

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.

Time Allowed: 3 Hours

Total Marks: 100 Marks

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

On 1.4.2023, Focus Ltd., an Indian company, borrowed ₹ 50 crores @ 9.5% p.a. from Max Inc., a US entity, thereby increasing its total borrowings to ₹ 65 crores. The said loan is guaranteed by Hik Inc., another US entity. The place of effective management of both Max Inc. and Hik Inc. is in the USA. The book value of total assets of Focus Ltd. is ₹ 180 crores.

Focus Ltd. imported turbo equipment worth ₹ 30 crores from Hik Inc. Import duty of ₹ 4.50 crores on the same was paid by Focus Ltd. The equipment was sold to T Ltd., an unrelated party for ₹ 40 crores. Normal GP margin of Focus Ltd. in similar uncontrolled transaction is 20%.

Net profit of Focus Ltd. of A.Y. 2024-25 was ₹ 8 crores after debiting interest of ₹ 6 crores (out of which ₹ 1.25 crores interest pertaining to local borrowings), depreciation of ₹ 2.5 crores and income tax of ₹ 1.5 crores.

Based on the facts of the above case scenario, choose the most appropriate answer to Q. 1 to 6 below:

1. What is the amount of interest to be allowed in the computation of total income of Focus Ltd. for A.Y. 2024-25, if for A.Y. 2023-24 there was an interest expenditure disallowed to the extent of ₹ 4 crores under section 94B?
 - (a) ₹ 6,65,00,000
 - (b) ₹ 4,75,00,000
 - (c) ₹ 6,00,00,000

- (d) ₹ 3,65,00,000
2. The transfer pricing adjustment for the arm's length purchase price to be made in the computation of total income of Focus Ltd. for A.Y. 2024-25 would be-
- (a) ₹ 3,00,00,000
(b) ₹ 2,50,00,000
(c) ₹ 2,00,00,000
(d) No adjustment is required, since transfer pricing adjustment cannot result in reduction of income
3. If Focus Ltd. repatriated the excess money on 31.03.2025, what will be the interest income that would be added to its total income of A.Y.2025-26, if SBI's one-year marginal of lending rate is 11.25% on 1.4.2024 and 10.25% on 1.4.2025? Assume that Focus Ltd. *suo motu* made the primary adjustment in its books of account and filed its return for A.Y.2024-25 on 30.11.2024.
- (a) ₹ 12,01,712
(b) ₹ 12,08,333
(c) ₹ 9,32,363
(d) ₹ 8,49,486
4. If Focus Ltd. decides not to repatriate the excess money and instead, pay additional income-tax on the entire excess money, then, what would be the additional income-tax payable?
- (a) ₹ 62,89,920
(b) ₹ 52,41,600
(c) ₹ 41,93,280
(d) ₹ 53,87,200
5. If Focus Ltd. decides to pay additional income-tax on the entire excess money on 15.03.2025, should interest be calculated and added to its total income of A.Y.2025-26? If so, what is the amount to be added? Assume that SBI one-year marginal cost of lending rate is 11.25% on 1.4.2024 and 10.25% on 1.4.2025 -
- (a) No, since it has paid additional income-tax on the entire excess money in the P.Y.2024-25
(b) Yes; ₹ 9,70,890
(c) Yes; ₹ 10,42,808
(d) Yes; ₹ 8,09,075
6. In addition to the facts given in the case scenario, assuming that -
- (i) on 23.08.2023, Focus Ltd. has entered into an agreement for sale of turbo equipment with Y Ltd., an Indian company not related to Focus Ltd;

- (ii) Y Ltd. had already entered into an agreement on 21.8.2023 for the sale of the same goods to Kite Inc. (unrelated to Y Ltd.), a UK entity whose place of effective management is also in the UK; and
- (iii) Focus Ltd. holds shares carrying 28% voting power in Kite Inc.

With which of the following enterprises would a transaction with Focus Ltd. be considered an international transaction or a deemed international transaction?

- (a) Hik Inc. and Kite Inc.
- (b) Max Inc. and Kite Inc.
- (c) Hik Inc., Kite Inc. and Y Ltd.
- (d) Max Inc., Hik Inc. and Kite Inc.

(2 x 6 = 12 Marks)

Case Scenario II

The Assessing Officer surveyed Surabhi & Hotels, which was within his jurisdiction, at 11:30 p.m. on 15.8.2023 for the purpose of obtaining information which may be relevant to the proceedings under the Income-tax Act, 1961. The restaurant is kept open for business every day between 11 a.m. and 12 a.m.

On 25.8.2023, the Assessing Officer entered Suraj & Hotels which was also within his jurisdiction at 9:15 p.m. for the purpose of collecting information which may be useful for the purposes of the Income-tax Act, 1961. This Restaurant is kept open for business every day between 7 am to 10:30 pm.

In both the above cases, the Assessing Officer impounded and retained in his custody for a period of 13 days (exclusive of 3 holidays), books of account and other documents inspected by him, after recording reasons for doing so. The Assessing Officer, however, did not take prior permission from income-tax authority equivalent to Chief Commissioner or above for doing so.

The owners of these restaurants claim that the Assessing Officer could not enter the restaurants after sunset and take away with him the books of account kept at the restaurants. The owners also claimed that the Assessing Officer ought to have obtained the prior approval of income-tax authority equivalent to Chief Commissioner or above before entering the restaurants.

Based on the facts of the above case scenario, choose the most appropriate answer to Q. 7 to 11 below:

- 7. Is the action of the Assessing Officer entering Surabhi & Hotels at 11:30 pm valid?
 - (a) Not valid, since Assessing Officer entered the restaurant after the sunset.
 - (b) Valid, since Assessing Officer entered during the hours at which such place is open for the conduct of business and prior permission of higher authorities is not required to be obtained for survey.

- (c) Not valid, since prior permission of income-tax authority equivalent to Chief Commissioner or above is not obtained by the Assessing Officer though he entered during the hours at which such place is open for the conduct of business.
 - (d) Not valid, since Assessing Officer entered after the sunset and prior permission of Chief Commissioner or above was not obtained.
8. Would your answer to Question no. 7 change if the Assessing Officer had surveyed Surabhi & Hotels only for the purpose of verifying whether tax has been deducted/collected at source in accordance with the provisions of the Income-tax Act, 1961?
- (a) The action of Assessing Officer is not valid, since he entered the place after sunset and permission of income-tax authority equivalent to Chief Commissioner or above is not obtained.
 - (b) The action of Assessing Officer is valid, since he entered the place during the hours at which such place is open for conduct of business and permission of Chief Commissioner or above authorities not required to be obtained.
 - (c) The action of Assessing Officer is not valid, since he has not obtained the permission of Chief Commissioner.
 - (d) The action of Assessing Officer is not valid, since he entered the place after 10 pm.
9. Is the action of the Assessing Officer entering Suraj & Hotels at 9:15 pm valid?
- (a) Not valid, since Assessing Officer entered the restaurant after the sunset.
 - (b) Valid, since Assessing Officer entered during the hours at which such place is open for the conduct of business and prior permission of higher authorities is not required to be obtained.
 - (c) Not valid, since prior permission of Chief Commissioner or above is not obtained by the Assessing Officer though he entered the place during the hours at which such place is open for the conduct of business.
 - (d) Not valid, since Assessing Officer entered after the sunset and prior permission of Chief Commissioner or above is not obtained.
10. Is the action of the Assessing Officer in impounding and retaining in his custody books of account and other documents of Surabhi & Hotels, after recording reasons for doing so, valid if prior permission from income-tax authority equivalent to Chief Commissioner or above has been taken only for the purpose of survey and not for retaining books of accounts etc.?
- (a) The action of Assessing Officer is not valid, since prior approval of Chief Commissioner or above authority is not obtained for retaining the impounded books of account etc.

- (b) The action of Assessing Officer is valid.
- (c) The action of Assessing Officer is not valid, since he cannot retain impounded books of accounts for period exceeding 15 days (inclusive of holidays) without prior approval of Chief Commissioner or above authority.
- (d) The action of Assessing Officer is not valid, since he cannot retain impounded books of accounts or other documents for a period exceeding 10 days (exclusive of holidays).
11. Would your answer to Question no. 10 change if the Assessing Officer had surveyed Surabhi & Hotels only for the purpose of verifying whether tax has been deducted/collected at source in accordance with the provisions of the Income-tax Act, 1961?
- (a) The action of Assessing Officer is not valid, since prior approval of Commissioner or above is not obtained for retaining impounded books of Accounts.
- (b) The action of Assessing Officer is valid.
- (c) The action of Assessing Officer is not valid, since he cannot impound or retain books of accounts or other documents.
- (d) The action of Assessing Officer is not valid, since he cannot retain impounded books of accounts or other documents for a period exceeding 10 days. **(2 x 5 = 10 Marks)**
12. RM Ltd., Pathankot, is a Maruti Cars dealer and also runs a service station. The sale of cars of RM Ltd. for F.Y.2022-23 is ₹ 8.40 crores. The sale of spare parts and service station is ₹ 80 lakhs for F.Y.2022-23. M/s. ABC Ltd., dealing in textile manufacturing, bought three Maruti cars on 18.7.2023, 18.8.2023 and 15.12.2023 for ₹ 18 lakhs, 22 lakhs and ₹ 9.5 lakhs for business purposes. On 16.1.2024, M/s ABC Ltd. purchased five more cars valuing ₹ 8.9 lakhs each. The payment against each purchase made on the same date of invoice itself. The turnover of ABC Ltd. for the F.Y. 2022-23 is ₹ 15.5 crores.
- What is the amount of tax required to be collected or deducted at source on sale transaction entered between RM Ltd. and ABC Ltd.?
- (a) RM Ltd. is required to collect tax at source of ₹ 40,000 under section 206C(1F).
- (b) RM Ltd. is required to collect tax at source of ₹ 40,000 under section 206C(1F) and ₹ 400 under section 206C(1H).
- (c) RM Ltd. is required to collect tax at source of ₹ 40,000 under section 206C(1F) and ABC Ltd. is required to deduct tax at source of ₹ 400.
- (d) RM Ltd. is required to collect tax at source of ₹ 94,000 under section 206C(1F). **(2 Marks)**

13. Mr. Mohit, a resident individual, starts a new business on 01-11-2023 for sale of designer suits. He obtained a valid PAN in his name and registers himself on Fine.com (a Country M based website), an e-commerce operator, for sale of his products in India. Mr. Mohit sold goods worth ₹ 80 lakhs through Fine.com upto 31-03-2024. E-commerce operator credited ₹ 35 lakhs on 31.12.2023, ₹ 12 lakhs on 1.1.2024 and ₹ 18 lakhs on 28.2.2024 payable to Mr. Mohit in its books of accounts. These amounts were paid to Mr. Mohit on 15.3.2024 after deducting a commission of 10% on gross sale proceeds.

On 31.3.2024, remaining amount of ₹ 15,00,000 were directly credited in Mr. Mohit bank account by the buyers. Who is liable to deduct tax at source on the above transactions? When and what amount of tax is deductible?

- (a) Fine.com is required to deduct tax at source of ₹ 35,000, ₹ 12,000, ₹ 18,000 and ₹ 15,000 on 31.12.2023, 1.1.2024, 28.2.2024 and on 31.3.2024, respectively.
- (b) Fine.com is required to deduct tax at source of ₹ 35,000, ₹ 12,000 and ₹ 18,000 on 31.12.2023, 1.1.2024 and on 28.2.2024, respectively.
- (c) Fine.com is required to deduct tax at source of ₹ 80,000 on 15.3.2024.
- (d) Fine.com is required to deduct tax at source of ₹ 65,000 on 15.3.2024.

(2 Marks)

14. Mr. Aryan, a non-resident, received foreign currency equivalent to ₹ 85,000 from his friend, a resident Indian in January 2024. The same was paid by such resident from his bank account in Country X and was received by Mr. Aryan in his bank account in Country X. The friend also gifted a Gold Chain to Mr. Aryan in Country X. Fair Market Value of Gold Chain on the date of gift was ₹ 95,000. Are the gifts received by Mr. Aryan taxable in his hands under the Income-tax Act, 1961? Assume no DTAA exist between India and Country X.

- (a) Yes; ₹ 1,80,000 would be taxable as Income from other sources.
- (b) Partially; ₹ 85,000 received from resident friend would be taxable as Income from other sources.
- (c) Partially; only ₹ 35,000, being cash gift in excess of ₹ 50,000, received from resident friend would be taxable as Income from other sources.
- (d) No; such gifts are not taxable in the hands of Mr. Arihant under the Income-tax Act, 1961, since they are received outside India. **(2 Marks)**

15. A Co Inc., a foreign company has a branch office in India. The branch has developed an online platform which facilitates online sale of various materials and products related to ink, colour pigments and printer accessories. During the F.Y. 2023-24, the Indian branch charged a fee amounting to ₹ 2,65,00,000 from SI Ltd., an Indian company for the use of the online platform. What is the amount of equalization levy that SI Ltd. should deduct/ pay in relation to

payment to be made to Indian branch of A Co. for the use of the online platform?

- (a) 15,90,000
- (b) 5,30,000
- (c) NIL
- (d) 26,50,000

(2 Marks)

Division B – Descriptive Questions

Question No. 1 is compulsory

*Attempt any **four** questions from the remaining **five** questions*

1. Sunshine Industries Limited, a domestic company, is engaged in the manufacturing of washing machines since 01-11-2021 in the State of Rajasthan. The net profit of the company as per Statement of Profit and Loss for the year ended 31st March, 2024, revealed profit of ₹ 1,47,50,000 after debiting or crediting the following items:
 - (i) Depreciation charged during the year amounted to ₹ 34,00,000.
 - (ii) Lumpsum consideration of ₹ 36 lakhs paid to a foreign company for obtaining designs & models of washing machines on 12-12-2023.
 - (iii) Purchased washing machine panels valued at ₹ 96 lakhs from Shine Ltd. in which directors have substantial interest. The market value of the goods is ₹ 82 lakhs.
 - (iv) Cash subsidy of ₹ 15 lakhs received from State Government on acquisition of new plant & machinery [mentioned at point (c) in additional information] acquired on 01-07-2023 which was credited to Statement of profit and loss.
 - (v) Legal expenses incurred for issue of bonus shares at ₹ 6 lakhs and legal expenses for issue of right shares at ₹ 8 lakhs.
 - (vi) Short term capital gains of ₹ 15 lakhs arising on transfer of a capital asset being equity shares in a company on which security transaction tax is charged.
 - (vii) Long term capital gains (arrived at after taking indexation benefit) on transfer of Zero-Coupon Bonds: ₹ 8 lakhs

Additional information:

- (a) Depreciation eligible under section 32 is ₹ 36 lakhs.
- (b) During the previous year 2023-24, the company transferred unlisted equity shares for a consideration of ₹ 22,00,000 which were acquired on 12.12.2022. Cost of these shares acquired is ₹ 12,00,000.
- (c) New Plant & Machinery acquired on 01-07-2023 for ₹ 75 lakhs and payment of ₹ 10 lakhs made by bearer cheque and balance by way of transfer through RTGS. Depreciation on this machinery not included in depreciation amount given at point (a).

Compute the total income and tax liability for the Assessment Year 2024-25, if company has opted for concessional rate of tax under section 115BAA.

(14 Marks)

2. (a) The profit and loss account of the LS & Associates, a partnership firm, showed a net profit of ₹ 80 lakhs after debiting/crediting of the following sums:
- (i) Interest on capital @13% - ₹ 7,15,000
 - (ii) Interest on loan taken from one of the partners@ 15% - ₹ 90,000
 - (iii) Interest on bank fixed deposits made out of surplus funds ₹ 35,000 (Gross)
 - (iv) Depreciation as per books of accounts ₹ 1,15,650
 - (vi) A building purchased in the year 2020 having a WDV as on 1.4.2023, of ₹ 36.45 lakhs was sold on 10.10.2023 for ₹ 90 lakhs. The differential amount was credited to profit and loss account. The building was the only asset in the block.

Additional Information:

- (a) The firm has four partners. Only 2 are working partners. Partnership deed authorised payment of interest to partners in the range of 12% - 16% and also payment of remuneration (not debited in P & L A/c) to all the four partners @ ₹ 20,000 per month
- (b) It applied for establishing a unit in SEZ and the letter of approval was granted on 30.3.2020. However, it started the operation of SEZ only on 15.10.2020. The total turnover, export turnover and net profit for the year ended 31.3.2024 were ₹ 120 lakhs, ₹ 40 lakhs and ₹ 7.5 lakhs respectively. The net profit is included in the profit of ₹ 80 lakhs mentioned above.
- (c) Out of the amount received from sale of building, the firm invested ₹ 60 lakhs on 5.4.2024 in 5-years specified bonds of the National Highways Authority of India. The bonds were issued on 31.5.2024.
- (d) Depreciation as per Income-tax Rules, 1962 is ₹ 14,000 excluding depreciation on assets mentioned in (e) and (f) below.
- (e) WDV of Motor car as on 1.4.2023 (purchased and put to use on 1.1.2020) of ₹ 6,80,000.
- (f) Cost of mobile phones (purchased and put to use on 11.10.2023) ₹ 20,000

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

(8 Marks)

- (b) Compute the total income and net tax liability after providing relief under section 91 by Mr. Gaurav aged 73 years for A.Y. 2024-25 from the following information in respect of income earned by him in various places for the previous year ended 31-03-2024:

India

Pension from State Government ₹ 3,90,000

Short term capital gains on sale of plot ₹ 2,10,000

Deposit in PPF Account ₹ 1,50,000

Speculative Income ₹ 1,16,000

Country M

Agricultural Income (gross) ₹ 90,000

Dividends from a company incorporated in Country M (gross) ₹ 64,000
[Exempt in Country M]

Country N

Business loss (proprietary business) ₹ 1,06,000 [Not eligible for set off against other incomes in Country N].

Gross rental income from a property ₹ 3,00,000 (No statutory deduction was available in Country N)

Municipal taxes paid in respect of the above property (not allowed as deduction in Country N) ₹ 20,000

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. Gaurav is an individual 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.

Assume Mr. Gaurav paying tax under default tax regime under section 115BAC. **(6 Marks)**

3. (a) (i) A public charitable trust registered under section 12AB, for the previous year ending 31.3.2024, derived gross income of ₹ 21 lakhs, which consists of the following:

| | (₹ in Lacs) |
|---|-------------|
| (a) Income from properties held by trust | 10 |
| (b) Income from business (incidental to main objects) | 4 |
| (c) Voluntary contributions from public | 7 |

The trust applied a sum of ₹ 11.60 lacs towards charitable purposes during the year which includes repayment of the loan borrowed in the P.Y. 2020-21 taken for construction of orphanage ₹ 3.60 lacs. The entire expenditure incurred on construction of orphanage was allowed as application of income in the P.Y. 2020-21.

Determine the taxable income of the trust for the assessment year 2024-25. **(4 Marks)**

- (ii) A not-for-profit trust undertakes philanthropic activities through an educational institution and a hospital. During the P.Y. 2023-24 the trust had annual receipts of ₹ 3 crores from its educational institution and ₹ 4 crore from the hospital. During the P.Y. 2023-24, it desires to avail exemption under section 10(23C)(iiiad) and 10(23C)(iiiiae), as the individual threshold under each of the sub-clauses, is less than ₹ 5 crore. Can it do so? Examine. **(4 Marks)**
- (b) Tip Inc., a foreign company, headquartered at Malaysia, has a branch in India. For the financial year ended 31.03.2024, the branch has shown net profit of ₹ 28 lakhs after charge of the following expenses:
- (i) Depreciation for the current financial year of ₹ 15 lakhs.
 - (ii) Unabsorbed depreciation for the previous financial year of ₹ 17 lakhs.
 - (iii) Capital Expenditure incurred for promoting family planning amongst its employees of ₹ 7 lakhs. ₹ 7 Lakhs is one fifth of the total expenditure incurred on promoting family planning.
 - (iv) Expenditure incurred for Scientific research ₹ 11 lakhs.
 - (v) Business loss brought forward for A.Y. 2023-24 of ₹ 25 lakhs.
 - (vi) Deductions under Chapter VI-A of ₹ 20 lakhs.
 - (vii) Head Office expenses of ₹ 120 lakhs allocated to the branch.

Compute income to be declared by the branch in its return for the Assessment Year 2024-25. **(6 Marks)**

4. (a) (i) Mr. Mukesh, an individual carrying on retail business with turnover of ₹ 3.2 crores in the P.Y.2022-23. He made contract payment for repair of residential house of ₹ 3 lakhs and ₹ 75,000 towards commission to Mr. Varun for business purposes. Examine whether TDS provisions would be attracted, if yes, specify the rate and amount of TDS applicable. **(2 Marks)**
- (ii) Mr. Rajesh, who gets his accounts audited under section 44AB filed his original return of income under section 139 for A.Y.2021-22 on 28.12.2021 declaring income of ₹ 12 lakhs and for A.Y.2022-23 on 31.10.2022 declaring loss of ₹ 5 lakhs.
- He wants to file an updated return of income under section 139(8A) for A.Y.2022-23 on 30.11.2023 declaring total income of ₹ 7 lakhs. Can he do so? Examine. **(2 Marks)**

- (b) S Ltd. took on sub-lease a building from Jim, an individual, with effect from 1.9.2023 on a rent of ₹ 20,000 per month. It also took on hire machinery from Jim with effect from 1.10.2023 on hire charges of ₹ 18,000 per month. S Ltd. entered into two separate agreements with Jim for sub-lease of building and hiring of machinery. The rent of building and hire charges of machinery for the financial year 2023-24 were ₹ 1,40,000 and ₹ 1,08,000, respectively, which were credited by S Ltd. to the account of Jim in its books of account on 31.3.2024. Examine the obligation of S Ltd. with regard to deduction of tax at source in respect of the rent and hire charges. **(4 Marks)**
- (c) Mr. Sarthak is a resident in India aged 58 years. He had an impressive investment portfolio in various mutual funds. He redeemed his entire mutual fund investment portfolio and bought a villa in Gurugram for ₹ 2.00 crores to spend rest of his life there. The details of mutual funds are as under –

| S. No. | Type of mutual fund | Date of investment | Date of redemption | Amount invested (in ₹ lakhs) | Amount redeemed (in ₹ lakhs) |
|--------|---------------------|--------------------|--------------------|------------------------------|------------------------------|
| 1 | SLR growth fund | 03.04.2020 | 05.06.2023 | 120 | 140 |
| 2 | XYZ Strategic fund | 04.05.2023 | 02.02.2024 | 46 | 50 |
| 3 | MNO Midcap fund | 02.12.2022 | 05.07.2023 | 115 | 118 |
| 4 | TBA Growth fund | 08.11.2021 | 12.12.2023 | 110 | 120 |

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

You are required to compute the capital gains chargeable to tax in the hands of Mr. Sarthak for A.Y. 2024-25. CII: 2020-21: 301; 2021-22: 317; 2022-23: 331; 2023-24: 348. **(6 Marks)**

5. (a) Attempt any two out sub-part (i), (ii) or (iii) of the following:
- (i) XYZ Ltd. received the draft order from the Assessing Officer as per section 144C of the Income-tax Act, 1961 due to variations determined by the Transfer Pricing Officer in the arm's length price. But XYZ Ltd. did not prefer to file the objection against the draft order before the Dispute Resolution Panel, instead, he prefer to do appeal before the CIT appeals under section 246A against the final order received from the Assessing Officer.

You are required to advise XYZ Ltd., whether his contentions are tenable? Discuss the issue with reference to provisions of section 144C of the Income-tax Act, 1961. **(4 Marks)**

- (ii) During search conducted on premises of an assessee, some gold bars were seized by the department from lockers of assessee. Assessee voluntarily disclosed some income during course of search. Assessee moved an application before Assessing Officer, for adjustment of tax liability on income surrendered during search by sale of seized gold bars. However, said application was turned down by the Assessing Officer. Explain whether action of the AO is justified, in light of relevant case laws? **(4 Marks)**
- (iii) T Ltd. filed its return of income for assessment year 2023-24 on 25th October 2023. The return is selected for regular assessment under section 143(3) for which notice under section 143(2) is served on the company on 9th July 2024. The company responded to the notice under section 143(2). Examine whether the service of the notice is within time and if not, whether the assessment order can be challenged by the assessee. **(4 Marks)**
- (b) Explain the nexus approach recommended by OECD in BEPS Action Plan 5 which has been adopted in the Income-tax Act, 1961. **(6 Marks)**
6. (a) NI Ltd. is an Indian Company involved in manufacturing and trading in cotton garments under the brand name "COTT". In order to expand its exports sale, it launched a massive publicity campaign in overseas market. For the purpose of online advertising, it hired SK Inc., a New York based company which has no permanent establishment in India and paid ₹ 10 lakhs for its services in the previous year 2023-24.
- Discuss the tax and TDS implications of such transaction both in the hands of NI Ltd. and SK Inc. **(3 Marks)**
- (b) Aryan (25 years) and Aditya (32 years) are two individuals, resident in India, and they earned salary of ₹ 13 lakhs each during the previous year 2023-24. Aditya had paid interest of ₹ 2,20,000 on loan taken in respect of a self-occupied house property. Aryan had paid ₹ 24,000 towards medical insurance of himself and his spouse. Payment was made through net banking. Aditya contributed ₹ 1,50,000 to a political party by cheque.
- You, as a consultant, are required to advise them whether they should opt out of default tax regime under section 115BAC or otherwise, showing the tax liability of both individuals. **(5 Marks)**
- (c) TI Ltd., the assessee, has sold goods on 12.01.2024 to LMP Ltd., located in notified jurisdictional area (NJA), for ₹ 9.50 crores. During the current financial year, TI Ltd. charged ₹ 10.50 crores from TOP Inc. of Country X and ₹ 11 crores from MON Inc. of Country Y for sale of identical goods

and both of which are neither associated enterprise of TI Ltd. nor they are situated in any NJA. While sales to TOP Inc. and MON Inc. were on CIF basis, the sale to LMP Ltd., was on FOB basis, which paid ocean freight and insurance amounting to ₹ 20 lakhs on purchases from TI Ltd. If sales to TOP Inc. and MON Inc. are made on FOB basis, the cost of freight, insurance would amount to ₹ 18 lakhs.

The assessee has a policy of providing after-sales support service to the tune of ₹ 13 lakhs to all customers except LMP Ltd. which procured the same locally at a cost of ₹ 17 lakhs.

Compute the ALP for the sales made to LMP Ltd., and the amount of consequent increase, if any, in the profit of the assessee-company.

(6 Marks)

FINAL COURSE: GROUP – II

PAPER – 4: DIRECT TAX LAWS & INTERNATIONAL TAXATION

Division A – Multiple Choice Questions

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

Division B – Descriptive Questions

1. (a) **Computation of total income and tax liability by Sunshine Industries Ltd. for A.Y.2024-25 in accordance with the provisions of section 115BAA**

| Particulars | ₹ | ₹ | ₹ |
|--|-----------|-------------|---|
| Profits and gains of business or profession | | | |
| Net profit as per statement of profit and loss | | 1,47,50,000 | |
| Add: Items debited but to be disallowed | | | |
| - Depreciation as per books of account | 34,00,000 | | |
| - Consideration for designs & models [Consideration for designs & models of washing machines is in the nature capital expenditure and hence, is an intangible asset which is eligible for depreciation as per section 32. Since lumpsum consideration has been | 36,00,000 | | |

| | | | |
|---|-----------------|--|--|
| debited to statement of profit and loss, the same has to be added back while computing business income] | | | |
| - Purchased washing machine panels at a price higher than the fair market value | 14,00,000 | | |
| [As per section 40A(2), the difference between the purchase price (₹ 96 lakhs) and the fair market value (₹ 82 lakhs) has to be added back since the purchase is from a related party, i.e., Shine Ltd., a company in which directors of Sunshine Industries Ltd. have substantial interest and at a price higher than the fair market value] | | | |
| - Legal expenses for issue of bonus shares | Nil | | |
| [There is no fresh inflow of funds or increase in capital employed on account of issue of bonus shares and there is only reallocation of the company's fund. Consequently, since there is no increase in the capital base of the company, legal expenses of ₹ 6 lakhs in connection with issue of bonus shares is a revenue expenditure and is hence, allowable as deduction ¹] | | | |
| - Legal expenses for issue of right shares | <u>8,00,000</u> | | |
| [Expenses incurred in relation to rights issue are of capital in nature ² . Hence, not allowed as deduction from business income. Since, it is already debited in statement of profit and loss, the same has to be | | | |

¹ It was held by Apex Court in case of CIT vs. General Insurance Corpn. (2006) 286 ITR 232

² It was held by Karnataka High Court in case of CIT Vs Motor Industries Ltd (1998) 229 ITR 137

| | | | |
|--|-----------|------------------|--|
| added back while computing business income] | | | |
| | | <u>92,00,000</u> | |
| | | 2,39,50,000 | |
| Less: Items credited but to be considered separately | | | |
| - Short term capital gains on equity shares [Not taxable under this head] | 15,00,000 | | |
| - Long term capital gains on Zero coupon bonds [Not taxable under this head] | 8,00,000 | | |
| - Cash Subsidy [Subsidy from State Government on acquisition of asset is reduced from the actual cost of the asset. Hence, such subsidy is not the income of Sunshine Industries Ltd. Since, subsidy is already credited in the statement of profit and loss, the same has to be reduced while computing business income] | 15,00,000 | | |
| | | <u>38,00,000</u> | |
| | | 2,01,50,000 | |
| Less: Depreciation as per Income-tax Rules | | | |
| - Depreciation | 36,00,000 | | |
| - Depreciation on New Plant and machinery [₹ 50 lakhs x 15%, since it has been put to use for more than 180 days during the year] [Any expenditure for acquisition of any asset in respect of which payment or aggregate of payment made to a person in a day, otherwise than by an a/c payee cheque/ bank draft or use of ECS or through prescribed electronic mode, exceeds ₹ 10,000, such expenditure would | 7,50,000 | | |

| | | | |
|--|------------------|------------------|------------------|
| not form part of actual cost of such asset. Further, where any part of the cost of asset acquired has been met directly or indirectly, <i>inter alia</i> , by State Government, then, so much of the cost as relates to subsidy would not be included in the actual cost. Hence, ₹10 lakhs paid by bearer cheque and ₹ 15 lakhs of cash subsidy received by State Government for acquisition of asset would not be included in the actual cost of plant and machinery.] | | | |
| - Depreciation on Intangible asset, being designs & models of washing machines [₹ 36 lakhs x 25% x 50%, since put to use for less than 180 days during P.Y. 2023-24] | 4,50,000 | | |
| - No additional depreciation is allowable under section 32(1)(iia) since the assessee has opted for the provisions of section 115BAA. | | | |
| | | <u>48,00,000</u> | |
| | | | 1,53,50,000 |
| Capital Gains | | | |
| - Short term capital gains on transfer of listed equity shares | | 15,00,000 | |
| - Long term capital gains on transfer of zero-coupon bonds [after indexation benefit] | | 8,00,000 | |
| - Short term capital gains on transfer of unlisted equity shares [Since not held for more than 24 months] | 22,00,000 | | |
| Full value of consideration | <u>12,00,000</u> | | |
| Less: Cost of acquisition | | <u>10,00,000</u> | |
| | | | <u>33,00,000</u> |

| | | | |
|--|--|-----------------|---------------------------|
| Gross Total Income/Total Income | | | <u>1,86,50,000</u> |
| Computation of tax payable under section 115BAA | | | |
| Tax u/s 115BAA on business income [₹ 1,53,50,000 x 22%] | | 33,77,000 | |
| Tax u/s 111A on Short-term capital gains on transfer of listed equity shares on which STT is paid [₹ 15 lakhs x 15%] | | 2,25,000 | |
| Tax u/s 112 on Long-term capital gains on transfer of zero-coupon bonds with indexation benefit [₹ 8 lakhs x 20%] | | 1,60,000 | |
| Tax u/s 115BAA on short term capital gains on transfer of unlisted equity shares [₹ 10 lakhs x 22%] | | <u>2,20,000</u> | |
| | | | 39,82,000 |
| Add: Surcharge @10% | | | <u>3,98,200</u> |
| | | | 43,80,200 |
| Add: HEC@4% | | | <u>1,75,208</u> |
| Tax liability | | | 45,55,408 |
| Tax liability (rounded off) | | | 45,55,410 |

2. (a) **Computation of Total Income of M/s LS & Associates, a partnership firm, for the A.Y. 2024-25**

| | Particulars | Amount (in ₹) | |
|----------|--|----------------------|-----------|
| I | Profits and gains of business and profession | | |
| | Net profit as per profit and loss account | | 80,00,000 |
| | Add: Items debited but to be considered separately or to be disallowed | | |
| | (1) Interest to partners on capital [As per section 40(b), interest to partners authorized by the partnership deed is allowable as deduction subject to a maximum of 12% p.a.] [₹ 7,15,000 x 1%/13%] | 55,000 | |
| | (2) Interest on loan taken from partner | 18,000 | |

| | | | |
|--|--|--------------|-----------------|
| | <p>[As per section 40(b), interest to partners authorized by the partnership deed is allowable as deduction subject to a maximum of 12% p.a., whether it is interest on partner's capital or loan] [₹ 90,000 x 3%/15%]</p> | | |
| | (3) Depreciation as per books of account | 1,15,650 | |
| | | | 1,88,650 |
| | Less: Items credited but chargeable to tax under another head/expenses allowed but not debited | | 81,88,650 |
| | 1. Interest on bank fixed deposits made out of surplus fund | 35,000 | |
| | [Interest received from bank on fixed deposits made out of surplus funds is assessable under the head 'Income from other sources'. Since the same has been credited to profit and loss account, it has to be deducted while computing business income] | | |
| | 2. Profit on sale of building | 53,55,000 | |
| | [Capital gain on sale of building is taxable under the head "Capital Gains". Since such gains has been credited to profit and loss account, the same has to be deducted while computing business income] | | 53,90,000 |
| | Less: Depreciation as per Income-tax Rules, 1962 | 14,000 | |
| | - Depreciation on Motor car [₹ 6,80,000 x 30%, eligible for higher depreciation since purchased and put to use on 1.1.2020] | 2,04,000 | |
| | - Mobile phone [₹ 20,000 x 15% x 50%, since purchased and put to use for less than 180 days] | <u>1,500</u> | <u>2,19,500</u> |
| | Book Profit | | 25,79,150 |

| | | | |
|------------|--|------------------|-----------------|
| | Less: Salary to working partners | | |
| | (i) As per limits given under section 40(b) | | |
| | On first ₹ 3,00,000 @90% | 2,70,000 | |
| | On the balance of ₹ 22,79,150 @ 60% | <u>13,67,490</u> | |
| | | 16,37,490 | |
| | (ii) Salary actually paid to working partners [₹ 20,000 x 12 x 2] | 4,80,000 | |
| | Deduction allowed being (i) or (ii) whichever is less | | <u>4,80,000</u> |
| | | | 20,99,150 |
| II | Capital Gains | | |
| | 1. Short term capital gain on sale of building forming part of block of asset [Since building was the only asset in the block] | | |
| | Full value of consideration | 90,00,000 | |
| | Less: Cost of acquisition [WDV as on 1.4.2023] | <u>36,45,000</u> | |
| | | 53,55,000 | |
| | Less: Exemption under section 54EC [Investment in bonds of NHAI, the maximum deduction u/s 54EC would be ₹ 50 lakhs] | <u>50,00,000</u> | 3,55,000 |
| | [Available against depreciable asset, being a building held for more than 24 months and the payment for bonds has been made within six months from the date of transfer, exemption u/s 54EC would be available even if the allotment of bonds was made after the expiry of the six months ³] | | |
| III | Income from Other Sources | | |
| | Interest from bank on fixed deposits | | 35,000 |
| | Gross Total Income | | 24,89,150 |
| | Less: Deduction under section 10AA [₹ 7,50,000 x 40,00,000/ ₹ 1,20,00,000 x 100%] | | |

³ *Hindustan Unilever Ltd. v. DCIT* (2010) 325 ITR 102 (Bom.)

| | |
|---|------------------|
| [Unit in SEZ is eligible for deduction u/s 10AA since it obtained the letter of approval on or before 31 st March, 2020 and started operations before 31.3.2021] | 2,50,000 |
| Total Income | 22,39,150 |

- (b) Since Mr. Gaurav is an individual 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. Gaurav for A.Y. 2024-25

| Particulars | ₹ | ₹ |
|--|-----------------|-----------------|
| Income under the head “Salaries” | | |
| Pension from State Government | 3,90,000 | |
| Less: Standard deduction u/s 16(ia) | <u>50,000</u> | |
| | | 3,40,000 |
| Income from House Property | | |
| Rental income from property in Country N ⁴ | 3,00,000 | |
| Less: Municipal taxes | <u>20,000</u> | |
| | 2,80,000 | |
| Less: Deduction u/s 24(a)@30% | <u>84,000</u> | |
| | | 1,96,000 |
| Profits and Gains of Business or Profession | | |
| Speculative income in India | 1,16,000 | |
| Less: Set-off of business loss from proprietary business in Country N under section 70 | <u>1,06,000</u> | |
| | | 10,000 |
| Short-term capital gains on sale of plot in India | | 2,10,000 |
| Income from Other Sources | | |
| Agricultural income from Country M [not exempt u/s 10(1), since it is earned from land situated outside India] | 90,000 | |
| Dividend from a company in Country M | <u>64,000</u> | |
| | | <u>1,54,000</u> |

⁴ 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.

| | | |
|--|---|------------------------|
| Gross Total Income | | 9,10,000 |
| Less: Deduction under Chapter VI-A [No deduction allowable as per section 115BAC] | - | <u>-</u> |
| Total Income | | <u>9,10,000</u> |

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

| Particulars | ₹ |
|--|---------------------|
| Tax payable on ₹ 9,10,000 | |
| Upto ₹ 3,00,000 | Nil |
| ₹ 3,00,000 to ₹ 6,00,000 @ 5% | 15,000 |
| ₹ 6,00,000 to ₹ 9,00,000 @ 10% | 30,000 |
| ₹ 9,00,000 to ₹ 9,10,000 @15% | 1,500 |
| Add: Health and education cess@4% | <u>1,860</u> |
| | 48,360 |
| Less: Rebate under section 91 (See Working Note below) | <u>9,283</u> |
| Tax Payable | 39,077 |
| Tax Payable (rounded off) | 39,080 |
| Calculation of Rebate under section 91: | ₹ |
| Average rate of tax in India [i.e., ₹ 48,360/ ₹ 9,10,000 x 100] = 5.314% | |
| Doubly taxed income pertaining to Country M | |
| Agricultural income | 90,000 |
| Dividend from a company in Country M [Not includible, since exempt in Country M] | <u>-</u> |
| | 90,000 |
| Rebate under section 91 on ₹ 90,000 @5.314% [being the lower of average Indian tax rate (5.314%) and Country M tax rate (10%)] | 4,783 |
| Doubly taxed income pertaining to Country N | |
| Income from house property less business loss set-off against income chargeable to tax in India (₹ 1,96,000 – ₹ 1,06,000) | 90,000 |
| Rebate under section 91 on ₹ 90,000 @5% [being the lower of average Indian tax rate (5.314%) and Country N tax rate (5%)] | <u>4,500</u> |
| Total rebate under section 91 (Country M + Country N) | <u>9,283</u> |

3. (a) (i) Computation of taxable income of public charitable trust

| Particulars | | ₹ |
|-------------|---|-----------------|
| (i) | Income from property held under trust | 10,00,000 |
| (ii) | Income from business (incidental to main objects) | 4,00,000 |
| (iii) | Voluntary contributions from public | 7,00,000 |
| | Voluntary contribution made with a specific direction towards corpus are alone to be excluded under section 11(1)(d). In this case, there is no such direction and hence, included. | |
| | | 21,00,000 |
| | Less: 15% of the income eligible for retention / accumulation without any conditions | 3,15,000 |
| | | 17,85,000 |
| | Less: Amount applied for the objects of the trust | |
| (i) | Amount spent for charitable purposes (₹ 11,60,000 - ₹ 3,60,000) | 8,00,000 |
| (ii) | Repayment of loan for construction of orphan home (See note below) | - |
| | Taxable Income | 9,85,000 |

Note - As per *Explanation 4(ii)* to section 11(1), any application for charitable or religious purposes, from any loan or borrowing in the concerned year, shall not be treated as application of income for charitable or religious purposes. However, the amount not so treated as application, shall be treated as application in the year in which the loan is repaid. Therefore, the repayment of loan for construction of orphan home can be treated as application of income only if such expenditure on construction of orphanage was not treated as application in year such expenditure was incurred. However, in this case, the amount spent on construction of orphanage was allowed as deduction in the P.Y. 2020-21. Thus, repayment of loan taken for such purposes will not be allowed as application as it would tantamount to double deduction.

- (ii) As per *Explanation* below to section 10(23C)(iii)(a), it has been clarified that the limit of annual receipts of ₹ 5 crore is qua 'taxpayer' and not qua 'activity'. Therefore, if the aggregate annual receipts from educational activity and medical activity exceeds ₹ 5 crores, then exemption under sub-clause (iii)(a) and (iii)(b) cannot be availed.

Since, in the present case, the aggregate annual receipt of ₹ 7 crores (₹ 3 crores of educational institution and ₹ 4 crores from

hospital) exceeds the threshold of ₹ 5 crores, exemption under section 10(23C)(iiia) and (iiiae) cannot be availed, even though the individual receipts have not exceeded ₹ 5 crores.

(b) Computation of income to be declared by the branch in its return of income

| Computation of Head Office expenses allowable u/s 44C: | | |
|---|------------------|---------------------------|
| Particulars | ₹ | ₹ |
| Net profit of the branch | | 28,00,000 |
| Add: Head office expenditure debited to profit and loss | 1,20,00,000 | |
| Unabsorbed depreciation | 17,00,000 | |
| Capital expenditure for promoting family planning | 7,00,000 | |
| Brought forward business loss | 25,00,000 | |
| Deductions under Chapter VI-A | <u>20,00,000</u> | |
| | | <u>1,89,00,000</u> |
| Adjusted total income | | <u>2,17,00,000</u> |
| Note – Depreciation for the current financial year and capital expenditure on scientific research are not required to be added back for computing adjusted total income. | | |
| Head office expenses allowable u/s 44C = ₹ 10,85,000 | | |
| Being the lower of - | | |
| (i) 5% of ₹ 2,17,00,000 = ₹ 10,85,000 | | |
| (ii) Actual Head Office expenses allocated to the branch = ₹ 1,20,00,000 | | |
| Income to be declared by the branch for A.Y.2024-25 | | |
| Particulars | | ₹ |
| Net profit of the branch | | 28,00,000 |
| Add: Head office expenditure debited to profit and loss | | <u>1,20,00,000</u> |
| | | 1,48,00,000 |
| Less: Head office expenses allowable u/s 44C | | <u>10,85,000</u> |
| Income to be declared by the branch | | <u>1,37,15,000</u> |

4. (a) (i) TDS under section 194C is **not** attracted since the payment of ₹ 3 lakhs for repair of residential house is for personal purpose. TDS under section 194M is also not attracted as aggregate of contract payment to the payee in the P.Y.2023-24 does not exceed ₹ 50 lakhs.
- However, on payment of ₹ 75,000 towards commission to Mr. Mukesh for business purposes, tax is required to be deducted at source u/s 194H @5%, since the payment exceeds ₹ 15,000, and Mr. Mukesh's turnover from business exceeds ₹ 1 crore in the P.Y.2022-23.

Accordingly, amount of ₹ 3,750 (₹ 75,000 x 5%) is required to be deducted at source.

- (ii) Yes, he can do so. If a person has a loss in any previous year and has furnished a return of loss under section 139(3) on or before the due date of filing return of income u/s 139(1), he shall be allowed to furnish an updated return, if such updated return is a return of income. Accordingly, in this case, since the original return of Mr. Rajesh was filed on the due date u/s 139(1) i.e., on 31.10.2022, he can file an updated return within 2 years from the end of A.Y.2022-23, i.e., on or before 31.3.2025. Accordingly, he can file an updated return of income on 30.11.2023 declaring total income of ₹ 7 lakhs, after paying tax due on such total income along with interest under section 234B and section 234C and additional income-tax at 25% of aggregate of tax and interest payable (since the updated return is filed before 31.3.2024, i.e., before 12 months from the end of A.Y.2022-23).

- (b) As per section 194-I dealing with deduction of tax at source from payment of rent, the rate of TDS applicable is 2% for machinery hire charges and 10% for building lease rent. The scope of the section includes within its ambit, rent for machinery, plant and equipment. Tax is required to be deducted at source from payment of rent, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of building and machinery, irrespective of whether such assets are owned or not by the payee.

The limit of ₹ 2,40,000 for tax deduction at source will apply to the aggregate rent of all the assets. Even if two separate agreements are entered into, one for sub-lease of building and another for hiring of machinery, rent and hire charges under the two agreements have to be aggregated for the purpose of application of the threshold limit of ₹ 2,40,000.

In this case, since the payment for rent and hire charges credited to the account of James, the payee, aggregates to ₹ 2,48,000 (₹ 1,40,000 + ₹ 1,08,000), tax is deductible at source under section 194-I. Tax is deductible @ 10% on ₹ 1,40,000 (rent of building) and @ 2% on ₹ 1,08,000 (hire charges of machinery).

- (c) **Computation of capital gains of Mr. Sarthak for A.Y. 2024-25**

| Particulars | ₹ | ₹ |
|--|--------------------|----------|
| Redemption of SLR growth fund | | |
| Full value of consideration [Redemption value] | 1,40,00,000 | |
| Less: Indexed cost of acquisition [₹ 1,20,00,000 × 348/301] | <u>1,38,73,754</u> | |
| Long term capital gains [Since it is debt fund (as not more than 65% of the | | 1,26,246 |

| | | |
|--|--------------------|------------------|
| proceeds are invested in equity shares of domestic companies) and it was held by Mr. Sarthak for more than 36 months immediately preceding the date of its transfer] | | |
| Redemption of XYZ Strategic fund | | |
| Full value of consideration [Redemption value] | 50,00,000 | |
| Less: Cost of acquisition | <u>46,00,000</u> | 4,00,000 |
| Short term capital gains [Since it is a specified mutual fund (as not more than 35% of its proceeds are invested in equity shares of domestic companies) which is acquired on or after 1.4.2023, this fund would be considered as short-term capital asset as per section 50AA irrespective of the period of holding] | | |
| Redemption of MNO Midcap fund | | |
| Full value of consideration [Redemption value] | 1,18,00,000 | |
| Less: Cost of acquisition | <u>1,15,00,000</u> | 3,00,000 |
| Short term capital gains [Since it is equity-oriented fund (as more than 65% of its proceeds are invested in equity shares of domestic companies) and it was held by Mr. Sarthak for not more than 12 months immediately preceding the date of its transfer] | | |
| Redemption of TBA Growth fund | | |
| Full value of consideration [Redemption value] | 1,20,00,000 | |
| Less: Cost of acquisition [Indexation benefit would not be available in case of income taxable under section 112A] | <u>1,10,00,000</u> | |
| Long term capital gains [Since it is equity-oriented fund (as more than 65% of its proceeds are invested in equity shares of domestic companies) and it was held by Mr. Sarthak for more than 12 months immediately preceding the date of its transfer] | | 10,00,000 |
| | | 18,26,246 |
| Less: Exemption under section 54F | | |
| Capital gain arising on transfer of a long- | | |

| | | |
|--|--|-----------------|
| term capital asset other than a residential house shall not be chargeable to tax to the extent such capital gain is invested in the purchase of one residential house property in India within one year before or two years after the date of transfer of original asset. Therefore, in the present case, the exemption would be available only in respect of long-term capital gains from redemption of SLR growth fund and TBA Growth fund. | | |
| Exemption from long term capital gains from redemption of TBA Growth fund [10,00,000 x 1,20,00,000 / 1,20,00,000] | | 10,00,000 |
| Exemption from long term capital gains from redemption of SLR short term fund [1,26,246 x 80,00,000 (2 crores – 1.20 crores)/1,40,00,000] | | 72,141 |
| Capital gains chargeable to tax for A.Y.2024-25 | | 7,54,105 |

5. (a) (i) Section 144C requires the eligible assessee, XYZ Ltd., to file his objections within 30 days of the receipt of draft assessment order from the Assessing Officer with the DRP and the Assessing Officer.
- If he fails to do so, the Assessing Officer will proceed to complete the assessment on the basis of the draft order.
- The CBDT has clarified that the assessee has a choice whether to file an objection before the DRP against the draft assessment order or not to exercise this option and file an appeal later before CIT (Appeals) against the final assessment order passed by the Assessing Officer.
- Therefore, XYZ Ltd. can choose to file an appeal before Commissioner (Appeals) against the final assessment order instead of filing objection before the DRP against the draft assessment order passed by the Assessing Officer.
- In case XYZ Ltd. files objection before the DRP, then, he has the right to appeal to Appellate Tribunal, if he is aggrieved by the final order passed by the Assessing Officer in pursuance of the directions of the DRP.
- (ii) As per section 132B, the amount of existing liability under the Income-tax Act and the amount of liability determined on completion of assessment under section 148 may be recovered out of assets seized under section 132. The words “existing liability” postulates a liability that is crystallized by adjudication.

Likewise, “a liability is determined” only on completion of the assessment. Until the assessment is complete, it cannot be postulated that a liability has been crystallized.

It is only when the liability is determined on the completion of assessment that it would stand crystallized and in pursuance of which a demand can be raised and recovery can be initiated. Accordingly, the assessee may make an application to the Assessing Officer within 30 days from the end of the month in which the asset was seized, for release of the assets seized.

However, in the present case, the assessee moved an application before the Assessing Officer for adjustment of tax liability on income surrendered during search by sale of seized gold bars.

In this case, assessment is not complete and the liability has not been crystallised.

Therefore, the action of the Assessing Officer in turning down the application of the assessee is in order, since the assets seized cannot be adjusted against tax liability on income surrendered during search⁵.

- (iii) The time limit for service of notice under section 143(2) is three months from the end of the financial year in which the return of income was furnished by the assessee. The return of income for assessment year 2023-24 was filed by the assessee on 25th October, 2023. Therefore, the notice under section 143(2) has to be served by 30th June, 2024. However, the notice was served on the assessee only on 9th July, 2024. Hence, the notice issued under section 143(2) is time-barred.

However, as per section 292BB, where an assessee had appeared in any proceedings or co-operated in any enquiry relating to an assessment or reassessment, it shall be deemed that any notice required to be served upon him, has been duly served upon him in time in accordance with the provisions of the Act and such assessee shall be precluded from raising any objection in any proceeding or enquiry that the notice was (a) not served upon him or (b) not served upon him in time or (c) served upon him in an improper manner.

The above provision shall not be applicable where the assessee has raised such objection before the completion of such assessment or reassessment. Therefore, in the instant case, if the assessee, T Ltd., had raised an objection to the proceeding, on the ground of non-service of the notice under section 143(2) on time, then, the validity of the assessment order can be challenged. In

⁵ It was so held in *Hemant Kumar Sindhi & Another v. CIT* (2014) 364 ITR 555 (All)

absence of such objection, the assessment order cannot be challenged.

- (b) In India, the Finance Act, 2016 has introduced a concessional taxation regime for royalty income from patents for the purpose of promoting indigenous research and development and making India a global hub for research and development. The purpose of the concessional taxation regime is to encourage entities to retain and commercialise existing patents and for developing new innovative patented products. Further, this beneficial taxation regime will incentivise entities to locate the high-value jobs associated with the development, manufacture and exploitation of patents in India.

The nexus approach has been recommended by the OECD under BEPS Action Plan 5. This approach requires attribution and taxation of income arising from exploitation of Intellectual property (IP) in the jurisdiction where substantial research and development (R & D) activities are undertaken instead of the jurisdiction of legal ownership. Accordingly, section 115BBF has been inserted in the Income-tax Act, 1961 to provide that where the total income of the eligible assessee (being a person resident in India who is the true and first inventor of the invention and whose name is entered in the patent register as the patentee in accordance with the Patents Act, 1970 and includes every such person, being the true and the first inventor of the invention, where more than one person is registered as patentee under Patents Act, 1970 in respect of that patent) includes any income by way of royalty in respect of a patent developed and registered in India, then such royalty shall be taxable at the rate of 10% (plus applicable surcharge and cess). For this purpose, developed means atleast 75% of the expenditure should be incurred in India by the eligible assessee for any invention in respect of which patent is granted under the Patents Act, 1970.

6. (a) Equalisation levy of 6% is attracted in respect of the amount of consideration exceeding ₹ 1 lakh for, *inter alia*, online advertisement, received or receivable by a non-resident not having permanent establishment in India, from, *inter alia*, a resident in India who carries on business or profession.

In this case, the payment of ₹ 10 lakhs by NI Ltd., a resident in India (since it is an Indian company) to SK Inc., New York, a non-resident not having PE in India, for online advertisement services would be subject to Equalisation Levy@6%. Such income is, however, exempt under the Income-tax Act, 1961 by virtue of section 10(50) thereof.

NI Ltd. is required to deduct equalisation levy of ₹ 60,000 i.e., @6% of ₹ 10 lakhs from such payment.

(b) Computation of Tax Liability of Mr. Aryan & Mr. Aditya for the A.Y. 2024-25 as per section 115BAC

| Particulars | Mr. Aryan | Mr. Aditya |
|---|------------------|------------------|
| Income under the head "Salaries" | | |
| Salary | 13,00,000 | 13,00,000 |
| Less: Standard deduction u/s 16(ia) | <u>50,000</u> | <u>50,000</u> |
| | 12,50,000 | 12,50,000 |
| Less: Set-off loss from house property in respect interest on loan for self-occupied property [not allowable as deduction u/s 115BAC] | <u>-</u> | <u>-</u> |
| Gross Total Income | 12,50,000 | 12,50,000 |
| Less: Deduction under section 80D & 80GGC [Not allowable as deduction u/s 115BAC] | <u>-</u> | <u>-</u> |
| Total income as per section 115BAC | 12,50,000 | 12,50,000 |
| Tax Liability | | |
| Upto ₹ 3,00,000 | Nil | Nil |
| ₹ 3,00,001 to ₹ 6,00,000 @ 5% | 15,000 | 15,000 |
| ₹ 6,00,001 to ₹ 9,00,000 @ 10% | 30,000 | 30,000 |
| ₹ 9,00,001 to ₹ 12,00,000 @ 15% | 45,000 | 45,000 |
| ₹ 12,00,001 to ₹ 12,50,000 @ 20% | <u>10,000</u> | <u>10,000</u> |
| | 1,00,000 | 1,00,000 |
| Add: Health and education cess @4% | <u>4,000</u> | <u>4,000</u> |
| Tax Liability | 1,04,000 | 1,04,000 |

Computation of Tax Liability of Mr. Aryan & Mr. Aditya for the A.Y. 2024-25 as per regular provisions of Income-tax Act

| Particulars | Mr. Aryan | Mr. Aditya |
|---|------------------|------------------|
| Income under the head "Salaries" | | |
| Salary | 13,00,000 | 13,00,000 |
| Less: Standard deduction u/s 16(ia) | <u>50,000</u> | <u>50,000</u> |
| | 12,50,000 | 12,50,000 |
| Less: Set-off of loss from house property in respect of interest on loan borrowed for self-occupied property, restricted to ₹ 2,00,000, as per section 71(3A) | <u>-</u> | <u>2,00,000</u> |
| Gross Total Income | 12,50,000 | 10,50,000 |
| Less: Deduction u/s VI-A | | |
| Section 80D – Medical insurance premium | 24,000 | - |

| | | |
|---|-----------------|---------------|
| Section 80GGC – Contribution to political party by cheque | - | 1,50,000 |
| Tax Liability | 12,26,000 | 9,00,000 |
| Upto ₹ 2,50,000 | Nil | Nil |
| ₹ 2,50,001 to ₹ 5,00,000 @ 5% | 12,500 | 12,500 |
| ₹ 5,00,001 to ₹ 10,00,000 @ 20% | 1,00,000 | 80,000 |
| Above ₹ 10,00,000 @30% | 67,800 | - |
| | 1,80,300 | 92,500 |
| Add: Health and Education cess @4% | 7,212 | 3,700 |
| Tax liability | 1,87,512 | 96,200 |
| Tax liability (rounded off) | 1,87,510 | 96,200 |

Since tax liability of Mr. Aryan as per section 115BAC of ₹ 1,04,000 is lower than the tax liability of ₹ 1,87,510 computed as per the regular provisions of the Act, it is advisable for him to not to opt out of section 115BAC.

However, in case of Mr. Aditya, since his tax liability as the normal provisions of ₹ 96,200 is lower than the tax liability of ₹ 1,04,000 as per section 115BAC, it is advisable for him to opt out of the default tax regime under section 115BAC and pay tax as per regular provisions.

- (c) A transaction where one of the parties thereto is a person located in a NJA would be deemed to be an international transaction and all parties to the transaction would be deemed as associated enterprises. Accordingly, all the provisions of transfer pricing would be attracted in case of such a transaction.

Hence, the transactions between TI Ltd, an Indian company and LMP Ltd., located in NJA, would be deemed to be international transactions between associated enterprises.

The transactions of TI Ltd. with TOP Inc. of Country X and MON Inc. of Country Y for sale of identical goods are comparable uncontrolled international transactions, since they are neither associated enterprises of TI Ltd. nor are they situated in NJA. Hence, Comparable Uncontrolled Price (CUP) method can be used to determine ALP.

Where more than one price is determined by the most appropriate method, CUP method in this case, then, the arithmetic mean has to be taken in cases where the number of entries in the dataset is less than 6 (in this case it is only 2). Moreover, the benefit of permissible variation between the ALP and the transfer price based on the rate notified by the Central Government (i.e., maximum of 3% of transaction price) would **not** be available in respect of such transaction.

Computation of ALP using CUP method

| Particulars | TOP Inc. | MON Inc. |
|--|---------------------|---------------------|
| | ₹ in crores | ₹ in crores |
| Price charged by TI Ltd. (on CIF basis) | 10.50 | 11.00 |
| Less: Ocean freight and insurance, has to be reduced since the price charged to LMP Ltd. is on FOB basis | <u>0.18</u> | <u>0.18</u> |
| | 10.32 | 10.82 |
| Less: Cost of after-sales support service (has to be reduced, since such services are being provided to TOP Inc. and MON Inc. but not to LMP Ltd.) | <u>0.13</u> | <u>0.13</u> |
| Arm's Length Price | <u>10.19</u> | <u>10.69</u> |
| Arithmetic mean of the above prices [(₹ 10.19 crores + ₹ 10.69 crores)/2] | | 10.44 |
| Less: Price at which goods were sold to LMP Ltd. | | <u>9.50</u> |
| Arm's length adjustment [increase in profit of TI Ltd.] | | <u>0.94</u> |