For CA FINAL

DIRECT TAX LAWS & INERNATIONAL TAXATION

(Question Bank)

#SabKarLenge

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KEY FEATURES:

- ✓ Based on the Institute's Revised Module for May 24/Nov 24 Exams
- ✓ Compilation of More than 400 Questions from ICAI Module, MTPs, RTPs, Past Papers till Nov 23 RTP
- ✓ Questions Covering all Concepts

CA YASH KHANDELWAL

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Direct Tax Laws &

International Taxation

Price : ₹599 (For Question Bank)

We express our sincere thanks to all our readers, authors and business associates for helping us in our mission of producing quality books for quality education. We wish all our young readers a brilliant success in various examinations and a bright future.

- Publisher

Preface

It gives me immense pleasure to present Question Bank of C.A. Final Direct Tax. This edition has updated syllabus which is applicable from Nov 2023 Exam and onwards.

This book has everything which student may require to understand & remember. The book has been developed keeping in the mind the technicality of the subject to bring it at a students grasping level. Efforts have been made to keep the book in simplest form to understand without compromising on the integral topics. Please note this book must be used as a summary book. Students should refer to the Module/Study Material provided by the Institute.

Students need to understand the concepts and logical reasoning of the Chapter. Only mugging-up shall not suffice to score in this subject. Also, students should practice as many illustrations as possible.

For all revisions, updates and notes, students are requested to join the Telegram Channel:

Main Channel (CA Yash Khandelwal-Direct Tax)

Every effort has been made to avoid any errors and omissions in this book. Despite all the effort we believe some errors might have crept in. The students are welcome to point out any errors/suggestions. Please e-mail at sabkarlenge@gmail.com

Best wishes,

Yash Khandelwal

ACKNOWLEDGEMENT

I would like to thank my Parents (Gopal & Radhika), Krrish (My Brother), Rupal (My Sister) & MAA (My Grandmother) & Dadaji for alltheir support towards my studies, career and various aspects of my life.

This Book is dedicated to them.

Special Thanks to "CA Aakash Kandoi" for his valuable support & guidance throughout the making of this book.

I would also like to Thank "Radhika" for her constant support and motivating me to make this book.

A Big Thanks to my brother "Krrish" for designing the template of this book & pushing me always.

Special Thanks To my Students Manin, Aditya, Ankit & Rutvi for their contribution while making this book.

Above all, a big Thank You to all my students for showering so much love in such a short span of time. We will make it big together.

A wise man once said " SAB KAR LUNGA MAIN"

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Direct Tax & International Tax

Ye Padh ke Start Karna Question Bank

I know you have ignored Preface, Isliye Ye Likh raha hu.

Question Bank me Sab kuch Covered hai From May 18 till Rtp Nov 23 i.e Latest Material Available from the Institue.

I had an option of Categorizing the Questions Based on concepts & sections but I myself refrained from doing that. Why?

Reason: When the Questions are categorized according to concept or Sections, You come to know about the Question before even reading the Question, Your mind is relaxed. Its not challenged by the uncertainity.

But what happens in Exam, Questions come randomly from each topic. You have to yourself read and identify the Chapter/concept/section applicable in the Question.

And most of the students panic in exams because they are not habitual of it.

So for being able to do that in the exam, you need to practice that from today.

And with Paper 6 IBS coming in picture, you must be habitual of tackling these situatios.

That's why I have not categorized Questions based on Concepts/sections.

You will Find Just 2 Sections :

Part A ; Study Mat Questions

Part B : Additional Questions (From Past Papers, RTPs, MTPs)

Chalo Ab Padho Jaake, Naam Roshan Karo Apne Papa Mummy Ka.

All The Best,

Yash Khandelwal

Sab Kar Lenge

CHAPTER 1
BASIC CONCEPTS
Part-A : Study Material Questions

Question-1 :
Mr. Arjun has a total income of ₹ 16,00,000 for P.Y.2023-24, comprising of income from house property and interest on fixed deposits. Compute his tax liability for A.Y.2024-25 assuming his age is–
(a) 52 years
(b) 64 years
(c) 83 years
Assume that Mr. Arjun has exercised the option to shift out/ opt out of the default tax regime.

Solution :

(a) Computation of Tax liability of Mr. Arjun (aged 52 years)

Tax liability:	
First ₹ 2,50,000 - Nil	-
Next ₹ 2,50,001 – ₹ 5,00,000- @5% of ₹ 2,50,000	₹ 12,500
Next ₹ 5,00,001 – ₹ 10,00,000- @20% of ₹ 5,00,000	₹ 1,00,000
Balance i.e., ₹ 16,00,000 minus	
₹ 10,00,000 - @30% of ₹ 6,00,000	₹ 1,80,000
	₹ 2,92,500
Add: Health and Education cess@4%	₹ 11,700
	₹ 3,04,200

(b) Computation of Tax liability of Mr. Arjun (aged 64 years)

Tax liability:	
First ₹ 3,00,000 - Nil	
Next ₹ 3,00,001 – ₹ 5,00,000 - @5% of ₹ 2,00,000	₹ 10,000
Next ₹ 5,00,001 – ₹ 10,00,000- @20% of ₹ 5,00,000	₹ 1,00,000
Balance i.e., ₹ 16,00,000 minus	
₹ 10,00,000- @30% of ₹ 6,00,000	₹ 1,80,000
	₹ 2,90,000
Add: Health and Education cess@4%	₹ 11,600
	₹ 3,01,600

(c) Computation of Tax liability of Mr. Arjun (aged 83 years)

Tax liability:	
First ₹ 5,00,000 - Nil	
Next ₹ 5,00,001 – ₹ 10,00,000 - @ 20% of ₹ 5,00,000	₹ 1,00,000
Balance i.e., ₹ 16,00,000 minus	
₹ 10,00,000 - @ 30% of ₹ 6,00,000	₹ 1,80,000
	₹ 2,80,000
Add: Health and Education cess@4%	₹ 11,200
	₹ 2,91,200

Question-2 :
Compute the tax liability of Mr. Arpit (aged 42), having total income of ₹ 51 lakhs for the Assessment Year 2024-25. Assume that his total income comprises of salary income, Income from house property and interest on fixed deposit. Assume that Mr. Arpit has exercised the option to shift out of section 115BAC.

Solution :

Computation of tax liability of Mr. Arpit for the A.Y.2024-25

(A)	Income-tax (including surcharge) computed on total income of ₹ 51,00,000		
	₹ 2,50,000 – ₹ 5,00,000 @5%	₹ 12,500	
	₹ 5,00,001 – ₹ 10,00,000 @20%	₹ 1,00,000	
	₹ 10,00,001 – ₹ 51,00,000 @30%	₹ 12,30,000	
	Total	₹ 13,42,500	
	Add: Surcharge @ 10%	₹ 1,34,250	₹ 14,76,750

(B)	Income-tax computed on total income of ₹ 50 lakhs (₹ 12,500 plus ₹ 1,00,000 plus ₹ 12,00,000)		₹ 13,12,500
(C)	Total Income Less ₹ 50 lakhs		₹ 1,00,000
(D)	Income-tax computed on total income of ₹ 50 lakhs plus the excess of total income over ₹ 50 lakhs **(B +C)**		₹ 14,12,500
(E)	**Tax liability: lower of (A) and (D)**		₹ 14,12,500
	Add: Health and education cess @4%		₹ 56,500
	Tax liability (including cess)		**₹ 14,69,000**
(F)	**Marginal Relief (A – D)**		**₹ 64,250**

Alternative method –

(A)	Income-tax (including surcharge) computed on total income of ₹ 51,00,000		
	₹ 2,50,000 – ₹ 5,00,000@5%	₹ 12,500	
	₹ 5,00,001 – ₹ 10,00,000@20%	₹ 1,00,000	
	₹ 10,00,001 – ₹ 51,00,000@30%	₹ 12,30,000	
	Total	₹ 13,42,500	
	Add: Surcharge@10%	₹ 1,34,250	₹ 14,76,750
(B)	Income-tax computed on total income of ₹ 50 lakhs (₹ 12,500 plus ₹ 1,00,000 plus ₹ 12,00,000)		₹ 13,12,500
(C)	Excess tax payable (A)-(B)		₹ 1,64,250
(D)	**Marginal Relief** (₹ 1,64,250 – ₹ 1,00,000, being the amount of income in excess of ₹ 50,00,000)		**₹ 64,250**
(E)	Tax liability (A)-(D)		₹ 14,12,500
	Add: Health and education cess @4%		₹ 56,500
	Tax liability (including cess)		**₹ 14,69,000**

Question-3 :

Compute the tax liability of Mr. Veer (aged 51) under the default tax regime, having total income of ₹ 1,01,00,000 for the Assessment Year 2024-25. Assume that his total income comprises of salary income, Income from house property and interest on fixed deposit.

Solution : Computation of tax liability of Mr. Veer for the A.Y. 2024-25

(A)	Income-tax (including surcharge) computed on total income of ₹ 1,01,00,000	
	₹ 3,00,000 – ₹ 6,00,000@5%	₹ 15,000
	₹ 6,00,001 – ₹ 9,00,000@10%	₹ 30,000
	₹ 9,00,001 – ₹ 12,00,000@15%	₹ 45,000
	₹ 12,00,001 – ₹ 15,00,000@20%	₹ 60,000
	₹ 15,00,001 – ₹ 1,01,00,000@30%	₹ 25,80,000
	Total	₹ 27,30,000
	Add: Surcharge@15%	₹ 4,09,500
	Tax liability without marginal relief	**₹ 31,39,500**
(B)	Income-tax computed on total income of ₹ 1 crore (₹ 1,50,000 plus ₹ 25,50,000)	₹ 27,00,000
	Add: Surcharge@10%	₹ 2,70,000
		₹ 29,70,000
(C)	Total Income Less ₹ 1 crore ₹ 1,00,000	
(D)	Income-tax computed on total income of ₹ 1 crore plus the excess of total income over ₹ 1 crore **(B +C)**	₹ 30,70,000
(E)	Tax liability: lower of (A) & (D)	₹ 30,70,000
	Add: Health and education cess @4%	₹ 1,22,800
	Tax liability (including cess)	**₹ 31,92,800**
(F)	**Marginal relief (A-D)**	**₹ 69,500**

Alternative method:

(A)	Income-tax (including surcharge) computed on total income of ₹ 1,01,00,000		
	₹ 3,00,000 – ₹ 6,00,000@5%	₹ 15,000	
	₹ 6,00,001 – ₹ 9,00,000@10%	₹ 30,000	
	₹ 9,00,001 – ₹ 12,00,000@15%	₹ 45,000	
	₹ 12,00,001 – ₹ 15,00,000@20%	₹ 60,000	
	₹ 15,00,001 – ₹ 1,01,00,000@30%	₹ 25,80,000	
	Total	₹ 27,30,000	
	Add: Surcharge @ 15%	₹ 4,09,500	₹ 31,39,500
(B)	Income-tax computed on total income of ₹ 1 crore [(₹ 1,50,000 plus ₹ 25,50,000) plus surcharge@10%]		₹ 29,70,000
(C)	Excess tax payable (A)-(B)		₹ 1,69,500
(D)	**Marginal Relief** (₹ 1,69,500 – ₹ 1,00,000, being the amount of income in excess of ₹ 1,00,00,000)		**₹ 69,500**
(E)	Tax liability (A) - (D)		₹ 30,70,000
	Add: Health and education cess @4%		₹ 1,22,800
	Tax liability (including cess)		**₹ 31,92,800**

Question-4 :

Compute the tax liability of Mr. Varun (aged 58), having total income of ₹2,01,00,000 for the Assessment Year 2024-25. Assume that his total income comprises of salary income, Income from house property and interest on fixed deposit. Assume that Mr. Varun has exercised the option to shift out of section 115BAC.

Solution : Computation of tax liability of Mr. Varun for the A.Y. 2024-25

(A)	Income-tax (including surcharge) computed on total income of ₹ 2,01,00,000		
	₹ 2,50,000 – ₹ 5,00,000 @ 5%	₹ 12,500	
	₹ 5,00,001 – ₹ 10,00,000 @ 20%	₹ 1,00,000	
	₹ 10,00,001 – ₹ 2,01,00,000@30%	₹ 57,30,000	
	Total	₹ 58,42,500	
	Add: Surcharge @ 25%	₹ 14,60,625	₹ 73,03,125
(B)	Income-tax computed on total income of ₹ 2 crore (₹ 12,500 plus ₹ 1,00,000 plus ₹ 57,00,000)		₹ 58,12,500
	Add: Surcharge@15%		₹ 8,71,875
			₹ 66,84,375
(C)	Total Income Less ₹ 2 crore		₹ 1,00,000
(D)	Income-tax computed on total income of ₹ 2 crore plus the excess of total income over ₹ 2 crore **(B +C)**		₹ 67,84,375
(E)	**Tax liability (A) or (D), whichever is lower**		₹ 67,84,375
	Add: Health and education cess @4%		₹ 2,71,375
	Tax liability (including cess)		**₹ 70,55,750**
(F)	**Marginal relief (A-D)**		**₹ 5,18,750**

Alternative method

(A)	Income-tax (including surcharge) computed on total income of ₹ 2,01,00,000		
	₹ 2,50,000 – ₹ 5,00,000 @ 5%	₹ 12,500	
	₹ 5,00,001 – ₹ 10,00,000 @ 20%	₹ 1,00,000	
	₹ 10,00,001 – ₹ 2,01,00,000@30%	₹ 57,30,000	
	Total	₹ 58,42,500	
	Add: Surcharge@25%	₹ 14,60,625	₹ 73,03,125
(B)	Income-tax computed on total income of ₹ 2 crore [(₹ 12,500 plus ₹ 1,00,000 plus ₹ 57,00,000) plus surcharge@15%]		₹ 66,84,375
(C)	Excess tax payable (A)-(B)		₹ 6,18,750
(D)	**Marginal Relief** (₹ 6,18,750 – ₹ 1,00,000, being the amount of income in excess of ₹ 2,00,00,000)		**₹ 5,18,750**
(E)	Tax liability (A) - (D)		₹ 67,84,375
	Add: Health and education cess@4%		₹ 2,71,375
	Tax liability (including cess)		**₹ 70,55,750**

Question-5 :
Compute the tax liability of Mr. Akhil (aged 65) in a most beneficial manner. He is having total income of ₹5,01,00,000 for the Assessment Year 2024-25. Assume that his total income comprises of salary income, Income from house property and interest on fixed deposit and is the same under both tax regimes.

Solution : Computation of tax liability of Mr. Akhil under default tax regime for the A.Y. 2024-25

Income-tax (including surcharge) computed on total income of ₹ 5,01,00,000		
₹ 3,00,000 – ₹ 6,00,000@5%	₹ 15,000	
₹ 6,00,001 – ₹ 9,00,000@10%	₹ 30,000	
₹ 9,00,001 – ₹ 12,00,000@15%	₹ 45,000	
₹ 12,00,001 – ₹ 15,00,000@20%	₹ 60,000	
₹ 15,00,001 – ₹ 5,01,00,000@30%	₹ 1,45,80,000	
Total	₹ 1,47,30,000	
Add: Surcharge@25%	₹ 36,82,500	₹ 1,84,12,500
Add: Health and education cess @4%		₹ 7,36,500
Tax liability		**₹ 1,91,49,000**

Computation of tax liability of Mr. Akhil under optional tax regime for the A.Y. 2024-25

(A)	Income-tax (including surcharge) computed on total income of ₹ 5,01,00,000		
	₹ 3,00,000 – ₹ 5,00,000 @ 5%	₹ 10,000	
	₹ 5,00,001 – ₹ 10,00,000 @ 20%	₹ 1,00,000	
	₹ 10,00,001 – ₹ 5,01,00,000@30%	₹ 1,47,30,000	
	Total	₹ 1,48,40,000	
	Add: Surcharge @ 37%	₹ 54,90,800	₹ 2,03,30,800
(B)	Income-tax computed on total income of ₹ 5 crore (₹ 10,000 plus ₹ 1,00,000 plus ₹ 1,47,00,000)		₹ 1,48,10,000
	Add: Surcharge@25%		₹ 37,02,500
			₹ 1,85,12,500
(C)	Total Income Less ₹ 5 crore		₹ 1,00,000
(D)	Income-tax computed on total income of ₹ 5 crore plus the excess of total income over ₹ 5 crore **(B +C)**		₹ 1,86,12,500
(E)	**Tax liability (A) or (D), whichever is lower**		₹ 1,86,12,500
	Add: Health and education cess@4%		₹ 7,44,500
	Tax liability (including cess)		**₹ 1,93,57,000**
(F)	**Marginal Relief (A – D)**		**₹ 17,18,300**

Alternative method

(A)	Income-tax (including surcharge) computed on total income of ₹ 5,01,00,000		
	₹ 3,00,000 – ₹ 5,00,000@5%	₹ 10,000	
	₹ 5,00,001 – ₹ 10,00,000@20%	₹ 1,00,000	
	₹ 10,00,001 – ₹ 5,01,00,000@30%	₹ 1,47,30,000	
	Total	₹ 1,48,40,000	
	Add: Surcharge @ 37%	₹ 54,90,800	₹ 2,03,30,800
(B)	Income-tax computed on total income of ₹ 5 crore [(₹ 10,000 plus ₹ 1,00,000 plus ₹ 1,47,00,000) plus surcharge@25%]		₹ 1,85,12,500
(C)	Excess tax payable (A)-(B)		₹ 18,18,300
(D)	**Marginal Relief** (₹ 18,18,300 – ₹ 1,00,000, being the amount of income in excess of ₹ 5,00,00,000)		**₹ 17,18,300**
(E)	Tax liability (A) - (D)		₹ 1,86,12,500
	Add: Health and education cess @4%		₹ 7,44,500
	Tax liability (including cess)		**₹ 1,93,57,000**

It is beneficial for Mr. Akhil to pay tax under default tax regime under section 115BAC, since his tax liability would be lower by ₹ 2,08,000 (₹ 1,93,57,000 - ₹ 1,91,49,000).

Question-6 :
Compute the marginal relief available to X Ltd., a domestic company, assuming that the total income of X Ltd. is ₹ 1,01,00,000 for A.Y.2024-25 and the total income does not include any income in the nature of capital gains. Assume that the company has not exercised option under section 115BAA or 115BAB.
[Note - The gross receipts of X Ltd. for the P.Y.2021-22 is ₹ 402 crore]

Solution :
The tax payable on total income of ₹ 1,01,00,000 of X Ltd. computed @32.1% (including surcharge @7%) is ₹ 32,42,100. However, the tax cannot exceed ₹31,00,000 (i.e., the tax of ₹ 30,00,000 payable on total income of ₹ 1 crore plus ₹ 1,00,000, being the amount of total income exceeding ₹ 1 crore). The marginal relief is ₹ 1,42,100 (i.e., ₹ 32,42,100 - ₹ 31,00,000).

Therefore, the tax payable on ₹ 1,01,00,000 would be ₹ 32,24,000 (₹ 31,00,000 plus health and education cess @4% of ₹ 1,24,000).

Question-7 :
Compute the marginal relief available to Y Ltd., a domestic company, assuming that the total income of Y Ltd. for A.Y.2024-25 is ₹ 10,01,00,000 and the total income does not include any income in the nature of capital gains. Assume that the company has not exercised option under section 115BAA or 115BAB.
[Note - The gross receipts of Y Ltd. for the P.Y.2021-22 is ₹ 410 crore]

Solution:
The tax payable on total income of ₹ 10,01,00,000 of Y Ltd. computed@ 33.6% (including surcharge@12%) is ₹ 3,36,33,600. However, the tax cannot exceed ₹ 3,22,00,000 [i.e., the tax of ₹ 3,21,00,000 (32.1% of ₹ 10 crore) payable on total income of ₹ 10 crore plus ₹ 1,00,000, being the amount of total income exceeding ₹ 10 crore]. The marginal relief is ₹ 14,33,600 (i.e., ₹ 3,36,33,600 - ₹ 3,22,00,000). Therefore, the tax payable on ₹ 10,01,00,000 would be ₹ 3,34,88,000 (i.e., ₹ 3,22,00,000 plus health and education cess @4% of ₹ 12,88,000).

Question-8 :
Mr. Mahesh aged 32 years and a resident in India, has a total income of ₹6,50,000, comprising his salary income and interest on bank fixed deposit. Compute his tax liability for A.Y.2024-25 under default tax regime under section 115BAC.

Solution: Computation of tax liability of Mr. Mahesh for A.Y. 2024-25

Particulars	**₹**
Tax on total income of ₹ 6,50,000	
Tax @10% of ₹ 50,000 + ₹ 15,000	20,000
Less: Rebate u/s 87A (Lower of tax payable or ₹ 25,000)	20,000
Tax Liability	Nil

Question-9 :
Mr. Nitin aged 42 years and a resident in India, has a total income of ₹ 7,15,000, comprising his salary income and interest on bank fixed deposit. Compute his tax liability for A.Y.2024-25 under default tax regime under section 115BAC.

Solution : Computation of tax liability of Mr. Nitin for A.Y. 2024-25

Particulars	**₹**	
Step 1: Total Income of ₹ 7,15,000 - ₹ 7,00,000	15,000	(A)
Step 2: Tax on total income of ₹ 7,15,000		
Tax @10%of ₹ 1,15,000 + ₹ 15,000	26,500	(B)
Step 3: Since B > A, rebate u/s 87A would be B-A [₹ 26,500 - ₹ 15,000]	11,500	
	15,000	
Add: HEC@4%	600	
Tax Liability	15,600	

Question-10 :
Mr. Manish, aged 47 years and a resident in India, has a total income of ₹4,15,000, comprising his salary income and interest on bank fixed deposit. Compute his tax liability for A.Y.2024 -25 if he exercises the option to shift out of the default tax regime.

Solution : Computation of tax liability of Mr. Manish for A.Y. 2024-25

Particulars	**₹**
Tax on total income of ₹ 4,15,000 Tax@5%of ₹ 1,65,000	8,250
Less: Rebate u/s 87A (Lower of tax payable or ₹ 12,500)	8,250
Tax Liability	Nil

Question-11 :
Mr. Bhargava, a leading advocate on corporate law, decided to reduce his practice and to accept briefs only for paying his taxes and making charities with the fees received on such briefs. In a particular case, he agreed to appear to defend one company in the Supreme Court on the condition that he would be provided with ₹ 5 lakhs for a public charitable trust that he would create. He defended the company and was paid the sum by the company. He created a trust of that sum by executing a trust deed. Decide whether the amount received by Mr. Bhargava is assessable in his hands as income from profession.

Solution :
In the instant case, the trust was created by Mr. Bhargava himself out of his professional income. The client did not create the trust. The client did not impose any obligation in the nature of a trust binding on Mr. Bhargava. Thus, there is no diversion of the money to the trust before it became professional income in the hands of Mr. Bhargava. This case is one of application of professional income and not of diversion of income by overriding title. Therefore, the amount received by Mr. Bhargava is chargeable to tax under the head "Profits and gains of business or profession".

Question-12 :
XYZ Ltd. took over the running business of a sole-proprietor by a sale deed. As per the sale deed, XYZ Ltd. undertook to pay overriding charges of ₹ 15,000 p.a. to the wife of the sole- proprietor in addition to the sale consideration. The sale deed also specifically mentioned that the amount was charged on the net profits of XYZ Ltd., who had accepted that obligation as a condition of purchase of the going concern. Is the payment of overriding charges by XYZ Ltd. to the wife of the sole-proprietor in the nature of diversion of income or application of income? Discuss.

Solution :
This issue came up for consideration before the Allahabad High Court in Jit & Pal X-Rays (P.) Ltd. v. CIT (2004) 267 ITR 370 (All). The Allahabad High Court observed that the overriding charge which had been created in favour of the wife of the sole-proprietor was an integral part of the sale deed by which the going concern was transferred to the assessee. The obligation, therefore, was attached to the very source of income i.e., the going concern transferred to the assessee by the sale deed. The sale deed also specifically mentioned that the amount in question was charged on the net profits of the assessee-company and the assessee-company had accepted that obligation as a condition of purchase of the going concern. Hence, it is clearly a case of diversion of income by an overriding charge and not a mere application of income.

Question-13 :
MKG Agency is a partnership firm consisting of Mr. Mohan and his three major sons. The partnership deed provided that after the death of Mr. Mohan, the business shall be continued by the sons, subject to the condition that the firm shall pay 20% of the profits to their mother, Lakshmi. Mr. Mohan died in March, 2023. In the previous year 2023-24, the reconstituted firm paid ₹ 1 lakh (equivalent to 20% of the profits) to Lakshmi and claimed the amount as deduction from its income. Examine the correctness of the claim of the firm.

Solution :
The issue raised in the problem is based on the concept of diversion of income by overriding title, which is well recognised in the income-tax law. In the instant case, the amount of ₹ 1 lakh, being 20% of profits of the firm, paid to Lakshmi gets diverted at source by the charge created in her favour as per the terms of the partnership deed. Such income does not reach the assessee-firm.

Rather, such income stands diverted to the other person as such other person has a better title on such income than the title of the assessee. The firm might have received the said amount but it so received for and on behalf of Lakshmi, who possesses the overriding title. Therefore, the amount paid to Lakshmi should be excluded from the income of the firm. This view has been confirmed in CIT vs. Nariman B. Bharucha & Sons (1981) 130 ITR 863 (Bom).

Question-14 :
Anand was the Karta of HUF. He died leaving behind his major son Prem, his widow, his grandmother and brother's wife. Can the HUF retain its status as such or the surviving persons would become co-owners?

Solution :
In the case of Gowli Buddanna v. CIT (1966) 60 ITR 293, the Supreme Court has made it clear that there need not be more than one male member to form a HUF as a taxable entity under the Income-tax Act, 1961. The expression "Hindu Undivided Family" in the Act is used in the sense in which it is understood under the personal law of the Hindus.

Under the Hindu system of law, a joint family may consist of a single male member and the widows of the deceased male members and the Income-tax Act, 1961 does not mandate that it should consist of at least two male members. Therefore, the property of a joint Hindu family does not cease to belong to the family merely because the family is represented by a single co-parcener who possesses the right which an owner of property may possess.

Therefore, the HUF would retain its status as such.

Question-15 :
Mr. C borrowed on Hundi, a sum of ₹ 25,000 by way of bearer cheque on 11-09-2023 and repaid the same with interest amounting to ₹ 30,000 by account payee cheque on 12-10-2023.

The Assessing Officer (AO) wants to treat the amount borrowed as income during the previous year. Is the action of the Assessing Officer valid?

Solution :
Section 69D provides that where any amount is borrowed on a hundi or any amount due thereon is repaid otherwise than by way of an account-payee cheque drawn on a bank, the amount so borrowed or repaid shall be deemed to be the income of the person borrowing or repaying the amount for the previous year in which the amount was so borrowed or repaid, as the case may be.

In this case, Mr. C has borrowed ₹ 25,000 on Hundi by way of bearer cheque. Therefore, it shall be deemed to be income of Mr. C for the previous year 2023-24. Since the repayment of the same along with interest was made by way of account payee cheque, the same would not be hit by the provisions of section 69D. Therefore, the action of the Assessing Officer treating the amount borrowed as income during the previous year is valid in law.

Question-16 :
The Assessing Officer found, during the course of assessment of a firm, that it had paid rent in respect of its business premises amounting to ₹ 60,000, which was not debited in the books of account for the year ending 31.3.2024. The firm did not explain the source for payment of rent. The Assessing Officer proposes to make an addition of ₹ 60,000 in the hands of the firm for the assessment year 2024-25. The firm claims that even if the addition is made, the sum of ₹60,000 should be allowed as deduction while computing its business income since it has been expended for purposes of its business. Examine the claim of the firm.

Solution :

The claim of the firm for deduction of the sum of ₹ 60,000 in computing its business income is not tenable. The action of the Assessing Officer in making the addition of ₹ 60,000, being the payment of rent not debited in the books of account (for which the firm failed to explain the source of payment) is correct in law since the same is an unexplained expenditure under section 69C. The proviso to section 69C states that such unexplained expenditure, which is deemed to be the income of the assessee, shall not be allowed as a deduction under any head of income. Therefore, the claim of the firm is not tenable.

Part-B : Additional Questions

Question-17 : [RTP MAY-2018]
Mr. Rajiv is a retail trader and his total income for the last few years ranged between 8 lakh to 10 lakh. He celebrated his 25th wedding anniversary on a large scale on 2nd December, 2023 by hosting a cruise party in the luxury cruise liner "Ocean Princess", for which he had spent 30 lakh. The Assessing Officer, in the course of scrutiny assessment of Mr. Rajiv, asked him to explain the source of such expenditure. The explanation offered by Mr. Rajiv that the same was out of his savings for the last few years, was not found satisfactory by the Assessing Officer, since a couple of years ago, he had spent to tune of 60 lakh on the grand wedding celebrations of his daughter at Vijayaseshmahal in Chennai. You are required to examine the tax consequences.

Solution :
If any expenditure is incurred by an assessee in any financial year in respect of which he is not able to offer explanation about the source of such expenditure or the explanation offered by him is not satisfactory in the opinion of the Assessing Officer, then the amount of such unexplained expenditure may be deemed as income of the assessee for such financial year as per section 69C.

Therefore, in this case, since the Assessing Officer is not satisfied with the explanation offered by Mr. Rajiv, the expenditure of 30 lakh incurred by him in the financial year 2023-24 in hosting a grand cruise party may be deemed as his income for P.Y. 2023-24 as per section 69C.

Further, such unexplained expenditure which is deemed as the income of Mr. Rajiv shall not be allowed as deduction under any head of income.

Where the total income of Mr. Rajiv includes such unexplained expenditure of 30 lakh, which is deemed as his income under section 69C, such deemed income would be taxed at the rate of 60% as per section 115BBE plus surcharge@25% and cess@4%. The effective rate of tax would be 78%.

Further no basic exemption or allowance or expenditure shall be allowed to him under any provision of the Income-tax Act, 1961 in computing such deemed income. No set-off of loss is permissible against such deemed income.

Section 271AAC provides for levy of penalty@10% of tax payable under section 115BBE, in a case where income determined includes any income referred to in sections 68, 69, 69A to 69D for any previous year.

However, no such penalty would be levied on such income to the extent the same has been included by the assessee in return of income furnished under section 139 and tax in accordance with section 115BBE has been paid on or before the end of the relevant previous year.

Question-18 [RTP MAY-23]
M/s. Alpha & Co. is a partnership firm with five partners sharing profits and losses equally. Its return for the A.Y.2024-25 was selected for scrutiny u/s 143(3). The controversy was in relation to the loan of ₹ 50 lakhs from one partner, Mr. Raghav, credited in the books of the firm. The firm's explanation that Mr. Raghav has given a loan for ₹ 50 lakhs carrying interest@12%, as approved by the partnership deed, was not accepted since Mr. Raghav's explanation for the source of income in his hands was not found satisfactory by the Assessing Officer. Accordingly, the Assessing Officer treated the said amount as cash credits in the hands of the firm, M/s. Alpha & Co., and subjected the same to tax@78%. Discuss the correctness of the action of the Assessing Officer.

Solution :
As per section 68, where any sum is found credited in the books of an assessee maintained for any previous year and the assessee offers no explanation about the nature and source or the explanation offered is not satisfactory in the opinion of the Assessing Officer, the sum so credited may be charged as income of the assessee of that previous year.

The first proviso to section 68 provides that where the sum so credited consists of loan or borrowing or any such amount, by whatever name called, any explanation offered by the assessee in whose books such sum is credited would not be deemed to be satisfactory, unless -

- the person in whose name such credit is recorded in the books of such assessee also offers an explanation about the nature and source of such sum so credited and
- in the opinion of the Assessing Officer, such explanation has been found to be satisfactory.

Such cash credits would be taxable@78% [tax@60% under section 115BBE plus surcharge@25% + cess@4%].

Since Mr. Raghav was unable to explain the source of the sum of ₹ 50 lakhs in his hands to the satisfaction of the Assessing Officer, such sum credited in the books of Alpha & Co. as loan from Mr. Raghav would be treated as cash credit in the hands of the firm and subject to tax@78%. Accordingly, the action of the Assessing Officer is Correct.

CHAPTER 2
INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

Part-A : Study Material Questions

Question-1 :
Mr. Amar grows sugarcane and uses the same for the purpose of manufacturing sugar in his factory. 40% of sugarcane produce is sold for ₹ 12 lakhs, and the cost of cultivation of such sugarcane is ₹ 6 lakhs. The cost of cultivation of the balance sugarcane (60%) is ₹ 15 lakhs and the market value of the same is ₹ 25 lakhs. After incurring ₹ 1.5 lakhs in the manufacturing process on the balance sugarcane, the sugar was sold for ₹ 30 lakhs. Compute Amar's business income and agricultural income.

Solution :

Computation of Business Income and Agriculture Income of Mr. Amar

Particulars	Business Income	Agricultural Income	
	(₹)	(₹)	(₹)
Sale of Sugar			
Business income			
Sale Proceeds of sugar	30,00,000		
Less: Market value of sugar (60%)	25,00,000		
Less: Manufacturing exp.	1,50,000		
	3,50,000		
Agricultural income			
Market value of sugar (60%)		25,00,000	
Less: Cost of cultivation		15,00,000	10,00,000
Sale of sugarcane			
Agricultural Income			
Sale proceeds of sugarcane (40%)		12,00,000	
Less: Cost of cultivation		6,00,000	6,00,000
			16,00,000

Question-2 :
Mr. Nilesh manufactures latex from the rubber plants grown by him in India. These are then sold in the market for ₹ 36 lakhs. The cost of growing rubber plants is ₹ 16 lakhs and that of manufacturing latex is ₹ 12 lakhs. Compute his total income.

Solution :
The total income of Mr. Nilesh comprises of agricultural income and business income.
Total profits from the sale of latex = ₹ 36 lakhs – ₹ 16 lakhs – ₹ 12 lakhs = ₹ 8 lakhs.
Agricultural income = 65% of ₹ 8 lakhs = ₹ 5.2 lakhs
Business income = 35% of ₹ 8 lakhs = ₹ 2.8 lakhs

Question-3 :
Ankur, the owner of a land situated in Kerala used for growing thereon different types of fruits, paddy, vegetables and flowers, received from Yahoo Movies Ltd., Chennai, ₹ 5 lakhs as rent towards the use of this land for shooting of a film. The amount so received was accounted by him in the books as revenue derived from land and claimed to be exempt under section 10(1). He now wants to confirm from you whether the amount has been correctly treated by him as agricultural income.

Solution :
The income received by Mr. Ankur 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 in respect of 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.

Question-4 :

Mr. X, a resident, has provided the following particulars of his income for the P.Y.2023-24.

i.	Income from salary (computed) -	₹ 4,00,000
ii.	Income from house property (computed) -	₹ 3,80,000
iii.	Agricultural income from a land in Assam -	₹ 4,50,000
iv.	Expenses incurred for earning agricultural income -	₹ 1,60,000

Compute his tax liability for A.Y. 2024-25 assuming his age is -

(a) 40 years

(b) 75 years

Solution :

(a) Computation of tax liability (age 40 years)

Computation of total income of Mr. X for the A.Y. 2024-25 under default tax regime under section 115BAC

For the purpose of partial integration of taxes, Mr. X has satisfied both the conditions i.e.

1. Net agricultural income exceeds ₹ 5,000 p.a., and
2. Non-agricultural income exceeds the basic exemption limit of ₹ 3,00,000.

His tax liability is computed in the following manner:

Particulars	**₹**	**₹**
Income from salary		4,00,000
Income from house property		3,80,000
Net agricultural income [₹ 4,50,000 (-) ₹ 1,60,000]	2,90,000	
Less: Exempt under section 10(1)	(2,90,000)	-
Gross Total Income		**7,80,000**
Less: Deductions under Chapter VI-A		-
Total Income		**7,80,000**

Step 1 :	₹ 7,80,000 + ₹ 2,90,000	= ₹ 10,70,000
	Tax on ₹ 10,70,000	= ₹ 70,500
	(i.e., 5% of ₹ 3,00,000 plus 10% of ₹ 3,00,000 plus 15% of ₹ 1,70,000)	
Step 2 :	₹ 2,90,000 + ₹ 3,00,000	= ₹ 5,90,000
	Tax on ₹ 5,90,000	= ₹ 14,500
	(i.e. 5% of ₹ 2,90,000)	
Step 3 :	₹ 70,500 – ₹ 14,500	= ₹ 56,000
Step 4 & 5 :	Total tax payable	= ₹ 56,000 + 4% of ₹ 56,000 = ₹ 58,240

Computation of total income of Mr. X for the A.Y. 2024-25 under normal provisions of the Act

For the purpose of partial integration of taxes, Mr. X has satisfied both the conditions i.e.

1. Net agricultural income exceeds ₹ 5,000 p.a., and
2. Non-agricultural income exceeds the basic exemption limit of ₹ 2,50,000.

His tax liability is computed in the following manner:

Particulars	**₹**	**₹**
Income from salary		4,00,000
Income from house property		3,80,000
Net agricultural income [₹ 4,50,000 (-) ₹ 1,60,000]	2,90,000	
Less: Exempt under section 10(1)	(2,90,000)	-
Gross Total Income		**7,80,000**
Less: Deductions under Chapter VI-A		-
Total Income		**7,80,000**

Step 1 : ₹ 7,80,000 + ₹ 2,90,000 = ₹ 10,70,000
Tax on ₹ 10,70,000 = ₹ 1,33,500
(i.e., 5% of ₹ 2,50,000 plus 20% of ₹ 5,00,000 plus 30% of ₹ 70,000)
Step 2 : ₹ 2,90,000 + ₹ 2,50,000 = ₹ 5,40,000
Tax on ₹ 5,40,000 = ₹ 20,500
(i.e. 5% of ₹ 2,50,000 plus 20% of ₹ 40,000)
Step 3 : ₹ 1,33,500 – ₹ 20,500 = ₹ 1,13,000
Step 4 & 5 : Total tax payable = ₹ 1,13,000 + 4% of ₹ 1,13,000 = ₹ 1,17,520

(b) Computation of tax liability (age 75 years)

Computation of total income of Mr. X for the A.Y. 2024-25
under default tax regime under section 115BAC

Tax liability of Mr. X would be same under default tax regime whether he is of age of 40 years of 75 years i.e., ₹ 58,240.

Computation of total income of Mr. X for the A.Y. 2024-25
under normal provisions of the Act

His tax liability is computed in the following manner:
Step 1 : ₹ 7,80,000 + ₹ 2,90,000 = ₹ 10,70,000.
Tax on ₹ 10,70,000 = ₹ 1,31,000
(i.e. 5% of ₹ 2,00,000 plus 20% of 5,00,000 plus 30% of 70,000)
Step 2 : ₹ 2,90,000 + ₹ 3,00,000 = ₹ 5,90,000.
Tax on ₹ 5,90,000 = ₹ 28,000
(i.e. 5% of ₹ 2,00,000 plus 20% of ₹ 90,000)
Step 3 : ₹ 1,31,000 – ₹ 28,000 = ₹ 1,03,000
Step 4 & 5: Total tax payable = ₹ 1,03,000 + 4% of ₹ 1,03,000 = ₹ 1,07,120.

Question-5

An amount of ₹ 5 lakhs was paid on 17.3.2024 to the parents of Amit by the Government of Chattisgarh as compensation to the aggrieved family, whose only son Amit lost his life in Maoist local bus bomb blast in Dantewada.

Examine with reasons, whether the amount of compensation received is chargeable to tax in A.Y. 2024-25.

Solution :

As per section 10(10BC), the meaning of ―disaster‖ shall be derived from Disaster Management Act, 2005 which defines disaster to mean a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or manmade causes, or by accident or negligence. It should have the effect of causing substantial loss of life or human suffering or damage to, and destruction of property, or damage to, or degradation of environment. It should be of such a nature or magnitude to be beyond the coping capacity of the community of the affected area.

If, for this reason, any compensation is paid by the Central Government or by a State Government or by a local authority, then, the same will be exempt from tax. Accordingly, the amount of ₹ 5 lakhs received by the parents of deceased Amit from the Government of Chattisgarh for the disaster because of Dantewada bus bomb blast is exempt under section 10(10BC).

Question-6

Examine with reasons, based on the provisions of the Act, as to chargeability of the following receipts to tax in the assessment year 2024-25:

(i) Rent of ₹ 60,000 charged from tenants occupying houses constructed on the land situated in India and used for agricultural purposes. The tenants, working in the nearby industrial area, occupy these houses for their own residential purposes.

(ii) Income of ₹ 75,000 derived by Anand Nursery from the sale of seedlings grown without carrying out all the basic operations on land.

(iii) Mr. Gaitonde, born and brought up in the State of Sikkim, had a net profit of ₹ 2,25,000 from the business located in Sikkim and interest of ₹ 55,000 on the securities/ bonds issued by the Government of Rajasthan.

Solution :

(i) As per section 10(1), agricultural income is exempt from tax. The meaning and scope of agricultural income is defined in section 2(1A). According to Explanation 2 to section 2(1A), any income derived from any building from the use of such building for any purpose (including letting for residential purposes or for the purpose of any business or profession) other than agriculture shall not be agricultural income. Therefore, the rent of ₹ 60,000 from letting out of houses constructed on agricultural land for residential purposes of industrial workers shall not be treated as agricultural income by virtue of Explanation 2 to section 2(1A). Hence, such income would be chargeable to tax.

(ii) Explanation 3 to section 2(1A) provides that the income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income, whether or not the basic operations were carried out on land. Accordingly, the income of ₹ 75,000 derived by Anand Nursery from the sale of seedlings grown without carrying out all the basic operations on land shall be treated as agricultural income and exempt from tax under section 10(1).

(iii) Section 10(26AAA) exempts the income which accrues or arises to a Sikkimese individual from any source in the State of Sikkim and the income by way of dividend or interest on securities. Therefore, the income of Mr. Gaitonde from a business located in Sikkim and interest income on the securities/bonds of Government of Rajasthan shall not be subject to tax.

Question-7 :

Mr. Akash, a resident Indian, earns income of ₹ 22 lakhs from sale of rubber manufactured from latex obtained from rubber plants grown by him in India and ₹ 30 lakhs from sale of rubber manufactured from latex obtained from rubber plants grown by him in Malaysia during the A.Y.2024-25. What would be his business income, assuming he has no other business?

Solution :

Since Mr. Akash is a resident, his global income would be taxable in India. Income of ₹ 30 lakhs from sale of rubber manufactured from latex obtained from rubber plants grown by him in Malaysia would be his business income since it is from rubber plants grown outside India. 35% income from sale of rubber manufactured from latex obtained from rubber plants grown by him in India would be taxable as business income and balance 65% would be exempt as agricultural income.

Business income = 35% of ₹ 22 lakhs + ₹ 30 lakhs = ₹ 37.70 lakhs

Question-8 :
Mr. Ram, a resident Indian, earns income of ₹ 15 lakhs from sale of coffee grown and cured in India during the A.Y.2024-25. His friend, Mr. Shyam, a resident Indian, earns income of ₹ 25 lakhs from sale of coffee grown, cured, roasted and grounded by him in India during the A.Y.2024-25. What would be the business income chargeable to tax in India of Mr. Ram and Mr. Shyam?

Solution :
In case of income derived from the sale of coffee grown and cured by the seller in India, 25% income on such sale is taxable as business income. In case of income derived from the sale of coffee grown, cured, roasted and grounded by the seller in India, 40% income on such sale is taxable as business income.

Business income of Mr. Ram = 25% of ₹ 15 lakhs = ₹ 3.75 lakhs
Business income of Mr. Shyam = 40% of ₹ 25 lakhs = ₹ 10 lakhs

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CHAPTER 3
PROFITS AND GAINS OF BUSINESS OR PROFESSION

Part-A : Study Material Questions

Question-1 :
XYZ (P) Ltd., engaged in manufacturing business, furnishes the following particulars:

	Particulars	₹
(1)	Opening WDV of plant and machinery as on 1.4.2023 (i.e., WDV as on 31.3.2023 after reducing depreciation for P.Y. 2022-23)	30,00,000
(2)	New plant and machinery purchased and put to use on 08.06.2023	20,00,000
(3)	New plant and machinery acquired and put to use on 15.12.2023	8,00,000
(4)	Computer acquired and installed in the office premises on 2.1.2024	3,00,000

Compute the amount of depreciation and additional depreciation as per the Income-tax Act, 1961 for the A.Y. 2024-25. Assume that all the assets were purchased by way of account payee cheque and that the company does not opt for section 115BAA/115BAB.

Solution :

Computation of depreciation and additional depreciation for A.Y. 2024-25

Particulars	Plant & Machinery (15%) (₹)	Computer (40%) (₹)
Normal depreciation		
• @ 15% on ₹ 50,00,000 [See Working Notes 1 & 2]	7,50,000	-
• @ 7.5% (50% of 15%, since put to use for less than 180 days) on ₹ 8,00,000	60,000	-
• @ 20% (50% of 40%, since put to use for less than 180 days) on ₹ 3,00,000	-	60,000
Additional Depreciation		
• @ 20% on ₹ 20,00,000 (new plant and machinery put to use for more than 180 days)	4,00,000	-
• @10% (50% of 20%, since put to use for less than 180 days) on ₹ 8,00,000	80,000	-
Total depreciation	**12,90,000**	**60,000**

Working Note:

Computation of written down value of Plant & Machinery

Particulars	Plant & Machinery (₹)	Computer (₹)
Written down value as on 1.4.2023	30,00,000	-
Add: Plant & Machinery purchased on 08.6.2023 (put to use for more than 180 days)	20,00,000	-
Add: Plant & Machinery acquired on 15.12.2023 (put to use for less than 180 days)	8,00,000	-
Computer acquired and installed in the office premises (put to use for less than 180 days)	-	3,00,000
Written down value as on 31.03.2024	**58,00,000**	**3,00,000**

Composition of plant and machinery included in the WDV

Particulars	Plant & Machinery (₹)	Computer (₹)
Plant and machinery put to use for 180 days or more [₹ 30,00,000 (WDV) + ₹ 20,00,000 (purchased on 8.6.2023)]	50,00,000	
Plant and machinery put to use for less than 180 days	8,00,000	-
Computers put to use for less than 180 days	-	3,00,000
	58,00,000	**3,00,000**

Notes:

1. As per the second proviso to section 32(1)(ii), where an asset acquired during the previous year is put to use for less than 180 days in that previous year, the amount of deduction allowable as normal depreciation and additional depreciation would be restricted to 50% of amount computed in accordance with the prescribed percentage.
   Therefore, normal depreciation on plant and machinery acquired and put to use on 15.12.2023 and computer acquired and installed on 02.01.2024, is restricted to 50% of 15% and 40%, respectively. The additional depreciation on the said plant and machinery is restricted to ₹ 80,000, being 10% (i.e., 50% of 20%) of ₹ 8 lakh.

2. As per third proviso to section 32(1)(ii), the balance additional depreciation of ₹ 80,000 being 50% of ₹ 1,60,000 (20% of ₹ 8,00,000) would be allowed as deduction in the A.Y.2025-26 if XYZ (P) Ltd. does not opt for the provisions of section 115BAA. 3. As per section 32(1)(iia), additional depreciation is allowable in the case of any new machinery or plant acquired and installed after 31.3.2005 by an assessee engaged, inter alia, in the business of manufacture or production of any article or thing, @20% of the actual cost of such machinery or plant.
   However, additional depreciation shall not be allowed in respect of, inter alia, any machinery or plant installed in office premises, residential accommodation or in any guest house.
   Accordingly, additional depreciation is not allowable on computer installed in the office premises.

Question-2 :

A newly qualified Chartered Accountant Mr. Dhaval, commenced practice and has acquired the following assets in his office during F.Y. 2023-24 at the cost shown against each item. Calculate the amount of depreciation that can be claimed from his professional income for A.Y.2024-25. Assume that all the assets were purchased by way of account payee cheque.

Sl.No.	Description	Date of acquisition	Date when put to use	Amount ₹
1.	Computer including computer software	27 Sept., 23	1 Oct.,	23 35,000
2.	Computer UPS	2 Oct., 23	8 Oct.,	23 8,500
3.	Computer printer	1 Oct., 23	1 Oct., 23	12,500
4.	Books (of which books being annual publications are of ₹ 12,000)	1 Apr., 23	1 Apr., 23 13,000	
5.	Office furniture (Acquired from a practising C.A.)	1 Apr., 23	1 Apr., 23	3,00,000
6.	Laptop	26 Sep., 23	8 Oct., 23	43,000

Solution :

Computation of depreciation allowable for A.Y.2024-25

	Asset	Rate	Depreciation
Block 1	Furniture **[See working note below]**	10%	30,000
Block 2	Plant (Computer including computer software, computer UPS, laptop, computer printer & books)	40%	34,500
	Total depreciation allowable		**64,500**

Working Notes:

Computation of depreciation

Block of Assets	**₹**
Block 1: Furniture – [Rate of depreciation - 10%]	
Put to use for more than 180 days [₹ 3,00,000@10%]	30,000
Block 2: Plant [Rate of depreciation - 40%]	
(a) Computer including computer software (put to use for more than 180 days) [₹ 35,000 @ 40%]	14,000
(b) Computer UPS (put to use for less than 180 days) [₹ 8,500@ 20%] **[See Note below]**	1,700
(c) Computer Printer (put to use for more than 180 days) [₹ 12,500 @ 40%]	5,000
(d) Laptop (put to use for less than 180 days) [₹ 43,000 @ 20%] **[See Note below]**	8,600
(e) Books (being annual publications or other than annual publications) (Put to use for more than 180 days) [₹ 13,000 @ 40%]	5,200
	34,500

Note - Where an asset is acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than 180 days, the deduction on account of depreciation would be restricted to 50% of the prescribed rate. In this case, since Mr. Dhaval commenced his practice in the P.Y.2023-24 and acquired the assets during the same year, the restriction of depreciation to 50% of the prescribed rate

Question-3 :

Sai Ltd. has a block of assets carrying 15% rate of depreciation, whose WDV as on 31.3.2023 after reducing depreciation for P.Y. 2022-23 was ₹ 40 lakhs. It purchased another asset (second-hand plant and machinery) of the same block on 01.11.2023 for ₹ 14.40 lakhs and put to use on the same day. Sai Ltd. was amalgamated with Shirdi Ltd. with effect from 01.01.2024.

You are required to compute the depreciation allowable to Sai Ltd. & Shirdi Ltd. for the previous year ended on 31.03.2024 assuming that the assets were transferred to Shirdi Ltd. at ₹ 60 lakhs. Also assume that the plant and machinery were purchased by way of account payee cheque.

Solution :

Statement showing computation of depreciation allowable to Sai Ltd. & Shirdi Ltd. for A.Y. 2024-25

Particulars	**₹**
Opening WDV as on 1.4.2023 [i.e., WDV as on 31.3.2023 after reducing depreciation for P.Y. 2022-23	40,00,000
Addition during the P.Y. 2023-24 (used for less than 180 days)	14,40,000
Total	**54,40,000**
Depreciation on ₹ 40,00,000 @ 15%	6,00,000
Depreciation on ₹ 14,40,000 @ 7.5%	1,08,000
Total depreciation for the P.Y. 2023-24	**7,08,000**
Apportionment between two companies:	
(a) Amalgamating company, Sai Ltd.	
₹ 6,00,000 × 275/366 4,50,820	4,50,820
₹ 1,08,000 × 61/152 43,342	43,342
	4,94,162
(b) Amalgamated company, Shirdi Ltd.	
₹ 6,00,000 × 91/366 1,49,180	1,49,180
₹ 1,08,000 × 91/152 64,658	64,658
	2,13,838

Notes:

(i) The aggregate deduction, in respect of depreciation allowable to the amalgamating company and amalgamated company in the case of amalgamation shall not exceed in any case, the deduction calculated at the prescribed rates as if the amalgamation had not taken place. Such deduction shall be apportioned between the amalgamating company and the amalgamated company in the ratio of the number of days for which the assets were used by them.

(ii) The price at which the assets were transferred, i.e., ₹ 60 lakhs, has no implication in computing eligible depreciation.

Question-4 :

Lights and Power Ltd. engaged in the business of generation of power, furnishes the following particulars pertaining to P.Y. 2023-24. Compute the depreciation allowable under section 32 for A.Y.2024-25 and the opening balance of written down value of the block of assets as on 01.04.2023, while computing his income under the head "Profits and gains of business or profession". The company has opted for the depreciation allowance on the basis of written down value. Assume that all the assets were purchased by way of account payee cheque and that the company has not opted for the special tax regimes under section 115BAA or under section 115BAB.

	Particulars	**(₹)**
1.	Opening Written down value of Plant and Machinery (15% block) as on 01.04.2023 (Purchase value ₹ 8,00,000) [WDV for P.Y. 2022-23 less depreciation for that year]	5,78,000
2.	Purchase of second hand machinery (15% block) on 29.12.2023 for business purpose	2,00,000
3.	Machinery Y (15% block) purchased and installed on 12.07.2023 for the purpose of power generation	8,00,000
4.	Acquired and installed for use a new air pollution control equipment on 31.7.2023	2,50,000
5.	New air conditioner purchased and installed in office premises on 8.9.2023	3,00,000
6.	New machinery Z (15% block) acquired and installed on 23.11.2023 for the purpose of generation of power	3,25,000
7.	Sale value of an old machinery X, sold during the year (Purchase value ₹ 4,80,000, WDV as on 01.04.2023 ₹ 3,46,800)	3,10,000

Solution :

Computation of depreciation allowance under section 32 for the A.Y. 2024-25

Particulars	(₹)	Plant and Machinery (15%) (₹)	Plant and Machinery (40%) (₹)
Opening WDV as on 01.04.2023		5,78,000	-
Add: Plant and Machinery acquired during the year			
- Second hand machinery	2,00,000		
- Machinery Y	8,00,000		
- Air conditioner for office	3,00,000		
- Machinery Z	3,25,000	16,25,000	-
- Air pollution control equipment - 2,50,000			
		22,03,000	2,50,000
Less: Asset sold during the year		3,10,000	Nil
Written down value as on 31.3.2024 before charging depreciation		18,93,000	2,50,000
Normal depreciation			
40% on air pollution control equipment (₹ 2,50,000 x 40%)		-	1,00,000
Depreciation on plant and machinery put to use for less than 180 days@ 7.5% (i.e., 50% of 15%)			
- Second hand machinery (₹ 2,00,000 × 7.5%)	15,000		
- Machinery Z (₹ 3,25,000 × 7.5%)	24,375	39,375	

15% on the balance WDV being put to use for more than 180 days (₹ 13,68,000 × 15%)		2,05,200	
Additional depreciation			
- Machinery Y (₹ 8,00,000 × 20%)	1,60,000		
- Machinery Z (₹ 3,25,000 × 10%, being 50% of 20%)	32,500	1,92,500	-
- Air pollution control equipment (₹ 2,50,000× 20%)		-	50,000
Total depreciation		**4,37,075**	**1,50,000**
WDV as on 1.4.2024 [WDV of P.Y. 2023-24 less depreciation for that year]		**14,55,925**	**1,00,000**

Notes:

(i) Power generation equipments qualify for claiming additional depreciation in respect of new plant and machinery.

(ii) Additional depreciation is not allowed in respect of second hand machinery and air conditioner installed in office premises. (iii) The balance 50% additional depreciation in respect of Machinery Z of ₹ 32,500 (10% x ₹ 3,25,000) can be claimed as deduction in the subsequent financial year i.e., F.Y. 2024-25.

Question-5 :

A Ltd., engaged in the business of manufacturing, furnishes the following particulars for the P.Y.2023-24. Compute the deduction allowable under section 35 for A.Y.2024-25, while computing its income under the head "Profits and gains of business or profession", assuming that it does not opt for special tax regime under section 115BAA or under section 115BAB.

	Particulars	**₹**
1.	Amount paid to notified approved Indian Institute of Science, Bangalore, for scientific research	1,00,000
2.	Amount paid to IIT, Delhi for an approved scientific research programme	2,50,000
3.	Amount paid to X Ltd., a company registered in India which has as its main object scientific research and development, as is approved by the prescribed authority	4,00,000
4.	Expenditure incurred on in-house research and development facility as approved by the prescribed authority	
	(a) Revenue expenditure on scientific research	3,00,000
	(b) Capital expenditure (including cost of acquisition of land ₹ 5,00,000) on scientific research	7,50,000

Solution :

Computation of deduction under section 35 for the A.Y.2024-25

Particulars	**₹**	**Section**	**% of deduction**	**Amount of deduction (₹)**
Payment for scientific research				
Indian Institute of Science	1,00,000	35(1)(ii)	100%	1,00,000
IIT, Delhi	2,50,000	35(2AA)	100%	2,50,000
X Ltd.	4,00,000	35(1)(iia)	100%	4,00,000
Expenditure incurred on in-house research and development facility				
Revenue expenditure	3,00,000	35(2AB))	100%	3,00,000
Capital expenditure (excluding cost of acquisition of land ₹ 5,00,000)	2,50,000	35(2AB)	100%	2,50,000
Deduction allowable under section 35				**13,00,000**

Question-6 :

X Ltd., providing telecommunication services, acquired a telecom licence at cost of ₹ 50 lakhs on 01.04.2021 for a period of 10 years. Assuming the telecom licence is transferred by X Ltd. in P.Y. 2023-24, say for: (a) ₹ 32 lakhs; (b) ₹ 43 lakhs or (c) ₹ 52 lakhs, and if:

(i) Whole of the license is transferred
(ii) Part of the license is transferred.
Explain, how the transfer shall be dealt with under the Income-tax Act, 1961 and the amount, if any, deductible for A.Y. 2024-25.

Solution :

(i) Whole of the license is transferred:

Particulars	₹ (in lakhs)
Cost of the licence	50
Less: Deduction u/s 35ABB for P.Y. 2021-22	5
	45
Less: Deduction u/s 35ABB for P.Y. 2022-23	5
Expenditure remaining unallowed	**40**
(a) If transferred for ₹ 32 lakhs	
Proceeds from transfer	32
Deduction allowed u/s 35ABB in P.Y. 2023-24 (Expenditure remaining unallowed as reduced by the proceeds of transfer)	8
(b) If transferred for ₹ 43 lakhs	
Proceeds from transfer	43
Taxable as profits and gains from business and profession (Lesser of: ₹ 3 lakhs i.e., Proceed from transfer - Expense remain unallowed i.e. ₹ 43 lakhs - ₹ 40 lakhs OR ₹ 10 lakhs i.e., expense allowed till date)	3
(c) If transferred for ₹ 52 lakhs	
Proceeds from transfer	52
Taxable as profits and gains from business and profession (Lesser of: ₹ 12 lakhs i.e., Proceed from transfer - Expense remain unallowed i.e. ₹ 52 lakhs - ₹ 40 lakhs OR ₹ 10 lakhs i.e., expense allowed till date)	10
Short Term Capital Gains (₹ 52 lakhs - ₹ 40 lakhs - ₹ 10 lakhs)	2

(ii) Part of the license is transferred: Particulars ₹ (in lakhs)

Cost of the licence	50
Less: Deduction u/s 35ABB for P.Y. 2021-22	5
	45
Less: Deduction u/s 35ABB for P.Y. 2022-23	5
Expenditure remaining unallowed	**40**
(a) If transferred for ₹ 32 lakhs	
Proceeds from transfer	32
Deduction allowed u/s 35ABB in P.Y. 2023-24 [₹ 40 lakhs - ₹ 32 lakhs)/ 8 years	1
(b) If transferred for ₹ 43 lakhs	
Proceeds from transfer	43
Taxable as profits and gains from business and profession (Lesser of: ₹ 3 lakhs i.e., Proceeds from transfer - Expense remaining unallowed i.e. ₹ 43 lakhs - ₹ 40 lakhs OR ₹ 10 lakhs i.e., expense allowed till date)	3
(c) If transferred for ₹ 52 lakhs	
Proceeds from transfer	52
Amount taxable as profits and gains from business and profession (Lesser of: ₹ 12 lakhs i.e., Proceeds from transfer - Expense remaining unallowed i.e. ₹ 52 lakhs - ₹ 40 lakhs OR ₹ 10 lakhs i.e., expense allowed till date)	10
Short Term Capital Gains (₹ 52 lakhs - ₹ 40 lakhs - ₹ 10 lakhs)	2

Question-7 :
Mr. A commenced operations of the businesses of setting up a warehousing facility for storage of food grains, sugar and edible oil on 1.4.2023. He incurred capital expenditure of ₹ 80 lakh, ₹ 60 lakh and ₹ 50 lakh, respectively, on purchase of land and building during the period January, 2023 to March, 2023 exclusively for the above businesses, and capitalized the same in its books of account as on 1st April, 2023. The cost of land included in the above figures is ₹ 50 lakh, ₹ 40 lakh and ₹ 30 lakh, respectively. During the P.Y. 2023-24, he incurred capital expenditure of ₹ 20 lakh, ₹ 15 lakh & ₹ 10 lakh, respectively, for extension/ reconstruction of the building purchased and used exclusively for the above businesses.

The profits from the business of setting up a warehousing facility for storage of food grains, sugar and edible oil (before claiming deduction under section 35AD and section 32) for the A.Y. 2024-25 is ₹ 16 lakhs, ₹ 14 lakhs and ₹ 31 lakhs, respectively. Assume in respect of expenditure incurred, the payments are made by account payee cheque or use of ECS through bank account.

Compute the income under the head "Profits and gains of business or profession" for the A.Y.2024-25 and the loss to be carried forward, assuming that Mr. A is exercising the option of shifting out of the default tax regime provided under section 115BAC(1A) and has fulfilled all the conditions specified for claim of deduction under section 35AD and wants to claim deduction under section 35AD and has not claimed any deduction under Chapter VI-A under the heading "C. – Deductions in respect of certain incomes".

Solution :

Computation of profits and gains of business or profession for A.Y. 2024-25

Particulars	**₹ (in lakhs)**
Profit from business of setting up of warehouse for storage of edible oil (before providing for depreciation under section 32)	31
Less: Depreciation under section 32	
10% of ₹ 30 lakh, being (₹ 50 lakh – ₹ 30 lakh + ₹ 10 lakh)	3
Income chargeable under "Profits and gains from business or profession"	28

Computation of income/loss from specified business under section 35AD

	Particulars	**Food Grains**	**Sugar**	**Total**
		₹ (in lakhs)		
(A)	Profits from the specified business of setting up a warehousing facility (before providing deduction under section 35AD)	16	14	30
	Less: Deduction under section 35AD			
(B)	Capital expenditure incurred prior to 1.4.2023 (i.e., prior to commencement of business) and capitalized in the books of account as on 1.4.2023 (excluding the expenditure incurred on acquisition of land) = ₹ 30 lakh (₹ 80 lakh – ₹ 50 lakh) and ₹ 20 lakh (₹ 60 lakh – ₹ 40 lakh)	30	20	50
(C)	Capital expenditure incurred during the P.Y.2023-24	20	15	35
(D)	**Total capital expenditure (B + C)**	**50**	**35**	**85**
(E)	**Deduction under section 35AD**			
	100% of capital expenditure (food grains/sugar)	50	35	85
	Total deduction u/s 35AD for A.Y.2024-25	**50**	**35**	**85**
(F)	**Loss from the specified business of setting up and operating a warehousing facility (after providing for deduction under section 35AD) to be carried forward as per section 73A (A-E)**	**(34)**	**(21)**	**(55)**

Notes:

(i) Deduction of 100% of the capital expenditure is available under section 35AD for A.Y.2024- 25 in respect of specified business of setting up and operating a warehousing facility for storage of sugar and setting up and operating a warehousing facility for storage of agricultural produce where operations are commenced on or after 01.04.2012 or on or after 01.04.2009, respectively.

(ii) However, since setting up and operating a warehousing facility for storage of edible oils is not a specified business, Mr. A is not eligible for deduction under section 35AD in respect of capital expenditure incurred in respect of such business.

(iii) Mr. A can, however, claim depreciation@10% under section 32 in respect of the capital expenditure incurred on buildings. It is presumed that the buildings were put to use for more than 180 days during the P.Y. 2023-24.

(iv) Loss from a specified business can be set-off only against profits from another specified business. Therefore, the loss of ₹ 55 lakh from the specified businesses of setting up and operating a warehousing facility for storage of food grains and sugar cannot be set-off against the profits of ₹ 28 lakh from the business of setting and operating a warehousing facility for storage of edible oils, since the same is not a specified business. Such loss can, however, be carried forward indefinitely for set-off against profits of the same or any other specified business provided Mr. A file his return of income on or before the due date as specified u/s 139.

Question-8 :
XYZ Ltd. commenced operations of the business of a new three-star hotel in Madurai, Tamil Nadu on 1.4.2023. The company incurred capital expenditure of ₹ 50 lakh during the period January, 2023 to March, 2023 exclusively for the above business, and capitalized the same in his books of account as on 1st April, 2023. Further, during the P.Y. 2023-24, it incurred capital expenditure of ₹ 2 crore (out of which ₹ 1.50 crore was for acquisition of land) exclusively for the above business.

Compute the income under the head "Profits and gains of business or profession" for the A.Y.2024-25, assuming that XYZ Ltd. has fulfilled all the conditions specified for claim of deduction under section 35AD and opted for claiming deduction under section 35AD; and has not claimed any deduction under Chapter VI-A under the heading "C. – Deductions in respect of certain incomes". The company is not opting for the concessional tax regime under section 115BAA.

The profits from the business of running this hotel (before claiming deduction under section 35AD) for the A.Y.2024-25 is ₹ 25 lakhs. Assume that the company also has another existing business of running a four-star hotel in Coimbatore, which commenced operations fifteen years back, the profits from which are ₹ 120 lakhs for the A.Y.2024-25. Also, assume that expenditure incurred during the previous year 2023-24 were paid by account payee cheque or use of ECS through bank account.

Solution :

Computation of profits and gains of business or profession for A.Y. 2024-25

Particulars	**₹ (in lakhs)**	
Profits from the specified business of new hotel in Madurai (before providing deduction under section 35AD)		25
Less: Deduction under section 35AD		
Capital expenditure incurred during the P.Y.2023-24 (excluding the expenditure incurred on acquisition of land) = ₹ 200 lakhs – ₹ 150 lakhs	50 lakh	
Capital expenditure incurred prior to 1.4.2023 (i.e., prior to commencement of business) and capitalized in the books of account as on 1.4.2023	50 lakh	
Total deduction under section 35AD for A.Y.2024-25		100
Loss from the specified business of new hotel in Madurai		**(75)**
Profit from the existing business of running a hotel in Coimbatore		120
Net profit from business after set-off of loss of specified business against profits of another specified business under section 73A		**45**

Question-9 :
ABC Ltd. is a company having two units – Unit A carries on specified business of setting up and operating a warehousing facility for storage of sugar; Unit B carries on non-specified business of operating a warehousing facility for storage of edible oil.

Unit A commenced operations on 1.4.2022 and it claimed deduction of ₹ 100 lakhs incurred on purchase of two buildings for ₹ 50 lakhs each (for operating a warehousing facility for storage of sugar) under section 35AD for A.Y. 2023-24. However, in February, 2024, Unit A transferred one of its buildings to Unit B.

Examine the tax implications of such transfer in the hands of ABC Ltd.

Solution :
Since the capital asset, in respect of which deduction of ₹ 50 lakhs was claimed under section 35AD, has been transferred by Unit A carrying on specified business to Unit B carrying on non- specified business in the P.Y.2023-24, the deeming provision under section 35AD(7B) is attracted during the A.Y. 2024-25.

Particulars	**₹**
Deduction allowed under section 35AD for A.Y.2023-24	50,00,000
Less: Depreciation allowable u/s 32 for A.Y.2023-24 [10% of ₹ 50 lakhs]	5,00,000
Deemed income under section 35AD(7B)	**45,00,000**

ABC Ltd., however, by virtue of proviso to Explanation 13 to section 43(1), can claim depreciation under section 32 on the building in Unit B for A.Y. 2024-25. For the purpose of claiming depreciation on building in Unit B, the actual cost of the building would be:

Particulars	**₹**
Actual cost to the assesse	50,00,000
Less: Depreciation allowable u/s 32 for A.Y.2023-24 [10% of ₹ 50 lakhs]	5,00,000
Actual cost in the hands of ABC Ltd. in respect of building in Unit B	**45,00,000**

Question-10 :
X Ltd. contributes 20% of basic salary to the account of each employee under a pension scheme referred to in section 80CCD. Dearness Allowance is 40% of basic salary and it forms part of pay of the employees.

Compute the amount of deduction allowable under section 36(1)(iva), if the basic salary of the employees aggregate to ₹ 10 lakh. Would disallowance under section 40A(9) be attracted, and if so, to what extent?

Solution :

Computation of deduction u/s 36(1)(iva) and disallowance u/s 40A(9)

Particulars	**₹**
Basic Salary	10,00,000
Dearness Allowance@40% of basic salary [DA forms part of pay]	4,00,000
Salary for the purpose of section 36(1)(iva) (Basic Salary + DA)	**14,00,000**
Actual contribution (20% of basic salary i.e., 20% of ₹10 lakh)	2,00,000
Less: Permissible deduction under section 36(1)(iva) [10% of (basic salary plus dearness pay) = 10% of ₹ 14,00,000 = ₹ 1,40,000]	**1,40,000**
Excess contribution disallowed under section 40A(9)	60,000

Question-11 :
Isac limited is a company engaged in the business of biotechnology. The net profit of the company for the financial year ended 31.03.2024 is ₹ 35,25,890 after debiting the following items:

S.No.	Particulars	₹
1.	Purchase price of raw material used for the purpose of in-house research and development	11,80,000
2.	Purchase price of asset used for in-house research and development	
	(a) Land	5,00,000
	(b) Building	3,00,000
3.	Expenditure incurred on notified agricultural extension project	25,50,000
4.	Expenditure on notified skill development project:	
	(a) Purchase of land	40,00,000
	(b) Expenditure on training for skill development	32,50,000
5.	Expenditure incurred on advertisement in the souvenir published by a political party	75,000
6.	Expenditure incurred on issue of right shares	80,000
7.	Expenditure incurred on issue of debentures	50,000
8.	Penalty paid under GST Act	35,000
9.	Interest paid on loan taken from bank for payment of advance income-tax	60,000
10.	Provision for loss of subsidiary	85,000

Compute the income under the head "Profits and gains of business or profession" for the A.Y. 2024-25 of Isac Ltd assuming that the company does not opt for the provisions of section 115BAA.

Solution :

Computation of income under the head "Profits and gains of business or profession" for the A.Y.2024-25

Particulars	₹	₹
Net profit as per profit and loss account		35,25,890
Add: Items debited to profit and loss account, but to be disallowed		
Purchase price of Land used in in-house research and development - being capital expenditure not allowable as deduction under section 35	5,00,000	
Purchase price of building used in in-house research and development - being capital expenditure, 100% of which is allowable as deduction u/s 35(1)(iv) read with section 35(2)	-	
Purchase price of raw material used for the purpose of in house research and development – qualifies for 100% deduction u/s 35(2AB)	-	
Expenditure incurred on notified agricultural extension project – 100% deduction is allowed under section 35CCC	-	
Expenditure incurred on notified skill development project - Purchase of land - being capital expenditure not qualifying for deduction under section 35CCD	40,00,000	
Expenditure incurred on notified skill development project - Expenditure on training for skill development – 100% deduction is allowed under section 35CCD	-	
Expenditure incurred on advertisement in the souvenir published by a political party not allowed as deduction as per section 37(2B)	75,000	
Expenditure incurred on issue of right shares not allowed as deduction since expenses is of capital nature	80,000	
Expenditure incurred on issue of debentures [allowable]	-	
Penalty paid under GST Law not allowed as deduction	35,000	
Interest paid on loan taken from bank for payment of advance income-tax not allowed as deduction since the same is not for the purpose of business or profession	60,000	
Provision for loss of subsidiary not allowed as deduction	85,000	48,35,000
Profit and gains from business		**83,60,890**

Note: The expenditure incurred on advertisement in the souvenir published by a political party is disallowed as per section 37(2B) while computing income under the head ―Profit and Gains of Business or Profession‖ but the same would be allowed as deduction under section 80GGB from the gross total income of the company.

Question-12 :
Delta Ltd. credited the following amounts to the account of resident payees in the month of March, 2024 without deduction of tax at source. What would be the consequence of non-deduction of tax at source by Delta Ltd. on these amounts during the financial year 2023-24, assuming that the resident payees in all the cases mentioned below, have not paid the tax, if any, which was required to be deducted by Delta Ltd.?

	Particulars	**Amount (₹)**
(1)	Salary to its employees (credited and paid in March, 2024)	12,00,000
(2)	Directors‟ remuneration (credited in March, 2024 and paid in April, 2024)	28,000

Would your answer change if Delta Ltd. has deducted tax on directors‟ remuneration in April, 2024 at the time of payment and remitted the same in July, 2024?

Solution :
Non-deduction of tax at source on any sum payable to a resident on which tax is deductible at source as per the provisions of Chapter XVII-B would attract disallowance under section 40(a)(ia).

Therefore, non-deduction of tax at source on any sum paid by way of salary on which tax is deductible under section 192 or any sum credited or paid by way of directors‘ remuneration on which tax is deductible under section 194J, would attract disallowance@30% under section 40(a)(ia). Whereas in case of salary, tax has to be deducted under section 192 at the time of payment, in case of directors‘ remuneration, tax has to be deducted at the time of credit of such sum to the account of the payee or at the time of payment, whichever is earlier. Therefore, in both the cases i.e., salary and directors‘ remuneration, tax is deductible in the P.Y.2023-24, since salary was paid in that year and directors‘ remuneration was credited in that year. Therefore, the amount to be disallowed under section 40(a)(ia) while computing business income for A.Y.2024-25 is as follows –

	Particulars	**Amount paid in ₹**	**Disallowance u/s 40(a)(ia)@ 30% (₹)**
(1)	Salary [tax is deductible under section 192]	12,00,000	3,60,000
(2)	Directors‘ remuneration [tax is deductible under section 194J without any threshold limit]	28,000	8,400
	Disallowance under section 40(a)(ia)		**3,68,400**

If the tax is deducted on directors‘ remuneration in the next year i.e., P.Y.2024-25 at the time of payment and remitted to the Government, the amount of ₹ 8,400 would be allowed as deduction while computing the business income of A.Y.2025-26.

Disallowance of any sum paid to a resident at any time during the previous year without deduction of tax under section 40(a)(ia) [Circular No.10/2013, dated 16.12.2013]

There have been conflicting interpretations by judicial authorities regarding the applicability of provisions of section 40(a)(ia), with regard to the amount not deductible in computing the income chargeable under the head Profits and gains of business or profession‘. Some court rulings have held that the provisions of disallowance under section 40(a)(ia) apply only to the amount which remained payable at the end of the relevant financial year and would not be invoked to disallow the amount which had actually been paid during the previous year without deduction of tax at source.

Departmental View: The CBDT‘s view is that the provisions of section 40(a)(ia) would cover not only the amounts which are payable as on 31st March of a previous year but also amounts which are payable at any time during the year. The statutory provisions are amply clear and in the context of section 40(a)(ia), the term "payable" would include "amounts which are paid during the previous year".

Question-13 :
During the financial year 2023-24, the following payments/expenditure were made/incurred by Mr. Yuvan Raja, a resident individual (whose turnover during the year ended 31.3.2023 was ₹ 99 lakhs):

(i) Interest of ₹ 45,000 was paid to Rehman & Co., a resident partnership firm, without deduction of tax at source;
(ii) ₹ 10,00,000 was paid as salary to a resident individual without deduction of tax at source;
(iii) Commission of ₹ 16,000 was paid to Mr. Vidyasagar on 2.7.2023 without deduction of tax at source.

Briefly discuss whether any disallowance arises under the provisions of section 40(a)(ia) of the Income-tax Act, 1961 assuming that the payees in all the cases mentioned above, have not paid the tax, if any, which was required to be deducted by Mr. Raja?

Solution :
Disallowance under section 40(a)(ia) of the Income-tax Act, 1961 is attracted where the assessee fails to deduct tax at source as is required under the Act, or having deducted tax at source, fails to remit the same to the credit of the Central Government within the stipulated time limit.

(i) The obligation to deduct tax at source from interest paid to a resident arises under section 194A in the case of an individual, whose total turnover in the immediately preceding previous year, i.e., P.Y.2022-23 exceeds ₹ 1 crore. Thus, in present case, since the turnover of the assessee is less than ₹ 100 lakhs, he is not liable to deduct tax at source. Hence, disallowance under section 40(a)(ia) is not attracted in this case.

(ii) The disallowance of 30% of the sums payable under section 40(a)(ia) would be attracted in respect of all sums on which tax is deductible under Chapter XVII-B. Section 192, which requires deduction of tax at source from salary paid, is covered under Chapter XVII-B. The obligation to deduct tax at source under section 192 arises, in the hands all assessee- employer even if the turnover amount does not exceed ₹ 1 crore in the immediately preceding previous year.
Therefore, in the present case, the disallowance under section 40(a)(ia) is attracted for failure to deduct tax at source under section 192 from salary payment. However, only 30% of the amount of salary paid without deduction of tax at source would be disallowed i.e. ₹ 3,00,000 (₹ 10 lakhs × 30%).

(iii) The obligation to deduct tax at source under section 194-H from commission paid in excess of ₹ 15,000 to a resident arises in the case of an individual, whose total turnover in the immediately preceding previous year, i.e., P.Y.2022-23 exceeds ₹ 1 crore. Thus, in present case, since the turnover of the assessee is less than ₹ 1 crore, he is not liable to deduct tax at source under section 194H. Mr. Raja is not required to deduct tax at source u/s 194M also since the aggregate of such commission to Mr. Vidyasagar does not exceed ₹ 50 lakh during the P.Y. 2023-24. Therefore, disallowance under section 40(a)(ia) is not attracted in this case.

Question-14 :
A firm assessed as such has paid ₹ 7,50,000 as remuneration to its partners for the P.Y.2023-24, in accordance with its partnership deed, and it has a book profit of ₹ 10 lakh as computed under section 40(b). What is the remuneration allowable as deduction?

Solution :
The allowable remuneration calculated as per the limits specified in section 40(b)(v) would be –

Particulars	**₹**
On first ₹ 3 lakh of book profit [₹ 3,00,000 × 90%]	2,70,000
On balance ₹ 7 lakh of book profit [₹ 7,00,000 × 60%]	4,20,000
	6,90,000

The excess amount of ₹ 60,000 (i.e., ₹ 7,50,000 – ₹ 6,90,000) would be disallowed as per section 40(b)(v).

Question-15 :
Rao & Jain, a partnership firm consisting of two partners, reports a net profit of ₹ 7,00,000 before deduction of the following items:

(1) Salary of ₹ 20,000 each per month payable to two working partners of the firm (as authorized by the deed of partnership).
(2) Depreciation on plant and machinery under section 32 (computed) ₹ 1,50,000.
(3) Interest on capital at 15% per annum (as per the deed of partnership). The amount of capital eligible for interest ₹ 5,00,000.

Compute:

(i) Book-profit of the firm under section 40(b) of the Income-tax Act, 1961. (ii) Allowable working partner salary for the assessment year 2024-25 as per section 40(b).

Solution :

(i) As per Explanation 3 to section 40(b), ―book profit‖ shall mean the net profit as per the profit and loss account for the relevant previous year computed in the manner laid down in Chapter IV-D as increased by the aggregate amount of the remuneration paid or payable to the partners of the firm if the same has been already deducted while computing the net profit.

In the present case, the net profit given is before deduction of depreciation on plant and machinery, interest on capital of partners and salary to the working partners. Therefore, the book profit shall be as follows:

Computation of Book Profit of the firm under section 40(b)

Particulars	**₹**	**₹**
Net Profit (before deduction of depreciation, salary and interest)		7,00,000
Less: Depreciation under section 32	1,50,000	
Interest @ 12% p.a. [being the maximum allowable as per section 40(b)] (₹ 5,00,000 × 12%)	60,000	2,10,000
Book Profit		**4,90,000**

(ii) Salary actually paid to working partners = ₹ 20,000 × 2 × 12 = ₹ 4,80,000.
As per the provisions of section 40(b)(v), the salary paid to the working partners is allowed subject to the following limits -

On the first ₹ 3,00,000 of book profit or in case of loss	₹ 1,50,000 or 90% of book profit, whichever is more
On the balance of book profit	60% of the balance book profit

Therefore, the maximum allowable working partners‘ salary for the A.Y. 2024-25 in this case would be:

Particulars	**₹**
On the first ₹ 3,00,000 of book profit [(₹ 1,50,000 or 90% of ₹ 3,00,000) whichever is more]	2,70,000
On the balance of book profit [60% of (₹ 4,90,000 - ₹ 3,00,000)]	1,14,000
Maximum allowable partners‘ salary	**3,84,000**

Hence, allowable working partners‘ salary for the A.Y. 2024-25 as per the provisions of section 40(b)(v) is ₹ 3,84,000.

Question-16 :

Hari, an individual, carried on the business of purchase and sale of agricultural commodities like paddy, wheat, etc. He borrowed loans from Andhra Pradesh State Financial Corporation (APSFC) and Indian Bank and has not paid interest as detailed hereunder:

		₹
(i)	Andhra Pradesh State Financial Corporation (P.Y. 2022-23 & 2023-24)	15,00,000
(ii)	Indian Bank (P.Y. 2023-24)	30,00,000
		45,00,000

Both APSFC and Indian Bank, while restructuring the loan facilities of Hari during the year 2023-24, converted the above interest payable by Hari to them as a loan repayable in 60 equal installments. During the year ended 31.3.2024, Hari paid 5 installments to APSFC and 3 installments to Indian Bank.

Hari claimed the entire interest of ₹ 45,00,000 as an expenditure while computing the income from business of purchase and sale of agricultural commodities. Discuss whether his claim is valid and if not what is the amount of interest, if any, allowable.

Solution :
According to section 43B, any interest payable on the term loans to specified financial institutions and any interest payable on any loans and advances to, inter alia, scheduled banks shall be allowed only in the year of payment of such interest irrespective of the method of accounting followed by the assessee. Where there is default in the payment of interest by the assessee, such unpaid interest may be converted into loan. Such conversion of unpaid interest into loan shall not be construed as payment of interest for the purpose of section 43B. The amount of unpaid interest so converted as loan shall be allowed as deduction only in the year in which the converted loan is actually paid.

In the given case of Hari, the unpaid interest of ₹ 15,00,000 due to APSFC and of ₹ 30,00,000 due to Indian Bank was converted into loan. Such conversion would not amount to payment of interest and would not, therefore, be eligible for deduction in the year of such conversion. Hence, claim of Hari that the entire interest of ₹ 45,00,000 is to be allowed as deduction in the year of conversion is not tenable. The deduction shall be allowed only to the extent of repayment made during the financial year. Accordingly, the amount of interest eligible for deduction for the A.Y.2024-25 shall be calculated as follows:

	Interest outstanding (₹)	**Number of Instalments**	**Amount per instalment (₹)**	**Instalments paid**	**Interest allowable (₹)**
APSFC	15 lakh	60	25,000	5	1,25,000
Indian Bank	30 lakh	60	50,000	3	1,50,000
Total amount eligible for deduction					**2,7 5,000**

Clarification on non-applicability of section 43B in respect of employee's Contribution to welfare funds [Explanation 5 to section 43B]

As per section 2(24)(x), any sum received by an assessee, being an employer from his employee as contribution to any provident fund or superannuation fund or any fund set up under Employee‘s State Insurance Act, 1948 or any other fund for the welfare of employees would be considered as the income of an employer.
The deduction in respect of above sum will be allowed to the assessee under section 36(1)(va) only if such sum is credited by the assessee to the employee‘s account in the relevant fund on or before the due date, being the date specified under the relevant Act, Rule, order or notification issued thereunder.
As per section 43B, any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, would be allowable during any P.Y. if the same has been paid on or before the 'due date' applicable in his case for furnishing the return of income under section 139(1) in respect of that P.Y.

Explanation 5 clarifies that the provisions of section 43B regarding allowability of certain expenditure in a previous year only on actual payment basis (i.e., payment on or before the due date of filing of return of income for relevant assessment year), does not apply and would deemed never to be applied to employee‘s contribution received by employer towards any welfare fund. In effect, clause (b) of section 43B covers only employer‘s contribution to provident fund, superannuation fund, gratuity fund or any other fund for welfare of employees, for remittance of which extended time limit upto due date of filing return u/s 139(1) is available; however, it does not include within its scope, employees‘ contribution to such funds received by the employer, which has to be credited to the employee‘s account in the relevant fund on or before the due date specified under the relevant Act, Rule etc. Amount credited after the said due date but on or before the due date under section 139(1) would not be eligible for deduction.

Question-17 :
Vinod is a person carrying on profession as film artist. His gross receipts from profession are as under:

	₹
Financial year 2020-21	1,15,000
Financial year 2021-22	1,80,000
Financial year 2022-23	2,10,000

What is his obligation regarding maintenance of books of accounts for Assessment Year 2024-25 under section 44AA of Income-tax Act, 1961?

Solution :
Section 44AA(1) requires every person carrying on any profession, notified by the Board in the Official Gazette (in addition to the professions already specified therein), to maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of the Income-tax Act, 1961.

As per Rule 6F, a person carrying on a notified profession shall be required to maintain **specified books of accounts, only if:**

(i) his gross receipts in all the three years immediately preceding the relevant previous year has exceeded ₹ 1,50,000; or
(ii) it is a new profession which is setup in the relevant previous year, it is likely to exceed ₹ 1,50,000 in that previous year.

In the present case, Vinod is a person carrying on profession as film artist, which is a notified profession. Since his gross receipts have not exceeded ₹ 1,50,000 in financial year 2020-21, the requirement under section 44AA to compulsorily maintain the prescribed books of account is not applicable to him for A.Y. 2024-25.

Mr. Vinod, however, required to maintain such books of accounts as would enable the Assessing Officer to compute his total income.

Question-18 :
Mr. Praveen engaged in retail trade, reports a turnover of ₹ 2,98,50,000 for the financial year 2023-24. Amount received in cash during the P.Y. 2023-24 is ₹ 14,00,000 and balance through prescribed electronic modes on or before 31st October 2024. His income from the said business as per books of account is ₹ 15,00,000 computed as per the provisions of Chapter IV-D "Profits and gains from business or Profession" of the Income -tax Act, 1961. Retail trade is the only source of income for Mr. Praveen. A.Y. 2023-24 was the first year for which he declared his business income in accordance with the provisions of presumptive taxation u/s 44AD.

(i) Is Mr. Praveen also eligible for presumptive determination of his income chargeable to tax for the assessment year 2024-25?
(ii) If so, determine his income from retail trade as per the applicable presumptive provision.
(iii) In case Mr. Praveen wants to declare profits as per books of account from retail trade, what are his obligations under the Income-tax Act, 1961?
(iv) What is the due date for filing his return of income under both the options?

Solution :
(i) Yes. Since his cash receipts during the P.Y. does not 5% of the total turnover (14,00,000/2,98,50,000 x 100) and his total turnover for the F.Y.2023-24 is below ₹ 300 lakhs, he is eligible for presumptive taxation scheme under section 44AD in respect of his retail trade business.
(ii) His income from retail trade, applying the presumptive tax provisions under section 44AD, would be ₹18,19,000 (₹ 1,12,000, being 8% of ₹ 14,00,000 + ₹ 17,07,000, being 6% of ₹ 2,84,50,000).

(iii) Mr. Praveen had declared profit for the previous year 2022-23 in accordance with the presumptive provisions and if he wants to declare profits as per books of account which is lower than the presumptive income for any of the five consecutive assessment years i.e., A.Y. 2024-25 to A.Y. 2028-29, he would not be eligible to claim the benefit of presumptive taxation for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance the presumptive provisions i.e. if he declares profits lower than the presumptive income in say P.Y. 2023 -24 relevant to A.Y.2024-25, then, he would not be eligible to claim the benefit of presumptive taxation for A.Y. 2025-26 to A.Y. 2029-30.
Consequently, Mr. Praveen is required to maintain the books of accounts and get them audited under section 44AB, since his income exceeds the basic exemption limit.

(iv) In case he declares presumptive income under section 44AD, the due date would be 31st July, 2024.
In case he declares profits as per books of account which is lower than the presumptive income, he is required to get his books of account audited, in which case the due date for filing of return of income would be 31st October, 2024.

Question-19 :
Mr. X commenced the business of operating goods vehicles on 1.4.2023. He purchased the following vehicles during the P.Y.2023-24. Compute his income under section 44AE for A.Y.2024-25.

	Gross Vehicle Weight (in kilograms)	Number	Date of purchase
(1)	7,000	2	10.04.2023
(2)	6,500	1	15.03.2024
(3)	10,000	3	16.07.2023
(4)	11,000	1	02.01.2024
(5)	15,000	2	29.08.2023
(6)	15,000	1	23.02.2024

Would your answer change if the two goods vehicles purchased in April, 2023 were put to use only in July, 2023?

Solution :
Since Mr. X does not own more than 10 vehicles at any time during the previous year 2023-24, he is eligible to opt for presumptive taxation scheme under section 44AE. ₹ 1,000 per ton of gross vehicle weight or unladen weight per month or part of the month for each heavy goods vehicle and ₹ 7,500 per month or part of month for each goods carriage other than heavy goods vehicle, owned by him would be deemed as his profits and gains from such goods carriage.

Heavy goods vehicle means any goods carriage, the gross vehicle weight of which exceeds 12,000 kg.

(1)	(2)	(3)	(4)
Number of Vehicles	**Date of purchase**	**No. of months for which vehicle is owned**	**No. of months × No. of vehicles [(1) × (3)]**
Heavy goods vehicle			
2	29.08.2023	8	16
1	23.02.2024	2	2
			18
Goods vehicle other than heavy goods vehicle			
2	10.4.2023	12	24
1	15.3.2024	1	1
3	16.7.2023	9	27
1	2.1.2024	3	3
			55

The presumptive income of Mr. X under section 44AE for A.Y.2024-25 would be - ₹ 6,82,500, i.e., 55 × ₹ 7,500, being for other than heavy goods vehicle + 18 x ₹ 1,000 x 15 ton being for heavy goods vehicle.

The answer would remain the same even if the two vehicles purchased in April, 2023 were put to use only in July, 2023, since the presumptive income has to be calculated per month or part of the month for which the vehicle is owned by Mr. X.

Question-20 :
Alpha Co-operative Bank amalgamated with Beta Co-operative Bank on 1.12.2023. The depreciation for the year ended 31.3.2024 calculated as per Income-tax Rules, 1962, allowable to Alpha Co-operative Bank had the amalgamation had not taken place amounts to ₹ 2,40,000. Compute the deduction on account of depreciation allowable in the hands of Alpha Co-operative Bank and Beta Co-operative Bank for A.Y. 2024-25.

Solution :
(i) The amount of deduction allowable to the amalgamating co-operative bank (i.e. Alpha Co-operative bank, in this case) under section 32 has to be determined in accordance with the following formula -

$$A \times \frac{B}{C}$$

A = the amount of deduction allowable to the predecessor co-operative bank (i.e. Alpha Co-operative bank, in this case) if the business reorganisation had not taken place. In this case, the amount of deduction is ₹ 2,40,000.
B = the number of days comprised in the period beginning with the 1st day of the financial year (i.e., 1.4.2023, in this case) and ending on the day immediately preceding the date of business reorganization (i.e., 30.11.2023, in this case); and
C = the total number of days in the financial year in which the business reorganization has taken place (i.e., 366 days). (ii) The amount of deduction allowable to the amalgamated co-operative bank (i.e. Beta Co-operative bank, in this case) under section 32 has to be determined in accordance with the formula–

$$A \times \frac{B}{C}$$

A = the amount of deduction allowable to the predecessor co-operative bank (i.e. Alpha Co-operative bank, in this case) if the business reorganisation had not taken place. In this case, the amount of deduction is ₹ 2,40,000.
B = the number of days comprised in the period beginning with the date of business reorganisation (i.e. 1.12.2023, in this case) and ending on the last day of the financial year (i.e. 31.3.2024); and
C = the total number of days in the financial year in which the business reorganization has taken place (i.e. 366 days).

(iii) In this case, the deduction that would have been allowable under section 32 to Alpha co- operative bank had the business reorganization had not taken place is ₹ 2,40,000 and the business re-organisation took place on 1.12.2023. Therefore, the deduction allowable to Alpha co-operative bank under section 32 would be ₹1,60,000 i.e., ₹ 2,40,000 x 244/366. The deduction allowable to Beta co-operative bank would be ₹ 80,000 i.e., ₹ 2,40,000 x 122/366.

Question-21 :
Miss Vivitha, a resident and ordinarily resident in India, has derived the following income from various operations (relating to plantations and estates owned by her) during the year ended 31-3-2024:

S. No.	Particulars	₹
(i)	Income from sale of centrifuged latex processed from rubber plants grown in Darjeeling.	3,00,000
(ii)	Income from sale of coffee grown and cured in Yercaud, Tamil Nadu.	1,00,000
(iii)	Income from sale of coffee grown, cured, roasted and grounded, in Colombo. Sale consideration was received at Chennai.	2,50,000
(iv)	Income from sale of tea grown and manufactured in Shimla.	4,00,000
(v)	Income from sapling and seedling grown in a nursery at Cochin. Basic operations were not carried out by her on land.	80,000

You are required to compute the business income and agricultural income of Miss Vivitha for the assessment year 2024-25.

Solution :

Computation of business income and agricultural income of Ms. Vivitha for the A.Y.2024-25

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

Notes:

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

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

Question-22 :

Examine critically the following cases in the context of provisions contained in the Income-tax Act, 1961 relevant for Assessment Year 2024-25. Support the answers with relevant case laws and workings.

(a) Mr. Janak is proprietor of M/s. Yash Texnit which is engaged in garment manufacturing business. The entire block of Plant & Machinery chargeable to depreciation @ 15%, has 20 different machinery items as at 31-03-2024. One of the machineries used for packing had become obsolete and was discarded by Mr. Janak in July‟ 23.

Assessee filed its return for A.Y. 2024-25 claiming total depreciation of ₹ 40 lakhs which includes ₹ 4 lakhs being the depreciation claimed on the machinery item discarded by Mr. Janak. The A.O. disallowed the claim of depreciation of ₹ 4 lakhs during the course of scrutiny assessment.
Comment on the validity of action taken by A.O.

(b) X. Ltd. issued debentures in the previous year 2023-24, which were to be matured at the end of 5 years. The debenture holder was given an option of one time upfront payment of ₹ 60 per debenture on account of interest which was to be immediately paid by the company. As per the option exercised by the debenture holders, company paid interest upfront to them in the first year itself and the same was claimed as deduction in the return of the company. But in the accounts, the interest expenditure was shown as deferred expenditure to be written off over a period of 5 years. During the course of assessment, the Assessing Officer spread the upfront interest paid over a period of five year term of debentures and allowed only one-fifth of the amount in the previous year 2023-24. Examine the correctness of the action of Assessing Officer.

Solution :

(a) The issue under consideration is whether disallowance of depreciation made by the Assessing Officer with regard to the discarded asset, in arriving at the written down value of the block of assets, is justified.

One of the conditions for claim of depreciation under section 32 is that the eligible asset must have been put to use for the purpose of business or profession.

The other aspect to considered is whether merely discarding an obsolete machinery, which is physically available, will attract the expression ―moneys payable‖ appearing in section 43(6), so as to deduct its value from the written down value of the block.

The facts in the present case are similar to facts in the case of CIT v. Yamaha Motor India Pvt. Ltd. (2010) 328 ITR 297, wherein the Delhi High Court observed that the expression "used for the purposes of the business" in section 32 when used with respect to discarded machinery would mean the use in the business, not only in the relevant financial year/previous year, but also in the earlier financial years.

The discarded machinery may not be actually used in the relevant previous year but depreciation can be claimed as long as it was used for the purposes of business in the earlier years provided the block continues to exist in the relevant previous year. Therefore, the condition for claiming depreciation in respect of the discarded machine would be satisfied if it was used in the earlier previous years for the business.

For the purpose of section 43(6), ―moneys payable‖ means the sale price, in case of sale, or the insurance, salvage or compensation moneys payable in respect of the asset. In this case, the machinery has not been sold as machinery or scrap or disposed off, and it continues to exist. Hence, there is no ―moneys payable‖ in this case, which alone is deductible while computing the WDV of the block to which it belongs.

Applying the rationale of the above case, the action of the Assessing Officer in disallowing ₹ 4 lakhs, being the depreciation claim attributable to discarded machinery, on the ground that the same was not put to use in the relevant previous year, is invalid, since the said machinery was put to use in the earlier previous years.

(b) The issue under consideration is whether, in a case where debentures are issued with maturity at the end of five years, and the debenture holders are given an option of upfront payment of interest in the first year itself, can the entire upfront interest paid, be claimed as deduction by the company in the first year or should the same be deferred over a period of five years; and would the treatment of such interest as deferred revenue expenditure in the books of account have any impact on the tax treatment.

The facts of the case are similar to the facts in Taparia Tools Ltd. v. JCIT (2015) 372 ITR 605, wherein the above issue came up before the Supreme Court. In that case, it was observed that under section 36(1)(iii), the amount of interest paid in respect of capital borrowed for the purposes of business or profession, is allowable as deduction.

The moment the option for upfront payment was exercised by the subscriber, the liability of X Ltd. to make the payment in that year had arisen. Not only had the liability arisen in the previous year in question, it was even quantified and discharged as well in that very year.

As per the rationale of the Supreme Court ruling in Taparia Tools Ltd.‟s case, when the deduction of entire upfront payment of interest is allowable as per the Income-tax Act, 1961, the fact that a different treatment was given in the books of account could not be a factor which would bar the company from claiming the entire expenditure as a deduction.

Accordingly, the action of the Assessing Officer in spreading the upfront interest paid over the five year term of debentures and restricting the deduction in the P.Y.2023-24 to one-fifth of the upfront interest paid is not correct. The company is eligible to claim the entire amount of interest paid upfront as deduction under section 36(1)(iii) in the P.Y.2023-24.

Question-23 :

Compute the quantum of depreciation available under section 32 of the Income-tax Act,
1961 in respect of the following items of Plant and Machinery purchased by PQR Textile Ltd., by paying through account payee cheque, which is engaged in the manufacture of textile fabrics, for the year ended 31-3-2024. Assume company does not opt for the provisions of section 115BAA or section 115BAB:

	(₹ in crores)
New machinery installed on 1-5-2023	84
New Windmill purchased and installed on 18-6-2023	22
Lorries for transporting goods to sales depots (purchased and put to use in July, 2023)	3
Items purchased after 30th November 2023:	
Fork-lift-trucks, used inside factory	4
Computers installed in office premises	1
Computers installed in factory	2
New imported machinery	12

The new imported machinery arrived at Chennai port on 30-03-2024 and was installed on 3-4-2024. All other items were installed during the year ended 31-3-2024.
The company was newly started during the year.
Also, compute the WDV of the various blocks of assets as on 1.4.2024 after charging depreciation for P.Y. 2023-24.

Solution :

Computation of depreciation allowance under section 32 for the A.Y. 2024-25

	Particulars	Normal Depreciation [u/s 32(1)(ii)]	Additional Depreciation [u/s 32(1)(iia)]
		(₹ in crores)	
(A)	**Plant and Machinery (15% block) (Put to use for 180 days or more)**		
	- New machinery installed on 01.05.2023	84.00	84.00
	- Lorries for transporting goods to depots	3.00	-
		87.00	84.00
	Normal Depreciation @15% & additional deprecation @20%	**13.05**	**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%)**		
	- Fork-lift trucks, used inside a factory	4.00	4.00
	Normal Depreciation @ 7.5% & additional depreciation @10%	**0.30**	**0.40**
(C)	**Plant and Machinery (40% block) (Put to use for less than 180 days, hence depreciation restricted to 20%, i.e., 50% of 40%)**		
	- Computers installed in office premises	1.00	-
	- Computers installed in factory	2.00	2.00
		3.00	2.00
	Normal depreciation @20% & additional depreciation@10%	**0.60**	**0.20**
(D)	**Plant and Machinery (40% block) (Put to use for 180 days or more) (See Note 1)**		
	- New windmill purchased and installed on 18.06.2023	22.00	22.00
	Normal Depreciation @ 40% & additional depreciation @ 20%	**8.80**	**4.40**
	Total depreciation and additional depreciation		
	- Plant and Machinery (15% block) (A +B)	13.35	17.20
	- Plant and Machinery (40% block) (C + D)	9.40	4.60
	Depreciation available under section 32 = ₹ 44.55 crores		

Computation of Written Down Value (WDV)
after charging depreciation for P.Y. 2023-24

Particulars		Plant & Machinery	
		15%	40%
		(₹ in crores)	
WDV as on 01.04.2023 (The company was started during the year – as given in question)		Nil	Nil
Add: Plant and Machinery acquired during the year			
- New Machinery installed on 01.05.2023	84.00		
- Lorries for transporting goods to sales depots	3.00		
- Fork-lift trucks, used inside factory	4.00		
- New imported machinery	12.00	103.00	-
- New Windmill purchased and installed on 18.6.2023		-	22.00
- Computers installed in office premises		-	1.00
- Computers installed in factory		-	2.00
		103.00	**25.00**
Less: Asset sold during the year		Nil	Nil
WDV as on 31.3.2024 (before charging depreciation)		**103.00**	**25.00**
Less: Depreciation for the P.Y.2023-24			
- Normal depreciation		13.35	9.40
- Additional depreciation		17.20	4.60
WDV as on 1.4.2024 (after charging depreciation for P.Y. 2023-24)		**72.45**	**11.00**

Notes:

(1) Windmills and any specially designed devices which run on windmills installed on or after 1.4.2014 would be eligible for depreciation @ 40%.

(2) New imported machinery was not installed during the previous year 2023-24. Hence, it would not be eligible for additional depreciation for A.Y. 2024-25. It would also not be eligible for normal depreciation for A.Y 2024-25, since it was not put to use in the P.Y.2023-24 being the year of acquisition.

(3) It may be noted that investment in the following plant and machinery would not be eligible for additional depreciation under section 32(1)(iia):
   (a) Lorries for transporting goods to sales depots, being vehicles/road transport vehicles; and
   (b) Computers installed in office premises.

(4) As per section 2(28) of the Motor Vehicles Act, 1988, the definition of a ―vehicle‖ excludes, inter alia, a vehicle of special type adopted 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 deprecation under section 32(1)(iia).

Question-24 :

(A) Examine the taxability and/ or allowability of the following receipts or expenditures under the provisions of the Income-tax Act, 1961, for the assessment year 2024-25:
   (i) Secret commission was paid during the previous year 2023-24.
   (ii) P Ltd. paid dollars equivalent to ₹ 50 lakhs as sales commission for the year ended 31.03.2024, without deducting tax at source, to Mr. Rodrigues, a citizen of UK and non-resident who acted as agent for booking orders, from various customers who are outside India.

(B) Can the following transactions be covered under section 43B for disallowance?
   (i) A bank guarantee given by a company towards disputed tax liabilities.
   (ii) Interest payable to Goods and Services Tax Department but not paid before the due date specified in section 139(1).

Solution :

(A) (i) Secret commission is one of the forms of commission payment generally made by business organizations. Secret commission is a payment for obtaining business orders or contracts from parties and /or customers and paid to employees and / or officials of those parties and / or customers or companies from whom business orders are obtained by the assessee.

Explanation 1 below section 37(1) of Income-tax Act, 1961 provides that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law, shall not be deemed to have been incurred for the purpose of business and no deduction or allowance shall be made in respect of such expenditure. In view of the Explanation, any expenditure incurred for a purpose which is an offence and prohibited by law cannot be allowed as expenditure. Therefore, since secret commission payment is a payment for an offence prohibited by law, the same cannot be allowed as deduction.

(ii) A foreign agent of an Indian exporter operates in his own country and no part of his income accrues or arises in India. His commission is usually remitted directly to him and is, therefore, not received by him or on his behalf in India. The commission paid to the non-resident agent for services rendered outside India is, thus, not chargeable to tax in India.

Since commission income for booking orders by non-resident who remains outside India is not subject to tax in India, disallowance under section 40(a)(i) is not attracted in respect of payment of commission to such non-resident outside India even though tax has not been deducted at source. Thus, the amount of ₹ 50 lakhs remitted to Mr. Rodrigues outside India in foreign currency towards commission would not attract disallowance under section 40(a)(i) for non-deduction of tax at source.

(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 Goods and Services Tax department is part of Goods and Services Tax. Therefore, interest payable to Goods and Services 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)]

Question-25 :

ILT Limited is engaged in manufacturing of pipes and tubes. The profit and loss account of the company for the year ended 31st March, 2024 shows a net profit of ₹ 405 lakhs. The following information and particulars are furnished to you. You are required to compute total income of the company for Assessment Year 2024-25 indicating reasons for treatment of each item, assuming that the company has not opted for special provisions under section 115BAA or 115BAB.

(i) A group free air ticket was provided by a supplier for reaching a certain volume of purchase during the financial year 2023-24. The same is encashed by the company for ₹ 10 lakhs in April 2023 and credited to General Reserve Account.

(ii) A regular supplier of raw materials agreed for settlement of ₹ 8 lakhs instead of ₹ 10 lakhs for poor quality of material supplied during the previous year which was not given effect in the running account of the supplier.

(iii) Andhra Bank sanctioned and disbursed a term loan in the financial year 2020-21 for a sum of ₹ 50 lakhs. Interest of ₹ 8 lakhs was in arrears. The bank has converted the arrear interest into a new loan repayable in 10 equal instalments. During the year, the company has paid 2 instalments and the amount so paid has been reduced from Funded Interest in the Balance Sheet.

(iv) The company remitted ₹ 5 lakhs as interest to a company incorporated in USA on a loan taken 2 years ago. Tax deducted under section 195 from such interest has been deposited by the company on 15th July, 2024. The said interest was debited to profit and loss account.

(v) Sandeep, a sales executive stationed at HO at Delhi, was on official tour in Bangalore from 31st May, 2023 to 18th June, 2023 and 28th September, 2023 to 15th October, 2023 for the business development. The company has paid Sandeep's salary in cash, from its local office at Bangalore for the month of May, 2023 (payable on 1st June) and September 2023 (payable on 1st October), amounting to ₹ 45,000 and ₹ 47,000 respectively (net of TDS and other deduction), as Sandeep has no bank account at Bangalore. These were included in the amount of "salary" debited to Profit and Loss Account.

(vi) The company has contributed ₹ 50,000 by account payee cheque to an electoral trust and the same stands included under the head "General Expenses".

Solution :

Computation of total income of ILT Ltd. for the A.Y.2024-25

Particulars	₹ (in lakhs)	
Profits and gains from business or profession		
Net profit as per profit and loss account	405.00	
Add : Items debited to profit and loss account, but to be disallowed and items not considered in accounts but to be taxed		
Value of group free air ticket provided by a supplier is taxable as business income under section 28(iv), as the value of any benefit, whether convertible into money or not, arising from business is taxable as business income.	10	
Amount waived by the supplier of raw materials is a deemed income under section 41(1), as the expenditure was allowed as deduction in the last year and there is a benefit by way of remission or cessation of a trading liability. The fact that effect was not given in the running account of supplier is not relevant.	2	
Interest payable outside India to a foreign company is allowable **[See Note 1 below]**	-	
Contribution to electoral trust is not an allowable expenditure while computing business income. Hence, the same has to be added back, since it is included in general expenses.	0.50	
Salary paid to employee Sandeep is eligible for deduction. Disallowance under section 40A(3) will not apply **[See Note 2 below]**	-	12.50
		417.50
Less: Amount of deduction allowable		
Under section 43B, interest on loan due to any scheduled bank, etc. is allowed as deduction, if such interest is actually paid irrespective of the method of accounting followed by the assessee. Conversion of arrear interest into a fresh loan by a bank cannot be considered as actual payment of interest. However, the amount of funded interest (i.e., converted loan) actually paid is allowable as deduction. Hence, ₹ 1,60,000, being two instalments of ₹ 80,000 each, actually paid is deductible.		1.60
Business Income		**415.90**
Gross total income		**415.90**
Less: Deduction under Chapter VI-A		
Deduction under section 80GGB in respect of contribution by the assessee company to an electoral trust.		0.50
Total Income		**415.40**

Notes:

1. Since tax has been deducted on interest payable outside India to a foreign company during the previous year 2023-24 and the same has been deposited before the due date of filing return of income under section 139(1), disallowance under section 40(a)(i) is not attracted. Since the interest has already been debited to profit and loss account, no further adjustment is required.

2. In respect of payment of salary to sales executive in cash, no disallowance under section 40A(3) is to be made as the payments fall within the scope of Rule 6DD(i). Salary paid to him in cash is allowable as the executive was temporarily posted for a continuous period of more than 15 days in Bangalore which is not the place of his normal duty. Further tax was deducted from such salary under section 192 and he does not maintain any bank account in Bangalore. No disallowance under section 40A(3) is attracted in respect of such salary.

Question-26 :

G Ltd., a company in which public are substantially interest, is engaged in the business of growing and manufacturing tea in India. For the previous year ended 31.03.2023, its composite business profits before allowing deduction u/s 33AB is ₹ 60,00,000. On 01.09.2023, it deposited a sum of ₹ 11,00,000 in the Tea Development Account. During the previous year 2021-22, G Ltd. had incurred a business loss of ₹ 14,00,000 which has been carried forward. On 25.01.2024, it withdrew ₹ 10 lakhs, from deposit account which is utilized as under:

₹ 6,00,000 for purchase on non-depreciable asset as per the scheme specified.
₹ 3,00,000 for purchase of machinery to be installed in the office premises.
₹ 1,00,000 was spent for the purpose of scheme on 5.4.2024.

(i) You are required to determine business income of G Ltd. and the tax consequences that may arise from the above transactions in the A.Y. 2024-25.
(ii) What will be the consequence if the asset which was purchased for ₹ 6,00,000 is sold for ₹ 8,00,000 in April, 2024.

Solution :

(i) Computation of Business Income of G Ltd. and tax consequences for the A.Y. 2024-25

Particulars	**₹**
₹ 10,00,000 being the amount withdrawn from Tea Development Account has to be utilized in the prescribed manner, otherwise, the withdrawn amount would be chargeable to tax as business income. In the given case, the taxability of withdrawal amount based on their utilization is as follows:	
- ₹ 6,00,000, out of the amount withdrawn from the deposit account, utilised for purchase of non-depreciable asset as per the specified scheme. [As per section 33AB(6), no deduction would be allowed under section 33AB since amount is spent out of ₹ 11 lakh	Not taxable
deposited in Tea Development Account, which has already been allowed as deduction in A.Y.2023-24 **(See Working Note below)].**	
- ₹ 3,00,000, being the amount utilized for purchase of machinery to be installed in the office premises is not a permissible utilization. Hence, the amount would be deemed as profits and gains of business of the previous year 2023-24 as per section 33AB(4).	3,00,000
- ₹ 1,00,000 was spent for the purpose of scheme on 05.04.2024. As per section 33AB(7), this amount would be taxable since the same is not utilized during the same previous year (i.e., P.Y. 2023-24) in which the amount is withdrawn from the deposit account.	1,00,000

When any part of withdrawal amount becomes taxable, the agricultural and nonagricultural portions of income must be segregated.

Accordingly, ₹ 1,60,000, being 40% of ₹ 4,00,000 (₹ 3,00,000 + ₹ 1,00,000) would be chargeable to tax as business income and the balance ₹ 2,40,000, being 60% of ₹ 4,00,000 would be agricultural income exempt from tax.

Working Note:

Computation of Business Income of G Ltd. for the A.Y. 2023-24

Particulars	**₹**
Composite business profits before allowing deduction under section 33AB	60,00,000
Less: Deduction under section 33AB(1) would be the lower of:	
- Amount deposited in Tea Development Account on or before 30.9.2022 [i.e., ₹ 11,00,000]	

- 40% of profits of such business [i.e., ₹ 24,00,000, being 40% of ₹ 60,00,000]	11,00,000
	49,00,000
Less: 60% of ₹ 49,00,000, being agricultural income **[as per Rule 8]**	29,40,000
Business income	19,60,000
Less: Brought forward business loss of A.Y.2022-23 set-off as per section 72	14,00,000
Business income chargeable to tax	5,60,000

(ii) Consequences, if asset purchased out of deposit account is sold during the previous year 2024-25

As per section 33AB(8), if the asset is sold before the expiry of eight years from the end of the previous year in which it was acquired, then, the cost of such asset shall be deemed to be the profits and gains from business or profession of the previous year in which asset is sold.

Therefore, ₹ 6,00,000 would be deemed to be the business income (composite) for the A.Y.2025-26. However, since the full cost of the asset was deducted in the assessment year 2023-24 (being part of ₹ 11 lakh deposited in Tea Development Account) before segregation of agricultural income and non-agricultural income, the agricultural and non-agricultural portions of income should be segregated in the year in which such amount becomes taxable on account of sale of asset before the expiry of eight years. Therefore, ₹ 3,60,000, being 60% of ₹ 6,00,000 would represent agricultural income. The balance ₹ 2,40,000 being 40% of ₹ 6,00,000 would be chargeable to tax as business income.

Moreover, the difference between the sale consideration and purchase price of the asset would be chargeable to tax as ―Short term capital gains‖, which is computed as follows:

Sales consideration	8,00,000
Less: Cost of acquisition	6,00,000
Short term capital gain	**2,00,000**

Question-27 :

The trading and profit and loss account of Pingu Trading Pvt. Ltd. having business of agricultural produce, consumer items and other products for the year ended 31.03.2024 is as under:

Trading Account

Particulars	**₹**	**Particulars**	**₹**
Opening Stock	3,75,000	Sales	1,55,50,000
Purchases	1,25,75,000	Closing Stock	4,50,000
Freight & Cartage	1,26,000		
Gross profit	29,24,000		
	1,60,00,000		**1,60,00,000**

Profit and Loss Account

Particulars	**₹**	**Particulars**	**₹**
Bonus to staff	47,500	Gross profit	29,24,000
Rent of premises	53,500	Income-tax refund	20,000
Advertisement	5,000	Warehousing charges	15,00,000
Bad Debts	75,000		
Interest on loans	1,67,500		
Depreciation	71,500		
Goods and Services tax demand paid	1,08,350		
Miscellaneous expenses	5,25,650		
Net profit of the year	33,90,000		
	44,44,000		**44,44,000**

On scrutiny of records, the following further information and details were extracted/ gathered:

(i) There was a survey under section 133A on the business premises on 31.3.2024 in which it was revealed that the value of closing stocks of 31.3.2023 was ₹ 8,75,000 and a sale of ₹ 75,000 made on 13.3.2024 was not recorded in the books. The value of closing stocks after considering these facts and on the basis of inventory prepared by the department as on 31.3.2024 worked out at ₹ 12,50,000, which was accepted to be correct and not disputed.

(ii) Income-tax refund includes amount of ₹ 4,570 of interest allowed thereon.

(iii) Bonus to staff includes an amount of ₹ 7,500 paid in the month of December 2023, which was provided in the books on 31.03.2023.

(iv) Rent of premises includes an amount of ₹ 5,500 incurred on repairs. The assessee was under no obligation to incur such expenses as per rent agreement.

(v) Advertisement expenses include an amount of ₹ 2,500 paid for advertisement published in the souvenir issued by a political party. The payment is made by way of an account payee cheque.

(vi) Miscellaneous expenses include:
  (a) amount of ₹ 15,000 paid towards penalty for non-fulfillment of delivery conditions of a contract of sale for the reasons beyond control,
  (b) amount of ₹ 1,00,000 paid to the wife of a director, who is working as junior lawyer for taking an opinion on a disputed matter. The junior advocate of High Courts normally charge only ₹ 25,000 for the same opinion,
  (c) amount of ₹ 1,00,000 paid to an Electoral Trust by cheque.

(vii) Goods and Services Tax demand paid includes an amount of ₹ 5,300 charged as penalty for delayed filing of returns and ₹ 12,750 towards interest for delay in deposit of tax.

(viii) The company had made an investment of ₹ 25 lakhs on the construction of a warehouse in rural area for the purpose of storage of agricultural produce. This was made available for use from 15.09.2023 and the income from this activity is credited in the Profit and Loss account under the head "Warehousing charges".

(ix) Depreciation under the Income-tax Act, 1961 works out at ₹ 65,000.

(x) Interest on loans includes an amount of ₹ 80,000 paid to Mr. X, a resident, on which tax was not deducted.

Compute the income chargeable to tax for assessment year 2024-25 of Pingu Trading Pvt. Ltd, ignoring MAT and provisions of section 115BAA. Support your answer with working notes.

Solution :

Computation of Income of Pingu Trading Pvt. Ltd. chargeable to tax for the A.Y.2024-25

Particulars		**₹**
Net profit as per profit and loss account		33,90,000
Less: Income-tax refund credited in the profit and loss account, out of which interest is to be considered separately under the head ―Income from other sources‖		20,000
		33,70,000
Add: Expenses either not allowable or to be considered separately but charged in the profit & loss account		
- Repair expenses on rented premises where assessee is under no obligation to incur such expenses are not allowable as per section 30(a)(i). However, if such expenses are required for carrying on the business efficiently, the same are allowable under section 37. In this case, assuming that such expenses are required for carrying on business efficiently, the same are allowable under section 37.		
- Advertisement in the souvenir of political party not allowable as per section 37(2B) **(See Note 2)**		2,500
- Payment made to the wife of a director examined as per section 40A(2) and the excess payment made to be disallowed **(See Note 4)**		75,000
- Payment made to electoral trust by cheque **(See Note 5)**		1,00,000

- Penalty levied by the Goods and Services tax department for delayed filing of returns not allowable as being paid for infraction of law **(See Note 6)**		5,300
- Depreciation as per books		71,500
- 30% of interest paid on loan paid to Mr. X, a resident, without deduction of tax at source not allowable as per section 40(a)(ia)		24,000
		36,48,300
Less: Depreciation allowable as per Income-tax Act, 1961		65,000
		35,83,300
Less: Income from specified business (warehousing charges) credited to profit and loss account, to be considered separately **(See Note 7)**		15,00,000
Income from business (other than specified business)		**20,83,300**
Add: Difference in the value of stocks detected on survey under section 133A on 31.03.2024 chargeable as income (See Note 8)		3,75,000
		24,58,300
Computation of income/ loss from specified business (See Note 7)		
Income from specified business	₹ 15,00,000	
Less: Deduction under section 35AD @ 100% of ₹25 lakhs	₹ 25,00,000	
Loss from specified business to be carried forward as per section 73A	**₹(10,00,000)**	
Income from Other Sources		
Interest on income-tax refund		4,570
Gross Total Income		**24,62,870**
Less: Deduction under section 80GGB		
Contribution to political party (See Note 2)		₹ 2,500
Contribution to an Electoral trust (See Note 5)	₹ 1,00,000	1,02,500
Total Income		**23,60,370**

Notes:

(1) Bonus for the previous year 2022-23 paid after the due date for filing return for that year would have been disallowed under section 43B for the P.Y.2022-23. However, when the same has been paid in December 2023, it should be allowed as deduction in the P.Y.2023-24 (A.Y.2024-25). Since it is already included in the figure of bonus to staff debited to profit and loss account of this year, no further adjustment is required.

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

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

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

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

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

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

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

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

(8) The business premises were surveyed and differences in the figures of opening and closing stocks and sales were found which have not been disputed and accepted by the assessee. Therefore, the trading account for the year is to be re-cast to arrive at the correct amount of the gross profit/ net profit for the purpose of return of income to be filed for the previous year ended on 31.3.2024.

Revised Trading Account

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

The difference of gross profit of ₹ 32,99,000 - ₹ 29,24,000 = ₹ 3,75,000 is to be added as income of the business for the year as undisclosed income[16]. [No loss (whether brought forward or otherwise) or unabsorbed depreciation under section 32(2) can be set-off against undisclosed income.]

Question-28 :

(a) A Ltd. paid IDBI (a public financial institution) a lump sum pre-payment premium of ₹ 1.2 lakhs on 7.4.2023 for restructuring its debts and reducing its rate of interest. It claimed the entire sum as business expenditure for the P.Y.2023-24. The Assessing Officer, however, held that the pre-payment premium should be amortised over a period of 10 years (being the tenure of the restructured loan), and thus, allowed only 10% of the pre-payment premium in the P.Y.2023-24. Discuss, with reasons, whether the contention of A Ltd. is correct or that of the Assessing Officer.

(b) Explain the tax treatment of emergency spares (of plant and machinery) acquired during the year which, even though kept ready for use, have not actually been used during the relevant previous year.

Solution :

(a) This issue came up before the Delhi High Court in CIT v. Gujarat Guardian Ltd (2009) 177 Taxman 434.The Court observed that the assessee company‘s claim for deduction has to be allowed in one lump sum keeping in view the provisions of section 43B(d), which provide that any sum payable by the assessee as interest on any loan or borrowing from any financial institution shall be allowed to the assessee in the year in which the same is paid, irrespective of the periods, in which the liability to pay such sum is incurred by the assessee according to the method of accounting regularly followed by the assessee. The High Court concurred with the Tribunal‘s view supporting the assessee that in terms of section 36(1)(iii) read with section 2(28A), the deduction for pre-payment premium was allowable. Since there was no dispute that the pre-payment premium was nothing but interest and that it was paid to a public financial institution i.e. IDBI, the Court held that, in terms of section 43B(d), the assessee‘s claim for deduction has to be allowed in the year in which the payment has actually been made.

Therefore, applying the ratio of the above case, the contention of A Ltd. is correct and not that of the Assessing Officer.

Note – Section 36(1)(iii) provides for deduction of interest paid in respect of capital borrowed for the purposes of business or profession. Section 2(28A) defines interest to include, inter alia, any other charge in respect of the moneys borrowed or debt incurred. Section 43B provides for certain deductions to be allowed only on actual payment. From a combined reading of these three sections, it can be inferred that –

(i) pre-payment premium represents interest as per section 2(28A);
(ii) such interest is deductible as business expenditure as per section 36(1)(iii);
(iii) such interest is deductible in one lump-sum on actual payment as per section 43B(d).

(b) As per ICDS V on Tangible Fixed Assets, machinery spares shall be charged to the revenue as and when consumed. When such spares can be used only in connection with an item of tangible fixed asset and their use is expected to be irregular, they shall be capitalised. Where the spares are capitalised as per the above requirement, the issue as to provision of depreciation arises – whether depreciation can be provided where such spares are kept ready for use or is it necessary that they are actually put to use. This issue was dealt with by the Delhi High Court in CIT v. Insilco Ltd (2010) 320 ITR 322. The Court observed that the expression ―used for the purposes of business‖ appearing in section 32 also takes into account emergency spares, which, even though ready for use, yet are not consumed or used during the relevant period. This is because these spares are specific to a fixed asset, namely plant and machinery, and form an integral part of the fixed asset. These spares will, in all probability, be useless once the asset is discarded and will also have to be disposed of. In this sense, the concept of passive use which applies to standby machinery will also apply to emergency spares. Therefore, once the spares are considered as emergency spares required for plant and machinery, the assessee would be entitled to capitalize the entire cost of such spares and claim depreciation thereon.

Note – One of the conditions for claim of depreciation is that the asset must be "used for the purpose of business or profession". In the past, courts have held that, in certain circumstances, an asset can be said to be in use even when it is "kept ready for use". For example, depreciation can be claimed by a transport company on spare engines kept in store in case of need, though they have not actually been used by the company. Hence, in such cases, the term "use" embraces both active use and passive use for business purposes.

Question-29:
"Easy Call Ltd.", to provide telecom services in Mumbai, obtained a licence on 1.4.2021 for a period of 10 years ending on 31.3.2031 against a fee of ₹ 27 lakhs to be paid in 3 installments of ₹ 9 lakhs each by April, 2021, April, 2022 and April, 2023, respectively. The company has commenced business on 1.4.2022.

Explain, how the payment made for licence fee shall be dealt with under the Income-tax Act, 1961 and the amount, if any, deductible for A.Y. 2024-25.

Solution :
The payment made for acquiring the licence to operate telecom services in Mumbai shall be subject to deduction as per the scheme in section 35ABB. As per section 35ABB, any amount actually paid for obtaining licence to operate telecommunication services shall be allowed as deduction in equal instalments during the number of years for which the license is in force.
If the payment is made before the commencement of business: The deduction shall be allowed beginning with the year of commencement of business.
In any other case: It will be allowed commencing from the year of payment. Deduction shall be allowed up to the year in which the license shall cease to be in force.

The amount of deduction available for A.Y. 2024-25 is worked out below:-

(1)	(2)	(3)	(4) = (3)/(2)
Previous year of payment	**Unexpired period of license**	**Instalment paid (₹)**	**Deduction in respect of each instalment (₹)**
2021-22	9 years	9,00,000	1,00,000
2022-23	9 years	9,00,000	1,00,000
2023-24	8 years	9,00,000	1,12,500
		27,00,000	**3,12,500**

The deduction under section 35ABB from assessment year 2024-25 shall be ₹ 3,12,500.

Question-30 :

Alpha Ltd., a manufacturing company, has disclosed a net profit of ₹ 12.50 lakhs for the year ended 31st March, 2024. You are required to compute the taxable income (ignore the provisions of section 115BAA) of the company for the Assessment year 2024-25, after considering the following information, duly explaining the reasons for each item of adjustment:

(i) Advertisement expenditure debited to profit and loss account includes the sum of ₹ 60,000 paid in cash to the sister concern of a director, the market value of which is ₹ 52,000.

(ii) Repairs of plant and machinery debited to profit and loss account includes ₹ 1.80 lakhs towards replacement of worn out parts of machineries. Such expenditure does not increase the future benefit from the asset beyond its previously assessed standard of performance.

(iii) A sum of ₹ 6,000 on account of liability foregone by a creditor has been taken to general reserve. The original purchases was debited to the Profit & Loss Account in the A.Y.2019-20.

(iv) Sale proceeds of import entitlements amounting to ₹ 1 lakh has been credited to Profit & Loss Account, which the company claims as capital receipt not chargeable to income-tax.

(v) Being also engaged in the biotechnology business, the company incurred the following expenditure on in-house research and development as approved by the prescribed authority:
   (a) Research equipments purchased ₹ 1,50,000.
   (b) Remuneration paid to scientists ₹ 50,000.
   The total amount of ₹ 2,00,000 is debited to the profit and loss account.

Solution :

Computation of taxable income of Alpha Ltd. for the A.Y.2024-25

Particulars		**₹**
Net profit as per profit and loss account		12,50,000
Add: Items debited to profit and loss A/c but not deductible or income to be taxed		
1.	**Payment of advertisement expenditure of ₹60,000**	
(i)	₹ 8,000, being the excess payment to a relative disallowed under section 40A(2)	8,000
(ii)	As the payment is made in cash and since the remaining amount of ₹ 52,000 exceeds ₹ 10,000, 100% shall be disallowed under section 40A(3)	52,000
2.	Under section 31, expenditure relatable to current repairs regarding plant, machinery or furniture is allowed as deduction.	
	The test to determine whether replacement of parts of machinery amounts to repair or renewal is whether the replacement is one which is in substance replacement of defective parts or replacement of the entire machinery or substantial part of the entire machinery [CIT v. Darbhanga Sugar Co. Ltd. [1956] 29 ITR 21 (Pat)]. Here expenditure on repairs does not bring in any new asset into existence. Such replacement can only be considered as current repairs. Hence, no adjustment is required.	
	Further, as per ICDS V on Tangible Fixed Assets, only an expenditure that increases the future benefits from the existing asset beyond its previously assessed standard of performance has to be added to the actual cost.	
3.	Liability foregone by creditor chargeable as business income but not credited to profit and loss account [taxable under section 41(1)]	6,000
4.	Sale proceeds of import entitlements. The sale of the rights gives rise to profits or gains taxable under section 28(iiia). As the amount has already been credited to profit and loss account, no further adjustment is necessary.	-

5.	Expenditure on in-house research and development is entitled to a weighted deduction of 100% of the expenditure (both capital and revenue) so incurred under section 35(2AB)(1). As the amount has already been debited to profit and loss account, no further adjustment is necessary	-
Taxable Income		**13,16,000**

Question-31

(i) A corporation was set up by the State Government transferring all the buses owned by it for a consideration of ₹ 75 lakhs, which was discharged by the Corporation by issue of equity shares. The Corporation in its assessment claimed depreciation. Can the depreciation be denied in the Corporation‟s hands on the ground that there was no registration of the buses in favour of the Corporation?

(ii) Ravi succeeded to his father's business in the year 2021. In the previous year ended 31.3.2024, Ravi has written off the balance in the name of „Y‟ which relates to supply made by his father, when he carried on business. Ravi desires to know whether the write off could be eligible for deduction.

Solution :

(i) The decision of the Supreme Court in Mysore Minerals Ltd v. CIT (1999) 239 ITR 775 is relevant in the context of the facts stated. The term ―asset used‖ in section 32 must be assigned a wider meaning and anyone in possession of property in his own title, exercising dominion over the property, to the exclusion of others and having the right to use and enjoy it, must be taken to be the owner.

Registration of the buses is only a formality to perfect the title and does not bar enjoyment. The Corporation cannot, therefore, be denied depreciation on the buses. A similar decision was also taken in CIT v. J & K Tourism Development Corporation (2001) 248 ITR 94 (J&K).

(ii) The deduction of bad debt is allowed if it is written off in the books of account of the assessee. In this case, Ravi has succeeded to the business carried on by his father. Under clause (vii) of section 36(1) the amount has been written off in the books of account as irrecoverable is eligible for deduction provided the debt has been taken into account in computing the income of the business in an earlier previous year [vide section 36(2)].

Therefore, Ravi is eligible for deduction in respect of the amount due in the name of Y which is written off in the books of account as bad debt, even though the debt represents the amount due for the supplies made by previous owner viz. deceased father of Ravi.[CIT v. T. Veerabhadra Rao, K. Koteswara Rao and Co (1985) 155 ITR 152 (SC)].

Part-B : Additional Questions

Question-32 : [PP MAY-18]

M/s. Gomati P Ltd., a closely held company, is in the business of growing rubber. The profit & loss account for the year ended 31-03-2024 of the company shows a net profit 37.65 crores after debiting depreciation of 30 crores.

The company has provided the following additional information:

(i) The company has deposited ₹30 crores in a special account with NABARD on 29-04-2024.

(ii) The company has brought forward losses of ₹6 crores pertaining to Assessment Year 2020-21. Mr. A who continuously held 60% of shares carrying voting power since incorporation of the company, had sold his entire holding to Mr. B on 01-08-2023.

(iii) The company had an accumulated balance of ₹200 crores in the special account with NABARD as on 01-04-2023. It has withdrawn ₹40 crores and utilized the same for the following purposes:
- Purchase of a new sprinkling machine for use in its operation ₹10 crores,
- Purchase of office appliances for corporate office at Chennai ₹10 crores.
- Purchase of computers and accessories ₹5 crores.
- Construction of a godown at a cost of ₹1 crore near the rubber estate to store raw rubber.
- Repairs to machinery ₹35 lakhs.

(iv) On 31·03·2024, the company has sold machinery which was purchased on 10·05·2018 for ₹10 crores. The purchase of the said machinery was in accordance with the scheme of deposit.

(v) Depreciation allowable as per Tax Audit Report is ₹28 crores.

Compute Taxable and Exempt income of M/s. Gomati (P) Ltd. **(8 Marks)**

Solution :

(a) Computation of Taxable and Exempt Income of M/s Gomati (P) Ltd. for the A.Y. 2024-25

Particulars		₹
Net profit as per Profit and Loss Account		37,65,00,000
Add: ***Excess depreciation as per books of account***	₹	
Depreciation as per books of account	30,00,00,000	
Less: Depreciation allowable as per the Income-tax Act, 1961	(28,00,00,000)	2,00,00,000
Net profit before allowing deduction under section 33AB		39,65,00,000
Less: Deduction under section 33AB would be the lower of:		
Amount deposited in Rubber Development Account on or before 30.9.2024 [i.e., ₹30,00,00,000]		
40% of profits of such business [i.e., ₹15,86,00,000, being 40% of ₹39,65,00,000]		15,86,00,000
Net profit after allowing deduction under section 33AB		**23,79,00,000**
Add: Amount withdrawn from special account with NABARD, which is deemed as profits and gains of business or profession		
(i) **Purchase of a new sprinkling machine for use in its operation for ₹10 crores,** would **not** be deemed as profits and gains of business or profession, since the said amount is utilised as per the specified scheme		Nil
(ii) **Purchase of office appliances for corporate office at Chennai for ₹10 crores,** out of the amount withdrawn from the deposit account, would be deemed as profits and gains of business or profession, since the said utilisation is not permissible.		10,00,00,000
(iii) **₹5 crores utilised for purchase of computers and accessories is permissible.** Thus, such amount would **not** be deemed as profits and gains of business or profession.		Nil
(iv) **1 crore utilised for construction of a godown near rubber estate to store raw rubber,** would **not** be deemed as profits and gains of business or profession, since the said amount is utilised as per the specified scheme.		Nil

(v) **35 lakhs utilised for repairs to machinery** would not be deemed as profits and gains of business or profession, since the said amount is utilised as per the specified scheme. **Note** - However, no deduction would be allowed in respect of such expenditure mentioned in (i), (iii), (iv) and (v) during the P.Y. 2023-24, since amount is spent out of the amount deposited in special account with NABARD, which has already been allowed as deduction in an earlier A.Y.	Nil
(vi) The **remaining amount of ₹13.65 crores {₹40 crores *less* ₹26.35 crores** [utilised above in **(i) to (v)]}**, which is **not** utilised during the previous year in which such amount is withdrawn, would be deemed as profits and gains of business or profession**.**	13,65,00,000
Add: Sale of machinery acquired out of the amount withdrawn from special account in accordance with the scheme of deposit. The cost of such machinery would be deemed as profits and gains of business or profession, since such machinery is sold before the expiry of eight years from the end of the previous year of its acquisition.	10,00,00,000
Total Composite business profits	**57,44,00,000**
Less: 65% of ₹57,44,00,000, being agricultural income exempt	37,33,60,000
Business income	**20,10,40,000**
Less: Brought forward business loss of ₹6 crores pertaining to A.Y.2020-21 not allowed to be set-off against the business profits of the P.Y. 2023-24, since as on 31.3.2024, the shares of M/s Gomati P Ltd carrying 60% (i.e., not less than 51%) of the voting power is held by Mr. B and not by Mr. A, being the person who held such shares as on 31.03.2020, being the last day of previous year 2019-20, in which such loss was incurred	-
Business income chargeable to tax	**20,10,40,000**

Question-33 : [MTP MARCH-21]

Comfort Ltd., an Indian company engaged in manufacturing footwear and leather products, since 2015. As per the Statement of profit and loss, the net profit for the year ended 31st March, 2024 is ₹ 640 lakhs. The net profit is arrived at after debiting or crediting the following amounts:

(i) Employers' contribution of ₹ 5.4 lakhs to EPF for the month of March, 2024 was deposited on 25th August, 2024.
(ii) A sundry creditor whose dues of ₹ 85 lakhs were outstanding since long time, has been settled for ₹ 63 lakhs on 31st March, 2024 based on compromise settlement. The amount waived has been credited to the statement of profit and loss.
(iii) Interest payments debited ₹ 85 lakhs (Includes interest on term loan of ₹ 50 lakhs availed on 1-4-2023 at interest rate of 12% p.a. towards purchase of machinery during the year).
(iv) Payment of ₹ 12 lakhs without deduction of tax to ABC & Co., a sub-contractor, for processing raw leather supplied by Comfort Ltd. is debited to statement of profit & loss.
(v) Depreciation as per Companies Act, 2013 is ₹ 78 lakhs.
(vi) Industrial power tariff concession of ₹ 4.80 lakhs, received from State Government.

Other Information:

(1) The written down values of assets before allowing depreciation as per Income-tax Rules are as under:
Factory Buildings: ₹ 320 lakhs;
Plant & Machinery: ₹ 360 lakhs (inclusive of machinery costing ₹ 60 lakhs acquired on 1.4.2023 and put to use on 1.12.2023)
Computers: ₹ 20 lakhs

(2) The company has not made provision for an amount of ₹ 18 lakhs being a fair estimate of the amount as payable to workers towards periodical wage revision once in 2 years in respect of existing employees. The provision is estimated on a reasonable certainty of the revision once in 2 years.

(3) During the year 2023-24, the company has employed 32 additional employees. All these employees contribute to a recognized provident fund. 18 out of 32 employees joined on 1.6.2023 on a salary of ₹ 23,000 per month, 8 joined on 1.7.2023 on a salary of ₹ 25,500 per month, and 6 joined on 1.11.2023 on a salary of ₹ 20,000 per month. The salaries of 6 employees who joined on 1.6.2023 are being settled by bearer cheques every month.

The total turnover of Comfort Ltd. for the P.Y.2021-22 was ₹ 360 crore.

Compute the total income and tax liability of Comfort Ltd. for the Assessment Year 2024-25 indicating reasons for treatment of each item and ignoring the provisions relating to minimum alternate tax (MAT). Assume that the company does not opt for the provisions of section 115BAA. **(14 Marks).**

Solution :

Computation of Total Income of Comfort Ltd. for the A.Y. 2024-25

Particulars	Amount (Rs.)	
Net profit as per the Statement of profit and loss		6,40,00,000
Add: Items debited but to be considered separately or to be disallowed		
(i) **Employer's contribution to EPF**	Nil	
[As per section 43B, employers' contribution to EPF is allowable as deduction, since the same has been deposited on or before the 'due date' of filing of return under section 139(1) i.e., 31.10.2024. Since the same has been debited to statement of profit and loss, no further adjustment is necessary]		
(iii) **Interest on term loan for purchase of plant and machinery**	4,00,000	
[Rs. 50 lakhs x 12% x 8/12]		
[As per the proviso to section 36(1)(iii), interest paid in respect of capital borrowed for acquisition of an asset for the period from the date of borrowing till the date on which such asset is first put to use shall not be allowed as deduction. Since the same has been debited to statement of profit and loss, it has to be added back while computing business income]		
(iv) **Payment to ABC & Co., a sub-contractor, without deduction of tax** [30% of Rs. 12 lakh]	3,60,000	
[Under section 40(a)(ia), 30% of any sum paid to any resident on which tax is deductible is disallowed if tax is not deducted at source. In this case, TDS provisions under section 194C are attracted on payment for processing of raw material. Since tax has not been deducted on such payment, 30% of the expenditure shall be disallowed]		
(v) **Depreciation charged as per Companies Act, 2013**	78,00,000	
		85,60,000
		7,25,60,000
Less: Items credited to statement of profit and loss, but not includible in business income / permissible expenditure and allowances		
(ii) **Waiver of sundry creditor's outstanding amount**	Nil	
[Waiver of Rs. 22,00,000 from the sundry creditors is a benefit in respect of a trading-liability by way of remission or cessation thereof and is, hence, taxable under section 41(1). Since the amount is already credited to statement of profit & loss, no adjustment is necessary]		
(vi) **Industrial power tariff concession received from State Government**	Nil	
[Any assistance in the form of, inter alia, concession received from the Central or State Government would be treated as income. Since the same has been credited to statement of profit and loss, no adjustment is required]		

AI (2) **Provision for wages payable to workers**		
[The provision based on fair estimate of wages and reasonable certainty of revision is allowable as deduction, since ICDS X requires 'reasonable certainty' for recognition of a provision, which is present in this case. As the provision has not been debited to statement to profit and loss, the same has to be reduced while computing business income]	18,00,000	
		-18,00,000
		7,07,60,000
Less: Depreciation as per Income-tax Rules, 1962		
A (1) Depreciation under section 32		
Depreciation on factory building [10% of Rs. 320 lakh]	32,00,000	
Depreciation on plant and machinery		
- Depreciation@7.5% on ₹ 64 lakhs [₹ 60 lakh, being machinery cost + ₹ 4 lakh, being interest from 1.4.2023 to 30.11.2023] since machinery is put to use for less than 180 days].	4,80,000	
Depreciation@15% on Rs. 300 lakh [Rs. 360 lakh – Rs. 60 lakhs	45,00,000	
Depreciation on computers [40% of Rs. 20 lakh]	8,00,000	
	89,80,000	
Add: Additional depreciation @10% on Rs. 64 lakh, since machinery is put to use for less than 180 days	6,40,000	
		96,20,000
Gross Total Income		**6,11,40,000**
Less: Deduction under Chapter VI-A		
Under section 80JJAA [See Working Note below]		-10,08,000
Total Income		**6,01,32,000**

Computation of tax payable by Comfort Ltd. for the A.Y. 2024-25

Particulars	Rs.
Tax payable on ₹ 6,01,32,000@25%, since the turnover of the company for the P.Y. 2021-22 does not exceed ₹ 400 crores	1,50,33,000
Add: Surcharge@7% (since the total income of the company exceeds Rs. 1 crore but does not exceed Rs. 10 crore)	10,52,310
	1,60,85,310
Add: Health and education cess@4%	6,43,412
Tax liability	**1,67,28,722**
Tax liability (Rounded off)	**1,67,28,720**

Working Note: Computation of deduction under section 80JJAA

Comfort Ltd. is eligible for deduction u/s 80JJAA since the company is subject to tax audit under section 44AB for A.Y.2024-25 and has employed "additional employees" during the P.Y.2023-24.	
Number of additional employees	
Total number of employees employed during the year	32
Less: Employees employed on 1.7.2023, since their total monthly emoluments > ₹ 25,000	8
Employees employed on 1.6.2023 whose emoluments are paid by bearer cheque	6
Number of additional employees [12 employees employed on 1.6.2023 and 6 employed on 1.11.2023]	**18**
Additional employee cost	Rs. 33,60,000
Rs. 27.6 lakh, being Rs. 23,000 × 12 ×10 + Rs. 6 lakh, being Rs. 20,000 x5 x 6	
Deduction under section 80JJAA [30% of Rs. 33.6 lakh]	**Rs. 10,08,000**

Author's Note: Sec 40A(3) is ignored here for payment to employees by bearer cheque. You have to add it back to Income. [Please refer RTP May 23 PGBP Ques, or Q.8 Chap 28]

Question-34 : [RTP MAY 20, MTP 1 Nov 23]

Lambda Ltd. is engaged in the manufacture of fabrics since 01-04-2012. Its Statement of Profit and Loss for the previous year ended 31st March, 2024 shows a profit of ₹750 lakhs after debiting or crediting the following items:

(a) Depreciation charged on the basis of useful life of assets as per Companies Act is ₹52 Lakhs.
(b) Industrial power tariff concession of ₹ 4.80 lakhs, received from Maharashtra State Government was credited to Statement of profit and loss.
(c) The company had provided ₹18 lakhs being sum fairly estimated as payable with reasonable certainty, to workers on agreement to be entered with the workers union towards periodical wage revision once in every three years.
(d) Dividend received from a US company ₹12 Lakhs.
(e) Loss ₹17 lakhs, due to destruction of a machine worth ₹24 lakhs by fire due to short circuit and ₹3 lakh received as scrap value. The insurance company did not admit the claim of the company on charge of gross negligence.
(f) Provision for gratuity based on actuarial valuation was ₹320 lakhs. Actual gratuity paid debited to gratuity provision account was ₹160 lakhs.
(g) Advertisement charges ₹2.30 lakhs, paid by cheque for advertisement published in the souvenir of a political party registered with the Election Commission of India.
(h) Long term capital gain ₹3 lakhs on sale of equity shares on which Securities Transaction Tax (STT) was paid sat the time of acquisition and sale.

Additional Information:

(i) Normal depreciation computed as per Income-tax Rules is ₹71 lakhs.
(ii) GST ₹8 lakhs collected from its customers was paid by the company on the due dates. On an appeal, the High Court directed the GST department to refund ₹3 lakhs to the company. The company in turn refunded ₹2 lakhs to the customers from whom it was collected and the balance ₹1 lakh is still lying under the head "Current Liabilities".

Compute the total income of Lambda Ltd. for the A.Y. 2024-25 by analyzing and applying the relevant provisions of income-tax law. Briefly explain the reasons for treatment of each item. Ignore the provisions relating to Minimum Alternate Tax. Assume that the company has not opted for section 115BAA.

Solution :

Computation of Total Income of Lambda Ltd. for the A.Y. 2024-25

	Particulars	**Amount (₹)**	
I	**Profits and gains of business and profession**		
	Net profit as per the statement of profit and loss		7,50,00,000
	Add: **Items debited but to be considered separately or items of expenditure to be disallowed**		
	(a) **Depreciation as per Companies Act**	52,00,000	
	(c) **Provision for wages payable to workers**	-	
	[Since the provision is based on a fair estimate of wages payable with reasonable certainty, the provision is allowable as deduction. ICDS X requires a reliable estimate of the amount of obligation and 'reasonable certainty' for recognition of a provision, which is present in this case. As the provision of ₹18 lakhs has been debited to statement of profit and loss, no adjustment is required while computing business income]		
	(e) **Loss due to destruction of machinery by fire**	17,00,000	
	[Loss of ₹17 lakhs due to destruction of machinery caused by fire is not deductible since it is capital in nature.		

	Since the loss has been debited to statement of profit and loss, the same is required to added back while computing business income]		
	(f) **Provision for gratuity**	1,60,00,000	
	[Provision of ₹320 lakhs for gratuity based on actuarial valuation is not allowable as deduction. However, actual gratuity of ₹160 lakhs paid is allowable as deduction. Hence, the difference has to be added back to income [₹320 lakhs (-) ₹160 lakhs]		
	(g) **Advertisement in souvenir of a political party**	2,30,000	
	[Advertisement charges paid in respect of souvenir published by a political party is not allowable as deduction from business profits of the company. Since, the expenditure has been debited to statement of profit and loss, the same has to be added back while computing business income]		
			2,31,30,000
			9,81,30,000
	Add: **Income taxable but not credited to statement of profit and loss**		
	AI(ii) **GST not refunded to customers out of GST refund received from State Govt.**	1,00,000	
	[The amount of GST refunded to the company by the Government is a revenue receipt chargeable to tax. Out of the refunded amount of ₹3 lakhs, the amount of ₹2 lakh stands refunded to customers would not be chargeable to tax. The balance amount of ₹1,00,000 lying with the company would be chargeable to tax]		
			9,82,30,000
	Less: **Items credited to statement of profit and loss, but not includible in business income/ permissible expenditure and allowances**		
	(b) **Industrial power tariff concession received from State Government**	-	
	[Any assistance in the form of, *inter alia*, concession received from the Central or State Government would be treated as income. Since the same has been credited to statement of profit and loss, no adjustment is required]		
	(d) **Dividend received from US company**	12,00,000	
	[Dividend received from foreign company is taxable under "Income from other sources". Since the same has been credited to the statement of profit and loss, it has to be deducted while computing business income]		
	(e) **Scrap value of machinery**	3,00,000	
	[Scrap value of machinery, being capital in nature, has to be reduced from WDV of machinery. Since the same has been credited to the statement of profit and loss, it has to be deducted while computing business income]		
	(i) **Long term capital gains of sale of equity shares**	3,00,000	
	[The taxability or otherwise of long term capital gain on sale of equity shares has to be considered while computing income under the head "Capital Gains". Since such capital gains has been credited to statement of profit and loss, the same has to be reduced to arrive at the business income.]		
	AI(i) **Depreciation as per Income-tax Rules, 1961 [See Note below]**	71,00,000	89,00,000

	Profits and gains from business and profession		**8,93,30,000**
II	**Income from Other Sources**		
	Dividend received from foreign company		12,00,000
	[Dividend received from a foreign company is chargeable to tax under the head" Income from other sources"]		
III	**Capital Gains**		
	Long term capital gain on sale of equity shares		3,00,000
	[Long term capital gains in excess of ₹1 lakh (i.e., ₹2 lakh, being ₹3 lakh – ₹1 lakh) on sale of equity shares on which STT is paid at the time of acquisition and sale would be taxable@10% u/s 112A, without indexation benefit.]		
	Gross Total Income		**9,08,30,000**
	***Less:* Deduction under Chapter VI-A**		
	Under section 80GGB [Contribution by a company to a registered political party is allowable as deduction, since payment is made otherwise than by cash. Expenditure incurred by an Indian company on advertisement in souvenir published by such political party tantamounts to contribution to such political party.]		2,30,000
	Total Income		**9,06,00,000**

Note – As per section 43(6)(c), for computation of written down value (WDV) of a block of asset at the end of the year, the amount of scrap value received has to be reduced from the value of block of assets at the beginning of the previous year and cost of assets purchased during the year. Depreciation is calculated on the value so arrived of the block of asset as on 31.3.2024. In the question, adjustment (e) states that scrap value of ₹ 3 lakh is received in respect of destroyed machinery and same is credited in the statement of profit and loss. In the additional information, since, depreciation as per Income-tax Rules, 1962 is given, no further adjustment for scrap value is done, presuming that the same has already been reduced to arrive at the value of the block as on 31.3.2024 and depreciation has been calculated on the said value of the block.

Alternatively, since scrap value has been credited to the statement of profit and loss, it is possible to take a view that the amount of scrap value is not reduced while computing the value of the assets. In such a case, depreciation allowable would be ₹70,55,000 [i.e., 71,00,000 – ₹45,000, being 15% of ₹3,00,000]. The business income and total income would be ₹8,93,75,000 and ₹9,06,45,000, respectively.

Question-35 : [PP NOV-20]

MP Ltd. is engaged in the manufacture of textile since 01.05.2012. Its Statement of Profit and Loss for the financial year ended 31st March, 2024 shows a profit of ₹ 560 lakhs after debiting or crediting the followings items:

(a) Depreciation charged on the basis of useful life of assets as per Companies Act is ₹ 52 lakhs.
(b) Industrial power tariff concession of ₹ 5.40 lakhs, received from Madhya Pradesh Government was credited to Statement of Profit and Loss.
(c) Contribution of ₹ 2.50 lakhs to a scientific laboratory functioning at the national level with a specific direction for use of the amount for scientific research programme approved by the prescribed authority.
(d) Profit of ₹8 lakhs on sale of a plot of land to AVM Limited, a domestic company, the entire shares of which are held by the assessee company. The plot was acquired by MP Ltd. on 30th June, 2023
(e) Payment of ₹3.50 lakhs towards transportation of various materials procured by one of its units to M/s Bansal Transport, a partnership firm, without deduction of tax at source. The firm opts for presumptive taxation under section 44AE and has furnished a declaration to this effect. It also furnished its Permanent Account Number in the tender document.

(f) Bonus paid to staff includes an amount of ₹1.50 lakhs which was provided for in the books on 31.03.2023 but has been paid in August 2023.
(g) Interest of 15 lakhs paid on loans taken specifically for purchase of plant and machinery. Out of this ₹5 lakhs is for upto the period till such machinery was commissioned.
(h) A debtor who owed the company an amount of ₹20 lakhs was declared insolvent and hence, was written off by debiting the Statement of Profit and Loss.
(i) ₹5 lakhs, being the additional compensation received from the State Government pursuant to an interim order of Court in respect of land acquired by the State Government in the previous year 2016-17.
(j) In order to expand its overseas business, the company planned online advertisement campaign for which it engaged Fastex Inc., a London based company not having any PE in India, and paid ₹5 lakhs for services availed. No tax/TDS was deducted by the company.
(k) ₹2 lakhs paid to consultant for expert opinion on new business set-up.

Additional Information:
(i) Normal depreciation computed as per Income-tax Rules on the book assets is ₹71 lakhs.
(ii) Debenture of face value of 1500 lakhs having 5 years tenure were issued at a discount of 3% and were subscribed in full.
(iii) The company received a bill for ₹3 lakhs on 31st March, 2024 from a supplier of cotton for supply made in March, 2024. The bill was omitted to be recorded in the books in March, 2024. Payment against the bill was made in April, 2024 and necessary entry was made in the books then. The same has been considered in closing inventory valuation during physical verification conducted on 31.03.2024.
(iv) The company has purchased 1000 bales of cotton at ₹5,000 per bale from Enpee LLP, a firm in which majority of the directors are partners. The normal selling price in the market for the same material is ₹4,600 per bale.

Compute total business income of the company for A.Y. 2024-25 giving a brief explanation to each item of addition or deletion. Ignore MAT provisions and the provisions of section 115BAA. **(14 Marks)**

Solution :

Computation of Business Income of MP Ltd. for the A.Y. 2024-25

Particulars	Amount	
I. Profits and gains of business and profession		
Net profit as per the statement of profit and loss		5,60,00,000
Add: Items debited but to be considered separately or to be disallowed		
(a) Depreciation as per Companies Act	52,00,000	
(e) Payment to transporter	-	
[No tax is required to be deducted at source u/s 194C on payment to a transporter declaring income under section 44AE, who has furnished a declaration to that effect along with PAN. Therefore, disallowance@30% of payment for non-deduction at source u/s 40(a)(ia) would not be attracted in respect of payment of ₹3.50 lakhs to M/s. Bansal Transport]		
(f) Bonus paid to staff in respect of P.Y. 2022-23	1,50,000	
[Bonus for P.Y. 2022-23 is stated to have been provided in the books of account of that year. It is also allowable as deduction under the Income-tax Act, 1961 in that year since the same has been paid in August, 2023 i.e., on or before the due date u/s 139(1).		
Since the bonus for the earlier previous year has once again been debited to statement of profit and loss of this year, the same is required to added back while computing business income, as it is not allowable as deduction again in the P.Y.2023-24]		

(**g) Interest on loan for purchase of plant and machinery**	5,00,000	
[Interest on loan taken for purchase of plant and machinery for use in business is allowable as deduction u/s 36(1)(iii) for the period after the date the asset is first put to use. Hence, such interest for the period upto the date the asset is first put to use is not allowable as deduction. Accordingly, out of ₹15 lakhs paid towards such interest, only ₹10 lakhs is allowable as deduction. 5 lakhs, being interest paid upto the the date till such machinery was commissioned has to be added back while computing business income]		
(h) Bad debts written off	-	
[No adjustment is required in respect of debt of 20 lakhs written off owing to insolvency of the debtor, since bad debts written off in the books of account is fully allowable as deduction u/s 36(1)(vii).		
Since the said amount has already been debited to the statement of profit and loss, no further adjustment is required]		
(j) Payment for online advertisement services	5,00,000	
[Since the payment for online advertisement services is made to a non-resident not having PE in India, equalization levy@6% has to be deducted. Since the same has not been deducted, disallowance@100% of the payment would be attracted u/s 40(a)(ib)]		
(k) Payment to Consultant for opinion on new business	2,00,000	
[Payment to consultant for expert opinion on new business is capital in nature. Hence, the same is not allowable as deduction u/s 37. Since the amount has been debited to the statement of profit and loss, the same has to be added back]		
		69,50,000
(l) Purchase of cotton at a price higher than the FMV	4,00,000	
[Since the purchase is from a related party, a firm in which majority of the directors of the company are partners, at a price higher than the fair market value, the difference between the purchase price (₹5,000 per bale) and the fair market value (₹4,600 per bale) multiplied by the quantity purchased (1000 bales) has to be added back]		
		6,29,50,000
Less: Items credited to statement of profit and loss, but not includible in business income/ permissible expenditure and allowances		
(b) Industrial power tariff concession received from State Government	-	
[Any assistance in the form of, inter alia, concession received from the Central or State Government would be treated as income. Since the same has been credited to statement of profit and loss, no adjustment is required]		
(c) Contribution to National Laboratory	-	
[Contribution to National laboratory for scientific research qualifies for deduction@ 100% u/s 35(2AA) . Since the same has been debited to the statement of profit and loss, no adjustment is required]		
(d) Profit on sale of plot of land	8,00,000	

[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, which is an Indian company, the same would not constitute a transfer for levy of capital gains tax as per section 47(iv). Since the same has been credited to the statement of profit and loss, the same has to be reduced while computing business income]		
(i) Additional compensation received from State Government in respect of land	5,00,000	
[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). Since the compensation has been credited to the statement of profit and loss, the same has to be deducted while computing business income]		
(i) Depreciation as per Income-tax Rules, 1961	71,00,000	
(ii) Discount on issue of debentures	9,00,000	
[Allowable as deduction over the tenure of debentures i.e., 5 years Hence, 1/5th allowable as deduction in P.Y. 2023-24 (1/5th of ₹45 lakhs, being 3% of ₹1500 lakhs)]		
(iii) Purchases omitted to be recorded in the books of account	3,00,000	
Since the purchase is made in March, 2024 (i.e., P.Y. 2023-24), in respect of which bill of ₹3 lakhs received in March, 2024, which has been omitted to be recorded in the books in this year, it has to be deducted to compute the business income. It is logical to assume that the company is following mercantile system of accounting		-96,00,000
Profits and gains from business and profession		**5,33,50,000**

Question-36 : [PP JAN-21]

Dinkar Synthetics Ltd. engaged in the business of manufacturing of textile goods of suiting and shirting and operating since 2012 shows Net Profit of ₹75 lacs as per Profit and Loss Account for the year ended 31-03-2024.

Net profit has been calculated after debiting/crediting the following items:

(1) The company used to include interest cost while valuing its stock of finished goods up to the financial year 2022-23. During the financial year 2023-24, the company changed its accounting policy to adopt AS-2 (Accounting standard on valuation of Inventories) as issued by the Institute of Chartered Accountants of India and thereby excluded interest costing while valuation of finished goods. This has resulted in a decrease in the year's profit by ₹13.50 Lacs. This policy will continue in future also.

(2) The company has made provision for Gratuity based on actuarial valuation of ₹5 lacs. Actual gratuity paid amounting to ₹1,20,000 during financial year 2023-24 was debited to provision of Gratuity Account.

(3) The company has debited to Profit and Loss account one time Franchise fees of ₹20 lakh paid to M/s. Robert Inc., a foreign company, for obtaining franchise on 16th August, 2023. The relevant amount of TDS has been deducted and deposited by the company in time.

(4) The company lost cash of ₹12,00,000 due to theft when it was withdrawn from the bank and taken to administrative office. It is not insured and hence, fully charged as revenue expenditure.

(5) On December 1, 2023, the company paid Royalty of ₹3,00,000 to Mr. Rozer (a non- resident individual) after deducting tax@20% under section 195 read with section 115A. The tax so deducted by the company is not deposited till November 30, 2024. However, Mr. Rozer submits his return of income on July 31, 2024 after including ₹3,00,000 in his income and claiming of refund of ₹20,000.

On scrutiny of records, the following further information and details were extracted:

(i) The Company has sold a plot of land to Libra Ltd., a domestic company, for ₹ 35 lacs on 15-04-2023. The same plot was purchased on 01-05-2019 for ₹26 lacs by Dinkar Synthetics Ltd. Dinkar Synthetics Ltd. held all the shares of Libra Ltd.

(ii) The company has obtained a loan of ₹5 lakhs from Manu Textiles Private Limited in which it holds 16% voting rights. The accumulated profits of Manu Textiles Private Limited on the date of receipt of loan was ₹2 lacs.

(iii) The company has purchased a new motor car during the year for the purpose of business, on 01-08-2023 for ₹12,80,000 (including GST of ₹2,80,000). The depreciation on the above car has not been debited to the Profit and Loss Account.

(iv) The company has the following number of workers employed in the factory (all are covered in Provident Fund)

Particulars of Employees	Number
No. of Employees as at 31-03-2023	480
Add: Additional Employees employed during the year	120
Less: Retrenchment of Employees in 2023-24	70
No. of employees as on 31-03-2024	530

The new employees have been recruited on mass recruitment basis on 01-07-2023 at a pay scale of ₹15,000 per month per person. Payment of salary is made through Account Payee Cheques only.

(v) The Gross Turnover of the Company during the financial year 2021-22 is ₹450 crores and the company has not opted for Section 115BAA.

Compute the total income and tax payable of the company for Assessment Year 2024-25 as per the provisions of the Income-tax Act, 1961.
Ignore the provisions of MAT. **(14 Marks)**

Solution :

Computation of total Income and tax payable of Dinkar Synthetics Ltd. for the A.Y. 2024-25

Particulars	Amount in ₹	
Profits and gains of business and profession		
Net profit as per profit and loss account		75,00,000
Add: **Items debited but to be considered separately or to be disallowed**		
(i) Decrease in profit due to non-inclusion of interest while valuing finished goods	-	
[As per ICDS 2, interest shall not be included in the cost of inventories, unless they meet the criteria for recognition of interest as a component of the cost as specified in ICDS 9 on borrowing costs. ICDS 9 requires capitalization of borrowing costs attributable to qualifying assets, which include only those inventories that require a period of twelve months or more to bring them to a saleable condition, which is not the case in textile industry. Hence, interest would not form part of cost for inventory valuation as per ICDS 2. Accordingly, no adjustment is required, since interest cost has already excluded while valuing finished goods]		
(ii) Provision for gratuity	3,80,000	

[Provision of ₹5 lakhs for gratuity based on the actuarial valuation is not allowed as deduction as per section 40A(7). However, actual gratuity of ₹1,20,000 paid is allowable as deduction. Hence, the difference has to be added back to income (₹5,00,000 – ₹1,20,000)]			
(iii) One time Franchise Fees		15,00,000	
[Franchise is an intangible asset eligible for depreciation as per section 32. Since one time franchise fees of ₹20 lakhs paid for obtaining franchise has been debited to profit and loss account, the same has to be added back while computing business income]	20,00,000		
Less: Franchise [Depreciation @ 25% on ₹20 lakhs, since it has been used for more than 180 days during the year] [20 lakhs – 5 lakhs]	5,00,000		
(iv) Loss of cash in transit from bank to administrative office on account of theft		-	
[Any loss from theft, dacoity, embezzlement, etc., is deductible if it is incidental to the carrying on of the business.1 Since the loss is due to theft which took place when cash was withdrawn from bank and taken to administrative office, it is incidental to business and thus, allowable as revenue expenditure. Since the same has already been charged as revenue expenditure, no further adjustment is required]		3,00,000	
(v) Royalty on which tax is deducted but not deposited till 30.11.2024			
[100% of ₹3 lakhs, being royalty paid after deducting tax would be disallowed under section 40(a)(i) while computing the business income of A.Y.2024-25, since tax is not paid before due date of filing return of income.]			21,80,000
			96,80,000
Less: **Depreciation as per Income-tax Rules, 1962**			
Motor car [₹12.8 lakh x 15%, since car is put to use for more than 180 days in the P.Y. 2023-24]			1,92,000
			94,88,000
Capital Gain			Nil
Capital gain on transfer of plot to Libra Ltd., a 100% subsidiary Indian company [Any transfer of capital asset by a holding company to its 100% subsidiary Indian company would not be regarded as transfer u/s 47(iv)]			
Income from Other Sources			
Deemed dividend u/s 2(22)(e) [Loan of ₹5 lakhs by Manu Textiles Pvt. Ltd., a company in which the public are not substantially interested, to Dinkar Synthetics Ltd. who is holding 16% i.e., 10% or more of the voting power of the company would be deemed to be dividend to the extent of ₹2 lakhs being the accumulated profits.]			2,00,000
Gross Total Income			**96,88,000**
Less: **Deduction under Chapter VI-A**			
Deduction under section 80JJAA [Since Dinkar Synthetics Ltd. is subject to tax audit for A.Y.2024-25 and has employed additional employees during the P.Y. 2023-24 [30% of ₹67,50,000 (₹15,000 x 9 months x 50)]			20,25,000
70 employees retrenched by the company during the year have to be deducted from the figure of 120 to arrive at the actual number of additional employees.			
Total Income			**76,63,000**

Tax payable on ₹76,63,000@30% [Since the turnover of the company for the previous year 2021-22 exceeds ₹400 crore]		22,98,900
Add: Health and education cess@4%		91,956
Tax liability		23,90,856
Tax liability (rounded off)		**23,90,860**

Question-37 : [MTP MAY-22]

Statement of Profit and Loss of Suraj Industries Ltd., engaged in production and marketing of diversified products, shows a net profit of ₹72,00,000 for the financial year ended 31st March, 2024 after charge of the following items:

A: Items debited to the Statement of Profit and Loss:

(i) Depreciation as per Companies Act, 2013: ₹24,00,000
(ii) Interest amounting to ₹60,000 for short payment of advance tax paid as per section 234B relating to the assessment year 2024-25.
(iii) Interest and borrowing costs amounting to ₹9,50,000 and ₹7,00,000 though not meeting the criteria for recognition as a component of cost, included in cost of opening and closing inventory, respectively.
(iv) Expenditure of ₹41,000 paid in cash comprising of ₹22,000 directly paid to producer of dairy farming products and ₹19,000 paid towards printing and stationery items to a trader.
(v) ₹3,50,000 paid to a contractor for carrying out repair work at factory premises. Tax was not deducted at source on this payment.
(vi) ₹35,000 towards expenditure for earning income from transfer of carbon credits.
(vii) Contribution to electoral trust: ₹3,00,000 paid by way of cheque.
(viii) Expenditure towards advertising charges in a brochure of a political party registered under section 29A of Representation of People Act, 1951: ₹40,000 paid by way of cheque.
(ix) Interest on term loan obtained from Cooperative Bank not paid before the due date of filing of return of income ₹2,60,000
(x) Actual contribution to the pension scheme of employees: ₹1,50,000

B: Items credited to the Statement of Profit and Loss:

(i) Unrealised rent of ₹3,80,000 pertaining to financial year 2019-20 & 2020-21 recovered during the year in respect of a commercial property owned by the company, which was sold by the company on 23.03.2023.
(ii) Dividends from a specified foreign company ₹1,60,000
(iii) Profit of ₹3,00,000 received from hedging contract entered into for meeting out loss in foreign currency payments towards an imported printing machinery valued at ₹95 lakhs, installed on 15th December, 2023 and put to use from that date.
(iv) Interest from banks on fixed deposits (net of TDS) at 10% ₹1,35,000

Additional Information:

(1) Depreciation as per Income-tax Rules: ₹28,00,000 exclusive of depreciation on the imported printing machine referred to in item B (iii)
(2) Expenditure pertaining to previous financial year allowed on due basis, but paid in current financial year in cash on 18.01.2024: ₹35,000
(3) Audit fee for the previous year 2022-23: ₹75,000. TDS deducted but not paid in the relevant previous year. However, TDS was paid on 31.12.2023.
(4) Income from transfer of Carbon Credits amounting to ₹4,00,000 included in Net Profit (before tax).
(5) The eligible salary and dearness allowance for the pension scheme referred to under section 80CCD is ₹10,00,000.
(6) Compute the total income of Suraj Industries Ltd. for assessment year 2024-25 as per the normal provisions of the Income-tax Act, 1961. Give brief reasons for the treatment given to each of the items considered in computation of income of the company. Company does not want to opt for section 115BAA. **(14 Marks)**

Solution :

Computation of Total Income of Suraj Industries Ltd. for the A.Y. 2024-25

	Particulars	Amount (₹)		
I	**Income from house property**			
	Unrealised rent [Taxable under section 25A, even if Suraj Industries Ltd. is no longer the owner of commercial property]		3,80,000	
	Less: 30% of above		1,14,000	
II	**Profits and gains of business and profession**			2,66,000
	Net profit as per the statement of profit and loss		72,00,000	
	Add: Items debited but to be considered separately or to be disallowed			
	(i) Depreciation as per Companies Act, 2013	24,00,000		
	(ii) Interest under section 234B for short payment of advance tax [Any interest payable for default committed by assessee for discharging his statutory obligations under Income-tax Act, 1961 which is calculated with reference to the tax on income is not allowable as deduction under section 40(a)(ii). Since the same has been debited to statement of profit and loss, it has to be added back]	60,000		
	(iii) Interest and borrowing cost included in Opening and Closing inventory [As per ICDS II, Interest and borrowing cost which does not meet the criteria for recognition as a component of the cost, cannot be included in the cost of inventory. Since the same have been included in the opening and closing inventory, the difference between 9,50,000, being interest included in opening inventory – ₹7,00,000, being interest included in closing inventory, has to be added back]	2,50,000		
	(iv) Cash payment in excess of ₹10,000 [Disallowance u/s 40A(3) is attracted in respect of expenditure, for which payment exceeding ₹10,000 in a day has been made in cash. Since expenditure of ₹19,000 towards printing and stationery items is debited to the statement of profit and loss, the same has to be added back. However, payment of ₹22,000 to producer for dairy farming products is not disallowed since it is covered under the exceptions specified in Rule 6DD]	19,000		
	(v) Repair work paid to contractor without deduction of tax at source [Disallowance of 30% of the amount of 3,50,000 paid for carrying out repair work to a contractor without deduction of tax at source would be attracted u/s 40(a)(ia)]	1,05,000		
	(vi) Expenditure for transfer of carbon credits [Income by way of transfer of Carbon Credits is chargeable to tax under section 115BBG at a flat rate. No deduction is allowed under any provision of the Act in respect of any expenditure or allowance in relation thereto. Since such expenditure is debited to the statement of profit and loss, the same has to be added back]	35,000		
	(vii) Contribution to electoral trust [Contribution to electoral trust is not allowable as deduction from business profits of the company. Since the expenditure has been debited to statement of profit and loss, the same has to be added back while computing business income]	3,00,000		

	(viii) Advertisement in brochure of a political party [Advertisement charges paid in respect of brochure published by a political party is not allowable as deduction from business profits of the company as per section 37(2B). Since the expenditure has been debited to statement of profit and loss, the same has to be added back while computing business income]	40,000		
	(ix) Interest to co-operative bank not paid on or before the due date [Disallowance under section 43B would be attracted for A.Y.2024-25, since the interest was not paid on or before the due date of filing of return]	2,60,000	35,19,000	
	(x) Contribution towards pension scheme of employees [Contribution towards pension scheme, referred to in section 80CCD, of employees is allowed only to the extent of 10% of salary of the employee in the P.Y. i.e., ₹1,00,000 being 10% of ₹10,00,000. Therefore, the excess contribution of ₹50,000 [i.e., ₹1,50,000 – ₹1,00,000] is disallowed u/s sec.36(1)(iva).	50,000		
			1,07,19,000	
	Add: Amount taxable but not credited to statement of profit and loss			
	A(2) Expenditure pertaining to previous financial year [Cash payment in excess of ₹10,000 made in the current year in respect of expenditure allowed on mercantile basis in the previous financial year, would be deemed as income in the current year as per section 40A(3A)]		35,000	
			1,07,54,000	
	Less: Items credited to statement of profit and loss, but not includible in business income / permissible expenditure and allowances			
	(i) Unrealised rent [Unrealised rent in respect of commercial property is taxable under the head "Income for house property". Since the said rent has been credited to the statement of profit and loss, the same has to be deducted while computing business income]	3,80,000		
	(ii) Dividend received from specified foreign company [Dividend received from specified 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]	1,60,000		
	(iii) Profit from hedging contract [Hedging contract is entered into for safeguarding against any loss that may arise due to currency fluctuation. The profit from such contract entered into for meeting loss in foreign currency payments towards imported printing machinery has to be adjusted against the cost of machinery. Since the said profit has been credited to the statement of profit and loss, the same has to be deducted while computing business income]	3,00,000		
	(iv) Interest from bank fixed deposit [Interest on fixed deposit is taxable under "Income from Other Sources". Since the said interest has been credited to the statement	1,35,000		

	of profit and loss, the same has to be deducted while computing business income]		9,97,500	
	(3) Audit fees of P.Y. 2022-23 [30% of ₹75,000, being the audit fees disallowed in the P.Y. 2022-23 for non- remittance of TDS on or before due date of filing return of income for P.Y. 2022-23 would be allowed in the year of payment of TDS i.e., P.Y. 2023-24]	22,500		
	(4) Transfer of Carbon Credits chargeable to tax under section 115BBG [Income by way of transfer of Carbon Credits chargeable under section 115BBG can be treated as business income or income from other sources, depending upon the facts of the case. In this case, since the question mentions that Suraj Industries Ltd. is engaged in production and marketing of diversified products, it is logical to assume that the same is in the nature of business income. Since the amount of ₹4 lakh has already been credited to statement of profit and loss, no further adjustment is necessary]	Nil		
			97,56,500	
	Less: **Depreciation as per Income tax Rules**			
	(1) Depreciation under section 32	28,00,000		
	Add: Depreciation @7.5% on ₹92 lakhs [₹95 lakhs, being imported printing machinery - ₹3 lakhs, being profit from hedging contract] since, machinery is put to use for less than 180 days].	6,90,000		
	Add: Additional depreciation@10% on ₹92 lakhs, since machinery is put to use for less than 180 days assuming the conditions for claim of additional depreciation are satisfied2.	9,20,000	44,10,000	
	Profits and gains from business or profession			**53,46,500**
	Income from Other Sources			
	Dividend from specified foreign company		1,60,000	
	Interest from banks on fixed deposits (Gross) [Interest on banks on fixed deposits is taxable as "Income from other sources"] [₹1,35,000 x 100/90]		1,50,000	3,10,000
	Gross Total Income		-	**59,22,500**
	Less: Deduction under Chapter VI-A		-	
	Under section 80GGB [Contribution by a company to an electoral trust or registered political party is allowable as deduction, since payment is made otherwise than by cash. Expenditure incurred by an Indian company on advertisement in brochure published by political party tantamount to contribution to such political party] [₹3,00,000 + ₹40,000]		-	3,40,000
	Total income		-	**55,82,500**

Question-38 : [MTP MAY-22]

The profit and loss account of the Little Smiles & Associates, a partnership firm, showed a net profit of ₹80 lakhs after debiting/crediting of the following sums:

(i) Interest on capital @13% - ₹7,15,000
(ii) Interest on loan taken from one of the partners@ 15% - ₹90,000
(iii) Interest on bank fixed deposits made out of surplus funds ₹35,000 (Gross)
(iv) Depreciation as per books of accounts ₹1,15,650

(v) A building purchased in the year 2018 having a WDV as on 1.4.2023, of ₹36.45 lakhs was sold on 10.10.2023 for ₹90 lakhs. The differential amount was credited to profit and loss account. The building was the only asset in the block.

Additional Information:

(a) The firm has four partners. Only 2 are working partners. Partnership deed authorises payment of interest to partners in the range of 12% - 16% and also payment of remuneration to all the four partners @ ₹20,000 per month.

(b) It applied for establishing a unit in SEZ and the letter of approval was granted on 30.3.2020. However, it started the operation of SEZ only on 15.10.2020. The total turnover, export turnover and net profit for the year ended 31.3.2024 were ₹120 lakhs, ₹40 lakhs and ₹7.5 lakhs respectively. The net profit is included in the profit of ₹80 lakhs mentioned above.

(c) Out of the amount received from sale of building, the firm invested ₹60 lakhs on 5.4.2024 in 5-years specified bonds of the National Highways Authority of India. The bonds were issued on 31.5.2024.

(d) Depreciation as per Income-tax Rules, 1962 is ₹ 14,000 excluding depreciation on assets mentioned in (e) and (f) below.

(e) WDV of Motor car as on 1.4.2023 (purchased and put to use on 1.1.2020) of ₹ 6,80,000.

(f) Cost of mobile phones (purchased and put to use on 11.10.2023) ₹ 20,000

Compute the total income of the firm for the A.Y. 2024-25 giving reasons/explanations for the treatment of each item under the normal provisions of the Act.

Solution :

Computation of Total Income of M/s Little Smiles & Associates, a partnership firm, for the A.Y. 2024-25

Particulars	Amount (in ₹)	
I. Profits and gains of business and profession		
Net profit as per profit and loss account		80,00,000
Add: **Items debited but to be considered separately or to be disallowed**		
(1)Interest to partners on capital [As per section 40(b), interest to partners authorized by the partnership deed is allowable as deduction subject to a maximum of 12% p.a.] [₹7,15,000 x 1%/13%]	55,000	
(2)Interest on loan taken from partner [As per section 40(b), interest to partners authorized by the partnership deed is allowable as deduction subject to a maximum of 12% p.a., whether it is interest on partner's capital or loan] [₹90,000 x 3%/15%]	18,000	
(3)Depreciation as per books of account	1,15,650	1,88,650
		81,88,650
Less: **Items credited but chargeable to tax under another head/expenses allowed but not debited**		
1.Interest on bank fixed deposits made out of surplus fund [Interest received from bank on fixed deposits made out of surplus funds is assessable under the head 'Income from other sources'. Since the same has been credited to profit and loss account, it has to be deducted while computing business income]	35,000	
2.Profit on sale of building [Capital gain on sale of building is taxable under the head "Capital Gains". Since such gains has been credited to profit and loss account, the same has to be deducted while computing business income]	53,55,000	
		53,90,000
		27,98,650

***Less:* Depreciation as per Income-tax Rules, 1962**	14,000	
- Depreciation on Motor car [₹6,80,000 x 30%, eligible for higher depreciation since purchased and put to use on 1.1.2020]	2,04,000	
- Mobile phone [₹20,000 x 15% x 50%, since purchased and put to use for less than 180 days]	1,500	2,19,500
Book Profit		25,79,150
Less: Salary to working partners		
(i)As per limits given under section 40(b)		
On first ₹3,00,000 @90%	2,70,000	
On the balance of ₹22,79,150 @ 60%	13,67,490	
	16,37,490	
(ii)Salary actually paid to working partners [₹20,000 x 12 x 2]	4,80,000	
Deduction allowed being (i) or (ii) whichever is less		4,80,000
		20,99,150
II. Capital Gains		
1. Short term capital gain on sale of building forming part of block of asset [Since building was the only asset in the block]		
Full value of consideration	90,00,000	
Less: Cost of acquisition [WDV as on 1.4.2023]	36,45,000	
Less: Exemption under section 54EC [Investment in bonds of NHAI, the maximum deduction u/s 54EC would be ₹50 lakhs]	50,00,000	3,55,000
[Available against depreciable asset, being a building held for more than 24 months and the payment for bonds has been made within six months from the date of transfer, exemption u/s 54EC would be available even if the allotment of bonds was made after the expiry of the six months]		
Income from Other Sources		
Interest from bank on fixed deposits		35,000
Gross Total Income		24,89,150
Less: Deduction under section 10AA [₹7,50,000 x 40,00,000/ ₹1,20,00,000 x 100%, being second year of operation]		
[Unit in SEZ is eligible for deduction u/s 10AA since it obtained the letter of approval on or before 31st March, 2020 and started operations before 31.3.2021]		2,50,000
Total Income		22,39,150

Question-39

XYZ Ltd. is engaged in the manufacture of textile since 01-04-2009. Its Statement of Profit & Loss shows a profit of ₹ 700 lakhs after debit/credit of the following items:

(1) Depreciation calculated on the basis of useful life of assets as per provisions of the Companies Act, 2013 is ₹ 50 lakhs.

(2) Employer's contribution to EPF of ₹ 2 lakhs and Employees' contribution of ₹ 2 lakhs for the month of March 2024 were remitted on 30th June, 2024.

(3) The company appended a note to its Income Statement that industrial power tariff concession of ₹2.5 lakhs was received from the State Government and credited the same to Statement of P&L.

(4) The company had provided an amount of ₹ 25 lakhs being sum estimated as payable to workers based on agreement to be entered with the workers union towards periodical wage revision once in 3 years. The provision is based on a fair estimation of wages and reasonable certainty of revision once in 3 years.

(5) The company had made a provision of 10% of its debtors towards bad and doubtful debts. Total sundry debtors of the company as on 31-03-2024 was ₹ 200 lakhs.

(6) A debtor who owed the company an amount of ₹ 40 lakhs was declared insolvent and hence, was written off by debit to Statement of Profit and loss.

(7) Sundry creditors include an amount of ₹ 50 lakhs payable to A & Co, towards supply of raw materials, which remained unpaid due to quality issues. An agreement has been made on 31-03-2024, to settle the amount at a discount of 75% of the outstanding. The amount waived is credited to Statement of Profit and Loss.

(8) The opening and closing stock for the year were ₹ 200 lakhs and ₹ 255 lakhs, respectively. They were overvalued by 10%.

(9) Provision for gratuity based on actuarial valuation was ₹ 500 lakhs. Actual gratuity paid debited to gratuity provision account was ₹ 300 lakhs.

(10) Commission of ₹ 1 lakhs paid to a recovery agent for realization of a debt. Tax has been deducted and remitted as per Chapter XVIIB of the Act.

(11) The company has purchased 500 tons of industrial paper as packing material at a price of ₹ 30,000/ton from PQR, a firm in which majority of the directors are partners. PQR's normal selling price in the market for the same material is ₹ 28,000/ton.

Additional Information:

(1) There was an addition to Plant & Machinery amounting to ₹ 50 lakhs on 10-06-2023, which was used for more than 180 days during the year. Additional depreciation has not been adjusted in the books.

(2) Normal depreciation calculated as per Income-tax Rules, 1962 is ₹ 80 lakhs.

(3) The company had credited a sub-contractor an amount of ₹ 10 lakhs on 31-03-2023 towards repairing a machinery component. The tax so deducted was remitted on 31-12-2023.

(4) The company has collected ₹ 7 lakhs as GST from its customers and paid the same on the due dates. However, on an appeal made, the High Court directed the Department to refund 3 lakhs to the company. The company, in turn, refunded ₹ 2 lakhs to the customers from whom the amount was collected and the balance of ₹ 1 lakh is still lying under the head "Current Liabilities".

Compute total income and tax payable for A.Y. 2024-25. Ignore MAT provisions and the provisions of section 115BAA.

Note - The turnover of XYZ Ltd. for the P.Y.2021-22 was ₹ 405 crore.

Solution :

Computation of Total Income of XYZ Ltd. for the A.Y. 2024-25

Particulars	Amount (₹)	
Profits and Gains from Business and Profession		
Profit as per Statement of profit and loss		7,00,00,000
Add: Items debited but to be considered separately or to be disallowed		
(a) Depreciation as per Companies Act, 2013	50,00,000	
(b) Employees' contribution to EPF	2,00,000	
[Since employees' contribution to EPF has not been deposited on or before the due date under the PF Act, the same is not allowable as deduction as per Explanation 2 below to section 36(1)(va). Since the same has been debited to Statement of profit and loss, it has to be added back for computing business income].		
(c) Employer's contribution to EPF	Nil	
[As per section 43B, employers' contribution to EPF is allowable as deduction since the same has been deposited on or before the due date of filing of return under section 139(1). Since the same has been debited to Statement of profit and loss, no further adjustment is necessary]		
(d) Provision for wages payable to workers	Nil	
[The provision is based on fair estimate of wages and		

reasonable certainty of revision, the provision is allowable as deduction, since ICDS X requires 'reasonable certainty for recognition of a provision, which is present in this case. As the provision has been debited to Statement of profit and loss, no adjustment is required while computing business income]		
(e) Provision for doubtful debts [10% of ₹ 200 lakhs] [Provision for doubtful debts is allowable as deduction under section 36(1)(viia) only in case of banks, public financial institutions, state financial corporations, state industrial investment corporations and non-banking financial corporations. Such provision is not allowable as deduction in the case of a manufacturing company. Since the same has been debited to Statement of profit and loss, it has to be added back for computing business income]	20,00,000	
(f) Bad debts written off [Bad debts write off in the book of account is allowable as deduction under section 36(1)(vii). Since the same has already been debited to Statement of profit and loss, no further adjustment is required]	Nil	
(g) Provision for gratuity [Provision of ₹ 500 lakhs for gratuity based on actuarial valuation is not allowable as deduction as per section 40A(7). However, actual gratuity of ₹ 300 lakhs paid is allowable as deduction. Hence, the difference has to be added back]	2,00,00,000	
(h) Commission paid to recovery agent for realization of a debt. [Commission of ₹ 1 lakh paid to a recovery agent for realisation of a debt is an allowable expense under section 37 as per DCIT v. Super Tannery (India) Ltd. (2005) 274 ITR 338 (All). Since the same has been debited to Statement of profit and loss, and tax has been deducted at source, no further adjustment is required]	Nil	
(i) Purchase of paper at a price higher than the fair market value [As per section 40A(2), the difference between the purchase price (₹ 30,000 per ton) and the fair market value (₹ 28,000 per ton) multiplied by the quantity purchased (500 tons) has to be added back since the purchase is from a related party, a firm in which majority of the directors are partners, at a price higher than the fair market value]	10,00,000	
(j) GST not refunded to customers out of GST refund	1,00,000	
[The amount of GST refunded to the company by the Government is a revenue receipt chargeable to tax under section 41(1). Deduction can be claimed of amount refunded to customers [CIT v. Thirumalaiswamy Naidu & Sons (1998) 230 ITR 534 (SC)]. Hence, the net amount of₹ 1,00,000 (i.e., ₹ 3,00,000 minus ₹ 2,00,000) would be chargeable to tax]		2,83,00,000
		9,83,00,000
Less: Items credited but to be considered separately/ permissible expenditure and allowances		
(k) Industrial power tariff concession received from State Government [Any assistance in the form of, inter alia, concession received from the Central or State Government would be treated as income as per section 2(24)(xviii). Since the same has been credited to Statement of profit and loss, no adjustment is required.	Nil	
(l) Discount given by Sundry Creditors for supply of raw materials [Discount of 75% given by Sundry Creditors for supply of raw materials is taxable under section 41(1). Since the same has already been credited to Statement of profit and loss, no further adjustment is required]	Nil	
(m) Depreciation as per Income-tax Act, 1961	80,00,000	

(n) Over-valuation of stock [₹ 55 lakhs × 10/110] [The amount by which stock is over-valued has to be reduced for computing business income. ₹ 50 lakhs, being the difference between closing and opening stock, has to be adjusted to remove the effect of over-valuation]	5,00,000	
(o) Additional Depreciation **[See Note 1 below]** [Additional depreciation@20% is allowable on ₹ 50 lakhs, being actual cost of new plant & machinery acquired on 10.06.2023, as the same was put to use for more than 180 days in the P.Y.2023-24.]	10,00,000	
(p) Payment to a sub-contractor where tax deducted last year was remitted after the due date of filing of return **[See Note 2 below]** [30% of ₹ 10 lakhs, being payment to a sub-contractor, would have been disallowed under section 40(a)(ia) while computing the business income of A.Y.2023-24, since tax deducted was remitted after the due date of filing of return. However, the same is allowable in A.Y.2024-25, since the remittance has been made on 31.12.2023]	3,00,000	98,00,000
Total Income		**8,85,00,000**

Notes:

(1) ₹ 50 lakhs, being the addition to plant and machinery on 10.6.2023 qualifies for additional depreciation @ 20% under section 32(1)(iia). Since only the normal depreciation as per Income-tax Rules, 1962, has been debited to profit and loss account, additional depreciation of ₹ 10 lakhs (being 20% of ₹ 50 lakhs) has to be deducted while computing business income.

(2) Since the tax deducted during the P.Y.2022-23 was remitted only on 31.12.2023, i.e., after the due date of filing of return for A.Y.2023-24, ₹ 3,00,000, being 30% of ₹ 10 lakh would have been disallowed while computing the business income of that year. Since the tax deducted has been remitted on 31.12.2023, ₹ 3,00,000 would be allowed as deduction while computing the business income of the A.Y.2024-25.

Question-40 :[MTP May 23]

Parik Hospitality Limited is engaged in the business of running hotels of 3-star category. The company's Statement of Profit and Loss for the previous year ended 31st March 2024 shows a profit of ₹ 152 lakhs after debiting or crediting the following items:

(a) Payment of ₹ 0.25 lakh and ₹ 0.30 lakh in cash on 3rd December 2023 and 10th December 2023, respectively, for purchase of raw corn to Mr. Raja, an agriculturist, and Mr. Khalid, a spice trader for purchase of masala used for corn products, respectively.

(b) Contribution towards employees' pension scheme notified by the Central Government under section 80CCD for a sum of ₹ 3 lakhs calculated at 12% of aggregate of basic salary and dearness allowance (forming part of retirement benefits) payable to the employees in terms of employment.

(c) Payment of ₹ 6.50 lakhs towards transportation of various materials procured by one of its hotels to M/s. Bansal Transport, a partnership firm, without deduction of tax at source. The firm opts for presumptive taxation under section 44AE and has furnished a declaration to this effect. It also furnished its Permanent Account Number in the tender document.

(d) Profit of ₹ 12 lakhs on sale of a plot of land to Avimunya Limited, a domestic company, the entire shares of which are held by the assessee company. The plot was acquired by Parik Hospitality Limited on 1st June 2022.

(e) Contribution of ₹ 2.50 lakhs to Indian Institute of Technology with a specific direction for use of the amount for scientific research programme approved by the prescribed authority.

(f) Expense of ₹ 10 lakhs on foreign travel of two directors for a collaboration agreement with a foreign company for a brewery project to be set up. The negotiation did not succeed, and the project was abandoned.

(g) Fees of ₹ 1 lakh paid to independent directors for attending Board meeting without deduction of tax at source under section 194J.

(h) Depreciation charged ₹ 10 lakhs.
(i) ₹ 10 lakhs, being the additional compensation received from the State Government pursuant to an interim order of Court in respect of land acquired by the State Government in the previous year 2015-16.
(j) Dividend received from a foreign company ₹ 5 lakhs in which it holds 15% of the equity share capital.

Additional information:
(i) As a corporate debt restructuring, the bank has converted unpaid interest of ₹ 10 lakhs upto 31st March 2023 into a new loan account repayable in five equal annual installments. The first installment of ₹ 2 lakhs was paid in March 2024 by debiting new loan account.
(ii) Depreciation as per Income-tax Act, 1961 ₹ 15 lakhs.
(iii) The company received a bill for ₹ 2 lakhs on 31st March 2024 from a supplier of vegetables for supply made in March 2024. The bill was omitted to be recorded in the books in March 2024. The bill was paid in April 2024 and the necessary entry was made in the books then.
(iv) Dividend of ₹ 7 lakhs is distributed on 25.09.2024 to its shareholders.

Compute total income of Parik Hospitality Limited for the Assessment Year 2024-25 indicating the reason for treatment of each item assuming that the company is not eligible for deduction u/s 35AD. Ignore the provisions relating to minimum alternate tax and the provisions of section 115BAA.

Solution :

Computation of Total Income of Parik Hospitality Ltd. for the A.Y.2024-25

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 an amount exceeding ₹10,000	30,000	
[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 - CBDT Circular 27/2017 dated 3/11/2017].		
(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 2/10, 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].		
(f) Expenses on foreign travel of two directors for a collaboration agreement which failed to materialize	10,00,000	
[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 Mc Gaw-Ravindra Laboratories (India) Ltd. v. CIT (1994) 210 ITR 1002 (Guj.). Brewery project is not related to the existing business of running three - star hotels]		
(g)Fees paid to directors without deducting tax at source [30% of ₹1 lakh]	30,000	

[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]			11,10,000
			1,63,10,000
Less: Items credited but to be considered separately/ Expenditure to be allowed			
(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	
(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].	-	
(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 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]	10,00,000	
(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	
(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.2023-24, the same is allowable as deduction]		2,00,000	
(iii) Purchases omitted to be recorded in the books [Since the purchase is made in March, 2024 (i.e., P.Y.2023-24), in respect of which bill of ₹ 2 lakhs received on 31.3.2024 has been omitted to be recorded in the books in that year, it has to be deducted to compute the business income [Kedarnath Jute Manufacturing Company Ltd. v. CIT (1971) 82 ITR 363 (SC)]. 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**

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**
Less: **Deduction under Chapter VI-A** 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**

Question-41

Mr. Harish, aged 66, running business as a proprietor furnishes the particulars of his income for the year ended 31.03.2024 as under:

(a) Net Profit of ₹ 3,65,500 from the wholesale business of textiles and fabrics arrived at after charge of following expenses in the Profit & Loss Account:
   (i) Personal travelling expenses of ₹ 12,750.
   (ii) Purchase of furniture items for shop on 13.6.2023 of ₹ 25,000 but charged in shop expenses.

(b) He owns a house with two floors constructed with the financial assistance of HDFC, out of which ground floor is used by him for self-use and first floor was let out on rent for ₹ 8,500 p.m. from April 2023. The municipal tax paid for the whole house was of ₹ 2,500 and interest paid on housing loan for the construction was ₹ 52,000. Both the floors of the house are identical.

(c) He deposited insurance premium on the life of self of ₹ 12,500, wife ₹ 13,500, son and daughter of ₹ 28,000, repaid housing loan of ₹ 50,000 and paid ₹ 55,000 by credit card for health insurance of himself and his family.

Compute the total income and the amount of tax payable by Mr. Harsh on such income for the Assessment Year 2024-25 assuming that he does not opt to pay tax under section 115BAC.

Solution :

Computation of total income of Mr. Harsh for the A.Y. 2024-25

Particulars	₹	₹
Income from house property		
Self-occupied portion (50%)		
Annual Value under section 23(2)	Nil	
Less: Deduction under section 24(b)		
Interest on housing loan [₹ 52,000 × 50%]	26,000	(26,000)
Let-out portion (50%)		
Income of let out portion being rent of ₹ 8,500 p.m. received for 12 months **(Rent received has been taken as the GAV in the absence of other information)**. Gross Annual Value under section 23(1) (₹ 8,500 × 12)	1,02,000	
Less: 50% of municipal taxes paid allowable in respect of rented out portion (i.e., 50% of ₹ 2,500)	1,250	
Net Annual Value (NAV)	1,00,750	
Less: Deduction under section 24		
30% of NAV under section 24(a)	30,225	
Interest on housing loan under section 24(b)	26,000	44,525

Profits and gains of business or profession		18,525
Net profit as per profit and loss account of wholesale business of textiles and fabrics	3,65,500	
Add: Expenses charged in profit and loss account either not allowable or to be considered separately -		
Personal travelling expenses of proprietor	12,750	
Purchase of furniture wrongly debited to shop expenses	25,000	
	4,03,250	
Less: Depreciation on furniture @10% on ₹ 25,000	2,500	4,00,750
Gross Total Income		
Less: **Deduction under Chapter VI-A**		
Under section 80C		
- Life insurance premium		**4,19,275**
Self	12,500	
Wife	13,500	
Son and daughter	28,000	
- Housing loan repaid	50,000	
Under section 80D [Medical insurance premium]	**1,04,000**	
Mediclaim insurance premium of ₹ 55,000 [maximum deductible is ₹ 50,000 where it covers a resident senior citizen]	50,000	1,54,000
Total Income		**2,65,275**
Total Income (rounded off)		2,65,280
Tax on total income of ₹ 2,65,280 (The basic exemption limit for senior citizen is ₹ 3,00,000 for A.Y. 2024-25)		Nil

Question-42 :[PP NOV 22]

M/s MPK Pharma Ltd, a company resident in India, in which the public are not substantially interested, is engaged in the manufacture of pharmaceutical products. The Statement of Profit & Loss for the year ended 31st March, 2024 shows a net profit of ₹ 50,75,000 after debiting or crediting the following items:

(i) One-time license fee of ₹ 12 lakhs paid to a foreign company for obtaining a franchise on 28th July, 2023.

(ii) Convertible debentures were issued by the company on which expenditure of issue and collection of ₹ 3,15,000 was incurred.

(iii) The company has paid ₹ 2,25,000 to share brokers for transactions in relation to equity shares listed in stock exchange and ₹ 1,20,000 to commodity broker for transactions in relation to commodities at MCX. Tax was not deducted at source on such transactions.

(iv) Contributed 15% of basic salary in National Pension Scheme referred in section 80CCD towards salary paid to an employee Mr. Gaurav whose basic salary was ₹ 6,00,000 p.a. and Dearness allowance of 30% of basic salary was considered. 50% of Dearness· allowance formed part of the salary.

(v) Expense of ₹ 7,00,000 has been incurred for providing freebies to medical practitioners.

(vi) Expenditure of ₹ 5,20,000 incurred on feasibility study conducted for examining proposals for technological advancement for existing business. The project was abandoned without creating a new asset.

(vii) Depreciation of ₹ 13,00,000 on the basis of useful life of assets has been charged.

(viii) Employees Provident Fund (EPF) for the month of March, 2024 amounting to ₹ 5,20,000 was remitted on 17th May, 2024 which includes ₹ 2,60,000 of employer's contribution and 2,60,000 of employee's contribution.

(ix) Donation to Swachh Bharat Kosh ₹ 2,00,000.
(x) Industrial power tariff concession of ₹ 4,50,000 is received from Central Government.
(xi) Interest and borrowing costs amounting to ₹ 6,85,000 and ₹ 5,65,000 though not meeting the criteria for recognition as a component of cost, is included in the cost of opening and closing inventory, respectively.
(xii) The profit from setting of warehouse in rural area for storage of sugar (before claiming deduction under section 35AD) is ₹ 10,00,000. The warehouse commenced operations on 24th October, 2023.

The Company has furnished the following additional information:
(i) The company has collected ₹ 14,00,000 as GST from its customers and remitted to the Government before due the dates. Consequent to an appeal filed, the Honourable High Court ordered the GST department to refund ₹ 5,00,000 to the Company. The Company in tum refunded ₹ 3,00,000 to its customers from whom GST was collected. Balance amount is shown under "current liabilities".
(ii) On 14.01.2024, the company has issued 2,00,000 equity shares of ₹ 10 each at ₹ 22 per share. The fair market value of the shares determined as per Income-tax Rules, 1962 was ₹ 19 per share.
(iii) The company has brought forward losses of ₹ 13,00,000 relating to assessment year 2020-21. Mr. X who continuously held 55% shares carrying voting power since incorporation of the company, had sold his entire shareholding to Mr. Y on 25.11.2023.
(iv) Depreciation allowable as per Income-tax Rules ₹ 14,50,000.
(v) The company has invested ₹ 35 lakhs in the construction of warehouse in a rural area for storage of sugar as an additional line of business. The investment includes land value of ₹ 20 lakhs.

You are required to compute the Total Income of M/s MPK Pharma Ltd. for the Assessment Year 2024-25. The company has not opted for tax u/s 115BAA of the Income-tax Act, 1961.

Solution :

Computation of Total Income of M/s MPK Pharma Ltd. for the A.Y. 2024-25

	Particulars	Amount (in ₹)	
I	**Profits and gains of business and profession**		
	Net profit as per Statement of profit and loss		50,75,000
	Add: Items debited but to be considered separately or to be disallowed		
	(i) One time license fee	12,00,000	
	[Franchise is in the nature of an intangible asset eligible for depreciation @ 25%. Since one-time license fees of ₹ 12 lakh paid to a foreign company for obtaining franchise has been debited to statement of profit and loss, the same has to be added back.]		
	(ii) Expenditure of issue of convertible debenture	Nil	
	[The expenditure incurred on the issue and collection of debentures would be treated as revenue expenditure even in case of convertible debentures, i.e., the debentures which had to be converted into shares at a later date.1 Since the said expenditure has been debited to statement of profit and loss, no further adjustment is required.]		
	(iiia) Payment to share brokers for transaction in relation to equity shares	**2,25,000**	
	[Since the company is engaged in the manufacture of pharmaceutical products, investment in equity shares is not related to the business and the payment to share broker is not wholly and exclusively for the purpose of assessee's business. Since the said payment has been debited to statement of profit and loss, the same has to be added back]		
	Note – If it is assumed that the company also carries on share trading business and the profits of such business are included in the figure of 50,75,000, then, the payment to share brokers would be allowable as deduction. There would be no disallowance under section 40(a)(ia) since section 194H is not attracted		

	in respect of payment for transaction in relation to equity shares. The figures of business income, gross total income and total income would, accordingly, change]		
	(iiib) Payment to commodity broker without deducting tax at source [Assuming that the commodity transactions at MCX are in relation to the business of the company, the payment of ₹ 1,20,000 to commodity broker on which tax is deductible under section 194H would attract disallowance@30% u/s 40(a)(ia), due to non- deduction of tax at source u/s 194H.] Note – If the transactions are not related to the business, the entire amount of ₹ 1,20,000 would be disallowed. The figures of business income, gross total income and total income would accordingly change.	36,000	
	(iv) Contribution towards NPS in excess of 10% of salary disallowed [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, ₹ 90,000 (15% of ₹ 6,00,000) – ₹ 69,000 [10% of (6,00,000 + 50% of 30% x ₹ 6,00,000)], would be disallowed]	21,000	
	(v) Expense on freebies to medical practitioners [Any expense incurred in providing freebies to medical practitioners is an expense prohibited by the law. Any expenditure incurred by an assessee for any purpose which is prohibited by law is not deemed to have been incurred for the purpose of business or profession and hence, has to be disallowed from business income.	7,00,000	
	(vi) Expenditure on feasibility study [If there is no creation of a new asset, then the expenditure incurred on feasibility study would be of revenue nature. In this case, since the feasibility study was conducted for the existing business and the project was abandoned without creating a new asset, the expenses were of revenue nature3. Since the expenditure of ₹ 5,20,000 has already been debited to statement of profit and loss, no further adjustment is required.	Nil	
	(vii) Depreciation on the basis of useful life of asset	13,00,000	
	(viiia) Employees' contribution to EPF [Since employees' contribution to EPF has not been deposited on or before the due date under the PF Act, the same is not allowable as deduction as per Explanation 2 below to section 36(1)(va). Since the same has been debited to Statement of profit and loss, it has to be added back for computing business income].	2,60,000	
	(viiib) Employer's contribution to EPF [As per section 43B, employers' contribution to EPF is allowable as deduction since the same has been deposited on or before the due date of filing of return of income u/s 139(1). Since the same has been debited to statement of profit and loss, no further adjustment is necessary]	Nil	
	(ix) Donation to Swachh Bharat Kosh [Donation to Swachh Bharat Kosh is not an allowable expenditure under section 37 since it is not laid out wholly or exclusively for the purposes of business or profession. Hence, the same has to be added back while computing business income.]	2,00,000	
	(xi) Difference on account of interest and borrowing costs	1,20,000	

	[As per ICDS II, Interest and borrowing costs not meeting the criteria for recognition as component of cost shall not be included in the cost of opening and closing stock. ₹ 1,20,000 [₹ 6,85,000 – ₹ 5,65,000] being the difference between closing and opening stock, has to be adjusted to remove the effect of interest and borrowing costs included in the value of stock.		40,62,000
			91,37,000
	Add: Income taxable but not credited to statement of profit and loss		
	(i) GST not refunded to customers out of GST refund received from Government		2,00,000
	[The amount of GST refunded to the company by the Government is a revenue receipt chargeable to tax. Out of the refunded amount of ₹ 5 lakhs, the amount of ₹ 3 lakh stands refunded to customers and hence, would not be chargeable to tax. The balance amount of 2,00,000 lying with the company would be chargeable to tax]		
	Less: Items credited but chargeable to tax under another head/expenses allowed but not debited		93,37,000
	(x) Industrial power tariff concession received from Central Government	Nil	
	[Any assistance in the form of, inter alia, concession received from the Central or State Government would be treated as income as per section 2(24)(xviii). Since the same has been credited to Statement of Profit and Loss, no adjustment is required]		
	(xii) Profits from setting of warehouse in rural area for storage of sugar	10,00,000	
	[Since it is a specified business, its profits would be computed separately]		
	(iv)Depreciation as per Income-tax Rules	14,50,000	
	[As depreciation is as per Income-tax Rules is stated as ₹14,50,000, it has been considered that it includes depreciation on Franchise. Note - If it is assumed that the figure does not include depreciation on franchise, then, depreciation of ₹ 17,50,000 (₹ 14,50,000 + 3,00,000, being depreciation@25% on franchise) has to be reduced]		
			24,50,000
			68,87,000
	Less: Brought forward business loss relating to A.Y. 2020-21		
	[Brought forward loss relating to A.Y. 2020-21 not allowed to be set off from the profits of A.Y. 2024-25 as 51% or more of the shares of MPK Pharma Ltd., which is a company in which public are not substantially interested, on 31.3.2024 are not held by the same persons who held not less than 51% shares of the company on 31.3.2020]		Nil
	Profits and gains from manufacture of pharmaceutical products		68,87,000
	Profits and gains from setting of warehouse in rural area for storage of sugar		
	Net profit before deduction under section 35AD	10,00,000	
	Less: Deduction under section 35AD	15,00,000	
	100% deduction u/s 35AD in respect of cost of warehouse [₹ 35 lakhs – ₹ 20 lakhs, being cost of land, not allowable]		
	Loss from the specified business of setting up a warehousing facility to be carried forward as per section 73A for set-off against profits of any specified business in the subsequent year	-5,00,000	

II	**Income from Other Sources**		
	Consideration received in excess of FMV of shares issued [The shares of the company are issued at a premium (i.e., issue price exceeds the face value of shares); The excess of the issue price of the shares over the FMV would be taxable u/s 56(2)(viib). ₹ 6,00,000 [2,00,000 ×3 (₹ 22 – ₹ 19)] shall be treated as income in the hands of MPK Pharma Ltd., which is not a company in which public are substantially interested]		6,00,000
	Gross Total Income		**74,87,000**
	Less: Deduction under Chapter VI-A Deduction u/s 80G in respect of donation to Swachh Bharat Kosh, assuming that the donation is otherwise than by way of cash		2,00,000
	Total Income		**72,87,000**

Question-43 :[RTP May 23]
On 31.3.2024, A Ltd. has an outstanding interest liability of ₹ 3.50 crores towards loan payable to IFCI Ltd., a public financial institution. On the same date, it issued debentures to IFCI Ltd. in lieu of the outstanding interest and deducted the said interest while computing profits and gains of business of A.Y.2024-25. The Assessing Officer, however, rejected the deduction of interest on loan claimed by A Ltd. Discuss the validity of the action of the Assessing Officer..

Solution :
As per section 43B, interest payable by the assessee on interest on loan from a public financial institution is allowable as deduction only in the year in which such interest is actually paid by the assessee. The proviso to section 43B permits deduction if such sum is paid on or before the due date of filing of return under section 139(1) in respect of the previous year in which the liability to pay such sum was incurred.

Explanation 3C to section 43B clarifies that if any sum payable by the assessee as interest on any such loan is converted into a loan or borrowing or advance or debenture on any other instrument by which the liability to pay is deferred to a future date, the interest so converted and not "actually paid" shall not be deemed as actual payment, and hence, would not be allowed as deduction.

In this case, since A Ltd. has converted the interest of ₹ 3.50 crores payable to IFCI Ltd. on loan borrowed from it, the interest so converted into debentures and not actually paid shall not be deemed as actual payment, and hence, would not be allowed as deduction while computing its profits and gains of business for A.Y.2024-25. Accordingly, the action of the Assessing Officer in rejecting the deduction of interest on loan claimed by A Ltd. while computing its profits and gains of business for A.Y.2024-25, is correct

Question-44 : [PP May 23]
X Ltd. is engaged in the manufacture and sale of textiles goods. Its net profit for the year ending March 31, 2024 after debit/ credit of the following items to the profit and loss account was ₹ 1,25,00,000.

(i) Advertisement expenditure includes a sum of ₹ 1.60 lakhs paid in cash to sister concern of a director of the company. The Fair market value of such expenditure in the market is ₹ 52,000.
(ii) Repairs of plant and machinery include ₹ 1.80 lakhs towards replacement of worn out parts of machineries.
(iii) The company used to include interest cost in valuation of its finished stock upto the financial year 2022-23. During the financial year 2023-24, the company changed its accounting policy to comply with the requirements of accounting standard issued by the ICAI and excluded interest cost in valuation of finished stock. This has resulted in a decrease in the current year's profit by ₹ 10.70 lakhs.
(iv) An executive Mr. Q, while on business trip abroad, died and the company voluntarily paid gratuity to his family amounting to ₹ 2.00 lakhs.
(v) Capital Expenditure of ₹ 1.80 lakhs incurred for the purpose of promoting family planning amongst its employees debited in the Profit and Loss account.

(vi) Retrenchment compensation paid to employees of one of the unit of the company which was closed down during the year amounted to ₹ 14 lakhs.

(vii) ₹ 4 lakhs, being amounts waived by a co-operative bank out of principal and ₹ 1 lakh being amount waived by the bank on arrears of interest, respectively, in one-time settlement. The loan was obtained for meeting working capital requirement four years back.

(viii) Contribution towards Employees' pension scheme notified by the Central Government u/s 80CCD for a sum of ₹ 3 lakhs calculated at 12% of basic salary and Dearness Allowance (forming part of retirement benefits) payable to the employees

(ix) Marked to market loss amounting to ₹ 6 lakhs in respect of an unsettled derivative contract. The contract was settled in May, 2024 with a gain of ₹ 1 lakh.

(x) Provision for gratuity based on actuarial valuation was ₹ 4 lakhs. Actual gratuity paid debited to gratuity provision account was ₹ 2.75 lakhs. The gratuity paid to Mr. Q is debited separately and not included in Provision for gratuity or Actual gratuity paid mentioned here.

The company furnishes following additional information relating to it:

i. The company has obtained a loan of ₹ 4 lakhs from ABC Private Limited in which it holds 16% voting rights. The accumulated profit of ABC Private Limited on the date of receipt of loan was ₹ 1 lakh.

ii. The company has given I phone Mobile sets to 5 distributors as incentive costing ₹ 60,000 each on 28.10.2023 on the occasion of Diwali. The accountant of the company debited the same amount to Business Promotion Expenses, being business expenditure and did not deduct any tax at source.

iii. The company during the financial year 2023-24 has contributed a sum of ₹ 3,50,000 to an approved Electoral trust by an RTGS directly to the account of the Trust.

You are required to compute the Total Income of X Ltd. for the A.Y. 2024-25 assuming that the company has not opted for Section 115BAA/115BAB under the Income-tax Act, 1961. **(14 Marks)**

Solution :

Computation of Total Income of X Ltd. for the A.Y. 2024-25

Computation of Total Income of X Ltd. for the A.Y. 2024-25			
	Particulars	**Amount (in ₹)**	
I	**Profits and gains of business and profession**		
	Net profit as per profit and loss account		1,25,00,000
	Add: **Items debited but to be considered separately or to be disallowed**	1,60,000	
	(i) Payment of advertisement expenditure of ₹ 1,60,000 [Sister concern of a director of X Ltd. falls under specified person u/s 40A(2). ₹ 1,08,000, being the excess payment to a specified person is disallowed u/s 40A(2). Since the payment is made in cash and since the remaining amount of ₹ 52,000 exceeds ₹ 10,000, the same would be disallowed u/s 40A(3). Since ₹ 1,60,000 has been debited to profit and loss account, the same has to be added back.] **Note** – Alternatively, the entire sum of ₹ 1,60,000 can be disallowed u/s 40A(3).		
	(ii) Repair of plant and machinery [As per ICDS V on Tangible Fixed Assets, only an expenditure that increases the future benefits from the existing asset beyond its previously assessed standard of performance has to be added to the actual cost. Since expenditure on replacement of worn out parts does not bring in any new asset into existence, such replacement is in the nature of current repairs, which is allowable as deduction. Since the same has been debited to profit and loss account, no adjustment is required.]	-	

	(iii) Interest cost in valuation of finished stock [X Ltd. has excluded interest cost in valuation of finished stock as it has changed its accounting policy to comply with the requirements of accounting standard, which is a bona fide reason and would be followed consistently in future. The change in the method of valuation of stock, being a genuine reason, no further adjustment is required, as the said interest cost has been already excluded and consequently profit has been reduced.]	-	
	(iv) Payment of gratuity to Mr. Q's family [Payment of gratuity ₹ 2.00 lakhs on account of death of an executive while on business trip is allowable as deduction [CIT vs. Laxmi Cement Distributors (P) Ltd. (1976) 104 ITR 711 (Gujarat)]. Since it has already been debited to the profit and loss account, no further adjustment is required.]	-	
	(v) 4/5th capital expenditure for promoting family planning [Capital expenditure incurred for the purpose of promoting family planning amongst employees is deductible over a period of 5 years as per the first proviso to section 36(1)(ix). Hence, only ₹ 36,000 is deductible in the current year in respect of such expenditure incurred by the company. Since ₹ 1,80,000 has been debited to the profit and loss account, ₹ 1,44,000, being 4/5th capital expenditure has to be added back.]	1,44,000	
	(vi) Retrenchment compensation to employees on closure of unit [Retrenchment compensation paid to employees at the time of closure of one of the units of the company is allowable as deduction2. Since the same has already been debited to the profit and loss account, no further adjustment is required.]	-	
	(viii) Contribution towards NPS in excess of 10% of salary disallowed [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%, which is in excess of 10% i.e., ₹ 3,00,000 x 2/12, would be disallowed.]	50,000	
	(ix) Marked to market losses [Marked to market loss or other expected loss as computed in accordance with the ICDS would be allowed as deduction u/s 36(1)(xviii). As per ICDS I, marked to market losses cannot be recognized unless the recognition of such loss is in accordance with the provisions of any other ICDS. Marked to market loss in respect of an unsettled derivative contract is not allowable as deduction. Since such losses have been debited to the profit and loss A/c, they have to be added back for computing business income.]	6,00,000	
	(x) Provision for gratuity [Provision of ₹ 4 lakhs for gratuity based on actuarial valuation is not allowable as deduction as per section 40A(7). However, actual gratuity of ₹ 2.75 lakhs paid is allowable as deduction. Hence, the difference has to be added back]	1,25,000	
	A(ii) Incentive to distributor without deducting tax at source [30% x ₹ 60,000 x 5] [Mobile phone to distributors is a perquisite or benefit provided to the distributors and X Ltd. is liable to deduct tax at source under section 194R on such benefit or perquisite. Disallowance @30% would be attracted under section 40(a)(ia) for non-deduction of tax at source on such benefit or perquisite]	90,000	
			11,69,000
			1,36,69,000

	Less: Items credited but not taxable or chargeable to tax under another head		
	(vii) Waiver of principal on bank loan [Waiver of principal amount of loan taken for trading activity is a benefit in respect of a trading- liability by way of remission or cessation thereof and is, hence, taxable u/s 41(1)3. Since the loan is for meeting working capital requirement, it is logical to assume that is taken for trading activity. Since the loan waiver has already been credited to profit and loss account, no adjustment is required.]	-	
	(vii) Waiver of interest on bank loan [As per section 43B, since interest is allowable only on actual payment, deduction in respect of interest due on loan would not have been allowed as deduction in any previous year. Therefore, waiver of such interest cannot be brought to tax by invoking section 41(1). Since such interest has now been credited to profit and loss account, the same has to be deducted while computing business income.]	1,00,000	1,00,000
			1,35,69,000
II	**Income from Other Sources**		
	Deemed dividend under section 2(22)(e) [Loan of ₹ 4 lakhs by ABC Pvt. Ltd., being a company in which the public are not substantially interested, to X Ltd., being a shareholder who is holding 16% of voting rights of the ABC Pvt. Ltd. will be deemed to be dividend in the hands of X Ltd. to the extent of the accumulated profits i.e., ₹ 1 lakh.]		1,00,000
	Gross Total Income		**1,36,69,000**
	Less: Deduction under Chapter VI-A		
	Under section 80GGB [Contribution by a company to an approved Electoral trust is allowable as deduction, since payment is made through RTGS.]		3,50,000
	Total Income		**1,33,19,000**

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CHAPTER 4
CAPITAL GAINS

Part-A : Study Material Questions

Question-1 :
X converts his capital asset (acquired on June 10, 2005 for ₹ 60,000) into stock-in-trade on March 10, 2023. The fair market value on the date of the above conversion was ₹ 5,50,000. He subsequently sells the stock-in-trade so converted for ₹ 6,00,000 on June 10, 2023. Examine the tax implication.

Cost Inflation Index - F.Y. 2005-06: 117; F.Y. 2022-23: 331; F.Y. 2023-24: 348.

Solution :
Since the capital asset is converted into stock-in-trade during the previous year relevant to the A.Y. 2023-24, it will be a transfer under section 2(47) during the P.Y.2022-23. However, the profits or gains arising from the above conversion will be chargeable to tax during the A.Y. 2024-25, since the stock-in-trade has been sold only on June 10, 2023. For this purpose, the fair market value on the date of such conversion (i.e. 10th March, 2023) will be the full value of consideration.

The capital gains will be computed after deducting the indexed cost of acquisition from the full value of consideration. The cost inflation index for 2005-06 i.e., the year of acquisition is 117 and the index for the year of transfer i.e., 2022-23 is 331. The indexed cost of acquisition is ₹ 60,000 × 331/117 = ₹ 1,69,744. Hence, ₹ 3,80,256 (i.e., ₹ 5,50,000 – ₹ 1,69,744) will be treated as longterm capital gains chargeable to tax during the A.Y.2024-25. During the same assessment year, ₹ 50,000 (₹ 6,00,000 - ₹ 5,50,000) will be chargeable to tax as business profits.

Question-2 :
M held 2000 shares in a company ABC Ltd. This company amalgamated with another company during the previous year ending 31-3-2024. Under the scheme of amalgamation, M was allotted 1000 shares in the new company. The market value of shares allotted is higher by ₹ 50,000 than the value of holding in ABC Ltd.

The Assessing Officer proposes to treat the transaction as an exchange and to tax ₹ 50,000 as capital gain. Is he justified?

Solution :
In the above example, assuming that the amalgamated company is an Indian company, the transaction is squarely covered by the exemption under section 47(vii) and the proposal of the Assessing Officer to treat the transaction as an exchange is not justified.

Question-3 :
In which of the following situations capital gains tax liability does not arise?
(i) Mr. A purchased gold in 1970 for ₹ 25,000. In the P.Y. 2023-24, he gifted it to his son at the time of marriage. Fair market value (FMV) of the gold on the day the gift was made was ₹ 1,00,000.
(ii) A house property is purchased by a Hindu undivided family in 1945 for ₹ 20,000. It is given to one of the family members in the P.Y. 2023-24 at the time of partition of the family. FMV on the day of partition was ₹ 12,00,000.
(iii) Mr. B purchased 50 convertible debentures for ₹ 40,000 in 1995 which are converted into 500 shares worth ₹ 85,000 in November 2023 by the company.

Solution :
We know that capital gains arise only when we transfer a capital asset. The liability of capital gains tax in the situations given above is discussed as follows:
(i) As per the provisions of section 47(iii), transfer of a capital asset under a gift is not regarded as transfer for the purpose of capital gains. Therefore, capital gains tax liability does not arise in the given situation.

(ii) As per the provisions of section 47(i), transfer of a capital asset (being in kind) on the total or partial partition of Hindu undivided family is not regarded as transfer for the purpose of capital gains. Therefore, capital gains tax liability does not arise in the given situation.

(iii) As per the provisions of section 47(x), transfer by way of conversion of bonds or debentures, debenture stock or deposit certificates in any form of a company into shares or debentures of that company is not regarded as transfer for the purpose of capital gains. Therefore, capital gains tax liability does not arise in the given situation.

Question-4 :
Mr. Abhishek a senior citizen, mortgaged his residential house with a bank, under a notified reverse mortgage scheme. He was getting loan from bank in monthly installments. Mr. Abhishek did not repay the loan on maturity and hence gave possession of the house to the bank, to discharge his loan. How will the treatment of long-term capital gain be on such reverse mortgage transaction?

Solution :
Section 47(xvi) provides that any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government shall not be considered as a transfer for the purpose of capital gain.

Accordingly, the mortgaging of residential house with bank by Mr. Abhishek will not be regarded as a transfer. Therefore, no capital gain will be charged on such transaction.

Further, section 10(43) provides that the amount received by the senior citizen as a loan, either in lump sum or in instalment, in a transaction of reverse mortgage would be exempt from income -tax. Therefore, the monthly instalment amounts received by Mr. Abhishek would not be taxable.

However, capital gains tax liability would be attracted at the stage of alienation of the mortgaged property by the bank for the purposes of recovering the loan.

Question-5 :
Neerja was carrying on the textile business under a proprietorship concern, Neerja Textiles. On 30.12.2023 the business of Neerja Textiles was succeeded by New Look Textile Private Limited and all the assets and liabilities of Neerja Textiles on that date became the assets and liabilities of New Look Textile Private Limited and Neerja was given 52% share in the share capital of the company. No other consideration was given to Neerja on account of this succession.

The assets and liabilities of Neerja Textiles transferred to the company include an urban land which was acquired by Neerja on 19.7.2013 for ₹ 9,80,000. The company sold the same on 30.03.2024 for ₹ 16,00,000.

Examine the tax implication of the above-mentioned transaction and compute the income chargeable to tax in such case(s).

Cost Inflation Index: F.Y. 2013-14: 220; F.Y. 2023-24: 348

Solution :
Taxability in case of succession of Neerja Textiles by New Look Textile Private Limited
As per provisions of section 47(xiv), in case a proprietorship concern is succeeded by a company in the business carried by it and as a result of which any capital asset or intangible asset is transferred to the company, then the same shall not be treated as transfer and will not be chargeable to capital gain tax in case the following conditions are satisfied:

(1) all the assets and liabilities of sole proprietary concern becomes the assets and liabilities of the company.
(2) the shareholding of the sole proprietor in the company is not less than 50% of the total voting power of the company and continues to remain as such for a period of 5 years from the date of succession.
(3) the sole proprietor does not receive any consideration or benefit in any form from the company other than by way of allotment of shares in the company.

In the present case, all the conditions mentioned above are satisfied therefore, the transfer of capital asset by Neerja Textiles to New Look Textile Private Limited shall not attract capital gain tax provided Neerja continues to hold 50% or more of voting power of New Look Textiles Private Limited for a minimum period of 5 years.

Question-6 :
ABC Ltd. converts its capital asset acquired for an amount of ₹ 50,000 in June, 2003 into stock-intrade in the month of November, 2022. The fair market value of the asset on the date of conversion is ₹ 4,50,000. The stock-in-trade was sold for an amount of ₹ 6,50,000 in the month of September, 2023. What will be the tax treatment?

Financial year	Cost Inflation Index
2003-04	109
2022-23	331
2023-24	348

Solution :
The capital gains on the sale of the capital asset converted to stock-in-trade is taxable in the given case. It arises in the year of conversion (i.e. P.Y. 2022-23) but will be taxable only in the year in which the stock-in-trade is sold (i.e. P.Y. 2023-24). Profits from business will also be taxable in the year of sale of the stock-in-trade (P.Y. 2023-24).

The long-term capital gains and business income for the A.Y.2024-25 are calculated as under:

Particulars	**₹**	**₹**
Profits and Gains from Business or Profession		
Sale proceeds of the stock-in-trade	6,50,000	
Less: Cost of the stock-in-trade (FMV on the date of conversion)	4,50,000	2,00,000
Long Term Capital Gains		
Full value of the consideration (FMV on the date of the conversion)	4,50,000	
Less: Indexed cost of acquisition (₹ 50,000 x 331/109)	1,51,835	2,98,165

Note: For the purpose of indexation, the cost inflation index of the year in which the asset is converted into stock-in-trade should be considered.

Question-7 :
Ms. Usha purchases 1,000 equity shares in X (P) Ltd., an unlisted company, at a cost of ₹ 30 per share (brokerage 1%) in January 1996. She gets 100 bonus shares in August 2000. She again gets 1,100 bonus shares by virtue of her holding in February 2006. Fair market value of the shares of X (P) Ltd. on April 1, 2001 is ₹ 80.

On 1st January 2024, she transfers all her shares @ ₹ 200 per share (brokerage 2%).
Compute the capital gains taxable in the hands of Ms. Usha for the A.Y. 2024-25
Cost Inflation Index for F.Y. 2001-02: 100, F.Y.2005-06: 117 & F.Y.2023-24: 348.

Solution :

Computation of capital gains for the A.Y. 2024-25

Particulars	**₹**
1000 Original shares	
Sale proceeds (1000 × ₹ 200)	2,00,000
Less : Brokerage paid (2% of ₹ 2,00,000)	4,000
Net sale consideration	1,96,000
Less : Indexed cost of acquisition [₹ 80 × 1000 × 348/100]	2,78,400
Long term capital loss (A)	**(82,400)**
100 Bonus shares	
Sale proceeds (100 × ₹ 200)	20,000
Less: Brokerage paid (2% of ₹ 20,000)	400
Net sale consideration	19,600
Less: Indexed cost of acquisition [₹ 80 × 100 × 348/100] [See Note below]	27,840

Long term capital loss (B)	**(8,240)**
1100 Bonus shares	
Sale proceeds (1100 × ₹ 200)	2,20,000
Less: Brokerage paid (2% of ₹2,20,000)	4,400
Net sale consideration	2,15,600
Less: Cost of acquisition	NIL
Long term capital gain (C)	**2,15,600**
∴ Long term capital gain (A+B+C)	**1,24,960**

Note: Cost of acquisition of bonus shares acquired before 1.4.2001 is the FMV as on 1.4.2001 (being the higher of the cost or the FMV as on 1.4.2001).

Question-8 :
Mr. R holds 1,000 shares in Star Minus Ltd., an unlisted company, acquired in the year 2001-02 at a cost of ₹75,000. He has been offered right shares by the company in the month of August, 2023 at ₹ 160 per share, in the ratio of 2 for every 5 held. He retains 50% of the rights and renounces the balance right shares in favour of Mr. Q for ₹ 30 per share in September 2023. All the shares are sold by Mr. R for ₹ 300 per share in January 2024 and Mr. Q sells his shares in December 2023 at ₹ 280 per share. What are the capital gains taxable in the hands of Mr. R and Mr. Q?

Financial year	Cost Inflation Index
2001-02	100
2023-24	348

Solution :

Computation of capital gains in the hands of Mr. R for the A.Y.2024-25

Particulars	**₹**
1000 Original shares	
Sale proceeds (1000 × ₹ 300)	3,00,000
Less: Indexed cost of acquisition [₹ 75,000 × 348/100]	2,61,000
Long-term capital gain (A)	39,000
200 Right shares	
Sale proceeds (200 × ₹ 300)	60,000
Less: Cost of acquisition [₹ 160 × 200] [Note 1]	32,000
Short-term capital gain (B)	28,000
Sale of Right Entitlement	
Sale proceeds (200 × ₹ 30)	6,000
Less: Cost of acquisition [Note 2]	NIL
Short-term capital gain (C)	**6,000**
Capital Gains (A+B+C) 73,000	

Note 1: Since the holding period of these shares is less than 24 months, they are short term capital assets and hence cost of acquisition will not be indexed.
Note 2: The cost of the rights renounced in favour of another person for a consideration is taken to be nil. The consideration so received is taxed as short-term capital gains in full. The period of holding is taken from the date of the rights offer to the date of the renouncement.

Computation of capital gains in the hands of Mr. Q for the A.Y.2024-25

Particulars	**₹**
Sale proceeds (200 shares × ₹ 280)	56,000
Less: Cost of acquisition [200 shares × (₹ 30 + ₹ 160)] **[See Note below]**	38,000
Short-term capital gain	**18,000**

Note: The cost of the rights is the amount paid to Mr. R as well as the amount paid to the company. Since the holding period of these shares is less than 24 months, they are short term capital assets.

Question-9 :
X & sons, HUF, purchased a land for ₹ 1,20,000 in the P.Y. 2002-03. In the P.Y. 2006-07, a partition took place when Mr. A, a coparcener, is allotted this plot valued at ₹ 1,50,000. In P.Y. 2007-08, he had incurred expenses of ₹ 2,35,000 towards fencing of the plot. Mr. A sells this plot of land for ₹ 15,00,000 in P.Y. 2023-24 after incurring expenses to the extent of ₹ 20,000. You are required to compute the capital gain for the A.Y.2024-25.

Financial year	Cost Inflation Index
2002-03	105
2006-07	122
2007-08	129
2023-24	348

Solution :

Computation of taxable capital gains for the A.Y.2024-25

Particulars	₹	₹
Sale consideration		15,00,000
Less: Expenses incurred for transfer		20,000
		14,80,000
Less: (i) Indexed cost of acquisition (₹ 1,20,000 x 348/122)	3,42,295	
(ii) Indexed cost of improvement (₹ 2,35,000 x 348/129)	6,33,953	9,76,248
Long term capital gains		**5,03,752**

Note - As per the view expressed by Bombay High Court in CIT v. Manjula J. Shah 16 Taxman 42, in case the cost of acquisition of the capital asset in the hands of the assessee is taken to be cost of such asset in the hands of the previous owner, the indexation benefit would be available from the year in which the capital asset is acquired by the previous owner. If this view is considered, the indexed cost of acquisition would have to be calculated by considering the Cost Inflation Index of F.Y.2002-03.

Question-10 :
Mr. C purchases a house property for ₹ 1,06,000 on May 15, 1975. The following expenses are incurred by him for making addition/alternation to the house property:

	Particulars	₹
a.	Cost of construction of first floor in 1982-83	3,10,000
b.	Cost of construction of the second floor in 2002-03	7,35,000
c.	Reconstruction of the property in 2012-13	5,50,000

Fair market value of the property on April 1, 2001 is ₹ 8,50,000 and stamp duty value on the said date was ₹ 8,10,000. The house property is sold by Mr. C on August 10, 2023 for ₹ 68,00,000 (expenses incurred on transfer: ₹ 50,000). Compute the capital gain for the assessment year 2024-25.

Cost Inflation Index: F.Y. 2001-02: 100, F.Y. 2002-03: 105, F.Y. 2012-13: 200, F.Y. 2023-24: 348

Solution :

Computation of capital gain of Mr. C for the A.Y.2024-25

Particulars	₹	₹
Gross sale consideration		68,00,000
Less: Expenses on transfer		50,000
Net sale consideration		67,50,000
Less: Indexed cost of acquisition (Note 1)	28,18,800	
Less: Indexed cost of improvement (Note 2)	33,93,000	62,11,800
Long-term capital gain		**5,38,200**

Notes:
Indexed cost of acquisition: ₹ 8,10,000 × 348/100 = ₹ 28,18,800
Fair market value on April 1, 2001 (actual cost of acquisition is ignored as it is lower than market value on April 1, 2001) however, it should not exceed ₹ 8,10,000, being the stamp duty value on 1.4.2001.

Indexed cost of improvement is determined as under:

Particulars	**₹**
Construction of first floor in 1982-83 (expenses incurred prior to April 1, 2001 are not considered)	Nil
Construction of second floor in 2002-03 (i.e., ₹ 7,35,000 x 348/105)	24,36,000
Alternation/reconstruction in 2012-13 (i.e., ₹ 5,50,000 x 348/200)	9,57,000
Indexed cost of improvement	**33,93,000**

Question-11 :
Rajawat & Co., a sole proprietorship owns six machines, put in use for business in March, 2022. The depreciation on these machines is charged @15%. The opening balance of these machines after providing depreciation for P.Y. 2022-23 was ₹ 8,50,000. Three of the old machines were sold on 10th June, 2023 for ₹ 11,00,000. A second hand plant was bought for ₹ 8,50,000 on 30th November, 2023.
You are required to:
(i) determine the claim of depreciation for Assessment Year 2024-25. No Yes
(ii) compute the capital gains liable to tax for Assessment Year 2024-25.
(iii) If Rajawat & Co. had sold the three machines in June, 2023 for ₹ 21,00,000, will there be any difference in your above workings? Examine.

Solution :
(i) Computation of depreciation for A.Y.2024-25

Particulars	**₹**
Opening balance of the block as on 1.4.2023 [i.e., W.D.V. as on 31.3.2023 after providing depreciation for P.Y. 2022-23]	8,50,000
Add: Purchase of second hand plant during the year in November, 2023	8,50,000
	17,00,000
Less: Sale consideration of old machinery during the year	11,00,000
W.D.V of the block as on 31.03.2024	**6,00,000**

Since the value of the block as on 31.3.2024 comprises of a new asset which has been put to use for less than 180 days, depreciation is restricted to 50% of the prescribed percentage of 15% i.e. depreciation is restricted to 7½%. Therefore, the depreciation allowable for the year is ₹ 45,000, being 7½% of ₹ 6,00,000.

(ii) The provisions under section 50 for computation of capital gains in the case of depreciable assets can be invoked only under the following circumstances:
  (a) When one or some of the assets in the block are sold for consideration more than the value of the block.
  (b) When all the assets are transferred for a consideration more than the value of the block.
  (c) When all the assets are transferred for a consideration less than the value of the block.

Since in the first two cases, the sale consideration is more than the written down value of the block, the computation would result in short term capital gains.

In the third case, since the written down value exceeds the sale consideration, the resultant figure would be a short-term capital loss.

In the given case, capital gains will not arise as the block of asset continues to exist, and some of the assets are sold for a price which is lesser than the written down value of the block.

(iii) If the three machines are sold in June, 2023 for ₹ 21,00,000, then short term capital gains would arise, since the sale consideration is more than the aggregate of the written down value of the block at the beginning of the year and the additions made during the year.

Particulars	**₹**	**₹**
Sale consideration		21,00,000
Less: Opening balance of the block as on 1.4.2023 [i.e., W.D.V. as on 31.3.2023 after providing depreciation for P.Y. 2022-23]	8,50,000	
Purchase of second hand plant during the year	8,50,000	17,00,000
Short term capital gains		**4,00,000**

Question-12 :

M/s Sriram Enterprises, a proprietorship having 2 units. Unit 1 is transferred on 1.4.2023 by way of slump sale for a total consideration of ₹ 14 lakhs. Unit 1 was started in the year 2005-06. The expenses incurred for this transfer were ₹ 38,000. Balance Sheet as on 31.3.2023 is as under:

Liabilities	**Total (₹)**	**Assets**	**Unit 1(₹)**	**Unit 2 (₹)**	**Total (₹)**
Own Capital	17,00,000	Building	13,00,000	3,00,000	16,00,000
Revaluation Reserve (for building of unit 1)	5,00,000	Machinery	4,00,000	2,00,000	6,00,000
Bank loan (70% for unit 1)	4,00,000	Debtors	2,00,000	1,40,000	3,40,000
Trade creditors (25% for unit 1)	3,50,000	Patents	2,50,000	1,60,000	4,10,000
Total	**29,50,000**	**Total**	**21,50,000**	**8,00,000**	**29,50,000**

Other information:

(i) Revaluation reserve is created by revising upward the value of the building of Unit 1. The stamp duty value on 1.4.2023 is ₹ 10 lakhs.

(ii) No individual value of any asset is considered in the transfer deed.

(iii) Patents were acquired on 1.7.2021 on which no depreciation has been charged.

Compute the capital gain for the assessment year 2024-25.

Solution :

Computation of capital gains on slump sale of Unit 1

Particulars	**₹**
Full value of consideration [Fair market value on 1.4.2023]	14,82,500
Less: Expenses on sale	38,000
Net sale consideration	14,44,500
Less: Net worth **(See Note 1 below)**	11,73,125
Long-term capital gain	**2,71,375**

Notes:

1. Computation of Full value of consideration

Particulars	**₹**
Fair market value of the capital assets transferred by way of slump sale Building, being an immovable property [stamp duty value on 1.4.2023, being the date of slump sale] **[A]**	10,00,000
Machinery [Book value as appearing in the books of accounts] **[B]**	4,00,000
Debtors [Book value as appearing in the books of accounts] **[C]**	2,00,000
Patents [Book value as appearing in the books of accounts] **[D]**	2,50,000
	18,50,000
Less: Liabilities of Unit 1 [₹ 29,50,000 - ₹ 1,20,000 - ₹ 2,62,500] **[L]**	
25,67,500	

Excluding				
(i)	Own Capital	17,00,000		
(ii)	Revaluation reserve	5,00,000	22,00,000	3,67,500
Fair market value of the capital assets transferred by way of slump sale [A+B+C+D- L] **[FMV1]**				14,82,500
Fair market value of the consideration received or accruing as a result of transfer by way of slump sale [value of the monetary consideration received] **[FMV2]**				14,00,000
Full value of consideration [Higher of FMV1 or FMV2]				**14,82,500**

2. Computation of net worth of Unit 1 of Akash Enterprises

Particulars	**₹**	**₹**
Building (excluding ₹ 5 lakhs on account of revaluation)		8,00,000
Machinery		4,00,000
Debtors		2,00,000
Patents **(See Note 2 below)**		1,40,625
Total assets 15,40,625		
Less: Creditors [₹ 3,50,000 x 25%]	87,500	
Bank Loan [₹ 4,00,000 x 70%]	2,80,000	3,67,500
Net worth		**11,73,125**

3. Written down value of patents as on 1.4.2023

Value of patents	**₹**
Cost as on 1.7.2021	2,50,000
Less: Depreciation @ 25% for Financial Year 2021-22	62,500
WDV as on 1.4.2022	1,87,500
Less: Depreciation for Financial Year 2022-23	46,875
WDV as on 1.4.2023	**1,40,625**

For the purposes of computation of net worth, the written down value determined as per section 43(6) has to be considered in the case of depreciable assets. The problem has been solved assuming that the Balance Sheet values of ₹ 4 lakh and ₹ 8 lakh (₹ 13 lakh – ₹ 5 lakh) represent the written down value of machinery and building, respectively, of Unit 1.

4. Since the Unit is held for more than 36 months, capital gain arising would be long-term capital gain. However, indexation benefit is not available in case of slump sale.

Question-13 :

Mr. Kay purchases a house property on April 10, 1992 for ₹ 65,000. The fair market value of the house property on April 1, 2001 was ₹ 2,70,000 and Stamp duty value was ₹ 2,20,000. On August 31, 2004, Mr. Kay enters into an agreement with Mr. Jay for sale of such property for ₹ 3,70,000 and received an amount of ₹ 60,000 as advance. However, as Mr. Jay did not pay the balance amount, Mr. Kay forfeited the advance. In May 2008, Mr. Kay constructed the first floor by incurring a cost of ₹ 2,35,000. Subsequently, in January 2009, Mr. Kay gifted the house to his brother
Mr. Dee. On February 10, 2024, Mr. Dee sold the house for ₹ 12,00,000.
CII for F.Y.2001-02: 100; 2004-05: 113; 2008-09: 137; 2023-24: 348.
Compute the capital gains in the hands of Mr. Dee for A.Y.2024-25.

Solution :

Computation of taxable capital gains of Mr. Dee for A.Y.2024-25

Particulars	**₹**	**₹**
Sale consideration		12,00,000
Less: Indexed cost of acquisition (See Note below)	5,58,832	
Indexed cost of improvement (See Note below)	5,96,934	11,55,766
Long-term capital gain		**44,234**

Note: For the purpose of capital gains, holding period is considered from the date on which the house was purchased by Mr. Kay, till the date of sale. However, indexation of cost of acquisition is considered from the date on which the house was gifted by Mr. Kay to Mr. Dee, till the date of sale i.e., from January 2009 (P.Y. 2008-09) to February, 2024 (P.Y. 2023-24). Since house property was acquired before 1st April, 2001, higher of fair market value on 1.4.2001 or actual cost of acquisition can be considered as cost of acquisition. However, fair market value cannot exceed stamp duty value on 1.4.2001.

Indexed cost of acquisition = (₹ 2,20,000 × 348/137) = ₹ 5,58,832
Indexed cost of improvement = (₹ 2,35,000 × 348/137) = ₹ 5,96,934
Amount forfeited by previous owner, Mr. Kay, shall not be deducted from cost of acquisition.

Alternative view - As per the view expressed by Bombay High Court in CIT v. Manjula J. Shah 16 Taxman 42, in case the cost of acquisition of the capital asset in the hands of the assessee is taken to be cost of such asset in the hands of the previous owner, the indexation benefit would be available from the year in which the capital asset is acquired by the previous owner. If this view is considered, the indexed cost of acquisition would have to be calculated by taking the CII of F.Y.2001-02, since the Fair Market Value as on 1.4.2001 has been taken as the cost of acquisition.

Note - Since the property was gifted prior to 1.10.2009, it is a case falling u/s 49(1) and not 49(4). Accordingly, the cost of acquisition of the previous owner, Mr. Kay, or the FMV as on 1.4.2001 (since the asset was acquired by the previous owner, Mr. Kay, before 1.4.2001), has to be considered.

Question-14 :
Mr. X purchases a house property in December 1993 for ₹ 5,25,000 and an amount of ₹ 1,75,000 was spent on the improvement and repairs of the property in March, 1997. The property was proposed to be sold to Mr. Z in the month of May, 2007 and an advance of ₹ 40,000 was taken from him. As the entire money was not paid in time, Mr. X forfeited the advance and subsequently sold the property to Mr. Y in the month of March, 2024 for ₹ 52,00,000. The fair value of the property on April 1, 2001 was ₹ 11,90,000 and Stamp duty value on the said date was ₹ 10,20,000. What is the capital gain chargeable in the hands of Mr. X for the A.Y. 2024-25?

Financial year	**Cost Inflation Index**
2001-02	100
2007-08	129
2023-24	348

Solution :

Capital gains in the hands of Mr. X for the A.Y.2024-25 is computed as under

Particulars	**₹**
Sale proceeds	52,00,000
Less: Indexed cost of acquisition **[Note 1]**	34,10,400
Indexed cost of improvement **[Note 2]**	–
Long term capital gains	**17,89,600**

Note 1: Computation of indexed cost of acquisition

Cost of acquisition (higher of fair market value as on April 1, 2001 and the actual cost of acquisition. Fair market value, however, should not exceed ₹ 10,20,000, being the stamp duty value on 1.4.2001)	10,20,000
Less: Advance taken and forfeited before 1.4.2014	40,000
Cost for the purposes of indexation	9,80,000
Indexed cost of acquisition (₹ 9,80,000 x 348/100)	34,10,400

Note 2: Any improvement cost incurred prior to 1.4.2001 is to be ignored.

Question-15 :
Mr. Kumar has an agricultural land costing ₹ 6 lakh in Lucknow on 1.4.2003 and has been using it for agricultural purposes till 1.8.2012 when the Government took over compulsory acquisition of this land. A compensation of ₹ 12 lakhs was settled. The compensation was received by Mr. Kumar on 1.7.2023. Compute the amount of capital gains taxable in the hands of Mr. Kumar.
Cost Inflation Index: 2003-04: 109, 2012-13: 200, 2023-24: 348

Solution :
In the given problem, compulsory acquisition of an urban agricultural land has taken place and the compensation is received after 1.4.2004. This land had also been used for at least 2 years by the assessee himself for agricultural purposes. Thus, as per section 10(37), entire capital gains arising on such compulsory acquisition will be fully exempt and nothing is taxable in the hands of Mr. Kumar in the year of receipt of compensation i.e., A.Y.2024-25.

Question-16 :
Will your answer be different if Mr. Kumar had by his own will sold this land to his friend Mr. Sharma? Examine.

Solution :
As per section 10(37), exemption is available if compulsory acquisition of urban agricultural land takes place. Since the sale is out of own will and desire, the provisions of this section are not attracted and the capital gains arising on such sale will be taxable in the hands of Mr. Kumar.

Question-17 :
Will your answer be different if Mr. Kumar had not used this land for agricultural activities? Examine and compute the amount of capital gains taxable in the hands of Mr. Kumar, if any.

Solution :
As per section 10(37), exemption is available only when such land has been used for agricultural purposes during the preceding two years by such individual or his parent or by such HUF. Since the assessee has not used it for agricultural activities, the provisions of this section are not attracted and the capital gains arising on such compulsory acquisition will be taxable in the hands of Mr. Kumar in the year of receipt of compensation i.e., A.Y. 2024-25.

Computation of capital gains

Particulars	**Amount (₹)**
Sales consideration	12,00,000
Less: Cost of acquisition (₹ 6,00,000 x 200/109)	11,00,917
Long term capital Gains	99,083

Question-18 :
Will your answer be different if the land belonged to ABC Ltd. and not Mr. Kumar and compensation on compulsory acquisition was received by the company? Examine.

Solution :
Section 10(37) exempts capital gains arising to an individual or a HUF from transfer of agricultural land by way of compulsory acquisition. If the land belongs to ABC Ltd., a company, the provisions of this section are not attracted and the capital gains arising on such compulsory acquisition will be taxable in the hands of ABC Ltd.

Question-19 :
Mr. Cee purchased a residential house on July 20, 2021 for ₹ 10,00,000 and made some additions to the house incurring ₹ 2,00,000 in August 2021. He sold the house property in April, 2023 for ₹ 20,00,000. Out of the sale proceeds, he spent ₹ 5,00,000 to purchase another house property in September, 2023.
What is the amount of capital gains taxable in the hands of Mr. Cee for the A.Y. 2024-25?

Solution :
The house is sold before 24 months from the date of purchase. Hence, the house is a short-term capital asset and no benefit of indexation would be available.

Particulars	**₹**
Sale consideration	20,00,000
Less: Cost of acquisition	10,00,000
Cost of improvement	2,00,000
Short-term capital gains	**8,00,000**

Note: The exemption of capital gains under section 54 is available only in case of long-term capital asset. As the house is short-term capital asset, Mr. Cee cannot claim exemption under section 54. Thus, the amount of taxable short-term capital gains is ₹ 8,00,000.

Question-20 :
PQR Ltd., purchased a land for industrial undertaking in May 2004, at a cost of ₹ 3,50,000. The above property was compulsorily acquired by the State Government at a compensation of ₹ 13,00,000 in the month of January, 2024. The compensation was received in February, 2024. The company purchased another land for its industrial undertaking at a cost of ₹ 2,00,000 in the month of March, 2024. What is the amount of the capital gains chargeable to tax in the hands of the company for the A.Y. 2024-25?

Financial year	**Cost Inflation Index**
2004-05	113
2023-24	348

Solution :

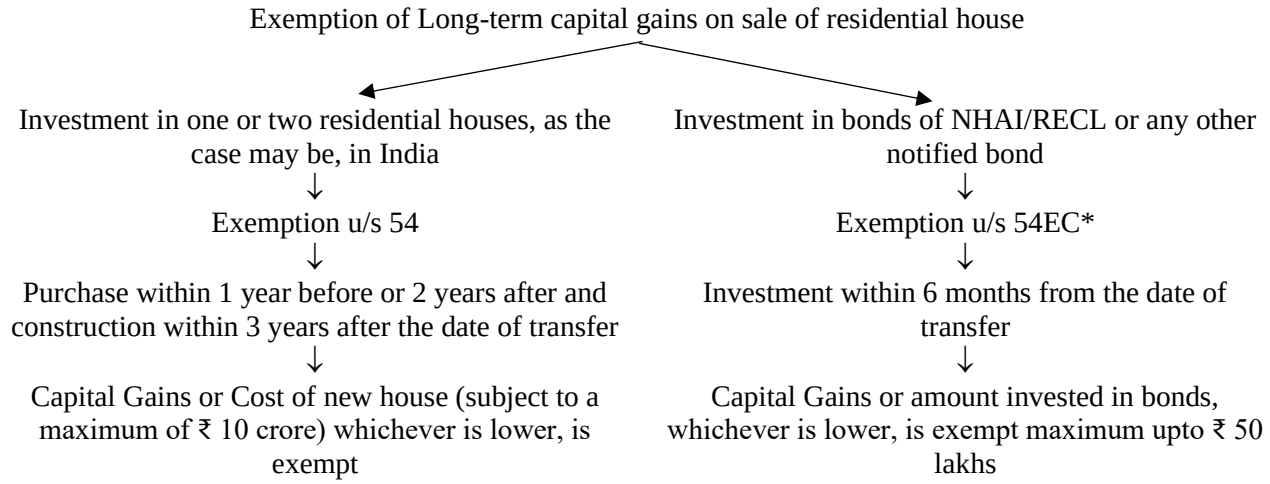
Computation of capital gains in the hands of PQR Ltd. for the A.Y.2024-25

Particulars	**₹**
Sale proceeds (Compensation received)	13,00,000
Less: Indexed cost of acquisition [₹ 3,50,000 × 348/113]	10,77,876
	2,22,124
Less: Exemption under section 54D (Cost of acquisition of land for its undertaking)	2,00,000
Taxable long-term capital gain	**22,124**

Question-21 :
Long-term capital gain of ₹ 75 lakh arising from transfer of building on 1.5.2023 will be fully exempt from tax if such capital gain is invested in the bonds redeemable after five years, issued by NHAI under section 54EC. Examine with reasons whether the given statement is true or false having regard to the provisions of the Income-tax Act, 1961.

Solution :

False: The exemption under section 54EC has been restricted, by limiting the maximum investment in long term specified assets (i.e., bonds of NHAI or RECL or any other bond notified by Central Government in this behalf, redeemable after 5 years) to ₹ 50 lakh, whether such investment is made during the relevant previous year or the subsequent previous year, or both. Therefore, in this case, the exemption under section 54EC can be availed only to the extent of ₹ 50 lakh, provided the investment is made before 1.11.2023 (i.e., within six months from the date of transfer).



* The exemption under section 54EC is available in respect of capital gains on transfer of capital asset being land or building or both.

Question-22 :

From the following particulars, compute the taxable capital gains of Mr. D for A.Y.2024-25 –

Particulars	**Amount (₹)**
Cost of jewellery [Purchased in F.Y.2005-06]	4,52,000
Sale price of jewellery sold in January 2024	14,50,000
Expenses on transfer	7,000
Residential house purchased in March 2024	5,00,000

The Cost Inflation Index are as follows:

Financial Year	**Cost Inflation Index**
2005-06	117
2023-24	348

Solution :

Computation of taxable capital gains for A.Y.2024-25

Particulars	**₹**
Gross consideration	14,50,000
Less: Expenses on transfer	7,000
Net consideration	14,43,000
Less: Indexed cost of acquisition (₹ 4,52,000 × 348/117)	13,44,410
	98,590
Less: Exemption under section 54F (₹ 98,590 × ₹ 5,00,000/ ₹ 14,43,000)	34,161
Taxable long-term capital gains	**64,429**

Question-23 :
Calculate the income-tax liability for the assessment year 2024-25 in the following cases:

	Mr. A (age 45)	Mrs. B (age 62)	Mr. C (age 81)	Mr. D (age 82)
Status	**Resident**	**Non-resident**	**Resident**	**Nonresident**
Total income other than longterm capital gain	2,40,000	3,10,000	5,90,000	4,80,000
Long-term capital gain	85,000 from sale of vacant site	10,000 from sale of listed equity shares (STT paid on sale and purchase of shares)	60,000 from sale of agricultural land in rural area	Nil

(i) If Mr. A, Mrs. B, Mr. C and Mr. D pay tax under default tax regime u/s 115BAC.
(ii) If Mr. A, Mrs. B, Mr. C and Mr. D exercise the option to shift out of the default tax regime and pay tax under the optional tax regime as per the normal provisions of the Act.

Solution :
(i) If Mr. A, Mrs. B, Mr. C and Mr. D pay tax under default tax regime u/s 115BAC.
Computation of income-tax liability for the A.Y. 2024-25

Particulars	Mr. A (age 45)	Mrs. B (age 62)	Mr. C (age 81)	Mr. D (age 82)
Residential Status	**Resident**	**Non-resident**	**Resident**	**Non resident**
Applicable basic exemption limit	₹ 3,00,000	₹ 3,00,000	₹ 3,00,000	₹ 3,00,000
Asset sold	Vacant site	Listed equity shares (STT paid on both sale and purchase of shares)	Rural agricultural land	-
Long-term capital gain (on sale of above asset)	₹ 85,000 [Taxable @20% u/s 112]	₹ 10,000 [exempt u/s 112A since it is less than ₹ 1,00,000]	₹ 60,000 (Exempt – not a capital asset)	-
Other income	₹ 2,40,000	₹ 3,10,000	₹ 5,90,000	₹4,80,000
Tax liability				
On LTCG (after adjusting unexhausted basic exemption limit of ₹ 60,000)	₹ 5,000	-	-	-
On Other income	Nil	₹ 500	₹ 14,500	₹ 9,000
	₹ 5,000	₹ 500	₹ 14,500	₹ 9,000
Less: Rebate u/s 87A	₹ 5,000	-	₹ 14,500	-
	Nil	₹ 500	Nil	₹ 9,000
Add: Health & education cess (HEC) @4%	Nil	₹ 20	Nil	₹ 360
Total tax liability	**Nil**	**₹ 520**	**Nil**	**₹ 9,360**

Note: Since Mr. A and Mr. C are residents whose total income does not exceed ₹ 7 lakhs, they are eligible for rebate of ₹ 25,000 or the actual tax payable, whichever is lower, under section 87A.

(ii) If Mr. A, Mrs. B, Mr. C and Mr. D exercise the option to shift out of the default tax regime and pay tax under the optional tax regime as per the normal provisions of the Act

Computation of income-tax liability for the A.Y.2024-25

Particulars	Mr. A (age 45)	Mrs. B (age 62)	Mr. C (age 81)	Mr. D (age 82)
Residential Status	**Resident**	**Non-resident**	**Resident**	**Nonresident**
Applicable basic exemption limit	₹ 2,50,000	₹ 2,50,000	₹ 5,00,000	₹ 2,50,000
Asset sold	Vacant site	Listed equity shares (STT paid on both sale and purchase of shares)	Rural agricultural land	-
Long-term capital gain (on sale of above asset)	₹ 85,000 [Taxable@20% u/s 112]	₹ 10,000 [exempt u/s 112A since it is less than ₹ 1,00,000]	₹ 60,000 (Exempt – not a capital asset)	-
Other income	₹ 2,40,000	₹ 3,10,000	₹ 5,90,000	₹ 4,80,000
Tax liability				
On LTCG (after adjusting unexhausted basic exemption limit of ₹ 10,000)	₹ 15,000	-	-	-
On Other income	Nil	₹ 3,000	₹ 18,000	₹ 11,500
	₹ 15,000	₹ 3,000	₹ 18,000	₹ 11,500
Less: Rebate u/s 87A	₹ 12,500	-	-	-
	₹ 2,500	₹ 3,000	₹ 18,000	₹ 11,500
Add: Health & education cess (HEC) @4%	₹ 100	₹ 120	₹ 720	₹ 460
Total tax liability	**₹ 2,600**	**₹ 3,120**	**₹ 18,720**	**₹ 11,960**

Notes:

1. Since Mrs. B and Mr. D are non-residents, they cannot avail the higher basic exemption limit of ₹3,00,000 and ₹ 5,00,000 for persons over the age of 60 years and 80 years, respectively. Also, they are not eligible for rebate under section 87A even though their total income does not exceed ₹ 5 lakh.
2. Since Mr. A is a resident whose total income does not exceed ₹ 5 lakh, he is eligible for rebate of ₹12,500 or the actual tax payable, whichever is lower, under section

Question-24 :

Hari has acquired a residential house property in Delhi on 15th April, 2002 for ₹ 9,00,000 and decided to sell the same on 3rd May, 2005 to Ms. Pari and an advance of ₹ 25,000 was taken from her. The balance money was not paid by Ms. Pari and Hari has forfeited the entire advance sum. On 3rd June, 2023, he has sold this house to Mr. Suri for ₹ 43,00,000. On 4th April, 2023, he had purchased a residential house in Delhi for ₹ 8,00,000, where he was staying with his family on rent for the last 5 years and paid the full amount as per the purchase agreement. However, Hari does not possess any legal title till 31st March, 2024, as such transfer was not registered with the registration authority.

Hari has purchased another old house in Chennai on 14th October, 2023 from Mr. X, an Indian resident, by paying ₹ 5,00,000 and the purchase was registered with the appropriate authority.

Determine the taxable capital gain arising from above transactions in the hands of Hari for Assessment Year 2024-25. [Cost inflation Index - 2002-03: 105; 2005-06: 117; 2023-24: 348]

Solution :

Computation of taxable capital gain of Mr. Hari for the A.Y.2024-25

Particulars	**₹**
Sale proceeds	43,00,000
Less: Indexed cost of acquisition [See Note (i)]	29,00,000
Long Term Capital Gain	14,00,000
Less: Exemption under section 54 in respect of investment in house at Delhi [See Note (ii)]	8,00,000
Exemption under section 54 in respect of investment in house at Chennai [See Note (iii)]	5,00,000
Taxable long-term capital gain	**1,00,000**

Notes:

(i) Computation of indexed cost of acquisition

Particulars	**₹**
Cost of acquisition	9,00,000
Less: Advance taken and forfeited	25,000
Cost for the purpose of Indexation	8,75,000
Indexed cost of acquisition (₹ 8,75,000 x 348/105)	29,00,000

Advance received and forfeited on or after 01.04.2014 is taxable under section 56(2)(ix). Such amount would not be reduced to compute indexed cost of acquisition while determining capital gains on sale of such property.

However, in this case, since the advance was received and forfeited in the year 2005, such advance has to be reduced for calculating indexed cost of acquisition for the purpose of arriving at capital gains.

(ii) In order to avail exemption of capital gains under section 54, residential house should be purchased within 1 year before or 2 years after the date of transfer or constructed within a period of 3 years after the date of transfer. In this case, Hari has purchased the residential house in Delhi within one year before the date of transfer and paid the full amount as per the purchase agreement, though he does not possess any legal title till 31.3.2024 since the transfer was not registered with the registration authority. However, for the purpose of claiming exemption under section 54, holding of legal title is not necessary. If the taxpayer pays the full consideration in terms of the purchase agreement within the stipulated period, the exemption under section 54 would be available. It was so held in Balraj v. CIT(2002) 254 ITR 22 (Del.) and CIT v. Shahzada Begum (1988) 173 ITR 397 (A.P.).

(iii) As per section 54, since the amount of capital gain does not exceed ₹ 2 crore, Mr. Hari can claim exemption thereunder in respect of investment made in two residential houses situated in India.

However, if Mr. Hari exercises the option to claim exemption in respect of two residential houses in Delhi and Chennai in P.Y. 2023-24, he shall not be subsequently entitled to exercise the option for the same or any other assessment year.

Question-25 :

Mr. Ganesh sold his residential house in Mumbai and earned long term capital gain of ₹ 2.5 crores. He purchased two residential flats adjacent to each other on the same day vide two separate registered sale deeds from two different persons. The builder had certified that he had effected necessary modification to make it one residential apartment. Mr. Ganesh sought exemption under section 54 in respect of the investment made in purchase of the two residential flats. The Assessing Officer, however, gave exemption under section 54 to the extent of purchase of one residential flat only contending that since the long-term capital gain exceeds ₹ 2 crore, sub-section (1) of section 54 clearly restricts the benefit of exemption to purchase one residential house only and the two flats cannot be treated as one residential unit since –

(i) the flats were purchased through different sale deeds; and
(ii) it was found by the Inspector that, before its sale to the assessee, the residential flats were in occupation of two different tenants.

Examine the correctness of the contention of the Assessing Officer.

Solution :
This issue came up before the Karnataka High Court in CIT v. D. Ananda Basappa (2009) 309 ITR 329. The Court observed that the assessee had shown that the flats were situated side by side and the builder had also certified that he had effected modification of the flats to make them one unit by opening the door between the apartments. Therefore, it was immaterial that the flats were occupied by two different tenants prior to sale or that it was purchased through different sale deeds. The Court observed that these were not the grounds to hold that the assessee did not have the intention to purchase the two flats as one unit. The Court held that the assessee was entitled to exemption under section 54 in respect of purchase of both the flats to form one residential house.

Applying the ratio of the above decision to the case on hand, Mr. Ganesh is entitled to exemption under section 54 in respect of purchase of two flats to form one residential house. Therefore, the contention of the Assessing Officer is not correct.

Question-26 :
Vijay, an individual, owned three residential houses which were let out. Besides, he and his four brothers co-owned a residential house in equal shares. He sold one residential house owned by him during the previous year relevant to the assessment year 2024-25. Within a month from the date of such sale, the four brothers executed a release deed in respect of their shares in the co-owned residential house in favour of Vijay for a monetary consideration.

Vijay utilised the entire long-term capital gain arising out of the sale of the residential house for payment of the said consideration to his four brothers. Vijay is not using the house, in respect of which his brothers executed a release deed, for his own residential purposes, but has let it out to another person, who is using it for his residential purposes.

Is Vijay eligible for exemption under section 54 of the Income-tax Act, 1961 for the assessment year 2024-25 in respect of the long-term capital gain arising from the sale of his residential house, which he utilised for acquiring the shares of his brothers in the co - owned residential house? Will the non-use of the new house for his own residential purposes disentitle him to exemption?

Solution :
The long-term capital gain arising on sale of residential house would be exempt under section 54 if it is utilized, inter alia, for purchase of one residential house situated in India within one year before or two years after the date of transfer. Release by the other co - owners of their share in co-owned property in favour of Vijay would amount to "purchase" by Vijay for the purpose of claiming exemption under section 54 [CIT v. T.N. Arvinda Reddy (1979) 120 ITR 46 (SC)]. Since such purchase is within the stipulated time of two years from the date of transfer of asset, Vijay is eligible for exemption under section 54. As Vijay has utilised the entire long-term capital gain arising out of the sale of the residential house for payment of consideration to the other co-owners who have released their share in his favour, he can claim full exemption under section 54.

There is no requirement in section 54 that the new house should be used by the assessee for his own residence. The condition stipulated is that the new house should be utilised for residential purposes and its income is chargeable under the head "Income from house property". This requirement would be satisfied even when the new house is let out for residential purposes.

Question-27 :
Aries Tubes Private Ltd. went into liquidation on 1.6.2023. The company possessed of the following funds prior to the distribution of assets to the shareholders:

	₹
Share Capital (issued on 1.4.2013)	5,00,000
Reserves prior to 1.6.2023	3,00,000
Excess realization in the course of liquidation	5,00,000
Total	13,00,000

There are 5 shareholders, each of whom received ₹ 2,60,000 from the liquidator in full settlement. The shareholders desire to invest the resultant element of capital gain in long
term specified assets as defined in section 54EC. You are required to examine the various issues and advice the shareholders about their liability to income tax.

Solution :
Under section 46(1), where the assets of a company are distributed to its shareholders on its liquidation, such distribution shall not be regarded as transfer in the hands of the company for the purpose of section 45.

However, under section 46(2), where the shareholder, on liquidation of a company, receives any money or other assets from the company, he shall be chargeable to income-tax under the head "capital gains", in respect of the money so received or the market value of the other assets on the date of distribution as reduced by the amount of dividend deemed under section 2(22)(c) [chargeable to tax in the hands of shareholders under the head "Income from other sources"] and the sum so arrived at shall be deemed to be the full value of the consideration for the purposes of section 48.

As per section 2(22)(c), dividend includes any distribution made to the shareholders of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalized or not.

In this case, the accumulated profits immediately before liquidation is ₹ 3,00,000. The share of each shareholder is ₹ 60,000 (being one-fifth of ₹ 3,00,000). An amount of ₹ 60,000 is the deemed dividend under section 2(22)(c). The same is taxable in the hands of the shareholder under the head "Income from other sources".

Therefore, ₹ 2,00,000 [i.e. ₹ 2,60,000 minus ₹ 60,000, being the deemed dividend under section 2(22)(c)] is the full value of consideration in the hands of each shareholder as per section 46(2). Against this, the investment of ₹ 1,00,000 by each shareholder is to be deducted to arrive at the capital gains of ₹ 1,00,000 of each shareholder. The benefit of indexation is available to the shareholders (since the shares are held for more than 24 months and hence long-term capital asset), but could not be computed in the absence of required information. Since the equity shares are not listed, it would not be liable for securities transaction tax and hence, the capital gain (long term) would be taxable under section 112. The benefit of concessional rate of tax @10% without indexation would also not be available. Hence, such long-term capital gain would be taxable @20% with indexation benefit.

Exemption under section 54EC is available only where there is an actual transfer of capital assets and not in the case of deemed capital gain as per the decision rendered in the case of CIT v. Ruby Trading Co (P) Ltd (2003) 259 ITR 54 (Raj). Therefore, exemption under section 54EC will not be available in this case since it is deemed transfer and not actual transfer. Furthermore, with effect from A.Y. 2019-20, exemption under section 54EC is available only on transfer of long-term capital asset, being land or building or both.

Question-28 :
Xavier had taken a loan under registered mortgage deed against the house, which was purchased by him on 26.5.2002 for ₹ 5 lakhs. The said property was inherited by his son Abraham in financial year 2009-10 as per Will.

For obtaining a clear title thereof, Abraham paid the outstanding amount of loan on 12.2.2010 of ₹ 15 lakhs. The said house property was sold by Abraham on 16.3.2024 for ₹ 55 lakhs. Examine with reasons the amount chargeable to capital gains for A.Y. 2024-25 (Cost Inflation Index 2002-03: 105, 2009-10: 148 and 2023-24: 348).

Solution :
The cost of inherited property to Mr. Abraham shall be the cost to the previous owner as per provisions of section 49(1)(iiia) and therefore, ₹ 5 lakhs, being the cost to his father (amount paid by his father on 26.5.2002 for acquiring the property) shall be the cost to Mr. Abraham, who is the new owner. Payment of outstanding loan of the predecessor by the successor for obtaining a clear title of the property by release of Mortgage Deed shall be the cost of acquisition of the successor under section 48 read with section 55(2) of the Act as held by the Apex Court in case of RM. Arunachalam v. CIT [1997] 227 ITR 222.

Computation of Taxable Capital Gain for the A.Y. 2024-25

Particulars		**₹**
Sale consideration of house property		55,00,000
Less: Indexed cost of acquisition (See Note below)		
(i) Cost to previous owner (₹ 5,00,000 × 348/148)	11,75,676	
(ii) Loan amount paid by Mr. Abraham		
(Benefit of CII is available since the loan amount was paid in the financial year 2009-10) (₹ 15,00,000 × 348/148)	35,27,027	47,02,703
Capital gains		**7,97,297**

Note: Since the property was acquired by Mr. Abraham through inheritance, the cost of acquisition will be cost to the previous owner.
As per the definition of indexation cost of acquisition under clause (iii) of Explanation below section 48, indexation benefit will be available only from the previous year in which Abraham first held the asset i.e. P.Y. 2009-10.
However, as per the view expressed by Bombay High Court, in the case of CIT v. Manjula J. Shah (2013) 355 ITR 474, in case the cost of acquisition of the capital asset in the hands of the assessee is taken to be cost of such asset in the hands of the previous owner, the indexation benefit would be available from the year in which the capital asset is acquired by the previous owner. If this view is considered, the indexed cost of acquisition would be ₹ 51,84,170 (₹ 16,57,143 + ₹ 35,27,027) and long-term capital gain would be ₹ 3,15,830.

Question-29 :
Gama Ltd, located within the corporation limits decided in December, 2023 to shift its industrial undertaking to non-urban area. The company sold some of the assets and acquired new assets in the process of shifting. The relevant details are as follows :

(₹ in lakhs)

	Particulars	**Land**	**Building**	**Plant & Machinery**	**Furniture**
(i)	Sale proceeds (sale effected in March, 2024)	8	18	16	3
(ii)	Indexed cost of acquisition	4	10	12	2
(iii)	WDV in terms of section 50	--	4	5	2
(iv)	Cost of new assets purchased in July, 2024 for the purpose of business in the new place	4	7	17	2

Compute the capital gains of Gama Ltd for the assessment year 2024-25.

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

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

1. If the capital gain is greater than the cost of the new asset, the difference between the capital gain and the cost of the new asset shall be chargeable as income 'under section 45'.
2. If the capital gain is equal to or less than the cost of the new asset, section 45 is not to be applied.

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

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

	Particulars	**₹**
(a)	**Land –** Sale proceeds (Non-depreciable asset)	8,00,000
	Less: Indexed cost of acquisition	4,00,000
	Long term capital gain	4,00,000
	Less: Cost of new assets purchased within three year after the date of transfer (under section 54G) **(See Note below)**	3,00,000
	Taxable Long-term capital gain	**1,00,000**
(b)	**Building –** sale proceeds (depreciable assets)	18,00,000
	Less: W.D.V. is deemed as cost of acquisition under section 50	4,00,000
	Short-term capital gain	**14,00,000**
(c)	**Plant & machinery-** sale proceeds (depreciable asset)	16,00,000
	Less: WDV is deemed cost under section 50	5,00,000
	Short-term capital gain	**11,00,000**
(d)	**Furniture -** sale proceeds (depreciable asset)	3,00,000
	Less: WDV is deemed cost under section 50	2,00,000
	Short-term capital gain (A)	**1,00,000**

Summary	**₹**
Short term capital gain : Building	14,00,000
Short term capital gain : Plant & machinery	11,00,000
	25,00,000
Less: Section 54G [New assets purchased] **(See Note below)**	25,00,000
Net short term capital gain **(B)**	Nil
Total short-term capital gain (A)+(B) = ₹ 1 lakh	

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

Long-term capital gains	₹ 1,00,000 (taxable @20% under section 112)
Short-term capital gains (furniture)	₹ 1,00,000 (taxable at applicable tax rates)
	₹ 2,00,000

Question-30 :
The assessee was a company carrying on business of manufacture and sale of art –silk cloth. It purchased machinery worth ₹ 4 lakhs on 1.5.2020 and insured it with United India Assurance Ltd against fire, flood, earthquake etc., The written down value of the asset as on 01.04.2023 was ₹ 1,87,850. The insurance policy contained a reinstatement clause requiring the insurance company to pay the value of the machinery, as on the date of fire etc., in case of destruction of loss. A fire broke out in August, 2023 causing extensive damage to the machinery of the assessee rendering them totally useless. The assessee company received a sum of ₹ 4 lakhs from the insurance company on 15th March, 2024. Examine the issues arising on account on the transactions and their tax treatment.
(Cost inflation index for financial year 2020-21 and 2023-24 are 301 and 348, respectively)

Solution :
As per section 45(1A), where any person receives any money or other assets under an insurance from an insurer on account of damage to or destruction of capital asset as a result of, inter alia, accidental fire then, any profits and gains arising from the receipt of such money or other assets, shall be chargeable to income tax under the head "Capital Gains" and shall be deemed to be the income of such person of the previous year in which such money or asset was received.

For the purpose of section 48, the money received or the market value of the asset shall be deemed to be the full value of the consideration accruing as a result of the transfer of such capital asset. Since the asset was destroyed and the money from the insurance company was received in the previous year, there will be a liability to compute capital gains in respect of the insurance moneys received by the assessee.

Under section 45(1A) any profits and gains arising from receipt of insurance moneys is chargeable under the head "Capital gains". For the purpose of section 48, the moneys received shall be deemed to be the full value of the consideration accruing or arising. Under section 50 the capital gains in respect of depreciable assets had to be computed in the following manner **(assuming it was the only asset in the block).**

The computation of capital gain and tax implication is given below:

Full value of the consideration	₹ 4,00,000
Less: Written down value as on April 1st, 2023	₹ 1,87,850
Short term capital gains	₹2,12,150

Question-31 :
Tani purchased a land at a cost of ₹ 35 lakhs in the financial year 2004-05 and held the same as her capital asset till 31st May, 2021. Tani started her real estate business on 1st June, 2021 and converted the said land into stock-in-trade of her business on the said date, when the fair market value of the land was ₹ 210 lakhs.

She constructed 15 flats of equal size, quality and dimension. Cost of construction of each flat is ₹ 10 lakhs. Construction was completed in January, 2024. She sold 10 flats at ₹ 30 lakhs per flat between January, 2024 and March, 2024. The remaining 5 flats were held in stock as on 31st March, 2024.
She invested ₹ 50 lakhs in bonds issued by National Highway Authority of India on 31st March, 2024 and another ₹ 50 lakhs in bonds of Rural Electrification Corporation Ltd. in April, 2024.

Compute the amount of chargeable capital gain and business income in the hands of Tani arising from the above transactions for Assessment Year 2024-25 indicating clearly the reasons for treatment of each item.
Cost Inflation Index: FY 2004-05: 113; FY 2021-22: 317; FY 2023-24: 348.

Solution :

Computation of capital gains and business income of Tani for A.Y. 2024-25

Particulars	**₹**
Capital Gains	
Fair market value of land on the date of conversion deemed as the full value of consideration for the purposes of section 45(2)	2,10,00,000
Less: Indexed cost of acquisition [₹ 35,00,000 × 317/113]	98,18,584
	1,11,81,416
Proportionate capital gains arising during A.Y.2024-25 [₹1,11,81,416 × 2/3]	74,54,277
Less: Exemption under section 54EC	50,00,000
Capital gains chargeable to tax for A.Y.2024-25	**24,54,277**
Business Income	
Sale price of flats [10 × ₹ 30 lakhs]	3,00,00,000
Less: Cost of flats Fair market value of land on the date of conversion [₹ 210 lakhs × 2/3]	1,40,00,000
Cost of construction of flats [10 × ₹ 10 lakhs]	1,00,00,000
Business income chargeable to tax for A.Y.2024-25	**60,00,000**

Notes:

(i) The conversion of a capital asset into stock-in-trade is treated as a transfer under section 2(47). It would be treated as a transfer in the year in which the capital asset is converted into stock-in-trade.

(ii) However, as per section 45(2), the capital gains arising from the transfer by way of conversion of capital assets into stock-in-trade will be chargeable to tax only in the year in which the stock-in-trade is sold.

(iii) The indexation benefit for computing indexed cost of acquisition would, however, be available only up to the year of conversion of capital asset to stock-in-trade and not up to the year of sale of stock-in-trade.

(iv) For the purpose of computing capital gains in such cases, the fair market value of the capital asset on the date on which it was converted into stock-in-trade shall be deemed to be the full value of consideration received or accruing as a result of the transfer of the capital asset.
In this case, since only 2/3rd of the stock-in-trade (10 flats out of 15 flats) is sold in the P.Y.2023-24, only proportionate capital gains (i.e., 2/3rd) would be chargeable in the A.Y.2024-25.

(v) On sale of such stock-in-trade, business income would arise. The business income chargeable to tax would be computed after deducting the fair market value on the date of conversion of the capital asset into stock-in-trade and cost of construction of flats from the price at which the stock-in-trade is sold.

(vi) In case of conversion of capital asset into stock-in-trade and subsequent sale of stock-in-trade, the period of 6 months is to be reckoned from the date of sale of stock-in-trade for the purpose of exemption under section 54EC [CBDT Circular No.791 dated 2.6.2000]. In this case, since the investment in bonds of NHAI has been made within 6 months of sale of flats, the same qualifies for exemption under section 54EC. With respect to long-term capital gains arising in any financial year, the maximum deduction under section 54EC would be ₹ 50 lakhs, whether the investment in bonds of NHAI or RECL are made in the same financial year or next financial year or partly in the same financial year and partly in the next financial year.

Therefore, even though investment of ₹ 50 lakhs has been made in bonds of NHAI during the P.Y.2023-24 and investment of ₹ 50 lakhs has been made in bonds of RECL during the P.Y.2024-25, both within the stipulated six month period, the maximum deduction allowable for A.Y.2024-25, in respect of long-term capital gain arising on sale of long-term capital asset(s) during the P.Y.2023-24, is only ₹ 50 lakhs. 9. Computation of taxable income of Mr. Singh for A.Y.2024-25

Question-32 :

Following are the details of income provided by Mr. Singh, the assessee for the financial year ended 31st March, 2024:

(i) Rental income from property at Bangalore - ₹ 3 lakhs, Standard Rent - ₹ 2,50,000, Fair Rent - ₹2,80,000.

(ii) Municipal and water tax paid during 2023-24: Current year ₹ 35,000, Arrears - ₹ 1,50,000.

(iii) Interest on loan borrowed towards major repairs to the property: ₹ 1,50,000.

(iv) Arrears of rent of ₹ 30,000 received during the year, which was not charged to tax in earlier years.

Further, the assessee furnished following additional information regarding sale of property at Chennai:

(i) Mr. Singh's father acquired a residential house in April 2006 for ₹ 1,25,000 and thereafter gifted this property to the assessee, Mr. Singh on 1st March, 2007.

(ii) The property, so gifted, was sold by Mr. Singh on 10th June 2023. The consideration received was ₹25,00,000.

(iii) Stamp duty charges paid by the purchaser at the time of registration @ 13% (as per statutory guidelines) was ₹ 3,90,000.

(iv) Out of the sale consideration received:

(a) On 02/01/2024, the assessee had purchased two adjacent flats, in the same building, and made suitable modification to make it as one unit. The investment was made by separate sale deeds, amount being ₹ 8,00,000 and ₹ 7,00,000, respectively.

(b) On 10/l0/2023, ₹ 10 lakhs were invested in bonds issued by National Highways Authority of India, but the allotment of the bonds was made on 1.2.2024. Compute Mr. Singh's taxable income for assessment year 2024-25 assuming he has exercised the option to shift out of the default tax regime under section 115BAC.
Cost inflation index: F.Y. 2006-07: 122; F.Y. 2023-24: 348

Solution :

Particulars	**₹**	**₹**
Income from house property		
Gross Annual Value [Higher of Expected Rent & Actual Rent]		3,00,000
Expected Rent [lower of Fair Rent and Standard Rent]	2,50,000	
Actual Rent	3,00,000	
Less: Municipal taxes paid by Mr. Singh during the year (including arrears) [₹ 35,000 + ₹1,50,000]		1,85,000
Net Annual Value (NAV)		1,15,000
Less: Deductions under section 24		
(a) 30% of NAV	34,500	
(b) Interest on loan borrowed for major repairs	1,50,000	1,84,500
		(69,500)
Arrears of rent taxable under section 25A	30,000	
Less: Deduction@30%	9,000	21,000
		(48,500)
Capital Gains		
Full value of consideration		30,00,000
As per section 50C, the full value of consideration would be the higher of -		
Actual Consideration	25,00,000	
Stamp Duty Value [₹ 3,90,000/13%]	30,00,000	
Since stamp duty value > 110% of actual consideration		
Less: Indexed cost of acquisition [₹ 1,25,000 × 348/122]		
As per section 49(1), cost of acquisition of the residential house gifted by Mr. Singh's father to Mr. Singh would be the cost for which Mr. Singh's father acquired the asset		3,56,557
		26,43,443
Less: Exemption under section 54 (₹ 8,00,000 + ₹ 7,00,000) Purchase of residential house within the stipulated time (within one year before or two years after the date of sale) [Where the flats are situated side by side and the builder had effected the necessary modification to make it as one house, the assessee would be entitled to exemption under section 54 in respect of investment in both the flats, despite the fact that they were purchased by separate sale deeds] [CIT v. Ananda Basappa (2009) 331 ITR 211 (Kar.)]	15,00,000	
Note: Since two adjacent flats are treated as one residential house, Mr. Singh can defer availing exemption under section 54 in respect of two residential houses (where capital gains do not exceed ₹ 2 crores) to a later assessment year.		
Exemption under section 54EC		
Investment in bonds of NHAI within six months from the date of transfer. Where the payment for bonds has been made within the six months period, exemption under section 54EC would be available even if the allotment of bonds was made after the expiry of the six months [Hindustan Unilever Ltd. v. DCIT (2010) 325 ITR 102 (Bom.)]	10,00,000	25,00,000
Long-term capital gains		**1,43,443**
Total Income		**94,943**

Question-33 :
SS(P) Ltd., an Indian company having two undertakings engaged in manufacture of cement and steel, decided to hive off cement division to RV(P) Ltd., an Indian company, by way of demerger. The net worth of SS(P) Ltd. immediately before demerger was ₹ 40 crores. The net book value of assets transferred to RV(P) Ltd. was ₹ 10 crores. The demerger was made in January 2024. In the scheme of demerger, it was fixed that for each equity share of ₹ 10 each (fully paid up) of SS(P) Ltd., two equity shares of ₹ 10 each (fully paid up) were to be issued.

One Mr. N.K. held 25,000 equity shares in SS(P) Ltd. which were acquired in the financial year 2004-05 for ₹ 6,00,000. Mr. N.K. received 50,000 equity shares from RV(P) Ltd. consequent to demerger in January 2024. He sold all the shares of RV(P) Ltd. for ₹ 8,00,000 in March, 2024. In this background you are requested to answer the following:

(i) Does the transaction of demerger attract any income tax liability in the hands of SS(P) Ltd. and RV(P) Ltd.?

(ii) Compute the capital gain that could arise in the hands of Mr. N.K. on receipt of shares of RV(P) Ltd.

(iii) Compute the capital gain that could arise in the hands of Mr. N.K. on sale of shares of RV(P) Ltd.

(iv) Will the sale of shares by Mr. N.K. affect the tax benefits availed by SS(P) Ltd. and/or RV(P) Ltd.?

(v) Is Mr. N.K. eligible to avail any tax exemption under any of the provisions of the Income-tax Act, 1961 on the sale of shares of RV(P) Ltd.? If so, mention in brief.

Note:

Financial Year	**Cost inflation index**
2004-05	113
2023-24	348

Solution :

(i) No, the transaction of demerger would not attract any income-tax liability in the hands of SS(P) Ltd. or RV(P) Ltd.

As per section 47(vib), any transfer in a demerger, of a capital asset, by the demerged company to the resulting company would not be regarded as "transfer" for levy of capital gains tax if the resulting company is an Indian company.

Hence, capital gains tax liability would not be attracted in the hands of SS(P) Ltd., the demerged company, in this case, since RV(P) Ltd. is an Indian company.

(ii) There would be no capital gains tax liability in the hands of Mr. N.K. on receipt of shares of RV (P) Ltd., since as per section 47(vid), any issue of shares by the resulting company in a scheme of demerger to the shareholders of the demerged company will not be regarded as "transfer" for levy of capital gains tax, if the issue is made in consideration of demerger of the undertaking.

(iii) Yes, capital gains would arise in the hands of Mr. N.K. on sale of shares of RV (P) Ltd.

Sale consideration	8,00,000
Less: Indexed cost of acquisition of shares of RV (P) Ltd.	
Cost of acquisition of shares of RV(P) Ltd. as per section 49(2C):	

$$\text{Cost of acquisition of shares of SS(P)Ltd.} \times \frac{\text{Net book value of assets transferred in a demerger}}{\text{Net worth of the demerged company immediately before demerger}}$$

$$₹6,00,000 \times \frac{10 \text{ Crore}}{40 \text{ Crore}} = ₹1,50,000$$

Indexed cost of acquisition of shares of RV (P) Ltd. [₹ 1,50,000 × 348/113]	₹ 4,61,947
Long-term capital gain (since period of holding of shares in demerged company is also to be considered)	₹ 3,38,053

(iv) No, sale of shares by Mr. N.K. would not affect the tax benefits availed by SS(P) Ltd. or RV (P) Ltd. One of the conditions to be satisfied is that the shareholders holding not less than three-fourths in value of the shares in the demerged company become shareholders of the resulting company by virtue of the demerger. It is presumed that the condition is satisfied in this case.

There is no stipulation that they continue to remain shareholders for any period of time thereafter.

(v) Since the resultant capital gain on sale of shares of RV(P) Ltd. is a long-term capital gain (on account of the period of holding of shares in demerged company being considered by virtue of section 2(42A)(g)), Mr. N.K. can avail exemption under section 54F by investing the entire net consideration in purchase (within one year before and two years after the date of transfer) or construction (within three years after the date of transfer) of one residential house in India. If part of the net consideration is invested, only proportionate exemption would be available.

Question-34 :

PQR Limited has two units - one engaged in manufacture of computer hardware and the other involved in developing software. As a restructuring drive, the company has decided to sell its software unit as a going concern by way of slump sale for ₹ 385 lakhs to a new company called S Limited, in which it holds 74% equity shares.

The balance sheet of PQR limited as on 31st March 2024, being the date on which software unit has been transferred, is given hereunder –

Balance Sheet as on 31.3.2024

Liabilities	**₹ (in lakhs)**	**Assets**	**₹ (in lakhs)**
Paid up Share Capital	300	**Fixed Assets**	
General Reserve	150	Hardware unit	170
Share Premium	50	Software unit	200
Revaluation Reserve	120	**Debtors**	
Current Liabilities (Ascertained liabilities)		Hardware unit	140
Hardware unit	40	Software unit	110
Software unit	90	**Inventories**	
		Hardware unit	95
		Software unit	35
	750		**750**

Following additional information are furnished by the management:

(i) The Software unit is in existence since May, 2015.

(ii) Fixed assets of Software unit includes land which was purchased at ₹ 40 lakhs in the year 2016 and revalued at ₹ 60 lakhs as on March 31, 2024. The stamp duty value on 31.3.2024 is ₹ 55 lakhs.

(iii) Fixed assets of Software unit mirrored at ₹ 140 lakhs (₹ 200 lakhs minus land value ₹ 60 lakhs) is written down value of depreciable assets (Furniture and Plant & machinery) as per books of account. However, the written down value of these assets under section 43(6) of the Income-tax Act, 1961 is ₹ 90 lakhs.

(a) Ascertain the tax liability, which would arise from slump sale to PQR Limited, assuming it does not opt for section 115BAA.

(b) What would be your advice as a tax-consultant to make the restructuring plan of the company more tax-savvy, without changing the amount of sale consideration?

Solution :

(a) As per section 50B, any profits and gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of capital assets and shall be deemed to be the income of the previous year in which the transfer took place.

If the assessee owned and held the undertaking transferred under slump sale for more than 36 months before slump sale, the capital gain shall be deemed to be longterm capital gain. Indexation benefit is not available in case of slump sale as per section 50B(2).

Ascertainment of tax liability of PQR Limited from slump sale of Software unit

Particulars	**₹ (in lakhs)**
Full value of consideration for slump sale of Software Unit	385
Less: Cost of acquisition, being the net worth of Software Unit	185
Long term capital gains arising on slump sale	**200**
(The capital gains is long-term as the Software Unit is held for more than 36 months)	
Tax liability on LTCG	
Under section 112 @ 20% on ₹ 200 lakhs	40.00
Add: Surcharge@ 7%	2.80
	42.80
Add: Health and Education cess@4%	1.712
	44.512

Working Note:

Computation of Full value of consideration

				₹ (in lakhs)
Fair market value of the capital assets transferred by way of slump sale				
Land, being an immovable property [stamp duty value on 31.3.2024, being the date of slump sale] **[A]**				55
Other Fixed assets (Furniture and Plant & machinery) [Book value as appearing in the books of accounts] [₹ 200 lakhs - ₹ 60 lakhs] **[B]**				140
Debtors [Book value as appearing in the books of accounts] **[C]**				110
Inventories [Book value as appearing in the books of accounts] **[D]**				35
				340
Less: Liabilities of Software Unit [₹ 750 - ₹ 40] [L]			710	
Excluding				
(i)	Paid up share capital	300		
(ii)	General Reserve	150		
(ii)	Share Premium	50		
(iii)	Revaluation reserve	120	620	90
Fair market value of the capital assets transferred by way of slump sale [A+B+C+D- L**] [FMV1]**				250
Fair market value of the consideration received or accruing as a result of transfer by way of slump sale [value of the monetary consideration received] **[FMV2]**				385
Full value of consideration [Higher of FMV1 or FMV2]				**385**

Computation of net worth of Software Unit

		₹ (in lakhs)
(1)	Book value of non-depreciable assets	
	(i) Land (Revaluation not to be considered)	40
	(ii) Debtors	110
	(iii) Inventories	35
(2)	Written down value of depreciable assets under section 43(6) (See Note below)	90
Aggregate value of total assets		275
Less: Current liabilities of Software unit		90
Net worth of software unit		**185**

Note: For computing net worth, the aggregate value of total assets in the case of depreciable assets shall be the written down value of the block of assets as per section 43(6).

(b) Tax advice

(i) Transfer of any capital asset by a holding company to its 100% Indian subsidiary company is exempt from capital gains under section 47(iv). Hence, PQR Limited should try to acquire the remaining 26% equity shares in S Limited then make the slump sale in the above said manner, in which case the slump sale shall be exempt from tax. For this exemption, PQR Limited will have to keep such 100% holding in S Limited for a period of 8 years from the date of slump sale, otherwise the amount exempt would be deemed to be income chargeable under the head "Capital Gains" of the previous year in which such transfer took place.

(ii) Alternatively, if acquisition of 26% share is not feasible, PQR Limited may think about demerger plan of Software Unit to get benefit of section 47(vib) of the Income-tax Act, 1961.

Question-35 :

Determine the capital gains/loss on transfer of listed equity shares (STT paid both at the time of acquisition and transfer of shares) and units of equity oriented mutual fund (STT paid at the time of transfer of units) for the A.Y.2024-25 and tax, if any, payable thereon, in the following cases, assuming that these are the only transactions covered under section 112A during the P.Y.2023-24 in respect of these assessees:

(i) Mr. Prasun purchased 300 shares in A Ltd. on 20.5.2017 at a cost of ₹ 400 per share. He sold all the shares of A Ltd. on 31.5.2023 for ₹ 1200. The price at which these shares were traded in National Stock Exchange on 31.1.2018 is as follows –

Particulars	Amount in ₹
Highest Trading Price	700
Average Trading Price	680
Lowest Trading Price	660

(ii) Mr. Raj purchased 200 units each of equity oriented funds, Fund A and Fund B on 1.2.2017 at a cost of ₹ 550 per unit. The units were not listed at the time of purchase. Subsequently, units of Fund A were listed on 1.1.2018 and units of Fund B were listed on 1.2.2018 on the National Stock Exchange. Mr. Raj sold all the units on 3.4.2023 for ₹ 900 each. The details relating to quoted price on National Stock Exchange and net asset value of the units are given hereunder:

Particulars	Fund A	Fund B
	Amount in ₹	Amount in ₹
Highest Trading Price	750 (on 31.1.2018)	800 (on 1.2.2018)
Average Trading Price	700 (on 31.1.2018)	750 (on 1.2.2018)
Lowest Trading Price	650 (on 31.1.2018)	700 (on 1.2.2018)
Net Asset Value on 31.1.2018	800	950

Solution :

(i) For the purpose of computation of long-term capital gains chargeable to tax under section 112A, the cost of acquisition in relation to the long-term capital asset, being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust acquired before 1st February, 2018 shall be the higher of

(a) cost of acquisition of such asset, i.e., actual cost; and

(b) lower of

(i) the fair market value of such asset as on 31.1.2018; and

(ii) the full value of consideration received or accruing as a result of the transfer of the capital asset.

The fair market value of listed equity shares as on 31.1.2018 is the highest price quoted on the recognized stock exchange as on that date.

Accordingly, long-term capital gain on transfer of STT paid listed equity shares by Mr. Prasun would be determined as follows:

The FMV of shares of A Ltd. would be ₹ 700, being the highest price quoted on National Stock Exchange on 31.1.2018. The cost of acquisition of each equity share in A Ltd. would be ₹ 700, being higher of actual cost i.e., ₹ 400 and ₹ 700 [being the lower of FMV of ₹ 700 as on 31.1.2018 (i.e., the highest trading price) and actual sale consideration of ₹ 1,200]. Thus, the long-term capital gain would be ₹ 1,50,000 i.e., (₹ 1,200 – ₹ 700) x 300 shares. The long-term capital gain of ₹ 50,000 (i.e., the amount in excess of ₹ 1,00,000) would be subject to tax@10% under section 112A (plus cess@4%), without benefit of indexation. The tax on capital gain @10.4% would be ₹ 5,200 (₹ 50,000 x 10.4%)

(ii) In the case of units listed on recognised stock exchange on the date of transfer, the FMV as on 31.1.2018 would be the highest trading price on recognised stock exchange as on 31.1.2018 (if units are listed on that date), else, it would be the net asset value as on 31.1.2018 (where units are unlisted on that date).

Accordingly, the FMV of units of Fund A as on 31.1.2018 would be ₹ 750 (being the highest trading price on 31.1.2018, since the units of Fund A are listed on that date) and the FMV of units of Fund B as on 31.1.2018 would be ₹ 950 (being the net asset value as on 31.1.2018, since the units of Fund B are unlisted on that date).

The cost of acquisition of a unit of Fund A would be ₹ 750, being higher of actual cost i.e., ₹ 550 and ₹ 750 (being the lower of FMV of ₹ 750 as on 31.1.2018 and actual sale consideration of ₹ 900). Thus, the long-term capital gains on sale of units of Fund A would be ₹ 30,000 (₹ 900 – ₹ 750) x 200 units.

The cost of acquisition of a unit of Fund B would be ₹ 900, being higher of actual cost i.e., ₹ 550 and ₹ 900 (being the lower of FMV of ₹ 950 as on 31.1.2018 (net asset value) and actual sale consideration of ₹ 900). Thus, the long-term capital gains on sale of units of Fund B would be Nil (₹ 900 – ₹ 900) x 200 units.

Since the long-term capital gains on sale of units is ₹ 30,000, which is less than ₹ 1,00,000, the said sum is not chargeable to tax under section 112A.

Part-B : Additional Questions

Question-36 : [MTP AUG-18]

Mr. Rahim sold his residential house in Chennai and purchased two residential flats adjacent to each other on the same day vide two separate registered sale deeds from two different persons. The builder had certified that he had effected necessary modification to make it one residential apartment. Mr. Rahim sought exemption under section 54 in respect of the investment made in purchase of the two residential flats. The Assessing Officer, however, gave exemption under section 54 to the extent of purchase of one residential flat only contending that sub-section (1) of section 54 clearly restricts the benefit of exemption to purchase one residential house only and the two flats cannot be treated as one residential unit since –

(1) the flats were purchased through different sale deeds; and

(2) it was found by the Inspector that, before its sale to the assessee, the residential flats were in occupation of two different tenants.

Examine the correctness of the contention of the Assessing Officer. **(4 Marks)**

Solution :

This issue came up before the Karnataka High Court in CIT v. D. Ananda Basappa (2009) 309 ITR 329. The Court observed that the assessee had shown that the flats were situated side by side and the builder had also certified that he had effected modification of the flats to make them one unit by opening the door between the apartments. Therefore, it was immaterial that the flats were occupied by two different tenants prior to sale or that it was purchased through different sale deeds. The Court observed that these were not the grounds to hold that the assessee did not have the intention to purchase the two flats as one unit. The Court held that the assessee was entitled to exemption under section 54 in respect of purchase of both the flats to form one residential house.

Applying the ratio of the above decision to the case on hand, Mr. Rahim is entitled to exemption under section 54 in respect of purchase of two flats to form one residential house. Therefore, the contention of the Assessing Officer is **not correct.**

Question-37 : [RTP MAY-22]

Beta Limited has transferred its Unit Omega to Delta Limited by way of slump sale on December 31st, 2023. The summarised Balance Sheet of Beta Limited as on 31st December, 2023 is given below:

Liabilities	**₹ in lakhs**	**Assets**	**₹ in lakhs**
Paid up Capital	850	**Fixed Assets:**	
Reserve & Surplus	310	Unit Gamma	75
Trade Creditors:		Unit Sigma	75
Unit Gamma	20	Unit Omega	275
Unit Sigma	55	**Debtors:**	
Unit Omega	45	Unit Gamma	260
		Unit Sigma	195
		Unit Omega	400
Total	**1,280**	**Total**	**1,280**

Using the further information given below, compute the capital gain arising from slump sale of Unit Omega and tax on such capital gain.

(i) Cost inflation index for F.Y. 2010-11 and F.Y. 2023-24 are 167 and 348, respectively.

(ii) Lump sum consideration on transfer of Unit Omega is ₹ 600 lakhs.

(iii) Fixed assets of Unit Omega includes land which was purchased at ₹ 30 lakhs in August 2012 and revalued at ₹ 45 lakhs as on 31st December, 2023. The stamp duty value of land as on 31st December, 2023 is ₹ 42 lakhs.

(iv) Other fixed assets representing machinery are reflected at ₹ 230 lakhs (i.e. ₹ 275 lakhs less value of land) which represents written down value as per books. The written down value of machinery under section 43(6) of the Income-tax Act, 1961 on 31.12.2023 is ₹ 155 lakhs.

(v) Unit Omega was set up by Beta Limited in May, 2010.

(vi) The company does not opt for section 115BAA.

Solution :
As per section 50B, any profits and gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of capital assets and shall be deemed to be the income of the previous year in which the transfer took place.

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

Particulars	₹ (in lakhs)
Full value of consideration for the slump sale of Unit Omega	627
Less: Net worth of Unit Omega *(Refer Note 1 below)*	540
Long term capital gain arising on slump sale	**87**

Computation of tax liability of Beta Ltd. on slump sale of Unit Omega for the A.Y. 2024-25

Particulars	₹ (in lakhs)
Tax on capital gains@20%	17.400
Add: HEC@4%	0.696
Total tax liability on capital gain arising on slump sale of Unit Omega	**18.096**

Notes:

(1) Computation of full value of consideration

Particulars	₹ (in lakhs)
Fair Market Value of capital assets transferred by way of slump sale as on 31.12.2023	
Land (stamp duty value as on 31.12.2023, being the date of slump sale)	42
Machinery (book value as appearing in the books of account)	230
Debtors (book value appearing in the books of account)	400
	672
Less: Value of trade creditors of Unit Omega	45
Fair market value of capital assets transferred by way of slump sale [FMV 1]	**627**
Fair market value of the consideration received or accruing as a result of transfer by way of slump sale [value of monetary consideration received, in this case] [FMV 2]	600
Full value of consideration [Higher of FMV 1 and FMV 2]	**627**

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

Computation of net worth of Unit Omega

Particulars	₹ (in lakhs)
(A) Book value of non-depreciable assets:	
(i)Land (Revaluation is to be ignored for computing net worth)	30
(ii)Debtors	400
(B) Written down value of machinery under section 43(6)	155
Aggregate value of total assets	585
Less: Value of trade creditors of Unit Omega	45
Net worth of Unit Omega	**540**

(3) Since Unit Omega is held for more than 36 months, the capital gains of ₹ 87 lakhs arising on transfer of such unit would be a long term capital gain taxable under section 112. However, indexation benefit is not available in the case of slump sale.

Question-38 : [PP DEC-21]3]

The Government compulsorily acquired land of Mr. Shivam in April 2020 and paid compensation of ₹ 20 lakhs in June 2022. The land was acquired by Mr. Shivam in June 2004 for ₹ 12 lakhs. He had filed for additional compensation through Court and was awarded ₹ 18 Lakhs in February 2023 but this amount was received only during May 2023. Compute the taxable capital gain from the above transaction indicating the relevant assessment year. Expenses in connection with compulsory acquisition were 30,000 and for obtaining enhancement of compensation was ₹ 1 lakh Cost inflation index: FY 2004-05: 113; FY 2020-21: 301; FY 2021-22: 317; FY 2022-23: 331; F.Y. 2023-24: 348 **(4 Marks)**

Solution :

Computation of capital gains of Mr. Shivam for the A.Y.2023-24

Particulars	₹
Full value of consideration (Compensation received) [Taxable in the year of receipt i.e., P.Y.2022-23]	20,00,000
Less: Expenses in connection with compulsory acquisition	30,000
	19,70,000
Less: Indexed cost of acquisition [₹ 12,00,000 × 301/113]	(31,96,460)
Long-term capital loss (since land was held for > 24 months) for the A.Y. 2023-24	(12,26,460)
Note – Since the year of compulsory acquisition i.e., F.Y.2020-21 is the year of transfer of land, CII for F.Y.2020-21 has to be considered for computing indexed cost of acquisition.	

Computation of capital gains of Mr. Shivam for the A.Y.2024-25

Particulars	₹
Full value of consideration (Enhanced Compensation received is taxable in the year of receipt i.e., P.Y.2023-24)	18,00,000
Less: Expenses for obtaining enhanced compensation (allowable as deduction)	1,00,000
	17,00,000
Less: Set-off of b/f long-term capital loss from A.Y.2023-24	(12,26,640)
Long-term capital gains for the A.Y. 2024-25	4,73,540
Note – No deduction in respect of cost of acquisition is allowable from enhanced compensation.	

Question-39 : [PP May 23]:

L, M and N are three partners of M/s. L & G Associates, a partnership firm established on 01.04.1995. L retires from the firm on July 27, 2023 and after his retirement, business of the firm will be operated by M and N. Capital account balance of L as on July 27, 2023 is ₹ 20 Lakhs, (there is no revaluation of assets in books of the firm at any time after 2003-04 when L joined the firm as a partner).

The firm gives to L the following to settle his account:

(i) Cash payment of ₹ 1,00,000

(ii) Stock in trade (Fair market value on July 27, 2023 is ₹ 2,00,000). This stock was purchased on April 15, 2023 for ₹ 1,20,000.

(iii) Plot of Land at Kota (Fair market value of plot as on July 27, 2023 is ₹ 17,00,000)

Book value of plot is ₹ 17,00,000. It was acquired during 1998-99 for ₹ 60,000. Fair market value of the plot as on April 1, 2001 is ₹ 1,10,000.

You are required to calculate the Taxable Income as per the provisions of Income- tax Act, 1961 for L & G Associates for A.Y. 2024-25.

Cost Inflation index for F.Y.2023-24 is 348 and for F.Y. 2001-02 is 100. **(4 Marks)**

Solution:

Computation of taxable income for M/s. L & G Associates for A.Y. 2024-25

Particulars	Amount (in ₹)	Amount (in ₹)
Profits and gains of business or profession		
Deemed transfer on receipt of stock in trade by Mr. L from L & G associates		
Receipt of stock in trade by Mr. L from L & G associates in connection with reconstitution of L & G associates would be deemed to be transfer of stock in trade by L & G associates to Mr. L and would be taxable in the P.Y. 2023-24 u/s 9B		
Full value of consideration of stock in trade [FMV as on 27.7.2023, being the date on which stock in trade in received by Mr. L]	2,00,000	
Less: Purchase cost	1,20,000	
Profits and gains from business		**80,000**
Capital Gains		
Deemed transfer on receipt of plot of Land by Mr. L from L & G associates		
Receipt of plot of land by Mr. L from L & G associates in connection with reconstitution of L & G associates would be deemed to be transfer of plot of land by L & G associates to Mr. L and would be taxable in the P.Y. 2023-24 u/s 9B		
Full value of consideration of plot of land [FMV as on 27.7.2023, being the date on which capital asset is received by Mr. L]	17,00,000	
Less: Indexed cost of acquisition [Higher of cost of acquisition (₹ 60,000) and FMV as on 1.4.2001 (₹ 1,10,000) i.e., ₹ 1,10,000 x 348/100]	(3,82,800)	
Capital Gains		**13,17,200**
Deemed income on receipt of cash and plot of land by Mr. L from L & G associates.		
Profits and gains arising on receipt of cash and plot of land by Mr. L from L & G associates in connection with reconstitution of L & G associates would be deemed to be the income of L & G associates and would be taxable in the P.Y. 2023-24 under section 45(4)		
Cash payment	1,00,000	
FMV of plot of land as on 27.7.2023	17,00,000	
	18,00,000	
Less: Amount of balance in capital account	**19,25,724**	
[See Working Note below]		
Since, income chargeable is negative, it would be deemed to be zero	(1,25,724)	-

Taxable Income		**13,97,200**
Working Note		
Amount of balance in capital account for section 45(4) = Capital balance as on date 27.7.2023 as increased / reduced by share in book profit/loss arising on account of deemed transfer		
Book profit after income-tax on account of deemed transfer u/s 9B		
Book profit on transfer on land = Nil (₹ 17,00,000 – ₹ 17,00,000)		
Book profit on transfer on stock in trade = 80,000 (₹ 2,00,000 – ₹ 1,20,000)		
Tax on capital gains on transfer of land as per section 9B = ₹ 13,35,900 x 20.8% = ₹ 2,77,867		
Tax on business income on transfer of stock in trade under section 9B = ₹ 80,000 x 31.2% **= ₹ 24,960**		
Profit as per books as reduced by Income- tax on transfer u/s 9B		
₹ 80,000 – ₹ 2,77,867 – ₹ 24,960 = (₹ 2,22,827)		
Share of loss of Mr. L = ₹ 2,22,827/3 = ₹ 74,276		
Capital account balance before adjustment	20,00,000	
Less: Share of loss	74,276	
Amount of balance in capital account on 27.7.2023	**19,25,724**	

CHAPTER 5
INCOME FROM OTHER SOURCES

Part-A : Study Material Questions

Question-1 :
Dhaval is in business of manufacturing customized kitchen equipments. He is also the Managing Director and held nearly 65% of the paid-up share capital of Aarav (P) Ltd. A substantial part of the business of Dhaval is obtained through Aarav (P) Ltd. For this purpose, Aarav (P) Ltd. passed on the advance received from its customers to Dhaval to execute the job work entrusted to him.

The Assessing Officer held that the advance money received by Dhaval is in the nature of loan given by Aarav (P) Ltd. to him and accordingly is deemed dividend within the meaning of provisions of section 2(22)(e) of the Income-tax Act, 1961. The Assessing Officer, therefore, made the addition by treating advance money as deemed dividend.

Examine whether the action of the Assessing Officer is tenable in law.

Solution :
As per section 2(22)(e), in case a company, not being a company in which the public are substantially interested, makes payment of any sum by way of advance or loan to a shareholder holding not less than 10% of voting power/share capital of the company, then, the payment so made shall be deemed to be dividend in the hands of such shareholder to the extent to which the company possesses accumulated profits.

In the present case, Dhaval is holding 65% of the paid-up capital of Aarav (P) Ltd. Aarav (P) Ltd. has passed on advance received from its customers to Dhaval for execution of job work entrusted to Dhaval.

Since Aarav (P) Ltd. is not a company in which public are substantially interested, the applicability of the provisions of section 2(22)(e) in respect of such transaction has to be examined. In CIT v. Rajkumar (2009) 318 ITR 462 (Del.), it was held that trade advance given to the shareholder which is in the nature of money transacted to give effect to a commercial transaction, would not amount to deemed dividend under section 2(22)(e). The Delhi High Court ruling in CIT v. Ambassador Travels (P) Ltd. (2009) 318 ITR 376 also supports the above view.

In the present case, the payment is made to Dhaval by Aarav (P) Ltd. for execution of work is in the course of commercial business transaction and therefore, it cannot be treated as deemed dividend under section 2(22)(e). Hence, the action of the Assessing Officer is not tenable in law.

Note – This can also be answered on the basis of Circular No. 19/2017, dated 12.06.2017. The CBDT has, in its circular clarified that it is a settled position that trade advances, which are in the nature of commercial transactions, would not fall within the ambit of the word 'advance' in section 2(22)(e) and therefore, the same would not to be treated as deemed dividend. Since, the payment is made to Dhaval by Aarav (P) Ltd. for execution of work is in the course of commercial business transaction and therefore, the advance cannot be treated as deemed dividend under section 2(22)(e). Hence, the action of the Assessing Officer is not tenable in law.

Question-2 :
MNO (P) Ltd. is a company in which the public are not substantially interested. K is a shareholder of the company holding 15% of the equity shares. The accumulated profits of the company as on 1.10.2023 amounted to ₹ 10,00,000. The company lent ₹ 1,00,000 to K by an account payee bank draft on 1.10.2023. The loan was not connected with the business of the company. K repaid the loan to the company by an account payee bank draft on 30.3.2024. Examine the effect of the borrowal and repayment of the loan by K on the computation of his total income for the assessment year 2024-25.

Solution :
As per section 2(22)(e), any payment by a company, in which the public are not substantially interested, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares holding not less than 10% of the voting power, shall be treated as dividend to the extent to which the company possesses accumulated profits.

In the instant case, MNO (P) Ltd. is a company in which the public are not substantially interested. The company has accumulated profits of ₹ 10,00,000 on 1.10.2023. The loan given by the company to K was not in the course of its business. K holds more than 10% of the equity shares in the company. Therefore, assuming that K has voting power equivalent to his shareholding, section 2(22)(e) comes into play. Deemed dividend of ₹ 1,00,000 under section 2(22)(e) would be taxable in the hands of Mr. K at normal rates of tax.

Under section 2(22)(e), the liability arises the moment the loan is borrowed by the shareholder and it is immaterial whether the loan is repaid before the end of the accounting year or not. Therefore, the repayment of loan by K to the company on 30.3.2024 will not affect the taxability of the sum of ₹ 1,00,000 as deemed dividend.

Question-3 :
Mr. A, a dealer in shares, received the following without consideration during the P.Y. 2023-24 from his friend Mr. B, -
(1) Cash gift of ₹ 75,000 on his anniversary, 15th April, 2023.
(2) Bullion, the fair market value of which was ₹ 60,000, on his birthday, 19th June, 2023.
(3) A plot of land at Faridabad on 1st July, 2023, the stamp value of which is ₹ 5 lakh on that date. Mr. B had purchased the land in April, 2009.

Mr. A purchased from his friend Mr. C, who is also a dealer in shares, 1000 shares of X Ltd. @ ₹ 400 each on 19th June, 2023, the fair market value of which was ₹ 600 each on that date. Mr. A sold these shares in the course of his business on 23rd June, 2023.

Further, on 1st November, 2023, Mr. A took possession of property (building) booked by him two years back at ₹ 20 lakh. The stamp duty value of the property as on 1st November, 2023 was ₹ 32 lakh and on the date of booking was ₹ 23 lakh. He had paid ₹ 1 lakh by account payee cheque as down payment on the date of booking. On 1st March, 2024, he sold the plot of land at Faridabad for ₹ 7 lakh. Compute the income of Mr. A chargeable under the head "Income from other sources" and "Capital Gains" for A.Y.2024-25.

Solution :

Computation of "Income from other sources" of Mr. A for the A.Y.2024-25

	Particulars	**₹**
(1)	Cash gift is taxable under section 56(2)(x), since it exceeds ₹ 50,000	75,000
(2)	Since bullion is included in the definition of property, therefore, when bullion is received without consideration, the same is taxable, since the aggregate fair market value exceeds ₹ 50,000	60,000
(3)	Stamp value of plot of land at Faridabad, received without consideration, is taxable under section 56(2)(x)	5,00,000
(4)	Difference of ₹ 2 lakh in the value of shares of X Ltd. purchased from Mr. C, a dealer in shares, is not taxable as it represents the stock-in-trade of Mr. A. Since Mr. A is a dealer in shares and it has been mentioned that the shares were subsequently sold in the course of his business, such shares represent the stock-in-trade of Mr. A.	-
(5)	Difference between the stamp duty value of ₹ 23 lakh on the date of booking and the actual consideration of ₹ 20 lakh paid is taxable under section 56(2)(x) since the difference exceeds ₹ 1 lakh being, the higher of ₹ 50,000 and 10% of consideration.	3,00,000
	Income from Other Sources	**9,35,000**

Computation of "Capital Gains" of Mr. A for the A.Y.2024-25

Particulars	**₹**
Sale Consideration	7,00,000
Less: Cost of acquisition [deemed to be the stamp value charged to tax under section 56(2)(x) as per section 49(4)]	5,00,000
Short-term capital gains	**2,00,000**

Note – The resultant capital gains will be short-term capital gains since for calculating the period of holding, the period of holding of previous owner is not to be considered.

Question-4 :

Discuss the taxability or otherwise of the following in the hands of the recipient under section 56(2)(x) of the Income-tax Act, 1961 -

(i) Akhil HUF received ₹ 75,000 in cash from niece of Akhil (i.e., daughter of Akhil's sister). Akhil is the Karta of the HUF.

(ii) Nitisha, a member of her father's HUF, transferred a house property to the HUF without consideration. The stamp duty value of the house property is ₹ 9,00,000.

(iii) Mr. Akshat received 100 shares of A Ltd. from his friend as a gift on occasion of his 25 th marriage anniversary. The fair market value on that date was ₹ 100 per share. He also received jewellery worth ₹ 45,000 (FMV) from his nephew on the same day.

(iv) Kishan HUF gifted a car to son of Karta for achieving good marks in XII board examination. The fair market value of the car is ₹ 5,25,000.

Solution :

	Taxable/ Non-taxable	**Amount liable to tax (₹)**	**Reason**
(i)	Taxable	75,000	Sum of money exceeding ₹ 50,000 received without consideration from a non-relative is taxable under section 56(2)(x). Daughter of Mr. Akhil's sister is not a relative of Akhil HUF, since she is not a member of Akhil HUF.
(ii)	Non-taxable	Nil	Immovable property received without consideration by a HUF from its relative is not taxable under section 56(2)(x). Since Nitisha is a member of the HUF, she is a relative of the HUF. However, income from such asset would be included in the hands of Nitisha under 64(2).
(iii)	Taxable	55,000	As per provisions of section 56(2)(x), in case the aggregate fair market value of property, other than immovable property, received without consideration exceeds ₹ 50,000, the whole of the aggregate value shall be taxable. In this case, the aggregate fair market value of shares (₹ 10,000) and jewellery (₹ 45,000) exceeds ₹ 50,000. Hence, the entire amount of ₹ 55,000 shall be taxable.
(iv)	Non-taxable	Nil	Car is not included in the definition of property for the purpose of section 56(2)(x), therefore, the same shall not be taxable.

Question-5 :

Mr. Hari, a property dealer, sold a building in the course of his business to his friend Mr. Rajesh, who is a dealer in automobile spare parts, for ₹ 90 lakh on 1.1.2024, when the stamp duty value was ₹ 150 lakh. The agreement was, however, entered into on 1.9.2023 when the stamp duty value was ₹ 140 lakh. Mr. Hari had received a down payment of ₹ 15 lakh by a crossed cheque from Mr. Rajesh on the date of agreement. Discuss the tax implications in the hands of Mr. Hari and Mr. Rajesh, assuming that Mr. Hari has purchased the building for ₹ 75 lakh on 12th July, 2022.

Would your answer be different if Hari was a share broker instead of a property dealer?

Solution :

Case 1: Tax implications if Mr. Hari is a property dealer

In the hands of Mr. Hari	In the hands of Mr. Rajesh
In the hands of Hari, the provisions of section 43CA would be attracted, since the building represents his stock-in-trade and he has transferred the same for a consideration less than the stamp duty value; and the stamp duty value exceeds 110% of consideration. Under section 43CA, the option to adopt the stamp duty value on the date of agreement can be exercised only if whole or part of the consideration has been received on or before the date of agreement by way of account payee cheque or draft or by use of ECS through a bank account or through credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay on or before the date of agreement. In this case, since the down payment of ₹ 15 lakh is received on the date of agreement by crossed cheque and not account payee cheque, the option cannot be exercised. Therefore, ₹ 75 lakh, being the difference between the stamp duty value on the date of transfer i.e., ₹ 150 lakh, and the purchase price i.e., ₹ 75 lakh, would be chargeable as **business income** in the hands of Mr. Hari, since stamp duty value exceeds **110% of the consideration.**	Since Mr. Rajesh is a dealer in automobile spare parts, the building purchased would be a capital asset in his hands. The provisions of section 56(2)(x) would be attracted in the hands of Mr. Rajesh who has received immovable property, being a capital asset, for inadequate consideration and the difference between the consideration and stamp duty value exceeds ₹ 9,00,000, being the higher of ₹ 50,000 and **10% of consideration**. Therefore, ₹ 60 lakh, being the difference between the stamp duty value of the property on the date of registration (i.e., ₹ 150 lakh) and the actual consideration (i.e., ₹ 90 lakh) would be taxable under section 56(2)(x) in the hands of Mr. Rajesh, since the payment on the date of agreement is made by crossed cheque and not account payee cheque/draft or ECS or through credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay.

Case 2: Tax implications if Mr. Hari is a share broker

In the hands of Mr. Hari	In the hands of Mr. Rajesh
In case Mr. Hari is a share broker and not a property dealer, the building would represent his capital asset and not stock-in-trade. In such a case, the provisions of section 50C would be attracted in the hands of Mr. Hari, since building is transferred for a consideration less than the stamp duty value; and the stamp duty value exceeds 110% of consideration. **Thus, ₹ 75 lakh, being the difference between the stamp duty value on the date of registration (i.e., ₹ 150 lakh) and the purchase price (i.e., ₹ 75 lakh) would be chargeable as short-term capital gains.** It may be noted that under section 50C, the option to adopt the stamp duty value on the date of agreement can be exercised only if whole or part of the consideration has been received on or before the date of agreement by way of account payee cheque or draft or by use of ECS through a bank account or through credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay on	There would be no difference in the taxability in the hands of Mr. Rajesh, whether Mr. Hari is a property dealer or a stock broker, (except where the property transferred in a residential unit fulfilling the stipulated conditions, which is not so in this case). Therefore, the provisions of section 56(2)(x) would be attracted in the hands of Mr. Rajesh who has received immovable property, being a capital asset, for inadequate consideration and the difference between the consideration and stamp duty value exceeds ₹ 9,00,000, being the higher of ₹ 50,000 and 10% of consideration. Therefore, ₹ 60 lakh, being the difference between the stamp duty value of the property on the date of registration (i.e., ₹ 150 lakh) and the actual consideration (i.e., ₹ 90 lakh) would be taxable under section 56(2)(x) in the hands of Mr. Rajesh, since the payment on the date of agreement is made by crossed cheque and not account payee cheque/draft or ECS or through credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement),

or before the date of agreement. In this case, since the down payment of ₹ 15 lakhs has been received on the date of agreement by crossed cheque and not account payee cheque, the option cannot be exercised.	NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay.

Question-6 :
Interest on enhanced compensation received by Mr. G during the previous year 2023-24 is ₹ 5,00,000. Out of this interest, ₹ 1,50,000 relates to the previous year 2019-20, ₹ 1,65,000 relates to previous year 2020-21 and ₹ 1,85,000 relates to previous year 2021-22. Discuss the tax implication, if any, of such interest income for A.Y.2024-25.

Solution :
The entire interest of ₹ 5,00,000 would be taxable in the year of receipt, namely, P.Y.2023-24.

Particulars	**₹**
Interest on enhanced compensation taxable u/s 56(2)(viii)	5,00,000
Less: Deduction under section 57(iv) @50%	2,50,000
Interest chargeable under the head "Income from other sources"	**2,50,000**

Question-7 :
Parimal, Managing Director of Heavens Engg. Pvt. Ltd. holds 70% of its paid up capital of ₹ 20 lakhs. The balance as at 31.03.2023 in General Reserve was ₹ 6 lakhs. The company on 1.04.2023 gave an interest-free loan of ₹ 5 lakhs to its Supervisor having salary of ₹ 4,000 p.m., who in turn on 15.4.2023 advanced the said amount of loan so taken from the company to Shri Parimal. The Assessing Officer had treated the amount of advance as deemed dividend. Is the action of Assessing Officer correct?

Solution :
The company had advanced a loan to an employee who in turn had advanced the same to the Managing Director of the company holding 70% of its capital. By virtue of the provisions of section 2(22)(e), the same shall be treated as the payment by a company in which public are not substantially interested, on behalf of, or for individual benefit of any such share holder (who holds not less than 10% of the voting power), to the extent to which the company possesses accumulated profits.

In this case, the company has reserves of ₹ 6 lakhs on 31st March of the preceding year and the amount of loan advanced on 1st April is ₹ 5 Lakhs. Therefore, the payment is to be treated as deemed dividend. The amount of interest-free loan of ₹ 5 lakhs given by the company to the supervisor who in turn had given the same to Mr. Parimal, shall be construed as the amount given for the benefit of Mr. Parimal and would be treated as deemed dividend. This has been held by the Supreme Court in the case of L. Alagusundaram Chettiar v. CIT (2001) 252 ITR 893.

Question-8 :
Mr. Santhanam holding 25% voting power in VKS Manufacturing Private Limited permitted his own land to be mortgaged to a bank for enabling the company to obtain a loan. Mr. Santhanam requested the company to release the property from the mortgage. The company failed to do so, but for retaining the benefit of bank loan it gave an advance of ₹ 10 lakhs to Mr. Santhanam, which was authorized by a resolution passed by the Board of Directors. The company's accumulated profit on the date of payment of advance was ₹ 50 lakhs. The Assessing Officer proposes to treat the amount of ₹ 10 lakhs as deemed dividend by invoking the provision of section 2(22)(e).
Is the proposition of the Assessing Officer correct in law?

Solution :
The issue under consideration is whether loan or advance given to a shareholder by the company, in return of an advantage or benefit conferred on the company by the shareholder, can be deemed as dividend under section 2(22)(e) of the Income-tax Act, 1961 in the hands of the shareholder

The facts of the case are similar to the facts in Pradip Kumar Malhotra v. CIT (2011) 338 ITR 538, wherein the above issue came up before the Calcutta High Court.

The High Court observed that the phrase "by way of advance or loan" appearing in section 2(22)(e) must be construed to mean those advances or loans which a shareholder enjoys simply on account of being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than 10% of the voting power.

In case such loan or advance is given to such shareholder as a consequence of any further consideration received from such a shareholder which is beneficial to the company, such advance or loan cannot be a deemed dividend within the meaning of the Act.

Thus, gratuitous loan or advance given by a company to a shareholder, who is the beneficial owner of shares holding not less than 10% of the voting power, would come within the purview of section 2(22)(e) to the extent of accumulated profits of the company but not the cases where the loan or advance is given in return for an advantage conferred upon the company by such shareholder.

In this case, advance of ₹ 10 lakhs was given by VKS Manufacturing (P) Ltd. to Mr. Santhanam holding 25% of voting power in lieu of non-release of his personal property from mortgage thereby enabling the company to retain the benefit of loan obtained from bank. Therefore, applying the rationale of the Calcutta High Court ruling in Pradip Kumar Malhotra's case, such advance cannot be brought within the purview of section 2(22)(e), since it was not in the nature of gratuitous advance but was given to protect the interest of the company.

The proposition of the Assessing Officer to treat the amount of ₹ 10 lakhs as deemed dividend by invoking the provisions of section 2(22)(e) in this case is, therefore, **not correct.**

Question-9 :

An enterprise engaged in manufacturing of steel balls discontinued its activities and decided to lease out its factory building, plant and machinery and furniture from 1.4.2023 on a consolidated lease rent of ₹ 50,000 per month. Compute the income for Assessment Year 2024-25 of the assessee from following information: **₹**

(i) Interest received on deposits 1,00,000
(ii) Brokerage paid on hundi loan taken 2,000
(iii) Interest paid on hundi and other loans which were given as deposits on interest to others 75,000
(iv) Expenses incurred on repairs of building, plant and machinery 15,000
(v) Fire insurance premium of plant and machinery and furniture 12,000
(vi) Depreciation for the year 1,47,500
(vii) Legal fees paid to an advocate for drafting and registering the lease agreement 1,500
(viii) Factory licence fees paid for the year 1,000
(ix) There is unabsorbed depreciation of ₹ 2,75,000 of the Assessment Years 2022-23 and 2023-24.
(x) Interest paid in (iii) above includes an amount of ₹ 25,000 remitted to a non-resident outside India on which tax was not deducted at source.

Solution :

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		**₹**	**₹**
(A)	Lease Rent for 12 months @ ₹ 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)		2,75,000	4,52,000
				1,48,000
(B)	Interest on Deposits		1,00,000	
	Less: Expenses allowable under section 57(i)			
	Brokerage	₹ 2,000		
	Interest on hundi loans **(Note 2)**	₹50,000	52,000	48,000
	Total Income			**1,96,000**

Notes:

1. Unabsorbed depreciation of ₹ 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 ₹ 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. However, interest paid to non-resident is not eligible for deduction as the tax has not been deducted at source.

Question-10 :

In July 2023, Mr. Pervez employed as Marketing Manager in a Pharma company, received a Maruti car as gift from a distributor of the company. The value of the gifted car is estimated at ₹ 2,60,000. Is the value of car taxable as income? If so, under what head it is taxable?

Solution :

Mr. Pervez, an employee of a Pharma company, has received a car as a gift from a distributor of the company. Since there is no employer-employee relationship in this case between the distributor and Mr. Pervez, the value of gift is not a perquisite chargeable to tax under the head “Salaries”.

Section 56(2)(x) brings within its scope the value of any property received by any person. For this purpose, “property” means immovable property being land or building or both, shares and securities, jewellery, archaeological collections, drawings, paintings, sculptures, any work of art or bullion.

Therefore, for the purpose of attracting the provisions of section 56(2)(x) for chargeability under the head “Income from Other Sources”, an individual should be in receipt of property as defined therein. Since, car is not included in the definition of “property”, the provisions of section 56(2)(x) would not be attracted in the hands of Mr. Pervez.

Part-B : Additional Questions

Question-11 : [RTP may-2018]

a) Mr. Sridhar gifted amount of Rs.8,00,000 to his brother's wife, Ms. Lakshmi, which was used by her for the purchase of a house and simultaneously, on the same day, his brother Mr. Vishnu gifted shares owned by him in a foreign company worth 10,00,000 to Harsh, Mr. Sridhar's minor son. Examine the impact of such transfers in the hands of Mr. Sridhar and Mr. Vishnu.

b) Mr. Kumar held 18% equity shares in PQR (P) Ltd. He gifted all the shares held by him in PQR (P) Ltd., to his wife Sowmya on 17.7.2023. The transfer was made without adequate consideration. On 18.9.2023, Sowmya obtained a loan of Rs.2 lakh from PQR (P) Ltd., when the company's accumulated profit was Rs.1,50,000. Examine the tax implications of the above transactions.

Solution

a) In the given case, Mr. Sridhar is making a gift of Rs.8,00,000 to his brother's wife for the purchase of a house by her and simultaneously, his brother, Mr. Vishnu, is making a gift of shares worth Rs.10,00,000 owned by him in a foreign company to the minor son of Mr. Sridhar. These transfers are in the nature of cross transfers. Accordingly, the income from the assets transferred would be assessed in the hands of the deemed transferor because the transfers are so intimately connected to form part of a single transaction and each transfer constitutes consideration for the other by being mutual or otherwise.

The Supreme Court has, in CIT vs. Keshavji Morarji (1967) 66 ITR 142, held that if two transactions are inter-connected and are part of the same transaction in such a way that it can be said that the circuitous method was adopted as a device to evade tax, the implication of clubbing provisions would be attracted.

Accordingly, the income arising to his brother's wife Ms. Lakshmi from the house property would be included in the total income of his brother, Mr. Vishnu and the dividend income from shares transferred to Mr. Sridhar's minor son would be taxable in the hands of Mr. Sridhar. This is because both Mr. Sridhar and his brother are the indirect transferors of the income yielding assets to their minor child and spouse, respectively, with an intention to reduce their burden of taxation. However, dividend income earned from shares of the value of Rs.8,00,000 alone will be clubbed in the hands of Mr. Sridhar, since cross transfer is only to the extent of 8,00,000. Balance dividend income (in respect of shares of the value of 2,00,000) will be included in the hands of Mr. Sridhar or his spouse, as the case may be, whose total income excluding such income is greater under section 64(1A).

However, since husband's brother and father's brother fall within the definition of "relative" under section 56(2)(x), hence, the sum of money and property, respectively, received from them would be exempt in the hands of the concerned transferee.

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.1,50,000 (i.e., loan to the extent of accumulated profits of PQR (P) Ltd.) would be deemed as dividend in the hands of Sowmya, who holds 18% equity shares in PQR (P) 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, Sowmya, by virtue of section 2(22)(e) (i.e., deemed dividend of 1,50,000) would be included in the total income of Mr. Kumar, who had transferred the said shares to Sowmya without consideration.

Question-12 : [Good Ques] [RTP NOV 19]
PQR Ltd. is engaged in the manufacture of multi-layer tubes and other speciality packaging and plastic products. It came out with an initial public issue of shares during the year 2023-24 and deposited the share application money received in banks till the allotment of shares was completed. The company earned interest of ₹75 lakhs on such deposits, which it set off against the public issue expenses, while computing total income for A.Y.2024-25. Accordingly, the company paid the tax on total income, after adjusting tax deducted at source and advance tax paid, and filed its return of income in September, 2024. On scrutiny, the Assessing Officer contended that interest of ₹75 lakhs is not eligible for set-off against public issue expenses but is taxable under the head 'Income from Other Sources'. Examine the correctness of contention of the Assessing Officer.

Solution
The issue under consideration is whether the interest income from share application money is taxable under the head 'Income from Other Sources', or can the same be set- off against public issue expenses.

This issue came up before the Supreme Court in CIT v. Sree Rama Multi Tech Ltd. [2018] 403 ITR 426. The Supreme Court observed that the assessee-company was statutorily required to keep share application money in a separate account till the allotment of shares was completed. Part of the share application money would normally have to be returned to unsuccessful applicants, and therefore, the entire share application money would not ultimately be appropriated by the company. The interest earned was inextricably linked with the requirement of raising share capital.

The Supreme Court further observed that any surplus money deposited in the bank for the purpose of earning interest is liable to be taxed as "Income from Other Sources"; however, in this case, the share application money was deposited with the bank not to make additional income by earning interest but to comply with the statute. The interest accrued on such deposit is merely incidental. Moreover, the issue of shares relates to capital structure of the company and hence, expenses incurred in connection with the issue of shares are to be capitalized. Accordingly, the Supreme Court held that the accrued interest on deposit of share application money is eligible to be set-off against public issue expenses.

Applying the rationale of the Supreme Court ruling to the case on hand, the contention of the Assessing Officer that interest income is taxable under the head "Income from Other Sources" is not correct.

Question-13 :
Discuss the applicability of the provisions of section 56(2)(viib) in respect of the shares issued by the following closely held companies to resident Indians-

Company	Consideration received for issue of a share (Rs)	Face value of a share (Rs.)	Fair market value (FMV) of a share (Rs.)	Number of shares issued
Win (P) Ltd.	370	300	350	1,00,000
Gain (P) Ltd.	330	300	350	2,00,000
Profit (P) td.	290	300	280	3,00,000

Solution :

Applicability of the provisions of section 56(2)(viib)

Company	Face value of a share (Rs.)	FMV) of a share (Rs.)	Consideration received for issue of a share (Rs)	Applicability of section 56(2)(viib)
Win (P) Ltd.	300	350	370	The provisions of Section 56(2) (viib) are attracted in this case since the shares are issued at a premium (i.e. issue price exceeds the face value of shares). The excess of the issue price of shares over the FMV would be taxable in the hands of Win (P) Ltd. i.e. Rs.20 lacs being 100,000 shares * Rs.20 per share (Rs.370 - Rs.350).
Gain (P) Ltd.	300	350	330	The provisions of Section 56(2) (viib) are attracted in this case since the shares are issued at a premium. However, no sum shall be chargeable to tax under the said section as the shares are issued at a price less than FMV of the shares.
Profit (P) td.	300	280	290	Section 56(2) (viib) is not attracted in this case since the shares are issued at a discount, though the issue price is greater than the FMV.

Question-14 : [PP MAY-18]

Discuss the taxability or otherwise of the following transactions:

(i) Mr. A purchased 10 acres of agricultural land from Mr. B at the rate of Rs. 2 lakh per acre on 10-05-2023. The guideline value of the land on the date of the transaction was Rs.3 lakhs per acre. However, he had entered into an agreement for purchase of the land on 10-03-2023 when the guideline value was Rs.2.50 lakhs per acre. He had paid a token advance of Rs.1 lakh by account payee cheque.

(ii) Mr. A received cash gift of Rs.4.75 lakhs from B on the occasion of his 61st birthday which was celebrated like marriage as per tradition, and Rs.25,000 from C. Both B and C are his distant relatives.

(iii) Mr. Dileep contributed Rs.2 lakhs to a Trust created for the purpose of marriage of his friend's daughter.

Note: (Guideline value means Assessable stamp duty value) **(6 Marks)**

Solution

(i) Agricultural land is not a capital asset and hence, there would be no tax implications in the hands of the seller, Mr. B.

In the hands of the buyer, Mr. A, the provisions of section 56(2)(x) would be attracted where any property is received without consideration or for inadequate consideration. "Property" means a capital asset, namely, immovable property being land or building or both. In this case, since agricultural land is not a capital asset, it would not fall within the definition of property to attract the provisions of section 56(2)(x). Therefore, the provisions of section 56(2)(x) would not be attracted in the hands of Mr. A.

Note - If it is assumed that the agricultural land is an urban agricultural land, the tax implications would be as follows:

Mr. B, the seller, can consider the stamp duty value of Rs.2.50 lakhs per acre on 10.3.2023, being the date of agreement, as the full value of consideration as per section 50C for computation of capital gains (instead of the stamp duty value of Rs.3 lakhs per acre on 10.5.2023, being the date of sale), since he has received an advance of Rs.1 lakh by account payee cheque at the time of entering into an agreement.

In the hands of the buyer, Mr. A, Rs. 5 lakhs would be taxable under section 56(2) as "Income from other sources", by considering the difference between the stamp duty value of Rs.2.50 lakhs per acre on 10.3.2023 and the actual purchase price of Rs.2 lakh per acre [(Rs.2.50 lakhs – Rs.2 lakhs) x 10 acres].

(ii) Since the question mentions that B and C are Mr. A's distant relatives, it is assumed that they do not fall within the definition of "relative" under section 56(2).

Since cash gift exceeding Rs.50,000 in aggregate from non-relatives, B & C, was received, not on the occasion of marriage but on the occasion of Mr. A's 61st birthday, the said sum of Rs.5 lakhs [i.e., Rs.4.75 lakhs from B and Rs.25,000 from C] is taxable under section 56(2)(x) as "Income from Other Sources" in the hands of Mr. A.

(iii) Section 56(2)(x) excludes from its scope, any sum of money received from an individual by a trust created or established solely for the benefit of relative of the individual.

In this case, this exclusion would not apply, since Rs.2 lakhs was received from Mr. Dileep by a trust created for the benefit of his friend's daughter and not his relative. Thus, Rs.2 lakhs would be chargeable to tax in the hands of the trust.

CHAPTER 6
INCOME OF OTHER PERSONS INCLUDED IN ASSESSEE'S TOTAL INCOME

Part-A : Study Material Questions

Question-1 :
Mr. Arun holds shares carrying 55% voting power in MNO (P) Ltd. Mrs. Anamika, wife of Mr. Arun is working as a computer software programmer in MNO (P) Ltd. at a salary of ₹ 35,000 p.m. She is, however, not qualified for the job. The other income of Mr. Arun & Mrs. Anamika are ₹ 7,30,000 & ₹ 4,20,000, respectively. Compute the gross total income of Mr. Arun and Mrs. Anamika for the A.Y.2024-25.

Solution :
Mr. Arun holds shares carrying 55% voting power in MNO (P) Ltd i.e., a substantial interest in the company. His wife is working in the same company without any professional qualifications for the same. Thus, by virtue of the clubbing provisions of the Act, the salary received by Mrs. Anamika from MNO (P) Ltd. will be clubbed in the hands of Mr. Arun.

Computation of Gross total income of Mr. Arun

Particulars	**₹**	**₹**
Salary received by Mrs. Anamika (₹ 35,000 × 12)	4,20,000	
Less: Standard deduction under section 16(ia)	50,000	3,70,000
Other Income		7,30,000
Gross total income		**11,00,000**

The gross total income of Mrs. Anamika is ₹ 4,20,000.

Question-2 :
Will your answer be different if Mrs. Anamika was qualified for the job?

Solution :
If Mrs. Anamika possesses professional qualifications for the job, then the clubbing provisions shall not be applicable.
Gross total income of Mr. Arun = ₹ 7,30,000 (other income)
Gross total income of Mrs. Anamika = Salary received by Mrs. Anamika [₹ 35,000×12] less ₹ 50,000, being the standard deduction under section 16(ia) plus other income [₹ 4,20,000] = ₹ 7,90,000

Question-3 :
Mr. Binu holds shares carrying 33% voting power in Yamma (P) Ltd. Mrs. Babita is working as an accountant in Yamma (P) Ltd. getting income under the head salary (computed) of ₹ 3,60,000 without any qualification in accountancy. Mr. Binu also receives ₹ 32,000 as interest on securities.

Mrs. Babita owns a house property which she has let out. Rent received from tenants is ₹ 6,500 p.m. Compute the gross total income of Mr. Binu and Mrs. Babita for the A.Y. 2024-25.

Solution :
Since Mrs. Babita is not professionally qualified for the job, the clubbing provisions shall be applicable.

Computation of Gross total income of Mr. Binu

Particulars	**₹**
Income from salary of Mrs. Babita (Computed)	3,60,000
Income from other sources - Interest on securities	32,000
	3,92,000

Computation of gross total income of Mrs. Babita

Particulars	**₹**	**₹**
Income from Salary [clubbed in the hands of Mr. Binu]		Nil
Income from house property		
Gross Annual Value [₹ 6,500 × 12]	78,000	
Less: Municipal taxes paid	-	
Net Annual Value (NAV)	**78,000**	
Less: Deductions under section 24		
- 30% of NAV i.e., 30% of ₹ 78,000	23,400	
- Interest on loan	-	54,600
Gross total income		**54,600**

Question-4 :
Mr. Rahul started a proprietary business on 01.04.2022 with a capital of ₹ 6,00,000. He incurred a loss of ₹3,00,000 during the year 2022-23. To overcome the financial position, his wife Mrs. Radha, a software engineer, gave a gift of ₹ 7,00,000 on 01.04.2023, which was immediately invested in the business by Mr. Rahul. He earned a profit of ₹ 5,00,000 during the year 2023-24. Compute the amount to be clubbed in the hands of Mrs. Radha for the Assessment Year 2024-25. If Mrs. Radha gave the said amount as loan, what would be the amount to be clubbed?

Solution :
Section 64(1)(iv) of the Income-tax Act, 1961 provides for the clubbing of income in the hands of the individual, if the income earned is from the assets (other than house property) transferred directly or indirectly to the spouse of the individual, otherwise than for adequate consideration or in connection with an agreement to live apart.

In this case, Mr. Rahul received a gift of ₹ 7,00,000 on 1.4.2023 from his wife Mrs. Radha, which he invested in his business immediately. The income to be clubbed in the hands of Mrs. Radha for the A.Y. 2024-25 is computed as under:

Particulars	**Mr. Rahul's capital contribution (₹)**	**Capital contribution out of gift from Mrs. Radha (₹)**	**Total (₹)**
Capital as on 1.4.2023	3,00,000 (6,00,000 – 3,00,000)	7,00,000	10,00,000
Profit for P.Y.2023-24 to be apportioned on the basis of capital employed on the first day of the previous year i.e. as on 1.4.2023 (3:7)	1,50,000 $\left(5,00,000 \times \frac{3}{10}\right)$	3,50,000 $\left(5,00,000 \times \frac{7}{10}\right)$	5,00,000

Therefore, the income to be clubbed in the hands of Mrs. Radha for the A.Y.2024-25 is ₹ 3,50,000.
In case, Mrs. Radha gave the said amount of ₹ 7,00,000 as a bona fide loan, then, clubbing provisions would not be attracted.

Note: The provisions of section 56(2)(x) would not be attracted in the hands of Mr. Rahul, since he has received a sum of money exceeding ₹ 50,000 without consideration from a relative i.e., his wife.

Question-5 :
Mrs. Komal transferred her immovable property to TPS Co. Ltd. subject to a condition that out of the rental income, a sum of ₹ 42,000 per annum shall be utilized for the benefit of her son's wife.

Mrs. Komal claims that the amount of ₹ 42,000 (utilized by her son's wife) should not be included in her total income as she no longer owned the property.
Examine with reasons whether the contention of Mrs. Komal is valid in law.

Solution :
The clubbing provisions under section 64(1)(viii) are attracted in case of transfer of any asset, directly or indirectly, otherwise than for adequate consideration, to any person to the extent to which the income from such asset is for the immediate or deferred benefit of son's wife. Such income shall be included in computing the total income of the transferor-individual.

Therefore, income of ₹ 42,000 meant for the benefit of daughter-in-law is chargeable to tax in the hands of transferor i.e., Mrs. Komal in this case.

Hence, the contention of Mrs. Komal is not valid in law.

Note - In order to attract the clubbing provisions under section 64(1)(viii), the transfer should be otherwise than for adequate consideration. In this case, it is presumed that the transfer is otherwise than for adequate consideration and therefore, the clubbing provisions are attracted. Moreover, the provisions of section 56(2)(x) will also get attracted in the hands of TPS Co Ltd., if the conditions specified thereunder are satisfied.

If it is presumed that the transfer was for adequate consideration, the provisions of section 64(1)(viii) and section 56(2)(x) would not be attracted.

Question-6 :
Mr. Arvind has three minor children – two twin daughters, aged 12 years, and one son, aged 16 years. Income of the twin daughters is ₹ 2,500 p.a. each and that of the son is ₹ 1,200 p.a. Mrs. Avani (wife of Mr. Arvind) has transferred her flat to her minor son on 1.4.2023 out of natural love and affection. The flat was let out on the same date and the rental income from the flat is ₹ 10,000 p.m. Compute the income, in respect of minor children, to be included in the hands of Mr. Arvind and Mrs. Avani under section 64(1A) assuming that Mr. Arvind's total income is higher than Mrs. Avani's total income, before including income of minor children and both Mr. Arvind and Mrs. Avani exercise the option of shifting out of the default tax regime provided under section 115BAC(1A).

Solution :
Taxable income, in respect of minor children, in the hands of Mr. Arvind is

Particulars	**₹**	**₹**
Twin minor daughters [₹ 2,500 × 2]	5,000	
Less: Exempt under section 10(32) [₹ 1,500 × 2]	3,000	2,000
Minor son	1,200	
Less: Exemption under section 10(32) would be lower of ₹ 1200, being the income of minor son or ceiling limit of ₹ 1500	1,200	Nil
Income to be clubbed in the hands of Mr. Arvind		**2,000**

Note – As per section 27(i), Mrs. Avani is the deemed owner of house property transferred to her minor son. Natural love and affection do not constitute adequate consideration for this purpose. Accordingly, the income from house property of ₹ 84,000 [i.e., ₹ 1,20,000 (-) ₹ 36,000, being 30% of ₹ 1,20,000) would be taxable directly in her hands as the deemed owner of the said property. Consequently, clubbing provisions under section 64(1A) would not be attracted in respect of income from house property, owing to which exemption u/s 10(32) cannot be availed by her.

Question-7 :
Mr. Madan gifted a sum of ₹ 6.5 lakhs to his brother's wife on 14-6-2023. On 12-7-2023, his brother gifted a sum of ₹ 5.2 lakhs to Mr. Madan's wife. The gifted amounts were invested as fixed deposits in banks by Mrs. Madan and wife of Mr. Madan's brother on 01-8-2023 at 9% interest. Examine the consequences of the above under the provisions of the Income-tax Act, 1961 in the hands of Mr. Madan and his brother.

Solution :
In the given case, Mr. Madan gifted a sum of ₹ 6.5 lakhs to his brother's wife on 4.06.2023 and simultaneously, his brother gifted a sum of ₹ 5.2 lakhs to Mr. Madan's wife on 2.0 .2023. The gifted amounts were invested as fixed deposits in banks by Mrs. Madan and his brother's wife. These transfers are in the nature of cross transfers. Accordingly, the income from the assets transferred would be assessed in the hands of the deemed transferor because the transfers are so intimately connected to form part of a single transaction and each transfer constitutes consideration for the other by being mutual or otherwise.

If two transactions are inter-connected and are part of the same transaction in such a way that it can be said that the circuitous method was adopted as a device to evade tax, the implication of clubbing provisions would be attracted. It was so held by the Apex Court in CIT vs. Keshavji Morarji (1967) 66 ITR 142.

Accordingly, the interest income arising to Mrs. Madan in the form of interest on fixed deposits would be included in the total income of Mr. Madan and interest income arising in the hands of his brother's wife would be taxable in the hands of Mr. Madan's brother as per section 64( ) to the extent of amount of cross transfers i.e., ₹ 5.2 lakhs.

This is because both Mr. Madan and his brother are the indirect transferors of the income to their respective spouses with an intention to reduce their burden of taxation.

However, the interest income earned by his spouse on fixed deposit of ₹ 5.2 lakhs alone would be included in the hands of Mr. Madan's brother and not the interest income on the entire fixed deposit of ₹ 6.5 lakhs, since the cross transfer is only to the extent of ₹ 5.2 lakhs.

Question-8 :
Mr. Ravi has gifted his only house property to his wife, Mrs. Ravi, and his married daughter, Mrs. Divya. The Assessing Officer has served a notice of demand on Mr. Ravi for payment of tax for the income derived from the said house property. Examine the validity of the Assessing Officer's action.

Solution :
As per section 27(i), an individual who transfers otherwise than for adequate consideration any house property to his spouse, not being a transfer in connection with an agreement to live apart, or to a minor child not being a married daughter shall be deemed to be the owner of the house property so transferred.

Mr. Ravi, in this case, would be the deemed owner only in respect of the share of house property transferred to his wife Mrs. Ravi without consideration and not for the share of the house property transferred to his married daughter Mrs. Divya.

Since Mr. Ravi is the deemed owner of the share of house property transferred to his wife without consideration, the income derived from the house property, to the extent attributable to the share of property transferred to his wife without consideration, would be taxable in his hands under the head "Income from house property".

However, as per section 65, the notice of demand can be served on Mrs. Ravi for payment of that portion of tax levied on Mr. Ravi attributable to the income derived [by virtue of section 27(i)], from the share of house property transferred to Mrs. Ravi, and standing in her name.

However, the income derived from house property, attributable to the share of property transferred to his married daughter without consideration, would be taxable in the hands of his daughter. Such income would not be taxable in the hands of Mr. Ravi. Mr. Ravi will not be responsible for the payment of tax attributable to aforesaid share of income of daughter from house property.

Thus, the action of the Assessing Officer in serving notice of demand on Mr. Ravi for payment of tax for the entire income derived from the said house property is not valid.

Question-9 :
Mrs. E, wife of Mr. F, is a partner in a firm. Her capital contribution to the firm as on 01-04-2023 was ₹ 5 lakhs, out of which ₹ 3 lakhs was contributed out of her own sources and ₹ 2 lakhs was contributed out of gift from her husband.

As further capital was needed by the firm, she further invested ₹ 2 lakhs on 01.05.2023 out of the funds gifted by her husband. The firm paid interest on capital of ₹ 80,000 and share of profit of ₹ 60,000 for the financial year 2023-24.

Advise Mr. F as to the applicability of the provisions of section 64(1)(iv) and the manner thereof in respect of the above referred transactions.

Solution :
As per section 64(1)(iv), in computing the total income of any individual, there shall be included all such income as arises, directly or indirectly, subject to the provisions of section 27(i), to the spouse of such individual from assets transferred directly or indirectly to the spouse by such individual otherwise than for adequate consideration or in connection with an agreement to live apart.

In this instant case, Mr. F has gifted money to his wife, Mrs. E. Mrs. E, in turn, invested such gifted money in the capital of a partnership firm, of which she is a partner. Mrs. E has also contributed a sum of ₹ 3 lakhs out of her own resources to the capital of the firm.

As per Explanation 3 to section 64(1), for the purpose of clubbing under section 64(1)(iv), where the assets transferred, directly or indirectly, by an individual to his spouse are invested by the transferee in the nature of contribution of capital as a partner in a firm, proportionate interest on capital will be clubbed with the income of the transferor. Such proportion has to be computed by taking into account the value of the aforesaid investment as on the first day of the previous year to the total investment by way of capital contribution as a partner in the firm as on that day.

In view of the above provision, interest received by Mrs. E from the firm shall be included in total income of Mr. F to the extent of ₹ 32,000 i.e., ₹ 80,000 x ₹ 2,00,000/ ₹ 5,00,000.

Share of profit amounting to ₹ 60,000 is exempt from income-tax under the provisions of section 10(2A). The provisions of section 64 will not apply, if the income from the transferred asset itself is exempt from tax.

Note: It is assumed that rate of interest on capital contributed by Mrs. E does not exceed 12% p.a.

Question-10:
Mr. A has gifted a house property valued at ₹ 50 lakhs to his wife, Mrs. B, who in turn has gifted the same to Mrs. C, their daughter-in-law. The house was let out at ₹ 25,000 per month throughout the year. Compute the total income of Mr. A and Mrs. C.

Will your answer be different if the said property was gifted to his son, husband of Mrs. C?

Solution :
As per section 27(i), an individual who transfers otherwise than for adequate consideration any house property to his spouse, not being a transfer in connection with an agreement to live apart, shall be deemed to be the owner of the house property so transferred.

Therefore, in this case, Mr. A would be the deemed owner of the house property transferred to his wife Mrs. B without consideration.

As per section 64( )(vi) income arising to the son's wife from assets transferred directly or indirectly, to her by an individual otherwise than for adequate consideration would be included in the total income of such individual.

Income from let-out property is ₹ 2,10,000 [i.e., ₹ 3,00,000, being the actual rent calculated at ₹ 25,000 per month less ₹ 90,000, being deduction under section 24 @30% of ₹ 3,00,000]

In this case, income of ₹ 2,10,000 from let-out property arising to Mrs. C, being Mr. A's son's wife would be included in the income of Mr. A applying the provisions of section 2 (i) and section 64(1)(vi). Such income would, therefore, not be taxable in the hands of Mrs. C.

In case the property was gifted to Mr. A's son the clubbing provisions under section 64 would not apply, since the son is not a minor child. Therefore, the income of ₹ 2,10,000 from letting out of property gifted to the son would be taxable in the hands of the son.

It may be noted that the provisions of section 56(2)(x) would not be attracted in the hands of the recipient of house property, since the receipt of property in each case was from a ―relative‖ of such individual. Therefore the stamp duty value of house property would not be chargeable to tax in the hands of the recipient of immovable property, even though the house property was received by her or him without consideration.

Note - The first part of the question can also be answered by applying the provisions of section 64(1)(vi) directly to include the income of ₹ 2,10,000 arising to Mrs. C in the hands of Mr. A. [without first applying the provisions of section 27(i) to deem Mr. A as the owner of the house property transferred to his wife Mrs. B without consideration], since section 64(1)(vi) speaks of clubbing of income arising to son's wife from indirect transfer of assets to her by her husband's parent, without consideration. Gift of house property by Mr. A to Mrs. C, via Mrs. B, can be viewed as an indirect transfer by Mr. A to Mrs. C.

Question-11:
Mr. Korani transferred 2,000 debentures of ₹ 100 each of Wild Fox Ltd. to his wife Mrs. Rekha Korani on 03.10.2022 without consideration. The company paid interest of ₹ 30,000 in September, 2023 which was deposited by Mrs. Korani with Kartar Finance Co. in October, 2023. Kartar Finance Co. paid interest of ₹ 3,000 upto March, 2024. How would both the interest income be charged to tax in A.Y. 2024-25?

Solution :
As per section 64(1)(iv), income arising from assets transferred without adequate consideration by an individual to his spouse is liable to be clubbed in the hands of the individual. It may be noted that income on the asset transferred has to be clubbed but if there is accretion to the asset, any further income derived on such accretion should not be clubbed.

Therefore, applying the provisions of section 64(1)(iv), ₹ 30,000, being the interest on debentures received by Mrs. Rekha Korani in September, 2023 will be clubbed with the income of Mr. Korani, since he had transferred the debentures of the company without consideration to her in October, 2022.

However, the interest of ₹ 3,000 upto March, 2024 earned by Mrs. Rekha Korani on the interest on the debentures deposited by her with Kartar Finance Company shall be taxable in her individual capacity and will not be clubbed with the income of Mr. Korani.

Question-12:
Mr. Rose, out of his own funds, had taken an FDR for ₹ 10,00,000 bearing interest @10% p.a. payable half-yearly in the name of his wife Lilly. The interest earned during the financial year 2023-24 of ₹ 1,00,000 was invested by Mrs. Lilly in the business of packed spices which resulted in a net profit of ₹ 55,000 for the year ended 31.03.2024. How shall the interest on FDR and income from business be taxed for the Assessment Year 2024-25?

Solution :
Section 64(1)(iv) specifies that the income derived by the spouse of an assessee from the assets transferred directly or indirectly without adequate consideration or intention to live apart shall be clubbed with the income of the transferor. Therefore, the interest income of ₹ 1 lakh on the FDR of ₹ 10 lakhs for the F.Y.2023-24 shall be clubbed with the income of Mr. Rose.

When Mrs. Lilly invested the interest income in a business and earned profits therefrom, such profits shall not be clubbed with the income of her husband but shall be taxable in her individual capacity. This is so because the income from the accretion of the transferred assets is not to be clubbed with the income of the transferor [CIT v. M. S. S. Rajan (2001) 252 ITR 126 (Mad)].

Question-13 :
Naresh is a fashion designer having lucrative business. His wife is a model. Naresh pays her monthly salary of ₹ 10,000. The Assessing Officer while admitting that the salary is an admissible deduction, in computing the total income of Naresh had applied the provisions of section 64(1) and had clubbed the income (salary) of his wife in Naresh hands.

Discuss the correctness of the action of the Assessing Officer.

Solution :
This question is based on the principles laid down by Madras High Court in the case of CIT v. Smt. R. Bharati (1999) 240 ITR 697 where the interpretation of the terms " professional qualifications" and "knowledge" came up for consideration as per proviso to section 64(1).

These words do not necessarily connote a qualification conferred by a recognized university after examining the candidate who has undergone a course of study in a technical subject or course of study preparing him for a profession of law, accountancy etc. Accordingly, the term "qualification" must be given a wide meaning as referring to the qualities which are required to be possessed by a person performing the work that he does, so long as that work is capable of being regarded as technical or professional.

The word "professional" is a term capable of very broad meaning and would encompass a variety of occupations. A large number of occupations are being practiced which form a source of livelihood and are capable of being regarded, as professions as long as they require certain degree of skill. A person having skill, experience and competence in a line of work can be regarded as professionally qualified for the purpose of section 64(1)(ii).

Applying the rationale of the Madras High Court ruling, a model, having skill, competence and experience in her line can be considered as a professional. Hence, the action of the Assessing Officer is not correct.

Extra Page

CHAPTER 7
AGGREGATION OF INCOME, SET OFF OR CARRY FORWARD LOSSES

Part-A : Study Material Questions

Question-1 :
Mr. Kamal (aged 35 years) submits the following particulars pertaining to the A.Y.2024-25:

Particulars	**₹**
Income from salary (computed)	4,20,000
Loss from let-out property	(-) 2,30,000
Business loss	(-)1,20,000
Bank interest (FD) received	85,000

Compute the total income of Mr. Kamal for the A.Y.2024-25, assuming that
(i) He has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).
(ii) He pays tax under the default tax regime.

Solution :
(i) Computation of total income of Mr. Kamal for the A.Y.2024-25 under the normal provisions of the Act

Particulars	**Amount (₹)**	**Amount (₹)**
Income from salary	4,20,000	
Less: Loss from house property of ₹ 2,30,000 to be restricted to ₹ 2 lakhs by virtue of section 71(3A)	(-)2,00,000	2,20,000
Balance loss of ₹ 30,000 from house property to be carried forward to next assessment year		
Income from other sources (interest on fixed deposit with bank)	85,000	
Less: Business loss of ₹ 1,20,000 set-off to the extent of ₹ 85,000	(-) 85,000	-
(Business loss of ₹ 35,000 to be carried forward for set-off against business income of the next assessment year)		
Gross total income [See Note below]		**2,20,000**
Less: Deduction under Chapter VI-A		Nil
Total income		**2,20,000**

Notes:
(i) Gross Total Income includes salary income of ₹ 2,20,000 after adjusting loss of ₹ 2,00,000 from house property. The balance loss of ₹ 30,000 from house property to be carried forward to next assessment year for set-off against income from house property of that year.
(ii) Business loss of ₹ 1,20,000 is set off to the extent of bank interest of ₹ 85,000 and remaining business loss of ₹ 35,000 will be carried forward as it cannot be set off against salary income.

(ii) Computation of total income of Mr. Kamal for the A.Y.2024-25 under default tax regime

Particulars	**Amount (₹)**	**Amount (₹)**
Income from salary		4,20,000
Income from other sources (interest on fixed deposit with bank)	85,000	
Less: Business loss of ₹ 1,20,000 set-off to the extent of ₹ 85,000	(-) 85,000	-
(Business loss of ₹ 35,000 to be carried forward for set-off against business income of the next assessment year)		
Gross total income/ Total Income		**2,20,000**

Notes:

(i) Under the default tax regime, loss from house property cannot be set off against income under any other head. Therefore, the entire loss of ₹ 2,30,000 from house property to be carried forward to next assessment year for set-off against income from house property of that year.

(ii) Business loss of ₹ 1,20,000 is set off to the extent of bank interest of ₹ 85,000 and remaining business loss of ₹ 35,000 will be carried forward as it cannot be set off against salary income.

Question-2 :

Mr. Vikas, a resident individual, furnishes the following particulars for the P.Y.2023-24:

Particulars	**₹**
Income from salary (computed)	50,000
Income from house property	(24,000)
Income from non-speculative business	(24,000)
Income from speculative business	(6,000)
Short-term capital losses	25,000
Long-term capital gains taxable u/s 112	21,000

What is the total income chargeable to tax for the A.Y.2024-25, assuming that he pays tax under section 115BAC?

Solution :

Total income of Mr. Vikas for the A.Y. 2024-25

Particulars	**Amount (₹)**	**Amount (₹)**
Income from salaries		50,000
Income from house property		
Loss from house property to be carried forward **[Note (i)]**	(24,000)	
Profits and gains of business and profession		
Business loss to be carried forward **[Note (ii)]**	(24,000)	
Speculative loss to be carried forward **[Note (iii)]**	(6,000)	
Capital Gains		
Long term capital gain taxable u/s 112	21,000	
Short term capital loss of ₹ 25,000 set-off against long-term capital gains to the extent of ₹ 21,000 **[Note (iii)]**		
	(21,000)	
	Nil	
Balance short term capital loss of ₹ 4,000 to be carried forward **[Note (iv)]**		
Taxable income		**50,000**

Notes:

(i) Since Mr. Vikas is paying tax under the default tax regime u/s 115BAC, loss from house property cannot be set off against income under any other head. Hence, such loss has to be carried forward to the next year for set-off against income from house property, if any.

(ii) Business loss cannot be set-off against salary income. Therefore, loss of ₹ 24,000 from the non-speculative business cannot be set off against the income from salaries. Hence, such loss has to be carried forward to the next year for set-off against business profits, if any.

(iii) Loss of ₹ 6,000 from the speculative business can be set off only against the income from the speculative business. Hence, such loss has to be carried forward.

(iv) Short term capital loss can be set off against both short term capital gain and long term capital gain. Therefore, short term capital loss of ₹ 25,000 can be set-off against long-term capital gains to the extent of ₹ 21,000. The balance short term capital loss of ₹ 4,000 cannot be set-off against any other income and has to be carried forward to the next year for set-off against capital gains, if any.

Question-3 :
During the P.Y. 2023-24, Mr. Chetan has the following income and the brought forward losses:

Particulars	**₹**
Short term capital gains on sale of shares	1,75,000
Brought forward Long-term capital loss of A.Y.2022-23	(96,000)
Short term capital loss of A.Y.2023-24	(42,000)
Long term capital gain u/s 112	85,000

What is the capital gain taxable in the hands of Mr. Chetan for the A.Y.2024-25?

Solution :

Taxable capital gains of Mr. Chetan for the A.Y. 2024-25

Particulars	**₹**	**₹**
Short term capital gains on sale of shares	1,75,000	
Less: Brought forward short-term capital loss of the A.Y.2023-24	(42,000)	1,33,000
Long term capital gain	85,000	
Less: Brought forward long-term capital loss of A.Y.2022-23 of ₹ 96,000 set-off to the extent of ₹ 85,000		
[See Note below]	(85,000)	Nil
Taxable short-term capital gains		**1,33,000**

Note: Long-term capital loss cannot be set off against short-term capital gain. Hence, the unadjusted long term capital loss of A.Y.2022-23 of ₹ 11,000 (i.e., ₹ 96,000 – ₹ 85,000) has to be carried forward to the next year to be set-off against long-term capital gains of that year.

Question-4 :
Mr. Dinesh has the following income for the P.Y.2023-24-

Particulars	**₹**
Income from the activity of owning and maintaining the race horses	75,000
Income from textile business	95,000
Brought forward textile business loss (relating to A.Y. 2023-24)	50,000
Brought forward loss from the activity of owning and maintaining the race horses (relating to A.Y.2021-22)	96,000

What is the total income in the hands of Mr. Dinesh for the A.Y. 2024-25?

Solution :

Total income of Mr. Dinesh for the A.Y. 2024-25

Particulars	**₹**	**₹**
Income from the activity of owning and maintaining race horses	75,000	
Less: Brought forward loss of ₹ 96,000 from the activity of owning and maintaining race horses set-off to the extent of ₹ 75,000	75,000	
	Nil	
Balance loss of ₹ 21,000 (₹ 96,000 – ₹ 75,000) from the activity of owning and maintaining race horses to be carried forward to A.Y.2025-26 Income from textile business	95,000	
Less: Brought forward business loss from textile business	50,000	45,000
Total income		**45,000**

Note: Loss from the activity of owning and maintaining race horses cannot be set-off against any other source/head of income.

Question-5 :
Mr. Varun has furnished his details for the A.Y.2024-25 as under:

Particulars	**₹**
Income from salaries (computed)	1,70,000
Income from speculation business	60,000
Loss from non-speculation business	(40,000)
Short term capital gain	90,000
Long term capital loss of A.Y.2022-23	(30,000)
Winning from lotteries (gross)	20,000

What is the taxable income of Mr. Varun for the A.Y.2024-25?

Solution :

Computation of taxable income of Mr. Varun for the A.Y.2024-25

Particulars	**₹**	**₹**
Income from salaries		1,70,000
Income from speculation business	60,000	
Less: Loss from non-speculation business	(40,000)	20,000
Short-term capital gain		90,000
Winnings from lotteries		20,000
Taxable income		**3,00,000**

Note: Long term capital loss can be set off only against long term capital gain. Therefore, long term capital loss of ₹ 30,000 has to be carried forward to the next assessment year.

Question-6 :
Compute the gross total income of Mr. Fadnis for the A.Y.2024-25 from the information given below –

Particulars	**₹**
Income from house property (computed)	1,25,000
Income from business (before providing for depreciation)	1,35,000
Short-term capital gains on sale of shares	56,000
Long-term capital loss from sale of property (brought forward from A.Y.2021-22)	(90,000)
Income from tea business	1,20,000
Dividend from Indian companies carrying on agricultural operations (Gross)	1,20,000
Current year depreciation	26,000
Brought forward business loss (loss incurred six years ago)	(45,000)

Solution :

Gross Total Income of Mr. Fadnis for the A.Y. 2024-25

Particulars	**₹**	**₹**
Income from house property		1,25,000
Income from business		
Profits before depreciation	1,35,000	
Less: Current year depreciation	26,000	
	1,09,000	
Income from tea business (40% is business income)	48,000	
	1,57,000	
Less: Brought forward business loss	45,000	1,12,000
Income from the capital gains		
Short-term capital gains		56,000
Income from Other Sources		
Dividend from Indian companies is chargeable to tax in the hands of shareholders		1,20,000
Gross Total Income		**4,13,000**

Notes:

(1) Dividend from Indian companies of ₹ 1,20,000 is taxable in the hands of shareholders at normal rate of tax.

(2) 60% of the income from tea business is treated as agricultural income and therefore, exempt from tax.

(3) Long-term capital loss can be set-off only against long-term capital gains. Therefore, long-term capital loss of ₹ 90,000 brought forward from A.Y.2021-22 cannot be set-off in the A.Y.2024-25. It has to be carried forward for set-off against long-term capital gains, if any, during A.Y.2025-26.

Question-7

X carrying on a business as sole proprietor, died on 31st March, 2024. On his death, the same business was continued by his legal heirs, by forming a firm. As on 31st March 2024, a determined business loss of ₹ 5 lakhs is to be carried forward under the Income-tax Act, 1961.

Does the firm consisting of all legal heirs of Mr. X, get a right to have this loss adjusted against its current income?

Solution :

Section 78(2) provides that where a person carrying on any business or profession has been succeeded in such capacity by another person, otherwise than by inheritance, then, the successor is not entitled to carry forward and set-off the loss of the predecessor against his income. This implies that generally, set-off of business losses should be claimed by the same person who suffered the loss and the only exception to this provision is when the business passes on to another person by inheritance.

The facts of case given in the question are similar to the case CIT v. Madhukant M. Mehta (2001) 247 ITR 805, where the Supreme Court has held that if the business is succeeded by inheritance, the legal heirs are entitled to the benefit of carry forward of the loss of the predecessor. Even if the legal heirs constitute themselves as a partnership firm, the benefit of carry forward and set off of the loss of the predecessor would be available to the firm.

In this case, the business of X was continued by his legal heirs after his death by constituting a firm. Hence, the exception contained in section 78(2) along with the decision of the Apex Court discussed above, would apply in this case. Therefore, the firm is entitled to carry forward the business loss of ₹ 5 lakhs of X.

Question-8 :

ABC Limited owning an industrial undertaking was amalgamated with XYZ Limited on 01.04.2023. All the conditions of section 2(1B) were satisfied.

ABC Limited has the following brought forward losses as assessed till the Assessment Year 2023-24:

	Particulars	**₹ (in lakhs)**
(i)	Speculative Loss	4
(ii)	Unabsorbed Depreciation	18
(iii)	Unabsorbed expenditure of capital nature on scientific research	2
(iv)	Business Loss	120

XYZ Limited has computed a profit of ₹ 140 lacs for the financial year 2023-24 before setting off the eligible losses of ABC Limited but after providing depreciation at 15% per annum on ₹ 150 lacs, being the consideration at which plant and machinery were transferred to XYZ Limited. The written down value as per Income-tax record of ABC Limited as on 1st April, 2023 was ₹ 100 lacs.

The above profit of XYZ Limited includes speculative profit of ₹ 10 lacs.

Compute the total income of XYZ Limited for Assessment Year 2024-25 and indicate the losses/ other allowances to be carried forward by it.

Solution :

Computation of total income of XYZ Limited for the A.Y. 2024-25

Particulars		**(₹ in lakhs)**
Business income before setting-off brought forward losses of ABC Ltd.		140.00
Add: Excess depreciation claimed in the scheme of amalgamation of ABC Limited with XYZ Limited.		
Value at which assets are transferred by ABC Ltd.	150	
WDV in the books of ABC Ltd.	100	
Excess accounted	50	
Excess depreciation claimed in computing taxable income of XYZ Ltd. [₹ 50 lacs × 15 %] [Explanation 2 to section 43(6)]		7.50
		147.50
Set-off of brought forward business loss of ABC Ltd. **(See Notes 2 & 4)**		(120.00)
Set-off of unabsorbed depreciation under section 32(2) read with section 72A **(See Notes 2 & 4)**		(18.00)
Set-off of unabsorbed capital expenditure under section 35(1)(iv) read with section 35(4) **(See Note 5)**		(2.00)
Business income		7.50

Notes:

1. It is presumed that the amalgamation is within the meaning of section 72A of the Income-tax Act, 1961.
2. In the case of amalgamation of companies, the unabsorbed losses and unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or unabsorbed depreciation of the amalgamated company for the previous year in which the amalgamation was effected and such business loss and unabsorbed depreciation shall be carried forward and set-off by the amalgamated company for a period of 8 years and indefinitely, respectively.
3. As per section 72A(7), the accumulated loss to be carried forward specifically excludes loss sustained in a speculative business. Therefore, speculative loss of ₹ 4 lacs of ABC Ltd. cannot be carried forward by XYZ Ltd.
4. Section 72(2) provides that where any allowance or part thereof unabsorbed under section 32(2) (i.e., unabsorbed depreciation) or section 35(4) (i.e., unabsorbed scientific research capital expenditure) is to be carried forward, effect has to be first given to brought forward business losses under section 72.
5. Section 35(4) provides that the provisions of section 32(2) relating to unabsorbed depreciation shall apply in relation to deduction allowable under section 35(1)(iv) in respect of capital expenditure on scientific research related to the business carried on by the assessee. Therefore, unabsorbed capital expenditure on scientific research can be set-off and carried forward in the same manner as unabsorbed depreciation.
6. The restriction contained in section 73 is only regarding set-off of loss computed in respect of speculative business. Such a loss can be set-off only against profits of another speculation business and not non-speculation business. However, there is no restriction under the Income-tax Act, 1961 regarding set-off of normal business losses against speculative income. Therefore, normal business losses can be set-off against profits of a speculative business.
   Consequently, there is no loss or allowance to be carried forward by XYZ Ltd. to the F.Y. 2024-25.

Question-9 :

Examine in brief about the treatment to be given in the following case under the Income-tax Act, 1961, for A.Y.2024-25:

A loss of ₹ 85,000 was sustained by Simran in the activity of owning and maintaining camels for races.

Solution :
Section 74A(3) lays down the provisions for set-off and carry forward of loss from the activity of owning and maintaining race horses. According to provisions of section 74A(3), the losses incurred by an assessee from the activity of owning and maintaining race horses cannot be set-off against the income from any other source other than the activity of owning and maintaining race horses. Since the scope of this section is confined to the activity of owning and maintaining race horses only, therefore, set-off and carry forward of loss from the activity of owning and maintaining camels is not covered under section 74A(3).

It is possible to take a view that the loss from the activity of owning and maintaining camels for races may be governed by section 72 provided such activity amounts to business. Accordingly, the loss from the activity of owning and maintaining of camels for races can be set-off against any income (other than income from salary) of current year and unadjusted amount shall be carried forward for set off against any business income for a maximum period of 8 assessment years immediately succeeding the assessment year in which the loss was incurred.

Question-10 :
M/s. JKLM, a firm, consists of four partners namely, J, K, L and M. They shared profits and losses equally during the year ended 31.3.2023. The assessed business loss of the firm for the assessment year 2023-24 which it is entitled to carry forward amounts to ₹ 3,60,000. A new deed of partnership was executed among J, K, L and M on 1.4.2023 in terms of which they agreed to share profits and losses in the ratio of 15:15:20:50 respectively.

Compute the amount of business loss relating to the assessment year 2023-24, which the firm is entitled to set off against its business income for the assessment year 2024-25. The business income of the firm for the assessment year 2024-25 is ₹ 3,30,000. Your answer should be supported by reasons.

Solution :
The firm is entitled to set off its brought forward business loss amounting to ₹ 3,60,000 relating to the assessment year 2023-24 to the extent of ₹ 3,30,000 against its business income of ₹ 3,30,000 for the assessment year 2024-25, as per the provisions of section 72(1).

The balance unabsorbed business loss of ₹ 30,000 relating to the assessment year 2023-24 will be carried forward to assessment year 2025-26.

Section 78(1) which deals with carry forward and set-off of losses in the case of change in constitution of firm is applicable only where there is retirement or death of a partner. **It is not applicable to a case where there is a change in the ratio of sharing profits and losses amongst the existing partners.** Therefore, section 78(1) is not applicable to the case of M/s. JKLM.

Question-11 :
An assessee sustained a loss under the head "Income from house property" in the previous year relevant to the assessment year 2023-24, which could not be set off against income from any other head in that assessment year. The assessee did not furnish the return of loss within the time allowed under section 139(1) in respect of the relevant assessment year. However, the assessee filed the return within the time allowed under section 139(4). Can the assessee carry forward such loss for set off against income from house property of the assessment year 2024-25?

Solution :
Section 139(3) stipulates that an assessee claiming carry forward of loss under the heads "Profits and gains of business or profession" or "Capital gains" should furnish the return of loss within the time stipulated under section 139(1). There is no reference to loss under the head "Income from house property" in section 139(3). The assessee, in the instant case, has filed the return showing loss from property within the time prescribed under section 139(4). The assessee is, therefore, entitled to carry forward such loss for set off against the income from house property of the subsequent assessment year.

Part-B : Additional Questions

Question-12 : [RTP May-2018]
A private limited company (not being an eligible start up referred to in section 80-IAC) has share capital in the form of equity share capital. The shares were held up till 31st March, 2022 by four members Akash, Bala, Chris and Dinesh equally. The company made losses/profits for the past three assessment years as follows:

Assessment Year	Business Loss	Unabsorbed Depreciation	Total
2020-21	Nil	16,00,000	16,00,000
2021-22	Nil	12,00,000	12,00,000
2022-23	10,00,000	7,00,000	17,00,000
Total	10,00,000	35,00,000	45,00,000

The above figures have been accepted by the tax department.
During the previous year ended 31.3.2023, Akash sold his shares to Ganesh and during the previous year ended 31.3.2024, Bala sold his shares to Rajesh. The profits for the two P.Y.s are as follows:
- 31.3.2023 ₹ 20,00,000 (before charging depreciation of ₹ 8,00,000)
- 31.3.2024 ₹ 50,00,000 (before charging depreciation of ₹ 10,00,000)

Compute taxable income for A.Y.2024-25. Workings must form part of your answer

Solution
Akash, Bala, Chris and Dinesh are the four shareholders of a private limited company. The shareholding pattern of the company in the three financial years are given below:

As on 31st day of March	Akash	Bala	Chris	Dinesh	Ganesh	Rajesh
	%	%	%	%	%	%
2021	25	25	25	25	-	-
2022	-	25	25	25	25	-
2023	-	-	25	25	25	25

Section 79 provides that, in case of a closely held company not being an eligible start up referred to in section 80-IAC, no loss incurred in the previous year shall be carried forward and set off against the income of the subsequent previous year unless the shares carrying at least 51% of the voting power of the company are beneficially held on the last day of the previous year in which the loss is sought to be set off, by the same shareholders, who beneficially held the shares carrying at least 51% of the voting power on the last day of the previous year in which the loss was incurred.

Since shareholders holding at least 51% of the voting power are the same in 1st & 2nd Year, the restriction imposed by section 79 is not applicable for Second Year. Thus, the taxable income for the assessment year 2023-24 would be:

Particulars	₹
Business profit	20,00,000
Less: Current year's depreciation	8,00,000
	12,00,000
Less: Brought forward business loss [as per section 72(2)]	10,00,000
Unabsorbed depreciation [as per section 32(2)]	2,00,000
Taxable income for A.Y. 2023-24	**Nil**

Balance Unabsorbed depreciation relating to the earlier assessment years can be carried forward to the next assessment year i.e., A.Y.2024-25. There is no brought forward business loss and section 79 is not applicable in case of carry forward of unabsorbed depreciation. Section 32 governs the carry forward and set off of depreciation for which the shareholding pattern is not relevant at all. Consequently, the income for A.Y.2024-25 will be determined as under –

Particulars	₹	₹
Business income		50,00,000
Less: Current year's depreciation		10,00,000
Less: Unabsorbed depreciation: -		40,00,000
Assessment year 2020-21	14,00,000	
Assessment year 2021-22	12,00,000	
Assessment year 2022-23	7,00,000	33,00,000
Taxable Income for A.Y. 2024-25		**7,00,000**

Question-13 [PP DEC-21,MTP March 21]
Samay Impex Ltd. was amalgamated with Delhi Impex Ltd. on 01-04-2022. All the conditions of section 72A are complied with. Samay lmpex Limited has the following carried forward losses as assessed upto Assessment year 2023-24:

Sr.No.	Particulars	Amount in
1.	Speculative loss	5,00,000
2.	Unabsorbed depreciation	18,00,000
3.	Unabsorbed expenditure of capital nature on scientific research	2,00,000
4.	Business Loss	1,25,00,000

Delhi Impex Limited has computed a profit of ₹ 175 lakhs for the financial year 2023-24 before setting off the eligible losses of Samay lmpex Ltd. but after providing depreciation @ 15% per annum on ₹ 160 lakhs, being the consideration at which plant and machinery were transferred to Delhi Impex Ltd.

The written down value of above Plant and Machinery of Samay Impex Limited as per Income Tax Act, 1961 as on 31-03-2023 was ₹ 100 lakhs. The above profit of Delhi Impex Ltd. includes speculative profit of ₹ 15 lakhs.

You are required to compute the total income/loss of Delhi Impex Ltd. for Assessment year 2024-25.
The set off should be on the basis of order provided under section 72(2). **(4 Marks)**

Solution :

Computation of total income of Delhi Impex Limited for the A.Y. 2024-25:

Particulars	₹ in lakhs	
Business income before setting-off brought forward losses of Samay Impex Ltd.		175
Add: Excess depreciation claimed in the scheme of amalgamation of Samay Impex Limited with Delhi Impex Limited.		
Value at which assets are transferred by Samay Impex Ltd.	160	
WDV in the books of Samay Impex Ltd.	100	
Excess accounted	60	
Excess depreciation claimed in computing taxable income of Delhi Impex Ltd. [₹ 60 lakhs × 15%]		9
		184
Set-off of b/f business loss of Samay Impex Ltd.		(125)
Set-off of unabsorbed depreciation u/s 32(2) read with section 72A		(18)
Set-off of unabsorbed capital expenditure on scientific research u/s 35(1)(iv) read with section 35(4)		(2)
Total income		**39**

Notes:

1. The unabsorbed losses and unabsorbed depreciation of the amalgamating company, Samay Impex Ltd. shall be deemed to be the loss or unabsorbed depreciation of the amalgamated company, Delhi Impex Ltd. for the previous year in which the amalgamation was effected (i.e., P.Y. 2022-23) and such business loss and unabsorbed depreciation shall be carried forward and set-off by the amalgamated company, Delhi Impex Ltd., for a period of 8 years and indefinitely, respectively. Unabsorbed capital expenditure on scientific research can be set-off and carried forward in the same manner as unabsorbed depreciation.

2. As per section 72A(7), the accumulated loss to be carried forward specifically excludes loss sustained in a speculative business. Therefore, speculative loss of 5 lakhs of Samay Impex Ltd. cannot be carried forward by Delhi Impex Ltd.

3. As per section 72(2), in this case, since business loss, unabsorbed depreciation and unabsorbed scientific research capital expenditure of Samay Impex Ltd. is to be carried forward by Delhi Impex Ltd., effect has to be first given to brought forward business losses, and thereafter, unabsorbed depreciation and unabsorbed capital expenditure.

CHAPTER 8
DEDUCTIONS FROM GROSS TOTAL INCOME

Part-A : Study Material Questions

Question-1 :
Examine the following statements with regard to the provisions of the Income-tax Act, 1961:
(a) For grant of deduction u/s 80-IB, filing of audit report in prescribed form is must for a corporate assessee; filing of return within the due date laid down in section 139(1) is not required.
(b) Filing of belated return under section 139(4) of the Income-tax Act, 1961 will debar an assessee from claiming deduction under section 80-IE.

Solution :
(a) **The statement is not correct.** Section 80AC stipulates compulsory filing of return of income on or before the due date specified under section 139(1), as a pre-condition for availing the benefit of deduction, inter alia, under section 80-IB.
(b) **The statement is correct.** As per section 80AC, the assessee has to furnish his return of income on or before the due date specified under section 139(1), to be eligible to claim deduction under, inter alia, section 80-IE.

Question-2 :
Compute the eligible deduction under section 80C for A.Y.2024-25 in respect of life insurance premium paid by Mr. Hari during the P.Y.2023-24, the details of which are given hereunder, if Mr. Hari has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A) -

	Date of issue of policy	Person insured	Actual capital sum assured (₹)	Insurance premium paid during 2023-24 (₹)
(i)	30/3/2012	Self	8,00,000	48,000
(ii)	1/5/2018	Spouse	1,50,000	20,000
(iii)	1/6/2021	Handicapped son (section 80U disability)	4,00,000	80,000

Solution :

	Date of issue of policy	Person insured	Actual capital sum assured (₹)	Insurance premium paid during 2023-24 (₹)	Deduction u/s 80C for A.Y.2024- 25 (₹)	Remark (restricted to % of actual capital sum assured)
(i)	30/3/2012	Self	8,00,000	48,000	48,000	20%
(ii)	1/5/2018	Spouse	1,50,000	20,000	15,000	10%
(iii)	1/6/2021	Handicapped son (section 80U disability)	4,00,000	80,000	60,000	15%
	Total				**1,23,000**	

Question-3 :
What would your answer if Mr. Hari pays tax under default tax regime under section 115BAC?

Solution :
If Mr. Hari pays tax under default tax regime under section 115BAC, he would not be eligible for deduction under section 80C.

Question-4 :
An individual assessee, resident in India, has made the following deposit/payment during the previous year 2023-24:

Particulars	**₹**
Contribution to the public provident fund	1,50,000
Insurance premium paid on the life of the spouse (policy taken on 1.4.2018) (Assured value ₹ 3,00,000)	36,000

What is the deduction allowable under section 80C for A.Y.2024-25 if the assessee has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A)?

Solution :

Computation of deduction under section 80C for A.Y.2024-25

Particulars	**₹**
Deposit in public provident fund	1,50,000
Insurance premium paid on the life of the spouse (Maximum 10% of the assured value ₹ 3,00,000, as the policy is taken after 31.3.2012)	30,000
Total	**1,80,000**
However, the maximum permissible deduction u/s 80C is restricted to	1,50,000

Question-5 :
Mr. Binu, aged about 40 years, has earned a lottery income of ₹ 1,30,000 (gross) during the P.Y. 2023-24. He also has interest on Fixed Deposit of ₹ 35,000. He invested an amount of ₹ 20,000 in Public Provident Fund account and ₹ 34,000 in five years term deposit. What is the total income of Mr. Binu for the A.Y.2024-25 if he has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A)?

Solution :

Computation of total income of Mr. Binu for A.Y.2024-25

Particulars	**₹**	**₹**
Income from Other Sources		
- Interest on Fixed Deposit		35,000
- Lottery income		1,30,000
Gross Total Income		**1,65,000**
Less: Deductions under Chapter VIA [See Note below]		
Under section 80C		
- Deposit in Public Provident Fund	20,000	
- Investment in five years term deposit	34,000	
	54,000	
Restricted to		35,000
Total Income		**1,30,000**

Note: Though the value of eligible investments is ₹ 54,000, however, deduction under Chapter VIA cannot exceed the gross total income exclusive of long term capital gains u/s 112/112A, short-term capital gains covered under section 111A, winnings of lotteries etc. of the assessee.
Therefore, the maximum permissible deduction u/s 80C = ₹ 1,65,000 – ₹ 1,30,000 = ₹ 35,000.

Question-6 :
The basic salary of Mr. Arjun is ₹ 1,00,000 p.m. He is entitled to dearness allowance, which is 40% of basic salary. 50% of dearness allowance forms part of pay for retirement benefits. Both Mr. Arjun and his employer contribute 15% of basic salary to the pension scheme referred to in section 80CCD. Examine the tax treatment in respect of such contribution in the hands of Mr. Arjun if he has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A). What would be your answer if Mr. Arjun pays tax under the default tax regime under section 115BAC?

Solution :

Tax treatment in the hands of Mr. Arjun in respect of employer's and own contribution to pension scheme referred to in section 80CCD, where Mr. Arjun has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A) [i.e., where Mr. Arjun pays tax under the normal provisions of the Act]

(a) Employer's contribution to such pension scheme would be treated as salary since it is specifically included in the definition of ―salary‖ under section 17(1)(viii). Therefore, ₹ 1,80,000, being 15% of basic salary of ₹ 12,00,000, will be included in Mr. Arjun's salary.

(b) Mr. Arjun's contribution to pension scheme is allowable as deduction under section 80CCD(1). However, the deduction is restricted to 10% of salary. Salary, for this purpose, means basic pay plus dearness allowance, if it forms part of pay for retirement benefits. Therefore, deduction under section 80CCD for Mr. Arjun would be –

Particulars	**₹**
Basic salary = ₹ 1,00,000 × 12 =	12,00,000
Dearness allowance = 40% of ₹ 12,00,000 = ₹ 4,80,000	
50% of Dearness Allowance forms part of pay = 50% of ₹ 4,80,000	2,40,000
Salary for the purpose of deduction under section 80CCD	**14,40,000**
Deduction under section 80CCD(1) is restricted to 10% of ₹ 14,40,000 (as against actual contribution of ₹ 1,80,000, being 15% of basic salary of ₹ 12,00,000)	1,44,000
As per section 80CCD(1B), a further deduction of upto ₹ 50,000 is allowable. Therefore, deduction under section 80CCD(1B) is ₹ 36,000 (₹ 1,80,000 - ₹ 1,44,000).	36,000

₹ 1,44,000 is allowable as deduction under section 80CCD(1). This would be taken into consideration and be subject to the overall limit of ₹ 1,50,000 under section 80CCE. ₹ 36,000 allowable as deduction under section 80CCD(1B) is outside the overall limit of ₹ 1,50,000 under section 80CCE.

In the alternative, ₹ 50,000 can be claimed as deduction under section 80CCD(1B). The balance ₹ 1,30,000 (₹ 1,80,000 - ₹ 50,000) can be claimed as deduction under section 80CCD(1).

(c) Employer's contribution to pension scheme would be allowable as deduction under section 80CCD(2), subject to a maximum of 10% of salary. Therefore, deduction under section 80CCD(2), would also be restricted to ₹ 1,44,000, even though the entire employer's contribution of ₹ 1,80,000 is included in salary under section 17(1)(viii). However, this deduction of employer's contribution of ₹ 1,44,000 to pension scheme would be outside the overall limit of ₹ 1,50,000 under section 80CCE i.e., this deduction would be over and above the other deductions which are subject to the limit of ₹ 1,50,000.

Question-7 :

The gross total income of Mr. Neeraj for the A.Y.2024-25 is ₹ 9,00,000. He has made the following investments/ payments during the F.Y.2023-24 –

	Particulars	**₹**
(1)	Contribution to PPF	1,30,000
(2)	Payment of tuition fees to Sunrise School, Mumbai, for education of his son studying in Class X	95,000
(3)	Repayment of housing loan taken from Canara Bank	30,000
(4)	Contribution to approved pension fund of LIC	1,05,000

Compute the eligible deduction under Chapter VI-A for the A.Y.2024-25 if Mr. Neeraj exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

Solution :

Computation of deduction under Chapter VI-A for the A.Y.2024-25

Particulars	**₹**
Deduction under section 80C	
- Contribution to PPF	1,30,000
- Payment of tuition fees to Sunrise School, Mumbai, for education of his son studying in Class X	95,000
- Repayment of housing loan	30,000
	2,55,000
Restricted to ₹ 1,50,000, being the maximum permissible deduction u/s 80C	1,50,000
Deduction under section 80CCC	
- Contribution to approved pension fund of LIC	1,05,000
	2,55,000
As per section 80CCE, the aggregate deduction under section 80C, 80CCC and 80CCD(1) has to be restricted to ₹ 1,50,000	
Deduction allowable under Chapter VIA for the A.Y.2024-25	**1,50,000**

Question-8 :

Mr. Ravi, aged 45 years, paid medical insurance premium of ₹ 22,000 during the P.Y.2023-24 to insure his health as well as the health of his spouse. He also paid medical insurance premium of ₹ 47,000 during the year to insure the health of his father, aged 65 years, who is not dependant on him. He contributed ₹ 4,600 to Central Government Health Scheme during the year. He has incurred ₹ 3,000 in cash on preventive health check-up of himself and his spouse and ₹ 4,500 by cheque on preventive health check-up of his father. Compute the deduction allowable under section 80D for the A.Y. 2024-25 if Mr. Ravi has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).

Solution :

Deduction allowable under section 80D for the A.Y.2024-25

	Particulars	**Actual Payment ₹**	**Maximum deduction allowable ₹**
A.	**Premium paid and medical expenditure incurred for self and spouse**		
	(i) Medical insurance premium paid for self and spouse	22,000	22,000
	(ii) Contribution to CGHS	4,600	3,000
	(iii) Exp. on preventive health check-up of self & spouse	3,000	Nil
		29,600	**25,000**
B.	**Premium paid and medical expenditure incurred for father, who is a senior citizen**		
	(i) Mediclaim premium paid for father, who is over 60 years of age	47,000	47,000
	(ii) Expenditure on preventive health check-up of father	4,500	3,000
		51,500	**50,000**
	Total deduction under section 80D (₹ 25,000 + ₹ 50,000)		75,000

Notes:

(1) The total deduction under A.(i), (ii) and (iii) above should not exceed ₹ 25,000. Therefore, the contribution to CGHS would be restricted to ₹ 3,000 [₹ 25,000 (-) ₹ 22,000] and expenditure on preventive health check-up for self and spouse would be Nil [₹ 25,000 (-) ₹ 22,000 (-) ₹ 3,000].

(2) The total deduction under B. (i) and (ii) above should not exceed ₹ 50,000. Therefore, the expenditure on preventive health check-up for father would be restricted to ₹ 3,000, being [₹ 50,000 (-) ₹ 47,000].

(3) In this case, the total deduction allowed on account of expenditure on preventive health check-up of self, spouse and father is ₹ 3,000, which is less than the maximum permissible limit of ₹ 5,000.

Question-9 :
Mr. Yatin, aged 48 years, paid medical insurance premium of ₹ 23,000 during the P.Y.2023-24 to insure his health as well as the health of his spouse and dependant children. He also paid medical insurance premium of ₹ 35,000 during the year to insure the health of his mother, aged 71 years, who is not dependent on him. He incurred medical expenditure of ₹ 24,000 on his father, aged 78 years, who is not covered under mediclaim policy. His father is also not dependent upon him. He contributed ₹ 6,500 to Central Government Health Scheme during the year. Compute the deduction allowable under section 80D for the A.Y.2024-25 if Mr. Yatin has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).

Solution :

Deduction allowable under section 80D for the A.Y.2024-25

	Particulars		**₹**
(i)	Medical insurance premium paid for self, spouse and dependent children	₹ 23,000	
(ii)	Contribution to CGHS	₹ 6,500	
		₹ 29,500	
	restricted to		25,000
(iii)	Mediclaim premium paid for mother, who is over 60 years of age	₹ 35,000	
(iv)	Medical expenditure incurred for father, who is over 60 years of age and not covered by any insurance ₹ 24,000		
		₹ 59,000	
	restricted to		50,000
			75,000

Question-10 :
Mr. Mohan is a resident individual. He deposits a sum of ₹ 60,000 with Life Insurance Corporation every year for the maintenance of his disabled grandfather who is wholly dependant upon him. The disability is one which comes under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. A copy of the certificate from the medical authority is submitted. Compute the amount of deduction available under section 80DD for the A.Y. 2024-25 if Mr. Mohan has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).

Solution :
Since the amount deposited by Mr. Mohan was for his grandfather, he will not be allowed any deduction under section 80DD. The deduction is available if the individual assessee incurs any expense for a dependent disabled relative. Grandfather does not come within the meaning of ―dependent‖ as defined under section 80DD.

Question-11 :
What will be the deduction if Mr. Mohan had made this deposit for his dependent father?

Solution :
Since the expense was incurred for a dependant disabled relative, Mr. Mohan will be entitled to claim a deduction of ₹ 75,000 under section 80DD, irrespective of the amount deposited. In case his father has severe disability, the deduction would be ₹ 1,25,000.

Question-12 :
Mr. Gopal has taken three education loans on April 1, 2023, the details of which are given below:

	Loan 1	**Loan 2**	**Loan 3**
For whose education loan was taken	Gopal	Son of Gopal	Daughter of Gopal
Purpose of loan	MBA	B. Tech.	B.Tech.
Amount of loan (₹)	6,00,000	3,00,000	4,50,000
Annual repayment of loan (₹)	1,20,000	48,000	88,000
Annual repayment of interest (₹)	24,000	12,000	16,000

Compute the amount deductible under section 80E for the A.Y.2024-25 if Mr. Gopal has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).

Solution :
Deduction under section 80E is available to an individual assessee exercising the option of shifting out of the default tax regime provided under section 115BAC(1A), in respect of any interest paid by him in the previous year in respect of loan taken for pursuing his higher education or higher education of his spouse or children. Higher education means any course of study pursued after senior secondary examination.
Therefore, interest repayment in respect of all the above loans would be eligible for deduction.
Deduction under section 80E = ₹ 24,000 + ₹ 12,000 + ₹ 16,000 = ₹ 52,000.

Question-13 :
Mr. Ankur purchased a residential house property for self-occupation at a cost of ₹ 48 lakh on 1.4.2017, in respect of which he took a housing loan of ₹ 35 lakh from Bank of India@11% p.a. on the same date. The loan was sanctioned on 10th March, 2017. Compute the eligible deduction in respect of interest on housing loan for A.Y.2024-25 if Mr. Ankur has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A), assuming that the entire loan was outstanding as on 31.3.2024 and he does not own any other house property.

Solution :

	Particulars	**₹**
	Interest deduction for A.Y.2024-25	
(i)	**Deduction allowable while computing income under the head "Income from house property"**	
	Deduction under section 24(b) ₹ 3,85,000 [₹ 35,00,000 × 11%]	
	Restricted to	2,00,000
(ii)	**Deduction under Chapter VI-A from Gross Total Income**	
	Deduction under section 80EE ₹1,85,000 (₹ 3,85,000 – ₹ 2,00,000)	
	Restricted to	50,000

Question-14 :
The following are the particulars relating to Mr. Arun, Mr. Barun, Mr. Chetan and Mr. Dinesh, salaried individuals, for A.Y.2024-25 –

Particulars	**Mr. Arun**	**Mr. Barun**	**Mr. Chetan**	**Mr. Dinesh**
Amount of loan taken	₹ 43 lakhs	₹ 45 lakhs	₹ 20 lakhs	₹ 12 lakhs
Loan taken from	HFC	Deposit taking NBFC	Deposit taking NBFC	Public sector bank
Date of sanction of loan	1.4.2021	1.4.2020	1.4.2020	30.3.2019
Date of disbursement of loan	1.5.2021	1.5.2020	1.5.2020	1.5.2019
Purpose of loan	Acquisition of residential house property for self occupation	Acquisition of residential house property for self occupation	Purchase of electric vehicle for personal use	Purchase of electric vehicle for personal use
Stamp duty value of house property	₹ 45 lakhs	₹ 48 lakhs	-	-
Cost of electric vehicle	-	-	₹ 22 lakhs	₹ 18 lakhs
Rate of interest	9% p.a.	9% p.a.	10% p.a.	10% p.a.

Compute the amount of deduction, if any, allowable under the provisions of the Income-tax Act, 1961 for A.Y.2024-25 in the hands of Mr. Arun, Mr. Barun, Mr. Cehtan and Mr. Dinesh if they have exercised the option of shifting out of the default tax regime provided under section 115BAC(1A). Assume that there has been no principal repayment in respect of any of the above loans upto 31.3.2024.

Solution :

	Particulars	**₹**
	Mr. Arun	
	Interest deduction for A.Y.2024-25	
(i)	**Deduction allowable while computing income under the head "Income from house property"**	
	Deduction u/s 24(b) ₹ 3,87,000 [₹ 43,00,000 × 9%]	
	Restricted to	2,00,000
(ii)	**Deduction under Chapter VI-A from Gross Total Income**	
	Deduction u/s 80EEA ₹ 1,87,000 (₹ 3,87,000 – ₹ 2,00,000)	
	Restricted to	1,50,000
	Mr. Barun	
	Interest deduction for A.Y.2024-25	
(i)	**Deduction allowable while computing income under the head "Income from house property"**	
	Deduction u/s 24(b) ₹ 4,05,000 [₹ 45,00,000 × 9%]	
	Restricted to	2,00,000
(ii)	**Deduction under Chapter VI-A**	
	Deduction u/s 80EEA is not permissible since:	Nil
	(i) loan is taken from NBFC	
	(ii) stamp duty value exceeds ₹ 45 lakh.	
	Deduction under section 80EEA would not be permissible due to either violation listed above.	
	Mr. Chetan	
	Deduction under Chapter VI-A from Gross Total Income	
	Deduction u/s 80EEB for interest payable on loan taken for purchase of electric vehicle [₹ 20 lakhs x 10% = ₹ 2,00,000, restricted to ₹ 1,50,000, being the maximum permissible deduction]	1,50,000
	Mr. Dinesh	
	Deduction under Chapter VI-A from Gross Total Income	
	Deduction u/s 80EEB is not permissible since loan was sanctioned before 1.4.2019.	Nil

Question-15 :

Mr. Arjun aged 45 years, has gross total income of ₹ 8,85,000 comprising of income from salary and house property. He has made the following payments and investments:

(i) Premium paid to insure the life of her major daughter (policy taken on 1.4.2018) (Assured value ₹1,80,000) – ₹ 20,000
(ii) Medical Insurance premium for self – ₹ 14,000; Spouse – ₹ 15,000
(iii) Donation to a public charitable institution registered under 80G ₹ 50,000 by way of cheque
(iv) LIC Pension Fund – ₹ 60,000
(v) Donation to National Children"s Fund - ₹ 25,000 by way of cheque
(vi) Donation to PM CARES Fund – ₹ 10,000 by way of cheque.
(vii) Donation to approved institution for promotion of family planning - ₹ 40,000 by way of cheque
(viii) Deposit in PPF - ₹ 1,20,000

Compute the total income of Mr. Arjun for A.Y. 2024-25 if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

Solution :

Computation of Total Income of Mr. Arjun for A.Y. 2024-25

Particulars	**₹**	**₹**
Gross Total Income		**8,85,000**
Less: Deduction under section 80C		
Deposit in PPF	1,20,000	
Life insurance premium paid for insurance of major daughter (Maximum 10% of the assured value ₹ 1,80,000, as the policy is taken after 31.3.2012)	18,000	
	1,38,000	
Deduction u/s 80CCC in respect of LIC pension fund	60,000	
	1,98,000	
As per section 80CCE, deduction u/s 80C & 80CCC is restricted to		1,50,000
Deduction under section 80D		
Medical Insurance premium in respect of self and spouse	29,000	
Restricted to		25,000
Deduction under section 80G (See Working Note below)		**1,03,000**
Total income		**6,07,000**

Working Note: Computation of deduction under section 80G

	Particulars of donation	**Amount donated (₹)**	**% of deduction**	**Deduction u/s 80G (₹)**
(i)	National Children's Fund	25,000	100%	25,000
(ii)	PM Cares Fund	10,000	100%	10,000
(iii)	Approved institution for promotion of family planning	40,000	100%, subject to qualifying limit	40,000
(iv)	Public Charitable Trust	50,000	50% subject to qualifying limit (See Note below)	15,500
				1,03,000

Note - Adjusted total income = Gross Total Income (–) Amount of deductions under section 80C to 80U except section 80G i.e., ₹ 7,10,000, in this case., ₹ 71,000, being 10% of adjusted total income is the qualifying limit, in this case.

Firstly, donation of ₹ 40,000 to approved institution for family planning qualifying for 100% deduction subject to qualifying limit, has to be adjusted against this amount. Thereafter, donation to public charitable trust qualifying for 50% deduction, subject to qualifying limit is adjusted. Hence, the contribution of ₹ 50,000 to public charitable trust is restricted to ₹ 31,000 (being, ₹ 71,000 - ₹ 40,000), 50% of which would be the deduction under section 80G. Therefore, the deduction under section 80G in respect of donation to public charitable trust would be ₹15,500, which is 50% of ₹ 31,000.

Question-16 :

Mr. Rakesh, a businessman, whose total income (before allowing deduction under section 80GG) for A.Y.2024-25 is ₹ 4,60,000, paid house rent at ₹ 12,000 p.m. in respect of residential accommodation occupied by him at Mumbai. Compute the deduction allowable to him under section 80GG for A.Y.2024-25 if he has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).

Solution :

The deduction under section 80GG will be computed as follows:

(i) Actual rent paid less 10% of total income
₹ 1,44,000 (-) ₹ 46,000 (10% x ₹ 4,60,000) = ₹ 98,000

(ii) 25% of total income i.e., ₹ 4,60,000
= ₹ 1,15,000

(iii) Amount calculated at ₹ 5,000 p.m. = ₹ 60,000

Deduction allowable u/s 80GG [least of (i), (ii) and (iii)] = ₹ 60,000

Question-17 :
During the P.Y.2023-24, Sky Ltd., an Indian company contributed a sum of ₹ 3.5 lakh to an electoral trust; and incurred expenditure of ₹ 52,000 on advertisement in a brochure of a political party.

Is the company eligible for deduction in respect of such contribution/expenditure, assuming that the contribution was made by cheque? If so, what is the quantum of deduction? Sky Ltd. does not opt for section 115BAA/115BAB.

Solution :
An Indian company is eligible for deduction under section 80GGB in respect of any sum contributed by it in the previous year to any political party or an electoral trust. Further, the word ―contribute‖ in section 80GGB has the meaning assigned to it in section 293A of the Companies Act, 1956, and accordingly, it includes the amount of expenditure incurred on advertisement in a brochure of a political party. Therefore, Sky Ltd. is eligible for a deduction of ₹ 4,02,000 under section 80GGB in respect of sum of ₹ 3.5 lakh contributed to an electoral trust and ₹ 52,000 incurred by it on advertisement in a brochure of a political party.

It may be noted that there is a specific disallowance under section 37(2B) in respect of expenditure incurred on advertisement in a brochure of a political party. Therefore, the expenditure of ₹ 52,000 would be disallowed while computing business income/ gross total income. However, the said expenditure incurred by an Indian company is allowable as a deduction from gross total income under section 80GGB.

Question-18 :
Mr. Vikas has commenced the business of manufacture of computers on 1.4.2023. He employed 420 new employees during the P.Y.2023-24, the details of whom are as follows –

	No. of employees	Date of employment	Regular/Casual	Total monthly emoluments per employee (₹)
(i)	75	1.4.2023	Regular	24,000
(ii)	125	1.5.2023	Regular	26,000
(iii)	120	1.7.2023	Casual	24,500
(iv)	100	1.9.2023	Regular	24,000

The regular employees participate in recognized provident fund while the casual employees do not. Compute the deduction, if any, available to Mr. Vikas for A.Y.2024-25, if the profits and gains derived from manufacture of computers that year is ₹ 90 lakhs and his total turnover is ₹ 11.48 crores.

What would be your answer if Mr. Vikas has commenced the business of manufacture of leather products on 1.4.2023?

Solution :
Mr. Vikas is eligible for deduction under section 80JJAA since he is subject to tax audit under section 44AB for A.Y.2024-25, and he has employed ―additional employees‖ during the P.Y.2023-24.

I. If Mr. Vikas is engaged in the business of manufacture of computers
Additional employee cost = ₹ 24,000 × 12 × 75 **[See Working Note below]** = ₹ 2,16,00,000
Deduction under section 80JJAA = 30% of ₹ 2,16,00,000 = ₹ 64,80,000.
Working Note:
Number of additional employees

Particulars		No. of workmen
Total number of employees employed during the year	420	
Less: Casual employees employed on 1.7.2023 who do not participate in recognized provident fund	120	
Regular employees employed on 1.5.2023, since their total monthly emoluments exceed ₹ 25,000	125	
Regular employees employed on 1.9.2023 since they have been employed for less than 240 days in the P.Y.2023-24.	100	345
Number of "additional employees"		**75**

Notes –

(i) Since casual employees do not participate in recognized provident fund, they do not qualify as additional employees. Further, 125 regular employees employed on 1.5.2023 also do not qualify as additional employees since their monthly emoluments exceed ₹ 25,000. Also, 100 regular employees employed on 1.9.2023 do not qualify as additional employees for the P.Y.2023-24, since they are employed for less than 240 days in that year.

Therefore, only 75 employees employed on 1.4.2023 qualify as additional employees, and the total emoluments paid or payable to them during the P.Y.2023-24 is deemed to be the additional employee cost.

(ii) As regards 100 regular employees employed on 1.9.2023, they would be treated as additional employees for previous year 2024-25, if they continue to be employees in that year for a minimum period of 240 days. Accordingly, 30% of additional employee cost in respect of such employees would be allowable as deduction under section 80JJAA in the hands of Mr. Vikas for the A.Y. 2025-26.

II. If Mr. Vikas is engaged in the business of manufacture of leather products

If Mr. Vikas is engaged in the business of manufacture of leather products, then, he would be entitled to deduction under section 80JJAA in respect of employee cost of regular employees employed on 1.9.2023, since they have been employed for more than 150 days in the previous year 2023-24.
Additional employee cost = ₹ 2,16,00,000 + ₹ 24,000 × 7 × 100 = ₹ 3,84,00,000
Deduction under section 80JJAA = 30% of ₹ 3,84,00,000 = ₹ 1,15,20,000

Question-19 :

Mr. Aakash earned royalty of ₹ 2,88,000 from a foreign country for a book authored by him, being a work of literary nature. The rate of royalty is 18% of value of books. The expenditure incurred by him for earning this royalty was ₹ 40,000. The amount remitted to India till 30th September, 2024 is ₹ 2,30,000. The remaining amount was not remitted till 31st March, 2025. Compute the amount includible in the gross total income of Mr. Aakash and the amount of deduction which he will be eligible for under section 80QQB if he has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).

Solution :

The net royalty of ₹ 2,48,000 (i.e., royalty of ₹ 2,88,000 less ₹ 40,000, being expenditure to earn such income) is includible in gross total income. Deduction u/s 80QQB would be ₹ 1,90,000 as calculated hereunder –

	₹
Deduction u/s 80QQB:	
Royalty ₹ 2,88,000 x 15/18 = ₹ 2,40,000	
Restricted to	
Amount brought into India in convertible foreign exchange within the prescribed time	2,30,000
Less: Expenses already allowed as deduction while computing royalty income	40,000
Deduction u/s 80QQB	**1,90,000**

Question-20 :
Mr. Shivpal, a resident individual aged about 64 years, has earned business income (computed) of ₹ 1,40,000, lottery income of ₹ 1,60,000 (gross) during the P.Y. 2023-24. He also has interest on Fixed Deposit of ₹ 51,000 with banks. He invested an amount of ₹ 1,50,000 in Public Provident Fund account. What is the total income of Mr. Shivpal for the A.Y.2024-25 if he has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A) ?

Solution :

Computation of total income of Mr. Shivpal for A.Y.2024-25

Particulars	**₹**	**₹**
Profits and gains of business or profession		**1,40,000**
Income from other sources		
- Interest on Fixed Deposit with banks		51,000
- lottery income		1,60,000
Gross Total Income		**3,51,000**
Less: Deductions under Chapter VIA **[See Note below]**		
Under section 80C		
- Deposit in Public Provident Fund	1,50,000	
Under section 80TTB		
- Interest on fixed deposits with banks, allowable as deduction to the extent of	50,000	
	2,00,000	
Restricted to		1,91,000
Total Income		**1,60,000**

Note: In case of resident individuals of the age of 60 years or more, interest on bank fixed deposits qualifies for deduction upto ₹ 50,000 under section 80TTB.

Though the aggregate of deductions under Chapter VI-A is ₹ 2,00,000, however, the maximum permissible deduction cannot exceed the gross total income exclusive of long term capital gains taxable under section 112 and section 112A, short-term capital gains covered under section 111A and winnings from lotteries of the assessee.

Therefore, the maximum permissible deduction under Chapter VI-A = ₹ 3,51,000 – ₹ 1,60,000 = ₹ 1,91,000.

Question-21 :
ABC Ltd. furnishes you the following information for the year ended 31.3.2024:

Particulars	**₹ (in lacs)**
Total turnover of Unit A located in Special Economic Zone	120
Profit of the business of Unit A	45
Export turnover of Unit A received in India in convertible foreign exchange on or before 30.9.2024	60
Total turnover of Unit B located in Domestic Tariff Area (DTA)	225
Profit of the business of Unit B	25

Compute deduction under section 10AA for the A.Y. 2024-25, assuming that ABC Ltd. commenced operations in SEZ and DTA in the year 2019-20.

Solution :
100% of the profit derived from export of articles or things or services is eligible for deduction under section 10AA, since F.Y.2023-24 falls within the first five year period commencing from the year of manufacture or production of articles or things or provision of services by the Unit in SEZ. As per section 10AA(7), the profit derived from export of articles or things or services shall be the amount which bears to the profits of the business of the undertaking, being the Unit, the same proportion as the export turnover in respect of articles or things or services bears to the total turnover of the business carried on by the undertaking.

Deduction under section 10AA

$$= \text{Profit of the business of Unit A} \times \frac{\text{Export Turnover of Unit A}}{\text{Total Turnover of Unit A}}$$

$$= \text{Rs.45 lakhs} \times \frac{\text{Rs.60 lakhs}}{\text{Rs.120 lakhs}} = \text{Rs.22.5 Lakhs}$$

Note – No deduction under section 10AA is allowable in respect of profits of business of Unit B located in DTA.

Question-22 :
Mr. Srinivasan, aged 61 years, furnishes the following particulars for the year ending 31.03.2024:

(a) Life Insurance Premium paid – ₹ 15,000, actual capital sum of the policy assured for ₹ 2,30,000. The insurance policy was taken on 31.03.2012;
(b) Contribution to Public Provident Fund – ₹ 40,000 in the name of father;
(c) Tuition fee payment – ₹ 8,000 each for 2 sons pursuing full time graduation course in Calcutta; Tuition fee for daughter pursuing PHD in Kellogg University, USA – ₹ 2.50 lakhs;
(d) Housing loan principal repayment – ₹ 32,000 to Axis Bank. This property is under construction at Calcutta as on 31.03.2024;
(e) Principal repayment of housing loan taken from a relative – ₹ 70,000. The property is self-occupied situated at Pune;
(f) Deposit under Senior Citizens Savings Scheme – ₹ 15,000;
(g) Five-year deposits in an account under Post Office Time Deposit Scheme – ₹ 50,000;
(h) Investment in National Savings Certificate – ₹ 70,000;

Compute the deduction eligible under appropriate provisions of section 80C for A.Y. 2024-25 if he shifts out of the default tax regime under section 115BAC.

Solution :
Computation of eligible deduction under section 80C for A.Y.2024-25

Particulars	**₹**
Life Insurance Premium **(See Note 1)**	15,000
Contribution to Public Provident fund **(See Note 2)**	Nil
Tuition fee of 2 sons for graduation course **(See Note 3)**	16,000
Housing loan principal repayment **(See Notes 4 & 5)**	Nil
Senior Citizen Savings Scheme deposit **(See Note 6)**	15,000
Post Office Time Deposit Scheme **(See Note 6)**	50,000
Investment in National Savings Certificate **(See Note 6)**	70,000
Total Investment	**1,66,000**
Eligible deduction under section 80C restricted to	1,50,000

Notes:
1. Any amount of life insurance premium paid in excess of the specified percentage of actual capital sum assured shall be ignored for the purpose of deduction under section 80C. In the given case, since the insurance policy has been issued before 1.04.2012, therefore, premium paid upto 20% of actual capital sum assured i.e., ₹ 46,000 shall be allowed as deduction. Hence, the premium of ₹ 15,000 paid during the year is allowable as deduction under section 80C.

2. In the case of an individual, contribution to PPF can be made in his name or in the name of his spouse or children to qualify for deduction under section 80C. **As the contribution was made in the name of his father, deduction is not allowable.**

3. Tuition fee paid is eligible for deduction under section 80C for a maximum of two children. Therefore, ₹ 16,000 shall be allowed as deduction. **Tuition fee paid to an educational institution situated outside India is not eligible for deduction.**

4. In order to claim the principal repayment on loan borrowed for house property as deduction, the construction of such property should have been completed and should be chargeable to tax under the head "Income from house property". In the given case, since the property is under construction, principal repayment does not qualify for deduction.

5. Repayment of principal on housing loan is not allowed as deduction in case the loan is borrowed from friends, relatives etc. In order to qualify for deduction, the loan should have been obtained from Central Government / State Government / bank / specified employer / institution.

6. The following investments are also eligible for deduction under section 80C:-
   (1) five year time deposit in an account under Post Office Time Deposit Rules, 1981; and
   (2) deposit in an account under the Senior Citizens Savings Scheme Rules, 2004.
   (3) investment in National Savings Certificate.

Question-23 :
X Ltd. has two units, unit „N" and unit „Y". Unit „N" engaged in the business of power generation installed a windmill in March, 2024 and had a profit of ₹ 100 lakhs in Assessment Year 2024-25. X Ltd. claimed depreciation of ₹ 120 lakhs on windmill against the profit of ₹ 100 lakhs from power generation business which was eligible for deduction under section 80-IA. Unit „Y", engaged in manufacturing of wires, non-eligible business, had a profit of ₹ 70 lakhs for Assessment Year 2024-25.The loss of ₹ 20 lakhs, i.e., balance depreciation not set off pertaining to unit „N" was set-off against the profits of unit „Y" carrying on non-eligible business, by the assessee, X Ltd. The Assessing Officer was of the view that depreciation relating to a business eligible for deduction under section 80-IA cannot be set-off against non-eligible business income. Hence, unabsorbed depreciation should be carried forward to the subsequent year to be set off against eligible business income of the assessee of that year.

Examine the correctness of the action of the Assessing Officer.

Solution :
In CIT v. Swarnagiri Wire Insulations Pvt. Ltd. (2012) 349 ITR 245, the Karnataka High Court observed that it is a generally accepted principle that the deeming provision of a particular section cannot be breathed into another section. Therefore, the deeming provision contained in section 80-IA(5) cannot override the provisions of section 70(1).

In this case, X Ltd. had incurred loss in eligible business (power generation) on account of claiming depreciation of ₹ 120 lakhs. Hence, section 80-IA becomes insignificant, since there is no profit from which this deduction can be claimed.

It is, thereafter, that section 70(1) comes into play, whereby an assessee is entitled to set off the losses from one source against income from another source under the same head of income. Accordingly, X Ltd. is entitled to the benefit of set off of loss of ₹ 20 lakhs (representing balance depreciation not set-off) pertaining to Unit N engaged in eligible business of power generation against profit of ₹ 70 lakhs of Unit Y carrying on non-eligible business. Therefore, the net profit of ₹ 50 lakhs would be taxable in the A.Y.2024-25.

However, once set-off is allowed under section 70(1) against income from another source under the same head, a deduction to such extent is not possible in any subsequent assessment year i.e., the loss (arising on account of balance depreciation of eligible business) so set-off under section 70(1) has to be first deducted while computing profits eligible for deduction under section 80-IA in the subsequent year. Accordingly, in the A.Y.2025-26, the net profits of Unit N has to be reduced by ₹ 20 lakhs for computing the profits eligible for deduction under section 80-IA in that year.

The action of the Assessing Officer in not permitting set-off of loss of eligible business against profits of non-eligible business in this case is, therefore, not correct.

Question-24 :
From the following details, compute the total income of Mr. A, Mr. B and Mr. C for A.Y.2024- 25 if they shift out of the default tax regime under section 115BAC –

	Particulars	Mr. A₹	Mr. B₹	Mr. C₹
(i)	Salary (computed)	9,25,000	10,45,000	11,15,000
(ii)	Interest income (on fixed deposits)	75,000	85,000	95,000

The particulars of their other investments/payments made during the P.Y.2023-24 are given hereunder –

	Particulars	₹
(1)	Deposit in Public Provident Fund (PPF) by Mr. A	1,50,000
(2)	Life insurance premium paid by Mr. C, the details of which are as follows –	

Date of issue of policy	Person insured	Actual capital sum assured (₹)	Insurance premium paid during 2023-24 (₹)
31/3/2012	Self	2,48,000	15,000
11/6/2018	Spouse	1,25,000	15,000
31/7/2019	Handicapped son (Section 80U disability)	2,00,000	32,000

(3) **Payment of medical insurance premium by the following persons to insure their health:**

Payer	Amount in ₹	Mode of payment
Mr. A (aged 55 years)	30,000	Account payee cheque
Mr. B (aged 52 years)	15,000	Cash
Mr. C (aged 48 years)	20,000	Crossed cheque

(4) Mr. B paid interest on loan taken for the purchase of house in which he currently resides. He is claiming benefit of self-occupation under section 23(2) in respect of this house. He does not own any other house. 2,20,000
Repayment of principal amount of loan taken for purchase of the said house 1,70,000
(5) Contribution by Mr. A by cheque to National Children's Fund during the year. 30,000
(6) Mr. B makes the following donations during the P.Y.2023-24 -
Donation to BJP by crossed cheque 50,000
Donation to Electoral trust by cash 50,000

Solution :

Computation of total income for A.Y.2024-25

	Particulars	Mr. A ₹	Mr. B ₹	Mr. C ₹
	Salary	9,25,000	10,45,000	11,15,000
	Income from house property **[See Note 4]**		(2,00,000)	
	Income from other sources (Interest)	75,000	85,000	95,000
(A)	**Gross total income**	**10,00,000**	**9,30,000**	**12,10,000**
	Less: Deductions under Chapter VIA			
	Under section 80C			
	Deposit in PPF **[See Note 3]**	1,50,000		
	LIC premium paid **[See Note 1]**			57,500
	Principal repayment of housing loan (restricted to ₹ 1,50,000) **[See Note 4]**		1,50,000	
	Under section 80D			
	Medical insurance premium **[See Note 2]**	25,000	Nil	20,000
	Under section 80G			
	Contribution to National Children's Fund **[See Note 5]**	30,000		

	Under section 80GGC [See Note 6]			
	Donation to BJP by crossed cheque		50,000	
	Cash donation to Electoral Trust		Nil	
(B)	**Total deduction under Chapter VIA**	**2,05,000**	**2,00,000**	**77,500**
(C)	**Total Income (A) – (B)**	**7,95,000**	**7,30,000**	**11,32,500**

Notes:

(1) Deduction u/s 80C in respect of life insurance premium paid by Mr. C

Date of issue of policy	Person insured	Actual capital sum assured	Insurance premium paid during 2023-24	Restricted to % of sum assured	Deduction u/s 80C
31/3/2012	Self	2,48,000	15,000	20%	15,000
11/6/2018	Spouse	1,25,000	15,000	10%	12,500
31/7/2019	Handicapped Son (section 80U disability)	2,00,000	32,000	15%	30,000
	Total				**57,500**

(2) Medical Insurance Premium

(i) Medical insurance premium of ₹ 30,000 paid by account payee cheque by Mr. A is allowed as a deduction under section 80D, subject to a maximum of ₹ 25,000.

(ii) Medical insurance premium paid by cash is not allowable as deduction. Hence, Mr. B is not eligible for deduction under section 80D in respect of medical insurance premium of ₹ 15,000 paid in cash.

(iii) Mr. C is eligible for deduction of ₹ 20,000 under section 80D in respect of medical insurance premium paid by crossed cheque.

(3) The maximum amount eligible for deduction under section 80C shall not exceed ₹ 1,50,000. Mr. A would be eligible for deduction of ₹ 1,50,000 in respect of PPF under section 80C.

(4) **Deduction in respect of interest and principal repayment of housing loan**

Mr. B is eligible for a maximum deduction of ₹ 2,00,000 under section 24 in respect of interest on housing loan taken in respect of a self-occupied property, for which he is claiming benefit of ―Nil‖ annual value. Therefore, ₹ 2,00,000 would represent his loss from house property.

Further, the maximum amount eligible for deduction under section 80C should not exceed ₹ 1,50,000. Since, Mr. B has no other investment under section 80C during the previous year 2023-24, he would be eligible for deduction of ₹ 1,50,000 in respect of principal repayment of housing loan.

(5) Contribution to National Children‘s Fund qualifies for 100% deduction under section 80G. Therefore, Mr. A is entitled to 100% deduction of the sum of ₹ 30,000 contributed by him by way of cheque to National Children‘s Fund.

(6) Mr. B is eligible for deduction under section 80GGC in respect of donation to a political party made otherwise than by way of cash. However, cash donations to electoral trust do not qualify for deduction under section 80GGC.

Question-25 :

Following issues have been raised by Navi Limited in connection with its eligibility for claiming deduction under Chapter VI-A for your consideration and advice for the assessment year 2024-25:

(i) It operates two separate undertakings. One undertaking is eligible for deduction under section 80-IB, while the other undertaking is not eligible for such deduction. If the eligible undertaking has profit and the other undertaking has loss, should it claim deduction after setting off the loss of the other undertaking against profit of the eligible undertaking?

(ii) Its profit from one undertaking in North Eastern States which is eligible for deduction u/s 80-IE includes sale of import entitlement, duty drawback and interest from customers for delayed payment. Is it permissible to claim deduction u/s 80-IE on these items of income?

Solution :

(i) Section 80-IB(13) provides that the provisions contained in section 80-IA(5) shall, so far as may be, apply to the eligible business under section 80-IB. Accordingly, for the purpose of computing the deduction under section 80-IB, the profits and gains of an eligible business shall be computed as if such eligible business was the only source of income of the assessee.

Therefore, Navi Limited should claim deduction under section 80-IB on profit from the eligible undertaking without considering the set off of losses suffered in the other undertaking. It may be noted that the aggregate deduction under Chapter VI-A, however, cannot exceed the gross total income of the assessee. It was held in in case of Reliance Energy Ltd. (2022) 441 ITR 346 (SC).

(ii) Under section 80-IE, where the gross total income of an assessee includes any profits and gains derived by an undertaking referred to in the section, there shall be allowed, in computing the total income of the assessee, a deduction from such profits and gains at the specified percentage and for such number of years as specified in the section. In CIT vs. Sterling Foods (1999) 237 ITR 579 (SC) and Liberty India vs. CIT (2009) 317 ITR 218 (SC), it was held that sale of import entitlement and duty drawback cannot be construed as income derived from undertaking. Therefore, such income cannot be included in computing income for the purpose of deduction under section 80-IE.

Interest income derived by an undertaking on delayed collection of sale proceeds shall be treated as income derived from the undertaking, and therefore, the same would be eligible for deduction under section 80-IE. [Phatela Cotgin Industries Private Limited vs CIT (2008) 303 ITR 411 (P & H)].

Question-26 :

PQR Co-operative Bank, a co-operative society, having its area of operation confined to Gubbi Taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities, has received the following amounts during the year ending 31.3.2024:

(i) Interest amounting to ₹ 1,00,000 from its members on loans advanced to them.
(ii) Interest amounting to ₹ 1,50,000 on deposits with other co-operative societies.
(iii) Rent amounting to ₹ 2,00,000 from letting out its godowns for storage of commodities.

PQR Co-operative Bank seeks your advice in the matter of eligibility for deduction, if any, in respect thereof for the assessment year 2024-25.

Solution :

Sub-section (4) of section 80P provides that section 80P shall not apply to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation to section 80P(4) defines a primary co-operative agricultural and rural development bank to mean a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.

PQR Co-operative Bank is a primary co-operative agricultural and rural development bank as defined in the said Explanation since it is a co-operative society having its area of operation confined to Gubbi Taluk and its principal object is to provide long-term credit for agricultural and rural development activities. Therefore, it is eligible for deduction under section 80P.

Interest of ₹ 1,00,000 received by the bank on loans advanced to its members is eligible for deduction in full under section 80P(2)(a)(i).

Interest of ₹ 1,50,000 received by the bank from deposits with other co-operative societies qualifies for deduction in full under section 80P(2)(d).

Rent of ₹ 2,00,000 received by the bank from letting out its godowns for storage of commodities is eligible for deduction in full under section 80P(2)(e).

Part-B : Additional Questions

Question-27 : [RTP NOV-18, RTP Nov-21]
ABC Ltd., engaged in development of housing projects, filed its return of income for A.Y.2024-25 after claiming deduction of ₹ 25 lakhs under section 80-IBA. The return was selected for scrutiny. In the assessment, a sum of ₹ 12.60 lakhs, being 30% of ₹ 42 lakhs, towards sub-contract payment was disallowed for non-deduction of tax at source by invoking section 40(a)(ia). The Assessing Officer, however, limited the deduction under section 80-IBA to the original amount claimed by ABC Ltd. ABC Ltd. contended that it was eligible for a higher deduction of ₹ 37.60 lakhs under section 80-IBA consequent to disallowance under section 40(a)(ia). Examine the correctness of contention of ABC Ltd.

Solution :
The issue under consideration in this case is whether the increase in gross total income on account of disallowance of expenditure under section 40(a)(ia) can be considered for the purpose of deduction under section 80-IBA.

The Bombay High Court, in CIT v. Sunil Vishwambharnath Tiwari (2016) 388 ITR 630, observed that if on account of non-deduction of tax at source by a company, expenses have been disallowed under section 40(a)(ia) which goes to increase the income chargeable under the head 'Profits and gains of business or profession', such enhanced income becomes eligible for deduction as profit-linked deduction under Chapter VI-A is with reference to an assessee's gross total income.

The High Court held that the company is entitled to claim profit-linked deduction under Chapter VI-A in respect of the enhanced gross total income as a consequence of disallowance of expenditure under section 40(a)(ia).

Further, the CBDT has, in its Circular No.37/2016 dated 2.11.2016, mentioned that the courts have generally held that if the expenditure disallowed is related to the business activity against which the Chapter VI-A deduction has been claimed, the deduction needs to be allowed on the enhanced profits. Thus, the settled position is that the disallowances made under, inter alia, section 40(a)(ia), relating to the business activity against which the Chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter VI -A is admissible on the profits so enhanced by the disallowance.

Accordingly, applying the rationale of the Bombay High Court ruling and the CBDT Circular in this regard to the facts of this case, ABC Ltd. would be entitled to claim deduction under section 80-IBA in respect of the enhanced profits of ₹ 37.60 lakhs, consequent to disallowance under section 40(a)(ia).

Question-28 : [RTP NOV-18]
Mysore Co-operative Society derives income during financial year 2023-24 from the following sources:

(i)	Income from processing with the aid of power	₹ 40,000
(ii)	Income from collective disposal of labour of its members	₹ 20,000
(iii)	Interest from another co-operative society	₹ 12,000
(iv)	Income from house property (Computed)	₹ 75,000
(v)	Income from other business	₹ 72,000
(vi)	Income by way of dividend from another co-operative society	₹ 15,000

Determine the total income of Mysore Co-operative Society for the A.Y.2024-25.

Solution :

Computation of total income of Mysore Co-operative Society for A.Y. 2024-25

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

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

Question-29 : [PP NOV-19]

ABC Ltd., a developer, is engaged in the business of developing of Special Economic Zones, notified on or after 1st April 2005 under the SEZ Act, 2005. It was established in the previous year 2016-17. It had exercised its option for claiming deduction under section 80-IAB from the Assessment Year 2019-20. It received the following incomes during the previous year 2023-24:

Income from the maintenance of SEZ	50,40,000
Income from lease rent from letting out of buildings along with other amenities in SEZ	14,25,000
Interest received from bank deposits (from the refundable security deposits received from lessees)	9,50,000

1. Calculate the amount of deduction available to ABC Ltd. for the A.Y.2024-25.
2. On 1st April 2024, it transferred the operation and maintenance of the SEZ to another company, DEF Ltd. Now, DEF Ltd. wants to claim deduction under section 80-IAB in respect of the income derived from such maintenance of SEZ as was available for ABC Ltd. Comment whether the contention of DEF Ltd.· is valid in law.

Solution :

(1) Since ABC Ltd., a developer, is engaged in the business of developing an SEZ, notified on or after 1.4.2005, it is eligible for a deduction of 100% of profits and gains derived by it from any business of developing a SEZ for 10 consecutive assessment years out of 15 assessment years beginning from the year in which the SEZ has been notified by the Central Government.

ABC Ltd. has exercised its option for claiming deduction u/s 80-IAB from A.Y. 2019-20. Therefore, it is eligible to claim 100% deduction in the A.Y. 2024-25, being the 5th consecutive assessment year.

Amount of deduction available to ABC Ltd. for A.Y. 2024-25

Particulars	**Amount in ₹**
Income from the maintenance of SEZ	50,40,000
Income from lease rent from letting out of buildings along with other amenities in SEZ [As per CBDT Circular No. 16/2017 dated 25.04.2017, income from letting out of premises/developed space along with other facilities in an SEZ is chargeable to tax under the head 'Profits and Gains of Business or Profession". Hence, considered for deduction u/s 80-IAB]	14,25,000
Interest received from bank deposits [not chargeable to tax under the head 'Profits and Gains of Business or Profession". Hence, not considered for deduction u/s 80-IAB]	Nil
	64,65,000
Deduction u/s 80-IAB for A.Y. 2024-25 [100% of profits derived from business]	64,65,000

(2) As per section 80-IAB, if an undertaking, being a Developer i.e., ABC Ltd., in the present case, who develops a SEZ on or after 1.4.2005, transfers the operation and maintenance of such SEZ to another Developer i.e., DEF Ltd., the deduction shall be allowed to DEF Ltd. for the remaining period in the ten consecutive assessment years as if the operation and maintenance were not so transferred to the DEF Ltd.

Hence, DEF Ltd. can claim deduction u/s 80-IAB for the remaining period..

Question-30 : [PP Jan-21]

Meenakshi Urban, is a cooperative society engaged in providing credit facilities to its members for the previous year 2023-24, it provides you the following information:

Particulars	**₹**
Interest received from deposit with other cooperative societies	5,47,000
Interest received from members (including ₹ 2,63,000 for personal purposes of a member)	11,85,000
Rent Received (per month)	36,000
Income from Agency business	2,87,500
Interest received from deposit of idle funds of members	2,04,000
Expenses incurred on agency business	1,24,000
Brought forward loss from earlier years (Financial Year 2021-22)	98,000

Compute the total income of the co-operative society after allowing eligible deduction under section 80-P, if any, and also the tax payable thereon. **(6 Marks)**

Solution

Computation of total income and tax payable by Meenakshi Urban, a Cooperative Society for the A.Y. 2024-25

Particulars	**₹**	**₹**
Income from house property		
Rental income (₹ 36,000 x 12)	4,32,000	
Less: Deduction under section 24(a) @30%	1,29,600	3,02,400
Profits and gains from business or profession		
Credit facility business		
Interest received from deposits with other cooperative society	5,47,000	
Interest received from members	11,85,000	

Interest received from deposit of idle funds of members [Since Meenakshi cooperative society is engaged in the business of providing credit facility to its members, the interest on un- utilised fund would be taxable under the head "Profits and gains from business or profession"]	2,04,000	19,36,000
Agency business		
Income from agency business	2,87,500	
Less: Expenses incurred	1,24,000	
	1,63,500	
Less: Brought forward loss from F.Y. 2021-22	98,000	65,500
Gross Total Income		**23,03,900**
Less: **Deduction under Chapter VI-A: Section 80P**		
- Deduction in respect of profits and gains from credit facility business	19,36,000	
- Deduction in respect of agency business allowable to the extent of	50,000	19,86,000
Total Income		**3,17,900**

Computation of tax liability		**₹**
Tax@30% on ₹ 2,97,900 plus ₹ 3,000 on income upto ₹ 20,000		92,370
Add: Health and education cess@4%		3,695
Tax liability		**96,065**
Tax liability (rounded off)		**96,070**

CHAPTER 9
ASSESSMENT OF VARIOUS ENTITIES

Part-A : Study Material Questions

Question-1 :
A domestic company, ABC Ltd., furnishes the following particulars in respect of Assessment Year 2024-25 and seeks your opinion on the application of section 115JB. You are also required to compute the total income and tax payable.

(1)	Profits as per Statement of profit and loss as per the Companies Act, 2013	₹ 215 Lakhs
(2)	Statement of Profit and Loss includes:	
	(a) Credits: Dividend income from Indian companies	₹ 20 Lakhs
	Excess realized on sale of land held as investment	₹ 30 Lakhs
	(b) Debits: Depreciation on straight line method basis	₹ 100 Lakhs
	Provision for loss of subsidiary company	₹ 60 Lakhs
(3)	Depreciation allowable as per the Income-tax Rules, 1962	₹ 150 Lakhs
(4)	Short term capital gains on sale of land mentioned above as computed under Income-tax Act, 1961	₹ 40 Lakhs
(5)	Losses brought forward as per books of account and as per Income-tax Act, 1961:	
	Business loss	₹ 50 Lakhs
	Unabsorbed depreciation	₹ 60 Lakhs

You will have to deal with this issue assuming that ABC Ltd. is not required to comply with the Indian Accounting Standards. Ignore the provisions of section 115BAA.
Note - The turnover of ABC Ltd. for the P.Y. 2021-22 was ₹ 390 crore.

Solution :
In the case of a company, it has been provided that where tax @ 15% of book profit exceeds tax on total income computed as per normal provisions, the book profit shall be deemed to be the total income for tax purposes.

It is therefore necessary to compute total income as per Income-tax Act, 1961 as well as book profits.

I. Computation of Total Income as per the normal provisions of the Income-tax Act, 1961

Particulars		₹ (in Lakhs)
Net profit as per statement of profit and loss		215
Add: Depreciation debited to statement of profit and loss	100	
Provision for losses of subsidiary company	60	160
		375
Less: Dividend income from Indian companies	20	
Excess realized on sale of land (considered separately)	30	
Depreciation allowable as per Income-tax Rules, 1962	150	200
Business Income		175
Less: Set-off of brought forward business loss		50
		125
Capital gains (Short term capital gains)		40
Income from other sources (Dividend income chargeable to tax in the hands of shareholders)		20
		185
Less: Set-off of unabsorbed depreciation		60
Total Income as per Income-tax Act, 1961		**125**

II. Computation of book profit under section 115JB

Particulars	**(₹ in Lakhs)**	
Net profit as per statement of profit and loss		215
Add: Provision for loss of subsidiary		60
Depreciation as per books of account		100
		375
Less: Depreciation as per books of account	100	
Business loss which is less than unabsorbed depreciation	50	150
"Book Profit"		**225**

III. Computation of tax liability under the normal provisions of the Income-tax Act, 1961

Total income as per the Income-tax Act, 1961 is ₹ 125 lakhs,

Particulars	**₹**
Tax payable ₹ 125 lakhs @25% since the turnover of the company for the previous year 2021-22 ≤ ₹ 400 crore.	31,25,000
Add: Surcharge @ 7%	2,18,750
	33,43,750
Add: Health and education cess @4%	1,33,750
Total Tax payable	**34,77,500**

IV. Computation of Minimum Alternate Tax

Particulars	**₹**
Tax @ 15% of book profit of ₹ 225 lakhs	33,75,000
Add: Surcharge @ 7%	2,36,250
	36,11,250
Add: Health and education cess@4%	1,44,450
Minimum Alternate Tax payable	**37,55,700**

Since 15% of book profit exceeds the tax payable as per normal provisions of the Income-tax Act, 1961, the book profit of ₹ 225 lakhs would be deemed to be the total income and the tax payable on such total income shall be 15% thereof i.e., ₹ 33,75,000 plus surcharge @7% being ₹ 2,36,250 plus health and education cess @4% (of tax and surcharge) being ₹ 1,44,450. Total tax liability would be ₹ 37,55,700.

Question-2 :

Maitri Jeans (P) Ltd. is in the business of manufacturing jeans. For the assessment year 2024-25, it paid tax@15% on its book profit computed under section 115JB. The Assessing Officer though satisfied that it is liable to pay book profit tax under section 115JB, wants to charge interest under sections 234B and 234C as no advance tax was paid during the financial year 2023-24. The company seeks your opinion on the proposed levy of interest.

Solution :

The issue under consideration is whether interest under sections 234B and 234C can be levied where a company is assessed on the basis of its book profit under section 115JB.

The Supreme Court, in Joint CIT v. Rolta India Ltd. (2011) 330 ITR 470, observed that there is a specific provision in section 115JB(5) providing that all other provisions of the Incometax Act, 1961 shall apply to every assessee, being a company, mentioned in that section. Section 115JB is a self-contained code pertaining to MAT, and by virtue of sub-section (5) thereof, the liability for payment of advance tax would be attracted.

According to section 207, tax shall be payable in advance during any financial year, in accordance with the provisions of sections 208 to 219 (both inclusive), in respect of the total income of the assessee which would be chargeable to tax for the assessment year immediately following that financial year.

Under section 115JB(1), where the tax payable on total income is less than 15% of "book profit" of a company, the "book profit" would be deemed to be the total income and tax would be payable at the rate of 15%.

Since in such cases, the book profit is deemed to be the total income, therefore, as per the provisions of section 207, tax shall be payable in advance in respect of such book profit (which is deemed to be the total income) also.

Therefore, if a company defaults in payment of advance tax in respect of tax payable under section 115JB, it would be liable to pay interest under sections 234B and 234C.

Therefore, even though Maitri Jeans (P) Ltd. is assessed on the basis of its book profit under section 115JB for A.Y.2024-25, it is liable to pay advance tax. Since Maitri Jeans (P) Ltd. has not paid any advance tax during the financial year 2023-24, the levy of interest under section 234B and 234C is valid.

Question-3 :
Sona Ltd., a resident company, earned a profit of ₹ 15 lakhs after debit/credit of the following items to its Statement of Profit and Loss for the year ended on 31/03/2024.

(i) Items debited to Statement of Profit and Loss:

No.	Particulars	₹
1.	Provision for the loss of subsidiary	70,000
2.	Provision for doubtful debts	75,000
3.	Provision for income-tax	1,05,000
4.	Provision for gratuity based on actuarial valuation	2,00,000
5.	Depreciation	3,60,000
6.	Interest to financial institution (unpaid before filing of return)	1,00,000
7.	Penalty for infraction of law	50,000

(ii) Items credited to Statement of Profit and Loss:

No.	Particulars	₹
1.	Profit from unit established in special economic zone	5,00,000
2.	Share in income of an AOP as a member	1,00,000
3.	Income from units of UTI	75,000
4.	Long term capital gains on sale of building	3,00,000

Other Information:

(i) Depreciation includes ₹ 1,50,000 on account of revaluation of fixed assets.
(ii) Depreciation as per Income-tax Rules is ₹ 2,80,000.
(iii) Brought forward loss as per books of account of the company is of ₹ 10 lakhs which includes unabsorbed depreciation of ₹ 4 lakhs.
(iv) The AOPs, of which the company is a member, has paid tax at maximum marginal rate.
(v) Provision for income-tax includes ₹ 45,000 of interest payable on income-tax.

Compute minimum alternate tax under section 115JB of the Income-tax Act, 1961, for A.Y. 2024-25, assuming that Sona Ltd. is not required to comply with the Indian Accounting Standards. Ignore the provisions of section 115BAA.

Solution :

Computation of "Book Profit" for levy of MAT under section 115JB for A.Y. 2024-25

Particulars	**₹**	**₹**
Net Profit as per Statement of Profit and Loss		15,00,000
Add: Net profit to be increased by the following amounts as per Explanation 1 to section 115JB		
- Provision for the loss of subsidiary	70,000	
- Provision for doubtful debts, being the amount set aside as provision for diminution in the value of any asset	75,000	
- Provision for income-tax [As per Explanation 2 to section 115JB, income-tax shall include, inter alia, any interest charged under the Act. Therefore, whole of the amount of provision for income-tax including ₹ 45,000 towards interest payable has to be added]	1,05,000	
- Depreciation	3,60,000	6,10,000
		21,10,000
Less: Net profit to be decreased by the following amounts as per Explanation 1 to section 115JB:		
- Share in income of an AOP as a member [In a case, where AOP has paid tax on its total income at maximum marginal rate, no income-tax is payable by the company, being a member of AOP, in accordance with the provisions of section 86. Therefore, share in income of an AOP on which no income-tax is payable in accordance with the provisions of section 86, would be reduced while computing book profit, since the same has been credited to Statement of Profit and Loss]	1,00,000	
- Income from units in UTI [Income from units in UTI is taxable in the hands of the unitholders thus, the same would not be reduced while computing book profits even though it is credited in the Statement of Profit and Loss]	-	
- Depreciation other than depreciation on revaluation of assets (₹ 3,60,000 – ₹ 1,50,000)	2,10,000	
- Unabsorbed depreciation or brought forward business loss, whichever is less, as per the books of account. [Lower of unabsorbed depreciation ₹ 4,00,000 and brought forward business loss ₹ 6,00,000 as per books of accounts has to be reduced while computing the book profit]	4,00,000	7,10,000
Book Profit		**14,00,000**

Computation of MAT liability under section 115JB

Particulars	**₹**
15% of book profit	2,10,000
Add: Health and education cess@4%	8,400
Minimum Alternate Tax liability	**2,18,400**

Notes:

(1) It is only the specific items mentioned under Explanation 1 to section 115JB, which can be adjusted from the net profit as per the Statement of Profit and Loss prepared as per the Companies Act for computing book profit for levy of MAT. Since the following items are not specified thereunder, the same cannot be adjusted for computing book profit:

- Interest to financial institution (unpaid before filing of return) and
- Penalty for infraction of law

(2) Provision for gratuity based on actuarial valuation is an ascertained liability [CIT v. Echjay Forgings (P) Ltd. (2001) 251 ITR 15 (Bom.)]. Hence, the same should not be added back to compute book profit.

(3) As per proviso to section 115JB(6), the profits from unit established in special economic zone cannot be excluded while computing the book profit, and hence, such income would be liable for MAT.

Question-4 :
XYZ Ltd., a domestic company, purchases its own listed shares on 4th July 2023. The consideration for buyback amounted to ₹ 21 lakh, which was paid on the same day. The amount received by the company two years back for issue of such shares determined in the manner specified in Rule 40BB was ₹ 13 lakh. Compute the additional income-tax payable by XYZ Ltd. Compute the interest, if any, payable if such tax is paid to the credit of the Central Government on 29th September 2023.

Solution :
XYZ Ltd is liable to pay ₹ 1,86,368 as additional income-tax, which is the amount calculated @23.296% (20% plus surcharge@12% plus health and education cess@4%) on ₹ 8 lakh, being its distributed income (i.e., ₹ 21 lakh – ₹ 13 lakh).

The additional income-tax was payable on or before 18th July 2023. However, the same was paid only on 29th September 2023.

Period for which interest@1% per month or part of a month is leviable -

Period	**No. of months/part of month**
19th July – 18th August 2023 (whole of first month)	1
19th August – 18th September 2023 (whole of second month)	1
19th September – 29th September 2023 (part of third month)	1
Total number of months	**3**

Question-5 :
Calculate tonnage income with respect to each of the following qualifying ships:

Qualifying Ships	**Q1**	**Q2**	**Q3**	**Q4**
Net Tonnage	1,020	8,563	22,368	37,525
Days for which ship operated during the P.Y.2023-24	120	70	250	100

Solution :

Qualifying Ships	**Q1**	**Q2**	**Q3**	**Q4**
Net Tonnage (rounded off)	1,000	8,600	22,400	37,500
Daily Tonnage (₹)	700	4,728	10,678	15,395
Days for which ship operated during the P.Y.2023-24	120	70	250	100
Tonnage Income (₹)	84,000	3,30,960	26,69,500	15,39,500

Question-6 :
Dolphy Ltd., a tonnage tax company provides following information for the P.Y. 2023-24:
(i) Relevant Shipping Income - ₹ 350 lakhs
(ii) Tonnage Income - ₹ 180 lakhs
(iii) Book profits derived from core and incidental activities - ₹ 400 lakhs

Provide answers to following questions, considering each of the questions given below independently:
(a) Calculate the minimum reserve requirement of the company as per section 115VT.
(b) Calculate the taxable amount under the other provisions of the Act, if Dolphy Ltd. transferred only ₹ 66 lakhs to tonnage tax reserve account during the P.Y. 2023-24.
(c) Calculate the taxable amount under the other provisions of the Act, if Dolphy Ltd. misutilised amount of ₹ 12 lakhs during P.Y. 2024-25 out of ₹ 92 lakhs transferred to tonnage tax reserve account during P.Y. 2023-24.

Solution :
(a) The minimum reserve requirement of the company as per section 115VT = 20% of the book profits derived from core and incidental activities = ₹ 400 lakhs × 20% = **₹ 80 lakhs**

(b) Taxable amount under the other provisions of the Act = Relevant shipping income × Shortfall in the credit to the reserves/ Minimum reserve requirement = ₹ 350 lakhs × [(₹ 80 lakhs – 66 lakhs) / ₹ 80 lakhs)] = ₹ 350 lakhs × ₹ 14 lakhs / ₹ 80 lakhs = **₹ 61.25 lakhs**

(c) Taxable amount under the other provisions of the Act for P.Y. 2024-25 = Relevant shipping income during P.Y. 2023-24 × Extent of reserves misutilised/Total reserve created during P.Y. 2023-24 = ₹ 350 lakhs × ₹ 12 lakhs / ₹ 92 lakhs = **₹ 45.65 lakhs**

Question-7 :

Mr. Rajesh has income of ₹ 45 lakhs under the head "Profits and gains of business or profession". One of his businesses is eligible for deduction @100% of profits under section 80-IB for A.Y. 2024- 25. The profit from such business included in the business income is ₹ 20 lakhs. Compute the tax payable by Mr. Rajesh, assuming that he has no other income during the P.Y. 2023-24 and he has exercised the option to shift out of default regime under section 115BAC.

Solution :

Computation of regular income-tax payable under the provisions of the Act

Particulars	**₹**
Profits and gains of business or profession	45,00,000
Gross total Income	**45,00,000**
Less: Deduction under section 80-IB	20,00,000
Total Income	25,00,000
Tax payable	
Up to ₹ 2,50,000	Nil
5% on next ₹ 2,50,000	12,500
20% on next ₹ 5,00,000	1,00,000
30% on balance ₹ 15,00,000	4,50,000
	5,62,500
Add: Health and education cess@ 4%	22,500
Tax liability	**5,85,000**

Computation of Alternate Minimum Tax (AMT)

Particulars	**₹**
Total Income as per the regular provisions of the Income-tax Act, 1961	25,00,000
Add: Deduction under section 80-IB	20,00,000
Adjusted Total Income	**45,00,000**
AMT @ 18.5% of ₹ 45,00,000	8,32,500
Add: Health and Education Cess @ 4%	33,300
AMT liability	**8,65,800**

Since the regular income-tax payable as per the provisions of the Act is less than the AMT, the adjusted total income of ₹ 45 lakhs would be deemed to be the total income of Mr. Rajesh and he would be liable to pay tax @18.5% thereof. The tax payable by Mr. Rajesh for the A.Y. 2024-25 would, therefore, be ₹ 8,65,800.

Mr. Rajesh would be eligible for credit to the extent of ₹ 2,80,800 [₹ 8,65,800 – ₹ 5,85,000] to be set-off in the year in which tax on total income computed under the regular provisions of the Act exceeds the AMT. Such credit can be carried forward for succeeding 15 assessment years.

Question-8 :

A and B entered into partnership agreement on April 1, 2023. As per the deed, each of them will be entitled to salary of ₹ 2,000 per month apart from profit. On August 1, 2023, they executed a supplementary deed by which they increased the remuneration to ₹ 3,000 each effective from 1st April 2023. Discuss the validity of the supplementary deed.

Solution :
Remuneration will be payable effective from the date of the deed which provides for the payment of such remuneration. In the given case, the original deed provides for remuneration at the rate of ₹ 2,000 for each partner from April 1, 2023 onwards. The supplementary deed is executed on August 1, 2023 increasing the limit of remuneration. Such increase in the limit of remuneration will be allowable only from 1st August 2023, being the date of supplementary deed. Hence, for the period from 1st April 2023 to 31st July 2023, the partners will be allowed remuneration only at the rate of ₹ 2,000 per month.

Question-9 :
M/s. HIG, a firm, consisting of three partners namely, H, I and G, carried on the business of purchase and sale of television sets in wholesale and manufacture and sale of pens under a deed of partnership executed on 1.4.2013. H, I and G were partners in their individual capacity.

The deed of partnership provided for payment of salary amounting to ₹ 1,25,000 each to H and G, who were the working partners. A new deed of partnership was executed on 1.10.2023 which, apart from providing for payment of salary to the two working partners as mentioned in the deed of partnership executed on 1.4.2013, for the first time provided for payment of simple interest @ 12% per annum on the balances standing to the credit of the Capital accounts of partners from 1.4.2023.

The firm was dissolved on 31.3.2024 and the capital assets of the firm were distributed among the partners on 20.4.2024. The net profit of the firm for the year ended 31.3.2024 after payment of salary to the working partners and debit/credit of the following items to the Profit and Loss Account was ₹ 1,50,000:

(i) Interest amounting to ₹ 1,00,000 paid to the partners on the balances standing to the credit of their capital accounts from 1.4.2023 to 31.3.2024.
(ii) Interest amounting to ₹ 50,000 paid to the partners on the balances standing to the credit of their Current accounts from 1.4.2023 to 31.3.2024.
(iii) Interest amounting to ₹ 20,000 paid to the Hindu undivided family of partner H @ 18% per annum.
(iv) Payment of ₹ 25,000 towards purchase of television sets (stock in trade) made by crossed cheque on 1.11.2023.
(v) ₹ 30,000 being the value of gold jewellery received as gift from a manufacturer for achieving sales target.
(vi) Depreciation amounting to ₹ 15,000 (as per Income-tax Rules) on motor car bought and used exclusively for business purposes but registered in the name of partner 'H'.
(vii) Depreciation under section 32(1)(ii) amounting to ₹ 37,500 of new machinery bought and installed for manufacture of pens on 1.11.2023 at a cost of ₹ 5,00,000.
(viii) Interest amounting to ₹ 25,000 received from bank on fixed deposits made out of surplus funds.

The firm furnishes the following information relating to it:
(a) Closing stock-in-trade was valued at ₹ 60,000 as per the method of lower of cost or net realizable value consistently followed by it. The net realizable value of the closing stock-in-trade was ₹ 65,000.
(b) Brought forward business loss relating to the assessment year 2023-24 was ₹ 50,000.
(c) The fair market value of the capital assets as on 20.4.2024 was ₹ 20,00,000 and the cost of their acquisition was ₹ 15,00,000.

Compute the total income of M/s. HIG for the Assessment Year 2024-25.
You are required to furnish explanations for the treatment of the various items given above.

Solution :

Computation of total income of M/s. HIG for the A.Y. 2024-25

Particulars	**₹**	**₹**
Net profit as per profit & loss account		1,50,000
Add: Interest to partners on capital accounts for the period from 1.4.2023 to 30.9.2023 disallowed (total interest ₹ 1,00,000 but deduction limited to 6 months only hence 50% thereof is deductible and the balance is added) **[Note (i)]**	50,000	

Interest to partners on current accounts from 1.4.2023 to 31.3.2024 – not authorized by the deed, hence disallowed **[Note (ii)].**	50,000	
100% of ₹ 25,000 paid towards purchase of television sets otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed (being stock in trade, hence disallowed) **[Note (iv)].**	25,000	
Difference on account of valuation of closing stock-in-trade at net realisable value (₹ 65,000 less ₹ 60,000) **[Note (ix)]**	5,000	
Salary paid to working partners considered separately.	2,50,000	3,80,000
		5,30,000
Less: Additional depreciation on new machinery (₹ 5,00,000 x 20%) = ₹ 1,00,000. Only 50% is allowable as deduction. **[Note (vii)]**		50,000
		4,80,000
Less: Interest received from bank on fixed deposits considered separately		25,000
		4,55,000
Less: Salary to working partners -		
(i) As per limit in section 40(b) On first ₹ 3,00,000 @ 90%	2,70,000	
On the balance of ₹ 1,55,000 @ 60%	93,000	
	3,63,000	
(ii) Salary actually paid	2,50,000	
Deduction allowed being (i) or (ii), whichever is less		2,50,000
		2,05,000
Less: Business loss relating to A.Y. 2023-24 set off		50,000
Income from business		**1,55,000**
Income from other sources		
Interest received from bank on fixed deposits **[Note (viii)].**		25,000
Total Income		**1,80,000**

Notes:

(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 1.10.2023 alone is eligible for deduction, since the partnership deed was executed only on 1.10.2023. Interest for the period prior to 1.10.2023 is not allowed.

(ii) The partnership deed of 1.10.2023 provides for payment of interest on balances in capital accounts of partners only. As such, the interest paid on the balances standing to the credit of the current accounts of partners is not allowable under section 40(b). The Kerala High Court has, in Novel Distributing Enterprises v. DCIT (2001) 251 ITR 704 (Ker), on identical facts, held that interest paid to the partners on their current account balances is not allowable.

(iii) Since H is a partner in his individual capacity, interest paid to the Hindu Undivided Family of partner H does not attract disallowance under section 40(b)(iv). Also, assuming that the provisions of section 40A(2) do not get attracted in this case, such interest shall be allowed as deduction in full even though the interest rate is more than 12% p.a.

(iv) Section 40A(3) provides for disallowances @100% of the expenditure incurred for an amount exceeding ₹ 10,000 otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed. Since the firm has made payment of ₹ 25,000 towards purchase of television sets by a crossed cheque and not by an account payee cheque, 100% of such expenditure would be disallowed.

(v) Gold jewellery valued at ₹ 30,000 received as gift from a manufacturer for achieving sales target is taxable under section 28(iv), being a benefit arising from business. Since it has already been credited to profit and loss account, no further adjustment is required.

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

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

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

(ix) As per para 24 of ICDS II: Valuation of Inventories, closing stock has to be valued at net realizable value in the case of a dissolved firm. As such, the closing stock-in-trade of the firm has to be valued at the net realizable value of ₹ 65,000. Since it has been valued at ₹ 60,000, being the cost, the balance ₹ 5,000 has to be added.

(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 2023-24 is not considered for calculation of book-profit.

(xi) Section 9B would be attracted in the hands of M/s HIG in the A.Y. 2025-26, since capital assets are received by the partners on 20.4.2024, i.e., P.Y. 2024-25.

Question-10 :

Vijay Agencies, a partnership firm constituted by three partners with equal shares was dissolved on 1-03-2023 after a search. The tax liability of the firm outstanding to be paid was determined at ₹ 15 lakhs. Out of three partners, one was declared insolvent on 18-03-2024 by the Court. The Assessing Officer, for recovering the demand, attached the Bank Accounts of other two partners and could recover an amount of ₹ 6 lakhs from the Account of one such partner. You are asked the following questions by the partners of the dissolved firm:

(i) About the liability of each of them to pay outstanding demand.
(ii) Whether the action of Assessing Officer to attach the Bank Account of partners to recover the tax demand of the dissolved firm is justified?

Solution :

As per section 189(3), every person who was at the time of dissolution, a partner of the firm, shall be jointly and severally liable for the amount of tax, penalty or other sum payable and all the provisions of the Act relating to assessment of such tax or imposition of such penalty or other sum, shall apply. Therefore,

(i) the three partners (till one was declared as insolvent by the Court) are jointly and severally liable for making the payment of outstanding dues of ₹ 15 lakhs. After insolvency of one partner, the other two partners are jointly and severally liable to pay such demand.

(ii) Accordingly, the action of the Assessing Officer to attach the bank accounts of the partners for recovery of outstanding demand is correct and the amount of ₹ 6 lakhs recovered by attachment of the bank account of one of the partners is also in order.

Question-11 :

Transfer fees are received by a cooperative housing society from its incoming and outgoing members. Are such transfer fees liable to tax in the hands of the cooperative society?

Solution :
The issue under consideration is whether the transfer fees received by a co-operative housing society from its incoming and outgoing members is taxable or exempt on the principle of mutuality.
On this issue, the High Court, in Sind Co-operative Housing Society v. ITO (2009) 317 ITR 47, observed that under the byelaws of the society, charging of transfer fees had no element of trading or commerciality. Both the incoming and outgoing members have to contribute to the common fund of the assessee. The amount paid was to be exclusively used for the benefit of the members as a class.

The High Court, therefore, held that transfer fees received by a co-operative housing society, whether from outgoing or from incoming members, is not liable to tax on account of the principle of mutuality, since the predominant activity of such co-operative society is maintenance of property of the society and there is no taint of commerciality, trade or business. Further, section 28(iii), which provides that income derived by a trade, professional or similar association from specific services performed for its members shall be treated as business income, can have no application since the co-operative housing society is not a trade or professional association.

Applying the rationale of the above ruling, transfer fees received by a co-operative housing society from its incoming and outgoing members would not be liable to tax in the hands of the co-operative society.

Question-12 :
Mr. X aged 34 years and a resident in India, has a total income of ₹ 6,70,000, comprising his salary income and interest on bank fixed deposit. Compute his tax liability for A.Y.2024-25 under default tax regime under section 115BAC.

Solution :

Computation of tax liability of Mr. X for A.Y. 2024-25

Particulars	**₹**
Tax on total income of ₹ 6,70,000	
Tax@10% of ₹ 70,000 + ₹ 15,000 [5% of ₹ 3,00,000 i.e., from ₹ 3,00,000 to ₹ 6,00,000]	22,000
Less: Rebate u/s 87A (Lower of tax payable or ₹ 25,000)	22,000
Tax Liability	**Nil**

Question-13 :
Ms. Pallavi aged 32 years and a resident in India, has a total income of ₹ 7,18,000, comprising his salary income and interest on bank fixed deposit. Compute his tax liability for A.Y.2024-25 under default tax regime under section 115BAC.

Solution :

Computation of tax liability of Ms. Pallavi for A.Y. 2024-25

Particulars	**₹**	
Step 1: Total Income of ₹ 7,18,000 - ₹ 7,00,000	18,000	(A)
Step 2: Tax on total income of ₹ 7,18,000		
Tax@10%of ₹ 1,18,000 + ₹ 15,000	26,800	(B)
Step 3: Since B > A, rebate u/s 87A would be B – A [₹ 26,800 - ₹ 18,000]	8,800	
	18,000	
Add: HEC@4%	720	
Tax Liability	**18,720**	

Question-14 :
Mr. Ram (aged 56) is Karta of his HUF. The HUF consists of himself, his wife and two sons viz. Mr. C (aged 28) and Minor D (aged 16). The HUF is assessed to income tax and has business income from the year 2015-16 onwards. The business income of HUF for the year ended 31.3.2024 is ₹ 5,00,000 (computed). Mr. Ram is employed in a private company and his salary income for the same period is ₹ 6,10,000 (computed).

You are requested to answer the following treating each of them as independent situations:

(i) Mr. C gave cash gift of ₹ 1,00,000 to the HUF of Mr. Ram. What would be the total income of HUF?
(ii) The HUF has one house property fetching rent of ₹ 10,000 per month and some movable assets. There is a proposal to make a partial partition of HUF by allotting the house property to Mr. C. Is it advisable to do a partial partition?
(iii) Minor D earned ₹ 70,000 by use of his special skill and talent. How would his income be taxed?
(iv) A car owned personally by Mr. Ram was blended with HUF during the year. It was leased out for a monthly rent of ₹ 10,000 from 1-10-2023. How would this income be taxed?

Solution :

(i) Cash gift of ₹ 1 lakh by Mr. C, Ram's major son, to the HUF of Mr. Ram would not be taxable in the hands of the HUF, since gifts from a relative of the HUF does not fall within the scope of income taxable under section 56(2)(x). Since Mr. C, being Mr. Ram's son, is a member of Ram's HUF, he is a relative of the HUF. Hence, the total income of HUF would be ₹ 5 lakhs, being the business income computed.

Note - Salary income of Mr. Ram, the Karta of the HUF, who is employed in a private company would be taxed in his individual hands, since the remuneration earned by the Karta on account of the personal qualifications and exertions and not on account of the investment of the family funds cannot be treated as income of the HUF.

(ii) Partial partition (after 31.12.1978) is not recognized and the HUF, which has been hitherto assessed to tax, shall continue to be liable to be assessed as if no such partial partition has taken place [Section 171(9)].
The rental income in this case would continue to be assessed in the hands of the HUF, even after partial partition. Therefore, it is not advisable to do a partial partition.

(iii) Income of ₹ 70,000 earned by Minor D by use of his special skill and talent would be taxable in his individual hands. It will not be included in the hands of his parent by virtue of the exception to section 64(1A) contained in the proviso to section 64(1A).

(iv) As per section 64(2), where a member of the HUF blends his self-acquired property for inadequate consideration with the HUF, income derived therefrom is deemed to arise to the transferor-member and not to the HUF. In this case, Mr. Ram has blended his personal property (i.e., car) with the HUF.
Since there is no consideration in case of blending, the income from car computed in the prescribed manner, [which can be as per the presumptive provisions or lease rental of ₹ 60,000 (₹ 10,000 × 6 months) less depreciation] would be deemed as the income of Mr. Ram.

Question-15 :

JK Associates is an Association of Persons (AOP) consisting of two members, J, aged 40 years and K, aged 37 years. Shares of the members are: 60% (J) and 40% (K). Income of the AOPs for the previous year 2023-24 is ₹ 11 lakhs.
J and K's income, other than income from AOP, amount to ₹ 2.50 lakhs and ₹ 2.90 lakhs, respectively.

Compute tax liability of the AOP assuming that J exercises the option to shift out of the default regime and the AOP and its member K pay tax under default tax regime under section 115BAC.

Solution :

Computation of tax of AOP is governed by section 167B. Tax on total income of AOP is computed as follows:

(i) If individual share of a member is known, and the total income of any member, excluding his share from such AOP, exceeds the basic exemption limit, then, the AOP will pay tax at the maximum marginal rate.
(ii) If individual share of a member is known and no member has total income (excluding his share from AOP) exceeding the basic exemption limit, then, the AOP will pay tax at the rates applicable to an individual.

Section 86 provides for assessment of share in the hands of members of AOP as follows:
A member's share in the total income of AOP will be treated as follows:-

(i) If an AOP has paid tax at the maximum marginal rate or a higher rate, the member's share in the total income of AOP will not be included in his total income and will be exempt.
(ii) If the AOP has paid tax at regular rates applicable to an individual, the member's share in the income of AOP will be included in his total income and he will be allowed rebate at the average rate of tax in respect of such share.

Question-16 :
Mr. Gavaskar sought voluntary retirement from a Government of India Undertaking and received compensation of ₹ 40 lacs on 28th February, 2023. He is planning to use the money as capital for a business dealership in electronic goods. The manufacturer of the product requires a security deposit of ₹ 15 lacs, which would carry interest at 8% p.a. Gavaskar's wife is a graduate and has worked as marketing manager in a multinational company for 15 years. She now looks for a change in employment. She is willing to join her husband in running the business. She expects an annual income of ₹ 5 lacs. Mr. Gavaskar would like to draw a monthly remuneration of ₹ 40,000 and also interest @ 10% p.a. on his capital in the business. Mr. Gavaskar has approached you for a tax efficient structure of the business.

Discuss the various issues, which are required to be considered for formulating your advice. Computation of income or tax liability is not required.

Solution :
The selection of the form of organisation to carry on any business activity is essential in view of the differential tax rates prescribed under the Income-tax Act, 1961 and specific concessions and deductions available under the Act in respect of different entities. For the purpose of formulating advice as to the tax efficient structure of the business, it is necessary for the tax consultant to consider the following issues:

(i) In the case of sole proprietary concern, interest on capital and remuneration paid to the proprietor is not allowable as deduction under section 37(1) as the expenditure is of personal nature. On the other hand, in the case of partnership firm, both interest on capital and remuneration payable to partners are allowable under section 37(1) subject to the conditions and limits laid down in section 40(b). The partnership should be evidenced by an instrument and the individual share of partners should be specified in the instrument. Remuneration and interest should however, be authorised by the instrument of partnership and paid in accordance with such instrument. Such interest and salary shall be taxable in the hands of partners to the extent the same is allowed as deduction in the hands of the firm under section 40(b). Interest to partners can be allowed upto 12% on simple interest basis, while the limit for allowability for partners' remuneration is based on book profit under section 40(b). As per section 40(b)(v), partners' remuneration shall be allowed to the extent of aggregate of -

   (a) On the first ₹ 3,00,000 of book profit or in case of loss – ₹ 1,50,000 or at the rate of 90% of book profits, whichever is more
   (b) On the balance of book profit – at the rate of 60%

   Note – However, if the firm is eligible to declare presumptive taxation under section 44AD, 8% of gross receipts or 6% of gross receipts, as the case may be, would be deemed as its income. All deductions under section 30 to 37 are deemed to be allowed. No deduction is allowable, including deduction for partner's remuneration and interest on capital.
(ii) Partner's share in the profits of firm is not taxed in the hands of the partners by virtue of section 10(2A).
(iii) If a proprietary concern is formed, the salary of Mrs. Gavaskar shall be allowed as deduction under section 37(1).
(iv) The possibility of invoking section 40A(2) cannot be ruled out as salary is payable to a relative, who is an interested person within the meaning of section 40A(2). However, it can be argued successfully that salary of ₹ 5 lacs is justified in view of her long experience as marketing manager of a multinational company and the fair market value of services to be rendered by her to the concern.

(v) An issue arises as to whether remuneration of Mrs. Gavaskar would be includible in the total income of Mr. Gavaskar. Under section 64(1)(ii), remuneration of the spouse of an individual working in a concern in which the individual is having a substantial interest shall be included in the total income of the individual. However, the clubbing provision does not apply if the spouse possesses technical or professional qualification and the income is solely attributable to the application of his or her technical or professional knowledge and experience. Further, technical or professional qualification would not necessarily mean the qualifications obtained by degree or diploma of any recognized body [Batta Kalyani vs. CIT (1985) 154 ITR 0059 (AP)]. The experience of Mrs. Gavaskar as a marketing manager in a multinational company for 15 years may reasonably be considered as a professional qualification for this purpose.

(vi) If Mrs. Gavaskar joins the proprietary concern or partnership concern of her husband as employee, remuneration of ₹ 5 lacs shall be taxed in her hands under the head "salary". Standard deduction u/s 16(ia) of Rs. 50,000 would be allowed.

(vii) lf she joins as partner in the business, remuneration shall be taxed in her hand as business income under section 28 to the extent such remuneration is allowed in the hands of the firm under section 40(b).

(viii) For individuals, tax can be computed as per slab rates provided under the default regime under section 115BAC(1A). Alternatively, he can exercise the option to shift out of the default tax regime and pay tax under the optional tax regime as per the regular provisions of the Act at the tax rates prescribed by the Annual Finance Act of that year. However, where he exercises the option of shifting out of the default regime for any previous year, he would be able to withdraw such option only once.

The surcharge rate is also depended on the total income and the highest surcharge would be 37% where total income exceeds ₹ 5 crores and the assessee has opted to shift out of the default tax regime whereas under default regime highest rate of surcharge would be 25%. Health and Education cess @ 4% on income-tax plus surcharge, if applicable, is attracted in all the cases. Whereas for partnership firms' tax is levied at a flat rate of 30%. Surcharge @12% would be attracted only if total income exceeds ₹ 1 crore.

If a sole proprietary concern is formed, Mr. Gavaskar has an option to pay income-tax in respect of his total income (other than income chargeable to tax at special rates under Chapter XII) as per the default regime under section 115BAC or as per the optional regime under the normal provisions of Income-tax Act.

Question-17 :

ABC Ltd., a pharmaceutical company incorporated in year 2015-16, purchased a new plant and machinery for ₹ 10 lakhs on 01-04-2023. The total income of the company for Assessment Year 2024-25 before allowing additional depreciation in respect of new plant and machinery is ₹ 20 lakhs. ABC Ltd. has not opted for the concessional tax regime under section 115BAA or 115BA so far. Compute the tax liability of ABC Ltd. for A.Y. 2024-25 assuming its turnover for the previous year 2021-22 was ₹ 350 crores. Ignore the provisions of MAT.

Solution :

Computation of tax liability of ABC Ltd. for A.Y. 2024-25 under regular provisions of the Act

Particulars	**₹**
Total Income before allowing additional depreciation	20,00,000
Less: Additional Depreciation u/s section 32(1)(iia)[₹10 lakh x 20%]	2,00,000
Total Income	18,00,000
Applicable Tax Rate (since turnover of P.Y. 2021-22 ≤ ₹ 400 crores)	25%
Tax payable	4,50,000
Add: Health & Education cess@4%	18,000
Tax Liability	**4,68,000**

Computation of tax liability of ABC Ltd. for A.Y. 2024-25 under section 115BAA

Particulars	**₹**
Total Income before allowing additional depreciation	20,00,000
Less: Additional Depreciation u/s section 32(1)(iia) [not allowable as deduction while computing income u/s 115BAA]	-
Total Income	20,00,000
Applicable Tax Rate	22%
Tax payable	4,40,000
Add: Surcharge@10%	44,000
	4,84,000
Add: Health & Education cess@4%	19,360
Tax Liability	**5,03,360**

Since tax payable as per the regular provisions of the Act is lower than the tax payable under the provisions of section 115BAA, it would be beneficial for ABC Ltd. not to opt for section 115BAA.

Question-18 :
XYZ Ltd. is engaged in the manufacture of textile since 01-04-2009. Its Statement of Profit & Loss shows a profit of ₹ 700 lakhs after debit/credit of the following items:

(a) Depreciation calculated on the basis of useful life of assets as per provisions of the Companies Act, 2013 is ₹ 50 lakhs.

(b) Employer's contribution to EPF of ₹ 2 lakhs and Employees' contribution of ₹ 2 lakhs for the month of March 2024 were remitted on 30th June, 2024.

(c) The company appended a note to its Income Statement that industrial power tariff concession of ₹ 2.5 lakhs was received from the State Government and credited the same to Statement of P & L.

(d) The company had provided an amount of ₹ 25 lakhs being sum estimated as payable to workers based on agreement to be entered with the workers union towards periodical wage revision once in 3 years. The provision is based on a fair estimation of wages and reasonable certainty of revision once in 3 years.

(e) The company had made a provision of 10% of its debtors towards bad and doubtful debts. Total sundry debtors of the company as on 31-03-2024 was ₹ 200 lakhs.

(f) A debtor who owed the company an amount of ₹ 40 lakhs was declared insolvent and hence, was written off by debit to Statement of Profit and loss.

(g) Sundry creditors include an amount of ₹ 50 lakhs payable to A & Co, towards supply of raw materials, which remained unpaid due to quality issues. An agreement has been made on 31-03-2024, to settle the amount at a discount of 75% of the outstanding. The amount waived is credited to Statement of Profit and Loss.

(h) The opening and closing stock for the year were ₹ 200 lakhs and ₹ 255 lakhs, respectively. They were overvalued by 10%.

(i) Provision for gratuity based on actuarial valuation was ₹ 500 lakhs. Actual gratuity paid debited to gratuity provision account was ₹ 300 lakhs.

(j) Commission of ₹ 1 lakhs paid to a recovery agent for realization of a debt. Tax has been deducted and remitted as per Chapter XVIIB of the Act.

(k) The company has purchased 500 tons of industrial paper as packing material at a price of ₹ 30,000/ton from PQR, a firm in which majority of the directors are partners. PQR's normal selling price in the market for the same material is ₹ 28,000/ton.

Additional Information:

(i) There was an addition to Plant & Machinery amounting to ₹ 50 lakhs on 10-06-2023, which was used for more than 180 days during the year. Additional depreciation has not been adjusted in the books.

(ii) Normal depreciation calculated as per Income-tax Rules, 1962 is ₹ 80 lakhs.

(iii) The company had credited a sub-contractor an amount of ₹ 10 lakhs on 31-03-2023 towards repairing a machinery component. The tax so deducted was remitted on 31-12-2023.

(iv) The company has collected ₹ 7 lakhs as GST from its customers and paid the same on the due dates. However, on an appeal made, the High Court directed the Department to refund ₹ 3 lakhs to the company. The company, in turn, refunded ₹ 2 lakhs to the customers from whom the amount was collected and the balance of ₹ 1 lakh is still lying under the head "Current Liabilities".

Compute total income and tax liability for A.Y. 2024-25. Ignore MAT provisions and the provisions of section 115BAA.

Note - The turnover of XYZ Ltd. for the P.Y.2021-22 was ₹ 405 crore.

Solution :

Computation of Total Income of XYZ Ltd. for the A.Y.2024-25

Particulars		**Amount (₹)**
Profits and Gains from Business and Profession		
Profit as per Statement of profit and loss		7,00,00,000
Add: Items debited but to be considered separately or to be disallowed		
(a) Depreciation as per Companies Act, 2013	50,00,000	
(b) Employees' contribution to EPF [Since employees' contribution to EPF has not been deposited on or before the due date under the PF Act, the same is not allowable as deduction as per Explanation 2 below to section 36(1)(va). Since the same has been debited to Statement of profit and loss, it has to be added back for computing business income].	2,00,000	
(c) Employer's contribution to EPF [As per section 43B, employers' contribution to EPF is allowable as deduction since the same has been deposited on or before the due date of filing of return under section 139(1). Since the same has been debited to Statement of profit and loss, no further adjustment is necessary]	Nil	
(d) Provision for wages payable to workers [The provision is based on fair estimate of wages and reasonable certainty of revision, the provision is allowable as deduction, since ICDS X requires 'reasonable certainty for recognition of a provision, which is present in this case. As the provision has been debited to Statement of profit and loss, no adjustment is required while computing business income]	Nil	
(e) Provision for doubtful debts [10% of ₹ 200 lakhs]	20,00,000	
[Provision for doubtful debts is allowable as deduction under section 36(1)(viia) only in case of banks, public financial institutions, state financial corporations, state industrial investment corporations and non-banking financial corporations. Such provision is not allowable as deduction in the case of a manufacturing company. Since the same has been debited to Statement of profit and loss, it has to be added back for computing business income]		
(f) Bad debts written off [Bad debts write off in the books of account is allowable as deduction under section 36(1)(vii). Since the same has already been debited to Statement of profit and loss, no further adjustment is required]	Nil	

(i) Provision for gratuity [Provision of ₹ 500 lakhs for gratuity based on actuarial valuation is not allowable as deduction as per section 40A(7). However, actual gratuity of ₹ 300 lakhs paid is allowable as deduction. Hence, the difference has to be added back]	2,00,00,000	
(j) Commission paid to recovery agent for realization of a debt. [Commission of ₹ 1 lakh paid to a recovery agent for realisation of a debt is an allowable expense under section 37 as per DCIT v. Super Tannery (India) Ltd. (2005) 274 ITR 338 (All). Since the same has been debited to Statement of profit and loss, and tax has been deducted at source, no further adjustment is required]	Nil	
(k) Purchase of paper at a price higher than the fair market value [As per section 40A(2), the difference between the purchase price (₹ 30,000 per ton) and the fair market value (₹ 28,000 per ton) multiplied by the quantity purchased (500 tons) has to be added back since the purchase is from a related party, a firm in which majority of the directors are partners, at a price higher than the fair market value]	10,00,000	
AI(vi) GST not refunded to customers out of GST refund [The amount of GST refunded to the company by the Government is a revenue receipt chargeable to tax under section 41(1). Deduction can be claimed of amount refunded to customers [CIT v. Thirumalaiswamy Naidu & Sons (1998) 230 ITR 534 (SC)]. Hence, the net amount of ₹ 1,00,000 (i.e., ₹ 3,00,000 minus ₹ 2,00,000) would be chargeable to tax]	1,00,000	2,83,00,000
		9,83,00,000
Less: Items credited but to be considered separately/ permissible expenditure and allowances		
(k) Industrial power tariff concession received from State Government [Any assistance in the form of, inter alia, concession received from the Central or State Government would be treated as income as per section 2(24)(xviii). Since the same has been credited to Statement of profit and loss, no adjustment is required].	Nil	
(g) Discount given by Sundry Creditors for supply of raw materials [Discount of 75% given by Sundry Creditors for supply of raw materials is taxable under section 41(1). Since the same has already been credited to Statement of profit and loss, no further adjustment is required]	Nil	
AI(ii) Depreciation as per Income-tax Act, 1961	80,00,000	
(h) Over-valuation of stock [₹ 55 lakhs × 10/110] [The amount by which stock is over-valued has to be reduced for computing business income. ₹ 50 lakhs, being the difference between closing and opening stock, has to be adjusted to remove the effect of over-valuation]	5,00,000	
AI(i) Additional Depreciation [Additional depreciation@20% is allowable on ₹ 50 lakhs, being actual cost of new plant & machinery acquired on 10.06.2023, as the same was put to use for more than 180 days in the P.Y.2023-24.]	10,00,000	
AI(iii) Payment to a sub-contractor where tax deducted last year was remitted after the due date of filing of return [30% of ₹ 10 lakhs, being payment to a subcontractor, would have been disallowed under section 40(a)(ia) while computing the business income of A.Y.2023-24, since tax deducted was remitted after the due date of filing of return. However, the same is allowable in A.Y.2024-25, since the remittance has been made on 31.12.2023]	3,00,000	98,00,000
Total Income		**8,85,00,000**

Computation of tax liability of XYZ Ltd. for A.Y.2024-25

Particulars	**₹**
Tax @30% on the above total income (since the turnover exceeded ₹400 crore in the P.Y. 2021-22)	2,65,50,000
Add: Surcharge @ 7% (since total income exceeds ₹1 crore but less than ₹ 10 crore)	18,58,500
	2,84,08,500
Add: Health and Education cess @ 4%	11,36,340
Total tax liability	**2,95,44,840**

Question-19 :

Parik Hospitality Limited is engaged in the business of running hotels of 3-star category. The company's Statement of Profit and Loss for the previous year ended 31st March 2024 shows a profit of ₹ 152 lakhs after debiting or crediting the following items:

(a) Payment of ₹ 0.25 lakh and ₹ 0.30 lakh in cash on 3rd December 2023 and 10th December 2023, respectively, for purchase of raw corn to Mr. Raja, an agriculturist, and Mr. Khalid, a spice trader for purchase of masala used for corn products, respectively.

(b) Contribution towards employees' pension scheme notified by the Central Government under section 80CCD for a sum of ₹ 3 lakhs calculated at 12% of aggregate of basic salary and dearness allowance (forming part of retirement benefits) payable to the employees in terms of employment.

(c) Payment of ₹ 6.50 lakhs towards transportation of various materials procured by one of its hotels to M/s. Bansal Transport, a partnership firm, without deduction of tax at source. The firm opts for presumptive taxation under section 44AE and has furnished a declaration to this effect. It also furnished its Permanent Account Number in the tender document.

(d) Profit of ₹ 12 lakhs on sale of a plot of land to Avimunya Limited, a domestic company, the entire shares of which are held by the assessee company. The plot was acquired by Parik Hospitality Limited on 1st June 2022.

(e) Contribution of ₹ 2.50 lakhs to Indian Institute of Technology with a specific direction for use of the amount for scientific research programme approved by the prescribed authority.

(f) Expense of ₹ 10 lakhs on foreign travel of two directors for a collaboration agreement with a foreign company for a brewery project to be set up. The negotiation did not succeed, and the project was abandoned.

(g) Fees of ₹ 1 lakh paid to independent directors for attending Board meeting without deduction of tax at source under section 194J.

(h) Depreciation charged ₹ 10 lakhs.

(i) ₹ 10 lakhs, being the additional compensation received from the State Government pursuant to an interim order of Court in respect of land acquired by the State Government in the previous year 2021-22.

(j) Dividend received from a foreign company ₹ 5 lakhs in which it holds 15% of the equity share capital.

Additional information:

(i) As a corporate debt restructuring, the bank has converted unpaid interest of ₹ 10 lakhs upto 31st March 2023 into a new loan account repayable in five equal annual installments. The first installment of ₹ 2 lakhs was paid in March 2024 by debiting new loan account.

(ii) Depreciation as per Income-tax Act, 1961₹ 15 lakhs.

(iii) The company received a bill for ₹ 2 lakhs on 31st March 2024 from a supplier of vegetables for supply made in March 2024. The bill was omitted to be recorded in the books in March 2024. The bill was paid in April 2024 and the necessary entry was made in the books then.

(iv) Dividend of ₹ 7 lakhs is distributed on 25.09.2024 to its shareholders.

Compute total income of Parik Hospitality Limited for the Assessment Year 2024-25 indicating the reason for treatment of each item assuming that the company is not eligible for deduction u/s 35AD. Ignore the provisions relating to minimum alternate tax and the provisions of section 115BAA.

Solution :

Computation of Total Income of Parik Hospitality Ltd. for the A.Y.2024-25

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 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 - CBDT Circular 27/2017 dated 3/11/2017].	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 2/10, 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 Mc Gaw-Ravindra Laboratories (India) Ltd. v. CIT (1994) 210 ITR 1002 (Guj.). 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
		1,63,10,000
Less: Items credited but to be considered separately/ Expenditure to be allowed		
(d) Profit on sale of plot of land to 100% subsidiary [Profit on sale of plot of land taxable or otherwise under the head "Capital Gains". 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) & AI(ii) 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 5,00,000	

(i) Additional compensation received from State Government [Additional compensation is taxable or otherwise under the head "Capital Gains". Since the compensation has been credited to the statement of profit and loss, the same has to be deducted while computing business income]	10,00,000	
(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.2023-24, 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, 2024 (i.e., P.Y.2023-24), in respect of which bill of ₹ 2 lakhs received on 31.3.2024 has been omitted to be recorded in the books in that year, it has to be deducted to compute the business income [Kedarnath Jute Manufacturing Company Ltd. v. CIT (1971) 82 ITR 363 (SC)]. 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"		**1,27,10,00**
Capital Gains		
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).].	-	
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).]	-	
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**
Less: Deduction under Chapter VI-A		
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**

Question-20 :

Hyper Ltd., engaged in diversified activities, earned a profit of ₹ 14,25,000 after debit/credit of the following items to its statement of profit and loss for the year ended on 31.3.2024:

		₹
(a)	Items debited to Statement of Profit and Loss	
	Provision for loss of subsidiary	85,000
	Provision for income-tax demand	1,05,000
	Depreciation	3,60,000
	Interest on deposit credited to buyers on 31.3.2024 for advance received from them, on which tax was deducted in April 2024 and was deposited on 31.7.2024	1,00,000
(b)	Items credited to Statement of Profit and Loss	
	Long term capital gain on sale of equity shares on which securities transaction tax was paid at the time of acquisition and sale	3,60,000
	Income from units of UTI (Gross)	75,000

The company provides the following additional information:
(i) Depreciation includes ₹ 1,50,000 on account of revaluation of fixed assets.
(ii) Depreciation allowable as per Income-tax Rules is ₹ 2,80,000.
(iii) Brought forward Business Loss/Unabsorbed Depreciation:

F.Y.	Amount as per books		Amount as per Income-tax	
	Loss ₹	Depreciation ₹	Loss ₹	Depreciation ₹
2020-21	2,50,000	3,00,000	2,00,000	2,50,000
2021-22	Nil	2,70,000	1,00,000	1,80,000
2022-23	3,50,000	3,15,000	1,20,000	2,10,000

You are required to:
(i) compute the total income of the company for the assessment year 2024-25 giving the reasons for treatment of items and
(ii) examine the applicability of section 115JB of the Income-tax Act, 1961, and compute book profit and the tax credit to be carried forward.

Assume the tax rate applicable to Hyper Ltd for the P.Y. 2023-24 is 30%. Ignore the provisions of section 115BAA.

Solution :

Computation of total income of M/s Hyper Ltd. for the A.Y. 2024-25

Particulars	**₹**	**₹**
Profit as per Statement of Profit & Loss		14,25,000
Add: Items disallowed/considered separately		
Provision for loss of subsidiary [since it is not wholly and exclusively for the purpose of business of the assessee]	85,000	
Provision for income-tax [disallowed under section 40(a)(ii)]	1,05,000	
Interest on deposit credited to buyers on 31.3.2024 and tax deducted in April 2024 which was deposited on 31.7.2024 [30% disallowed under section 40(a)(ia) since tax is deducted only in the next year].	30,000	
Depreciation debited to statement of profit and loss [only depreciation calculated as per the Income-tax Rules, 1962 is allowable as deduction]	3,60,000	5,80,000
		20,05,000
Less: Items credited but not includible under business income or are exempt under the provisions of the Act		
Long-term capital gain on sale of equity shares on which securities transaction tax was paid, since it is not a business income.	3,60,000	
Income from units of UTI, since it is not a business income.	75,000	4,35,000
		15,70,000
Less: Depreciation (allowable as per the Income-tax Rules, 1962)		2,80,000
		12,90,000
Less: Set-off of brought forward business loss and unabsorbed depreciation		
Brought forward business loss under section 72	4,20,000	
Brought forward depreciation under section 32	6,40,000	10,60,000
Income from business		**2,30,000**
Capital Gains		
Long term capital gain on sale of equity shares on which securities transaction tax was paid at the time of acquisition and sale		3,60,000
Income from Other Sources		
Income from units of UTI		75,000
Total Income		**6,65,000**

Tax on LTCG exceeding ₹ 1 lakh @ 10% of ₹ 2,60,000		26,000
Tax on other income of ₹ 3,05,000 @ 30%		91,500
		1,17,500
Add: Health and Education cess @ 4%		4,700
Tax Payable as per the Income-tax Act, 1961		**1,22,200**

Computation of Book Profit under section 115JB

Particulars	**₹**	**₹**
Profit as per Statement of Profit & Loss		14,25,000
Add: Net Profit to be increased by the following amounts as per Explanation 1 below section 115JB(2)		
Provision for loss of subsidiary	85,000	
Provision for income-tax	1,05,000	
Depreciation debited to statement of profit and loss	3,60,000	5,50,000
		19,75,000
Less: Net Profit to be reduced by the following amounts as per Explanation 1 below section 115JB(2)		
Depreciation debited to statement of profit and loss (excluding depreciation on account of revaluation of fixed assets) (i.e., ₹ 3,60,000 – ₹ 1,50,000)	2,10,000	
Brought forward business loss or unabsorbed deprecation as per books of account, whichever is less, taken on cumulative basis	6,00,000	8,10,000
Book Profit		**11,65,000**
15% of book profit		1,74,750
Add: Health and Education cess @4%		6,990
Minimum Alternate Tax u/s 115JB		**1,81,740**

In case of a company, it has been provided that where income-tax payable on total income computed as per the provisions of the Act is less than 15% of book profit, the book profit shall be deemed as the total income and the tax payable on such total income shall be 15% thereof plus health and education cess @4%.

Accordingly, in this case, since income-tax payable on total income computed as per the provisions of the Act is less than 15% of book profit, the book profit of ₹ 11,65,000 is deemed to be the total income and income-tax is payable @ 15% thereof plus health and education cess @4%. The tax liability, therefore, works out to be ₹1,81,740.

Computation of tax credit

Particulars	**₹**
Tax on book profit under section 115JB	1,81,740
Less: Tax on total income computed as per the other provisions of the Act	1,22,200
Tax credit to be carried forward under section 115JAA [can be carried forward for 15 assessment years succeeding A.Y. 2024-25]	**59,540**

Question-21 :
The profit as per the Statement of profit and loss of XYZ Ltd., an Indian company, for the year ended 31.3.2024 is ₹ 190 lakhs arrived at after making the following adjustments:

	Particulars	**₹ (in lakhs)**
(i)	Depreciation on assets	100
(ii)	Reserve for currency exchange fluctuation	50
(iii)	Provision for tax	40
(iv)	Proposed dividend	120

Following further information are also provided by company:
(a) Provision for tax includes ₹ 2 lakhs of interest payable on income-tax.
(b) Depreciation includes ₹ 40 lakhs towards revaluation of assets.
(c) Amount of ₹ 50 lakhs credited to statement of P & L was drawn from revaluation reserve.
(d) Balance of statement of profit and loss shown in balance sheet at the asset side as at 31.3.2023 was ₹ 30 lakhs which includes unabsorbed depreciation of ₹ 10 lakhs.
Compute the book profit under section 115JB for the year ended 31.3.2024.

Solution :

Computation of book profit of XYZ Ltd. for the year ended 31.3.2024

Particulars	**₹**	**₹**
Profit as per Statement of Profit & Loss		1,90,00,000
Add: Net profit to be increased by the following amounts as per Explanation 1 below section 115JB(2)		
Depreciation on assets debited to Statement of P& L	1,00,00,000	
Reserve for currency exchange fluctuation, since the amount carried to any reserve, by whatever name called, is to be added back	50,00,000	
Provision for tax (See Note below)	40,00,000	
Proposed dividend	1,20,00,000	3,10,00,000
		5,00,00,000
Less: Net profit to be decreased by the following amounts as per Explanation 1 below section 115JB(2)		
Depreciation other than depreciation on revaluation of assets (₹ 100 lakhs - ₹ 40 lakhs)	60,00,000	
Withdrawal from revaluation reserve restricted to the extent of depreciation on account of revaluation of assets (₹ 50 lakhs or ₹ 40 lakhs, whichever is less)	40,00,000	
Unabsorbed depreciation or brought forward business loss, whichever is less, as per the books of account. Unabsorbed depreciation ₹ 10 lakhs and brought forward business loss ₹ 20 lakhs – whichever is less	10,00,000	1,10,00,000
Book profit		**3,90,00,000**

Note – For the purpose of section 115JB, book profit means the profit as per the statement of profit and loss prepared in accordance with Schedule III to the Companies Act, 2013, as adjusted by certain additions/deductions as specified. One of the adjustments is to add back income-tax paid or payable, and the provisions therefor. Explanation 2 after subsection (2) of section 115JB clarifies that income-tax includes, inter alia, interest on incometax. Therefore, the entire provision of ₹ 40 lakhs for income-tax is added back for computing book profit for levy of minimum alternate tax.

Question-22 :
Mr. Harish, aged 66, running business as a proprietor furnishes the particulars of his income for the year ended 31.03.2024 as under:
(a) Net Profit of ₹ 3,65,500 from the wholesale business of textiles and fabrics arrived at after charge of following expenses in the Profit & Loss Account:
  (i) Personal travelling expenses of ₹ 12,750.
  (ii) Purchase of furniture for shop on 13.6.2023 of ₹ 25,000 but charged in shop expenses.

(b) He owns a house with two floors constructed with the financial assistance of HDFC, out of which ground floor is used by him for self-use and first floor was let out on rent for ₹ 8,500 p.m. from April 2023. The municipal tax paid for the whole house was of ₹ 2,500 and interest paid on housing loan for the construction was ₹ 52,000. Both the floors of the house are identical.

(c) He deposited insurance premium on the life of self of ₹ 12,500, wife ₹ 13,500, son and daughter of ₹28,000, repaid housing loan of ₹ 50,000 and paid ₹ 55,000 by credit card for health insurance of himself and his family.

Compute the total income and the amount of tax payable by Mr. Harsh on such income for the Assessment Year 2024-25 assuming that he has exercised the option to shift out of the default tax regime under section 115BAC.

Solution :

Computation of total income and tax payable by Mr. Harish for the A.Y. 2024-25 under the normal provisions of the Act

Particulars	**₹**	**₹**
Income from house property		
Self-occupied portion (50%)		
Annual Value under section 23(2)	Nil	
Less: Deduction under section 24(b)		
Interest on housing loan [₹ 52,000 × 50%]	26,000	(26,000)
Let-out portion (50%)		
Income of let out portion being rent of ₹ 8,500 p.m. received for 12 months [Rent received has been taken as the GAV in the absence of other information.]		
Gross Annual Value under section 23(1) (₹ 8,500 × 12)	1,02,000	
Less: 50% of municipal taxes paid allowable in respect of rented out portion (i.e., 50% of ₹ 2,500)	1,250	
Net Annual Value (NAV)	1,00,750	
Less: Deduction under section 24		
30% of NAV under section 24(a)	30,225	
Interest on housing loan under section 24(b)	26,000	44,525
		18,525
Profits and gains of business or profession		
Net profit as per profit and loss account of wholesale business of textiles and fabrics	3,65,500	
Add: Expenses charged in profit and loss account either not allowable or to be considered separately -		
Personal travelling expenses of proprietor	12,750	
Purchase of furniture wrongly debited to shop expenses	25,000	
	4,03,250	
Less: Depreciation on furniture @10% on ₹ 25,000	2,500	4,00,750
Gross Total Income		**4,19,275**
Less: Deduction under Chapter VI-A		
Under section 80C - Life insurance premium		
Self	12,500	
Wife	13,500	
Son and daughter	28,000	
- Housing loan repaid	50,000	
	1,04,000	
Under section 80D [Medical insurance premium]		
Mediclaim insurance premium of ₹ 55,000 [maximum deductible is ₹ 50,000 where it covers a resident senior citizen]	50,000	1,54,000
Total Income		**2,65,275**
Total Income (rounded off)		**2,65,280**
Tax on total income of ₹ 2,65,280		Nil
(The basic exemption limit for senior citizen is ₹ 3,00,000 for A.Y.2024-25 under the normal provisions of the Act)		

Question-23 :

PQR LLP, a limited liability partnership set up a unit in Special Economic Zone (SEZ) in the financial year 2019-20 for production of washing machines. The unit fulfills all the conditions of section 10AA of the Income-tax Act, 1961. During the financial year 2022-23, it has also set up a warehousing facility in a district of Tamil Nadu for storage of agricultural produce. It fulfills all the conditions of section 35AD. Capital expenditure in respect of warehouse amounted to ₹ 75 lakhs (including cost of land ₹ 10 lakhs). The warehouse became

operational with effect from 1st April 2023 and the expenditure of ₹ 75 lakhs was capitalized in the books on that date.

Relevant details for the financial year 2023-24 are as follows:

Particulars	**₹**
Profit of unit located in SEZ	40,00,000
Export sales of above unit	80,00,000
Domestic sales of above unit	20,00,000
Profit from operation of warehousing facility (before considering deduction under Section 35AD).	1,05,00,000

Compute income tax (including AMT under Section 115JC) payable by PQR LLP for Assessment Year 2024-25.

Solution :

Computation of total income and tax liability of PQR LLP for A.Y.2024-25
(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	
Less: Deduction under section 35AD [See Note (1) below]	65,00,000	
Business income of warehousing facility chargeable to tax		40,00,000
Gross Total Income		**80,00,000**
Less: Deduction under section 10AA [See Note (2) below]		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
Add: Health and Education cess @ 4%		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**
Add: Deduction under section 10AA		32,00,000
		80,00,000
Add: Deduction under section 35AD	65,00,000	
Less: Depreciation under section 32		
On building @10% of ₹ 65 lakhs [Assuming the capital expenditure of ₹ 65 lakhs is incurred entirely on buildings]	6,50,000	58,50,000
Adjusted Total Income		**1,38,50,000**
Alternate Minimum Tax @18.5%		25,62,250
Add: Surcharge@12% (since adjusted total income > ₹ 1 crore)		3,07,470
		28,69,720
Add: Health and Education cess@4%		1,14,789
		29,84,509
Tax liability under section 115JC (rounded off)		**29,84,510**

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 @ 100% of the capital expenditure is available under section 35AD for A.Y.2024-25 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. 2022-23 and capitalized in the books of account on 1.4.2023, being the date when the warehouse became operational, ₹ 65,00,000, being 100% of ₹ 65 lakhs would qualify for deduction under section 35AD.

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

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

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

Question-24 :

Victory Polyfibres, a partnership firm, has earned a gross total income of ₹ 300 lakhs for the year ended 31-3-2024. The firm has not undertaken any international transaction or specified domestic transaction during the said year.

The above income includes a profit of ₹ 220 lakhs from an undertaking having a turnover of ₹ 80 crores. This is the fifth year and deduction under section 80-IA is available to the extent of ₹ 200 lakhs.

There are some grey areas in the taxation workings and hence, the assessee is contemplating to file the return of income on 7-12-2024, after seeking clarifications from tax experts.

Advise the assessee-firm by working out the total income and tax payable, where the return is filed on 31-10-2024 or when the same is filed on 7-12-2024.

What is the practical solution as regards obtaining clarifications, which might or might not have an impact on the total income? You may ignore interest under section 234A, 234B, 234C and 234F while making the computation in support of your advice.

Solution :

As per section 80AC, while computing the total income of an assessee of a previous year **(P.Y.2023-24, in this case)** relevant to any assessment year **(A.Y.2024-25, in this case),** any deduction is admissible, inter alia, under section 80-IA, such deduction shall not be allowed unless it furnishes a return of income for such assessment year on or before the 'due date' specified in section 139(1).

Since the turnover of the partnership firm has exceeded the prescribed threshold limit in the previous year 2024-25, it would be subject to audit under section 44AB, in which case the 'due date' of filing its return of income for A.Y.2024-25 would be 31st October, 2024 as per section 139(1).

Computation of total income and tax liability of M/s. Victory Polyfibres for A.Y. 2024-25

I. Where the firm files its return of income on 31st October 2024:

Particulars	**₹ in lakhs**
Gross Total Income	300.00
Less: Deduction under section 80-IA	200.00
Total Income	**100.00**
Tax liability@ 30%	30.00
Add: Health and Education cess@4%	1.20
Regular income-tax payable	**31.20**

Computation of Alternate Minimum Tax payable [Section 115JC]

Particulars	**₹ in lakhs**
Total Income	100.00
Add: Deduction under section 80-IA	200.00
Adjusted Total Income	**300.00**
Alternate Minimum Tax (AMT) @ 18.5% on ₹ 300 lakhs	55.50
Add: Surcharge@12% (Since adjusted total income > ₹ 1 crore)	6.66
	62.16
Add: Health and Education cess@4%	2.49
Total tax payable (AMT)	**64.65**

Since the regular income-tax payable by the firm is less than the alternate minimum tax payable, the adjusted total income shall be deemed to be the total income of the firm for P.Y.2023-24 and it shall be liable to pay income-tax on such total income @ 18.5% **[Section 115JC(1)].** Therefore, the tax payable for the A.Y. 2024-25 would be ₹ 64.65 lakhs.

Tax credit for Alternate Minimum Tax [Section 115JD]

	₹ in lakhs
Total tax payable for A.Y.2024-25 (Alternate Minimum Tax)	64.65
Less: Regular income-tax payable	31.20
To be carried forward for set-off against regular income-tax payable (upto a maximum of fifteen assessment years).	33.45

II. Where the firm files its return of income on 7th December 2024:

Where the firm files its return on 7-12-2024, it would be a belated return under section 139(4). Consequently, as per section 80AC, deduction under 80-IA would not be available. In such circumstances, the gross total income of ₹ 300 lakhs would be the total income of the firm.

Particulars	**₹ in lakhs**
Income-tax @ 30% of ₹ 300 lakhs	90.000
Add: Surcharge @12% (since total income exceeds ₹ 1 crore)	10.800
Income-tax (plus surcharge)	100.800
Add: Health and Education cess @ 4%	4.032
Total tax liability	**104.832**

Practical solution regarding obtaining clarifications:
The practical solution regarding obtaining clarifications would be to file the return of income under section 139(1) on or before the 'due date', i.e., 31.10.2024, and claim deduction under section 80-IA. In such a case, the firm can claim deduction of ₹ 200 lakhs under section 80-IA. Thereafter, consequent to the clarifications obtained, if any change is required, it can file a revised return under section 139(5) by 31.12.2024 which would replace the original return filed under section 139(1). A revised return filed under section 139(5) would replace the original return filed under section 139(1).
If the firm files the return of income under section 139(1) on or before 31.10.2024, its tax liability would stand reduced to ₹ 64.65 lakhs, as against ₹ 104.832 lakhs to be paid if return is furnished after due date. Further, it would also be eligible for tax credit for alternate minimum tax under section 115JD to the extent of ₹ 33.45 lakhs. Therefore, the firm is advised to file its return of income on or before 31.10.2024.

Question-25 :
T and Q are individuals, aged 28 years and 30 years respectively, who constitute an Association of Persons, sharing profit and losses in the ratio of 2:1. For the accounting year ended 31st March 2024, the Profit and Loss account of the business is as under:

Figures are in ₹ '000s

Cost of goods sold	4,250	Sales	4,900
Remuneration to:		Dividend from Indian companies	25
T	130	Long term capital gains (computed)	640
Q	170		
Employees	256		
Interest to:			
T	48.3		
Q	35.7		
Other expenses	111.7		
GST penalty due	39		
Net profit	524.3		
	5,565		**5,565**

Additional information furnished:
(i) Other expenses included:
  (a) wrist watches costing ₹ 2,500 each were given to 12 dealers, who had exceeded the sales quota prescribed under a sales promotion scheme;
  (b) employer's contribution of ₹ 6,000 to the Provident Fund for the month of November, 2023 was paid on 14th January 2024.
  (c) ₹ 30,000 was paid in cash to an advertising agency for publicity.

(ii) Outstanding GST penalty was paid on 15th October 2024. The penalty was imposed for non-filing of returns and statements by the due dates.

T and Q had, for this year, income from other sources of ₹ 3,60,000 and ₹ 2,32,000 respectively.
Required to:
(i) Compute the total income of the AOPs for the assessment year 2024-25; and
(ii) Discuss the tax implication for that year in the hands of the individual members.

Solution :
(i) Computation of total income of the AOP for A.Y.2024-25

Particulars	**₹**
Profit & gains of business **(See Working Note below)**	3,12,300
Long term capital gain	6,40,000
Income from other sources - Dividend from Indian companies	25,000
Total income	**9,77,300**

Working Note - Computation of profits and gains of business

Particulars	**₹**	**₹**
Net profit as per profit & loss account		5,24,300
Add: Inadmissible payments		
Interest to members T & Q (₹ 48,300 + ₹ 35,700)	84,000	
Advertising [Disallowance under section 40A(3) (100% of ₹ 30,000 being a cash payment)]	30,000	
Remuneration to members T & Q (₹ 1,30,000 + ₹1,70,000)	3,00,000	
GST penalty **(See Note 3 below)**	39,000	4,53,000
		9,77,300
Less: Income not taxable under this head		
Long term capital gain	6,40,000	
Dividend from Indian companies	25,000	6,65,000
Profits and gains of business		**3,12,300**

Notes:

1. Since the employer's contribution to PF has been paid during the previous year itself, it is allowable as deduction.
2. Penalty imposed for delay in filing GST return is not deductible since it is on account of infraction of the law requiring filing of the return within the specified period. – CIT v. Ratanchand Bholanath (S.S) (1986) 160 ITR 500 (M.P.)

(ii) Tax implication in the hands of members T & Q for the A.Y. 2024-25

Members of the AOPs have to pay tax on their total income taking into account savings/ investments etc.

Since one of the members has total income excluding share from AOP more than the basic exemption limit, the AOPs will be chargeable to tax at the maximum marginal rate.

Since the AOPs is taxed at maximum marginal rate, the share income of members is not taxable in their hands individually as per section 86.

Question-26 :

The assessee, Pandey Co-operative Housing Society, is a registered co-operative housing society, formed with the objective of maintaining the property owned by it, to effect repairs and maintenance of the common property of the members, and to confer to the members, the usual rights and privileges. For the assessment year 2024-25, the assessee has received ₹ 3 lakhs as transfer fees from the transferor members and like amount from the transferees, who at the time of transfer, were not members of the society. Discuss the eligibility to tax the aforesaid receipts in the hands of the assessee.

Solution :

Transfer fees received by a co-operative housing society, whether from outgoing or from incoming members, is not liable to tax on the ground of principle of mutuality where the predominant activity of such co-operative society is maintenance of property of the society. It was so held by the Bombay High Court in Sind Co-op Housing Society v. ITO (2009) 317 ITR 47.

Further, section 28(iii), which provides that income derived by a trade, professional or similar association from specific services performed for its members shall be treated as business income, can have no application since the co-operative housing society is not a trade or professional association.

Therefore, ₹ 6 lakhs received as transfer fees by Pandey Co-operative Housing Society from its transferor members and its transferees, is not chargeable to tax.

Question-27 :
M/s. Beta & Co., a partnership firm in India, is engaged in development of software and providing IT enabled services through two units, one of which is located in a notified Special Economic Zone (SEZ) in Noida (commenced operations from 01.04.2011) and the other located in a domestic tariff area (DTA). The particulars relating to previous year 2023-24 furnished by the assessee are as follows:
Total Turnover: SEZ unit ₹ 210 lakhs; DTA unit ₹ 90 lakhs
Export Turnover: SEZ unit ₹ 150 lakhs; DTA unit ₹ 50 lakhs
Profit: SEZ unit ₹ 50 lakhs; DTA unit ₹ 40 lakhs.

Amount debited to Statement of Profit and Loss and credited to Special Economic Zone Re-Investment Reserve Account ₹ 20 lakhs.

Considering that the firm has no other income during the year, compute the tax payable by the firm for the A.Y. 2024-25 by integrating, analysing and applying the relevant provisions of income-tax law.

Solution :
Computation of total income and tax liability of M/s. Beta & Co., a partnership firm, as per the normal provisions of the Act for A.Y. 2024-25

Particulars ₹		**(in lakhs)**
Business income (before deduction under section 10AA)		
SEZ Unit		50.00
Add: Amount debited to SEZ Re-investment Reserve		20.00
		70.00
DTA Unit		40.00
Gross Total Income		**110.00**
Less: Deduction u/s 10AA		
= ₹ 70 lakhs × ₹ 150 lakhs/₹ 210 lakhs = 50 × 50% (being the 13th year)	25.00	
Amount credited to SEZ Re-investment Reserve Account	20.00	
whichever is less is deductible		20.00
Total Income		**90.00**
Tax on total income@30%		27.00
Add: Health and Education Cess@4%		1.08
Tax liability (as per normal provisions)		**28.08**

Computation of Adjusted total income and Alternate Minimum tax of M/s. Beta & Co., a partnership firm, as per the provisions of section 115JC for A.Y.2024-25

Particulars	**₹ (in lakh)**
Total income as per the normal provisions	90.00
Add: Deduction under section 10AA	20.00
Adjusted total income	110.00
Tax@18.5% of Adjusted Total Income	20.350
Add: Surcharge @12% as the adjusted total income is > ₹ 1 crore	2.442
	22.792
Add: Health and Education cess @4%	0.912
Alternate Minimum Tax as per section 115JC	**23.704**

Since the tax payable as per the normal provisions of the Act is more than the alternate minimum tax payable, the total income as per normal provisions shall be liable to tax and the tax payable for A.Y. 2024-25 shall be ₹ 28.08 lakhs.

Question-28 :
X, Y and HUF of Z (represented by Z) are partners with equal shares in profits and losses of a firm, M/s Popular Cine Vision, which is engaged in the production of TV serials and telefilms.

The earlier partnership deed did not authorise payment of remuneration or interest to partners. The partnership deed was revised by the partners on 1st June 2023 to authorise payment of remuneration of ₹ 1 lac per month to each working partner and simple interest at 15% per annum on partners' capital. X, Y and Z are actively associated with the affairs of the firm.

The Profit & Loss Account of the firm for the year ended 31st March 2024 shows a net profit of ₹ 10 lakhs after debiting/crediting the following:

(a) Interest amounting to ₹ 5 lakhs each was paid to partners on the balances standing to their capital accounts from 1stJune, 2023 to 31st March 2024.
(b) Remuneration to the partners including partner in representative capacity ₹ 30 lakhs.
(c) Interest amounting to ₹ 2 lakhs paid to Z on loan provided by him in his individual capacity at 16% interest.
(d) Royalty of ₹ 5 lakhs paid to partner X, who is a professional script writer, for use of his scripts as per agreement between the firm and X. The same is authorized by partnership deed.
(e) Two separate payments of ₹ 18,000 and ₹ 15,000 made in cash on 1st February, 2024 to Altaf, a hairdresser, against his bill for services rendered in January, 2024 and two payments of ₹ 19,000 and ₹ 10,000 made in cash on 1st February and 2nd February, 2024, respectively, to Priyam, an assistant cameraman, against her bill for services provided in January, 2024.
(f) Amount of ₹ 5 lakhs provided in the books on 31st March 2024 as liability for remuneration to Shreya, a film artist and a non-resident. Tax deducted at source under section 195 from the amount so credited was paid on 3rd June 2024.
(g) Amount of ₹ 6 lakhs provided as gratuity for the year on the basis of actuarial valuation. Gratuity actually paid to one retired employee during the year is ₹ 1.50 lakhs.
(h) Interest of ₹ 1.20 lakhs received on income-tax refund under section 244(1A) in respect of A.Y. 2023-24.

Compute the total income of the firm for the assessment year 2024-25 stating the reasons for treatment of each item.

Solution :

Computation of Total Income of M/s. Popular Cine Vision for the A.Y.2024-25

Particulars	**₹**	**₹**
Profits and Gains from Business or Profession		
Net Profit as per Profit & Loss A/c		10,00,000
Add: Expenses disallowed or considered separately:		
Interest to partners in excess of 12% **(Note 1)**	3,00,000	
Disallowance under section 40A(3) for aggregate cash		
payment exceeding ₹ 10,000 in a single day **(Note 5)**	52,000	
Provision for gratuity **(Note 7)**	4,50,000	
Partners' Remuneration	30,00,000	
Royalty paid to Partner X **(Note 4)**	5,00,000	43,02,000
		53,02,000
Less: Interest on income-tax refund (Note 8)		1,20,000
Book Profit		**51,82,000**
Less: Partners' remuneration allowable under section 40(b)(v)		
(i) As per limit prescribed in section 40(b)		
On first ₹ 3,00,000 90%	2,70,000	
On the balance ₹ 48,82,000 60%	29,29,200	
	31,99,200	

(ii) Remuneration actually paid or payable (₹ 1,00,000 × 10 months × 3 partners) + (Royalty ₹ 5 lakhs)		
(i) or (ii) whichever is less, is deductible	35,00,000	31,99,200
		19,82,800
Income from other sources		
Interest on income-tax refund		1,20,000
Gross Total Income		**21,02,800**
Deductions under Chapter VI-A	Nil	
Total Income		**21,02,800**

Notes:

1. As per section 40(b), simple interest at 12% p.a. to partners relating to the period after the date of partnership deed is allowable. Excess interest @ 3% paid from 1st June 2023 to 31st March 2024 is to be disallowed. Excess interest of 3% being ₹15,00,000 x 3/15 = ₹ 3,00,000.

2. Even though Z is a partner in a representative capacity, he is still a partner. Therefore, remuneration to Z should also be subject to the limits prescribed in section 40(b). This view finds support from the decision of the Supreme Court in the case of Rashik Lal & Co. vs CIT (1998) 229 ITR 458 (SC).

3. As per Explanation 1 to section 40(b), where an individual is a partner in a firm in representative capacity, the provisions of section 40(b) shall not apply to any interest payable by the firm to such individual in his personal capacity. Z represents his HUF in the firm. However, Z gave the loan in his individual capacity. Hence, assuming that the provisions of section 40A(2) do not get attracted in this case, such interest shall be allowed as deduction in full even though the interest rate is more than 12% p.a.

4. It may be noted that the limits specified under section 40(b)(v) are applicable in case of payment of salary, bonus, commission, or remuneration, by whatever name called, to a working partner. From a plain reading of the section, it is clear that any remuneration, **by whatever name called**, paid to a working partner, is subject to the limits laid down in section 40(b)(v). Therefore, the royalty of ₹ 5 lakhs paid to partner X would also be subject to the limits laid down in section 40(b)(v). Hence, the same has to be added back for computing book profits.

5. Section 40A(3) provides for disallowance of any expenditure in respect of which the actual payment exceeding ₹ 10,000 is made otherwise than by an account payee cheque, account payee bank draft or use of ECS through bank account or through such other electronic mode as may be prescribed in a single day to a person. Hence, the payments of ₹ 18,000 and ₹ 15,000 in cash on 1.2.2024 to Altaf, a hairdresser, shall be disallowed, since the aggregate payment of ₹ 33,000 exceeds the limit of ₹ 10,000.

   The payment of bill of the assistant cameraman of ₹ 19,000 on 1st February is also liable for disallowance under section 40A(3) since the aggregate payment in cash on a single day has exceeded ₹ 10,000.

6. As per section 40(a)(i), any sum payable to a non-resident shall not be allowed as deduction, if tax has not been deducted at source or after deduction, has not been paid on or before the due date specified under section 139(1). Tax deducted from the amount of remuneration credited to payee's account on 31st March 2024 has to be deposited latest by 31st July 2024/ 31st October 2024 (as the case may be). The firm has paid the tax on 3rd June 2024 and hence, the remuneration shall be allowed. Since the same is already debited to profit and loss account, no further adjustment is made.

7. As per section 40A(7), any provision made for payment of gratuity to employees on their retirement or on termination of employment for any reason is disallowed. However, gratuity of ₹ 1.50 lakhs paid to retired employees is allowable as deduction. Hence, the balance provision of ₹ 4.50 lakhs (i.e., ₹ 6 lakhs – ₹ 1.50 lakhs) is to be disallowed.

8. Interest on income-tax refund is assessable under the head "Income from other sources".

Question-29 :
Ganga Ltd., an Indian company, earned a profit of ₹ 52 lakhs after debit/credit of the following items to its Statement of Profit and Loss for the year ended on 31.3.2024 -

i. Items debited to Statement of Profit and Loss:

No.	Particulars	₹
1.	Provision for the loss of subsidiary	84,000
2.	Provision for doubtful debts	93,000
3.	Provision for income-tax	1,46,000
4.	Provision for gratuity based on actuarial valuation	4,17,000
5.	Depreciation	3,08,000
6.	Interest to financial institution (unpaid before filing of return)	72,000
7.	Penalty for infraction of law	14,000

ii. Items credited to Statement of Profit and Loss:

No.	Particulars	₹
1.	Profit from unit established in special economic zone.	15,20,000
2.	Share in income of an AOP as a member	1,95,000
3.	Long term capital gains	3,20,000

Other Information:
i. Depreciation includes ₹ 80,000 on account of revaluation of fixed assets.
ii. Depreciation as per Income-tax Rules, 1962 is ₹ 4,12,000.
iii. Balance of Statement of Profit and Loss shown in Balance Sheet at the asset side as at 31.3.2023 was ₹32 lakhs which includes unabsorbed depreciation of ₹ 18 lakhs.
iv. The AOP, of which the company is a member, has paid tax at maximum marginal rate.
v. Provision for income-tax includes ₹ 65,000 of interest payable on income-tax.

Based on the above information, you are required to –
i. Compute minimum alternate tax under section 115JB of the Income-tax Act, 1961, for A.Y. 2024-25;
ii. What would be your answer to Q.(i), if Ganga Ltd. is a unit located in an IFSC and derives its income solely in convertible foreign exchange?

Solution :

Computation of "Book Profit" for levy of MAT under section 115JB for A.Y. 2024-25

Particulars	₹	₹
Net Profit as per Statement of Profit and Loss		52,00,000
Add: Net profit to be increased by the following amounts as per Explanation 1 to section 115JB:		
-Provision for the loss of subsidiary	84,000	
-Provision for doubtful debts, being the amount set aside as provision for diminution in the value of any asset	93,000	
- Provision for income-tax [As per Explanation 2 to section 115JB, income-tax shall include, inter alia, any interest charged under the Act, therefore, whole of the amount of provision for income-tax including ₹ 65,000 towards interest payable has to be added]	1,46,000	
- Depreciation as per books of account	3,08,000	6,31,000
Less: Net profit to be decreased by the following amounts as per Explanation 1 to section 115JB:		58,31,000

- Share in income of an AOP as a member [In a case where AOP has paid tax on its total income at maximum marginal rate, no income- tax is payable by the company, being a member of AOP, in accordance with the provisions of section 86. Therefore, share in income of an AOP on which no income-tax is payable in accordance with the provisions of section 86, would be reduced while computing book profit, since the same has been credited to statement of profit and loss]	1,95,000	
- Depreciation other than depreciation on revaluation of assets (₹ 3,08,000 – ₹ 80,000)	2,28,000	
- Unabsorbed depreciation or brought forward business loss, whichever is less, as per the books of account. [Lower of unabsorbed depreciation ₹ 18,00,000 and brought forward business loss ₹ 14,00,000 as per books of accounts has to be reduced while computing the book profit]	14,00,000	
		18,23,000
Book Profit		**40,08,000**

Computation of MAT liability under section 115JB

Particulars	
15% of book profit of ₹ 40,08,000	**6,01,200**
Add: Health & Education Cess@4%	24,048
Minimum Alternate Tax liability	**6,25,248**
MAT liability (rounded off)	6,25,250

Notes:

1. It is only the specific items mentioned under Explanation 1 to section 115JB, which can be adjusted from the net profit as per the Statement of Profit and Loss prepared as per the Companies Act for computing book profit for levy of MAT. Since the following items are not specified thereunder, the same cannot be adjusted for computing book profit:

   Interest to financial institution (unpaid before filing of return) and Penalty for infraction of law

2. Provision for gratuity based on actuarial valuation is an ascertained liability [CIT v. Echjay Forgings (P) Ltd. (2001) 251 ITR 15 (Bom.)]. Hence, the same should not be added back to compute book profit.

3. As per proviso to section 115JB(6), the profits from unit established in special economic zone cannot be excluded while computing the book profit, and hence, such income would be liable for MAT.

Computation of MAT liability u/s 115JB where Ganga Ltd. is a unit located in an IFSC and derives its income solely in convertible foreign exchange

Particulars	**₹**
9% of book profit of ₹ 40,08,000	3,60,720
Add: Health & Education Cess@4%	14,429
Minimum Alternate Tax liability	**3,75,149**
MAT liability (rounded off)	3,75,150

Part-B : Additional Questions

Question-30 : [PP May-19]

Alpha and Beta Tyres Limited, an Indian Company engaged in the manufacture of Tyres in Andhra Pradesh, has adopted IndAS from 1-4-2020. The following particulars are provided for the year ended 31.3.2024:
Net profit as per statement of profit and loss is ₹ 20 crores after debit and credit of the following items:

Items Debited:

(i) Depreciation ₹ 18 crores. Included in depreciation is ₹ 3 crores, being amount provided on revalued assets.
(ii) Interest charged for delay in remittance of tax deducted at source ₹ 20 lakhs.

Items Credited:

(i) Share Income from Association of Persons in which the company is a member 50 lakhs. (The AOP is charged to tax at Maximum Marginal Rate)
(ii) Amount of ₹ 6 crores withdrawn from revaluation reserves on account of revaluation of assets.

Other Information:

1. The application of a financial creditor for corporate insolvency resolution process has been admitted by the Hyderabad Bench of the National Company Law Tribunal under section 7 of the Insolvency and Bankruptcy Code, 2016.
2. Brought forward business loss and depreciation.

Assessment Year	Business Loss	Depreciation
2019-20	₹ 3 crores	₹ 1 crore
2020-21	₹ 5 crores	₹ 2 crores

3. Items credited to other comprehensive income which will not be reclassified to profit or loss:
   (i) Re-measurement of defined employee retirement benefits plan ₹ 50 lakhs.
   (ii) Revaluation surplus of property, plant and equipment ₹ 1 crore.
4. The transition amount as on convergence date 1-4-2020 stood at ₹ 5 crores including capital reserve of ₹ 50 lakhs (credit balance).
5. Tax payable under the regular provisions of the Income-tax Act, 1961 is ₹ 0.73 crores.
   (i) Compute Minimum Alternate Tax payable by the company for the Assessment Year 2024-25.
   (ii) Compute the amount of MAT credit eligible for carried forward.

Solution :

(i) Computation of MAT payable by Alpha and Beta Tyres Limited under section 115JB for A.Y.2024-25

Particulars	₹	₹
Net profit as per statement of profit and loss		20,00,00,000
Add: **Net profit to be increased by the following amounts as per Explanation 1 to section 115JB(2):**		
- Depreciation	18,00,00,000	
- Interest charged for delay in remittance of TDS	20,00,000	
[As per Explanation 2 to section 115JB, income- tax shall include, inter alia, any interest charged under the Act. Therefore, interest on delay in remittance of TDS has to be added back]		18,20,00,000
Less: **Net profit to be decreased by the following amounts as per Explanation 1 to section 115JB(2):**		38,20,00,000
- Depreciation other than depreciation on revaluation of assets [₹ 18 crore – ₹ 3 crore]		

- Share income from Association of Persons	50,00,000	
[Share income of company in AOP has to be reduced while computing the book profit, since no income-tax is payable by the company on share income in AOP, as the AOP is chargeable to tax at Maximum Marginal Rate]		
- Amount withdrawn from revaluation reserve [₹ 6 crore] to the extent it does not does not exceed depreciation on revaluation of assets [₹ 3 crore]	3,00,00,000	
- Brought forward business loss of ₹ 8 crore [₹ 3 crore + ₹ 5 crore] and unabsorbed depreciation of ₹ 3 crore [₹ 1 crore + ₹ 2 crore]	11,00,00,000	
[Since Alpha and Beta Tyres Limited is a company against which an application for corporate insolvency resolution process has been admitted by NCLT under section 7 of the Insolvency and Bankruptcy Code, 2016, the amount of total loss brought forward (including unabsorbed depreciation) is allowed to be reduced from the book profit for the purposes of levy of MAT under section 115JB].		29,50,00,000
Book profit computed in accordance with Explanation 1 to section 115JB(2)		8,70,00,000
Add: **Items credited to OCI that will not be reclassified to profit or loss:**		
Re-measurement of defined employee benefit plan	50,00,000	
Revaluation surplus of property, plant and equipment ₹ 1 crore [Book profit not to be increased by revaluation surplus for assets]	Nil	50,00,000
Add: **One-fifth of Transition amount [Credit Balance]**		9,20,00,000
Transition amount	5,00,00,000	
Less: **Amounts to be excluded from transition amount**		
Capital Reserve	50,00,000	
	4,50,00,000	
One-fifth of ₹ 4,50,00,000		90,00,000
Book Profit for levy of MAT		**10,10,00,000**

Computation of MAT	**₹**
MAT on book profit under section 115JB = 15% of ₹ 10,10,00,000	1,51,50,000
Add: Surcharge@12% (since book profit exceeds ₹10 crore)	18,18,000
	1,69,68,000
Add: Health and education cess@4%	6,78,720
MAT liability for A.Y.2024-25	**1,76,46,720**

(ii) Computation of MAT credit to be carried forward

Particulars	**₹**
MAT liability for A.Y.2024-25 (rounded off)	1,76,46,720
Income-tax computed as per the normal provisions of the Act for A.Y.2024-25	73,00,000
Since the income-tax liability computed as per the regular provisions of the Income-tax Act,1961 is less than the MAT payable, the book profit of ₹ 10,10,00,000 would be deemed to be the total income and tax is leviable@15%: The total tax liability (rounded off) is ₹ 1,76,46,720	
Computation of tax credit to be carried forward:	
Tax payable for A.Y.2024-25 on deemed total income	1,76,46,720
Less: Income-tax payable as per the normal provisions of the Act	73,00,000
Tax credit in respect of tax paid on deemed income	**1,03,46,720**

Question-31 : [PP NOV-20]

Mahadev & Sons Ltd. is a Public Company whose accounts have been prepared in accordance with provisions of Schedule III of Company's Act. Its P&L for the year ended 31st March 2024 shows a Net Profit of ₹ 27 Lakhs. The Company informs the following debit/credits have been made in the P & L A/c before arriving at the above stated Net Profit.

	Credits to the P&L A/c		Debits to the P&L A/c
1	Net Agricultural income in India - 11 Lakhs	1	Expenses relating to section 10AA undertaking - 16 Lakhs
2	Profits of industrial undertaking covered & qualified for deduction u/s 10AA – 30 Lakhs	2	Depreciation relating to P.Y. 2021-22- b/f 13 Lakhs
3	Amount withdrawn from reserve created in P.Y. 2021-22 (Book profit was **not** increased by the amount transferred to the reserve in the year 2021-22) - 4 Lakhs	3	Business Loss relating to P.Y. 2021-22 b/f 10 lakhs
4	LTCG on sale of equity shares on which STT paid - 3.50 lakhs	4	Current year Depreciation - 12 lakhs
5	Amount withdrawn from Revaluation Reserve – 10 lakhs	5	Interest to bank not paid upto filing of ROI – 5 Lakhs
		6	Provision for unascertained liability - 3 lakhs
		7	Income-tax – 6 lakhs
		8	Penalty for infraction of Law 2 lakhs

Further Information:

- Depreciation for current year includes ₹ 5 Lakhs towards revaluation of assets.

Compute the book profits of the Company for the year ended 31.03.2024 liable to tax under MAT.

Solution :

(a) Computation of "Book Profit" for levy of MAT under section 115JB for the year ended 31.3.2024

Particulars	₹	₹
Net Profit as per Statement of Profit and Loss		27,00,000
Add: Net profit to be increased by the following amounts as per Explanation 1 to section 115JB:		
Current year depreciation as per books of account	12,00,000	
Provision for unascertained liability	3,00,000	
Income-tax	6,00,000	21,00,000
Less: Net profit to be decreased by the following amounts as per Explanation 1 to section 115JB:		48,00,000
Net agricultural income [since the same is exempt u/s 10(1)]	11,00,000	
Depreciation other than depreciation on revaluation of assets (₹ 12,00,000 – ₹ 5,00,000)	7,00,000	
Unabsorbed depreciation or brought forward business loss, whichever is less, as per the books of account. [Lower of unabsorbed depreciation ₹ 13,00,000 and brought forward business loss ₹ 10,00,000 as per books of accounts has to be reduced while computing the book profit]	10,00,000	
Amount withdrawn from revaluation reserve [to the extent of depreciation on revaluation]	5,00,000	33,00,000
Book Profit for levy of MAT		**15,00,000**

Notes:

1. The profits from unit established in special economic zone cannot be excluded while computing the book profit as per proviso to section 115JB(6), and hence, such income would be liable for MAT. Hence, no adjustment is required in respect of credits or debits to P & L in respect of income and expenditure relating to SEZ.

2. Long-term capital gains exceeding Rs.1 lakh on sale of equity shares on which STT is paid is taxable u/s 112A. The same is not deductible while computing book profit for levy of MAT.

3. Amount withdrawn from reserve created in P.Y.2021-22 cannot be reduced to compute book profit, since the book profit was not increased by the amount transferred to the reserve in the year 2021-22

4. It is only the specific items mentioned under Explanation 1 to section 115JB, which can be adjusted from the net profit as per the Statement of Profit and Loss prepared as per the Companies Act for computing book profit for levy of MAT. Since the following items are not specified thereunder, the same cannot be adjusted for computing book profit:
   - Interest to bank (unpaid before filing of return) and
   - Penalty for infraction of law

Note :
The first para of the question mentions that the accounts have been prepared in compliance with Schedule III to the Companies Act, in which case only the specific adjustments listed in Explanation 1 below section 115JB(2) are permitted from the profit as shown in the statement of profit and loss, while computing book profit for levy of MAT in case of a company (other than a company whose financial statements are drawn up in compliance with the Ind AS, in which case, sub-sections (2A) to (2C) also become relevant). Accordingly, in the above solution, only the specific adjustments listed in Explanation 1 below section 115JB(2) have been effected while computing book profit for levy of MAT.

However, it may be noted that in the case of the above company, unabsorbed depreciation and brought forward business loss relating to P.Y.2021-22 have been shown as debited to profit and loss statement of P.Y.2023-24, which is not in accordance with Schedule III. This information should have been given as "Additional Information" and not by way of debit to the profit and loss statement. Due to this reason, it is possible to work out the solution by first adding back the unabsorbed depreciation of ₹ 13 lakhs and brought forward business loss of ₹ 10 lakhs in order to make the statement of profit and loss Schedule III compliant and thereafter, deducting the lower of the two i.e., ₹ 10 lakhs, to compute the book profit for levy of MAT. If the solution is worked out in this manner, the book profit would be ₹ 38 lakhs

Question-32 : [RTP MAY-22]
Manav Rachna Ltd., an Indian company engaged in manufacture and sale of electrical appliances in India and abroad, started adoption of Ind AS with effect from 1st April, 2020.

The particulars of "Other Comprehensive Income" for the year ended 31.03.2024:
Other Comprehensive Income (OCI) that will not be re-classified to Statement of profit and loss:

(₹ In lakhs)

		Debit	Credit
(i)	Deferred costs of hedging	2.80	
(ii)	Changes in fair values of equity instruments	7.40	
(iii)	Revaluation surplus for assets		6.10
(iv)	Deferred gains on cash flow hedges		7.50
(v)	Re-measurement of post-employment benefit obligation		6.20

The following are other particulars furnished for the year ended 31st March 2024:-

(a) The book profit after adjustment of all items specified in section 115JB(2) amounted to ₹ 97.54 lakhs (except the adjustment for brought forward losses/ unabsorbed depreciation), for the year ended 31.3.2024.

(b) Brought forward losses as per books are as under: **(₹ In lakhs)**

Financial Year	Business loss	Depreciation
2020-21	9.10	6.40
2021-22	6.10	8.10

(c) The transition amount as on convergence date (01-04-2020) stood at ₹ 68 lakhs (credit balance) including capital reserve of ₹ 8 lakhs and adjustment of ₹ 6 lakhs relating to translation difference in a foreign operation.

(d) The National Company Law Tribunal (NCLT), Mumbai Bench has admitted an application under section 7 of Insolvency and Bankruptcy Code, 2016 (IBC) made by financial creditor against the company for initiation of Corporate Insolvency Resolution Process on 30th March, 2023.

You are required to compute the MAT liability for the assessment year 2024-25, applying the provisions relating to Ind AS compliant companies. Assuming that the income tax under normal provisions of Income-tax Act, 1961 for the assessment year 2024-25 works out to 12.80 lakhs, compute the tax credit, if any, to be carried forward by the company including the period up to which it will be available to be carried forward.

Solution :

Computation of MAT liability of Manav Rachna Ltd. u/s 115JB for A.Y.2024-25

Particulars	₹	₹
Book profit after adjustment of items under section 115JB(2) [except brought forward business loss and unabsorbed depreciation]		97,54,000
Less: Brought forward business loss [₹ 9,10,000 + ₹ 6,10,000]	15,20,000	
Unabsorbed depreciation [₹ 6,40,000 + ₹ 8,10,000]	14,50,000	
[Since Manav Rachana Ltd. is a company against which an application for corporate insolvency resolution process has been admitted by NCLT under section 7 of the Insolvency and Bankruptcy Code, 2016, the aggregate amount of loss brought forward and unabsorbed depreciation is allowed to be reduced from the book profit for the purposes of levy of MAT under section 115JB].		29,70,000
Book profit computed in accordance with *Explanation 1* to section 115JB(2)		67,84,000
Add: **Items credited to OCI that will not be reclassified to profit or loss:**		
Deferred gains on cash flow hedges	7,50,000	
Re-measurement of post-employment benefit obligations	6,20,000	
Revaluation surplus for assets ₹ 6,10,000 [Book profit not to be increased by revaluation surplus for assets as per first proviso to section 115JB(2A)]		
	Nil	
		13,70,000
		81,54,000
Less: **Items debited to OCI that will not be reclassified to profit or loss:**		
Deferred costs of hedging	2,80,000	
Changes in fair values of equity instruments ₹ 7,40,000 [Book profit not to be decreased by changes in fair values of equity instruments as per first proviso to section 115JB(2A)]		
	Nil	2,80,000
		78,74,000
Add: **One-fifth of Transition amount [Credit Balance]**		
Transition amount	68,00,000	
Less: Amounts to be excluded from above		
Capital Reserve	8,00,000	
Translation difference in foreign operations	6,00,000	
	54,00,000	
One-fifth of ₹ 54,00,000		10,80,000
Book Profit for levy of MAT		**89,54,000**

MAT on book profit under section 115JB = 15% of ₹ 89,54,000	13,43,100
Add: Health and education cess@4%	53,724
MAT liability for A.Y.2024-25	**13,96,824**

Computation of tax credit to be carried forward

Particulars	₹
MAT liability for A.Y.2024-25 (rounded off)	13,96,820
Income-tax computed as per the normal provisions of the Act for A.Y.2024-25	12,80,000
Since the income-tax liability computed as per the regular provisions of the Income-tax Act, 1961 is less than the MAT payable, the book profit would be deemed to be the total income and tax is leviable @15%. The total tax liability (rounded off) is ₹ 13,96,820.	
Computation of tax credit to be carried forward	
Tax payable for A.Y.2024-25 on deemed total income	13,96,820
Less: Income-tax payable as per the normal provisions of the Act	12,80,000
MAT credit	**1,16,820**
[Can be carried forward for 15 Assessment Years i.e., upto A.Y. 2039-40]	

Question-33 : [MTP MAY-22]

The accounts of Viraj Exports are prepared in accordance with the provisions of the Companies Act, 2013. Its Statement of Profit and Loss for the previous year ended 31st March 2024 shows a net profit of ₹ 95 Lacs after debiting or crediting the following items:

		₹
Credits in Statement of Profit and Loss		
(1)	Profit from a new industrial undertaking qualifying for deduction under section 80-IA (Net)	17,00,000
(2)	Dividend received from Investment in Indian companies	2,50,000
(3)	Net agricultural income	5,00,000
Debits in Statement of Profit and Loss		
(1)	Depreciation	10,00,000
(2)	Penalty for infraction of law	1,00,000
(3)	Provision for GST	3,00,000
(4)	Provision for doubtful debts	2,00,000
(5)	Interest on financial institutions unpaid before due date of filing return of income	1,50,000
(6)	Reserves of currency foreign fluctuation	1,25,000

Other Information:

(i) Depreciation admissible under the Income-tax Rules, 1962 for the previous year 2023-24 i.e ₹19,50,000.
(ii) Depreciation (as per books) includes ₹ 1,90,000 on account of revaluation of assets.
(iii) Interest on borrowed capital ₹ 1,00,000 payable to Y, not debited to Statement of profit and loss.
(iv) GST provided in the accounts has been remitted before the due date for filing return of income.

Compute book profits and minimum alternate tax thereon, assuming that Viraj Exports is not required to comply with the Indian Accounting Standards (Ind AS). **(8 Marks)**

Solution :

Particulars	₹	₹
Net Profit as per Statement of Profit and Loss		95,00,000
Add: Net Profit to be increased by the followings amounts as per *Explanation 1* below section 115JB(2)		
-Depreciation	10,00,000	

-Provision for doubtful debts i.e. provision for diminution in value of asset i.e. debtors	2,00,000	
-Reserve for currency fluctuation reserve	1,25,000	13,25,000
Less: Net Profit to be decreased by the followings amounts as per *Explanation 1* below section 115JB(2)		1,08,25,000
-Net agricultural income Net agricultural income is to be reduced, since it is exempt under section 10(1)]	5,00,000	
- Depreciation other than deprecation on revaluation of assets is to be reduced while computing book profit [10,00,000 – 1,90,000]	8,10,000	13,10,000
Book profit under section 115JB		95,15,000

Computation of Minimum Alternate Tax under section 115JB

Particulars	₹
15% of book profit (₹ 95,15,000 x 15%)	14,27,250
Add: Health & Education cess@4%	57,090
Minimum Alternate Tax under section 115JB	14,84,340

Notes:

1. Only the specified items mentioned under Explanation 1 below section 115JB(2) can be added back or deducted to the net profit as per the Statement of Profit and Loss prepared as per the Companies Act for computing book profit for levy of MAT. Since the following items are not specified in the said Explanation 1, the same cannot be added back or deducted for computing book profit:
   - Penalty for infraction of law
   - Unpaid interest to financial institutions
   - Profits from a new industrial undertaking eligible for deduction under section 80 -IA
   - Dividend received on investment in Indian companies

2. For computing the book profit, since provisions for GST is an ascertain liability, it is not added back.

3. No adjustment is required in respect of interest on borrowed capital of ₹ 1,00,000 payable to Y, not debited to statement of profit and loss, since the net profit as per the Statement of Profit and Loss prepared as per the Companies Act and the items specified for exclusion/inclusion under section 115JB alone have to be considered while computing the book profit for levy of MAT.

4. Depreciation as per Income-tax Act, 1961 is not relevant for computing book profit for levy of MAT.

Question-34 : [MAY 22 PP]

Buildwell Ltd., a Real Estate Investment Trust, registered under relevant SEBI Regulations, holds 51% shares in HATS Ltd. Buildwell Ltd. provides the following information about its income for the F.Y. 2023-24.

(i) Interest income from HATS Ltd. - ₹ 10 crores
(ii) Dividend income from HATS Ltd. - ₹ 3 crores
(iii) Short-term capital gains on sale of developmental properties - ₹ 1 crore
(iv) Interest received from investments in unlisted debentures of companies - ₹ 10 lakhs
(v) Rental income from directly owned real estate assets - ₹ 2.5 crores

Mr. Vijay, a resident Indian, holds 70% of the units of the REIT. He does not have any other income during the year.

Compute the total income and tax payable in the hands of M/s Buildwell Ltd. and Mr. Vijay.

Note: HATS Ltd. has opted to pay tax under section 115BAA and Mr. Vijay is paying tax under default tax regime u/s 115BAC. Ignore TDS implications (8 Marks)

Solution :

Computation of total income and tax payable in the hands of M/s Buildwell Ltd. (REIT) and Mr. Vijay (unit-holder)

Particulars	Buildwell (REIT)	Mr. Vijay (Unit-holder)
(i) Interest income of ₹ 10 crore from HATS Ltd. (SPV) Interest income from SPV would be exempt in the hands of REIT by virtue of section 10(23FC)(a).	Nil	7,00,00,000
The component of such interest income distributed to unit holders would be deemed as income of the unit holders as per section 115UA(3). Accordingly, ₹ 7 crores being 70% of ₹ 10 crores is taxable in the hands of the unitholder Mr. Vijay. (ii) Dividend income of ₹ 3 crore from HATS Ltd. (SPV) The dividend distributed by the SPV to the REIT is exempt in the hands of REIT by virtue of section 10(23FC)(b). The component of such dividend income distributed to unitholders is taxable in the hands of unitholders by virtue of the exception contained in section 10(23FD), since HATS Ltd. (SPV) has exercised the option u/s 115BAA. Accordingly, ₹ 2.10 crore, being 70% of ₹ 3 crores, would be taxable in the hands of the unitholder Mr. Vijay.	Nil	2,10,00,000
(iii) Short-term capital gains of ₹ 1 crore on sale of developmental properties STCG on sale of development properties is taxable at maximum marginal rate of 42.744% in the hands of the REIT as per section 115UA(2). There would be no tax liability in the hands of the unit holders on the capital gain component of income distributed to them by virtue of exemption contained in section 10(23FD).	1,00,00,000	Nil
(iv) Interest of ₹ 10 lakh received in respect of investment in unlisted debentures of companies Such interest is taxable@42.744%, being the maximum marginal rate, in the hands of the REIT as per section 115UA(2). There would be no tax liability in the hands of the unit holders on the interest component of income distributed to them by virtue of section 10(23FD).	10,00,000	Nil
(v) Rental income of ₹ 2.50 crore from directly owned real estate assets Income by way of renting or leasing or letting out any real estate asset owned directly by REIT is exempt in the hands of the REIT as per section 10(23FCA). However, the component of such rental income distributed to unitholders is deemed as income of the unit holders as per section 115UA(3). Accordingly, ₹ 1.75 crores, being 70% of ₹ 2.5 crores would be taxable in the hands of Mr. Vijay.	Nil	1,75,00,000
Total income	**1,10,00,000**	**10,85,00,000**

Particulars	₹	₹
Computation of tax payable		
In the hands of REIT (M/s Buildwell)		
Tax on total income of ₹ 1,10,00,000 @ 42.744% [Maximum marginal rate – 30% + surcharge@37% + cess@4%]	47,01,840	
In the hands of the unitholder, Mr. Vijay who has opted for section 115BAC		
Upto ₹ 3,00,000		Nil
₹ 3,00,001 – ₹ 6,00,000 @5%		15,000
₹ 6,00,001 – ₹ 9,00,000 @10%		30,000
₹ 9,00,001 – ₹ 12,00,000 @15%		45,000
₹ 12,00,001 – ₹15,00,000 @20%		60,000
Above 15,00,000 @30%		3,21,00,000
		3,22,50,000
Add: Surcharge@25% since total income exceeds ₹ 2 crores(115BAC)		80,62,500
		4,03,12,500
Add: Health and education cess@4%		16,12,500
Tax payable		**4,19,25,000**

Notes:
(i) It has been assumed that 100% of income received by the REIT is distributed to its unitholders.
(ii) Since question specifically contains a note at the end to ignore TDS implications, tax payable is computed without deducting the amount of tax deducted at source.

Question-35 : [PP JULY-21]
An Investment Fund incorporated in India in the form of a company has 20 resident unit- holders, each holding 5 units. Out of these, 16 unit holders are holding units for more than 12 months and 4 unit-holders are holding units for less than 12 months as on 31.03.2024.

The particulars of income of the Investment fund for the previous year 2023-24 are as follows:

i. Business income - ₹ 20 lakhs.
ii. Long-term capital losses - ₹ 30 lakhs.
iii. Income from other sources - ₹ 40 lakhs.

Discuss the tax treatment with respect to the above income in the hands of investment fund as well as in the hands of unit-holders for the A.Y. 2024-25.

What would be the implication in the hands of unit-holders, if the Investment fund distributes only 80% of its income to the unit-holders during the year?

Solution :
As per section 115UB(1), any income accruing or arising to, or received by, a person, being a unit holder of an investment fund, out of investments made in the investment fund shall be chargeable to income-tax in the same manner as if it were the income accruing or arising to, or received by, such person had the investments made by the investment fund, been made directly by him.

Section 10(23FBA) exempts any income, other than income chargeable under the head "Profits and gains of business or profession", in the hands of investment fund. Consequently, income of the same nature as income chargeable under the head "Profits and gains of business or profession" at investment fund level, shall be exempt in the hands of unit holders as per section 10(23FBB). This implies that all income from investment fund is taxable in the hands of unit holders except income under the head "Profits and gains of business or profession".

i. Business income - ₹ 20 lakhs

Business income would be taxable in the hands of Investment Fund. Consequently, such income would not be includible in the hands of unit holders.

ii. Long-term capital loss - ₹ 30 lakhs

Loss other than loss under the head "Profits and gains from business or profession" would not be allowed to be passed through to the investors if such loss has arisen in respect of a unit which has not been held by the unit holder for a period of at least 12 months. However, such loss can be passed through to the investors if such loss has arisen in respect of a unit which has been held by the unit holder for a period of at least 12 months

Accordingly, **long-term capital loss of ₹ 1.5 lakhs (₹ 30 lakhs/20 unitholders) each can be carried forward and set-off by 16 unitholders,** holding 5 units each for more than 12 months, against income from long-term capital gains arising in the subsequent years, since there is no long-term capital gain in the current year. It can be carried forward for a maximum of 8 assessment years.

However, **such loss of ₹ 1.50 lakhs each cannot be carried forward by the 4 unitholders,** holding 5 units each for less than 12 months.

iii. Income from Other Sources - ₹ 40 lakhs

"Income from Other Sources" would be exempt in the hands of Investment fund. **2 lakhs (₹ 40 lakhs/ 20 unitholders) would be taxable as income from other sources in the hands of each unitholder.**

If the income is not paid or credited to the unitholders during a previous year, it shall be deemed to have been credited to the account of the unitholder on the last day of the previous year in the same proportion in which such person would have been entitled to receive the income had it been paid in the previous year.

Thus, even if investment fund distributed only 80% of its income to the unit holders during the year, the remaining 20% of income would be deemed to be credited to the account of each unitholder on the last day of the previous year i.e., 31.03.2024.

However, income which has been included in the total income of the unitholders in the previous year on accrual basis shall not once again be included in the previous year in which such income is actually paid to him by the investment fund.

Question-36 : [RTP NOV 22]

Mr. Rajesh is a resident unitholder of PQR and Shipra. PQR is incorporated as an Investment Fund and Shipra is a Real Estate Investment Trust. (REIT), which holds 100% shareholding in

GPL Ltd., an Indian company. Mr. Rajesh holds 10% units in both Shipra and PQR since the year 2019.
The particulars of income of Shipra and PQR for the previous year 2023-24 are given below:

Particulars	Shipra	PQR
Dividend Income from GPL Ltd.	₹ 2 crores	
Interest Income from GPL Ltd.	₹ 3 crores	
Short-term capital gains on sale of developmental properties	₹ 1 crore	
Business income		₹ 35 lakhs.
Long-term capital losses		₹ 27 lakhs
Interest income		₹ 52 lakhs

GPL Ltd. does not exercise option under section 115BAA for A.Y. 2024-25. Shipra and PQR distribute 90% of its income to the unit-holders during the year. Compute total income and tax payable by Mr. Rajesh for the A.Y. 2024-25, assuming that he has paying tax under default tax regime u/s 115BAC.

Solution :

Computation of total income and tax payable in the hands of Mr. Rajesh

	Particulars	₹
(i)	Dividend income from GPL Ltd. (SPV) As per section 10(23FD), the component of dividend income distributed to unitholders is not taxable in the hands of unitholders, since GPL Ltd. (SPV) has not exercised the option u/s 115BAA. Accordingly, ₹ 18 lakhs (10% of ₹ 1.80 crore, being 90% of ₹ 2 crore), being the dividend component of income received by Mr. Rajesh from Shipra is not taxable in his hands.	-
(ii)	Interest income from GPL Ltd. (SPV) As per section 115UA(3), interest income distributed to unit holders would be deemed as income of the unit holders. Accordingly, ₹ 27 lakhs [i.e., 10% of ₹ 2.7 crores (90% of ₹ 3 crores)], being the interest component of income distributed to Mr. Rajesh, is taxable in the hands of the Mr. Rajesh.	27,00,000
(iii)	Short-term capital gains on sale of developmental properties by Shipra As per section 115UA(2), STCG on sale of development properties is taxable at maximum marginal rate of 42.744% in the hands of the REIT. No tax liability arises in the hands of Mr. Rajesh on ₹ 9 lakh (10% of ₹ 90 lakh, being 90% of ₹ 1 crore), being the capital gain component of income distributed to him, by virtue of section 10(23FD).	-
(iv)	Business Income of PQR Business income of an investment fund is taxable in the hands of investment fund. Consequently, as per section 10(23FBB), business income accruing or arising to or received by a unitholder of an investment fund is not taxable in his hands.	-
(v)	Long-term capital loss of PQR Long-term capital loss of ₹ 2,70,000 (10% of ₹ 27 lakhs) can be carried forward and set-off by Mr. Rajesh, since he holds such units for more than 12 months, against income from long-term capital gains arising in the subsequent years, since there is no long-term capital gain in the current year. It can be carried forward for a maximum of 8 assessment years.	-
(vi)	Interest income of PQR As per section 10(23FBA), interest income would be exempt in the hands of Investment fund. As per section 115UB, ₹ 5,20,000 lakhs (10% of ₹ 52 lakhs) would be taxable as income from other sources in the hands of Mr. Rajesh. Even if investment fund distributed only 90% of its income to the unit holders during the year, the remaining 10% of income would be deemed to be credited to the account of each unitholder on the last day of the previous year i.e., 31.03.2024. Further, income which has been included in the total income of the unitholders in the previous year on accrual basis shall not once again be included in the previous year in which such income is actually paid to him by the investment fund.	5,20,000
	Total Income	**32,20,000**

Computation of tax payable by Mr. Rajesh for A.Y.2024-25

Particulars	₹	₹
Upto ₹ 3,00,000	Nil	
₹ 3,00,001 – ₹ 6,00,000 @5%	15,000	
₹ 6,00,001 – ₹9,00,000 @10%	30,000	
₹ 9,00,001 – ₹12,00,000 @15%	45,000	
₹12,00,001 – ₹15,00,000 @20%	60,000	
Above 15,00,000 @ 30%	5,16,000	
		6,66,000
Add: Health and education cess @4%		26,640

Tax liability		**6,92,640**
Less: Tax deducted at source		
- under section 194LBA @ 10% by Shipra in respect of interest income from SPV	2,70,000	
- under section 194LBB @10% by PQR	52,000	3,22,000
Tax payable		**3,70,640**

Question-37 : [RTP NOV 22]

M/s Fit & Fair, a partnership firm, commenced operations of the business of a new three- star hotel in Pune, Maharashtra on 1.4.2023. The firm consisting of two working partners, with equal shares, reports a net profit of ₹ 26,00,000 after deduction of the following items:

I. Depreciation as per books of accounts ₹ 15,80,000.
II. Interest on capital @ 15% per annum (as per the deed of partnership). The amount of interest is ₹50,00,000.
III. Interest on loan includes an amount of ₹ 6,00,000 paid to Mr. Rajveer, a resident, on which tax was not deducted.

The firm purchased a new motor car for the above business for ₹ 7 lakh on 10th March, 2023 and capitalized the same in its books of account as on 1st April, 2023. Further, in April, 2023, it incurred capital expenditure of ₹ 2 crores (out of which ₹ 1.50 crores was for acquisition of land and ₹ 50 lakhs on building) exclusively for the above business. The firm also installed and put to use new centralised air conditioners on 15.5.2023 costing ₹ 3,20,000.

The capital expenditure incurred by the firm were paid by account payee cheque or use of ECS through bank account.

The firm also has another existing business of running a four-star hotel in Mumbai, which commenced operations fifteen years back, the profits from which are ₹ 41,38,000 computed as per Income-tax Act for the A.Y.2024-25.

Compute total income and tax payable by the firm for the A.Y.2024-25, assuming that the firm has fulfilled all the conditions specified for claim of deduction under section 35AD and opted for claiming deduction under section 35AD; and has not claimed any deduction under Chapter VI-A under the heading "C. – Deductions in respect of certain incomes".

Solution :

Computation of total income and tax payable of M/s Fit & Fair for A.Y. 2024-25

Particulars		₹
Profits from the specified business of new hotel in Pune		26,00,000
Add: Items debited but to be considered separately or to be disallowed		
Depreciation	15,80,000	
Interest on capital to partners@15% p.a. (Interest allowable to the extent of 12% p.a., since the same is authorized by the partnership deed. Thus, interest of ₹ 10,00,000, being in excess of 12% p.a. i.e., ₹ 50,00,000 x 3%/15% would be disallowed)	10,00,000	
30% disallowance of interest on loan on which tax is not deducted [30% of ₹ 6,00,000]	1,80,000	27,60,000
		53,60,000
Less: Permissible expenditures and allowances		
100% of capital expenditure allowable as deduction under section 35AD in respect of –		
- Building (expenditure on land not eligible for deduction)	50,00,000	

- New Motor Car (capital expenditure for purchase of car prior to 1.4.2023 (i.e., prior to commencement of business) and capitalized in the books of account as on 1.4.2023	7,00,000	
- New Air conditioner	3,20,000	
		60,20,000
Loss from the specified business of new hotel in Pune		(6,60,000)
Profit from the existing business of running a hotel in Mumbai		41,38,000
Less: Loss from the specified business of new hotel in Pune		6,60,000
Net profit from business after set-off of loss of specified business against profits of another specified business under section 73A		34,78,000
Total Income		34,78,000
		₹
Income-tax @30% on total income of ₹ 34,78,000		10,43,400
Add: Health & education cess @4%		41,736
Tax liability		**10,85,136**
Tax liability (rounded off)		**10,85,140**

Particulars		**₹**
Total income (computed above)		34,78,000
Add: Deduction under section 35AD		60,20,000
		94,98,000
Less: Depreciation in respect of –	₹	
- Building @10% of ₹ 50,00,000	5,00,000	
- New Motor Car (capital expenditure for purchase of car prior to 1.4.2023 (i.e., prior to commencement of business) and capitalized in the books of account as on 1.4.2023@15% of ₹ 7,00,000	1,05,000	
- New Air conditioner @15% of ₹ 3,20,000	48,000	6,53,000
Adjusted total income		88,45,000
Alternate Minimum Tax@18.5%		16,36,325
Add: Health & education cess@4%		65,453
Tax liability under section 115JC		17,01,778
Tax liability under section 115JC (Rounded off)		17,01,780
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 health and education cess@4%. Therefore, the tax liability is ₹ 17,01,780		
AMT Credit to be carried forward under section 115JD		₹
Tax liability under section 115JC		17,01,780
Less: Tax liability under the regular provisions of the Income-tax Act, 1961		10,85,140
AMT Credit to be carried forward		6,16,640

Question-38 : [RTP NOV 22]

M/s PRK LLP, a limited liability partnership, set up a unit in Special Economic Zone (SEZ) on 1st April, 2020 to develop and export computer software. The unit complied with all the conditions of section 10AA. The net profit of the unit as per Statement of Profit & Loss for the year ended 31st March, 2024 was ₹ 65 lakhs after debiting/crediting the following items:

i. Profit on sale of import entitlement ₹ 9 lakhs.
ii. Remuneration to its working partners ₹ 58 lakhs.
iii. Interest at the rate of 16% per annum on partners' capital ₹ 20 lakhs.
iv. Donation to a political party ₹ 3 lakhs.
v. Depreciation ₹ 17 lakhs.

Additional Information:

i. Payment of remuneration to working partners and interest on capital are authorized by the partnership deed.
ii. Brought forward business loss from assessment year 2018-19 was ₹ 4 lakhs.
iii. Unabsorbed depreciation brought forward from assessment year 2017-18 was ₹ 35 lakhs.
iv. Total export turnover was ₹ 45 crores and the sale proceeds in convertible foreign exchange received in India by 30th September, 2024 was 38 crores. Total export turnover of ₹ 45 crores include telecommunication charges of ₹ 5 crores attributable to delivery of software. Sale proceeds realization of ₹ 38 crores also include such telecommunication charges of ₹ 2 crores.
v. Depreciation allowable as per Income-tax Rules is ₹ 26 lakhs.

You are required to compute:

i. Income-tax (including AMT under section 115JC) payable by M/s PRK LLP for the Assessment Year 2024-25.
ii. Amount of tax credit allowed to be carried forward.

Necessary working notes should form part of your answer. **(8 Marks)**

Solution :

Computation of total income and tax liability of M/s PRK LLP for A.Y.2024-25 (under the regular provisions of the Income-tax Act, 1961)

Particulars	Amount	Amount
Net profit as per Statement of Profit & Loss		65,00,000
***Add:* Items debited but to be considered separately or to be disallowed**		
Remuneration to its working partners	58,00,000	
Interest@16% p.a. on partners' capital	5,00,000	
(Interest on capital account would be fully allowed to the extent of 12%, since the same is authorized by the partnership deed. Thus, interest in excess of 12% i.e., ₹ 20 lakhs/16% x 4% would be disallowed)		
- Donation to a political party [not allowed as deduction as per section 37(1) while computing business income, since it is not incurred wholly and exclusively for the business]	3,00,000	
- Depreciation	17,00,000	83,00,000
		1,48,00,000
Less: Permissible expenditure and allowances		
- Depreciation allowable as per Income-tax Rules, 1962	26,00,000	
- Unabsorbed depreciation under section 32(2) [allowable as deduction while computing book profit as per Explanation 3 to section 40(b)]	35,00,000	61,00,000
Profit on sale of import entitlement [taxable as profits and gains from business as per section 28, since the same has already credited in Statement of profit and loss, no further adjustment is required]		Nil
Book Profit		**87,00,000**
On first ₹ 3 lakh of book profit [₹ 3,00,000 × 90%]	2,70,000	
On balance ₹ 84 lakh of book profit [₹ 84,00,000 × 60%]	50,40,000	
Remuneration actually paid of ₹ 58,00,000 is allowable to the extent of	53,10,000	
		53,10,000
Business Income		**33,90,000**
Less: Brought forward business loss for A.Y. 2018-19		4,00,000
Gross Total Income		**29,90,000**
***Less:* Deduction under section 10AA**		
Profit from SEZ unit x Export Turnover/ Total Turnover x 100% [₹ 24,90,000 x 36 crores /40 crores x 100% (since it is the third year of operation)]		22,41,000

Profit derived from SEZ unit	33,90,000	
Less: Profits from sale of import entitlement [business income which are in the nature of ancillary profits, do not constitute profit 'derived from' business for the purpose of exemption under section 10AA]	(9,00,000)	
	24,90,000	
Export Turnover [₹ 38 crores – ₹ 2 crores, being telecommunication charges included therein. Telecommunication charges not includible in export turnover]	36 crores	
Total Turnover [₹ 45 crores – ₹ 5 crores, being telecommunication charges included therein. Since telecommunication charges has been excluded from export turnover, the same has to be excluded from total turnover also]	40 crores	
		3,00,000
***Less:* Deduction under section 80GGC**		
[Donation to political party [allowable as deduction under section 80GGC, assuming the donation made otherwise than by way of cash]		
Total Income		**4,49,000**
Tax liability		
Tax@30%		1,34,700
Add: Health and education cess@ 4%		5,388
Tax Liability		**1,40,088**
Tax Liability (rounded off)		1,40,090

Computation of adjusted total income of M/s PRK LLP and Alternate Minimum Tax

Particulars	**Amount (in ₹)**
Total Income (as computed above)	4,49,000
Add: Deduction under section 10AA	22,41,000
Adjusted Total Income	**26,90,000**
Alternate Minimum Tax@18.5%	4,97,650
Add: Health and Education cess@4%	19,906
Tax liability under section 115JC	**5,17,556**
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 cess@4%. Therefore, the tax liability is ₹ 5,17,560 (rounded off).	
AMT Credit to be carried forward under section 115JEE	
Tax liability under section 115JC (rounded off)	5,17,560
Less: Tax liability under the regular provisions of the Income-tax Act, 1961	1,40,090
Amount of Credit	**3,77,470**

Note – In the above solution, while computing deduction under section 10AA, the brought forward business loss of ₹ 4,00,000 from A.Y. 2018-19 is not deducted from profits derived from SEZ, considering the view that such profits have to be computed as per Chapter IV-D and hence, effect of carry forward and set-off of losses is not given.

However, alternate view is also possible based on Circular No. 7/DV/2013 [FILE NO.279/MISC./M-116/2012-ITJ], dated 16-7-2013 that provisions contained in Chapter VI relating to set-off and carry forward and set-off of losses shall also apply while determining the income for the purpose of computing deduction under section 10AA. If this view is considered, the deduction under section 10AA has to be computed after deducting brought forward business losses of ₹ 4,00,000 from the profits of SEZ. In such case, the deduction under section 10AA would be ₹ 18,81,000 [(₹ 20,90,000 x ₹ 36 crores/₹ 40 crores) x 100%], total income would be ₹ 8,09,000, tax liability as per normal provisions would be ₹ 2,52,410. Alternate minimum tax liability would remain same. However, AMT credit to be carried forward would be ₹ 2,65,150]

Question-39 : [RTP MAY 23]

Beta LLP, a limited liability partnership in India is engaged in export of computers through two units, namely, Unit I and Unit II. Unit I is setup in Special Economic Zone (SEZ) and Unit II is set up in a Domestic Tariff Area (DTA). The LLP furnishes the following information relating to its 4th year of operation ended on 31-3-2024:

Items	(Amount in ₹ lakhs)	
	Unit I	Unit II
Export Turnover	1800	1150
Domestic Turnover	300	650
Duty Draw Back	52	48
Profit on sale of Import Entitlement	33	Nil
Salaries paid	700	388
Other expenses	775	620
Net Profit of the year	710	840

Additional Information:

i. Unit I:

- Expenses of ₹ 41 lakhs are disallowable under section 43B and export sales proceeds received in India amounted to ₹ 1600 lakhs.
- Export sales of ₹ 1800 lakhs include freight and insurance of ₹ 300 lakhs attributable to delivery outside India; and realization of ₹ 1600 lakhs includes amount of insurance and freight charges of ₹ 180 lakhs attributable to delivery outside India.

ii. Unit II:

- Export sales received in India was ₹ 970 lakhs.
- Expenses charged which are to be disallowed as per section 40A(3) are of ₹ 55 lakhs.

Determine the total income and tax liability of Beta LLP for the A.Y.2024-25.

Solution :

Computation of total income and tax liability of Beta LLP for A.Y.2024-25

Particulars	₹ (in lakh)
Profit from Unit I [₹ 710 lakhs + ₹ 41 lakhs, being disallowance u/s 43B]	751.00
Profit from Unit II [₹ 840 lakhs + ₹ 55 lakhs, being disallowance u/s 40A(3)]	895.00
	1646.00
Less: Deduction under section 10AA [See Working Note below]	525.40
Total Income	1120.60
Particulars	**₹ (in lakh)**
Tax on total income@30%	336.18
Add: Surcharge@12%, since total income > ₹1 crore	40.34
	376.52
Add: Health and Education cess@4%	15.06
Tax liability (as per normal provisions)	391.58

Computation of Adjusted total income and Alternate Minimum tax of Beta LLP as per the provisions of section 115JC for A.Y. 2024-25

Particulars	₹ (in lakh)
Total income as per the normal provisions	1120.60
Add: Deduction under section 10AA	525.40
Adjusted Total Income	1646.00
Tax@18.5% of Adjusted Total Income	304.51
Add: Surcharge @12% as the adjusted total income is > ₹ 1 crore	36.54
	341.05
Add: Health and Education cess@4%	13.64
Alternate Minimum Tax as per section 115JC	354.69

Since the tax liability as per the normal provisions of the Act is more than the alternate minimum tax payable, the total income as per normal provisions shall be liable to tax and the tax liability for A.Y. 2024-25 shall be ₹391.58 lakhs.

Working Note:

Computation of deduction under section 10AA in respect of Unit I located in a SEZ

Particulars		₹ (in lakh)
Total turnover of Unit I		1800.00
(₹ 1800 lakhs + ₹ 300 lakhs) – ₹ 300 lakhs, being freight and insurance attributable to delivery outside India included therein. Since such freight and insurance has been excluded from export turnover, the same has to be excluded from total turnover also 1		
Export Turnover of Unit I		
Export sale proceeds received in India		1600.00
Less: Insurance and freight attributable to delivery outside India not includible in export turnover		180.00
		1420.00
Profit "derived from" Unit I		
Net profit for the year		710.00
Add: Disallowance under section 43B		41.00
		751.00
Less: Items of business income which are in the nature of ancillary profits and hence, do not constitute profit 'derived from' business for the purpose of deduction under section 10AA		
Duty drawback	52	
Profit on sale of import entitlement	33	
		85.00
		666.00
Deduction under section 10AA		
Profit derived from Unit I x Export turnover of Unit I x 100% / Total turnover of Unit I		**525.40**

Question-40 : [RTP MAY 23]

ABC Co-operative society is engaged in marketing of agricultural produce grown by its members. The profits and gains attributable to such business for A.Y.2024-25 is ₹ 60 lakhs (computed). It has employed ten new employees with salary of ₹ 20,000 p.m. on 1.5.2023. Salary is paid by account payee cheque. It gets its books of accounts audited under section 44AB. It also earns interest of ₹ 32 lakhs on fixed deposits with banks.

Compute its total income and tax liability for A.Y.2024-25 and advise whether it should opt for the special provisions under section 115BAD.

What would be your answer if ABC Co-operative society is a Co-operative bank engaged in the business of banking, all other facts remaining the same? Assume that it is not a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Solution :

Computation of total income & tax liability of ABC Co-operative Society for A.Y.2024-25 (under the regular provisions of the Act)

Particulars		
Profits and gains of business or profession		60,00,000
Income from other sources – Interest on bank fixed deposits		32,00,000
Gross Total Income		92,00,000
Less: Deductions under Chapter VI-A		
Deduction u/s 80JJAA [30% of ₹ 20,000 x 10 employees x 11 months]	6,60,000	
Deduction u/s 80P	60,00,000	
[ABC Co-operative society is entitled for deduction under section 80P.on the whole of the amount of profits and gains of business attributable to the activity of marketing of agricultural produce grown by its members]		
		66,60,000
Total Income		25,40,000
Tax liability:		
Upto ₹ 10,000 – 10%	1,000	
₹ 10,000 – ₹ 20,000 – 20%	2,000	
₹ 20,000 – ₹ 25,40,000 – 30%	7,56,000	
		7,59,000
Add: Health and education cess@4%		30,360
Tax liability		**7,89,360**
Alternate Minimum Tax		
Total Income		**25,40,000**
Add: Deduction under section 80JJAA		6,60,000
Adjusted Total Income		32,00,000
Alternate Minimum Tax@15% of ₹ 32,00,000		4,80,000
Add: Health and education cess@4%		19,200
Alternate Minimum Tax		4,99,200

Since AMT is lower than the tax payable under the regular provisions of the Act, the tax liability of the co-operative society would be ₹ 7,89,360.

Computation of total income & tax liability of ABC Co-operative Society under section 115BAD for A.Y.2024-25

Particulars		
Profits and gains of business or profession		60,00,000
Income from other sources – Interest on bank fixed deposits		32,00,000
Gross Total Income		**92,00,000**
Less: Deductions under Chapter VI-A		
Deduction u/s 80JJAA [30% of ₹ 20,000 x 10 employees x 11 months]	6,60,000	
Deduction u/s 80P [Not allowable where the co- operative society opts for section 115BAD]	-	
		6,60,000

Total Income		**85,40,000**
Tax liability		
22% of ₹ 85,40,000		18,78,800
Add: Surcharge@10%		1,87,880
		20,66,680
Add: Health and education cess@4%		82,667
Tax liability		**21,49,347**
Tax liability (rounded off)		**21,49,350**

Since the tax liability under section 115BAD is higher than the tax liability under the regular provisions of the Act, ABC Co-operative Society should not opt for section 115BAD.

If ABC Co-operative Society is engaged in the business of banking Computation of total income & tax liability of ABC Co-operative Bank for A.Y.2024-25 (under the regular provisions of the Act)

Particulars		
Profits and gains of business or profession		60,00,000
Income from other sources – Interest on bank fixed deposits		32,00,000
Gross Total Income		**92,00,000**
Less: Deductions under Chapter VI-A	6,60,000	
Deduction u/s 80JJAA [30% of ₹ 20,000 x 10 employees x 11 months]		
Deduction u/s 80P [Not allowable in case of co- operative banks]	Nil	
		6,60,000
Total Income		**85,40,000**
Tax liability:		
Upto ₹ 10,000 – 10%	1,000	
₹ 10,000 – ₹ 20,000 – 20%	2,000	
₹ 20,000 – ₹ 85,40,000 – 30%	25,56,000	
		25,59,000
Add: Health and education cess@4%		1,02,360
Tax liability		**26,61,360**
Alternate Minimum Tax		
Total Income		**85,40,000**
Add: Deduction under section 80JJAA		6,60,000
Adjusted Total Income		92,00,000
Alternate Minimum Tax@15% of ₹ 92,00,000		13,80,000
Add: Health and education cess@4%		55,200
Alternate Minimum Tax		**14,35,200**
Since AMT is lower than the tax payable under the regular provisions of the Act, the tax liability of the co-operative bank would be ₹ 26,61,360.		

Computation of total income & tax liability of ABC Co-operative Bank under section 115BAD for A.Y.2024-25

Particulars	₹	₹
Profits and gains of business or profession		60,00,000
Income from other sources – Interest on bank fixed deposits		32,00,000
Gross Total Income		**92,00,000**
Less: Deductions under Chapter VI-A		
Deduction u/s 80JJAA [30% of ₹ 20,000 x 10 employees x 11 months]	6,60,000	
Deduction u/s 80P [Not allowable]	_	6,60,000
Total Income		**85,40,000**
Tax liability		
22% of ₹ 85,40,000		18,78,800
Add: Surcharge@10%		1,87,880
		20,66,680
Add: Health and education cess@4%		82,667
Tax liability		**21,49,347**
Tax liability (rounded off)		**21,49,350**

Question-41 : [MTP 2 Nov 23]

The profit and loss account of the Fast Forward & Associates, a partnership firm, showed a net profit of ₹ 80 lakhs after debiting/crediting of the following sums:

(i) Interest on capital @13% - ₹ 7,15,000
(ii) Interest on loan taken from one of the partners@ 15% - ₹ 90,000
(iii) Interest on bank fixed deposits made out of surplus funds ₹ 35,000 (Gross)
(iv) Depreciation as per books of accounts ₹ 1,15,650
(v) A building purchased in the year 2019 having a WDV as on 1.4.2023 of ₹ 36.45 lakhs was sold on 10.10.2023 for ₹ 90 lakhs. The differential amount was credited to profit and loss account. The building was the only asset in the block.

Additional Information:

(a) The firm has four partners. Only 2 are working partners. Partnership deed authorises payment of interest to partners in the range of 12% - 16% and also payment of remuneration to all the four partners @ ₹ 20,000 per month. Remuneration paid to partners not debited to P& L A/c.
(b) It applied for establishing a unit in SEZ and the letter of approval was granted on 30.3.2020. However, it started the operation of SEZ only on 15.10.2020. The total turnover, export turnover and net profit for the year ended 31.3.2024 were ₹ 120 lakhs, ₹ 40 lakhs and ₹ 7.5 lakhs respectively. The net profit is included in the profit of ₹ 80 lakhs mentioned above.
(c) Out of the amount received from sale of building, the firm invested ₹ 60 lakhs on 5.4.2024 in 5-years specified bonds of the National Highways Authority of India. The bonds were issued on 31.5.2024.
(d) Depreciation as per Income-tax Rules, 1962 is ₹ 14,000 excluding depreciation on assets mentioned in (e) and (f) below.
(e) WDV of Motor car as on 1.4.2023 (purchased and put to use on 1.1.2020) of ₹ 6,80,000.
(f) Cost of mobile phones (purchased and put to use on 11.10.2023) ₹ 20,000

Compute the total income of the firm for the A.Y. 2024-25 giving reasons/explanations for the treatment of each item under the normal provisions of the Act. **(8 Marks)**

Solution :

Computation of Total Income of M/s Fast Forward & Associates, a partnership firm, for the A.Y. 2024-25

	Particulars	Amount (in ₹)	
I	**Profits and gains of business and profession**		
	Net profit as per profit and loss account		80,00,000
	Add: **Items debited but to be considered separately or to be disallowed**		
	(1) Interest to partners on capital [As per section 40(b), interest to partners authorized by the partnership deed is allowable as deduction subject to a maximum of 12% p.a.] [₹ 7,15,000 x 1%/13%]	55,000	
	(2) Interest on loan taken from partner [As per section 40(b), interest to partners authorized by the partnership deed is allowable as deduction subject to a maximum of 12% p.a., whether it is interest on partner's capital or loan] [₹ 90,000 x 3%/15%]	18,000	
	(3) Depreciation as per books of account	1,15,650	1,88,650
			81,88,650
	Less: **Items credited but chargeable to tax under other head/expenses allowed but not debited**		
	1. Interest on bank fixed deposits made out of surplus fund [Interest received from bank on fixed deposits made out of surplus funds is assessable under the head 'Income from other sources'. Since the same has been credited to profit and loss account, it has to be deducted while computing business income]	35,000	
	2. Profit on sale of building [Capital gain on sale of building is taxable under the head "Capital Gains". Since such gains has been credited to profit and loss account, the same has to be deducted while computing business income]	53,55,000	53,90,000
			27,98,650
	Less: Depreciation as per Income-tax Rules, 1962	14,000	
	- Depreciation on Motor car [₹ 6,80,000 x 30%, eligible for higher depreciation since purchased and put to use on 1.1.2020]	2,04,000	
	- Mobile phone [₹ 20,000 x 15% x 50%, since purchased and put to use for less than 180 days]	1,500	2,19,500
			25,79,150
	Book Profit		
	Less*:* Salary to working partners		
	(i) As per limits given under section 40(b)		
	On first ₹ 3,00,000 @90%	2,70,000	
	On the balance of ₹ 22,79,150 @ 60%	13,67,490	
		16,37,490	
	(ii) Salary actually paid to working partners [₹ 20,000 x 12 x 2]	4,80,000	
	Deduction allowed being (i) or (ii) whichever is less		4,80,000
			20,99,150

II	**Capital Gains**		
	1. Short term capital gain on sale of building forming part of block of asset [Since building was the only asset in the block]		
	Full value of consideration	90,00,000	
	Less: Cost of acquisition [WDV as on 1.4.2023]	36,45,000	
		53,55,000	
	Less: Exemption under section 54EC [Investment in bonds of NHAI, the maximum deduction u/s 54EC would be ₹ 50 lakhs]	50,00,000	3,55,000
	[Available against depreciable asset, being a building held for more than 24 months and the payment for bonds has been made within six months from the date of transfer, exemption u/s 54EC would be available even if the allotment of bonds was made after the expiry of the six months1]		
III	**Income from Other Sources**		
	Interest from bank on fixed deposits		35,000
	Gross Total Income		24,89,150
	Less: Deduction under section 10AA [₹ 7,50,000 x 40,00,000/ ₹ 1,20,00,000 x 100%]		
	[Unit in SEZ is eligible for deduction u/s 10AA since it obtained the letter of approval on or before 31st March, 2020 and started operations before 31.3.2021]		2,50,000
	Total Income		**22,39,150**

Question-42 :

Godavari Ltd., an Indian Company engaged in manufacture and sale of electrical appliances in India and abroad, started adoption of Ind AS with effect from 1st April, 2021. The following particulars are furnished for the year ended 31st March 2024:-

(a) The book profit after adjustment of all items specified in section 115JB(2) amounted to ₹ 87.34 lakhs (except the adjustment for brought forward losses/ unabsorbed depreciation), for the year ended 31.3.2024.

(b) Brought forward losses as per books are as under : **(₹ In lakhs)**

Financial Year	Business loss	Depreciation
2020-21	8.20	7.60
2021-22	7.30	9.50

(c) The particulars of "Other Comprehensive Income" for the year ended 31.03.2024 **(₹ In lakhs)**

	Other Comprehensive Income (OCI) that will not be re- classified to profit and loss:	**Debit**	**Credit**
(i)	Deferred costs of hedging	3.80	
(ii)	Changes in fair values of equity instruments	8.00	
(iii)	Revaluation surplus for assets		8.20
(iv)	Deferred gains on cash flow hedges		6.70
(v)	Re-measurement of post-employment benefit obligations		5.20
(vi)	Share of other comprehensive income of other associates		2.80
	Other Comprehensive Income (OCI) that may be re- classified to profit and loss:	**Debit**	**Credit**
(i)	Deferred gains on cash flow hedges		8.20
(ii)	Comprehensive income from discontinued operations		5.30
(iii)	Exchange Differences of foreign exchange operations	1.80	
(iv)	Deferred costs of hedging	0.80	

(d) The transition amount as on convergence date (01-04-2021) stood at ₹ 48 lakhs (credit balance) including capital reserve of ₹ 6 lakhs and adjustment of ₹ 5 lakhs relating to translation difference in a foreign operation.

(e) The National Company Law Tribunal (NCLT), Mumbai Bench has admitted an application under section 7 of Insolvency and Bankruptcy Code, 2016 (IBC) made by financial creditor against the company for initiation of Corporate Insolvency Resolution Process on 30th March, 2024.

You are required to compute the MAT liability for the assessment year 2024-25, applying the provisions relating to Ind AS compliant companies. Assuming that the income tax under normal provisions of Income-tax Act, 1961 for the assessment year 2024-25 works out to ₹ 10.20 lakhs, compute the tax credit, if any, to be carried forward by the company including the period up to which it will be available to be carried forward.

Solution :

Computation of MAT liability of Godavari Ltd. under section 115JB for A.Y.2024-25

Particulars	**₹**	**₹**
Book profit after adjustment of items under section 115JB(2) [except brought forward business loss and unabsorbed depreciation]		87,34,000
Less: Brought forward business loss [₹ 8,20,000 + ₹ 7,30,000]	15,50,000	
Unabsorbed depreciation [₹ 7,60,000 + ₹ 9,50,000]	17,10,000	
[Since Godavari Ltd. is a company against which an application for corporate insolvency resolution process has been admitted by NCLT under section 7 of the Insolvency and Bankruptcy Code, 2016, the amount of total loss brought forward (including unabsorbed depreciation) is allowed to be reduced from the book profit for the purposes of levy of MAT under section 115JB].		32,60,000
Book profit computed in accordance with Explanation 1 to section 115JB(2)		54,74,000
Add: **Items credited to OCI that will not be reclassified to profit or loss:**		
Deferred gains on cash flow hedges	6,70,000	
Share of Other Comprehensive Income of Other Associates	2,80,000	
Re-measurement of post-employment benefit obligations	5,20,000	
Revaluation surplus for assets ₹ 8,20,000 [Book profit not to be increased by revaluation surplus for assets as per proviso to section 115JB(2A)]	Nil	14,70,000
		69,44,000
Less: **Items debited to OCI that will not be reclassified to profit or loss:**		
Deferred costs of hedging	3,80,000	
Changes in fair values of equity instruments ₹ 8,00,000 [Book profit not to be decreased by changes in fair values of equity instruments as per proviso to section 115JB(2A)]	Nil	3,80,000
		65,64,000
Add: **One-fifth of Transition amount [Credit Balance]**		
Transition amount	48,00,000	
Less: Amounts to be excluded from above		
Capital Reserve	6,00,000	
Translation difference in foreign operations	5,00,000	
	37,00,000	
One-fifth of ₹ 37,00,000		7,40,000
Book Profit for levy of MAT		**73,04,000**
MAT on book profit under section 115JB = 15% of ₹ 73,04,000		10,95,600
Add: Health and education cess@4%		43,824
MAT liability for A.Y.2024-25		**11,39,424**

Computation of tax credit to be carried forward

Particulars	₹
MAT liability for A.Y.2024-25 (rounded off)	11,39,420
Income-tax computed as per the normal provisions of the Act for A.Y.2024-25	10,20,000
Since the income-tax liability computed as per the regular provisions of the Income-tax Act,1961 is less than the MAT payable, the book profit would be deemed to be the total income and tax is leviable @15%: The total tax liability (rounded off) is ₹ 11,39,420.	
Computation of tax credit to be carried forward	
Tax payable for A.Y.2024-25 on deemed total income	11,39,420
Less: Income-tax payable as per the normal provisions of the Act	10,20,000
Tax credit in respect of tax paid on deemed income [Can be carried forward for 15 Assessment Years i.e., upto A.Y.2039-40]	**1,19,420**

Question-43 : [RTP Nov 23].

The following are the details about Alpha Co-operative society (referred to as Alpha Co-op), Beta Co-operative Society (referred to as Beta Co-op) and Gamma Co-operative Bank (referred to as Gamma Co-op) for the P.Y.2023-24 -

Alpha Co-op is engaged in providing credit facilities solely to its members, the profits and gains from which is ₹ 20 lakhs (computed) for the P.Y.2023-24. Alpha Co-op also derives interest of ₹ 3 lakhs from investments in Delta Co-operative Society.

Beta Co-op is engaged in marketing of agricultural produce grown by its members, the profits and gains from which is ₹ 40 lakhs (computed) for the P.Y.2023-24. It has employed 8 new employees with salary of ₹ 22,000 p.m. on 1.6.2023. Salary is paid by ECS through bank account. It gets its books of accounts audited under section 44AB. It also earns interest of ₹ 12 lakhs on fixed deposits with Axis Bank and ICICI Bank.

Gamma Co-op is engaged in banking business in Bangalore, the profits and gains from which is ₹ 110 lakhs (computed) for the P.Y.2023-24. It also gets its books of account audited under section 44AB. It is not a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

On the basis of the facts given above, choose the most appropriate answer to Q. 7 to Q.11 below, based on the provisions of the Income-tax Act, 1961 -

1 Would Alpha Co-op and Gamma Co-op be entitled to deduction under section 80P for A.Y.2024-25, if they do not opt for section 115BAD?

(a) Alpha Co-op is entitled to deduction u/s 80P only in respect of interest of ₹ 3 lakhs and not in respect of profits and gains of ₹ 20 lakhs. Gamma Co-op is not entitled to deduction u/s 80P.

(b) Alpha Co-op is entitled to deduction u/s 80P only in respect of profits and gains of ₹ 20 lakhs and not in respect of interest of ₹ 3 lakhs. Gamma Co-op is entitled to deduction u/s 80P in respect of profits and gains of ₹ 110 lakhs.

(c) Alpha Co-op is entitled to deduction u/s 80P both in respect of profits and gains of ₹ 20 lakhs and interest of ₹ 3 lakhs. Gamma Co-op is entitled to deduction u/s 80P in respect of profits and gains of ₹ 110 lakhs

(d) Alpha Co-op is entitled to deduction u/s 80P both in respect of profits and gains of ₹ 20 lakhs and interest of ₹ 3 lakhs. Gamma Co-op is not entitled to deduction u/s 80P.

2. Would the provisions of alternate minimum tax (AMT) be attracted in case of Alpha Co-op, Beta Co-op and Gamma Co-op for A.Y.2024-25, if they do not opt for section 115BAD?

(a) Yes, the AMT provisions would be attracted in case of Alpha Co-op, Beta Co-op and Gamma Co-op

(b) The AMT provisions would be attracted only in case of Alpha Co-op and Gamma Co-op

(c) The AMT provisions would be attracted only in case of Alpha Co-op and Beta Co-op

(d) The AMT provisions would be attracted only in case of Beta Co-op.

3. What would be the tax liability (rounded off) of Beta Co-op for A.Y.2024-25, if it opts for section 115BAD? It may be assumed that the gross total income is the same under the normal provisions of the Act and section 115BAD.
   (a) ₹ 1,69,130
   (b) ₹ 3,02,020
   (c) ₹ 10,68,950
   (d) ₹ 11,75,850.

4. What would be the tax liability (rounded off) of Beta Co-op for A.Y.2024-25, if it does not opt for section 115BAD? AMT provisions, if applicable, have to be considered.
   (a) ₹ 1,87,200
   (b) ₹ 2,06,540
   (c) ₹ 2,30,880
   (d) ₹ 8,11,200

5. Would it be beneficial for Alpha Co-op, Beta Co-op and Gamma Co-op to opt for section 115BAD for A.Y.2024-25? It may be assumed that the gross total income is the same under the normal provisions of the Act and section 115BAD in all cases.
   (a) It would be beneficial for Alpha Co-op and Gamma Co-op to opt for section 115BAD, but not for Beta Co-op.
   (b) It would not be beneficial for Alpha Co-op, Beta Co-op and Gamma Co-op to opt for section 115BAD
   (c) It would be beneficial for Alpha Co-op to opt for section 115BAD, but not for Beta Co-op and Gamma Co-op.
   (d) It would be beneficial for Gamma Co-op to opt for section 115BAD, but not for Alpha Co-op and Beta Co-op.

Question-44 :
The books of account maintained by a National Political Party registered with Election Commission for the year ended on 31.3.2024 discloses the following receipts:

		₹
(a)	Rent of property let out to a departmental store at Chennai	6,00,000
(b)	Interest on deposits other than banks	5,00,000
(c)	Contribution of ₹ 21,000 each from 100 persons (who have secreted their names)	21,00,000
(d)	Contribution from 10 persons by way of electoral bonds of ₹ 25,000 each	2,50,000
(e)	Cash contribution @ ₹ 2,100 each from 1,000 members (recorded in books of account)	21,00,000
(f)	Net profit of cafeteria run in the premises at Delhi	3,00,000

Compute the total income of the political party for the assessment year 2024-25, with reasons for inclusion or otherwise.

Solution :
The total income of a political party registered with the Election Commission is to be computed as per section 13A under which the income derived from house property, income from other sources and income by way of voluntary contributions received from any person, on fulfilling of the conditions as mentioned thereunder, are exempt from tax. However, in this case, since cash contribution in excess of ₹ 2,000 is received from 1000 persons, the political party has violated the condition of receipt of donation through account payee cheque/draft or prescribed electronic modes. Further, the political party has also violated the condition of maintenance of records in case of donations exceeding ₹ 20,000 received otherwise than by way of electoral bonds. Hence, its total income has to be computed as under without providing for exemption available under section 13A:

Computation of total income of National Political Party

	Particulars	**₹**
(a)	The rent of the property of ₹ 6 lacs located at Chennai [assuming the same to be the Gross Annual Value] less 30% of ₹ .6 lacs, being deduction u/s 24	4,20,000
(b)	Interest received on deposits	5,00,000
(c)	Contribution from 100 persons (who have secreted their names) of ₹ 21,000 each	21,00,000
(d)	Contribution from 10 persons by way of electoral bonds of ₹ 25,000 each	2,50,000
(e)	Cash contribution @ ₹ 2,100 each from 1,000 members (recorded in books of account)	21,00,000
(f)	Net profit of cafeteria at Delhi	3,00,000
	Total Income	**56,70,000**

Note – Alternatively, the political party can contend that only ₹ 45 lakh is taxable on account of non-maintenance of records and receipt of cash donations, in which case the total income would be computed as under:

Computation of total income of National Political Party

	Particulars	**₹**
(a)	Rent of the property of ₹ 6 lacs located at Chennai	Exempt
(b)	Interest received on deposits	Exempt
(c)	Contribution from 100 persons (who have secreted their names) of ₹ 21,000 each	21,00,000
(d)	Contribution from 10 persons by way of electoral bonds of ₹ 25,000 each	Exempt
(e)	Cash contribution @ ₹ 2,100 each from 1,000 members (recorded in books of account)	21,00,000
(f)	Net profit of cafeteria at Delhi	3,00,000
	Total Income	**45,00,000**

Note: It is presumed that the conditions regarding maintenance of books of account, audit, submission of report under section 29C of the Representation of the People Act, 1951 and filing of return of income under section 139(4B) are fulfilled by the political party, and hence it is eligible for exemption of income under section 13A.

Question-45 :
A business trust, registered under SEBI (Real Estate Investment Trusts) Regulations, 2014, gives particulars of its income for the P.Y.2023-24:

(1) Interest income from Beta Ltd. – ₹ 4 crore;
(2) Dividend income from Beta Ltd. – ₹ 2 crore;
(3) Short-term capital gains on sale of listed shares of Beta Ltd. – ₹ 1.5 crore;
(4) Short-term capital gains on sale of developmental properties – ₹ 1 crore
(5) Interest received from investments in unlisted debentures of real estate companies – ₹ 10 lakh;
(6) Rental income from directly owned real estate assets – ₹ 2.50 crore

Beta Ltd. is an Indian company in which the business trust holds 70% of the shareholding.

Discuss the tax consequences of the above income earned by the business trust in the hands of the business trust and the unit holders, assuming that the business trust has distributed ₹ 10 crore to the unit holders in the P.Y.2023-24 (Assume that Beta Ltd. does not opt to pay tax under section 115BAA).

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

(1) Interest income of ₹ 4 crore from Beta Ltd.: There would be no tax liability in the hands of business trust due to pass-through status enjoyed by it under sub-clause (a) of section 10(23FC) in respect of interest income from Beta Ltd., being the special purpose vehicle. Therefore, Beta Ltd. is not required to deduct tax at source on interest payment to the business trust.

The distributed income or any part thereof, received by a unit holder from the REIT, which is in the nature of interest income received or receivable from a SPV is deemed income of the unit holder as per section 115UA(3).

The business trust has to deduct tax at source under section 194LBA –
- @ 10%, on interest component of income distributed to resident unit holders; and
- @ 5%, on interest component of income distributed to non-corporate non-resident and foreign companies' unit holders.

The interest component of income received from the business trust in the hands of each unitholder would be determined in the proportion of 4/11.1, by virtue of section 115UA(1).

(2) **Dividend income of ₹ 2 crore from Beta Ltd.:** The dividend distributed by the SPV to the business trust is exempt by virtue of section 10(23FC). Any distributed income referred to in section 115UA, which is in the nature of dividend income received or receivable from SPV, in a case where the SPV has exercised the option under section 115BAA, is taxable in the hands of unitholders by virtue of section 10(23FD). However, since Beta Ltd., being a SPV does not opt for section 115BAA, dividend component is exempt in the hands of the unitholders. Consequently, business trust is not required to deduct tax at source on the dividend component distributed to the unitholders.

(3) **Short-term capital gains of ₹ 1.50 crore on sale of listed shares of Beta Ltd.:** As per section 115UA(2), the business trust is liable to pay tax@15% under section 111A in respect of short-term capital gains on sale of listed shares of special purpose vehicle. There would, however, be no tax liability on the capital gain component of income distributed to unit holders, by virtue of the exemption contained in section 10(23FD).

(4) **Short-term capital gains of ₹ 1 crore on sale of developmental properties:** It is taxable at maximum marginal rate in the hands of the business trust as per section 115UA(2). There would be no tax liability in the hands of the unit holders on the capital gain component of income distributed to them, by virtue of the exemption contained in section 10(23FD).

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

(6) **Rental income of ₹ 2.50 crore from directly owned real estate assets:** Any income of a business trust, being a REIT, by way of renting or leasing or letting out any real estate asset owned directly by such business trust is exempt in the hands of the trust as per section 10(23FCA).

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

The distributed income or any part thereof, received by a unit holder from the REIT, which is in the nature of income by way of renting or leasing or letting out any real estate asset owned directly by such REIT is deemed income of the unit holder as per section 115UA(3). The business trust has to deduct tax at source@10% under section 194LBA in case of distribution to a resident unit holder and at rates in force in case of distribution to a non-resident unit holder.

The rental income component received from the business trust in the hands of each unitholder would be determined in the proportion of 2.5/11.1, by virtue of section 115UA(1).

Question-46 :
The following are the particulars of income of four investment funds for P.Y.2023-24:

Particulars	A	B	C	D
	₹ in lakh			
Business Income		2	(2)	5
Capital Gains	16	14	(6)	20
Income from other sources	4	4	8	(2)

Compute the total income of the investment funds and each unitholder for A.Y.2024-25, assuming that:

(1) each investment fund has 20 unitholders each having one unit held by them for a period exceeding 12 months; and
(2) income from investment in the investment fund is the only income of the unitholder.

If Investment Fund C has the following income components for A.Y.2025-26, what would be the total income of the fund and the unit holder for that year?
Business Income ₹ 2 lakh
Capital Gains ₹ 9 lakh
Income from Other Sources ₹ 8 lakh

Solution :

Computation of total income of the investment fund for A.Y. 2024-25

Particulars	A	B	C	D
	₹			
Business Income	Nil	2,00,000	Nil	3,00,000
Total Income	Nil	2,00,000	Nil	3,00,000

Computation of total income of a unit holder of the following Investment funds for A.Y. 2024-25

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

Notes:

(i) The total income of Investment Fund B would be chargeable to tax @30% if the fund is a firm and @30%/25%, as the case may, if the fund is a company and at the maximum marginal rate, in any other case.

(ii) In case of Investment Fund D, the loss from other sources ₹ 2 lakh is set-off against business income of ₹ 5 lakh.

(iii) In case of Investment Fund C, the business loss of ₹ 2 lakh is set-off against income from other sources of ₹ 8 lakh. Loss of ₹ 6 lakh under the head "Capital gains" cannot be set-off against income under any other head. The same can be carried forward by the Unitholder for set-off in the subsequent years since, the units are held for a period of 12 months or more.

For A.Y. 2025-26, the brought forward capital loss of ₹ 30,000 [₹ 6 lakh/20] can be set-off against capital gains of ₹ 45,000 [₹ 9 lakh/20] by the unit-holder since, the period of holding of units is 12 months or more. Business income of ₹ 2 lakh would be taxable in the hands of the Investment Fund. Income from other sources of ₹ 40,000 (₹ 8 lakh/20) would be taxable in the hands of the unitholders.

Question-47 :
An electoral trust approved by the CBDT is not liable to income-tax in respect of voluntary contribution received and other income - Examine the correctness of the statement.

Solution :
Section 13B provides exemption in respect of voluntary contribution received by an electoral trust approved by the CBDT in accordance with the scheme to be made by the Central Government.

Voluntary contribution received by an electoral trust would be treated as its income under section 2(24), but shall be exempt under section 13B if the trust distributes to a registered political party during the year, 95% of the aggregate donations received by it during the year along with surplus brought forward from any earlier years. Another condition for availing the benefit under this section is that the electoral trust should function in accordance with the rules framed by the Central Government.

It may be noted that the exemption under section 13B will be available only in respect of voluntary contribution received by an electoral trust. The exemption cannot be claimed in respect of any other income of the electoral trust.

Therefore, the given statement is not correct.

Author's Note: Q18,19,22 are repeated from PGBP here in this chapter.
Sir, pehle kyu nahi bataya? – so that tum solve kar lo ek aur bar and practice ho jaaye.
2nd Revision me cut kar dena.:p

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CHAPTER 10
ASSESSMENT OF TRUSTS AND INSTITUTIONS, POLITICAL PARTIES AND OTHER SPECIAL ENTITIES
Part-A : Study Material Questions

Question-1 :
An educational institution having annual receipts of ₹ 3.80 crore during the P.Y. 2023-24, has availed exemption under section 10(23C)(iiiad). The Assessing Officer has denied the exemption on the grounds that the educational institution has not made any application to the prescribed authority for approval under the said section 10(23C)(iiiad). Examine the action of the Assessing Officer in denying the exemption.

Solution :
As per section 10(23C)(iiiad), income of any university or other educational institution existing solely for educational purposes and not for purposes of profit would be exempt if the aggregate annual receipts of such university or educational institution do not exceed ₹ 5 crore. Therefore, the exemption available under this section can be availed without making any application to the prescribed authority.

Therefore, the action of the Assessing Officer in denying the exemption to the educational institution is not correct.

Question-2 :
A not for profit trust undertakes philanthropic activities through an educational institution and a hospital. During the P.Y. 2023-24, the trust had annual receipts of ₹ 3 crore from its educational institution and ₹ 4 crore from the hospital. During the P.Y. 2023-24, it desires to avail exemption under section 10(23C)(iiiad) and 10(23C)(iiiae), as the individual threshold under each of the sub-clauses, is less than ₹ 5 crore. Can it do so? Examine.

Solution :
As per Explanation below to section 10(23C)(iiiae), it has been clarified that the limit of annual receipts of ₹ 5 crore is qua 'taxpayer' and not qua 'activity'. Therefore, if the aggregate annual receipts from educational activity and medical activity exceeds ₹ 5 crores, then, exemption under sub-clause (iiiad) and (iiiae) cannot be availed by the trust.

Since, in the present case, the aggregate annual receipt of ₹ 7 crores (₹ 3 crores of educational institution and ₹ 4 crores from hospital) exceeds the threshold of ₹ 5 crores, exemption under section 10(23C)(iiiad) and (iiiae) cannot be availed, even though the individual receipts from educational institution and hospital have not exceeded ₹ 5 crores.

Question-3 :
An institution having its main object as "advancement of general public utility" received ₹ 30 lakhs in aggregate during the P.Y.2023-24 from an activity in the nature of trade. The total receipts of the institution, including donations, was ₹ 140 lakhs. It applied 85% of its total receipts from such activity during the same year for its main object i.e., advancement of object of general public utility.

(i) What would be the tax consequence of such receipt and application thereof by the institution?

(ii) Would your answer be different if the institution's total receipts had been ₹ 150 lakhs (instead of ₹ 140 lakhs) in aggregate during the P.Y.2023-24?

(iii) What would be your answer if the main object of the institution is "relief of the poor" and the institution receives₹ 30 lakhs from a trading activity, when its total receipts are ₹ 140 lakhs and applies 85% of the said receipts for its main object?

Solution :

(i) As the main object of the institution is "advancement of object of general public utility", the institution will lose its "charitable" status for the P.Y.2023-24, since it has received ₹ 30 lakhs from an activity in the nature of trade, which exceeds ₹ 28 lakhs, being 20% of the total receipts of the institution undertaking that activity for the previous year. The application of 85% of such receipt for its main object during the year would not help in retaining its "charitable" status for that year. The institution will lose its charitable status and consequently, the benefit of exemption of income for the P.Y.2023-24, irrespective of the fact that its approval is not withdrawn or its registration is not cancelled.

(ii) If the total receipt of the institution is ₹ 150 lakhs, and the institution receives ₹ 30 lakhs in aggregate from an activity in the nature of trade during the P.Y.2023-24, then it will not lose its "charitable" status since receipt of upto 20% of the total receipts of the institution in a year from such activity is permissible. The institution can claim exemption subject to fulfilment of other conditions under sections 11 to 13. Further, such activity should also be undertaken in the course of actual carrying out of such advancement of any other object of general public utility.

(iii) The restriction regarding carrying on a trading activity for a cess, fee or other consideration will not apply if the main object of the institution is "relief of the poor".
Therefore, receipt of ₹ 30 lakhs from a trading activity by such an institution will not affect its "charitable" status, even if it exceeds 20% of the total receipts of the institution. The institution can claim exemption subject to fulfilment of other conditions under sections 11 to 13.

Question-4 :

"Save Wild Life" an institution having its main object as 'preservation of wildlife', used the entire income derived from an activity in the nature of trade for its main object during the previous year ended on 31.03.2024. Would such utilization of its income be treated as utilisation for "charitable purpose"? Examine. Would your answer be different, if the main object of the institution is "advancement of object of general public utility"?

Solution :

Section 2(15) defines "charitable purpose" to include relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest and the advancement of any other object of general public utility. However, the "advancement of any other object of general public utility" shall not be a charitable purpose, if the institution is carrying on any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income derived from such activity.

Therefore, preservation of wildlife is included in the definition of "charitable purpose" under section 2(15). Further, an institution having the preservation of wildlife as its main object would not be subject to the restrictions which are applicable to the "advancement of any other object of general public utility". Such institution would continue to retain its "charitable" status, even if it derives income from an activity in the nature of trade.

However, if an institution having its main object as "advancement of any other object of general public utility", derives income from an activity in the nature of trade during a financial year, it would lose its "charitable" status for that year, even if it applies such income for its main objects.

It may be noted that if the receipts from such activity does not exceed 20% of the total receipts in that year, then, the institution would not lose its "charitable" status, even if its main object is "advancement of any other object of general public utility", if such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility.

Question-5 :

NSN, a charitable educational trust approved under section 10(23C)(vi), is running a school. It operates a stationery shop outside the school campus. A sum of ₹ 75 lakhs has been derived as net income from such business activity, which has been applied towards the objectives of the trust in providing education. The trust maintains separate books of accounts for the business activity. Examine the taxability of application of the income, if the income so derived relates to the previous year 2023-24.

Solution :
The trust objective of providing education is a charitable purpose as per section 2(15). The trust in the given case runs a stationery shop business, whose income is applied towards the objectives of the trust. In this case, the business income from the stationery shop will be eligible to avail exemption in respect of profits and gains of business, if such business is incidental to the attainment of the objectives of the trust and separate books of account are maintained in respect of such business.

Therefore, in the given case, the profit from the business shall be eligible for exemption under section 11, assuming that the said business is incidental to the attainment of the objects of the trust (i.e., education) and books of account for such business activity is maintained separately.

Question-6 :
A public trust has commenced its activities of providing "relief to poor" in the year 2022-23. The trust intends to claim benefits of sections 11 and 12 from A.Y. 2024-25. It approaches you in October, 2023. Advise the trust as to the time limit for making an application for registration, time limit for granting approval by the Principal Commissioner or Commissioner and the period for which the approval is valid.

Solution :
In order to avail the exemption under section 11, the trust has to obtain registration under section 12AB read with section 12A(1)(ac). From 1.10.2023, the trust which has already commenced its activities can directly apply for final registration. In the present case, the trust has to apply for registration after commencing its activities but on or before 31.3.2024 to avail the exemption for A.Y. 2024-25. Accordingly, the time limit for making application, time limit for granting registration and period of validity would be as follows:

S. No	Particulars	Time Limit
1	Registration application to be filed online as prescribed under Rule 17A	Application for final registration to be made in Form 10AB at any time after the commencement of such activities.
2	Grant of registration by the Principal Commissioner or Commissioner	Grant registration within 6 months from the end of the month in which application was received after satisfying himself about the genuineness of activities and compliance of other laws, as are material for the purpose of achieving its objects. For this purpose, the PC or C shall call for such documents or information and make inquiries as he thinks necessary. If not satisfied, pass an order in writing rejecting such application after giving opportunity of being heard.
3	Validity period of the approval	Registration is valid for five years effective from the A.Y. immediately following the F.Y. in which application is made.

Question-7 :
Help All, a trust created on 1st April 2022 for providing relief to the poor, applied for registration under section 12AB on 28th February 2023. The Commissioner denied registration on the ground that the trust had not commenced any charitable activity, due to which he could not satisfy himself about the genuineness of the trust. Is the ground for denial of registration by the Commissioner justified in this case? Discuss.

Solution :
Section 12AB read with section 12A(1)(ac)(vi) provides that in case of a trust seeking registration for first time, provisional registration will be provided for a period of three years without detailed enquiry by the prescribed income-tax authority even in cases where activities of the entity are yet to begin. This is one of the key feature of the new registration process that benefits the taxpayer, wherein provisional registration is accorded.

Hence, in the new registration regime, the Commissioner cannot deny registration on the ground that activities have not commenced. The Commissioner can make detailed enquires and call for information when the trust applies to convert its provisional registration into a final registration as stipulated under section 12A(1)(ac)(iii) read with section 12AB.

Question-8 :
XYZ Charitable Trust is an educational institution registered under section 12AB of the Income-tax Act. During the Financial Year 2023-24, the trust receives a corpus donation of ₹ 25 lakhs with a specific direction that the corpus fund should be utilised for setting up a science laboratory. The trust intends to set up the lab only during P.Y. 2025-26 and will utilize the funds only during that financial year. In this regard, the trust wants to understand whether the corpus donations are exempt u/s 11(1)(d) of the Income-tax Act, 1961

Solution :
As per section 11(1)(d), voluntary contributions made with a specific direction that they shall form part of the corpus of the trust is an exempted income. However, in order to avail the exemption by the trust, such corpus donations must be invested or deposited in one or more of the forms or modes specified in section 11(5). Failure to deposit the same in the prescribed modes, will result in inclusion of corpus donation as an income of the XYZ Charitable trust.

Question-9 :
MSO Foundation, a registered charitable institution set up on 1st April, 2022 is engaged in providing education in hotel management. The organization acquires a building in July 2023 for using the same for holding classes and office activities. It has approached you for your opinion on its eligibility to claim the cost of the building and also depreciation thereon in the current year and the subsequent year. Advise the institution indicating the reasons.

Would your advise change, if building has been acquired out of loan taken in July 2023 from bank, to be repaid in installments over a period of 7 years?

Solution :
15% of income from property held for charitable purposes is exempt from tax under section 11. The remaining 85% of such "income" would be exempt if it is "applied" for charitable purposes in India.

Application of the amount can be for revenue or capital purposes. As long as the expenditure is incurred out of income earned by the trust and for the purposes of carrying on the objects of the trust, it would be treated as application of income even if such expenditure is for capital purposes. Therefore, since the building is acquired by the organization for holding classes and office activities, which is for the purposes of carrying on the objects of the charitable institution i.e., for providing education in hotel management, the cost of the building would be treated as application of income.

However, section 11(6) provides that where the cost of building is claimed as application, no other deduction for depreciation or otherwise would be allowed as an application of income in respect of such asset for the same or any other previous year.

If building has been acquired out of loan taken from bank, then, cost of building cannot be claimed as application. Repayment of loan would be treated as application in the year of repayment to the extent of amount repaid for a period of 5 years from the end of the previous year in which building was acquired. The repayment made upto 31.3.2029 would be eligible to be treated as application in the respective year of repayment. Repayment made thereafter i.e., from 1.4.2029 cannot be treated as application.

Alternatively, since cost of building is not claimed as application, depreciation on such building can be claimed as deduction. However, if deduction in respect of depreciation is claimed, then, it is possible to take a view that repayment of loan may not be eligible to be treated as application.

Question-10 :
VPS Foundation, a charitable institution registered under section 12AB set up on 1st August 2022 is engaged in providing education in sports management. The Foundation follows accrual basis of accounting and during the previous year 2023-24, has accrued staff's salary expenses pertaining to the month of March 2024 amounting to ₹ 5 lakhs. The salary was paid during the first week of April 2024. KS, the tax advisor of the foundation has advised them that the salary expenses provided for in the accounts will not be treated as an application of income for the previous year 2023-24. Examine.

Solution :
Upto Assessment Year 2021-22, an expenditure could be regarded as an application of income even if it was not actually paid. However, effective from assessment year 2022-23, Explanation to section 11 provides that any sum payable by an institution shall be considered as an application of income only in the previous year in which such sum is actually paid by it. This is irrespective of the previous year in which the liability to pay such sum is incurred by the institution according to the method of accounting regularly employed by it. Therefore, the tax advisor's statement is correct.

Question-11 :
A charitable institution registered under section 12AB of the Income-tax Act, 1961 filled in Form No.10 for seeking permission to accumulate unapplied income under section 11(2) of the Act for the objects of the institution and submitted it to the Assessing Officer along with the resolution for accumulation. The Assessing Officer found that the objects for which accumulation was sought were not particularised in as much as they covered the entire range of objects of the institution. Can the Assessing Officer deny the benefit of accumulation in such a case?

Solution :
Section 11(2) permits a charitable trust or institution to accumulate its unspent income where 85% of the income is not applied or is not deemed to have been applied to charitable or religious purposes in India during the previous year. The institution or trust has to specify, in the statement furnished to the Assessing Officer, the purpose for which the income is being accumulated or set apart and the period for which such income is to be accumulated or set apart.

In the given case, the assessee institution sought the permission of the Assessing Officer to accumulate unapplied income for the objects of the institution. The institution had not stated any objects in particular for which the unspent income was sought to be accumulated or set apart. In Bharat Krishak Samaj vs. Deputy Director of Income-tax (Exemption) (2008) 306 ITR 153 (Del.), it was held that it is not necessary for a charitable trust to particularize each and every object for which accumulation is sought. It is enough if the assessee seeks permission for accumulation for the objects of the trust. Therefore, the Assessing Officer cannot deny the benefit of accumulation in such a case.

Question-12 :
A charitable institution registered under section 12AB of the Income-tax Act, 1961 for the previous year ended 31 March 2024, filled in Form No.10 for seeking permission to accumulate unapplied income for a period of five years under section 11(2) of the Act for the objects of the institution and submitted it to the Assessing Officer along with the resolution for accumulation. The charitable institution could not utilise the accumulated income within the period of five years. Examine the consequences of the same for the charitable institution with regards to the accumulated income.

Solution :
Section 11(3) provides for consequences when an assessee registered under section 12AB fails to satisfy the conditions of 11(2) accumulation. In this regard, the charitable institution has not utilised the accumulated income of P.Y. 2023-24 within a period of five years as specified in Form 10. Hence, by virtue of section 11(3), the said income will be deemed to be the income of the charitable institution of the previous year, being the last previous year of the period for which the income accumulated is not utilised. Hence, the said income will be taxable in the 5th year as it is the last previous year of the period of accumulation.

Question-13 :
A charitable trust derives its income from the business of providing mineral water to various companies situated in Software Technology Park in Hyderabad. A sum of ₹ 30 lakhs has been derived as net income from such business activity, which has been applied for the object of general public utility. The total receipts of the trust during the P.Y. 2023-24 was ₹ 140 lakhs.
Examine the taxability of application of the income, if the income so derived relates to the previous year 2023-24. Would your answer be different, if the trust runs a school in a backward district and applies the profits from the business for such school's activity?

Solution :
In the first case, net income from the business of supplying mineral water to various companies i.e., ₹ 30 lakhs is not eligible for exemption under section 11, since the receipt from such activity exceeds 20% of total receipts (i.e., 20% of ₹ 140 lakhs) during the year. This is because "advancement of any object of general public utility" would not be a charitable purpose if it involves carrying on of any activity in the nature of trade, commerce or business, for example, supply of mineral water for a consideration, as in this case. It is immaterial that the net income from such business is applied for the object of general public utility. On the other hand, where the trust runs a school in a backward district, this restriction is not applicable. The reason is that the restriction contained in section 2(15) is applicable only to the last limb of the definition of "charitable purpose" i.e. advancement of object of general public utility. It does not affect the other limbs of the definition viz. "relief of the poor", "education", "medical relief" etc.

Section 11(4) clarifies that "property held under trust" includes a business undertaking so held. As per section 11(4A), exemption can be availed in respect of profits and gains of business, if such business is incidental to the attainment of the objectives of the trust and separate books of account are maintained in respect of such business. Therefore, in the second case, the profit from the business shall be eligible for exemption under section 11, assuming that the said business is incidental to the attainment of the objects of the trust (i.e., education) and books of account for such business activity is maintained separately.

Question-14 :
The following trusts claim that anonymous donations received by them during the financial year 2023-24 are not liable to tax under section 115BBC:

(i) A charitable trust referred to in section 11 which applied the entire amount of anonymous donations for purposes of the trust during the relevant financial year.
(ii) A trust established wholly for religious purposes which applied 85% of the amount of anonymous donations for the purposes of the objects of the trust during the relevant financial year.

Examine the validity of the claim made by the trusts.

Solution :
(i) Section 115BBC provides for levy of tax @ 30% on anonymous donation received by, inter alia, charitable trusts or institutions referred to in section 11 in the following manner:

(a) the amount of income-tax calculated @30% on the aggregate of anonymous donations received in excess of 5% of the total donations received by the assessee or one lakh rupees, whichever is higher; and
(b) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of the anonymous donations received in excess of 5% of the total donations received by the assessee or ₹ 1 lakh, as the case may be.

Further, section 13(7) provides that the exemption provisions contained in sections 11 and 12 shall not be applicable in respect of any anonymous donation liable to tax under section 115BBC. As such, application of the anonymous donations received by the charitable trust for charitable purposes does not confer any exemption from tax. Therefore, the claim for non-taxability under section 115BBC of anonymous donations received by the charitable trust is not valid in law.

However, a view may be taken that anonymous donation upto higher of 5% of total donations or ₹ 1 lakh, which is taxable at normal rates would be eligible for application of income and thereby, the benefit of exemption under section 11 would apply.

(ii) Section 115BBC(2) provides that the provisions contained in section 115BBC(1) relating to the taxability of anonymous donations are not applicable to any trust or institution created or established wholly for religious purposes. As such, the trust established wholly for religious purposes is not liable to be taxed in respect of the anonymous donations received by it. Therefore, the claim made by the trust is valid in law. The application or non-application of such anonymous donation for the purposes of trust during the relevant financial year is not germane to the issue of taxability under section 115BBC.

Question-15 :
SR Trust is a registered charitable trust under section 12AB. During the P.Y.2023-24, the trust had applied ₹ 5 lakh for the benefit of the trustee and ₹ 2 lakh for the benefit of Mr. Satish, who has donated ₹ 3 lakh to the trust upto 31.3.2024. Also, an amount of ₹ 2 lakh set apart in the P.Y.2021-22 by the trust for charitable purposes u/s 11(2) has been utilized in the P.Y.2023-24 for making donation to another registered charitable trust with similar object as SR Trust. What is the amount of "specified income" liable to tax@30% under section 115BBI for A.Y. 2024-25?

Solution :
Section 115BBI provides for levy of tax @ 30% on certain "specified income" of a trust. Section 115BBI defines "specified income" to include income which has been applied for the benefit of prohibited persons u/s 13(3), which includes, inter alia, trustee of the trust and a person who has made substantial contribution to the trust (i.e., whose total contribution upto 31.3.2024 is more than ₹ 50,000). Specified income also includes deemed income on account of violation of certain conditions stipulated in section 11(3) for accumulation of income. Donation to another charitable trust out of accumulated income is one such violation. Accordingly, "specified income" of SR Trust liable to tax@30% under section 115BBI for A.Y. 2024-25 would be ₹ 10 lakh [₹ 5 lakh (amount applied for the benefit of the trustee) + ₹ 3 lakh (amount applied for the benefit of Mr. Satish) + ₹ 2 lakh (donation made to another trust out of accumulated income of an earlier previous year].

Question-16 :
Explain in the context of provisions of the Act, whether the income derived during the year ended on 31.03.2024 in following case shall be subject to tax in the A.Y. 2024-25:

A political party, duly registered under section 29A of the Representation of the People Act, 1951, received rent of ₹ 1,25,000 per month of one of its building let out to a bank from 01.06.2023.

Solution :
Rent received by the political party from the bank is an income chargeable under the head "Income from house property". However, according to the provisions of section 13A, income from, inter alia, house property shall not be included in total income of a political party registered under section 29A of the Representation of the People Act, 1951, provided the political party fulfils the conditions as specified therein including furnishing a return of income for the previous year in accordance with the provisions of section 139(4B) on or before the due date under section 139. Therefore, if the stipulated conditions are fulfilled by the political party, rent of ₹ 1,25,000 per month received by the registered political party from letting out of its building to a bank would not be included in its total income.

Question-17 :
A trust, unless created for "charitable purpose", does not qualify to claim exemption under Chapter III of the Act. In this context, explain the meaning of "charitable purpose" and examine whether the following objects constitute part of it:

(i) Rural reconstruction and upliftment of the masses through Cottage Industry.

(ii) Welfare of industrial workers with a stipulation that the workers of settlor of trust have got preference over others.

Solution :
Section 2(15) defines "charitable purpose" to include relief of the poor, education, medical relief, yoga, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest and the advancement of any other object of general public utility. However, "advancement of any other object of general public utility" would not be a charitable purpose, if it involves carrying on of any activity in the nature of trade, commerce or business or, any activity of rendering of any service in relation to any trade, commerce or business, for a fee or cess or any other consideration, irrespective of the nature of use or application of the income from such activity or the retention of such income, by the concerned entity.

"Advancement of any other object of general public utility" would continue to be a "charitable purpose", if the total receipt from any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business does not exceed 20% of the total receipts of the trust in the previous year, and such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility.

(i) The Supreme Court has, in Thiagarajar Charities vs. Addl. CIT (1997) 225 ITR 1010, observed that "cottage industry" is associated with the idea of a small, simple enterprise or industry in which employees work in their own houses or in a small place, gathered together for the purpose, using their own equipments and is usually found in rural areas or so carried on, by the poorer section of the society. In substance, the activity of rural reconstruction and upliftment of masses through cottage industry is to afford relief to the poor and consequently, it is for charitable purpose.

(ii) The welfare of industrial workers with a stipulation that the workers of settlor of trust have preference over others would also constitute "charitable purpose" within the meaning of section 2(15). The Patna High Court has, in CIT v. Tata Steel Charitable Trust (1993) 203 ITR 764, observed that exemption under section 11(1) can be availed only if the following conditions are satisfied –

(1) the trust is created for a charitable purpose; and
(2) no part of the income of such trust enures or has been used or applied directly or indirectly for the benefit of any person referred to in section 13(3).

The list of persons contained in section 13(3) does not include employees of the settlor of the trust. Section 13(3)(d), which includes any relative of the author, can have no application because "relative" means a person connected by birth or marriage with another person. A person having relationship pursuant to a contract like that of an employer and an employee cannot be said to be a relative. The High Court concluded that it was immaterial that any employee of the settler of the trust had acquired any benefit out of the income of the trust as an ordinary member of the community. Therefore, the application of part of the income of the trust for the benefit of the employees of the settler cannot disentitle the trust from claiming exemption under section 11.

Question-18 :
Ramji Charitable Trust has filed return of income for the Assessment Year 2024-25 within the stipulated time under section 139(4) and applied only 50% of its income for specified purposes. It intends to accumulate the balance 35% of income to be spent in future years. Accordingly, it filed its Statement in Form 10 in August, 2024 and deposited the money so accumulated in post office savings bank account. While completing the assessment, the Assessing Officer disallowed the accumulated income of 35% and taxed the same on the ground that the trust has filed its return of income only in December, 2024. Discuss the validity of the action of the Assessing Officer in this case.

Solution :
Section 11(2) provides that a charitable trust has to apply 85% of its income to charitable purposes and where 85% of its income is not applied for such purposes, the trust may accumulate or set apart either the whole or part of its income for future application for such purposes in India. The requirement of the Act is that the trust has to make an application/intimation in the prescribed form, for accumulation of income, specifying the purpose and the period (not exceeding 5 years). The application should be filed or furnished before the assessing authority two months prior to the due date specified under section 139(1). Further, the money so set apart or accumulated should be invested/deposited in any one or more of these modes or forms specified under section 11(5).

In case the statement in Form 10 is submitted in August, 2024 and the amount accumulated was deposited in post office savings bank account, which is a mode specified in section 11(5). However, the benefit of accumulation would not4 be available if the return of income is not furnished on or before the due date of filing of return of income under section 139(1). In this case, trust has not filed its return on or before the due date under section 139(1). The return of income was filed only in December, 2024. Therefore, the action of the Assessing Officer, in this case, is valid.

Question-19 :
An institution operating for promotion of education claiming exemption under section 11 since 1994 furnishes the following data for the assessment year 2024-25:

S.No.	Particulars	₹ in crores
(i)	Fees collected from students	14
(ii)	Construction of a new computer science laboratory	0.50
(iii)	Land acquired to be used as a cricket field for the students	2
(iv)	Amount earmarked and set apart for construction of an arts block within the next 4 years.	4

Compute the total income of the institution for the A.Y.2024-25.

Solution :

Computation of total income of the institution for the A.Y. 2024-25

Particulars	₹ (in crores)
Fees received	14.00
Less : 15% (exempt even if not spent for the objects of the institution)	2.10
	11.90
Less: Amount applied for charitable purposes	
Actual amount spent on construction of computer science lab **(See Note 1)**	0.50
Actual amount spent on purchase of land for cricket field **(See Note 1)**	2.00
	2.50
	9.40
Less : Accumulated for specified purpose (See Note 2)	4.00
Total Income	**5.40**

Notes:

(1) The institution must utilise 85% of its income within the previous year for the objects of the institution. The institution can apply its income either for revenue expenditure or for capital expenditure provided the expenditure is incurred for promoting the objects of the institution. Land acquired and meant for use as cricket field for students is a capital expenditure incurred for promoting the objects of the institution and hence, eligible for deduction. Likewise, the amount spent on construction of computer science laboratory is also eligible for deduction.

(2) Section 11(2) provides that a trust/institution can accumulate or set apart its income for a specified purpose by furnishing statement in prescribed format to the concerned Assessing Officer. However, the period for which the funds can be accumulated cannot exceed 5 years. The amount so accumulated should be invested in the forms and modes specified in section 11(5). In this case, the institution has to furnish statement in Form 10 two months prior to the due date of filing return of income to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is being accumulated or set apart, which shall, in no case, exceed five years. Further, the institution has to invest ₹ 4 crore in the specified forms and modes.

Note – Section 11(2) stipulates the conditions for accumulation, on fulfillment of which the income so accumulated or set apart would not be included in the total income of the previous year of the trust. The condition stipulated in clause (c) of Section 11(2) is that the statement in Form 10 has to be furnished at least 2 months prior to the due date of filing of return of income u/s 139(1). However, as per section 13(9), the income accumulated would not be excluded from total income if Form 10 is not submitted on or before the due date under section 139(1). Section 13(9) permits exclusion of accumulated income from total income of the previous year, if Form 10 is filed on or before the due date under section 139(1). CBDT Circular No.6/2023 dated 24.5.2023 clarifies that the statement of accumulation in Form No. 10 is required to be furnished at least two months prior to the due date of furnishing return of income so that it may be taken into account while auditing the books of account. However, the

accumulation/deemed application shall not be denied to a trust as long as the statement of accumulation/deemed application is furnished on or before the due date of furnishing the return as provided in section 139(1).

Question-20 :
A public charitable trust registered under section 12AB, for the previous year ending 31.3.2024, derived gross income of ₹ 21 lakhs, which consists of the following:

		(₹ in Lacs)
(a)	Income from properties held by trust (net)	10
(b)	Income (net) from business (incidental to main objects)	4
(c)	Voluntary contributions from public	7

The trust applied a sum of ₹ 11.60 lacs towards charitable purposes during the year which includes repayment of loan taken for construction of orphanage₹ 3.60 lacs. The entire expenditure incurred on construction of orphanage was allowed as application of income in the P.Y. 2020-21.

Determine the taxable income of the trust for the assessment year 2024-25.

Solution :

Computation of taxable income of public charitable trust

	Particulars	**₹**
(i)	Income from property held under trust (net)	10,00,000
(ii)	Income (net) from business (incidental to main objects)	4,00,000
(iii)	Voluntary contributions from public	7,00,000
	Voluntary contribution made with a specific direction towards corpus are alone to be excluded under section 11(1)(d). In this case, there is no such direction and hence, included.	**21,00,000**
	Less: 15% of the income eligible for retention / accumulation without any conditions	3,15,000
		17,85,000
	Less: Amount applied for the objects of the trust	
	(i) Amount spent for charitable purposes (₹ 11,60,000 - ₹ 3,60,000)	8,00,000
	(ii) Repayment of loan for construction of orphan home (See Note below)	-
	Taxable Income	**9,85,000**

Note - As per Explanation 4(ii) to section 11(1), any application for charitable or religious purposes, from any loan or borrowing in the concerned year, shall not be treated as application of income for charitable or religious purposes. However, the amount not so treated as application, shall be treated as application in the year in which the loan is repaid. The Fourth proviso to Explanation 4(ii) to section 11(1) clarifies that this provision will, however, not apply where application is from loan or borrowing made on or before 31.3.2021.

Since the amount spent on construction of orphanage was allowed as deduction in the P.Y. 2020-21, repayment of loan taken for such purposes will not be allowed as application as it would tantamount to double deduction.

Question-21 :
Work out, from the following particulars, the amount of capital gain which shall be deemed to have been applied for charitable or religious purpose arising out of sale of a capital asset utilized for the purposes of trust to the extent of 60%:

Particulars	**₹**
Cost of transferred asset	2,40,000
Sale consideration	3,60,000
Cost of new asset purchased	3,00,000

Solution :
In this case, since the asset which is transferred is utilized for the purposes of the trust only to the extent of 60%, only the proportionate amount (i.e., 60%) of the capital gain would be regarded as having been applied for charitable or religious purposes.

As per section 11(1A), where a capital asset held under trust is transferred, and only a part of the net consideration is utilized for acquiring a new capital asset, only so much of the capital gain as is equal to the amount, if any, by which the amount so utilized exceeds the cost of the transferred asset shall be considered to have been applied for the objects of the trust.

In this case, only a part of the net consideration of ₹ 3,60,000 is utilized for acquiring the new capital asset costing ₹ 3,00,000. The amount utilized in acquiring the new asset (i.e., ₹ 3,00,000) exceeds the cost of the transferred asset (i.e., ₹ 2,40,000) by ₹ 60,000.

Therefore, only 60% of (₹ 3,00,000 – ₹ 2,40,000) = 60% of ₹ 60,000 = ₹ 36,000 is deemed to be applied for the objects of the trust.

Question-22 :
Helpage is a charitable trust set up on 1.4.2010 with the object of providing relief to the poor. Later on, in April, 2012, it changed its object to medical relief. It applied for registration on the basis of its new object, i.e., medical relief, on 1.9.2012 and was granted registration under Section 12AA on 1.2.2013.

On 1.4.2023, Helpage got merged with Poor Aid, is not eligible for registration under section 12AB or approval under section 10(23C). All the assets and liabilities of the erstwhile trust became the assets and liabilities of Poor Aid. The trust appointed a registered valuer for the valuation of its assets and liabilities. From the following particulars (including the valuation report), calculate the tax liability in the hands of the trust arising as a result of such merger:

(i) Land

Location	Date of purchase	Stamp duty value on 1.4.2023	Value which the land would fetch, if sold in the open market on 1.4.2023	Book Value on 1.4.2023
		₹	₹	₹
Noida	1.9.2010	55 lakhs	58 lakhs	50 lakhs
Gurgaon	1.9.2013	100 lakhs	120 lakhs	110 lakhs

(ii) Shares

Type of shares	Date of purchase	Face value of each share	Purchase price of each share	Price at which each share is quoted on BSE as on 1.4.2023		Open market value as on 1.4.2023 #
				Highest price	Lowest price	
		₹	₹	₹	₹	₹
5000 Quoted equity shares of A Ltd.	1.5.2014	100	110	320	300	
2000 Preference shares of B Ltd.	1.9.2015	100	100	-	-	180

on the basis of report of Merchant Banker

(iii) Liabilities

Book value of liabilities on 1.4.2023 = ₹ 120 lakhs. This includes –
(a) Corpus fund ₹ 12 Lakhs.
(b) Provision for taxation ₹ 8 lakhs; and
(c) Reserves and Surplus ₹ 18 lakhs

Solution :
As per section 115TD, the accreted income of "Helpage", a charitable trust, registered under section 12AA which is merged with Poor Aid, an entity not entitled for registration under section 12AB or approval under section 10(23C), would be chargeable to tax at the rate of 34.944% [30% plus surcharge @12% plus cess@4%].

Computation of accreted income and tax liability in the hands of the Helpage trust arising as a result of merger with Poor Aid

Particulars	**Amount (₹)**
Aggregate FMV of total assets as on 1.4.2023, being the specified date (date of merger) **[See Working Note 1]**	1,39,10,000
Less: Total liability computed in accordance with the prescribed method of valuation **[See Working Note 2]**	82,00,000
Accreted Income	**57,10,000**
Tax Liability @ 34.944% of ₹ 57,10,000 (rounded off)	**19,95,300**
Working Notes:	
(1) Aggregate fair market value of total assets on the date of merger	
Land at Noida, being immovable property, purchased on 1.9.2010	
Since the trust was registered only on 1.2.2013 and benefit of section 11 and 12 was available to the trust only from A.Y.2013-14, relevant to P.Y.2012-13, being the previous year in which the application for registration is made, the value of land purchased in P.Y.2010-11, in respect of which benefit under sections 11 and 12 was not availed, has to be ignored for computing accreted income.	
Land at Gurgaon, being an immovable property, purchased on 1.9.2013	1,20,00,000
[The fair market value of land would be higher of ₹ 120 lakhs i.e., price that the land would ordinarily fetch if sold in the open market and ₹ 100 lakhs, being stamp duty value as on the specified date, i.e., 1.4.2023]	
Quoted equity shares of A Ltd. [5,000 x ₹ 310 per share]	15,50,000
[₹ 310 per share, being the average of the lowest (₹ 300) and highest price (₹ 320) of such shares on the specified date]	
Preference shares of B Ltd. [2,000 x ₹ 180 per share]	3,60,000
[The fair market value which it would fetch if sold in the open market on the specified date i.e., FMV on 1.4.2023]	
	1,39,10,000
(2) Total liability	
Reserves and Surplus ₹ 18 lakhs [not includible]	
Corpus Fund of ₹ 12 lakhs [not includible]	
Provision for taxation ₹ 8 lakhs [not includible]	
Other Liabilities	
[₹ 120 lakhs - ₹ 18 lakhs - ₹ 12 lakhs - ₹ 8 lakhs]	82,00,000
	82,00,000

Question-23 :
"Serving the poor", a charitable trust, is registered under section 12AB of the Act. On 1.4.2023, it got merged with another entity not eligible for registration under section 12AB or approval under section 10(23C).

All the assets and liabilities of the erstwhile trust became the assets and liabilities of the merged entity.

The trust appointed a registered valuer for the valuation of its assets and liabilities. From the following particulars (including the valuation report), calculate the tax liability in the hands of the trust arising as a result of such merger:

(i) Stamp duty value of land held ₹ 15 lakhs. However, if this land is sold in the open market, it would ordinarily fetch ₹ 17 lakhs. The book value of the land is ₹ 20 lakhs.
(ii) 75,000 equity shares in Ink Ltd. traded in Delhi Stock Exchange. The lowest price per share on 1.4.2023 was ₹ 75 and the highest price on that day was ₹ 85. The book value was ₹ 67 lakhs.
(iii) 55,000 preference shares held in N Ltd. The shares will fetch ₹ 44 lakhs, if they are sold in the open market on 1.4.2023. Book value was ₹ 25 Lakhs.
(iv) Corpus fund as on 1.4.2023 ₹ 15 Lakhs.
(v) Outside liabilities ₹ 90 lakhs
(vi) Provision for taxation ₹ 5 lakhs.
(vii) Liabilities in respect of payment of various utility bills ₹ 6 lakhs.

Solution :

As per section 115TD, the accreted income of "Serving the poor", a charitable trust, registered under section 12AA 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. 2024-25

Particulars	**Amount (₹)**
Aggregate FMV of total assets as on 1.4.2023, 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:	
Aggregate fair market value of total assets on the date of merger	
Land, being an immovable property	**17,00,000**
[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]	
Quoted equity shares in Ink Ltd. [75,000 x ₹ 80 per share]	**60,00,000**
[₹ 80 per share, being the average of the lowest (₹ 75) and highest price (₹ 85) of such shares on the date of merger]	
55,000 preference shares of N Ltd.	**44,00,000**
[The fair market value which it would fetch if sold in the open market on the date of merger i.e., FMV on 1.4.2023]	
	1,21,00,000
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

Question-24 :
Examine the tax consequences for A.Y.2024-25 in the case of the following charitable institution/trust, considering each case independently -

(i) A charitable institution, having its main object as "any other object of general public utility", carries on business in the course of actual carrying out of such advancement of any other object of general public utility and maintains separate books of account in respect of business. The gross receipts during the P.Y.2023-24 is ₹ 2 crore, which comprises of receipts of ₹ 44 lakh from such business and 1.56 crore by way of voluntary contributions (not being corpus donations). It has applied 85% of its gross receipts for charitable purposes.

(ii) A charitable trust registered under section 12AB with the object of "Relief of poor" changed its object on 1.4.2023 to "any other object of general public utility". The application of income in the year P.Y.2023-24 was towards general public utility and not relief of poor. It has, however, not applied for fresh registration under section 12AB (based on the modified object) upto 31.3.2024.

Solution :
Tax consequences in the hands of the charitable trust/institution for A.Y.2024-25

(i) In this case, the main object of the charitable institution is "any other object of general public utility" and therefore, its aggregate receipts from business undertaken in the course of actual carrying out of such advancement of any other object of general public utility should not exceed 20% of total receipts, if it wants to retain its "charitable status". However, the aggregate receipts from business for P.Y.2023-24, in this case, is 22% of total receipts. Hence, the institution would lose its "charitable status" for the P.Y.2023-24. Application of 85% of receipts for its main object during the year would not help in retaining its "charitable" status for that year.

(ii) As per section 115TD(3)(ii)(a), a trust would be deemed to have been converted into any form not eligible for registration under section 12AB in the P.Y.2023-24, if it has adopted or undertaken modification of its objects which do not confirm to the conditions of registration and it has not applied for fresh registration under section 12AB in that previous year. Accordingly, it would tantamount to deemed conversion of the trust into a form not eligible for registration under section 12AB and the accreted income of the trust shall be taxable at maximum marginal rate (@34.944%) as per section 115TD(1).

Part-B : Additional Questions

Question-25 : [RTP MAY-22]

Examine the correctness of contention/action/treatment of the institution/charitable trust in each of the following separate cases –

(a) An institution runs a university solely for educational purposes and a hospital solely for philanthropic purposes. Both the university and the hospital are not for profit. The gross receipts from the university and hospital during the F.Y.2023-24 are ₹ 3 crores each. The institution contended that the income from university is eligible for exemption u/s 10(23C)(iiiad) and income from hospital is eligible for exemption u/s 10(23C)(iiiae), since the aggregate annual receipts in each case does not exceed the prescribed threshold; and there would be no requirement to get the approval of Principal Commissioner or Commissioner for availing the benefit of exemption under section 10(23C).

(b) A registered charitable trust, with the main object of relief of poor, wants to set off its excess application of ₹ 27 lakhs in the P.Y.2022-23 while computing its income required to be applied during the P.Y.2023-24.

(c) A charitable trust registered u/s 12AB borrowed ₹ 40 lakhs from SBI in April, 2023 for purchase of building for opening a school in a rural area for primary education of children in backward areas. It spent the entire amount for the said purpose and claimed the same as application of income. In March, 2024, it repaid the first instalment of ₹ 5 lakhs to SBI.

Solution :

(a) The contention of the institution is **not** correct. Since the institution has receipts from a university specified under section 10(23C)(iiiad) and a hospital specified under section 10(23C)(iiiae), and the combined receipts of ₹ 6 crore exceed the threshold receipt of ₹ 5 crore, the institution would **not** be eligible for exemption under sections 10(23C)(iiiad) and 10(23C)(iiiae) [Explanation below section 10(23C)(iiiae)]. The institution has to make an application to the Principal Commissioner or Commissioner within the prescribed time limit for grant of approval for claiming exemption under section 10(23C)(vi) and (via).

(b) The proposed action of the trust is **not** correct. As per Explanation 5 to section 11(1), with effect from A.Y.2024-25, no set off or deduction or allowance of any excess application of any of the year preceding the previous year shall be made in computation of income required to be applied or accumulated during the previous year. Accordingly, excess application of ₹ 27 lakhs in the P.Y.2022-23 cannot be set- off while computing income required to be applied or accumulated during the P.Y.2023-24.

(c) The proposed claim of the trust is **not** correct. As per clause (ii) of Explanation 4 to section 11(1), application for charitable purposes from a loan or borrowing shall not be treated as application of income for charitable purposes. However, the amount not so treated as application, or part thereof, would be treated as application for charitable purposes in the previous year in which the loan is repaid from the income of that year and to the extent of such repayment.

Accordingly, the trust cannot claim ₹ 40 lakhs as application of income of A.Y.2024-25, since the amount is spent out of loan taken from SBI. However, it can treat the amount of ₹ 5 lakhs repaid to SBI during the P.Y.2023-24 as application of income in that year.

Question-26 & 27 : [PP May 22]

Examine the tax consequences for A.Y.2024-25 in the case of the following charitable institution/trust, considering each case independently -

(i) A charitable institution, having its main object as "any other object of general public utility", carries on business in the course of actual carrying out of such advancement of any other object of general public utility and maintains separate books of account in respect of business. The gross receipts during the P.Y.2023-24 is ₹ 2.10 crore, which comprises of receipts of ₹ 52 lakh from such business and ₹ 1.58 crore by way of voluntary contributions (not being corpus donations). It has applied 85% of its gross receipts for charitable purposes.

(ii) A charitable trust paid annual rent of ₹ 18 lakh in the P.Y.2022-23 and ₹ 21 lakh in the P.Y.2023-24 in respect of a building used for charitable purposes, after deducting tax at source. However, tax deducted on such rent in the P.Y.2022-23 was remitted only in December, 2023; and tax deducted in the P.Y.2023-24 was remitted only in July, 2024.

(iii) Social Welfare is a charitable institution registered under section 12AA. To continue claiming the benefits of the exemption provisions contained in sections 11 & 12 for the assessment year 2023-24, it wants to apply for re-registration under section 12AB. What would be the effective date for making the application for re-registration under section 12AB? The trust wants to confirm whether the registration granted under section 12AB has the same perpetual validity as granted under section 12AA.

Solution :
Tax consequences in the hands of the charitable trust/institution for A.Y.2024-25

(i) In this case, the main object of the charitable institution is "any other object of general public utility" and therefore, its aggregate receipts from business undertaken in the course of actual carrying out of such advancement of any other object of general public utility should not exceed 20% of total receipts, if it wants to retain its "charitable status". However, the aggregate receipts from business for P.Y.2023-24, in this case, is 24.76% of total receipts. Hence, the institution would lose its "charitable status" for the P.Y.2023-24. Application of 85% of receipts for its main object during the year would not help in retaining its "charitable" status for that year.

(ii) Rent paid in respect of a building used for charitable purposes can be claimed as application of income for charitable purposes. However, since tax deducted on such rent paid for P.Y.2022-23 was remitted after the due date of filing of return of income u/s 139(1) for A.Y.2023-24, ₹ 5,40,000, being 30% of annual rent of ₹ 18 lakh, would not have been allowed as application in the P.Y.2022-23, by virtue of Explanation 3 to section 11(1) read with section 40(a)(ia). However, since tax so deducted was remitted in December, 2023, the said amount of ₹ 5,40,000 (i.e., 30% of rent not allowed as application in the P.Y.2022-23) would be allowed as application in the P.Y.2023-24 (A.Y.2024-25). Further, the rent of ₹ 21 lakh paid in the P.Y.2023-24 would also be allowed as application in A.Y.2024-25, since the tax deducted in respect of such rent was remitted in July, 2024 i.e., before the due date of filing of return u/s 139(1) for A.Y.2024-25. Therefore, an amount of ₹ 26,40,000 towards rent paid would be allowed as application of income in the P.Y.2023-24 (A.Y.2024-25).

(iii) The effective date of making the application for re-registration under section 12AB is 30.6.2021, being three months from 1st April, 2021. CBDT has, vide Circular , extended the date upto 30.9.2023. No, the registration granted under section 12AB would be valid only for 5 years and not perpetually, as in the case of registration granted under section 12AA

Question-28 : [Must Do] [PP DEC-21]
Ramnarayan Foundation Trust was formed on 01-04-2008. It applied for registration u/s. 12AA of the Act and got the registration approved from prescribed authority with effect from 01-04-2012. The trust got the exemption from payment of taxes satisfying the conditions laid down in Sections 11 to 13 from 01-04-2012. The trust got dissolved on 29-12-2023.

The Balance Sheet of the Trust on the date of dissolution was as under:

Liabilities	Amount (₹)	Assets	Amount (₹)
Corpus of the trust	6,00,000	Land and Building	12,00,000
Reserves (created out of accumulated amount of 15% each year)	3,00,000	Investment in Equity Shares - Quoted	4,00,000
Loan taken for purchase of Land and Building	9,00,000	Investment in Equity Shares - Unquoted (in Z Ltd.)	1,50,000
Loan taken for the purchase of unquoted shares (taken in year 2007-08)	1,00,000	Cash	1,00,000
		Bank Balance	50,000
Total	**19,00,000**	**Total**	**19,00,000**

Additional information:

(i) FMV of Land and Building is ₹ 50,00,000.

(ii) 50% of the Unquoted shares were acquired during the year 2009-10.

(iii) Market Value of quoted shares on the date of dissolution is ₹ 18,00,000.

(iv) Land and Building is acquired out of agricultural income.

(v) With respect to Z Ltd. in which the trust invested in unquoted shares, the following additional information was available as on 29-12-2023:

  (a) 1,00,000 Equity Shares with face value of ₹ 10 each

  (b) Total Book Value of the assets (other than bullion, jewellery) is ₹ 60,00,000.

  (c) Market Value of bullion and jewellery is ₹ 30,00,000.

  (d) Liabilities amounting to ₹ 35,00,000.

(vi) The trust distributed the assets on dissolution, valuing ₹ 8,00,000 to another trust registered u/s 12AB of the Act before 31-12-2024.

Compute the tax payable by Ramnarayan Foundation Trust for the A.Y. 2024-25 u/s 115TD.

Solution :

As per section 115TD, the accreted income of Ramnarayan Foundation trust, a charitable trust, registered under section 12AB would be chargeable to tax at the rate of 34.944% [30% plus surcharge @12% plus cess@4%] on non-distribution of assets on dissolution to another trust registered u/s 12AB within 12 months from the end of the month in which the dissolution takes place

Computation of accreted income and tax liability in the hands of Ramnarayan Foundation trust on dissolution

Particulars	Amount (₹)
Aggregate FMV of total assets as on 29.12.2023, being the specified date (date of dissolution) [See Working Note 1]	61,12,500
Less: Total liability computed in accordance with the prescribed method of valuation [See Working Note 2]	9,00,000
Accreted Income	52,12,500
Less: Value of assets distributed within a period of 12 months from the end of the month of dissolution	8,00,000
	44,12,500
Tax Liability@34.944% of ₹ 44,12,500	**15,41,904**
Tax Liability (rounded off)	**15,41,900**
Working Notes:	
(1) Aggregate FMV of total assets on the date of dissolution	
- Land and building, FMV as on 29.12.2023, being the specified date, has to be considered and one-fourth of the value of land and building to be ignored, since acquired out of agricultural income exempt u/s 10(1) [₹ 50 lakhs x 3/4]	37,50,000
-Equity shares - quoted [market value on the date of dissolution]3	18,00,000

- Equity shares – unquoted in Z Ltd. [Since the trust was registered only on 1.4.2012 and benefit of section 11 and 12 was available to the trust only from A.Y.2013-14, relevant to P.Y.2012-13, the value of 50% of the unquoted shares purchased in P.Y.2009-10, in respect of which benefit under sections 11 and 12 was not allowed, has to be ignored for computing accreted income] Value of unquoted shares = ₹ 4,12,500 [50% of ₹ 8,25,000 (Book value of assets (other than bullion, jewellery) of Z Ltd. i.e., 60,00,000 + Market value of bullion and jewellery of Z Ltd. i.e., 30,00,000 – Liabilities of ₹ 35,00,000 x paid up value of shares i.e., ₹ 1,50,000 / total amount of paid up equity share capital as shown in the Balance Sheet of ₹ 10,00,000)]	4,12,500
-Cash	1,00,000
-Bank Balance	50,000
	61,12,500
(2) Total liability	
-Corpus Fund of ₹ 6,00,000 [not includible]	Nil
-Reserves and Surplus ₹ 3,00,000 [not includible]	Nil
-Loan taken for purchase of land and building	9,00,000
- Loan taken for purchase of unquoted shares [Since the entire loan is in relation to unquoted shares acquired during the year 2009-10, when the trust was not eligible for exemption under section 11 and 12, the same is not deductible]	Nil
	9,00,000

Question-29 : [RTP MAY 23 CS-2]

Helpage is a charitable trust registered under section 12AB, with its main object falling under the residuary clause "any other object of general public utility". During the P.Y.2023-24, it received ₹ 80 lakh as voluntary contributions. The trust also borrowed ₹ 40 lakh on 1.7.2023 from Indian bank to purchase land for construction of an office building from where it can carry out its functions. The trust repaid principal of ₹ 10 lakh to Indian bank on 31.3.2024. The trust incurred revenue expenditure of ₹17 lakh and capital expenditure of ₹ 60 lakh towards purchase of land for construction of office building during the P.Y.2023-24. Out of the revenue expenditure of ₹ 17 lakh, ₹ 15 lakh was paid during the P.Y.2023-24 itself. Out of the remaining ₹ 2 lakh, ₹ 1 lakh was paid in April, 2024 and ₹ 1 lakh was paid in January, 2025. During the P.Y.2023-24, the trust also paid ₹ 3 lakh towards revenue expenditure incurred during the P.Y.2021-22 and ₹ 1 lakh towards revenue expenditure incurred during the P.Y.2020 -21.

The trust also received ₹ 30 lakhs by way of corpus donations during the P.Y.2023-24, out of which it deposited ₹ 25 lakhs in post office savings bank account (the balance in post office savings bank account after such deposit is ₹ 32 lakhs). The trust also withdrew ₹ 5 lakhs from post office savings bank account and applied towards purchase of land for construction of office building.

The trust has donated to Eduaid, another trust registered under section 12AB with main object of providing education to poor, ₹ 12 lakhs out of its current year income. The trust has applied ₹ 2 lakh out of its current year income for medical treatment of brother of the trustee, who met with an accident while working in his factory.

On the basis of the facts given above, choose the most appropriate answer to Q. 1 to Q.5 below, based on the provisions of the Income-tax Act, 1961 -

1. What would be the application of the trust for the P.Y.2023-24 (excluding unconditional accumulation of 15%), assuming that it has fulfilled the relevant conditions stipulated under section 12A?
   (a) 43 lakhs
   (b) 53.2 lakhs
   (c) 56 lakhs
   (d) 60 lakhs.

2. If the trust does not get its accounts audited before the specified date referred to in section 44AB, what would be the consequence?
   (a) No deduction would be allowed if the trust fails get its accounts audited before the specified date referred to in section 44AB.

(b) Capital expenditure incurred on account of purchase of land for construction of office building would not be allowed.
(c) Amount donated to Eduaid would not be allowed.
(d) Both capital expenditure incurred on account of purchase of land and the amount donated to Eduaid would not be allowed.

3. What is the amount of income which would be chargeable to tax under section 115BBI for A.Y.2024-25?
(a) 2,00,000
(b) 5,00,000
(c) 7,00,000
(d) 12,00,000

4. What is the quantum of penalty which can be levied under section 271AAE? Assume that the specified violation has occurred only once during the P.Y.2023 -24.
(a) 2,00,000
(b) 4,00,000
(c) 5,00,000
(d) 7,00,000

5. Assuming for the purpose of this MCQ, that the trust has receipts of ₹ 22 lakh from trade, commerce and business in P.Y.2023-24 while advancing the object of general public utility, what is the tax consequence?
(a) The registration of the trust would be cancelled since it has violated the stipulated condition for grant of exemption.
(b) The registration of the trust would not be cancelled though the trust would be denied exemption for violating the stipulated condition.
(c) The trust would be denied exemption and the entire income of the trust would be chargeable to tax at the maximum marginal rate.
(d) Neither the registration of the trust would be cancelled nor would it be denied exemption as it has not violated the stipulated condition.

Solution :
(b) 53.2 lakhs
(d) Both capital expenditure incurred on account of purchase of land and the amount donated to Eduaid would not be allowed.
(c) 7,00,000
(a) 2,00,000
(d) Neither the registration of the trust would be cancelled nor would it be denied exemption as it has not violated the stipulated condition

Question-30 : [MTP 1 Nov 23]
1. (a) Examine the correctness of contention/action/treatment of the institution/charitable trust in each of the following separate cases –
(i) An institution runs a university solely for educational purposes and a hospital solely for philanthropic purposes. Both the university and the hospital are not for profit. The gross receipts from the university and hospital during the F.Y.2023-24 are ₹ 3 crores each. The institution contended that the income from university is eligible for exemption u/s 10(23C)(iiiad) and income from hospital is eligible for exemption u/s 10(23C)(iiiae), since the aggregate annual receipts in each case does not exceed the prescribed threshold; and there would be no requirement to get the approval of Principal Commissioner or Commissioner for availing the benefit of exemption under section 10(23C). **(3 Marks)**

(ii) A registered charitable trust, with the main object of relief of poor, wants to set off its excess application of ₹ 27 lakhs in the P.Y.2022-23 while computing its income required to be applied during the P.Y.2023-24. **(2 Marks)**

(iii) A charitable trust registered u/s 12AB borrowed ₹ 40 lakhs from SBI in April, 2023 for purchase of building for opening a school in a rural area for primary education of children in backward areas. It spent the entire amount for the said purpose and claimed the same as application of income. In March, 2024, it repaid the first instalment of ₹ 5 lakhs to SBI

Solution:

i. The contention of the institution is **not** correct. Since the institution has receipts from a university specified under section 10(23C)(iiiad) and a hospital specified under section 10(23C)(iiiae), and the combined receipts of ₹ 6 crore exceed the threshold receipt of ₹ 5 crore, the institution would **Ube** eligible for exemption under sections 10(23C)(iiiad) and 10(23C)(iiiae) [Explanation below section 10(23C)(iiiae)]. The institution has to make an application to the Principal Commissioner or Commissioner within the prescribed time limit for grant of approval for claiming exemption under section 10(23C)(vi) and (via).

ii. The proposed action of the trust is **not** correct. As per Explanation 5 to section 11(1), with effect from A.Y.2022-23, no set off or deduction or allowance of any excess application of any of the year preceding the previous year shall be made in computation of income required to be applied or accumulated during the previous year. Accordingly, excess application of ₹ 27 lakhs in the P.Y.2022-23 cannot be set-off while computing income required to be applied or accumulated during the P.Y.2023 -24.

iii. The proposed claim of the trust is **not** correct. As per clause (ii) of Explanation 4 to section 11(1), application for charitable purposes from a loan or borrowing shall not be treated as application of income for charitable purposes. However, the amount not so treated as application, or part thereof, would be treated as application for charitable purposes in the previous year in which the loan is repaid from the income of that year and to the extent of such repayment.

Accordingly, the trust cannot claim ₹ 40 lakhs as application of income of A.Y.2024-25, since the amount is spent out of loan taken from SBI. However, it can treat the amount of ₹ 5 lakhs repaid to SBI during the P.Y.2023-24 as application of income in that year.

Question-31 : [MTP 2 Nov 23]

The Balance Sheet of M/s Ratan Charitable Trust as on 31.1.2024, and its other information is given hereunder:

Particulars	₹ in lakhs
Liabilities	
Capital fund	800.00
Sundry creditors	335.00
Total	**1135.00**
Assets	
Land (purchased in the year 2009)	100.00
Land and buildings purchased in the year 2016	800.00
2000 equity shares of ₹ 1000 each in M/s XP Ltd. shares are listed in Bombay Stock Exchange (at face value)	20.00
Balance in current account of a nationalized bank	10.00
Balanced in fixed deposits with scheduled banks	200.00
Cash in hand	3.50
Tax Deducted at Source	1.50
Total	**1135.00**

The application for registration was made on 15-4-2012 and registration under section 12AA of the Income-tax Act, 1961 was granted on 1-7-2012 to M/s Ratan Charitable Trust. However, the registration was cancelled on 31-1-2024. An appeal was preferred against the order of cancellation, which was dismissed by the Appellate authorities. The order confirming the cancellation was received on 31-3-2024.

Additional Information:

(1) Stamp duty value of the land (purchased in 2009) as on 31-1-2024 was ₹ 120.00 lakhs but if sold in the open market, the property would fetch ₹ 250 lakhs as per a registered valuer's certificate.

(2) Land and building (purchased in 2016), if sold in the open market will fetch ₹ 1000 lakhs as per a registered valuer's certificate. Stamp duty value as on 31-1-2024 was ₹ 1050 lakhs.

(3) The highest and lowest value per share of M/s XP Ltd. traded on 31-1-2024 was ₹ 1099 and ₹ 1051 respectively.

(4) Sundry Creditors include ₹ 30 lakhs provided on estimated basis to contractors for which no bills are received.

Based on the above information, calculate the exit tax payable by the Charitable Trust and state the latest day on which the said tax has to be paid. Give working notes wherever necessary.

Solution

As per section 115TD, the accreted income of "M/s Ratan Charitable Trust", registered under section 12AA would be chargeable to tax at maximum marginal rate @ 34.944% [30% plus surcharge @12% plus cess@4%] for the reason of cancellation of registration.

Computation of exit tax payable by M/s Ratan Charitable Trust

Computation of exit tax payable by M/s Ratan Charitable Trust	
Particulars	**Amount (₹)**
Aggregate FMV of total assets as on 31.1.2024, being the specified date (date of order of cancellation of the registration) **[See Working Note 1]**	12,85,00,000
Less: Total liability computed in accordance with the prescribed method of valuation **[See Working Note 2]**	3,05,00,000
Accreted Income	**9,80,00,000**
Tax Liability @ 34.944% of ₹ 9,80,00,000	**3,42,45,120**
Working Note 1:	
Aggregate fair market value of total assets on the date of cancellation of the registration	-
Valuation of Land, being an immovable property purchased in the year 2009	
[Value of land purchased in the year 2009 not includible in the aggregate fair market value, since the exemption provisions under section 11 and 12 would apply from P.Y.2012-13, being the previous year in which application for registration of trust is made]	
Valuation of Land and building, being an immovable property, purchased in 2016 [The fair market value of land and building would be higher of ₹ 1,000 lakhs i.e., price that the land and building would ordinarily fetch if sold in the open market as per registered valuer's certificate and ₹ 1,050 lakhs, being stamp duty value as on the specified date i.e., 31.1.2024]	10,50,00,000
Valuation of Quoted equity shares in M/s XP Ltd. [2,000 x ₹ 1,075 per share] [The fair market value of quoted shares would be ₹ 1,075 per share, being the average of the lowest (₹ 1,051) and highest price (₹ 1,099) of such shares on the specified date i.e., 31.1.2024]	21,50,000
Balance in current account of a nationalized bank	10,00,000
Balance in fixed deposits with scheduled banks	2,00,00,000
Cash in hand	3,50,000
	12,85,00,000

Working Note 2 - Total liability	
Book value of liabilities in the balance sheet on specified date	11,35,00,000
Less: Capital fund	8,00,00,000
Less: Contingent liability on estimated basis to contractor for which no bills are received	30,00,000
Total liability of M/s Ratan Charitable Trust	**3,05,00,000**
The latest day on which such tax has to be paid is 14th April, 2024, being 14 days from 31.3.3024, the date on which the order confirming the cancellation is received.	

Question-32 : [RTP Nov 23]

Compute the "specified income" taxable@30% u/s 115BBI in case of a registered charitable trust, EduAid, running an educational institution, from the information given below relating to P.Y. 2023-24. The main object of the trust is education

<table>
<tr><th></th><th colspan="4">Particulars</th><th>Amount in ₹</th></tr>
<tr><td>(1)</td><td colspan="4">Corpus donations received by the trust
The same have been invested as follows -
Mode of investment | ₹
(i) Deposit in Post Office Savings Bank Account | 2,00,000
(ii) Fixed deposits with SBI | 5,00,000
(iii) Deposit with a co-operative land development bank | 1,10,000
(iv) Deposit with a NBFC engaged in retail car finance. | 4,10,000</td><td>12,20,000</td></tr>
<tr><td>(2)</td><td colspan="4">Income applied by the trust for the benefit of the following donors -
Name of the donor | Total contribution to the trust upto 31.3.2024 (₹) | Income applied for the benefit of the donor (₹)
(i) Vallish | 24,000 | 15,000
(ii) Ritesh | 48,000 | 20,000
(iii) Arjun | 96,000 | 30,000</td><td>65,000</td></tr>
<tr><td>(3)</td><td colspan="4">Income applied by the trust for the benefit of Mr. Vaibhav Gupta, trustee of the trust</td><td>25,200</td></tr>
<tr><td>(4)</td><td colspan="4">Income applied by the trust for the benefit of Mr. Shyam Lal, Mr. Manohar Arora and Mr. Sridhar Agarwal, being the employees of the trust, by way of interest-free loan to them for pursuing higher education.</td><td>32,000</td></tr>
<tr><td>(5)</td><td colspan="4">Value of educational service made available by the trust through its educational institution to the two children of Mr. Vaibhav Gupta</td><td>14,500</td></tr>
<tr><td>(6)</td><td colspan="4">Value of educational service made available by the trust through its educational institution to the children of Mr. Manohar Arora and Mr. Sridhar Agarwal</td><td>21,300</td></tr>
<tr><td>(7)</td><td colspan="4">Amount set apart in the P.Y.2022-23 by the trust for charitable purposes u/s 11(2) utilized in the P.Y.2023-24 for making donation to another charitable trust, whose object is also education.</td><td>2,13,000</td></tr>
</table>

The correct answer is -

(a) ₹ 6,78,200
(b) ₹ 6,92,700
(c) ₹ 7,10,200
(d) ₹ 8,54,700

Question-33 : [PP May 23]

(i) A public company has created a charitable trust exclusively for the benefit of the public. The trust has granted interest free loans, inter alia, to some of the company's employees in order to enable their children to pursue higher studies, as per the objects of the trust. The Assessing Officer considers this benefit as being covered under section 13(3) and proposes to withdraw the exemption from tax granted to the trust. Comment upon the correctness or otherwise of the view of the Assessing Officer.

(ii) Leeladhar Memorial Trust runs an educational institution, which is engaged solely in education, received annual receipts during F.Y. 2023-24 amounting to ₹ 2.40 crores. The trust also runs a hospital for treatment of persons suffering from mental defectiveness solely for philanthropic purposes. The total receipts for the hospital during F.Y. 2023-24 amounted to ₹ 2.50 crores.

Leeladhar Memorial Trust is not registered under the Income-tax Act, 1961 for tax exemption u/s. 11, 12 or any other such clause. The consultant of the trust told them they are not required to pay any tax even not given Registration under the Act, Examine the consultants' view discussing the relevant provisions of Income-tax Act, 1961.

Solution:

(i)

(1) The benefit of section 11 would **not** be available to a public charitable trust, if any part of its income enures directly or indirectly for the benefit of any person to in section 13(3).

(2) The persons referred to in section 13(3) include an –
   (i) author or trustee of the trust,
   (ii) person who has made contribution exceeding ₹ 50,000 to the trust upto the end of the relevant previous year,
   (iii) where the author or trustee or person mentioned above is a HUF, a member of the HUF
   (iv) relative of such author, trustee or member
   (v) person or a concern in which any person mentioned above has substantial interest

(3) The list of prohibited persons in section 13(3), however, does not include employees of the company.

(4) Therefore, the proposed action of the Assessing Officer to withdraw the exemption from tax granted to the trust on account of interest-free loans granted to company's employees to pursue higher education as per the objects of the trust, is incorrect.

Note – Section 13(3) includes relative of an author or trustee. However, a person having relationship pursuant to a contract like that of an employer and an employee cannot be said to be a relative. "Relative" means a person connected by birth or marriage with another person. This line of reasoning is based on the Patna High Court ruling in CIT v. Tata Steel Charitable Trust (1993) 203 ITR 764.

(ii)

The condition of approval or registration is not required in the following cases –

- An educational institution existing solely for educational purposes whose aggregate annual receipts do not exceed ₹ 5 crore is eligible for exemption under section 10(23C)(iiiad);
- A hospital for treatment of persons suffering from mental defectiveness existing solely for philanthropic purposes whose aggregate annual receipts do not exceed ₹ 5 crore is eligible for exemption under section 10(23C)(iiiae);

A trust running an educational institution and a hospital or both would be eligible for exemption under section 10(23C), without the condition of approval or registration, if the combined aggregate annual receipts from the educational institution and hospital does not exceed ₹ 5 crore.

In this case, Leeladhar Memorial Trust's combined receipts of ₹ 4.90 crores from educational institution (₹ 2.40 crores) and hospital (₹ 2.50 crores), does not exceed ₹ 5 crores.

Therefore, the consultant's view that the trust is not required to pay tax even if it is not registered under section 11 or 12 or any other clause is correct.

Note – The question can also be answered in the following manner -

Exemption under the first regime is available under section 10(23C), where the trust is required to fulfil the prescribed conditions and be approved by the Principal Commissioner/Commissioner in certain cases.

Exemption under the second regime under section 11 is available to a trust registered under section 12AB and fulfilling the prescribed conditions. However, in case of a trust whose combined receipts from educational institution and hospital established solely for education and philanthropic purposes, respectively, do not exceed ₹ 5 crores, neither approval of Principal Commissioner / Commissioner nor registration is required. Therefore, the consultant's view that the trust is not required to pay tax even if it is not registered under section 11 or 12 or any other clause is correct.

Question-34 :
GVB Charitable Trust engaged in the activities of running a charitable hospital and medical college since 8 years, has been merged with a Corporate hospital on 31st March, 2024. The said Corporate Hospital is not eligible for registration under section 12AA of the Act. The position of assets and liabilities of the Charitable trust as on the date of merger are furnished as under:

A:	**Properties and Assets :**	
(a)	Asset held by Trust acquired out of agricultural income exempt u/s 10(1) of the Act	25 lakhs
(a)	Book value of Quoted shares and securities	35 lakhs
	Market value (Average of lowest and highest price of such shares as on date of merger quoted on recognised stock exchange)	40 lakhs
(b)	Book value of Land and Buildings held by Trust:	60 lakhs
	Value of Immovable Properties (Land & Buildings) as per valuation report from Registered Valuer:	40 lakhs
	Stamp Duty value:	38 lakhs
(c)	The Trust was created on 1st January, 2016 and obtained registration under section 12AA on 31st March, 2017.	
(d)	The Trust holds 40% of equity shares in an unlisted company and the financial position of said unlisted company as on date of merger is as under :	
	Book value of assets (other than immovable property)	25 lakhs
	Fair Market value of Immovable Property	45 lakhs
	Reserves and Surplus	15 lakhs
	Provision for taxation	5 lakhs
	Total amount of Paid-up Equity Share Capital	25 lakhs

B:	**Liabilities:**	
(a)	Liability in respect of shares and securities (unlisted)	8 lakhs
(b)	Bank Liability in respect of quoted shares and securities	15 lakhs
(c)	Advance Tax paid	12 lakhs

Compute the tax liability, if any, of Charitable Trust, arising out of above merger, giving explanation for treatment of each item in the context of relevant provisions contained in the Act. Assume that the trust has no tax liability in respect of other activities undertaken during P.Y. 2023-24.

Solution :
Computation of exit tax payable by GVB Charitable Trust

Particulars	**Amount (₹)**
Aggregate FMV of total assets as on 31.3.2024, being the specified date (date of merger) **[See Working Note 1]**	1,08,00,000
Less: Total liability computed in accordance with the prescribed method of valuation **[See Working Note 2]**	23,00,000
Accreted Income	**85,00,000**
Tax Liability@34.944% of ₹ 85,00,000	29,70,240
Working Note 1	

Aggregate fair market value of total assets on the specified date		
Share and securities held by the trust, which are acquired out of agricultural income exempt u/s 10(1) shall be ignored by virtue of proviso to section 115TD(2).		Nil
Quoted shares and securities		40,00,000
[The fair market value of quoted shares would be average of the lowest and highest price of such shares quoted on the recognized stock exchange on the specified date i.e., 31.3.2024]		
Land and building, being immovable property		40,00,000
[The fair market value of land and building would be higher of ₹ 40,00,000 i.e., price that it would ordinarily fetch if sold in the open market as per registered valuer's certificate and ₹ 38,00,000, being stamp duty value as on the specified date i.e., 31.3.2024]		
Equity shares in an unlisted company:		
Book value of assets (other than immovable property)	25,00,000	
Fair market value of immovable property	45,00,000	
	70,00,000	
Less: Book value of liabilities in the balance sheet: [Provision for taxation not to be included in the liabilities; total amount of paid up share capital and reserves and surplus would also not be included in liabilities]	Nil	
	70,00,000	
Value of unlisted shares held by GVB Charitable trust [70,00,000 x 40%]		28,00,000
		1,08,00,000

Working Note 2

Particulars	**Amount (in ₹)**
Total liability	
Liability in respect of unlisted shares and securities	8,00,000
Bank liability in respect of quoted shares and securities	15,00,000
Total liability of Charitable Trust	**23,00,000**

Extra Page

CHAPTER 11
TAX PLANNING, TAX AVOIDANCE AND TAX EVASION

Part-A : Study Material Questions

Question-1 :
Distinguish between Tax planning and Tax Evasion.

Solution :
Tax planning is carried out within the framework of law by availing the deductions and exemptions permitted by law and thereby minimizing tax liability. Tax planning is an arrangement by which full advantage is taken of the concessions and benefits conferred by the statute, without violation of legal provisions. Tax evasion on the other hand is an attempt to reduce tax liability by dubious or artificial methods or downright fraud. It is illegal and denies the State its legitimate share of tax.

Question-2 :
Specify with reason, whether the following acts can be considered as (i) Tax planning; or (ii) Tax management; or (iii) Tax evasion.

(i) Mr. P deposits ₹ 1,00,000 in PPF account so as to reduce his total income from ₹ 5,90,000 to ₹ 4,90,000.
(ii) SQL Ltd. maintains a register of tax deduction at source effected by it to enable timely compliance.
(iii) An individual tax payer making tax saver deposit of ₹ 1,00,000 in a nationalised bank.
(iv) A partnership firm obtaining declaration from lenders/depositors in Form No. 15G/15H and forwarding the same to income-tax authorities.
(v) A company installed an air-conditioner costing ₹ 75,000 at the residence of a director as per terms of his appointment but treats it as fitted in quality control section in the factory. This is with the objective to treat it as plant for the purpose of computing depreciation.
(vi) RR Ltd. issued a credit note for ₹ 80,000 as brokerage payable to Mr. Ramana who is the son of the managing director of the company. The purpose is to increase the total income of Mr. Ramana from ₹ 6,20,000 to ₹ 7,00,000 and reduce the income of RR Ltd. correspondingly.
(vii) A company remitted provident fund contribution of both its own contribution and employees' contribution on monthly basis before due date.

Solution :
Tax Planning / Tax Management / Tax Evasion

	Answer	**Reason**
1.	Tax planning	Depositing money in PPF and claiming deduction under section 80C is as per the provisions of law.
2.	Tax management	Maintaining a register of payments subject to TDS helps in complying with the obligations under the Income-tax Act, 1961.
3.	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.
4.	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 with statutory obligation under the Income-tax Act, 1961.
5.	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 in an attempt to evade tax.
6.	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 ₹ 6.2 lakh to ₹ 7.00 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 as per the default regime under section 115BAC, since his total income does not exceed ₹ 7,00,000, consequent to which he would be eligible for tax rebate of ₹ 25,000 under section 87A. Reducing tax liability by recording a fictitious transaction would tantamount to tax evasion.
7.	Tax management	Remitting of own contribution to provident fund and employees contribution to provident fund on a monthly basis before the due date is proper compliance with the statutory obligations.

Question-3 :
Examine the doctrine of form and substance in the context of tax planning.

Solution :
The following are certain principles enunciated by the Courts on the question as to whether it is the form or substance of a transaction, which will prevail in income-tax matters:

(i) **Form of transaction is to be considered in case of genuine transactions -** It is well settled that when a transaction is arranged in one form known to law, it will attract tax liability whereas, if it is entered into in another form which is equally lawful, it may not. Therefore, in considering whether a transaction attracts tax or not, the form of the transaction put through is to be considered and not the substance. **However, this rule applies only to genuine transactions.** [CIT v. Motor and General Stores (P) Ltd. v. CIT (1967) 66 ITR 692(SC).

(ii) **True legal relation is the crucial element for taxability -** It is open for the authorities to pierce the corporate veil and look behind the legal facade at the reality of the transaction. The taxing authority is entitled as well as bound to determine the true legal relation resulting from a transaction. The true legal relation arising from a transaction alone determines the taxability of a receipt arising from the transaction [CIT v. B.M. Kharwar (1969) 72 ITR 603 (SC)]

(iii) **Substance (i.e. actual nature of expense) is relevant and not the form** – Under section 97, an arrangement shall be deemed to lack commercial substance if the substance or effect of the arrangement as a whole, is inconsistent with or differs significantly from, the form of its individual steps or a part. Accordingly, such arrangement would be impermissible avoidance arrangement and be subject to GAAR. However, GAAR provisions will be applicable only to an arrangement where the tax benefit in the relevant A.Y. arising, in aggregate to all parties to the arrangement exceeds ₹ 3 crores. The Income-tax Act, 1961 also contains Specific Anti-avoidance provisions to address the concern of tax avoidance. Some examples where Supreme Court has upheld substance over form are -

(a) In case of an expenditure, the mere fact that the payment is made under an agreement does not preclude the department from enquiring into the actual nature of the payment [Swadeshi Cotton Mills Co. Ltd. v. CIT (1967) 63 ITR 57(SC)].

(b) In order to determine whether a particular item of expenditure is of revenue or capital nature, the substance and not merely the form should be looked into. [Assam Bengal Cement Co. Ltd. v. CIT (1955) 27 ITR 34 (SC)].

Question-4 :
The merger of a loss making company with a profit making one results in losses setting off profits, a lower net profit and lower tax liability for the merged company. Would the losses be disallowed by applying GAAR?

Solution :
As regards setting off of losses, the provisions relating to merger and amalgamation already contain specific anti-avoidance safeguards. Therefore, GAAR need not be invoked when SAAR is applicable, though as per CBDT Circular No. 7/2017 dated 27.01.2017, GAAR and SAAR can co-exist. Further, since merger and amalgamation would be carried out under the order of the National Company Law Tribunal (NCLT), GAAR need not be invoked if the NCLT has explicitly and adequately considered the tax implication while sanctioning the merger scheme.

Question-5 :
A choice is made by a company by acquiring an asset on lease over outright purchase. The company claims deduction for lease rentals in case of acquisition through lease rather than depreciation as in the case of purchase of the asset. Would the lease rent payment, being higher than the depreciation, be disallowed as expense under GAAR?

Solution :
GAAR provisions would not apply in this case as the taxpayer merely makes a selection out of the options available to him under the provisions of the Act for which he is eligible and satisfies the stipulated conditions, if any. Even if choice of such option results in lower tax liability, the same is a result of tax planning.

Question-6 :
M/s Global Architects Inc is a company incorporated in country F1. It is engaged in the business of providing architectural design services all over the world. It receives an offer from Lovely Resorts Pvt Ltd, an Indian company, for design and development of resorts all over India.

India-F1 tax treaty provides that architectural services are technical services and payment for the same to a company may be taxed in India. However, if such professional services are provided by a firm or individual, then payment for such services are taxable only if the firm has a fixed base in India or stay of partners/ employees in India exceed 180 days. Limitation of benefit clause does not exist in tax treaty between India-F1.

M/s Global Architects Inc forms a partnership firm with a third party (director of the company) having only a nominal share in the F1. The firm enters into an agreement to carry out the services in India. The company seconded its trained manpower to the firm.

Thus, the partnership firm claimed the treaty benefit and no tax was paid in India. Can such an arrangement be examined under GAAR?

Solution :
It is obvious that there was no commercial necessity to create a separate firm except to obtain the tax benefit. The firm was only on paper as the manpower was drawn from the company. The firm did not have any commercial substance. Moreover, it is a case of treaty abuse. Hence, GAAR may be invoked to disregard the firm and tax payment for architectural services as fee for technical services. However, the rate of tax on such payment shall be as applicable under the treaty, if more beneficial.

Part-B : Additional Questions

Question-7 : [PP NOV-19]
MNO Ltd. in Mumbai is a wholly owned subsidiary of a holding company located in Low Tax Jurisdiction (LTJ). MNO Ltd. has accumulated profit of ₹ 1,500 lakhs. It deposited 1,000 lakhs in fixed deposit with a branch of foreign bank located in India. Based on the security of the deposit, the holding company located in LTJ availed bank loan of 800 lakhs. Is this an impermissible arrangement lacking commercial substance? Support your answer with applicable legal provisions. (4 Marks)

Solution :
This is an arrangement whose main purpose is to take money out of reserves available with subsidiary company i.e., MNO Ltd., India without payment of dividend distribution tax under section 115-O.

The dividend distribution tax would be attracted in the hands of MNO Ltd. in both following situations -

If MNO Ltd. had declared or distributed dividend, tax has to be paid@15% + surcharge@12% + health and education cess@4% (i.e., 17.472%) on such distributed income.

If MNO Ltd. had directly lent money to its holding company, the provisions of section 2(22)(e) would get attracted, on account of deeming such amount of loan as dividend, since the holding company holds substantial interest in its Indian subsidiary, MNO Ltd. In such a case, dividend distribution tax@30% plus surcharge @12% plus health and education cess@4% (i.e. 34.944%) would be levied.

In order to avoid payment of dividend distribution tax, MNO Ltd. had adopted a circuitous route of depositing money with foreign bank's branch in India, so that the bank could loan the amount to the holding company.

Tax benefit [of ₹ 279.552 lakhs (₹ 800 lakhs x 34.944%)] is sought to be obtained by way of saving taxes on the amount distributed to the holding company which would be treated as deemed dividend and subject to dividend distribution tax in the hands of MNO Ltd. The arrangement disguises the source of funds by routing it through branch of a foreign bank. The branch of foreign bank may also be treated as an accommodating party. Hence, the arrangement shall be deemed to be an impermissible arrangement lacking commercial substance.

However, in this case, since the tax benefit of 279.552 lakhs (₹ 800 lakhs x 34.944%) arising out of such arrangement does not exceed ₹3 crore, GAAR provisions cannot be invoked.

Question-8 : [MTP MARCH-19]
As per the provisions of a tax treaty between India and Country A, any capital gains arising from the sale of shares of an Indian company would be taxable only in Country A, if the transferor is a resident of Country A except where the transferor holds more than 10% interest in the capital stock of Indian company.

A company, X Ltd., being resident in Country A, makes an investment in an Indian company through two wholly owned subsidiaries (L Ltd. and M Ltd.) located in Country A. Each subsidiary holds 9.95% shareholding in the Indian Company, the total adding to 19.9% of equity of Indian company. The subsidiaries sell the shares of Indian company and claim exemption as each is holding less than 10% equity shares in the Indian company. Can GAAR be invoked to deny treaty benefit?
Note - The applicable tax rate on capital gains in Country A is 5%. **(4 Marks)**

Solution :
The above arrangement of splitting the investment through two subsidiaries appears to be with the intention of obtaining tax benefit under the treaty. Further, there appears to be no commercial substance in creating two subsidiaries as they do not change the economic condition of investor X Ltd. in any manner (i.e. on business risks or cash flow), and reveals a tainted element of abuse of tax laws. Hence, the arrangement can be treated as an impermissible avoidance arrangement by invoking GAAR. Consequently, treaty benefit would be denied by ignoring L Ltd. and M Ltd., the two subsidiaries, or by treating L Ltd. and M Ltd. as one and the same company for tax computation purposes.

Question-9 : [MTP MARCH-18]
Indico Pvt. Ltd. is a domestic company in India. Den Pvt. Ltd. is a company incorporated in Country 'X' and it is a non-resident in India. Den Pvt. Ltd. forms a company Zen Pvt. Ltd, its 100% subsidiary, in Country 'Y'. Zen Pvt. Ltd. and Indico Pvt. Ltd. form a joint venture company Revolution (P) Ltd. in India on 10.04.2023. There is no other activity in Zen Pvt. Ltd. As per the joint venture agreement, 49% of Revolution (P) Ltd's equity is allotted to Zen Pvt. Ltd. and 51% is allotted to Indico Pvt. Ltd. Zen Pvt. Ltd. is also designated as a permitted transferee of Den Pvt. Ltd. Permitted transferee means that though shares of Revolution (P) Ltd. are held by Zen Pvt. Ltd, all rights of voting, management, right to sell etc., are vested in Den Pvt. Ltd. On 28.02.2024, the shares of Revolution (P) Ltd. held by Zen Pvt. Ltd. are sold to C Pvt. Ltd., a company connected to the Indico Pvt. Ltd. group. The India-Country 'Y' tax treaty provides for non-taxation of capital gains in the Source Country and Country 'Y' charges no capital gains tax in its domestic law. So, as per the tax treaty with Country 'Y', capital gains arising to Zen Pvt. Ltd. are not taxable in India.

Examine, whether General Anti-Avoidance Rules (GAAR) can be invoked to deny the treaty benefit assuming that the other conditions prescribed for application of GAAR are satisfied. **(4 Marks)**

Solution :
The arrangement of routing investment through Country 'Y' results into a tax benefit. Since there is no business purpose in incorporating company Zen Pvt. Ltd. in Country 'Y', it can be said that the main purpose of the arrangement is to obtain a tax benefit. The alternate course available in this case is direct investment in Revolution (P) Ltd. joint venture by Den Pvt. Ltd. The tax benefit would be the difference in tax liabilities between the two available courses.

The next question is, does the arrangement have any tainted element? It is evident that there is no commercial substance in incorporating Zen Pvt. Ltd. as it does not have any effect on the business risk of Den Pvt. Ltd. or cash flow of Den Pvt. Ltd. As the twin conditions of main purpose being tax benefit and existence of a tainted element are satisfied, GAAR may be invoked.

Additionally, as all rights of shareholders of Revolution (P) Ltd. are being exercised by Den Pvt. Ltd instead of Zen Pvt. Ltd, it again shows that Zen Pvt. Ltd lacks commercial substance.
Hence, GAAR provisions can be invoked in this case.

Question-10 : [MTP MAY20]
Under the provisions of a tax treaty between India and Country P, if a resident of country P makes any capital gains by selling the shares in any Indian Company, such capital gains will be taxable only in Country P and it will be exempt from tax in India. However, as an exception it is also provided that, such exemption is not available if the transferor holds more than 10% interest in the equity capital of the Indian Company. PFX Ltd., a resident in Country P floated two wholly owned subsidiaries in Country P. On 1.4.2023, both the subsidiaries bought 9% shareholding in TRP Co. Ltd., an Indian Company. These subsidiaries do not have any other income. On 31.12.2023, both of them sold the investment in TRP Co. Ltd. Each of the subsidiaries claim exemption from Indian capital gains tax amounting to ₹2.5 crores from such sale, as each is holding less than 10% equity shares in the Indian Company. Can GAAR be invoked in such case to deny the treaty benefit?

Will your answer be different if the capital gain tax on such sale is calculated at ₹1.2 crores each? **(4 Marks)**

Solution :
The arrangement by PFX Ltd., a resident in Country P, of floating two wholly owned subsidiaries and splitting the investment in equity shares of the Indian company through such subsidiaries appears to be with the intention of obtaining tax benefit under the treaty between India and Country P, so that the individual subsidiaries do not hold more than 10% interest in the equity capital of the Indian company.

Further, there appears to be no commercial substance in creating two subsidiaries as they do not change the economic condition of investor PFX Ltd. in any manner (i.e. on business risks or cash flow), and reveals a tainted element of abuse of tax laws.

Since the tax benefit in the P.Y.2023-24 in aggregate is ₹ 5 crores (₹ 2.5 crores x 2), which exceeds the specified threshold of ₹ 3 crores, the arrangement can be treated as an impermissible avoidance arrangement and GAAR can be invoked. Consequently, treaty benefit would be denied by ignoring the two subsidiaries, or by treating the two subsidiaries as one and the same company for tax computation purposes.

If the capital gains tax on such sale is calculated at ₹ 1.2 crores each, the tax benefit of ₹ 2.4 crores would be less than the specified threshold of ₹ 3 crores. Hence, GAAR cannot be invoked in such case.

Question-11 : [MTP OCT-20]
Examine whether the following acts can be considered as (i) Tax planning; or (ii) Tax management; or (iii) Tax evasion. Give brief reasons for your answer.

1. Miss Kashish, a resident, deposits ₹1,50,000 in PPF account so as to reduce her total income from ₹6,40,000 to ₹ 4,90,000.
2. A company installed an air-conditioner costing ₹ 80,000 at the residence of a director as per terms of his appointment but treats it as fitted in quality control section in the factory. This is with the objective of treating it as plant for the purpose of computing depreciation. **(4 Marks)**

Solution :
Tax Planning / Tax Management / Tax Evasion

	Answer	Reason
(i)	Tax planning	Depositing money in PPF and claiming deduction under section 80C is as per the provisions of law. Hence, it is a legitimate tax planning measure which enables her to reduce her tax liability by claiming a deduction permissible 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.

Question-12 : [PP DEC-21]
M/s. Highway Drive Limited incorporates a wholly owned subsidiary M/s. Highway Roads Limited in India during the F.Y. 2016-17. Its main business is to develop infrastructure facility and is eligible for deduction u/s 80-IA. Accordingly the company has claimed deduction u/s 80-IA for the A.Y. 2024-25.

1. Highway Roads Limited derives income other than income from developing infrastructure facilities and discloses such income as income from developing infrastructure facilities, thus enjoying the benefit u/s 80-IA.
2. Highway Roads Limited purchases the supplies for the development of infrastructure facilities from M/s. Highway Drive Limited at a price lesser than the fair price, thus transferring the income of M/s. Highway Drive Limited to M/s. Highway Roads Limited and enjoying the benefit of section 80-IA on such income.

   Can GAAR be invoked in both the instances mentioned above? **(4 Marks)**

Solution :
i. In the present case, Highway Roads Ltd. derives income other than income from developing infrastructure facilities and discloses such income as income from developing infrastructure facilities to avail benefit of deduction u/s 80-IA. This is a case of misrepresentation of facts by showing non-eligible income as income eligible for deduction u/s 80-IA. Hence, this is an arrangement of tax evasion and not tax avoidance.

Tax evasion, being unlawful, can be dealt with directly by establishing correct facts. GAAR provisions need not be invoked in such a case.

ii. In this case, there is a close connection between Highway Drive Limited, ineligible assessee, and Highway Roads Ltd, an eligible assessee, since the eligible assessee is a wholly owned subsidiary of ineligible assessee. The purchase transaction has been arranged in such a way that it produces more than ordinary profits to the eligible assessee.

However, such tax avoidance is specifically dealt with through the provisions contained in section 80-IA(10). Further, if the aggregate of such transactions entered into in the relevant previous year exceed the threshold of ₹ 20 crore, domestic transfer pricing regulations under section 92BA would be attracted.

It is not the intention of the legislation to invoke GAAR in such situations. Hence, the Revenue need not invoke GAAR in such a case, though GAAR and SAAR can co-exist as per clarification given in the CBDT Circular.

Question-13 : [MTP NOV-22]

Ipse Pvt. Ltd. is a domestic company in India. Den Pvt. Ltd. is a company incorporated in Country 'X' and it is a non-resident in India. Den Pvt. Ltd. forms a company Zen Pvt. Ltd, its 100% subsidiary, in Country 'Y'. Zen Pvt. Ltd. and Ipse Pvt. Ltd. form a joint venture company Ren (P) Ltd. in India on 10.04.2023. There is no other activity in Zen Pvt. Ltd. As per the joint venture agreement, 49% of Ren (P) Ltd.'s equity is allotted to Zen Pvt. Ltd. and 51% is allotted to Ipse Pvt. Ltd. Zen Pvt. Ltd. is also designated as a permitted transferee of Den Pvt. Ltd. Permitted transferee means that though shares of Ren (P) Ltd. are held by Zen Pvt. Ltd, all rights of voting, management, right to sell etc., are vested in Den Pvt. Ltd. On 08.03.2024, the shares of Ren (P) Ltd. held by Zen Pvt. Ltd. are sold to CFL Pvt. Ltd., a company connected to the Ipse Pvt. Ltd. group. The India- Country 'Y' tax treaty provides for non-taxation of capital gains in the Source Country and Country 'Y' charges no capital gains tax in its domestic law. So, as per the tax treaty with Country 'Y', capital gains arising to Zen Pvt. Ltd. are not taxable in India. As per India-Country X tax treaties, capital gains is chargeable to tax in the source country.

Examine, whether General Anti-Avoidance Rules (GAAR) can be invoked to deny the treaty benefit, assuming that the prescribed conditions for application of GAAR are satisfied.

Solution :

The arrangement of routing investment through Country 'Y' results into a tax benefit. Since there is no business purpose in incorporating company Zen Pvt. Ltd. in Country 'Y', it can be said that the main purpose of the arrangement is to obtain a tax benefit. The alternate course available in this case is direct investment in Ren (P) Ltd. joint venture by Den Pvt. Ltd. The tax benefit would be the difference in tax liabilities between the two available courses.

The next question is, does the arrangement have any tainted element? It is evident that there is no commercial substance in incorporating Zen Pvt. Ltd. as it does not have any effect on the business risk of Den Pvt. Ltd. or cash flow of Den Pvt. Ltd. As the twin conditions of main purpose being tax benefit and existence of a tainted element are satisfied, GAAR may be invoked.

Additionally, as all rights of shareholders of Ren (P) Ltd. are being exercised by Den Pvt. Ltd instead of Zen Pvt. Ltd, it again shows that Zen Pvt. Ltd lacks commercial substance.

Hence, GAAR provisions can be invoked in this case.

Question-14 : [PP NOV 22]

In the following independent circumstances, discuss whether the provisions of GAAR would be applicable:

i. Milo Ltd., an Indian company, is making losses for the past several years. Tilo Ltd., another Indian company, having huge profits acquired Ms. Milo Ltd.

ii. DAMP Inc., a company incorporated in Country A, holds 1000 equity shares in MAP Ltd., an Indian listed entity since 1.4.2016. On 1.5.2021, MAP Ltd. issued 1000 bonus shares to DAMP Inc. As per the treaty between India and Country A, the capital gain is taxable in the country where the transferor of shares is a resident. The tax laws of Country A, exempt capital gains. DAMP Inc. sells all the shareholding in MAP Ltd. on 1.1.2024 and earned a capital gain of ₹ 5 crores.

iii. A Ltd., an Indian company, incorporates a wholly owned subsidiary Company B, in Country B which is a Low Tax Jurisdiction with equity share capital of ₹ 1 crore. Out of the equity capital, company B gives loan to C Ltd., an Indian company at the rate of 5%. There is no other activity in Company B.

iv. Bee Ltd., an Indian company sets up a unit in SEZ in FY 2018-19 for manufacturing of chemicals. It claims 100% deduction of profits of ₹ 100 crores earned from that unit in FY 2023-24, u/s 10AA of the Act.

Solution :
Applicability of GAAR

i. In the present case, Tilo Ltd. having huge profits acquired Milo Ltd. a loss-making company. Due to provisions relating to merger and acquisition in the Act and considering that the scheme would have been sanctioned by the High Court/National Company Law Tribunal considering tax implications, GAAR need not be invoked.

ii. In case of investment made prior to 1.4.2017, income arising from transfer thereof would not be subject to GAAR. Accordingly, income from transfer of shares acquired on 1.4.2016 by DAMP Inc. would not attract GAAR.

If the original shares are acquired before 1.4.2017, but bonus shares are issued after that date, GAAR provisions would not be attracted on transfer of such bonus shares also.

iii. An impermissible avoidance arrangement means an arrangement, the main purpose or one of the main purposes of which is to obtain a tax benefit and also, inter alia, lacks commercial substance or is deemed to lack commercial substance. An arrangement is deemed to lack commercial substance if it involves, inter alia, round tripping of funds.

In this case, the arrangement of routing money through wholly owned subsidiary Company B in Country B, a low tax jurisdiction, to an Indian company (C Ltd.) involves round tripping of funds even though funds emanating from A Ltd. are not traced back to A Ltd. The alternate course available in this case is direct advance to C Ltd. an Indian company, in which case the interest income would have been chargeable to tax in the hands of A Ltd.

Therefore, the agreement is deemed to lack commercial substance as it involves round tripping of funds. Also, its main purpose is to obtain tax benefit and there is no other activity in Company B.

iv. Bee Ltd. set up a SEZ unit and claiming 100% deduction under section 10AA resulting in tax benefit. However, setting up of SEZ is for the purpose of taking benefit of a fiscal incentive offered for promoting SEZs. In such a case, GAAR provisions would not be applicable. However, if the tax benefit in the relevant assessment year arising, in aggregate, to all the parties to the arrangement does not exceed ₹ 3 crore, then, GAAR provisions would not be invoked.

Question-15 : [MTP MAY 23]
Specify with reason, whether the following acts can be considered as (i) Tax planning; or (ii) Tax management; or (iii) Tax evasion.

i. SQL Ltd. maintains register of tax deduction at source effected by it to enable timely compliance.
ii. A partnership firm obtaining declaration from lenders/depositors in Form No. 15G/15H and forwarding the same to income-tax authorities.

iii. A company installed an air-conditioner costing ₹ 75,000 at the residence of a director as per terms of his appointment but treats it as fitted in quality control section in the factory. This is with the objective to treat it as plant for the purpose of computing depreciation.

iv. RR Ltd. issued a credit note for ₹ 80,000 as brokerage payable to Mr. Ramana who is the son of the managing director of the company. The purpose is to increase the total income of Mr. Ramana from ₹4,20,000 to ₹ 5,00,000 and reduce the income of RR Ltd. correspondingly.

v. An individual tax payer making tax saver deposit of ₹ 1,00,000 in a nationalised bank. **(4 Marks)**

Solution :

	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.

Extra Page

CHAPTER 12
TAXATION OF DIGITAL TRANSACTIONS

Part-A : Study Material Questions

Question-1 :
Compute the income-tax payable by Mr. Abhinav, aged 32 years, who has the following income for the A.Y.2024-25:

(i)	Interest on fixed deposits with SBI (Gross)	₹ 1,10,000
(ii)	Interest on savings bank account with SBI	₹ 15,000
(iii)	Consideration received for transfer of VDA	₹ 62,000
(iv)	Cost of acquisition	₹ 21,000
(v)	Expenses on transfer of VDA	₹ 1,000

Solution :
Total income (excluding Income from transfer of VDA) is below the basic exemption limit of ₹ 2,50,000. Therefore, tax on income, other than income from VDA, is Nil. Income of ₹ 41,000 (₹ 62,000 – ₹ 21,000) from transfer of VDA would be taxable@30% (plus cess of 4%), even if the total income including income from transfer of VDA is less than the basic exemption limit. The tax on income from transfer of VDA would be ₹ 12,792, being 31.2% of ₹ 41,000. The expenses on transfer of VDA is not allowable as deduction.
Section 194S provides for deduction of tax on payment on transfer of virtual digital asset to a resident at the rate of 1% of consideration. Hence, the transferor would have deducted tax of ₹ 620, being 1% of ₹ 62,000.
Tax@10% under section 194A would have been deducted by SBI from ₹ 1,10,000. TDS u/s 194A = ₹ 11,000
Net tax payable by Mr. Abhinav would be ₹ 1,172 (₹ 12,792 – ₹ 11,000 (TDS u/s 194A) –
₹ 620 (TDS u/s 194S).

Question-2 :
Compute the income-tax payable by Mr. Siddhanth, aged 24 years, who has the following income for the A.Y.2024-25

(i)	Income from Salaries (computed)	₹ 8,40,000
(ii)	Interest on savings bank account with Axis Bank	₹ 12,000
(iii)	Consideration received on transfer of VDA to Mr. Harsh	₹ 50,000
(iv)	Cost of acquisition of VDA transferred	₹ 5,000

Mr. Harsh is employed with ABC Ltd. on a monthly salary of ₹ 50,000. In addition, he has interest on savings bank account with Bank of India.

Mr. Siddhanth has not exercised option to shift out of section 115BAC. Ignore TDS on income other than VDA.

Solution :

Tax payable by Mr. Siddhanth for A.Y. 2024-25

Particulars		Amount in ₹
Total income (excluding income from transfer of VDA) [₹ 8,40,000 + ₹ 12,000]		8,52,000
Income from VDA (₹ 50,000 – ₹ 5,000)		45,000
Total Income		**8,97,000**
Tax on income other than VDA		
Upto ₹ 3,00,000	Nil	
₹ 3,00,001 to ₹ 6,00,000 @5%	₹15,000	
₹ 6,00,001 to ₹ 8,52,000 @10%	₹25,200	40,200
Tax on income from VDA @30%		13,500
		53,700
Add: Health and education cess @ 4%		2,148
		55,848

Less: TDS under section 194S [Mr. Harsh is a specified person since he does not have income under the head "Profits and gains of business and profession" and the consideration payable by him does not exceed ₹ 50,000. Accordingly, Mr. Harsh need not deduct tax u/s 194S on consideration payable to Siddhanth]		Nil
Net tax payable		**55,848**
Net tax payable (rounded off)		**55,850**

Question-3 :
Compute the income-tax payable by Mr. Raj, aged 32 years, who has the following income for the A.Y.2024-25

(i)	Business loss	(₹ 3,18,000)
(ii)	Interest on fixed deposits with HDFC Bank	₹ 18,000
(iii)	Consideration received on transfer of VDA	₹ 4,20,000
(iv)	Cost of acquisition of VDA transferred	₹ 20,000

Solution :
As per section 71, business loss of the current year can be set off against income from other sources of that year. Therefore, business loss of ₹ 3,18,000 can be set off against interest of ₹ 18,000 from fixed deposits.

As per section 115BBH, business loss cannot be set off against income from transfer of VDA. Therefore, balance business loss of ₹ 3,00,000 cannot be set off against Income from VDA of ₹ 4,00,000 (₹ 4,20,000 – ₹ 20,000). The same has to be carried forward to A.Y.2025-26 for set-off against business income of that year.

Tax on Income from VDA would be ₹ 1,24,800 (i.e., 31.2% of ₹ 4 lakh).

Section 194S provides for deduction of tax on payment on transfer of virtual digital asset to a resident at the rate of 1% of consideration. Hence, the transferor would have deducted tax of ₹ 4,200, being 1% of ₹ 4,20,000.

Net tax payable by Mr. Raj = ₹ 1,24,800 – ₹ 4,200 = ₹ 1,20,600.

Question-4 :
Explain the core reasons for difference between the e-commerce transactions and the traditional business transactions causing difficulty to tax the income of e-commerce transactions.

Solution :
The core reasons for difference between e-commerce transactions and traditional business transactions causing difficulty to tax the income from e-commerce transactions under the Income-tax Act, 1961 are absence of national boundaries, no requirement of physical presence of goods and no requirement of physical delivery (in certain cases). Since ecommerce transactions are completed in cyberspace, it is often not clear as to the place where the transaction is effected, thereby causing difficulty in implementing source rule taxation.

Question-5:
E-commerce transactions have replaced concepts generally associated with international transactions traditionally. Discuss briefly the taxation issues involving such transactions.

Solution :
The typical taxation issues relating to e-commerce are:
(1) the difficulty in characterizing the nature of payment and establishing a nexus or link between taxable transaction, activity and a taxing jurisdiction,
(2) the difficulty of locating the transaction, activity and identifying the taxpayer for income tax purposes.

Question-6 :
ABC Ltd., an Indian company, is carrying on the business of manufacture and sale of teakwood furniture under the brand name "PUREWOOD". In order to expand its overseas sales/exports, it launched a massive advertisement campaign of its products. For the purpose of online advertisement, it utilized the services of PQR Inc., a London based company. During the previous year 2023-24, ABC Ltd. paid ₹ 5 lakhs to PQR Inc. for

such services. Discuss the tax implications/TDS implications of such payment and receipt in the hands of ABC Ltd. and PQR Inc., respectively, if –

(i) PQR Inc. has no permanent establishment in India

(ii) PQR Inc. has a permanent establishment in India, and the service is effectively connected to the permanent establishment in India

Solution :

Chapter VIII of the Finance Act, 2016, "Equalisation Levy", provides for an equalisation levy of 6% of the amount of consideration for specified services received or receivable by a nonresident not having permanent establishment in India, from a resident in India who carries out business or profession, or from a non-resident having permanent establishment in India.

"Specified Service" means -

(1) online advertisement;

(2) any provision for digital advertising space or any other facility or service for the purpose of online advertisement; and

(3) any other service as may be notified by the Central Government.

However, equalisation levy shall not be levied-

- where the non-resident providing the specified services has a permanent establishment in India and the specified service is effectively connected with such permanent establishment.
- the aggregate amount of consideration for specified service received or receivable during the previous year does not exceed ₹ 1 lakh.
- where the payment for specified service is not for the purposes of carrying out business or profession

(i) Where PQR Inc. has no permanent establishment in India

In the present case, equalisation levy @6% is chargeable on the amount of ₹ 5,00,000 received by PQR Inc., a non-resident not having a PE in India from ABC Ltd., an Indian company. Accordingly, ABC Ltd. is required to deduct equalisation levy of ₹ 30,000 i.e., @6% of ₹ 5 lakhs, being the amount paid towards online advertisement services provided by PQR Inc., a non-resident having no permanent establishment in India. Non-deduction of equalisation levy would attract disallowance under section 40(a)(ib) of 100% of the amount paid while computing business income.

Since equalisation levy is attracted on the amount of ₹ 5 lakhs, the said amount is exempt from income-tax by virtue of section 10(50) of the Income-tax Act, 1961.

(ii) Where PQR Inc. has permanent establishment in India and the service is effectively connected to the permanent establishment in India

Equalisation levy would not be attracted where the non-resident service provider (PQR Inc., in this case) has a permanent establishment in India and the service is effectively connected to the permanent establishment in India. Therefore, the ABC Ltd. is not required to deduct equalisation levy on ₹ 5 lakhs, being the amount paid towards online advertisement services to PQR Inc, in this case.

Since equalisation levy is not attracted in this case, exemption under section 10(50) of the Income-tax Act, 1961 would not be available. Therefore, tax has to be deducted by ABC Ltd. at the rates in force under section 195 in respect of such payment to PQR Inc. Non-deduction of tax at source under section 195 would attract disallowance under section 40(a)(i) of 100% of the amount paid while computing business income.

Question-7 :

MNO Inc., a Country A based company, is carrying on the business of manufacture and sale of furniture under the brand name "PUREWOOD". In order to increase its share in Indian market, it launched a massive advertisement campaign of its products. For the purpose of online advertisement, it utilized the services of PQR Inc., a Country Y based company which also owns and operates a digital platform. The gross receipt of PQR Inc from provision of such services during the P.Y.2023-24 is ₹ 3 crores. During the previous year 2023-24, MNO Inc. paid ₹ 5 lakhs to PQR Inc. for such services. Discuss the tax implications of such payment and receipt in the hands of MNO Inc. and PQR Inc., respectively, if –

(i) both MNO Inc. and PQR Inc. have no permanent establishment in India
(ii) MNO Inc. has a permanent establishment in India but PQR Inc. has no permanent establishment in India
(iii) PQR Inc. has a permanent establishment in India and the advertisement services are effectively connected with such PE.

Solution :
Chapter VIII of the Finance Act, 2016, "Equalisation Levy", provides for an equalisation levy of 6% of the amount of consideration for specified services received or receivable by a nonresident not having permanent establishment in India, from a resident in India who carries out business or profession, or from a non-resident having permanent establishment in India.

"Specified Service" means
(1) online advertisement;
(2) any provision for digital advertising space or any other facility or service for the purpose of online advertisement and
(3) any other service as may be notified by the Central Government.

However, equalisation levy shall not be levied-
- where the non-resident providing the specified services has a permanent establishment in India and the specified service is effectively connected with such permanent establishment.
- the aggregate amount of consideration for specified service received or receivable during the previous year does not exceed ₹ 1 lakh.
- where the payment for specified service is not for the purposes of carrying out business or profession.

Equalization levy@2% would be chargeable 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—
(1) to a person resident in India; or
(2) to a non-resident in the specified circumstances as provided below; or
(3) to a person who buys such goods or services or both using internet protocol address located in India.

The equalization levy shall not be charged—
(1) where the e-commerce operator making or providing or facilitating e-commerce supply or services has a permanent establishment in India and such e-commerce supply or services is effectively connected with such PE;;
(2) where the equalization levy is leviable under section 165; or
(3) sales, turnover or gross receipts, as the case may be, of the e-commerce operator from the e-commerce supply or services made or provided or facilitated is less than ₹ 2 crore during the previous year.

Meaning of "specified circumstances":
(1) sale of advertisement, which targets a customer, who is resident in India or a customer who accesses the advertisement though internet protocol address located in India; and
(2) sale of data, collected from a person who is resident in India or from a person who uses internet protocol address located in India.

(i) Where MNO Inc. and PQR Inc. have no permanent establishment in India
Equalisation levy would not be attracted in the present case since MNO Inc., a nonresident service recipient, does not have a permanent establishment in India. Therefore, the MNO Inc. is not required to deduct equalisation levy @ 6% on ₹ 5 lakhs, being the amount paid towards online advertisement services to PQR Inc.
However, equalisation levy @2% under section 165A is attracted on ₹ 5 lakhs, being the amount of consideration received by PQR Inc, an e-commerce operator from ecommerce services provided by it to MNO Inc., a non-resident in the specified circumstance, namely, sale of advertisement, which targets a customer, who is resident in India, since the gross receipts of PQR Inc. in the P.Y. 2023-24 exceeds ₹ 2 crores.

(ii) Where MNO Inc. has a permanent establishment in India but PQR Inc. does not have a permanent establishment in India

In the present case, equalisation levy @6% is chargeable on the amount of ₹ 5,00,000 received by PQR Inc., a non-resident not having a PE in India from MNO Inc., a nonresident having a PE in India. Accordingly, MNO Inc. is required to deduct equalisation levy of ₹ 30,000 i.e., @6% of ₹ 5 lakhs, being the amount paid towards online advertisement services provided by PQR Inc., a non-resident having no permanent establishment in India. Non-deduction of equalisation levy would attract disallowance under section 40(a)(ib) of 100% of the amount paid while computing business income.

Since equalisation levy is attracted on the amount of ₹ 5 lakhs, the said amount is exempt from income-tax by virtue of section 10(50) of the Income-tax Act, 1961.

(iii) Where PQR Inc. has a permanent establishment in India and the advertisement services are effectively connected with such PE

Equalisation levy would not be attracted where the non-resident service provider (PQR Inc., in this case) has a permanent establishment in India and the service is effectively connected to the permanent establishment in India. Therefore, MNO Inc. is not required to deduct equalisation levy on ₹ 5 lakhs, being the amount paid towards online advertisement services to PQR Inc, in this case.

Since equalisation levy is not attracted in this case, exemption under section 10(50) of the Income-tax Act, 1961 would not be available.

However, since PQR Inc. has a PE in India and advertisement services are effectively connected with the PE in India, such advertisement income would be deemed to accrue or arise in India in the hands of PQR Inc. under section 9(1)(i) and would be taxable in the hands of PQR Inc. under the Income-tax Act, 1961.

Question-8 :

XYZ & Co., a non-resident entity based in Singapore, owns and operates an electronic facility through which it effects online sale of goods manufactured by it. The following are its receipts from the P.Y.2023-24 –

	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 but resident in other parts of South-East Asia	96 lakhs
	Out of the said sum, ₹ 57 lakhs relates to receipts from persons using internet protocol address located in India.	

Discuss the equalisation levy implications of such receipt in the hands of XYZ & Co., if –

(i) XYZ & Co. has no permanent establishment in India

(ii) XYZ & Co. has a permanent establishment in India, and the sale of goods is effectively connected to the permanent establishment in India

Would your answer change if out of the receipts in (b) above, only ₹ 40 lakhs relates to receipts from persons using internet protocol address located in India?

Solution :

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.

(i) XYZ & Co. has no permanent establishment in India

In this case, 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.

Note – If the receipts in (b) above were only ₹ 40 lakhs, then equalisation levy would not be attracted since the gross receipts would be only ₹ 198 lakhs, which is less than ₹ 2 crores.

(ii) XYZ & Co. has a permanent establishment in India, and the sale of goods is effectively connected to the permanent establishment in India

Equalisation levy would not be attracted where the non-resident E-Commerce Operator (XYZ & Co., in this case) has a permanent establishment in India and the sale of goods is effectively connected to the permanent establishment in India.

This is irrespective of the quantum of receipts in (b) above i.e., whether ₹ 57 lakhs or ₹ 40 lakhs.

Question-9 :

PQR Ltd., an Indian headquartered multinational company, has entered into a fixed fee agreement for ₹ 3 crores with X-Accounting Ltd., UK for the Financial Year 2023-24, which was approved by the Central Government. As part of the agreement, X-Accounting Ltd., UK maintains an online web-platform through which it provides IFRS advisory and consultancy services, which also includes providing response to queries raised by PQR Ltd. The technical staff of X-Accounting Ltd., UK provide their expert views virtually over the platform within 24-72 hours. Further, X- Accounting Ltd. also provides customised training through the embedded online video platform exclusively for the personnel working with PQR Ltd.

X-Accounting Ltd. does not have any offices outside the UK. Examine the tax implications/TDS implications of such payment and receipt in the hands of X-Accounting Ltd., UK and PQR Ltd., India under Chapter VIII of the Finance Act, 2016 (as amended by the Finance Act, 2021) and the Income-tax Act, 1961.

Extract of Article 13 of India-UK DTAA

1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the law of that State; but if the beneficial owner of the royalties or fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed:

   (a) in the case of royalties within paragraph 3(a) of this Articles, and fees for technical services within paragraphs 4(a) and (c) of this Article,—
      (i) during the first five years for which this Convention has effect ;
         (aa) 15 per cent of the gross amount of such royalties or fees for technical services when the payer of the royalties or fees for technical services is the Government of the first-mentioned Contracting State or a political sub-division of that State, and
         (bb) 20 per cent of the gross amount of such royalties or fees for technical services in all other cases; and

(ii) during subsequent years, 15 per cent of the gross amount of such royalties or fees for technical services; and

(b) in the case of royalties within paragraph 3(b) of this Article and fees for technical services defined in paragraph 4(b) of this Article, 10 per cent of the gross amount of such royalties and fees for technical services.

3. For the purposes of paragraph 2 of this Article, and subject to paragraph 5, of this Article, the term "fees for technical services" means payments of any kind of any person in consideration for the rendering of any technical or consultancy services (including the provision of services of a technical or other personnel) which :

(a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3(a) of this article is received ; or
(b) are ancillary and subsidiary to the enjoyment of the property for which a payment described in paragraph 3(b) of this Article is received ; or
(c) make available technical knowledge, experience, skill know-how or processes, or consist of the development and transfer of a technical plan or technical design.

4. The definition of fees for technical services in paragraph 4 of this Article shall not include amounts paid:
(a) for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property, other than property described in paragraph 3(a) of this Article;
(b) for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships, or aircraft in international traffic
(c) for teaching in or by educational institutions;
(d) for services for the private use of the individual or individuals making the payment ; or
(e) to an employee of the person making the payments or to any individual or partnership for professional services as defined in Article 15 (Independent personal services) of this Convention.

Solution :
Section 165A of 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.

We need to determine whether X-Accounting Ltd., UK is an e-commerce operator

E-Commerce Operator means a non-resident who owns, operates or manages digital or electronic facility or platform for online sale of goods or online provision of services or both.

In the given situation, X-Accounting Ltd., UK, a non-resident, maintains a digital platform for online provision of services. Therefore, X-Accounting Ltd. is an e-commerce operator defined in section 165A.

However, the consideration received or receivable for specified services and for e-commerce supply or services would not include the consideration, which are taxable as, inter alia, fees for technical services in India under the Income-tax Act, read with the DTAA notified by the Central Government under section 90 or section 90A.

As per the Income-tax Act, 1961 and India-UK DTAA, fee for advisory services and training services by X-Accounting Ltd., UK comes within the scope of "fees for technical services" defined thereunder.

Hence, the consideration received for such services, being in the nature of fee for technical services, would not be subject to equalization levy.

Now, we will consider the income-tax implications.

Any fees for technical services will be deemed to accrue or arise in India if they are payable by, inter alia, a person who is resident in India except where the fees is payable in respect of technical services utilised in a business or profession carried on by such person outside India or for the purpose of making or earning any income from any source outside India.

Hence, ₹ 3 crores would be deemed to accrue or arise in India in the hands of X-Accounting Ltd., UK and would be chargeable to tax in India as per Income-tax Act, 1961.

Withholding tax provisions under section 195 would be attracted and PQR Ltd, India has to withhold taxes on the payment made to X-Accounting Ltd., UK at the rate of 20%, which is the rate as per India-UK DTAA. The rate as per section 115A is also 20% but will be further increased by surcharge @2% and HEC @4%. Hence, the effective rate of tax as per Income tax Act, 1961 would be 21.216%. Therefore, the rate as per DTAA i.e., 20% is more beneficial.

Part-B : Additional Questions

Question-10 : [PP MAY-19]
Raghu Ltd made a payment of ₹ 3,00,000 on 30-6-2023 towards procuring online advertisement space to a foreign company which had no place of business in India. The company remitted the equalization levy on 23-3-2024. Calculate interest and penalty payable by Raghu Ltd. if any. **(3 Marks)**

Solution
Interest for failure to remit the equalization levy
An assessee who fails to credit the equalisation levy or any part thereof within 7th of the month following the calendar month in which it is deducted, to the account of the Central Government, has to pay simple interest at the rate of 1% of such levy for every month or part of a month by which such crediting of the tax or any part thereof is delayed.

In the present case, Raghu Ltd. is required to remit the equalization levy of ₹ 18,000 i.e., 6% of ₹ 3,00,000 by 07.7.2023. However, since it remitted the said levy only on 23.3.2024, the interest ₹ 1,620 i.e., @1% would be levied for 9 months.

Penalty for failure to pay equalisation levy
Failure to remit equalisation levy to the Central Government on or before 7th of the following month, after deduction would attract a penalty of ₹ 1,000 for every day during which the failure continues. However, such penalty shall not exceed the amount of equalisation levy that he failed to pay.

Thus, in the present case, penalty of ₹ 2,59,000 (₹ 1000 x 259) would be limited to 18,000, being the amount of equalization levy which the assessee has failed to pay

Question-11 :[MTP APRIl-21]
Master Ltd. is an Indian Company involved in manufacturing and trading in mobile phones under the brand name "MY PHONE". In order to expand its exports sale, it launched a massive publicity campaign in foreign market. For the purpose of online advertising, it hired the Sunshine Inc., a Japanese based company which has no permanent establishment in India and paid ₹ 15 lakhs for its services in the P.Y. 2023-24.

Discuss the tax and TDS implications of such transaction both in the hands of Master Ltd. and Sunshine Inc. **(3 Marks)**

Solution
Chapter VIII of the Finance Act, 2016, "Equalisation Levy", provides for an equalisation levy of 6% of the amount of consideration for specified services received or receivable by a non - resident not having permanent establishment in India, from a resident in India who carries out business or profession, or from a non-resident having permanent establishment in India.

"Specified Service" means
(1) online advertisement;
(2) any provision for digital advertising space or any other facility or service for the purpose of online advertisement and
(3) any other service as may be notified by the Central Government.
However, equalisation levy shall not be levied-
- where the non-resident providing the specified services has a permanent establishment in India and the specified service is effectively connected with such permanent establishment.
- the aggregate amount of consideration for specified service received or receivable during the previous year does not exceed Rs.1 lakh.
- where the payment for specified service is not for the purposes of carrying out business or profession

In the present case, equalisation levy @ 6% is chargeable on the amount of ₹ 15,00,000 received by Sunshine Inc., a non-resident not having a PE in India from Master Ltd., an Indian company. Accordingly, Master Ltd. is required to deduct equalisation levy of ₹ 90,000 i.e., @ 6% of ₹ 15 lakhs, being the amount paid towards online advertisement services provided by Sunshine Inc., a non-resident having no permanent establishment in India. Non-deduction of equalisation levy would attract disallowance under section 40(a)(ib) of 100% of the amount paid while computing business income

Question-12 [PP DEC-21]

M/s. XYZ.com, an e-commerce operator, incorporated in China has no physical presence in India. It has no permanent establishment in India.

(a) It sells goods worth ₹ 1.20 crores to Indian residents.

(b) Service provided to persons resident in India by way of sale of online advertisement. When amount of bill (or aggregate amount of bills) to a recipient of service during the financial year does not exceed ₹ 1 lakh per recipient of service (Gross amount of all bills is ₹ 70 lakhs).

(c) Service provided to non-residents by way of sale of online advertisements, which target resident Indian customers, amounting to ₹ 20 lakhs.

The above data pertains to financial year 2023-2024. Discuss the implications of Equalisation levy on XYZ.com for the Assessment year 2024-25. **(6 Marks)**

Solution

(1) Equalisation levy @ 2% is attracted 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; or
- to a non-resident in specified circumstances, which include sale of advertisement targeting a customer who is resident in India.

XYZ.com is an e-commerce operator since it is a non-resident managing an electronic facility for online sale of goods and provision of services.

(2) Equalisation levy @ 2% would **not** be attracted, if –
- (i) XYZ.com has a PE in India; or
- (ii) Equalization levy @ 6% is deductible by the service recipients, resident in India, in respect of online advertisement services rendered to them; or
- (iii) The sales/turnover/gross receipts of XYZ.com from taxable e-commerce supply or services is less than ₹ 2 crore in the current previous year i.e., P.Y.2023-24.

(3) In this case, Equalisation levy @ 2% would be attracted since -
- (i) XYZ.com does not have a PE in India.
- (ii) The amount of billing (or the aggregate amount of billing) to each recipient of advertisement service (being a person resident in India) does not exceed ₹ 1 lakh. Consequently, there would be no requirement for them to deduct equalization levy of 6%.
- (iii) The sales/turnover/gross receipts of XYZ.com from taxable e-commerce supply or services exceeds ₹ 2 crores in the current previous year i.e., P.Y.2023-24 (Working given below)

Value of taxable e-commerce supply or services

Particulars		₹
(a)	E-commerce supply of goods to residents	1,20,00,000
(b)	E-commerce services to residents (Equalisation levy @ 2% is attracted in the hands of XYZ.com, since Equalisation levy @ 6% is not deductible by the service recipients on account of the billing/aggregate amount of billing being less than ₹ 1 lakh)	70,00,000
(c)	E-commerce services to non-residents by way of sale of online advertisements targeting Indian customers	20,00,000
Taxable e-commerce supply or services		2,10,00,000
Equalisation levy @ 2%		**4,20,000**

Question-13 : [PP May 23]

Kiwi Inc., a company based in USA, is engaged in manufacturing and selling of mobile phones, globally. It sells each mobile phone for USD 2,000. Alpha Inc., another company based in USA, owns and manages a website which acts as a marketplace for buying and selling of goods and also hosts advertisements. Gama LLC, a company incorporated in UK, is engaged in manufacturing and selling of printers.

During the previous year 2023-24, Kiwi Inc. sold 80,000 mobile phones, as under-

Platform through which the mobile phones are sold	Customer to whom the mobile phones are sold	Number of mobile phones sold
Through Alpha Inc.	Persons who are resident in India	15,000
Through Alpha Inc.	Persons who are not resident in India, sitting in U.K.	25,000
Through Kiwi Inc.'s own website	Persons who are resident in India	7,000
Through Kiwi Inc.'s own website	Persons who are not resident in India, using Internet in U.K.	12,000
Through Kiwi Inc.'s physical store in US	Persons who are resident in India	21,000
Total		**80,000**

Gama LLC enters into a contract with Alpha Inc. for publishing its advertisement on the website of Alpha Inc., for the period from 1st March 2024 to 31st March 2024. Gama LLC paid USD 50,000 for hosting advertisement in India for Indian customers and USD 20,000 for hosting advertisement in UK for UK customers. Kiwi Inc., Alpha Inc. and Gama LLC do not have any Permanent Establishment in India.

Discuss the India tax implications in the above scenario as per Income-tax Act, 1961. You may assume that sale of mobile phones was evenly distributed throughout the year and the rate of 1 USD is equal to ₹ 80.

(6 Marks)

Solution :

(a) Tax implications in the hands of Kiwi Inc/Alpha Inc.

(1)		(2)
Transaction entered into by Kiwi Inc.		**Tax implications in the hands of Kiwi Inc./ Alpha Inc.**
(i)	Sale of 15,000 mobile phones through Alpha Inc. to persons who are resident in India	Alpha Inc, the e-commerce operator, has to pay equalisation levy@2%, since the e-commerce supply is to persons resident in India, the consideration for which exceeds ₹ 2 crore. Consideration =15,000 x 2,000 x ₹ 80 = ₹ 240 crores EL payable by Alpha Inc = 2% x ₹ 240 crores = ₹ 4.80 crores There would be no income-tax liability in the hands of Kiwi Inc on account of exemption u/s 10(50). Note – This view is taken since EL is leviable on the gross sale consideration even though Alpha Inc. is only facilitating sale of phones by Kiwi Inc. in this case. Accordingly, Kiwi Inc. can avail benefit of exemption u/s 10(50), since the transaction has already been subject to equalization levy in the hands of Alpha Inc. Alternatively, it is possible to take a view that exemption u/s 10(50) would not be available to Kiwi Inc since equalization levy is paid by Alpha Inc. If this view is taken, then the income attributable to this transaction would be subject to income-tax in the hands of Kiwi Inc. on account of significant economic presence of Kiwi Inc. in India leading to business connection in India.

(ii)	Sale of 25000 mobile phones through Alpha Inc. to persons who are not resident in India, sitting in UK	Equalisation levy is **not** attracted in the hands of Alpha Inc. on sale of mobile phones to non-residents based outside India. Income-tax liability is also **not** attracted in the hands of Kiwi Inc. since the income accrues and arises outside India and is received outside India by a non-resident, i.e., Kiwi Inc.
(iii)	Sale of 7,000 phones through Kiwi Inc's own website to persons resident in India	Equalisation levy@2% is attracted in the hands of Kiwi Inc, since it has effected e-commerce supply to persons resident in India, the consideration for which exceeds ₹ 2 crores. Consideration = 7,000 x 2,000 x ₹ 80 = ₹ 112 crores EL payable by Kiwi Inc. = 2% x ₹ 112 crores = ₹ 2.24 crores There would be no income-tax liability in the hands of Kiwi Inc. on account of exemption u/s 10(50).
(iv)	Sale of 12,000 phones through Kiwi Inc's own website to persons who are not resident in India, using internet in UK	Equalisation levy is **not attracted** in the hands of Kiwi Inc. on sale of mobile phones to non-residents based outside India using internet protocol address outside India. Income-tax liability is also not attracted in the hands of Kiwi Inc. since the income accrues and arises outside India and is received outside India by a non-resident, i.e., Kiwi Inc.
(v)	Sale of 21,000 phones through Kiwi's physical store in US to persons resident in India.	Since the sale has taken place outside India, no income is deemed to accrue or arise in the hands of Kiwi Inc.

USD 50,000 received from Gama LLC by Alpha Inc. for hosting advertisement for Indian Customers
Amount of USD 50,000 paid by Gamma Inc., a non-resident, to Alpha Inc, another non-resident, being an e-commerce operator, would be subject to EL @2% in the hands of Alpha Inc, since the same is for hosting advertisement in India which is a specified circumstance.
EL payable by Alpha Inc. = 2% x USD 50,000 x ₹ 80 = ₹ 80,000.

USD 20,000 received from Gama LLC by Alpha Inc. for hosting advertisement in UK for UK customers
No equalization levy is attracted in respect of the sum of USD 20,000 paid since it is not for targeting Indian customers.

No income-tax liability is attracted since no income accrues or arises or is deemed to accrue or arise in India to Alpha Inc.

Note – The question requires the candidates to discuss the India tax implications in the given scenario **as per the Income-tax Act, 1961.** Since majority of the transactions listed therein is through a non-resident e-commerce operator, it becomes imperative to first consider the equalisation levy implications. If the transaction is subject to equalisation levy, then, it would be exempt u/s 10(50) of the Income-tax Act, 1961. Otherwise, it has to be examined whether the income from the transaction is deemed to accrue or arise in India to attract chargeability of income-tax u/s 9 of the Income-tax Act, 1961. The main answer given above has been prepared on these lines.

However, due to the specific reference to "as per the Income-tax Act, 1961" in Q.5(b), an alternate answer is given below ignoring the provisions of equalisation levy, since the levy itself is through Chapter VIII of the Finance Act, 2016 and not through the Income-tax Act, 1961:

Tax implications under the Income-tax Act, 1961 ignoring equalisation levy		
(1)		(2)
Transaction entered into by Kiwi Inc.		Tax implications in the hands of Kiwi Inc.
(i)	Sale of 15,000 mobile phones@ USD 2,000 through Alpha Inc. to persons who are resident in India	Significant economic presence of Kiwi Inc in India arises in these cases [transactions referred to in (i) and (iii)] since these transactions are with persons in India in respect of which the aggregate payments in the P.Y.2023-24 exceeds ₹ 2 crores.
(iii)	Sale of 7,000 phones@ USD 2,000 through Kiwi Inc's own website to persons resident in India	Hence, business connection is constituted and income attributable to such transactions shall be deemed to accrue or arise in India and would be chargeable to income-tax in the hands of Kiwi Inc.
(ii)	Sale of 25000 mobile phones through Alpha Inc. to persons who are not resident in India, sitting in UK	Income-tax liability is not attracted in the hands of Kiwi Inc. in respect of transactions referred to in (ii) and (iv) since the income accrues and arises outside India and is received outside India by a non-resident, i.e., Kiwi Inc.
(iv)	Sale of 12,000 phones through Kiwi Inc's own website to persons who are not resident in India, using internet in UK	No business connection is established in this case, and hence, no income is deemed to accrue or arise in India in the hands of Kiwi Inc.
(v)	Sale of 21,000 phones through Kiwi's physical store in US to persons resident in India.	Since the sale has taken place outside India, no income is deemed to accrue or arise in the hands of Kiwi Inc.

USD 50,000 received from Gama LLC by Alpha Inc. for hosting advertisement in India for Indian Customers

Income attributable to operations carried out in India which is deemed to accrue or arise in India would include income from advertisement which targets customers residing in India. Accordingly, income of USD 50,000 received from Gama LLC by Alpha Inc. for hosting advertisement in India for Indian customers would be chargeable to income-tax in the hands of Alpha Inc.

USD 20,000 received from Gama LLC by Alpha Inc. for hosting advertisement in UK for UK customers

No income-tax liability is attracted since no income accrues or arises or is deemed to accrue or arise in India to Alpha Inc.

Question-14 : [RTP Nov 23]

Aster Inc., a company based in Canada, owns, operates and manages a digital platform which acts as a marketplace for buying and selling E-readers of different brands globally and which also hosts advertisements. Through this website, Aster Inc. sold E-readers of ABC Ltd. and XYZ Inc. to customers during the P.Y. 2023-24, the details of which are given in the table below –

Seller	Customers	Number of E-readers	Price per E- reader
ABC Ltd., an Indian Company engaged in designing, manufacturing and selling E-readers	Indian Customers	2,500	₹ 10,000
	Customers outside India buying E-readers using internet protocol address located in India	250	US$ 150 [1 US$ = ₹ 80]
XYZ Inc., a Singapore based company not having any PE in India, engaged in designing, manufacturing and selling E-readers	Indian Customers	2,000	₹ 12,000
	Customers outside India buying E-readers using internet protocol address located in India	1,000	US$ 150 [1 US$ = ₹ 80]

During the previous year 2023-24, ABC Ltd. paid ₹ 25,00,000 to Aster Inc. for hosting advertisement for promoting sale to customers outside India; and XYZ Inc. paid ₹ 32,00,000 to Aster Inc. for hosting advertisement for promoting sale to customers in India. Examine the equalization levy implications in respect of the transactions entered into with ABC Ltd. and XYZ Ltd. Assume that Aster Inc. does not have a PE in India.

Solution :
Section 165A of 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 to -

- a person resident in India,
- a non-resident in the specified circumstance (sale of advertisement, which targets a customer, who is resident in India or a customer who accesses the advertisement through internet protocol address located in India) and
- a person who buys such goods or services or both using internet protocol address located in India.

Consideration received or receivable from e-commerce supply or services shall not include consideration for sale of such goods which are owned by a person resident in India or by a permanent establishment in India of a person non-resident in India, if sale of such goods is effectively connected with such permanent establishment.

Sale of E-readers
In the present case, Aster Inc. is an e-commerce operator since it is a non-resident owning, operating and managing a digital platform for online sale of E-readers. Equalisation levy would be attracted on the amount of consideration received for sale of E-readers of XYZ Inc., a non-resident not having a PE in India, to Indian customers as well as to customers buying E-readers using internet protocol address located in India. However, amount of consideration received for sale of E-readers owned by ABC Ltd., being an Indian company, would not be subject to equalization levy.

Since receipts from e-commerce supply of E-readers of XYZ Inc. exceed ₹ 2 crores, Aster Inc. is liable to pay equalization levy of ₹ 7,20,000 @2% of ₹ 3,60,00,000 [(₹ 12,000 x 2,000 E-readers) + (1,000 E-readers x ₹ 12,000 ($ 150 x ₹ 80)].

Hosting of advertisement
As per section 165 of the Finance Act, 2016, an equalisation levy @6% is leviable on the amount of consideration for online advertisement received or receivable by a non-resident not having permanent establishment in India from a resident in India who carries on business or profession, or from a non-resident having permanent establishment in India.

In the present case, ABC Ltd. is required to deduct equalization levy of ₹ 1,50,000 i.e., @6% of ₹ 25,00,000 being the amount received by Aster Inc. a non-resident not having PE in India for online advertisement. However, XYZ Inc., a foreign company not having PE in India, is not required deduct equalization levy for consideration paid to Aster Inc. fo r online advertisement.
Equalization levy under section 165A would, however, be attracted in the hands of Aster Inc. on consideration received in respect of online advertisement services provided to XYZ Inc. being a non-resident, since such advertisement would target customers resident in India. Moreover, total receipts from e-commerce supply or services by Aster Inc. exceed ₹ 2 crores. Accordingly, Aster Inc. is required to pay equalization levy of ₹ 64,000 @2% of ₹ 32,00,000.

Question-15 : [May 23 PP]
Mr. A, aged 34 years, is a salaried employee with TKM Limited. He has furnished the following details for the previous year 2023-24:

Sr. No.	Particulars	Amount in ₹
1.	Gross Salary	23,00,000
2.	Business Loss from a new part time business of trading in Mobiles	(4,50,000)
3.	Short Term Capital Loss on sale of Property (computed)	(3,60,000)
4.	Mr. A purchased 1000 Bibcoins, a virtual digital currency on 01.04.2023 for ₹ 1,000 per coin, which he sold on 15.02.2024 for ₹ 1,300 per coin. Commission for transfer of Bibcoins is 2% of the sale value.	

You are required to compute the total income of Mr. A, assuming that he has opted out of Default Tax Regime u/s 115BAC for the Assessment year 2024-25 as per the provisions of the Income-tax Act, 1961.

Solution

(a) Computation of total income of Mr. A for A.Y.2024-25 (under the Optional Tax Regime)

	Particulars	Amount (in ₹)	Amount (in ₹)
I	**Salaries**		
	Gross Salary	23,00,000	
	Less: Standard deduction under section 16(ia)	50,000	**22,50,000**
II	**Profit and gains from business or profession**		
	Business loss from part time business	(4,50,000)	
	Loss from business cannot be set off against salary income.		
	No set off of business loss is allowed against any capital gain from virtual digital assets.		
	Business loss of ₹ 4,50,000 has to be carried forward to A.Y. 2025-26.		
III	**Capital Gains**		
	Short term capital loss on sale of property	(3,60,000)	
	[Short term capital loss cannot be set off against any income other than Capital gains. Short term capital loss of ₹ 3,60,000 has to be carried forward to A.Y. 2025-26].		
	It is not eligible for set off against capital gain arising from transfer of virtual digital asset.		
IV	**Capital Gains**		
	Income from transfer of virtual digital assets [(₹ 1,300 - ₹ 1,000) x 1,000 bib coins)		3,00,000
	[No deduction in respect of any expenditure other than cost of acquisition is allowed]		
	Total Income		**25,50,000**

Extra Page

CHAPTER 13
DEDUCTION, COLLECTION AND RECOVERY OF TAX

Part-A : Study Material Questions

Question-1 :
LL Limited paid leave travel facility to its employees and considered exemption under section 10(5), based on the self-declaration furnished by the employees, who have exercised option to opt out of new tax regime under section 115BAC. The Assessing Officer held that the company as an employer ought to have verified the genuineness of the claim of exemption by obtaining from them, the proof of actual expenditure incurred by availing leave travel facility. Accordingly, the Assessing Officer treated the assessee company as assessee in default. Decide the correctness of action.

Solution :
Section 192 casts liability on the employer to deduct tax at source from the salary paid to its employees.

In this case, the employer has paid leave travel concession/facility to its employees and the said concession/ facility would be eligible for exemption subject to the conditions laid down in section 10(5) read with Rule 2B of the Income-tax Rules, 1962.

Section 192(2D) casts responsibility on the person responsible for paying any income chargeable under the head 'Salaries' to obtain from the assessee, the evidence or proof or particulars of prescribed claims under the provisions of the Act in the prescribed form and manner for the purposes of –

(1) estimating income of the assesses; or
(2) computing tax deductible under section 192(1).

Rule 26C of the Income-tax Rules, 1962 mandates a salaried assessee claiming, inter alia, leave travel concession or assistance to furnish evidence of expenditure incurred in relation thereto to the person responsible for making such for payment under section 192(1), for the purpose of estimating his income for computing the tax deductible under section 192.

In the given case, LL Limited paid leave travel concession to its employees and considered for exemption on the basis of mere self-declaration, instead of verifying and obtaining the evidence/ proof of actual expenditure. Thus, the action of the Assessing Officer is correct in law.

Question-2 :
Mr. Sharma, an employee of M/s. ABC Ltd. since 10-04-2020, resigned on 31-03-2024 and withdrew ₹ 60,000 being the balance in his EPF account. Discuss with reasons whether the provisions of Chapter XVII-B are attracted and if so, what is the net amount receivable by the payee, Mr. Sharma?

Solution :
As per section 192A, in a case where the accumulated balance due to an employee participating in a recognized provident fund is includible in his total income owing to the provisions of Rule 8 of Part A of the Fourth Schedule not being applicable, the trustees of the Employees' Provident Fund Scheme, 1952 or any person authorised under the scheme to make payment of accumulated balance due to employees are required to deduct income-tax@10% at the time of payment of accumulated balance due to the employee. Tax deduction at source has to be made only if the amount of such payment or aggregate amount of such payment of the payee is ₹ 50,000 or more.

Rule 8 of Part A of the Fourth Schedule, inter alia, provides that only if an employee has rendered continuous service of five years or more with the employer, then accumulated balance in a recognized provident fund payable to an employee would be excluded from the total income of that employee.

In the present case, Mr. Sharma has withdrawn an amount exceeding ₹ 50,000 on his resignation after rendering a continuous service of four years with M/s. ABC Ltd. Therefore, tax has to be deducted at source@10% under section 192A on ₹ 60,000, being the amount withdrawn on his resignation without rendering continuous service of a period of five years with M/s. ABC Ltd.

The net amount receivable by Mr. Sharma is ₹ 54,000 [i.e., ₹ 60,000 – ₹ 6,000, being tax deducted at source].

Question-3 :
Examine the TDS implications under section 194A in the cases mentioned hereunder –

(i) On 1.10.2023, Mr. Harish, aged 45 years, made a six-month fixed deposit of ₹ 10 lakh@9% p.a. with ABC Co-operative Bank. The fixed deposit matures on 31.3.2024.

(ii) On 1.6.2023, Mr. Ganesh, aged 35 years, made three nine months fixed deposits of ₹ 3 lakh each, carrying interest @9% p.a. with Dwarka Branch, Janakpuri Branch and Rohini Branch of XYZ Bank, a bank which has adopted CBS. The fixed deposits mature on 28.2.2024.

(iii) On 1.10.2023, Mr. Rajesh, aged 40 years, started a six months recurring deposit of ₹ 2,00,000 per month @8% p.a. with PQR Bank. The recurring deposit matures on 31.3.2024.

SOLUTION

(i) ABC Co-operative Bank has to deduct tax at source@10% on the interest of ₹ 45,000 (9% × ₹ 10 lakh × ½) under section 194A. The tax deductible at source under section 194A from such interest is, therefore, ₹ 4,500.

(ii) XYZ Bank has to deduct tax at source@10% u/s 194A, since the aggregate interest on fixed deposit with the three branches of the bank is ₹ 60,750 [3,00,000 × 3 × 9% × 9/12], which exceeds the threshold limit of ₹ 40,000. Since XYZ Bank has adopted CBS, the aggregate interest credited/paid by all branches has to be considered. Since the aggregate interest of ₹ 60,750 exceeds the threshold limit of ₹ 40,000, tax has to be deducted@10% u/s 194A.

(iii) No tax has to be deducted under section 194A by PQR Bank on the interest of ₹ 28,000 falling due on recurring deposit on 31.3.2024 to Mr. Rajesh, since such interest does not exceed the threshold limit of ₹ 40,000.

Question-4 :
Maya Bank credited ₹ 73,50,000 towards interest on the deposits in a separate account for macro-monitoring purposes by using Core-branch Banking Solutions (CBS) software. No tax was deducted at source in respect of interest on deposits so credited even where the interest in respect of some depositors exceeded the limit of ₹40,000.

The Assessing Officer disallowed 30% of interest expenditure, where the interest on time deposits credited exceeded the limit of ₹ 40,000 and also levied penalty under section 271C.

Decide the correctness of action of the Assessing Officer.

Solution :
The Explanation to section 194A provides that where any income by way of interest other than interest on securities is credited to any account, whether called 'interest payable account' or 'suspense account' or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and provisions of section 194A, shall, thus, apply.

However, the CBDT has, vide Circular No.3/2010 dated 2.3.2010, clarified that Explanation to section 194A will not apply in cases of banks where credit is made to provisioning account on daily/monthly basis for the purpose of macro monitoring only by the use of CBS software.

Since no constructive credit to the depositor's/ payee's account takes place while calculating interest on daily / monthly basis in the CBS software used by banks, tax need not be deducted at source on such provisioning of interest by banks for the purposes of macro monitoring only.

In such cases, tax shall be deducted at source on accrual of interest at the end of the financial year or at periodic intervals as per practice of the bank or as per the depositor's or payee's requirement or on maturity or on encashment of time deposit, whichever event takes place earlier and wherever the aggregate amount of interest income credited or paid or likely to be credited or paid during the financial year by the bank exceeds the limits specified in section 194A i.e., ₹ 40,000.

In view of the above, the action of the Assessing Officer in disallowing the interest expenditure credited in a separate account for macro monitoring purpose is not valid and consequent initiation of penalty proceedings under section 271C is not tenable in law.

Question-5 :
Mr. Govind won the first prize in a lottery ticket and the prize was a Maruti car worth ₹ 5 lakhs. What is the procedure to be adopted before handing over the Maruti Car to Mr. Govind?

Solution :
Section 194B provides that the person responsible for paying to any person, any income by way of winnings from any lottery or crossword puzzle, card game or any other game of any sort and the amount of winning exceeds ₹ 10,000, tax shall be deducted at source @30%.

However, in case where the winning is wholly in kind, the person responsible for paying the prize shall before releasing the winning, ensure that the tax has been paid in respect of such winning.

The Karnataka High Court in the case of CIT v. Hindustan Lever Ltd. (2014) 361 ITR 1 has held that where the winnings are wholly in kind, the responsibility cast under section 194B is to ensure that the tax is paid by the winner of the prize before the prize is released in his favour. In this regard, the CBDT Circular No.763 dated 18/2/1998 clarifies that the person responsible for paying the winnings shall, before releasing such winnings, ensure that the tax is paid by the winner. He can do so, for example, by collecting from the winner a sum equal to the tax deductible at source on the winnings in kind, before releasing the winnings. For this purpose, the value of the winnings in kind shall be taken as the cost incurred by the payer in acquiring the said winnings in kind.

Therefore, in this case since the entire winning is in kind, it must be ensured that the sum equal to the tax deductible at source (i.e., ₹ 1,50,000, being @ 30% of ₹ 5 lakhs) is paid by Mr. Govind, before the car is released in his favour. This can be done by collecting ₹ 1,50,000 from Mr. Govind before releasing the Maruti car to him and remitting the said sum to the Government account or verifying the tax payment by the winner and thereafter releasing the prize.

Question-6 :
ABC Ltd. makes the following payments to Mr. X, a contractor, for contract work during the P.Y.2023-24 –

₹ 20,000 on 1.5.2023
₹ 25,000 on 1.8.2023
₹ 28,000 on 1.12.2023

On 1.3.2024, a payment of ₹ 30,000 is due to Mr. X on account of a contract work.
Discuss whether ABC Ltd. is liable to deduct tax at source under section 194C from payments made to Mr. X.

Solution :
In this case, the individual contract payments made to Mr. X does not exceed ₹ 30,000. However, since the aggregate amount paid to Mr. X during the P.Y.2023-24 exceeds ₹ 1,00,000 (on account of the last payment of ₹ 30,000, due on 1.3.2024, taking the total from ₹ 73,000 to ₹ 1,03,000), the TDS provisions under section 194C would get attracted. Tax has to be deducted @1% on the entire amount of ₹ 1,03,000 from the last payment of ₹ 30,000 and the balance of ₹ 28,970 (i.e., ₹ 30,000 – ₹ 1030) has to be paid to Mr. X.

Question-7 :
Bharathi Cements Ltd. purchased jute bags from Raj Kumar & Co. The latter has to supply the jute bags with the logo and address of the assessee, printed on it. From 01.09.2023 to 20.03.2024, the value of jute bags supplied is ₹ 8,00,000, for which the invoice has been raised on 20.03.2024. While effecting the payment for the same, is the assessee bound to deduct tax at source, assuming that the value of the printing component involved is ₹ 1,10,000. You are informed that the assessee has not sold any material to Raj Kumar & Co. and that the latter has to manufacture the jute bags in its plant using raw materials purchased by it from outsiders.

Solution :
As per the definition under section 194C, "work" shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using raw material purchased from a person, other than such customer or associate of such customer. This is regardless of the quantum of expenditure incurred towards printing or processing comprised in the bill amount.

The problem clearly states that Raj Kumar & Co. has to manufacture the jute bags using raw materials purchased from outsiders and that the assessee Bharathi Cements Ltd has not sold any material to them. Therefore, in this case, it is a contract of sale. Hence, the provisions of section 194C are **not** attracted and no liability to deduct tax at source would arise.

Question-8 :
Alap Ltd. has made following payments on various dates in financial year 2023-24 to Vilambit Ltd. towards work done under different contracts:

Contract Number	Date of payment	Amount (₹)
1.	5.5.2023	20,000
2.	6.6.2023	15,000
3.	8.8.2023	25,000
4.	10.12.2023	25,000
5.	29.01.2024	17,000

Alap Ltd. claims that it is not liable for deduction of tax at source under section 194C. Examine the correctness of the claim made by the company. What would be the position if the value of the contract no. 5 is ₹ 14,000 only and there was no further contract during the year?

Solution :
As per section 194C(5), tax has to be deducted at source where the amount credited or paid or likely to be credited or paid to a contractor or sub-contractor exceeds ₹ 30,000 in a single payment or ₹ 1,00,000 in aggregate during the financial year.

Therefore, in the given case, even though the value of each individual contract does not exceed ₹ 30,000, the aggregate amount exceeds ₹ 1,00,000. Hence, Alap Ltd's contention is not correct and tax is required to be deducted at source on the whole amount of ₹ 1,02,000 from the last payment of ₹ 17,000 towards Contract No.5 on account of which the aggregate amount exceeded ₹ 1,00,000.

However, no tax deduction is to be made if the value of the last contract is ₹ 14,000 as the aggregate amount in such case would only be ₹ 99,000, which is below the aggregate monetary limit of ₹ 1,00,000.

Question-9 :
Examine the applicability of the provisions for tax deduction at source under section 194DA in the following cases -

(i) Mr. X, a resident, is due to receive ₹ 4.50 lakhs on 31.3.2024, towards maturity proceeds of LIC policy taken on 1.4.2021, for which the sum assured is ₹ 4 lakhs and the annual premium is ₹ 1,25,000.
(ii) Mr. Y, a resident, is due to receive ₹ 4.10 lakhs on 31.3.2024 on LIC policy taken on 31.3.2012, for which the sum assured is ₹ 3.70 lakhs and the annual premium is ₹ 30,100.

(iii) Mr. Z, a resident, is due to receive ₹ 95,000 on 1.8.2023 towards maturity proceeds of LIC policy taken on 1.8.2017 for which the sum assured is ₹ 90,000 and the annual premium is ₹ 10,000.

Solution :

(i) Since the annual premium exceeds 10% of sum assured in respect of a policy taken after 31.3.2012, the maturity proceeds of ₹ 4.50 lakhs due on 31.3.2024 are not exempt under section 10(10D) in the hands of Mr. X. Therefore, tax is required to be deducted @5% under section 194DA on the amount of income comprised therein i.e., on ₹ 75,000 (₹ 4,50,000, being maturity proceeds - ₹ 3,75,000, being the aggregate amount of insurance premium paid).

(ii) Since the annual premium is less than 20% of sum assured in respect of a policy taken before 1.4.2012, the sum of ₹ 4.10 lakhs due to Mr. Y would be exempt under section 10(10D) in his hands. Hence, no tax is required to be deducted at source under section 194DA on such sum payable to Mr. Y.

(iii) Even though the annual premium exceeds 10% of sum assured in respect of a policy taken after 31.3.2012, and consequently, the maturity proceeds of ₹ 95,000 due on 1.8.2023 would not be exempt under section 10(10D) in the hands of Mr. Z. However, tax deduction at source provisions under section 194DA are not attracted since the maturity proceeds are less than ₹ 1 lakh.

Question-10 :

Moon TV, a television channel, made payment of ₹ 50 lakhs to a production house for production of programme for telecasting as per the specifications given by the channel. The copyright of the programme is also transferred to Moon TV. Would such payment be liable for tax deduction at source under section 194C? Discuss.

Also, examine whether the provisions of tax deduction at source under section 194C would be attracted if the payment was made by Moon TV for acquisition of telecasting rights of the content already produced by the production house.

Solution :

In this case, since the programme is produced by the production house as per the specifications given by Moon TV, a television channel, and the copyright is also transferred to the television channel, the same falls within the scope of definition of the term 'work' under section 194C. Therefore, the payment of ₹ 50 lakhs made by Moon TV to the production house would be subject to tax deduction at source under section 194C.

If, however, the payment was made by Moon TV for acquisition of telecasting rights of the content already produced by the production house, there is no contract for ''carrying out any work", as required in section 194C(1). Therefore, such payment would not be liable for tax deduction at source under section 194C.

Question-11 :

ABC Ltd. took on sub-lease a building from J, an individual, with effect from 1.9.2023 on a rent of ₹ 25,000 per month. It also took on hire machinery from J with effect from 1.10.2023 on hire charges of ₹ 15,000 per month. ABC Ltd. entered into two separate agreements with J for sub-lease of building and hiring of machinery. The rent of building and hire charges of machinery for the financial year 2023-24 were ₹ 1,75,000 and ₹ 90,000, respectively, which were credited by ABC Ltd. to the account of J in its books of account on 31.3.2024. Examine the obligation of ABC Ltd. with regard to deduction of tax at source in respect of the rent and hire charges.

Solution :

As per section 194-I dealing with deduction of tax at source from payment of rent, the rate of TDS applicable is 2% for machinery hire charges and 10% for building lease rent. The scope of the section includes within its ambit, rent for machinery, plant and equipment. Tax is required to be deducted at source from payment of rent, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of building and machinery, irrespective of whether such assets are owned or not by the payee.

The limit of ₹ 2,40,000 for tax deduction at source will apply to the aggregate rent of all the assets. Even if two separate agreements are entered into, one for sub-lease of building and another for hiring of machinery, rent and hire charges under the two agreements have to be aggregated for the purpose of application of the threshold limit of ₹ 2,40,000. In this case, since the payment for rent and hire charges credited to the account of J, the payee, aggregates to ₹ 2,65,000 (₹ 1,75,000 + ₹ 90,000), tax is deductible at source under section 194-I. Tax is deductible@10% on ₹ 1,75,000 (rent of building) and @2% on ₹ 90,000 (hire charges of machinery).

Question-12 :
Mr. X sold his house property in Bangalore as well as his rural agricultural land for a consideration of ₹ 60 lakh and ₹ 15 lakh, respectively, to Mr. Y on 1.8.2023. He has purchased the house property and the land in the year 2022 for ₹ 40 lakh and ₹ 10 lakh, respectively. The stamp duty value on the date of transfer, i.e., 1.8.2023, is ₹ 85 lakh and ₹ 20 lakh for the house property and rural agricultural land, respectively. Examine the tax implications in the hands of Mr. X and Mr. Y and the TDS implications, if any, in the hands of Mr. Y, assuming that both Mr. X and Mr. Y are resident Indians.

Solution :

(i) Tax implications in the hands of Mr. X

As per section 50C, the stamp duty value of house property (i.e., ₹ 85 lakh) would be deemed to be the full value of consideration arising on transfer of property since stamp duty value exceeds 110% of the consideration received. Therefore, ₹ 45 lakh (i.e., ₹ 85 lakh – ₹ 40 lakh, being the purchase price) would be taxable as short-term capital gains in the A.Y.2024-25.

Since rural agricultural land is not a capital asset, the gains arising on sale of such land is not taxable in the hands of Mr. X.

(ii) Tax implications in the hands of Mr. Y

In case immovable property is received for inadequate consideration, the difference between the stamp value and actual consideration would be taxable under section 56(2)(x), if such difference exceeds higher of ₹ 50,000 and 10% of the consideration. Therefore, in this case ₹ 25 lakh (₹ 85 lakh – ₹ 60 lakh) would be taxable in the hands of Mr. Y under section 56(2)(x).

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

(iii) TDS implications in the hands of Mr. Y

Since the sale consideration and stamp duty value of house property both are not less than ₹ 50 lakhs, Mr. Y is required to deduct tax at source under section 194-IA. The tax to be deducted under section 194-IA would be ₹ 85,000, being 1% of ₹ 85 lakh (higher of ₹ 60 lakhs and ₹ 85 lakhs).

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

Question-13 :
Mr. X, a salaried individual, pays rent of ₹ 55,000 per month to Mr. Y from June, 2023. Is he required to deduct tax at source? If so, when is he required to deduct tax? Also, compute the amount of tax to be deducted at source.

Would your answer change if Mr. X vacated the premises on 31st December, 2023?

Also, what would be your answer if Mr. Y does not provide his PAN to Mr. X?

Solution :
Since Mr. X pays rent exceeding ₹ 50,000 per month in the F.Y. 2023-24, he is liable to deduct tax at source @5% of such rent for F.Y. 2023-24 under section 194-IB. Thus, ₹ 27,500 [₹ 55,000 x 5% x 10] has to be deducted from rent payable for March 2024.

If Mr. X vacated the premises in December, 2023, then tax of ₹ 19,250 [₹ 55,000 x 5% x 7] has to be deducted from rent payable for December, 2023.
In case Mr. Y does not provide his PAN to Mr. X, tax would be deductible @20%, instead of 5%.
In case 1 above, this would amount to ₹ 1,10,000 [₹ 55,000 x 20% x 10] but the same has to be restricted to ₹ 55,000, being rent for March, 2024.
In case 2 above, this would amount to ₹ 77,000 [₹ 55,000 x 20% x 7] but the same has to be restricted to ₹ 55,000, being rent for December, 2023.

Question-14 :
XYZ Ltd. makes a payment of ₹ 28,000 to Mr. Ganesh on 2.8.2023 towards fees for professional services and another payment of ₹ 25,000 to him on the same date towards fees for technical services. Discuss whether TDS provisions under section 194J are attracted.

Solution :
TDS provisions under section 194J would not get attracted, since the limit of ₹ 30,000 is applicable for fees for professional services and fees for technical services, separately. It is assumed that there is no other payment to Mr. Ganesh towards fees for professional services and fees for technical services during the P.Y.2023-24.

Question-15 :
East Bengal Club, a renowned football club, has engaged Raghu, a resident in India, as its coach at a remuneration of ₹ 6 lakhs per annum. The club wants to know from you whether it is liable to deduct tax at source from such remuneration.

Solution :
Section 194J requires deduction of tax at source @10% from the amount credited or paid by way of fees for professional services, where such amount or aggregate of such amounts credited or paid to a person exceeds ₹ 30,000 in the F.Y. 2023-24. As per Explanation (a) to section 194J, professional services include services rendered by a person in the course of carrying on such other profession as is notified by the CBDT for the purposes of section 194J.

Accordingly, the CBDT has, vide Notification No.88 dated 21.8.2008, notified the services rendered by coaches and trainers in relation to the sports activities as professional services for the purposes of section 194J.

Therefore, the club is liable to deduct tax at source under section 194J from the remuneration payable to the Coach, Raghu.

Question-16 :
Examine whether TDS provisions would be attracted in the following cases, and if so, under which section. Also, specify the rate of TDS applicable in each case. Assume that all payments are made to residents.

	Particulars of the payer	**Nature of payment**	**Aggregate of payments made in the F.Y.2023-24**
1.	Mr. Ganesh, an individual carrying on retail business with turnover of ₹ 2.5 crores in the P.Y.2022-23	Contract Payment for repair of residential house Payment of commission to Mr. Vallish for business purposes	₹ 5 lakhs ₹ 80,000
2.	Mr. Rajesh, a wholesale trader whose turnover was ₹ 95 lakhs in P.Y. 2022-23.	Contract Payment for reconstruction of residential house (made during the period January- March, 2024)	₹ 20 lakhs in January, 2024, ₹ 15 lakhs in Feb 2024 and ₹ 20 lakhs in March 2024.
3.	Mr. Satish, a salaried individual	Payment of brokerage for buying a residential house in March, 2024	₹ 51 lakhs
4.	Mr. Dheeraj, a pensioner	Contract payment made during October-November 2023 for reconstruction of residential house	₹ 48 lakhs

Solution :

	Particulars of the payer	Nature of payment	Aggregate of payments in the F.Y.2023-24	Whether TDS provisions are attracted?
1.	Mr. Ganesh, an individual carrying on retail business with turnover of ₹ 2.5 crores in the P.Y.2022-23	Contract Payment for repair of residential house	₹ 5 lakhs	No; TDS under section 194C is **not** attracted since the payment is for personal purpose. TDS under section 194M is not attracted as aggregate of contract payment to the payee in the P.Y.2023- 24 does not exceed ₹ 50 lakhs.
		Payment of commission to Mr. Vallish for business purposes	₹ 80,000	Yes, u/s 194H, since the payment exceeds ₹ 15,000, and Mr. Ganesh's turnover exceeds from business ₹ 1 crore in the P.Y.2022-23.
2.	Mr. Rajesh, a wholesale trader whose turnover was ₹ 95 lakhs in P.Y.2022-23	Contract Payment for reconstruction of residential house	₹ 55 lakhs	Yes, under section 194M, since the aggregate of payments (i.e., ₹ 55 lakhs) exceed ₹ 50 lakhs. Since, his turnover from business does not exceed ₹ 1 crore in the P.Y.2022-23, TDS provisions under section 194C are not attracted in respect of payments made in the P.Y.2023-24.
3.	Mr. Satish, a salaried individual	Payment of brokerage for buying a residential house	₹ 51 lakhs	Yes, under section 194M, since the payment of ₹ 51 lakhs made in March 2024 exceeds the threshold of ₹ 50 lakhs. Since Mr. Satish is a salaried individual, the provisions of section 194H are not applicable in this case.
4.	Mr. Dheeraj, a pensioner	Contract payment for reconstruction of residential house	₹ 48 lakhs	TDS provisions under section 194C are not attracted since Mr. Dheeraj is a pensioner. TDS provisions under section 194M are also not applicable in this case, since the payment of ₹ 48 lakhs does not exceed the threshold of ₹ 50 lakhs.

Question-17 :

Mr. Sharma, a resident Indian aged 77 years, gets pension of ₹ 52,000 per month from the UP State Government. The same is credited to his savings account in SBI, Lucknow Branch. In addition, he gets interest@8% on fixed deposit of ₹ 20 lakhs with the said bank. Out of the deposit of ₹ 20 lakhs, ₹ 2 lakh represents five-year term deposit made by him on 1.4.2023. Interest on savings bank credited to his SBI savings account for the P.Y.2023-24 is ₹ 9,500.

(I) From the above facts, compute the total income and tax liability of Mr. Sharma for the A.Y. 2024-25 in the manner more beneficial to him.

(II) What would be the amount of tax deductible at source by SBI, assuming that the same is a specified bank? Is Mr. Sharma required to file his return of income for A.Y.2024-25, if tax deductible at source has been fully deducted? Examine.

(III) Is Mr. Sharma required to file his return of income for A.Y.2024-25, if the fixed deposit of ₹ 20 lakhs was with Canara Bank instead of SBI, other facts remaining the same?

Solution :

(I) (i) Computation of total income of Mr. Sharma for A.Y.2024-25

	Particulars	**₹**	**₹**
I	**Salaries**		
	Pension (52,000 x 12)	6,24,000	
	Less: Standard deduction u/s 16(ia)	50,000	5,74,000
II	**Income from Other Sources**		
	Interest on fixed deposit (₹ 20 lakhs x 8%)	1,60,000	
	Interest on savings account	9,500	1,69,500
	Gross total income		**7,43,500**
Less:	**Deductions under Chapter VI-A** [Deduction under section 80C and 80TTB would not be available under default regime under section 115BAC]		Nil
	Total Income		**7,43,500**
	Computation of tax liability		
	Tax payable		
	Upto ₹ 3,00,000	Nil	
	₹ 3,00,001 to ₹ 6,00,000 [5% of ₹ 3,00,000]	15,000	
	₹ 6,00,001 to ₹7,43,500 [10% of ₹ 1,43,500]	14,350	29,350
	Add: Health and Education Cess@4%		1,174
	Tax liability		**30,524**
	Tax liability (rounded off)		**30,520**

(ii) Computation of total income of Mr. Sharma for A.Y.2024-25, if he shifts out of the default regime provided under section 115BAC

	Particulars	**₹**	**₹**
I	Salaries		
	Pension (52,000 x 12)	6,24,000	
	Less: Standard deduction u/s 16(ia)	50,000	5,74,000
II	**Income from Other Sources**		
	Interest on fixed deposit (₹ 20 lakhs x 8%)	1,60,000	
	Interest on savings account	9,500	1,69,500
	Gross total income		**7,43,500**
Less:	**Deductions under Chapter VI-A**		
	Under Section 80C		
	Five years term deposit (₹ 2 lakh, restricted to ₹ 1.5 lakh)	1,50,000	
	Under section 80TTB		
	Interest on fixed deposit and savings account, restricted to ₹ 50,000, since Mr. Sharma is a resident Indian of the age of 77 years.	50,000	2,00,000
	Total Income		**5,43,500**
	Computation of tax liability		
	Tax payable [₹ 43,500 x 20% + ₹ 10,000]		18,700
	Add: Health and Education Cess@4%		748
	Tax liability		**19,448**
	Tax liability (rounded off)		**19,450**

Since Mr. Sharma's tax liability is higher under the default regime under section 115BAC, he should exercise option to shift out of the default regime. In such case, his tax liability would be ₹ 19,450.

(II) SBI, being a specified bank, is required to deduct tax at source u/s 194P and remit the same to the Central Government. In such a case, Mr. Sharma would not be required to file his return of income u/s 139.

(III) If the fixed deposit of ₹ 20 lakh is with a bank other than SBI, which is the bank where his pension is credited, then, Mr. Sharma would not qualify as a "specified senior citizen". In this case, Mr. Sharma would have to file his return of income u/s 139, since his total income (without giving effect to deduction under Chapter VI-A) exceeds the basic exemption limit.

Question-18 :
'X' while making payment "net of tax" to a non-resident for providing technical services on a world bank aided project had deducted tax out of such payments as per rates prescribed but says that the payee is not entitled for the TDS certificate. Examine.

Solution :
A payment made of 'net of tax' in terms of section 195A, refers to an agreement/arrangement, where the tax chargeable on any income is borne by the payer of the income, and for the purpose of deduction of tax at source, such income is increased to such an amount as would after deduction of tax thereon, be equal to the net amount payable under the agreement.

As per section 198, any sum deducted in accordance with the provisions of Chapter XVII-B of the Income-tax Act, 1961 is deemed to be income received while computing the income of the payee. Further, section 199 provides that credit for the tax deducted at source and paid to the Central Government shall be given to the person from whose income the deduction was made on the production of certificate furnished under section 203 of the Income-tax Act.

As per section 203, every person deducting tax at source shall furnish to the payee a certificate in the prescribed form within the prescribed time.

Even in a case where X undertakes to pay the tax on the grossed up amount, the non-resident shall be entitled for issue of certificate for tax deducted at source in respect of payment made 'net of tax'. This has been clarified vide CBDT Circular No.785 dated 24.11.1999.

Therefore, X has a legal obligation to issue TDS certificate to the non-resident, even if he has made payment of income "net of tax" to him.

Question-19 :
An amount of ₹ 40,000 was paid to Mr. X on 1.7.2023 towards fees for professional services without deduction of tax at source. Subsequently, another payment of ₹ 50,000 was due to Mr. X on 28.2.2024, from which tax @10% (amounting to ₹ 9,000) on the entire amount of ₹ 90,000 was deducted. However, this tax of ₹ 9,000 was deposited only on 22.6.2024. Compute the interest chargeable under section 201(1A).

Solution :
Interest under section 201(1A) would be computed as follows –

Particulars	**₹**
1% on tax deductible but not deducted i.e., 1% on ₹ 4,000 for 8 months	320
1½% on tax deducted but not deposited i.e. 1½% on ₹ 9,000 for 4 months1	540
	860

Question-20 :
Mr. Gupta, a resident Indian, is in retail business and his turnover for F.Y.2022-23 was ₹ 12 crores. He regularly purchases goods from another resident, Mr. Agarwal, a wholesaler, and the aggregate payments during the F.Y.2023-24 was ₹ 95 lakh (₹ 20 lakh on 1.6.2023, ₹ 25 lakh on 12.8.2023, ₹ 22 lakh on 23.11.2023 and ₹ 28 lakh on 25.3.2024). Assume that the said amounts were credited to Mr. Agarwal's account in the books of Mr. Gupta on the same date. Mr. Agarwal's turnover for F.Y.2022-23 was ₹ 15 crores.

(i) Based on the above facts, examine the TDS/TCS implications, if any, under the Income-tax Act, 1961.

(ii) Would your answer be different if Mr. Gupta's turnover for F.Y.2022-23 was ₹ 8 crores, all other facts remaining the same?

(iii) Would your answer to (i) and (ii) change, if PAN has not been furnished by the buyer or seller, as required?

Solution :

(i) Since Mr. Gupta's turnover for F.Y.2022-23 exceeds ₹ 10 crores, and payments made by him to Mr. Agarwal, a resident seller exceed ₹ 50 lakhs in the P.Y.2023-24, he is liable to deduct tax @ 0.1% of ₹ 45 lakhs (being the sum exceeding ₹ 50 lakhs) in the following manner –

No tax is to be deducted u/s 194Q on the payments made on 1.6.2023 and 12.8.2023, since the aggregate payments till that date i.e., 45 lakhs, has not exceeded the threshold of ₹ 50 lakhs.

Tax of ₹ 1,700 [i.e., 0.1% of ₹ 17 lakhs (₹ 22 lakh – ₹ 5 lakhs, being the balance unexhausted threshold limit)] has to be deducted u/s 194Q from the payment/ credit of ₹ 22 lakh on 23.11.2023.

Tax of ₹ 2,800 (i.e., 0.1% of ₹ 28 lakhs) has to be deducted u/s 194Q from the payment/ credit of ₹ 28 lakhs on 25.3.2024.

Note – In this case, since both section 194Q and 206C(1H) applies, tax has to be deducted u/s 194Q.

(ii) If Mr. Gupta's turnover for the F.Y.2022-23 was only ₹ 8 crores, TDS provisions under section 194Q would not be attracted. However, TCS provisions under section 206C(1H) would be attracted in the hands of Mr. Agarwal, since his turnover exceeds ₹ 10 crores in the F.Y.2022-23 and his receipts from Mr. Gupta exceed ₹ 50 lakhs.

No tax is to be collected u/s 206C(1H) on 1.6.2023 and 12.8.2023, since the aggregate receipts till that date i.e., ₹ 45 lakhs, has not exceeded the threshold of ₹ 50 lakhs.

Tax of ₹ 1,700 [i.e., 0.1% of ₹ 17 lakh (₹ 22 lakh – ₹ 5 lakhs, being the balance unexhausted threshold limits] has to be collected u/s 206C(1H) on 23.11.2023.

Tax of ₹ 2,800 (i.e., 0.1% of ₹ 28 lakhs) has to be collected u/s 206C(1H) on 25.3.2024.

(iii) In case (i), if PAN is not furnished by Mr. Agarwal to Mr. Gupta, then, Mr. Gupta has to deduct tax @5%, instead of 0.1%. Accordingly, tax of ₹ 85,000 (i.e., 5% of ₹ 17 lakhs) and ₹ 1,40,000 (5% of ₹ 28 lakhs) has to be deducted by Mr. Gupta u/s 194Q on 23.11.2023 and 25.3.2024, respectively.

In case (ii), if PAN is not furnished by Mr. Gupta to Mr. Agarwal, then, Mr. Agarwal has to collect tax@1% instead of 0.1%. Accordingly, tax of ₹ 17,000 (i.e., 1% of ₹ 17 lakhs) and ₹ 28,000 (1% of ₹ 28 lakhs) has to be collected by Mr. Agarwal u/s 206C(1H) on 23.11.2023 and 25.3.2024, respectively.

Question-21 :

The Assessing Officer issued a notice of demand under section 156 to Mr. X on 1.10.2023 for payment of ₹ 15 lakhs towards his income-tax liability for the A.Y.2022-23, requiring him to pay the said amount within 30 days.

(a) Is he required to issue fresh notice of demand and if so, for what amount, in the following two cases (each case has to be considered independently) –

(i) If the tax demand is reduced to ₹ 12 lakhs by the Commissioner (Appeals) by issue of order under section 250;

(ii) If the tax demand is increased to ₹ 20 lakhs by the Appellate Tribunal, by issue of an order under section 254.

(b) How would the interest liability under section 220(2) be calculated if the tax demand is reduced to ₹ 12 lakhs by the Commissioner (Appeals) by issue of order under section 250 and subsequently increased to ₹ 15 lakhs by the Appellate Tribunal by way of issue of order under section 254?

Solution :

(a) (i) No fresh notice of demand is required to be served on Mr. X. The Assessing Officer is only required to give an intimation of the fact of reduction of demand to ₹ 12 lakhs to Mr. X. The proceedings initiated on the basis of the original notice of demand may be continued in relation to the reduced amount of ₹ 12 lakhs from the stage at which such proceedings stood immediately before disposal of appeal.

(ii) A fresh notice of demand has to be given only in respect of ₹ 5 lakhs, being the amount of enhancement. Any proceedings in relation to ₹ 15 lakhs covered by the original notice of demand served upon Mr. X may be continued from the stage at which such proceedings stood immediately before disposal of appeal.

(b) The interest under section 220(2) has to be paid on ₹ 15 lakhs @1% per month or part of the month comprised in the period commencing from 1.11.2023 and ending with the date on which the amount is paid, assuming that Mr. X has not paid any interest so far.

Question-22 :

Mr. Madhusudan is regular in deducting tax at source and depositing the same. In respect of the quarter ended 31st December, 2023, a sum of ₹ 80,000 was deducted at source from the contractors. The statement of tax deducted at source under section 200 was filed on 23rdMarch, 2024 for the quarter ended 31.12.2023.

(i) Is there any delay on the part of Mr. Madhusudan in filing the statement of TDS?
(ii) If the answer to (i) above is in the affirmative, how much amount can be levied on Mr. Madhusudan for such default under section 234E?
(iii) Is there any remedy available to him for reduction/waiver of the levy?

Solution :

(i) Yes, there has been a delay on the part of Mr. Madhusudan in filing the statement of TDS. As per section 200(3) read with Rule 31A, the statement of tax deducted at source for the quarter ended 31st December, 2023 has to be filed on or before 31st January, 2024. However, the same has been filed only on 23rd March, 2024. Hence, there has been delay of 52 days on the part of Mr. Madhusudan in filing the statement of TDS.

(ii) As per section 234E of the Income-tax Act, 1961, where a person fails to file deliver or cause to be delivered the statement of tax deducted at source within the prescribed time, then, he shall be liable to pay, by way of fee, a sum of ₹ 200 for every day during which the failure continues.

The amount of fee shall not, however, exceed the amount of tax deductible.

In this case, since Mr. Madhusudhan has delayed filing the statement of TDS by 52days, he would be liable to pay a fee of ₹ 10,400 (₹ 200 x 52 days) under section234E. The said fee does not exceed the tax deductible (₹ 80,000, in this case).

(iii) Under section 119, the CBDT is empowered to issue general or special orders, whether by way of relaxation of any of the provisions of sections 139, 143, 144, 147 etc. or otherwise, in respect of any class of incomes or class of cases. The CBDT may issue such order(s) from time to time, if it considers expedient to do so, for the purpose of proper and efficient management of the work of assessment and collection of revenue. Section 234E is included in the list of sections in respect of which the CBDT is empowered to issue order for relaxation of the provisions of the Act.

Hence, the remedy available to Mr. Madhusudhan is that he can file an application to the CBDT under section 119 and seek waiver/reduction of the penalty levied/leviable under section 234E.

Question-23 :
Smt. Vijaya, proprietor of Lakshmi Enterprises, made turnover of ₹ 210 lakhs during the previous year 2022-23. Her turnover for the year ended 31-3-2024 was ₹ 90 lakhs.

Decide whether provisions relating to deduction of tax at source are attracted for the following payments made during the financial year 2023-24:

(i) Purchase commission paid to one agent ₹ 25,000 on 13.6.2023 towards purchases made during the year.
(ii) Payments to Civil engineer of ₹ 5,00,000 on 23rd August, 2023 for construction of residential house for self-use.

Solution :
Since Smt. Vijaya's turnover from business was ₹ 210 lakhs in the immediately preceding financial year (i.e., F.Y.2022-23), she is liable to deduct tax at source in the P.Y.2023-24, irrespective of her turnover being only ₹ 90 lakhs in the F.Y.2023-24.

(i) Tax @5% has to be deducted under section 194H in respect of purchase commission of ₹ 25,000 to an agent for purchases made during the year, since the same exceeds the threshold limit of ₹ 15,000 for non-deduction of tax at source thereunder.

(ii) Tax has to be deducted under section 194C in case of payment to resident contractors. The rate of tax is 1% if the payee is an individual or HUF and 2% in case of payees, other than individuals and HUFs.

However, as per section 194C(4), no individual or Hindu undivided family shall be liable to deduct income tax on the sum credited or paid to the account of the contractor where such sum is credited or paid exclusively for personal purposes of such individual or any member of the Hindu undivided family. In such case, the provisions of section 194M would be attracted if the aggregate payment to the contractor exceeds ₹ 50 lakhs.

In this case, since Smt. Vijaya, an individual, makes payment of ₹ 5 lakh to a civil engineer for construction of residential house for self use, she is not liable to deduct tax at source either under section 194C or under section 194M from such sum.

Question-24 :
What is the rate at which the tax is either to be deducted or collected under the provisions of the Act in the following cases?

(i) A partnership firm making sales of timber in September 2023 which was procured and obtained under a forest lease.
(ii) A nationalized bank receiving professional services from a registered society made provision on 31-03-2024 of an amount of ₹ 25 lakh against the service charges bills tobe received.

Solution :
(i) As per section 206C(1), tax has to be collected at source@2.5% by the partnership firm, being a seller, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount, whichever is earlier.

(ii) Tax has to be deducted at source@10% under section 194J, by the nationalized bank at the time of credit of fees for professional services to the account of the registered society (i.e., on 31.3.2024), even though payment is to be made after that date.

Question-25 :
Examine the liability for tax deduction at source in the following cases for the A.Y.2024-25:

(i) Wings Ltd. has paid amount of ₹ 15 lakhs during the year ended 31-3-2024 to Airports Authority of India towards landing and parking charges.
(ii) Ramesh gave a building on sub-lease to Mac Ltd. with effect from 1-7-2023 on a rent of ₹ 20,000 per month. The company also took on hire machinery from Ramesh with effect from 1-11-2023 on hire charges of ₹ 15,000 per month. The rent of building and hire charges of machinery for the year 2023-24 were credited by the company to the account of Ramesh in its books of account on 31-3-2024.
(iii) ₹ 2,45,000 paid to Mr. X on 01-02-2024 by Karnataka State Government on compulsory acquisition of his urban land. What would be your answer if the land is agricultural land?

Solution :
(i) TDS on landing and parking charges: The landing and parking charges which are fixed by the Airports Authority of India are not merely for the "use of the land". These charges are also 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 [Japan Airlines Co. Ltd. v. CIT / CIT v. Singapore Airlines Ltd. (2015) 377 ITR 372 (SC)]. Thus, tax is not deductible under section 194-I which provides deduction of tax for payment in the nature of rent.

Hence, tax is deductible @2% under section 194C by the airline company, Wings Ltd., on payment of ₹ 15 lacs made towards landing and parking charges to the Airports Authority of India for the previous year 2023-24.

(ii) TDS on rent for building and machinery: Tax is deductible on rent under section 194-I, if the aggregate amount of rental income paid or credited to a person exceeds ₹ 2,40,000. Rent includes payment for use of, inter alia, building and machinery. Tax is deductible at the time of credit of such income to the payee or at the time of payment, whichever is earlier.

The aggregate payment made by Mac Ltd. to Ramesh towards rent in P.Y.2023-24 is ₹ 2,55,000 (i.e., ₹ 1,80,000 for building and ₹ 75,000 for machinery). Hence, Mac Ltd. has to deduct tax @10% on rent for building and tax @2% on rent for machinery, credited to the account of Ramesh on 31.3.2024.

(iii) TDS on compensation for compulsory acquisition: Tax is deductible at source @2% under section 194LA, where payment is made to a resident as compensation or enhanced compensation on compulsory acquisition of any immovable property (other than agricultural land).
However, no tax deduction is required if the aggregate payments in a year does not exceed ₹ 2,50,000. Therefore, no tax is required to be deducted at source on payment of ₹ 2,45,000 to Mr. X, since the aggregate payment does not exceed ₹ 2,50,000.
If the land is agricultural land, no tax would be deductible under section 194LA irrespective of the amount of compensation.

Question-26:
"Come Air Ltd." has paid a sum of ₹ 12 lakhs during the year ended 31-3-2024 to Airports Authority of India towards landing and parking charges. The company has deducted tax at source @2% under section 194C on the said payment and remitted the tax deducted within the prescribed time. The Assessing Officer contended that landing and parking charges were levied for use of the land of the airport and hence, the payment was in the nature of rent attracting TDS @10% under section 194-I. Discuss the correctness or otherwise of the contention of the Assessing Officer.

Solution :
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 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.

Question-27 :
Mr. Harish, Vice President of ABC Bank, sold his house property in Chennai as well as his rural agricultural land for a consideration of ₹ 60 lakh and ₹ 15 lakh, respectively, to Mr.Suresh, a retail trader of garments, on 10.10.2023. Mr. Harish had purchased the house property and rural agricultural land in December 2021 for ₹ 40 lakh and ₹ 10 lakh, respectively. The stamp duty value on the date of transfer, i.e., 10.10.2023, is ₹ 85 lakh and₹ 20 lakh for the house property and rural agricultural land, respectively.

(a) Determine the tax implications in the hands of Mr. Harish and Mr. Suresh, if the date of agreement for sale of house property and rural agricultural land is 1.7.2023 and the stamp duty value on the said date was ₹ 75 lakh and ₹ 15 lakh, respectively. On the said date, Mr. Suresh made payment of ₹ 5 lakh by way of account payee cheque to Mr. Harish for purchase of house property.
(b) Would your answer be different if Mr. Harish is a property dealer and sold the house property in the course of his business?

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

(i) Tax implications in the hands of Mr. Harish, a salaried employee
Since rural agricultural land is not a capital asset, the gains arising on sale of such land is not taxable in the hands of Mr. Harish. However, capital gains would arise on sale of house property, being a capital asset. As per section 50C(1), the stamp duty value of house property on the date of agreement (i.e., ₹ 75 lakh) would be deemed to be the full value of consideration arising on transfer of property. Therefore, ₹ 35 lakh (i.e., ₹ 75 lakh – ₹ 40 lakh, being the purchase price) would be taxable as short term capital gains in the A.Y.2024-25.
It may be noted that as the date of agreement is different from the date of registration and part of the consideration was received on or before the date of agreement by way of account payee cheque, the stamp duty value on the date of agreement is to be adopted as the deemed sale consideration.

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

The house property purchased would be a capital asset in the hands of Mr. Suresh, who is a retail trader of garments. The provisions of section 56(2)(x) are attracted in the hands of Mr. Suresh who has acquired the immovable property, being a capital asset, for inadequate consideration. For the purpose of section 56(2)(x), Mr. Suresh can take the stamp duty value on the date of agreement instead of the date of registration since he has paid a part of the consideration by account payee cheque on the date of agreement. Therefore, ₹ 15 lakh, being the difference between the stamp duty value of the property on the date of agreement (i.e., ₹ 75 lakh) and the actual consideration (i.e., ₹ 60 lakh) would be taxable as per section 56(2)(x) under the head "Income from other sources" in the hands of Mr. Suresh, since such difference exceeds the higher of ₹ 50,000 or 10% of consideration. As rural agricultural land is not a capital asset, the provisions of section 56(2)(x) are not attracted in respect of acquisition of agricultural land for inadequate consideration, since the definition of "property" under section 56(2)(x) includes only capital assets specified thereunder.

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

(i) Tax implications in the hands of Mr. Harish

If Mr. Harish is a property dealer who has sold the house property in the course of his business, the provisions of section 43CA would be attracted, since the house property represents his stock-in-trade and he has transferred the same for a consideration less than the stamp duty value. For the purpose of section 43CA, Mr. Harish can take the stamp duty value on the date of agreement instead of the date of registration, since he has received part of the sale consideration by an account payee cheque on the date of agreement and it exceeds 110% of consideration. Therefore, ₹ 35 lakh, being the difference between the stamp duty value on the date of agreement (i.e., ₹ 75 lakh) and the purchase price (i.e., ₹ 40 lakh), would be chargeable as business income in the hands of Mr. Harish.

(ii) Taxability in the hands of Mr. Suresh

There would be no difference in the taxability in the hands of Mr. Suresh, whether Mr. Harish is a property dealer or a salaried employee. Therefore, the provisions of section 56(2)(x) would be attracted in the hands of Mr. Suresh who has received house property, being a capital asset, for inadequate consideration.

Question-28 :

Siddharth Hospitals Pvt. Ltd. has recently been accorded recognition by several insurance companies to admit and treat patients on cashless hospitalization basis. Payment to the assessee hospital will be made by Third Party Administrators (TPA) who will process the claims of the patients admitted and make payments to the various hospitals including the assessee. All TPAs are corporate entities. The assessee wants to know whether the TPAs are bound to deduct tax at source under section 194J or under section 194C. Examine.

Solution :

This issue has been clarified by the CBDT Circular No.8/2009 dated 24.11.2009. As per provisions of section 194J(1), any person, who is responsible for paying to a resident any sum by way of fees for professional services, shall, at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to 10% of such sum as TDS.

Further, as per clause (a) of Explanation to section 194J "professional services" includes services rendered by a person in the course of carrying on medical profession.

The services rendered by hospitals to various patients are primarily medical services and, therefore, **the provisions of section 194J are applicable on payments made by TPAs to hospitals etc**. Further, for invoking provisions of section 194J, there is no stipulation that the professional services have to be necessarily rendered to the person who makes payment to hospital. Therefore, TPAs who are making payment on behalf of insurance companies to hospitals for settlement of medical/ insurance claims etc. under various schemes including Cashless Schemes are liable to deduct tax at source under section 194J on all such payments to hospitals etc.

In view of the above, all such transactions between TPAs and hospitals would fall within the ambit of provisions of section 194J.

Question-29 :
Examine in the context of provisions contained in Chapter XVII-B of the Act and also work out the amount of tax to be deducted by the payer of income in the following cases:

(i) Payment of ₹ 5 lakh made by JCP & Co. to Pingu Events Co. Ltd. on 4th September, 2023 for organizing a debate competition on the subject "Preservation of Rural Heritage of Rajasthan".
(ii) KD, a part time director of DAF Pvt. Ltd. was paid an amount of ₹ 2,25,000 as fees which was actually in the nature of commission on sales for the period 1.7.2023 to 30.9.2023.

Solution :
(i) The services of Event Managers in relation to sports activities alone have been notified by the CBDT as "professional services" for the purpose of section 194J. In this case, payment of ₹ 5 lakh was made to an event management company for organization of a debate competition. Hence, the provisions of section 194J are not attracted.

However, TDS provisions under section 194C relating to contract payments would be attracted and consequently, tax has to be deducted @2% under section 194C. The tax deductible under section 194C would be ₹ 10,000, being 2% of ₹ 5 lakh.

(ii) Section 194J provides for deduction of tax at source @10% on any remuneration or fees or commission, by whatever name called, paid to a director, which is not in the nature of salary in respect of which tax is deductible at source under section 192.

Hence, tax is to be deducted at source under section 194J @10% by DAF Pvt. Ltd. on the commission of ₹ 2,25,000 paid to KD, a part-time director. The tax deductible under section 194J would be ₹ 22,500, being 10% of ₹ 2,25,000.

Question-30 : Examine the applicability of the provisions relating to deduction of tax at source in the following transactions:

(i) Max Limited pays ₹ 1,02,000 to Mini Limited, a resident contractor who, under the contract dated 15th October, 2023, manufactures a product according to specification of Max Limited by using materials purchased from Max Limited.
(ii) A company operating a television channel makes payment of ₹ 5 lakh to a former Indian cricketer on 10th March, 2024 for making running commentary of a one-day cricket match.

Solution :
(i) The definition of "work" under section 194C includes manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer or its associate. In the instant case, Mini Limited manufactures the product as per the specification given by Max Limited **by using the raw materials purchased from Max Limited. Therefore, it falls within the definition of "work"** under section 194C. Consequently, tax is to be deducted on the invoice value excluding the value of material purchased from such customer if such value is mentioned separately in the invoice. If the material component is not mentioned separately in the invoice, tax is to be deducted on the whole of the invoice value.

(ii) Provisions for deduction of tax at source under section 194J are attracted in respect of payment of fees for professional services, if the amount of such fees exceeds ₹ 30,000 in the relevant financial year. The service rendered by a commentator in relation to sports activities has been notified by the CBDT as a professional service for the purposes of section 194J vide its Notification No. 88 dated 21st August, 2008. Therefore, tax is required to be deducted @10% from the fee of ₹ 5 lakhs payable to the former cricketer.

Question-31 :

Examine in the following cases, the obligation of the person paying the income in respect of tax deduction at source:

(i) MNO Ltd., the employer, credited salary due for the month of March 2024 amounting to ₹ 9,40,000 to the account of Q, an employee, in its books of account on 31.3.2024. Q has not intimated his intended tax regime.

(ii) T, an individual whose total sales in business during the year ended 31.3.2023 was ₹ 2.20 crores, paid ₹ 9 lakh by cheque on 1.1.2024 to a contractor (an individual), for construction of his factory building. No amount was credited earlier to the account of the contractor in the books of T.

(iii) BCD Ltd. credited ₹ 28,000 towards fees for professional services and ₹ 27,000 towards fees for technical services to the account of HG in its books of account on 6.10.2023. The total sum of ₹ 55,000 was paid by cheque to HG on 18.12.2023.

Solution :

(i) Section 192 requires deduction of tax from salary at the time of payment. Thus, the employer is not required to deduct tax at source when salary has not been paid but is merely credited to the account of the employee in its books of account. MNO Ltd. therefore, is not required to deduct tax at source in respect of the salary merely credited to the account of employee Q which is not paid.

If salary has been paid during the year to Q, then, MNO Ltd a deductor, being an employer, shall seek information from each of its employees having income under section 192 regarding their intended tax regime and each such employee shall intimate the same to the deductor, being his employer, regarding his intended tax regime for each year and upon intimation, the deductor shall compute his total income, and deduct tax at source thereon according to the option exercised.

If intimation is not made by the employee, it shall be presumed that the employee continues to be in the default tax regime and has not exercised the option to opt out of the new tax regime. Accordingly, in such a case, the MNO Ltd. shall deduct tax at source, on income under section 192, in accordance with the rates provided under section 115BAC(1A)

(ii) An individual who has total sales, gross receipts or turnover from the business carried on by him exceeding ₹ 1 crore in the immediately preceding financial year i.e., F.Y. 2022-23, is liable to deduct tax at source under section 194C for the financial year 2023-24 in respect of the payment made to contractor exceeding ₹ 30,000 in a single contract and ₹ 1,00,000 in aggregate of contracts during the financial year. Since, turnover of the individual T is ₹ 2.20 crores in the financial year 2022-23 and as the payment during financial year 2023-24 to the contractor has exceeded the limits prescribed in section 194C, tax has to be deducted under section 194C.

The rate of tax deduction is 1% as the contractor is an individual.

(iii) The limit of ₹ 30,000 for non-deduction of tax under section 194J would apply separately for fees for professional services and fees for technical services. This means that if a person has rendered services falling under both the categories, tax need not be deducted if the fee for each category does not exceed ₹ 30,000 even though the aggregate of the amounts credited to the account of such person or paid to him for both the categories of services exceed ₹ 30,000. Therefore, BCD Ltd. is not required to deduct tax at source in respect of the fees either at the time of credit or at the time of payment.

Question-32 :

Examine the liability for tax deduction at source in the following cases for the assessment year 2024-25:

(i) Mr. Anand has been running a sole proprietary business with turnover of ₹ 202 lakhs for the A.Y.2023-24. He pays a monthly rent of ₹ 15,000 for the office premises to Mr. R, the owner of building and an individual. Besides, he also pays service charges of ₹ 6,000 per month to Mr. R towards the use of furniture, fixtures and vacant land appurtenant thereto.

(ii) By virtue of an agreement with a nationalised bank, a catering organisation receives a sum of ₹ 50,000 per month towards supply of food, water, snacks etc. during office hours to the employees of the bank.

(iii) An Indian company pays gross salary including allowances and monetary perquisites amounting to ₹ 7,30,000 to its General Manager (aged 45 years). Besides, the company provides non-monetary perquisites to him whose value is estimated at₹ 1,20,000. General manager has not given any declaration regarding opt out of section 115BAC.

Solution :

(i) Section 192 requires deduction of tax from salary at the time of payment. Thus, the employer is not required to deduct tax at source when salary has not been paid but is merely credited to the account of the employee in its books of account. MNO Ltd. therefore, is not required to deduct tax at source in respect of the salary merely credited to the account of employee Q which is not paid.
If salary has been paid during the year to Q, then, MNO Ltd a deductor, being an employer, shall seek information from each of its employees having income under section 192 regarding their intended tax regime and each such employee shall intimate the same to the deductor, being his employer, regarding his intended tax regime for each year and upon intimation, the deductor shall compute his total income, and deduct tax at source thereon according to the option exercised.

If intimation is not made by the employee, it shall be presumed that the employee continues to be in the default tax regime and has not exercised the option to opt out of the new tax regime. Accordingly, in such a case, the MNO Ltd. shall deduct tax at source, on income under section 192, in accordance with the rates provided under section 115BAC(1A)

(ii) An individual who has total sales, gross receipts or turnover from the business carried on by him exceeding ₹ 1 crore in the immediately preceding financial year i.e., F.Y. 2022-23, is liable to deduct tax at source under section 194C for the financial year 2023-24 in respect of the payment made to contractor exceeding ₹ 30,000 in a single contract and ₹ 1,00,000 in aggregate of contracts during the financial year. Since, turnover of the individual T is ₹ 2.20 crores in the financial year 2022-23 and as the payment during financial year 2023-24 to the contractor has exceeded the limits prescribed in section 194C, tax has to be deducted under section 194C.

The rate of tax deduction is 1% as the contractor is an individual.

(iii) The limit of ₹ 30,000 for non-deduction of tax under section 194J would apply separately for fees for professional services and fees for technical services. This means that if a person has rendered services falling under both the categories, tax need not be deducted if the fee for each category does not exceed ₹ 30,000 even though the aggregate of the amounts credited to the account of such person or paid to him for both the categories of services exceed ₹ 30,000. Therefore, BCD Ltd. is not required to deduct tax at source in respect of the fees either at the time of credit or at the time of payment.

Question-33 :

The following issues arise in connection with the deduction of tax at source under Chapter XVII-B. Examine the liability for tax deduction in these cases:

(a) An employee of the Central Government receives arrears of salary for the earlier 3years. He enquires whether he is liable for deduction of tax on the entire amount during the current year.
(b) ₹ 10 lakh is payable by a T.V. Channel on 1.9.2023 as prize money to the winner of quiz programme, "Who will be a Millionaire".
(c) State Bank of India pays ₹ 50,000 per month as rent to the Central Government for abuilding in which one of its branches is situated.
(d) ₹ 80,000 is payable by a television company to a cameraman on 6th January, 2024 for shooting of a documentary film.
(e) ₹ 22,000 is payable by Maharashtra State Government on 2.7.2023 as commission to one of its agents on sale of lottery tickets.
(f) A Turf Club awards a jack-pot of ₹ 5 lakh to the winner of one of its races on 1.2.2024.

Solution :

(a) As per section 192, tax is deductible at source by any person who is responsible for paying any income chargeable under the head 'Salaries'. However, as per sub-section (2A) of said section, the employee will be entitled to relief u/s 89 and consequently he will be required to furnish to the person responsible for making the payment, such particulars in the prescribed form (i.e., Form No.10E). The person responsible for making the payment shall compute the relief and take into account the same while deducting tax at source from salary.

(b) Under section 194B, the person responsible for paying by way of winnings from any card game and other game in an amount exceeding ₹ 10,000 shall at the time of payment deduct income-tax at 30%. Therefore, tax of ₹ 3 lakh has to be deducted at source from the prize money of ₹ 10 lakh payable to the winner.

(c) Section 194-I, which governs the deduction of tax at source on payment of rent, exceeding ₹ 2,40,000 p.a., is applicable to all taxable entities except individuals and HUFs, whose total sales, gross receipts or turnover from the business or profession carried on by him does not exceed ₹ 1 crore in case of business and ₹ 50 lakhs in case of profession during the financial year immediately preceding financial year in which such rent was credited or paid, is liable to deduct tax at source. Section 196, however, provides exemption in respect of payments made to Government from application of the provisions of tax deduction at source.
Therefore, no tax is required to be deducted at source by State Bank of India from rental payments to the Government.

(d) If the cameraman is an employee of the T.V. company, the provisions of section 192 will apply. However, if he is a professional, TDS provisions under section 194J will apply. Tax at 10% will have to be deducted at the time of credit of ₹ 80,000 or on its payment, whichever is earlier.

(e) Under section 194G, the person responsible for paying to any person, stocking, distributing, purchasing or selling lottery tickets shall at the time of credit of the commission or payment thereof, whichever is earlier, amounting to more than ₹ 15,000, deduct income-tax at source @5%.
Accordingly, tax @5% under section 194G amounting to ₹ 1,100 has to be deducted from commission payment of ₹ 22,000 to the agent of the State Government.

(f) The TDS on payment by way of winnings from horse race is governed by section 194BB. Under this section, the person responsible for payment shall, at the time of payment, deduct tax at source @ 30%, if the payment exceeds ₹10,000.

Accordingly, tax @30% amounting to ₹ 1,50,000 has to be deducted from the winnings of ₹ 5 lakh payable to the winner of the race.

Question-34 :

Examine and compute the liability for deduction of tax at source, if any, in the cases stated hereunder, for the financial year ended 31st March, 2024:

(i) On 20.6.2023, Mr. X, a resident, made three separate transactions for acquiring house property at Mumbai from Mr. Y for a consideration of ₹ 90 lakhs, an urban plot in Kolkata from Mr. C for a sum of ₹ 49,50,000 and rural agricultural land from Mr. D for a consideration of ₹ 60 lakhs. Stamp duty value of house property, plot and rural agricultural land is ₹ 95 lakhs, ₹ 48 lakhs and ₹ 65 lakhs, respectively.

(ii) On 17.6.2023, a commission of ₹ 50,000 was retained by the consignee 'ABC Packaging Ltd.' and not remitted to the consignor 'XYZ Developers', while remitting the sale consideration. Examine the obligation of the consignor to deduct tax at source.

(iii) Raj (aged 35 years) is working with AB Ltd. He is entitled to a salary of ₹ 85,000 per month w.e.f. 1.4.2023. He has a house property which is self-occupied. He paid an interest of ₹ 1,95,000 on loan, during the previous year 2023-24. The loan was taken for construction of house. He has notified his employer AB Ltd. that there will be a loss of ₹ 1,95,000 in respect of this house property for financial year ended 31.3.2024. Raj declared that he has exercised option to shift out of default regime of section 115BAC.

Solution :

Liability for deduction of tax at source

	Reasoning		**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 transferor account or payment, whichever is earlier.		95,000
	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.		Nil
	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.		Nil
	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.		
(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 rates specified under section 115BAC(1A) or at the average of income tax computed on the basis of the rates in force for the financial year in which payment is made in case employee submitted a declaration of opt out of the default regime under section 115BAC.		
	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 submitted a declaration of opt out of section 115BAC and also 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 ₹ 85,000 per month paid to Mr. Raj, in the following manner:		
	Income under the head salaries (₹ 85,000 x 12)	10,20,000	
	Less: Standard deduction under section 16(ia)	50,000	
		9,70,000	
	Income under the head "house property"	(1,95,000)	
	Gross total income	7,75,000	
	Less: Deduction under Chapter VI-A	Nil	
	Total Income	**7,75,000**	
	Tax on ₹ 7,75,000	67,500	
	Add: Health and Education cess@4%	2,700	
	Tax to be deducted at source	**70,200**	**70,200**

Question-35 :
"Tax Recovery Officer, can recover the arrear demands from the assessee in default out of sale proceeds of the property attached after making a proclamation". How can such proclamation be made under the Act? Is there any time limit for sale of attached immovable property? Discuss.

Solution :
Manner of making a proclamation
Movable Property [Rules 38 & 39 of Schedule II to the Income-tax Act, 1961]

Where the Tax Recovery Officer orders sale of movable property, he should issue a proclamation in the language of the district, of the intended sale, specifying the time and place of sale and whether the sale is subject to confirmation or not.

The proclamation should be made by beat of drum or other customary mode, -

(a) in the case of property attached by actual seizure –
  (i) in the village in which the property was seized, or, if the property was seized in a town or city, then, in the locality in which it was seized; and
  (ii) at such other places as the Tax Recovery Officer may direct;

(b) in the case of property attached otherwise than by actual seizure, in such places, if any, as the Tax Recovery Officer may direct.

A copy of the proclamation should also be affixed in a conspicuous part of the office of the Tax Recovery Officer.

Immovable Property [Rule 54 of Schedule II to the Income-tax Act, 1961]
The Tax Recovery Officer shall make a proclamation for sale of immovable property at some place on or near such property by beat of drum or other customary mode. A copy of the proclamation shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the office of the Tax Recovery Officer.

Where the Tax Recovery Officer directs, such proclamation shall also be published in the Official Gazette or in a local newspaper or in both, and the cost of such publication shall be deemed to be cost of the sale.

Where the property to be sold is divided into lots for the purpose of being sold separately, then it is not necessary to make a separate proclamation for each lot of property, unless in the opinion of the Tax Recovery Officer, proper notice of sale cannot otherwise be given.

Time limit for sale of attached immovable property [Rule 68B of Schedule II to the Income-tax Act, 1961]

The sale of immovable property attached has to be made on or before the expiry of 7 years from the end of the financial year in which the order giving rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached,

- has become conclusive under the provisions of section 245-I (where order of settlement under section 245D(4) is deemed to be conclusive as to the matters stated therein) or
- has become final in terms of the provisions of Chapter XX (Appeals and Revision).

However, the CBDT may, for reasons to be recorded in writing, extend the aforesaid period for a further period not exceeding 3 years.

Part-B : Additional Questions

Question-36 :[MTP MAY 19] [RTP May-20]

Gamma (P) Ltd., an Indian company established in the year 2007, reports total income of 22 lakh for the previous year ended 31st March, 2024. Tax deducted at source by different payers amounted to 1,68,000 and tax paid in Country A on a doubly taxed income amounted to ₹ 30,000 for which the company is entitled to relief under section 90 as per the double taxation avoidance agreement.

During the year, the company paid advance tax as under:

Date of payment	Advance tax paid (₹)
13-06-2023	45,000
14-09-2023	90,000
13-12-2023	1,00,000
14-03-2024	1,05,000

The company filed its return of income for the A.Y. 2024-25 on 3rd December, 2024.

Compute interest, if any, payable by the company under sections 234A, 234B and 234C and fee payable under section 234F. Assume that transfer pricing provisions are not applicable and that the company has not opted for the provisions of section 115BAA.

Note – Turnover of Gamma (P) Ltd. for P.Y. 2021-22 is ₹ 251 crore.

Solution

Interest under section 234A: Since the return of income has been furnished by Gamma (P) Ltd. on 3rd December, 2024 i.e., after the due date for filing return of income (31.10.2024), interest under section 234A will be payable for 2 months @ 1% p.m. on the amount of tax payable on the total income, as reduced by tax reliefs and prepaid taxes.

Particulars	₹
Tax on total income (₹ 22,00,000 x 26%) [Since turnover of P.Y. 2021-22 does not exceed ₹ 400 crore, the rate of tax would be 26% (i.e., 25% + HEC@4%)]	5,72,000
Less: Advance tax paid	3,40,000
Less: Tax deducted at source	1,68,000
Less: Relief of tax allowed under section 90	30,000
Tax payable on self-assessment	34,000
Interest under section 234A = ₹ 34,000 x 1% x 2 months= ₹ 680	

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

Computation of assessed tax	₹
Tax on total income (₹ 22,00,000 x 26%)	5,72,000
Less: Tax deducted at source	1,68,000
Less: Relief of tax allowed under section 90	30,000
Assessed tax	**3,74,000**
90% of assessed tax = ₹ 3,74,000 x 90% = ₹ 3,36,600	

Since the advance tax paid by Gamma (P) Ltd. (₹ 3,40,000) is more than ₹ 3,36,600, being 90% of the assessed tax (₹ 3,74,000), it is not liable to pay interest under section 234B.

Interest under section 234C

Particulars	
Tax on total income (₹ 22,00,000 x 26%)	5,72,000
Less: Tax deducted at source	1,68,000
Less: Relief of tax allowed under section 90	30,000
Tax due on returned income/Total advance tax payable	3,74,000

Calculation of interest payable under section 234C:

Due Date for payment of advance tax	Advance tax paid till date	Advance tax payable till date	Minimum % of tax due on returned income to be paid till date to avoid interest u/s 234C		Shortfall	Interest
			%	Amt (₹)	(₹)	(₹)
15.6.2023	45,000	15%	12%	44,880	-	Nil (See Note below)
15.9.2023	1,35,000	45%	36%	1,34,640	-	Nil (See Note below)
15.12.2023	2,35,000	75%	75%	2,80,500	45,500	45,500 x 1% x 3 months = 1,365
15.3.2024	3,40,000	100%	100%	3,74,000	34,000	34,000 x 1%= 340
Interest payable under section 234C (Nil + Nil + ₹ 1,365 + ₹ 340)						₹ 1,705

Note: Since the advance tax paid by Gamma (P) Ltd. on 13th June, 2023 is more than 12% of the tax due on returned income (i.e., ₹ 3,74,000) and the advance tax paid on 14th September, 2023 is more than 36% of the tax due on returned income, it is not liable to pay any interest under section 234C in respect of these two quarters.

Fee under section 234F

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

Question-37 : [MTP MAY 19] [RTP May-20]

Discuss the TDS/TCS implications if any, for the following transactions. What is the amount payable to the payee?:

(i) X is a bookmaker and Mr. Y is a punter. On 22-01-2024, B has won ₹ 50,000 in Horse Race 1 and suffered a loss of ₹ 20,000 in Horse Race 2.

(ii) Mr. Santosh has let out his house property on a monthly rent of ₹ 60,000 from 15-01-2024 to Mrs. Preeti.

(iii) H. Ltd., a manufacturer of luxury cars sold 50 cars on 01·09·2023 to NMP Ltd. , its dealer, each car costing ₹ 20 Lakhs.

(iv) AKL Ltd., a third party administrator on behalf of an Insurance Company has settled medical bills of 5,00,000 on 31-10-2023 submitted by Kay Hospitals Ltd. from a patient under a cashless scheme.

(1½ x 4 = 6 Marks)

Solution :

(i) Any person, being a bookmaker, who is responsible for paying to any person any income exceeding 10,000 by way of winnings from horse races is liable to deduct tax@30% at the time of payment as per section 194BB.

In a case where the book-maker credits such winnings and debits the losses to the individual account of the punter, tax would be deducted on the winnings before set- off of losses. Thereafter, the net amount, i.e., the winnings after deduction of tax and losses, would be paid to the individual.

Thus, in the present case, Mr. X is liable to deduct tax of ₹ 15,000 (₹ 50,000 x 30%) from winnings of 50,000. The net amount payable to Mr. B would be 15,000 (i.e., ₹ 50,000 – ₹ 20,000, being loss – 15,000, being TDS).

(ii) Section 194-IB requires any individual responsible for paying to a resident any income by way of rent exceeding ₹ 50,000 per month shall deduct tax @5% of such income at the time of credit or payment of rent for the last month of the previous year, whichever is earlier.

Since Mrs. Preeti, an individual, pays rent exceeding ₹ 50,000 per month in the F.Y. 2023-24 to Mr. Santosh, she is liable to deduct tax at source @5% of such rent for F.Y. 2023-24 under section 194-IB. Thus, 7,500 [₹ 60,000 x 5% x 2.5] has to be deducted from rent payable for March, 24. The rent payable to Mr. Santosh for March, 24 would be ₹ 52,500.

Note – The above answer is based on the provisions of section 194-IB, which would be attracted in Mrs. Preeti's case.

Alternatively, in case it is assumed that Mrs. Preeti carries on business or profession and her total sales, gross receipts or turnover from the business or profession carried on by her exceeds the monetary limit specified under section 44AB in the immediately preceding financial year, she is required to deduct tax at source @10% under section 194-I in respect of rent payable for use of any land or building, if the rent payable during the financial year exceeds ₹ 180,000. In the present case, since the rent of 1,50,000 i.e., ₹ 60,000 x 2.5 months is less than 180,000, no tax is required to be deducted at source under section 194 -I.

(iii) Every person, being a seller, who receives any amount as consideration for sale of a motor vehicle of the value exceeding 10 lakhs, shall collect tax from the buyer@1% of the sale consideration as per section 206C(1F).

However, this provision applies only in respect of transactions of retail sales and does not apply to sale of motor vehicles by manufacturers to dealers. Therefore, H Ltd., a manufacturer, is not required to collect tax at source from NMP Ltd., the dealer, on receipt of consideration for sale of motor cars.
Hence, the amount payable by NMP Ltd. to H Ltd. is ₹ 1,000 lakhs i.e., 20 lakhs x 50.

(iv) Every person, who is responsible for paying to a resident any sum by way of fees for professional services exceeding ₹ 30,000 shall deduct tax at source at the rate of 10% at the time of credit to the account of the payee or at the time of payment, whichever is earlier, as per section 194J.

"Professional services" include services rendered by a person in the course of carrying on medical profession.

The CBDT has, vide Circular No.8/2009 dated 24.11.2009, clarified that since the services rendered by hospitals to various patients are primarily medical services, TPAs (Third Party Administrator's), who are making payment on behalf of insurance companies to hospitals for settlement of medical/insurance claims etc. under various schemes including cashless schemes are liable to deduct tax at source on all such payments to hospitals etc.

Thus, AKL Ltd., a TPA is liable to deduct tax of ₹ 50,000, being 10% of ₹ 5,00,000 from the payment made to Kay Hospitals Ltd. Hence, the amount payable by AKL Ltd. to Kay Hospitals Ltd. would be ₹ 4,50,000 [₹ 5,00,000 – ₹ 50,000]

Question-38 : [PP MAY-19]
Deer Co Ltd engaged in the business of manufacture of furniture items on contract basis. It sub-contracted the production of cushion for the chairs to M/s Lion & Co, a sole proprietary concern. The sub-contractor M/s. Lion & Co procured the raw materials for production of cushions, performed further labour works and supplied the same to Deer Co Ltd. It raised its bill on Deer Co Ltd, showing the cost of raw materials ₹ 4,00,000 and labour charges ₹ 1,50,000, separately. Explain briefly the tax deduction requirement in the hands of Deer Co Ltd.
(2 Marks)

Solution
TDS under section 194C is attracted on any sum payable to a resident contractor/sub- contractor for carrying out any work. However, "work" shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using raw material purchased from a person, other than such customer, as such a contract is a 'contract for sale'.

In this case, M/s Lion & Co. has to supply cushion for the chairs to Deer Co Ltd., according to the specifications of the customer by using materials purchased from a person other than the customer, Deer Co Ltd. Thus, the sub-contract for production of cushions is a 'contract for sale' and not a 'works contract'.
Consequently, there is no liability to deduct tax at source under section 194C in this case

Question-39 : [PP MAY-19]
Maha Bank Ltd accepted fixed deposits of ₹ 20 crores in the name of Registrar General of the High Court and issued a fixed deposit receipt in compliance with a direction passed by the court in relation to certain proceedings. The Bank did not deduct tax on the interest accrued. The Assessing Officer issued a notice to the bank to show cause as to why it should not be treated as an assessee in default under sections 201(1) and 201 (1A) for not deducting tax at source on interest accrued. Examine whether the bank is correct in not deducting tax on the interest accrued. **(4 Marks)**

Solution :
The issue under consideration is whether the bank is required to deduct tax at source on the amount of interest paid or payable on fixed deposits in the name of Registrar General of High Court.
Under section 194A, the bank is obliged to deduct tax at source in respect of any credit or payment of interest (exceeding ₹ 10,000) on deposits made with it. The expression "payee" under section 194A would mean the recipient of income whose account is maintained by the person paying interest.

However, in this case, the actual payee is not ascertainable and the person in whose name the interest is credited is not a person liable to pay tax under the Act. The Registrar General is recipient of neither the amount credited to his account nor to interest accruing thereon. Therefore, he cannot be considered as a 'payee' for the purposes of section 194A. In the absence of a payee, the machinery provisions for deduction of tax from interest credited become ineffective.
The credit by the bank in the name of the Registrar General would, thus, not attract the provisions of section 194A. Therefore, the bank is correct in not deducting tax on the interest accrued.

Note – This issue came up before the Delhi High Court in UCO Bank v. Dy. CIT (2014) 369 ITR 335. The above answer is based on the Delhi High Court ruling in the said case. The CBDT has, vide Circular No. 23/2015 dated 28.12.2015 accepted the aforesaid judgment and clarified that interest on fixed deposits made in the name of the Registrar General of the Court or the depositor of the fund on the directions of the Court, will not be subject to TDS till the matter is decided by the Court.

Question-40 : [PP NOV-19]
Answer any one out of the following two questions:

(i) M/s Kashdash (P) Ltd. an Indian company in the business of event management throughout India withdraws ₹ 10 lakhs in cash on 7th day of each month during the financial year 2023-2024 from its current account with Union Bank, for local payments and for payment of wages and incentives to temporary employees engaged by it for different events. lt did not made any single payment of ₹ 10,000 or more to any person in a day. Examine the liability for tax deduction at source in the present case.

(ii) Mis TQ Inc., a foreign company, seconded some employees to its collaborator M/s Tekwel Ltd., an lndian company, for working on a turnkey project for setting up a pharmaceutical factory. These employees worked with M/s Tekwel Ltd., throughout the P.Y. 2023-24. The employees were in receipt of salary from M/s Tekwel Ltd. They were also in receipt of special allowance directly from M/s TQ lnc. in foreign currency outside India. M/s Tekwel Ltd. deducted tax under section 192, on the component of salary paid by it, without taking into account the special allowance paid abroad by M/s TQ lnc. in foreign currency to these employees.

For this reason, the Revenue authorities treated M/s Tekwel Ltd. as an 'assessee- in-default' under Section 201 for non-deduction of tax at source on the "special allowance" component of salary paid by M/s TQ Inc. under section 192. Is such treatment by the Revenue Authorities and the consequent levy of interest and penalty justified? **(4 x 1 = 4 Marks)**

Solution :

(i) Section 194N provides that every person, including, inter alia, a banking company, who is responsible for paying, in cash, any sum or aggregate of sums exceeding ₹ 1 crore during the previous year to any person from one or more accounts maintained by such recipient-person with it, shall deduct tax at source @2% of sum exceeding ₹ 1 crore.

In the present case, M/s Kashdash (P) Ltd. an Indian company has withdrawn 10,00,000 in cash on 7th of each month from the current account with Union Bank, which is totalling to ₹ 1.20 crores in aggregate during the previous year 2023-24.

Thus, Union Bank is required deducted tax at source of ₹ 40,000 [i.e., 2% of ₹ 20 lakhs, being the amount exceeding ₹ 1 crore].

(ii) Section 9(1)(ii) provides that any income which falls under the head “Salaries” is deemed to accrue or arise in India, if it is earned in India. The Explanation thereto further clarifies that income payable for services rendered in India shall be regarded as income earned in India.

Section 192(1) requires the person responsible for paying any income chargeable under the head “Salaries” to deduct income-tax, at the time of payment, at the average rate of income-tax computed on the basis of the rates in force for the financial year on the amount payable.

Since the TDS provisions relating to payment of income chargeable under the head “Salaries” form an integrated code along with the charging and computation provisions under the Act, section 192(1) has to be read with section 9(1)(ii) and the Explanation thereto. Therefore, if any payment under the head “Salaries” falls within section 9(1)(ii), then TDS provisions under section 192 gets attracted. Consequently, the Indian tax deductor-assessee is duty bound to deduct, from the portion of salary paid by it, tax at source under section 192(1) on the entire salary paid to the employee, including special allowance paid abroad to the employee by the foreign company. It was so held in CIT, New Delhi v. Eli Lilly & Co. (India) P. Ltd. (2009) 312 ITR 225 (SC).

In this case, all the employees are resident in India, since they have worked with the Indian collaborator throughout the previous year 2023-24. If the tax due on special allowance received from the foreign company is paid by the recipient-employees, then, the Indian collaborator would not be treated as an assessee-in-default under section 201(1), if these resident-employees have furnished a return of income under section 139 on or before the due date of filing return of income, disclosing such income, and have also furnished a certificate to this effect from an accountant in the prescribed form. However, interest under section 201(1A)@1% per month or part of month shall be payable by the Indian collaborator from the date on which such tax was deductible to the date of furnishing of return by such resident employee.

In cases where the tax has not been paid by the recipient employee, the Assessing Officer can proceed under section 201(1) to recover the shortfall in payment of tax and interest thereon under section 201(1A) from M/s Tekwel Ltd.

However, no penalty under section 271C would be attracted, if the Indian company was under the genuine and bona fide belief that it was not under any obligation to deduct tax at source from the special allowance paid by the foreign company. This is provided for under section 273B.

Question-41 : [PP NOV-19]

Examine the liability to deduct tax at source in respect of the following independent situations:

(i) M/s Mexil Ltd. is engaged in the business of manufacturing certain article or thing for which the raw material is imported from Russia. For the purpose of making payment to the supplier, the assessee entered into a bank guarantee with BDFH Bank, an Indian Bank against the payment of 1,10,000 as bank guarantee commission for the FY 2023-24.

(ii) StudyKart, an online education provider and a trust registered under section 12AA of the Income-tax Act, pays ₹ 98,000 during the Financial Year 2023-24, to Mr. Monty, a non-resident for providing web based lectures.

(iii) On 31st December, 2023, Mr. Nitin, a resident individual whose gross turnover was 97 lakhs during the preceding previous year, paid ₹ 65 lakhs to Mr. Basant, a resident individual, as contract payment for repairing his office building.

(iv) Fly Fly Ltd., an airlines company, paid ₹ 10 lakhs to Airports Authority of India as landing and parking charges of its aircrafts. **(2 x 4 = 8 Marks)**

Solution :

(i) No tax is deductible at source on the payment of inter alia bank guarantee commission made by a person to a bank.

As per section 197A(1F), no deduction of tax shall be made from specified payments to notified bodies. Accordingly, the Central Government has notified that no deduction of tax shall be made from the specified payments, which include bank guarantee commission, in case such payment is made by a person to a bank listed in the Second Schedule to the Reserve Bank of India Act, 1934, excluding a foreign bank.

Thus, M/s Mexil Ltd. is **not** required to deduct tax at source on bank guarantee commission of 1,10,000 paid to BDFH Bank, an Indian bank, in the F.Y.2023-24

(ii) Any person responsible for paying any sum chargeable to tax to a non-corporate non-resident is liable to deduct tax at source at the rates in force.

Since Mr. Monty, a non-resident has provided web based lectures from outside India, income arsing therefrom is not chargeable to tax in India as no income is deemed to accrue or arise in India. Thus, no tax is deductible at source on such payment to him.

Alternatively, it may be possible to take a view that income arising from web lectures may fall within the meaning of "Fees for technical services". If this view is taken, such income would be deemed to accrue or arise in India, since the services are utlised in India, even though they are rendered from outside India. Therefore, such income would be chargeable to tax in India in the hands of Mr. Monty, a non-resident. Thus, StudyKart, a trust registered u/s 12AB, is required to deduct tax at source under section 195.

(iii) Since Mr. Nitin T/O does not exceed 1 crore in the P.Y. 2022-23, TDS provisions u/s 194C are not attracted in respect of payment made in the P.Y. 2023-24 to Mr. Basant, a resident individual, for repairing his office building. However, tax is required to be deducted at source @5% under section 194M, on the payment of 65,00,000, since such amount exceeds ₹ 50 lakhs

Therefore, tax deducted at source would be ₹ 3,25,000, being 5% of ₹ 65,00,000.

(iv) The landing and parking charges which are fixed by the Airports Authority of India are not merely for the "use of the land". These charges are also 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.

Therefore, tax of 20,000 (2% of ₹ 10 lakh) is deductible at source under section 194C by the airline company, Fly Fly Ltd., on payment of ₹ 10,00,000 made towards landing and parking charges to the Airports Authority of India for the previous year 2023-24.

Question-42 : [PP JULY-21]

Discuss and compute the liability for deduction of tax at source, if any, in the following cases for the Assessment Year :

(i) A notified infrastructure debt fund eligible for exemption u/s 10(47) of the Income-tax Act, 1961 pays interest of ₹ 4.50 lakhs to a company incorporated in USA. The US company incurred expenditure of ₹ 15,000 for earning such interest. The fund also pays interest of ₹ 2.50 lakhs to Mr. R, who is a resident of a notified jurisdictional area.

(ii) On 17.06.2023, a commission of ₹ 40,000 was retained by the consignee 'Harshit Packaging Ltd.' and not remitted to the consignor 'Hari Developers', while remitting the sales consideration.

(iii) Mr. Harsh, an employee of M/s XY Ltd. since 10.04.2019, resigned on 31.03.2024 and withdrew 80,000 being the balance in his EPF account. His PAN is available with M/s XY Ltd.

(iv) Param Construction Ltd. sells a flat to Mr. Mani for ₹ 48 Lakhs on 15.01.2024. The agreement to sell provides that in addition, Mr. Mani has to pay maintenance charges (of ₹ 5,000 per month) for 24 months in advance ₹ 2,00,000 for car parking to be used exclusively by him and ₹ 1,00,000 for club membership fees to Param Construction Ltd. before the flat is registered in the name of Mr. Mani. The flat is registered on 30.03.2024. **(8 Marks)**

Solution :

(i) As per section 194LB, tax would be deductible@5% on gross interest paid/credited by a notified infrastructure debt fund, eligible for exemption under section 10(47), to a non- corporate non-resident or foreign company.

However, in case the notified infrastructure debt fund pays interest to a person who is a resident of a notified jurisdictional area, section 94A will apply. Accordingly, tax would be deductible@30% under section 94A

Since the payment is to a non-corporate non-resident or foreign company, health and education cess @4% has to be added to the applicable rate of TDS.

Therefore, the tax deductible in respect of payment of interest of ₹ 4.50 lakhs to US company would be 23,400 (i.e., 5.20% of ₹ 4.50 lakhs).

Tax deductible in respect of payment of interest of ₹ 2.50 lakhs to Mr. R, who is a resident of a notified jurisdictional area, would be ₹ 78,000, being 31.2% of ₹ 2,50,000.

(ii) Section 194H requires deduction of tax at source @5% from commission and brokerage payments to a resident if the amount of such payment exceeds ₹ 15,000.

In the given case, 'Harshit Packaging Ltd.', the consignee, has retained the commission of ₹ 40,000 while remitting the sales consideration to the consignor 'Hari Developers'.

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, Hari Developers has to deduct tax at source on ₹ 40,000 @ 5%. Tax deductible would be 2,000.

(iii) As per section 192A, in a case where the accumulated balance due to an employee participating in a recognized provident fund is includible in his total income owing to the provisions of Rule 8 of Part A of the Fourth Schedule not being applicable, income-tax@10% is required to be deducted, if the amount of such payment or aggregate amount of such payment to the payee is ₹ 50,000 or more.

Rule 8 of Part A of the Fourth Schedule, inter alia, provides that only if an employee has rendered continuous service of five years or more with the employer, then accumulated balance in a recognized provident fund payable to an employee would be excluded from the total income of that employee.
In the present case, Mr. Harsh has withdrawn an amount exceeding ₹ 50,000 on his resignation after rendering a continuous service of less than four years with M/s. XY Ltd.

Therefore, tax has to be deducted at source@10% under section 192A on ₹ 80,000, being the amount withdrawn on his resignation without rendering continuous service of a period of five years with M/s. XY Ltd. Tax deductible in such a case would, therefore, be ₹ 8,000.

(iv) Section 194-IA requires deduction of tax @1% by every transferee responsible for paying any sum as consideration or SDV for transfer of immovable property (land, other than agricultural land, or building or part of building) to a resident transferor.

Tax is not required to be deducted at source where the total amount of consideration for the transfer of immovable property is less than ₹ 50 lakhs. Consideration for transfer of any immovable property includes, inter alia, club membership fee, car parking fee, maintenance fee, which are incidental to transfer of the immovable property.

In the present case, since the consideration for transfer of flat by Mr. Mani to Param Construction Ltd. is ₹ 52,20,000 (₹ 48 lakhs + ₹ 1,20,000, being ₹ 5,000 x 24 + ₹ 2 lakhs + ₹ 1 lakh) which is not less than ₹ 50 lakhs, Mr. Mani is required to deduct tax @1% on ₹ 52,20,000.
Tax deductible by Mr. Mani would be ₹ 52,200.

Question-43 : [PP OLD JULY-21]
Examine the applicability of provisions relating to deduction/collection of tax at source and compute the liability, if any for deduction/collection of tax at source in the following cases for financial year ended 31st March, 2024 as per provisions contained under the Income-tax Act, 1961:

(i) Pursuant to the agreement to operate E-commerce platform between "AB" (E- commerce Operator) and "XY" (E-commerce Participant), the buyer purchased goods worth ₹ 6.00 lakhs on 28.02.2024 on e-commerce website of "AB" and he makes such payment through the digital platform of "XY". Who is the person responsible to deduct/collect the tax on this transaction and specify the amount of liability ?

(ii) Mr. James, is an authorised dealer under the Liberalised Remittance Scheme of RBI. Three persons from India remitted the following sums through the Authorised Dealer as under:

Name of the Person	Remittance Amt. INR	Purpose
Mr. Pradeep	₹ 6,50,000	Maintenance expenses of his son studying in London
Mr. Promod	₹ 15,00,000	Cost of Overseas Tour Programme package to North & South America
Mr. Pranav	₹ 10,00,000	Repayment of loan obtained from Bank in Germany for pursuing higher studies.

What are the tax obligations of Mr. James in the above transactions? **(8 Marks)**

Solution :

(i) In a case where sale of goods of an e-commerce participant (XY) is facilitated by an e-commerce operator (AB) through its e-commerce website, section 194-O requires the e-commerce operator (AB) to deduct tax at source@1% on ₹ 6 lakhs, being the gross amount of sales facilitated through the e-commerce website.

Therefore, TDS u/s 194-O is ₹ 6,000, being 1% of ₹ 6 lakhs.

In this case, since the payment is facilitated by a payment gateway (referred to as digital platform), the payment gateway may also happen to qualify as an e- commerce operator for facilitating service. However, the payment gateway (i.e., the digital platform) will not be required to deduct tax if the e-commerce operator (AB) has deducted tax u/s 194-O.

(ii) An authorised dealer who receives an amount for overseas remittance from a buyer, being a person remitting such amount out of India under the Liberalised Remittance Scheme of RBI, is required to collect tax at source @5%. In case the remittance is for a purpose other than purchase of overseas tour programme package, then, no tax has to be collected at source, if the amount or aggregate of amount remitted by a buyer is less than ₹ 7 lakhs; and where the said amount exceeds 7 lakhs, tax has to be collected at source @5% of the amount or aggregate of amount in excess of 7 lakhs.

Accordingly, Mr. James, the authorised dealer need not collect any tax from remittance of 6,50,000 by Mr. Pradeep towards maintenance expenses of his son studying in London, since such remittance does not exceed ₹ 7 lakhs.

Mr. James has to collect tax of 75,000, being 5% on 15 lakhs remitted by Mr. Promod towards cost of overseas tour programme package to North and South America. The benefit of tax collection on the amount in excess of 7 lakh is not available where the remittance is for an overseas tour programme package.

Note – In this case, it appears that the payment is made to a foreign entity for purchase of tour programme package. Therefore, the authorised dealer is required to collect tax at source since the amount has been remitted abroad by the buyer for purchase of tour programme package.

Mr. James has to collect tax of ₹ 15,000, being 5% of ₹ 3 lakhs (i.e., the amount in excess of ₹ 7 lakhs) on remittance of ₹ 10 lakh by Mr. Pranav towards repayment of loan obtained from bank in Germany for pursuing higher studies. The benefit of concessional rate of 0.5% will not be available in this case, since the remittance is not out of loan from financial institution defined under section 80E.

Question-44 : [MTP OCT-20]

Discuss the liability for tax deduction at source in the following cases for the A.Y. 2024-25:

(i) Mr. Raghav gave a building on sub-lease to MT Ltd. with effect from 1-7-2023 on a rent of 20,000 per month. The company also took a machinery on hire from Raghav with effect from 1-11-2023 on hire charges of 15,000 per month. The rent for building and hire charges of machinery for the year 2023-24 were credited by the company to the account of Raghav in its books of account on 31-3-2024.

(ii) Mr. Sarthak, an individual, whose turnover from the business carried on by him during the financial year immediately preceding the financial year exceed ₹ 100 lakh, paid fee to an architect of ₹ 50,000 for furnishing his residential house. **(4 Marks)**

Solution :

(i) Tax is deductible under section 194-I on rent, if the aggregate amount of rental income paid or credited to a person exceeds ₹ 2,40,000. Tax is deductible at the time of payment or credit, whichever is earlier. Rent includes payment under any lease or sub-lease for use of, inter alia, building and machinery.

The aggregate amount credited by MT Ltd. to the account of Raghav in its books of account on 31.3.2024 towards rent for the P.Y.2023-24 is ₹ 2,55,000 [i.e., ₹ 1,80,000 for building and ₹ 75,000 for machinery]. Hence, MT Ltd. has to deduct tax @10% on rent credited for building and tax @ 2% on rent credited for machinery.

(ii) TDS @ 10% under section 194J would be attracted in respect of fees for professional-.services exceeding 30,000 paid to a resident during any financial year. However, TDS provisions u/s 194J wouid not be attracted, if the fee is paid exclusively for personal purposes. In this case, since the fee paid by Mr, Shan is for furnishing of his residential house, it is exclusively for personal purposes, Therefore, Mr. Sarthak is not required to deduct tax at source under section 194J on the fees of 30,000 paid to an architect for furnishing his residential house even if, in such a case, the turnover from the business exceeds 100 lakhs during the preceding financial year or the amount of fees far professional services exceeds 30,000 during the financial year.

Question-45 : [RTP MAY-22]

Examine the applicability of provisions relating to deduction/collection of tax at source and compute the amount of tax to be deducted/collected at source in the following cases for financial year ended 31st March, 2024 as per provisions contained in the Income-tax Act, 1961:

(i) Mr. Rajesh remitted an amount of ₹ 5,80,000 towards maintenance expenses of his son pursing education in University of Australia. He also remitted ₹ 7,80,000 to University of Australia, for the purpose of his son's education, out of loan taken from his employer, ABC Ltd., an Indian manufacturing company. Both the remittances were made through the same authorized dealer under the Liberalized Remittance Scheme of RBI.

(ii) Mr. Appy, a resident Indian, [E-commerce participant] sells goods worth ₹ 84 lakhs through e-commerce website of HIGHSALE [E-commerce Operator]. Mr. Appy has not furnished PAN or AADHAR No. to the E-commerce Operator. He has furnished his return of income for all the assessment years before the due date of filing return of income.

Solution :

(i) An authorised dealer, who receives an amount for overseas remittance from a buyer, being a person remitting such amount out of India under the Liberalised Remittance Scheme of RBI, is required to collect tax at source @5%. In case the remittance is for a purpose other than purchase of overseas tour programme package, then, no tax has to be collected at source, if the amount or aggregate of amount remitted by a buyer is less than ₹ 7 lakhs; and where the said amount exceeds ₹ 7 lakhs, tax has to be collected at source @5% of the amount or aggregate of amount in excess of 7 lakhs.

Tax is required to be collected at source @0.5% of the amount or aggregate of amount in excess of ₹ 7 lakhs where remittance is made out of loan from a bank or financial institution notified by the Central Government referred under section 80E. However, in the present case, Mr. Rajesh remitted the amount out of the loan taken from his employer, being a manufacturing company. Hence, concessional rate of tax collection at source@0.5% would not be available.

Accordingly, the authorised dealer has to collect tax at source @5% on the amount remitted by Mr. Rajesh towards maintenance expenses of his son studying in Australia as well as on amount remitted out of the loan taken from his employer not being the financial institution defined under section 80E in excess of ₹ 7,00,000.

Since both remittances are through the same authorised dealer, tax collection at source@5% would be attracted on the aggregate amount remitted in excess of 7,00,000. Thus, ₹ 33,000 [5% of ₹ 6,60,000 (₹ 7,80,000 + ₹ 5,80,000 – ₹ 7,00,000)] has to be collected at source by the authorised dealer on the remittances made by Mr. Rajesh.

(ii) In a case where sale of goods of an e-commerce participant (Mr. Appy) is facilitated by an e-commerce operator (HIGHSALE) through its e-commerce website, section 194-O requires the e-commerce operator to deduct tax at source@1% on ₹ 84 lakhs, being the gross amount of sales facilitated through the e-commerce website.

As per section 206AA, in case where the deductee has not furnished his PAN, tax is required to deducted at source at higher of 1% or 5%. Accordingly, tax has to be deducted at source @5% of ₹ 84 lakhs = ₹ 4.2 lakhs.

Question-46 : [PP DEC-21]

(i) Mr. Z, a resident individual, starts a new business on 01-11-2023 for sale of unique T-shirts. He obtained a valid PAN in his name and registers himself on ABC.com (a Singapore based website), an e-commerce operator, for sale of his products in India.

Mr. Z sold goods worth ₹ 60 lakhs through ABC.com upto 31-03-2024. E-commerce operator credited the following payments from time to time payable to Mr. Z in its books of accounts.

31-12-2023 ₹ 20 lakhs
28-02-2024 ₹ 15 lakhs

Full and final payments have been released by ABC.com to Mr. Z on 31-03-2024 after deducting a commission of 10% on gross sale proceeds.

Mr. Z received ₹ 10,00,000 directly in his bank out of above ₹ 60 lakhs through PayTM Wallet directly connected by ABC.com to the account of Mr. Z.

Discuss the TDS provisions applicable on the above transactions alongwith the date and amount of tax deductible. **(4 Marks)**

(ii) Raghav Motors Ltd., Ludhiana, is a dealer in cars of Ford and Maruti Cars and also runs a service station. The sale of cars of Raghav Motors Ltd. for F.Y.2022-23 is 9.80 crores. The sale of spare parts and service station is ₹ 60 lakhs for F.Y.2022-23.

M/s. Om Ltd., dealing in textile manufacturing, bought following cars from Raghav Motors Ltd. during F.Y. 2023-24 for business purposes:

Model of Car	Date of Invoice	Value of Car in ₹ in Lacs
Maruti	14-07-2023	37 lakhs
Maruti	12-08-2023	19 lakhs
Ford	18-10-2023	8 lakhs
Maruti	05-11-2023	12 lakhs

The payment against each invoice was made on the date of invoice itself.
You are required to calculate the amount of TCS applicable, if any, to be collected by Raghav Motors Ltd. as per the relevant provisions of section 206C. **(4 Marks)**

Solution :

(i) As per section 194-O, ABC.com, an e-commerce operator is required to deduct tax @ 1% on the gross amount of sale of goods (T-shirts, in the present case) of Mr. Z, a resident individual, an e-commerce participant, since such sale of goods is facilitated by ABC.com through its digital or electronic facility or platform.

ABC.com is required to deduct tax at the time of credit of such sum or payment, whichever is earlier. Any payment received directly by Mr. Z for the sale of goods, facilitated by ABC.com, would be deemed to be amount credited or paid by ABC.com to Mr. Z.

Accordingly, ABC.com is required to deduct tax of ₹ 20,000 (1% x ₹ 20,00,000) and ₹ 15,000 (1% x ₹ 15,00,000) on 31.12.2023 and on 28.02.2024, respectively, being the dates on which such amounts were credited in books of account of ABC.com, since the date of credit is earlier than the date of payment in these two cases.

ABC.com is also required to deduct tax of ₹ 10,000 (1% of ₹ 10,00,000 being the amount received by Mr. Z directly in his bank).

On 31.3.2024, ABC.com is also required to deduct tax of ₹ 15,000 (1% of 15,00,000), being the amount of full and final payment made on 31.3.2024.

(ii) As per section 206C(1F), Raghav Motors Ltd., a seller is required to collect tax at source@1% of the sale consideration received from M/s. Om Ltd., a buyer, on sale of motor vehicle of the value exceeding ₹ 10 lakhs.

Accordingly, Raghav Motors Ltd. is required to collect tax at source u/s 206C(1F) on the following dates -

- ₹ 37,000 [1% on ₹ 37,00,000] on 14.7.2023
- ₹ 19,000 [1% on ₹ 19,00,000] on 12.8.2023
- ₹ 12,000 [1% on ₹ 12,00,000] on 5.11.2023

Total amount of TCS is ₹ 68000

In all three cases mentioned above, the payment was received on the date of sale of Maruti cars, hence, the tax has to be collected on the respective dates of sale mentioned above.

In respect of Ford car, the value of which is ₹ 8,00,000, tax is not required to be collected under section 206C(1F), since its value does not exceed ₹ 10,00,000.

Further, as regards receipt of sale consideration of ₹ 8 lakh in respect of Ford car, there are two views as to whether TCS provisions under section 206C(1H) would be attracted.

Since sale consideration of ₹ 8 lakh in respect of Ford car on 18.10.2023 is the only receipt of Om Ltd. which is excluded from the purview of TCS u/s 206C(1F), and this receipt does not exceed the annual threshold of ₹ 50 lakhs, a view can be taken that no tax is required to be collected at source u/s 206C(1H).

Alternative view in respect of TCS u/s 206C(1H)

Since the receipt of sale consideration for all vehicles (including the sale consideration of Maruti cars in respect of which TCS u/s 206C(1F) is attracted) exceeds ₹ 50 lakhs during the previous year 2023-24 and the total sales of Raghav Motors Ltd. from the business carried on by it exceed ₹ 10 crores (₹ 10.20 crores i.e., ₹ 9.80 crores + ₹ 0.60 crores) during the financial year 2022-23, a view can be taken that tax is to be collected at source @ 1% of ₹ 8 lakh u/s 206C(1H), amounting to ₹ 800, at the time of receipt of consideration i.e., on 18.10.2023.
In such case, TCS liability will be ₹ 68,000 + ₹ 800 = ₹ 68,800

Question-47 :

Examine the applicability of provisions relating to deduction/collection of tax at source and compute the liability, if any, for deduction/collection of tax at source in the following cases for financial year ended 31st March, 2024 as per provisions contained under the Income-tax Act, 1961:-

i. In terms of agreement between A (the Owner of land) and B (Developer and Builder) the Developer, B agrees to allot 5 apartments to the owner in part consideration for providing his land and also agreed to pay a sum of Rs.25,00,000. In terms of the agreement, Mr. B issued a cheque for Rs. 15,00,000 towards part of consideration on 30.03.2024.

ii. Rent of Rs. 60,000 per month deposited by Mr. Shrikanth, software employee on 1st of every month in advance, in the account of Mr. Ashok, who does not provide his PAN. The house was taken on rent with effect from 01.07.2023 and he vacated the house on 28.02.2024.
Would there be any change in TDS, if Mr. Ashok furnished his PAN to the tenant?

iii. Rs.19,50,000 credited to the account of Digitec Studios (a partnership firm) on 31.03.2024 by B-TV, Television channel, towards part consideration for shooting of Tele Episode for 10 weeks as per the storyline, contents and specifications of B-TV channel.

Solution :

(i) Since the agreement between the owner of land, A, and the developer and builder, B, is in the nature of specified agreement under section 45(5A), which involves cash consideration as well, TDS @10% on Rs. 25,00,000, being the cash component payable to A, is deductible under section 194-IC. Assuming that only Rs.15,00,000, being the amount paid to A on 30.3.2024, has actually been credited to the account of A in the books of B in the P.Y. 2023-24, the TDS liability would be Rs. 1,50,000 being 10% of Rs. 15,00,000.

Note – If it is assumed that Rs.25,00,000 has been credited to the account of A in the books of B in the P.Y.2023-24, even though only Rs.15,00,000 has been actually paid in that year, then, tax has to be deducted@10% on Rs. 25,00,000, being the amount credited to the account of A. TDS liability would be Rs. 2,50,000, being 10% of Rs.25,00,000.

(ii) Since Mr. Shrikanth pays rent exceeding Rs.50,000 per month in the F.Y. 2023-24, he is liable to deduct tax at source @5% under section 194-IB on such rent for F.Y. 2023-24.

However, since Mr. Ashok does not provide his PAN to Mr. Shrikanth, tax would be deductible@20%, instead of 5%.

Tax has to be deducted from rent payable for the last month of the P.Y.2023-24. However, since he vacated the premises in February, 2024, tax has to be deducted from rent paid on 1.2.2024 for the month of February, 2024. Tax of Rs. 96,000 [Rs. 60,000 x 20% x 8] has to be deducted but the same has to be restricted to Rs. 60,000, being rent for February,2024.
If Mr. Ashok furnished his PAN to Shrikanth, tax would be deductible @ 5%. Taxof Rs. 24,000 [Rs. 60,000 x 5% x 8] has to be deducted from rent paid on 1.2.2024 for the month of February, 2024.

(iii) Shooting of Tele Episode for B-TV as per the storyline, contents and specifications of B-TV falls within the scope of "work" under section 194C. Since the amount credited exceeds the specified limit of Rs.30,000, TDS@2% under section 194C is attracted on Rs. 19,50,000 credited to the account of Digitec Studios, a partnership firm.
TDS liability would be Rs.39,000 [being 2% of Rs.19,50,000]

Question-48 : [PP DEC-21]

The assessee firm M/s. Karishma Transport Services entered into contract with a cement company for transporting cement to various places in India for a yearly contract exceeding 10 crores. As the assessee did not have transport vehicles of its own, it engaged the services of other transporters for the said purpose. The cement company effected payments to the assessee towards transportation charges after deduction of tax at source. In its return of income, the assessee showed the income arising out of the business of transport contracts. While making payment to truck operators or owners, the assessee had not deducted tax at source. The Assessing Officer has disallowed 30% of the expenditure for non-deduction of tax as it exceeded the threshold limit specified under the Income tax Act. Is the contention of Assessing Officer valid? **(4 Marks)**

Solution :

Issue Involved:

The issue involved in this case is whether the assessee-firm, M/s. Karishma Transport Services, is liable to deduct tax at source under section 194C in respect of payment to truck operators/owners, where the payment exceeds the threshold limit, in a case where the assessee-firm used the services of the truck owners for execution of contract entered into by it with a cement company.

Provision applicable:
Section 194C requires deduction of tax at source in case of payments to resident contractors/sub-contractors, where the individual payment exceeds 30,000 or the aggregate payments to residents during the year exceed 1 lakh.
Where the tax required to be deducted at source has not been deducted or after deduction, has not been paid within the stipulated time, then disallowance u/s 40(a)(ia) is attracted, at 30% of the expenditure in the form of payments made to the residents.

Analysis:
The nature of the contract entered into by the assessee-firm, with the cement company makes it clear that it was the responsibility of the assessee-firm to transport the cement of the company; and how to accomplish this task of transportation was a matter exclusively within the domain of the assessee-firm.
When any truck got engaged for the purpose of execution of the work undertaken by the assessee-firm and freight charges were payable to its operator or owner upon execution of the work, i.e., transportation of the goods, all the essentials of a contract existed; and the truck operator or owner became a sub-contractor.

In this case, the assessee-firm was not acting as a facilitator or intermediary between the cement company and the truck operators or owners because those two parties had no privity of contract between them. The contract of the company for transportation of its goods was only with the assessee-firm and it was the assessee- firm who hired the services of the trucks. The payment made by the assessee-firm to such transporter was clearly a payment made to a sub-contractor.

Therefore, section 194C was applicable and the assessee-firm was under obligation to deduct tax at source in relation to the payments made by it to the truck operators or owners for hiring the vehicles for the purpose of its business of transportation of goods, if the payment exceeded the individual threshold limit of 30,000/aggregate threshold limit of 1 lakh specified thereunder.

Conclusion: The action of the Assessing Officer in disallowing 30% of the expenditure for non-deduction of tax as it exceeded the threshold limit, is correct.

Note – The facts given in the question are similar to the facts in Shree Choudhary Transport Co. v ITO [2020] 426 ITR 0289, wherein the issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court in the said case.

It may be noted that section 194C provides that no tax is deductible at source where transport charges are made to a contractor/sub-contractor, who owns ten or less goods carriages at any time during the previous year 2021-22, and have furnished a declaration to this effect along with their PAN. If the transporters satisfy these conditions stipulated u/s 194C, the action of the Assessing Officer would be incorrect.

Question-49 : [RTP NOV 22]
Examine the applicability of provisions relating to deduction/collection of tax at source and compute the liability, if any, for deduction/collection of tax at source in the following cases for financial year ended 31st March, 2024 as per provisions contained under the Income- tax Act, 1961:

i) Mr. Devansh, an Indian Citizen, residing in New York, came to India on a visit on 15.2.2024. He paid ₹ 6 lakhs to a tour operator, M/s Journey Trip, based in Mumbai for a tour package to Malaysia for 1 week. He left for Malaysia on 1.3.2024 and returned to India on 8.3.2024. Thereafter, he was in India upto 5.4.2024 on which date he took his return flight to New York. He does not have any source of income in India.

ii) XYZ Ltd. was incorporated on 1.4.2023 for trading goods. Its turnover for the P.Y. 2023-24 is ₹ 12 crores. During the P.Y.2023-24, it purchased goods from M/s. White Ride, the details of which are as follows:
On 1.8.2023 for ₹ 25,00,000;
On 15.9.2023 for ₹ 30,00,000 and
On 15.12.2023 for ₹ 15,00,000.

The above dates represent the date of credit to the account of M/s. White Ride. Payment is made after one month (i.e., on the same date in the immediately following month). M/s White Ride's turnover for the F.Y. 2022-23 and F.Y. 2023-24 was ₹ 11 crores and ₹ 9.7 crores, respectively.

Solution :

(i) Section 206C(1G) provides for collection of tax@ 5% by every person, being a seller of an overseas tour programme package, who receives any amount from the buyer who purchases the package. The threshold limit of ₹ 7 lakh is not applicable in case of collection of tax at source by a seller of an overseas tour programme package from a buyer who purchases such package. Hence, tax has to be collected@5% of the amount received by the seller of an overseas tour programme package from a buyer even if the amount is less than ₹ 7 lakh.

However, TCS u/s 206C(1G) would not be applicable, if the buyer is an individual who is not a resident in India [in terms of section 6(1) and (1A)]; and who is visiting India.

Mr. Devansh, an Indian citizen living in New York, came on a visit to India during the P.Y. 2023-24. He does not have any source of income in India. During that previous year, he stayed in India for only 39 days (14 days in February + 25 days in March). Since his stay in India during the P.Y.2023-24 is less than 182 days, he is non- resident in India for the said previous year.

Accordingly, in this case, since Mr. Devansh is a non-resident who is visiting India, M/s. Journey trip, the tour package operator, is not required to collect tax at source under section 206C(1G) on the amount of ₹ 6 lakh received from him for purchase of tour programme package to Malaysia.

(2) For the provisions of section 194Q to be attracted, a buyer is required to have a total sales or gross receipts or turnover from the business carried on by it exceeding ₹ 10 crore during the financial year immediately preceding the financial year in which the purchase of goods is carried out. The CBDT has, vide Circular No. 13/2021, dated 30.6.2021, clarified that since this condition would not be satisfied in the year of incorporation, the provisions of section 194Q shall not apply in the year of incorporation. Since XYZ Ltd. is incorporated in the P.Y. 2023-24, it would not qualify as a "buyer" for the purpose of section 194Q for the said previous year, inspite of its turnover exceeding ₹ 10 crores in the said previous year.

However, since White Ride's turnover for the F.Y. 2022-23 exceeds ₹ 10 crores and its receipts from XYZ Ltd. exceed ₹ 50 lakhs, TCS provisions under section 206C(1H) would be attracted in its hands. TCS would be attracted at the time of receipt of consideration (i.e., in respect of receipts in excess of sale consideration of Rs.50 lakhs).

No tax is to be collected u/s 206C(1H) on 1.9.2023, since the aggregate receipts till that date i.e., ₹ 25 lakhs, has not exceeded the threshold of ₹ 50 lakhs.

Tax of ₹ 500 (i.e., 0.1% of ₹ 5 lakhs) has to be collected u/s 206C(1H) by M/s White Ride on 15.10.2023 (₹ 30 lakh – ₹ 25 lakhs, being the balance unexhausted threshold limit).

Tax of ₹ 1,500 (i.e., 0.1% of ₹ 15 lakhs) has to be collected u/s 206C(1H) by M/s. White Ride on 15.1.2024

Question-50 : [PP NOV 22]

In respect of the following independent case scenarios, you are required to discuss the provisions related to tax deducted at source for the year ended 31st March, 2024:

(i) Tam Electronics Ltd., an Indian company, imports certain computer software from Jam Electronics Inc., a non-resident company based in USA for reselling it to the end users in India. During the F.Y. 2023-24, Tam Electronics Ltd. paid a sum of ₹ 85 crores to Jam Electronics Inc.

(ii) DEHP Ltd., a public sector bank in India, paid ₹ 20 crores to M/s NFGS Ltd., an organisation that provides ATM networks to the banks as commission for facilitating ATM credit/debit cards. NGFS Ltd. also facilitates online convenience banking. It links together the country's ATM in a single network.

(iii) Mr. A received an order from PQR Ltd. to stich T-shirts. To complete such order, he purchased cloth of ₹ 35 lakhs from Fashion Ltd. on 24th May 2023. He stitched T-shirts as per given specifications and supplied to PQR Ltd. He raised a consolidated invoice in the following manner:
Sale of 8000 T-shirts @ ₹ 500 each = ₹ 40,00,000
Fashion Ltd. is closely related to PQR Ltd. as specified under section 40A(2)(b).

(iv) Mr. David, a Canadian citizen and a non-resident sportsman, received the following sums during the F.Y. 2023-24 from India:
(i) Income from participation in matches ₹ 4,58,000
(ii) Honorarium from writing an article related to sports for a sports magazine1,25,000**.(8 Marks)**

Solution :

(i) For the payment in question, since the payment has been made to a non-resident, applicability of TDS will have to be considered as per the provisions of section 195. The obligation to deduct tax at source u/s 195 arises only in respect of any sum chargeable to tax in India.

As per Explanation 4 to section 9(1)(vi) of the Income-tax Act, 1961, "royalty" includes transfer of all or any right for use or right to use a computer software. Hence, royalty payable by a resident in India to a non-resident company based in USA for the purposes of importing computer software for reselling to end users in India would be deemed to accrue or arise in India in the hands of the non-resident company, and hence, would be chargeable to tax in India in its hands. There being income chargeable to tax in India, TEL is required to deduct tax at source under section 195 at the rates in force as per the provisions of the Income-tax Act, 1961

However, as per India-USA DTAA, since Tam Electronics Ltd. (TEL) resells the computer software purchased from Jam Electronics Inc. to resident Indian end- users without modification, the amount paid by Tam Electronics Ltd. to Jam Electronics Inc. for purchase of computer software is not royalty, due to absence of provision akin to Explanation 4 to section 9(1)(vi) in the DTAA including such payment within the definition of royalty. It was so held by the Supreme Court in Engineering Analysis Centre of Excellence P. Ltd v. CIT and Another (2021) ITR 471.

As per section 90(2), where India has entered into a DTAA with a country outside India, the provisions of the Income-tax Act, 1961 will apply only to the extent they are more beneficial to the assessee. In this case, since the DTAA provisions are more beneficial to TEL, the same will prevail over the provisions of the Income-tax Act, 1961. Accordingly, there being no income chargeable to tax in India, TEL is not required to deduct tax at source.

(ii) The relationship between the DEHP Ltd., a public sector bank, and M/s NFGS Ltd., is not of an agency but that of two independent parties on principal-to-principal basis. Therefore, TDS provisions under section 194H would not be attracted on commission payment made by DEHP Ltd., a public sector bank to M/s NFGS Ltd. for ATM network services provided by it. It was so held in CIT and another vs. Corporation Bank (2021) 431 ITR 554 (Kar).
Also, section 194J will not apply is case of provision of ATM network services. since the same takes place without manual or human intervention.

(iii) Tax is required to be deducted under section 194C by PQR Ltd. on payment for stitching of T-shirts to Mr. A,
- since the supply of t-shirts is as per the specification of PQR Ltd. and the cloth is purchased from Fashion Ltd., which is an associate of PQR Ltd, specified under section 40A(2), and
- Since a consolidated invoice has been raised, tax would be deducted on the entire amount, including the cost of purchases.

Tax rate would be deducted@1% under section 194C since the contractor is an individual. Therefore, tax to be deducted = ₹ 40,00,000 x 1% = ₹ 40,000.

(iv) Tax is to be deducted under section 194E at 20% on amount payable to a non- resident sportsman who is not a citizen of India for participation in matches and honorarium for writing an article related to sport for a sports magazine.

Further, since Mr. David, a Canadian citizen, is a non-resident, health and education cess@4% on TDS should also be added. Thus the effective TDS rate will be 20.8%

Tax to be deducted = (₹ 4,58,000 + ₹ 1,25,000) x 20.80% = ₹ 95,264 +26,000 = ₹ 1,21,264.

Question-51 : [MTP 1 MAY 23]

Examine and compute the liability for deduction of tax at source, if any, in the cases stated hereunder, for the financial year ended 31st March, 2024:

(i) On 20.6.2023, Mr. X, a resident, made three separate transactions for acquiring house property at Mumbai from Mr. Y for a consideration of ₹ 90 lakhs, an urban plot in Kolkata from Mr. C for a sum of ₹ 49,50,000 and rural agricultural land from Mr. D for a consideration of 60 lakhs. Stamp duty value of house property, plot and rural agricultural land is ₹ 95 lakhs, 48 lakhs and ₹ 65 lakhs.

(ii) On 17.6.2023, a commission of ₹ 50,000 was retained by the consignee 'ABC Packaging Ltd.' and not remitted to the consignor 'XYZ Developers', while remitting the sale consideration.

(iii) Raj (aged 35 years) is working with AB Ltd. He is entitled to a salary of ₹ 55,000 per month w.e.f. 1.4.2023. He has a house property which is self-occupied. He paid an interest of ₹ 80,000 on loan during the previous year 2023-24. The loan was taken for construction of house. He has notified his employer AB Ltd. that there will be a loss of ₹ 80,000 in respect of this house property for financial year ended 31.3.2024. Raj is opting out of the provisions of section 115BAC.

(iv) Mr. Anand has been running a sole proprietary business with turnover of ₹ 202 lakhs for the A.Y.2023-24. He pays a monthly rent of ₹ 15,000 for the office premises to Mr. R, the owner of building. Besides, he also pays service charges of ₹ 6,000 per month to Mr. R towards the use of furniture, fixtures and vacant land appurtenant thereto. **(8 Marks)**

Solution :

		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 transferor account or payment, whichever is earlier.		95,000
	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.		Nil
	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.		Nil

	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.		
(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: Income under the head salaries (55,000 x 12) Less: Standard deduction under section 16(ia) Income under the head "house property" Gross total income Less: Deduction under Chapter VI-A Total Income Tax on ₹ 5,30,000 Add: Health and Education cess@4% Tax to be deducted at source	6,60,000 50,000 6,10,000 -80,000 5,30,000 Nil 5,30,000 18,500 740 19,240	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. 2022-23, he is liable to deduct tax at source under section 194-I in respect of rental payments during the financial year 2023-24. 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 2023-24 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

Question-52 : [MTP 2 MAY 23]

Examine in the following cases the obligation of the person paying the income in respect of tax deduction at source:

(i) MNO Ltd., the employer, credited salary due for the financial year 2023-24 amounting to 5,40,000 to the account of Q, an employee, employed on 15.1.2024 in its books of account on 31.3.2024. Q has not furnished any information about his income/loss from any other head or proof of investments/ payments qualifying for deduction under section 80C.

(ii) T, an individual whose total sales in business during the year ended 31.3.2023 was 2.20 crores, paid ₹ 9 lacs by cheque on 1.1.2024 to a contractor (an individual), for construction of his factory building. No amount was credited earlier to the account of the contractor in the books of T.

(iii) BCD Ltd. credited ₹ 28,000 towards fees for professional services and ₹ 27,000 towards fees for technical services to the account of HG in its books of account on 6.10.2023. The total sum of ₹ 55,000 was paid by cheque to HG on 18.12.2023.

(iv) By virtue of an agreement with a nationalised bank, a catering organisation receives a sum of 50,000 per month towards supply of food, water, snacks etc. during office hours to the employees of the bank.

(8 Marks)

Solution :

(i) Section 192 requires deduction of tax from salary at the time of payment. Thus, the employer is not required to deduct tax at source when salary has not been paid but is merely credited to the account of the employee in its books of account. MNO Ltd. therefore, is not required to deduct tax at source in respect of the salary merely credited to the account of employee Q which is not paid.

If salary has been paid during the year to Q, then, MNO Ltd has to obtain from Q, the evidence/proof/particulars of prescribed claims (including claim for set-off of loss) under the provisions of the Act in such form and manner as may be prescribed.

If Q has not furnished any information about his income/loss under any other head or proof of investments/expenditure qualifying for deduction under section 80C, then, the employer has to deduct tax without considering any claim for any expenditure or set-off of losses or deduction under section 80C.

(ii) An individual who has total sales, gross receipts or turnover from the business carried on by him exceeding ₹ 1 crore in the immediately preceding financial year i.e., F.Y. 2022-23, is liable to deduct tax at source under section 194C for the financial year 2023-24 in respect of the payment made to contractor exceeding ₹ 30,000 in a single contract and ₹ 1,00,000 in aggregate of contracts during the financial year. Since, turnover of the individual T is ₹ 2.20 crores in the financial year 2022-23 and as the payment during financial year 2023-24 to the contractor has exceeded the limits prescribed in section 194C, tax has to be deducted under section 194C.

The rate of tax deduction is 1% as the contractor is an individual.

(iii) The limit of ₹ 30,000 for non-deduction of tax under section 194J would apply separately for fees for professional services and fees for technical services. This means that if a person has rendered services falling under both the categories, tax need not be deducted if the fee for each category does not exceed ₹ 30,000 even though the aggregate of the amounts credited to the account of such person or paid to him for both the categories of services exceed ₹ 30,000. Therefore, BCD Ltd. is not required to deduct tax at source in respect of the fees either at the time of credit or at the time of payment.

(iv) The definition of "work" under Explanation to section 194C includes catering services and therefore, TDS provisions under section 194C are attracted in respect of payments to a caterer. As the payment exceeds ₹ 30,000, the nationalised bank is required to deduct tax at source at 2% on the payments made to catering organisation. If the catering organization is an individual or HUF, then the tax deduction shall be made @1%.

Question-53 : [PP May 23]

i. During the previous year 2023-24, Mr. A purchased scrap of ₹ 55 lakhs from Mr. B for the purpose of his manufacturing unit. Mr. A also furnished a certificate to Mr. B that the scrap shall be utilized for manufacturing process carried on by Mr. A and shall not be used for trading purposes. Mr. A made the payment of ₹ 45 lakhs during F.Y 2023-24 to Mr. B. Assume turnover of both Mr. A and Mr. B from the business carried on by them exceeds ₹ 10 crores in the financial year 2022-23. Comment upon TDS/ TCS implication in the above case. (3 Marks)

ii. Mr. P provides technical consultancy to its various clients who deduct tax u/s 194-J of the Act. Mr. P applies for lower tax deduction certificate u/s 197 from the TDS officer in respect of his receipts from consultancy. During the previous year 2023-24, Mr. P was issued the lower tax deduction certificate allowing him to receive the consultancy payments after deduction of tax@1%. Mr. P forwarded this certificate to his client Mr. Q asking him to deduct tax@1% on the payments of ₹ 15 lakhs to be made to Mr. P.

Mr. Q has approached you to advise on the amount of tax to be deducted from the payment to be made to Mr. P. You gathered the information that Mr. P is not filing his ITRs for the last two Assessment years and TDS credit in his 26AS is more than ₹ 1 lakh in each last two years i.e. A.Y. 2022-23 and 2023-24. What would be your advice to Mr. Q? (3 Marks)

iii. Ms. Roshni sold her house property at Delhi to Ms. Shalini for a consideration of ₹ 60 lakhs on 1.8.2023. She has purchased the house property on 1.4.2015 for ₹ 36 lakhs. The Stamp duty value of the property on the date of sale i.e., 1.8.2023 is ₹ 82 lakhs.

Determine the TDS implications in the hands of Ms. Shalini as per the Income-tax Act, 1961, assuming both Roshni and Shalini are resident individuals. **(2 Marks)**

Solution :

i. By virtue of section 206C(1A), Mr. B is not required to collect tax at source under section 206C(1), since Mr. A has furnished a certificate to Mr. B that the scrap purchased from him is for manufacturing process carried on by him and not for trading purposes.
However, as clarified vide Circular no. 13/2021 dated 30.6.2021 and Circular No. 20/2021 dated 25.11.2021, TDS under section 194Q will be attracted in the hands of the buyer in such cases covered under section 206C(1A), if the conditions specified under section 194Q are fulfilled.

In this case, tax is required to be deducted at source under section 194Q by the buyer, Mr. A, since his turnover in the immediately preceding financial year i.e., F.Y.2022-23 exceeds ₹ 10 crores and he has purchased goods of the value or aggregate of such value exceeding ₹ 50 lakhs in the F.Y.2023-24. TDS u/s 194Q would be 0.1% of the sum exceeding ₹ 50 lakhs and the same has to be deducted at the time of payment or credit of such sum to the account of resident seller, whichever is earlier.

Therefore, in the present case, Mr. A is required to deduct tax at source @ 0.1% of ₹ 5,00,000, being the amount exceeding ₹ 50 lakhs (₹ 45,00,000, being the payment made plus ₹ 10 lakhs, being the amount credited to the account of Mr. B).

Note: It may be noted that section 206C(1H) would not apply where section 194Q is applicable.

ii. As per section 194J, Mr. Q is required to deduct tax at source @2% on ₹ 15 lakhs in respect of payment for technical consultancy to Mr. P. However, since Mr. P has furnished lower tax deduction certificate issued under section 197 specifying lower rate of 1% to Mr. Q, tax would be deducted at such lower rate of 1%.

However, as per section 206AB, since Mr. P has not furnished his return of income for A.Y.2022-23 / A.Y.2023-24 relevant to the P.Y. 2021-22/P.Y.2022-23, respectively, and the aggregate of TDS and TCS in his case is ₹ 1 lakh in the said previous year, which is more than the threshold of ₹ 50,000, Mr. Q is required to deduct tax at source on payment of fees for technical consultancy to Mr. P, at higher of inter alia the following rates –

(i) at twice the rate prescribed in the relevant provisions of the Act i.e., 4% [being twice the rate of 2% applicable under section 194J] [Alternatively, since tax is deductible as per lower tax deduction certificate issued under section 197, rate of 2% may be mentioned in the answer];

(ii) at 5%

Accordingly, Mr. Q is required to deduct tax at source @5% on ₹ 15 lakhs, being the amount paid as technical consultancy fees.

Note - The above answer is on the basis that receipts from technical consultancy represents fees for technical services attracting TDS@2%. It may be noted that "technical consultancy" is also covered under the definition of "Professional Services" under section 194J. The rate of TDS for Fees for professional services is 10%. If receipts from technical consultancy is treated as fees for professional services, the TDS rate applying section 206AB would be 20%, being the higher of 5% or twice the applicable rate of 10%. This is an alternate view possible since technical consultancy is also included in the definition of "Professional Services" under section 194J.

iii. In the case of transfer of any immovable property and the transferor is a resident, where the consideration or the stamp duty value, whichever is higher, exceeds ₹ 50 lakhs, tax is deductible at source @1%.
As per section 194-IA, Ms. Shalini, being a resident transferee paying ₹ 60 lakhs to Ms. Roshni, a resident transferor, as consideration for transfer of house property at Delhi, is required to deducted tax at source @1% on ₹ 82 lakhs, being the higher of Stamp duty value of ₹ 82 lakhs or consideration of ₹ 60 lakhs.

Therefore, tax to be deducted = ₹ 82,00,000 x 1% = ₹ 82,000.

Question-54 : [MTP 1 Nov 23]
Examine in the following cases the obligation of the person paying the income in respect of tax deduction at source:

(i) An Indian company pays gross salary including allowances and monetary perquisites amounting to ₹7,30,000 to its General Manager. Besides, the company provides non- monetary perquisites to him whose value is estimated at ₹ 1,20,000. General manager is opting out of the provisions of section 115BAC.

(ii) A notified infrastructure debt fund eligible for exemption under section 10(47) of the Income- tax Act, 1961 pays interest of ₹ 5 lakhs to a company incorporated in USA. The US Company incurred expenditure of ₹ 12,000 for earning such interest. The fund also pays interest of ₹ 3 lakhs to Mr. X, who is a resident of a notified jurisdictional area.

(iii) Max Limited pays ₹ 1,02,000 to Mini Limited, a resident contractor who, under the contract dated 15th October, 2023, manufactures a product according to specification of Max Limited by using materials purchased from Max Limited.

(iv) A company operating a television channel makes payment of ₹ 5 lakh to a former Indian cricketer on 10th March, 2024 for making running commentary of a one-day cricket match.

(8 Marks)

Solution :

i.

	₹
Gross salary, allowances and monetary perquisites	7,30,000
Non-Monetary perquisites	1,20,000
Non-Monetary perquisites	8,50,000
Less: Standard deduction under section 16(ia)	50,000
	8,00,000
	75,400
Average rate of tax (₹ 75,400 / ₹ 8,00,000 × 100)	9.425%

The company can deduct ₹ 75,400 at source from the salary of the General Manager at the time of payment.
Alternatively, the company can pay tax on non-monetary perquisites as under –
Tax on non-monetary perquisites = 9.425% of ₹ 1,20,000 = ₹ 11,310 Balance to be deducted from salary = ₹ 64,090
If the company pays tax of ₹ 11,310 on non-monetary perquisites, the same is not a deductible expenditure as per section 40(a)(v). The amount of tax paid towards non- monetary perquisite by the employer, however, is not chargeable to tax in the hands of the employee as per section 10(10CC).

ii. As per section 194LB, tax would be deductible@5% on gross interest paid/credited by a notified infrastructure debt fund, eligible for exemption under section 10(47), to a foreign company.

In the first case, since the payment is to a foreign company, health and education cess @4% has to be added to the applicable rate of TDS. Therefore, the tax deductible under section 194LB would be ₹ 26,000 (i.e., 5.20% of ₹ 5 lakhs).

However, in case the notified infrastructure debt fund pays interest to a person who is a resident of a notified jurisdictional area, section 94A will apply. Accordingly, tax would be deductible @30% (plus health and education cess@4%) under section 94A, even though section 194LB provides for deduction of tax at a concessional rate of 5%. Therefore, the tax deductible in respect of payment of ₹ 3 lakh to Mr. X, who is a resident of a notified jurisdictional area, would be ₹ 93,600, being 31.2% of ₹ 3,00,000

iii. The definition of "work" under section 194C includes manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer or its associate. In the instant case, Mini Limited manufactures the product as per the specification given by Max Limited by using the raw materials purchased from Max Limited. Therefore, it falls within the definition of "work" under section 194C. Consequently, tax is to be deducted on the invoice value excluding the value of material purchased from such customer if such value is mentioned separately in the invoice. If the material component is not mentioned separately in the invoice, tax is to be deducted on the whole of the invoice value.

iv. Provisions for deduction of tax at source under section 194J are attracted in respect of payment of fees for professional services, if the amount of such fees exceeds ₹ 30,000 in the relevant financial year. The service rendered by a commentator in relation to sports activities has been notified by the CBDT as a professional service for the purposes of section 194J vide its Notification No. 88 dated 21st August, 2008. Therefore, tax is required to be deducted @10% from the fee of ₹ 5 lakhs payable to the former cricketer.

Question-55 : [RTP Nov 23]

ABC Ltd. held a dealer conference on 22nd and 23rd August, 2023 in Cochin to educate the dealers about the new product being launched by it and how the product is better than the similar products of other companies available in the market. The spouse was allowed to accompany the dealer and they could stay in the hotel from 20th August, 2023 (being a Saturday). Leisure trip was organised for dealers and their spouse on 20th and 21st August, 2023, being the weekend. The expenses on airfare, hotel stay and leisure trip of all dealers and their spouse was met by ABC Ltd

The break-up of the expenditure incurred by ABC Ltd. in relation to Mr. Ashok Sharma, a dealer, for the purpose of the above dealer conference, is as follows –

	Particulars of expenses	**₹**
(i)	To and fro airfare for Mr. Ashok Sharma from New Delhi	25,000
(ii)	To and fro airfare for Mrs. Ashok Sharma from New Delhi	25,000
(iii)	Hotel stay (including breakfast and dinner) for Mrs. and Mr. Ashok Sharma on 20th and 21st August, 2023 [The expenditure was equal for each person and each day]	30,000
(iv)	Hotel stay (including breakfast and dinner) for Mrs. and Mr. Ashok Sharma on 22nd and 23rd August, 2023 [The expenditure was equal for each person and each day]	28,000
(v)	Expenses for leisure trip on 20th and 21st August, 2023 attributable to Mr. and Mrs. Ashok Sharma [The expenditure was equal for each person and each day]	22,000
(vi)	Conference expenses on 22nd and 23rd August, 2023 attributable to Mr. Ashok Sharma	20,000

What would be the value of benefit or perquisite to Mr. Ashok Sharma on which tax is deductible at source under section 194R?

(a) ₹ 65,000
(b) ₹ 77,000
(c) ₹ 83,500
(d) ₹ 91,000

Question-56 : [RTP Nov 23]

Examine the applicability of provisions relating to deduction/collection of tax at source in the following cases for the financial year ended 31st March, 2024 as per provisions contained in the Income-tax Act, 1961:

(i) Delta Ltd., an Indian company, which was incorporated on 1.4.2023 purchases coal from Phi Ltd., another Indian company, for ₹ 75 lakhs during the P.Y.2023-24, to manufacture steel. Delta Ltd. furnishes a declaration that such coal is used to manufacture steel and not for trading. What are the TCS/TDS implications on such transaction, if Delta Ltd.'s turnover was ₹ 12 crores in the P.Y.2023-24; and Phi Ltd.'s annual turnover ranges between ₹ 16 crores and ₹ 18 crores in the last few years? Would your answer change if Delta Ltd. was incorporated on 1.4.2022 and its turnover in the P.Y.2022-23 is ₹ 10 crores?

(ii) Sigma Ltd., a car manufacturer, sold the following cars to the car dealers, Epsilon Ltd. and Omega Ltd., in the P.Y.2023-24.

Dealer	**Particulars of cars sold**	**Value**
Epsilon Ltd.	10 cars of the value ₹ 12 lakhs each	₹ 120 lakhs
Omega Ltd.	8 cars of the value of ₹ 10 lakhs each	₹ 80 lakhs

The turnover in the P.Y.2022-23 of Sigma Ltd. is ₹ 12 crores, Epsilon Ltd. is ₹ 14 crores and Omega Ltd. is ₹ 9 crores.

Solution :

i. As per section 206C(1A), since Delta Ltd., a resident buyer, has furnished a declaration that coal is used for manufacturing steel and not for trading, Phi Ltd. is not required to collect tax at source under section 206C(1). In case of goods covered under section 206C(1) but exempted under section 206C(1A), tax would not be collectible under section 206C(1H). However, section 194Q will apply in such cases covered under section 206C(1A) and the buyer would be liable to deduct tax under section 194Q, if the conditions specified therein are fulfilled.

However, for the provisions of section 194Q to be attracted, a buyer is required to have total sales or gross receipts or turnover from the business carried on by it exceeding ₹ 10 crores during the financial year immediately preceding the financial year in which the purchase of goods is carried out. The CBDT has, vide Circular No. 13/2021, dated 30.6.2021, clarified that since this condition would not be satisfied in the year of incorporation, the provisions of section 194Q shall not apply in the year of incorporation. Since Delta Ltd. is incorporated in the P.Y. 2023 -24, it would not qualify as a "buyer" for the purpose of section 194Q for the said previous year, inspite its turnover exceeding ₹ 10 crores in the current previous year.

Thus, the transaction would neither attract TDS u/s 194Q nor TCS u/s 206C.

The answer would not change even if Delta Ltd. was incorporated on 1.4.2022 and its turnover in the P.Y.2022-23 is ₹ 10 crores, since the said turnover does not exceed ₹ 10 crores.

ii. The first step is to examine the applicability of section 206C(1F). Section 206C(1F) requiring collection of tax at source@1% by the seller of motor car of value exceeding ₹ 10 lakhs does not, however, apply in case of sale by manufacturer to a dealer. Hence, the provisions of section 206C(1F) are not attracted in case of sale of cars by Sigma Ltd., a car manufacturer, to its dealers Epsilon Ltd. and Omega Ltd.

The second step is to examine whether the provisions of section 194 Q would be attracted in the hands of the dealers, namely, Epsilon Ltd. and Omega Ltd. Since the turnover of Epsilon Ltd. in the P.Y.2022-23 exceeds ₹ 10 crore and the value of cars purchased from Sigma Ltd. in the P.Y.2023-24 exceeds ₹ 50 lakhs, Epsilon Ltd. has to deduct tax@0.1% of ₹ 70 lakhs (i.e., ₹ 120 lakhs – ₹ 50 lakhs), at the time of credit to the account of Sigma Ltd. or at the time of payment, whichever is earlier. However, Omega Ltd. is not required to deduct tax at source under section 194Q, since its turnover in the P.Y.2022-23 does not exceed ₹ 10 crores.

The third step is to examine whether the provisions of section 206C(1H) would be attracted in the hands of Sigma Ltd. Sigma Ltd.'s turnover for P.Y.2022-23 exceeds ₹ 10 crores and the value of cars sold to Epsilon Ltd. and Omega Ltd. exceed ₹ 50 lakhs each. Hence, it falls within the meaning of "seller" under section 206C(1H). Accordingly, in respect of sale of cars to Omega Ltd., Sigma Ltd. is required to collect tax@0.1% of ₹ 30 lakhs (i.e., ₹ 80 lakhs – ₹ 50 lakhs) at the time of receipt. However, no tax is to be collected by Sigma Ltd. from Epsilon Ltd., since the transaction has already been subject to TDS u/s 194Q in the hands of Epsilon Ltd.

Question-57 : [RTP Nov 23]

M/s.LMN Travels is a Travel Agent engaged in sale of air tickets of AirGo and AirJet Airlines. It earns standard commission@5% as well as supplementary commission. AirGo and AirJet have deducted tax at source under section 194H on the standard commission, which is a fixed percentage designated by the International Air Transport Association (IATA). However, they have not deducted tax on the supplementary commission, which is the additional amount LMN Travels charges over and above the net fare quoted by AirGo and AirJet and retained by LMN Travels as its own income.

The details of the amounts at which the tickets were sold are transmitted by LMN Travels to an organization known as the Billing and Settlement Plan ("BSP") which functions under the aegis of the IATA. This auxiliary amount charged on top of the net fare was portrayed on the BSP as a "supplementary commission" in the hands of LMN Travels. The contract between LMN Travels and the airlines stated that “all monies” received by LMN Travels were held as the property of the air carrier until they were recorded on the billing and settlement plan and properly gauged.

AirGo and AirJet contended that tax is not deductible on supplementary commission which LMN Travels retains out of the sale proceeds of the air tickets, since there is no agency relationship between the airlines and LMN Travels and that the supplementary commission is not within the control of the airlines. Discuss the correctness of the above contention.

Solution :
The issue under consideration in this case is whether TDS under section 194H is attracted in respect of both standard and supplementary commission paid by AirGo and AirJet Airlines to LMN Travels. This issue came up before the Supreme Court in Singapore Airlines Ltd / KLM Royal Dutch Airlines v. CIT / British Airways Plc v. CIT (TDS) (2023) 49 ITR 203.

The Supreme Court observed that section 194H does not distinguish between direct and indirect payments. Both standard commission and supplementary commission fall within the meaning of “commission” under clause (i) of the Explanation thereto.

Section 194H is to be read with section 182 of the Contract Act, 1872. If a relationship between two parties as culled out from their intentions as manifested in the terms of the contract between them indicates the existence of a principal-agent relationship as defined under section 182 of the Contract Act, the definition of “commission” under section 194H stands attracted and the requirement to deduct tax at source arises.

The Apex Court noted that there was no transfer in terms of the title in the tickets and they remained the property of the airline company throughout the transaction. Every action taken by the travel agents is on behalf of the air carriers and the services they provide is with express prior authorization. Accordingly, the Apex Court concluded that the contract is one of agency that does not distinguish in terms of stages of the transaction involved in selling flight tickets. The accretion of the supplementary commission to the travel agents was an accessory to the actual principal-agent relationship. Notwithstanding the lack of control over the actual fare, the contract definitively stated that “all monies” received by the agent were held as the property of the air carrier until they were recorded on the bill ing and settlement plan and properly gauged. The billing and settlement plan also demarcated “supplementary commission” under a separate heading.

Hence, once the IATA made the payment of the accumulated amounts shown on the billing and settlement plan, it would be feasible for the assessees, being the airlines to deduct tax at source on this additional income earned by the agent.

Applying the rationale of the Supreme Court ruling to the case on hand, the contention of AirGo and AirJet is not correct and they are required to deduct tax at source under section 194H on both the standard commission and supplementary commission paid to LMN Travels.

Extra Page

CHAPTER 14
INCOME TAX AUTHORITIES

Part-A : Study Material Questions

Question-1 :
Rajesh regularly files his return of income electronically. While he was trying to upload his return of income for assessment year 2023-24 on 31st July, 2023, he found it extremely difficult to do the same due to network problems and ultimately, he became successful in making e-filing of his return only at 1 a.m. on 1st August,2023. The return contained a claim for carry forward of business loss of ₹ 3.10 crores. This circumstance was recorded in an e-mail addressed to the competent income-tax authority on 1st August, 2023. Rajesh made a request to the CBDT for condonation of delay in filing the return of income.

Discuss whether the CBDT has the power to condone the delay in filing the return of income and permit carry forward of loss in the given circumstance.

Would your answer change, if the return contained a claim for carry forward of business loss of ₹ 2.7 crores.

Solution :
Section 119(2)(b) empowers the CBDT to authorise any income tax authority to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after the expiry of the period specified under the Act, to avoid genuine hardship in any case or class of cases. The claim for carry forward of loss in case of late filing of a return is relatable to a claim arising under the category of "any other relief available under the Act". Therefore, the CBDT has the power to condone delay in filing of such loss return due to genuine reasons.

The facts of the case are similar to the case of Lodhi Property Company Ltd. v. Under Secretary, (ITA-II), Department of Revenue (2010) 323 ITR 0441, where the Delhi High Court held that the Board has the power to condone the delay in case of a return which was filed late and where a claim for carry forward of losses was made. The delay was only one day and the assessee had shown justifiable reason for the delay of one day in filing the return of income. If the delay is not condoned, it would cause genuine hardship to the assessee. Therefore, the Court held that the delay of one day in filing of the return had to be condoned.

The CBDT Circular No. 9/2015 dated 09.06.2015 specified the monetary limits along with following authorities to be approached for this purpose. The said monetary limits are revised w.e.f. 1.6.2023 vide Circular No.7/2023 dated 31.5.2023 prescribed as under:

Quantum of claim	**Concerned Income-tax Authority**
Where the claim is upto ₹ 50 lakhs for one A.Y.	Principal CIT or CIT
Where the claim is above ₹ 50 lakhs but upto ₹ 2 crores for any one A.Y.	CCIT
Where the claim is above ₹ 2 crores but upto ₹ 3 crores for any one A.Y.	Principal CCIT
Where the claim is above ₹ 3 crores	CBDT

Applying the rationale of the above court ruling and the clarification given in CBDT Circular to the case on hand, the CBDT has the power to condone the delay in filing the return of income of Mr. Rajesh and permit carry forward of business loss of ₹ 3.10 crores, since the delay of one hour was due to a genuine and justifiable reason i.e., network problem while e-filing the return.

Based on the circular mentioned above, if the claim for carry forward of business loss is ₹ 2.7 crores, then, the Principal Chief Commissioner of Income-tax has the power to condone the delay.

Question-2 :
Examine the correctness of the statement "the jurisdiction of an Assessing Officer cannot be objected by the assessee".

Solution :
According to section 124(3), the assessee can raise a question as to the jurisdiction of an Assessing Officer within the prescribed time limit as under:

(i) **where a return has been filed** under section 139(1) then, within one month from the date of service of notice under section 142(1) or section 143(2) or before the completion of assessment, whichever is earlier.

(ii) **where no return has been filed,** then, within the expiry of time allowed by the notice under section 142(1) or section 148 for filing the return or within the time allowed in show cause notice issued seeking as to why a best judgment assessment under section 144 should not be made, whichever is earlier.

(iii) where search is initiated under section 132 or books of accounts, other documents or any assets are requisitioned under section 132A, within one month from the date on which he was served with a notice under section 153A(1) or 153C(2)[4] or before the completion of assessment, whichever is earlier.

[4] Section 153A deals with assessment in case of search, initiated under section 132 or books of accounts or other documents or any assets requisitioned under section 132A before 1.4.2021. Section 147 contains the provisions for assessment in case of search initiated or books of accounts or other documents or any assets requisitioned on or after 1.4.2021.

Where the assessee calls in question the jurisdiction of an Assessing Officer and the Assessing Officer is not satisfied with such claim, he shall refer the matter for determination by the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner before the assessment is made.

Therefore, in view of the above provisions, the statement that "the jurisdiction of an Assessing Officer cannot be objected by the assessee" is not correct.

Question-3 :
The Director General of Income-tax after getting the information that Mr. Mogambo is in possession of unaccounted cash of ₹ 50 lacs, issued orders by invoking powers vested in him as per section 131(1A), for its seizure. Is the order for seizure of cash issued by the Director General of Income-tax correct? If not, does the Director General of Income-tax have any other power to seize such cash?

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

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

Question-4 :
The premises of Ganesh were subjected to a search under section 132 of the Act. The search was authorized and the warrant was signed by the Joint Commissioner of Income-tax having jurisdiction over the assessee, consequent to information in his possession. The assessee challenged the validity of search on the ground that section 132(1) does not empower Joint Commissioner to authorise a search under the Act. Decide the correctness of the contention raised by the assessee.

Solution :
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 authorisation 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 authorisation only if he has been specifically empowered to do so by the CBDT. Therefore, only if the Joint Commissioner has not been specifically empowered by the CBDT to do so, the contention of the assessee would hold good. If the Joint Commissioner has been duly empowered by the CBDT, then the contention raised by the assessee would not be valid.

Question-5 :
Examine whether the information regarding possession of unexplained assets and income received from the Central Bureau of Investigation, a Government agency, can constitute "information" for action under section 132. Discuss.

Solution :
As per section 132(1)(c), authorisation for search and seizure can take place if the authority, in consequence of information in his possession, has reason to believe that any person is in possession of money, bullion, jewellery or other valuable article or thing and these assets represent, either wholly or partly, income or property which has not been, or would not be disclosed by such person for the purposes of this Act. In the absence of such information, a search cannot be validly authorised.
The Apex Court in UOl v Ajit Jain [2003] 260 ITR 80 has held that mere intimation by the CBI that money was found in the possession of the assessee, which according to the CBI was undisclosed, without something more, does not constitute "information" within the meaning of section 132, on the basis of which a search warrant could be issued. Consequently, the Supreme Court held that the search conducted on this basis and the assessment made pursuant to such search was not valid.

Question-6 :
Cash of ₹ 25 lacs was seized on 12.9.2023 in a search conducted as per section 132 of the Act. The assessee moved an application on 27.10.2023 to release such cash after explaining the sources thereof, which was turned down by the department. The assessee seeks your opinion on, the following issues:
(i) Can the department withhold the explained money?
(ii) If yes, then to what extent and upto what period?

Solution :
The proviso to section 132B(1)(i) provides that where the person concerned makes an application to the Assessing Officer, within 30 days from the end of the month in which the asset was seized, for release of the asset and the nature and source of acquisition of the asset is explained to the satisfaction of the Assessing Officer, then, the Assessing Officer may, with the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, release the asset after recovering the existing liability under the Income-tax Act, 1961, etc. out of such asset. 'Existing liability', however, does not include advance tax payable. Such asset or portion thereof has to be released within 120 days from the date on which the last of the authorisations for search under section 132 was executed.
In this case, since the application was made to the Assessing Officer within 30 days from the end of the month in which search was conducted, the department may retain only the amount of existing liability, if any, and the balance may have to be released within 120 days from the date on which the last of the authorisations for search under section 132 was executed.

Note: It may be noted that one of the conditions mentioned above for release of an asset is that the nature and source of acquisition of the asset should be explained to the satisfaction of the Assessing Officer. However, in this case, it has been given that the assessee's application for release of the asset, explaining the sources thereof, was turned down by the Department. If the application was turned down by the Department due to the reason that it was not satisfied with the explanation given by the assessee as to the nature and source of acquisition of the asset, then, the asset (in this case, cash) cannot be released, since the condition mentioned above is not satisfied.

Question-7 :
The business premises of Ram Bharose Ltd. and the residence of two of its directors at Delhi were searched under section 132 by the DDI, Delhi. The search was concluded on 9.8.2023 and following were also seized besides other papers and records:

(i) Papers found in the drawer of an accountant relating to Shri Krishna Ltd., Mumbai indicating details of various business transactions. However, Ram Bharose Ltd. is not having any direct or indirect connection of any nature with these transactions and Shri Krishna Ltd., Mumbai and its directors.
(ii) Jewellery worth ₹ 5 lacs from the bed room of one of the directors, which was claimed by him to be of his married daughter.
(iii) Papers recording certain transactions of income and expenses having direct nexus with the business of the company for the period from 16.4.2019 to date of search. It was admitted by the director that the transactions recorded in such papers have not been incorporated in the books.

You are required to answer on the basis of aforesaid and the provisions of Act, following questions:
(a) What action the DDI shall be taking in respect of the seized papers relating to Shri Krishna Ltd., Mumbai?
(b) Whether the contention raised by the director as to jewellery found from his bed-room will be acceptable?
(c) What presumption shall be drawn in respect of the papers which indicate transactions not recorded in the books?

Solution :
(a) The authorised officer being DDI, Delhi is not having any jurisdiction over Shri Krishna Ltd., Mumbai, and therefore, as per section 132(9A), the papers seized relating to this company shall be handed over by him to the Assessing Officer having jurisdiction over Shri Krishna Ltd., Mumbai within a period of 60 days from the date on which the last of the authorisations for search was executed for taking further necessary action thereon.
(b) The contention raised by the Director will not be acceptable because as per the provisions of sub-section (4A)(i) of section 132, where any books of account, other documents, money, bullion, jewellery or other valuables are found in the possession or control of any person in the course of search, then, in respect thereof, it may be presumed that the same belongs to that person.
(c) As per section 132(4A), the presumptions in respect of the papers, indicating transactions not recorded in the books but having direct nexus with the business of the company, are that the same belong to the company, contents of such papers are true and the handwriting in which the same are written is/are of the persons(s) whose premises have been searched.

Question-8 :
In the course of search on 25.03.2024, assets were seized. Examine the procedure laid down to deal with such seized assets under the Act.

Solution :
Section 132B of the Income-tax Act, 1961 deals with the application of assets seized under section 132. Such assets will be first applied towards the existing liability under the Income-tax Act, 1961, etc. 'Existing liability', however, does not include advance tax payable. Further, the amount of liability determined on completion of assessment or reassessment or recomputation (including any penalty levied or interest payable in connection with such assessment) and in respect of which the assessee is in default or deemed to be in default, may be recovered out of such assets.

Where the nature and source of acquisition of such seized assets is explained to the satisfaction of the Assessing Officer, the amount of any existing liability mentioned above may be recovered out of such asset and the remaining portion, if any, of the asset may be released, with the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be. The release must be made within 120 days from the date on which the last of the authorisations for search under section 132 or for requisition under section 132A was executed. The assets would be released to the person from whose custody they were seized.

When the assets consist of solely of money, or partly of money and partly of other assets, the Assessing Officer may apply such money in the discharge of the liabilities referred to above and the assessee shall be discharged of such liability to the extent of the money so applied. However, the assets other than money may also be applied for the discharge of such liabilities if the complete recovery could not be made from the money seized or the money seized was not sufficient.

Question-9 :
A search under section 132 was initiated in the premises of Mr. X on 30.4.2023 and undisclosed money and jewellery belonging to Mr. X was found in his premises. Examine the penal provisions under the Income-tax Act which are attracted in this case, assuming that the undisclosed assets were acquired out of his undisclosed income of previous year 2022-23.

Solution :
In order to deter the practice of non-disclosure of income, section 271AAB(1A) provides for levy of penalty on undisclosed income found during the course of a search, which relates to specified previous year, i.e.-

- the previous year which has ended before the date of search, but the due date of filing return of income for the same has not expired before the date of search and the return has not yet been furnished (P.Y. 2022-23).
- the previous year in which search is conducted (P.Y. 2023-24).

Accordingly, under section 271AAB(1A), in respect of searches initiated on or after 15.12.2016,

- penalty@30% would be attracted, if undisclosed income is admitted during the course of search in the statement furnished under section 132(4), and the assessee explains the manner in which such income was derived, pays the tax, together with interest if any, in respect of the undisclosed income, and furnishes the return of income for the specified previous year declaring such undisclosed income on or before the specified date (i.e., the due date of filing return of income or the date on which the period specified in the notice issued under section 148 expires, as the case may be).
- In all other cases, penalty @60% of undisclosed income would be attracted.

Part-B : Additional Questions

Question-10 : [RTP may-18]
An Assessing Officer entered a hotel run by a person, in respect of whom he exercises jurisdiction, at 8.30 p.m. for the **purpose of collecting information,** which may be useful for the purposes of the Act. The hotel is kept open for business every day between 8 a.m. and 10 p.m. The hotelier claims that the Assessing Officer could not enter the hotel after sunset. The Assessing Officer wants to take away with him the books of account kept at the hotel.

Examine the validity of the claim made by the hotelier and the proposed action of the Assessing Officer with reference to the provisions of section 133B of the Income-tax Act, 1961.

Solution :
Section 133B(2) of the Income-tax Act, 1961 empowers an income-tax authority to enter any place of business during the hours at which such place is open for the conduct of business. The hotel is open from 8.00 a.m. to 10.00 p.m. for the conduct of business. The Assessing Officer entered the hotel at 8.30 p.m. which falls within the working hours. The claim made by the hotelier to the effect that the Assessing Officer could not enter the hotel after sunset is not in accordance with law.

Section 133B(3) provides that an income tax authority acting under this section shall, on no account, remove or cause to be removed from the place wherein he has entered, any books of account. In view of this clear prohibition in section 133B(3), the proposed action of the Assessing Officer to take away with him the books of account kept at the hotel is not valid in law.

Question-11 [RTP NOV-18]
The Assessing Officer within his jurisdiction surveyed a popular restaurant (bar cum restaurant) at 10.15 p.m. for the purpose of collecting information which may be useful for the purposes of the Income-tax Act, 1961. The restaurant is kept open for business every day between 8 a.m. and 11.30 p.m. The owner of the restaurant claims that the Assessing Officer could not enter the restaurant for survey after sunset. The Assessing Officer wanted to take away with him the books of account kept at the restaurant. Examine the validity of the claim made by the owner and the proposed action of the Assessing Officer.

Solution :
The Assessing Officer can exercise his power of survey under section 133A only after obtaining the approval of the higher authority, as the case may be. Assuming that he has obtained such approval in this case, he is empowered under section 133A to enter any place of business of the assessee within his jurisdiction only during the hours at which such place is open for the conduct of business.

In the case given, the restaurant is open from 8.00 a.m. to 11.30 p.m. for the conduct of business. The Assessing Officer entered the restaurant at 10.15 p.m. which falls within the working hours of the restaurant. Therefore, the claim made by the owner to the effect that the Assessing Officer could not enter the restaurant after sunset is not valid.

Further, as per section 133A(3)(ia), the Assessing Officer may, impound and retain in his custody for such period as he thinks fit, any books of account or other documents inspected by him. However, he shall not impound any books of account or other documents except after recording his reasons for doing so. He shall not retain in his custody any such books of account or other documents for a period exceeding 15 days (exclusive of holidays) without obtaining the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner or Principal Director or Director therefor, as the case may be. The proposed action of the Assessing Officer is valid provided he satisfies the stipulated conditions.

Question-12 : [PP MAY-19]
The Assessing Officer surveyed a popular cinema hall by name "Thriller" which is within his jurisdiction at 12 o' clock in the midnight for collecting information which may be useful for the purpose of Income-tax Act, 1961. The concerned cinema hall is kept open for business everyday between 9 p.m. and 1 a.m. The owner of the cinema hall claims that the A.O. could not enter his business premises after sunset and at late in the midnight. The Assessing Officer wanted to take away with him the books of account kept at the premises of the cinema hall. Examine the validity of the claim made by the owner of cinema hall and the proposed action of the Assessing Officer. **(4 Marks)**

Solution :
The Assessing Officer can exercise his power of survey under section 133A only after obtaining the approval of the higher authority, as the case may be.

Assuming that he has obtained such approval in this case, he is empowered under section 133A to enter any place of business of the assessee within his jurisdiction only during the hours at which such place is open for the conduct of business.

In the case given, the "Thriller" a popular cinema hall is open from 9.00 p.m. to 1.00 a.m. for the conduct of business. The Assessing Officer entered the cinema hall at 12 o'clock in the night which falls within the working hours of the cinema hall.

Therefore, the claim made by the owner to the effect that the Assessing Officer could not enter the cinema hall at late night is not valid.

Further, as per section 133A(3)(ia), the Assessing Officer may, impound and retain in his custody for such period as he thinks fit, any books of account or other documents inspected by him. However, he shall not impound any books of account or other documents except after recording his reasons for doing so. He shall not retain in his custody any such books of account or other documents for a period exceeding 15 days (exclusive of holidays) without obtaining the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner or Principal Director or Director therefor, as the case may be. The proposed action of the Assessing Officer is valid provided he satisfies the stipulated conditions.

Question-13 [MTP APRIL-21]
During search conducted on premises of assessee, some gold bars were seized by the department from lockers of assessee. Assessee voluntarily disclosed some income during course of search. Assessee moved an application before Assessing Officer, for adjustment of tax liability on income surrendered during search by sale of seized gold bars. However said application was turned down by the Assessing Officer. Examine whether action of the AO is justified, in light of relevant case laws. **(4 Marks)**

Solution :
As per section 132B, the amount of existing liability under the Income-tax Act and the amount of liability determined on completion of assessment under section 153A may be recovered out of assets seized under section 132. The words "existing liability" postulates a liability that is crystallized by adjudication.

Likewise, "a liability is determined" only on completion of the assessment. Until the assessment is complete, it cannot be postulated that a liability has been crystallized.

It is only when the liability is determined on the completion of assessment that it would stand crystallized and in pursuance of which a demand can be raised and recovery can be initiated. Accordingly, the assessee may make an application to the Assessing Officer within 30 days from the end of the month in which the asset was seized, for release of the assets seized.

However, in the present case, the assessee moved an application before the Assessing Officer for adjustment of tax liability on income surrendered during search by sale of seized gold bars.

In this case, assessment is not complete and the liability has not been crystallised.
Therefore, the action of the Assessing Officer in turning down the application of the assessee is in order, since the assets seized cannot be adjusted against tax liability on income surrendered during search.

Question-14 [RTP NOV-21]
The Assessing Officer, with prior approval of Commissioner of Income-tax, surveyed Good Day Cyber Café, which was within his jurisdiction, at 1 a.m. on 1.6.2023 for the purpose of obtaining information which may be relevant to the proceedings under the Income-tax Act, 1961. The Cyber Café is kept open for business every day between 2 p.m. and 2 a.m.

On 15.6.2023, the Assessing Officer entered Bright Light Cyber Café which was also within his jurisdiction at 11 p.m. for the purpose of collecting information which may be useful for the purposes of the Income-tax Act, 1961. This Cyber Café is kept open for business every day between 12 noon to 12 midnight.

In both the above cases, the Assessing Officer impounded and retained in his custody for a period of 12 days (inclusive of holidays), books of account and other documents inspected by him, after recording reasons for doing so. The Assessing Officer, however, did not take prior permission from the Commissioner for doing so.

The owners of these Cyber Cafés claim that the Assessing Officer could not enter the café after sunset and take away with him the books of account kept at the Cyber Café. Also, the owner of Bright Light Cyber Café claimed that the Assessing Officer ought to have obtained the prior approval of the Commissioner before entering the Café. Examine the validity of the claim made by the owners and the action of the Assessing Officer in both the cases.

Would your answer change if the Assessing Officer had surveyed Good Day Cyber Café only for the purpose of verifying whether tax has been deducted/collected at source in accordance with the provisions of the Income-tax Act, 1961? Examine

Solution :
Good Day Cyber Café
In this case, since he has obtained prior approval of the Commissioner, he is empowered under section 133A to enter any place of business of the Good Day Cyber Café, which was within his jurisdiction, only during the hours at which such place is open for the conduct of business. It is only in case he wishes to enter any other place, other than the place of business, he has to do so before sunset.

Good Day Cyber Cafe is open from 2.00 p.m. to 2.00 a.m. for the conduct of business. The Assessing Officer entered the cyber cafe at 1 a.m. which falls within the working hours of the cyber cafe. Therefore, the claim made by the owner of Good Day Cyber Cafe to the effect that the Assessing Officer could not enter the cyber cafe after sunset is not correct.

Further, as per section 133A(3)(ia), the Assessing Officer may, impound and retain in his custody for such period as he thinks fit, any books of account or other documents inspected by him. However, he shall not impound any books of account or other documents except after recording his reasons for doing so. He shall not retain in his custody any such books of account or other documents for a period exceeding 15 days (exclusive of holidays) without obtaining the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner or Principal Director or Director therefor, as the case may be. In this case, since the Assessing Officer has recorded his reasons for impounding and the period of retention is only 12 days (inclusive of holidays), prior approval of higher authorities is not required for this purpose.

Hence, the action of the Assessing Officer in entering the premises at 1 a.m. and impounding and retaining books of account and other documents inspected by him for 12 days is within the powers of survey conferred on him under section 133A.

However, in case the Assessing Officer had surveyed the Cyber Café only for the purpose of verifying whether tax has been deducted/collected at source in accordance with the provisions of the Income-tax Act, 1961, then, he cannot enter the Café after sunset and impound and retain books of account inspected by him, by virtue of the restrictions laid down in section 133A(2A) read with the proviso to section 133A(3).

Bright Light Cyber Café

Section 133B empowers an income-tax authority to enter any place of business during the hours at which such place is open for the conduct of business for the purpose of collecting information which may be useful for the purposes of the Income-tax Act, 1961. The Cyber Cafe is open from 12 noon to 12 midnight for the conduct of business. The Assessing Officer entered the hotel at 11 p.m. which fell within the working hours. The claim made by the Cyber Café owner to the effect that the Assessing Officer could not enter the Cyber Cafe after sunset is not in accordance with law. Also, in case of section 133B, the prior permission of Commissioner or any other higher authority is not required 4.

Section 133B(3) provides that the Assessing Officer acting under this section shall, on no account, remove or cause to be removed from the place wherein he has entered, any books of account. In view of this clear prohibition in section 133B(3), the action of the Assessing Officer in impounding and retaining with him the books of account kept at the Bright Light Cyber Cafe is not valid in law.

Question-15 RTP [Nov 23]

Consequent to search under section 132 in the premises of Mr. Ajay Verma, the Assessing Officer has in his possession, cash of ₹ 160 lakhs, which has not been recorded in the books of account and other documents maintained in the normal course of business. Mr. Ajay Verma is engaged in jewellery business and his brought forward business loss relating to A.Y.2021-22 was ₹ 90 lakhs and unabsorbed depreciation relating to that year was ₹ 30 lakhs. He wants to set-off the brought forward business loss and unabsorbed depreciation against income of ₹ 160 lakhs, represented in the form of undisclosed money discovered during search. Can he do so? Examine.

Solution :

No, he cannot do so. As per section 79A, no loss (whether brought forward or otherwise) or unabsorbed depreciation under section 32(2) can be set-off against undisclosed income included in the total income of any previous year of an assessee consequent to, inter alia, a search under section 132, while computing his total income for such previous year.

Accordingly, in this case, Mr. Ajay Verma cannot set-off the brought forward business loss of ₹ 90 lakhs and unabsorbed depreciation of ₹ 30 lakhs against the undisclosed income of ₹ 160 lakhs included in his total income of P.Y.2023-24 consequent to search u/s 132.

Extra Page

CHAPTER 15
ASSESSMENT PROCEDURE

Part-A : Study Material Questions

Question-1 :
Mr. X would like to furnish his updated return for the A.Y. 2022-23. In case he furnished his updated return of income, he would be liable to pay ₹ 2,50,000 towards tax and ₹ 35,000 towards interest after adjusting tax and interest paid at the time filing earlier return. You are required to examine whether Mr. X can furnish updated return-

(i) as on 31.3.2024
(ii) as on 28.2.2025
(iii) as on 31.5.2025

If yes, compute the amount of additional income-tax payable by Mr. X at the time of filing his updated return. Would your answer be different with respect to filing of updated return in case of (ii) above, where he has received a notice under section 147 for the said A.Y. 2022-23 on 23.7.2024.

Solution :
Mr. X may furnish an updated return of his income for A.Y. 2022-23 at any time within 24 months from the end of the relevant assessment year i.e., 31.3.2025.

Accordingly, Mr. X can furnish updated return for A.Y. 2022-23 as on 31.3.2024 and on 28.2.2025. However, he cannot furnish such return as on 31.5.2025, since such date falls after 31.3.2025.

Mr. X would be liable to pay additional income-tax

- @25% of tax and interest payable, if updated return is furnished after the expiry of the time limit available under section 139(4) or 139(5) i.e., 31st December 2022 and before the expiry of 12 months from end of relevant assessment year i.e., 31.3.2024.
- @50% of tax and interest payable, if updated return is furnished after the expiry of 12 months from end of relevant assessment year i.e., after 31.3.2024 but before the expiry of 24 months from end of relevant assessment year i.e., 31.3.2025.

Accordingly, Mr. X is liable to pay additional income-tax in case he furnished his updated return as on

(i) 31.3.2024 - ₹ 71,250 [25% of 2,85,000, being tax of ₹ 2,50,000 plus interest of ₹ 35,000]
(ii) 28.2.2025 of ₹ 1,42,500 [50% of 2,85,000, being tax of ₹ 2,50,000 plus interest of ₹ 35,000]

He cannot furnish updated return where he has received notice u/s 147, since proceeding for income escaping assessment for the A.Y. 2022-23 are pending.

Question-2 :
Teachwell Education is a trust approved under section 10(23C)(vi) which runs various educational institutions. During the course of assessment under section 143(3), the Assessing Officer finds that the trust has carried out its activities in contravention of the section under which it was approved for exemption. Hence, the Assessing Officer wants to pass an order without giving exemption under section 10, which the assessee objects. You are required to examine the following with respect to the provisions of Income-tax Act, 1961.

(a) Whether the Assessing Officer can pass an order without giving exemption under section 10?
(b) Can the Assessing Officer get any additional time limit in completing this assessment?

Solution :
(a) As per second proviso to section 143(3), if any educational institution referred to in section 10(23C)(iv) has committed any "specified violation" as mentioned under section 10(23C), the Assessing Officer shall send a reference to the Principal Commissioner or Commissioner to withdraw the approval or registration, as the case may be. Specified violation inter alia includes a case where income of the institution has been applied other than for the objects for which it is established.

No order making an assessment of the total income or loss of such educational institution shall be made by AO without giving effect to the order passed by the Principal Commissioner or Commissioner either cancelling the approval or refusing to cancel the approval of such educational institution. [under clause (ii) or clause (iii) of the fifteenth proviso to section 10(23C)]

Therefore, in the aforesaid case, the Assessing Officer can pass an assessment order without giving exemption under section 10 to Teachwell Education, which is an educational institution approved under section 10(23C)(vi), if he has referred the matter to Principal Commissioner or Commissioner and they have subsequently cancelled the approval of such educational institution under clause (ii) of fifteenth proviso section 10(23C).

(b) As per Explanation 1 to section 153, the period commencing from the date on which the Assessing Officer makes a reference to the Principal Commissioner or Commissioner under section 143(3) [second proviso to section 143(3)] and ending with the date on which the copy of the order either cancelling the approval or refusing to cancel the approval under section 10(23C) [under clause (ii) or clause (iii) of the fifteenth proviso to section 10(23C)] is received by the Assessing Officer, shall be excluded for computing the period of limitation for completing the assessment.

Further, in case the time limit available to the Assessing Officer for passing an assessment order, after such exclusion is less than 60 days, such remaining period of assessment shall be deemed to have been extended to 60 days.

Therefore, the Assessing Officer will get the above mentioned additional time for completing the assessment of Teachwell Education.

Question-3:
State with reasons whether return of income is to be filed in the following cases for the Assessment Year 2024-25:

(i) Mr. X, a resident individual, aged 80 years, has a total income of ₹ 2,85,000. He has claimed deduction of ₹ 1,50,000 under section 80C. Long-term capital gains of ₹ 80,000 is not taxable by virtue of the exemption available upto specified threshold under section 112A. Assume that he has opted for the normal provisions of the Income-tax Act. Would your answer change if Mr. X has incurred ₹ 1,05,000 towards payment of electricity bills for F.Y. 2023-24?
(ii) ABC, a partnership firm, has a loss of ₹ 10,000 during the previous year 2023-24.
(iii) A registered association, eligible for exemption under section 10(23B), has income from house property of ₹ 6,60,000. (iv) Mr.Y, aged 45 years, an employee of ABC (P) Ltd, draws a salary of ₹ 5,90,000 and has income from fixed deposits with bank of ₹ 10,000.

Solution :

S. No.	Is filing of return required?	Reason
(i)	No	As per the provisions of section 139(1), every person, whose total income without giving effect to the provisions of Chapter VI-A exceeds the maximum amount not chargeable to tax, is required to furnish the return of income for the relevant assessment year on or before the due date. The gross total income of Mr. X before giving effect to deduction of ₹ 1,50,000 under section 80C is ₹ 4,35,000, which is less than the basic exemption limit of ₹ 5,00,000 applicable to an individual aged 80 years or more. Therefore, Mr. X need not furnish his return of income for the A.Y. 2024-25.
		Yes, the answer would change, since Mr. X has incurred expenditure of an amount exceeding ₹ 1 lakh towards the consumption of electricity and he is not liable to file return of income under section 139(1). In such a case, he would have to file his return for A.Y.2024-25 on or before the due date u/s 139(1).

(ii)	Yes	As per section 139(1), it is mandatory for a firm to furnish its return of income or loss on or before the specified due date. Therefore, M/s ABC has to furnish its return of loss for the A.Y. 2024-25 on or before the due date under section 139(1), even if it has incurred a loss.
(iii)	Yes	As per section 139(4C), every institution referred to, inter alia, in section 10(23B), whose total income without giving effect to the provisions of section 10 exceeds the maximum amount not chargeable to tax, is required to furnish the return of income for the relevant assessment year on or before the due date u/s 139(2). In the above case, the registered association has income from house property of ₹ 6,60,000 before exemption under section 10, which exceeds the basic exemption limit of ₹ 3,00,000. Therefore, it is under an obligation to furnish its return of income for the A.Y. 2024-25.
(iv)	Yes	As per the provisions of section 139(1), every person, whose gross total income exceeds the maximum amount not chargeable to tax, is required to furnish the return of income for the relevant assessment year on or before the due date. Mr. Y's salary income is ₹ 5,40,000 (i.e., ₹ 5,90,000 less standard deduction of ₹ 50,000). The gross total income of Mr. Y is ₹ 5,50,000 (₹ 5,40,000 + ₹ 10,000) which exceeds the basic exemption limit of ₹ 3,00,000 applicable to an individual as per default regime of section 115BAC. Therefore, Mr. Y has to furnish his return of income for the A.Y. 2024-25.

Question-4 : The Assessing Officer issued a notice under section 142(1) on the assessee on 24th February, 2024 calling upon him to file return of income for Assessment Year 2023-24. In response to the said notice, the assessee furnished a return of loss and claimed carry forward of business loss and unabsorbed depreciation. State whether the assessee would be entitled to carry forward as claimed in the return.

Solution :
As per the provisions of section 139(3), any person who has sustained loss under the head 'Profit and gains of business or profession' is allowed to carry forward such a loss under section 72(1) or section 73(2), only if he has filed the return of loss within the time allowed under section 139(1). Also, the provisions of section 80 specify that a loss which has not been determined as per the return filed under section 139(3) shall not be allowed to be carried forward and set-off under, inter alia, section 72(1) (relating to business loss) or section 73(2) (losses in speculation business) or section 74(1) (loss under the head "Capital gains") or section 74A(3) (loss from the activity or owning and maintaining race horses) or section 73A (loss relating to a "specified business"). However, there is no such condition for carry forward of loss from house property under section 71B or unabsorbed depreciation under section 32.

In the given case, the assessee has filed its return of loss in response to notice under section 142(1). As per the provisions stated above, assessee furnished return in response to notice under section 142(1) after the due date specified under section 139(1) and therefore, the benefit of carry forward of business loss under section 72(1) or section 73(2) or section 73A shall not be available. The assessee shall, however, be entitled to carry forward the unabsorbed depreciation as per provisions of section 32(2).

Question-5 :
State whether the following assessees have to file return of income and if so, the due date for the assessment year 2024-25:
(i) A registered trade union having income from let out property of ₹ 1,00,000.
(ii) A public trust hospital having an aggregate annual receipt of ₹ 505 lacs and availing exemption of ₹3,10,000 under section 10(23C)(via) with total income of ₹ 2,40,000

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

(ii) Since the total income without giving effect to the exemption under section 10(23C)(via) is ₹ 5,50,000, which exceeds ₹ 3,00,000, the trust has to file its return of income by 31st October 2024.

Question-6 :
What will be the consequences when Mr. Raghav paid ₹ 75,000 in cash to a travel agent for his travel to Saudi Arabia to be undertaken for business purposes by intentionally quoting the wrong PAN? Would your answer be different if such cash payment was made for his travel to Nepal, instead of Saudi Arabia?

Solution :
If a person who is required to quote his permanent account number in any document referred to in section 139A(5)(c), quotes a number which is false, and which he either knows or believes to be false or does not believe to be true, the Assessing Officer may direct that such a person shall pay by way of penalty a sum of ₹ 10,000 under section 272B(2).

In the given case, if Mr. Raghav travels to Saudi Arabia and pays his travel agent cash in excess of ₹ 50,000, such a transaction is covered by section 139A(5)(c) read with Rule 114B and therefore, Mr. Raghav has to quote his PAN. Since Mr. Raghav has misquoted his PAN, penalty under section 272B(2) is leviable. Mr. Raghav has to be given an opportunity of being heard in the matter. If Mr. Raghav is not able to prove that there was a reasonable cause for the said failure, penalty under section 272B(2) would be imposable.

The answer would remain the same even if such cash payment was made for his travel to Nepal.

Question-7 :
For facilitating expeditious resolution of disputes relating to international transactions involving transfer pricing and foreign companies, the Income-tax Act, 1961, has provided for "alternate dispute resolution mechanism". In this context, you are required to answer the following:
(i) What meanings have been assigned to "dispute resolution panel" and the "eligible assessee" under this mechanism?
(ii) When can a grievance for resolution be filed by an assessee?
(iii) What evidences are being considered by the panel to redress the grievance of the assessee?

Solution :
(i) The term "Dispute Resolution Panel" has been defined to mean a collegium comprising of three Principal Commissioners or Commissioners of Income-tax constituted by the Board for this purpose. The term "Eligible Assessee" means any person in whose case the variation referred to in section 144C(1) arises as a consequence of the order of the Transfer PricingOfficer passed under section 92CA(3) and any non-corporate non-resident or any foreign company.

(ii) In case of an assessment of the eligible assessee, the Assessing Officer shall forward a draft of the proposed order of assessment. The eligible assessee shall file his objections to such variation within 30 days of receipt of such order, with the Dispute Resolution Panel and with the Assessing Officer.

(iii) The Dispute Resolution Panel shall, in a case where any objections are received, take into consideration:-
  (a) the draft order
  (b) the objections filed by the assessee
  (c) the evidence furnished by the assessee
  (d) the report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority
  (e) the records relating to the draft order
  (f) the evidence collected by, or caused to be collected by it
  (g) the result of any enquiry made by or caused to be made by it.

Question-8 :
The Assessing Officer has the power to make an assessment to the best of his judgment, in certain situations. What are they?

Solution :
Under section 144, the Assessing Officer, after taking into account all relevant material which he has gathered, is under an obligation to make an assessment of the total income or loss to the best of his judgment and determine the sum payable by the assessee in the following cases –

(1) Where any person fails to make the return under section 139(1) and has not filed a belated return under section 139(4) or a revised return under section 139(5) or an updated return under section 139(8A).
(2) Where any person fails to comply with all the terms of a notice issued under section 142(1) or fails to comply with a direction issued under section 142(2A) for getting the accounts audited.
(3) Where any person, having made a return, fails to comply with all the terms of a notice issued under section 143(2).

Further, section 145(3) of the Income-tax Act, 1961 permits the Assessing Officer to make an assessment in the manner provided in section 144:
(i) where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee; or
(ii) where the method of accounting under section 145(1) has not been regularly followed by the assessee;
(iii) where the income has not been computed in accordance with "Income Computation and Disclosure Standards" notified by the Central Government under section 145(2).

Faceless assessment as per section 144B shall be applicable to best judgement assessment under section 144 i.e., the assessment proceedings shall be conducted electronically in e- Proceeding facility through assessee's registered account in designated portal. The faceless assessment shall be made in respect of such territorial area, or persons or class of persons, or incomes or class of incomes, or cases or class of cases, as may be specified by the Board.

Question-9 :
Mr. Sanskar is engaged in the business of retail trade and has been declaring income of ₹ 10 lakhs to ₹ 15 lakhs every year in the last 10 years. A search was conducted under section 132 in the business premises of Sanskar on 5th December, 2023. The search was concluded by executing last of authorisation for search on 21st December, 2023. The A.O. has in his possession documents which revealed that Mr. Sanskar has incurred ₹ 5 crores in May 2017 for the marriage of his daughter. The A.O intends to issue notice under section 148 to Sanskar for the Assessment Year relevant to the previous year 2017-18. Can he do so?

Solution :
As per section 148, the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in case of an assessee where a search is initiated under section 132 on or after 01.04.2021. Further, in case of search under section 132, notice under section 148 need not be accompanied by order u/s 148A. Thus, the Assessing Officer can issue a notice under section 148 for any of the relevant assessment years -
(a) if three years have not elapsed from the end of the relevant assessment year,
(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year and the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of
    (i) asset: or
    (ii) expenditure in respect of a transaction or in relation to an event or occasion; or
    (iii) an entry or entries in the books of account,

    which has escaped assessment amounts to or is likely to amount to ₹ 50 lakhs or more for that year.

Where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to in (b) above, has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in (b), a notice under section 148 shall be issued for **every such assessment year** for assessment, reassessment or recomputation, as the case may be.

In this case, Mr. Sanskar has incurred expenditure of ₹ 5 crores in relation to marriage of his daughter. Hence, the Assessing Officer can issue notice under section 148 for A.Y. 2018-19, since it falls within the 10 year period.

Note – As per section 153A, the Assessing Officer shall assess or reassess the total income of each of the six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted under section 132 or requisition was made under section 132A. Moreover, where the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of assets, which has escaped assessment amounts to or is likely to amount to ₹ 50 lakhs or more in the relevant assessment year or in aggregate in the relevant assessment years, notice under section 153A can be issued for beyond 6 assessment years but upto 10 assessment years prior to the assessment year relevant to the previous year in which the search or requisition is conducted. In the present case, notice under section 153A can be issued for A.Y. 2018-19, since it falls within the 6 A.Y. immediately preceding the A.Y. 2024-25 relevant to the P.Y. 2023-24 in which search is conducted.

Question-10 :
Examine whether the Assessing Officer has the power to make any adjustment to income disclosed by the assessee in the return of income in course of processing the return under section 143(1)?

Solution :
The procedure to be followed for summary assessment is contained in section 143(1). As per section 143(1), the total income or loss of an assessee shall be computed after making the following adjustments to the returned income:

(i) any arithmetical error in the return; or
(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return.
(iii) disallowance of loss claimed, if return is filed beyond due date u/s 139(1)
(iv) disallowance of expenditure or increase in income indicated in the audit report but not taken into account in computing the total income in the return
(v) disallowance of deduction claimed under section 10AA or under any of the provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes", if return is filed beyond due date u/s 139(1)

No such adjustment shall be made unless an intimation is given to the assessee of such adjustment either in writing or electronic mode. Further, Assessing Officer shall make any adjustment after considering the response received from the assessee, if any. Where no response is received with 30 days of the issue of such notice, the above adjustment can be made.

For the purpose of section 143(1), "an incorrect claim apparent from any information in the return" means such claim on the basis of an entry, in the return of income:

(i) of an item, which is inconsistent with another entry of the same or some other item in such return;
(ii) in respect of which, the information required to be furnished under the Income-tax Act, 1961 to substantiate such entry, has not been so furnished;
(iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may be expressed as monetary amount or percentage or ratio or fraction.

Question-11 :
Tai Ltd. filed its return of income for assessment year 2023-24 on 26th September, 2023. The return is selected for regular assessment under section 143(3) for which notice under section 143(2) is served on the company on 3rd July, 2024. The company responded to the notice under section 143(2). Examine whether the service of the notice is within time and if not, whether the assessment order can be challenged by the assessee.

Solution :
The time limit for service of notice under section 143(2) is three months from the end of the financial year in which the return of income was furnished by the assessee. The return of income for assessment year 2023-24 was filed by the assessee on 26th September, 2023. Therefore, the notice under section 143(2) has to be served by 30th June, 2024. However, the notice was served on the assessee only on 3rd July, 2024. Hence, the notice issued under section 143(2) is time-barred.

However, as per section 292BB, where an assessee had appeared in any proceedings or cooperated in any enquiry relating to an assessment or reassessment, it shall be deemed that any notice required to be served upon him, has been duly served upon him in time in accordance with the provisions of the Act and such assessee shall be precluded from raising any objection in any proceeding or enquiry 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.

The above provision shall not be applicable where the assessee has raised such objection before the completion of such assessment or reassessment. Therefore, in the instant case, if the assessee, Tai Limited, had raised an objection to the proceeding, on the ground of nonservice of the notice under section 143(2) upon it on time, then, the validity of the assessment order can be challenged. In absence of such objection, the assessment order cannot be challenged.

Question-12 :
Discuss the correctness or otherwise of the following proposition in the context of the Incometax Act, 1961: "A fresh claim before the Assessing Officer can be made only by filing a revised return and not otherwise".

Solution :
This proposition is correct. A return of income filed within the due date under section 139(1) or a belated return filed under section 139(4) may be revised by filing a revised return under section 139(5) where the assessee finds any omission or wrong statement in the original return subject to satisfying other conditions. There is no provision in the Income-tax Act, 1961, to make changes or modification in the return of income by filing a letter before the Assessing Officer. The revised return can be filed at any time before three months prior to the end of the relevant assessment year or before the completion of assessment, whichever is earlier. In a case where a return of income has been filed within the due date under section 139(1) or a belated return is filed under section 139(4), the only option available to the assessee to make an amendment to such return is by way of filing a revised return under section 139(5). Therefore, a fresh claim can be made before the Assessing Officer only by filing a revised return and not otherwise. The Supreme Court, in Goetze (India) Ltd. vs. CIT (2006) 284 ITR 323, has held that there is no power available under the provisions of the Income-tax Act, 1961 enabling the Assessing Officer to allow a claim made by the assessee except by way of filing a revised return.

Note – Section 139(8A), provides an option to an assessee to file an updated return for an assessment year, at any time within 24 months from the end of the relevant assessment year. But such updated return should not be a return of a loss or have the effect of decreasing the total tax liability determined on the basis of return furnished under section 139(1) or 139(4) or 139(5) or result in refund or increases the refund due on the basis of return furnished under section 139(1) or 139(4) or 139(5). Hence, for making a fresh claim the only option available with the assessee is to file a revised return under section 139(5).

Question-13 :
The Assessing Officer within the powers vested in him under section 142(2A), while examining the accounts of PNF Ltd., had ordered to get the same audited. The company challenges this order on the ground "that the opportunity was not provided to them by the Assessing Officer prior to passing of such an order". Decide the correctness of the action of the Assessing Officer.

Solution :
As per the proviso to section 142(2A), the Assessing Officer shall not direct the assessee to get the accounts so audited unless the assessee has been given a reasonable opportunity of being heard.

Therefore, in this case, the order of the Assessing Officer is not valid, since the assessee was not given an opportunity of being heard prior to passing of such order.

Question-14 :
Smt. Kanti, aged 49 years engaged in the business of growing, curing, roasting and grounding of coffee in India after mixing chicory had income of ₹ 6,00,000 from this business which was her only source of income during the year ended on 31.3.2024. She consults you to have an opinion whether she is required to file return of income for the A.Y. 2024-25 as per provisions of section 139(1).

Would your answer change if she had travelled to the USA during the P.Y.2023-24 and incurred ₹ 2.20 lakhs for the same?

Solution :
The clarification regarding filing 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 a total income of ₹ 6,00,000 from this business, which was her only source of income for P.Y. 2022-23. 40% of her income works out to ₹ 2,40,000, which is less than the basic exemption limit of ₹ 3,00,000 (under section 115BAC, being default regime) / ₹ 2,50,000 (if opting for normal provisions) in respect of an individual assessee. Therefore, Smt. Kanti is not required to file a return of income for the A.Y. 2024-25 as per the provisions of section 139(1). If Smt. Kanti had travelled to the USA during the P.Y. 2023-24 and incurred ₹ 2.20 lakhs on such travel, she would be required to mandatorily file a return of income for A.Y. 2024-25 on or before the due date u/s 139(1), even though her total income does not exceed the basic exemption limit.

Question-15 :
Ram, an individual, filed his return of income for the assessment year 2024-25 on 15.6.2024. He later discovered that he had not claimed deduction under section 80C in the said return though he had opted for the normal provisions of the Act. He claimed the said deduction through a letter addressed to the Assessing Officer. The Assessing Officer completed the assessment without allowing the deduction claimed by Ram. Is the Assessing Officer justified in doing so?

Solution :

Question-16 :
Examine the correctness or otherwise of the following statements in the context of provisions contained in the Income-tax Act, 1961 and the decided case laws:

> "The Assessing Officer is bound to allow the set-off of brought forward losses under section 72 even if the assessee has not claimed the same in the return filed".

Solution :
The Supreme Court has, in Goetze (India) Ltd. v. CIT (2006) 284 ITR 323, ruled that the Assessing Officer has no power to entertain a claim for deduction made after filing of the return of income otherwise than by way of a revised return. In the instant case, Ram has claimed the deduction under section 80C, which he omitted to claim in the original return of income, through a letter addressed to the Assessing Officer and not by filing a revised return under section 139(5). In view of the decision of the Supreme Court cited above, the Assessing Officer was justified in completing the assessment without allowing the deduction under section 80C. 15. The statement is correct. The Supreme Court has, in CIT v. Mahalakshmi Sugar Mills Co. Ltd. (1986) 160 ITR 920, held that it is the duty of the Assessing Officer to apply the relevant provisions of the Act for the purpose of

determining the true figure of the assessee's total income and consequential tax liability. Merely because the assessee has not claimed the set-off in the return filed, it cannot relieve the Assessing Officer of his duty to apply section 72 in the appropriate case.

As per CBDT Circular No.14 (XL-35) of 1955 dated 11.04.1955, it is the duty of the Assessing Officer to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard, they should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him.

Therefore, on the basis of the above Supreme Court ruling and the CBDT Circular, the Assessing Officer is bound to allow the set-off of brought forward losses under section 72, even if the assessee has not claimed the same in the return filed, provided the loss was determined in pursuance of a return filed under section 139(3) in any earlier previous year. Moreover, the wording used in section 72 is "shall", indicating that the provisions relating to set off of brought forward business loss are mandatory. Therefore, the Assessing Officer is bound to allow the claim for set off of brought forward business losses even if the assessee has not claimed the same in the return filed.

Question-17 :
X, an individual, has got his books of account for the year ending 31.3.2024 audited under section 44AB. His total income for the assessment year 2024-25 is ₹ 5,20,000. He desires to know if he can furnish his return of income for the assessment year 2024-25 through a Tax Return Preparer.

Solution :
Section 139B provides for submission of return of income through Tax Return Preparers. It empowers the Central Board of Direct Taxes (CBDT) to frame a scheme for the purpose of enabling any specified class or classes of persons to prepare and furnish their returns of income through Tax Return Preparers. Specified class or classes of persons have been defined to mean any person, other than a company or a person whose accounts are required to be audited under section 44AB or under any other existing law, who is required to furnish a return of income under the Act. Thus, companies and persons whose accounts are liable for tax audit under section 44AB do not fall within the definition of 'specified class or classes of persons' and consequently, cannot furnish their returns of income through Tax Return Preparers. In the instant case, the books of account of X for the year ending 31.3.2024 have been audited under section 44AB. As such, he cannot furnish his return of income for the A.Y. 2024-25 through a Tax Return Preparer.

Part-B : Additional Questions

Question-18 : [RTP NOV-20]
Mr. Suresh aged 60 years, is a resident and ordinarily resident in India for the A.Y. 2024-25. He owns an apartment in Sharjah, U.A.E., which he purchased on 1.4.2008, and he also has a bank account in the Bank of Sharjah.

Mr. Suresh contends that since his total income of ₹ 3,00,000 for the P.Y.2023-24, comprising of income from house property and bank interest, is less than the basic exemption limit, he need not file his return of income for A.Y.2024-25. Mr. Suresh is Opting out of Default Tax Regime u/s 115BAC

Solution :

(a) The first contention of Mr. Suresh is not correct.

Section 139(1) requires every resident other than not ordinarily resident, who at any time during the previous year, holds as a beneficial owner or otherwise, any asset (including financial interest in any entity) located outside India or has signing authority in any account located outside India or is a beneficiary of any asset located outside India, to file a return of income compulsorily whether or not he has income chargeable to tax.

Mr. Suresh has a house property in Sharjah, UAE and a bank account in the Bank of Sharjah. Therefore, Mr. Suresh has to file his return of income mandatorily for the A.Y.2024-25, even though his total income of ₹3,00,000, comprising solely of income from house property and bank interest, does not exceed the basic exemption limit of ₹ 3,00,000 applicable to a senior citizen.

Question-19 : [RTP NOV-20]
Is issue of notice under section 143(2) mandatory for making a regular assessment under section 143(3)? Can failure on the part of the Assessing Officer to issue notice under section 143(2) be treated as a defect curable under section 292BB, if the assessee participates in assessment proceedings? Discuss, with the aid of a recent Supreme Court ruling.

Solution :
Issue of notice under section 143(2) is mandatory for making a regular assessment under section 143(3). 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.

The issue as to whether the Assessing Officer's omission to issue notice under section 143(2) is a defect curable under section 292BB if the assessee participates in the assessment proceedings came up before the Supreme Court in CIT v. Laxman Das Khandelwal (2019) 417 ITR 325.

The Supreme Court observed that the law on the point as regards applicability of the requirement of issue of notice under section 143(2) is quite clear. 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, accordingly, 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.

Question-20 & 21 : [PP JAN-21]
Ms. Maya, a resident individual, engaged in the jewellery making, filed her return of income showing income of ₹19,80,000. The Assessing Officer completed the assessment under section 143(3) as the assessee participated in the assessment. The Assessing Officer disallowed a sum of ₹ 3,69,000 as unexplained cash. The assessee claims that the assessment is void as no notice under section 143(2) was served to the assessee. You are required to judge the validity of assessee's claim.

Solution :
Since the question is silent about issuance of notice, it is possible to answer the question on the basis of the assumption that the notice has not been issued by the Assessing Officer. Issue of notice under section 143(2) is mandatory for making a regular assessment under section 143(3). 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.

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.

Accordingly, 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.

In the present case, since the assessment of Ms. Maya was completed u/s 143(3) without issuing notice u/s 143(2), the assessment is bad in law and not a curable defect u/s 292BB.
Therefore, the contention of Ms. Maya is valid and the assessment is void inspite of the fact that Ms. Maya participated in the assessment proceedings.

It was so held in CIT v. Laxman Das Khandelwal (2019) 417 ITR 325, wherein the above issue came up before the Supreme Court.

Question-22 : [PP JAN-21]
Mr. Mahesh received the draft order from the Assessing Officer as per section 144C of the Income-tax Act, 1961 due to variations determined by the Transfer Pricing Officer in the arm's length price. But Mr. Mahesh did not prefer to file the objection against the draft order before the Dispute Resolution Panel; instead, he preferred to file appeal before the CIT (Appeals) under section 246A against the final order received from the Assessing Officer.

You are required to advise Mr. Mahesh, whether his contentions are tenable? Discuss the issue with reference to provisions of section 144C of the Income-tax Act, 1961.

Solution :
Section 144C requires the eligible assessee, Mr. Mahesh, to file his objections with the Dispute Resolution Panel (DRP) and the Assessing Officer within 30 days of the receipt by him of the draft assessment order.

If he fails to do so, the Assessing Officer will proceed to complete the assessment on the basis of the draft order.

The CBDT has clarified that the assessee has a choice whether to file an objection before the DRP against the draft assessment order or not to exercise this option and file an appeal later before CIT (Appeals) against the final assessment order passed by the Assessing Officer.

Therefore, Mr Mahesh's contention to file an appeal before Commissioner (Appeals) against the final assessment order instead of filing objections before the DRP against the draft assessment order is tenable in law.

Question-23 : [RTP MAY-22]
In respect of Mr. Hari, who is engaged in export of fabrics, information is flagged as per the risk management strategy formulated by the CBDT for A.Y.2019-20, A.Y.2020-21, A.Y.2021-22 and A.Y.2022-23. The income escaping assessment for these years aggregate to ₹ 42 lakhs.

In respect of Mr. Hari's friend Mr. Rajesh, who is engaged in trading of commodities, a search was initiated u/s 132 in April, 2023.

Can the Assessing Officer issue notice under section 148 to Mr. Hari and Mr. Rajesh in April, 2023? If so, in respect of which assessment years can notice be issued? Is it necessary that they be provided an opportunity of being heard before issuance of notice? Examine.

Solution :
In respect of Mr. Hari, the Assessing Officer has information suggesting that income has escaped assessment for the purposes of section 148 and 148A, since information has been flagged for the relevant assessment year as per risk management policy formulated by the CBDT. Notice can be issued for A.Y.2022-23, A.Y.2021-22, and A.Y.2020-21, since the three year time limit from the end of the relevant assessment year has not expired as on April, 2023. Such notice can be issued after conducting an enquiry, if required, with respect to the information suggesting escapement of income; and providing an opportunity of being heard to Mr. Hari by serving a show cause notice. Thereafter, on the basis of material available on record including the reply of Mr. Hari, in response to show cause notice, the Assessing Officer has to decide whether or not it is a fit case to issue notice under section 148 by passing an order, with the prior approval of Principal Commissioner or Principal Director or Commissioner or Director. However, notice cannot be issued in respect of A.Y.2019-20, since the three-year time limit from the end of the relevant assessment year (i.e., from 31.3.2020) has since expired on 31st March, 2023. The extended time limit of 10 years from the end of the relevant assessment year cannot be invoked in this case to issue notice for A.Y.2019-20, since the income escaping assessment in respect of Mr. Hari is not ₹ 50 lakh or more for that year.

In case of Mr. Rajesh, the Assessing Officer shall be deemed to have information suggesting that income has escaped assessment for three assessment years immediately preceding A.Y.2024-25, relevant to P.Y.2023-24 in which search is initiated. Hence, the relevant assessment years in respect of which the Assessing Officer can issue notice to Mr. Rajesh are A.Y.2022-23, A.Y.2021-22, and A.Y.2020-21. In this case, for the purpose of issue of notice u/s 148, there is no requirement to conduct an enquiry or provide an opportunity of being heard to Mr. Rajesh.

Question-24: [PP DEC-21]
Nikhil, an individual, furnished his return of income for Assessment Year 2024-25 declaring income of ₹ 80,000 from Short Term Capital Gains on sale of shares and paid tax thereon at 15%. The Assessing Officer issued intimation under section 143(1) accepting the return of income but however, levied tax @ 30% on such income. The assessee filed an application under section 154 claiming that he erroneously offered to tax the gains arising on sale of shares as Short Term Capital Gains instead of Long Term Capital Gains, STT paid, which are exempt from tax. The Assessing Officer passed a rectification order allowing relief in part by computing tax @ 15% but refused to grant the refund on the ground that it was not claimed in the return of income furnished and the issue was beyond the ambit of section 154. Thereafter, the assessee furnished a revision petition u/s 264, which was rejected by the Commissioner of Income Tax on the plea that the scope of section 154 of the Income-tax Act was limited and had to be strictly based on the return of income furnished and that intimation under section 143(1) was not an order and not assessable to revisionary jurisdiction. Is the rejection of the revision petition under section 264 by the CIT valid. **(4 Marks)**

Solution :
Issue Involved:
The issue under consideration is whether intimation u/s 143(1) can be regarded as an order, which can be revised by the Commissioner u/s 264.

Provision Applicable:
As per section 264, the Commissioner can revise any order, other than an order to which section 263 applies.

Analysis:
Since section 264 uses the expression "any order", it would imply that the section does not limit the power thereunder to correct errors committed by the subordinate authorities but could even be exercised where errors are committed by assessees. It would even cover situations where the assessee, because of an error, has not put forth a legitimate claim at the time of filing the return and the error is subsequently discovered and is raised in an application under section 264.

The intimation under section 143(1) is to be regarded as an order for the purposes of section 264
A duty is cast upon the Assessing Officer to assist and aid the assessee in the matter of taxation and to advise the assessee, guide him and not to take advantage of error or mistake committed by the assessee or of his ignorance.

Conclusion:
Accordingly, the Commissioner instead of merely examining whether the intimation was correct based on the material then available ought to have examined the material in the light of the CBDT Circular. The rejection of revision petition is, therefore, not valid.

Question-25 : [Rule 12AB] [RTP Nov-22, MTP Nov-23]
Mr. Ravi Prakash, a resident Indian aged 52 years, gifted a sum of ₹ 30 lakhs to his wife Mrs. Sudha on the occasion of her 50th birthday. Out of the said sum, Mrs. Sudha purchased a car for ₹ 29,52,000 inclusive of RTO charges of ₹ 2,15,000, insurance of ₹ 51,575, extended warranty of ₹ 25,255 and accessories charges of ₹ 35,460 during the P.Y. 2023-24. These charges were shown separately in the invoice. Mrs. Sudha's furnished her Aadhaar No. to the dealer. She is a housewife and does not have any income except rental income of ₹ 25,000 p.m. in respect of a house property gifted to her by her father.

Mr. Ravi Prakash is of the opinion that his wife is not required to furnish return of income, since her total income does not exceed the basic exemption limit. Examine.

Solution :
Mrs. Sudha's income from house property would be ₹ 2,10,000 (₹ 3,00,000 less 30% of net annual value). Since this is her only source of income, her gross total income/total income for A.Y.2024-25 would be ₹ 2,10,000, which is lower than the basic exemption limit. Hence, she is not required file her return of income for A.Y.2024-25 as per section 139(1)(b), since her gross total income/total income does not exceed the basic exemption limit of ₹ 2,50,000.

However, clause (iv) to seventh proviso of section 139(1) provides that a person (other than a company or a firm) who is not required to furnish a return u/s 139(1) has to furnish return on or before the due date if he/she fulfills such other conditions as may be prescribed under Rule 12AB.

Rule 12AB, inter alia, prescribes that any person other than a company or a firm, who is not required to furnish a return under section 139(1), has to file income-tax return in the prescribed form and manner on or before the due date if, the aggregate of tax deducted at source and tax collected at source during the previous year, in case of such person, is ₹ 25,000 or more.

Accordingly, it has to be examined whether, in Mrs. Sudha's case, the requirement to file return for A.Y.2024-25 arises due to TDS/TCS, in her case, exceeding ₹ 25,000 in the P.Y.2023-24.

As per section 206C(1F), every person, being a seller, who receives any amount as consideration for sale of a motor vehicle of the value exceeding ₹ 10 lakhs, has to collect tax from the buyer @ 1% of the sale consideration.

Accordingly, dealer of the car is required to collect tax at source of ₹ 26,247 @ 1% on ex- showroom price i.e., ₹26,24,710 (₹ 29,52,000 – ₹ 2,15,000 – ₹ 51,575 – ₹ 25,255 –₹ 35,460) from Mrs. Sudha, being the buyer of the car.

Hence, as per the seventh proviso to section 139(1) read with Rule 12AB, Mrs. Sudha is required to mandatorily file her return of income for A.Y.2024-25, even though her gross total income/total income does not exceed the basic exemption limit, since tax collected at source during the P.Y. 2023-24, in her case is ₹ 26,247 which exceeds the threshold of ₹ 25,000.

Question-26 : [RTP MAY 23]

Examine whether the following persons are required to file return of income for A.Y.2024-25, giving brief reasons for your answer –

(i) Mr. Albert, aged 31 years, whose turnover from business is ₹ 70 lakhs for the P.Y.2023-24 and whose total income computed as per books of account is ₹ 2 lakhs. This is the first year of his business. He has no other income. He is not claiming any deduction under Chapter VI-A or section 10AA.

(ii) Mr. Ashish, aged 42 years, has gross receipts of ₹ 5 lakhs from profession and profits and gains of ₹ 2.50 lakhs (computed) from profession for the P.Y. 2023-24. In addition, he has interest of ₹ 4 lakhs on fixed deposits and ₹ 50,000 from savings bank account.

(iii) M/s. ABC & Co., a law firm, whose gross receipts from profession for the P.Y.2023-24 is ₹ 9 lakhs.

(iv) XYZ (P) Ltd. which has incurred expenditure of an amount of ₹ 95,000 towards consumption of electricity in the F.Y.2023-24.

(v) Mr. Vallish, aged 58 years, who has deposited ₹ 50 lakhs in his savings bank account with SBI on 28th March, 2024. The said sum was received as a gift from his son, Mr. Rishi, aged 30 years, who is employed in a company. Mr. Vallish used the said sum to purchase a flat for ₹ 30 lakhs on 25th April, 2024 for self- residence. The balance money was transferred to a 1-year fixed deposit on 28th April, 2024. Mr. Vallish does not maintain any other bank account. He is not in receipt of any other source of income other than interest on this fixed deposit.

Solution :

Requirement of filing return of income

(i) Yes, Mr. Albert is required to file his return of income for A.Y.2024-25.

As per section 139(1)(b), an individual is required to file his return if his total income, without giving effect to deductions under, inter alia, Chapter VI-A and section 10AA, exceeds the basic exemption limit. In this case, Mr. Albert's total income of ₹ 2,00,000 is lower than the basic exemption limit of ₹ 2,50,000. However, such person referred to in section 139(1)(b) who is not required to file his return on account of his total income being lower than the basic exemption limit would be required to file return of income if, inter alia, his turnover in business exceeds ₹ 60 lakhs. In this case, since Mr. Albert's turnover from business for the P.Y.2023-24 is ₹ 70 lakhs, he has to file return of his income for A.Y.2024-25.

(ii) Yes, Mr. Ashish is required to file his return of income for A.Y.2024-25.

Mr. Ashish's total income for A.Y.2024-25 without giving effect to Chapter VI-A deductions is ₹ 7 lakhs [₹ 2.50 lakhs from profession + ₹ 4 lakhs interest on fixed deposits + ₹ 0.50 lakhs interest on savings bank account], which exceeds the basic exemption limit of ₹ 2,50,000. Hence, he is required to file his return of income for A.Y.2024-25 as per section 139(1)(b).

Note - The threshold limit of ₹ 10 lakhs for gross receipts in profession has to be looked into only in a case where an individual referred to in section 139(1)(b) is not required to file his return of income thereunder i.e., only if Ashish's total income without giving effect to Chapter VI-A deductions is lower than the basic exemption limit.

(iii) Yes, M/s. ABC & Co. is required to file its return of income for A.Y.2024-25.

As per section 139(1)(a), a firm is compulsorily required to file its return of income. The threshold limit of ₹ 10 lakhs for gross receipts in profession is relevant only for a person other than a company or a firm.

(iv) Yes, XYZ (P) Ltd. is required to file its return of income for A.Y.2024-25.

As per section 139(1)(a), a company has to mandatorily file its return of income. The condition of filing of return of income where expenditure towards consumption of electricity exceeds ₹ 1 lakh applies to a person other than a company or a firm.

(v) Yes, Mr. Vallish is required to file his return of income for A.Y.2024-25.

Gift of ₹ 50 lakhs received from son is not taxable under section 56(2)(x) in the hands of Mr. Vallish, since his son is his relative, and gifts from a relative are excluded from the applicability of section 56(2)(x). The only income of Mr. Vallish for the P.Y.2023-24 would be interest on savings account for a period of 4 days from 28th March, 2024 to 31st March, 2024 on ₹ 50 lakhs, which would be lower than the basic exemption limit. As per section 139(1)(b), an individual is required to file his return if his total income exceeds the basic exemption limit. In this case, Mr. Vallish's total income is lower than the basic exemption limit of ₹ 2,50,000.

However, such person referred to in section 139(1)(b) who is not required to file his return on account of his total income being lower than the basic exemption limit would be required to file return of income if, inter alia, the deposit in his savings account is ₹ 50 lakhs or more during the previous year.

Since a deposit of ₹ 50 lakhs has been made in the savings account of Mr. Vallish in the P.Y.2023-24, he is required to file his return of income for A.Y.2024-25.

Question-27 :[RTP May 23]

The business premises of Mr. Arjun was searched on 17.4.2023 under section 132, consequent to which the Assessing Officer has in his possession documents revealing information pertaining to shares purchased in the P.Y.2017-18 for ₹ 23 lakhs and in the P.Y.2018-19 for ₹ 25 lakhs.

(i) Can the Assessing Officer issue notice under section 148 for bringing to tax income escaping assessment?

(ii) Would your answer change if the shares purchased in the P.Y.2017-18 were for ₹ 30 lakhs instead of ₹23 lakhs?

(iii) What would be your answer if, consequent to the search, the Assessing Officer has in his possession, documents revealing information pertaining to expenditure of ₹ 52 lakhs incurred for the marriage of his daughter in the P.Y.2017-18 instead of the information pertaining to shares? Examine.

Solution :

Where search is initiated under section 132, the Assessing Officer shall be deemed to have information suggesting that income has escaped assessment. In such a case, where search was initiated on or after 1.4.2021, the relevant assessment year can be any assessment year which is not time-barred under section 149. As per section 149(1)(a), the time limit for issue of notice under section 148 for the relevant assessment year is upto 3 years from the end of the relevant assessment year. However, if the Assessing Officer has in his possession, books of account which reveal that income chargeable to tax, represented in the form of an asset or expenditure in respect of a transaction or in relation to an event or occasion or an entry or entries in the books of account, which has escaped assessment amounts to or is likely to amount to ₹ 50 lakh or more, notice can be issued beyond 3 years but not more than 10 years from the end of the relevant assessment year. For this purpose, "asset" includes immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

(i) In this case, since search was conducted under section 132 on 17.4.2023, the Assessing Officer is deemed to have information suggesting that income chargeable to tax has escaped assessment in the case of Mr. Arjun. In this case, the Assessing Officer has in his possession, books of account which reveal that income chargeable to tax, represented in the form of an asset, has escaped assessment. Shares are included in the definition of "asset". However, the income chargeable to tax, represented in the form of shares, which has escaped assessment amounts to ₹ 48 lakhs (i.e., ₹ 23 lakhs + ₹ 25 lakhs). Since the amount is lower than ₹ 50 lakhs, notice cannot be issued beyond 3 years from the end of the relevant assessment year. In this case, the relevant assessment years are A.Y.2018-19 (relevant to P.Y.2017-18) and A.Y.2019-20 (relevant to P.Y.2018-19). The three-year period for A.Y.2018-19 and A.Y.2019-20 expired on 31.3.2022 and 31.3.2023, respectively. Accordingly, notice cannot be issued under section 148 in April, 2023 due to expiry of the three-year time limit under section 149(1)(a).

(ii) In this case, the income chargeable to tax, represented in the form of shares, which has escaped assessment amounts to ₹ 55 lakhs (i.e., ₹ 30 lakhs + ₹ 25 lakhs). Since the amount is more than ₹ 50 lakhs, an extended period of 10 years from the end of the relevant assessment year (i.e., from the end of 31.3.2019 and 31.3.2020) would be available under section 149(1)(b) for issue of notice, which has not expired in April, 2023. Therefore, Assessing Officer can issue notice under section 148 for A.Y.2018-19 and A.Y.2019-20 with the prior approval of specified authority.

(iii) If the Assessing Officer has in his possession documents revealing information pertaining to expenditure of ₹ 52 lakhs incurred for the marriage of his daughter in the P.Y.2017-18, then, the income escaping assessment, represented in the form of expenditure in relation to an event or occasion would be ₹ 52 lakhs. Therefore, he can issue notice under section 148 in April, 2023 (with the prior approval of specified authority), since an extended period of 10 years from the end of the relevant assessment year (i.e., end of 31.3.2019) would be available under section 149(1)(b), which has not expired as on that date.

Note – Notice cannot be issued under section 148 in respect of the relevant assessment year beginning on or before 1.4.2021, if on the date of issue of such notice, the time limit prescribed for issue of notice under erstwhile section 153A has expired. In cases (ii) and above, the time limit for issue of notice under erstwhile section 153A in case of relevant assessment year beginning on or before 1.4.2021, has also not expired in April, 2023. Since search had taken place in the P.Y.2023-24 relevant to A.Y.2024-25, the Assessing Officer could have issued notice for six assessment years immediately preceding A.Y.2024-25 (i.e., from A.Y.2018-19 to A.Y.2023-24) under the erstwhile section 153A.

Question-28 : [MTP 2 Nov 23]

(i) Mr. Arvind, aged 28 years, whose turnover from business is ₹ 70 lakhs for the P.Y.2023-24 and whose total income computed as per books of account is ₹ 2 lakhs. This is the first year of his business. He has no other income. He is not claiming any deduction under Chapter VI - A or section 10AA.

(ii) Mr. Bipin, aged 52 years, who has deposited ₹ 50 lakhs in his savings bank account with SBI on 28th March, 2024. The said sum was received as a gift from his son, Mr. Shaurya, aged 25 years, who is employed in a company. Mr. Bipin used the said sum to purchase a flat for ₹ 30 lakhs on 25th April, 2024 for self-residence. The balance money was transferred to a 1-year fixed deposit on 28th April, 2024. Mr. Bipin does not maintain any other bank account. He is not in receipt of any other source of income other than interest on this fixed deposit.

Solution:

i. Yes, Mr. Arvind is required to file his return of income for A.Y.2024-25.

As per section 139(1)(b), an individual is required to file his return if his total income, without giving effect to deductions under, inter alia, Chapter VI-A and section 10AA, exceeds the basic exemption limit. In this case, Mr. Arvind's total income of ₹ 2,00,000 is lower than the basic exemption limit of ₹ 2,50,000. However, such person referred to in section 139(1)(b) who is not required to file his return on account of his total income being lower than the basic exemption limit would be required to file return of income if, inter alia, his turnover in business exceeds ₹ 60 lakhs. In this case, since Mr. Arvind's turnover from business for the P.Y.2023-24 is ₹ 70 lakhs, he has to file return of his income for A.Y.2024-25.

ii. Yes, Mr. Bipin is required to file his return of income for A.Y.2024-25.

Gift of ₹ 50 lakhs received from son is not taxable under section 56(2)(x) in the hands of Mr. Bipin, since his son is his relative, and gifts from a relative are excluded from the applicability of section 56(2)(x). The only income of Mr. Bipin for the P.Y.2023-24 would be interest on savings account for a period of 4 days from 28th March, 2024 to 31st March, 2024 on ₹ 50 lakhs, which would be lower than the basic exemption limit. As per section 139(1)(b), an individual is required to file his return if his total income exceeds the basic exemption limit. In this case, Mr. Bipin's total income is lower than the basic exemption limit of ₹ 2,50,000.

However, such person referred to in section 139(1)(b) who is not required to file his return on account of his total income being lower than the basic exemption limit would be required to file return of income if, inter alia, the deposit in his savings account is ₹ 50 lakhs or more during the previous year.

Since a deposit of ₹ 50 lakhs has been made in the savings account of Mr. Bipin in the P.Y.2023-24, he is required to file his return of income for A.Y.2024-25.

Extra Page

CHAPTER 16
APPEALS AND REVISION

Part-A : Study Material Questions

Question-1 :
"SVS Propcon" did not make a claim of ₹ 20 lakhs in the return of income filed for A.Y. 2023-24 which was disallowed in the previous assessment year under section 43B. However, the said claim was also not considered by the Assessing Officer during assessment proceedings on the ground that no revised return was filed. Can the assessee now make such claim before the appellate authority?

Solution :
Yes, the assessee is entitled to raise additional claims before the appellate authorities.
The restriction that an additional claim has to be made by filing a revised return applies only in respect of a claim made before the Assessing Officer. An assessee cannot make a claim before the Assessing Officer otherwise than by filing a revised return. It was so held by the Supreme Court in Goetze (India) Ltd v. CIT (2006) 284 ITR 323.

However, this restriction does not apply to an additional claim made before an appellate authority. The appellate authorities have jurisdiction to permit additional claims before them, though, the exercise of such jurisdiction is entirely the authorities' discretion. It was so held by the Bombay High Court in CIT v. Pruthvi Brokers & Shareholders (2012) 349 ITR 336. This view is also endorsed by the Supreme Court in case of Wipro Finance Ltd. v. CIT (2022) 443 ITR 250.
Thus, an additional claim can be raised before the Appellate Authority even if no revised return is filed.

Question-2 :
Examine the correctness or otherwise of the following statements with reference to the provisions of the Income-tax Act, 1961:
(i) An appeal before Income-tax Appellate Tribunal cannot be decided in the event of difference of opinion between the Judicial Member and the Accountant Member on a particular ground.

(ii) A High Court does not have an inherent power to review an earlier order passed by it on merits.

Solution :
(i) **The statement given is not correct.** As per the provisions of section 255, in the event of difference in opinion between the members of the Bench of the Income-tax Appellate Tribunal, the matter shall be decided on the basis of the opinion of the majority of the members. In case the members are equally divided, they shall state the point or points of difference and the case shall be referred by the President of the Tribunal for hearing on such points by one or more of the other members of the Tribunal. Such point or points shall be decided according to the opinion of majority of the members of the Tribunal who heard the case, including those who had first heard it.

(ii) **The statement given is not correct.** 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 [Article 226, empowers the High Courts to issue, to any person or authority, including the government (in appropriate cases), directions, orders or writs, including writs.] of the Constitution to preclude a High Court from exercising the power of review which is inherent 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.

Question-3 :
Does the Income-tax Appellate Tribunal have the following powers?

(i) Power to allow the assessee to urge any ground of appeal which was not raised by him before the Commissioner (Appeals).
(ii) Power to recall its own order solely for rectification of mistake apparent from the records.

Solution :
(i) The Income-tax Appellate Tribunal has the power to entertain question raised for the first time. The Tribunal is not confined only to the issues arising out of the appeal before the Commissioner (Appeals). It has the power to allow the assessee to urge any ground not raised before the Commissioner (Appeals). However, the relevant facts in respect of such ground should be on record. The decision of the Supreme Court in the case of National Thermal Power Company Limited vs. CIT (1998) 229 ITR 383 (SC) supports this view.

(ii) The Delhi High Court, in Lachman Dass Bhatia Hingwala (P) Ltd. v. ACIT (2011) 330 ITR 243 observed that the justification of an order passed by the Tribunal recalling its own order is required to be tested on the basis of the law laid down by the Apex Court in Honda Siel Power Products Ltd. v. CIT (2007) 295 ITR 466, dealing with the Tribunal's power under section 254(2) to recall its order where prejudice has resulted to a party due to an apparent omission, mistake or error committed by the Tribunal while passing the order. Such recalling of order for correcting an apparent mistake committed by the Tribunal has nothing to do with the doctrine or concept of inherent power of review. It is a well settled provision of law that the Tribunal has no inherent power to review its own judgment or order on merits or reappreciate the correctness of its earlier decision on merits. However, the power to recall has to be distinguished from the power to review. While the Tribunal does not have the inherent power to review its order on merits, it can recall its order for the purpose of correcting a mistake apparent from the record.

When prejudice results from an order attributable to the Tribunal's mistake, error or omission, then, it is the duty of the Tribunal to set it right. The Delhi High Court observed that the Tribunal, while exercising the power of rectification under section 254(2), can recall its order in entirety, if it is satisfied that prejudice has resulted to the party which is attributable to the Tribunal's mistake, error or omission and the error committed is apparent.

Question-4 :
Can a rectification order under section 254 of the Income-tax Act, 1961 be passed by the Income-tax Appellate Tribunal beyond 6 months from the end of the month in which the order sought to be rectified was passed?

Solution :
The issue as to whether a rectification order can be passed by the Income-tax Appellate Tribunal under section 254 beyond six months from the end of the month in which order sought to be rectified was passed, has been addressed in Sree Ayyanar Spinning and Weaving Mills Ltd. v. CIT (2008) 301 ITR 434 (SC). Section 254(2), dealing with the power of the Appellate Tribunal to pass an order of rectification of mistakes, is in two parts. The first part refers to the suo motu exercise of the power of rectification by the Appellate Tribunal, whereas the second part refers to rectification on an application filed by the assessee or Assessing Officer bringing any mistake apparent from the record to the attention of the Appellate Tribunal.

If Income-tax Appellate Tribunal, suo moto, makes the rectification of its order, then the order has to be passed within 6 months from the end of the month in which the order sought to be rectified was passed. Where the application for rectification is made by the Assessing Officer or the assessee within 6 months from the end of the month in which the order sought to be rectified was passed, the Appellate Tribunal is bound to decide the application on merits and not on the ground of limitation i.e. order can be passed after expiry of 6 months from the end of the month in which the order sought to be rectified was passed. However, the application for rectification cannot be filed belatedly after 6 months from the end of the month in which the order sought to be rectified was passed. [Ajith Kumar Pitaliya vs ITO (2009) 318 ITR 182 (M.P.)]

Question-5 :
What do you mean by substantial question of law? Examine.

Solution :
The expression "substantial question of law" has not been defined anywhere in the Act. However, it has acquired a definite meaning through various judicial pronouncements. The tests are:

(1) whether directly or indirectly it affects substantial rights of the parties; or
(2) the question is of general public importance; or
(3) whether it is an open question in the sense that issue is not settled by the pronouncement of the Supreme Court or Privy Council or by the Federal Court; or
(4) the issue is not free from difficulty; or
(5) it calls for a discussion for alternative view.

Question-6 :
An Income-tax authority did not file an appeal to the Income-tax Appellate Tribunal against an order of the Commissioner (Appeals) decided against the Income-tax department on a particular issue in case of one assessee, Alpi for assessment year 2023-24 on the ground that the tax effect of such dispute was less than the monetary limit prescribed by CBDT. In assessment year 2024-25, similar issue arose in the assessments of Alpi and her sister Palki, which was decided by the Commissioner (Appeals) against the Department. Can the Incometax department move an appeal to the Tribunal in respect of A.Y. 2024-25 against the orders of the Commissioner (Appeals) for Alpi and her sister Palki?

Solution :
Under section 268A(1), the CBDT is empowered to issue orders, instructions or directions to the other income-tax authorities, fixing such monetary limits, as it may deem fit, to regulate filing of appeal or application for reference by any income-tax authority.

Under section 268A(2), where an income-tax authority has not filed any appeal or application for reference on any issue in the case of an assessee for any assessment year, due to abovementioned order/instruction/direction of the CBDT, such authority shall not be precluded from filing an appeal or application for reference on the same issue in the case of the same assessee for any other assessment year or any other assessee for the same or any other assessment year. Further, in such a case, it shall not be lawful for an assessee to contend that the income-tax authority has acquiesced in the decision on the disputed issue by not filing an appeal or application for reference in any case.
In view of above provision, it would be in order for the Income-tax Department to move an appeal to the Tribunal against the orders of the CIT(A) in respect of A.Y. 2024-25 both for Alpi and Palki.

Question-7 :
A petition for stay of demand was filed by XYZ Ltd. before the Income-tax Appellate Tribunal in respect of a disputed demand for which appeal was pending before it. The Appellate Tribunal granted stay vide order dated 1.1.2024 for a period of 180 days from the date of such order, on deposit of 20% of the amount of tax by XYZ Ltd. Thereafter, the bench was functioning intermittently till 1.2.2025 and therefore, the disputed matter could not be disposed of. In the meanwhile, in June 2024, XYZ Ltd. had made an application for extension of stay and was granted extension of stay upto 31.12.2024. Thereafter, on 5.1.2025, the Assessing Officer attached the bank account of XYZ Ltd. and recovered the amount of ₹ 15 lakhs against the arrear demand of ₹ 25 lakhs. The company requested the Assessing Officer to refund the amount as it holds stay over it. The Assessing Officer, however, rejected the contention of the assessee stating that the stay period expired on 30.12.2024 (since 2024 being a leap year), after which the order of stay stood vacated automatically. Examine the correctness of contention of the Assessing Officer.

Solution :
As per section 254(2A), the Appellate Tribunal may, on merit, pass an order of stay in any proceedings relating to an appeal. However, such period of stay cannot exceed 180 days from the date of such order subject to the condition that the assessee deposits not less than 20% of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnishes security of equal amount in respect thereof.

No extension of stay shall be granted by the Appellate Tribunal, where such appeal is not so disposed of within the said period as specified in the order of stay, unless the assessee makes an application and has complied with the condition of depositing 20% of tax and the Appellate Tribunal is satisfied that the delay in disposing of the appeal is not attributable to the assessee, However, the aggregate of the period of stay originally allowed and the period of stay so extended cannot exceed 365 days and the Appellate Tribunal has to dispose of the appeal within the period or periods of stay so extended or allowed.

If such appeal is not so disposed of within 180 days or the period or periods extended not exceeding 365 days, the order of stay shall stand vacated after the expiry of such period or periods, **only if the delay in disposing of the appeal is attributable to the assessee**. It was so held by the Supreme Court in DCIT v. Pepsi Foods Ltd (2021) 433 ITR 295.
Accordingly, if an appeal is not heard by the bench, due to the bench functioning intermittently, the delay is not attributable to XYZ Ltd. In such a case, though the extended stay period of 365 days had expired on 30.12.2024, the recovery of ₹ 15 lakhs against the arrear demand of ₹ 25 lakhs made by the Assessing Officer on 5.1.2025 is not in order, since the delay in disposing of the appeal is not attributable to XYZ Ltd. Therefore, the contention of the Assessing Officer is not correct. The order of stay would stand vacated after 30.12.2024, only in a case where the delay in disposing of the appeal had been attributable to XYZ Ltd.

Question-8 :
An assessee who had been served with an order of assessment passed under section 143(3) on 1.1.2024 had filed an application against this order before the CIT as per section 264 on 11.1.2024. However, the CIT refused to entertain the application on the pretext of premature application. Assessee seeks your opinion.

Solution :
An assessee, who is aggrieved by the order of the Assessing Officer under section 143(3) passed on 1.1.2024, had moved an application for revision of order under section 264 on 11.1.2024. The order passed by the Assessing Officer under section 143(3) is an order appealable before the Joint Commissioner (Appeals) or the Commissioner (Appeals). The time limit for filing an appeal is 30 days from the date of order i.e., upto 31.1.2024. This time limit had not expired on 11.1.2024 and the assessee had also not waived his right of appeal while filing the application for revision on 11.1.2024 before the Commissioner of Income-tax.

The application filed before the Commissioner of Income-tax for revision under section 264 by the assessee will only be considered when the conditions specified under section 264(4) have been complied with. One of the conditions is that the Commissioner shall not revise any order where an appeal against the order lies to the Joint Commissioner (Appeals) or Commissioner (Appeals) or Appellate Tribunal and the time within which such appeal may be made has not expired, unless the assessee has waived his right of appeal. In the present case, the time limit had not expired on 11.1.2024 and the assessee had also not waived the right of appeal while filing the application for revision before the Commissioner of Income-tax on 11.1.2024 under section 264. Therefore, the Commissioner's refusal to entertain such application is correct.

Note : In practical situations, the Commissioner could have kept the proceedings in abeyance till the expiry of the time prescribed for filing appeal by the assessee and thereafter, could have assumed jurisdiction for making revision besides taking an undertaking from the assessee for waiving his right of appeal. In reality, taxpayers usually will not prefer revision in such short time period nor would the Commissioner reject the application, the moment it is received by him.

Question-9 :
(a) The Commissioner of Income-tax issued notice to revise the order passed by an Assessing Officer under section 143. During the pendency of proceedings before the Commissioner, on the basis of material gathered during survey under section 133A after issue of the first notice, the Commissioner of Income-tax issued a second notice, the contents of which were different from the contents of the first notice. Examine whether the action of the Commissioner is justified as to the second notice.
(b) Examine the circumstances where the appellant shall be entitled to produce additional evidence, oral or documentary, before the Commissioner of Income-tax (Appeals) other than the evidence produced during the proceedings before the Assessing Officer.

Solution :

(a) The action of the Commissioner in issuing the second notice is not justified. The term "record" has been defined in clause (b) of Explanation to section 263(1). According to this definition "record" shall include and shall be deemed always to have included all records relating to any proceeding under the Act available at the time of examination by the Commissioner. In other words, the information, material, report etc. which were not in existence at the time the assessment was made and came into existence afterwards can be taken into consideration by the Commissioner for the purpose of invoking his jurisdiction under section 263(1). However, at the same time, in view of the express provisions contained in clause (b) of the Explanation to section 263(1), such information, material, report etc. can be relied upon by the Commissioner only if the same forms part of record when the action under section 263 is taken by the Commissioner.

Issuance of a notice under section 263 succeeds the examination of record by Commissioner. In the present case, the Commissioner initially issued a notice under section 263, after the examination of the record available before him. The subsequent second notice was on the basis of material collected under section 133A, which was totally unrelated and irrelevant to the issues sought to be revised in the first notice. Accordingly, the material on the basis of which the second notice was issued could not be said to be "record" available at the time of examination as emphasized in Explanation (b) to section 263(1).

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

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

Further, no evidence shall be admitted unless the Commissioner (Appeals) records in writing the reasons for its admission.

Question-10 :

Examine the correctness or otherwise of the following propositions in the context of the Income-tax Act, 1961:

(a) The powers of the Commissioner of Income-tax (Appeals) to enhance the assessment are plenary and quite wide.

(b) At the time of hearing of rectification application, the Income-tax Appellate Tribunal can re-appreciate the evidence produced during the proceedings of the appeal hearing.

(c) The High Court cannot interfere with the factual finding recorded by the lower authorities and the Tribunal, without any valid reasons.

Solution :

(a) The proposition is correct in law. The Supreme Court has, in CIT vs. McMilan & 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 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.

(b) 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) The proposition is correct in law. A finding of fact cannot be disturbed by the High Court in exercise of its powers under section 260A. The Income-tax Appellate Tribunal is the final fact finding authority and the findings of fact recorded by the Tribunal can be interfered with by the High Court under section 260A only on the ground that the same were without evidence or material, or if the finding is contrary to the evidence, or is perverse or there is no direct nexus between conclusion of fact and the primary fact upon which that conclusion is based.

In CIT vs. P. Mohanakala (2007) 291 ITR 278 and M. Janardhana Rao v. Joint CIT (2005) 273 ITR 50, the Apex Court observed that the High Court had set aside the factual findings of the lower authorities and the Tribunal without any valid reason. The Apex Court held that the findings of fact could not be interfered with by the High Court without carefully considering the facts on record, the surrounding circumstances and the material evidence. There is no scope for interference with the factual findings, unless the findings are per se without reason or basis, perverse and/or contrary to the material on record.

Hence, only if the issue gives rise to a substantial question of law, an appeal shall lie before the High Court.

Question-11 :

An assessee, who is aggrieved by all or any of the following orders, is desirous to know the available remedial recourse and the time limit against each order under the Income-tax Act, 1961:

(i) passed under section 143(3) by the Assessing Officer.
(ii) passed under section 263 by the Commissioner of Income-tax.
(iii) passed under section 272A by the Director General.
(iv) passed under section 254 by the ITAT.

Solution :

(i) An assessee, aggrieved by the order passed under section 143(3) by the Assessing Officer, can file an appeal before the Joint Commissioner (Appeals) under section 246 or the Commissioner of Income-tax (Appeals) under section 246A(1), within 30 days of the date of service of the notice of demand relating to the assessment. However, where the assessee does not want to prefer an appeal, then he can move a revision petition before the Principal Commissioner or Commissioner of Income-tax under section 264 within a period of one year from the date of on which the order was communicated to him or the date on which he otherwise came to know of it, whichever is earlier.

(ii) An assessee, aggrieved by the order passed under section 263 by the Commissioner of Income-tax, can file an appeal to Income-tax Appellate Tribunal under section 253(1)(c) within 60 days of the date on which the order sought to be appealed against is communicated to the assessee.

(iii) An assessee, aggrieved by the order passed under section 272A by the Director General, can file an appeal before the Income-tax Appellate Tribunal under section 253(1)(c) within 60 days of the date on which the order sought to be appealed against is communicated to the assessee.

(iv) An assessee, aggrieved by the order passed under section 254 by the Income-tax Appellate Tribunal, can file an appeal before the High Court under section 260A within 120 days from the date of receipt of order of Income-tax Appellate Tribunal, only where the order gives rise to a substantial question of law.

Question-12 :
Who can file memorandum of cross-objections before the Income-tax Appellate Tribunal? What is the time limit? What is the fee for filing memorandum of cross objections?

Solution :

Section 253(4) of the Income-tax Act, 1961 gives the respondent (assessee or the Assessing Officer), in every appeal filed before the Income-tax Appellate Tribunal, a right to file a memorandum of cross-objections against any order of the Joint Commissioner (Appeals) or the Commissioner (Appeals). This right of filing a memorandum of cross-objections is an independent right given to the respondent in an appeal and is in addition to the right of appeal which may or may not be exercised by the assessee or the Assessing Officer under section 253(1) or section 253(2). The memorandum of cross-objections has to be in the prescribed form and verified in the prescribed manner and has to be filed within 30 days of the receipt of notice of the appeal. The Tribunal is empowered to permit filing of memorandum of cross objections after the expiry of the prescribed period if sufficient cause is shown. Such memorandum of cross-objections will be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in section 253(3). There is no fee for filing a memorandum of cross-objections.

Part-B : Additional Questions

Question-13 : [PP NOV-19]
An Assessee, who is aggrieved by all or any of the following orders, is desirous to know the remedial recourse and the time limit against each order under the Income- tax Act, 1961 –
(1) Passed under section 147 by the Assessing Officer.
(2) Passed under section 263 by the Commissioner of Income-tax.
(3) Passed under section 272A by the Principal Commissioner.
(4) Passed under section 254 by the ITAT.

Solution :
Remedial measures against certain orders and time limit

	Order passed u/s	Remedy available	Time limit
1	153A	File an appeal before the Commissioner (Appeals) or JCIT(A) u/s 246A **(or)** Move a revision petition u/s 264 before the Commissioner or Principal Commissioner	Within 30 days of the date of service of the notice of demand relating to the assessment. Within a period of one year from: (i) the date of on which the order was communicated to him; or (ii) the date on which he otherwise came to know of it, **whichever is earlier.**
2	263	File an appeal before the Appellate Tribunal (ITAT) u/s 253(1)(c)	within 60 days of the date on which the order sought to be appealed against is communicated to the assessee.
3	272A	File an appeal before the Appellate Tribunal (ITAT) u/s 253(1)(c)	within 60 days of the date on which the order sought to be appealed against is communicated to the assessee.
4	254	File an appeal before the High Court u/s 260A	within 120 days from the date of receipt of order of ITAT

Question-14 : [MTP AUG-18]
The assessment of Vijaya Ltd. was completed under section 143(3) with an addition of Rs. 28 lakhs to the returned income. Vijaya Ltd. preferred appeal before the Commissioner (Appeals) which is pending now.
In this backdrop, examine the following issues:

(I) Can the Assessing Officer pass an order under section 154 for rectification of mistake in respect of issues not being subject matter of appeal?
(II) Can the assessee-company seek revision under section 264 in respect of matters other than those preferred in appeal?
(III) Can the Commissioner make a revision under section 263 both in respect of matters covered in appeal and other matters? **(6 Marks)**

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

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

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

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

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

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

Question-15 : [PP NOV 22]

Answer any two out of the following three sub-parts, viz. (i), (ii) and (iii).
Your answer should cover
(a) Issue involved
(b) Provision applicable
(c) Analysis
(d) Conclusion

(i) During the scrutiny assessment of Refresh Me Ltd., a company engaged in manufacture and distribution of packaged juices, the Assessing Officer (AO) increased the income and thus, passed an order of demand. Aggrieved by the order, the assessee filed an appeal to CIT(A), who confirmed the order of A.O. Assessee further appealed to ITAT and requested ITAT for the stay of collection of tax, which the Honourable ITAT provided initially for 180 days which was further extended till 365 days as provided in section 254(2A) of the Act. The ITAT did not dispose off the appeal before the time extended for collection of tax. The revenue served an order of demand citing the reason that the order of stay automatically gets vacated post the expiry of 365 days. The assessee seeks your opinion as to whether the contention of the revenue is justified.

(ii) On 31.12.2023, a search under section 132 of the Income-tax Act was conducted in the business and residential premises of Mr. Rajshekaran and some gold bars were seized from the locker. Mr. Rajshekaran voluntarily disclosed ₹ 12.50 crores of income during the course of search. Later on, he filed an application for sale of the gold bars worth 5 kgs for adjustment "towards the automatic tax liability", even before the completion of the assessment by the AO. However, AO rejected the application and observed that such action can be taken only after the assessment is completed and a demand has been quantified.
Is the AO justified in rejecting the application?

(iii) On 31.3.2023, Pastro Ltd. (the assessee) had an outstanding interest liability of ₹ 2 crores towards loan payable to financial institutions. It issued debentures to the financial institutions in lieu of the outstanding interest on 1.5.2023 and deducted the same from the taxable income as payment thereof. The Assessing Officer, however, rejected the deduction claimed by the assessee, by invoking Explanation 3C of section 43B of the Income-tax Act. You are required to discuss the validity of the Assessing Officer's claim.

Solution :

(i) **Issue Involved:** The issue under consideration is whether the stay order can be automatically vacated upon expiry of extended period of stay of 365 days, where the delay in disposing of the appeal is not attributable to the assessee.

Provision Applicable: The third proviso to section 254(2A) provides that where the appeal filed before the Appellate Tribunal is not disposed of within the period of stay or extended period of stay granted by the Tribunal, the order of stay shall stand vacated after the expiry of 365 days, even if the delay in disposing of the appeal is not attributable to the assessee.

Analysis: This provision would result in the automatic vacation of a stay upon the expiry of 365 days, even if the Appellate Tribunal could not take up the appeal in time for no fault of the assessee. Thus, the vacation of stay in favour of the Department would ensue even if the Department is itself responsible for the delay in hearing the appeal. This will cause undue hardship to the assessee, even where he is not at fault. In this sense, the provision is arbitrary and disproportionate so far as the assessee is concerned.

Conclusion: The contention of the revenue is not justified. Any order of stay shall stand vacated after the expiry of the period or periods mentioned in the section, only if the delay in disposing of the appeal is attributable to the assessee.

Note – The facts given in the question are similar to the facts in DCIT v. Pepsi Foods Ltd (2021) 433 ITR 295, wherein the above issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court ruling in that case.

(ii) **Issue Involved:** The issue involved in this case is whether Mr. Rajshekaran's application, for adjustment of tax liability on income surrendered during search by sale of seized gold bars, can be entertained where assessment has not been completed.

Provision applicable: The provision contained in section 132B(1) lays down the manner in which the assets seized under section 132 may be dealt with. An assessee is entitled to make an application to the Assessing Officer for adjustment of seized assets towards existing tax liability.

Analysis: Here, the application by the assessee is not for adjustment of any existing liability, but "towards the automatic tax liability". In the said provision, the expression used is "the amount of the liability determined". "A liability is determined" only on completion of the assessment. Until the assessment is complete, it cannot be postulated that a liability has been crystallized.

Conclusion: Accordingly, the action of the Assessing Officer rejecting the application on the ground that such action can be taken only after the assessment is completed and a demand has been quantified, is justified.

Note - The facts given in the question are similar to the facts in Hemant Kumar Sindhi & Another v. CIT (2014) 364 ITR 555 wherein the issue came up before the Allahabad High Court. The above answer is based on the rationale of the Allahabad High Court in the said case.

(iii) **Issue Involved:** The issue under consideration is whether issue of debentures in lieu of outstanding interest payable to Financial Institution can be treated as "actual payment" as contemplated under section 43B for allowability as deduction while computing business income.

Provision Applicable: Explanation 3C to section 43B clarifies that interest that remained unpaid and converted into a loan or borrowing shall not be deemed to have been actually paid. Hence, such interest would not be deductible while computing profits and gains of business or profession.

Analysis: Interest to bank can be claimed as deduction only when the same if actually paid within the stipulated time. Where it is paid in any subsequent period, it can be claimed in the year of actual payment.

Explanation 3C to section 43B was enacted to plug the loophole and to overcome the argument of the taxpayer that conversion of outstanding interest into loan would tantamount to actual payment and thus claim deduction under section 43B.

The issue of debentures by the assessee was to extinguish the liability of bank interest altogether. The interest was "actually paid" by the assessee by issuance of debentures, which extinguished its liability to pay interest.

Conclusion: Explanation 3C to section 43B, which was meant to plug a loophole, could not be invoked in this case, where debentures were issued in lieu of interest. The interest is, therefore, deductible. The Assessing Officer's claim rejecting the deduction claimed by the assessee is not valid.

Note - The facts given in the question are similar to the facts in M.M. Aqua Technologies Ltd. v. CIT (2021) 436 ITR 582, wherein the issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court in the said case.

Question-16 : [MTP MAY 23]

An order for A.Y. 2021-22 was passed by the Assessing Officer as per section 143(3), but the typist wrongly typed in the order, the assessment year as A.Y.2020-21 and the relevant previous year as ending on 31.3.2020. The assessee claimed in appeal that the same is an invalid order which was not accepted by the CIT (Appeals) on the ground of the error being of clerical nature. Discuss the correctness of the order of the CIT (Appeals).

(4 Marks)

Solution :

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.

Question-17 : [PP May 23]

XYZ Limited entered into a contract for purchase of software with M/s. Delta Inc, a non-resident company based in Sweden. It filed an application u/s 195(2) before the Assessing Officer to make payment to the non-resident company for purchase of software without deducting tax at source.

The assessee, XYZ Limited, contended that said non-resident company had no Permanent Establishment in India and in terms of the DTAA between India and Sweden, no tax was to be deducted in India on same. The AO rejected the assessee's application on grounds that consideration for software licensing constituted royalty u/s 9(1)(vi) and was liable to be taxed in India and, accordingly, assessee was directed to deduct tax at source at rate of 20% on said royalty payment.

On Appeal, the Commissioner (Appeals) passed an order in favour of the assessee. On further appeal, the Tribunal upheld the order passed by the Assessing Officer on grounds that payments made for purchase of software were in nature of royalty and tax at source to be deducted on such payment.

The assessee company filed a miscellaneous application for rectification under Section 254(2) before the Tribunal. The assessee had also filed an appeal before the High Court.

Tribunal allowed said application in exercise of his powers under section 254(2) and reheard entire appeal on merits and recalled its original order and passed an order in favour the assessee. Thereafter, the writ petition filed by the assessee with High Court was also withdrawn. Is Tribunal justified in recalling its original order? Please state your answer on the basis of latest provisions of the Act and Supreme Court rulings.

Solution:
Issue Involved: The issue under consideration is whether the powers under section 254(2) can be exercised by the Tribunal to recall an order and rehear the entire appeal on merits.

Provisions applicable: Section 254(1) empowers the Appellate Tribunal to pass such order thereon as it thinks fit, after giving both the parties to the appeal an opportunity of being heard.

Under section 254(2), the Appellate Tribunal, may amend an order passed by it u/s 254(1) with a view to rectifying any mistake apparent from the record.

Analysis and Conclusion: The power u/s 254(2) is limited to rectification of a mistake apparent on record and therefore, the Tribunal must restrict itself within those parameters.

A detailed order was passed by the Tribunal upholding the order passed by the Assessing Officer. While allowing the application u/s 254(2) and recalling its earlier order, the Tribunal had reheard the entire appeal on the merits as if the Tribunal was deciding the appeal against the order passed by the Commissioner (Appeals). The subsequent order passed by the Tribunal recalling its earlier order was beyond the scope and ambit of the powers u/s 254(2) and is not tenable in law.

Note – The facts given in the question are similar to the facts in Reliance Telecom Ltd./Reliance Communications Ltd. (2023) 440 ITR 1 (SC) wherein the issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court in the said case.

Question-18 : [RTP Nov 23]
"The arm's length price (ALP) determined by the Tribunal, which is the final fact-finding authority, is final and cannot be the subject matter of scrutiny by the High Court as it does not give rise to a substantial question of law; accordingly, in an appeal u/s 260A, the High Court is precluded from examining the correctness of determination of the ALP" – Examine the correctness of this statement with reference to a recent Supreme Court ruling.

Solution
The statement is not correct.
The Apex Court, in SAP Labs India Pvt. Ltd. v. ITO [2024] 454 ITR 121, laid down the following with respect to the powers of High Court to consider the substantial question of law involving determination of arm's length price (ALP):

- While determining the ALP, the Tribunal has to follow the guidelines stipulated under Chapter X of the Income-tax Act, 1961, namely, sections 92 to 92F of the Act and Rules 10A to 10E of the Income-tax Rules, 1962. Any determination of the ALP under Chapter X not in accordance with the relevant provisions of the Income-tax Act, 1961 and Rules can be considered as perverse and it may be considered as a substantial question of law as perversity itself can be said to be a substantial question of law. Therefore, there cannot be any absolute proposition of law that in all cases where the Tribunal has determined the ALP, the same is final and cannot be the subject matter of scrutiny by the High Court in an appeal under section 260A.
  When the determination of the ALP is challenged before the High Court, it is always open for the High Court to consider and examine whether the ALP has been determined while taking into consideration the relevant guidelines under the Act and the Rules.
- The High Court can examine the question of comparability of two companies or selection of filters and examine whether the same is done judiciously and on the basis of the relevant material/evidence on record. The High Court can also examine whether the comparable transactions have been taken into consideration properly or not, i.e., to the extent as to whether non-comparable transactions are considered as comparable transactions or not.
  Therefore, in an appeal challenging the determination of the arm's length price, it is always open for the High Court to examine in each case, within the parameters of section 260A, whether while determining the ALP, the guidelines laid down under the Income-tax Act, 1961 and the Income-tax Rules, 1962 are followed or not and whether the determination of the ALP and the findings recorded by the Tribunal while determining the ALP are perverse or not.

Question-19 : [RTP Nov 20]

M/s. Uranus LLP filed its return of income for the A.Y. 2023-24 on 23-07-2023. The assessment u/s 143(3) was completed on 27th April, 2024. The Assessing Officer made two additions to the income of the LLP, namely, 12 lakhs towards unexplained investment u/s 69 and 4 lakhs u/s 40(b) due to excess interest paid to partners.
The LLP, being aggrieved, contested the addition of 12 lakhs under section 69 and filed an appeal before the Commissioner (Appeals). The appeal was decided on 12th February, 2025 against the LLP. In March, 2025, the LLP approaches you to know whether it should apply for revision to Principal Commissioner u/s 264 or for rectification u/s 154 to the Assessing Officer as regards disallowance u/s 40(b). You are required to advise the LLP, keeping in mind the relevant provisions of income-tax law.

SOLUTION

Section 264(4)(c) provides that the Principal Commissioner or Commissioner has no power to revise any order which has been made the subject matter of an appeal to the Commissioner (Appeals), even if the relief claimed in the petition is different from the relief claimed in appeal. The concept of total merger would apply in the case of section 264. It was so held by the Supreme Court in the case of Hindustan Aeronautics Ltd v. CIT (2000) 243 ITR 898.
Section 154(1A) provides that where any matter had been considered and decided in any proceeding by way of appeal or revision relating to an order, Assessing Officer may amend the order for rectification of mistake apparent from the record, in relation to a matter other than the matter which has been considered and decided. The concept of partial merger would apply in the case of sec- 154.

In the present case, since the order passed by the Assessing Officer in respect of the addition of unexplained investment of 12 lakhs became the subject matter of an appeal to the Commissioner (Appeals), the assessee, M/s. Uranus LLP, cannot apply for revision under section 264 even if the subject matter of revision i.e., addition of 4 lakhs under section 40(b) is different from the subject matter of appeal.
However, M/s. Uranus LLP can apply to the Assessing Officer for rectification of the order in respect of addition of 4 lakh under section 40(b), if the mistake is apparent from the record, as this matter has not been considered and decided in any proceeding by way of appeal or revision.
In the view of above, the assessee, M/s. Uranus LLP should seek rectification under section 154.

Extra Page

CHAPTER 17
DISPUTE RESOLUTION

Part-A : Study Material Questions

Question-1 :
What is the need for constitution of Dispute Resolution Committee (DRC)? Can an assessee make an application before DRC against an order which is based on information received under an agreement referred to in section 90 or section 90A?

Solution :
In order to provide early tax certainty to small and medium taxpayers, with effect from 1st April, 2021, new scheme of Dispute Resolution has been formulated for constitution of one or more Dispute Resolution Committee(s) (DRC).

Specified order inter alia does not include an order which is based on information received under an agreement referred to in section 90 or section 90A. Thus, an assessee can not opt for dispute resolution before DRC in respect of an order which is based on information received under an agreement referred to in section 90 or section 90A.

Question-2 :
Can an assessee opt for dispute resolution before DRC if prosecution for any offence punishable under the provisions of the Indian Penal Code has been instituted against him and he has been convicted in respect of the same under the said Act?

Solution :
Dispute Resolution Committee would resolve dispute in the case of such persons or class of persons, as may be specified by the Board, who may opt for dispute resolution under this Chapter in respect of dispute arising from any variation in the specified order in his case and who fulfils the specified conditions.

Specified conditions include the condition that the person should not be a person in respect of whom prosecution for any offence punishable under the provisions of the Indian Penal Code has been instituted and he has been convicted of any offence punishable under the said Act.

Thus, a person in respect of whom any prosecution has been instituted and who is convicted of any offence punishable under the Indian Penal Code, cannot opt for resolution of dispute in respect of specified order before DRC.

Question-3 :
Mr. Vijay furnished his return of income for A.Y.2023-24 declaring total income of ₹ 28,00,000. He received an assessment order under section 143(3) on 26.11.2024 enhancing the total income for the A.Y.2023-24 by ₹ 5,00,000. He is aggrieved by the said order and is desirous of knowing whether he can file an application before the Dispute Resolution Committee (DRC). He informs you that no order of detention has been made and no prosecution proceedings have been initiated or instituted against him under any law for the time being in force. However, penalty under section 271D has been levied on him for failure to comply with the provisions of section 269SS.

Can Mr. Vijay file an application before the DRC?

(i) If yes, what is the time limit for making an application to DRC against such order under the Income-tax Act, 1961. He is also keen to know, whether, in case he is aggrieved by the order passed by the DRC, can he file appeal against such order of DRC?

(ii) Would your answer be different, if assessment order is based on information received under a DTAA with Country X?

Solution :
Dispute Resolution Committee (DRC) would resolve dispute in the case of a person who opts for dispute resolution under Chapter XIX-AA in respect of dispute arising from any variation in the specified order in his case and who fulfils the specified conditions. Specified order includes an assessment order passed under section 143(3), where the aggregate sum of variations made vide such order does not exceed ₹ 10 lakh; the total income as per such return furnished by the assessee for the assessment year relevant to such order does not exceed ₹ 50 lakhs and such order is not based on search or requisition or survey or any information received under a DTAA.

Accordingly, in the present case, Mr. Vijay can file an application before DRC, since the assessment order received on 26.11.2024 is a specified order and he satisfies the specified conditions on account of no order of detention being made and no prosecution proceedings being initiated or instituted against him. Non-levy of penalty under income-tax law is not a specified condition, therefore, the levy of penalty under section 271D on him does not result in non-compliance with the specified condition. Mr. Vijay has to file an application for resolution of dispute in the prescribed form on or before 25.12.2024 i.e., within one month from the date of receipt of the specified order.

However, once a modified order is passed by the DRC, no appeal or revision would lie against such order.

If assessment order is based upon the information received under an DTAA entered with India, Mr. Vijay, will not be eligible to make an application before DRC, since it is not a specified order.

Part-B : Additional Questions

Question-4 : [MTP Nov 22]
Mr. Sanjay furnished his return of income for A.Y.2022-23 declaring total income of ₹ 52,00,000. He received an assessment order under section 143(3) on 12.12.2023 enhancing the total income for the A.Y.2022-23 by ₹ 3,20,000. He is aggrieved by the said order and is desirous of knowing whether he can file an application before the Dispute Resolution Committee (DRC). He informs you that no order of detention has been made and no prosecution proceedings have been initiated or launched against him under any law for the time being in force. However, penalty under section 271E has been levied on him for failure to comply with the provisions of section 269T.

Can Mr. Sanjay file an application before the DRC? If no, what are the other remedies available under the Income-tax Act, 1961?

Solution :
Dispute Resolution Committee (DRC) would resolve dispute in the case of a person who opts for dispute resolution under Chapter XIX-AA in respect of dispute arising from any variation in the specified order in his case and who fulfils the specified conditions. Specified order includes an assessment order passed under section 143(3), where the aggregate sum of variations made vide such order does not exceed ₹ 10 lakh; the total income as per such return furnished by the assessee for the assessment year relevant to such order does not exceed ₹ 50 lakhs and such order is not based on search or requisition or survey or any information under a DTAA.

In the present case, Mr. Sanjay cannot file an application before DRC, since the assessment order received on 12.12.2023 is not a specified order since total income as per return furnished by Mr. Sanjay of ₹ 5,00,000 exceeds the threshold limit of ₹ 50,00,000 though he satisfies the specified conditions on account of no order of detention being made and no prosecution proceedings being initiated or launched against him.

However, Mr. Sanjay, can file an appeal before the Commissioner of Income-tax (Appeals) under section 246A (1) against such order passed under section 143(3) within 30 days of the date of service of the notice of demand relating to the assessment. Moreover, in case he does not want to prefer an appeal, then he can move a revision petition before the Principal Commissioner or Commissioner of Income-tax under section 264 within a period of one year from the date of on which the order was communicated to him or the date on which he otherwise came to know of it, whichever is earlier.

Extra Page

CHAPTER 18
MISCELLANEOUS PROVISIONS

Part-A : Study Material Questions

Question-1 :
A private bank has not filed its statement of financial transaction or reportable account in relation to the specified financial transactions for the financial year 2023-24. A notice was issued by the prescribed income-tax authority on 1st October, 2024 requiring the bank to furnish the statement by 31st October, 2024. The bank, however, furnished the statement only on 15th November, 2024. What would be the penalty leviable under section 271FA?

Solution :

(1)	(2)	(3)	(4)	
Noncompliance of section	**Penalty under section 271FA**	**Period**	**Quantum of penalty under section 271FA (2) × (3) (₹)**	
285BA(1)	₹ 500 per day of continuing default	1.6.2024 to 31.10.2024	153 days × ₹ 500	76,500
285BA(5)	₹ 1,000 per day of continuing default	1.11.2024 to 15.11.2024	15 days × ₹ 1,000	15,000
				91,500

Question-2 :
Fearless General Finance & Investment Limited, a residuary non-banking company, accepts public deposits, issues deposit certificate and repays the same after some period of time alongwith interest, under different schemes run by it. Following transactions were noted from their books of account:

(i) Mr. A, an individual, has deposited ₹ 15,000 on 1st May, 2020 for 48 months by bearer cheque and another ₹ 15,000 on 30th June, 2023 in cash to purchase a new certificate of 48 months tenure.

(ii) Mr. A has applied for premature withdrawal against both the certificates and the company has paid him ₹ 16,500, by a bearer cheque, against principal and interest on 23rd March, 2024, due against his first certificate (purchased in 2020) and ₹ 15,500 in cash on 25th March, 2024, against the second certificate.

Discuss the violation of income tax provision, if any, and consequential penalty for each transaction. Will it make any difference if the certificates were held by Mr. A with his wife Mrs. A, jointly, while repaying back in cash or bearer cheque?

Solution :
(i) There is no violation of section 269SS at the time of acceptance of the first deposit of ₹ 15,000 by bearer cheque on 1.5.2020, since it is not in excess of the threshold limit of ₹ 20,000. However, violation under section 269SS is attracted at the time of acceptance of the second deposit in cash on 30th June, 2023, since as on that date, there is already an outstanding deposit of ₹ 15,000 and another cash deposit of ₹ 15,000 would take the aggregate to ₹ 30,000, which exceeds the threshold limit of ₹ 20,000. Therefore, penalty under section 271D of a sum equal to the amount of deposit taken from Mr. A is attracted for failure to comply with the provisions of section 269SS.

(ii) In this case, there is a violation of the provisions of section 269T at the time of first repayment by bearer cheque on 23rd March, 2024, since on that date, the aggregate amount of deposits held by Mr. A with the non-banking company (together with interest payable on such deposits) is more than ₹ 20,000. Therefore, penalty under section 271E equal to the amount of deposit so repaid will be attracted for failure to comply with the provisions of section 269T.

However, the second repayment of ₹ 15,500 on 25th March, 2024 in cash cannot be considered as a violation of section 269T, since neither the amount of deposit with interest thereon nor the aggregate amount of deposits held by Mr. A on that date together with interest exceeds the threshold limit of ₹ 20,000.

The provisions of section 269T will be attracted at the time of first repayment of bearer cheque even if the certificate is being held by Mr. A in joint name with his wife.

Question-3 :
The proceedings before the Income-tax Authorities either can be attended by the assessee in person or through an authorized representative. Who can be treated as an authorized representative of the assessee? Mention any five persons who can be treated as an authorized representative of the assessee.

Solution :
As per section 288, the proceedings before the income-tax authorities can be attended by an assessee in person or through an authorised representative, i.e., a person authorized by the assessee in writing to appear on his behalf, being -

(i) a person who is a relative or a regular employee of the assessee; or
(ii) any officer of a Scheduled Bank in which the assessee maintains a current account or has other regular dealings; or
(iii) a legal practitioner who is entitled to practise in any civil court in India; or
(iv) a chartered accountant within the meaning of the Chartered Accountants Act, 1949 who hold a valid certificate of practice
(v) any person who has passed any accountancy examination recognized in this behalf by the CBDT for this purpose; or

Question-4 :
An order for A.Y. 2022-23 was passed by the Assessing Officer as per section 143(3), but the typist wrongly typed in the order, the assessment year as A.Y.2021-22 and the relevant previous year as ending on 31.3.2021. The assessee claimed in appeal that the same is an invalid order which was not accepted by the CIT (Appeals) on the ground of the error being of clerical nature. Discuss the correctness of the order of the CIT(Appeals).

Solution :
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.

Question-5 :
"Proceedings cannot be initiated under the Act, unless a proper notice to this effect has been served upon." In this context answer:

(i) What are the prescribed modes of service of such notice?
(ii) On whom should the notice be addressed and served upon in the cases where the assessee is a dissolved firm, a deceased person and a partitioned HUF.

Solution :

(i) As per section 282(1), the service of notice or summon or requisition or order or any other communication under this Act may be made by delivering or transmitting a copy thereof to the person named therein -
    (1) by post or such courier services as approved by the CBDT; or
    (2) in such manner as provided in the Code of Civil Procedure, 1908 for the purposes of service of summons; or

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

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

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

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

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

Question-6 :
Explain the circumstances under which the Assessing Officer can resort to provisional attachment of the property of the assessee. Also, state the period of time for which such attachment can take place.

When can the Assessing Officer revoke provisional assessment of property? Discuss.

Solution :
As per the provisions of section 281B, there can be provisional attachment to protect the interest of Revenue in certain cases i.e.-

(i) The proceeding for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment or for imposition of penalty under section 271AAD (penalty leviable for false entry etc. in books of accounts) where the amount or aggregate of amounts of penalty likely to be imposed under the said section exceeds ₹ 2 crores should be pending.

(ii) Such attachment should be necessary for the purpose of protecting the interest of Revenue in the opinion of the Assessing Officer.

(iii) The previous approval of the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director has been obtained by the Assessing Officer.

(iv) The Assessing Officer, may, by an order in writing attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.

(v) Such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of order made under section 281B(1). However, the period can be extended by the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director, as the case may be, for the reasons to be recorded in writing for a further period or periods as he thinks fit. The total period of extension in any case cannot exceed 2 years or 60 days after the date of order of assessment or reassessment, whichever is later.

The Assessing Officer shall, by order in writing, revoke provisional attachment of a property made under section 281B(1) in a case where the assessee furnishes a guarantee from a scheduled bank, for an amount not less than the fair market value of such provisionally attached property or for an amount which is sufficient to protect the interests of the revenue.

Question-7 :
Mr. Biswas, a stock broker, has defaulted with regard to his income-tax payments and the Assessing Officer has attached his membership card of Stock Exchange under section 281B of the Income-tax Act, 1961. Mr. Biswas contends that the membership card is not transferable and is not his personal asset. Discuss the validity of attachment of the card by the Assessing Officer in the context of Section 281B.

Solution :
The right of membership is not a private asset and it is merely a personal privilege granted to the member. It is non-transferable and incapable of alienation by the member or his legal representative except to the limited extent provided in the rules and regulations of the stock exchange and subject to the fulfillment of conditions prescribed by the stock exchange. The nomination, even if permitted, is subject to the rules and is not automatic. The right of nomination is vested in the stock exchange absolutely in the case of death of or default of a member. Thus, the membership card is not the property of the assessee and therefore cannot be attached under section 281B. It has been so held by the Apex Court in the case of Stock Exchange Ahmedabad vs. ACIT (2001) 248 ITR 209.

Question-8 :
An assessee had credited a sum of ₹ 50,000 in cash in the account of Madan, said to represent a loan obtained from him. The Assessing Officer, having gone into the genuineness of the transaction, disbelieved the story of loan and treated the sum of ₹ 50,000 as the income of the assessee from undisclosed sources. He also started proceedings under section 271D and levied a penalty of ₹ 60,000 on the assessee for having accepted the loan in contravention of section 269SS. Examine the correctness of the levy.

Solution :
There are several flaws in the penalty levied by the Assessing Officer. Firstly, the penalty leviable under section 271D cannot exceed the sum equal to the loan taken. Hence, the maximum penalty leviable would be ₹ 50,000. Secondly, any penalty imposable under section 271D shall be imposed by the Joint Commissioner. Hence, unless the Assessing Officer happens to be a Joint Commissioner the levy of penalty will be invalid. Thirdly, the Assessing Officer cannot, on the one hand, treat the loan as undisclosed income of the assessee and on the other, treat it as a loan for the purpose of section 269SS read with section 271D. Such a treatment will be self-contradictory. The moment the amount of ₹ 50,000 is treated as undisclosed income, it ceases to bear the character of loan and therefore, the foundation for the levy of penalty under section 271D disappears. [Diwan Enterprises v. CIT and Others (2000) 246 ITR 571]

Part-B : Additional Questions

Question-9 : [PP May 23]

Comment whether the following transactions, undertaken during the financial year 2023-24, are required to be reported under the Statement of Financial Transaction or Reportable Account as required u/s 285BA of the Income-tax Act, 1961. Please give your answer alongwith suitable reasons and Category of Reporting Person.

a) Mr. A purchased five bank drafts of ₹ 3 lakh each from his current A/c with State Bank of India, Jaipur;

b) Ms. Q made two time deposits with Canara Bank, Jaipur - (a) a time deposit of ₹ 7 lakhs made on 07-08-2023 and (b) Renewal of Time deposit of ₹ 5 lakhs originally made on 1.1.2023 and renewed on 1.1.2024;

c) Ms. C made following payments in respect of credit card payments-

For the months of April to July, 2023	-	₹ 19,500 for each month, in cash
For the months of Aug. to Dec., 2023	-	₹ 59,500 for each month, through bank A/c
For the months of Jan to Mar, 2024	-	₹ 13,300 for each month, in cash

d) Mr. Z purchased garments of ₹ 2 lakhs in cash from M/s Arora Designers on the occasion of his marriage. M/s Arora Designers is liable for audit u/s 44AB of the Income-tax Act, 1961

Solution

(a) State Bank of India, Jaipur, is **not** required to report value of bank drafts purchased by Mr. A, even though aggregate value of such bank drafts i.e., ₹ 15 lakhs, exceed ₹ 10 lakhs in the F.Y.2023-24, since such bank drafts are purchased from his current A/c and not in cash.

(b) Canara Bank, Jaipur is **not** required to report time deposits made by Ms. Q, since the value of time deposits other than time deposit renewed on 1.1.2024 is only ₹ 7 lakhs, and hence, does not aggregate to ₹ 10 lakhs or more in the F.Y.2023-24.

(c) The bank or institution issuing credit card is required to report cash payment made by Ms. C in respect of credit card, since aggregate cash payments of ₹ 1,17,900 (₹ 19,500 x 4 + ₹ 13,300 x 3) exceeds ₹ 1 lakh in the F.Y.2023-24.
However, payment of ₹ 59,500 for each month from August 2023 to December 2023 need **not** be reported by such bank or company or institution since, aggregate value of such transactions, being ₹ 2,97,500, is less than ₹ 10 lakhs.

(d) Payment of ₹ 2 lakhs by Mr. Z is not required to be reported by M/s Arora Designers, since receipt of cash payment against sale of garments from Mr. Z does not exceed ₹ 2 lakhs.

Question-10 [MTP 1 Nov 23]

Fearless General Finance & Investment Limited, a residuary non-banking company, accepts public deposits, issues deposit certificate and repays the same after some period of time alongwith interest, under different schemes run by it. Following transactions were noted from their books of account:

(i) Mr. A, an individual, has deposited ₹ 15,000 on 1st May, 2019 for 48 months by bearer cheque and another ₹ 15,000 on 30th June, 2023 in cash to purchase a new certificate of 48 months tenure.

(ii) Mr. A has applied for premature withdrawal against both the certificates and the company has paid him ₹ 16,500, by a bearer cheque, against principal and interest on 23rd March, 2024, due against his first certificate (purchased in 2019) and ₹ 15,500 in cash on 25th March, 2024, against the second certificate

Solution

i. There is no violation of section 269SS at the time of acceptance of the first deposit of ₹ 15,000 by bearer cheque on 1.5.2019, since it is not in excess of the threshold limit of ₹ 20,000. However, violation under section 269SS is attracted at the time of acceptance of the second deposit in cash on 30th June, 2023, since as on that date, there is already an outstanding deposit of ₹ 15,000 and another cash deposit of ₹ 15,000 would take the aggregate to ₹ 30,000, which exceeds the threshold limit of ₹ 20,000. Therefore, penalty under section 271D of a sum equal to the amount of deposit taken from Mr. A is attracted for failure to comply with the provisions of section 269SS.

ii. In this case, there is a violation of the provisions of section 269T at the time of first repayment by bearer cheque on 23rd March, 2024, since on that date, the aggregate amount of deposits held by Mr. A with the non-banking company (together with interest payable on such deposits) is more than ₹ 20,000. Therefore, penalty under section 271E equal to the amount of deposit so repaid will be attracted for failure to comply with the provisions of section 269T.

However, the second repayment of ₹ 15,500 on 25th March, 2024 in cash cannot be considered as a violation of section 269T, since neither the amount of deposit with interest thereon nor the aggregate amount of deposits held by Mr. A on that date together with interest exceeds the threshold limit of ₹20,000.

CHAPTER 19
PROVISIONS TO COUNTERACT UNETHICAL TAX PRACTICES

Part-A : Study Material Questions

Question-1 :
M/s. XYZ is a firm liable to tax@30%. The following are the particulars furnished by the firm for A.Y.2024-25:

	Particulars of total income	**₹**
(1)	As per the return of income furnished u/s 139(1)	50,00,000
(2)	Determined under section 143(1)(a)	60,00,000
(3)	Assessed under section 143(3)	75,00,000
(4)	Reassessed under section 147	95,00,000

Can penalty be levied u/s 270A on M/s. XYZ? If the answer is in the affirmative, compute the penalty leviable u/s 270A.

Solution :
M/s. XYZ is deemed to have under-reported its income since:
(1) its income assessed u/s 143(3) exceeds its income determined in a return processed u/s 143(1)(a); and
(2) the income reassessed under section 147 exceeds the income assessed u/s 143(3).

Therefore, penalty is leviable under section 270A for under-reporting of income.

Computation of penalty leviable under section 270A

Particulars	**₹**	**₹**
Assessment under section 143(3) Under-reported income:		
Total income assessed under section 143(3)	75,00,000	
(-) Total income determined u/s 143(1)(a)	60,00,000	
	15,00,000	
Tax payable on under-reported income:		
Tax on under-reported income of ₹ 15 lakhs plus tax on total income of ₹ 60 lakhs determined u/s 143(1)(a) [30% of ₹ 75 lakh + HEC@4%]	23,40,000	
Less: Tax on total income determined u/s 143(1)(a) [30% of ₹ 60 lakh +HEC@4%]	18,72,000	
	4,68,000	
Penalty leviable@50% of tax payable		2,34,000
Reassessment under section 147 Under-reported income:		
Total income reassessed under section 147	95,00,000	
(-) Total income assessed under section 143(3)	75,00,000	
	20,00,000	
Tax payable on under-reported income:		
Tax on under-reported income of ₹ 20 lakhs plus tax on total income of ₹ 75 lakhs assessed u/s 143(3) [30% of ₹ 95 lakh + HEC@4%]	29,64,000	
Less: Tax on total income assessed u/s 143(3) [30%of ₹ 75 lakh + HEC@4%]	23,40,000	
	6,24,000	
Penalty leviable@50% of tax payable		3,12,000

Note – The following assumptions have been made -
(1) None of the additions or disallowances made in assessment or reassessment qualifies under section 270A(6); and
(2) The under-reported income is not on account of misreporting.

Question-2 :
Mr. Ram, a resident individual of the age of 55 years, has not furnished his return of income for A.Y.2024- 25. However, the total income assessed in respect of such year under section 144 is ₹ 12 lakh. Is penalty u/s 270A attracted in this case, and if so, what is the quantum of penalty leviable?

Solution :
Mr. Ram is deemed to have under-reported his income since he has not filed his return of income and his tax liability would be computed applying the provisions of section 115BAC, since w.e.f. A.Y. 2024-25 he has to specifically exercise the option to shift to normal provisions along with the return of income. Hence, penalty under section 270A is leviable in his case in the following manner.

Computation of penalty leviable under section 270A

Particulars	**₹**	**₹**	**₹**
Assessment under section 144			
Under-reported income:			
Total income assessed under section 144		12,00,000	
Tax payable on under-reported income as per section 115BAC			
Upto ₹ 3,00,000	Nil		
₹ 3,00,001 – ₹ 6,00,000 @ 5%	15,000		
₹ 6,00,001 – ₹ 9,00,000 @10%	30,000		
₹ 9,00,001 – ₹ 12,00,000 @15%	45,000	90,000	
Add: HEC@4%		3,600	
		93,600	
Penalty leviable@50% of tax payable			46,800

Note – It is assumed that the under-reported income is not on account of misreporting.

Question-3 :
ABC Ltd. is a domestic company liable to tax@25%. The following are the particulars furnished by the company for A.Y.2024-25:

	Particulars of total income	**₹**
(1)	As per the return of income furnished u/s 139(1)	(15,00,000)
(2)	Determined under section 143(1)(a)	(8,00,000)
(3)	Assessed under section 143(3)	(5,00,000)
(4)	Reassessed under section 147	4,00,000

Is penalty leviable under section 270A on ABC Ltd., and if so, what is the quantum of penalty?

Solution :
ABC Ltd. is deemed to have under-reported its income since:
(1) the assessment u/s 143(3) has the effect of reducing the loss determined in a return processed u/s 143(1)(a); and
(2) the reassessment u/s 147 has the effect of converting the loss assessed u/s 143(3) into income.

Therefore, penalty is leviable under section 270A for under-reporting of income.

Computation of penalty leviable under section 270A

Particulars	**₹**	**₹**
Assessment under section 143(3) Under-reported income:		
Loss assessed u/s 143(3)	(5,00,000)	
(-) Loss determined under section 143(1)(a)	(8,00,000)	
	3,00,000	

Tax payable on under-reported income@25%	75,000	
Add: HEC@4%	3,000	
	78,000	
Penalty leviable@50% of tax payable		39,000
Reassessment under section 147 Under-reported income:		
Total income reassessed under section 147	4,00,000	
(-) Loss assessed under section 143(3)	(5,00,000)	
	9,00,000	
Tax payable on under-reported income@25%	2,25,000	
Add: HEC@4%	9,000	
	2,34,000	
Penalty leviable@50% of tax payable		1,17,000

Notes – The following assumptions have been made -
(1) None of the additions or disallowances made in assessment or reassessment qualifies u/s 270A(6); and
(2) The under-reported income is not on account of misreporting.

Question-4 :
What is the quantum of penalty that could be levied in each of the following cases -
(i) Failure to get books of accounts audited as required under section 44AB within the time prescribed under the Act.
(ii) Failure to comply with a direction issued under section 142(2A).
(iii) Failure to furnish report from an accountant as required under section 92E.

Solution :
The penalty that could be levied in each case is:
(i) Failure to get books of accounts audited as required under section 44AB of the Income-tax Act, 1961 - a sum equal to ½% of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years, or a sum of ₹ 1,50,000, whichever is less [Section 271B].
(ii) Failure to comply with a direction issued under section 142(2A) – a sum of ₹ 10,000 [Section 272A(1)(d)].
(iii) Failure to furnish report from an accountant as required by section 92E - a sum of ₹ 1,00,000 [Section 271BA].

Question-5 :
X, an individual whose total sales in the business of food grains for the year ending 31.3.2024 was ₹ 205 lakhs, did not maintain books of account for P.Y.2023-24, even though his turnover was ₹ 28 lakhs in the P.Y.2022-23. During the previous year 2023-24, majority of payment were made either in cash or by bearer cheque by Mr. X. The Assessing Officer levied penalty of ₹ 25,000 under section 271A for non-maintenance of books of account and penalty of ₹ 1,02,500 under section 271B for not getting the books audited as required by section 44AB. Is the Assessing Officer justified in levying penalty under section 271B?

Solution :
X is required to maintain books of account as per section 44AA for the P.Y.2023-24 since his turnover exceeded ₹ 25 lakhs in the P.Y.2022-23. He also has to get them audited under section 44AB, since his gross sales in the P.Y.2023-24 exceeds ₹ 1 crore. He is liable to pay penalty under section 271A for not maintaining his books of account as per section 44AA. Accordingly, the action of the Assessing Officer in levying penalty of ₹ 25,000 under section 271A is correct. However, where books of account have not been maintained, there cannot be a question of getting them audited. Audit of books of account presupposes maintenance of books of account. When admittedly X has not maintained books, he cannot obviously get the audit done.

In Surajmal Parsuram Todi v. CIT (1996) 222 ITR 691, the Guwahati High Court has held that when a person commits an offence by not maintaining books of accounts as contemplated by section 44AA, the offence is complete and after that there can be no possibility of any offence as contemplated by section 44AB and, therefore, the imposition of penalty under section 271B is erroneous.

Therefore, in this case, the Assessing Officer is not justified in levying penalty under section 271B.

Question-6 :
State the conditions, if any, to be satisfied by an assessee in order to get relief under section 273A(4) regarding the waiver of penalty. Can the Principal Commissioner or the Commissioner refuse to grant relief, when the conditions laid down in the section was complied with, by the assessee?

Solution :
There are two conditions to be satisfied by an assessee in order to get relief in the form of a waiver or reduction of penalty by the Principal Commissioner or the Commissioner of Incometax under section 273A(4) of the Act. These conditions are:

(i) The payment of penalty would cause "genuine hardship" to the assessee and the Commissioner is satisfied about the existence of genuine hardship having regard to the circumstances of the case. The existence of genuine hardship would entitle the assessee to relief. The CBDT in its Circular No 784 dated 22-11-1999 has clarified that "genuine hardship" referred to in the provisions of section 273A(4) should exist both at the time at which the application under section 273A(4) is made by the assessee before the Principal Commissioner or the Commissioner and at the time of passing of order under section 273A(4) by the Principal Commissioner or the Commissioner.

(ii) The assessee has co-operated in any enquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

As per the decision of Andhra Pradesh High Court in K.S.N. Murthy v. Chairman, CBDT (2001) 252 ITR 269, if the above conditions laid down for exercise of the discretion are satisfied, the Principal Commissioner or the Commissioner cannot refuse to exercise the discretion. Though the power given to the Commissioner under section 273A is discretionary, the exercise of discretion cannot be either arbitrary or capricious and has to be judicious and objective, once the conditions required for exercise of discretion in any judicial or quasijudicial proceedings are satisfied. Such discretion must be exercised taking into consideration all relevant facts. The satisfaction for exercise of discretionary power under the section must be based on objective consideration and not on subjective satisfaction.

Also, as per the proviso to section 273A(4), in case the quantum of penalty exceeds ₹ 1 lakh, the Principal Commissioner or the Commissioner can grant relief only with the previous approval of the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General, as the case may be.

Note - The Principal Commissioner or the Commissioner has to pass an order under section 273A(4), either accepting or rejecting the application in full or in part, within a period of 12 months from the end of the month in which the application is received. Further, no order rejecting the application, either in full or in part, shall be passed unless the assessee has been given an opportunity of being heard.

Question-7 :
Examine the following cases and state whether the same are liable for penalty as per the provisions of the Income-tax Act, 1961.

(i) Raman & Associates had made payment in excess of the limits prescribed to the contractors for carrying out labour job work at various sites, but had not deducted tax at source as per section 194C.

(ii) Hotels and Hotels were asked by Income-tax Officer (CIB) to furnish details of all such tourists who stayed in their hotels and had paid bill amount in excess of ₹ 10,000.

They have not furnished the requisite information in spite of various reminders.

Solution :

(i) Penalty under section 271C is attracted for failure to deduct tax at source. The penalty would be a sum equal to the amount of tax which such person has failed to deduct. Such penalty can be imposed only by the Joint Commissioner. Therefore, Raman & Associates shall be liable for penalty under section 271C equal to the amount of tax which they have failed to deduct under section 194C from the payments made to the contractors. The penalty would be in addition to the disallowance of 30% of expenditure/payment under section 40(a)(ia).

(ii) Section 133(6) empowers the Income-tax authority to require any person to furnish information in relation to such points or matters which will be useful for or relevant to any enquiry or proceeding under the Act. Failure on the part of an assessee to furnish the information in relation to such points or matters as required makes him liable for penalty under section 272A(2) of ₹ 500 for every day during which the failure continues.

Note – An income-tax authority below the rank of the Principal Director or Director or Principal Commissioner or Commissioner can exercise this power in respect of an enquiry in a case where no proceeding is pending, only with the prior approval of the Principal Director or Director or Principal Commissioner or Commissioner. Such power can, however, be exercised by the Joint Director, Deputy Director and Assistant Director, without the prior approval of the Principal Director/Director/Principal Commissioner/Commissioner. In this case, it is presumed that the Income-tax authority has obtained the approval of the Principal Director/Director or Principal Commissioner/ Commissioner before exercising this power.

Question-8 :

Fox Limited failed to furnish information and documents sought by the Transfer Pricing Officer (TPO). Can TPO levy penalty for such failure? How much would be the quantum of penalty imposable for the said failure?

Solution :

Under section 271G, if any person who has entered into an international transaction or specified domestic transaction fails to furnish any such information or document as required by section 92D(3) sought for by the Transfer Pricing Officer, then, such person shall be liable to a penalty which may be levied by the Assessing Officer or the Transfer Pricing Officer or the Commissioner (Appeals). Thus, the Transfer Pricing Officer is a competent authority to levy penalty.

Penalty would be a sum equal to 2% of the value of international transaction or specified domestic transaction for each such failure.

Question-9 :

What would be the penalty leviable under section 270A in case of the following assessees, if none of the additions or disallowances made in the assessment or reassessment qualify under section 270A(6) and the under-reported income is not on account of misreporting?

	Particulars of total income of A.Y.2024-25	**M/s. Alpha, a resident firm**	**Beta Ltd., an Indian company**
		(₹)	**(₹)**
(1)	As per the return of income furnished u/s 139(1)	35,00,000	(12,00,000)
(2)	Determined under section 143(1)(a)	45,00,000	(6,00,000)
(3)	Assessed under section 143(3)	62,00,000	(2,00,000)
(4)	Reassessed under section 147	81,00,000	6,00,000

Note – Beta Ltd. is a trading company. The total turnover of Beta Ltd. for the P.Y.2021-22 was ₹ 401 crore and the company has not exercised option under section 115BAA.

Solution :

Penalty leviable under section 270A in case of M/s. Alpha, a resident firm

M/s. Alpha is deemed to have under-reported its income since:

(1) its income assessed under 143(3) exceeds its income determined in a return processed under section 143(1)(a); and

(2) the income reassessed under section 147 exceeds the income assessed under section 143(3).

Therefore, penalty is leviable under section 270A for under-reporting of income.

Computation of penalty leviable under section 270A

Particulars	**₹**	**₹**
Assessment under section 143(3)		
Under-reported income:		
Total income assessed under section 143(3)	62,00,000	
(-) Total income determined u/s 143(1)(a)	45,00,000	
	17,00,000	
Tax payable on under-reported income:		
Tax on under-reported income of ₹ 17 lakhs plus total income of ₹ 45 lakhs determined u/s 143(1)(a) [30% of ₹ 62 lakh + HEC@4%]	19,34,400	
Less: Tax on total income determined u/s 143(1)(a) [30% of ₹ 45 lakh + HEC@4%]	14,04,000	
	5,30,400	
Penalty leviable@50% of tax payable		2,65,200
Reassessment under section 147		
Under-reported income:		
Total income reassessed under section 147	81,00,000	
(-) Total income assessed under section 143(3)	62,00,000	
	19,00,000	
Tax payable on under-reported income		
Tax on under-reported income of ₹ 19 lakhs plus total income of ₹ 62 lakhs assessed u/s 143(3) [30% of ₹ 81 lakh + HEC@4%]	25,27,200	
Less: Tax on total income assessed u/s 143(3) [30% of ₹ 62 lakh + HEC@4%]	19,34,400	
	5,92,800	
Penalty leviable@50% of tax payable		2,96,400

Penalty leviable under section 270A in the case of Beta Ltd., an Indian company

Beta Ltd. is deemed to have under-reported its income since:

(1) the assessment under 143(3) has the effect of reducing the loss determined in a return processed under section 143(1)(a); and

(2) the reassessment under section 147 has the effect of converting the loss assessed under section 143(3) into income.

Therefore, penalty is leviable under section 270A for under-reporting of income.

Computation of penalty leviable under section 270A

Particulars	**₹**	**₹**
Assessment under section 143(3)		
Under-reported income:		
Loss assessed u/s 143(3)	(2,00,000)	
(-) Loss determined under section 143(1)(a)	(6,00,000)	
	4,00,000	
Tax payable on under-reported income@30%	1,20,000	
Add: HEC@4%	4,800	

	1,24,800	
Penalty leviable@50% of tax payable		62,400
Reassessment under section 147		
Under-reported income:		
Total income reassessed under section 147	6,00,000	
(-) Loss assessed under section 143(3)	(2,00,000)	
	8,00,000	
Tax payable on under-reported income@30%	2,40,000	
Add: HEC@4%	9,600	
	2,49,600	
Penalty leviable@50% of tax payable		1,24,800

Note – The applicable rate of tax for Beta Ltd., a trading company, for A.Y.2024-25 is 30%, since its turnover for the P.Y.2021-22 exceeded ₹ 400 crores.

Question-10 :

Can prosecution be launched for each of the following actions or defaults committed? If yes, then explain the relevant provisions of the Act and the quantum of prescribed punishment.

(i) The assessee had restrained and not allowed the officer authorized as per section 132(1)(iib) of the Act to inspect the documents maintained in the form of electronic record and the books of accounts.

(ii) The assessee deliberately has failed to comply with the requirement of section 142(1) and/or 142(2A).

(iii) The assessee deliberately has failed to make the payment of the tax collected under section 206C.

Solution :

(i) Failure to afford facility to the officer authorized as per section 132(1)(iib) is a case for **which prosecution can be launched under section 275B** and such person shall be punishable with rigorous imprisonment **for a term which may extend to two years and shall also be liable to fine.**

(ii) Willful failure to produce books of account and documents as required under section 142(1) or willful failure to comply with a direction to get the accounts audited under section 142(2A) is a case for which **prosecution can be launched under section 276D and such person shall be punishable with rigorous imprisonment for a term which may extend to one year and with fine.**

(iii) Deliberate failure to deposit the tax collected under section 206C to the credit of the Central Government is a case for which **prosecution can be launched under section 276BB and such person shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.**

Question-11 :

The Assessing Officer lodged a complaint against M/s. KLM, a firm, under section 276CC of the Income-tax Act, 1961 for failure to furnish its return of income for the A.Y.2022-23 within the due date under section 139(1). The tax payable on the assessed income, as reduced by the advance tax paid and tax deducted at source, was ₹ 60,000. The appeal filed by the firm against the order of assessment was allowed by the Commissioner (Appeals). The Assessing Officer passed an order giving effect to the order of the Commissioner (Appeals). The tax payable by the firm as per the said order of the Assessing Officer was ₹ 8,900. The Assessing Officer has accepted the order of the Commissioner (Appeals) and has not preferred an appeal against it to the Income Tax Appellate Tribunal. The firm desires to know of the maintainability of the prosecution proceedings in the facts and circumstances of the case.

Would your answer change if the person against whom complaint was lodged was KLM Ltd., a company, instead of a firm?

Solution :

(i) Section 276CC provides for prosecution for wilful failure to furnish a return of income within the prescribed time, in a case where tax would have been evaded had the failure not been discovered. Since the amount of tax which would have been evaded does not exceed ₹ 25 lakh, the imprisonment would be for a term of 3 months to 2 years. In addition, fine would also be attracted.

However, in a case where the return of income is not filed within the due date, prosecution proceedings will not be attracted if the tax payable by a person, other than a company, on the total income determined on regular assessment, as reduced by the advance tax or self assessment tax, if any, paid and any tax deducted at source, does not exceed ₹ 10,000.

In this case, even though the tax liability of the firm as per the original order of assessment exceeded ₹10,000, however, as a result of the order of the Commissioner (Appeals), it got reduced to ₹ 8,900, which is less than ₹ 10,000. Therefore, since the tax liability of the firm on final assessment was determined at ₹ 8,900, the prosecution proceedings are not maintainable.

In Guru Nanak Enterprises v. ITO (2005) 279 ITR 30, where the facts were similar, the Supreme Court held that prosecution was unwarranted.

(ii) Yes, in case of a company, the answer would be different and prosecution proceedings would be maintainable.

Question-12 :
Explain section 278C applicable in respect of offences committed by Hindu undivided families.

Solution :
As per section 278C(1) of the Income-tax Act, 1961, where an offence under the Income-tax Act, 1961 has been committed by a Hindu undivided family (HUF), the karta shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, the karta shall not be liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

As per section 278C(2), where an offence under the Income-tax Act, 1961 has been committed by a HUF and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any member of the HUF, such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Question-13 :
Can the Department launch prosecution in a case where they have accepted the revised return filed by the assessee, rectifying a mistake in the original return of income?

Solution :
This question came up before the Karnataka High Court in K.E. Sunil Babu, Asst. CIT v. Steel Processors (2006) 286 ITR 315. The High Court observed that since the Department had accepted the revised returns filed under section 139(5), it was clear that there was a bona fide mistake in the original return and there was no element of mens rea. Therefore, the High Court held that the Department cannot launch prosecution under sections 276C, 277 and 278.

Question-14 :
Ravinder, an Indian citizen, left India and settled in United Kingdom from 10.4.2016. He had never left India previously since April, 2008. He acquired a property worth ₹ 200 lakhs in his name in the financial year 2013-14 at Malaysia.

The Assessing Officer came to know of this in March, 2024 based on the investigation made by Enforcement Directorate in some other person's case. The Assessing Officer, having recorded some concrete evidences against Ravinder, issued a notice under section 10 of the Black Money and Imposition of Tax Act, 2015 on 27.3.2024. Mr. Ravinder's counsel contended that since Mr. Ravinder is not a resident in the financial year 2023-24, a notice under section 10 could not be issued to him.

Is the issue of notice on Ravinder under section 10 of the Black Money Act, 2015 tenable in law? Examine.

Solution :
Every assessee would be liable to tax@30% in respect of his undisclosed foreign income and asset of the previous year. Undisclosed foreign asset would be liable to tax in the previous year in which such asset comes to the notice of the Assessing Officer.

The term "assessee" defined under section 2(2) of the Black Money Act includes a person being a resident in India within the meaning of section 6 of the Income-tax Act, 1961 in the relevant previous year; or being a non-resident or not ordinarily resident in India within the meaning of section 6(6) of the Income-tax Act, 1961 in the relevant previous year, who was resident in India in the previous year in which the undisclosed asset located outside India was acquired.

Since Mr. Ravinder left India and settled in United Kingdom from 10.4.2016 and has not visited India at any time thereafter, he would be non-resident in India in the previous year 2023-24 in which notice is issued. However, he was resident and ordinarily resident in India in the financial year 2013-14 when he acquired the property at Malaysia. Accordingly, the issue of notice on Mr. Ravinder under section 10 of the Black Money Act, 2015, is tenable in law.

Question-15 :
Mr. Harshit stayed in India only for 48 days during P.Y.2023-24. He had acquired a house property located in Country A in September 2013 for ₹ 80 lakh. Out of the investment of ₹ 80 lakh, ₹ 55 lakh was assessed to tax in the total income of the P.Y.2013-14 and P.Y.2012-13, when he was resident in India. The remaining income has not been assessed to tax in any year. This asset comes to the notice of the Assessing Officer in March 2024. The value of the house property on 1.4.2023 was ₹ 120 lakh.

What is the value of undisclosed asset (house property located in Country A) in the hands of Mr. Harshit for the purpose of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and in which year would the same be chargeable to tax?

Solution :
Although Mr. Harshit is a non-resident in A.Y.2024-25 (since he stayed in India only for 48 days in the P.Y.2023-24), he is a resident in the P.Y. 2013-14 in which the undisclosed asset located in Country A was acquired. Hence, he is an assessee under the Black Money (Undisclosed Foreign Income and Assets) Imposition of Tax Act, 2015.

If the value of the house property in the year 2023-24 is ₹ 120 lakh, the amount chargeable to tax shall be X-Y=Z where,
X = ₹ 120 lakh,
Y = ₹ 120 lakh x 55/80 = ₹ 82.50 lakh,
Z = ₹ 120 lakh – ₹ 82.50 lakh = ₹ 37.50 lakh.
₹ 37.50 lakh chargeable to tax in the hands of Mr. Harshit in the A.Y.2024-25.

Question-16 :
An apartment located in Country X was bought in 1988 for ₹ 10 lakh. It was sold in the year 2003 for ₹ 30 lakh. This amount was deposited in a bank account in Country X. In the year 2004, another apartment was purchased for ₹ 45 lakh. The investment in the new apartment was made through withdrawal from the bank account in Country X. The new apartment has not been transferred before the valuation date and its value on the valuation date is ₹ 55 lakh. Assuming that the value of foreign bank account in Country X as computed under Rule 3(1)(e) is ₹ 70 lakh, what would be the fair market value of the new apartment as per Rule 3 of Black Money (Undisclosed Foreign Income and Assets) Imposition of Tax Rules, 2015?

Solution :
FMV of the new apartment = Higher of cost of acquisition i.e., ₹ 45 lakh and price which the property would ordinarily fetch if sold in the open market on the valuation date as per the valuation report i.e., ₹ 55 lakh = ₹ 55 lakh.

Question-17 :
Mr. Piloo (age 72) was the managing director of Ashok (P) Ltd. at Surat. He retired in June, 2009 and left India permanently in January, 2012. It came to the notice of the Joint Director of Income-tax (Investigation) in June, 2023 that Mr. Piloo had accumulated assets during the previous year 2008-09 exceeding ₹ 500 lakhs outside India (consisting of residential apartments and deposits in banks) which were not disclosed for income-tax purposes up to the assessment year 2012-13 for which the return of income was filed in India. Mr. Piloo was served with a notice under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 in August, 2023.

Mr. Piloo is of the opinion that since 10 years have elapsed from the last assessment year in which he was assessed in India, no proceedings could be initiated against him under the Income-tax Act, 1961 and the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. Mr. Piloo is a non-resident for the assessment year 2024-25.

Discuss the liability of Mr. Piloo under the Black Money law and state the procedure and methodology for determination of the value of undisclosed asset outside after evaluating the validity of the contentions raised by him.

Solution :
The contention of the assessee that the proceedings under the Black Money law are barred by limitation is not tenable in law. The time limitation given in the Income-tax Act, 1961, will not apply for the purpose of Black Money law. There is no time limit for initiation of proceedings under the Black Money Law, therefore, proceedings can be initiated against Piloo, even though 10 years have elapsed from the last assessment year in which he was assessed in India.

Every assessee would be liable to tax @ 30% in respect of his undisclosed foreign income and asset of the previous year. Undisclosed foreign asset would be liable to tax in the previous year in which such asset comes to the notice of the Assessing Officer.

Since Mr. Piloo left India permanently in January, 2012, he is a non-resident in India for the previous year 2023-24, the year in which the notice under the Black Money Act was served on him. However, he was resident in India during the previous year 2008-09, being the year in which he accumulated assets outside India which were not disclosed by him in the return of income.

The term "assessee" defined under section 2(2) of the Black Money Act, inter alia includes a person being a non-resident or not ordinarily resident in India within the meaning of section 6(6) of the Income-tax Act, 1961 in the relevant previous year, but who was resident in India in the previous year in which the undisclosed asset located outside India was acquired. Accordingly, Piloo who was resident in India in the P.Y.2008-09 would be an assessee under the Black Money Act, even though he is a non-resident for P.Y.2023-24.

Accordingly, Piloo is liable to pay tax @30% in respect of undisclosed foreign asset during the previous year 2023-24, the year in which such assets came to the notice of the Assessing Officer.

The relevant date for determination of the value of undisclosed assets would be the first day of April of the previous year in which the undisclosed asset located outside India comes to the notice of the Assessing Officer. The notice under the Black Money law was served in August, 2023 and the question states that it came to the notice of Joint Director of Incometax (Investigation) in June, 2023. Accordingly, the fair market value of the asset as on 01.04.2023 would be adopted.

He is also liable to pay penalty, in addition to tax, if any, payable by him, of a sum equal to three times the tax so computed.

The value of the undisclosed asset would be the fair market value of an asset (including financial interest in any entity) determined in the prescribed manner as laid down in Rule 3 of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015.

The value of residential apartments would be the higher of -
(i) its cost of acquisition; and
(ii) the price that the property shall ordinarily fetch if sold in the open market on the valuation date

The value of bank deposits would be the sum of all the deposits made in the account with the bank since the date of opening of the account. However, where any deposit is made from the proceeds of any withdrawal from the account, such deposit shall not be taken into consideration while computing the value of the account.

Question-18 :
Deepak, aged 45 (an Indian citizen) has settled in California, USA since 2015. Prior to that, he has always been in India. He had acquired a residential property in California on 25-06- 2009 for USD 20,000. He kept bank deposit of USD 10,000 in a bank account in New York since 15-04-2010.

Notice under Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 was issued on 20-10-2023. The fair market value of residential property as on 01- 04-2023 was USD 25,000; on 01-04-2024 USD 32,000 and 20-10-2023 USD 30,000. The bank deposit with accrued interest thereon was USD 12,500 on 01-04-2023; USD 12,800 on 01-04-2024 and USD 12,700 on 20-10-2023.

Note: USD = United States Dollar

The exchange rate of Indian currency per 1 USD as per the reference rate of the RBI on the various dates are:
01-04-2023 = ₹ 71
20-10-2023 = ₹ 72
01-04-2024 = ₹ 73·
Compute the value of undisclosed foreign asset chargeable to tax in the hands of Deepak as per Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

Solution :
The definition of "assessee" under the Black Money Law, inter alia, includes a person who, being a non-resident in the previous year when the undisclosed income came to the notice of the Assessing Officer, was resident in India in the previous year in which the undisclosed asset located outside India was acquired. **Therefore, Deepak is an assessee under the Black Money Law since he was resident in India in the P.Y.2009-10, when the property was acquired, even though he is a non-resident in the P.Y.2023-24, when notice under Black Money Law was issued.** Accordingly, the value of undisclosed asset located outside India of Deepak would be chargeable to be tax under the Black Money Law in the previous year in which such asset comes to the notice of the Assessing Officer i.e., P.Y 2023-24, even though he is a non-resident in India for that previous year.

Computation of value of undisclosed foreign asset

Particulars	**USD**	**₹**
Value of residential property in California acquired on 25.6.2009	25,000	
Value of residential property would be the fair market value, being the higher of -		
- Cost of acquisition	USD 20,000	
- Price that the property shall ordinarily fetch if sold in the open market on the valuation date, i.e., 1.4.2023		
	USD 25,000	
Converted into Indian currency taking the rate as on 1.4.2023	₹ 71/USD	17,75,000
Bank Deposits in a bank A/c in New York as on 1st April 2023 [The sum of all the deposits made in the account with the bank since the date of opening of the account would be the value of the bank deposits]	10,000	
Converted into Indian currency taking the rate as on 1.4.2023	₹ 71/USD	7,10,000
Total value of undisclosed foreign asset		**24,85,000**

Part-B : Additional Questions

Question-19 [Sec 270A] [RTP MAY-21]

M/s. ABC LLP filed its return of income for A.Y.2024-25, declaring total income of 18 lakhs, on 2nd October, 2024. On processing of return, the total income determined under section 143(1)(a) was 22 lakhs, after disallowing claim for deduction under section 10AA on account of late furnishing of return of income. Thereafter, on scrutiny, the Assessing Officer made some additions under section 40(a)(ia) and section 43B and passed an assessment order under section 143(3) assessing total income of ₹ 35 lakhs. Later on, the Assessing Officer noticed that certain income had escaped assessment and issued notice for reassessment under section 148. The total income reassessed under section 147 was ₹ 42 lakhs.

Considering that none of the additions or disallowances made in the assessment or re - assessment as above qualifies under section 270A(6), compute the amount of penalty to be levied under section 270A of the Income-tax Act, 1961 at the time of assessment under section 143(3) and at the time of reassessment under section 147 (Assume under- reporting of income is not on account of misreporting).

Solution :

M/s. ABC LLP is deemed to have under-reported its income since:

(1) its income assessed under 143(3) exceeds its income determined in a return processed under section 143(1)(a); and

(2) the income reassessed under section 147 exceeds the income assessed under section 143(3).

Therefore, penalty is leviable under section 270A for under-reporting of income.

Computation of penalty leviable under section 270A

Particulars	₹	₹
Assessment under section 143(3)		
Under-reported income:		
Total income assessed under section 143(3)	35,00,000	
(-) Total income determined u/s 143(1)(a)	22,00,000	
	13,00,000	
Tax payable on under-reported income:		
Tax on under-reported income of 13 lakhs plus total income of 22 lakhs determined u/s 143(1)(a) [30% of 35 lakh + HEC@4%]	10,92,000	
Less: Tax on total income determined u/s 143(1)(a) [30% of 22 lakh +HEC@4%]	6,86,400	
	4,05,600	
Penalty leviable@50% of tax payable		
Reassessment under section 147		2,02,800
Under-reported income:		
Total income reassessed under section 147	42,00,000	
(-) Total income assessed under section 143(3)	35,00,000	
	7,00,000	
Tax payable on under-reported income:		
Tax on under-reported income of ₹ 7 lakhs plus total income of ₹ 35 lakhs assessed u/s 143(3) [30% of ₹ 42 lakh + HEC@4%]	13,10,400	
Less: Tax on total income assessed u/s 143(3) [30% of 35 lakh + HEC@4%]	10,92,000	
Penalty leviable@50% of tax payable	2,18,400	1,09,200

Question-20 [Misc.] [PP OLD NOV-19]
State with reasons the penalty leviable on each of the four independent instances:

(1) The premises of A Ltd. was searched and undisclosed income of ₹ 20 crores was determined. The Company did not admit the undisclosed income in a statement under section 132(4) but declared the same in a return furnished, and paid the tax with interest thereon.
(2) Meena Caterers has received ₹ 1 lakh in cash and ₹ 9 lakh by account payee crossed cheque from Mr. Arvind for rendering catering services on the occasion of his daughter's wedding.
(3) Mrs. P is a trader who is subject to audit under section 44AB. She has reported cash collections from various Sundry Debtors, but has discovered that she omitted to include 2 more debtors in the statement already filed. She has reported the omission to the authorities within 15 days. (4 Marks)

Solution :
(1) As per section 271AAB(1A), penalty @60% of undisclosed income would be attracted, since A Ltd. had not admitted the undisclosed income in a statement under section 132(4) but declared the same in a return furnished and paid the tax with interest thereon.

(2) No penalty would be leviable on Meena caterers under section 271DA, since it received only ₹ 1 lakh in cash, (which is less than the permissible threshold of ₹2 lakhs) in respect of transactions relating to rendering of catering services on the occasion of Mr. Arvind's daughter marriage from Mr.Arvind. The balance ₹9 lakh was paid by way of account payee crossed cheque which is a permissible mode of payment.

(3) In this case, Mrs. P, a trader subject to audit under section 44AB, has omitted to include two debtors in the statement of financial transaction filed by her. Even though she has failed to inform and furnish the correct information within 10 days, penalty of ₹ 50,000 is leviable under section 271FAA(c) read with section 285BA(6).

Question-21 [PP May 23]
The assessee, MPV Ltd, being a branch office of US Company, MPV Inc, was engaged in contract research activities and cultivation of parent seeds in India. It had been claiming exemption by treating its entire income as agricultural income.

On Scrutiny assessment for the period from year 2010 to 2015, the Assessing Officer treated entire income of the assessee as "Business Income" and attributed deemed income from research activity holding the assessee company to be a Permanent Establishment (PE) of MPV Inc. However, the assessee company disputed the matter for resolution under Mutual Agreement Procedure (MAP) under the DTAA agreement between India and USA. The MAP was culminated in the year 2020. The assessment was finalized and taxes alongwith interest were paid by the assessee u/s 220.

However, the assessee disputed the amount of interest u/s.220(2) for the period from 2015 to 2020.

Thereafter the assessee company filed an application before Jurisdictional Commissioner of Income-tax under section 220(2A) for waiver of interest levied u/s 220(2). Commissioner dismissed application of the assessee.

The assessee company is a part of MPV Inc, a global conglomerate which had in 2020 ₹ 94,000 crores in net sales and ₹ 12,000 crores as operating profit. The amount paid by it towards interest u/s.220(2) of the Act was 2.50 crores.

On the basis of the above facts and as per the latest ruling of the Supreme Court, whether the Commissioner of Income-tax is justified in rejecting the claim of Assessee or not

Solution
Issue Involved: The issue under consideration is whether pendency of dispute resolution under MAP is a valid ground for waiver of interest under section 220(2A).

Provisions Applicable: Section 220(2) provides for levy of simple interest for delay in paying the sum specified in the notice of demand within the period specified thereunder.

Section 220(2A) provides for reduction or waiver of interest payable under section 220(2) if, inter alia, the Commissioner is satisfied that payment of such amount has caused or would cause genuine hardship to the assessee.

Analysis and Conclusion: Merely raising the dispute before any authority cannot be a ground for waiver of interest under section 220(2A). Otherwise, each and every assessee may raise a dispute and thereafter, may contend that since the litigation was bona fide, no interest is leviable.

Further, in this case, the assessee is a part of a global conglomerate which had in the 2020 ₹ 94,000 crores in net sales and ₹ 12,000 crores as operating profit. In comparison to the profitability over the years, the amount paid by it towards interest under section 220(2) was merely ₹ 2.50 crores. This fact is relevant in concluding that no 'genuine hardship' can be said to have been caused to the assessee on account of payment of interest.

The Commissioner of Income-tax is, therefore, justified in rejecting the claim of assessee.

Note – The facts given in the question are similar to the facts in Pioneer Overseas Corporation USA (India Branch) v. CIT (International Taxation) (2023) 449 ITR 186, wherein the issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court in the said case.

Question-22 [PP May 23]

M/s Risky Construction Pvt. Ltd. is engaged in the construction of bridges and flyovers. During the previous year 2023-24, it made payment to various parties und deducted tax amounting to ₹ 1.60 crores. However, the company failed to deposit the said amount with the income-tax department within the time prescribed under the Act. The company submitted that it is facing financial hardship since a large sum of money has been stuck-up with its debtors and also with the income-tax department in the form of tax refunds. It is further submitted that inspite of financial crisis, the company has suo-moto deposited the TDS amount along-with interest u/s 201(1A) of the Act, before receiving any notice from the income-tax department in this regard. However, Tax officer initiated prosecution proceedings under Section 276B of the Act against the company and its directors. The company has approached you to advise in the matter.

Solution

(a) **Issue Involved:** The issue under consideration is whether prosecution proceedings can be initiated where tax deducted has been deposited by the assessee suo moto, after the time prescribed under the Act but before receiving notice from the income- tax department, along with interest under section 201(1A) and the assessee has shown reasonable cause for such delay.

(b) **Provisions Applicable:** Prosecution proceedings are attracted under section 276B, if a person fails to pay to the credit of the Central Government, the tax deducted at source by him as required under the provisions of the Act.

Section 278AA provides that no person would be punishable for such failure if he proves that there was reasonable cause for the same.

(c) **Analysis and Conclusion:** In this case, the company has reasonable and sufficient cause since it was facing financial hardship on account of large sum of money stuck up with the debtors and also with the income-tax department on account of refunds. In spite of the financial crisis, the company has suo moto deposited the TDS along with interest under section 201(1A) of the Act, before receiving any notice from the income-tax department in this regard.

Since it has deposited the TDS along with interest suo moto before receiving any notice from the department and it has also shown reasonable cause for such delay in deposit, the company cannot be punishable for the delay in deposit of TDS. The initiation of prosecution proceedings under section 276B against the company and the directors is, therefore, not correct.

CHAPTER 20
TAX AUDIT AND ETHICAL COMPLIANCES

Part-A : Study Material Questions

Question-1 :
Sunlight & Co., a partnership firm engaged in trading of electronic goods, has a turnover of ₹ 265 lakhs for the F.Y. 2023-24. Examine whether Sunlight & Co. is required to get its books of account audited mandatorily as per section 44AB from the information given below –

	Particulars	**₹**
(i)	Total turnover of F.Y.2023-24	2,65,00,000
(ii)	Aggregate of all receipts during the year (including amount received for turnover mentioned in (i) above)	3,25,00,000
(iii)	Cash receipts out of (i) above	14,00,000
(iv)	Cash receipts out of (ii) above (This is inclusive of the figure mentioned in (iii) above)	16,00,000
(v)	Aggregate of all payments during the year	1,35,00,000
(vi)	Cash payments out of (v) above	6,95,000

Would your answer change if the cash receipts indicated in (iii) is ₹ 13 lakh instead of ₹ 14 lakh?

Solution :
As per section 44AB, every person carrying on business or profession is required to get his accounts audited before the "specified date" by a Chartered Accountant, if the total sales, turnover or gross receipts in business exceeds ₹ 1 crore in any previous year.

However, tax audit is not required in case of such person carrying on business whose total sales, turnover or gross receipts in business ≤ ₹ 10 crore in the relevant previous year (P.Y.), if:-

- aggregate cash receipts including amount received for sales, turnover, gross receipts in the relevant previous year ≤ 5% of such receipts; and

- aggregate cash payments including amount incurred for expenditure in the relevant P.Y. ≤ 5% of such payments or

In this case, the turnover of Sunlight & Co. exceeds ₹ 1 crore but does not exceed ₹ 10 crore. Accordingly, it has to be seen whether cash receipts exceed 5% of aggregate receipts and cash payments exceed 5% of aggregate payments, to determine whether tax audit is compulsory.

In this case, the percentage of cash receipts of ₹ 16 lakhs to aggregate receipts of ₹ 325 lakhs is 4.92% and the percentage of cash payments to aggregate payments is 5.14%.

Since the cash payments made during the year exceed 5% of aggregate payments, the firm is required to get its accounts audited under section 44AB and furnish audit report before the specified date, irrespective of the fact that its turnover does not exceed ₹ 10 crores and its cash receipts do not exceed 5% of total receipts.

It may be noted that, in this case, Sunshine & Co. cannot declare profits as per the presumptive provisions of section 44AD, since the percentage of turnover receipts in cash of ₹ 14 lakhs to the total turnover of ₹ 265 lakhs is 5.28%.

If the cash receipts indicated in (iii) is ₹ 13 lakhs instead of ₹ 14 lakhs, the percentage of turnover receipts in cash of ₹ 13 lakhs to the total turnover of ₹ 265 lakhs would be 4.91%. In such a case, Sunshine & Co. can declare profits as per the presumptive provisions of section 44AD, in which case, it need not get its books of account audited under section 44AB.

Question-2 :
Mr. Abhinav Ahuja runs a travel agency business since the year 2010. His total commission receipts for the F.Y. 2023-24 is ₹ 287 lakhs. The details of receipts and payments made by him during the year 2023-24 are as follows:

Particulars	**Amount (₹)**	**Mode of receipt/payment**
Date of Receipt		
15.4.2023	15,65,000	BHIM UPI
27.4.2023	13,80,000	A/c payee cheque
7.5.2023	13,35,000	Bearer cheque
6.6.2023	18,21,000	A/c payee cheque
15.8.2023	15,25,000	NEFT
19.9.2023	16,72,000	NEFT
18.10.2023	15,35,600	UPI
15.2.2024	16,25,350	UPI
17.3.2024	18,19,450	NEFT
Other aggregate receipts not exceeding ₹ 2,000 per person on certain occasions from various customers. Out of this, receipts of ₹ 52,500 are received in cash.	1,44,21,600	A/c payee cheques, NEFT and UPI
Payments		
Aggregate all payments made during the P.Y. 2023-24	2,58,00,000	
Amount incurred for expenditure in cash (not exceeding ₹ 10,000 per person in each case)	20,58,000	

Mr. Abhinav contended that he is not required to get his accounts audited since his turnover does not exceed ₹ 3 crores and he is eligible to declare his income as per presumptive provisions of section 44AD. Examine the contention of Mr. Abhinav Ahuja.

Solution :
As per section 44AB, every person inter alia carrying on business or profession is required to get his accounts audited before the "specified date" by an accountant, if total sales, turnover or gross receipts in business exceeds ₹ 1 crore in any previous year.

However, tax audit is not required in case of such person carrying on business whose total sales, turnover or gross receipts in business ≤ ₹ 10 crore in the relevant previous year (P.Y.), if -

- aggregate cash receipts including amount received for sales, turnover, gross receipts in the relevant previous year ≤ 5% of such receipts; and

- aggregate cash payments including amount incurred for expenditure in the relevant P.Y. ≤ 5% of such payments or

As per section 44AD, a resident individual, HUF or Partnership firm (but not LLP) engaged in eligible business and who has not claimed deduction under section 10AA or Chapter VIA under "C – deductions in respect of certain incomes" whose total turnover/ gross receipts in the P.Y. ≤ ₹ 200 lakhs (where cash receipts do not exceed 5% of total turnover, higher threshold limit of ₹ 300 lakhs applicable) can declare 8%/6%, as the case may be, of total turnover/ sales/gross receipts or a sum higher than the aforesaid sum claimed to have been earned by the assessee. However, a person inter alia carrying on any agency business are not eligible for presumptive provisions of section 44AD.

In the present case, since Mr. Abhinav Ahuja is carrying on travel agency business, he is not eligible for presumptive provisions of section 44AD, though his turnover does not exceed ₹ 3 crores.

In this case, the turnover of Mr. Abhinav Ahuja exceeds ₹ 1 crore but does not exceed ₹ 10 crore. Accordingly, it has to be seen whether cash receipts exceed 5% of aggregate receipts and cash payments exceed 5% of aggregate payments, to determine whether tax audit is compulsory. During the P.Y. 2023-24, his cash receipts are ₹ 13,35,000 plus ₹ 52,500 totalling to ₹ 13,87,500, which is 4.83% of total receipts of ₹ 2,87,00,000. Cash payments made during the P.Y. 2023-24 are ₹ 20,58,000 which is 7.98% of aggregate payments of ₹ 2,58,00,000. Since his cash payments during the P.Y. 2023-24, exceed 5% of aggregate payments made during the year, he is required to get the accounts audited under section 44AB and furnish tax audit report on or before the specified date i.e., one month prior to the due date of filing return of income under section 139(1).

Question-3 :
X Ltd., an Indian company, paid interest of ₹ 95 lakhs to X Inc., a non-resident associated enterprise in the P.Y.2023-24 on loan borrowed from it. X Ltd. also obtained loan of ₹ 5 crore@10% p.a. on 1.4.2023 from Y Inc., a foreign company in which it holds 20% voting power. X Inc. deposits ₹ 2 crore with Y Inc. X Ltd. contends that the provisions of section 94B are not attracted in its case, since the interest paid to non-resident associated enterprise does not exceed ₹ 1 crore in the P.Y.2023-24. The tax auditor is, however, of the opinion that the interest of ₹ 20 lakh (i.e., 10% of ₹ 2 crore) also has to be considered for the purpose of section 94B. X Ltd. contends that X Inc. has not deposited a corresponding and matching amount of ₹ 5 crore with Y Inc, and hence, the provisions of section 94B will not be attracted in this case. Examine the reporting requirement, if any, of the tax auditor in this case.

Solution :
Relevant provision of law - Section 94B provides that where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise.
In this case, the debt issued by Y Inc. is ₹ 5 crore and the deposit made by the associated enterprise, X Inc. with Y Inc. is ₹ 2 crore. Since the deposit is not of a matching amount, the X Ltd. contends that provisions of section 94B will not be attracted in respect of interest payable by it to Y Inc. The tax auditor is of the opinion that interest on ₹ 2 crore amounting to ₹ 20 lakhs will have to be considered for the purpose of section 94B. Accordingly, the interest payable/paid by X Ltd. to non-resident associated enterprises during the year would be ₹ 115 lakhs and hence, the provisions of section 94B would be attracted, since the same exceeds the threshold of ₹ 1 crore. This appears to be the legislative intent, since otherwise it is possible to escape the application of this provision by even by depositing a marginally lower amount than the loan taken.

Relevant clause of Form 3CD - Clause 30B(a) of Form 3CD requires the tax auditor to state whether the assessee has incurred expenditure during the previous year by way of interest or of similar nature exceeding one crore rupees as referred to in sub-section (1) of section 94B.

Relevant paras of the Guidance Note on Tax Audit - As per para 18.6 of the Guidance Note on Tax Audit, the tax auditor may have a difference of opinion with regard to the particulars furnished by the assessee. These differences are to be reported in para 3 of Form No. 3CA or para 5 of Form 3CB. As per para 19.3, if there is any difference in the opinion of the tax auditor and that of the assessee in respect of any information furnished in Form No. 3CD by the assessee, the tax auditor may consider stating both the view points and also the relevant information related to matter in order to enable the tax authority to take a decision in the matter.
Therefore, the tax auditor has to report the difference of opinion appropriately as an observation in para 3 of Form No. 3CA or para 5 of Form No. 3CB as the case may be.

Accordingly, in this case, the tax auditor may state both the view points in Clause 30B as well as report the difference of opinion appropriately as an observation in para 3 of Form 3CA to enable the tax authority to take a decision in the matter.

Question-4 :
ABC Ltd. is engaged in transportation of building material and transportation of goods to contractors. It made payment for hiring dumpers for this purpose. The company has not deducted tax at source on the ground that since the payment was for transportation of goods and not renting out machinery and equipment, such payments could not be termed as rent paid for use of machinery under section 194-I and hence, no tax was deductible at source.

The tax auditor is, however, of the view that the transactions being in the nature of contracts for shifting of goods from one place to another would be covered under works contracts, thereby attracting the provisions of section 194C. He relied upon the Gujarat High Court ruling in CIT (TDS) v. Shree Mahalaxmi Transport Co. (2011) 339 ITR 484.

What is the reporting responsibility of the tax auditor in such a case and the consequent ethical implications? Examine.

Solution :
In clause 34(a) of Form 3CD, the tax auditor is required to report whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB, and if yes, to furnish the details mentioned thereunder. While answering the issue of applicability of the provisions of Chapter XVII-B and/or XVII-BB, a number of debatable issues may arise before the assessee as well as the tax auditor. The tax auditor may have a difference of opinion with regard to the applicability of the provisions of TDS/TCS on a particular payment. In such a case, the tax auditor has to report the difference of opinion appropriately as an observation in para 3 of Form 3CA. This requirement is contained in the Guidance Note on Tax Audit.

Also, in clause 21(b)(ii) of Form 3CD, the amount inadmissible under section 40(a)(ia) has to be mentioned.

In case the tax auditor does not comply with the reporting requirements under these clauses and fails to mention the difference of opinion appropriately as an observation in para 3 of Form 3CA, clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 for not exercising due diligence may be invoked.

Question-5 :
A search was conducted u/s 132 of the Income-tax Act, 1961 in the case of LMN Jewellers (P) Ltd., a gold jewellery retail chain, on 28.2.2023. As part of the post search enquiries, data from the billing software was analysed. On analysis of this data, it was found that the company was involved in violation of section 40A(3) in a major way to the tune of ₹ 20 crores in the purchase of old gold.

In order to verify the findings culled from digital data, some of the customers whose whereabouts were available from computer records were contacted and their statements were recorded under oath. These customers admitted under oath that they had sold old gold and received the amounts (all exceeding ₹ 10,000) in cash. The fact which emerged from the enquiries is that LMN Jewellers (P) Ltd. purchase old gold and make payments for these purchases in cash, even if they exceed ₹ 10,000.

However, the tax auditor had mentioned "Yes" in response to the statement in sub-clause (A) of Clause 21(d) on whether the expenditure covered under section 40A(3) read with Rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft. The tax auditor submitted that standing instructions were given by the management of the entity to the employees to make payments above ₹ 10,000 only through account payee cheques and/or bank drafts or other permissible electronic modes; and copy of these instructions were verified by him. He further submitted that he had also taken a representation from the Management that net payment in cash to any person in a day did not exceed ₹ 10,000. Also, he mentioned that the test checks conducted by him did not reveal any violation.

Examine the ethical implications in this case and the consequences thereof.

Solution :
As per section 40A(3), where the assessee incurs any expenditure, in respect of which payment or aggregate of payments made to a person in a day otherwise than by an account payee cheque drawn on a bank or by an account payee bank draft or use of electronic system through bank account or through such other prescribed electronic modes exceeds ₹ 10,000, such expenditure shall not be allowed as a deduction.

Clause 21(d) of Form 3CD requires the tax auditor to report, on the basis of the examination of books of account and other relevant documents/evidence, whether the expenditure covered under section 40A(3) read with rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft; and if not, to furnish details mentioned thereunder, namely, date of payment, nature of payment, amount etc.

The Guidance Note on Tax Audit issued by ICAI states that there may be practical difficulties in verifying whether each payment is made through account payee cheque or bank draft or ECS or other prescribed electronic modes. Where the reporting has been done on the basis of the certificate of the assessee, the fact has to be reported as an observation in para 3 of Form 3CA.

The tax auditor is required to point out in tax audit report, the violation of the provisions of section 40A(3) thereof involving expenditure to a person in a day exceeding ₹ 10,000 otherwise than by way of account payee cheque/bank draft, ECS and other prescribed electronic modes. However, in this case, the tax auditor has certified that there was no such instance, though such instances aggregate to a large quantum of ₹ 20 crores.

The tax auditor should have considered the nature of business i.e., jewellery business of the assessee and accordingly undertaken necessary checks to verify whether there are cash payments in violation of section 40A(3). He should have made use of the audit tools which are available to find out such payments expeditiously and accurately where the data is voluminous.

In this case, considering the nature of business of the assessee, namely, jewellery business, the onus was on the tax auditor to verify the same before reporting in Form 3CD. Mere reliance on certificate issued by the management is not acceptable in such a case. Also, even in a case where the reporting has been done on the basis of the certificate of the assessee, the fact has to be reported as an observation in para 3 of Form 3CA, which he had failed to do.

Thus, in the case, the tax auditor had failed to exercise due diligence in the conduct of his professional duties. He had also failed to obtain sufficient information which is necessary for expression of opinion. On account of such failure, clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 may be invoked.

Question-6 :
XYZ & Co, a firm engaged in interior decoration business, employed 20 new employees on 1.4.2022 on a monthly salary of ₹ 25,000 to be paid by account payee cheque. In addition, each employee was entitled to 10% employer contribution to recognised provident fund. The employees were also entitled to transport allowance of ₹ 3,000 p.m. paid in cash. The gross total income of XYZ & Co. included profits and gains from business of ₹ 62 lakh.

The firm claimed deduction under section 80JJAA of ₹ 18 lakh, being 30% of 60 lakh (20 new employees x ₹ 25,000 p.m. x 12) on the basis of the report of the chartered accountant issued in Form 10DA. The same chartered accountant was also the tax auditor of the firm. The chartered accountant contended that "emoluments" do not include employer contribution to PF. Also, cash payments were not to be considered as "additional employee cost" for the purpose of section 80JJAA. Hence, only ₹ 25,000 p.m. per employee paid by account payee cheque has to be treated as additional employee cost. Since the same does not exceed the limit of ₹ 25,000 p.m. and the employees have been employed for more than 240 days in the P.Y.2022-23, the employees would qualify as "additional employees" for the purpose of deduction under section 80JJAA for A.Y.2023-24.

Is his contention correct? Examine the ethical implications in this case.

Solution :
Deduction under section 80JJAA is allowable to an assessee to whom section 44AB applies and whose gross total income includes any profits and gains derived from business, in respect of employment of new employees. The amount of deduction is 30% of additional employee cost incurred in the course of such business in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

"Additional employee cost" means the total emoluments paid or payable to additional employees employed during the previous year. However, in the case of an existing business, the additional employee cost shall be nil, if emoluments are paid otherwise than by an account payee cheque or account payee bank draft or use of ECS through bank account or other prescribed electronic mode.

"Emoluments" means any sum paid or payable to an employee in lieu of his employment by whatever name called but does not include, inter alia, contribution by employer to provident fund.

"Additional employee" means an employee who has been employed during the previous year and whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the preceding year, but does not include, inter alia, an employee whose total emoluments are more than ₹ 25,000 p.m.

In this case, the contention of the chartered accountant that the emoluments do not include employer contribution to PF is correct. However, emoluments include ₹ 3,000 paid in cash by way of transport allowance to the employee. Hence, the total emoluments per employee is ₹ 28,000 p.m. Due to this reason, the 20 employees employed on 1.4.2022 will not qualify as "additional employees" for the purpose of deduction under section 80JJAA, since their total emoluments are more than ₹ 25,000 p.m. Hence, XYZ & Co. is not eligible for any deduction under section 80JJAA due to failure to fulfil the condition for being treated as an "additional employee". In this case, the chartered accountant has failed to ensure compliance with the condition stipulated for claim of deduction under section 80JJAA and has wrongly issued the report in Form 10DA certifying the deduction claimed by the assessee under section 80JJAA.

Also, clause 33 of Form 3CD requires section-wise details of deductions, if any, admissible under Chapter VIA. Here again, the tax auditor has to ensure that the assessee fulfils all the conditions specified in the section under which the deduction is claimed. However, in this case, the tax auditor has failed to do so.

On account of such failure, clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 may be invoked.

Question-7 :
The Income-tax department collected documents from ABC Bank which revealed that M/s. Alpha Travels and Consultancy Services (Alpha Travels) had remitted substantial amounts abroad. The documents collected include Form 15CB issued by the chartered accountant, list of passengers, copy of their passports, date of travel and invoice raised by the foreign party. On enquiring from the passengers and verifying their passports, it is found that they did not travel abroad during the dates mentioned in the documents. Further, the passengers denied any sort of transactions with Alpha Travels. The department, therefore, concluded that the amounts were remitted abroad on the basis of false invoices and for wrong reasons, leading to FEMA violations and that the Form 15CB issued by the chartered accountant facilitated such violations. During the nine-month period in question, the chartered accountant had issued 120 certificates in Form 15CB approximately involving remittances of ₹ 30 crores in favour of Alpha Travels.

The chartered accountant submitted that he had issued Form 15CB based on invoices produced by the company and verifying the KYC documents of the signatory to the invoices. He however, failed to bring on record the invoices. He further submitted that since he was not the statutory auditor of the company, he did not examine the books of account before issue of Form 15CB or conduct due diligence of its business activities. He had charged ₹ 3,000 per certificate. Mostly, the fees was collected in cash. Some part of the fee was credited to his bank account.

Examine the ethical implications in this case.

Solution :

Form 15CB is a certificate of an accountant wherein he certifies that he has examined the agreement between the remitter and the beneficiary requiring such remittance as well as the relevant documents and books of account required for ascertaining the nature of remittance and for determining the rate of deduction of tax at source. The chartered accountant certifying the form undertakes to have verified the agreement between the remitter and the beneficiary as well as the relevant documents and books of account to ascertain the nature of remittance and determine the rate of TDS. In this case, however, the chartered accountant mentioned that he had only verified KYC of signatory to invoice and the invoices thereof. He had not only failed to justify as to

how verification of invoices was considered as sufficient compliance for certifying the forms but also failed to bring on record the said invoices. Thus, he failed to provide any basis on which he relied for issuing Form 15CB certificates to the company.

On account of such failure, clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 for failure to exercise due diligence in discharging his professional responsibilities and failure to obtain sufficient information may be invoked.

Extra Page

CHAPTER 21
NON RESIDENT TAXATION

Part-A : Study Material Questions

Question-1 :
Mr. Ajay is an Indian citizen and a member of the crew of a Mauritius bound Indian ship engaged in carriage of passengers in international traffic departing from Mumbai port on 16th July, 2023. From the following details for the P.Y.2023-24, determine the residential status of Mr. Ajay for A.Y.2024-25, assuming that his stay in India in the last 4 previous years (preceding P.Y.2023-24) is 415 days and last seven previous years (preceding P.Y.2023-24) is 745 days:

Particulars	Date
Date entered into the Continuous Discharge Certificate in respect of joining the ship by Mr. Ajay	16th July, 2023
Date entered into the Continuous Discharge Certificate in respect of signing off the ship by Mr. Ajay	19th January, 2024

Solution :
In this case, since Mr. Ajay is an Indian citizen and leaving India during P.Y. 2023-24 as a member of the crew of an Indian ship, he would be resident in India, only if he stayed in India for 182 days or more.

The voyage is undertaken by an Indian ship engaged in the carriage of passengers in international traffic, originating from a port in India (i.e., the Mumbai port) and having its destination at a port outside India (i.e., the Mauritius port). Hence, the voyage is an eligible voyage for the purposes of section 6(1).

Therefore, the period beginning from 16th July, 2023 and ending on 19th January, 2024, being the dates entered into the Continuous Discharge Certificate in respect of joining the ship and signing off from the ship by Mr. Ajay, an Indian citizen who is a member of the crew of the ship, has to be excluded for computing the period of his stay in India. Accordingly, 188 days [16+31+30+31+30+31+19] have to be excluded from the period of his stay in India. Consequently, Mr. Ajay's period of stay in India during the P.Y.2023-24 would be 178 days [i.e., 366 days – 188 days]. Since his period of stay in India during the P.Y.2023-24 is less than 182 days, he is a nonresident for A.Y.2024-25.

Note - Since the residential status of Mr. Ajay is "non-resident" for A.Y.2024-25 consequent to his number of days of stay in P.Y.2023-24 being less than 182 days, his period of stay in the earlier previous years become irrelevant.

Question-2 :
Chris Gayle, a West Indies cricket player visits India for 102 days in every financial year. This has been his practice for the past 10 financial years.
(a) Find out his residential status for the A.Y. 2024-25.
(b) Would your answer change if the above facts relate to Srinath, an Indian citizen who resides in West Indies and represents the West Indies cricket team?
(c) What would be your answer if Srinath had visited India for 120 days instead of 102 days every year, including P.Y.2023-24?

Solution :
(a) Determination of Residential Status of Mr. Chris Gayle for the A.Y. 2024-25:
Period of stay during the P.Y. 2023-24 = 102 days
Calculation of period of stay during 4 preceding previous years (102 days x 4=408 days)

P.Y. 2022-23	102 days
P.Y. 2021-22	102 days
P.Y. 2020-21	102 days
P.Y.2019-20	102 days
Total	**408 days**

Mr. Chris Gayle has been in India for a period of more than 60 days during P.Y. 2023-24 and for a period of more than 365 days during the 4 immediately preceding previous years. Therefore, since he satisfies one of the basic conditions under section 6(1), he is a resident for the A.Y. 2024-25.

Computation of period of stay during 7 preceding previous years = 102 days x 7=714 days

2022-23	102 days
2021-22	102 days
2020-21	102 days
2019-20	102 days
2018-19	102 days
2017-18	102 days
2016-17	102 days
Total	**714 days**

Since his period of stay in India during the past 7 previous years is less than 730 days, he is a not-ordinarily resident during the A.Y. 2024-25. **(See Note below)**

Therefore, Mr. Chris Gayle is a resident but not ordinarily resident during the previous year 2023-24 relevant to the A.Y. 2024-25.

Note: An individual, not being an Indian citizen, would be not-ordinarily resident person if he satisfies any one of the conditions specified under section 6(6), i.e.,

(i) If such individual has been non-resident in India in any 9 out of the 10 previous years preceding the relevant previous year, or
(ii) If such individual has during the 7 previous years preceding the relevant previous year been in India for a period of 729 days or less.

In this case, since Mr. Chris Gayle satisfies condition (ii), he is a not-ordinary resident for the A.Y. 2024-25.

(b) If the above facts relate to Mr. Srinath, an Indian citizen, who residing in West Indies, comes on a visit to India, he would be treated as non-resident in India for previous year 2023-24, irrespective of his total income (excluding income from foreign sources), since his stay in India in the current financial year is, in any case, less than 120 days.

(c) In this case, if Mr. Srinath's total income (excluding income from foreign sources) exceeds ₹ 15 lakh, he would be treated as resident but not ordinarily resident in India for P.Y.2023-24, since his stay in India is 120 days in the P.Y.2023-24 and 480 days (i.e., 120 days x 4 years) in the immediately four preceding previous years.

If his total income (excluding income from foreign sources) does not exceed ₹ 15 lakh, he would be treated as non-resident in India for the P.Y.2023-24, since his stay in India is less than 182 days in the P.Y.2023-24.

Question-3 :

ABC Inc., a Swedish company headquartered at Stockholm, not having a permanent establishment in India, has set up a liaison office in Mumbai in April, 2023 in compliance with RBI guidelines to look after its day to day business operations in India, spread awareness about the company's products and explore further opportunities. The liaison office takes decisions relating to day to day routine operations and performs support functions that are preparatory and auxiliary in nature. The significant management and commercial decisions are, however, in substance made by the Board of Directors at Sweden. Determine the residential status of ABC Inc. for A.Y. 2024-25.

Solution :

Section 6(3) provides that a company would be resident in India in any previous year, if-
(i) it is an Indian company; or
(ii) its place of effective management, in that year, is in India.

In this case, ABC Inc. is a foreign company. Therefore, it would be resident in India for P.Y.2023- 24 only if its place of effective management, in that year, is in India.

Explanation to section 6(3) defines "place of effective management" to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made. In the case of ABC Inc., its place of effective management for P.Y.2023-24 is not in India, since the significant management and commercial decisions are, in substance, made by the Board of Directors outside India in Sweden.

ABC Inc. has only a liaison office in India through which it looks after its routine day to day business operations in India. The place where decisions relating to day to day routine operations are taken and support functions that are preparatory or auxiliary in nature are performed are not relevant in determining the place of effective management.

Hence, ABC Inc., being a foreign company is a non-resident for A.Y.2024-25, since its place of effective management is outside India in the P.Y.2023-24.

Question-4 :
J, a citizen of India, employed in the Indian Embassy at Tokyo, Japan. He received salary and allowances at Tokyo from the Government of India for the year ended 31.3.2024 for services rendered by him in Tokyo. Besides, he was allowed perquisites by the Government. He is a nonresident for the assessment year 2024-25. Examine the taxability of salary, allowances and perquisites in the hands of J for the assessment year 2024-25.

Solution :
As per section 9(1)(iii), salaries payable by the Government to a citizen of India for services rendered outside India shall be deemed to accrue or arise in India. As such, salary received by J is chargeable to tax, even though he was a non-resident for A.Y. 2024-25.

As per section 10(7), all allowances or perquisites paid or allowed as such outside India by the Government to a citizen of India for rendering services outside India is exempt from tax. Therefore, the allowances and perquisites received by J are exempt as per section 10(7).

Question-5 :
Miss Vivitha paid a sum of 5000 USD to Mr. Kulasekhara, a management consultant practising in Colombo, specializing in project financing. The payment was made in Colombo. Mr. Kulasekhara is a non-resident. The consultancy is related to a project in India with possible Ceylonese collaboration. Is this payment chargeable to tax in India in the hands of Mr. Kulasekhara?

Solution :
A non-resident is chargeable to tax in respect of income received outside India only if such income accrues or arises or is deemed to accrue or arise to him in India.

The income deemed to accrue or arise in India under section 9 comprises, inter alia, income by way of fees for technical services, which includes any consideration for rendering of any managerial, technical or consultancy services. Therefore, payment to a management consultant relating to project financing is covered within the scope of "fees for technical services".

The Explanation below section 9(2) clarifies that income by way of, inter alia, fees for technical services, from services utilized in India would be deemed to accrue or arise in India in case of a non-resident and be included in his total income, whether or not such services were rendered in India or whether or not the non-resident has a residence or place of business or business connection in India.

In the instant case, since the services were utilized in India, the payment received by Mr. Kulasekhara, a non-resident, in Colombo is chargeable to tax in his hands in India, as it is deemed to accrue or arise in India.

Question-6 :
Compute the total income in the hands of an individual, aged 55 years, being a resident and ordinarily resident, resident but not ordinarily resident, and non-resident for the A.Y. 2024-25 if he has shifted out of the default tax regime and pays tax under normal provisions of the Act:

Particulars	**Amount (₹)**
Interest on UK Development Bonds, 50% of interest received in India	10,000
Income from a business in Chennai (50% is received in India)	20,000
Short term capital gains on sale of shares of an Indian company received in London	20,000
Dividend from British company received in London	5,000
Long term capital gains on sale of plant at Germany, 50% of profits are received in India	40,000
Income earned from business in Germany which is controlled from Delhi (₹ 40,000 is received in India)	70,000
Profits from a business in Delhi but managed entirely from London	15,000
Income from house property in London deposited in an Indian Bank at London, brought to India (Computed)	50,000
Interest on debentures in an Indian company received in London	12,000
Fees for technical services rendered in India but received in London	8,000
Profits from a business in Bombay managed from London	26,000
Pension for services rendered in India but received in London (Computed)	4,000
Income from property situated in Pakistan, received there (Computed)	16,000
Past foreign untaxed income brought to India during the previous year	5,000
Income from agricultural land in Nepal received there and then brought to India	18,000
Income from profession in Kenya which was set up in India, received there but spent in India	5,000
Gift received on the occasion of his wedding	20,000
Interest on savings bank deposit in State Bank of India	12,000
Income from a business in Russia, controlled from Russia	20,000
Dividend from Reliance Petroleum Limited, an Indian Company	5,000
Agricultural income from a land in Rajasthan	15,000

Solution :

Computation of total income for the A.Y. 2024-25

Particulars	**Resident and ordinarily resident ₹**	**Resident but not ordinarily resident ₹**	**Nonresident ₹**
Interest on UK Development Bonds, 50% of interest received in India	10,000	5,000	5,000
Income from a business in Chennai (50% is received in India)	20,000	20,000	20,000
Short term capital gains on sale of shares of an Indian company received in London	20,000	20,000 20,000	
Dividend from British company received in London	5,000	-	-
Long term capital gain on sale of plant at Germany, 50% of profits are received in India	40,000	20,000 20,000	
Income earned from business in Germany which is controlled from Delhi, out of which ₹ 40,000 is received in India	70,000	70,000	40,000
Profits from a business in Delhi but managed entirely from London	15,000	15,000	15,000
Income from property in London deposited in a Bank at London, later on remitted to India	50,000	-	-

Interest on debentures in an Indian company received in London	12,000	12,000	12,000
Fees for technical services rendered in India but received in London	8,000	8,000	8,000
Profits from a business in Bombay managed from London	26,000	26,000	26,000
Pension for services rendered in India but received in London	4,000	4,000	4,000
Income from property situated in Pakistan, received there	16,000	-	-
Past foreign untaxed income brought to India during the previous year	-	-	-
Income from agricultural land in Nepal received there and then brought to India	18,000	-	-
Income from profession in Kenya which was set up in India, received there but spent in India	5,000	5,000	-
Gift received on the occasion of his wedding **[not taxable]**	-	-	-
Interest on savings bank deposit in SBI	12,000	12,000	12,000
Income from a business in Russia, controlled from Russia	20,000	-	-
Dividend from Reliance Petroleum Limited, an Indian Company	5,000	5,000	5,000
Agricultural income from a land in Rajasthan **[Exempt under section 10(1)]**	-	-	-
Gross Total Income	**3,56,000**	**2,22,000**	**1,87,000**
Less: Deduction u/s 80TTA [Interest on savings bank account subject to a maximum of ₹ 10,000]	10,000 10,000	10,000	
Total Income	**3,46,000**	**2,12,000**	**1,77,000**

Question-7 :
Sea Port Shipping Line, a non-resident foreign company, is engaged in the business of carriage of goods shipped at Mumbai port. During the previous year ended on 31.3.2024, it had collected freight of ₹ 100 lakhs, demurrages of ₹ 20 lakhs and handling charges of ₹ 10 lakhs. The expenses of operating its fleet during the year for the Indian Ports were ₹ 110 lakhs. Compute its income applying the presumptive provisions under section 44B.

Solution :
Section 44B provides that in the case of an assessee, being a non-resident, engaged in the business of operation of ships, a sum equal to 7.5% of the aggregate of the following amounts would be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

(i) The amount paid or payable, whether within India or outside, to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods shipped at any port in India; and

(ii) The amount received or deemed to be received in India by the assessee himself or by any other person on behalf of or on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India.

The above amounts will include demurrage charges and handling charges.

These provisions for computation of income from the shipping business in case of non-residents would apply notwithstanding anything to the contrary contained in the provisions of sections 28 to 43A of the Income-tax Act, 1961.

Therefore, in this case, M/s. Sea Port Shipping Line is required to pay tax in India on the basis of presumptive scheme as per the provisions of section 44B. The assessee shall not be entitled to set off any of the expenses incurred for earning of such income. Therefore, the Shipping Line is required to pay tax on deemed profit of ₹ 9.75 lacs (7.50% on the total receipts of ₹ 130 lacs). The tax payable would be reduced by the amount of tax paid under section 172(4).

Question-8 :
Mr. Q, a non-resident, operates an aircraft between Singapore and Chennai. He received the following amounts while carrying on the business of operation of aircrafts for the year ended 31.3.2024:

(i) ₹ 2 crores in India on account of carriage of passengers from Chennai.
(ii) ₹ 1 crore in India on account of carriage of goods from Chennai.
(iii) ₹ 3 crores in India on account of carriage of passengers from Singapore.
(iv) ₹ 1 crore in Singapore on account of carriage of passengers from Chennai.

The total expenditure incurred by Mr. Q for the purposes of the business during the year ending 31.3.2024 was ₹ 6.75 crores.

Compute the income of Mr. Q chargeable to tax in India under the head "Profits and gains of business or profession" for the assessment year 2024-25.

What would be your answer in case the business was carried on by a foreign company, Q Airlines (P) Ltd?

Solution :
Section 44BBA says for computing profits and gains of the business of operation of aircraft in the case of non-residents a sum equal to 5% of the aggregate of the following amounts -

(a) paid or payable, whether in or out of India, to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods from any place in India; and
(b) received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods from any place outside India.

Keeping in view the provisions of section 44BBA, the income of Mr. Q chargeable to tax in India under the head "Profits and gains of business or profession" is worked out hereunder -

Particulars	**₹**
Amount received in India on account of carriage of passengers from Chennai	2,00,00,000
Amount received in India on account of carriage of goods from Chennai	1,00,00,000
Amount received in India on account of carriage of passengers from Singapore	3,00,00,000
Amount received in Singapore on account of carriage of passengers from Chennai	1,00,00,000
	7,00,00,000

Income from business under section 44BBA at 5% of ₹ 7,00,00,000 is ₹ 35,00,000, which is the income of Mr. Q chargeable to tax in India under the head "Profits and gains of business or profession" for the A.Y. 2024-25.

In case the assessee is a foreign company, say, Q Airlines (P) Ltd, the answer would be the same since section 44BBA does not distinguish corporate and non-corporate taxpayers who operate aircraft provided their residential status is that of non-resident.

Question-9 :
The net result of the business carried on by a branch of foreign company in India for the year ended 31.03.2024 was a loss of ₹ 100 lakhs after charge of head office expenses of ₹ 200 lakhs allocated to the branch. Explain with reasons the income to be declared by the branch in its return for the assessment year 2024-25.

Solution :
Section 44C restricts the allowability of the head office expenses to the extent of lower of an amount equal to 5% of the adjusted total income or the amount actually incurred as is attributable to the business of the assessee in India.

For the purpose of computing the adjusted total income, the head office expenses of ₹ 200 Lakhs charged to the profit and loss account have to be added back.

The amount of income to be declared by the assessee for A.Y. 2024-25 will be as under:

Particulars	**₹**
Net loss for the year ended on 31.03.2024	(100 lakhs)
Add: Amount of head office expenses to be considered separately as per section 44C	200 lakhs
Adjusted total income	100 lakhs
Less: Head Office expenses allowable under section 44C is the lower of -	
(i) ₹ 5 lakhs, being 5% of ₹ 100 lakhs, or	
(ii) ₹ 200 lakhs.	5 lakhs
Income to be declared in return	**95 lakhs**

Question-10 :
Mr. A, a non-resident Indian, remits US $ 40,000 to India on 16.09.2006. The amount is partly utilised on 3.10.2006 for purchasing 10,000 equity shares in A Ltd, an Indian Company, at the rate of ₹ 12 per share. These shares are sold for ₹ 48 per share on 30.03.2024. Fair market value of these shares on 31.01.2018 was ₹ 35 per share.

The telegraphic transfer buying and selling rate of US dollars adopted by the State Bank of India is as follows:-

Date	**Buying Rate (1 US$)**	**Selling Rate (1 US $)**
16.09.2006	18	20
3.10.2006	19	21
30.3.2024	59	61

Compute the capital gain chargeable to tax for the A.Y. 2024-25 on the assumption that –
(a) These shares have not been sold through a recognised stock exchange
(b) These shares have been purchased and sold through a recognised stock exchange.

Solution :
(a) Where the shares are not sold through recognised stock exchange

Particulars	**US $**
Sale consideration (₹ 4,80,000/60)	8000
Less: Cost of Acquisition (1,20,000/20)	6000
Long term capital gain	**2000**

Long-term capital gain converted into $ 2000 x ₹ 59 = ₹ 1,18,000

(b) Where the shares are purchased and sold through a recognised stock exchange

Particulars		**₹**
Sale consideration		4,80,000
Less: Cost of Acquisition		
Higher of the following		
Cost of acquisition	1,20,000	
Lower of Fair market value as on 31.1.2018 and Full value of consideration (i.e., lower of ₹ 3,50,000 and ₹ 4,80,000)	3,50,000	3,50,000
Long term capital gain		**1,30,000**

Long term capital gains upto ₹ 1,00,000 would be exempt. Long term capital gains exceeding ₹ 1,00,000, i.e., ₹ 30,000 is taxable @10% under section 112A.

Question-11 :
A non-resident Indian acquired shares in an Indian company, A Ltd., on 1.1.2009 for ₹ 1,00,000 in foreign currency. These shares are sold by him on 1.1.2024 for ₹ 3,00,000. He invests ₹ 3,00,000 in shares on 31.03.2024 and these shares are sold by him on 30.06.2024 for ₹ 3,50,000. Discuss the tax implications. Ignore the effect of first proviso to section 48.

Solution :

Computation of Long term Capital Gain for Assessment Year 2024-25

Particulars	**Amount (₹)**
Sale consideration	3,00,000
Less: Cost of Acquisition	1,00,000
Long term capital gain	2,00,000
Less: Exemption under section 115F	2,00,000
Exempt long-term capital gain	**NIL**

Capital Gain for Assessment year 2025-26:
1. LTCG of ₹ 2,00,000 which was exempt in A.Y.2024-25 becomes taxable this year.
2. STCG of ₹ 50,000 is also taxable this year.

Question-12 :
Mr. John, a non-resident Indian, purchased unlisted shares of an Indian Company at a cost of ₹ 70,000 on 01.07.2010 in foreign currency. Mr. John sold the said shares for a consideration of ₹ 2,50,000 on 01.08.2023 and the expenditure incurred wholly or exclusively in connection with the transfer is ₹ 10,000. Compute the taxable capital gain if he deposited in specified assets ₹ 1,50,000 out of sale consideration. Ignore the effect of first proviso to section 48.

Solution :

Particulars	**Amount (₹)**
Sale Consideration	2,50,000
Less: Transfer Expenses	10,000
Net Consideration	2,40,000
Less: Cost of Acquisition	70,000
Long-term capital gain	1,70,000
Less: Exemption u/s 115F	1,06,250*
Taxable long-term capital gain	**63,750**

$$*\frac{1,70,000 \times 1,50,000}{2,40,000} = ₹1,06,250$$

Question-13 :
During the financial year 2023-24, Nadal, a tennis professional and a Spanish citizen participated in India in a Tennis Tournament and won prize money of ₹ 15 lakhs. He contributed articles on the tournament in a local newspaper for which he was paid ₹ 1 lakh. He was also paid ₹ 5 lakhs by a Soft Drink company for appearance in a T.V. advertisement. Although his expenses in India were met by the sponsors, he had to incur ₹ 3 lakhs towards his travel costs to India. He was a nonresident for tax purposes in India.

What would be his tax liability in India for A.Y. 2024-25? Is he required to file his return of income?

Solution :
Under section 115BBA, all the three items of receipts in India viz. prize money of ₹ 15 lakhs, amount received from newspaper of ₹ 1 lakh and amount received towards TV advertisement of ₹ 5 lakhs - are chargeable to tax. No expenditure is allowable as deduction against such receipts. The rate of tax chargeable under section 115BBA is 20%, plus health and education cess @4%. The total tax liability works out to ₹ 4,36,800 being 20.8% of ₹ 21 lakhs. Thus, Nadal will be liable to tax on the income earned in India

He is not required to file his return of income if -

(a) his total income during the previous year consists only of income arising under section 115BBA; and

(b) the tax deductible at source under the provisions of Chapter XVII-B have been deducted from such incomes.

Question-14 :

Smith, a foreign national and a cricketer came to India as a member of Australian cricket team in the year ended 31st March, 2023. He received ₹ 5 lakhs for participation in matches in India. He also received ₹ 1 lakh for an advertisement of a product on TV. He contributed articles in a newspaper for which he received ₹ 10,000. When he stayed in India, he also won a prize of ₹ 20,000 from horse racing in Mumbai. He has no other income in India during the year.

(i) Compute tax liability of Smith for Assessment Year 2024-25.

(ii) Are the income specified above subject to deduction of tax at source?

(iii) Is he liable to file his return of income for Assessment Year 2024-25?

(iv) What would have been his tax liability, had he been a match referee instead of a cricketer and pays tax under the default tax regime under section 115BAC?

Solution :

(i) Computation of tax liability of Smith for the A.Y.2024-25

Particulars	**₹**	**₹**
Income taxable under section 115BBA		
Income from participation in matches in India	5,00,000	
Advertisement of product on TV	1,00,000	
Contribution of articles in newspaper	10,000	
Income taxable under section 115BB		
Income from horse races	20,000	
Total income	**6,30,000**	
Tax@ 20% under section 115BBA on ₹ 6,10,000		1,22,000
Tax@ 30% under section 115BB on income of ₹ 20,000 from horse races		6,000
		1,28,000
Add: Health and Education cess@4%		5,120
Total tax liability of Smith for the A.Y.2024-25		**1,33,120**

(ii) Yes, the above income is subject to tax deduction at source.

Income referred to in section 115BBA (i.e., ₹ 6,10,000, in this case) is subject to tax deduction at source@ 20% under section 194E.

Income referred to in section 115BB (i.e.,₹ 20,000, in this case) is subject to tax deduction at source@30% under section 194BB.

Since Smith is a non-resident, the amount of tax to be deducted calculated at the prescribed rates mentioned above, would be increased by health and education cess@4%.

(iii) Section 115BBA provides that if the total income of the non-resident sportsman comprises of only income referred to in that section and tax deductible at source has been fully deducted, it shall not be necessary for him to file his return of income. However, in this case, Mr. Smith has income from horse races as well. Therefore, he cannot avail the benefit of exemption from filing of return of income as contained in section 115BBA. Hence, he would be liable to file his return of income for A.Y.2024-25.

(iv) The Calcutta High Court in Indcom v. CIT (TDS)(2011) 335 ITR 485 has held that 'match referee' would not fall within the meaning of "sportsmen" to attract the provisions of section 115BBA.Therefore, although the payments made to non-resident 'match referee' are "income" which has accrued and arisen in India, the same are not taxable under the provisions of section 115BBA. They are subject to the normal rates of tax under section 115BAC.

Particulars		₹
Tax@30% under section 115BB on winnings of ₹ 20,000 from horse races	6,000	
Tax on ₹ 6,10,000 at normal rate of tax		
Upto ₹ 3,00,000	Nil	
3,00,000 – 6,00,000 @5%	15,000	
6,00,000 – 6,10,000 @ 10%	1,000	16,000
		22,000
Add: Health and Education cess@4%		880
Total tax liability		**22,880**

Question-15 :
Peeyush, who returned to India on 12th June, 2023 for permanently residing in India after a stay of about 20 years in U.K., provides the sources of his various incomes and seeks your opinion to know about his liability to income tax thereon in India in assessment year 2024- 25 assuming that he has exercised the option to shift out of the default tax regime under section 115BAC:

(i) Income of rent of the flat in London which was deposited in a bank there. The flat was given on rent by him after his return to India since July, 2023.
(ii) Dividends on the shares of three German Companies which are being collected in a bank account in London. He proposes to keep the dividend on shares in London with the permission of the Reserve Bank of India.
(iii) He has got two sons, one of whom is of 12 years and other 19 years. Both his sons are staying in London and not returning to India with him. Each of his sons is having income of ₹ 75,000 in U.K. in foreign currency (not received in India) and of ₹ 20,000 in India.
(iv) During the preceding accounting year when he was a non-resident, he had sold 1000 shares which were acquired by him in British Pound Sterling and the sale proceeds were repatriated. The profit in terms of British Pound Sterling on sale of these 1000 shares was 175% of the cost at ₹ 37,500 while in terms of Indian Rupee it was ₹ 50,000.

Solution :
Peeyush returned to India on 12th June 2023 for permanently residing in India after staying in UK for 20 years. During the P.Y.2023-24, he stays in India for 294 days. Since he has stayed in India for a period of 182 days or more during the previous year 2023-24, he would be a resident in India for the A.Y.2024-25. However, he would be a resident but not ordinarily resident, assuming that he was a non-resident in nine out of ten previous years preceding P.Y.2023-24/his stay in India during the seven previous years is less than 730 days. The residential status of Peeyush for A.Y.2024-25 is, therefore, **Resident but Not Ordinarily Resident.**

As per section 5(1), only income which is received/ deemed to be received/ accrued or arisen/ deemed to accrue or arise in India is taxable in case of a Resident but not Ordinarily Resident. Income which accrues or arises outside India shall not be included in his total income, unless it is derived from a business controlled in, or a profession set up in, India.

(i) Rental income from a flat in London which was deposited in a bank there shall not be taxable in the case of a resident but not ordinarily resident, since both the accrual and receipt of income are outside India.
(ii) Dividends from shares of three German Companies, collected in a bank account in London, would also not be taxable in the case of a resident but not ordinarily resident since both the accrual and receipt of income are outside India.
(iii) As per section 64(1A), all income accruing or arising to a minor child is includible in the hands of the parent, after providing for deduction of ₹ 1,500 per child under section 10(32).

Accordingly, income of ₹ 20,000 accruing to his minor son, aged 12 years, in India is includible in the income of Peeyush, after providing deduction of ₹ 1,500. Therefore, ₹18,500 is includible in the income of Peeyush. Income accruing to the minor child outside India (which is also received outside India) is not includible in the income of Peeyush.

Since the other son is major, his income is not includible in the income of Peeyush.

(iv) Repatriation of sale proceeds of 1000 shares sold in the preceding accounting year, when Peeyush was a non-resident, is not taxable in the A.Y.2024-25 since it is not the income of the P.Y.2023-24.

Consequently, only the income includible under section 64(1A) would form part of the total income of Mr. Peeyush for A.Y.2024-25. Since his total income (i.e., ₹ 18,500) is less than the basic exemption limit, there would be no liability to income-tax for A.Y.2024-25.

Question-16 :

Mr. David, a citizen of India, serving in the Ministry of External Affairs in India, was transferred to Indian Embassy in Canada on 31.03.2023. He did not visit India any time during the previous year 2023-24. He has received the following income for the Financial Year 2023-24:

S.No.	Particulars	₹
(i)	Salary (Computed)	5,00,000
(ii)	Foreign Allowance	4,00,000
(iii)	Interest on fixed deposit from bank in India	1,00,000
(iv)	Income from agriculture in Country X	2,00,000
(v)	Income from house property in Country X	2,50,000

Compute his gross total income for Assessment Year 2024-25.

Solution :

As per section 6(1), Mr. David is a non-resident for the A.Y. 2024-25, since he was not present in India at any time during the previous year 2023-24.

As per section 5(2), a non-resident is chargeable to tax in India only in respect of following incomes:

(i) Income received or deemed to be received in India; and

(ii) Income accruing or arising or deemed to accrue or arise in India.

In view of the above provisions, income from agriculture in Country X and income from house property in Country X would not be chargeable to tax in the hands of David, assuming that the same were received in Country X.

Income from 'Salaries' payable by the Government to a citizen of India for services rendered outside India is deemed to accrue or arise in India as per section 9(1)(iii). Hence, such income is taxable in the hands of Mr. David, even though he is a nonresident. However, allowances or perquisites paid or allowed as such outside India by the Government to a citizen of India for rendering service outside India is exempt under section 10(7). Hence, foreign allowance of ₹ 4,00,000 is exempt under section 10(7).

Gross Total Income of Mr. David for A.Y. 2024-25

Particulars	₹
Salaries	5,00,000
Income from other sources (Interest on fixed deposit in India)	1,00,000
Gross Total Income	**6,00,000**

Question-17 :

Mr. A, a citizen of India, left for USA for the purposes of employment on 1.5.2023. He has not visited India thereafter. Mr. A borrows money from his friend Mr. B, who also left India for employment purpose one week before Mr. A's departure, to the extent of ₹ 10 lakhs and buys shares in X Ltd., an Indian company. Discuss the taxability of the interest charged @10% in B's hands, if the said interest has been received in New York.

Solution :
An individual is said to be resident in India in any previous year, if he -
(i) has been in India during that year for a total period of 182 days or more, or
(ii) has been in India during the four years immediately preceding that year for a total period of 365 days or more and has been in India for at least 60 days in that year.

In the case of an Indian citizen leaving India for the purposes of employment outside India during the previous year, the period of stay during the previous year in condition (ii) above, to qualify as a resident, would be 182 days instead of 60 days.

In this case, Mr. A is an Indian citizen who left India for employment outside India on 01.05.2023. Mr. A has been in India only from 1.4.2023 to 01.05.2023 i.e. for 31 days. Since his stay in India during the previous year 2023-24 is only 31 days, he does not satisfy the minimum criterion of 182 days stay in India for being a resident. Hence, his residential status for A.Y. 2024-25 is non-resident. Mr. B, who left India one week before A's departure, is also a non-resident for the same reasons.

Section 9(1)(v) provides that income by way of interest payable by a non-resident in respect of any debt incurred, or moneys borrowed and used, for the purposes of a business or profession carried on by such person in India shall be deemed to accrue or arise in India.

Therefore, interest payable by a non-resident in respect of any debt incurred, or moneys borrowed and used, for the purpose of making or earning any income from any source other than a business or profession carried on by him in India, shall **not** be deemed to accrue or arise in India. Therefore, interest payable by Mr. A on money borrowed from Mr. B to invest in shares of an Indian company shall **not** be deemed to accrue or arise in India and hence, is not taxable in India in the hands of Mr. B.

Question-18 :
JJ Limited, a company incorporated in Australia has entered into an agreement with KK Limited, an Indian company for rendering technical services to the latter for setting up a fertilizer plant in Orissa. As per the agreement, JJ Limited rendered both off-shore services and on-shore services to KK Limited at fee of ₹ 1 crore and ₹ 1.5 crore, respectively. JJ Limited is of the view that it is not liable to tax in India in respect of fee of ₹ 1 crore as it is for rendering services outside India. Discuss the correctness of the view of JJ Limited.

Solution :
The Explanation below section 9(2) clarifies that income by way of, inter alia, fees for technical services from services utilized in India would be deemed to accrue or arise in India under section 9(1)(vii) in case of a non-resident and be included in his total income, whether or not such services were rendered in India.

In this case, the technical services rendered by the foreign company, JJ Ltd., were for setting up a fertilizer plant in Orissa. Therefore, the services were utilized in India. Consequently, as per the Explanation below section 9(2), the fee of ₹ 2.5 crore for technical services rendered by JJ Ltd. (both off-shore and on-shore services) to KK Ltd. is deemed to accrue or arise in India and includible in the total income of JJ Ltd.

Therefore, the view of JJ Ltd. that it is not liable to tax in India in respect of fee of ₹ 1 crore (as it is for rendering services outside India) is not correct.

Question-19 :
Examine with reasons whether the following transactions attract income-tax in India, in the hands of recipients under section 9 of Income-tax Act, 1961:

(i) A non-resident German company, which did not have a permanent establishment in India, entered into an agreement for execution of electrical work in India. Separate payments were made towards drawings & designs, which were described as "Engineering Fee". The assessee contended that such business profits should be taxable in Germany as there is no business connection within the meaning of section 9(1)(i) of the Income-tax Act, 1961.

(ii) A firm of solicitors in Mumbai engaged a barrister in UK for arguing a case before Supreme Court of India. A payment of 5000 pounds was made as per terms of professional engagement.
(iii) Amount paid by Government of India for use of a patent developed by Mr. A, who is a non-resident.
(iv) Sai Engineering, a non-resident foreign company entered into a collaboration agreement on 25/6/2023, with an Indian Company and was in receipt of interest on 8% debentures for ₹ 20 lakhs, issued by Indian Company, in consideration of providing technical know-how utilised in its business in Mumbai during previous year 2023-24.

Solution :

(i) Fees for technical services is taxable under section 9(1)(vii). In this case, the separate payments made towards drawings and designs (described as "engineering fee") are in the nature of fee for technical services and, therefore, it is taxable in India by virtue of section 9(1)(vii), since the services are utilized for execution of electrical work in India [Aeg Aktiengesllschaft v. CIT (2004) 267 ITR 209 (Kar.)].

As per Explanation below section 9(2), where income is deemed to accrue or arise in India under section 9(1)(vii), such income shall be included in the total income of the non-resident German company, regardless of whether it has a residence or place of business or business connection in India.

(ii) As per section 9(1)(i), all income accruing or arising, whether directly or indirectly, through or from any business connection in India is deemed to accrue or arise in India.

In this case, there was a professional connection between the firm of solicitors in Mumbai and the barrister in UK. The expression "business" includes not only trade and manufacture; it includes, within its scope, "profession" as well. Therefore, the existence of professional connection amounts to existence of "business connection" under section 9(1)(i). It was so held by the Supreme Court in Barendra Prasad Roy v. ITO (1981) 129 ITR 295.

Hence, the amount of 5,000 pounds paid to the barrister in UK as per the terms of the professional engagement constitutes income which is deemed to accrue or arise in India under section 9(1)(i). Hence, it is taxable in India.

(iii) As per section 9(1)(vi), income by way of royalty payable by the Government of India is deemed to accrue or arise in India. "Royalty" means consideration for, inter alia, use of patent. Therefore, the amount paid by Government of India for use of patent developed by Mr. A, a non-resident, is deemed to accrue or arise in India. Hence, it is taxable in India in the hands of Mr. A.

(iv) ₹ 20 lakhs, being the value of debentures issued by an Indian company in consideration of providing technical know-how for use in its business in India, is in the nature of fee for technical services, deemed to accrue or arise in India to Sai Engineering, a non-resident foreign company, under section 9(1)(vii). Hence, it is taxable in India.

Further, as per section 9(1)(v), income by way of interest payable by a person who is a resident of India is deemed to accrue or arise in India. Therefore, interest income from debentures of an Indian company is deemed to accrue or arise in India in the hands of Sai Engineering by virtue of section 9(1)(v). Hence, it is taxable in India. Note – Since the question specifically requires the candidates to examine the taxability of the above transactions under section 9, the provisions of double taxation avoidance agreement, if any, applicable in the above cases, have not been taken into consideration.

Question-20 :

Z, an American tourist, comes to India for the first time on June 17, 2023. He leaves India on September 29, 2023. Determine his residential status for the assessment year 2024-25.

Would your answer change if he is a person of Indian origin and his total income from Indian sources for A.Y.2024-25 is ₹ 16 lakhs?

Solution :

Previous year 2023-24:	105 [14+31+31+29]
Previous year 2022-23:	Nil
Previous year 2021-22:	Nil
Previous year 2020-21:	Nil
Previous year 2019-20:	Nil

He is non-resident for the assessment year 2024-25 as he does not satisfy either of the basic conditions.

Even if he is a person of Indian origin whose total income from Indian sources exceeds ₹15 lakhs, he would still be a non-resident for A.Y.2024-25. For becoming a resident but not ordinarily resident, he should have stayed in India for atleast 120 days in the previous year 2023-24 and 365 days in four immediately preceding previous years. Since his stay in India in the P.Y.2023-24 is less than 120 days, he would be non-resident in India for A.Y.2024-25.

Question-21 :

M/s. Global Airlines incorporated as a company in USA operated its flights to India and vice versa during the year 2023-24 (April, 2023 to March, 2024) and collected charges of ₹ 125 lakhs for carriage of passengers and cargo out of which ₹ 65 lakhs were received in New York in U.S Dollars for the passenger fare booked from New York to Mumbai. The total expenses for the year on operation of such flights were ₹ 95 lakhs. Compute the income chargeable to tax of the foreign airlines.

Solution :

As per section 44BBA, in case of a non-resident engaged in the business of operation of aircraft, 5% of the following amounts would be deemed to be the profits and gains from such business:

(a) paid or payable, whether in or out of India, to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods from any place in India; and

(b) received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods from any place outside India.

In the present case, the income chargeable to tax of M/s Global Airlines applying the provisions of section 44BBA are as follows:

Particulars	Fare booked from India to outside India whether received in India or not (₹)	Fare booked from New York to Mumbai and received outside India (₹)
Fare	60,00,000 (1,25,00,000 – 65,00,000)	65,00,000
Deemed income @5% u/s 44BBA	3,00,000 (60,00,000 × 5%)	Nil (since the amount not received in India)

Question-22 :

Atlant Italy, a company incorporated in France, was engaged in manufacture, trade and supply equipment and services for GSM Cellular Radio Telephones Systems. It supplied hardware and software to various entities in India. Software licensed by assessee embodied the process which is required to control and manage the specific set of activities involved in the business use of its customers, and also made available to its customers, who used it to carry out their business activities. The Assessing Officer contended that the consideration for supply of software embedded in hardware is 'royalty' under section 9(1)(vi).

Examine the correctness of the action of the Assessing Officer assuming that the software that was loaded on the hardware and embedded in the system does not have any independent existence.

Solution :

The issue under consideration in this case is whether consideration for supply of software embedded in hardware would tantamount to 'royalty' for attracting deemed accrual of income under section 9(1)(vi).

As per section 9(1)(vi), income by way of royalty payable by a person who is a resident in India would be deemed to accrue or arise in India. However, where it is payable for the transfer of any right or the use of any property or information or for the utilization of services for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India, the amount payable by way royalty would not be deemed to accrue or arise in India, in the hands of non-resident.

For this purpose, 'royalty' includes transfer of all or any right for use or right to use a computer software irrespective of the medium through which such right is transferred.

The facts of the case are similar to the facts in CIT v. Alcatel Lucent Canada (2015) 372 ITR 476, wherein the above issue came up before the Delhi High Court. The Court observed that the software supply is an integral part of GSM mobile telephone system and is used by the cellular operators for providing cellular services to its customers. Where payment is made for hardware in which the software is embedded and the software does not have independent functional existence, no amount could be attributed as 'royalty' for software in terms of section 9(1)(vi).

In this case, since the software that was loaded on the hardware and embedded in the system does not have any independent existence, there could not be any independent use of such software. Therefore, the rationale of the Delhi High Court ruling can be applied to the case on hand. Accordingly, the action of the Assessing Officer in treating the consideration for supply of software embedded in hardware as royalty under section 9(1)(vi) is not correct.

Question-23 :
Singtel Ltd. is a company incorporated in Singapore and 55% of its shares are held by Godavari (P) Ltd., an Indian company. Singtel Ltd. has its presence in India also. The details relating to Singtel Ltd. for the P.Y.2023-24, are as under:

Particulars	**India**	**Singapore**
Fixed assets at depreciated values for tax purposes (₹ in crores)	120	80
Intangible assets (₹ in crores)	50	200
Other assets (value as per books of account) (₹ in crores)	40	120
Income from trading operations (₹ in crores)	25	50
The above figure includes:		
(i) Income from transactions where purchases are from associated enterprises and sales are to unrelated parties	2	4
(ii) Income from transactions where sales are to associated enterprises and purchases are from unrelated parties	3	5
(iii) Income from transactions where both purchases and sales are from/to associated enterprises	5	10
Interest and dividend from investments (₹ in crores)	20	15
Number of employees (Residents in respective countries)	70	90
Payroll expenses on employees (₹ in crores)	8	12

Determine the residential status of Singtel Ltd. for A.Y.2024-25, if during the F.Y.2023-24, eight board meetings were held – 3 in India and 5 in Singapore.

Solution :
The residential status of a foreign company is determined on the basis of place of effective management (POEM) of the company.

For determining the POEM of a foreign company, the important criteria is whether the company is engaged in active business outside India or not.

A company shall be said to be engaged in **"Active Business Outside India"** (ABOI) for POEM, if
- the passive income is not more than 50% of its total income; **and**
- less than 50% of its total assets are situated in India; **and**
- less than 50% of total number of employees are situated in India or are resident in India; **and**
- the payroll expenses incurred on such employees is less than 50% of its total payroll expenditure.

Singtel Ltd. shall be regarded as a company engaged in active business outside India for P.Y.2023-24 for POEM purpose only if it satisfies all the four conditions cumulatively.

Condition 1: The passive income of Singtel Ltd. should not be more than 50% of its total income
Total income of Singtel Ltd. during the P.Y. 2023-24 is ₹ 110 crores [(₹ 25 crores + ₹ 50 crores) + (₹ 20 crores + ₹ 15 crores)]

Passive income is the aggregate of, -
(i) income from the transactions where both the purchase and sale of goods is from/to its associated enterprises; and
(ii) income by way of royalty, dividend, capital gains, interest or rental income;

Passive Income of Singtel Ltd. is ₹ 50 crores, being sum total of :
(i) ₹ 15 crores, income from transactions where both purchases and sales are from/to associated enterprises (₹ 5 crores in India and ₹ 10 crores in Singapore)
(ii) ₹ 35 crores, being interest and dividend from investment (₹ 20 crores in India and ₹ 15 crores in Singapore)

Percentage of passive income to total income = ₹ 50 crore/ ₹ 110 crore x 100 = 45.45%

Since passive income of Singtel Ltd. is 45.45%, which is not more than 50% of its total income, the first condition is satisfied.

Condition 2: Singtel Ltd. should have less than 50% of its total assets situated in India
Value of total assets of Singtel Ltd. during the P.Y. 2023-24 is ₹ 610 crores [₹ 210 crores, in India + ₹ 400 crores, in Singapore]

Value of total assets of Singtel Ltd. in India during the P.Y. 2023-24 is ₹ 210 crores

Percentage of assets situated in India to total assets = ₹ 210 crores/₹ 610 crores x 100 = 34.43%

Since the value of assets of Singtel Ltd. **situated in India is less than 50%** of its total assets, the second condition for ABOI test is satisfied.

Condition 3: Less than 50% of the total number of employees of Singtel Ltd. should be situated in India or should be resident in India
Number of employees situated in India or are resident in India is 70
Total number of employees of Singtel Ltd. is 160 [70 + 90]

Percentage of employees situated in India or are resident in India to total number of employees is 70/160 x 100 = **43.75%**

Since employees situated in India or are residents in India of Singtel Ltd. **are less than 50%** of its total employees, the third condition for ABOI test is satisfied.

Condition 4: The payroll expenses incurred on employees situated in India or resident in India should be less than 50% of its total payroll expenditure
Payroll expenses on employees employed in and resident of India = ₹ 8 crores.
Total payroll expenses = ₹ 20 crores (₹ 8 crores + ₹ 12 crores)

Percentage of payroll expenses of employees situated in India or are resident in India to the total payroll expenses = 8 x 100/20 = 40%
Since the payroll expenses incurred on employees situated in India or resident in India **is less than 50% of its total payroll expenditure**, the fourth condition for ABOI test is also satisfied.
Thus, since Singtel Ltd. has satisfied all the four conditions, the company would be said to be engaged in "active business outside India" during the P.Y. 2023-24.

POEM of a company engaged in active business outside India shall be presumed to be outside India, if the majority of the board meetings are held outside India.

Since Singtel Ltd. is engaged in active business outside India in the P.Y. 2023-24 and majority of its board meetings i.e., 5 out of 8, were held outside India, POEM of Singtel Ltd. would be outside India.

Therefore, Singtel Ltd. would be non-resident in India for the P.Y. 2023-24.

Question-24 :
STYLE Inc., a notified Foreign Institutional Investor (FII), derived the following incomes for the financial year 2023-24:-
(1) Interest received on investment in Rupee Denominated Bonds of ABC Ltd., an Indian company (investment was made in the F.Y.2022-23) - ₹ 8,50,000
(2) Dividend from listed shares of Indian companies – ₹ 6,20,000
(3) Interest on securities – ₹ 17,32,000 (Expenses of ₹ 26,000 has been incurred to earn such income)
(4) Income from sale of securities and shares:

(i) Bonds of J Ltd.
[Date of purchase 5 May, 2017; Date of sale 7 March, 2024]

Sale proceeds :	₹ 47,00,000
Cost of purchase :	₹ 32,00,000

Cost Inflation Index: F.Y.2017-18:272; F.Y.2023-24:348

(ii) Listed Shares of E Ltd.
[Date of purchase – 2 May, 2023; Date of sale – 9 February, 2024]

Sale Consideration	₹ 12,40,000
Purchase cost	₹ 7,80,000

[STT paid both at the time of purchase and sale]

(iii) Unlisted equity shares of M Ltd.
[Date of purchase – 1 July, 2023; Date of sale – 7 March, 2024]

Sale Consideration	₹ 8,40,000
Purchase cost	₹ 3,72,000

Compute the total income and tax liability of the FII, STYLE Inc., for the A.Y. 2024-25 as per section 115AD, assuming that no other income is derived by STYLE Inc. during the F.Y.2023-24.

Solution :

Computation of total income of STYLE Inc., a notified FII, for A.Y.2024-25

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]	17,32,000	32,02,000
Long-term capital gains on sale of bonds of J Ltd.		
Sale consideration	47,00,000	
Less: Cost of acquisition [Benefit of indexation is not allowable]	32,00,000	15,00,000

Short-term capital gains on sale of STT paid equity shares of E Ltd.		
Sale consideration	12,40,000	
Less: Cost of acquisition	7,80,000	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	3,72,000	4,68,000
Total Income		**56,30,000**

Computation of tax liability of STYLE Inc. for A.Y.2024-25

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 1,40,400	
	8,72,300
Add: HEC@4%	34,892
Tax liability	**9,07,192**
Tax liability (rounded off)	**9,07,190**

Part-B : Additional Questions

Question-25 : [RTP May-21]

Lords Inc., a British company, received, in the P.Y. 2023-24, income by way of fees for technical services of ₹3.20 crore from Yamuna Ltd., an Indian company, in pursuance of an agreement between Yamuna Ltd. and Lords Inc. entered into in the year 2012, which is approved by the Central Government. Expenses incurred for earning such income is ₹ 28 lakhs.

(i) Examine the taxability of the above sum in the hands of Lords Inc as per the provisions of the Income-tax Act, 1961 and the requirement, if any, to file return of income, assuming that Lords Inc does not have a permanent establishment in India.

(ii) If Lords Inc. has a permanent establishment in India and the contract/agreement with Yamuna Ltd. for rendering technical services is effectively connected with such PE in India, examine the taxability based on the following details provided relating to P.Y. 2023-24 –

	Particulars	Amount
(1)	Fees for technical services received from Yamuna Ltd.	₹ 3.20 crore
(2)	Expenses incurred for earning such income	₹ 28 lakhs
(3)	Fees for technical services received from other Indian companies in pursuance of approved agreement entered into between the years 2006 to 2010	₹ 2 crore
(4)	Expenses incurred for earning such income	₹ 21 lakhs
(5)	Expenditure not wholly and exclusively incurred for the business of such PE [not included in (2) & (4) above]	₹ 8 lakhs
(6)	Amounts paid by the PE to HO (not being in the nature of reimbursement of actual expenses)	₹ 14 lakhs

What are the other requirements, if any, under the Income-tax Act, 1961 in this case?

Solution :

(i) Where Lords Inc., a British company, does not have a PE in India

In this case, Lords Inc. would be eligible for a concessional rate of tax @ 20% (plus surcharge @ 2% and HEC @ 4%) of ₹ 3.20 crore under section 115A on the fees for technical services received from Yamuna Ltd., an Indian company, since the same is in pursuance of an agreement entered into after 31.3.1976, which has been approved by the Central Government. No deduction, however, would be allowed in respect of expenditure of ₹ 28 lakhs incurred to earn such income.

If tax deductible at source @ 21.216% has been fully deducted, Lords Inc. need not file its return of income in India under section 139 for A.Y. 2024-25.

(ii) Where Lords Inc., a British company, has a PE in India and rendering technical services is effectively connected with the PE in India

Since Lords Inc. carries on business through a PE in India, in pursuance of an agreement with Yamuna Ltd. or other Indian companies entered into after 31.3.2003, and the income by way of fees for technical services is effectively connected with the PE in India as per section 44DA, such income shall be computed under the head "Profits and gains from business or profession" in accordance with the provisions of the Income-tax Act, 1961.

Accordingly, expenses of ₹ 49 lakhs (₹ 28 lakhs + ₹ 21 lakhs) incurred for earning fees for technical services of ₹ 5.20 crore (₹ 3.20 crore + ₹ 2 crore) is allowable as deduction therefrom. However, expenditure of ₹ 8 lakhs which is **not** incurred wholly and exclusively for the business of the PE and the amount of ₹ 14 lakhs paid by the PE to the HO is not allowable as deduction.

Lords Inc. is required to maintain books of account under section 44AA and get the same audited under section 44AB and furnish report before the specified date i.e., the date one month prior to the due date of filing return u/s 139(1) for A.Y.2024-25.

Question-26 : [PP May-18]
State with reasons whether the following transactions are subject to tax as deemed income.

(i) XYZ Ltd. is a broadcaster of News Channel in India. It had made payments to a Malaysian company having no PE in India for downlinking Television Channels into India and international footprint through a channel.

(ii) Mr. A, a foreign citizen and a diamond merchant from US, has earned income of 10 crores from display of uncut and unassorted diamonds in the Bharat Diamond Bourse, a notified special zone in Surat.

(2 x3 = 6 Marks)

Solution :

(i) As per section 9(1)(vi)(b), any income by way of royalty payable by a person who is a resident would be deemed to accrue or arise in India in the hands of the recipient, except where the royalty is payable in respect of any right, property or information or services utilised for the purposes of business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India.

Explanation 2 to section 9(1)(vi) defines "royalty" to mean consideration for the transfer of any right in respect of, inter alia, a process. Explanation 6 to section 9(1)(vi) clarifies that "process" includes transmission by satellite (including conversion for down-linking of any signal).

Accordingly, the payment made by XYZ Ltd., a resident in India (since it is an Indian company), for downlinking television channels into India and international footprint through the channel, would constitute "royalty".

Such royalty income would be deemed to accrue or arise in India in the hands of the Malaysian company not having a PE in India, since it is paid by XYZ Ltd., a company resident in India in relation to its business in India.

(ii) As per section 9(1)(i)(e), in the case of a foreign company engaged in the business of mining of diamonds, no income shall be deemed to accrue or arise in India to it through or from the activities which are confined to display of uncut and unassorted diamonds in any notified special zone.

Since this benefit is available only in case of a foreign company engaged in the business of mining of diamonds, Mr. A, a foreign citizen and a diamond merchant from US, cannot avail of such benefit.

The income of ₹ 10 crores from display of uncut and unassorted diamonds would, accordingly, be deemed to accrue or arise in the hands of Mr. A by virtue of business connection in India.

Question-27 : [PP May-18]
Red Ltd., a non-resident foreign company, had entered into a collaboration agreement, approved by the Central Government, with Blue Ltd., an Indian company on February 21, 2003 and is in receipt of following payments during the previous year ending on March 31, 2024:

(i) Interest on 8% debentures for ₹ 40 lakhs issued by Blue Ltd. on July 1, 2023 in consideration of providing of technical know-how, manufacturing process and designs (date of payment of interest being March 31 every year).

(ii) Service charges @2.5% of the value of plant and machinery for ₹ 500 Lakhs leased out to Blue Ltd. payable each year before March 31.

(iii) Apart from the above incomes, Red Ltd. received a long term capital gain amounting to 1.90 Lakhs on sale of debentures of Green Ltd., an Indian company, subscribed in US$.

Compute the Total Income of Red Ltd. and determine its tax liability for the A.Y. 2024-25.

Solution :

(a) Computation of total income of Red Ltd., a foreign company, for A.Y.2024-25

Particulars	
Fees for technical services Debentures issued by Blue Ltd. in consideration for provision of technical know-how by Red Ltd., a foreign company, is in the nature of fee for technical services, deemed to accrue or arise in India to Red Ltd., a foreign company	40,00,000
Royalty Service charges for leased out plant and machinery [₹ 500 lakhs x 2.5%] [Service charges paid by Blue Ltd. for leased out plant and machinery is in the nature of royalty, which is deemed to accrue or arise in India to Red Ltd., a foreign company]	12,50,000
Capital Gains	
Long term capital gain on sale of debentures of Green Ltd. an Indian company	1,90,000
Interest on debentures	
Interest on debentures [₹40 lakhs x 8% x 9/12] [Interest on debentures of Blue Ltd., an Indian company, is deemed to accrue or arise in India, since the debt incurred is not used for a business outside India or for earning income from a source outside India]	2,40,000
Total Income	**56,80,000**

Computation of tax liability of Red Ltd. for A.Y. 2024-25

Particulars	
Tax @ 20% on royalty of ₹12.50 lakhs and **fees for technical services** of 40 lakhs	10,50,000
Tax @ 10% on long term capital gains of ₹ 1,90,000	19,000
Tax @ 40% on interest on debentures of ₹ 2,40,000 since debt is not incurred by Blue Ltd. in foreign currency	96,000
	11,65,000
Add: Cess @ 4%	46,600
Tax Liability	**12,11,600**

Question-28 : [PP Nov-20]
Explain in brief whether the transaction - Interest of ₹ 5,00,000 paid on money borrowed by Mr. Smith (a Non-resident) for the purpose of doing business of garments at Mumbai to Mr. John (who is also a Non-resident) attracts income-tax in India in the hands of recipient in the Assessment Year 2024-25. **(2 Marks)**

Solution :
Income by way of interest payable by a person who is a non-resident would be deemed to accrue or arise in India, where the interest is payable in respect of any money borrowed and used for the purposes of a business or profession carried on by such person in India.

Accordingly, interest income arising to Mr. John, a non-resident, would be deemed to accrue or arise in India since it is in respect of money borrowed by Mr. Smith, a non- resident, for the purpose of business of garments at Mumbai in India. Hence, it would attract income-tax in India in the hands of Mr. John, even though he is a non-resident.

Question-29 : [PP Nov-20] Repeated from Study Mat – Given for Your Practice
Simran (P) Ltd. holds 55% of shares in Al Kuber Ltd., a Company incorporated in Dubai. Al Kuber Ltd. has its offices in India also.

Details relating to Al Kuber Ltd. for year ended March 2024 are as stated below:

(Amt. in ₹ crores)

Particulars	India	Dubai
Fixed Assets after considering Depreciation for tax purposes	1500	650
Intangible Assets	225	1075
Other Assets (value as per books of A/c)	800	1900
Income from trading operations. The above figure includes:	730	1370
a. Income from transactions where sales are to AE	20	40
b. Income from transactions where purchases are from AE	30	55
c. Income from transactions where sales/purchases are to/from AE	45	80
Interest & Dividend from investments	560	320
No. of employees	70	90
Unskilled employees out of the above-mentioned total employees (resident in respective countries)	5	30
Payroll expenses on employees	940	1250
Payroll expenses on Unskilled employees out of the above-mentioned total Payroll expenses	100	415
No. of Board Meetings held	3	4

Determine the Residential Status of Al Kuber Ltd. for A.Y. 2024-25. **(5 Marks)**

Solution :
AI Kuber Ltd., a company incorporated in Dubai, would be resident in India in the P.Y. 2023-24, if its place of effective management is in India in that year.

For determining the POEM of AI Kuber Ltd., the important criteria is whether the company is engaged in active business outside India or not.

A company would be said to be engaged in "Active Business Outside India" (ABOI) for POEM, if -
- its passive income is not more than 50% of its total income; **and**
- less than 50% of its total assets are situated in India; **and**
- less than 50% of total number of employees are situated in India or are resident in India; **and**
- the payroll expenses incurred on such employees is less than 50% of its total payroll expenditure.

AI Kuber Ltd. would be regarded as a company engaged in active business outside India for P.Y. 2023-24 for POEM purpose only if it satisfies all the four conditions cumulatively.

Condition 1: The passive income of AI Kuber Ltd. should not be more than 50% of its total income.
Total income of AI Kuber Ltd. during the P.Y. 2023-24 is ₹ 2,980 crores Passive income is the aggregate of, -

(i) income from the transactions where both the purchase and sale of goods is from/to its associated enterprises i.e ₹ 125 crores; and
(ii) income by way of, inter alia, interest and dividend i.e ₹ 880 crores; Passive Income of AI Kuber Ltd. is ₹ 1,005 crores (i.e ₹ 125 crores + ₹ 880 crores) Percentage of passive income to total income = ₹ 1,005 crore / ₹ 2,980 crore x 100 = **33.72%**

Since passive income of AI Kuber Ltd. i.e 33.72% is **not** more than 50% of its total income, the first condition is satisfied.

Condition 2: AI Kuber Ltd. should have less than 50% of its total assets situated in India
Value of total assets of AI Kuber Ltd. is ₹ 6,150 crores [₹ 1,500 crore + ₹ 225 crore + ₹ 800 crore + ₹ 650 crore + 1,075 crore + 1900 crore].

Value of total assets of AI Kuber Ltd. in India is ₹ 2,525 crores [₹ 1,500 crore + ₹ 225 crore + ₹ 800 crore]
Percentage of assets situated in India to total assets = ₹ 2,525 crores / ₹ 6150 crores x 100 = **41.06%**
Since the value of assets of AI Kuber Ltd. situated in India is less than 50% of its total assets, the second condition for ABOI test is satisfied.

Condition 3: Less than 50% of the total number of employees of AI Kuber Ltd. should be situated in India or should be resident in India
Number of employees working in India is 70.
Total number of employees of AI Kuber Ltd. is 160 [70+90].
Percentage of employees working in India to total number of employees is 70 x 100/160= **43.75%**

Since the number of employees of AI Kuber Ltd. working in India is less than 50% of its total number of employees, the third condition for ABOI test is satisfied.

Condition 4: The payroll expenses incurred on employees situated in India or resident in India should be less than 50% of its total payroll expenditure
Payroll expenditure on employees in India is ₹ 940 crores
Total payroll expenditure of AI Kuber Ltd. is ₹ 2,190 crores [₹ 940 crore + ₹ 1,250 crore]. Percentage of payroll expenditure on employees in India to total payroll expenditure is **42.92%,** being ₹ 940 crores x 100 / ₹ 2190 crores.

Since payroll expenditure on employees of AI Kuber Ltd. in India is less than 50% of its total payroll expenditure, the fourth condition for ABOI test is satisfied.

Since AI Kuber Ltd. satisfies all the above four conditions cumulatively, AI Kuber Ltd. has passed the Active Business Outside India (ABOI) test.

POEM of a company engaged in active business outside India shall be presumed to be outside India, if the majority of the board meetings are held outside India.

Since AI Kuber Ltd. is engaged in active business outside India in P.Y. 2023-24 and majority of its board meetings i.e., 4 out of 7, were held outside India, POEM of AI Kuber Ltd. would be outside India.

Therefore, AI Kuber Ltd. would be non-resident in India for the P.Y. 2023-24.

Question-30 : [PP Jan-21]
Wioni Inc., a company incorporated in Japan, is engaged in development of infrastructure and providing consultancy in the same field. During the Financial Year 2023-24, its shareholders met in India for three times. The first two meetings were held to discuss the modification of rights attached to various classes of shares and the third meeting was held to discuss and decide about sale of companies' assets situated in India. It provides the following additional information pertaining to Financial Year 2023-24:

(i) Dividend declared by a Miani Inc., a Japan based Company: ₹ 54,000 [Miani Inc. holds 70% of its total assets in India].
(ii) Fees for technical services received from Government of India: ₹ 4,54,000. The Government of India utilised such technical services for a development project carried out by it in Nepal.
(iii) Interest received from Ms. O, a unit located in IFSC in respect of monies borrowed by Ms. O: ₹ 15,400 (Date of loan 24-12-2019)
(iv) On 26-8-2023, Wioni Inc. sold 5,000 equity shares held by it in an Indian Company for ₹ 89 per share. These shares were bought by the Wioni Inc. on 28th June, 2009 for ₹ 64 per share. Both the purchase and sale of shares were effected through a recognized stock exchange in India. Fair Market Value of these shares on 31-01-2018 was ₹ 70 per share.

You are required to compute the total income of Wioni Inc. for the A.Y. 2024-25 briefly explaining the relevant provisions of the Income-tax Act, 1961. **(6 Marks)**

Solution :
Wioni Inc. is a company incorporated in Japan. It would be resident in India, if its place of effective management is in India in that year.

As per the POEM guidelines, the decisions made by a shareholder for sale of all or substantially all of the company's assets, or the modification of the rights attaching to various classes of shares or the issue of a new class of shares etc. are decisions typically affecting the existence of the company itself or the rights of the shareholders as such, rather than the conduct of the company's business from a management or commercial perspective. Therefore, such decisions are **not** relevant for determination of a company's place of effective management. Therefore, the POEM of Wioni Inc. is not in India and hence, it is a non-resident for A.Y. 2024-25.

Taxability of income
As per section 5(2), in case of a non-resident, only income which accrues or arises or which is deemed to accrue or arise to it in India or which is received or deemed to be received in India in the relevant previous year is taxable in India.

Computation of total income of Wioni Inc. for A.Y. 2024-25		
Particulars		**Amount (₹)**
(i)	Dividend declared by Miani Inc., a Japan based company which holds 70% of its total assets in India [As per Circular No. 4/2015, dated 26-03- 2015, dividends declared and paid by Miani Inc., a foreign company, outside India in respect of shares which derive their value substantially from assets situated in India would **not** be deemed to be income accruing or arising in India]	Nil
(ii)	Fees for technical services received from Government of India [As per section 9(1)(vii), any fees for technical services would be deemed to accrue or arise in India if they are payable by Government of India. Since FTS is received from Government of India, it is deemed to have accrued or arisen in India irrespective of that fact that it is utilized for a project outside India]	4,54,000
(iii)	Interest received from Ms. O, a unit located in IFSC for monies borrowed by it on 24.12.2019 [As per section 10(15)(ix), interest payable to Wioni Inc., a non-resident, by Ms. O, a unit located in an IFSC, in respect of monies borrowed by it on or after 1.9.2019 is exempt from income-tax]	Nil
(iv)	**Long term capital gains** Sale consideration (5,000 x ₹ 89) ₹ 4,45,000 Less: Cost of acquisition, being higher of: (₹ 3,50,000) (a) Actual cost i.e., (5,000 x ₹ 64) ₹ 3,20,000 (b) lower of ₹ 3,50,000 - ₹ 3,50,000 (5,000 x ₹ 70), being fair market value on 31.1.2018 and - ₹ 4,45,000 (5,000 x ₹ 89), being full value of consideration [There would be no tax on long-term capital gains, since only the gain in excess of ₹ 1,00,000 is taxable @ 10% u/s 112A]	95,000
	Total Income	**5,49,000**

Question-31 : [MTP Oct-18]
"JUPITER" is a shipliner, used in carrying passengers and cargo, owned by M/s Saturn of U.K. The ship carried the passengers and cargo in June, 2023 from Singapore to Chennai and vice versa and collected charges thereof amounting to ₹ 200 lacs. It left Chennai port on 15.6.2023 for its journey to Korea. No other journey to India was undertaken by any of the vessels of the company during the year ended on 31.3.2024. The non-resident company had authorized its Indian agent to comply with the income tax provisions.

You are consulted by the company to explain about the procedure as to return of income to be filed and the period within which the assessment thereof will be completed by the Assessing Officer. **(4 Marks)**

Solution :
M/s. Saturn of U.K shall be required to file the return of income in India for the journey of its ship before it leaves for onward journey to Korea.

However, as per the proviso to section 172(3), where the Assessing Officer is satisfied that it is not possible for the master of the ship to furnish the return before the departure of the ship from the port, and if satisfactory arrangements have been made for filing of return and payment of tax by the authorised agent in India, he may permit filing of return within 30 days of departure of the ship.

Section 172(4A) provides a time limit of 9 months for completion of assessment in such cases. The period of 9 months is reckoned from the end of the financial year in which the return under section 172(3) is furnished.

Question-32 : [MTP Oct-19]
Examine the tax consequence for Assessment Year 2024-25 in respect of fees for technical services (FTS) received by Mr. Richard Grill, a non-resident, from Trim Ltd., an Indian company, in pursuance of an agreement approved by the Central Government, if –

(I) India has no Double Tax Avoidance Agreement (DTAA) with Country F
(II) India has a DTAA with Country F, which provides for taxation of such FTS @ 5%.
(III) India has a DTAA with Country F, which provides for taxation of such FTS @ 25%.

Assume that Richard Grill is a resident of Country F and he has no fixed place of his profession in India. The technical services are utilised by Trim Ltd. for its business in Indore. **(3 Marks)**

Solution :
As per section 9(1)(vii)(b), income by way of fees for technical services payable by a resident is deemed to accrue or arise in India, except where the fees is payable, inter alia, in respect of services utilized in a business or profession carried on by such person outside India. In this case, since Trim Ltd. utilizes the technical services for its business in Indore, the fees for technical services payable by Trim Ltd. is deemed to accrue or arise in India in the hands of Mr. Richard Grill.

In accordance with the provisions of section 115A, where the total income of a non- corporate non-resident includes any income by way of royalty or fees for technical services other than the income referred to in section 44DA(1), received from an Indian concern in pursuance of an agreement made by him with the Indian concern and the agreement is approved by the Central Government, then, the special rate of tax at 20% of such fees for technical services is applicable. No deduction would be allowable under sections 28 to 44C and section 57 while computing such income.

Section 90(2) makes it clear that where the Central Government has entered in to a DTAA with a country outside India, then, in respect of an assessee to whom such agreement applies, the provisions of the Act shall apply to the extent they are more beneficial to the assessee. Therefore, if the DTAA provides for a rate lower than 10%, then, the provisions of DTAA would apply.

(I) In this case, since India does not have a DTAA with Country F, of which Richard Grill is a resident, the fees for technical services (FTS) received from Trim Ltd., an Indian company, would be taxable @ 20%, by virtue of section 115A.

(II) In this case, the FTS from Trim Ltd. would be taxable @ 5%, being the rate specified in the DTAA, even though section 115A provides for a higher rate of tax, since the tax rates specified in the DTAA are more beneficial. However, since Richard Grill is a non- resident, he has to furnish a tax residency certificate from the Government of Country F for claiming such benefit. Also, he has to furnish other information, namely, his nationality, his tax identification number in Country F and his address in Country F.

(III) In this case, the FTS from Trim Ltd. would be taxable @ 20% as per section 115A, even though DTAA provides for a higher rate of tax, since the provisions of the Act (i.e., section 115A in this case) are more beneficial.

Question-33 : [RTP MAY-22] [must do LDR Ques]
Trex Ltd., a company incorporated in Country "T", has the following incomes in India during the year ended on 31.03.2024. Compute the total income and tax liability of Trex Ltd. for the A.Y. 2024-25, assuming that its POEM is outside India.

(i) Interest of ₹ 2,85,000 earned on debentures of ₹ 30,00,000 issued on 1st August 2023, in consideration of providing technical knowhow to MNO Ltd., an Indian Company, for the purpose of business carried out in India.
(ii) Dividend of ₹ 6,50,000 earned on Global Depository Receipts of YL Ltd., an Indian company, issued under a scheme of Central Government against the initial issue of shares of the company and purchased by Trex Ltd. in foreign currency through an approved intermediary.
(iii) Dividend of ₹ 15,50,000 earned on equity shares of Indian companies.
(iv) Income by way of royalty amounting to ₹ 11,10,629.50 , received from Z Ltd., an Indian company, in pursuance of an agreement approved by Central Government.
(v) Business Income of ₹ 8,50,000 from a unit established at Delhi.
(vi) Long-term capital gain of ₹ 1,32,000 on transfer of unlisted shares of an Indian Company (computed with indexation benefit). If computed without indexation benefit, the long-term capital gains would be ₹ 2,32,000.

Notes –
(i) No DTAA exists between India and Country "T".
(ii) The Unit in Delhi is not involved in any manner in provision of technical knowhow/royalty.

Solution :
Computation of total income and tax liability of Trex Ltd., a non-resident foreign company, for the A.Y. 2024-25

Computation of total income for A.Y. 2024-25		
Particulars	**₹**	**₹**
Profits and gains of business or profession		
Business Income from a unit established at Delhi	8,50,000	
Fees for technical services [would be equivalent to the amount of debentures of ₹ 30,00,000 received from an Indian company, issued in consideration of providing technical knowhow] for the purpose of business carried out in India	30,00,000	
Royalty income received from Z Ltd., an Indian company, in pursuance of an agreement approved by Central Government [₹ 11,10,629.5 x 100/79.2, since tax would have been deducted at source @ 20.8%]	14,02,310	52,52,310
Capital Gains		
Long-term capital gains on transfer of unlisted shares		2,32,000
Income from Other Sources		
Interest on debentures issued by an Indian company	2,85,000	
Dividend on Global Depository Receipts (GDRs) of YL Ltd., an Indian company, issued under a scheme of Central Government against the initial issue of YL Ltd. and purchased in foreign currency by Trex Ltd.	6,50,000	
Dividend income on equity shares of Indian companies	15,50,000	
		24,85,000
Gross Total Income/ Total income		**79,69,310**

Computation of tax liability for A.Y.2024-25		
Particulars		
Business income of ₹ 8,50,000 [taxable @40%]	3,40,000	
FTS of ₹ 30,00,000, taxable @40%, since it is not in pursuance of an agreement approved by the Central Government	12,00,000	
Royalty income of ₹ 14,02,310, taxable @20% u/s 115A, since it is in pursuance of an agreement approved by the Central Government	2,80,462	18,20,462

Particulars	₹	₹
Long-term capital gain of ₹ 2,32,000 (computed without indexation benefit) on unlisted shares taxable @10% under section 112(1)(c)(iii)		23,200
Interest on debentures of ₹ 2,85,000, taxable @40% [Since debt is incurred in Indian currency, it is not eligible for concessional rate of 20% u/s 115A]	1,14,000	
Dividend on GDRs of ₹ 6,50,000, taxable @10% u/s 115AC	65,000	
Dividend income of ₹ 15,50,000, taxable @20% u/s 115A	3,10,000	4,89,000
		23,32,662
Add: Health and education cess@4%		93,306
Tax liability		24,25,968
Tax liability (rounded off)		**24,25,970**

Note – Since the unit in Delhi does not play any role in provision of technical know/royalty, the provisions of section 44DA are **not** attracted in this case in respect of fees for technical services and royalty.

Question-34 : [PP DEC-21]
The following data is furnished by Mr. Ashish, a non-resident and a person of Indian Origin, for the financial year ended 31-3-2024:

Particulars	Amount
Long-term capital gains arising on transfer of specified foreign exchange asset on 31-05-2023 (computed)	8,50,000
Expenditure wholly and exclusively incurred in connection with such transfer (not considered above)	30,000
Interest on deposits held with private limited companies	2,93,000
Interest on Government Securities	1,00,000
Income from Short Term Capital gains u/s 111A	2,00,000
Investment in notified savings certificates of Central Government on 30-3-2024	1,50,000
Investment in shares of Indian public limited companies on 31-12-2023	1,80,000
Tax deducted at source	1,55,000

Compute balance tax payable/refund due for the A.Y. 2024-25 in accordance with special provisions applicable to non-residents. **(6 Marks)**

Solution :

Computation of tax payable by Mr. Ashish., a non-resident as per special provisions applicable to non-residents for the A.Y. 2024-25

Particulars		₹
Capital gains		
Long-term capital gains on transfer of specified asset	₹ 8,50,000	
Less: Expenditure incurred in connection with such transfer	₹ 30,000	
	₹ 8,20,000	
Less: Investment in shares of Indian Public Limited companies [Deduction u/s 115F **not** allowable, since investment is made after 6 months from the date of transfer]	**Nil**	
Taxable LTCG	₹ 8,20,000	
Short-term capital gains u/s 111A	₹ 2,00,000	
		10,20,000
Income from Other Sources		
- Interest on deposits held with private limited companies [deposits with private limited companies are not foreign exchange assets, hence, taxable at normal rates of tax]		2,93,000
- Interest on Government Securities [Investment income, as Government securities are foreign exchange asset, assuming the same were acquired in foreign currency]		
		1,00,000
Gross Total Income		**14,13,000**
Less: Deduction u/s 80C in respect of NSC		1,50,000
Total Income		**12,63,000**

Particulars	₹
Computation of tax payable/refundable	
LTCG of ₹ 8,20,000 taxable @ 10% [10% of ₹ 8,20,000]	82,000
STCG of ₹ 2,00,000 [taxable @ 15%]	30,000
Interest on Government securities [Investment income] [20% of 1,00,000]	20,000
Interest on deposits held with private limited companies ₹ 1,43,000 [₹ 2,93,000 – ₹ 1,50,000], which is less than the basic exemption limit of ₹ 2,50,000	Nil
	1,32,000
Add: Health and education cess @ 4%	5,280
Tax liability	**1,37,280**
Less: TDS	1,55,000
Tax refundable	**17,720**

Alternative answer

Computation of tax payable by Mr. Ashish., a non-resident as per special provisions applicable to non-residents for the A.Y. 2024-25

Particulars		₹
Capital gains		
Long-term capital gains on transfer of specified asset	₹ 8,50,000	
Less: Expenditure incurred in connection with such transfer	₹ 30,000	
	₹ 8,20,000	
Less: Investment in shares of Indian Public Limited companies [Deduction u/s 11 allowable, since investment is made after six months from the date of transfer]	Nil	8,20,000

Short-term capital gains u/s 111A	2,00,000
Income from Other Sources	
- Interest on deposits held with private limited companies [deposits with private limited companies are not foreign exchange assets, hence, taxable at normal rates of tax]	2,93,000
- Interest on Government Securities [Not classified as investment income as Government securities are not foreign exchange assets, assuming the same were not acquired in foreign currency]	1,00,000
Gross Total Income	14,13,000
Less: Deduction u/s 80C in respect of NSC	1,50,000
Total Income	**12,63,000**
Particulars	**₹**
Computation of tax payable/refundable	
LTCG of ₹ 8,20,000 taxable@10% [10% of ₹ 8,20,000]	82,000
STCG of ₹ 2,00,000 [taxable@15%]	30,000
Tax on Interest on Government securities and Interest on deposits held with private limited companies on ₹ 2,43,000 [₹ 3,93,000 – ₹ 1,50,000], which is less than the basic exemption limit of ₹ 2,50,000	Nil
	1,12,000
Add: Health and education cess @ 4%	4,480
Tax liability	**1,16,480**
Less: TDS	1,55,000
Tax refundable	**38,520**

Question-35 : [PP NOV-19]

Mr. Bhist, a non-resident individual, earned an interest income of 12 lakhs on an investment made in a notified lnfrastructure Debt Fund set up in India eligible for exemption under section 10(47) during the financial year 2023-24. Further, he incurred an expenditure of ₹ 15,000 for earning such interest income. Examine the tax implications in the hands of both Fund and Mr. Bhist and justify your conclusions with relevant provisions of Income-tax Act, 1961 in two situations, when

(i) Mr. Bhist is residing in Notified Jurisdictional Area; and
(ii) Mr. Bhist is stationed outside India, in a place other than NJA.

Will there be any change in tax liability of Mr. Bhist, if the income received is fee for technical services from an Indian Company instead of interest income from Infrastructure Debt Fund? **(6 Marks)**

Solution :

I. If Mr. Bhist has received interest on investment made in notified Infrastructure Debt Fund

The interest income received by Mr. Bhist, a non-resident, from a notified infrastructure debt fund u/s 10(47) would be subject to a concessional tax rate of 5% (plus health and education cess @ 4%) i.e., 5.2% under section 115A on the gross amount of such interest income.

Accordingly, the tax liability of Mr. Bhist in respect of such income would be 62,400 (being 5% of 12 lakhs plus health and education cess @ 4%).

(i) If Mr. Bhist is residing in a Notified Jurisdictional Area (NJA)

Under section 194LB, tax is deductible @ 5% (plus health and education cess @ 4%) i.e., 5.2% on interest paid by notified infrastructure debt fund u/s 10(47) to a non-resident.

However, since Mr. Bhist is a resident of a NJA, tax would be deductible @ 30% (plus health and education cess @ 4%) i.e 31.2% being the highest of the following rates –

(a) at the rate or rates in force;
(b) at the rate specified in the relevant provision of the Act i.e., 5%;
(c) at the rate of 30%.

Tax to be deducted by notified infrastructure debt fund would be ₹ 3,74,400 (being 30% of ₹ 12 lakhs plus health and education cess @ 4%).

(ii) If Mr. Bhist is stationed outside India, in a place other than a NJA

Tax would be deductible @ 5% under section 194LB (plus health and education cess@4%) i.e., 5.2% on interest paid by notified infrastructure debt fund u/s 10(47) to Mr. Bhist.

Tax to be deducted by notified infrastructure debt fund would be ₹ 62,400 (being 5% of ₹ 12 lakhs plus health and education cess @ 4%).

II. If Mr. Bhist has received fee for technical services (FTS) from an Indian company

If Mr. Bhist, a non-resident, has received FTS from an Indian company instead of interest income from Infrastructure Debt Fund assuming that the agreement for FTS is approved by the Central Government, the same would be subject to tax @ 10% (plus health and education cess @ 4%) i.e. 10.4% under section 115A on the gross amount of such FTS, irrespective of the residing place of Mr. Bhist.

The tax liability of Mr. Bhist, in such a case, would be 1,24,800 (being 10% of 12 lakhs plus health and education cess @ 4%).

Question-36 : [PP JULY-21] [Very Unique Ques]

Mr. Ram, a citizen of USA, resides in San Jose in USA since 2004. He is a non-resident since A.Y. 2004-05. He works for X Inc., a US based company. He came to India on 10th January, 2023, to visit his aged parents. He could return back on only 31st January, 2024. He was permitted to work from home in India by his employer. The details of his earnings and withholding tax during the said period is as given below. (All figures in US $)

Months	Salary	Federal Tax	State Tax	Social Security Tax	TT Buying rate as on the last day of the month immediately preceding the month in ·which tax has been paid/deducted (in INR) (assumed)
Jan 2023	8750	1313	525	613	71
Feb 2023	6250	938	375	438	71
March 2023	6250	1600	420	420	71
April 2023	6250	1600	420	420	72
May 2023	6250	1600	420	420	72
June 2023	6250	1600	420	420	72
July 2023	6250	1600	420	420	72
August 2023	6250	1600	420	420	72
Sep 2023	6250	1600	420	420	72
October 2023	6250	1600	420	420	72
Nov 2023	6250	1600	420	420	72
Dec 2023	6250	1600	420	420	72
Jan 2024	6250	1600	420	420	72

He has also earned Fixed Deposit Interest in USA on 30-09-2023 US$ 200 (Tax deducted US $ 20) and on 31-03-2024 US $ 220 (Tax Deducted US$ 22)

As per Article 2 of the DTAA, the taxes covered for credit are Federal Income Taxes imposed by Internal Revenue Code but excluding Social Security Taxes.

Return of Income for A.Y. 2024-25 was filed on 25th August, 2024. You are required to:-

1. Compute tax payable, if any, by Mr. Ram (Assume that tax as per default tax regime u/s 115BAC is opted).
2. Advise Mr. Ram the procedure involved to claim Foreign Tax Credit. **(6 Marks)**

Solution :

Mr. Ram is a resident for A.Y. 2024-25, since his stay in India is for a period of 306 days in the P.Y. 2023-24. Therefore, he satisfies the condition of stay in India for a period of 182 days or more in the P.Y. 2023-24 for being treated as a resident.

However, he is a "not ordinarily resident" in India –

- since his stay in India in the seven years immediately preceding P.Y. 2023-24 is only for 82 days (i.e., less than 730 days).
- since he is a non-resident in all the ten years immediately preceding P.Y. 2023-24, he satisfies the condition of being a non-resident in 9 out of 10 previous years immediately preceding P.Y. 2023-24.

Accordingly, he is a resident but not ordinarily resident in India for A.Y. 2024-25.

In case of a resident but not ordinarily resident, only income which accrues or arises in India or is deemed to accrue or arise in India or which is received in India or is deemed to be received in India would be taxable in India. Income which accrues or arises outside India would be taxable in India only if it is derived from a business controlled in or a profession set up in India.

Since Ram renders service in India, income from salaries for the period from 1st April, 2023 to 31st January, 2024 would be deemed to accrue or arise to him in India and would be taxable in his hands. Since his period of stay in India in the P.Y.2023-24 exceeds 90 days, he would not be eligible for exemption u/s 10(6)(vi) for A.Y.2024-25 in respect of remuneration received as an employee of a foreign enterprise for services rendered by him during his stay in India.

Computation of total income and tax liability of Mr. Ram for A.Y. 2024-25 under the regular provisions of the Act)

Particulars	**₹**
Salaries	
For the period from 1st April, 2023 to 31st January, 2024 (10 months x $ 6250 x TTBR 72, since the applicable TTBR is the same for all 10 months from April to January)	45,00,000
Less: Standard deduction u/s 16(ia)	50,000
	44,50,000
Income from Other Sources	**-**
Interest on Fixed Deposits in USA (not taxable in his hands in India since it accrues and is received outside India)	
Total Income	**44,50,000**
Computation of tax liability under section 115BAC	
Upto ₹ 3,00,000	Nil
₹ 3,00,001 to ₹ 6,00,000 @ 5%	15,000
₹ 6,00,001 to ₹ 9,00,000 @ 10%	30,000
₹ 9,00,001 to ₹ 12,00,000 @ 15%	45,000

₹ 12,00,001 to ₹ 15,00,000 @ 20%	60,000
Above ₹ 15,00,000 @ 30%	8,85,000
	10,35,000
Add: Health and education cess @ 4%	41,400
Tax Liability	**10,76,400**

Ram can however claim foreign tax credit in respect of Federal Income Tax paid by him in US, since the same is covered under Article 2 of the India-US DTAA.

The amount of FTC which he can claim would be the lower of - Tax payable under the Income-tax Act on such income = ₹ 10,76,400 and Foreign tax paid on such income = ₹ 11,52,000 / ₹ 8,49,600 (depending on the assumption made)

First assumption - Assuming that the column 5 figures of SST are not included in the column 3 figures of Federal Tax, foreign tax paid on such income would be $ 1600 x 10 months x 72 (TTBR), since the applicable TTBR is the same for all ten months and assuming that the TTBR as on 31.01.2024 is also 72. Accordingly, the FTC would be **10,76,400.**

The tax payable would, accordingly, be Nil and no interest would be payable u/s 234A for late filing of return.

Second assumption - If we assume that the column 5 figures of SST are included in the column 3 figures of Federal Tax, then the foreign tax paid on such income would be ₹ 8,49,600 i.e $ 1180 ($ 1600 - $ 420) x 10 months x 72 (TTBR), since the applicable TTBR is the same for all ten months and assuming that the TTBR as on 31.01.2024 is also 72. Accordingly, the FTC would be **₹ 8,49,600.**

The tax payable would be ₹ 2,26,800 (i.e ₹ 10,76,400 – FTC of ₹ 8,49,600). Accordingly, interest u/s 234A would be leviable @ 1% for one month, assuming the balance tax of ₹ 2,26,800 is paid on 25th August, 2024, being the date of filing of return of income.

The following statements/forms need to be furnished by Mr. Ram on or before 31/07/2024 for claiming FTC –

(i) A statement of income from US offered for tax for the P.Y. 2023 -24 and of US tax deducted or paid on such income in the prescribed form.

(ii) Certificate or statement specifying the nature of income and the amount of tax deducted therefrom or paid by the assessee from the tax authority of US or from the person responsible for deduction of tax or which is signed by the assessee.

Note – The above assumptions arise since it is not clear whether the column 3 figures of Federal Tax include column 5 figures of Social Security Tax.

Question-37 :
The net result of the business carried on by a branch of a foreign company in India for the financial year ended 31.03.2024 was a profit of ₹ 20 lakhs after charge of the following expenses:

(i) Depreciation for the current financial year of ₹ 15 lakhs.
(ii) Unabsorbed depreciation for previous financial year of ₹ 17 lakhs.
(iii) Capital Expenditure incurred for promoting family planning amongst its employees of ₹ 7 lakhs. ₹ 7 Lakhs is one fifth of the total expenditure incurred on promoting family planning.
(iv) Expenditure incurred for Scientific research ₹ 11 lakhs.
(v) Business loss brought forward of A.Y. 2023-24 of ₹ 25 lakhs.
(vi) Deductions under chapter VI-A of ₹ 20 lakhs.
(vii) Head Office expenses of ₹ 125 lakhs allocated to the branch.

Compute income to be declared by the branch in its return for the Assessment Year 2024-25.

Solution :
As per section 44C, deduction in respect of head office expanses shall be allowed upto the extent of lower of an amount equal to 5% of the adjusted total income or the amount actually incurred as is attributable to the business of the assessee in India.

For this purpose, adjusted total income is total income without giving effect to allowance referred to in this section, unabsorbed depreciation, one-fifth of capital expenditure by company on promoting family planning amongst its employees as referred to in section 36(1)(ix), any brought forward loss, or any deduction under section 80C to 80U.

Amount of income to be declared by the assessee for A.Y.2024-25 will be as under:	**₹ in Lakhs**
Net profit for the year ended on 31.03.2024	20
Add: Amount of head office expenses to be considered separately as per section 44C	125
Total income	**145**
Less: Head office expenses allowable under section 44C is the lower of:	
₹ 10.7 lakhs being	
i) 5% of ₹ 214 lakhs (W.N.1) and	
ii) ₹ 125 lakhs	10.7
Income to be declared in return	**134.3**

Working Note 1:

Particulars	**₹ in Lakhs**
Net profit for the year ended on 31.03.2024	20
Add: Unabsorbed depreciation for previous financial years	17
Add: 1/5 of capital expenditure by company on promoting family planning amongst its employees	7
Add: Amount of expenditure incurred on scientific research (not considerable in computing adjusted total income)	-
Add: Amount of business loss brought forward of A.Y. 2023-24	25
Add: Amount of deductions under Chapter VI-A	20
Add: Amount of head office expenses to be considered separately as per section 44C	125
Adjusted total income	**214**

Question-38 :
SQL Inc., a notified FPI and assessed like an AOP derived the following incomes from various sources for the financial year 2023-24:

(1) Income in respect of securities: ₹ 2,80,50,000
Expenses incurred in respect thereof: ₹ 50,000
(the above income includes an interest of ₹ 16,00,000 received from an Indian company on the investment of rupee denomination bonds and dividend income of ₹ 3,50,000 from a domestic company referred to in section 115-O).

(2) Capital Gains:

(i) Long Term:

Sale proceeds on sale of securities on 15/01/2024	₹ 52,00,000
Purchase cost of securities on 25/05/2015	₹ 28,00,000

Cost Inflation Index: 2015-16:254, 2023-24: 348

(ii) Short Term:

Sale proceeds of equity shares of Company A (Jan. 2024): (STT paid on Company A shares)	₹ 13,50,000
Cost of acquisition (Aug. 2023)	₹ 5,50,000
Sale proceeds of equity shares of Company B (Dec. 2023)	₹ 9,25,000
Cost of acquisition (April, 2023) (STT not paid on Company B Shares)	₹ 4,85,000

Compute the taxable income of SQL Inc. and tax liability for the Assessment Year 2024-25 as per applicable provisions of the Income Tax Act, 1961, assuming that no other income is derived by SQL Inc. (FII) during the financial year 2023-24.

Solution :

Computation of total income of SQL Inc., a notified FII, for A.Y. 2024-25

Particulars	₹	₹
Investment Income		
Dividend income of ₹ 3,50,000	3,50,000	
Income in respect of securities [₹ 2,80,50,000 – Dividend ₹ 3,50,000] [No deduction is allowable in respect of expenses incurred in respect thereof]	2,77,00,000	2,80,50,000
Long-term capital gains on sale of securities		
Sale consideration	52,00,000	
Less: Cost of acquisition [Benefit of indexation is not allowable]	(28,00,000)	24,00,000
Short-term capital gains on sale of STT paid equity shares of Company A		
Sale consideration	13,50,000	
Less: Cost of acquisition	(5,50,000)	8,00,000
Short-term capital gains on sale on equity shares of Company B in respect of which STT is not paid		
Sale consideration	9,25,000	
Less: Cost of acquisition	(4,85,000)	4,40,000
Total Income		**3,16,90,000**

Computation of tax liability of SQL Inc. for A.Y.2024-25

Particulars	₹
Tax @ 5% **u/s 115A** on interest on ₹ 16,00,000 received from an Indian company on investment in rupee denominated bonds = 5% of ₹16,00,000	80,000
Tax @ 20% **u/s 115AD** on balance investment income of ₹ 2,64,50,000 [₹ 2,80,50,000 – ₹ 16,00,000]	52,90,000
Tax @ 10% **u/s 115AD** on long-term capital gains = 10% of ₹ 24,00,000	2,40,000
Tax @ 15% **u/s 111A** on STT paid short-term capital gains on sale of listed equity shares of Company A = 15% of ₹ 8,00,000	1,20,000
Tax @ 30% **u/s 115AD** on short-term capital gains on sale of listed equity shares of Company B on which STT is not paid = 30% of ₹ 4,40,000	1,32,000
Add: Surcharge:	58,62,000
On Capital Gain & Dividend @ 15% on ₹ 5,62,000 (2,40,000+1,20,000+1,32,000+70,000)	84,300
On other Income @ 25% on ₹ 53,00,000 (₹ 80,000 + ₹ 52,90,000 - ₹ 70,000)	13,25,000
Add: Education cess and SHEC @ 4%	2,90,852
Tax Liability	**75,62,152**

Note- The computation of total income and tax liability of an FII, whose income comprises solely of investment income and capital gains on sale of securities is governed by the provisions of section 115AD, as per which

- No deduction is allowable in respect of expenditure to earn investment income and
- Benefit of indexation is not allowable in respect of long-term capital gains.

The rates at which tax is to be calculated in respect of investment income and capital gains are also provided in section115AD.

Question-39 : PP May 22, MTP NOV-22]

XYZ Ltd., a Country P company, had entered into agreements with Y Ltd., and G Ltd., Indian companies in the year 2015 to provide technical services to them to be utilised for the business carried on by them in India. The agreements were approved by the Central Government. Following particulars are provided by XYZ Ltd. in respect of previous year 2023-24.

	Particulars	**Amount**
(1)	Fees for technical services received from Y Ltd.	265 lakhs
(2)	Expenses incurred for earning such income	35 lakhs
(3)	Fees for technical services received from G Ltd.	302 lakhs
(4)	Expenses incurred for earning such income	24 lakhs
Other expenses [not included in (2) and (4) above]		
(5)	General Expenditure not wholly and exclusively incurred for the business of the PE	8.2 lakhs
(6)	Amounts paid by the PE to HO (not being in the nature of reimbursement of actual expenses)	14.6 lakhs
(7)	Amounts paid by the PE to HO (being in the nature of reimbursement of actual expenses)	15.2 lakhs

Examine the taxability of the income received by XYZ Ltd. on the following assumptions:

(i) XYZ Ltd., does not have a permanent establishment in India.

(ii) XYZ Ltd., has a permanent establishment in India and the contracts/ agreements are effectively connected with such PE.

Also, discuss the requirements relating to maintaining books of accounts and audit and filing of return of income in India by XYZ Ltd. under both the assumptions made above, under the Income- tax Act, 1961. Also assume no DTAA exists between India and Country P. **(6 Marks)**

Solution :

(i) Where XYZ Ltd., a Country P company, does not have a PE in India

In this case, XYZ Ltd. would be eligible for a concessional rate of tax @20% (plus surcharge@2% and HEC@4%) under section 115A on the fees for technical services of ₹ 567 lakhs (i.e ₹ 265 lakhs + ₹ 302 lakhs) received from the Indian companies, Y Ltd. and G Ltd, since the same are in pursuance of agreements approved by the Central Government.

No deduction, however, would be allowed in respect of expenditure of ₹ 59 lakhs (i.e ₹35 lakhs and ₹24 lakhs) incurred to earn such income.

If tax deductible at source @21.216 % has been fully deducted, XYZ Ltd. need not file its return of income in India under section 139 for A.Y. 2024-25.

(ii) Where XYZ Ltd., a Country P company, has a PE in India and the contracts/agreements are effectively connected with the PE in India.

In this case, XYZ Ltd. has a PE in India, and the agreements with Y Ltd. and G Ltd. are effectively connected with such PE and such agreements have been entered into in the year 2015. Accordingly, as per section 44DA, the income from rendering technical services shall be computed under the head "Profits and gains of business or profession" in accordance with the provisions of the Income-tax Act, 1961; and shall be subject to tax@40% (plus surcharge@2% and HEC@4%).

Accordingly, expenses of ₹ 35 lakhs and ₹ 24 lakhs incurred for earning fees for technical services of ₹ 265 lakhs and ₹ 302 lakhs, respectively, from Y Ltd. and G Ltd., is allowable as deduction therefrom. Further amount of ₹ 15.2 lakhs paid by the PE to the HO being in the nature of reimbursement of actual expenses is allowable as deduction. However, expenditure of ₹ 8.2 lakhs which is not incurred wholly and exclusively for the business of the PE and the amount of ₹ 14.6 lakhs paid by the PE to the HO, not being in the nature of reimbursement of actual expenses, are not allowable as deduction.

XYZ Ltd. is required to maintain books of account under section 44AA and get the same audited under section 44AB and furnish report before the specified date i.e., the date one month prior to the due date of filing return u/s 139(1) for A.Y. 2024-25.

Question-40 : [PP May 22]

Ms. Black and Brown S.A. (BnB) a company incorporated in Country X, appointed Mr. Lal Singh as an agent in India. Lal Singh habitually maintains in India, stock of goods or merchandise and regularly delivers the same on behalf of various non-resident entities including BnB. BnB does not have a permanent establishment or a fixed place of profession in India. Also, there is no DTAA between India and Country X.

BnB earned the following incomes from India during the FY 2023-24:

- Income from delivery of goods by Mr. Lal Singh ₹ 2 crores.
- Fee for technical services ₹ 55 lakhs (After deducting ₹ 6 lakhs spent on earning such income)
- Long-term capital gains from sale of unlisted debentures of White Ltd., an Indian Company (subscribed in US$) ₹ 14 lakhs
- BnB had paid a sum equal to ₹ 50 lakhs as tax in Country X in respect of the above- mentioned income earned from India.

You are required to discuss the relevant provisions of Income-tax Act with respect to the taxability of incomes earned by BnB in India and compute the tax payable by BnB on above income. **(6 Marks)**

Solution :

Computation of Tax liability of BnB for the A.Y. 2024-25

Particulars	₹
Income from delivery of goods by Mr. Lal Singh, an agent of BnB As per section 9(1)(i), business profits of a foreign company would be deemed to accrue or arise in India, if such income accrues or arises through or from any business connection in India. In case of BnB, business connection is established, since Mr. Lal Singh acting on its behalf habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on its behalf. Therefore, such income is taxable in the hands of BnB.	2,00,00,000
Fee for technical services (FTS) FTS would be taxable in the hands of a foreign company, since the FTS has been received in India. Therefore, such FTS would be taxable in the hands of BnB after deducting expenditure on earning such income. Accordingly, ₹ 55 lakhs would be taxable.	55,00,000
Long-term capital gains from sale of unlisted debentures of White Ltd. an Indian company, would be taxable in the hands of BnB, since it arises from the capital asset situated in India.	14,00,000
Total Income	2,69,00,000
Tax payable on total income	
Tax on long-term capital gain @ 10% as per section 112(1)(c)(iii)	1,40,000
Tax on other income @ 40% on ₹ 2,55,00,000	1,02,00,000
	1,03,40,000

Add: Surcharge @ 2% since total income > ₹ 1 crore but ≤ ₹10 crore	2,06,800
	1,05,46,800
Add: Health and education cess @4%	4,21,872
Tax liability	1,09,68,672
Tax liability (rounded off)	1,09,68,670
Note – No credit will be available in respect of ₹ 50 lakhs paid as tax in Country X since there is no DTAA with Country X and the provisions of section 91 providing for deduction in cases where there is no DTAA will not apply to BnB, being a foreign company.	

Alternate Answer

If it is assumed that the agreement for FTS is approved by the Central Government, then FTS would be taxable@20% under section 115A. The tax liability would be as follows –

Particulars	₹
Income from delivery of goods by Mr. Lal Singh, an agent of BnB As per section 9(1)(i), business profits of a foreign company would be deemed to accrue or arise in India, if such income accrues or arises through or from any business connection in India. In case of BnB, business connection is established, since Mr. Lal Singh acting on its behalf habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on its behalf. Therefore, such income is taxable in the hands of BnB.	2,00,00,000
Fee for technical services (FTS) FTS would be taxable in the hands of a foreign company, since the FTS has been received in India. Assuming that the Agreement has been approved by the Central Govt., as per section 115A, such FTS would be taxable in the hands of BnB without deducting expenditure on earning such income. Accordingly, ₹ 61 lakhs would be taxable.	61,00,000
Long-term capital gains from sale of unlisted debentures of White Ltd. an Indian company, would be taxable in the hands of BnB, since it arises from the capital asset situated in India.	14,00,000
Total Income	**2,75,00,000**

Computation of tax liability

Particulars	₹
Tax liability on total income of ₹ 2,75,00,000	
Tax on long-term capital gain @10% as per section 112(1)(c)(iii)	1,40,000
Tax on Fees for technical services @ 20% on ₹ 61,00,000	12,20,000
Tax on other income @40% on ₹ 2,00,00,000	80,00,000
	93,60,000
Add: Surcharge@2% since total income > ₹ 1 crore but ≤ ₹10 crore	1,87,200
	95,47,200
Add: Health and education cess@4%	3,81,888
Tax liability	**99,29,088**

Question-41 : [PP NOV-22]

Mr. Robert, a non-resident and German citizen, is employed in a German company. The German company has a PE in India and accordingly the income of the PE is chargeable to tax in India. Robert visited India during the FY 2023-24 on official work and stayed for 85 days. His salary for that period was ₹ 28,00,000 which is borne by the Indian PE.

Robert held 1200 shares of Nalapir Pvt. Ltd. (NP), an Indian company since 28.11.2016 which he acquired for 15 per share. For acquiring the shares, he remitted USD 50,000 to India on 1.11.2016. He sold these shares on 23.6.2023 for ₹ 43 per share.

Robert also held 2000 equity shares of Aribitz GmbH (AG), a German company, which he had acquired for ₹145 per share in 2019. AG follows April to March as its financial year. He sold all these shares for ₹615 per share to David, another non-resident, on 26.08.2023. The relevant information of AG as on 31.3.2024 is given below:

(i) Total value of assets - ₹15 crores.
(ii) Total value of immovable properties worldwide - ₹12 crores.
(iii) Immovable properties held in India (included in (ii) above) - ₹8 crores. Dividend from Aribitz GmbH received in India on 28.06.2023 was - ₹ 1,11,000.

You are required to compute the total income taxable in India of Mr. Robert ignoring the provisions of DTAA between India and Germany, if any.

Exchange rates for 1 USD on the relevant dates is given as hereunder: **(6 Marks)**

Date	Buying Rate (1 US $)	Selling Rate (1 US$)
28.11.2016	₹ 59	₹ 61
1.11.2016	₹ 61	₹ 64
23.6.2023	₹ 74	₹ 76

Solution :

Computation of Total income of Mr. Robert for the A.Y. 2024-25

Particulars		
Salary		
[Salary deemed to accrue or arise in India, since it is paid for services rendered in India as per section 9(1)(ii). Hence, it is taxable in the hands of Mr. Robert. [Exemption u/s 10(6)(vi) would not be available to him, though he stayed in India for a period of not exceeding 90 days during the previous year since he is receiving salary from a German company which is engaged in business and trade in India through a PE in India and such salary is borne by Indian PE]	28,00,000	
Less: Standard deduction u/s 16(ia)	(50,000)	27,50,000
Capital Gains		
Transfer of 1200 equity shares of Nalapir Pvt. Ltd. [Taxable in India, since shares are situated in India]		
Sale Consideration (1200 x ₹ 43 per share/75, being average of ₹ 74 (TTBR) + ₹ 76 (TTSR)/2 on 23.6.2023)	$688	
Less: Cost of acquisition (1200 x ₹ 15 per share/60, being average of ₹ 59 (TTBR) + ₹ 61 (TTSR)/2 on 28.11.2016)	($ 300)	
Long-term capital gain [$ 388 x ₹ 74, being TTBR on 23.06.2023]	$ 388	28,712
Transfer of 2000 Equity shares of Aribitz GmbH (AG) [Not taxable in India, since shares of foreign company do not derive its value substantially from assets located in India as value of Indian assets do not exceed ₹ 10 crores]		Nil
Income from Other Sources		
Dividend received in India from Aribitz Gmbh [taxable in India, since dividend is received in India]		1,11,000
Gross Total Income / Total Income		**28,89,712**
Total income (rounded off)		**28,89,710**

Question-42 : [PP May 23]
M/s ABC Inc., a company incorporated in Korea, entered into an agreement with XYZ Ltd., an Indian company, for providing assistance to the latter in setting-up a power plant in Gujarat. The scope of work includes -

(i) offshore services in the nature of drawing and design of Electrical and networking work; and
(ii) onshore services in respect of installation of such machinery.

The consideration for aforesaid scope of work was agreed to be ₹ 3 crores for offshore services and ₹ 2 crores for onshore services. The consideration was discharged as under:
- ₹ 3 crores, in respect of offshore services, was paid in ABC's bank account in Korea on 1st July 2023;
- 6% debentures for ₹ 2 crores were issued on 1st September, 2023 in consideration for onshore services.

Discuss tax implications in India in respect of above transactions in the hands of M/s ABC Inc. under the provisions of the Act for AY. 2024-25. For the purpose of your answer, you may assume that activities of ABC Inc. do not constitute any business connection in India.
Ignore the provisions of tax treaty and DTAA.

Solution :

(a) Payment for offshore services in the nature of drawing and design of Electrical and networking work:

In this case, ₹ 3 crores, being the consideration towards offshore services of drawings and designs are in the nature of fee for technical services[4].

Income by fees for technical services payable by a resident in India for the purpose of business or profession carried on in India is deemed to accrue or arise in India under section 9(1)(vii), whether or not the non-resident has a residence; or place of business; or business connection in India; or whether or not the non-resident has rendered services in India.

Therefore, in the present case, even if drawing and design services are offshore services provided by M/s ABC Inc., a Korean company, the consideration of ₹ 3 crore payable by XYZ Ltd. would be deemed to accrue or arise in India since it is for setting up a power plant in India. Hence, the consideration would be chargeable to tax in India.

Payment for onshore service in respect of installation of such machinery:

₹ 2 crores, being the value of debentures issued by an XYZ Ltd., an Indian company in consideration of providing technical services i.e., onshore services for installation of machinery for setting up a power plant in Gujarat, is in the nature of fee for technical services and would be deemed to accrue or arise in India to M/s ABC Inc. under section 9(1)(vii). Hence, it is taxable in India.

Payment of interest on debentures of ABC Ltd:

As per section 9(1)(v), income by way of interest payable by a person who is a resident of India is deemed to accrue or arise in India except where the interest is payable for debt incurred or money borrowed and used for the purpose of business carried on outside India and for making or earning any income from any source outside India.

Therefore, interest income of ₹ 7 lakhs (₹ 2 crores x 6% x 7/12) from debentures of XYZ Ltd., an Indian company is deemed to accrue or arise in India in the hands of M/s ABC Inc. by virtue of section 9(1)(v). Hence, it is taxable in India.

Question-43 : [MTP 1 Nov 23]
Mr. Charles, a non-resident and German citizen, is employed in a German company. The German company has a PE in India and accordingly the income of the PE is chargeable to tax in India. Charles visited India during the F.Y. 2023-24 on official work and stayed for 85 days. His salary for that period was ₹ 28,00,000 which is borne by the Indian PE.

Charles held 1200 shares of B (P) Ltd., an Indian company since 28.11.2015 which he acquired for ₹ 15 per share. For acquiring the shares, he remitted USD 50,000 to India on 1.11.2015. He sold these shares on 23.6.2023 for ₹ 43 per share.

Charles also held 2000 equity shares of Aribitz GmbH (AG), a German company, which he had acquired for ₹ 145 per share in 2018. AG follows April to March as its financial year. He sold all these shares for ₹ 615 per share to David, another non-resident, on 26.08.2023. The relevant information of AG as on 31.3.2024 is given below:

(i) Total value of assets ₹ 15 crores.
(ii) Total value of immovable properties worldwide = ₹ 12 crores.
(iii) Immovable properties held in India (included in (ii) above) - ₹ 8 crores. Dividend from Aribitz GmbH received in India on 28.06.2023 was - ₹ 1,11,000.

You are required to compute the total income taxable in India of Mr. Charles ignoring the provisions of DTAA between India and Germany, if any.

Exchange rates for 1 USD on the relevant dates is given as hereunder

Date	Buying Rate (1 US $)	Selling Rate (1 US$)
28.11.2015	₹ 59	₹ 61
1.11.2015	₹ 61	₹ 64
23.6.2023	₹ 74	₹ 76

(6 Marks)

Solution :

Computation of Total income of Mr. Charles for the A.Y. 2024-25

Particulars	**₹**	**₹**
Salary [Salary deemed to accrue or arise in India, since it is paid for services rendered in India as per section 9(1)(ii). Hence, it is taxable in the hands of Mr. Charles. Exemption u/s 10(6)(vi) would not be available to him, though he stayed in India for a period of not exceeding 90 days during the previous year since he is receiving salary from a German company which is engaged in business and trade in India through a PE in India and such salary is borne by Indian PE]	28,00,000	
Less: Standard deduction u/s 16(ia)	50,000	27,50,000
Capital Gains		
Transfer of 1200 equity shares of B (P) Ltd. [Taxable in India, since shares are situated in India]		
Sale Consideration (1200 x ₹ 43 per share/75, being average of ₹ 74 (TTBR) + ₹ 76 (TTSR)/2 on 23.6.2023)	$ 688	
Less: Cost of acquisition (1200 x ₹ 15 per share/60, being average of ₹ 59 (TTBR) + ₹ 61 (TTSR)/2 on 28.11.2015)	$ 300	
	$ 388	
Long-term capital gain [$ 388 x ₹ 74, being TTBR on 23.06.2023]		28,712
Transfer of 2000 Equity shares of Aribitz GmbH (AG)		Nil
[Not taxable in India, since shares of foreign company do not derive its value substantially from assets located in India as value of Indian assets do not exceed ₹ 10 crores]		
Income from Other Sources		
Dividend received in India from Aribitz Gmbh [taxable in India, since dividend is received in India]		1,11,000
Gross Total Income/total income		**28,89,712**
Total income (rounded off)		**28,89,710**

Question-44 : [MTP 2 Nov 23]

Fox Fire Inc., a foreign company, headquartered at USA, has a branch in India. For the financial year ended 31.03.2024, the branch has shown net profit of ₹ 28 lakhs after charge of the following expenses:

(i) Depreciation for the current financial year of ₹ 15 lakhs.
(ii) Unabsorbed depreciation for previous financial year of ₹ 17 lakhs.
(iii) Capital Expenditure incurred for promoting family planning amongst its employees of ₹ 7 lakhs. ₹ 7 Lakhs is one fifth of the total expenditure incurred on promoting family planning.
(iv) Expenditure incurred for Scientific research ₹ 11 lakhs.
(v) Business loss brought forward for A.Y. 2023-24 of ₹ 25 lakhs.
(vi) Deductions under Chapter VI-A of ₹ 20 lakhs.
(vii) Head Office expenses of ₹ 120 lakhs allocated to the branch.

Compute income to be declared by the branch in its return for the Assessment Year 2024-25.

Solution :

Computation of income to be declared by the branch in its return of income

Computation of Head Office expenses allowable u/s 44C:			
Particulars		**₹**	**₹**
Net profit of the branch			28,00,000
Add:	Head office expenditure debited to profit and loss	1,20,00,000	
	Unabsorbed depreciation	17,00,000	
	Capital expenditure for promoting family planning	7,00,000	
	Brought forward business loss	25,00,000	
	Deductions under Chapter VI-A	20,00,000	
			1,89,00,000
Adjusted total income			**2,17,00,000**
Note – Depreciation for the current financial year and capital expenditure on scientific research are not required to be added back for computing adjusted total income.			
Head office expenses allowable u/s 44C = ₹ 10,85,000 Being the lower of - (i) 5% of ₹ 2,17,00,000 = ₹ 10,85,000 (ii) Actual Head Office expenses allowable to the branch = ₹ 1,20,00,000			

Income to be declared by the branch for A.Y.2024-25		
Particulars		**₹**
Net profit of the branch		28,00,000
Add:	Head office expenditure debited to profit and loss	1,20,00,000
		1,48,00,000
Less:	Head office expenses allowable u/s 44C	10,85,000
Income to be declared by the branch		**1,37,15,000**

Extra Page

CHAPTER 22
DOUBLE TAXATION RELIEF

Part-A : Study Material Questions

Question-1 :
Examine the correctness or otherwise of the following statement with reference to the provisions of Income-tax Act, 1961. The double taxation avoidance treaties entered into by the Government of India override the domestic law.

Solution :
The statement is correct.

Section 90(2) provides that where a double taxation avoidance treaty is entered into by the Government, the provisions of the Income-tax Act, 1961 would apply to the extent they are more beneficial to the assessee.

In case of any conflict between the provisions of the double taxation avoidance agreement and the Income-tax Act, 1961, the provisions of the DTAA would prevail over the Act in view of the provisions of section 90(2), to the extent they are more beneficial to the assessee [CIT v. P.V.A.L. Kulandagan Chettiar (2004) 267 ITR 654 (SC)].

Question-2 :
Nandita, an individual resident retired employee of the Prasar Bharati aged 60 years, is a wellknown dramatist deriving income of ₹ 1,10,000 from theatrical works played abroad. Tax of ₹ 11,000 was deducted in the country where the plays were performed. India does not have any Double Tax Avoidance Agreement under section 90 of the Income-tax Act, 1961, with that country. Her income in India amounted to ₹ 6,10,000. In view of tax planning, she has deposited ₹ 1,50,000 in Public Provident Fund and paid contribution to approved Pension Fund of LIC ₹ 32,000. She also contributed ₹ 28,000 to Central Government Health Scheme during the previous year and gave payment of medical insurance premium of ₹ 26,000 to insure the health of her mother, a nonresident aged 84 years, who is not dependent on her. Compute the tax liability of Nandita for the Assessment year 2024-25, assuming that she opted out of the default tax regime under section 115BAC.

Solution :

Computation of tax liability of Nandita for the A.Y. 2024-25
under normal provisions of the Act

Particulars	**₹**	**₹**
Indian Income		6,10,000
Foreign Income		1,10,000
Gross Total Income		**7,20,000**
Less: Deduction under section 80C		
Deposit in PPF	1,50,000	
Under section 80CCC		
Contribution to approved Pension Fund of LIC	32,000	
	1,82,000	
Under section 80CCE		
The aggregate deduction under section 80C, 80CCC and 80CCD(1) has to be restricted to ₹ 1,50,000	1,50,000	
Under section 80D		
Contribution to Central Government Health Scheme ₹ 28,000 is also allowable as deduction under section 80D. Since she is a resident senior citizen, the deduction is allowable to a maximum of ₹ 50,000 **(See Note 1)**	28,000	
Medical insurance premium of ₹ 26,000 paid for mother aged 84 years. Since the mother is a non-resident in India, she will not be entitled for the higher deduction of ₹ 50,000 eligible for a senior citizen, who is resident in India. Hence, the deduction will be restricted to maximum of ₹ 25,000.	25,000	2,03,000

Total Income		**5,17,000**
Tax on Total Income		
Income-tax (See Note below)		13,400
Add: Health and Education Cess @4%		536
		13,936
Average rate of tax in India (i.e. ₹ 13,936/ ₹ 5,17,000 × 100)	2.696%	
Average rate of tax in foreign country (i.e. ₹ 11,000/ ₹ 1,10,000 ×100)	10%	
Deduction under section 91 on ₹ 1,10,000 @ 2.696% (lower of average Indian-tax rate or average foreign tax rate)		2,966
Tax payable in India (₹ 13,936 – ₹ 2,966)		**10,970**

Notes:

1. Section 80D allows a higher deduction of up to ₹ 50,000 in respect of the medical premium paid to insure the heath of a senior citizen. Therefore, Nandita will be allowed deduction of ₹ 28,000 under section 80D, since she is a resident Indian of the age of 60 years.
2. The basic exemption limit for senior citizens under the normal provisions of the Act is ₹ 3,00,000 and the age criterion for qualifying as a "senior citizen" for availing the higher basic exemption limit is 60 years. Accordingly, Nandita is eligible for the higher basic exemption limit of ₹ 3,00,000, since she is 60 years old.
3. An assessee shall be allowed deduction under section 91 provided all the following conditions are fulfilled:-
   (a) The assessee is a resident in India during the relevant previous year.
   (b) The income accrues or arises to him outside India during that previous year.
   (c) Such income is not deemed to accrue or arise in India during the previous year.
   (d) The income in question has been subjected to income-tax in the foreign country in the hands of the assessee and the assessee has paid tax on such income in the foreign country.
   (e) There is no agreement under section 90 for the relief or avoidance of double taxation between India and the other country where the income has accrued or arisen.

   In this case, since all the above conditions are satisfied, Nandita is eligible for deduction u/s 91.

Question-3 :

Cosmos Limited, a company incorporated in Mauritius, has a branch office in Hyderabad opened in April, 2023. The Indian branch has filed return of income for assessment year 2024-25 disclosing income of ₹ 50 lakhs. It paid tax at the rate applicable to domestic company i.e. 30% plus higher education cess@4% on the basis of paragraph 2 of Article 24 (Non-Discrimination) of the Double Taxation Avoidance Agreement between India and Mauritius, which reads as follows:

"The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities in the same circumstances."

However, the Assessing Officer computed tax on the Indian branch at the rate applicable to a foreign company i.e. 40% plus higher education cess@4%.

Is the action of the Assessing Officer in accordance with law?

Solution :

Under section 90(2), where the Central Government has entered into an agreement for avoidance of double taxation with the Government of any country outside India or specified territory outside India, as the case may be, then, in relation to the assessee to whom such agreement applies, the provisions of the Income-tax Act, 1961 shall apply to the extent they are more beneficial to the assessee. Thus, in view of paragraph 2 of Article 24 (Nondiscrimination of the DTAA, it appears that the Indian branch of Cosmos Limited, incorporated in Mauritius, is liable to tax in India at the rate applicable to domestic company (30%), which is lower than the rate of tax applicable to a foreign company (40%).

However, Explanation 1 to section 90 clarifies that the charge of tax in respect of a foreign company at a rate higher than the rate at which a domestic company is chargeable, shall not be regarded as less favourable charge or levy of tax in respect of such foreign company. Therefore, in view of this Explanation, the action of the Assessing Officer in levying tax@40% on the Indian branch of Cosmos Ltd. is in accordance with law.

Question-4 :
Kalpesh Kumar, a resident individual, is a musician deriving income of ₹ 7,50,000 from concerts performed outside India. Tax of ₹ 1,00,000 was deducted at source in the country where the concerts were performed. India does not have any double tax avoidance agreement with that country. His income in India amounted to ₹ 30,00,000. Compute net tax liability of Kalpesh Kumar for the assessment year 2024-25 assuming he has deposited ₹ 1,50,000 in Public Provident Fund and paid medical insurance premium in respect of his father, resident in India, aged 65 years, ₹ 52,000.

Solution :

Computation of net tax liability of Mr. Kalpesh for A.Y.2024-25
under the default tax regime under section 115BAC
(assuming that he pays tax under the default tax regime)

Particulars	**₹**	**₹**
Indian Income		30,00,000
Foreign Income		7,50,000
Gross Total Income		**37,50,000**
Less: Deduction under VI-A [Not available under default tax regime]		**Nil**
Total Income		**37,50,000**
Tax on total income		8,25,000
Add: Health and Education cess @4%		33,000
		8,58,000
Average rate of tax in India [i.e., ₹ 8,58,000 /₹ 37,50,000 x 100]	22.88%	
Average rate of tax in foreign country [i.e. ₹ 1,00,000/ ₹ 7,50,000 x 100]	13.333%	
Doubly taxed income	7,50,000	
Deduction under section 91 on ₹ 7,50,000 @13.33% (lower of average Indian tax rate and foreign tax rate]		1,00,000
Net tax liability in India [₹ 8,58,000 – ₹ 1,00,000]		**7,58,000**

Computation of net tax liability of Mr. Kalpesh for A.Y.2024-25
under the normal provisions of the Act
(assuming that he has exercised the option to shift out of default tax regime)

Particulars	**₹**	**₹**
Indian Income		30,00,000
Foreign Income		7,50,000
Gross Total Income		**37,50,000**
Less: Deduction under section 80C		
PPF Contribution	1,50,000	
Deduction under section 80D		
Medical insurance premium of father, being a resident senior citizen, restricted to	50,000	2,00,000
Total Income		**35,50,000**
Tax on total income		8,77,500
Add: Health and Education cess @4%		35,100
		9,12,600
Average rate of tax in India [i.e., ₹ 9,12,600 /₹ 35,50,000 x 100]	25.71%	
Average rate of tax in foreign country [i.e. ₹ 1,00,000/ ₹ 7,50,000 x 100]	13.333%	
Doubly taxed income	7,50,000	
Deduction under section 91 on ₹ 7,50,000 @13.33% (lower of average Indian tax rate and foreign tax rate]		1,00,000
Net tax liability in India [₹ 9,12,600 – ₹ 1,00,000]		**8,12,600**

Note: An assessee shall be allowed deduction under section 91 provided all the following conditions are fulfilled:-

(a) The assessee is a resident in India during the relevant previous year.
(b) The income accrues or arises to him outside India during that previous year.
(c) Such income is not deemed to accrue or arise in India during the previous year.
(d) The income in question has been subjected to income-tax in the foreign country in the hands of the assessee and the assessee has paid tax on such income in the foreign country.
(e) There is no agreement under section 90 for the relief or avoidance of double taxation between India and the other country where the income has accrued or arisen.

In this case, Kalpesh Kumar is eligible for deduction under section 91 since all the above conditions are fulfilled.

Question-5 :

The following are the particulars of income earned by Miss Vivitha, a resident Indian aged 25, for the assessment year 2024-25:

	(₹ In lacs)
Income from playing snooker matches in country L	12.00
Tax paid in country L	1.80
Income from playing snooker tournaments in India	19.20
Life Insurance Premium paid	1.10
Medical Insurance Premium paid for her father (resident Indian) aged 62 years (paid through credit card)	0.54

Compute her total income and net tax liability for the assessment year 2024-25. There is no Double Taxation Avoidance Agreement between India and country L.

Solution :

Computation of total income and net tax liability of Miss Vivitha for the A.Y. 2024-25 under the default tax regime under section 115BAC (assuming that she pays tax under the default tax regime)

Particulars	**₹**	**₹**
Indian Income [Income from playing snooker tournaments in India]		19,20,000
Foreign Income [Income from playing snooker matches in country L]		12,00,000
Gross Total Income		**31,20,000**
Less: Deduction under Chapter VIA		Nil
Total Income		**31,20,000**
Tax on Total Income		
Income-tax		6,36,000
Add: Health and education cess @4%		25,440
		6,61,440
Average rate of tax in India (i.e. ₹ 6,61,440/₹ 31,20,000 × 100)	21.20%	
Average rate of tax in foreign country (i.e. ₹ 1,80,000/ ₹12,00,000 ×100)	15.00%	
Deduction under section 91 on ₹ 12 lakh @ 15% (lower of average Indian-tax rate or average foreign tax rate)		1,80,000
Net tax liability in India (₹ 6,61,440 – ₹ 1,80,000)		**4,81,440**

Computation of total income and net tax liability of Miss Vivitha for the A.Y. 2024-25 under the normal provisions of the Act (assuming that she has exercised the option to shift out of default tax regime)

Particulars	**₹**	**₹**
Indian Income [Income from playing snooker tournaments in India]		19,20,000
Foreign Income [Income from playing snooker matches in country L]		12,00,000
Gross Total Income		**31,20,000**

Less: Deduction under Chapter VIA		
Deduction under section 80C		
Life insurance premium of ₹ 1,10,000 paid during the previous year deduction, is within the overall limit of ₹ 1.5 lakh. Hence, fully allowable as deduction	1,10,000	
Deduction under section 80D		
Medical insurance premium of ₹ 54,000 paid for her father aged 62 years. Since her father is a senior citizen, the deduction is allowable to a maximum of ₹ 50,000. Further, deduction is allowable where payment is made by any mode other than cash. Here payment is made by credit card hence, eligible for deduction.	50,000	1,60,000
Total Income		**29,60,000**
Tax on Total Income		
Income-tax		7,00,500
Add: Health and education cess @4%		28,020
		7,28,520
Average rate of tax in India (i.e. ₹ 7,28,520/₹ 29,60,000 × 100)	24.61%	
Average rate of tax in foreign country (i.e. ₹ 1,80,000/ ₹12,00,000 ×100)	15.00%	
Deduction under section 91 on ₹ 12 lakh @ 15% (lower of average Indian-tax rate or average foreign tax rate)		1,80,000
Net tax liability in India (₹ 7,28,520 – ₹ 1,80,000)		**5,48,520**

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

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

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

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

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

Question-6 :

The concept of Permanent Establishment is one of the most important concepts in determining the tax implications of cross border transactions. Examine the significance thereof, when such transactions are governed by Double Taxation Avoidance Agreements (DTAA).

Solution :

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(iiia), 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. DTAAs, however, provide that business income is taxable only if there is a permanent establishment in India. As per section 90(2), the provisions of the Income-tax Act, 1961 or the DTAA, whichever is beneficial, shall apply. The PE concept is narrower than the business connection concept. Therefore, in a case where the Indian Government has entered into DTAA with a country, unless and until the PE test is satisfied, the business income would not be taxable in the source country.

However, in cases not covered by DTAAs, business income attributable to business connection is taxable.

Question-7 :
An individual resident in India, having income earned outside India in a country with which no agreement under section 90 exists, asks you to examine whether the credit for the tax paid on the foreign income will be allowed against his income-tax liability in India.

Solution :
The assessee is a resident in India and accordingly, the income accruing or arising to him globally is chargeable to tax in India. However, section 91 specifies that if a person resident in India has paid tax in any country with which no agreement under section 90 exists, then, for the purpose of relief or avoidance of double taxation, a deduction is allowed from the Indian income-tax payable by him, of a sum calculated on such doubly taxed income at Indian rate of tax or the rate of tax of such foreign country, whichever is lower, or at the Indian rate of tax, if both the rates are equal. Accordingly, the assessee shall not be given any credit of the tax paid on the income in other country, but shall be allowed a deduction from the Indian income-tax payable by him as per section 91 read with Rule 128 on Foreign Tax Credit.

Question-8 :
The Income-tax Act, 1961 provides for taxation of a certain income earned in India by Mr. X, a non-resident. The Double Taxation Avoidance Agreement, which applies to Mr. X provides for taxation of such income in the country of residence. Is Mr. X liable to pay tax on such income earned by him in India? Examine.

Solution :
Section 90(2) makes it clear that where the Central Government has entered into a Double Taxation Avoidance Agreement with a country outside India, then in respect of an assessee to whom such agreement applies, the provisions of the Act shall apply to the extent they are more beneficial to the assessee. This means that where the DTAA has been entered, the assessee can opt to be governed by the provisions of DTAA if the provisions are beneficial in comparison to provisions of Act.

However, as per section 90(4), the assessee, in order to claim relief under the agreement, has to obtain a certificate [Tax Residence Certificate (TRC)] from the Government of that country, declaring the residence of the country outside India. Further, he also has to provide the following information in Form No. 10F:

(i) Status (individual, company, firm etc.) of the assessee;
(ii) PAN of the assessee, if allotted;
(iii) Nationality (in case of an individual) or country or specified territory of incorporation or registration (in case of others);
(iv) Assessee's tax identification number in the country or specified territory of residence and in case there is no such number, then, a unique number on the basis of which the person is identified by the Government of the country or the specified territory of which the assessee claims to be a resident;
(v) Period for which the residential status, as mentioned in the certificate referred to in section 90(4) or section 90A(4), is applicable; and
(vi) Address of the assessee in the country or specified territory outside India, during the period for which the certificate, as mentioned in (v) above, is applicable.

However, the assessee may not be required to provide the information or any part thereof, if the information or the part thereof, as the case may be, is already contained in the TRC referred to in section 90(4) or section 90A(4).

The Supreme Court has held, in CIT v. P.V.A.L. Kulandagan Chettiar (2004) 267 ITR 654, that in case of any conflict between the provisions of the Double Taxation Avoidance Agreement and the Income-tax Act, 1961, the provisions of the Double Taxation Avoidance Agreement would prevail over those of the Income-tax Act, 1961. Mr. X is, therefore, not liable to pay tax on the income earned by him in India provided he submits the Tax Residence Certificate obtained from the government of the other country, and provides such other documents and information as may be prescribed.

Question-9 :
Arif is a resident of both India and another foreign country in the previous year 2023-24. He owns immovable properties (including residential house) in both the countries. He earned income of ₹ 50 lakhs from rubber estates in the foreign country during the financial year 2023-24. He also sold some house property situated in foreign country resulting in short-term capital gain of ₹ 10 lakhs during the year. Arif has no permanent establishment of business carried on in India. However, he has derived rental income of ₹ 6 lakhs from property let out in India and he has a house in Lucknow where he stays during his visit to India.

Article 4 of the Double Taxation Avoidance Agreement between India and the foreign country where Arif is a resident, provides that "where an individual is a resident of both the Contracting States, then, he shall be deemed to be resident of the Contracting State in which he has permanent home available to him. If he has permanent home in both the Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests)".

You are required to examine with reasons whether the business income of Arif arising in foreign country and the capital gains in respect of sale of the property situated in foreign country can be taxed in India.

Solution :
Section 90(2) of the Income-tax Act, 1961 provides that where the Central Government has entered into an agreement with the Government of any other country for granting relief of tax or for avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of the Income-tax Act, 1961 shall apply to the extent they are more beneficial to that assessee.

In this case, Arif is resident of both India and the foreign country. Therefore, the DTAA provides for a tie-breaker rule wherein if a person is resident of two countries, he shall be deemed to be resident of the Contracting State in which he has permanent home available to him. If he has permanent home in both the Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests).

Arif has residential houses both in India and foreign country. Thus, he has a permanent home in both the countries.

Arif owns rubber estates in a foreign country from which he derives business income. However, Arif has no permanent establishment of his business in India. Therefore his personal and economic relations with foreign country are closer, since foreign country is the place where –
(a) the property is located and
(b) the permanent establishment (PE) has been set-up

Therefore, he shall be deemed to be resident of the foreign country for A.Y. 2024-25.

The fact of the case and issues arising therefrom are similar to that of CIT vs. P.V.A.L. Kulandagan Chettiar (2004) 267 ITR 654, where the Supreme Court held that if an assessee is deemed to be a resident of a Contracting State where his personal and economic relations are closer, then in such a case, the fact that he is a resident in India to be taxed in terms of sections 4 and 5 would become irrelevant, since the DTAA prevails over sections 4 and 5. Accordingly, only the income accruing or arising or deemed to accrue or arise in India shall be taxable in India in the hands of Arif.

However, as per section 90(4), in order to claim relief under the agreement, Arif has to obtain a certificate [Tax Residency Certificate (TRC)] declaring his residence of the country outside India from the Government of that country. Further, he also has to provide such other documents and information, as may be prescribed.

Therefore, in this case, Arif is not liable to income tax in India for assessment year 2024-25 in respect of business income and capital gains arising in the foreign country provided he furnishes the Tax Residency Certificate and provides such other documents and information as may be prescribed.

Question-10 :
Mr. Kamesh, an individual resident in India aged 52 years, furnishes you the following particulars of income earned in India, Country "X" and Country "Y" for the previous year 2023-24. India has not entered into double taxation avoidance agreement with these two countries.

Particulars	**₹**
Income from profession carried on in India	7,50,000
Agricultural income in Country "X" (gross)	50,000
Dividend from a company incorporated in Country "Y" (gross)	1,50,000
Royalty income from a literary book from Country "X" (gross)	6,00,000
Expenses incurred for earning royalty	50,000
Business loss in Country "Y" (Proprietary business)	65,000
Rent from a house situated in Country "Y" (gross)	2,40,000
Municipal tax paid in respect of the above house in Country "Y" (not allowed as deduction in country "Y")	10,000

Note: Business loss in Country "Y" not eligible for set off against other incomes as per law of that country.

The rates of tax in Country "X" and Country "Y" are 10% and 20%, respectively.

Compute total income and net tax liability of Mr. Kamesh in India for Assessment Year 2024-25, assuming that he opted out of the default tax regime under section 115BAC.

Solution :

Computation of total income of Mr. Kamesh for A.Y.2024-25
under normal provisions of the Act

Particulars	**₹**	**₹**
Income from House Property [House situated in country Y]		
Gross Annual Value[1]	2,40,000	
Less: Municipal taxes	10,000	
Net Annual Value	2,30,000	
Less: Deduction under section 24 – 30% of NAV	69,000	1,61,000
Profits and Gains of Business or Profession		
Income from profession carried on in India	7,50,000	
Royalty income from a literary book from Country X (after deducting expenses of ₹ 50,000)	5,50,000	
	13,00,000	
Less: Business loss in country Y set-off[2]	65,000	12,35,000
Income from Other Sources		
Agricultural income in country X	50,000	
Dividend from a company in country Y	1,50,000	2,00,000
Gross Total Income		**15,96,000**
Less: Deduction under Chapter VIA		
Under section 80QQB – Royalty income of a resident from literary work[3]		3,00,000
Total Income		**12,96,000**

[1] Rental Income has been taken as GAV in the absence of other information relating to fair rent, municipal value etc.
[2] As per section 70(1), inter-source set-off of income is permitted.
[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.
Note – Since adjusted total income (i.e., ₹ 15,96,000) does not exceed ₹ 20 lakhs, AMT would not be attracted in this case.

Computation of net tax liability of Mr. Kamesh for A.Y.2024-25

Particulars	**₹**
Tax on total income [30% of ₹ 2,96,000 + ₹ 1,12,500]	2,01,300
Add: Health and Education cess@4%	8,052
	2,09,352
Less: Deduction under section 91 **(See Working Note below)**	**69,739**
Net tax liability	**1,39,613**
Net tax liability (rounded off)	1,39,610

Working Note: Calculation of Rebate under section 91

	₹	**₹**
Average rate of tax in India [i.e., ₹ 2,09,352 / ₹ 12,96,000 x 100]	**16.154%**	
Average rate of tax in country X	**10%**	
Doubly taxed income pertaining to country X		
Agricultural Income	50,000	
Royalty Income [₹ 6,00,000 – ₹ 50,000 (Expenses) – ₹ 3,00,000 (deduction under section 80QQB)][4]	2,50,000	
	3,00,000	
Deduction under section 91 on ₹ 3,00,000 @10% [being the lower of average Indian tax rate (16.154%) and foreign tax rate (10%)]		30,000
Average rate of tax in country Y	**20%**	
Doubly taxed income pertaining to country Y		
Income from house property	1,61,000	
Dividend	1,50,000	
	3,11,000	
Less: Business loss set-off	65,000	
	2,46,000	
Deduction u/s 91 on ₹ 2,46,000 @16.154% (being the lower of average Indian tax rate (16.154%) and foreign tax rate (20%)]		39,739
Total rebate under section 91 (Country X + Country Y)		**69,739**

[4] Doubly 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.).

Note: Mr. Kamesh shall be allowed deduction u/s 91, since the following conditions are fulfilled:-

(a) He is a resident in India during the relevant previous year (i.e., P.Y.2023-24).

(b) The income in question accrues or arises to him outside India in foreign countries X and Y 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 X and Y 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 X and Y where the income has accrued or arisen.

Question-11 :

Mr. Anil, aged 49 years, a resident individual furnishes the following particulars of income earned by him in India and Country N for the previous year 2023-24. India does not have a double taxation avoidance agreement (DTAA) with Country N.

Particulars	Amount (₹)
Income from profession carried on in Mumbai	8,50,000
Agricultural Income in Country N	1,30,000
Dividend from a company incorporated in Country N (gross)	85,000
Royalty income from a literary book from Country N (gross)	6,25,000
Expenses incurred for earning royalty	75,000
Business loss in Country N	1,10,000

The domestic tax laws of Country N does not permit set-off of business loss against any other income. The rate of income-tax in Country N is 18%. Compute total income and net tax liability of Mr. Anil in India for A.Y. 2024-25, assuming that he satisfies all conditions for the purpose of section 91 and he opted out of the default tax regime under section 115BAC.

Solution :

Computation of total income of Mr. Anil for A.Y.2024-25
under normal provisions of the Act

Particulars	₹	₹
Profits and Gains of Business or Profession		
Income from profession carried on in India	8,50,000	
Royalty income from a literary book in Country N (after deducting expenses of ₹ 75,000)	5,50,000	
	14,00,000	
Less: Business loss in Country N	1,10,000	12,90,000
Income from Other Sources		
Agricultural income in Country N [Not exempt u/s 10(1)]	1,30,000	
Dividend received from a company incorporated in Country N	85,000	2,15,000
Gross Total Income		**15,05,000**
Less: Deduction under Chapter VIA		
Under section 80QQB – Royalty income of a resident from a literary book[5]		3,00,000
Total Income		**12,05,000**

[5] 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.

Note – Since adjusted total income (i.e., ₹ 15,05,000) does not exceed ₹ 20 lakhs, AMT would not be attracted in this case.

Computation of net tax liability of Mr. Anil for A.Y.2024-25

Particulars		₹
Tax on total income [30% of ₹ 2,05,000 plus ₹ 1,12,500]		1,74,000
Add: Health and education cess @4%		6,960
Tax Liability		1,80,960
Calculation of Rebate under section 91:		
Average rate of tax in India [i.e., ₹ 1,80,960 / ₹ 12,05,000 x 100]	**15.0174%**	
Average rate of tax in Country N	**18%**	
Doubly taxed income pertaining to Country N	**₹**	
Agricultural Income	1,30,000	
Royalty Income [₹ 6,25,000 – ₹ 75,000 (Expenses) – ₹ 3,00,000 (deduction under section 80QQB)][6]	2,50,000	
Dividend income	85,000	
	4,65,000	
Less: Business Loss set off	1,10,000	
	3,55,000	
Rebate under section 91 on ₹ 3,55,000 @ 15.0174% [being the lower of average Indian tax rate (15.0174%) and foreign tax rate (18%)]		53,312
Net tax liability		**1,27,648**
Net tax liability (Rounded off)		1,27,650

[6] Doubly 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.).

Question-12 :
Mr. Ravi, an individual resident in India aged 45 years, furnishes you the following particulars of income earned in India, Foreign Countries "S" and "T" for the previous year 2023-24.

Particulars	**₹**
Indian Income:	
Income from business carried on in Mumbai	4,40,000
Interest on savings bank with ICICI Bank	42,000
Income earned in Foreign Country "S" [Rate of tax – 16%]:	
Agricultural income in Country "S"	94,000
Royalty income from a book on art from Country "S" (Gross)	7,80,000
Expenses incurred for earning royalty	50,000
Income earned in Foreign Country "T" [Rate of tax – 20%]:	
Dividend from a company incorporated in Country "T" (Gross)	2,65,000
Rent from a house situated in Country "T" (Gross)	3,30,000
Municipal tax paid in respect of the above house (not allowed as deduction in Country "T")	10,000

Compute the total income and net tax liability of Mr. Ravi in India for A.Y. 2024-25 assuming that India has not entered into double taxation avoidance agreement with Countries S & T.

Solution :

Computation of total income of Mr. Ravi for A.Y.2024-25
under the default tax regime under section 115BAC
(assuming that he pays tax under the default tax regime)

Particulars	**₹**	**₹**
Income from House Property [House situated in Country T]		
Gross Annual Value[7]	3,30,000	
Less: Municipal taxes paid in Country T	10,000	
Net Annual Value	3,20,000	
Less: Deduction under section 24 – 30% of NAV	96,000	2,24,000
Profits and Gains of Business or Profession		
Income from business carried on in India	4,40,000	
Royalty income from a book on 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	2,65,000	4,01,000
Gross Total Income		**17,95,000**
Less: Deduction under Chapter VIA [Not available under default tax regime]		Nil
Total Income		**17,95,000**

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

Computation of tax liability of Mr. Ravi for A.Y.2024-25 under the default tax regime

Particulars		**₹**
Tax on total income		2,38,500
Add: Health and education cess @4%		9,540
		2,48,040
Less: Rebate under section 91 **(See Working Note below)**		1,81,430
Net tax liability		**66,610**
Calculation of Rebate under section 91:		
Average rate of tax in India [i.e., ₹ 2,48,040 / ₹ 17,95,000 x 100]	**13.818%**	
Average rate of tax in Country S	**16%**	
Doubly taxed income pertaining to Country S	**₹**	
Agricultural Income	94,000	
Royalty Income [₹ 7,80,000 – ₹ 50,000 (Expenses)]	7,30,000	
	8,24,000	
Rebate under section 91 on ₹ 8,24,000 @13.818% [being the lower of average Indian tax rate (13.818%) and Country S tax rate (16%)]		1,13,860
Average rate of tax in Country T	**20%**	
Doubly taxed income pertaining to Country T		
Income from house property	2,24,000	
Dividend	2,65,000	
	4,89,000	
Rebate under section 91 on ₹ 4,89,000 @13.818% (being the lower of average Indian tax rate (13.818%) and Country T tax rate (20%)]		67,570
Total rebate under section 91 (Country S + Country T)		**1,81,430**

Computation of total income of Mr. Ravi for A.Y.2024-25
under the normal provisions of the Act
(assuming that he has exercised the option to shift out of default tax regime)

Particulars	**₹**	**₹**
Income from House Property [House situated in Country T]		
Gross Annual Value[8]	3,30,000	
Less: Municipal taxes paid in Country T	10,000	
Net Annual Value	3,20,000	
Less: Deduction under section 24 – 30% of NAV	96,000	2,24,000
Profits and Gains of Business or Profession		
Income from business carried on in India	4,40,000	
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	2,65,000	4,01,000
Gross Total Income		**17,95,000**
Less: Deduction under Chapter VIA		
Under section 80QQB – Royalty income of a resident from a work of art[9]		3,00,000
Under section 80TTA – Interest on savings bank account, subject to a maximum of ₹ 10,000.		10,000
Total Income		**14,85,000**

[8] Rental income **h**as been taken as GAV in the absence of other information relating to fair rent, municipal value etc.

[9] 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.

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 liability of Mr. Ravi for A.Y.2024-25 under the normal provisions of the Act

Particulars		**₹**
Tax on total income [30% of ₹ 4,85,000 + ₹ 1,12,500]		2,58,000
Add: Health and education cess @4%		10,320
		2,68,320
Less: Rebate under section 91 **(See Working Note below)**		1,72,197
Tax Payable		**96,123**
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 S[10]	**₹**	
Agricultural Income	94,000	
Royalty Income [₹ 7,80,000 – ₹ 50,000 (Expenses) – ₹ 3,00,000 (deduction under section 80QQB)]	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
Average rate of tax in Country T	**20%**	
Doubly taxed income pertaining to Country T		
Income from house property	2,24,000	
Dividend	2,65,000	
	4,89,000	
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%)]		88,357
Total rebate under section 91 (Country S + Country T)		**1,72,197**

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.2023-24.

(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.

[10] Doubly 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.).

Part-B : Additional Questions

Question-13 [RTP Nov-20]

Mr. Hari, a resident aged 42 years is a salaried employee employed with Omega P Ltd. He received the following components of his salary income during the previous year 2023-24.

- Basic Salary 60,000 p.m.
- Dearness Allowance 12% of basic salary
- Transport Allowance 10,000 p.m.
- Medical Allowance 5,000 p.m.

He contributed ₹ 18,000 to approved Pension Fund of LIC.

He also paid ₹ 2,00,000 by crossed cheque for Mediclaim premium to insure the health of his mother, a resident aged 61 years, who is not dependent on him as a lumpsum payment for 5 years including the current previous year.

He also delivered guest lecture in a reputed university in Country X during the year. He received ₹ 8,00,000 from such university after deduction of tax of ₹ 2,00,000 in Country X. India does not have any double taxation avoidance agreement under section 90 of the Income-tax Act, 1961, with Country X. Compute the tax liability of Mr. Hari for the A.Y. 2024-25. He has opted out of the Default Tax Regime

Solution :

Computation of total income of Mr. Hari for A.Y.2024-25

Particulars	**₹**	**₹**
Salaries [Indian Income]		
Basic Salary (₹ 60,000 x 12 months)	7,20,000	
Dearness Allowance (12% of basic salary of ₹ 7,20,000)	86,400	
Transport Allowance (₹ 10,000 x 12) [Fully taxable]	1,20,000	
Medical Allowance (₹ 5,000 x 12) [Fully taxable]	60,000	
Gross Salary	9,86,400	
Less: Standard deduction u/s 16(ia) Lower of actual salary or ₹ 50,000	50,000	
Net Salary		**9,36,400**
Income from Other Sources [Foreign Income]		
Income from lectures in foreign university [₹ 8,00,000 plus tax deducted at source of ₹ 2,00,000]		10,00,000
Gross Total Income		**19,36,400**
Less: Deduction under Chapter VIA		
Under section 80CCC – Contribution to approved Pension Fund of LIC	18,000	
Under section 80D – Medical insurance premium of mother, being a resident senior citizen for the year 2023-24, ₹ 40,000 [being 1/5th of the lumpsum premium of ₹ 2,00,000 paid for 5 years] fully allowable, even though she is not dependent on him, since the same does not exceed ₹ 50,000	40,000	58,000
Total Income		**18,78,400**

Computation of tax liability of Mr. Hari for A.Y.2024-25

Particulars		**₹**
Tax on total income [₹ 2,63,520 (i.e., 30% of ₹ 8,78,400) plus ₹ 1,12,500 (Tax on income of ₹ 10 lakh)]		3,76,020
Add: Health and education cess@4%		15,041
Tax Liability		3,91,061
Average rate of tax in India [i.e., 3,91,061 / 18,78,400 x 100]	20.82%	
Tax rate in Country X [2,00,000 /10,00,000] x 100	20%	
Deduction under section 91 on ₹ 10,00,000, being the doubly taxed income@ 20% [being the lower of Indian rate of tax (20.82%) and Country X tax rate (20%)]		2,00,000
Tax Payable		**1,91,061**
Tax Payable (rounded off)		1,91,060

Question-14 : [RTP May-21]

Mr. Shyam, aged 47 years, is a resident individual having income from the following sources:

(i) Income from a sole-proprietary business in Noida = ₹ 50 lakhs.

(ii) Share of profit from a partnership firm in Gurgaon = ₹ 30 lakhs.

(iii) Agricultural Income (gross) from coffee estates in Country A, a foreign country with which India has no DTAA, CAD 32000. Tax deducted on the above income CAD 8,000

(iv) Brought forward business loss of F.Y.2020-21 in Country A was CAD 4,000 which is not permitted to be set off against other income as per the laws of that country.

(v) Mr. Shyam has deposited ₹ 1,50,000 in public provident fund and paid medical insurance premium of ₹ 30,000 by account payee cheque to insure his health. He has also paid ₹ 55,000 as insurance premium to insure the health of his mother and father, who are resident Indians aged 70 years and 75 years, respectively. He also incurred ₹ 50,000 on the medical treatment of his dependent sister, who is a person with disability. His sister does not claim deduction under section 80U.

Compute total income and tax liability of Mr. Shyam for the AY. 2024-25, assuming that 1 CAD =60. He has opted out of the Default Tax Regime u/s 115BAC.

Solution :

Computation of total income and tax liability of Mr. Shyam for A.Y. 2024-25

Particulars		
Profits and gains from business and profession		
Income from sole proprietary concern in India	50,00,000	
Share of profit from a partnership firm in India of ₹ 30 lakhs, is exempt	Nil	
Business profit	50,00,000	
Less: Business Loss in Country A (CAD 4000 x ₹ 60/CAD)	2,40,000	47,60,000
Income from Other Sources		
Agricultural income from coffee estates in Country A, is taxable in India (CAD 32000 x ₹ 60/CAD)		19,20,000
Gross Total Income		**66,80,000**
Less: **Deductions under Chapter VI-A**		
Under section 80C [deposit in PPF]	1,50,000	
Under section 80D	75,000	
[Medical insurance premium paid ₹ 30,000 for self, restricted to ₹ 25,000; ₹55,000 for senior citizen parents, restricted to ₹ 50,000]		
Under section 80DD		
[Flat deduction of ₹ 75,000 irrespective of the expenditure incurred on dependent sister, being a person with disability]	75,000	3,00,000
Total Income		**63,80,000**
Tax on total income		
Tax on ₹ 63,80,000 [(30% x ₹ 53,80,000) plus 1,12,500]		17,26,500
Add: Surcharge@10%, since total income exceeds ₹ 50 lakh		1,72,650
		18,99,150
Add: HEC @ 4%		75,966
		19,75,116
Average rate of tax in India [i.e., ₹ 19,75,116/₹ 63,80,000 x 100]	30.96%	
Average rate of tax in Country A [i.e., CAD 8000/CAD 32000]	25%	
Doubly taxed income [₹ 19,20,000 – ₹ 2,40,000]	16,80,000	
Rebate under section 91 on ₹ 16,80,000@25% (lower of average Indian tax rate and rate of tax in Country A)		4,20,000
Tax payable in India [₹ 19,75,116 – ₹ 4,20,000]		**15,55,116**
Tax payable in India (rounded off)		**15,55,120**

Note:

(1) Since Mr. Shyam is resident in India for the P.Y.2023-24, his global income would be subject to tax in India. He is eligible for deduction under section 91 since the following conditions are fulfilled: -
   (a) He is a resident in India during the relevant previous year.
   (b) Agricultural income accrues or arises to him outside India during that previous year.
   (c) Such agricultural income is not deemed to accrue or arise in India during the previous year.
   (d) The income in question i.e., agricultural income, has been subjected to income-tax in Country A in his hands and he has paid tax on such income in Country A.
   (e) There is no agreement under section 90 for the relief or avoidance of double taxation between India and Country A, where the income has accrued or arisen.

(2) If Mr. Shyam opts for default regime u/s 115BAC, he would not be able to claim deduction of ₹ 3,00,000 under Chapter VI-A. His total income would be ₹ 66,80,000. His tax liability would be ₹ 19,49,380 (working shown below), which is lower than the tax liability of ₹ 19,75,116 computed as per the regular provisions of the Act. Hence, he would not opt out of default regime section 115BAC.

Particulars	**₹**
Upto ₹ 3,00,000	Nil
₹ 3,00,001 – ₹ 6,00,000 [₹ 3,00,000 @ 5%]	15,000
₹ 6,00,001 – ₹ 9,00,000 [₹ 3,00,000 @ 10%]	30,000
₹ 9,00,001 – ₹ 12,00,000 [₹ 3,00,000 @ 15%]	45,000
₹ 12,00,001 – ₹ 15,00,000 [₹ 3,00,000 @ 20%]	60,000
Above 15,00,000 [₹ 51,80,000 @ 30%]	15,54,000
Add: Surcharge @ 10%	1,70,400
	18,74,400
Add: HEC @ 4%	74,976
Total tax liability	**19,49,376**
Total tax liability (rounded off)	**19,49,380**

Question-15 : [PP Jan-21]

Mr. Ramanuj Tiwari, aged 65 years resident of India derived the following income for the financial year 2023-24:

(1) Income from business and profession in India: ₹ 6,00,000
(2) Dividend (gross) from a company in Nigeria: ₹ 1,50,000 (Tax paid in Nigeria ₹ 30,000)
(3) Royalty on books from Spain: ₹ 8,00,000 (₹ 7,60,000 has been received in India on 30-06-2023. Further ₹ 40,000 as TDS has been deducted in Spain on royalty)
(4) Income from Other Sources as follows:
   - Saving Interest from Punjab and Sind Bank ₹ 15,000
   - Interest Income on FDR's ₹ 2,15,000

Further, Mr. Ramanuj Tiwari incurred expenses to the tune of ₹ 1,20,000 on earning the royalty of ₹ 8,00,000. He has also deposited ₹ 1,50,000 in Public Provident Fund Account of his wife during the year. He has opted out of Default Tax Regime u/s 115BAC

Compute the Total Income and Tax Payable by Mr. Ramanuj Tiwari for the Assessment Year 2024-25, assuming India does not have Double Taxation Avoidance Agreement with Nigeria and Spain. **(6 Marks)**

Solution :

Computation of total income of Mr. Ramanuj Tiwari for A.Y.2024-25

Since Mr. Ramanuj Tiwari is resident in India for the P.Y.2023-24, his global income would be subject to tax in India. Therefore, income earned by him in Nigeria and Spain would be taxable in India. He would, however, be entitled to deduction under section 91, since India does not have a DTAA with Nigeria and Spain, and all conditions under section 91 are satisfied.

Particulars	₹	₹
Profits and Gains of Business or Profession		
Income from business and profession in India		6,00,000
Royalty on books from Spain	8,00,000	
Less: Expenses incurred	1,20,000	6,80,000
Income from Other Sources		
Dividend from a company in Nigeria		1,50,000
Interest on saving account with Punjab and Sind Bank		15,000
Interest on fixed deposits		2,15,000
Gross Total Income		**16,60,000**
Less: Deduction under Chapter VI-A		
Under section 80C – Deposits in PPF	1,50,000	
Under section 80QQB – Royalty income on books allowable to the extent of ₹3,00,000.	3,00,000	
Under section 80TTB – Deduction allowable in respect of interest on fixed deposits, since Mr. Ramanuj Tiwari is a senior citizen resident in India	50,000	5,00,000
Total Income		**11,60,000**

Computation of tax liability of Mr. Ramanuj Tiwari for A.Y.2024-25

Particulars	₹
Tax on total income [30% of ₹ 1,60,000 + ₹ 1,10,000, eligible for higher exemption limit of ₹ 3,00,000, since he is a senior citizen]	1,58,000
Add: Health and education cess @4%	6,320
	1,64,320
Less: Rebate under section 91 **(See Working Note below)**	40,248
Tax Payable	1,24,072
Tax Payable (rounded off)	**1,24,070**

Calculation of Rebate under section 91:		₹
Average rate of tax in India [i.e ₹ 1,64,320 / ₹ 11,60,000 x 100]	14.1655%	
Average rate of tax in Nigeria [i.e ₹ 30,000 / ₹ 1,50,000 x 100]	20%	
Doubly taxed income pertaining to Nigeria		
Dividend from a company in Nigeria	₹ 1,50,000	
Rebate u/s 91 on ₹ 1,50,000 @ 14.1655% [being the lower of average Indian tax rate (14.1655%) and Nigeria tax rate (20%)]		21,248
Average rate of tax in Spain [i.e., ₹ 40,000 / ₹ 8,00,000 x 100]	5%	
Doubly taxed income pertaining to Spain		
Royalty (₹ 8,00,000 – ₹ 1,20,000 – ₹ 3,00,000)	₹ 3,80,000	
Rebate u/s 91 on ₹ 3,80,000 @5% [being the lower of average Indian tax rate (14.1655%) and Spain tax rate (5%)]		19,000
Total rebate under section 91		**40,248**

Question-16 : [PP JULY-21]

Mr. Naveen, an individual resident in India, aged 52 years, earned royalty income of ₹ 15 lakhs from XY Inc. of Canada, for writing articles in journals and newspapers for the year ended 31.03.2024. However, he received only ₹ 12.50 lakhs during the previous year 2023-24 and the balance is outstanding as on 31.03.2024. He maintains cash system of accounting for royalty income.

He also earned a rental income of ₹ 2.40 lakhs (gross) from a house situated in Canada. Municipal taxes paid in respect of the house amounted to ₹ 10,000 which is not allowed as deduction in Canada. DTAA between India and Canada provides for tax @ 15% in Canada without prejudice to taxation of the same income in India.

He further received ₹ 3.50 lakhs during the year, as dividend from X Ltd., an Indian company. On 1.04.2023, he took an educational loan from bank for his son who was pursuing MBA.
Annual repayment of loan and interest amounted to ₹ 1.20 lakhs and ₹ 0.24 lakhs, respectively. Compute the total income and tax payable by Mr. Naveen in India for the A.Y. 2024-25, assuming that he has opted out of Default Tax Regime u/s 115BAC **(6 Marks)**

Solution :

Computation of total income of Mr. Naveen for A.Y.2024-25

Particulars	₹	₹
Income from House Property		
Rental income from property in Canada	2,40,000	
Less: Municipal taxes paid	10,000	
	2,30,000	
Less: Deduction u/s 24(a) @ 30%	69,000	1,61,000
Profits and gains from business or profession		
Royalty from Canada for writing article in journals [only the amount which is received during the previous year is includible, since he maintains cash system of accounting]		12,50,000
Income from Other Sources		
Dividend received from X Ltd. an Indian company [since TDS would have been deducted @ 10%, the amount includible in the total income need to be grossed up (₹ 3,50,000 x 100/90)]		3,88,889
Gross Total Income		**17,99,889**
Less: Deduction under Chapter VI-A		
U/s 80E – deduction in respect of interest on educational loan for his son	24,000	
U/s 80QQB – No deduction is allowable since royalty income is for writing articles in journals and newspapers and not for writing books	-	24,000
Total Income		**17,75,889**
Total Income (rounded off)		**17,75,890**

Computation of tax liability of Mr. Naveen for A.Y.2024-25

Particulars		₹
Tax on total income [30% of ₹ 7,75,890 + ₹ 1,12,500]		3,45,267
Add: Health and education cess @ 4%		13,811
		3,59,078
Less: Deduction in respect of tax paid in Canada -		
- Tax payable in India @ 20.220% on ₹ 14,11,000, being income from house property of ₹ 1,61,000 plus royalty of ₹12,50,000[i.e., ₹ 3,59,078/17,75,890 x 100]	₹ 2,85,304	
-Tax payable in Canada @ 15%	₹ 2,11,650	
Lower of the two above		2,11,650
Tax Payable		**1,47,428**
Tax Payable (rounded off)		**1,47,430**

Question-17 : [PP OLD NOV-19] [90 & 91 Both]
Mr. S is a performing musician, resident of India. He has the following income for the year ended 31-3-2024.
(1) Income from music performances in India ₹ 5,00,000.
(2) Income from Country A with which India does not have any Double Taxation Avoidance Agreement ₹5,00,000. Tax deducted from this income was at 20%.
(3) Income from Country B during January 2023 ₹ 1,00,000, July 2023 ₹ 1,00,000 and January 2024 ₹3,00,000.

Tax withheld by Country B is at 10%.
Country B follows Calendar Year for its tax purposes. India has entered into a Double Taxation Avoidance Agreement with Country B.

(4) Rent received from his property at Chennai ₹ 30,000 per month.

(5) Contribution to PPF is ₹ 1,50,000.

Compute tax payable by Mr. S for the Assessment Year 2024-25. Give necessary working notes for your answer. He has opted out of Default Tax Regime u/s 115BAC **(6 Marks)**

Solution :

Computation of total income of Mr. S for A.Y.2024-25

Particulars		
Income from House Property in India		
Gross Annual Value [Rent received is taken as GAV] [₹ 30,000 p.m. x 12 months]	3,60,000	
Less: Municipal taxes	-	
Net Annual Value (NAV)	3,60,000	
Less: Deduction u/s 24 @30%	1,08,000	**2,52,000**
Profits and Gains of Business or Profession		
Income from music performances in India	5,00,000	
Income from Country A	5,00,000	
Income from Country B [Income earned during July 2023 and January 2024 is taxable in India in P.Y. 2023-24]	4,00,000	14,00,000
Gross Total Income		**16,52,000**
Less: Deduction under Chapter VIA		
Under section 80C – Contribution to PPF		1,50,000
Total Income		**15,02,000**

Computation of tax liability of Mr. S for A.Y.2024-25		
Particulars		
Tax on total income [₹1,50,600 (i.e., 30% of ₹ 5,02,000) plus ₹ 1,12,500 (Tax on income of ₹ 10 lakh)]		2,63,100
Add: Health and education cess @ 4%		10,524
Tax Liability		2,73,624
Average rate of tax in India [i.e., ₹ 2,73,624 / ₹ 15,02,000 x 100]	18.217%	
Foreign Tax credit		
For Country A (with which India does not have a DTAA)		
Doubly taxed income	5,00,000	
Deduction under section 91 on ₹ 5,00,000 @ 18.217% [being the lower of Indian rate of tax (18.217%) and Country A tax rate (20%)]		91,085
For Country B (with which India has a DTAA)		
Doubly taxed income [Credit shall be allowed for foreign tax paid by Mr. S in Country B in P.Y. 2023-24 in respect of income which is chargeable to tax in India in P.Y. 2023-24 i.e for income of ₹ 4,00,000]	4,00,000	
Deduction under section 90:		
Lower of:		
Tax Payable under the Income-tax Act, 1961 i.e ₹ 72,868, being 18.217% of ₹4,00,000; and		
Tax paid in Country B i.e ₹ 40,000, being 10% of ₹ 4,00,000		40,000
Tax Payable		**1,42,539**
Tax Payable (Rounded off)		1,42,540

Question-18 : [MTP AUG-18]

Ms. Mamta, a resident Individual has earned income from the following sources during the previous year 2023-24:

(i) Share of profit from a partnership firm in Kolkata ₹ 30 lakhs.
(ii) Income (taxable) from a sole-proprietary concern in Kolkata ₹ 50 lakhs.
(iii) Agricultural Income from tea estate in Country XYZ which has no DTAA with India, USD 70000 (gross). Withholding Tax on the above income USD 10,500 (Assume 1 USD = ₹ 64).
(iv) Brought forward Business Loss of the previous year 2022-23 in Country XYZ was USD 10,000 which is not permitted to be set off against other income as per the laws of that country. (Assume foreign currency conversion rate on 31.3.2023 was ₹ 64/USD)

Compute taxable income and tax payable by Ms. Mamta for the A.Y. 2024-25 **(6 Marks)**

Solution :

Computation of taxable income and tax payable of Ms. Mamta for A.Y. 2024-25

Particulars	**₹**	**₹**
Profits and gains from business and profession		
Income from sole proprietary concern in India	50,00,000	
Share of profit from a partnership firm in India of ₹ 30 lakhs, is exempt	Nil	
Business profit	50,00,000	
Less: Business Loss in Country A (USD 10,000 x ₹ 64/USD), since eight assessment years has not expired from the assessment year in which such business loss was incurred.		
Income from Other Sources	6,40,000	43,60,000
Agricultural income from tea estate in Country XYZ is taxable in India (USD 70,000 x ₹ 64/USD)		44,80,000
Gross Total Income/ Total Income		**88,40,000**
Tax on total income		
Tax on ₹ 88,40,000 [30% x ₹ 78,40,000 plus ₹ 1,12,500]		24,64,500
Add: Surcharge @ 10%, since total income exceeds ₹ 50 lakhs		2,46,450
		27,10,950
Add: Education cess & SHEC @ 4%		1,08,438
		28,19,388
Average rate of tax in India [i.e., ₹ 27,92,279/₹ 88,40,000 x 100]	31.89%	
Average rate of tax in Country XYZ [i.e., USD 10,500/USD 70,000]	15%	
Doubly taxed income [₹ 44,80,000 – ₹ 6,40,000]	38,40,000	
Rebate under section 91 on ₹ 38,40,000 @ 15% (lower of average Indian tax rate and rate of tax in Country XYZ]		5,76,000
Tax payable in India [₹ 27,92,279 – ₹ 5,76,000]		22,43,388
Tax payable (rounded off)		**22,43,390**

Note:

Since Ms. Mamta is resident in India for the P.Y.2023-24, her global income would be subject to tax in India. She would be allowed deduction under section 91 provided all the following conditions are fulfilled:-

(a) She is a resident in India during the relevant previous year.
(b) Income accrues or arises to her outside India during that previous year.
(c) Such income is not deemed to accrue or arise in India during the previous year.

(d) The income in question has been subjected to income-tax in Country XYZ in her hands and she has paid tax on such income in Country XYZ.
(e) There is no agreement under section 90 for the relief or avoidance of double taxation between India and Country XYZ, where the income has accrued or arisen.

Ms. Mamta is eligible for deduction under section 91 since all the conditions specified thereunder stand fulfilled by her during the previous year.

Question-19 : [RTP NOV-21]

Saraswati Centre of Excellence Ltd. (SCEL) is an Indian company which is the end-user of shrink-wrapped computer software directly imported from Kallang Ltd. (KAL), a Singapore company (whose POEM is in Singapore) through an End-User Licence Agreement (EULA).

The broad terms of the EULA between the two companies are as follows –

Grant of licence. KAL grants SCEL a limited non-exclusive licence to install, use, access, display and run one copy of the shrink-wrapped Computer Software (SWCS) on a single Kallang Mobile Device, local hard disk(s) or other permanent storage media of one computer. SCEL should not make SWCS available over a network where it could be used by multiple computers at the same time. SCEL may make one copy of the SWCS in machine readable form for backup purposes only; provided that the backup copy must include all copyright or other proprietary notices contained on the original.

Reservation of rights and ownership. KAL reserves all rights not expressly granted to SCEL in this EULA. The SWCS is protected by copyright and other intellectual property laws and treaties. KAL owns the title, copyright and other intellectual property rights in the SWCS. The SWCS is licenced (only for use and not any other purpose), not sold.

Limitations on end user rights. SCEL shall not, and shall not enable or permit others to, copy, reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code or algorithms of, SWCS (except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation), or modify, or disable any features of, SWCS, or create derivative works based on the SWCS. SCEL should not rent, lease, lend, sub-license or provide commercial hosting services with the SWCS. SCEL should not transfer this EULA or the rights to the SWCS granted herein to any third party.

Based on the above terms of EULA, the provisions of the Income-tax Act, 1961 and the India-Singapore DTAA (the relevant extract of which is given below), examine whether the amount paid by SCEL to KAL, as consideration for the use of the SWCS can be considered as payment of royalty for the use of copyright in the computer software. If yes, are tax deduction provisions u/s 195 attracted in this case? Examine.

Extract of Article 12 of India-Singapore DTAA – Royalties and Fees for Technical Services

1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the royalties or fees for technical services, the tax so charged shall not exceed 10 per cent.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use :
   (a) any copyright of a literary, artistic or scientific work, including cinematograph film or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, including gains derived from the alienation of any such right, property or information

Solution :

The issue of whether the amount paid by a resident Indian end-user to a non-resident computer software supplier for use of computer software can be treated as royalty came up before the **Apex Court in Engineering Analysis Centre of Excellence P. Ltd v. CIT and Another (2021) ITR 471.**

The Apex Court observed that as per the definition given in Explanation 2(v) to section 9(1)(vi) of the Income-tax Act, 1961, "royalty" means consideration for, inter alia, the transfer of all or any rights (including the granting of a license), in respect of any copyright, literary, artistic or scientific work. Further, as per Explanation 4 thereto, such transfer of all or any rights includes transfer of all or any right for use or right to use a computer software (including the granting of a license).

As per the meaning assigned in the DTAA with Singapore, however, "royalty" means payment of any kind received as consideration for **"the use of, or the right to use, any copyright"** of a literary, artistic or scientific work. The Apex Court observed that where computer software is purchased directly by an end-user, resident in India, from a foreign, non-resident supplier or manufacturer, the end-user license agreement (EULA) does not create any interest or right to such end-user, which would amount to the use of or right to use any copyright. The "license" that is granted vide the EULA, is not a license in terms of the Copyright Act, but is a "license" which imposes restrictions or conditions for the use of computer software.

There is an important difference between the right to reproduce and the right to use computer software. Whereas the former would amount to parting with a copyright by the owner thereof, the latter would not. Under the non-exclusive license, the end-user only receives a right to use the software and nothing more.

Accordingly, the Apex Court held that the amount paid by a resident Indian end-user to a non-resident computer software manufacturer or supplier, as consideration for the use of the computer software through EULA, is not royalty for the use of copyright in the computer software.

As per section 90(2), the provisions of the Income-tax Act, 1961 will apply only to the extent they are more beneficial to the assessee, in a case where India has entered into a DTAA with the other country. In this case, since the provisions under the DTAA are more beneficial, the taxability of the payment would be determined as per the meaning of royalty assigned under the DTAA between India and Singapore. The Apex Court, accordingly, held that the provisions contained in the Income-tax Act, 1961 [namely, section 9(1)(vi) read along with Explanations 2 and 4 thereof], which deal with royalty, not being more beneficial to the assessee, would not be applicable.

Applying the rationale of the above decision to the facts of this case, the consideration paid by SCEL to KAL for use of SWCS as per the terms of EULA is not "royalty" as per the meaning assigned in the DTAA, since it does not create any interest or right to SCEL which would amount to the use of or right to use any copyright. Accordingly, the same does not give rise to any income chargeable to tax in India. Since the provisions of the DTAA are more beneficial, the same would apply in the case on hand. Hence, the tax deduction at source provisions u/s 195 would not be attracted in this case.

Question-20 : [RTP MAY-22]

Mr. Ganesh, a resident individual aged 52 years, has furnished the following details of his income earned during the previous year 2023-24:

India

(i) Income from a sole-proprietary business in Pune ₹ 80 lakhs.

(ii) Share of profit from a partnership firm in Mumbai ₹ 20 lakhs.

Country G

(iii) Agricultural Income (gross) of CGD 40000 from tea gardens. Taxable @ 20%.

(iv) Brought forward business loss of F.Y.2018-19 in Country G was CGD 5,200 which is not permitted to be set off against other income as per the laws of that country.

Country M

(v) Dividend income (gross) of CMD 30,000. Taxable @10%.

(vi) Rental Income of CMD 52,000 from house property. Taxable @ 15%. He paid CMD 6,000 towards municipal taxes in Country M. Municipal taxes are not allowed as deduction in Country M.

Other Information

- Mr. Ganesh has deposited ₹ 1,50,000 in public provident fund and paid medical insurance premium of ₹ 28,000 by account payee cheque to insure the health of himself and his wife (aged 48 years).
- India has no DTAA with Country G and Country M.

Compute total income and tax liability of Mr. Ganesh for the A.Y. 2024-25 after providing for deduction under section 91, assuming that 1 CGD/CMD = ₹ 70. He has opted out of Default Tax Regime u/s 115BAC

Solution :

Computation of total income and tax liability of Mr. Ganesh for A.Y. 2024-25

Particulars	₹	₹
Income from house property		
Gross annual value of house property in Country M [₹ 52,000 x ₹ 70/CMD]	36,40,000	
Less: Municipal taxes [₹ 6,000 x ₹ 70/CMD]	(4,20,000)	
Net Annual Value	32,20,000	
Less: Deduction @30%	(9,66,000)	
Profits and gains from business and profession		
Income from sole proprietary concern in India	80,00,000	22,54,000
Share of profit from a partnership firm in India of ₹ 20 lakhs, is exempt under section 10(2A)	Nil	
Business profit	80,00,000	
Less: Business Loss in Country G (CGD 5200 x ₹ 70/CGD)	(3,64,000)	
		76,36,000
Income from Other Sources		
Agricultural income from tea gardens in Country G, is taxable in India (CGD 40000 x ₹ 70/CGD)	28,00,000	
Dividend income from Country M (CMD 30000 x ₹ 70/CGD)	21,00,000	
		49,00,000
Gross Total Income		1,47,90,000
Less: Deductions under Chapter VI-A		
Under section 80C [deposit in PPF]	1,50,000	
Under section 80D	25,000	
[Mediclaim premium paid ₹ 28,000, restricted to		1,75,000
Total Income		1,46,15,000

Particulars	₹	₹
Tax on total income		
Tax on ₹ 1,46,15,000 [(30% x ₹ 1,36,15,000) plus 1,12,500]		41,97,000
Add: Surcharge@15%, since total income exceeds ₹ 1 crore but does not exceed ₹ 2 crore		6,29,550
		48,26,550
Add: HEC @ 4%		1,93,062
		50,19,612
Average rate of tax in India	**34.35%**	
[i.e., ₹ 50,19,612/₹ 1,46,15,000 x 100]		
Rebate u/s 91 in respect of income in Country G		
Average rate of tax in Country G	**20%**	
Doubly taxed income [₹ 28,00,000 – ₹ 3,64,000]	**24,36,000**	
Rebate under section 91 on ₹ 24,36,000 @20%		
(lower of average Indian tax rate and rate of tax in Country G)		4,87,200
Rebate u/s 91 in respect of income in Country M		

Average rate of tax in Country M	13.17%	
[CMD 3,000 (30,000 x 10%) + CMD 7800 (52,000 x 15%) / CMD 82,000] x 100		5,73,452
Doubly taxed income [₹ 22,54,000 + ₹ 21,00,000]		
Rebate under section 91 on ₹ 43,54,000 @13.1707% (lower of average Indian tax rate and rate of tax in Country M)		
Tax payable in India		**39,58,960**

Question-21 : [May 22]
Mr. Chetan, an Indian citizen aged 51 years, left India on 1st April 2020 to settle in Country Y. But owing to some personal unavoidable circumstances, he returned back to India permanently on 1st June 2023.

He has a residential property in Country Y from which he earned an income of $ 25,000 for the year ended 31st March 2024. He is eligible for basic exemption limit of $ 8,000 and on balance income, he paid income tax @20% in Country Y. The tax was paid on 10th May 2024 from his bank account in India.

His income from business in India is ₹ 5,00,000 for the year ended on 31st March 2024. He also received dividend amounting to ₹ 1,25,000 from an Indian company and interest of ₹ 11,500 on saving bank account with SBI, during the year.

The exchange rates of 1 $ on various dates is given below:
1.04.2023 - ₹ 74; 31.03.2024- ₹ 75; 10.05.2024 - ₹ 75.5;

Compute the net tax liability of Mr. Chetan in India for the assessment year 2024-25 on the assumption that there is no DTAA between India and Country Y.

Assume that the assessee has opted out of Default Tax Regime u/s 115BAC **(6 Marks)**

Solution :
Mr. Chetan is a resident in India for A.Y.2024-25, since his stay in India in the P.Y.2023-24 is for 304 days which exceeds the minimum required stay of 182 days in that previous year. Also, his stay in India is for 1461 days (i.e., 365 days each in P.Y.2016-17 to P.Y.2019-20 + 1 day for leap year) during the last seven years (which exceeds the minimum specified requirement of 730 days in the immediately preceding seven years) and he has been resident in 7 years (P.Y.2013-14 to P.Y.2019-20) out of 10 years immediately preceding P.Y.2023-24.

Hence, he is resident and ordinarily resident in India for A.Y.2024-25. Accordingly, his global income would be subject to tax. He would, however, be entitled for deduction under section 91 in respect of doubly taxed income earned in Country Y.

Computation of total income of Mr. Chetan for A.Y.2024-25.

Particulars	₹	₹
Income from House Property [Residential property in Country Y]		
Annual Value ($ 25,000 x ₹ 75, exchange rate on 31.3.2024 - Rule 115)	18,75,000	
Less: Deduction under section 24 – 30% of NAV	(5,62,500)	
		13,12,500
Profits and Gains of Business or Profession		
Income from business in India		5,00,000
Income from Other Sources		
Dividend from Indian company [₹1,25,000 x 100/90]	1,38,889	
Interest on savings bank account with SBI	11,500	
		1,50,389
Gross Total Income		19,62,889

Less: Deduction under Chapter VIA		
Under section 80TTA – Interest on savings bank account (actual interest of ₹ 11,500 or ₹ 10,000, whichever is lower)		(10,000)
Total Income		19,52,889
Total Income (rounded off)		19,52,890

Computation of tax liability of Mr. Chetan for A.Y.2024-25

Particulars	₹
Tax on total income [30% of ₹ 9,52,890 + ₹ 1,12,500]	3,98,367
Add: Health and Education cess@4%	15,935
	4,14,302
Less: Deduction under section 91 (See Working Note below)	(1,78,500)
Net Tax Liability	2,35,802
Net Tax liability (rounded off)	2,35,800

Working Note: Calculation of deduction under section 91

Particulars	₹	₹
Average rate of tax in India [i.e., ₹ 4,14,302/₹ 19,52,890x100]	21.21%	
Average rate of tax in country Y [20% of $ 17,000 ($ 25,000 - $ 8,000) = $ 3,400/$ 25,000 x 100 = 13.6%	13.60%	
Doubly taxed income		
Income from house property	13,12,500	
Deduction u/s 91 on ₹13,12,500 @13.60% (being the lower of average Indian tax rate (21.21%) and foreign tax rate (13.60%)]		1,78,500

Question-22 : [PP Nov 22]

Mr. Ritesh, a resident individual, aged 42 years, received the following sums during the previous year 2023-24:
Income from a business in India: ₹ 4,85,000

Royalty from Country N: ₹ 7,80,000 (Rate of Tax in Country N 10%, Tax deducted ₹78,000)
Interest from Country Y: US $ 9,500 (interest became due on 01.04.2023) Tax deducted (on 21.02.2024): US $ 950 (Rate of Tax 10%)

Agriculture income in Country M: ₹ 1,09,000 Additional Information:

(i) As per the DTAA between India and Country N, the royalty will only be taxable in the Source State.
(ii) As per the DTAA between India and Country Y, interest can be taxed in both the states and tax credit will be available in respect of tax payable in resident state.
(iii) Agriculture income is exempt in country M. India does not have a DTAA with Country M.
Telegraphic transfer buying rate on different dates of US $:

Date	Rate (₹)
31.03.2023	75
31.01.2024	78
21.02.2024	79
31.03.2024	80
01.01.2024	80

You are required to calculate the total income and tax payable by Mr. Ritesh assuming that He has opted out of Default Tax Regime u/s 115BAC. **(6 Marks)**

Solution :

Computation of total income and tax payable by Mr. Ritesh for A.Y. 2024-25

Particulars	₹	₹
Profits and Gains of Business or Profession		
Income from business in India		4,85,000
Income from Other Sources		
Royalty from Country N [As per India-Country N DTAA, royalty is taxable in Country N only]	Nil	
Interest from Country Y [US $ 9,500 x 80 (being conversion rate as on 31.3.2024 i.e., last day of the previous year – Rule 115]	7,60,000	
Agricultural Income in Country M [Not exempt in India]	1,09,000	
		8,69,000
Gross Total Income/ Total Income		**13,54,000**
Tax liability on ₹ 13,54,000		
Tax on total income [30% of ₹ 3,54,000 + ₹ 1,12,500]		2,18,700
Add: Health and Education cess@4%		8,748
		2,27,448
Less: Deduction under section 91 [Since agricultural income is exempt in Country M, there is no doubly taxed income. Hence, no deduction under section 91 is allowable]		Nil
Less: Deduction u/s 90 (See Working Note below)		74,100
Tax payable		**1,53,348**
Tax payable (Rounded off)		**1,53,350**

Working Note: Calculation of deduction under section 90

Particulars	₹
Average rate of tax in India [i.e., ₹ 2,27,448 / ₹ 13,54,000 x 100]	16.798%
Tax payable in India on interest from Country Y [₹ 7,60,000 x 16.798%]	1,27,665
Tax paid in Country Y [US $ 950 x 78, being conversion rate as on 31.1.2024 i.e., the last day of the month immediately preceding the month in which tax has been deducted – Rule 128]	74,100
Deduction u/s 90 [being the lower of tax paid on interest income in Country Y and tax payable in India]	74,100

Note – Interest from Country Y represents interest other than interest on securities, in the absence of specific information that the same represents interest on securities. Accordingly, the same has been converted applying the TTBR as on 31.3.2024, being the last day of the P.Y.2023-24. If it is specifically assumed that the same represents interest on securities, then, the TTBR as on 31.3.2023, being the last date of the month immediately preceding the month in which interest became due (April, 2023) has to be considered.

Question-23 :

Mr. Rizvi, an Indian resident, aged 35 years, works in the Welly Oilfields, Country S as a Superintendent in charge at an emolument of AED 9,500 per month. In order to look after his ailing mother residing in Mumbai, India, he shifted with his family on 1st July, 2023 and started his consultancy business in India. Before shifting to India, he let out his house property in Country S @ 3,250 AED from the same month. The details of his income in INR for the year ended 31st March, 2024 are as follows:

Profit from the consultancy business	₹ 8,65,000
Fixed Deposit interest from the bank of Country S	₹ 45,500
Savings bank interest from SBI, Mumbai	₹ 18,250
Dividend income from XYZ Ltd., an Indian company	₹ 7,750

Rate of income tax in Country S is 23%.

During the previous year, Mr. Rizvi paid ₹ 48,000 as medical insurance premium for himself and ₹ 60,000 as medical insurance premium to insure the health of his father, a non-resident aged 66 years, who is not dependent on him.

You are required to compute the total income and tax liability of Mr. Rizvi for assessment year 2024-25 assuming that India has not entered into double taxation avoidance agreement with Country S and he has He has opted out of Default Tax Regime u/s 115BAC. You may consider (1 AED = 23 INR) **(6 Marks)**

Solution :

Computation of total income and tax liability of Mr. Rizvi for A.Y.2024-25

Particulars	₹	₹
Salaries		
Salary income from Welly Oilfields, Country S (9500 AED x 3 x ₹ 23)	6,55,500	
Less: Standard deduction	50,000	
		6,05,500
Income from house property		
Annual Value of house property in Country S (3,250 AED x ₹ 23 x 9 months)	6,72,750	
Less: Deduction u/s 24(a) 30% of Annual Value	2,01,825	
		4,70,925
Profits and Gains of Business or Profession		
Profits from the Consultancy business in India		8,65,000
Income from Other Sources		
Fixed deposit interest from the bank of Country S	45,500	
Savings bank interest from SBI Mumbai	18,250	
Dividend income from XYZ Ltd., an Indian company	7,750	71,500
Gross Total Income		20,12,925
Less: Deductions under Chapter VI-A		
Under section 80D		
Mediclaim premium for self ₹ 48,000 restricted to	25,000	
Mediclaim premium for father ₹ 60,000 restricted to (Since father is a non-resident, even though he is of the age of 66 years)	25,000	
		50,000
Under section 80TTA		
Interest on savings bank account ₹18,250, restricted to		10,000
		19,52,925
Total Income (rounded off)		**19,52,930**
Tax liability on ₹ 19,52,930		
Tax on total income [30% of ₹ 9,52,930 + ₹ 1,12,500]		3,98,379
Add: Health and Education cess@4%		15,935
		4,14,314
Less: Deduction u/s 91 (See Working Note below)		2,38,016
Net tax liability		**1,76,298**
Net tax liability (Rounded off)		**1,76,300**

Working note – Calculation of deduction under section 91	
Particulars	**₹**
Doubly Taxed Income	
Salaries	6,05,500
Income from house property	4,70,925
FD interest in Country S	45,500
	11,21,925
Indian rate of tax = 4,14,314/19,52,930 x 100 = 21.215% Rate of tax in Country S = 23% Lower of the above = 21.215%	
Deduction u/s 91 [21.215% x ₹ 11,21,925]	**2,38,016**
Note – The question mentions that Mr. Rizvi is an Indian resident working in Country S. The facts given therein indicate the intent to test the application of the provisions of section 91. Accordingly, the main solution has been worked out considering **Mr. Rizvi as a resident and ordinarily resident.**	

Alternate Solution

The question specifically mentions that Mr. Rizvi who was residing in Country S and was in employment there, has shifted with his family to India on 1st July, 2023 and started his consultancy business here. No information relating to his stay in India in the earlier previous years is given. He is a resident in P.Y.2023-24 since the period of his stay in this year is 182 days or more. However, since he has been ordinarily residing in Country S so far and has shifted to India only on 1st July, 2023, he would be resident but not ordinarily resident in India for A.Y.2024-25, in which case, the income earned by him in Country S in the P.Y.2023-24 would not be chargeable to tax in India. Accordingly, on this basis, an alternate solution is worked out below –

Computation of total income and tax liability of Mr. Rizvi for A.Y.2024-25

Particulars		₹
Income from Salaries		
Salary income from Welly Oilfields Country S (not taxable, since the income accrues or arises outside India. Since the services are rendered outside India, such income is not deemed to accrue or arise in India)		-
Income from house property		
Income from house property in Country S (income accruing or arising outside India is not taxable since Mr. Rizvi is a RNOR)		-
Profits and Gains of Business or Profession	**₹**	**₹**
Profits from the Consultancy business		8,65,000
Income from Other Sources		
Fixed deposit interest from the bank of Country S (income accruing or arising outside India not taxable since Mr. Rizvi is a RNOR)	-	
Savings bank interest from SBI Mumbai	18,250	
Dividend income from XYZ Ltd., an Indian company	7,750	
		26,000
Gross Total Income		**8,91,000**
Less: Deductions under Chapter VI-A		
Under section 80D		
Mediclaim premium for self ₹ 48,000 restricted to	₹ 25,000	
Mediclaim premium for father ₹ 60,000 restricted to (Since father is a non-resident, even though he is of the age of 66 years)	₹ 25,000	
Under section 80TTA	50,000	
Interest on savings bank account ₹ 18,250, restricted to	10,000	60,000
Total Income		**8,31,000**
Tax liability on ₹ 8,31,000		

Tax on total income [20% of ₹ 3,31,000 + ₹ 12,500]		78,700
Add: Health and Education cess@4%		3,148
Tax liability		81,848
Tax liability (Rounded off)		**81,850**

Note – While working out the question on the basis that Mr. Rizvi is a RNOR, it may be assumed that income from house property in Country S or FD interest from bank of Country S or both is received in India, since effect of deduction under section 91 can be given only when such assumption(s) is made. The figures of doubly taxed income, deduction under section 91 and net tax liability would differ depending on the assumption made.

Extra Page

CHAPTER 23
ADVANCE RULINGS

Part-A : Study Material Questions

Question-1 :
Q, a non-resident, made an application to the Board for Advance Rulings on 3.4.2023 in relation to a transaction proposed to be undertaken by him. On 1.5.2023, he decides to withdraw the said application. Can he withdraw the application on 1.5.2023?

Solution :
Section 245Q(3) of the Income-tax Act, 1961 provides that an applicant, who has sought for an advance ruling, may withdraw the application within 30 days from the date of the application. Since the 30 day period from the date of application by Q to the Board for Advance Rulings has not lapsed, he can withdraw the application.

Question-2 :
Examine when can an advance ruling pronounced by the Board for Advance Rulings be declared void. What is the consequence?

Solution :
As per section 245T, an advance ruling can be declared to be void ab initio by the Board for Advance Rulings if, on a representation made to it by the Principal Commissioner or Commissioner or otherwise, it finds that the ruling has been obtained by fraud or misrepresentation of facts. Thereafter, all the provisions of the Act will apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this section) as if no such advance ruling has been made. A copy of such order shall be sent to the applicant and the Principal Commissioner or Commissioner.

Question-3 :
The Board for Advance Rulings has the powers of compelling the production of books of account – Examine the correctness or otherwise of this statement.

Solution :
The statement is correct.
Under section 245U, the Board for Advance Rulings shall have all the powers vested in the Civil Court under the Code of Civil Procedure, 1908 as are referred to in section 131.

Accordingly, the Board for Advance Rulings shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely -

(1) discovery and inspection;
(2) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;
(3) compelling the production of books of account and other documents; and
(4) issuing commissions.

Therefore, the Board for Advance Ruling has the powers of compelling the production of books of account.

Question-4 :
The term 'Advance Ruling' includes within its scope, a determination by the Board for Advance Rulings only in relation to a transaction undertaken by a non-resident applicant. Examine the correctness of this statement, with reference to the provisions of the Income tax Act 1961.

Solution :
The statement is not correct. As per section 245N, advance ruling not only includes a determination by the BAR in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant, but also includes, inter alia, determination by the BAR –

(i) in relation to the tax liability of a non-resident arising out of a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with such non-resident and such determination shall include the determination of any question of law or of fact specified in the application

(ii) in relation to the tax liability of a resident applicant, arising out of a transaction which has been undertaken or is proposed to be undertaken by such applicant and such determination shall include the determination of any question of law or of fact specified in the application.

Question-5 :
What is the remedy available to an applicant who is aggrieved by the ruling of Board for Advance Rulings? Also, state the time limit within which he should exercise this remedy.

Solution :
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.

Part-B : Additional Questions

Question-6 : [MTP APRIL-21]
"The Authority for Advance Rulings has the powers of compelling the production of books of account". Examine the correctness or otherwise of this statement. **(3 Marks)**

Solution :
The statement is correct. Under section 245U, the Authority for Advance Rulings shall have all the powers vested in the Civil Court under the Code of Civil Procedure, 1908 as are referred to in section 131.

Accordingly, the Authority for Advance Rulings shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely -
(1) **discovery and inspection;**
(2) **enforcing the attendance of any person**, including any officer of a banking company and **examining him on oath;**
(3) **compelling the production of books** of account and other documents; and
(4) **issuing commissions.**
Therefore, the Authority for Advance Ruling has the power of compelling the production of books of account.

Question-7 : [RTP MAY-22]
ABC Ltd., a domestic company, applied for advance ruling on 1.4.2021 in relation to tax liability arising out of transactions valuing 110 crore which is proposed to be undertaken by it. The advance ruling was pronounced on 31.8.2021. Is the same binding on ABC Ltd.? Examine.

Would your answer change if the advance ruling was pronounced on 30.9.2021? What would be the remedy available to ABC Ltd. if it is aggrieved by the advance ruling pronounced on 30.9.2021? Examine.

Solution :
Up to 31.8.2021, advance ruling was pronounced by the Authority for Advance Rulings. As per section 245S, the advance ruling pronounced by the Authority for Advance Rulings (AAR) would be binding on the applicant. Accordingly, the advance rulings pronounced on 31.8.2021 by the AAR would be binding on ABC Ltd. With the constitution of Boards for Advance Rulings (BAR) for giving advance rulings on or after 1.9.2021, the Authority for Advance Rulings (AAR) ceased to operate with effect from such date. **With effect from 1.9.2021, advance ruling would be pronounced by the Board for Advance Rulings (BAR).**

By virtue of section 245Q(4), since the application for advance ruling was made on 1.4.2021 (i.e., before 1.9.2021) by ABC Ltd. and no ruling has been pronounced by the AAR before 1.9.2021, such application along with all relevant records, documents or material, on the file of AAR shall be transferred to BAR and shall be deemed to be records before the BAR for all purposes.

The binding provision contained in section 245S will, however, not apply to an advance ruling pronounced on or after 1.9.2021 by the Board for Advance Rulings. Accordingly, in the case of ABC Ltd., the binding provision would not apply in respect of the advance ruling pronounced on 30.9.2021 by the Board for Advance Rulings. As per section 245W(1), if ABC Ltd. is **aggrieved by the advance ruling pronounced by the Board for Advance Rulings on 30.9.2021, it may appeal to the High Court against such ruling, within 60 days from the date of communication of that ruling.**

Question-8 [PP NOV 22]
Explain the correctness or otherwise of the following statements giving proper reasons thereof:

(A) Mr. Rikky, a resident individual, is aggrieved by an order passed by the Board for Advance Ruling on 1.10.2021. Since the decision of the Board is binding on the applicant, he has no other option but to accept the ruling of the Board.

(B) M/s Aritri Ltd., an Indian public sector company, wants to seek advance ruling from the Board for Advance Ruling (BOAR) in respect of a matter relating to computation of its total income involving a question of law relating to such computation. However, the matter is already pending before the Income-tax Appellate Tribunal (ITAT) as on the date of application for advance ruling i.e 12.12.2021. It cannot seek the BOAR ruling till the matter is pending before the ITAT. **(3 Marks)**

Solution :

(A) The statement is not correct.

The binding provision will not apply to an advance ruling pronounced on or after 1.9.2021 by the Board of Advance Ruling. Therefore, the order passed by the Board for Advance Ruling on 1.10.2021 is not binding on Mr. Rikky.

He may appeal to the High Court against such order within sixty days from the date of the communication of that order.

(B) The statement is not correct.

A resident falling within any class or category of persons as notified by the Central Government i.e., a public sector undertaking can seek advance ruling even if question raised is pending before the Appellate Tribunal.

Question-9 [MTP Nov 23]

Explain the correctness or otherwise of the following statements giving proper reasons thereof:

(A) Mr. Shalin, a resident individual, is aggrieved by an order passed by the Board for Advance Ruling. Since the decision of the Board is binding on the applicant, he has no other option but to accept the ruling of the Board.

(B) M/s TNS Ltd., an Indian public sector company, wants to seek advance ruling from the Board for Advance Ruling (BAR) in respect of a matter relating to computation of its total income involving a question of law relating to such computation. However, the matter is already pending before the Income-tax Appellate Tribunal (ITAT) as on the date of application for advance ruling. It cannot seek the BAR ruling till the matter is pending before the ITAT. **(3 Marks)**

Solution:

(A) The statement is not correct.

The binding provision will not apply to an advance ruling pronounced by the Board of Advance Ruling. Therefore, the order passed by the Board for Advance Ruling is not binding on Mr. Shalin.

He may appeal to the High Court against such order within sixty days from the date of the communication of that order.

(B) The statement is not correct.

A resident falling within any class or category of persons as notified by the Central Government i.e., a public sector undertaking can seek advance ruling even if question raised is pending before the Appellate Tribunal

CHAPTER 24
TRANSFER PRICING

Part-A : Study Material Questions

Question-1 :
US Ltd., a US company has a subsidiary, IND Ltd. in India. US Ltd. sells computer monitors to IND Ltd. for resale in India. US Ltd. also sells computer monitors to CMI Ltd., another computer reseller. It sells 50,000 computer monitors to IND. Ltd. at ₹ 11,000 per unit. The price fixed for CMI Ltd. is ₹ 10,000 per unit. The warranty in case of sale of monitors by IND Ltd. is handled by IND Ltd. However, for sale of monitors by CMI Ltd., US Ltd. is responsible for the warranty for 3 months. Both US Ltd. and IND Ltd. offer extended warranty at a standard rate of ₹ 1,000 per annum. On these facts, how is the assessment of IND Ltd. going to be affected?

Solution :
US Ltd., the foreign company and IND Ltd., the Indian company are associated enterprises since US Ltd. is the holding company of IND Ltd. US Ltd. sells computer monitors to IND Ltd. for resale in India. US Ltd. also sells identical computer monitors to CMI Ltd., which is not an associated enterprise. The price charged by US 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 US Ltd. and IND Ltd.) and uncontrolled transaction (i.e. transaction between US Ltd. and CMI Ltd.) and the price so adjusted shall be the arm's length price for the international transaction.

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

Particulars	**No.**	**₹**
Sale price charged by US Ltd. to CMI Ltd.		10,000
Less: Cost of warranty included in the price charged to CMI Ltd. (₹ 1,000 x 3 /12)		250
Arm's length price		**9,750**
Actual price paid by IND Ltd. to US Ltd.		11,000
Difference per unit		**1,250**
No. of units supplied by US 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 ₹ 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.

Question-2 :
Earth (P) Ltd., Calcutta is engaged in trading of electronic goods. It purchased goods from its associated enterprise Sun Pte. Ltd., Singapore, and also from unrelated party, Oceania Ltd., UK. For the F.Y.2023-24, the gross profit margin was 15% on the sale of goods of Sun Pte Ltd. whereas it was 20% in the case of Oceania Ltd. After-sales warranty of 6 months was provided by Sun Pte Ltd. whereas Oceania Ltd. gave after-sales warranty of 1 year. The cost of warranty may be taken as 2% of the sale price. The Sun Pte. Ltd.'s brand value is internationally known and the benefit of the brand value can be taken as 1% of sale price. During the F.Y.2023-24, it sold goods of Sun Pte Ltd. for ₹ 20 crores and of Oceania Ltd. for ₹ 15 crores. As regards transport cost of the goods purchased, there was no difference between related and unrelated party. Compute the ALP of the transaction between Earth (P) Ltd. and Sun Pte Ltd., Singapore by applying the Resale Price Method, considering the facts of the case.

Solution :
As per section 92B, the transactions entered into between Earth (P) Ltd., an Indian company, and Sun Pte. Ltd., Singapore, being associated enterprises, for purchase of electronic goods would be international transaction.

Since Earth (P) Ltd. purchased similar electronic goods from Oceania Ltd., an unrelated entity, and sold the same to unrelated parties, this transaction can be considered as uncontrolled transaction and the gross profit margin of 20% earned on sale of such goods can be considered for the purpose of determining the arm's length price of the transactions between Earth (P) Ltd. and Sun Pte. Ltd. However, functional adjustments need to be given effect to in arriving at the ALP.

Computation of ALP of transaction between Earth (P) Ltd. and Sun Pte. Ltd.

Particulars	Amount (In ₹)
Resale price of goods purchased from Sun Pte. Ltd.	20,00,00,000
Less: Profit margin with reference to uncontrolled transaction between Earth (P) Ltd. and Oceania Ltd. (20% on sale)	4,00,00,000
	16,00,00,000
Add: Adjustment for benefit of brand value of Sun Pte. Ltd. [Sun Pte. Ltd has its brand value internationally. Therefore, adjustment of benefit of brand value has to be carried out to arrive at ALP (1% of sale price)]	20,00,000
Less: Adjustment of cost of warranty [Sun Pte. Ltd. provides warranty for 6 months whereas unrelated party has provided warranty of 12 months. Therefore, adjustment for the cost of such warranty has to be carried out to arrive at arm's length price (2% of sale price x 6/12)]	(20,00,000)
Arm's length price	**16,00,00,000**

Question-3 :
ABC Ltd., Canada holds 35% shares in LMN Ltd., India. LMN Ltd. develops software and does both onsite and offsite consultancy services for the customers. LMN Ltd. during the year billed ABC Ltd. Canada for 120 man-hours at the rate of ₹ 1,800 per man hour. The total cost (direct and indirect) for executing this work amounted to ₹ 2,25,000.

However, LMN Ltd. billed XYZ Ltd., India at the rate of ₹ 2,800 per man hour for the similar level of manpower and earned a Gross Profit of 50% on its cost. The transactions of LMN Ltd. with ABC Ltd. and XYZ Ltd. are comparable, subject to the following differences:

- While LMN Ltd. derives technology support from the ABC Ltd., there is no such support from XYZ Ltd. The value of technology support received from ABC Ltd. may be put at 18% of normal gross profits.
- As ABC Ltd. gives business in large volumes, LMN Ltd. offered to ABC Ltd., a quantity discount which may be valued at 10% of normal gross profits.
- In the case of rendering services to ABC Ltd., LMN Ltd. neither runs any risk nor incurs any marketing costs. On the other hand, in the case of services to XYZ Ltd., LMN Ltd. has to assume all the risk and costs associated with the marketing function which may be estimated at 12% of the normal gross profits.
- LMN Ltd. offered one month credit to ABC Ltd. The cost of providing such credit may be valued at 2% of the gross profits. No such credit was given to XYZ Ltd.

Compute the Arm's Length Price along with income to be increased under the Cost Plus Method.

Solution :
LMN Ltd, an Indian company and ABC Ltd., a Canadian company, are deemed to associated enterprises as per section 92A(2), since ABC Ltd. holds shares carrying 35% of the voting power (i.e., not less than 26% of voting power) in LMN Ltd. Further, the transaction of developing software and providing consultancy services (both onsite and offsite) fall within the meaning of "international transaction" under section 92B. Hence, transfer pricing provisions would be attracted in this case.

Computation of Arm's Length Price as per Cost Plus Method

Gross Profit mark-up on cost in case of XYZ Ltd. [an unrelated party]		50%
Less: Adjustments for functional and other differences		
- Value of technology support [ABC Ltd. provides technology support, but XYZ Ltd. does not provide such support. Therefore, value of technology support shall be adjusted] [18% of 50%, being gross profit]	9%	
- Quantity discount to ABC Ltd. [Quantity discount is allowed to ABC Ltd. as it gives business in large volumes, but the same is not provided to XYZ Ltd. Therefore, it shall be adjusted] [10% of 50%, being gross profit]	5%	
- Risk and cost associated with marketing [LMN Ltd. has to bear all the risk and costs associated with the marketing function in case of XYZ Ltd., while there is no such risk in case of services to ABC Ltd. Therefore, market risk and cost shall be adjusted] [12% of 50%, being gross profit]	6%	20%
		30%
Add: Cost of credit to ABC Ltd. [LMN Ltd has provided credit of 1 month to ABC Ltd. but not to the unrelated party. Therefore, adjustment for the cost of such credit has to be carried out to arrive at the ALP] [(2% of 50%, being gross profit]		1%
Arm's length gross profit mark up to cost		**31%**
Cost incurred by LMN Ltd. for executing ABC Ltd.'s work		2,25,000
Add: Adjusted gross profit (₹ 2,25,000 x 31%)		69,750
Arm's length billed value		**2,94,750**
Less: Actual Billed Income from ABC Ltd. (₹ 1800 x 120 man hours) 2,16,000		
Total Income of LMN Ltd to be increased by		**78,750**

Question-4 :
Andes Inc. having its business in Malaysia has advanced a loan of MD 1,60,000 to Andes Ltd, India. Book value of total assets of Andes Ltd was ₹ 125 lakhs. Andes Ltd provides software backup support to Andes Inc. Andes Ltd has spent 50,000 man hours during the financial year 2023-24 for the services rendered to Andes Inc. The cost for Andes Ltd is MD 75/manhour. Andes Ltd has billed Andes Inc. at MD 90.75/manhour.

Gama Ltd. in India which has a similar business model, provides software backup support to Olive Inc. in Penang, Malaysia. Gama Ltd.'s cost and operating profits are as hereunder:

Particulars	**₹ in lakhs**
Direct costs	600
Indirect costs	200
Operating profits	200

(1) Calculate Arm's Length Price for the transaction between Andes Ltd. and Andes Inc. based on the above data of Gama Ltd. using the Transactional Net Margin Method. Assume 1 MD = ₹ 45.
(2) Explain, if there is any adjustment to be made to the total income of Andes Ltd.
Note: MD = Malaysia Dollars

Solution :
Two enterprises are deemed to be associated enterprises where one enterprise advances loan constituting not less than 51% of the book value of the total assets of the other enterprise.

In this case, since Andes Inc., a foreign company, has advanced loan to Andes Ltd., an Indian company, and such loan constitutes 57.6% [(₹ 45 x 1,60,000 x 100/1,25,00,000] of the book value of total assets of Andes Ltd., Andes Inc and Andes Ltd. are deemed to be associated enterprises. Since the transaction of provision of software backup support by Andes Ltd. to Andes Inc. is an international transaction between associated enterprises the provisions of transfer pricing would be attracted in this case.

Determination of Operating Margin of transaction of provision of software backup support by Andes Ltd. to Andes Inc

Particulars	**₹**
Billing per manhour [MD 90.75/hour x ₹45]	4,083.75
Cost per man hour [MD 75/hour x ₹45]	3,375.00
Operating profit per manhour	**708.75**
Operating profits to cost (%) [708.75 x 100/3375] = 21%	

Determination of Operating Margin of Comparable Uncontrolled transaction i.e., provision of software backup support. by Gama Ltd. to Olive Inc.

Particulars	**₹ in lakhs**
Direct Cost	600
Indirect Cost	200
Total cost	**800**
Operating profits	200
Operating profits to cost (%) [200 x 100/800] = 25%	

(1) Computation of Arm's Length Price of provision of software backup support provided by Andes Ltd. to Andes Inc. by applying TNMM

Particulars	**₹**
Cost for Andes Ltd. (per man hour) [MD 75 x ₹ 45/MD]	3,375.00
Add: Arm's length operating profit margin as % of cost (25% of ₹ 3,375)	843.75
Arm's length price (per manhour) in	**₹ 4,218.75**
Arm's length price of total manhours spent by Andes Ltd. for providing software backup support to Andes Inc. [₹ 4,218.75 x 50,000 man hours] = ₹ 21,09,37,500	

(2) Adjustment to be made to the total income of Andes Ltd.

Particulars	**₹**
Arm's length price of total manhours spent by Andes Ltd. for providing software backup support to Andes Inc.	21,09,37,500
Less: Amount actually billed [90.75 MD x ₹ 45/MD x 50,000 manhours]	20,41,87,500
Arm's length adjustment to be made to the total income of Andes Ltd.	**67,50,000**

Question-5 :
XYZ (P) Ltd. has been supplying goods to its Associate Enterprise (AE) in foreign country. It has applied for Advance Pricing Agreement ('APA') in respect of the transactions with its AE. Application for APA was filed on 15th March, 2023 and the APA was signed on 2nd June, 2023. Discuss from which previous year APA would be applicable.

Solution :
XYZ (P) Ltd. has filed APA application in respect of transactions with its AE which are of a continuing nature from dealings that are already occurring. Since the application was filed on 15th March, 2023 i.e., before 1.4.2023, APA would be applicable from P.Y. 2023-24.

Question-6 :
On 1.4.2023, PQR Ltd., an Indian company, advanced a loan of ₹ 6 crores to XYZ Inc., a company resident in Singapore. As on the date of loan, the book value of total assets in the books of XYZ Inc. was ₹ 10 crores. XYZ Inc. paid the entire loan along with interest thereon on 31st August, 2023. During the Financial Year 2023-24, PQR Ltd. also entered into an agreement with XYZ Inc. to provide 20,000 medical equipments at a cost of ₹ 7,400 per unit. The Assessing Officer treats them as associate enterprises and wants to re-compute the income of PQR Ltd. at arms' length price. You are required to answer the following questions in this respect:

(1) Would PQR Ltd. and XYZ Inc. be treated as associate enterprises for the purpose of transfer pricing adopted by the Assessing Officer? If yes, why?

(2) Calculate the arms length price of PQR Ltd. which sells the same equipment at the rate of ₹ 9,000 per unit to Y Ltd. and at the rate of ₹ 9,500 per unit to X LLP (both of them are unrelated parties in respect of PQR Ltd.). PQR Ltd. is not a wholesale dealer.

(3) What are the options available to PQR Ltd. in respect of such increase in transfer price by income tax authorities, if PQR Ltd. accepts such transfer price?

Solution :

(1) Two enterprises are deemed to be associated enterprises as per section 92A(2)(c), if a loan advanced by one enterprise to the other enterprise constitutes not less than 51% of the book value of total assets of the other enterprise at any time during the previous year. Since PQR Ltd., an Indian company, advanced loan of an amount of ₹ 6 crores to XYZ Inc., a Singapore company, which is 60% of the book value of the total assets of XYZ Inc. (i.e., 60% of ₹ 10 crores), PQR Ltd. and XYZ Inc. are deemed to be associated enterprises.

(2) PQR Ltd. sells equipment at the rate of ₹ 9,000 per unit to Y Ltd. and at ₹ 9,500 per unit to X LLP, both of them being unrelated parties. Since the transactions can be considered as comparable uncontrolled transactions for the purpose of determining the arm's length price, Comparable Uncontrolled Price (CUP) method would be most appropriate method.

Since two prices are determined by the most appropriate method, and data set comprises of only two entries, the arm's length price shall be the arithmetical mean of both the values included in the dataset.

Accordingly, arm's length price would be ₹ 9,250 [(₹ 9,000 + ₹ 9,500)/2]. Since the deviation between the arm's length price and actual sale price of the equipment to XYZ Inc. i.e., ₹ 7,400 per unit is 25%, which far exceeds the maximum percentage deviation which can be notified by the Central Government4, the arm's length price would be ₹ 9,250 per unit and the total income would increase by ₹ 3.7 crores [i.e. ₹ 1,850 (₹ 9,250 – ₹ 7,400) x 20,000 units]

(3) On account of the primary adjustment of ₹ 3.7 crores (₹ 1850 x 20,000 units) made by the Assessing Officer, in the total income of PQR Ltd. for A.Y.2024-25, secondary adjustment has to be made under section 92CE, since –

(1) The company has accepted the primary adjustment made by the Assessing Officer;
(2) The primary adjustment is in respect of A.Y.2024-25; and
(3) The primary adjustment exceeds ₹ 100 lakhs.

Accordingly, the excess money i.e., ₹ 3.7 crores available with the XYZ Inc. has to be repatriated to India within 90 days of the date of the order of the Assessing Officer.
Alternatively, PQR Ltd. can opt to pay additional income-tax @20.9664% (tax @18% plus surcharge @12% plus cess@4%) on ₹ 3.7 crores, which amounts to ₹ 77,57,568.

Question-7 :

A Ltd., an Indian company, provides technical services to a company, XYZ Inc., located in a NJA for a consideration of ₹ 40 lakhs in October, 2023. It charges ₹ 42 lakhs for similar services rendered to PQR Inc., which is not located in a NJA. PQR Inc. is not an associated enterprise of A Ltd.
Discuss the tax implications under section 94A read with section 92C in respect of the above transaction of provision of technical services by A Ltd. to XYZ Inc.

Solution :

Since XYZ Inc. is located in a NJA, the transaction of provision of technical services by the Indian company, A Ltd., would be deemed to be an international transaction and XYZ Inc. and A Ltd. would be deemed to be associated enterprises. Therefore, the provisions of transfer pricing would be attracted in this case.

The price of ₹ 42 lakhs charged for similar services from PQR Inc, being an independent entity located in a non-NJA country, can be taken into consideration for determining the arm's length price (ALP) under Comparable Uncontrolled Price (CUP) Method.

Since the ALP is more than the transfer price, the ALP of ₹ 42 lakhs would be considered as the income arising from the international transaction between A Ltd. and XYZ Inc.

It may be noted that the benefit of permissible variation between the ALP and transfer price is not available in respect of a transaction entered into with an entity in NJA.

Question-8 :
Mr. X, a non-resident individual, is due to receive interest of ₹ 5 lakhs during March 2024 from a notified infrastructure debt fund eligible for exemption under section 10(47). He incurred expenditure amounting to ₹ 10,000 for earning such income. Assuming that Mr. X is a resident of a NJA, discuss the tax implications under section 94A, read with sections 115A and 194LB.

Solution :
The interest income received by Mr. X, a non-resident, from a notified infrastructure debt fund would be subject to a concessional tax rate of 5% under section 115A on the gross amount of such interest income. Therefore, the tax liability of Mr. X in respect of such income would be ₹ 26,000 (being 5% of ₹ 5 lakhs plus health and education cess@4%).
Under section 194LB, tax is deductible @5% (plus health and education cess@4%) on interest paid by such fund to a non-resident. However, since X is a resident of a NJA, tax would be deductible@30% (plus health and education cess@4%) as per section 94A, and not @5% specified under section 194LB. This is on account of the provisions of section 94A(5), which provides that **"Notwithstanding anything contained in any other provision of this Act, where a person located in a NJA is entitled to receive any sum or income or amount on which tax is deductible under Chapter XVII-B, the tax shall be deducted at the highest of the following rates, namely–**

(a) at the rate or rates in force;
(b) at the rate specified in the relevant provision of the Act;
(c) at the rate of thirty per cent." Mr. X can, however, claim refund of excess tax deducted along with interest.

Question-9 :
ND Ltd., an Indian Company, has borrowed ₹ 90 crores on 01-04-2023 from M/s. TM Inc, a company incorporated in London, at an interest rate of 10% p.a. The said loan is repayable over a period of 5 years. Further, this loan is guaranteed by M/s TY Inc. incorporated in UK. M/s. TD Inc, a non-resident, holds shares carrying 40% of voting power both in M/s ND Ltd. and M/s TY Inc.
Net profit of M/s. ND Ltd. for P.Y. 2023-24 was ₹ 11 crores after debiting the above interest, depreciation of ₹ 5 crores and income-tax of ₹ 4 crores.

Calculate the amount of interest to be allowed to be claimed under the head "Profits and gains of business or profession" in the computation of M/s ND Ltd. giving appropriate reasons. Also explain allowability of such disallowed interest, if any.

Solution :
If an Indian company, being the borrower, incurs any expenditure by way of interest in respect of any debt issued by its non-resident associated enterprise (AE) and such interest exceeds ₹ 1 crore, then, the interest paid or payable by such Indian company in excess of 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to associated enterprise, whichever is lower, shall not be allowed as deduction as per section 94B.

Further, where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise and limitation of interest deduction would be applicable.

In the present case, since M/s TD Inc holds 40% of voting power i.e., more than 26% of voting power in both ND Ltd and M/s TY Inc, ND Ltd. and M/s TY Inc are deemed to be associated enterprises.

Since loan of ₹ 90 crores taken by ND Ltd., an Indian company from M/s TM Inc, is guaranteed by M/s TY Inc, an associated enterprise of ND Ltd., such debt shall be deemed to have been issued by an associated enterprise and interest payable to M/s TM Inc shall be considered for the purpose of limitation of interest deduction u/s 94B.

Computation of interest to be allowed as per section 94B in the computation of income under the head profits and gains of business or profession of ND Ltd.

Particulars		₹ (in crores)
Net profit		11.00
Add: Interest already debited (₹ 90 crores x 10%)		9.00
Depreciation		5.00
Income-tax		4.00
EBITDA		**29.00**
Interest paid or payable by ND Ltd.		**9.00**
Lower of the following would be disallowed		
- Total interest paid or payable in excess of 30% of EBITDA (₹ 9,00,00,000 – ₹ 8,70,00,000) = ₹ 30 lakhs	0.30	
- Interest paid or payable to non-resident AE	9.00	
Interest to be disallowed as deduction		0.30
Interest allowable as deduction under the head "Profits and gains from business or profession (₹ 9,00,00,000 – ₹ 30,00,000)		8.70

Disallowed interest of ₹ 30 lakhs can be carried forward to the subsequent assessment year and it would be allowed as deduction against profits and gains, to the extent of allowable interest expenditure u/s 94B.

Question-10 :
Examine the consequences that would follow if the Assessing Officer makes adjustment to arm's length price in international transactions of the assessee resulting in increase in taxable income. What are the remedies available to the assessee to dispute such adjustment?

Solution :
In case the Assessing Officer makes adjustment to arm's length price in an international transaction which results in increase in taxable income of the assessee, the following consequences shall follow:-

(1) No deduction under section 10AA or Chapter VI-A shall be allowed from the income so increased.
(2) No corresponding adjustment would be made to the total income of the other associated enterprise (in respect of payment made by the assessee from which tax has been deducted or is deductible at source) on account of increase in the total income of the assessee on the basis of the arm's length price so recomputed.

The remedies available to the assessee to dispute such an adjustment are:-
(1) In case the assessee is an eligible assessee under section 144C, he can file his objections to the variation made in the income within 30 days of the receipt of draft order by him to the Dispute Resolution Panel and Assessing Officer. Appeal against the order of the Assessing Officer in pursuance of the directions of the Dispute Resolution Panel can be made to the Income-tax Appellate Tribunal.

(2) In any other case, he can file an appeal under section 246 to the Joint Commissioner (Appeals)/ under section 246A to the Commissioner (Appeals) against the order of the Assessing Officer within 30 days of the date of service of notice of demand.

(3) The assessee can opt to file an application for revision of order of the Assessing Officer under section 264 within one year from the date on which the order sought to be revised is communicated, provided the time limit for appeal to the Commissioner (Appeals) or the Income-tax Appellate Tribunal has expired or the assessee has waived the right of such an appeal. The eligibility conditions stipulated in section 264 should be fulfilled.

Question-11 :
Mr. Hari holds 30% of voting power in ABC Inc, a company incorporated under the laws of Country A. For the purpose of expansion of business, the said company enters into an agreement with XYZ Ltd., a company incorporated under the Indian laws. As per one of the clauses of the agreement, ABC Inc has the power to appoint 6 directors of XYZ Ltd., which has 12 directors on the board. Further, total purchases by XYZ Ltd. for the F.Y. 2023-24 is estimated to be ₹ 500 crores, out of which, purchases of ₹ 48 crores has been sourced locally and the balance shall be supplied by ABC Inc. The price for entire purchase has been fixed in the agreement and the conditions for supply are determined by ABC Inc. Advise Mr. Hari as to whether ABC Inc and XYZ Ltd are Associated Enterprises, on the basis of the provisions of the Income-tax Act, 1961.

Solution :
Two enterprises shall be deemed to be associated enterprises if, at any time during the previous year, more than half of the board of directors or members of the governing board, or one or more of the executive directors or executive members of the governing board of one enterprise, are appointed by the other enterprise.

In the present case, the power to appoint is only for half the number and not more than half. Hence, ABC Inc. and XYZ Ltd. are not associated enterprises under this criteria.

Two enterprises shall be deemed to be associated enterprises, if 90% or more of the raw materials and consumables required for the manufacture or processing of goods or article carried out by one enterprise, are supplied by the other enterprise, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise.

In this case, ABC Inc. supplies more than 90% of the requirements of purchases of XYZ Ltd. Further, the price is controlled by the former by way of written agreement. Also, the conditions for supply are determined by ABC Inc. Hence, the two entities would be deemed to be associated enterprises under this criterion.

Question-12 :
I. Limited, an Indian Company supplied billets to its holding company, U. Limited, UK during the previous year 2023-24. I. Limited also supplied the same product to another UK based company, V. Limited, an unrelated entity. The transactions with U. Limited are priced at Euro 500 per MT (FOB), whereas the transactions with V. Limited are priced at Euro 700 per MT (CIF). Insurance and Freight amounts to Euro 200 per MT. Compute the arm's length price for the transaction with U. Limited.

Solution :
In this case, I. Limited, the Indian company, supplied billets to its foreign holding company, U. Limited. Since the foreign company, U. Limited, is the holding company of I. Limited, I. Limited and U. Limited are the associated enterprises within the meaning of section 92A.

As I. Limited supplies similar product to an unrelated entity, V. Limited, UK, the transactions between I. Limited and V. Limited can be considered as comparable uncontrolled transactions for the purpose of determining the arm's length price of the transactions between I. Limited and U. Limited Comparable Uncontrolled Price (CUP) method of determination of arm's length price (ALP) would be applicable in this case.

Transactions with U. Limited are on FOB basis, whereas transactions with V. Limited are on CIF basis. This difference has to be adjusted before comparing the prices.

	Amount (in Euro)
Price per MT of billets to V. Limited	700
Less: Cost of insurance and freight per M.T.	200
Adjusted Price per M.T.	500

Since the adjusted price for V. Limited, UK and the price fixed for U. Limited are the same, the arm's length price is Euro 500 per MT. Since the sale price to related party (i.e., U. Limited) and unrelated party (i.e., V. Limited) is the same, the transaction with related party U. Limited has also been carried out at arm's length price.

Question-13 :
X Ltd., operating in India, is the dealer for the goods manufactured by Yen Ltd. of Japan. Yen Ltd. owns 55% shares of X Ltd. and out of 7 directors of the company, 4 were appointed by them. The Assessing Officer, after verification of international transactions of ₹ 300 lakhs of X Ltd. for the relevant year and by noticing that the company had failed to maintain the requisite records and had also not obtained the accountants report, adjusted its income by making an addition of ₹ 30,00,000 to the declared income and also issued a show cause notice to levy various penalties. X Ltd seeks your expert opinion.

Solution :
The facts of the case indicate that X Ltd. and Yen Ltd. of Japan are associated enterprises since Yen Ltd. holds 55% shares of X Ltd. and has appointed more than half of the board of directors of X Ltd. Since Yen Ltd. is a non-resident, any transaction between X Ltd. and Yen Ltd. would fall within the meaning of "international transaction" under section 92B. Therefore, the income arising from such transactions have to be computed having regard to the arm's length price.

The action of the Assessing Officer in making addition to the declared income and issuing show cause notice for levy of various penalties is correct since X Ltd. had committed defaults, as listed hereunder, in respect of which penalty, as briefed hereunder, is imposable -

(i) Failure to report any international transaction or any transaction, deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X applies, would attract penalty @ 200% of the amount of tax payable since it is a case of misreporting of income referred under section 270A(9) read with section 270A(8).

(ii) Failure to maintain the requisite records as required under section 92D in relation to international transaction makes it liable for penalty under section 271AA which will be 2% of the value of each international transaction.

(iii) Failure to furnish report from an accountant as required under section 92E makes it liable for penalty under section 271BA i.e., a fixed penalty of ₹ 1 lakh.

The Assessing Officer shall give an opportunity of hearing to the assessee with a notice as to why the arm's length price should not be determined on the basis of material or information or document in the possession of the Assessing Officer.

Note: It is assumed that X Ltd. has not entered into an APA and has also not opted to be subject to Safe Harbour Rules.

Question-14 :
Anush Motors Ltd., an Indian company declared income of ₹ 300 crores computed in accordance with Chapter IV-D but before making any adjustments in respect of the following transactions for the year ended on 31.3.2024:
(i) 10,000 cars sold to Rida Ltd., US company, which holds 30% shares in Anush Motors Ltd. at a price which is less by $ 200 for each car than the price charged from Shingto Ltd.

(ii) Royalty of $ 1,20,00,000 was paid to Kyoto Ltd., a US company, for use of technical know-how in the manufacturing of car. However, Kyoto Ltd. had provided the same know-how to another Indian company for $ 90,00,000. Kyoto Ltd. is the sole owner of technology used by Anush Motors Ltd. in its manufacturing process and the manufacture of cars by Anush Motors Ltd is wholly dependent on the use of knowhow owned by Kyoto Ltd.

(iii) Loan of Euro 1000 crores carrying interest @10% p.a. advanced by Dorf Ltd., a German company, was outstanding on 31.3.2024. The total book value of assets of Anush Motors Ltd. on the date was ₹ 90,000 crores. The said German company had also advanced a loan of similar amount to another Indian company @9% p.a. Total interest paid for the year was EURO 100 crores. Explain in brief the provisions of the Act affecting all these transactions and compute the income of the company chargeable to tax for A.Y.2024-25 keeping in mind that the value of 1$ and of 1 EURO was ₹ 63 and ₹ 84, respectively, throughout the year.

Solution :
Any income arising from an international transaction, where two or more "associated enterprises" enter into a mutual agreement or arrangement, shall be computed having regard to arm's length price as per the provisions of Chapter X of the Act.

Section 92A defines an "associated enterprise" and sub-section (2) of this section speaks of the situations when the two enterprises shall be deemed to associated enterprises. Applying the provisions of section 92A(2)(a) to (m) to the given facts, it is clear that "Anush Motors Ltd." is associated with :-

(i) Rida Ltd. as per section 92A(2)(a), because this company holds shares carrying more than 26% of the voting power in Anush Motors Ltd.;
(ii) Kyoto Ltd. as per section 92A(2)(g), since this company is the sole owner of the technology used by Anush Motors Ltd. in its manufacturing process;
(iii) Dorf Ltd. as per section 92A(2)(c), since this company has financed an amount which is more than 51% of the book value of total assets of Anush Motors Ltd.

The transactions entered into by Anush Motors Ltd. with different companies are, therefore, to be adjusted accordingly to work out the income chargeable to tax for the A.Y. 2024-25.

Particulars	**₹ (in crores)**
Income of Anush Motors Ltd. as computed under Chapter IV-D, prior to adjustments as per Chapter X	300.00
Add: Difference on account of adjustment in the value of international transactions:	
(i) Difference in price of car @ $ 200 each for 10,000 cars ($ 200 x 10,000 x ₹ 63)	12.60
(ii) Difference for excess payment of royalty of $ 30,00,000 ($ 30,00,000 x ₹ 63) [See Note below]	18.90
(iii) Difference for excess interest paid on loan of EURO 1000 crores (₹ 84*1000*1/100)	840.00
Total Income	**1,171.50**

Note: It is presumed that Anush Motors Ltd. has not entered into an Advance Pricing Agreement or opted to be subject to Safe Harbour Rules.

Question-15 :
What is the legislative objective of bringing into existence the provisions relating to transfer pricing in relation to international transactions? Examine.

Solution :
The presence of multinational enterprises in India and their ability to allocate profits in different jurisdictions by controlling prices in intra-group transactions prompted the Government to set up an Expert Group to examine the issues relating to transfer pricing.

There is a possibility that two or more entities belonging to the same multinational group can fix up their prices for goods and services and allocate profits among the enterprises within the group in such a way that there may be either no profit or negligible profit in the jurisdiction which taxes such profits and substantial profit in the jurisdiction which is tax haven or where the tax liability is minimum. This may adversely affect a country's share of due revenue. The increasing participation of multinational groups in economic activities in India has given rise to new and complex issues emerging from transactions entered into between two or more enterprises belonging to the same multinational group. The profits derived by such enterprises carrying on business in India can be controlled by the multinational group, by manipulating the prices charged and paid in such intra-group transactions, which may lead to erosion of tax revenue. Therefore, transfer pricing provisions have been brought in by the Finance Act, 2001 with a view to provide a statutory framework which can lead to computation of reasonable, fair and equitable profits and tax in India, in the case of such multinational enterprises.

Question-16 :

XE Ltd. is an Indian Company in which Zilla Inc., a US company, has 28% shareholding and voting power. Following transactions were effected between these two companies during the financial year 2023-24.

(i) XE Ltd. sold 1,00,000 pieces of T-shirts at $ 2 per T-Shirt to Zilla Inc. The identical T-Shirts were sold to unrelated party namely Kennedy Inc., at $ 3 per T-Shirt.

(ii) XE Ltd. borrowed $ 2,00,000 from a foreign lender based on the guarantee of Zilla Inc. For this, XE Ltd. paid $ 10,000 as guarantee fee to Zilla Inc. To an unrelated party for the same amount of loan, Zilla Inc. collected $ 7000 as guarantee fee.

(iii) XE Ltd. paid $15,000 to Zilla Inc. for getting various potential customers details to improve its business. Zilla Inc. provided the same service to unrelated parties for $ 10,000.

Assume the rate of exchange as 1 $ = ₹ 64

XE Ltd. is located in a Special Economic (SEZ) and its income before transfer pricing adjustments for the year ended 31st March, 2024 was ₹ 1,200 lakhs.

Compute the adjustments to be made to the total income of XE Ltd. Assuming that such adjustments are made by the Assessing Officer, state whether it can claim deduction under section 10AA for the income enhanced by applying transfer pricing provisions.

Solution :

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)

Question-17 :
Examine with reasons whether the two enterprises referred to in the independent situations given below can be deemed to be associated enterprises under the Indian transfer pricing regulations:

(i) PQR Inc, a US company having its place of effective management also in the USA, has advanced a loan equivalent to ₹ 170 crores to Mahanadi Ltd., an Indian company on 10-4-2023. The total book value of assets of Mahanadi Ltd. is ₹ 300 crores. The market value of the assets, however, is ₹ 320 crores. Mahanadi Ltd. repaid ₹ 30 crores before 31-3-2024.

(ii) Queenland plc., a French company having its place of effective management also in the France, has the power to appoint 3 of the directors of Godavari Ltd, an Indian company, whose total number of directors in the Board is 8.

(iii) Total value of raw materials and consumables of Saraswati Ltd., an Indian company, is ₹ 900 crores. Of this, supplies to the tune of ₹ 830 crores are by Zoel GmbH, a German company having its place of effective management in Germany, at prices and terms decided by the German company.

Solution :

(i) PQR Inc, a foreign company, has advanced loan of ₹ 170 crores to Mahanadi Ltd., an Indian company, which amounts to 56.67% of book value of assets of Mahanadi Ltd. Since the loan advanced by PQR Inc. is 51% or more of the book value of assets of Mahanadi Ltd., PQR Inc. and Mahanadi Ltd. are deemed to be associated enterprises under the Indian transfer pricing regulations.
The deeming provisions would be attracted even if there is a repayment of loan during the same previous year which brings down the said percentage below 51%.

(ii) Queenland plc, a foreign company has the power to appoint 37.50% (3 out of 8) of the directors of an Indian company, Godavari Ltd.
Two enterprises would be deemed to be associated enterprises **if more than half of the board of directors of one enterprise are appointed by the other enterprise.**
In this case, since Queenland plc has the power to appoint only 37.50% (which is less than half) of the directors of an Indian company, Godavari Ltd., Queenland plc and Godavari Ltd. are not deemed to be associated enterprises.

(iii) Since Zoel GmbH, a German company, supplies 92.22% of the raw materials and consumables required by Saraswati Ltd., an Indian company, which is more than the specified threshold of 90%; and the prices and terms of supply are decided by the German company, the two companies are deemed to be associated enterprises.

Question-18 :
NP Ltd., an Indian Company, has borrowed ₹ 80 crores on 01-04-2023 from M/s. TL Inc, a company incorporated in London, at an interest rate of 10% p.a. The said loan is repayable over a period of 5 years. Further, loan is guaranteed by M/s ST Inc. incorporated in UK. M/s. Tweed Inc, a non-resident, holds shares carrying 40% of voting power both in M/s NP Ltd. and M/s ST Inc.

Net profit of M/s. NP Ltd. for P.Y. 2023-24 was ₹ 7 crores after debiting the above interest, depreciation of ₹ 6 crores and income-tax of ₹ 4 crores. Calculate the amount of interest to be disallowed under the head "Profits and gains of business or profession" in the computation of M/s NP Ltd., giving appropriate reasons.

Solution :
If an Indian company, being the borrower, incurs any expenditure by way of interest in respect of any debt issued by its non-resident associated enterprise (AE) and such interest exceeds ₹ 1 crore, then, the interest paid or payable by such Indian company in excess of 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to associated enterprise, whichever is lower, shall not be allowed as deduction as per section 94B.

Further, where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise and limitation of interest deduction would be applicable.

In the present case, since M/s Tweed Inc holds 40% of voting power i.e., more than 26% of voting power in both NP Ltd and M/s ST Inc, NP Ltd. and M/s ST Inc are deemed to be associated enterprises.

Since loan of ₹ 80 crores taken by NP Ltd., an Indian company from M/s TL Inc, is guaranteed by M/s ST Inc, an associated enterprise of NP Ltd., such debt shall be deemed to have been issued by an associated enterprise and interest payable to M/s TL Inc shall be considered for the purpose of limitation of interest deduction under section 94B.

Computation of interest to be disallowed as per section 94B in the computation of income under the head profits and gains of business or profession of NP Ltd.

Particulars	**₹**	**₹**
Net profit		7,00,00,000
Add: Interest already debited (₹ 80 crores x 10%)		8,00,00,000
Depreciation		6,00,00,000
Income tax		4,00,00,000
EBITDA		**25,00,00,000**
Interest paid or payable by NP Ltd.		8,00,00,000
Lower of the following would be disallowed		
- Total interest paid or payable in excess of 30% of EBITDA (₹ 8,00,00,000 – ₹ 7,50,00,000)	₹ 50,00,000	
- Interest paid or payable to non-resident AE	₹ 8,00,00,000	
Interest to be disallowed as deduction		**50,00,000**

Question-19 :
MNO Ltd., having its registered office in Mumbai, is engaged in multiple businesses. It has borrowed ₹ 200 crores from State Bank of India (SBI) for which 100% guarantee was given by the parent company, ABC Inc. of Country A. The total borrowings of MNO Ltd. is ₹ 1,000 crores.

MNO Ltd. buys mobile phones from ABC Inc. The mobile phones are branded for which royalty at ₹ 100 per mobile phone sold is paid to ABC Inc. Similar mobile phones are also sold to other customers in India by ABC Inc. but no royalty is charged from them. The credit period offered to MNO Ltd. is 2 months, whereas for other customers, the credit period is 1 month. During the year, 10 lakh mobile phones were bought for an aggregate sum of ₹ 2,600 crores from ABC Inc. The purchase could be assumed as uniform throughout the financial year 2023-24. The cost of capital may be adopted as 10% per annum. ABC Inc. would have billed ₹ 2,400 crores (excluding interest component for the delay beyond 1 month) for supply of identical quantity of similar mobile phones to other customers. It may be assumed that the entire purchase has been sold out by 31st March, 2024.

Determine the arm's length price (ALP) of the transaction of purchase of mobile phones by MNO Ltd. from ABC Inc., Country A and its impact on the assessable income, if any, for the assessment year 2024-25.

Solution :
MNO Ltd., an Indian company, and ABC Inc., a Country A based company, are associated enterprises as per section 92A, since ABC Inc. is a parent company of MNO Ltd. Thus, the transaction of purchase of mobile handsets by MNO Ltd. from ABC Inc. would be an international transaction. The value of international transaction is to be worked out on the basis of Arm's Length Price (ALP).

ABC Inc. is selling mobile phones to unrelated customers, which would be the comparable uncontrolled transaction in this case. The purchase price for unrelated customers has to be adjusted by taking into consideration the functional differences existing between the transactions of ABC Inc. with associated enterprise (MNO Ltd.) and other unrelated parties.

Accordingly, the arm's length price for purchase of mobile phones has to be computed for working out the impact on assessable value as per CUP method.

Computation of Arm's Length Price

Particulars	₹ in crores
Purchase price of mobile phones by unrelated parties from ABC Inc.	2,400
Adjustments for functional differences	
Add: Royalty payable by MNO Ltd. [₹ 100 per mobile phone x 10,00,000]	10
Cost of capital for 1 month credit which is not given to unrelated party [10% x ₹ 200 crore (monthly average sales i.e., ₹ 2,400 crore /12 months]	20
Arm's Length Price of 10,00,000 mobile phones (A)	**2430**
Purchase price of mobile phone by MNO Ltd. from ABC Inc., its parent company (associated enterprise) (B)	**2600**
Amount to be added to its total income (B) – (A)	**170**

Note – In case it is assumed that ₹ 10 crores is not included in the price of ₹ 2600 crores, the adjustment of royalty of ₹ 10 crores paid/payable is not required. The ALP in such a case would be ₹ 2,420 crores. The amount to be added to the total income would be ₹ 180 crores

Question-20 :
Beta Ltd., an Indian company, has two units in India, a manufacturing unit in Hyderabad and a trading unit in Surat. Beta Ltd. has entered into various international transactions with its associate enterprises from both the units. The assessment of Beta Ltd., an Indian company, for A.Y.2024-25 is pending before the Assessing Officer who referred the matter to Transfer Pricing Officer (TPO) for determination of arm's length price (ALP) in respect of its manufacturing unit at Hyderabad. The TPO, however, expanded the scope of his work by calling for details in respect of the trading unit of Beta Ltd. located at Surat.

Examine the procedure to be followed by the Assessing Officer before making reference to TPO. Can the TPO enlarge his scope of work by calling for details of trading activity at Surat, when the Assessing Officer has made reference only in respect of the manufacturing unit at Hyderabad? Examine.

Solution :
As per section 92CA(1), where the Assessing Officer considers it necessary or expedient so to do, he may refer the computation of the arm's length price in relation to the international transaction entered by any person, being an assessee, to the Transfer Pricing Officer (TPO).

However, the Assessing Officer has to take the prior approval of the Principal Commissioner of Income-tax (PCIT)/Commissioner of Income-tax (CIT) before making such a reference.

As per section 92CA(2A), the Transfer Pricing Officer (TPO) can also determine the ALP of other international transactions which have not been referred to him, but which have come to his notice subsequently in the course of proceedings before him.

The Assessing Officer has made reference for determination of ALP in respect of the manufacturing unit at Hyderabad which shall be taken as the proceedings before him (TPO).

The TPO can enlarge his scope of work during the course of proceedings before him of Hyderabad unit by calling for details of trading activity at Surat, and the same is within the powers conferred by section 92CA(2A).

Question-21 :
Allepey Ltd. is an Indian Company in which Andes Inc., a Country Z company holds 38% shareholding and voting power. During the previous year 2021-22, the Indian company supplied computers to the Country Z based company @CZD 1100 per piece. The price of computer supplied to other unrelated parties in Country Z is @CZD 1400 per piece. During the course of assessment proceedings relating to A.Y.2022-23, the Assessing Officer carried out primary adjustments and added a sum of ₹ 168 lakhs, being the difference between actual price of computer and arm's length price for 700 pieces and it was duly accepted by the assessee. The Assessing Officer passed the order, in which the primary adjustments were made, on 1.6.2023. On account of this adjustment, the excess money of ₹ 168 lakhs is available with Andes Inc, Country Z. In this context, Allepey

Ltd. wants to know the effect of this transaction for the assessment year 2024-25 on the basis that it declared an income of ₹ 300 lakhs and the excess money is still lying with Andes Inc. till today. Assume the rate of exchange as 1 CZD = ₹ 80. [CZD stands for Country Z Dollars, which is the currency of Country Z]; six month LIBOR as on 30.9.2023 is 9.50%.

Solution :
In this case, Allepey Ltd., the Indian company, and Andes Inc., a Country Z company, are deemed to be associated enterprises as per section 92A(2) since Andes Inc. holds shares carrying not less than 26% voting power in Allepey Ltd.

On account of the primary adjustment of ₹ 168 lakhs made by the Assessing Officer, the total income of Allepey Ltd. for A.Y.2022-23 would increase by ₹ 168 lakhs.

I. If Allepey Ltd. opts not to pay additional income-tax on such excess money not repatriated

In this case, secondary adjustment has to be made under section 92CE, since –

(1) The company has accepted the primary adjustment made by the Assessing Officer;
(2) The primary adjustment is in respect of A.Y.2022-23; and
(3) The primary adjustment exceeds ₹ 100 lakhs.

Accordingly, the excess money (i.e., ₹ 168 lakhs) available with the associated enterprise (i.e., Andes Inc., Country Z) not repatriated to India within 90 days of the date of the order of the Assessing Officer would be deemed as an advance made by the Allepey Ltd. to its associated enterprise, Andes Inc. Interest would be calculated on such advance at 12.50% [i.e., the rate of six month LIBOR as on 30th September, 2023 (i.e., 9.50%)+ 3%], since the international transaction is denominated in foreign currency. Such interest computed from 1.6.2023 to 31.3.2024 amounting to 304/366 x 168 lakhs x 12.50% = ₹ 17,44,262 would be added to its total income for A.Y.2024-25.

II. If Allepey Ltd. opts to pay additional income-tax on such excess money not repatriated

In such a case, Allepey Ltd. has to pay additional income-tax @20.9664% (tax @18% plus surcharge @12% plus cess@4%) on ₹ 168 lakhs, which amounts to ₹ 35,22,355. Where additional income-tax is so paid by Allepey Ltd., it will not be required to make secondary adjustment and compute interest from the date of payment of such tax. The additional income-tax so paid by Allepey Ltd. would be treated as the final payment of tax in respect of excess money not repatriated and no further credit would be allowed to Allepey Ltd. or to any other person in respect of the amount of additional income-tax so paid.

Part-B : Additional Questions

Question-22 : [RTP NOV-18]

Examine whether transfer pricing provisions under the Income-tax Act, 1961 would be attracted in respect of the following cases -

(i) Scientific research services provided by Lambda Sicom, an Italian company to XYZ Ltd., an Indian company. Lambda Sicom is a "specified foreign company" as defined in section 115BBD, in relation to XYZ Ltd.
(ii) Purchase of commodities by Omega Ltd., an Indian company, from Cylo AG, a German company. Omega Ltd. is the subsidiary of Cylo AG.
(iii) EF Ltd., an Indian company, has two units, E & F. Unit E, which commenced business two years back, is engaged in the development of a highway project, for which purpose an agreement has been entered into with the Central Government. Unit F is carrying on the business of trading in steel. Unit F transfers 20,000 metric tons of steel of the value of ₹ 32,000 per MT to Unit E for ₹ 20,000 per MT.
(iv) Ms. Geetha, a resident Indian, is a director of Theta Ltd, an Indian company. Theta Ltd. pays salary of ₹ 40 lakhs per annum to Samyukta, who is Ms. Geetha's daughter.
(v) Transfer of technical knowhow by Y Ltd., an Indian company, to Alcatel Lucent, a French company, which guarantees 15% of the borrowings of Y Ltd.

Solution :

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

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

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

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

(v) The scope of the term "intangible property" has been amplified to include, *inter alia,* technical knowhow, which is a technology related intangible asset. **Transfer of intangible property falls within the scope of the term "international transaction"**. Since Alcatel Lucent, a French company, guarantees not less than

10% of the borrowings of Y Ltd., an Indian company, Alcatel Lucent and Y Ltd. are deemed to be associated enterprises under section 92A(2). Therefore, since transfer of technical knowhow by Y Ltd., an Indian company, to Alcatel Lucent, a French company, is an international transaction between associated enterprises, the provisions of transfer pricing are **attracted** in this case.

Question-23 & 24 : [RTP MAY-19] [Sec 94B]
Narmada Ltd., an Indian Company has borrowed ₹ 80 crores on 01-04-2023 from M/s. Thames Inc, a Company incorporated in London, at an interest rate of 10% p.a. The said loan is repayable over a period of 5 years. Further, loan is guaranteed by M/s Tyne Inc. incorporated in UK. M/s. Tweed Inc, a non-resident, holds shares carrying 40% of voting power both in M/s Narmada Ltd. and M/s Tyne Inc.

Net profit of M/s. Narmada Ltd. for P.Y. 2023-24 was ₹ 7 crores after debiting the above interest, depreciation of ₹ 4 crores and income-tax of ₹ 3 crores. Calculate the amount of interest to be disallowed under the head "Profits and gains of business or profession" in the computation of M/s Narmada Ltd., giving appropriate reasons.

Solution :
If an Indian company, being the borrower, incurs any expenditure by way of interest in respect of any debt issued by its non-resident associated enterprise (AE) and such interest exceeds ₹ 1 crore, then, the interest paid or payable by such Indian company in excess of 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to associated enterprise, whichever is lower, shall not be allowed as deduction as per section 94B.

Further, where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise and limitation of interest deduction would be applicable.

In the present case, since M/s Tweed Inc holds 40% of voting power i.e., more than 26% of voting power in both Narmada Ltd and M/s Tyne Inc, Narmada Ltd. and M/s Tyne Inc are deemed to be associated enterprises.

Since loan of ₹ 80 crores taken by Narmada Ltd., an Indian company from M/s Thames Inc, is guaranteed by M/s Tyne Inc, an associated enterprise of Narmada Ltd., such debt shall be deemed to have been issued by an associated enterprise and interest payable to M/s Thames Inc shall be considered for the purpose of limitation of interest deduction under section 94B.

Computation of interest to be disallowed as per section 94B in the computation of income under the head profits and gains of business or profession of M/s. Narmada Ltd.

Particulars		
Net profit		7,00,00,000
Add: Interest already debited (₹ 80 crores x 10%)		8,00,00,000
Depreciation		4,00,00,000
Income tax		3,00,00,000
EBITDA		22,00,00,000
Interest paid or payable by Narmada Ltd.		8,00,00,000
Lower of the following would be disallowed		
- Total interest paid or payable in excess of 30% of EBITDA (₹ 8,00,00,000 – ₹ 6,60,00,000)	1,40,00,000	
- Interest paid or payable to non-resident AE	8,00,00,000	
Interest to be disallowed as deduction		**1,40,00,000**

Question-25 : [RTP NOV-20]

Examine whether transfer pricing provisions under the Income-tax Act, 1961 would be attracted in respect of the following cases -

(i) Transfer of process patents by Rho Ltd., an Indian company, to ABC Inc., a US company, which guarantees 12% of the borrowings of Rho Ltd.

(ii) Marketing management services provided by Athena, a Greece company to Alpha Ltd., an Indian company. Athena is a "specified foreign company" as defined in section 115BBD (old, now amended), in relation to Alpha Ltd.

(iii) Gamma Ltd., an Indian company, has two units, Delta & Phi. Unit Delta, which commenced business four years back, is engaged in the development of a highway project, for which purpose an agreement has been entered into with the Central Government. Unit Phi is carrying on the business of trading in steel. Unit Phi transfers 25,000 metric tons of steel of the value of ₹ 30,000 per MT to Unit Delta for 20,000 per MT.

(iv) Purchase of machinery by Beta Ltd., an Indian company, from Huff AG, a German company. Beta Ltd. is the subsidiary of Huff AG.

Solution :

(i) The scope of the term "intangible property" includes, inter alia, process patents, which is a technology related intangible asset. Transfer of intangible property falls within the scope of the term "international transaction". Since ABC Inc., a US company, guarantees not less than 10% of the borrowings of Rho Ltd., an Indian company, ABC Inc. and Rho Ltd. are deemed to be associated enterprises under section 92A(2). Therefore, since transfer of process patents by Rho Ltd., an Indian company, to ABC Inc., a US company, is an international transaction between associated enterprises, the provisions of transfer pricing are attracted in this case.

(ii) Clause (i) of Explanation to section 92B amplifies the scope of the term "international transaction". According to the said Explanation, international transaction includes, inter alia, provision of marketing management services. Athena is a specified foreign company in relation to Alpha Ltd. Therefore, the condition of Alpha Ltd. holding shares carrying not less than 26% of the voting power in Athena is satisfied, assuming that all shares carry equal voting rights. Hence, Athena and Alpha Ltd. are deemed to be associated enterprises under section 92A(2). Since the provision of marketing management services by Alpha Ltd. to Athena is an "international transaction" between associated enterprises, transfer pricing provisions are attracted in this case.
Note: Sec 115BBD is no more applicable, Author has intentionally kept Question for your knowledge.

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

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

Question-26 : [PP NOV-18]

State with reasons, whether Netlon LLC., (Incorporated in Singapore) and Briggs Ltd., a domestic company, are/can be deemed to be associated enterprises for the transfer pricing regulations (Each situation is independent) of the others:

(i) Netlon LLC. has advanced a loan of 53 crores to Briggs Ltd. on 12-1-2024. The total book value of assets of Briggs Ltd. is 100 crores. The market value of the assets, however, is ₹ 150 crores. Briggs Ltd. repaid 10 crores before 31-3-2024.
(ii) Netlon LLC. has the power to appoint 2 of the directors of Briggs Ltd, whose total number of directors in the Board is 4.
(iii) Total value of raw materials and consumables of Briggs Ltd. is 900 crores. Of this, Netlon LLC. supplies to the tune of 820 crores, at prices mutually agreed upon once in six months and depending upon the market conditions. **(6 Marks)**

Solution :
(i) Netlon LLC, a foreign company, has advanced loan of 53 crores to Briggs Ltd., a domestic company, which amounts to 53% of book value of assets of Briggs Ltd. Since the loan advanced by Netlon Inc. is not less than 51% of the book value of assets of Briggs Ltd., Netlon Inc. and Briggs Ltd. are **deemed to be associated enterprises** for the transfer pricing regulations. The deeming provisions would be attracted even if there is a repayment of loan during the same previous year which brings down his percentage below 51%.

(ii) Netlon LLC has the power to appoint 50% (2 out of 4) of the directors of Briggs Ltd. Two enterprises would be deemed to be associated enterprises if more than half of the board of directors of one enterprise are appointed by the other enterprise. In this case, since Netlon LLC has the power to appoint exactly half (and not more than half) of the directors of Briggs Ltd., they are **not deemed to be associated enterprises.**

(iii) Even though Netlon LLC supplies 91.11% of the raw materials and consumables required by Briggs Ltd. which is more than the specified threshold of 90%, Netlon LLC and Briggs Ltd. are not deemed to be **associated enterprises** Reason for not deemed to be associated enterprises is since the price of supply is not influenced by Netlon LLC but is mutually agreed upon once in six months depending upon prevailing market conditions.

Question-27 : [PP NOV-19] [Roll Back]
DIY Ltd., a company registered in India and subsidiary of CD Inc., a company registered in Austria. DIY Ltd. engaged in the manufacturing of fabric. To arrive at the arm's length price applicable to its transactions with CD Inc., DIY Ltd. enters into an advance pricing agreement with the Board on 25th November 2023. Accordingly, there will be a substantial change in the income of DIY Ltd. Also, DIY Ltd. wishes to apply for roll back provisions to PY 2019-20, 2020-21, 2021-22 and 2022-23. The AO wants to apply such transfer pricing provisions from the year in which DIY Ltd. became the subsidiary of CD Inc. i.e., A.Y. 2016-17 onwards.

DIY Ltd. had filed its return of income for the A.Y. 2023-24 on 26th August 2023 and for A.Y. 2024-25, on 31st August, 2024. The assessments for the A.Y.'s 2020-21 to 2023-24 are completed but the assessment of A.Y. 2024-25 is pending on the date of entering into APA.

You are required to answer the following questions:
(i) Whether the AO is correct to apply the transfer pricing provisions from A.Y. 2016-17 onwards?
(ii) In respect of A.Y. 2020-21, the transfer price arrived at by the Board is resulting in reduction in income of the assessee. Discuss whether the roll back provisions can be applied for that assessment year as well.
(iii) What will happen to completed as well as pending assessments? **(6 Marks)**

Solution :
(i) No; the Assessing Officer is not correct in applying transfer pricing provisions as per the advance pricing agreement from A.Y.2016-17 itself.

This is so since **roll back provisions** can be applied only for any previous year, falling within the period **not exceeding four previous years**, preceding the first of the five consecutive previous years as may be specified in the agreement. Since P.Y. 2023-24 is the first of the five consecutive previous years, **roll back provisions can be applied only from A.Y. 2020-21 (relevant to P.Y. 2019-20) and not from A.Y.2016-17**.

(ii) **No, the rollback provision cannot be applied** in respect of an international transaction for a rollback year, **if the application of rollback provision has the effect of reducing the total income or increasing the loss**, as the case may be, of the applicant as declared in the return of income of the said year already filed by the assessee prior to the filing of the APA. Accordingly, the **roll back provisions cannot be applied in respect of A.Y.2020-21, since it has the effect of reduction in income of DIY Ltd. for that year.**

(iii) DIY Ltd. has to furnish modified return in respect of the assessment years relevant to the previous year to which APA applies (and for which returns have already been furnished before entering into an APA) within a period of 3 months from the end of the month in which the agreement was entered into i.e., on or before 28th February 2024. The modifications therein should arise only because of the APA. Such return would be treated as a return filed under section 139(1).

In case of completed assessments (i.e., assessments made upto A.Y. 2023-24 other than A.Y. 2020-21), the Assessing Officer would assess or reassess or recompute the total income of the relevant assessment year having regard to the APA. Such order of assessment has to be passed within a period of one year from the end of the financial year in which the modified return was furnished.

In respect of pending assessment (i.e., assessment for A.Y. 2024-25), the Assessing Officer shall proceed to complete the assessment or reassessment proceedings in accordance with the APA taking into consideration the return furnished by the assessee, since the same has been furnished after the date of entering into the APA.

Question-28 : [PP JAN-21]

On 1-4-2023, Vihaan Ltd., an Indian company, advanced a loan of ₹ 6 crores to Yuvan Inc., a company resident in Singapore. As on the date of loan, the book value of total assets in the books of Yuvan Inc. was ₹ 4 crores. In the Financial Year 2022-23, Yuvan Inc. had revalued its assets and accordingly the value of assets had increased by ₹ 2 crores. Yuvan Ltd. paid the entire loan along with interest thereon on 31st August, 2023. During the Financial Year 2023-24, Vihaan Ltd. also entered into an agreement with Yuvan Inc. to provide 20 thousand medical equipments at a cost of ₹ 7,400 per unit. The Assessing Officer treats them as associate enterprise and wants to re-compute the income of Vihaan Ltd. at arms' length price. You are required to answer the following questions in this respect:

(1) Would Vihaan Ltd. and Yuvan Ltd. be treated as associate enterprises for the purpose of transfer pricing adopted by the Assessing Officer? If yes, why? '.

(2) Calculate the arm's length price of Vihaan Ltd. which sells the same equipments at the rate of ₹ 9,000 per unit to Y Ltd. and at the rate of ₹ 9,500 per unit to X LLP (both of them are unrelated parties in respect of Vihaan Ltd.). Vihaan Ltd. is not a wholesale dealer.

(3) What are the options available to Yuvan Inc. in respect of such increase in transfer price by income tax authorities, if Vihaan Ltd. accepts such transfer price? **(6 Marks)**

Solution :

(1) Two enterprises are deemed to be associated enterprises as per section 92A(2)(c), if a loan advanced by one enterprise to the other enterprise constitutes not less than 51% of the book value of total assets of the other enterprise. Since Vihaan Ltd., an Indian company, advanced loan of an amount of ₹ 6 crores to Yuvan Inc., a Singapore company, which is 150% of the book value of the total assets of Yuvan Inc. (i.e., 150% of ₹ 4 crores), Vihaan Ltd. and Yuvan Inc. are deemed to be associated enterprises.

(2) Vihaan Ltd. sells equipments at the rate of ₹ 9,000 per unit to Y Ltd. and at ₹ 9,500 per unit to X LLP, both of them being unrelated parties. Since the transactions can be considered as comparable uncontrolled transactions for the purpose of determining the arm's length price, Comparable Uncontrolled Price (CUP) method would be most appropriate method.

Since two prices are determined by the most appropriate method, and data set comprises of only two entries, the arm's length price shall be the arithmetical mean of both the values included in the dataset.

Accordingly, arm's length price would be ₹9,250 [(₹9,000 + ₹9,500)/2]. Since the deviation between the arm's length price and actual sale price of the equipment to Yuvan Inc. i.e., ₹7,400 per unit is 25%, which exceeds 3% of the price of the international transaction, the arm's length price would be ₹9,250 per unit and the total income would increase by ₹3.7 crores [i.e. ₹ 1,850 (9,250 – 7,400) x 20,000 units]

(3) On account of the primary adjustment of ₹3.7 crores (1850 x 20,000 units) made by the Assessing Officer, in the total income of Vihaan Ltd. for A.Y. 2024-25, secondary adjustment has to be made under section 92CE, since –
   (1) The company has accepted the primary adjustment made by the Assessing Officer;
   (2) The primary adjustment is in respect of A.Y. 2024-25; and
   (3) The primary adjustment exceeds ₹100 lakhs.

Accordingly, the excess money i.e., ₹3.7 crores available with the Yuvan Inc. has to be repatriated to India within 90 days of the date of the order of the Assessing Officer.

Alternatively, Vihaan Ltd. can opt to pay additional income-tax @ 20.9664% (tax @18% plus surcharge @ 12% plus cess @ 4%) on ₹3.7 crores, which amounts to ₹77,57,568.

Question-29 : [PP JULY-21, PP Nov 23]

Paras Ltd. is an Indian company engaged in the manufacturing of supreme quality mink blankets. It has total borrowings of 60 crores by way of loan as on 31.03.2024. Saksham Ltd. of Germany imported 5 lakh blankets from Paras Ltd. for the resale in Germany @ ₹2,000 per unit. Paras Ltd. sold similar blankets to other dealers in Germany @ ₹2,100 per unit. Paras Ltd. received a bank guarantee on 01.04.2023 for availing a cash credit limit of ₹9 crores for which Saksham Ltd. was the guarantor. The terms of trade for other dealers was to make payment within 1 month from the date of sale of goods by Paras Ltd., whereas for Saksham Ltd., the credit period allowed was 3 months from the date of sale of goods. The cost of capital was 12% per annum and the supply of goods is assumed to be uniform throughout the year.

You are required to determine whether Paras Ltd. and Saksham Ltd. are associated enterprises. If yes, compute the ALP of the transaction between them and the amount to be added to the income of Paras Ltd., if any, by way of an ALP adjustment.

Assuming that the above adjustments to the transfer price have been made suo-moto by Paras Ltd. in its return of income, what is the time limit for the repatriation of such excess money? What are the implications if the excess money is not repatriated within such prescribed time limit? **(6 Marks)**

Solution :

(1) Paras Ltd. and Saksham Ltd. of Germany are **deemed to be associated enterprises**, since Saksham Ltd., a German company provides guarantee for loan of ₹9 crores taken by Paras Ltd., which is 15% of the total borrowings (i.e., more than 10 %) of Paras Ltd. i.e. ₹60 crores.

As per section 92B, the transactions entered into between Paras Ltd. and Saksham Ltd., two associate enterprises, for sale of blankets falls within the meaning of **"international transaction".**

As Paras Ltd. has sold similar blankets to other dealers, being unrelated entity, at ₹2,100 per unit, the transactions between Paras Ltd. and such unrelated party can be considered as a comparable uncontrolled transaction for the purpose of determining the arm's length price of the transactions between Paras Ltd. and Saksham Ltd. However, such figure needs to be adjusted by the functional adjustments.

Computation of ALP of transaction between Paras Ltd. and Saksham Ltd.

Particulars	Amount
Selling price of each blanket to unrelated dealers in Germany	2,100
Add: Adjustment of cost of credit [Paras Ltd. provides credit for 1 month to unrelated entity whereas it provided credit period of 3 months to Saksham Ltd. Therefore, adjustment for the cost of such credit has to be carried out to arrive at arm's length price. (12% x ₹2,100 x 2/12)]	42
Arm's length price of 1 unit of blanket	**2,142**
Arm's length price of 5 lakh units of blanket (A)	1,07,10,00,000
Sale price of 5 lakh units of blanket by Paras Ltd. to Saksham Ltd. (associated enterprise) (B) [₹2,000 x 5,00,000]	1,00,00,00,000
Amount to be added to Paras Ltd.'s total income by way of ALP adjustment	**7,10,00,000**

(2) Where the **primary adjustment to transfer price has been made *suo moto* by Paras Ltd. in its return of income, the time limit for the repatriation of such excess money** (i.e., ₹ 710 lakhs) available with the associated enterprise (i.e Saksham Ltd.) is **within 90 days from 30.11.2024, being the due date of filing of return u/s 139(1) i.e 28.02.2025.**

(3) The excess money (i.e ₹710 lakhs) available with the associated enterprise (i.e Saksham Ltd.) **not repatriated to India within 90 days** from the due date of filing return of income u/s 139(1) would be **deemed as an advance made by the Paras Ltd. to its associated enterprise, Saksham Ltd**.

Interest would be calculated on such advance at the rate of one-year marginal cost of fund lending rate of SBI as on 1st April of the relevant previous year i.e., 1.4.2024 + 3.25%, since the international transaction is denominated in Indian rupee.

Option to pay additional income-tax, if the excess money not repatriated

Paras Ltd. has the option to pay additional income-tax @ 20.9664% (tax @ 18% *plus* surcharge @ 12% *plus* cess @ 4%) **on excess money** (i.e ₹ 710 lakhs), in lieu of repatriation of such excess money.

Where additional income-tax is so paid by Paras Ltd., it will not be required to make secondary adjustment and compute interest from the date of payment of such tax.

The additional income-tax so paid by Paras Ltd. would be treated as the final payment of tax in respect of excess money not repatriated and no further credit would be allowed to Paras Ltd. or to any other person in respect of the amount of additional income-tax so paid.

Question-30 : [PP OLD NOV-19]

Explain with reasoning that the following statements are correct or not. Your answer should be based on the provisions of the Income-tax Act, 1961.

(i) Whether Assessing Officer (AO) can complete the assessment of income from international transaction in disregard of the order passed by the Transfer Pricing Officer (TPO) by accepting the contention of assessee. **(3 Marks)**

(ii) An advance pricing agreement once entered by the tax payer with the Income Tax authorities cannot be modified or revised. **(3 Marks)**

Solution :

(i) The statement is not correct.

As per section 92CA(4), where the Assessing Officer (AO) has referred the computation of arm's length price to the Transfer Pricing Officer (TPO) and the TPO has passed an order determining the arm's length price (ALP), the A.O. has to proceed to compute the total income of the assessee in conformity with the ALP so determined by the TPO.

Therefore, the AO **cannot** complete the assessment of income from international transaction in disregard of the order passed by the TPO by accepting the contention of the assessee.

(ii) The statement is not correct.

As per Rule 10Q, an agreement, after being entered, may be revised by the Board either suo moto or on request of the assessee or the competent authority in India or the Director General of Income-tax (International Taxation), if–

(1) there is a change in critical assumptions or failure to meet a condition subject to which the agreement has been entered into;

(2) there is a change in law that modifies any matter covered by the agreement but is not of the nature which renders the agreement to be non-binding; or

(3) there is a request from competent authority in the other country requesting revision of agreement, in case of bilateral or multilateral agreement.

Question-31 : [Arith. Mean of ALPs] [PP NOV-20]

KVS Ltd., the assessee, has sold goods on 12.01.2024 to L Ltd., located in notified jurisdictional area (NJA), for ₹10.50 crores. During the current financial year, KVS Ltd. charged ₹11.50 crores from AJ of New York and ₹12 crores from KP of London for sale of identical goods and both of which are neither associated enterprise of KVS Ltd. nor they are situated in any NJA. While sales to AJ and KP were on CIF basis, the sale to L Ltd., was on FOB basis, which paid ocean freight and insurance amounting to ₹20 lakhs on purchases from KVS Ltd.

India has a Double Taxation Avoidance Agreement with the U.S.A. and U.K. The assessee has a policy of providing after sales support service to the tune of ₹ 14 lakhs to all customers except L Ltd. which procured the same locally at a cost of ₹ 18 lakhs.

Compute the ALP for the sales made to L Ltd., and the amount of consequent increase, if any, in the profit of the assessee-company. **(6 Marks)**

Solution :

A transaction where one of the parties thereto is a person located in a NJA would be deemed to be an international transaction and all parties to the transaction would be deemed as associated enterprises. Accordingly, all the provisions of transfer pricing would be attracted in case of such a transaction.

Hence, the transactions between KVS Ltd, an Indian company and L Ltd., located in NJA, would be deemed to be international transactions between associated enterprises.

The transactions of KVS Ltd. with AJ of New York and KP of London for sale of identical goods are comparable uncontrolled international transactions, since they are neither associated enterprises of KVS Ltd. nor are they situated in NJA. Hence, Comparable Uncontrolled Price (CUP) method can be used to determine ALP.

Where more than one price is determined by the most appropriate method, CUP method in this case, then, the arithmetic mean has to be taken in cases where the number of entries in the dataset is less than 6 (in this case it is only 2). However, the benefit of permissible variation between the ALP and the transfer price based on the rate notified by the Central Government (i.e., maximum of 3% of transaction price) would not be available in respect of such transaction

Computation of ALP using CUP method

Particulars (₹ in crores)	**AJ**	**KP**
Price charged by KVS Ltd. (on CIF basis)	11.50	12.00
Less: Ocean freight and insurance, has to be reduced since the price charged to L Ltd. is on FOB basis	0.20	0.20
	11.30	**11.80**
Less: Cost of after-sales support service (has to be reduced, since such services are being provided to AJ and KP but not to L Ltd.)	0.14	0.14
Arm's Length Price	**11.16**	**11.66**
Arithmetic mean of the above prices [(11.16 crores + 11.66 crores)/2]		**11.41**
Less: Price at which goods were sold to L Ltd.		10.50
Arm's length adjustment [increase in profit of KVS Ltd.]		**0.91**

Question-32 : [Sec Adj.] [RTP NOV-21, MTP NOV 22]

Delta Ltd., an Indian company, declared total income of ₹2,100 crores computed in accordance with Chapter IV-D before making primary adjustment, if required, in respect of the loan transaction with Alps Inc, a Swiss company, for the year ended 31.03.2024. Alps Inc. had advanced a loan of Euro 350 crores carrying interest @ 9% p.a. on 1.4.2023 to Delta Ltd. The total book value of assets of Delta Ltd. was ₹60,000 crores. Assume that the amount of interest computed @ 9% p.a. and payable to Alps Inc. does not exceed 30% of EBITDA and that this is the only loan taken by Delta Ltd.

Alps Inc also advanced a loan of similar nature and amount to Beta Ltd., another Indian company @ 7% p.a. during the F.Y. 2023-24. The value of 1 Euro may be taken as ₹88. You are required to:

(i) Examine whether transfer pricing provisions under the Income-tax Act, 1961 would be attracted in this case and if so, on what basis.
(ii) Advise Delta Ltd. regarding primary adjustments, if any, to be made to the above income keeping in mind the transfer pricing provisions contained in the Income-tax Act, 1961 and compute the total income for A.Y. 2024-25.
(iii) Elaborate on secondary adjustments, if any, required to be made under the provisions of Income-tax Act, 1961, assuming that Delta Ltd. has made the primary adjustment suo moto.

Calculate the additional income-tax liability, if Delta Ltd. opts for payment of additional income-tax in lieu of making secondary adjustment.

Solution :

(i) Delta Ltd., an Indian company and Alps Inc, a Swiss company are **deemed to be associated enterprises** since the latter has advanced a loan to the former which constitutes 51.33% of the book value of total assets of the former [Euro 350 crores x ₹88/₹60,000 crores]. Since the loan advanced by Alps Inc is not less than 51% of the book value of the total assets of Delta Ltd., the two companies are deemed to be associated enterprises.

A loan transaction between two enterprises, one of whom is a non-resident (Alps Inc, Switzerland, in this case), would be an **international transaction**. Accordingly, **transfer pricing provisions would be attracted in this case.**

(ii) The interest rate charged by Alps Inc. on loan advanced to Delta Ltd. is 9% p.a. whereas the arm's length interest charged by Alps Inc. in a comparable uncontrolled transaction with Beta Ltd., another Indian company, is 7% p.a. Therefore, the **arm's length adjustment (primary adjustment) to be made is = 9% - 7% = 2% of ₹ 30,800 crores** (Euro 350 crores x ₹ 88, being the value of 1 Euro) = ₹616 crores

The **total income (after primary adjustment)** of Delta Ltd for P.Y.2023-24 = ₹2,100 crores + primary adjustment of ₹616 crores = **₹2,716 crores.**

(iii) Since the primary adjustment has been made by Delta Ltd. *suo moto* while filing its return of income for A.Y. 2024-25, **Delta Ltd. has to carry out secondary adjustment in the following manner.**

The excess money (i.e ₹616 crores) lying with Alps Inc has to be **repatriated within 90 days from 30.11.2024, being the due date for filing return of income.**

If the excess money is not repatriated on or before 28th February, 2025, it would be deemed as an advance made by Delta Ltd. to Alps Inc and interest would be chargeable from 30.11.2024 at **six-month LIBOR as on 30th September, 2024 + 3%**, since the loan is denominated in Euros. **Such interest** for the period from 30.11.2024 to 31.03.2025 (assuming that it has not been repatriated upto 31.3.2025) **would be included in the total income** of Delta Ltd. for P.Y. 2024-25.

(iv) **If Delta Ltd. opts for payment of additional income-tax, it has to pay ₹129.153 crores** [i.e 20.9664% (tax@18% + surcharge@12% + cess@4%) of ₹616 crores].

Question-33 : [PP DEC-21] [TNMM]
Alpha Inc. having its business in Singapore has advanced a loan of SD 1,50,000 to Alpha Ltd., Bhubaneswar. Book value of total assets of Alpha Ltd. was ₹120 lakhs. Alpha Ltd. provides software backup support to Alpha Inc. Alpha Ltd., has spent 30,000 man hours during the financial year 2023-24 for the services rendered to Alpha Inc. The cost to Alpha Ltd., is SD 80/man-hour. Alpha Ltd. has billed Alpha Inc. at SD 85/man-hour.

Gama Ltd. in Bhubaneswar which has a similar business model, provides software back up support to Beta Inc. in Penang, Malaysia.
Gama Ltd.'s cost and operating profits are as hereunder:

Particulars	Amount (in lakhs)
Direct costs	500
Indirect costs	100
Operating profits	100

(a) Calculate Arm's Length Price for the transaction between Alpha Ltd. and Alpha Inc. based on the above data of Gama Ltd. using the Transactional Net Margin Method. Assume 1 SD = ₹55.
(b) Is any adjustment required be made to the total income of Alpha Ltd.?
Note: SD = Singapore Dollars (6 Marks)

Solution :
Two enterprises are deemed to be associated enterprises where one enterprise advances loan constituting not less than 51% of the book value of the total assets of the other enterprise.

In this case, since Alpha Inc., a foreign company, has advanced loan to Alpha Ltd., an Indian company, and such loan constitutes 68.75% [(₹ 55 x SD 1,50,000 x 100/₹1,20,00,000] of the book value of total assets of Alpha Ltd., Alpha Inc and Alpha Ltd. are deemed to be associated enterprises. Since the transaction of provision of software backup support by Alpha Ltd. to Alpha Inc. is an international transaction between associated enterprises, the provisions of transfer pricing would be attracted in this case.

Determination of Operating Margin of transaction of provision of software backup support by Alpha Ltd. to Alpha Inc

Particulars	**₹**
Billing per man-hour [SD 85/hour x ₹55]	4675
Cost per man hour [SD 80/hour x ₹55]	4400
Operating profit per man-hour	275
Operating profits to cost (%) [275 x 100/4400] = **6.25%**	

Determination of Operating Margin of Comparable Uncontrolled transaction i.e., provision of software backup support by Gama Ltd. to Beta Inc.

Particulars	**₹ in lakhs**
Direct Cost	500
Indirect Cost	100
Total cost	**600**
Operating profits	100
Operating profits to cost (%) [100 x 100/600] = **16.67%**	

(a) Computation of Arm's Length Price of provision of software backup support provided by Alpha Ltd. to Alpha Inc. by applying TNMM

Particulars	₹
Cost for Alpha Ltd. (per man hour) [SD 80 x ₹ 55/MD]	4,400.00
Add: Arm's length operating profit margin as % of cost (16.67% of₹ 4,400)	733.48
Arm's length price (per man-hour) in ₹	5,133.48
Arm's length price of total man-hours spent by Alpha Ltd. for providing software backup support to Alpha Inc. [₹5,133.48 x 30,000-man hours] = ₹ 15,40,04,400	

(b) Adjustment to be made to the total income of Alpha Ltd.

Particulars	₹
Arm's length price of total man-hours spent by Alpha Ltd. for providing software backup support to Alpha Inc.	15,40,04,400
Less: Amount actually billed [85 SD x ₹ 55/SD x 30,000 man-hours]	14,02,50,000
Arm's length adjustment to be made to the total income of Alpha Ltd.	**1,37,54,400**

Question-34 : [Sec 94B Must Do] [PP OLD JULY-21]

On 23rd June 2022, R Ltd., an Indian Company borrowed ₹ 100 crores from M Pte. Ltd., a company incorporated in Singapore. The said loan is repayable over a period of 6 years. This loan is guaranteed by L Ltd., a company incorporated in U.S.A. L Ltd. holds 30% shares in R Ltd. R Ltd. provides you the following information with respect to its P/L account.

(in lakhs)

Particulars	For the F.Y. 2022-23	For the F.Y. 2023-24	Particulars	For the F.Y. 2022-23	For the F.Y. 2023-24
Employees Benefit Expenses	280	301	Gross Profit	1630	1550
Interest paid to M Pte. Ltd.	589	238			
Depreciation	250	254			
Income Tax	271	232			
Profit transferred to Reserves	240	525			
	1630	**1550**		**1630**	**1550**

Calculate the income under the head Profits and Gains from business and profession of R Ltd. for the Assessment Year 2024-25, assuming the gross profit is calculated as per the provisions of Income-tax Act and Depreciation is also as per Income-tax Rules. Give appropriate reasons of your workings.

Assume none of the companies are engaged in the business of banking. **(6 Marks)**

Solution :

If an Indian company, being the borrower, incurs any expenditure by way of interest in respect of any debt issued by its non-resident associated enterprise and such interest exceeds ₹ 1 crore, then, the interest paid or payable by such Indian company in excess of 30% of its Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA) or interest paid or payable to associated enterprise, whichever is lower, shall not be allowed as deduction as per section 94B.

Further, where the debt is issued by lender which is not associated enterprise but an associated enterprise provides an implicit or explicit guarantee to such lender, such debt shall be deemed to have been issued by an associated enterprise and limitation of interest deduction would be applicable.

In the present case, since L Ltd., a US company, holds 30% share in R Ltd., an Indian company, i.e., more than 26% of voting power, L Ltd. and R Ltd. are deemed to be associated enterprise.

Since loan of ₹100 crores taken by R Ltd., an Indian company from M Pte. Ltd., a Singapore company, is guaranteed by L Ltd., an associated enterprise, such debt shall be deemed to have been issued by an associated enterprise and interest paid or payable to M Pte. Ltd. shall be considered for the purpose of limitation of interest deduction under section 94BLimitation of interest paid to associated enterprise under section 94B.

Computation of income under the head profits and gains from business or profession of R Ltd for AY. 2024-25

Particulars		Rs. (in lakhs)
Interest allowable u/s 94B for A.Y. 2023-24		
Gross Profit		1,630
Less: Employee benefits expenses		280
EBITDA		1,350
Interest paid or payable to M Pte. Ltd.		589
Lower of the following would be disallowed		
- Total interest paid or payable in excess of 30% of EBITDA [₹589 lakhs – lakhs (i.e., 30% of ₹1,350 lakhs)]	184 L	
- Interest paid or payable to M Pte Ltd.	589 L	
Interest to be disallowed as deduction for A.Y. 2023-24, which can be carried forward up to 8 assessment years		184
Interest allowable u/s 94B for A.Y. 2024-25		
Gross Profit		**1,550**
Less: Employee benefits expenses		301
EBITDA		1,249
Interest paid or payable to M Pte. Ltd.		238
Lower of the following would be disallowed		
- Total interest paid or payable in excess of 30% of EBITDA [₹ 238 lakhs – ₹ 374.70 lakhs (30% of ₹ 1249 lakhs)]	Nil	
- Interest paid or payable to M Pte Ltd.	₹238L	
Interest to be disallowed as deduction for A.Y. 2024-25		Nil
Brought forward interest of A.Y. 2023-24 allowed as deduction against profits and gains of A.Y. 2024-25 to the extent of maximum allowable interest expenditure u/s 94B i.e., ₹136.7 lakhs [₹374.70 lakhs – ₹238 lakhs]		
Total interest allowed in A.Y. 2024-25 [₹238 lakhs + ₹136.70 lakhs)		**374.7**
Balance of amount of interest relating to AY 2023-24 is eligible for carried forward i.e.₹ 47.30 lakhs (₹ 184 lakhs minus ₹ 136.70 lakhs) to 7 more subsequent assessment years.		
Income under the head profit and gains of business or profession Of R Ltd. for A.Y. 2024-25		
EBITDA		**1,249.00**
Less: Interest (maximum interest allowable as deduction u/s 94B)		374.7
Depreciation (As per the Income-tax Act, 1961)		254
Income Before Tax		**620.3**

Question-35 :[RTP MAY 23]

(i) Phi & Co. is engaged in providing scientific research services to several non-resident clients. Such services are also provided to Zeta Inc., which guarantees 12% of the total loans of Phi & Co. Examine whether transfer pricing provisions are attracted in respect of this transaction.

(ii) Without prejudice to the answer to (i) above, assuming that transfer pricing provisions are attracted in this case and that the Assessing Officer had made a primary adjustment of ₹310 lakhs to transfer price in the P.Y. 2021-22 vide order dated 1.4.2023 and the same was accepted by Phi & Co., what are the consequent requirements as per the Income-tax Act, 1961 and the implications of non-compliance with the said requirements? Assume that the transaction is denominated in Indian Rupees and no amount has been repatriated upto 31.3.2024. The one year marginal cost of fund lending rate of State Bank of India as on 1.4.2023 is 9%.

Solution :

(i) Provision of scientific research services falls within the scope of international transaction under section 92B. Phi & Co. and Zeta Inc. are deemed to be associated enterprises as per section 92A(2)(d), since Zeta Inc. guarantees not less than 10% of the total borrowings of Phi & Co. Since there is an international transaction between associated enterprises, transfer pricing provisions are attracted in this case.

(ii) Where the Assessing Officer has made a primary adjustment of ₹310 lakhs to the transfer price and the same has been accepted by Phi & Co., secondary adjustment has to be made in the books of account as per section 92CE, since the primary adjustment made by the Assessing Officer and accepted by Phi & Co exceeds ₹100 lakhs and the primary adjustment is in relation to P.Y. 2021-22. The excess money determined based on the primary adjustment has to be repatriated to India within 90 days from the date of order, failing which the same would be deemed as an advance and interest would be attracted at the one-year marginal cost of fund lending rate of State Bank of India as on 1.4.2023 + 3.25%, since the international transaction has been denominated in Indian Rupees. In this case, since the excess money has not been repatriated within 90 days, the same would be deemed to be an advance made by Phi & Co. to Zeta Inc. and interest would be attracted @ 12.25% (9% + 3.25%) from 1.4.2023, being the date of the order of the Assessing Officer. The interest would amount to ₹ 37.975 lakhs (i.e 12.25% of ₹310 lakhs) for the P.Y. 2023-24.

Alternatively, Phi & Co. can opt to pay additional income-tax @ 20.9664% (tax@18% plus surcharge @ 12% plus cess @ 4%) on ₹ 310 lakhs, which would amount to ₹ 65 lakhs. In such a case, secondary adjustment is not required to be made.

Question-36 : [PP NOV-22]

MNO Ltd., Mumbai, is engaged in providing IT and communication services. It is a subsidiary company of MNO Inc., USA. During the previous year 2023-24, MNO Ltd. has provided such services to MNO Inc. and similar type of services were also provided to HTY Ltd., Hong Kong. Billing details and other information are given below:

(i) Billing per month to MNO Inc.: USD 85,000
(ii) Billing per month to HTY Ltd.: USD 92,000
(iii) MNO Inc. has given a loan of USD 1,20,000 to MNO Ltd. to purchase hardware for execution of its project. Rate of interest is 4% p.a.
(iv) Direct and indirect cost incurred are USD 120 and USD 210 per hour respectively.
(v) MNO Ltd. works 9 hours per day for 18 days to execute the projects for MNO Inc. and 8 hours per day for 18 days to execute projects for HTY Ltd. MNO Ltd. has provided such services throughout the year to both the customers.
(vi) Warranty was provided to HTY Ltd. for a period of 2 years. Cost of warranty is calculated at the rate of 1.5% of direct cost incurred. The cost of warranty is neither included in the direct nor indirect cost.

Assume all the cost and billing are even throughout the year.

Compute Arm's Length Price as per the cost-plus method and the amount to be added, if any, to the income of MNO Ltd. Assume conversion rate 1 USD = ₹ 75. **(6 Marks)**

Solution :

Computation of Arm's Length Price as per Cost Plus Method
Determination of Gross Margin of Comparable Uncontrolled transaction i.e., of HTY Ltd.

Particulars	HTY Ltd. ($)
Direct Cost (USD 120 x 8 hours x 18 days)	17,280
Indirect Cost (USD 210 x 8 hours x 18 days)	30,240
Total Direct and Indirect cost	**47,520**
Billing per month	92,000
Gross Margin being gross profit	**44,480**
Gross Margin to cost (%) [44,480 x 100/47,520]	**93.60%**
Adjustment for functional difference on account of cost of warranty	
Total Direct and Indirect Cost	47,520.00
Add: Cost of warranty [1.5% of direct cost of USD 17,280]	259.20
Total Cost	**47,779.20**
Billing per month	92,000.00
Margin after cost of warranty being profit margin [92,000 – 47,779.20]	**44,220.80**
Profit margin to cost (%) [after considering functional difference on account of cost of warranty [44,220.80 x 100/47,779.20]	**92.55%**

Computation of Arm's Length Price by applying Cost Plus Method

	MNO Inc ($)
Direct Cost (USD 120 x 9 hours x 18 days)	19,440.00
Indirect Cost (USD 210 x 9 hours x 18 days)	34,020.00
Total Direct and Indirect cost	53,460.00
Add: **Interest on loan of USD** 1,20,000 borrowed for purchase of hardware [USD 4,800 (i.e., USD 1,20,000@4%) / 12]	400.00
Total Cost	53,860.00
Profit margin by applying the margin of 92.55% of total cost of USD 53,860	49,847.43
Arm's length price of billing per month	**1,03,707.43**
Arm's length price (in ₹) [USD 1,03,707.43 x 75]	77,78,057
Actual Billing per month [USD 85,000 x ₹ 75]	63,75,000
Income to be added to the total income of MNO Ltd. [77,78,057 – 63,75,000] = 14,03,057 x 12	1,68,36,684

Question-37 :[PP May 23]
Shahi Pvt. Ltd., a domestic company, located in Special Economic Zone (SEZ) since November 2013.

The company is engaged in manufacturing of consumables goods. The manufacturing is- wholly dependent on raw material which is imported from Sumi Inc. of Japan.

The following details are furnished in respect of the financial year 2023-24:
(i) Shahi Pvt. Ltd. imported goods for ₹ 30 crores from Sumi Inc.
(ii) Sumi Inc. supplied similar raw materials to unrelated parties with a mark-up of 10%, whereas for Shahi Pvt. Ltd. it earned a mark-up of 20%.
(iii) Shahi Pvt. Ltd. was allowed to use the brand name of Sumi Inc. without any payment and whereas the unrelated parties cannot use such brand name in India. The annual cost of brand value is ₹ 90 lakhs.
(iv) The Assessing Officer referred the matter to the Transfer Pricing Officer (TPO) for determination of Arm's Length Price (ALP).

You are required to answer the following:

(a) Compute the arm's length price of the transaction and adjustments to be made to the income of Shahi Pvt. Ltd while discussing the relevant provisions.

(b) If Transfer Pricing Officer (TPO) had enhanced the income of Shahi Pvt. Ltd. by ₹ 2 crores, will that enhanced amount of income be eligible for deduction u/s 10AA?

Will Shahi Pvt. Ltd. become liable for penalty for under-reporting of income based on the report of the Transfer Pricing Officer (TPO)?

Solution :

(a) Shahi Pvt. Ltd, an Indian company and Sumi Inc. of Japan, are deemed to be associated enterprises as per section 92A(2), since Shahi Ltd.'s manufacturing is wholly dependent on raw material5 imported from Sumi Inc. Further, the transaction of purchasing raw material falls within the meaning of "international transaction" u/s 92B. Hence, transfer pricing provisions would be attracted in this case.

Computation of Arm's length price and adjustment to be made	₹ in crores
Price of imported goods charged by Sumi Inc. from Shahi Pvt. Ltd.	30.00
Less: Mark up earned @ 20% [₹ 30 crores x 20/120] from Shahi Pvt. Ltd.	5.00
	25.00
Add: Mark up earned in uncontrolled comparable transaction @10%	2.50
	27.50
Add: Adjustment on account of brand value [Annual cost of brand value]	0.90
Arm's length price of raw material purchase	28.40
Less: Price at which raw material was imported by Shahi Pvt. Ltd. from Sumi Inc.	30.00
Adjustment to be made to the income of Shahi Pvt. Ltd.	1.60

(b) Shahi Pvt. Ltd. cannot claim deduction under section 10AA in respect of ₹ 2 crores, being the amount of income by which the total income is enhanced by the TPO, by virtue of the first proviso to section 92C(4).

(c) No, Shahi Pvt. Ltd. would not be liable for penalty for under reporting of income based on the report of the TPO, since the amount of under-reported income represented by any addition made in conformity with the arm's length price determined by the Transfer Pricing Officer would not be included within the scope of under-reported income under section 270A, assuming Shahi Pvt. Ltd. has maintained information and documents, as prescribed under section 92D, declared the international transactions under Chapter X and disclosed all material facts relating to the transaction.

Question-38 : [MTP 2 Nov 23]

Tick Ltd., Australia, holds 30% equity shares in Toe Ltd., India. Toe Ltd. develops software and also provides the related support services. Toe Ltd. during the year billed Tick Ltd., Australia for 150 man-hours at the rate of ₹ 2,500 per man hour. The total cost (direct and indirect) for executing this work amounted to ₹ 3,50,000. However, Toe Ltd. billed GN Ltd., India at the rate of ₹ 3,500 per man hour for the similar level of manpower and earned Gross Profit of 40% on its cost.

The transactions of Toe Ltd. with Tick Ltd. and GN Ltd. are comparable, subject to the following differences:

(i) While Toe Ltd. also derives technological support from Tick Ltd., there is no such support from GN Ltd. The value of technological support received from Tick Ltd. may be put at 15% of normal gross profits,

(ii) As Tick Ltd. gives business in large volumes, Toe Ltd. offered to Tick Ltd., a quantity discount which may be valued at 10% of the normal gross profits,

(iii) In the case of rendering services to Tick Ltd., Toe Ltd. neither runs any risk nor incurs any marketing costs. On the other hand, in the case of services to GN Ltd., Toe Ltd. has to assume all the risks and costs associated with the marketing function which may be estimated at 20% of the normal gross profits,

(iv) Toe Ltd. offered one month credit to Tick Ltd. The cost of providing such credit may be valued at 5% of the normal gross profits. No such credit was given to GN Ltd.

Compute the Arm's Length Price alongwith income to be adjusted under the cost-plus method.

Solution

Two enterprises are deemed to be associated enterprises where one enterprise, directly or indirectly, holds shares carrying not less than 26% of the voting power in the other enterprise.

In this case, since Tick Ltd., a foreign company, holds 30% equity shares in Toe Ltd., an Indian company, Tick Ltd. and Toe Ltd. are deemed to be associated enterprises. Since the transaction of developing software and providing related support service by Toe Ltd. to Tick Ltd. is an international transaction between associated enterprises, the provisions of transfer pricing would be attracted in this case.

Computation of Arm's Length Price as per Cost Plus Method

Particulars	%	%
Gross Profit mark-up on cost in case of GN Ltd. Ltd. [an unrelated party]		40%
Less: Adjustments for functional and other differences		
- Value of technology support [Tick Ltd. provides technology support, but GN Ltd. does not provide such support. Therefore, value of technology support shall be adjusted] [15% of 40%, being gross profit]	6%	
- Quantity discount to Tick Ltd. [Quantity discount is allowed to Tick Ltd. as it gives business in large volumes, but the same is not provided to GN Ltd. Therefore, it shall be adjusted] [10% of 40%, being gross profit]	4%	
- Risk and cost associated with marketing [Toe Ltd. has to bear all the risk and costs associated with the marketing function in case of GN Ltd., while there is no such risk in case of services to Tick Ltd. Therefore, market risk and cost shall be adjusted] [20% of 40%, being gross profit]	8%	18%
		22%
Add: Cost of credit to Tick Ltd. [Toe Ltd has provided credit of 1 month to Tick Ltd. but not to the unrelated party. Therefore, adjustment for the cost of such credit has to be carried out to arrive at the ALP] [(5% of 40%, being gross profit]		2%
Arm's length gross profit mark up to cost		**24%**
Cost incurred by Toe Ltd. for executing Tick Ltd.'s work		3,50,000
Add: Adjusted gross profit (₹ 3,50,000 x 24%)		84,000
Arm's length billed value		**4,34,000**
Less: Actual Billed Income from Tick Ltd. (₹ 2,500 x 150-man hours)		3,75,000
Total Income of Toe Ltd to be increased by		**59,000**

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CHAPTER 25
FUNDAMENTALS OF BEPS

Part-A : Study Material Questions

Question-1 :
An Indian company intends to withhold taxes on a payment to be made to an Italian Company on 10th April 2023. In this regard, the Indian company wants to understand whether the provisions of MLI are applicable to read it along with the India-Italy DTAA.

Solution :
With effect from 1st April 2020, India's MLI has entered into effect. However, Italy has not yet ratified the MLI as on 10th April 2023, therefore, the MLI provisions of Italy has not entered into force yet and therefore, the MLI provisions are not applicable. The Indian company will rely only on the existing India-Italy DTAA.

Question-2 :
Whether MLI provisions will apply in the following scenarios?

(a) Country A and Country B are signatories to the MLI. Both countries have ratified the MLI agreement as per their domestic legislative process. Country A has notified DTAA with Country B as a CTA, however, Country B has not notified DTAA with Country A.

(b) Country A - Country B DTAA is a CTA under Article 2 of the MLI as both the countries have notified the concerned DTAA. Country A has ratified the MLI under their domestic laws and has deposited the ratification instrument. Country B has not ratified the MLI owing to political instability in their country. In this regard, Country A wishes to invoke the MLI provisions while accessing the Country A – Country B DTAA. Is the action of Country A valid?

Solution :
(a) Since Country B has not notified DTAA with Country A as CTA, the MLI provisions will not apply with regard to the Country A - Country B DTAA, as per Article 2 of the MLI.

(b) Under Article 34 - Entry into Force of the MLI, only when a Country deposits its instrument of ratification, the MLI will enter into force according to the timelines stipulated in the mentioned Article. In the given scenario, since Country B has not ratified the MLI, consequently, the MLI with regards to Country B has not entered into force yet. Hence, Country A - Country B CTA under MLI is not in force yet and, therefore, provisions of the MLI are not applicable. The action of Country A is, therefore, invalid.

Question-3 :
What do you understand by base erosion and profit shifting? Describe briefly its adverse effects.

Solution :
Base Erosion and Profit Shifting (BEPS) refers to tax planning strategies that exploit gaps and mismatches in tax rules to make profits 'disappear' for tax purposes or to shift profits to locations where there is little or no real activity but the taxes are low, resulting in little or no overall corporate tax being paid.

Adverse Effects of BEPS:
(1) Governments have to cope with less revenue and a higher cost to ensure compliance.
(2) In developing countries, the lack of tax revenue leads to significant under-funding of public investment that could help foster economic growth.
(3) BEPS undermines the integrity of the tax system, as reporting of low corporate taxes is considered to be unfair. When tax laws permit businesses to reduce their tax burden by shifting their income away from jurisdictions where income producing activities are conducted, other taxpayers, especially individual taxpayers in that jurisdiction bear a greater share of the burden. This gives rise to tax fairness issues on account of individuals having to bear a higher tax burden.

(4) Enterprises that operate only in domestic markets, including family-owned businesses or new innovative businesses, may have difficulty competing with MNEs that have the ability to shift their profits across borders to avoid or reduce tax. Fair competition is harmed by the distortions induced by BEPS.

Question-4 :
What are the significant OECD Recommendations under Action Plan 1 of BEPS? Which recommendation has been adopted in Indian tax laws?

Solution :
The OECD has recommended several options to tackle the direct tax challenges which include:

(1) Modifying the existing Permanent Establishment (PE) rule to provide that whether an enterprise engaged in fully de-materialized digital activities would constitute a PE, if it maintained a significant digital presence in another country's economy.
(2) A virtual fixed place of business PE in the concept of PE i.e., creation of a PE when the enterprise maintains a website on a server of another enterprise located in a jurisdiction and carries on business through that website.
(3) Imposition of a final withholding tax on certain payments for digital goods or services provided by a foreign e-commerce provider or imposition of a equalisation levy on consideration for certain digital transactions received by a non-resident from a resident or from a non-resident having permanent establishment in other contracting state.

Taking into consideration the potential of new digital economy and the rapidly evolving nature of business operations, it becomes necessary to address the challenges in terms of taxation of such digital transactions.

The concept of 'Significant Economic Presence' (SEP) which is similar to the virtual fixed place PE as recommended in the 2015 BEPS Action Plan 1 report has been introduced in the Income-tax Act, 1961 vide Explanation 2A to section 9(1)(i).

Significant economic presence of a non-resident in India shall also constitute business connection in India. Significant economic presence means-

	Nature of transaction	**Condition**
(a)	in respect of any goods, services or property carried out by a non-resident with any person in India including provision of download of data or software in India	Aggregate of payments arising from such transaction or transactions during the previous year should exceed **₹ 2 crores.**
(b)	systematic and continuous soliciting of business activities or engaging in interaction with users in India	The number of users should be atleast **3 lakhs.**

Further, the above transactions or activities shall constitute significant economic presence in India, whether or not,—
(i) the agreement for such transactions or activities is entered in India;
(ii) the non-resident has a residence or place of business in India; or
(iii) the non-resident renders services in India:

However, where a business connection is established by reason of significant economic presence in India, only so much of income as is attributable to the transactions or activities referred to in (a) or (b) above shall be deemed to accrue or arise in India.

In order to address the challenges of the digital economy, Chapter VIII of the Finance Act, 2016, titled "Equalisation Levy", provides for an equalisation levy of 6% of the amount of consideration for specified services received or receivable by a non-resident not having permanent establishment in India, from a resident in India who carries out business or profession, or from a non-resident having permanent establishment in India. This is provided for in section 165 of the Finance Act, 2016.

Meaning of "Specified Service"

(1) Online advertisement;

(2) Any provision for digital advertising space or any other facility or service for the purpose of online advertisement;

Specified Service also includes any other service as may be notified by the Central Government.

Further, in order to reduce burden of small players in the digital domain, it is also provided that no such levy shall be made if the aggregate amount of consideration for specified services received or receivable by a non-resident from a person resident in India or from a non-resident having a permanent establishment in India does not exceed ₹ 1 lakh in any previous year.

The Finance Act, 2020 has expanded the scope of equalisation levy by inserting new section 165A in the Finance Act, 2016 to include within the ambit of Chapter VIII thereto, consideration received or receivable for e-commerce supply or services made or provided or facilitated on or after 1.4.2020. Accordingly, on and from 1st April, 2020, equalisation levy @ 2% would be chargeable 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—

(i) to a person resident in India; or

(ii) to a non-resident in the following specified circumstances -

  (a) sale of advertisement, which targets a customer, who is resident in India or a customer who accesses the advertisement though internet protocol address located in India; and

  (b) sale of data, collected from a person who is resident in India or from a person who uses internet protocol address located in India; or

(iii) to a person who buys such goods or services or both using internet protocol address located in India.

However, equalisation levy would **not** be chargeable —

(i) where the e-commerce operator making or providing or facilitating e-commerce supply or services has a permanent establishment in India and such e-commerce supply or services is effectively connected with such permanent establishment;

(ii) where the equalisation levy is leviable on specified services under section 165; or

(iii) sales, turnover or gross receipts, as the case may be, of the e-commerce operator from the e-commerce supply or services made or provided or facilitated is less than ₹ 2 crores during the previous year.

However, the consideration received or receivable for specified services and for e-commerce supply or services would not include the consideration, which are taxable as royalty or fees for technical services in India under the Income-tax Act, 1961 read with the DTAA notified by the Central Government under section 90 or section 90A.

Question-5 :

Discuss the provision incorporated in the Income-tax Act, 1961 in line with the OECD recommendations under Action Plan 4 of BEPS.

Solution :

In line with the recommendations of OECD BEPS Action Plan 4, section 94B has been inserted in the Income-tax Act, 1961 by the Finance Act, 2017 to provide a cap on the interest expense that can be claimed by an entity to its associated enterprise. The total interest paid in excess of 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to associated enterprise for that previous year, whichever is less, shall not be deductible.

The provision is applicable to an Indian company, or a permanent establishment of a foreign company, being the borrower, who pays interest in respect of any form of debt issued by a non-resident who is an 'associated enterprise' of the borrower. Further, the debt is deemed
to be treated as issued by an associated enterprise where it provides an implicit or explicit guarantee to the lender, being a non-associated enterprise, or deposits a corresponding and matching amount of funds with such lender.

The provision allows for carry forward of disallowed interest expense for 8 assessment years immediately succeeding the assessment year for which the disallowance is first made and deduction against the income computed under the head "Profits and gains of business or profession" to the extent of maximum allowable interest expenditure.

In order to target only large interest payments, it provides for a threshold of interest expenditure of ₹ 1 crore in respect of any debt issued by a non-resident associated enterprise exceeding which the provision would be applicable. Banks, Insurance business and class of NBFCs notified by the Government are excluded from the ambit of the said provisions keeping in view of special nature of these businesses. Also, section 94B would not be attracted on interest paid in respect of debt issued by a lender which is a permanent establishment in India of a non-resident, being a person engaged in the business of banking.

Question-6 :
Describe the three tier structure for transfer pricing documentation mandated by BEPS Action Plan 13.

Solution :
Action 13 contains a three-tiered standardized approach to transfer pricing documentation which consists of:

(a) **Master file:** Master file requires MNEs to provide tax administrations with high-level information regarding their global business operations and transfer pricing policies. The master file is to be delivered by MNEs directly to local tax administrations.

(b) **Local file:** Local file requires maintaining of transactional information specific to each country in detail covering related-party transactions and the amounts involved in those transactions. In addition, relevant financial information regarding specific transactions, a comparability analysis and analysis of the selection and application of the most appropriate transfer pricing method should also be captured. The local file is to be delivered by MNEs directly to local tax administrations.

(c) **Country-by-country (CBC) report:** CBC report requires MNEs to provide an annual report of economic indicators viz. the amount of revenue, profit before income tax, income tax paid and accrued in relation to the tax jurisdiction in which they do business. CBC reports are required to be filed in the jurisdiction of tax residence of the ultimate parent entity, being subsequently shared between other jurisdictions through automatic exchange of information mechanism.

Question-7 :
Explain the nexus approach recommended by OECD in BEPS Action Plan 5 which has been adopted in the Income-tax Act, 1961.

Solution :
In India, the Finance Act, 2016 has introduced a concessional taxation regime for royalty income from patents for the purpose of promoting indigenous research and development and making India a global hub for research and development. The purpose of the concessional taxation regime is to encourage entities to retain and commercialise existing patents and for developing new innovative patented products. Further, this beneficial taxation regime will incentivise entities to locate the high-value jobs associated with the development, manufacture and exploitation of patents in India.

The nexus approach has been recommended by the OECD under BEPS Action Plan 5. This approach requires attribution and taxation of income arising from exploitation of Intellectual property (IP) in the jurisdiction where substantial research and development (R & D) activities are undertaken instead of the jurisdiction of legal ownership. Accordingly, section 115BBF has been inserted in the Income-tax Act, 1961 to provide that where the total income of the eligible assessee (being a person resident in India who is the true and first inventor of the invention and whose name is entered in the patent register as the patentee in accordance with the Patents Act, 1970 and includes every such person, being the true and the first inventor of the invention, where more than one person is registered as patentee under Patents Act, 1970 in respect of that patent.) includes any income by way of royalty in respect of a patent developed and registered in India, then such royalty shall be taxable at the rate of 10% (plus applicable surcharge and cess). For this purpose, developed means atleast 75% of the expenditure should be incurred in India by the eligible assessee for any invention in respect of which patent is granted under the Patents Act, 1970.

Question-8 :
What are the ways in which hybrid mismatch arrangements are used to achieve unintended double non-taxation or long-term tax deferral?

Solution :

Hybrid mismatch arrangements are sometimes used to achieve unintended double nontaxation or long-term tax deferral in one or more of the following ways -
(1) Creation of two deductions for a single borrowal;
(2) Generation of deductions without corresponding income inclusions;
(3) Misuse of foreign tax credit; and
(4) Participation exemption regimes.

Question-9 :
What is the meaning of, and difference between, a hybrid mismatch and branch mismatch? Briefly mention the reasons why hybrid mismatch arrangements arise. Which Action Plan of BEPS gives recommendations in this regard?

Solution :
A hybrid mismatch is an arrangement that exploits a difference in the tax treatment of an entity or an instrument under the laws of two or more tax jurisdictions to achieve double non-taxation.

Branch mismatches arise where the ordinary rules for allocating income and expenditure between the branch and head office result in a portion of the net income of the taxpayer escaping the charge to taxation in both the branch and residence jurisdiction. Unlike hybrid mismatches, which result from conflicts in the legal treatment of entities or instruments, branch mismatches are the result of differences in the way the branch and head office account for a payment made by or to the branch.

Hybrid mismatch arrangements arise due to -
(i) Creation of two deductions for a single borrowal
(ii) Generation of deductions without corresponding income inclusions
(iii) Misuse of foreign tax credit
(iv) Participation exemption regimes

Specific country laws that allow taxpayers to opt for the tax treatment of certain domestic and foreign entities may aid hybrid mismatches.

BEPS Action Plan 2 gives recommendations to neutralise the effects of hybrid mismatch arrangements, which include general changes to domestic law followed by a set of dedicated anti-hybrid rules. Treaty changes are also recommended. The 2017 report includes specific recommendations for improvements to domestic law intended to reduce the frequency of branch mismatches as well as targeted branch mismatch rules which adjust the tax consequences in either the residence or branch jurisdiction in order to neutralise the hybrid mismatch without disturbing any of the other tax, commercial or regulatory outcomes.

Part-B : Additional Questions

Question-10 : [RTP NOV-18]
What is meant by Thin Capitalisation? Why is it considered as an anti-avoidance measure? Which action plan of BEPS addresses Thin Capitalisation? Explain the provision incorporated in the Income-tax Act, 1961 to address Thin Capitalisation.

Solution :
A company is typically financed or capitalized through a mixture of debt and equity. The manner in which company raises capital has a significant impact on the amount of profit it reports for tax purposes. This is due to the reason that tax legislations of countries typically allow a deduction for interest paid or payable in arriving at the profit for tax purposes while the dividend paid on equity contribution is not deductible.

Therefore, the higher the level of debt in a company, and thus, the amount of interest it pays, the lower will be its taxable profit. For this reason, debt is often a more tax efficient method of finance than equity. Since in such a structure, equity financing is less, it is referred to as Thin Capitalization. Thin capitalization, thus, refers to the process of funding an entity by debt instead of equity with a view to take advantage of interest deduction benefits.

Multinational groups are often able to structure their financing arrangements to maximize these benefits. To prevent tax erosion on account of such arrangements, country's tax administrations often introduce rules that place a limit on the amount of interest that can be deducted in computing a company's profit for tax purposes. Such rules are designed to counter cross-border shifting of profit through excessive interest payments, and thus aim to protect a country's tax base. Under the initiative of the G-20 countries, the Organization for Economic Co-operation and Development (OECD) in its Base Erosion and Profit Shifting (BEPS) project had taken up the issue of base erosion and profit shifting by way of excess interest deductions by the MNEs in its Action Plan 4. The OECD has recommended several measures in its final report to address this issue. In view of the above, new section 94B has been inserted in the Income-tax Act, 1961, in line with the recommendations of OECD BEPS Action Plan 4, to provide that interest paid or payable by an entity to its non-resident associated enterprises shall be restricted to 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to non-resident associated enterprises, whichever is less.

Question-11 : [RTP MAY-19]
Explain the meaning of "significant economic presence". Does "significant economic presence" constitute "business connection" for attracting deemed accrual provisions under section 9(1)? Examine, in line with which action plan of BEPS, has this provision been introduced in the Income-tax Act, 1961.

Solution :
As per Explanation 2A to section 9(1)(i), "significant economic presence" of a non- resident in India shall constitute "business connection" for attracting deemed accrual provisions in India.

"Significant Economic Presence" means-

(a) transaction in respect of any goods, services or property carried out by a non- resident in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds the prescribed amount; or

(b) systematic and continuous soliciting of business activities or engaging in interaction with such prescribed number of users in India through digital means.

Further, the above transactions or activities shall constitute significant economic presence in India, whether or not,—

(i) the agreement for such transactions or activities is entered in India;

(ii) the non-resident has a residence or place of business in India; or

(iii) the non-resident renders services in India:

However, where a business connection is established by reason of significant economic presence in India, only so much of income as is attributable to the transactions or activities referred to in (a) or (b) above shall be deemed to accrue or arise in India.

This provision has been inserted in the Income-tax Act, 1961 in line with "BEPS Action Plan 1 Addressing the challenges of the digital economy" to take care of new business models such as digitized businesses, which do not require physical presence of itself or any agent in India. Such businesses can now be covered within the scope of section 9(1)(i).

Question-12 : [RTP MAY-19]
What is the difference between OECD Model Convention, 2017 and UN Model Convention, 2017 relating to right of Source State to tax business profits of an enterprise? Explain.

Solution :
Business profits of an enterprise can only be taxed by the Residence State. Right of Source State to tax business profits of an enterprise only arises if it carries on business through a Permanent Establishment (PE) situated in that State.
As per the approach under the OECD Model Convention, once a PE is proven, the Source State can tax only such profits as are attributable to the PE. The UN Model Convention amplifies this attribution principle by a limited Force of Attraction rule (FOA).

The FOA rule implies that when a foreign enterprise sets up a PE in State of Source, it brings itself within the fiscal jurisdiction of that State (State of Source) to such a degree that profits that the enterprise derives from Source State of Source, whether through the PE or not, can be taxed by it (State of Source State).
As per Article 7 of the UN Model Convention, if the enterprise carries on business in the other Contracting State through a PE, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to:
(a) that PE;
(b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that PE; or
(c) other business activities carried on in that other State of the same or similar kind as those effected through that PE.

Question-13 : [RTP NOV-19]
Which action plan of BEPS requires introduction of Limitation of Benefits clause in a tax treaty? Has India introduced Limitation of Benefits clause in its tax treaties in line with the BEPS Action Plan? Discuss.

Solution :
BEPS Action Plan 6 – Preventing Treaty Abuse requires introduction of Limitation of Benefits (LOB) clause or Principal Purpose Test (PPT) rule or both to protect against treaty shopping. Treaty shopping is a practice by which a resident of a third country takes advantage of beneficial treaty provisions between two countries by establishing a shell or conduit company in one of the two countries, where tax incidence is low.

Given the risk to revenues posed by treaty shopping, countries have committed to ensure a minimum level of protection against treaty shopping (the minimum standard). That commitment will require countries to include in their tax treaties an express statement that their common intention is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping arrangements.

Accordingly, on 10th May, 2016, India and Mauritius has signed a protocol amending the India-Mauritius tax treaty at Mauritius. In the said treaty, for the first time, it has been provided that gains from the alienation of shares acquired on or after 1.4.2017 in a company which is a resident of India may be taxed in India. The tax rate on such capital gains arising during the period from 1.4.2017 to 31.3.2019 should, however, not exceed 50% of the tax rate applicable on such capital gains in India. A Limitation of Benefit (LOB) Clause has been introduced which provides that a resident of a Contracting State shall not be entitled to the benefits of 50% of the tax rate applicable in transition period if its affairs are arranged with the primary purpose of taking advantage of concessional rate of tax. Further, a shell or a conduit company claiming to be a resident of a Contracting State shall not be entitled to this benefit. A shell or conduit company has been defined as any legal entity falling within the meaning of resident with negligible or nil business operations or with no real and continuous business activities carried out in that Contracting State.

Question-14 : [PP JULY-21]
Explain Base Erosion and Profit Sharing [BEPS]. What are its adverse effects? (4 Marks)

Solution :
Base Erosion and Profit Shifting (BEPS) refers to tax planning strategies that exploit gaps and mismatches in tax rules to make profits 'disappear' for tax purposes or to shift profits to locations where there is little or no real activity but the taxes are low, resulting in little or no overall corporate tax being paid.

Adverse effects of BEPS:
The following are the adverse effects of BEPS:
- Governments have to cope with less revenue and a higher cost to ensure compliance.
- Undermines the integrity of the tax system, as reporting of low corporate taxes is considered to be unfair.
- in developing countries, the lack of tax revenue leads to significant under-funding of public investment that could help foster economic growth.
- when tax laws permit businesses to reduce their tax burden by shifting their income away from jurisdictions where income producing activities are conducted, other taxpayers, especially individual taxpayers in that jurisdiction bear a greater share of the burden. This gives rise to tax fairness issues on account of individuals having to bear a higher tax burden.
- Also, enterprises that operate only in domestic markets, including family-owned businesses or new innovative businesses, may have difficulty competing with MNEs that have the ability to shift their profits across borders to avoid or reduce tax. Fair competition is harmed by the distortions induced by BEPS.

Question-15 : [MTP MARCH-18]
What are the different indicators of BEPS activity as per BEPS Action Plan 11? Discuss. (6 Marks)

Solution :
There are six indicators of BEPS activity as per BEPS Action Plan 11. These six indicators of BEPS activity highlight BEPS behaviour using different sources of data, employing different metrics, and examining different BEPS channels. When combined and presented as a dashboard of indicators, they confirm the existence of BEPS, and its continued increase in scale in recent years.

(1) **The profit rates of MNE affiliates located in lower-tax countries are higher than their group's average worldwide profit rate -** For example, the profit rates reported by MNE affiliates located in lower-tax countries are twice as high as their group's worldwide profit rate on average.

(2) **The effective tax rates paid by large MNE entities are estimated to be lower than similar enterprises with only domestic operations -** This tilts the playing-field against local businesses and non-tax aggressive MNEs, although some of this may be due to MNEs' greater utilisation of available country tax preferences.

(3) **Foreign**

(4) **direct investment (FDI) is increasingly concentrated -** FDI in countries with net FDI to GDP ratios of more than 200% increased from 38 times higher than all other countries in 2005 to 99 times higher in 2012.

(5) **The separation of taxable profits from the location of the value creating activity is particularly clear with respect to intangible assets, and the phenomenon has grown rapidly -** For example, the ratio of the value of royalties received to spending on research and development in a group of low-tax countries was six times higher than the average ratio for all other countries, and has increased three-fold between 2009 and 2012.

(6) **Royalties received by entities located in these low-tax countries accounted for 3% of total royalties-** This provides evidence of the existence of BEPS, though not a direct measurement of the scale of BEPS.

(7) **Debt from both related and third-parties is more concentrated in MNE affiliates in higher statutory tax-rate countries -** The interest-to-income ratio for affiliates of the largest global MNEs in higher-tax rate countries is almost three times higher than their MNE's worldwide third-party interest-to-income ratio.

CHAPTER 26
APPLICATION AND INTERPRETATION OF TAX TREATIES

Part-A : Study Material Questions

Question-1 :
What do you mean by double taxation? Discuss the connecting factors which lead to double taxation.

Solution :
The taxability of a foreign entity in any country depends upon two distinct factors, namely, whether it is doing business **with that country or in that country.** Internationally, the term used to determine the jurisdiction for taxation is "connecting factors". There are two types of connecting factors, namely, "Residence" and "Source". It means a company can be subject to tax either on its residence link or its source link with a country. If a company is doing business in a host/source country, then, besides being taxed in the home country on the basis of its residence link, it will also be taxed in the host country on the basis of its source link as the company would be heavily engaged in doing business in the territory of other country, for example, through its branch in that country.

However, if a company is doing business with another country (i.e., host/source country), then, it would generally be subject to tax in its home country alone, based on its residence link, since the company is not engaged in carrying on the business in the territory of source country (for example, export of goods to another country). In this regard, it may, however, be noted that significant economic presence in another country may result in tax liability in the other country. For example, as per the Income-tax Act, 1961, transaction in respect of any goods, services or property carried out by a non-resident with any person in India including provision of download of data or software in India if aggregate of payments arising from such transaction or transactions during the previous year exceeds ₹ 2 crores, would be deemed as significant economic presence of such non-resident in India. Significant economic presence of a non-resident in India would constitute business connection in India and consequently, income would be deemed to accrue or arise in India and hence, be taxable in India (the Source country).

- **Juridical double taxation:** When source rules overlap, double taxation may arise i.e. tax is imposed by two or more countries as per their domestic laws in respect of the same transaction, income arises or is deemed to arise in their respective jurisdictions. This is known as "juridical double taxation".

  In order to avoid such double taxation, a company can invoke provisions of Double Taxation Avoidance Agreements (DTAAs) (also known as Tax Treaty or Double Taxation Convention–DTC) with the host/source country, or in the absence of such an agreement, an Indian company can invoke provisions of section 91, providing unilateral relief in the event of double taxation.

- **Economic double taxation:** 'Economic double taxation' happens when the same transaction, item of income or capital is taxed in two or more states but in hands of different persons (because of lack of subject identity)

Question-2 :
"In addition to allocating the taxing rights and elimination of double taxation, there are various other important considerations while entering into tax treaty". Elucidate.

Solution :
In addition to allocating the taxing rights and elimination of double taxation, there are various other important considerations while entering into a tax treaty, as mentioned below:

- Ensuring non-discrimination between residents and non-residents
- Resolution of disputes arising on account of different interpretation of tax treaty by the treaty partner.
- Providing assistance in the collection of the fair and legitimate share of tax.

Further, in addition to above, there are some other principles which must be considered by countries in their tax system –

(i) **Equity and fairness:** Same income earned by different taxpayers must be taxed at the same rate regardless of the source of income.

(ii) **Neutrality and efficiency:** Neutrality factor provides that economic processes should not be affected by external factors such as taxation. Neutrality is two-fold.

(a) Capital export neutrality and

(b) Capital import neutrality (CIN).

Capital export neutrality (CEN) provides that business decision must not be affected by tax factors between the country of residence and the target country; whereas CIN provides that the level of tax imposed on non-residents as well as the residents must be similar.

(iii) **Promotion of mutual economic relation, trade and investment:** In some cases, it is observed that avoidance of double taxation is not the only objective. The other objective may be to give impetus to a country's overall economic growth and development.

Question-3 :

What is the General Rule of Interpretation under Vienna Convention of Law of Treaties?

Solution :

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.

Question-4 :

What are the Extrinsic Aids to interpretation of a tax treaty?

Solution :

A wide range of extrinsic material is permitted to be used in interpretation of tax treaties. According to Article 32 of the Vienna Convention, the supplementary means of interpretation include the preparatory work of the treaty and the circumstances of its conclusion.

According to Prof. Starke, one may resort to following extrinsic aids to interpret a tax treaty provided that clear words are not thereby contradicted:

(i) Interpretative Protocols, Resolutions and Committee Reports, setting out agreed interpretations;

(ii) A subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions [Art. 31(3) of the VCLT];

(iii) Subsequent conduct of the state parties, as evidence of the intention of the parties and their conception of the treaty;

(iv) Other treaties, in pari materia (i.e., relating to the same subject matter), in case of doubt.

Provisions in Parallel Tax Treaties

If the language used in two tax treaties (say treaties: X and Y) are same and one treaty is more elaborative or clear in its meaning (say treaty X) can one rely on the interpretation/explanations provided in a treaty X while applying provisions of a treaty Y? Though the interpretation or explanations in treaty X would not be binding while interpreting the treaty Y, however, if the language is similar between the two treaties, one can make a reference to treaty X for understanding the intention of the Contracting parties.

The views of the Indian Judiciary are, however, not consistent in this respect. There are contradictory judgments by Indian courts/Tribunal in this regard.

International Articles/Essays/Reports

Like in the direct tax cases, Courts many a times refer to the Commentaries of Kanga Palkhiwala and Sampath Iyengar for interpretation as they are considered authoritative source. Also under the International taxation, various authors like Phillip Baker and Klaus Vogel's commentary are considered as classic sources of interpretation for understanding the tax treaties. International Article/Essays/Reports are referred as extrinsic aid for interpretation of tax treaties. Like, in case of CIT v. Vishakhapatnam Port Trust (1983) 144 ITR 146 (AP), the High Court obtained "useful material" through international articles..

Protocol

Protocol is like a supplement to the treaty. In many treaties, in order to put certain matters beyond doubt, there is a protocol annexed at the end of the treaty, which clarifies borderline issues.

A protocol is an integral part of a tax treaty and has the same binding force as the main clauses therein.

Protocol to India France treaty contains the Most Favoured Nation (MFN) Clause. Thus, one must refer to protocol before arriving at any final conclusion in respect of any tax treaty provision.

Preamble

Preamble to a tax treaty could guide in interpretation of a tax treaty. As mentioned above, in case of Azadi Bachao Andolan, the Apex Court observed that 'the preamble to the Indo- Mauritius Double Tax Avoidance Treaty recites that it is for the 'encouragement of mutual trade and investment' and this aspect of the matter cannot be lost sight of while interpreting the treaty'. These observations are very significant whereby the Apex Court has upheld 'economic considerations' as one of the objectives of a Tax Treaty. Further, now after the BEPS Action Plan 6 recommendation and Multi-lateral Instrument (MLI), the new text has been added to the Preamble to reflect that the treaties are not intended for creating opportunities for double-non taxation and treaty shopping arrangements. This will play a keyrole in interpreting the treaties post MLI.

Mutual Agreement Procedure [MAP]

MAP helps to interpret any ambiguous term/provision through bilateral negotiations. MAP is more authentic than other aids as officials of both countries are in possession of materials/documents exchanged at the time of signing the tax treaty which would clearly indicate the object or purpose of a particular provision. Successful MAPs also serve as precedence in case of subsequent applications.

Question-5 :

Matrix Inc. incorporated in Country X, holds 26% controlling interest in Pilu Ltd., an Indian Company. Pilu Ltd. declared dividend of ₹ 50,00,000 during the P.Y. 2023-24. The DTAA between India and Country X, which came into force on 1.1.2018, provides for taxation of dividend @15%. Thereafter, India entered into a DTAA with Country Y, which came into force from 15.5.2018. The India-Country Y DTAA, inter alia, provides for concessional tax rate of 10% in respect of dividend. Country X is an OECD member since 2015 and Country Y is also an OECD member since 2017.

Mr. Jack, CFO of Matrix Inc. seeks your opinion on whether the concessional tax rate provided in the DTAA between India and Country Y can be availed by a resident of Country X and if so, are there any further conditions to be satisfied in this regard. You may assume that the protocol annexed to India's DTAAs with all OECD member countries contain the relevant tax parity clause.

Would your answer change, if Country Y had become an OECD member only in the year 2020?

Solution :
The CBDT has, vide Circular No. 3/2022 dated 3.2.2022, clarified that the applicability of the Most Favoured Nation (MFN) clause and benefit of the lower rate or restricted scope of source taxation rights in relation to certain items of income including dividends provided in India's DTAAs with the third State (Country Y, in this case) will be available to the first (OECD) State (Country X, in this case) **only when all the following conditions are met:**

	Condition	Satisfaction of condition in the case on hand
(i)	The second treaty (with the third State) is entered into after the signature/ Entry into Force of the treaty between India and the first state	This condition is satisfied as India has entered into a DTAA with Country Y on 15.5.2018, after it has entered into a DTAA with Country X on 1.1.2018.
(ii)	The second treaty is entered into between India and a State which is a member of the OECD at the time of signing the treaty with it;	This condition is satisfied as India has entered into a DTAA on 15.5.2018 with Country Y, which is a member of OECD since 2017. Hence, on 15.5.2018, Country Y was an OECD member.
(iii)	India limits its taxing rights in the second treaty in relation to rate or scope of taxation in respect of relevant items of income	This condition is satisfied since in DTAA between India and Country Y, dividend is taxable@10%.
(iv)	A separate notification has been issued by India, importing the benefits of the second treaty into the treaty with the first State as required by the provisions of section 90(1) of the Income-tax Act, 1961.	In this case, conditions (i), (ii) and (iii) mentioned above have been satisfied. The concessional rate of 10% can be applied for taxing the dividend received by Matrix Inc. from Pilu Ltd., an Indian company, only if India has issued a separate notification importing the benefits of India-Country Y tax treaty into India-Country X tax treaty, as required by the provisions of sections 90(1). If such notification has been issued, then, the concessional rate of 10% can be applied for taxing the dividend received by Matrix Inc. from Pilu Ltd., an Indian company; otherwise it cannot be applied, even if other conditions are satisfied.

In case if Country Y became an OECD member only in the year 2020, then, the concessional rate of 10% cannot be applied for taxing dividend received by Matrix Inc. from Pilu Ltd., since Country Y was not an OECD member on 15.5.2018, at the time when India signed the DTAA with it. Consequently, condition (ii) mentioned above would not be satisfied in such a case. Hence, dividend received by Matrix Inc. from Pilu Ltd. would be subject to tax @ 15%.

Question-6 :
Explain, with examples, the role of Protocol and Preamble in interpretation of tax treaty

Solution :
Protocol:
Protocol is like a supplement to the treaty. In many treaties, in order to put certain matters beyond doubt, there is a protocol annexed at the end of the treaty, which clarifies borderline issues. A protocol is an integral part of a tax treaty and has the same binding force as the main clauses therein.
Protocol to India France treaty contains the Most Favoured Nation Clause. Thus, protocol must be referred to before arriving at any final conclusion in respect of any tax treaty provision.

Preamble:
Preamble to a tax treaty could guide in interpretation of a tax treaty. In case of Union of India v. Azadi Bachao Andolan (2003) 263 ITR 706 (SC) , the Apex Court observed that 'the preamble to the Indo-Mauritius Double Tax Avoidance Convention recites that it is for the 'encouragement of mutual trade and investment' and this aspect of the matter cannot be lost sight of while interpreting the treaty'. These observations are very significant whereby the Apex Court has upheld 'economic considerations' as one of the objectives of a Tax Treaty.

Part-B : Additional Questions

Question-7 : [RTP NOV-18]
Explain the following terms in the context of interpretation of tax treaties:
(a) Principle of Contemporanea Expositio
(b) Teleological Interpretation

Solution :
Principle of Contmporanea Expositio
A treaty's terms are normally to be interpreted on the basis of their meaning at thetime the treaty was concluded. However, this is not a universal principle.

In Abdul Razak A. Meman's (2005) 276 ITR 306, the AAR observed that "there can be little doubt that while interpreting treaties, regard should be had to material contemporanea expositio. This proposition is embodied in article 32 of the Vienna Convention and is also referred to in the decision of the Hon'ble Supreme Court in K. P. Varghese v. ITO [1981] 131 ITR 597.

Teleological Interpretation
In this approach the treaty is to be interpreted so as to facilitate the attainment of the aims and objectives of the treaty. This approach is also known as the 'objects and purpose' method.

In case of Union of India v. Azadi Bachao Andolan 263 ITR 706, the Supreme Court observed that "the principles adopted for interpretation of treaties are not the same as those in interpretation of statutory legislation. The interpretation of provisions of an international treaty, including one for double taxation relief, is that the treaties are entered into at a political level and have several considerations as their bases."

One instance is where the Apex Court agreed with the contention of the Appellant that "the preamble to the Indo-Mauritius DTAA recites that it is for 'encouragement of mutual trade and investment' and this aspect of the matter cannot be lost sight of while interpreting the treaty.

Question-8 : [PP MAY-18]
Explain the meaning of "Treaty" as per Article 2 of Vienna Convention on Law of Treaties, 1969. Why it come into play? **(3 Marks)**

Solution :
Article 2 of Vienna Convention on Law of Treaties, 1969 defines "treaty" as an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

Treaties (Double Tax Avoidance Agreements) come into play to mitigate hardship caused by subjecting the same income to double taxation.

Tax Treaties attempt to eliminate double taxation and try to achieve balance and equity. They aim at sharing of tax revenues by the concerned States on a rational basis.

Question-9 : [PP MAY-19]
Examine and state the correctness or otherwise of each of the following statements in the context of international tax treaties between the countries and answer in brief with reasons/contents thereof:

(i) "Providing assistance in the collection of the fair and legitimate share of tax by the countries involved" is the sole objective of Tax Treaties entered among Countries.
(ii) A Protocol is an integral part of the Tax Treaty and has the same binding force as the main clauses therein. **(6 Marks)**

Solution :

(i) The statement is not correct.

The objectives of tax treaties also include

- allocating tax rights,
- elimination of double taxation,
- ensuring non-discrimination between residents and non-residents and
- resolution of disputes of on account of different treaty interpretation.

(ii) The statement is correct.

Protocol is like a supplement to the treaty. In many treaties, in order to put certain matters beyond doubt, there is a protocol annexed at the end of the treaty, which clarifies borderline issues. Thus, one must refer to protocol before arriving at any final conclusion in respect of any tax treaty provision.

Question-10 : [PP NOV-19]

Do you agree that the tax treaties are to be interpreted liberally? If so, why? **(2 Marks)**

Solution :

Yes, I agree with the given statement.

It is a general principle of construction with respect to treaties that they shall be liberally construed so as to carry out the apparent intention of the parties.

Contrary to an ordinary taxing statute, a tax treaty or convention must be given a liberal interpretation with a view to implementing the true intentions of the parties. A literal or legalistic interpretation must be avoided when the basic object of the treaty might be defeated or frustrated in so far as the particular item under consideration is concerned.

Question-11 : [MTP OCT-18]

"In addition to allocating the taxing rights and elimination of double taxation, there are various other important considerations while entering into tax treaty". Elucidate. (6 Marks)

Solution :

In addition to allocating the taxing rights and elimination of double taxation, there are various other important considerations while entering into a tax treaty, as mentioned below:

- Ensuring non-discrimination between residents and non-residents
- Resolution of disputes arising on account of different interpretation of tax treaty by the treaty partner.
- Providing assistance in the collection of the fair and legitimate share of tax.

Further, in addition to above, there are some other principles which must be considered by countries in their tax system –

(i) Equity and fairness: Same income earned by different taxpayers must be taxed at the same rate regard less of the source of income.

(ii) Neutrality and efficiency: Neutrality factor provides that economic processes should not be affected by external factors such as taxation. Neutrality is two-fold.

(a) Capital export neutrality and

(b) Capital import neutrality (CIN).

Capital export neutrality (CEN) provides that business decision must not be affected by tax factors between the country of residence and the target country; whereas CIN provides that the level of tax imposed on non-residents as well as the residents must be similar.

Promotion of mutual economic relation, trade and investment: In some cases, it is observed that avoidance of double taxation is not the only objective. The other objective may be to give impetus to a country's overall economic growth and development.

Question-12 : [MTP APRIL-21]
Explain the following terms in the context of interpretation of tax treaties:
(i) Principle of Contemporanea Expositio
(ii) Purposive Interpretation. **(6 Marks)**

Solution :
Principle of Contemporanea Expositio
A treaty's terms are normally to be interpreted on the basis of their meaning at the time the treaty was concluded.

In Abdul Razak A. Meman's (2005) 276 ITR 306, the AAR observed that "there can be little doubt that while interpreting treaties, regard should be had to material contemporanea expositio. This proposition is embodied in article 32 of the Vienna Convention and is also referred to in the decision of the Hon'ble Supreme Court in K. P. Varghese v. ITO [1981] 131 ITR 597.

Purposive Interpretation
In this approach the treaty is to be interpreted so as to facilitate the attainment of the aims and objectives of the treaty. This approach is also known as the 'objects and purpose' method.

In case of Union of India v. Azadi Bachao Andolan 263 ITR 706, the Supreme Court observed that "the principles adopted for interpretation of treaties are not the same as those in interpretation of statutory legislation. The interpretation of provisions of an international treaty, including one for double taxation relief, is that the treaties are entered into at a political level and have several considerations as their bases."

One instance is where the Apex Court agreed with the contention of the Appellant that "the preamble to the Indo-Mauritius DTAA recites that it is for 'encouragement of mutual trade and investment' and this aspect of the matter cannot be lost sight of while interpreting the treaty.

Question-13 : [PP DEC-21]
(i) In what context is the term "Thin Capitalisation" used?
Is there any threshold limit prescribed by the Act for claiming deduction u/s 94B of the Act for addressing Thin Capitalisation? Discuss its applicability to different entities. Whether any entities are excluded from its application? **(4 Marks)**
(ii) There are two types of DTAA made by India with other countries i.e., Limited DTAAs and Comprehensive DTAAs. Explain the terms. **(2 Marks)**

Solution :
(i) **Thin capitalization refers to the process of funding an entity by debt instead of equity with a view to take advantage of interest deduction benefits.** In other words, thin capitalization refers to the situation where a company is financed through a relatively high level of debt compared to equity.

For addressing thin capitalization, **section 94B provides a cap on the interest expense that can be claimed by an entity in respect of borrowings from its non- resident associated enterprise**. As per section 94B, the **total interest paid in excess of 30% of its EBITDA** (Earnings before interest, taxes, depreciation and amortization) **or interest paid or payable** to associated enterprise for that previous year, **whichever is less**, shall **not be deductible**. This limitation of interest deduction would be **applicable** only where the **interest expenditure** in respect of any debt issued by a non-resident associated enterprise **exceed 1 crore.**

Section 94B is applicable to an Indian company, or a permanent establishment of a foreign company in India, being the borrower incurring interest expenditure in respect of debt issued by its non-resident associated enterprise. Debt shall be deemed to have been issued by an associated enterprise, even where the lender is not an associated enterprise, if an associated enterprise provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender.

The following has been **excluded from the applicability of the provisions of section 94B -**

- an Indian company or permanent establishment of a foreign company which is engaged in the **business of banking and insurance**
- interest paid in respect of a debt issued by a lender which is a permanent establishment in India of a non-resident, being a person engaged in the business of banking.

(ii) **Limited DTAAs are those which are limited to certain types of incomes only**. e.g., DTAA between India and Pakistan is limited to income from international air transport only.

Comprehensive DTAAs are those which cover almost all types of incomes covered by any model convention.

Question-14 : [PP May 23]

(i) What is the "General Rule of Interpretation" of tax treaty as provided under Vienna. Convention on Law of Treaties?

(ii) Explain the following terms "Pacta Sunt Servanda (in good faith)" in view of Principles enunciated in the Vienna Convention on law of treaties.

(iii) Explain the term "Mutual Agreement Procedure" as per Article 25 of Model Tax Conventions under OECD model and UN Model.

Solution :

i. General Rule of Interpretation implies that a treaty shall be interpreted –

- in good faith;
- in accordance with the ordinary meaning to be given to the terms thereof; and
- in the context and in the light of its object and purpose.

ii. Pacta Sunt Servanda (in good faith) implies that every treaty in force-

- is binding upon the parties; and
- must be followed by them in good faith.

iii. There may be a situation wherein a tax payer may believe that the treatment accorded by either or both Contracting States is not in accordance with the provisions of the tax treaty.

In such a case, there is a need for dispute resolution which is addressed by Article 25 of Model Tax Convention under OECD Model and UN Model. This Article requires competent authorities of both countries to endeavor to resolve the conflict by engaging in bilateral negotiations.

The UN Model Convention provides two alternatives - Alternative A and Alternative B, for the article on Mutual Agreement Procedure. Under OECD Model Convention, the taxpayer may make a request to either Contracting State while UN Model (Alternative A) contemplates taxpayer going to Residence State or the country of his nationality. Alternative B of UN Model Article 25 contemplates reference to an arbitration process as part of the Mutual Agreement Procedure.

CHAPTER 27
OVERVIEW OF MODEL TAX CONVENTIONS

Part-A : Study Material Questions

Question-1 :
Explain briefly the significant difference between the UN and OECD Model Tax Convention.

Solution :
OECD Model is essentially a model treaty between two developed nations whereas UN Model is a model convention between a developed country and a developing country.

Further, OECD Model advocates the residence principle, i.e., it lays emphasis on the right of state of residence to tax the income, whereas the UN Model is a compromise between the source principle and residence principle, giving more weight to the source principle as against the residence principle.

Question- :
When does it become necessary to apply the tie-breaker rule? Discuss the manner of application of the tie-breaker rule.

Solution :
Every jurisdiction, in its domestic tax law, prescribes the mechanism to determine residential status of a person. If a person is considered to be resident of both the Contracting States, relief should be sought from Article 4 of the Tax Treaty. A series of tiebreaker rules are provided in Paragraph 2 Article 4 of Model Convention to determine single state of residence for an individual.

The tie-breaker rule would be applied in the following manner:

(i) The first test is based on where the individual has a permanent home. Permanent home would mean a dwelling place available to him at all times continuously and not occasionally and includes place taken on rent for a prolonged period of time.

(ii) If that test is inconclusive for the reason that the individual has permanent home available to him in both Contracting States, he will be considered a resident of the Contracting State where his personal and economic relations are closer, in other words, the place where lies his centre of vital interests. Thus, preference is given to family and social relations, occupation, place of business, place of administration of his properties, political, cultural and other activities of the individual.

(iii) Paragraph (ii) establishes a secondary criterion for two quite distinct and different situations:
- The case where the individual has a permanent home available to him in both Contracting States and it is not possible to determine in which one he has his centre of vital interests;
- The case where the individual has a permanent home available to him in neither Contracting State.

In the aforesaid scenarios, preference is given to the Contracting State where the individual has an **habitual abode.**

(iv) If the individual has habitual abode in both Contracting States or in neither of them, he shall be treated as a resident of the Contracting State of which he is a national.

(v) If the individual is a national of both or neither of the Contracting States, the matter is left to be **considered by the competent authorities** of the respective Contracting States.

Question-3 :
Explain the meaning of "interest" and "fees for technical services" under the UN Model Convention.

Solution :
As per Article 11 of the UN Model Convention, "Interest" essentially means income from debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment are not regarded as interest for the purpose of this Article.

As per Article 12A of the UN Model Convention, "Fees for technical services" is defined as payments for managerial, technical or consultancy services but excludes payment to an employee, payment for teaching in an educational institution or for teaching by an educational institution, payments by an individual for services for personal use.

Question-4 :
What is the meaning of Automated Digital Services? Elucidate.

Solution :
As per Article 12B of UN Model Convention, "Automated digital services" means any service provided on the Internet or another electronic network, in either case requiring minimal human involvement from the service provider.

The term "Automated digital services" includes specially:
(a) online advertising services;
(b) supply of user data;
(c) online search engines;
(d) online intermediation platform services;
(e) social media platforms;
(f) digital content services;
(g) online gaming;
(h) cloud computing services; and
(i) standardized online teaching services.

Question-5 :
What are the payments covered within the scope of "Royalties" under the UN Model Convention and OECD Model Convention. Elucidate.

Solution :
The term "royalties" as per UN Model Convention means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

The definition of 'royalties' under the OECD Model Convention does not include the following: (a) rentals for films or tapes used for radio or television broadcasting and (b) equipment rentals like rentals for industrial, commercial or scientific equipment.

Part-B : Additional Questions

Question-6 : [RTP May-18]
Explain how the income derived by a resident of a Contracting State in respect of professional services is taxable as per the UN Model Convention. In this context, discuss the scope of professional services.

Solution :
Taxation of income derived by a resident of a Contracting State in respect of professional services is dealt with in Article 14 of the UN Model Convention.

As per this article, income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

(a) If he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or

(b) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

Scope of professional services: The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Question-7 : [RTP NOV-18]
Mr. Ganesh is a resident of the Contracting States, namely, Country “M” and Country “N”, as per the domestic tax laws of the respective countries. Explain the manner of determining the single status of residence of Mr. Ganesh as per the UN Model Convention.

Solution :
Since Mr. Ganesh is an individual resident of two Contracting States, namely, Country M and Country N, the UN Model Convention provides for a series of tie-breaker rules to determine single state of residence for him:

(i) **Permanent Home:** The first test is based on where he has a permanent home. Permanent home would mean a dwelling place available to him at all times continuously and not occasionally and includes place taken on rent for a prolonged period of time. Any place taken for a short duration of stay or for temporary purpose, may be for reasons such as short business travel, or a short holiday etc. is not regarded as a permanent home.

(ii) **Personal and economic relations:** If that test is inconclusive for the reason that he has permanent home available to him in both Contracting States, he will be considered a resident of the Contracting State where his personal and economic relations are closer, in other words, the place where lies his centre of vital interests. Thus, preference is given to family and social relations, occupation, place of business, place of administration of his properties, political, cultural and other activities of the individual.

(iii) **Habitual abode:** In the following distinct and different situations, preference is given to the Contracting State where he has an habitual abode:

- The case where he has a permanent home available to him in both Contracting States and it is not possible to determine in which one he has his centre of vital interests;
- The case where he has a permanent home available to him in neither Contracting State.

(iv) **National:** If he has habitual abode in both Contracting States or in neither of them, he shall be treated as a resident of the Contracting State of which he is a national.

(v) **Competent Authority:** If he is a national of both or neither of the Contracting States, the matter would be left to be considered by the competent authorities of the respective Contracting States.

Question-8 : [RTP NOV-18]
Explain the meaning of "fees for technical services" and "professional services" under the relevant articles of the UN Model Convention, 2017. Does the Contracting State in which such income arises have the right to tax such income, and if so, what are the conditions/limitations for such taxability? Discuss.

Solution :
Meaning of Fees for technical services and professional services under the UN Model Convention, 2017

- **Fees for technical services**
  Article 12A of the UN Model Convention pertains to Fees for Technical Services (FTS). FTS is defined as payments for managerial, technical or consultancy services but excludes payment to an employee, payment for teaching in an educational institution or for teaching by an educational institution, payments by an individual for services for personal use.

- **Professional services**
  Article 14 of the UN Model Convention pertains to Independent Personal Services. As per this article, "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Right of Source State to tax FTS & income for professional services under the UN Model Convention, 2017

- **Fees for technical Services (FTS)**
  Article 12A(1) provides that the FTS may be taxed in the Residence State but does not provide that the FTS is exclusively taxable in the Residence State. Article 12A(2) establishes the right of the country in which FTS arises to tax in accordance with its domestic law, subject to the limitation on the maximum rate of tax, if the beneficial owner is a resident of the other Contracting State. The maximum rate of tax is to be established through bilateral negotiations.

- **Income for Professional Services**
  As per article 14, income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State (i.e., Residence State) except in the following circumstances, when such income may also be taxed in the other Contracting State (i.e., Source State):

  (a) If he has a fixed base regularly available to him in the Source State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in the Source State; or
  (b) If his stay in the Source State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in the Source State may be taxed in that State.

Question-9 : [RTP MAY-20]
What are the differences between the OECD Model Convention and UN Model Convention.

Solution :
In relation to Article 5 on Permanent Establishment, the UN Model Convention varies from the OECD Model Convention in the following aspects:

(i) As per Article 5(3)(a) of the OECD Model Convention, a building site or construction or installation project constitutes a PE if it lasts more than twelve months. The UN Model Convention is wider as it covers "assembly and installation project" and "supervisory" activities in connection thereto and requires the activity in question to continue only for six months for constituting a PE.

(ii) Article 5(3)(b) of the UN Model Convention makes a specific reference to Service PE which is absent in the OECD Model Convention. Under the UN Model Convention, furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose would constitute a PE, but only if activities of that nature continue within a Contracting State for a period or periods aggregating more than 183 days in any 12 month period commencing or ending in the fiscal year concerned.

In the absence of a Service PE reference in OECD Model Convention, the presence has to be ascertained through general principles under Article 5(1).

(iii) The UN Model Convention has an additional Article 5(6) relating to insurance which is absent in OECD Model Convention. As per this Article in the UN Model Convention, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person.

In the absence of similar Article in the OECD Model Convention, a PE of an insurance Enterprise has to be determined in accordance with provisions of Article 5(1) or 5(2) of the OECD Model Convention.

Question-10 : [PP MAY-18]

Explain the term "Royalty" as per UN model Tax Convention. Is it different from the definition contained in OECD Model? Discuss. **(3 Marks)**

Solution :
As per UN Model Tax Convention, "royalty" means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience".

The definition of "royalty" in OECD Model Tax Convention is identical to the definition of "royalty" in UN Model Tax Convention except that the OECD Model specifically excludes the following from the definition of "royalty":
- Rentals for "films or tapes used for radio or television broadcasting";
- Equipment rentals like rentals for industrial, commercial or scientific equipment

In certain situations, the lease rental for industrial, commercial or scientific equipment may include an element of "royalty" (e.g. for use of a patent). In such cases, the lease rent may be treated as a "royalty" as per OECD Model Tax Convention to the extent it could be attributed to the use of the patent.

Question-11 : [PP NOV-18]
"Every jurisdiction, in the domestic law, prescribes the mechanism to determine residential status of a person. In case, a person is considered to be resident of both contracting states, it becomes necessary to apply the tie-breaker rule."

Discuss the manner for application of the tie-breaker rule. **(6 Marks)**

Solution :
The tie-breaker rule would be applied in the following manner:

(i) The first test is based on where the individual has a permanent home i.e., a dwelling place available to him at all times continuously and not occasionally.

(ii) If the individual has permanent home available to him in both Contracting States, he will be considered a resident of the Contracting State where his personal and economic relations are closer, in other words, the place where lies his centre of vital interests.

Thus, preference is given to family and social relations, occupation, place of business, place of administration of his properties, political, cultural and other activities of the individual.

(iii) In a case where the individual has a permanent home available to him in both Contracting States and it is not possible to determine in which one he has his centre of vital interests; and in a case where the individual has a permanent home available to him in neither Contracting State, preference is given to the Contracting State where the individual has an habitual abode.

(iv) If the individual has habitual abode in both Contracting States or in neither of them, he shall be treated as a resident of the Contracting State of which he is a national.

(v) If the individual is a national of both or neither of the Contracting States, the matter is left to be considered by the competent authorities of the respective Contracting States.

Question-12 : [PP JULY-21]
"The application of tax treaty may result into double taxation for the taxpayers. In the light of the statement, answer the following questions- **(6 Marks)**

(1) What are the approaches for the elimination of double taxation under Model Conventions? Explain.
(2) Explain the meaning of Juridical Double Taxation and Economic Double Taxation.
(3) Can the problems of Economic Double Taxation be solved by the above approaches? Explain.

Solution :
The Model Conventions specify two approaches -
- Exemption method [Article 23A]; and
- Credit method [Article 23B]

Under the exemption method, tax exemption may be available in the Residence State. Under the credit method, tax credit may be available in the Residence State for taxes deducted in the Source State. These methods are not mutually exclusive and there may be cases where a treaty may adopt exemption method for certain types of income and credit method for other incomes.

“Juridical double taxation” arises when the same income or capital is taxable in the hands of the same person by more than one State.

‘Economic double taxation’ happens when the same item of income or capital is taxed in more than one States in hands of different persons.

Under Model Conventions, double taxation referred, is juridical double taxation, meaning the same income or capital is taxable in the hands of the same person by more than one State. It does not thus, encompass situations of economic double taxation, i.e., where two different persons are taxable in respect of the same income or capital. If two States wish to solve problems of economic double taxation, they must do so through bilateral negotiations.

Question-13 : [MTP OCT-18]
Can tax provisions be discriminatory merely because a person is a non-resident? Explain in the context of the OECD Model Convention. **(6 Marks)**

Solution :
In order to provide equality in terms of tax treatment, Article 24 of OECD Model Convention, Non - discrimination, provides that the tax provision cannot be discriminatory merely because one person is a non-resident.

Para 1 of Article 24 provides that a Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

Para 2 of Article 24 provides that Stateless persons who are residents of a Contracting State shall not be subjected in either Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of the State concerned in the same circumstances, in particular with respect to residence, are or may be subjected.

As per para 3 of Article 24, the taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

Para 5 provides that Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

As per para 6 of Article 24, the provisions of Article 24 shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Question-14 : [MTP AUG-18]
Explain how the income derived by a resident of a Contracting State in respect of professional services is taxable as per the UN Model Convention. In this context, discuss the scope of professional services. **(6 Marks)**

Solution :
Taxation of income derived by a resident of a Contracting State in respect of professional services is dealt with in Article 14 of the UN Model Convention.

As per this article, income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

(a) If he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or

(b) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

Scope of professional services: The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Question-15 : [RTP MAY-22]
Mr. Divakar is a resident of the Contracting States, namely, India and Country "Y", as per the domestic tax laws of the respective countries. Would it be necessary to apply tie - breaker rule in case of Mr. Divakar? If yes, explain the manner of determining residential status of Mr. Divakar as per the UN Model Convention applying the tie breaker rule.

Solution :
Since Mr. Divakar is an individual who is a resident of two Contracting States, namely, India and Country Y, tie-breaker rule contained in Paragraph 1 of Article 4 of UN Model Convention need to be applied to determine the single state of residence.

The tie-breaker rule would be applied in the following manner:

(i) **Permanent Home:** The first test is based on where he has a permanent home. Permanent home would mean a dwelling place available to him at all times continuously and not occasionally and includes place taken on rent for a prolonged period of time.

(ii) **Personal and economic relations:** If that test is inconclusive for the reason that he has permanent home available to him in both Contracting States, he will be considered a resident of the Contracting State where his personal and economic relations are closer, in other words, the place where lies his centre of vital interests. Thus, preference is given to family and social relations, occupation, place of business, place of administration of his properties, political, cultural and other activities of the individual.

(iii) **Habitual abode:** In the following distinct and different situations, preference is given to the Contracting State where he has a habitual abode:
- The case where he has a permanent home available to him in both Contracting States and it is not possible to determine in which one he has his centre of vital interests;
- The case where he has a permanent home available to him in neither Contracting State.

(iv) **Nationality:** If he has habitual abode in both Contracting States or in neither of them, he shall be treated as a resident of the Contracting State of which he is a national.

(v) **Competent Authority:** If he is a national of both or neither of the Contracting States, the matter would be left to be considered by the competent authorities of the respective Contracting States.

Question-16 : [RTP Nov 23]
XYZ GmBH Germany is a foreign company engaged in manufacturing and sale of LED lights. It opened a branch in Gurugram for sale of LED lights in India. The profit mark up was cost plus 40% in respect of sales made by the branch. The XYZ GmBH, Germany also supplied the goods directly to various customers in India. The turnover of the Gurugram branch for the P.Y. 2023-24 is ₹ 155 lakhs and direct sales by XYZ GmBH to Indian customers is ₹ 80 lakhs.

The Assessing Officer wants to tax the profits arising to XYZ GmBH from direct sale to customers in India though PE (i.e., branch in India) had no role to play in it. Decide the validity of the Assessing Officers view in the context of OECD and UN Model tax Convention.

Solution
Business profits of an enterprise can only be taxed by the Residence State. Source State would have the right to tax business profits of an enterprise only if a PE exists in its jurisdiction.

Taxability as per OECD Model Convention
The OECD Model Convention provides that if the enterprise of the Residence State carries on business in the Source State through a PE situated therein, then, the profits that are attributable to the PE alone may be taxed in the Source State. OECD Model does not incorporate "Force of Attraction" rule.

Accordingly, only profits from turnover of ₹ 155 lakhs, representing sale of LED lights made by the Gurugram branch would be taxable in India in the hands of XYZ GmBH, Germany.

Thus, in this case, the Assessing Officer's proposed action to bring to tax profit earned by XYZ GmBH, Germany from direct supply to customers in India, in which the PE had no role to play, is not valid.

Taxability as per UN Model Convention
The UN Model Convention amplifies this attribution principle by a limited Force of Attraction rule, which permits Source State taxation of the enterprise, not only in respect of the business carried on by it through a PE in the Source State, but also on business profits arising from sales in Source State **of same or similar goods or merchandise as those sold through that PE.**

Accordingly, profits from turnover of ₹ 235 lakhs, representing sale of LED lights made by the Gurugram branch as well as the direct sale of LED lights made by XYZ GmBH, Germany to Indian customers would be taxable in India in the hands of XYZ GmBH, Germany.

Therefore, in this case, the Assessing Officer's proposed action to bring to tax profit earned by XYZ GmBH, Germany from direct supply to customers in India is valid, even though the PE had no role to play.

Extra Page

CHAPTER 28
115 BAA BAB BAC

Part-B : Additional Questions

Question-1 : [RTP NOV-21]

X Ltd. is an Indian company engaged in the business of generation of electricity. The company was set up on 1.4.2019. During the year P.Y. 23-24 it had employed 500 new employees, all of whom participate in recognized provident fund. The emoluments of these employees are paid by ECS through bank account @ ₹ 18,000 per month per employee for 150 employees, @₹ 22,000 per month per employee for 150 employees and @₹ 26,000 per month per employee for 200 employees. It opts for depreciation on written down value method on block of assets. Its turnover for P.Y.2021-22 is ₹ 402 crores. On 1.10.2023, the company installed new plant and machinery of ₹ 9 crore and put the same to use immediately. The company has received dividend of ₹ 60 lakhs from other domestic companies during the P.Y.2023-24. X Ltd. distributed dividend of ₹ 72 lakhs for the F.Y.2023-24 in July, 2023.

Y Ltd. is an Indian company set up on 1.10.2023 for printing of books. On the same date, it installed new plant and machinery for ₹ 2 crore and put the same to use immediately. It employed 200 new employees on the said date@ ₹ 25,000 per month per employee. Their emoluments were paid by account payee cheque and all of them participate in recognized provident fund.

The gross total income for A.Y.2024-25 computed under the special provisions of the Income- tax Act, 1961 inserted by the Taxation Laws (Amendment) Act, 2019 is ₹ 6.60 crore for X Ltd. and ₹ 1 crore for Y Ltd. Both X Ltd. and Y Ltd. are subject to tax audit for A.Y.2024-25.

You are required to -

(i) Compute the tax liability of X Ltd. and Y Ltd. for A.Y.2024-25, assuming that the companies desire to avail benefits u/s 115BAA/BAB in the Income-tax Act, 1961 by fulfilling the conditions specified thereunder.

(ii) Compute the total income of X Ltd. and Y Ltd. under the regular provisions of the Income-tax Act, 1961.

(iii) Examine whether it would it be beneficial for X Ltd. to opt for the special provisions inserted by the Taxation Laws (Amendment) Act, 2019. For this purpose, you may assume that the book profit of X Ltd. computed under section 115JB for A.Y.2024-25 for levy of minimum alternate tax is ₹ 4.20 crore.

Solution :

(I) Computation of tax liability of X Ltd. and Y Ltd. for A.Y.2024-25 u/s 115BAA

Particulars	X Ltd.	Y Ltd.
Gross Total Income computed u/s 115BAA	6,60,00,000	1,00,00,000
Less: Permissible deductions under Chapter VI-A		
Under section 80JJAA	2,16,00,000	-
X Ltd - [(₹ 18,000 x 12 x 150) + (₹ 22,000x12x150)] x 30%		
Under section 80M	60,00,000	-
Dividend received (₹ 60 lakhs), to the extent of dividend distributed on or before the due date i.e., the date one month prior to the due date of filing of return u/s 139(1) (₹ 72 lakhs)		
Total Income	3,84,00,000	1,00,00,000
Computation of tax liability		
Income-tax @ 22% [As per section 115BAA]	84,48,000	22,00,000
Add: Surcharge @ 10%	8,44,800	2,20,000
	92,92,800	24,20,000

Add: Health and Education cess @ 4%	3,71,712	96,800
Total tax liability	96,64,512	25,16,800
Total tax liability (rounded off)	96,64,510	25,16,800

Notes:

(1) X Ltd. is eligible to opt for special provisions under section 115BAA, as per which the rate of tax would be 22% plus surcharge @ 10% plus HEC @ 4%. It is not eligible to opt for section 115BAB even though it is engaged in generation of electricity, since it was set up before 1.10.2019.
Y Ltd. is a set up after 1.10.2019, but it is not eligible to opt for section 115BAB, and avail benefit of concessional rate of tax @ 15% plus surcharge @ 10% and HEC @ 4%., since business of manufacture or production of any article or thing does not include business of printing of books. It is, however, eligible to opt for section 115BAA and pay tax @ 22% plus surcharge @ 10% plus HEC @ 4%.

(2) X Ltd. is eligible to claim deduction u/s 80JJAA, which is a permissible Chapter VI-A deduction while computing total income under section 115BAA, subject to fulfillment of conditions specified thereunder.
Since new employees are employed during the year in case of X Ltd., it can claim 30% of additional employee cost for three years. Accordingly, it would be entitled to deduction u/s 80JJAA for P.Y.2023-24. 150 employees whose emoluments are ₹ 18,000 p.m. and 150 employees whose emoluments are ₹ 22,000 p.m. qualify as additional employees. Further, these employees also participate in recognized provident fund and their emoluments are paid by way of ECS through bank account. 200 employees whose emoluments exceed ₹ 25,000 p.m. do not qualify as additional employees.
Y Ltd. is not entitled to claim deduction u/s 80JJAA for A.Y.2024-25, since its employees are not employed for a minimum period of 240 days in the P.Y.2023-24.

(3) X Ltd. is eligible to claim deduction u/s 80M, which is also a permissible Chapter VI-A deduction while computing total income under section 115BAA, subject to fulfillment of conditions specified thereunder. X Ltd. would be eligible to claim deduction in respect of dividend of ₹ 60 lakhs received from other domestic companies in the P.Y.2023-24, to the extent of the amount distributed to its shareholders on or before the due date, i.e., the date one month prior to the date of furnishing return of income under section 139(1). In this case, since it has distributed ₹ 72 lakhs in July, 2023, it is entitled to claim deduction of the entire amount of ₹ 60 lakhs received in the P.Y.2023-24 as dividend from other domestic companies.

(II) Computation of total income of X Ltd. and Y Ltd. for A.Y.2024-25 under the regular provisions of the Income-tax Act, 1961

Particulars	X Ltd	Y Ltd.
Gross Total Income computed u/s 115BAA	6,60,00,000	1,00,00,000
Less: Additional Depreciation [20% of ₹ 9 crore and ₹ 2 crore, respectively, since the plant and machinery has been put to use for 182 days (180 days or more) in the P.Y.2023-24]	1,80,00,000	40,00,000
Gross Total Income (computed under the regular provisions of the Act)	4,80,00,000	60,00,000
Less: Deductions under Chapter VI-A		
Under section 80JJAA X Ltd - [(₹ 18,000 x 12 x 150) + (₹ 22,000 x 12 x 150)] x 30%	2,16,00,000	-
Under section 80M Dividend received (₹ 60 lakhs), to the extent of dividend distributed on or before the due date i.e., the date one month prior to the due date of filing of return u/s 139(1) (₹ 72 lakhs)	60,00,000	-
Total Income	**2,04,00,000**	**60,00,000**

Note – Both X Ltd. and Y Ltd. are entitled to additional depreciation @ 20% on new plant and machinery installed by them. X Ltd. is engaged in the business of generation of electricity, and hence qualifies for additional depreciation, since it has opted for depreciation as per written down value method. Further, the CBDT has, vide Circular No.15/2016 dated 19.5.2016 clarified that the business of printing amounts to manufacture or production of article or thing and is, therefore, eligible for additional depreciation. Hence, Y Ltd., engaged in the business of printing of books, is also eligible to claim additional depreciation.

(III) Computation of tax liability of X Ltd. for A.Y.2024-25 as per the other provisions of the Act (other than section 115BAA)

Particulars	**₹**
Tax@30% on ₹ 2,04,00,000 [Since turnover of P.Y.2021-22 exceeds ₹ 400 crore]	61,20,000
Add: Surcharge @7% (since total income exceeds ₹ 1 crore but does not exceed ₹ 10 crore)	4,28,400
	65,48,400
Add: Health and Education cess @ 4%	2,61,936
Total tax liability	**68,10,336**
Total tax liability (rounded off)	**68,10,340**
Computation of MAT liability for A.Y.2024-25	
15% of book profit of ₹ 4.2 crore	63,00,000
Add: Surcharge@7% since book profit exceeds ₹ 1 crore but does not exceed ₹ 10 crore	
	4,41,000
	67,41,000
Add: Heath and Education cess@4%	2,69,640
	70,10,640
MAT credit to be carried forward u/s 115JAA	
MAT liability u/s 115JB	70,10,640
Less: Tax computed under the regular provisions of the Act	68,10,340
MAT credit to be carried forward	**2,00,300**

Since the MAT liability u/s 115JB is higher than the income-tax payable under the regular provisions of the Act, the book profit of ₹ 4.20 crore of X Ltd. would be deemed to be its total income and tax would be payable @ 16.692% (15% plus surcharge @ 7% plus HEC @ 4%). Hence, the tax liability of X Ltd. for A.Y.2024-25 would be 70,10,640. X Ltd. would, however, be entitled to carry forward MAT credit of 2,00,300 and set it off in future years, when the tax liability under the regular provisions of the Act is higher than the MAT liability.

Accordingly, since the tax liability under the other provisions of the Act (i.e., MAT liability) for A.Y.2024-25 is ₹ 70,10,640 vis-à-vis tax liability of ₹ 96,64,510 computed under section 115BAA, it is not beneficial for X Ltd. to opt for the special provisions under section 115BAA for A.Y.2024-25. Moreover, X Ltd. would be eligible to carry forward MAT credit of ₹ 2,00,300, if it pays tax as per the other provisions of the Act (i.e., other than section 115BAA). Hence, X Ltd. should not opt for the special provisions under section 115BAA for A.Y.2024-25.

Question-2 :

M/s Diamond Industries Ltd., an Indian company, is engaged in assembling and manufacturing of automobiles and auto components in Indore, Madhya Pradesh. The net profit after debit/credit of the following amounts to its Statement of Profit and Loss for the year ended 31-03-2024 was ₹ 9,50,00,000.

(i) Depreciation calculated as per useful life of its assets ₹ 2,80,00,000.
(ii) Donation of ₹ 12,00,000 given to a political party by way of account payee cheque.
(iii) The company has paid ₹ 50,00,000 on 15-08-2023 to a research institution recognized and notified by the Central Government which has as its object, undertaking of scientific research.
(iv) Dividend received from foreign company of ₹ 15,00,000 in which it holds 30% of the equity share capital.

(v) Long-term capital gain of ₹ 4,00,000 on sale of equity shares on which STT was paid at the time of acquisition and sale.

(vi) Interest at 10% p.a. on ₹ 4,20,00,000 being amount borrowed from State Bank of India on 01-06-2023 for purchase of machinery. The interest outstanding as on 31-03-2024 was paid on 01-12-2024.

(vii) Profit of ₹ 8,00,000 on sale of a plot of land to PQR Limited, an Indian company, the entire shares of which are held by the Diamond Industries Ltd. The plot was acquired on 30th June, 2022.

(viii) Salary of ₹ 1,00,00,000 to foreign technicians for installation of machinery at the factory premises was paid.

(ix) The company sold automobile parts for ₹ 22,00,000 to M/s ABC Co Engineers, a sole proprietary concern, on 01.11.2022. On 01.02.2024 ₹ 12,00,000 was written off in the books as bad debts. The sole proprietor died on 01.03.2024 and the company managed to collect ₹ 11,00,000 towards full and final settlement on 30.03.2024. The entire amount collected was shown as bad debts recovered and credited to Statement of Profit and Loss.

Additional Information:

1. Depreciation computed as per Income-tax Rules, 1962 is ₹ 1,50,00,000 other than on the additions in assets made during the year.
2. Additions made to the assets were as follows:
   (i) Office Building ₹ 3,00,00,000 - Put to use from 15-12-2023.
   (ii) Computers ₹ 25,00,000 - Put to use on 11-05-2023.
   (iii) Plant and machinery ₹ 5,00,00,000 - Installed and put to use on 01-01-2024.
3. The company declared and distributed dividend for the financial year 2023 -24 on 31.5.2024 for ₹12,00,000.

Compute the total income of the company and tax liability for the assessment year 2024-25, assuming company opts for concessional tax regime under section 115BAA. Total turnover of the company for the P.Y. 2021-22 was ₹ 402 crores.

Solution :

Computation of total income and tax liability of M/s Diamond Industries Ltd. for the A.Y. 2024-25 as per section 115BAA.

	Particulars	Amount in ₹	
I	**Profits and gains of business and profession**		
	Net profit as per Statement of Profit and Loss		9,50,00,000
	Add: Items debited but to be considered separately or to be disallowed		
	(i) Depreciation as per useful life of assets	2,80,00,000	
	(ii) Donation to political party	12,00,000	
	[Since donation to political party is not wholly and exclusively for the purpose of business or profession, it is not allowable as deduction u/s 37. Since the amount of contribution is debited to statement of profit and loss, the same has to be added back]		
	(iii) Contribution to research institution approved and notified by the Central Government for scientific research	50,00,000	
	[As per section 35(1)(ii), 100% deduction is allowed for amount paid to a research institution undertaking scientific research, if such institution is approved for this purpose and notified by the Central Government. However, since company is opting for section 115BAA, deduction in respect of this contribution is not allowed. Since the amount of contribution is debited to statement of profit and loss, the same is required to be added]		

	(vi) Interest on borrowing paid to State Bank of India (SBI) [10% x ₹ 420 lakhs x 10/12] [Interest on borrowing from SBI upto 1.1.2024, being the date when machinery is installed and put to use, is not allowable as deduction since it has to be capitalized as part of the cost of the asset. Interest for January, February and March 2024 is disallowed as per section 43B since it is not paid on or before the due date of filing return of income i.e. interest has been debited to the statement of profit and loss, it has to be added back while computing business income]	35,00,000	
	(viii) Salary for installation of machinery [As per ICDS V, expenses which are specifically attributable for bringing the fixed asset to its working condition would form part of actual cost. Therefore, salary to foreign technicians for installation of machinery is a capital expenditure and not allowable as deduction. Since it has been debited to the statement of profit and loss, it has to be added back while computing business income]	1,00,00,000	
			47700000
	Less: Items credited but not chargeable to tax or chargeable to tax under other head of income/expenses allowed but not debited		
	(iv) Dividend received from foreign company [Dividend received from foreign company is taxable under the head "Income from other Source". Since the same has been credited to Statement of Profit and loss, it has to be deducted while computing business income.	15,00,000	
	(v) Long-term capital gain on sale of equity shares [Long-term capital gain on sale of equity shares is taxable under the head "Capital Gains". Since the same has been credited to Statement of Profit and loss, it has to be deducted while computing business income.	4,00,000	
	(ix) Bad debt recovered [The deduction of bad debt allowed u/s 36 was ₹ 12 lakhs out of the total debt of ₹ 22 lakhs; Since the amount not written off as bad debt is ₹ 10 lakhs (₹ 22 lakhs - ₹ 12 lakhs) while the amount recovered in respect of such debt is ₹ 11 lakhs, only the paid on or before the due date of filing return of income i.e., 31.10.2024. Since the entire excess sum of ₹ 1 lakh would be chargeable to tax as business income. Since the entire amount of ₹ 11 lakhs recovered has been credited to the statement of profit and loss, ₹ 10 lakhs has to be reduced while computing business income.]	10,00,000	
	(vii) Profit on sale of plot of land Capital gains arising on sale of plot of land are taxable under the "Capital Gains". Since the same has been credited to the statement of profit and loss, the same has to be reduced while computing business income]	8,00,000	
			-37,00,000
			13,90,00,000
	Less: Depreciation as per Income-tax Rules, 1962	1,50,00,000	
	Depreciation on assets acquired during the P.Y.		
	- Office building Purchased and put to use on 15.12.2023 [₹ 300 lakhs x 10% x 50%, since it has been put to use for less than 180 days during the year]	15,00,000	
	- Computer Purchased and put to use on 11.5.2023 [₹ 25 lakhs x 40%, since it has been put to use for 180 days or more during the year]	10,00,000	
	- Plant and machinery	46,83,750	

	On P & M installed and put to use on 1.1.2024 [₹ 624.5 lakhs (₹ 500 lakhs + ₹ 100 lakhs of salary for installation + ₹ 24.5 lakhs, being interest from 1.6.2023 to 31.12.2023) x 15% x 50%, since it has been put to use for less than 180 days during the year]		-2,21,83,750
	Additional depreciation (since company is opting for section 115BAA, additional depreciation is not allowed)		-
	Profits and gains from business or profession		**11,68,16,250**
II	**Capital Gains**		
	Profit on sale of plot of land	-	
	[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, which is an Indian company, the same would not constitute a transfer for levy of capital gains tax as per section 47(iv)]		
	Long-term capital gain on listed equity shares	4,00,000	**4,00,000**
III	**Income from Other Sources**		
	Dividend received from a foreign company		**15,00,000**
Gross Total Income			**11,87,16,250**
Less: Deduction under Chapter VI-A			
Deduction under section 80GGB [Donation to political party is not allowable as deduction to Diamond Industries Ltd., since the company is opting for section 115BAA]			-
Deduction under section 80M allowable, even if, company is opting for section 115BAA, to the extent of lower of dividend received and dividend distributed. Therefore, ₹ 12,00,000, being the amount of dividend distributed allowable as deduction			12,00,000
Total Income			**11,75,16,250**

Question-3 :
STP Construction Ltd., an Indian company is engaged in the business of executing civil contracts awarded by various companies in relation to infrastructure facility.

Statement of Profit & Loss for the year ended 31st March, 2024 reveals a net profit (before tax) amounting to ₹85,00,000 after debiting/crediting the following items:

(a) Interest of ₹ 3,00,000 due to a public financial institution for the last quarter of the financial year 2023-24 paid on 20th December, 2024.
(b) ₹ 6,00,000 to Mr. George, a non-resident, towards fee for technical services without deduction of tax at source. TDS was, however, deducted and paid on 30th December, 2024.
(c) Damages amounting to ₹ 15,00,000 paid to the Government of Maharashtra as per the terms of contract for defects found in construction of a flyover after 5 years of its construction.
(d) Depreciation charged ₹ 20,00,000.
(e) Marked to market loss amounting to ₹ 6,00,000 in respect of an unsettled derivative contract. The contract was settled in May, 2024 with a gain of ₹ 1,00,000.
(f) Profit of ₹ 10,00,000 on sale of land to Max Inc., U.S.A. which is a wholly owned subsidiary company.
(g) Retention money amounting to ₹ 10,00,000 held by a public sector undertaking which can be released after expiry of two years on the satisfaction of certain performance criteria as per the terms of contract.
(h) ₹ 3,00,000 being interest on fixed deposit made with a bank as margin money for obtaining a guarantee required by a State Government for a particular contract.
(i) Income of ₹ 10,00,000 received from a Real Estate Investment Trust (REIT), the break-up of which is as follows:
- Component of short-term capital gain on sale of development properties by the REIT ₹6,00,000.
- Component of rental income from properties owned by the REIT ₹ 4,00,000.

Other Information:

(i) Depreciation as per Income-tax Rules, 1962 ₹ 25,00,000.

(ii) Land sold to Max Inc. was acquired at a cost of ₹ 30,00,000 on 25.05.2015. Value assessed by the Stamp Valuation Authority on the date of sale was ₹ 50,00,000 (Cost Inflation Index- Financial Year 2015-16 : 254; Financial Year 2023-24 : 348)

(iii) 102 new employees employed during the P.Y. 2023-24, the details of whom are as follows –

	No. of employees	Date of employment	Regular/Casual	Total monthly emoluments per employee (₹)
(i)	15	1.4.2023	Regular	24,000
(ii)	35	1.5.2023	Regular	26,000
(iii)	42	1.8.2023	Casual	24,500
(iv)	10	1.9.2023	Regular	24,000

The regular employees participate in recognized provident fund while the casual employees do not. The due date for filing of return of income for Assessment Year 2024-25 be taken as 30-11-2024.

Compute the total income and tax liability for the Assessment Year 2024-25 clearly stating the reasons for treatment of each item. The Company has opted for concessional rate of tax under section 115BAA

Solution :

Computation of Total Income of STP Construction Ltd. for the A.Y.2024-25.

	Particulars	Amount (₹)	
I	**Profits and gains of business and profession**		
	Net profit as per the statement of profit and loss		85,00,000
	Add: Items debited but to be considered separately or to be disallowed		
	(a) Interest to public financial institution paid on 20.12.2024	3,00,000	
	[Disallowance under section 43B would be attracted, since the interest is paid on or after 30.10.2024, being the due date of filing of return]		
	(b) Fees for technical services paid to non-resident without deduction of tax at source	6,00,000	
	[Disallowance of 100% of the amount towards fees for technical services to a non-resident, would be attracted under section 40(a)(i) during the previous year 2023-24 since tax was deducted and paid during the subsequent previous year i.e., P.Y. 2024-25]		
	(c) Damages paid to State Government for defects in construction of flyover	-	
	[Payment of damages as per the terms of the contract for defects in construction is compensatory in nature and incurred in the normal course of construction business, and hence, such expenditure is deductible under section 37.		
	Since such payment is debited to the statement of profit and loss, no further adjustment is required]		
	(e) Marked to market losses		
	[As per ICDS I, marked to market losses cannot be recognized unless the recognition of such loss is in accordance with the provisions of any other ICDS. Since such losses have been debited to the statement of profit and loss, they have to be added back for computing business income]	6,00,000	15,00,000

			1,00,00,000
	Less: Items credited to statement of profit and loss, but not includible in business income		
	(f) Profit on sale of land to wholly owned subsidiary [Income is chargeable to tax under the head "Capital Gains". Since the same has been credited to statement of profit and loss, it has to be reduced while computing business income]	10,00,000	
	(g) Retention money [Section 43CB read with ICDS III requires recognition of contract revenue, including retention money, on percentage of completion method. Since such amount has been credited to the statement of profit and loss, no adjustment is required]	-	
	(h) Interest on bank fixed deposit [Since the fixed deposit has been made with a bank as margin money for obtaining a guarantee required by a State Government for a particular contract, interest income of such deposit is inextricably linked to the business of the assessee and hence, has to be treated as business income and not as income from other sources. Since the same has been credited to the statement of profit and loss, no adjustment is required]	-	
	(i) Income received from REIT Short-term capital gain component of ₹ 6 lakhs is taxable in the hands of REIT and hence, exempt in the hands of the unit holder under section 10(23FD). Since ₹ 6 lakhs has been credited to the statement of profit and loss, the same has to be deducted for computing business income	6,00,000	
	(ii)Rental income component distributed by REIT As per section 115UA(3), such income would be deemed as income in the hands of unit holder. By virtue of section 115UA(1), income distributed by REIT to a unit holder would be deemed to be of the same nature and same proportion in the hands of the unit holder as it had been received by or accrued to the REIT. Accordingly, rental income component would be taxable under the head "Profits and gains of business and profession", since REIT is engaged in the business of letting out real estate properties. Since ₹ 4 lakhs has been credited to the statement of profit and loss, no adjustment is required]	-	16,00,000
			84,00,000
	Less: Permissible deduction		
	Depreciation Depreciation of ₹ 25 lakh computed as per Income- tax Rules, 1962 is allowable as deduction u/s 32. However, depreciation of ₹ 20 lakh has only been charged in the statement of profit and loss. Therefore, the difference of ₹ 5 lakh has to be deducted for computing business income]		5,00,000
	Profits and gains from business and profession		**79,00,000**
II	**Capital Gains**		
	Full value of consideration under section 50C [Stamp duty value of ₹ 50 lakh would be deemed as full value of consideration since it is higher than 110% of actual consideration of ₹ 40 lakh (i.e., Cost of ₹ 30 L + Profit of 10 L]	50,00,000	
	Less: Indexed Cost of Acquisition [₹ 30,00,000 × 348/254]	41,10,236	

	[Note - Even though STP Construction Ltd. holds 100% of shareholding of Max Inc., transfer of land by STP Construction Ltd. to Max Inc. would be regarded as a transfer for the purpose of levy of capital gains, since Max Inc. is not an Indian company].		
	Long-term capital gain [Since held for a period of more than 24 months]		**8,89.764**
	Gross Total Income		**87,89,764**
	Less: Deduction under Chapter VI-A		
	Deduction u/s 80JJAA [See Working Note below] (Deduction under section 80JJAA is allowable even though it is opting for 115BAA)		12,96,000
	Total Income		**76,94,551**
	Total Income (rounded off)		**74,93,764**
	Computation of tax liability as per section 115BAA		
	Tax u/s 115BAA on business income [₹ 66,04,000 x 22%]		14,52,880
	Tax u/s 112 on Long-term capital gains on transfer of land with indexation benefit [₹ 10,90,551 x 20%]		2,18,110
			16,70,990
	Add: Surcharge @10%		1,67,099
			18,38,089
	Add: HEC@4%		73,523
	Tax liability		**19,11,612**
	Tax liability (rounded off)		**19,11,610**

Working Note: Computation of deduction u/s 80JJAA

(i) Since casual employees do not participate in recognized provident fund, they do not qualify as additional employees. Further, 35 regular employees employed on 1.5.2023 also do not qualify as additional employees since their monthly emoluments exceed ₹ 25,000. Also, 10 regular employees employed on 1.9.2023 do not qualify as additional employees for the P.Y.2023-24, since they are employed for less than 240 days in that year.

Therefore, only 15 employees employed on 1.4.2023 qualify as additional employees, and the total emoluments paid or payable to them during the P.Y.2023-24 is deemed to be the additional employee cost. Additional employee cost = ₹ 24,000 × 12 × 15 = ₹ 43,20,000

Deduction under section 80JJAA = 30% of ₹ 43,20,000 = ₹ 12,96,000.

(ii) As regards 10 regular employees employed on 1.9.2023, they would be treated as additional employees for previous year 2024-25, if they continue to be employees in that year for a minimum period of 240 days. Accordingly, 30% of additional employee cost in respect of such employees would be allowable as deduction under section 80JJAA during the P.Y. 2024-25.

Question-4 : [May 22 PP]

M/s Kaveri Ltd., a manufacturing company, having an annual turnover of ₹ 6,000 lakhs, shows a net profit of ₹ 850 lakhs after debit / credit of following amounts to its Statement of Profit and Loss for the year ended 31st March, 2024:

(a) Depreciation as per Companies Act ₹ 65 lakhs.
(b) Employer's contribution to EPF of ₹ 18 lakhs together with similar amount of Employee's contribution for the month of March, 2024 was remitted on 20th May, 2024. (The due date for the remittance to the credit of employee's EPF account being 15th April, 2024.)

(c) GST paid includes an amount of ₹ 10,500 charged as penalty for delayed filing of returns and ₹ 15,400 towards interest for delay in deposit of tax.
(d) An amount of ₹ 10 lakhs was incurred on notified skill development project u/s. 35CCD.
(e) Loss of ₹ 20 lakhs, on destruction of an old machinery by fire in the factory and ₹ 5 lakhs received as scrap value on this machinery. The insurance company did not admit the claim of the company on the charge of gross negligence.
(f) Dividend ₹ 15 lakhs received from a foreign company in which the company holds 32% of the equity share capital of the company
(g) Profit of ₹ 15 lakhs on sale of a building to X Ltd., a domestic company, the entire shares of which are held by the assessee company. The building was acquired by Kaveri Ltd. on 1st December, 2022.

Additional information:
(i) Normal depreciation computed as per Income-tax Rules, 1962 is ₹ 92 lakhs.
(ii) During the previous year 2022-23, the company has purchased a new plant and machinery worth ₹ 20 lakhs on 10th January, 2023. Balance of Additional depreciation on this machine is not included in the depreciation computed for the previous year 2023-24.
(iii) The company had credited in the account of a sub-contractor, an amount of ₹ 7 lakhs on 31st March, 2023 towards repairs of factory building. The tax deducted on such payment was remitted on 31st December, 2023.
(iv) On 15th May, 2023, M/s Kaveri Ltd. declared and distributed dividend of ₹ 20 lakhs.
Compute the total income and tax payable by M/s Kaveri Ltd. for the Asst. Year 2024-25 clearly stating the reasons for treatment of each item. Assume that the company has opted for section 115BAA for the A.Y. 2024-25. **(14 Marks)**

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Solution :

Computation of Total Income of M/s Kaveri Ltd. for the A.Y. 2024-25 under section 115BAA

	Particulars	**Amount (in ₹)**	
I.	Profits and gains of business and profession		
	Net profit as per Statement of profit and loss		8,50,00,000
	Add: Items debited but to be considered separately or to be disallowed		
	(a) Depreciation as per Companies Act	65,00,000	
	(b) Employees' contribution to EPF	18,00,000	
	[Since employees' contribution to EPF has not been deposited on or before the due date under the PF Act, the same is not allowable as deduction as per section 36(1)(va) read with Explanations 1 and 2 thereto. Since the same has been debited to Statement of profit and loss, it has to be added back for computing business income].		
	(c) Employer's contribution to EPF	Nil	
	[As per section 43B, employers' contribution to EPF is allowable as deduction since the same has been deposited on or before the due date of filing of return under section 139(1). Since the same has been debited to Statement of profit and loss, no further adjustment is necessary]		
	(d) Penalty for delayed filing of GST return	10,500	
	[Penalty imposed for delay in filing GST return is not deductible since it is on account of infraction of the law requiring filing of the return within the specified period1. Since the same has been debited to Statement of profit and loss, it has to be added back for computing business income]		
	(e) Interest for delay in deposit of GST	Nil	
	[Interest paid for delay in deposit of GST is compensatory in nature and hence, allowable as deduction. Since the same has been debited to Statement of profit and loss, no further adjustment is necessary]		

	(f) Expenditure on notified skill development project u/s 35CCD	10,00,000	
	[Expenditure on notified skill development project u/s 35CCD is not allowable as deduction since the company has opted for section 115BAA]		
	(g) Loss due to destruction of machinery by fire		
	[Loss of 20 lakhs due to destruction of machinery caused by fire is not deductible since it is capital in nature. As the loss has been debited to statement of profit and loss, the same is required to be added back while computing business income.	20,00,000	
			9,63,10,500
		1,13,10,500	
	Less: Items credited but chargeable to tax under another head/expenses allowed but not debited		
	1. Scrap value of machinery	5,00,000	
	[Scrap value of machinery, being capital in nature, has to be reduced from WDV of		
	machinery. Since the same has been credited to the statement of profit and loss, it has to be deducted while computing business income]		
	2. Dividend received from specified foreign company	15,00,000	
	[Dividend income from specified 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]		
	3. Profit on sale of building to 100% subsidiary	15,00,000	
	[Taxability or otherwise to be considered under the head "Capital Gains". Since such profit has been credited to the statement of profit and loss, the same has to be deducted while computing business income]		
	4. Depreciation as per Income-tax Rules		
	Normal depreciation	92,00,000	
	Additional depreciation	Nil	
	[Though the balance 10% additional depreciation of the earlier year is allowable as deduction in the current year, since the company is opting for section 115BAA, additional depreciation is not permissible in this case]		
	5. Payment to a sub-contractor where tax deducted last year was remitted after the due date of filing of return	2,10,000	
	[30% of ₹ 7 lakhs, being payment to a sub- contractor, would have been disallowed u/s 40(a)(ia) while computing the business income of A.Y.2023-24, since tax deducted was remitted after the due date of filing of return. However, the same is allowable in A.Y.2024-25, since the remittance has been made on 31.12.2023]		
		1,29,10,000	**8,34,00,500**
II	**Capital Gains**		
	1. Profit on sale of building to 100% Indian subsidiary	Nil	
	[Short-term capital gains arise on sale of building 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)]		

III	**Income from Other Sources** Dividend income from specified foreign company [M/s Kaveri Ltd. holds 26% or more equity shares in foreign company, such foreign company is a specified foreign company u/s 115BBD, but 115BBD is scraped now. So Dividend income is taxable at normal tax rates]		15,00,000
	Gross Total Income Less: Deduction under Chapter VI-A Deduction u/s 80M in respect of inter-corporate dividends [being lower of 15 lakh, being dividend received from specified foreign company, and 20 lakh, being dividend distributed by M/s Kaveri Ltd. on or before the due date specified u/s 139(1) of filing return of income]		**8,49,00,500** 15,00,000
	Total Income		**8,34,00,500**

Question-5 :
Mr.A, aged 32 years, is employed with XYZ (P) Ltd. on a basic salary of ₹ 50,000 p.m. He has received transport allowance of ₹ 15,000 p.m. and house rent allowance of ₹ 20,000 p.m. from the company for the P.Y. 2023-24. He has paid rent of ₹ 25,000 p.m. for an accommodation in Delhi.

Mr. A has paid interest of ₹ 2,10,000 for housing loan taken for the construction of his house in Mumbai. The construction of the house is completed in March, 2023 and the house is vacant.

Other Information
- Contribution to PPF - ₹ 1,50,000
- Contribution to pension scheme referred to in section 80CCD - ₹ 50,000
- Payment of medical insurance premium for father, who is of the age of 65 - ₹ 55,000
- Payment of medical insurance premium for self and spouse - ₹ 32,000 Compute the total income and tax liability of Mr. A for the A.Y. 2024-25.

Solution :

Computation of total income and tax liability of Mr. A for A.Y. 2024-25

Particulars		**₹**
Salaries		
Basic Salary [₹ 50,000 x 12]		6,00,000
Transport allowance [₹ 15,000 x 12]		1,80,000
HRA received 2,40,000		
Less: Least of the following exempt u/s 10(13A) 2,40,000		-
HRA Received	2,40,000	
Actual rent paid – 10% of salary [₹3,00,000 – ₹ 60,000]	2,40,000	
50% of salary	3,00,000	
Gross salary		7,80,000
Less: Standard deduction u/s 16(ia)		(50,000)
		7,30,000
Income from house property [Annual Value is Nil. Deduction u/s 24(b) for interest on housing loan would be restricted to ₹ 2,00,000, in case of self-occupied property, which would represent loss from house property]		(2,00,000)
Gross Total Income		5,30,000
Less: Deductions under Chapter VI- A		
Section 80C		
Contribution to PPF		1,50,000
Section 80CCD(1B)		

Own contribution to pension scheme		50,000
Section 80D		
Mediclaim insurance premium		
For self and spouse, restricted to	25,000	
For father, who is a senior citizen, restricted to	50,000	75,000
Total Income		2,55,000
Tax liability		
Tax @ 5% on ₹ 5,000 [₹ 2,55,000 - ₹ 2,50,000]		250
Less: Rebate u/s 87A		250
Total Tax Liability		-

Computation of total income and tax liability of Mr. A for A.Y. 2024-25 in accordance with the provisions of section 115BAC

Particulars		₹
Salaries		
Basic Salary [₹ 50,000 x 12]		6,00,000
Transport allowance [₹ 15,000 x 12]		1,80,000
HRA received		2,40,000
		10,20,000
Standard Deduction		(50,000)
Income from house property		
Interest on housing loan		-
Gross Total Income		9,70,000
Less: Deductions under Chapter VI- A		
Section 80C		
Contribution in PPF		-
Section 80CCD		
Contribution to pension scheme		-
Section 80D		
Mediclaim insurance premium for self and parents		-
Total Income		9,70,000
Tax liability		
Tax @5% on ₹ 3,00,000 [₹ 6,00,000 - ₹ 3,00,000]	15,000	
Tax @10% on ₹ 3,00,000 [₹ 9,00,000 - ₹ 6,00,000]	30,000	
Tax @15% on ₹ 70,000 [₹ 9,00,000 - ₹ 9,70,000]	10,500	
		55,500
Add: Health & Education cess @ 4%		2,220
Total Tax Liability		57,720

Since tax payable as per the Optional Regime of the Act is lower than the tax payable under the provisions of deault regime u/s115BAC, it would be beneficial for Mr. A to opt out of section 115BAC.

Note: In this case, Mr. A is entitled to exemption u/s 10(13A), standard deduction u/s 16(ia), benefit of interest on housing loan in respect of self-occupied property and Chapter VI-A deductions, owing to which his total income is reduced by ₹ 7,65,000. His total income under the Optional Regime of the Act is less than ₹ 5,00,000, owing to which he becomes entitled to rebate u/s 87A. Hence, in this case, it is beneficial for Mr. A opt out of default regime under section 115BAC

Question-6 :
ABC Ltd., a pharmaceutical company incorporated in year 2000-01, purchased a new plant and machinery for ₹ 10 lakhs on 01-04-2023. The total income of the company for Assessment Year 2024-25 before allowing additional depreciation in respect of new plant and machinery is ₹ 20 lakhs. ABC Ltd. has not opted for the concessional tax regime under section 115BAA so far. Compute the tax liability of ABC Ltd. for A.Y. 2024-25 assuming its turnover for the previous year 2021-22 was ₹ 350 crores. Ignore the provisions of MAT.

Solution :

Computation of tax liability of ABC Ltd. for A.Y. 2024-25 under regular provisions of the Act

Particulars	₹
Total Income before allowing additional depreciation	20,00,000
Less: Additional Depreciation u/s section 32(1)(iia)[₹10 lakh x 20%]	2,00,000
Total Income	**18,00,000**
Applicable Tax Rate (since turnover of P.Y. 2021-22 is upto ₹ 400 crores	25%
Tax payable	4,50,000
Add: Health & Education cess@4%	18,000
Tax Liability	**4,68,000**

Computation of tax liability of ABC Ltd. for A.Y. 2024-25 under section 115BAA

Particulars	₹
Total Income before allowing additional depreciation	20,00,000
Less: Additional Depreciation u/s section 32(1)(iia) [not allowable as deduction while computing income u/s 115BAA]	-
Total Income	**20,00,000**
Applicable Tax Rate	22%
Tax payable	4,40,000
Add: Surcharge@10%	44,000
	4,84,000
Add: Health & Education cess@4%	19,360
Tax Liability	**5,03,360**

Since tax payable as per the regular provisions of the Act is lower than the tax payable under the provisions of section 115BAA, it would be beneficial for ABC Ltd. not to opt for section 115BAA.

Question-7 :
The following are the particulars relating to two Indian companies, namely, Alpha Ltd. and Beta Ltd., which are subject to tax audit u/s 44AB, for A.Y.2024-25 –

Particulars	Alpha Ltd.	Beta Ltd.
Date of setting up/ registration	1.4.2019	1.11.2023
Main object	Manufacture of steel	Manufacture of leather
Place	Vaishali, Bihar	Ranipet, Tamil Nadu
Turnover of P.Y. 2021-22	₹ 251 crores	-
Turnover of P.Y. 2022-23	₹ 401 crores	-
Turnover of P.Y. 2023-24	₹ 270 crores	₹ 120 crores
Value of new plant and machinery installed and put to use on 1.11.2023	₹ 8 crore	₹ 5 crore
Gross Total Income of P.Y.2023-24	₹ 5 crore	₹ 3 crore
No. of new employees employed on the date of setting up/registration the company	50	750

No. of new employees employed as on 1.4.2021	750	-
Monthly emoluments to 750 employees employed in the respective companies as mentioned above, by ECS through bank account:		
250 employees	₹ 20,000 per employee	₹ 21,000 per employee
250 employees	₹ 25,000 per employee	₹ 25,000 per employee
250 employees	₹ 28,000 per employee	₹ 27,000 per employee

From the above details -

(i) Compute the tax liability of Alpha Ltd. and Beta Ltd. for A.Y.2024-25, assuming that Alpha Ltd. has not opted for any concessional rates earlier and they both avail the beneficial tax rates under the special provisions of the Income-tax Act, 1961 in the P.Y. 2023-24 by fulfilling the conditions specified thereunder. Assume that the gross total income reflects the computation under the special provisions.

(ii) Would it be beneficial for Alpha Ltd. to opt for beneficial tax rates in P.Y. 2023-24 instead of paying tax under regular provisions of the Income-tax Act, 1961? Examine.

Solution :

(i) Computation of tax liability of Alpha Ltd. and Beta Ltd. under the special provisions of the Income-tax Act, 1961

Particulars	Alpha Ltd. ₹	Beta Ltd. ₹
Gross Total Income	**5,00,00,000**	**3,00,00,000**
Less: Deduction u/s 80JJAA		
Alpha Ltd - [(₹ 20,000 x 12 x 250) + (₹ 25,000 x 12 x 250)] x 30%	4,05,00,000	
Beta Ltd – [(₹ 21,000 x 5 x 250) + (₹ 25,000 x 5 x 250)] x 30%		1,72,50,000
Total Income	**95,00,000**	**1,27,50,000**
Computation of tax liability		
Tax@22% on ₹ 95,00,000 [As per section 115BAA]	20,90,000	
Tax@15% on ₹ 1,27,50,000 [As per section 115BAB]		19,12,500
Add: Surcharge@10%	2,09,000	1,91,250
	22,99,000	**21,03,750**
Add: Health and Education cess@4%	91,960	84,150
Total tax liability	**23,90,960**	**21,87,900**

Notes -

(1) Beta Ltd. is a manufacturing company set up on or after 1.10.2019 but before 31.3.2024, hence, it would be eligible to opt for section 115BAB, and avail benefit of concessional rate of tax@15% plus surcharge@10% and HEC@4%. Alpha Ltd. is eligible to opt for special provisions under section 115BAA, as per which the rate of tax would be 22% plus surcharge@10% and HEC@4%.

(2) Both Alpha Ltd. and Beta Ltd. are eligible to claim deduction u/s 80JJAA, which is a permissible Chapter VI-A deduction while computing total income under section 115BAA and 115BAB.

In case of Alpha Ltd, 30% of the additional employee cost of new employees employed in the P.Y. 2021-22, can be claimed as deduction u/s 80JJAA for P.Y.2023-24. Out of 750 employees, 250 employees whose emoluments are ₹ 20,000 p.m., 250 employees whose emoluments are ₹ 25,000 p.m. qualify as additional employees and 250 employees whose emoluments exceed ₹ 25,000 p.m. do not qualify as additional employees.

In case of Beta Ltd, 750 new employees are employed on 1.11.2023, being the date of setting up, for which 30% of additional employee cost can be claimed as deduction. Beta Ltd. is engaged in manufacture of leather, and hence it would be entitled for deduction u/s 80JJAA in the P.Y. 2023-24, since the eligible employees have been employed for more than 150 days in that year. Thus, 30% of the additional employee cost of 250 employees whose emoluments are ₹ 21,000 p.m. and 250 employees whose emoluments are ₹ 25,000 p.m. qualify as additional employees, can be claimed as deduction u/s 80JJAA for P.Y.2023-24.

(ii) Computation of tax liability of Alpha Ltd. and Beta Ltd. under the special provisions of the Income-tax Act, 1961

Particulars	Alpha Ltd. ₹
Gross Total Income (computed under the special provisions)	5,00,00,000
Less: Additional Depreciation [10% of ₹ 8 crore, since the plant and machinery has been put to use for less than 180 days in the P.Y.2023-24]	80,00,000
Gross Total Income (computed under the regular provisions of the Act)	**4,20,00,000**
Less: Deduction u/s 80JJAA	
[(₹ 20,000 x 12 x 250) + (₹ 25,000 x 12 x 250)] x 30%	4,05,00,000
Total Income	**15,00,000**
Computation of tax liability	
Tax@25% on ₹ 15,00,000 [Since turnover of P.Y.2021-22 is less than ₹ 400 crore]	3,75,000
Add: Surcharge (Not applicable, since total income is less than ₹ 1 crore)	Nil
	3,75,000
Add: Health and Education cess@4%	15,000
Total tax liability	**3,90,000**

Since the tax liability under the regular provisions of the Act is ₹ 3,90,000 vis-à-vis tax liability of ₹ 23,90,960 computed under section 115BAA, it is not beneficial for Alpha Ltd. to opt for the special provisions under section 115BAA for A.Y.2024-25. Hence, Alpha Ltd. should not opt for the special provisions under section 115BAA for A.Y.2024-25

Question-8 : [RTP MAY 23]

SF Ltd. is engaged in manufacturing and sale of pharmaceutical products. The net profit of the company as per statement of profit and loss for the year ended 31st March, 2024 is ₹ 930 lakhs, after debiting or crediting the following items:

(i) The opening and closing stock for the year were ₹ 66 lakhs and ₹ 63 lakhs respectively. Opening stock was overvalued by 10% and Closing stock was undervalued by 10%.

(ii) Payment of ₹ 65 lakhs on 15th October 2023 to a foreign company for obtaining know how for a product launched in the month of November 2023.

(iii) Profit on sale of 2200 shares of M/s. MS Ltd., a listed company ₹ 2,97,000. These shares were sold on 27.11.2023 for ₹ 220 per share. The highest price of MS Ltd. quoted on the stock exchange as on 31.01.2018 was ₹ 195 per share. The said shares were acquired for ₹ 85 per share on 12.08.2016. STT was paid both at the time of purchase and sale of shares.

(iv) Electricity charges of ₹ 8 lakhs for the month of February 2024 and March 2024 was unpaid up to the due date of filing of return.

(v) Loss of ₹ 2.2 lakhs due to hedging contract against future price fluctuations in respect of import of raw material, used in the course of manufacturing.

(vi) Depreciation charged to the Statement of Profit and Loss was ₹ 48 lakhs.

(vii) Credits to statement of Profit and Loss include dividend of ₹ 5,20,000 received on September 9, 2023 from a foreign company, in which it holds 30% voting rights.

(viii) ₹ 32 lakhs received from Zen Ltd. under an agreement in the form of non-compete fees for not carrying out any business in a particular product.
(ix) Advance received amounting to ₹ 22 lakhs on proposed sale of land, forfeited due to non-receipt of balance amount of ₹ 70 lakhs on time, as per terms of agreement. The land was purchased during FY 2018-19.
(x) Excess on sale of unlisted shares - ₹ 18 lakhs (Sold on 18th January 2024).
(xi) Loss of ₹ 2 lakh from hedging contracts entered into for mitigating the loss arising due to fluctuation in foreign currency payment towards an imported machinery purchased from Japan for ₹ 70 lakhs, which was installed and put to use in the month of November 2023.

Additional Information:
(1) Normal depreciation allowable as per the Income-tax Act, 1961 ₹ 35 lakhs.
(2) Depreciation on plant and machinery imported and installed during November 2023 and on technical know-how has not been considered while calculating normal depreciation as per Income-tax Act, 1961 given in (1) above.
(3) During the year F.Y. 2023-24, the company has employed 59 additional employees. All these employees contribute to a recognized provident fund. 36 out of 59 employees joined on 1 6-2023 on a salary of ₹ 15,000 per month, 18 joined on 1-7-2023 on a salary of ₹ 35,200 per month, and 5 joined on 1-11-2023 on a salary of ₹ 22,000 per month. The salaries of 10 employees who joined on 1-6-2023 are being settled by bearer cheques every month. Audit under section 44AB has been done before the due date.
(4) The unlisted shares were acquired on 18.2.2018 for ₹ 80 lakhs.
(5) Cost Inflation Index F.Y. 2016-17 - 264, F.Y. 2017-18 - 272, F.Y. 2023-24- 348.

You are required to compute the total income and tax liability of the company for the A.Y.2024-25 clearly stating the reasons for treatment of each of the items given above. The return of income of the company is to be filed applying the provisions of section 115BAA

Solution :

Computation of total Income and tax liability of SF Ltd. for the A.Y. 2024-25 under section 115BAA

	Particulars	Amount	Amount
I	**Profits and gains of business and profession**		
	Net profit as per Statement of profit and loss		9,30,00,000
	Add: (i) Stock valuation adjustments		
	Overvaluation of opening stock [₹ 66,00,000 x 10/110]	6,00,000	
	Undervaluation of closing stock [₹ 63,00,000 x 10/90]	7,00,000	
	Add: Items debited but to be considered separately or to be disallowed		
	(ii) Payment towards know-how for a product [Payment towards obtaining know-how is capital expenditure i.e., an intangible asset and eligible for depreciation. Since the same is debited in statement of profit and loss, it has to be added back]	65,00,000	
	(iv) Electricity charges unpaid upto the due of filing return of income [Electricity charges are not included within the scope of section 43B2, therefore no disallowance would be attracted. Since the same is already debited in statement of profit and loss, no further adjustment is required]	-	
	(v) Loss due to hedging contract in respect of raw material [Loss due to hedging contract against future price fluctuations in respect of import of raw material for manufacturing is not deemed to be speculative transaction. Hence, the same is allowable as deduction while computing income from manufacturing. Since the same is already debited in statement of profit and loss, no further adjustment is required]	-	
	(vi) Depreciation as per books of account	48,00,000	
	(xi) Loss from hedging contract in respect of imported machinery from Japan	2,00,000	

	[Loss from hedging contracts entered for mitigating loss arising due to fluctuation in foreign currency payment towards import of machinery has to be added to the actual cost of the machinery as per section 43A. Since the same is wrongly debited to statement of profit and loss, same has to be added back].			
	AI(3) Salary paid to employees through bearer cheques		15,00,000	
	[Salary paid through bearer cheques (10 employees x ₹ 15,000 x 10 months) will attract disallowance u/s 40A(3) and hence, the same has to be added back]			1,43,00,000
				10,73,00,000
	(vii) Dividend received from foreign company [Dividend income 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]		5,20,000	
	(viii) Non-compete fees for not carrying out any business in a particular product		-	
	[Non-compete fees for not carrying out any business in a particular product would be chargeable to tax as business income under section 28(va). Since the same is already credited in statement of profit and loss, no further adjustment is required]			
	(ix) Advance forfeited in respect of sale of land		22,00,000	
	[With effect from A.Y.2015-16, advance forfeited in respect of sale of land due to non- receipt of balance amount of consideration would be taxable under the head "Income from other sources". Since the same has been credited to the statement of profit and loss, the same has to be deducted while computing business income]			
	(x) Profit on sale of unlisted shares		18,00,000	
	[Profit on sale of unlisted shares is taxable under the head "Capital Gains". Since profits have been credited to the statement of profit and loss, the same has to be deducted while computing business income]			48,17,000
				10,24,83,000
	Less: Depreciation as per Income-tax Act, 1961 [other than imported plant & machinery and know-how]		35,00,000	
	Deprecation on: ₹			
	Plant & Machinery imported	70,00,000		
	Add: Loss on hedging contract	2,00,000		
		72,00,000		
	- Normal depreciation @7.5% of ₹ 72,00,000 [only 50% of the 15% allowable since machinery is put to use for less than 180 days]		5,40,000	
	- Additional depreciation not allowable, since company is opting for section 115BAA		-	
	Know-how @ 12.5% of ₹ 65,00,000 [50% of 25% since know how was obtained on 15th October 2023, which is used for less than 180 days]		8,12,500	48,52,500
				9,76,30,500
II	**Capital Gains**			
	Long term capital gain on sale of unlisted shares			
	[Since shares were held for more than 24 months]			
	Full value of consideration [₹ 18,00,000 + ₹ 80,00,000]	98,00,000		
	Less: Indexed cost of acquisition [80,00,000 x 348/272]	97,35,294		

			64,705	
	Long term capital gain on sale of listed shares of M/s. MS Ltd. [Since shares were held for more than 12 months] ₹			
	Full value of consideration (2,200 x ₹ 220)	4,84,000		
	Less: Cost of acquisition [Higher of (i) and (ii) below]	4,29,000	55,000	
	(i) Actual cost of acquisition ₹ 1,87,000(2,200 x₹ 85)			
	(ii) ₹ 4,29,000, being lower of fair market value as on 31.1.2018 (i.e., ₹ 4,29,000, being 2,200 x 195) and sale consideration (i.e., ₹ 4,84,000)			
				1,19,706
III	**Income from Other Sources**			
	Advance forfeited on sale of land		22,00,000	
	Dividend from foreign company		5,20,000	
				27,20,000
	Gross Total Income			**10,04,70,206**
	Less: Deduction under section 80JJAA [Deduction under section 80JJAA is allowable though company is opting for concessional tax rate under section 115BAA. For computation of amount, see working note below]			11,70,000
	Total income			**9,93,00,206**
	Total income (rounded off)			**9,93,00,210**

Computation of tax liability of SF Ltd. for the A.Y. 2024-25 u/s 115BAA

Particulars	₹
Tax on long-term capital gains u/s 112A would be nil, since such gain does not exceed ₹ 1 lakh	Nil
Tax on long term capital gain @20% under section 112 on unlisted shares [₹ 64,706 x 20%]	12,941
Tax on remaining income including dividend received from foreign company @22% remaining income is ₹ 9,91,80,504 [₹ 9,93,00,210 – ₹ 55,000 – ₹ 64,706]	2,18,19,711
	2,18,32,652
Add: Surcharge@10%	21,83,265
	2,40,15,917
Add: Health and education cess@4%	9,60,637
Tax liability	2,49,76,554
Tax liability (rounded Off)	**2,49,76,550**

Working Note - Computation of deduction u/s 80JJAA

No of eligible additional employees [59 (-) 18 (-) 5 = 36]	36
[18 employees who joined on 1.7.2023 do not qualify as "additional employees" since their monthly emoluments exceed ₹ 25,000 and 5 employees who joined on 1.11.2023 also do not qualify as additional employees, since they have not employed for more than 240 days during the P.Y.2023-24]. In respect of these 5 employees deduction in respect of their additional employee cost would eligible for deduction in subsequent previous year.	
Additional employee cost means the total emoluments paid or payable to additional employees employed during the P.Y.2023-24. However, the additional employee cost in respect of 10 employees who joined on 1.6.2023, whose salary is paid by bearer cheque would be Nil.	
Additional employee cost	
[₹ 15,000 x 26 employees (36 - 10) x 10 months] = ₹ 39,00,000	₹ 39,00,000
Eligible deduction = 30% of ₹ 39,00,000	₹ 11,70,000

Question-9 : [MTP 2 Nov 23]

M/s Sunshine Industries Ltd., an Indian company, is engaged in assembling and manufacturing of automobiles and auto components in Pune, Maharashtra. The net profit after debit/credit of the following amounts to its Statement of Profit and Loss for the year ended 31-03-2024 was ₹ 9,50,00,000.

(i) Depreciation calculated as per useful life of its assets ₹ 2,80,00,000.
(ii) Donation of ₹ 12,00,000 given to a political party by way of account payee cheque.
(iii) The company has paid ₹ 50,00,000 on 15-08-2023 to a research institution recognized and notified by the Central Government which has as its object, undertaking of scientific research.
(iv) Dividend received from foreign company of ₹ 15,00,000 in which it holds 30% of the equity share capital.
(v) Long-term capital gain of ₹ 4,00,000 on sale of equity shares on which STT was paid at the time of acquisition and sale.
(vi) Interest at 10% p.a. on ₹ 4,20,00,000, being amount borrowed from State Bank of India on 01-06-2023 for purchase of machinery. The interest outstanding as on 31-03-2024 was paid on 01-12-2024.
(vii) Profit of ₹ 8,00,000 on sale of a plot of land to PQR Limited, an Indian company, the entire shares of which are held by the Sunshine Industries Ltd. The plot was acquired on 30th June, 2023.
(viii) Salary of ₹ 1,00,00,000 to foreign technicians for installation of machinery at the factory premises was paid.
(ix) The company sold automobile parts for ₹ 22,00,000 to M/s ABC Co Engineers, a sole proprietary concern, on 01.11.2020. On 01.02.2024 ₹ 12,00,000 was written off in the books as bad debts. The sole proprietor died on 01.03.2024 and the company managed to collect ₹ 11,00,000 towards full and final settlement on 30.03.2024. The entire amount collected was shown as bad debts recovered and credited to Statement of Profit and Loss.

Additional Information:

1. Depreciation computed as per Income-tax Rules, 1962 is ₹ 1,50,00,000 other than on the additions in assets made during the year.
2. Additions made to the assets were as follows:
   (i) Office Building ₹ 3,00,00,000 - Put to use from 15-12-2023.
   (ii) Computers ₹ 25,00,000 - Put to use on 11-05-2023.
   (iii) Plant and machinery ₹ 5,00,00,000 - Installed and put to use on 01-01-2024.
3. The company declared and distributed dividend for the financial year 2023-24 on 31.5.2024 for ₹ 12,00,000.

Compute the total income of the company and tax liability for the assessment year 2024-25, assuming company opts for concessional tax regime under section 115BAA. Total turnover of the company for the P.Y. 2021-22 was ₹ 402 crores. **(14 Marks)**

Question-10 : [RTP Nov 23]

The Statement of Profit and Loss of Manav Ltd., engaged in manufacturing activity for the year ended 31st March, 2024, exhibits a Net Profit of ₹ 180 lakhs after debiting/ crediting the following items:

(a) Interest of ₹ 24 lakhs relating to F.Y.2023-24, which is settled by issuing 8% debentures of ₹ 100 each in August, 2024.
(b) Income-tax assessment of A.Y.2023-24 was completed in September, 2023 with a tax demand of ₹5,80,000 which included surcharge of ₹ 50,700 and cess of ₹ 22,308. The entire sum has been duly paid during the F.Y. 2023 -24.
(c) Provision for gratuity based on actuarial valuation ₹ 180 lakhs.
(d) Expenditure incurred towards foreign travel of directors ₹ 6.5 lakhs to explore opening of a branch in a foreign country to market its products in the said foreign country.
(e) Paid ₹ 82,000 for purchase of raw material on 26th January, 2024 by making payment in cash to a supplier in a single day.
(f) Paid ₹ 11 lakhs to ST Inc. of Japan for online digital advertisement. ST Inc. has no PE in India. No tax was deducted at source nor was equalization levy paid on the said amount.

(g) Incurred ₹ 4.6 lakhs on activities related to Corporate Social Responsibility as required under section 135 of Companies Act, 2013.
(h) Sold a vacant land to its wholly owned subsidiary Petal (P) Ltd., Mumbai. The long- term capital gain of ₹ 18 lakhs is credited to the Statement of Profit and Loss.
(i) Paid ₹ 2.2 lakhs to a university as donation to be used for research in social science approved under section 35(1)(iii). Out of this, ₹ 1.2 lakh was paid through net banking and balance by cash.
(j) Interim dividend distributed during the year of ₹ 65 lakhs
(k) Contributed ₹ 60 lakhs towards employees' pension scheme notified by the Central Government u/s 80CCD calculated at 15% of aggregate of salary and dearness allowance (forming part of retirement benefits) payable to employees as per the terms of employment.
(l) Depreciation ₹ 36 lakhs.
(m) ₹ 36 lakhs by way of dividend received from Knight Pte. of Singapore in which Manav Ltd. has 28% voting power.
(n) Paid ₹ 6 lakhs as donation to a recognised political party by way of account payee crossed cheque.

Additional Information:
(i) Normal depreciation as per Income-tax Act, 1961 - ₹ 62 lakhs.
(ii) Additional depreciation as per Income-tax Act,1961- ₹ 24 lakhs
(iii) Brought forward unabsorbed depreciation (out of normal depreciation) of A.Y. 2021-22 ₹ 14 lakhs.
(iv) Actual gratuity paid during the year of ₹ 105 lakhs is debited to provision for gratuity account.

You are required to compute the total income and tax liability of Manav Ltd. for A.Y. 2024-25 with brief reasons for the treatment of each item given above. Manav Ltd. has opted to pay tax as per the provisions of section 115BAA

Solution :

Computation of Total Income of Manav Ltd. for the A.Y.2024-25

Particulars	₹	₹
Income from Profits and gains of business or profession		
Profit as per Statement of Profit and Loss		1,80,00,000
Add: Items debited but to be considered separately or to be disallowed		
(a) Term loan interest arrears settled by issuing 8% debentures	24,00,000	
As per *Explanation 3C* to section 43B, issue of debentures by which the interest liability is deferred to a future date shall not be deemed to have been actually paid. Since issue of debentures is not equivalent to discharge of interest on term loan, interest would be disallowed. Since ₹ 24 lakhs towards interest for F.Y. 2023-24 is debited to statement of profit and loss, the same has to be added back.		
(b) Tax demand of A.Y. 2023-24 ₹ 5,80,000 which includes surcharge and cess of ₹ 50,700 and ₹ 22,308, respectively	5,80,000	
As per *Explanation 3* to section 40(a)(ii) the term 'tax' shall include any surcharge or cess, by whatever name called, on such tax. Therefore, both surcharge and cess partake the character of income-tax and hence, are liable for disallowance along with tax. Since tax of ₹ 5,80,000 including surcharge and cess is debited to Statement of Profit and Loss, the same has to be added back.		
(c) Provision for gratuity	75,00,000	
Provision of ₹ 180 lakhs for gratuity based on actuarial valuation is not allowable as deduction as per section 40A(7). However, actual payment of gratuity of ₹ 105 lakhs is allowable as deduction. Hence, the difference has to be added back.		

(d) Expenses on foreign travel of directors Expenses on foreign travel of directors for exploring opening of a branch in foreign country for marketing its products relates to the existing business of the company and is, therefore, eligible for deduction. Since the same has been debited to the Statement of Profit and Loss, no adjustment is required.	-	
(e) Cash payment for purchase of raw material in 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. Cash payment of ₹ 82,000 for purchase of raw material on 26th January, 2024 is, therefore, liable for disallowance.	82,000	
(f) Expenses on online digital advertisement Expenses on online digital advertisement to a non-resident company, which has no PE in India, is liable for deduction of equalisation levy. Since equalization levy is not deducted and paid, 100% disallowance is attracted in respect of such payment under section 40(a)(ib). Since ₹ 11 lakhs has been debited to Statement of Profit and Loss, the same has to be added back.	11,00,000	
(g) Expenditure on CSR Activities: As per Explanation 2 to section 37(1), expenditure incurred on CSR activities is not deductible. Assuming that such expenditure is not deductible under sections 30 to 36, the entire amount is liable for disallowance. Since ₹ 4.6 lakhs has been debited to Statement of Profit and Loss, the same has to be added back.	4,60,000	
(i) Contribution to University for research in social science As per section 35(1)(iii), contribution to university for research in social science is eligible for 100% deduction. However, since Manav Ltd. has opted for concessional tax regime under section 115BAA, deduction under section 35(1)(iii) is not allowable. Since ₹ 2.2 lakhs has been debited to Statement of Profit and Loss, the same has to be added back.	2,20,000	
(j) Interim dividend distributed Interim dividend distributed is not allowable as deduction. Since the same has been debited to Statement of Profit and Loss, the said amount same has to be added back to arrive at business income.	65,00,000	
(k) Contribution towards employee's pension scheme in excess of 10% of salary disallowed 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, 5%, which is in excess of 10% i.e., ₹ 60,00,000 x 5/15, would be disallowed.	20,00,000	
(l) Depreciation debited to the Statement of Profit and Loss	36,00,000	
(n) Donation to recognised political party Donation to political party not allowable as deduction under section 37.	6,00,000	2,50,42,000
		4,30,42,000
Less: Items credited to Statement of Profit and Loss which are to be considered separately/ expenditure to be allowed		
(h) LTCG on sale of vacant land Capital gains on transfer of capital assets are taxable under the head "Capital Gains". However, long term capital gain on sale of vacant land of ₹ 18 lakhs to wholly owned subsidiary is not liable to tax since it is not regarded as 'transfer'. Since the same is credited to the Statement of Profit and Loss, it has to be deducted while computing business income.	18,00,000	

(m) 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.	36,00,000	
AI(i) Depreciation as per Income-tax Act, 1961	62,00,000	
AI(ii) Additional Depreciation as per Income-tax Act, 1961, not allowable as deduction, since company is opting for section 115BAA	Nil	1,16,00,000
		3,14,42,000
Less: Brought forward unabsorbed depreciation Unabsorbed depreciation out of normal depreciation is allowable as deduction though company has opted for section 115BAA, since such deprecation is not attributable to additional depreciation in respect of which deduction is not permissible u/s 115BAA.		14,00,000
		3,00,42,000
Income from Other Sources		
Dividend received from foreign company		36,00,000
Gross Total Income		**3,36,42,000**
Less: **Deductions under Chapter VI-A**		
Deduction under section 80M in respect of dividend distributed, restricted to the amount of dividend received from domestic/ foreign company is allowable though company has opted for section 115BAA.		36,00,000
Deduction under section 80GGB in respect of donation to recognised political party not available since company has opted for section 115BAA.		Nil
Total Income		**3,00,42,000**
Computation of tax liability		
Income-tax on ₹ 3,00,42,000@ 22% (u/s 115BAA)		66,09,240
Add: Surcharge@10% (irrespective of the total income)		6,60,924
		72,70,164
Add: Health and Education Cess@4%		2,90,807
Tax liability		**75,60,971**
Tax liability (rounded off)		**75,60,970**

Extra Page.