

Mock Test Paper - Series II: October, 2024

Date of Paper: 4th October, 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.

Total Marks: 100 Marks

Time Allowed: 3 Hours

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

M/s. Swift LLP filed its return of income for A.Y.2023-24, declaring total income of ₹ 18 lakhs, on 2nd December 2023. On processing of return, the total income determined under section 143(1)(a) was ₹ 22 lakhs, after disallowing claim for deduction under section 10AA on account of late furnishing of return of income. Thereafter, on scrutiny, the Assessing Officer made some additions under section 40(a)(ia) and section 43B and passed an assessment order under section 143(3) assessing total income of ₹ 35 lakhs. Later on, the Assessing Officer noticed that some information is flagged for A.Y. 2023-24 suggesting that certain income chargeable to tax had escaped assessment. Based on the said information, notice under section 148 was issued for making reassessment under section 147 after compliance with the requirements stipulated under section 148A. The total income reassessed under section 147 was ₹ 42 lakhs.

Consider that none of the additions or disallowances made in the assessment or re-assessment as above qualifies under section 270A(6). Based on the facts of the above case scenario, choose the most appropriate answer to Q. 1 to 5 below:

1. For the purpose of answering this question alone, assume that intimation under section 143(1)(a) was sent to M/s Swift LLP on 1.2.2025, would such intimation be valid?
 - (a) Yes, since it was sent within one year from the end of the financial year in which return was made.
 - (b) No, since it was sent after the expiry of nine months from the end of the financial year in which return was made.
 - (c) No, since it was sent after the expiry of one year from the end of the month in which return was made.

- (d) No, since it was sent after the expiry of nine months from the end of the month in which return was made.
2. For the purpose of answering this question alone, assume that in case of M/s Swift LLP, certain other incomes (which had escaped assessment and came to Assessing Officer's notice subsequently in the course of reassessment proceedings) were also assessed or reassessed in the reassessment order made under section 147, in respect of which provisions of section 148A were not complied with. Examine whether the action of the Assessing Officer is valid while making reassessment order in respect of such incomes?
- (a) The action of the Assessing Officer is not valid, since reassessment cannot be made in respect of other incomes which comes to his notice subsequently.
- (b) The action of the Assessing Officer is not valid, since provisions of section 148A are not complied with.
- (c) The action of the Assessing Officer is not valid, due to the reasons mentioned in (a) and (b) above.
- (d) The action of the Assessing Officer is valid.
3. Compute the amount of penalty to be levied under section 270A of the Income-tax Act, 1961 at the time of assessment made under section 143(3)? Assume under-reporting of income is not on account of misreporting.
- (a) ₹ 2,02,800
- (b) ₹ 2,65,200
- (c) ₹ 5,30,400
- (d) ₹ 4,05,600
4. Compute the amount of penalty to be levied under section 270A of the Income-tax Act, 1961 at the time of reassessment under section 147. Assume under-reporting of income is on account of misreporting.
- (a) ₹ 1,09,200
- (b) ₹ 4,36,800
- (c) ₹ 2,18,400
- (d) ₹ 3,12,000
5. In continuation to Q 4, assume reassessment order made under section 147 was received on 12.12.2025 and M/s Swift LLP does not prefer appeal against such order, can M/s Swift LLP make application for grant of immunity from penalty? If yes, what is time limit for making the said application?
- (a) No, M/s Swift LLP cannot make application for grant of immunity
- (b) Yes, M/s Swift LLP can make application for grant of immunity on or before 11.01.2026

- (c) Yes, M/s Swift LLP can make application for grant of immunity on or before 31.01.2026
- (d) Yes, M/s Swift LLP can make application for grant of immunity on or before 31.03.2026 **(2 x 5 = 10 Marks)**

Case Scenario II

A business trust, registered under SEBI (Real Estate Investment Trusts) Regulations, 2014, gives particulars of its income for the P.Y.2023-24:

- (i) Interest income from Tang Ltd. – ₹ 10 lakh;
- (ii) Dividend income from Tang Ltd. – ₹ 5 lakh;
- (iii) Short-term capital gains on sale of listed shares (STT paid both at the time of purchase and sale) of Indian companies – ₹ 4 lakh;
- (iv) Short-term capital gains on sale of developmental properties – ₹ 8 lakh
- (v) Interest received from investments in unlisted debentures of real estate companies – ₹ 1 lakh;
- (vi) Rental income from directly owned real estate assets – ₹ 20 lakh

Tang Ltd. is an Indian company in which the business trust holds 100% of the shareholding. Tang Ltd. does not opt to pay tax under section 115BAA.

Assume that the business trust has distributed the entire ₹ 48 lakh to the unit holders in the P.Y. 2023-24 in the month of March, 2024.

Mr. Shivam is a resident holder holding 100 units and Mr. Sahaj is a non-resident holder holding 500 units. The total number of units subscribed to by all unit holders is 5,000.

From the information given above, choose the most appropriate answer to the following questions -

- 6 In respect of the component of interest income from Tang Ltd. distributed by the business trust to unit-holders Shivam and Sahaj -
- (a) No tax is deductible by the business trust, since such income is not taxable in the hands of unit holders
 - (b) Tax is deductible @5% on ₹ 20,000 distributed to Mr. Shivam and @5.2% on ₹ 1 lakh distributed to Mr. Sahaj
 - (c) Tax is deductible @10% on ₹ 20,000 distributed to Mr. Shivam and @5.2% on ₹ 1 lakh distributed to Mr. Sahaj
 - (d) Tax is deductible @10% on ₹ 20,000 distributed to Mr. Shivam and 10.4% on ₹ 1 lakh distributed to Mr. Sahaj
7. In respect of short-term capital gains of ₹ 4 lakh on sale of listed shares of Indian companies and ₹ 8 lakh on sale of developmental properties -
- (a) The business trust is liable to pay tax @15% and at MMR, respectively

- (b) The business trust is liable to pay tax at MMR
 - (c) The business trust enjoys pass through status and hence, it need not pay any tax on such short-term capital gains; such income is subject to tax in the hands of unit-holders
 - (d) The business trust is liable to pay tax@15.6% and at MMR, respectively
8. The dividend component of income from Tang Ltd., distributed to unit-holders Shivam and Sahaj -
- (a) would be subject to distribution tax in the hands of Tang Ltd., hence exempt in the hands of the business trust and the unit holders
 - (b) is exempt in the hands of the business trust, since the trust enjoys pass through status in respect of such income; such income is taxable in the hands of the unitholders Shivam and Sahaj
 - (c) is taxable in the hands of the business trust; hence, exempt in the hands of the unitholders
 - (d) is exempt in the hands of the business trust and in the hands of the unit holders
9. If Tang Ltd. exercises option under section 115BAA, then, the dividend component of income from Tang Ltd., distributed to unit-holders Shivam and Sahaj-
- (a) would be subject to distribution tax in the hands of Tang Ltd., hence exempt in the hands of the business trust and the unit holders
 - (b) is exempt in the hands of the business trust, since the trust enjoys pass through status in respect of such income; such income is taxable in the hands of Shivam and Sahaj
 - (c) is taxable in the hands of the business trust; hence, exempt in the hands of the Shivam and Sahaj
 - (d) is exempt in the hands of the business trust and in the hands of the unit holders Shivam and Sahaj
10. Interest received by the business trust from investments in unlisted debentures of real estate companies and distributed to unit holders would be-
- (a) subject to tax in the hands of the unit holders
 - (b) subject to tax in the hands of the business trust @30%
 - (c) subject to tax in the hands of the business trust at MMR
 - (d) subject to tax in the hands of the business trust at the average rate of tax
11. The rental component of income from real estate assets received by the business trust and distributed to its unit holders Shivam and Sahaj would be -
- (a) subject to tax in the hands of the business trust at MMR

- (b) subject to tax in the hands of the business trust@31.2%
- (c) subject to tax in the hands of the unit-holder Shivam @10% (on ₹ 40,000) and Sahaj @ the rates in force (on ₹ 2,00,000); such tax has to be deducted at source by the business trust
- (d) subject to tax in the hands of the unit-holders Shivam and Sahaj; business trust has to deduct tax@10% on ₹ 40,000 distributed to Shivam and at the rates in force on ₹ 2,00,000 distributed to Sahaj

(2 x 6 = 12 Marks)

12. Mr. Piyush, a resident Indian aged 77 years, gets pension of ₹ 58,000 per month from the Rajasthan State Government. The same is credited to his savings account in SBI, Kota Branch. In addition, he gets interest@8% p.a. on fixed deposit of ₹ 28 lakh with the said bank. On 1.1.2024, he deposited ₹ 3 lakhs as five year term deposit in same account at interest rate of 8.5% p.a. Interest on savings bank credited to his SBI savings account for the P.Y. 2023-24 is ₹ 8,600.

What would be the tax liability of Mr. Piyush for the A.Y. 2024-25? Is Mr. Piyush required to file his return of income for A.Y.2024-25, if tax deductible at source has been fully deducted? Assume that Mr. Piyush has opted out for section 115BAC and taxing income on accrual basis.

- (a) ₹ 48,880; No, Mr. Piyush is not required to file his return of income
- (b) ₹ 59,280; Mr. Piyush is required to file his return of income, since his total income exceeds ₹ 5,00,000
- (c) ₹ 61,880; No, Mr. Piyush is not required to file his return of income
- (d) ₹ 61,880; Mr. Piyush is required to file his return of income, since his total income exceeds ₹ 5,00,000

(2 Mark)

13. SNO Ltd., an Indian company, paid Interest on loan taken from a wholly owned subsidiary P Inc., UK for ₹ 35 million. The SNO identified the following uncontrolled observations to arrive at this ALP:

| Observation | Interest rate |
|-------------|---------------|
| 1 | 5% |
| 2 | 8% |
| 3 | 14% |
| 4 | 6% |
| 5 | 12% |
| 6 | 17% |

What are the values (percentages) in the dataset to be selected by the SNO while computing the arm's length interest rate applying the range concept as per Rule 10CA?

- (a) 35th percentile – 8%, Median – 10%, 65th percentile – 12%

- (b) 35th percentile – 14%, Median – 10%, 65th percentile – 6%
- (c) 35th percentile – 4.9%, Median – 10%, 65th percentile – 11.05%
- (d) Arithmetic mean - 10.33% **(2 Marks)**
14. Smart Inc., Country X, advanced USD 10 million on 1.06.2023 to Kite (P) Ltd., India, in foreign currency. Kite (P) Ltd accepted the loan amount under an agreement approved by the Central Government of India. The loan carries interest@9% per annum payable in foreign currency. For the financial year 2023-24, Kite (P) Ltd paid interest after deducting income-tax on 31.03.2024. The TT buying rates on 01.06.2023 is 1 USD = ₹ 69; on 31.03.2024 is 1 USD = ₹ 70. What is the income-tax liability of Smart Inc. in India for the assessment year 2024-25 in respect of interest income earned in foreign currency from Kite (P) Ltd?
- (a) Nil, exempt income
- (b) ₹ 55.692 lakhs
- (c) ₹ 111.384 lakhs
- (d) ₹ 27.846 lakhs **(2 Marks)**
15. STP Process Ltd, an Indian company entered into a business agreement with Gayle LLP of UK in September 2023 for export of goods to various countries as directed by Gayle LLP. The amount of transaction between STP Process Ltd and Gayle LLP by way of sale of goods would be ₹ 180 crores spread over 3 financial years commencing from 01.10.2023. The parties (i.e., both STP Process Ltd and Gayle LLP) apprehend some ambiguity as regards the income chargeable to tax in the hands of Gayle LLP in India and STP Process Ltd. Can STP Process Ltd seek advance ruling in relation to its tax liability arising in respect of its transactions with Gayle LLP? If so, how much is the amount of fee to be paid for seeking advance ruling?
- (a) It cannot seek advance ruling in relation to its tax liability, since STP Process Ltd. is an Indian company. Hence, the question of paying fees does not arise.
- (b) It can seek advance ruling since value of transaction undertaken or proposed to be undertaken exceeds ₹ 100 crores. The amount of fee would be ₹ 5,00,000.
- (c) It can seek advance ruling since value of transaction undertaken or proposed to be undertaken exceeds ₹ 100 crores. The amount of fee would be ₹ 10,00,000.
- (d) It cannot seek advance ruling since value of transaction undertaken or proposed to be undertaken is only ₹ 60 crores in a year. Hence, the question of paying fees does not arise. **(2 Marks)**

Division B – Descriptive Questions

Question No. 1 is compulsory

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

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

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

- (i) Depreciation as per Companies Act, 2013: ₹ 24,00,000
- (ii) Interest amounting to ₹ 60,000 for short payment of advance tax paid as per section 234B relating to the assessment year 2023-24.
- (iii) Interest and borrowing costs amounting to ₹ 9,50,000 and ₹ 7,00,000 though not meeting the criteria for recognition as a component of cost, included in cost of opening and closing inventory, respectively.
- (iv) Expenditure of ₹ 41,000 paid in cash comprising of ₹ 22,000 directly paid to producer of dairy farming products and ₹ 19,000 paid towards printing and stationery items to a trader.
- (v) ₹ 3,50,000 paid to a contractor for carrying out repair work at factory premises. Tax was not deducted at source on this payment.
- (vi) ₹ 35,000 towards expenditure for earning income from transfer of carbon credits.
- (vii) Contribution to electoral trust: ₹ 3,00,000 paid by way of cheque.
- (viii) Expenditure towards advertising charges in a brochure of a political party registered under section 29A of Representation of People Act, 1951: ₹ 40,000 paid by way of cheque.
- (ix) Interest on term loan obtained from Cooperative Bank not paid before the due date of filing of return of income ₹ 2,60,000
- (x) Actual contribution to the pension scheme of employees: ₹ 1,50,000

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

- (i) Unrealised rent of ₹ 3,80,000 pertaining to financial year 2020-21 & 2021-22 recovered during the year in respect of a commercial property owned by the company, which was sold by the company on 23.03.2024.
- (ii) Dividends from a specified foreign company ₹ 1,60,000
- (iii) Profit of ₹ 3,00,000 received from hedging contract entered into for meeting out loss in foreign currency payments towards an imported printing machinery valued at ₹ 95 lakhs, installed on 15th December, 2023 and put to use from that date.

- (iv) Interest from banks on fixed deposits (net of TDS) at 10% ₹ 1,35,000.

Additional Information:

- (1) Depreciation as per Income-tax Rules: ₹ 28,00,000 exclusive of depreciation on the imported printing machine referred to in item B (iii)
- (2) Expenditure pertaining to previous financial year allowed on due basis, but paid in current financial year in cash on 18.01.2024: ₹ 35,000
- (3) Audit fee for the previous year 2022-23: ₹ 75,000. TDS deducted but not paid in the relevant previous year. However, TDS was paid on 31.12.2023.
- (4) Income from transfer of Carbon Credits amounting to ₹ 4,00,000 included in Net Profit (before tax).
- (5) The eligible salary and dearness allowance for the pension scheme referred to under section 80CCD is ₹ 10,00,000.

Compute the total income of SJ Industries Ltd. for assessment year 2024-25 as per the normal provisions of the Income-tax Act, 1961. Give brief reasons for the treatment given to each of the items considered in computation of income of the company. Company does not want to opt for section 115BAA.

(14 Marks)

2. (a) G Ltd., a domestic company, provides the following information of its Statement of Profit and Loss for the year ended on 31/03/2024. It earned profit of ₹ 20 lakhs after debiting/crediting of the below items:

Items debited to Statement of Profit and Loss:

| No. | Particulars | ₹ |
|-----|--|----------|
| 1. | Provision for the loss of subsidiary | 1,70,000 |
| 2. | Provision for doubtful debts | 1,75,000 |
| 3. | Provision for income-tax | 2,05,000 |
| 4. | Provision for gratuity based on actuarial valuation | 3,00,000 |
| 5. | Depreciation | 4,60,000 |
| 6. | Interest to financial institution (unpaid before filing of return) | 2,00,000 |
| 7. | Penalty for infraction of law | 1,50,000 |

Items credited to Statement of Profit and Loss:

| No. | Particulars | ₹ |
|-----|---|----------|
| 1. | Profit from unit established in 2019 in special economic zone | 6,00,000 |
| 2. | Share in income of an AOP as a member | 2,00,000 |
| 3. | Income from units of UTI | 1,75,000 |

Other Information:

- (i) Provision for income-tax includes ₹ 55,000 of interest payable on income-tax.
- (ii) Depreciation includes ₹ 2,50,000 on account of revaluation of fixed assets.
- (iii) Depreciation as per Income-tax Rules is ₹ 3,80,000.
- (iv) Brought forward loss of ₹ 11 lakhs include unabsorbed depreciation of ₹ 5 lakhs.
- (v) The AOP, of which the company is a member, has paid tax at maximum marginal rate.

Compute minimum alternate tax under section 115JB of the Income-tax Act, 1961, for A.Y. 2024-25, assuming that G Ltd. is not required to comply with the Indian Accounting Standards. **(8 Marks)**

- (b) Compute the total income and net tax liability of Mr. Nitin, an individual resident in India, aged 25 years for the Assessment Year 2024-25 from the following information furnished by him for the year ended 31.3.2024:

Mr. Nitin earned royalty income of ₹ 18 lakhs from PT Inc. of Country X, for writing articles in journals and newspapers for the year ended 31.03.2024. However, he received only ₹ 13.60 lakhs during the previous year 2023-24 and the balance is outstanding as on 31.03.2024. He maintains cash system of accounting for royalty income.

He also earned a rental income of ₹ 3.60 lakhs (gross) from a house situated in Country X. Municipal taxes paid in respect of the house amounted to ₹ 12,000 which is not allowed as deduction in Country X. No DTAA exist between India and Country X. In Country X, all incomes are charged to tax @15%.

He further earned ₹ 5.50 lakhs during the year, as dividend from M Ltd., an Indian company. On 1.04.2023, he took an educational loan from bank for his son who is pursuing MBA.

Annual repayment of loan and interest amounted to ₹ 1.40 lakhs and ₹ 0.36 lakhs, respectively.

Assume that Mr. Narayan opt out of default tax regime under section 115BAC. **(6 Marks)**

3. (a) The Balance Sheet of M/s SN Charitable Trust as on 31.1.2024, and its other information is given hereunder:

| Particulars | ₹ in lakhs |
|---------------------------|-----------------------|
| <u>Liabilities</u> | |
| Capital fund | 800.00 |
| Sundry creditors | <u>335.00</u> |
| Total | <u>1135.00</u> |

| | |
|---|----------------|
| <u>Assets</u> | |
| Land (purchased in the year 2009) | 100.00 |
| Land and buildings purchased in the year 2015 | 800.00 |
| 2000 equity shares of ₹ 1000 each in M/s XP Ltd. shares are listed in Bombay Stock Exchange (at face value) | 20.00 |
| Balance in current account of a nationalized bank | 10.00 |
| Balanced in fixed deposits with scheduled banks | 200.00 |
| Cash in hand | 3.50 |
| Tax Deducted at Source | <u>1.50</u> |
| Total | 1135.00 |

The application for registration was made on 15-4-2012 and registration under section 12AB of the Income-tax Act, 1961 was granted on 1-7-2012 to M/s SN Charitable Trust. However, the registration was cancelled on 31-1-2024. An appeal was preferred against the order of cancellation, which was dismissed by the Appellate authorities. The order confirming the cancellation was received on 31-3-2024.

Additional Information:

- (1) Stamp duty value of the land (purchased in 2009) as on 31-1-2024 was ₹ 120.00 lakhs but if sold in the open market, the property would fetch ₹ 250 lakhs as per a registered valuer's certificate.
- (2) Land and building (purchased in 2015), if sold in the open market will fetch ₹ 1000 lakhs as per a registered valuer's certificate. Stamp duty value as on 31-1-2024 was ₹ 1050 lakhs.
- (3) The highest and lowest value per share of M/s XP Ltd. traded on 31-1-2024 was ₹ 1099 and ₹ 1051 respectively.
- (4) Sundry Creditors include ₹ 30 lakhs provided on estimated basis to contractors for which no bills are received.

Based on the above information, calculate the exit tax payable by the Charitable Trust and state the latest day on which the said tax has to be paid. Give working notes wherever necessary. **(8 Marks)**

- (b) STP Ltd. is an Indian company engaged in the manufacturing of supreme quality cotton bedsheets. It has total borrowings of ₹ 60 crores by way of loan as on 1.04.2023. Fix Ltd. of Canada imported 4 lakh bedsheets from STP Ltd. for the resale in Canada @ ₹ 2,200 per unit. STP Ltd. sold similar bedsheets to other dealers in Canada @ ₹ 2,300 per unit.

STP Ltd. received a bank guarantee on 1.04.2023 for availing a cash credit limit of ₹ 9 crores for which Fix Ltd. was the guarantor. The terms of trade for other dealers was to make payment within 1 month from the date of sale of goods by STP Ltd., whereas for Fix Ltd., the credit period allowed was 3 months from the date of sale of goods. The cost of capital was 12% per annum and the supply of goods is assumed to be uniform throughout the year.

You are required to determine whether STP Ltd. and Fix Ltd. are associated enterprises. If yes, compute the ALP of the transaction between them and the amount to be added to the income of STP Ltd., if any, by way of an ALP adjustment.

Assuming that the above adjustments to the transfer price have been made suo-moto by STP Ltd. in its return of income, what is the time limit for the repatriation of such excess money? What are the implications if the excess money is not repatriated within such prescribed time limit?

(6 Marks)

4. (a) Examine whether TDS provisions are attracted in the following cases:
- (i) Kite & Co LLP withdrew from its bank account ₹ 68 lakhs cash for buying agricultural produce, from farmers/agriculturists, being raw material required for manufacture of finished products by it and ₹ 58 lakhs for purpose of other business activities. It files return of income on time regularly.
 - (ii) Interest of ₹ 98,000 on Capital Gains Bond issued by Power Finance Corporation Ltd. to Mr. Ajay (aged 52), a non-resident individual. **(2 x 2 = 4 Marks)**
- (b) The tax assessment of Mr. Pramod was completed on 25-12-2023 and the tax due was determined as ₹ 115 lakhs. The assessee has the following (i) Bank fixed deposit with Canara Bank ₹ 22 lakhs; (ii) Receivable from T & Co Ltd ₹ 27 lakhs. He gifted a land to his son (aged 35 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 05.10.2021.

Discuss against which of the movable/immovable property the Tax Recovery Officer can proceed against for recovery of tax. **(4 Marks)**

- (c) XYZ Ltd. provides you the Profit and loss A/c for the Financial Year 2022-23 and Financial Year 2023-24: **₹ in lakhs**

| Particulars | For the F.Y. 2022-23 | For the F.Y. 2023-24 | Particulars | For the F.Y. 2022-23 | For the F.Y. 2023-24 |
|--------------------------------|----------------------------|----------------------------|--------------|----------------------------|----------------------------|
| Employees Benefit Expenses | 390 | 402 | Gross Profit | 2030 | 1780 |
| Interest paid to L & T Inc. | 562 | 389 | | | |
| Depreciation | 250 | 254 | | | |
| Income Tax | 271 | 332 | | | |
| Profit transferred to Reserves | 557 | 403 | | | |
| | 2030 | 1780 | | 2030 | 1780 |

On 23rd June 2022, XYZ Ltd., an Indian Company borrowed ₹ 120 crores from L & T Inc., a company incorporated in Country R. The said loan is

repayable over a period of 4 years. This loan is guaranteed by SAM Ltd., a company incorporated in Country Y. SAM Ltd. holds 36% shares in XYZ Ltd.

Calculate the income under the head Profits and Gains from business and profession of XYZ Ltd. for the Assessment Year 2024-25, assuming the gross profit is calculated as per the provisions of Income-tax Act and Depreciation is also as per Income-tax Rules. Give appropriate reasons of your workings. Assume none of the companies are engaged in the business of banking. **(6 Marks)**

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

- (1) Issue involved
- (2) Provision Applicable
- (3) Analysis and conclusion

- (i) “The arm’s length price (ALP) determined by the Tribunal, which is the final fact-finding authority, is final and cannot be the subject matter of scrutiny by the High Court as it does not give rise to a substantial question of law; accordingly, in an appeal u/s 260A, the High Court is precluded from examining the correctness of determination of the ALP” – Examine the correctness of this statement with reference to a recent Supreme Court ruling.

(4 Marks)

- (ii) Tangram Limited entered into a contract for purchase of patented process with M/s. Dash Inc, a non-resident company based in Country X. It filed an application u/s 195(2) before the Assessing Officer to make payment to the non-resident company for purchase of patented process without deducting tax at source.

The assessee, Tangram Limited, contended that said non-resident company had no Permanent Establishment in India and in terms of the DTAA between India and Country X, no tax was to be deducted in India on same. The Assessing Officer rejected the assessee's application on grounds that consideration for patented process constituted royalty u/s 9(1)(vi) and was liable to be taxed in India and, accordingly, assessee was directed to deduct tax at source at rate of 10% on said royalty payment.

On Appeal, the Commissioner (Appeals) passed an order in favour of the assessee. On further appeal, the Tribunal upheld the order passed by the Assessing Officer on grounds that payments made for purchase of patented processes were in the nature of royalty and tax at source to be deducted on such payment.

The assessee company filed a miscellaneous application for rectification under section 254(2) before the Tribunal. The assessee had also filed an appeal before the High Court.

The Tribunal allowed said application in exercise of his powers under section 254(2) and reheard entire appeal on merits and recalled its original order and passed an order in favour of the assessee. Thereafter, the writ petition filed by the assessee with High Court was also withdrawn. Is Tribunal justified in recalling its original order? **(4 Marks)**

- (iii) On 31.12.2023, a search under section 132 was conducted in the business and residential premises of Mr. Yatin and some gold bars were seized from the locker. Mr. Yatin voluntarily disclosed ₹ 12.50 crores of income during the course of search. Later on, he filed an application for sale of the gold bars weighing 5 kgs for adjustment towards the tax liability, even before the completion of the assessment by the Assessing Officer. However, the Assessing Officer rejected the application and observed that such action can be taken only after the assessment is completed and a demand has been quantified. Is the Assessing Officer justified in rejecting the application? Examine. **(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) TMP Ltd. is engaged in transportation of building material and transportation of goods to contractors. It made payment for hiring dumpers for this purpose. The company has not deducted tax at source on the ground that since the payment was for transportation of goods and not renting out machinery and equipment, such payments could not be termed as rent paid for use of machinery under section 194-I and hence, no tax was deductible at source.

The tax auditor is, however, of the view that the transactions being in the nature of contracts for shifting of goods from one place to another would be covered under works contracts, thereby attracting the provisions of section 194C. He relied upon the Gujarat High Court ruling in *CIT (TDS) v. Shree Mahalaxmi Transport Co. (2011) 339 ITR 484*.

What is the reporting responsibility of the tax auditor in such a case and the consequent ethical implications? Examine. **(4 Marks)**

- (b) SD Ltd., a pharmaceutical company incorporated in year 2000-01, purchased a new plant and machinery for ₹ 12 lakhs on 01-04-2023. The total income of the company for Assessment Year 2024-25 before allowing additional depreciation in respect of new plant and machinery is ₹ 22 lakhs. SD Ltd. has not opted for the concessional tax regime under section 115BAA or 115BA so far.

Compute the tax liability of SD Ltd. in most beneficial manner for A.Y. 2024-25 assuming its turnover for the previous year 2021-22 was ₹ 338 crores. Ignore the provisions of MAT. **(4 Marks)**

- (c) Strawberry Ltd., a non-resident German company, has the following incomes in India during the year ended on 31.03.2024:
- (i) Dividend income of ₹ 12,50,000 from XY Ltd., an Indian company listed on recognized stock exchange.
 - (ii) 8% debentures of ₹ 20,00,000 received from X Ltd., an Indian Company, on October 1, 2023, in consideration of providing technical knowhow (date of payment of interest being March 31 every year).
 - (iii) Dividend of ₹ 5,50,000 on Global Depository Receipts of Y Ltd., an Indian company, issued under a scheme of Central Government against the initial issue of shares of the company and purchased by Strawberry Ltd. in foreign currency through an approved intermediary.
 - (iv) Business Income of ₹ 8,00,000 from a unit established at Mumbai.
 - (v) Income by way of royalty (other than referred to in section 44DA) amounting to ₹ 10,00,000, from Z Ltd., an Indian company, in pursuance of an agreement approved by Central Government. As per DTTA between the two countries, such royalty is taxable @22%.

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

Mock Test Paper - Series II: October, 2024

Date of Paper: 4th October, 2024

Time of Paper: 2 P.M. to 5 P.M.

FINAL COURSE: GROUP – II

PAPER – 4: DIRECT TAX LAWS & INTERNATIONAL TAXATION

SOLUTIONS

Division A – Multiple Choice Questions

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

Division B – Descriptive Questions

1. (a) Computation of Total Income of SJ Industries Ltd. for the A.Y. 2024-25

| | Particulars | Amount (₹) | | |
|----|--|-----------------|--|----------|
| I | Income from house property Unrealised rent [Taxable under section 25A, even if SJ Industries Ltd. is no longer the owner of commercial property] <i>Less:</i> 30% of above | 3,80,000 | | 2,66,000 |
| II | Profits and gains of business and profession Net profit as per the statement of profit and loss Add: Items debited but to be considered separately or to be disallowed | <u>1,14,000</u> | | |
| | | 72,00,000 | | |

| | | |
|--|-----------|--|
| (i) Depreciation as per Companies Act, 2013 | 24,00,000 | |
| (ii) Interest under section 234B for short payment of advance tax | 60,000 | |
| [Any interest payable for default committed by assessee for discharging his statutory obligations under Income-tax Act, 1961 which is calculated with reference to the tax on income is not allowable as deduction under section 40(a)(ii). Since the same has been debited to statement of profit and loss, it has to be added back] ¹ | | |
| (iii) Interest and borrowing cost included in Opening and Closing inventory | 2,50,000 | |
| [As per ICDS II, Interest and borrowing cost which does not meet the criteria for recognition as a component of the cost, cannot be included in the cost of inventory. Since the same have been included in the opening and closing inventory, the difference between ₹ 9,50,000, being interest included in opening inventory – ₹ 7,00,000, being interest included in closing inventory, has to be added back] | | |
| (iv) Cash payment in excess of ₹ 10,000 | 19,000 | |
| [Disallowance u/s 40A(3) is attracted in respect of expenditure, for which | | |

¹Bharat Commerce and Industries Ltd. v. CIT [1998] 230 ITR 733 (SC)

| | | | |
|--|----------|--|--|
| <p>payment exceeding ₹ 10,000 in a day has been made in cash. Since expenditure of ₹ 19,000 towards printing and stationery items is debited to the statement of profit and loss, the same has to be added back.</p> <p>However, payment of ₹ 22,000 to producer for dairy farming products is not disallowed since it is covered under the exceptions specified in Rule 6DD]</p> | | | |
| <p>(v) Repair work paid to contractor without deduction of tax at source</p> <p>[Disallowance of 30% of the amount of ₹ 3,50,000 paid for carrying out repair work to a contractor without deduction of tax at source would be attracted u/s 40(a)(ia)]</p> | 1,05,000 | | |
| <p>(vi) Expenditure for transfer of carbon credits</p> <p>[Income by way of transfer of Carbon Credits is chargeable to tax under section 115BBG at a flat rate. No deduction is allowed under any provision of the Act in respect of any expenditure or allowance in relation thereto. Since such expenditure is debited to the statement of profit and loss, the same has to be added back]</p> | 35,000 | | |
| <p>(vii) Contribution to electoral trust</p> | 3,00,000 | | |

| | | | |
|--|---|----------|--|
| | <p>[Contribution to electoral trust is not allowable as deduction from business profits of the company. Since the expenditure has been debited to statement of profit and loss, the same has to be added back while computing business income]</p> | | |
| | <p>(viii) Advertisement in brochure of a political party</p> <p>[Advertisement charges paid in respect of brochure published by a political party is not allowable as deduction from business profits of the company as per section 37(2B). Since the expenditure has been debited to statement of profit and loss, the same has to be added back while computing business income]</p> | 40,000 | |
| | <p>(ix) Interest to co-operative bank not paid on or before the due date</p> <p>[Disallowance under section 43B would be attracted for A.Y.2024-25, since the interest was not paid on or before the due date of filing of return]</p> | 2,60,000 | |
| | <p>(x) Contribution towards pension scheme of employees</p> <p>[Contribution towards pension scheme, referred to in section 80CCD, of employees is allowed only to the extent of 10% of salary of the employee in the P.Y. i.e., ₹ 1,00,000 being 10% of ₹ 10,00,000.]</p> | 50,000 | |

| | | |
|---|----------|--------------------|
| Therefore, the excess contribution of ₹ 50,000 [i.e., ₹ 1,50,000 – ₹ 1,00,000] is disallowed u/s 36(1)(iva). | | 35,19,000 |
| Add: Amount taxable but not credited to statement of profit and loss | | 1,07,19,000 |
| A(2) Expenditure pertaining to previous financial year [Cash payment in excess of ₹ 10,000 made in the current year in respect of expenditure allowed on mercantile basis in the previous financial year, would be deemed as income in the current year as per section 40A(3A)] | | 35,000 |
| | | 1,07,54,000 |
| Less: Items credited to statement of profit and loss, but not includible in business income / permissible expenditure and allowances | | |
| (i) Unrealised rent [Unrealised rent in respect of commercial property is taxable under the head "Income for house property". Since the said rent has been credited to the statement of profit and loss, the same has to be deducted while computing business income] | 3,80,000 | |
| (ii) Dividend received from specified foreign company | 1,60,000 | |

| | | |
|--|-----------------|--|
| <p>[Dividend received from specified foreign company is taxable under the head "Income from other sources". Since the said dividend has been credited to the statement of profit and loss, the same has to be deducted while computing business income]</p> | | |
| <p>(iii) Profit from hedging contract</p> <p>[Hedging contract is entered into for safeguarding against any loss that may arise due to currency fluctuation. The profit from such contract entered into for meeting loss in foreign currency payments towards imported printing machinery has to be adjusted against the cost of machinery. Since the said profit has been credited to the statement of profit and loss, the same has to be deducted while computing business income]</p> | <p>3,00,000</p> | |
| <p>(iv) Interest from bank fixed deposit</p> <p>[Interest on fixed deposit is taxable under "Income from Other Sources". Since the said interest has been credited to the statement of profit and loss, the same has to be deducted while computing business income]</p> | <p>1,35,000</p> | |
| <p>A(3) Audit fees of P.Y. 2022-23</p> <p>[30% of ₹ 75,000, being the audit fees disallowed in</p> | <p>22,500</p> | |

| | | |
|--|---------------------------|-----------|
| the P.Y. 2022-23 for non-remittance of TDS on or before due date of filing return of income for P.Y. 2022-23 would be allowed in the year of payment of TDS i.e., P.Y. 2023-24] | | |
| A(4) Transfer of Carbon Credits chargeable to tax under section 115BBG [Income by way of transfer of Carbon Credits chargeable under section 115BBG can be treated as business income or income from other sources, depending upon the facts of the case. In this case, since the question mentions that SJ Industries Ltd. is engaged in production and marketing of diversified products, it is logical to assume that the same is in the nature of business income. Since the amount of ₹ 4 lakh has already been credited to statement of profit and loss, no further adjustment is necessary] | <u>Nil</u> | 9,97,500 |
| Less: Depreciation as per Income tax Rules A(1) Depreciation under section 32 <i>Add:</i> Depreciation @7.5% on ₹ 92 lakhs [₹ 95 lakhs, being imported printing machinery - ₹ 3 lakhs, being profit from hedging contract] since, machinery is put to use for less than 180 days]. | 28,00,000 6,90,000 | 97,56,500 |

| | | | | |
|------------|---|----------|-----------------|------------------|
| | Add: Additional depreciation @10% on ₹ 92 lakhs, since machinery is put to use for less than 180 days assuming the conditions for claim of additional depreciation are satisfied ² . | 9,20,000 | | |
| | | | 44,10,000 | |
| | Profits and gains from business or profession | | | 53,46,500 |
| III | Income from Other Sources | | | |
| | Dividend from specified foreign company | | 1,60,000 | |
| | Interest from banks on fixed deposits (Gross) [Interest on banks on fixed deposits is taxable as "Income from other sources"] [₹1,35,000 x 100/90] | | <u>1,50,000</u> | |
| | | | | <u>3,10,000</u> |
| | Gross Total Income | | | 59,22,500 |
| | Less: Deduction under Chapter VI-A | | | |
| | Under section 80GGB [Contribution by a company to an electoral trust or registered political party is allowable as deduction, since payment is made otherwise than by cash. Expenditure incurred by an Indian company on advertisement in brochure published by political party tantamount to contribution to such political party] [₹ 3,00,000 + ₹ 40,000] | | | 3,40,000 |
| | Total income | | | 55,82,500 |

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

| Particulars | ₹ | ₹ |
|---|---|-----------|
| Net Profit as per Statement of Profit and Loss | | 20,00,000 |
| Add: Net profit to be increased by the following amounts as per <i>Explanation 1</i> to section 115JB(2): | | |

²Balance additional depreciation can be claimed in the A.Y.2025-26

| | | |
|--|-----------------|------------------|
| - Provision for the loss of subsidiary | 1,70,000 | |
| - Provision for doubtful debts , being the amount set aside as provision for diminution in the value of any asset | 1,75,000 | |
| - Provision for income-tax [As per Explanation 2 to section 115JB, income-tax shall include, inter alia, any interest charged under the Act, therefore, whole of the amount of provision for income-tax including ₹ 55,000 towards interest payable has to be added back] | 2,05,000 | |
| - Depreciation | <u>4,60,000</u> | <u>10,10,000</u> |
| | | 30,10,000 |
| Less: Net profit to be decreased by the following amounts as per <i>Explanation 1</i> to section 115JB: | | |
| - Share in income of an AOP as a member [In a case, where AOP has paid tax on its total income at maximum marginal rate, no income-tax is payable by the company, being a member of AOP, in accordance with the provisions of section 86. Therefore, share in income of an AOP on which no income-tax is payable in accordance with the provisions of section 86, would be reduced while computing book profit, since the same has been credited to profit and loss account] | 2,00,000 | |
| - Income from units in UTI [Income from units in UTI not to be reduced while computing the book profits, since the same is taxable in the hands of unitholders] | - | |
| - Depreciation other than depreciation on revaluation of assets (₹ 4,60,000 – ₹ 2,50,000) | 2,10,000 | |
| - Unabsorbed depreciation or brought forward business loss , whichever is less, as per the books of account. Lower of unabsorbed depreciation ₹ 5,00,000 and brought forward business | <u>5,00,000</u> | |

| | | |
|---|--|-------------------------|
| loss ₹ 6,00,000 as per books of accounts has to be reduced while computing the book profit] | | <u>9,10,000</u> |
| Book Profit | | <u>21,00,000</u> |

Computation of MAT liability under section 115JB

| Particulars | ₹ |
|--|------------------------|
| 15% of book profit | 3,15,000 |
| Add: Health & education cess@4% | <u>12,600</u> |
| Minimum Alternate Tax liability | <u>3,27,600</u> |

Notes:

- (1) It is only the specific items mentioned under *Explanation 1* to section 115JB, which can be adjusted from the net profit as per the Statement of Profit and Loss prepared as per the Companies Act for computing book profit for levy of MAT. Since the following items are not specified thereunder, the same cannot be adjusted for computing book profit:
 - Interest to financial institution (unpaid before filing of return) and
 - Penalty for infraction of law
- (2) Provision for gratuity based on actuarial valuation is an ascertained liability [*CIT v. Echjay Forgings (P) Ltd. (2001) 251 ITR 15 (Bom.)*]. Hence, the same should not be added back to compute book profit.
- (3) As per proviso to section 115JB(6), the profits from unit established in special economic zone cannot be excluded while computing the book profit, and hence, such income would be liable for MAT.

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

| Particulars | ₹ | ₹ |
|---|-----------------|----------|
| Income from House Property | | |
| Rental income from property in Country X ³ | 3,60,000 | |
| Less: Municipal taxes paid | <u>12,000</u> | |
| | 3,48,000 | |
| Less: Deduction u/s 24(a) @30% | <u>1,04,400</u> | |
| | | 2,43,600 |

³ In the absence of any information relating to fair rent, municipal value and standard rent, rental income assumed to be gross annual value.

| | | |
|--|----------|-------------------------|
| Profits and gains from business or profession | | |
| Royalty ⁴ from Country X for writing article in journals [only the amount which is received during the previous year is includible, since he maintains cash system of accounting] | | 13,60,000 |
| Income from Other Sources | | |
| Dividend from M Ltd. an Indian company | | <u>5,50,000</u> |
| Gross Total Income | | 21,53,600 |
| Less: Deduction under Chapter VI-A | | |
| U/s 80E – deduction in respect of interest on educational loan for his son | 36,000 | |
| U/s 80QQB – No deduction is allowable since royalty income is for writing articles in journals and newspapers and not for writing books | <u>-</u> | <u>36,000</u> |
| Total Income | | <u>21,17,600</u> |

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

| Particulars | ₹ |
|---|------------------------|
| Tax on total income [30% of ₹ 11,17,600 + ₹ 1,12,500] | 4,47,780 |
| Add: Health and education cess @4% | <u>17,911</u> |
| | 4,65,691 |
| Less: Relief under section 91 - | |
| Average rate of tax in India [[i.e., ₹ 4,65,691/21,17,600 x 100] | 21.991% |
| Average rate of tax in Country X | 15% |
| Doubly Taxed income [Rental income of ₹ 2,43,600 + royalty income of ₹ 13,60,000] | 16,03,600 |
| Deduction under section 91 on ₹ 16,03,600 @15%, being lower average Indian tax rate and foreign tax rate. | <u>2,40,540</u> |
| Net tax liability | <u>2,25,151</u> |
| Net tax liability (rounded off) | <u>2,25,150</u> |

3. (a) As per section 115TD, the accreted income of “M/s SN Charitable Trust”, registered under section 12AB would be chargeable to tax at maximum marginal rate @ 34.944% [30% plus surcharge @12% plus cess@4%] for

⁴ Royalty can also be shown under the head “Income from other sources” instead of “Profits and gains from business or profession.”

the reason of cancellation of registration.

| Computation of exit tax payable by M/s SN Charitable Trust | |
|--|---------------------------|
| Particulars | Amount (₹) |
| Aggregate FMV of total assets as on 31.1.2024, being the specified date (date of order of cancellation of the registration) [See Working Note 1] | 12,85,00,000 |
| Less: Total liability computed in accordance with the prescribed method of valuation [See Working Note 2] | <u>3,05,00,000</u> |
| Accreted Income | <u>9,80,00,000</u> |
| Tax Liability @ 34.944% of ₹ 9,80,00,000 | 3,42,45,120 |
| Working Note 1: | |
| <u>Aggregate fair market value of total assets on the date of cancellation of the registration</u> | |
| Valuation of Land, being an immovable property purchased in the year 2009 | - |
| [Value of land purchased in the year 2009 not includible in the aggregate fair market value, since the exemption provisions under section 11 and 12 would apply from P.Y.2012-13, being the previous year in which application for registration of trust is made] | |
| Valuation of Land and building, being an immovable property, purchased in 2015 | 10,50,00,000 |
| [The fair market value of land and building would be higher of ₹ 1,000 lakhs i.e., price that the land and building would ordinarily fetch if sold in the open market as per registered valuer's certificate and ₹ 1,050 lakhs, being stamp duty value as on the specified date i.e., 31.1.2024] | |
| Valuation of Quoted equity shares in M/s XP Ltd. [2,000 x ₹ 1,075 per share] | 21,50,000 |
| [The fair market value of quoted shares would be ₹ 1,075 per share, being the average of the lowest (₹ 1,051) and highest price (₹ 1,099) of such shares on the specified date i.e., 31.1.2024] | |
| Balance in current account of a nationalized bank | 10,00,000 |
| Balance in fixed deposits with scheduled banks | 2,00,00,000 |
| Cash in hand | 3,50,000 |
| | 12,85,00,000 |
| Working Note 2 - Total liability | |
| Book value of liabilities in the balance sheet on specified date | 11,35,00,000 |
| Less: Capital fund | 8,00,00,000 |

| | |
|---|--------------------|
| Less: Contingent liability on estimated basis to contractor for which no bills are received | 30,00,000 |
| Total liability of M/s SN Charitable Trust | 3,05,00,000 |
| The latest day on which such tax has to be paid is 14 th April, 2024, being 14 days from 31.3.2024, the date on which the order confirming the cancellation is received. | |

- (b) (1) STP Ltd. and Fix Ltd. of Canada are deemed to be associated enterprises, since Fix Ltd., a Canadian company provides guarantee for loan of ₹ 9 crores taken by STP Ltd., which is 15% of the total borrowings (i.e., not less than 10%) of STP Ltd. i.e., ₹ 60 crores.

As per section 92B, the transactions entered into between STP Ltd. and Fix Ltd., two associate enterprises, for sale of bedsheets falls within the meaning of “international transaction”.

As STP Ltd. has sold similar bedsheets to other dealers, being unrelated entity, at ₹ 2,300 per unit, the transactions between STP Ltd. and such unrelated party can be considered as a comparable uncontrolled transaction for the purpose of determining the arm’s length price of the transactions between STP Ltd. and Fix Ltd. However, such figure needs to be adjusted by the functional adjustments.

Computation of ALP of transaction between STP Ltd. and Fix Ltd.

| Particulars | Amount (in ₹) |
|---|--------------------|
| Selling price of each bedsheets to unrelated dealers in Canada | 2,300 |
| <i>Add:</i> Adjustment of cost of credit [STP Ltd. provides credit for 1 month to unrelated entity whereas it provided credit period of 3 months to Fix Ltd. Therefore, adjustment for the cost of such credit has to be carried out to arrive at arm’s length price. (12% x 2,300 x 2/12)] | 46 |
| Arm’s length price of 1 unit of bedsheets | 2,346 |
| Arm’s length price of 4 lakh units of bedsheets (A) | 93,84,00,000 |
| Sale price of 4 lakh units of bedsheets by STP Ltd. to Fix Ltd. (associated enterprise) (B) [2,200 x 4,00,000] | 88,00,00,000 |
| Amount to be added to STP Ltd.’s total income by way of ALP adjustment | 5,84,00,000 |

- (2) Where the primary adjustment to transfer price has been made *suo moto* by STP Ltd. in its return of income, the time limit for the

repatriation of such excess money (i.e., ₹ 584 lakhs) available with the associated enterprise (i.e., STP Ltd.) is within 90 days from 30.11.2024, being the due date of filing of return u/s 139(1) i.e., 28.2.2025.

- (3) The excess money (i.e., ₹ 584 lakhs) available with the associated enterprise (i.e., Fix Ltd.) not repatriated to India within 90 days from the due date of filing return of income u/s 139(1) would be deemed as an advance made by the STP Ltd. to its associated enterprise, Fix Ltd.

Interest would be calculated on such advance at the rate of one year marginal cost of fund lending rate of SBI as on 1st April of the relevant previous year i.e., 1.4.2024 + 3.25%, since the international transaction is denominated in Indian rupee.

Option to pay additional income-tax, if the excess money not repatriated

STP Ltd. has the option to pay additional income-tax @20.9664% (tax @18% plus surcharge @12% plus cess@4%) on excess money (i.e., ₹ 584 lakhs), in lieu of repatriation of such excess money.

Where additional income-tax is so paid by STP Ltd., it will not be required to make secondary adjustment and compute interest from the date of payment of such tax.

The additional income-tax so paid by STP Ltd. would be treated as the final payment of tax in respect of excess money not repatriated and no further credit would be allowed to STP Ltd. or to any other person in respect of the amount of additional income-tax so paid.

4. (a) (i) Section 194N, provides that every person, including, *inter alia*, a banking company, who is responsible for paying, in cash, any sum or aggregate of sums exceeding ₹ 1 crore during the previous year to any person from one or more accounts maintained by such recipient-person with it, shall deduct tax at source @2% of sum exceeding ₹ 1 crore.

In the present case, M/s Kite & Co. LLP has withdrawn ₹ 1.26 crores in cash in aggregate during the previous year 2023-24. Since aggregate amount of cash withdrawals exceed ₹ 1 crore, bank is required to deduct tax at source on the amount exceeding ₹ 1 crore i.e., ₹ 26 lakhs though he withdraws ₹ 68 lakhs for buying agricultural produce from farmers, agriculturists, being raw material required for manufacturing of finished products by it.

- (ii) Any person responsible for paying interest (other than interest referred to in section 194LB or section 194LC or section 194LD) or any other sum chargeable to tax (other than salaries) to a non-corporate non-resident or to a foreign company is liable to deduct tax at source at the rates in force.

Since interest of ₹ 98,000 on Capital Gains Bond issued by Power Finance Corporation Ltd. is taxable in the hands of Mr. Ajay, being a non-resident, the provisions for tax deduction at source under section 195 are attracted in this case.

- (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. Pramod had transferred his land 5 years ago to his son who was 30 years old at that time. He also gifted a diamond necklace to his son's wife on 5.10.2021. He also has bank fixed deposits, receivables from T & Co. Ltd.

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

- (i) bank fixed deposits,
- (ii) receivables from T & Co. Ltd.;

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) If an Indian company, being the borrower, incurs any expenditure by way of interest in respect of any debt issued by its non-resident associated enterprise and such interest exceeds ₹ 1 crore, then, the interest paid or payable by such Indian company in excess of 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to associated enterprise, whichever is lower, shall not be allowed as deduction as per section 94B.

Further, where the debt is issued by lender which is not associated enterprise but an associated enterprise provides an implicit or explicit guarantee to such lender, such debt shall be deemed to have been issued by an associated enterprise and limitation of interest deduction would be applicable.

In the present case, since SAM Ltd., a Country Y company, holds 36% share in XYZ Ltd., an Indian company, i.e., more than 26% of voting power, SAM Ltd. and XYZ Ltd. are deemed to be associated enterprise.

Since loan of ₹ 120 crores taken by XYZ Ltd., an Indian company from L & T Inc., Country R company, is guaranteed by SAM Ltd., an associated enterprise, such debt shall be deemed to have been issued by an associated enterprise and interest paid or payable to L & T Inc. shall be considered for the purpose of limitation of interest deduction under section 94B.

Computation of income under the head profits and gains of business or profession of XYZ Ltd

| Particulars | Amount (in lakhs) |
|--|----------------------|
| Interest allowable u/s 94B for A.Y. 2023-24 | |
| Gross Profit | 2,030 |
| Less: Employee benefits expenses | <u>390</u> |
| EBITDA | 1,640 |
| Interest paid or payable to L & T Inc. | 562 |
| Lower of the following would be disallowed | |
| - Total interest paid or payable in excess of 30% of EBITDA [₹ 562 lakhs – ₹ 492 lakhs (i.e., 30% of ₹ 1,640 lakhs)] | ₹ 70 lakhs |
| - Interest paid or payable to L & T Inc. | ₹ 562 lakhs |
| Interest to be disallowed as deduction for A.Y. 2023-24, which can be carried forward up to 8 assessment years | 70 |
| Interest allowable u/s 94B for A.Y. 2024-25 | |
| Gross Profit | 1,780 |
| Less: Employee benefits expenses | <u>402</u> |
| EBITDA | 1,378 |
| Interest paid or payable to L & T Inc. | 389 |
| Lower of the following would be disallowed | |
| - Total interest paid or payable in excess of 30% of EBITDA [₹ 389 lakhs – ₹ 413.40 lakhs (30% of ₹ 1378 lakhs)] | Nil |
| - Interest paid or payable to L & T Inc. | ₹ 389 lakhs |
| Interest to be disallowed as deduction for A.Y. 2024-25 | Nil |
| Brought forward interest of A.Y. 2023-24 allowed as deduction against profits and gains of A.Y. 2024-25 | |

| | |
|--|----------------------|
| to the extent of maximum allowable interest expenditure u/s 94B i.e., ₹ 24.4 lakhs [₹ 413.40 lakhs – ₹ 389 lakhs] | |
| Total interest allowed in A.Y. 2024-25 [₹ 389 lakhs + ₹ 24.40 lakhs] | <u>413.40</u> |
| Balance of amount of interest relating to A.Y. 2023-24 is eligible for carried forward i.e., ₹ 45.60 lakhs (₹ 70 lakhs minus ₹ 24.40 lakhs) to 7 more subsequent assessment years. | |
| Income under the head profit and gains of business or profession of XYZ Ltd. for A.Y. 2024-25 | |
| EBITDA | 1,378.00 |
| Less: Interest (maximum interest allowable as deduction u/s 94B) | 413.40 |
| Depreciation (As per the Income-tax Act, 1961) | <u>254.00</u> |
| | <u>710.60</u> |

5. (a) (i) **Issue Involved:** The issue under consideration is whether the arm's length price (ALP) determined by the Tribunal, which is the final fact-finding authority, is final and cannot be the subject matter of scrutiny by the High Court as it does not give rise to a substantial question of law.

Relevant provision of law: As per section 260A(1), an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law.

Analysis & Conclusion: The High Court have the powers to consider the substantial question of law involving determination of arm's length price (ALP):

- While determining the ALP, the Tribunal has to follow the guidelines stipulated under Chapter X of the Income-tax Act, 1961, namely, sections 92 to 92F of the Act and Rules 10A to 10E of the Income-tax Rules, 1962. Any determination of the ALP under Chapter X not in accordance with the relevant provisions of the Income-tax Act, 1961 and Rules can be considered as perverse and it may be considered as a substantial question of law as perversity itself can be said to be a substantial question of law. Therefore, there cannot be any absolute proposition of law that in all cases where the Tribunal has determined the ALP, the same is final and cannot be the subject matter of scrutiny by the High Court in an appeal under section 260A.

When the determination of the ALP is challenged before the High Court, it is always open for the High Court to consider and examine whether the ALP has been determined while taking into consideration the relevant guidelines under the Act and the Rules.

- The High Court can examine the question of comparability of two companies or selection of filters and examine whether the same is done judiciously and on the basis of the relevant material/evidence on record. The High Court can also examine whether the comparable transactions have been taken into consideration properly or not, i.e., to the extent as to whether non-comparable transactions are considered as comparable transactions or not.

Therefore, in an appeal challenging the determination of the arm's length price, it is always open for the High Court to examine in each case, within the parameters of section 260A, whether while determining the ALP, the guidelines laid down under the Income-tax Act, 1961 and the Income-tax Rules, 1962 are followed or not and whether the determination of the ALP and the findings recorded by the Tribunal while determining the ALP are perverse or not.

The statement is, therefore, not correct.

Note – *The facts given in the question are similar to the facts in SAP Labs India Pvt. Ltd. v. ITO [2023] 454 ITR 121 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.*

- (ii) **Issue Involved:** The issue under consideration is whether the powers under section 254(2) can be exercised by the Tribunal to recall an order and rehear the entire appeal on merits.

Relevant provision of law: Section 254(1) empowers the Appellate Tribunal to pass such order thereon as it thinks fit, after giving both the parties to the appeal an opportunity of being heard.

Under section 254(2), the Appellate Tribunal, may amend an order passed by it u/s 254(1) with a view to rectifying any mistake apparent from the record.

Analysis & Conclusion: The power u/s 254(2) is limited to rectification of a mistake apparent on record and therefore, the Tribunal must restrict itself within those parameters.

A detailed order was passed by the Tribunal upholding the order passed by the Assessing Officer. While allowing the application u/s 254(2) and recalling its earlier order, the Tribunal had reheard the entire appeal on the merits as if the Tribunal was deciding the appeal against the order passed by the Commissioner (Appeals).

The subsequent order passed by the Tribunal recalling its earlier order was beyond the scope and ambit of the powers u/s 254(2) and is not tenable in law.

Note – *The facts given in the question are similar to the facts in Reliance Telecom Ltd./Reliance Communications Ltd. (2022) 440 ITR 1 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 involved in this case is whether Mr. Yatin's application, for adjustment of tax liability on income surrendered during search by sale of seized gold bars, can be entertained where assessment has not been completed.

Relevant provision of law: The provision contained in section 132B(1) lays down the manner in which the assets seized under section 132 may be dealt with. An assessee is entitled to make an application to the Assessing Officer for adjustment of seized assets towards existing tax liability.

Analysis & Conclusion: Here, the application by the assessee is not for adjustment of any existing liability, but towards the tax liability. In the said provision, the expression used is "the amount of the liability determined". "A liability is determined" only on completion of the assessment. Until the assessment is complete, it cannot be postulated that a liability has been crystallized.

Accordingly, the action of the Assessing Officer rejecting the application on the ground that such action can be taken only after the assessment is completed and a demand has been quantified, is justified.

Note - *The facts given in the question are similar to the facts in Hemant Kumar Sindhi & Another v. CIT (2014) 364 ITR 555 wherein the issue came up before the Allahabad High Court. The above answer is based on the rationale of the Allahabad High Court in the said case.*

- (b) 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) In clause 34(a) of Form 3CD, the tax auditor is required to report whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB, and if yes, to furnish the details mentioned thereunder. While answering the issue of applicability of the provisions of Chapter XVII-B and/or XVII-BB, a number of debatable issues may arise before the assessee as well as the tax auditor. The tax auditor may have a difference of opinion with regard to the applicability of the provisions of TDS/TCS on a particular payment. In such a case, the tax auditor has to report the difference of opinion appropriately as an observation in para 3 of Form 3CA. This requirement is contained in the Guidance Note on Tax Audit.

Also, in clause 21(b)(ii) of Form 3CD, the amount inadmissible under section 40(a)(ia) has to be mentioned.

In case the tax auditor does not comply with the reporting requirements under these clauses and fails to mention the difference of opinion appropriately as an observation in para 3 of Form 3CA, clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 for not exercising due diligence may be invoked.

(b) Computation of tax liability of SD Ltd. for A.Y. 2024-25 under regular provisions of the Act

| Particulars | ₹ |
|--|------------------|
| Total Income before allowing additional depreciation | 22,00,000 |
| Less: Additional Depreciation u/s section 32(1)(ia) [₹ 12 lakh x 20%] | 2,40,000 |
| Total Income | 19,60,000 |
| Applicable Tax Rate (since turnover of P.Y. 2021-22 < ₹ 400 crores) | 25% |
| Tax payable | 4,90,000 |
| Add: Health & Education cess@4% | 19,600 |
| Tax Liability | 5,09,600 |

Computation of tax liability of SD Ltd. for A.Y. 2024-25 under section 115BAA

| Particulars | ₹ |
|---|------------------------|
| Total Income before allowing additional depreciation | 22,00,000 |
| Less: Additional Depreciation u/s section 32(1)(ia) [not allowable as deduction while computing income u/s 115BAA] | - |
| Total Income | 22,00,000 |
| Applicable Tax Rate | 22% |
| Tax payable | 4,84,000 |
| Add: Surcharge@10% | 48,400 |
| | 5,32,400 |
| Add: Health & Education cess@4% | 21,296 |
| Tax Liability | <u>5,53,696</u> |
| Tax Liability (rounded off) | 5,53,700 |

Since tax payable as per the regular provisions of the Act is lower than the tax payable under the provisions of section 115BAA, it would be beneficial for SD Ltd. not to opt for section 115BAA.

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

| Particulars | ₹ |
|--|-----------|
| Profits and gains from business or profession | |
| Business Income from a unit established at Mumbai | 8,00,000 |
| Income from other sources | |
| - Dividend income from XY Ltd. an Indian company | 12,50,000 |

| | |
|---|-------------------------|
| - Fees for technical services [would be equivalent to the amount of debentures of ₹ 20,00,000 received from an Indian company, issued in consideration of providing technical knowhow] | 20,00,000 |
| - Interest on Debentures [₹ 20,00,000 x 8% x 6/12] | 80,000 |
| - Dividend on Global Depository Receipts (GDRs) of Y Ltd. an Indian company, issued under a scheme of Central Government against the initial issue of Y Ltd. and purchased in foreign currency by Strawberry Ltd. | 5,50,000 |
| - Royalty income received from Z Ltd. an Indian company in pursuance of an agreement approved by Central Government | <u>10,00,000</u> |
| Gross Total Income/ Total income | <u>56,80,000</u> |
| Computation of tax liability | |
| Dividend income of ₹ 12,50,000, taxable @20% u/s 115A | 2,50,000 |
| Dividend on GDRs of ₹ 5,50,000, taxable @10% u/s 115AC | 55,000 |
| Royalty income of ₹ 10,00,000, taxable @20% u/s 115A, since it is in pursuance of an agreement approved by the Central Government | 2,00,000 |
| FTS of ₹ 20,00,000, taxable @40%, since it is not in pursuance of an agreement approved by the Central Government | 8,00,000 |
| Interest on debentures of ₹ 80,000, taxable @40%, since debt is incurred in Indian currency, it is not eligible for concessional rate of 20% u/s 115A | 32,000 |
| Business income of ₹8,00,000 [taxable @40%] | <u>3,20,000</u> |
| | 16,57,000 |
| Add: Health and education cess@4% | <u>66,280</u> |
| Tax liability | <u>17,23,280</u> |