# CA FINAL (Nov 2024)

## GROUP II – PAPER 4

## DIRECT TAX LAWS & INTERNATIONAL TAXATION

## SUGGESTED ANSWERS

## (Series 4)

## PART – I (MCQs)

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

## 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 | | |

| | | | |
|---|---|---|---|
| | 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]**<br>[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] | 35,00,000 | |
| | **(e) Salary for installation of machinery**<br>[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] | 1,00,00,000 | |
| | | | 4,77,00,000 |
| | | | 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**<br>[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. | 15,00,000 | |
| | **(g) Long-term capital gain on sale of equity shares**<br>[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. | 4,00,000 | |
| | **(h) Bad debt recovered**<br>[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 | 10,00,000 | |

| | | | |
|---|---|---|---|
| | 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** | 4,00,000 | 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 | 2,57,65,575 |
| | 2,57,95,575 |
| Add: Surcharge @ 10% | 25,79,558 |
| | 2,83,75,133 |
| Add: Health and education cess @4% | 11,35,005 |
| **Tax liability** | **2,95,10,138** |
| **Tax liability (rounded off)** | **2,95,10,140** |

**2 (a)** **Computation of total income of Siddarth Ltd. for A.Y. 2024-25**

| Particulars | ₹ | ₹ |
|---|---|---|
| **Profits and gains of business or profession** | | |
| Unit X (See Note 4) | 63,81,000 | |
| Less: Deduction under section 10AA (See Working below) | 35,45,000 | 28,36,000 |
| Unit Y (See Note 4) | | 36,54,000 |
| **Total Income** | | **64,90,000** |

**Deduction under section 10AA in respect of Unit X (See Notes 1, 2 & 3)**

$$= \text{Profit of Unit in SEZ (Unit X)} \times \frac{\text{Export turnover of Unit in SEZ}}{\text{Total turnover of Unit in SEZ}} \times 100\%$$

$$= ₹\ 63,81,000 \times \frac{₹\ 1,00,00,000}{₹\ 1,80,00,000} \times 100\% = \textbf{₹ 35,45,000}$$

**Notes:**

(1) Deduction under section 10AA is available in respect of units established in Special Economic Zones which begin to manufacture or produce articles or things or provide any services during the previous year relevant to A.Y.2006-07 or thereafter. Under section 10AA(1), 100% of the profits and gains derived from export of such articles or things or from services is allowable as deduction for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which the Unit begins to manufacture or produce such articles or things or provide services, as the case may be.

Therefore, in this case, the profits from Unit X, located in a SEZ, will be eligible for deduction of 100% of the profits and gains derived from export, since P.Y.2023-24 is the fifth year of its operations. It is assumed that Unit X has fulfilled all the specified conditions for claim of deduction. Unit Y is, however, not eligible for deduction under section 10AA in respect of the exports made by it since it is located in a Free Trade Zone.

(2) Export turnover, for the purpose of section 10AA, means the consideration received in respect of export by the unit in SEZ. Therefore, in this case, the amount of ₹ 20,00,000 which has become irrecoverable due to bankruptcy of one of the foreign buyers in Unit X will not be included in its export turnover.

Therefore, export turnover of Unit X (in SEZ) = ₹ 1,20,00,000 – ₹ 20,00,000 = ₹ 1,00,00,000.

(3) Profits and gains from on site development of computer software outside India shall be deemed to be the profits and gains derived from export of computer software outside India. Since the same has already been included in the figure of export sales, no further adjustment is required.

(4) Computation of unit-wise profits of the business

| **Particulars** | **Unit X** | **Unit Y** | **Total** |
|---|---|---|---|
| | **(₹)** | **(₹)** | **(₹)** |
| Profit earned [after claim of bad debts under section 36(1)(vii) in Unit X] | 63,00,000 | 36,00,000 | 99,00,000 |
| Add: Depreciation calculated on SLM basis and charged in the proportion of sales (3:2) | 5,40,000 | 3,60,000 | 9,00,000 |
| | 68,40,000 | 39,60,000 | 1,08,00,000 |
| Less: Depreciation calculated @15% on WDV basis and charged in the proportion of sales (3:2) **(See Note 5)** | 4,59,000 | 3,06,000 | 7,65,000 |
| **Profits of the business** | **63,81,000** | **36,54,000** | **1,00,35,000** |

(5) Depreciation as per the Income-tax Rules, 1962 for the A.Y.2024-25 has to be calculated as follows –

| **Particulars** | **₹** |
|---|---|
| Actual cost of plant and machinery (₹ 9,00,000 / 15%) | 60,00,000 |
| Less: Depreciation @15% for P.Y.2022-23 (It is logical to assume that the assets were put to use for more than 180 days during the year.) | 9,00,000 |
| Written down value as on 1.4.2023 | 51,00,000 |
| **Depreciation @15% on WDV for P.Y.2023-24 (₹ 51,00,000 × 15%)** | **7,65,000** |

**2 (b) Computation of total income of Mr. Suresh**

| **Particulars** | **₹** | **₹** |
|---|---|---|
| **Income from House Property [House situated in Country Y]** | | |
| Gross Annual Value | 2,40,000 | |
| Less: Municipal taxes paid in Country Y | 10,000 | |
| Net Annual Value | 2,30,000 | |
| Less: Deduction under section 24 – 30% of NAV | 69,000 | 1,61,000 |

| | | |
|---|---|---|
| **Profits and Gains of Business or Profession** | | |
| Income from profession carried on in India | 8,00,000 | |
| Less: Business loss in Country "Y" from proprietary business | 65,000 | |
| | 7,35,000 | |
| Royalty income from a literary book from Country X (after deducting expenses of ₹ 1,00,000) | 5,00,000 | 12,35,000 |
| **Income from Other Sources** | | |
| Agricultural income in Country X [Not exempt] | 60,000 | |
| Dividend income from a company in Country Y | 1,50,000 | 2,10,000 |
| **Gross Total Income** | | **16,06,000** |
| **Less: Deduction under Chapter VI-A** | | |
| **Under section 80QQB –** Royalty income of a resident from literary book allowable as deduction since the amount has been bought into India with six months from the end of previous year | | 3,00,000 |
| **Total Income** | | **13,06,000** |
| **Computation of tax liability of Mr. Suresh** | | |
| Tax on total income [30% of ₹ 3,06,000 + ₹ 1,10,000, since Mr. Suresh is a senior citizen, he is eligible for higher basic exemption limit of ₹ 3,00,000] | | 2,01,800 |
| Add: Health and education cess @4% | | 8,072 |
| | | **2,09,872** |
| Less: Deduction under section 90 **(See Working Note 1)** | | **39,532** |
| Less: Deduction under section 91 **(See Working Note 2)** | | **26,000** |
| **Tax Payable** | | **1,44,340** |

**Working Note 1**

| **Calculation of deduction under section 90:** Deduction under section 90 is available in respect of Country Y with which India has a DTAA. | | |
|---|---|---|
| | **₹** | **₹** |
| Foreign tax paid in Country Y on Rental income of ₹ 2,40,000 plus Dividend income of ₹ 1,50,000 @ 15% | 58,500 | |
| [Business loss is not allowable as deduction in Country Y and no deduction is available in respect of municipal tax] | | |
| **Income pertaining to Country Y forming part of total income in India** | | |
| Income from house property | 1,61,000 | |
| Dividend | 1,50,000 | |
| | 3,11,000 | |
| Less: Loss from business set-off against other business income | 65,000 | |
| | **2,46,000** | |
| Average rate of tax in India [i.e., ₹ 2,09,870/₹ 13,06,000 x 100] | 16.070% | |
| Tax payable in India on the income forming part of total | 39,532 | |

| | | |
|---|---|---|
| income @16.070% on ₹ 2,46,000<br>As per Rule 128, lower of tax paid in Country Y and tax payable in India is allowable as deduction | | **39,532** |

**Working Note 2**

| **Calculation of deduction under section 91:** Deduction under section 91 is available in respect of Country X with which India has no DTAA | | |
|---|---|---|
| | | **₹** |
| Average rate of tax in India [i.e., ₹ 2,09,870/₹ 13,06,000 x 100] | 16.070% | |
| Average rate of tax in Country X | 10% | |
| **Doubly taxed income pertaining to Country X** | | |
| Agricultural Income | 60,000 | |
| Royalty Income [₹ 6,00,000 – ₹ 1,00,000 (Expenses) – ₹ 3,00,000 (deduction under section 80QQB)] | 2,00,000 | |
| | 2,60,000 | |
| Deduction under section 91 on ₹ 2,60,000 @10% [being the lower of average Indian tax rate (16.070%) and Country X tax rate (10%)] | | **26,000** |

**3 (a) Tax consequences in the hands of the charitable trust/institution**

**(i)** In this case, the main object of the charitable institution is "any other object of general public utility" and therefore, its aggregate receipts from business undertaken in the course of actual carrying out of such advancement of any other object of general public utility **should not exceed 20% of total receipts,** if it wants to retain its "charitable status". However, the aggregate receipts from business, in this case, is **22% of total receipts. Hence, the institution would lose its "charitable status".** Application of 85% of receipts for its main object during the year would not help in retaining its "charitable" status for that year.

**(ii)** Rent paid in respect of a building used for charitable purposes can be claimed as application of income for charitable purposes. However, since tax deducted on such rent paid for P.Y.2022-23 was remitted after the due date of filing of return of income u/s 139(1), **₹ 3,60,000, being 30% of annual rent of ₹ 12 lakh, would not have been allowed as application in the P.Y.2022-23,** by virtue of Explanation 3 to section 11(1) read with section 40(a)(ia). However, since the tax so deducted was remitted in January, 2024, the **said amount of ₹ 3,60,000** (i.e., 30% of rent not allowed as application in the P.Y.2022-23) **would be allowed as application in the P.Y.2023-24.** Further, the **rent of ₹ 15 lakh paid in the P.Y.2023-24 would also be allowed as application** in A.Y.2024-25, since the **tax deducted in respect of such rent was remitted in July, 2024 i.e., before the due date of filing of return u/s 139(1)**. Therefore, an **amount of ₹ 18,60,000 towards rent paid would be allowed as application of income** in the P.Y.2023-24.

**(iii)** As per section 115TD(3)(ii)(a), a **trust would be deemed to have been converted into any form not eligible for registration** under section 12AB in the P.Y.2023-24, if it has adopted or undertaken modification of its objects which do not confirm to the conditions of registration and it has not applied for fresh registration under section 12AB in that previous year. Accordingly, it would tantamount to deemed conversion of

the trust into a form not eligible for registration under section 12AB and the **accreted income of the trust shall be taxable at maximum marginal rate (@34.944%)** as per section 115TD(1).

**3 (b)** **Computation of total income of Mr. Robin**

As per section 5(2), Mr. Robin, a non-resident, is chargeable to tax in respect of income which accrues or arises or which is deemed to accrue or arise to him in India or which is received or deemed to be received in India in the relevant previous year.

| | **Particulars** | **Amount (₹)** |
|---|---|---|
| (i) | Income from a business in Jaipur | 1,90,000 |
| (ii) | Dividend from a Chinese company received in Singapore [Not taxable as the same accrues or arises outside India and is also received outside India] | Nil |
| (iii) | Income from profession in Singapore which was set up in India received in Singapore but spent in India [Not taxable, as it accrues or arises outside India and is also received outside India] | Nil |
| (iv) | Agriculture income from a land in Jodhpur [Exempt u/s 10(1)] | Exempt |
| (v) | Interest on saving bank deposit in SBI | 10,500 |
| (vi) | Income from a business in Singapore which is controlled from Jaipur (50% received in India) (50% of ₹ 1,00,000 is taxable in India) | 50,000 |
| (vii) | Income from agricultural land in Hong Kong received there and then brought to India [Not taxable as such income accrues or arises outside India and is also received outside India] | Nil |
| (viii) | Interest received from an Indian company on rupee denominated bonds issued in Singapore on 1.3.2019 [Exempt u/s 10(4C)] | Exempt |
| (ix) | Income received from units of UTI purchased in foreign currency [Taxable u/s 115A] | 20,000 |
| (x) | Long term capital gain on sale of shares purchased and sold through recognized stock exchange [The gain in excess of ₹ 1,00,000 is taxable @10% u/s 112A] | 1,25,000 |
| | **Gross Total Income** | **3,95,500** |
| | Less: Deduction u/s 80TTA [Interest on savings bank account subject to maximum of ₹ 10,000] | 10,000 |
| | **Total Income** | **3,85,500** |

**4 (a)** **Applicable Rate of TDS/TCS**

| **Situation** | **TCS/TDS** | **Rate** | **Note** |
|---|---|---|---|
| (i) Partnership firm selling timber obtained under forest lease | TCS | **2.5%** | 1 |
| (ii) Payment of income on investments in the securities to the Foreign Institutional Investors<br>In case the securities are Government | TDS | **20.8%**<br>**5.20%** | 2 |

| | | | |
|---|---|---|---|
| securities | | | |
| (iii) Professional services rendered by a registered society to a nationalised bank | TDS | **10%** | 3 |
| (iv) Payment by a manufacturer of swim wear to its brand ambassador Mr. Phelps, an athlete<br>If Mr. Phelps is a resident<br>If Mr. Phelps is a non-resident | TDS | **10%**<br>**20.8%** | 4 |

**Notes:**

(1) As per section 206C(1), **tax has to be collected at source** by the partnership firm, being a seller, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount, whichever is earlier.

(2) As per section 196D, tax has to be deducted at source @ 20.8% (20% plus cess@4%) by any person who is responsible for paying to a **Foreign Institutional Investor,** any income by way of interest on securities at the time of credit of such income to the account of the payee or at the time of payment of such income, whichever is earlier.

Alternatively, if the said securities are assumed to be **government securities, tax is deductible@5.20% (i.e., 5% plus cess@4%) under section 194LD.**

(3) Tax has to be **deducted at source@10% under section 194J,** by the nationalized bank at the time of credit of fees for professional services to the account of the registered society (i.e., on 31.3.2024), even though payment is to be made after that date.

(4) Tax has to be **deducted at source under section 194J** in respect of income of ₹ 5 lakh paid to Mr. Phelps, athlete, for advertisement, on inherent presumption that **Mr. Phelps is a resident.**

Alternatively, if Mr. Phelps is assumed to be a **non-resident,** who is not citizen of India, tax has to be deducted at source**@20.8%** (20% plus cess 4%) under section 194E in respect of income of ₹ 5 lakh paid to Mr. Phelps, an athlete, for advertisement referred under section 115BBA.

**4 (b)** 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 & limitation of interest deduction would be applicable.

In the present case, since L Ltd., a US company, holds 30% share in R Ltd., an Indian company, i.e., more than 26% of voting power, L Ltd. and R Ltd. are deemed to be associated enterprise.

Since loan of ₹ 100 crores taken by R Ltd., an Indian company from M Pte. Ltd., a Singapore company, is guaranteed by L Ltd., an associated enterprise, such debt shall be deemed to

have been issued by an associated enterprise and interest paid or payable to M Pte. Ltd. shall be considered for the purpose of limitation of interest deduction under section 94B Limitation of interest paid to associated enterprise under section 94B.

**Computation of income under the head profits and gains of business or profession of R Ltd for A.Y. 2024-25**

| Particulars | | Amount (in lakhs) |
|---|---|---|
| **Interest allowable u/s 94B for A.Y. 2023-24** | | |
| Gross Profit | | 1,630 |
| Less: Employee benefits expenses | | 280 |
| **EBITDA** | | **1,350** |
| Interest paid or payable to M Pte. Ltd. | | 589 |
| Lower of the following would be disallowed | | |
| - Total interest paid or payable in excess of 30% of EBITDA [₹ 589 lakhs – ₹ 405 lakhs (i.e., 30% of ₹ 1,350 lakhs)] | ₹ 184 lakhs | |
| - Interest paid or payable to M Pte Ltd. | ₹ 589 lakhs | |
| Interest to be disallowed as deduction for A.Y. 2023-24, which can be carried forward up to 8 assessment years | | 184 |
| **Interest allowable u/s 94B for A.Y. 2024-25** | | |
| Gross Profit | | 1,550 |
| Less: Employee benefits expenses | | 301 |
| **EBITDA** | | **1,249** |
| Interest paid or payable to M Pte. Ltd. | | 238 |
| Lower of the following would be disallowed | | |
| - Total interest paid or payable in excess of 30% of EBITDA [₹ 238 lakhs – ₹ 374.70 lakhs (30% of ₹ 1249 lakhs)] | Nil | |
| - Interest paid or payable to M Pte Ltd. | ₹ 238 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., ₹ 136.7 lakhs [₹ 374.70 lakhs – ₹ 238 lakhs] | | |
| Total interest allowed in A.Y. 2024-25 [₹ 238 lakhs + ₹ 136.70 lakhs) | | 374.70 |
| Balance of amount of interest relating to AY 2023-24 is eligible for carried forward i.e.₹ 47.30 lakhs (₹ 184 lakhs minus ₹ 136.70 lakhs) to 7 more subsequent assessment years. | | |
| **Income under the head profit and gains of business or profession of R Ltd. for A.Y. 2024-25** | | |
| EBITDA | | 1,249.00 |
| Less: Interest (maximum interest allowable as deduction u/s 94B) | | 374.70 |
| Depreciation (As per the Income-tax Act, 1961) | | 254.00 |
| | | **620.30** |

**5 (a)** (i) As per section 54EC, where the **capital gain arising from the transfer of a long-term**

**capital asset, being land or building or both, is invested in the long-term specified asset, being the bonds issued by the National Highways Authority of India (NHAI) or the Rural Electrification Corporation Limited (RECL)** or any other bond notified by the Central Government in this behalf, at any time **within a period of six months after the date of such transfer, the amount of such capital gain shall not be charged to tax, to the extent of ₹ 50 lakhs.**

Section 50 is a special provision for computation of capital gains in the case of depreciable asset, and has limited application in the context of computation of capital gains to the extent that the provisions of sections 48 and 49 would apply with the modifications stated thereunder. It does not deal with exemption which is provided in a totally different provision i.e., section 54EC.

**Section 54EC does not make any distinction between depreciable and non-depreciable asset** for the purpose of re-investment of capital gains in long term specified assets for availing the exemption thereunder. Further, section 54EC specifically provides that when the capital gain arising on the transfer a long-term capital asset, being land or building or both, is invested or deposited in bonds issued by NHAI or RECL, the assessee shall not be subject to capital gains to that extent [i.e., lower of capital gains or ₹ 50 lakhs]. Therefore, the exemption under section 54EC cannot be denied to the assessee on account of the fiction created in section 50.

Thus, in the present case, the **action of the Assessing Officer disallowing the claim for exemption under section 54EC** on the reasoning that capital gain on transfer of depreciable asset (building) is a short-term capital gain in respect of which the provisions of section 50 apply, even if held for more than 24 months, **is not valid.**

Note – The facts of the case are similar to the facts in CIT v. V.S. Dempo Company Ltd (2016) 387 ITR 354, wherein the above issue came up before the Apex Court. The above answer is based on the rationale of the Supreme Court in the said case.

(ii) **Issue Involved:** The issue involved in this case is whether Mr. Rajshekaran'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.

**Provision applicable:** 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 Assessing Officer for adjustment of seized assets towards existing tax liability**.

**Analysis:** Here, the application by the assessee is not for adjustment of any existing liability, but "towards the automatic 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.

**Conclusion:** 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.

**5 (b)** (1) **Equalisation levy @ 2% is attracted** 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; or
- to a non-resident in specified circumstances, which include sale of advertisement targeting a customer who is resident in India.

XYZ.com is an e-commerce operator since it is a non-resident managing an electronic facility for online sale of goods and provision of services.

(2) Equalisation levy@2% would not be attracted, if –

a. XYZ.com has a PE in India; or

b. Equalization levy@6% is deductible by the service recipients, resident in India, in respect of online advertisement services rendered to them; or

c. The sales/turnover/gross receipts of XYZ.com from taxable e-commerce supply or services is less than ₹ 2 crore in the current previous year.

(3) In this case, Equalisation levy @ 2% would be attracted since -

(i) XYZ.com does not have a PE in India.

(ii) The amount of billing (or aggregate amount of billing) to each recipient of advertisement service (being a person resident in India) does not exceed ₹ 1 lakh. Consequently, there would be no requirement for them to deduct equalization levy of 6%.

(iii) The sales/turnover/gross receipts of XYZ.com from taxable e-commerce supply or services exceeds ₹ 2 crore in the current previous year (Working given below)

(4) **Value of taxable e-commerce supply or services**

| Particulars | | ₹ |
|---|---|---|
| (a) | E-commerce supply of goods to residents | 1,20,00,000 |
| (b) | E-commerce services to residents (Equalisation levy@2% is attracted in the hands of XYZ.com, since Equalisation levy@6% is not deductible by the service recipients on account of the billing/aggregate amount of billing being less than ₹ 1 lakh) | 70,00,000 |
| (c) | E-commerce services to non-residents by way of sale of online advertisements targeting Indian customers | 20,00,000 |
| **Taxable e-commerce supply or services** | | **2,10,00,000** |
| **Equalisation levy @ 2%** | | **4,20,000** |

**6 (a)** Every jurisdiction, in its domestic tax law, prescribes the mechanism to determine residential status of a person. If a person is considered to be resident of both the Contracting States, relief should be sought from Article 4 of the Tax Treaty. A series of tie-breaker rules are provided in Paragraph 2 Article 4 of Model Convention to determine single state of residence for an individual.

**The tie-breaker rule would be applied in the following manner:**

(i) The first test is based on where the individual has a **permanent home**. Permanent home would mean a dwelling place available to him at all times continuously and not

occasionally and includes place taken on rent for a prolonged period of time.

(ii) If that test is inconclusive for the reason that the individual has permanent home available to him in both Contracting States, he will be considered a resident of the Contracting State where his personal and economic relations are closer, in other words, the place where lies **his centre of vital interests**. Thus, preference is given to family and social relations, occupation, place of business, place of administration of his properties, political, cultural and other activities of the individual.

(iii) Paragraph (ii) establishes a secondary criterion for two quite distinct and different situations:

- The case where individual has a permanent home available to him in both Contracting States and it is not possible to determine in which one he has his centre of vital interests;
- The case where individual has a permanent home available to him in neither Contracting State.

In the aforesaid scenarios, preference is given to the Contracting State where the individual has an **habitual abode**.

(iv) If the individual has habitual abode in both Contracting States or in neither of them, he shall be treated as a resident of the Contracting State of which he is **a national**.

(v) If the individual is a national of both or neither of the Contracting States, the matter is left to be **considered by the competent authorities** of the respective Contracting States.

**6 (b)** M/s. Thomas & Thomas of U.K shall be **required to file the return of income in India for the journey of its ship before it leaves for onward journey to Korea.**

However, as per the proviso to section 172(3), where the **Assessing Officer is satisfied** that it is not possible for the master of the ship to furnish the return before the departure of the ship from the port, and if satisfactory arrangements have been made for filing of return and payment of tax by the authorised agent in India, he **may permit filing of return within 30 days of departure of the ship.**

Section 172(4A) provides a **time limit of 9 months for completion of assessment in such cases.** The period of 9 months is reckoned from the end of the financial year in which the return under section 172(3) is furnished.

**6 (c)** Every assessee would be **liable to tax@30%** in respect of his undisclosed foreign income and asset of the previous year. **Undisclosed foreign asset would be liable to tax in the previous year in which such asset comes to the notice of the Assessing Officer**.

The term **"assessee"** defined under section 2(2) of the Black Money Act **includes** a person being a resident in India within the meaning of section 6 of the Income-tax Act, 1961 in the relevant previous year; or being a non-resident or not ordinarily resident in India within the meaning of section 6(6) of the Income-tax Act, 1961 in the relevant previous year, **who was resident in India in the previous year in which the undisclosed asset located outside India was acquired**.

Since Mr. Ravinder left India and settled in United Kingdom from 10.4.2016 and has not visited India at any time thereafter, he would be non-resident in India in the previous year

2023-24 in which notice is issued. However, **he was resident and ordinarily resident in India in the financial year 2013-14 when he acquired the property at Malaysia**. Accordingly, the **issue of notice on Mr. Ravinder** under section 10 of the Black Money Act, 2015, **is tenable** in law.