

## PAPER – 4: DIRECT TAX LAWS & INTERNATIONAL TAXATION

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### PART I

*All questions relate to Assessment Year 2024-25, unless stated otherwise in the question.*

1. A charitable institution, engaged in education of Yoga in India, registered under section 12AB of the Income-tax Act, 1961 for the previous year ended 31 March 2024, received the following amounts of donation:
- (i) Total donations during the year ₹ 40,00,000
  - (ii) Anonymous donations received ₹ 10,00,000  
(Included in total donations)

*What amount of anonymous donations would be taxable @30% as per Section 115BBC of the Income-tax Act, 1961.*

- A. ₹ 1,00,000
- B. ₹ 8,00,000
- C. NIL
- D. ₹ 2,00,000

**(2 Marks)**

2. Mr. Bela Kapoor, furnishes the following particulars for the previous year 2023-24. What would be the amount of deduction allowable under section 35 for A.Y.2024-25, while computing his income under the head "Profits and gains of business or profession", if he is paying tax under default tax regime under section 115BAC?

Particulars	₹
Amount paid to IIT, Delhi for an approved scientific research programme	1,50,000
Amount paid to Ramaya Ltd., a company registered in India which has as its main object scientific research and development, as is approved by the prescribed authority	3,00,000

<i>Expenditure incurred on in-house scientific research and development facility as approved by the prescribed authority related to his business</i>	
<i>(a) Revenue expenditure on scientific research</i>	<i>3,00,000</i>
<i>(b) Capital expenditure (including cost of acquisition of land ₹8,00,000) on scientific research</i>	<i>9,50,000</i>

- (A) ₹ Nil  
 (B) ₹ 4,50,000  
 (C) ₹ 16,00,000  
 (D) ₹ 9,00,000

**(2 Marks)**

3. Mr. K, Managing Director of Kairon Metals Private Ltd, holds 70% of its paid up capital of ₹ 20 lakhs. The balance as at 31.03.2023 in General Reserve was ₹ 7 lakhs. The company on 01.04.2023 gave an interest-free loan of ₹ 8.50 lakhs to its Supervisor having salary of ₹ 15,500 p.m., who in turn on 25.04.2023, advanced the said amount of loan so taken from the company to Mr. K. What amount would be treated as deemed dividend u/s 2(22)(e) of the Income-tax Act, 1961?

- A. NIL  
 B. ₹ 7,00,000  
 C. ₹ 8,50,000  
 D. ₹ 4,90,000

**(2 Marks)****Case Scenario - I**

*M/s Gamma Ltd. is an Indian company engaged in providing consultancy and business advisory services. During the previous year 2023-24, it received the following loans in cash from various vendors due to some business exigency:*

*₹ 3,00,000 availed from Mr. Arun on 20.04.2023.*

*₹ 19,500 availed from Mr. Raj on 20.05.2023.*

*₹ 20,500 availed from Mr. Sunil on 20.06.2023*

*Further, the company made the following loan repayments during the year:*

*₹ 18,000 to Mr. Arun on 15.07.2023 in crossed cheque.*

₹ 1,25,000 to Mr. Arun on 10.08.2023 through account payee cheque.

₹ 21,000 to Mr. Arun on 08.10.2023 through RTGS.

₹ 3,000 to Mr. Arun on 12.12.2023 through cash.

M/s Gamma Ltd. also furnished the following particulars for assessment year 2024-25:

<b>S. No.</b>	<b>Particulars of total income</b>	<b>Amount (₹)</b>
1	As per the return of income furnished under section 139(1)	(10,00,000)
2	Determined under section 143(1)(a)	(5,00,000)
3	Assessed under section 143(3)	(1,00,000)
4	Reassessed under section 147	5,00,000

The total turnover of Gamma Ltd. for the P.Y. 2021-22 was ₹ 405 crores. Ignore the provisions of section 115BAA/115BAB.

From the information given above, choose the most appropriate answer to the questions 4 to 7:-

4. What is the amount of penalty leviable on repayment of loan to Mr. Arun?
- A. No penalty is leviable since the repayment otherwise than by way of prescribed modes is less than ₹ 20,000
  - B. Penalty of ₹ 21,000 under section 271E
  - C. Penalty of ₹ 3,000 under section 271D
  - D. Penalty of ₹ 24,000 under section 271E
- (2 Marks)**
5. Assuming that the underreporting of income is on account of misreporting, penalty leviable on M/s. Gamma Ltd. under section 270A at the time of assessment u/s 143(3) would be?
- A. ₹ 6,24,000
  - B. ₹ 1,87,200
  - C. ₹ 1,24,800
  - D. ₹ 2,49,600
- (2 Marks)**

6. What is the amount of penalty, if any, which would be leviable on M/s Gamma Ltd. for availing loan in cash from various vendors?
- A. Penalty of ₹ 3,20,500 under section 271D
  - B. Penalty of ₹ 3,40,000 under section 271E
  - C. Penalty of ₹ 3,40,000 under section 271D
  - D. Penalty of ₹ 3,19,500 under section 271E
- (2 Marks)**
7. Assuming that the underreporting of income is not on account of misreporting and none of the additions or disallowances made in assessment qualifies under section 270A(6), penalty leviable on M/s. Gamma Ltd. under section 270A at the time of reassessment u/s 147 would be?
- A. ₹ 93,600
  - B. ₹ 62,400
  - C. ₹ 1,56,000
  - D. ₹ 1,40,400
- (2 Marks)**

**Case Scenario - II**

Madhav, a non-resident Indian aged 45 years, furnishes following particulars of income earned by him in India during the previous year 2023-24:

- (i) Short term capital gain (computed) on sale of equity shares of M/s PQ Ltd., an Indian company ₹ 2,00,000. These shares were purchased in convertible foreign exchange on 01.06.2023 and sold on 31.01.2024. He invested whole of the sale proceeds ₹ 5,00,000 in the shares of M/s RS Ltd., an Indian company on 01.02.2024.
- (ii) Long term capital gain on sale of equity shares of M/s AB Ltd., an Indian company for ₹ 3,50,000 (computed). These shares were purchased in convertible foreign exchange on 01.10.2020 and sold on 15.10.2023 for ₹ 7,00,000. Out of the sale proceeds, he further purchased the shares of M/s X Ltd., an Indian company for ₹ 5,00,000 on 31.03.2024.
- (iii) Dividend received (gross) from M/s PQ Ltd. and M/s AB Ltd. ₹ 80,000. Assume that he does not opt for section 115BAC and STT has been paid on purchase and sale of the above shares.

From the information given above, choose the most appropriate answer to the question no.8 to 11-

8. What is the tax liability of Madhav for the assessment year 2024-25 under the provisions of Chapter XII-A?
- A. ₹ 58,240  
B. ₹ 16,640  
C. ₹ 47,840  
D. ₹ 39,520 **(2 Marks)**
9. What is the tax liability of Madhav in respect of these incomes for the assessment year 2024-25 if he opts out of the provisions of Chapter XII-A assuming that his other income exceeds basic exemption limit?
- A. ₹ 65,520  
B. ₹ 73,840  
C. ₹ 57,200  
D. ₹ 47,840 **(2 Marks)**
10. What is the total capital gains chargeable to tax in the hands of Madhav for the assessment year 2024-25 under the provisions of Chapter XII-A?
- A. ₹ 1,00,000  
B. ₹ 2,00,000  
C. ₹ 3,00,000  
D. NIL **(2 Marks)**
11. What is the tax on dividend income in the hands of Madhav for the assessment year 2024-25 if he opts out of the provisions of Chapter XII-A? Ignore surcharge and cess.
- A. ₹ 12,000 u/s 115E  
B. ₹ 8,000 u/s 115A  
C. ₹ 16,000 u/s 115A  
D. As per the applicable slab rate **(2 Marks)**

**Case Scenario - III**

*BCD Realty Trust is a business trust registered under SEBI (Real Estate Investment Trusts) Regulations, 2014. Details of its income for the previous year ended 31 March, 2024 are as follows:*

- (i) Rental income of ₹ 5 crores from directly owned real estate assets.*
- (ii) Short term capital gain of ₹ 3.5 crore on sale of listed shares of Rama Ltd. an Indian company in which BCD realty trust holds controlling interest through holding 60% of the shareholding of Rama Ltd.*
- (iii) Short term capital gain of ₹ 1 crore on sale of development properties.*
- (iv) Dividend of ₹ 4.5 crore from Rama Ltd.*

*Miscellaneous Information:*

*BCD Realty Trust has distributed ₹ 12 crores to its resident and non-resident unit holders in the previous year 2023-24.*

*Based on the above facts, choose the most appropriate answer to question no. 12 to 15 below for the assessment year 2024-25:*

*12. In case of distribution of rental income component to its resident unit holders, BCD Realty Trust is liable to deduct tax at source at the rate of*

- A. 10% under section 194I*
- B. 10% under section 194LBA*
- C. 30% under section 194LBA*
- D. 5% under section 194LBA*

**(2 Marks)**

*13. Determine the tax liability in the hands of BCD Realty Trust for short-term capital gain of ₹ 3.5 crore on sale of listed shares of Rama Ltd. and short-term capital gain of ₹ 1 crore on sale of development properties.*

- A. Short-term capital gain on sale of listed shares is taxable @ 15% and short-term capital gain on sale of development properties is taxable at maximum marginal rate*
- B. Short-term capital gain on sale of listed shares is taxable at maximum marginal rate and short-term capital gain on sale of development properties is taxable @15%*

- C. Both the short-term capital gains are taxable at maximum marginal rate
- D. Both the short-term capital gains are taxable @ 15% **(2 Marks)**
14. Which statement is correct regarding tax liability in the hands of BCD Realty Trust and its unit holders in respect of Rental income of ₹ 5 crores from directly owned real estate assets:
- A. Exempt in the hands of BCD Realty Trust and unit holders both u/s 10(23FCA).
- B. Taxable in the hands of BCD Realty Trust and unit holders u/s 115UA(3).
- C. Exempt in the hands of BCD Realty Trust u/s 10(23FCA) and taxable in the hands of unit holders u/s 115UA(3).
- D. Taxable in the hands of BCD Realty Trust u/s 115UA(3) and exempt in the hands of unit holders u/s 10(23FCA). **(2 Marks)**
15. What is the tax liability in the hand of non-resident unit holders in respect of dividend component distributed to them if Rama Ltd. opts to pay tax as per section 115BAA?
- A. No tax liability
- B. At the rate of 10%
- C. At slab rates
- D. At the rate of 20% **(2 Marks)**

**ANSWER KEYS**

MCQ No.	Correct Option
1.	(B)
2.	(B)
3.	(B)
4.	(B)
5.	(D)
6.	(A)
7.	(A)

8.	(C)
9.	(B)
10.	(B)
11.	(C)
12.	(B)
13.	(A)
14.	(C)
15.	(B) or (D)

### Part – II Descriptive Questions

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 2024-25, unless stated otherwise in the question.

#### Question 1

- (a) Kansal Cements Ltd., a resident company set up in the year 2010 is engaged in the manufacture of cement. Its Statement of Profit and Loss (from cement business) for the financial year ended 31<sup>st</sup> March, 2024 shows a net profit of ₹ 75 Lakhs after debiting/crediting the following items:
- Depreciation as per the Companies Act ₹ 6 lakhs.
  - The assessee company received a dividend of ₹ 5,00,000 from Arnold Ltd., a foreign company. It has incurred interest expense of ₹ 1,50,000 towards borrowed funds for the purpose of investing in the shares of Arnold Ltd.
  - It contributed ₹ 5,00,000 to the State Housing Board towards construction of tenements for the company's workers which constituted 25% of the cost of construction and the assessee could use these for 15 years. Ownership of such tenements remains with the State Housing Board.



- (iv) A creditor whose amount of ₹ 20 lakhs was outstanding for 10 years, has been settled for ₹ 15 lakhs on 01.03.2024 based on compromise settlement. The amount waived has been credited to the statement of profit and loss.
- (v) Upfront discounted interest paid during the year to the debenture-holders ₹ 5 lakhs. Debentures were issued for a period of 5 years. Apart from half yearly periodical interest, debenture holders were paid one-time upfront discounted interest payment. One fifth of the interest paid has been debited to the statement of profit and loss.

**Additional Information:**

- A. During the previous year 2023-24, the assessee company started a business of developing and building rental housing projects eligible under section 80IBA. Net profit from such business amounted to ₹ 20 lakhs during the year. Assessee also earned an income of ₹ 10 lakhs for constructing a housing project eligible under the above said section which it executed as a work contract, received from X Constructions Ltd. These projects were approved/ notified during the F.Y. 2021-22.
- B. The assessee company has purchased a land on 01.04.2010 for ₹ 5 lakhs which was compulsorily acquired by the Government on 31.03.2018. Original compensation awarded ₹ 10 lakhs was received on 30.06.2018. The assessee company has filed a suit for the additional compensation in the High Court and was awarded an additional compensation of ₹ 8 lakhs on 31.05.2023.
- C. Depreciation as per the Income-tax Act, 1961 ₹ 4.5 lakhs
- D. The assessee company has purchased machinery worth ₹ 20 lakhs on May 1, 2020 and insured it against fire, flood, earthquake etc. The insurance policy contained a reinstatement clause requiring the insurance company to pay the value of machinery, as on the date of loss due to fire, flood, earthquake etc. A fire broke out in September, 2023 causing total damage to the machinery. The company received a sum of ₹ 22 lakhs from the insurance company on 01.03.2024 (Rate of depreciation is 15% and assume that the machinery was the only asset in the block)

E. The company declares and distributes a dividend of ₹ 6,00,000 to its shareholders on 31.08.2024

Compute the total income and tax liability of Kansal Cements Ltd for the assessment year 2024-25 under the regular provision by analyzing and applying the relevant provisions of Income-tax Law, assuming that the assessee has not opted for any concessional rates under special provisions of the Income-tax Act, 1961. Briefly explain the reasons for treatment of each item. Total turnover of the company for the previous year 2021-22 was ₹ 450 crores.

Would it be beneficial for Kansal Cements Ltd. to opt for concessional tax rates in previous year 2023-24 instead of paying tax under regular provisions of the Income-tax Act 1961? Examine. **(14 Marks)**

### Answer

#### Computation of Total Income and tax liability of Kansal Cements Ltd. for the A.Y. 2024-25 under regular provisions of the Act

	Particulars	Amount (in ₹)	
I	<b>Profits and gains of business or profession</b>		
	Net profit as per statement of profit and loss from Cement business		75,00,000
	<b>Add: Items debited but to be considered separately or to be disallowed</b>		
	(i) Depreciation as per the Companies Act	6,00,000	
	(ii) Interest expenditure towards borrowed funds for investing in shares	1,50,000	
	[Allowability or otherwise of interest expenditure on earning dividend has to be considered separately under the head "Income from Other Sources". Since the amount has been debited to the statement of profit and loss, it has to be added back.]		

<b>(iii) Expenditure towards construction of tenements for company's workers</b>	Nil	
[As Kansal Cements Ltd. acquired no ownership rights in the tenements and remained the property of the Housing Board, the expenditure of ₹ 5,00,000 was incurred wholly and exclusively for the welfare of the employees and, therefore, constituted legitimate business expenditure <sup>1</sup> . Since the same has been debited to the statement of profit and loss, no further adjustment is required]		
<b>Less: Items credited but not taxable or chargeable to tax under another head</b>		
<b>(ii) Dividend received from foreign company</b>	5,00,000	
[Dividend received from foreign company is taxable under the head "Income from Other Sources". Since the same has been credited to the statement of profit and loss, the same has to be deducted while computing business income]		
<b>(iv) Waiver of amount by creditor<sup>2</sup></b>	Nil	
[Amount waived by the trade creditor is deemed income under section 41(1) as there is a benefit by way of remission or cessation of trading liability. Since the same has been credited to the		
		<u>7,50,000</u>
		82,50,000

<sup>1</sup> CIT v. Bombay Dyeing and Manufacturing Co. Ltd. [1996] 219 ITR 521 (SC)

<sup>2</sup> Assuming as trade creditors

statement of profit and loss, no further adjustment is required.]		
<b>(v) Upfront discounted interest to debenture holders</b>	<u>4,00,000</u>	
[Since the liability of Kansal Cements Ltd. with respect to upfront interest payment had arisen this year, it would be eligible to claim the entire amount of ₹ 5 lakhs of interest paid as deduction <sup>3</sup> under section 36(1)(iii). As only 1/5th of the interest is debited to the statement of profit and loss, remaining 4/5th also has to be reduced]		<u>9,00,000</u>
		73,50,000
<b>Less:</b> Depreciation as per the Income-tax Act, 1961		<u>4,50,000</u>
		69,00,000
<b>Profit from business of developing and building rental housing projects</b>		
Net profit from business of developing and building rental housing projects	20,00,000	
Income from housing project executed as a work contract	<u>10,00,000</u>	
		<u>30,00,000</u>
		<b>99,00,000</b>
<b>II Capital Gains</b>		
<b>Long term capital gain</b> on compulsory acquisition of land		
Full value of consideration	8,00,000	
[Additional compensation		

<sup>3</sup> *Taparia Tools Ltd. v. JCIT (2015) 372 ITR 605 (SC)*

pursuant to order of the High Court]			
Less: Cost of acquisition	<u>Nil</u>	8,00,000	
<b>Short term capital gain</b> on damage of machinery due to fire			
Full value of consideration [Insurance compensation]	22,00,000		
Less: WDV as on 1.4.2023	<u>9,39,250</u>	<u>12,60,750</u>	20,60,750
<b>Computation of WDV as on 1.4.2023</b>			
Actual Cost as on 1.5.2020	20,00,000		
Less: Depreciation for P.Y. 2020-21 [15%]	3,00,000		
Less: Additional Dep.@ 20%	<u>4,00,000</u>		
WDV	13,00,000		
Less: Depreciation for P.Y. 2021-22 [15%]	<u>1,95,000</u>		
WDV	11,05,000		
Less: Depreciation for P.Y. 2022-23 [15%]	<u>1,65,750</u>		
WDV as on 01.04.2023	<b>9,39,250</b>		
<b>III Income from Other Sources</b>			
Dividend received from foreign company		5,00,000	
Less: Interest expenditure of ₹ 1,50,000 allowed upto 20% of dividend		<u>1,00,000</u>	<u>4,00,000</u>
<b>Gross Total Income</b>			1,23,60,750
<b>Less: Deduction under Chapter VI-A</b>			
Under section 80-IAB		20,00,000	
[100% of profits from business of			

developing and building rental housing projects. No deduction is allowed in respect of income from housing project executed as a work contractor]		
Under section 80M		<u>4,00,000</u>
[Deduction in respect of inter-corporate dividend would be lower of dividend received included in the Gross Total Income (₹ 4 lakh) and dividend distributed on or before the due date (₹ 6 lakhs)]		
<i>Note: On standalone reading of the provisions of section 80M, it is possible to take a view that deduction u/s 80M would be ₹ 5 lakhs, being the lower of dividend received of ₹ 5 lakhs and dividend distributed on or before the due date of ₹ 6 lakhs. However, the amount of dividend included in the gross total income alone be considered as the amount of dividend received by the company for the purpose of deduction u/s 80M.</i>		<u>24,00,000</u>
<b>Total Income</b>		<b><u>99,60,750</u></b>
<b>Computation of tax liability</b>		
Tax on long term capital gains of ₹ 8,00,000 @ 20%	1,60,000	
Tax on other income of ₹ 91,60,750 @ 30%, since the turnover of the company for the previous year 2021-22 exceeds ₹ 400 crores		<u>27,48,225</u>
		29,08,225
Add: Health and education cess @4%		<u>1,16,329</u>
<b>Tax liability</b>		<b><u>30,24,554</u></b>
<b>Tax liability (Rounded off)</b>		<b><u>30,24,550</u></b>

**Computation of Total Income and tax liability of Kansal Cements Ltd.  
for the A.Y. 2024-25 under concessional regime u/s 115BAA**

Particulars	Amount (in ₹)	
<b>Total Income under regular provisions of the Act</b>		99,60,750
<b>Add: Deduction under Chapter VI-A</b>		
Under section 80-IAB [Not allowable u/s 115BAA]	20,00,000	
Under section 80M [Allowed as per concessional tax regime u/s 115BAA]	<u>Nil</u>	<u>20,00,000</u>
<b>Total Income as per section 115BAA</b>		<b><u>1,19,60,750</u></b>
<b>Computation of tax liability</b>		
Tax on long term capital gains of ₹ 8,00,000 @20%	1,60,000	
Tax on other income of ₹ 1,11,60,750 @ 22%	<u>24,55,365</u>	
		26,15,365
Add: Surcharge @ 10%		<u>2,61,537</u>
		28,76,902
Add: Health and education cess @ 4%		<u>1,15,078</u>
<b>Tax liability</b>		<b><u>29,91,980</u></b>
<b>Tax liability (Rounded off)</b>		<b><u>29,91,980</u></b>

Since the tax liability of Kansal Cements Ltd. computed under section 115BAA is lower than the tax liability computed under regular provisions of the Act, it is beneficial for Kansal Cements Ltd. to opt for the special provisions under section 115BAA for A.Y.2024-25. Concessional tax regime under section 115BAA would be beneficial to Kansal Cements Ltd. even if it is assumed that the MAT liability is higher or lower than the tax liability computed under regular provisions of the Act. Such an option, once exercised, would apply to subsequent assessment years. Further, once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

## Questions 2

- (a) Salsy Limited has two units one engaged in manufacture of textile goods and the other involved in manufacturing of chemicals. As a restructuring drive, the company sold its chemical unit as a going concern by way of slump sale for ₹ 242 lakhs on 01.10.2023.

The balance sheet of Salsy limited as on 01 October 2023, being the date on which chemical unit has been transferred, is given here under –

**Balance Sheet as on 1.10.2023**

<b>Liabilities</b>	<b>₹</b>	<b>Assets</b>	<b>₹</b>
Paid up Share Capital	2,50,00,000	<b>Land</b>	
		Textile Unit	60,00,000
		Chemical Unit	70,00,000
General Reserve	1,35,00,000	<b>Building</b>	
Share Premium	60,00,000	Textile Unit	90,00,000
Revaluation reserve	20,00,000	Chemical Unit	70,00,000
<b>Trade Creditors</b>		<b>Machinery</b>	
Textile Unit	90,00,000	Textile Unit	40,00,000
Chemical unit	47,00,000	Chemical unit	52,00,000
		<b>Investment in Equity Share (1,00,000) shares of ABC Ltd, a listed company at ₹ 35 per share</b>	
		Chemical Unit	35,00,000
		<b>Inventories</b>	
		Textile Unit	82,00,000
		Chemical unit	60,00,000
		<b>Licenses and Franchises</b>	
		Textile Unit	20,00,000



		Chemical unit	23,00,000
	6,02,00,000		6,02,00,000

The following information have been furnished by the management:

- (i) The Chemical unit was established in July, 2020 during the COVID period.
- (ii) Land of Chemical unit includes revaluation reserve of ₹ 20 lacs. The Land was purchased at ₹ 50 lakhs in May 2020 and revalued at ₹ 70 lakhs as on October 1, 2023. The stamp duty value on 01.10.2023 is ₹ 62 lakhs.
- (iii) The Building and Machinery have been shown in the balance sheet at its written down value as per section 43(6)(c) of the Income-tax Act, 1961.
- (iv) License and Franchises were acquired on 01.06.2022 and shown in the balance sheet at its original purchase price.
- (v) Equity shares were acquired by the company through National stock exchange on 01.04.2021 and value recorded for shares of ABC Limited as on 01.10.2023 at NSE is ₹ 42 per share.

You are required to Compute the Taxable capital gain to Salsy Limited for A.Y. 2024-25. **(8 Marks)**

- (b) The net result of the business carried on to a branch of US based foreign company in India for the year ended 31.03.2024 was a loss of ₹ 28 lakhs after charge of the following expenses -
  - (i) Depreciation for the current financial year of ₹ 35 lakhs.
  - (ii) Unabsorbed depreciation for previous financial year of ₹ 18 lakhs.
  - (iii) Short term capital loss of ₹ 1.5 lakhs on sale of shares of an Indian company received in US.
  - (iv) Expenditure incurred for payment in respect of voluntary retirement scheme ₹ 12 lakhs.
  - (v) Speculative Business loss brought forward for A.Y. 2022-23 of ₹ 17 lakhs.
  - (vi) Deductions under Chapter VI-A of 29 ₹ lakhs.
  - (vii) Head Office expenses of ₹ 165 lakhs allocated to the branch.

The assessable adjusted total income of the assessee for the three immediately preceding assessment years was:

Assessment year	₹ (in lakhs)
2023-24	600
2022-23	450
2021-22	500

You are required to compute income to be declared by the branch in its return for the assessment year 2004-25. **(6 Marks)**

**Answer**

**(a) (i) Computation of Taxable Capital gain in the hands of Salsy Limited for A.Y.2024-25**

Particulars	₹
Full value of consideration [ <b>See Note 1 below</b> ]	2,62,00,000
Less: Net worth [ <b>See Note 2 below</b> ]	<u>2,37,25,000</u>
<b>Long-term capital gain</b> [Since the Unit is held for more than 36 months]	<b><u>24,75,000</u></b>
No indexation benefit is allowed in slump sale.	
<b>Note 1: Computation of Full value of consideration</b>	
Fair market value of the capital assets transferred by way of slump sale [ <b>FMV1</b> ]	
Land, being an immovable property [stamp duty value on 1.10.2023, being the date of slump sale]	62,00,000
Building, being an immovable property [Assuming the stamp duty value on 1.10.2023, being the date of slump sale is the same as the book value appearing in the books of accounts]	70,00,000
Machinery [Book value as appearing in the books of accounts]	52,00,000
Investment in listed equity shares of ABC Limited [Fair market value as on 1.10.23] [1,00,000 x 42]	42,00,000
Inventories [Book value as appearing in the books of accounts]	60,00,000

Licenses and Franchises [Book value as appearing in the books of accounts]		<u><b>23,00,000</b></u>
		3,09,00,000
<i>Less:</i> Liabilities of Chemical Unit – Trade Creditors		<u>47,00,000</u>
Fair market value of the capital assets transferred by way of slump sale <b>[FMV1]</b>		<b>2,62,00,000</b>
Fair market value of the consideration received or accruing as a result of transfer by way of slump sale [value of the monetary consideration received] <b>[FMV2]</b>		2,42,00,000
<b>Full value of consideration [Higher of FMV1 or FMV2]</b>		2,62,00,000
<b>Note 2 – Computation of Net worth</b>		
Land (excluding ₹ 20 lakhs on account of revaluation)		50,00,000
Building		70,00,000
Machinery		52,00,000
Investment in Equity Shares of ABC Ltd.		35,00,000
Inventories		60,00,000
Licenses and Franchises		<u>17,25,000</u>
Cost as on 1.6.2022	23,00,000	
<i>Less:</i> Depreciation @ 25% for Financial Year 2022-23	<u>5,75,000</u>	
WDV as on 1.4.2023	17,25,000	
Total assets		2,84,25,000
<i>Less:</i> Trade Creditors		<u>47,00,000</u>
<b>Net worth</b>		<b>2,37,25,000</b>

**(b) Computation of income to be declared by the branch in its return of income for A.Y.2024-25**

Particulars		₹
Loss of the branch		(28,00,000)
<i>Add:</i> Short-term capital loss [allowed	1,50,000	

	to be set-off only against capital gains]		
	Expenditure on Voluntary Retirement Scheme [Only 1/5 is allowable as deduction. Thus, 4/5 <sup>th</sup> will be added back]	9,60,000	
	Brought forward speculative business loss [Allowed to be set-off only against speculative business]	17,00,000	
	Head office expenditure debited to profit and loss	<u>1,65,00,000</u>	<u>1,93,10,000</u>
			1,65,10,000
Less:	Head office expenses allowable u/s 44C [ <b>Refer note below</b> ]		<u>10,60,500</u>
	Income to be declared by the branch		<b><u>1,54,49,500</u></b>
<b>Note - Computation of Head Office expenses allowable u/s 44C</b>			
Head office expenses allowable u/s 44C = ₹ 10,60,500			
Being the lower of -			
(i) 5% of ₹ 2,12,10,000 (adjusted total income) = ₹10,60,500			
<b>(ii)</b> Actual Head Office expenses allocated to the branch= ₹ 1,65,00,000			
<b>Computation of Adjusted Total Income</b>			
	<b>Particulars</b>	<b>₹</b>	<b>₹</b>
	Loss of the branch		(28,00,000)
<b>Add:</b>	Current year depreciation	NIL	
	Unabsorbed depreciation	18,00,000	
	Short-term capital loss	1,50,000	
	Expenditure on Voluntary Retirement Scheme [Only 1/5 is allowable as deduction. Thus,	9,60,000	

4/5 <sup>th</sup> will be added back]		
Brought forward speculative business loss	17,00,000	
Deductions under Chapter VI-A	29,00,000	
Head office expenditure debited to profit and loss	<u>1,65,00,000</u>	
		<u>2,40,10,000</u>
<b>Adjusted total income</b>		<b><u>2,12,10,000</u></b>
<b>Note</b> – Depreciation for the current financial year is not required to be added back for computing adjusted total income.		

**Question 3**

(a) Examine each of the following independent cases of charitable trust/ institutions based on the relevant provisions of the Income-tax Act and judicial pronouncements for the assessment year 2024-25:

(i) M/s MPL, an electoral trust incorporated on 1st April 2023, provides following information for the previous year 2023-24.

Total voluntary contributions received ₹ 600 lakhs. It spends ₹ 5 lakhs on management of its affairs.

In light of the provisions of section 13B of the Income-tax Act and rule 17CA notified by the Central Government in this context give answer of following questions.

What is the amount of surplus that can be distributed by the electoral trust to a registered political party assuming all other conditions as provided under the Act are satisfied?

What will be your answer if out of the total voluntary contributions of ₹ 600 lakhs, ₹ 100 lakhs received from individuals who are not citizen of India? **(4 Marks)**

(ii) Astha Foundation is a not for profit trust that runs a secondary school and a hospital. The trust had total receipts of ₹ 1.2 crores from school and ₹ 4.2 crores from hospital for the assessment year 2024-25. Can the trust claim exemption under section 10(23C)(iiiad) and section 10(23c)(iiiiae) for assessment year 2024-25? **(2 Marks)**

- (iii) *Care for All Foundation is claiming exemption under section 10(23C)(vi). On 15.11.2023 it gets notified under section 10(46). The foundation intends to know whether it can enjoy the benefits of both sections in section 10(46) and section 10(23C)(vi) simultaneously. (2 Marks)*
- (b) *Mr. Ashok, aged 66 years, a resident individual furnishes the following particulars of income earned by him in India and Country N for the assessment year 2024-25:*
- (i) *Taxable income from a sole proprietary concern in Mumbai ₹ 8,00,000.*
- (ii) *Income from Country N with which India does not have any Double Taxation Avoidance Agreement:*
- (A) *Business income ₹ 9,50,000.*
- (B) *Gift in foreign currency from a friend ₹ 65,000.*
- (C) *Dividend (gross) (taxed in country N) ₹ 1,40,000.*
- (D) *Business loss of assessment year 2020-21 in Country N ₹ 50,000. The domestic tax laws of Country N do not permit set off of business loss against any income.*
- (E) *Country N taxed dividend income at the rate of 10% and all other income at the rate of 20%.*
- (iii) *Mr. Ashok has deposited ₹ 1,50,000 in Public Provident fund and paid contribution to approved Pension fund of LIC ₹ 22,000.*
- Compute taxable income and net tax liability of Mr. Ashok in India for assessment year 2024-25. Assume that Mr. Ashok opts to pay tax under default tax regime provided under section 115BAC(IA). (6 Marks)*

**Answer**

- (a) (i) As per section 13B, any voluntary contribution received by an electoral trust would be exempt during the previous year, if such electoral trust –
- distributes to the eligible political parties during the said previous year, 95% of the total contributions received during the financial year along with the surplus, if any, brought forward from earlier previous year; and

- functions in accordance with the rules (Rule 17CA) made by the Central Government.

In the present case, M/s MPL, an electoral trust incorporated in the previous year 2023-24, received voluntary contributions of ₹ 600 lakhs. It spent ₹ 5 lakhs for the purpose of managing its affairs.

As per rule 17CA, since M/s MPL, an electoral trust incorporated in the P.Y. 2023-24, it is eligible to spend ₹ 5 lakhs, being ₹ 30 lakhs i.e., 5% of total contributions of ₹ 600 lakhs subject to the limit of ₹ 5 lakhs.

Accordingly, distributable contribution for the P.Y. 2023-24 would be ₹ 595 lakhs [i.e., ₹ 600 lakhs less ₹ 5 lakhs]. In such a case, M/s MPL can distribute ₹ 595 lakhs to a registered political party as the same exceeds ₹ 570 lakhs, being 95% of total contributions received of ₹ 600 lakhs.

Rule 17CA provides that the electoral trust shall not accept contributions, *inter alia*, from an individual who is not a citizen of India.

If M/s MPL received ₹ 100 Lakhs as contribution from individuals who are not citizen of India, it has violated the conditions mentioned in Rule 17CA. In such case, M/s MPL, an electoral trust, would not be eligible for exemption under section 13B in respect of entire contribution.

Moreover, the CBDT may withdraw the approval after giving an opportunity of being heard and record the reasons in writing for the withdrawal of approval.

- (ii) No, Astha Foundation trust cannot claim exemption under section 10(23C)(iiiad) and section 10(23C)(iii ae), since the aggregate annual receipt of ₹ 5.4 crores (₹ 1.2 crores from school and ₹ 4.2 crores from hospital) exceeds the aggregate threshold of ₹ 5 crores though the individual receipts from school and hospital have not exceeded ₹ 5 crores.
- (iii) Where a trust or institution or fund is notified under section 10(46), the approval or provisional approval granted under first regime under section 10(23C)(vi) would become inoperative from the date of such notification issued under section 10(46).

Accordingly, in the present case, since approval granted under section 10(23C)(vi) would become inoperative from 15.11.2023, being the date of notification issued under section 10(46), Care for All Foundation cannot simultaneously enjoy the benefits of both sections i.e., 10(23C)(vi) and section 10(46).

**(b) Computation of taxable total income and net tax liability of Mr. Ashok for A.Y.2024-25 under the default tax regime under section 115BAC**

Particulars	₹	₹
<b>Profits and Gains of Business or Profession</b>		
Income from sole-proprietary concern in India	8,00,000	
Business Income in Country 'N'	<u>9,50,000</u>	
	17,50,000	
Less: Business loss of A.Y. 2020-21 in Country 'N'	<u>50,000</u>	
<b>Income from Other Sources</b>		
Gift received from a friend in Country 'N'	65,000	
Dividend in Country 'N'	<u>1,40,000</u>	<u>2,05,000</u>
<b>Gross Total Income</b>		19,05,000
Less: Deductions under Chapter VI-A [Not available under default tax regime]		<u>Nil</u>
<b>Total Income</b>		<b>19,05,000</b>
<b>Tax liability on ₹19,05,000</b>		
Tax on total income [30% of ₹ 4,05,000 + ₹ 1,50,000]	2,71,500	
Add: Health and Education cess@4%	<u>10,860</u>	2,82,360
Less: Deduction u/s 91 (See Working Note below)		<u>1,63,761</u>
<b>Net Tax Liability</b>		<b><u>1,18,599</u></b>
<b>Net Tax Liability (Rounded off)</b>		<b>1,18,600</b>



Working Note: Calculation of deduction under section 91		
<b>Average Rate of tax in Country N</b>		
- Tax @10% on dividend income of ₹ 1,40,000	14,000	
- Tax @20% on other income of ₹ 10,15,000 (Business income of ₹ 9,50,000 and gift of ₹ 65,000)	<u>2,03,000</u>	
<b>Total Tax Liability in Country N</b>		2,17,000
<b>Average Rate of tax in Country N</b> = $2,17,000/11,55,000 \times 100$		18.79%
<b>Indian Rate of tax</b> = $2,82,360/19,05,000 \times 100$		14.82%
<b>Doubly taxed income from Country N</b>		
Business income [9,50,000 – ₹ 50,000]	9,00,000	
Gift from a friend of ₹ 65,000	65,000	
Dividend Income	<u>1,40,000</u>	
Doubly taxed income		11,05,000
<b>Deduction u/s 91</b> = Lower of average rate of tax in Country N and Indian rate of tax rate of tax x Doubly taxed income = $[14.82\% \times ₹ 11,05,000]$		1,63,761

**Question 4**

(a) Discuss the relevant provisions of the Income-tax Act, 1961, with respect to collection/deduction of tax in the following situations:

(i) Mr. Bhavan, an individual purchased urban land on 12.07.2014 which was compulsory acquired by Maharashtra State Government on 10.04.2022. The compensation for acquisition was fixed at ₹ 2,40,000, which was paid to Mr. Bhuvan on 10.04.2023. Against the order of court, the compensation was enhanced by ₹ 50,000 and paid to Mr. Bhuvan on 10.12.2023. **(2 Marks)**

(ii) On 1<sup>st</sup> October, 2023. Mr. Aman makes payment of ₹ 9,00,000 towards cost of overseas tour programme package to Mr. Robert, a seller of an overseas tour programme package and an authorized dealer under the Liberalised Remittance Scheme of the RBI. **(3 Marks)**

Mr. Aman has not filed his return of income for the last two assessment years i.e., 2023-24 and 2022-23. Mr. Aman has total TCS of ₹ 51,000 in

A.Y. 2023-24 and ₹ 60,000 in A.Y. 2022-23 to his credit. Tax is collected and deposited before due date of filing return of income for both the assessment years. **(3 Marks)**

(iii) Dream 44 is an online gaming portal. Mr. Z is a user of this portal and he has a credit balance of ₹ 10,000 in his user account with Dream 44 as on 31.03.2023. He deposited ₹ 1,00,000 from his accumulated savings on 02.04.2023 to play online games. He earned ₹ 30,00,000 from online games during IPL season which started on April 4, 2023 and ended on May 31, 2023. During the previous year 2023-24, Mr. Z also earned Referral bonus of ₹ 50,000 from Dream 44 for referring new users on 31.03.2024.

Out of the above sum Mr. Z withdrew ₹ 25,00,000 on 01.02.2024 and kept the balance of ₹ 6,60,000 in user account on 31.03.2024 to utilise it in next year online games. **(3 Marks)**

(b) Surya Ltd., an Indian Company, is engaged in manufacturing activities by importing raw material from Sun Inc. of UK. Sun Inc. has a total loan of 1 million pounds from XYZ Bank of UK. Out of that, Surya Ltd. guarantees 20% of total borrowings in case of any default made by Sun Inc.

During the financial year 2023-24, Surya Ltd. imported goods for ₹ 60 crores from Sun Inc. Sun Inc. supplied similar raw materials to unrelated parties with a mark-up of 20%, whereas, for Surya Ltd. it provided a mark-up of 25%. Surya Ltd. was allowed to use the brand name of Sun Inc., without any payment and whereas the unrelated parties cannot use such brand name in India. The annual cost of brand value is ₹ 100 Lakhs. Surya Ltd. was allowed credit period of 2 months, whereas for the unrelated parties, Sun Inc. allowed only 1 month as credit period. The interest cost may be taken as 12% per annum and the purchases were uniform throughout the year.

The Assessing Officer referred the matter to Transfer Pricing Officer (TPO) for determination of Arm Length Price (ALP).

You are required to (i) Compute the ALP and the adjustments to be made to the income of Surya Ltd. (ii) What is the due date for Surya Ltd. for furnishing audit report u/s 92E? (iii) What amount of penalty is leviable on Surya Ltd., if it fails to furnish audit report u/s 92E? **(6 Marks)**

**Answer**

(a) (i) As per section 194LA, Maharashtra State Government is required to deduct tax at source @ 10% on the entire sum of ₹ 2,90,000 on 10.12.2023, being the date on which enhanced compensation of ₹ 50,000 is paid to Mr. Bhuvan on account of compulsory acquisition of urban land since aggregate amount of compensation including enhanced compensation exceeds ₹ 2,50,000 during the F.Y. 2023-24.

(ii) Mr. Robert, being a seller of an overseas tour programme package has to collect tax at source under section 206C(1G) from Mr. Aman on receiving the amount for purchase of package.

For the amount received on or after 1.10.2023, tax has to be collected at source @ 5% on ₹ 7 lakhs received, and @ 20% on ₹ 2 lakhs, being above ₹ 7 lakhs.

Since Mr. Aman has not filed his return of income for A.Y. 2023-24 and A.Y. 2022-23 and the TCS credit exceeds ₹ 50,000 for both A.Y. 2023-24 and A.Y. 2022-23, section 206CCA is invoked which provides, tax is required to be collected at source, in his case, at the higher of twice the rate specified under section 206C(1G) and 5%.

However, the higher rate of TCS leviable cannot exceed 20%.

Accordingly, Mr. Robert is required to collect tax @ 10% (twice of 5%) on ₹ 7 lakhs and @ 20% (40% twice of 20% but restricted to 20%) on ₹ 2 lakhs (₹ 9 lakhs – ₹ 7 lakhs).

(iii) As per section 194BA, on any income by way of winnings from any online game during the financial year, tax @ 30% is required to be deducted on the net winnings in the user account.

Since there is a withdrawal on 1.2.2024, Dream 44 is required to deduct tax at source at the time of such withdrawal on the net winnings comprised in such withdrawal, as well as on the remaining amount of net winnings in the user account at the end of the financial year.

Net winnings at the time of first withdrawal during the F.Y. i.e., on 1.2.2024 = ₹ 25,00,000, being amount withdrawn – (₹ 1,00,000, being non-taxable deposit made in the user account + ₹ 10,000, being opening balance) = ₹ 23,90,000.

Net winnings at the end of the financial year i.e., on 31.3.2024 = (₹ 25,00,000, being amount withdrawn + ₹ 6,60,000, being closing balance) – (₹ 1,00,000, being non-taxable deposit made in the user account + ₹ 10,000, being opening balance + ₹ 23,90,000, being net winnings comprised in the earlier withdrawal) = ₹ 6,60,000.

**(b) Computation of Arm's length price and adjustment to be made as per Comparable Uncontrolled Price Method**

Particulars	₹ in crores
Price of imported goods charged by Sun Inc. from Surya Ltd.	60.00
Less: Mark up earned @ 25% [₹ 60 crores x 25/125] from Surya Ltd.	<u>12.00</u>
	48.00
Add: Mark up earned in uncontrolled comparable transaction @ 20%	9.60
Add: Adjustment on account of brand value [Annual cost of brand value]	1.00
Add: Adjustment on account of cost of credit for 1 month [12% x 1/12 x 57.60]	<u>0.576</u>
<b>Arm's length price of raw material purchase</b>	<b>59.176</b>
Less: Price at which raw material was imported by Surya Ltd. from Sun Inc.	<u>60.000</u>
<b>Adjustment to be made to the income of Surya Ltd.</b>	<b><u>0.824</u></b>

Surya Ltd., an Indian company and Sun Inc. of UK, are deemed to be associated enterprises as per section 92A(2), since Surya Ltd. guarantees 10% or more of total borrowings of Sun Inc.

Further, the transaction of purchasing raw material falls within the meaning of "international transaction" under section 92B. Hence, transfer pricing provisions would be attracted in this case.

Surya Ltd. is required to furnish the audit report under section 92E on or before 31.10.2024, being the specified date i.e., date one month prior to the due date for furnishing the return of income under section 139(1) for the relevant assessment year.

If Surya Ltd. fails to furnish the audit report under section 92E, penalty of ₹ 1 lakh would be leviable.

### Question 5

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

(i) Mr. Balram Kumar, a jeweller was intercepted by Police personnel with 1 kg of gold ornaments at New Delhi on 17.01.2023. The case was referred to Income Tax Investigation wing by the Police and the gold ornaments were seized by the Income Tax Department. The registered valuer made the valuation of the gold ornaments amounting to ₹ 63.30 Lacs, to which the assessee did not raise any objection

During the assessment proceedings, the AO was not satisfied with the explanation given by the assessee and the AO made the additions of ₹ 63.30 lacs as unexplained jewellery u/s 69A in the hands of Mr. Balram Kumar and applied section 115BBE for applicability of tax alongwith Interest. As a result, a demand of tax of ₹ 49.37 lacs and interest of ₹ 12.35 Lacs were created against the assessee,

The assessee filed an appeal before the Commissioner of Income Tax Appeals, as per Law. The CIT(Appeals) allowed the appeal and the addition of ₹ 63.30 lacs was deleted by the CIT being satisfied with the nature and source of the ornaments found from the assessee.

The jurisdictional CIT contemplates to file an appeal before the ITAT against the order of CIT(Appeals). Can Jurisdictional CIT do so? Discuss while explaining the provisions of Income-tax Act and Rules.

(ii) Due to the nature, complexity and volume of the accounts of M/s. ABC Private Limited, during the assessment proceedings, the Assessing Officer issued the direction for inventory valuation under section 142(2A) of the Income-tax Act. The relevant approval has been taken by the AO and the company was given an opportunity of being heard as per law. The AO wants to appoint a Chartered Accountant in practice for the purpose. The AO fixed the fees for inventory valuation at ₹ 1,00,000 and asked the CA to raise the bill for valuation report directly to the company after completion of the valuation.

Is AO justified in doing so? What are the relevant provisions for Inventory valuation under section 142(2A)? Discuss in detail.

(iii) *M/s SBE Cellular Limited, a domestic company, had entered into franchisee agreement with various distributors for sale of its prepaid connections. Under these agreements, they sold startup kits and recharge vouchers at discounted prices to distributors, who in turn sold them to customers. The Assessing Officer while going through the TDS return filed by the company found that the company had paid commission on startup kits and recharge vouchers to 10 parties herein called "Franchisees" and though the company had deducted TDS on commission and deposited the same during the period from April 2023 to July 2023, such deduction of tax at source however was discontinued by the company treating such payment to the franchisee not as commission but discount which was outside the ambit of TDS under section 194H. The revenue contended that the company should deduct tax under section 194H on the amounts which, as per Revenue, is a commission payable to an agent by the company under the franchise agreement between the company and the franchisees.*

*However, as per M/s SBL Cellular Limited, neither are they paying a commission or brokerage to the franchisees/distributors, nor the franchisees/distributors are their agents. In the light of the latest Supreme Court rulings, discuss whether the contention of Revenue is correct or not?*

**(2 x 4 = 8 Marks)**

- (b) (i) *What do you understand by Automated Digital Services as per UN model? List out the services (at least 4) mentioned in paragraph 6?*
- (ii) *What is meant by Hybrid Mismatch Arrangement? What are the ways in which hybrid mismatch arrangements are used to achieve unintended double non-taxation or long-term tax deferral?*

**(3 + 3 = 6 Marks)**

### Answer

- (a) (i) As per section 253(2), the Principal Commissioner or Commissioner may, if he objects to any order passed by the Joint Commissioner (Appeals) or the Commissioner (Appeals) under section 250, direct the Assessing Officer to appeal to the Appellate Tribunal against such order.

However, the Departmental appeals are subjected to the monetary limits and other conditions specified by the CBDT for filing appeals

before Income Tax Appellate Tribunal, High Courts and SLPs/ appeals before Supreme Court.

The key points as per CBDT circulars in this regard are as under:

- Departmental Appeals shall not be filed before Appellate Tribunal in cases where the tax effect does not exceed the monetary limit of ₹ 50 lakhs.
- Tax would include surcharge and cess. However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute.

In the present case, tax of ₹ 49.37 lacs [78% of ₹ 63.30 lakhs] under section 115BBE and interest of ₹ 12.35 lakhs determined in respect of additions of unexplained jewellery under section 69A.

Since the tax effect excluding interest does not exceed ₹ 50 lakhs, the department cannot file appeal before the ITAT.

- (ii) As per section 142(2A), if at any stage of the proceedings, the Assessing Officer, having regard to the nature and complexity of the accounts, volume of the accounts etc. is of the opinion that it is necessary so to do, he may, with the previous approval of the Principal Chief Commissioner (PCC) or Chief Commissioner (CC) or the Principal Commissioner (PC) or Commissioner (C) get the inventory valued by a Cost Accountant and furnish a report of such inventory valuation. Opportunity of being heard is to be given to the assessee before directing to get the inventory valued.

For inventory valuation, Cost Accountant should be nominated by PCC or CC or PC or C of Income-tax. Further, the expenses of inventory valuation including remuneration of Cost Accountant shall be determined by the PCC or CC or PC or C of Income-tax in accordance with the prescribed guidelines, and not by the AO. The expenses so determined shall be paid by the Central Government.

In the present case, though AO has taken the relevant approval and the company was given opportunity of being heard, the Assessing Officer is not justified in appointing a Chartered Accountant in practice, fixing his fees himself and asking the CA to raise the bill to the company. For inventory valuation, a Cost Accountant nominated

by PCC or CC or PC or C can be appointed and expenses of inventory valuation including remuneration are also determined by these authorities. Such expenses shall be paid by the Central Government and not by the company.

- (iii) The obligation to deduct tax at source in terms of section 194H arises when the legal relationship of principal and agent is established. Agency is a triangular relationship between the principal, agent and the third party. The legal position of a distributor is generally regarded as different from that of an agent.

Section 194H fixes the liability to deduct tax at source on the 'person responsible to pay' and the liability to deduct tax at source arises when the income is credited or paid by the person responsible for paying. However, deduction of tax at source in terms of section 194H is not to be extended and widened in ambit to apply to true/genuine business transactions, where the assessee is not the person responsible for paying or crediting income.

In the present case, M/s SBL Cellular Limited, being an assessee,

- neither pays nor credits
- any income to the person with whom he has contracted.

M/s SBL Cellular Limited is not privy to the transactions between distributors/franchisees and third parties. It is, therefore, impossible for M/s SBL Cellular Limited to deduct tax at source and comply with section 194H, on the difference between the total/sum consideration received by the distributors/franchisees from third parties and the amount paid by the distributors/franchisees to them.

Thus, in the case on hand, section 194H is not applicable in the hands of M/s SBL Cellular Limited and it would not be under a legal obligation to deduct tax at source on the income/profit component in the payments received by the distributors/franchisees from the third parties/customers.

Accordingly, the contention of the Revenue that company should deduct tax under section 194H is not correct.



**Note** – The facts given in the question are similar to the facts in *Bharti Cellular Ltd. vs. ACIT* [2024] 462 ITR 247(SC). The above answer is based on the rationale of the Supreme Court ruling in the said case.

- (b) (i)** As per UN Model Convention, “Automated digital services” means any service provided on the Internet, or another electronic network, in either case requiring minimal human involvement from the service provider.

The term “Automated digital services” includes specially:

- (a) online advertising services;
- (b) supply of user data;
- (c) online search engines;
- (d) online intermediation platform services;
- (e) social media platforms;
- (f) digital content services;
- (g) online gaming;
- (h) cloud computing services; and
- (i) standardized online teaching services.

- (ii)** A hybrid mismatch is an arrangement that exploits a difference in the tax treatment of an entity or an instrument under the laws of two or more tax jurisdictions to achieve double non-taxation.

Hybrid mismatch arrangements are sometimes used to achieve unintended double non-taxation or long-term tax deferral in one or more of the following ways -

- Creation of two deductions for a single borrowal
- Generation of deductions without corresponding income inclusions
- Misuse of foreign tax credit
- Participation exemption regimes

**Question 6**

- (a) (i) *M/s. PQR Waste Management Pvt. Ltd., a domestic company, engaged in developing, operating and maintaining a solid waste management system filed its return of income for A.Y. 2021-22 on 30<sup>th</sup> September, 2022 claiming deduction under section 80-IA, on the basis of Form 10CCB issued by the chartered accountant. However, in August 2023, it came to the notice of the chartered accountant that the ten year period for which the company had been eligible to claim deduction had expired in A.Y.2020-21. The chartered accountant withdrew the audit report in Form 10CCB and advised the company to file a revised return u/s 139(5). The company, accordingly, filed a revised return withdrawing the claim under section 80-IA. The Assessing Officer completed the assessment on the basis of the revised return and issued the assessment order.*

*However, the department concluded that the concerned chartered accountant had issued Form 10CCB without ensuring that the ten year period had expired or not.*

*The chartered accountant contended that as soon as he came to know about the error, he withdrew his report in Form 10CCB and informed the assessee accordingly. Further, according to him, his report in Form 10CCB was neither the subject matter at the time of assessment nor at the time of penalty proceedings.*

*Can the chartered accountant be held guilty of professional misconduct for failure to obtain sufficient information and failure to exercise due diligence in discharging the professional responsibilities? Support your answer with relevant provisions of the Income-tax Law and the Chartered Accountant Act, 1949.*

**(6 Marks)**

- (ii) A. *The management of M/s. KKT Private limited, Chennai planned to acquire 5 JCB machines for business purposes. The total depreciation on such machines is around ₹ 30 lacs for one year. However, a choice is made by the management of the company by acquiring the machines on lease over outright purchase. The lease rentals are ₹ 36 lacs per annum. The company claims deduction for lease rentals. Would the lease rent payment, being higher than the depreciation, be disallowed as expense under GAAR provisions?*

B. Mr. Dhaval, aged 45 years, is making investment in Equity shares at recognised stock exchange through registered broker. During previous year 2023-24, he made a short term capital gain in Equity shares of ₹ 10,00,000 till 20.03.2024.

He was holding 1000 Equity shares of SPR Limited (purchased on 01.01.2024 at ₹ 500 per share). The market price of it was ₹ 200 per share on 31.03.2024. Mr. Dhaval sold all the shares of SPR Limited on 31.03.2024 and purchased the same quantity of these shares back on 01.04.2024. He did it so that his short-term capital gain may reduce by ₹ 3,00,000 for P.Y. 2023-24.

Is it a tax planning or tax evasion?

**(4 Marks)**

(b) M/s. ABC Limited, an Indian company makes an application to Board of Advance rulings in relation to the tax liability of M/s. Pinicer Inc, a non-resident arising out of a transaction which is proposed to be undertaken by ABC Limited with M/s. Pinicer Inc. The value of transactions entered into between both the parties is ₹ 250 crores.

As per section 245Q, how many copies of application need to be filed by the applicant with the Board and what would be the amount of fees to be accompanied with the application.

What is the remedy available to an applicant if the Board rejects its application? Also, state the time limit within which the applicant should exercise this remedy.

**(4 Marks)**

### Answer

(a) (i) Section 80-IA provides for deduction of 100% of the profits and gains derived from the business of, *inter alia*, developing, operating and maintaining a solid waste management system for 10 consecutive assessment years out of 20 years.

Section 80-IA(7) read with Rule 18BBB requires audit of accounts and furnishing of audit report in Form 10CCB on or before the prescribed time for claim of such deduction.

Form 10CCB is a declaration provided by the Chartered Accountant that in his opinion the enterprise satisfies the conditions stipulated in section 80-IA and the amount of deduction claimed thereunder is as per the provisions of the Income-tax Act, 1961 and meets the required conditions.

As per clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties.

With respect to Form 10CCB, the Chartered Accountant later came to know about the error that the period of ten years had expired in A.Y. 2020-21 and he withdrew his report in Form 10CCB and informed M/s. PQR Waste Management Pvt. Ltd.

Accordingly, the Chartered Accountant can be held "not guilty" of professional misconduct under clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 as he withdrew his report in Form 10CCB as soon as he came to know about the error and informed the company.

**Note** - In the facts of the question, M/s. PQR Waste Management Pvt. Ltd. filed its return of income for A.Y. 2021-22 on 30.9.2022 claiming deduction under section 80-IA. However, as per section 139, it is not permissible to file a return or a belated return of income for A.Y. 2021-22 beyond 31.12.2021. Moreover, as per section 80AC, no deduction, inter alia, under section 80-IA would be allowed to an assessee unless the assessee furnishes a return of income for that assessment year on or before the due date specified under section 139(1) i.e., 31.10.2021<sup>4</sup>. Further, date for revising the return of income is given after "August 2023", though a revised return for A.Y. 2021-22 could have been furnished upto 31.12.2021. Accordingly, the above solution has been given ignoring the return filing dates given in the question.

- (ii) **A.** GAAR provisions would not apply in this case as the assessee, M/s KKT Private Limited merely makes a selection of acquiring the machine on lease over outright purchase, out of the options available to him under the provisions of the Act for which he is eligible and satisfies the stipulated conditions, if any.

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<sup>4</sup> The due date for filing return of income for A.Y. 2021-22 was extended upto 15.3.2022 vide CBDT Circular No. 1/2022 dated 11.01.2022.

Even if choice of such option results in lower tax liability, the same is a result of tax planning.

- B.** Investment strategy adopted by the assessee to reduce its tax effect for a particular year is not a method of tax evasion.

Selling of shares of an Indian company at loss and setting off such loss against the short-term capital gain arising on sale of other listed shares is as per the provisions of law. It does not make any difference if the shares sold are purchased again in the next year. It would be considered as tax planning.

- (b)** As per section 245N(a) clause(ii), Advance ruling means a determination by the Authority 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.

Section 245Q(1) provides that an applicant desirous of obtaining an advance ruling may make an application stating the question on which the advance ruling is sought in the prescribed form and in the prescribed manner.

As per section 245Q(2), the application of advance ruling needs to be made in quadruplicate (*refer note below*) by the applicant i.e., M/s ABC Ltd.

Since the value of transaction between M/s ABC Ltd and M/s Pinicer Inc., in respect of which ruling is sought, exceeds ₹ 100 crores but does not exceed ₹ 300 crores, fees of ₹ 5 lakhs to be accompanied with the application.

As per section 245W(1), an applicant who is aggrieved by any order passed by the Board for Advance Rulings or the Assessing Officer, on the directions of the Principal Commissioner or Commissioner, 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 or order. However, where the High Court is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the 60 days period, it may grant further period of 30 days for filing such appeal.

**Note** – Rule 44E(1) provides that an application for obtaining an advance ruling under sub-section (1) of section 245Q shall be made in prescribed forms and shall be verified in the manner indicated therein. Rule 44E(2) prescribes that the application referred to in sub-rule (1), the verification appended thereto, the annexures to the said application and the statements and documents accompanying the annexures, shall be signed or digitally signed by a particular person and furnished through his/its registered e-mail address.

Since reference to the word “quadruplicate” still contained in the section 245Q(2) though rule prescribe to furnish application through e-mail. The main solution is given based on provisions contained in section 245Q(2). However, alternate solution that “the application of advance ruling needs to be made by the applicant i.e., M/s ABC Ltd. through its registered e-mail” is also possible in line with Rule 44E.