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CA FINAL (Nov 2024)
GROUP II - PAPER 4
DIRECT TAX LAWS & INTERNATIONAL TAXATION
SUGGESTED ANSWERS
(Series 1)

PART - I (MCQs)

| MCQ - 2 marks each | | | | | | | | | | | | | | |
|---------------------------|----|----|----|----|----|----|----|----|-----|-----|-----|-----|-----|-----|
| 1. | 2. | 3. | 4. | 5. | 6. | 7. | 8. | 9. | 10. | 11. | 12. | 13. | 14. | 15. |
| D | B | D | A | C | D | C | A | B | C | A | B | A | D | B |

PART - II (Descriptive Answers)

- 1 Computation of total income and tax liability of M/s Diamond Industries Ltd. for the A.Y. 2024-25 as per section 115BAA**

| | Particulars | Amount in ₹ | |
|----------|--|--------------------|-------------|
| I | Profits and gains of business and profession | | |
| | Net profit as per Statement of Profit and Loss | | 9,50,00,000 |
| | Add: Items debited but to be considered separately or to be disallowed | | |
| | (a) Depreciation as per useful life of assets | 2,80,00,000 | |
| | (b) Donation to political party | 12,00,000 | |
| | [Since donation to political party is not wholly and exclusively for the purpose of business or profession, it is not allowable as deduction u/s 37. Since the amount of contribution is debited to statement of profit and loss, the same has to be added back] | | |
| | (c) Contribution to research institution approved and notified by Central Government for scientific research | 50,00,000 | |
| | [As per section 35(1)(ii), 100% deduction is allowed for amount paid to a research institution undertaking scientific research, if such institution is approved for this purpose and notified by the Central Government. However, since company is opting for section 115BAA, deduction in respect of this contribution is not allowed. Since the amount of contribution is debited to statement of profit and | | |

| | | |
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| loss, the same is required to be added] | | |
| (d) Interest on borrowing paid to State Bank of India (SBI) [10% x ₹ 420 lakhs x 10/12] | 35,00,000 | |
| [Interest on borrowing from SBI upto 1.1.2024, being the date when machinery is installed and put to use, is not allowable as deduction since it has to be capitalized as part of the cost of the asset. Interest for January, February and March 2024 is disallowed as per section 43B since it is not paid on or before the due date of filing return of income i.e., 31.10.2024. Since the entire interest has been debited to the statement of profit and loss, it has to be added back while computing business income] | | |
| (e) Salary for installation of machinery | 1,00,00,000 | |
| [As per ICDS V, expenses which are specifically attributable for bringing the fixed asset to its working condition would form part of actual cost. Therefore, salary to foreign technicians for installation of machinery is a capital expenditure and not allowable as deduction. Since it has been debited to the statement of profit and loss, it has to be added back while computing business income] | | |
| | | <u>4,77,00,000</u> |
| | | 14,27,00,000 |
| Less: Items credited but not chargeable to tax or chargeable to tax under other head of income/expenses allowed but not debited | | |
| (f) Dividend received from foreign company | 15,00,000 | |
| [Dividend received from foreign company is taxable under the head "Income from other Source". Since the same has been credited to Statement of Profit and loss, it has to be deducted while computing business income. | | |
| (g) Long-term capital gain on sale of equity shares | 4,00,000 | |
| [Long-term capital gain on sale of equity shares is taxable under the head "Capital Gains". Since the same has been credited to Statement of Profit and loss, it has to be deducted while computing business income. | | |
| (h) Bad debt recovered | 10,00,000 | |
| [The deduction of bad debt allowed u/s 36 was ₹ 12 lakhs out of the total debt of ₹ 22 lakhs; Since the amount not written off as bad debt is ₹ 10 lakhs (₹ 22 lakhs - ₹ 12 lakhs) while the amount recovered in respect of such debt is ₹ 11 lakhs, only the excess sum of ₹ 1 lakh would be chargeable to tax as business income. Since the entire amount of ₹ 11 lakhs recovered has been credited to the statement | | |

| | | | |
|------------|--|-----------------|---------------------|
| | of profit and loss, ₹ 10 lakhs has to be reduced while computing business income.] | | |
| | (i) Profit on sale of plot of land | 8,00,000 | |
| | Capital gains arising on sale of plot of land are taxable under the "Capital Gains". Since the same has been credited to the statement of profit and loss, the same has to be reduced while computing business income] | | 37,00,000 |
| | | | 13,90,00,000 |
| | Less: Depreciation as per Income-tax Rules, 1962 | 1,50,00,000 | |
| | Depreciation on assets acquired during the P.Y. | | |
| | - Office building | | |
| | Purchased and put to use on 15.12.2023 [₹ 300 lakhs x 10% x 50%, since it has been put to use for less than 180 days during the year] | 15,00,000 | |
| | - Computer | | |
| | Purchased and put to use on 11.5.2023 [₹ 25 lakhs x 40%, since it has been put to use for 180 days or more during the year] | 10,00,000 | |
| | - Plant and machinery | | |
| | On P & M installed and put to use on 1.1.2024 [₹ 624.5 lakhs (₹ 500 lakhs + ₹ 100 lakhs of salary for installation + ₹ 24.5 lakhs, being interest from 1.6.2023 to 31.12.2023) x 15% x 50%, since it has been put to use for less than 180 days during the year] | 46,83,750 | 2,21,83,750 |
| | Additional depreciation (since company is opting for section 115BAA, additional depreciation is not allowed) | - | - |
| | Profits and gains from business or profession | | 11,68,16,250 |
| II | Capital Gains | | |
| | Profit on sale of plot of land | - | |
| | [Short-term capital gains arise on sale of plot of land held for less than 24 months. However, in this case, since the transfer is to a 100% subsidiary company, which is an Indian company, the same would not constitute a transfer for levy of capital gains tax as per section 47(iv)] | | |
| | Long-term capital gain on listed equity shares | <u>4,00,000</u> | 4,00,000 |
| III | Income from Other Sources | | |
| | Dividend received from a foreign company | | 15,00,000 |
| | Gross Total Income | | 11,87,16,250 |
| | Less: Deduction under Chapter VI-A | | |
| | Deduction under section 80GGB [Donation to political party is not allowable as deduction to Diamond Industries Ltd., since the company is opting for section 115BAA] | | - |
| | Deduction under section 80M allowable, even if, company is opting for section 115BAA, to the extent of lower of | | 12,00,000 |

| | |
|---|---------------------|
| dividend received and dividend distributed. Therefore, ₹ 12,00,000, being the amount of dividend distributed allowable as deduction | |
| Total Income | 11,75,16,250 |

Computation of tax liability as per section 115BAA

| Particulars | Amount in ₹ |
|---|---------------------------|
| Tax payable on LTCG @10% u/s 112A on ₹ 3,00,000, being the LTCG in excess of ₹ 1,00,000 | 30,000 |
| Tax @ 22% on ₹ 11,71,16,250 | <u>2,57,65,575</u> |
| | 2,57,95,575 |
| Add: Surcharge @ 10% | <u>25,79,558</u> |
| | 2,83,75,133 |
| Add: Health and education cess @4% | <u>11,35,005</u> |
| Tax liability | <u>2,95,10,138</u> |
| Tax liability (rounded off) | 2,95,10,140 |

2 (a) Computation of total income and tax liability of M/s ABC LLP (under the regular provisions of the Income-tax Act, 1961)

| Particulars | (₹ in lakhs) | (₹ in lakhs) |
|--|---------------|----------------------|
| Profits and gains of business or profession | | 250.00 |
| Add: Items debited but to be considered separately or to be disallowed | | |
| - Depreciation | 20.00 | |
| - Remuneration to its working partners | 200.00 | |
| - Interest provided on current account balance of partners@15% p.a. (Interest on current account would be fully disallowed since the same is not authorized by the partnership deed) | 15.00 | |
| - Advertisement in a souvenir published by a political party [not allowed as deduction as per section 37(2B)] | <u>2.00</u> | <u>237.00</u> |
| | | 487.00 |
| Less: Permissible expenditure and allowances | | |
| - Depreciation allowable as per Income-tax Rules, 1962 | 25.00 | |
| - Unabsorbed depreciation under section 32(2) [allowable as deduction while computing book profit as per Explanation 3 to section 40(b)] | <u>30.00</u> | <u>55.00</u> |
| Book Profit | | 432.00 |
| On first ₹ 3 lakh of book profit [₹ 3,00,000 × 90%] | 2.70 | |
| On balance ₹ 429 lakh of book profit [₹ 429 × 60%] | <u>257.40</u> | |
| | 260.10 | |
| Remuneration actually paid of ₹ 200 lacs is fully allowable as deduction, since it is lower than the specified limit | | <u>200.00</u> |
| Business Income | | 232.00 |

| | | |
|---|--|---------------|
| Less: Brought forward business loss for A.Y. 2023-24 | | 50.00 |
| Gross Total Income | | 182.00 |
| Less: Deduction under section 10AA [See Note (1)] | | 182.00 |
| Profit from SEZ unit x Export Turnover/Total Turnover x 100% | | |
| = ₹ 232 lakhs x 25/25 x 100% (since it is the fifth year of operation) = ₹232 lakhs, restricted to gross total income | | |
| Less: Deduction under section 80GGC | | - |
| [Expenditure on advertisement in a souvenir published by a political party not allowable as deduction since it is included within the meaning of the term "contribution" only for the purpose of deduction u/s 80GGB in case of a company.] | | |
| Total Income | | Nil |
| Tax liability (since total income is Nil) | | Nil |

Computation of adjusted total income of M/s ABC LLP for levy of Alternate Minimum Tax

| Particulars | (₹ in lakhs) |
|---|----------------|
| Total Income (as computed above) | Nil |
| Add: Deduction under section 10AA | 182.00 |
| Adjusted Total Income | 182.00 |
| Alternate Minimum Tax@18.5% | 33.6700 |
| Add: Surcharge@12% (since adjusted total income > ₹ 1 crore) | 4.0404 |
| | 37.7104 |
| Add: Health and Education cess@4% | 1.5084 |
| Tax liability under section 115JC | 39.2188 |
| Since the regular income-tax payable is less than the alternate minimum tax payable, the adjusted total income shall be deemed to be the total income and tax is leviable @18.5% thereof plus surcharge@12% and cess@4%. Therefore, the tax liability is ₹ 39.2188 lakhs. | |
| AMT Credit to be carried forward under section 115JEE | |
| Tax liability under section 115JC | 39.2188 |
| Less: Tax liability under the regular provisions of the Income-tax Act, 1961 | Nil |
| Amount of Credit | 39.2188 |

2 (b)

Computation of total income of Mr. S

| Particulars | ₹ | ₹ |
|--|-----------------|---|
| Income from House Property in India | | |
| Gross Annual Value [Rent received is taken as GAV] [₹ 30,000 p.m. x 12 months] | 3,60,000 | |
| Less: Municipal taxes | - | |
| Net Annual Value (NAV) | 3,60,000 | |
| Less: Deduction u/s 24 @30% | 1,08,000 | |

| | | |
|---|----------|-------------------------|
| Profits and Gains of Business or Profession | | 2,52,000 |
| Income from music performances in India | 5,00,000 | |
| Income from Country A | 5,00,000 | |
| Income from Country B [Income earned during July 2023 and January 2024 is taxable in India in P.Y. 2023-24] | 4,00,000 | <u>14,00,000</u> |
| Gross Total Income | | 16,52,000 |
| Less: Deduction under Chapter VIA | | |
| Under section 80C – Contribution to PPF | | <u>1,50,000</u> |
| Total Income | | <u>15,02,000</u> |

| Computation of tax liability of Mr. S | | |
|---|----------|------------------------|
| Particulars | | ₹ |
| Tax on total income [₹1,50,600 (i.e., 30% of ₹ 5,02,000) plus ₹ 1,12,500 (Tax on income of ₹ 10 lakh)] | | 2,63,100 |
| Add: Health and education cess @4% | | <u>10,524</u> |
| Tax Liability | | 2,73,624 |
| Average rate of tax in India [i.e., ₹ 2,73,624/₹ 15,02,000 x 100] | 18.217% | |
| <u>Foreign Tax credit</u> | | |
| <u>For Country A (with which India does not have a DTAA)</u> | | |
| Doubly taxed income | 5,00,000 | |
| Deduction under section 91 on ₹ 5,00,000 @18.217% [being the lower of Indian rate of tax (18.217%) and Country A tax rate (20%)] | | 91,085 |
| <u>For Country B (with which India has a DTAA)</u> | | |
| Doubly taxed income [Credit shall be allowed for foreign tax paid by Mr. S in Country B in respect of income which is chargeable to tax in India in P.Y. 2023-24 i.e., for income of ₹ 4,00,000] | 4,00,000 | |
| Deduction under section 90: | | |
| Lower of: | | |
| Tax Payable under the Income-tax Act, 1961 i.e., ₹ 72,868, being 18.217% of ₹4,00,000; and | | |
| Tax paid in Country B i.e., ₹ 40,000, being 10% of ₹ 4,00,000 | | <u>40,000</u> |
| Tax Payable | | <u>1,42,539</u> |
| Tax Payable (Rounded off) | | 1,42,540 |

3 (a)

Computation of total income of Mathi Charitable Trust

| Particulars | ₹ | ₹ |
|--|----------|--------------------|
| Gross receipts from Full Cure Hospital | | 4,00,00,000 |
| Gross receipts from India Arts College | | <u>1,80,00,000</u> |
| | | 5,80,00,000 |
| Add: Anonymous donations [to the extent not chargeable to tax@30% under section 115BBC(1)(i)] [₹ 2,25,000, | | <u>2,25,000</u> |

| | | |
|---|------------------|------------------|
| being 5% of total donations of ₹ 45,00,000 or ₹ 1,00,000, whichever is higher] | | 5,82,25,000 |
| Less: 15% of income eligible for being set apart without any condition | | 87,33,750 |
| | | 4,94,91,250 |
| Less: Amount applied for charitable purposes | | |
| - On revenue account – Administrative expenses: | | |
| For Hospital | 2,20,00,000 | |
| For College | 1,00,00,000 | |
| - On capital account – Land & Building | 1,20,00,000 | |
| [Section 56(2)(x) is not attracted in respect of value of property received by a trust or institution registered u/s 12AB] | | |
| - Donation to Gandhiji Trust registered u/s 12AB – allowable as application to the extent of 85%, even though the objects of trust are different. Only corpus donations are not permissible to other trusts registered u/s 12AB (25,00,000 x 85%) | <u>21,25,000</u> | 4,61,25,000 |
| Total income [other than anonymous donation taxable@30% under section 115BBC(1)(i)] | | 33,66,250 |
| Add: Anonymous donation taxable @30% u/s 115BBC(1)(i) | | 7,75,000 |
| Total Income (including anonymous donation taxable@30%) | | 41,41,250 |

Computation of tax liability of the trust

| Particulars | ₹ | ₹ |
|---|-----------------|------------------|
| Tax on total income of ₹ 33,66,250 [Excluding anonymous donations] | | |
| Upto ₹ 2,50,000 | Nil | |
| ₹ 2,50,000 – ₹ 5,00,000 [₹2,50,000 x 5%] | 12,500 | |
| ₹ 5,00,000 – ₹ 10,00,000 [₹5,00,000 x 20%] | 1,00,000 | |
| > ₹ 10,00,000 [₹23,66,250 x 30%] | <u>7,09,875</u> | |
| | 8,22,375 | |
| Tax on anonymous donations taxable@30% [₹ 7,75,000 x 30%] | 2,32,500 | 10,54,875 |
| Add: Education cess @4% | | 42,195 |
| Total tax liability | | 10,97,070 |
| Total tax liability (rounded off) | | 10,97,070 |

Note: Since the trust follows cash system of accounting, fees not realized from patients and from students would not form part of gross receipts. Therefore, there is no need of applying the provisions of Explanation 1 to section 11(1) to exclude such income.

- 3 (b) (i)** A Co. Ltd, Mumbai has manufactured and supplied garments as per the variations and customization in accordance with its AE. However, such customization is not carried

by it on the goods sold to other unrelated parties.

In cases of contract manufacturing transactions with AEs, the most appropriate method is the **Transactional Net Margin Method (TNMM)**.

- (ii) DEF Co. Ltd. manufactures semi-finished drugs in bulk and sells them to related parties. In the case of sale of semi-finished goods to related parties, the most appropriate method is the **Cost Plus Method**, in which adjustment of gross profit mark-up is to be made on the direct and indirect costs of production.
- (iii) ZY Ltd., Bengaluru provided identical call centre services to both related and unrelated parties. In respect of provision of services, the most appropriate method can be either the **Comparable Uncontrolled Price (CUP) or Cost Plus Method (CPM) and Transactional Net Margin method (TNMM)**, since in all these three methods there are similar transactions with related parties and unrelated parties; and adjustments are made for functional differences.
- 4 (a) (i) Since the agreement between the owner of land, A, and the developer and builder, B, is in the nature of specified agreement under section 45(5A), which involves money consideration as well, **TDS@10% on ₹ 25,00,000, being the money component payable to A, is deductible under section 194-IC.**
TDS liability would be ₹ 2,50,000, being 10% of ₹ 25,00,000.
- (ii) Since Mr. Shrikanth pays **rent exceeding ₹ 50,000 per month**, he is **liable to deduct tax at source @5% under section 194-IB** on such rent.
However, **since Mr. Ashok does not provide his PAN to Mr. Shrikanth, tax would be deductible@20%, instead of 5%.**
Tax has to be deducted from rent payable for the last month of the P.Y.2023-24. However, since he vacated the premises in February, 2024, tax has to be deducted from rent paid on 1.2.2024 for the month of February, 2024.
Tax of ₹ 96,000 [₹ 60,000 x 20% x 8] has to be deducted but the same has to be restricted to ₹ 60,000, being rent for February, 2024.
If Mr. Ashok furnished his PAN to Shrikanth, tax would be deductible@5%.
Tax of ₹ 24,000 [₹ 60,000 x 5% x 8] has to be deducted from rent paid on 1.2.2024 for the month of February, 2024.
- (iii) **Section 194-IA** requires deduction of tax by every transferee responsible for paying any sum as consideration for transfer of immovable property (land, other than agricultural land, or building or part of building) **at the rate of 1% of such sum or stamp duty value, whichever is higher**, to a resident transferor.
Tax is not required to be deducted at source where the total amount of consideration for transfer and stamp duty value of immovable property is less than ₹ 50 lakhs. **Consideration** for transfer of any immovable property **includes**, inter alia, **club membership fee, car parking fee, maintenance fee**, which are incidental to transfer of immovable property.
In the present case, since the **consideration for transfer of flat by Mr. Mani to Param Construction Ltd. is ₹ 52,20,000** (₹ 48 lakhs + ₹ 1,20,000, being ₹ 5,000 x 24 + ₹ 2 lakhs + ₹ 1 lakh) which is not less than ₹ 50 lakhs, Mr. Mani is required to **deduct tax @1% on ₹52,20,000.**

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

(iv) Shooting of Tele Episode for B-TV as per the storyline, contents and specifications of B-TV falls within the scope of “work” under section 194C. Since the amount credited exceeds the specified limit of ₹ 30,000, **TDS@2% under section 194C is attracted on ₹ 19,50,000** credited to the account of Digitec Studios, a partnership firm.

TDS liability would be ₹ 39,000 [being 2% of ₹ 19,50,000]

4 (b) AI Kuber Ltd., a company incorporated in Dubai, would be resident in India in the P.Y. 2023-24, if its place of effective management is in India in that year.

For determining the POEM of AI Kuber Ltd., the important criteria is whether the company is engaged in active business outside India or not.

A company would be said to be engaged in “Active Business Outside India” (ABOI) for POEM, if

- its passive income is not more than 50% of its total income; and
- less than 50% of its total assets are situated in India; and
- less than 50% of total number of employees are situated in India or are resident in India; and
- the payroll expenses incurred on such employees is less than 50% of its total payroll expenditure.

AI Kuber Ltd. would be regarded as a company engaged in active business outside India for POEM purpose only if it satisfies all the four conditions cumulatively.

Condition 1: The passive income of AI Kuber Ltd. should not be more than 50% of its total income.

Total income of AI Kuber Ltd. is ₹ 2,980 crores Passive income is the aggregate of, -

- (i) income from the transactions where both the purchase and sale of goods is from/to its associated enterprises i.e., ₹ 125 crores; and
- (ii) income by way of, inter alia, interest and dividend i.e., ₹ 880 crores;

Passive Income of AI Kuber Ltd. is ₹ 1,005 crores (i.e., ₹ 125 crores + ₹ 880 crores)

Percentage of passive income to total income = ₹ 1,005 crore / ₹ 2,980 crore x 100 = **33.72%**

Since passive income of AI Kuber Ltd. i.e., 33.72% is not more than 50% of its total income, the **first condition is satisfied.**

Condition 2: AI Kuber Ltd. should have less than 50% of its total assets situated in India

Value of total assets of AI Kuber Ltd. is ₹ 6,150 crores [₹ 1,500 crore + ₹ 225 crore + ₹ 800 crore + ₹ 650 crore + ₹ 1,075 crore + ₹ 1900 crore].

Value of total assets of AI Kuber Ltd. in India is ₹ 2,525 crores [₹ 1,500 crore + ₹ 225 crore + ₹ 800 crore]

Percentage of assets situated in India to total assets = ₹ 2,525 crores / ₹ 6150 crores x 100 = **41.06%**

Since the value of assets of AI Kuber Ltd. situated in India is less than 50% of its total assets, the **second condition for ABOI test is satisfied.**

Condition 3: Less than 50% of the total number of employees of AI Kuber Ltd. should

be situated in India or should be resident in India

Number of employees working in India is 70.

Total number of employees of AI Kuber Ltd. is 160 [70+90].

Percentage of employees working in India to total number of employees is $70 \times 100/160 = 43.75\%$

Since the number of employees of AI Kuber Ltd. working in India is less than 50% of its total number of employees, the **third condition for ABOI test is satisfied.**

Condition 4: The payroll expenses incurred on employees situated in India or resident in India should be less than 50% of its total payroll expenditure

Payroll expenditure on employees in India is ₹ 940 crores

Total payroll expenditure of AI Kuber Ltd. is ₹ 2190 crores [₹ 940 crore + ₹ 1250 crore].

Percentage of payroll expenditure on employees in India to total payroll expenditure is **42.92%**, being ₹ 940 crores x 100/₹ 2190 crores.

Since payroll expenditure on employees of AI Kuber Ltd. in India is less than 50% of its total payroll expenditure, the **fourth condition for ABOI test is satisfied.**

Since AI Kuber Ltd. satisfies all the above four conditions cumulatively, **AI Kuber Ltd. has passed the Active Business Outside India (ABOI) test.**

POEM of a company engaged in active business outside India shall be presumed to be outside India, if the majority of the board meetings are held outside India.

Since AI Kuber Ltd. is engaged in active business outside India in P.Y. 2023-24 and **majority of its board meetings i.e., 4 out of 7, were held outside India, POEM of AI Kuber Ltd. would be outside India.**

Therefore, AI Kuber Ltd. would be non-resident in India for the P.Y. 2023-24.

- 5 (a) (i) As per section 148, the Assessing **Officer shall be deemed to have information** which suggests that the income chargeable to tax has escaped assessment in case of an assessee **where a search is initiated** under section 132 on or after 01.04.2021. Further, in case of search under section 132, notice under section 148 need not be accompanied by order u/s 148A. Thus, the **Assessing Officer can issue a notice under section 148 for any of the relevant assessment years -**
- (a) if **three years** have not elapsed from the end of the relevant assessment year,
 - (b) if **three years, but not more than ten years**, have elapsed from end of relevant assessment year and the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of
 - (I) asset: or
 - (II) expenditure in respect of a transaction or in relation to an event or occasion; or
 - (III) an entry or entries in the books of account,which has **escaped** assessment amounts or is likely to amount to **₹ 50 lakhs or more** for that year.
- Where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to in (b)

above, has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in (b), a notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.

In this case, Mr. Sanskar has incurred expenditure of ₹ 5 crores in relation to marriage of his daughter. Hence, the **Assessing Officer can issue notice under section 148 for A.Y. 2018-19, since it falls within the 10 year period.**

(ii) The statement is **not correct.**

The Apex Court, in SAP Labs India Pvt. Ltd. v. ITO [2023] 454 ITR 121, laid down the following with respect to powers of High Court to consider the substantial question of law involving determination of arm's length price (ALP):

- While determining the ALP, the Tribunal has to follow the guidelines stipulated under Chapter X of the Income-tax Act, 1961, namely, sections 92 to 92F of the Act and Rules 10A to 10E of the Income-tax Rules, 1962. Any **determination of the ALP** under Chapter X not in accordance with the relevant provisions of the Income-tax Act, 1961 and Rules can be considered as perverse and it may be **considered as a substantial question of law** as perversity itself can be said to be a substantial question of law. Therefore, there cannot be any absolute proposition of law that in all cases where the Tribunal has determined the ALP, the same is final and cannot be the subject matter of scrutiny by the High Court in an appeal under section 260A. When the determination of the ALP is challenged before the High Court, it is always open for the High Court to consider and examine whether the ALP has been determined while taking into consideration the relevant guidelines under the Act and the Rules.
- The High Court can examine the question of comparability of two companies or selection of filters and examine whether the same is done judiciously and on the basis of the relevant material/evidence on record. The High Court can also examine whether the comparable transactions have been taken into consideration properly or not, i.e., to the extent as to whether non-comparable transactions are considered as comparable transactions or not. Therefore, **in an appeal challenging the determination of the arm's length price, it is always open for the High Court to examine** in each case, within the parameters of section 260A, whether while determining the ALP, the guidelines laid down under the Income-tax Act, 1961 and the Income-tax Rules, 1962 are followed or not and whether the determination of the ALP and the findings recorded by the Tribunal while determining the ALP are perverse or not.

5 (b) Section 165A of the Finance Act, 2016 provides for equalisation levy@2% on the amount of consideration received or receivable by an e-commerce operator from e-commerce supply or services made or provided or facilitated by it, inter alia, to a person resident in India and a person who buys such goods or services or both using internet protocol address located in India.

First, it has to be determined whether DOT Inc., Country X is an e-commerce operator.

E-Commerce Operator means a non-resident who owns, operates or manages digital or

electronic facility or platform for online sale of goods or online provision of services or both. In the given situation, DOT Inc., Country X, a non-resident, maintains a digital platform for providing end user computer software. Therefore, **DOT Inc. is an e-commerce operator.**

However, the **consideration** received or receivable for e-commerce supply or services **would not include the consideration, which are taxable as, inter alia, royalty or fees for technical services in India under the Income-tax Act**, read with the DTAA notified by the Central Government under section 90 or section 90A.

The **consideration paid by Spacecraft Ltd. to DOT Inc. for use of computer software as per the terms of EULA is not “royalty” as per the meaning assigned in the DTAA**, since it does not create any interest or right to Spacecraft Ltd. which would amount to the use of or right to use any copyright. Accordingly, the same does not give rise to any income chargeable to tax in India. **Since the provisions of the DTAA are more beneficial, the same would apply in the case** on hand as decided by Apex Court in Engineering Analysis Centre of Excellence P. Ltd v. CIT and Another (2021) ITR 471.

In the given situation, DOT Inc. is an e-commerce operator defined in section 165A, since it provides services through its digital platform. Further, the consideration for such services is ₹ 4.5 crores which exceeds the threshold limit of ₹ 2 crores specified in section 165A. Also, all the other conditions specified in section 165A are satisfied viz. namely there is no PE for DOT Inc., Country X, in India and services are provided to a resident in India i.e., Spacecraft Ltd., an Indian company.

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

- 6 (a)** The cost of the product being T-Shirts sold by the company to its subsidiary Oxfam Pty of UK is Rs. 840 per unit and company is maintain a 30% GP ratio on the sales. Therefore, the price to be charged from the subsidiary works out to be:

$(840 \times 100/70) = \text{Rs. } 1200 \text{ per piece.}$

The functional differences as stated are required to be adjusted for ascertaining the Arm's Length Price for the sales made to the subsidiary of the Indian company.

| Particulars | Amount (Rs.) |
|---|--------------------|
| Ideal Price required to be charged per piece | 1200 |
| Less: Adjustments for Functional differences | |
| For packaging (since no packaging on goods sold to Oxfam) | 36 |
| For tagging (since no tagging on goods sold to Oxfam) | 3 |
| For working capital cost (3% of selling price for 6 months) | 36 |
| Arm's Length Price | 1125 |
| Profit Difference due to ALP Applicability {2,50,000 pcs x (1125-1000)} | 3,12,50,000 |

- 6 (b)** The definition of “assessee” under the Black Money Law, inter alia, **includes** a person who, being a non-resident in the previous year when the undisclosed income came to the notice of the Assessing Officer, **was resident in India in the previous year in which the undisclosed asset located outside India was acquired.** Therefore, Deepak is an assessee

under the Black Money Law since he was resident in India in the P.Y.2009-10, when the property was acquired, even though he is a non-resident in the P.Y.2023-24, when notice under Black Money Law was issued. Accordingly, the value of undisclosed asset located outside India of Deepak would be **chargeable to be tax** under the Black Money Law **in the previous year in which such asset comes to the notice of the Assessing Officer** i.e., P.Y 2023-24, even though he is a non-resident in India for that previous year.

Computation of value of undisclosed foreign asset

| Particulars | USD | ₹ |
|---|------------|------------------|
| Value of residential property in California acquired on 25.6.2009 | 25,000 | |
| Value of residential property would be the fair market value, being the higher of - | | |
| - Cost of acquisition | USD 20,000 | |
| - Price that the property shall ordinarily fetch if sold in the open market on the valuation date, i.e., 1.4.2023 | USD 25,000 | |
| Converted into Indian currency taking the rate as on 1.4.2023 | ₹ 71/USD | 17,75,000 |
| Bank Deposits in a bank A/c in New York as on 1st April 2023 [The sum of all the deposits made in the account with the bank since the date of opening of the account would be the value of the bank deposits] | 10,000 | |
| Converted into Indian currency taking the rate as on 1.4.2023 | ₹ 71/USD | 7,10,000 |
| Total value of undisclosed foreign asset | | 24,85,000 |

6 (c) Deduction under **section 80JJAA** is allowable to an assessee to whom section 44AB applies and whose gross total income includes any profits and gains derived from business, in respect of employment of new employees. The amount of deduction is 30% of additional employee cost incurred in the course of such business in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

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

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

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

In this case, the contention of the chartered accountant that the emoluments do not include employer contribution to PF is correct. However, emoluments include ₹ 3,000 paid in cash by way of transport allowance to the employee. Hence, the **total emoluments per employee is ₹ 28,000 p.m.** Due to this reason, the 20 employees employed on 1.4.2023 will

not qualify as “additional employees” for the purpose of deduction under section 80JJAA, since their total emoluments are more than ₹ 25,000 p.m. Hence, **XYZ & Co. is not eligible for any deduction under section 80JJAA** due to failure to fulfil the condition for being treated as an “additional employee”. In this case, the chartered accountant has failed to ensure compliance with the condition stipulated for claim of deduction under section 80JJAA and has wrongly issued the report in Form 10DA certifying the deduction claimed by the assessee under section 80JJAA.

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

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