

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)

Division B – Descriptive Questions

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.

- (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

₹ 25 lakhs on 01-06-2023 which is charged as expenditure in the books of account.

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.

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).
- (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.

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.

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.

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 MAT credit of ₹ 20 lakhs of the assessment year 2015-16. The book profit (computed) for the assessment year 2024-25 is ₹ 520 lakhs.

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:

- 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)
- (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.
- (v) Unadjusted MAT credit u/s 115JAA ₹ 8.6 lakhs
- (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(xiiiib). **(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:

| Particulars | Amount (₹) |
|--|------------|
| <u>India</u> | |
| Pension from State Government | 4,80,000 |
| Short term capital gains on sale of plot | 3,20,000 |
| Deposit in PPF Account | 1,50,000 |
| Speculative Income | 1,56,000 |
| <u>Country M</u> | |
| Agricultural Income (gross) | 86,000 |
| Dividends from a company incorporated in Country M (gross) [Exempt in Country M] | 68,000 |
| <u>Country N</u> | |
| 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) | 21,000 |

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)**

3. (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.
- (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.
- (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)**

- (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.
- (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)**

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)**

- (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 |

| | | | |
|--|-----|------|-----|
| 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 |

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.

- (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)**

- (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?

- (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)**

- (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%

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)

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**PAPER – 4: DIRECT TAX LAWS & INTERNATIONAL TAXATION****SOLUTIONS****Division A – Multiple Choice Questions**

| MCQ No. | Most Appropriate Answer | MCQ No. | Most Appropriate Answer |
|---------|-------------------------|---------|-------------------------|
| 1. | (a) | 9. | (c) |
| 2. | (c) | 10. | (b) |
| 3. | (a) | 11. | (c) |
| 4. | (c) | 12. | (b) |
| 5. | (c) | 13. | (a) |
| 6. | (d) | 14. | (a) |
| 7. | (b) | 15. | (b) |
| 8. | (d) | | |

Division B – Descriptive Questions

1. Computation of total income and tax liability of Sheetal Ltd. for A.Y.2024-25 under the regular provisions of the Act

| Particulars | ₹ | ₹ |
|---|-------------|---|
| Profits and gains of business or profession | | |
| Net profit from Chemical manufacturing unit, Jaipur | 3,00,00,000 | |
| Add: Items debited but to be disallowed | | |
| - Royalty on which tax is not deducted | 3,00,000 | |
| [30% of ₹ 10 lakhs, being payment of royalty without deduction of tax would be disallowed under section 40(a)(ia) while computing the business income of A.Y.2024-25. However, since the payee has admitted the income, paid tax and filed his return of income before due date, the same would be allowable in the P.Y. 2024-25 relevant to A.Y.2025-26, being | | |

| | | |
|---|------------------|-------------|
| the year in which tax was deducted and paid] | | |
| - Employer's contribution to notified pension scheme | <u>11,20,000</u> | |
| [As per section 36(1)(iva), employer's contribution to the account of an employee under a Pension Scheme as referred to in section 80CCD would be allowed as deduction while computing business income only to the extent of 10% of salary and DA of the employee in the previous year. Therefore, ₹ 11,20,000 representing the excess 5% (i.e., ₹ 33,60,000 x 5%/15%) debited to profit and loss account has to be added back while computing business income] | | |
| | | 3,14,20,000 |
| Net profit from Furniture manufacturing unit, Pune | 90,00,000 | |
| Add: Items debited but to be disallowed or to be treated separately | | |
| - Trademark | 25,00,000 | |
| [Trademark is an intangible asset which is eligible for depreciation as per section 32. Since purchase cost of trademark has been debited to profit and loss account, the same has to be added back while computing business income] | | |
| - Interest on loan taken from a non-resident | NIL | |
| [No disallowance under section 40(a)(i) is attracted in respect of interest, since tax has been deducted during the P.Y. 2023-24 and remitted on or before the due date of filing of return of income for A.Y. 2024-25] | | |
| - Income-tax paid on non-monetary perquisites | <u>7,00,000</u> | |
| [As per section 40(a)(v), tax paid by employer on non-monetary perquisites is not allowable as deduction. Since the | | |

| | | |
|---|--------------------|-------------|
| same has been debited to profit and loss account, the same has to be added back while computing business income] | | |
| | 1,22,00,000 | |
| Less: Depreciation on trademark u/s 32 [₹ 25 lakhs x 25%] | <u>6,25,000</u> | |
| | | 1,15,75,000 |
| Net profit from Fertilizer producing unit, Narmada | 2,20,00,000 | |
| Add: Items debited but to be disallowed or to be treated separately | | |
| - Depreciation on building of ₹ 25 lakhs and on plant and machinery of ₹ 45 lakhs [As per section 35AD, no deduction would be allowed under any other section in any previous year in respect of capital expenditure referred to in section 35AD. Hence, depreciation on building and plant and machinery is not allowable as deduction and the same has to be added back.] | <u>70,00,000</u> | |
| | 2,90,00,000 | |
| Less: Deduction u/s 35AD [Since fertilizer unit commenced operation on or after 1.4.2011, it is a specified business eligible for 100% deduction u/s 35AD in respect of capital expenditure. However, deduction is not available on expenditure incurred on acquisition of land. Deduction u/s 35AD is ₹ 5.50 crores, being ₹ 2.50 crore on building and ₹ 3 crore on plant and machinery. Since it is more beneficial for the company to claim deduction u/s 35AD, it is assumed that the company has opted to claim such deduction.] | <u>5,50,00,000</u> | |
| As per section 73A, loss from the specified business u/s 35AD can be set-off only against profits from another specified business. Since there is no other specified business, such loss has to be carried forward to A.Y. 2025-26. | (2,60,00,000) | |
| Net profit from Warehousing facility for storage of edible oils at Delhi | 70,00,000 | |

| | | | |
|--|------------------|--------------------|---------------------------|
| Less: Depreciation u/s 32 | | | |
| On building of ₹ 3 crores @ 10% | 30,00,000 | | |
| On Plant & machinery of ₹ 5 crores @ 15% | <u>75,00,000</u> | <u>1,05,00,000</u> | |
| As per section 70(1), Business loss from one source is allowed to be set off from other source under the same head. | | | <u>(35,00,000)</u> |
| Net profit of Sheetal Ltd. | | | 3,94,95,000 |
| Add: Interest on share application money deposited in bank | | | <u>-</u> |
| [The interest on share application money deposited in a bank is not liable to be taxed, as the deposit was not for making additional income but to comply with the statutory requirement. The interest accrued on such deposit is merely incidental. The interest is eligible for set-off against share issue expenses. ¹] | | | |
| | | | 3,94,95,000 |
| Income from Other Sources | | | |
| Dividend from ABC Inc., a foreign company | | | <u>56,00,000</u> |
| Gross Total Income | | | 4,50,95,000 |
| Less: Deduction under section 80M [In respect of inter-corporate dividends to the extent of dividend distributed by it one month prior to the date for filing return of income u/s 139(1)] | | | <u>40,00,000</u> |
| Total Income | | | <u>4,10,95,000</u> |
| Computation of tax liability under the regular provisions of the Act | | | |
| Tax liability on ₹ 4,10,95,000 @ 25% [Since the turnover of the company for the previous year 2021-22 does not exceed ₹ 400 crore] | | | 1,02,73,750 |
| Add: Surcharge @ 7%, since the total income of the company > ₹ 1 crore but ≤ ₹ 10 crores | | | <u>7,19,163</u> |

¹ CIT v. Sree Rama Multi Tech Ltd. [2018] 403 ITR 426 (SC)

| | |
|-------------------------------------|---------------------------|
| | 1,09,92,913 |
| Add: Health and education cess @ 4% | <u>4,39,717</u> |
| Tax liability | <u>1,14,32,630</u> |

Computation of tax liability of Sheetal Ltd. for the A.Y. 2024-25 under section 115JB

| Particulars | ₹ |
|---|-------------------------|
| Minimum Alternate Tax @15% on book profit of ₹ 5,20,00,000 | 78,00,000 |
| Add: Surcharge@7%, since the book profit of the company > ₹ 1 crore but ≤ ₹ 10 crores | <u>5,46,000</u> |
| | 83,46,000 |
| Add: Health and Education cess@4% | <u>3,33,840</u> |
| Tax liability under section 115JB | <u>86,79,840</u> |

Since the regular income-tax liability is more than the minimum alternate tax liability, Sheetal Ltd. is liable to pay tax under normal provisions of the Act.

| | |
|--|-------------------------|
| Tax liability under the regular provisions of the Income-tax Act, 1961 | 1,14,32,630 |
| Less: MAT Credit of A.Y. 2015-16 | <u>20,00,000</u> |
| | <u>94,32,630</u> |

Note - Sheetal Ltd. is eligible for concessional rate under section 115BAA @25.168% i.e., tax@22% plus surcharge@10% plus HEC@4% subject to tax at the rates mentioned in the said sections in Chapter XII. In case Sheetal Ltd. opted for concessional rate of tax u/s 115BAA, it would not be eligible for deduction u/s 35AD in respect of fertilizer producing unit, however, it can claim depreciation u/s 32 on building and plant and machinery. In that case, its total income u/s 115BAA would be -

| Particulars | ₹ |
|--|--------------------|
| Profit from Chemical manufacturing unit, Jaipur | 3,14,20,000 |
| Profit from Furniture manufacturing unit, Pune | 1,15,75,000 |
| Profit from Fertilizer producing unit, Narmada | 2,20,00,000 |
| Profit from Warehousing facility for storage of edible oils at Delhi | <u>(35,00,000)</u> |
| | 6,14,95,000 |
| Dividend from ABC Inc., a foreign company | <u>56,00,000</u> |
| Gross Total Income | 6,70,95,000 |

| | |
|--|--------------------|
| Less: Deduction under section 80M [In respect of inter-corporate dividends to the extent of dividend distributed by it one month prior to the date for filing return of income u/s 139(1)] | <u>40,00,000</u> |
| Total Income | <u>6,30,95,000</u> |
| Tax liability under section 115BAA (22% + surcharge 10% + HEC 4%) = 25.168% on ₹ 6,30,95,000 | |
| Tax liability | 1,58,79,750 |
| Suggestion to Sheetal Ltd. Sheetal Ltd. should not opt for section 115BAA for assessment year 2024-25, since the tax liability under section 115BAA is higher under the regular provisions of the Act and section 115JB. | |

2. (a) **Tax treatment in the hands of ABC LLP on conversion of ABC Pvt. Ltd. into ABC LLP**

(i) **Business loss of ₹ 54 lakhs (relating to P.Y. 2019-20)**

As per section 72A(6A), the business loss of ₹ 54 lakhs of ABC Pvt. Ltd. would be deemed to be the loss of ABC LLP for P.Y. 2023-24 and it would be able to set off and carry forward such loss.

The carry forward is for 8 assessment years subsequent to the assessment year 2024-25.

However, if subsequent to the conversion, ABC LLP fails to fulfill any of the conditions mentioned in section 47(xiiib), the set-off of business loss so made in any previous year would be deemed to be the income chargeable to tax in the year in which such conditions are not complied with.

(ii) **Depreciation and written down value of assets**

In case of conversion of ABC Pvt. Ltd. into ABC LLP, depreciation on assets shall be apportioned between the company and LLP in the ratio of the number of days for which the assets were used by them.

Total Depreciation

Plant and machinery (15%) = ₹ 14 lakhs x 15% = ₹ 2,10,000

Building (10%) = ₹ 40 lakhs x 10% = ₹ 4,00,000

In the hands of ABC LLP (for 183 days)

Plant and machinery (15%) = ₹ 2,10,000 x 183/366 = ₹ 1,05,000

Building (10%) = ₹ 4,00,000 x 183/366 = ₹ 2,00,000

WDV in the hands of ABC LLP

As per section 43(6), the actual cost of the block of assets in the hands of ABC LLP shall be the WDV of the block of assets as in

the case of ABC Pvt. Ltd. on the date of conversion.

WDV of P & M (15%) = ₹ 14 lakhs – ₹ 1,05,000 (₹ 2,10,000 x 183/366)
= ₹ 12,95,000

WDV of Building (10%) = ₹ 40 lakhs – ₹ 2,00,000 (₹ 4,00,000 x 183/366) = ₹ 38,00,000

Actual cost of Plant and machinery on which deduction has been allowed or is allowable to the assessee under section 35AD would be 'NIL' in the hands of ABC Pvt. Ltd. and ABC LLP.

(iii) Cost of land acquired in 2012 at ₹ 80 lakhs (Market value ₹ 120 lakhs)

The cost of acquisition of land in the hands of ABC LLP would be the cost for which ABC Pvt. Ltd. acquired it, i.e., ₹ 80 lakhs.

(iv) Expenditure on voluntary retirement benefit of ₹ 28 lakhs

As per section 35DDA, in case of conversion of ABC Pvt. Ltd. into ABC LLP, deduction would be available to ABC LLP for the remaining periods from the previous year in which conversion took place. Since deduction of ₹ 5.6 lakhs each has been claimed by ABC Pvt Ltd. in P.Y. 2021-22 and P.Y. 2022-23, ABC LLP would be eligible for deduction of ₹ 5.6 lakhs each for the remaining three previous years, namely P.Y.2023-24, P.Y.2024-25 and P.Y.2025-26 under section 35DDA.

(v) Unadjusted MAT credit u/s 115JJAA of ₹ 8.6 lakhs

As per section 115JAA(7), in case of conversion of ABC Pvt. Ltd. into ABC LLP, the credit for MAT paid by ABC Pvt. Ltd. cannot be availed by the successor LLP i.e., ABC LLP.

(vi) Unabsorbed depreciation of ₹ 48 lakhs

As per section 72A(6A), ABC LLP would be able to carry forward and set-off the unabsorbed depreciation of ₹ 48 lakhs of ABC Pvt. Ltd.

However, if subsequent to the conversion, ABC LLP fails to fulfill any of the conditions mentioned in section 47(xiiib), the set-off of depreciation so made in any previous year would be deemed to be the income chargeable to tax in the year in which such conditions are not complied with.

- (b)** Since Mr. Mani Prasad 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 Country M and Country N would be taxable in India. He would, however, be entitled to deduction under section 91, since India does not have a DTAA with Country M and Country N, and all conditions under section 91 are satisfied.

Computation of total income of Mr. Mani Prasad for A.Y.2024-25

| Particulars | ₹ | ₹ |
|--|-----------------|-------------------------|
| Income under the head “Salaries” | | |
| Pension from State Government | 4,80,000 | |
| Less: Standard deduction u/s 16(ia) [Allowable as per section 115BAC] | <u>50,000</u> | |
| | | 4,30,000 |
| Income from House Property | | |
| Rental income from property in Country N ² | 3,20,000 | |
| Less: Municipal taxes | <u>21,000</u> | |
| | 2,99,000 | |
| Less: Deduction u/s 24(a)@30% | <u>89,700</u> | |
| | | 2,09,300 |
| Profits and Gains of Business or Profession | | |
| Speculative income in India | 1,56,000 | |
| Less: Set-off of business loss from proprietary business in Country N under section 70 | <u>1,16,000</u> | |
| | | 40,000 |
| Capital Gains | | |
| Short-term capital gains on sale of plot in India | | 3,20,000 |
| Income from Other Sources | | |
| Agricultural income from Country M [not exempt u/s 10(1), since it is earned from land situated outside India] | 86,000 | |
| Dividend from a company in Country M | <u>68,000</u> | |
| | | <u>1,54,000</u> |
| Gross Total Income | | 11,53,300 |
| Less: Deduction under Chapter VI-A [No deduction allowable as per section 115BAC] | - | <u>-</u> |
| Total Income | | <u>11,53,300</u> |

² In the absence of any information relating to fair rent, municipal value and standard rent, rental income is assumed to be the gross annual value.

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

| Particulars | | ₹ |
|--|---------------|----------------------|
| Tax on ₹ 11,53,300 | | |
| Upto ₹ 3,00,000 | Nil | |
| ₹ 3,00,001 to ₹ 6,00,000 @5% | 15,000 | |
| ₹ 6,00,001 to ₹ 9,00,000 @10% | 30,000 | |
| ₹ 9,00,001 to ₹ 11,53,300 @15% | <u>37,995</u> | |
| | | 82,995 |
| Add: Health and education cess@4% | | <u>3,320</u> |
| | | 86,315 |
| Less: Rebate under section 91 (See Working Note below) | | <u>11,101</u> |
| Net tax liability | | <u>75,214</u> |
| Net tax liability (Rounded off) | | <u>75,210</u> |
| Calculation of Rebate under section 91: | | ₹ |
| Average rate of tax in India [i.e., ₹ 86,315/ ₹ 11,53,300 x 100] = 7.484% | | |
| Doubly taxed income pertaining to Country M | | |
| Agricultural income | 86,000 | |
| Dividend from a company in Country M [Not includible, since exempt in Country M] | <u>-</u> | |
| | 86,000 | |
| Rebate under section 91 on ₹ 86,000 @7.484% [being the lower of average Indian tax rate (7.484%) and Country M tax rate (10%)] | | 6,436 |
| Doubly taxed income pertaining to Country N | | |
| Income from house property less business loss set-off against income chargeable to tax in India (₹ 2,09,300 – ₹ 1,16,000) | 93,300 | |
| Rebate under section 91 on ₹ 93,300 @5% [being the lower of average Indian tax rate (7.484%) and Country N tax rate (5%)] | | <u>4,665</u> |
| Total rebate under section 91 (Country M + Country N) | | <u>11,101</u> |

3. (a) (i) As per section 11(1A), where a capital asset held under trust (building, in this case) is transferred and only a part of the net consideration is utilized for acquiring another capital asset, the amount of capital gains deemed to have been utilised for charitable

or religious purposes shall be the excess of the proceeds utilised over the cost of the asset transferred.

In the present case, short-term capital gain of ₹ 2,00,000 [₹ 4,20,000 less ₹ 2,20,000] would arise on transfer of building held under trust, as building is held for a period of not more than 24 months. Further, the trust has invested part of the net consideration i.e., ₹ 3,00,000 out of ₹ 4,20,000, in fixed deposits for the tenure of 2 years.

Where the net consideration on sale of a capital asset is invested in fixed deposits, it is regarded as utilised for acquiring another capital asset³. Accordingly, capital gains utilised for investing in fixed deposits is deemed to be applied for charitable purpose.

Since only a part of the net consideration of ₹ 3,00,000 out of ₹ 4,20,000 is utilized for investing in fixed deposits, the amount of short-term capital gains to the extent of ₹ 80,000 (being the excess of proceeds utilized i.e., ₹ 3,00,000 over cost of transferred asset i.e., ₹ 2,20,000) would be deemed to be utilised for charitable purpose.

The balance of ₹ 1,20,000 is taxable in the hands of the trust. Applying such income to the objects of the trust would make the transaction, tax neutral.

- (ii) As per section 115BBC, anonymous donations received *inter alia* by trust or institution referred u/s 11 would be taxable @ 30% in excess of higher of -
- 5% of the total donations received by the assessee; or
 - ₹ 1 lakh

However, the provisions of section 115BBC would not apply to anonymous donation received by trusts/institutions created or established wholly for religious and charitable purposes (i.e. partly charitable and partly religious institutions/trusts) other than anonymous donation made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution.

In the present case, HelpAge trust is established for religious and charitable purposes and runs a temple and a school. During the P.Y. 2023-24, it received anonymous donation of ₹ 3 crores for Temple and ₹ 8 crores for School. Since it received anonymous donation separately for temple and school, the provisions of section 115BBC would not be attracted in respect of donations of ₹ 3 crores received for Temple.

³ CIT v. Ambalal Sarabhai Trust No. 3 [1988] 173 ITR 683 (Guj)/ CIT v. Hindustan Welfare Trust [1994] 206 ITR 138 (Cal)/ CBDT instruction no. 883, dated 24.09.1975

However, the provisions of section 115BBC would be attracted in respect of anonymous donation received for school.

(iii) Any voluntary contribution received by an electoral trust would be exempt, if such electoral trust:

- (i) distributes to a registered political party during the previous year, 95% of the aggregate donations received by it during the year along with the surplus if any, brought forward from any earlier previous year and
- (ii) functions in accordance with the rules made by the Central Government.

The electoral trust may, for the purposes of managing its affairs, spend up to 5% of the total contributions received in a year subject to an aggregate limit of ₹ 5 lakh in the first year of incorporation and ₹ 3 lakh in subsequent years.

The total contributions received in any financial year alongwith the surplus from any earlier financial year, if any, as reduced by the amount spent on managing its affairs, shall be the distributable contributions for the financial year.

In the present case, M/s XYZ, an electoral trust incorporated in the year 2022, received voluntary contributions of ₹ 420 lakhs and has brought forward surplus from earlier previous years is ₹ 18 lakhs. It spent ₹ 8 lakhs for the purpose of managing its affairs. However, it is eligible to spend ₹ 3 lakhs being lower of -

- ₹ 21 lakhs, being 5% of total contributions i.e., ₹ 420 lakhs or
- ₹ 3 lakhs, since P.Y. 2023-24, being the subsequent year

for the purpose of managing its affairs.

Accordingly, M/s XYZ, an electoral trust can distribute its distributable contribution of ₹ 435 lakhs [i.e., ₹ 420 lakhs *plus* ₹ 18 lakhs *less* ₹ 3 lakhs] as the same exceeds ₹ 416.10 lakhs (i.e., 95% of ₹ 438 lakhs).

- (b) (i)** Provision of scientific research services falls within the scope of international transaction under section 92B. Trax & Co. and Olive Inc. are deemed to be associated enterprises as per section 92A(2)(d), since Olive Inc. guarantees not less than 10% of the total borrowings of Trax & Co. Since there is an international transaction between associated enterprises, transfer pricing provisions are attracted in this case.
- (ii)** Where the Assessing Officer has made a primary adjustment of ₹ 310 lakhs to the transfer price and the same has been accepted by Trax & Co., secondary adjustment has to be made in the books of account as per section 92CE, since the primary adjustment made by the Assessing Officer and accepted by Trax & Co exceeds ₹ 100

lakhs and the primary adjustment is in relation to P.Y.2021-22.

The excess money determined based on the primary adjustment has to be repatriated to India within 90 days from the date of order, failing which the same would be deemed as an advance and interest would be computed at the one-year marginal cost of fund lending rate of State Bank of India as on 1.4.2023 + 3.25%, since the international transaction has been denominated in Indian Rupees.

In this case, since the excess money has not been repatriated within 90 days, the same would be deemed to be an advance made by Trax & Co. to Olive Inc. and interest would be computed @12.25% (9% + 3.25%) from 1.4.2023, being the date of the order of the Assessing Officer. The interest would amount to ₹ 37.975 lakhs (i.e., 12.25% of ₹ 310 lakhs) for the P.Y.2023-24.

Alternatively, Trax & Co. can opt to pay additional income-tax@20.9664% (tax@18% plus surcharge@12% plus cess@4%) on ₹ 310 lakhs, which would amount to ₹ 64,99,584. In such a case, secondary adjustment is not required to be made.

4. (a) As per section 269SU, Marigold 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 Marigold Ltd., since its total turnover in business during the immediately preceding previous year. i.e., P.Y. 2022-23 is ₹ 70 crores, which exceeds the prescribed threshold of ₹ 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 Marigold Ltd. would attract a penalty under section 271DB of a sum of ₹ 5,000, for every day during which such failure continues.

However, penalty shall not be imposed, if Marigold Ltd. proves that there were good and sufficient reasons for such failure. Further, any such penalty shall be imposed by the Joint Commissioner.

- (b) When an assessee is in default or is deemed to be in default in making a payment of tax, the TRO may draw up under his signature a statement in the prescribed form specifying the amount of arrears due from the assessee and shall proceed to recover from such assessee the amount specified in the certificate by *inter alia* attachment and sale of the assessee's movable or immovable property.

The assessee's movable or immovable property shall include any property which has been transferred, directly or indirectly by the assessee to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of any of the persons aforesaid.

In the present case, Mr. Raghav had transferred his land 5 years ago to his son who was 40 years old at that time. He also gifted a diamond necklace to his son's wife on 5.10.2023. He also has bank fixed deposits, receivables from S & Co. Ltd. and residential apartment in Australia.

The Tax Recovery Officer can proceed to recover the tax by attaching -

- (i) bank fixed deposits
- (ii) receivables from S & Co. Ltd.
- (iii) residential apartment in Australia

He can also proceed to recover the tax by attaching the diamond necklace gifted to his son's wife.

However, he cannot proceed to recover the tax by attaching the land which he transferred to his son, since at the time of transfer, his son was major.

- (c) Capital gain arising in the hands of Angelo and James from transfer of a capital asset situated in India would be deemed to accrue or arise in India. Shares of Flix Inc., Country M, shall be deemed to be situated in India if those shares derive directly or indirectly, its value substantially from assets located in India.

Shares of Flix Inc. would be deemed to derive its value substantially from the assets located in India, if on the specified date, the fair market value of Indian assets (without reduction of liabilities) i.e., fair market value of assets of XYZ Co. –

- exceeds ₹ 10 crores; and
- represents at least 50% of the value of all the assets owned by the Flix Inc.

Specified date would be the date of transfer i.e., 1.6.2023 since book value of the assets of Flix Inc. on the date of transfer i.e., ₹ 1,300 crores exceed the book value of the assets as on the last balance sheet date preceding the date of transfer i.e., ₹ 1,000 crores by at least 15%.

Shares of Flix Inc. derives its value substantially from assets located in India since the fair market value of assets located in India (without reduction of liabilities) on 1.6.2023, being the specified date i.e., ₹ 600 crores exceed ₹ 10 crores and represents more than 50% i.e., 54.545% of the fair market value of assets of Flix Inc. i.e., ₹ 1,100 crores.

Hence, the shares of Flix Inc. would be deemed to be a capital asset situated in India and the capital gains from the transfer of shares of Flix

Inc. by Angelo and James would be deemed to accrue or arise in India. Accordingly, the capital gains arising from transfer of shares of Flix Inc. would be taxable in the hands of Angelo and James in India as per Income-tax Act, 1961.

5. (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.

Relevant provision of law: 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 & Conclusion: 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.

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 under consideration is whether the participation by the assessee in assessment proceedings would make the omission to issue notice under section 143(2) a curable defect on account of the deeming provision under section 292BB.

Relevant provision of law: As per section 292BB, any notice which is required to be served upon an assessee 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,

if he had appeared in any proceedings or co-operated in any enquiry relating to assessment or re-assessment.

Analysis & Conclusion: Issue of notice under section 143(2) is mandatory for making a regular assessment under section 143(3). Section 292BB is a deeming provision that seeks to cure defects in any notice issued under any provision of the Income-tax Act, 1961, if the assessee has participated in the proceedings.

For section 292BB to apply, the notice must have emanated from the Department. It is only the infirmities in the manner of service of notice that the section seeks to cure. The section is not intended to cure the complete absence of notice itself.

Accordingly, non-issuance of notice under section 143(2) is not a curable defect under section 292BB inspite of participation by the assessee in assessment proceedings.

In the present case, since the assessment of Mr. Sharma was completed u/s 143(3) without issuing notice u/s 143(2), the assessment is bad in law and not a curable defect u/s 292BB. Therefore, the contention of Mr. Sharma is valid and the contention of the Assessing Officer is invalid in spite of the fact that Mr. Sharma participated in the assessment proceedings.

Note – The facts given in the question are similar to the facts in CIT v. Laxman Das Khandelwal (2019) 417 ITR 325, 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 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.

Relevant provisions of law: 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. The punishment is rigorous imprisonment for not less than 3 months but which may extend to 7 years and with fine.

Section 278AA, however, provides that no person would be punishable for such failure if he proves that there was reasonable cause for the same.

Analysis & Conclusion: The CBDT has, *vide Circular No. 24/2019 dated 9.9.2019*, in exercise of the powers under section 119, listed out the offences covered under Chapter XXII of the Income-tax Act, 1961 in respect of which prosecution proceedings shall be launched by Approving Authority being the Sanctioning

Authority where the quantum of offences exceed the prescribed monetary threshold. Accordingly, in case of failure to pay TDS under section 276B or failure to pay TCS u/s 276BB, no prosecution will be processed if the TDS/TCS amount does not exceed ₹ 25 lakhs and delay in deposit is less than 60 days.

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.

Note - The facts given in the question are similar to the facts in *ACIT v. AT-Dev Prabha (JV) and others (2023) 454 ITR 59*, wherein the above issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court in the said case read along with the CBDT Circular.

- (b) BEPS Action Plan 13 contains a three-tier standardized approach to transfer pricing documentation which consists of:
- (i) **Master file**: Master file requires MNEs to provide tax administrations with high-level information regarding their global business operations and transfer pricing policies. The master file is to be delivered by MNEs directly to local tax administrations.
 - (ii) **Local file**: Local file requires maintaining of transactional information specific to each country in detail covering related-party transactions and the amounts involved in those transactions. In addition, relevant financial information regarding specific transactions, a comparability analysis and analysis of the selection and application of the most appropriate transfer pricing method should also be captured. The local file is to be delivered by MNEs directly to local tax administrations.
 - (iii) **Country-by-country (CBC) report**: CBC report requires MNEs to provide an annual report of economic indicators viz. the amount of revenue, profit before income tax, income tax paid and accrued in relation to the tax jurisdiction in which they do business. CBC reports are required to be filed in the jurisdiction of tax residence of the ultimate parent entity, being subsequently shared between

other jurisdictions through automatic exchange of information mechanism.

A specific reporting regime in respect of CbC reporting and also the master file has been incorporated in the Income-tax Act, 1961. The essential elements have been incorporated in the Income-tax Act, 1961 while remaining aspects would be dealt with in detail in the Income-tax Rules, 1962.

- (i) Section 286 of the Income-tax Act, 1961 contains the provisions relating to CbC reporting requirement and related matters.
- (ii) Section 92D of the Income-tax Act, 1961 contains the provisions relating to maintenance and furnishing of Master file.

- 6. (a) (i)** In the present case, Shiva Ltd., an Indian company has 2 manufacturing units, unit X in the SEZ and unit Y in non-SEZ. Though unit X only does the packaging of goods manufactured by unit Y, the company, in its books of account, shows the goods manufactured by unit Y as manufacture of goods by unit X 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 N, a non-SEZ unit, being a non-eligible business, are transferred to unit M, 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 M.

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 ₹ 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.

- (b)** Deduction under section 80JJAA is allowable to an assessee to whom section 44AB applies and whose gross total income includes any profits and gains derived from business, in respect of employment of new employees. The amount of deduction is 30% of additional employee cost

incurred in the course of such business in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

“Additional employee cost” means the total emoluments paid or payable to additional employees employed during the previous year. However, in the case of an existing business, the additional employee cost shall be nil, if emoluments are paid otherwise than by an account payee cheque or account payee bank draft or use of ECS through bank account or other prescribed electronic mode.

“Emoluments” means any sum paid or payable to an employee in lieu of his employment by whatever name called but does not include, *inter alia*, contribution by employer to provident fund.

“Additional employee” means an employee who has been employed during the previous year and whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the preceding year, but does not include, *inter alia*, an employee whose total emoluments are more than ₹ 25,000 p.m.

In this case, the contention of the chartered accountant that the emoluments do not include employer contribution to PF is correct. However, emoluments include ₹ 3,500 paid in cash by way of transport allowance to the employee. Hence, the total emoluments per employee is ₹ 28,000 p.m. Due to this reason, the 30 employees employed on 1.4.2022 will not qualify as “additional employees” for the purpose of deduction under section 80JJAA, since their total emoluments are more than ₹ 25,000 p.m. Hence, Right & Co. is not eligible for any deduction under section 80JJAA due to failure to fulfil the condition for being treated as an “additional employee”. In this case, the chartered accountant has failed to ensure compliance with the condition stipulated for claim of deduction under section 80JJAA and has wrongly issued the report in Form 10DA certifying the deduction claimed by the assessee under section 80JJAA.

Also, clause 33 of Form 3CD requires section-wise details of deductions, if any, admissible under Chapter VI-A. Here again, the tax auditor has to ensure that the assessee fulfils all the conditions specified in the section under which the deduction is claimed. However, in this case, the tax auditor has failed to do so.

On account of such failure, clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 may be invoked.

- (c) Advance ruling pronounced by Board for Advance Rulings is not binding on LT Co. Ltd. Section 245W provides that the applicant who is aggrieved by any ruling pronounced or order passed by the Board for Advance Rulings may appeal to the High Court against such ruling. He has to do so within sixty days from the date of the communication of that ruling or order, in the prescribed form and manner.

Accordingly, if LT Co. Ltd. is aggrieved by the advance ruling pronounced by BAR, it can file an appeal before the High Court on or before 29th June 2024. The High Court can grant extension of a further period of 30 days for filing the appeal, if it is satisfied, on an application made by LT Co. Ltd. in this behalf, that it was prevented by sufficient cause from presenting the appeal within the 60 days period as specified above.