

8 RTP's (INCL MAY 2024)

RTP NOV 2020:

Question 1:

PQR Ltd, a company manufacturing footwear and leather products for the past ten years, had a net profit of Rs. 544 lakhs as per the statement of profit and loss for the year ended 31st March, 2024. The company was subject to tax audit under section 44AB. The net profit is arrived at after debiting or crediting the following amounts:

- (i) Depreciation as per Companies Act, 2013 is Rs. 64 lakhs. (+)
- (ii) A sundry creditor whose dues of Rs. 64 lakhs were outstanding since long time, has been settled for Rs. 52 lakhs on 31st March, 2024 based on compromise settlement. The amount waived has been credited to the statement of profit and loss. \therefore No effect as 12% cr to P&L
- (iii) Employers' contribution of Rs. 6 lakhs to EPF for the month of March, 2024 was deposited on 30th June, 2024. Allowed. Deposit till due date of return \rightarrow 438.
- (iv) Interest payments debited Rs. 60 lakhs (Includes interest on term loan of Rs. 50 lakhs availed on 1-4-2023 at interest rate of 12% p.a. towards purchase of machinery during the year). 3% sl \rightarrow (+) NIP A/D.
- (v) Payment of Rs. 20 lakhs without deduction of tax to XYZ & Co., a sub-contractor, for processing raw leather supplied by PQR Ltd. is debited to statement of profit & loss. (+) 30%.

Additional Information:

- (1) The company has not made provision for an amount of Rs. 24 lakhs being a fair estimate of the amount as payable to workers towards periodical wage revision once in 3 years in respect of existing employees. The provision is estimated on a reasonable certainty of the revision once in 3 years. Not debited to P&L \therefore Reduce. Allowed

- (2) The written down values of assets before allowing depreciation as per Income-tax Rules are as under:

Factory Buildings:	Rs. 360 lakhs; \rightarrow 10%.
Plant & Machinery:	Rs. 340 lakhs (inclusive of machinery costing Rs. 60 lakhs acquired on 1.4.2023 and put to use on 1.11.2023) $280 \times 15\%$. \textcircled{A} 63.5% 7.5% 10%.
Computers:	Rs. 30 lakhs \rightarrow 40%.

It may be noted that the above values have been duly recognised while providing depreciation in the books of accounts.

- (3) During the year 2023-24, the company has employed 24 additional employees (qualified as "workman" under the Industrial Disputes Act, 1947). All these employees contribute to a recognized provident fund. 12 out of 24 employees joined on 1.6.2023 on a salary of Rs. 23,000 per month, 4 joined on 1.7.2023 on a salary of Rs. 25,500 per month, and 8 joined on 1.11.2023 on a salary of Rs. 20,000 per month. The salaries of 2 employees who joined on 1.6.2023 are being settled by bearer cheques every month. $10 \times 10 \times 23000 + 8 \times 5 \times 20000$

- (4) Employees contribution to EPF of Rs. 3 lakhs recovered from their salaries for the month of March 2024 and shown in the Balance Sheet under the head Sundry Creditors was remitted on 31st July, 2024. \rightarrow 25%.

Compute the total income and tax liability of PQR Ltd. for the Assessment Year 2024-25. The turnover of the company for the year ended 31.3.2022 was Rs. 251 crores. Ignore the provisions of

~~MAT~~ Assume that the company does not opt for the special provisions inserted by the Taxation Laws (Amendment) Act, 2019.

Answer:

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

Particulars	Amount (Rs.)
Net profit as per the statement of profit and loss	✓ 5,44,00,000
Add: Items debited but to be considered separately or to be disallowed	
(i) Depreciation charged as per Companies Act, 2013	✓ 64,00,000
(iii) Employer's contribution to EPF	✓ Nil

<p>[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]</p>		
<p>(iv) Interest on term loan for purchase of plant and machinery [Rs. 50 lakhs x 12% x 7/12] [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]</p>	✓ 3,50,000	
<p>(v) Payment to XYZ & Co., a sub-contractor, without deduction of tax [30% of Rs. 20 lakhs] [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]</p>	✓ 6,00,000	73,50,000
<p>Add: Amount taxable but not credited to statement of profit and loss</p>		6,17,50,000
<p>AI(5) Employee's contribution to EPF [Any sum received by the assessee from his employees as contribution to any provident fund is treated as income of the assessee. 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).]</p>		3,00,000
<p>Less: Items credited to statement of profit and loss, but not includible in business income / permissible expenditure and allowances</p>		6,20,50,000
<p>(ii) Waiver of sundry creditor's outstanding amount [Waiver of Rs. 12,00,000 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]</p>	✓ Nil	
<p>AI (1) 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]</p>	24,00,000	24,00,000
<p>Less: Depreciation as per Income-tax Rules, 1962 A(2) Depreciation under section 32</p>		5,96,50,000

Depreciation on factory building [10% of Rs. 360 lakh]	36,00,000	
Depreciation on plant and machinery		
- Depreciation @ 7.5% on Rs. 63.50 lakhs [Rs. 60 lakh, being machinery cost + Rs. 3.50 lakh, being interest from 1.4.2023 to 31.10.2023] since machinery is put to use for less than 180 days].	4,76,250	
- Depreciation @ 15% on Rs. 280 lakh [Rs. 340 lakh – Rs. 60 lakh]	42,00,000	
- Depreciation on computers [40% of Rs. 30 lakh]	12,00,000	
	94,76,250	
Add: Additional depreciation @ 10% on Rs. 63.50 lakh, since machinery is put to use for less than 180 days	6,35,000	1,01,11,250
Gross Total Income		4,95,38,750
Less: Deduction under Chapter VI-A		
Under section 80JJAA [See Working Note below]		9,30,000
Total Income		4,86,08,750

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

Particulars	Rs.
Tax payable on Rs. 4,86,08,750 @ 25%, since the turnover of the company for the P.Y. 2021-22 does not exceed Rs. 400 crores	1,21,52,188
Add: Surcharge @ 7% (since the total income of the company exceeds Rs. 1 crore but does not exceed Rs. 10 crore)	8,50,653
	1,30,02,841
Add: Health and education cess @ 4%	5,20,114
Tax liability	1,35,22,954
Tax liability (Rounded off)	1,35,22,950

Working Note: Computation of deduction under section 80JJAA

PQR 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	24
Less: Employees employed on 1.7.2023, since their total monthly emoluments > Rs. 25,000	4
Employees employed on 1.6.2023 whose emoluments are paid by bearer cheque	2
Number of additional employees [10 employees employed on 1.6.2023 and 8 employed on 1.11.2023]	18
Additional employee cost	Rs. 31,00,000
Rs. 23 lakh, being Rs. 23,000 × 10 × 10 + Rs. 8 lakh, being Rs. 20,000 × 5 × 8	
Deduction under section 80JJAA [30% of Rs. 31 lakh]	9,30,000

Question 2:

Sowbaghya, a charitable trust, is registered under section 12AB of the Act. On 1.4.2023, it got merged with M/s. LMN (P) Ltd., which is a company engaged in manufacturing of furniture. All the assets and liabilities of the erstwhile trust became the assets and liabilities of M/s. LMN (P) Ltd. which is not entitled for registration under section 12AB. 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, giving reasons for treatment of each item:

EXIT
Tax



- (i) Stamp duty value of land held Rs. 30 lakhs. However; if this land is sold in the open market it would ordinarily fetch Rs. 34 lakhs. The book value of the land is Rs. 40 lakhs.
- (ii) 75,000 equity shares in XYZ Ltd. traded in National Stock Exchange. The lowest price per share on 1.4.2023 was Rs. 150 and the highest price on that day was Rs. 170. The book value was Rs. 134 lakhs. Avg = 160
- (iii) 55,000 preference shares held in ABC Ltd. The shares will fetch Rs. 88 lakhs, if they are sold in the open market on 1.4.2023. Book value was Rs. 50 Lakhs
- (iv) Corpus fund as on 1.4.2023 Rs. 30 Lakhs.
- (v) Outside liabilities Rs. 180 lakhs
- (vi) Provision for taxation Rs. 10 lakhs.
- (vii) Liabilities in respect of payment of various utility bills Rs. 12 lakhs.

Answer:

As per section 115TD, the accreted income of "Sowbaghya", a charitable trust, registered under section 12AB which is merged with M/s LMN (P) Ltd., an entity not entitled for registration under section 12AB, 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 LMN (P) Ltd. for A.Y. 2023-24

Particulars	Amount (Rs.)
Aggregate FMV of total assets as on 1.4.2023, being the specified date (date of merger)	2,42,00,000
[See Working Note 1]	
Less: Total liability computed in accordance with the prescribed method of valuation	<u>1,92,00,000</u>
[See Working Note 2]	
Accreted Income	<u>50,00,000</u>
Tax Liability @ 34.944% of Rs. 50,00,000	<u>17,47,200</u>
Working Notes:	
(1) Aggregate fair market value of total assets on the date of merger	
- Land, being an immovable property	34,00,000
[The fair market value of land would be higher of Rs. 34 lakhs i.e., price that the land would ordinarily fetch if sold in the open market and Rs. 30 lakhs, being stamp duty value as on the specified date]	
- Quoted equity shares in XYZ Ltd. [75,000 x Rs. 160 per share] [Rs. 160 per share, being the average of the lowest (Rs. 150) and highest price (Rs. 170) of such shares on the date of merger]	1,20,00,000
- 55,000 preference shares of ABC Ltd.	
[The fair market value which it would fetch if sold in the open market on the date of merger i.e. FMV on 1.4.2023]	<u>88,00,000</u>
	2,42,00,000
(2) Total liability	
- Outside liabilities	1,80,00,000
- Corpus Fund of Rs. 30 lakhs [not includible]	-
- Provision for taxation Rs. 10 lakhs [not includible]	-
- Liabilities in respect of payment of various utility bills [since this liability is an ascertained liability]	<u>12,00,000</u>
	<u>1,92,00,000</u>

Question 3:

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 1.4.2012, and he also has a bank account in the Bank of Sharjah. Mr. Suresh contends that since his total income of Rs. 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.

Discuss the correctness of the above contentions of Mr. Suresh.

Answer:

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 Rs. 3,00,000, comprising solely of income from house property and bank interest, does not exceed the basic exemption limit of Rs. 3,00,000 applicable to a senior citizen.

Question 4:

M/s. Himalaya LLP filed its return of income for the A.Y. 2022-23 on 23-07-2022. The assessment u/s 143(3) was completed on 27th April, 2023. The Assessing Officer made two additions to the income of the LLP, namely, Rs. 20 lakhs towards unexplained investment u/s 69 and Rs. 3 lakhs u/s 40(b) due to excess interest paid to partners.

The LLP, being aggrieved, contested the addition of Rs. 20 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.

Answer:

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)*.

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 section 154.

In the present case, since the order passed by the Assessing Officer in respect of the addition of unexplained investment of Rs. 20 lakhs became the subject matter of an appeal to the Commissioner (Appeals), the assessee, M/s. Himalaya LLP, cannot apply for revision under section 264 even if the subject matter of revision i.e., addition of Rs. 3 lakhs under section 40(b) is different from the subject matter of appeal.

However, M/s. Himalaya LLP can apply to the Assessing Officer for rectification of the order in respect of addition of Rs. 3 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. Himalaya LLP should seek rectification under section 154.

Question 5:

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 assessed participates in assessment proceedings? Discuss, with the aid of a recent Supreme Court ruling.

Answer:

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)**.

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 6:

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. **∴ AE**
- (ii) 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 Rs. 30,000 per MT to Unit Delta for Rs. 20,000 per MT. **80 IA**
- (iii) **Purchase of machinery** by Beta Ltd., an Indian company, from Huff AG, a German company. Beta Ltd. is the **subsidiary** of Huff AG.

Answer:

- (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) 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 Rs. 20 crore.

- (iii) 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.

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Question 7:

Lords Inc., a British company, received, in the P.Y.2023-24, income by way of fees for technical services of Rs. 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 2013, which is approved by the Central Government. Expenses incurred for earning such income is Rs. 28 lakhs. → Not Allowed

- (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. → 20% + 2% + 4% on 3.2 cr
- (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.	Rs. 3.20 crore ✓
(2)	Expenses incurred for earning such income	Rs. 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	Rs. 2 crore ✓
(4)	Expenses incurred for earning such income	Rs. 21 lakhs (-)
(5)	Expenditure not wholly and exclusively incurred for the business of such PE [not included in (2) & (4) above]	Rs. 8 lakhs X
(6)	Amounts paid by the PE to HO (not being in the nature of reimbursement of actual expenses) X	Rs. 14 lakhs 46AA/46AB-

What are the other requirements, if any, under the Income-tax Act, 1961 in this case?

Answer:

(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 Rs. 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 Rs. 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 of business or profession” in accordance with the provisions of the Income-tax Act, 1961.

Accordingly, expenses of Rs. 49 lakhs (Rs. 28 lakhs + Rs. 21 lakhs) incurred for earning fees for technical services of Rs. 5.20 crore (Rs. 3.20 crore + Rs. 2 crore) is allowable as deduction therefrom.

However, expenditure of Rs. 8 lakhs which is not incurred wholly and exclusively for the business of the PE and the amount of Rs. 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 8:

M/s. ABC LLP filed its return of income for A.Y.2024-25, declaring total income of Rs. 18 lakhs, on 2nd October, 2024. On processing of return, the total income determined under section 143(1)(a) was Rs. 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 Rs. 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 Rs. 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). *50/-*

Answer:

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	Rs.	Rs.
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 Rs. 13 lakhs plus total income of Rs. 22 lakhs determined u/s 143(1)(a) [30% of Rs. 35 lakh + HEC@4%]	10,92,000	
Less: Tax on total income determined u/s 143(1)(a) [30% of Rs. 22 lakh + HEC@4%]	6,86,400	
	4,05,600	
Penalty leviable@50% of tax payable		2,02,800
Reassessment under section 147		
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 Rs. 7 lakhs plus total income of Rs. 35 lakhs assessed u/s 143(3) [30% of Rs. 42 lakh + HEC@4%]	13,10,400	
Less: Tax on total income assessed u/s 143(3) [30% of Rs. 35 lakh + HEC@4%]	10,92,000	
	2,18,400	

Penalty leviable@50% of tax payable		1,09,200
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Question 9:

Ganga Ltd., an Indian company, earned a profit of Rs. 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	Rs.
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 Do not Add.	4,17,000
5.	Depreciation (+)	3,08,000
6.	Interest to financial institution (unpaid before filing of return) X	72,000
7.	Penalty for infraction of law X	14,000

(ii) Items credited to Statement of Profit and Loss:

No.	Particulars	Rs.
1.	Profit from unit established in special economic zone. X	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 Rs. 80,000 on account of revaluation of fixed assets. (-) 228000
- (ii) Depreciation as per Income-tax Rules, 1962 is Rs. 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 Rs. 32 lakhs which includes unabsorbed depreciation of Rs. 18 lakhs. 18L or 4L ↓
- (iv) The AOP, of which the company is a member, has paid tax at maximum marginal rate.
- (v) Provision for income-tax includes Rs. 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. 2023-24;
- (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? 9%.
- (iii) If Ganga Ltd. is a unit of an IFSC and derives its income solely in convertible foreign exchange, what would be the tax consequence of dividend distributed by it in the hands of Ganga Ltd. and its shareholders? Exempt -

Answer:

(i) **Computation of "Book Profit" for levy of MAT under section 115JB for A.Y. 2024-25**

Particulars	Rs.	Rs.
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, <i>inter alia</i> , any interest charged under the Act, therefore, whole of the amount of provision for income-tax including Rs. 65,000 towards interest payable has to be added]	1,46,000 ✓	
- Depreciation as per books of account	3,08,000	6,31,000
		58,31,000
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]	1,95,000	
- Depreciation other than depreciation on revaluation of assets (Rs. 3,08,000 – Rs. 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 Rs. 18,00,000 and brought forward business loss Rs. 14,00,000 as per books of accounts has to be reduced while computing the book profit]	14,00,000	
Book Profit		<u>18,23,000</u> 40,08,000

Computation of MAT liability under section 115JB

Particulars	Rs.
15% of book profit of Rs. 40,08,000	6,01,200
Add: Health & Education Cess@4%	24,048
Minimum Alternate Tax liability	<u>6,25,248</u>
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.
- (ii) 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	Rs.
9% of book profit of Rs. 40,08,000	3,60,720
Add: Health & Education Cess@4%	14,429
Minimum Alternate Tax liability	<u>3,75,149</u>
MAT liability (rounded off)	3,75,150

- (iii) As per section 115-O(8), no tax on distributed profits is chargeable in respect of the total income of a company, being a unit of an IFSC deriving income solely in convertible foreign exchange, on any amount of declared, distributed or paid by the company by way of dividends, either in the hands of the company or the person receiving such dividend.
Thus, neither the company nor the shareholders have to pay any tax on dividend distributed by Ganga Ltd.

Question 10:

EduAid is a **charitable trust** set up on 1.4.2014 with the object of providing relief of the poor. Later on, in April, 2016, it changed its object to “providing education to the under privileged”. It applied for registration for the first time on the basis of its new object, i.e., “education to the under privileged”, on 12.8.2016 and was granted registration on 15.3.2017.

On 1.4.2023, EduAid got merged with M/s. Educare (P) Ltd, a company not entitled for registration under section 12AB. All the assets and liabilities of the erstwhile trust became the assets and liabilities of M/s. Educare (P) Ltd. 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
		Rs.	Rs.	Rs.
Surat	1.10.2014	42 lakhs	46 lakhs	40 lakhs
Baroda	21.11.2017	90 lakhs	105 lakhs	100 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 NSE as on 1.4.2023		Open market value as on 1.4.2023 #
				Highest price	Lowest price	
		Rs.	Rs.	Rs.	Rs.	Rs.
3000 Quoted equity shares of PQR Ltd.	4.4.2018	100	130	280	250	
1800 Preference shares of LMN Ltd.	21.8.2019	100	100	-	-	210

on the basis of report of Merchant Banker

(iii) Liabilities

Book value of liabilities on 1.4.2023 = Rs. 112 lakhs. This includes –

- (a) Corpus fund Rs. 14 lakhs. (-)
 (b) Provision for taxation Rs. 10 lakhs; and (-)
 (c) Reserves and Surplus Rs. 21 lakhs (-)

Balance → Take in liab.

Answer:

As per section 115TD, the accreted income of “EduAid”, a charitable trust, registered under section 12AB which is merged with M/s Educare (P) Ltd., an entity not entitled for registration under section 12AB, 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 EduAid trust arising as a result of merger with M/s. Educare (P) Ltd.

Particulars	Amount (Rs.)
Aggregate FMV of total assets as on 1.4.2023, being the specified date (date of merger) [See Working Note 1]	1,16,73,000
Less: Total liability computed in accordance with the prescribed method of valuation [See Working Note 2]	67,00,000
Accreted Income	49,73,000

Tax Liability @ 34.944% of Rs. 49,73,000 (rounded off)	17,37,765
Working Notes:	
(1) Aggregate fair market value of total assets on the date of merger	
- Land at Surat, being immovable property, purchased on 1.10.2014 Since the trust was registered only on 15.3.2017 and benefit of section 11 and 12 was available to the trust only from A.Y.2017-18, relevant to P.Y.2016-17, being the previous year in which the application for registration is made, the value of land purchased in P.Y.2014-15, in respect of which benefit under sections 11 and 12 was not availed, has to be ignored for computing accreted income.	✓ -
- Land at Baroda, being an immovable property, purchased on 21.11.2017 [The fair market value of land would be higher of Rs. 105 lakhs i.e., price that the land would ordinarily fetch if sold in the open market and Rs. 90 lakhs, being stamp duty value as on the specified date, i.e., 1.4.2023]	✓ 1,05,00,000
- Quoted equity shares of PQR Ltd. [3,000 x Rs. 265 per share] [Rs. 265 per share, being the average of the lowest (Rs. 250) and highest price (Rs. 280) of such shares on the specified date]	✓ 7,95,000
- Preference shares of LMN Ltd. [1,800 x Rs. 210 per share] [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]	3,78,000
	<u>1,16,73,000</u>
(2) Total liability	
- Reserves and Surplus Rs. 21 lakhs [not includible]	-
- Corpus Fund of Rs. 14 lakhs [not includible]	-
- Provision for taxation Rs. 10 lakhs [not includible]	
- Other Liabilities [Rs. 112 lakhs - Rs. 21 lakhs - Rs. 14 lakhs - Rs. 10 lakhs]	<u>67,00,000</u>
	<u>67,00,000</u>

RTP NOV 2021:

Question 11:

115BAA → X Ltd. is an Indian company engaged in the business of generation of electricity. The company was set up on 1.4.2018 and on that date, 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 @ Rs. 18,000 per month per employee for 150 employees, @ Rs. 22,000 per month per employee for 150 employees and @ Rs. 26,000 per month per employee for 200 employees. On 28.9.2019, it had exercised option for depreciation on written down value method on block of assets for A.Y.2019-20. Its turnover for P.Y.2018-19 and P.Y.2019-20 are Rs. 402 crores and Rs. 249 crores, respectively. On 1.10.2020, the company installed new plant and machinery of Rs. 9 crore and put the same to use immediately. The company has received dividend of Rs. 60 lakhs from other domestic companies during the P.Y.2020-21. X Ltd. distributed dividend of Rs. 72 lakhs for the F.Y.2020-21 in July, 2021.

115BAA → Y Ltd. is an Indian company set up on 1.10.2020 for printing of books. On the same date, it installed new plant and machinery for Rs. 2 crore and put the same to use immediately. It employed 200 new employees on the said date @ Rs. 25,000 per month per employee. Their emoluments were paid by account payee cheque and all of them participate in recognized provident fund.

115BAB → N.A.
↓ 80JIAA Not Allowed as employed < 240 DAYS.

The gross total income for A.Y.2021-22 computed under the special provisions of the Income-tax Act, 1961 inserted by the Taxation Laws (Amendment) Act, 2019 is Rs. 6.60 crore for X Ltd. and Rs. 1 crore for Y Ltd. Both X Ltd. and Y Ltd. are subject to tax audit for A.Y.2021-22.

You are required to -

- (i) Compute the tax liability of X Ltd. and Y Ltd. for A.Y.2021-22, assuming that the companies desire to avail the beneficial tax rates under the special provisions inserted by the Taxation Laws (Amendment) Act, 2019 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 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.2021-22 for levy of minimum alternate tax is Rs. 4.20 crore.

Answer:

(i) **Computation of tax liability of X Ltd. and Y Ltd. for A.Y.2021-22 u/s 115BAA**

Particulars	X Ltd. Rs.	Y Ltd. Rs.
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 - [(Rs. 18,000 x 12 x 150) + (Rs. 22,000 x 12 x 150)] x 30%		
Under section 80M	60,00,000	-
Dividend received (Rs. 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) (Rs. 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 on 1.4.2018 in case of X Ltd., it can claim 30% of additional

employee cost for three years, namely, P.Y.2018-19, P.Y.2019-20 and P.Y.2020-21. Accordingly, it would be entitled to deduction u/s 80JJAA for P.Y.2020-21. 150 employees whose emoluments are Rs. 18,000 p.m. and 150 employees whose emoluments are Rs. 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 Rs. 25,000 p.m. do not qualify as additional employees. Y Ltd. is not entitled to claim deduction u/s 80JJAA for A.Y.2021-22, since its employees are not employed for a minimum period of 240 days in the P.Y.2020-21.

- (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 Rs. 60 lakhs received from other domestic companies in the P.Y.2020-21, 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 Rs. 72 lakhs in July, 2021, it is entitled to claim deduction of the entire amount of Rs. 60 lakhs received in the P.Y.2020-21 as dividend from other domestic companies.

(ii) **Computation of total income of X Ltd. and Y Ltd. for A.Y.2021-22 under the regular provisions of the Income-tax Act, 1961**

Particulars	X Ltd. Rs.	Y Ltd. Rs.
Gross Total Income computed u/s 115BAA	6,60,00,000	1,00,00,000
Less: Additional Depreciation [20% of Rs. 9 crore and Rs. 2 crore, respectively, since the plant and machinery has been put to use for 182 days (180 days or more) in the P.Y.2020-21]	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	2,16,00,000	-
X Ltd - [(Rs. 18,000 x 12 x 150) + (Rs. 22,000 x 12 x 150)] x 30%		
Under section 80M	60,00,000	-
Dividend received (Rs. 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) (Rs. 72 lakhs)		
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. Once it has opted for WDV method for A.Y.2019-20, the same will apply for subsequent years also, as such option, once exercised shall be final and shall apply to all the subsequent assessment years. 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.2021-22 as per the other provisions of the Act (other than section 115BAA)**

Particulars	Rs.
Tax@30% on Rs. 2,04,00,000 [Since turnover of P.Y.2018-19 exceeds Rs. 400 crore]	61,20,000
Add: Surcharge @7% (since total income exceeds Rs. 1 crore but does not exceed	<u>4,28,400</u>

Rs. 10 crore)	65,48,400
Add: Health and Education cess@4%	<u>2,61,936</u>
Total tax liability	<u>68,10,336</u>
Total tax liability (rounded off)	68,10,340
Computation of MAT liability for A.Y.2021-22	
15% of book profit of Rs. 4.2 crore	63,00,000
Add: Surcharge@7% since book profit exceeds Rs. 1 crore but does not exceed Rs. 10 crore	<u>4,41,000</u>
	67,41,000
Add: Health and Education cess@4%	<u>2,69,640</u>
	<u>70,10,640</u>
<u>MAT credit to be carried forward u/s 115JAA</u>	
MAT liability u/s 115JB	70,10,640
Less: Tax computed under the regular provisions of the Act	<u>68,10,340</u>
MAT credit to be carried forward	<u>2,00,300</u>

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 Rs. 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.2021-22 would be Rs. 70,10,640. X Ltd. would, however, be entitled to carry forward MAT credit of Rs. 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.2021-22 is Rs. 70,10,640 vis-à-vis tax liability of Rs. 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.2021-22. Moreover, X Ltd. would be eligible to carry forward MAT credit of Rs. 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.2021-22.

Question 12:

Examine the tax consequences for A.Y.2024-25 in the case of the following charitable institution/trust, considering each case independently -

- 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 Rs. 2 crore, which comprises of receipts of Rs. 44 lakh from such business and Rs. 1.56 crore by way of voluntary contributions (not being corpus donations). It has applied 85% of its gross receipts for charitable purposes. 22%
- A charitable trust paid annual rent of Rs. 12 lakh in the P.Y.2023-24 and Rs. 15 lakh in the P.Y.2024-25 in respect of a building used for charitable purposes, after deducting tax at source. However, tax deducted on such rent in the P.Y.2023-24 was remitted only in January, 2025; and tax deducted in the P.Y.2024-25 was remitted only in July, 2025.
- 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.

Answer:

Tax consequences in the hands of the charitable trust/institution for A.Y.2024-25

- 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) 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.2023-24 was remitted after the due date of filing of return of income u/s 139(1) for A.Y.2024-25, Rs. 3,60,000, being 30% of annual rent of Rs. 12 lakh, would not have been allowed as application in the P.Y.2023-24, by virtue of *Explanation 3* to section 11(1) read with section 40(a)(ia). However, since the tax so deducted was remitted in January, 2025, the said amount of Rs. 3,60,000 (i.e., 30% of rent not allowed as application in the P.Y.2023-24) would be allowed as application in the P.Y.2024-25 (A.Y.2025-26). Further, the rent of Rs. 15 lakh paid in the P.Y.2024-25 would also be allowed as application in A.Y.2025-26, since the tax deducted in respect of such rent was remitted in July, 2025 i.e., before the due date of filing of return u/s 139(1) for A.Y.2025-26. Therefore, an amount of Rs. 18,60,000 towards rent paid would be allowed as application of income in the P.Y.2024-25 (A.Y.2025-26).
- (iii) 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 conform 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).

Question 13:

Hutch Ltd., engaged in development of housing projects, filed its return of income for A.Y.2022-23 claiming deduction of Rs. 40 lakhs under section 80-IBA. The return was selected for scrutiny. In the assessment, a sum of Rs. 18 lakhs, being 30% of Rs. 60 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 Hutch Ltd. Hutch Ltd. contended that it was eligible for a higher deduction of Rs. 58 lakhs under section 80-IBA consequent to disallowance under section 40(a)(ia). Examine the correctness of contention of Hutch Ltd.

Answer:

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, Hutch Ltd. would be entitled to claim deduction under section 80-IBA in respect of the enhanced profits of Rs. 58 lakhs, consequent to disallowance under section 40(a)(ia).

Question 14:

Delta Ltd., an Indian company, declared total income of Rs. 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 Rs. 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 Rs. 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*.
- (iv) Calculate the additional income-tax liability, if Delta Ltd. opts for payment of additional income-tax in lieu of making secondary adjustment.

Answer:

- (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 Rs. 88/Rs.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 Rs. 30,800 crores (Euro 350 crores x Rs. 88, being the value of 1 Euro) = Rs. 616 crores

The total income (after primary adjustment) of Delta Ltd for P.Y.2023-24 = Rs. 2,100 crores + primary adjustment of Rs. 616 crores = Rs. 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., Rs. 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 31.3.2025 (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 Rs. 129.153 crores [i.e., 20.9664% (tax@18% + surcharge@12% + cess@4%) of Rs. 616 crores].

Question 15:

Analyze the tax consequence in the hands of Mr. Hugh Grant, a non-resident, for A.Y. 2024-25 in respect of fees for technical services (FTS) received from Himalaya Ltd., an Indian company, in pursuance of an agreement approved by the Central Government, if -

- (a) India has no Double Tax Avoidance Agreement (DTAA) with Country X → 20%
 (b) India has a DTAA with Country X, which provides for taxation of such FTS @8%. 8%
 (c) India has a DTAA with Country X, which provides for taxation of such FTS@25%. 20%

Assume that Mr. Hugh Grant is a resident of Country X and he has no fixed place of his profession in India and that the technical services are utilised by Himalaya Ltd. for its business in India.

Also, examine whether Mr. Hugh Grant would be exempt from filing his return of income if tax deductible at source had been fully deducted in each case mentioned above in a manner most beneficial to him; and his total income comprises only of the said fees from technical services.

Would your answer change if he has a fixed place of his profession in India and he renders technical services through that place? Examine, in a case where India has no DTAA with Country X.

Answer:

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 Himalaya Ltd. utilizes the technical services for its business in India, the fees for technical services payable by Himalaya Ltd. is deemed to accrue or arise in India in the hands of the non-resident, Mr. Hugh Grant.

In accordance with the provisions of section 115A, where the total income of a non-corporate non-resident includes any income by way of 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. The non-resident would be exempt from the requirement of filing return of income under section 139(1), if tax deductible at source has been fully deducted and the rate of tax deduction is not less than the rate specified in section 115A and his total income comprises only of income referred to in section 115A.

Section 90(2) makes it clear that where the Central Government has entered into 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.

- (a) In this case, since India does not have a DTAA with Country X, of which Mr. Hugh Grant is a resident, the fees for technical services (FTS) received from Himalaya Ltd., an Indian company, would be taxable @20%, by virtue of the provisions of section 115A (plus surcharge, if applicable, and health and education cess@4%). If tax deductible at source at the said rate has been fully deducted, he would be exempt from the requirement of filing return of income under section 139(1), since his total income comprises only of such fees for technical services taxable u/s 115A.
- (b) In this case, the FTS from Himalaya Ltd. would be taxable @8%, being the rate specified in the DTAA, even though section 115A provides for a higher rate of tax, since the tax rate specified in the DTAA is more beneficial. However, since Mr. Hugh Grant is a non-resident, he has to furnish a tax residency certificate from the Government of Country X for claiming such benefit. Also, he has to furnish other information, namely, his nationality, his tax identification number in Country X and his address in Country X. Further, he would not be exempt from the

requirement to file return of income under section 139(1), since tax would have been deducted at 8%, being the rate specified in the DTAA, which is lower **than the rate of 20%** u/s 115A.

- (c) In this case, the FTS from Himalaya Ltd. would be **taxable @20%** as per section 115A (plus surcharge, if applicable, and health and education cess@4%), 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. If tax deductible at source at the said rate has been fully deducted, he would be exempt from the requirement of filing return of income under section 139(1), since his total income comprises only of such fees for technical services taxable u/s 115A.

If Mr. Hugh Grant has a fixed place of profession in India, and he renders technical services through the fixed place of profession, then, by virtue of section 44DA, such income by way of fees for technical services received by Mr. Hugh Grant from Himalaya Ltd., India, would be computed under the head "Profits and gains of business or profession" in accordance with the provisions of Income-tax Act, 1961, since technical services are provided from a fixed place of profession situated in India and fees for technical services is received from an Indian concern in pursuance of an agreement with the non-resident and is effectively connected with such fixed place of profession. No deduction would, however, be allowed in respect of any expenditure or allowance which is not wholly and exclusively incurred for the fixed place of profession in India. Mr. Hugh Grant would be required to keep and maintain books of account and other documents in accordance with the provisions contained in section 44AA and get his accounts audited by an accountant and furnish the report of such audit in the prescribed form duly signed and verified by such accountant on or before the specified date referred to in section 44AB [i.e., date one month prior to the due date of filing of return of income u/s 139(1)].

It may be noted that the concessional rate of tax@10% under section 115A would not apply in this case. Further, he would not be exempt from the requirement of filing return of income under section 139(1).

RTP MAY 2022:

Question 16:

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	Rs. in lakhs	Assets	Rs. 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. ~~X~~
- (ii) Lump sum consideration on transfer of Unit Omega is Rs. **600 lakhs** **Fmv ②** → NW
- (iii) Fixed assets of Unit Omega includes **land** which was purchased at Rs. **30 lakhs** in August 2014 and revalued at Rs. **45 lakhs** as on 31st December, 2023. The stamp duty value of land as on 31st December, 2023 is Rs. **42 lakhs**. **Fmv ①**
- (iv) Other fixed assets representing **machinery** are reflected at **Rs. 230 lakhs** (i.e. Rs. 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 **Rs. 155 lakhs**.

(v) Unit Omega was set up by Beta Limited in May, 2010.

(vi) The company does not opt for section 115BAA.

Answer:

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	Rs. (in lakhs)
Full value of consideration for the slump sale of Unit Omega	627
<i>Less:</i> Net worth of Unit Omega (<i>Refer Note 1 below</i>)	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	Rs. (in lakhs)
Tax on capital gains @ 20%	17.400
<i>Add:</i> 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	Rs. (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
<i>Less:</i> 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	Rs. (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
<i>Less:</i> 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 Rs. 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 17:

Regal (P) Limited, incorporated on 15th December, 2021, is engaged in manufacture and sale of ceramic tiles. It commenced manufacturing in the month of January, 2022. The net profit of the

company as per its statement of profit and loss for the year ended 31st March, 2024 is Rs. 220 lakh after debiting/crediting the following items:

- (i) One-time license fee of Rs. 22 lakh paid to ABC Ltd (an Indian company) for obtaining franchise on 1st June, 2023. (+) (-) 25%.
- (ii) Rs. 32,000 paid to B & Co., a goods transport operator, in cash on 31st January, 2023 for carrying company's products to the warehouse. Allowed.
- (iii) Rent of Rs. 60,000 p.m. received from letting out a part of its office premises. Municipal tax paid in respect of the said part of the building is Rs. 8,000. The same has been debited to statement of profit and loss. (-) 60000 x 12 (+) 8000 → IFHP → Only 60,000/- x 12
- (iv) Rs. 2 lakh, being contribution to a scientific research association approved and notified under section 35(1)(ii). Not Allowed
- (v) Rs. 5 lakh paid to a contractor for repair work at the company's factory. No tax was deducted on such payment. (+) 30%.
- (vi) Dividend of Rs. 10,000 from Gamma Limited earned on 1,000 equity shares of Rs. 10 each purchased at Rs. 100 per share on 10th October, 2017. These shares were sold on 1st March, 2024 at Rs. 280 per share. Gain on transfer of these shares credited to books of accounts. (-) 10000 IFOS 10000
- (vii) Depreciation on tangible fixed assets as per books of account Rs. 2.20 lakh. (+)

Additional Information:

- (i) Depreciation on tangible fixed assets as per Income-tax Rules Rs. 2.60 lakh. (-)
- (ii) Company has acquired on 15.11.2023, machinery for Rs. 20 lakhs and put the same to use on the same date. Depreciation on such machinery is not included in point (i) above. ND ✓ AD X
- (iii) Fair market value of shares of Gamma Limited as on 31st January, 2018 was Rs. 110 per share.
- (iv) On account of expansion of its activities, 180 new employees joined during the P.Y.2023-24, the details of whom are as follows –

	No. of employees	Date of employment	Regular/ Contractual	Total monthly emoluments per employee (Rs.)
(i)	51	1.4.2023	Regular	23,000 ✓
(ii)	46	1.6.2023	Regular	26,000 X
(iii)	48	1.8.2023	Contractual	27,000 X
(iv)	35	1.9.2023 X	Regular	24,000 X

The emoluments are paid by use of ECS through a bank account and it may be assumed that the employees participate in recognised provident fund.

Compute the total income of the company and tax liability for the A.Y. 2024-25, assuming that the company opts for concessional tax regime under section 115BAB.

Answer:

Computation of total income of Regal (P) Ltd. for the A.Y. 2024-25 u/s 115BAB

Particulars	Rs.	Rs.
Income from House Property		
Rental income [Rs. 60,000 x 12]		✓ 7,20,000
[No deduction is allowable in respect of such income, since the company has opted for concessional regime under section 115BAB. Hence, deduction for municipal taxes paid and deduction @ 30% of net annual value is not allowable]		
Profits and gains of business or profession		
Net profit as per Statement of profit and loss	2,20,00,000 ✓	
Add: Income debited to statement of profit and loss, but considered separately or disallowed		
Licence fee for obtaining franchise	✓ 22,00,000	
(Franchise is an intangible asset eligible for depreciation @ 25%. Since one-time licence fee of Rs. 22 lakh paid for obtaining		

franchise has been debited to statement of profit and loss, the same has to be added back. Depreciation @ 25% has to be provided in respect of the intangible asset since it has been used for more than 180 days during the year)		
Payment in cash to a goods transport operator	✓	-
[Rs. 32,000 paid to B & Co., a goods transport operator, in cash is deductible while computing business income, as the disallowance under section 40A(3) would be attracted in case of payment to a transport contractor only when such cash payment exceeds Rs. 35,000. Since it is already debited to statement of profit and loss, no further adjustment is required]		
Municipal taxes in respect of let-out part of office premises	✓	8,000
[Municipal taxes paid in respect of office premises, debited to Statement of Profit and Loss has to be added back to compute business income, since same is to be considered separately under the head "Income from house property"]		
Contribution to approved and notified scientific research association	✓	2,00,000
[Not allowable as deduction since company is opting for section 115BAB]		
Amount paid to contractor without deduction of tax at source [Rs. 5 lakhs x 30%]	✓	1,50,000
[Payment to contractor without deduction of tax at source would attract disallowance at 30% of the expenditure under section 40(a)(ia)]		
Depreciation on tangible fixed assets		
[The amount of Rs. 2.20 lakh, being depreciation as per books of account, debited to statement of profit and loss has to be added back]		
		<u>2,20,000</u>
		2,47,78,000
Less: Depreciation under section 32		
Tangible fixed assets	✓	2,60,000
Intangible asset (Franchise)		
25% of Rs.22,00,000	✓	5,50,000
Plant & Machinery		
- Normal Depreciation (Rs. 20,00,000 x 7.5%, since put to use for less than 180 days during the P.Y. 2023-24)	✓	1,50,000
- Additional depreciation [not allowable since company is opting for section 115BAB]	✗	-
		<u>9,60,000</u>
		2,38,18,000
Less: Income credited to Statement of Profit and Loss, but taxable under other heads of income		
Rental income from letting out of office premises	✓	7,20,000
(Rental income from letting out a part of the office premises is taxable under "Income from house property". Therefore, it has to be deducted while calculating business income, since the income has been credited to statement of profit and loss)		
Dividend from Gamma Limited		
Dividend credited to statement of profit and loss account to be deducted as it is taxable under the "Income from other	✓	10,000

sources”		
Capital gain on sale of shares		
Gain on transfer of shares to be taxed under the head “Capital Gains” [1000 x 180 (280- 100)]	✓ 1,80,000	2,29,08,000
Capital Gains		
Sales consideration (Rs. 280 x 1000 shares)	✓ 2,80,000	1,70,000
Less: Cost of acquisition	✓ 1,10,000	
Higher of		
- Actual cost [Rs. 1,00,000 (Rs. 100 x 1000)]		
- Rs. 1,10,000, being lower of		
- FMV as on 31.1.2018 of Rs. 1,10,000 [Rs. 110 x 1,000]		
- Sale consideration of Rs. 2,80,000 [Rs. 280 x 1000]		
Income from Other Sources		
Dividend from Gamma Limited		10,000
Gross Total Income		2,38,08,000
Less: Deduction under section 80JJAA [allowable even though company opts for section 115BAB]		
30% of additional employee cost of Rs. 1,40,76,000 [Rs. 23,000 x 51 employees employed on 1.4.2023 x 12 months] [See Note below]		42,22,800
Total Income		<u>1,95,85,200</u>
Tax liability		
Tax payable on LTCG @10% on Rs. 70,000 in excess of Rs. 1,00,000		7,000
Tax payable on dividend @22% on Rs. 10,000		2,200
Tax payable on rental income @22% on Rs. 7,20,000		1,58,400
Tax @ 15% on Rs. 1,86,85,200 [i.e., business income of Rs. 2,29,08,000 – Rs.42,22,800]		28,02,780
		29,70,380
Add: Surcharge@10%		2,97,038
		32,67,418
Add: Health and education cess@4%		1,30,697
Tax liability		<u>33,98,115</u>
Tax liability (rounded off)		<u>33,98,120</u>

Note – For the purpose of deduction under section 80JJAA, employees employed on 1.6.2023 and 1.8.2023 do not qualify as additional employees, since their monthly emoluments exceed Rs. 25,000. Employees employed on 1.9.2023 also do not qualify as additional employees for A.Y.2024-25, since they have been employed for less than 240 days in the P.Y.2023-24. Therefore, only the employees employed on 1.4.2023 qualify as additional employees for the purpose of deduction u/s 80JJAA for A.Y.2024-25.

Question 18:

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, 2022. 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:

	Debit	Credit
	(Rs. In lakhs)	

(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 obligations		(+) 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 Rs. 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: (Rs. In lakhs)

Financial Year	Business loss	Depreciation
2021-22	9.10	6.40
2022-23	6.10	8.10

- (c) The transition amount as on convergence date (01-04-2022) stood at Rs. 68 lakhs (credit balance) including capital reserve of Rs. 8 lakhs and adjustment of Rs. 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, 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 Rs. 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.

Answer:

Computation of MAT liability of Manav Rachna Ltd. u/s 115JB for A.Y.2024-25

Particulars	Rs.	Rs.
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 [Rs. 9,10,000 + Rs. 6,10,000]	15,20,000	
Unabsorbed depreciation [Rs. 6,40,000 + Rs. 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 Rs. 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
Less: Items debited to OCI that will not be reclassified to		81,54,000

profit or loss:		
Deferred costs of hedging	✓ 2,80,000	
Changes in fair values of equity instruments Rs. 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	<u>2,80,000</u>
		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	
	<u>54,00,000</u>	
One-fifth of Rs. 54,00,000 /5		(f) <u>10,80,000</u>
Book Profit for levy of MAT		<u>89,54,000</u>
MAT on book profit under section 115JB = 15% of Rs. 89,54,000		13,43,100
Add: Health and education cess@4%		<u>53,724</u>
MAT liability for A.Y.2024-25		<u>13,96,824</u>

Computation of tax credit to be carried forward

Particulars	Rs.
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 Rs. 13,96,820.	
Computation of tax credit to be carried forward	
Tax payable for A.Y.2024-25 on deemed total income	<u>13,96,820</u>
Less: Income-tax payable as per the normal provisions of the Act	<u>12,80,000</u>
MAT credit	<u>1,16,820</u>
[Can be carried forward for 15 Assessment Years i.e., upto A.Y.2039 -40]	

Question 19:

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 Rs. 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)(iiiiae), 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 Rs. 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 Rs. 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 Rs. 5 lakhs to SBI.

Answer:

- (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)(iiia), and the combined receipts of Rs. 6 crore exceed the threshold receipt of Rs. 5 crore, the institution would **not** be eligible for exemption under sections 10(23C)(iiia) and 10(23C)(iiib) [Explanation below section 10(23C)(iiia)]. 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 (vii).

- (b) The proposed action of the trust is **not** correct. As per Explanation 5 to section 11(1), 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 Rs. 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 Rs. 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 Rs. 5 lakhs repaid to SBI during the P.Y.2023-24 as application of income in that year.

Question 20:

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. Appy, a resident Indian, [E-commerce participant] sells goods worth Rs. 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.

Answer:

- (i) 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 Rs. 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 be deducted at source at higher of 1% or 5%. Accordingly, tax has to be deducted at source @5% of Rs. 84 lakhs = Rs. 4.2 lakhs.

Question 21:

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 Assessment Year 2024-25, assuming that its POEM is outside India. ∴ NP.

- (i) Interest of Rs. 2,85,000 earned on debentures of Rs. 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. FTS → 40%. Int = 40%.
- (ii) Dividend of Rs. 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. 115A(c) → 10%.
- (iii) Dividend of Rs. 15,50,000 earned on equity shares of Indian companies. 20%.
- (iv) Income by way of royalty amounting to Rs. 12,56,470, received from Z Ltd., an Indian company, in pursuance of an agreement approved by Central Government. 115A.

gross up:
1256470 → 79.2

- (v) **Business Income** of Rs. 8,50,000 from a unit established at Delhi. **40%**
- (vi) Long-term capital gain of Rs. 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 Rs. 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.
- (There is a mistake in this question by ICAI)**

Answer:

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	Rs.	Rs.
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 Rs. 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 [Rs.12,56,470 x 100/79.2, since tax would have been deducted at source @ 20.8%]	15,86,452	
		54,36,452
Capital Gains		
Long-term capital gains on transfer of unlisted shares		1,32,000
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		80,53,452

Computation of tax liability for A.Y.2024-25		
Particulars	Rs.	Rs.
Business income of Rs. 8,50,000 [taxable @40%]	3,40,000	
FTS of Rs. 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 Rs. 15,86,452, taxable @20% u/s 115A, since it is in pursuance of an agreement approved by the Central Government	3,17,290	
		18,57,290
Particulars		
Long-term capital gain of Rs. 2,32,000 (computed without indexation benefit) on unlisted shares taxable @10% under section 112(1)(c)(iii)		23,200
Interest on debentures of Rs. 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 Rs. 6,50,000, taxable @10% u/s 115AC	65,000	

Dividend income of Rs. 15,50,000, taxable @20% u/s 115A	✓ 3,10,000	4,89,000
		23,69,490
Add: Health and education cess@4%		94,780
Tax liability		<u>24,64,269</u>
Tax liability (rounded off)		24,64,270

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 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 Rs. 80 lakhs. ✓

(ii) Share of profit from a partnership firm in Mumbai Rs. 20 lakhs. ✗

Country G

(iii) Agricultural Income (gross) of **CGD 40000** from tea gardens. Taxable @20%.

(iv) Brought forward business loss of F.Y.2020-21 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 Rs. 1,50,000 in **public provident fund** and paid medical insurance premium of Rs. **28,000** by account payee cheque to insure the health of himself and his wife (aged 48 years). **25000**

- 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 = **Rs. 70**. **Follow Old Regime**.

Answer:**Computation of total income and tax liability of Mr. Ganesh for A.Y. 2024-25**

Particulars	Rs.	Rs.
Income from house property		
Gross annual value of house property in Country M [Rs. 52,000 x Rs. 70/CMD]	✓ 36,40,000	
Less: Municipal taxes [Rs. 6,000 x Rs. 70/CMD]	✓ 4,20,000	
Net Annual Value	✓ 32,20,000	
Less: Deduction @30%	✓ 9,66,000	22,54,000
Profits and gains from business and profession		
Income from sole proprietary concern in India	✓ 80,00,000	
Share of profit from a partnership firm in India of Rs. 20 lakhs, is exempt under section 10(2A)	✗ Nil	
Business profit	80,00,000	
Less: Business Loss in Country G (CGD 5200 x Rs. 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 Rs. 70/CGD)	✓ 28,00,000	
Dividend income from Country M (CMD 30000 x Rs. 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	✓
[Medi-claim premium paid Rs. 28,000, restricted to		1,75,000
Total Income		1,46,15,000

Particulars	Rs.	Rs.
Tax on total income		41,97,000
Tax on Rs. 1,46,15,000 [(30% x Rs. 1,36,15,000) plus Rs. 1,12,500]		
Add: Surcharge @15%, since total income exceeds Rs. 1 crore but does not exceed Rs. 2 crore		6,29,550
		48,26,550
Add: HEC @4%		1,93,062
		50,19,612
Average rate of tax in India [i.e., Rs. 50,19,612/Rs. 1,46,15,000 x 100]	34.3456%	
Rebate u/s 91 in respect of income in Country G		
Average rate of tax in Country G	20%	
Doubly taxed income [Rs. 28,00,000 – Rs. 3,64,000]	24,36,000	
Rebate under section 91 on Rs. 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	13.1707%	
[CMD 3,000 (30,000 x 10%) + CMD 7800 (52,000 x 15%)/ CMD 82,000] x 100		
Doubly taxed income [Rs. 22,54,000 + Rs. 21,00,000]		
Rebate under section 91 on Rs. 43,54,000 @13.1707% (lower of average Indian tax rate and rate of tax in Country M)		5,73,452
Tax payable in India		39,58,960

RTP NOV 2022:

Question 23:

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 Rs. 26,00,000 after deduction of the following items:

- Depreciation as per books of accounts Rs. 15,80,000. (+)
- Interest on capital @ 15% per annum (as per the deed of partnership). The amount of interest is Rs. 50,00,000. 3% Int → 10% (+)
- Interest on loan includes an amount of Rs. 6,00,000 paid to Mr. Rajveer, a resident, on which tax was not deducted. (+) 30%. (35AP)

The firm purchased a new motor car for the above business for Rs. 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 Rs. 2 crores (out of which Rs. 1.50 crores was for acquisition of land and Rs. 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 Rs. 3,20,000. (sol)

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 Rs. 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".

Answer:

Computation of total income and tax payable of M/s Fit & Fair for A.Y. 2024-25

Particulars	Rs.
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 Rs. 10,00,000, being in excess of 12% p.a. i.e., Rs. 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 Rs. 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	60,60,000
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
	Rs.
Income-tax @ 30% on total income of Rs. 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

Computation of Alternate Minimum Tax liability of M/s Fit & Fair for A.Y.2024-25

Particulars	Rs.
Total income (computed above)	34,78,000
Add: Deduction under section 35AD	60,20,000
	94,98,000
Less: Depreciation in respect of –	Rs.
- Building @ 10% of Rs. 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 Rs. 7,00,000)	1,05,000
- New Air conditioner @ 15% of Rs. 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 Rs. 17,01,780	
AMT Credit to be carried forward under section 115JD	Rs.
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 24:

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 Rs. 9,50,00,000.

- Depreciation calculated as per useful life of its assets Rs. 2,80,00,000. (+)
- Donation of Rs. 12,00,000 given to a political party by way of account payee cheque. (+) Not Allowed. 115B AA
- The company has paid Rs. 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. (-) 115BAA
- Dividend received from foreign company of Rs. 15,00,000 in which it holds 30% of the equity share capital. (-) FFS
- Long-term capital gain of Rs. 4,00,000 on sale of equity shares on which STT was paid at the time of acquisition and sale. (-) (4% → 3% x 10%.
- Interest at 10% p.a. on Rs. 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. 10mth Int → (+) 3% & 1 claim N. Dep.
- Profit of Rs. 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. (-) Exempt u/s 47-
- Salary of Rs. 1,00,00,000 to foreign technicians for installation of machinery at the factory premises was paid. (+) → Add to P&L & 1 claim Dep.
- The company sold automobile parts for Rs. 22,00,000 to M/s ABC Co Engineers, a sole proprietary concern, on 01.11.2021. On 01.02.2024 Rs. 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 Rs. 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. 12% } 2%

Additional Information:

- Depreciation computed as per Income-tax Rules, 1962 is Rs. 1,50,00,000 other than on the additions in assets made during the year. (-)
- Additions made to the assets were as follows:
 - Office Building Rs. 3,00,00,000 - Put to use from 15-12-2023. → 5%.
 - Computers Rs. 25,00,000 - Put to use on 11-05-2023. → 5%.
 - Plant and machinery Rs. 5,00,00,000 - Installed and put to use on 01-01-2024. (+) 20% (7 mths 10%)

The company declared and distributed dividend for the financial year 2023-24 on 31.5.2024 for Rs. 12,00,000. 80% → Allowed u/s 115BAA.

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 Rs. 402 crores. X

Answer:

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 Rs.	
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 [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]	12,00,000 ✓	
	(iii) Contribution to research institution approved and notified by the Central Government for scientific research [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]	50,00,000 ✓	
	(vi) Interest on borrowing paid to State Bank of India (SBI) [10% x Rs. 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., 31.10.2024. Since the entire 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 ✓	
			4,77,00,000

		14,27,00,000
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 Rs. 12 lakhs out of the total debt of Rs. 22 lakhs; Since the amount not written off as bad debt is Rs. 10 lakhs (Rs. 22 lakhs - Rs. 12 lakhs) while the amount recovered in respect of such debt is Rs. 11 lakhs, only the excess sum of Rs. 1 lakh would be chargeable to tax as business income. Since the entire amount of Rs. 11 lakhs recovered has been credited to the statement of profit and loss, Rs. 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		
Depreciation on assets acquired during the P.Y.		
- Office building Purchased and put to use on 15.12.2023 [Rs. 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 [Rs. 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 On P & M installed and put to use on 1.1.2024 [Rs. 624.5 lakhs (Rs. 500 lakhs + Rs. 100 lakhs of salary for installation + Rs. 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]	46,83,750	
		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]		X -
	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, Rs. 12,00,000, being the amount of dividend distributed allowable as deduction		✓ 12,00,000
	Total Income		11,75,16,250

Computation of tax liability as per section 115BAA

Particulars	Amount in Rs.
Tax payable on LTCG @ 10% u/s 112A on Rs. 3,00,000, being the LTCG in excess of Rs. 1,00,000	30,000
Tax @ 22% on Rs. 11,71,16,250	2,57,65,575
	2,57,95,575
Add: Surcharge @ 10%	25,79,558
	2,83,75,132
Add: Health and education cess @ 4%	11,35,005
Tax liability	2,95,10,137
Tax liability (rounded off)	2,95,10,140

Question 25:

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 2021.

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.	Rs. 2 crores	
Interest Income from GPL Ltd.	Rs. 3 crores	
Short-term capital gains on sale of developmental properties	Rs. 1 crore	
Business income		Rs. 35 lakhs.
Long-term capital losses		Rs. 27 lakhs
Interest income		Rs. 52 lakhs

Handwritten notes: REIT will pay. 10% x 90% -
 REIT will pay. 10% x 90% -
 Arenal Basis
 AIF ✓
 AIF ✓

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 opted for section 115BAC(1A).

Answer: → Reduce Tax Adv Tax.

Computation of total income and tax payable in the hands of Mr. Rajesh

	Particulars	Rs.
(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, Rs. 18 lakhs (10% of Rs. 1.80 crore, being 90% of Rs. 2 crore), being the dividend component of income received by Mr. Rajesh from Shipra is <u>not</u> taxable in his hands.	X -
(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, Rs. 27 lakhs [i.e., 10% of Rs. 2.7 crores (90% of Rs. 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 Rs. 9 lakh (10% of Rs. 90 lakh, being 90% of Rs. 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 Rs. 2,70,000 (10% of Rs. 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, Rs. 5,20,000 lakhs (10% of Rs. 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	Rs.	Rs.
Upto Rs.3,00,000	Nil	
Rs.3,00,001 – Rs.6,00,000 @5%	15,000	
Rs.6,00,001 – Rs.9,00,000 @10%	30,000	
Rs. 9,00,001 – Rs.12,00,000 @15%	45,000	
Rs.12,00,001 – Rs.15,00,000 @20%	60,000	
Rs. 15,00,001 – Rs. 32,20,000@30%	<u>5,16,000</u>	6,66,000
Add: Health and education cess @4%		<u>26,640</u>
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	<u>52,000</u>	<u>3,22,000</u>
Tax payable		3,70,640

Question 26:

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 Rs. 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 Rs. 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 Rs. 25,00,000; X

On 15.9.2023 for Rs.30,00,000 and $\rightarrow 15/10 \rightarrow 5 \times 0.1\%$

On 15.12.2023 for Rs. 15,00,000. $\rightarrow 15/1 \rightarrow 15 \times 0.1\%$

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 Rs. 11 crores and Rs. 9.7 crores, respectively.

Answer:

(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 Rs. 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 Rs. 7 lakh. **Above Rs. 7 lakhs it is 20%.**

However, as per Notification No. 20/2022 dated 30.3.2022, 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 Rs. 6 lakh received from him for purchase of tour programme package to Malaysia.

- (ii) 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 Rs. 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 Rs. 10 crores in the said previous year. However, since White Ride’s turnover for the F.Y. 2022-23 exceeds Rs. 10 crores and its receipts from XYZ Ltd. exceed Rs. 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 1.8.2023, since the aggregate receipts till that date i.e., Rs. 25 lakhs, has not exceeded the threshold of Rs. 50 lakhs.

Tax of Rs. 500 (i.e., 0.1% of Rs. 5 lakhs) has to be collected u/s 206C(1H) by M/s White Ride on 15.10.2023 (Rs. 30 lakh – Rs.25 lakhs, being the balance unexhausted threshold limit).

Tax of Rs. 1,500 (i.e., 0.1% of Rs. 15 lakhs) has to be collected u/s 206C(1H) by M/s. White Ride on 15.1.2024.

Question 27:

Mr. Ravi Prakash, a resident Indian aged 52 years, **gifted a sum of Rs. 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 Rs. 29,52,000** inclusive of RTO charges of Rs. 2,15,000, insurance of Rs. 51,575, extended warranty of Rs. 25,255 and accessories charges of Rs. 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 **Rs. 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.

Answer:

Mrs. Sudha’s income from house property would be Rs. 2,10,000 (Rs. 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 Rs.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 Rs. 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 Rs.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 Rs. 25,000 in the P.Y.2023-24.

2952000
(215000)
(51575)
(25255)
(35460)

26,24,710

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 Rs. 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 Rs. 26,247 @1% on ex- showroom price i.e., Rs. 26,24,710 (Rs. 29,52,000 – Rs. 2,15,000 – Rs. 51,575 – Rs. 25,255 – Rs. 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 Rs. 26,247 which exceeds the threshold of Rs.25,000.

Question 28:

Mr. Vijay furnished his return of income for A.Y.2023-24 declaring total income of Rs. 28,00,000 for the A.Y. 2023-24. He received an assessment order under section 143(3) on 26.11.2024 enhancing the total income for the A.Y.2023-24 by Rs. 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? ✓ → 25/12/24 ←

- (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?

Answer:

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 Rs. 10 lakh; the total income as per such return furnished by the assessee for the assessment year relevant to such order does not exceed Rs. 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.

Question 29:

Spacecraft Ltd., an Indian company, has entered into a contract for Rs. 4.5 crores with DOT Inc. Country X for the Financial Year 2023-24. DOT Inc. maintains an online web-platform through which it provides end user computer software through an End-user Licence Agreement (EULA) as per the contract. The broad terms of the EULA between the two companies are as follows-

Grant of licence. DOT Inc. grants Spacecraft Ltd. a limited non-exclusive licence to install, use, access, display and run the click wrap web-based Computer Software (CWCS) on a single local hard disk(s) or other permanent storage media of one computer. Spacecraft Ltd. should not make CWCS available over a network where it could be used by multiple computers at the same time.

Reservation of rights and ownership. DOT Inc. reserves all rights not expressly granted to Spacecraft Ltd. in this EULA. The CWCS is protected by copyright and other intellectual property laws and treaties. DOT Inc. owns the title, copyright and other intellectual property rights in the CWCS. The CWCS is licenced (only for use and not any other purpose), not sold.

DOT Inc. does not have any offices outside Country X.

Discuss the tax implications/TDS implications of such receipt in the hands of DOT Inc., Country X and payment by Spacecraft Ltd., India under Chapter VIII of the Finance Act, 2016 (as amended by the Finance Act, 2022) and Income-tax Act, 1961, considering the India- Country X DTAA also, the relevant extract of which is given hereunder:

Extract of Article 12 of India-Country X 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, trademark, 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*

Answer:

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.

First, it has to be determined whether DOT Inc., Country X 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, DOT Inc., Country X, a non-resident, maintains a digital platform for providing end user computer software. Therefore, DOT Inc. is an e-commerce operator.

However, the consideration received or receivable for e-commerce supply or services would **not** include the consideration, which are taxable as, *inter alia*, royalty or 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.

The consideration paid by Spacecraft Ltd. to DOT Inc. for use of computer software 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 Spacecraft Ltd. 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 as decided by Apex Court in *Engineering Analysis Centre of Excellence P. Ltd v. CIT and Another (2021) ITR 471*.

In the given situation, DOT Inc. is an e-commerce operator defined in section 165A, since it provides services through its digital platform. Further, the consideration for such services is Rs. 4.5 crores which exceeds the threshold limit of Rs. 2 crores specified in section 165A. Also, all the

other conditions specified in section 165A are satisfied viz. namely there is no PE for DOT Inc., Country X, in India and services are provided to a resident in India i.e., Spacecraft Ltd., an Indian company.

Hence, DOT Inc., Country X has to pay 2% on Rs. 4.5 crores which would amount to Rs. 9 lakhs, as equalisation levy. Spacecraft Ltd., India, the service recipient, need not deduct the amount as equalisation levy under section 165A (e-commerce supply or services), since the same is to be paid directly by the service provider i.e., DOT Inc., Country X.

Question 30:

Mrs. Rajni, aged 63 years, is married and settled in Ranchi. She is a Hindustani classical dancer and choreographer who performs in concerts in India and Country M. She visits Country M every year in October to participate in the Spring dance concert held there. For the rest of the year, she performs in dance programs organized in India. India does not have a DTAA with Country M.

She earns CMD 10120 from concerts held in Country M. She also owns a residential house property in Country M. She earned rental income of CMD 25,000 from such property. She also paid municipal taxes of CMD 200 in respect of this property, which is not deductible in Country M. All income from Country M is taxable in Country M @20%. The entire tax due in Country M has been duly paid by Mrs. Rajni.

She earns Rs. 15 lakhs from performances in dance programs held in India. She has interest income of Rs. 4.2 lakhs (gross) from bank fixed deposits in her name and Rs. 15,000 from savings bank account in India.

She pays medical insurance premium of Rs. 29,000 to insure her health and Rs. 32,000 to insure the health of her husband, a resident aged 65 years. She deposits Rs. 1.50 lakhs in her public provident fund and Rs. 4 lakhs in five-year fixed deposit in the name of her son, Mr. Priyanshu. The TT buying rate as on 31.3.2024 for Country M Dollar (CMD) is Rs. 69.

Compute the total income and net tax payable by Mrs. Rajni for A.Y.2024-25, providing for deduction under section 91. **Follow Old Regime.**

Answer:

Computation of total income and net tax payable by Ms. Rajni for the A.Y. 2024-25

Particulars	Rs.	Rs.
Income from house property		
Gross annual value [CMD 25000 x 69, being conversion rate as on 31.3.2024 – Rule 115]	17,25,000	
Less: Municipal taxes [CMD 200 x 69]	<u>13,800</u>	
	17,11,200	
Less: Deduction u/s 24@30%	<u>5,13,360</u>	
		11,97,840
Profits and gains of business or profession		
From dance programs held in India	15,00,000	
From concerts held in Country M [CMD 10,120 x 69 (being conversion rate as on 31.3.2024 – Rule 115)]	<u>6,98,280</u>	
		21,98,280
Income from Other Sources		
Income from bank fixed deposits in her name	4,20,000	
Income from savings bank account	<u>15,000</u>	
		<u>4,35,000</u>
Gross Total Income		38,31,120
Less: Deduction under section 80C		
Deposit in PPF	1,50,000	
Five year fixed deposit in the name of her son (does not qualify for deduction under section 80C)	-	
Under section 80D	50,000	
Medical insurance premium to insure her health and		

health of spouse (Rs. 61,000, restricted to Rs. 50,000, being the maximum allowable for senior citizens) Under section 80TTB: Interest on bank FD and savings bank account restricted to	50,000	2,50,000
Total Income		35,81,120
Tax on Total Income		
Income-tax		8,84,336
Add: Health and Education Cess @4%		35,373
		9,19,709
Average rate of tax in India (i.e., Rs. 9,19,709/Rs. 35,81,120 × 100)	25.682%	
Rate of tax in Country M	20%	
Doubly Taxed Income [Rs. 11,97,840 (income from house property) + Rs. 6,98,280 (income from concerts)]	18,96,120	
Lower of Indian rate of tax and Rate of tax in Country M	20%	
Deduction under section 91		
20% of doubly taxed income of Rs. 18,96,120		3,79,224
Net tax payable		5,40,485
Net tax payable (rounded off)		5,40,490

Question 31:

Matrix Inc. incorporated in Country X, holds 26% controlling interest in Pilu Ltd., an Indian Company. Pilu Ltd. declared dividend of Rs. 50,00,000 during the P.Y. 2023-24. The DTAA between India and Country X, which came into force on 1.1.2020, provides for taxation of dividend @15%. Thereafter, India entered into a DTAA with Country Y, which came into force from 15.5.2020. 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 2017 and Country Y is also an OECD member since 2019.

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 DTAs 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 2022?

Answer:

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 DTAs 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 15.5.2020, after it has entered into a DTAA with Country X on 1.1.2020.
(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 15.5.2020 with Country Y, which is a member of OECD since 2019. Hence, on 15.5.2020, 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	This condition is satisfied since in DTAA between India and Country Y, dividend is taxable @10%.

relevant items of income	
(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 2022, 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 15.5.2020, 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%.

RTP NOV 2023:

Question 32:

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 Rs. 180 lakhs after debiting/ crediting the following items:

- Interest of Rs. 24 lakhs relating to F.Y.2023-24, which is settled by issuing 8% debentures of Rs. 100 each in August, 2024. *438 Not Actual Payment ∴ DA.*
- Income-tax assessment of A.Y.2022-23 was completed in September, 2023 with a tax demand of Rs. 5,80,000 which included surcharge of Rs. 50,700 and cess of Rs. 22,308. The entire sum has been duly paid during the F.Y. 2024-25. *(+) 40(a)(ii)*
- Provision for gratuity based on actuarial valuation Rs. 180 lakhs. *(+) 40A(7)*
- Expenditure incurred towards foreign travel of directors Rs. 6.5 lakhs to explore opening of a branch in a foreign country to market its products in the said foreign country. *Allowed.*
- Paid Rs. 82,000 for purchase of raw material on 26th January, 2024 by making payment in cash to a supplier in a single day. *(+) 40A(13).*
- Paid Rs. 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. *DA.*
- Incurred Rs. 4.6 lakhs on activities related to Corporate Social Responsibility as required under section 135 of Companies Act, 2013. *(+)*
- Sold a vacant land to its wholly owned subsidiary Petal (P) Ltd., Mumbai. The long-term capital gain of Rs. 18 lakhs is credited to the Statement of Profit and Loss. *(-) Exempt 47.*
- Paid Rs. 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, Rs. 1.2 lakh was paid through net banking and balance by cash. *DIA*
- Interim dividend distributed during the year of Rs. 65 lakhs. *80M 36L Allowed (+) 14BP*
- Contributed Rs. 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. *20L(+)*
- Depreciation Rs. 36 lakhs. *(+)*
- Rs. 36 lakhs by way of dividend received from Knight Pte. of Singapore in which Manav Ltd. has 28% voting power.
- Paid Rs. 6 lakhs as donation to a recognised political party by way of account payee crossed cheque. *(+) 115BAA.*

Additional Information:

- (i) Normal depreciation as per Income-tax Act, 1961 - Rs. 62 lakhs. ✓
- (ii) Additional depreciation as per Income-tax Act, 1961 - Rs. 24 lakhs X
- (iii) Brought forward unabsorbed depreciation (out of normal depreciation) of A.Y. 2021-22 Rs. 14 lakhs. ✓
- (iv) Actual gratuity paid during the year of Rs. 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.

Answer:**Computation of Total Income of Manav Ltd. for the A.Y. 2024-25**

Particulars	Rs.	Rs.
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 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 Rs.24 lakhs towards interest for F.Y. 2023-24 is debited to statement of profit and loss, the same has to be added back.	✓ 24,00,000	
(b) Tax demand of A.Y. 2022-23 Rs.5,80,000 which includes surcharge and cess of Rs.50,700 and Rs.22,308, respectively 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 Rs.5,80,000 including surcharge and cess is debited to Statement of Profit and Loss, the same has to be added back.	✓ 5,80,000	
(c) Provision for gratuity Provision of Rs.180 lakhs for gratuity based on actuarial valuation is not allowable as deduction as per section 40A(7). However, actual payment of gratuity of Rs.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.	✓ 82,000	
(e) Cash payment for purchase of raw material in an amount exceeding Rs.10,000 Under section 40A(3), disallowance is attracted in respect of expenditure for which cash payment exceeding Rs.10,000 is made on a day to a person. Cash payment of Rs.82,000 for purchase of raw material on 26 th January, 2024 is, therefore, liable for disallowance.	✓ 11,00,000	
(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 equalization levy. Since equalization levy is not deducted and paid, 100% disallowance is attracted in respect of such payment under section 40(a)(ib). Since	✓ 4,60,000	

Rs.11 lakhs has been debited to Statement of Profit and Loss, the same has to be added back.		
(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 Rs.4.6 lakhs has been debited to Statement of Profit and Loss, the same has to be added back.	2,20,000	
(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 Rs.2.2 lakhs has been debited to Statement of Profit and Loss, the same has to be added back.	65,00,000	
(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.	36,00,000	
(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., Rs.60,00,000 x 5/15, would be disallowed.	6,00,000	
(l) Depreciation debited to the Statement of Profit and Loss	18,00,000	
(n) Donation to recognised political party Donation to political party not allowable as deduction under section 37.		
Less: Items credited to Statement of Profit and Loss which are to be considered separately / expenditure to be allowed	36,00,000	
(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 Rs.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.	62,00,000	
(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.	Nil	
AI(i) Depreciation as per Income-tax Act, 1961		1,16,00,000
AI(ii) Additional Depreciation as per Income-tax Act, 1961, not allowable as deduction, since company is opting for section 115BAA		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 depreciation is not attributable to additional depreciation in respect of which deduction is not permissible u/s 115BAA.		14,00,000
		<u>2,50,42,000</u>
		4,30,42,000

Income from other Sources		3,00,42,000
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 Rs.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

Question 33:

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 Rs. 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 Rs. 12 crores in the P.Y.2023-24; and Phi Ltd.'s annual turnover ranges between Rs. 16 crores and Rs. 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 Rs. 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 Rs.12 lakhs each	Rs.120 lakhs
Omega Ltd.	8 cars of the value of Rs.10 lakhs each	Rs.80 lakhs

The turnover in the P.Y.2022-23 of Sigma Ltd. is Rs. 12 crores, Epsilon Ltd. is Rs. 14 crores and Omega Ltd. is Rs. 9 crores.

Answer:

(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 Rs. 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 Rs. 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 Rs. 10 crores, since the said turnover does not exceed Rs. 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 Rs. 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 194Q 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 Rs. 10 crore and the value of cars purchased from Sigma Ltd. in the P.Y.2023-24 exceeds Rs. 50 lakhs, Epsilon Ltd. has to deduct tax@0.1% of Rs. 70 lakhs (i.e., Rs. 120 lakhs – Rs. 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 Rs. 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 Rs. 10 crores and the value of cars sold to Epsilon Ltd. and Omega Ltd. exceed Rs. 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 Rs. 30 lakhs (i.e., Rs. 80 lakhs – Rs. 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 34:

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. (See after Case Law Lecture)

Answer:

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) (2022) 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 billing 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 assessee, 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.

Question 35:

Mr. Ram, who gets his accounts audited under section 44AB filed his original return of income under section 139 for A.Y.2020-21 on 28.12.2020 declaring income of Rs. 12 lakhs and for A.Y.2021-22 on 31.10.2021 declaring loss of Rs. 5 lakhs.

- (i) He wants to file an updated return of income under section 139(8A) for A.Y.2021-22 on 30.11.2022 declaring total income of Rs. 7 lakhs. Can he do so? Examine.
- (ii) Based on your answer to (i), what would be the time limit for completion of assessment under section 143(3) in respect of A.Y.2020-21 and A.Y.2021-22?

Answer:

- (i) Yes, he can do so. If a person has a loss in any previous year and has furnished a return of loss under section 139(3) on or before the due date of filing return of income u/s 139(1), he shall be allowed to furnish an updated return, if such updated return is a return of income. Accordingly, in this case, since the original return of Mr. Ram was filed on the due date u/s 139(1) i.e., on 31.10.2021, he can file an updated return within 2 years from the end of A.Y.2021-22, i.e., on or before 31.3.2024. Accordingly, he can file an updated return of income on 30.11.2022 declaring total income of Rs. 7 lakhs, after paying tax due on such total income along with interest under section 234B and section 234C and additional income-tax at 25% of aggregate of tax and interest payable (since the updated return is filed before 31.3.2023, i.e., before 12 months from the end of A.Y.2021-22).
- (ii) The time limit for completion of assessment for A.Y.2020-21 would be 30.9.2022, being 18 months from the end of the assessment year.

The time limit for completion of assessment for A.Y.2021-22 would be 31.12.2023, i.e., 9 months from the end of F.Y.2022-23, being the financial year in which the updated return was furnished.

Question 36:

Consequent to search under section 132 in the premises of Mr. Ajay Verma, the Assessing Officer has in his possession, cash of Rs. 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 Rs. 90 lakhs and unabsorbed depreciation relating to that year was Rs. 30 lakhs. He wants to set-off the brought

Sec 79A: X

forward business loss and unabsorbed depreciation against income of Rs. 160 lakhs, represented in the form of undisclosed money discovered during search. Can he do so? Examine.

Answer:

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 Rs. 90 lakhs and unabsorbed depreciation of Rs. 30 lakhs against the undisclosed income of Rs. 160 lakhs included in his total income of P.Y.2023-24 consequent to search u/s 132.

Question 37:

“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. (See after Case Law lecture)

Answer:

The statement is **not** correct.

The Apex Court, in *SAP Labs India Pvt. Ltd. v. ITO [2023] 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 38:

Mr. Raj (aged 45 years), a resident of India employed with a private company in India, received the following sums during the F.Y. 2023-24:

(i) Basic Salary	Rs.62,000 p.m.
(ii) Dearness Allowance – 10% of basic salary	
(iii) Royalty Income (gross) received from Country ‘M’ in respect of a literary book	Rs.9,80,000
(iv) Expenses incurred for earning royalty	Rs.2,80,000
(v) Rental Income (gross) from a house property situated in Country ‘N’	

(vi) Dividend from a company incorporated in Country 'N' (Gross)	Rs.2,20,000
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Mr. Raj purchased a residential house in Bhopal for his residence on 1st August, 2023 for a consideration of Rs. 23,00,000 and paid 1% stamp duty on it. $\rightarrow 23000 \rightarrow 80C$

He paid Rs. 26,000 towards his health insurance premium and Rs. 50,000 to insure the health of his father, a non-resident aged 72 years, who is not dependent on him. 25000

Tb to =
50000

The rate of tax in Country 'M' is flat 12% and the rate of tax in Country 'N' is 20% in respect of dividend income and 15% in respect of rental income. No standard deduction is allowed in Country 'N' from rental income. $80000 B = (300000)$

Assuming that India does not have a Double Taxation Avoidance Agreement with both the countries, you are required to compute the total income of Mr. Raj and net tax liability thereon for A.Y. 2024-25 as per the provisions of Income-tax Act, 1961, after providing deduction u/s 91. **Follow Old Regime.**

Answer:

Computation of total income and tax liability of Mr. Raj for A.Y. 2024-25

Particulars	Amount in Rs.	Amount in Rs.
Salaries		
Basic Salary [Rs.62,000 x 12]	7,44,000	
Add: Dearness Allowance (10% of 7,44,000)	74,400	
	<u>8,18,400</u>	
Less: Standard deduction u/s 16(ia)	<u>50,000</u>	
		7,68,400
Income from house property (Country N)		
Gross Annual Value ¹	2,80,000	
Less: Deduction u/s 24@ 30%	<u>84,000</u>	
		1,96,000
Income from Other Sources		
Royalty income from a literary book from Country M (after deducting expenses of Rs.98,000)	8,82,000	
Dividend income from a company in Country N	<u>2,20,000</u>	
		<u>11,02,000</u>
		20,66,400
Gross Total Income		
Less: Deductions under Chapter VI-A		
U/s 80C – 1% stamp duty on	23,000	
U/s 80D – Medical insurance premium	50,000	
- For self, restricted to Rs.25,000		
- For father, being a non-resident, restricted to Rs.25,000		
U/s 80QQB – Royalty income of a resident in respect of literary work	<u>3,00,000</u>	
		<u>3,73,000</u>
Total Income		16,93,400

¹In the absence of any information regarding expected rent, actual rent is considered as gross annual value.

Computation of net tax liability of Mr. Raj for A.Y. 2024-25

Particulars	Amount in Rs.	Amount in Rs.
Tax on total income (30% of 6,93,400) + Rs.1,12,500		3,20,520
Add: Health and Education Cess@ 4%		<u>12,821</u>
Tax liability		3,33,341
Less: Deduction u/s 91 (See Working Note below)		<u>1,41,392</u>
Net tax liability		1,91,949
Net tax liability (rounded off)		1,19,950

Working Note – Computation of deduction u/s 91		Rs.
Average rate of tax in India (Rs.3,33,341/ 16,93,400 x 100)	19.6847%	
Average Rate of Tax in Country M	12%	
Average Rate of Tax in Country N [(Rs.44,000 + Rs.42,000)/5,00,000]	17.2%	
Doubly taxed income in Country M = Rs.5,82,000 Rs.9,80,000 (royalty) – Rs.98,000 (expenses incurred) – Rs.3,00,000 (deduction u/s 80QQB)]		
Deduction u/s 91 in respect of royalty income earned in Country M (lower of 19.6847% and 12%) i.e., 12% on doubly taxed income of Rs.5,82,000		69,840
Doubly taxed income in Country N = Rs.4,16,000 (Rs.1,96,000, being income from house property + Rs.2,20,000, being dividend income)		
Deduction u/s 91 in respect of income earned in Country N (lower of 19.6847% and 17.2%) i.e., 17.2% on doubly taxed income of Rs.4,16,000		<u>71,552</u>
Total deduction under section 91		1,41,392

Question 39:

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 Customers outside India buying E-readers using internet protocol address located in India	2,500 250	Rs.10,000 US\$ 150 [1 US \$ = Rs.80]
XYZ Inc., a Singapore based company no having any PE in India, engaged in designing, manufacturing and selling E-readers	Indian Customers Customers outside India buying E-readers using internet protocol address located in India	2,000 1,000	Rs.12,000 US\$ 150 [1 US\$ = Rs.80]

Indian PE
→ Seller
∴ No EL

2016 X
2020 ✓

2016 6-1-

During the previous year 2023-24, ABC Ltd. paid Rs.25,00,000 to Aster Inc. for hosting advertisement for promoting sale to customers outside India; and XYZ Inc. paid Rs. 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.

Answer:

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.

2016 EL X
2020 → EL ✓

Total = 3.6 cr > 2 cr.

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 Rs.2 crores, Aster Inc. is liable to pay equalization levy of Rs.7,20,000 @2% of Rs.3,60,00,000 [(Rs.12,000 x 2,000 E-readers)+ (1,000 E-readers x Rs. 12,000 (\$ 150 x Rs. 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 Rs. 1,50,000 i.e., @6% of Rs. 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. for 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 Rs. 2 crores. Accordingly, Aster Inc. is required to pay equalization levy of Rs. 64,000 @2% of Rs. 32,00,000.

Question 40:

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 Rs. 155 lakhs and direct sales by XYZ GmbH to Indian customers is Rs. 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.

Answer:

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 Rs. 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 Rs. 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.

“I WOULD RATHER DIE OF PASSION THAN OF BOREDOM”

RTP MAY 2024:

- (b) Blossom Tea Garden's contention is incorrect; entire compensation is assessable as manufacturing income.
- (c) Blossom Tea Garden's contention is incorrect; it's deemed to be profit on sale of standing crop or the produce, therefore the same is taxable as profits and gains from business or profession.
- (d) Blossom Tea Garden's contention is correct; no part of the compensation consists of manufacturing income, and it cannot be apportioned under rule 8 between manufacturing income and agricultural income. Therefore, the income will be agricultural income.

14. Shubh Fragrance Ltd. established in 2015, is engaged in the manufacturing and selling of pharmaceutical products. The net profit of the company as per profit and loss account for the year ended 31st March 2024 is ₹ 900 lakhs, after debiting or crediting the following items:

- (i) Payment of ₹ 50 lakhs in the month of November 2023 to a foreign company for obtaining know-how for a product launched in the month of December 2023. (+) Less 25% Depn
- (ii) Electricity charges of ₹ 7 lakhs for the month of March 2024 were unpaid up to the due date of filing of return of income. Allowed.
- (iii) Loss of ₹ 4 lakhs due to hedging contract against future price fluctuations in respect of import of raw material, used in the course of manufacturing. Allowed
- (iv) Depreciation charged to the Statement of Profit and Loss was ₹ 45 lakhs. (+)
- (v) 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 ₹ 65 lakhs, which was installed in the month of December 2023. (+) to Asset 43A-

(vi) ₹ 20 lakhs received from Z Ltd. under an agreement in the form of non-compete fees for not carrying out any business in a particular product. PGBP Income

DIA →
(GSDT 2d) → NOA
AID
50%
180 MAY 25

(vii) Advance received amounting to ₹ 20 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 F.Y. 2019-20. *IFOS. (-) Deductible from PGBP.*

(viii) Excess on sale of unlisted shares - ₹ 15 lakhs (Sold on 15th February 2024). *(-) From PGBP,*

Additional Information:

(1) Normal depreciation allowable as per the Income-tax Act, 1961 ₹ 35 lakhs [depreciation, if any required to be computed on the amount debited or credited to Statement of profit or loss is not included].

(2) The unlisted shares were acquired on 29.3.2021 for ₹ 80 lakhs. *LTCH*

(3) Cost Inflation Index F.Y. 2019-20 - 289, F.Y. 2020-21 - 301, F.Y. 2023-24 - 348.

The total turnover of the company for previous year 2021-22 was ₹ 282 crores and for the financial year 2022-23 ₹ 405 crores. The company has MAT credit of ₹ 20 lakhs of the assessment year 2016-17. The book profit (computed) for the assessment year 2024-25 is ₹ 1520 lakhs. *25% - 15% + 12% + 4%.*

Compute the total income and tax liability (computed in the most beneficial manner) for the assessment year 2024-25. *Also solve IISBAA (+) Add in Dep*

15. Mr. Sanjay is a resident in India aged 55 years. He had an impressive investment portfolio in various mutual funds. He redeemed his entire mutual fund investment portfolio and bought a villa in Lonavala for ₹ 2.00 crores to spend rest of his life there. The details of mutual funds are as under –

S. No.	Type of mutual fund	Date of investment	Date of redemption	Amount invested (in ₹ lakhs)	Amount redeemed (in ₹ lakhs)
1	BLR growth fund	03.04.2020	05.06.2023	120	140
2	ABC Strategic fund	04.05.2023	02.02.2024	46	50

Debt fund

*Index ✓
No Index
Sec 50AA
STCA -*

SLF

LT SBA

LT BLR

10L x 1.20L

1,26,248 x 80L

*CGT
SP
95L
(-) 10A
80L x 348 / 301
Tax @ 20%
Regular < MAT :-*

REVISION TEST PAPER

FINAL EXAMINATION

3	ABD fund	Midcap	02.12.2022	05.07.2023	115	118
4	SBA fund	Growth	08.11.2021	12.12.2023	110	120

Handwritten notes: STCA (circled), LYCA (circled), Eq. orient Fund. (bracketed), STCG IIIA (circled), 10% U2A (circled).

The funds stated at 1 and 2 have invested 30% of their proceeds in equity shares of domestic companies and funds stated at 3 and 4 have invested 70% of their proceeds in equity shares of domestic companies. The investment pattern of funds remained unchanged over all the years. STT is paid at the time of acquisition and redemption of mutual fund, wherever applicable.

You are required to compute the capital gains chargeable to tax in the hands of Mr. Sanjay for A.Y. 2024-25. CII: 2020-21: 301; 2021-22: 317; 2022-23: 331; 2023-24: 348

16. 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.

17. In respect of Mr. Naksh, who is engaged in the export of fabrics, information is flagged as per the risk management strategy formulated by the CBDT for A.Y.2020-21, A.Y.2021-22, A.Y.2022-23 and A.Y.2023-24.

In case of Mr. Ramesh (friend of Mr. Naksh), who is engaged in trading of commodities, a search was initiated u/s 132 in April 2024, consequent to which the Assessing Officer has in his possession certain documents showing information pertaining to shares of value ₹ 28 lakhs purchased in the P.Y. 2017-18 and shares of value of ₹ 21 lakhs purchased in the P.Y.2018-19.

Can the Assessing Officer issue notice under section 148 to Mr. Naksh and Mr. Ramesh in April 2024? If so, in respect of which assessment years can notice be issued? Is it necessary that they be provided with an opportunity of being heard before issuance of notice?

Handwritten notes: AY 21-22, 22-23, 23-24

Handwritten notes: (+) ERM, 148A

Handwritten notes: Then AD will side whether 21-24

MAY 2024 EXAMINATION

Handwritten note: No need for 148A.

Handwritten calculation: Income escaped: 28L + 21L = 49L

REVISION TEST PAPER

DIRECT TAX LAWS AND INTERNATIONAL TAXATION

What would be your answer with respect to issue of notice to Mr. Ramesh if the shares purchased in the P.Y.2017-18 were of ₹ 30 lakhs instead of ₹ 28 lakhs, all other facts remain the same?

Total = 31 day upto 10/11

30% ⊕
UFILA-
Asset is chargeable in PY in which AD Notice.

18. Mr. Rohit, an Indian citizen, returned to India in March 2013 to assume the role of CEO at ABC (P) Ltd., an Indian company. He served in this capacity from 1st April 2013 to 31st March 2020. Prior to this, from May 2000 to February 2013 he was working with Red Inc, in the USA. In April 2020, he went to the USA to rejoin Red Inc. and permanently settled there. Mr. Rohit visits India every year only for 1 month during his stay in USA. It was found that when he was CEO of ABC (P) Ltd., he accumulated undisclosed income/wealth such as

PY 23-24 NR since he returned USA.

- (i) shares of listed companies in USA acquired on 10th December, 2012; NR.
- (ii) acquired one apartment in London on 20th April 2015 and Resident
- (iii) established a leather goods manufacturing factory in Malaysia on 15th April 2020. NR.

PY 12-13 NR. → Notice is valid.

He also earned income by taking commission from various foreign buyers located outside India during the period between April 2013 to March 2020. The above undisclosed assets came to the notice of Assessing Officer in April 2023, and he issued notice under the Black Money Act, 2015 in July, 2023. Notice can be issued from

PY 15-16 to PY 19-20.

Is the notice issued by the Assessing Officer under the Black Money Act, 2015 on Mr. Rohit tenable in law?

19. Mahesh (Age 50 years) is the CEO of Silver India Ltd. since 01.04.2019. His income in India consists of

- (i) salary (before standard deduction) of ₹ 23 lakhs; (-) 50000
- (ii) interest in respect of self-occupied property of ₹ 1,80,000; Not Allowed in New Regime
- (iii) interest on bank fixed deposits ₹ 1,60,000. IFOI

He has the following income for the year ended 31st March 2024 in Country 'A'.

- (i) Income from business in Country A = USD 25,000; TTR on 31/3/24.

- (ii) Rent from house property in Country A = USD 4,500; *→ (-) NT - 30% X TTBR of 31/3.*
- (iii) Municipal taxes in respect of the above house (Not allowed as deduction in Country A) = USD 450;
- (iv) Dividend from shares held in Country 'A' where dividend was declared and paid in March, 2024 = USD 10,000; *TTBR of 29/2/2024*
- (v) Short term capital gain of USD 5,000 on sale of shares of companies registered in Country 'A' and sale proceeds were credited in bank account outside India on 28.03.2024. *TTBR → 29/2/24*

India has DTAA with Country 'A' and the tax paid in Country 'A' is eligible for tax credit in India. The fiscal year for income-tax is the same both in India and Country 'A'. Rate of tax is 20% in Country 'A' in respect of all incomes. Income-tax was paid by Mahesh on 25.05.2024 for the incomes of the year ended 31st March 2024 in Country 'A'. *→ Rule 128 TTBR 30/4/24*

Compute the total income and net tax liability of Mahesh for the A.Y. 2024-25. Assume Mahesh pays tax under section 115BAC.

The TT buying rate of 1 USD on various dates: 29.02.2024 = ₹ 70; 28.03.2024 = ₹ 70.50; 31.03.2024 = ₹ 71; 30.04.2024 = ₹ 72; and 25.05.2024 = ₹ 73.

20. ABC (P) Ltd., Bangalore is engaged in the manufacture of electronic goods and exporting the same to various associated and other enterprises across Southeast Asia. The report with respect to its international transactions with AE has been furnished for all years. The company has applied for APA in respect of the transactions with its AE. Application was filed on 15th February 2023 which was signed on 5th May 2023. *5 yrs PY 23-24 onward?*

The company also applied in respect of the international transactions to which APA applies for rollback benefit which was agreed and signed in January 2024. The details of the status of income tax assessments are as follows:

- A.Y. 2018-19 – The matter is pending before High Court with regard to acquisition of a company by the assessee and the dispute is about set off of loss of the erstwhile company.
- A.Y. 2019-20 and A.Y. 2020-21 - There is no dispute and the assessments have been completed. *→ R/B possible.*

R/B → PY 22-23 (AY 23-24) to AY 20-21

Falls beyond 4 years

- A.Y. 2021-22 - The assessment for the A.Y. 2021-22 was completed by making reference to the TPO who enhanced the arm's length price of the international transaction by ₹ 500 lakhs.
- A.Y. 2022-23 - ALP of international transaction was disputed before the tribunal which set aside the order for fresh consideration by the Assessing Officer in November 2023.
- A.Y. 2023-24 - The income tax return ('ITR') was filed on 29th December 2023.

Matter not reached finality. Available

Available

Belated Return ∴ Not Possible.

If the APA is applied, the ALP determined for the A.Y. 2021-22 would get enhanced by ₹ 300 lakhs as against ₹ 500 lakhs originally determined by TPO.

Discuss the applicability of rollback agreement for various assessment years in case of ABC (P) Ltd.



SUGGESTED ANSWERS/HINTS

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

14. Mr. Aakash filed his original return of income under section 139(1) for A.Y.2022-23 and A.Y.2023-24 on 31.7.2022 and 31.7.2023, respectively. He however filed an updated return of income under section 139(8A) for A.Y.2022-23 on 31.10.2023. What is the time limit for completion of assessment under section 143(3) in respect of A.Y.2022-23 and A.Y.2023-24?
- (a) 31.12.2023 and 31.12.2024, respectively
 (b) 31.12.2024, in both cases
 (c) 31.12.2025 and 31.12.2024, respectively
 (d) 31.12.2024 and 31.12.2025, respectively.
15. Mr. Ram, a resident individual aged 40 years, has total income of ₹ 4,15,00,000 for A.Y.2023-24 which comprises of salary (computed) of ₹ 1,80,00,000, long-term capital gains of ₹ 60,00,000 u/s 112, long-term capital gains of ₹ 45,00,000 u/s 112A, short-term capital gains of ₹ 1,00,00,000 u/s 111A, dividend of ₹ 10,00,000 and interest income of ₹ 20,00,000. What would be his tax liability for A.Y.2023-24, assuming that he does not opt for section 115BAC?
- (a) ₹ 1,17,01,690
 (b) ₹ 1,17,13,650
 (c) ₹ 1,10,65,990
 (d) ₹ 1,10,77,950

RTP - MAY 2023:

16. M/s. Alpha & Co. is a partnership firm with five partners sharing profits and losses equally. Its return for the A.Y.2023-24 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.
17. On 31.3.2023, 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.2023-24. 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.

FA 2022
Amendment:-

78%
115BBE

FA 2022
E+pln 3C to
sec 43B.

18. Examine whether the following persons are required to file return of income for A.Y.2023-24, giving brief reasons for your answer –

To > 60k
Yes ✓

(i)	Mr. Albert, aged 31 years, whose turnover from business is ₹ 70 lakhs for the P.Y.2022-23 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. 2022-23. 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.2022-23 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.2022-23.
(v)	Mr. Vallish, aged 58 years, who has deposited ₹ 50 lakhs in his savings bank account with SBI on 28th March, 2023. 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, 2023 for self-residence. The balance money was transferred to a 1-year fixed deposit on 28th April, 2023. 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.

2.5l + 4l + 50000 = 7l
Yes ✓

Yes ✓

Yes ✓

4 DAY SHIT Tax
Gift Not taxable

19. The business premises of Mr. Arjun was searched on 17.4.2022 under section 132, consequent to which the Assessing Officer has in his possession documents revealing information pertaining to shares purchased in the P.Y.2016-17 for ₹ 23 lakhs and in the P.Y.2017-18 for ₹ 25 lakhs.

Search = Deemed Escaped

(i) Can the Assessing Officer issue notice under section 148 for bringing to tax income escaping assessment? 23l + 25l = 48 → Lower than 50l (11).

55 (11)

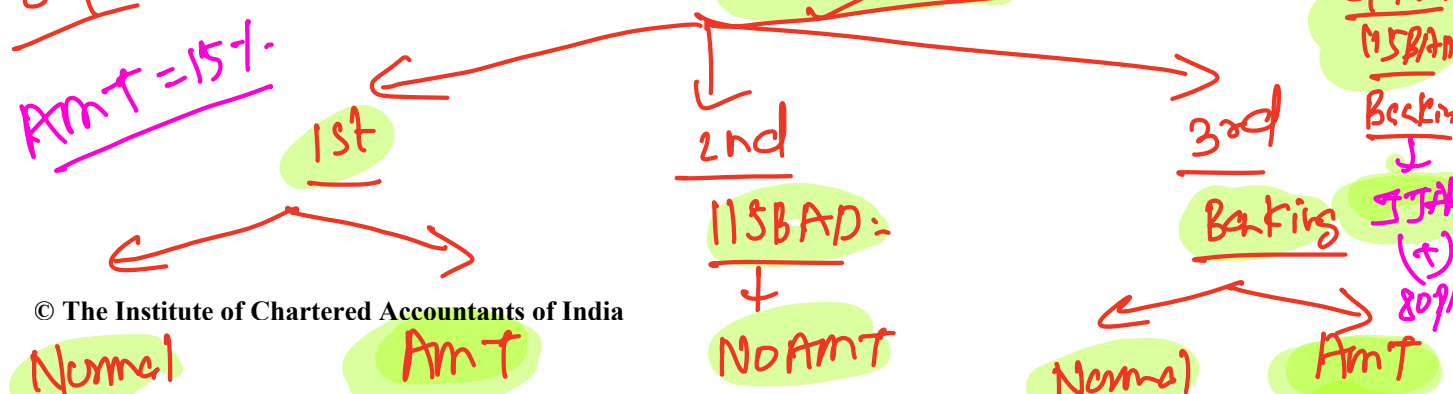
(ii) Would your answer change if the shares purchased in the P.Y.2016-17 were for ₹ 30 lakhs instead of ₹ 23 lakhs? Yes → max than 3 yrs upto 10 yrs

(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.2016-17 instead of the information pertaining to shares? Examine. Yes.

20. 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.2023-24 is ₹ 60 lakhs (computed). It has employed ten new employees with salary of ₹ 20,000 p.m. on 1.5.2022. 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.

80P

80P:
AMT = 15%



Compute its total income and tax liability for A.Y.2023-24 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.

21. 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 31-3-2023:

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. *E/T/O →*
- 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.2023-24.

22. 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, 2023 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 2022 to a foreign company for obtaining know how for a product launched in the month of November 2022. (+) ✓ $25\% \times 50\%$
- (iii) Profit on sale of 2200 shares of M/s. MS Ltd., a listed company ₹ 2,97,000. These shares were sold on 27.11.2022 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. → (-) 112A →
- (iv) Electricity charges of ₹ 8 lakhs for the month of February 2023 and March 2023 was unpaid up to the due date of filing of return. Allowed. ✓
- (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. Allowed. ✓
- (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, 2022 from a foreign company, in which it holds 30% voting rights. (-) → IFOJ ✓
- (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. P4BP ✓
- (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. (-) → IFOJ ✓
- (x) Excess on sale of unlisted shares - ₹ 18 lakhs (Sold on 18th January 2023). (-) → CG ✓
- (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 2022. $70 + 2L \rightarrow 43A \cdot X \cdot 7.5\%$ No Addition Rep ✓

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 2022 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. 2022-23, the company has employed 59 additional employees. All these employees contribute to a recognized provident fund. 36 out of 59 employees joined on 1-6-2022 on a salary of ₹ 15,000 per month, 18 joined on 1-7-2022 on a salary of ₹ 35,200 per month, and 5 joined on 1-11-2022 on a salary of ₹ 22,000 per month. The salaries of 10 employees who joined on 1-6-2022 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. 2022-23- 331.

26 EE's. X
10 months X
15000 X 30%

SC → 80%
100A → 18 = 98%
20%
112

You are required to compute the total income and tax liability of the company for the A.Y.2023-24 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.

23. (i) Gamma Inc., a US company, received income by way of fees for technical services of ₹ 3 crore from Delta Ltd., an Indian company, in pursuance of an agreement between Delta Ltd. and Gamma Inc. entered into in the year 2012, which is approved by the Central Government. Expenses incurred for earning such income is ₹ 22 lakhs. Examine the taxability of the above sum in the hands of Gamma Inc as per the provisions of the Income-tax Act, 1961 and the requirement, if any, to file return of income, assuming that Gamma Inc does not have a permanent establishment in India.
- (ii) If Gamma Inc. has a permanent establishment in India and the contract/agreement with Delta Ltd. and other Indian companies for rendering technical services is effectively connected with such PE in India, examine the taxability based on the following details provided –

Some Question done earlier.

	Particulars	Amount (₹)
(1)	Fees for technical services received from Delta Ltd.	3 crore
(2)	Expenses incurred for earning such income referred to in (1) above	22 lakhs
(3)	Fees for technical services received from other Indian companies in pursuance of approved agreement entered into between the years 2010 to 2015	5 crore
(4)	Expenses incurred for earning such income referred to in (3) above	35 lakhs

(5)	Expenditure not wholly and exclusively incurred for the business of such PE [not included in (2) & (4) above]	12 lakhs
(6)	Amounts paid by the PE to HO (not being in the nature of reimbursement of actual expenses)	15 lakhs

What are the other requirements, if any, under the Income-tax Act, 1961 in this case?

24. (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.2020-21 vide order dated 1.4.2022 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 31.3.2023. The one year marginal cost of fund lending rate of State Bank of India as on 1.4.2022 is 9%.

25. Mr. Hari, aged 32 years, is a resident individual having income from the following sources:

- (i) Income from a sole-proprietary business in Pune = ₹ 40 lakhs.
- (ii) Share of profit from a partnership firm in Mumbai = ₹ 25 lakhs.
- (iii) Agricultural Income (gross) from coffee estates in Country X, a foreign country with which India has no DTAA, CXD 36000. Tax deducted on the above income CXD 9,000
- (iv) Brought forward business loss of F.Y.2021-22 in Country X was CXD 5,000 which is not permitted to be set off against other income as per the laws of that country.
- (v) Mr. Hari has deposited ₹ 1,50,000 in public provident fund and paid medical insurance premium of ₹ 28,000 by account payee cheque to insure his health. He has also paid ₹ 52,000 as insurance premium to insure the health of his mother and father, who are resident Indians aged 65 years and 68 years, respectively. He also incurred ₹ 20,000 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 net tax liability of Mr. Hari for the A.Y. 2023-24, after providing for deduction under section 91, assuming that 1 CXD = ₹ 50 and that he does not opt for section 115BAC.

CHAPTER 39 – PAST PAPERS (☆☆☆☆☆)

JAN 2021

Question 1

Dinkar Synthetics Ltd. engaged in the business of manufacturing of textile goods of suiting and shirting and operating since 2010 shows Net Profit of Rs. 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 Rs. 13.50 Lacs. This policy will continue in future also.
- (2) The company has made provision for Gratuity based on actuarial valuation of Rs. 5 lacs. Actual gratuity paid amounting to Rs. 1,20,000 during financial year 2023-24 was debited to provision of Gratuity Account. (+) 40A(7) (-) 1-2l paid
- (3) The company has debited to Profit and Loss account one time Franchise fees of Rs. 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. (+) 20l (-) 25% TDS Full Dept
- (4) The company lost cash of Rs. 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. Revenue Loss. "Badrichar Naga v/s CIT"
- (5) On December 1, 2023, the company paid Royalty of Rs. 3,00,000 to Mr. Rozer (a non-resident individual) after deducting tax@10% 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 Rs. 3,00,000 in his income and claiming of refund of Rs. 20,000. (+) 3lac 40(a)(i).

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 Rs. 35 lacs on 15-04-2023. The same plot was purchased on 01-05-2021 for Rs. 26 lacs by Dinkar Synthetics Ltd. Dinkar Synthetics Ltd. held all the shares of Libra Ltd. exempt v/s 47.
- (ii) The company has obtained a loan of Rs. 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 Rs. 2 lacs. 2(22)(e). ∴ D/D = 2l IFOS.
- (iii) The company has purchased a new motor car during the year for the purpose of business, on 23-08-2019 whose WDV as on 1.4.2023 is Rs. 12,80,000. The depreciation on the above car has not been debited to the Profit and Loss Account. ∴ 15% + 15% = 30%.
- (iv) The company has the following number of workers employed in the factory (all are covered in Provident Fund) 120EE x 9mths x 15000 x 30%.

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 Rs. 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 Rs. 450 crores and the company has not opted for Section 115BAA. ∴ Tax Rate = 30%.
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)

Answer

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

	Particulars	Amount in Rs.
I	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 Rs. 5 lakhs for gratuity based on the actuarial valuation is not allowed as deduction as per section 40A(7). However, actual gratuity of Rs. 1,20,000 paid is allowable as deduction. Hence, the difference has to be added back to income (Rs. 5,00,000 – Rs. 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 Rs. 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]	
	Less: Franchise [Depreciation @ 25% on Rs. 20 lakhs, since it has been used for more than 180 days during the year] [20 lakhs – 5 lakhs]	
	(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. 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]	
	(v) Royalty on which tax is deducted but not deposited till 30.11.2024	3,00,000
	[100% of Rs. 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	
		21,80,000

due date of filing return of income.]		
Less: Depreciation as per Income-tax Rules, 1962		96,80,000
Motor car [Rs. 12.8 lakh x 30%, since car is purchased between 23.8.2019 and 31.3.2020 .]		3,84,000
		92,96,000
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 Rs. 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 Rs. 2 lakhs being the accumulated profits.]		2,00,000
Gross Total Income		94,96,000
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 Rs. 1,62,00,000 (Rs. 15,000 x 9 months x 120)]		48,60,000
[Note – As per clause (ii) of Explanation to section 80JJAA, “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. As per this definition, all 120 employees employed during the year would qualify as “additional employees”, and hence remuneration paid to them would be eligible for deduction u/s 80JJAA.		
Alternatively, it is possible to take a view that 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. If this view is taken, deduction u/s 80JJAA would be Rs. 20,25,000 [30% of Rs. 67,50,000 (Rs. 15,000 x 9 months x 50)] and total income would be Rs. 72,71,000. Tax payable would be Rs. 22,68,550 (rounded off).		
Total Income		46,36,000
Tax payable on Rs. 46,36,000@30% [Since the turnover of the company for the previous year 2021-22 exceeds Rs.400 crore]		13,90,800
Add: Health and education cess@4%		55,632
Tax liability		14,46,432
Tax liability (rounded off)		14,46,430

Question 2

- (a) RST LLP, a limited liability partnership set up a unit in a Special Economic Zone (SEZ) in the financial year 2019-20 for production of refrigerators. 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

10AA

35AD -

produce. It fulfills all the conditions of section 35AD. Capital expenditure in respect of warehouse amounted to Rs. 75 lakhs (including cost of land Rs. 10 lakhs). The warehouse become operational with effect from 1st April, 2023 and the expenditure of Rs. 75 lakhs was capitalized in the book on that date.

Relevant details for the financial year 2023-24 are as follows:

Particulars	Rs.
Profit of unit located in SEZ	50,00,000 (-) sol x 80 / 100
Export sales of above unit	80,00,000 → total
Domestic sales of above unit	20,00,000
Profit from operation of warehouse facility (before considering deduction under section 35AD)	1,05,00,000 (-) 65 l 35A

Compute income tax (including AMT under section 115JC) payable by RST LLP for Assessment Year 2024-25. **(8 Marks)**

(b) 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: Rs. 54,000 [Miani Inc. holds 70% of its total assets in India]. *Vodafone case law → Div (exempt)*
- (ii) Fees for technical services received from Government of India: Rs. 4,54,000. The Government of India utilised such technical services for a development project carried out by it in Nepal. *Even if utilised outside India then also Accrued*
- (iii) Interest received from Ms. O, a unit located in IFSC in respect of monies borrowed by Ms. O: Rs. 15,400 (Date of loan 24-12-2023) *exempt u/s- 10(15) on → 119/19.*
- (iv) On 26-8-2023, Wioni Inc. sold 5,000 equity shares held by it in an Indian Company for Rs. 89 per share. These shares were bought by the Wioni Inc. on 28th June, 2010 for Rs. 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 Rs. 70 per share. *Grandfather - the ring*

You are required to compute the total income of Wioni Inc. for the assessment year 2024-25 briefly explaining the relevant provisions of the Income-tax Act, 1961. **(6 Marks)**

Answer

(a) Computation of total income and tax liability of RST LLP for A.Y. 2024-25 (under the regular provisions of the Act)

Particulars	Rs.	Rs.
Profits and gains of business or profession		
Profit from unit in SEZ	50,00,000	
Less: Deduction under section 10AA	40,00,000	
[50,00,000 x 80,00,000/1,00,00,000 x 100%, since it is the 5 th year of manufacturing]		
Business income of SEZ unit chargeable to tax		10,00,000
Profit from operation of warehousing facility for storage of agricultural produce	1,05,00,000	
Less: Deduction u/s 35AD [Deduction@100% in respect of the expenditure incurred prior to the commencement of its operations and capitalized in the books of account on 1.4.2023. Deduction is not available on expenditure incurred on acquisition of land] [Rs. 75 lakhs – Rs. 10 lakhs]	65,00,000	
Business income of warehousing facility chargeable to tax		40,00,000
Total Income		50,00,000

Computation of tax liability	
Tax on Rs. 50,00,000@30%	15,00,000
Add: Health and Education cess@4%	60,000
Total tax liability	15,60,000

Computation of adjusted total income and AMT of RST LLP for A.Y. 2024-25

Particulars	Rs.	Rs.
Total Income (as computed above)		50,00,000
Add: Deduction under section 10AA		40,00,000
		90,00,000
Add: Deduction under section 35AD	65,00,000	
Less: Depreciation u/s 32[On building@10% of Rs. 65 lakhs]	6,50,000	58,50,000
Adjusted Total Income		1,48,50,000
Alternate Minimum Tax@18.5%		27,47,250
Add: Surcharge@12% (since adjusted total income > Rs. 1 crore)		3,29,670
		30,76,920
Add: Health and Education cess@4%		1,23,077
Total tax liability		31,99,997
Tax Liability (Rounded off)		32,00,000

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 Rs. 32,00,000.

AMT Credit to be carried forward u/s 115JEE

Particulars	Rs.
Tax liability under section 115JC	32,00,000
Less: Tax liability under the regular provisions of the Income-tax Act, 1961	15,60,000
	16,40,000

(b) 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 (Rs.)
(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	4,54,000

	or arisen in India irrespective of that fact that it is utilized for a project outside India]	
(iii)	Interest received from Ms. O, a unit located in IFSC for monies borrowed by it on 24.12.2023 [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)	<p>Long term capital gains</p> <p>Sale consideration (5,000 x Rs. 89) Rs.4,45,000</p> <p>Less: Cost of acquisition, being higher of <u>Rs. 3,50,000</u></p> <p>(a) Actual cost i.e., (5,000 x Rs. 64) Rs. 3,20,000</p> <p>(b) lower of Rs.3,50,000</p> <p>- Rs. 3,50,000 (5,000 x Rs. 70), being fair market value on 31.1.2018 and</p> <p>- Rs. 4,45,000 (5,000 x Rs. 89), being full value of consideration</p> <p>[There would be no tax on long-term capital gains, since only the gain in excess of Rs. 1,00,000 is taxable@10% u/s 112A]</p>	
Total Income		5,49,000

Question 3

(a) GNK Trust, a charitable trust following accrual system of accounting registered under Section 12AB of the Income-tax Act, provides services in the field of education. It furnishes the following particulars to you with respect to previous year 2023-24:

Add to Normal Statement be for 15% - Application allowed on Payment Basis

AD 18000
(E) Exempt
12 @ (12)
5% TD 85

Particulars	Rs.
Gross Receipts received from students	24,41,000
Voluntary Contribution (including anonymous donation Rs. 1,85,000)	5,20,000
Dividend from Indian Companies	5,40,000
Income from mutual funds registered under section 10(23D)	2,85,000
Agricultural income	4,79,000

The following amounts are spent for the purposes of the trust:

Particulars	Rs.
Amount set aside during the year to be applied in the next 4 years for the purposes of the trust.	(2,54,000)
Payment to Mr. Lohia, one of the trustees, as rent for the building where the trust carry on its activities. The rent for similar property is Rs. 2,50,000.	(1,47,000)
During the year, the trust invited foreign teachers and made the payment in the same Financial Year.	(1,96,000)
Other expenses for the purposes of the trust	(16,79,000)

Compute the total income of the trust and also the tax liability in order to avail the maximum benefits under the provisions of Income-tax Act, 1961. **(8 Marks)**

(b) Mr. Ramanuj Tiwari, aged 65 years resident of India derived the following income for the financial year 2023-24:

DTAA

- (1) Income from business and profession in India 6,00,000
- (2) Dividend (gross) from a company in Nigeria (Tax paid in Nigeria Rs. 1,50,000) 30,000 *20% Tax*
- (3) Royalty on books from Spain 8,00,000
(Rs. 7,60,000 has been received in India on 30-06-2024. Further Rs. 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 *80TTB*

Further, Mr. Ramanuj Tiwari incurred expenses to the tune of Rs. 1,20,000 on earning the royalty of Rs. 8,00,000. He has also deposited Rs. 1,50,000 in Public Provident Fund Account of his wife during the year.

800-

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. **Follow Old Regime.** (6 Marks)

Answer

(a) Computation of total income of GNK Trust for the A.Y.2024-25

Particulars	Rs.	Rs.
Gross receipts from students		24,41,000
Add: Voluntary contributions other than anonymous donation of Rs. 1,85,000		<u>3,35,000</u>
		27,76,000
Add: Dividend from Indian Companies	5,40,000	
Income from mutual funds registered u/s 10(23D)	2,85,000	
Agricultural income [Exemption u/s 10(1) would be available, even though the trust is registered u/s 12AB]]	<u>Nil</u>	<u>8,25,000</u>
		36,01,000
Add: Anonymous donations [to the extent not chargeable to tax@30% under section 115BBC(1)(i)] [Rs. 26,000, being 5% of total donations of Rs. 5,20,000 or Rs. 1,00,000, whichever is higher]		<u>1,00,000</u>
		37,01,000
Less: 15% of income eligible for being set apart without any condition		<u>5,55,150</u>
		31,45,850
Less: Amount applied for charitable purposes		
- Payment of rent for the building to Mr. Lohia	1,47,000	
- Amount paid to foreign teachers for services rendered and utilised in India	1,96,000	
- Other expenses	<u>16,79,000</u>	<u>20,22,000</u>
		11,23,850
Less: Amount set aside during the year to be applied in the next 4 years		<u>2,54,000</u>
Total income [other than anonymous donation taxable@30% u/s 115BBC(1)(i)]		<u>8,69,850</u>
Add: Anonymous donation taxable @30% u/s 115BBC(1)(i) [See Note below]		<u>85,000</u>
Total Income of the trust (including anonymous donation taxable@30%)		<u>9,54,850</u>

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

Particulars	Rs.
Tax on total income of Rs. 8,69,850 i.e., total income (excluding anonymous donations chargeable to tax@30% u/s 115BBC) [Rs. 3,69,850 x 20% plus Rs.12,500]	86,470
Tax on anonymous donations taxable@30% [Rs. 85,000 x 30%]	<u>25,500</u>
	1,11,970
Add: Health and education cess@4%	<u>4,479</u>
Total tax liability	<u>1,16,449</u>
Total tax liability (rounded off)	1,16,450

Note - To avail the maximum benefit, the amount set aside should be invested in modes specified under section 11(5) and intimated to the Assessing Officer before the due date of filing of return.

(b) 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	Rs.	Rs.
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	<u>1,20,000</u>	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		<u>2,15,000</u>
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 Rs. 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	<u>50,000</u>	<u>5,00,000</u>
Total Income		<u>11,60,000</u>

Computation of tax liability of Mr. Ramanuj Tiwari for A.Y.2024-25

Particulars	Rs.
Tax on total income [30% of Rs. 1,60,000 + Rs. 1,10,000, eligible for higher exemption limit of Rs. 3,00,000, since he is a senior citizen]	1,58,000
Add: Health and education cess @4%	<u>6,320</u>
	1,64,320
Less: Rebate under section 91 (See Working Note below)	<u>40,248</u>
Tax Payable	<u>1,24,072</u>
Tax Payable (rounded off)	1,24,070

Calculation of Rebate under section 91:		Rs.
Average rate of tax in India [i.e., Rs. 1,64,320 / Rs. 11,60,000 x 100]	14.1655%	
Average rate of tax in Nigeria [i.e., Rs. 30,000 / Rs. 1,50,000 x 100]	20%	
Doubly taxed income pertaining to Nigeria		
Dividend from a company in Nigeria	Rs. 1,50,000	
Rebate u/s 91 on Rs. 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., Rs. 40,000 / Rs. 8,00,000 x 100]	5%	
Doubly taxed income pertaining to Spain		
Royalty (Rs. 8,00,000 – Rs. 1,20,000 – Rs. 3,00,000)	Rs. 3,80,000	
Rebate u/s 91 on Rs. 3,80,000 @5% [being the lower of average Indian tax rate (14.1655%) and Spain tax rate (5%)]		<u>19,000</u>
Total rebate under section 91		<u>40,248</u>

Question 4

- (a) 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 Rs. 1,10,000 as bank guarantee commission for the Financial Year 2023-24.

No TDS if paid to Bank → CBDT Notifi.

→ Name of Busi → NO PE x

- (ii) StudyKart, an online education provider and a trust registered under section 12AB of the Income-tax Act, pays Rs. 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 Rs. 97 lakhs during the preceding previous year, paid Rs. 65 lakhs to Mr. Basant, a resident individual, as contract payment for repairing his office building. 194C X 194m 5%.
- (iv) Fly Fly Ltd., an airlines company, paid Rs. 10 lakhs to Airports Authority of India as landing and parking charges of its aircrafts. 194C → 2% (2 x 4 = 8 Marks)
- (b) On 1-4-2023, Vihaan Ltd., an Indian company, advanced a loan of Rs. 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 Rs. 4 crores. In the Financial Year 2023-24, Yuvan Inc. had revalued its assets and accordingly the value of assets had increased by Rs. 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 Rs. 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 arms length price of Vihaan Ltd. which sells the same equipments at the rate of Rs. 9,000 per unit to Y Ltd. and at the rate of Rs. 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)

Answer

- (a) (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 Rs. 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 arising 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 utilised 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 is not subject to tax audit 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 Rs. 65,00,000, since such amount exceeds Rs. 50 lakhs.

Therefore, tax deducted at source would be Rs. 3,25,000, being 5% of Rs. 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 Rs. 20,000 (2% of Rs. 10 lakh) is deductible at source under section 194C by the airline company, Fly Fly Ltd., on payment of Rs. 10,00,000 made towards landing and parking charges to the Airports Authority of India for the previous year 2023-24.

- (b) (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 Rs. 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 Rs. 4 crores), Vihaan Ltd. and Yuvan Inc. are deemed to be associated enterprises.

- (2) Vihaan Ltd. sells equipments at the rate of Rs. 9,000 per unit to Y Ltd. and at Rs. 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 Rs. 9,250 [(Rs. 9,000 + Rs. 9,500)/2]. Since the deviation between the arm's length price and actual sale price of the equipment to Yuvan Inc. i.e., Rs. 7,400 per unit is 25%, which exceeds 3% of the price of the international transaction, the arm's length price would be Rs. 9,250 per unit and the total income would increase by Rs. 3.7 crores [i.e. Rs. 1,850 (Rs. 9,250 – Rs. 7,400) x 20,000 units]

- (3) On account of the primary adjustment of Rs. 3.7 crores (Rs. 1,850 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 exceeds Rs. 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 Rs. 3.7 crores, which amounts to Rs. 77,57,568.

Question 5

- (a) Answer any **two** out of the following **three**:

- (i) In respect of a civil suit, the Calcutta High Court appointed a receiver in respect of properties of Ms. Ghosh and Sons HUF. One such property was situated at Delhi which was sold by the Income Tax Department to Mr. Devang. The karta of the HUF, Mr. Ghosh, objected to such sale stating that no leave was taken from Calcutta High Court for such sale. An application was also filed by the department to take the permission for such sale. The Calcutta High Court passed an order whereby it directed a civil suit to be pursued at Delhi.

HC can recall its own order to rectify an apparent mistake.

However, it overlooked the provisions of section 293 of the Income-tax Act, which puts a bar on filing suit in any civil court against an income-tax authority in respect of any proceedings under the Income-tax Act. The said order was recalled for review by the High Court and error apparent was corrected. Discuss the validity of action taken by the Calcutta High Court.

*ACE Building
Dempo Ltd
54EC for
Block Asset*

(ii) Ms. RSRZ and Co. Ltd., sold one of its factory building for Rs. 14 lakhs on 19-4-2020. The building was acquired on 1-4-2010 and the assessee was using it for manufacturing activity and accordingly, depreciation was also being claimed. After sale of the building, the assessee reinvested the amount of capital gain in long-term specified assets under section 54EC and claimed exemption thereunder. The AO rejected the claim for exemption by the assessee and regarded that since the asset sold was depreciable asset, provisions of section 50 will be applicable and accordingly the assessee is not entitled to exemption under section 54EC. Discuss the validity of AO's claims.

(2 x 4 = 8 Marks)

(b) 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: *80P -*

Particulars		Rs.
Interest received from deposit with other cooperative societies	<i>80P</i>	5,47,000
Interest received from members (including Rs. 2,63,000 for personal purposes of a member)	<i>80P</i>	11,85,000
Rent Received (per month)	<i>(-) 30% Dedn</i>	36,000 X
Income from Agency business	<i>P4BP</i>	2,87,500
Interest received from deposit of idle funds of members	<i>80P</i>	2,04,000
Expenses incurred on agency business	<i>Take Dedn</i>	1,24,000
Brought forward loss from earlier years (Financial Year 2022-23)	<i>Take Dedn</i>	(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)*

Answer

MSBAD

Gen Ded (= 50000) Follow Normal provision.

(a)

(i) The High Court can review its own order, where the grounds for review are:

- (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii) mistake or error apparent on the face of the record;
- (iii) any other sufficient reason.

Section 293 puts a complete bar on filing suit in any civil court against the Income- tax authority. If the civil suit was not maintainable in view of section 293 and this was the purported defence of the respondents and of the Department, there was no error committed by the High Court in its judgment rendered in exercise of its review jurisdiction calling for interference.

In the present case, Calcutta High Court passed an order directing a civil suit by overlooking the provisions of section 293 and then recalled its own order and corrected the apparent error. The action taken by the Calcutta High Court is valid as the High Court has the inherent power to review its own order to correct a mistake apparent from the record.

Note – The facts of the case are similar to the facts in **Sunil Vasudeva & Others v. Sundar Gupta & Others [2019]** , wherein the above issue came up before the Supreme Court. The above answer is based on the rationale of the Apex Court in the said case.

(ii) As per section 54EC, where the capital gain arising from the transfer of a long-term capital asset, being land or building or both, is invested in the long-term specified asset, being the bonds issued by the National Highways Authority of India (NHAI) or the Rural Electrification Corporation Limited (RECL) or any other bond notified by the Central Government in this behalf, at any time within a period of six months after the date of such transfer, the amount of such capital gain shall not be charged to tax, to the extent of Rs. 50 lakhs.

Section 50 is a special provision for computation of capital gains in the case of depreciable asset, and has limited application in the context of computation of capital gains to the extent

that the provisions of sections 48 and 49 would apply with the modifications stated thereunder. It does not deal with exemption which is provided in a totally different provision i.e., section 54EC.

Section 54EC does not make any distinction between depreciable and non-depreciable asset for the purpose of re-investment of capital gains in long term specified assets for availing the exemption thereunder. Further, section 54EC specifically provides that when the capital gain arising on the transfer a long-term capital asset, being land or building or both, is invested or deposited in bonds issued by NHAI or RECL, the assessee shall not be subject to capital gains to that extent [i.e., lower of capital gains or Rs. 50 lakhs]. Therefore, the exemption under section 54EC cannot be denied to the assessee on account of the fiction created in section 50.

Thus, in the present case, the action of the Assessing Officer disallowing the claim for exemption under section 54EC on the reasoning that capital gain on transfer of depreciable asset (building) is a short-term capital gain in respect of which the provisions of section 50 apply, even if held for more than 24 months, is **not** valid.

Note – The facts of the case are similar to the facts in **CIT v. V.S. Dempo Company Ltd**, wherein the above issue came up before the Apex Court. The above answer is based on the rationale of the Supreme Court in the said case.

(b) Computation of total income and tax payable by Meenakshi Urban, a Cooperative Society for the A.Y. 2024-25

Particulars	Rs.	Rs.
Income from house property		
Rental income (Rs. 36,000 x 12)	4,32,000	
Less: Deduction under section 24(a) @30%	<u>1,29,600</u>	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"]	<u>2,04,000</u>	19,36,000
Agency business		
Income from agency business	2,87,500	
Less: Expenses incurred	<u>1,24,000</u>	
	1,63,500	
Less: Brought forward loss from F.Y. 2022-23	<u>98,000</u>	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	<u>50,000</u>	19,86,000
Total Income		<u>3,17,900</u>
Computation of tax liability		
Tax @30% on Rs. 2,97,900 plus Rs. 3,000 on income upto Rs. 20,000		92,370
Add: Health and education cess @4%		<u>3,695</u>
Tax liability		<u>96,065</u>
Tax liability (rounded off)		96,070

Question 6

(a)

- Yes he can ignore DFR*
- (i) 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.
- (ii) The Assessing Officer has initiated the penalty proceedings under section 270A for under-reporting of income and launched prosecution proceedings under section 276C for willful evasion of tax at the time of completion of re-assessment of Mr. Pradeep under section 147 of Income-tax Act, 1961. Mr. Pradeep filed an application for the immunity from imposition of penalty and prosecution before the Assessing Officer. Is he entitled to file application for immunity from penalty and prosecution under section 270A and 276C, respectively, before the Assessing Officer? **(2 x 4 = 8 Marks)**

Answer**(a)**

- (i) 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.

- (ii) Section 270AA empowers an assessee to make an application to the Assessing Officer for grant of immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C, if he -

- (i) pays the tax and interest payable as per the order of reassessment under section 147, within the period specified in such notice of demand; and
- (ii) does not prefer an appeal against such reassessment order.

Therefore, Mr. Pradeep is entitled to file an application for immunity from penalty under section 270A and prosecution under section 276C before the Assessing Officer. He has to do so within one month from the end of the month in which the order of reassessment is received.

However, immunity shall be granted by the Assessing Officer only if the penalty proceedings under section 270A have **not** been initiated on account of the following, namely:—

- (a) misrepresentation or suppression of facts;
- (b) failure to record investments in the books of account;
- (c) claim of expenditure not substantiated by any evidence;
- (d) recording of any false entry in the books of account;
- (e) failure to record any receipt in books of account having a bearing on total income; or
- (f) 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 apply.

(+) 21(Y) 9mths Capitalise
 1041111 - 25-8 + 2021 = Int.
 4.67(Y) D/A 43B

Question 1

The net profit of M/s Dilip Industries Ltd engaged in the manufacturing of Iron and Steel in Belampalli, a notified backward area in Andhra Pradesh, after debit/credit of the following amounts to its Statement of Profit and Loss for the year ended 31-03-2024 was Rs. 1000 lakhs.

Amounts Debited

1. Depreciation calculated as per useful life of its assets Rs. 350 lakhs (+)
2. The company has paid Rs. 50 lakhs on 01-08-2023 to a research institution recognized and notified by the Central Government which has its object of undertaking scientific research. 35(Y)(ii)
3. The company has provided interest at 8% p.a. on Rs. 350 lakhs being amount borrowed from a non-banking financial company on 01-05-2023 for purchase of machinery. The interest outstanding as on 31-03-2024 was paid on 01-11-2024.
4. Salary of Rs. 100 lakhs to foreign technicians for installation of machinery at the factory premises was paid without deduction of tax. Add to NP ⊕ Add to P&M
5. General Expenses include Rs. 35 lakhs, incurred towards bringing drinking water to the village in which the factory is situated. Allowed 37(Y)
6. Donation includes Rs. 10 lakhs given to a political party. (+) 80(Y)(B) → Assume 0 then than CASH
7. The company has incurred expenditure of Rs. 25 lakhs, towards purchase of coal for its smelting furnace for which invoice is not available. However, indirect evidence such as Goods Inward report, online payment made towards the purchases are available. The auditors have made an adverse remark in their Report in this regard. Allowed. or D/A Both views can be taken AO.

Amounts credited

1. The company had made a sale of for Rs. 20 Lakhs to M/s A. Co Engineers a sole proprietary concern, on 10-10-2022. On 01-02-2023 Rs. 10 lakhs was written off in the books as bad debts. Due to the demise of the sole proprietor, the company could collect only Rs. 7 Lakhs towards the final settlement on 01-03-2024. The amount recovered was shown as Bad debts recovered and credited to Statement of Profit and Loss. ∴ Reduce 7-l

Additional Information

1. Written down value of its assets as on 01-04-2023 was as follows:
 - a. Factory Building Rs. 1200 Lakhs, → 10%
 - b. Computers and accessories Rs. 50 Lakhs, 40%
 - c. Office appliances Rs. 30 Lakhs, 15%
 - d. Tractors used for movement of raw materials, Semi finished goods and Finished goods within the factory premises 20 lakhs, 15%
 - e. Plant and Machinery Rs. 800 Lakhs. 15%

Additions made to the assets were as follows:

- i. Factory Buildings Rs. 300 Lakhs - Put to use from 01-11-2023. 5%
- ii. Computers Rs. 25 Lakhs - Put to use on 01-05-2023. 40%
- iii. Tractors Rs. 15 Lakhs - on 01-08-2023 and Rs. 10 Lakhs - Put to use on 01-02-2024. 15% + 20% 7.5% + 10%
- iv. Plant and machinery Rs. 500 Lakhs - Installed and put to use on 01-02-2024. 50% + 10% + 2% 7.5% + 10%
- v. Expenditure incurred towards the grant of ISO 9001 certificate Rs. 10 Lakhs. This amount is included in the Property, Plant and Asset Schedule as Intangible asset. Treat as Rev. expense.
- f. The recognition granted to the research association which was engaged in scientific research was subsequently withdrawn by the Government on 28-02-2024. ∴ No effect.

You are required to compute the Total Income of the company for the Assessment Year 2024-25. Ignore MAT and the provisions of section 115BAA. (14 Marks)

Answer

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

	Particulars	Amount (in Lakhs)
I	Profits and gains of business and profession	

Net profit as per Statement of Profit and Loss		1,000.00
Add: Items debited but to be considered separately or to be disallowed		
(1) Depreciation as per useful life of assets	350.00	
(2) Contribution to research institution approved and notified by the Central Government for scientific research [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. As per Explanation below section 35(1)(iii), deduction would not be denied merely on the ground that subsequent to payment of such sum by Dilip Industries Ltd., the approval granted to research institution is withdrawn. Since the amount of contribution is already debited to statement of profit and loss, no further adjustment is required]	-	
(3) Interest on borrowing paid to NBFC after due date of filing return of income [8% x 350 lakhs x 11/12] [Interest on borrowing from NBFC upto 1.2.2024, 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 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., 31.10.2024. Since the entire interest has been debited to the statement of profit and loss, it has to be added back while computing business income]	25.67	
(4) 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]	100.00	
(5) Expense towards bringing drinking water to the village [Expenditure towards bringing drinking water to the village in which the factory is situated will benefit the employees working in the factory and also facilitate the manufacturing activity carried on. Also, being known as a good corporate citizen brings goodwill of the local community, as also with the regulatory agencies and the society at large, thereby creating an atmosphere in which the business can succeed in a greater measure with the aid of such goodwill. It was so held in CIT vs. Madras Refineries Ltd. (2004) (Mad.). Hence, the same is allowable as deduction u/s 37(1). Since it has already been debited to statement of profit and loss, no further adjustment is necessary].	-	
(6) Donation to political party [Since the 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]	10.00	
(7) Expenditure towards purchase of coal [Even though payments made online need not be treated as	-	

<p>genuine automatically on their face value, the assessee had produced Goods Inward Report, based on which genuineness of the transaction and the related payment can be established [CIT v. SVE Engineers P Ltd. (Mad.)] Therefore, the said expenditure is allowable as deduction. Since the same has already been debited to the statement of profit and loss, no further adjustment is required.</p> <p>Note – Alternatively, since the question is silent regarding the satisfaction of the tax authorities about the genuineness of the transaction based on the Goods Inward Report, the said expenditure can be added back, on the ground that payments made online need not be treated as genuine automatically on their face value]</p>		485.67
		1,485.67
Less: Items credited but not chargeable to tax/ expenses allowed but not debited		
1. Bad debt recovered	7.00	
[Since the deduction of bad debt allowed u/s 36 was Rs. 10 lakhs out of the total debt of Rs. 20 lakhs; and the amount recovered in respect of such debt is only Rs. 7 lakhs which is not more than the amount of Rs. 10 lakhs not written off, no amount is chargeable to tax as business income. Since the amount of Rs. 7 lakhs recovered has been credited to the statement of profit and loss, it has to be reduced while computing business income.		
1. Bad debts	3.00	
[The company had written off Rs. 10 lakh earlier, and out of the balance Rs. 10 lakhs, only Rs. 7 lakhs could be collected towards final settlement. Therefore, the balance Rs. 3 lakhs will be allowable as deduction, provided it is written off in the books of account]		
Expenditure towards grant of ISO 9001 certificate	10.00	
[Expenditure towards grant of ISO 9001 certificate is not a capital expenditure since it does not create an asset of enduring nature. Accordingly, expenditure towards granting of ISO 9001 is revenue in nature [CIT vs. Infosys Technologies Ltd. (2012) (Kar.)]. Since the same is not debited in statement of profit and loss, it has to be reduced while computing business income].		
		20.00
Less: Depreciation as per Income-tax Rules, 1962		
- Factory building		
On Opening WDV = Rs. 1200 lakhs x 10%	120	
On factory building purchased on 1.11.2023 [Rs. 1500 lakhs x 10% x 50%, since it has been put to use for less than 180 days during the year]		135.00
- Computer and accessories		
On opening WDV = Rs. 50 lakhs x 40%	20	
On computer purchased on 1.5.2023 [Rs. 25 lakhs x 40%, since it has been put to use for more than 180 days during the year]		30.00
- Plant and machinery		
<u>Office appliances</u> on opening WDV [Rs. 30 lakhs x 4.50%		
15%]		

<p>Tractors</p> <p>On opening WDV = Rs. 20 lakhs x 15% 3.00</p> <p>On tractor purchased on 1.8.2023 [Rs. 15 lakhs x 2.25 15%, since it has been put to use for more than 180 days during the year]</p> <p>On tractor purchased on 1.2.2024 [Rs. 10 lakhs x 0.75 15% x 50%, since it has been put to use for less than 180 days during the year]</p> <p>Plant and machinery</p> <p>On opening WDV = Rs. 800 lakhs x 15% 120.00</p> <p>On P & M installed on 1.2.2024 [Rs. 621 lakhs (Rs. 46.58 500 lakhs + Rs. 100 lakhs of salary for installation + Rs. 21 lakhs, being interest from 1.5.2023 to 31.1.2021) x 15% x 50%, since it has been put to use for less than 180 days during the year]</p> <p style="text-align: right;">177.08</p>			
<p>Additional depreciation</p> <p>On tractors installed and put to use on 1.8.2023 = 3.00 20% x Rs. 15 lakhs, since it is used within factory premises</p> <p>On tractors installed and put to use on 1.2.2024 = 1.00 20% x 50% x Rs. 10 lakhs, since it is used within factory premises</p> <p>On new plant and machinery installed and put to use on 1.2.2024 = 50% x 20% x Rs. 621 lakhs</p>		243.18	408.18
<p>Gross Total Income</p>			1057.49
<p>Less: Deduction under Chapter VI-A</p> <p>Deduction under section 80GGB [Donation to political party is allowed as deduction to Dilip Industries Ltd., assuming that the payment is made otherwise than by way of cash]</p>			10.00
<p>Total Income</p>			1047.49

Question 2

(a) M/s A Ltd, entered into a scheme of amalgamation with M/s. X Ltd and Y Ltd. (Transferor). The appointed date of the scheme was 01-01-2015. The schemes which also incorporated provisions for filing returns beyond the stipulated time were duly approved and sanctioned by National Company Law Tribunal on 31-05-2018, which was duly filed with the Assessing Officer on 10-06-2018. M/s A Ltd, X Ltd and Y Ltd filed its original return of income for the Asst. Year 2016-17 on 31-08-2016 declaring loss of Rs. 100 lakhs, Rs. 150 lakhs and Rs. 120 lakhs, respectively. M/s A Ltd., thereafter, filed a revised return on 31-12-2018 claiming further loss for Assessment Year 2016-17 based on the revised computation of X Ltd. The Assessing Officer did not entertain the revised return stating that it was time barred, and condonation was not taken from CBDT for filing revised return beyond stipulated time. What is your view?

(OR)

M/s A & Co.'s return for the Assessment Year 2018-19 was selected for scrutiny. Disallowances to the extent of Rs. 50 lakhs and Rs. 75 lakhs was made since the assessee could not prove that bad debts claimed were supported by requisite evidences and repairs and maintenance which were booked on an estimate. It was further observed that another partnership firm M/s B & Co was a partner of M/s A & Co. The Assessing Officer proposed to change the status as AOP and complete the assessment.

*Outdated
New Sec
came on
it*

*Court said.
A Firm cannot
become a
partner in a
Firm.*

"3 Issues in this Q:-"

*if it is
current repair*

prove to AO → Allow

cannot prove to AO

Discuss whether the proposal of the Assessing Officer to change the status as AOP is correct in law.

- (b) Mr. Ram, a citizen of USA, resides in San Jose in USA since 2007. He is a non-resident since Asst. Year 2007-08. 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	72
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 Asst. Year 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 sec 115BAC(1A) is opted).
2. Advise Mr. Ram the procedure involved to claim Foreign Tax Credit. (6 Marks)

Answer

(a) [First Alternative]

The scheme of amalgamation entered into between A Ltd and the transferors, X Ltd. and Y Ltd., enabled A Ltd. to file revised return even after the prescribed time limit for filing or revising such returns had lapsed, without incurring any liability on account of interest, penalty or any other sum. The scheme was sanctioned by NCLT and attained statutory force not only inter se A Ltd. and the transferors, X Ltd. and Y Ltd., but also in relation to the Department, since there was no objection raised by the Department to the said scheme which was filed with the Assessing Officer on 10.6.2018.

As a consequence, the amalgamating companies, X Ltd. and Y Ltd., lost their separate identity and character, and ceased to exist upon the approval of the scheme of amalgamation. The scheme, which incorporated provisions for filing revised returns beyond the prescribed time limit, came into force retrospectively from the appointed date, i.e., January 1, 2015. Accordingly, A Ltd. filed its revised return on December 31st, 2018.

In view of section 170(1), the Department was required to receive the revised returns of income for A.Y. 2016-17 and assess the income of A Ltd. taking into account the scheme of amalgamation as sanctioned by the NCLT due to the following reasons:

- (a) Section 139(5) requiring filing of revised return before 9 months from the end of relevant assessment year (31.12.2016, in this case)² would not apply since the revised

returns were not filed by A Ltd. on account of any omission or wrong statement in the original return. The delay was due to the time taken to obtain sanction of the scheme from NCLT. It was an impossibility for A Ltd. to have filed the revised returns for A.Y.2016-17 before the due date of Dec 31, 2016, since NCLT passed the order sanctioning the scheme only on May 31, 2018;

- (b) A Ltd. is not required to apply for condonation from CBDT since it was filing revised return of income consequent to scheme of amalgamation with the prior approval and sanction of the NCLT, without any objection from the Department.

Note – The facts of the above case are based on the facts in *Dalmia Power Ltd. & Anr. v. ACIT [2020]*, wherein the above issue came up before the Supreme Court. The above answer is based on the rationale of the said Supreme Court ruling.

(a) **[Second Alternative]**

In this case, the Assessing Officer disallowed bad debts, since the same was not supported by requisite evidence, and also repairs and maintenance which were booked by estimate. He also proposed to change the status of the firm as AOP and complete the assessment.

Section 36(1)(vii) permits deduction of bad debts written off in the books of account. The Act does not require supporting evidence for claim of this deduction. Hence, the Assessing Officer's action in disallowing bad debts since the same were not supported by requisite evidence, is incorrect.

If the repairs are in the nature of current repairs allowable under section 30 or 31, and a provision has been made in respect of such repairs on the basis of a reliable estimate, the same is allowable as deduction subject to satisfaction of conditions laid down in ICDS X. Therefore, the correctness of the Assessing Officer's action is dependent on the nature of repairs and the satisfaction of conditions laid down in ICDS X.

A partnership firm is a relationship between persons who have agreed to share the profits of the business carried on by all or any of them acting for all. Since firm is not a separate legal entity, it cannot be a partner. In this case, since another partnership firm M/s. B & Co., was a partner in M/s. A & Co., the assessment of M/s. A & Co. cannot be carried out as a firm. Accordingly, the proposed action of the Assessing Officer to change the status of the firm to AOP and complete the assessment is in order.

- (b) 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	Rs.
Salaries	
For the period from 1 st April, 2023 to 31 st 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) [Available, since Ram has opted for section 115BAC]	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 Rs. 3,00,000	Nil
Rs. 3,00,001 to Rs. 6,00,000@5%	15,000
Rs. 6,00,001 to Rs. 9,00,000@10%	30,000
Rs. 9,00,001 to Rs. 12,00,000@15%	45,000
Rs. 12,00,001 to Rs. 15,00,000@20%	60,000
Rs. 15,00,001 to Rs. 44,50,000@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 = Rs. 10,76,400

and

Foreign tax paid on such income = Rs. 11,52,000 / Rs. 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 31.1.2024 is also 72. Accordingly, the FTC would be Rs. **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 Rs.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 31.1.2024 is also 72. Accordingly, the FTC would be Rs. **8,49,600**.

The tax payable would be Rs. 2,26,800 (i.e., Rs. 10,76,400 – FTC of Rs. 849,600). Accordingly, interest u/s 234A would be leviable@1% for one month, assuming the balance tax of Rs. 2,26,800 is paid on 25th August, 2024, being the date of filing of return of income.

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.

The following statements/forms need to be furnished by Mr. Ram on or before 31st July, 2024 for claiming FTC - *before end of AY in which income is offered.*

File till 31/3/25.

- (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.

Question 3

- (a) 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 - Rs. 20 lakhs. *→ Fund pay Tax →*
- (ii) Long-term capital losses - Rs. 30 lakhs. *→ Pass to Investor > 12 mths. → 80% - 24/45*
- (iii) Income from other sources - Rs. 40 lakhs. *→ Investor.*

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? **(8 Marks)**

- (b) Cherry Ltd., a non-resident German company, has the following incomes in India during the year ended on 31.03.2024:

- (i) Dividend income of Rs. 12,50,000 from XY Ltd., an Indian company listed on recognized stock exchange. *20%*
- (ii) 8% debentures of Rs. 20,00,000 received from X Ltd., an Indian Company, on October 1, 2023, in consideration of providing technical knowhow (date of payment of interest being March 31 every year). *40% FTS ⊕ Int = 40% ISA → N.A.*
- (iii) Dividend received Rs. 5,50,000 on Global Depository Receipts of Y Ltd., an Indian company, issued under a scheme of Central Government against the initial issue of shares of the company and purchased by Cherry Ltd. in foreign currency through an approved intermediary. *ISA → 10% Gross up → 10.4%*
- (iv) Business Income of Rs. 8,00,000 from a unit established at Mumbai. *40%*
- (v) Income by way of royalty (other than referred to in section 44DA) amounting to Rs. 10,00,000, received from Z Ltd., an Indian company, in pursuance of an agreement approved by Central Government. As per DTTA between the two countries, such royalty is taxable @24%. *20.8% Gross up 79.2%*

With brief reasons for the treatment of the above incomes, you are required to compute the tax liability of Cherry Ltd. for the Assessment Year 2024-25. **(6 Marks)**

Answer

- (a) 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 - Rs. 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 - Rs. 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 Rs. 1.5 lakhs (Rs. 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 Rs. 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 - Rs. 40 lakhs

“Income from Other Sources” would be exempt in the hands of Investment fund.

Rs. 2 lakhs (Rs. 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.

(b) Computation of total income and tax liability of Cherry Ltd., a non-resident German company, for the A.Y. 2024-25

Particulars	Rs.
Business Income from a unit established at Mumbai	8,00,000
Income from other sources	
- Dividend income from XY Ltd. an Indian company	12,50,000
- Fees for technical services [would be equivalent to the amount of debentures of Rs. 20,00,000 received from an Indian company, issued in consideration of providing technical knowhow	20,00,000
- Interest on Debentures [Rs. 20,00,000 x 8% x 6/12]	80,000
- Dividend on Global Depository Receipts (GDRs) of Y Ltd. an Indian company, issued under a scheme of Central Government against the initial issue of Y Ltd. and purchased in foreign currency by Cherry Ltd. [Rs. 5,50,000 x 100/89.6, since tax would have been deducted at source @ 10.4%]	6,13,839
- Royalty income received from Z Ltd. an Indian company in pursuance of an agreement approved by Central Government [Rs.10,00,000 x 100/79.2, since tax would have been deducted at source @ 20.8%]	12,62,626
Gross Total Income/ Total income	<u>60,06,465</u>
Computation of tax liability	
Dividend income of Rs. 12,50,000, taxable @20% u/s 115A	2,50,000
Dividend on GDRs of Rs. 6,13,839, taxable @10% u/s 115AC	61,384

Royalty income of Rs. <u>12,62,626</u> , taxable @20% u/s 115A, since it is in pursuance of an agreement approved by the Central Government	2,52,525
FTS of Rs. 20,00,000, taxable @40%, since it is not in pursuance of an agreement approved by the Central Government	8,00,000
Interest on debentures of Rs. 80,000, taxable @40%, since debt is incurred in Indian currency, it is not eligible for concessional rate of 20% u/s 115A	32,000
Business income of Rs.8,00,000 [taxable @40%]	<u>3,20,000</u>
	17,15,909
Add: Health and education cess@4%	<u>68,636</u>
Tax liability	<u>17,84,545</u>
Tax liability (rounded off)	17,84,550

Question 4

(a) Discuss and compute the liability for deduction of tax at source, if any, in the following cases for the Assessment Year 2024-25: *194LB → 5-27-*

(i) A notified **infrastructure debt fund** eligible for exemption u/s 10(47) of the Income-tax Act, 1961 pays interest of Rs. 4.50 lakhs to a company incorporated in USA. The US company incurred **expenditure** of Rs. 15,000 for earning such interest. The fund also pays interest of Rs. 2.50 lakhs to Mr. R, who is a resident of a **notified jurisdictional area**. *31-27- 94A-*

(ii) On 17.06.2023, a **commission** of Rs. 40,000 was **retained** by the consignee 'Harshit Packaging Ltd.' and not remitted to the consignor 'Hari Developers', while remitting the sales consideration. *194H ✓*

(iii) Mr. Harsh, an **employee** of M/s XY Ltd. since 10.04.2020, resigned on 31.03.2024 and withdrew Rs. 80,000 being the balance in his EPF account. His PAN is available with M/s XY Ltd. *192A ⊕ Retire before 5 yrs ⊕ Bid ≥ 50000 . 80000 × 10%*

(iv) Param Construction Ltd. sells a flat to Mr. Mani for Rs. 48 Lakhs on 15.01.2024. The agreement to sell provides that in addition, Mr. Mani has to pay **maintenance charges** (of Rs. 5,000 per month) for 24 months in advance Rs. 2,00,000 for car parking to be used exclusively by him and Rs. 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. *also compare with SDV.* **(8 Marks)**

(b) Paras Ltd. is an **Indian company** engaged in the manufacturing of supreme quality mink blankets. It has total borrowings of Rs. 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 @Rs. 2,000 per unit. Paras Ltd. sold similar blankets to other dealers in Germany @Rs. 2,100 per unit. Paras Ltd. received a bank guarantee on 1.04.2023 for availing a cash credit limit of Rs. 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)

Answer

(a) (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 Rs. 4.50 lakhs to US company would be Rs. 23,400 (i.e., 5.20% of Rs. 4.50 lakhs).

Tax deductible in respect of payment of interest of Rs. 2.50 lakhs to Mr. R, who is a resident of a notified jurisdictional area, would be Rs. 78,000, being 31.2% of Rs. 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 Rs. 15,000.

In the given case, 'Harshit Packaging Ltd.', the consignee, has retained the commission of Rs. 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 Rs. 40,000 @ 5%. Tax deductible would be Rs. 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 Rs. 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 Rs. 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 Rs. 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 Rs. 8,000.

- (iv) Section 194-IA requires deduction of tax@1% by 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 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 Rs. 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 Rs. 52,20,000 (Rs. 48 lakhs + Rs. 1,20,000, being Rs. 5,000 x 24 + Rs. 2 lakhs + Rs. 1 lakh) which is not less than Rs. 50 lakhs, Mr. Mani is required to deduct tax @ 1% on Rs. 52,20,000.

Tax deductible by Mr. Mani would be Rs. 52,200.

If Stamp Duty Value is higher then, tax has to be deducted on Stamp Duty Value.

- (b) (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 Rs. 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 Rs. 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 (in Rs.)
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., Rs. 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., 28.2.2025.
- (3) The excess money (i.e., Rs. 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., Rs. 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.

DEC 2021

Question 1

ABC LTD., a manufacturing company, is engaged in the manufacturing of leather products since 01-11-2019 in the State of Tamil Nadu. As per Statement of Profit and Loss for the year ended 31st March, 2024, the company showed profit of Rs. 1,20,00,000 after debiting or crediting the following items:

- (i) The opening and closing stock for the year were Rs. 55 lakhs and Rs. 54 lakhs respectively. Opening stock was overvalued by 10% and Closing stock was undervalued by 10%. → 54 (+) 90% (+)
- (ii) ABC LTD. paid Rs. 10 Lakhs in foreign currency as sales commission during the year without deducting tax at source to Mr. John, a citizen of U.S.A and non-resident, for procuring orders from outside India. No TDS... No DTA.
- (iii) Rs. 45,000 paid in cash to Mr. Raj employee of the company at the time of his retirement.

Rate 600 can pay upto Rs 50000 CASH-

(+) 55L 110%

115BAB ✓

80JJAA = 150DAY

(+) 61

54 (+) 90% (+)

- (iv) Profit on sale of 2000 shares of M/s. VKL LTD, a listed company Rs. 3,50,000. These shares were sold on 7-10-2023 for Rs. 250 per share. The highest price of VKL LTD. quoted on the stock exchange as on 31-01-2018 was Rs. 175 per share. The said shares were acquired for Rs. 75 per share on 10.06.2016. STT paid both at the time of purchase and sale of shares. *Greenel - following*
- (v) STCG derived from transfer of a Capital asset on which no depreciation is allowable under the Act Rs. 75,000. (-) PGBP → 75000 x 22% → If it was Block → 15%
- (vi) Profit of Rs. 6 lakhs on sale of plot of land on 24-07-2023 to XYZ LTD, a domestic company, the entire shares of which are held by the assessee company. The plot was acquired by ABC LTD. on 30-09-2022. (-) 6-l → exempt (47)
- (vii) Credits to statement of Profit and Loss Account include dividend of Rs. 50,000 received on September 6, 2023 from a domestic company. -50000 → Gross up in IFOs $\frac{50000}{90\%} = 55555$
- (viii) Rs. 20,000 paid for expenses in connection with the inauguration of a new branch opened for expanding the business. Allowed.
- (ix) Rs. 20,000 paid as penalty to Government for company's failure in performance of a contract within stipulated time. There was delay of 4 months and according to the agreement, the company had to pay a penalty of Rs. 5,000 per month to the Government. *Compensatory Penalty Allowed.*
- (x) An amount of Rs. 5 lakhs was paid to the manager of the company under Voluntary Retirement Scheme. 35000 → D/A → 4/5th.
- (xi) Interest of Rs. 75,000 paid by bank remittance, on deposits made by non-resident buyers of goods manufactured by the company. The said payments were made outside India without deduction of tax. *INDIA ← Deposit → Outside*

Additional information:

- (1) During the year F.Y. 2023-24, the company has employed 56 additional employees. All these employees contribute to a recognized provident fund. 39 out of 56 employees joined on 1-6-2023 on a salary of Rs. 15,000 per month, 14 joined on 1-7-2023 on a salary of Rs. 45,790 per month, and 3 joined on 1-11-2023 on a salary of Rs. 22,000 per month. The salaries of 9 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. *INDIA ← India MB → In Paid → TDS ∴ 70000 D/A*
- (2) The company has paid through bank Rs. 1,20,000 to National Fund for Rural Development. *35000*
- (3) The Company opted for concessional rate of tax and exemption from MAT under Section 115BAB for Assessment year 2024-25. *35000 D/A*

Compute the total income and tax payable for the Assessment Year 2024-25 clearly stating the reasons for treatment of each item. (14 Marks)

Answer

Computation of Total Income of ABC Ltd. for the A.Y. 2024-25 under section 115BAB

Particulars		Amount (in Rs.)	
I	Profits and gains of business and profession		
	Net profit as per Statement of profit and loss		1,20,00,000
	Add: Overvaluation of opening stock [Rs. 55,00,000 x 10/110]	5,00,000	
	Undervaluation of closing stock [Rs. 54,00,000 x 10/90]	6,00,000	
	Add: Items debited but to be considered separately or to be disallowed		
	(1) Sales commission to Mr. John, a non-resident, for procuring orders from outside India	Nil	
	[The commission paid to Mr. John, non-resident agent, for services rendered outside India is not chargeable to tax in India. His commission is paid in foreign currency directly to him and is, therefore, not received by him or on his behalf in India. Since commission income for procuring 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.]		
(2)	Payment to Mr. Raj, an employee, on his retirement [Section 40A(3) provides for disallowance@100% of the expenditure incurred exceeding Rs. 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. However, no disallowance under section 40A(3) is to be made as the amount paid to Mr. Raj is on his retirement since such sum payable does not exceed Rs. 50,000. This exception is provided in Rule 6DD]	Nil	
(3)	Expenses in connection with inauguration of a new branch for expanding business [Expenses in connection with inauguration of a new branch for expanding business is allowable as revenue expenditure since it is incurred wholly or exclusively for business purpose. Since the same is already debited in statement of profit and loss, no further adjustment is required]	Nil	
(4)	Penalty to Government for failure in performance of a contract [The penalty of Rs. 20,000 paid for non-fulfilment of a contract within stipulated time is not for the breach of law but was paid for breach of contractual obligations and therefore, is an allowable expense. Since it is already debited in statement of profit and loss, no further adjustment is required]	Nil	
(5)	Voluntary Retirement Scheme expenditure [Only 1/5th of expenditure on voluntary retirement scheme is allowable over a period of five years u/s 35DDA. Since whole amount of expenditure is debited to statement of profit and loss, 4/5th has to be added back [Rs. 5,00,000 x 4/5].	4,00,000	
(6)	Interest paid to non-resident buyers of goods, on deposits made by them [Interest paid to non-resident buyer of goods, on deposits made by them is deemed to accrue or arise in India since such interest is paid by the company, a resident, which used such deposit for the purpose of business carried on by it in India. Thus, such interest is chargeable to tax in India and ABC Ltd. is required to deduct tax at source on such interest. Disallowance@100% of interest paid is attracted under section 40(a)(i), since tax has not been deducted at source therefrom.]	75,000	
(7)	Salary paid to employees through bearer cheques [Salary paid through bearer cheques (9 employees x Rs. 15,000 x 10 months) will attract disallowance u/s 40A(3) and hence, the same has to be added back] [See Note at the end of the solution]	13,50,000	
			29,25,000
			1,49,25,000
	Less: Items credited but chargeable to tax under another		

	head/expenses allowed but not debited		
	(1) Profit on sale of shares of M/s VKL Ltd. [Capital Gain arising on sale of shares of VKL Ltd. is taxable under the head "Capital Gains". Since the profit on sale of shares has been credited to the statement of profit and loss, the same has to be deducted while computing business income]	3,50,000	
	2. Short term capital gain on sale of capital asset on which no depreciation is allowable [Short term capital gain arising on sale of capital asset is taxable under the head "Capital Gains". Since such STCG has been credited to the statement of profit and loss, the same has to be deducted while computing business income]	75,000	
	3. Profit on sale of plot of land to 100% subsidiary [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]	6,00,000	
	4. Dividend received from domestic company [Dividend income from domestic 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]	50,000	
	5. Contribution to National Fund for Rural Development [In respect of payment to a National Fund for Rural Development, deduction is allowable under section 35CCA while computing business income. This deduction is permissible in case of an assessed opting for section 115BAB also]	1,20,000	
			<u>11,95,000</u>
			1,37,30,000
II	Capital Gains		
	1. Long term capital gain on sale of shares of M/s. VKL Ltd. [Since shares were held for more than 12 months] [Full value of consideration 5,00,000 (2,000 x Rs. 250)] Less: Cost of acquisition - Higher of (i) <u>3,50,000</u> and (ii) (i) Actual cost of acquisition (2,000 x Rs. 75) Rs. 1,50,000 (ii) Rs. 3,50,000, being lower of fair market value as on 31.1.2018 (i.e., Rs. 3,50,000, being 2,000 x 175) and sale consideration (i.e., Rs. 5,00,000)	1,50,000	
	2. Short term capital gain on sale of capital asset on which no depreciation is allowable	75,000	
	3. 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]	Nil	
			2,25,000
III	Income from Other Sources		
	Dividend income from domestic company [50,000/90 x 100]		55,555

Gross Total Income	1,40,10,555
Deduction u/s 80JJAA [See Working Note below]	14,49,000
Total Income	1,25,61,555
Total Income (Rounded Off)	1,25,61,560

Computation of tax payable by ABC Ltd. for the A.Y. 2024-25 under section 115BAB

Particulars	Rs.	Rs.
Tax on long-term capital gains in excess of Rs. 1 lakh @10% u/s 112A [Rs. 50,000 x 10%]		5,000
Tax on short term capital gain of Rs. 75,000 derived from transfer of a capital asset on which no depreciation is allowable @22%		16,500
Tax on dividend income of Rs. 55,555 @22%		12,222
Tax on business income @15% of Rs. 1,22,81,000 (i.e., Rs. 1,37,30,000 – Rs.14,49,000)		18,42,150
		18,75,872
Add: Surcharge @10%		1,87,587
		20,63,459
Add: Health and education cess @4%		82,538
Tax liability		21,45,998
Less: TDS on dividend income		5,555
Tax payable		21,40,442
Tax payable (Rounded Off)		21,40,440

Working Note - Computation of deduction u/s 80JJAA

No of eligible additional employees [56 (-) 14 = 42] [14 employees who joined on 1.7.2023 do not qualify as “additional employees” since their monthly emoluments exceed Rs. 25,000. However, 3 employees who joined on 1.11.2023 qualify as additional employees, since they have been employed for more than 150 days during the P.Y.2023-24.] 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 9 employees who joined on 1.6.2023, whose salary is paid by bearer cheque would be Nil. Additional employee cost [Rs. 15,000 x 30 employees (39 - 9) x 10 months] + [Rs. 22,000 x 3 employees x 5 months] = Rs. 45,00,000 + Rs. 3,30,000 Eligible deduction = 30% of Rs. 48,30,000	33 Rs. 48,30,000 Rs. 14,49,000
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Note – Since it is logical to assume that remuneration paid to employees has been debited to statement of profit and loss, consequently, disallowance would be attracted in respect of remuneration paid to 9 employees by bearer cheque every month. Accordingly, Rs. 13,50,000, being salary paid to 9 employees during the P.Y.2023-24 has been added back while computing profits and gains of business or profession.

If a view is taken that the details of remuneration paid to employees, given by way of “Additional Information”, are only for the purpose of computation of deduction under section 80JJAA, then, the computation of income under the head “Profits and gains of business and profession” would be without providing for disallowance under section 40A(3) in respect of payment to employees by bearer cheque. In such a case, profits and gains of business or profession would be Rs. 1,23,80,000, gross total income would be Rs. 1,26,60,555 and total income (rounded off) would be Rs. 1,12,11,560. The tax liability would be Rs. 19,14,337 and the tax payable would be Rs. 19,08,780.

Question 2

Atingo

Atedco

(a) (i) Samay Impex Ltd. was amalgamated with Delhi Impex Ltd. on 01-04-2023. All the conditions of section 72A are complied with. Samay Impex Limited has the following carried forward losses as assessed upto Assessment year 2023-24:

Sr. No.	Particulars	Amount in Rs.
1.	Speculative loss <i>X</i>	5,00,000
2.	Unabsorbed depreciation	18,00,000
3.	Unabsorbed expenditure of capital nature on scientific research <i>✓</i>	2,00,000
4.	Business Loss <i>✓</i>	1,25,00,000

175l
(18l)
(2l)
(125l)
(+24l)
(-)(15l)
39l.

Delhi Impex Limited has computed a profit of Rs. 175 lakhs for the financial year 2023-24 before setting off the eligible losses of Samay Impex Ltd. but after providing depreciation @15% per annum on Rs. 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 Rs. 100 lakhs. The above profit of Delhi Impex Ltd. includes speculative profit of Rs. 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)**

(ii) The Government compulsorily acquired land of Mr. Shivam in April 2019 and paid compensation of Rs. 20 lakhs in June 2020. The land was acquired by Mr. Shivam in June 2003 for Rs. 12 lakhs. He had filed for additional compensation through Court and was awarded Rs. 18 Lakhs in February 2021 but this amount was received only during May 2021. Compute the taxable capital gain from the above transaction indicating the relevant assessment year. Expenses in connection with compulsory acquisition were Rs. 30,000 and for obtaining enhancement of compensation was Rs. 1 lakh

Cost inflation index: FY 2003-04 :109; FY 2019-20: 289; FY 2020-21: 301; FY 2021-22:317

Asset = 120l

Loan 68.75% - 82.5% **(4 Marks)**

(b) 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 Rs. 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.

AE: NP %

5 x 100

80 = 6.25%

Gama Ltd. in Bhubaneswar which has a similar business model, provides software back up support to Beta Inc. in Penang, Malaysia.

unrelated: 100 x 100 = 16.67% / 600

Gama Ltd.'s cost and operating profits are as hereunder:

Particulars	Amount (in lakhs)
Direct costs	500
Indirect costs	100
Operating profits	100

our cost = 80 x 30000 x 55 + 16.67%

(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 = Rs. 55.

(b) Is any adjustment required be made to the total income of Alpha Ltd.?

Note: SD = Singapore Dollars

(6 Marks)

Answer

(a) (i) Computation of total income of Delhi Impex Limited for the A.Y. 2024-25

Particulars	Rs. 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. [Rs. 60 lakhs × 15%]		9
Set-off of b/f business loss of Samay Impex Ltd.		184
Set-off of unabsorbed depreciation u/s 32(2) read with section 72A		(125)
Set-off of unabsorbed capital expenditure on scientific research u/s 35(1)(iv) read with section 35(4)		(18)
		(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.2023-24) 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 Rs. 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.

(ii) Computation of capital gains of Mr. Shivam for the A.Y.2021-22

Particulars	Rs.
Full value of consideration (Compensation received) [Taxable in the year of receipt i.e., P.Y.2020-21]	20,00,000
Less: Expenses in connection with compulsory acquisition	30,000
	19,70,000
Less: Indexed cost of acquisition [Rs. 12,00,000 × 289/109]	31,81,651
Long-term capital loss (since land was held for > 24 months) for the A.Y. 2021-22	12,11,651
Note – Since the year of compulsory acquisition i.e., F.Y.2019-20 is the year of transfer of land, CII for F.Y.2019-20 has to be considered for computing indexed cost of acquisition.	

Computation of capital gains of Mr. Shivam for the A.Y.2022-23

Particulars	Rs.
Full value of consideration (Enhanced Compensation received is taxable in the year of receipt i.e., P.Y.2021-22)	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.2021-22	12,11,651
Long-term capital gains for the A.Y. 2022-23	4,88,349
Note – No deduction in respect of cost of acquisition is allowable from enhanced compensation.	

- (b) 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% [(Rs. 55 x 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	Rs.
Billing per manhour [SD 85/hour x Rs. 55]	4675
Cost per man hour [SD 80/hour x Rs.55]	4400
Operating profit per manhour	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	Rs. in lakhs
Direct Cost	500
Indirect Cost	100
Total cost	600
Operating profits	100
Operating profits to cost (%) [100 x 100/600] = 16.67%	

1. Computation of Arm's Length Price of provision of software backup support provided by Alpha Ltd. to Alpha Inc. by applying TNMM

Particulars	Rs.
Cost for Alpha Ltd. (per man hour) [SD 80 x Rs. 55/MD]	4,400.00
Add: Arm's length operating profit margin as % of cost (16.67% of Rs. 4,400)	733.48
Arm's length price (per manhour) in Rs.	5,133.48
Arm's length price of total manhours spent by Alpha Ltd. for providing software backup support to Alpha Inc. [Rs. 5,133.48 x 30,000 man hours] = Rs. 15,40,04,400	

(2) Adjustment to be made to the total income of Alpha Ltd.

Particulars	Rs.
Arm's length price of total manhours spent by Alpha Ltd. for providing software backup support to Alpha Inc.	15,40,04,400
Less: Amount actually billed [85 SD x Rs. 55/SD x 30,000 manhours]	14,02,50,000
Arm's length adjustment to be made to the total income of Alpha Ltd.	1,37,54,400

Question 3

- (a) Ramnarayan Foundation Trust was formed on 01-04-2006. It applied for registration u/s. 12AB of the Act and got the registration approved from prescribed authority with effect from 01-04-2010. The trust got the exemption from payment of taxes satisfying the conditions laid down in Sections 11 to 13 from 01-04-2010. The trust got dissolved on 29-12-2023.

The Balance Sheet of the Trust on the date of dissolution was as under:

Liabilities	Amount (Rs.)	Assets	Amount (Rs.)
Corpus of the trust	6,00,000	Land and Building BV.	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 ^{3/4}	Investment in Equity Shares - Unquoted (in Z Ltd.)	1,50,000
Loan taken for the purchase of unquoted shares (taken in year 2007-	1,00,000	Cash	1,00,000
		Bank Balance	50,000

only 1/4 from Agri Income.

(08)			
Total	19,00,000	Total	19,00,000

Additional information:

- (i) FMV of Land and Building is Rs. 50,00,000. $\rightarrow 3/4 = 37.5\%$
- (ii) 50% of the Unquoted shares were acquired during the year 2007-08.
- (iii) Market Value of quoted shares on the date of dissolution is Rs. 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: $55l \times 15\% \times 50\% = 412500$
 - (a) 1,00,000 Equity Shares with face value of Rs. 10 each
 - (b) Total Book Value of the assets (other than bullion, jewellery) is Rs. 60,00,000.
 - (c) Market Value of bullion and jewellery is Rs. 30,00,000. **Net Asset = 55l**
 - (d) Liabilities amounting to Rs. 35,00,000.
- (vi) The trust distributed the assets on dissolution, valuing Rs. 8,00,000 to another trust registered u/s 12AA of the Act before the specified time.

our share = $\frac{15\%}{100} \times 100$

Compute the tax payable by Ramnarayan Foundation Trust for the A.Y. 2024-25 u/s 115TD. **(8 Marks)**

- (b) Mr. Anil Talpade, aged 62 years, a resident individual, furnishes the following particulars of income earned by him in India and in Brazil for the previous year 2023-24. India does not have a double taxation avoidance agreement with Brazil.

S. No.	Particulars	Amount (Rs.)
1.	Gross Salary in India	4,50,000
2.	Professional Income received in Country Brazil	5,80,000
3.	Dividend Income in Country Brazil	88,000
4.	Rent from House Property Situated in Country Brazil	1,80,000
5.	Interest Income on FDR'S with Bank of Baroda, Pune Branch.	62,000
6.	Paid interest on Housing Loan to Punjab National Bank, Pune branch for the residential property, where he and his family resides	2,00,000
7.	Investment in Public Provident Fund	1,50,000
8.	Medical insurance Premium paid for himself	32,000

Assume the tax rate in Country Brazil is 16%.

Compute the total income and tax liability of Mr. Anil Talpade for the Assessment Year 2024-25 assuming he opts for Section 115BAC(1A) complying with all the necessary rules. **(6 Marks)**

Answer

- (a) 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 (Rs.)
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 Rs. 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) [Rs. 50 lakhs x 3/4]	37,50,000
-	Equity shares - quoted [market value on the date of dissolution]	18,00,000
-	Equity shares - unquoted in Z Ltd. [Since the trust was registered only on 1.4.2010 and benefit of section 11 and 12 was available to the trust only from A.Y.2011-12, relevant to P.Y.2010-11, the value of 50% of the unquoted shares purchased in P.Y.2007-08, in respect of which benefit under sections 11 and 12 was not allowed, has to be ignored for computing accreted income]	4,12,500
	Value of unquoted shares = Rs. 4,12,500 [50% of Rs. 8,25,000 (Book value of assets (other than bullion, jewellery) of Z Ltd. i.e., Rs. 60,00,000 + Market value of bullion and jewellery of Z Ltd. i.e., Rs. 30,00,000 – Liabilities of Rs. 35,00,000 x paid up value of shares i.e., Rs. 1,50,000/ total amount of paid up equity share capital as shown in the Balance Sheet of Rs. 10,00,000)]	
-	Cash	1,00,000
-	Bank Balance	50,000
		61,12,500
(2)	Total liability	
-	Corpus Fund of Rs. 6,00,000 [not includible]	Nil
-	Reserves and Surplus Rs. 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 2007-08, when the trust was not eligible for exemption under section 11 and 12, the same is not deductible]	Nil
		9,00,000

(b) Computation of total income of Mr. Anil Talpade for A.Y.2024-25

Particulars	Rs.	Rs.
Income from salaries [Standard deduction allowable, as he opts for section 115BAC]		4,00,000
Income from House Property		
Annual value of self-occupied property in India	Nil	
Less: Interest on housing loan [not allowable, since he opts for section 115BAC]	Nil	
	Nil	
Annual value of house property in Brazil [Rental income from property in Brazil]	1,80,000	
Less: Deduction u/s 24(a) @30% (allowable in respect of let out property)	54,000	1,26,000
Profits and gains from business or profession		
Professional income from Brazil		5,80,000
Income from Other Sources		
Dividend from Brazil		88,000
Interest on FDRs with Bank of Baroda		62,000
Gross Total Income		12,56,000
Less: Deduction under 80C in respect of investment in PPF and deduction under section 80D in respect of medical insurance premium [no deduction is allowable under these sections, since he opts for section 115BAC(1A)]		Nil

Total Income	12,56,000
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Computation of tax liability of Mr. Anil Talpade for A.Y.2024-25

Particulars	Amount (Rs.)
Upto Rs.3,00,000	Nil
Rs.3,00,001 – Rs.6,00,000 [@5%]	15,000
Rs.6,00,001 – Rs.9,00,000 [@10%]	30,000
Rs.9,00,001 – Rs.12,00,000 [@15%]	45,000
Rs.12,00,001 – Rs.12,56,000 [@20%]	11,200
	1,01,200
Add: Health & Education Cess@4%	4,048
	1,05,248
Less: Deduction under section 91	
Average rate of tax in India = Rs.1,05,248 x 100/ Rs.12,56,000 = 8.3796%	
Rate of tax in Brazil = 16%	
Doubly taxed income = Rs. 1,26,000 + Rs. 5,80,000 + Rs. 88,000 = Rs. 7,94,000	
Lower of the Indian rate of tax and Brazil rate of tax is 8.3796%, which has to be applied on doubly taxed income of Rs. 7,94,000 [8.3796% x Rs. 7,94,000]	66,534
Tax Payable	38,713
Tax Payable (rounded off)	38,710

Question 4

(a)

(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. *1% TDS on Cr/Payment*. Mr. Z sold goods worth Rs. 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	Rs.20 lakhs	<i>5 1/2%</i>
28-02-2024	Rs.15 lakhs	<i>1 1/2%</i>

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. *15% = balance 1 1/2%*

Mr. Z received Rs. 10,00,000 directly in his bank out of above Rs. 60 lakhs through PayTM Wallet directly connected by ABC.com to the account of Mr. Z. *1 1/2%*

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 Rs. 9.80 crores. The sale of spare parts and service station is Rs. 60 lakhs for F.Y.2022-23. *To > 10cr* 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 Rs. in Lacs
(IF) Maruti	14-07-2023	37 lakhs
(IF) Maruti	12-08-2023	19 lakhs
(IF) Ford	18-10-2023	8 lakhs (<i>→ 2 views</i>)
(IF) Maruti	05-11-2023	12 lakhs

The payment against each invoice was made on the date of invoice itself.

Threshold < 50e
Threshold All (AM) > 50e
∴ ✓

206(1H)x



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)

(b) 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: N-P-I CHXIIA → optional

Particulars	Amounts (Rs.)
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 31-12-2024	1,80,000
Tax deducted at source	1,55,000

2nd view → No Tax → slab rate.
 Slab rates
 CHXIIA → Assume Tax
 157.
 115F NA
 80% OLD Regime

Compute balance tax payable/refund due for the assessment year 2024-25 in accordance with special provisions applicable to non-residents. CHXIIA opt it. (6 Marks)

Answer

(a) (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 Rs. 20,000 (1% x Rs. 20,00,000) and Rs. 15,000 (1% x Rs. 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 Rs. 10,000 (1% of Rs. 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 Rs. 15,000 (1% of Rs. 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 Rs. 10 lakhs.

Accordingly, Raghav Motors Ltd. is required to collect tax at source u/s 206C(1F) on the following dates -

- Rs. 37,000 [1% on Rs. 37,00,000] on 14.7.2023

- Rs. 19,000 [1% on Rs. 19,00,000] on 12.8.2023

- Rs. 12,000 [1% on Rs. 12,00,000] on 5.11.2023

Total amount of TCS is Rs. 68,000.

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 Rs. 8,00,000, tax is not required to be collected under section 206C(1F), since its value does not exceed Rs. 10,00,000.

Further, as regards receipt of sale consideration of Rs. 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 Rs. 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 Rs. 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 Rs. 50 lakhs during the previous year 2023-24 and the total sales of Raghav Motors Ltd. from the business carried on by it exceed Rs. 10 crores (Rs. 10.40 crores i.e., Rs. 9.80 crores + Rs. 0.60 crores) during the financial year 2022-23, a view can be taken that tax is to be collected at source @0.1% of Rs. 8 lakh u/s 206C(1H), amounting to Rs. 800, at the time of receipt of consideration i.e., on 18.10.2023.

In such case, TCS liability will be Rs. 68,000 + Rs. 800 = Rs. 68,800

(b) 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	Rs.
Capital gains	
Long-term capital gains on transfer of specified asset	Rs. 8,50,000
Less: Expenditure incurred in connection with such transfer	<u>Rs. 30,000</u>
Rs. 8,20,000	
	<u>Rs. 8,20,000</u>
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]	<u>Nil</u>
Taxable LTCG	Rs. 8,20,000
Short-term capital gains u/s 111A	<u>Rs. 2,00,000</u>
	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	<u>1,50,000</u>
Total Income	<u>12,63,000</u>
Particulars	Rs.
Computation of tax payable/refundable	
LTCG of Rs. 8,20,000 taxable @10% [10% of Rs. 8,20,000]	82,000
STCG of Rs. 2,00,000 [taxable @15%]	30,000
Interest on Government securities [Investment income] [20% of Rs. 1,00,000]	20,000
Interest on deposits held with private limited companies Rs. 1,43,000 [Rs. 2,93,000 – Rs. 1,50,000], which is less than the basic exemption limit of Rs. 2,50,000	<u>Nil</u>
	1,32,000
Add: Health and education cess@4%	<u>5,280</u>
Tax liability	1,37,280
Less: TDS	<u>1,55,000</u>
Tax refundable	<u>17,720</u>

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	Rs.
Capital gains	

Long-term capital gains on transfer of specified asset	Rs. 8,50,000	
Less: Expenditure incurred in connection with such transfer	<u>Rs. 30,000</u>	
	Rs. 8,20,000	
Less: Investment in shares of Indian Public Limited companies [Deduction u/s 115F not allowable, since investment is made after six months from the date of transfer]	<u>Nil</u>	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]		<u>1,00,000</u>
Gross Total Income		14,13,000
Less: Deduction u/s 80C in respect of NSC		<u>1,50,000</u>
Total Income		<u>12,63,000</u>
Particulars		Rs.
Computation of tax payable/refundable		
LTCG of Rs. 8,20,000 taxable@10% [10% of Rs. 8,20,000]		82,000
STCG of Rs. 2,00,000 [taxable@15%]		30,000
Tax on Interest on Government securities and Interest on deposits held with private limited companies on Rs. 2,43,000 [Rs. 3,93,000 – Rs. 1,50,000], which is less than the basic exemption limit of Rs. 2,50,000		<u>Nil</u>
Add: Health and education cess@4%		1,12,000
Tax liability		<u>4,480</u>
Less: TDS		1,16,480
Tax refundable		<u>1,55,000</u>
		38,520

Question 5

(a) Your answer should cover these aspects:

- Issue Involved
- Provisions Applicable,
- Analysis and
- Conclusion

(i) Nikhil, an individual, furnished his return of income for Assessment Year 2018-19 declaring income of Rs. 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)

Can
CIT
Revise
an
intimation
u/s-143(i)
as per
S-264.

(OR)

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)

(ii) A scheme of arrangement was approved by the Delhi High Court pursuant to which the assessee company bought back 5,00,000 shares at the rate of Rs. 18,000 per share for a total consideration of Rs. 900 crores held by its sole shareholder and holding company in Mauritius.

In its return of income, it declared the details of the transaction but denied the liability to pay any tax on the said transaction. Pursuant to notice under section 143(2), an assessment order was passed rejecting the assessee's contention that the transaction was not a buyback in terms of section 115QA but a buy-back pursuant to a scheme approved by the High Court, and holding the assessee liable to pay tax at 20% on the distributed income of Rs. 900 crores.

The assessee filed a writ petition with High Court against this portion of the assessment order. The Department submitted that since the remedy of appeal was available to the assessee, the writ petition should not be entertained.

In light of the above facts, please discuss whether the assessee company is right in filing a writ petition? (4 Marks)

(b) 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 Rs. 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 Rs. 1 lakh per recipient of service (Gross amount of all bills is Rs. 70 lakhs).

(c) Service provided to non-residents by way of sale of online advertisements, which target resident Indian customers, amounting to Rs. 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)

Answer

(a) (i) [First Alternative]

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.

(a) (i) [Second Alternative]

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 Rs. 30,000 or the aggregate payments to residents during the year exceed Rs. 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 Rs. 30,000/aggregate threshold limit of Rs. 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], 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 2020-21, 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.

(ii) Issue Involved: The issue under consideration in this case is whether denial of liability to pay tax under section 115QA is an appealable issue.

[Note - The issue involved in this case may also be described as whether the assessee is justified in filing the writ petition].

Provision Applicable: When an alternate remedy is available, a taxpayer cannot seek the writ jurisdiction of the High Court.

As per section 246A, any assessee aggrieved against, inter alia, any one of the following orders may appeal to Commissioner (Appeals):

- (i) An order against the assessee, where the assessee denies his liability to be assessed under this Act, or

(ii) Any order of assessment under section 143(3), where the assessee objects to the amount of income assessed/tax determined/loss computed, as the case may be.

Section 115QA provides that where shares are bought back at a price higher than the price at which those shares were issued, then, the balance amount will be treated as distribution of income to shareholder and tax@20% will be payable by the company.

Analysis: The expression “denies his liability to be assessed” is quite comprehensive to include within its fold every case where the assessee denies his liability to be assessed under the Act. Therefore, any determination u/s 115QA, be it regarding quantification of the liability or the question whether such company is liable or not, would fall within the ambit of "an order against the assessee, where the assessee denies his liability to be assessed under this Act".

Accordingly, an appeal u/s 246A to Commissioner (Appeals) would be maintainable against the determination of liability under section 115QA.

Conclusion: Accordingly, the assessee should have filed an appeal to the Commissioner (Appeals) instead of filing a writ petition. The action of the assessee in filing writ petition is **not correct**.

(b) (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 Rs. 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 Rs. 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 Rs. 2 crore in the current previous year i.e., P.Y.2023-24 (Working given below)

(4) **Value of taxable e-commerce supply or services**

Particulars	Rs.
(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 Rs. 1 lakh)	70,00,000
(c) E-commerce services to non-residents by way of sale of online advertisements targeting Indian customers	<u>20,00,000</u>
Taxable e-commerce supply or services	<u>2,10,00,000</u>
Equalisation levy @ 2%	<u>4,20,000</u>

Question 6

(a) 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.

(i) 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. **Tax Evasion - NO GAAR.**

(ii) 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. **S.A.A.P.**

Can GAAR be invoked in both the instances mentioned above? **(4 Marks)**

(b) As per Income Tax Act, the Assessing Officer is empowered to provisionally attach any property of the assessee if he is of the opinion that it is necessary to do so for the purpose of protecting the interests of the revenue.

Can the Assessing Officer revoke Provisional attachment of property if the assessee furnishes a bank guarantee. If yes, from whom and to what extent of value of the Bank guarantee needs to be furnished as per law.

Is the Assessing Officer empowered to invoke such Bank guarantee under any circumstances? Discuss. **(4 Marks)**

Answer

(a) (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 Rs. 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.

(b) Yes, as per section 281B(3), the Assessing Officer can, by order in writing, revoke provisional attachment of a property made u/s 281B in a case where the assessee furnishes a guarantee.

Such bank guarantee should be from a scheduled bank and 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. **→ Liquidate.**

The Assessing Officer is empowered to invoke bank guarantee in the following circumstances -

(i) Where a notice of demand specifying a sum payable is served upon the assessee and the assessee fails to pay such sum within the time specified in the notice of demand, the Assessing Officer may invoke the bank guarantee, wholly or partly, to recover the said amount

(ii) In a case where the assessee fails to renew the bank guarantee or fails to furnish a new

guarantee from a scheduled bank for an equal amount, fifteen days before the expiry of such guarantee, the Assessing Officer shall, in the interests of the revenue, invoke the bank guarantee.

MAY 2022:

Question 1

115 BAA

M/s Kaveri Ltd., a manufacturing company, having an annual turnover of Rs. 6,000 lakhs, shows a net profit of Rs. 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 Rs. 65 lakhs. (+)
- (b) Employer's contribution to EPF of Rs. 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 Rs. 10,500 charged as penalty for delayed filing of returns and Rs. 15,400 towards interest for delay in deposit of tax. Not Allow in 115BAA
- (d) An amount of Rs. 10 lakhs was incurred on notified skill development project u/s. 35CCD. in 115BAA
- (e) Loss of Rs. 20 lakhs, on destruction of an old machinery by fire in the factory and Rs. 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 Rs. 15 lakhs received from a foreign company in which the company holds 32% of the equity share capital of the company. Rs. 50,000 was also expended on earning this income. IFOS Assume Int (+) (-) 20%
- (g) Profit of Rs. 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. Same Adj

Additional information:

- (i) Normal depreciation computed as per Income-tax Rules, 1962 is Rs. 92 lakhs. (-)
- (ii) During the previous year 2022-23, the company has purchased a new plant and machinery worth Rs. 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 Rs. 7 lakhs on 31st March, 2023 towards repairs of factory building. The tax deducted on such payment was remitted on 31st December, 2023. ∴ CY 30% Allowed
- (iv) On 15th May, 2024, M/s Kaveri Ltd. declared and distributed dividend of Rs. 20 lakhs. 80m

Answer

Computation of Total Income of M/s Kaveri Ltd. for the A.Y. 2024-25 under section 115BAA

Particulars		Amount (in Rs.)	
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 [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	18,00,000	

bal Adellh
Dep not
Allowed in 115BAA -
(14.5e)
80m

	be added back for computing business income].		
(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)	Penalty for delayed filing of GST return [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. Since the same has been debited to Statement of profit and loss, it has to be added back for computing business income]	10,500	
(e)	Interest for delay in deposit of GST [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]	Nil	
(f)	Expenditure on notified skill development project u/s 35CCD [Expenditure on notified skill development project u/s 35CCD is not allowable as deduction since the company has opted for section 115BAA]	10,00,000	
(g)	Loss due to destruction of machinery by fire [Loss of Rs. 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	
(h)	Expenditure on earning dividend income [Allowability or otherwise of expenditure on earning dividend income has to be considered under the head "Income from Other Sources". Since the said expenditure has been debited to the statement of profit and loss, the same has to be added back while computing business income]	50,000	
			<u>1,13,60,500</u>
			9,63,60,500
	Less: Items credited but chargeable to tax under another head/expenses allowed but not debited		
1.	Scrap value of machinery [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]	5,00,000	
2.	Dividend received from specified foreign company [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]	15,00,000	
3.	Profit on sale of building to 100% subsidiary [Taxability or otherwise to be considered under the head	15,00,000	

	<p>“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]</p> <p>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]</p> <p>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 Rs. 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]</p>		
			1,29,10,000
			8,34,50,500
II	Capital Gains		
	1. Profit on sale of building to 100% Indian subsidiary [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)]		Nil
III	Income from Other Sources		
	Dividend income net of expense [Since M/s Kaveri Ltd. holds 26% or more equity shares in foreign company, such foreign company is a specified foreign company u/s 115BBD. Expenditure on earning dividend income from specified foreign company is not allowable as deduction.]		15,00,000
	Gross Total Income		8,49,50,500
	Less: Deduction under Chapter VI-A Deduction u/s 80M in respect of inter-corporate dividends [being lower of Rs. 15 lakh, being dividend received from foreign company, and Rs. 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]		15,00,000
	Total Income		8,34,50,500

Computation of tax payable by M/s Kaveri Ltd. for the A.Y. 2024-25 under section 115BAA

Particulars	Rs.
Tax on business income @ 22% of Rs. 8,34,50,500	1,83,59,110
Add: Surcharge@10%	<u>18,35,911</u>
	2,01,95,021
Add: Health and education cess@4%	<u>8,07,801</u>
Tax liability	<u>2,10,02,822</u>
Tax payable (rounded off)	2,10,02,820

Question 2

(a) 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. - Rs. 10 crores
- (ii) Dividend income from HATS Ltd. - Rs. 3 crores
- (iii) Short-term capital gains on sale of developmental properties - Rs. 1 crore
- (iv) Interest received from investments in unlisted debentures of companies - Rs. 10 lakhs
- (v) Rental income from directly owned real estate assets - Rs. 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 has opted for default tax regime under section 115BAC(1A). Ignore TDS implications.

(b) 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 Rs. 2 crores.
- Fee for technical services Rs. 55 lakhs (After deducting Rs. 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\$) Rs. 14 lakhs

BnB had paid a sum equal to Rs. 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.

Answer

(a) 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 (Unitholder)
(i) Interest income of Rs. 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). 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, Rs. 7 crores being 70% of Rs. 10 crores is taxable in the hands of the unitholder Mr. Vijay.	Nil	7,00,00,000
(ii) Dividend income of Rs. 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	Nil	2,10,00,000

HATS Ltd. (SPV) has exercised the option u/s 115BAA. Accordingly, Rs. 2.10 crore, being 70% of Rs. 3 crores, would be taxable in the hands of the unitholder Mr. Vijay.		
(iii) Short-term capital gains of Rs. 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 Rs. 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 Rs. 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, Rs. 1.75 crores, being 70% of Rs. 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	Rs.	Rs.
Computation of tax payable		
In the hands of REIT (M/s Buildwell)		
Tax on total income of Rs. 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 Rs. 3,00,000		Nil
Rs. 3,00,001 – Rs. 6,00,000 @ 5%		15,000
Rs. 6,00,001 – Rs. 9,00,000 @ 10%		30,000
Rs. 9,00,001 – Rs. 12,00,000 @ 15%		45,000
Rs. 12,00,001 – Rs. 15,00,000 @ 20%		60,000
Rs. 15,00,001 – Rs. 10,85,00,000 @ 30%		<u>3,21,00,000</u>
		3,22,50,000
Add: Surcharge @ 25% since total income exceeds Rs. 5 crores		<u>80,62,500</u>
		4,03,12,500
Add: Health and education cess @ 4%		<u>16,12,500</u>
Tax payable		<u>4,19,25,000</u>

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.

(b) **Computation of Tax liability of BnB for the A.Y.2024-25**

Particulars	Rs.
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, Rs. 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	<u>2,69,00,000</u>
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 Rs. 2,55,00,000	<u>1,02,00,000</u>
	1,03,40,000
Add: Surcharge @2% since total income > Rs. 1 crore but ≤ Rs.10 crore	<u>2,06,800</u>
	1,05,46,800
Add: Health and education cess @4%	<u>4,21,872</u>
Tax liability	<u>1,09,68,672</u>
Tax liability (rounded off)	1,09,68,670
Note – No credit will be available in respect of Rs. 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 @10% under section 115A. The tax liability would be as follows –

Particulars	Rs.
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.	61,00,000

Accordingly, Rs. 61 lakhs would be taxable.	
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	Rs.
Tax liability on total income of Rs. 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 Rs. 61,00,000	12,20,000
Tax on other income @40% on Rs. 2,00,00,000	80,00,000
	<u>93,60,000</u>
Add: Surcharge@2% since total income > Rs. 1 crore but ≤ Rs.10 crore	<u>1,87,200</u>
	95,47,200
Add: Health and education cess@4%	<u>3,81,888</u>
Tax liability	99,29,088

Question 3

(a) Examine each of the following independent cases of charitable trust/institutions for the assessment year 2024-25:

(i) Raj Charitable trust registered under section 12AB, received corpus donation of Rs. 5 lakhs during the previous year 2023-24. The trust intends to utilize it during the previous year 2024-25 and claimed that since the donor gave the donation with a specific direction that it is towards the corpus of the trust, it is exempt from tax under section 11(1)(d). Further, during the year, the trust took a loan of Rs. 20 lakhs from a nationalized bank and out of it, applied Rs. 18 lakhs on the construction of its building. The trust claimed Rs. 18 lakhs as application for charitable purposes during the year.

(ii) Smile Foundations is a 'not for profit' trust that runs a secondary school. The total receipts consisting of voluntary contributions and the government grants of the trust during the previous year 2023-24 amounted to Rs. 30 lakhs (Rs. 14 lakhs and 16 lakhs respectively). Is the trust required to get an approval to claim exemption under section 10(23C)?

(iii) Mani Foundations is a charitable trust registered under section 12AB. On 31.07.2023, it gets an approval under section 10(23C) also. The trust intends to know whether it can enjoy the benefits of both the sections that is, section 11 and section 10(23C).

(b) 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 Rs. 5,00,000 for the year ended on 31st March 2024. He also received dividend amounting to Rs. 1,25,000 from an Indian company and interest of Rs. 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 - Rs. 74; 31.03.2024, Rs. 75; 10.05.2024 - Rs. 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 does not opt for the provisions of Section 115BAC.

1st
Substantially financed by Govt.
 $\frac{162 \times 100}{302} = 53.33\%$
11(7)
PEOP
Invest in 11(5)
Repay it for exemption
cannot take both Ben
Stay in INDIA = 305 DAYS
 $\rightarrow 3/13/25$
30% ben.
80TTA
 $\text{Tax paid in Foreign (amt)} = 20\% \times (25000\$ - 8000\$)$
 $= 3400\$$
Gross up
 $\text{Foreign Rate} = \frac{3400\$}{75} = 45.33$

Answer

- (a) (i) Corpus donations of Rs. 5 lakhs would be exempt from tax only if they are received with a specific direction that they shall form part of the corpus and are invested in any of the modes specified under section 11(5).
If the same is not so invested, then, it would not be exempt under section 11(1)(d) for P.Y.2023-24.
Application for charitable purposes from a loan or borrowing shall not be treated as application of income for charitable purposes. Accordingly, Rs. 18 lakhs applied by the trust out of loan of Rs. 20 lakhs taken from a nationalised bank cannot be claimed as application for charitable purposes. However, the same can be claimed as application at the time of repayment of loan to the extent of repayment in the relevant previous year.
Therefore, both the claims of Raj Charitable trust are not correct.
- (ii) Smile foundations is an education institution existing solely for educational purposes and not for the purposes of profit.
It is substantially financed by the Government, since government grants of Rs.16 lakhs constitute 53.33% of its total receipts of Rs. 30 lakhs (Rs.14 lakhs voluntary contributions + Rs. 16 lakhs government grants), which is more than 50% of its total receipts.
The income of the institution is exempt u/s 10(23C)(iiiab).
Hence, it is not required to get the approval of prescribed authority for claiming exemption under section 10(23C).
- (iii) No, the trust cannot enjoy the benefits under both section 11 and 10(23C).
The registration granted to Mani Foundations under section 12AB for availing exemption under section 11 would become inoperative from 31.7.2023, being the date on which it is approved under section 10(23C).
The trust, whose registration has become inoperative, may apply to get its registration operative under section 12AB subject to the condition that on doing so, the approval under section 10(23C) to such trust shall cease to have any effect from the date on which the said registration becomes operative.
- (b) 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	Rs.	Rs.
Income from House Property [Residential property in Country Y]		
Annual Value ² (\$ 25,000 x Rs. 75, exchange rate on 31.3.2022)	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 [Rs.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 Rs. 11,500 or Rs. 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	Rs.
Tax on total income [30% of Rs. 9,52,890 + Rs. 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	Rs.	Rs.
Average rate of tax in India [i.e., Rs. 4,14,302/Rs. 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 Rs.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 4

- (a) In respect of the following independent case scenarios you are required to discuss the provisions related to tax deducted/collected at source and amount of tax deductible for the year ended 31st March 2024.
- (i) Mr. Rajat aged 79 years, a retired resident individual, maintains a savings bank account (S) and a fixed deposit account (F) with ABC Bank, Delhi. He provides the following details to ABC Bank in respect of financial year 2023-24:

Interest on (S)	Rs. 75,100
Pension from employer (received in savings account S)	Rs. 55,000 per month (50000)
Interest from fixed deposit account (F)	Rs. 1,20,000 (50000)

He does not have any other income during the financial year 2023-24. **Follow Old Regime.**

- (ii) High and Tall Ltd., a real estate development company, entered into a Joint Development Agreement with Mr. John, a resident individual, whereby Mr. John would transfer a plot of land measuring 10 acres for a part consideration of Rs. 6 crores to be paid on the date of agreement, i.e., 1.6.2023. High and Tall Ltd. has planned to develop a high-rise apartment complex on such land by 31.3.2026. Upon completion of the project, High and Tall Ltd. would transfer 6 flats in the apartment to Mr. John as final settlement. The FMV of the flats is estimated to be Rs. 1.20 crores each as on 31.3.2026.

- (iii) M/s Aryan Ltd., a domestic company having a total turnover of Rs. 12 crores for the financial year 2021-22, purchased goods worth Rs. 85 lakhs (excluding purchase return) from M/s Varun & Co. during the previous year 2022-23. M/s Varun & Co., a resident firm, has furnished its PAN to Aryan Ltd. Details of payments for purchases from M/s Varun (P) Ltd. are given below:

On 25.05.2022 - Rs. 30 lakhs; On 28.06.2022 - Rs. 25 lakhs; On 10.12.2022 - Rs. 20 lakhs (out of these purchases, goods worth Rs. 5 lakhs were returned on 20.12.2022 due to quality issue for which money was refunded by M/s Varun & Co.); On 20.02.2023 - Rs. 10 lakhs. Assume that the turnover of M/s Varun & Co. during the Financial year 2021-22 was Rs. 8 crores and the above amounts were credited to M/s Varun & Co.'s account in the books of M/s Aryan Ltd. on the same date.

194-1C
10% on cash portion
1e B 6E Y

194C

SLX 0.17

20x0.1%

only 50

206(11) → 27.

- (iv) State Government of Telangana grants a lease of coal mine to M/s XYZ Co. Ltd. on 1.09.2023 and charged Rs. 10 crores for the lease. M/s XYZ Co. Ltd. sold coal for Rs. 1 crore to M/s AB (P) Ltd. during the previous year 2023-24. The turnover of M/s XYZ Co. and M/s AB (P) Ltd. for the financial year 2022-23 amounted to Rs. 5 crores and Rs. 6 crores, respectively.

17-
206(11)**Answer:**

- (a) (i) Mr. Rajat is a specified person as per section 194P as he is of age of 79 years, having pension income and only interest on fixed deposit with ABC Bank. His pension income is also received in savings bank with ABC Bank.
As per section 194P, ABC Bank (specified bank) is required to deduct tax at source on the basis of rates in force on the total income of Mr. Rajat for A.Y. 2024-25, computed after giving effect to -
- deduction allowable under Chapter VI-A; and
 - rebate allowable under section 87A

Particulars	Rs.	Rs.
Pension (Rs. 55,000 x 12)	6,60,000	
Less: Standard deduction u/s 16(ia)	50,000	6,10,000
Interest on fixed deposit	1,20,000	
Interest on Saving bank account	75,100	1,95,100
Gross Total Income		8,05,100
Deduction u/s 80TTB [Interest on fixed deposit and savings account, restricted to 50,000, since Mr. Rajat is a resident Indian of the age of 79 years]		50,000
Total Income		7,55,100
Tax to be deducted by the specified bank i.e., ABC Bank [20% x Rs. 2,55,100 (Rs. 7,55,100 – Rs. 5,00,000) + Rs. 10,000 (being 5% of Rs. 2,00,000)] plus HEC@4%		63,461

- (ii) Mr. John, a resident, is entering into an agreement with High and Tall Ltd., a real estate developer, to develop a high-rise apartment complex on his land in consideration of Rs. 6 crore and 6 flats in the apartment. This is a specified agreement under section 45(5A).
As per section 194-IC, High and Tall Ltd. is required to deduct tax at source @ 10% on Rs. 6 crores, being the consideration paid other than consideration in kind, under a specified agreement to Mr. John.

Tax is to be deducted at the time of credit of such sum or payment, whichever is earlier. Tax u/s 194-IC would be = Rs. 6 crore x 10% = Rs. 60 lakhs

- (iii) M/s Varun & Co. is **not** required to collect tax at source on the sale of goods to M/s Aryan Ltd., since his turnover for the P.Y. 2021-22 does not exceed Rs. 10 crores.

Since turnover of M/s Aryan Ltd. for the P.Y. 2021-22 exceeds Rs. 10 crores and the aggregate value of purchases from M/s Varun & Co. exceeds Rs. 50 lakhs, M/s Aryan Ltd. is required to deduct tax at source u/s 194Q@0.1% of such sum exceeding Rs. 50 lakhs. However, the provisions of section 194Q are applicable with effect from 1.7.2022.

In case of purchase return, if the money is refunded by the seller, then, this tax deducted on purchase return would be adjusted against the next purchase from the same seller.

Applicability of TDS on purchases from M/s Varun & Co		
25.05.2022	Rs. 30 lakhs	Not required to deduct tax at source
28.06.2022	Rs. 25 lakhs	Aggregate value of purchase exceeds Rs. 50 lakhs but still M/s Aryan Ltd. is not required to deduct tax at source u/s 194Q as the provisions of section 194Q are effective only from 1.7.2021
10.12.2022	Rs. 20 lakhs	TDS = Rs. 2,000 [0.1% x Rs. 20 lakhs]
20.02.2023	Rs. 10 lakhs	TDS = Rs. 500 [Rs. 1,000, being 0.1% x Rs. 10 lakhs – Rs. 500, being the TDS on purchase return of Rs. 5 lakhs]

- (iv) State Government is required to collect tax at source @2% u/s 206C(1C) on Rs. 10 crores, being the charges for lease of coal mine.
 $TCS = 2\% \times Rs. 10 \text{ crores} = Rs. 20,00,000$
 M/s XYZ Co. Ltd. is required to collect tax at source @1% u/s 206C(1) on sale of coal to M/s AB (P) Ltd.
 $TCS = 1\% \text{ of Rs. 1 crore} = Rs. 1,00,000.$

Question 5

Sun Ltd., an Indian company, is engaged in the business of manufacture and sale of carpets. To expand its international sales, it hired the services of a London based company, Shine Inc., for online advertisements. Shine Inc. has no permanent establishment in India. During the previous year 2023-24, Sun Ltd. paid Rs. 5 lakh to Shine Inc. for such services and deducted the equalization levy on 15.03.2024 and credited it to the account of Central Government on 15.04.2024.

2016
EL
—

→ pay by 7th April. ∴ Delay.

You are required to -

- (i) Compute interest leviable to Sun Ltd. on the delayed payment of equalization levy. $300000 \times 1\% = 3000 \text{ int.}$
 (ii) What are the circumstances under which penalty cannot be imposed?
 (iii) Sun Ltd. is aggrieved by the order imposing penalty. What is the time limit for filing of appeal against the order of the Assessing Officer imposing the penalty?

Answer

CIT(A) → 30 DAYS.

← prove to AO reasonable cause.

(i) Interest for delayed remittance of equalization levy

Equalisation levy = 6% of Rs. 5 lakh = Rs. 30,000

The equalization levy deducted on 15.3.2024 has to be paid to the credit of the Central Government by 7.4.2024 (i.e., 7th of the succeeding month).

However, in this case, Sun Ltd. remitted the same only on 15.4.2024. The delay in this case is 8 days.

Simple interest @1% is leviable per month or part of month by which crediting of tax is delayed.

Accordingly, interest would be 1% of Rs. 30,000 = Rs. 300

(ii) Circumstances under which penalty cannot be imposed

No penalty for failure to deduct or pay equalisation levy shall be imposable, if Sun Ltd. proves to the satisfaction of the Assessing Officer that there was reasonable cause for the said failure.

Further, no order imposing a penalty shall be made unless Sun Ltd. has been given a reasonable opportunity of being heard.

(iii) Time limit for filing appeal

If Sun Ltd. is aggrieved by the order imposing penalty, it may appeal to Commissioner (Appeals) within a period of 30 days from the date of receipt of the order of the Assessing Officer imposing the penalty.

Question 6

- (a) State with reason, whether the following acts can be considered as Tax Planning or Tax Management or Tax Evasion.
- (i) An individual assessee deposits a sum of Rs. 10,000 in Sukanya Samriddhi Account of his daughter, so that his total income is reduced from Rs. 5,05,000 to Rs. 4,95,000 which entitles him to rebate under section 87A and consequently his tax liability becomes Nil. P
- (ii) A company obtaining declaration in Form No.60 from customers who are required to provide their PAN but the same is not allotted to them. M.
- (iii) A partnership firm made a payment of Rs. 35,000 for purchase of a refrigerator which is installed at the residence of one of the partners. However, the same is shown as being installed in the office of the firm for claiming depreciation. E
- (iv) A company pays Rs. 4 lakhs to Mrs. D (wife of Director Mr. D), who, although being a qualified professional but is a house-wife. The purpose is to increase the total income of Mrs.

D (upto Rs. 5 lakhs) and claim expenditure in the books of the company without provision of any professional service by Mrs. D to the company. **E**

- (b) In respect of insolvency proceedings initiated against D Ltd., Mr. Prateek was appointed as "Official Assignee", You are required to advise him as to whether he will be treated as Representative Assessee in this regard and what will be his status and his liability with respect to other procedures under the Income-tax Act, 1961. **They Question**

Answer

(a)

	Answer	Reason
(i)	Tax planning	Depositing money in Sukanya Samriddhi Account of his daughter for claiming deduction under section 80C to reduce total income from Rs. 5,05,000 to Rs. 4,95,000 in order to avail rebate under section 87A, which consequently reduces his tax liability to 'Nil', is a permitted tax planning measure under the provisions of income-tax law.
(ii)	Tax management	Obtaining declaration from customers in Form No. 60 by the company is in the nature of compliance of statutory obligation under the Income-tax Law.
(iii)	Tax evasion	A refrigerator fitted at the residence of a partner and shown as being installed in the office of the firm for claiming depreciation would tantamount to furnishing of false particulars with an attempt to evade tax.
(iv)	Tax evasion	Payment of Rs. 4 lakhs to Mrs. D (wife of Director Mr. D) without provision of any professional services, to increase her total income upto Rs. 5 lakhs 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 Mrs. D would not be liable to pay any tax, since her total income does not exceed Rs. 5,00,000, consequent to which she would be eligible for tax rebate of Rs. 12,500 under section 87A. Reducing tax liability by recording a fictitious transaction would tantamount to tax evasion.

- (b) CBDT Circular No. 4/2019, dated 28.1.2019 has clarified that since Official Assignee does not receive the income or manage the property on behalf of the debtor, he cannot be considered as a 'Representative Assessee' of the debtor under the Act while computing the tax-liability arising from the estate of the debtor. Therefore, Mr. Prateek appointed as "Official Assignee" in respect of insolvency proceedings initiated against D Ltd. will not be treated as representative assessee.

As property of the insolvent is vested with the Official Assignees as per specific provisions of the Act/Law regulating functioning of the Official Assignees, they have to be treated as a 'juristic entity' for purposes of the Income-tax Act.

For purpose of discharge of tax-liability under the Act, the status of Official Assignee is that of an 'artificial juridical person' as prescribed in section 2(31)(vii), not being one of the 'persons' falling in section 2(31)(i) to (vi).

Therefore, Official Assignee is required to file income-tax return electronically in the ITR Form applicable to 'artificial juridical person' separately for each of the estate of the insolvent, D Ltd., in this case, and the income shall be taxed as per the rates applicable in a particular year to an 'artificial juridical person'.

In view of the above position, Official Assignees would have to obtain a separate PAN for each of the estate of the insolvent.

Question 1

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 Rs.50,75,000 after debiting or crediting the following items:

- (i) One-time license fee of Rs.12 lakhs paid to a foreign company for obtaining a franchise on 28th July,2023. *(+) 25% (U can assume Depuls-32 includes this)*
- (ii) Convertible debentures were issued by the company on which expenditure of issue and collection of Rs.3,15,000 was incurred. *Allowed*
- (iii) The company has paid Rs.2,25,000 to share brokers for transactions in relation to equity shares listed in stock exchange and Rs.1,20,000 to commodity broker for transactions in relation to commodities at MCX. Tax was not deducted at source on such transactions. **BAAA*
- (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 Rs.6,00,000 p.a. and Dearness allowance of 30% of basic salary was considered. 50% of Dearness allowance formed part of the salary. *2 view - Actual: 90000*
- (v) Expense of Rs.7,00,000 has been incurred for providing freebies to medical practitioners. *(+)* *10% Basic + DA (in 10% - (6L + 90k) ∴ 20000 D/A*
- (vi) Expenditure of Rs.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. *Revenue exp ✓*
- (vii) Depreciation of Rs.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 Rs.5,20,000 was remitted on 17th May, 2024 which includes Rs.2,60,000 of employer's contribution and Rs.2,60,000 of employee's contribution.
- (ix) Donation to Swachh Bharat Kosh Rs.2,00,000. *(+) Allowed CHVIA (other than cash) Assume*
- (x) Industrial power tariff concession of Rs.4,50,000 is received from Central Government. *Income*
- (xi) Interest and borrowing costs amounting to Rs.6,85,000 and Rs.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. *(+)* *4-)*
- (xii) The profit from setting of warehouse in rural area for storage of sugar (before claiming deduction under section 35AD) is Rs.10,00,000. The warehouse commenced operations on 24th October, 2023. *(15L) = (5L) → can set off only against 35AD profit.*

The Company has furnished the following additional information:

- (i) The company has collected Rs.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 Rs.5,00,000 to the Company. The Company in turn refunded Rs.3,00,000 to its customers from whom GST was collected. Balance amount is shown under "current liabilities". *2L (+)*
- (ii) On 14.01.2024, the company has issued 2,00,000 equity shares of Rs.10 each at Rs.22 per share. The fair market value of the shares determined as per Income-tax Rules,1962 was Rs.19 per share. *S6(2)(vii b) → (22 - 19) x 2L = 6-lacs Rs.*
- (iii) The company has brought forward losses of Rs.13,00,000 relating to assessment year 2021-22. Mr. X who continuously held 55% shares carrying voting power since incorporation of the company, had sold his entire share holding to Mr.Y on 25.11.2023. *Sec 79: loss cannot set off*
- (iv) Depreciation allowable as per Income-tax Rules Rs.14,50,000. *(-)*
- (v) The company has invested Rs.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 Rs.20 lakhs. *X*

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/s115BAA of the Income-tax Act,1961. **(14 Marks)**

Answer

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

Particulars	Amount (In Rs.)	
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 [Franchise is in the nature of an intangible asset eligible for depreciation @ 25%. Since one-time license fees of Rs.12 lakhs paid to a foreign company for obtaining franchise has been debited to statement of profit and loss, the same has to be added back.]	12,00,000	
(ii) Expenditure of issue of convertible debenture [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 debenture 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.]	Nil	
(iiia) Payment to share brokers for transaction in relation to equity shares [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 – It is assumed that the company also carries on share trading business and the profits of such business are included in the figure of Rs.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]	2,25,000	
(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 Rs.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 Rs.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, Rs.90,000 (15% of Rs.6,00,000) – Rs.69,000 [10% of (Rs.6,00,000 + 50% of 30% x Rs.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 law. Any expenditure incurred by an assessee for any purpose which is prohibited by law is not deemed to	7,00,000	
	Nil	

<p>have been incurred for the purpose of business or profession and hence, has to be disallowed from business income.]²</p> <p>(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 nature.³ Since the expenditure of Rs.5,20,000 has already been debited to statement of profit and loss, no further adjustment is required.]</p> <p>(vii) Depreciation on the basis of useful life of asset</p> <p>(viii) Employee's 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].</p> <p>(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]</p> <p>(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.]</p> <p>(xi) Difference on account of interest and borrowing costs [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, Rs.1,20,000 [Rs.6,85,000 = Rs.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.</p>	<p>13,00,000 2,60,000</p> <p>Nil</p> <p>2,00,000</p> <p><u>1,20,000</u></p>	<p>40,62,000</p>
<p>Add: Income taxable but not credited to statement of profit and loss</p> <p>AI(i) GST not refunded to customers out of GST refund received from Government [The amount of GST refunded to the company by the Government is a revenue receipt chargeable to tax. Out of the refunded amount of Rs.5 lakhs, the amount of Rs.3 lakh stands refunded to customers and hence, would not be chargeable to tax. The balance amount of Rs.2,00,000 lying with the company would be chargeable to tax]</p> <p>Les: Items credited but chargeable to tax under another head/ expenses allowed but not debited</p> <p>(x) Industrial power tariff concession received from Central 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</p>	<p>Nil</p>	<p>91,37,000</p> <p><u>2,00,000</u> 93,37,000</p>

and Loss, no adjustment is required]	10,00,000	
(xii) Profits from setting of warehouse in rural area for storage of sugar [Since it is a specified business, its profits would be computed separately]	<u>14,50,000</u>	
AI(iv) Depreciation as per Income-tax Rules [As depreciation is as per Income-tax Rules is stated as Rs.14,50,000, it has been considered that it includes deprecation on Franchise.] Note – If it is assumed that the figure does not include depreciation on franchise, then, depreciation of Rs.17,50,000 (Rs.14,50,000 + Rs.3,00,000, being depreciation @25% on franchise) has to be reduced]		<u>24,50,000</u> 68,87,000
Less: Brought forward business loss relating to A.Y. 2021-22 [Brought forward loss relating to A.Y. 2021-22 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 31.3.2021]		<u>Nil</u>
Profits and gains from manufacture of pharmaceutical products Profits and gains from setting of warehouse in rural area for storage of sugar	10,00,000	68,87,000
Net profit before deduction under section 35AD Less: Deduction under section 35AD 100% deduction u/s 35AD in respect of cost of warehouse [Rs.35 lakhs – Rs.20 lakhs, being cost of land, not allowable]	15,00,000	
	<u>(5,00,000)</u>	
Los 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		
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). Rs.6,00,000 [2,00,000 x Rs.3 (Rs.22 – Rs.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 2

- (a) 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, 2023 was Rs.65 lakhs after debiting/crediting the following items:
- (i) Profit on sale of import entitlement Rs.9 lakhs. ✗

First
compute
BIP
4d(b)

- (ii) Remuneration to its working partners Rs.58 lakhs. (+)
- (iii) Interest at the rate of 16% per annum on partners' capital Rs.20 lakhs. 4% (+)
- (iv) Donation to a political party Rs.3 lakhs. (+)
- (v) Depreciation Rs.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 Rs.4 lakhs. Reduce later.
- (iii) Unabsorbed depreciation brought forward from assessment year 2017-18 was Rs.35 lakhs. (-)
- (iv) Total export turnover was Rs.45 crores and the sale proceeds in convertible foreign exchange received in India by 30th September, 2023 was 38 crores. Total export turnover of Rs.45 crores include telecommunication charges of Rs.5 crores attributable to delivery of software. Sale proceeds realization of Rs.38 crores also include such telecommunication charges of Rs.2 crores.
- (v) Depreciation allowable as per Income-tax Rules is Rs.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 2023-24.
 - (ii) Amount of tax credit allowed to be carried forward.
- Necessary working notes should form part of your answer. (8 Marks)

Answer

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

Particulars	Amount (in Rs.)	Amount (in Rs.)
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 partner's capital (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., Rs.20 lakhs/16% x 4% would be disallowed)	5,00,000	
- 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	<u>17,00,000</u>	<u>83,00,000</u>
		1,48,00,000
Less: Permissible expenditure and allowances	26,00,000	
- Depreciation allowable as per Income-tax Rules, 1962		
- Unabsorbed depreciation under section 32(2) [allowable as deduction while computing book profit as per Explanation 3 to section 40(b)]	<u>35,00,000</u>	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]		<u>Nil</u>
Book Profit	2,70,000	87,00,000
On first Rs.3 lakh of book profit [Rs.3,00,000 x 90%]	<u>50,40,000</u>	
On balance Rs.85 lakh of book profit [Rs.84,00,000 x 60%]	53,10,000	
Remuneration actually paid of Rs.58,00,000 is allowable to the extent of		<u>53,10,000</u>
		33,90,000 (-) 98

Total TID
45cr - 5cr
= 40cr
E-T = 38cr - 2cr
= 36cr
↓
while computing
profit don't take
Licence
→ 2 View for Profit.

Business Income		4,00,000
Less: Brought forward business loss for A.Y. 2017-18		<u>29,90,000</u>
Gross Total Income		
Less: Deduction under section 10AA		22,41,000 (-) 9.1.
Profit from SEZ unit x Export Turnover / Total Turnover x 100% [Rs.24,90,000 x 36 crores / 40 crores x 100% (since it is the third year of operation)]	33,90,000	
Profit derived from SEZ unit		
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]	<u>9,00,000</u>	
	<u>24,90,000</u>	
Export Turnover [Rs.38 crores – Rs.2 crores, being telecommunication charges included therein. Telecommunication charges ⁴ not includible in export turnover]	36 crores	
	40 crores	
Total Turnover [Rs.45 crores – Rs.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]		
Less: Deduction under section 80GGC		<u>3,00,000</u>
[Donation to political party [allowable as deduction under section 80GGC, assuming the donation made otherwise than by way of cash]]		<u>4,49,000</u>
Total Income		
Tax liability		1,34,700
Tax @ 30%		<u>5,388</u>
Add: Health and education cess @4%		<u>1,40,088</u>
Tax Liability		1,40,090
Tax Liability (rounded off)		

⁴ It is assumed that telecommunication charges are incurred in foreign currency outside India.

Computation of adjusted total income of M/s PRK LLP and Alternate Minimum Tax

Particulars	Amount (in Rs.)
Total Income (as computed above)	4,49,000
Add: Deduction under section 10AA	<u>22,41,000</u>
Adjusted Total Income	<u>26,90,000</u>
Alternative Minimum Tax @ 18.5%	4,97,650
Add: Health and Education cess @ 4%	<u>19,906</u>
Tax liability under section 115JC	<u>5,17,556</u>
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 Rs.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	<u>1,40,090</u>
Amount of Credit	<u>3,77,470</u>

Note – In the above solution, while computing deduction under section 10AA, the brought forward business loss of Rs. 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 Rs. 4,00,000 from the profits of SEZ. In such case, the deduction under section 10AA would be Rs. 18,81,000 [(Rs. 20,90,000 x Rs. 36 crores/Rs. 40 crores) x 100%], total income would be Rs. 8,09,000, tax liability as per normal provisions would be Rs. 2,52,410. Alternate minimum tax liability would remain same. However, AMT credit to be carried forward would be Rs. 2,65,150]

Question 3

(a) The Head of Accounts of Fit Me Foundation, a trust, established for the purpose of promotion of Yoga has approached you to guide him about the tax implications of the following:

- (i) During the financial year 2023-24, it received a voluntary contribution of Rs.125 lakhs with a specific direction that it should form part of the corpus of the trust. The trust invested such amount in the shares of M/s. Bend and Blend Private Ltd, a private sector company.
- (ii) Apart from the above-mentioned Rs.125lakhs, during the financial year 2023-24, it received Rs.95 lakhs from other voluntary contributions and Rs.60 lakhs of fees towards providing Yoga classes.

(b) Mr.Nagaraj is the founder of SSVB Trust, a public charitable trust registered u/s 12AB of the Income-tax Act, 1961. The trust runs a hospital for the treatment of various diseases. Mr. Ram, son of Mr.Nagaraj, was admitted in May 2023 in the hospital due to COVID for treatment. He was charged a total fee of Rs.3 lakhs as against the amount of Rs.5 lakhs charged by the hospital for similar treatment to the general public.

The Board of trustees were served with a notice by the income tax authorities for cancellation of registration u/s12A.

Discuss whether registration can be denied to the trust. What are the further tax implications?

(c) Mr.Ritesh, a resident individual, aged 42 years, received the following sums during the previous year 2023-24:

- Income from a business in India Rs.4,85,000
- Royalty from Country N Rs.7,80,000 (Rate of Tax in Country N 10%, Tax deducted Rs.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 Tax10%)
- Agriculture in come in Country M: Rs.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 (Rs.)
31.03.2023	75
31.01.2024	78
21.02.2024	79
31.03.2024	80
01.01.2024	80

FTC on Int = 950\$ x 78 = 74,100 (Rule 128)

You are required to calculate the total income and tax payable by Mr.Ritesh. Follow Old Regime.

Answer

- (a) (i) Voluntary contribution of Rs. 125 lakhs received with a specific direction that it will form part of corpus of the trust would be exempt from tax only if it is invested in any of the modes specified under section 11(5) specifically maintained for such corpus. If the same is not so invested, then, it would not be exempt under section 11(1)(d) for P.Y.2023-24. Investment in shares of private company is not a specified mode under section 11(5). Hence, Rs.125 lakhs received by Fit Me Foundation would not be exempt under section 11.

- (ii) Yoga is included in the definition of “charitable purpose” under section 2(15). Accordingly, voluntary contributions of Rs.95 lakhs and fees towards providing Yoga classes of Rs.60 lakhs would be income from property held for charitable purposes and eligible for unconditional exemption of 15% under section 11. Exemption will be available under section 11 subject to the fulfilment of the necessary conditions.
- (b) As per section 13(6), SSVB Trust shall not be denied the benefit of exemption under section 11 in respect of its entire income merely due to the reason that the benefit of medical facilities have been provided to Mr. Ram, son of Mr. Nagaraj, being the specified person. Accordingly, the registration of SSVB Trust cannot be cancelled by the Income-tax authorities on this basis. As per section 12(2), the value of medical facilities provided to Mr. Ram, being the specified person, at a concessional rate would be deemed to be the income of the trust and such income would not be eligible for exemption under section 11. Hence, Rs.2,00,000, being the concessional value of medical services would be deemed to be the income of SSVB Trust. The remaining income would be eligible for benefit of section 11.
- (c) **Computation of total income and tax payable by Mr. Ritesh for A.Y.2024-25**

Particulars	Rs.	Rs.
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 Rs.13,54,000		
Tax on total income [30% of Rs.13,54,000 + Rs.1,12,500]		2,18,700
Add: Health and Education cess @ 4%		8,748
		2,27,448
Less: Deduction under section 91		Nil
[Since agricultural income is exempt in Country M, there is no doubly taxed income. Hence, no deduction under section 91 is allowable]		
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	Rs.
Average rate of tax in India [i.e. Rs.2,27,448 / Rs.13,54,000 x 100]	16.798%
Tax payable in India on interest from Country Y [Rs.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 4

(a) 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 Rs.85 crores to Jam Electronics Inc. *Not a Royalty ∴ No TDS*

(ii) DEHP Ltd., a public sector bank in India, paid Rs.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. *Neither 194H, 194J.*

(iii) Mr. A received an order from PQR Ltd. to stitch T-shirts. To complete such order, he purchased cloth of Rs.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 @ Rs. 500 each = Rs. 40,00,000

Fashion Ltd. is closely related to PQR Ltd. as specified under section 40A(2)(b). *Contracte*

(iv) Mr. David, a Canadian citizen and a non-resident sportsman, received the following sums during the F.Y. 2023-24 from India: *194E > 115BBA.*

(i) Income from participation in matches Rs. 4,58,000 *20% + 4%*

(ii) Honorarium from writing an article related to sports for a sports magazine Rs. 1,25,000. *20% + 4%*

(b) 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.: USD85,000 *AE*

(ii) Billing per month to HTY Ltd.: USD92,000 *3rd party.*

(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. *120000 x 1% x 1/2 (monthly date) = 300 \$*

(iv) Direct and indirect cost incurred are USD 120 and USD 210 per hour respectively. *330 \$*

(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=Rs.75. **(6 Marks)**

Answer

(a) (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

Analysis Engineer Excellence.

194H P-P (ii) 196J → Service No manual/Heaven Intex

PQR Ltd pay x

Related Party

Step 1: Total cost to AE.

330\$ x 9hr x 18 = 53460\$

Step 2:

G.P Margin of HTY - 92.55%

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 in 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 = Rs.40,00,000 x 1% = Rs.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 = (Rs.4,58,000 + Rs.1,25,000) x 20.80% = Rs.95,264 + Rs.26,000 =Rs.1,21,264.

(b) 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	HYT Ltd. (USD)
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]	<u>44,220.80</u>
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 (USD)
Direct Cost (USD 120 x 9 hours x 18 days)	19,440.00
Indirect Cost (USD 210 x 9 hours x 18 days)	<u>34,020.00</u>
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]	<u>400.00</u>
Total Cost	53,860.00
Profit margin by applying the margin of 92.55% of total cost of USD 58,860	<u>49,847.43</u>
Arm’s length price of billing per month	<u>1,03,707.43</u>
Arm’s length price (in Rs.) [USD 1,03,707.43 x 75]	77,78,057
Actual Billing per month [USD 85,000 x Rs.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 5

(a) 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 there as on 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 31.12.2021, 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 Rs.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?

(b) (i) 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 1.10.2023. Since the decision of the Board is binding on the applicant, he has no other option but to accept the ruling of the Board.

Peppse Foods Ltd

Proviso to sec 132B 30 DAYS ...

Appeal to HC 30 DAYS.

- (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., 12.12.2023. It cannot seek the BFAR ruling till the matter is pending before the ITAT. **(3 Marks)**
- (ii) M/s Boggle LLC., an **entity resident** in the USA, owns and operates an online shopping app, Flipz one. On this platform, it facilitates the sale of various kinds of goods owned by different entities. M/s Boggle LLC does **not have a permanent establishment** in India. During the F.Y.2023-24, it gives you the following details:

2020
EL.

Particulars	Amount in Rs.
Receipts from sale of goods to persons resident in India using intent from India	1,96,00,000
Sale proceeds received from persons resident in India, while visiting some other neighbouring countries.	7,00,000

You are required to discuss the tax implications of these transactions in respect of M/s Boggle LLC.

Answer

- (a)(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.

(b)(i) (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 1.10.2023 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.

(ii) M/s. Boggle LLC is an e-commerce operator since it is a non-resident owning and operating an online shopping app for facilitating sale of goods. Equalisation levy is attracted since it does not have a permanent establishment in India. Equalisation levy @2% is leviable on the amount of consideration received or receivable by M/s. Boggle LLC from online sale of goods facilitated by it to persons resident in India, since the aggregate consideration from such sale exceeds Rs.2 crore in the F.Y.2023-24.

Particulars	Amount in Rs.
(a) Receipts from sale of goods to persons resident in India using internet from India	196 lakhs
(b) Receipts from persons resident in India, even if it is while visiting neighbouring countries	7 lakhs
Amount of consideration	203 lakhs

Equalisation levy= 2% of Rs.203 lakhs =Rs.4.06 lakhs.

Question 6

(a) 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.** *X Amalgamation*

(ii) DAMP Inc., a company incorporated in Country A, holds 1000 equity shares in MAP Ltd., an Indian listed entity since 1.4.2018. On 1.5.2023, 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 share holding in MAP Ltd. on 1.1.2024 and earned a capital gain of Rs.5crores. *IF GAAR n.A on original shares ∴ N.A on Bonus shares*

GAAR came from 1/4/17

(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 Rs.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. *→ GAAR Applicable.*

(iv) Bee Ltd., an Indian company **sets up a unit in SEZ** in FY2020-21 for manufacturing of chemicals. It claims 100% deduction of profits of Rs.100 crores earned from that unit in FY2023-24, u/s10AA of the Act. *No GAAR → Planning* **(4 Marks)**

(b) The jurisdictional Assessing Officer of Mr. Albert, a **non-resident**, wants to treat the following persons as his agent in India for AY 2024-25 as per the provisions of section 163 of the Income-tax Act,1961. You are required to discuss the validity of the Assessing Officer's claims.

- (i) Mr. Albert owned a residential house in Goa, India. During the financial year 2023-24, he sold the house to Mr. D'Souza, another non-resident. AO wants to treat Mr. D'Souza as an agent of Mr. Albert.
- (ii) Mr. Albert employed Mr. Rakesh, a resident of India, to work for him on 1.4.2022. Mr. Rakesh left India to be employed by Mr. Albert on 1.4.2023. (4 Marks)

Answer

(a) 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 Bin 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.

However, if the tax benefit in the relevant assessment year arising, in aggregate, to all the parties to the arrangement does not exceed Rs.3 crore, then, GAAR provisions would not be invoked.

(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.

(b) As per section 163, an agent, in relation to a non-resident person, inter alia includes

- any person in India who is employed by or on behalf of the non-resident or
- any person (whether resident or non-resident) who has acquired a capital asset in India by means of a transfer from the non-resident.

(i) Since Mr. D'Souza acquired residential house in Goa from Mr. Albert, the jurisdictional Assessing Officer can treat Mr. D'Souza as an agent of Mr. Albert even though Mr. D'Souza is a non-resident.

(ii) Mr. Rakesh was employed by Mr. Albert on 1.4.2022. He left India on 1.4.2023 to be employed by Mr. Albert. Since he is not in India during the P.Y. 2023-24, the jurisdictional Assessing Officer cannot treat him as an agent of Mr. Albert for the P.Y. 2023-24.

MAY 2023 PAPER:

Question 1

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 Rs.1,25,00,000.

(i) Advertisement expenditure includes a sum of Rs.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 Rs.52,000.

"MAY 2023 → PAPER!"

PAPER – 7: DIRECT TAX LAWS & INTERNATIONAL TAXATION

Part - II

Question No.1 is compulsory.

Answer any **four** questions out of the remaining **five** questions.

Working notes should form part of the answer

All questions relate to Assessment Year 2023-24, unless stated otherwise in the question.

Question 1

X Ltd. is engaged in the **manufacture** and sale of textiles goods. Its net profit for the year ending March 31, 2023 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.

40A(2) = 108000
40A(3) = 52000

Does not bring any new asset in exist

(ii) Repairs of plant and machinery include ₹ 1.80 lakhs towards replacement of worn out parts of machineries.

X

(iii) The company used to include interest cost in valuation of its finished stock upto the financial year 2021-22. During the financial year 2022-23, 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.

Sahi kya

(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.

Allowed.

(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.

45th Add Back.

(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.

Allowed.

Remission of trading liability
No Adj.

(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.

X X

(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.

(+) 50000
10% Allowed :-

The Suggested Answers for Paper 7: Direct Tax Laws and International Taxation are based on the provisions of direct tax laws as amended by the Finance Act, 2022, which are relevant for May, 2023 examination. The relevant assessment year is A.Y.2023-24.

- (ix) Marked to market loss amounting to ₹ 6 lakhs in respect of an unsettled derivative contract. The contract was settled in May, 2023 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 1 phone Mobile sets to 5 distributors as incentive costing ₹ 60,000 each on 28.10.2022 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 2022-23 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. 2023-24 assuming that the company has not opted for Section 115BAA/115BAB under the Income-tax Act, 1961.

(14 Marks)

Answer

Computation of Total Income of X Ltd. for the A.Y. 2023-24			
	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		
	(i) Payment of advertisement expenditure of ₹ 1,60,000	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.]		

<p>Note – Alternatively, the entire sum of ₹ 1,60,000 can be disallowed u/s 40A(3).</p>	
<p>(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.]</p>	-
<p>(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 <i>bona fide</i> 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.]</p>	-
<p>(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 deduction¹. Since it has already been debited to the profit and loss account, no further adjustment is required.]</p>	-
<p>(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</p>	1,44,000

¹ CIT vs. Laxmi Cement Distributors (P) Ltd. (1976) 104 ITR 711 (Gujarat)

<p>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.]</p>	
<p>(vi) Retrenchment compensation to employees on closure of unit</p> <p>[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.]</p>	-
<p>(viii) Contribution towards NPS in excess of 10% of salary disallowed</p> <p>[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.]</p>	50,000
<p>(ix) Marked to market losses</p> <p>[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.]</p>	6,00,000
<p>(x) Provision for gratuity</p> <p>[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]</p>	1,25,000
<p>A(ii) Incentive to distributor without deducting tax at source [30% x ₹ 60,000 x 5]</p>	90,000

² Allahabad High Court in *CIT v. JK Cotton Spinning & Weaving Co. Ltd.* (2005) 145 Taxman 591

	<p>[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]</p>		<p><u>11,69,000</u> 1,36,69,000</p>
	<p>Less: Items credited but not taxable or chargeable to tax under another head</p>		
	<p>(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.]</p>	-	
	<p>(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.]</p>	1,00,000	<p>1,00,000</p>
			<p>1,35,69,000</p>
II	<p>Income from Other Sources Deemed dividend under section 2(22)(e) [Loan of ₹ 4 lakhs by ABC Pvt. Ltd., being a company</p>		<p>1,00,000</p>

³ Solid Containers vs. DCIT (2009) 308 ITR 417 (Bom)

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.]	
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

Question 2

- (a) (i) Mr. A, aged 34 years, is a salaried employee with TKM Limited. He has furnished the following details for the previous year 2022-23:

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 Bitcoins, a virtual digital currency on 01.04.2022 for ₹ 1,000 per coin, which he sold on 15.02.2023 for ₹ 1,300 per coin. Commission for transfer of Bitcoins is 2% of the sale value.	(1300 - 1000) × 1000

No dock of transfer exp.

You are required to compute the total income of Mr. A, assuming that he has not opted for section 115BAC for the Assessment year 2023-24 as per the provisions of the Income-tax Act, 1961. **(4 Marks)**

- (ii) 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, 2022 and after his retirement, business of the firm will be operated by M and N. Capital account balance of L as on July 27, 2022 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, 2022 is ₹ 2,00,000).

B/P on Transfer of Cash: 17.1-17.1

B/P on Transfer of SIT = 27.1-1.2.1
= 80K.

↓
31.2.1. = 24,960
Tax paid.

(120000)
PGBP 80000
(9B)

45(4)

This stock was purchased on April 15, 2022 for ₹ 1,20,000.

(iii) Plot of Land at Kota (Fair market value of plot as on July 27, 2022 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. 2023-24.

Cost Inflation index for F.Y. 2022-23 is 331 and for F.Y. 2001-02 is 100. (4 Marks)

(b) 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 FTS.
- (ii) onshore services in respect of installation of such machinery. FTS.

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 2022;
- 6% debentures for ₹ 2 crores were issued on 1st September, 2022 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. 2023-24. 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.

(6 Marks)

Answer

(a) (i) Computation of total income of Mr. A for A.Y. 2023-24
(under the regular provisions of the Income-tax Act, 1961)

	Particulars	Amount (in ₹)	Amount (in ₹)
I	Salaries		
	Gross Salary	23,00,000	
	Less: Standard deduction under section 16(ia)	<u>50,000</u>	
			22,50,000

II	Profit and gains from business or profession Business loss from part time business 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. 2024-25.	(4,50,000)	
III	Capital Gains Short term capital loss on sale of property [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. 2024-25]. It is not eligible for set off against capital gain arising from transfer of virtual digital asset.	(3,60,000)	
IV	Capital Gains Income from transfer of virtual digital assets [(₹ 1,300 - ₹ 1,000) x 1,000 bib coins] [No deduction in respect of any expenditure other than cost of acquisition is allowed]		3,00,000
	Total Income		25,50,000

(ii) **Computation of taxable income for M/s. L & G Associates for A.Y. 2023-24**

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. 2022-23 u/s 9B		
Full value of consideration of stock in trade [FMV as on 27.7.2022, being the date on which stock in trade is received by Mr. L]	2,00,000	
Less: Purchase cost	<u>1,20,000</u>	
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. 2022-23 u/s 9B		
Full value of consideration of plot of land [FMV as on 27.7.2022, 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 331/100]	3,64,100	
Capital Gains		13,35,900
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. 2022-23 under section 45(4)		
Cash payment	1,00,000	
FMV of plot of land as on 27.7.2022	<u>17,00,000</u>	
	18,00,000	

Less: Amount of balance in capital account [See Working Note below]	19,25,724	
Since, income chargeable is negative, it would be deemed to be zero	(1,25,724)	-
Taxable Income		14,15,900
<u>Working Note</u>		
Amount of balance in capital account for section 45(4) = Capital balance as on date 27.7.2022 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 27.7.2022	19,25,724	

(b) 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 services⁴.

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 ($₹ 2 \text{ crores} \times 6\% \times 7/12$) 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 3

- (a) (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

⁴ Aeg Aktiengesellschaft v. CIT (2004) 267 ITR 209 (Kar.)

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. 2022-23 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. 2022-23 amounted to ₹ 2.50 crores.

6.9 CY
∴ No Appraisal required.

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. (4 x 2 = 8 Marks)

- (b) 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, 2022 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, 2023 are as follows:

PL NOR:

PLOR:
Salary - 3 mths
H.P. - 9 mths
PGBP → 86000
45500
18250
7750
(25000)
(25000)
8077A (10000)

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%.	25000

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 2023-24 assuming that India has not entered into double taxation avoidance agreement with Country S and he has not opted for the provisions of Section 115BAC. You may consider (1 AED = 23 INR) (6 Marks)

Answer

- (a) (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)(iii ae);

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.

(b) **Computation of total income and tax liability of Mr. Rizvi for A.Y.2023-24**

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		
Mediclaime premium for self ₹ 48,000 restricted to	25,000	
Mediclaime 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
		60,000
Total Income		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	<u>45,500</u>
	<u>11,21,925</u>
Indian rate of tax = $4,14,314/19,52,930 \times 100 = 21.215\%$	
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, 2022 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.2022-23 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, 2022, he would be resident but not ordinarily resident in India for A.Y.2023-24, in which case, the income earned by him in Country S in the P.Y.2022-23 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.2023-24

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
	<u>26,000</u>
Gross Total Income	8,91,000

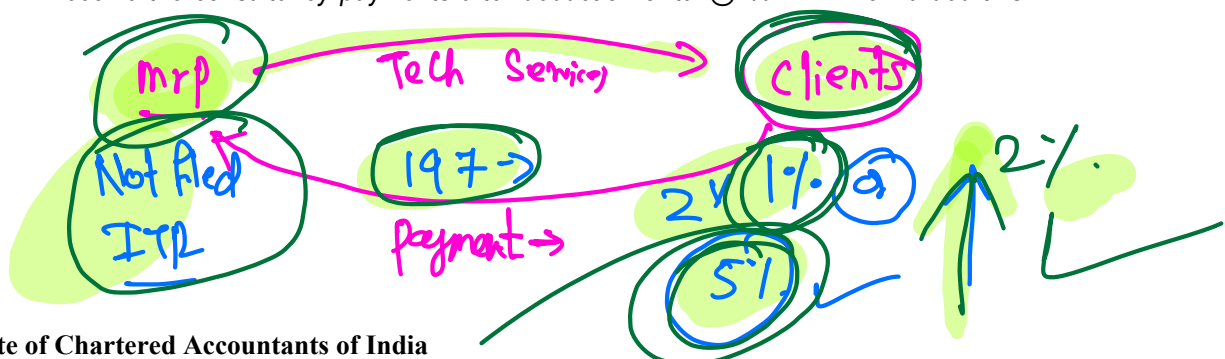
Less: Deductions under Chapter VI-A		
Under section 80D		
Mediclaim premium for self ₹ 48,000 restricted to	₹ 25,000	
Mediclaim premium for father ₹ 60,000 restricted to	₹ 25,000	
(Since father is a non-resident, even though he is of the age of 66 years)		
		50,000
Under section 80TTA		
Interest on savings bank account ₹ 18,250, restricted to		<u>10,000</u>
		<u>60,000</u>
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%		<u>3,148</u>
Tax liability		<u>81,848</u>
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.

Question 4

- (a) (i) During the previous year 2022-23, 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 2022-23 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 2021-22. 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 2022-23, 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

206C(1) X
206C(1A) ✓
∴ buyer → 194J ✓



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. 2021-22 and 2022-23. 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 1.8.2022. 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., 1.8.2022 is ₹ 82 lakhs. $82 \times 1\%$ 194-IA-

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)

- (b) 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 2022-23:

- (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?
- (c) Will Shahi Pvt. Ltd. become liable for penalty for under-reporting of income based on the report of the Transfer Pricing Officer (TPO)? (6 Marks)

30
(5)
25
2.5 +
+ 0.9
ALP =
28.41
30.8
1.62 (+)

270A

2007.

Answer

- (a) (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.2021-22 exceeds ₹ 10 crores and he has purchased goods of the value or aggregate of such value exceeding ₹ 50 lakhs in the F.Y.2022-23. 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.2021-22 / A.Y.2022-23 relevant to the P.Y. 2020-21/P.Y.2021-22, 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.

- (b) (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.	<u>5.00</u>
	25.00
Add: Mark up earned in uncontrolled comparable transaction @10%	<u>2.50</u>
	27.50
Add: Adjustment on account of brand value [Annual cost of brand value]	<u>0.90</u>
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.	<u>30.00</u>
Adjustment to be made to the income of Shahi Pvt. Ltd.	<u>1.60</u>

⁵ Assuming the prices and terms of supply are decided by the Sumi Inc.

- (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 5

- (a) Answer any **two** out of the following three sub-parts, viz. (i), (ii) and (iii).

Your answer should cover:

- (a) Issue involved
- (b) Provisions applicable
- (c) Analysis and Conclusion
- (i) *M/s Risky Construction Pvt. Ltd. is engaged in the construction of bridges and flyovers. During the previous year 2022-23, it made payment to various parties and 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 in spite 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.*
- (ii) *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 10% 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 of 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.

- (iii) 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. **(4 x 2 = 8 Marks)**

- (b) ¹ 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. ²

During the previous year 2022-23, 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

2 cr
SEP
NO SEP
SEP
NO SEP
SEP

IT ✓
2016 ELX
2020 EL
29.

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 2023 to 31st March 2023. 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.

No IT

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)

Answer

- (a) (i) **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.

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.

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.

- (ii) **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. (2022) 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.*

- (iii) **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) (2022) 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.

(b) 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

		<p>exemption u/s 10(50), since the transaction has already been subject to equalization levy in the hands of Alpha Inc.</p> <p>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.</p>
(ii)	Sale of 25000 mobile phones through Alpha Inc. to persons who are not resident in India, sitting in UK	<p>Equalisation levy is not attracted in the hands of Alpha Inc. on sale of mobile phones to non-residents based outside India.</p> <p>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.</p>
(iii)	Sale of 7,000 phones through Kiwi Inc's own website to persons resident in India	<p>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.</p> <p>Consideration = 7,000 x 2,000 x ₹ 80 = ₹ 112 crores</p> <p>EL payable by Kiwi Inc. = 2% x ₹ 112 crores = ₹ 2.24 crores</p> <p>There would be no income-tax liability in the hands of Kiwi Inc. on account of exemption u/s 10(50).</p>
(iv)	Sale of 12,000 phones through Kiwi Inc's own website to persons who are not resident in India, using internet in UK	<p>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.</p> <p>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.</p>
(v)	Sale of 21,000 phones through Kiwi's physical store in US to persons resident in India.	<p>Since the sale has taken place outside India, no income is deemed to accrue or arise in the hands of Kiwi Inc.</p>

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.2022-23 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 6

(a) (i) Comment whether the following transactions, undertaken during the financial year 2022-23, 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;

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(b) Ms. Q made two time deposits with Canara Bank, Jaipur - (a) a time deposit of ₹ 7 lakhs made on 07-08-2022 and (b) Renewal of Time deposit of ₹ 6 lakhs originally made on 1.1.2022 and renewed on 1.1.2023;

(c) Ms. C made following payments in respect of credit card payments-

• For the months of April to July, 2022	- ₹ 19,500 for each month, in cash	19500 x 4
• For the months of Aug. to Dec., 2022	- ₹ 59,500 for each month, through bank A/c	102 x
• For the months of Jan to Mar, 2023	- ₹ 13,300 for each month, in cash	13300 x 3

(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. **(4 Marks)**

(ii) Doctrine of precedence would be applicable in case of tax laws. In light of the Doctrine of Precedence, comment on the correctness or otherwise of the following statements alongwith reasons for your answers:

(a) The ratio decendi (the rationale for deciding a case) of a Supreme Court decision is absolutely binding on all lower courts, Tribunals and authorities. However, the lower courts, Tribunals and authorities are not bound by the obiter dicta (additional remarks or things said by the way) of Supreme Court decisions.

(b) Where there are two irreconcilable decisions of two Benches of similar strength of the Supreme Court, the decision with more detailed discussion on the subject shall prevail.

(c) Lower courts are bound by the decisions of Supreme Court. The only exception to this principle is the judgments passed by the Supreme Court per incuriam (i.e. without referring the statutory provision).

(d) Lower authorities may deviate from the decision of the High Court within whose jurisdiction they function, only in a situation to keep the issue alive where the Department has not accepted the said decision and has taken the matter to the Supreme Court. **(4 Marks)**

(b) (i) What is the "General Rule of Interpretation" of tax treaty as provided under Vienna Convention on Law of Treaties? **(2 Marks)**

- (ii) Explain the following terms "Pacta Sunt Servanda (in good faith)" in view of Principles enunciated in the Vienna Convention on law of treaties. (1 Mark)
- (iii) Explain the term "Mutual Agreement Procedure" as per Article 25 of Model Tax Conventions under OECD model and UN Model. (3 Marks)

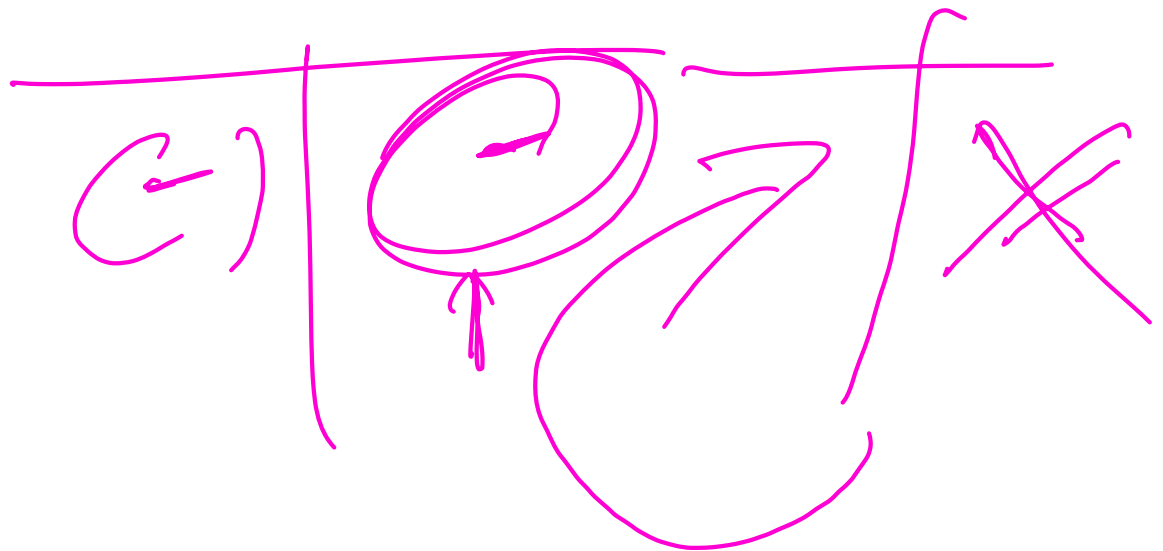
Answer

- (a) (i) (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.2022-23, 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 1.1.2023 is only ₹ 7 lakhs, and hence, does not aggregate to ₹ 10 lakhs or more in the F.Y.2022-23.
- (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.2022-23.
- However, payment of ₹ 59,500 for each month from August 2022 to December 2022 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.
- (ii) **Doctrine of precedence**
- (a) **Incorrect** - Not only the *ratio decidendi* (the rationale for deciding a case), but also *obiter dicta* (additional observations, remarks, and opinions given while deciding a case) of the Supreme Court are binding on all the Courts.
- (b) **Incorrect** - When there are two irreconcilable decisions of two Benches of similar strength of Supreme Court, the decision later in time shall prevail.
- (c) **Incorrect** - The Supreme Court judgments cannot be ignored by the lower courts though such judgments are *per incuriam* (i.e., without referring the statutory provisions).

- (d) **Incorrect** - Lower authorities cannot pass orders which are inconsistent with the decisions of the High Court within whose jurisdiction they function, even for the purpose of keeping the issue alive.
- (b) (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.



NOV 2023 → Paper

PAPER – 7: DIRECT TAX LAWS & INTERNATIONAL TAXATION

Part - II

Question No.1 is compulsory.

Answer any **four** questions from the remaining **five** questions.

Working notes should form part of the answer.

All questions relate to Assessment Year 2023-24, unless stated otherwise in the question.

Question 1

M/s. Breeze Dental Care Pvt. Ltd., a Tooth brush manufacturing company, having its factory in Rajkot, Gujarat shows a net profit of ₹ 79,50,000 after debiting and crediting of the amounts in its Profit and Loss Account as mentioned below for the year ended March 31, 2023:

- (a) Depreciation as per Companies Act ₹ 85,00,000. (+)
- (-f) (b) A gross loss of amount of ₹ 25,00,000, due to destruction of old machinery by fire in the factory. Though ₹ 7,80,000 was received as scrap value on this old machinery on 31-8-2022, the Insurance company did not admit the claim of the company on the charge of negligence. (-) Same Adj done earlier.
- (c) Income Tax Assessment of A.Y. 2021-22 was completed in September 2022 with a tax demand of ₹ 5,70,000 which included surcharge of ₹ 60,500 and a cess of ₹ 24,200. The entire sum has been duly paid during the F.Y. 2022-23. (+)
- (d) Power Subsidy received from Central Government amounting to ₹ 13 lakhs. It was received with a stipulation that the same is to be adjusted in the electricity bills for the financial year 2021-22. The subsidy received in the financial year 2022-23. It was not included in the income of year 2021-22. ignore. Excluded part of Income.
- PTDP (e) Interest received ₹ 7,50,000 on margin money deposited with bank for obtaining bank guarantee to carry on business is included as income in the Profit and Loss Account. ∴ ignore.
- (f) Purchase price of raw material used for the purpose of in-house research and development is ₹ 14,00,000. (including GST of ₹ 2,75,000 on which ITC is not admissible) is debited in Profit and Loss account. Allowed
- (g) Breeze Dental Care Pvt. Ltd. paid ₹ 12 lakhs to JAPA Inc. of China for online digital advertisement. JAPA Inc. has no PE in India. No tax was deducted at source nor was equilisation levy paid on the said amount. DIA → 2016 EL Applicable @ 6%

The Suggested Answers for Paper 7: Direct Tax Laws and International Taxation are based on the provisions of direct tax laws as amended by the Finance Act, 2022, which are relevant for November, 2023 examination. The relevant assessment year is A.Y.2023-24.

(-) PGBP → Show under IFOs

- (h) Dividend of ₹ 2,50,750 was received from a foreign company, in which Breeze Dental Care Pvt. Ltd. holds 28% in nominal value of equity share capital of the company. An expense (other than Interest payment) of ₹ 15,000 spent on earning this income. **Not Allowed**
- (i) Interest of ₹ 20,00,000 lakhs¹ relating to F.Y. 2022-23, which is settled by issuing 8% debentures of ₹ 100 each in March, 2023. **Not Allowed. (+)**

Additional Information:

- (1) Depreciation as per Income-tax Act, 1961 is ₹ 32,50,000. **(-)**
- (2) A new Air Compressor machine, necessary for installing with main Plant to keep the Air compression as per guidelines, was purchased and was installed and put to use on 1.5.2022 - ₹ 74,00,000. **Normal 15% → Add/In → 20%.**
- (3) Another new specified Air Pollution Control Equipment was purchased for ₹ 23,45,000 on 18.6.2022. **40% + 20%**
- (4) Items purchased after 30th October, 2022:
- (a) Lorries for transporting goods to sales depots - ₹ 95,00,000. **7.5%**
- (b) Machine imported from Germany - ₹ 1,60,00,000. It arrived at Kandla port on 30.3.2023 and was installed on 10.4.2023. **X Installed next year.**

All the other items were installed during the period ended March 31, 2023. The total turnover of the company for the Financial Year 2020-21 was ₹ 415 crores. **- 30%**

You are required to compute the Total Income and Tax payable of Breeze Dental Care Pvt. Ltd. for the Assessment Year 2023-24 with brief reasons for the treatment of each item given above. The company has not opted for section 115BAA/115BAB. Ignore provisions of MAT.

(14 Marks)

Answer

Computation of Total Income and Tax Payable by M/s Breeze Dental Care Pvt. Ltd. for the A.Y. 2023-24

Particulars		Amount (in ₹)	
I	Profits and gains of business and profession		
	Net profit as per profit and loss account		79,50,000
	Add: Items debited but to be considered separately or to be disallowed		
	(a) Depreciation as per Companies Act	85,00,000	
	(b) Loss due to destruction of machinery by fire	25,00,000	

¹ to be read as ₹ 20 lakhs

<p>Loss of ₹ 25 lakhs due to destruction of old machinery caused by fire is not deductible since it is capital in nature. Since the loss has been debited to profit and loss account, the same is required to be added back while computing business income</p>	<p>5,70,000</p>
<p>(c) Tax paid (including surcharge and cess) Tax paid including surcharge and cess is not allowed while computing business income under section 40(a)(ii). Since the tax paid has been debited to profit and loss account, the same is required to added back while computing business income]</p>	<p>5,70,000</p>
<p>(f) Purchase price of raw material for in-house research Purchase price of raw material used for the purpose of in-house research and development qualifies for 100% deduction u/s 35(2AB) or 35(1)(i). GST on which ITC is not admissible is an expense and can be claimed as deduction under section 37. As the amount has already been debited to profit and loss account, no further adjustment is necessary</p>	<p>Nil</p>
<p>(g) Payment to JAPA Inc. for online digital advertisement Disallowance @ 100% would be attracted under section 40(a)(ib) for non-deduction of equalization levy on payment for online digital advertisement to JAPA Inc. Since the payment has been debited to profit and loss account, the same is required to added back while computing business income</p>	<p>12,00,000</p>
<p>(h) Expenses on earning dividend income The allowability or otherwise of expenses on dividend income has to be considered while computing income under the head "Income from other sources". Since the same has been debited to the profit and loss account, it has to be added back while computing business income]</p>	<p>15,000</p>

<p>(i) Interest² settled by issuing debentures As per section 43B, conversion of interest into a debenture shall not be deemed as actual payment, and hence would not be allowed as deduction. Since the interest has been debited to the profit and loss account, it has to be added back while computing business income]</p>	<p>20,00,000</p>	
		<p><u>1,47,85,000</u> 2,27,35,000</p>
<p>Less: Items credited but not taxable or chargeable to tax under another head</p>		
<p>(b) Scrap value of machinery Scrap value of machinery, being capital in nature, has to be reduced from WDV of machinery. Since the same has been credited to the profit and loss account, it has to be deducted while computing business income</p>	<p>7,80,000</p>	
<p>(d) Power Subsidy received from Central Government As per ICDS VII, Government grant (subsidy) which is receivable as compensation for expenses or losses incurred in a previous financial year shall be recognised as income of the period in which it is received. Since the subsidy is received in the P.Y. 2022-23, it would be taxable in P.Y. 2022-23. Since such subsidy has been credited to profit and loss account, no further adjustment is required.</p>	<p>Nil</p>	
<p>(e) Interest on margin money deposited with Bank Interest income received on funds kept as margin money for obtaining the bank guarantee would be taxable under the head "Profits and gains of business or profession"³. Since such interest has already been credited to profit and loss account, no further adjustment is required.</p>	<p>Nil</p>	

² It is assumed that interest is on any loan or borrowing from any public financial institution or a State Financial Corporation or a State Industrial Investment Corporation or a deposit taking non-banking financial company or systemically important non-deposit taking non-banking financial company or a scheduled bank or co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank

³ As decided in CIT v. K and Co. (2014) 364 ITR 93 (Del)

<p>(h) Dividend received from foreign company Dividend received from foreign company is taxable under "Income from other sources". Since the same has been credited to the profit and loss account, it has to be deducted while computing business income.</p>	2,50,750	
		10,30,750
		2,17,04,250
Less: Depreciation as per Income-tax Act, 1961		
Normal depreciation [Refer Note below for alternative]		
- Depreciation on assets other than on air compressor, air pollution control equipment & lorries stated in A (2), (3) & (4)	32,50,000	
- On Air Compressor machine [74,00,000 x 15%]	11,10,000	
- On Air Pollution Control Equipment [23,45,000 x 40%]	9,38,000	
- On Lorries for transporting goods to sales depots [95,00,000 x 15% x 50%, since it is used for less than 180 days]	7,12,500	
- On Machine imported from Germany [Nil, since it is not installed in P.Y. 2022-23]	✓ Nil	
		60,10,500
Additional depreciation		
- On Air Compressor machine [74,00,000 x 20%]	14,80,000	
- On Air Pollution Control Equipment [23,45,000 x 20%]	4,69,000	19,49,000
		1,37,44,750
II 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". ₹ 15,000, being an expense other than interest payment is not allowable as deduction from dividend income.]		2,50,750
Gross Total Income/ Total Income		1,39,95,500

Computation of Tax payable		
Tax on ₹ 1,39,95,500 @30% (since the turnover exceed ₹ 400 crores in the P.Y. 2020-21)		41,98,650
Add: Surcharge @ 7% (since total income exceeds ₹ 1 crore but less than ₹ 10 crore)		2,93,906
		44,92,556
Add: Health and Education cess @ 4%		1,79,702
Tax Payable		46,72,258
Tax Payable (Rounded off)		46,72,260

Note – The above solution has been worked out on the assumption that scrap value of machine ₹ 7,80,000 has already been adjusted in computing the depreciation of ₹ 32,50,000. However, if it is assumed that adjustment in respect of scrap value of machine is not considered in the depreciation amount of ₹ 32,50,000, the business income, total income and tax payable would be ₹ 1,38,61,750, ₹ 1,41,12,500 and ₹ 47,11,320, respectively.

Question 2

- (a) Agro Food Corporation Ltd., a domestic company engaged in manufacturing of FMCG products. It has business of manufacturing, marketing and selling of a wide range of food products and edible oils in India.

The company has prepared Statement of Profit & Loss in accordance with the Schedule III to the Companies Act, 2013 and such Statement of Profit & Loss for the previous year ended 31-03-2023 shows a net profit of ₹ 89 lakhs.

The above net profit was arrived at in respect of its business activities after debiting/crediting the following amounts under different heads:

Debits to the Statement of Profit and loss:

		₹ (lakh)	
(i)	Expenditure relating to industrial undertaking qualifying for deduction u/s 10AA.	15.00	X
(ii)	Depreciation for current year under Companies Act, 2013.	34.00	(+) (-) 34
(iii)	Interest to Financial Institution (an NBFC) not paid up to the date of filing the return.	8.50	X
(iv)	Penalty for infraction of law	1.50	X
(v)	Proposed dividend	3.50	+
(vi)	Provision for Income-tax	2.75	+
(vii)	Transfer to General Reserve	5.00	+

(viii)	Expenditure relating to 80-IA undertaking	6.00	X
Credits to the Statement of Profit and Loss:			
(i)	Amount withdrawn from Reserve created during 2019-20 (Book Profit was <u>not increased by the amount transferred to such reserve in the year 2019-20</u>)	4.00	X
(ii)	Profits from an Industrial Undertaking covered and qualified for deduction under section 10AA of Income-tax Act	31.70	X
(iii)	Profits from an Industrial Undertaking covered and qualified under section 80-IA of Income-tax Act, 1961	7.00	X
(iv)	Deferred tax Credit	3.57	(-)
Additional Information:			
(i)	Brought forward Business Loss as <u>per books</u>	8.75	
(ii)	Depreciation allowable under Income tax rules	42.00	X
(iii)	Brought forward Business Loss as per Income-tax Law	9.50	X
(iv)	Unabsorbed depreciation as per Income-tax Law	10.53	X
(v)	Unabsorbed depreciation as per Books	Nil	Nil.

You are requested to compute the Book profit of the company as per section 115JB of the Income-tax Act, 1961 for A.Y. 2023-24.

15% + 4%

Also compute the Minimum Alternate tax applicable on Books profits calculated as per section 115JB as applicable to Book Profits. Ignore Tax liability as per normal provisions of law.

(8 Marks)

- (b) (i) M/s. XY Airlines Inc., incorporated as a company in USA operated its flights to India and vice versa during the financial year 2022-23.

44BBA

90-40 = 50
x 5%

M/s. XY Airlines Inc. collected charges of ₹ 90 lakhs for carriage of passengers and cargo from Delhi to New York and vice versa out of which, ₹ 40 lakhs were received in New York in USD for the passenger and cargo fare booked from New York to Delhi.

70-30 = 40
x 5%

The company also collected ₹ 70 lakhs for carriage of passengers and cargo from Mumbai to New York and vice versa out of which, ₹ 30 lakhs were received in New York in USD for the passenger and cargo fare booked from New York to Mumbai.

90 x 9%

The total expenses for the year on operation of such flights were ₹ 170 lakhs. Compute the income chargeable to tax of the XY Airlines Inc. in India. (3 Marks)

Not Allowed

- (ii) Mr. Aadi, a non-resident Indian (Age 45 years), subscribed unlisted equity shares of an Indian company in 2008-09 for ₹ 6,00,000. These shares were sold by him on 05.03.2023 for a consideration of ₹ 9,00,000.

Assume per in foreign currency

FIC
(-) Exp

900000
(15000)
885000

If it is not in FIC

(-) COA

(600000) No Indexation
CAXIA
285000

Index -> Available

(-) ISF (285000 x 3.5%)

ISF -> N.A.

Brokerage paid for sale of these shares is ₹ 15,000. Compute taxable capital gain of Mr. Aadi for the Assessment Year 2023-24, assuming that he has invested in specified assets ₹ 3,50,000, before 31st March 2023.

Cost inflation Index for Financial Year 2008-09 is 137 and for 2022-23 is 331. Ignore the effect of first proviso to section 48. (3 Marks)

Answer

(a) Computation of Book Profit and MAT liability under section 115JB for A.Y.2023-24

Particulars	₹	₹
Net Profit as per Statement of Profit and Loss		89,00,000
Add: Net profit to be increased by the following amounts as per Explanation 1 to section 115JB:		
- Depreciation	34,00,000	
- Proposed dividend	3,50,000	
- Provision for income-tax	2,75,000	
- Transfer to General Reserves, [Amount carried to any reserves, by whatever name called has to be added back]	<u>5,00,000</u>	
		<u>45,25,000</u>
		1,34,25,000
Less: Net profit to be decreased by the following amounts as per Explanation 1 to section 115JB:		
- Depreciation	34,00,000	
- Amount withdrawn from reserve created during 2019-20 [Since the book profit of 2019-20 was not increased by the amount transferred to such reserve]	Nil	
- Deferred tax credit	3,57,000	
- Unabsorbed depreciation or brought forward business loss, whichever is less, as per the books of account. <i>Lower of unabsorbed depreciation i.e., Nil and brought forward business loss ₹ 8,75,000 as per books of account has to be reduced while computing the book profit]</i>	<u>Nil</u>	
		<u>37,57,000</u>
Book Profit		96,68,000

Computation of MAT Liability	
15% of book profit (₹ 96,68,000 x 15%)	14,50,200
Add: Health and Education cess@4%	<u>58,008</u>
Minimum Alternate Tax liability	<u>15,08,208</u>
MAT liability (rounded off)	15,08,210

Notes:

- (1) Only the specified items mentioned under *Explanation 1* to section 115JB can be added back to or reduced 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 added back/reduced for computing book profit:
 - Interest to financial institution (an NBFC) not paid before due date of filing of return of income
 - Penalty for infraction of law
 - Expenditure relating to undertaking eligible for deduction u/s 80-IA
 - Profits from an Industrial undertaking eligible for deduction u/s 80-IA
 - (2) As per the 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. Accordingly, expenditure and profits from an industrial undertaking eligible for deduction u/s 10AA cannot be added back/reduced for computing book profit.
 - (3) Depreciation and brought forward business loss as per Income-tax Act, 1961 is not relevant for computing book profit for levy of MAT.
- (b) (i) As per section 44BBA, in the 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 XY Airlines Inc. 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 Delhi/ Mumbai (₹)
(i)	Fare for Delhi to New York and vice versa	50,00,000 (90,00,000 – 40,00,000)	40,00,000
(ii)	Fare for Mumbai to New York and vice versa	40,00,000 (70,00,000 – 30,00,000)	30,00,000
Total		90,00,000	70,00,000
Presumptive income @5% u/s 44BBA		4,50,000 (90,00,000 × 5%)	Nil (since the amount not received in India)
No deduction would be available in respect of expenditure incurred by M/s XY Airlines Inc.			

(ii) **Computation of taxable capital gain of Mr. Aadi for A.Y. 2023-24**

Particulars	(Amount in ₹)
Full Value of Consideration	9,00,000
Less: Brokerage paid	<u>15,000</u>
Net Consideration	8,85,000
Less: Cost of Acquisition [Indexation benefit would not be available]	<u>6,00,000</u>
Long-term capital gain [Since it was held for more than 24 months]	2,85,000
Less: Exemption u/s 115F [3,50,000 × 2,85,000/8,85,000]	<u>1,12,712</u>
Taxable capital gains	<u>1,72,289</u>

Note – In the question, the information is missing whether the unlisted equity shares were purchased in convertible foreign exchange or not. The above solution is given assuming it is purchased in convertible foreign exchange in which case provisions of Chapter XII-A would be applicable to Mr. Aadi and indexation benefit would not be available to him. However, if it is assumed that unlisted shares are not purchased in convertible foreign exchange, the indexation benefit under normal provisions of the Act would be available. In such case, capital gain/loss would be computed as follows:

Particulars	(Amount in ₹)
Full Value of Consideration	9,00,000
Less: Brokerage paid	<u>15,000</u>
Net Consideration	8,85,000
Less: Cost of Acquisition [6,00,000 x 331/137]	<u>14,49,635</u>
Long-term capital loss [Since it held for more than 24 months]	(5,64,635)

Question 3

(a) Mookti Foundation, a Charitable institution registered under section 12AB set up on 1st August, 2021 is engaged in preservation of forests. The accountant of the institution provides the following details of the institution to you as a Chartered Accountant. Please discuss the treatment of Application of Income/Expense in the hands of the Charitable institution for the previous year 2022-23 in the following independent situations as per provisions of Income-tax Act, 1961. Your answer should be followed with reasons:

- (i) The institution follows mercantile system of accounting and during the previous year 2022-23, has incurred Electricity expenses amounting to ₹ 1,00,000 for the period pertaining to the year 2022-23. The Electricity expenses was actually paid on 10th day of April 2023 through an account payee cheque. In which year the application of income will be treated by the Foundation? *py 23-24 - Allowed.*
- (ii) The Foundation was cultivating 20 acres of agriculture land. It is doing agriculture operations and earned an agriculture income of ₹ 12,00,000 during Previous year 2022-23 from this activity. Whether exemption under section 10(1) will be available to Mookti Foundation on such income? *Sec 11(7) exempt.*
- (iii) Mookti Foundation has earned Rental income for previous year 2022-23 amounting to ₹ 3,00,000. It received ₹ 2,00,000 upto 31st December, 2022 of such income. However, the balance of ₹ 1,00,000 was received on 31st July, 2023. Upto what period the institution can apply the same amount towards the objects of the institution? The institution has exercised the relevant option in this regard. *∴ Apply till py 24-25.*
- (iv) Mookti Foundation borrowed ₹ 45 lakhs from a nationalised bank in April, 2022 for purchase of building in a forest area for the objects of the institution. It spent the whole amount of loan for the same purpose and claimed the same as application of income in March 2023. It repaid the first instalment of ₹ 6 lakhs to the Bank on 31st March 2023. *Allowed when paid py 6-2023* **(8 Marks)**

(b) Smt. Manisha (aged 70 years), a resident individual, furnishes you the following particulars of Income relating to the previous year 2022-23:

Particulars	Amount ₹
Loss from let out property at Delhi (Computed)	4,50,000

Simple Q on DTAA.

*(2-l) set off
Bal 2.5l IIF.*

Income from business in India (Computed)	8,99,500
Business income in Country "A"	8,00,000
Fixed Deposit Interest in Country A	USD 8,000
Saving Bank Interest in India from PNB Bank	50,500
Contribution to PPF Account of her married son	1,50,000
Interest on PPF Account (in her own name)	58,682
Agriculture income in Country "M"	1,20,000

Agriculture income is exempt in Country "M" and rate of Tax in Country A is 25%. Assume that there is no double taxation avoidance agreement between India and Country "A" and Country "M".

Rate of 1 USD = ₹82 for calculation purposes.

Compute the total income and tax payable by Smt. Manisha for the A.Y.2023-24. Assume that she did not opt to be governed by provision of section 115BAC. (6 Marks)

Answer

- (a) (i) With effect from A.Y. 2022-23, any sum payable by any trust or institution shall be treated as application of income only in the previous year when such sum is actually paid by it. This is irrespective of the previous year in which the liability to pay such sum was incurred or method of accounting regularly employed by it. Thus, expenditure is allowed as application only when the payment is actually made and not when the liability is incurred.

In the present case, though the Mookti Foundation trust follows mercantile system of accounting, electricity expenses of ₹ 1,00,000 incurred during the P.Y. 2022-23 would be allowable as application of income only in the previous year 2023-24 as actual payment is made on 10th April, 2023.

- (ii) Where a trust or an institution has been granted registration for purposes of availing exemption under section 12AB then, such trust or institution cannot claim any exemption under any provision of section 10 [other than exemption of agricultural income under section 10(1)].

Accordingly, agricultural income of ₹ 12,00,000 would be exempt under section 10(1) in the hands of Mookti Foundation registered under section 12AB.

- (iii) In case a trust is unable to apply the minimum of 85% of its income during the previous year as whole or any part of the income has not been received during that year, the period of application is extended to cover the previous year in which the income is actually received or the previous year immediately following the previous year in which the income was received.

Accordingly, in the present case, income of ₹ 1,00,000 which was received on 31st July, 2023 can be applied during the P.Y. 2023-24, being the year in which such amount is received or in the P.Y. 2024-25, being the P.Y. immediately following the P.Y. 2023-24.

- (iv) Application for charitable or religious purposes, from any loan or borrowing, shall not be treated as application of income for charitable or religious purposes.

However, the amount not so treated as application or part thereof, shall be treated as application in the previous year in which the loan or borrowing or part thereof is repaid from the income of that year to the extent of such repayment.

Accordingly, amount of ₹ 45 lakhs spent for purchase of building is not allowable as application of income for the P.Y. 2022-23 but the repayment of first instalment of ₹ 6 lakhs on 31st March 2023 would be allowed as application.

(b) Computation of total income and tax payable by Smt. Manisha for A.Y.2023-24

Particulars	₹	₹
Loss from house property	4,50,000	
Less: As per section 71(3A), set-off of loss against business income in India to the extent of	<u>2,00,000</u>	
Balance loss would be carried forward for set-off to subsequent A.Y.2024-25	(2,50,000)	
Profits and Gains of Business or Profession		
Income from business in India (Computed)	8,99,500	
Less: Set-off of loss from house property	<u>2,00,000</u>	
	6,99,500	
Business income in Country 'A'	<u>8,00,000</u>	14,99,500
Income from Other Sources		
Fixed deposit interest in Country 'A' [USD 8,000 x 82]	6,56,000	
Savings bank interest in India from PNB Bank	50,500	
Interest on PPF Account	Exempt	
Agriculture income in Country 'M'	<u>1,20,000</u>	
		<u>8,26,500</u>
Gross Total Income		23,26,000
Less: Deductions under Chapter VI-A		
Under section 80C – Contribution to PPF	1,50,000	
Under section 80TTB - Interest on savings bank account restricted to	<u>50,000</u>	
		<u>2,00,000</u>

Total Income	21,26,000
Tax liability on ₹21,26,000	
Tax on total income [30% of ₹11,26,000 + ₹1,10,000]	4,47,800
Add: Health and Education cess@4%	<u>17,912</u>
	4,65,712
Less: Deduction under section 91: In respect of Country M, no relief u/s 91 would be available, since agricultural income is exempt in Country M.	
Less: Deduction u/s 91 in respect of doubly taxed income in Country A (See Working Note below)	<u>3,18,944</u>
Tax payable	<u>1,46,768</u>
Tax payable (Rounded off)	1,46,770
Working Note: Calculation of deduction under section 91	
	₹
Doubly Taxed Income – Country A	
Business Income	8,00,000
FD interest in Country A	<u>6,56,000</u>
	14,56,000
Indian rate of tax = $4,65,712/21,26,000 \times 100 = 21.9055\%$	
Rate of tax in Country A = 25%	
Lower of the above = 21.9055%	
Deduction u/s 91 [21.9055% x ₹14,56,000]	3,18,944

Question 4

(a) Examine the applicability of Tax to be deducted at Source (TDS) or Tax to be collected at Source (TCS) as per the Income-tax Act, 1961 in the following independent situations. Calculate the amount of tax to be deducted at Source or tax to be collected at Source in given cases as per the provisions applicable for the Assessment Year 2023-24:

(i) Mr. Ron took a loan of ₹ 10 lakhs from his employer Thomas Private Limited, an Indian domestic manufacturing company for sponsoring studies of his son in Germany. Out of the said loan, he remitted ₹ 8,75,000 towards fees to the University in Germany for his son's education on 01.10.2022.

He also remitted to his son an amount of ₹ 4,75,000 for pursuing higher studies in Germany towards his out of pocket expenses on 20.02.2023. Both the remittances were made through the same authorized dealer under the Liberalized Remittance Scheme of RBI. (3 Marks)

(ii) Mr. Mandeep Singh, a manufacturer of textile goods, had a turnover of ₹ 12 crores during Financial year 2021-22 and is covered under provisions of section 44AB of

↳ Last year..

875000
(700000)
175000 x 5% = 87500
475000 x 5% = 23750

Commission → 194H → 5% of 60 lacs.

PAPER – 7 : DIRECT TAX LAWS & INTERNATIONAL TAXATION

15

→ 194-1A → 1%.

Income-tax Act for compulsory audit of Books of Accounts. He purchased a residential house in January 2023 for his personal use for ₹ 5 crores from Mr. Amit and paid a commission @ 12% of the value of the house to Mr. Pankaj for effecting the deal. The house is not used for business purposes by Mr. Mandeep Singh.

(3 Marks)

- (iii) Registrar General of Hon'ble High Court of Delhi has made a fixed deposit of ₹ 100 lakhs with a nationalised bank out of money deposited by litigants on directions of the Court. Is section 194A applicable in respect of interest on fixed deposits in the name of Registrar General of High Court? **NO TDS.** (2 Marks)

- (b) 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 31.03.2023.

SHQ Inc of Germany during the Financial year 2022-23 imported 5 lakh piece of blankets from Paras Ltd. @ ₹ 2,000 per unit for the trading purposes in Germany. Paras Ltd. sold similar blankets to other dealers in Germany @ ₹ 2,100 per unit. Paras Ltd. received a guarantee on 1.04.2022 for availing a cash credit limit of ₹ 9 crores for which SHQ Inc 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 SHQ Inc, 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 SHQ Inc. are associated enterprises. If yes, compute the Arm's Length Price (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? Your answer must be based on the latest provisions of Income-tax Act. (6 Marks)

Answer

- (a) (i) Tax would be collectible at source under section 206C(1G) by the authorised dealer, who received an amount, under the Liberalised Remittance Scheme of the RBI, for overseas remittance from Mr. Ron at the rate of 5% of the sum exceeding ₹ 7 lakhs.

Tax of ₹ 8,750 (5% of ₹ 1,75,000, being the sum exceeding ₹ 7 lakhs) would be collectible by the authorised dealer on 1.10.2022 on remittance of ₹ 8,75,000 for education of his son out of the loan from his employer. The concessional rate of TCS of 0.5% would not be applicable, since the amount of remittance is not out of a loan obtained from any financial institution as referred under section 80E.

Done earlier
Same question

Tax of ₹ 23,750 (5% of ₹ 4,75,000) would be collectible by the authorised dealer on 20.2.2023 on remittances of ₹ 4,75,000 for education of his son for out of pocket expenses.

- (ii) Section 194-IA is attracted where the consideration for transfer of immovable property and the stamp duty value of such property, are both, is ₹ 50,00,000 or more.

As per section 194-IA, Mr. Mandeep Singh paying ₹ 5 crores to Mr. Amit, as consideration for transfer of house property, is required to deducted tax at source @1% of consideration or the stamp duty value, whichever is higher.

The tax deduction under section 194-IA would be ₹ 5,00,000, being 1% of ₹ 5 crores⁴.

Since Mr. Mandeep Singh's turnover for the P.Y. 2021-22 exceeded ₹ 1 crore and payment of commission i.e., ₹ 60,00,000 (12% of ₹ 5 crores) exceeds ₹ 15,000, Mr. Mandeep Singh is required to deduct tax under section 194H @5% from commission payment to Mr. Pankaj.

The tax deduction under section 194H would be ₹ 3,00,000, being 5% of ₹ 60 lakhs.

- (iii) The expression "payee" u/s 194A would mean the recipient of income whose account is maintained by the person paying interest. The Registrar General is neither recipient of 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 to his credit are ineffective. The interest on FDRs made in the name of Registrar General of the Court would, thus, not be subjected to TDS under section 194A.

- (b) Paras Ltd, an Indian company, and SHQ Inc. of Germany are deemed to be associated enterprises as per section 92A(2), since SHQ Inc. guarantees not less than 10% i.e., 15% in this case (₹ 9 crores/ ₹ 60 crores) of the total borrowing of Paras Ltd.

Computation of Arms Length Price and adjustment to be made to the income of Paras Ltd

Particulars	₹
Price of blanket charged from unrelated party (Per blanket)	2,100
Add: Adjustment for cost of capital [₹ 2,100 x 12% x 2/12]	<u>42</u>
Arm's length price per blanket	2,142
Less: Price at which blankets was sold to SHQ Inc.	<u>2,000</u>
Adjustment to be made per blanket	<u>142</u>

⁴ Assuming SDV is lower than the consideration

No of pieces of blanket sold to SHQ Inc. Germany	5,00,000
Adjustment to be made to the income of Paras Ltd. [5,00,000 x 142]	7,10,00,000

If the primary adjustments to transfer price has been made *suo-motu* by Paras Ltd. in its return of income, it has to repatriate the excess money of ₹ 7,10,00,000 on or before 90 days from the due date of filing of return u/s 139(1) for A.Y. 2023-24.

If the excess money of ₹ 7,10,00,000 is not repatriated to India within 90 days from the due date of filing of return u/s 139(1) for A.Y. 2023-24, the same shall be deemed to be an advance made by the Paras Ltd. to SHQ Inc. and the interest on such advance shall be computed at the one year marginal cost of fund lending rate of SBI as on 1st April of the relevant previous year + 3.25%.

In a case where the excess money of ₹ 7,10,00,000 has not been repatriated within 90 days from the due date of filing of return u/s 139(1) for A.Y. 2023-24, Paras Ltd. has the option to pay additional income-tax @ 20.9664% (i.e., tax@18% plus surcharge@12% plus cess@4%) on ₹ 7,10,00,000.

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.

Question 5

(a) Answer any **two** out of the following three sub-parts (i), (ii), (iii) Your answer should cover.

(1) Issues involved

(2) Provisions Applicable

(3) Analysis and Conclusion

(i) Mr. Surajit e-filed his Income-tax Return for A.Y. 2023-24 on July 21, 2023. He declared a total income of ₹ 11,75,000.

Total income includes interest from Public Provident Fund (PPF) ₹ 95,530 and long-term capital gains on agricultural land exempt under section 10(37). Both these incomes were disclosed in the schedule of exempt income.

Mr. Surajit also found that by mistake he failed to claim the current year business loss in the Income-tax Return amounting to ₹ 4,50,000 which he is entitled to claim.

In due course of time, the above Income-tax Return got processed under section 143(1) and both the above exemptions for Interest on Public Provident Fund and long-term capital gains on agricultural land were denied. Intimation was served to Mr. Surajit and a demand of tax was raised.

For all the above mistakes in the return he filed a revised return under section 139(5) but time limit for e-verification of revised return had lapsed and the same became invalid.

AO bound to
accept for
LTCU/ → Not for B/L.
PPF

Assessee filed for rectification under section 154 which was also rejected by the Assessing Officer. Is the Assessing Officer bound to accept the request of Mr. Surajit?

- (ii) IT Finance (I) Ltd. repays a loan merely by passing adjustment entries in its books of account. Loan repayment was not actually made.

The cause shown by the assessee for repayment of the loan otherwise than by account payee cheque/bank draft was on account of the fact that the assessee was liable to receive amount towards the sale price of the shares sold by the assessee to the person from whom loan was received by the assessee. In order to avoid the unnecessary circular transfer of shares, both the parties agreed to set-off the amount payable and receivable by way of passing journal entries and the balance loan amount was paid by the assessee by way of an account payee cheque. The amount of loan settled by way of passing journal entries exceeds ₹ 20,000.

Neither the genuineness of the receipt of loan nor the transaction of repayment of loan by way of adjustment through book entries has been doubted in the regular assessment. But the Assessing Officer imposed penalty under section 271E as a contravention of the provisions of section 269T with regard to repayment of loan otherwise than by banking channel.

Is the Assessing Officer justified in imposing penalty?

- (iii) The assessee, M/s. ABC Finance Limited, a finance company, was engaged in business of leasing and hire purchase of capital equipment to existing Indian enterprises. It had obtained certain amount of loan from a UK based company in foreign currency to be used by the assessee for financing the procurement of capital equipment by its customers. While repaying said amount the assessee had to pay a higher amount in lieu of fluctuation in exchange rate, which resulted in loss of ₹ 3.57 crores. Subsequently, the assessee, while filing the return of income, claimed loss owing to exchange fluctuation, amongst others, of ₹ 1.10 crores as deduction u/s 37(1), and capitalised exchange fluctuation of ₹ 2.47 crores. However, the claim under section 37(1) was denied by the Revenue while processing return.

The Commissioner (Appeals) also rejected the assessee's claim and held that provision of section 43A for capitalisation of Exchange rate fluctuation was applicable.

In the appeal before ITAT, the appellant not only claimed deduction in respect of loss of ₹ 1.10 crores arising on account of exchange fluctuation, but also set up a fresh claim in respect of revenue expenses to the tune of ₹ 2.47 crores, erroneously capitalised in the return. The Tribunal reversed the findings of the Commissioner (Appeals) and further held that since entire amount of loan was utilised in trading operations, the expenditure so incurred was revenue in nature and allowable under section 37(1).

Reasonable
cause should
be given
as banking
channel.

CIT vs
Triumph International
Finance (I) Ltd
2012 (BOM)

Wipro Finance
Ltd vs CIT
(2022) (SC)

Whether the Tribunal is justified in deleting the disallowance of claim of ₹ 1.10 crores made by AO and allowing the additional claim of ₹ 2.47 crores as revenue expense? (4 x 2 = 8 Marks)

- (b) ABC Inc., a company incorporated in USA, owns and manages a website which acts as a marketplace for buying and selling of goods and also hosts advertisement. ABC Inc. has no physical presence in India and no permanent establishment in India.

Raghu Ltd is a domestic Indian company. Raghu Ltd made a payment of ₹ 3,00,000 on 30-6-2022 towards procuring online advertisement space to ABC Inc. for his business. Raghu Ltd. remitted the equalization levy on 23-3-2023.

For the purpose of online advertisement, Raghu Ltd. also took the services of LMF Inc., a UK based company who has a permanent establishment in India and the service is effectively connected to the permanent establishment. During the previous year 2022-23 Raghu Limited paid ₹ 4,50,000 to LMF Inc.

Discuss the implications of Equalisation levy alongwith its due date of payment and its implications on Raghu Limited for the Assessment Year 2023-24, in above circumstances. Does any of the above payment have any impact as per the TDS provisions under the Income-tax Act? (6 Marks)

Answer

- (a) (i) **Issue Involved:** The issue under consideration is whether a rectification application before the Assessing Officer under section 154 can be filed to rectify a mistake
- for denial of exemption in respect of interest on PPF and Long-term Capital Gains on agricultural land u/s 10(37) while processing return u/s 143(1) which was disclosed by the assessee in the Schedule of exempt income of ITR and
 - to claim a business loss which the assessee failed to claim in the return filed by him.

Provisions Applicable: As per section 154 with a view to rectifying any mistake apparent from the record an income-tax authority may *inter alia* amend any order passed by it under the provisions of this Act or amend any intimation or deemed intimation under section 143(1).

Analysis and Conclusion:

The jurisdiction of any authority under the Act to make an order under section 154 depends upon the existence of a mistake apparent on the face of the record. As per section 154, an income-tax authority can rectify mistake which is committed in the intimation passed under section 143(1) or an order passed under the Act.

In the present case, denial of exemption while processing the return under section 143(1) in respect of interest from Public Provident Fund (PPF) and LTCG on agricultural land exempt under section 10(37) are mistakes apparent from record.

32 x 6% = 18000
18000 x 17% x 9 months
NOEL
But TDS
9(1)(c)
Sec 145

E-commerce Operator

10(80)
exempt

2016 EL. 7/7/22 →

However, mistake to claim current year business loss in the return of income cannot not be said to be mistake apparent from record, since current year business loss not forming part of intimation as Mr. Surajit failed to claim the business loss in the ITR filed by him.

Moreover, the assessing authority has no power to entertain a claim for deduction made after filing return of income otherwise than by way of a revised return.⁵

Accordingly, the Assessing Officer is bound to accept the request of Mr. Surajit for rectification only in respect of exemption of interest on PPF and LTCG under section 10(37) and not in respect of claim for business loss.

- (ii) **Issue Involved:** The issue under consideration is whether the repayment of loan by the assessee merely by passing adjustment entries in its books of account be taken as a contravention of the provisions of section 269T to attract penalty under section 271E.

Provisions Applicable: Section 269T provides that it is obligatory on every person to repay any loan by an account payee cheque or account payee bank draft, or by use of electronic clearing system through a bank account or through such other prescribed electronic mode, if the amount of loan together with interest, if any, payable thereon is ₹ 20,000 or more.

Failure to comply with the provisions of section 269T would attract penalty u/s 271E.

Analysis and Conclusion: Section 269T does not make a distinction between a bonafide or a non-bonafide transaction neither does it require the fulfillment of the condition mentioned therein only in case where there is outflow of funds. It merely puts a condition that in case a loan or deposit is repaid, it should be by way of an account payee cheque/draft or by use of electronic clearing system through a bank account or through such other prescribed electronic mode.

Therefore, in the present case, the assessee has repaid a portion of loan in contravention of provisions of section 269T.

In effect, the assessee has violated the provisions of section 269T by repaying the loan amount by way of passing book entries and therefore, penalty under section 271E is applicable.

However, since the transaction is bona fide in nature being a normal business transaction and has not been made with a view to avoid tax and since the IT Finance (I) Ltd. has shown reasonable cause for the failure under section 269T, no penalty under section 271E could be imposed on the IT Finance (I) Ltd. for contravening the provisions of section 269T by virtue of the provisions of section 273B.

⁵ *Goetze (India) Ltd. v. CIT (2006) 284 ITR 323(SC)*

Accordingly, the Assessing Officer is not justified in imposing penalty.

Note - The facts given in the question are similar to the facts in **CIT v. Triumph International Finance (I.) Ltd. (2012) 345 ITR 270 (Bom.)**. The above answer is based on the rationale of the Bombay High Court ruling in the said case.

- (iii) **Issue Involved:** The issue under consideration is whether the loss incurred on account of foreign currency fluctuation at the time of repayment of loan taken for financing procurement of capital equipment on lease or hire purchase by its customers would be allowable as revenue expenditure.

Another issue under consideration is whether the Tribunal can entertain a fresh claim for the first time in exercise of its powers under section 254.

Provisions applicable: Under section 37, any expenditure (not being in the nature of expenditure described in sections 30 to 36), and not being in the nature of capital expenditure or personal expenses of the assessee, laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing income chargeable under the head "Profits and gains of business or profession".

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.

Analysis and Conclusion: The activity of the M/s ABC Finance Limited of financing its customers for procurement of capital equipment on lease or hire purchase, was an independent transaction or activity of the assessee. The transaction of loan between the M/s ABC Finance Limited and UK based company is necessary for carrying on its business of financing.

It was not for creation of an asset of the assessee as such. The loan was wholly and exclusively used for the purpose of business of financing to its customers.

Accordingly, M/s ABC Finance Limited is justified in availing deduction of the entire expenditure or loss suffered by it in connection with such a transaction in terms of section 37.

As regards the restriction in powers to accept a new claim for the first time, such limitation on accepting new claims would apply to the "assessing authority" but would not impinge upon the plenary powers of the Tribunal bestowed under section 254.

Note - The facts given in the question are similar to the facts in **Wipro Finance Ltd. v. CIT (2022) 443 ITR 250** 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.

(b) Implications of Equalisation Levy and due date of payment in respect of transaction with ABC Inc.

Raghu Ltd. is required to deduct equalisation levy of ₹ 18,000 i.e. @ 6% of ₹ 3 lakhs, being the amount paid or payable towards online advertisement services provided by ABC Inc., a non-resident not having permanent establishment in India.

Raghu Ltd. has to pay the equalization levy to the credit of the Central Government by 7.7.2022, being the 7th of the month immediately following the calendar month in which it is so deducted.

Since Raghu Ltd. has remitted the equalization levy on 23.3.2023, it has to pay simple interest of ₹ 1620 / @ 1% of ₹ 18,000 for 9 months (from July 2022 to March 2023), being the months by which such crediting of the tax is delayed.

Penalty of ₹ 1,000 per day for which failure continues would be levied for delay in payment of equalization levy. However, such penalty cannot exceed the amount of equalization levy of ₹ 18,000.

TDS impact in respect of transaction with ABC Inc.

Section 10(50) provides that any income arising from providing any specified service which is chargeable to equalisation levy would be exempt from income-tax. Therefore, ₹ 3 lakhs would be exempt from income-tax in the hands of ABC Inc. and accordingly, no tax is required to be deducted by Raghu Ltd.

Implications of Equalisation Levy and due date of payment in respect of transaction with LMF Inc.

Equalisation levy would not be attracted where the non-resident service provider (LMF Inc., in this case) has a permanent establishment in India and the service is effectively connected to the permanent establishment in India.

Since equalisation levy would not be attracted in respect of transaction with LMF Inc., there is no implications on Raghu Ltd.

TDS impact in respect of transaction with LMF Inc.

Since LMF 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 LMF Inc. under section 9(1)(i) and be taxable in the hands of LMF Inc. under the Income-tax Act, 1961.

Tax has to be deducted by Raghu Ltd. at the rates in force under section 195 on ₹ 4,50,000 on payment to LMF Inc.

Question 6

- (a) *Please discuss the relevant provisions of Income-tax Act in the following independent situations:*

- (i) Examine whether General Anti-Avoidance Rules (GAAR) can be invoked in this case –

XY Ltd an Indian company has 2 manufacturing units, unit C in the SEZ and unit D in non-SEZ. It transfers the goods manufactured by unit D to unit C at a price significantly lower than the market value of goods and thus becomes eligible for higher deduction. **D.T.P.V. ∴ No GAAR.** (3 Marks)

- (ii) Keeping in view the provisions of mandatory filing of return of Income, please comment on the following, whether the following persons are required to file their return of income as per provisions of Income-tax Act for A.Y. 2023-24:

(a) Mr. A incurred expenditure of ₹ 2.40 lakhs for his wife for travel to a foreign country. His taxable income is ₹ 2.25 lakhs only. ✓

(b) Total turnover of the business of Mr. B for F.Y. 2022-23 is ₹ 73 lakhs, but profit from the same business is ₹ 2.10 lakhs, He has no other income. **> 60-l.** (2 Marks)

- (iii) Tax recovery officer attached the properties of A Chowdhury and Sri R Madekar, two directors of ACRM Pvt. Ltd. (the company in liquidation) in respect of the tax due from the company and also for penalty, interest due from the company.

The two directors contended that the directors are not liable for any tax, penalty and interest due from the company. Moreover, a notice under section 156 had not been served on them and therefore, they are not liable for any tax, penalty or interest due from the company. Hence, the proceedings for recovery were not valid.

Discuss what is the correct legal position. (3 Marks)

- (b) Examine and state the correctness or otherwise of each of the following in the context of BEPS Action Plan and Income-tax Act, 1961 and answer in brief with reasons/contents thereof:

(i) "Country by Country (CBC) report not requires Multi National Enterprises (MNEs) to provide an annual report of economic indicators". Explain with reference to BEPS Action Plan.

(ii) What are the basic three fundamental pillars of BEPS Action Plans?

(iii) Why there is a need for international collaboration to protect tax sovereignty of its countries? (6 Marks)

Answer

- (a) (i) As there is no misrepresentation of facts or false submissions, it is not a case of tax evasion. The company has tried to take advantage of tax provisions by diverting profits from non-SEZ unit i.e., Unit D to Unit C, a SEZ unit. This is not the intention

of the SEZ legislation. However, such tax avoidance is specifically dealt with through the provisions contained in section 10AA(9), as per which provisions of section 80-IA(8) would get attracted in such a case.

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.

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

- (ii) (a) In the present case, since Mr. A has incurred expenditure of ₹ 2.40 lakhs which exceeds ₹ 2 lakhs for his wife for travel to a foreign country, he is required to file return of income though his total income of ₹ 2.25 lakhs is lower than the basic exemption limit of ₹ 2.50 lakhs.
- (b) In this case, since Mr. B's turnover from business for the P.Y.2022-23 is ₹ 73 lakhs which exceeds the threshold limit of ₹ 60 lakhs specified for mandatory filing of return of income, he has to file return of his income for A.Y.2023-24 though his total income of ₹ 2.10 lakhs is lower than the basic exemption limit of ₹ 2.50 lakhs.
- (iii) Under section 179, every person who was a director of a private limited company at any time during the relevant previous year shall be jointly and severally liable for the payment of taxes which cannot be recovered from the company, unless he proves that the non-recovery cannot be attributed to any gross negligence, misfeasance or breach of duty on his part in relation to the affairs of the company.

Tax due includes penalty, interest, fees and any other sum payable under the Act.

There is no necessity to issue a notice to a director, because the position of a person on whom liability is fastened is equated to that of an 'assessee' in default.

Accordingly, the proceedings for recovery were valid⁶

Note - Before recovery of dues from the directors, it is necessary for the Revenue to establish that such recovery cannot be made from the company and then and then alone it can reach the directors who were responsible for the conduct of its business.

Accordingly, if it is assumed that the tax recovery officer has attached the properties of directors without completing the recovery proceedings from the company, the proceedings of recovery of tax due from the directors were not valid⁷.

⁶ S. Basant Singh (DECD.) and Other v. TRO (1998) 233 ITR 508 (P & H) and S. Hardip Singh v. ITO (1987) 166 ITR 759 (P & H)

⁷ Bhagwandas J.Patel v. Dy.CIT (1999) 238 ITR 127 (Guj.)

- (b) (i) **Incorrect** – Country by Country (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.
- (ii) The Action Plans were structured around three fundamental pillars viz.:
- (a) Introducing **coherence** in the domestic rules that affect cross-border activities.
 - (b) Reinforcing of '**substance**' requirements in existing international standards; Alignment of taxation with location of value creation and economic activity; and
 - (c) Improving **transparency** and **tax certainty**.
- (iii) There is a need for countries to collaborate on tax matters so that they are able to get their due share of taxes due to following reasons –
- The interaction of separate sets of domestic laws enforced by sovereign countries causes frictions, including potential double taxation for corporations operating in many countries.
 - It also causes gaps, in cases where corporate income is untaxed, both in the country of source and in the country of residence, or is taxed only at nominal rates.
 - BEPS relates primarily to instances where the interaction of different tax rules & tax systems leads to double non-taxation.
 - It also relates to arrangements that achieve no or low taxation by shifting profits away from the jurisdictions where the activities creating those profits take place.

CHAPTER 38 – ICAI MOCK TEST PAPERS (☆☆☆☆☆)

MTP SERIES – I – NOV 2022:

Question 1:

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 Rs. 85,00,000 after debiting/crediting the following items:

- (a) Interest of Rs. 3,00,000 due to a public financial institution for the last quarter of the financial year 2023-24 paid on 20th December, 2024. \therefore DIA \Rightarrow 43B
- (b) Rs. 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. \therefore 100% DIA
- (c) Damages amounting to Rs. 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. \therefore **Compensatory Penalty.**
- (d) Depreciation charged Rs. 20,00,000. (+)
- (e) **Marked to market loss** amounting to Rs. 6,00,000 in respect of an **unsettled derivative contract**. (+)
The contract was settled in May, 2024 with a gain of Rs. 1,00,000. **not as per ICD.**
- (f) Profit of Rs. 10,00,000 on sale of land to **Max Inc., U.S.A.** which is a wholly owned subsidiary company. (-) \therefore **Her taxable coz Bign Co.**
- (g) **Retention money** amounting to Rs. 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. **Not Taxable Today as P.C.L. Method.**
- (h) Rs. 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. **PGBP Income.**
- (i) Income of Rs. 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 Rs. 6,00,000. **X REIT will pay tax**
- Component of **rental income** from properties owned by the REIT Rs. 4,00,000. **Investor will pay tax**

Other Information:

- (i) Depreciation as per Income-tax Rules, 1962 Rs. 25,00,000. (-)
- (ii) Land sold to Max Inc. was acquired at a **cost of Rs. 30,00,000** on 25.05.2015. Value assessed by the **Stamp Valuation Authority** on the date of sale was Rs. 50,00,000 (Cost Inflation Index- Financial Year 2015-16 : 254; Financial Year 2023-24 : 348) **SCXGOI**
- (iii) 102 new employees employed during the P.Y. 2023-24, the details of whom are as follows – **Allowed to 115BAA**

	No. of employees	Date of employment	Regular/Casual	Total monthly emoluments per employee (Rs.)
(i)	15	1.4.2023	Regular	24,000 ✓
(ii)	35	1.5.2023	Regular	26,000 X
(iii)	42	1.8.2023	Casual	24,500 X
(iv)	10	1.9.2023	Regular	24,000 X

The regular employees participate in **recognized provident fund** while the **casual employees** do not. X
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**. ✓

Answer:

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

Particulars	Amount (Rs.)
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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 [Disallowance under section 43B would be attracted, since the interest is paid on or after 30.11.2024, being the due date of filing of return]	3,00,000	
	(b) Fees for technical services paid to non-resident without deduction of tax at source [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]	6,00,000	
	(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 Rs. 6 lakhs is taxable in the hands of REIT and hence, exempt in the hands of the unit holder under section 10(23FD). Since Rs. 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	
	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 Rs. 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 Rs. 25 lakh computed as per Income- tax Rules, 1962 is allowable as deduction u/s 32. However, depreciation of Rs. 20 lakh has only been charged in the statement of profit and loss. Therefore, the difference of Rs. 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 Rs. 50 lakh would be deemed as full value of consideration since it is higher than 110% of actual consideration of Rs. 40 lakh (i.e., Cost of Rs. 30 lakh + Profit of Rs. 10 lakh)]	50,00,000	
	Less: Indexed Cost of Acquisition [Rs. 30,00,000 × 348/254]	41,10,236	
	<i>[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].</i>		
	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]		12,96,000

(Deduction under section 80JJAA is allowable even though it is opting for 115BAA)	
Total Income	74,93,764
Total Income (rounded off)	74,93,764
Computation of tax liability as per section 115BAA	
Tax u/s 115BAA on business income [Rs. 66,04,000 x 22%]	14,52,880
Tax u/s 112 on Long-term capital gains on transfer of land with indexation benefit [Rs. 8,89,764 x 20%]	1,77,953
Add: Surcharge @10%	16,30,833
	<u>1,63,083</u>
	17,93,916
Add: HEC@4%	<u>71,757</u>
Tax liability	18,65,673
Tax liability (rounded off)	18,65,670

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 Rs. 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 = Rs. 24,000 × 12 × 15 = Rs. 43,20,000
Deduction under section 80JJAA = 30% of Rs. 43,20,000 = Rs. 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 A.Y. 2025-26.

Question 2:

- (a) Priyanshu, Managing Director of HE Pvt. Ltd. holds 72% of its paid up capital of Rs. 25 lakhs. The balance in General Reserve on 30.4.2023 was Rs. 8 lakhs. The company on 30.04.2023 gave an interest-free loan of Rs. 5.5 lakhs to its Supervisor having salary of Rs. 5,400 p.m., who in turn on 22.5.2023 advanced the said amount of loan so taken from the company to Shri Priyanshu. The Assessing Officer had treated the amount of advance as deemed dividend. Is the action of Assessing Officer correct? No effect broz of this.

- (b) Mr. Dinesh, aged 64 years, is a resident individual having income from the following sources:
- Income from a sole-proprietary business in Pune = Rs. 50 lakhs.
 - Share of profit from a partnership firm in Delhi = Rs. 30 lakhs.
 - Agricultural Income (gross) from coffee estates in Country D, a foreign country with which India has no DTAA, CAD 32000. Tax deducted on the above income CAD 8,000
 - Brought forward business loss of F.Y.2021-22 in Country D was CAD 4,000 which is not permitted to be set off against other income as per the laws of that country.
 - Mr. Dinesh has deposited Rs. 1,50,000 in public provident fund and paid medical insurance premium of Rs. 25,000 by account payee cheque to insure his health. He has also paid Rs. 55,000 as insurance premium to insure the health of his mother and father, who are resident Indians aged 83 years and 85 years, respectively. He also incurred Rs. 50,000 on the medical treatment of his dependent sister, who is a person with severe disability. His sister does not claim deduction under section 80U.

Compute total income and tax liability of Mr. Dinesh for the A.Y. 2024-25, assuming that 1 CAD = Rs. 60. **Follow Old Regime.**

Answer:

- (a) **The company had advanced a loan to an employee who in turn had advanced the same to the Managing Director of the company holding 72% 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 Rs. 8 lakhs and the amount of loan advanced is Rs. 5.5 Lakhs. Therefore, the payment is to be treated as deemed dividend. The amount of interest-free loan of Rs. 5.5 lakhs given by the company to the supervisor who in turn had given the same to Mr. Priyanshu, shall be construed as the amount given for the benefit of Mr. Priyanshu 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*.

- (b) **Computation of total income and tax liability of Mr. Dinesh for A.Y. 2024-25**

Particulars	Rs.	Rs.
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 Rs. 30 lakhs, is exempt	Nil	
Business profit	50,00,000	
Less: Business Loss in Country D (CAD 4000 x Rs. 60/CAD)	<u>2,40,000</u>	47,60,000
Income from Other Sources		
Agricultural income from coffee estates in Country D, is taxable in India (CAD 32000 x Rs. 60/CAD)		<u>19,20,000</u>
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 Rs. 25,000 for self, allowable in full; Rs. 55,000 for senior citizen parents, restricted to Rs. 50,000]		
Under section 80DD		
[Flat deduction of Rs. 1,25,000 irrespective of the expenditure incurred on dependent sister, being a person with severe disability]	<u>1,25,000</u>	
		<u>3,50,000</u>
Total Income		<u>63,30,000</u>
Tax on total income		
Tax on Rs. 63,30,000 [(30% x Rs. 53,30,000) plus Rs. 1,10,000]		17,09,000
Add: Surcharge@10% , since total income exceeds Rs. 50 lakh		<u>1,70,900</u>
		18,79,900
Add: HEC@4%		<u>75,196</u>
		19,55,096
Average rate of tax in India	30.886%	
[i.e., Rs. 19,55,096/Rs. 63,30,000 x 100]		
Average rate of tax in Country A	25%	
[i.e., CAD 8000/CAD 32000]		
Doubly taxed income [Rs. 19,20,000 – Rs. 2,40,000]	16,80,000	
Rebate under section 91 on Rs. 16,80,000@25%		
(lower of average Indian tax rate and rate of tax in Country D)		4,20,000

Tax payable in India [Rs. 19,55,096 – Rs. 4,20,000]		<u>15,35,096</u>
Tax payable in India (rounded off)		15,35,100

Note: Since Mr. Dinesh 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:-

- He is a resident in India during the relevant previous year.
- Agricultural income accrues or arises to him outside India during that previous year.
- Such agricultural income is not deemed to accrue or arise in India during the previous year.
- The income in question i.e., agricultural income, has been subjected to income-tax in Country D in his hands and he has paid tax on such income in Country D.
- There is no agreement under section 90 for the relief or avoidance of double taxation between India and Country D, where the income has accrued or arisen.

Question 3:

(a) 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 Rs. 2.10 crore, which comprises of receipts of Rs. 52 lakh from such business and Rs. 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 Rs. 18 lakh in the P.Y.2022-23 and Rs. 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.

(b) Finetune Ltd., an Indian company, declared total income of Rs. 1,900 crores computed in accordance with Chapter IV-D before making primary adjustment, if required, in respect of the loan transaction with Iris Inc, a Country M company, for the year ended 31.03.2024. Iris Inc. had advanced a loan of Euro 380 crores carrying interest@9% p.a. on 1.4.2023 to Finetune Ltd. The total book value of assets of Finetune Ltd. was Rs. 58,420 crores. Assume that the amount of interest computed@9% p.a. and payable to Iris Inc. does not exceed 30% of EBITDA and that this is the only loan taken by Finetune Ltd.

Iris Inc also advanced a loan of similar nature and amount to Bigbumper Ltd., another Indian company@7% p.a. during the F.Y. 2023-24. The value of 1 Euro may be taken as Rs. 90. You are required to:

- Examine whether transfer pricing provisions under the Income-tax Act, 1961 would be attracted in this case and if so, on what basis.
- Advise Finetune 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.
- Elaborate on secondary adjustments, if any, required to be made under the provisions of Income-tax Act, 1961, assuming that Finetune Ltd. has made the primary adjustment *suo moto*.
- Calculate the additional income-tax liability, if Finetune Ltd. opts for payment of additional income-tax in lieu of making secondary adjustment.

Answer:

(a) Tax consequences in the hands of the charitable trust/institution for A.Y.2024-25

- 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

Same as earlier Q-12 of PTP

Same as Q-14 of PTP Discussion

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, Rs. 5,40,000, being 30% of annual rent of Rs. 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 Rs. 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 Rs. 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 Rs. 26,40,000 towards rent paid would be allowed as application of income in the P.Y.2023-24 (A.Y.2024-25).

- (b) (i) Finetune Ltd., an Indian company and Iris Inc, a Country M company are deemed to be associated enterprises since the latter has advanced a loan to the former which constitutes 58.54% of the book value of total assets of the former [Euro 380 crores x Rs. 90/Rs.58,420 crores]. Since the loan advanced by Iris Inc is not less than 51% of the book value of the total assets of Finetune Ltd., the two companies are deemed to be associated enterprises.

A loan transaction between two enterprises, one of whom is a non-resident (Iris Inc, Country M, in this case), would be an international transaction. Accordingly, transfer pricing provisions would be attracted in this case.

- (ii) The interest rate charged by Iris Inc. on loan advanced to Finetune Ltd. is 9% p.a. whereas the arm's length interest charged by Iris Inc. in a comparable uncontrolled transaction with Bigbumper Ltd., another Indian company, is 7% p.a. Therefore, the arm's length adjustment (primary adjustment) to be made is = 9% - 7% = 2% of Rs. 34,200 crores (Euro 380 crores x Rs. 90, being the value of 1 Euro) = Rs. 684 crores

The total income (after primary adjustment) of Finetune Ltd for P.Y.2023-24 = Rs. 1900 crores + primary adjustment of Rs. 684 crores = Rs. 2,584 crores.

- (iii) Since the primary adjustment has been made by Finetune Ltd. *suo moto* while filing its return of income for A.Y.2024-25, Finetune Ltd. has to carry out secondary adjustment in the following manner.

The excess money (i.e., Rs. 684 crores) lying with Iris 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 Finetune Ltd. to Iris 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 31.3.2025 (assuming that it has not been repatriated upto 31.3.2025) would be included in the total income of Finetune Ltd. for P.Y.2024-25.

- (iv) If Finetune Ltd. opts for payment of additional income-tax, it has to pay Rs. 143.410 crores [i.e., 20.9664% (tax@18% + surcharge@12% + cess@4%) of Rs. 684 crores].

Question 4:

- 194A..
Monitoring purpose
Bank cr. an
amt to a
sep. A/c.*
- (a) ABC Bank credited Rs. 83,60,000 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 Rs. 40,000. The Assessing Officer disallowed 30% of interest expenditure, where the interest on time deposits credited exceeded the limit of Rs. 40,000 and also levied penalty under section 271C. *TDS arises not on computation but on credit to A/c.* Decide the correctness of action of the Assessing Officer.
- (b) (i) M/s. Citax.com, an **e-commerce operator**, incorporated in **Japan** has no physical presence in India. It has **no permanent establishment** in India. It provided service to persons resident in India by way of sale of **online advertisement** during the previous year 2023-24. The bill (or aggregate amount of bills) to a recipient of service during the financial year **does not exceed Rs. 1 lakh** per recipient of service (Gross amount of all bills is **Rs. 2.10 crores**). Discuss the implications of Equalisation levy on Citax.com for the Assessment year 2024-25.
- ∴ 2020 → EL ✓
2016 → ELX
2.1 Cr x 2%*

Answer:

- (a) The *Explanation* below section 194A(1) 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* below section 194A(1) 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., Rs. 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.
- (b) (i) 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.
- Citax.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. Equalisation levy@2% would **not** be attracted, if -
- (i) Citax.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 Citax.com from taxable e-commerce supply or services is less than Rs. 2 crore in the current previous year i.e., P.Y.2023-24.

In the present case, Equalisation levy @ 2% would be attracted since -

- (i) Citax.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 Rs. 1 lakh. Consequently, there would be no requirement for them to deduct equalization levy of 6%.
 - (iii) The sales/turnover/gross receipts of Citax.com from taxable e-commerce supply or services exceeds Rs. 2 crore in the current previous year i.e., P.Y.2023-24.
- Accordingly, equalization levy of Rs. 4,20,000 @2% of Rs. 2.10 crores would be attracted.

Question 5:

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. *Theory question.*

271AAB
S. PY /
S. D.

Answer:

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 30.4.2023,

- 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.

In all other cases, penalty @60% of undisclosed income would be attracted.

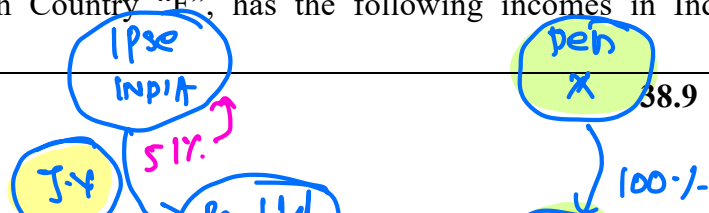
Question 6:

(a) The directors of a private company are personally liable to pay the income tax due from the company but their liability does not extend towards interest and penalty payable by the company. Discuss? *Theory.*

(b) 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.

(c) Flax Ltd., a company incorporated in Country "E", has the following incomes in India during the year ended on 31.03.2024.



10% ISA

Ren Ltd India

49% → Zen Y

→ No other Act in Zen

- (i) Dividend of Rs. 8,50,000 earned on Global Depository Receipts of MN Ltd., an Indian company, issued under a scheme of Central Government against the initial issue of shares of the company and purchased by Flax Ltd. in foreign currency through an approved intermediary.
- (ii) Dividend of Rs. 16,80,000 earned on equity shares of Indian companies. 20% ISA
- (iii) Royalty amounting to Rs. 8,76,000, received from Flip Ltd., an Indian company, in pursuance of an agreement entered between Flip Ltd. and Flax Ltd. The said agreement is not approved by the Central Government. 41.6% But Grossup. No ISA.
- (iv) Business Income of Rs. 9,50,000 from a unit established at Surat. → 40%
- (v) Interest of Rs. 2,88,000 earned on debentures of Rs. 32,00,000 issued on 1st July 2023, in consideration of providing technical knowhow to Sangita Ltd., an Indian Company, for the purpose of business carried out in India. Flax Ltd. received the consideration in pursuance to an agreement approved by the Central Government.

Compute the total income and tax liability of Flax Ltd. for the Assessment Year 2024-25, assuming that it does not have a PE in India and its POEM is outside India.

Note – No DTAA exists between India and Country “F”.

Answer:

- (a) Section 179 contains the provisions relating to the liability of directors of a private company in liquidation in respect of tax due from the company. Where any tax due from a private company in respect of income of any previous year or from any other company in respect of any income of any previous year during which such other company was a private company cannot be recovered, then, every person who was a director of such company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax. However, the director shall not be so liable if he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Explanation to section 179 clarifies that the expression “tax due” includes penalty, interest or any other sum payable under the Act. Therefore, the directors’ liability is not confined to tax alone but extends to penalty, interest or any other sum payable by the company

- (b) 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.

- (c) Computation of total income and tax liability of Flax Ltd., a non-resident foreign company, for the A.Y. 2024-25

Particulars	Rs.
Business Income from a unit established at Delhi	9,50,000
Income from other sources	
- Fees for technical services [would be equivalent to the amount of debentures of Rs. 32,00,000 received from an Indian company, issued in consideration of providing technical knowhow for the purpose of business carried out in India]	32,00,000

- Interest on Debentures	2,88,000
- Dividend on Global Depository Receipts (GDRs) of MN Ltd. an Indian company, issued under a scheme of Central Government against the initial issue of MN Ltd. and purchased in foreign currency by Flax Ltd.	8,50,000
- Dividend income on equity shares of Indian companies	16,80,000
- Royalty income received from Flip Ltd., an Indian company. Since such agreement is not approved by the Central Government, TDS is to be deducted @41.6%. [Rs. 8,76,000 x 100/58.4, since tax would have been deducted at source @ 41.6%]	15,00,000
Gross Total Income/ Total income	84,68,000
Computation of tax liability	
Dividend income of Rs. 16,80,000, taxable @20% u/s 115A	3,36,000
Dividend on GDRs of Rs. 8,50,000, taxable @10% u/s 115AC	85,000
FTS of Rs. 32,00,000, taxable @20% u/s 115A, since it is in pursuance of an agreement approved by the Central Government	6,40,000
Royalty income of Rs. 15,00,000, taxable @40%, since it is not in pursuance of an agreement approved by the Central Government	6,00,000
Interest on debentures of Rs. 2,88,000, taxable @40%, since debt is incurred in Indian currency, it is not eligible for concessional rate of 20% provided u/s 115A	1,15,200
Business income of Rs. 9,50,000 [taxable @40%]	3,80,000
	21,56,200
<i>Add:</i> Health and education cess@4%	86,248
Tax liability	22,42,448
Tax liability (rounded off)	22,42,450

MTP SERIES – II – NOV 2022:

Question 1:

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

- Depreciation charged on the basis of useful life of assets as per Companies Act is Rs. 52 lakhs. (+)
- Industrial power tariff concession of Rs. 5.40 lakhs, received from Uttar Pradesh Government was credited to Statement of Profit and Loss. Income 2(24)(xviii) ✓ Ignor.
- Contribution of Rs. 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. Sec 35 ✓ Allowed ∴ Ignor.
- Profit of Rs. 8 lakhs on sale of a plot of land to PQR Limited, a domestic company, the entire shares of which are held by the S Ltd. The plot was acquired by S Ltd. on 30th June, 2023. (-) exempt-
- Payment of Rs. 3.50 lakhs towards transportation of various materials procured by one of its units to M/s BP 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. ∴ NO TDS
- Interest of 15 lakhs paid on loans taken specifically for purchase of second hand plant and machinery. Out of this Rs. 5 lakhs is for the period till such machinery was commissioned on 12.08.2023. (+) 5L & claim N.p @ 15%.
- A debtor who owed the company an amount of Rs. 20 lakhs was declared insolvent and hence, was written off by debiting the Statement of Profit and Loss. Allowed 36(1)(vii)
- Rs. 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 2017-18. Taxable in the yr in which final order is passed.

- (i) In order to expand its overseas business, the company planned online advertisement campaign for which it engaged Fastex Inc., a Malaysian company not having any PE in India, and paid Rs. 5 lakhs for services availed. No tax/TDS was deducted by the company. *DA-SFL.*
- (j) Expense of Rs. 2 lakhs on foreign travel of two directors for a collaboration agreement with a foreign company for a new construction project to be set up. The negotiation did not succeed, and the project was abandoned. *Dis Allowed.*

Additional Information:

- (i) Normal depreciation computed as per Income-tax Rules on the book assets is Rs. 71 lakhs. *(-)*
- (ii) Debenture of face value of Rs. 1500 lakhs having 5 years tenure were issued at a discount of 3% and were subscribed in full. *Discount on issue of Deb allowed in Grry*
- (iii) The company received a bill for Rs. 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. *Take Dedn*
- (iv) The company has purchased 1000 bales of cotton at Rs. 5,000 per bale from PB LLP, a firm in which majority of the directors of S Ltd. are partners. The normal selling price in the market for the same material is Rs. 4,600 per bale. *40A(2). 400 x 1000*

Compute total business income of 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.

Answer:

(a) Computation of Business Income of S Ltd. for the A.Y.2024-25

Particulars	Amount (Rs.)	
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	
(c) Contribution to National Laboratory [Contribution to National laboratory for scientific research qualifies for 100% deduction u/s 35(2AA). Since 100% has been debited to the statement of profit and loss, no adjustment required to be made while computing business income]	-	
(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 <u>not</u> be attracted in respect of payment of Rs. 3.50 lakhs to M/s. BP Transport]	-	
(f) Interest on loan for purchase of plant and machinery [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 Rs. 15 lakhs paid towards such interest, only Rs. 10 lakhs is allowable as deduction. Rs. 5 lakhs, being interest paid upto the the date till such machinery was commissioned has to be added back while computing business income]	5,00,000	
(g) Bad debts written off [No adjustment is required in respect of debt of Rs. 20 lakhs written	-	

<p>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).</p> <p>Since the said amount has already been debited to the statement of profit and loss, no further adjustment is required]</p>		
<p>(i) Payment for online advertisement services [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)]</p>	5,00,000	
<p>(j) 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. Since the amount has been debited to the statement of profit and loss, the same has to be added back]</p>	2,00,000	
<p>AI(iv) Purchase of cotton at a price higher than the FMV [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 (Rs. 5,000 per bale) and the fair market value (Rs. 4,600 per bale) multiplied by the quantity purchased (1000 bales) has to be added back]</p>	4,00,000	68,00,000
<p>Less: Items credited to statement of profit and loss, but not includible in business income/ permissible expenditure and allowances</p>		6,28,00,000
<p>(b) Industrial power tariff concession received from State Government [Any assistance in the form of, <i>inter alia</i>, 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]</p>	-	
<p>(d) 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). Since the same has been credited to the statement of profit and loss, the same has to be reduced while computing business income]</p>	8,00,000	
<p>(h) Additional compensation received from State Government in respect of land [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"]</p>	5,00,000	

<p>AI(i) Depreciation as per Income-tax Rules, 1962 [Rs. 71,00,000, being normal depreciation on book assets + Rs. 75,000, being 15% of Rs. 5,00,000, being the interest on loan taken for acquiring plant and machinery upto the date of commissioning]</p>	71,75,000	
<p>AI(ii) Discount on issue of debentures [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 Rs. 45 lakhs, being 3% of Rs. 1500 lakhs)]</p>	9,00,000	
<p>AI(iii) Purchases omitted to be recorded in the books of account Since the purchase is made in March, 2024 (i.e., P.Y. 2023-24), in respect of which bill of Rs. 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</p>	3,00,000	
Profits and gains from business and profession		96,75,000
		5,31,25,000

Question 2:

(a) The accounts of Sun Pvt. Ltd. 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 Rs. 95 Lacs after debiting or crediting the following items:

Credits in Statement of Profit and Loss		Rs.	
(1)	Profit from a new industrial undertaking qualifying for deduction under section 80-IA (Net)	17,00,000	X
(2)	Dividend received from Investment in Indian companies	2,50,000	X
(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	X
(3)	Provision for GST	3,00,000	X
(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	X
(6)	Reserves of currency foreign fluctuation	1,25,000	(+)

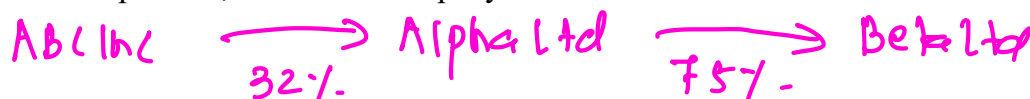
Other Information:

- (i) Depreciation admissible under the Income-tax Rules, 1962 for the previous year 2023-24 is Rs. 19,50,000. X
- (ii) Depreciation (as per books) includes Rs. 1,90,000 on account of revaluation of assets. (-) 81,000
- (iii) Interest on borrowed capital Rs. 1,00,000 payable to Y, not debited to Statement of profit and loss. Apollo Tyres Ltd.
- (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 Sun Pvt. Ltd. is not required to comply with the Indian Accounting Standards (Ind AS).

(b) State with brief reasons, whether transfer pricing provisions are attracted in the following cases:

- (i) ABC Inc, a London based foreign company transferred engravings valued at Rs. 55 crores to Beta Ltd, an Indian Company during the previous year 2023-24. ABC Inc, holds 32% of voting power in Alpha Ltd, an Indian Company which in turn holds 75% of shares in Beta Ltd.



32% x 75%
24% ∴ No AF

D.T.P
80-1A

- (ii) Tikku Projects Ltd., an Indian Company, has two units, Tikku Infra and Tikku Trading. While the Tikku Infra is engaged in the development of highway project pursuant to the agreement entered into with Central Government since past 3 years. Tikku Trading is engaged in the business of trading of construction materials. During the previous year 2023-24, Tikku Trading transferred 12,000 MT of cement at Rs. 14,000 per MT against the prevailing market value at Rs. 16,000 per MT. *Here it's less than 20L*
- (iii) A Ltd, engaged in manufacturing activity of power generation, opted for concessional rate of tax under Section 115BAB. B Ltd, supplied 10,000 MT of power cables valued at Rs. 23,000 per MT to A Ltd. at Rs. 21,000 per MT during the previous year 2023-24. Mr. X, an individual, holding controlling interest in both A Ltd. and B Ltd. *> 20cr :- Applicable.*

Answer:

(a) Computation of book profit for levy of MAT under section 115JB for A.Y. 2024-25

Particulars	Rs.	Rs.
Net Profit as per Statement of Profit and Loss		95,00,000
Add: Net Profit to be increased by the followings amounts as per <i>Explanation 1</i> 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
		1,08,25,000
Less: Net Profit to be decreased by the followings amounts as per <i>Explanation 1</i> below section 115JB(2)		
- Net agricultural income	5,00,000	
- Net agricultural income is to be reduced, since it is exempt under section 10(1)]		
- 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	Rs.
15% of book profit (Rs. 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:

- 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
- For computing the book profit, since provisions for GST is an ascertain liability, it is not added back.
- No adjustment is required in respect of interest on borrowed capital of Rs. 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.
- (b) (i) International transaction is a transaction between associated enterprises, either or both of whom are non-residents, in the nature of, *inter alia*, purchase, sale of tangible or intangible property. Transfer pricing provisions under the Income-tax Act, 1961 would get attracted in respect of an international transaction. In this case, one of the enterprises, i.e., ABC Inc., a London based company, is a non-resident. The transaction in question is the transfer of engravings, i.e., transfer is of an intangible property.

However, two enterprises would be deemed as associated enterprises if one enterprise holds, directly or indirectly, shares carrying not less than 26% voting power in the other enterprise.

In this case, ABC Inc. indirectly holds only 24% voting power / (32% of 75%) in Beta Ltd., an Indian company. Hence, ABC Inc. and Beta Ltd. are not associated enterprises.

Since the transaction of transfer of engravings is not between associated enterprises, it would not fall within the meaning of international transaction. Hence, transfer pricing provisions would not be attracted in this case.

- (ii) Tikku Infra 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, Tikku Trading is not engaged in any "eligible business". Since Tikku Trading has transferred construction materials to Tikku Infra 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.

This transaction would fall within the meaning of "specified domestic transaction" to attract transfer pricing provisions, only if the aggregate value of such transactions during the year exceeds a sum of Rs. 20 crore.

In this case, however, the aggregate value of transactions between Tikku Infra and Tikku Trading does not exceed Rs. 20 crore. Hence, the transaction is not a specified domestic transaction to attract transfer pricing provisions under the Income-tax Act, 1961. Accordingly, transfer pricing provisions would not be attracted in respect of this transaction.

Note - In the absence of information in the question, it is assumed that there are no other such transactions during the year falling within the scope of section 92BA.

- (iii) Where a company eligible for benefit under section 115BAB enters into a transaction with any other person with whom it has close connection, and the transactions between them are arranged in a manner resulting in more than ordinary profits arising to the company eligible for benefit u/s 115BAB, then, such transactions would fall within the scope of "specified domestic transaction" under section 92BA, if the aggregate value of such transactions (listed out in section 92BA) entered into by the company in the previous year exceeds Rs. 20 crore.

In this case, A Ltd. is a company eligible for deduction under section 115BAB which has entered into a transaction with B Ltd., a company in which Mr. X (a person who has controlling interest in A Ltd.) has controlling interest. Further, the said transaction for supply of cables by B Ltd. to A Ltd. result in more than ordinary profits to A Ltd. (on account of the supply being made by B Ltd. to A Ltd. at a lower rate than the arm's length rate).

Also, the aggregate value of such transactions entered into by the two companies exceed Rs. 20 crore. Consequently, the said transactions between A Ltd. and B Ltd. are "specified domestic transactions" under section 92BA and transfer pricing provisions under the Income-tax Act, 1961 would be attracted.

Question 3:

During the Previous Year 2023-24, Ms. Radha (39 years), a citizen of India and resident of India earned business income of Rs. 21,00,000 from a foreign country with which India has a Double Taxation Avoidance Agreement (DTAA), which provides that "the income would be taxable in

country where it is earned and not in other country but would be included for computation of tax rate in such other country."

Her income is Rs. 8,75,000 from business in India. In foreign country, the rate of tax is 18%. During the year, she paid a premium of Rs. 35,000 to insure the health of her mother, a non-resident, aged 63 years, through her credit card. You are required to compute the tax liability by Ms. Radha in India for the A.Y.2024-25.

Also, show the tax payable of Ms. Radha in India, had there been no DTAA with such foreign country. **Follow Old Regime.**

Answer:

(i) Computation of tax payable in case where there is a DTAA with the foreign country

The DTAA with the foreign country provides that the income would be taxable in country where it is earned and not in other country, but it would be included for computation of tax rate in such other country.

Thus, business income of Rs. 21,00,000 in foreign country would not be taxable in India in the hands of Ms. Radha, however, such income has to be included in the total income to determine the effective rate of tax applicable on Indian income chargeable to tax in India.

Computation of tax payable of Ms. Radha for A.Y.2024-25

Particulars	Rs.
Business Income	
- Foreign country	21,00,000
- In India	<u>8,75,000</u>
Gross Total Income	29,75,000
Less: Deduction under Chapter VI-A	
Section 80D – Medical insurance premium of Rs. 35,000 allowable to the extent of Rs. 25,000 [Since her mother aged 63 years is a non-resident]	<u>25,000</u>
Total Income	<u>29,50,000</u>
Tax on total income [30% of Rs. 19,50,000 + Rs. 1,12,500]	6,97,500
Add: Health and education cess@4%	<u>27,900</u>
Tax Liability	<u>7,25,400</u>
Tax rate [Rs. 7,25,400 / Rs. 29,50,000 x 100]	24.59%
Tax payable = 24.59% x Rs. 8,50,000 [Rs. 8,75,000 – Rs. 25,000]	<u>2,09,015</u>
Tax payable (rounded off)	2,09,020

(ii) Computation of tax payable in case where there is no DTAA with the foreign country

In such case, Ms. Radha would be allowed deduction under section 91, since she has satisfied the following conditions:-

- She is a resident in India during the relevant previous year i.e., P.Y.2023-24.
- The business income of Rs. 21,00,000 accrues or arises to her outside India and such income is not deemed to accrue or arise in India during the previous year.
- Such business income has been subjected to tax in the foreign country@18%

Computation of tax payable of Ms. Radha for A.Y.2024-25

Particulars	Rs.
Tax Liability (computed above would remain same)	7,25,400
Less: Rebate under section 91 (See Working Note below)	<u>3,78,000</u>
Tax Payable	<u>3,47,400</u>
Working Note:	
Calculation of Rebate under section 91	
Average rate of tax in India [Rs. 7,25,400/Rs. 29,50,000 x 100]	24.59%
Average rate of tax in Foreign Country	18%
Doubly taxed income (Business income in foreign country)	Rs.21,00,000
Rebate u/s 91 on Rs. 21,00,000 @18% [being the lower of average Indian	3,78,000

tax rate (24.59%) and foreign tax rate (18%)	
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Question 4:

(a) 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. Aryan, an Indian Citizen, residing in Australia, came to India on a visit on 25.2.2024. He paid Rs. 5.2 lakhs to a tour operator, M/s Satya Travels, based in Delhi for a tour package to Malaysia for 2 week. He left for Malaysia on 5.3.2024 and returned to India on 20.3.2024. Thereafter, he was in India upto 15.4.2024 on which date he took his return flight to Australia. He does not have any source of income in India.

(ii) Shristi Ltd. was incorporated on 1.4.2023 for trading of goods. Its turnover for the P.Y. 2023-24 is Rs. 14.5 crores. During the P.Y.2023-24 it purchased goods from M/s. Filip Co., the details of which are as follows:

On 1.9.2023 for Rs. 32,00,000;

On 18.9.2023 for Rs. 31,00,000 and 132 TCS @ 0.1% on 18/10/23

On 18.11.2023 for Rs. 18,00,000. → 182 TCS @ 0.1% on 18/12/23

The above dates represent the date of credit to the account of M/s. Filip & Co. Payment is made after one month (i.e., on the same date in the immediately following month). M/s Filip & Co.'s turnover for the F.Y. 2022-23 and F.Y. 2023-24 was Rs. 11 crores and Rs. 9.7 crores, respectively.

(iii) Mr. Adheer [E-commerce participant] sells goods worth Rs. 52 lakhs on e-commerce website of WINKLE [E-commerce operator]. Mr. Adheer 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. 22L X 5% → 206AA Not 207.

(b) Turnip Inc., a Country D based company, is carrying on the business of manufacture and sale of Mixture Grinder under the brand name "FINEST". 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 Sam Inc., a Country Y based company which also owns and operates a digital platform. The gross receipt of Sam Inc. from provision of such services during the P.Y.2023-24 is Rs. 4.2 crores. During the previous year 2023-24, Turnip Inc. paid Rs. 5 lakhs to Sam Inc. for such services. Discuss the tax implications of such payment and receipt in the hands of Turnip Inc. and Sam Inc., respectively, if –

(i) Both Turnip Inc. and Sam Inc. have no permanent establishment in India 2016 X 2020 ✓

(ii) Turnip Inc. has a permanent establishment in India, but Sam Inc. has no permanent establishment in India 2016 ✓ 40(1) D 1A → 10(5D)

(iii) Sam Inc. has a permanent establishment in India and the advertisement services are effectively connected with such PE. Turnip Inc. ← Online Advt. → Sam Inc.

Answer:

(a) (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 Rs. 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 Rs. 7 lakh. **Above Rs. 7 lacs TCS is 20%.**

However, as per Notification No. 20/2022 dated 30.3.2024, 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. Aryan, an Indian citizen living in Australia, 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 21 days (4 days in February + 17 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. Aryan is a non-resident who is visiting India, M/s. Satya Travels, the tour package operator, is not required to collect tax at source under section 206C(1G) on the amount of Rs. 5.2 lakh received from him for purchase of tour programme package to Malaysia.

- (ii) 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 Rs. 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 Shristi 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 Rs. 10 crores in the said previous year.

However, since Filip & Co.'s turnover for the F.Y. 2022-23 exceeds Rs. 10 crores and its receipts from Shristi Ltd. exceed Rs. 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., Rs. 32 lakhs, has not exceeded the threshold of Rs. 50 lakhs.

Tax of Rs. 1300 (i.e., 0.1% of Rs. 13 lakhs) has to be collected u/s 206C(1H) by M/s Filip & Co. on 18.10.2023 (Rs. 31 lakh – Rs. 18 lakhs, being the balance unexhausted threshold limit).

Tax of Rs. 1,800 (i.e., 0.1% of Rs. 18 lakhs) has to be collected u/s 206C(1H) by M/s. Filip & Co. on 18.12.2023.

- (iii) In a case where sale of goods of an e-commerce participant (Mr. Adheer) is facilitated by an e-commerce operator (WINKLE) through its e-commerce website, section 194-O requires the e-commerce operator to deduct tax at source @1% on Rs. 52 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 Rs. 52 lakhs = Rs. 2.6 lakhs.

- (b) (i) **Where Turnip Inc. and Sam Inc. have no permanent establishment in India**

Equalisation levy would not be attracted in the present case since Turnip Inc., a non-resident service recipient does not have a permanent establishment in India. Therefore, the Turnip Inc. is not required to deduct equalisation levy @ 6% on Rs. 5 lakhs, being the amount paid towards online advertisement services to Sam Inc.

However, equalisation levy @2% under section 165A is attracted on Rs. 5 lakhs, being the amount of consideration received by Sam Inc, an e-commerce operator from e-commerce services provided by it to Turnip Inc., a non-resident in the specified circumstance, namely, sale of advertisement, which targets a customer, who is resident in India, since the gross receipt of Sam Inc. in the P.Y. 2023-24 exceeds Rs. 2 crores.

- (ii) **Where Turnip Inc. has a permanent establishment in India but Sam Inc. does not have a permanent establishment in India**

In the present case, equalisation levy @6% is chargeable on the amount of Rs. 5,00,000 received by Sam Inc., a non-resident not having a PE in India from Turnip Inc., a non-resident having a PE in India. Accordingly, Turnip Inc. is required to deduct equalisation levy of Rs. 30,000 i.e., @6% of Rs. 5 lakhs, being the amount paid towards online advertisement services provided by Sam 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 Rs. 5 lakhs, the said amount is exempt from income-tax by virtue of section 10(50) of the Income-tax Act, 1961.

(iii) Where Sam 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 (Sam Inc., in this case) has a permanent establishment in India and the service is effectively connected to the permanent establishment in India. Therefore, Turnip Inc. is not required to deduct equalisation levy on Rs. 5 lakhs, being the amount paid towards online advertisement services to Sam 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.

It is immaterial whether Turnip Inc. has a PE in India or not for the purpose of equalisation levy implication of advertisement transaction, as in both the cases, equalisation levy would not be attracted.

However, since Sam Inc. has a PE in India and advertisement services are effectively connected with the PE in India, income attributable from such advertisement would be deemed to accrue or arise in India in the hands of Sam Inc. under section 9(1)(i) and be taxable in the hands of Sam Inc. under the Income-tax Act, 1961.

Question 5:

Mr. Sanjay furnished his return of income for A.Y.2023-24 declaring total income of Rs. 52,00,000. He received an assessment order under section 143(3) on 12.12.2024 enhancing the total income for the A.Y.2023-24 by Rs. 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?

Answer:

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 Rs. 10 lakh; the total income as per such return furnished by the assessee for the assessment year relevant to such order does not exceed Rs. 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 12.12.2024 is not a specified order since total income as per return furnished by Mr. Sanjay of Rs. 5,00,000 exceeds the threshold limit of Rs. 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.

Question 6:

(a) Rupal Ltd., an Indian Company engaged in trading of electronic appliances through retail stores all across India, reported a total turnover of Rs. 51 crores during the previous year 2022-23

Q Code.
UPTI -

Sec 269SU & 2(1)(B) → 5000/-
PHY.

and Rs. 47 crores during the previous year 2023-24. The customers who purchase appliance from its stores can pay only through cash, cheque, credit card or debit card. Discuss the relevant provisions of the Act with respect to relevant compliances that should have been ensured by Rupal Ltd. and in the absence of such compliances, what will be the amount of penalty, if any, that can be levied on Rupal Ltd

- (b)
- (i) Dweep Ltd., an Indian company has 2 manufacturing units, unit M in the Special Economic Zone (SEZ) and unit N in non-SEZ. Manufacturing activities are carried out in Unit N while unit M only does the packaging of the goods manufactured by unit N. In its books of accounts, it shows the manufacturing to be carried out in unit M and claims allowable deductions. **Evasion. NO GAAR.**
- (ii) Isha Ltd., an Indian company has 2 manufacturing units, unit P in the Special Economic Zone (SEZ) and unit Q in non-SEZ. It transfers the goods manufactured by unit Q to unit P at a price significantly lower than the market value of the goods and thus becomes eligible for higher deductions. **D.T.P ∴ NO GAAR**
- Examine the above cases and discuss whether the provisions of General Anti-avoidance Rules (GAAR) can be invoked in these cases?
- (c) XYZ Ltd., a Country P company, had entered into agreements with Y Ltd., and G Ltd., Indian companies in the year 2017 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 X	8.2 lakhs
(6)	Amounts paid by the PE to HO (not being reimbursement of actual expenses) X	14.6 lakhs
(7)	Amounts paid by the PE to HO (being reimbursement of actual expenses) ✓	15.2 lakhs

ISA: 567/-
20%
2%
4%
GAAR

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. **ISA 20%**
- (ii) XYZ Ltd., has a permanent establishment in India and the contracts/ agreements are effectively connected with such PE. **GAAR**

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.

Answer:

(a) As per section 269SU, Rupal Ltd. is required to provide facility for accepting payment through the prescribed electronic modes, in addition to the facility for other electronic modes of payment of debit card or credit card provided by Rupal Ltd., since its total turnover in business during the immediately preceding previous year. i.e., P.Y. 2022-23 is Rs. 51 crores, which exceeds the prescribed threshold of Rs. 50 crores.

Prescribed electronic modes are

- (1) Debit Card powered by RuPay;
- (2) Unified Payments Interface (UPI) (BHIM-UPI); and
- (3) Unified Payments Interface Quick Response Code (UPI QR Code) (BHIM-UPI QR Code).

The failure to provide facility for electronic modes of payment prescribed under section 269SU by

Rupal Ltd. would attract a penalty under section 271DB of a sum of Rs. 5,000, for every day during which such failure continues.

However, penalty shall not be imposed, if Rupal Ltd. proves that there were good and sufficient reasons for such failure. Further, any such penalty shall be imposed by the Joint Commissioner.

(b) (i) In the present case, Dweep Ltd., an Indian company has 2 manufacturing units, unit M in the SEZ and unit N in non-SEZ. Though unit M only does the packaging of goods manufactured by Unit N, the company, in its books of account, shows the manufacture of goods by Unit N as manufacture of goods by unit M to enjoy exemption under section 10AA. This is a case of misrepresentation of facts by showing manufacture of non-SEZ unit as manufacture of SEZ unit. 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, goods manufactured by unit Q, a non-SEZ unit, being a non-eligible business, are transferred to unit P, a SEZ unit, being an eligible business, at a price significantly lower than the market value of the goods to claim higher deduction under section 10AA in respect of unit P.

As there is no misrepresentation of facts or false submissions, it is not a case of tax evasion. The company has tried to take advantage of tax provisions by diverting profits from non-SEZ unit to SEZ unit. However, this is not the intention of the legislation.

Such tax avoidance is specifically dealt with through the provisions contained in section 10AA(9), as per which provisions of section 80-IA(8) would get attracted in such a case. Further, if the aggregate of such transactions entered into in the relevant previous year exceed the threshold of Rs. 20 crore, domestic transfer pricing regulations under section 92BA would be attracted. 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.

(c) (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 Rs. 567 lakhs (i.e., Rs. 265 lakhs plus Rs. 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 Rs. 59 lakhs (i.e., Rs. 35 lakhs and Rs. 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 2017. 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 Rs. 35 lakhs and Rs. 24 lakhs incurred for earning fees for technical services of Rs. 265 lakhs and Rs. 302 lakhs, respectively, from Y Ltd. and G Ltd. is allowable as deduction therefrom. Further amount of Rs. 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 Rs. 8.2 lakhs which is not incurred wholly and exclusively for the business of the PE and the amount of Rs. 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.

MTP SERIES 1 – MAY 2023:

Question 1:

Risk 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 Rs.152 lakhs after debiting or crediting the following items:

- (a) Payment of Rs.0.25 lakh and Rs.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 Rs.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. *2% D/A → 36(1)(iv) (+) 50000*
- (c) Payment of Rs.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. *No TDS.*
- (d) Profit of Rs.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. *(-) Exempt u/s-47. No Exemption if sold to FLC*
- (e) Contribution of Rs.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. *Allowed*
- (f) Expense of Rs.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. *∴ CAPEX Not Allowed.*
- (g) Fees of Rs.1 lakh paid to independent directors for attending Board meeting without deduction of tax at source under section 194J. *(+) 30%.*
- (h) Depreciation charged Rs.10 lakhs *(+)*
- (i) Rs.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 2016-17.
- (j) Dividend received from a foreign company Rs.5 lakhs in which it holds 15% of the equity share capital. *(-) → DFD.*

Additional Information:

- (i) As a corporate debt restructuring, the bank has converted unpaid interest of Rs.10 lakhs upto 31st March 2023 into a new loan account repayable in five equal annual installments. The first installment of Rs.2 lakhs was paid in March 2024 by debiting new loan account. *X*
- (ii) Depreciation as per Income-tax Act, 1961 Rs.15 lakhs *(-)*
- (iii) The company received a bill for Rs.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. *(less.)*
- (iv) Dividend of Rs.7 lakhs is distributed on 25.09.2024 to its shareholders. *80m → 5L.*

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.

(14 Marks)

Answer:

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

Particulars	Amount (Rs.)	
Profit as per Statement of Profit and Loss		1,52,00,000
Add: Items debited but to be considered separately or to be disallowed		
(a) Payment to middleman for purchase of raw corn etc. in cash for an	30,000	

amount exceeding Rs.10,000 [Under section 40A(3), disallowance is attracted in respect of expenditure for which cash payment exceeding Rs.10,000 is made on a day to a person. Payment of Rs.25,000 to farmer for purchase of corn is covered by exception under Rule 6Dd. However, payment of Rs.30,000 to spice trader is not covered under the exception – CBDT Circular 27/2017 dated 31/11/2017].		
(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 2/12, would be disallowed]	50,000	
(c) Payment to transport contractor without deduction of tax at source [Since the contractor opts for presumptive taxation under section 44AE and furnished a declaration to this effect, tax is not required to be deducted at source under section 194C in respect of payment to transport contractor]	-	
(e) Contribution to IIT for scientific research [Contribution to IIT for scientific research programme approved by the prescribed authority qualifies for deduction @100% under section 35(2AA). Since the amount of contribution has already been debited to the statement of profit and loss, there is no further adjustment required].	-	
(f) Expenses on foreign travel of two directors for a collaboration agreement which failed to materialize [Where expenditure is incurred for a project not related to the existing business and the project was abandoned without creating a new asset, the expenses are capital in nature as per Mc Gaw-Ravindra Laboratories (India) Ltd. v. CIT (1994) 201 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 Rs.1 lakh] [Disallowance @ 30% could be attracted under section 40(a)(ia) for non-deduction of tax at source from director's remuneration on which tax is deductible under section 194J]	30,000	11,10,000
Less: Items credited but to be considered separately / Expenditure to be allowed (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	1,63,10,000
(h) Depreciation [Depreciation allowable under the Income-tax Act, 1961 is Rs.15 lakhs whereas the depreciation as per books of account debited to the statement of profit and loss is Rs.10 lakhs. Hence, the additional amount of Rs.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	10,00,000	

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]		
(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]		
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 Rs.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 Rs. 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
Capital Gains Profit on sale of land to 100% subsidiary [Since the transfer is to a 100% subsidiary company and the subsidiary company is an Indian company, the same would not constitute a transfer for levy of capital gains tax as per section 47(iv). Consequently, profit arise on sale of plot of land would not be taxable in the hands of Parik Hospitality Ltd.]. Additional compensation received from State Government [Since the additional compensation has been received pursuant to an interim order of the Court, the same would be deemed as income chargeable to tax under the head "Capital Gains" in the year of final order as per section 45(5). Consequently, such compensation would not be taxable during the PY. 2023-24].	- -	-
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 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]		1,32,10,000 5,00,000
Total Income		1,27,10,000

Question 2:

- (a) 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 Rs.75 lakhs (including cost of land Rs.10 lakhs). The warehouse became operational with effect from 1st April 2023 and the expenditure of Rs.75 lakhs was capitalized in the books on that date.

Relevant details for the financial year 2023-24 are as follows:

Particulars	Rs.
Profit on 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. **(8 Marks)**

- (b) 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	Rs.
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 tax payable by Mr. Ravi in India for A.Y. 2024-25 assuming that India has not entered into double taxation avoidance agreement with Countries S & T. Mr. Follow Old Regime **(6 Marks)**

Answer:

- (a) **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	Rs.	Rs.
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 (2) below]	<u>65,00,000</u>	
Business income of warehousing facility chargeable to tax		40,00,000
Gross Total Income		80,00,000
Less: Deduction under section 10AA [See Note (1) below]		32,00,000
Total Income		48,00,000
Computation of tax liability (under the normal/ regular provisions)		
Tax @ 30% on Rs.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	Rs.	Rs.
Total Income (as computed above)		48,00,000

Add: Deduction under section 10AA		32,00,000
Add: Deduction under section 35AD	65,00,000	80,00,000
Less: Depreciation under section 32 On building @ 10% of Rs.65 lakhs ¹	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 > Rs.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

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

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

AMT Credit to be carried forward under section 115JD

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

Notes:

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

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

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

(2) 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 or 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 Rs.65 lakhs (i.e., Rs.75 lakhs – Rs.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, Rs.65,00,000, being 100% of Rs.65 lakhs would qualify for deduction under section 35AD in F.Y. 2023-24.

(b) Computation of total income of Mr. Ravi for A.Y. 2024-25

Particulars	Rs.	Rs.
Income from House Property [House situated in Country T]		
Gross Annual Value ²	3,30,000	
Less: Municipal taxes paid in Country T	<u>10,000</u>	
Net Annual Value	3,20,000	
Less: Deduction under section 24 – 30% of NAV	<u>96,000</u>	2,24,000

Profits and Gains of Business or Profession		
Income from business carried on in India	4,40,000	
Royalty income from a book of art in Country S (after deducting expenses of Rs.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 ³		3,00,000
Under section 80TTA – Interest on savings bank account, subject to a maximum of Rs.10,000		10,000
Total Income		14,85,000

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

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

Computation of tax payable by Mr. Ravi for A.Y. 2024-25

Particulars	Rs.	Rs.
Tax on total income [30% of Rs.4,85,000 + Rs.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.,Rs.2,68,320/Rs.14,85,000x 100]	18.069%	
Average rate of tax in Country S	16%	
Doubly taxed income pertaining to Country S⁴	Rs.	
Agricultural Income	94,000	
Royalty Income [Rs.7,80,000 – Rs.50,000 (Expenses) – Rs.3,00,000 (deduction under section 80QQB)]	4,30,000	
	5,24,000	
Rebate under section 91 on Rs.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	2,24,000	
Income from house property	2,65,000	
Dividend	4,89,000	
Rebate under section 91 on Rs.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

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

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

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

- He is a resident in India during the relevant previous year i.e., P.Y. 2023-24.
- 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.
- 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 had paid tax on such income in those countries.
- 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.

Question 3:

(i) 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. **30 days (3 Marks)**

(ii) 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 for the P.Y. 2023-24 –

Particulars	Amount in Rs.
(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 Rs.57 lakhs relates to receipts from persons using internet protocol address located in India.	158 + 57 = 215 lakhs

Discuss the equalization levy implications of such receipt in the hands of XYZ & Co., if XYZ & Co. has **no permanent establishment** in India. **(3 Marks)**

Answer:

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

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

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

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

Particulars	Rs.
(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 equalization levy exceed Rs.2 crore, equalization levy @ 2% is attracted on the above sum of Rs.215 lakhs, which would amount to Rs.4.30 lakhs.

Question 4:

4.(a) 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 Rs.98 lakhs, an urban plot in Kolkata from Mr. C for a sum of Rs.49,50,000 and rural agricultural land from Mr. D for a consideration of Rs.60 lakhs. Stamp duty value of house property, plot and rural agricultural land is Rs.95 lakhs, Rs.48 lakhs and Rs.65 lakhs.
- (ii) On 17.6.2023, a commission of Rs.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 Rs.55,000 per month w.e.f. 1.4.2023. He has a house property which is self-occupied. He paid an interest of Rs.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 Rs.80,000 in respect of this property for financial year ended 31.3.2024. **Follow Old Regime.**
- (iv) Mr. Anand has been running a sole proprietary business with turnover of Rs.202 lakhs for the A.Y. 2023-24. He pays a monthly rent of Rs.15,000 for the office premises to Mr. R, the owner of building. Besides, he also pays service charges of Rs.6,000 per month to Mr. R towards the use of furniture, fixtures and vacant land appurtenant thereto. **(8 Marks)**

(50000)
(80000)

180000 + 7000
10% 10%

- (b) STYLE Inc., a notified Foreign Institutional Investor (FII), derived the following incomes for the financial year 2022-23:-
 - (1) Interest on investment in Rupee Denominated Bonds of ABC Ltd., an Indian company (investment was made in the F.Y. 2018-19) – Rs.8,50,000
 - (2) Dividend from listed shares of Indian companies – Rs.6,20,000
 - (3) Interest on securities – Rs.17,32,000 (Expenses of Rs.26,000 has been incurred to earn such income)
 - (4) Income from sale of securities and shares:

(i) Bonds of J Ltd.		LT	115AD No. lacha
[Date of purchase 5 May, 2017; Date of sale 7 March, 2023]			
Sale proceeds:		10%	Rs. 47,00,000
Cost of purchase:			Rs. 32,00,000
Cost Inflation Index: F.Y. 2017-18; 272; F.Y. 2022-23: 331			15% x 16%
(ii) Listed Shares of E Ltd.			
[Date of purchase - 2 May, 2022; Date of sale - 9 February, 2023]			
Sale Consideration		ST ≤ 12 months	Rs.12,40,000
Purchase cost			Rs.7,80,000
[STT paid both at the time of purchase and sale]			115A → 15%
(iii) Unlisted equity shares of M Ltd.			
[Date of purchase - 1 July, 2022; Date of sale - 7 March, 2023]			
Sale Consideration		115AD → STCG 30%	Rs. 8,40,000
Purchase Cost			Rs. 3,72,000

Compute the total income and tax liability of the FII, STYLE Inc., for the A.Y. 2023-24 as per section 115AD, assuming that no other income is derived by STYLE Inc. during the F.Y. 2022-23. **(6 Marks)**

Answer:

4.(a)

	Amount of TDS (Rs.)
(i) Since the consideration and stamp duty value of transfer of house property at Mumbai both are not less than Rs.50 lakhs, Mr.X, being the transferee, is required to deduct tax @ 1% under section 194-IA on Rs.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 Rs.49,50,000 paid to Mr. C for transfer of urban plot, since the consideration and stamp duty value, both are less than Rs.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																														
<p>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% 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 Rs.50 lakhs.</p>																															
<p>(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 Rs.15,000.</p> <p>In the given case, 'ABC Packaging Ltd.', the consignee, has not remitted the commission of Rs.50,000 to the consignor 'XYZ Developers' while remitting the sales consideration.</p> <p>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]</p> <p>Therefore, XYZ Developers has to deduct tax at source on Rs.50,000 at the rate of 5%.</p>	2,500																														
<p>(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.</p> <p>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.</p> <p>Therefore, AB Ltd. is required to deduct tax at source on the salary of Rs.55,000 per month paid to Mr. Raj, in the following manner:</p> <table data-bbox="68 1598 1133 1982"> <tr> <td>Income under the head salaries (Rs.55,000 x 12)</td> <td style="text-align: right;">6,60,000</td> <td></td> </tr> <tr> <td>Less: Standard deduction under section 16(ia)</td> <td style="text-align: right;"><u>50,000</u></td> <td></td> </tr> <tr> <td></td> <td style="text-align: right;">6,10,000</td> <td></td> </tr> <tr> <td>Income under the head "house property"</td> <td style="text-align: right;"><u>(80,000)</u></td> <td></td> </tr> <tr> <td>Gross total income</td> <td style="text-align: right;">5,30,000</td> <td></td> </tr> <tr> <td>Less: Deduction under Chapter VI-A</td> <td style="text-align: right;"><u>Nil</u></td> <td></td> </tr> <tr> <td>Total Income</td> <td style="text-align: right;"><u>5,30,000</u></td> <td></td> </tr> <tr> <td>Tax on Rs.5,30,000</td> <td style="text-align: right;">18,500</td> <td></td> </tr> <tr> <td>Add: Health & Education cess@ 4%</td> <td style="text-align: right;"><u>740</u></td> <td></td> </tr> <tr> <td>Tax to be deducted at source</td> <td style="text-align: right;"><u>19,240</u></td> <td style="text-align: right;">19,240</td> </tr> </table>	Income under the head salaries (Rs.55,000 x 12)	6,60,000		Less: Standard deduction under section 16(ia)	<u>50,000</u>			6,10,000		Income under the head "house property"	<u>(80,000)</u>		Gross total income	5,30,000		Less: Deduction under Chapter VI-A	<u>Nil</u>		Total Income	<u>5,30,000</u>		Tax on Rs.5,30,000	18,500		Add: Health & Education cess@ 4%	<u>740</u>		Tax to be deducted at source	<u>19,240</u>	19,240	
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<p>(iv) Where the payer is an individual or HUF whose total sales, gross receipts or turnover from the business carried on by him exceed Rs.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 Rs.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.</p> <p>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 uses of land or building together with furniture, fittings etc. Therefore, in the given case, apart from monthly rent of Rs.15,000 p.m., service charge of Rs.6,000 p.m. for use of furniture and fixtures would also attract TDS under section 194-I. Since the aggregate rental payments of Rs.2,52,000 to Mr. R during the financial year 2023-24 exceeds Rs.2,40,000, Mr. Anand is liable to deduct tax at source @10% under section 194-I from rent paid to Mr. R.</p>	25,200																														

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

Particulars	Rs.	Rs.
Interest on Rupee Denominated Bonds	8,50,000	
Dividend income	6,20,000	
Interest on securities [No deduction is allowable in respect of expenses incurred in respect thereof]	<u>17,32,000</u>	32,02,000

Long-term capital gains on sale of bonds of J Ltd.		
Sale consideration	47,00,000	
Less: Cost of acquisition	<u>32,00,000</u>	15,00,000
[Benefit of indexation is not allowable]		
Short-term capital gains on sale of STT paid equity shares of E Ltd.		
Sale consideration	12,40,000	
Less: Cost of acquisition	<u>7,80,000</u>	4,60,000
Short-term capital gains on sale on unlisted equity shares of M Ltd.		
Sale consideration	8,40,000	
Less: Cost of acquisition	<u>3,72,000</u>	4,68,000
Total Income		56,30,000

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

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

Question 5:

- (a) Smt. Kanti engaged in the business of growing, curing, roasting and grounding of coffee after mixing chicory had income of Rs.6,00,000 from his 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 you answer change if she had travelled to USA during the P.Y. 2023-24 and incurred Rs.2.20 lakhs for the same? *Yes she has to file-* (4 Marks)
- (b) Examine the correctness or otherwise of the following propositions in the context of the Income-Tax Act, 1961:
- (i) The powers of the Commissioner of Income-tax (Appeals) to enhance the assessment are plenary and quite wide. *Yes. its correct. power is (determined) with AO.*
- (ii) 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. *No.* (4 Marks)

Answer:

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

In this case, Smt. Kanti has income of Rs.6,00,000 from his business, which was her only source of income for P.Y. 2023-24. Her total income would be 40% of such income i.e., Rs.2,40,000, which is less than the basic exemption limit of Rs.2,50,000 in respect of an individual assessee. Therefore, Smt. Kanti is not required to file a return of income for the A.Y. 2024-25 as per the provisions of section 139(1).

If Smt. Kanti had travelled to USA during the P.Y. 2023-24 and incurred Rs.2.20 lakhs on such travel, she would be required to mandatorily file a return of income for A.Y. 2024-25 or on before the due date u/s 139(1), even though her total income does not exceed the basic exemption limit.

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

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

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

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

- (ii) The proposition is not correct 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 v.s 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.)]

Question 6:

- 6.(a) 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 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). **(4 Marks)**

- (b) 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. (T.M)

- (ii) A partnership firm obtaining declaration from lenders/depositors in Form No.15G/15H and forwarding the same to income-tax authorities. (T.M)
- (iii) A company installed an air-conditioner costing Rs.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. (T.E)
- (iv) RR Ltd. issued a credit note for Rs.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 Rs.4,20,000 to Rs.5,00,000 and reduce the income of RR Ltd. correspondingly. (T.E)
- (v) An individual tax payer making tax saver deposit of Rs.1,00,000 in a nationalised bank. (T.P)

(4 Marks)

(c) 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. AE

- (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. $18 \times 1000 \times 64$.
- (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. 3000×64 .
- (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. 5000×64 .

Assume the rate of exchange as 1 \$ = Rs.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 Rs.1,200 lakhs. \rightarrow 10AA: NO 10AA on Additions.

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. (6 Marks)

Answer:

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

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

(b)

Answer	Reason
(i) Tax management	Maintaining register of payments subject to TDS helps in complying with the obligations under the Income-tax Act, 1961.
(ii) Tax management	Obtaining declaration from lenders/depositors in Form NO.15G/15H by a partnership firm and forwarding the same to Income-tax authorities is in the nature of compliance of statutory obligation under the Income-tax Act, 1961.
(ii) 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 Rs.80,000 by RR Ltd. as brokerage payable to Mr. Ramana, the son of the Managing Director, to increase his total income from Rs.4.2 lakh to Rs.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 Rs.5,00,000, consequent to which he would be eligible for tax rebate of Rs.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 Rs.1,00,000 in a nationalized bank for claiming deduction under section 80C by an individual is a permitted tax planning measure under the provisions of income-tax law.

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

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

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

Particulars	Rs. 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 Rs.64)	64.00
(ii) Difference for excess payment of guarantee fee to Zilla Inc. for loan borrowed from foreign lender (\$ 3,000 x Rs.64)	1.92
(iii) Difference for excess payment for services to Zilla Inc. (\$ 5,000 x Rs.64)	3.20
	69.12

XE Ltd. cannot claim deduction under section 10AA in respect of Rs.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)

MTP SERIES 2 – MAY 2023:

Question 1:

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

- Depreciation calculated on the basis of useful life of assets as per provisions of the Companies Act, 2013 is Rs. 50 lakhs. (✓)
- Employer's contribution to EPF of Rs. 2 lakhs and ~~Employees'~~ contribution of Rs. 2 lakhs for the month of March 2024 were remitted on 30th June, 2024. (X)
- The company appended a note to its Income Statement that industrial power tariff concession of Rs. 2.5 lakhs was received from the State Government and credited the same to Statement of P & L. *Income vs - 2(2c)(xviii)*
- The company had provided an amount of Rs. 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. *Allowed.*

- (v) 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 Rs. 200 lakhs. *Add → PDP →*
- (vi) A debtor who owed the company an amount of Rs. 40 lakhs was declared insolvent and hence, was written off by debit to Statement of Profit and loss. *Allowed → Actual B.D.*
- (vii) Sundry creditors include an amount of Rs. 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. *41(1) → Already Cr B P&L ∴ Ignore*
- (viii) The opening and closing stock for the year were Rs. 200 lakhs and Rs. 255 lakhs, respectively. They were overvalued by 10%. *(+) 110% - 110% (-)*
- (ix) Provision for gratuity based on actuarial valuation was Rs. 500 lakhs. Actual gratuity paid debited to gratuity provision account was (Rs. 300 lakhs) *(+)*
- (x) Commission of Rs. 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. *Allowable expn.*
- (xi) The company has purchased 500 tons of industrial paper as packing material at a price of Rs. 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 Rs. 28,000/ton. *40A(2) (+)*

Additional Information:

- (1) There was an addition to Plant & Machinery amounting to Rs. 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. *Sol x 20% ✓ Add'n*
- (2) Normal depreciation calculated as per Income-tax Rules, 1962 is Rs. 80 lakhs. *(-)*
- (3) The company had credited a sub-contractor an amount of Rs. 10 lakhs on 31-03-2023 towards repairing a machinery component. The tax so deducted was remitted on 31-12-2023. *Take 30% in cy.*
- (4) The company has collected Rs. 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 Rs. 3 lakhs to the company. The company, in turn, refunded Rs. 2 lakhs to the customers from whom the amount was collected and the balance of Rs. 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 Rs. 405 crore. *- Tax (14 Marks)*

Answer:

1. (a) Computation of Total Income of XYZ Ltd. for the A.Y.2024-25

Particulars	Amount (Rs.)	
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) Employee's contribution to EPF	2,00,000	
[Since employee's 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].		Nil
(c) Employer's contribution to EPF		
[As per section 43B, employer's 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		

<p>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]</p>	20,00,000	
<p>(e) Provision for doubtful debts [10% of Rs.200 lakhs] [Provision for doubtful debts is allowable as deduction under section 36(1)(vii) 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]</p>	Nil	
<p>(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]</p>	2,00,00,000	
<p>(g) Provision for gratuity [Provision of Rs.500 lakhs for gratuity based on actuarial valuation is not allowable as deduction as per section 40A(7). However, actual gratuity of Rs.300 lakhs paid is allowable as deduction. Hence, the difference has to be added back]</p>	Nil	
<p>(h) Commission paid to recovery agent for realization of a debt. [Commission of Rs.1 lakh paid to a recovery agent for realization 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]</p>	10,00,000	
<p>(i) Purchase of paper at a price higher than the fair market value [As per section 40A(2), the difference between the purchase price (Rs.30,000 per ton) and the fair market value (Rs.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]</p>	1,00,000	2,83,00,000
<p>(j) 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 Rs.1,00,000 (i.e., Rs.3,00,000 minus Rs.2,00,000) would be chargeable to tax]</p>		9,83,00,000
<p>Less: Items credited but to be considered separately/ permissible expenditure and allowances</p>		
<p>(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]</p>	Nil	
<p>(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]</p>	Nil	
<p>(m) Depreciation as per Income-tax Act, 1961</p>	80,00,000	

(n) Over-valuation of stock [Rs.55 lakhs x 10/110] [The amount by which stock is over-valued has to be reduced for computing business income. Rs. 5 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 [Additional depreciation @ 20% is allowable on Rs.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 [30% of Rs.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

Computation of tax liability of XYZ Ltd. for A.Y.2024-25

Particulars	Rs.
Tax @30% on the above total income (since the turnover exceeded Rs.400 crore in the P.Y. 2021-22)	2,65,50,000
Add: Surcharge @ 7% (since total income exceeds Rs.1 crore but less than Rs.10 crore)	18,58,500
	<u>2,84,08,500</u>
Add: Health and Education cess @ 4%	11,36,340
Total tax liability	2,95,44,840

2. (a)

Victory Polyfibres, a partnership firm, has earned a gross total income of Rs. 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 Rs. 200 lakhs from an undertaking eligible for deduction under section 80-IA, having a turnover of Rs. 80 crores. This is the fifth year and deduction under section 80-IA is available to the extent of Rs. 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. (8 Marks)

(b) → 80-IA ✓. (Regular/AMT) 80-IA X. → GTI = 300 ∴ AMT.

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 (Rs. in crores)	120	80
Intangible assets (Rs. in crores)	50	200
Other assets (value as per books of account) (Rs. in crores)	40	120
Income from trading operations (Rs. in crores)	25	50
The above figure includes:		

$$PI = \frac{50}{110} = 45.45\%$$

Due date
31/10.

Practical
Solut

Revised

uls -

139(5).

= 139(1)

(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 purchase are from unrelated parties	3	5
(iii) Income from transactions where both purchases and sales are from/to associated enterprises	P 5	P 10
Interest and dividend from investments (Rs. in crores)	P 20	P 15
Number of employees (Residents in respective countries)	70/160	70
Payroll expenses on employees (Rs in crores)	8/20	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. (6 Marks)

Answer:

2.(a)

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 2023-24, 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	Rs. 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	Rs. 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 Rs.300 lakhs	55.50
Add: Surcharge @12% (Since adjusted total income > Rs. 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 Rs. 64.65 lakhs.

Tax credit for Alternate Minimum Tax [Section 115JD]

	Rs. 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 Rs. 300 lakhs would be the total income of the firm.

Particulars	Rs. in lakhs
Income-tax @ 30% of Rs.300 lakhs	90,000
Add: Surcharge @12% (since total income exceeds Rs.100 lakhs)	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 Rs. 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 Rs. 64.65 lakhs, as against Rs. 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 Rs. 33.45 lakhs. Therefore, the firm is advised to file its return of income on or before 31.10.2024.

(b) 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 Rs. 110 crores [(Rs. 25 crores + Rs. 50 crores) + (Rs. 20 crores + Rs. 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 Rs. 50 crores, being sum total of :

- (i) Rs. 15 crores, income from transactions where both purchases and sales are from/to associated enterprises (Rs. 5 crores in India and Rs. 10 crores in Singapore)
- (ii) Rs. 35 crores, being interest and dividend from investment (Rs. 20 crores in India and Rs. 15 crores in Singapore)

Percentage of passive income to total income = Rs. 50 crore/ Rs. 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 Rs. 610 crores [Rs. 210 crores, in India + Rs. 400 crores, in Singapore]

Value of total assets of Singtel Ltd. in India during the P.Y. 2023-24 is Rs. 210 crores

Percentage of assets situated in India to total assets = Rs. 210 crores/Rs. 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 = Rs.8 crores.

Total payroll expenses = Rs.20 crores (Rs.8 crores + Rs.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.

3.(a) (i) A public charitable trust registered under section 12AB, for the previous year ending 31.3.2024, derived gross income of Rs. 21 lakhs, which consists of the following:

	(Rs. in Lacs)
(a) Income from properties held by trust	10
(b) Income from business (incidental to main objects)	4
(c) Voluntary contributions from public	7

The trust applied a sum of Rs. 11.60 lacs towards charitable purposes during the year which includes repayment of loan taken for construction of orphanage Rs. 3.60 lacs. The entire expenditure incurred on construction of orphanage was allowed as application of income in the P.Y. 2021-22.

Determine the taxable income of the trust for the assessment year 2024-25. (4 Marks)

(b) 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

Wrong:

21L
 (-) (5.1)

 17.85L
 (-) (8L)

 11.6 - 3.6L

correctness of this statement, with reference to the provisions of the Income-tax Act 1961.

(3 Marks)

Answer:

3.(a) (i) Computation of taxable income of public charitable trust

Particulars	Rs.
(i) Income from property held under trust	10,00,000
(ii) Income 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	<u>3,15,000</u>
Less; Amount applied for the objects of the trust	17,85,000
(i) Amount spent for charitable purposes (Rs.11,60,000 – Rs.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. Therefore, the repayment of loan for construction of orphan home can be treated as application of income only if such expenditure on construction of orphanage was not treated as application in year such expenditure was incurred. However, in this case, the amount spent on construction of orphanage was allowed as deduction in the P.Y. 2021-22. Thus, repayment of loan taken for such purposes will not be allowed as application as it would tantamount to double deduction.

- (b)(i) The statement is **not** correct. As per section 245N, advance ruling not only includes a determination by the Board for Advance Rulings (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 –
- (a) 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
- (b) 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.

4.

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 Rs. 170 crores to Mahanadi Ltd., an Indian company on 10-4-2023. The total book value of assets of Mahanadi Ltd. is Rs. 300 crores. The market value of the assets, however, is Rs. 320 crores. Mahanadi Ltd. repaid Rs. 30 crores before 31-3-2024.
- (ii) Queenland plc., a French company having its place of effective management also in the France, has appointed 3 of the directors of Godavari Ltd, an Indian company, whose total number of directors in the Board is 8. $< 50\%$. \therefore No A-E
- (iii) Total value of raw materials and consumables of Saraswati Ltd., an Indian company, is Rs. 900 crores. Of this, supplies to the tune of Rs. 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. (6 Marks)

Answer:

- (i) PQR Inc, a foreign company, has advanced loan of Rs.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.

5. (a) Cash of Rs. 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? *↓ did not like the Expln (-) Existing Liab ... & Bal → 120 DAYS*
- (ii) If yes, then to what extent and upto what period? (4 Marks)

29288B:
(b) 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. (4 Marks)

(c) When does it become necessary to apply the tie-breaker rule? Discuss the manner of application of the tie-breaker rule. *Thoy:* (6 Marks)

Answer:

5.(a) 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.

- (b) 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 co-operated 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 non-service 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.

- (c) 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 tie-breaker 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:

- 1) 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.
- 2) 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.
- 3) 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**.

- 4) 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**.
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.

6. (a) An assessee had credited a sum of Rs. 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 Rs. 50,000 as the income of the assessee from undisclosed sources. He also started proceedings under section 271D and levied a penalty of Rs. 60,000 on the assessee for having accepted the loan in contravention of section 269SS. Examine the correctness of the levy. **(4 Marks)**
- (b) Critically examine the following cases and discuss whether the provisions of General Anti-avoidance Rules (GAAR) can be invoked in these cases?
- (i) Diva Ltd., an Indian company has 2 manufacturing units, unit A in the Special Economic Zone (SEZ) and unit B in non-SEZ. Manufacturing activities are carried out in Unit B while unit A only does the packaging of the goods manufactured by unit B. In its books of accounts, it shows the manufacturing to be carried out in unit A and claims allowable deductions.
- (ii) Jeeva Ltd., an Indian company has 2 manufacturing units, unit C in the Special Economic Zone (SEZ) and unit D in non-SEZ. It transfers the goods manufactured by unit D to unit C at a price significantly lower than the market value of the goods and thus becomes eligible for higher deductions. **(4 Marks)**
- (c) 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.

Done earlier in MTP. Nov 2022

Particulars	Rs.
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

we have done in class

Sec 80DDB → (3L)
(OLD Regime)

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 tax payable by Mr. Kamesh in India for Assessment Year 2024-25, assuming that he does not opt for section 115BAC **(6 Marks)**

- Answer:**
- 6.(a) 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 Rs. 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 Rs. 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].
- (b)(i) In the present case, Diva Ltd., an Indian company has 2 manufacturing units, unit A in the SEZ and unit B in non-SEZ. Though unit A only does the packaging of goods manufactured by Unit B, the company, in its books of account, shows the manufacture of goods by Unit B as manufacture of goods by unit A to enjoy exemption under section 10AA. This is a case of

misrepresentation of facts by showing manufacture of non-SEZ unit as manufacture of SEZ unit. 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, goods manufactured by unit D, a non-SEZ unit, being a non-eligible business, are transferred to unit C, a SEZ unit, being an eligible business, at a price significantly lower than the market value of the goods to claim higher deduction under section 10AA in respect of unit C.

As there is no misrepresentation of facts or false submissions, it is not a case of tax evasion. The company has tried to take advantage of tax provisions by diverting profits from non-SEZ unit to SEZ unit. However, this is not the intention of the legislation.

Such tax avoidance is specifically dealt with through the provisions contained in section 10AA(9), as per which provisions of section 80-IA(8) would get attracted in such a case. Further, if the aggregate of such transactions entered into in the relevant previous year exceed the threshold of Rs. 20 crore, domestic transfer pricing regulations under section 92BA would be attracted. 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.

(c) **Computation of total income of Mr. Kamesh for A.Y.2024-25**

Particulars	Rs.	Rs.
Income from House Property [House situated in country Y]		
Gross Annual Value ¹	2,40,000	
Less: Municipal taxes	<u>10,000</u>	
Net Annual Value	2,30,000	
Less: Deduction under section 24-30% of NAV	<u>69,000</u>	
Profits and Gains of Business or Profession		1,61,000
Income from profession carried on in India	7,50,000	
Royalty income from a literary book from Country X (after deduction expenses of Rs.50,000)	5,50,000	
Less: Business loss in country Y set-off ²	<u>65,000</u>	
		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 work³		3,00,000
Total Income		12,96,000

¹Rental Income has been taken as GAV in the absence of other information relating to fair rent, municipal value etc.

²As per section 70(1), inter-source set-off of income is permitted.

³It 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., Rs. 15,96,000) does not exceed Rs. 20 lakhs, AMT would not be attracted in this case.

Computation of tax payable by Mr. Kamesh for A.Y.2024-25

Particulars	Rs.
Tax on total income [30% of Rs.2,96,000 + Rs.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
Tax payable	1,39,613
Tax payable (rounded off)	1,39,610

Working Note: Calculation of Rebate under section 91

	Rs.	Rs.
Average rate of tax in India [i.e. Rs.2,09,352 / Rs.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 [Rs.6,00,000 – Rs.50,000 (Expenses) – Rs.3,00,000 (deduction under section 80QQB)] ⁴	2,50,000	
	3,00,000	
Deduction under section 91 on Rs.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	1,6,1000	
Dividend	1,50,000	
	3,11,000	
Less; Business loss set-off	65,000	
	2,46,000	
Deduction u/s 91 on Rs.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

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

Note: Mr. Kamesh shall be allowed deduction u/s 91, since the following conditions are fulfilled:-

- He is a resident in India during the relevant previous year (i.e., P.Y.2023-24).
- 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.
- 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.
- 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.

MTP SERIES 1 – NOV 2023:**Question 1:**

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 Rs. 750 lakhs after debiting or crediting the following items:

- Depreciation charged on the basis of useful life of assets as per Companies Act is Rs. 52 lakhs.
- Industrial power tariff concession of Rs. 4.80 lakhs, received from Maharashtra State Government was credited to Statement of profit and loss.

All Adjustments Same Already done.

- (c) The company had provided Rs. 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 Rs. 12 lakhs.
- (e) Loss Rs. 17 lakhs, due to destruction of a machine worth Rs. 24 lakhs by fire due to short circuit and Rs. 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 Rs. 320 lakhs. Actual gratuity paid debited to gratuity provision account was Rs. 160 lakhs.
- (g) Advertisement charges Rs. 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 Rs. 3 lakhs on sale of equity shares on which Securities Transaction Tax (STT) was paid at the time of acquisition and sale.

Additional Information:

- (i) Normal depreciation computed as per Income-tax Rules is Rs. 71 lakhs. Ignore adjustment, if any, due to scrap value of Rs. 3 lakhs.
- (ii) GST Rs. 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 Rs. 3 lakhs to the company. The company in turn refunded Rs. 2 lakhs to the customers from whom it was collected and the balance Rs. 1 lakh is still lying under the head "Current Liabilities".
Compute the total income and tax liability 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.

Note - The turnover of Lambda Ltd. for the P.Y.2021-22 was Rs. 450 crore. (14 Marks)

Answer:

1.(a) Computation of Total Income of Lambda Ltd. for the A.Y. 2024-25

Particulars	Amount (Rs.)	
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 dissolved		
(a) Depreciation as per Companies Act	52,00,000	
(b) 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 Rs.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 Rs.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]		1,60,00,000
(f) Provision for gratuity		
[Provision of Rs.320 lakhs for gratuity based on actuarial valuation is not allowable as deduction. However, actual gratuity of Rs.160 lakhs paid is allowable as deduction Hence the difference has to be added back to income [Rs.320 lakhs (-) Rs.160 lakhs]		2,30,000
(g) Advertisement in souvenir of a political party		
[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
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. [The amount of GST refunded to the company by the Government is a revenue receipt chargeable to tax. Out of the refunded amount of Rs.3 lakhs, the amount of Rs.2 lakh stands refunded to customers would not be chargeable to tax. ¹ The balance amount of Rs.1,00,000 lying with the company would be chargeable to tax]		9,81,30,000 1,00,000
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 [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 [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] (h) Long term capital gains on sale of equity shares [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		9,82,30,000 - 12,00,000 3,00,000 3,00,000 71,00,000 89,00,000
Profits and gains from business and profession II Income from Other Sources [Dividend received from a foreign company is chargeable to tax under the head "Income from other sources"] III Capital Gains Long term capital gains on sale of equity shares [Long term capital gains in excess of Rs.1 lakh (i.e. Rs.2 lakh, being Rs.3 lakh – Rs.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.]		8,93,30,000 12,00,000 3,00,000
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 tantamount to contribution to such political party	2,30,000
Total Income	9,06,00,000

¹CIT v. Thirumalaiswamy Naidu & Sons (1998) 230 ITR 534 (SC)

Computation of tax liability of Lambda Ltd. for A.Y.2024-25

Particulars	Rs.
Tax @ 10% on long term capital gains in excess of Rs.1 lakh (i.e. Rs.2 lakh, being Rs.3 lakh – Rs.1 lakh)	20,000
Tax @ 30% on balance income of Rs.9,03,00,000 (i.e., Rs.9,06,00,000 – Rs.3,00,000) (since the turnover exceeded Rs.400 crore in the P.Y. 2021-22)	2,70,90,000
	2,71,10,000
Add: Surcharge @ 7% (since total income exceeds Rs.1 crore but less than Rs.10 crore)	18,97,700
	2,90,07,700
Add: Health and Education cess @ 4%	11,60,308
Total tax liability	3,01,68,008
Total tax liability (Rounded off)	3,01,68,010

Option
15B AD
Normal
80P N.A
80JIAA
Allowed
28% Tax
10(6)(vi)
N.A.

Question 2:

(a) XYZ 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 Rs. 65 lakhs (computed). It has employed ten new employees with salary of Rs. 22,000 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 Rs. 30 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. (8 Marks)

80P ✓

Option (i)
Normal
R Amt
80P (+)
80JIAA 80
JIAA
Higher

(b) 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 Rs. 28,00,000 which is borne by the Indian PE.

Charles held 1200 shares of B (P) Ltd., an Indian company since 28.11.2016 which he acquired for Rs. 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 Rs. 43 per share. Charles also held 2000 equity shares of Aribitz GmbH (AG), a German company, which he had acquired for Rs. 145 per share in 2019. AG follows April to March as its financial year. He sold all these shares for Rs. 615 per share to David, another non-resident, on 26.08.2023. The relevant information of AG as on 31.3.2023 is given below:

- (i) Total value of assets Rs. 15 crores.
- (ii) Total value of immovable properties worldwide = Rs. 12 crores.
- (iii) Immovable properties held in India (included in (ii) above) Rs. 8 crores.

Dividend from Aribitz GmbH received in India on 28.06.2023 was - Rs. 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: (6 Marks)

Answer:

2.(a) Computation of total income & tax liability of XYZ Co-operative Society for A.Y.2024-25 (under the regular provisions of the Act)

Particulars	Rs.	Rs.
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Profits and gains of business or profession		65,00,000
Income from other sources – Interest on bank fixed deposits		30,00,000
Gross Total Income		95,00,000
Less: Deductions under Chapter VI-A		
Deduction u/s 80JJAA [30% of Rs.22,000 x 10 employees x 11 months]	7,26,000	
Deduction u/s 80P [XYZ 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]	<u>65,00,000</u>	<u>72,26,000</u>
Total Income		<u>22,74,000</u>
Tax liability:		
Upto Rs.10,000 – 10%	1,000	
Rs.10,000 – Rs.20,000 – 20%	2,000	
Rs.20,000 – Rs.22,74,000 – 30%	<u>6,76,200</u>	<u>6,79,200</u>
Add: Health and education cess @ 4%		27,168
Tax liability		7,06,368
Tax liability (Rounded off)		7,06,370
Alternate Minimum Tax		
Total Income		22,74,000
Add: Deduction under section 80JJAA		<u>7,26,000</u>
Adjusted Total Income		<u>30,00,000</u>
Alternate Minimum Tax @ 15% of Rs.30,00,000		4,50,000
Add: Health and education cess @4%		<u>18,000</u>
Alternate Minimum Tax		<u>4,68,000</u>

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 Rs.7,06,370.

Computation of total income & tax liability of XYZ Co-operative Society under section 115BAD for A.Y.2024-25

Particulars	Rs.	Rs.
Profits and gains of business or profession		65,00,000
Income from other sources – Interest on bank fixed deposits		<u>30,00,000</u>
Gross Total Income		95,00,000
Less: Deductions under Chapter VI-A		
Deduction u/s 80JJAA [30 of Rs.22,000 x 10 employees x 11 months]	7,26,000	
Deduction u/s 80P [Not allowable where the co-operative society opts for section 115BAD]	<u>-</u>	<u>7,26,000</u>
Total Income		<u>87,74,000</u>
Tax liability		
22% of Rs.87,74,000		19,30,280
Add: Surcharge @ 10%		<u>1,93,028</u>
		21,23,308
Add: Health and education cess @ 4%		<u>84,932</u>
Tax liability		<u>22,08,240</u>

Since the tax liability under section 115BAD is higher than the tax liability under the regular provisions of the Act, XYZ Co-operative Society should not opt for section 115BAD.

(b) Computation of Total income of Mr. Charles for the A.Y. 2024-25

Particulars	Rs.	Rs.
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 Germany company which is engaged in business and trade in India through a PE in India and such salary is borne by Indian PE] Less: Standard deduction u/s 16(ia)	28,00,000 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 Rs.43 per share/75, being average of Rs.74 (TTBR) + Rs.76 (TTSR)/2 on 23.6.2022) Less: cost of acquisition (1200 x Rs.15 per share/60, being average of Rs.59 (TTBR) + Rs.61 (TTSR)/2 on 28.11.2015)	 \$688 \$300	
	\$ 388	
Long-term capital gain [\$ 388 x Rs.74, being TTBR on 23.06.2022] 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 assts do not exceed Rs.10 crores] Income from Other Sources Dividend received in India from Aribitz GmbH [taxable in India, since dividend is received in India]		28,712 Nil 1,11,000
Gross Total Income/Total Income		28,89,712
Total income (rounded off)		28,89,710

Question 3:

- (a)(i) The Authority for Advance Rulings has the powers of compelling the production of books of account – Examine the correctness or otherwise of this statement. **4 points (3 Marks)**
- (ii) 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 Rs. 3 crores. During the previous year 2023-24, MNO Inc. paid Rs. 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 both MNO Inc. and PQR Inc. have no permanent establishment in India **(3 Marks)**

Answer:

(a)(i) 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;

2016 ELX

2020 ELV

MNO INC
NR
NOPE

← Online Advt

PQR INC
NR NOPE

SLX 27-

* Total Indian (customers)

- (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 powers of compelling the production of books of account.

- (ii) 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.

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 Rs. 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 through 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.

Equalisation levy would not be attracted in the present case since MNO Inc., a non-resident service recipient does not have a permanent establishment in India. Therefore, the MNO Inc. is not required to deduct equalisation levy @ 6% on Rs. 5 lakhs, being the amount paid towards online advertisement services to PQR Inc.

However, equalisation levy @2% under section 165A is attracted on Rs. 5 lakhs, being the amount of consideration received by PQR Inc, an e-commerce operator from e-commerce 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 receipt of PQR Inc. in the P.Y. 2022-23 exceeds Rs. 2 crores.

Question 4:

(a) 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 Rs. 7,30,000 to its General Manager. Besides, the company provides non-monetary perquisites to him whose value is estimated at Rs. 1,20,000. General manager is not opting for the provisions of section 115BAC. *OLD Regime - 194LB @ 5.2%.*

(ii) A notified infrastructure debt fund eligible for exemption under section 10(47) of the Income-tax Act, 1961 pays interest of Rs. 5 lakhs to a company incorporated in USA. The US Company incurred expenditure of Rs. 12,000 for earning such interest. The fund also pays interest of Rs. 3 lakhs to Mr. X, who is a resident of a notified jurisdictional area. *31.2%.*

(iii) Max Limited pays Rs. 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. *194C ✓ Breakup ✓ No Breakup X*

(iv) A company operating a television channel makes payment of Rs. 5 lakh to a former Indian cricketer on 10th March, 2024 for making running commentary of a one-day cricket match. *194J @ 10%.*

(8 Marks)**Answer:**

4.(a) (i)

	Rs.
Gross salary, allowances and monetary perquisites	7,30,000
Non-Monetary perquisites	<u>1,20,000</u>
	8,50,000

Less: Standard deduction under section 16(ia)

50,000

8,00,000

Tax Liability

75,400

Average rate of tax (Rs. 75,400 / Rs. 8,00,000 × 100)

9.425%

The company can deduct Rs. 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 Rs. 1,20,000 = Rs. 11,310

Balance to be deducted from salary = Rs. 64,090

If the company pays tax of Rs. 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% 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 Rs. 26,000 (i.e., 5.20% of Rs. 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 Rs. 3 lakh to Mr. X, who is a resident of a notified jurisdictional area, would be Rs. 93,600, being 31.2% of Rs. 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 Rs. 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 Rs. 5 lakhs payable to the former cricketer.

Question 5:

- (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. **(4 Marks)**

- (b) The Director General of Income Tax after getting the information that Mr. Mogambo is in possession of unaccounted cash of Rs. 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? **(4 Marks)**

- (c) Mrs. Rajni, aged 63 years, is married and settled in Ranchi. She is a Hindustani classical dancer and choreographer who performs in concerts in India and Country M. She visits Country M every year in October to participate in the Spring dance concert held there. For the rest of the year, she performs in dance programs organized in India. India does not have a DTAA with Country M.

She earns CMD 10120 from concerts held in Country M. She also owns a residential house property in Country M. She earned rental income of CMD 25,000 from such property. She also paid municipal taxes of CMD 200 in respect of this property, which is not deductible in Country M. All income from Country M is taxable in Country M @20%. The entire tax due in Country M has been duly paid by Mrs. Rajni.

She earns Rs. 15 lakhs from performances in dance programs held in India. She has interest income of Rs. 4.2 lakhs (gross) from bank fixed deposits in her name and Rs. 15,000 from savings bank account in India.

She pays medical insurance premium of Rs. 29,000 to insure her health and Rs. 32,000 to insure the health of her husband, a resident aged 65 years. She deposits Rs. 1.50 lakhs in her public provident fund and Rs. 4 lakhs in five-year fixed deposit in the name of her son Mr. Priyanshu. The TT buying rate as on 31.3.2024 for Country M Dollar (CMD) is Rs. 69.

Compute the total income and net tax payable by Mrs. Rajni for A.Y.2024-25, providing for deduction under section 91. **Follow Old Regime. (6 Marks)**

Answer:

- 5.(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 1* 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 1* 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 clause (b) of the *Explanation 1* to section 263(1).

- (b) 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.

(c) **Computation of tax liability of Ms. Rajni for the A.Y. 2024-25**

Particulars	Rs.	Rs.
Income from house property		
Gross annual value ² [CMD 25000 x 69, being conversion rate as on 31.3.2024 – Rule 115]	17,25,000	
Less: Municipal taxes [CMD 200 x 69]	<u>13,800</u>	
	17,11,200	
Less: Deduction u/s 24@ 30%	<u>5,13,360</u>	
		11,97,840
Profits and gains of business or profession		
From concerts held in India	15,00,000	
From concerts held in Country M [CMD 10,120 x 69 (being conversion rate as on 31.3.2024 – Rule 115)]	<u>6,98,280</u>	
		21,98,280
Income from Other Sources		
Income from bank fixed deposits in her name		
Income from savings bank account	4,20,000	
Gross Total Income	<u>15,000</u>	<u>4,35,000</u>
Less: <u>Deduction under section 80C</u>		38,31,120
Deposit in PPF	1,50,000	
Five year fixed deposit in the name of her son (does not qualify for deduction under section 80C)	-	
<u>Under section 80D</u>	50,000	
Medical insurance premium to insure her health and health of spouse (Rs.61,000, restricted to Rs.50,000, being the maximum allowable for senior citizens)		
<u>Under section 80TTB:</u>		
Interest on bank FD and savings bank account restricted to	<u>50,000</u>	2,50,000
Total Income		35,81,120

<u>Tax on Total Income</u>		
Income-tax		8,84,336
Add: Health and Education Cess @4%		<u>35,373</u>
		9,19,709
Average rate of tax in India (i.e. Rs.9,19,709/Rs.35,81,120 x 100)	25,682%	
Rate of tax in Country M	20%	
Doubly Taxed Income Rs.11,97,840 (income from house property) + Rs.6,98,280 (income from concerts)	18,96,120	
Lower of Indian rate of tax and Rate of tax in Country M	20%	
<u>Deduction under section 91</u>		
20% of doubly taxed income of Rs.18,96,120		<u>3,79,224</u>
Net tax payable		<u>5,40,485</u>
Net tax payable (rounded off)		5,40,490

²Rental income assumed to be gross annual value, in absence of information regarding standard rent, fair rent and municipal value.

Question 6:

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 Rs. 15,000 on 1st May, 2020 for 48 months by bearer cheque and another Rs. 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 Rs. 16,500, by a bearer cheque, against principal and interest on 23rd March, 2024, due against his first certificate (purchased in 2020) and Rs. 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. **(4 Marks)**

Answer:

- (i) There is no violation of section 269SS at the time of acceptance of the first deposit of Rs. 15,000 by bearer cheque on 1.5.2020, since it is not in excess of the threshold limit of Rs. 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 Rs. 15,000 and another cash deposit of Rs. 15,000 would take the aggregate to Rs. 30,000, which exceeds the threshold limit of Rs. 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 Rs. 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 Rs. 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 Rs. 20,000.

MTP SERIES 2 – NOV 2023:

Question 1:

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 Rs. 9,50,00,000.

- Same as Q24 of RTP. (Again ICAI repeated) with same numbers.*
- (i) Depreciation calculated as per useful life of its assets Rs. 2,80,00,000.
 - (ii) Donation of Rs. 12,00,000 given to a political party by way of account payee cheque.
 - (iii) The company has paid Rs. 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 Rs. 15,00,000 in which it holds 30% of the equity share capital.
 - (v) Long-term capital gain of Rs. 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 Rs. 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 Rs. 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, 2022.
 - (viii) Salary of Rs. 1,00,00,000 to foreign technicians for installation of machinery at the factory premises was paid.
 - (ix) The company sold automobile parts for Rs. 22,00,000 to M/s ABC Co Engineers, a sole proprietary concern, on 01.11.2021. On 01.02.2024 Rs. 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 Rs. 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 Rs. 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 Rs. 3,00,00,000 - Put to use from 15-12-2023.
 - (ii) Computers Rs. 25,00,000 - Put to use on 11-05-2023.
 - (iii) Plant and machinery Rs. 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 Rs.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 Rs.402 crores. (14 Marks)

Answer:

1. Computation of total income and tax liability of M/s Sunshine Industries Ltd. for the A.Y. 2024-25 as per section 115BAA

Particulars	Amount in Rs.	
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 [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]	50,00,000	
(vi) Interest on borrowing paid to State Bank of India (SBI) [10% x Rs.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., 31.10.2024. Since the entire 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 assets to its working condition would form part of actual cost. Therefore, salary to foreign technicians for installation of machinery is a capital expenditure and no 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	4,77,00,000
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. (v) Long-term capital gain on sale of equity shares [Long-term capital gain on sale of equity shares as 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. (ix) Bad debt recovered [The deduction of bad debt allowed u/s 36 was Rs.12 lakhs out of the total debt of Rs.22 lakhs; Since the amount not written off as bad debt is Rs.10 lakhs (Rs.22 lakhs- Rs.12 lakhs) while the amount recovered in respect of such debt is Rs.11 lakhs, only the excess sum of Rs.1 lakh would be chargeable to tax as business income. Since the entire amount of Rs.11 lakhs recovered has been credited to the statement of profit and loss, Rs.10 lakhs has to be reduced while computing business income]. (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	15,00,000 4,00,000 10,00,000 8,00,000	14,27,00,000 37,00,000

income]		
Less: Depreciation as per Income-tax Rules, 1962	1,50,00,00	13,90,00,000
Depreciation on assets acquired during the P.Y.		
- Office building		
Purchased and put to use on 15.12.2023 [Rs.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 [Rs.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		
On P & M installed and put to use on 1.1.2024 [Rs.624.5 lakhs/Rs.500 lakhs + Rs.100 lakhs of salary for installation + Rs.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]	46,83,750	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)]	4,00,000	4,00,000
Long-term capital gain on listed equity shares		
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, Rs.12,00,000, being the amount of dividend distributed allowable as deduction		12,00,000
Total Income		11,75,16,250

Computation of tax liability as per section 115BAA

Particulars	Amount in Rs.
Tax payable on LTCG @10% u/s 112A on Rs.3,00,000, being the LTCG in excess of Rs.1,00,000	30,000
Tax @ 22% on Rs.11,71,16,250	<u>2,57,65,575</u>
	2,57,95,575
Add: Surcharge @ 10%	<u>25,79,558</u>
	2,83,75,133
Add: Health and education cess @ 4%	<u>11,35,005</u>
Tax liability	<u>2,95,10,138</u>
Tax liability (rounded off)	2,95,10,140

Question 2:

- (a) The profit and loss account of the Fast Forward & Associates, a partnership firm, showed a net profit of Rs. 80 lakhs after debiting/crediting of the following sums:
- (i) Interest on capital @13% - Rs. 7,15,000 (+) 1% → D/A-
 - (ii) Interest on loan taken from one of the partners @ 15% - Rs. 90,000 + 3% P/A-
 - (iii) Interest on bank fixed deposits made out of surplus funds Rs. 35,000 (Gross) (-) IFOA
 - (iv) Depreciation as per books of accounts Rs. 1,15,650 (+)
 - (v) A building purchased in the year 2019 having a WDV as on 1.4.2022 of Rs. 36.45 lakhs was sold on 10.10.2022 for Rs. 90 lakhs. The differential amount was credited to profit and loss account. The building was the only asset in the block. → 90L P&BP

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 @ Rs. 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 31.3.2023 were Rs. 120 lakhs, Rs. 40 lakhs and Rs. 7.5 lakhs respectively. The net profit is included in the profit of Rs. 80 lakhs mentioned above.
- (c) Out of the amount received from sale of building, the firm invested Rs. 60 lakhs on 5.4.2023 in 5-years specified bonds of the National Highways Authority of India. The bonds were issued on 31.5.2023. Allowed SEC → SDI ACE Builders Ltd.
- (d) Depreciation as per Income-tax Rules, 1962 is Rs. 14,000 excluding depreciation on assets mentioned in (e) and (f) below.
- (e) WDV of Motor car as on 1.4.2022 (purchased and put to use on 1.1.2020) of Rs. 6,80,000. 30%/-
- (f) Cost of mobile phones (purchased and put to use on 11.10.2022) Rs. 20,000 7.5%
- Compute the total income of the firm for the A.Y. 2023-24 giving reasons/explanations for the treatment of each item under the normal provisions of the Act. (8 Marks)
- (b) Mr. Pradeep, aged 48 years, a resident individual has furnished the following details of income earned during the previous year 2023-24:

India

- (i) Income from a sole-proprietary business in Indore Rs. 80 lakhs.
- (ii) Share of profit from a partnership firm in Bhopal Rs. 20 lakhs.

Country G

- (iii) Agricultural Income (gross) from tea gardens of CGD 40000. Taxable @20%.
- (iv) Brought forward business loss of F.Y.2020-21 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%. CMD 6,000 paid towards Municipal taxes in Country M. Municipal taxes are not allowed as deduction in Country M.

Other Information

- Mr. Pradeep has deposited Rs.1,50,000 in public provident fund and paid medical insurance premium of Rs. 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. Pradeep for the A.Y. 2024-25 after providing for deduction under section 91, assuming that 1 CGD/CMD = Rs.70. Follow Old Regime. (6 Marks)

Answer:

2.(a) Computation of Total Income of M/s Fast Forward & Associates, a partnership firm, for the A.Y. 2023-24

Particulars	Amount (in Rs.)
-------------	-----------------

Actual Rem = 4.8Lpa
7.5L X 40%
10AA 120L

Simple question
DTAA.

BIP → ??? → Remun

Show under STCG 90L - 36.45 = 53.55L

→ Donot find AMT.

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	55,000	
[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.] [Rs.7,15,000 x 1%/13%]		
(2) Interest on loan taken from partner	18,000	
[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] [Rs.90,000 x 3%/15%]		
(3) Depreciation as per books of account	1,15,650	1,88,650
Less: Items credited but chargeable to tax under another head / expenses allowed but not debited		81,88,650
1. Interest on bank fixed deposits made out of surplus fund	35,000	
[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]		
2. Profit on sale of building	53,55,000	
[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]		53,90,000
Less: Depreciation as per Income-tax Rules, 1962		27,98,650
- Depreciation on Motor Car [Rs.6,80,000 x 30%, eligible for higher depreciation since purchased and put to use on 1.1.2020]	14,000	
- Mobile phone (Rs.20,000 x 15% x 50%, since purchased and put to use for less than 180 days]	2,04,000	
	<u>1,500</u>	<u>2,19,500</u>
		25,79,150
Book Profit		
Less: Salary to working partners		
(i) As per limits given under section 40(b)		
On first Rs.3,00,000 @ 90%	2,70,000	
On the balance of Rs.22,79,150 @ 60%	<u>13,67,490</u>	
	16,37,490	
(ii) Salary actually paid to working partners (Rs.20,000 x 12 x 2)	4,80,000	
Deduction allowed being (i) or (ii) whichever is less		<u>4,80,000</u>
		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 1.4.2022]	<u>36,45,000</u>	
	53,55,000	
Less: Exemption under section 54EC [Investment in bonds of NHAI, the maximum deduction u/s 54EC would be Rs.50 lakhs]	<u>50,00,000</u>	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]		

II Income from Other Sources		24,89,150
Interest from bank on fixed deposits		
Less: Deduction under section 10AA [Rs.7,50,000 x 40,00,000 / Rs.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 31 st March, 2020 and started operations before 31.3.2021]		2,50,000
Total Income		22,39,150

(b) Computation of total income and tax liability of Mr. Pradeep for A.Y. 2024-25

Particulars	Rs.	Rs.
Income from house property		
Gross annual value ² of house property in Country M [Rs.52,000 x Rs.70/CMD]	36,40,000	
Less: Municipal taxes [Rs.6,000 x Rs.70/CMD]	<u>4,20,000</u>	
Net Annual Value	32,20,000	
Less: Deduction @ 30%	<u>9,60,000</u>	22,54,000
Profits and gains from business and profession		
Income from sole proprietary concern in India	80,00,000	
Share of profit from a partnership firm in India of Rs.20 lakhs, is exempt under section 10(2A)	<u>Nil</u>	
Business profit	80,00,000	
Less: Business Loss ³ in Country G (CGD 5200 x Rs.70/CGD)	<u>3,64,000</u>	76,36,000
Income from Other Sources	28,00,000	
Agricultural income from tea gardens in Country G, is taxable in India (CGD 40000 x Rs.70/CGD)		
Dividend income from Country M (CMD 30000 x Rs.70/CGD)	<u>21,00,000</u>	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 [Medi-claim premium paid Rs.28,000, restricted to]	<u>25,000</u>	1,75,000
Total Income		1,46,15,000
Tax on total income		
Tax on Rs.1,46,15,000 [(30% x Rs.1,36,15,000) plus Rs.1,12,500]		41,97,000
Add: Surcharge @ 15%, since total income exceeds Rs.1 crore but does not exceed Rs.2 crore		<u>6,29,500</u>
		48,26,550
Add; HEC @ 4%		<u>1,93,062</u>
		50,19,612
Average rate of tax in India [i.e., Rs.50,19,612 / Rs.1,46,15,000 x 100]	34.3456%	
Rebate u/s 91 in respect of income in Country G		
Average rate of tax in Country G	20%	
Doubly taxed income [Rs.28,00,000 – Rs.3,64,000]	24,36,000	
Rebate under section 91 on Rs.24,36,000 @ 20% (lower of average Indian tax rate and rate of tax in County G)		4,87,200
Rebate u/s 91 in respect of income in Country M		
Average rate of tax in County M	13,1707%	
[CMD 3,000 (30,000 x 10%) + CMD 7800 (52,000 x 15%) /		

CMD 82,000] x 100		
Doubly taxed income [Rs.22,54,000 + Rs.21,00,000]		
Rebate under section 91 on Rs.43,54,000 @ 13.1707% (lower of average Indian tax rate and rate of tax in Country G)		5,73,452
Tax liability in India		39,58,960

²In absence of any information regarding fair rent and standard rent, actual rent is considered as gross annual value.

³Since the eight year has not expired from the assessment year in which such business loss was incurred, such business loss can be set-off against current year business income.

Question 3:

(a) The Balance Sheet of M/s Ratan Charitable Trust as on 31.1.2024, and its other information is given hereunder:

Particulars	Rs. in Lakhs
Liabilities	
Capital fund	800.00
Sundry Creditors	335.00
Total	1135.00
Assets	
Land (purchased in the year 2010) → X	100.00
Land and buildings purchased in the year 2017 → SDV → 31050	800.00
2000 equity shares of Rs.1000 each in M/s XP Ltd. shares are listed in Bombay Stock Exchange (at face value)	20.00
Balance is current account of a nationalize bank ✓	10.00
Balance 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 15-4-2013 and registration under section 12AA of the Income-tax Act, 1961 was granted on 1-7-2013 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:

- Stamp duty value of the land (purchased in 2010) as on 31-1-2024 was Rs. 120.00 lakhs but if sold in the open market, the property would fetch Rs. 250 lakhs as per a registered valuer's certificate.
- Land and building (purchased in 2017), if sold in the open market will fetch Rs. 1000 lakhs as per a registered valuer's certificate. Stamp duty value as on 31-1-2024 was Rs. 1050 lakhs. ↑
- The highest and lowest value per share of M/s XP Ltd. traded on 31-1-2024 was Rs. 1099 and Rs. 1051 respectively. $1099 + 1051 = 1075 / \text{Share}$
- Sundry Creditors include Rs. 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. (8 Marks)

- 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 Rs. 28 lakhs after charge of the following expenses: 44C
- Depreciation for the current financial year of Rs. 15 lakhs. X

- (ii) Unabsorbed depreciation for previous financial year of Rs. 17 lakhs. (+)
- (iii) Capital Expenditure incurred for promoting family planning amongst its employees of Rs. 7 lakhs. Rs. 7 Lakhs is one fifth of the total expenditure incurred on promoting family planning. (+)
- (iv) Expenditure incurred for Scientific research Rs. 11 lakhs. X
- (v) Business loss brought forward for A.Y. 2023-24 of Rs. 25 lakhs. (+)
- (vi) Deductions under Chapter VI-A of Rs. 20 lakhs (+)
- (vii) Head Office expenses of Rs. 120 lakhs allocated to the branch. (+)
- Compute income to be declared by the branch in its return for the Assessment Year 2024-25.

(6 Marks)

Answer:

- 3.(a) 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

Particulars	Amount (Rs.)
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 Rs.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 2010	-
[Value of land purchased in the year 2010 not includible in the aggregate fair market value, since the exemption provisions under section 11 and 12 would apply from P.Y. 2013-14, being the previous year in which application for registration of trust is made]	10,50,00,000
Valuation of Land and Building, being an immovable property, purchased in 2017	
[The fair market value of land and building would be higher of Rs.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 Rs.1,050 lakhs, being stamp duty value as on the specified date i.e. 31.3.2024]	
Valuation of Quoted equity shares in M/s XP Ltd. [2,000 x Rs.1,075 per share]	10,00,000
[The fair market value of quoted shares would be Rs.1,075 per share, being the average of the lowest (Rs.1,051) and highest price (Rs.1,099) of such shares on the specified date i.e. 31.1.2024]	2,00,00,000
	3,50,000
Balance in current account of a nationalized bank	
Balance in fixed deposits with scheduled banks	
Cash in hand	21,50,000
	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 31.3.2024, the date on which the order confirming the cancellation is received.

(b) Computation of income to be declared by the branch in its return of income

Computation of Head Office expenses allowable u/s 44C:

Particulars	Rs.	Rs.
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	
Deduction under Chapter VI-A	20,00,000	
		<u>1,89,00,000</u>
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 = Rs.10,85,000

Being the lower of –

(i) 5% of Rs.2,17,00,000 = Rs.10,85,000

(ii) Actual Head Office expenses allocated to the branch = Rs.1,20,00,000

Income to be declared by the branch for A.Y. 2024-25

Particulars	Rs.
Net profit of the branch	28,00,000
Add: Head office expenditure debited to profit and loss	<u>1,20,00,000</u>
	1,48,00,000
Less: Head office expenses allowable u/s 44C	<u>10,85,000</u>
Income to be declared by the branch	1,37,15,000

Question 4:

(a) Mr. Sharma furnished his return of income for A.Y.2023-24 declaring total income of Rs. 28,00,000 for the A.Y. 2023-24. He received an assessment order under section 143(3) on 26.11.2024 enhancing the total income for the A.Y.2023-24 by Rs. 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. Sharma 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? **(4 Marks)**

(b) 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. Arvind, aged 28 years, whose turnover from business is Rs. 70 lakhs for the P.Y.2023-24 and whose total income computed as per books of account is Rs. 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 Rs. 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 Rs.

Same as Q 28 of RTP

Copy Paste

TD > 60L

Saving Bank > 50L Deposit - ✓

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. **(4 Marks)**

(c) (i) 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)

(ii) M/s AlphaLLC., a Singapore entity, owns and operates an online shopping app, Fitzzone. On this platform, it facilitates the sale of various kinds of goods owned by different entities. M/s Alpha LLC does not have a permanent establishment in India. During the F.Y. 2023-24, it gives you the following details:

Particulars	Amount in Rs.
Receipts from sale of good to persons resident in India using internet from India	1,96,00,000
Sale proceeds received from persons resident in India, while visiting some other neighbouring countries.	7,00,000

You are required to discuss the tax implications of these transactions in respect of M/s AlphaLLC. **(3 Marks)**

Answer:

4. (a) 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 Rs. 10 lakh; the total income as per such return furnished by the assessee for the assessment year relevant to such order does not exceed Rs. 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. Sharma 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. Sharma 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. Sharma, will **not** be eligible to make an application before DRC, since it is not a specified order.

(b) (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 Rs. 2,00,000 is lower than the

basic exemption limit of Rs. 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 Rs. 60 lakhs. In this case, since Mr. Arvind's turnover from business for the P.Y.2023-24 is Rs. 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 Rs. 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 Rs. 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 Rs. 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 Rs. 50 lakhs or more during the previous year.

Since a deposit of Rs. 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.

(c) (i) (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.

(ii) M/s. Alpha LLC is an e-commerce operator since it is a non-resident owning and operating an online shopping app for facilitating sale of goods. Equalisation levy is attracted since it does not have a permanent establishment in India. Equalisation levy@2% is leviable on the amount of consideration received or receivable by M/s. Alpha LLC from online sale of goods facilitated by it to persons resident in India, since the aggregate consideration from such sale exceeds Rs. 2 crore in the F.Y.2023-24.

Particulars	Amount (Rs.)
(a) Receipts from sale of goods to persons resident in India using internet from India	196 lakhs
(b) Receipts from persons resident in India, even if it is while visiting neighbouring countries	7 lakhs
Amount of consideration	203 lakhs

Equalisation levy = 2% of Rs. 203 lakhs = Rs. 4.06 lakhs.

Question 5:

(a) A liquidator is appointed by TPO Ltd. which is undergoing liquidation. What are the statutory obligations and restrictions on the part of the liquidator under the Income-tax Act, 1961 after being so appointed? What are the consequences if he fails to perform such obligations?

(4 Marks)

(b) Tick Ltd., Australia, holds 30% equity shares in ToeLtd., India. ToeLtd. develops software and also provides the related support services. ToeLtd. during the year billed TickLtd., Australia

↓ Cost: 350000

for 150 man-hours at the rate of Rs.2,500 per man hour. The total cost (direct and indirect) for executing this work amounted to Rs.3,50,000.

However, ToeLtd. billed GN Ltd., India at the rate of Rs.3,500 per man hour for the similar level of manpower and earned Gross Profit of 40% on its cost.

The transactions of ToeLtd. with Tick Ltd. and GN Ltd. are comparable, subject to the following differences:

- (i) While ToeLtd. also derives technological support from TickLtd., there is no such support from GN Ltd. The value of technological support received from TickLtd. may be put at 15% of normal gross profits, **6% less**
- (ii) As TickLtd. gives business in large volumes, ToeLtd. offered to TickLtd., a quantity discount which may be valued at 10% of the normal gross profits, **4% less**.
- (iii) In the case of rendering services to TickLtd., ToeLtd. neither runs any risk nor incurs any marketing costs. On the other hand, in the case of services to GN Ltd., ToeLtd. has to assume all the risks and costs associated with the marketing function which may be estimated at 20% of the normal gross profits, **8% less**
- (iv) ToeLtd. offered one month credit to TickLtd. The cost of providing such credit may be valued at 5% of the normal gross profits. No such credit was given to GN Ltd. **2% (-)**

Compute the Arm's Length Price alongwith income to be adjusted under the costplus method.

Answer:

5. (a) As per section 178, every person who is the liquidator of any company which is being wound up, whether under the orders of a Court or otherwise, is under a statutory obligation to give notice of such appointment within thirty days to the Assessing Officer who is entitled to assess the income of the company.

The liquidator is debarred from parting with the assets of company and its properties in his hands until he is notified by the Assessing Officer of the amount which will be sufficient to provide for any tax which is then, or is likely thereafter, to become payable by the company except with the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and on being so notified, shall set aside an amount equal to the amount notified.

Consequences on failure to perform such obligations

If the liquidator fails to notify the Assessing Officer of his appointment within the time specified or fails to set aside the amount intimated by the Assessing Officer as being sufficient to provide for the tax liability of the company or parts with any of the assets or property of the company in his hands in contravention of the above provisions, he shall be personally liable for payment of the tax which the company would be liable to pay.

However, if the amount of any tax payable by the company is notified by the Assessing Officer, the personal liability of the liquidator shall be to the extent of such amount.

Failure to comply with the above requirement would be an offence punishable under section 276A.

(b) 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. [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	6%	

technology support shall be adjusted] [15% of 40%, being gross profit] - Quantity discount of 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] - 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]	4% 8%	18%
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) Arm's length gross profit mark up to cost Cost incurred by Toe Ltd. for executing Tick Ltd.'s work Add: Adjusted gross profit (Rs.3,50,000 x 24%) Arm's length billed value Less: Actual Billed Income from Tick Ltd. (Rs.2,500 x 150 man hours) Total income of Toe Ltd to be increased by		22% 2% <u>24%</u> 3,50,000 84,000 <u>4,34,000</u> 3,75,000 <u>59,000</u>

“EVERYTHING YOU HAVE EVER WANTED IS ON THE OTHER SIDE OF FEAR”

Mock Test Paper - Series I: March, 2024

Date of Paper: 11 March, 2024

Time of Paper: 2 P.M. to 5 P.M.

FINAL COURSE: GROUP - II

PAPER – 4: DIRECT TAX LAWS & INTERNATIONAL TAXATION

Working Notes should form part of the answer. Wherever necessary, suitable assumptions may be made by the candidates and disclosed by way of a note. However, in answers to Questions in Division A, working notes are not required.

All questions relate to Assessment Year 2024-25, unless stated otherwise in the question.

Division A – Multiple Choice Questions

Write the most appropriate answer to each of the following multiple-choice questions by choosing one of the four options given. All questions are compulsory.

Case Scenario I

Falcon Ltd of Country X is an associated enterprise of Max Inc. of USA. Falcon Ltd. has a branch in India since 2010. It was selling goods to Indian customers by importing from various countries besides sale in India of goods manufactured by it in Country X.

The adjusted total income of the Indian branch of Falcon Ltd for the year ended 31st March, 2024 is ₹ 80 lakhs. The branch incurred ₹ 12 lakhs by way of executive and general administrative expenditure during the financial year 2023-24. The head office has allocated ₹ 18 lakhs as the branch's share of head office expenditure including the expenditure of ₹ 12 lakhs incurred by the branch.

A survey under section 133A of the Act was conducted in its branch premises in January, 2023 and undisclosed assets of ₹ 90 lakhs were found. Assessment for the assessment year 2023-24 was completed by making addition of the entire undisclosed asset of ₹ 90 lakhs. The assessee preferred appeal before CIT (Appeals) who gave complete relief to the assessee. The Income-tax Department wants to file an appeal before ITAT.

T (P) Ltd. an Indian company, a wholly owned subsidiary of Falcon Ltd., paid ₹ 50 lakhs to XYZ Inc. of Country M as fee for technical services. Services were rendered by the employees of the branch of XYZ Inc. in India. There is no DTAA between India and Country M. T(P) Ltd. has entered into certain international transactions during the P.Y. 2022-23 and P.Y. 2023-24.

T (P) Ltd. invested in SS (P) Ltd of Country Y and received dividend of ₹ 550 lakhs during the financial year 2023-24. It declared and distributed interim dividend of ₹ 250 lakhs on 10.11.2023 and a final dividend of ₹ 230 lakhs on 12.11.2024. T (P) Ltd. has filed its return of income on 15.11.2023 for A.Y. 2023-24 and on 30.11.2024 for A.Y. 2024-25.

Based on the facts of the above case scenario, choose the most appropriate answer to Q.1 to Q. 4 below:

1. How much tax to be deductible at source by T (P) Ltd on the fee for technical services paid to XYZ Inc.?
 - (a) ₹ 20,80,000
 - (b) ₹ 20,00,000
 - (c) ₹ 5,00,000
 - (d) ₹ 10,40,000
2. How much of the dividend received by T (P) Ltd would be liable to tax for the assessment year 2024-25?
 - (a) ₹ 70 lakhs
 - (b) ₹ 320 lakhs
 - (c) ₹ 300 lakhs
 - (d) ₹ 550 lakhs
3. How much of head office expenditure can be claimed by the Indian branch of Falcon Ltd for the assessment year 2024-25?
 - (a) ₹ 4,00,000
 - (b) ₹ 6,00,000
 - (c) ₹ 12,00,000
 - (d) ₹ 18,00,000
4. Can the Income-tax Department prefer appeal before ITAT in respect of the complete relief obtained by Falcon Ltd from CIT (Appeals)?
 - (a) No, as the tax liability is less than ₹ 50 lakhs.
 - (b) Yes, as the tax liability is more than ₹ 25 lakhs.
 - (c) Yes, as the tax liability is more than ₹ 50 lakhs.
 - (d) No, as the undisclosed asset is less than ₹ 100 lakhs. **(4 x 2 = 8 Marks)**

Case Scenario II

Mr. Abhay, a resident Indian, is in retail business in Delhi and his turnover for F.Y.2022-23 was ₹ 9.8 crores. He regularly purchases goods from another resident, Mr. Kunal, a wholesaler in Delhi, and the aggregate payments made by Mr. Abhay to Mr. Kunal during the F.Y.2023-24 was ₹ 90 lakh (₹ 25 lakh on 8.5.2023, ₹ 20 lakh on 27.8.2023, ₹ 25 lakh on 18.10.2023 and ₹ 20 lakh on 11.2.2024). Mr. Kunal's turnover for F.Y.2022-23 was ₹ 13.5 crores.

Mr. Kunal remitted ₹ 6.5 lakh on 28.3.2024, out of his personal savings, through Canara Bank, Delhi branch, which is an authorised dealer, under the Liberalised Remittance Scheme of RBI, as gift to his elder brother residing in Dubai (since 1995), on the occasion of his 60th birthday.

Mr. Kunal paid ₹ 8.8 lakhs on 1.11.2023 to World Travels for a holiday package to Singapore for a week with his family, comprising of his wife and two children, being twins aged 19 years, in the last week of November.

He also took an education loan of ₹ 13 lakhs on 1.2.2024 from Canara Bank, Delhi Branch, for his son's two-year Master of Public Administration program in UWA University, Australia and remitted the said amount through the same bank under LRS. For his daughter's Research program in PSL Research University, USA, he remitted ₹ 12 lakhs on 15.2.2024, out of his personal savings, through Bank of India, Delhi branch, which is also an authorised dealer, under LRS.

Mr. Kunal has furnished undertaking containing the details of earlier remittance to Canara Bank and Bank of India.

Based on the facts of the above case scenario, choose the most appropriate answer to Q.5 to Q. 9 below:

5. Are provisions of TDS/TCS under the Income-tax Act, 1961 attracted in respect of purchase/sale transaction between Mr. Abhay and Mr. Kunal? If so, what is the quantum of tax to be deducted/collected for the P.Y.2023-24?
 - (a) No; TDS/TCS provisions are not attracted for P.Y.2023-24, since the turnover of Mr. Abhay in the immediately preceding financial year i.e., F.Y.2022-23 does not exceed ₹ 10 crores.
 - (b) Yes, Mr. Abhay has to deduct tax@0.1% of ₹ 40 lakhs (₹ 20 lakhs on 18.10.2023 and ₹ 20 lakhs on 11.2.2024)
 - (c) Yes, Mr. Kunal has to collect tax@0.1% of ₹ 40 lakhs (₹ 20 lakhs on 18.10.2023 and ₹ 20 lakhs on 11.2.2024)
 - (d) Yes, Mr. Kunal has to collect tax@0.1% of ₹ 90 lakhs
6. In case of failure to furnish PAN by the deductee/collectee as required based on the answer to Q.5 above, what would be the applicable rate of TDS/TCS?
 - (a) Not applicable, since there is no requirement to deduct or collect tax at source
 - (b) 20%
 - (c) 5%
 - (d) 1%
7. Is World Travels required to collect tax at source on receipt of ₹ 8.8 lakhs from Mr. Kunal for holiday package to Singapore? If so, what is the amount of tax to be collected?
 - (a) Yes; ₹ 36,000
 - (b) Yes; ₹ 71,000
 - (c) Yes; ₹ 44,000
 - (d) No tax is required to be collected at source in respect of this transaction
8. What is the amount of tax to be collected from Mr. Kunal in respect of the remittance of amounts overseas for his son's and daughter's education?

- (a) TCS @0.5% of ₹ 6 lakhs and ₹ 5 lakhs is attracted in respect of remittance for son's and daughter's education, respectively.
 - (b) TCS @5% of ₹ 6 lakhs and ₹ 12 lakhs is attracted in respect of remittance for son's and daughter's education, respectively
 - (c) TCS @0.5% of ₹ 6 lakhs and TCS@5% of ₹ 5 lakhs are attracted in respect of remittance for son's and daughter's education, respectively.
 - (d) TCS @0.5% of ₹ 6 lakhs and TCS@5% of ₹ 12 lakhs are attracted in respect of remittance for son's and daughter's education, respectively.
9. Are TCS provisions attracted in respect of remittance of gift to brother? If so, what is the amount of tax to be collected from Mr. Kunal?
- (a) No, since the remittance is out of personal savings for a personal purpose
 - (b) No, since the amount remitted to his sister is less than ₹ 7 lakhs
 - (c) Yes, ₹ 1,30,000
 - (d) Yes, ₹ 32,500
- (5 x 2 = 10 Marks)**

Case Scenario III

Flax (P) Ltd. availed online digital advertisement service provided by Marshall Inc. of USA in March 2024. It paid ₹ 10 lakhs and the amount outstanding as on 31st March, 2024 was ₹ 2 lakhs for the said online digital advertisement service.

Marshall Inc. is also an e-commerce operator who sold its goods to customers resident in India for ₹ 180 lakhs during the financial year 2023-24. Also, during the same year, Marshall Inc. sold goods for ₹ 70 lakhs to customers outside India but has used IP address in India for the purchase of those goods.

Based on the facts of the above case scenario, choose the most appropriate answer to Q.10 to Q. 12 below:

10. In respect of amount paid/payable by Flax (P) Ltd. for advertising services provided by Marshall Inc., which of the following statements are correct?
- (a) Equalization levy of ₹ 60,000 is to be deducted and paid by Flax (P) Ltd.
 - (b) Equalization levy of ₹ 72,000 is to be deducted and paid by Flax (P) Ltd.
 - (c) Equalization levy of ₹ 24,000 is to be paid by Marshall Inc.
 - (d) Equalization levy of ₹ 72,000 is to be paid by Marshall Inc.
11. Would Flax (P) Ltd. be liable to pay any interest and/or penalty if the amount of the equalisation levy remitted on 20.6.2024?
- (a) No, it would not be liable to pay any interest or penalty since the amount is remitted within the prescribed time limit.
 - (b) It would be liable to pay interest but no penalty is attracted.
 - (c) Yes, it would be liable to pay both interest and penalty.

- (d) It would be liable to pay penalty but no interest is payable.
12. Would equalization levy be attracted in the hands of Marshall Inc., being an e-commerce operator for sale of goods in India?
- (a) Yes, Equalization levy of ₹ 15,00,000 is to be paid by Marshall Inc.
- (b) Yes, Equalization levy of ₹ 5,00,000 is to be paid by Marshall Inc.
- (c) No, equalization levy is not attracted in the hands of Marshall Inc.
- (d) Yes, Equalization levy of ₹ 3,60,000 is to be paid by Marshall Inc.

(3 x 2 = 6 Marks)

13. Swastik 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 ₹ 90 lakh as voluntary contributions. The trust also borrowed ₹ 45 lakh on 14.8.2023 from Axis 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 Axis bank on 31.3.2024. The trust has donated (not as corpus donation) to another trust registered under section 12AB with main object of providing education to poor, ₹ 14 lakhs out of its current year income. 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) ₹ 21.9 lakhs
- (b) ₹ 24 lakhs
- (c) ₹ 59 lakhs
- (d) ₹ 56.9 lakhs

(2 Marks)

14. Which of the following deduction/exemption/set-off of losses are allowable while computing income under respective head of income and total income of an individual as per section 115BAC?
- (i) Deduction for interest on housing loan in respect of self-occupied property
- (ii) Deduction for Interest on housing loan in respect of let-out property
- (iii) Exemption in respect of agricultural income
- (iv) Exemption in respect of minor child income included in the income of parent
- (v) Set-off of loss under the head house property against income under any other head
- (vi) Standard Deduction u/s 16(ia)

The correct answer is –

- (a) (ii), (iii) & (vi)
- (b) (i), (ii), (iii) & (vi)

(c) (i), (ii), (v) & (vi)

(d) (ii), (iv), (v) & (vi)

(2 Marks)

15. Mr. Rahul, a resident Indian, purchased units in ABC REIT on 1.4.2023. ABC REIT received dividend income from TL Ltd., being a SPV. TL Ltd. opted for section 115BAA. The record date of ABC REIT is 1st June 2023 and it distributed dividend to unitholders in June, 2023. Would dividend stripping provisions of section 94(7) be attracted, if Mr. Rahul sells the units held by him at a loss in January, 2024? Is ABC REIT required to deduct tax at source on the dividend component of income received from SPV and distributed to Mr. Rahul?

(a) Dividend stripping provisions would not be attracted and ABC REIT is not required to deduct tax at source.

(b) Dividend stripping provisions would not be attracted and ABC REIT is required to deduct tax at source@10%

(c) Dividend stripping provisions would be attracted and ABC REIT is required to deduct tax at source@10%

(d) Dividend stripping provisions would be attracted and ABC REIT is not required to deduct tax at source.

(2 Marks)

Series - I.

Division B – Descriptive Questions

MAY - 2024

Question No. 1 is compulsory

Attempt any **four** questions from the remaining **five** questions

1. Sheetal Ltd. is a **listed company** located in Mumbai. It is engaged in multiple activities at different locations. **Books of account** are maintained by **each unit separately**. The **head office** maintains books relating to **common transactions**. All the accounts are **consolidated** and the return of income is filed at Mumbai.

The following information is furnished **unit wise** for the year ended **31st March, 2024**:

(a) **Chemical manufacturing unit, Jaipur**: The Company has reported Net Profit of ₹ 300 lakhs in the books of account of the said business unit. It entered into an **agreement** for use of **know-how** owned by a renowned scientist. The amount of **royalty paid** during the previous year 2023-24 was ₹ 40 lakhs. The company **deducted tax at source** on the amounts paid upto November, 2023 and **omitted to deduct tax at source** on the royalty of ₹ 10 lakhs due for the period from November, 2023 to March, 2024. The **payee admitted the royalty income fully, paid tax and filed his return of income** before the "due date" specified in section 139(1).

The company paid ₹ 33,60,000 being 15% of basic salary **plus DA** of the employees in notified pension scheme and the amount so paid is debited as **expenditure** in the books of account. **+ 5% → 11,20,000**

(b) **Furniture manufacturing unit, Pune**: The Company has a **manufacturing unit** at Pune. It reports a **Net Profit of ₹ 90 lakhs** as per books of account of the unit. It bought a **trademark** from Mr. Yellow for

(+) 3 l
30%
Allowed in
next year.

→ (+) 25% (-) 25% Deph

₹ 25 lakhs on 01-06-2023 which is charged as expenditure in the books of account.

→ Allowed.

The unit paid ₹ 3 lakhs as interest on loan taken from a non-resident Indian. The tax was deducted at source in March, 2024 but it was remitted only on 06-05-2024.

60(a)(v)

The company paid ₹ 7 lakhs, being the amount of income-tax payable by the employees on non-monetary perquisites provided by the company. This amount is debited in the books of account as expenditure.

(c) **Fertilizer producing unit, Narmada:** The Company established a fertilizer producing unit in Narmada, Gujarat which become operational in July, 2023. It has acquired a Land for ₹ 1 crore and put up a Building for ₹ 2.50 crores and installed new Plant and Machinery for ₹ 3 crores. The Net Profit as per books of account of the unit is ₹ 220 lakhs (after deducting depreciation on Building of ₹ 25 lakhs and Plant and Machinery of ₹ 45 lakhs).

35AD:

Losses clf
73A-

(+) Deph

(+) (+)

(d) **Warehousing facility for storage of edible oils at Delhi:** It established a warehousing facility for storage of edible oils from 01-08-2023. It made investments such as cost of Land ₹ 2 crores, Building ₹ 3 crores and Plant and Machinery (new) ₹ 5 crores. The Net Profit as per books (without deducting depreciation) was ₹ 70 lakhs.

→ Loss
Setoff
against
other profits

→ 15%

→ 10%

Additional information:

The company mobilized capital during the previous year 2023-24 by public issue of shares. The application money was kept in bank pending allotment of shares. The interest income from the said deposit of ₹ 3,20,000 is credited to general reserve. *setoff against Share issue exps.*

The company declared interim dividend @10% of share capital being ₹ 40 lakhs in December, 2023. It has 27% shareholding in ABC Inc., New York from whom it received ₹ 56 lakhs as dividend in February, 2024. Both dividend received and paid were credited and debited, respectively, in the Consolidated Statement of Profit and Loss.

IFOS

→ 8000
400

The total turnover of the company for previous year 2021-22 was ₹ 390 crores and for financial year 2022-23 ₹ 405 crores. The company has MAI credit of ₹ 20 lakhs of the assessment year 2015-16. The book profit (computed) for the assessment year 2024-25 is ₹ 520 lakhs. *15% + 7% + 4%*

→ 25%

Compute the total income of the company and optimum income-tax liability for the assessment year 2024-25. Assume company have not yet opted for concessional tax regime. Your answer must give reasons for treatment of each item given above and also for the tax liability. **(14 Marks)**

2. (a) ABC Pvt. Ltd was converted into limited liability partnership (LLP) as ABC LLP on 1-10-2023. You are provided with the following particulars of ABC Pvt. Ltd. as on 31-03-2023:

- (i) Business loss ₹ 54 Lakhs (relating to P.Y.2019-20)
- (ii) Written down value of the assets as per the Income-tax Act, 1961:

Another 8yr → Failsto fulfil reqs

Dep should be appurtioned

$$P\&M = 14 \times 15\% = 210000$$

$$Bldg = 40 \times 10\% = 400000$$

$$\rightarrow ABC LLP = 2.1 \times \frac{183}{366} = 105000$$

CO
Balance
105000

$$\begin{aligned} \text{WDV} &= 14l - 100000 \text{ } \bigcirc \} \text{W.D.V.} \\ &= 40l - 200000 \text{ } \bigcirc \} \end{aligned}$$

- Plant and Machinery (15%) ₹ 14 Lakhs (Market Value ₹ 20 lakhs)
 - Plant and Machinery ₹ 75 Lakhs (cost) – deduction claimed u/s 35AD
 - Building (10%) ₹ 40 lakhs (Market Value ₹ 80 Lakhs)
- (iii) Cost of land (acquired in year 2012) ₹ 80 lakhs (Market value ₹ 120 lakhs) *Same = 80l.*
- (vi) Expenditure on **voluntary retirement** incurred by the company during the P.Y. 2021-22 is ₹ 28 Lakhs. The company has been allowed a deduction of ₹ 5.6 lakhs for each year for the P.Y. 2021-22 and P.Y. 2022-23 u/s 35DDA. *5.6 lakhs for 2yrs by LLP.*
- (v) Unadjusted MAT credit u/s 115JAA ₹ 8.6 lakhs *X*
- (vi) Unabsorbed depreciation ₹ 48 lakhs *✓*

Explain the **tax treatment** of each item stated above in the hands of LLP, assuming that the conversion satisfies all the conditions laid down in **section 47(xiiib)**. **(8 Marks)**

- (b) Mr. Mani Prasad, aged 71 years furnished the following information in respect of income earned by him for the previous year ended 31-03-2024:

Simple Q on DTAA.

Particulars	Amount (₹)
India	
Pension from State Government	<i>✓</i> 4,80,000 <i>(-) 50000</i>
Short term capital gains on sale of plot	<i>✓</i> 3,20,000
Deposit in PPF Account <i>X</i>	1,50,000
Speculative Income	1,56,000 <i>set off</i>
Country M	
Agricultural Income (gross)	<i>IFoI</i> 86,000
Dividends from a company incorporated in Country M (gross) [<i>Exempt</i> in Country M] <i>X</i>	<i>✓</i> 68,000 <i>IFoI.</i>
Country N	
Business loss (proprietary business) [Not eligible for set off against other incomes in Country N]	1,16,000
Gross rental income from a house property (No statutory deduction was available in Country N)	3,20,000
Municipal taxes paid in respect of the above property (not allowed as deduction in Country N)	<i>(21,000)</i> <i>30% ✓</i>

Additional Information:

- (1) There is no agreement under section 90 for relief for avoidance of

double taxation between India and Country M and Country N where the incomes have accrued or arisen.

- (2) Mr. Mani Prasad is resident in India, and he has paid applicable taxes on incomes earned in Country M and Country N, where the applicable tax rates are 10% and 5%, respectively.

Compute the total income and net tax liability of Mr. Mani Prasad after providing relief under section 91 for A.Y. 2024-25. Mr. Mani Prasad is paying tax under default tax regime under section 115BAC. **(6 Marks)**

SP
COA
STG
Exempt
3
4.2 X
(2.2L)
2L
(3L - 2.2L)
(10K)
Taxable 1.2L

(a) Examine the following based on the relevant provisions of the Income-tax Act, 1961 and judicial pronouncements:

(i) Satvik public charitable trust sold one of its building which was held by it for charitable purposes, for ₹ 4.2 lakhs on 28th September, 2023. The asset were acquired on 25-6-2022 for ₹ 2.20 lakhs. It invested ₹ 3 lakhs in fixed deposits for the tenure of 2 years. → 11(1A)

(ii) HelpAge, a trust established for the purpose of religious and charitable purposes. It runs a temple and a school. During the year 2023-24, it received anonymous donation amounting to ₹ 3 crores for temple and ₹ 8 crores for school. 115BB1 ✓

(iii) M/s XYZ, an electoral trust incorporated in the year 2022, provides the following information to you in respect of its transactions for the year 2023-24

Total voluntary contributions received ₹ 420 lakhs

Surplus brought forward from earlier P.Y.s ₹ 18 lakhs

Expenses incurred for the purpose of managing its affairs ₹ 8 lakhs.

What is the amount of surplus that can be distributed by the electoral trust assuming all other conditions as provided under the Income-tax Act, 1961 are satisfied? **(8 Marks)**

95% → 438L
x 95%
= 416.1

First yr → 5% → 5L
2nd yr 5% → 3L

(b) (i) Trax & Co. is engaged in providing scientific research services to several non-resident clients. Such services are also provided to Olive Inc., which guarantees 12% of the total loans of Trax & Co. Examine whether transfer pricing provisions are attracted in respect of this transaction. TP ✓

(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 the transfer price in the P.Y.2021-22 vide order dated 31.3.2023 and the same was accepted by Trax & 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%. **(6 Marks)**

SBI MCLR
14/23 + 3.25%

Done earlier

26984
Same as Q6
Series II
NOV 2022
MTP

4. (a) Marigold Ltd., an Indian Company engaged in trading of electronic appliances through retail stores all across India, reported a total turnover of ₹ 70 crores during the previous year 2022-23 and ₹ 45 crores during the previous year 2023-24. The customers who purchase appliances from its stores can pay only through cash, cheque, credit card or debit card. Discuss the relevant provisions of the Act with respect to relevant compliances that should have been ensured by Marigold Ltd. and in the absence of such compliances, what will be the amount of penalty, if any, that can be levied on Marigold Ltd. **(4 Marks)**

(b) The tax assessment of Mr. Raghav was completed on 25-12-2023 and the tax due was determined as ₹ 28 lakhs. The assessee has the following:

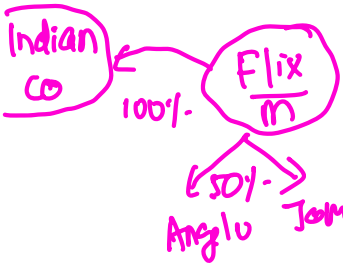
- (i) Bank fixed deposit with Canara Bank ₹ 24 lakhs;
- (ii) Receivable from S & Co Ltd ₹ 27 lakhs.

He gifted a land to his son (aged 45 years) 5 years ago whose present market value is ₹ 28 lakhs. He gifted a diamond necklace to his son's wife evidenced by a gift deed dated 05.10.2023. He owns a residential apartment in Australia acquired 11 years ago.

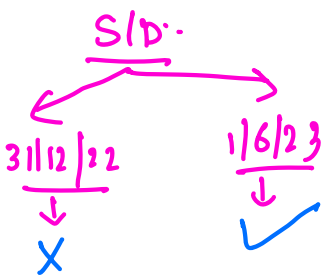
Discuss against which of the movable/immovable property the Tax Recovery Officer can proceed against for recovery of tax. **(4 Marks)**

Vadobre case law

(c) XYZ Co., an Indian company, is engaged in the business of manufacture of packaging material having its manufacturing facility in India. XYZ Co. is a wholly owned subsidiary of Flix Inc., a company incorporated in Country M. Angelo and James, citizens and residents of the Country N, each of them hold 50% of the share capital of Flix Inc. Angelo and James, each had invested equivalent to INR 100 crores in Flix Inc. in April 2015.



On 1st June 2023, Angelo and James, having received an offer which they believe was fair, sold their entire stake in Flix Inc. to Ishaan, resident of Country N for amount equivalent to INR 350 crores each.



The accounting period of Flix Inc. is January to December, the relevant extract of the balance sheet of Flix Inc. as on 31st December 2022, 1st June 2023 and 31st December 2023 are as follows:

Particulars	As on 31 st December 2022 (in INR crores)	As on 1 st June 2023 (in INR crores)	As on 31 st December 2023 (in INR crores)
Details regarding Flix Inc.			
Book value of assets	1,000	1,300	1,500
Liabilities	300	250	350

60000
10000

= 56.25%

Fair Market Value of assets (without reduction of liabilities)	800	1100	950
Details regarding investment in XYZ Co.			
Cost of acquisition	150	150	150
Book value of assets in balance sheet of XYZ Co.	350	550	480
Liabilities	150	200	250
Fair market value of assets in balance sheet of XYZ Co. (without reduction of liabilities)	350	600	600

110000

Determine whether the income arising from transfer of shares of Flix Co. chargeable to tax in India in the hands of Angelo and James for the A.Y. 2024-25. Assume there is no DTAA between India-Country M and between India-Country N. **(6 Marks)**

5. (a) Answer **any two** of the following three sub-parts (i), (ii), (iii) on the basis of decided case laws, bringing out the following –

- (1) Issue involved
- (2) Relevant provisions of law
- (3) Analysis and Conclusion
- (i) During the scrutiny assessment of Orange Ltd., a company engaged in manufacture and distribution of packaged Coconut water and fresh drinks, the Assessing Officer increased the income passed an order of demand. Aggrieved by the order, the assessee filed an appeal to CIT(A), who confirmed the order of Assessing Officer. The assessee further appealed to Appellate Tribunal requesting for the stay of collection of tax, which the Tribunal provided initially for 180 days on deposit of 20% of the amount of tax by Orange Ltd. Thereafter, the Bench was functioning intermittently and therefore, the disputed matter could not be disposed off. The company applied for extension of stay and was granted extension upto 365 days. The Appellate Tribunal 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.

Done earlier
Pepsi Foods
Ltd.
ITAT beyond
365 DAYS.

Done earlier
Laxman
Das Khandelwal

- (ii) The assessment of Mr. Sharma was completed u/s 143(3) of the Income-tax Act 1961 with an addition of income of ₹ 8.5 lakhs to the returned income. Mr. Sharma contends that the order of assessment is bad in law as no notice was issued u/s 143(2) even though he had participated in the assessment proceedings. The Assessing Officer, relying on section 292BB, contends that since Mr. Sharma has participated in assessment proceedings, he cannot raise such objection.

Examine the validity of the contentions of both Mr. Sharma as well as the Assessing Officer.

- (iii) Fast Construction Pvt. Ltd. is engaged in the construction of bridges and flyovers. During the previous year 2023-24, it made payment to various parties and deducted tax amounting to ₹ 18 lakhs. However, the company failed to deposit the said amount with the income-tax department within the time prescribed under the Income-tax Act, 1961. 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), before receiving any notice from the income-tax department in this regard. However, prosecution proceedings were initiated under section 276B against the company and its directors. The company has approached you to advise in the matter. **(2 x 4 marks)**

X
Done earlier ✓

- (b) Describe the three-tier structure for transfer pricing documentation mandated by BEPS Action Plan 13. Which provisions under the Income-tax Act, 1961 dealt with Master File and CbC reporting. **(6 Marks)**

6. (a) Critically examine the following cases and discuss whether the provisions of General Anti-avoidance Rules (GAAR) can be invoked in these cases?

Done earlier

- (i) Shiva Ltd., an Indian company has 2 manufacturing units, unit X in the Special Economic Zone (SEZ) and unit Y in non-SEZ. Manufacturing activities are carried out in unit Y while unit X only does the packaging of the goods manufactured by unit Y. In its books of accounts, it shows the manufacturing to be carried out in unit X and claims allowable deductions.

- (ii) Vishnu Ltd., an Indian company has 2 manufacturing units, unit M in the Special Economic Zone (SEZ) and unit N in non-SEZ. It transfers the goods manufactured by unit N to unit M at a price significantly lower than the market value of the goods and thus becomes eligible for higher deductions. **(4 Marks)**

SDT

- (b) Right & Co, a firm engaged in retail business, employed 30 new employees on 1.4.2022 on a monthly salary of ₹ 24,500 to be paid by account payee cheque. In addition, each employee was entitled to 10%

Emoluments → Cash X
Existing Bus → PF X

Clause 33 of
Form 3(1D).
Clause (7) of
Part I of
1st Schedule

employer contribution to recognised provident fund. The employees were also entitled to transport allowance of ₹ 3,500 p.m. paid in cash. The gross total income of Right & Co. included profits and gains from business of ₹ 75 lakhs.

The firm claimed deduction under section 80JJAA of ₹ 26,46,000, being 30% of ₹ 88,20,000 lakh (30 new employees x ₹ 24,500 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 ₹ 24,500 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.

(6 Marks)

- (c) The Indian branch of D Co Ltd, Country K has carried out some transactions with LT Co Ltd, Bengaluru in the financial year 2023-24. The value of the transaction is ₹ 600 crores. LT Co Ltd. applied for advance ruling in January, 2024 to know exactly the tax consequences of its transactions with the non-resident D Co Ltd., Country K, both for itself and on non-resident. Application for ruling is accepted by Board for Advance Rulings (BAR). On 30.4.2024, BAR pronounced its ruling and said ruling was communicated to LT Co. Ltd. on the same date. LT Co. Ltd. was, however, not satisfied with said ruling.

State whether the advance ruling pronounced by BAR is binding on LT Co. Ltd. Is there any remedy available to LT Co. Ltd. if it is aggrieved with the said ruling? Examine.

(4 Marks)

2450 → HC → 60 + 30.

Mock Test Paper - Series II: April, 2024

Date of Paper: 8 April, 2024

Time of Paper: 2 P.M. to 5 P.M.

FINAL COURSE: GROUP - II

PAPER – 4: DIRECT TAX LAWS & INTERNATIONAL TAXATION

Working Notes should form part of the answer. Wherever necessary, suitable assumptions may be made by the candidates and disclosed by way of a note. However, in answers to Questions in Division A, working notes are not required.

All questions relate to Assessment Year 2024-25, unless stated otherwise in the question.

Division A – Multiple Choice Questions

Write the most appropriate answer to each of the following multiple-choice questions by choosing one of the four options given. All questions are compulsory.

Case Scenario I

The following information pertains to Mr. Apoorv, an Indian citizen and non-resident in India, for the previous year 2023-24:

- (i) Dividend from TPO Ltd., an Indian Company (gross) of ₹ 1,30,000.
- (ii) Interest on debentures of SLP Pvt. Ltd. (subscribed in convertible foreign exchange) of ₹ 1,35,000 (gross).
- (iii) He incurred interest on loan taken for purchase of shares of TPO Ltd. and for purchase of debentures of SLP Pvt. Ltd. of ₹ 30,000 and ₹ 20,000, respectively.
- (iv) On 15th March 2024, he sold debentures of Fix Ltd. for ₹ 18,25,000 which were subscribed in convertible foreign exchange on 10th June 2004 in dollars equivalent to ₹ 4,65,000. He paid commission to broker of ₹ 7,000 at the time of sale.
- (v) On 30th April, 2024, he reinvested the sale proceeds of debentures of ₹ 4,80,000 for purchase of listed shares of an Indian company, Fly High Ltd.

Cost Inflation Index: F.Y. 2004-05 - 113; F.Y.2023-24 – 348.

Based on the facts of the above case scenario, choose the most appropriate answer to Q.1 to Q. 5 below:

1. What is the amount of dividend taxable in the hands of Mr. Apoorv and at what rate TPO Ltd. is required to deduct tax at source on dividend income distributed to Mr. Apoorv?
 - (a) ₹ 1,30,000 and 10%
 - (b) ₹ 1,04,000 and 10%
 - (c) ₹ 1,00,000 and 20.8%
 - (d) ₹ 1,30,000 and 20.8%

2. Assuming for the purpose of this MCQ that Mr. Apoorv is a resident in India for the P.Y. 2023-24, determine the amount of dividend taxable in his hands and at what rate TPO Ltd. is required to deduct tax at source on dividend income distributed to him?
- (a) ₹ 1,30,000 and 10%
 - (b) ₹ 1,04,000 and 10%
 - (c) ₹ 1,00,000 and 20%
 - (d) ₹ 1,30,000 and 20%
3. What is the amount of interest on debentures of SLP Pvt. Ltd. taxable in the hands of Mr. Apoorv and at what rate? Ignore surcharge and cess.
- (a) ₹ 1,35,000 taxable @20%
 - (b) ₹ 1,05,000 taxable @20%
 - (c) ₹ 1,08,000 taxable at slab rates
 - (d) ₹ 1,05,000 taxable at slab rates
4. What would be the amount of long-term capital gains taxable in the hands of Mr. Apoorv on sale of debentures of Fix Ltd., as per the provisions of Chapter XII-A of the Income-tax Act, 1961? Ignore the effect of first proviso to section 48 (benefit of foreign currency conversion).
- (a) ₹ 13,53,000
 - (b) ₹ 9,95,772
 - (c) ₹ 9,97,142
 - (d) ₹ 13,60,000
5. Assuming for the purpose of this MCQ that Mr. Apoorv is a resident in India for the previous year 2023-24, what would be the amount of taxable capital gains on sale of debentures of Fix Ltd. in the hands of Mr. Apoorv?
- (a) ₹ 13,53,000
 - (b) ₹ 3,85,965
 - (c) ₹ 9,95,772
 - (d) ₹ 13,60,000
- (5 x 2 = 10 Marks)**

Case Scenario II

Omega Inc., a Country F company, maintains an online web-platform through which it provides end user computer software through an End-user Licence Agreement (EULA). Traylor Ltd., an Indian company, has entered into a contract for ₹ 6.7 crores with Omega Inc., for the Financial Year 2023-24, which is approved by the Central Government.

The broad terms of the EULA between the two companies are as follows-

Grant of licence. Omega Inc. grants Traylor Ltd. a limited non-exclusive licence to install, use, access, display and run the click wrap web-based Computer Software (CWCS) on a single local hard disk(s) or other permanent storage media of one

computer. Traylor Ltd. should not make CWCS available over a network where it could be used by multiple computers at the same time.

Reservation of rights and ownership. Omega Inc. reserves all rights not expressly granted to Traylor Ltd. in this EULA. The CWCS is protected by copyright and other intellectual property laws and treaties. Omega Inc. owns the title, copyright and other intellectual property rights in the CWCS. The CWCS is licenced (only for use and not any other purpose), not sold.

Omega Inc. does not have any offices outside Country F.

Extract of Article 12 of India-Country F 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*

Based on the facts of the above case scenario, choose the most appropriate answer to Q.6 to Q.9 below:

6. Is Traylor Ltd., India required to deduct tax at source on the payment made to Omega Inc.? If yes, what amount of tax is required to be deducted at source on the said payment?
 - (a) Yes, Traylor Ltd. is required to deduct tax at source of ₹ 1,42,14,720.
 - (b) No, Traylor Ltd. is not required to deduct tax at source.
 - (c) Yes, Traylor Ltd. is required to deduct tax at source of ₹ 2,84,29,440.
 - (d) Yes, Traylor Ltd. is required to deduct tax at source of ₹ 67,00,000
7. Is equalisation levy attracted in respect of the consideration received by Omega Inc., Country F from Traylor Ltd.? If so, in whose hands and at what rate?
 - (a) Omega Inc. has to pay equalisation levy @6% of the consideration
 - (b) Traylor Ltd. is required to deduct equalisation levy @6% of the consideration

- (c) Traylor Ltd. is required to deduct equalisation levy @2% of the consideration
 - (d) Omega Inc. has to pay equalisation levy @2% of the consideration
8. Would Traylor Ltd., India be required to deduct tax at source on the payment made to Omega Inc, if there was no DTAA between India and Country F? If so, what amount of tax is required to be deducted at source on the said payment?
- (a) Yes, Traylor Ltd. is required to deduct tax at source of ₹ 1,42,14,720.
 - (b) No, Traylor Ltd. is not required to deduct tax at source, since such sum is not taxable in the hands of Omega Inc.
 - (c) Yes, Traylor Ltd. is required to deduct tax at source of ₹ 2,84,29,440.
 - (d) Yes, Traylor Ltd. is required to deduct tax at source of ₹ 71,07,360
9. Is equalisation levy attracted in respect of the consideration received by Omega Inc. Country F from Traylor Ltd., if there is no DTAA between India and Country F? If so, in whose hands and at what rate?
- (a) Omega Inc. has to pay equalization levy @6% of the consideration
 - (b) Traylor Ltd. is required to pay equalization levy @2% of the consideration
 - (c) Omega Inc. has to pay equalization levy @2% of the consideration
 - (d) No, equalization levy is not attracted **(2 x 4 = 8 Marks)**

Case Scenario III

Sharma Pvt. Ltd. ("S") files its return of income for the P.Y. 2023-24 on 30th September 2024 declaring loss of ₹ 18,00,000. The rate of income-tax applicable to the company is 25%.

The tax auditor of S, in his audit report submitted under section 44AB, has reported a disallowance of ₹ 2,80,000 towards personal expenditure of directors as no evidence was produced by S in support of this expenditure. However, S did not disallow the same in its computation and return of income.

The return of income was processed by the Centralised Processing Centre making an addition of ₹ 2,80,000 towards personal expenditure and the loss u/s 143(1) was computed at ₹ 15,20,000.

The return of income was selected for scrutiny assessment and by order passed u/s 143(3), the loss as per normal provisions was reduced to ₹ 11,60,000 by making an addition of ₹ 3,60,000.

The assessment was reopened u/s 147 and by order passed u/s 147, the loss as per preceding order u/s 143(3) was converted into income of ₹ 3,20,000.

Based on the facts of the above case scenario, choose the most appropriate answer to Q.10 to Q. 12 below:

10. Which of the following statements regarding penalty on addition of ₹ 2,80,000 towards personal expenditure is correct?

- (i) Since S has claimed deduction of amount incurred towards personal expenditure of directors, S shall be considered to have under-reported its income.
 - (ii) The under-reporting on account of claiming personal expenditure of directors as deduction can be construed as misreporting of income as it is a claim of expenditure not substantiated by any evidence.
 - (iii) Since addition of ₹ 2,80,000 is an adjustment referred to in section 143(1)(a), no penalty is leviable in respect of this addition.
 - (iv) No penalty is leviable if S offers an explanation and the Assessing Officer is satisfied that the explanation is *bona fide* and S has disclosed all the material facts to substantiate the explanation offered.
- (a) (i) and (iv)
 - (b) (ii) and (iv)
 - (c) (iv) only
 - (d) (iii) only
11. What is the amount of penalty leviable u/s 270A as a consequence of assessment u/s 147, if the addition was not on account of misreporting?
- (a) ₹ 1,09,200
 - (b) ₹ 1,92,400
 - (c) ₹ 41,600
 - (d) ₹ 1,85,000
12. Assuming that the additions made in the order u/s 147 are not on account of misreporting of income but only on account of under-reporting, S seeks to claim immunity from imposition of penalty u/s 270A and initiation of proceedings u/s 276C of the Act by filing an application in this regard before the Assessing Officer. What are the other conditions that need to be satisfied by S in this regard?
- (i) Pay the tax and interest payable as per the order u/s section 147 within the period specified in the notice of demand.
 - (ii) Pay the tax as per the order u/s section 147 within the period specified in the notice of demand.
 - (iii) Contest the additions made in the order, after payment of tax and interest, within the period specified in the notice of demand.
 - (iv) No appeal should be or should have been filed against the order.

The correct answer is-

- (a) (ii) and (iv)
- (b) (i) and (iv)
- (c) (i) and (iii)
- (d) (ii) and (iii)

(3 x 2 = 6 Marks)

13. During the P.Y.2023-24, YourCare Charitable Trust registered under section 12AB received donations of ₹ 90 lakhs, out of which ₹ 10 lakhs were corpus donations which were deposited in post office savings bank account and ₹ 20 lakhs were anonymous donations. The trust applied ₹ 40 lakhs towards its objects during the P.Y.2023-24. The tax liability of the trust for A.Y.2024-25 is -

- (a) ₹ 7,51,140
- (b) ₹ 7,02,000
- (c) ₹ 6,35,960
- (d) ₹ 6,42,720

(2 Marks)

14. Mr. Sugam, a resident Indian aged 61 years, has income of ₹ 48 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. What would be the tax liability (computed in the most beneficial manner) of Mr. Sugam, assuming that he has no other income during the P.Y. 2023-24.

- (a) ₹ 6,52,500
- (b) ₹ 11,85,600
- (c) ₹ 9,23,520
- (d) ₹ 6,76,000

(2 Marks)

15. Mr. Sahil set-up a three-star hotel "Cloud View" in Bhopal on 16.5.2009 and another three-star hotel "Green View" in Mumbai on 1.4.2012. His brother Mr. Akhil is in the business of building and operating hospitals. He has set-up hospital "Lifeline" (with 50 beds capacity) in Mumbai which begins to operate on 1.8.2008 and another hospital "Lifecare" (with 120 beds capacity) in Bhopal which begins to operate on 15.5.2016. For the previous year, 2023-24, Mr. Sahil has profit from hotel "Cloud View" of ₹ 95 lakhs and loss from hotel "Green View" of ₹ 35 lakhs. Mr. Akhil has profit from Hospital "Lifeline" of ₹ 54 lakhs and loss from hospital "Lifecare" of ₹ 25 lakhs for the P.Y. 2023-24. What would be the profits and gains from business or profession of Mr. Sahil and Mr. Akhil and also determine the loss to be carried forward, if both of them opt out to pay tax as per section 115BAC?

- (a) Business income of ₹ 60 lakhs in the hands of Mr. Sahil and amount to be carried forward would be Nil. Business income of ₹ 54 lakhs in the hands of Mr. Akhil and ₹ 25 lakhs loss to be carried forward.
- (b) Business income of ₹ 95 lakhs in the hands of Mr. Sahil and ₹ 35 lakhs loss to be carried forward. Business income of ₹ 29 lakhs in the hands of Mr. Akhil and no amount to be carried forward.
- (c) Business income of ₹ 60 lakhs in the hands of Mr. Sahil and amount to be carried forward would be Nil. Business income of ₹ 29 lakhs in the hands of Mr. Akhil and no amount to be carried forward.

MTP - MAY 2024 - Series II:

- (d) Business income of ₹ 95 lakhs in the hands of Mr. Sahil and ₹ 35 lakhs loss to be carried forward. Business income of ₹ 54 lakhs in the hands of Mr. Akhil and ₹ 25 lakhs to be carried forward. **(2 Marks)**

Division B – Descriptive Questions

Question No. 1 is compulsory.

Attempt any **four** questions from the remaining **five** questions.

1. Fun Limited, a **domestic company**, set-up and commenced business of **manufacturing** of mixer grinder on **01-4-2023** in the State of Madhya Pradesh. The net profit of the company as per Statement of Profit and Loss for the year ended 31st March, 2024, revealed **profit** of ₹ **1,47,50,000** after debiting or crediting the following items:

- 115 BAB:-
Add: Add'lk
Dep of 10%
↓
Tax Rate:-
15%
STCG → 11A-
STCG → 22-
Ⓟ
10%
(i) **Depreciation** charged during the year amounted to ₹ 34,00,000. **(+)**
(ii) Lumpsum consideration of ₹ **36 lakhs** paid to a foreign company for obtaining **designs & models** of mixer grinder on 12-12-2023. **(+)** 36LX 25% X 50%
(iii) Purchased raw material valued at ₹ 96 lakhs from **Gold Ltd.** in which **directors have substantial interest**. The market value of the goods is ₹ 82 lakhs. **(+)** 14LARS.
(iv) Cash **subsidy** of ₹ 15 lakhs received from **State Government** on acquisition of new plant & machinery [mentioned at point (c) in additional information] acquired on 01-07-2023 which was credited to **Statement of profit and loss**. **(-)** PGBP → **(-)** PLM
(v) **Legal expenses** incurred for issue of **bonus shares** at ₹ 6 lakhs and **legal expenses** for issue of **right shares** at ₹ 8 lakhs. **X**
(vi) **Short term capital gains** of ₹ 15 lakhs arising on transfer of a capital asset being **equity shares** in a company on which **security transaction tax** is charged. **(-)** 11A 15%.

Additional information:

- (a) Depreciation eligible under section 32 is ₹ 36 lakhs. **(-)**
(b) During the previous year 2023-24, the company transferred **unlisted equity shares** for a consideration of ₹ 22,00,000 which were acquired on 1.5.2023. The cost of these shares acquired is ₹ 12,00,000. **STCG** **< 24mths**
(c) New Plant & Machinery acquired on 01-07-2023 for ₹ 75 lakhs and payment of ₹ 10 lakhs made by bearer cheque and balance by way of transfer through RTGS. Depreciation on this machinery is not included in depreciation amount given at point (a). **75L - 10L = 50LARS**

Book profits for the previous year 2023-24 is ₹ **320 lakhs**.

Compute the total income and tax liability of Fun Limited for the Assessment Year 2024-25 in a **most beneficial manner** clearly stating the reasons for treatment of each item. **(14 Marks)**

2. (a) The profit and loss account of the Heros and Sons, a partnership firm, showed a net profit of ₹ 80 lakhs after debiting/crediting of the following sums:

- (i) Interest on capital @14% - ₹ 7,00,000
- (ii) Interest on loan taken from one of the partners@ 15% - ₹ 90,000
- (iii) Interest on bank fixed deposits made out of surplus funds - ₹ 25,000 (Gross)
- (iv) Depreciation as per books of accounts - ₹ 1,02,000
- (vi) A building purchased in the year 2018 having a WDV as on 1.4.2023, of ₹ 36.45 lakhs was sold on 05.11.2023 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 (not debited to profit and loss account).
- (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 received in convertible foreign exchange upto 30.9.2024 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 2.4.2024 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 - ₹ 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)**

(b) Mr. Albert, a non-resident and American citizen, is employed in an American company. The American company has a PE in India. Albert visited India during the F.Y. 2023-24 on official work and stayed for 80 days. His salary for that period was ₹ 25,00,000 which is borne by the Indian PE.

Albert held 1200 shares of Shine Pvt. Ltd (SPL), an Indian company since 31.12.2018 which he acquired for ₹ 35 per share. For acquiring the

MTP Series II
Nov 2023
Same Q

Same Q
done earlier
Q.2 of
Series I
2023.

MTT
NOV-2023

shares, he remitted USD 50,000 to India on 15.12.2018. He sold these shares on 20.8.2023 for ₹ 63 per share.

Albert also held 2000 equity shares of YoC Inc., another American company, which he had acquired for dollars equivalent to ₹ 145 per share in 2018. YoC Inc. follows April to March as its financial year. He sold all these shares for dollars equivalent to ₹ 615 per share to Mishel, another non-resident, on 10.10.2023. The relevant information of YoC Inc. 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 YoC Inc. received in India on 28.06.2023 was - ₹ 1,32,000.

You are required to compute the total income taxable in India of Mr. Albert ignoring the provisions of DTAA between India and USA.

Exchange rates for 1 USD on the relevant dates is given as hereunder:

Date	Buying Rate (1 US \$)	Selling Rate (1 US\$)
31.12.2018	₹ 68	₹ 70
15.12.2018	₹ 66	₹ 68
20.8.2023	₹ 90	₹ 92

(6 Marks)

3. (a) The Head of Accounts of Heathy Wealthy Foundation, a trust, established for the purpose of promotion of Yoga has approached you to guide about the tax implications of the following:

Some

(i) During the financial year 2023-24, it received a voluntary contribution of ₹ 150 lakhs with a specific direction that it should form part of the corpus of the trust. The trust invested such amount in the shares of M/s. ABC Private Ltd., a private sector company.

(ii) Apart from the above-mentioned ₹ 150 lakhs, during the financial year 2023-24, it received ₹ 80 lakhs as other voluntary contributions and ₹ 50 lakhs as fees towards providing Yoga classes. (4 Marks)

Yoga = C/P

(b) Mr. Shyam is the founder of UVX Trust, a public charitable trust registered u/s 12A of the Income-tax Act, 1961. The trust runs a hospital for the treatment of various diseases. Mr. Umesh, son of Mr. Shyam, was admitted in May 2023 in the hospital for treatment. He was charged a total fee of ₹ 2.20 lakhs as against the amount of ₹ 3.50 lakhs charged by the hospital for similar treatment to the general public.

The Board of trustees were served with a notice by the income tax authorities for cancellation of registration u/s 12AB.

Take 15% exemption.

1-3% concessia
Income of
Trust.

NO

Discuss whether registration can be denied to the trust. What are the further tax implications? (4 Marks)

- (c) Mr. Sarthak, an Indian citizen aged 51 years, left India for the first time 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 \$ 32,000 for the year ended 31st March 2024. He is eligible for basic exemption limit of \$ 9,000 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 ₹ 6,20,000 for the year ended on 31st March 2024. He also received dividend amounting to ₹ 2,25,000 from an Indian company and interest of ₹ 13,500 on saving bank account with SBI, during the year.

The exchange rates of 1 \$ on various dates is given below:

01.04.2023 - ₹ 74; 31.03.2024, ₹ 75; 30.04.2024 - ₹ 75.5;

Compute the net tax liability of Mr. Sarthak in India for the assessment year 2024-25 after providing relief u/s 91 (ignore foreign tax credit rules) on the assumption that there is no DTAA between India and Country Y.

Assume that Mr. Sarthak shifted out of the provisions of section 115BAC. (6 Marks)

4. (a) In respect of the following independent case scenarios you are required to discuss the provisions related to tax deducted/collected at source and amount of tax deductible for the year ended 31st March 2024:

- (i) During the previous year 2023-24, Mr. Amit purchased scrap of ₹ 65 lakhs from Mr. Bharat for the purpose of his manufacturing unit. Mr. Amit also furnished a declaration to Mr. Bharat that the scrap shall be utilized for manufacturing process carried on by him and shall not be used for trading purposes. Mr. Amit made the payment of ₹ 49 lakhs during F.Y 2023-24 to Mr. Bharat. Assume turnover of both Mr. Amit and Mr. Bharat from the business carried on by them exceeds ₹ 10 crores in the financial year 2022-23.

(4 Marks)

- (ii) Cloud Ltd., a real estate development company, entered into a Joint Development Agreement with Mr. Ashok, a resident individual, whereby Mr. Ashok would transfer a plot of land measuring 10 acres for a part consideration of ₹ 6.5 crores to be paid on the date of agreement, i.e., 1.6.2023. Cloud Ltd. has planned to develop a high-rise apartment complex on such land by 31.3.2026. Upon completion of the project, Cloud Ltd. would transfer 6 flats in the apartment to Mr. Ashok as final settlement. The FMV of the flats is estimated to be ₹ 1.35 crores each as on 31.3.2026. (2 Marks)

Same Q done earlier
Post paper
Q3 of
MAY 2022

194Q → 15.2%
0.1%

194-IC →
6.5 cr x 10%
Cash portion

206(1)X
206(1A)

Repeat

(iii) State Government of Madhya Pradesh grants a lease of coal mine to M/s Maple Co. Ltd. on 01.09.2023 and charged ₹ 12 crores for the lease. M/s Maple Co. Ltd. sold coal for ₹ 1 crore to M/s DL (P) Ltd. during the previous year 2023-24. The turnover of M/s Maple Co. and M/s DL (P) Ltd. for the financial year 2022-23 amounted to ₹ 7 crores and ₹ 8 crores, respectively. **(2 Marks)**

(b) Aster Ltd., Australia, holds 30% equity shares in Bhuvan Ltd., India. Bhuvan Ltd. develops software and also provides related support services. Bhuvan Ltd. during the year billed Aster Ltd., Australia for 150 man-hours at the rate of ₹ 2,700 per man hour. The total cost (direct and indirect) for executing this work amounted to ₹ 4,52,000.

However, Bhuvan Ltd. billed Gaurav Ltd., India at the rate of ₹ 3,800 per man hour for the similar level of manpower and earned Gross Profit of 40% on its cost.

The transactions of Bhuvan Ltd. with Aster Ltd. and Gaurav Ltd. are comparable, subject to the following differences:

- (i) While Bhuvan Ltd. also derives technological support from Aster Ltd., there is no such support from Gaurav Ltd. The value of technological support received from Aster Ltd. may be put at 15% of normal gross profits.
- (ii) As Aster Ltd. gives business in large volumes, Bhuvan Ltd. offered to Aster Ltd., a quantity discount which may be valued at 10% of the normal gross profits.
- (iii) In the case of rendering services to Aster Ltd., Bhuvan Ltd. neither runs any risk nor incurs any marketing costs. On the other hand, in the case of services to Gaurav Ltd., Bhuvan 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) Bhuvan Ltd. offered one month credit to Aster Ltd. The cost of providing such credit may be valued at 5% of the normal gross profits. No such credit was given to Gaurav Ltd.

Compute the Arm's Length Price alongwith income to be adjusted under the cost plus method. **(6 Marks)**

5. (a) Answer **any two** of the following three sub-parts (i), (ii), (iii) on the basis of decided case laws, bringing out the following –

- (1) Issue involved
- (2) Relevant provisions of law
- (3) Analysis and Conclusion
- (i) In the case of M/s Hyper Ltd., the Income-tax Appellate Tribunal decided against the assessee and issued order under section 254. The assessee filed an appeal to the jurisdictional High Court by framing the substantial question of law under section 260A(2)(c). The High Court, without framing the question of law u/s 260A(3) at

A-A-Estate Pvt Ltd

As per 260A(3) HC shall formulate S.O.L.
There is difference between.....

the time of admission of appeal, issued notices, heard both the parties and decided the appeal affirming the order of the Tribunal on the questions raised by the assessee appellant. You are required to discuss whether the High Court was justified in not formulating the substantial question of law as required under section 260A(3) and adjudicating merely on the questions put forth by the appellant under section 260A(2)(c).

- (ii) Krishna Cooperative Society, the assessee is engaged in marketing of fertilizers and purchase and processing of seeds. The assessee had claimed deduction under section 80P(2)(d) on dividend income received from NAFED and one Cooperative bank and also on interest on deposits with Co-operative banks. The Assessing Officer contended that the aforesaid income were not included in the total income and wants to invoke section 14A by disallowing the expenditure incurred with respect to earning income which is not liable to income tax.

14A → 10
14A X 80%
CIN/A:

CIT vs
Krishna
Delhi (2012)
HC

Discuss whether the action taken by the Assessing Officer is tenable in law.

- (iii) On 1st May 2023, M Sudarshan, a resident individual, received 1,500 bonus shares from Sugam Pvt. Ltd. in which he held 3,000 equity shares. The Assessing Officer held that since the assessee has not paid any consideration for bonus shares, he was under an obligation in law to offer the market value as income from other sources under section 56(2)(x) of the Act. The Assessing Officer computed the fair value of these bonus shares and added the amount to the income of M Sudarshan as "Income from other sources". Whether the decision of the Assessing Officer is correct in law? **(2 x 4 marks = 8 Marks)**

DR Rajan
Pai.

- (b) What is meant by Digital economy? What are the taxation issues in E-Commerce? List out the OECD recommendations under Action Plan 1 which deals with the digital economy. **(6 Marks)**

Theory:

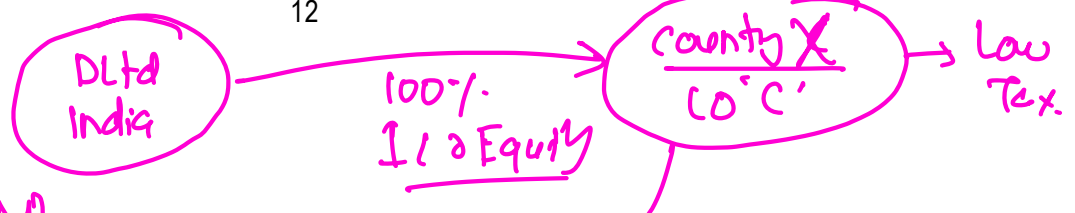
6. (a) In the following independent circumstances, discuss whether the provisions of GAAR would be applicable:

Done earlier:

- (i) Right Inc., a company incorporated in Country M, holds 1200 equity shares in PS Ltd., an Indian listed entity since 1.4.2016. On 1.5.2023, PS Ltd. issued 1200 bonus shares to Right Inc. As per the treaty between India and Country M, the capital gain is taxable in the country where the transferor of shares is a resident. The tax laws of Country M, exempt capital gains. Right Inc. sells all the shareholding in PS Ltd. on 1.1.2024 and earned a capital gain of ₹ 5 crores.

- (ii) D Ltd., an Indian company, incorporates a wholly owned subsidiary Company C, in Country X which is a Low Tax Jurisdiction with equity share capital of ₹ 1 crore. Out of the equity capital, company

12



→ Lacks Comm
Subs
Round Tripping

→ Tax Ben.
 → Main Purpose
 → IFRB > 30%
 otherwise X

C Ltd
 Indianro

Loan

C gives loan to C Ltd., an Indian company at the rate of 5%. There is no other activity in Company C. **(4 Marks)**

15CB certifies he has examined. CA should verify the agreement.
 Doc BOA Tax of Rem.
 But CA only verify KYC of Invoice!
 clause (7) & (8) part I Schedule II fail to do due diligence.

(b) (i) The Income-tax department collected documents from MNO Bank which revealed that M/s. Aster Travels and Consultancy Services (Aster 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 Aster 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 105 certificates in Form 15CB approximately involving remittances of ₹ 22 crores in favour of Aster 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 ₹ 3,500 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. **(3 Marks)**

(ii) XYZ & Co., a partnership firm engaged in trading of electronic goods, furnished the following information:

$CR = \frac{19}{456} = 4.16\%$
 $C.P = \frac{3.88}{2388} = 1.59\%$

	Particulars	₹
(i)	Total turnover of F.Y.2023-24	2,78,00,000
(ii)	Aggregate of all receipts during the year (including amount received for turnover mentioned in (i) above)	4,56,00,000
(iii)	Cash receipts out of (i) above	13,00,000
(iv)	Cash receipts out of (ii) above (This is inclusive of the figure mentioned in (iii) above)	19,00,000
(v)	Aggregate of all payments during the year	2,38,00,000
(vi)	Cash payments out of (v) above	3,80,000

Examine whether XYZ & Co. is required to get its books of account audited mandatorily as per section 44AB from the above information. **(3 Marks)**

(c) Explain the correctness or otherwise of the following statements giving proper reasons thereof:

~~(i) Mr. Rakul, a resident individual, is aggrieved by an order passed by the Board for Advance Ruling on 1.10.2023. Since the decision of the Board is binding on the applicant, he has no other option but to accept the ruling of the Board.~~

Done
cond. 2

~~(ii) M/s Sun Ltd., an Indian public sector company, wants to seek advance ruling from the Board for Advance Rulings (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., 12.12.2023. It cannot seek the BOAR ruling till the matter is pending before the ITAT.~~

Done :-

(4 Marks)