CHAPTER - 10
TDS, TCS, Advance Tax, Interest and Refund

Tax Deducted at Source (TDS)

Question 1

LL Limited paid leave travel facility to its employees and considered exemption under section 10(5), based on the self-declaration furnished by the employees without obtaining evidences/proof of actual expenditure. The Assessing Officer held that the company as an employer ought to have verified the genuineness of the claim of exemption by obtaining from them, the proof of actual expenditure incurred by availing leave travel facility. Accordingly, the Assessing Officer treated the assessee company as assessee in default. Decide the correctness of action.

Answer

Section 192 casts liability on **employer to deduct tax at source from salary** paid to its employees.

In this case, the employer has paid leave travel concession/facility to its employees and the said concession/facility would be eligible for exemption subject to the conditions laid down in section 10(5) read with Rule 2B of the Income-tax Rules, 1962.

Section 192(2D) casts responsibility on the person responsible for paying any income chargeable under the head 'Salaries' to obtain from the assessee, the **evidence or proof** or particulars of prescribed claims under provisions of the Act in prescribed form and manner for the purposes of –

(1) estimating income of the assesses; or

(2) computing tax deductible under section 192(1).

Rule 26C of the Income-tax Rules, 1962 mandates a salaried assessee claiming, inter alia, leave travel concession or assistance to furnish evidence of expenditure incurred in relation thereto to the person responsible for making such for payment under section 192(1), for the purpose of estimating his income for computing the tax deductible under section 192.

In the given case, **LL Limited paid leave travel concession to its employees and considered for exemption on basis of mere self-declaration**, instead of verifying and obtaining evidences/proof of actual expenditure. Thus, the **action of the Assessing Officer is correct in law.**

Question 2

Mr. Sharma, an employee of M/s. ABC Ltd. since 10.04.2021 resigned on 31.03.2025 and withdrew ₹ 60,000 being the balance in his EPF account. Discuss with reasons whether the provisions of Chapter XVII-B are attracted and if so, what is the net amount receivable by the payee, Mr. Sharma?

Answer

As per section 192A, in a case where the accumulated balance due to an employee participating in a recognized provident fund is includible in his total income owing to the provisions of Rule 8 of Part A of the Fourth Schedule not being applicable, the trustees of the Employees Provident Fund Scheme, 1952 or any person authorised under the scheme to make payment of accumulated balance due to employees are required to **deduct income-tax@10%** at the time of payment of accumulated balance due to the employee. Tax deduction at source has to be made only if the amount of such payment or aggregate amount of such payment of the payee is **₹ 50,000 or more.**

Rule 8 of Part A of the Fourth Schedule, inter alia, provides that only if an employee has rendered continuous service of five years or more with employer, then accumulated balance in a recognized provident fund payable to an employee would be excluded from total income of that employee.

In the present case, Mr. Sharma has withdrawn an amount exceeding ₹ 50,000 on his resignation after rendering **a continuous service of four years** with M/s. ABC Ltd. Therefore, **tax has to be deducted at source@10% under section 192A on ₹ 60,000**, being the amount withdrawn on his resignation without rendering continuous service of a period of five years with M/s. ABC Ltd.

The **net amount receivable by Mr. Sharma is ₹ 54,000** [i.e., ₹ 60,000 - ₹ 6,000, being TDS].

Question 3

Examine the TDS implications under section 194A in the cases mentioned hereunder –

(i) On 1.10.2024, Mr. Harish, aged 40 years, made a six-month fixed deposit of ₹ 10 lakh @9% p.a. with ABC Co-operative Bank. The fixed deposit matures on 31.3.2025.

(ii) On 1.6.2024, Mr. Ganesh, aged 45 years, made three nine month fixed deposits of ₹ 3 lakh each carrying interest@9% with Dwarka Branch, Janakpuri Branch and Rohini Branch of XYZ Bank, a bank which has adopted CBS. The fixed deposits mature on 28.2.2025.

(iii) On 1.10.2024, Mr. Rajesh, aged 40 years, started a 6 months recurring deposit of ₹ 2,00,000 per month@8% p.a. with PQR Bank. The recurring deposit matures on 31.3.2025 with interest of ₹ 28,000.

Answer

(i) ABC Co-operative Bank **has to deduct tax at source@10%** on the interest of ₹ 45,000 (9% × ₹ 10 lakh × ½) under section 194A. The tax deductible at source under section 194A from such interest is, therefore, ₹ 4,500.

(ii) XYZ Bank has to deduct tax at source@10% under section 194A, since the aggregate interest on fixed deposit with the three branches of the bank is **₹ 60,750** [₹ 3,00,000 × 3 × 9% × 9/12], which exceeds the threshold limit of ₹ 40,000. Since XYZ Bank has adopted CBS, the aggregate interest credited/paid by all branches has to be considered. Since the aggregate interest of ₹ 60,750 exceeds the threshold limit of ₹ 40,000, **tax has to be deducted@10%** u/s 194A.

(iii) **No tax has to be deducted** under section 194A by PQR Bank on the interest of ₹ 28,000 falling due on recurring deposit to Mr. Rajesh, since such interest does not exceed the threshold limit of ₹ 40,000.

Question 4

Maya Bank credited ₹ 73,50,000 towards interest on the deposits in a separate account for macro-monitoring purposes by using Core-branch Banking Solutions (CBS) software. No tax was deducted at source in respect of interest on deposits so credited even where the interest in respect of some depositors exceeded the limit of ₹ 40,000.

The Assessing Officer disallowed 30% of interest expenditure, where the interest on time deposits credited exceeded the limit of ₹ 40,000 and also levied penalty under section 271C.

Decide the correctness of action of the Assessing Officer.

Answer

The Explanation below section 194A(1) provides that where any income by way of interest other than interest on securities is credited to any account, whether called 'interest payable account' or 'suspense account' or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and provisions of section 194A, shall, thus, apply.

However, the CBDT has, vide Circular No.3/2010 dated 2.3.2010, clarified that Explanation to section 194A will not apply in cases of banks **where credit is made to provisioning account on daily/monthly basis for the purpose of macro monitoring only by the use of CBS software.**

Since no constructive credit to the depositor's/payee's account takes place while calculating interest on daily/monthly basis in the CBS software used by banks, **tax need not be deducted at source on such provisioning of interest by banks for the purposes of macro monitoring only.**

In such cases, tax shall be deducted at source on accrual of interest at the end of the financial year or at periodic intervals as per practice of the bank or as per the depositor's or payee's requirement or on maturity or on encashment of time deposit, whichever event takes place earlier and wherever the aggregate amount of interest income credited or paid or likely to be credited or paid during the financial year by the bank exceeds the limits specified in section 194A i.e., ₹ 40,000.

In view of the above, the **action of the Assessing Officer** in disallowing the interest expenditure credited in a separate account for macro monitoring purpose **is not valid** and consequent initiation of penalty proceedings under section 271C is not tenable in law.

Question 5

Mr. Govind won the first prize in a lottery ticket and the prize was a Maruti car worth ₹ 5 lacs. What is the procedure to be adopted before handing over the Maruti Car to Mr. Govind?

Answer

Section 194B provides that the person responsible for paying to any person, any income by way of winnings from any lottery or crossword puzzle, card game or any other game of any sort and the **amount of winning exceeds ₹ 10,000, tax shall be deducted at source @30%.**

However, **in case where the winning is wholly in kind,** the person responsible for paying the prize shall before releasing the winning, **ensure that the tax has been paid in respect of such winning.**

The Karnataka High Court in the case of CIT v. Hindustan Lever Ltd. (2014) 361 ITR 1 has held that where the winnings are wholly in kind, the responsibility cast under section 194B is to ensure that the tax is paid by the winner of the prize before the prize is released in his favour. In this regard, the CBDT Circular No.763 dated 18/2/1998 clarifies that the person responsible for paying the winnings shall, before releasing such winnings, ensure that the tax is paid by the winner. He can do so, for example, by collecting from the winner a sum equal to the tax deductible at source on the winnings in kind, before releasing the winnings. For this purpose, the value of the winnings in kind shall be taken as the cost incurred by the payer in acquiring the said winnings in kind.

Therefore, in this case since the entire winning is in kind, **it must be ensured that the sum equal to the tax deductible at source (i.e., ₹ 1,50,000, being @ 30% of ₹ 5 lacs) is paid by Mr. Govind,** before the car is released in his favour. This can be done by collecting ₹ 1,50,000 from Mr. Govind before releasing the Maruti car to him and remitting the said sum to the Government account or verifying the tax payment by the winner and thereafter releasing the prize.

Question 6

ABC Ltd. makes the following payments to Mr. X, a contractor, for contract work during the year:

₹ 20,000 on 1.5.2024

₹ 25,000 on 1.8.2024

₹ 28,000 on 1.12.2024

On 1.3.2025, a payment of ₹ 30,000 is due to Mr. X on account of a contract work.

Discuss whether ABC Ltd. is liable to deduct tax at source under section 194C from payments made to Mr. X.

Answer

In this case, the individual contract payments made to Mr. X does not exceed ₹ 30,000. However, since the aggregate amount paid to Mr. X during the year exceeds ₹ 1,00,000 (on account of the last payment of ₹ 30,000, due on 1.3.2025, taking the total from ₹ 73,000 to ₹ 1,03,000), the TDS provisions under section 194C would get attracted. **Tax has to be deducted@1% on the entire amount of ₹ 1,03,000 from the last payment of ₹ 30,000** and the balance of ₹ 28,970 (i.e., ₹ 30,000 - ₹ 1,030) has to be paid to Mr. X.

Question 7

Alap Ltd. has made following payments on various dates to Vilambit Ltd. towards work done under different contracts:

Contract Number	Date of payment	Amount (₹)
1.	5.5.2024	20,000
2.	6.6.2024	15,000
3.	8.8.2024	25,000
4.	10.12.2024	25,000
5.	29.01.2025	17,000

Alap Ltd. claims that it is not liable for deduction of tax at source under section 194C. Examine the correctness of the claim made by the company. What would be the position if the value of the contract no. 5 is ₹ 14,000 only and there was no further contract during the year?

Answer

As per section 194C(5), tax has to be deducted at source where the amount credited or paid or likely to be credited or paid to a contractor or sub-contractor exceeds ₹ 30,000 in a single payment or ₹ 1,00,000 in aggregate during the financial year.

Therefore, in the given case, even though the value of each individual contract does not exceed ₹ 30,000, the aggregate amount exceeds ₹ 1,00,000. Hence, Alap Ltd's contention is not correct and **tax is required to be deducted at source on the whole amount of ₹ 1,02,000** from the last payment of ₹ 17,000 towards Contract No. 5 on account of which the aggregate amount exceeded ₹ 1,00,000.

However, **no tax deduction is to be made if the value of the last contract is ₹ 14,000 as the aggregate amount in such case would only be ₹ 99,000**, which is below the aggregate monetary limit of ₹ 1,00,000.

Question 8

Bharathi Cements Ltd. purchased jute bags from Raj Kumar & Co. The latter has to supply the jute bags with the logo and address of the assessee, printed on it. The value of jute bags supplied is ₹ 8,00,000. While effecting the payment for the same, is the assessee bound to deduct tax at source, assuming that the value of the printing component involved is ₹ 1,10,000. You are informed that the assessee has not sold any material to Raj Kumar & Co. and that the latter has to manufacture the jute bags in its plant using raw materials purchased by it from outsiders.

Answer

As per the definition under section 194C, **"work" shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using raw material purchased from a person, other than such customer.** This is regardless of the quantum of expenditure incurred towards printing or processing comprised in the bill amount.

The problem clearly states that Raj Kumar & Co. has to manufacture the jute bags using raw materials purchased from outsiders and that the **assessee Bharathi Cements Ltd has not sold any material to them.** Therefore, in this case, it is a **contract of sale.** Hence, the **provisions of section 194C are not attracted and no liability to deduct tax at source would arise.**

Question 9

Moon TV, a television channel, made payment of ₹ 50 lakhs to a production house for production of programme for telecasting as per the specifications given by the channel. The copyright of the programme is also transferred to Moon TV. Would such payment be liable for tax deduction at source under section 194C? Discuss.

Also, examine whether the provisions of tax deduction at source under section 194C would be attracted if the payment was made by Moon TV for acquisition of telecasting rights of the content already produced by the production house.

Answer

In this case, since the **programme is produced by the production house as per the specifications** given by Moon TV, a television channel, and the copyright is also transferred to the television channel, the same falls within the scope of definition of the term 'work' under section 194C. Therefore, the payment of ₹ 50 lakhs made by Moon TV to the production house would be **subject to tax deduction at source under section 194C.**

If, however, the **payment was made by Moon TV for acquisition of telecasting rights** of the content already produced by the production house, there is no contract for "carrying out any work", as required in section 194C(1). Therefore, **such payment would not be liable for tax deduction at source under section 194C.**

Question 10

Examine the applicability of the provisions for tax deduction at source under section 194DA in the following cases -

(i) Mr. X, a resident, is due to receive ₹ 4.50 lakhs, towards maturity proceeds of LIC policy taken on 1.4.2022, for which the sum assured is ₹ 4 lakhs and the annual premium is ₹ 1,25,000.

(ii) Mr. Y, a resident, is due to receive ₹ 3.95 lakhs on LIC policy taken on 31.3.2012, for which the sum assured is ₹ 3.50 lakhs and the annual premium is ₹ 30,100.

(iii) Mr. Z, a resident, is due to receive ₹ 95,000 towards maturity proceeds of LIC policy taken on 1.8.2017 for which the sum assured is ₹ 90,000 and the annual premium is ₹ 10,000.

Answer

(i) Since the annual premium exceeds 10% of sum assured in respect of a policy taken after 31.3.2012, the maturity proceeds of ₹ 4.50 lakhs are not exempt under section 10(10D) in the hands of Mr. X. Therefore, **tax is required to be deducted@2% under section 194DA on the amount of income comprised therein i.e., on ₹ 75,000** (₹ 4,50,000, being maturity proceeds - ₹ 3,75,000 (1,25,000 x 3 years), being the entire amount of insurance premium paid).

(ii) Since the annual premium is less than 20% of sum assured in respect of a policy taken before 1.4.2012, the sum of ₹ 3.95 lakhs due to Mr. Y **would be exempt** under section 10(10D) in his hands. Hence, **no tax is required to be deducted at source** under section 194DA on such sum payable to Mr. Y.

(iii) Even though the annual premium exceeds 10% of sum assured in respect of a policy taken after 31.3.2012, and consequently, the maturity proceeds of ₹ 95,000 would not be exempt under section 10(10D) in the hands of Mr. Z, the tax deduction provisions under section 194DA are **not attracted since the maturity proceeds are less than ₹ 1 lakh.**

Question 11

Calculate the amount of tax to be deducted at source (TDS) on payment made to Ricky Ponting, an Australian cricketer, by a newspaper for contribution of articles ₹ 25,000.

Answer

Under section 194E, the person responsible for payment of any amount to a **non-resident sportsman** for contribution of articles relating to any game or sport in India in a newspaper **shall** deduct **tax @20%.** Further, since Ricky Ponting is a non-resident, health and education cess@4% on TDS would also be added.

Therefore, **tax to be deducted = ₹ 25,000 x 20.80% = ₹ 5,200.**

Question 12

M/s. LMN Travels is a Travel Agent engaged in sale of air tickets of AirGo and AirJet Airlines. It earns standard commission@5% as well as supplementary commission. AirGo and AirJet have deducted tax at source under section 194H on the standard commission, which is a fixed percentage designated by the International Air Transport Association (IATA). However, they have not deducted tax on the supplementary commission, which is the additional amount LMN Travels charges over and above the net fare quoted by AirGo and AirJet and retained by LMN Travels as its own income.

The details of the amounts at which the tickets were sold are transmitted by LMN Travels to an organization known as the Billing and Settlement Plan ("BSP") which functions under the aegis of the IATA. This auxiliary amount charged on top of the net fare was portrayed on the BSP as a "supplementary commission" in the hands of LMN Travels. The contract between LMN Travels and the airlines stated that "all monies" received by LMN Travels were held as the property of the air carrier until they were recorded on the billing and settlement plan and properly gauged.

AirGo and AirJet contended that tax is not deductible on supplementary commission which LMN Travels retains out of the sale proceeds of the air tickets, since there is no agency relationship between the airlines and LMN Travels and that the supplementary commission is not within the control of the airlines. Discuss the correctness of the above contention.

Answer

The issue under consideration in this case is **whether TDS under section 194H is attracted in respect of both standard and supplementary commission** paid by AirGo and AirJet Airlines to LMN Travels. This issue came up before the Supreme Court in Singapore Airlines Ltd / KLM Royal Dutch Airlines v. CIT / British Airways Plc v. CIT (TDS) (2022) 49 ITR 203.

The Supreme Court observed that section 194H does not distinguish between direct and indirect payments. **Both standard commission and supplementary commission fall within the meaning of "commission"** under clause (i) of the Explanation thereto.

Section 194H is to be read with section 182 of the Contract Act, 1872. If a relationship between two parties as culled out from their intentions as manifested in the terms of the contract between them indicates the existence of a principal-agent relationship as defined under section 182 of the Contract Act, the definition of "commission" under section 194H stands attracted and the requirement to deduct tax at source arises.

The Apex Court noted that there was no transfer in terms of the title in the tickets and they remained the property of the airline company throughout the transaction. Every action taken by the travel agents is on behalf of the air carriers and the services they provide is with express prior authorization. Accordingly, the Apex Court concluded that the contract is one of agency that does not distinguish in terms of stages of the transaction involved in selling flight tickets. The accretion of the supplementary commission to the travel agents was an accessory to the actual principal-agent relationship. Notwithstanding the lack of control over the actual fare, the contract definitively stated that "all monies" received by the agent were held as the property of the air carrier until they were recorded on the billing and settlement plan and properly gauged. The billing and settlement plan also demarcated "supplementary commission" under a separate heading.

Hence, once the IATA made the payment of the accumulated amounts shown on the billing and settlement plan, it would be feasible for the assessees, being the airlines to deduct tax at source on this additional income earned by the agent.

Applying the rationale of the Supreme Court ruling to the case on hand, the **contention of AirGo and AirJet is not correct and they are required to deduct tax at source under section 194H on both the standard commission and supplementary commission paid to LMN Travels.**

Question 13

ABC Telecom Ltd. has entered into agreements with various distributors to sell its prepaid products. According to the agreement, the distributors purchase prepaid products at a discounted price from ABC Telecom Ltd. and are free to sell these products at any price below the printed price. The distributors make a profit based on the margin between their purchase price and the sale price to retailers or consumers. The distributors pay for the products in advance, irrespective of when they sell them. ABC Telecom Ltd. does not credit or pay any income to the distributors and is not involved in the transactions between the distributors and third-party buyers.

Examine whether ABC Telecom Ltd. is obligated to deduct tax at source on the income/profit component earned by the distributors.

Answer

The same issue came up before the Supreme Court in the case of Bharti Cellular Ltd. vs. ACIT [2024] 462 ITR 247, wherein the Apex Court noted that the **obligation to deduct tax at source in terms of section 194H arises when the legal relationship of principal and agent is established.** Agency is a triangular relationship between the principal, agent and the third party. The legal position of a distributor is generally regarded as different from that of an agent. Based on perusal of agreement between assessee and distributors/franchisee, the franchisee/distributor paid the discounted price regardless of, and even before, the pre-paid products being sold and transferred to the retailers or the actual consumer. The franchisee/distributor was free to sell the prepaid products at any price below the price printed on the pack. The franchisee/distributor determined his profits/income.

Section 194H fixes the liability to deduct tax at source on the 'person responsible to pay' and the liability to deduct tax at source arises when the income is credited or paid by the person responsible for paying. The expression "direct or indirect" used in Explanation (i) to section 194H is meant to ensure that "the person responsible for paying" does not dodge the obligation to deduct tax at source, even when the payment is indirectly made by the principal-payer to the agent-payee. However, deduction of tax at source in terms of section 194H is not to be extended and widened in ambit to apply to true/genuine business transactions, where the assessee is not the person responsible for paying or crediting income. In the present case, the ABC Telecom Ltd., being an assessee neither pays nor credit any income to the person with whom he has contracted.

ABC Telecom Ltd. is not privy to the transactions between distributors/franchisees and third parties. It is, therefore, impossible for ABC Telecom Ltd. to deduct tax at source and comply with section

194H, on difference between the total/sum consideration received by the distributors/franchisees from third parties and the amount paid by the distributors/franchisees to them. In the present case, the contractual obligations of the franchises or distributors did not reflect a fiduciary character of the relationship, or the business being done on the principal's account.

Applying the rationale of the Apex Court ruling in the case on hand, **section 194H is not applicable in the hands of ABC Telecom Ltd. and it would not be under a legal obligation to deduct tax at** source on **the income/profit component in payments received by the distributors/franchisees** from the **third parties/customers.**

Question 14

ABC Ltd. took on sub-lease a building from J, an individual, with effect from 1.9.2024 on a rent of ₹ 25,000 per month. It also took on hire machinery from J with effect from 1.10.2024 on hire charges of ₹ 15,000 per month. ABC Ltd. entered into two separate agreements with J for sub-lease of building and hiring of machinery. The rent of building and hire charges of machinery for the financial year 2024-25 were ₹ 1,75,000 and ₹ 90,000, respectively, which were credited by ABC Ltd. to the account of J in its books of account on 31.3.2025. Examine the obligation of ABC Ltd. with regard to deduction of tax at source in respect of the rent and hire charges.

Answer

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

The limit of ₹ 2,40,000 for tax deduction at source will apply to the aggregate rent of all the assets. Even if two separate agreements are entered into, one for sub-lease of building and another for hiring of machinery, rent and hire charges under the two agreements have to be aggregated for the purpose of application of the threshold limit of ₹ 2,40,000. In this case, since the payment for rent and hire charges credited to the account of J, the payee, aggregates to ₹ 2,65,000 (₹ 1,75,000 + ₹ 90,000), tax is deductible at source under section 194-I. **Tax is deductible@10% on ₹ 1,75,000** (rent of building) **and @2% on ₹ 90,000** (hire charges of machinery).

Question 15

"Come Air Ltd." has paid a sum of ₹ 12 lakhs to Airports Authority of India towards landing and parking charges. The company has deducted tax at source@2% under section 194C on the said payment and remitted the tax deducted within the prescribed time. The Assessing Officer contended that landing and parking charges were levied for use of the land of the airport and hence, the payment was in the nature of rent attracting TDS@10% under section 194-I. Discuss the correctness or otherwise of the contention of the Assessing Officer.

Answer

The issue as to whether the charges fixed by Airport Authority of India (AAI) for landing and take-off facilities and parking facility for aircraft are for "use of the land" by airline company came up before Supreme Court in Japan Airlines Co. Ltd. v. CIT/CIT v. Singapore Airlines Ltd. (2015) 377 ITR 372.

The Supreme Court observed that the charges which are fixed by the AAI for landing and take-off services as well as for parking of aircrafts are not for the "use of the land". These charges are for services and facilities offered in connection with the aircraft operation at the airport which include providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport.

There are various international protocols which mandate all authorities manning and managing these airports to construct airport of desired standards which are stipulated in the protocols. The services which are required to be provided by these authorities, like AAI, are aimed at passengers' safety as well as for safe landing and parking of the aircrafts. Therefore, the services are not restricted to merely permitting "use of the land" of airport. On the contrary, it encompasses all the facilities that are to be compulsorily offered by the AAI in tune with the requirements of the protocol.

The Supreme Court observed that the charges levied on air-traffic includes landing charges, lighting charges, approach and aerodrome control charges, aircraft parking charges, aerobridge charges, hangar charges, passenger service charges, cargo charges, etc. Thus, when the airlines pay for these charges, treating such charges as charges for "use of the land" would tantamount to adopting a totally simplistic approach which is far away from reality.

The Supreme Court opined that substance behind such charges has to be considered and when the issue is viewed from this angle, keeping larger picture in mind, it becomes very clear that charges are not for use of land per se and, therefore, it cannot be treated as "rent" within the meaning of section 194-I. The Supreme Court, thus, concurred with the view taken by Madras High Court in Singapore Airlines case and overruled the view taken by Delhi High Court in United Airlines/Japan Airlines case.

Applying rationale of Supreme Court ruling to the facts of this case, **contention of Assessing Officer that landing and parking charges are levied for use of land of airport** and hence, charges are in nature of rent **to attract provisions of tax deduction at source u/s 194-I is not correct.**

Question 16

Mr. X sold his house property in Bangalore as well as his rural agricultural land for a consideration of ₹ 60 lakh and ₹ 15 lakh, respectively, to Mr. Y on 1.8.2024. He has purchased the house property and the land in the year 2023 for ₹ 40 lakh and ₹ 10 lakh, respectively. The stamp duty value on the date of transfer is ₹ 85 lakh and ₹ 20 lakh for the house property and rural agricultural land, respectively. Determine the tax implications in the hands of Mr. X and Mr. Y and the TDS implications, if any, in the hands of Mr. Y, assuming that both Mr. X and Mr. Y are resident Indians.

Answer

(i)	**Tax implications in the hands of Mr. X**
	As per section 50C, the stamp duty value of house property (i.e. ₹ 85 lakh) would be deemed to be the full value of consideration arising on transfer of property since stamp duty value exceeds 110% of the actual consideration.

	Therefore, ₹ **45 lakh** (i.e., ₹ 85 lakh – ₹ 40 lakh, being the purchase price) **would be taxable as short-term capital gains.** **Since rural agricultural land is not a capital asset, the gains arising on sale of such land is not taxable in the hands of Mr. X.**
(ii)	**Tax implications in the hands of Mr. Y**
	In case immovable property is received for inadequate consideration, the difference between the stamp value and actual consideration would be taxable under section 56(2)(x), if such difference exceeds higher of ₹ 50,000 or 10% of the consideration. Therefore, in this case **₹ 25 lakh** (₹ 85 lakh – ₹ 60 lakh) **would be taxable in the hands of Mr. Y under section 56(2)(x).** **Since agricultural land is not a capital asset, the provisions of section 56(2)(x) are not attracted** in respect of receipt of agricultural land for inadequate consideration, since the definition of "property" u/s 56(2)(x) includes only capital assets specified thereunder.
(iii)	**TDS implications in the hands of Mr. Y**
	Since the sale consideration and stamp duty value of house property both are not less than ₹ 50 lakhs, Mr. Y is required to deduct tax at source under section 194-IA. The **tax to be deducted under section 194-IA would be ₹ 85,000, being 1% of ₹ 85 lakh** (higher of ₹ 60 lakhs and ₹ 85 lakhs). **TDS u/s 194-IA are not attracted in respect of transfer of rural agricultural land.**

Question 17

Mr. Harish, Vice President of ABC Bank, sold his house property in Chennai as well as his rural agricultural land for a consideration of ₹ 60 lakh and ₹ 15 lakh, respectively, to Mr. Suresh, a retail trader of garments, on 10.10.2024. Mr. Harish had purchased the house property and rural agricultural land in December 2022 for ₹ 40 lakh and ₹ 10 lakh, respectively. The stamp duty value on the date of transfer, i.e., 10.10.2024, is ₹ 85 lakh and ₹ 20 lakh for the house property and rural agricultural land, respectively.

(a) Determine the tax implications in the hands of Mr. Harish and Mr. Suresh, if the date of agreement for sale of house property and rural agricultural land is 1.7.2024 and the stamp duty value on the said date was ₹ 75 lakh and ₹ 15 lakh, respectively. On the said date, Mr. Suresh made payment of ₹ 5 lakh by way of account payee cheque to Mr. Harish for purchase of house property. Also, discuss the TDS implications, if any, in the hands of Mr. Suresh, assuming that both Mr. Harish and Mr. Suresh are resident Indians.

(b) Would your answer be different if Mr. Harish is a property dealer and sold the house property in the course of his business?

Answer

(a) **Tax implications on sale of rural agricultural land and house property representing a capital asset in the hands of Mr. Harish, a salaried employee**

(i)	**Tax implications in the hands of Mr. Harish, a salaried employee**
	Since rural agricultural land is not a capital asset, the gains arising on sale of

	such land is not taxable in the hands of Mr. Harish. However, capital gains would arise on sale of house property, being a capital asset. As per section 50C(1), the stamp duty value of house property on the date of agreement (i.e., ₹ 75 lakh) would be deemed to be the full value of consideration arising on transfer of property. Therefore, **₹ 35 lakh** (i.e., ₹ 75 lakh - ₹ 40 lakh, being the purchase price) **would be taxable as short-term capital gains.** It may be noted that as the date of agreement is different from the date of registration and part of the consideration was received on or before the date of agreement by way of account payee cheque, the stamp duty value on the date of agreement is to be adopted as the deemed sale consideration.
(ii)	**Tax implications in the hands of the buyer – Mr. Suresh, a retail trader**
	The house property purchased would be a capital asset in the hands of Mr. Suresh, who is a retail trader of garments. The provisions of section 56(2)(x) is attracted in the hands of Mr. Suresh who has acquired the immovable property, being a capital asset, for inadequate consideration. For the purpose of section 56(2)(x), Mr. Suresh can take the stamp duty value on the date of agreement instead of date of registration since he has paid a part of the consideration by account payee cheque on the date of agreement. Therefore, ₹ **15 lakh,** being the difference between the stamp duty value of the property on the date of agreement (i.e., ₹ 75 lakh) and the actual consideration (i.e., ₹ 60 lakh) would be **taxable** as **per section 56(2)(x) under the head "Income from other sources"** in the hands of Mr. Suresh, since such difference exceeds the higher of ₹ 50,000 or 10% of consideration. **As rural agricultural land is not a capital asset, section 56(2)(x) are not attracted** in respect of acquisition of agricultural land for inadequate consideration, since the definition of "property" u/s 56(2)(x) includes only capital assets specified thereunder.
(iii)	**TDS implications in the hands of the buyer, Mr. Suresh**
	Since the sale consideration and stamp duty value of house property both are not less than ₹ 50 lakhs, Mr. Suresh is required to deduct tax at source under section 194-IA. The **tax deduction under section 194-IA would be ₹ 75,000, being 1% of ₹ 75 lakh** i.e. higher of consideration or stamp duty value. **TDS u/s 194-IA are not attracted in respect of transfer of rural agricultural land.**

(b) Tax implications on sale of house property representing stock-in-trade in the hands of Mr. Harish, a property dealer:

(i)	**Tax implications in the hands of Mr. Harish**
	If Mr. Harish is a property dealer who has sold the house property in the course of his business, the **provisions of section 43CA would be attracted,** since the house property represents his stock-in-trade and he has transferred the same for a consideration less than the stamp duty value. For the purpose of section 43CA, Mr. Harish can take the stamp duty value on the date of agreement instead of the date of registration, since he has received part of the sale consideration by an account payee cheque on the date of agreement and it exceeds 110% of consideration. Therefore, **₹ 35 lakh,** being the difference between the stamp

	duty value on the date of agreement (i.e., ₹ 75 lakh) and the purchase price (i.e., ₹ 40 lakh), would be **chargeable as business income in the hands of Mr. Harish.**
(ii)	**TDS implications and taxability in the hands of Mr. Suresh**
	There would be no difference in the TDS implications or taxability in the hands of Mr. Suresh, whether Mr. Harish is a property dealer or a salaried employee. Therefore, the provisions of section 56(2)(x) would be attracted in hands of Mr. Suresh who has received house property, being a capital asset, for inadequate consideration. The TDS provisions u/s 194-IA would also be attracted since the sale consideration and stamp duty value of house property both are not less than ₹ 50 lakhs.

Question 18

Mr. X, a salaried individual, pays building rent of ₹ 55,000 per month to Mr. Y from October, 2024. Is he required to deduct tax at source? If so, when is he required to deduct tax? Also, compute the amount of tax to be deducted at source.

Would your answer change if Mr. X vacated the premises on 31st December, 2024?

Also, what would be your answer if Mr. Y does not provide his PAN to Mr. X?

Answer

Since Mr. X pays rent exceeding ₹ 50,000 per month, he is liable to deduct tax at source @2% of such rent under section 194-IB. **Thus, ₹ 6,600 [₹ 55,000 x 2% x 6] has to be deducted from rent payable for March, 2025.**

If Mr. X vacated the premises in December, 2024, then **tax of ₹ 3,300 [₹ 55,000 x 2% x 3] has to be deducted from rent payable for December, 2024.**

In case Mr. Y **does not provide his PAN** to Mr. X, tax would be deductible @20%, instead of 2%.

In case 1 above, **this would amount to ₹ 66,000 [₹ 55,000 x 20% x 6] but the same has to be restricted to ₹ 55,000**, being rent for March, 2025.

In case 2 above, **this would amount to ₹ 33,000 [₹ 55,000 x 20% x 3].**

Question 19

XYZ Ltd. makes a payment of ₹ 28,000 to Mr. Ganesh towards fees for professional services and another payment of ₹ 25,000 to him on the same date towards fees for technical services. Discuss whether TDS provisions under section 194J are attracted.

Answer

TDS provisions under **section 194J would not get attracted**, since the **limit of ₹ 30,000 is applicable for fees for professional services and fees for technical services, separately.** It is assumed that there is no other payment to Mr. Ganesh towards fees for professional services and fees for technical services during the year.

Question 20

East Bengal Club, a renowned football club, has engaged Raghu, a resident in India, as its coach at a remuneration of ₹ 6 lacs per annum. The club wants to know from you whether it is liable to deduct tax at source from such remuneration.

Answer

Section 194J requires **deduction of tax at source** from the amount credited or paid by way of fees for **professional services,** where such amount or aggregate of such amounts credited or paid to a person **exceeds ₹ 30,000** in a financial year. As per Explanation (a) to section 194J, professional services includes services rendered by a person in the course of carrying on such other profession as is notified by the CBDT for the purposes of section 194J.

Accordingly, the CBDT has, vide Notification No. 88 dated 21.8.2008, in exercise of the powers conferred by clause (a) of the Explanation to section 194J notified the services rendered by coaches and trainers in relation to **sports activities** as professional services for the purposes of section 194J.

Therefore, the **club is liable to deduct tax at source under section 194J from the remuneration payable to the Coach, Raghu.**

Question 21

Siddharth Hospitals Pvt. Ltd., has recently been accorded recognition by several insurance companies to admit and treat patients on cashless hospitalization basis. Payment to the assessee hospital will be made by Third Party Administrators (TPA) who will process the claims of the patients admitted and make payments to the various hospitals including the assessee. All TPAs are corporate entities. The assessee wants to know whether TPAs are bound to deduct tax at source u/s 194J or 194C?

Answer

This issue has been clarified by the CBDT Circular No.8/2009 dated 24.11.2009. As per provisions of section 194J(1), any person, who is responsible for paying to a resident any sum by way of fees for **professional services,** shall, at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, **deduct an amount equal to 10% of such sum as TDS.**

Further, as per clause (a) of Explanation to section 194J "professional services" includes services rendered by a person in the course of carrying on **medical profession.**

The services rendered by hospitals to various patients are primarily medical services and, therefore, **the provisions of section 194J are applicable on payments made by TPAs to hospitals** etc. Further, for invoking provisions of section 194J, there is no stipulation that the professional services have to be necessarily rendered to the person who makes payment to hospital. Therefore, TPAs who are making payment on behalf of insurance companies to hospitals for settlement of medical/ insurance claims etc. under various schemes including Cashless Schemes are liable to deduct tax at source under section 194J on all such payments to hospitals etc.

In view of the above, all such transactions between TPAs and hospitals would fall within the ambit of provisions of section 194J.

Question 22

Examine whether TDS provisions would be attracted in the following cases, and if so, under which section. Assume that all payments are made to residents.

	Particulars of the payer	Nature of payment	Aggregate of payments made in the F.Y.2024-25
1	Mr. Ganesh, an individual carrying on retail business with turnover of ₹ 2.5 crores in the P.Y.2023-24	Contract Payment for repair of residential house	₹ 5 lakhs
		Payment of commission to Mr. Vallish for business purposes	₹ 80,000
2.	Mr. Rajesh, a wholesale trader whose turnover was ₹ 95 lakhs in P.Y. 2023-24.	Contract Payment for reconstruction of residential house	₹ 20 lakhs in January, 2025, ₹ 15 lakhs in Feb 2025 and ₹ 20 lakhs in March 2025.
3.	Mr. Satish, a salaried individual	Payment of brokerage for buying a residential house	₹ 51 lakhs
4.	Mr. Dheeraj, a pensioner	Contract payment made for reconstruction of residential house	₹ 48 lakhs

Answer

	Particulars of the payer	Nature of payment	Aggregate payment	Whether TDS provisions are attracted?
1	Mr. Ganesh, . an individual carrying on retail business with turnover of ₹ 2.5 crores in the P.Y.2023-24	Contract Payment for repair of residential house	₹ 5 lakhs	No, **TDS u/s 194C is not attracted** since the payment is for personal purpose and **TDS u/s 194M is not attracted** as aggregate of contract payment to the payee during the year does not exceed ₹ 50 lakh.
		Payment of commission to Mr. Vallish for business purposes	₹ 80,000	**Yes, u/s 194H**, since the payment exceeds ₹ 15,000, and Mr. Ganesh's turnover exceeds from business ₹ 1 crore in the preceding P.Y.
2	Mr. Rajesh, a wholesale trader whose turnover was ₹ 95 lakhs in P.Y. 2023-24.	Contract Payment for reconstruction of residential house	₹ 55 lakhs	**Yes, u/s 194M**, since the aggregate of payments (i.e., ₹ 55 lakhs) exceed ₹ 50 lakhs. Since his turnover does not exceed Rs. 1 crore in preceding P.Y., TDS u/s 194C are not attracted.
3	Mr. Satish, a salaried individual	Payment of brokerage for buying a residential house	₹ 51 lakhs	**Yes, under section 194M**, since the payment of ₹ 51 exceeds the threshold of ₹ 50 lakhs. Since Mr. Satish is a salaried individual, section 194H are not applicable in this case.

4	Mr. Dheeraj, a pensioner	Contract payment for reconstruction of residential house	₹ 48 lakhs	TDS provisions u/s **194C are not attracted** since Mr. Dheeraj is a pensioner. TDS provisions u/s **194M are also not applicable** in this case, since the payment of ₹ 48 lakhs does not exceed the threshold of ₹ 50 lakhs.

Question 23

M/s Kashdash (P) Ltd. an Indian company in the business of event management throughout India withdraws ₹ 10 lakhs in cash on 7th day of each month from its current account with Union Bank, for local payments and for payment of wages and incentives to temporary employees engaged by it for different events. It did not make any single payment of ₹ 10,000 or more to any person in a day. Examine the liability for tax deduction at source in the present case.

Answer

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 accqunts maintained by such recipient-person with it, shall **deduct tax at source @2% of sum exceeding ₹ 1 crore.**

In the present case, M/s Kashdash (P) Ltd. an **Indian company has withdrawn ₹ 10,00,000 in cash on 7th of each month from the current account with Union Bank, which is totaling to ₹ 1.20 crores in aggregate** during the year.

Thus, **Union Bank is required deducted tax at source of ₹ 40,000** [i.e., 2% of ₹ 20 lakhs, being the amount exceeding ₹ 1 crore].

Question 24

The persons referred to in (i) to (vi) in Column (2) of the table below have always been filing their returns of income on or before the due date u/s 139(1). The persons mentioned in (vii) to (x) in Column (2) of the table below have not filed their returns of income for the last five years. Determine the liability of deduction of tax at source u/s 194N by the bank/co-operative bank referred to in column (3) of the table below in each of the following individual cases, assuming that this is the only withdrawal in the year by the persons referred to in Column (2).

(1)	**(2)**	**(3)**	**(4)**
	Person making the withdrawal	**Bank/Co-operative Bank from which money is withdrawn**	**Amount of withdrawal (₹)**
(i)	Mr. Harshit	SBI	1,10,00,000
(ii)	Mr. Pranav	SBI	90,00,000
(iii)	ABC Co-operative Society	SBI	2,70,00,000
(iv)	XYZ Co-operative Society	MNO Co-operative bank	3,10,00,000
(v)	Mr. Vaibhav	MNO Co- operative bank	2,10,00,000

(vi)	A Ltd.	MNO Co-operative bank	1,05,00,000
(vii)	M/s. DEF & Co., a firm	MNO Co-operative bank	90,00,000
(viii)	Mr. Varun	BOI	1,20,00,000
(ix)	Mr. Rakesh	BOI	45,00,000
(x)	PQR Co-operative Society	BOI	3,30,00,000

Answer

	Person making the withdrawal	Amount of withdrawal (₹)	TDS u/s 194N (₹)
(i)	Mr. Harshit	1,10,00,000	₹ 10,00,000 x 2% = **₹ 20,000**
(ii)	Mr. Pranav	90,00,000	**Nil** (since withdrawals < ₹ 1 crore)
(iii)	ABC Co-operative Society	2,70,00,000	**Nil** (since withdrawals < ₹ 3 crore)
(iv)	XYZ Co-operative Society	3,10,00,000	₹ 10,00,000 x 2% = **₹ 20,000**
(v)	Mr. Vaibhav	2,10,00,000	₹ 1,10,00,000 x 2% = **₹ 2,20,000**
(vi)	A Ltd.	1,05,00,000	₹ 5,00,000 x 2% = **₹ 10,000**
(vii)	M/s. DEF & Co., a firm	90,00,000	₹ 70,00,000 x 2% = **₹ 1,40,000**
(viii)	Mr. Varun	1,20,00,000	₹ 80,00,000 x 2% **(+)** ₹ 20,00,000 x 5% = **₹ 2,60,000**
(ix)	Mr. Rakesh	45,00,000	₹ 25,00,000 x 2% = **₹ 50,000**
(x)	PQR Co-operative Society	3,30,00,000	₹ 2,80,00,000 x 2% **(+)** ₹ 30,00,000 x 5% = **₹ 7,10,000**

Question 25

Examine the applicability of provisions relating to deduction of tax at source and compute the liability, if any for deduction of tax at source in the following cases:

(i) Pursuant to the agreement to operate E-commerce platform between "AB" (E-commerce Operator) and "XY" (E-commerce Participant), the buyer purchased goods worth ₹ 6.00 lakhs on e-commerce website of "AB" and he makes such payment through the digital platform of "XY". Who is the person responsible to deduct/collect the tax on this transaction and specify the amount of liability?

(ii) Mr. Appy, a resident Indian, [E-commerce participant] sells goods worth ₹ 84 lakhs through e-commerce website of HIGHSALE [E-commerce Operator]. Mr. Appy has not furnished PAN or AADHAR No. to the E-commerce Operator. He has furnished his return of income for all the assessment years before the due date of filing return of income.

Answer

(i) In a case where sale of goods of an e-commerce participant (XY) is facilitated by an e-commerce operator (AB) through its e-commerce website, **section 194-O requires the e-commerce operator (AB) to deduct tax at source @0.1% on ₹ 6 lakhs, being the gross amount of sales facilitated through the e-commerce website.**

Therefore, TDS u/s 194-O is ₹ 600, being 0.1% of ₹ 6 lakhs.

In this case, since the payment is facilitated by a payment gateway (referred to as digital platform), the payment gateway may also happen to qualify as an e-commerce operator for facilitating service. However, the payment gateway (i.e., the digital platform) will not be required to deduct tax if the e-commerce operator (AB) has deducted tax u/s 194-O.

(ii) In a case where sale of goods of an e-commerce participant (Mr. Appy) is facilitated by an e-commerce operator (HIGHSALE) through its e-commerce website, section 194-O requires the e-commerce operator to **deduct tax at source@0.1% on ₹ 84 lakhs, being the gross amount of sales facilitated through the e-commerce website.**

As per section 206AA, in case where the **deductee has not furnished his PAN,** tax is required to deducted at source at **higher of 0.1% or 5%.** Accordingly, **tax has to be deducted** at source **@5% of ₹ 84 lakhs = ₹ 4.2 lakhs.**

Question 26

Mr. Z, a resident individual, starts a new business for sale of unique T-shirts. He obtained a valid PAN in his name and registers himself on ABC.com (a Singapore based website), an e-commerce operator, for sale of his products in India.

Mr. Z sold goods worth ₹ 60 lakhs through ABC.com upto 31.03.2025. E-commerce operator credited the following payments from time to time payable to Mr. Z in its books of accounts.

31.12.2024	₹ 20 lakhs
28.02.2025	₹ 15 lakhs

Full and final payments have been released by ABC.com to Mr. Z on 31.3.2025 after deducting a commission of 10% on gross sale proceeds.

Mr. Z received ₹ 10,00,000 directly in his bank out of above ₹ 60 lakhs through PayTM Wallet directly connected by ABC.com to the account of Mr. Z.

Discuss the TDS provisions applicable on the above transactions alongwith the date and amount of tax deductible.

Answer

As per section 194-O, ABC.com, **an e-commerce operator is required to deduct tax @0.1% on the gross amount of sale of goods** (T-shirts, in the present case) of Mr. Z, a resident individual, an e-commerce participant, since such sale of goods is facilitated by ABC.com through its digital or electronic facility or platform.

ABC.com is required to deduct tax **at the time of credit of such sum or payment, whichever is earlier.** Any payment received directly by Mr. Z for the sale of goods, facilitated by ABC.com, would be deemed to be amount credited or paid by ABC.com to Mr. Z.

Accordingly, ABC.com is required to **deduct tax of ₹ 2,000** (0.1% x ₹ 20,00,000) **and ₹ 1,500** (0.1% x ₹ 15,00,000) **on 31.12.2024 and on 28.02.2025**, respectively, being the dates on which such amounts were credited in books of account of ABC.com, since the date of credit is earlier than the date of payment in these two cases.

ABC.com is also required to **deduct tax of ₹ 1,000** (0.1% of ₹ 10,00,000 being the **amount received by Mr. Z directly in his bank).**

ABC.com is **also required to deduct tax of ₹ 1,500** (0.1% of ₹ 15,00,000), being the **amount of full and final payment made on 31.3.2025.**

Question 27

Mr. Sharma, a resident Indian aged 77 years, gets pension of ₹ 52,000 per month from the UP State Government. The same is credited to his savings account in SBI, Lucknow Branch. In addition, he gets interest@8% on fixed deposit of ₹ 20 lakh with the said bank. Out of the deposit of ₹ 20 lakh, ₹ 2 lakh represents five year term deposit made by him on 1.4.2024. Interest on savings bank credited to his SBI savings account is ₹ 9,500.

(1) From the above facts, compute the total income and tax liability of Mr. Sharma, assuming that he has not opted for section 115BAC.

(2) What would be the amount of tax deductible at source by SBI, assuming that the same is a specified bank? Is Mr. Sharma required to file his return of income, if tax deductible at source has been fully deducted? Examine.

(3) Is Mr. Sharma required to file his return of income, if the fixed deposit of ₹ 20 lakh was with Canara Bank instead of SBI, other facts remaining the same?

Answer

(1) Computation of total income of Mr. Sharma

	Particulars	₹	₹
I	**Salaries**		
	Pension (52,000 x 12)	6,24,000	
	Less: Standard deduction u/s 16(ia)	50,000	
			5,74,000
II	**Income from Other Sources**		
	Interest on fixed deposit (₹ 20 lakh x 8%)	1,60,000	
	Interest on savings account	9,500	1,69,500
Gross total income			**7,43,500**
Less: **Deductions under Chapter VI-A**			
	Under Section 80C		
	Five year term deposit (₹ 2 lakh, restricted to ₹ 1.5 lakh)	1,50,000	
	Under section 80TTB		
	Interest on fixed deposit and savings account, restricted to 50,000, since Mr. Sharma is a resident Indian of the age of 77 years.	50,000	2,00,000
Total Income			**5,43,500**
Computation of tax liability			

Tax payable [₹ 43,500 x 20% + ₹ 10,000]		18,700
Add: Health and Education Cess@4%		748
Tax liability		**19,448**
Tax liability (rounded off)		**19,450**

(2) SBI, being a **specified bank, is required to deduct tax at source u/s 194P** and remit the same to the Central Government. In such a case, **Mr. Sharma would not be required to file his return of income u/s 139.**

(3) If the fixed deposit of ₹ 20 lakh is with a bank other than SBI, which is the bank where his pension is credited, then, **Mr. Sharma would not qualify as a "specified senior citizen".** In this case, Mr. Sharma would have to file his return of income u/s 139, since his total income (without giving effect to deduction under Chapter VI-A) exceeds the basic exemption limit.

Question 28

Smt. Vijaya, proprietor of Lakshmi Enterprises, made turnover of ₹ 210 lakhs during the previous year 2023-24. Her turnover for the year ended 31.3.2025 was ₹ 90 lakhs.

Decide whether provisions relating to deduction of tax at source are attracted for the following payments made during the financial year 2024-25:

(i) Purchase commission paid to one agent ₹ 25,000 towards purchases made during the year.

(ii) Payments to contractor of ₹ 5,00,000 for construction of residential house for self-use.

Answer

Since Smt. Vijaya's turnover was ₹ 210 lakhs in the immediately preceding financial year (i.e., F.Y.2023-24), she is liable to deduct tax at source in the P.Y.2024-25, irrespective of her turnover being only ₹ 90 lakhs in the F.Y.2024-25.

(i) **Tax@2% has to be deducted under section 194H** in respect of purchase commission of ₹ 25,000 to an agent for purchases made during the year, **since the same exceeds the threshold limit of ₹ 15,000** for non-deduction of tax at source thereunder.

(ii) Tax has to be deducted under **section 194C** in case of payment to resident contractors. The **rate of tax is 1% if the payee is an individual or HUF and 2% in case of payees, other than individuals and HUFs.**

However, as per section 194C(4), **no individual or Hindu undivided family shall be liable to deduct income tax** on the sum credited or paid to the account of the contractor where such sum is credited or paid exclusively **for personal purposes** of such individual or any member of the Hindu undivided family. In such case, the provisions of section 194M would be attracted if the aggregate payment to the contractor exceeds ₹ 50 lakhs.

In this case, since Smt. Vijaya, an individual, makes payment of ₹ 5 lakh to a contractor for construction of residential house for self-use, she is **not liable to deduct tax at source under section 194C or under section 194M** from such sum.

Question 29

Examine the liability for tax deduction at source in the following cases:

(i) Wings Ltd. has paid amount of ₹ 15 lacs to Airports Authority of India towards landing and parking charges.

(ii) Omega Ltd., an event management company, organized a concert of international artists in India. In this connection, it engaged the services of an overseas agent Mr. John from UK to bring artists to India. He contacted the artists and negotiated with them for performance in India in terms of the authority given by the company. He did not take part in event organized in India. The company made the payment of commission equivalent to ₹ 1 lac to the overseas agent.

(iii) Ramesh gave a building on sub-lease to Mac Ltd. with effect from 1.7.2024 on a rent of ₹ 20,000 per month. The company also took on hire machinery from Ramesh with effect from 1.11.2024 on hire charges of ₹ 15,000 per month.

(iv) ₹ 2,45,000 paid to Mr. X by Karnataka State Government on compulsory acquisition of his urban land. What would be your answer if the land is agricultural land?

Answer

(i) **TDS on landing and parking charges:** The landing and parking charges which are fixed by the Airports Authority of India are not merely for the "use of the land". These charges are also for services and facilities offered in connection with the aircraft operation at the airport which include providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport [Japan Airlines Co. Ltd. v. CIT/CIT v. Singapore Airlines Ltd. (2015) 377 ITR 372 (SC)]. Thus, **tax is not deductible under section 194I** which provides deduction of tax for payment in the nature of rent.

Hence, **tax is deductible @2% under section 194C** by the airline company, Wings Ltd., on payment of ₹ 15 lacs made towards landing and parking charges to Airports Authority of India.

(ii) **TDS on services of overseas agent outside India:** An overseas agent of an Indian company operates in his own country and no part of his income accrues or arises in India. His commission is usually remitted directly to him and is, therefore, not received by him or on his behalf in India. The **commission paid to the non-resident agent for services rendered outside India is, thus, not chargeable to tax in India.**

Since commission income for contacting and negotiating with artists by Mr. John, a non-resident, who remains outside India is not subject to tax in India, consequently, there is **no liability for deduction of tax at source.** It is assumed that the commission equivalent to ₹ 1 lakh was remitted to Mr. John outside India.

(iii) **TDS on rent for building and machinery:** Tax is deductible on rent under **section 194-I**, if the aggregate amount of rental income paid or credited to a person **exceeds ₹ 2,40,000.** Rent includes payment for use of, inter alia, building and machinery. The aggregate payment made by Mac Ltd. to Ramesh towards rent is ₹ 2,55,000 (i.e., ₹ 1,80,000 for building and ₹ 75,000 for machinery). Hence, **Mac Ltd. has to deduct tax@10% on rent paid for building and tax@2% on rent paid for machinery.**

(iv) **TDS on compensation for compulsory acquisition:** Tax is deductible at source **@10% u/s 194LA,** where payment is made to a resident as compensation or enhanced compensation on compulsory acquisition of any immovable property (other than agricultural land).

However, **no tax deduction** is required if the **aggregate payments in a year does not exceed ₹ 2,50,000.** Therefore, **no tax is required to be deducted** at source on payment of ₹ 2,45,000 to Mr. X, **since the aggregate payment does not exceed ₹ 2,50,000.**

Since the definition of immovable property specifically excludes agricultural land, **no tax is deductible** at source **on compensation paid for** compulsory acquisition of **agricultural land.**

Question 30

Examine the applicability of the provisions relating to deduction of tax at source in following cases:

(i) Max Limited pays ₹ 1,02,000 to Mini Limited, a resident contractor who, under the contract, manufactures a product according to specification of Max Limited by using materials purchased from Max Limited.

(ii) A company operating a television channel makes payment of ₹ 5 lakh to a former cricketer for making running commentary of a one-day cricket match.

(iii) EL Ltd., a foreign company, pays outside India, salary to its employee, Mr. Raghavan, a foreign national and a non-resident, for services rendered in India.

Answer

(i) The definition of "work" under **section 194C** includes manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer. In the instant case, **Mini Limited manufactures the product as per the specification given by Max Limited by using the raw materials purchased from Max Limited. Therefore, it falls within the definition of "work"** under section 194C. Consequently, **tax is to be deducted** on the invoice value excluding the value of material purchased from such customer if such value is mentioned separately in the invoice. If the material component is not mentioned separately in the invoice, tax is to be deducted on the whole of the invoice value.

(ii) Provisions for deduction of tax at source under **section 194J** are attracted in respect of payment of fees for **professional services, if the amount of such fees exceeds ₹ 30,000** in the relevant financial year. The **service rendered by a commentator in relation to sports activities** has been notified by the CBDT as a professional service for the purposes of section 194J vide its Notification No. 88 dated 21st August, 2008. Therefore, **tax is required to be deducted@10% from the fee of ₹ 5 lacs payable to the former cricketer.**

(iii) Section 195 requires deduction of tax at source by any person responsible for making payment to a non-resident, any interest or any other sum chargeable under the provisions of the Income-tax Act, 1961 (other than income chargeable under the head "Salaries").

Section 192(1) requires "any person" responsible for paying income under the head "Salaries" to deduct tax at source. Therefore, even if the payer is a foreign company, section 192 would be applicable.

TDS provisions **under section 192 are attracted, if the salary payable to a non-resident is** chargeable **to tax in India.** Under section 9(1)(ii), income which falls under the head "Salaries" shall be deemed to accrue or arise in India, if it is earned in India. Salary payable for service rendered in India shall be regarded as income earned in India. Therefore, **salary paid to Mr. Raghavan, a non-resident, attracts tax liability in India, as he has rendered services in India** and the salary is attributable to such services.

Therefore, the **foreign company, EL Limited, is liable to deduct tax at source under section** 192 from **the salary of Mr. Raghavan.**

Question 31

Examine in the following cases the obligation of the person paying the income in respect of tax deduction at source and indicate the due date for payment of such tax, wherever applicable:

(i) MNO Ltd., the employer, credited salary due for the year amounting to ₹ 9,40,000 to account of Q, an employee, in its books of account on 31.3.2025. Q has not intimated his intended tax regime.

(ii) T, an individual whose total sales in business during the preceding financial year was ₹ 2.20 crores, paid ₹ 9 lacs by cheque on 1.1.2025 to a contractor (an individual), for construction of his factory building. No amount was credited earlier to the account of the contractor in the books of T.

(iii) BCD Ltd. credited ₹ 28,000 towards fees for professional services and ₹ 27,000 towards fees for technical services to the account of HG in its books of account on 6.10.2024. The total sum of ₹ 55,000 was paid by cheque to HG on 18.12.2024.

Answer

(i) Section 192 requires **deduction of tax from salary at the time of payment.** Thus, the employer is **not required to deduct tax at source when salary has not been paid but is** merely **credited to the account of the employee** in its books of account. **MNO Ltd.** therefore**, is not required to deduct tax at source in respect of the salary merely credited** to the account of employee Q which is not paid.

If salary **has been paid** during the year to Q, then, MNO Ltd a deductor, being an employer, shall seek information from each of its employees having income under section 192 regarding their intended tax regime and each such employee shall **intimate** the same to deductor, being his employer, **regarding his intended tax regime** for each year and upon intimation, deductor shall compute his total income, and deduct tax at source thereon according to option exercised.

If intimation is not made by the employee, it shall be presumed that the employee continues to be in the default tax regime and has not exercised the option to opt out of the new tax regime. Accordingly, in such a case, the MNO Ltd. shall deduct tax at source, on income under section 192, in accordance with the rates provided under section 115BAC.

(ii) An individual whose total sales from the business carried on by him exceeds one crore rupees during the immediately preceding financial year is liable to deduct tax at source under **section** 194C for the current financial year in respect of the **payment made to contractor exceeding**

₹ 30,000 in a single contract and ₹ 1,00,000 in aggregate of contracts during the financial year. Turnover of the individual T is ₹ 2.20 crores in the preceding financial year. As the payment during current financial year to the contractor has exceeded the limits prescribed in section 194C, tax has to be deducted under section 194C.

The **rate of tax deduction is 1% as the contractor is an individual.**

(iii) The **limit of ₹ 30,000** for non-deduction of tax **under section 194J would apply separately for fees for professional services and fees for technical services.** This means that if a person has rendered services falling under both the categories, tax need not be deducted if the fee for each category does not exceed ₹ 30,000 even though the aggregate of the amounts credited to the account of such person or paid to him for both the categories of services exceed ₹ 30,000. **Therefore, BCD Ltd. is not required to deduct tax at source** in respect of the fees either at the time of credit or at the time of payment.

Question 32

Examine the liability for tax deduction at source in the following cases:

(i) Mr. Anand has been running a sole proprietary business whose accounts are audited under section 44AB with turnover of ₹ 202 lakhs for the A.Y. 2024-25. He pays a monthly rent of ₹ 15,000 for the office premises to Mr. R, the owner of building and an individual. Besides, he also pays service charges of ₹ 6,000 per month to Mr. R towards the use of furniture, fixtures and vacant land appurtenant thereto.

(ii) By virtue of an agreement with a nationalised bank, a catering organisation receives a sum of ₹ 50,000 per month towards supply of food, water, snacks etc. during office hours to the employees of the bank.

(iii) An Indian company pays gross salary including allowances and monetary perquisites amounting to ₹ 7,30,000 to its General Manager. Besides, the company provides non-monetary perquisites to him whose value is estimated at ₹ 1,20,000. General manager has not given any declaration regarding opt out of section 115BAC.

Answer

(i) Where the payer is an individual or HUF whose total turnover from the business exceeds one crore rupees during the immediately preceding financial year, he has to deduct tax at source. Since the turnover of Mr. Anand was ₹ 202 lakhs for the A.Y.2024-25, he is liable to deduct tax at source under section 194-I in respect of rental payments during the financial year 2024-25.

Accordingly, **Mr. Anand is liable to deduct tax at source under section 194-I** on the rental payments made. Section 194-I provides that rent includes any payment, by whatever name called, for the use of land or building together with furniture, fittings etc. Therefore, in the given case, apart from monthly rent of ₹ 15,000 p.m., service charge of ₹ 6,000 p.m. for use of furniture and fixtures would also attract TDS under section 194-I. **Since the aggregate rental payments of ₹ 2,52,000 to Mr. R** during the current financial year **exceeds ₹ 2,40,000, Mr. Anand is liable to deduct tax at source @10%** under section 194-I from rent paid to Mr. R.

(ii) The definition of "**work**" **under** Explanation to **section 194-C includes catering services** and therefore, TDS provisions under section 194C are attracted in respect of payments to a caterer. As the payment exceeds ₹ 30,000, the **nationalised bank is required to deduct tax at source at 2% on the payments made to catering organisation** under 194-C. **If the catering organization is an individual or HUF, then the tax deduction shall be @1%.**

(iii)

	₹
Gross salary, allowances and monetary perquisites	7,30,000
Non-Monetary perquisites	1,20,000
	8,50,000
Less: Standard deduction under section 16(ia)	75,000
	7,75,000
Tax Liability as per section 115BAC	28,600

Average rate of tax (₹ 28,600/₹ 7,75,000 × 100) = 3.69%

The company **can deduct ₹ 28,600 at source from the salary** of the General Manager at the time of payment.

Question 33

The following issues arise in connection with the deduction of tax at source under Chapter XVII-Examine the liability for tax deduction in these cases:

(a) An employee of the Central Government receives arrears of salary for the earlier 3 years. He enquires whether he is liable for deduction of tax on the entire amount during the current year.

(b) A T.V. channel pays ₹ 10 lakh as prize money to the winner of a quiz programme, "Who will be a Millionaire"?

(c) State Bank of India pays ₹ 50,000 per month as rent to the Central Government for a building in which one of its branches is situated.

(d) A television company pays ₹ 80,000 to a cameraman for shooting of a documentary film.

(e) A State Government pays ₹ 22,000 as commission to one of its agents on sale of lottery tickets.

(f) A Turf Club awards a jack-pot of ₹ 5 lakh to the winner of one of its horse races.

Answer

(a) As per **section 192**, tax is deductible at source by any person who is responsible for paying any income chargeable under the head 'Salaries'. However, as per sub-section (2A) of that section, the employee will be **entitled to relief u/s 89** and consequently he will be required to furnish to the person responsible for making the payment, such particulars in the prescribed form (i.e., Form No.10E). The person responsible for making the payment **shall compute the relief and take into account the same while deducting tax at source from salary.**

(b) Under **section 194B**, the person responsible for paying by way of winnings from any card game and other game in an amount exceeding ₹ 10,000 shall at the time of payment **deduct income-tax at 30%.** Therefore, tax of ₹ 3 lakh has to be deducted at source from the prize money of ₹ 10 lakh payable to the winner.

(c) **Section 194-I,** which governs the **deduction of tax at source on payment of rent, exceeding ₹ 2,40,000 p.a.,** is applicable to all taxable entities except individuals and HUFs, whose total sales, gross receipts or turnover from the business or profession carried on by him does not exceed ₹ 1 crore in case of business or ₹ 50 lakhs in case of profession during the immediately preceding financial year in which such rent was credited or paid, is liable to deduct tax at source. Section 196, however, provides **exemption in respect of payments made to Government from application of the provisions of tax deduction at source.**

Therefore, **no tax is required to be deducted at source by State Bank of India from rental payments to the Government.**

(d) If the **cameraman is an employee** of the T.V. Company, the provisions of **section 192 will apply.** However, **if he is a professional,** TDS provisions u/s **194-J will apply.** Tax at 10% will have to be deducted at the time of credit of ₹ 80,000 or on its payment, whichever is earlier.

(e) Under **section 194G,** the person responsible for paying to any person stocking, distributing, purchasing or selling **lottery tickets** shall at the time of credit of the **commission** or payment thereof, whichever is earlier, amounting to **more than ₹ 15,000, deduct tax at source @2%.**

Accordingly, **tax@2% under section 194G amounting to ₹ 440 has to be deducted from commission payment of ₹ 22,000 to the agent of the State Government.**

(f) The payment by way of winnings from horse race is governed by **section 194BB.** Under this section, the person responsible for payment shall, at the time of payment, **deduct tax at source @ 30%, if the payment exceeds ₹ 10,000.**

Accordingly, **tax@30% amounting to ₹ 1,50,000 has to be deducted from the winnings of ₹ 5 lakh payable to the winner of the race.**

Question 34

Discuss the liability of TDS provisions in the following independent cases:

(i) X Ltd. is a producer of natural gas. During the year, it sold natural gas worth ₹ 20,50,000 to M/s Hawa Co., a partnership firm. It also incurred ₹ 2,00,000 as freight for transportation of gas. It raised the invoice and clearly bifurcated the value of gas as well as the transportation charges.

(ii) Beta Ltd, gave a contract to Alpha Ltd. for the supply of 2000 pens on which the logo of Beta Ltd. was printed. The raw materials were purchased by Alpha Ltd. from C Ltd., which is not related to Beta Ltd. The consideration paid for the pens was ₹ 1,50,000.

(iii) M/s. Taba Ltd. enters into a contract with Mr. Babu for the transportation of its products from its plant to warehouses. It pays a lump-sum amount of ₹ 2,50,000 to Mr. Babu for the year at the year end. Mr. Babu is engaged in the business of plying goods carriages on hire. Mr. Babu is not an assessee under Income-tax Act and thus did not provide PAN to Taba Ltd.

(iv) Deer Co Ltd engaged in the business of manufacture of furniture items on contract basis. It sub-contracted the production of cushion for the chairs to M/s Lion & Co, a sole proprietary concern. The sub-contractor M/s. Lion & Co procured the raw materials for production of cushions, performed further labour works and supplied the same to Deer Co Ltd. It raised its bill on Deer Co Ltd, showing the cost of raw materials ₹ 4,00,000 and labour charges ₹ 1,50,000, separately. Explain briefly the tax deduction requirement in the hands of Deer Co Ltd.

Answer

(i) **TDS u/s 194C** is attracted on any sum payable to a resident contractor **for carrying out any work**. Since X Ltd., the producer of natural gas sells as well as transports the gas to the purchaser, M/s. Hawa Co., a partnership firm, till the point of delivery, where the ownership of gas is simultaneously transferred, the manner of raising the sale bill (whether the transportation charges are embedded in the cost of gas or shown separately) does not alter the basic nature of such contract which remains essentially a **'contract for sale' and not a 'works contract'** as envisaged in section 194C.

Therefore, in such circumstances, **TDS provisions under section 194C are not applicable on the component of Gas Transportation Charges payable by M/s. Hawa Co. to X Ltd.** Consequently, there is no liability to deduct tax at source under section 194C in this case.

(ii) **TDS u/s 194C** is attracted on any sum payable to a resident contractor **for carrying out any work**. However, "work" shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using raw material purchased from a person, other than such customer, as such a contract is a 'contract for sale'.

In this case, since Alpha Ltd. has to supply pens to Beta Ltd. by using materials purchased from C Ltd., the contract for supply of pens is a **'contract for sale' and not a works contract.** Consequently, there is **no liability to deduct tax at source under section 194C** in this case.

(iii) Tax **is not required to be deducted at source under section 194C** from the sum credited or paid to the account of a contractor, during the course of the **business of plying, hiring or leasing goods carriages, if he furnishes his PAN to the deductor.**

In this case, since Mr. Babu has not furnished his PAN to M/s. Taba Ltd., **M/s. Taba Ltd. has to deduct tax at source@20% as per section 206AA** on lumpsum payment of ₹ 2,50,000 to Mr. Babu, since the same exceeds the aggregate threshold of ₹ 1,00,000.

(iv) TDS **under section 194C** is attracted on any sum payable to a resident contractor/sub-contractor **for carrying out any work.** However, "work" shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using raw material purchased from a person, other than such customer, as such a contract is a 'contract for sale'.

In this case, M/s Lion & Co. has to supply cushion for the chairs to Deer Co Ltd., according to the specifications of the customer by using materials purchased from a person other than the customer, Deer Co Ltd. Thus, the sub-contract for production of cushions is a **'contract for sale' and not a 'works contract'.**

Consequently, there is **no liability to deduct tax at source under section 194C** in this case.

Question 35

Discuss the liability of TDS provisions in the following independent cases:

(i) Mr. Shan, an individual, whose turnover from the business carried on by him during the financial year immediately preceding the financial year exceed ₹ 100 lakh, paid fee to an architect of ₹ 50,000 for furnishing his residential house.

(ii) M/s. Sunivesh Investors is engaged in the business of stock broking, depositories, mobilisation of deposits and marketing of public issues. It is a registered member of Bombay Stock Exchange. Every year it makes payment amounting to ₹ 10 lakhs, to the Stock Exchange by way of transaction charges in respect of fully automated online trading facility. This service is available to all members of the stock exchange in respect of every transaction that is entered into. Would it be liable for tax deduction under section 194J?

(iii) Maha Bank Ltd accepted fixed deposits of ₹ 20 crores in the name of Registrar General of the High Court and issued a fixed deposit receipt in compliance with a direction passed by court in relation to certain proceedings. The Bank did not deduct tax on the interest accrued. The Assessing Officer issued a notice to the bank to show cause as to why it should not be treated as an assessee in default under sections 201(1) and 201(1A) for not deducting tax at source on interest accrued. Examine whether the bank is correct in not deducting tax on interest accrued.

Answer

(i) **TDS@10% under section 194J** would be attracted in respect of fees **for professional services exceeding ₹ 30,000** paid to a resident during any financial year. However, TDS provisions u/s **194J would not be attracted,** if fee is paid exclusively for **personal purposes.**

In this case, since the fee paid by Mr. Shan is for furnishing of his residential house, it is exclusively for personal purposes. Therefore, **Mr. Shan is not required to deduct tax at source under section 194J on the fees of ₹ 50,000 paid to an architect for furnishing his residential house** even if, in such a case, the turnover from the business exceeds ₹100 lakhs during the preceding financial year or the amount of fees for professional services exceeds ₹30,000 during the financial year.

(ii) **Under section 194J, TDS is attracted in respect of,** inter alia, **fees for technical services.** Technical services like managerial and consultancy services are in the nature of specialised services made available by the service provider to cater to the special needs of the customer-user as may be felt necessary. It is the above feature that distinguishes or identifies a service provider from a facility offered

However, the service provided by the BSE for which transaction charges are paid does not satisfy the test of specialized, exclusive and individual requirement of the user or the consumer who may approach the service provider for such assistance or service. Therefore, the **transaction charges paid to BSE by its members are not for technical services but are in the nature of payments made for facilities provided by stock exchange.** Such payments would, therefore, **not attract the provisions of tax deduction at source under section 194J.**

Accordingly, payment of **transaction charges of ₹ 10 lakhs by M/s. Sunivesh Investors to BSE in respect of fully automated online trading facility would not be liable for tax deduction at source under section 194J.**

(iii) The issue under consideration is whether bank is required to deduct tax at source on amount of interest paid or payable on fixed deposits in the name of Registrar General of High Court.

Under **section 194A,** the **bank is obliged to deduct tax at source in respect of any credit or payment of interest (exceeding ₹ 40,000) on deposits made with it.** The expression "payee" under section 194A would mean the recipient of income whose account is maintained by the person paying interest.

However, in this case, the actual payee is not ascertainable and the person in whose name the interest is credited is not a person liable to pay tax under the Act. The Registrar General is recipient of neither the amount credited to his account nor to interest accruing thereon. Therefore, he cannot be considered as a 'payee' for the purposes of section 194A. In the absence of a payee, the machinery provisions for deduction of tax from interest credited become ineffective.

The **credit by bank in the name of Registrar General would**, thus, **not attract provisions of section 194A**. Therefore, the **bank is correct in not deducting tax on the interest accrued.**

Question 36

Examine in the context of provisions contained in Chapter XVII of the Act and also work out the amount of tax to be deducted by the payer of income in the following cases:

(i) Payment of ₹ 5 lakh made by JCP & Co. to Pingu Events Co. Ltd. for organizing a debate competition on the subject "Preservation of Rural Heritage of Rajasthan".

(ii) KD, a part time director of DAF Pvt. Ltd. was paid an amount of ₹ 2,25,000 as fees which was actually in the nature of commission on sales.

Answer

(i) The services of Event Managers in relation to sports activities alone have been notified by the CBDT as "professional services" for the purpose of section 194J. In this case, payment of ₹ 5 lakh was made to an **event management company** for organization of a debate competition. Hence, the provisions of section 194J are not attracted.

However, **TDS provisions under section 194C** relating to contract payments **would be attracted** and consequently, **tax has to be deducted @2%** under section 194C. The **tax deductible under section 194C would be ₹ 10,000**, being 2% of ₹ 5 lakh.

(ii) Section 194J provides for **deduction of tax at source @10% on any remuneration or fees or commission,** by whatever name called, **paid to a director, which is not in the nature of salary** in respect of which tax is deductible at source under section 192.

Hence, **tax is to be deducted at source under section 194J @10% by DAF Pvt. Ltd.** on the commission of ₹ 2,25,000 paid to KD, a part-time director. The **tax deductible under section 194J would be ₹ 22,500,** being 10% of ₹ 2,25,000.

Question 37

Examine and compute the liability for deduction of tax at source, if any, in cases stated hereunder:

(i) Mr. X, a resident, made three separate transactions for acquiring house property at Mumbai from Mr. Y for a consideration of ₹ 90 lakhs, an urban plot in Kolkata from Mr. C for a sum of ₹ 49,50,000 and rural agricultural land from Mr. D for a consideration of ₹ 60 lakhs. Stamp duty value of house property, plot and rural agricultural land is ₹ 95 lakhs, ₹ 48 lakhs and ₹ 65 lakhs, respectively.

(ii) A commission of ₹ 50,000 was retained by the consignee 'ABC Packaging Ltd.' and not remitted to the consignor 'XYZ Developers', while remitting the sale consideration. Examine the obligation of the consignor to deduct tax at source.

(iii) Raj (aged 35 years) is working with AB Ltd. He is entitled to a salary of ₹ 85,000 per month. He has a house property which is self-occupied. He paid an interest of ₹ 1,95,000 on loan during the year. The loan was taken for construction of house. He has notified his employer AB Ltd. that there will be a loss of ₹ 1,95,000 in respect of this house property. Raj declared that he has exercised option to shift out of default regime of section 115BAC.

Answer

		TDS (₹)
(i)	Since the consideration and stamp duty value for transfer of house property at Mumbai both are not less than ₹ 50 lakhs, Mr. X, being the transferee, is required to **deduct tax @1% under section 194-IA on ₹ 95 lakhs**, being higher of stamp duty value and the amount of consideration for transfer of property, at the time of credit to the transferor account or payment, whichever is earlier.	**95,000**
	Mr. X is **not required to deduct tax** as source under section 194-IA from the consideration of ₹ 49,50,000 paid to Mr. C for transfer of urban plot, since the consideration and stamp duty value, **both are less than ₹ 50 lakhs**.	Nil
	Mr. X is also **not required to deduct tax** at source under section 194-IA for transfer of **rural agricultural land**, since the same is specifically excluded from scope of immovable property for purpose of tax deduction under section 194-IA.	Nil
(ii)	**Section 194H requires deduction of tax at source@2% from commission** and brokerage payments to a resident. However, **no tax is to be deducted** at source where the amount of such **payment does not exceed ₹ 15,000.**	
	In given case, 'ABC Packaging Ltd.', consignee, has not remitted his commission of ₹ 50,000 to consignor 'XYZ Developers' while remitting sales consideration.	
	Since the retention of commission by the consignee/agent amounts to constructive payment of the same to him by the consignor/principal, deduction of tax at source is required to be made from the amount of commission.	
	Therefore, XYZ Developers has to deduct tax at source on ₹ 50,000 at rate of 2%.	**1,000**
(iii)	**Section 192** provides that tax is required to be deducted on the **payment made as salaries.** Tax is to be deducted on estimated income at average of income tax computed on basis of rates in force for financial year in which payment is made.	
	The **employee may declare details of his other incomes (including loss under the head "Income from house property"** but not any other loss) to his employer. In this case, since Mr. Raj has submitted a declaration of opt out of section 115BAC and also notified his employer AB Ltd. of loss from self-occupied house property, the employer has to take the same into consideration for deduction of tax at source.	
	Therefore, AB Ltd. is required to deduct tax at source on the salary of ₹ 85,000 per month paid to Mr. Raj, in the following manner:	
	Income under the head salaries (₹ 85,000 x 12) — 10,20,000	

Less: Standard deduction under section 16(ia)	50,000	
	9,70,000	
Income under the head "house property"	(1,95,000)	
Gross total income	7,75,000	
Less: Deduction under Chapter VI-A	Nil	
Total Income	7,75,000	
Tax on ₹ 7,75,000	67,500	
Add: Health and Education cess@4%	2,700	
Tax to be deducted at source	70,200	**70,200**

Question 38

Discuss the TDS implications if any, for following transactions. What is the amount payable to payee?

(i) X is a bookmaker and Mr. B is a punter. B has won ₹ 50,000 in Horse Race 1 and suffered a loss of ₹ 20,000 in Horse Race 2.

(ii) Mr. Santosh has let out his house property on a monthly rent of ₹ 60,000 from 15.01.2025 to Mrs. Preeti, a salaried individual.

(iii) AKL Ltd., a third party administrator on behalf of an Insurance Company has settled medical bills of ₹ 5,00,000 submitted by Kay Hospitals Ltd. from a patient under a cashless scheme.

Answer

(i) Any person, being a bookmaker, who is responsible for paying to any person any income exceeding ₹ 10,000 by way of winnings from horse races is liable to **deduct tax@30%** at the time of payment as per **section 194BB.**

In a case where the book-maker credits such winnings and debits the losses to the individual account of the punter, tax would be deducted on winnings before set-off of losses. Thereafter, the net amount, i.e., winnings after deduction of tax and losses, would be paid to the individual.

Thus, in the present case, **Mr. X is liable to deduct tax of ₹ 15,000** (₹ 50,000 x 30%) from winnings of ₹ 50,000. The **net amount payable to Mr. B would be ₹ 15,000** (i.e., ₹ 50,000 - ₹ 20,000, being loss – ₹ 15,000, being TDS).

(ii) Section **194-IB** requires any individual responsible for paying to a resident any income by way of rent **exceeding ₹ 50,000 per month shall deduct tax @2%** of such income at the time of credit or payment of **rent for the last month** of the previous year, whichever is earlier.

Since Mrs. Preeti, a salaried individual, pays rent exceeding ₹ 50,000 per month to Mr. Santosh, she is liable to deduct tax at source @2% of such rent under section 194-IB.

Thus, **₹ 3,000** [₹ 60,000 x 2% x 2.5] **has to be deducted** from rent payable for March, 2025. The **rent payable to Mr. Santosh for March**, 2025 **would be ₹ 57,000.**

(iii) Every person, who is responsible for paying to resident any sum by way of fees for professional services **exceeding ₹ 30,000** shall deduct tax at source at the **rate of 10%** at the time of credit to the account of payee or at the time of payment, whichever is earlier, **as per section 194J.**

"Professional services" include services rendered by a person in the course of carrying on **medical profession.**

The CBDT has, vide Circular No.8/2009 dated 24.11.2009, clarified that since the services rendered by hospitals to various patients are primarily medical services, **TPAs (Third Party Administrator's), who are making payment on behalf of insurance companies to hospitals** for settlement of medical/insurance claims etc. under various schemes including cashless schemes are **liable to deduct tax at source** on all such payments to hospitals etc.

Thus, **AKL Ltd., a TPA is liable to deduct tax of ₹ 50,000,** being 10% of ₹ 5,00,000 from the payment made to Kay Hospitals Ltd. Hence, the **amount payable by AKL Ltd. to Kay Hospitals Ltd. would be ₹ 4,50,000** [₹ 5,00,000 – ₹ 50,000]

Question 39

Examine the applicability of provisions relating to deduction of tax at source and compute the liability, if any, for deduction of tax at source in the following cases:

(i) In terms of agreement between A (the Owner of land) and B (Developer and Builder) the Developer, B agrees to allot 5 apartments to the owner in part consideration for providing his land and also agreed to pay a sum of ₹ 25,00,000. In terms of the agreement, Mr. B issued a cheque for ₹ 25,00,000 towards money consideration on 30.03.2025.

(ii) Rent of ₹ 60,000 per month deposited by Mr. Shrikanth, software employee on 1st of every month in advance, in the account of Mr. Ashok, who provides his PAN. The house was taken on rent with effect from 01.10.2024 and he vacated the house on 28.02.2025.

(iii) Param Construction Ltd. sells a flat to Mr. Mani for ₹ 48 Lakhs (SDV ₹ 40 Lakhs). The agreement to sell provides that in addition, Mr. Mani has to pay maintenance charges (of ₹ 5,000 per month) for 24 months in advance ₹ 2,00,000 for car parking to be used exclusively by him and ₹ 1,00,000 for club membership fees to Param Construction Ltd. before the flat is registered in the name of Mr. Mani.

(iv) ₹ 19,50,000 credited to the account of Digitec Studios (a partnership firm) by B-TV, Television channel, towards part consideration for shooting of Tele Episode for 10 weeks as per the storyline, contents and specifications of B-TV channel.

Answer

(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 @2% under section 194-IB** on such rent.

Tax has to be deducted from rent payable for the last month of the P.Y.2024-25. However, since he vacated the premises in February, 2025, tax has to be deducted from rent paid on 1.2.2025 for the month of February, 2025.

Tax of **₹ 6,000** [₹ 60,000 x 2% x 5] **has to be deducted** from rent paid on 1.2.2025 for the month of **February**, 2025.

(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 present case, since **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]

Question 40

Discuss and compute liability for deduction of tax at source, if any, in following independent cases:

(i) M/s Mexil Ltd. is engaged in the business of manufacturing certain article or thing for which the raw material is imported from Russia. For the purpose of making payment to the supplier, the assessee entered into a bank guarantee with BDFH Bank, an Indian Bank against the payment of ₹ 1,10,000 as bank guarantee commission.

(ii) Mr. Nitin, a resident individual whose gross turnover was ₹ 97 lakhs during the preceding previous year, paid ₹ 65 lakhs on 31.12.2024 to Mr. Basant, a resident individual, as contract payment for repairing his office building.

(iii) Mr. Harsh, an employee of M/s XY Ltd. since 10.04.2021, resigned on 31.03.2025 and withdrew ₹ 80,000 being the balance in his EPF account. His PAN is available with M/s XY Ltd.

Answer

(i) **No tax is deductible at source on the payment of** inter alia **bank guarantee commission** made **by a person to a bank.**

As per section 197A(1F), no deduction of tax shall be made from specified payments to notified bodies. Accordingly, the Central Government has notified that no deduction of tax shall be made from the specified payments, which include bank guarantee commission, in case such payment is made by a person to a bank listed in the Second Schedule to the Reserve Bank of India Act, 1934, excluding a foreign bank.

Thus, **M/s Mexil Ltd. is not required to deduct tax at source on bank guarantee commission of ₹ 1,10,000 paid to BDFH Bank, an Indian bank.**

(ii) Since Mr. Nitin turnover does not exceed Rs. 1 crore in the preceding previous year, TDS provisions u/s 194C are not attracted in respect of payment made to Mr. Basant, a resident individual, for repairing his office building. However, **tax is required to be deducted at source@2% u/s 194M,** on the payment of ₹ 65,00,000, since such amount exceeds ₹ 50 lakhs.

Therefore, **tax deducted at source would be ₹ 1,30,000,** being 2% of ₹ 65,00,000.

(iii) As per **section 192A**, in a case where the accumulated balance due to an employee participating in a recognized provident fund is includible in his total income owing to the provisions of Rule 8 of Part A of the Fourth Schedule not being applicable, **income-tax@10% is required to be deducted,** if the amount of such payment or aggregate amount of such payment to the payee is **₹ 50,000 or more.**

Rule 8 of Part A of Fourth Schedule provides that only if an employee has rendered continuous service of five years or more with the employer, then accumulated balance in a recognized provident fund payable to an employee would be excluded from total income of that employee.

In the present case, Mr. Harsh has withdrawn an amount exceeding ₹ 50,000 on his resignation after rendering a continuous service of less than four years with M/s. XY Ltd.

Therefore, **tax has to be deducted at source@10% under section 192A on ₹ 80,000,** being the amount withdrawn on his resignation without rendering continuous serviceof a period of five years with M/s. XY Ltd. Tax deductible in such a case would, therefore, be **₹ 8,000.**

Question 41

In respect of the following independent case scenarios, you are required to discuss the provisions related to tax deducted at source and compute amount of tax deductible:

(i) Mr. Rajat aged 79 years, a retired resident individual, maintains a savings bank account (S) and a fixed deposit account (F) with ABC Bank, Delhi. He provides the following details to ABC Bank in respect of financial year 2024-25:

Interest on (S)	₹ 75,100
Pension from employer (received in savings account S)	₹ 55,000 per month
Interest from fixed deposit account (F)	₹ 1,20,000

He does not have any other income during the year and he does not opt for section 115BAC.

(ii) High and Tall Ltd., a real estate development company, entered into a Joint Development Agreement with Mr. John, a resident individual, whereby Mr. John would transfer a plot of land measuring 10 acres for a part consideration of ₹ 6 crores to be paid on the date of agreement, i.e., 1.6.2024. High and Tall Ltd. has planned to develop a high-rise apartment complex on such land by 31.3.2027. Upon completion of the project, High and Tall Ltd. would transfer 6 flats in the apartment to Mr. John as final settlement. The FMV of the flats is estimated to be ₹ 1.20 crores each as on 31.3.2027.

(iii) M/s Aryan Ltd., a domestic company having a total turnover of ₹ 12 crores for the financial year 2023-24, purchased goods worth ₹ 85 lakhs (excluding purchase return) from M/s Varun

& Co. during the previous year 2024-25. M/s Varun & Co., a resident firm, has furnished its PAN to Aryan Ltd. Details of payments for purchases from M/s Varun (P) Ltd. are given below:

On 25.05.2024 - ₹ 30 lakhs;

On 28.06.2024 - ₹ 25 lakhs;

On 10.12.2024 - ₹ 20 lakhs (out of these purchases, goods worth ₹ 5 lakhs were returned on 20.12.2024 due to quality issue for which money was refunded by M/s Varun & Co.);

On 20.02.2025 - ₹ 10 lakhs.

Assume that the turnover of M/s Varun & Co. during the Financial year 2023-24 was ₹ 8 crores and the above amounts were credited to M/s Varun & Co.'s account in the books of M/s Aryan Ltd. on the same date.

Answer

(i) Mr. Rajat is a specified person as per section 194P as he is of age of 79 years, having pension income and only interest on fixed deposit with ABC Bank. His pension income is also received in savings bank with ABC Bank.

As per section 194P, **ABC Bank (specified bank) is required to deduct tax at source** on the basis of rates in force on total income of Mr. Rajat, computed after giving effect to deduction allowable under Chapter VI-A; and rebate allowable under section 87A.

Particulars	₹	₹
Pension (₹ 55,000 x 12)	6,60,000	
Less: Standard deduction u/s 16(ia)	50,000	6,10,000
Interest on fixed deposit	1,20,000	
Interest on Saving bank account	75,100	1,95,100
Gross Total Income		**8,05,100**
Deduction u/s 80TTB [Interest on fixed deposit and savings account, restricted to 50,000, since Mr. Rajat is a resident Indian of the age of 79 years]		50,000
Total Income		**7,55,100**
Tax to be deducted by the specified bank i.e., ABC Bank [20% x ₹ 2,55,100 (₹ 7,55,100 – ₹ 5,00,000) + ₹ 10,000 (being 5% of ₹ 2,00,000)] plus HEC@4%		**63,461**

(ii) Mr. John, a resident, is entering into an agreement with High and Tall Ltd., a real estate developer, to develop a high-rise apartment complex on his land in consideration of ₹ 6 crore and 6 flats in the apartment. This is a specified agreement under section 45(5A).

As per section 194-IC, High and Tall Ltd. is required to **deduct tax at source @ 10% on ₹ 6 crores, being the consideration paid other than consideration in kind**, under a specified agreement to Mr. John.

Tax is to be deducted at the time of credit of such sum or payment, whichever is earlier. **Tax u/s 194-IC would be = ₹ 6 crore x 10% = ₹ 60 lakhs**

(iii) M/s Varun & Co. is not required to collect tax at source on the sale of goods to M/s Aryan Ltd., since his turnover for the P.Y. 2023-24 does not exceed ₹ 10 crores.

Since turnover of M/s Aryan Ltd. for the P.Y. 2023-24 **exceeds ₹ 10 crores** and the aggregate value of purchases from M/s Varun & Co. exceeds ₹ 50 lakhs, **M/s Aryan Ltd. is required to deduct tax at source u/s 194Q@0.1% of such sum exceeding ₹ 50 lakhs.**

In case of purchase return, if the money is refunded by the seller, then, this tax deducted on purchase return would be adjusted against the next purchase from the same seller.

Applicability of TDS on purchases from M/s Varun & Co		
25.05.2024	₹ 30 lakhs	**Not required** to deduct tax at source
28.06.2024	₹ 25 lakhs	TDS = **₹ 500** [0.1% x ₹ 5 lakhs]
10.12.2024	₹ 20 lakhs	TDS = **₹ 2,000** [0.1% x ₹ 20 lakhs]
20.02.2025	₹ 10 lakhs	TDS = **₹ 500** [₹ 1,000, being 0.1% x ₹ 10 lakhs – ₹ 500, being the TDS on purchase return of ₹ 5 lakhs]

Question 42

In respect of the following independent case scenarios, you are required to discuss the provisions related to tax deducted at source and compute amount of tax deductible:

(i) Tam Electronics Ltd., an Indian company, imports certain computer software from Jam Electronics Inc., a non-resident company based in USA for reselling it to the end users in India. Tam Electronics Ltd. paid a sum of ₹ 85 crores to Jam Electronics Inc.

Note: As per India-USA DTAA, import of computer software for reselling it to end users in India is not royalty and not taxable in India.

(ii) DEHP Ltd., a public sector bank in India, paid ₹ 20 crores to M/s NFGS Ltd., an organisation that provides ATM networks to the banks as commission for facilitating ATM credit/debit cards. NGFS Ltd. also facilitates online convenience banking. It links together the country's ATM in a single network.

(iii) Mr. A received an order from PQR Ltd. to stich T-shirts. To complete such order, he purchased cloth of ₹ 35 lakhs from Fashion Ltd. He stitched T-shirts as per given specifications and supplied to PQR Ltd. He raised a consolidated invoice in the following manner:

Sale of 8000 T-shirts @ ₹ 500 each = ₹ 40,00,000

Fashion Ltd. is closely related to PQR Ltd. as specified under section 40A(2)(b).

(iv) Mr. David, a Canadian citizen and non-resident sportsman, received following sums from India:

(a) Income from participation in matches ₹ 4,58,000

(b) Honorarium from writing an article related to sports for a sports magazine ₹ 1,25,000.

Answer

(i) For the payment in question, since the payment has been made to a non-resident, applicability of TDS will have to be considered as per the provisions of **section 195**. The obligation to deduct tax at source u/s 195 arises only in respect of any sum chargeable to tax in India.

As per Explanation 4 to **section 9(1)(vi)** of the Income-tax Act, 1961, **"royalty" includes**

transfer of all or any right for use or right to use a computer software. Hence, royalty payable by a resident in India to a non-resident company based in USA for the purposes of importing computer software for reselling to end users in India would be deemed to accrue or arise in India in the hands of the non-resident company, and hence, would be chargeable to tax in India in its hands. There being income chargeable to tax in India, TEL is required to deduct tax at source u/s 195 at the rates in force as per the provisions of the Income-tax Act, 1961.

However, **as per India-USA DTAA**, since Tam Electronics Ltd. (TEL) **resells the computer** software purchased from Jam Electronics Inc. to resident Indian end-users **without modification**, the amount paid by Tam Electronics Ltd. to Jam Electronics Inc. for purchase of computer software **is not royalty**, due to absence of provision akin to Explanation 4 to section 9(1)(vi) in the DTAA including such payment within the definition of royalty. It was so held by the Supreme Court in Engineering Analysis Centre of Excellence P. Ltd v. CIT and Another (2021) ITR 471.

As per section 90(2), where India has entered into a DTAA with a country outside India, the provisions of the Income-tax Act, 1961 will apply only to the extent they are more beneficial to the assessee. In this case, since the **DTAA provisions are more beneficial to TEL, the same will prevail over the provisions of the Income-tax Act, 1961**. Accordingly, there being **no income chargeable to tax in India, TEL is not required to deduct tax at source**.

(ii) The relationship between the DEHP Ltd., a public sector bank, and M/s NFGS Ltd., is not of an agency but that of **two independent parties on principal-to-principal basis**. Therefore, TDS provisions under **section 194H would not be attracted** on commission payment made by DEHP Ltd., a public sector bank to M/s NFGS Ltd. for ATM network services provided by it. It was so held in CIT and another vs. Corporation Bank (2021) 431 ITR 554 (Kar).

Also, section 194J will not apply is case of provision of ATM network services, since the same takes place without manual or human intervention.

(iii) **Tax is required to be deducted under section 194C** by PQR Ltd. on payment for stitching of T-shirts to Mr. A,

- since the supply of t-shirts is as **per specification** of PQR Ltd. and the cloth is purchased from Fashion Ltd., which is an **associate** of PQR Ltd, specified under section 40A(2), and
- Since a **consolidated invoice** has been raised, **tax would be deducted on the entire amount**, including the cost of purchases.

Tax rate would be deducted@1% under section 194C since the contractor is an individual. Therefore, tax to be deducted **= ₹ 40,00,000 x 1% = ₹ 40,000**.

(iv) Tax is to be deducted under **section 194E at 20%** on amount payable to a non-resident sportsman who is not a citizen of India for participation in matches and honorarium for writing an article related to sport for a sports magazine.

Further, since Mr. David, a Canadian citizen, is a non-resident, health and education cess@4% on TDS should also be added. Thus the **effective TDS rate will be 20.8%**

Tax to be deducted = (₹ 4,58,000 + ₹ 1,25,000) x 20.80% = ₹ 95,264 + ₹ 26,000 = **₹ 1,21,264**.

Question 43

(i) During the previous year 2024-25, Mr. A purchased scrap of ₹ 55 lakhs from Mr. B for the purpose of his manufacturing unit. Mr. A also furnished a certificate to Mr. B that the scrap shall be utilized for manufacturing process carried on by Mr. A and shall not be used for trading purposes. Mr. A made the payment of ₹ 45 lakhs during the year to Mr. B. Assume turnover of both Mr. A and Mr. B from the business carried on by them exceeds ₹ 10 crores in the financial year 2023-24. Comment upon TDS/TCS implication in the above case.

(ii) Mr. P provides technical consultancy to its various clients who deduct tax u/s 194-J of the Act. Mr. P applies for lower tax deduction certificate u/s 197 from the TDS officer in respect of his receipts from consultancy. Mr. P was issued the lower tax deduction certificate allowing him to receive the consultancy payments after deduction of tax@1%. Mr. P forwarded this certificate to his client Mr. Q asking him to deduct tax@1% on payments of ₹ 15 lakhs to be made to Mr. P.

Mr. Q has approached you to advise on the amount of tax to be deducted from the payment to be made to Mr. P. You gathered the information that Mr. P is not filing his ITRs for the last two Assessment years and TDS credit in his 26AS is more than ₹ 1 lakh in each last two years. What would be your advice to Mr. Q?

(iii) Ms. Roshni sold her house property at Delhi to Ms. Shalini for a consideration of ₹ 60 lakhs. She has purchased the house property for ₹ 36 lakhs. The Stamp duty value of the property on the date of sale is ₹ 82 lakhs.

Determine the TDS implications in the hands of Ms. Shalini as per the Income-tax Act, 1961, assuming both Roshni and Shalini are resident individuals.

Answer

(i) By virtue of section 206C(1A), **Mr. B is not required to collect tax at source** under section 206C(1), since Mr. A has furnished a certificate to Mr. B that the scrap purchased from him is for manufacturing process carried on by him and not for trading purposes.

However, as clarified vide Circular no. 13/2021 dated 30.6.2021 and Circular No. 20/2021 dated 25.11.2021, TDS under section 194Q will be attracted in the hands of the buyer in such cases covered under section 206C(1A), if conditions specified under section 194Q are fulfilled.

In this case, tax is required to be deducted at source under section 194Q by the buyer, Mr. A, since his turnover in the immediately preceding financial year exceeds ₹ 10 crores and he has purchased goods of the value or aggregate of such value exceeding ₹ 50 lakhs. TDS u/s 194Q would be 0.1% of the sum exceeding ₹ 50 lakhs and the same has to be deducted at the time of payment or credit of such sum to the account of resident seller, whichever is earlier.

Therefore, in the present case, **Mr. A is required to deduct tax at source @ 0.1% of ₹ 5,00,000, being the amount exceeding ₹ 50 lakhs** (₹ 45,00,000, being the payment made plus ₹ 10 lakhs, being the amount credited to the account of Mr. B).

Note: It may be noted that section 206C(1H) would not apply where section 194Q is applicable.

(ii) As per **section 194J**, Mr. Q is required to **deduct tax at source @2% on ₹ 15 lakhs** in respect of payment for technical consultancy to Mr. P. However, **since Mr. P has furnished lower tax deduction certificate issued under section 197 specifying lower rate of 1% to Mr. Q, tax would be deducted at such lower rate of 1%.**

However, as per **section 206AB**, since Mr. P has not furnished his return of income for the last two Assessment years, and the aggregate of TDS and TCS in his case is ₹ 1 lakh, which is more than the threshold of ₹ 50,000, Mr. Q is required to deduct tax at source on payment of fees for technical consultancy to Mr. P, at **higher of** inter alia the following rates –

(a) **at twice the rate prescribed in the relevant provisions of the Act i.e., 4%;**

(b) **at 5%**

Accordingly, Mr. Q is **required to deduct tax at source @5% on ₹ 15 lakhs**, being the amount paid as technical consultancy fees.

(iii) In the case of transfer of any immovable property and the transferor is a resident, where the consideration or the stamp duty value, whichever is higher, exceeds ₹ 50 lakhs, tax is deductible at source @1%.

As per **section 194-IA**, Ms. Shalini, being a resident transferee paying ₹ 60 lakhs to Ms. Roshni, a resident transferor, as consideration for transfer of house property at Delhi, is **required to deducted tax at source @1% on ₹ 82 lakhs**, being the higher of Stamp duty value of ₹ 82 lakhs or consideration of ₹ 60 lakhs.

Therefore, **tax to be deducted = ₹ 82,00,000 x 1% = ₹ 82,000.**

Question 44

Examine the applicability of Tax to be deducted at Source (TDS) or Tax to be collected at Source (TCS) as per the Income-tax Act, 1961 in the following independent situations..Calculate the amount of tax to be deducted at Source or tax to be collected at Source in given cases:

(i) Mr. Ron took a loan of ₹ 10 lakhs from his employer, Thomas Private Limited, an Indian domestic manufacturing company for sponsoring studies of his son in Germany. Out of the said loan, he remitted ₹ 8,75,000 towards fees to the University in Germany for his son's education.

He also remitted to his son an amount of ₹ 4,75,000 for pursuing higher studies in Germany towards his out-of-pocket expenses regarding education. Both the remittances were made through the same authorized dealer under the Liberalized Remittance Scheme of RBI.

(ii) Mr. Mandeep Singh, a manufacturer of textile goods, had a turnover of ₹ 12 crores during financial year 2023-24 and is covered under provisions of section 44AB of Income-tax Act for compulsory audit of Books of Accounts. He purchased a residential house in January 2025 for his personal use for ₹ 5 crores from Mr. Amit and paid a commission@12% of the value of the house to Mr. Pankaj for effecting the deal. The house is not used for business purposes by Mr. Mandeep Singh.

(iii) Registrar General of Hon'ble High Court of Delhi has made a fixed deposit of ₹ 100 lakhs with a nationalised bank out of money deposited by litigants on directions of Court. Is section 194A applicable in respect of interest on fixed deposits in name of Registrar General of High Court?

Answer

(i) Tax would be collectible at source under section 206C(1G) by the authorised dealer, who received an amount, under the Liberalised Remittance Scheme of the RBI, **for overseas remittance from Mr. Ron at the rate of 5% of the sum exceeding ₹ 7 lakhs.**

Tax of ₹ 8,750 (5% of ₹ 1,75,000, being sum exceeding ₹ 7 lakhs) would be collectible by the authorised dealer on remittance of ₹ 8,75,000 **for education** of his son out of the loan from his employer. The concessional rate of TCS of **0.5%** would **not** be **applicable,** since remittance is **not out of a loan obtained from any financial institution** as referred under section 80E.

Tax of ₹ 23,750 (5% of ₹ 4,75,000) would be collectible by authorised dealer on remittances of ₹ 4,75,000 **for education** of his son for out-of-pocket expenses regarding education.

(ii) **Section 194-IA** is attracted where the consideration for transfer of immovable property or the stamp duty value of such property, is **₹ 50,00,000 or more.**

As per section 194-IA, Mr. Mandeep Singh paying ₹ 5 crores to Mr. Amit, as consideration for transfer of house property, is **required to deducted tax at source @1% of consideration or the stamp duty value, whichever is higher.**

The tax deduction under section 194-IA would be ₹ 5,00,000, being 1% of ₹ 5 crores.

Since Mr. Mandeep Singh's turnover for the P.Y. 2023-24 exceeded ₹ 1 crore and **payment of commission i.e., ₹ 60,00,000 (12% of ₹ 5 crores) exceeds ₹ 15,000,** Mr. Mandeep Singh is required to **deduct tax under section 194H @2%** from commission payment to Mr. Pankaj.

The tax deduction under section 194H would be ₹ 1,20,000, being 2% of ₹ 60 lakhs.

(iii) The expression "payee" u/s **194A** would mean the recipient of income whose account is maintained by the person paying interest. The Registrar General is neither recipient of the amount credited to his account nor to interest accruing thereon. Therefore, he cannot be considered as a 'payee' for the purposes of section 194A.

In the absence of a payee, the machinery provisions for deduction of tax to his credit are ineffective. The **interest on FDRs made in the name of Registrar General of the Court** would, thus, **not be subjected to TDS under section 194A.**

Question 45

Examine the applicability of Tax Deducted at source/Tax Collected at source and calculate the amount of TDS/TCS in the following independent cases:

(i) Raj Keshri Hotels and Resorts Limited is engaged in business of owning, operating and managing hotels. The tips are paid by the guests by way of charge to the Credit Cards, UPI or Net Banking in the bills. The company disburse the same to the employees at periodic intervals. Explain with reason whether the company is responsible for deducting tax at source from disbursement of tips to its employees.

(ii) Lalit, an individual whose total sales in business during the year ended 31.3.2024 was ₹ 1.50 crores, opted to compute income under section 44AD for A.Y. 2024-25. He paid ₹ 5,00,000 by cheque on 1.2.2025 to a contractor (an individual), for construction of his factory building. No amount was credited earlier to the account of the contractor in the books of Lalit. The turnover of Mr. Lalit for previous year 2024-25 is ₹ 95 Lacs.

He also pays a monthly rent starting from 1st April, 2024 to 31st March, 2025 of ₹ 16,000 p.m. for the office premises to Mr. Hemant, the owner of building. Besides, he also pays service charges of ₹ 5,500 per month to Mr. Hemant towards the use of furniture, fixtures and vacant land appurtenant to office. Examine the obligation of tax deducted at source for A.Y.2025-26.

(iii) XY and Co., a partnership firm selling its products 'R' through the digital facility provided by ABC Limited (an E-commerce Operator). On 28th February, 2025, ABC Limited credited in its books of account, the account of XY and Co. with a sum of ₹ 4,90,000 for the online sale of products 'R' made during the month of February 2025.

The company released a payment of ₹ 4,30,000 on 6th March 2025 to XY and Co. out of above sales made during February. Mr. Rai, who purchases products 'R' through the digital facility of ABC Limited made payment of ₹ 60,000 directly to XY and Co. on 15th March, 2025.

Answer

(i) In respect of tips collected by the company from the guests and distributed to the employees, **the person responsible for paying the employee was not the employer at all, but a third person, namely the guest.**

The payments of collected tips included and paid by way of a credit cards, UPI or Net Banking in the bills by guest, **would not be payments made "by or on behalf of" an employer.**

The contract of employment not being the proximate cause for the receipt of tips by the employee from a guest, such payments would be outside the scope of sections 15 and 17.

There is **no employer-employee relationship between customers and employees** of Raj Keshri Hotels and Resorts Ltd. and therefore such payments do not fall in the nature of salary.

On account of such tips being received from guests and not from employer, **section 192 would not get attracted at all in hands of Raj Keshri Hotels and Resorts Ltd.** Thus, the **company** is not **responsible for deducting tax at source** from disbursement of tips to its employees.

(ii) Lalit is **required to deduct TDS under section 194C** for contract payments and under section 194-I for rent paid for office premises during the previous year 2024-25 **since Lalit's turnover** for the previous year 2023-24 **exceeded ₹ 1 crore.**

Thus, **tax deduction under section 194C would be ₹ 5,000, being 1% of ₹ 5 lakhs.**

Mr. Lalit is also required to deduct tax at source @10% u/s 194-I on the rent paid for office premises and for furniture, fixtures and vacant land appurtenant to office to Mr. Hemant, since aggregate of rent i.e., ₹ 2,58,000 [(16,000 + ₹ 5,500) x 12] paid during the year exceeds the threshold limit of ₹ 2,40,000.

The tax deduction under section 194-I would be ₹ 25,800, being 10% of ₹ 2,58,000.

(iii) As per section 194-O, **ABC Limited, an e-commerce operator is required to deduct tax at source @0.1% on ₹ 4,90,000, being the gross amount of sale** of products 'R' of XY and Co., a partnership firm, an e-commerce participant, since such sale of goods is facilitated by ABC Limited through its digital facility.

The gross amount of sales is ₹ 4,90,000 of which ₹ 4,30,000 was paid to e-commerce operator and the balance of ₹ 60,000 is directly paid to the XY and Co., a partnership firm by one of the buyers (Mr. Rai).

ABC Ltd. is required to deduct tax@0.1% on the entire amount of ₹ 4,90,000. **Thus, ABC Ltd. is required to deduct tax of ₹ 490, being 0.1% of ₹ 4,90,000.**

Question 46

Examine whether tax has to be deducted at source under the provisions of the Income-tax Act, 1961 in the following situations:

(i) M/s. Jiva & Co., a partnership firm, pays a sum of ₹ 43,000 as interest on loan borrowed from an Indian branch of a foreign bank.

(ii) Above firm has paid ₹ 42,000 as interest on capital to partner Mr. A, a resident in India.

(iii) The above firm paid ₹ 50,000 being share of profit of partner Mr. B, a non-resident

Answer

(i) Section 194A requires **deduction of tax on any income by way of interest, other than interest on securities,** credited or paid to a resident, at the rates in force.

However, it specifically **excludes** from its scope, income credited or **paid to any banking company** to which the Banking Regulation Act, 1949 applies. An Indian branch of a foreign bank, transacting the business of banking in India, is a banking company to which the Banking Regulation Act, 1949 applies. Therefore, **interest payment to such bank will not attract tax deduction under section 194A.**

Consequently, **no tax is required to be deducted at source under section 194A on interest of ₹ 43,000 paid by M/s. Jiva & Co., a partnership firm,** on loan borrowed from an Indian branch of a foreign bank.

(ii) **Section 194T requires firm** who is responsible for paying any sum in the nature of salary, remuneration, commission, bonus or interest to a partner of the firm, shall, at the time of credit of such sum to the account of the partner (including the capital account) or at the time of payment thereof, whichever is earlier shall, **deduct income-tax thereon at the rate of 10%.**

However, **no deduction** shall be made where aggregate of such sums credited or paid to the partner of the firm **does not exceed ₹ 20,000** during the financial year.

Therefore, **tax is required to be deducted** at source under section 194T **on interest on capital of ₹ 42,000 paid by firm to Mr. A, a resident partner.**

(iii) As per section 10(2A), **share of profit received by a partner** from the total income of the firm is **exempt from tax.** Therefore, the share of profit paid to non-resident partner is **not liable for tax deduction at source.**

However, section 195(6) provides that person responsible for **paying any sum,** whether or not chargeable to tax, to a non-corporate **non-resident or foreign company, shall be required to furnish information relating to payment of such sum** in prescribed form and manner.

Question 47

An amount of ₹ 40,000 was paid to Mr. X on 1.7.2024 towards fees for professional services without deduction of tax at source. Subsequently, another payment of ₹ 50,000 was due to Mr. X on 28.2.2025, from which tax @10% (amounting to ₹ 9,000) on the entire amount of ₹ 90,000 was deducted. However, this tax of ₹ 9,000 was deposited only on 22.6.2025. Compute the interest chargeable under section 201(1A).

Answer

Interest under section 201(1A) would be computed as follows –

Particulars	₹
1% on tax deductible but not deducted i.e., 1% on ₹ 4,000 for 8 months	320
1½% on tax deducted but not deposited i.e. 1½% on ₹ 9,000 for 4 months	540
	860

Question 48

Mr. Madhusudan is regular in deducting tax at source and depositing the same. In respect of quarter ended 31.12.2024, a sum of ₹ 80,000 was deducted at source from the contractors. The statement of tax deducted at source u/s 200 was filed on 23rd March, 2025 for the quarter ended 31.12.2024.

(i) Is there any delay on the part of Mr. Madhusudan in filing the statement of TDS?

(ii) If the answer to (i) above is in the affirmative, how much amount can be levied on Mr. Madhusudan for such default under section 234E?

(iii) Is there any remedy available to him for reduction/waiver of the levy?

Answer

(i) **Yes, there has been a delay on the part of Mr. Madhusudan in filing the statement of TDS.**

As per section 200(3) read with Rule 31A, the statement of tax deducted at source for the quarter ended 31st December, 2024 has to be filed on or before 31st January, 2025. However, the same has been filed only on 23rd March, 2025. Hence, there has been a **51 day delay** on the part of Mr. Madhusudan in filing the statement of TDS.

(ii) As per section 234E of the Income-tax Act, 1961, where a person fails to file deliver or cause to be delivered the statement of tax deducted at source within the prescribed time, then, he shall be liable to pay, by way of fee, a sum of ₹ 200 for every day during which the failure continues.

The amount of fee shall not, however, exceed the amount of tax deductible.

In this case, since Mr. Madhusudhan has delayed filing the statement of TDS by 51 days, **he would be liable to pay a fee of ₹ 10,200 (₹ 200 x 51 days) under section 234E.** The said fee does not exceed the tax deductible (₹ 80,000, in this case).

(iii) Under section 119, the CBDT is empowered to issue general or special orders, whether by way of relaxation of any of the provisions of sections 139, 143, 144, 147 etc. or otherwise, in respect of any class of incomes or class of cases. The CBDT may issue such order(s) from time to time, if it considers expedient to do so, for the purpose of proper and efficient management of the work of assessment and collection of revenue. Section 234E is included in the list of sections in respect of which the CBDT is empowered to issue order for relaxation of provisions of the Act.

Hence, the remedy available to Mr. Madhusudhan is that he **can file an application to CBDT** under section 119 and seek **waiver/reduction of penalty** levied/leviable under section 234E.

Tax Collected at Source (TCS)

Question 49

Mr. Gupta, a resident Indian, is in retail business and his turnover for F.Y.2023-24 was ₹ 12 crores. He regularly purchases goods from another resident, Mr. Agarwal, a wholesaler, and the aggregate payments during the F.Y.2024-25 was ₹ 95 lakh (₹ 20 lakh on 1.6.2024, ₹ 25 lakh on 12.8.2024, ₹ 22 lakh on 23.11.2024 and ₹ 28 lakh on 25.3.2025). Assume that the said amounts were credited to Mr. Agarwal's account in the books of Mr. Gupta on the same date. Mr. Agarwal's turnover for F.Y.2023-24 was ₹ 15 crores.

(1) Based on above facts, examine the TDS/TCS implications, if any, under Income-tax Act, 1961.

(2) Would your answer be different if Mr. Gupta's turnover for F.Y.2023-24 was ₹ 8 crores, all other facts remaining the same?

(3) Would your answer to (1) and (2) change, if PAN has not been furnished by the buyer or seller, as required?

Answer

(1) Since Mr. Gupta's turnover for F.Y.2023-24 exceeds ₹ 10 crores, and payments made by him to Mr. Agarwal, a resident seller exceed ₹ 50 lakhs in the P.Y.2024-25, **he is liable to deduct tax @ 0.1% of ₹ 45 lakhs (being the sum exceeding ₹ 50 lakhs)** in the following manner –

No tax is to be deducted u/s 194Q on the payments made on 1.6.2024 and 12.8.2024, since the aggregate payments till that date i.e., 45 lakhs, has not exceeded the threshold of ₹ 50 lakhs.

Tax of ₹ 1,700 (i.e., 0.1% of ₹ 17 lakhs) has to be deducted u/s 194Q from the payment/credit of ₹ 22 lakh on 23.11.2024 [₹ 22 lakh – ₹ 5 lakhs, being balance unexhausted threshold limit].

Tax of ₹ 2,800 (i.e., 0.1% of ₹ 28 lakhs) has to be deducted u/s 194Q from the payment/credit of ₹ 28 lakhs on 25.3.2025.

Note – In this case, since both section 194Q and 206C(1H) applies, tax has to be deducted u/s 194Q.

(2) If Mr. Gupta's turnover for the F.Y.2023-24 was only ₹ 8 crores, **TDS provisions under section 194Q would not be attracted. However, TCS provisions** under section 206C(1H) **would be attracted in the hands of Mr. Agarwal**, since his turnover exceeds ₹ 10 crores in the F.Y.2023-24 and his receipts from Mr. Gupta exceed ₹ 50 lakhs.

No tax is to be collected u/s 206C(1H) on 1.6.2024 and 12.8.2024, since the aggregate receipts till that date i.e. ₹ 45 lakhs, has not exceeded the threshold of ₹ 50 lakhs.

Tax of ₹ 1,700 (i.e., 0.1% of ₹ 17 lakhs) has to be collected u/s 206C(1H) on 23.11.2024 (₹ 22 lakh – ₹ 5 lakhs, being the balance unexhausted threshold limit).

Tax of ₹ 2,800 (i.e., 0.1% of ₹ 28 lakhs) has to be collected u/s 206C(1H) on 25.3.2025.

(3) In case (1), **if PAN is not furnished by Mr. Agarwal to Mr. Gupta**, then, **Mr. Gupta has to deduct tax@5%**, instead of 0.1%. Accordingly, tax of ₹ 85,000 (i.e., 5% of ₹ 17 lakhs) and ₹ 1,40,000 (5% of ₹ 28 lakhs) has to be deducted by Mr. Gupta u/s 194Q on 23.11.2024 and 25.3.2025, respectively.

In case (2), **if PAN is not furnished by Mr. Gupta to Mr. Agarwal**, then, **Mr. Agarwal has to**

collect tax@1% instead of 0.1%. Accordingly, tax of ₹ 17,000 (i.e., 1% of ₹ 17 lakhs) and ₹ 28,000 (1% of ₹ 28 lakhs) has to be collected by Mr. Agarwal u/s 206C(1H) on 23.11.2024 and 25.3.2025, respectively.

Question 50

Examine the applicability of provisions relating to deduction/collection of tax at source in the following cases as per provisions contained in the Income-tax Act, 1961:

(i) Delta Ltd., an Indian company, which was incorporated on 1.4.2024 purchases coal from Phi Ltd., another Indian company, for ₹ 75 lakhs during the P.Y.2024-25, to manufacture steel. Delta Ltd. furnishes a declaration that such coal is used to manufacture steel and not for trading. What are the TCS/TDS implications on such transaction, if Delta Ltd.'s turnover was ₹ 12 crores in the P.Y.2024-25; and Phi Ltd.'s annual turnover ranges between ₹ 16 crores and ₹ 18 crores in the last few years?

Would your answer change if Delta Ltd. was incorporated on 1.4.2023 and its turnover in the P.Y.2023-24 is ₹ 10 crores?

(ii) Sigma Ltd., a car manufacturer, sold the following cars to the car dealers, Epsilon Ltd. and Omega Ltd., in the P.Y.2024-25:

Dealer	Particulars of cars sold	Value
Epsilon Ltd.	10 cars of the value ₹ 12 lakhs each	₹ 120 lakhs
Omega Ltd.	8 cars of the value of ₹ 10 lakhs each	₹ 80 lakhs

The turnover in the P.Y.2023-24 of Sigma Ltd. is ₹ 12 crores, Epsilon Ltd. is ₹ 14 crores and Omega Ltd. is ₹ 9 crores.

Answer

(i) As per section 206C(1A), since Delta Ltd., a resident buyer, has furnished a declaration that coal is used for manufacturing steel and not for trading, **Phi Ltd. is not required to collect tax at source under section 206C(1).** In case of goods covered under section 206C(1) but exempted under section 206C(1A), tax would not be collectible under section 206C(1H). However, section 194Q will apply in such cases covered under section 206C(1A) and the buyer would be liable to deduct tax under section 194Q, if conditions specified therein are fulfilled.

However, for the provisions of **section 194Q** to be attracted, **a buyer is required to have total sales or gross receipts or turnover from business carried on by it exceeding ₹ 10 crores** during the financial year **immediately preceding financial year** in which purchase of goods is carried out. The CBDT has, vide Circular No. 13/2021, dated 30.6.2021, clarified that since this condition would not be satisfied in the year of incorporation, the provisions of **section 194Q shall not apply in the year of incorporation**. Since Delta Ltd. is incorporated in the P.Y. 2024-25, it would not qualify as a "buyer" for the purpose of section 194Q for the said previous year, inspite its turnover exceeding ₹ 10 crores in the current previous year.

Thus, the **transaction would neither attract TDS u/s 194Q nor TCS u/s 206C.**

The **answer would not change even if Delta Ltd. was incorporated on 1.4.2023** and its turnover in P.Y.2023-24 is ₹ 10 crores, **since the said turnover does not exceed ₹ 10 crores.**

(ii) The first step is to examine the applicability of section 206C(1F). **Section 206C(1F)** requiring collection of tax at source@1% by the seller of motor car of value exceeding ₹ 10 lakhs **does not**, however, **apply in case of sale by manufacturer to a dealer**. Hence, the provisions of section 206C(1F) are not attracted in case of sale of cars by Sigma Ltd., a car manufacturer, to its dealers Epsilon Ltd. and Omega Ltd.

The second step is to examine whether the provisions of **section 194Q** would be attracted in the hands of the dealers, namely, Epsilon Ltd. and Omega Ltd. Since the turnover of Epsilon Ltd. in the P.Y.2023-24 exceeds ₹ 10 crore and the value of cars purchased from Sigma Ltd. in the P.Y.2024-25 exceeds ₹ 50 lakhs, **Epsilon Ltd. has to deduct tax@0.1% of ₹ 70 lakhs** (i.e., ₹ 120 lakhs – ₹ 50 lakhs), at the time of credit to the account of Sigma Ltd. or at the time of payment, whichever is earlier. However, **Omega Ltd. is not required to deduct tax at source under section 194Q, since its turnover in the P.Y.2023-24 does not exceed ₹ 10 crores.**

The third step is to examine whether the provisions of **section 206C(1H)** would be attracted in the hands of Sigma Ltd. Sigma Ltd.'s turnover for P.Y.2023-24 exceeds ₹ 10 crores and the value of cars sold to Epsilon Ltd. and Omega Ltd. exceed ₹ 50 lakhs each. Hence, it falls within the meaning of "seller" under section 206C(1H). Accordingly, **in respect of sale of cars to Omega Ltd., Sigma Ltd. is required to collect tax@0.1% of ₹ 30 lakhs** (i.e., ₹ 80 lakhs – ₹ 50 lakhs) at the time of receipt. However, **no tax is to be collected by Sigma Ltd. from Epsilon Ltd., since transaction has already been subject to TDS u/s 194Q in hands of Epsilon Ltd.**

Question 51

Raghav Motors Ltd., Ludhiana, is a dealer in cars of Ford and Maruti Cars and also runs a service station. The sale of cars of Raghav Motors Ltd. for F.Y.2023-24 is ₹ 9.80 crores. The sale of spare parts and service station is ₹ 60 lakhs for F.Y.2023-24. M/s. Om Ltd., dealing in textile manufacturing, bought following cars from Raghav Motors Ltd. during F.Y. 2024-25 for business purposes:

Model of Car	Date of Invoice	Value of Car in ₹ in Lacs
Maruti	14.07.2024	37 lakhs
Maruti	12.08.2024	19 lakhs
Ford	18.10.2024	8 lakhs
Maruti	05.11.2024	12 lakhs

The payment against each invoice was made on the date of invoice itself.

You are required to calculate the amount of TCS applicable, if any, to be collected by Raghav Motors Ltd. as per the relevant provisions of section 206C.

Answer

As per section 206C(1F), Raghav Motors Ltd., **a seller is required to collect tax at source@1% of the sale consideration** received from M/s. Om Ltd., a buyer, **on sale of motor vehicle of the value exceeding ₹ 10 lakhs.**

Accordingly, Raghav Motors Ltd. is required to collect tax at source u/s 206C(1F) on following dates -

- **₹ 37,000** [1% on ₹ 37,00,000] on 14.7.2024

- ₹ 19,000 [1% on ₹ 19,00,000] on 12.8.2024

- ₹ 12,000 [1% on ₹ 12,00,000] on 5.11.2024

Total amount of TCS is **₹ 68,000.**

In all three cases mentioned above, the payment was received on the date of sale of Maruti cars, hence, the tax has to be collected on the respective dates of sale mentioned above.

In respect of Ford car, the value of which is ₹ 8,00,000, **tax is not required to be collected under section 206C(1F), since its value does not exceed ₹ 10,00,000.**

Further, **as regards receipt of sale consideration of ₹ 8 lakh** in respect of Ford car, Since sale consideration of ₹ 8 lakh in respect of Ford car on 18.10.2024 is the only receipt of Om Ltd. which is excluded from the purview of TCS u/s 206C(1F), and this **receipt does not exceed the annual** threshold **of ₹ 50 lakhs, no tax is required to be collected at source u/s 206C(1H).**

Question 52

Examine the applicability of provisions relating to collection of tax at source and compute the liability, if any, for collection of tax at source in the following cases:

(i) XYZ Ltd. was incorporated on 1.4.2024 for trading goods. Its turnover for P.Y. 2024-25 is ₹ 12 crores. During the year, it purchased goods from M/s. White Ride, details are as follows:

On 1.8.2024 for ₹ 25,00,000;

On 15.9.2024 for ₹ 30,00,000 and

On 15.12.2024 for ₹ 15,00,000.

The above dates represent date of credit to the account of M/s. White Ride. Payment is made after one month (i.e., on the same date in the immediately following month). M/s White Ride's turnover for the F.Y. 2023-24 and F.Y. 2024-25 was ₹ 11 crores and ₹ 9.7 crores, respectively.

(ii) State Government of Telangana grants a lease of coal mine to M/s XYZ Co. Ltd. on 1.09.2024 and charged ₹ 10 crores for the lease. M/s XYZ Co. Ltd. sold coal for ₹ 1 crore to M/s AB (P) Ltd. during the previous year 2024-25. The turnover of M/s XYZ Co. and M/s AB (P) Ltd. for the financial year 2023-24 amounted to ₹ 5 crores and ₹ 6 crores, respectively.

Answer

(i) For the provisions of section 194Q to be attracted, a buyer is required to have a total sales or gross receipts or turnover from the business carried on by it exceeding ₹ 10 crore during the financial year immediately preceding the financial year in which the purchase of goods is carried out. The CBDT has, vide Circular No. 13/2021, dated 30.6.2021, clarified that since this condition would not be satisfied in the year of incorporation, the **provisions of section 194Q shall not apply in the year of incorporation. Since XYZ Ltd. is incorporated in the P.Y. 2024-25,** it would not qualify as a "buyer" for the purpose of section 194Q for the said previous year, inspite of its turnover exceeding ₹ 10 crores in the said previous year.

However, **since White Ride's turnover for the F.Y. 2023-24 exceeds ₹ 10 crores and its receipts from XYZ Ltd. exceed ₹ 50 lakhs, TCS provisions under section 206C(1H) would be attracted** in its hands. TCS would be attracted at the time of receipt of consideration (i.e., in respect of receipts in excess of sale consideration of ₹ 50 lakhs).

No tax is to be collected u/s 206C(1H) **on 1.9.2024**, since the aggregate receipts till that date i.e., ₹ 25 lakhs, has not exceeded the threshold of ₹ 50 lakhs.

Tax of ₹ 500 (i.e., 0.1% of ₹ 5 lakhs) **has to be collected** u/s 206C(1H) by M/s White Ride **on 15.10.2024** (₹ 30 lakh – ₹ 25 lakhs, being the balance unexhausted threshold limit).

Tax of ₹ 1,500 (i.e., 0.1% of ₹ 15 lakhs) **has to be collected** u/s 206C(1H) by M/s. White Ride **on 15.1.2025.**

(ii) **State Government is required to collect tax at source@2%** u/s 206C(1C) on ₹ 10 crores, being the charges for lease of coal mine.

TCS = 2% x ₹ 10 crores = **₹ 20,00,000**

M/s XYZ Co. Ltd. is required to collect tax at source @1% u/s 206C(1) on sale of coal to M/s AB (P) Ltd.

TCS = 1% of ₹ 1 crore = **₹ 1,00,000.**

Question 53

Examine the applicability of provisions relating to collection of tax at source and compute the amount of tax to be collected at source in the following cases:

(i) Mr. Rajesh remitted an amount of ₹ 5,80,000 towards medical treatment of his son pursing education in University of Australia. He also remitted ₹ 7,80,000 to University of Australia, for the purpose of his son's education, out of loan taken from his employer, ABC Ltd., an Indian manufacturing company. Both the remittances were made through the same authorized dealer under the Liberalised Remittance Scheme of RBI.

(ii) Mr. James, is an authorised dealer under the Liberalised Remittance Scheme of RBI. Three persons from India remitted the following sums through the Authorised Dealer as under:

Name of Person	Remittance ₹	Purpose
Mr. Pradeep	₹ 6,50,000	Education expenses of his son studying in London
Mr. Promod	₹ 15,00,000	Cost of Overseas Tour Programme package to North & South America
Mr. Pranav	₹ 10,00,000	Repayment of loan obtained from Bank in Germany for pursuing higher studies

What are the tax obligations of Mr. James in the above transactions?

Answer

(i) An authorised dealer, who receives an amount for remittance from a buyer, being a person remitting such amount under Liberalised Remittance Scheme of RBI, is required to **collect tax at source @5%.** In case of remittance, **no tax has to be collected** at source, if the amount or aggregate of **amount remitted by a buyer is upto ₹ 7 lakhs;** and where the said amount exceeds ₹ 7 lakhs, **tax has to be collected at source @5% of the amount or aggregate of amount in excess of ₹ 7 lakhs.**

Tax is required to be collected at source @0.5% of the amount or aggregate of amount in excess of ₹ 7 lakhs where remittance is made out of loan from a bank or financial institution notified by the Central Government referred under section 80E. However, in the present case, Mr. Rajesh **remitted amount out of loan taken from his employer,** being a manufacturing company. **Hence,** concessional rate of tax collection at source**@0.5%** would **not** be **available.**

Accordingly, the **authorised dealer has to collect tax at source @5%** on the amount remitted by Mr. Rajesh towards medical and maintenance expenses of his son studying in Australia as well as on amount remitted out of the loan taken from his employer not being the financial institution in excess of ₹ 7,00,000.

Since both remittances are through the same authorised dealer, tax collection at source@5% would be attracted on the aggregate amount remitted in excess of ₹ 7,00,000. **Thus, ₹ 33,000** [5% of ₹ **6,60,000 (₹ 7,80,000 + ₹ 5,80,000 – ₹ 7,00,000)] has to be collected at source by the authorised dealer on the remittances made by Mr. Rajesh.**

(ii) An **authorised dealer** who receives an amount for remittance from a buyer, being a person remitting such amount under the Liberalised Remittance Scheme of RBI, is required to **collect** tax at **source @5%.** In case of remittance, **no tax has to be collected at source, if the amount or aggregate of amount remitted by a buyer is upto ₹ 7 lakhs;** and where the said amount exceeds ₹ 7 lakhs, tax has to be collected at source @5% of the amount or aggregate of amount in excess of ₹ 7 lakhs.

In case of **overseas tour package,** tax has to be collected **@5% on amount upto ₹ 7,00,000** and @**20% on excess amount above ₹ 7,00,000.**

Accordingly, **Mr. James, the authorised dealer need not collect any tax from remittance of ₹ 6,50,000 by Mr. Pradeep** towards education expenses of his son studying in London, since such remittance does not exceed ₹ 7 lakhs.

Mr. James **has to collect tax of ₹ 1,95,000, being 5% on ₹ 7 lakhs plus 20% on 8 lakhs remitted by Mr. Promod towards cost of overseas tour programme package** to North and South America.

Mr. James **has to collect tax of ₹ 15,000, being 5% of ₹ 3 lakhs (i.e., the amount in excess of ₹ 7 lakhs) on remittance of ₹ 10 lakh by Mr. Pranav** towards repayment of loan obtained from bank in Germany for pursuing higher studies. The benefit of **concessional rate of 0.5%** will **not be available** in this case, since the remittance is not out of loan from financial institution defined under section 80E.

Interest u/s 234A, 234B & 234C

Question 54

Gamma (P) Ltd., an Indian company established in the year 2011, reports total income of ₹ 22 lakh for the previous year ended 31st March, 2025. Tax deducted at source by different payers amounted to ₹ 1,68,000 and tax paid in Country A on a doubly taxed income amounted to ₹ 30,000 for which the company is entitled to relief under section 90 as per the double taxation avoidance agreement.

During the year, the company paid advance tax as under:

Date of payment	Advance tax paid (₹)
13.06.2024	45,000
14.09.2024	90,000
13.12.2024	1,00,000
14.03.2025	1,05,000

The company filed its return of income for the A.Y. 2025-26 on 3rd December, 2025.

Compute interest, if any, payable by the company under sections 234A, 234B and 234C and fee payable under section 234F. Assume that transfer pricing provisions are not applicable and that the company has not opted for the provisions of section 115BAA.

Note – Turnover of Gamma (P) Ltd. for P.Y. 2022-23 is ₹ 251 crore.

Answer

Interest under section 234A: Since the return of income has been furnished by Gamma (P) Ltd. on 3rd December, 2025 i.e., after the due date for filing return of income (31.10.2025), interest under section 234A will be payable for 2 months @ 1% p.m. on the amount of tax payable on the total income, as reduced by tax reliefs and prepaid taxes.

Particulars	₹
Tax on total income (₹ 22,00,000 x 26%) [Since turnover of P.Y. 2022-23 does not exceed ₹ 400 crore, the rate of tax would be 26% (i.e., 25% + HEC@4%)]	5,72,000
Less: Advance tax paid	3,40,000
Less: Tax deducted at source	1,68,000
Less: Relief of tax allowed under section 90	30,000
Tax payable on self-assessment	**34,000**
Interest under section 234A = ₹ 34,000 x 1% x 2 months= ₹ 680	

Interest under section 234B: Where the advance tax paid by the assessee is less than 90% of the assessed tax, the assessee would be liable to pay interest under section 234B.

Computation of assessed tax	₹
Tax on total income (₹ 22,00,000 x 26%)	5,72,000
Less: Tax deducted at source	1,68,000
Less: Relief of tax allowed under section 90	30,000
Assessed tax	**3,74,000**
90% of assessed tax = ₹ 3,74,000 x 90% = ₹ 3,36,600	

Since the advance tax paid by Gamma (P) Ltd. (₹ 3,40,000) is more than ₹ 3,36,600, being 90% of the assessed tax (₹ 3,74,000), it is not liable to pay interest under section 234B.

Interest under section 234C

Particulars	₹
Tax on total income (₹ 22,00,000 x 26%)	5,72,000
Less: Tax deducted at source	1,68,000
Less: Relief of tax allowed under section 90	30,000
Tax due on returned income/Total advance tax payable	**3,74,000**

Calculation of interest payable under section 234C:

Due Date for payment of advance tax	Advance tax paid till date	Advance tax payable till date	Minimum % of tax due on returned income to be paid till date to avoid interest u/s 234C		Shortfall	Interest
	(₹)	%	%	Amt (₹)	(₹)	(₹)
15.6.2024	45,000	15%	12%	44,880	-	Nil **(See Note below)**
15.9.2024	1,35,000	45%	36%	1,34,640	-	Nil **(See Note below)**
15.12.2024	2,35,000	75%	75%	2,80,500	45,500	45,500 x 1% x 3 months = 1,365
15.3.2025	3,40,000	100%	100%	3,74,000	34,000	34,000 x 1% = 340
Interest payable under section 234C (Nil + Nil + ₹ 1,365 + ₹ 340)						**₹ 1,705**

Note: Since the advance tax paid by Gamma (P) Ltd. on 13th June, 2024 is more than 12% of the tax due on returned income (i.e., ₹ 3,74,000) and the advance tax paid on 14th September, 2024 is more than 36% of the tax due on returned income, it is not liable to pay any interest under section 234C in respect of these two quarters.

Fee under section 234F

₹ 5,000 is payable under section 234F by way of fee, since the return was filed after the due date.

Other Modes of Recovery of Tax

Question 55

The tax assessment of Mr. Bimal was completed on 20.12.2024 and the tax due was determined as ₹ 105 lakhs. The assessee has the following (i) Bank fixed deposit with SBI ₹ 20 lakhs; (ii) Receivable from Sunder & Co Ltd ₹ 25 lakhs. He gifted a land to his son (aged 38 years) 3 years ago whose present market value is ₹ 22 lakhs. He gifted a diamond necklace to his son's wife by a gift deed. He owns a residential apartment in London acquired 13 years ago.

Discuss against which of the movable/immovable property the Tax Recovery Officer can proceed against for recovery of tax.

Answer

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. Bimal had transferred his land 3 years ago to his son who was 35 years old at that time. He also gifted a diamond necklace to his son's wife. He also has bank fixed deposits, receivables from Sunder & Co. Ltd. and residential apartment in London.

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

(i) **bank fixed deposits,**

(ii) **receivables from Sunder & Co. Ltd;**

(iii) **residential apartment in London.**

He can also proceed to recover the tax by attaching 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.**

Question 56

Mr. Anand, a resident of Bangalore, has 2 house properties, one situated in Bangalore and the other in Jaipur. The house property at Jaipur was purchased in April 2002 and the Bangalore house was purchased during May 2012. Mr. Anand transferred his house property at Jaipur in the name of his son, Prateek, on his 10th birthday in July 2006.

In Sept. 2024, TRO has served a notice on Mr. Anand for recovering outstanding tax arrears of ₹ 150 lakhs relating to A.Y. 2020-21 in respect of his proprietorship business. TRO simultaneously attached both houses for recovering the tax arrears along with interest.

Mr. Prateek has been staying in the house property at Jaipur with his wife for last 4 years after he got separated from his father. The current value of house at Jaipur is ₹ 45 lakhs and Bangalore is ₹ 90 lakhs.

Mr. Prateek seeks your advice on the validity of action taken by TRO in attaching the Jaipur property.

Answer

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 immovable property.

The assessee's immovable property shall include any property which has been transferred, directly or indirectly, by the assessee inter alia to his minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of minor son. Immovable property so transferred to his minor child shall, even after the date of attainment of majority by such minor child, continue to be included in the assessee's immovable property for recovering any arrears due from the assessee in respect of any period prior to such date.

In the present case, Mr. Anand has transferred his Jaipur house property in July 2006, when his son is 10 years old. He attained majority in July 2014. TRO has served a notice on Mr. Anand for recovering outstanding tax arrears of ₹ 150 lakhs relating to A.Y.2020-21 in respect of his proprietorship business. The **immovable property transferred to minor son continues to be includible in the assessee's immovable property** for recovering any arrears due from the assessee, so far as the **same is in respect of the period prior to the date of attainment of majority by such minor son.**

However, in the present case, **since Anand's minor son Prateek attained the age of majority in the year 2014, the action taken by TRO in attaching Jaipur property, for recovering arrears relating to A.Y. 2020-21, which falls after the date of attainment of majority, is not valid.**

CHAPTER - 11

Income Tax Authorities, Return Filing & Assessment Procedure

Powers of Income Tax Authorities

Question 1

Rajesh regularly files his return of income electronically. While he was trying to upload his return of income for assessment year 2025-26 on 31st July, 2025 due date for filing the same, he found it extremely difficult to do the same due to network problems and ultimately he became successful in making e-filing of his return only at 1 a.m. on 1st August, 2025. The return contained a claim for carry forward of business loss of ₹ 3.10 crores. This circumstance was recorded in an e-mail addressed to the competent income-tax authority on 1st August, 2025. Rajesh made a request to the CBDT for condonation of delay in filing the return of income.

Discuss whether the CBDT has the power to condone the delay in filing the return of income and permit carry forward of loss in the given circumstance.

Would your answer change, if the return contained a claim for carry forward of business loss of ₹ 2.7 crores.

Answer

Section 119(2)(b) empowers the **CBDT** to authorise any income tax authority to admit an application or claim for any exemption, deduction, refund or **any other relief under the Act** after the expiry of the period specified under the Act, **to avoid genuine hardship** in any case or class of cases. The claim for carry forward of loss in case of late filing of a return is relatable to a claim arising under the category of "any other relief available under the Act". Therefore, the **CBDT has the power to condone delay in filing of such loss return due to genuine reasons.**

The facts of the case are similar to the case of Lodhi Property Company Ltd. v. Under Secretary, (ITA-II), Department of Revenue (2010) 323 ITR 0441, where the Delhi High Court held that the Board has the power to condone the delay in case of a return which was filed late and where a claim for carry forward of losses was made. The delay was only one day and the assessee had shown justifiable reason for the delay of one day in filing the return of income. If the delay is not condoned, it would cause genuine hardship to the assessee. Therefore, the Court held that the delay of one day in filing of the return had to be condoned.

The CBDT Circular No. 9/2015 dated 09.06.2015 expressly clarifies that the following authorities to be approached for this purpose. specified the monetary limits along with following authorities to be approached for this purpose. The said monetary limits are revised w.e.f. 1.6.2023 vide Circular No.7/2023 dated 31.5.2023 prescribed as under:

Quantum of claim	Concerned Income-tax Authority
Where the claim is upto ₹ 50 lakhs	Principal CIT or CIT
Where the claim is above ₹ 50 lakhs but upto ₹ 3 crores	Principal CCIT or CCIT
Where the claim is above ₹ 3 crores	CBDT

Applying the rationale of the above court ruling and the clarification given in CBDT Circular to the case on hand, the **CBDT has the power to condone the delay in filing the return of income of Mr. Rajesh and permit carry forward of business loss of ₹ 3.10 crores**, since the delay of one hour was due to a genuine and justifiable reason i.e., network problem while e-filing the return.

Based on the circular mentioned above, **if the claim for carry forward of business loss is 2.7 crores, then, the Principal Chief** Commissioner of Income-tax has the power to condone the delay.

Question 2

The Director General of Income Tax after getting the information that Mr. Mogambo is in possession of unaccounted cash of ₹ 50 lacs, issued orders by invoking powers vested in him as per section 131(1A), for its seizure. Is the order for seizure of cash issued by the Director General of Income Tax correct? If not, does the Director General of Income Tax have any other power to seize such cash?

Answer

The **powers under section 131**(1A) deal with power of discovery and production of evidence. They do not confer the power of seizure of cash or any asset. The Director General, for the purposes of making an enquiry or investigation relating to any income concealed or likely to be concealed by any person or class of persons within his jurisdiction, shall be competent to exercise powers conferred under section 131(1), which confine to **discovery and inspection, enforcing attendance, compelling the production of books of account and other documents and issuing commissions.** Thus, the **power of seizure of unaccounted cash is not** one of the powers conferred on the Director General under section 131(1A).

However, **under section 132**(1), the Director General has the **power to** authorize any Additional Director or Additional Commissioner or Joint Director or Joint Commissioner etc. to **seize money** found **as a result of search** [Clause (iii) of section 132(1)], if he has **reason to believe** that any person is in possession of any money which represents wholly or partly income which has not been disclosed [Clause (c) of section 132(1)]. Therefore, the proper course open to the Director General is to exercise his power under section 132(1) and authorize the Officers concerned to enter the premises where the cash is kept by Mr. Mogambo and seize such unaccounted cash.

Question 3

The premises of Ganesh were subjected to a search under section 132 of the Act. The search was authorized and the warrant was signed by the Joint Commissioner of Income-tax having jurisdiction over the assessee, consequent to information in his possession. The assessee challenged the validity of search on the ground that section 132(1) does not empower Joint Commissioner to authorise a search under the Act. Decide the correctness of the contention raised by the assessee.

Answer

Under section 132(1), the income-tax authorities listed therein are empowered to authorise other income-tax authorities to conduct search and seizure operations. The authorities empowered to issue authorization include such Additional Director, Additional Commissioner, Joint Director and Joint Commissioner as are **empowered by the CBDT** to do so.

However, a **Joint Commissioner can issue warrant of authorization only if he has been specifically empowered** to do so **by the CBDT**. Therefore, only **if the Joint Commissioner has not**

been specifically empowered by the CBDT to do so, the **contention of the assessee would hold good. If** the Joint Commissioner has been duly **empowered by the CBDT, then the contention raised by the assessee would not be valid.**

Question 4

The business premises of Ram Bharose Ltd. and the residence of two of its directors at Delhi were searched under section 132 by the DDI, Delhi. The search was concluded on 9.8.2024 and following were also seized besides other papers and records:

(i) Papers found in the drawer of an accountant relating to Shri Krishna Ltd., Mumbai indicating details of various business transactions. However, Ram Bharose Ltd. is not having any direct or indirect connection of any nature with these transactions and Shri Krishna Ltd., Mumbai and its directors.

(ii) Jewellery worth ₹ 5 lacs from the bed room of one of the director, which was claimed by him to be of his married daughter.

(iii) Papers recording certain transactions of income and expenses having direct nexus with the business of company for the period from 16.4.2020 to date of search. It was admitted by the director that the transactions recorded in such papers have not been incorporated in books.

You are required to answer on the basis of aforesaid and the provisions of Act, following questions:

(a) What action the DDI shall be taking in respect of the seized papers relating to Shri Krishna Ltd., Mumbai?

(b) Whether the contention raised by the director as to jewellery found from his bed-room will be acceptable?

(c) What presumption shall be drawn in respect of the papers which indicate transactions not recorded in the books?

Answer

(a) The authorised officer being DDI, Delhi is not having any jurisdiction over Shri Krishna Ltd., Mumbai, and therefore as per section 132(9A), the papers seized relating to this company shall be **handed over by him to the Assessing Officer having jurisdiction over Shri Krishna Ltd.**, Mumbai **within a period of 60 days** from the date on which the last of the authorisations for search was executed for taking further necessary action thereon.

(b) The **contention raised by the Director will not be acceptable** because as per the provisions of sub-section (4A)(i) of section 132, where any books of account, other documents, money, bullion, jewellery or other valuables are found in possession or control of any person in course of search, then, in respect thereof, it may be **presumed that same belongs to that person.**

(c) As per section 132(4A), the **presumptions** in respect of the papers, indicating transactions not recorded in the books but having direct nexus with the business of the company, are that the **same belong to the company, contents of such papers are true and the handwriting** in which the same are written is/are of the persons(s) whose premises have been searched.

Question 5

Cash of ₹ 25 lacs was seized on 12.9.2024 in a search conducted as per section 132 of the Act. The assessee moved an application on 27.10.2024 to release such cash after explaining the sources thereof, which was turned down by the department. The assessee seeks your opinion on, the following issues:

(i) Can the department withhold the explained money?

(ii) If yes, then to what extent and upto what period?

Answer

The proviso to section 132B(1)(i) provides that where the person concerned makes an **application** to the Assessing Officer, **within 30 days from the end of the month in which the asset was seized, for release of the asset and the nature and source** of acquisition of the asset is **explained to the satisfaction of the Assessing Officer**, then, the Assessing Officer may, with the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, **release the asset after recovering the existing liability** under the Income-tax Act, 1961, etc. out of such asset. 'Existing liability', however, does not include advance tax payable. Such asset or portion thereof has to be **released within 120 days** from the date on which the last of the authorizations for search under section 132 was executed.

In this **case**, since application was made to Assessing Officer within the 30 day period the amount of existing **liability may be recovered out of the asset and the balance may be released within** 120 days from date on which the last of authorizations for search under section 132 was executed.

Note: It may be noted that one of the conditions mentioned above for release of an asset is that the nature and source of acquisition of the asset should be explained to the satisfaction of the Assessing Officer. However, in this case, it has been given that the assessee's application for release of the asset, explaining the sources thereof, was turned down by the Department. If the application was turned down by the Department due to the reason that it was not satisfied with the explanation given by the assessee as to the nature and source of acquisition of the asset, then, the asset (in this case, cash) cannot be released, since the condition mentioned above is not satisfied.

Question 6

In the course of search on 25.03.2025, assets were seized. Examine the procedure laid down to deal with such seized assets under the Act.

Answer

Section 132B of the Income-tax Act, 1961 deals with the application of assets seized under section 132. **Such assets will be first applied towards the existing liability** under the Income-tax Act, 1961, etc. Further, the **amount of liability determined on completion of search assessment** (including any penalty levied or interest payable in connection with such assessment) and in respect of which the assessee is in default or deemed to be in default, **may be recovered out of such assets.**

Where the nature and source of acquisition of such seized assets is explained to the satisfaction of the Assessing Officer, the amount of any **existing liability** mentioned above may be **recovered** out of such asset **and the remaining portion**, if any, of the asset may be **released,** with prior approval of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be. The release must be made **within 120 days** from the date on which the last of authorisations for search under section 132 or for requisition under section 132A was executed. The assets would be released to the person from whose custody they were seized.

When the assets consist of solely of money, or partly of money and partly of other assets, the Assessing Officer may apply such money in the discharge of the liabilities referred to above and the assessee shall be discharged of such liability to the extent of the money so applied. However, the assets other than money may also be applied for the discharge of such liabilities if the complete recovery could not be made from the money seized or the money seized was not sufficient.

Question 7

The Assessing Officer within his jurisdiction under **section 133A**, surveyed a popular Cyber Café at 12 o'clock in night for the purpose of collecting information which may be useful for the purposes of the Income-tax Act, 1961. The Cyber Café is kept open for business every day between 2 p.m. and 2 a.m. The owner of the Cyber Café claims that the Assessing Officer could not enter the café in late night. The Assessing Officer wanted to take away with him the books of account kept at the Cyber Café. Examine the validity of the claim made by owner and proposed action of the Assessing Officer.

Answer

The Assessing Officer can exercise his power of survey under section 133A only after obtaining the approval. Assuming that he has obtained such approval in this case, he is empowered under section 133A to **enter any place of business of the assessee** within his jurisdiction **only during the hours at which such place is open for the conduct of business.**

In the case given, the cyber cafe is open from 2.00 p.m. to 2.00 a.m. for the conduct of business. The Assessing Officer entered the cyber cafe at 12 o'clock in the night which falls within the working hours of the cyber cafe. Therefore, the **claim made by the owner** to the effect that the Assessing Officer could not enter the cyber cafe at late night **is not in accordance with law.**

Further, as per section 133A(3)(ia), the **Assessing Officer may, impound and retain in his custody** for such period as he thinks fit, any **books of account or other documents** inspected by him. However, he shall not impound any books of account or other documents except **after recording his reasons** for doing so. He shall not retain in his custody any such books of account or other documents for a period exceeding **fifteen days** (exclusive of holidays).

Question 8

An Assessing Officer entered a hotel run by a person, in respect of whom he exercises jurisdiction, at 8 p.m. for the purpose of collecting information, which may be useful for the purposes of the Act as per section 133B. The hotel is kept open for business every day between 9 a.m. and 9 p.m. The hotelier claims that the Assessing Officer could not enter the hotel after sunset.

The Assessing Officer wants to take away with him the books of account kept at the hotel.

Examine the validity of the claim made by the hotelier and the proposed action of the Assessing Officer with reference to the provisions of **section 133B** of the Income-tax Act, 1961.

Answer

Section 133B(2) of the Income-tax Act, 1961 empowers an income-tax authority to **enter any place of business during the hours at which such place is open for the conduct of business.** The hotel is open from 9.00 a.m. to 9.00 p.m. for the conduct of business. The Assessing Officer entered the hotel at 8.00 p.m. which falls within the working hours. The **claim made by the hotelier** to the effect that the Assessing Officer could not enter the hotel after sunset **is not in accordance with law.**

Section 133B(3) provides that an **income tax authority** acting under this section **shall, on no account, remove or cause to be removed** from the place wherein he has entered, any **books of account.** In view of this clear prohibition in section 133B(3), the proposed **action of the Assessing** Officer **to take away with him the books of account kept at the hotel is not valid in law.**

Question 9

The Assessing Officer, with prior approval of Chief Commissioner of Income-tax, under **section** 133A, surveyed Good Day Cyber Café, which was within his jurisdiction, at 1 a.m. on 1.6.2024 for the purpose of obtaining information which may be relevant to the proceedings under the Income-tax Act, 1961. The Cyber Café is kept open for business every day between 2 p.m. and 2 a.m.

On 15.6.2024, the Assessing Officer entered Bright Light Cyber Café which was also within his jurisdiction at 11 p.m. for the purpose of collecting information which may be useful for the purposes of the Income-tax Act, 1961 as per **section 133B**. This Cyber Café is kept open for business every day between 12 noon to 12 midnight.

In both the above cases, the Assessing Officer impounded and retained in his custody for a period of 12 days (inclusive of holidays), books of account and other documents inspected by him, after recording reasons for doing so. The Assessing Officer, however, did not take prior permission from the Commissioner for doing so.

The owners of these Cyber Cafés claim that the Assessing Officer could not enter the café after sunset and take away with him the books of account kept at the Cyber Café. Also, the owner of Bright Light Cyber Café claimed that the Assessing Officer ought to have obtained the prior approval of the Commissioner before entering the Café. Examine the validity of the claim made by the owners and the action of the Assessing Officer in both the cases.

Would your answer change if the Assessing Officer had surveyed Good Day Cyber Café only for the purpose of verifying whether tax has been deducted/collected at source in accordance with the provisions of the Income-tax Act, 1961? Examine.

Answer

Good Day Cyber Cafe

In this case, since Assessing Officer has obtained prior approval of the Chief Commissioner, he is **empowered under section 133A to enter any place of business** of the Good Day Cyber Café, which was within his jurisdiction, only **during the hours at which such place is open for the conduct of business.** It is only in case he wishes to enter any other place, other than the place of business, he has to do so before sunset.

Good Day Cyber Cafe is open from 2.00 p.m. to 2.00 a.m. for the conduct of business. The Assessing

Officer entered the cyber cafe at 1 a.m. which falls within the working hours of the cyber cafe. Therefore, the **claim made by the owner** of Good Day Cyber Cafe to the effect that the Assessing Officer could not enter the cyber cafe after sunset is **not correct.**

Further, as per section 133A(3)(ia), the **Assessing Officer may, impound and retain in his custody** for such period as he thinks fit, any **books of account or other documents** inspected by him. However, he shall not impound any books of account or other documents except after **recording his reasons** for doing so. He **shall not retain in his custody** any such books of account or other documents **for a period exceeding 15 days (exclusive of holidays)** without obtaining the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner or Principal Director or Director therefor, as the case may be. In this case, since the Assessing Officer has recorded his reasons for impounding and the period of retention is only 12 days (inclusive of holidays), prior approval of higher authorities is not required for this purpose.

Hence, the **action of the Assessing Officer** in entering the premises at 1 a.m. and impounding and retaining books of account and other documents inspected by him for **12 days is within the powers of survey conferred on him under section 133A.**

However, in case the Assessing Officer had surveyed the Cyber Café **only for the purpose of verifying whether tax has been deducted/collected** at source in accordance with the provisions of the Income-tax Act, 1961, then, **he cannot impound and retain books of account** inspected by him, by virtue of the restrictions laid down in section 133A(2A) read with the proviso to section 133A(3).

<u>Bright Light Cyber Cafe</u>

Section 133B empowers an income-tax authority **to enter any place of business during the hours at which such place is open for the conduct of business for the purpose of collecting information** which may be useful for the purposes of the Income-tax Act, 1961. The Cyber Cafe is open from 12 noon to 12 midnight for the conduct of business. The Assessing Officer entered the hotel at 11 p.m. which fell within the working hours. The **claim made by the Cyber Café owner** to the effect that the Assessing Officer could not enter the Cyber Cafe after sunset **is not in accordance with law.** Also, in case of section 133B, the prior permission of Commissioner or any other higher authority is not required.

Section 133B(3) provides that the **Assessing Officer** acting under this section **shall, on no account, remove or cause to be removed** from the place wherein he has entered, **any books of account.** In view of this clear prohibition in section 133B(3), the **action of the Assessing Officer in impounding and retaining with him the books of account kept at the Bright Light Cyber Cafe is not valid in law.**

Return Filing and Self-Assessment

Question 10

State with reasons whether return of income is to be filed in the following cases for the Assessment Year 2025-26:

(i) Mr. X, a resident individual, aged 80 years, has a total income of ₹ 2,85,000. He has claimed deduction of ₹ 1,50,000 under section 80C. Long-term capital gains of ₹ 80,000 is not taxable by virtue of the exemption available upto specified threshold under section 112A. Assume that he has not opted for the special provisions under section 115BAC.

Would your answer change if Mr. X has incurred ₹ 1,05,000 towards payment of electricity bills during the year?

(ii) ABC, a partnership firm, has a loss of ₹ 10,000 during the year.

(iii) A registered association, eligible for exemption under section 10(23B), has income from house property of ₹ 6,60,000.

(iv) Mr. Y, aged 45 years, an employee of ABC (P) Ltd, draws a salary of ₹ 5,90,000 and has income from fixed deposits with bank of ₹ 10,000. He has opted for section 115BAC.

Answer

S. No.	Is filing of return required?	Reason
(i)	No	As per the provisions of section 139(1), every person, whose total income without giving effect to the provisions of Chapter VI-A exceeds the maximum amount not chargeable to tax, is required to furnish the return of income for the relevant assessment year on or before the due date. The gross total income of Mr. X before giving effect to deduction of ₹ 1,50,000 under section 80C is ₹ 4,35,000, which is less than the **basic exemption limit of ₹ 5,00,000 applicable** to an individual aged 80 years or more. **Therefore, Mr. X need not furnish his return of income.** **Note** – Yes, the answer would change, since Mr. X has incurred **expenditure of an amount exceeding ₹ 1 lakh towards consumption of electricity.** Hence, **he would have to file his return** on or before the due date u/s 139(1).
(ii)	Yes	As per section 139(1), it is **mandatory for a firm to furnish its return** of income or loss on or before the specified due date. Therefore, M/s ABC has to furnish its return of loss on or before the due date under section 139(1), even if it has incurred a loss.
(iii)	Yes	As per section 139(4C), **every institution** referred to, inter alia, in section 10(23B), **whose total income without giving effect to the provisions of section 10 exceeds the maximum amount not chargeable to tax, is required to furnish the return of income** for the relevant assessment year on or before the due date under section 139(2). In the above case, the registered association has income from house property of

		₹ 6,60,000 before exemption under section 10, which exceeds the basic exemption limit of ₹ 3,00,000. Therefore, it is under an obligation to furnish its return of income.
(iv)	Yes	As per the provisions of section 139(1), every person, whose gross total income exceeds the maximum amount not chargeable to tax, is required to furnish the return of income for the relevant assessment year on or before the due date. Mr. Y's salary income is ₹ 5,15,000 (i.e., ₹ 5,90,000 less standard deduction of ₹ 75,000). The **gross total income of Mr. Y is ₹ 5,25,000** (₹ 5,15,000 + ₹ 10,000) **which exceeds the basic exemption limit of ₹ 3,00,000** applicable to an individual **as per default regime of section 115BAC**. Therefore, **Mr. Y has to furnish his return** of income.

Question 11

Mr. Hari, aged 65 years, is a resident and ordinarily resident in India for the A.Y. 2025-26. He owns a house property in Dubai, which he purchased on 30.4.2015, and he also has a bank account in the Bank of Dubai.

Mr. Hari contends that since his total income of ₹ 2,80,000, comprising of income from house property and bank interest, is less than basic exemption limit, he need not file his return of income.

Discuss the correctness of the above contention of Mr. Hari. Assume that he has not opted for the special provisions under section 115BAC.

Answer

The contention of Mr. Hari is not correct.

Section 139(1) requires every resident other than not ordinarily resident, who at any time during the previous year, holds as a **beneficial owner** or otherwise, **any asset** (including financial interest in any entity) **located outside India or has signing authority in any account located outside India** or is a beneficiary of any asset located outside India, to **file a return of income compulsorily** whether or not he has income chargeable to tax. Mr. Hari has a house property in Dubai and a bank account in the Bank of Dubai. **Therefore, Mr. Hari has to file his return of income mandatorily**, even though his total income of ₹ 2,80,000, comprising solely of income from house property and bank interest, is less than the basic exemption limit of ₹ 3,00,000 applicable to a senior citizen.

Question 12

Smt. Kanti, aged 49 years engaged in the business of growing, curing, roasting and grounding of coffee after mixing chicory had a total income of ₹ 6,00,000 from this business which was her only source of income during the year. She consults you to have an opinion whether she is required to file return of income for the A.Y. 2025-26 as per provisions of section 139(1).

Would your answer change if she had travelled to USA during the year and incurred ₹ 2.20 lakhs for the same?

Answer

The clarification regarding filing of return of income by the coffee growers being individuals covered by Rule 7B of the Income-tax Rules, 1962 is given in Circular No.10/2006 dated 16.10.2006. According to the Circular, an individual deriving income from growing, curing, roasting and grounding of coffee with or without mixing chicory, would not be required to file the return of income if the aggregate of 40% of his or her income from growing, curing, roasting and grounding of coffee with or without mixing chicory and income from all other sources liable to tax in accordance with the provisions of this Act, is equal to or less than the basic exemption limit prescribed in the First Schedule of the Finance Act of the relevant year.

In this case, Smt. Kanti has a total income of ₹ 6,00,000 from this business, which was her only source of income for the year. 40% of her **total income works out to ₹ 2,40,000, which is less than the basic exemption limit of ₹ 3,00,000 (under section 115BAC, being default regime) / ₹ 2,50,000 (if opting for normal provisions)** in respect of an individual assessee. Therefore, **Smt. Kanti is not required to file a return of income** as per the provisions of section 139(1).

If Smt. **Kanti had travelled to USA** during the year and **incurred ₹ 2.20 lakhs on such travel**, she would be **required to mandatorily file a return of income** on or before the due date u/s 139(1), even though her total income does not exceed the basic exemption limit.

Question 13

Keeping in view the provisions of mandatory filing of return of Income, please comment on the following, whether the following persons are required to file their return of income as per provisions of Income-tax Act for A.Y. 2025-26:

(a) Mr. A incurred expenditure of ₹ 2.40 lakhs for his wife for travel to a foreign country. His taxable income is ₹ 2.25 lakhs only.

(b) Total turnover of the business of Mr. B for F.Y. 2024-25 is ₹ 73 lakhs, but profit from the same business is ₹ 2.10 lakhs, He has no other income.

Answer

(a) In the present case, since Mr. A has **incurred expenditure** of ₹ 2.40 lakhs which **exceeds ₹ 2 lakhs for his wife for travel to a foreign country,** he is **required to file return of income** though his total income of ₹ 2.25 lakhs is lower than the basic exemption limit of ₹ 2.50 lakhs.

(b) In this case, since Mr. B's **turnover from business** for the P.Y.2024-25 is ₹ 73 lakhs which **exceeds the threshold limit of ₹ 60 lakhs** specified for mandatory filing of return of income, he **has to file return of his income** though his total income of ₹ 2.10 lakhs is lower than the basic exemption limit of ₹ 2.50 lakhs.

Question 14

Examine whether the following persons are required to file return of income for A.Y.2025-26, giving brief reasons for your answer –

(i) Mr. Albert, aged 31 years, whose turnover from business is ₹ 70 lakhs for the P.Y.2024-25 and whose total income computed as per books of account is ₹ 2 lakhs. This is the first year of his business. He has no other income. He is not claiming any deduction under Chapter VI-A or section 10AA. He does not opt for Section 115BAC.

(ii) Mr. Ashish, aged 42 years, has gross receipts of ₹ 5 lakhs from profession and profits and gains of ₹ 2.50 lakhs (computed) from profession for the P.Y. 2024-25. In addition, he has interest of ₹ 4 lakhs on fixed deposits and ₹ 50,000 from savings bank account. He does not opt for Section 115BAC.

(iii) M/s. ABC & Co., a law firm, whose gross receipts from profession for P.Y.2024-25 is ₹ 9 lakhs.

(iv) XYZ (P) Ltd. which has incurred expenditure of an amount of ₹ 95,000 towards consumption of electricity in the F.Y.2024-25.

(v) Mr. Vallish, aged 58 years, who has deposited ₹ 50 lakhs in his savings bank account with SBI on 28th March, 2025. The said sum was received as a gift from his son, Mr. Rishi, aged 30 years, who is employed in a company. Mr. Vallish used the said sum to purchase a flat for ₹ 30 lakhs on 25th April, 2025 for self-residence. The balance money was transferred to a 1-year fixed deposit on 28th April, 2025. Mr. Vallish does not maintain any other bank account. He is not in receipt of any other source of income other than interest on this fixed deposit. He does not opt for Section 115BAC.

Answer

Requirement of filing return of income

(i) **Yes**, Mr. Albert is required to file his return of income.

As per section 139(1)(b), an individual is required to file his return if his total income, without giving effect to deductions under, inter alia, Chapter VI-A and section 10AA, exceeds the basic exemption limit. In this case, Mr. Albert's total income of ₹ 2,00,000 is lower than the basic exemption limit. However, such person referred to in section 139(1)(b) who is not required to file his return on account of his total income being lower than the basic exemption limit would be required to file return of income if, inter alia, his **turnover in business exceeds ₹ 60 lakhs**. In this case, since Mr. Albert's turnover from business for the P.Y.2024-25 is ₹ 70 lakhs, **he has to file return of his income**.

(ii) **Yes**, Mr. Ashish is required to file his return of income.

Mr. Ashish's total income without giving effect to Chapter VI-A deductions is ₹ 7 lakhs [₹ 2.50 lakhs from profession + ₹ 4 lakhs interest on fixed deposits + ₹ 0.50 lakhs interest on savings bank account], which **exceeds the basic exemption limit**. Hence, **he is required to file his return of income** as per section 139(1)(b).

Note - The threshold limit of ₹ 10 lakhs for gross receipts in profession has to be looked into only in a case where an individual referred to in section 139(1)(b) is not required to file his return of income thereunder i.e., only if Ashish's total income without giving effect to Chapter VI-A deductions is lower than the basic exemption limit.

(iii) **Yes**, M/s. ABC & Co. is required to file its return of income.

As per section 139(1)(a), a **firm is compulsorily required to file its return of income**. The threshold limit of ₹ 10 lakhs for gross receipts in profession is relevant only for a person other than a company or a firm.

(iv) **Yes**, XYZ (P) Ltd. is required to file its return of income.

As per section 139(1)(a), a **company has to mandatorily file its return of income.** The condition of filing of return of income where expenditure towards consumption of electricity exceeds ₹ 1 lakh applies to a person other than a company or a firm.

(v) Yes, Mr. Vallish is required to file his return of income.

Gift of ₹ 50 lakhs received from son is not taxable under section 56(2)(x) in the hands of Mr. Vallish, since his son is his relative, and gifts from a relative are excluded from the applicability of section 56(2)(x). The **only income of Mr. Vallish would be interest on savings account** for a period of 4 days from 28th March, 2025 to 31st March, 2025 on ₹ 50 lakhs, which would be lower than the basic exemption limit. As per section 139(1)(b), an individual is required to file his return if his total income exceeds the basic exemption limit. In this case, **Mr. Vallish's total income is lower than basic exemption limit.**

However, such person referred to in section 139(1)(b) who is not required to file his return on account of his total income being lower than the basic exemption limit would be required to file return of income if, inter alia, the **deposit in his savings account is ₹ 50 lakhs or more** during the previous year.

Since a deposit of ₹ 50 lakhs has been made in the savings account of Mr. Vallish in the P.Y.2024-25, he **is required to file his return of income.**

Question 15

Mr. Ravi Prakash, a resident Indian aged 52 years, gifted a sum of ₹ 30 lakhs to his wife Mrs. Sudha on the occasion of her 50th birthday. Out of the said sum, Mrs. Sudha purchased a car for ₹ 29,52,000 inclusive of RTO charges of ₹ 2,15,000, insurance of ₹ 51,575, extended warranty of ₹ 25,255 and accessories charges of ₹ 35,460 during the P.Y. 2024-25. These charges were shown separately in the invoice. Mrs. Sudha's furnished her Aadhaar No. to the dealer. She is a housewife and does not have any income except rental income of ₹ 25,000 p.m. in respect of a house property gifted to her by her father.

Mr. Ravi Prakash is of the opinion that his wife is not required to furnish return of income, since her total income does not exceed the basic exemption limit. Examine.

Answer

Mrs. Sudha's income from house property would be ₹ 2,10,000 (₹ 3,00,000 less 30% of net annual value). Since this is her only source of income, **her gross total income/total income would be ₹ 2,10,000, which is lower than the basic exemption limit. Hence, she is not required file her return of income** as per section 139(1)(b), **since her gross total income/total income does not exceed the basic exemption limit.**

However, clause (iv) to seventh proviso of section 139(1) provides that a person (other than a company or a firm) who is not required to furnish a return u/s 139(1) has to furnish return on or before the due date if he/she fulfills such other conditions as may be prescribed under Rule 12AB.

Rule 12AB, inter alia, prescribes that any person other than a company or a firm, who is not required to furnish a return under section 139(1), **has to file income-tax return** in the prescribed form and manner on or before the due date **if, the aggregate of tax deducted at source and tax collected at source during the previous year, in case of such person, is ₹ 25,000 or more.**

Accordingly, it has to be examined whether, in Mrs. Sudha's case, the requirement to file return arises due to TDS/TCS, in her case, exceeding ₹ 25,000 in the year.

As per section 206C(1F), every person, being a seller, who receives any amount as consideration for sale of a motor vehicle of the value exceeding ₹ 10 lakhs, has to collect tax from the buyer @1% of the sale consideration.

Accordingly, **dealer of the car is required to collect tax at source of ₹ 26,247 @1% on ex-showroom price** i.e., ₹ 26,24,710 [₹ 29,52,000 – ₹ 2,15,000 – ₹ 51,575 – ₹ 25,255 – ₹ 35,460] from Mrs. Sudha, being the buyer of the car.

Hence, as per the seventh proviso to section 139(1) read with Rule 12AB, **Mrs. Sudha is required to mandatorily file her return of income, even though her gross total income/total income does not exceed the basic exemption limit, since tax collected at source during the year, in her case is ₹ 26,247 which exceeds the threshold of ₹ 25,000.**

Question 16

State whether the following assessees have to file return of income and if so, the due date for the assessment year 2025-26:

(i) A registered trade union, eligible for exemption under section 10(24), having income from let out property of ₹ 1,00,000.

(ii) A public trust hospital having an aggregate annual receipt of ₹ 505 lacs and availing exemption of ₹ 3,10,000 under section 11 with total income of ₹ 2,40,000.

Answer

(i) A registered trade union is having income from house property, which is exempt u/s 10(24).

Section 139(4C) mandates **filing of return only when the total income exceeds the maximum amount which is not chargeable to tax without giving effect to the provisions of section 10.** In this case, even without giving effect to section 10(24), the total income of the registered trade union is **below basic exemption limit and therefore, there is no mandatory requirement to file the return of income.**

(ii) Since **total income without** giving effect to **exemption** u/s 11 is ₹ 5,50,000, which **exceeds basic exemption limit, trust has to file its return of income** by 31st October, 2025.

Question 17

An assessee sustained a loss under the head "Income from house property" in the previous year relevant to the assessment year 2025-26, which could not be set off against income from any other head in that assessment year. The assessee did not furnish the return of loss within the time allowed under section 139(1) in respect of the relevant assessment year. However, the assessee filed the return within the time allowed under section 139(4). Can the assessee carry forward such loss for set off against income from house property of the next assessment year?

Answer

Section 139(3) stipulates that an assessee claiming carry forward of loss under the heads "Profits and gains of business or profession" or "Capital gains" should furnish the return of loss within the time stipulated under section 139(1). There is no reference to loss under the head "Income from house property" in section 139(3). The assessee, in the instant case, has filed the return showing loss from property within the time prescribed under section 139(4). The **assessee is, therefore, entitled to carry forward such loss for set off against the income from house property of the subsequent assessment year.**

Question 18

The Assessing Officer issued a notice under section 142(1) on the assessee on 24th February, 2026 calling upon him to file return of income for Assessment Year 2025-26. In response to the said notice, the assessee furnished a return of loss and claimed carry forward of business loss and unabsorbed depreciation. State whether the assessee would be entitled to carry forward as claimed in the return.

Answer

As per the provisions of section 139(3), **any person who has sustained loss under the head 'Profit and gains of business or profession' is allowed to carry forward such a loss** under section 72(1) or section 73(2), **only if he has filed the return of loss within the time allowed** under section 139(1). Also, the provisions of section 80 specify that a loss which has not been determined as per the return filed under section 139(3) shall not be allowed to be carried forward and set-off under, inter alia, section 72(1) (relating to business loss) or section 73(2) (losses in speculation business) or section 74(1) (loss under the head "Capital gains") or section 74A(3) (loss from the activity or owning and maintaining race horses) or section 73A (loss relating to a "specified business"). **However, there is no such condition for carry forward of loss from house property** under section 71B **or unabsorbed depreciation under section 32.**

In **the given case**, the assessee has filed its return of loss in response to notice under section 142(1). As per provisions stated above, **return filed by the assessee in response to notice under section 142(1) is a belated return and therefore, benefit of carry forward of business loss** under section 72(1) or section 73(2) or section 73A **shall not be available.** The assessee shall, however be **entitled to carry forward the unabsorbed depreciation** as per provisions of section 32(2).

Question 19

Discuss the correctness or otherwise of following proposition in context of the Income-tax Act, 1961:

A fresh claim before the Assessing Officer can be made only by filing a revised return and not otherwise.

Answer

This proposition is correct. A **return of income** filed within the due date under section 139(1) or a belated return filed under section 139(4) **may be revised by filing a revised return under section 139(5) where the assessee finds any omission or wrong statement in the original return** subject to satisfying other conditions. There is no provision in the Income-tax Act, 1961, to make changes or modification in the return of income by filing a letter before the Assessing Officer. The revised return can be filed at any time before three months prior to the end of relevant assessment year or before completion of assessment, whichever is earlier. In a case where a return of income has been filed within the due date under section 139(1) or a belated return is filed under section 139(4), the only option available to the assessee to make an amendment to such return is by way of filing a revised return under section 139(5). Therefore, **a fresh claim can be made before the Assessing Officer only by filing a revised return and not otherwise.** The Supreme Court, in Goetze (India) Ltd. vs. CIT (2006) 284 ITR 323, has held that **there is no provision in the Income-tax Act, 1961 to allow an amendment in the return of income filed except by way of filing a revised return.**

Question 20

Ram, an individual, filed his return of income for the assessment year 2025-26 on 15.6.2025. He later discovered that he had not claimed deduction under section 80C in the said return though he had opted for the normal provisions of the Act. He claimed the said deduction through a letter addressed to the Assessing Officer. The Assessing Officer completed the assessment without allowing the deduction claimed by Ram. Is the Assessing Officer justified in doing so?

Answer

The Supreme Court has, in Goetze (India) Ltd. v. CIT (2006) 284 ITR 323, ruled that the **assessing authority has no power to entertain a claim for deduction made after filing of the return of income otherwise than by way of a revised return.** In the instant case, Ram has claimed the deduction under section 80C, which he omitted to claim in the original return of income, through a letter addressed to the Assessing Officer and not by filing a revised return under section 139(5). In view of the decision of the Supreme Court cited above, the **Assessing Officer was justified** in completing the assessment without allowing the deduction under section 80C.

Question 21

What will be the consequences when Mr. Raghav made payment of ₹ 75,000 in cash to a travel agent for his travel to Saudi Arabia to be undertaken for business purposes by quoting intentionally the wrong PAN? Would your answer be different if such cash payment was made for his travel to Nepal, instead of Saudi Arabia?

Answer

If a person who is **required to quote his permanent account number in any document** referred to in section 139A(5)(c), **quotes a number which is false,** and which he either knows or believes to be false or does not believe to be true, the Assessing Officer may direct that such a person shall pay by way of **penalty** a sum of **₹ 10,000** under section 272B(2).

In the given case, if Mr. Raghav travels to Saudi Arabia and pays his travel agent cash in excess of ₹ 50,000, such a transaction is covered by section 139A(5)(c) read with Rule 114B and therefore, Mr. Raghav has to quote his PAN. **Since Mr. Raghav has misquoted his PAN, penalty** under section 272B(2) is **leviable.** Mr. Raghav has to be given an opportunity of being heard in the matter. If Mr. Raghav is not able to prove that there was a reasonable cause for the said failure, penalty under section 272B(2) would be imposable.

The **answer** would remain the **same even if such cash payment was made for his travel to Nepal.**

Question 22

X, an individual, has got his books of account for the year ending 31.3.2025 audited under section 44AB. His total income for the assessment year 2025-26 is ₹ 5,20,000. He desires to know if he can furnish his return of income through a Tax Return Preparer.

Answer

Section 139B provides for submission of return of income through Tax Return Preparers. It empowers the Central Board of Direct Taxes (CBDT) to frame a scheme for the purpose of **enabling any specified class** or classes **of persons to prepare and furnish their returns of income through Tax Return Preparers.** Specified class or classes of persons have been **defined to mean any person, other than a company or a person whose accounts are required to be audited** under section 44AB or under any other existing law, who is required to furnish a return of income under the Act. Thus, companies and persons whose accounts are liable for tax audit under section 44AB do not fall within the definition of 'specified class or classes of persons' and consequently, cannot furnish their returns of income through Tax Return Preparers. In the instant case, the books of account of X have been audited under section 44AB. As such, **he cannot furnish his return of income through a Tax Return Preparer.**

Question 23

Mr. X would like to furnish his updated return for the A.Y. 2025-26. In case he furnished his updated return of income, he would be liable to pay ₹ 2,50,000 towards tax and ₹ 35,000 towards interest after adjusting tax and interest paid at the time filing earlier return. You are required to examine whether Mr. X can furnish updated return

(i) as on 31.3.2027

(ii) as on 28.2.2028

(iii) as on 31.5.2028

If yes, compute the amount of additional income-tax payable by Mr. X at the time of filing his updated return.

Would your answer be different with respect to filing of updated return in case of (ii) above, where he has received a notice under section 147 for the said A.Y. 2025-26 on 23.7.2027

Answer

Mr. X may furnish an updated return of his income for A.Y. 2025-26 **at any time within 24 months from the end of the relevant assessment year** i.e., 31.3.2028.

Accordingly, Mr. X can furnish updated return as on 31.3.2027 and on 28.2.2028. However, he cannot furnish such return as on 31.5.2028, since such date falls after 31.3.2028.

Mr. X would be **liable to pay additional income-tax**

- **@25% of tax and interest payable**, if updated return is furnished after the expiry of the time limit available under section 139(4) or 139(5) i.e., 31st December 2025 and before the expiry of 12 months from end of relevant assessment year i.e., 31.3.2027
- **@50% of tax and interest payable**, if updated return is furnished after the expiry of 12 months from end of relevant assessment year i.e., 31.3.2027 and before the expiry of 24 months from end of relevant assessment year i.e., 31.3.2028.

Accordingly, Mr. X is liable to pay additional income-tax in case he furnished his updated return as on

(i) 1.3.2027 - **₹ 71,250** [25% of 2,85,000, being tax of ₹ 2,50,000 plus interest of ₹ 35,000]

(ii) 28.2.2028 of **₹ 1,42,500** [50% of 2,85,000, being tax of ₹ 2,50,000 plus interest of ₹ 35,000]

He cannot furnish updated return where he has received notice u/s 147, since proceeding for income escaping assessment for the A.Y. 2025-26 are pending.

Question 24

Mr. Ram, who gets his accounts audited under section 44AB filed his original return of income under section 139 for A.Y.2024-25 on 28.12.2024 declaring income of ₹ 12 lakhs and for A.Y.2025-26 on 31.10.2025 declaring loss of ₹ 5 lakhs.

(i) He wants to file an updated return of income under section 139(8A) for A.Y.2025-26 on 30.11.2026 declaring total income of ₹ 7 lakhs. Can he do so? Examine.

(ii) Based on your answer to (i), what would be the time limit for completion of assessment under section 143(3) in respect of A.Y.2024-25 and A.Y.2025-26?

Answer

(i) **Yes, he can do so.** If a person has a loss in any previous year and has furnished a return of loss under section 139(3) on or before the due date of filing return of income u/s 139(1), he shall be allowed to furnish an updated return, if such updated return is a return of income. Accordingly, in this case, since the original return of Mr. Ram was filed on the due date u/s 139(1) i.e., on 31.10.2025, he **can file an updated return within 2 years from the end of A.Y.2025-26**, i.e., on or before 31.3.2028. Accordingly, he can file an updated return of income on 30.11.2026 declaring total income of ₹ 7 lakhs, **after paying tax due on such total income along with interest** under section 234B and section 234C **and additional income-tax at 25%** of aggregate of tax and interest payable (since the updated return is filed before 31.3.2027, i.e., before 12 months from the end of A.Y.2025-26).

(ii) The **time limit for completion of assessment for A.Y.2024-25** would be 31.3.2026, **being 12 months from the end of the assessment year**.

The **time limit for completion of assessment for A.Y.2025-26** would be 31.3.2028, i.e., **12 months from the end of F.Y.2026-27**, being the financial year in which the updated return was furnished.

Assessment by Department

Question 25

The Assessing Officer within the powers vested in him under section 142(2A), while examining the accounts of PNF Ltd., had ordered to get the same audited. The company challenges this order on the ground "that the opportunity was not provided to them by the Assessing Officer prior to passing of such an order". Decide the correctness of the action of the Assessing Officer.

Answer

As per the proviso to section 142(2A), the **Assessing Officer shall not direct** the assessee to get the accounts audited **unless the assessee has been given a reasonable opportunity of being heard.**

Therefore, in this case, the order of the Assessing Officer is not valid, since the assessee was not given an opportunity of being heard prior to passing of such order.

Question 26

Mr. John, was directed to carry out a special audit of his accounts under section 142(2A) on 1.8.2024, without giving him an opportunity of being heard.

Answer the following questions in this regard:

(i) Can the assessee contend that since reasonable opportunity of being heard is not provided to him by the Assessing Officer, such notice requiring the special audit of accounts is not valid?

(ii) If the assessee decides to get his books of account audited under section 142(2A), what will be the due date by which he has to submit the audit report (including the extended time, if any, allowed to him)?

(iii) If the assessee intentionally does not comply with the directions. How much penalty can be levied on him?

(iv) For failure to get the books of account audited under section 142(2A), can prosecution proceedings be launched against the assessee? If yes, what will be the quantum of punishment for such default?

Answer

(i) As per the proviso to section 142(2A), Assessing Officer shall not direct the assessee to get the accounts audited unless assessee has been given a **reasonable opportunity of being heard.**

Accordingly, **contention of the assessee** that notice requiring special audit is not valid since reasonable opportunity of being heard has not been provided to him **is correct.**

(ii) The maximum period (including extended time, if any, allowed) within which the assessee has to submit his audit report is 180 days from 1.8.2024, being the date on which direction to carry out a special audit of accounts under section 142(2A) is received by the assessee. Accordingly, in this case, the **assessee has to submit his audit report by 27.1.2025.**

(iii) Penalty of ₹ 10,000 is leviable under section 272A(1)(d) for failure to comply with a direction issued under section 142(2A).

(iv) If the assessee willfully fails to comply with a direction issued to him under section 142(2A), he shall be punishable with **rigorous imprisonment for a term which may extend to one year and with fine** under section 276D.

Question 27

State with brief reason, whether the following statements are true or false:

(i) Expenses of special audit conducted under section 142 shall be paid by Central Government.

(ii) Even without rejecting the books of account, if any, maintained by the assessee, the Assessing Officer can make a reference to the Valuation Officer under section 142A for estimating the cost of construction of an immovable property.

(iii) Where a notice under section 143(2) is issued to the assessee, it is not required to process under section 143(1), the return of income filed by the assessee.

Answer

(i) The statement is true

Where the direction for special audit is issued by the Assessing Officer, the expenses of, and incidental to, such special audit, shall be determined by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in accordance with the prescribed guidelines. The expenses so determined shall be paid by the Central Government.

(ii) The statement is true

Section 142A(2) provides that the Assessing Officer may make a reference to the Valuation Officer whether or not he is satisfied about the correctness or completeness of the accounts of the assessee. Thus, even without rejecting the books of accounts maintained by the assessee, the Assessing Officer may make reference to the Valuation Officer under section 142A.

(iii) The statement is false

Processing of a return under section 143(1) is necessary even where a notice has been issued to the assessee under section 143(2).

Question 28

Examine whether the Assessing Officer has the power to make any adjustment to income disclosed by the assessee in the return of income in course of processing the return under section 143(1)?

Answer

The procedure to be followed for summary assessment is contained in section 143(1). As per section 143(1), the total income or loss of an assessee shall be computed after making the following adjustments to the returned income:

(i) any **arithmetical error** in the return; or

(ii) an **incorrect claim**, if such incorrect claim is apparent from any information in the return.

(iii) **disallowance of loss** claimed, if return is filed beyond due date u/s 139(1)

(iv) **disallowance of expenditure or increase in income indicated in the audit report** but not taken into account in computing the total income in the return

(v) **disallowance of deduction claimed under section 10AA or** under any of the provisions of **Chapter VI-A under the heading "C.**—Deductions in respect of certain incomes", if return is filed beyond due date u/s 139(1)

No such adjustment shall be made unless as intimation is given to the assessee of such adjustment either in writing or electronic mode. Further, Assessing Officer shall make any adjustment after considering the response received from the assessee, if any. Where no response is received with 30 days of the issue of such notice, the above adjustment can be made.

For the purpose of section 143(1), "an **incorrect claim** apparent from any information in the return" means such claim on the basis of an entry, in the return of income:

(i) of an item, which is **inconsistent with another entry** of same or some other item in such return;

(ii) in respect of which, the **information required to be furnished** under the Income-tax Act, 1961 to substantiate such entry, **has not been so furnished;**

(iii) in respect of a deduction, where **such deduction exceeds specified statutory limit** which may be expressed as monetary amount or percentage or ratio or fraction.

Question 29

Teachwell Education is a trust registered under section 12AB which runs various educational institutions. During the course of assessment under section 143(3), the Assessing Officer finds that the trust has carried out its activities in contravention of the section under which it was registered for exemption. Hence, the Assessing Officer wants to pass an order without giving exemption under section 11, which the assessee objects. You are required to examine the following with respect to the provisions of Income-tax Act, 1961.

(a) Whether the Assessing Officer can pass an order without giving exemption under section 11?

(b) Can the Assessing Officer get any additional time limit in completing this assessment?

Answer

(a) As per second proviso to section 143(3), if any educational institution referred to in section 12AB has committed any **"specified violation"** as mentioned under section 12AB, the **Assessing Officer shall send a reference to** the Principal Commissioner or **Commissioner** to withdraw approval or registration, as the case may be. Specified violation includes a case where income of institution has been applied other than for objects for which it is established.

No order making an assessment of the total income or loss of such educational institution shall be made by AO without giving effect to the order passed by the Principal Commissioner or Commissioner either cancelling the registration or refusing to cancel the registration of such educational institution.

Therefore, in the aforesaid case, the **Assessing Officer can pass an assessment order without giving exemption under section 11 to Teachwell Education**, which is an educational institution registered under section 12AB, **if he has referred the matter to**

Principal Commissioner or **Commissioner and they have subsequently cancelled the registration** of such educational institution under section 12AB.

(b) As per Explanation 1 to section 153, the **period commencing from the date on which the Assessing Officer makes a reference** to the Principal Commissioner or Commissioner under section 143(3) **and ending with the date on which copy of the order** either cancelling the registration or refusing to cancel the registration under section 12AB is received by Assessing Officer, shall be **excluded for computing period of limitation** for completing the assessment.

Therefore, the Assessing Officer will get the above mentioned additional time for completing the assessment of Teachwell Education.

Question 30

The Assessing Officer has the power to make an assessment to the best of his judgment, in certain situations. What are they?

Answer

Under section 144, the Assessing Officer, after taking into account all relevant material which he has gathered, is under an obligation to make an assessment of the total income or loss to the **best of his judgment** and determine the sum payable by the assessee **in the following cases** –

(1) Where any person **fails to make the return** under section 139(1) and has not filed a belated return under section 139(4) or a revised return under section 139(5) or an updated return under section 139(8A).

(2) Where any person **fails to comply with all the terms of a notice issued under section 142(1) or** fails to comply with a direction issued under section **142(2A)** for getting the accounts audited or valuation of inventory.

(3) Where any person, having made a return, **fails to comply with** all the terms of a **notice issued under section 143(2).**

Further, section 145(3) of the Income-tax Act, 1961 permits the Assessing Officer to make an assessment in the manner provided in section 144:

(i) where the **Assessing Officer is not satisfied** about the **correctness or completeness of the accounts** of the assessee; or

(ii) where the **method of accounting** under section 145(1) has **not been regularly followed** by the assessee;

(iii) where the **income has not been computed in accordance with "Income Computation and Disclosure Standards"** notified by the Central Government under section 145(2).

Faceless assessment as per section 144B shall be applicable to best judgement assessment under section 144 i.e, the assessment proceedings shall be conducted electronically in e-Proceeding facility through assessee's registered account in designated portal. The faceless assessment shall be made in respect of such territorial area, or persons or class of persons, or incomes or class of incomes, or cases or class of cases, as may be specified by the Board.

Question 31

For facilitating expeditious resolution of disputes relating to international transactions involving transfer pricing and foreign companies, the Income-tax Act, 1961, has provided for "alternate dispute resolution mechanism". In this context, you are required to answer the following:

(i) What meanings have been assigned to "dispute resolution panel" and the "eligible assessee" under this mechanism?

(ii) When can a grievance for resolution be filed by an assessee?

(iii) What evidences are being considered by the panel to redress the grievance of the assessee?

Answer

(i) The term **"Dispute Resolution Panel"** has been defined to mean a collegium **comprising of three Principal Commissioners or Commissioners of Income-tax** constituted by the Board for this purpose.

The term **"Eligible Assessee" means any person in whose case the variation** referred to in section 144C(1) arises as a consequence of the order of the **Transfer Pricing Officer** passed under section 92CA(3) **and any non-resident** not being a company, **or any foreign company.**

(ii) In case of an assessment of the eligible assessee, the **Assessing Officer shall forward a draft** of the proposed order of assessment. The **eligible assessee shall file his objections to such variation within 30 days** of receipt of such order, **with the Dispute Resolution Panel** and with the Assessing Officer.

(iii) The Dispute Resolution Panel shall, in a case where any objections are received, take into consideration:

(a) the **draft order**

(b) the **objections** filed by the assessee

(c) the **evidence** furnished by the assessee

(d) the **report**, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority

(e) the records relating to the draft order

(f) the evidence collected by, or caused to be collected by it

(g) the **result of any enquiry** made by or caused to the made by it.

Question 32

Mr. Mahesh received the draft order from the Assessing Officer as per section 144C of the Income-tax Act, 1961 due to variations determined by the Transfer Pricing Officer in the arm's length price. But Mr. Mahesh did not prefer to file the objection against the draft order before the Dispute Resolution Panel; Instead, he preferred to file appeal before the CIT (Appeals) under section 246A against the final order received from the Assessing Officer.

You are required to advise Mr. Mahesh, whether his contentions are tenable? Discuss the issue with reference to provisions of section 144C of the Income-tax Act, 1961.

Answer

Section 144C requires the eligible assessee, Mr. Mahesh, to **file his objections with the Dispute Resolution Panel (DRP)** and the Assessing Officer **within 30 days of the receipt by him of the draft assessment order.**

If he fails to do so, the Assessing Officer will proceed to complete the assessment on the basis of the draft order.

The CBDT has clarified that the **assessee has a choice whether to file an objection before the DRP against the draft assessment order or not to exercise this option and file an appeal later before CIT (Appeals) against the final assessment order passed by the Assessing Officer.**

Therefore, Mr Mahesh's contention to file an appeal before Commissioner (Appeals) against the final assessment order instead of filing objections before the DRP against the draft assessment order **is tenable in law.**

Rectification of Mistake (Section 154)

Question 33

Mr. Surajit e-filed his Income-tax Return and declared a total income of ₹ 11,75,000. Total income includes interest from Public Provident Fund (PPF) ₹ 95,530 and long-term capital gains on agricultural land exempt under section 10(37). Both these incomes were disclosed in the schedule of exempt income.

Mr. Surajit also found that by mistake he failed to claim the current year business loss in the Income-tax Return amounting to ₹ 4,50,000 which he is entitled to claim.

In due course of time, the above Income-tax Return got processed under section 143(1) and both the above exemptions for Interest on Public Provident Fund and long-term capital gains on agricultural land were denied. Intimation was served to Mr. Surajit and a demand of tax was raised.

For all the above mistakes in the return he filed a revised return under section 139(5) but time limit for e-verification of revised return had lapsed and the same became invalid.

Assessee filed for rectification under section 154 which was also rejected by the Assessing Officer. Is the Assessing Officer bound to accept the request of Mr. Surajit?

Answer

Issue Involved: The issue under consideration is whether a rectification application before the Assessing Officer under section 154 can be filed to rectify a mistake

- for denial of exemption in respect of interest on PPF and Long-term Capital Gains on agricultural land u/s 10(37) while processing return u/s 143(1) which was disclosed by the assessee in the Schedule of exempt income of ITR and
- to claim a business loss which the assessee failed to claim in the return file d by him.

Provisions Applicable: As per **section 154 with a view to rectifying any mistake apparent from the record an income-tax authority may inter alia amend any order passed by it** under the provisions of this Act **or amend any intimation** or deemed intimation **under section 143(1).**

Analysis and Conclusion: The jurisdiction of any authority under the Act to make an order under section 154 depends upon the existence of a mistake apparent on the face of the record. As per section 154, an income-tax authority can rectify mistake which is committed in the intimation passed under section 143(1) or an order passed under the Act.

In the present case, denial of exemption while processing the return under section 143(1) in respect of interest from Public Provident Fund (PPF) and LTCG on agricultural land exempt under section 10(37) **are mistakes apparent from record.**

However, mistake to claim current year business loss in the return of income cannot not be said to be mistake apparent from record, since current year business loss not forming part of intimation as Mr. Surajit failed to claim the business loss in the ITR filed by him.

Moreover, the assessing authority has no power to entertain a claim for deduction made after filing return of income otherwise than by way of a revised return.

Accordingly, the Assessing Officer is bound to accept the request of Mr. Surajit for rectification only in respect of exemption of interest on PPF and LTCG under section 10(37) and not in respect of claim for business loss.

Question 34

The Assessing Officer passed an assessment order u/s 143(3) on 20.11.2021 in which the assessee committed mistake of reducing depreciation in computation of Income instead of adding to income resulting in double deduction of depreciation. The AO did not correct the said mistake in his order.

The assessee went up in appeal on other issues to the CIT(A) for the same Assessment year, who decided the appeal on 28.6.2024. The AO gave effect to the CIT(A)'s order vide order dated 23.7.2024. The AO thereafter passed an order u/s 154 dated 26.4.2025 in which he rectified the mistake of double deduction of depreciation committed in the order dated 20.11.2021.

Please discuss whether the time limit of 4 years as per section 154(7) would apply from the date of original assessment order or the order of the Appellate Authority?

Answer

Issue Involved: The issue under consideration is whether the time limit of 4 years as per section 154(7) would apply from date of original assessment order or the order of the Appellate Authority.

Provisions Applicable: As per section 154(7), no amendment under section 154 shall be made after expiry of **four years from end of financial year** in which order sought to be amended was passed.

Analysis and Conclusion: Once an appeal against the order passed by an authority is preferred and is decided by the appellate authority, the **order of the Assessing Officer merges with the order of the appellate authority but limited to the subject matter of appeal.**

In the present case, the final order passed by the appellate authority was on other issues.

Thus, the period of limitation of **4 years** for the purpose of section 154(7) has to be **counted from the date of the original order of the Assessing Officer on matters other than the matter decided by the Appellate Authority.**

Notice of AO Deemed to be Valid in Certain Cases (Section 292BB)

Question 35

Tai Ltd. filed its return of income for assessment year 2025-26 on 26th September, 2025. The return is selected for regular assessment under section 143(3) for which notice under section 143(2) is **served** on the company on 3rd July, 2026. The company responded to the notice under section 143(2). Examine whether the service of the notice is within time and if not, whether the assessment order can be challenged by the assessee.

Answer

The time limit for service of notice under section 143(2) is three months from the end of the financial year in which the return of income was furnished by the assessee. The return of income for assessment year 2025-26 was filed by the assessee on 26th September, 2025. Therefore, the notice under section 143(2) **has to be served by 30th June, 2026.** However, notice was served on the assessee only on 3rd July, 2026. **Hence, notice issued under section 143(2) is time-barred.**

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

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

Question 36

Ms. Maya, a resident individual, engaged in the jewellery making, filed her return of income showing income of ₹ 19,80,000. The Assessing Officer completed the assessment under section 143(3) as the assessee participated in the assessment. The Assessing Officer disallowed a sum of ₹ 3,69,000 as unexplained cash. The assessee claims that the assessment is void as notice under section 143(2) was **not served to the assessee on time.** You are required to judge the validity of assessee's claim.

Answer

Section 292BB provides that **where the assessee has participated in the proceedings, any notice which is required to be served upon him shall be deemed to have been duly served and the assessee would be precluded from taking any objection that the notice was -**

(a) **not served upon him; or**

(b) **not served upon him in time; or**

(c) **served upon him in an improper manner.**

However, such deeming provision **would not apply where the assessee has raised an objection** (regarding non-service of notice or non-service of notice in time or improper service of notice) **before the completion of such assessment or reassessment.**

In the present case, notice was not served on time upon Ms. Maya under section 143(2) but Ms. Maya participated in the proceedings and assessment was completed u/s 143(3). Since Ms. Maya has not raised the objection regarding non-service of notice before the completion of assessment u/s 143(3), it would be deemed that the notice under section 143(2) has been duly served upon her in time.

Therefore, the contention of Ms. Maya is not valid and the assessment is valid

Question 37

Is **issue of notice** under section 143(2) mandatory for making a regular assessment under section 143(3)? Can failure on the part of the Assessing Officer to issue notice under section 143(2) be treated as a defect curable under section 292BB, if the assessee participates in assessment proceedings? Discuss, with the aid of a recent Supreme Court ruling.

Answer

Issue of notice under section 143(2) is mandatory for making a regular assessment under section 143(3). Section 292BB is a deeming provision that seeks to cure defects in any notice issued under any provision of the Income-tax Act, 1961, if the assessee has participated in the proceedings. **Section 292BB provides that where the assessee has participated in the proceedings, any notice which is required to be served upon him shall be deemed to have been duly served and the assessee would be precluded from taking any objection that the notice was (a) not served upon him; or (b) not served upon him in time; or (c) served upon him in an improper manner.**

The issue as to whether the Assessing Officer's omission to issue notice under section 143(2) is a defect curable under section 292BB if the assessee participates in the assessment proceedings came up before the Supreme Court in CIT v. Laxman Das Khandelwal (2019) 417 ITR 325.

The Supreme Court observed that the law on the point as regards applicability of the requirement of issue of notice under section 143(2) is quite clear. According to section 292BB, if the assessee had participated in the proceedings, by way of legal fiction, notice issued would be deemed to be valid even if there be infractions as detailed in the said section. The scope of the provision is to make service of notice having certain infirmities to be proper and valid if there was requisite participation on the part of the assessee. It is, however, to be noted that the section does not save complete absence of issue of notice. **For section 292BB to apply, the notice must have emanated from the Department.** It is only the infirmities in the manner of service of notice that the section seeks to cure. The section is not intended to cure complete absence of notice itself.

The Supreme Court, accordingly, held that **non-issuance of notice under section 143(2) is not a curable defect u/s 292BB inspite of participation by the assessee in assessment proceedings.**

Question 38

The assessment of R & Sons HUF was completed u/s 143(3) of the Income-tax Act 1961 with an addition of income of ₹ 7 Lakh to the returned income. The assessee contends that the order of the assessment is bad in law as **no notice was issued** u/s 143(2) even though the assessee had participated in the assessment proceedings. The Assessing Officer, relying on section 292BB, contends that when assessee has participated in assessment proceedings, now he cannot raise any objection on the assessment order.

Examine the validity of the contentions of both and give your opinion on who is correct.

Answer

Section 292BB provides that **where the assessee has participated in the proceedings, any notice which is required to be served upon him shall be deemed to have been duly served and the assessee would be precluded from taking any objection that the notice was -**

(a) **not served upon him; or**

(b) **not served upon him in time; or**

(c) **served upon him in an improper manner.**

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

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

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

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

CHAPTER - 12
Appeals and Revision

Appeal before CIT(A)

Question 1

Examine the circumstances where the appellant shall be entitled to produce additional evidence, oral or documentary, before the Commissioner of Income-tax (Appeals) other than the evidence produced during the proceedings before the Assessing Officer.

Answer

As per Rule 46A(1) of the Income-tax Rules 1962, **an appellant shall be entitled to produce before the Commissioner (Appeals)**, evidence, either oral or documentary, other than evidence produced by him during course of proceedings before Assessing Officer, **only in following circumstances -**

(a) where the **Assessing Officer refused to admit evidence** which ought to have admitted; or

(b) where the **appellant was prevented by sufficient cause from producing the evidence** which he was **called upon** to produce by the Assessing Officer; or

(c) where the appellant was **prevented by sufficient cause from producing** before the Assessing Officer **any evidence which is relevant** to any ground of appeal; or

(d) where the **Assessing Officer has made the order appealed against without giving sufficient opportunity to appellant to adduce evidence** relevant to any ground of appeal.

Further, no evidence shall be admitted unless the Commissioner (Appeals) records in writing the reasons for its admission.

Question 2

"SVS Propcon" did not make a claim of ₹ 20 lacs in the return of income filed for A.Y. 2025-26 which was disallowed in the previous assessment year under section 43B. However, the said claim was also not considered by the Assessing Officer during assessment proceedings on the ground that no revised return was filed. Can the assessee now make such claim before the appellate authority?

Answer

Yes, **the assessee is entitled to raise additional claims before the appellate authorities.**

The **restriction** that an additional claim has to be made **by filing a revised return applies only in respect of a claim made before the Assessing Officer.** An assessee cannot make a claim before the Assessing Officer otherwise than by filing a revised return.

However, **this restriction does not apply to an additional claim made before an appellate authority.** The appellate authorities have jurisdiction to permit additional claims before them, though, the exercise of such jurisdiction is entirely the authorities' discretion. It was so held by the Bombay High Court in CIT v. Pruthvi Brokers & Shareholders (2012) 349 ITR 336.

Thus, additional claim can be raised before Appellate Authority even if no revised return is filed.

Appeal before ITAT and High Court

Question 3

Does the Income-tax Appellate Tribunal have the following powers?

(i) Power to allow the assessee to urge any ground of appeal which was not raised by him before the Commissioner (Appeals);

(ii) Power to recall its own order solely for rectification of mistake apparent from the records.

Answer

(i) The Income-tax Appellate Tribunal has the power to entertain question raised for the first time. The Tribunal is not confined only to the issues arising out of the appeal before the Commissioner (Appeals). It has the **power to allow the assessee to urge any ground not raised before the Commissioner (Appeals).** However, the relevant facts in respect of such ground should be on record. The decision of the Supreme Court in the case of National Thermal Power Company Limited vs. CIT (1998) 229 ITR 383 (SC) supports this view.

(ii) The Delhi High Court, in Lachman Dass Bhatia Hingwala (P) Ltd. v. ACIT (2011) 330 ITR 243 (Delhi)(FB) observed that the justification of an order passed by the Tribunal recalling its own order is required to be tested on the basis of the law laid down by the Apex Court in Honda Siel Power Products Ltd. v. CIT (2007) 295 ITR 466, dealing with the Tribunal's power under section 254(2) to recall its order where prejudice has resulted to a party due to an apparent omission, mistake or error committed by the Tribunal while passing the order. Such recalling of order for correcting an apparent mistake committed by the Tribunal has nothing to do with the doctrine or concept of inherent power of review. It is a well settled provision of law that the Tribunal has no inherent power to review its own judgment or order on merits or reappreciate the correctness of its earlier decision on merits. However, the power to recall has to be distinguished from the power to review. While the **Tribunal does not have the inherent power to review its order on merits, it can recall its order for the purpose of correcting a mistake apparent from the record.**

When prejudice results from an order attributable to the Tribunal's mistake, error or omission, then it is the duty of the Tribunal to set it right. The Delhi High Court observed that the Tribunal, while exercising the power of rectification under section 254(2), can recall its order in entirety if it is satisfied that prejudice has resulted to the party which is attributable to the Tribunal's mistake, error or omission and the error committed is apparent.

Question 4

XYZ Limited entered into a contract for purchase of software with M/s. Delta Inc, a non-resident company based in Sweden. It filed an application u/s 195(2) before the Assessing Officer to make payment to the non-resident company for purchase of software without deducting tax at source.

The assessee, XYZ Limited, contended that said non-resident company had no Permanent Establishment in India and in terms of the DTAA between India and Sweden, no tax was to be deducted in India on same. The AO rejected the assessee's application on grounds that consideration for software licensing 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 software were in 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.

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 the assessee. Thereafter, the writ petition filed by the assessee with High Court was also withdrawn. Is Tribunal justified in recalling its original order?

Answer

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.

Provisions applicable: 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 and 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 (SC) 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.

Question 5

Who can file memorandum of cross-objections before the Income-tax Appellate Tribunal? What is the time limit? What is the fee for filing memorandum of cross objections?

Answer

Section 253(4) of the Income-tax Act, 1961 gives the **respondent** (assessee or the Assessing Officer), in every appeal filed before the Income-tax Appellate Tribunal, a **right to file a memorandum of cross-objections against any order of the Joint Commissioner (Appeals) or the Commissioner (Appeals).** This right of filing a memorandum of cross-objections is an independent right given to the respondent in an appeal and is in addition to the right of appeal which may or may not be exercised by the assessee or the Assessing Officer under section 253(1) or section 253(2). The memorandum of cross-objections has to be in the prescribed form and verified in the prescribed manner and **has to be filed within 30 days** of the receipt of notice of the appeal. The Tribunal is empowered to permit filing of memorandum of cross-objections after the expiry of the prescribed period if sufficient cause is shown. Such memorandum of cross-objections will be disposed of by Appellate Tribunal as if it were an appeal presented within the time specified in section 253(3). There is **no fee for filing a memorandum of cross-objections.**

Question 6

A petition for stay of demand was filed by XYZ Ltd. before Income-tax Appellate Tribunal in respect of a disputed demand for which appeal was pending before it. The Appellate Tribunal granted stay vide order dated 1.1.2025 for a period of 180 days from the date of such order, on deposit of 20% of the amount of tax by XYZ Ltd. Thereafter, the bench was functioning intermittently till 1.2.2026 and therefore, the disputed matter could not be disposed of. In the meanwhile, in June 2025, XYZ Ltd. had made an application for extension of stay and was granted extension of stay upto 31.12.2025. Thereafter, on 5.1.2026, the Assessing Officer attached the bank account of XYZ Ltd. and recovered the amount of ₹ 15 lakhs against the arrear demand of ₹ 25 lakhs. The company requested the Assessing Officer to refund the amount as it holds stay over it. The Assessing Officer, however, rejected the contention of assessee stating that stay period expired on 31.12.2025, after which the order of stay stood vacated automatically. Examine the correctness of contention of Assessing Officer.

Answer

As per section 254(2A), the Appellate Tribunal may, on merit, pass an order of stay in any proceedings relating to an appeal. However, **such period of stay cannot exceed 180 days from the date of such order** subject to the condition that the **assessee deposits not less than 20% of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act,** or furnishes security of equal amount in respect thereof.

No extension of stay shall be granted by the Appellate Tribunal, where such appeal is not so disposed of within the said period as specified in the order of stay, unless the assessee makes an application and has complied with the condition of depositing 20% of tax and the Appellate Tribunal is satisfied that the delay in disposing of appeal is not attributable to the assessee. However, **aggregate period of stay originally allowed and period of stay so extended cannot exceed 365 days and Appellate Tribunal has to dispose the appeal within the period of stay so extended or allowed.**

If such appeal is not so disposed of within 180 days or the period or periods extended not exceeding 365 days, the **order of stay shall stand vacated** after the expiry of such period or periods, **only if the delay in disposing of the appeal is attributable to the assessee.** It was so held by the Supreme Court in DCIT v. Pepsi Foods Ltd (2021) 433 ITR 295.

Accordingly, if an appeal is not heard by bench, due to bench functioning intermittently, delay is not attributable to XYZ Ltd. In such a case, though the extended stay period of 365 days had expired on 31.12.2025, recovery of ₹ 15 lakhs against the arrear demand of ₹ 25 lakhs made by Assessing Officer on 5.1.2026 is not in order, **since the delay in disposing of appeal is not attributable to XYZ Ltd. Therefore, contention of Assessing Officer is not correct.** The order of stay would stand vacated after 31.12.2025, only in a case where delay in disposing of appeal had been attributable to XYZ Ltd.

Question 7

Can a rectification order u/s 254 of the Income-tax Act, 1961 be passed by the Income-tax Appellate Tribunal beyond 6 months from the end of month in which order sought to be rectified was passed?

Answer

The issue as to whether a rectification order can be passed by the Income-tax Appellate Tribunal under section 254 beyond six months from the end of the month in which order sought to be rectified was passed, has been addressed in Sree Ayyanar Spinning and Weaving Mills Ltd. v. CIT (2008) 301 ITR 434 (SC). Section 254(2), dealing with the power of the Appellate Tribunal to pass an order of rectification of mistakes, is in two parts. The first part refers to the suo motu exercise of the power of rectification by the Appellate Tribunal, whereas the second part refers to rectification on an application filed by the assessee or Assessing Officer bringing any mistake apparent from the record to the attention of the Appellate Tribunal.

If Income-tax Appellate Tribunal, suo moto, makes the rectification of its order, then the order has to be passed **within 6 months from the end of the month in which the order sought to be rectified was passed. Where the application for rectification is made** by the Assessing Officer or the assessee **within 6 months from the end of the month in which the order sought to be rectified was passed,** the Appellate Tribunal is bound to decide the application on merits and not on the ground of limitation i.e. **order can be passed after expiry of 6 months** from the end of the month in which the order sought to be rectified was passed. **However, the application for rectification cannot be filed belatedly after 6 months** from the end of the month in which the order sought to be rectified was passed. [Ajith Kumar Pitaliya vs ITO (2009) 318 ITR 182 (M.P.)]

Question 8

Examine the correctness or otherwise of the following statements with reference to the provisions of the Income-tax Act, 1961:

(i) An appeal before Income-tax Appellate Tribunal cannot be decided in the event of difference of opinion between the Judicial Member and the Accountant Member on a particular ground.

(ii) A High Court does not have inherent power to review an earlier order passed by it on merits.

Answer

(i) **The statement given is not correct.** As per the provisions of section 255, in the event of difference in opinion between the members of the Bench of the Income-tax Appellate Tribunal, the matter shall be decided **on the basis of the opinion of the majority of the members.** In case the members are equally divided, they shall state the point or points of difference and the case shall be referred by President of Tribunal for hearing on such points by one or more of the other members of Tribunal. Such point or points shall be decided according to the opinion of majority of members of Tribunal who heard the case, including those who had first heard it.

(ii) **The statement given is not correct.** The Supreme Court, in CIT v. Meghalaya Steels Ltd. (2015) 377 ITR 112, observed that power of review would inhere on High Courts, being courts of record under article 215 of the Constitution of India. There is nothing in article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. The Supreme Court further observed that section 260A(7) does not purport in any manner to curtail or restrict the application of provisions of Code of Civil Procedure. Section 260A(7) only states that all provisions that would apply qua appeals in Code of Civil Procedure would apply to appeals u/s 260A. The Supreme Court opined that this does not in any manner suggest either that the other provisions of Code of Civil Procedure are necessarily excluded or that the High Court's inherent jurisdiction is in any manner affected.

Question 9

In respect of a civil suit, the Calcutta High Court appointed a receiver in respect of properties of Ms. Ghosh and Sons HUF. One such property was situated at Delhi which was sold by the Income Tax Department to Mr. Devang. The karta of HUF, Mr. Ghosh, objected to such sale stating that no leave was taken from Calcutta High Court for such sale. An application was also filed by the department to take the permission for such sale. The Calcutta High Court passed an order whereby it directed a civil suit to be pursued at Delhi. However, it overlooked the provisions of section 293 of the Income-tax Act, which puts a bar on filing suit in any civil court against an income-tax authority in respect of any proceedings under the Income-tax Act. The said order was recalled for review by the High Court and error apparent was corrected. Discuss the validity of action taken by the Calcutta High Court.

Answer

The **High Court can review its own order**, where the grounds for review are:

(i) **discovery of new and important matter or evidence** which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) **mistake** or error **apparent on** the face of the **record;**

(iii) **any other sufficient reason.**

Section 293 puts a complete bar on filing suit in any civil court against the Income-tax authority. If the civil suit was not maintainable in view of section 293 and this was the purported defence of the respondents and of the Department, there was no error committed by the High Court in its judgment rendered in exercise of its review jurisdiction calling for interference.

In the present case, Calcutta High Court passed an order directing a civil suit by overlooking the provisions of section 293 and then recalled its own order and corrected the apparent error. **The action taken by the Calcutta High Court is valid as the High Court has the inherent power to review its own order to correct a mistake apparent from the record.**

Question 10

"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.

Answer

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.

Question 11

Doctrine of precedence would be applicable in case of tax laws. In light of the Doctrine of Precedence, comment on correctness or otherwise of following statements alongwith reasons for your answers:

(a) The ratio decendi (the rationale for deciding a case) of a Supreme Court decision is absolutely binding on all lower courts, Tribunals and authorities. However, the lower courts, Tribunals and authorities are not bound by the obiter dicta (additional remarks or things said by the way) of Supreme Court decisions.

(b) Where there are two irreconcilable decisions of two Benches of similar strength of the Supreme Court, the decision with more detailed discussion on the subject shall prevail.

(c) Lower courts are bound by the decisions of Supreme Court. The only exception to this principle is the judgments passed by the Supreme Court per incuriam (i.e. without referring the statutory provision).

(d) Lower authorities may deviate from the decision of the High Court within whose jurisdiction they function, only in a situation to keep the issue alive where the Department has not accepted the said decision and has taken the matter to the Supreme Court.

Answer

(a) **Incorrect** - Not only the ratio decidendi (the rationale for deciding a case), but also obiter dicta (additional observations, remarks, and opinions given while deciding a case) of the Supreme Court are **binding** on all the Courts.

(b) **Incorrect** - When there are two irreconcilable decisions of two Benches of similar strength of Supreme Court, the decision **later in time shall prevail**.

(c) **Incorrect** - The Supreme Court judgments cannot be ignored by the lower courts though such judgments are per incuriam (i.e., without referring the statutory provisions).

(d) **Incorrect** - Lower authorities cannot pass orders which are inconsistent with the decisions of the High Court within whose jurisdiction they function, even for the purpose of keeping the issue alive.

Monetary Limit

Question 12

An Income-tax authority did not file an appeal to the Income-tax Appellate Tribunal against an order of the Commissioner (Appeals) decided against the Income-tax department on a particular issue in case of one assessee, Alpi for assessment year 2024-25 on the ground that the tax effect of such dispute was less than the monetary limit prescribed by CBDT. In assessment year 2025-26, similar issue arose in the assessments of Alpi and her sister Palki, which was decided by the Commissioner (Appeals) against the Department. Can the Income-tax department move an appeal to the Tribunal in respect of A.Y. 2025-26 against the orders of Commissioner (Appeals) for Alpi and her sister Palki?

Answer

Under section 268A(1), the **CBDT is empowered to** issue orders, instructions or directions to the other Income-tax authorities, **fixing such monetary limits**, as it may deem fit, **to regulate filing of appeal** or application for reference by any income-tax authority.

Under section 268A(2), **where an income-tax authority has not filed any appeal** or application for reference on any issue in the case of an assessee for any assessment year, **due to above-mentioned order/instruction/direction of the CBDT, such authority shall not be precluded from filing an appeal** or application for reference **on the same issue in the case of same assessee for any other assessment year or any other assessee for same or any other assessment year**. Further, in such a case, it shall not be lawful for an assessee to contend that the income-tax authority has acquiesced in the decision on the disputed issue by not filing an appeal or application for reference in any case.

In view of above provision, **it would be in order for Income-tax Department to move an appeal to the Tribunal against the orders of CIT(A) in respect of A.Y. 2025-26 both for Alpi and Palki.**

Revision u/s 264

Question 13

An assessee who had been served with an order of assessment passed u/s 143(3) on 1.1.2024 had filed an application against this order before CIT as per section 264 on 11.1.2024. However, the CIT refused to entertain application on pretext of premature application. Assessee seeks your opinion.

Answer

An assessee, who is aggrieved by the order of the Assessing Officer under section 143(3) passed on 1.1.2024, had moved an application for revision of order under section 264 on 11.1.2024. The order passed by the Assessing Officer under section 143(3) is an order appealable before the Joint Commissioner (Appeals) or the Commissioner (Appeals). The **time limit for filing an appeal is 30** days from the date of order i.e., upto 31.1.2024. This **time limit had not expired on 11.1.2024** and the assessee had also not waived his right of appeal while filing the application for revision on 11.1.2024 before Commissioner of Income-tax. The application filed before Commissioner of Income-tax for revision under section 264 by assessee will only be considered when conditions specified under section 264(4) have been complied with. One of the conditions is that **Commissioner shall not revise any order where an appeal against order lies to Joint Commissioner (Appeals) or Commissioner (Appeals) or Appellate Tribunal and the time within which such appeal may be made has not expired**, unless the assessee has waived his right of appeal. In the present case, the time limit had not expired on 11.1.2024 and the assessee had also not waived the right of appeal while filing the application for revision before the Commissioner of Income-tax on 11.1.2024 under section 264. **Therefore, the Commissioner's refusal to entertain such application is correct.**

Time Limit of Filing Appeals and Revision

Question 14

An assessee, who is aggrieved by all or any of the following orders, is desirous to know the available remedial recourse and the time limit against each order under the Income-tax Act, 1961:

(i) passed under section 143(3) by the Assessing Officer.

(ii) passed under section 263 by the Commissioner of Income-tax.

(iii) passed under section 272A by the Director General.

(iv) passed under section 254 by the ITAT.

Answer

(i) An assessee, aggrieved by the order passed under section 143(3) by the Assessing Officer, can file an **appeal before the Joint Commissioner (Appeals) under section 246 or the Commissioner of Income-tax (Appeals)** under section 246A(1) **within 30 days** of the date of service of the notice of demand relating to the assessment. However, where the assessee does not want to prefer an appeal, then **he can move a revision petition before** Principal Commissioner or **Commissioner** of Income-tax under section 264 **within a period of one year** from the date of on which the order was communicated to him or date on which he otherwise came to know of it, whichever is earlier.

(ii) An assessee, aggrieved by order passed under section 263 by the Commissioner of Income-tax, can file an **appeal to Income-tax Appellate Tribunal** under section 253(1)(c) **within 60 days [2 months from end of month w.e.f. 1.10.24]** in which order is communicated to assessee.

(iii) An assessee, aggrieved by order passed under section 272A by the Director General, can file an **appeal before the Income-tax Appellate Tribunal** under section 253(1)(c) **within 60 days [2 months from end of month w.e.f. 1.10.24]** in which order is communicated to assessee.

(iv) An assessee, aggrieved by the order passed under section 254 by the Income-tax Appellate Tribunal, can file an **appeal before the High Court** under section 260A **within 120 days** from the date of receipt of order of Income-tax Appellate Tribunal, only where the order gives rise to a substantial question of law.

Question 15

An Assessee, who is aggrieved by all or any of the following orders, is desirous to know the remedial recourse and the time limit against each order under the Income-tax Act, 1961 -

(1) Passed under section 147 by the Assessing Officer (Joint Commissioner).

(2) Passed under section 263 by the Commissioner of Income-tax.

(3) Passed under section 272A by the Principal Commissioner.

(4) Passed under section 254 by the ITAT.

Answer

Remedial measures against certain orders and time limit

	Order	Remedy available	Time limit
1	147	File an **appeal before Commissioner (Appeals)**	Within **30 days** of the date of service of notice of demand relating to assessment.
2	263	File an **appeal before the Appellate Tribunal** (ITAT)	**within 60 days [2 months from end of month w.e.f. 1.10.24]** in which order is communicated to assessee.
3	272A	File an **appeal before the Appellate Tribunal** (ITAT)	**within 60 days [2 months from end of month w.e.f. 1.10.24]** in which order is communicated to assessee.
4	254	File an **appeal before the High Court** u/s 260A	**within 120 days** from the date of receipt of order of ITAT

Partial and Total Merger

Question 16

Assessment of Bhajan Ltd. was completed under section 143(3) with an addition of ₹ 15 lakhs to the returned income. The assessee-company preferred appeal before the Commissioner (Appeals) which is pending now.

In this backdrop, answer the following:

(i) Can the Assessing Officer pass an order under section 154 for rectification of mistake in respect of issues not being subject matter of appeal?

(ii) Can the assessee-company seek revision under section 264 in respect of matters other than those preferred in appeal?

(iii) Can the Commissioner make a revision under section 263 both in respect of matters covered in appeal and other matters?

Answer

(i) As per section 154(1A), the Assessing Officer can pass an order under 154(1) to rectify a mistake apparent from the record, provided the **rectification is in relation to a matter, other than the matter which has been considered and decided in the appeal** before Commissioner (Appeals). The **doctrine of partial merger** holds good for section 154 also.

Since the issue under consideration in this case relates to rectification of a mistake in respect of a matter which is not the subject matter of appeal, the **Assessing Officer can pass an order under section 154 for rectification** of the same provided the same is a mistake apparent from the record.

(ii) As per section 264(4), the **Commissioner shall not revise any order under section 264, where such order has been made the subject of an appeal** to the Commissioner (Appeals). Thus, the **concept of total merger** would apply in the case of section 264.

Therefore, **under section 264, the Commissioner cannot revise an order which is pending before the Commissioner (Appeals), even if the revision pertains to a matter, other than the matter(s) covered in the appeal.**

(iii) As per section 263, the Commissioner has the power to revise an order prejudicial to revenue, even if the order is the subject matter of appeal before Commissioner (Appeals). However, the power of **the Commissioner under section 263 shall extend to only such matters as had not been considered & decided in such appeal.** Here again, **doctrine of partial merger** would apply.

In a case where the appeal is pending but not yet decided, the **Commissioner cannot exercise his revisionary jurisdiction in respect of those issues which are subject matter of appeal.**

CHAPTER - 13
Dispute Resolution

Question 1

What is the need for constitution of Dispute Resolution Committee (DRC)? Can an assessee make an application before DRC against an order which is based on information received under an agreement referred to in section 90?

Answer

In order to provide early tax certainty to small and medium taxpayers, new scheme of Dispute Resolution has been formulated for constitution of one or more Dispute Resolution Committee(s) (DRC).

Specified order inter alia **does not include an order which is based on information received under an agreement referred to in section 90.** Thus, an **assessee cannot opt for dispute resolution before DRC** in respect of an order which is based on information received under an agreement referred to in section 90.

Question 2

Can an assessee opt for dispute resolution before DRC if prosecution for any offence punishable under the provisions of the Indian Penal Code has been instituted against him and he has been convicted in respect of the same under the said Act?

Answer

Dispute Resolution Committee would resolve dispute in the case of such persons or class of persons, as may be specified by the Board, who may opt for dispute resolution under this Chapter in respect of dispute arising from any variation in the specified order in his case and who fulfils the specified conditions.

Specified conditions in relation to a person means a person who inter alia is **not a person in respect of whom prosecution for any offence punishable under the provisions of the Indian Penal Code has been instituted and he has been convicted** of any offence punishable under the said Act.

Thus, a person in respect of whom any prosecution has been instituted and who is convicted of any offence punishable under the Indian Penal Code, **cannot opt for resolution of dispute in respect of specified order before DRC.**

Question 3

Mr. Vijay furnished his return of income declaring total income of ₹ 28,00,000 for the A.Y. 2024-25. He received an assessment order under section 143(3) on 26.11.2025 enhancing the total income by ₹ 5,00,000. He is aggrieved by the said order and is desirous of knowing whether he can file an application before the Dispute Resolution Committee (DRC). He informs you that no order of detention has been made and no prosecution proceedings have been initiated or instituted against him under any law for the time being in force. However, penalty under section 271D has been levied on him for failure to comply with the provisions of section 269SS.

Can Mr. Vijay file an application before the DRC?

(i) If yes, what is the time limit for making an application to DRC against such order under the Income-tax Act, 1961. He is also keen to know, whether, in case he is aggrieved by the order passed by the DRC, can he file appeal against such order of DRC?

(ii) Would your answer be different, if assessment order is based on information received under a DTAA with Country X?

Answer

Dispute Resolution Committee (DRC) would resolve dispute in the case of a person who opts for dispute resolution under Chapter XIX-AA in respect of dispute arising from any variation in the specified order in his case and who fulfils the specified conditions. **Specified order includes an assessment order passed under section 143(3), where the aggregate sum of variations made vide such order does not exceed ₹ 10 lakh;** the **total income as per such return furnished by assessee** for assessment year relevant to such order **does not exceed ₹ 50 lakhs and such order is not based on search or requisition or survey or any information received under a DTAA.**

Accordingly, in the present case, **Mr. Vijay can file an application before DRC,** since the assessment order received is a specified order and he satisfies the specified conditions on account of no order of detention being made and no prosecution proceedings being initiated or instituted against him. Non-levy of penalty under income-tax law is not a specified condition, therefore, the levy of penalty under section 271D on him does not result in non-compliance with the specified condition. **Mr. Vijay has to file an application for resolution of dispute** in the prescribed form **on or before 25.12.2025 i.e., within one month from the date of receipt of the specified order.**

However, once a modified order is passed by the DRC, no appeal or revision would lie against such order.

If assessment order is based upon the information received under an **DTAA** entered with India, **Mr. Vijay, will not be eligible to make an application** before DRC, since it is not a specified order.

CHAPTER - 14
Penalties, Offences and Prosecution

Penalties

Question 1

Mr. Ram, a resident individual of the age of 55 years, has not furnished his return of income for A.Y.2025-26. However, the total income assessed in respect of such year under section 144 is ₹ 12 lakh. Is penalty u/s 270A attracted in this case, and if so, what is the quantum of penalty leviable? Assume that he has opted for section 115BAC.

Answer

Mr. Ram is deemed to have under-reported his income since he has not filed his return of income and his tax liability would be computed applying the provisions of section 115BAC. Hence, penalty under section 270A is leviable in his case in the following manner.

Computation of penalty leviable under section 270A

Particulars		₹	₹
Assessment under section 144			
Under-reported income:			
Total income assessed under section 144		12,00,000	
Tax payable on under-reported income as per section 115BAC			
Upto ₹ 3,00,000	Nil		
₹ 3,00,001 – ₹ 7,00,000 @ 5%	20,000		
₹ 7,00,001 – ₹ 10,00,000 @10%	30,000		
₹ 10,00,001 – ₹ 12,00,000 @15%	30,000	80,000	
Add: HEC@4%		3,200	
		83,200	
Penalty leviable@50% of tax payable			**41,600**

Note – It is assumed that the under-reported income is not on account of misreporting.

Question 2

M/s. XYZ is a firm liable to tax@30%. The following are the particulars furnished by the firm:

	Particulars of total income	₹
(1)	As per the return of income furnished u/s 139(1)	50,00,000
(2)	Determined under section 143(1)(a)	60,00,000
(3)	Assessed under section 143(3)	75,00,000
(4)	Reassessed under section 147	95,00,000

Can penalty be levied u/s 270A on M/s. XYZ? If the answer is in the affirmative, compute the penalty leviable u/s 270A.

Answer

M/s. XYZ is deemed to have under-reported its income since:

(1) its income assessed u/s 143(3) exceeds its income determined in a return processed u/s 143(1)(a); and

(2) the income reassessed under section 147 exceeds the income assessed u/s 143(3).

Therefore, penalty is leviable under section 270A for under-reporting of income.

Computation of penalty leviable under section 270A

Particulars	₹	₹
Assessment under section 143(3) Under-reported income:		
Total income assessed under section 143(3)	75,00,000	
(-) Total income determined u/s 143(1)(a)	60,00,000	
	15,00,000	
Tax payable on under-reported income:		
Tax on under-reported income of ₹ 15 lakhs plus tax on total income of ₹ 60 lakhs determined u/s 143(1)(a) **[30% of ₹ 75 lakh + HEC@4%]**	23,40,000	
Less: Tax on total income determined u/s 143(1)(a) **[30% of ₹ 60 lakh +HEC@4%]**	18,72,000	
	4,68,000	
Penalty leviable@50% of tax payable		**2,34,000**
Reassessment under section 147 Under-reported income:		
Total income reassessed under section 147	95,00,000	
(-) Total income assessed under section 143(3)	75,00,000	
	20,00,000	
Tax payable on under-reported income:		
Tax on under-reported income of ₹ 20 lakhs plus tax on total income of ₹ 75 lakhs assessed u/s 143(3) **[30% of ₹ 95 lakh + HEC@4%]**	29,64,000	
Less: Tax on total income assessed u/s 143(3) **[30% of ₹ 75 lakh + HEC@4%]**	23,40,000	
	6,24,000	
Penalty leviable@50% of tax payable		**3,12,000**

Note - The following assumptions have been made -

(1) None of the additions or disallowances made in assessment or reassessment qualifies under section 270A(6); and

(2) The under-reported income is not on account of misreporting.

Question 3

MCM is a firm liable to tax at the rate of 30% and has filed its return of income. The following information are provided to you:

(i)	Returned Total income	₹ 1,00,00,000
(ii)	Total income determined U/s 143(1)(a)	₹ 1,20,00,000
(iii)	Total income assessed U/s 143(3)	₹ 1,60,00,000
(iv)	Total income reassessed U/s 147	₹ 1,90,00,000

Considering that none of the additions or disallowances made in the assessment or re-assessment as above qualifies under section 270A(6), compute the amount of penalty to be levied U/s 270A of the Income-tax Act, 1961 at the time of assessment U/s 143(3) and at the time of reassessment U/s 147 (Assume under-reporting of income is not on account of misreporting).

Answer

MCM, a firm, is deemed to have under-reported its income since:

(1) its income assessed under 143(3) exceeds its income determined in a return processed under section 143(1)(a); and

(2) the income reassessed under section 147 exceeds the income assessed under section 143(3).

Therefore, penalty is leviable under section 270A for under-reporting of income.

Computation of penalty leviable under section 270A

Particulars	₹	₹
Assessment under section 143(3)		
Under-reported income:		
Total income assessed under section 143(3)	1,60,00,000	
(-) Total income determined u/s 143(1)(a)	1,20,00,000	
	40,00,000	
Tax payable on under-reported income:		
Tax on under-reported income of ₹ 40 lakhs plus on total income of ₹ 120 lakhs determined u/s 143(1)(a) [30% of ₹ 160 lakh + Surcharge @12% +EC @4%]	55,91,040	
Less: Tax on total income determined u/s 143(1)(a) [30% of ₹ 120 lakhs + Surcharge@12% + EC @4%]	41,93,280	
	13,97,760	
Penalty leviable@50% of tax payable		**6,98,880**
Reassessment under section 147		
Under-reported income:		
Total income reassessed under section 147	1,90,00,000	
(-) Total income assessed under section 143(3)	1,60,00,000	
	30,00,000	
Tax payable on under-reported income:		

Tax on under-reported income of ₹ 30 lakhs plus on total income of ₹ 160 lakhs assessed u/s 143(3) [30% of ₹ 190 lakhs + Surcharge@12% + EC @4%]	66,39,360	
Less: Tax on total income assessed u/s 143(3) [30% of ₹ 160 lakhs + Surcharge@12% + EC @4%]	55,91,040	
	10,48,320	
Penalty leviable@50% of tax payable		**5,24,160**

Question 4

ABC Ltd. is a domestic company liable to tax@25%. The following are the particulars furnished by the company:

	Particulars of total income	₹
(1)	As per the return of income furnished u/s 139(1)	(15,00,000)
(2)	Determined under section 143(1)(a)	(8,00,000)
(3)	Assessed under section 143(3)	(5,00,000)
(4)	Reassessed under section 147	4,00,000

Is penalty leviable under section 270A on ABC Ltd., and if so, what is the quantum of penalty?

Answer

ABC Ltd. is deemed to have under-reported its income since:

(1) the assessment u/s 143(3) has the effect of reducing the loss determined in a return processed u/s 143(1)(a); and

(2) the reassessment u/s 147 has the effect of converting the loss assessed u/s 143(3) into income.

Therefore, penalty is leviable under section 270A for under-reporting of income.

Computation of penalty leviable under section 270A

Particulars	₹	₹
Assessment under section 143(3) Under-reported income:		
Loss assessed u/s 143(3)	(5,00,000)	
(-) Loss determined under section 143(1)(a)	(8,00,000)	
	3,00,000	
Tax payable on under-reported income@25%	75,000	
Add: HEC@4%	3,000	
	78,000	
Penalty leviable@50% of tax payable		**39,000**
Reassessment under section 147 Under-reported income:		
Total income reassessed under section 147	4,00,000	
(-) Loss assessed under section 143(3)	(5,00,000)	
	9,00,000	

Tax payable on under-reported income@25%	2,25,000	
Add: HEC@4%	9,000	
	2,34,000	
Penalty leviable@50% of tax payable		**1,17,000**

Notes – The following assumptions have been made -

(1) None of the additions or disallowances made in assessment or reassessment qualifies u/s 270A(6); and

(2) The under-reported income is not on account of misreporting.

Question 5

What would be the penalty leviable under section 270A in case of the following assessees, if none of the additions or disallowances made in the assessment or reassessment qualify under section 270A(6) and the under-reported income is not on account of misreporting?

	Particulars of total income of A.Y.2024-25	M/s. Alpha, a resident firm (₹)	Beta Ltd., an Indian company (₹)
(1)	As per the return of income furnished u/s 139(1)	35,00,000	(12,00,000)
(2)	Determined under section 143(1)(a)	45,00,000	(6,00,000)
(3)	Assessed under section 143(3)	62,00,000	(2,00,000)
(4)	Reassessed under section 147	81,00,000	6,00,000

Note – Beta Ltd. is a trading company. The total turnover of Beta Ltd. for the P.Y.2022-23 was ₹ 401 crore and the company has not exercised option under section 115BAA.

Answer

Penalty leviable under section 270A in case of M/s. Alpha, a resident firm

M/s. Alpha is deemed to have under-reported its income since:

(1) its income assessed under 143(3) exceeds its income determined in a return processed under section 143(1)(a); and

(2) the income reassessed under section 147 exceeds the income assessed under section 143(3). Therefore, penalty is leviable under section 270A for under-reporting of income.

Computation of penalty leviable under section 270A

Particulars	₹	₹
Assessment under section 143(3)		
Under-reported income:		
Total income assessed under section 143(3)	62,00,000	
(-) Total income determined u/s 143(1)(a)	45,00,000	
	17,00,000	

Tax payable on under-reported income:		
Tax on under-reported income of ₹ 17 lakhs plus total income of ₹ 45 lakhs determined u/s 143(1)(a) **[30% of ₹ 62 lakh + HEC@4%]**	19,34,400	
Less: Tax on total income determined u/s 143(1)(a) **[30% of ₹ 45 lakh + HEC@4%]**	14,04,000	
	5,30,400	
Penalty leviable@50% of tax payable		**2,65,200**
Reassessment under section 147		
Under-reported income:		
Total income reassessed under section 147	81,00,000	
(-) Total income assessed under section 143(3)	62,00,000	
	19,00,000	
Tax payable on under-reported income		
Tax on under-reported income of ₹ 19 lakhs plus total income of ₹ 62 lakhs assessed u/s 143(3) **[30% of ₹ 81 lakh + HEC@4%]**	25,27,200	
Less: Tax on total income assessed u/s 143(3) **[30% of ₹ 62 lakh + HEC@4%]**	19,34,400	
	5,92,800	
Penalty leviable@50% of tax payable		**2,96,400**

Penalty leviable under section 270A in the case of Beta Ltd., an Indian company

Beta Ltd. is deemed to have under-reported its income since:

(1) the assessment under 143(3) has the effect of reducing the loss determined in a return processed under section 143(1)(a); and

(2) the reassessment under section 147 has the effect of converting the loss assessed under section 143(3) into income.

Therefore, penalty is leviable under section 270A for under-reporting of income.

Computation of penalty leviable under section 270A

Particulars	₹	₹
Assessment under section 143(3)		
Under-reported income:		
Loss assessed u/s 143(3)	(2,00,000)	
(-) Loss determined under section 143(1)(a)	(6,00,000)	
	4,00,000	
Tax payable on under-reported income@30%	1,20,000	
Add: HEC@4%	4,800	
	1,24,800	
Penalty leviable@50% of tax payable		**62,400**
Reassessment under section 147		
Under-reported income:		

Total income reassessed under section 147	6,00,000	
(-) Loss assessed under section 143(3)	(2,00,000)	
	8,00,000	
Tax payable on under-reported income@30%	2,40,000	
Add: HEC@4%	9,600	
	2,49,600	
Penalty leviable@50% of tax payable		**1,24,800**

Note – The applicable rate of tax for Beta Ltd., a trading company is 30%, since its turnover for the P.Y.2022-23 exceeded ₹ 400 crores.

Question 6

A search under section 132 was initiated in the premises of Mr. X on 30.4.2024 and undisclosed money and jewellery belonging to Mr. X was found in his premises. Examine the penal provisions under the Income-tax Act which are attracted in this case, assuming that the undisclosed assets were acquired out of his undisclosed income of previous year 2024-25.

Answer

In order to deter practice of non-disclosure of income, section 271AAB provides for levy of penalty on undisclosed income found during course of a search, which relates to specified previous year, i.e.-

- the previous year which has ended before the date of search, but the due date of filing return of income for the same has not expired before the date of search and the return has not yet been furnished (P.Y. 2023-24);
- the previous year in which search is conducted (P.Y. 2024-25).

Accordingly, under section 271AAB(1A), in respect of searches initiated on or after 15.12.2016,

- **penalty@30%** would be attracted, if undisclosed income is **admitted** during the course of search in the statement furnished under section 132(4), and the assessee **explains the manner** in which such income was derived, **pays the tax**, together with interest if any, in respect of the undisclosed income, **and furnishes the return of income** for the specified previous year declaring such undisclosed income on or before the specified date (i.e., the due date of filing return of income or the date on which the period specified in the notice, as the case may be).
- In all other cases, **penalty @60% of undisclosed income** would be attracted.

Question 7

What is the quantum of penalty that could be levied in each of the following cases -

(i) Failure to get books of accounts audited as required under section 44AB within the time prescribed under the Act.

(ii) Failure to comply with a direction issued under section 142(2A).

(iii) Failure to furnish report from an accountant as required under section 92E.

Answer

The penalty that could be levied in each case is:

(i) **Failure to get books of accounts audited as required under section 44AB of the Income-tax Act, 1961** - a sum equal to **½% of the total sales**, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years, or a sum of **₹ 1,50,000, whichever is less** [Section 271B].

(ii) **Failure to comply with a direction issued under section 142(2A)** - a sum of **₹ 10,000** [Section 272A(1)(d)].

(iii) **Failure to furnish report from an accountant as required by section 92E** - a sum of ₹ **1,00,000** [Section 271BA].

Question 8

X, an individual whose total sales (in cash) in the business of food grains for the year ending 31.3.2025 was ₹ 205 lakhs, did not maintain books of account for P.Y.2024-25, even though his turnover was ₹ 28 lakhs in the P.Y.2023-24. The Assessing Officer levied penalty of ₹ 25,000 under section 271A for non-maintenance of books of account and penalty of ₹ 1,02,500 under section 271B for not getting the books audited as required by section 44AB. Is the Assessing Officer justified in levying penalty under section 271B?

Answer

X is required to maintain books of account as per section 44AA for the P.Y.2024-25 since his turnover exceeded ₹ 25 lakhs in the P.Y.2023-24. He also has to get them audited under section 44AB, since his gross sales in the P.Y.2024-25 exceeds ₹ 1 crore. He is **liable to pay penalty** under section 271A **for not maintaining his books of account** as per section 44AA. Accordingly, **the action of the Assessing Officer in levying penalty of ₹ 25,000** under section 271A **is correct.** However; where books of account have not been maintained, **there cannot be a question of getting them audited.** Audit of books of account presupposes maintenance of books of account. When admittedly X has not maintained books, he cannot obviously get the audit done.

In Surajmal Parsuram Todi v. CIT (1996) 222 ITR 691, the Gauhati High Court has held that when a person commits an offence by not maintaining books of accounts as contemplated by section 44AA, the offence is complete and after that there can be no possibility of any offence as contemplated by section 44AB and, therefore, the imposition of penalty under section 271B is erroneous.

Therefore, in this case, **Assessing Officer is not justified in levying penalty under section 271B.**

Question 9

Examine the following cases and state whether the same are liable for penalty as per the provisions of the Income-tax Act, 1961.

(i) Raman & Associates had made payment in excess of the limits prescribed to the contractors for carrying out labour job work at various sites, but had not deducted tax at source as per section 194C.

(ii) Hotels and Hotels were asked by Income-tax Officer (CIB) to furnish details of all such tourists who stayed in their hotels and had paid bill amount in excess of ₹ 10,000. They have not furnished the requisite information in spite of various reminders.

Answer

(i) Penalty under section 271C is attracted for failure to deduct tax at source. The **penalty would be a sum equal to the amount of tax which such person has failed to deduct.** Such penalty can be **imposed only by the Joint Commissioner.** Therefore, **Raman & Associates shall be liable for penalty** under section 271C **equal to the amount of tax which they have failed to deduct** under section 194C from the payments made to the contractors. The penalty would be in addition to the disallowance of 30% of expenditure/payment under section 40(a)(ia).

(ii) Section 133(6) empowers the Income-tax authority to **require any person to furnish information** in relation to such points or matters which will be useful for or relevant to any enquiry or proceeding under the Act. Failure on the part of an assessee to furnish the information in relation to such points or matters as required makes him **liable for penalty** under section 272A(2) of **₹ 500 for every day during which the failure continues.**

Question 10

An assessee had credited a sum of ₹ 50,000 in cash in the account of Madan, said to represent a loan obtained from him. The Assessing Officer, having gone into genuineness of transaction, disbelieved the story of loan and treated the sum of ₹ 50,000 as income of the assessee from undisclosed sources. He also started proceedings under section 271D and levied a penalty of ₹ 60,000 on the assessee for having accepted the loan in contravention of section 269SS. Examine the correctness of the levy.

Answer

There are **several flaws** in the penalty levied by the Assessing Officer. Firstly, the **penalty** leviable **under section 271D cannot exceed the sum equal to the loan taken.** Hence, the **maximum penalty leviable would be ₹ 50,000**. Secondly, any **penalty imposable** under section 271D **shall be imposed by the Joint Commissioner.** Hence, unless the Assessing Officer happens to be a Joint Commissioner the levy of penalty will be invalid. Thirdly, the Assessing Officer cannot, on the one hand, treat the loan as undisclosed income of the assessee and on the other, treat it as a loan for the purpose of section 269SS read with section 271D. Such a treatment will be self-contradictory. The moment the amount of ₹ 50,000 is treated as undisclosed income, it ceases to bear the character of loan and therefore, the foundation for the levy of penalty under section 271D disappears. [Diwan Enterprises v. CIT and Others (2000) 246 ITR 571].

Question 11

State with reasons the penalty leviable on each of the three independent instances:

(1) The premises of A Ltd. was searched and undisclosed income of ₹ 20 crores was determined. The Company did not admit the undisclosed income in a statement under section 132(4) but declared the same in a return furnished, and paid the tax with interest thereon.

(2) Meena Caterers has received ₹ 1 lakh in cash and ₹ 9 lakh by account payee cheque from Mr. Arvind for rendering catering services on the occasion of his daughter's wedding.

(3) Mrs. P is a trader who is subject to audit under section 44AB. She has reported cash collections from various Sundry Debtors, but has discovered that she omitted to include 2 more debtors in the statement already filed. She has reported the omission to the authorities within 15 days.

Answer

(1) As per section 271AAB, **penalty @60% of undisclosed income would be attracted**, since A Ltd. had not admitted the undisclosed income in a statement under section 132(4) but declared the same in a return furnished and paid the tax with interest thereon.

(2) **No penalty would be leviable** on Meena caterers under section 271DA, since it received only ₹ 1 lakh in cash, (which is **less than** the permissible threshold of **₹ 2 lakhs)** in respect of transactions relating to rendering of catering services on the occasion of Mr. Arvind's daughter marriage from Mr. Arvind. The balance ₹ 9 lakh was paid by way of account payee cheque which is a permissible mode of payment.

(3) In this case, Mrs. P, a trader subject to audit under section 44AB, has omitted to include two debtors in the statement of financial transaction filed by her. Since, she has **failed to inform and furnish the correct information within 10 days, penalty of ₹ 50,000 is leviable** under section 271FAA read with section 285BA.

Question 12

A private bank has not filed its statement of financial transaction or reportable account in relation to the specified financial transactions for the financial year 2024-25. A notice was issued by the prescribed income-tax authority on 1st October, 2025 requiring the bank to furnish the statement by 31st October, 2025. The bank, however, furnished the statement only on 15th November, 2025. What would be the penalty leviable under section 271FA?

Answer

(1)	(2)	(3)	(4)	
Non-compliance of section	**Penalty under section 271FA**	**Period**	**Quantum of penalty under section 271FA**	
			(2) × (3)	**(₹)**
285BA(1)	₹ 500 per day	1.6.2025 to 31.10.2025	153 days × ₹ 500	76,500
285BA(5)	₹ 1,000 per day	1.11.2025 to 15.11.2025	15 days × ₹ 1,000	15,000
				91,500

Question 13

Fox Limited failed to furnish information and documents sought by the Transfer Pricing Officer (TPO). Can TPO levy penalty for such failure? How much would be the quantum of penalty imposable for the said failure?

Answer

Under section 271G, if any person who has entered into an international transaction or specified domestic transaction fails to furnish any such information or document as required by section 92D(3) sought for by the Transfer Pricing Officer, then, such person shall be liable to a penalty which may be levied by the Assessing Officer or the Transfer Pricing Officer or the Commissioner (Appeals). Thus, the **Transfer Pricing Officer is a competent authority to levy penalty.**

Penalty would be a sum equal to 2% of the value of international transaction or specified domestic transaction for each such failure.

Question 14

The Assessing Officer has initiated the penalty proceedings under section 270A for under-reporting of income and launched prosecution proceedings under section 276C for willful evasion of tax at the time of completion of re-assessment of Mr. Pradeep under section 147 of Income-tax Act, 1961.

Mr. Pradeep filed an application for the immunity from imposition of penalty and prosecution before the Assessing Officer. Is he entitled to file application for immunity from penalty and prosecution under section 270A and 276C, respectively, before the Assessing Officer?

Answer

Section 270AA **empowers an assessee to make an application to Assessing Officer for grant of immunity from imposition of penalty** u/s 270A **and initiation of proceedings** u/s 276C, **if he** -

(i) **pays the tax and interest payable** as per the order of reassessment under section 147, within the period specified in such notice of demand; and

(ii) **does not prefer an appeal** against such reassessment order.

Therefore, **Mr. Pradeep is entitled to file an application for immunity from penalty** u/s 270A **and prosecution** u/s 276C before the Assessing Officer. He has to do so within one month from the end of the month in which the order of reassessment is received.

However, immunity shall be granted by the Assessing Officer only if the penalty proceedings u/s 270A have not been initiated on account of the following, namely:

(a) misrepresentation or suppression of facts;

(b) failure to record investments in the books of account;

(c) claim of expenditure not substantiated by any evidence;

(d) recording of any false entry in the books of account;

(e) failure to record any receipt in books of account having a bearing on total income; or

(f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction to which the provisions of Chapter X apply.

Offences and Prosecution

Question 15

Can prosecution be launched for each of the following actions or defaults committed? If yes, then explain the relevant provisions of the Act and the quantum of prescribed punishment.

(i) The assessee had restrained and not allowed the officer authorized as per section 132(1)(iib) of the Act to inspect the documents maintained in the form of electronic record and the books of accounts.

(ii) The assessee deliberately has failed to comply with the requirement of section 142(1) and/or 142(2A).

(iii) The assessee deliberately has failed to make the payment of tax collected under section 206C.

Answer

(i) Failure to afford facility to the officer authorized as per section 132(1)(iib) is a case for which **prosecution** can be launched under section 275B and such person shall be **punishable with rigorous imprisonment for a term which may extend to two years and shall also be liable to fine.**

(ii) Willful failure to produce books of account and documents as required under section 142(1) or willful failure to comply with a direction to get the accounts audited or inventory valuation under section 142(2A) is a case for which **prosecution** can be launched under section 276D and such person shall be **punishable with rigorous imprisonment for a term which may extend to one year and with fine.**

(iii) Deliberate failure to deposit the tax collected under section 206C to the credit of the Central Government is a case for which **prosecution** can be launched under section 276BB and such person shall be **punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.**

Question 16

M/s Risky Construction Pvt. Ltd. is engaged in the construction of bridges and flyovers. During the year, it made payment to various parties and deducted tax amounting to ₹ 1.60 crores. However, the company failed to deposit the said amount with the income-tax department within the time prescribed under the Act. The company submitted that it is facing financial hardship since a large sum of money has been stuck-up with its debtors and also with the income-tax department in the form of tax refunds. It is further submitted that inspite of financial crisis, the company has suo-moto deposited the TDS amount along-with interest u/s 201(1A) of the Act, before receiving any notice from income-tax department in this regard. However, Tax officer initiated prosecution proceedings under Section 276B of the Act against the company and its directors. The company has approached you to advise in the matter.

Answer

Issue Involved: The issue under consideration is whether prosecution proceedings can be initiated where tax deducted has been deposited by the assessee suo moto, after the time prescribed under the Act but before receiving notice from the income-tax department, along with interest under section 201(1A) and the assessee has shown reasonable cause for such delay.

Provisions Applicable: Prosecution proceedings are attracted under section 276B, if a person fails to pay to the credit of the Central Government, the tax deducted at source by him as required under the provisions of the Act.

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

Analysis and Conclusion: In this case, the **company has reasonable and sufficient cause** since it was facing financial hardship on account of large sum of money stuck up with the debtors and also with the income-tax department on account of refunds. In spite of the financial crisis, the **company has suo moto deposited the TDS along with interest** under section 201(1A) of the Act, **before receiving any notice** from the income-tax department in this regard.

Since it has deposited the TDS along with interest suo moto before receiving any notice from the department and it has also shown reasonable cause for such delay in deposit, the company cannot be punishable for the delay in deposit of TDS. The **initiation of prosecution proceedings** under section 276B **against the company and the directors is, therefore, not correct.**

Question 17

The Assessing Officer lodged a complaint against M/s. KLM, a firm, under section 276CC of the Income-tax Act, 1961 for failure to furnish its return of income for the A.Y.2025-26 within the due date under section 139(1). The tax payable on the assessed income, as reduced by the advance tax paid and tax deducted at source, was ₹ 60,000. The appeal filed by the firm against the order of assessment was allowed by the Commissioner (Appeals). The Assessing Officer passed an order giving effect to the order of the Commissioner (Appeals). The tax payable by the firm as per the said order of the Assessing Officer was ₹ 8,900. The Assessing Officer has accepted the order of the Commissioner (Appeals) and has not preferred an appeal against it to the Income Tax Appellate Tribunal. The firm desires to know of the maintainability of the prosecution proceedings in the facts and circumstances of the case.

Would your answer change if the person against whom complaint was lodged was KLM Ltd., a company, instead of a firm?

Answer

(i) Section 276CC provides for prosecution for wilful failure to furnish a return of income within the prescribed time, in a case where tax would have been evaded had the failure not been discovered. Since **the amount of tax which would have been evaded does not exceed ₹ 25 lakh, the imprisonment would be for a term of 3 months to 2 years.** In addition, fine would also be attracted.

However, in a case where the return of income is not filed within the due date, **prosecution proceedings will not be attracted if the tax payable by a person, other than a company,** on the total income determined on regular assessment, as reduced by the advance tax or self assessment tax, if any, paid and any tax deducted at source, **does not exceed ₹ 10,000.**

In this case, even though the tax liability of the firm as per the original order of assessment exceeded ₹ 10,000, however, as a result of the order of the Commissioner (Appeals), it got reduced to ₹ 8,900, which is less than ₹ 10,000. Therefore, **since the tax liability of the firm on final assessment was determined at ₹ 8,900, the prosecution proceedings are not maintainable.**

In Guru Nanak Enterprises v. ITO (2005) 279 ITR 30, where the facts were similar, the Supreme Court held that prosecution was unwarranted.

(ii) **Yes, in case of a company,** the **answer would be different** and prosecution proceedings would be maintainable.

Question 18

Explain section 278C applicable in respect of offences committed by Hindu undivided families.

Answer

As per section 278C(1) of Income-tax Act, 1961, where an offence under Income-tax Act, 1961 has been committed by a Hindu undivided family (HUF), **karta shall be deemed to be guilty of offence and shall be liable to be proceeded** against and punished accordingly. However, karta shall **not be liable** to any punishment **if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.**

As per section 278C(2), where an offence under the Income-tax Act, 1961 has been committed by a HUF and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any member of HUF, such **member shall also be deemed to be guilty of that offence and shall be liable to be proceeded** against and punished accordingly.

CHAPTER - 15
Miscellaneous Provisions

Section 269SS, 269ST, 269SU and 269T

Question 1

Fearless General Finance & Investment Limited, a residuary non-banking company, accepts public deposits, issues deposit certificate and repays the same after some period of time along with interest, under different schemes run by it. Following transactions were noted from their books of account:

(i) Mr. A, an individual, has deposited ₹ 15,000 on 1st May, 2021 for 48 months by bearer cheque and another ₹ 15,000 on 30th June, 2024 in cash to purchase a new certificate of 48 months tenure.

(ii) Mr. A has applied for premature withdrawal against both the certificates and the company has paid him ₹ 16,500, by a bearer cheque, against principal and interest on 23rd March, 2025, due against his first certificate (purchased in 2021) and ₹ 15,500 in cash on 25th March, 2025, against the second certificate.

Discuss the violation of income tax provision, if any, and consequential penalty for each transaction. Will it make any difference if the certificates were held by Mr. A with his wife Mrs. A, jointly, while repaying back in cash or bearer cheque?

Answer

(i) There is **no violation of section 269SS at the time of acceptance of the first deposit of ₹ 15,000 by bearer cheque** on 1.5.2021, since it is not in excess of the threshold limit of ₹ 20,000. However, **violation under section 269SS is attracted at the time of acceptance of the second deposit in cash** on 30th June, 2024, since as on that date, there is already an outstanding deposit of ₹ 15,000 and another cash deposit of ₹ 15,000 would take the **aggregate to ₹ 30,000, which exceeds the threshold limit of ₹ 20,000.** Therefore, **penalty under section 271D of a sum equal to the amount of deposit** taken from Mr. A is attracted for failure to comply with the provisions of section 269SS.

(ii) In this case, **there is a violation of the provisions of section 269T at the time of first repayment by bearer cheque** on 23rd March, 2025, **since on that date, the aggregate amount of deposits held by Mr. A** with the non-banking company (together with interest payable on such deposits) **is more than ₹ 20,000.** Therefore, **penalty under section 271E equal to the amount of deposit so repaid will be attracted** for failure to comply with the provisions of section 269T.

However, the **second repayment of ₹ 15,500** on 25th March, 2025 **in cash cannot be considered as a violation of section 269T**, since neither the amount of deposit with interest thereon nor the aggregate amount of deposits held by Mr. A on that date together with interest exceeds the threshold limit of ₹ 20,000.

The **provisions of section 269T will be attracted at the time of first repayment** of bearer cheque **even if the certificate is being held by Mr. A in joint name with his wife.**

Question 2

Mr. A an agriculturist has made an agreement to sell his 10 acres of agricultural land situated in a remote village at a price of ₹ 1 lakh per acre to Mr. B, for constructing a farmhouse. Mr. A has received an advance of ₹ 1 lakh by way of a crossed cheque. Later on, the agreement was rescinded as Mr. B could not pay the balance amount within the stipulated time as per the agreement. Mr. A returned the advance by a crossed cheque. The assessing officer has proposed to levy a penalty under section 271D on Mr. A. Examine the validity of the Assessing Officer's action.

Answer

Section 269SS prohibits acceptance of any advance of ₹ 20,000 or more in relation to transfer of immovable property otherwise than by way of account payee cheque/bank draft or use of ECS through a bank account, whether or not the transfer has actually taken place.

This **provision will not be applicable in a case where both the payer and recipient have agricultural income and neither of them has any income chargeable to tax in India.**

In this case, Mr. A has accepted an advance of ₹ 1 lakh by of a crossed cheque for transfer of immovable property, i.e., agricultural land, which is in contravention of section 269SS. Further, the exemption from applicability of this provision would not be available even though Mr. A, recipient, has agricultural income because **Mr. B, the payer of advance, is not having agricultural income.**

Accordingly, **penalty under section 271D equal to the amount of such advance would be attracted.** This is irrespective of Mr. A having returned the advance by a crossed cheque.

However, **such penalty can be imposed only by the Joint Commissioner.**

Accordingly, the **proposed action for levy of penalty under section 271D by the Assessing Officer would be valid, only if the Assessing Officer is a Joint Commissioner.** If he is not a Joint Commissioner, the proposed action for levy of penalty under section 271D would not be valid.

Question 3

Mr. B proposes to purchase for his business, certain raw materials from Mr. S. In view of the scarcity of the products, S insists on cash payments for the purchases, to which B agrees. On 27.3.2025, the purchases are effected through a cash invoice for ₹ 3,20,000.

In respect of the above transactions, will there be any detrimental effect in the hands of B and S under the provisions of the Income-tax Act, 1961? Explain briefly.

Will your answer be different, if the cash purchases are effected by the buyer B on two different dates for different raw materials for ₹ 1,80,000 and ₹ 1,40,000 respectively?

Answer

(1) **Where purchases are effected through cash invoice of ₹ 3,20,000**

(i) **In the hands of Mr. B**

Since Mr. B is making cash payment of ₹ 3,20,000 for purchase of raw materials from Mr. S for his business, **disallowance under section 40A(3) would be attracted,** since the payment otherwise than by way of account payee cheque or bank draft or use of ECS through a bank account to a person **in a day exceeds ₹ 10,000.** Accordingly, ₹ 3,20,000 would not be allowable as deduction while computing his business income.

(ii) **In the hands of Mr. S**

Section 269ST prohibits, inter alia, **receipt of an amount of ₹ 2 lakh or more in aggregate from a person in a day otherwise than by way of account payee cheque or account payee bank draft or use of ECS** through a bank account. If any person receives any sum in contravention of the provisions of section 269ST, he shall be liable to pay **penalty under section 271DA of a sum equal to the amount of such receipt.**

In this case, since S has received ₹ 3,20,000 by way of cash from Mr. B on 27.3.2025, he has violated the provisions of section 269ST, and hence, is **liable to pay penalty of ₹ 3,20,000 under section 271DA.**

(2) **Where cash purchases of ₹ 1,80,000 and ₹ 1,40,000 are effected in respect of different raw materials on two different dates**

(i) **In the hands of Mr. B**

Even if cash payment of ₹ 1,80,000 and ₹ 1,40,000 are made by Mr. B on two different dates for different raw materials, **disallowance under section 40A(3) would be attracted,** since the **payment in cash in a day to Mr. S exceeds ₹ 10,000.**

(ii) **In the hands of Mr. S**

If S receives cash of ₹ 1,80,000 and ₹ 1,40,000 on two different dates, for purchase of different raw materials, there would be **no violation of section 269ST since receipt on a day is less than ₹ 2 lakh and the receipts are not in respect of the same transaction** but for purchase of different raw materials. Hence, **provision of section 271DA shall not be attracted.**

Question 4

Rose Ltd., an Indian Company engaged in trading of electronic appliances through retail stores all across India, reported a total turnover of ₹ 75 crores during the previous year 2023-24 and ₹ 49 crores during the previous year 2024-25. The customers who purchase appliance from its stores can pay only through cash, cheque, credit card or debit card. Discuss the relevant provisions of the Act with respect to relevant compliances that should have been ensured by Rose Ltd. and in the absence of such compliances, what will be the amount of penalty, if any, that can be levied on Rose Ltd.

Answer

As per section 269SU, Rose Ltd. is **required to provide facility for accepting payment through the prescribed electronic modes**, in addition to the facility for other electronic modes of payment of debit card or credit card provided by Rose Ltd., since its total turnover in business during the immediately preceding previous year. i.e., P.Y. 2023-24 is ₹ 75 crores, which **exceeds the prescribed threshold of ₹ 50 crores.**

Prescribed electronic modes are

(1) **Debit Card** powered by **RuPay;**

(2) Unified Payments Interface **(UPI)** (BHIM-UPI); and

(3) Unified Payments Interface Quick Response Code **(UPI QR Code)** (BHIM-UPI QR Code).

The failure to provide facility for electronic modes of payment prescribed under section 269SU by Rose Ltd. **would attract a penalty** under section 271DB of a sum of **₹ 5,000**, for every day during which such failure continues.

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

Provisional Attachment to Protect the Interest of Revenue (Section 281B)

Question 5

Explain the circumstances under which the Assessing Officer can resort to provisional attachment of the property of the assessee. Also, state the period of time for which such attachment can take place.

When can the Assessing Officer revoke provisional assessment of property? Discuss.

Answer

As per the provisions of section 281B, there can be **provisional attachment to protect the interest of Revenue in certain cases i.e.-**

(i) The **proceeding** for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment or for imposition of penalty under section 271AAD (penalty for false entry etc. in books of accounts) where the amount or aggregate of amounts of penalty likely to be imposed under the said section exceeds ₹ 2 crores should be **pending**.

(ii) Such **attachment should be necessary for the purpose of protecting the interest of Revenue** in the opinion of the Assessing Officer.

(iii) The **previous approval of** the Principal Chief Commissioner or Chief **Commissioner,** Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director has been obtained by the Assessing Officer.

(iv) The **Assessing Officer, may, by an order in writing** attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.

(v) **Such provisional attachment shall cease to have effect after the expiry of a period of six months** from the date of order made under section 281B(1). However, the period can be extended by the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director, as the case may be, for the reasons to be recorded in writing for a further period or periods as he thinks fit. The **total period of extension in any case cannot exceed 2 years or 60 days after the date of order of assessment or reassessment, whichever is later.**

The **Assessing Officer shall**, by order in writing, **revoke provisional attachment** of a property made under section 281B(1) in a case where the **assessee furnishes a guarantee from a scheduled bank, for an amount not less than the fair market value of such provisionally attached property** or for an amount which is sufficient to protect the interests of the revenue.

Question 6

The regular assessment of Ms. Swati for the A.Y. 2023-24 was completed u/s 143(3) on 31.12.2024. On 18.03.2025, she received a notice issued u/s 148 for income escaping assessment for the same A.Y. 2023-24. Further, during the pendency of such proceeding for income escaping assessment, the A.O. attaches the house property of Ms. Swati.

Now, aggrieved Swati seeks your opinion (being a Chartered Accountant) as to:

(i) The circumstances under which A.O. can make provisional attachment of property of assessee.

(ii) The period of time for which such attachment can take place.

(iii) Can such attachment be revoked by the A.O. and if yes, how?

Discuss the relevant provisions of law to satisfy the aggrieved assessee, Ms. Swati.

Answer

(i) As per section 281B(1), the **Assessing Officer** is empowered to **provisionally attach any property** of Ms. Swati, by an order in writing, **during the pendency of** assessment or reassessment **proceedings, with the prior approval of** the Principal Chief **Commissioner** or Chief Commissioner or Principal Commissioner or Commissioner or Principal Director General or Director General or Principal Director or Director, **if he is of the opinion that it is necessary** to do so **for** the purpose of **protecting the interests of the revenue.**

(ii) As per section 281B(2), the provisional attachment **shall be valid for a period of 6 months** from the date of the order issued for provisional attachment.

However, the income-tax authority may extend the period of provisional attachment, for reasons to be recorded in writing, by a further period as he thinks fit.

However, the **total period of extension shall not exceed two years or sixty days after the date of assessment or reassessment, whichever is later.**

(iii) Section 281B(3) **empowers the Assessing Officer to revoke,** by an order in writing, provisional attachment of **property if Ms. Swati furnishes a guarantee from a scheduled bank, for an amount not less than the fair market value of such provisionally attached property** or for an amount which is sufficient to protect the interests of the revenue.

Question 7

As per Income Tax Act, the Assessing Officer is empowered to provisionally attach any property of the assessee if he is of the opinion that it is necessary to do so for the purpose of protecting the interests of the revenue. Can the Assessing Officer revoke Provisional attachment of property if the assessee furnishes a bank guarantee. If yes, from whom and to what extent of value of the Bank guarantee needs to be furnished as per law.

Is the Assessing Officer empowered to invoke such Bank guarantee under any circumstances?

Answer

Yes, as per section 281B(3), the **Assessing Officer can**, by order in writing, **revoke provisional attachment** of a property made u/s 281B in a case where the **assessee furnishes a guarantee**.

Such bank guarantee should be **from a scheduled bank and for an amount not less than the fair market value of such provisionally attached property** or for an amount which is sufficient to protect the interests of the Revenue.

The Assessing Officer is **empowered to invoke bank guarantee** in the following circumstances -

(i) Where a notice of demand specifying a sum payable is served upon the assessee and the **assessee fails to pay such sum** within the time specified in the notice of demand, the Assessing Officer may invoke the bank guarantee, wholly or partly, to recover the said amount

(ii) In a case where the **assessee fails to renew the bank guarantee** or fails to furnish a new guarantee from a scheduled bank for an equal amount, fifteen days before the expiry of such guarantee, the Assessing Officer shall, in the interests of revenue, invoke the bank guarantee.

Question 8

During the pendency of reassessment proceedings, the Assessing Officer has provisionally attached the property of the assessee, Mr. Malhothra in accordance with powers vested under section 281B of the Income-tax Act, 1961. The fair market value of the said property is ₹ 90 lakhs. Mr. Malhothra proposes to furnish bank guarantee to the tune of ₹ 90 lakhs in lieu of provisional attachment of property and approached the AO to revoke the attachment. AO refused such proposal. Answer the following issues in the context of relevant provisions of the Act:

(i) Whether AO can refuse to accept bank guarantee, if not, is it mandatory on his part to pass revocation order for the provisional attachment of property?

(ii) Specify circumstances under which the AO is empowered to invoke the bank guarantee.

Answer

(i) Since Mr. Malhotra proposes to furnish a bank guarantee from a scheduled bank for an amount equal to the fair value of the property, the **Assessing Officer has to revoke provisional attachment of property.** In such situation, as per section 281B, the **Assessing Officer cannot refuse to accept bank guarantee,** and has to mandatorily pass an order in writing revoking the provisional attachment of property.

(ii) The Assessing Officer can invoke the bank guarantee in the following two circumstances –

(1) **<u>Failure to pay</u>** - Where a notice of demand specifying a sum payable is served upon Mr. Malhotra, and he fails to pay such sum within the time specified in the notice of demand;

(2) **<u>Failure to renew</u>** - Where Mr. Malhotra fails to renew the bank guarantee or fails to furnish a new guarantee from a scheduled bank for an equal amount 15 days before the expiry of such guarantee.

Question 9

Mr. Biswas, a stock broker, has defaulted with regard to his income-tax payments and the Assessing Officer has attached his membership card of Stock Exchange under section 281B of the Income-tax Act, 1961. Mr. Biswas contends that the membership card is not transferable and is not his personal asset. Discuss the validity of attachment of card by Assessing Officer in the context of Section 281B.

Answer

The right of membership is not a private asset and it is merely a personal privilege granted to the member. It is non-transferable and incapable of alienation by the member or his legal representative except to the limited extent provided in the rules and regulations of the stock exchange and subject to the fulfillment of conditions prescribed by the stock exchange. The nomination, even if permitted, is subject to the rules and is not automatic. The right of nomination is vested in the stock exchange absolutely in the case of death of or default of a member. Thus, **the membership card is not the property of the assessee and therefore cannot be attached under section 281B.** It has been so held by the Apex Court in the case of Stock Exchange Ahmedabad vs. ACIT (2001) 248 ITR 209.

Statement of Financial Transaction or Reportable Account (Section 285BA)

Question 10

Comment whether the following transactions, undertaken during the financial year 2024-25, are required to be reported under the Statement of Financial Transaction or Reportable Account as required u/s 285BA of the Income-tax Act, 1961. Please give your answer alongwith suitable reasons and Category of Reporting Person.

(a) Mr. A purchased five bank drafts of ₹ 3 lakh each from his current A/c with State Bank of India, Jaipur;

(b) Ms. Q made two time deposits with Canara Bank, Jaipur - (a) a time deposit of ₹ 7 lakhs made on 7.8.2024 and (b) Renewal of Time deposit of ₹ 5 lakhs originally made on 1.1.2024 and renewed on 1.1.2025;

(c) Ms. C made following payments in respect of credit card payments-

• For the months of April to July, 2024	- ₹ 19,500 for each month, in cash
• For the months of Aug. to Dec., 2024	- ₹ 59,500 for each month, through bank A/c
• For the months of Jan to Mar, 2025	- ₹ 13,300 for each month, in cash

(d) Mr. Z purchased garments of ₹ 2 lakhs in cash from M/s Arora Designers on the occasion of his marriage. M/s Arora Designers is liable for audit u/s 44AB of the Income-tax Act, 1961.

Answer

(a) **State Bank of India, Jaipur, is not required to report** value of bank drafts purchased by Mr. A, even though aggregate value of such bank drafts i.e., ₹ 15 lakhs, exceed ₹ 10 lakhs in the F.Y.2024-25, **since such bank drafts are purchased from his current A/c and not in cash.**

(b) **Canara Bank, Jaipur is not required to report** time deposits made by Ms. Q, since the value of time deposits **other than time deposit renewed** on 1.1.2025 is only ₹ 7 lakhs, and hence, **does not aggregate to ₹ 10 lakhs or more** in the F.Y.2024-25.

(c) The **bank or institution issuing credit card is required to report** cash payment made by Ms. C in respect of credit card, since **aggregate cash payments of ₹ 1,17,900** (₹ 19,500 x 4 + ₹ 13,300 x 3) **exceeds ₹ 1 lakh** in the F.Y.2024-25.

However, **payment of ₹ 59,500** for each month from August 2024 to December 2024 **need**

not be reported by such bank or company or institution since, **aggregate value of such transactions, being ₹ 2,97,500, is less than ₹ 10 lakhs.**

(d) **Payment of ₹ 2 lakhs by Mr. Z is not required to be reported** by M/s Arora Designers, since receipt of cash payment against sale of garments from Mr. Z **does not exceed ₹ 2 lakhs.**

Other Miscellaneous

Question 11

"Proceedings cannot be initiated under the Act, unless a proper notice to this effect has been served upon." In this context answer:

(i) What are the prescribed modes of service of such notice?

(ii) On whom should the notice be addressed and served upon in the cases where the assessee is a dissolved firm, a deceased person and a partitioned HUF.

Answer

(i) As per section 282(1), the service of notice or summon or requisition or order or any other communication under this Act may be made by delivering or transmitting a copy thereof to the person named therein -

(1) **by post or such courier** services as approved by the CBDT; or

(2) **in such manner as provided in the Code of Civil Procedure, 1908** for the purposes of service of summons; or

(3) **in the form of any electronic record** as provided in Chapter IV of the Information Technology Act, 2000; or

(4) **by any other means** of transmission of documents as may be provided by rules made by the CBDT in this behalf.

The CBDT is empowered to make rules providing for the addresses (including the address for electronic mail or electronic mail message) to which such communication may be delivered or transmitted to the person named therein.

(ii) The service of notice in the given cases should be on the persons mentioned hereunder:

Person	Notice to be addressed and served on
A dissolved firm	Any person who was a **partner** (not being a minor) **immediately before dissolution.**
A deceased person	The **legal heirs** of the deceased.
A partitioned HUF	**Last Manager of the HUF,** or, if he is dead, then, all adult members of the erstwhile HUF.

Question 12

The proceedings before the Income-tax Authorities either can be attended by the assessee in person or through an authorized representative. Who can be treated as an authorized representative of the assessee? Mention any five persons who can be treated as an authorized representative of assessee.

Answer

As per section 288, the proceedings before the income-tax authorities can be attended by an assessee in person or through an **authorised representative,** i.e., a person authorized by the assessee in writing to appear on his behalf, being -

(i) a person who is a **relative or a regular employee** of the assessee; or

(ii) **any officer of a Scheduled Bank** in which the assessee maintains a current account or has other regular dealings; or

(iii) a **legal practitioner** who is entitled to practise in any civil court in India; or

(iv) a **chartered accountant** within the meaning of the Chartered Accountants Act, 1949 who hold a valid certificate of practice; or

(v) **any person who has passed any accountancy examination** recognized in this behalf by the CBDT for this purpose.

Question 13

An order for A.Y. 2025-26 was passed by the Assessing Officer as per section 143(3), but the typist wrongly typed in the order, the assessment year as A.Y.2024-25 and the relevant previous year as ending on 31.3.2024. The assessee claimed in appeal that the same is an invalid order which was not accepted by the CIT (Appeals) on the ground of the error being of clerical nature. Discuss the correctness of the order of the CIT(Appeals).

Answer

Section 292B provides that **no return of income, assessment, notice or summons** furnished or made or issued or taken in pursuance of any of the provisions of the Income-tax Act, 1961 **shall be invalid** or deemed to be invalid **merely by reason of any mistake, defect or omission** in such return of income, assessment or notice etc., if such return of income, assessment, notice, summons etc. is in substance and effect in **conformity with or according to the intent and purpose** of the Act. **Therefore, a clerical mistake cannot invalidate an otherwise valid assessment.** Thus, the typographical error in the assessment order as to assessment year and previous year does not make the same invalid unless established otherwise. Accordingly, the **action of the CIT(Appeals) in not accepting the claim of the assessee is valid.**

CHAPTER - 16

Tax Planning, Tax Evasion & Tax Avoidance (GAAR)

Tax Planning & Tax Evasion

Question 1

Distinguish between Tax planning and Tax Evasion

Answer

Tax planning is carried out within the framework of law by **availing deductions and exemptions permitted by law** and thereby minimizing tax liability. Tax planning is an arrangement by which full advantage is taken of the concessions and benefits conferred by the statute, without violation of legal provisions. **Tax evasion** on the other hand is an attempt to **reduce tax liability by dubious or artificial methods or downright fraud.** It is **illegal** and denies State its legitimate share of tax.

Question 2

Mr. Gavaskar sought voluntary retirement from a Government of India Undertaking and received compensation of ₹ 40 lacs. He is planning to use the money as capital for a business dealership in electronic goods. The manufacturer of the product requires a security deposit of ₹ 15 lacs, which would carry interest at 8% p.a. Gavaskar's wife is a graduate and has worked as marketing manager in a multinational company for 15 years. She now looks for a change in employment. She is willing to join her husband in running the business. She expects an annual income of ₹ 5 lacs. Mr. Gavaskar would like to draw a monthly remuneration of ₹ 40,000 and also interest @ 10% p.a. on his capital in the business. Mr. Gavaskar has approached you for a tax efficient structure of the business.

Discuss the various issues, which are required to be considered for formulating your advice. Computation of income or tax liability is not required.

Answer

The selection of the form of organisation to carry on any business activity is essential in view of the differential tax rates prescribed under the Income-tax Act, 1961 and specific concessions and deductions available under the Act in respect of different entities. For the purpose of formulating advice as to the tax efficient structure of the business, it is necessary for the tax consultant to **consider the following issues:**

(i) **In the case of sole proprietary concern, interest on capital and remuneration paid to the proprietor is not allowable as deduction** under section 37(1) as the expenditure is of personal nature. On the other hand, **in the case of partnership firm, both interest on capital and remuneration payable to partners are allowable** under section 37(1) subject to the conditions and limits laid down in section 40(b). The partnership should be evidenced by an instrument and the individual share of partners should be specified in the instrument. Remuneration and interest should however, be authorised by the instrument of partnership and paid in accordance with such instrument. Such interest and salary shall be taxable in the hands of partners to the extent the same is allowed as deduction in the hands of the firm under section 40(b). Interest to partners can be allowed up to 12% on simple interest basis, while the limit for allowability for partners' remuneration is based on book profit under section 40(b). As per section 40(b)(v), partners' remuneration shall be allowed to the extent of aggregate of -

(a) On the first ₹ 6,00,000 of book profit or in case of loss – ₹ 3,00,000 or at the rate of 90% of book profits, whichever is more

(b) On the balance of book profit – at the rate of 60%

Note – However, if the firm is eligible to opt for presumptive taxation under section 44AD, 8% of gross receipts or 6% of gross receipts, as the case may be, would be deemed as its income. All deductions under section 30 to 37 are deemed to be allowed. No deduction is allowable, including deduction for partner's remuneration and interest on capital.

(ii) **Partner share in profits of firm** is not taxed in hands of partners by virtue of section 10(2A).

(iii) If a proprietary concern is formed, the **salary of Mrs. Gavaskar** shall be allowed as deduction under section 37(1).

(iv) The possibility of invoking **section 40A(2)** cannot be ruled out as salary is payable to a relative, who is an interested person within the meaning of section 40A(2). However, it can be argued successfully that salary of ₹ 5 lacs is justified in view of her long experience as marketing manager of a multinational company and the fair market value of services to be rendered by her to the concern.

(v) An issue arises as to whether remuneration of Mrs. Gavaskar would be includible in the total income of Mr. Gavaskar. Under section 64(1)(ii), **remuneration of the spouse of an individual working in a concern in which the individual is having a substantial interest shall be included in the total income of the individual.** However, the **clubbing provision does not apply if the spouse possesses technical or professional qualification** and the income is solely attributable to the application of his or her technical or professional knowledge and experience. Further, technical or professional qualification would not necessarily mean the qualifications obtained by degree or diploma of any recognized body [Batta Kalyani vs. CIT (1985) 154 ITR 0059 (AP)]. The experience of Mrs. Gavaskar as a marketing manager in a multinational company for 15 years may reasonably be considered as a professional qualification for this purpose.

(vi) If Mrs. Gavaskar joins the proprietary concern or partnership concern of her husband as employee, **remuneration of ₹ 5 lacs shall be taxed in her hands under the head "salary".**

(vii) If she joins as partner in the business, remuneration shall be taxed in her hand as business income u/s 28 to the extent such remuneration is allowed in the hands of the firm u/s 40(b).

(viii) For **individuals**, tax can be computed as per **slab rates** provided under the default regime under section 115BAC(1A). Alternatively, he can exercise the option to shift out of the default tax regime and pay tax under the optional tax regime as per the regular provisions of the Act at the tax rates prescribed by the Annual Finance Act of that year. However, where he exercises the option of shifting out of the default regime for any previous year, he would be able to withdraw such option only once.

The surcharge rate is also depended on the total income and the highest surcharge would be 37% where total income exceeds ₹ 5 crores and the assessee has opted to shift out of the default tax regime whereas under default regime highest rate of surcharge would be 25%. Health and Education cess @ 4% on income-tax plus surcharge, if applicable, is attracted in all the cases. Whereas for **partnership firms'** tax is levied at a **flat rate of 30%.** Surcharge @12% would be attracted only if total income exceeds ₹ 1 crore.

If a sole proprietary concern is formed, Mr. Gavaskar has an option to pay income-tax in respect of his total income (other than income chargeable to tax at special rates under Chapter XII) as per the default regime under section 115BAC or as per the optional regime under the normal provisions of Income-tax Act.

Question 3

Specify with reason, whether the following acts can be considered as (i) Tax planning; or (ii) Tax management; or (iii) Tax evasion.

(i) Mr. P deposits ₹ 1,00,000 in PPF account so as to reduce his total income from ₹ 5,90,000 to ₹ 4,90,000.

(ii) SQL Ltd. maintains register of tax deduction at source effected by it to enable timely compliance.

(iii) An individual tax payer making tax saver deposit of ₹ 1,00,000 in a nationalised bank.

(iv) A partnership firm obtaining declaration from lenders/depositors in Form No. 15G/15H and forwarding the same to income-tax authorities.

(v) A company installed an air-conditioner costing ₹ 75,000 at the residence of a director as per terms of his appointment but treats it as fitted in quality control section in the factory. This is with the objective to treat it as plant for the purpose of computing depreciation.

(vi) RR Ltd. issued a credit note for ₹ 80,000 as brokerage payable to Mr. Ramana who is the son of the managing director of the company. The purpose is to increase the total income of Mr. Ramana from ₹ 6,20,000 to ₹ 7,00,000 and reduce the income of RR Ltd. correspondingly.

(vii) A company remitted provident fund contribution of both its own contribution and employees' contribution on monthly basis before due date.

Answer

Tax Planning/Tax Management/Tax Evasion

	Answer	Reason
1.	**Tax planning**	Depositing money in PPF and claiming deduction under section 80C is as per the provisions of law.
2.	**Tax management**	Maintaining register of payments subject to TDS helps in complying with the obligations under the Income-tax Act, 1961.
3.	**Tax planning**	Making a tax saver deposit of ₹ 1,00,000 in a nationalized bank for claiming deduction under section 80C by an individual is a permitted tax planning measure under the provisions of income-tax law.
4.	**Tax management**	Obtaining declaration from lenders/depositors in Form No. 15G/15H by a partnership firm and forwarding the same to Income-tax authorities is in the nature of compliance of statutory obligation under the Income-tax Act, 1961.

5.	Tax evasion	An air conditioner fitted at the residence of a director as per the terms of his appointment would be a furniture qualifying for depreciation @10%, whereas an air conditioner fitted in a factory would be a plant qualifying for a higher depreciation @15%. The wrong treatment unjustifiably increases the amount of depreciation and consequently, reduces profit and consequent tax liability. Treatment of air-conditioner fitted at the residence of a director as a plant fitted at the factory would tantamount to furnishing of false particulars with an attempt to evade tax.
6.	Tax evasion	Issuance of a credit note for ₹ 80,000 by RR Ltd. as brokerage payable to Mr. Ramana, the son of the Managing Director, to increase his total income from ₹ 6.2 lakh to ₹ 7.00 lakh and to correspondingly reduce the company's total income is a method of reducing the tax liability of the company by recording a fictitious transaction. The company is liable to tax at a flat rate of 30%/25%/22%, as the case may be, whereas Mr. Ramana would not be liable to pay any tax as per the default regime under section 115BAC, since his total income does not exceed ₹ 7,00,000, consequent to which he would be eligible for tax rebate under section 87A. Reducing tax liability by recording a fictitious transaction would tantamount to tax evasion.
7.	Tax management	Remitting of own contribution to provident fund and employees contribution to provident fund on a monthly basis before due date is proper compliance with the statutory obligations.

Question 4

State with reason, whether the following acts can be considered as Tax Planning or Tax Management or Tax Evasion.

(i) An individual assessee deposits a sum of ₹ 10,000 in Sukanya Samriddhi Account of his daughter, so that his total income is reduced from ₹ 5,05,000 to ₹ 4,95,000 which entitles him to rebate under section 87A and consequently his tax liability becomes Nil.

(ii) A company obtaining declaration in Form No.60 from customers who are required to provide their PAN but the same is not allotted to them.

(iii) A partnership firm made a payment of ₹ 35,000 for purchase of a refrigerator which is installed at the residence of one of the partners. However, the same is shown as being installed in the office of the firm for claiming depreciation.

(iv) A company pays ₹ 4 lakhs to Mrs. D (wife of Director Mr. D), who, although being a qualified professional but is a house-wife. The purpose is to increase the total income of Mrs. D (upto ₹ 5 lakhs) and claim expenditure in the books of the company without provision of any professional service by Mrs. D to the company.

Answer

	Answer	Reason

(i)	**Tax planning**	Depositing money in Sukanya Samriddhi Account of his daughter for claiming deduction under section 80C to reduce total income from ₹ 5,05,000 to ₹ 4,95,000 in order to avail rebate under section 87A, which consequently reduces his tax liability to 'Nil', is a permitted tax planning measure under the provisions of income-tax law.
(ii)	**Tax management**	Obtaining declaration from customers in Form No. 60 by the company is in the nature of compliance of statutory obligation under Income-tax Law.
(iii)	**Tax evasion**	A refrigerator fitted at the residence of a partner and shown as being installed in the office of firm for claiming depreciation would tantamount to furnishing of false particulars with an attempt to evade tax.
(iv)	**Tax evasion**	Payment of ₹ 4 lakhs to Mrs. D (wife of Director Mr. D) without provision of any professional services, to increase her total income upto ₹ 5 lakhs and to correspondingly reduce the company's total income is a method of reducing the tax liability of the company by recording a fictitious transaction. The company is liable to tax at a flat rate of 30%/25%/22%, as the case may be, whereas Mrs. D would not be liable to pay any tax, since her total income does not exceed ₹ 5,00,000, consequent to which she would be eligible for tax rebate of ₹ 12,500 under section 87A. Reducing tax liability by recording a fictitious transaction would tantamount to tax evasion.

Question 5

Specify with reason, whether the following acts can be considered as: (A) Tax planning; or (B) Tax management; or (C) Tax evasion.

(i) Mr. D has FDR with SBI in his name amounting to ₹ 50 lakhs. He gifted this sum of ₹ 50 lakhs to his son on the date on which he attained 18 years of age. The purpose is to shift interest income from his hands to his son, so that there may be Zero tax implication, since his son has no other income and the total interest would be lower than taxable limits.

(ii) Mr. Ram's Annual income is ₹ 49.50 lakhs excluding commission receivable from ABC Limited. During the year, he earned a commission of ₹ 6 lakhs from ABC Limited. He asked ABC Limited to transfer the commission in his wife's account, who is a housewife. He also asked them to deduct TDS in her wife's name. He did it so that his total income may not cross ₹ 50 lakhs and he can save surcharge on taxes applicable on total income exceeding ₹ 50 lakhs. His wife has no other income.

Answer

(i) **Tax Planning** – Gifting of fixed deposits of ₹ 50 lakhs by Mr. D to his son who attained age of 18 years for purpose of shifting interest income from his hands to his son so that there may be zero tax implication, is a permitted **tax planning** measure under provisions of income-tax law.

Note – It has been assumed that such transfer is irrevocable and Mr. D does not derive any direct or indirect benefit from such income. In case transfer of fixed deposit is revocable then the interest income on fixed deposits would be included in the hands of Mr. D and hence the same would not be considered as Tax Planning.

(ii) **Tax Evasion** – Mr. Ram's annual income is ₹ 49.50 lakhs. He also earned commission of ₹ 6 lakhs from ABC Limited. Accordingly, his total income would be ₹ 55.50 lakhs which exceeds ₹ 50 lakhs and hence surcharge is applicable on tax on total income.

However, **for the purpose of saving tax, he instructed ABC Ltd. to transfer the commission in his wife's account.** This is the case of application of income and not of diversion of income by overriding title, since such transfer of commission is not under any obligation but to evade tax. This is **tax evasion.**

Tax Avoidance (GAAR)

Question 6

A choice is made by a company by acquiring an asset on lease over outright purchase. The company claims deduction for lease rentals in case of acquisition through lease rather than depreciation as in the case of purchase of the asset. Would the lease rent payment, being higher than the depreciation, be disallowed as expense under GAAR?

Answer

GAAR provisions would not apply in this case as the taxpayer merely **makes a selection** out of the options available to him under the provisions of the Act for which he is eligible and satisfies the stipulated conditions, if any. Even if choice of such option results in lower tax liability, the same is a result of **tax planning.**

Question 7

M/s. Highway Drive Limited incorporates a wholly owned subsidiary M/s. Highway Roads Limited in India. Its main business is to develop infrastructure facility and is eligible for deduction u/s 80-IA. Accordingly the company has claimed deduction u/s 80-IA.

(i) Highway Roads Limited derives income other than income from developing infrastructure facilities and discloses such income as income from developing infrastructure facilities, thus enjoying the benefit u/s 80-IA.

(ii) Highway Roads Limited purchases the supplies for the development of infrastructure facilities from M/s. Highway Drive Limited at a price lesser than the fair price, thus transferring the income of M/s. Highway Drive Limited to M/s. Highway Roads Limited and enjoying the benefit of section 80-IA on such income.

Can GAAR be invoked in both the instances mentioned above?

Answer

(i) In the present case, Highway Roads Ltd. derives income other than income from developing infrastructure facilities and discloses such income as income from developing infrastructure facilities to avail benefit of deduction u/s 80-IA. This is a case of misrepresentation of facts by showing non-eligible income as income eligible for deduction u/s 80-IA. Hence, **this is an arrangement of tax evasion and not tax avoidance.**

Tax evasion, being unlawful, can be dealt with directly by establishing correct facts. **GAAR provisions need not be invoked in such a case.**

(ii) In this case, there is a close connection between Highway Drive Limited, ineligible assessee, and Highway Roads Ltd, an eligible assessee, since the eligible assessee is a wholly owned subsidiary of ineligible assessee. The purchase transaction has been arranged in such a way that it produces more than ordinary profits to the eligible assessee.

However, such tax avoidance is specifically dealt with through the provisions contained in section 80-IA(10). Further, if the aggregate of such transactions entered into in the relevant previous year exceed the threshold of ₹ 20 crore, **domestic transfer pricing regulations under section 92BA would be attracted.**

It is not the intention of the legislation to invoke GAAR in such situations. Hence, the Revenue need **not invoke GAAR in such a case,** though GAAR and SAAR can co-exist as per clarification given in the CBDT Circular.

Question 8

Critically examine the following cases and discuss whether the provisions of General Anti-avoidance Rules (GAAR) can be invoked in these cases?

(i) Diva Ltd., an Indian company has 2 manufacturing units, unit A in the Special Economic Zone (SEZ) and unit B in non-SEZ. Manufacturing activities are carried out in Unit B while unit A only does the packaging of the goods manufactured by unit B. In its books of accounts, it shows the manufacturing to be carried out in unit A and claims allowable deductions.

(ii) Jeeva Ltd., an Indian company has 2 manufacturing units, unit C in the Special Economic Zone (SEZ) and unit D in non-SEZ. It transfers the goods manufactured by unit D to unit C at a price significantly lower than market value of goods and thus becomes eligible for higher deductions.

Answer

(i) In the present case, Diva Ltd., an Indian company has 2 manufacturing units, unit A in the SEZ and unit B in non-SEZ. Though unit A only does the packaging of goods manufactured by Unit B, the company, in its books of account, shows the manufacture of goods by Unit B as manufacture of goods by unit A to enjoy exemption under section 10AA. This is a case of misrepresentation of facts by showing manufacture of non-SEZ unit as manufacture of SEZ unit. Hence, **this is an arrangement of tax evasion and not tax avoidance.**

Tax evasion, being unlawful, can be dealt with directly by establishing correct facts. **GAAR provisions need not be invoked in such a case.**

(ii) In this case, goods manufactured by unit D, a non-SEZ unit, being a non-eligible business, are transferred to unit C, a SEZ unit, being an eligible business, at a price significantly lower than the market value of goods to claim higher deduction under section 10AA in respect of unit C.

As there is no misrepresentation of facts or false submissions, it is not a case of tax evasion. The company has tried to take advantage of tax provisions by diverting profits from non-SEZ unit to SEZ unit. However, this is not the intention of the legislation.

Such tax avoidance is specifically dealt with through the provisions contained in section

10AA(9), as per which provisions of section 80-IA(8) would get attracted in such a case. Further, if the aggregate of such transactions entered into in the relevant previous year exceed the threshold of ₹ 20 crore, **domestic transfer pricing regulations under section 92BA would be attracted.** Hence, the Revenue **need not invoke GAAR in such a case,** though GAAR and SAAR can co-exist as per clarification given in the CBDT Circular.

Question 9

Y Tech Ltd. is a company resident of country C1. It enters into an agreement with Z Energy Ltd., an Indian company for setting up a power plant in India. It is a composite contract for an agreed price of US$ 100 million. The payment has been split in the following parts as per separate agreements

(i) US$ 10 million for design of power plant outside India (payment for which is taxable at 20% on gross basis)

(ii) US$ 70 million for offshore supplies of equipment etc. (not taxable as no role is played by any PE in India. These are not subject to import duty)

(iii) US$ 20 million for local supplies and installation charges (taxable on net income basis)

It is found that the fair market value of offshore design is about USD 30 million; therefore, it is under invoiced. On the other hand, offshore supplies were over invoiced. The arrangement resulted in significant tax benefit to the taxpayer. Can GAAR be invoked in such a case?

Answer

The allocation of price to different parts of the contract has been decided in such a manner as to reduce tax liability of the foreign company in India. **Both conditions for declaring an arrangement as impermissible are satisfied.** (1) The main purpose of this arrangement is to **obtain tax benefit;** and (2) the **transactions are not at arm's length.** Consequently, **GAAR may be invoked** and prices would be reallocated. However, determination of arm's length price should be based on transfer pricing regulations under the Act, if the enterprises are associated enterprises.

Question 10

Under the provisions of a tax treaty between India and country F4, any capital gains arising from the sale of shares of Indco, an Indian company, would be taxable only in F4 if the transferor is a resident of F4 except where the transferor holds more than 10% interest in the capital stock of Indco. A company, A Ltd., being resident in F4, makes an investment in Indco through two wholly owned subsidiaries (K Ltd. and L Ltd.) located in F4. Each subsidiary holds 9.95% shareholding in the Indian Company, the total adding to 19.9% of equity of Indco. The subsidiaries sell the shares of Indco and claim exemption as each is holding less than 10% equity shares in the Indian company. Can GAAR be invoked to deny treaty benefit?

Answer

The above arrangement of splitting the investment through two subsidiaries appears to be with the **intention of obtaining tax benefit** under the treaty. Further, there appears to be **no commercial substance** in creating two subsidiaries as they do not change the economic condition of investor A

Ltd. in any manner (i.e. on business risks or cash flow), and reveals a tainted element of **abuse of tax treaty**. Hence, **the arrangement can be treated as an impermissible avoidance arrangement by invoking GAAR.** Consequently, treaty benefit would be denied by ignoring K and L, the two subsidiaries, or by treating K and L as one and the same company for tax computation purposes.

Question 11

M/s Global Architects Inc is a company incorporated in country F1. It is engaged in the business of providing architectural design services all over the world. It receives an offer from Lovely Resorts Pvt Ltd, an Indian company, for design and development of resorts all over India.

India-F1 tax treaty provides that architectural services are technical services and payment for the same to a company may be taxed in India. However, if such professional services are provided by a firm or individual, then payment for such services are taxable only if the firm has a fixed base in India or stay of partners/employees in India exceed 180 days. Limitation of benefit clause does not exist in tax treaty between India-F1.

M/s Global Architects Inc forms a partnership firm with a third party (director of the company) having only a nominal share in the F1. The firm enters into an agreement to carry out the services in India. The company seconded its trained manpower to the firm.

Thus, the partnership firm claimed the treaty benefit and no tax was paid in India. Can such an arrangement be examined under GAAR?

Answer

It is obvious that there was **no commercial necessity to create a separate firm except to obtain the tax benefit.** The firm was only on paper as the manpower was drawn from the company. The firm **did not have any commercial substance.** Moreover, it is a case of **treaty abuse.** Hence, **GAAR may be invoked** to disregard the firm and tax payment for architectural services as fee for technical services. However, rate of tax on such payment shall be as applicable under treaty, if more beneficial.

Question 12

Indco incorporates a Subco in a LTJ (Low Tax Jurisdiction) with equity of US $100 million. Subco gives a loan of US $100 million to another Indian company (X Ltd.) at the rate of 10% p.a. X Ltd. claims deduction of interest payable to Subco from the profit of business. There is no other activity in Subco. Can GAAR be invoked in such a case?

Answer

The arrangement appears to avoid payment of tax on interest income by Indco in case loan is directly provided by Indco to X Ltd. The **arrangement involves round tripping of funds** even though the funds emanating from Indco are not traced back to Indco in this case. Hence, the **arrangement may be deemed to lack commercial substance and GAAR may be invoked.**

Consequently, in the case of Indco, Subco may be disregarded and the interest income may be taxed in the hands of Indco.

Question 13

Examine whether General Anti-Avoidance Rules (GAAR) can be invoked to deny the treaty benefit in the following case, assuming that all other conditions prescribed for application of GAAR are being satisfied:

Yan Ltd is a company incorporated in country C1. Yan Ltd incorporates 100% subsidiary company Y Ltd in country A. X Ltd, an Indian Company and Y Ltd (100% subsidiary of YAN Ltd) located in country "A" formed a joint venture company XY Ltd in India. As per the joint venture agreement, 51% of shares are held by X Ltd and 49% are held by Y Ltd in XY Ltd. There is no other business activity in Y Ltd.

Y Ltd is designated as Permitted Transferee of YAN Ltd. Permitted Transferee means though shares of XY Ltd are held by Y Ltd, all rights of voting, management, right to sell etc. are vested with YAN Ltd.

The shares held by Y Ltd in XY Ltd are sold to P Ltd which is a group company of X Ltd. As per the tax-treaty between India and Country "A", there is no tax for capital gains either in source country or in Country "A". Consequently, the capital gains arising to Y Ltd are not taxable in India.

Answer

GAAR may, prima facie, apply, when the following twin conditions are satisfied:

- Main purpose of the arrangement being tax benefit, and
- Existence of tainted benefit.

As per the tax treaty between India and Country "A", there is no tax on capital gains either in the Source country or in Country "A". Consequently, the capital gains arising to Y Ltd is not taxable in India.

The arrangement of routing investment through Country "A" would result in a tax benefit. Since there is no business purpose in incorporating a company Y Ltd (100% subsidiary of YAN Ltd) in Country "A", it can be said that the **main purpose of the arrangement is to obtain a tax benefit.**

On the question of whether the arrangement has any tainted element, it is evident that there **is no commercial substance** in incorporating Y Ltd as it **does not have any effect on the business risk of YAN Ltd or cash flow of YAN Ltd.**

Additionally, the fact that all rights of shareholders of Y Ltd (designated as Permitted Transferee) are being exercised by YAN Ltd instead of Y Ltd, indicates that Y Ltd lacks commercial substance.

As the twin conditions of main purpose being tax benefit and existence of a tainted element are satisfied, **GAAR may be invoked in this case.**

Question 14

In the following independent circumstances, discuss whether the provisions of GAAR would be applicable:

(i) Milo Ltd., an Indian company, is making losses for the past several years. Tilo Ltd., another Indian company, having huge profits acquired Ms. Milo Ltd.

(ii) DAMP Inc., a company incorporated in Country A, holds 1000 equity shares in MAP Ltd., an Indian listed entity since 1.4.2016. MAP Ltd. issued 1000 bonus shares to DAMP Inc. As per the treaty between India and Country A, the capital gain is taxable in the country where the transferor of shares is a resident. The tax laws of Country A, exempt capital gains. DAMP Inc. sells all the shareholding in MAP Ltd. and earned a capital gain of ₹ 5 crores.

(iii) A Ltd., an Indian company, incorporates a wholly owned subsidiary Company B, in Country B which is a Low Tax Jurisdiction with equity share capital of ₹ 1 crore. Out of the equity capital, company B gives loan to C Ltd., an Indian company at the rate of 5%. There is no other activity in Company B.

(iv) Bee Ltd., an Indian company sets up a unit in SEZ in FY 2019-20 for manufacturing of chemicals. It claims 50% deduction of profits of ₹ 100 crores earned from that unit u/s 10AA of the Act.

Answer

Applicability of GAAR

(i) In the present case, Tilo Ltd. having huge profits acquired Milo Ltd. a loss-making company. Due to **provisions relating to merger and acquisition in the Act** and considering that the scheme would have been sanctioned by the High Court/National Company Law Tribunal considering tax implications, **GAAR need not be invoked.**

(ii) **In case of investment made prior to 1.4.2017, income arising from transfer thereof would not be subject to GAAR.** Accordingly, income from transfer of shares acquired on 1.4.2016 by DAMP Inc. **would not attract GAAR.**

If the original shares are acquired before 1.4.2017, but bonus shares are issued after that date, GAAR provisions would not be attracted on transfer of such bonus shares also.

(iii) An impermissible avoidance arrangement means an arrangement, the main purpose or one of the main purposes of which is to obtain a tax benefit and also, inter alia, lacks commercial substance or is deemed to lack commercial substance. **An arrangement is deemed to lack commercial substance if it involves, inter alia, round tripping of funds.**

In this case, the arrangement of routing money through wholly owned subsidiary Company B in Country B, a low tax jurisdiction, to an Indian company (C Ltd.) involves round tripping of funds even though funds emanating from A Ltd. are not traced back to A Ltd. The alternate course available in this case is direct advance to C Ltd. an Indian company, in which case the interest income would have been chargeable to tax in the hands of A Ltd.

Therefore, the **agreement is deemed to lack commercial substance** as it involves round tripping of funds. Also, its **main purpose is to obtain tax benefit** and there is no other activity in Company B.

However, if the tax benefit in relevant assessment year arising, in aggregate, to all the parties to arrangement **does not exceed ₹ 3 crore, then, GAAR provisions would not be invoked.**

(iv) Bee Ltd. **set up a SEZ unit and claiming 50% deduction under section 10AA** resulting in tax benefit. However, setting up of SEZ is for the purpose of taking benefit of a fiscal **incentive** offered **for promoting SEZs. In such a case, GAAR provisions would not be applicable.**

CHAPTER - 17
Tax Audit and Ethical Compliances

Applicability of Tax Audit

Question 1

Sunlight & Co., a partnership firm engaged in trading of electronic goods, has a turnover of ₹ 265 lakhs for the F.Y. 2024-25. Examine whether Sunlight & Co. is required to get its books of account audited mandatorily as per section 44AB from the information given below –

	Particulars	₹
(i)	Total turnover	2,65,00,000
(ii)	Aggregate of all receipts during the year (including amount received for turnover mentioned in (i) above)	3,25,00,000
(iii)	Cash receipts out of (i) above	14,00,000
(iv)	Cash receipts out of (ii) above (This is inclusive of the figure mentioned in (iii) above)	16,00,000
(v)	Aggregate of all payments during the year	1,35,00,000
(vi)	Cash payments out of (v) above	6,95,000

Would your answer change if the cash receipts indicated in (iii) is ₹ 13 lakh instead of ₹ 14 lakh?

Answer

As per section 44AB, every person carrying on business or profession is required to get his accounts **audited** before the "specified date" by a Chartered Accountant, if the total sales, **turnover** or gross receipts in business **exceeds ₹ 1 crore** in any previous year.

However, tax audit is **not required** in case of such person carrying on business whose total sales, turnover or gross receipts in business ≤ **₹ 10 crore** in the relevant previous year (P.Y.), if:

- **aggregate cash receipts** including amount received for sales, turnover, gross receipts in the relevant previous year ≤ **5% of such receipts**; and
- **aggregate cash payments** including amount incurred for expenditure in the relevant P.Y. ≤ **5% of such payments** or

In this case, the turnover of Sunlight & Co. exceeds ₹ 1 crore but does not exceed ₹ 10 crore. Accordingly, it has to be seen whether cash receipts exceed 5% of aggregate receipts and cash payments exceed 5% of aggregate payments, to determine whether tax audit is compulsory.

In this case, the **percentage of cash receipts** of ₹ 16 lakhs to aggregate receipts of ₹ 325 lakhs **is 4.92% and the percentage of cash payments** to aggregate payments **is 5.14%.**

Since the cash payments made during the year exceed 5% of aggregate payments, the **firm is required to get its accounts audited under section 44AB** and furnish audit report before the specified date, irrespective of the fact that its turnover does not exceed ₹ 10 crores and its cash receipts do not exceed 5% of total receipts.

It may be noted that, in this case, **Sunshine & Co. cannot declare profits as per the presumptive provisions of section 44AD**, since the percentage of turnover **receipts in cash** of ₹ 14 lakhs to the total turnover of ₹ 265 lakhs **is 5.28%.**

If the cash receipts indicated in (iii) is ₹ 13 lakhs instead of ₹ 14 lakhs, the percentage of turnover receipts **in cash** of ₹ 13 lakhs to the total turnover of ₹ 265 lakhs **would be 4.91%**. In such a case, **Sunshine & Co. can declare profits as per the presumptive provisions of section 44AD**, in which case, it need not get its books of account audited under section 44AB.

Question 2

Mr. Abhinav Ahuja runs a travel agency business since the year 2010. His total commission receipts for the F.Y. 2024-25 is ₹ 287 lakhs. The details of receipts and payments made by him during the year 2024-25 are as follows:

Particulars	Amount (₹)	Mode of receipt/payment
Date of Receipt		
15.4.2024	15,65,000	BHIM UPI
27.4.2024	13,80,000	A/c payee cheque
7.5.2024	13,35,000	Bearer cheque
6.6.2024	18,21,000	A/c payee cheque
15.8.2024	15,25,000	NEFT
19.9.2024	16,72,000	NEFT
18.10.2024	15,35,600	UPI
15.2.2025	16,25,350	UPI
17.3.2025	18,19,450	NEFT
Other aggregate receipts not exceeding ₹ 2,000 per person on certain occasions from various customers. Out of this, receipts of ₹ 52,500 are received in cash.	1,44,21,600	A/c payee cheques, NEFT and UPI
Payments		
Aggregate all payments made during the P.Y. 2024-25	2,58,00,000	
Amount incurred for expenditure in cash (not exceeding ₹ 10,000 per person in each case)	20,58,000	

Mr. Abhinav contended that he is not required to get his accounts audited since his turnover does not exceed ₹ 3 crores and he is eligible to declare his income as per presumptive provisions of section 44AD. Examine the contention of Mr. Abhinav Ahuja.

Answer

As per section 44AB, every person inter alia carrying on business or profession is required to get his accounts **audited** before the "specified date" by an accountant, if total sales, **turnover** or gross receipts in business **exceeds ₹ 1 crore** in any previous year.

However, tax audit is **not required** in case of such person carrying on business whose total sales, turnover or gross receipts in business **≤ ₹ 10 crore** in the relevant previous year (P.Y.), if -

- **aggregate cash receipts** including amount received for sales, turnover, gross receipts in the relevant previous year **≤ 5% of such receipts**; and

- **aggregate cash payments** including amount incurred for expenditure in the relevant P.Y. **≤ 5% of such payments** or

As per **section 44AD**, a resident individual, HUF or Partnership firm (but not LLP) engaged in eligible business and who has not claimed deduction under section 10AA or Chapter VIA under "C - deductions in respect of certain incomes" whose total turnover/ gross receipts in the P.Y. ≤ ₹ 200 lakhs (where cash receipts do not exceed 5% of total turnover, higher threshold limit of ₹ 300 lakhs applicable) can declare 8%/6%, as the case may be, of total turnover/sales/gross receipts or a sum higher than aforesaid sum claimed to have been earned by the assessee. However, **a person** inter alia **carrying on any agency business are not eligible for presumptive provisions of section 44AD**.

In the present case, since **Mr. Abhinav Ahuja is carrying on travel agency business**, he is **not eligible for presumptive provisions of section 44AD**, though his turnover does not exceed ₹ 3 crores.

In this case, the turnover of Mr. Abhinav Ahuja exceeds ₹ **1** crore but does not exceed ₹ 10 crore. Accordingly, it has to be seen whether cash receipts exceed 5% of aggregate receipts and cash payments exceed 5% of aggregate payments, to determine whether tax audit is compulsory. During the P.Y. 2024-25, his **cash receipts** are ₹ 13,35,000 plus ₹ 52,500 totaling to ₹ 13,87,500, which is **4.83%** of total receipts of ₹ 2,87,00,000. **Cash payments** made during the P.Y. 2024-25 are ₹ 20,58,000 which is **7.98%** of aggregate payments of ₹ 2,58,00,000. Since his cash payments during the P.Y. 2024-25, exceed 5% of aggregate payments made during the year, **he is required to get the accounts audited under section 44AB** and furnish tax audit report on or before the specified date i.e., one month prior to the due date of filing return of income under section 139(1).

Ethical Compliances and Implications

Question 3

ABC 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.

Answer

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**.

Question 4

A search was conducted u/s 132 of the Income-tax Act, 1961 in the case of LMN Jewellers (P) Ltd., a gold jewellery retail chain. As part of the post search enquiries, data from the billing software was analysed. On analysis of this data, it was found that the company was involved in violation of section 40A(3) in a major way to the tune of ₹ 20 crores in the purchase of old gold.

In order to verify the findings culled from digital data, some of the customers whose whereabouts were available from computer records were contacted and their statements were recorded under oath. These customers admitted under oath that they had sold old gold and received the amounts (all exceeding ₹ 10,000) in cash. The fact which emerged from the enquiries is that LMN Jewellers (P) Ltd. purchase old gold and make payments for these purchases in cash, even if they exceed ₹ 10,000.

However, the tax auditor had mentioned "Yes" in response to the statement in sub-clause (A) of Clause 21(d) on whether the expenditure covered under section 40A(3) read with Rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft. The tax auditor submitted that standing instructions were given by the management of the entity to the employees to make payments above ₹ 10,000 only through account payee cheques and/or bank drafts or other permissible electronic modes; and copy of these instructions were verified by him. He further submitted that he had also taken a representation from the Management that net payment in cash to any person in a day did not exceed ₹ 10,000. Also, he mentioned that the test checks conducted by him did not reveal any violation.

Examine the ethical implications in this case and the consequences thereof.

Answer

As per **section 40A(3)**, where the assessee incurs any expenditure, in respect of which payment or aggregate of payments made to a person in a day otherwise than by an account payee cheque drawn on a bank or by an account payee bank draft or use of electronic system through bank account or through such other prescribed electronic modes exceeds ₹ 10,000, such expenditure shall not be allowed as a deduction.

Clause 21(d) of Form 3CD **requires the tax auditor to report**, on the basis of the examination of books of account and other relevant documents/evidence, **whether the expenditure covered under section 40A(3)** read with rule 6DD were **made by account payee cheque drawn on a bank or account payee bank draft; and if not, to furnish details** mentioned thereunder, namely, date of payment, nature of payment, amount etc.

The Guidance Note on Tax Audit issued by ICAI states that there may be practical difficulties in verifying whether each payment is made through account payee cheque or bank draft or ECS or other prescribed electronic modes. Where the reporting has been done on the basis of the certificate of the assessee, the fact has to be reported as an observation in para 3 of Form 3CA.

The tax auditor is required to point out in tax audit report, the violation of the provisions of section 40A(3) thereof involving expenditure to a person in a day exceeding ₹ 10,000 otherwise than by way of account payee cheque/bank draft, ECS and other prescribed electronic modes. However, in this case, the tax auditor has certified that there was no such instance, though such instances aggregate to a large quantum of ₹ 20 crores.

The tax auditor should have considered the nature of business i.e., jewellery business of the assessee and accordingly undertaken necessary checks to verify whether there are cash payments in violation of section 40A(3). He should have made use of the audit tools which are available to find out such payments expeditiously and accurately where the data is voluminous.

In this case, considering the nature of business of the assessee, namely, jewellery business, the onus was on the tax auditor to verify the same before reporting in Form 3CD. **Mere reliance on certificate issued by the management is not acceptable** in such a case. Also, even in a case where the reporting has been done on the basis of the certificate of the assessee, the fact has to be reported as an observation in para 3 of Form 3CA, which he had failed to do.

Thus, in the case, the **tax auditor had failed to exercise due diligence in the conduct of his professional duties**. He had **also failed to obtain sufficient information which is necessary for expression of opinion**. On account of such failure, **clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 may be invoked**.

Question 5

X Ltd., an Indian company, paid interest of ₹ 95 lakhs to X Inc., a non-resident associated enterprise in the P.Y.2024-25 on loan borrowed from it. X Ltd. also obtained loan of ₹ 5 crore@10% p.a. on 1.4.2024 from Y Inc., a foreign company in which it holds 20% voting power. X Inc. deposits ₹ 2 crore with Y Inc. X Ltd. contends that the provisions of section 94B are not attracted in its case, since the interest paid to non-resident associated enterprise does not exceed ₹ 1 crore in the P.Y.2024-25. The tax auditor is, however, of the opinion that the interest of ₹ 20 lakh (i.e., 10% of ₹ 2 crore) also has to be considered for the purpose of section 94B. X Ltd. contends that X Inc. has not deposited a corresponding and matching amount of ₹ 5 crore with Y Inc, and hence, the provisions of section 94B will not be attracted in this case. Examine the reporting requirement, if any, of the tax auditor in this case.

Answer

Relevant provision of law - Section 94B provides that where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise.

In this case, the debt issued by Y Inc. is ₹ 5 crore and the deposit made by the associated enterprise, X

Inc. with Y Inc. is ₹ 2 crore. Since the deposit is not of a matching amount, the X Ltd. contends that provisions of section 94B will not be attracted in respect of interest payable by it to Y Inc. The tax auditor is of the opinion that interest on ₹ 2 crore amounting to ₹ 20 lakhs will have to be considered for the purpose of section 94B. Accordingly, the interest payable/paid by X Ltd. to non-resident associated enterprises during the year would be ₹ 115 lakhs and hence, the provisions of section 94B would be attracted, since the same exceeds the threshold of ₹ 1 crore. This appears to be the legislative intent, since otherwise it is possible to escape the application of this provision by even by depositing a marginally lower amount than the loan taken.

Relevant clause of Form 3CD - Clause 30B(a) of Form 3CD requires the **tax auditor to state whether the assessee has incurred expenditure during the previous year by way of interest** or of similar nature **exceeding one crore** rupees as referred to in sub-section (1) of section 94B.

Relevant paras of the Guidance Note on Tax Audit - As per para 18.6 of the Guidance Note on Tax Audit, the tax auditor may have a difference of opinion with regard to the particulars furnished by the assessee. These differences are to be reported in para 3 of Form No. 3CA or para 5 of Form 3CB. As per para 19.3, if there is any **difference in the opinion of the tax auditor and that of the assessee** in respect of any information furnished in Form No. 3CD by the assessee, the tax auditor may consider **stating both the view points** and also the relevant information related to matter in order to enable the tax authority to take a decision in the matter.

Therefore, the tax auditor has to report the difference of opinion appropriately as an observation in para 3 of Form No. 3CA or para 5 of Form No. 3CB as the case may be.

Accordingly, in this case, the tax auditor may state both the view points in Clause 30B as well as report the difference of opinion appropriately as an observation in para 3 of Form 3CA **to enable the tax authority to take a decision in the matter.**

Question 6

XYZ & Co, a firm engaged in interior decoration business, employed 20 new employees on 1.4.2024 on a monthly salary of ₹ 25,000 to be paid by account payee cheque. In addition, each employee was entitled to 10% employer contribution to recognised provident fund. The employees were also entitled to transport allowance of ₹ 3,000 p.m. paid in cash. The gross total income of XYZ & Co. included profits and gains from business of ₹ 62 lakh.

The firm claimed deduction under section 80JJAA of ₹ 18 lakh, being 30% of 60 lakh (20 new employees x ₹ 25,000 p.m. x 12) on the basis of the report of the chartered accountant issued in Form 10DA. The same chartered accountant was also the tax auditor of the firm. The chartered accountant contended that "emoluments" do not include employer contribution to PF. Also, cash payments were not to be considered as "additional employee cost" for the purpose of section 80JJAA. Hence, only ₹ 25,000 p.m. per employee paid by account payee cheque has to be treated as additional employee cost. Since the same does not exceed the limit of ₹ 25,000 p.m. and the employees have been employed for more than 240 days in the P.Y.2024-25, the employees would qualify as "additional employees" for the purpose of deduction under section 80JJAA for A.Y.2025-26.

Is his contention correct? Examine the ethical implications in this case.

Answer

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 1.4.2024 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.**

Question 7

The Income-tax department collected documents from ABC Bank which revealed that M/s. Alpha Travels and Consultancy Services (Alpha Travels) had remitted substantial amounts abroad. The documents collected include Form 15CB issued by the chartered accountant, list of passengers, copy of their passports, date of travel and invoice raised by the foreign party. On enquiring from the passengers and verifying their passports, it is found that they did not travel abroad during the dates mentioned in the documents. Further, the passengers denied any sort of transactions with Alpha Travels. The department, therefore, concluded that the amounts were remitted abroad on the basis of false invoices and for wrong reasons, leading to FEMA violations and that the Form 15CB issued by the chartered accountant facilitated such violations. During the nine-month period in question, the chartered accountant had issued 120 certificates in Form 15CB approximately involving remittances of ₹ 30 crores in favour of Alpha Travels.

The chartered accountant submitted that he had issued Form 15CB based on invoices produced by the company and verifying the KYC documents of the signatory to the invoices. He however, failed to bring on record the invoices. He further submitted that since he was not the statutory auditor of the company, he did not examine the books of account before issue of Form 15CB or conduct due diligence of its business activities. He had charged ₹ 3,000 per certificate. Mostly, the fees was collected in cash. Some part of the fee was credited to his bank account.

Examine the ethical implications in this case.

Answer

Form 15CB is a certificate of an accountant wherein he certifies that he has examined the agreement between the remitter and the beneficiary requiring such remittance as well as the relevant documents and books of account required for ascertaining the nature of remittance and for determining the rate of deduction of tax at source. The chartered accountant certifying the form undertakes to have verified the agreement between the remitter and the beneficiary as well as the relevant documents and books of account to ascertain the nature of remittance and determine the rate of TDS. In this case, however, the chartered accountant mentioned that he had only verified KYC of signatory to invoice and the invoices thereof. He had not only failed to justify as to how verification of invoices was considered as sufficient compliance for certifying the forms but also failed to bring on record the said invoices. Thus, he failed to provide any basis on which he relied for issuing Form 15CB certificates to the company.

On account of such failure, **clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949** for failure to exercise due diligence in discharging his professional responsibilities and failure to obtain sufficient information **may be invoked.**

CHAPTER - 18
The Black Money & Imposition of Tax Law

Question 1

Ravinder, an Indian citizen, left India and settled in United Kingdom from 10.4.2016. He had never left India previously since April, 2008. He acquired a property worth ₹ 200 lakhs in his name in the financial year 2013-14 at Malaysia. The Assessing Officer came to know of this in March, 2025 based on the investigation made by Enforcement Directorate in some other person's case.

The Assessing Officer, having recorded some concrete evidences against Ravinder, issued a notice under section 10 of the Black Money and Imposition of Tax Act, 2015 on 27.3.2025. Mr. Ravinder's counsel contended that since Mr. Ravinder is not a resident in the financial year 2024-25, a notice under section 10 could not be issued to him.

Is issue of notice on Ravinder under section 10 of Black Money Act, 2015 tenable in law? Examine.

Answer

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 2024-25 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.

Question 2

Mr. Piloo (age 72) was the managing director of Ashok (P) Ltd. at Surat. He retired in June, 2009 and left India permanently in January, 2012. It came to the notice of the Joint Director of Income-tax (Investigation) in June, 2024 that Mr. Piloo had accumulated assets during the previous year 2008-09 exceeding ₹ 500 lakhs outside India (consisting of residential apartments and deposits in banks) which were not disclosed for income-tax purposes up to the assessment year 2012-13 for which the return of income was filed in India. Mr. Piloo was served with a notice under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 in August, 2024.

Mr. Piloo is of the opinion that since 10 years have elapsed from the last assessment year in which he was assessed in India, no proceedings could be initiated against him under the Income-tax Act, 1961 and the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. Mr. Piloo is a non-resident for the assessment year 2025-26.

Discuss the liability of Mr. Piloo under Black Money law and state the procedure and methodology for determination of value of undisclosed asset after evaluating the validity of contentions raised by him.

Answer

The **contention of the assessee** that the proceedings under the Black Money law are barred by limitation is **not tenable** in law. The time limitation given in the Income-tax Act, 1961, will not apply for the purpose of Black Money law. **There is no time limit for initiation of proceedings under the Black Money Law**, therefore, proceedings can be initiated against Piloo, even though 10 years have elapsed from the last assessment year in which he was assessed in India.

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.**

Since Mr. Piloo left India permanently in January, 2012, he is a non-resident in India for the previous year 2024-25, the year in which the notice under the Black Money Act was served on him. However, he was resident in India during the previous year 2008-09, being the year in which he accumulated assets outside India which were not disclosed by him in the return of income.

The term **"assessee"** defined under section 2(2) of the Black Money Act, inter alia **includes** a person 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, but **who was resident in India in the previous year in which the undisclosed asset located outside India was acquired**. Accordingly, Piloo who was resident in India in the P.Y.2008-09 would be an assessee under the Black Money Act, even though he is a non-resident for P.Y.2024-25.

Accordingly, **Piloo is liable to pay tax @30%** in respect of undisclosed foreign asset during the previous year 2024-25, the year in which such assets came to the notice of the Assessing Officer.

The **relevant date for determination of the value of undisclosed assets would be the first day of April of the previous year** in which the undisclosed asset located outside India comes to the notice of the Assessing Officer. The notice under the Black Money law was served in August, 2024 and the question states that it came to the notice of Joint Director of Income- tax (Investigation) in June, 2024. Accordingly, the fair market value of the asset as on 01.04.2024 would be adopted.

He is **also liable to pay penalty**, in addition to tax, if any, payable by him, of a sum **equal to three times the tax so computed.**

The value of the undisclosed asset would be the fair market value of an asset (including financial interest in any entity) determined in the prescribed manner as laid down in Rule 3 of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015.

The value of residential apartments would be the **higher of** –

(i) its **cost of acquisition**; and

(ii) the price that the property shall ordinarily fetch if sold in the **open market** on valuation date

The **value of bank deposits would be the sum of all the deposits made in the account** with the bank since the date of opening of the account. However, where any deposit is made from the proceeds of any withdrawal from the account, such deposit shall not be taken into consideration while computing the value of the account.

Question 3

An apartment located in Country X was bought in 1988 for ₹ 10 lakh. It was sold in the year 2003 for ₹ 30 lakh. This amount was deposited in a bank account in Country X. In the year 2004, another apartment was purchased for ₹ 45 lakh. The investment in the new apartment was made through withdrawal from the bank account in Country X. The new apartment has not been transferred before the valuation date and its value on the valuation date is ₹ 55 lakh. Assuming that the value of foreign bank account in Country X as computed under Rule 3(1)(e) is ₹ 70 lakh, what would be the fair market value of the new apartment as per Rule 3 of Black Money (Undisclosed Foreign Income and Assets) Imposition of Tax Rules, 2015?

Answer

FMV of the new apartment = **Higher of cost of acquisition** i.e., ₹ 45 lakh **and** price which the property would ordinarily fetch if sold in the **open market on the valuation date** as per the valuation report i.e., ₹ 55 lakh = **₹ 55 lakh.**

Question 4

Deepak, aged 45 (an Indian citizen) has settled in California, USA since 2015. Prior to that, he has always been in India. He had acquired a residential property in California on 25.06.2009 for USD 20,000. He kept bank deposit of USD 10,000 in a bank account in New York since 15.04.2010.

Notice under Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 was issued on 20.10.2024. The fair market value of residential property as on 01.04.2024 was USD 25,000; on 01.04.2025 USD 32,000 and 20.10.2024 USD 30,000. The bank deposit with accrued interest thereon was USD 12,500 on 01.04.2024; USD 12,800 on 01.04.2025 and USD 12,700 on 20.10.2024.

Note: USD = United States Dollar

The exchange rate of Indian currency per 1 USD as per the reference rate of the RBI on the various dates are:

01.04.2024 = ₹ 71

20.10.2024 = ₹ 72

01.04.2025 = ₹ 73

Compute the value of undisclosed foreign asset chargeable to tax in the hands of Deepak as per Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

Answer

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.2024-25, 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 2024-25, 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., 1.4.2024	USD 25,000	
Converted into Indian currency taking the rate as on 1.4.2024	₹ 71/USD	17,75,000
Bank Deposits in a bank A/c in New York as on 1st April 2024 [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 1.4.2024	₹ 71/USD	7,10,000
Total value of undisclosed foreign asset		**24,85,000**

Question 5

Mr. Harshit stayed in India only for 48 days during P.Y.2024-25. He had acquired a house property located in Country A in September 2013 for ₹ 80 lakh. Out of the investment of ₹ 80 lakh, ₹ 55 lakh was assessed to tax in the total income of the P.Y.2013-14 and P.Y.2012-13, when he was resident in India. The remaining income has not been assessed to tax in any year. This asset comes to the notice of the Assessing Officer in March 2025. The value of the house property on 1.4.2024 was ₹ 120 lakh.

What is the value of undisclosed asset (house property located in Country A) in the hands of Mr. Harshit for the purpose of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and in which year would the same be chargeable to tax?

Answer

Although Mr. Harshit is a non-resident in A.Y.2025-26 (since he stayed in India only for 48 days in the P.Y.2024-25), **he is a resident in the P.Y. 2013-14 in which the undisclosed asset located in Country A was acquired**. Hence, he is an assessee under the Black Money (Undisclosed Foreign Income and Assets) Imposition of Tax Act, 2015.

If the value of the house property in the year 2024-25 is ₹ 120 lakh, the amount chargeable to tax shall be X-Y=Z where,

X = ₹ 120 lakh,

Y = ₹ 120 lakh x 55/80 = ₹ 82.50 lakh,

Z = ₹ 120 lakh - ₹ 82.50 lakh = ₹ 37.50 lakh.

₹ 37.50 lakh chargeable to tax in the hands of Mr. Harshit in the A.Y.2025-26.

Question 6

Mr. Rohit, an Indian citizen, returned to India in March 2013 to assume the role of CEO at ABC (P) Ltd., an Indian company. He served in this capacity from 1st April 2013 to 31st March 2020. Prior to this, from May 2000 to February 2013 he was working with Red Inc, in the USA. In April 2020, he went to the USA to rejoin Red Inc. and permanently settled there. Mr. Rohit visits India every year only for 1 month during his stay in USA. It was found that when he was CEO of ABC (P) Ltd., he accumulated undisclosed income/wealth such as

(i) shares of listed companies in USA acquired on 10th December, 2012;

(ii) acquired one apartment in London on 20th April 2015 and

(iii) established a leather goods manufacturing factory in Malaysia on 15th April 2020.

He also earned income by taking commission from various foreign buyers located outside India during the period between April 2013 to March 2020. The above undisclosed assets came to notice of Assessing Officer in April 2024, and he issued notice under the Black Money Act, 2015 in July, 2024.

Is the notice issued by Assessing Officer under Black Money Act, 2015 on Mr. Rohit tenable in law?

Answer

Validity of notice issued under Black Money Act, 2015

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.**

Section 2(2) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 defines "assessee" to include a person being -

(a) a **resident** in India within the meaning of section 6 of the Income- tax Act, 1961 in the previous year; or

(b) a non-resident or not ordinarily resident in India within the meaning of section 6(6) of the Income-tax Act, 1961 in the previous year but **who was resident in India** either in the previous year to which the income referred to in section 4 relates; or **in the previous year in which the undisclosed asset located outside India was acquired.**

Mr. Rohit is non-resident for P.Y. 2024-25 (previous year in which notice is issued by Assessing Officer), since he returned to the USA in April 2020 and visited every year only for 1 month. He was **also a non-resident for the P.Y. 2012-13, when he acquired shares of listed companies in USA and P.Y. 2020-21, when he established a leather goods manufacturing factory in Malaysia,** since he was in India only during the previous years from P.Y. 2013-14 to P.Y. 2019-20. However, he was **resident in India in the P.Y. 2015-16, when he acquired one apartment in London.**

Accordingly, the **issue of notice on Mr. Rohit** under section 10 of the Black Money Act, 2015, is **tenable in law, in respect of apartment in London** since he was resident in the previous year 2015-16 when the property was acquired.

However, **notice issued in respect of shares of listed companies in USA** acquired in the P.Y.2012-13 **and leather goods manufacturing factory established in Malaysia** in the P.Y.2020-21 **is not tenable in law**, since Mr. Rohit was non-resident in the previous years in which undisclosed assets were acquired and also in the previous year in which it comes to the notice of Assessing Officer.

CHAPTER - 19
Double Taxation Relief

Relief u/s 90

Question 1

Examine the correctness or otherwise of the following statement with reference to the provisions of Income-tax Act, 1961.

The double taxation avoidance treaties entered into by the Government of India override the domestic law.

Answer

The statement is correct.

Section 90(2) provides that where a double taxation avoidance treaty is entered into by the Government, the provisions of the Income-tax Act, 1961 would **apply to the extent they are more beneficial to the assessee.**

In case of any conflict between the provisions of the double taxation avoidance agreement and the Income-tax Act, 1961, the provisions of the DTAA would prevail over the Act in view of the provisions of section 90(2), to the extent they are more beneficial to the assessee [CIT v. P.V.A.L. Kulandagan Chettiar (2004) 267 ITR 654 (SC)].

Question 2

Assessee had taken an engine on lease under an agreement with a foreign company (lessor), a tax resident of the Germany, having no permanent establishment (PE) in India. The foreign company also does not have PAN in India. The assessee company deducted tax at source @10% on lease rental as per the provisions contained under DTAA between India and Germany.

However, revenue contended that in the absence of furnishing of PAN, the assessee was under an obligation to deduct tax at a higher rate of 20% following the provisions of section 206AA. In the light of the latest Supreme Court rulings, discuss whether the contention of Revenue is correct or not.

Answer

Issue Involved: The issue under consideration is whether the provisions of section 206AA, which prescribe a higher rate of tax deduction at source in case of non-furnishing of PAN by a foreign company, override the Double Taxation Avoidance Agreement (DTAA) that specify a lower rate of tax.

Provisions Applicable: As per **section 206AA**, in case of non-furnishing of PAN by the deductee to the deductor, the tax is required to be deducted at **higher of the rate specified in the relevant provision or at the rates in force or at the rate of 20%.**

Analysis and Conclusion: Section 90(2) provides that the **provisions of DTAAs would override the provisions of Act in cases where provisions of DTAAs are more beneficial** to the assessee.

Even the charging sections 4 and 5 of the Act, which deal with the principle of ascertainment of total income under the Act, are also subordinate to the principle enshrined in section 90(2).

Thus, in so far as the applicability of the scope/rate of taxation with respect to the impugned payments made to the non-residents is concerned, no fault can be found with the rate of taxation invoked by the assessee based on the DTAAs, which prescribed for a beneficial rate of taxation.

The provisions of tax withholding, i.e., section 195 of the Act, would apply only to sums that are otherwise chargeable to tax under the Act. The provisions of DTAAs, along with sections 4, 5, 9, 90 & 91 of the Act, are relevant while applying the provisions of tax deduction at source. Therefore, section 206AA of the Act cannot be understood to override charging sections 4 and 5 of the Act.

Accordingly, **the contention of the revenue** that in the absence of furnishing of PAN, the assessee was under an obligation to deduct tax at a higher rate of 20% **is not correct.**

Note – The facts given in the question are similar to the facts in CIT (International Taxation) v. Air India Ltd. [2023] 456 ITR 139 (SC). The above answer is based on the rationale of the Supreme Court ruling in the said case.

Question 3

Cosmos Limited, a company incorporated in Mauritius, has a branch office in Hyderabad opened in April. The Indian branch has filed return of income disclosing income of ₹ 50 lacs. It paid tax at the rate applicable to domestic company i.e. 30% plus higher education cess@4% on the basis of paragraph 2 of Article 24 (Non-Discrimination) of the Double Taxation Avoidance Agreement between India and Mauritius, which reads as follows:

"The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities in the same circumstances."

However, the Assessing Officer computed tax on the Indian branch at the rate applicable to a foreign company i.e. 35% plus higher education cess@4%.

Is the action of the Assessing Officer in accordance with law?

Answer

Under section 90(2), where the Central Government has entered into an agreement for avoidance of double taxation with Government of any country outside India or specified territory outside India, as the case may be, then, in relation to the assessee to whom such agreement applies, the provisions of the Income-tax Act, 1961 shall apply to the extent they are more beneficial to the assessee. Thus, in view of paragraph 2 of Article 24 (Non-discrimination of the DTAA, it appears that the Indian branch of Cosmos Limited, incorporated in Mauritius, is liable to tax in India at the rate applicable to domestic company (30%), which is lower than the rate of tax applicable to a foreign company (35%).

However, Explanation 1 to section 90 clarifies that the **charge of tax in respect of a foreign company at a rate higher than the rate at which a domestic company is chargeable, shall not be regarded as less favourable charge** or levy of tax in respect of such foreign company. Therefore, in view of this Explanation, the **action of the Assessing Officer** in levying tax@35% on the Indian branch of Cosmos Ltd. **is in accordance with law.**

Question 4

The Income-tax Act, 1961 provides for taxation of a certain income earned in India by Mr. X, a non-resident. The Double Taxation Avoidance Agreement, which applies to Mr. X provides for taxation of such income in the country of residence. Is Mr. X liable to pay tax on such income earned by him in India? Examine.

Answer

Section 90(2) makes it clear that where the Central Government has entered into a Double Taxation Avoidance Agreement with a country outside India, then **in respect of an assessee to whom such agreement applies, the provisions of the Act shall apply to the extent they are more beneficial to the assessee.** This means that where tax liability is imposed by the Act, the Double Taxation Avoidance Agreement may be resorted to for reducing or avoiding the tax liability.

However, as per section 90(4), the assessee, in order to claim relief under the agreement, has to obtain a certificate **[Tax Residence Certificate (TRC)]** from the Government of that country, declaring the residence of the country outside India. Further, he also has to provide the following information in Form No. 10F:

(i) **Status** (individual, company, firm etc.) of the assessee;

(ii) **PAN** of the assessee, if allotted;

(iii) **Nationality** (in case of an individual) or country or specified territory of incorporation or registration (in case of others);

(iv) Assessee's **tax identification number** in the country or specified territory of residence and in case there is no such number, then, a unique number on the basis of which the person is identified by the Government of the country or the specified territory of which the assessee claims to be a resident;

(v) **Period for which the residential status**, as mentioned in the certificate referred to in section 90(4) or section 90A(4), **is applicable**; and

(vi) **Address of the assessee** in the country or specified territory **outside India**, during the period for which the certificate, as mentioned in (v) above, is applicable.

However, the assessee may not be required to provide the information or any part thereof, if the information or the part thereof, as the case may be, is already contained in the TRC referred to in section 90(4) or section 90A(4).

The Supreme Court has held, in CIT v. P.V.A.L. Kulandagan Chettiar (2004) 267 ITR 654, that in case of any conflict between the provisions of the Double Taxation Avoidance Agreement and the Income-tax Act, 1961, the provisions of the Double Taxation Avoidance Agreement would prevail over those of the Income-tax Act, 1961. Mr. X is, therefore, not liable to pay tax on income earned by him in India provided he submits the Tax Residence Certificate obtained from the government of other country, and provides such other documents and information as may be prescribed.

Question 5

Arif is a resident of both India and another foreign country in the previous year 2024-25. He owns immovable properties (including residential house) in both the countries. He earned incpme of ₹ 50 lacs from rubber estates in the foreign country during the year. He also sold some house property situated in foreign country resulting in short-term capital gain of ₹ 10 lacs during the year. Arif has no permanent establishment of business in India. However, he has derived rental income of ₹ 6 lacs from property let out in India and he has a house in Lucknow where he stays during his visit to India.

Article 4 of the Double Taxation Avoidance Agreement between India and the foreign country where Arif is a resident, provides that "where an individual is a resident of both the Contracting States, then, he shall be deemed to be resident of the Contracting State in which he has permanent home available to him. If he has permanent home in both the Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests)".

You are required to examine with reasons whether the business income of Arif arising in foreign country and the capital gains in respect of sale of the property situated in foreign country can be taxed in India.

Answer

Section 90(1) of the Income-tax Act, 1961 empowers the Central Government to enter into an agreement with the Government of any country outside India for avoidance of double taxation of income under the Indian law and the corresponding law of that country. Section 90(2) provides that where the Central Government has entered into an agreement with the Government of any other country for granting relief of tax or for avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of the Income-tax Act, 1961 shall apply to the extent they are more beneficial to that assessee.

Arif has residential houses both in India and foreign country. Thus, he has a permanent home in both the countries. However, he has no permanent establishment of business in India. The Double Taxation Avoidance Agreement (DTAA) with foreign country provides that **where an individual is a resident of both the countries, he shall be deemed to be resident of that country in which he has a permanent home** and if he has a **permanent home in both the countries, he shall be deemed to be resident of that country, which is the centre of his vital interests** i.e. the country with which he has closer **personal and economic relations.**

Arif owns rubber estates in a foreign country from which he derives business income. However, Arif has no permanent establishment of his business in India. Therefore **his personal and economic relations with foreign country are closer,** since foreign country is the place where –

(a) the property is located and

(b) the permanent establishment (PE) has been set-up

Therefore, **he shall be deemed to be resident of the foreign country** for A.Y. 2025-26.

The fact of the case and issues arising therefrom are similar to that of CIT vs. P.V.A.L. Kulandagan Chettiar (2004) 267 ITR 654, where the Supreme Court held that if an assessee is deemed to be a resident of a contracting State where his personal and economic relations are closer, then in such a case, the fact that he is a resident in India to be taxed in terms of sections 4 and 5 would become irrelevant, since the DTAA prevails over sections 4 and 5.

However, as per section 90(4), in order to claim relief under the agreement, Arif has to obtain a certificate [Tax Residency Certificate (TRC)] declaring his residence of the country outside India from the Government of that country. Further, he also has to provide such other documents and information, as may be prescribed.

Therefore, in this case, **Arif is not liable to income tax in India in respect of business income and capital gains arising in the foreign country provided he furnishes the Tax Residency Certificate** and provides such other documents and information as may be prescribed.

Question 6

Mr. Naveen, an individual resident in India, aged 52 years, earned royalty income of ₹ 15 lakhs from XY Inc. of Canada, for writing articles in journals and newspapers for the year ended 31.03.2025. However, he received only ₹ 12.50 lakhs during the previous year 2024-25 and the balance is outstanding as on 31.03.2025. He maintains cash system of accounting for royalty income.

He also earned a rental income of ₹ 2.40 lakhs (gross) from a house situated in Canada. Municipal taxes paid in respect of the house amounted to ₹ 10,000 which is not allowed as deduction in Canada. There is DTAA between India and Canada. Tax of ₹ 2,11,650 was paid in Canada in respect of income earned in Canada.

He further received ₹ 3.50 lakhs during the year, as dividend from X Ltd., an Indian company.

He took an educational loan from bank for his son who was pursuing MBA. Annual repayment of loan and interest amounted to ₹ 1.20 lakhs and ₹ 0.24 lakhs, respectively.

Compute the total income and tax liability of Mr. Naveen in India for the Assessment Year 2025-26, assuming that he opted/shift out of the default tax regime under section 115BAC.

Answer

Computation of total income of Mr. Naveen

Particulars	₹	₹
Income from House Property		
Rental income from property in Canada	2,40,000	
Less: Municipal taxes paid	10,000	
	2,30,000	
Less: Deduction u/s 24(a) @30%	69,000	1,61,000
Profits and gains from business or profession		
Royalty from Canada for writing article in journals [only the amount which is received during the previous year is includible, since he maintains cash system of accounting]		12,50,000
Income from Other Sources		
Dividend received from X Ltd. an Indian company [since TDS have been deducted @ 10%, the amount includible in the total income need to be grossed up [₹ 3,50,000 x 100/90]]		3,88,889
Gross Total Income		**17,99,889**
Less: Deduction under Chapter VI-A		
U/s 80E – deduction in respect of interest on educational loan for his son	24,000	

U/s 80QQB – No deduction is allowable since royalty income is for writing articles in journals and newspapers and not for writing books	-	24,000
Total Income		17,75,889
Total Income (rounded off)		**17,75,890**

Computation of tax liability of Mr. Naveen

Particulars		₹
Tax on total income [30% of ₹ 7,75,890 + ₹ 1,12,500]		3,45,267
Add: Health and education cess @4%		13,811
		3,59,078
Less: Deduction in respect of tax paid in Canada -		
- Tax in India @20.220% on ₹ 14,11,000, being income from house property of ₹ 1,61,000 plus royalty of ₹ 12,50,000 [i.e., ₹ 3,59,078/17,75,890 x 100]	₹ 2,85,304	
- Tax paid in Canada	₹ 2,11,650	
Lower of the two above		2,11,650
Tax Liability		1,47,428
Tax Liability (rounded off)		**1,47,430**

Question 7

Mr. Ritesh, a resident individual, aged 42 years, earned the following sums during the P.Y. 2024-25:

Income from a business in India ₹ 4,85,000

Royalty Income from Country N ₹ 7,80,000 (Rate of Tax in Country N 10%, Tax deducted ₹ 78,000)

Interest (other than interest on securities) from Country Y US $ 9,500 (interest became due on 01.04.2024) Tax deducted (on 21.02.2025): US $ 950 (Rate of Tax 10%)

Agriculture income in Country M: ₹ 1,09,000

Additional Information:

(i) As per DTAA between India and Country N, the royalty will only be taxable in the Source State.

(ii) As per the DTAA between India and Country Y, interest can be taxed in both the states and tax credit will be available in respect of tax payable in resident state.

(iii) Agriculture income is exempt in country M. India does not have a DTAA with Country M.

(iv) Telegraphic transfer buying rate on different dates of US $:

Date	Rate (₹)
31.03.2024	75
31.01.2025	78
21.02.2025	79
31.03.2025	80

You are required to calculate the total income and tax payable by Mr. Ritesh assuming that he opted out of the default tax regime under section 115BAC.

Answer

Computation of total income and tax payable by Mr. Ritesh

Particulars	₹	₹
Profits and Gains of Business or Profession		
Income from business in India	4,85,000	
Royalty from Country N [As per India-Country N DTAA, royalty is taxable in Country N only]	Nil	4,85,000
Income from Other Sources		
Interest from Country Y [US $ 9,500 x 80 (being conversion rate as on 31.3.2025 i.e., last day of the previous year – Rule 115]	7,60,000	
Agricultural Income in Country M [Not exempt in India]	1,09,000	8,69,000
Gross Total Income/Total Income		**13,54,000**
Tax liability on ₹ 13,54,000		
Tax on total income [30% of ₹ 3,54,000 + ₹ 1,12,500]		2,18,700
Add: Health and Education cess@4%		8,748
		2,27,448
Less: **Deduction under section 91**		Nil
[Since agricultural income is exempt in Country M, there is no doubly taxed income. Hence, no deduction under section 91 is allowable]		
Less: Deduction u/s 90 **(See Working Note below)**		74,100
Tax payable		**1,53,348**
Tax payable (Rounded off)		**1,53,350**

Working Note: Calculation of deduction under section 90

Particulars	₹
Average rate of tax in India [i.e., ₹ 2,27,448 / ₹ 13,54,000 x 100]	16.798%
Tax payable in India on interest from Country Y [₹ 7,60,000 x 16.798%]	1,27,665
Tax paid in Country Y [US $ 950 x 78, being conversion rate as on 31.1.2025 i.e., the last day of month immediately preceding month in which tax has been deducted]	74,100
Deduction u/s 90 [being the lower of tax paid on interest income in Country Y and tax payable in India]	**74,100**

Question 8

Mahesh (Age 50 years) is the CEO of Silver India Ltd. His income in India consists of:

(i) salary (before standard deduction) of ₹ 23,25,000;

(ii) interest on bank fixed deposits ₹ 1,60,000;

(iii) Interest paid in respect of self-occupied property of ₹ 1,80,000.

He has the following income for the year ended 31st March 2025 in Country 'A'.

(i) Income from business in Country A = USD 25,000;

(ii) Rent from house property in Country A = USD 4,500;

(iii) Municipal taxes in respect of above house (Not allowed as deduction in Country A) = USD 450;

(iv) Dividend from shares held in Country 'A' where dividend was declared and paid in March, 2025 =USD 10,000;

(v) Short term capital gain of USD 5,000 on sale of unlisted shares of companies registered in Country 'A' and sale proceeds were credited in bank account outside India on 28.03.2025.

India has DTAA with Country 'A' and the tax paid in Country 'A' is eligible for tax credit in India. The fiscal year for income-tax is the same both in India and Country 'A'. Rate of tax is 20% in Country 'A' in respect of all incomes (i.e. on USD 44,500). Income-tax was paid by Mahesh on 25.05.2025 for the incomes of the year ended 31st March 2025 in Country 'A'.

Compute the total income and net tax liability of Mahesh for the A.Y. 2025-26. Assume Mahesh pays tax under section 115BAC.

The TT buying rate of 1 USD on various dates: 28.02.2025 = ₹ 70; 28.03.2025 = ₹ 70.50; 31.03.2025 = ₹ 71; 30.04.2025 = ₹ 72; and 25.05.2025 = ₹ 73.

Answer

Since Mr. Mahesh is a resident in India for the P.Y.2024-25, his global income would be subject to tax in India. Therefore, income earned by him in Country A would be taxable in India.

Computation of total income of Mahesh as per section 115BAC

Particulars	Amount (₹)	Amount (₹)
Salaries		
Salary from Silver Ltd.	23,25,000	
Less: Standard deduction u/s 16(ia)	75,000	22,50,000
Income from house property		
Let out property in Country A		
Gross Annual Value	USD 4,500	
Less: Municipal taxes	USD 450	
Net Annual Value	USD 4,050	
Less: Deduction under section 24 – 30% of NAV	USD 1,215	
	USD 2,835	
[$ 2,835 x 71, being the last day of previous year i.e., 31.3.2025 as per Rule 115]	2,01,285	
Self-occupied property in India		
Loss from self-occupied property [Interest u/s 24(b) is not allowable in respect of self-occupied property under section 115BAC]	Nil	2,01,285
Profits and gains from business or profession		

Income from business in Country A [$ 25,000 x 71, being the last day of previous year i.e., 31.3.2025 as per Rule 115]		17,75,000
Capital Gains		
Short term capital gains on sale of unlisted shares of companies registered in Country A [$ 5,000 x 70, being the last day of the month immediately preceding the month in which the shares are transferred i.e., 28.2.2025 as per Rule 115]		3,50,000
Income from Other Sources		
Interest on bank fixed deposits	1,60,000	
Dividend from shares held in Country A [$ 10,000 x 70, being the last day of the month immediately preceding the month in which the dividend is declared i.e., 28.2.2025 as per Rule 115]	7,00,000	8,60,000
Gross Total Income/Total Income		**54,36,285**
Total Income (Rounded off)		**54,36,290**

Computation of Net tax liability of Mahesh

Particulars		Amount
Upto ₹ 3,00,000	Nil	
₹ 3,00,001 – ₹ 7,00,000 [i.e., ₹ 4,00,000 @5%]	20,000	
₹ 7,00,001 – ₹ 10,00,000 [i.e., ₹ 3,00,000 @10%]	30,000	
₹ 10,00,001 – ₹ 12,00,000 [i.e., ₹ 2,00,000 @15%]	30,000	
₹ 12,00,001 – ₹ 15,00,000 [i.e., ₹ 3,00,000 @ 20%]	60,000	
₹ 15,00,001 – ₹ 54,36,290 [i.e., ₹ 39,36,290 @ 30%]	11,80,887	
		13,20,887
Add: Surcharge@10% [Since total income exceed ₹ 50 lakhs but not exceed ₹ 1 crore]		1,32,089
		14,52,976
Add: Health & Education Cess@4%		58,119
		15,11,095
Less: Foreign tax credit, being lower of:		
- Tax payable in India @27.796% on ₹ 30,26,285, being income from house property of ₹ 2,01,285, business income of ₹ 17,75,000 plus capital gains of ₹ 3,50,000 plus dividend income of ₹ 7,00,000 [i.e., ₹ 15,11,095/₹ 54,36,290 x 100] = 27.796%	8,41,186	
- Tax paid in Country A @20% [$ 44,500 @20% x ₹ 72, being the rate on 30.4.2025, being the last day of the month immediately preceding the month in which tax is paid, i.e., May 2025]	6,40,800	6,40,800
Net tax liability		**8,70,295**
Net tax liability (Rounded off)		**8,70,300**

Relief u/s 91

Question 9

An individual resident in India, having income earned outside India in a country with which no agreement under section 90 exists, asks you to examine whether the credit for the tax paid on the foreign income will be allowed against his income-tax liability in India.

Answer

The assessee is a resident in India and accordingly, the income accruing or arising to him globally is chargeable to tax in India. However, section 91 specifies that if a person resident in India has paid tax in any country with which no agreement under section 90 exists, then, for the purpose of relief or avoidance of double taxation, **a deduction is allowed from the Indian income-tax payable by him, of a sum calculated on such doubly taxed income at Indian rate of tax or the rate of tax of such foreign country, whichever is lower, or at the Indian rate of tax, if both the rates are equal.** Accordingly, the assessee **shall not be given any credit** of the tax paid on the income in other country, **but shall be allowed a deduction from the Indian income-tax payable by him** as per the scheme of section 91 read with Rule 128 on Foreign Tax Credit.

Question 10

Nandita, an individual resident retired employee of the Prasar Bharati aged 60 years, is a well-known dramatist deriving income of ₹ 1,10,000 from theatrical works played abroad. Tax of ₹ 11,000 was deducted in the country where the plays were performed. India does not have any Double Tax Avoidance Agreement under section 90 of the Income-tax Act, 1961, with that country. Her income in India amounted to ₹ 6,10,000. In view of tax planning, she has deposited ₹ 1,50,000 in Public Provident Fund and paid contribution to approved Pension Fund of LIC ₹ 32,000. She also contributed ₹ 28,000 to Central Government Health Scheme during the previous year and gave payment of medical insurance premium of ₹ 26,000 to insure health of her mother, a non-resident aged 84 years, who is not dependent on her. Compute the tax liability of Nandita for the Assessment year 2025-26, assuming that she opted out of the default tax regime under section 115BAC.

Answer

Computation of tax liability of Nandita under normal provisions of the Act

Particulars	₹	₹
Indian Income		6,10,000
Foreign Income		1,10,000
Gross Total Income		**7,20,000**
Less: <u>Deduction under section 80C</u>		
Deposit in PPF	1,50,000	
<u>Under section 80CCC</u>		
Contribution to approved Pension Fund of LIC	32,000	
	1,82,000	

Under section 80CCE The aggregate deduction under section 80C, 80CCC and 80CCD(1) has to be restricted to ₹ 1,50,000	1,50,000	
Under section 80D Contribution to CGHS ₹ 28,000 is also allowable as deduction under section 80D. Since she is a resident senior citizen, the deduction is allowable to a maximum of ₹ 50,000 (See Note 1)	28,000	
Medical insurance premium of ₹ 26,000 paid for mother aged 84 years. Since the mother is a non-resident in India, she will not be entitled for the higher deduction of ₹ 50,000 eligible for a senior citizen, who is resident in India. Hence, the deduction will be restricted to maximum of ₹ 25,000.	25,000	2,03,000
Total Income		**5,17,000**
Tax on Total Income		
Income-tax (See Note below)		13,400
Add: Health and Education Cess @4%		536
		13,936
Average rate of tax in India (i.e. ₹ 13,936/₹ 5,17,000 × 100)	2.696%	
Average rate of tax in foreign country (i.e. ₹ 11,000/₹ 1,10,000 ×100)	10%	
Deduction under section 91 on ₹ 1,10,000 @ 2.696% (lower of average Indian-tax rate or average foreign tax rate)		2,966
Tax payable in India (₹ 13,936 – ₹ 2,966)		**10,970**

Notes:

1. Section 80D allows a higher deduction of up to ₹ 50,000 in respect of the medical premium paid to insure the heath of a senior citizen. Therefore, Nandita will be allowed deduction of ₹ 28,000 under section 80D, since she is a resident Indian of the age of 60 years.

2. The basic exemption limit for senior citizens is ₹ 3,00,000 and the age criterion for qualifying as a "senior citizen" for availing the higher basic exemption limit is 60 years. Accordingly, Nandita is eligible for the higher basic exemption limit of ₹ 3,00,000, since she is 60 years old.

3. An assessee shall be allowed deduction u/s 91 provided all following conditions are fulfilled:

   (a) The assessee is a resident in India during the relevant previous year.

   (b) The income accrues or arises to him outside India during that previous year.

   (c) Such income is not deemed to accrue or arise in India during the previous year.

   (d) The income in question has been subjected to income-tax in the foreign country in the hands of the assessee and assessee has paid tax on such income in the foreign country.

   (e) There is no agreement under section 90 for the relief or avoidance of double taxation between India and the other country where the income has accrued or arisen.

   In this case, since all the above conditions are satisfied, Nandita is eligible for deduction u/s 91.

Question 11

Kalpesh Kumar, a resident individual, is a musician deriving income of ₹ 7,50,000 from concerts performed outside India. Tax of ₹ 1,00,000 was deducted at source in the country where the concerts were performed. India does not have any double tax avoidance agreement with that country. His income in India amounted to ₹ 30,00,000. Compute tax liability of Kalpesh Kumar for the assessment year 2025-26 assuming he has deposited ₹ 1,50,000 in Public Provident Fund and paid medical insurance premium in respect of his father, resident in India, aged 65 years, ₹ 52,000. Assume that he opted out of the default tax regime under section 115BAC.

Answer

Computation of tax liability of Mr. Kalpesh under normal provisions of the Act

Particulars	₹	₹
Indian Income		30,00,000
Foreign Income		7,50,000
Gross Total Income		**37,50,000**
Less: **Deduction under section 80C**		
PPF Contribution	1,50,000	
Deduction under section 80D		
Medical Insurance premium of father, being a resident senior citizen, restricted to	50,000	2,00,000
Total Income		**35,50,000**
Tax on total income		8,77,500
Add: Health and Education cess @4%		35,100
		9,12,600
Average rate of tax in India [₹ 9,12,600/₹ 35,50,000 x 100]	25.71%	
Average rate of tax in foreign country [₹ 1,00,000/₹ 7,50,000 x 100]	13.333%	
Deduction under section 91 on ₹ 7,50,000 @13.33% (lower of average Indian tax rate and foreign tax rate]		1,00,000
Tax payable in India [₹ 9,12,600 – ₹ 1,00,000]		**8,12,600**

Note: An assessee shall be allowed deduction u/s 91 provided all following conditions are fulfilled:

(a) The assessee is a resident in India during the relevant previous year.

(b) The income accrues or arises to him outside India during that previous year.

(c) Such income is not deemed to accrue or arise in India during the previous year.

(d) The income in question has been subjected to income-tax in the foreign country in the hands of the assessee and the assessee has paid tax on such income in the foreign country.

(e) There is no agreement under section 90 for the relief or avoidance of double taxation between India and the other country where the income has accrued or arisen.

In this case, Kalpesh Kumar is eligible for deduction u/s 91 since all the above conditions are fulfilled.

Question 12

The following are the particulars of income earned by Miss Vivitha, a resident Indian aged 25:

	(₹ in lacs)
Income from playing snooker matches in country L	12.00
Tax paid in country L	1.80
Income from playing snooker tournaments in India	19.20
Life Insurance Premium paid	1.10
Medical Insurance Premium paid for her father aged 62 years (through credit card)	0.54

Compute her total income and tax liability for the assessment year 2025-26. There is no Double Taxation Avoidance Agreement between India and country L. Assume that she opted out of the default tax regime under section 115BAC.

Answer

Computation of tax liability of Miss Vivitha under normal provisions of the Act

Particulars	₹	₹
Indian Income [Income from playing snooker tournaments in India]		19,20,000
Foreign Income [Income from playing snooker matches in country L]		12,00,000
Gross Total Income		**31,20,000**
Less: Deduction under Chapter VIA		
Deduction under section 80C		
Life insurance premium of ₹ 1,10,000 paid during the previous year deduction, is within the overall limit of ₹ 1.5 lakh. Hence, fully allowable as deduction	1,10,000	
Deduction under section 80D		
Medical insurance premium of ₹ 54,000 paid for her father aged 62 years. Since her father is a senior citizen, the deduction is allowable to a maximum of ₹ 50,000 (assuming that her father is also a resident in India). Further, deduction is allowable where payment is made by any mode other than cash. Here payment is made by credit card hence, eligible for deduction.	50,000	1,60,000
Total Income		**29,60,000**
Tax on Total Income		
Income-tax		7,00,500
Add: Health and education cess @4%		28,020
		7,28,520
Average rate of tax in India	24.61%	
(i.e. ₹ 7,28,520/₹ 29,60,000 × 100)		
Average rate of tax in foreign country	15.00%	
(i.e. ₹ 1,80,000/ ₹12,00,000 ×100)		

Deduction under section 91 on ₹ 12 lakh @ 15% (lower of average Indian-tax rate or average foreign tax rate)		1,80,000
Tax payable in India (₹ 7,28,520 – ₹ 1,80,000)		**5,48,520**

Note: Miss Vivitha shall be allowed deduction u/s 91, since the following conditions are fulfilled:

(a) She is a resident in India during the relevant previous year.

(b) The income accrues or arises to her outside India during that previous year and such income is not deemed to accrue or arise in India during the previous year.

(c) The income in question has been subjected to income-tax in the foreign country L in her hands and she has paid tax on such income in the foreign country L.

(d) There is no agreement under section 90 for the relief or avoidance of double taxation between India and country L where the income has accrued or arisen.

Question 13

Mr. Anil, aged 49 years, a resident individual furnishes the following particulars of income earned by him in India and Country N for the previous year 2024-25. India does not have a double taxation avoidance agreement (DTAA) with Country N.

Particulars	Amount (₹)
Income from profession carried on in Mumbai	8,50,000
Agricultural Income in Country N	1,30,000
Dividend income from a company incorporated in Country N	85,000
Royalty income from a literary book from Country N	6,25,000
Expenses incurred for earning royalty	75,000
Business loss in Country N	1,10,000

The domestic tax laws of Country N does not permit set-off of business loss against any other income. The rate of income-tax in Country N is 18%. Compute total income and tax payable by Mr. Anil in India for A.Y. 2025-26, assuming that he satisfies all conditions for the purpose of section 91 and he opted out of the default tax regime under section 115BAC.

Answer

Computation of total income of Mr. Anil under normal provisions of the Act

Particulars	₹	₹
Profits and Gains of Business or Profession		
Income from profession carried on in India	8,50,000	
Royalty income from a literary book in Country N (after deducting expenses of ₹ 75,000)	5,50,000	
	14,00,000	
Less: Business loss in Country N	1,10,000	12,90,000
Income from Other Sources		

Agricultural income in Country N [Not exempt u/s 10(1)]	1,30,000	
Dividend income from a company incorporated in Country N	85,000	2,15,000
Gross Total Income		**15,05,000**
Less: Deduction under Chapter VIA		
Under section 80QQB – Royalty income from a literary book		3,00,000
Total Income		**12,05,000**

Computation of tax liability of Mr. Anil

Particulars		₹
Tax on total income [30% of ₹ 2,05,000 plus ₹ 1,12,500]		1,74,000
Add: Health and education cess @4%		6,960
Tax Liability		1,80,960
Calculation of Rebate under section 91:		
Average rate of tax in India [i.e., ₹ 1,80,960 / ₹ 12,05,000 x 100]	**15.0174%**	
Average rate of tax in Country N	**18%**	
Doubly taxed income pertaining to Country N	₹	
Agricultural Income	1,30,000	
Royalty Income [₹ 6,25,000 – ₹ 75,000 (Expenses) – ₹ 3,00,000 (deduction under section 80QQB)]	2,50,000	
Dividend income	85,000	
	4,65,000	
Less: Business Loss set off	1,10,000	
	3,55,000	
Rebate under section 91 on ₹ 3,55,000 @ 15.0174% [being the lower of average Indian tax rate (15.0174%) and foreign tax rate (18%)]		53,312
Tax Payable		**1,27,648**
Tax Payable (Rounded off)		1,27,650

Question 14

Mr. Ravi, an Individual resident in India aged 45 years, furnishes you the following particulars of income earned in India, Foreign Countries "S" and "T" for the previous year 2024-25.

Particulars	₹
Indian Income:	
Income from business carried on in Mumbai	4,40,000
Interest on savings bank with ICICI Bank	42,000
Income earned in Foreign Country "S" [Rate of tax – 16%]:	
Agricultural income in Country "S"	94,000
Royalty income from a book on art from Country "S" (Gross)	7,80,000
Expenses incurred for earning royalty	50,000

Income earned in Foreign Country "T" [Rate of tax – 20%]:	
Dividend from a company incorporated in Country "T"	2,65,000
Rent from a house situated in Country "T" (gross)	3,30,000
Municipal tax paid in respect of the above house (not allowed as deduction in Country "T")	10,000

Compute the total income and tax payable by Mr. Ravi in India for A.Y. 2025-26 assuming that India has not entered into double taxation avoidance agreement with Countries S & T. Mr. Ravi opted out of the default tax regime under section 115BAC.

Answer

Computation of total income of Mr. Ravi under normal provisions of the Act

Particulars	₹	₹
Income from House Property [House situated in Country T]		
Gross Annual Value	3,30,000	
Less: Municipal taxes paid in Country T	10,000	
Net Annual Value	3,20,000	
Less: Deduction under section 24 – 30% of NAV	96,000	2,24,000
Profits and Gains of Business or Profession		
Income from business carried on in India	4,40,000	
Royalty income from a book of art in Country S (after deducting expenses of ₹ 50,000)	7,30,000	11,70,000
Income from Other Sources		
Interest on savings bank with ICICI Bank	42,000	
Agricultural income in Country S [Not exempt]	94,000	
Dividend income from a company in Country T	2,65,000	4,01,000
Gross Total Income		**17,95,000**
Less: Deduction under Chapter VIA		
Under section 80QQB – Royalty income of a resident from a work of art		3,00,000
Under section 80TTA – Interest on savings bank account, subject to a maximum of ₹ 10,000.		10,000
Total Income		**14,85,000**

Computation of tax liability of Mr. Ravi

Particulars		₹
Tax on total income [30% of ₹ 4,85,000 + ₹ 1,12,500]		2,58,000
Add: Health and education cess @4%		10,320
		2,68,320
Less: Rebate under section 91 **(See Working Note below)**		1,72,197

Tax Payable		96,123
Tax payable (rounded off)		96,120
Calculation of Rebate under section 91:		
Average rate of tax in India [i.e., ₹ 2,68,320 / ₹ 14,85,000 x 100]	**18.069%**	
Average rate of tax in Country S	**16%**	
Doubly taxed income pertaining to Country S	**₹**	
Agricultural Income	94,000	
Royalty Income [₹ 7,80,000 – ₹ 50,000 (Expenses) – ₹ 3,00,000 (deduction under section 80QQB)]	4,30,000	
	5,24,000	
Rebate under section 91 on ₹ 5,24,000 @16% [being the lower of average Indian tax rate (18.069%) and Country S tax rate (16%)]		83,840
Average rate of tax in Country T	**20%**	
Doubly taxed income pertaining to Country T		
Income from house property	2,24,000	
Dividend	2,65,000	
	4,89,000	
Rebate under section 91 on ₹ 4,89,000 @18.069% (being the lower of average Indian tax rate (18.069%) and Country T tax rate (20%)]		88,357
Total rebate under section 91 (Country S + Country T)		**1,72,197**

Note: Mr. Ravi shall be allowed deduction u/s 91, since the following conditions are fulfilled:

(a) He is a resident in India during the relevant previous year.

(b) The income in question accrues or arises to him outside India in foreign countries S & T during that previous year and such income is not deemed to accrue or arise in India during the previous year.

(c) The income in question has been subjected to income-tax in the foreign countries "S" and "T" in his hands and it is presumed that he has paid tax on such income in those countries.

(d) There is no agreement under section 90 for the relief or avoidance of double taxation between India and Countries S and T where the income has accrued or arisen.

Question 15

Mr. Ramanuj Tiwari, aged 65 years resident of India derived the following income:

(1)	Income from business and profession in India	6,00,000
(2)	Dividend (gross) from a company in Nigeria (Tax paid in Nigeria ₹ 30,000)	1,50,000
(3)	Royalty on books from Spain (₹ 7,60,000 has been received in India on 30.06.2025. Further ₹ 40,000 as TDS has been deducted in Spain on royalty)	8,00,000
(4)	Income from Other Sources as follows:	

• Saving Interest from Punjab and Sind Bank	15,000
• Interest Income on FDR's	2,15,000

Further, Mr. Ramanuj Tiwari incurred expenses to the tune of ₹ 1,20,000 on earning the royalty of ₹ 8,00,000. He has also deposited ₹ 1,50,000 in Public Provident Fund Account of his wife during the year.

Compute the Total Income and Tax Payable by Mr. Ramanuj Tiwari for the Assessment Year 2025-26, assuming India does not have Double Taxation Avoidance Agreement with Nigeria and Spain and he opted out of the default tax regime under section 115BAC.

Answer

Computation of total income of Mr. Ramanuj Tiwari

Since Mr. Ramanuj Tiwari is resident in India, his global income would be subject to tax in India. Therefore, income earned by him in Nigeria and Spain would be taxable in India. He would, however, be entitled to deduction under section 91, since India does not have a DTAA with Nigeria and Spain, and all conditions under section 91 are satisfied.

Particulars	₹	₹
Profits and Gains of Business or Profession		
Income from business and profession in India		6,00,000
Royalty on books from Spain	8,00,000	
Less: Expenses incurred	1,20,000	6,80,000
Income from Other Sources		
Dividend from a company in Nigeria		1,50,000
Interest on saving account with Punjab and Sind Bank		15,000
Interest on fixed deposits		2,15,000
Gross Total Income		**16,60,000**
Less: Deduction under Chapter VI-A		
Under section 80C – Deposits in PPF	1,50,000	
Under section 80QQB – Royalty income on books allowable to the extent of ₹ 3,00,000.	3,00,000	
Under section 80TTB – Deduction allowable in respect of interest on fixed deposits, since Mr. Ramanuj Tiwari is a senior citizen resident in India	50,000	5,00,000
Total Income		11,60,000

Computation of tax liability of Mr. Ramanuj Tiwari

Particulars	₹
Tax on total income [30% of ₹ 1,60,000 + ₹ 1,10,000, eligible for higher exemption limit of ₹ 3,00,000, since he is a senior citizen]	1,58,000
Add: Health and education cess @4%	6,320
	1,64,320
Less: Rebate under section 91 **(See Working Note below)**	40,249

Tax Payable	1,24,071
Tax Payable (rounded off)	**1,24,070**

Calculation of Rebate under section 91:		₹
Average rate of tax in India [i.e., ₹ 1,64,320/₹ 11,60,000 x 100]	14.166%	
Average rate of tax in Nigeria [i.e., ₹ 30,000/₹ 1,50,000 x 100]	20%	
Doubly taxed income pertaining to Nigeria		
Dividend from a company in Nigeria	₹ 1,50,000	
Rebate u/s 91 on ₹ 1,50,000 @ 14.166% [being the lower of average Indian tax rate (14.166%) and Nigeria tax rate (20%)]		21,249
Average rate of tax in Spain [i.e., ₹ 40,000/₹ 8,00,000 x 100]	5%	
Doubly taxed income pertaining to Spain		
Royalty (₹ 8,00,000 – ₹ 1,20,000 – ₹ 3,00,000)	₹ 3,80,000	
Rebate u/s 91 on ₹ 3,80,000 @5% [being the lower of average Indian tax rate (14.1655%) and Spain tax rate (5%)]		19,000
Total rebate under section 91		**40,249**

Question 16

Mr. Kamesh, an individual resident in India aged 52 years, furnishes you the following particulars of income earned in India, Country "X" and Country "Y" for the previous year 2024-25. India has not entered into double taxation avoidance agreement with these two countries.

Particulars	₹
Income from profession carried on in India	7,50,000
Agricultural income in Country "X" (gross)	50,000
Dividend received from a company incorporated in Country "Y" (gross)	1,50,000
Royalty income from a literary book from Country "X" (gross)	6,00,000
Expenses incurred for earning royalty	50,000
Business loss in Country "Y" (Proprietary business)	65,000
Rent from a house situated in Country "Y" (gross)	2,40,000
Municipal tax paid in respect of the above house in Country "Y" (not allowed as deduction in country "Y")	10,000

Note: Business loss in Country "Y" not eligible for set off against other incomes as per law of that country.

The rates of tax in Country "X" and Country "Y" are 10% and 20%, respectively.

Compute total income and tax payable by Mr. Kamesh in India for Assessment Year 2025-26, assuming that he opted out of the default tax regime under section 115BAC.

Answer

Computation of total income of Mr. Kamesh under normal provisions of the Act

Particulars	₹	₹
Income from House Property [House situated in country Y]		
Gross Annual Value	2,40,000	
Less: Municipal taxes	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	7,50,000	
Royalty income from a literary book from Country X (after deducting expenses of ₹ 50,000)	5,50,000	
Less: Business loss in country Y set-off	65,000	
		12,35,000
Income from Other Sources		
Agricultural income in country X	50,000	
Dividend income from a company in country Y	1,50,000	2,00,000
Gross Total Income		**15,96,000**
Less: Deduction under Chapter VIA		
Under section 80QQB - Royalty income of a resident from literary work		3,00,000
Total Income		**12,96,000**

Computation of tax liability of Mr. Kamesh

Particulars	₹
Tax on total income [30% of ₹ 2,96,000 + ₹ 1,12,500]	2,01,300
Add: Health and Education cess@4%	8,052
	2,09,352
Less: Deduction under section 91 **(See Working Note below)**	69,739
Tax Payable	**1,39,613**
Tax payable (rounded off)	1,39,610

Working Note: Calculation of Rebate under section 91

	₹	₹
Average rate of tax in India [i.e., ₹ 2,09,352/₹ 12,96,000 x 100]	**16.154%**	
Average rate of tax in country X	**10%**	
Doubly taxed income pertaining to country X		
Agricultural Income	50,000	
Royalty Income [₹ 6,00,000 - ₹ 50,000 (Expenses) - ₹ 3,00,000 (deduction under section 80QQB)]	2,50,000	
	3,00,000	

Deduction under section 91 on ₹ 3,00,000 @10% [being the lower of average Indian tax rate (16.154%) and foreign tax rate (10%)]		30,000
Average rate of tax in country Y	**20%**	
Doubly taxed income pertaining to country Y		
Income from house property	1,61,000	
Dividend	1,50,000	
	3,11,000	
Less: Business loss set-off	65,000	
	2,46,000	
Deduction u/s 91 on ₹ 2,46,000 @16.154% (being the lower of average Indian tax rate (16.154%) and foreign tax rate (20%)]		39,739
Total rebate under section 91 (Country X + Country Y)		**69,739**

Note: Mr. Kamesh shall be allowed deduction u/s 91, since the following conditions are fulfilled:

(a) He is a resident in India during the relevant previous year.

(b) The income in question accrues or arises to him outside India in foreign countries X and Y and such income is not deemed to accrue or arise in India during the previous year.

(c) The income in question has been subjected to income-tax in the foreign countries X and Y in his hands and it is presumed that he has paid tax on such income in those countries.

(d) There is no agreement under section 90 for the relief or avoidance of double taxation between India and Countries X and Y where the income has accrued or arisen.

Question 17

Mr. Raj (aged 45 years), a resident of India employed with a private company in India, earned the following sums during the F.Y. 2024-25:

(i)	Basic Salary	₹ 62,000 p.m.
(ii)	Dearness Allowance - 10% of basic salary	
(iii)	Royalty Income (gross) received from Country 'M' in respect of a literary book	₹ 9,80,000
(iv)	Expenses incurred for earning royalty	₹ 98,000
(v)	Rental Income (gross) from a house property situated in Country 'N'	₹ 2,80,000
(vi)	Dividend from a company incorporated in Country 'N' (Gross)	₹ 2,20,000

Mr. Raj purchased a residential house in Bhopal for his residence for a consideration of ₹ 23,00,000 and paid 1% stamp duty on it.

He paid ₹ 26,000 towards his health insurance premium and ₹ 50,000 to insure the health of his father, a non-resident aged 72 years, who is not dependent on him.

The rate of tax in Country 'M' is flat 12% and the rate of tax in Country 'N' is 20% in respect of dividend income and 15% in respect of rental income. No standard deduction is allowed in Country 'N' from rental income.

Assuming that India does not have a Double Taxation Avoidance Agreement with both the countries, you are required to compute the total income of Mr. Raj and net tax liability thereon for A.Y. 2025-26 as per the provisions of Income-tax Act,1961, after providing deduction u/s 91. Mr. Raj has opted out of the default tax regime under section 115BAC.

Answer

Computation of total income and tax liability of Mr. Raj

Particulars	₹	₹
Salaries		
Basic Salary [₹ 62,000 x 12]	7,44,000	
Add: Dearness Allowance (10% of 7,44,000)	74,400	
	8,18,400	
Less: Standard deduction u/s 16(ia)	50,000	7,68,400
Income from house property (Country N)		
Gross Annual Value	2,80,000	
Less: Deduction u/s 24 @30%	84,000	1,96,000
Profits and gains from business or profession		
Royalty income from a literary book from Country M (after deducting expenses of ₹ 98,000)		8,82,000
Income from Other Sources		
Dividend income from a company in Country N		2,20,000
Gross Total Income		**20,66,400**
Less: **Deductions under Chapter VI-A**		
U/s 80C - 1% stamp duty on residential house	23,000	
U/s 80D - Medical insurance premium	50,000	
- For self, restricted to ₹ 25,000		
- For father, being a non-resident, restricted to ₹ 25,000		
U/s 80QQB - Royalty income of a resident in respect of literary book	3,00,000	3,73,000
Total Income		**16,93,400**

Computation of net tax liability of Mr. Raj

Particulars	₹	₹
Tax on total income (30% of 6,93,400) + ₹ 1,12,500		3,20,520
Add: Health and Education Cess@4%		12,821
Tax liability		3,33,341
Less: Deduction u/s 91 (See Working Note below)		1,41,392
Net tax liability		**1,91,949**
Net tax liability (rounded off)		**1,91,950**

Working Note – Computation of deduction u/s 91

		₹
Average rate of tax in India (₹ 3,33,341/16,93,400 x 100)	19.685%	

Average Rate of Tax in Country M	12%	
Average Rate of Tax in Country N [(₹ 44,000 + ₹ 42,000)/5,00,000)	17.2%	
Doubly taxed income in Country M = ₹ 5,82,000		
₹ 9,80,000 (royalty) - ₹ 98,000 (expenses incurred) - ₹ 3,00,000 (deduction u/s 80QQB)]		
Deduction u/s 91 in respect of royalty income earned in Country M (lower of 19.685% and 12%) **i.e., 12% on doubly taxed income of ₹ 5,82,000**		69,840
Doubly taxed income in Country N = ₹ 4,16,000		
(₹ 1,96,000, being income from house property + ₹ 2,20,000, being dividend income)		
Deduction u/s 91 in respect of income earned in Country N (lower of 19.685% and 17.2%) **i.e., 17.2% on doubly taxed income of ₹ 4,16,000**		71,552
Total deduction under section 91		**1,41,392**

Question 18

Mr. Shyam, aged 47 years, is a resident individual having income from the following sources:

(i) Income from a sole-proprietary business in Noida = ₹ 50 lakhs.

(ii) Share of profit from a partnership firm in Gurgaon = ₹ 30 lakhs.

(iii) Agricultural income (gross) from coffee estates in Country A, a foreign country with which India has no DTAA, CAD 32000. Tax deducted on the above income CAD 8,000

(iv) Brought forward business loss of Country A was CAD 4,000 which is not permitted to be set off against other income as per the laws of that country.

(v) Mr. Shyam has deposited ₹ 1,50,000 in public provident fund and paid medical insurance premium of ₹ 30,000 by account payee cheque to insure his health. He has also paid ₹ 55,000 as insurance premium to insure the health of his mother and father, who are resident Indians aged 70 years and 75 years, respectively. He also incurred ₹ 50,000 on medical treatment of his dependent sister, who is a person with disability. His sister does not claim deduction u/s 80U.

Compute total income and tax liability of Mr. Shyam for the A.Y. 2025-26, assuming that 1 CAD = ₹ 60 and he opted out of the default tax regime under section 115BAC.

Answer

Computation of total income and tax liability of Mr. Shyam

Particulars	₹	₹
Profits and gains from business and profession		
Income from sole proprietary concern in India	50,00,000	
Share of profit from a partnership firm in India of ₹ 30 lakhs, is exempt	Nil	
Business profit	50,00,000	47,60,000

Less: Business Loss in Country A (CAD 4000 x ₹ 60/CAD)	2,40,000	
Income from Other Sources		
Agricultural income from coffee estates in Country A, is taxable in India (CAD 32000 x ₹ 60/CAD)		19,20,000
Gross Total Income		**66,80,000**
Less: **Deductions under Chapter VI-A**		
Under section 80C [deposit in PPF]	1,50,000	
Under section 80D	75,000	
[Medical insurance premium paid ₹ 30,000 for self, restricted to ₹ 25,000; ₹ 55,000 for senior citizen parents, restricted to ₹ 50,000]		
Under section 80DD	75,000	
[Flat deduction of ₹ 75,000 irrespective of the expenditure incurred on dependent sister, being a person with disability]		3,00,000
Total Income		**63,80,000**
Tax on total income		
Tax on ₹ 63,80,000 [(30% x ₹ 53,80,000) plus ₹ 1,12,500]		17,26,500
Add: Surcharge@10%, since total income exceeds ₹ 50 lakh		1,72,650
		18,99,150
Add: HEC@4%		75,966
		19,75,116
Average rate of tax in India [i.e., ₹ 19,75,116/₹ 63,80,000 x 100]	30.958%	
Average rate of tax in Country A [i.e., CAD 8000/CAD 32000]	25%	
Doubly taxed income [₹ 19,20,000 – ₹ 2,40,000]	16,80,000	
Rebate under section 91 on ₹ 16,80,000@25%		
(lower of average Indian tax rate and rate of tax in Country A)		4,20,000
Tax payable in India [₹ 19,75,116 - ₹ 4,20,000]		**15,55,116**
Tax payable in India (rounded off)		**15,55,120**

Note:

Since Mr. Shyam is resident in India, his global income would be subject to tax in India. He is eligible for deduction under section 91 since the following conditions are fulfilled:

(a) He is a resident in India during the relevant previous year.

(b) Agricultural income accrues or arises to him outside India during that previous year.

(c) Such agricultural income is not deemed to accrue or arise in India during the previous year.

(d) The income in question i.e., agricultural income, has been subjected to income-tax in Country A in his hands and he has paid tax on such income in Country A.

(e) There is no agreement under section 90 for the relief or avoidance of double taxation between India and Country A, where the income has accrued or arisen.

Question 19

Mr. Rizvi, an Indian resident (ROR), aged 35 years, works in the Welly Oilfields, Country S as a Superintendent in charge at an emolument (salary) of AED 9,500 per month. In order to look after his ailing mother residing in Mumbai, India, he shifted with his family on 1st July, 2024 and started his consultancy business in India. Before shifting to India, he let out his house property in Country S at rent of AED 3,250 per month from the same month. The details of his income in INR for the year ended 31st March, 2025 are as follows:

Profit from the consultancy business in India	₹ 8,65,000
Fixed Deposit interest from the bank of Country S	₹ 45,500
Savings bank interest from SBI, Mumbai	₹ 18,250
Dividend income from XYZ Ltd., an Indian company	₹ 7,750

Rate of income tax in Country S is 23%.

During the previous year, Mr. Rizvi paid ₹ 48,000 as medical insurance premium for himself and ₹ 60,000 as medical insurance premium to insure the health of his father, a non-resident aged 66 years, who is not dependent on him.

You are required to compute the total income and tax liability of Mr. Rizvi for A.Y. 2025-26 assuming that India has not entered into double taxation avoidance agreement with Country S and he opted out of the default tax regime under section 115BAC. You may consider (1 AED = 23 INR)

Answer

Computation of total income and tax liability of Mr. Rizvi

Particulars	₹	₹
Salaries		
Salary from Welly Oilfields, Country S (9500 AED x ₹ 23 x 3 months)	6,55,500	
Less: Standard deduction	50,000	
		6,05,500
Income from house property		
Annual Value of house property in Country S (3,250 AED x ₹ 23 x 9 months)	6,72,750	
Less: Deduction u/s 24(a) 30% of Annual Value	2,01,825	
		4,70,925
Profits and Gains of Business or Profession		
Profits from the Consultancy business in India		8,65,000
Income from Other Sources		
Fixed deposit interest from the bank of Country S	45,500	
Savings bank interest from SBI Mumbai	18,250	
Dividend income from XYZ Ltd., an Indian company	7,750	71,500
Gross Total Income		**20,12,925**
Less: Deductions under Chapter VI-A		
Under section 80D		

Mediclaim premium for self ₹ 48,000 restricted to	25,000		
Mediclaim premium for father ₹ 60,000 restricted to (Since father is a non-resident, even though he is of the age of 66 years)	25,000	50,000	
Under section 80TTA			
Interest on savings bank account ₹18,250, restricted to		10,000	60,000
Total Income			**19,52,925**
Total Income (rounded off)			**19,52,930**
Tax liability on ₹ 19,52,930			
Tax on total income [30% of ₹ 9,52,930 + ₹ 1,12,500]			3,98,379
Add: Health and Education cess@4%			15,935
			4,14,314
Less: Deduction u/s 91 (See Working Note below)			2,38,016
Net tax liability			**1,76,298**
Net tax liability (Rounded off)			**1,76,300**

Working note – Calculation of deduction under section 91	
Particulars	₹
Doubly Taxed Income	
Salaries	6,05,500
Income from house property	4,70,925
FD Interest in Country S	45,500
	11,21,925
Indian rate of tax = 4,14,314/19,52,930 x 100 = 21.215%	
Rate of tax in Country S = 23%	
Lower of the above = 21.215%	
Deduction u/s 91 [21.215% x ₹ 11,21,925]	**2,38,016**

Note – The question mentions that Mr. Rizvi is an Indian resident working in Country S. The facts given therein indicate the intent to test the application of the provisions of section 91. Accordingly, main solution has been worked out considering **Mr. Rizvi as a resident and ordinarily resident**.

Question 20

Mr. Chetan, an Indian citizen aged 51 years, left India on 1st April 2021 to settle in Country Y. But owing to some personal unavoidable circumstances, he returned back to India permanently on 1st June 2024.

He has a residential property in Country Y from which he earned rental income of $ 25,000 for the year ended 31st March 2025. He is eligible for basic exemption limit of $ 8,000 and on balance income, he paid income tax @20% in Country Y. The tax was paid on 10th May 2025 from his bank account in India.

His income from business in India is ₹ 5,00,000 for the year ended on 31st March 2025. He also received dividend amounting to ₹ 1,25,000 from an Indian company and interest income of ₹ 11,500 on saving bank account with SBI, during the year.

The exchange rates of 1 $ on various dates is given below:

1.04.2024 - ₹ 74; 31.03.2025, ₹ 75; 10.05.2025 - ₹ 75.5;

Compute the net tax liability of Mr. Chetan in India for the assessment year 2025-26 on the assumption that there is no DTAA between India and Country Y.

Assume that the assessee opted out of the default tax regime under section 115BAC.

Answer

Mr. Chetan is a resident in India for A.Y.2025-26, since his stay in India in the P.Y.2024-25 is for 303 days which exceeds the minimum required stay of 182 days in that previous year. Also, his stay in India is for 1461 days (i.e., 365 days each in P.Y.2017-18 to P.Y.2020-21) during the last seven years (which exceeds the minimum specified requirement of 730 days in the immediately preceding seven years) and he has been resident in 7 years (P.Y.2014-15 to P.Y.2020-21) out of 10 years immediately preceding P.Y.2024-25.

Hence, he is **resident and ordinarily resident in India** for A.Y.2025-26. Accordingly, his global income would be subject to tax. He would, however, be entitled for deduction under section 91 in respect of doubly taxed income earned in Country Y.

Computation of total income of Mr. Chetan

Particulars	₹	₹
Income from House Property [Residential property in Country Y]		
Annual Value ($ 25,000 x ₹ 75, exchange rate on 31.3.2025 – Rule 115)	18,75,000	
Less: Deduction under section 24 – 30% of NAV	5,62,500	
		13,12,500
Profits and Gains of Business or Profession		
Income from business in India		5,00,000
Income from Other Sources		
Dividend from Indian company [₹1,25,000 x 100/90]	1,38,889	
Interest on savings bank account with SBI	11,500	1,50,389
Gross Total Income		**19,62,889**
Less: Deduction under Chapter VIA		
Under section 80TTA – Interest on savings bank account (actual interest of ₹ 11,500 or ₹ 10,000, whichever is lower)		10,000
Total Income		**19,52,889**
Total Income (rounded off)		**19,52,890**

Computation of tax liability of Mr. Chetan

Particulars	₹
Tax on total income [30% of ₹ 9,52,890 + ₹ 1,12,500]	3,98,367

Add: Health and Education cess@4%	15,935
	4,14,302
Less: Deduction under section 91 **(See Working Note below)**	1,78,500
Net Tax Liability	2,35,802
Net Tax liability (rounded off)	**2,35,800**

Working Note: Calculation of deduction under section 91

Particulars	₹	₹
Average rate of tax in India [i.e., ₹ 4,14,302/₹ 19,52,890 x 100]	21.21%	
Average rate of tax in country Y [20% of $ 17,000 ($ 25,000 - $ 8,000) = $ 3,400/$ 25,000 x 100 = 13.6%	13.60%	
Doubly taxed income		
Income from house property	13,12,500	
Deduction u/s 91 on ₹13,12,500 @13.60% (being the lower of average Indian tax rate (21.21%) and foreign tax rate (13.60%)]		1,78,500

Question 21

Smt. Manisha (aged 70 years), a resident individual, furnishes you the following particulars of Income relating to the previous year 2024-25:

Particulars	Amount ₹
Loss from let out property at Delhi (Computed)	4,50,000
Income from business in India (Computed)	8,99,500
Business income in Country "A"	8,00,000
Fixed Deposit Interest in Country A	USD 8,000
Saving Bank Interest in India from PNB Bank	50,500
Contribution to PPF Account of her married son	1,50,000
Interest on PPF Account (in her own name)	58,682
Agriculture income in Country "M"	1,20,000

Agriculture income is exempt in Country "M" and rate of Tax in Country A is 25%. Assume that there is no double taxation avoidance agreement between India and Country "A" and Country "M".

Rate of 1 USD = ₹ 82 for calculation purposes.

Compute the total income and tax payable by Smt. Manisha for the A.Y.2025-26. Assume that she did not opt to be governed by provision of section 115BAC

Answer

Computation of total income and tax payable by Smt. Manisha

Particulars	₹	₹
Loss from house property	4,50,000	

Less: As per section 71(3A), set-off of loss against business income in India to the extent of	2,00,000	
Balance loss would be carried forward	(2,50,000)	
Profits and Gains of Business or Profession		
Income from business in India (Computed)	8,99,500	
Less: Set-off of loss from house property	2,00,000	
	6,99,500	
Business income in Country 'A'	8,00,000	14,99,500
Income from Other Sources		
Fixed deposit interest in Country 'A' [USD 8,000 x 82]	6,56,000	
Savings bank interest in India from PNB Bank	50,500	
Interest on PPF Account	Exempt	
Agriculture income in Country 'M'	1,20,000	8,26,500
Gross Total Income		23,26,000
Less: Deductions under Chapter VI-A		
Under section 80C – Contribution to PPF	1,50,000	
Under section 80TTB - Interest on savings bank account restricted to	50,000	2,00,000
Total Income		21,26,000
Tax liability on ₹21,26,000		
Tax on total income [30% of ₹ 11,26,000 + ₹ 1,10,000]		4,47,800
Add: Health and Education cess@4%		17,912
		4,65,712
Less: Deduction under section 91: In respect of Country M, no relief u/s 91 would be available, since agricultural income is exempt in Country M.		-
Less: Deduction u/s 91: in respect of doubly taxed income in Country A (See Working Note below)		3,18,951
Tax payable		**1,46,761**
Tax payable (Rounded off)		**1,46,760**

Working Note: Calculation of deduction under section 91	₹
Doubly Taxed Income – Country A	
Business Income	8,00,000
FD interest in Country A	6,56,000
	14,56,000
Indian rate of tax = 4,65,712/21,26,000 x 100 = **21.906%**	
Rate of tax in Country A = 25%	
Lower of the above = 21.906%	
Deduction u/s 91 [21.906% x ₹ 14,56,000]	**3,18,951**

Relief u/s 91 [Section 115BAC]

Question 22

Following are the particulars of income earned by Mr. Kumar Saurav, a resident Indian aged 56 years in India and from Country P:

Income from India	Amount in ₹
Income from Profession in India	10,75,000
Interest on Fixed Deposit with XYZ Bank	95,000
Interest on Savings Bank Account	47,000
Income from Country P	
Rate of Tax is 16%	
Agricultural Income in Country P (Gross)	65,000
Royalty Income form literary book from Country P	4,50,000
Expenses incurred for earning royalty	35,000
Dividend from a company incorporated in Country P	1,59,000
Rent from a house situated in Country P (Gross)	1,92,000
Municipal Tax paid in respect of above house (not allowed as deduction in Country P)	9,500

You are required to compute the total income and net tax liability of Mr. Kumar Saurav in India for the A.Y. 2025-26 assuming that India has not entered into DTAA with Country P.

Assume that Mr. Kumar Saurav pays tax under the default tax regime under section 115BAC.

Answer

Computation of total income and tax liability of Mr. Kumar Saurav under default tax regime

Particulars	₹	₹
Income from house property		
Gross Annual Value of property in Country 'P'	1,92,000	
Less: Municipal taxes paid in Country 'P'	9,500	
Net Annual Value	**1,82,500**	
Less: Deduction under section 24 – 30% of NAV	54,750	1,27,750
Profits and Gains of Business or Profession		
Income from profession in India	10,75,000	
Royalty income from literary book from Country 'P' (after deducting expenses of ₹ 35,000)	4,15,000	14,90,000
Income from Other Sources		
Interest on Fixed deposit with XYZ Bank	95,000	
Interest on savings bank account	47,000	
Agriculture income in Country 'P'	65,000	
Dividend from a company incorporated in Country 'P'	1,59,000	3,66,000
Gross Total Income		**19,83,750**

Less: Deductions under Chapter VI-A [Not available u/s 115BAC]		Nil
Total Income		**19,83,750**
Tax liability on ₹19,83,750		
Tax on total income [30% of ₹ 4,83,750 + ₹ 1,40,000]		2,85,125
Add: Health and Education cess@4%		11,405
		2,96,530
Less: Deduction u/s 91 (See Working Note below)		1,14,614
Net Tax Liability		**1,81,916**
Net Tax Liability (Rounded off)		**1,81,920**

Working Note: Calculation of deduction under section 91

Particulars	₹
Doubly Taxed Income – Country P	
Income from house property	1,27,750
Royalty Income [₹4,50,000 – ₹35,000 (Expenses)]	4,15,000
Agricultural income	65,000
Dividend	1,59,000
	7,66,750
Rate of tax in Country P = 16%	
Indian rate of tax = 2,96,530/19,83,750 x 100 = 14.948%	
Lower of the above = 14.948%	
Deduction u/s 91 [14.948% x ₹ 7,66,750]	**1,14,614**

Question 23

Mr. Anil Talpade, aged 62 years, a resident individual, furnishes the following particulars of income earned by him in India and in Brazil for P.Y. 2024-25. India does not have a DTAA with Brazil.

SN.	Particulars	Amount (₹)
1.	Income from salary in India (computed)	4,50,000
2.	Professional Income in Country Brazil	5,80,000
3.	Dividend Income in Country Brazil	88,000
4.	Rent from House Property Situated in Country Brazil	1,80,000
5.	Interest Income on FDR'S with Bank of Baroda, Pune Branch.	62,000
6.	Paid interest on Housing Loan to Punjab National Bank, Pune branch for the residential property, where he and his family resides (self-occupied property)	2,00,000
7.	Investment in Public Provident Fund	1,50,000
8.	Medical insurance Premium paid for himself	32,000

Assume the tax rate in Country Brazil is 16%.

Compute the total income and tax liability of Mr. Anil Talpade for A.Y. 2025-26 assuming he wants to be taxed as per default tax regime under section 115BAC.

Answer

Computation of total income of Mr. Anil Talpade under the default tax regime u/s 115BAC

Particulars	₹	₹
Income from salary (computed)		4,50,000
Income from House Property		
Annual value of self-occupied property in India	Nil	
Less: Interest on housing loan of self-occupied property [not allowable, since he opts for section 115BAC]	<u>Nil</u>	-
Rent from property in Brazil	1,80,000	
Less: Deduction u/s 24(a) @30%	<u>54,000</u>	1,26,000
Profits and gains from business or profession		
Professional income from Brazil		5,80,000
Income from Other Sources		
Dividend from Brazil		88,000
Interest on FDRs with Bank of Baroda		<u>62,000</u>
Gross Total Income		**13,06,000**
Less: Deduction under 80C in respect of investment in PPF and deduction under 80D in respect of medical insurance premium [no deduction is allowable under these sections, since he opts for section 115BAC]		<u>Nil</u>
Total Income		**<u>13,06,000</u>**

Computation of tax liability of Mr. Anil Talpade

Particulars		Amount (₹)
Upto ₹ 3,00,000	Nil	
₹ 3,00,001 – ₹ 7,00,000 [i.e., ₹ 4,00,000@5%]	20,000	
₹ 7,00,001 – ₹ 10,00,000 [i.e., ₹ 3,00,000@10%]	30,000	
₹ 10,00,001 – ₹ 12,00,000 [i.e., ₹ 2,00,000@15%]	30,000	
₹ 12,00,001 – ₹ 13,06,000 [i.e., ₹ 1,06,000@20%]	<u>21,200</u>	1,01,200
Add: Health & Education Cess@4%		4,048
		1,05,248
Less: **Deduction under section 91**		
Average rate of tax in India = ₹ 1,05,248/₹ 13,06,000 x 100 = 8.059%		
Rate of tax in Brazil = 16%		
Doubly taxed income = ₹ 1,26,000 + ₹ 5,80,000 + ₹ 88,000 = ₹ 7,94,000		
Lower of the Indian rate of tax and Brazil rate of tax is 8.059%, which has to be applied on doubly taxed income of ₹ 7,94,000 [8.059% x ₹ 7,94,000]		63,988
Tax Payable		**41,260**
Tax Payable (rounded off)		**41,260**

Question 24

Mr. Mani Prasad, aged 71 years furnished the following information in respect of income earned by him during the year:

Particulars	Amount (₹)
India	
Pension from State Government	5,05,000
Short term capital gains on sale of plot	3,20,000
Deposit in PPF Account	1,50,000
Speculative Business Income	1,56,000
Country M	
Agricultural Income	86,000
Dividends from a company incorporated in Country M [Exempt in Country M]	68,000
Country N	
Business loss (proprietary business) [Not eligible for set-off against other incomes in Country N]	1,16,000
Gross rent from house property (No statutory deduction was available in Country N)	3,20,000
Municipal taxes paid for above property (not allowed as deduction in Country N)	21,000

Additional Information:

(1) There is no agreement under section 90 for relief for avoidance of double taxation between India and Country M and Country N where the incomes have accrued or arisen.

(2) Mr. Mani Prasad is resident in India, and he has paid applicable taxes on incomes earned in Country M and Country N, where the applicable tax rates are 10% and 5%, respectively.

Compute the total income and net tax liability of Mr. Mani Prasad after providing relief under section 91 for A.Y. 2025-26. Mr. Mani Prasad is paying tax under default tax regime under section 115BAC.

Answer

Computation of total income of Mr. Mani Prasad

Particulars	₹	₹
Income under the head "Salaries"		
Pension from State Government	5,05,000	
Less: Standard deduction u/s 16(ia) [Allowable as per section 115BAC]	75,000	4,30,000
Income from House Property		
Rental income from property in Country N2	3,20,000	
Less: Municipal taxes	21,000	
	2,99,000	
Less: Deduction u/s 24(a)@30%	89,700	2,09,300
Profits and Gains of Business or Profession		
Speculative Business income in India	1,56,000	
Less: Set-off of business loss from proprietary business in Country N	1,16,000	40,000

Capital Gains		
Short-term capital gains on sale of plot in India		3,20,000
Income from Other Sources		
Agricultural income from Country M [not exempt u/s 10(1), since it is earned from land situated outside India]	86,000	
Dividend from a company in Country M	68,000	1,54,000
Gross Total Income		11,53,300
Less: Deduction under Chapter VI-A [No deduction allowable as per section 115BAC]		-
Total Income		11,53,300

Computation of net tax liability of Mr. Mani Prasad

Particulars		₹
Tax on ₹ 11,53,300		
Upto ₹ 3,00,000	Nil	
₹ 3,00,001 to ₹ 7,00,000 @5%	20,000	
₹ 7,00,001 to ₹ 10,00,000 @10%	30,000	
₹ 10,00,001 to ₹ 11,53,300 @15%	22,995	72,995
Add: Health and education cess@4%		2,920
		75,915
Less: Rebate under section 91 **(See Working Note below)**		10,326
Net tax liability		65,589
Net tax liability (Rounded off)		65,590
Calculation of Rebate under section 91:	₹	
Average rate of tax in India [i.e., ₹ 75,915/₹ 11,53,300 x 100] = 6.582%		
Doubly taxed income pertaining to Country M		
Agricultural income	86,000	
Dividend from a company in Country M [Not includible, since exempt in Country M]	-	
	86,000	
Rebate under section 91 on ₹ 86,000 @6.582% [being the lower of average Indian tax rate (6.582%) and Country M tax rate (10%)]		5,661
Doubly taxed income pertaining to Country N		
Income from house property less business loss set-off against income chargeable to tax in India (₹ 2,09,300 – ₹ 1,16,000)	93,300	
Rebate under section 91 on ₹ 93,300 @5% [being the lower of average Indian tax rate (6.582%) and Country N tax rate (5%)]		4,665
Total rebate under section 91 (Country M + Country N)		10,326

Question 25

Mr. Ram Prakash, a resident Indian aged 58 years, has business interest in India and in some other foreign nations also. He has derived income from two other nations X and Y, with which India does not have DTAA. The particulars of income earned in the two nations X, Y and in India during the year are as under:

Particulars of Income	₹		
	X	Y	India
Gross rental receipts from commercial property	2,50,000	2,50,000	-
Share income from Partnership firm (loss) [The partnership deed was not evidenced by an instrument in writing]	(1,20,000)	(1,30,000)	-
Business income	2,80,000	3,40,000	1,80,000
STCG from sale of vacant site	10,80,000	Nil	-
Long-term capital gains (without index) on sale of residential house in Delhi on 1.3.2025	-	-	37,00,000
Agricultural Income	3,40,000	1,80,000	5,20,000

The following investments were made in India during the year:

Particulars of Income	₹
Purchase of residential house at Delhi on 18.3.2025 in joint name with spouse	25,00,000
Contribution to PPF	1,50,000

Income-tax rate structure:

Country X

₹	Tax rate
Upto ₹ 3 lakhs	Nil
₹ 3 to ₹ 6 lakhs	15%
Above ₹ 6 lakhs	22%

Country Y

Flat 27% without any basic exemption limit.

Tax treatment/concessions in other nations

(i) No statutory allowance/deduction in respect of house property income in Country X as well as Country Y.

(ii) Loss from firm can be set off against other business income in Country Y only (and not in Country X).

(iii) Agricultural income is exempt in Country X only (and not in Country Y).

Compute the net tax liability of Mr. Ram Prakash for the assessment year 2025-26 assuming that he is paying tax under section 115BAC.

Answer

Computation of total income of Mr. Ram Prakash

Particulars	₹	
Income from house property		
Rent received [₹ 2.5 lakhs +₹ 2.5 lakhs]	5,00,000	
Less: Deduction u/s 24(a) at 30% of NAV	1,50,000	3,50,000
Profits and gains of business or profession		
Own business income [₹ 2,80,000 (Country X) + ₹ 3,40,000 (Country Y) + ₹ 1,80,000 (India)]	8,00,000	
Loss from partnership firm in Country X [₹ 1.2 lakh] and Country Y [₹ 1.3 lakhs]	(2,50,000)	5,50,000
[Share of profit from foreign firm is not exempt, since the partnership is not evidenced by an instrument. Hence, loss can be set-off against business income]		
Capital gains		
Long-term capital gains on transfer of residential house in Delhi	37,00,000	
Less: Exemption u/s 54 – Purchase of residential house in Delhi in joint name with wife within two years from the date of transfer	25,00,000	
Net long-term capital gains	12,00,000	
Short-term capital gains on transfer of vacant site in Country X	10,80,000	22,80,000
Income from other sources		
Agricultural income in Country X and Country Y [₹ 3.4 lakhs + ₹ 1.8 lakhs]	5,20,000	
Agricultural income from land situated in India [exempt u/s 10(1)]	-	5,20,000
Gross Total Income		**37,00,000**
Less: Deduction under Chapter VI-A: Section 80C – PPF [Not available as per section 115BAC]		-
Total Income		**37,00,000**

Computation of net tax liability of Mr. Ram Prakash

Particulars		₹
Tax on ₹ 42.2 lakhs, being non-agricultural income [₹ 37 lakhs] + agricultural income [₹ 5.2 lakhs]		
Tax on LTCG of ₹ 12 lakhs@12.5%		1,50,000
Tax on other income of ₹ 30.2 lakhs		
Upto ₹ 3,00,000	Nil	
₹ 3,00,001 – ₹ 7,00,000 [i.e., ₹ 4,00,000 @5%]	20,000	
₹ 7,00,001 – ₹ 10,00,000 [i.e., ₹ 3,00,000 @10%]	30,000	
₹ 10,00,001 – ₹ 12,00,000 [i.e., ₹ 2,00,000 @15%]	30,000	
₹ 12,00,001 – ₹ 15,00,000 [i.e., ₹ 3,00,000 @ 20%]	60,000	
₹ 15,00,001 – ₹ 30,20,000 [i.e., ₹ 15,20,000 @ 30%]	4,56,000	5,96,000
		7,46,000

(-) Tax on ₹ 8.2 lakhs, being agricultural Income [₹ 5.2 lakhs] + Basic Exemption Limit [₹ 3 lakhs]	32,000
	7,14,000
Add: Health and education cess @4%	28,560
	7,42,560
Indian rate of tax = 7,42,560 x 100/37,00,000 = 20.069%	
Less: Rebate u/s 91 on income of Country X + Country Y	**3,48,223**
Net Tax liability	**3,94,337**
Net Tax liability (Rounded off)	**3,94,340**

Computation of average rate of tax in Country X

Particulars	₹
Gross rental receipts from commercial property [No deduction is allowed from this in Country X]	2,50,000
Share income from partnership firm (loss) to be ignored	-
Business income	2,80,000
STCG from sale of vacant site	10,80,000
Agricultural income [Exempt in Country X]	-
Total income	**16,10,000**
Rates of tax in Country X	
Upto 3 lakhs Nil	-
3 to 6 lakhs 15%	45,000
Above 6 lakhs 22%	2,22,200
	2,67,200
Average rate of tax in Country X = 2,67,200 x 100/16,10,000 = 16.596%	

Computation of Rebate u/s 91

Particulars	₹
Country X	
Gross rental receipts form commercial property (₹ 2.5 lakhs – ₹ 0.75 lakhs, being 30% of ₹ 2.5 lakhs)	1,75,000
Share of loss from partnership firm	(1,20,000)
Business income	2,80,000
STCG from sale of vacant site	10,80,000
Agricultural income [Not included in doubly taxed income as it is exempt in Country X]	-
Doubly Taxed Income (in Country X)	**14,15,000**
Double Taxation Relief at Indian rate of tax (20.069%) or rate of tax in Country E (16.596%), whichever is lower	16.596%
Double Taxation Relief = 16.596% of ₹ 14.15 lakhs = ₹ 2,34,833	
Country Y	

Gross rental receipts from commercial property [₹ 2.5 lakhs (-) 30% of ₹ 2.5 lakhs]	1,75,000
Business income	3,40,000
Share of loss from partnership firm	(1,30,000)
Agricultural income	1,80,000
Doubly Taxed Income (in Country Y)	**5,65,000**
Rate of tax in Country Y	27%
Double Taxation Relief at Indian rate of tax (20.069%) or rate of tax in Country Y (27%), whichever is lower	20.069%
Double Taxation Relief = 20.069% of ₹ 5,65,000 = ₹ 1,13,390	
Double Taxation Relief [Country X & Country Y] = ₹ 2,34,833 + ₹ 1,13,390	**3,48,223**

CHAPTER - 20
Non Resident Taxation

Residential Status and POEM

Question 1

Mr. Ajay is an Indian citizen and a member of the crew of a Mauritius bound Indian ship engaged in carriage of passengers in international traffic departing from Mumbai port on 16th July, 2024. From the following details for the P.Y.2024-25, determine the residential status of Mr. Ajay for A.Y.2025-26, assuming that his stay in India in the last 4 previous years (preceding P.Y.2024-25) is 415 days and last seven previous years (preceding P.Y.2024-25) is 745 days:

Particulars	Date
Date entered into the Continuous Discharge Certificate in respect of joining the ship by Mr. Ajay	16th July, 2024
Date entered into the Continuous Discharge Certificate in respect of signing off the ship by Mr. Ajay	19th January, 2025

Answer

In this case, since Mr. Ajay is an Indian citizen and leaving India during P.Y. 2024-25 as a member of crew of an Indian ship, he would be resident in India, only if he stayed in India for 182 days or more.

The voyage is undertaken by an Indian ship engaged in carriage of passengers in international traffic, originating from a port in India (i.e., the Mumbai port) and having its destination at a port outside India (i.e., Mauritius port). Hence, the voyage is an eligible voyage for the purposes of section 6(1).

Therefore, period beginning from 16th July, 2024 and ending on 19th January, 2025, being the **dates entered into the Continuous Discharge Certificate in respect of joining the ship and signing off from ship** by Mr. Ajay, an Indian citizen who is a member of crew of the ship, **has to be excluded for computing the period of his stay in India.** Accordingly, 188 days [16+31+30+31+30+31+19] have to be excluded from the period of his stay in India. Consequently, Mr. Ajay's period of stay in India during the P.Y.2024-25 would be 177 days [i.e., 365 days - 188 days]. **Since his period of stay in India during the P.Y.2024-25 is less than 182 days, he is a non-resident for A.Y.2025-26.**

Note - Since residential status of Mr. Ajay is non-resident consequent to his number of days of stay in P.Y.2024-25 being less than 182 days, his period of stay in earlier previous years become irrelevant.

Question 2

Chris Gayle, a West Indies cricket player visits India for 102 days in every financial year. This has been his practice for the past 10 financial years.

(a) Find out his residential status for the A.Y. 2025-26.

(b) Would your answer change if the above facts relate to Srinath, an Indian citizen who resides in West Indies and represents the West Indies cricket team?

(c) What would be your answer if Srinath had visited India for 120 days instead of 102 days every year, including P.Y.2024-25?

Answer

(a) Determination of Residential Status of Mr. Chris Gayle for the A.Y. 2025-26:

Period of stay during the P.Y. 2024-25 = 102 days

Calculation of period of stay during 4 preceding previous years (102 x 4=408 days)

P.Y.2023-24	102 days
P.Y.2022-23	102 days
P.Y.2021-22	102 days
P.Y.2020-21	102 days
Total	**408 days**

Mr. Chris Gayle has been in India for a period of more than 60 days during P.Y. 2024-25 and for a period of more than 365 days during the 4 immediately preceding previous years. Therefore, since he satisfies one of the basic conditions u/s 6(1), he is a **resident** for the A.Y. 2025-26.

Computation of period of stay during 7 preceding previous years = 102 x 7=714 days

2023-24	102 days
2022-23	102 days
2021-22	102 days
2020-21	102 days
2019-20	102 days
2018-19	102 days
2017-18	102 days
Total	**714 days**

Since his period of stay in India during the past 7 previous years is less than 730 days, he is a not-ordinarily resident during the A.Y. 2025-26. (See Note below)

Therefore, Mr. Chris Gayle is a **resident but not ordinarily resident** during the P.Y. 2024-25.

Note: An individual, not being an Indian citizen, would be not-ordinarily resident person if he satisfies any one of the conditions specified under section 6(6), i.e.,

(i) If such individual has been non-resident in India in any 9 out of the 10 previous years preceding the relevant previous year, or

(ii) If such individual has during the 7 previous years preceding the relevant previous year been in India for a period of 729 days or less.

In this case, since Mr. Chris Gayle satisfies condition (ii), he is a not-ordinary resident.

(b) If the above facts relate to **Mr. Srinath, an Indian citizen,** who residing in West Indies, **comes on a visit to India, he would be treated as non-resident** in India for previous year 2024-25, irrespective of his total income (excluding income from foreign sources), **since his stay in India** in the current financial year is, in any case, **less than 120 days.**

(c) In this case, if Mr. Srinath's total income (excluding income from foreign sources) **exceeds ₹ 15 lakh, he would be treated as resident but not ordinarily resident** in India for P.Y.2024-25, since his stay in India is 120 days in the P.Y.2024-25 and 480 days (i.e., 120 days x 4 years) in the immediately four preceding previous years.

If his total income (excluding income from foreign sources) **does not exceed ₹ 15 lakh, he would be treated as non-resident in India** for the P.Y.2024-25, since his stay in India is less than 182 days in the P.Y.2024-25.

Question 3

Z, an American tourist, comes to India for the first time on June 17, 2024. He leaves India on September 29, 2024. Determine his residential status for the assessment year 2025-26.

Would your answer change if he is a person of Indian origin and his total income from Indian sources for A.Y.2025-26 is ₹ 16 lakhs?

Answer

Previous year 2024-25:	105 [14+31+31+29]
Previous year 2023-24:	Nil
Previous year 2022-23:	Nil
Previous year 2021-22:	Nil
Previous year 2020-21:	Nil

He is **non-resident** for assessment year 2025-26 as he does not satisfy either of the basic conditions.

Even if he is a person of Indian origin whose total income from Indian sources exceeds Rs.15 lakhs, he would still be a non-resident for A.Y.2025-26. For becoming a resident but not ordinarily resident, he should have stayed in India for atleast 120 days in the previous year 2024-25 and 365 days in four immediately preceding previous years. **Since his stay in India in the P.Y.2024-25 is less than 120 days, he would be non-resident in India for A.Y.2025-26.**

Question 4

ABC Inc., a Swedish company headquartered at Stockholm, not having a permanent establishment in India, has set up a liaison office in Mumbai in compliance with RBI guidelines to look after its day to day business operations in India, spread awareness about the company's products and explore further opportunities. The liaison office takes decisions relating to day to day routine operations and performs support functions that are preparatory and auxiliary in nature. The significant management and commercial decisions are, however, in substance made by the Board of Directors at Sweden. Determine the residential status of ABC Inc for the A.Y.2025-26.

Answer

Section 6(3) provide that a company would be resident in India in any previous year, if-

(i) it is an Indian company; or

(ii) its place of effective management, in that year, is in India.

In this case, ABC Inc. is a foreign company. Therefore, it would be resident in India only if its place of effective management, in that year, is in India.

Explanation to section 6(3) defines "place of effective management" to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made. In the case of ABC Inc., its **place of effective management is not in India, since the significant management and commercial decisions are**, in substance, made by the Board of Directors **outside India in Sweden.**

ABC Inc. has only a liaison office in India through which it looks after its routine day to day business operations in India. The place where decisions relating to day to day routine operations are taken and support functions that are preparatory or auxiliary in nature are performed are not relevant in determining the place of effective management.

Hence, ABC Inc., being a foreign company is a **non-resident** for A.Y.2025-26, since its place of effective management is outside India.

Question 5

ABC Ltd, a software giant in India, set up a 100% subsidiary company by name SHD Inc. in Switzerland. The subsidiary company, SHD Inc., is mainly engaged in the software services, hardware services and data backup services in three different countries viz., Switzerland, Sweden and India. The following information is furnished by SHD Inc., for the year:

Particulars	In Switzerland	In Sweden	In India
Value of assets as per books of account (₹ in crores)	24	12	24
Number of employees working (in thousands)	30	10	28
Pay roll expenditure (₹ in crores)	4	2.6	5.4
Total aggregate income earned	₹ 80 crores		

Other Information:

I. Break up of total income:

- ₹ 28 crores derived from the transactions where purchases are made from associated enterprises and sold to non-associated enterprises;
- ₹ 24 crores derived from the transactions where both purchases and sales are made from/to associated enterprises;
- ₹ 16 crores derived from the transactions where purchases are made from non-associated enterprises and sold to associated enterprises;
- ₹ 8 crores by way of income from capital gains on trading of shares;
- ₹ 4 crores by way of interest from non-associated enterprises;

II. During the year, total 5 board meetings were held, 2 in India, 1 in Sweden and 2 in Switzerland.

Based on the above information, determine the residential status of SHD Inc., applying the provisions of POEM for the A.Y.2025-26.

Answer

SHD Inc., a foreign company, would be resident in India in the P.Y. 2024-25, if its place of effective management is in India in that year.

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

A company shall be said to be engaged in **"Active Business Outside India"** (ABOI) for POEM, if

- the 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.

SHD Inc. 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 SHD Inc. should not be more than 50% of its total income

Total income of SHD Inc. is ₹ 80 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., ₹ 24 crores; and

(ii) income by way of, inter alia, capital gains i.e., ₹ 8 crores and interest i.e., ₹ 4 crores;

Passive Income of SHD Inc. is ₹ 36 crores

Percentage of passive income to total income = ₹ 36 crore/ ₹ 80 crore x 100 = **45%**

Since passive income of SHD Inc. i.e., 45% is not more than 50% of its total income, the **first condition is satisfied.**

Condition 2: SHD Inc. should have less than 50% of its total assets situated

Value of total assets of SHD Inc. is ₹ 60 crores [₹ 24 crore + ₹ 12 crore + ₹ 24 crore].

Value of total assets of SHD Inc. in India is ₹ 24 crores

Percentage of assets situated in India to total assets = ₹ 24 crores/₹ 60 crores x 100 = **40%**

Since the value of assets of SHD Inc. 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 SHD Inc. should be situated in India or should be resident in India

Number of employees working in India is 28,000.

Total number of employees of SHD Inc. is 68,000 [30,000+10,000+28,000].

Percentage of employees working in India to total number of employees is 28,000 x 100/68,000 = **41.176%**

Since employees of SHD Inc. working in India are less than 50% of its total 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 ₹ 5.40 crores

Total payroll expenditure of SHD Inc. is ₹ 12 crores [4.0 crore + 2.6 crore + 5.4 crore].

Percentage of payroll expenditure on employees in India to total payroll expenditure is ₹ 5.4 crores/₹ 12 crores x 100 = **45%**

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

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

Determination of POEM of SHD Inc.

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 SHD Inc. is engaged in active business outside India and **majority of its board meetings i.e., 3 out of 5, were held outside India, POEM of SHD Inc. would be outside India.**

Therefore, SHD Inc. would be non-resident in India for the P.Y. 2024-25.

Question 6

Singtel Ltd. is a company incorporated in Singapore and 55% of its shares are held by Godavari (P) Ltd., an Indian company. Singtel Ltd. has its presence in India also. The details relating to Singtel Ltd. for the year, are as under:

Particulars	India	Singapore
Fixed assets at depreciated values for tax purposes (₹ in crores)	120	80
Intangible assets (₹ in crores)	50	200
Other assets (value as per books of account) (₹ in crores)	40	120
Income from trading operations (₹ in crores)	25	50
The above figure includes:		
(i) Income from transactions where purchases are from associated enterprises	2	4
(ii) Income from transactions where sales are to associated enterprises	3	5
(iii) Income from transactions where both purchases and sales are from/to associated enterprises	5	10
Interest and dividend from investments (₹ in crores)	20	15
Number of employees (Residents in respective countries)	70	90
Payroll expenses on employees (₹ in crores)	8	12

Determine the residential status of Singtel Ltd. for A.Y.2025-26, if during the year, eight board meetings were held – 3 in India and 5 in Singapore.

Answer

The residential status of a foreign company is determined on the basis of place of effective management (POEM) of the company.

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

A company shall be said to be engaged in **"Active Business Outside India"** (ABOI) for POEM, if

- the 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.

Singtel Ltd. shall 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 Singtel Ltd. should not be more than 50% of its total income

Total income of Singtel Ltd. is ₹ 110 crores [(₹ 25 crores + ₹ 50 crores) + (₹ 20 crores + ₹ 15 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; and

(ii) income by way of royalty, dividend, capital gains, interest or rental income;

Passive Income of Singtel Ltd. is ₹ 50 crores, being sum total of:

(i) ₹ 15 crores, income from transactions where both purchases and sales are from/to associated enterprises (₹ 5 crores in India and ₹ 10 crores in Singapore)

(ii) ₹ 35 crores, being interest and dividend from investment (₹ 20 crores in India and ₹ 15 crores in Singapore)

Percentage of passive income to total income = ₹ 50 crore/ ₹110 crore x 100 = **45.45%**

Since passive income of Singtel Ltd. is 45.45%, which is not more than 50% of its total income, the **first condition is satisfied.**

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

Value of total assets of Singtel Ltd. is ₹ 610 crores [₹ 210 crores, in India + ₹ 400 crores, in Singapore]

Value of total assets of Singtel Ltd. in India is ₹ 210 crores

Percentage of assets situated in India to total assets = ₹ 210 crores/₹ 610 crores x 100 = **34.43%**

Since the value of assets of Singtel 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 Singtel Ltd. should be situated in India or should be resident in India

Number of employees situated in India or are resident in India is 70 Total number of employees of Singtel Ltd. is 160 [70 + 90]

Percentage of employees situated in India or are resident in India to total number of employees is 70/160 x 100 = **43.75%**

Since employees situated in India or are residents in India of Singtel Ltd. are less than 50% of its total 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 expenses on employees employed in and resident of India = ₹ 8 crores. Total payroll expenses = ₹ 20 crores (₹ 8 crores + ₹ 12 crores)

Percentage of payroll expenses of employees situated in India or are resident in India to the total payroll expenses = 8 x 100/20 = **40%**

Since the payroll expenses incurred on employees situated in India or resident in India is less than 50% of its total payroll expenditure, the **fourth condition for ABOI test is also satisfied.**

Thus, since Singtel Ltd. has satisfied all the four conditions, the company would be said to be engaged in **"active business outside India".**

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 Singtel Ltd. is engaged in active business outside India and **majority of its board meetings i.e., 5 out of 8, were held outside India, POEM of Singtel Ltd. would be outside India.**

Therefore, Singtel Ltd. would be non-resident in India for the P.Y. 2024-25.

Question 7

John Butler Tex. Inc., is a company incorporated in Colombo, Sri Lanka. 60% of its shares are held by I Pvt. Ltd., a domestic company. John Butler Tex. Inc. has its presence in India also. The data relating to John Butler Tex. Inc., are as under:

Particulars	India	Sri Lanka
Fixed assets at depreciated values for tax purposes (₹ in crores)	90	70
Intangible assets (₹ in crores)	40	180
Other assets (₹ in crores)	30	90
Income from trading operations (₹ in crores)	15	42
Income from investments (₹ in crores)	30	13
Number of employees (Residents in respective countries)	40	60

For POEM purposes, state whether,

(i) The company shall be said to be engaged in 'active business outside India'.

(ii) Because of increased operations in India, more manpower is needed. 30 more employees may be required in this regard. The company can either take these employees directly in its roll or can outsource the increased operation to an external agency which will engage the 15 employees in its roll and finish the work for the company. Which choice will be better?

Note: If for any test, average figures are needed, the same may be ignored and the data as given above to the applicant may be used.

Answer

(i) For determining the POEM of a company, the important criteria is whether the company is engaged in active business outside India or not.

A company shall be said to be engaged in **"Active Business Outside India"** (ABOI) for POEM, if

- the 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 resident in India; **and**
- the payroll expenses incurred on such employees is less than 50% of its total payroll expenditure.

John Butler Tex. Inc. shall 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 John Butler Tex. Inc. should not be more than 50% of its total income

Total income of John Butler Tex. Inc. is ₹ 100 crores [(₹ 15 crores + ₹ 30 crores) + (₹ 42 crores + ₹ 13 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; and

(ii) income by way of royalty, dividend, capital gains, interest or rental income;

Passive Income of John Butler Tex. Inc. is ₹ 43 crores, being income from investment of ₹ 30 Crores in India and ₹ 13 crores in Sri Lanka.

Percentage of passive income to total income = ₹ 43 crore/₹ 100 crore x 100 = **43%**

Since passive income of John Butler Tex. Inc. is 43% i.e., is not more than 50% of its total income, the **first condition is satisfied.**

Condition 2: John Butler Tex. Inc. should have less than 50% of its total assets situated in India

Value of total assets of John Butler Tex. Inc. is ₹ 500 crores [₹ 160 crores, in India + ₹ 340 crores, in Sri Lanka].

Value of total assets of John Butler Tex. Inc. in India is ₹ 160 crores.

Percentage of assets situated in India to total assets = ₹ 160 crores/₹ 500 crores x 100 = **32%**

Since the value of assets of John Butler Tex. Inc. 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 John Butler Tex. Inc. should be situated in India or should be resident in India

Number of employees situated in India or are resident in India is 40 Total number of employees of John Butler Tex. Inc. is 100 [40 + 60]

Percentage of employees situated in India or are resident in India to total number of employees is 40/100 x 100 = **40%**.

Since employees situated in India or are residents in India of John Butler Tex. Inc. are less than 50% of its total employees, the **third condition for ABOI test is satisfied.**

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

Since the information pertaining to payroll expenditure of employees situated in India and situated outside India is not given in the question it is assumed that the condition pertaining to payroll expenditure is also satisfied by John Butler Tex. Inc.

Thus, since the John Butler Tex. Inc. has satisfied all the four conditions, the **company would be said to be engaged in "active business outside India".**

Note – Since the information pertaining to payroll expenditure of employees situated in India and situated outside India is not given in the question it is also possible to assume that the condition pertaining to payroll expenditure is not satisfied by John Butler Tex. Inc.

In such case, the company would not be said to be engaged in "active business outside India", since John Butler Tex. Inc. has not satisfied one of condition i.e., payroll expenditure out of the specified four conditions.

(ii) Option 1: 30 more employees employed in India for the increased operations

In case John Butler Tex. Inc. employed 30 more employees in India, then Percentage of employees situated in India or are resident in India to total number of employees would be 70/130 x 100 = **53.85%.**

In such a case, one of the four conditions would not be satisfied and therefore, John Butler Tex. Inc. **would not be considered to be engaged in ABOI.**

It may be noted that place of effective management of a company passing the ABOI test would be presumed to be outside India, if majority of the board meetings are held outside India. Consequently, global income of company would not be subject to tax in India. However, such a presumption cannot be made if the company does not fulfil any of the four conditions for ABOI.

Option 2: Increased operations outsourced to external agency which will get the work done by engaging 15 employees in India

For the purpose of ABOI, employees shall include persons, who though not employed directly by the company, perform tasks similar to those performed by the employees.

Thus, 15 employees engaged by external agency have also to be included while determining the percentage of employees situated in India or are resident in India to the total number of employees.

In such a case, the percentage of employees situated in India or are resident in India to total number of employees would be 55/115 x 100 = **47.83%**

In such a case, John Butler would continue to satisfy the four conditions for ABOI. Thus, it would be **better to outsource** the increased operation to an external agency.

Scope of Total Income

Question 8

Peeyush, returned to India on 12th June, 2024 for permanently residing in India after a stay of about 20 years in U.K., provides the sources of his various incomes and seeks your opinion to know about his liability to income tax thereon in India in assessment year 2025-26 assuming that he has exercised the option to shift out of the default tax regime under section 115BAC:

(i) Income of rent of the flat in London which was deposited in a bank there. The flat was given on rent by him after his return to India since July, 2024.

(ii) Dividends on the shares of three German Companies which are being collected in a bank account in London. He proposes to keep the dividend on shares in London with the permission of the Reserve Bank of India.

(iii) He has got two sons, one of whom is of 12 years and other 19 years. Both his sons are staying in London and not returning to India with him. Each of his sons is having income of ₹ 75,000 in U.K. in foreign currency (not received in India) and of ₹ 20,000 in India.

(iv) During the preceding accounting year when he was a non-resident, he had sold 1000 shares which were acquired by him in British Pound Sterling and the sale proceeds were repatriated. The profit in terms of British Pound Sterling on sale of these 1000 shares was 175% of the cost at ₹ 37,500 while in terms of Indian Rupee it was ₹ 50,000.

Answer

Peeyush returned to India on 12th June 2024 for permanently residing in India after staying in UK for 20 years. During the P.Y.2024-25, he stays in India for 293 days. Since he has stayed in India for a period of 182 days or more, he would be a resident in India for the A.Y.2025-26. However, he would be a resident but not ordinarily resident, assuming that he was a non-resident in nine out of ten previous years preceding P.Y.2024-25 and his stay in India during the seven previous years is less than 730 days. The residential status of Peeyush for A.Y.2025-26 is, therefore, **Resident but Not Ordinarily Resident.**

As per section 5(1), only income which is received/deemed to be received/accrued or arisen/ deemed to accrue or arise in India is taxable in case of a Resident but not Ordinarily Resident. Income which accrues or arises outside India shall not be included in his total income, unless it is derived from a business controlled in, or a profession set up in, India.

(i) Rental income from a flat in London which was deposited in a bank there **shall not be taxable** in the case of a resident but not ordinarily resident, since both the accrual and receipt of income are outside India.

(ii) Dividends from shares of three German Companies, collected in a bank account in London, would also **not be taxable** in the case of a resident but not ordinarily resident since both the accrual and receipt of income are outside India.

(iii) As per section 64(1A), all income accruing or arising to a minor child is includible in the hands of the parent, after providing for deduction of ₹ 1,500 per child under section 10(32).

Accordingly, **income of ₹ 20,000 accruing to his minor son, aged 12 years, in India is includible in the income of Peeyush, after providing deduction of ₹ 1,500. Therefore, ₹18,500 is includible in the income of Peeyush.** Income accruing to the minor child outside India (which is also received outside India) is not includible in the income of Peeyush.

Since the other son is major, his income is not includible in the income of Peeyush.

(iv) **Repatriation of sale proceeds** of 1000 shares sold in the preceding accounting year, when Peeyush was a non-resident, is **not taxable** since it is not the income of the P.Y.2024-25.

Consequently, only the income includible under section 64(1A) would form part of the total income of Mr. Peeyush. **Since his total income** (i.e., ₹ 18,500) **is less than the basic exemption limit, there would be no liability** to income-tax for A.Y.2025-26.

Question 9

Compute the total income in the hands of an individual, aged 55 years, being a resident and ordinarily resident, resident but not ordinarily resident, and non-resident:

Particulars	Amount (₹)
Interest on UK Development Bonds, 50% of interest received in India	10,000
Income from a business in Chennai (50% is received in India)	20,000
Short term capital gains on sale of shares of an Indian company received in London	20,000
Dividend from British company received in London	5,000
Long term capital gains on sale of plant at Germany, 50% of profits are received in India	40,000
Income earned from business in Germany which is controlled from Delhi (₹ 40,000 is received in India)	70,000
Profits from a business in Delhi but managed entirely from London	15,000
Income from house property in London deposited in an Indian Bank at London, brought to India (Computed)	50,000
Interest on debentures in an Indian company received in London	12,000
Fees for technical services rendered in India but received in London	8,000
Profits from a business in Bombay managed from London	26,000
Pension for services rendered in India but received in Burma	4,000
Income from property situated in Pakistan, received there	16,000
Past foreign untaxed income brought to India during the previous year	5,000
Income from agricultural land in Nepal received there and then brought to India	18,000
Income from profession in Kenya which was set up in India, received there but spent in India	5,000
Gift received on the occasion of his wedding	20,000
Interest on savings bank deposit in State Bank of India	12,000
Income from a business in Russia, controlled from Russia	20,000
Dividend from Reliance Petroleum Limited, an Indian Company	5,000
Agricultural income from a land in Rajasthan	15,000

Answer

Computation of total income

Particulars	Resident and ordinarily resident ₹	Resident but not ordinarily resident ₹	Non-resident ₹
Interest on UK Development Bonds, 50% of interest received in India	10,000	5,000	5,000
Income from business in Chennai (50% received in India)	20,000	20,000	20,000

Short term capital gains on sale of shares of an Indian company received in London	20,000	20,000	20,000
Dividend from British company received in London	5,000	-	-
Long term capital gain on sale of plant at Germany, 50% of profits are received in India	40,000	20,000	20,000
Income earned from business in Germany which is controlled from Delhi, out of which ₹ 40,000 is received in India	70,000	70,000	40,000
Profits from a business in Delhi but managed entirely from London	15,000	15,000	15,000
Income from property in London deposited in a Bank at London, later on remitted to India	50,000	-	-
Interest on debentures in an Indian company received in London	12,000	12,000	12,000
Fees for technical services rendered in India but received in London	8,000	8,000	8,000
Profits from a business in Bombay managed from London	26,000	26,000	26,000
Pension for services rendered in India but received in Burma	4,000	4,000	4,000
Income from property situated in Pakistan, received there	16,000	-	-
Past foreign untaxed income brought to India during the previous year	-	-	-
Income from agricultural land in Nepal received there and then brought to India	18,000	-	-
Income from profession in Kenya which was set up in India, received there but spent in India	5,000	5,000	-
Gift received on the occasion of his wedding [not taxable]	-	-	-
Interest on savings bank deposit in State Bank of India	12,000	12,000	12,000
Income from a business in Russia, controlled from Russia	20,000	-	-
Dividend from Reliance Petroleum Limited, an Indian Company	5,000	5,000	5,000
Agricultural income from a land in Rajasthan [Exempt under section 10(1)]	-	-	-
Gross Total Income	**3,56,000**	**2,22,000**	**1,87,000**
Less: Deduction under section 80TTA			
[Interest on savings bank account subject to a maximum of ₹ 10,000]	10,000	10,000	10,000
Total Income	**3,46,000**	**2,12,000**	**1,77,000**

Income deemed to accrue or arise in India (Section 9)

Question 10

Significant economic presence of a non-resident in India shall also constitute business connection in India. Explain.

Answer

Significant economic presence of a non-resident in India shall also constitute business connection in India. Significant economic presence means

- **Transaction in respect of any goods, services** or property carried out by a non-resident with any person in India including provision of download of data or software in India, **if aggregate of payments** arising from such transaction/transactions during previous year **exceed ₹ 2 crores**; or
- systematic and continuous soliciting of business activities or **engaging in interaction with atleast 3 lakhs users in India.**

Question 11

J, a citizen of India, employed in the Indian Embassy at Tokyo, Japan. He received salary and allowances at Tokyo from the Government of India for services rendered by him in Tokyo. Besides, he was allowed perquisites by the Government. He is a non-resident for the assessment year 2025-26. Examine the taxability of salary, allowances and perquisites in the hands of J.

Answer

As per section 9(1)(iii), salaries payable by the Government to a citizen of India for services rendered outside India shall be **deemed to accrue or arise in India**. As such, salary received by J is chargeable to tax, even though he was a non-resident for A.Y. 2025-26.

As per section 10(7), all **allowances or perquisites** paid or allowed as such outside India by the Government to a citizen of India for rendering services outside India is **exempt** from tax. Therefore, the allowances and perquisites received by J are exempt as per section 10(7).

Question 12

Mr. David, a citizen of India, serving in the Ministry of External Affairs in India, was transferred to Indian Embassy in Canada on 31.03.2024. He did not visit India any time during the previous year 2024-25. He has received the following income for the Financial Year 2024-25:

S.No.	Particulars	₹
(i)	Salary (Computed)	5,00,000
(ii)	Foreign Allowance	4,00,000
(iii)	Interest on fixed deposit from bank in India	1,00,000
(iv)	Income from agriculture in Country X	2,00,000
(v)	Income from house property in Country X	2,50,000

Compute his gross total income for Assessment Year 2025-26.

Answer

As per section 6(1), **Mr. David is a non-resident** for the A.Y. 2025-26, since he was not present in India at any time during the previous year 2024-25.

As per section 5(2), a non-resident is chargeable to tax in India only in respect of following incomes:

(i) Income received or deemed to be received in India; and

(ii) Income accruing or arising or deemed to accrue or arise in India.

In view of the above provisions, income from agriculture in Country X and income from house property in Country X would not be chargeable to tax in the hands of David, assuming that the same were received in Country X.

Income from 'Salaries' payable by the Government to a citizen of India for services rendered outside India is deemed to accrue or arise in India as per section 9(1)(iii). Hence, such income is taxable in the hands of Mr. David, even though he is a non-resident. However, **allowances or perquisites** paid or allowed as such outside India by the Government to a citizen of India for rendering service outside India is **exempt** under section 10(7). Hence, foreign allowance of ₹ 4,00,000 is exempt u/s 10(7).

Gross Total Income of Mr. David

Particulars	₹
Salaries	5,00,000
Income from other sources (Interest on fixed deposit in India)	1,00,000
Gross Total Income	**6,00,000**

Question 13

Mr. A, a citizen of India, left for USA for the purposes of employment on 1.5.2024. He has not visited India thereafter. Mr. A borrows money from his friend Mr. B, who also left India for employment purpose one week before Mr. A's departure, to the extent of ₹ 10 lakhs and buys shares in X Ltd., an Indian company. Discuss the taxability of the interest charged @10% in B's hands where the same has been received in New York.

Answer

An individual is said to be resident in India in any previous year, if he -

(i) has been in India during that year for a total period of 182 days or more, or

(ii) has been in India during the four years immediately preceding that year for a total period of 365 days or more and has been in India for at least 60 days in that year.

In the case of an Indian citizen leaving India for the purposes of employment outside India during the previous year, the period of stay during the previous year in condition (ii) above, to qualify as a resident, would be 182 days instead of 60 days.

In this case, **Mr. A** is an Indian citizen who left India for employment outside India on 01.05.2024. Mr. A has been in India only from 1.4.2024 to 01.05.2024 i.e. for 31 days. Since his stay in India during the previous year 2024-25 is only 31 days, he does not satisfy the minimum criterion of 182 days stay in India for being a resident. Hence, his residential status for A.Y. 2025-26 is **Non-Resident. Mr. B,** who left India one week before A's departure, **is also a non-resident** for the same reasons.

Section 9(1)(v) provides that income by way of interest payable by a non-resident in respect of any debt incurred, or moneys borrowed and used, for the purposes of a business or profession carried on by such person in India shall be deemed to accrue or arise in India.

Therefore, interest payable by a non-resident in respect of any debt incurred, or moneys borrowed and used, for the purpose of making or earning any income from any source other than a business or profession carried on by him in India, shall not be deemed to accrue or arise in India. Therefore, **interest payable by Mr. A on money borrowed from Mr. B to invest in shares of an Indian company shall not be deemed to accrue or arise in India** and hence, is not taxable in India in the hands of Mr. B.

Question 14

State with reasons whether the following transactions are subject to tax as deemed income.

(i) XYZ Ltd. is a broadcaster of News Channel in India. It had made payments to a Malaysian company having no PE in India for downlinking Television Channels into India and international footprint through a channel.

(ii) Mr. A, a foreign citizen and a diamond merchant from US, has earned income of ₹ 10 crores from display of uncut and unassorted diamonds in the Bharat Diamond Bourse, a notified special zone in Surat.

Answer

(i) As per section 9(1)(vi)(b), any income by way of royalty payable by a person who is a resident would be deemed to accrue or arise in India in the hands of the recipient, except where the royalty is payable in respect of any right, property or information or services utilised for the purposes of business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India.

Section 9(1)(vi) defines "royalty" to mean consideration for the transfer of any right in respect of, inter alia, a process. Explanation 6 to section 9(1)(vi) clarifies that "process" includes transmission by satellite (including conversion for down-linking of any signal).

Accordingly, the **payment** made by XYZ Ltd., a resident in India (since it is an Indian company), **for downlinking television channels** into India and international footprint through the channel, would **constitute "royalty".**

Such royalty income would be **deemed to accrue or arise in India** in the hands of the Malaysian company not having a PE in India, since it is paid by XYZ Ltd., a company resident in India in relation to its business in India.

(ii) As per section 9(1)(i)(e), in the case of a foreign company engaged in the business of mining of diamonds, **no income shall be deemed to accrue or arise in India** to it through or from the activities which are **confined to display of uncut and unassorted diamonds in any notified special zone.**

Since this **benefit is available only in case of a foreign company** engaged in the business of mining of diamonds, **Mr. A, a foreign citizen** and a diamond merchant from US, **cannot avail of such benefit.**

The income of ₹ 10 crores from display of uncut and unassorted diamonds would, accordingly, be **deemed to accrue or arise in the hands of Mr. A** by virtue of business connection in India.

Question 15

Atlant Italy, a company incorporated in France, was engaged in manufacture, trade and supply equipment and services for GSM Cellular Radio Telephones Systems. It supplied hardware and software to various entities in India. Software licensed by assessee embodied the process which is required to control and manage the specific set of activities involved in the business use of its customers, and also made available to its customers, who used it to carry out their business activities. The Assessing Officer contented that the consideration for supply of software embedded in hardware is 'royalty' under section 9(1)(vi)

Examine the correctness of the action of the Assessing Officer assuming that the software that was loaded on the hardware and embedded in the system does not have any independent existence.

Answer

The issue under consideration in this case is whether consideration for supply of software embedded in hardware would tantamount to 'royalty' for attracting deemed accrual of income under section 9(1)(vi).

As per section 9(1)(vi), income by way of royalty payable by a person who is a resident in India would be deemed to accrue or arise in India. However, where it is payable for the transfer of any right or the use of any property or information or for the utilization of services for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India, the amount payable by way royalty would not be deemed to accrue or arise in India, in the hands of non-resident.

For this purpose, 'royalty' includes transfer of all or any right for use or right to use a computer software irrespective of the medium through which such right is transferred.

The facts of the case are similar to the facts in CIT v. Alcatel Lucent Canada (2015) 372 ITR 476, wherein the above issue came up before the Delhi High Court. The Court observed that the software supply is an integral part of GSM mobile telephone system and is used by the cellular operators for providing cellular services to its customers. **Where payment is made for hardware in which the software is embedded** and the software does not have independent functional existence, **no amount could be attributed as 'royalty' for software** in terms of section 9(1)(vi).

In this case, since the software that was loaded on the hardware and embedded in the system does not have any independent existence, there could not be any independent use of such software. Therefore, the rationale of the Delhi High Court ruling can be applied to the case on hand. Accordingly, the **action of the Assessing Officer** in treating the consideration for supply of software embedded in hardware as royalty under section 9(1)(vi) is **not correct.**

Question 16

Miss Vivitha paid a sum of 5000 USD to Mr. Kulasekhara, a management consultant practising in Colombo, specializing in project financing. The payment was made in Colombo. Mr. Kulasekhara is a non-resident. The consultancy is related to a project in India with possible Ceylonese collaboration. Is this payment chargeable to tax in India in the hands of Mr. Kulasekhara?

Answer

A non-resident is chargeable to tax in respect of income received outside India only if such income accrues or arises or is deemed to accrue or arise to him in India.

The income deemed to accrue or arise in India under section 9 comprises, inter alia, income by way of fees for technical services, which includes any consideration for rendering of any managerial, technical or consultancy services. Therefore, **payment to a management consultant relating to project financing is covered within the scope of "fees for technical services".**

The Explanation below section 9(2) clarifies that income by way of, inter alia, fees for technical services, from services utilized in India would be deemed to accrue or arise in India in case of a non-resident and be included in his total income, whether or not such services were rendered in India or whether or not the non-resident has a residence or place of business or business connection in India.

In the instant case, **since services were utilized in India**, payment received by Mr. Kulasekhara, a non-resident, in Colombo is **chargeable to tax** in his hands in India, as it is deemed to accrue or arise in India.

Question 17

JJ Limited, a company incorporated in Australia has entered into an agreement with KK Limited, an Indian company for rendering technical services to the latter for setting up a fertilizer plant in Orissa. As per the agreement, JJ Limited rendered both off-shore services and on-shore services to KK Limited at fee of ₹ 1 crore and ₹ 1.5 crore, respectively. JJ Limited is of the view that it is not liable to tax in India in respect of fee of ₹ 1 crore as it is for rendering services outside India. Discuss the correctness of the view of JJ Limited.

Answer

The Explanation below section 9(2) clarifies that income by way of fees for technical services from services utilized in India would be deemed to accrue or arise in India u/s 9(1)(vii) in case of a non-resident and be included in his total income, whether or not such services were rendered in India.

In this case, the **technical services rendered by the foreign company, JJ Ltd.,** were for setting up a fertilizer plant in Orissa. Therefore, the services **were utilized in India.** Consequently, as per the Explanation below section 9(2), the fee of ₹ 2.5 crore for technical services rendered by JJ Ltd. (both off-shore and on-shore services) to KK Ltd. is **deemed to accrue or arise in India and includible in the total income of JJ Ltd.**

Therefore, the **view of JJ Ltd.** that it is not liable to tax in India in respect of fee of ₹ 1 crore (as it is for rendering services outside India) **is not correct.**

Question 18

M/s ABC Inc., a company incorporated in Korea, entered into an agreement with XYZ Ltd., an Indian company, for providing assistance to the latter in setting-up a power plant in Gujarat. The scope of work includes -

(i) offshore services in the nature of drawing and design of Electrical and networking work; and

(ii) onshore services in respect of installation of such machinery.

The consideration for aforesaid scope of work was agreed to be ₹ 3 crores for offshore services and ₹ 2 crores for onshore services. The consideration was discharged as under:

- ₹ 3 crores, in respect of offshore services, was paid in ABC's bank account in Korea on 1st July 2024;
- 6% debentures for ₹ 2 crores were issued on 1st September, 2024 in consideration for onshore services.

Discuss tax implications in India in respect of above transactions in the hands of M/s ABC Inc. under the provisions of the Act for AY. 2025-26. For the purpose of your answer, you may assume that activities of ABC Inc. do not constitute any business connection in India.

Ignore the provisions of tax treaty and DTAA.

Answer

Payment for offshore services in the nature of drawing and design of Electrical and networking work:

In this case, ₹ 3 crores, being the consideration towards offshore services of drawings and designs are in the **nature of fee for technical services.**

Income by fees for technical services payable by a resident in India for the purpose of business or profession carried on in India is deemed to accrue or arise in India under section 9(1)(vii), whether or not the non-resident has a residence; or place of business; or business connection in India; or whether or not the non-resident has rendered services in India.

Therefore, in the present case, even if drawing and design services are offshore services provided by M/s ABC Inc., a Korean company, the consideration of ₹ 3 crore payable by XYZ Ltd. would be **deemed to accrue or arise in India since it is for setting up a power plant in India.** Hence, the consideration would be chargeable to tax in India.

Payment for onshore service in respect of installation of such machinery:

₹ 2 crores, being the value of debentures issued by an XYZ Ltd., an Indian company in consideration of providing technical services i.e., onshore services for installation of machinery for setting up a power plant in Gujarat, is in the **nature of fee for technical services** and would be **deemed to accrue or arise in India to M/s ABC Inc.** under section 9(1)(vii). Hence, it is taxable in India.

Payment of interest on debentures of ABC Ltd:

As per section 9(1)(v), income by way of interest payable by a person who is a resident of India is deemed to accrue or arise in India except where the interest is payable for debt incurred or money borrowed and used for the purpose of business carried on outside India and for making or earning any income from any source outside India.

Therefore, **interest income of ₹ 7 lakhs** (₹ 2 crores x 6% x 7/12) **from debentures** of XYZ Ltd., an Indian company is **deemed to accrue or arise in India in the hands of M/s ABC Inc.** by virtue of section 9(1)(v). Hence, it is taxable in India.

Question 19

Examine with reasons whether the following transactions attract income-tax in India, in the hands of recipients under section 9 of Income-tax Act, 1961:

(i) A non-resident German company, which did not have a permanent establishment in India, entered into an agreement for execution of electrical work in India. Separate payments were made towards drawings & designs, which were described as "Engineering Fee". The assessee contended that such business profits should be taxable in Germany as there is no business connection within the meaning of section 9(1)(i) of the Income-tax Act, 1961.

(ii) A firm of solicitors in Mumbai engaged a barrister in UK for arguing a case before Supreme Court of India. A payment of 5000 pounds was made as per terms of professional engagement.

(iii) Amount paid by Government of India for use of a patent developed by Mr. A, who is a non-resident.

(iv) Sai Engineering, a non-resident foreign company entered into a collaboration agreement with an Indian Company and was in receipt of interest on 8% debentures for ₹ 20 lakhs, issued by Indian Company, in consideration of providing technical know-how utilised in its business in Mumbai during the year.

Answer

(i) Fees for technical services is taxable under section 9(1)(vii). In this case, the separate **payments made towards drawings and designs** (described as "engineering fee") are in the **nature of fee for technical services** and, therefore, it is **taxable in India** by virtue of section 9(1)(vii), since the services are utilized for execution of electrical work in India.

As per Explanation to section 9, where income is deemed to accrue or arise in India u/s 9(1)(vii), such income shall be included in total income of the non-resident German company, regardless of whether it has a residence or place of business or business connection in India.

(ii) As per section 9(1)(i), all income accruing or arising, whether directly or indirectly, through or from any business connection in India is deemed to accrue or arise in India.

In this case, there was a professional connection between the firm of solicitors in Mumbai and the barrister in UK. The expression "business" includes not only trade and manufacture; it includes, within its scope, "profession" as well. Therefore, the existence of professional connection amounts to existence of "business connection" under section 9(1)(i). It was so held by the Supreme Court in Barendra Prasad Roy v. ITO (1981) 129 ITR 295.

Hence, the amount of 5,000 pounds paid to the barrister in UK as per the terms of the professional engagement constitutes income which is **deemed to accrue or arise in India under section 9(1)(i). Hence, it is taxable in India.**

(iii) As per section 9(1)(vi), income by way of royalty payable by the Government of India is deemed to accrue or arise in India. "Royalty" means consideration for, inter alia, use of patent.

Therefore, **amount paid by Government of India** for use of patent developed by Mr. A, a non-resident, is **deemed to accrue or arise in India.** Hence, it is taxable in India in hands of Mr. A.

(iv) ₹ 20 lakhs, being the value of debentures issued by an Indian company in consideration of **providing technical know-how** for use in its business in India, is in the **nature of fee for technical services, deemed to accrue or arise in India** to Sai Engineering, a non-resident foreign company, under section 9(1)(vii). Hence, it is taxable in India.

Further, as per section 9(1)(v), income by way of interest payable by a person who is a resident of India is deemed to accrue or arise in India. Therefore, **interest income from debentures** of an Indian company is **deemed to accrue or arise in India** in the hands of Sai Engineering by virtue of section 9(1)(v). Hence, it is taxable in India.

Presumptive Taxation for Non Resident

Question 20

Sea Port Shipping Line, a non-resident foreign company ships is engaged in the business of carriage of goods shipped at Mumbai port. During the year, it had collected freight of 100 lakhs, demurrages of ₹ 20 lakhs and handling charges of ₹ 10 lakhs. The expenses of operating its fleet during the year for the Indian Ports were ₹ 110 lakhs. Compute its income applying the presumptive provisions under section 44B.

Answer

Section 44B provides that in the case of an assessee, being a non-resident, engaged in the business of operation of ships, a sum equal to 7.5% of the aggregate of the following amounts would be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

(i) The amount paid or payable, whether within India or outside, to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods shipped at any port in India; and

(ii) The amount received or deemed to be received in India by the assessee himself or by any other person on behalf of or on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India.

The above amounts will include demurrage charges and handling charges.

These provisions for computation of income from the shipping business in case of non-residents would apply notwithstanding anything to the contrary contained in the provisions of sections 28 to 43A of the Income-tax Act, 1961.

Therefore, in this case, M/s. Sea Port Shipping Line is required to pay tax in India on the basis of presumptive scheme as per the provisions of section 44B. The assessee shall not be entitled to set off any of the expenses incurred for earning of such income. Therefore, the Shipping Line is required to pay tax on **deemed profit of ₹ 9.75 lacs (7.50% on the total receipts of ₹ 130 lacs).** The tax payable would be reduced by the amount of tax paid under section 172(4).

Question 21

Mr. Q, a non-resident, operates an aircraft between Singapore and Chennai. He received the following amounts while carrying on the business of operation of aircrafts for the year ended 31.3.2025:

(i) ₹ 2 crores in India on account of carriage of passengers from Chennai.

(ii) ₹ 1 crore in India on account of carriage of goods from Chennai.

(iii) ₹ 3 crores in India on account of carriage of passengers from Singapore.

(iv) ₹ 1 crore in Singapore on account of carriage of passengers from Chennai.

The total expenditure incurred by Mr. Q for purposes of business during the year was ₹ 6.75 crores.

Compute the income of Mr. Q chargeable to tax in India under the head "Profits and gains of business or profession" for the assessment year 2025-26.

What would be your answer in case business was carried on by foreign company, Q Airlines (P) Ltd?

Answer

Section 44BBA says for computing profits and gains of the business of operation of aircraft in the case of non-residents a sum equal to 5% of the aggregate of the following amounts -

(a) paid or payable, whether in or out of India, to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods from any place in India; and

(b) received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods from any place outside India.

Keeping in view the provisions of section 44BBA, the income of Mr. Q chargeable to tax in India under the head "Profits and gains of business or profession" is worked out hereunder-

Particulars	₹
Amount received in India on account of carriage of passengers from Chennai	2,00,00,000
Amount received in India on account of carriage of goods from Chennai	1,00,00,000
Amount received in India on account of carriage of passengers from Singapore	3,00,00,000
Amount received in Singapore on account of carriage of passengers from Chennai	1,00,00,000
	7,00,00,000

Income from business under section 44BBA at 5% of ₹ 7,00,00,000 is ₹ 35,00,000, which is the income of Mr. Q chargeable to tax in India under head "Profits and gains of business or profession".

In case the assessee is a foreign company, say, Q Airlines (P) Ltd, the **answer would be the same** since section 44BBA does not distinguish corporate and non-corporate taxpayers who operate aircraft provided their residential status is that of non-resident.

Question 22

M/s. Global Airlines incorporated as a company in USA operated its flights to India and vice versa during the year 2024-25 and collected charges of ₹ 125 lakhs for carriage of passengers and cargo out of which ₹ 65 lakhs were received in New York in U.S Dollars for the passenger fare booked from New York to Mumbai. The total expenses for the year on operation of such flights were ₹ 195 lakhs.

Compute the income chargeable to tax of the foreign airlines.

Answer

As per section 44BBA, in case of a non-resident engaged in the business of operation of aircraft, 5% of the following amounts would be deemed to be the profits and gains from such business:

(a) paid or payable, whether in or out of India, to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods from any place in India; and

(b) received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods from any place outside India.

In the present case, the income chargeable to tax of M/s Global Airlines applying the provisions of section 44BBA are as follows:

Particulars	Fare booked from India to outside India whether received in India or not (₹)	Fare booked from New York to Mumbai (₹)
Fare	60,00,000 (1,25,00,000 – 65,00,000)	65,00,000
Deemed income @5% u/s 44BBA	**3,00,000** (60,00,000 × 5%)	**Nil** (since the amount not received in India)

Question 23

M/s. XY Airlines Inc., incorporated as a company in USA operated its flights to India and vice versa during the year.

M/s. XY Airlines Inc. collected charges of ₹ 90 lakhs for carriage of passengers and cargo from Delhi to New York and vice versa out of which, ₹ 40 lakhs were received in New York in USD for the passenger and cargo fare booked from New York to Delhi.

The company also collected ₹ 70 lakhs for carriage of passengers and cargo from Mumbai to New York and vice versa out of which, ₹ 30 lakhs were received in New York in USD for the passenger and cargo fare booked from New York to Mumbai.

The total expenses for the year on operation of such flights were ₹ 170 lakhs. Compute the income chargeable to tax of the XY Airlines Inc. in India.

Answer

As per section 44BBA, in the case of a non-resident engaged in the business of operation of aircraft, 5% of the following amounts would be deemed to be the profits and gains from such business:

(a) paid or payable, whether in or out of India, to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods from any place in India; and

(b) received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods from any place outside India In the present case, the income chargeable to tax of M/s XY Airlines Inc. applying the provisions of section 44BBA are as follows:

Particulars		Fare booked from India to outside India whether received in India or not (₹)	Fare booked from New York to Delhi/Mumbai (₹)
(i)	Fare for Delhi to New York and vice versa	50,00,000 (90,00,000 - 40,00,000)	40,00,000
(ii)	Fare for Mumbai to New York and vice versa	40,00,000 (70,00,000 - 30,00,000)	30,00,000
Total		**90,00,000**	**70,00,000**
Presumptive income @5% u/s 44BBA		**4,50,000 (90,00,000 × 5%)**	**Nil (since amount not received in India)**
No deduction would be available in respect of expenditure incurred by M/s XY Airlines Inc.			

Question 24

Mr. Robert, a non-resident, (aged 38) operates a ship for the carriage of goods, passengers and livestock between Dubai, Mumbai and Chennai. He provides you the following particulars:

(i) Received ₹ 200 Lakhs in India on account of carriage of livestock from Mumbai to London.

(ii) Received ₹ 50 Lakhs in India on account of carriage of passengers from Dubai to Colombo.

(iii) Received ₹ 65 Lakhs in Dubai on account of carriage of goods from Chennai to Dubai.

(iv) Expenses incurred during the year in respect of operation of such ships ₹ 195 Lakhs.

(v) Gross Winning from horse races in India ₹ 25 Lakhs

Compute the total income of Mr. Robert Chargeable to tax in India for the assessment year 2025-26. Also, calculate the tax liability thereon, assuming that he has exercised the option to shift out of the default tax regime under section 115BAC.

Answer

Computation of total income and tax payable by Mr. Robert

	Amount (₹)
Section 44B provides that profits and gains of a non-resident engaged in business of operation of ships are to be taken @7.5% of the aggregate of the following amounts: (i) paid or payable, whether in or out of India, to the assessee or to any person on his behalf on account of carriage of passengers, livestock, mail or goods shipped at any port in India; and (ii) received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India. These provisions for computation of the income from the shipping business in case of non-residents would apply notwithstanding anything to the contrary contained in the provisions of sections 28 to 43A. Accordingly, profits from shipping business of Mr. Robert computed as follows:	

(i) Amount received in India for carriage of livestock from Mumbai to London		200 lakhs
(ii) Amount received in India for carriage of passengers from Dubai to Colombo		50 lakhs
(iii) Amount received in Dubai for carriage of goods from Chennai to Dubai		65 lakhs
Total amount received		**315 lakhs**
Profits and gains chargeable under head profits and gains from business or profession @7.5% of the total amount received		**23,62,500**
Income from other sources		
Winning from horse races in India		25,00,000
Total Income		**48,62,500**
Tax on winning from horse races @ 30%		7,50,000
Tax on balance income of ₹ 23,62,500		
Upto ₹ 10,00,000	1,12,500	
₹ 10,00,001 – ₹ 23,62,500	4,08,750	5,21,250
		12,71,250
Add: Health and Education Cess @4%		50,850
Tax liability		**13,22,100**

Head Office Expenses (Section 44C)

Question 25

The net result of the business carried on by a branch of foreign company in India for the year was a loss of ₹ 100 lakhs after charge of head office expenses of ₹ 200 lakhs allocated to the branch. Explain with reasons the income to be declared by the branch in its return for the assessment year 2025-26.

Answer

Section 44C restricts the allowability of the head office expenses to the extent of lower of an amount equal to 5% of the adjusted total income or the amount actually incurred as is attributable to the business of the assessee in India. For the purpose of computing the adjusted total income, the head office expenses of ₹ 200 Lakhs charged to the profit and loss account have to be added back.

The amount of income to be declared by the assessee will be as under:

Particulars	₹
Net loss for the year	(100 lakhs)
Add: Amount of head office expenses to be considered separately as per section 44C	200 lakhs
Adjusted total income	100 lakhs
Less: Head Office expenses allowable under section 44C is the lower of -	
(i) ₹ 5 lakhs, being 5% of ₹ 100 lakhs, or	
(ii) ₹ 200 lakhs.	5 lakhs
Income to be declared in return	**95 lakhs**

Question 26

The net result of the business carried on by a branch of a foreign company in India for the financial year ended 31.03.2025 was a profit of ₹ 20 lakhs after charge of the following expenses:

i. Depreciation for the current financial year of ₹ 15 lakhs.

ii. Unabsorbed depreciation for previous financial year of ₹ 17 lakhs.

iii. Capital Expenditure incurred for promoting family planning amongst its employees of ₹ 7 lakhs. ₹ 7 Lakhs is one fifth of the total expenditure incurred on promoting family planning.

iv. Expenditure incurred for Scientific research ₹ 11 lakhs.

v. Business loss brought forward for A.Y. 2024-25 of ₹ 25 lakhs.

vi. Deductions under Chapter VI-A of ₹ 20 lakhs.

vi. Head Office expenses of ₹ 125 lakhs allocated to the branch.

Compute income to be declared by the branch in its return for the Assessment Year 2025-26.

Answer

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

Computation of Head Office expenses allowable u/s 44C:

Particulars	₹	₹
Net profit of the branch		20,00,000
Add: Head office expenditure debited to profit and loss	1,25,00,000	
Unabsorbed depreciation	17,00,000	
Capital expenditure on family planning	7,00,000	
Brought forward business loss	25,00,000	
Deductions under Chapter VI-A	20,00,000	1,94,00,000
Adjusted total income		**2,14,00,000**

Note – Depreciation for the current financial year and expenditure incurred for scientific research are not required to be added back for computing adjusted total income.

Head office expenses allowable u/s 44C = ₹ 10,70,000

Being the lower of -

(i) 5% of ₹ 2,14,00,000 = ₹ 10,70,000

(ii) Actual Head Office expenses allocated to the branch = ₹ 1,25,00,000

Income to be declared by the branch

Particulars	₹
Net profit of the branch	20,00,000
Add: Head office expenditure debited to profit and loss	1,25,00,000
	1,45,00,000
Less: Head office expenses allowable u/s 44C	10,70,000
Income to be declared by the branch	**1,34,30,000**

First Proviso to Section 48

Question 27

Mr. A, a non-resident Indian remits US $ 40,000 to India on 16.09.2007. The amount is partly utilised on 3.10.2007 for purchasing 10,000 equity shares in A Ltd, an Indian Company, at the rate of ₹ 12 per share. These shares are sold for ₹ 48 per share on 30.03.2025. Fair Market value of these shares on 31.01.2018 was ₹ 35 per share.

The telegraphic transfer buying and selling rate of US dollars adopted by State Bank of India is as follows:

Date	Buying Rate (1 US$)	Selling Rate (1 US $)
16.09.2007	18	20
3.10.2007	19	21
30.3.2025	59	61

Compute Capital gain chargeable to tax for the A.Y. 2025-26 on the assumption that –

(a) These shares have not been sold through a recognised stock exchange

(b) These shares have been purchased and sold through a recognised stock exchange.

Answer

(a) Where the shares are not sold through recognised stock exchange

Particulars	US $
Sale consideration (₹ 4,80,000/60)	8000
Less: Cost of Acquisition (1,20,000/20)	6000
Long term capital gain	**2000**

Long-term capital gain converted into $ 2000 x ₹ 59 = **₹ 1,18,000**

(b) Where the shares are purchased and sold through a recognised stock exchange

Particulars		₹
Sale consideration		4,80,000
Less: Cost of Acquisition		
Higher of the following		
Cost of acquisition	1,20,000	
Lower of Fair market value as on 31.1.2018 and Full value of consideration (i.e., lower of ₹ 3,50,000 and ₹ 4,80,000)	3,50,000	3,50,000
Long term capital gain		**1,30,000**

Long term capital gains upto ₹ 1,25,000 would be exempt. Long term capital gains exceeding ₹ 1,25,000, i.e., **₹ 5,000 is taxable @12.5% under section 112A.**

Non Resident Indian (NRI) - Chapter XII-A

Question 28

Mr. John, a non-resident Indian, purchased unlisted shares of an Indian Company at a cost of ₹ 70,000 on 01.07.2011 in foreign currency. Mr. John sold the said shares for a consideration of ₹ 2,50,000 on 01.08.2024 and the expenditure incurred wholly or exclusively in connection with the transfer is ₹ 10,000. Compute the taxable capital gain as per special provision applicable to NRI if he deposited in specified assets ₹ 1,50,000 out of sale consideration. Ignore the effect of first proviso to section 48.

Answer

Particulars	Amount (₹)
Sale Consideration	2,50,000
Less: Transfer Expenses	10,000
Net Consideration	2,40,000
Less: Cost of Acquisition	70,000
Long-term capital gain	1,70,000
Less: Exemption u/s 115F (1,70,000*1,50,000/2,40,000)	1,06,250
Taxable long-term capital gain	**63,750**

Question 29

A non-resident Indian acquired shares in an Indian company, A Ltd., on 1.1.2010 for ₹ 1,00,000 in foreign currency. These shares are sold by him on 1.1.2025 for ₹ 3,00,000. He invests ₹ 3,00,000 in shares on 31.03.2025 and these shares are sold by him on 30.06.2025 for ₹ 3,50,000. Discuss the tax implications as per special provision applicable to NRI. Ignore the effect of first proviso to section 48.

Answer

Computation of Long term Capital Gain for Assessment Year 2025-26

Particulars	Amount (₹)
Sale consideration	3,00,000
Less: Cost of Acquisition	1,00,000
Long term capital gain	2,00,000
Less: Exemption under section 115F	2,00,000
Exempt long-term capital gain	NIL

Capital Gain for Assessment year 2026-27:

1. LTCG of ₹ 2,00,000 which was exempt in A.Y.2025-26 becomes taxable this year.
2. STCG of ₹ 50,000 is also taxable this year.

Question 30

Pranab, a non-resident Indian (aged 41) has furnished the following particulars of income relating to financial year 2024-25:

Particulars	₹
Loss from house property located in India	2,50,000
Income from business carried on in India	7,50,000
Interest on debentures of Indian public company subscribed in US$	1,50,000
Interest on loan taken for purchase of above debentures	20,000
Long-term capital gains on sale of debentures subscribed in US $ in the year 2012-13 for ₹ 5,00,000 and sold on 30.03.2025 for ₹ 8,00,000.	
Brokerage on sale of debentures	12,000

Compute tax payable by Pranab for Assessment Year 2025-26, assuming that he opts for provisions of Chapter XII-A of the Income-tax Act, 1961. He has exercised the option to shift out of the default tax regime under section 115BAC.

Answer

Computation of tax payable by Mr. Pranab

Particulars	₹	₹
Profit and gains of business or profession		
Income from business carried on in India	7,50,000	
Less: Loss from house property of ₹ 2,50,000, restricted to ₹ 2,00,000 by virtue of section 71(3A)	2,00,000	5,50,000
Balance loss of ₹ 50,000 [₹ 2,50,000 – ₹ 2,00,000] from house property to be carried forward.		
Capital Gains		
Long term capital gains		
Sale Consideration	8,00,000	
Less: Brokerage on sale of debentures	12,000	
Net sale consideration	7,88,000	
Less: Cost of acquisition	5,00,000	2,88,000
Income from Other Sources		
Interest on debentures of Indian public company [No deduction is allowed under any provision of the Act in respect of any expenditure while applying provisions under Chapter XII-A. Therefore, interest on loan taken for purchase of debentures is not deductible].	1,50,000	1,50,000
Gross Total Income/Total Income		**9,88,000**
Tax liability [as per provisions of Chapter XII-A]		
Tax on long term capital gains (₹ 2,88,000 x 12.5%)	36,000	
Tax on interest on debentures, being investment income (₹ 1,50,000 x 20%)	30,000	

Tax on balance income of ₹ 5,50,000 as per normal provisions of Act			
Upto ₹ 2,50,000	Nil		
₹ 2,50,001 – ₹ 5,00,000 @5%	12,500		
₹ 5,00,001 – ₹ 5,50,000@20%	10,000	22,500	88,500
Add: Education cess @4%			3,540
Tax liability			**92,040**
Tax liability (rounded off)			**92,040**

Question 31

The following data is furnished by Mr. Sumedh, a non-resident and a person of Indian Origin, for the financial year ended 31.3.2025:

A:	Long-term capital gains on transfer of foreign exchange asset on 31.7.2024	₹ 6,50,000
	Expenditure wholly and exclusively incurred in connection with such transfer (not considered above)	₹ 80,000
	Interest on deposits held with private limited companies	₹ 7,40,000
	Interest on Government Securities	₹ 95,000
	Interest on deposits with pubic limited companies	₹ 2,60,000
B:	Savings and Investments	
	Investment in notified savings certificates (NSC) of Central Government on 30.3.2025 (eligible for deduction u/s 80C)	₹ 2,00,000
	Investment in shares of Indian public limited companies on 31.12.2025	₹ 3,00,000
C:	Tax deducted at source	₹ 1,83,800

Compute balance tax payable/refund due for A.Y. 2025-26 in accordance with special provisions applicable to NRI. He has exercised the option to shift out of default tax regime u/s 115BAC.

Answer

Computation of tax payable/refund due to Mr. Sumedh

Particulars	₹	₹
Capital Gains		
Long-term capital gains on transfer of foreign exchange asset	6,50,000	
Less: Expenditure wholly and exclusively incurred with such transfer	80,000	5,70,000
Less: **Exemption under section 115F**		
- Investment of ₹ 3,00,000 in shares of Indian Public Limited Companies on 31.12.2025		Nil
[Investment in specified assets, being shares in an Indian company is to be made within six months from date of transfer i.e., on or before 31.1.2025. Since investment is made after 31.1.2025, no exemption would be allowed]		
		5,70,000

Income from other sources			
Investment Income			
Interest on Government Securities	95,000		
Interest on deposits with public limited companies	2,60,000	3,55,000	
Other Incomes			
Interest on deposits with private limited companies		7,40,000	10,95,000
Gross Total Income			**16,65,000**
Less: Deduction u/s 80C in respect of NSC			1,50,000
Total Income			**15,15,000**

Particulars	₹	₹
Tax liability [applying special provisions under Chapter XII-A]		
Tax@20% on investment income = 20% of ₹ 3,55,000	71,000	
Tax@12.5% on long-term capital gains = 12.5% of ₹ 5,70,000	71,250	
Tax on balance income of ₹ 5,90,000 (₹ 7,40,000 – ₹ 1,50,000) at slab rate [₹ 18,000, being 20% of ₹ 90,000 + ₹ 12,500]	30,500	1,72,750
Add: Health and education cess@4%		6,910
Total Tax liability		**1,79,660**
Less: TDS		1,83,800
Refund due		**4,140**

Section 115A and 44DA

Question 32

Examine the tax consequence in respect of fees for technical services (FTS) received by Mr. Tom Sawyer, a non-resident, from Ganga Ltd., an Indian company, in pursuance of an agreement approved by the Central Government, if -

(a) India has no Double Tax Avoidance Agreement (DTAA) with Country A

(b) India has a DTAA with Country A, which provides for taxation of such FTS @10%.

(c) India has a DTAA with Country A, which provides for taxation of such FTS @25%.

The technical services are utilised by Ganga Ltd. for its business in Calcutta. Assume that Tom Sawyer is a resident of Country A and he has no fixed place of his profession in India.

Would your answer change if he has a fixed place of his profession in India and he renders technical services through that place? Examine, in a case where India has no DTAA with Country A.

Answer

As per section 9(1)(vii)(b), income by way of fees for technical services payable by a resident is deemed to accrue or arise in India, except where the fees is payable, inter alia, in respect of services utilized in a business or profession carried on by such person outside India. In this case, since Ganga Ltd. utilizes the technical services for its business in Calcutta, the **fees for technical services payable by Ganga Ltd. is deemed to accrue or arise in India in the hands of Mr. Tom Sawyer.**

In accordance with the provisions of **section 115A**, where the total income of a non-corporate non-resident includes any income by way of royalty or fees for technical services other than the income referred to in section 44DA(1), received from an Indian concern in pursuance of an agreement made by him with the Indian concern and the agreement is approved by the Central Government, then, the **special rate of tax at 20%** of such fees for technical services is applicable. **No deduction** would be allowable under sections 28 to 44C and section 57 while computing such income.

Section 90(2) makes it clear that where the Central Government has entered into a DTAA with a country outside India, then, in respect of an assessee to whom such agreement applies, the provisions of the Act shall apply to the extent they are more beneficial to the assessee. Therefore, **if the DTAA provides for a rate lower than 20%, then, the provisions of DTAA would apply.**

(a) In this case, since India does not have a DTAA with Country A, of which Tom Sawyer is a resident, the fees for technical services (FTS) received from Ganga Ltd., an Indian company, would be **taxable @20%**, by virtue of section 115A.

(b) In this case, the FTS from Ganga Ltd. would be **taxable @10%,** being the rate specified in the DTAA, even though section 115A provides for a higher rate of tax, since the tax rates specified in the DTAA are more beneficial. However, since Tom Sawyer is a non-resident, he has to furnish a tax residency certificate from the Government of Country A for claiming such benefit. Also, he has to furnish other information, namely, his nationality, his tax identification number in Country A and his address in Country A.

(c) In this case, the FTS from Ganga Ltd. would be **taxable @20%** as per section 115A, even though DTAA provides for a higher rate of tax, since the provisions of the Act (i.e. section 115A in this case) are more beneficial.

If Mr. Tom Sawyer has a fixed place of profession in India, and he renders technical services through the fixed place of profession, then, by virtue of **section 44DA**, such income by way of fees for technical services received by Mr. Tom Sawyer from Ganga Ltd., India, would be computed under "Profits and gains of business or profession" as per Income-tax Act, 1961, since technical services are provided from a fixed place of profession situated in India and fees for technical services is received from an Indian concern in pursuance of an agreement with the non-resident and is effectively connected with such fixed place of profession. No deduction would be allowed in respect of any expenditure which is not wholly and exclusively incurred for the fixed place of profession in India.

Mr. Tom Sawyer is **required to maintain books of account** and other documents in accordance with the provisions contained in section 44AA and **get his accounts audited** by an accountant and furnish the report of such audit in the prescribed form duly signed and verified by such accountant.

It may be noted that concessional rate of tax@20% under section 115A would not apply in this case.

Question 33

Lords Inc., a British company, received income by way of fees for technical services of ₹ 3.20 crore from Yamuna Ltd., an Indian company, in pursuance of an agreement between Yamuna Ltd. and Lords Inc. which is approved by the Central Government. Expenses incurred for earning such income is ₹ 28 lakhs.

(i) Examine the taxability of the above sum in the hands of Lords Inc as per the provisions of the

Income-tax Act, 1961 and the requirement, if any, to file return of income, assuming that Lords Inc does not have a permanent establishment in India.

(ii) If Lords Inc. has a permanent establishment in India and the contract/agreement with Yamuna Ltd. for rendering technical services is effectively connected with such PE in India, examine the taxability based on the following details provided –

	Particulars	Amount
(1)	Fees for technical services earned from Yamuna Ltd.	₹ 3.20 crore
(2)	Expenses incurred for earning such income	₹ 28 lakhs
(3)	Fees for technical services earned from other Indian companies in pursuance of agreement approved by the Central Government	₹ 2 crore
(4)	Expenses incurred for earning such income	₹ 21 lakhs
(5)	Expenditure not wholly and exclusively incurred for the business of such PE [not included in (2) & (4) above]	₹ 8 lakhs
(6)	Amounts paid by the PE to HO (not being in the nature of reimbursement of actual expenses)	₹ 14 lakhs

What are the other requirements, if any, under the Income-tax Act, 1961 in this case?

Answer

(i) **Where Lords Inc., a British company, does not have a PE in India**

In this case, Lords Inc. would be eligible for a concessional rate of **tax@20%** (plus surcharge@2% and HEC@4%) of ₹ 3.20 crore **under section 115A** on the fees for technical services received from Yamuna Ltd., an Indian company, since the same is in pursuance of an agreement which has been approved by the Central Government. No deduction, however, would be allowed in respect of expenditure of ₹ 28 lakhs incurred to earn such income.

If tax deductible at source@21.216% has been fully deducted, Lords Inc. need not file its return of income in India under section 139.

(ii) **Where Lords Inc., a British company, has a PE in India and rendering technical services is effectively connected with the PE in India.**

Since Lords Inc. carries on business through a PE in India, in pursuance of an agreement with Yamuna Ltd. or other Indian companies, and the income by way of fees for technical services is effectively connected with the PE in India as per **section 44DA**, such income shall be computed under the head "Profits and gains of business or profession" as per Income-tax Act, 1961.

Accordingly, **expenses of ₹ 49 lakhs** (₹ 28 lakhs + ₹ 21 lakhs) **incurred for earning fees for technical services of ₹ 5.20 crore** (₹ 3.20 crore + ₹ 2 crore) **is allowable as deduction.** However, **expenditure of ₹ 8 lakhs** which is **not incurred wholly and exclusively** for business of PE **and** amount of **₹ 14 lakhs paid by PE to HO is not allowable as deduction.**

Lords Inc. is **required to maintain books of account** under section 44AA **and get the same** audited under section 44AB and furnish report before the specified date i.e., the date one month prior to the due date of filing return u/s 139(1).

Question 34

Mr. Bhist, a non-resident individual, earned an interest income of ₹ 12 lakhs on an investment made in a notified Infrastructure Debt Fund set up in India eligible for exemption under section 10(47). Further, he incurred an expenditure of ₹ 15,000 for earning such interest income. Examine the tax implications in the hands of both Fund and Mr. Bhist and justify your conclusions with relevant provisions of Income-tax Act, 1961 in two situations, when (i) Mr. Bhist is residing in Notified Jurisdictional Area; and (ii) Mr. Bhist is stationed outside India, in a place other than NJA.

Will there be any change in tax liability of Mr. Bhist, if the income earned is fee for technical services from an Indian Company instead of interest income from Infrastructure Debt Fund?

Answer

If Mr. Bhist has received interest on investment made in notified Infrastructure Debt Fund

The interest income received by Mr. Bhist, a non-resident, from a notified infrastructure debt fund u/s 10(47) would be subject to a concessional **tax rate of 5%** (plus health and education cess@4%) i.e., 5.2% **under section 115A** on the gross amount of such interest income.

Accordingly, the **tax liability of Mr. Bhist** in respect of such income would be **₹ 62,400** (being 5% of ₹ 12 lakhs plus health and education cess@4%).

(i) **If Mr. Bhist is residing in a Notified Jurisdictional Area (NJA)**

Under section 194LB, tax is deductible @ 5% (plus health and education cess@4%) i.e. 5.2% on interest paid by notified infrastructure debt fund u/s 10(47) to a non-resident.

However, since Mr. Bhist is a resident of a NJA, tax would be deductible@30% (plus health and education cess@4%) i.e. 31.2% being the highest of the following rates –

(a) at the rate or rates in force;

(b) at the rate specified in the relevant provision of the Act i.e., 5%;

(c) at the rate of 30%.

Tax to be deducted by notified infrastructure debt fund would be ₹ 3,74,400 (being 30% of ₹ 12 lakhs plus health and education cess@4%).

(ii) **If Mr. Bhist is stationed outside India, in a place other than a NJA**

Tax would be deductible@5% under section 194LB (plus health and education cess@4%) i.e. 5.2% on interest paid by notified infrastructure debt fund u/s 10(47) to Mr. Bhist.

Tax to be deducted by notified infrastructure debt fund would be ₹ 62,400 (being 5% of ₹ 12 lakhs plus health and education cess @ 4%).

If Mr. Bhist has received fee for technical services (FTS) from an Indian company

If Mr. Bhist, a non-resident, has received FTS from an Indian company instead of interest income from Infrastructure Debt Fund assuming that the agreement for FTS is approved by the Central Government, the same would be subject to **tax@20%** (plus health and education cess@4%) i.e. 20.8% **under section 115A** on the gross amount of such FTS.

The **tax liability of Mr. Bhist**, in such a case, would be **₹ 2,49,600** (being 20% of ₹ 12 lakhs plus health and education cess@4%).

Foreign Institutional Investor (FII)

Question 35

STYLE Inc, a notified Foreign Institutional Investor (FII), derived the following incomes for the financial year 2024-25:

(1) Interest earned on investment in Rupee Denominated Bonds of ABC Ltd., an Indian company (investment was made in the F.Y.2022-23) - ₹ 8,50,000

(2) Dividend from listed shares of Indian companies – ₹ 6,20,000

(3) Interest on securities – ₹ 17,32,000 (Expenses of ₹ 26,000 incurred to earn such income)

(4) Income from sale of securities and shares:

(i)	**Bonds of J Ltd.**	
	[Date of purchase 5 May 2017; Date of sale 7 March 2025]	
	Sale proceeds	₹ 47,00,000
	Cost of purchase	₹ 32,00,000
(ii)	**Listed Shares of E Ltd.**	
	[Date of purchase – 2 May, 2024; Date of sale – 9 February, 2025]	
	Sale Consideration	₹ 12,40,000
	Purchase cost	₹ 7,80,000
	[STT paid both at the time of purchase and sale]	
(iii)	**Unlisted equity shares of M Ltd.**	
	[Date of purchase – 1 July, 2024; Date of sale – 7 March, 2025]	
	Sale Consideration	₹ 8,40,000
	Purchase cost	₹ 3,72,000

Compute the total income and tax liability of the FII, STYLE Inc., for the A.Y. 2025-26 as per section 115AD, assuming that no other income is derived by STYLE Inc.

Answer

Computation of total income of STYLE Inc., a notified FII

Particulars	₹	₹
Interest on Rupee Denominated Bonds	8,50,000	
Dividend income	6,20,000	
Interest on securities [No deduction is allowable in respect of expenses incurred in respect thereof]	17,32,000	32,02,000
Long-term capital gains on sale of bonds of J Ltd.		
Sale consideration	47,00,000	
Less: Cost of acquisition	32,00,000	15,00,000
Short-term capital gains on sale of STT paid equity shares of E Ltd.		
Sale consideration	12,40,000	
Less: Cost of acquisition	7,80,000	4,60,000

Short-term capital gains on sale on unlisted equity shares of M Ltd.		
Sale consideration	8,40,000	
Less: Cost of acquisition	3,72,000	4,68,000
Total Income		**56,30,000**

Computation of tax liability of STYLE Inc.

Particulars	₹
Tax@5% on interest of ₹ 8,50,000 received from an Indian company on investment in rupee denominated bonds = 5% x ₹ 8,50,000	42,500
Tax@20% on interest on securities and dividend =20% x ₹ 23,52,000	4,70,400
Tax@10% on long-term capital gains on sale of bonds of J Ltd. = 10% x ₹ 15,00,000	1,50,000
Tax @ 20% on short-term capital gains on sale of listed equity shares of E Ltd., in respect of which STT has been paid = 20% of ₹ 4,60,000	92,000
Tax @ 30% on short-term capital gains on sale of unlisted equity shares of M Ltd. = 30% of ₹ 4,68,000	1,40,400
	8,95,300
Add: HEC@4%	35,812
Tax liability	9,31,112
Tax liability (rounded off)	9,31,110

Question 36

SOL Inc, a notified Foreign Institutional Investor (FII), derived the following incomes from various sources for the financial year 2024-25:

(1) **Income in respect of securities:** ₹ 28,50,000

Expenses incurred in respect there of: ₹ 50,000

(The above income includes an interest of ₹ 16,00,000 earned from an Indian Company on the investment in rupee denominated bonds made on or before 30.6.2023 and dividend income of ₹ 3,50,000 from a domestic company)

(2) **Capital Gains:**

(i)	**Long Term :**	
	Sale proceeds on sale of unlisted securities on 15.01.2025:	₹ 52,00,000
	Purchase cost of unlisted securities on 25.05.2016:	₹ 28,00,000
(ii)	**Short Term:**	
	Sale proceeds of equity shares of Company A:	₹ 13,50,000
	Cost of acquisition (STT paid on Company A shares):	₹ 5,50,000
	Sale proceeds of equity shares of Company B:	₹ 9,25,000
	Cost of acquisition (STT not paid on Company B Shares):	₹ 4,85,000

Compute the taxable income of SOL Inc and tax liability for A.Y. 2025-26 as per applicable provisions of the Income-tax Act, 1961, assuming that no other income is derived by SOL Inc (FII).

Answer

Computation of total income of SOL Inc., a notified FII

Particulars	₹	₹
Investment Income		
Dividend income	3,50,000	
Interest on investment in rupee denominated bond	16,00,000	
Interest on other securities [₹ 28,50,000 – ₹ 3,50,000 – ₹ 16,00,000]	9,00,000	28,50,000
[No deduction is allowable in respect of expenses incurred in respect thereof]		
Long-term capital gains on sale of unlisted securities		
Sale consideration	52,00,000	
Less: Cost of acquisition	28,00,000	24,00,000
Short-term capital gains on sale of STT paid equity shares of Company A		
Sale consideration	13,50,000	
Less: Cost of acquisition	5,50,000	8,00,000
Short-term capital gains on sale on equity shares of Company B in respect of which STT is not paid		
Sale consideration	9,25,000	
Less: Cost of acquisition	4,85,000	4,40,000
Total Income		**64,90,000**

Computation of tax liability of SOL Inc.

Particulars	₹
Tax@5% on interest on ₹ 16,00,000 earned from an Indian company on investment in rupee denominated bonds = 5% of ₹ 16,00,000	80,000
Tax@20% on balance income on securities of ₹ 9,00,000 [₹ 25,00,000 – ₹ 16,00,000]	1,80,000
Tax@20% on dividend income of ₹ 3,50,000	70,000
Tax@10% on long-term capital gains = 10% of ₹ 24,00,000	2,40,000
Tax@20% on STT paid short-term capital gains on sale of listed equity shares of Company A = 20% of ₹ 8,00,000	1,60,000
Tax@30% on short-term capital gains on sale of equity shares of Company B on which STT is not paid = 30% of ₹ 4,40,000	1,32,000
	8,62,000
Add: Education cess @4%	34,480
Tax Liability	**8,96,480**

Non Resident Sportsman (Section 115BBA)

Question 37

During the year, Nadal, a tennis professional and a non-Indian citizen participated in India in a Tennis Tournament and won prize money of ₹ 15 lakhs. He contributed articles on the tournament in a local newspaper for which he was paid ₹ 1 lakh. He was also paid ₹ 5 lakhs by a Soft Drink company for appearance in a T.V. advertisement. Although his expenses in India were met by sponsors, he had to incur ₹ 3 lakhs towards his travel costs to India. He was a non-resident for tax purposes in India.

What would be his tax liability in India for A.Y. 2025-26? Is he required to file his return of income?

Answer

Under section 115BBA, all the three items of receipts in India viz. prize money of ₹ 15 lakhs, amount received from newspaper of ₹ 1 lakh and amount received towards TV advertisement of ₹ 5 lakhs - are chargeable to tax. No expenditure is allowable as deduction against such receipts. The rate of tax chargeable under section 115BBA is 20%, plus health and education cess @4%. The total tax liability works out to **₹ 4,36,800 being 20.8% of ₹ 21 lakhs.** Thus, Nadal will be liable to tax on the income earned in India

He is **not required to file his return** of income if -

(a) his **total income** during the previous year consists only of income arising under section **115BBA; and**

(b) the **tax** deductible at source under the provisions of Chapter XVII-B have been **deducted** from such incomes.

Question 38

Smith, a foreign national and a cricketer came to India as a member of Australian cricket team in the year ended 31st March, 2025. He received ₹ 5 lakhs for participation in matches in India. He also received ₹ 1 lakh for an advertisement of a product on TV. He contributed articles in a newspaper for which he received ₹ 10,000. When he stayed in India, he also won a prize of ₹ 20,000 from horse racing in Mumbai. He has no other income in India during the year.

(i) Compute tax liability of Smith for Assessment Year 2025-26.

(ii) Are the income specified above subject to deduction of tax at source?

(iii) Is he liable to file his return of income for Assessment Year 2025-26?

(iv) What would have been his tax liability, had he been a match referee instead of a cricketer and pays tax under the default tax regime under section 115BAC?

Answer

(i) Computation of tax liability of Smith

Particulars	₹	₹
Income taxable under section 115BBA		
Income from participation in matches in India	5,00,000	

Advertisement of product on TV	1,00,000	
Contribution of articles in newspaper	10,000	
Income **taxable under section 115BB**		
Income from horse races	20,000	
Total **income**	**6,30,000**	
Tax@ 20% under section 115BBA on ₹ 6,10,000		1,22,000
Tax@ 30% under section 115BB on income of ₹ 20,000 from horse races		6,000
		1,28,000
Add: Health and Education cess@4%		5,120
Total **tax liability of Smith**		**1,33,120**

(ii) Yes, the above income is subject to tax deduction at source.

Income referred to in section 115BBA (i.e., ₹ 6,10,000, in this case) is subject to **tax deduction at source@ 20% under section 194E.**

Income referred to in section 115BB (i.e., ₹ 20,000, in this case) is subject to **tax deduction at source@30% under section 194BB.**

Since Smith is a non-resident, the amount of tax to be deducted calculated at the prescribed rates mentioned above, would be increased by health and education cess@4%.

(iii) Section 115BBA provides that if the total income of the non-resident sportsman comprises of only income referred to in that section and tax deductible at source has been fully deducted, it shall not be necessary for him to file his return of income. However, in this case, Mr. Smith has income from horse races as well. Therefore, he cannot avail the benefit of exemption from filing of return of income as contained in section 115BBA. Hence, **he would be liable to file his return of income.**

(iv) The Calcutta High Court in Indcom v. CIT (TDS)(2011) 335 ITR 485 has held that 'match referee' would not fall within the meaning of "sportsmen" to attract the provisions of section 115BBA. Therefore, although the payments made to non-resident 'match referee' are "income" which has accrued and arisen in India, the same are not taxable under the provisions of section 115BBA. They are subject to the normal rates of tax under section 115BAC.

Particulars		**₹**
Tax@30% under section 115BB on winnings of ₹ 20,000 from horse races		6,000
Tax on **₹ 6,10,000 at normal rate of tax**		
Upto ₹ 3,00,000	Nil	
3,00,000 – 6,10,000 @5%	15,500	15,500
		21,500
Add: Health and Education cess@4%		860
Total **tax liability**		**22,360**

Miscellaneous

Question 39

Mr. Ram, a citizen of USA, resides in San Jose in USA since 2006. He is a non-resident since Assessment Year 2006-07. He works for X Inc., a US based company. He came to India on 10th January, 2024, to visit his aged parents. He could return back on only 31st January, 2025. He was permitted to work from home in India by his employer. The details of his earnings and withholding tax during the said period is as given below:

(All figures in US $)

Months	Salary	Federal Tax	State Tax	Social Security Tax	TT Buying rate as on the last day of the month immediately preceding the month in which tax has been paid/deducted (in INR) (assumed)
Jan 2024	8750	1313	525	613	71
Feb 2024	6250	938	375	438	71
March 2024	6250	1600	420	420	71
April 2024	6250	1600	420	420	72
May 2024	6250	1600	420	420	72
June 2024	6250	1600	420	420	72
July 2024	6250	1600	420	420	72
August 2024	6250	1600	420	420	72
Sep 2024	6250	1600	420	420	72
October 2024	6250	1600	420	420	72
Nov 2024	6250	1600	420	420	72
Dec 2024	6250	1600	420	420	72
Jan 2025	6250	1600	420	420	72

He has also earned Fixed Deposit Interest in USA on 30.09.2024 US$ 200 (Tax deducted US $ 20) and on 31.03.2025 US $ 220 (Tax Deducted US$ 22)

As per Article 2 of the DTAA, the taxes covered for credit are Federal Income Taxes imposed by Internal Revenue Code but excluding State and Social Security Taxes.

Return of Income for Assessment Year 2025-26 was filed on 25th August, 2025. You are required to:

(a) Compute tax payable, if any, by Mr. Ram (Assume that tax as per section 115BAC is opted).

(b) Advise Mr. Ram the procedure involved to claim Foreign Tax Credit.

Answer

(a) Mr. Ram is a resident for A.Y.2025-26, since his stay in India is for a period of 306 days in the P.Y.2024-25. Therefore, he satisfies the condition of stay in India for a period of 182 days or more for being treated as a resident.

However, he is a "not ordinarily resident" in India –

- since his stay in India in the seven years immediately preceding P.Y.2024-25 is only for 82 days (i.e., less than 730 days).

- since he is a non-resident in all ten years immediately preceding P.Y.2024-25, he satisfies the condition of being a non-resident in 9 out of 10 preceding previous years.

Accordingly, he is a **resident but not ordinarily resident** in India for A.Y.2025-26.

In case of a resident but not ordinarily resident, only income which accrues or arises in India or is deemed to accrue or arise in India or which is received in India or is deemed to be received in India would be taxable in India. Income which accrues or arises outside India would be taxable in India only if it is derived from a business controlled in or a profession set up in India.

Since Ram **renders service in India**, income from salaries for the period from 1st April, 2024 to 31st January, 2025 would be **deemed to accrue or arise to him in India and would be taxable in his hands.** Since his period of stay in India in the P.Y.2024-25 exceeds 90 days, he would not be eligible for exemption u/s 10(6)(vi) in respect of remuneration received as an employee of a foreign enterprise for services rendered by him during his stay in India.

Computation of total income and tax liability of Mr. Ram

Particulars	₹
Salaries	
From 1st April, 2024 to 31st January, 2025 (10 months x $ 6250 x TTBR 72, since the applicable TTBR is the same for all 10 months from April to January)	45,00,000
Less: Standard deduction u/s 16(ia)	(75,000)
	44,25,000
Income from Other Sources	
Interest on Fixed Deposits in USA (not taxable in his hands in India since it accrues and is received outside India)	
Total Income	**44,25,000**
Computation of tax liability under section 115BAC	
Upto ₹ 3,00,000	Nil
₹ 3,00,001 to ₹ 7,00,000@5%	20,000
₹ 7,00,001 to ₹ 10,00,000@10%	30,000
₹ 10,00,001 to ₹ 12,00,000@15%	30,000
₹ 12,00,001 to ₹ 15,00,000@20%	60,000
₹ 15,00,001 to ₹ 44,25,000@30%	8,77,500
	10,17,500
Add: Health and education cess@4%	40,700
Tax Liability	**10,58,200**

Ram can however claim foreign tax credit in respect of Federal Income Tax paid by him in US, since the same is covered under Article 2 of the India-US DTAA.

The amount of FTC which he can claim would be the lower of –

Tax payable under the Income-tax Act on such income = ₹ 10,58,200 and

Foreign tax paid on such income = ₹ 11,52,000 (Foreign tax paid on such income would be $ 1600 x 10 months x 72 (TTBR), since the applicable TTBR is the same for all ten months and assuming that the TTBR as on 31.1.2025 is also 72.)

Accordingly, the **FTC would be ₹ 10,58,200.**

The **tax payable would, accordingly, be Nil** and no interest would be payable u/s 234A for late filing of return.

(b) The following statements/forms need to be furnished by Mr. Ram on or before 31st July, 2025 for claiming FTC -

(i) A **statement of income from US** offered for tax and of US tax deducted or paid on such income in the prescribed form.

(ii) Certificate or **statement specifying the nature of income and the amount of tax deducted** therefrom or paid by the assessee from the tax authority of US or from the person responsible for deduction of tax or which is signed by the assessee.

Question 40

Mr. Robert, a non-resident and German citizen, is employed in a German company. The German company has a PE in India and accordingly the income of the PE is chargeable to tax in India. Robert visited India during the FY 2024-25 on official work and stayed for 85 days. His salary for that period was ₹ 28,00,000 which is borne by the Indian PE.

Robert held 1200 shares of Nalapir Pvt. Ltd. (NP), an Indian company since 28.11.2017 which he acquired for ₹ 15 per share. For acquiring the shares, he remitted USD 50,000 to India on 1.11.2017. He sold these shares on 23.12.2024 for ₹ 43 per share.

Robert also held 2000 equity shares of Aribitz GmbH (AG), a German company, which he had acquired for ₹ 145 per share in 2020. AG follows April to March as its financial year. He sold all these shares for ₹ 615 per share to David, another non-resident, on 26.12.2024. The relevant information of AG as on 31.3.2024 is given below:

(i) Total value of assets ₹ 15 crores.

(ii) Total value of immovable properties worldwide= ₹ 12 crores.

(iii) Immovable properties held in India (included in (ii) above) - ₹ 8 crores.

Dividend from Aribitz GmbH received in India on 28.06.2024 was - ₹ 1,11,000.

You are required to compute the total income taxable in India of Mr. Robert ignoring the provisions of DTAA between India and Germany, if any. He has exercised the option to shift out of the default tax regime under section 115BAC.

Exchange rates for 1 USD on the relevant dates is given as hereunder:

Date	Buying Rate (1 US $)	Selling Rate (1 US$)
28.11.2017	₹ 59	₹ 61
1.11.2017	₹ 61	₹ 64
23.12.2024	₹ 74	₹ 76

Answer

Computation of Total income of Mr. Robert

Particulars	₹	₹

Salary [Salary deemed to accrue or arise in India, since it is paid for services rendered in India as per section 9(1)(ii). Hence, it is taxable in the hands of Mr. Robert. Exemption u/s 10(6)(vi) would not be available to him, though he stayed in India for a period of not exceeding 90 days during the previous year since he is receiving salary from a German company which is engaged in business and trade in India through a PE in India and such salary is borne by Indian PE]	28,00,000	
Less: Standard deduction u/s 16(ia)	50,000	27,50,000
Capital Gains Transfer of 1200 equity shares of Nalapir Pvt. Ltd. [Taxable in India, since shares are situated in India]		
Sale Consideration (1200 x ₹ 43 per share/75, being average of ₹ 74 (TTBR) + ₹ 76 (TTSR)/2 on 23.12.2024)	$ 688	
Less: Cost of acquisition (1200 x ₹ 15 per share/60, being average of ₹ 59 (TTBR) + ₹ 61 (TTSR)/2 on 28.11.2017)	$ 300	
	$ 388	
Long-term capital gain [$ 388 x ₹ 74, being TTBR on 23.12.2024]		28,712
Transfer of 2000 Equity shares of Aribitz GmbH (AG)		Nil
[Not taxable in India, since shares of foreign company do not derive its value substantially from assets located in India as value of Indian assets do not exceed ₹ 10 crores]		
Income from Other Sources Dividend received in India from Aribitz Gmbh [taxable in India, since dividend is received in India]		1,11,000
Gross Total Income/total income		**28,89,712**
Total income (rounded off)		**28,89,710**

Question 41

Peter Inc., is a company incorporated under the laws of USA. The value of its global assets are ₹ 50 crores. The value of assets in India are ₹ 25 crores. Its turnover during the year is US $ equivalent to ₹ 90 crores. Out of 10 board meetings held during the year, only 4 meetings are held in India. The key management and commercial decisions for conduct of the company's business as a whole are, however, made by the directors located in India at the meetings held in India. Your client, Payal Ltd, an Indian company, wishes to remit an amount towards professional fees to Peter Inc. on which tax is required to be deducted in India.

Determine the residential status of Peter Inc. for A.Y.2025-26 under the Income-tax Act, 1961. Advise Payal Ltd as to whether tax on fees for professional services paid to Peter Inc. has to be deducted under section 194J or section 195.

Answer

In the given case, **Peter Inc. is a company incorporated under the laws of USA and hence, it is a foreign company** under the Income-tax Act, 1961. However, the said **company shall be considered to be resident in India if its place of effective management is in India.** In this case, the **company does not satisfy the active business outside India test since 50% of its assets are located in India.** Since it has failed the active business test outside India on account of 50% of its assets being located in India, the persons who take key management and commercial decisions for conduct of the company's business as a whole and the place where the decisions are made are the key factors in determining whether the POEM of the company is in India. The facts of the case clearly state that the **key management decisions and commercial decisions for conduct of the company's business as a whole are made by the directors located in India** and at the meetings held in India. **Therefore, the POEM of Peter Inc. is in India** in the P.Y.2024-25, irrespective of the fact that majority of the board meetings are held outside India.

Section 194J applies when professional fees are being paid to a resident, whereas section 195 applies when payments are made to a non-corporate non-resident or a foreign company. Section 194J is income specific and section 195 is payee specific. CBDT vide Notification No. 29/2018 dated 22nd June 2018 has clarified that the **foreign company shall continue to be treated as a foreign company even if it is said to be resident in India on account of its POEM being in India,** and all the provisions of the Act shall apply accordingly. Where more than one provision of Chapter XVII-B of the Act applies to foreign company as resident as well as a foreign company, the provision applicable to the foreign company alone shall apply. Further, in case of conflict between the provision applicable to foreign company as resident and the provision applicable to it as foreign company, the latter shall generally prevail. **Hence, Payal Ltd shall deduct tax under section 195 while making payment of fees for professional services to Peter Inc., a foreign company resident in India.**

Question 42

XYZ Co., an Indian company, is engaged in the business of manufacture of packaging material having its manufacturing facility in India. XYZ Co. is a wholly owned subsidiary of Flix Inc., a company incorporated in Country M. Angelo and James, citizens and residents of the Country N, each of them hold 50% of the share capital of Flix Inc. Angelo and James, each had invested equivalent to INR 100 crores in Flix Inc. in April 2015.

On 1st June 2024, Angelo and James, having received an offer which they believe was fair, sold their entire stake in Flix Inc. to Ishaan, resident of Country N for amount equivalent to INR 350 crores each.

The accounting period of Flix Inc. is January to December, the relevant extract of the balance sheet of Flix Inc. as on 31st December 2023, 1st June 2024 and 31st December 2024 are as follows:

Particulars	As on 31st December 2023 (in INR crores)	As on 1st June 2024 (in INR crores)	As on 31st December 2024 (in INR crores)
Details regarding Flix Inc.			

Book value of assets	1,000	1,300	1,500
Liabilities	300	250	350
Fair market value of assets (without reduction of liabilities)	800	1100	950
Details regarding investment in XYZ Co.			
Cost of acquisition	150	150	150
Book value of assets in balance sheet of XYZ Co.	350	550	480
Liabilities	150	200	250
Fair market value of assets in balance sheet of XYZ Co. (without reduction of liabilities)	350	600	600

Determine whether the income arising from transfer of shares of Flix Co. chargeable to tax in India in the hands of Angelo and James for the A.Y. 2025-26. Assume there is no DTAA between India-Country M and between India-Country N.

Answer

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

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

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

Specified date would be the date of transfer i.e., 1.6.2024 since book value of the assets of Flix Inc. on the date of transfer i.e., ₹ 1,300 crores **exceed** the book value of the assets as on the last balance sheet date preceding the date of transfer i.e., ₹ 1,000 crores by **at least 15%.**

Shares of Flix Inc. derives its value substantially from assets located in India **since the fair market value of assets located in India** (without reduction of liabilities) on 1.6.2024, being the specified date i.e., **₹ 600 crores exceed ₹ 10 crores and represents more than 50% i.e., 54.545% of the fair market value of assets of Flix Inc. i.e., ₹ 1,100 crores.**

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

Question 43

Miles Inc., a company incorporated in US, is engaged in development of infrastructure and providing consultancy in the same field. During the Financial Year 2024-25, its shareholders met in India for three times. The first two meetings were held to discuss the modification of rights attached to various classes of shares and third meeting was held to discuss and decide about sale of companies' assets situated in India. The meetings of Board of Directors are held in Chicago, USA where management and commercial decisions necessary for conduct of company's business are taken.

It provides the following additional information:

(i) Dividend received ₹ 5,50,000 (Net of TDS) on Global Depository Receipts of Z Ltd., an Indian company, issued under a scheme of Central Government against the initial issue of shares of company and purchased by Miles Inc. in foreign currency through an approved intermediary.

(ii) Fees for technical services received from Government of India: ₹ 5,55,000. The Government of India utilised such technical services for a development project carried out by it in Nepal.

You are required to determine residential status of Miles Inc. and compute the total income of Miles Inc. for A.Y. 2025-26 briefly explaining the relevant provisions of the Income-tax Act, 1961.

Answer

Miles Inc., a foreign company, would be resident in India if its POEM, in that year, is in India. Since the **meeting of Board of Directors are held outside India i.e., in Chicago, USA where management and commercial decisions necessary for conduct of company's business are taken, its POEM would be outside India. Hence, Miles Inc. is a non-resident** during the P.Y. 2024-25.

The **decisions made by shareholders** in India on modification of the rights attaching to various classes of shares and sale of company's assets situated in India **are not relevant** for determination of Miles Inc.'s place of effective management.

Computation of total income of Miles Inc.

Particulars	Amount (₹)
Dividend received on GDR of an Indian company [Taxable, since income is from any asset or source of income is in India. Tax @10.4% would have been deducted on dividend of GDR] [₹ 5,50,000/89.6%]	6,13,839
Fees for technical services received from Government of India [Taxable, since it is deemed to accrue or arise inIndia on account of being received from Government of India even though services are utilised for development project carried out outside India. Tax @20.8% would have been deducted on FTS received from Government] [₹ 5,55,000/79.2%]	7,00,758
Note – Since, word "received" is mentioned after fees for technical services, solution has been worked out considering the FTS amount as net of TDS and accordingly grossing up has been done. However, on account of using word "Net of TDS" after dividend amount but not after FTS amount, it is possible to assume **FTS amount of ₹ 5,55,000 as gross amount.** In such case, **total income would be ₹ 11,68,839.**	
Total Income	**13,14,597**

Question 44

Wioni Inc., a company incorporated in Japan, is engaged in development of infrastructure and providing consultancy in the same field. During the year, its shareholders met in India for three times. The first two meetings were held to discuss the modification of rights attached to various classes of shares and the third meeting was held to discuss and decide about sale of companies' assets situated in India. It provides the following additional information:

(i) Dividend declared by a Miani Inc., a Japan based Company: ₹ 54,000 [Miani Inc. holds 70% of its total assets in India].

(ii) Fees for technical services received (gross) from Government of India: ₹ 4,54,000. The Government of India utilised such technical services for a development project carried out by it in Nepal.

(iii) Interest received from Ms. O, a unit located in IFSC in respect of monies borrowed by Ms. O: ₹ 15,400.

(iv) On 26.12.2024, Wioni Inc. sold 5,000 equity shares held by it in an Indian Company for ₹ 89 per share. These shares were bought by the Wioni Inc. on 28th June, 2011 for ₹ 64 per share. Both the purchase and sale of shares were effected through a recognized stock exchange in India. Fair Market Value of these shares on 31.01.2018 was ₹ 70 per share.

You are required to compute the total income of Wioni Inc. for the assessment year 2025-26 briefly explaining the relevant provisions of the Income-tax Act, 1961.

Answer

Wioni Inc. is a company incorporated in Japan. It would be resident in India, if its place of effective management is in India in that year.

As per the POEM guidelines, the decisions made by a shareholder for sale of all or substantially all of the company's assets, or the modification of the rights attaching to various classes of shares or the issue of a new class of shares etc. are decisions typically affecting the existence of the company itself or the rights of the shareholders as such, rather than the conduct of the company's business from a management or commercial perspective. Therefore, **such decisions are not relevant for determination of a company's place of effective management. Therefore, the POEM of Wioni Inc. is not in India and hence, it is a non-resident** for A.Y.2025-26.

Taxability of income

As per section 5(2), in case of a non-resident, only income which accrues or arises or which is deemed to accrue or arise to it in India or which is received or deemed to be received in India in the relevant previous year is taxable in India.

Computation of total income of Wioni Inc.		
	Particulars	**Amount (₹)**
(i)	Dividend declared by Miani Inc., a Japan based company which holds 70% of its total assets in India [As per Circular No. 4/2015, dated 26.03.2015, dividends declared and paid by Miani Inc.,a foreign company, outside India in respect of shares which derive their value substantially from assets situated in India would **not be deemed to be income accruing or arising in India**]	Nil
(ii)	Fees for technical services received from Government of India [As per section 9(1)(vii), any fees for technical services would be deemed to accrue or arise in India if they are payable by Government of India. Since FTS is received from Government of India, it is **deemed to have accrued or arisen in India** irrespective of that fact that it is utilized for a project outside India]	4,54,000

(iii)	Interest received from Ms. O, a unit located in IFSC for monies borrowed by it [As per section 10(15)(ix), interest payable to Wioni Inc., a non-resident, by Ms. O, a unit located in IFSC, in respect of monies borrowed by it is exempt]	Nil
(iv)	Long term capital gains Sale consideration (5,000 x ₹ 89) ₹ 4,45,000 Less: Cost of acquisition, being higher of ₹ 3,50,000 (a) Actual cost i.e., (5,000 x ₹ 64) ₹ 3,20,000 (b) lower of ₹ 3,50,000 - ₹ 3,50,000 (5,000 x ₹ 70), being fair market value on 31.1.2018 and - ₹ 4,45,000 (5,000 x ₹ 89), being full value of consideration [There would be no tax on long-term capital gains, since only the gain in excess of ₹ 1,25,000 is taxable@12.5% u/s 112A]	95,000
Total Income		**5,49,000**

Question 45

Red Ltd., a non-resident foreign company, had entered into a collaboration agreement, approved by the Central Government, with Blue Ltd., an Indian company and is in receipt of following payments during the year:

(i) Interest on 8% debentures for ₹ 40 lakhs issued by Blue Ltd. on July 1, 2024 in consideration of providing of technical know-how, manufacturing process and designs (date of payment of interest being March 31 every year).

(ii) Service charges @2.5% of the value of plant and machinery for ₹ 500 Lakhs leased out to Blue Ltd. payable each year before March 31.

(iii) Apart from the above incomes, Red Ltd. earned long term capital gain amounting to ₹ 1.90 Lakhs on sale of debentures of Green Pvt. Ltd., an Indian company, subscribed in US$.

Compute the Total Income of Red Ltd. for the A.Y. 2025-26.

Answer

Computation of total income of Red Ltd., a foreign company

Particulars	₹
Fees for technical services Debentures issued by Blue Ltd. in consideration for provision of technical know-how by Red Ltd., a foreign company, is in the nature of fee for technical services, deemed to accrue or arise in India to Red Ltd., a foreign company	40,00,000
Royalty Service charges for leased out plant and machinery [₹ 500 lakhs x 2.5%] [Service charges paid by Blue Ltd. for leased out plant and machinery is in the nature of royalty, which is deemed to accrue or arise in India to Red Ltd., a foreign company]	12,50,000
Capital Gains Long term capital gain on sale of debentures of Green Pvt. Ltd. an Indian company	1,90,000

Interest on debentures Interest on debentures [₹40 lakhs x 8% x 9/12] [Interest on debentures of Blue Ltd., an Indian company, is deemed to accrue or arise in India, since debt incurred is not used for a business outside India or for earning income from a source outside India]	2,40,000
Total Income	**56,80,000**

Question 46

Ms. Black and Brown S.A., (BnB) a non-resident company incorporated in Country X, appointed Mr. Lal Singh as an agent in India. Lal Singh habitually maintains in India, stock of goods or merchandise and regularly delivers the same on behalf of BnB. BnB does not have a permanent establishment or a fixed place of profession in India. Also, there is no DTAA between India and Country X.

BnB earned the following incomes from India during the year:

Income from delivery of goods by Mr. Lal Singh ₹ 2 crores.

Fee for technical services ₹ 55 lakhs (After deducting ₹ 6 lakhs spent on earning such income)

Long-term capital gains from sale of unlisted debentures of White Pvt. Ltd. on 31.3.2025, an Indian Company (subscribed in US$) ₹ 14 lakhs

BnB had paid a sum equal to ₹ 50 lakhs as tax in Country X in respect of the above-mentioned income earned from India.

You are required to discuss the relevant provisions of Income-tax Act with respect to the taxability of incomes earned by BnB in India and compute total income and tax liability of BnB for A.Y. 2025-26.

Answer

Computation of Total Income and Tax liability of BnB

Particulars	₹
Income from delivery of goods by Mr. Lal Singh, an agent of BnB As per section 9(1)(i), business profits of a foreign company would be deemed to accrue or arise in India, if such income accrues or arises through or from any business connection in India. In case of BnB, business connection is established, since Mr. Lal Singh acting on its behalf habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on its behalf. Therefore, such income is taxable in the hands of BnB.	2,00,00,000
Fee for technical services (FTS) FTS would be taxable in hands of a foreign company, since FTS has been received in India. Assuming that the Agreement has been approved by Central Govt., as per section 115A, such FTS would be taxable in the hands of BnB without deducting expenditure on earning such income. Accordingly, ₹ 61 lakhs would be taxable.	61,00,000
Long-term capital gains from sale of unlisted debentures of White Pvt. Ltd. an Indian company, would be taxable in the hands of BnB, since it arises from the capital asset situated in India.	14,00,000
Total Income	**2,75,00,000**

Tax liability on total income of ₹ 2,75,00,000	
Tax on long-term capital gain @12.5% as per section 112	1,75,000
Tax on Fees for technical services @ 20% on ₹ 61,00,000 as per section 115A	12,20,000
Tax on other income @35% on ₹ 2,00,00,000	70,00,000
	83,95,000
Add: Surcharge@2% since total income > ₹1 crore but ≤ ₹10 crore	1,67,900
	85,62,900
Add: Health and education cess@4%	3,42,516
Tax liability	**89,05,416**
Tax liability (rounded off)	**89,05,420**

Note – No credit will be available in respect of ₹ 50 lakhs paid as tax in Country X since there is no DTAA with Country X and the provisions of section 91 providing for deduction in cases where there is no DTAA will not apply to BnB, being a foreign company.

Question 47

Trex Ltd., a company incorporated in Country "T", has the following incomes in India during the year. Compute the total income and tax liability of Trex Ltd. for the Assessment Year 2025-26, assuming that its POEM is outside India.

(i) Interest of ₹ 2,85,000 earned on debentures of ₹ 30,00,000 issued on 1st August 2024, in consideration of providing technical knowhow to MNO Ltd., an Indian Company, for the purpose of business carried out in India.

(ii) Dividend of ₹ 6,50,000 earned on Global Depository Receipts of YL Ltd., an Indian company, issued under a scheme of Central Government against the initial issue of shares of the company and purchased by Trex Ltd. in foreign currency through an approved intermediary.

(iii) Dividend of ₹ 15,50,000 earned on equity shares of Indian companies.

(iv) Royalty amounting to ₹ 12,56,470 (net of TDS @20.80%), received from Z Ltd., an Indian company, in pursuance of an agreement approved by Central Government.

(v) Business Income of ₹ 8,50,000 from a unit established at Delhi.

(vi) Long-term capital gain of ₹ 2,32,000 on transfer of shares of Black Pvt. Ltd., an Indian company.

Notes –

(I) No DTAA exists between India and Country "T".

(II) The Unit in Delhi is not involved in provision of technical knowhow/royalty (i.e., No PE).

Answer

Computation of total income and tax liability of Trex Ltd., a non-resident foreign company

Computation of total income		
Particulars	₹	₹
Profits and gains of business or profession		

Business Income from a unit established at Delhi	8,50,000	
Fees for technical services [would be equivalent to the amount of debentures of ₹ 30,00,000 received from an Indian company, issued in consideration of providing technical knowhow] for the purpose of business carried out in India	30,00,000	
Royalty income received from Z Ltd., an Indian company, in pursuance of an agreement approved by Central Government [₹ 12,56,470 x 100/79.20, since tax have been deducted at source @ 20.8%]	15,86,452	54,36,452
Capital Gains		
Long-term capital gains on unlisted shares		2,32,000
Income from Other Sources		
Interest on debentures issued by an Indian company	2,85,000	
Dividend on Global Depository Receipts (GDRs) of YL Ltd., an Indian company, issued under a scheme of Central Government against the initial issue of YL Ltd. and purchased in foreign currency by Trex Ltd.	6,50,000	
Dividend income on equity shares of Indian companies	15,50,000	24,85,000
Gross Total Income/Total income		**81,53,452**

Computation of tax liability

Particulars	₹	₹
Business income of ₹ 8,50,000 [taxable @35%]	2,97,500	
FTS of ₹ 30,00,000, taxable @20% u/s 115A	6,00,000	
Royalty income of ₹ 15,86,452, taxable @20% u/s 115A	3,17,290	12,14,790
Long-term capital gain of ₹ 2,32,000 on unlisted shares taxable @12.5% under section 112		29,000
Interest on debentures of ₹ 2,85,000, taxable @35% [Since debt is incurred in Indian currency, it is not eligible for concessional rate of 20% u/s 115A]	99,750	
Dividend on GDRs of ₹ 6,50,000, taxable @10% u/s 115AC	65,000	
Dividend on equity shares of ₹ 15,50,000, taxable @20% u/s 115A	3,10,000	4,74,750
		17,18,540
Add: Health and education cess@4%		68,742
Tax liability		**17,87,282**

Note – Since the unit in Delhi does not play any role in provision of technical know/royalty, the provisions of **section 44DA are not attracted** in this case in respect of fees for technical services and royalty.

Question 48

The jurisdictional Assessing Officer of Mr. Albert, a non-resident, wants to treat the following persons as his agent in India for A.Y. 2025-26 as per the provisions of section 163 of the Income-tax Act, 1961. You are required to discuss the validity of the Assessing Officer's claims.

(i) Mr. Albert owned a residential house in Goa, India. During the year, he sold the house to Mr. D'Souza, another non-resident. AO wants to treat Mr. D'Souza as an agent of Mr. Albert.

(ii) Mr. Albert employed Mr. Rakesh, a resident of India, to work for him on 1.4.2023. Mr. Rakesh left India to be employed by Mr. Albert on 1.4.2024.

Answer

As per section 163, an agent, in relation to a non-resident person, inter alia includes

- any person **in India who is employed by or on behalf of the non-resident** or
- any person (whether resident or non-resident) **who has acquired a capital asset in India** by means of a transfer **from the non-resident**.

(i) Since Mr. D'Souza acquired residential house in Goa from Mr. Albert, the jurisdictional Assessing Officer **can treat Mr. D'Souza as an agent** of Mr. Albert even though Mr. D'Souza is a non-resident.

(ii) Mr. Rakesh was employed by Mr. Albert on 1.4.2023. He left India on 1.4.2024 to be employed by Mr. Albert. **Since he is not in India** during the P.Y. 2024-25, the jurisdictional **Assessing Officer cannot treat him as an agent of Mr. Albert** for the P.Y. 2024-25.

CHAPTER - 21
Transfer Pricing

Transfer Pricing Basics

Question 1

Examine with reasons whether the two enterprises referred to in the independent situations given below can be deemed to be associated enterprises under the Indian transfer pricing regulations:

(i) PQR Inc, a US company having its place of effective management also in the USA, has advanced a loan equivalent to ₹ 170 crores to Mahanadi Ltd., an Indian company on 10.4.2024. The total book value of assets of Mahanadi Ltd. is ₹ 300 crores. The market value of the assets, however, is ₹ 320 crores. Mahanadi Ltd. repaid ₹ 30 crores before 31.3.2025.

(ii) Queenland plc., a French company having its place of effective management also in the France, has the power to appoint 3 of the directors of Godavari Ltd, an Indian company, whose total number of directors in the Board is 8.

(iii) Total value of raw materials and consumables of Saraswati Ltd., an Indian company, is ₹ 900 crores. Of this, supplies to the tune of ₹ 830 crores are by Zoel GmbH, a German company having its place of effective management in Germany, at prices and terms decided by the German company.

Answer

(i) PQR Inc, a foreign company, has advanced loan of ₹ 170 crores to Mahanadi Ltd., an Indian company, which amounts to 56.67% of book value of assets of Mahanadi Ltd. Since the loan advanced by PQR Inc. is 51% or more of the book value of assets of Mahanadi Ltd., PQR Inc. and Mahanadi Ltd. are **deemed to be associated enterprises** under the Indian transfer pricing regulations.

The deeming provisions would be attracted even if there is a repayment of loan during the same previous year which brings down the said percentage below 51%.

(ii) Queenland plc, a foreign company has the power to appoint 37.50% (3 out of 8) of the directors of an Indian company, Godavari Ltd.

Two enterprises would be deemed to be associated enterprises if more than half of the board of directors of one enterprise are appointed by the other enterprise.

In this case, since Queenland plc has the power to appoint only 37.50% (which is less than half) of the directors of an Indian company, Godavari Ltd., Queenland plc and Godavari Ltd. are **not deemed to be associated enterprises.**

(iii) Since Zoel GmbH, a German company, supplies 92.22% of the raw materials and consumables required by Saraswati Ltd., an Indian company, which is more than the specified threshold of 90%; and the prices and terms of supply are decided by the German company, the two companies are **deemed to be associated enterprises.**

Question 2

State with reasons, whether Netlon LLC., (Incorporated in Singapore) and Briggs Ltd., a domestic company, are/can be deemed to be associated enterprises for the transfer pricing regulations (Each situation is independent) of the others:

(i) Netlon LLC. has advanced a loan of ₹ 53 crores to Briggs Ltd. on 12.1.2025. The total book value of assets of Briggs Ltd. is ₹ 100 crores. The market value of the assets, however, is ₹ 150 crores. Briggs Ltd. repaid ₹ 10 crores before 31.3.2025.

(ii) Netlon LLC. has the power to appoint 2 of the directors of Briggs Ltd, whose total number of directors in the Board is 4.

(iii) Total value of raw materials and consumables of Briggs Ltd. is ₹ 900 crores. Of this, Netlon LLC. supplies to the tune of ₹ 820 crores, at prices mutually agreed upon once in six months and depending upon the market conditions.

Answer

(i) Netlon LLC, a foreign company, has advanced loan of ₹ 53 crores to Briggs Ltd., a domestic company, which amounts to 53% of book value of assets of Briggs Ltd. Since the loan advanced by Netlon Inc. is not less than 51% of the book value of assets of Briggs Ltd., Netlon Inc. and Briggs Ltd. are **deemed to be associated enterprises** for the transfer pricing regulations.

The deeming provisions would be attracted even if there is a repayment of loan during the same previous year which brings down his percentage below 51%.

(ii) Netlon LLC has the power to appoint 50% (2 out of 4) of the directors of Briggs Ltd.

Two enterprises would be deemed to be associated enterprises if more than half of the board of directors of one enterprise are appointed by the other enterprise.

In this case, since Netlon LLC has the power to appoint exactly half (and not more than half) of the directors of Briggs Ltd., they are **not deemed to be associated enterprises.**

(iii) Even though Netlon LLC supplies 91.11% of the raw materials and consumables required by Briggs Ltd. which is more than the specified threshold of 90%, Netlon LLC and Briggs Ltd. are **not deemed to be associated enterprises**

Reason for not deemed to be associated enterprises is since the **price of supply is not influenced by Netlon LLC but is mutually agreed** upon once in six months depending upon prevailing market conditions.

Question 3

Examine whether transfer pricing provisions under the Income-tax Act, 1961 would be attracted in respect of the following cases -

(i) Scientific research services provided by Lambda Sicom, an Italian company to XYZ Ltd., an Indian company. XYZ Ltd. holds 30% voting power in Lambda Sicom.

(ii) Purchase of commodities by Omega Ltd., an Indian company, from Cylo AG, a German company. Omega Ltd. is the subsidiary of Cylo AG.

(iii) Transfer of technical knowhow by Y Ltd., an Indian company, to Alcatel Lucent, a French company, which guarantees 15% of the borrowings of Y Ltd.

(iv) Gamma Ltd., an Indian company, has two units, Delta & Phi. Unit Delta is engaged in the development of a highway project, for which purpose an agreement has been entered into with the Central Government. Unit Delta is eligible for 100% deduction under section 80-IA. Unit Phi is carrying on the business of trading in steel. Unit Phi transfers 25,000 metric tons of steel of the value of ₹ 30,000 per MT to Unit Delta for ₹ 20,000 per MT.

Answer

(i) Clause (i) of Explanation to section 92B amplifies the scope of the term "international transaction". According to the said Explanation, international transaction includes, inter alia, provision of scientific research services. XYZ Ltd. holds 30% voting power in Lambda Sicom. Therefore, the condition of XYZ Ltd. holding shares carrying not less than 26% of the voting power in Lambda Sicom is satisfied. Hence, Lambda Inc. and XYZ Ltd. are **deemed to be associated enterprises** under section 92A(2). Since the provision of scientific research services by Lambda Sicom to XYZ Ltd. is an **"international transaction" between associated enterprises, transfer pricing provisions are attracted in this case.**

(ii) Purchase of tangible property falls within the scope of "international transaction". Tangible property includes commodity. Cylo AG and Omega Ltd. **are associated enterprises** under section 92A, since Cylo AG is a holding company of Omega Ltd. Therefore, purchase of commodities by Omega Ltd., an Indian company, from Cylo AG, a German company, is an **international transaction between associated enterprises**, and consequently, **provisions of transfer pricing are attracted in this case.**

(iii) The scope of the term "intangible property" has been amplified to include, inter alia, technical knowhow, which is a technology related intangible asset. Transfer of intangible property falls within the scope of the term "international transaction". Since Alcatel Lucent, a French company, guarantees not less than 10% of the borrowings of Y Ltd., an Indian company, Alcatel Lucent and Y Ltd. are **deemed to be associated enterprises** under section 92A(2). Therefore, since transfer of technical knowhow by Y Ltd., an Indian company, to Alcatel Lucent, a French company, is an **international transaction between associated enterprises, the provisions of transfer pricing are attracted in this case.**

(iv) Unit Delta is eligible for deduction@100% of the profits derived from its eligible business (i.e., the business of developing an infrastructure facility, namely, a highway project in this case) under section 80-IA. However, Unit Phi is not engaged in any "eligible business". Since Unit Phi has transferred steel to Unit Delta at a price lower than the fair market value, it is an inter-unit transfer of goods between eligible business and other business, where the consideration for transfer does not correspond with the market value of goods. Therefore, **this transaction would fall within the meaning of "specified domestic transaction" to attract transfer pricing provisions, since the aggregate value of such transactions during the year exceeds a sum of ₹ 20 crore.**

Question 4

Anush Motors Ltd., an Indian company declared income of ₹ 300 crores computed in accordance with Chapter IV-D but before making any adjustments in respect of the following transactions for the year ended on 31.3.2025:

(i) 10,000 cars sold to Rida Ltd., US company, which holds 30% shares in Anush Motors Ltd. at a price which is less by $ 200 each car than the price charged from Shingto Ltd.

(ii) Royalty of $ 1,20,00,000 was paid to Kyoto Ltd., a US company, for use of technical know-how in the manufacturing of car. However, Kyoto Ltd. had provided the same know-how to another Indian company for $ 90,00,000. Kyoto Ltd. is the sole owner of technology used by Anush Motors Ltd. in its manufacturing process.

(iii) Loan of Euro 1000 crores carrying interest @10% p.a. advanced by Dorf Ltd., a German company, was outstanding on 31.3.2025. The total book value of assets of Anush Motors Ltd. on the date was ₹ 90,000 crores. The said German company had also advanced a loan of similar amount to another Indian company @9% p.a. Total interest paid for the year was EURO 100 crores.

Explain in brief the provisions of the Act affecting all these transactions and compute the income of the company chargeable to tax keeping in mind that the value of 1$ and of 1 EURO was ₹ 63 and ₹ 84, respectively, throughout the year.

Answer

Any income arising from an international transaction, where two or more "associated enterprises" enter into a mutual agreement or arrangement, shall be computed having regard to arm's length price as per the provisions of Chapter X of the Act.

Section 92A defines an "associated enterprise" and sub-section (2) of this section speaks of the situations when the two enterprises shall be **deemed to associated enterprises**. Applying the provisions of section 92A(2)(a) to (m) to the given facts, it is clear that "Anush Motors Ltd." is associated with:

(i) Rida Ltd. as per section 92A(2)(a), because this company holds shares carrying more than 26% of the voting power in Anush Motors Ltd.;

(ii) Kyoto Ltd. as per section 92A(2)(g), since this company is the sole owner of the technology used by Anush Motors Ltd. in its manufacturing process;

(iii) Dorf Ltd. as per section 92A(2)(c), since this company has financed an amount which is more than 51% of the book value of total assets of Anush Motors Ltd.

The transactions entered into by Anush Motors Ltd. with different companies are, therefore, to be adjusted accordingly to work out the income chargeable to tax.

Particulars		₹ (in Crores)
Income of Anush Motors Ltd. as computed under Chapter IV-D, prior to adjustments as per Chapter X		300.00
Add:	Difference on account of adjustment in the value of international transactions:	
(i)	Difference in price of car @ $ 200 each for 10,000 cars ($ 200 x 10,000 x ₹ 63)	12.60
(ii)	Difference for excess payment of royalty of $ 30,00,000 ($ 30,00,000 x ₹ 63) [See Note below]	18.90
(iii)	Difference for excess interest paid on loan of EURO 1000 crores	840.00

	(₹ 84*1000*1/100)	
Total Income		**1,171.50**

The difference for excess payment of royalty has been added back presuming that the manufacture of cars by Anush Motors Ltd is wholly dependent on the use of know-how owned by Kyoto Ltd.

Question 5

XE Ltd. is an Indian Company in which Zilla Inc., a US company, has 28% shareholding and voting power. Following transactions were effected between these two companies during the financial year 2024-25.

(i) XE Ltd. sold 1,00,000 pieces of T-shirts at $ 2 per T-Shirt to Zilla Inc. The identical T-Shirts were sold to unrelated party namely Kennedy Inc., at $ 3 per T-Shirt.

(ii) XE Ltd. borrowed $ 2,00,000 from a foreign lender based on the guarantee of Zilla Inc. For this, XE Ltd. paid $ 10,000 as guarantee fee to Zilla Inc. To an unrelated party for the same amount of loan, Zilla Inc. collected $ 7000 as guarantee fee.

(iii) XE Ltd. paid $15,000 to Zilla Inc. for getting various potential customers details to improve its business. Zilla Inc. provided the same service to unrelated parties for $ 10,000.

Assume the rate of exchange as 1 $ = ₹ 64

XE Ltd. is located in a Special Economic (SEZ) and its income before transfer pricing adjustments for the year was ₹ 1,200 lakhs.

Compute the adjustments to be made to the total income of XE Ltd.

Assuming that such adjustments are made by the Assessing Officer, state whether it can claim deduction under section 10AA for the income enhanced by applying transfer pricing provisions.

Answer

XE Ltd, the Indian company and Zilla Inc., the US company are **deemed to be associated enterprises** as per section 92A(2)(a), since Zilla Inc. holds shares carrying not less than 26% of the voting power in XE Ltd.

As per Explanation to section 92B, the transactions entered into between these two companies for sale of product, lending or guarantee and provision of services relating to market research are included within the meaning of "international transaction".

Accordingly, **transfer pricing provisions would be attracted** and the income arising from such international transactions have to be computed having regard to the arm's length price. In this case, from the information given, the arm's length price has to be determined taking the comparable uncontrolled price method to be the most appropriate method.

Particulars		₹ in lakhs
Amount by which total income of XE Ltd. is enhanced on account of adjustment in the value of international transactions:		
(i)	Difference in price of T-Shirt @ $ 1 each for 1,00,000 pieces sold to Zilla Inc. ($ 1 x 1,00,000 x ₹ 64)	64.00

(ii)	Difference for excess payment of guarantee fee to Zilla Inc. for loan borrowed from foreign lender ($ 3,000 x ₹ 64)	1.92
(iii)	Difference for excess payment for services to Zilla Inc. ($ 5,000 x ₹ 64)	3.20
		69.12
XE Ltd. cannot claim deduction under section 10AA in respect of ₹ 69.12 lakhs, being the amount of income by which the total income is enhanced by virtue of first proviso to section 92C(4)		

Calculation of ALP

Question 6

I. Limited, an Indian Company supplied billets to its holding company, U. Limited, UK during the year. I. Limited also supplied the same product to another UK based company, V. Limited, an unrelated entity. The transactions with U. Limited are priced at Euro 500 per MT (FOB), whereas the transactions with V. Limited are priced at Euro 700 per MT (CIF). Insurance and Freight amounts to Euro 200 per MT. Compute the arm's length price for the transaction with U. Limited.

Answer

In this case, I. Limited, the Indian company, supplied billets to its foreign holding company, U. Limited. Since the foreign company, U. Limited, is the holding company of I. Limited, I. Limited and U. Limited are the **associated enterprises** within the meaning of section 92A.

As I. Limited supplies similar product to an unrelated entity, V. Limited, UK, the transactions between I. Limited and V. Limited can be considered as comparable uncontrolled transactions for the purpose of determining the arm's length price of the transactions between I. Limited and U. Limited **Comparable Uncontrolled Price (CUP) method of determination of arm's length price (ALP) would be applicable in this case.**

Transactions with U. Limited are on FOB basis, whereas transactions with V. Limited are on CIF basis. This difference has to be adjusted before comparing the prices.

	Amount (in Euro)
Price per MT of billets to V. Limited	700
Less: Cost of insurance and freight per M.T.	200
Adjusted Price per M.T.	**500**

Since the adjusted price for V. Limited, UK and the price fixed for U. Limited are the same, the arm's length price is Euro 500 per MT. Since the sale price to related party (i.e., U. Limited) and unrelated party (i.e., V. Limited) is the same, the transaction with related party U. Limited has also been carried out at arm's length price.

Question 7

US Ltd., a US company has a subsidiary, IND Ltd. in India. US Ltd. sells computer monitors to IND Ltd. for resale in India. US Ltd. also sells computer monitors to CMI Ltd., another computer reseller. It sells 50,000 computer monitors to IND. Ltd. at ₹ 11,000 per unit. The price fixed for CMI Ltd. is ₹

10,000 per unit. The warranty in case of sale of monitors by IND Ltd. is handled by IND Ltd. However, for sale of monitors by CMI Ltd., US Ltd. is responsible for the warranty for 3 months. Both US Ltd. and IND Ltd. offer extended warranty at a standard rate of ₹ 1,000 per annum. On these facts, how is the assessment of IND Ltd. going to be affected?

Answer

US Ltd., the foreign company and IND Ltd., the Indian company **are associated enterprises** since US Ltd. is the holding company of IND Ltd. US Ltd. sells computer monitors to IND Ltd. for resale in India. US Ltd. also sells identical computer monitors to CMI Ltd., which is not an associated enterprise. The price charged by US Ltd. for a similar product transferred in comparable uncontrolled transaction is, therefore, identifiable. Therefore, **Comparable Uncontrolled Price (CUP) method for determining arm's length price can be applied.**

While applying CUP method, the price in comparable uncontrolled transaction needs to be adjusted to account for difference, if any, between the international transaction (i.e. transaction between US Ltd. and IND Ltd.) and uncontrolled transaction (i.e. transaction between US Ltd. and CMI Ltd.) and the price so adjusted shall be the arm's length price for the international transaction.

For sale of monitors by CMI Ltd., US Ltd. is responsible for warranty for 3 months. The price charged by US Ltd. to CMI Ltd. includes the charge for warranty for 3 months. Hence arm's length price for computer monitors being sold by US Ltd. to IND Ltd. would be:

Particulars	No.	₹
Sale price charged by US Ltd. to CMI Ltd.		10,000
Less: Cost of warranty included in the price charged to CMI Ltd. (₹ 1,000 x 3/12)		250
Arm's length price		**9,750**
Actual price paid by IND Ltd. to US Ltd.		11,000
Difference per unit		**1,250**
No. of units supplied by US Ltd. to IND Ltd.	50,000	
Addition required to be made in the computation of total income of IND Ltd. (₹ 1,250 × 50,000)		**6,25,00,000**

No deduction under Chapter VI-A would be allowable in respect of enhanced income of ₹ 6.25 crores.

Question 8

Earth (P) Ltd., Calcutta is engaged in trading of electronic goods. It purchased goods from its associated enterprise Sun Pte. Ltd., Singapore, and also from unrelated party, Oceania Ltd., UK. For the F.Y.2024-25, the gross profit margin was 15% on the sale of goods of Sun Pte Ltd., whereas it was 20% in the case of Oceania Ltd. After-sales warranty of 6 months was provided by Sun Pte Ltd. whereas Oceania Ltd. gave after-sales warranty of 1 year. The cost of warranty may be taken as 2% of the sale price. The Sun Pte. Ltd.'s brand value is internationally known and the benefit of the brand value can be taken as 1% of sale price. During the year, it sold goods of Sun Pte Ltd. for ₹ 20 crores and of Oceania Ltd. for ₹ 15 crores. As regards transport cost of the goods purchased, there was no difference between related and unrelated party. Compute the ALP of the transaction between Earth

(P) Ltd. and Sun Pte Ltd., Singapore by applying the Resale Price Method, considering the facts of the case.

Answer

As per section 92B, the transactions entered into between Earth (P) Ltd., an Indian company, and Sun Pte. Ltd., Singapore, being associated enterprises, for purchase of electronic goods would be international transaction.

Since Earth (P) Ltd. purchased similar electronic goods from Oceania Ltd., an unrelated entity, and sold the same to unrelated parties, this transaction can be considered as uncontrolled transaction and the gross profit margin of 20% earned on sale of such goods can be considered for the purpose of determining the arm's length price of the transactions between Earth (P) Ltd. and Sun Pte. Ltd. However, functional adjustments need to be given effect to in arriving at the ALP.

Computation of ALP of transaction between Earth (P) Ltd. and Sun Pte. Ltd.

Particulars	Amount (In ₹)
Resale price of goods purchased from Sun Pte. Ltd.	20,00,00,000
Less: Profit margin with reference to uncontrolled transaction between Earth (P) Ltd. and Oceania Ltd. (20% on sale)	4,00,00,000
	16,00,00,000
Add: Adjustment for benefit of brand value of Sun Pte. Ltd. [Sun Pte. Ltd has its brand value internationally. Therefore, adjustment of benefit of brand value has to be carried out to arrive at ALP (1% of sale price)]	20,00,000
Less: Adjustment of cost of warranty [Sun Pte. Ltd. provides warranty for 6 months whereas unrelated party has provided warranty of 12 months. Therefore, adjustment for the cost of such warranty has to be carried out to arrive at arm's length price (2% of sale price x 6/12)]	(20,00,000)
Arm's length price	**16,00,00,000**

Question 9

ABC Ltd., Canada holds 35% shares in LMN Ltd., India. LMN Ltd. develops software and does both onsite and offsite consultancy services for the customers. LMN Ltd. during the year billed ABC Ltd. Canada for 120 man-hours at the rate of ₹ 1,800 per man hour. The total cost (direct and indirect) for executing this work amounted to ₹ 2,25,000.

However, LMN Ltd. billed XYZ Ltd., India at the rate of ₹ 2,800 per man hour for the similar level of manpower and earned a Gross Profit of 50% on its cost.

The transactions of LMN Ltd. with ABC Ltd. and XYZ Ltd. are comparable, subject to the following differences:

- While LMN Ltd. derives technology support from the ABC Ltd., there is no such support from XYZ Ltd. The value of technology support received from ABC Ltd. may be put at 18% of normal gross profits.
- As ABC Ltd. gives business in large volumes, LMN Ltd. offered to ABC Ltd., a quantity discount

which may be valued at 10% of normal gross profits.

- In the case of rendering services to ABC ltd., LMN Ltd. neither runs any risk nor incurs any marketing costs. On the other hand, in the case of services to XYZ Ltd., LMN Ltd. has to assume all the risk and costs associated with the marketing function which may be estimated at 12% of the normal gross profits.
- LMN Ltd. offered one month credit to ABC Ltd. The cost of providing such credit may be valued at 2% of the gross profits. No such credit was given to XYZ Ltd.

Compute the Arm's Length Price along with income to be increased under the Cost Plus Method.

Answer

LMN Ltd, an Indian company and ABC Ltd., a Canadian company, are **deemed to associated enterprises** as per section 92A(2), since ABC Ltd. holds shares carrying 35% of the voting power (i.e., not less than 26% of voting power) in LMN Ltd. Further, the transaction of developing software and providing consultancy services (both onsite and offsite) fall within the meaning of "international transaction" under section 92B. Hence, transfer pricing provisions would be attracted in this case.

Computation of Arm's Length Price as per Cost Plus Method		
Gross Profit mark-up on cost in case of XYZ Ltd. [an unrelated party]		50%
Less: Adjustments for functional and other differences		
- Value of technology support [ABC Ltd. provides technology support, but XYZ Ltd. does not provide such support. Therefore, value of technology support shall be adjusted] [18% of 50%, being gross profit]	9%	
- Quantity discount to ABC Ltd. [Quantity discount is allowed to ABC Ltd. as it gives business in large volumes, but the same is not provided to XYZ Ltd. Therefore, it shall be adjusted] [10% of 50%, being gross profit]	5%	
- Risk and cost associated with marketing [LMN Ltd. has to bear all the risk and costs associated with the marketing function in case of XYZ Ltd., while there is no such risk in case of services to ABC Ltd. Therefore, market risk and cost shall be adjusted] [12% of 50%, being gross profit]	6%	20%
		30%
Add: Cost of credit to ABC Ltd. [LMN Ltd has provided credit of 1 month to ABC Ltd. but not to the unrelated party. Therefore, adjustment for the cost of such credit has to be carried out to arrive at the ALP] [(2% of 50%, being gross profit]		1%
Arm's length gross profit mark up to cost		**31%**
Cost incurred by LMN Ltd. for executing ABC Ltd.'s work		2,25,000
Add: Adjusted gross profit (₹ 2,25,000 x 31%)		69,750
Arm's length billed value		**2,94,750**
Less: Actual Billed income from ABC Ltd. (₹ 1800 x 120 man hours)		2,16,000
Total Income of LMN Ltd to be increased by		**78,750**

Question 10

NANO Inc., a German Company, holds 45% of equity in Hitech Ltd., an Indian Company. Hitech Ltd. is engaged in development of software and maintenance of the same for customers across the globe. Its clientele includes NANO Inc.

During the year, Hitech Ltd. had spent 2400 man hours for developing and maintaining software for NANO Inc. with each hour being billed at Rs. 1,300. Cost incurred by Hitech Ltd. for executing work for NANO Inc. amounts to Rs. 20 lakhs.

Hitech Ltd. had also undertaken developing software for Modi Industries, for which Hitech Ltd. had billed at Rs. 2,700 per man hour. The persons working for Modi Industries and NANO Inc. were part of the same team and were of matching credentials and calibre. Hitech Ltd. made a gross profit of 60% on Modi Industries work. Hitech Ltd.'s transactions with NANO Inc. are comparable to transactions with Modi Industries, subject to the following differences:

(i) NANO Inc. gives technical knowhow support to Hitech Ltd., which can be valued at 8% of the normal gross profit. Modi Industries does not provide any such support.

(ii) Since the work for NANO Inc. involved huge number of man hours, a quantity discount of 14% of normal gross profits was given.

(iii) Hitech Ltd. had offered 90 days credit to NANO Inc., the cost of which is measured at 2% of the normal billing rate. No such discount was offered to Modi Industries.

Compute arm's length price as per cost plus method and the amount of increase in total income of Hitech Ltd.

Answer

Computation of Arm's Length Price as per Cost Plus Method

Particulars		₹
Gross Profit Mark up in case of Modi Industries **[an unrelated party]**	60.0%	
Less: Differences to be adjusted		
- Value of technical know-how (8% of 60%)	4.8%	
- Quantity discount to Nano Inc. (14% of 60%)	8.4%	
	46.8%	
Add: Cost of credit to Nano Inc., **an associated enterprise** (2% of 100%)	2.0%	
Arm's length gross profit mark up	**48.8%**	
Cost incurred by Hitech Ltd. for executing Nano Inc's work. [100% - 48.8%= 51.2%]		20,00,000
Add: Adjusted gross profit (Rs. 20,00,000 x 48.8/51.2)		19,06,250
Arm's length billed value		**39,06,250**
Less: Actual Billed Income in the case of Nano Inc (Rs. 1300 x 2400 man hours)		31,20,000
Total Income of Hitech Ltd to be increased by		7,86,250

Question 11

Amar P Ltd., Bangalore is engaged in IT Enabled services. It is the subsidiary of ABC Inc in US. It also provides similar services to a company SAK Ltd. at Singapore. Its billings and other information is as given hereunder:

(i) Billings per month to ABC Inc. - USD 85,000

(ii) Billings per month to SAK Ltd. - USD 70,000

(iii) ABC Inc has provided a loan of USD 1,00,000 to Amar P Ltd. towards purchase of hardware for executing its project. Rate of interest charged for the said loan is at 3% p.a.

(iv) Direct and indirect cost incurred are USD 100 and USD 200 per hour, respectively.

(v) Amar P Ltd. works 9 hours per day for 15 days to execute the projects for ABC Inc and 8 hours per day for 15 days to execute projects for SAK Ltd. Service was provided by the company to both its customers throughout the year.

(vi) Warranty was provided to SAK Ltd. for a period of 2 years. Cost of warranty is calculated at 1% of direct cost incurred. The cost of warranty is neither included in the direct nor indirect cost.

Compute Arm's Length Price as per the cost-plus method and the amount to be added, if any, to the income of Amar P Ltd. Assume conversion rate 1 USD = ₹ 64.

Answer

Determination of Gross Margin of Comparable Uncontrolled transaction i.e., of SAK Ltd.

Particulars	Amt in USD
Direct Cost (USD 100 x 8 hours x 15 days)	12,000
Indirect Cost (USD 200 x 8 hours x 15 days)	24,000
Total Direct and Indirect cost	36,000
Billing per month	70,000
Gross Margin being gross profit	34,000
Gross Margin to cost (%) [34,000 x 100/36,000]	94.44%
Adjustment for functional difference of cost of warranty	
Total Direct and Indirect Cost	36,000
Add: Cost of warranty [1% of direct cost of USD 12,000]	120
Total Cost	**36,120**
Billing per month	70,000
Margin after cost of warranty being profit margin [70,000 - 36,120]	**33,880**
Profit margin to cost (%) [after considering functional difference on account of cost of warranty [33,880 x 100/36,120]	**93.80%**

Computation of Arm's Length Price by applying Cost Plus Method

	ABC Inc (USD)
Direct Cost (USD 100 x 9 hours x 15 days)	13,500
Indirect Cost (USD 200 x 9 hours x 15 days)	27,000
Total Direct and Indirect cost	**40,500**

Add: Interest on loan of USD 1,00,000 borrowed for purchase of hardware [USD 3,000 (i.e., USD 1,00,000@3%)/12]	250
Total Cost	40,750
Profit by applying margin of 93.80% of total cost of USD 40,750	38,224
Arm's length price of billing per month	**78,974**
Arm's length price (in ₹) [USD 78,974 x 64] = ₹ 50,54,336	
Actual Billing per month to ABC Inc.	**85,000**

Since actual billing of USD 85,000 per month to the ABC Inc, an AE, is **higher than Arm's length price** of USD 78,974 determined by cost plus method, **no adjustment is to be made to the income of Amar P Ltd.**

Question 12

Andes Inc. having its business in Malaysia has advanced a loan of MD 1,60,000 to Andes Ltd, India. Book value of total assets of Andes Ltd was ₹ 125 lakhs. Andes Ltd provides software backup support to Andes Inc. Andes Ltd has spent 50,000 man hours during the year for the services rendered to Andes Inc. The cost for Andes Ltd is MD 75/manhour. Andes Ltd has billed Andes Inc. at MD 90.75/manhour.

Gama Ltd. in India which has a similar business model, provides software backup support to Olive Inc. in Penang, Malaysia. Gama Ltd's cost and operating profits are as hereunder:

Particulars	₹ in lakhs
Direct costs	600
Indirect costs	200
Operating profits	200

(1) Calculate Arm's Length Price for the transaction between Andes Ltd. and Andes Inc. based on the above data of Gama Ltd. using the Transactional Net Margin Method. Assume 1 MD = ₹ 45.

(2) Explain, if there is any adjustment to be made to the total income of Andes Ltd.

Note: MD = Malaysia Dollars

Answer

Two enterprises are deemed to be associated enterprises where one enterprise advances loan constituting not less than 51% of the book value of the total assets of the other enterprise.

In this case, since Andes Inc., a foreign company, has advanced loan to Andes Ltd., an Indian company, and such loan constitutes 57.6% [(₹ 45 x 1,60,000 x 100/1,25,00,000] of the book value of total assets of Andes Ltd., Andes Inc and Andes Ltd. are **deemed to be associated enterprises.**

Since the transaction of provision of software backup support by Andes Ltd. to Andes Inc. is an international transaction between associated enterprises the provisions of transfer pricing would be attracted in this case.

Determination of Operating Margin of transaction of provision of software backup support by Andes Ltd. to Andes Inc

Particulars	₹
Billing per manhour [MD 90.75/hour x ₹45]	4,083.75
Cost per man hour [MD 75/hour x ₹45]	3,375.00
Operating profit per manhour	**708.75**
Operating profits to cost (%) [708.75 x 100/3375] = 21%	

Determination of Operating Margin of Comparable Uncontrolled transaction i.e., provision of software backup support. by Gama Ltd. to Olive Inc

Particulars	₹ in lakhs
Direct Cost	600
Indirect Cost	200
Total cost	**800**
Operating profits	200
Operating profits to cost (%) [200 x 100/800] = 25%	

(1) Computation of Arm's Length Price of provision of software backup support provided by Andes Ltd. to Andes Inc. by applying TNMM

Particulars	₹
Cost for Andes Ltd. (per man hour) [MD 75 x ₹ 45/MD]	3,375.00
Add: Arm's length operating profit margin as % of cost (25% of ₹ 3,375)	843.75
Arm's length price (per manhour) in ₹	**4,218.75**
Arm's length price of total manhours spent by Andes Ltd. for providing software backup support to Andes Inc. [₹ 4,218.75 x 50,000 man hours] = ₹ 21,09,37,500	

(2) Adjustment to be made to the total income of Andes Ltd.

Particulars	₹
Arm's length price of total manhours spent by Andes Ltd. for providing software backup support to Andes Inc.	21,09,37,500
Less: Amount actually billed [90.75 MD x ₹ 45/MD x 50,000 manhours]	20,41,87,500
Arm's length adjustment to be made to the total income of Andes Ltd.	**67,50,000**

Advanced Pricing Agreement (APA)

Question 13

Answer the following in the context of international transactions:

(i) Company X and Company Y who entered into Advance Pricing Agreements (APA) and eligible for rollback provisions merged to form Company XY. Is the Company XY eligible for rollback provisions as it was formed on merger of Company X and Company Y?

(ii) The gross total income of Sachin Co. Ltd., Pune was Rs. 70 lakhs which is wholly attributable to a unit located in SEZ since April, 2018. Adjustments to total income made by the Assessing Officer by applying the transfer pricing provisions, enhanced the total income by Rs. 50 lakhs.

What is the total income chargeable to tax and explain why?

Answer

	Particulars
(i)	The agreement of APA is between the Board and a taxpayer/person. The principle to be followed is that the **person who makes the APA application alone would be entitled to enter into the agreement and be entitled for the rollback provisions** in respect of international transactions undertaken by it in rollback years. Since Company X and Y were the APA applicants and not the new company XY formed as a result of merger, **Company XY would not be eligible for the rollback provisions.**
(ii)	As per the proviso to section 92C(4), where the arm's length price is determined by the Assessing Officer by applying transfer pricing provisions, no deduction, inter alia, under section 10AA shall be allowed from the income so enhanced by the Assessing Officer. Assuming that the entire turnover represents the export turnover, and consequently, the entire profit of Rs. 70 lakhs is eligible for deduction under section 10AA, the total income would be computed as follows:

Particulars	₹ in lakhs
Income of unit in SEZ (computed)	70
Less: Deduction u/s 10AA = 50% of Rs. 70 lakhs, being the 7th year	35
	35
Add: Enhancement in total income by the Assessing Officer	50
Total Income	**85**
[No deduction u/s 10AA is allowable in respect of income so enhanced]	

Question 14

DIY Ltd., a company registered in India and subsidiary of CD Inc., a company registered in Austria. DIY Ltd. engaged in the manufacturing of fabric. To arrive at the arm's length price applicable to its transactions with CD Inc., DIY Ltd. enters into an advance pricing agreement with the Board on 25th November 2024. Accordingly, there will be a substantial change in the income of DIY Ltd. Also, DIY Ltd. wishes to apply for roll back provisions to PY 2020-21, 2021-22, 2022-23 and 2023-24. The AO wants to apply such transfer pricing provisions from the year in which DIY Ltd. became the subsidiary of CD Inc. i.e., A.Y. 2018-19 onwards.

DIY Ltd. had filed its return of income for the A.Y. 2024-25 on 26th August 2024 and for A.Y. 2025-26, on 31st August, 2025. The assessments for the A.Ys 2021-22 to 2024-25 are completed but the assessment of A.Y. 2025-26 is pending on the date of entering into APA.

You are required to answer the following questions:

(i) Whether the AO is correct to apply the transfer pricing provisions from A.Y. 2018-19 onwards?

(ii) In respect of A.Y. 2022-23, the transfer price arrived at by the Board is resulting in reduction in returned income of the assessee. Discuss whether the roll back provisions can be applied for that assessment year as well.

(iii) What will happen to completed as well as pending assessments?

Answer

(i) **No; the Assessing Officer is not correct** in applying transfer pricing provisions as per the advance pricing agreement from A.Y.2018-19 itself.

This is so since **roll back provisions** can be applied only for any previous year, falling within the period **not exceeding four previous years,** preceding the first of the five consecutive previous years as may be specified in the agreement. Since P.Y.2024-25 is the first of the five consecutive previous years, **roll back provisions can be applied only from A.Y.2021-22 (relevant to P.Y.2020-21) and not from A.Y.2018-19.**

(ii) **No; the rollback provision cannot be applied** in respect of an international transaction for a rollback year, **if the application of rollback provision has the effect of reducing the total income or increasing the loss,** as the case may be, of the applicant as declared in the return of income of the said year already filed by the assessee prior to the filing of the APA.

Accordingly, the **roll back provisions cannot be applied in respect of A.Y.2022-23, since it has the effect of reduction in income of DIY Ltd. for that year.**

(iii) DIY Ltd. has to **furnish modified return** in respect of the assessment years relevant to the previous year to which APA applies (and for which returns have already been furnished before entering into an APA) **within a period of 3 months from the end of the month in which the agreement was entered** into i.e., on or before 28th February 2025. The modifications therein should arise only because of the APA. Such return would be treated as a return filed under section 139(1).

In case of completed assessments (i.e., assessments made upto A.Y.2024-25 other than A.Y.2022-23), the **Assessing Officer would assess or reassess** or recompute the total income of the relevant assessment year having **regard to the APA.**

In respect of pending assessment (i.e., assessment for A.Y.2025-26), the **Assessing Officer shall proceed to complete the assessment or reassessment proceedings in accordance with the APA** taking into consideration the return furnished by the assessee, since the same has been furnished after the date of entering into the APA.

Secondary Adjustment

Question 15

Research & Co. is engaged in providing scientific research services to several non-resident clients. Such services are also provided to B Inc., which guarantees 15% of the total loans of Research & Co.

(i) Examine whether transfer pricing provisions are attracted in respect of this transaction.

(ii) Without prejudice to the answer to (i) above, assuming that transfer pricing provisions are attracted in this case and that the Assessing Officer had made a primary adjustment of ₹ 225 lakhs to transfer price in the P.Y. 2022-23 vide order dated 1.4.2024 and the same was accepted by Research & Co., what are the consequent requirements as per the Income-tax Act, 1961 and the implications of non-compliance with the said requirements? Assume that the transaction is denominated in Indian Rupees and no amount has been repatriated upto 31.3.2025. The one year marginal cost of fund lending rate of State Bank of India as on 1.4.2024 is 8.15%.

Answer

(i) Provision of scientific research services falls within the scope of international transaction under section 92B. Research & Co. and B Inc. are **deemed to be associated enterprises** as per section 92A(2), since B Inc. guarantees not less than 10% of the total borrowings of Research & Co. Since there is an **international transaction between associated enterprises, transfer pricing provisions are attracted in this case.**

(ii) Where the Assessing Officer has made a primary adjustment of ₹ 225 lakhs to the transfer price and the same has been accepted by Research & Co., secondary adjustment has to be made in the books of account. The **excess money** determined based on the primary adjustment **has to be repatriated to India within 90 days from the date of order**, failing which the same would be deemed as an advance and **interest would be attracted** at the one year marginal cost of fund lending rate of **State Bank of India as on 1.4.2023 + 3.25%**, since the international transaction has been denominated in Indian Rupees. In this case, since the excess money has not been repatriated within 90 days, **the same would be deemed to be an advance made by Research & Co. to B Inc. and interest would be attracted@11.40%** (8.15% + 3.25%).

Question 16

Allepey Ltd. is an Indian Company in which Andes Inc., a Country Z company holds 38% shareholding and voting power. During the previous year 2022-23, the Indian company supplied computers to the Country Z based company @CZD 1100 per piece. The price of computer supplied to other unrelated parties in Country Z is @CZD 1400 per piece. During the course of assessment proceedings relating to A.Y.2023-24, the Assessing Officer carried out primary adjustments and added a sum of ₹ 168 lakhs, being the difference between actual price of computer and arm's length price for 700 pieces and it was duly accepted by the assessee. The Assessing Officer passed the order, in which the primary adjustments were made, on 1.6.2024. On account of this adjustment, the excess money of ₹ 168 lakhs is available with Andes Inc, Country Z. In this context, Allepey Ltd. wants to know the effect of this transaction for the assessment year 2025-26 on the basis that it declared an income of ₹ 300 lakhs and the excess money is still lying with Andes Inc. till today. Assume the rate of exchange as 1 CZD = ₹ 80. [CZD stands for Country Z Dollars, which is the currency of Country Z]; six month LIBOR as on 30.9.2024 is 9.50%.

Answer

In this case, Allepey Ltd., the Indian company, and Andes Inc., a Country Z company, are **deemed to be associated enterprises** as per section 92A(2) since Andes Inc. holds shares carrying not less than 26% voting power in Allepey Ltd.

On account of the primary adjustment of ₹ 168 lakhs made by the Assessing Officer, the total income of Allepey Ltd. for A.Y.2023-24 would increase by ₹ 168 lakhs.

I. If Allepey Ltd. opts not to pay additional income-tax on such excess money not repatriated

In this case, **secondary adjustment has to be made** under section 92CE, since –

(1) The company has accepted the primary adjustment made by the Assessing Officer;

(2) The primary adjustment is in respect of A.Y.2023-24; and

(3) The primary adjustment exceeds ₹ 100 lakhs.

Accordingly, the excess money (i.e., ₹ 168 lakhs) available with the associated enterprise (i.e., Andes Inc., Country Z) not repatriated to India within 90 days of the date of the order of the Assessing Officer would be **deemed as an advance made by the Allepey Ltd. to its associated enterprise, Andes Inc. Interest would be calculated on such advance at 12.50%** [i.e., the rate of six month LIBOR as on 30th September, 2024 (i.e., 9.50%)+ 3%], since the international transaction is denominated in foreign currency. Such interest computed from 2.6.2024 to 31.3.2025 amounting to 303/365 x 168 lakhs x 12.50% = **₹ 17,43,288 would be added to its total income for A.Y.2025-26.**

II. If Allepey Ltd. opts to pay additional income-tax on such excess money not repatriated

In such a case, **Allepey Ltd. has to pay additional income-tax @20.9664%** (tax @18% plus surcharge @12% plus cess@4%) **on ₹ 168 lakhs, which amounts to ₹ 35,22,355.** Where additional income-tax is so paid by Allepey 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 Allepey 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 Allepey Ltd. or to any other person in respect of the amount of additional income-tax so paid.

Question 17

Delta Ltd., an Indian company, declared total income of ₹ 2,100 crores computed in accordance with Chapter IV-D before making primary adjustment, if required, in respect of the loan transaction with Alps Inc, a Swiss company, for the year ended 31.03.2025. Alps Inc. had advanced a loan of Euro 350 crores carrying interest@9% p.a. on 1.4.2024 to Delta Ltd. The total book value of assets of Delta Ltd. was ₹ 60,000 crores. Assume that the amount of interest computed@9% p.a. and payable to Alps Inc. does not exceed 30% of EBITDA and that this is the only loan taken by Delta Ltd.

Alps Inc also advanced a loan of similar nature and amount to Beta Ltd., another Indian company@7% p.a. during the F.Y. 2024-25. The value of 1 Euro may be taken as ₹ 88. You are required to:

(i) Examine whether transfer pricing provisions under the Income-tax Act, 1961 would be attracted in this case and if so, on what basis.

(ii) Advise Delta Ltd. regarding primary adjustments, if any, to be made to the above income keeping in mind the transfer pricing provisions contained in the Income-tax Act, 1961 and compute the total income for A.Y.2025-26.

(iii) Elaborate on secondary adjustments, if any, required to be made under the provisions of Income-tax Act, 1961, assuming that Delta Ltd. has made the primary adjustment suo moto.

(iv) Calculate the additional income-tax liability, if Delta Ltd. opts for payment of additional income-tax in lieu of making secondary adjustment.

Answer

(i) Delta Ltd., an Indian company and Alps Inc, a Swiss company are **deemed to be associated enterprises** since the latter has advanced a loan to the former which constitutes 51.33% of the book value of total assets of the former [Euro 350 crores x ₹ 88/Rs.60,000 crores]. Since the loan advanced by Alps Inc is not less than 51% of the book value of the total assets of Delta Ltd., the two companies are deemed to be associated enterprises.

A loan transaction between two enterprises, one of whom is a non-resident (Alps Inc, Switzerland, in this case), would be an **international transaction**. Accordingly, **transfer pricing provisions would be attracted in this case.**

(ii) The interest rate charged by Alps Inc. on loan advanced to Delta Ltd. is 9% p.a. whereas the arm's length interest charged by Alps Inc. in a comparable uncontrolled transaction with Beta Ltd., another Indian company, is 7% p.a. Therefore, the **arm's length adjustment (primary adjustment) to be made is = 9% - 7% = 2% of ₹ 30,800 crores** (Euro 350 crores x ₹ 88, being the value of 1 Euro) = **₹ 616 crores**

The **total income (after primary adjustment)** of Delta Ltd for P.Y.2023-24 = ₹ 2,100 crores + primary adjustment of ₹ 616 crores = **₹ 2,716 crores.**

(iii) Since the primary adjustment has been made by Delta Ltd. suo moto while filing its return of income for A.Y.2025-26, **Delta Ltd. has to carry out secondary adjustment in the following manner.**

The excess money (i.e., ₹ 616 crores) lying with Alps Inc has to be **repatriated within 90 days from 30.11.2025, being the due date for filing return of income.**

If the excess money is not repatriated on or before 28th February, 2026, it would be deemed as an advance made by Delta Ltd. to Alps Inc and interest would be chargeable from 01.12.2025 at six month LIBOR as on 30th September, 2025 + 3%, since the loan is denominated in Euros. **Such interest** for the period from 01.12.2025 to 31.3.2026 (assuming that it has not been repatriated upto 31.3.2026) **would be included in the total income of Delta Ltd.** for P.Y.2025-26.

(iv) **If Delta Ltd. opts for payment of additional income-tax, it has to pay ₹ 129.153 crores** [i.e., 20.9664% (tax@18% + surcharge@12% + cess@4%) of ₹ 616 crores].

Question 18

On 1.4.2024, Vihaan Ltd., an Indian company, advanced a loan of ₹ 6 crores to Yuvan Inc., a company resident in Singapore. As on the date of loan, the book value of total assets in the books of Yuvan Inc. was ₹ 4 crores. In the Financial Year 2023-24, Yuvan Inc. had revalued its assets and accordingly the value of assets had increased by ₹ 2 crores. Yuvan Ltd. paid the entire loan along with interest thereon on 31st August, 2024. During the Financial Year 2024-25, Vihann Ltd. also entered into an agreement with Yuvan Inc. to provide 20 thousand medical equipments at a cost of ₹ 7,400 per unit. The Assessing Officer treats them as associate enterprise and wants to re-compute the income of Vihaan Ltd. at arms' length price. You are required to answer the following questions in this respect:

(1) Would Vihaan Ltd. and Yuvan Ltd. be treated as associate enterprises for the purpose of transfer pricing adopted by the Assessing Officer? If yes, why? '.

(2) Calculate the arm's length price of Vihaan Ltd. which sells the same equipments at the rate of ₹ 9,000 per unit to Y Ltd. and at the rate of ₹ 9,500 per unit to X LLP (both of them are unrelated parties in respect of Vihaan Ltd.). Vihaan Ltd. is not a wholesale dealer.

(3) What are the options available to Vihaan Ltd. in respect of such increase in transfer price by income tax authorities, if Vihaan Ltd. accepts such transfer price?

Answer

(1) Two enterprises are deemed to be associated enterprises as per section 92A(2)(c), if a loan advanced by one enterprise to the other enterprise constitutes not less than 51% of the book value of total assets of the other enterprise. Since Vihaan Ltd., an Indian company, advanced loan of an amount of ₹ 6 crores to Yuvan Inc., a Singapore company, which is 150% of the book value of the total assets of Yuvan Inc. (i.e., 150% of ₹ 4 crores), Vihaan Ltd. and Yuvan Inc. are **deemed to be associated enterprises.**

(2) Vihaan Ltd. sells equipments at the rate of ₹ 9,000 per unit to Y Ltd. and at ₹ 9,500 per unit to X LLP, both of them being unrelated parties. Since the transactions can be considered as comparable uncontrolled transactions for the purpose of determining the arm's length price, **Comparable Uncontrolled Price (CUP) method would be most appropriate method.**

Since two prices are determined by the most appropriate method, and data set comprises of only two entries, the arm's length price shall be the **arithmetical mean** of both the values included in the dataset.

Accordingly, **arm's length price would be ₹ 9,250** [(₹ 9,000 + ₹ 9,500)/2]. **Since the deviation** between the arm's length price and actual sale price of the equipment to Yuvan Inc. i.e., ₹ 7,400 per unit is 25%, which **exceeds** 3% of the price of the international transaction, the **arm's length price would be ₹ 9,250 per unit and the total income would increase by ₹ 3.7 crores** [i.e. ₹ 1,850 (₹ 9,250 - ₹ 7,400) x 20,000 units]

(3) On account of the primary adjustment of ₹ 3.7 crores (₹ 1850 x 20,000 units) made by the Assessing Officer, in the total income of Vihaan Ltd., **secondary adjustment has to be made** under section 92CE, since -

(1) The company has accepted the primary adjustment made by the Assessing Officer;

(2) The primary adjustment is in respect of A.Y.2025-26; and

(3) The primary adjustment exceeds ₹ 100 lakhs.

Accordingly, the **excess money i.e., ₹ 3.7 crores available with the Yuvan Inc. has to be repatriated to India within 90 days of the date of the order of the Assessing Officer.**

Alternatively, **Vihaan Ltd. can opt to pay additional income-tax @20.9664%** (tax @18% plus surcharge @12% plus cess@4%) **on ₹ 3.7 crores, which amounts to ₹ 77,57,568.**

Question 19

Paras Ltd. is an Indian company engaged in the manufacturing of supreme quality mink blankets. It has total borrowings of ₹ 60 crores by way of loan as on 31.03.2025. Saksham Ltd. of Germany imported 5 lakh blankets from Paras Ltd. for the resale in Germany @₹ 2,000 per unit. Paras Ltd. sold similar blankets to other dealers in Germany @₹ 2,100 per unit. Paras Ltd. received a bank guarantee on 1.04.2024 for availing a cash credit limit of ₹ 9 crores for which Saksham 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 Paras Ltd., whereas for Saksham 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 Paras Ltd. and Saksham Ltd. are associated enterprises. If yes, compute the ALP of the transaction between them and the amount to be added to the income of Paras Ltd., if any, by way of an ALP adjustment.

Assuming that the above adjustments to the transfer price have been made suo-moto by Paras 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?

Answer

(1) Paras Ltd. and Saksham Ltd. of Germany are **deemed to be associated enterprises,** since Saksham Ltd., a German company provides guarantee for loan of ₹ 9 crores taken by Paras Ltd., which is 15% of the total borrowings (i.e., more than 10 %) of Paras Ltd. i.e., 60 crores.

As per section 92B, the transactions entered into between Paras Ltd. and Saksham Ltd., two associate enterprises, for sale of blankets falls within meaning of **"International transaction".**

As Paras Ltd. has sold similar blankets to other dealers, being unrelated entity, at ₹ 2,100 per unit, the transactions between Paras 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 Paras Ltd. and Saksham Ltd. However, such figure needs to be adjusted by the functional adjustments.

Computation of ALP of transaction between Paras Ltd. and Saksham Ltd.

Particulars	Amount (in ₹)
Selling price of each blanket to unrelated dealers in Germany	2,100
Add: Adjustment of cost of credit [Paras Ltd. provides credit for 1 month to unrelated entity whereas it provided credit period of 3 months to Saksham Ltd. Therefore, adjustment for the cost of such credit has to be carried out to arrive at arm's length price. (12% x 2,100 x 2/12)]	42
Arm's length price of 1 unit of blanket	**2,142**
Arm's length price of 5 lakh units of blanket (A)	1,07,10,00,000
Sale price of 5 lakh units of blanket by Paras Ltd. to Saksham Ltd. (associated enterprise) (B) [2,000 x 5,00,000]	1,00,00,00,000
Amount to be added to Paras Ltd.'s total income by way of ALP adjustment	**7,10,00,000**

(2) Where the **primary adjustment to transfer price has been made suo moto by Paras Ltd. in its return of income, the time limit for the repatriation of such excess money** (i.e., ₹ 710 lakhs) available with the associated enterprise (i.e., Saksham Ltd.) **is within 90 days from 30.11.2025, being the due date of filing of return u/s 139(1) i.e., 28.2.2026.**

(3) The excess money (i.e., ₹ 710 lakhs) available with the associated enterprise (i.e., Saksham

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 Paras Ltd. to its associated enterprise, Saksham 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., 1.4.2025 + 3.25%, since the international transaction is denominated in Indian rupee.

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

Paras **Ltd. has the option to pay additional income-tax @20.9664%** (tax @18% plus surcharge @12% plus cess@4%) **on excess money** (i.e., ₹ 710 lakhs), in lieu of repatriation of such excess money.

Where **additional income-tax is so paid by Paras 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 Paras 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 Paras Ltd. or to any other person in respect of the amount of additional income-tax so paid.

Transfer Pricing Miscellaneous

Question 20

Can the Assessing Officer complete the assessment of income from international transactions in disregard of the order passed by the Transfer Pricing Officer by accepting the contention of assessee?

Answer

Section 92CA(4) provides that the **order of the Transfer Pricing Officer** determining the arm's length price of an international transaction **is binding on the Assessing Officer and the Assessing Officer shall proceed to compute the total income in conformity with the arm's length price determined by the Transfer Pricing Officer.**

Therefore, the **Assessing Officer cannot complete the assessment** of income from international transactions **in disregard of the order of Transfer Pricing Officer** and on the basis of contention raised by the assessee.

Question 21

Examine the consequences that would follow if the Assessing Officer makes adjustment to arm's length price in international transactions of the assessee resulting in increase in taxable income. What are the remedies available to the assessee to dispute such adjustment?

Answer

In case the Assessing Officer makes adjustment to arm's length price in an international transaction which results in increase in taxable income of the assessee, the following consequences shall follow:

(1) **No deduction under section 10AA or Chapter VI-A shall be allowed from the income so**

increased.

(2) **No corresponding adjustment would be made to the total income of the other associated enterprise** (in respect of payment made by the assessee from which **tax has been deducted** or is deductible at source) on account of increase in the total income of the assessee on the basis of the arm's length price so recomputed.

The **remedies available to the assessee** to dispute such an adjustment are:

(1) In case the assessee is an **eligible assessee** under section 144C, he **can file his objections** to the variation made in the income **within 30 days** [of the receipt of draft order by him] **to the Dispute Resolution Panel** and Assessing Officer. Appeal against the order of the Assessing Officer in pursuance of the directions of the Dispute Resolution Panel can be made to the Income-tax Appellate Tribunal.

(2) In any other case, he **can file an appeal** under section 246A **to the Commissioner (Appeals) against the order of the Assessing Officer within 30 days** of the date of service of notice of demand.

(3) The assessee **can opt to file an application for revision of order of the Assessing Officer under section 264 within one year** from the date on which the order sought to be revised is communicated, provided the time limit for appeal to the Commissioner (Appeals) or the Income-tax Appellate Tribunal has expired or the assessee has waived the right of such an appeal. The eligibility conditions stipulated in section 264 should be fulfilled.

Question 22

X Ltd., operating in India, is the dealer for the goods manufactured by Yen Ltd. of Japan. Yen Ltd. owns 55% shares of X Ltd. and out of 7 directors of the company, 4 were appointed by them. The Assessing Officer, after verification of international transactions of ₹ 300 lacs of X Ltd. for the relevant year and by noticing that the company had failed to maintain the requisite records and had also not obtained the accountants report, adjusted its income by making an addition of ₹ 30,00,000 to the declared income and also issued a show cause notice to levy various penalties. X Ltd seeks your expert opinion.

Answer

The facts of the case indicate that X Ltd. and Yen Ltd. of Japan are associated enterprises since Yen Ltd. holds 55% shares of X Ltd. and has appointed more than half of the board of directors of X Ltd. Since Yen Ltd. is a non-resident, any transaction between X Ltd. and Yen Ltd. would fall within the meaning of "international transaction" under section 92B. Therefore, the income arising from such transactions have to be computed having regard to the arm's length price.

The action of the Assessing Officer in making addition to the declared income and issuing show cause notice for levy of various penalties is correct since X Ltd. had committed defaults, as listed hereunder, in respect of which penalty, as briefed hereunder, is imposable -

(i) **Failure to report any international transaction** or any transaction, deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X applies, would attract **penalty @ 200% of the amount of tax payable since it is a**

case of misreporting of income referred under section 270A(9) read with section 270A(8).

(ii) **Failure to maintain the requisite records** as required under section 92D in relation to international transaction makes it liable for penalty under section 271AA which will be **2% of the value of each international transaction.**

(iii) **Failure to furnish report from an accountant as required under section 92E** makes it liable for penalty under section 271BA i.e., a fixed **penalty of ₹ 1 Lac.**

The Assessing Officer shall give an opportunity of hearing to the assessee with a notice as to why the arm's length price should not be determined on the basis of material or information or document in the possession of the Assessing Officer.

Notified Jurisdictional Area (Section 94A)

Question 23

A Ltd., an Indian company, provides technical services to a company, XYZ Inc., located in a NJA for a consideration of ₹ 40 lakhs. It charges ₹ 42 lakhs for similar services rendered to PQR Inc., which is not located in a NJA. PQR Inc. is not an associated enterprise of A Ltd.

Discuss the tax implications under section 94A read with section 92C in respect of the above transaction of provision of technical services by A Ltd. to XYZ Inc.

Answer

Since XYZ Inc. is located in a NJA, the transaction of provision of technical services by the Indian company, A Ltd., would be **deemed to be an international transaction** and XYZ Inc. and A Ltd. would be deemed to be associated enterprises. Therefore, the **provisions of transfer pricing would be attracted in this case.**

The price of ₹ 42 lakhs charged for similar services from PQR Inc, being an independent entity located in a non-NJA country, can be taken into consideration for determining the arm's length price (ALP) under **Comparable Uncontrolled Price (CUP) Method.**

Since the ALP is more than the transfer price, the **ALP of ₹ 42 lakhs would be considered** as the income arising from the international transaction between A Ltd. and XYZ Inc.

It may be noted that the benefit of permissible variation between the ALP and transfer price is not available in respect of a transaction entered into with an entity in NJA.

Question 24

KVS Ltd., the assessee, has sold goods to L Ltd., located in notified jurisdictional area (NJA), for ₹ 10.50 crores. During the current financial year, KVS Ltd. charged ₹ 11.50 crores from AJ of New York and ₹ 12 crores from KP of London for sale of identical goods and both of which are neither associated enterprise of KVS Ltd. nor they are situated in any NJA. While sales to AJ and KP were on CIF basis, the sale to L Ltd., was on FOB basis, which paid ocean freight and insurance amounting to ₹ 20 lakhs on purchases from KVS Ltd.

India has a Double Taxation Avoidance Agreement with the U.S.A. and U.K. The assessee has a policy of providing after sales support service to the tune of ₹ 14 lakhs to all customers except L Ltd. which procured the same locally at a cost of ₹ 18 lakhs.

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

Answer

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

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

The transactions of KVS Ltd. with AJ of New York and KP of London for sale of identical goods are comparable uncontrolled international transactions, since they are neither associated enterprises of KVS Ltd. nor are they situated in NJA. Hence, **Comparable Uncontrolled Price (CUP) method can be used to determine ALP.**

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

Computation of ALP using CUP method

Particulars	AJ	KP
	₹ in crores	₹ in crores
Price charged by KVS Ltd. (on CIF basis)	11.50	12.00
Less: Ocean freight and insurance, has to be reduced since the price charged to L Ltd. is on FOB basis	0.20	0.20
	11.30	**11.80**
Less: Cost of after-sales support service (has to be reduced, since such services are being provided to AJ and KP but not to L Ltd.)	0.14	0.14
Arm's Length Price	**11.16**	**11.66**
Arithmetic mean of the above prices [(₹ 11.16 crores + ₹ 11.66 crores)/2]		**11.41**
Less: Price at which goods were sold to L Ltd.		10.50
Arm's length adjustment [increase in profit of KVS Ltd.]		**0.91**

Question 25

Mr. X, a non-resident individual, is due to receive interest of ₹ 5 lakhs during March from a notified infrastructure debt fund eligible for exemption under section 10(47). He incurred expenditure amounting to ₹ 10,000 for earning such income. Assuming that Mr. X is a resident of a NJA, discuss the tax implications under section 94A, read with sections 115A and 194LB.

Answer

The interest income received by Mr. X, a non-resident, from a notified infrastructure debt fund would be subject to a concessional tax rate of 5% under section 115A on the gross amount of such interest income. Therefore, the **tax liability of Mr. X in respect of such income would be ₹ 26,000** (being 5% of ₹ 5 lakhs plus health and education cess@4%).

Under **section 194LB, tax is deductible @5%** (plus health and education cess@4%) on interest paid by such fund to a non-resident. **However, since X is a resident of a NJA, tax would be deductible@30%** (plus health and education cess@4%) as per section 94A, and not @5% specified under section 194LB. This is on account of the provisions of section 94A(5), which provides that "**Notwithstanding anything contained in any other provision of this Act, where** a person located in a NJA is entitled to receive any sum or income or amount on which **tax is deductible under Chapter XVII-B, the tax shall be deducted at the highest of the following rates**, namely–

(a) at the rate or rates in force;

(b) at the **rate specified** in the relevant provision of the Act;

(c) at the **rate of thirty per cent**."

Mr. X can, however, claim refund of excess tax deducted along with interest.

Limitation of Interest Deduction (Section 94B)

Question 26

NP Ltd., an Indian Company has borrowed ₹ 80 crores on 01.04.2024 from M/s. TL Inc, a Company incorporated in London, at an interest rate of 10% p.a. The said loan is repayable over a period of 5 years. Further, loan is guaranteed by M/s ST Inc. incorporated in UK. M/s. Tweed Inc, a non-resident, holds shares carrying 40% of voting power both in M/s NP Ltd. and M/s ST Inc.

Net profit of M/s. NP Ltd. for P.Y. 2024-25 was ₹ 7 crores after debiting the above interest, depreciation of ₹ 6 crores and income-tax of ₹ 4 crores. Calculate the amount of interest to be disallowed under the head "Profits and gains of business or profession" in the computation of M/s NP Ltd., giving appropriate reasons.

Answer

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 (AE) 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 a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the 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 M/s Tweed Inc holds 40% of voting power i.e., more than 26% of voting power in both NP Ltd and M/s ST Inc, NP Ltd. and M/s ST Inc are deemed to be associated enterprises.

Since loan of ₹ 80 crores taken by NP Ltd., an Indian company from M/s TL Inc, is guaranteed by M/s ST Inc, an associated enterprise of NP Ltd., such debt shall be deemed to have been issued by an associated enterprise and interest payable to M/s TL Inc shall be considered for the purpose of limitation of interest deduction under section 94B.

Computation of interest to be disallowed as per section 94B in the computation of income under the head profits and gains of business or profession of NP Ltd.

Particulars		₹
Net profit		7,00,00,000
Add: Interest already debited (₹ 80 crores x 10%)		8,00,00,000
Depreciation		6,00,00,000
Income tax		4,00,00,000
EBITDA		**25,00,00,000**
Interest paid or payable by NP Ltd.		8,00,00,000
Lower of the following would be disallowed		
- Total interest paid or payable in excess of 30% of EBITDA (₹ 8,00,00,000 – ₹ 7,50,00,000)	₹ 50,00,000	
- Interest paid or payable to non-resident AE	₹ 8,00,00,000	
Interest to be disallowed as deduction		**50,00,000**

Question 27

Narmada Ltd., an Indian Company has borrowed ₹ 80 crores on 01.04.2024 from M/s. Thames Inc, a Company incorporated in London, at an interest rate of 10% p.a. The said loan is repayable over a period of 5 years. Further, loan is guaranteed by M/s Tyne Inc, incorporated in UK. M/s. Tweed Inc, a non-resident, holds shares carrying 40% of voting power both in M/s Narmada Ltd. and M/s Tyne Inc.

Net profit of M/s. Narmada Ltd. for P.Y. 2024-25 was ₹ 7 crores after debiting the above interest, depreciation of ₹ 4 crores and income-tax of ₹ 3 crores. Calculate the amount of interest to be disallowed under the head "Profits and gains of business or profession" in the computation of M/s Narmada Ltd., giving appropriate reasons.

Answer

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 (AE) 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 a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the 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 M/s Tweed Inc holds 40% of voting power i.e., more than 26% of voting power in both Narmada Ltd and M/s Tyne Inc, Narmada Ltd. and M/s Tyne Inc are deemed to be associated enterprises.

Since loan of ₹ 80 crores taken by Narmada Ltd., an Indian company from M/s Thames Inc, is guaranteed by M/s Tyne Inc, an associated enterprise of Narmada Ltd., such debt shall be deemed to have been issued by an associated enterprise and interest payable to M/s Thames Inc shall be considered for the purpose of limitation of interest deduction under section 94B.

Computation of interest to be disallowed as per section 94B in the computation of income under the head profits and gains of business or profession of M/s. Narmada Ltd.

Particulars		₹
Net profit		7,00,00,000
Add: Interest already debited (₹ 80 crores x 10%)		8,00,00,000
Depreciation		4,00,00,000
Income tax		3,00,00,000
EBITDA		**22,00,00,000**
Interest paid or payable by Narmada Ltd.		8,00,00,000
Lower of the following would be disallowed		
- Total interest paid or payable in excess of 30% of EBITDA (₹ 8,00,00,000 – ₹ 6,60,00,000)	₹ 1,40,00,000	
- Interest paid or payable to non-resident AE	₹ 8,00,00,000	
Interest to be disallowed as deduction		**1,40,00,000**

Question 28

On 23rd June 2023, R Ltd., an Indian Company borrowed ₹ 100 crores from M Pte. Ltd., a company incorporated in Singapore. The said loan is repayable over a period of 6 years. This loan is guaranteed by L Ltd., a company incorporated in U.S.A. L Ltd. holds 30% shares in R Ltd. R Ltd. provides you the following information with respect to its P/L account.

₹ in lakhs

Particulars	F.Y. 2023-24	F.Y. 2024-25	Particulars	F.Y. 2023-24	F.Y. 2024-25
Employees Benefit Expenses	280	301	Gross Profit	1630	1550
Interest paid to M Pte. Ltd.	589	238			
Depreciation	250	254			
Income Tax	271	232			
Profit transferred to Reserves	240	525			
	1630	**1550**		**1630**	**1550**

Calculate the income under the head Profits and Gains from business and profession of R Ltd. for the Assessment Year 2025-26, 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.

Answer

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

Particulars		Amount (in lakhs)
Interest allowable u/s 94B for A.Y. 2024-25		
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. 2024-25, which can be carried forward up to 8 assessment years		184
Interest allowable u/s 94B for A.Y. 2025-26		
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. 2025-26		Nil

Brought forward interest of A.Y. 2024-25 allowed as deduction against profits and gains of A.Y. 2025-26 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. 2025-26 [₹ 238 lakhs + ₹ 136.70 lakhs)	374.70
Balance interest relating to AY 2024-25 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. 2025-26	
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

Additional

Question 29

Mr. Hari holds 30% of voting power in ABC Inc, a company incorporated under the laws of Country A. For the purpose of expansion of business, the said company enters into an agreement with XYZ Ltd., a company incorporated under the Indian laws. As per one of the clauses of the agreement, ABC Inc has the power to appoint 6 directors of XYZ Ltd., which has 12 directors on the board. Further, total purchases by XYZ Ltd. is estimated to be ₹ 500 crores, out of which, purchases of ₹ 48 crores has been sourced locally and the balance shall be supplied by ABC Inc. The price for entire purchase has been fixed in the agreement and the conditions for supply are determined by ABC Inc.

Advise Mr. Hari as to whether ABC Inc and XYZ Ltd are Associated Enterprises, on the basis of the provisions of the Income-tax Act, 1961.

Answer

Two enterprises shall be deemed to be **associated enterprises** if, at any time during the previous year, **more than half of the board of directors** or members of the governing board, or one or more of the executive directors or executive members of the governing board of one enterprise, are **appointed by the other enterprise**.

In the present case, the power to appoint is only for half the number and not more than half. Hence, **ABC Inc. and XYZ Ltd. are not associated enterprises under this criteria.**

Two enterprises shall be deemed to be **associated enterprises, if 90% or more of the raw materials and consumables** required for manufacture or processing of goods or article carried out by one enterprise, are **supplied by other enterprise**, or by persons specified by other enterprise, and the **prices and other conditions** relating to supply are **influenced by such other enterprise.**

In this case, ABC Inc. supplies more than 90% of the requirements of purchases of XYZ Ltd. Further, the price is controlled by the former by way of written agreement. Also, the conditions for supply are determined by ABC Inc. Hence, the **two entities would be deemed to be associated enterprises under this criterion.**

Question 30

MNO Ltd., having its registered office in Mumbai, is engaged in multiple businesses. It has borrowed ₹ 200 crores from State Bank of India (SBI) for which 100% guarantee was given by the parent company, ABC Inc. of Country A. The total borrowings of MNO Ltd. is ₹ 1,000 crores.

MNO Ltd. buys mobile phones from ABC Inc. The mobile phones are branded for which royalty at ₹ 100 per mobile phone sold is paid to ABC Inc. Similar mobile phones are also sold to other customers in India by ABC Inc. but no royalty is charged from them. The credit period offered to MNO Ltd. is 2 months, whereas for other customers, the credit period is 1 month. During the year, 10 lakh mobile phones were bought for an aggregate sum of ₹ 2,600 crores from ABC Inc. The purchase could be assumed as uniform throughout the financial year 2024-25. The cost of capital may be adopted as 10% per annum. ABC Inc. would have billed ₹ 2,400 crores (excluding interest component for the delay beyond 1 month) for supply of identical quantity of similar mobile phones to other customers. It may be assumed that the entire purchase has been sold out by 31st March, 2025.

Determine the arm's length price (ALP) of the transaction of purchase of mobile phones by MNO Ltd. from ABC Inc., Country A and its impact on the assessable income, if any, for the A.Y. 2025-26.

Answer

MNO Ltd., an Indian company, and ABC Inc., a Country A based company, are associated enterprises as per section 92A, since ABC Inc. is a parent company of MNO Ltd. Thus, the transaction of purchase of mobile handsets by MNO Ltd. from ABC Inc. would be an **international transaction**. The value of international transaction is to be worked out on the basis of Arm's Length Price (ALP).

ABC Inc. is selling mobile phones to unrelated customers, which would be the comparable uncontrolled transaction in this case. The purchase price for unrelated customers has to be adjusted by taking into consideration the functional differences existing between the transactions of ABC Inc. with associated enterprise (MNO Ltd.) and other unrelated parties.

Accordingly, the arm's length price for purchase of mobile phones has to be computed for working out the impact on assessable value **as per CUP method**.

Computation of Arm's Length Price

Particulars	₹ in crores
Purchase price of mobile phones by unrelated parties from ABC Inc.	2,400
Adjustments for functional differences	
Add: Royalty payable by MNO Ltd. [₹ 100 per mobile phone x 10,00,000]	10
Cost of capital for 1 month credit which is not given to unrelated party [10% x ₹ 200 crore (monthly average sales i.e., ₹ 2,400 crore /12 months]	20
Arm's Length Price of 10,00,000 mobile phones (A)	**2430**
Purchase price of mobile phone by MNO Ltd. from ABC Inc., its parent company (associated enterprise) (B)	**2600**
Amount to be added to its total income (B) - (A)	**170**

Note – In case it is assumed that ₹ 10 crores is not included in the price of ₹ 2600 crores, the adjustment of royalty of ₹ 10 crores paid/payable is not required. The ALP in such a case would be ₹ 2,420 crores. The amount to be added to the total income would be ₹ 180 crores

Question 31

Shahi Pvt. Ltd., a domestic company, located in Special Economic Zone (SEZ) since November 2015. The company is engaged in manufacturing of consumables goods. The manufacturing is wholly dependent on raw material which is imported from Sumi Inc. of Japan. The following details are furnished in respect of the financial year 2024-25:

(i) Shahi Pvt. Ltd. imported goods for ₹ 30 crores from Sumi Inc.

(ii) Sumi Inc. supplied similar raw materials to unrelated parties with a mark-up of 10% on cost, whereas for Shahi Pvt. Ltd. it earned a mark-up of 20% on cost.

(iii) Shahi Pvt. Ltd. was allowed to use the brand name of Sumi Inc. without any payment and whereas the unrelated parties cannot use such brand name in India. The annual cost of brand value is ₹ 90 lakhs.

(iv) The Assessing Officer referred the matter to the Transfer Pricing Officer (TPO) for determination of Arm's Length Price (ALP).

You are required to answer the following:

(a) Compute the arm's length price of the transaction and adjustments to be made to the income of Shahi Pvt. Ltd while discussing the relevant provisions.

(b) If Transfer Pricing Officer (TPO) had enhanced the income of Shahi Pvt. Ltd. by ₹ 2 crores, will that enhanced amount of income be eligible for deduction u/s 10AA?

(c) Will Shahi Pvt. Ltd. become liable for penalty for under-reporting of income based on the report of the Transfer Pricing Officer (TPO)?

Answer

(a) Shahi Pvt. Ltd, an Indian company and Sumi Inc. of Japan, are deemed to be associated enterprises as per section 92A(2), since Shahi Ltd.'s manufacturing is wholly dependent on raw material imported from Sumi Inc. Further, the transaction of purchasing raw material falls within the meaning of "international transaction" u/s 92B. Hence, transfer pricing provisions would be attracted in this case.

Computation of Arm's length price and adjustment to be made	**₹ in crores**
Price of imported goods charged by Sumi Inc. from Shahi Pvt. Ltd.	30.00
Less: Mark up earned @ 20% [₹ 30 crores x 20/120] from Shahi Pvt. Ltd.	5.00
	25.00
Add: Mark up earned in uncontrolled comparable transaction @10%	2.50
	27.50
Add: Adjustment on account of brand value [Annual cost of brand value]	0.90
Arm's length price of raw material purchase	**28.40**
Less: Price at which raw material was imported by Shahi Pvt. Ltd. from Sumi Inc.	30.00
Adjustment to be made to the income of Shahi Pvt. Ltd.	**1.60**

(b) Shahi Pvt. Ltd. **cannot claim deduction under section 10AA in respect of ₹ 2 crores**, being the amount of income by which the total income is **enhanced** by the TPO, by virtue of the first proviso to section 92C(4).

(c) **No**, Shahi Pvt. Ltd. would not be liable for **penalty** for under reporting of income based on the report of the TPO, since the amount of under-reported income represented by any addition made in conformity with the arm's length price determined by the Transfer Pricing Officer would not be included within the scope of under-reported income under section 270A, **assuming Shahi Pvt. Ltd. has maintained information and documents**, as prescribed under section 92D, **declared the international transactions** under Chapter X **and disclosed all material facts** relating to the transaction.

Question 32

Beta Ltd., an Indian company, has two units in India, a manufacturing unit in Hyderabad and a trading unit in Surat. Beta Ltd. has entered into various international transactions with its associate enterprises from both the units. The assessment of Beta Ltd., an Indian company, is pending before the Assessing Officer who referred the matter to Transfer Pricing Officer (TPO) for determination of arm's length price (ALP) in respect of its manufacturing unit at Hyderabad. The TPO, however, expanded the scope of his work by calling for details in respect of the trading unit of Beta Ltd. located at Surat.

Examine the procedure to be followed by the Assessing Officer before making reference to TPO. Can the TPO enlarge his scope of work by calling for details of trading activity at Surat, when the Assessing Officer has made reference only in respect of manufacturing unit at Hyderabad? Examine.

Answer

As per section 92CA(1), where the **Assessing Officer** considers it necessary or expedient so to do, he **may refer the computation of the arm's length price** in relation to the international transaction entered by any person, being an assessee, **to the Transfer Pricing Officer (TPO)**.

However, the Assessing Officer has to take the **prior approval of** the Principal Commissioner of Income-tax (PCIT)/Commissioner of Income-tax **(CIT)** before making such a reference.

As per section 92CA(2A), the Transfer Pricing Officer **(TPO) can also determine the ALP of other international transactions** or specified domestic transaction which have **not been referred to him, but which have come to his notice subsequently** in the course of proceedings before him.

The Assessing Officer has made reference for determination of ALP in respect of the manufacturing unit at Hyderabad which shall be taken as the proceedings before him (TPO).

The **TPO can enlarge his scope of work** during the course of proceedings before him of Hyderabad unit by calling for details of trading activity at Surat, and the same is within the powers conferred by section 92CA(2A).

Question 33

Yalin Ltd. is located in Country X, a notified jurisdictional area (NJA). Armo Ltd., a domestic company (the assessee) sold goods to Yalin Ltd. for ₹ 11.75 crore.

During the current financial year, Armo Ltd. sold identical goods to KB Inc., of Edinburgh, U.K. for ₹ 13 crore. KB Inc. is neither situated in any NJA nor it is associated person of Armo Ltd.

While sales to KB Inc., were on CIF basis, the sale to Yalin Ltd. was on FOB basis, which paid ocean freight and insurance amounting to ₹ 25 Lakhs on purchases from Armo Ltd. India has a double taxation avoidance agreement with UK. The assessee has a policy of providing after sales support service to the tune of ₹ 19 lakhs to all customers except Yalin Ltd. which procured the same locally at a cost of ₹ 23 lakhs.

Whether Yalin Ltd. and Armo Ltd. are Associated Enterprises. If yes, compute the Arm's Length Price for the sales made to Yalin Ltd. and the amount of consequent adjustment, if any, in the profits of Armo Ltd., the assessee company. Explain with reasons.

Answer

Since Armo Ltd. entered into a transaction with Yalin Ltd., in Country X which is located in a notified jurisdictional area (NJA), Armo Ltd. and Yalin Ltd. would be deemed as associated enterprises and the transactions between them would be deemed to be international transactions. Accordingly, all the provisions of transfer pricing would be attracted in case of such a transaction.

The transactions of Armo Ltd. with KB Inc., U.K. for sale of identical goods are comparable uncontrolled international transactions, since it is neither associated enterprises of Armo Ltd. nor it is situated in NJA.

Hence, Comparable Uncontrolled Price (CUP) method can be used to determine ALP.

Computation of ALP using CUP method

Particulars	₹ in crores
Price charged by KB Inc. (on CIF basis)	13.00
Less: Ocean freight and insurance, has to be reduced since the price charged to Yalin Ltd. is on FOB basis	0.25
Less: Cost of after-sales support service (has to be reduced, since such services are being provided to KB Inc. but not to Yalin Ltd.)	0.19
Arm's Length Price	**12.56**
Less: Price at which goods were sold to Yalin Ltd.	11.75
Arm's length adjustment [increase in profit of Armo Ltd.]	**0.81**

Question 34

ABC (P) Ltd., Bangalore is engaged in the manufacture of electronic goods and exporting the same to various associated and other enterprises across Southeast Asia. The report with respect to its international transactions with AE has been furnished for all years. The company has applied for APA in respect of the transactions with its AE. Application was filed on 15th April 2024 which was signed on 5th May 2024.

The company also applied in respect of the international transactions to which APA applies for rollback benefit which was agreed and signed in January 2025. The details of the status of income tax assessments are as follows:

- A.Y. 2019-20 – The matter is pending before High Court with regard to acquisition of a company by the assessee and the dispute is about set off of loss of the erstwhile company.

- A.Y. 2020-21 and A.Y. 2021-22 - There is no dispute and the assessments have been completed.
- A.Y. 2022-23 - The assessment for the A.Y. 2022-23 was completed by making reference to the TPO who enhanced the arm's length price of the international transaction by ₹ 500 lakhs.
- A.Y. 2023-24 - ALP of international transaction was disputed before the tribunal which set aside the order for fresh consideration by the Assessing Officer in November 2024.
- A.Y. 2024-25 - The income tax return ('ITR') was filed on 29th December 2024.

If the APA is applied, the ALP determined for the A.Y. 2022-23 would get enhanced by ₹ 300 lakhs as against ₹ 500 lakhs originally determined by TPO.

Discuss the applicability of rollback agreement for various assessment years in case of ABC (P) Ltd.

Answer

Rollback year means any previous year, falling within the period **not exceeding four previous years, preceding first of the five consecutive previous years for which advance pricing agreement is valid.**

The application for advance pricing agreement may be filed at any time before the first day of the previous year relevant to the first assessment year for which the application is made, in respect of transactions which are of a continuing nature from dealings that are already occurring; or before undertaking the transaction in respect of remaining transactions.

Accordingly, the **APA application filed on 15th April 2024 would be in respect of five previous years beginning with P.Y. 2024-25** relevant to the A.Y. 2025-26.

Consequently, APA entered by ABC (P) Ltd. can provide for determining ALP in relation to international transaction entered during **rollback years i.e., from A.Y. 2021-22 to A.Y. 2024-25** subject to satisfaction of certain conditions.

In present case, **since A.Y. 2019-20 and A.Y. 2020-21 fall beyond said four year period, ABC (P) Ltd. cannot avail roll back benefit in respect of these years.** From A.Y. 2021-22 - A.Y. 2024-25, the applicability of rollback provisions would be as follows:

Rollback year	Applicability of rollback provisions
A.Y. 2021-22	**Yes, rollback provisions are applicable** for A.Y. 2021-22.
A.Y. 2022-23	**Yes, rollback provisions are applicable** for A.Y. 2022-23 even if ALP adjustment was reduced to addition of ₹ 300 lakhs as against addition of ₹ 500 lakhs originally determined by the TPO on account of APA, since such reduction in the amount of ALP adjustment **does not result in reducing the total income** or increasing the total loss, as **declared in the return of income** of the said year by ABC (P) Ltd.
A.Y. 2023-24	**Yes, roll back provisions are applicable** for A.Y. 2023-24, since ITAT has only set aside the order for fresh consideration and the matter has not reached finality.
A.Y. 2024-25	**No, rollback provisions are not applicable** for A.Y. 2024-25, since the **return was filed belatedly** u/s 139(4) on 29.12.2024.

CHAPTER - 22
Advance Rulings

Question 1

The term 'Advance Ruling' includes within its scope, a determination by the Board for Advance Rulings only in relation to a transaction undertaken by a non-resident applicant. Examine the correctness of this statement, with reference to the provisions of the Income-tax Act 1961.

Answer

The **statement is not correct.** As per section 245N, advance ruling not only includes a determination by the BAR in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant, but also includes, inter alia, determination by the BAR –

(i) **in relation to the tax liability of a non-resident** arising out of a transaction which has been undertaken or is proposed to be undertaken **by a resident applicant** with such non-resident

(ii) **in relation to the tax liability of a resident applicant,** arising out of a **transaction** which has been undertaken or is proposed to be **undertaken by such applicant** and such determination shall include the determination of any question of law or of fact specified in the application.

Question 2

Examine when can an advance ruling pronounced by the Board for Advance Rulings be declared void. What is the consequence?

Answer

As per section 245T, an advance ruling can be declared to be **void ab initio** by the Board for Advance Rulings if, on a representation made to it by the Principal Commissioner or Commissioner or otherwise, it finds that the ruling has been obtained by **fraud or misrepresentation of facts**. Thereafter, all the provisions of the Act will apply as if no such advance ruling has been made. A copy of such order shall be sent to the applicant and Principal Commissioner or Commissioner.

Question 3

The Board for Advance Rulings has the powers of compelling the production of books of account – Examine the correctness or otherwise of this statement.

Answer

The statement is correct.

Under section 245U, the Board for Advance Rulings shall have all the powers vested in the Civil Court under the Code of Civil Procedure, 1908 as are referred to in section 131.

Accordingly, the BAR shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely -

(1) **discovery and inspection;**

(2) **enforcing the attendance** of any person and examining him on oath;

(3) **compelling the production of books** of account and other documents; and

(4) **issuing commissions.**

Therefore, Board for Advance Ruling has the powers of compelling production of books of account.

Question 4

What is the remedy available to an applicant who is aggrieved by the ruling of Board for Advance Rulings? Also, state the time limit within which he should exercise this remedy.

Answer

An applicant who is aggrieved by any ruling pronounced by the Board for Advance Rulings may **appeal to the High Court against such ruling or order of the Board of Advance Rulings.** He has to do so **within sixty days** from the date of the communication of that ruling, in the prescribed form and manner.

However, where the High Court is satisfied, on an application made by the appellant in this behalf, that the **appellant was prevented by sufficient cause** from presenting the appeal within the 60 day period as specified above, **it may grant further period of 30 days for filing such appeal.**

Question 5

Examine the correctness or otherwise of the following:

(a) Mr. Rikky, a resident individual, is aggrieved by an order passed by the Board for Advance Ruling. Since the decision of the Board is binding on the applicant, he has no other option but to accept the ruling of the Board.

(b) M/s Aritri Ltd., an Indian public sector company, wants to seek advance ruling from the Board for Advance Ruling (BOAR) in respect of a matter relating to computation of its total income involving a question of law relating to such computation. However, the matter is already pending before the Income-tax Appellate Tribunal (ITAT) as on the date of application for advance ruling. It cannot seek the BOAR ruling till the matter is pending before the ITAT.

Answer

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

The binding provision will not apply to an advance ruling pronounced by the Board of Advance Ruling. Therefore, order passed by the Board for Advance Ruling is **not binding** on Mr. Rikky.

He **may appeal to the High Court** against such order **within sixty days** from the date of the communication of that order.

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

A resident falling within any class or category of persons as notified by the Central Government i.e., **a public sector undertaking can seek advance ruling even if question raised is pending before the Appellate Tribunal.**

Question 6

Q, a non-resident, made an application to the Board for Advance Rulings on 3.4.2024 in relation to a transaction proposed to be undertaken by him. On 1.5.2024, he decides to withdraw the said application. Can he withdraw the application on 1.5.2024?

Answer

Section 245Q(3) of the Income-tax Act, 1961 provides that an applicant, who has sought for an advance ruling, **may withdraw the application within 30 days** from the date of the application. Since the 30 day period from the date of application by Q to the Board for Advance Rulings has not lapsed, **he can withdraw the application.**

Question 7

The Indian branch of D Co Ltd, Country K has carried out some transactions with LT Co Ltd, Bengaluru. The value of the transaction is ₹ 600 crores. LT Co Ltd. applied for advance ruling in January, 2025 to know exactly the tax consequences of its transactions with the non-resident D Co Ltd., Country K, both for itself and on non-resident. Application for ruling is accepted by Board for Advance Rulings (BAR). On 30.4.2025, BAR pronounced its ruling and said ruling was communicated to LT Co. Ltd. on the same date. LT Co. Ltd. was, however, not satisfied with said ruling.

State whether the advance ruling pronounced by BAR is binding on LT Co. Ltd. Is there any remedy available to LT Co. Ltd. if it is aggrieved with the said ruling? Examine.

Answer

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

Accordingly, if LT Co. Ltd. is aggrieved by the advance ruling pronounced by BAR, it can file an appeal before the High Court on or before 29th June 2025. The High Court can grant extension of a further period of 30 days for filing the appeal, if it is satisfied, on an application made by LT Co. Ltd. in this behalf, that it was prevented by sufficient cause from presenting the appeal within the 60 days period as specified above.

Question 8

A Non-resident Foreign Company entered into contracts with several Indian Companies for installation of mobile telephone system and made an application to the Board of Advance Rulings, for advance ruling in relation to the tax liability arising out of such transaction.

One of the above said Indian Companies also made an application to its Assessing Officer for determination of a question of law with regard to payments to be made to the said Foreign Company.

The Board of Advance Rulings rejected the application of the Foreign Company on the ground that the question raised is pending before an Income Tax Authority. Is the rejection of the application of the Foreign Company justified in law?

Or

An Irish company, Phi plc., entered into a contract with an Indian company, Beta Ltd., for provision of technical know-how and made an application to the Board for Advance Rulings for advance ruling on the rate of withholding tax on receipts from Beta Ltd. Beta Ltd. had also made an application to the Assessing Officer for determination of the rate at which tax is deductible on the said payment to Phi plc. The Board for Advance Rulings rejected the application of Phi plc. on the ground that the question raised in the application is already pending before an income tax authority. Is the rejection of the application of Phi plc. justified in law?

Answer

As per section 245R, the Board for Advance Rulings (BAR), after examining the application and the records called for, may either allow or reject an application. However, the **Board shall not allow an application where the question raised in the application is already pending before any income-tax authority, or Appellate Tribunal or any court.**

In the present case, the **question raised** by a non-resident foreign company with respect to tax liability on income arising from installation of mobile telephone system **is already pending before the Assessing Officer** on account of application made by one of the Indian Companies for determination of question of law with regard to the payments made to the said foreign company.

Since such question is already pending before the Income-tax Authority, the **rejection of application of the foreign company by the BAR is justified in law.**

CHAPTER - 23

Taxation of Digital Transactions (Equalisation Levy)

Equalisation Levy on Specified Services

Question 1

Mr. Bharat has opened an office of Alpha Pvt. Ltd., a Country A based company, in Pune from where he and Mr. Ashok execute the work of the company relating to Indian operations. Alpha Pvt. Ltd. is further considering advertising the product on internet using Facepad. Alpha Pvt. Ltd. enters into talks with Facepad Inc. for hosting the desired advertisements. It negotiated a sum of ₹ 20 lakhs, which is paid to Facepad Inc. for online advertisement services in March. Assume that Facepad does not have a permanent establishment in India.

(i) Is the fee paid for online advertisement services by Alpha Pvt. Ltd. to Facepad Inc. taxable in India? Examine.

(ii) If the answer to (a) is in the affirmative, is there any requirement to deduct equalisation levy? If equalisation levy is not so deducted, what would be the consequence?

(iii) As per which action plan of BEPS was this provision incorporated in Indian tax laws?

(iv) What is the provision incorporated in Indian tax laws to avoid double taxation of such income?

Answer

(i) **Equalisation levy@6% is attracted** on the amount of consideration for specified services received or receivable by a non-resident not having PE in India from a resident in India who carries on business or profession or from a non-resident having PE in India. Specified services include **online advertisement and any provision for digital advertising space** or any other facility or service for the purpose of online advertisement.

In this case, Alpha Pvt. Ltd. is a non-resident having a PE in India. Since there is an office in Pune for carrying on work of the company, Alpha Ltd. has a PE in India. Facepad Inc is a non-resident not having PE in India. It receives consideration of ₹ 20 lakhs from Alpha Pvt. Ltd., a non-resident having PE in India, for online advertisement services provided by it. Hence, **equalization levy @6% on ₹ 20 lakhs is attracted in the hands of Facepad Inc.**

In the hands of Alpha Pvt. Ltd., the amount of ₹ 20 lakhs paid to Facepad Inc. would be allowable as business expenditure, provided equalization levy has been deducted at source.

(ii) **Alpha Pvt. Ltd. is liable to deduct equalization levy of ₹ 1,20,000** from the amount of ₹ 20 lakhs payable to Facepad Inc. In case it fails to deduct equalization levy, **disallowance of the expenditure of ₹ 20 lakhs would be attracted u/s 40(a)(ib)** while computing business income of Alpha Pvt. Ltd.

(iii) **BEPS Action Plan 1** "Addressing Challenges of the Digital Economy"

(iv) **Section 10(50)** of the Income-tax Act, 1961 exempts income arising from providing specified service of online advertisement, which are subject to equalization levy, from income-tax.

Question 2

ABC ltd., an Indian company, is carrying on the business of manufacture and sale of teakwood furniture under the brand name "PUREWOOD". In order to expand its overseas sales/exports, it launched a massive advertisement campaign of its products. For the purpose of online advertisement, it utilized the services of PQR Inc., a London based company. During the year, ABC Ltd. paid ₹ 5 lakhs to PQR Inc. for such services. Discuss the tax implications/TDS implications of such payment and receipt in the hands of ABC Ltd. and PQR Inc., respectively, if –

(i) PQR Inc. has no permanent establishment in India

(ii) PQR Inc. has a permanent establishment in India, and the service is effectively connected to the permanent establishment in India

Answer

Chapter VIII of the Finance Act, 2016, "Equalisation Levy", provides for an equalisation levy of 6% of the amount of consideration for specified services received or receivable by a non-resident not having permanent establishment in India, from a resident in India who carries out business or profession, or from a non-resident having permanent establishment in India.

"Specified Service" means

(1) **online advertisement**;

(2) any provision for **digital advertising space** or any other facility or service for the purpose of online advertisement and

(3) any other service as may be notified by the Central Government.

However, equalisation levy shall **not** be levied-

- where the non-resident providing the specified services has a **permanent establishment in India** and the specified service is effectively connected with such permanent establishment.
- the **aggregate amount of consideration** for specified service received or receivable during the previous year **does not exceed ₹ 1 lakh.**
- Where the **payment for specified service is not for** carrying out **business or profession.**

(i) Where PQR Inc. has no permanent establishment in India

In the present case, **equalisation levy @6% is chargeable** on the amount of ₹ 5,00,000 received by PQR Inc., a non-resident not having a PE in India from ABC Ltd., an Indian company. Accordingly, **ABC Ltd. is required to deduct equalisation levy of ₹ 30,000** i.e., @6% of ₹ 5 lakhs, being the amount paid towards online advertisement services provided by PQR Inc., a non-resident having no permanent establishment in India. **Non-deduction of equalisation levy would attract disallowance under section 40(a)(ib) of 100% of the amount paid while computing business income.**

Since, equalisation levy is attracted on the amount of ₹ 5 lakhs, the said amount is exempt from Income-tax by virtue of section 10(50) of the Income-tax Act, 1961.

(ii) Where PQR Inc. has permanent establishment in India and the service is effectively connected to the permanent establishment in India

Equalisation levy would not be attracted where the non-resident service provider (PQR Inc., in this case) has a permanent establishment in India and the service is effectively connected to the permanent establishment in India. **Therefore, the ABC Ltd. is not required to deduct equalisation levy** on ₹ 5 lakhs, being the amount paid towards online advertisement services to PQR Inc, in this case.

Since equalisation levy is not attracted in this case, exemption under section 10(50) of the Income-tax Act, 1961 would not be available. Therefore, **tax has to be deducted by ABC Ltd. at the rates in force under section 195** in respect of such payment to PQR Inc. **Non-deduction of tax at source under section 195 would attract disallowance under section 40(a)(i) of 100% of the amount paid while computing business income.**

Question 3

MNO Inc., a Country A based company, is carrying on the business of manufacture and sale of furniture under the brand name "PUREWOOD". In order to increase its share in Indian market, it launched a massive advertisement campaign of its products. For purpose of online advertisement, it utilized the services of PQR Inc., a Country Y based company. During the year, MNO Inc. paid ₹ 5 lakhs to PQR Inc. for such services. Discuss the tax implications in the hands of MNO Inc., if –

(i) both MNO Inc. and PQR Inc. have no permanent establishment (PE) in India

(ii) MNO Inc. has a PE in India but PQR Inc. has no PE in India

Answer

Chapter VIII of the Finance Act, 2016, "Equalisation Levy", provides for an equalisation levy of 6% of the amount of consideration for specified services received or receivable by a non-resident not having permanent establishment in India, from a resident in India who carries out business or profession, or from a non-resident having permanent establishment in India.

"**Specified Service**" means

(1) **online advertisement;**

(2) any provision for **digital advertising space** or any other facility or service for the purpose of online advertisement and

(3) any other service as may be notified by the Central Government.

However, equalisation levy shall **not** be levied-

- where the non-resident providing the specified services **has a permanent establishment in India** and specified service is effectively connected with such permanent establishment.
- the **aggregate amount of consideration** for specified service received or receivable during the previous year **does not exceed ₹ 1 lakh.**
- Where **payment** for specified service is **not for** purposes of carrying out **business or profession.**

(i) <u>Where MNO Inc. and PQR Inc. have no permanent establishment in India</u>

Equalisation levy would not be attracted in the present case since MNO Inc., a non-resident service recipient does not have a permanent establishment in India. Therefore, the **MNO Inc. is not required to deduct equalisation levy @ 6%** on ₹ 5 lakhs, being the amount paid towards online advertisement services to PQR Inc.

(ii) Where MNO Inc. has a permanent establishment in India but PQR Inc. does not have a permanent establishment in India

In the present case, **equalisation levy @6% is chargeable on the amount of ₹ 5,00,000** received by PQR Inc., a non-resident not having a PE in India from MNO Inc., a non-resident having a PE in India. Accordingly, **MNO Inc. is required to deduct equalisation levy of ₹ 30,000** i.e., @6% of ₹ 5 lakhs, being the amount paid towards online advertisement services provided by PQR Inc., a non-resident having no permanent establishment in India. **Non-deduction of equalisation levy would attract disallowance under section 40(a)(ib) of 100% of the amount paid while computing business income.**

Since, equalisation levy is attracted on the amount of ₹ 5 lakhs, the said amount is exempt from income-tax by virtue of section 10(50) of the Income-tax Act, 1961.

Question 4

ABC Inc., a company incorporated in USA, owns and manages a website which acts as a marketplace for buying and selling of goods and also hosts advertisement. ABC Inc. has no physical presence in India and no permanent establishment in India.

Raghu Ltd is a domestic Indian company. Raghu Ltd made a payment of ₹ 3,00,000 on 30.6.2024 towards procuring online advertisement space to ABC Inc. for his business. Raghu Ltd. remitted the equalization levy on 23.3.2025.

For the purpose of online advertisement, Raghu Ltd. also took the services of LMF Inc., a UK based company who has a permanent establishment in India and the service is effectively connected to the permanent establishment. During the year, Raghu Limited paid ₹ 4,50,000 to LMF Inc.

Discuss the implications of Equalisation levy alongwith its due date of payment and its implications on Raghu Limited, in above circumstances. Does any of the above payment have any impact as per the TDS provisions under the Income-tax Act?

Answer

Implications of Equalisation Levy and due date of payment in respect of transaction with ABC Inc.

Raghu Ltd. is required to **deduct equalisation levy of ₹ 18,000 i.e. @ 6% of ₹ 3 lakhs,** being the amount paid or payable towards online advertisement services provided by ABC Inc., a non-resident not having permanent establishment in India.

Raghu Ltd. has to **pay the equalization levy to the credit of the Central Government by 7.7.2024,** being the 7th of the month immediately following the calendar month in which it is so deducted.

Since Raghu Ltd. has remitted the equalization levy on 23.3.2025, it has to pay **simple interest of ₹ 1,620** @ 1% of ₹ 18,000 for 9 months (from July 2024 to March 2025), being the months by which such crediting of the tax is delayed.

Penalty of ₹ 1,000 per day for which failure continues would be levied for delay in payment of equalization levy. However, such penalty cannot exceed the amount of equalization levy of ₹ 18,000.

TDS impact in respect of transaction with ABC Inc.

Section 10(50) provides that any income arising from providing any specified service which is chargeable to equalisation levy would be exempt from income-tax. Therefore, **₹ 3 lakhs would be exempt from income-tax in the hands of ABC Inc. and accordingly, no tax is required to be deducted by Raghu Ltd.**

Implications of Equalisation Levy and due date of payment in respect of transaction with LMF Inc.

Equalisation levy would not be attracted where the non-resident service provider (LMF Inc., in this case) has a permanent establishment in India and the service is effectively connected to the permanent establishment in India.

Since equalisation levy would not be attracted in respect of transaction with LMF Inc., there is no implications on Raghu Ltd.

TDS impact in respect of transaction with LMF Inc.

Since LMF Inc. has a PE in India and advertisement services are effectively connected with the PE in India, **such advertisement income would be deemed to accrue or arise in India in the hands of LMF Inc. u/s 9(1)(i)** and be taxable in the hands of LMF Inc. under the Income-tax Act, 1961.

Tax has to be deducted by Raghu Ltd. at the rates in force **under section 195** on ₹ 4,50,000 on payment to LMF Inc.

Interest and Penalty

Question 5

Raghu Ltd made a payment of ₹ 3,00,000 on 30.6.2024 towards procuring online advertisement space to a foreign company which had no place of business in India. The company remitted the equalization levy on 23.1.2025. Calculate interest and penalty payable by Raghu Ltd. if any.

Answer

Interest for failure to remit the equalization levy

An assessee who fails to credit the equalisation levy or any part thereof within 7th of the month following the calendar month in which it is deducted, to the account of the Central Government, has to pay simple **interest at the rate of 1% of such levy for every month or part of a month** by which such crediting of the tax or any part thereof is delayed.

In the present case, **Raghu Ltd. is required to remit the equalization levy of ₹ 18,000 i.e., 6% of ₹ 3,00,000 by 07.7.2024.** However, since it remitted the said levy only on 23.1.2025, the **interest ₹ 1,260 i.e., @1% would be levied for 7 months.**

Penalty for failure to pay equalisation levy

Failure to remit equalisation levy to the Central Government on or before 7th of the following month, after deduction would attract a **penalty of ₹ 1,000 for every day during which failure continues.** However, **such penalty shall not exceed the amount of equalisation levy that he failed to pay.**

Thus, in the present case, **penalty of ₹ 2,00,000 (₹ 1000 x 200 days) would be limited to ₹ 18,000,** being the amount of equalization levy which the assessee has failed to pay.

Question 6

Sun Ltd., an Indian company, is engaged in the business of manufacture and sale of carpets. To expand its international sales, it hired the services of a London based company, Shine Inc., for online advertisements. Shine Inc. has no permanent establishment in India. During the year, Sun Ltd. paid ₹ 5 lakh to Shine Inc. for such services and deducted the equalization levy on 15.03.2025 and credited it to the account of Central Government on 15.04.2025.

You are required to -

(i) Compute interest leviable to Sun Ltd. on the delayed payment of equalization levy.

(ii) What are the circumstances under which penalty cannot be imposed?

(iii) Sun Ltd. is aggrieved by the order imposing penalty. What is the time limit for filing of appeal against the order of the Assessing Officer imposing the penalty?

Answer

(i) Interest for delayed remittance of equalization levy

Equalisation levy = 6% of ₹ 5 lakh = ₹ 30,000

The equalization levy deducted on 15.3.2025 has to be paid to the credit of the Central Government by 7.4.2025 (i.e., 7^{th} of the succeeding month).

However, in this case, Sun Ltd. remitted the same only on 15.4.2025. The delay in this case is 8 days.

Simple interest@1% is leviable per month or part of month by which crediting of tax is delayed.

Accordingly, **interest would be 1% of ₹ 30,000 = ₹ 300**

(ii) Circumstances under which penalty cannot be imposed

No penalty for failure to deduct or pay equalisation levy shall be imposable, if Sun Ltd. proves to the satisfaction of the Assessing Officer that there was **reasonable cause** for the said failure.

Further, no order imposing a penalty shall be made unless Sun Ltd. has been given a reasonable **opportunity of being heard.**

(iii) Time limit for filing appeal

If Sun Ltd. is aggrieved by the order imposing penalty, it may **appeal to Commissioner (Appeals) within a period of 30 days** from the date of receipt of the order of the Assessing Officer imposing the penalty.

CHAPTER - 24
Fundamentals of BEPS

Question 1

What do you understand by base erosion and profit shifting? Describe briefly its adverse effects.

Answer

Base Erosion and Profit Shifting (BEPS) refers **to tax** planning **strategies that exploit gaps and mismatches in tax rules to make profits 'disappear'** for tax purposes **or to shift profits** to locations where there is little or no real activity but the taxes are low, **resulting in little or no overall corporate tax being paid.**

Adverse Effects of BEPS:

(1) **Governments** have to cope with **less revenue and a higher cost** to ensure compliance.

(2) In developing countries, the lack of tax revenue leads to significant under-funding of public investment that could help **foster economic growth.**

(3) BEPS undermines the integrity of the tax system, as reporting of low corporate taxes is considered to be unfair. When tax laws permit businesses to reduce their tax burden by shifting their income away from jurisdictions where income producing activities are conducted, other taxpayers, especially **individual taxpayers** in that jurisdiction **bear a greater share of the burden.** This gives rise to tax fairness issues on account of individuals having to bear a higher tax burden.

(4) **Enterprises that operate only in domestic markets,** including family-owned businesses or new innovative businesses, **may have difficulty competing with MNEs** that have the ability to shift their profits across borders to avoid or reduce tax. Fair competition is harmed by the distortions induced by BEPS.

Question 2

What are the significant OECD Recommendations under Action Plan 1 of BEPS? Which recommendation has been adopted in Indian tax laws?

Answer

The OECD has recommended several options to tackle the direct tax challenges which include:

(1) **Modifying the existing Permanent Establishment (PE) rule** to provide that whether an enterprise engaged in fully de-materialized digital activities would constitute a PE, if it maintained a significant digital presence in another country's economy.

(2) **A virtual fixed place of business PE in the concept of PE** i.e., creation of a PE when the enterprise maintains a website on a server of another enterprise located in a jurisdiction and carries on business through that website.

(3) **Imposition of a final withholding tax on certain payments for digital goods or services provided by a foreign e-commerce provider or imposition of a equalisation levy** on consideration for certain digital transactions received by a non-resident from a resident or from a non-resident having permanent establishment in other contracting state.

Taking into consideration potential of new digital economy and rapidly evolving nature of business operations, it becomes necessary to address challenges of taxation of such digital transactions.

The **concept of 'Significant Economic Presence'** (SEP) which is similar to the virtual fixed place PE as recommended in the 2015 BEPS Action Plan 1 report has been introduced in the Income-tax Act, 1961 vide Explanation 2A to section 9(1)(i).

Significant economic presence of a non-resident in India shall also constitute business connection in India. Significant economic presence means:

	Nature of transaction	Condition
(a)	in respect of any goods, services or property carried out by a non-resident with any person in India including provision of download of data or software in India.	Aggregate of payments arising from such transaction or transactions during the previous year should exceed ₹ 2 crores.
(b)	systematic and continuous soliciting of business activities or engaging in interaction with users in India	The number of users should be atleast 3 lakhs.

In order to address these challenges, Chapter VIII of the Finance Act, 2016, titled **"Equalisation Levy"**, provides for an equalisation levy of 6% of the amount of consideration for specified services received or receivable by a non-resident not having permanent establishment in India, from a resident in India who carries out business or profession, or from a non-resident having permanent establishment in India. This is provided for in section 165 of the Finance Act, 2016.

Meaning of "Specified Service":

(1) Online advertisement;

(2) Any provision for digital advertising space or any other facility or service for the purpose of online advertisement;

Specified Service also includes any other service as may be notified by the Central Government.

Further, in order to reduce burden of small players in the digital domain, it is also provided that no such levy shall be made if the aggregate amount of consideration for specified services received or receivable by a non-resident from a person resident in India or from a non-resident having a permanent establishment in India does not exceed ₹ 1 lakh in any previous year.

Question 3

What is meant by Digital economy? What are the taxation issues in E-Commerce? List out the OECD recommendations under Action Plan 1 which deals with the digital economy.

Answer

In digital economy **transactions like sale, purchase, payment, rendering services are performed through digital or virtual mode.** In the digital domain, business do not actually occur in any physical location but instead takes place in "cyberspace."

Taxation issues in e-commerce

The typical taxation issues relating to e-commerce are:

(i) **difficulty in characterizing the nature of payment** and establishing a nexus or link between taxable transaction, activity and a taxing jurisdiction,

(ii) **difficulty of locating transaction,** activity and identifying taxpayer for income tax purposes.

The **following are OECD recommendations under Action Plan 1** dealing with digital economy:

(1) **Modifying the existing permanent establishment rule** to provide for whether an enterprise engaged in fully de-materialized digital activities would constitute a PE, if it maintained a significant digital presence in another country's economy.

(2) **a virtual fixed place of business in the concept of permanent establishments** i.e., creation of a PE when the enterprise maintains a website on a server of another enterprise located in a jurisdiction and carries on business through that website.

(3) **Imposition of a final withholding tax on certain payments** for digital goods or services provided by a foreign e-commerce provider or imposition of equalisation levy on consideration for certain digital transactions received by a non-resident from a resident or from a non-resident having permanent establishment in other contracting state.

Question 4

What are the ways in which hybrid mismatch arrangements are used to achieve unintended double non-taxation or long-term tax deferral?

Answer

Hybrid mismatch arrangements are sometimes used to achieve unintended double non-taxation or long-term tax deferral in one or more of the following ways -

(1) Creation of **two deductions** for a single borrowal;

(2) Generation of **deductions without** corresponding **income inclusions;**

(3) Misuse of foreign tax credit; and

(4) Participation **exemption regimes.**

Question 5

Discuss the provision incorporated in the Income-tax Act, 1961 in line with the OECD recommendations under Action Plan 4 of BEPS.

Answer

In line with the recommendations of OECD BEPS Action Plan 4, section 94B has been inserted in the Income-tax Act, 1961 by the Finance Act, 2017 to provide a cap on the interest expense that can be claimed by an entity to its associated enterprise. **The total interest paid in excess of 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to associated enterprise for that previous year, whichever is less, shall not be deductible.**

The provision is applicable to an Indian company, or a permanent establishment of a foreign company, being the borrower, who pays interest in respect of any form of debt issued by a non-resident who is an 'associated enterprise' of the borrower. Further, the debt is deemed to be treated as issued by an associated enterprise where it provides an implicit or explicit guarantee to the lender, being a non-associated enterprise, or deposits a corresponding and matching amount of funds with such lender.

The provision allows for **carry forward of disallowed interest expense for 8 assessment years** immediately succeeding the assessment year for which the disallowance is first made and deduction against the income computed under the head "Profits and gains of business or profession" to the extent of maximum allowable interest expenditure.

In order to target only large interest payments, it provides for a threshold of interest expenditure of ₹ 1 crore in respect of any debt issued by a non-resident associated enterprise exceeding which the provision would be applicable. **Banks, Insurance business, finance company located in any IFSC and** class of **NBFCs** notified by the Government **are excluded** from the ambit of the said provisions keeping in view of special nature of these businesses.

Question 6

In what context is the term "Thin Capitalisation" used? Is there any threshold limit prescribed by the Act for claiming deduction u/s 94B of the Act for addressing Thin Capitalisation? Discuss its applicability to different entities. Whether any entities are excluded from its application?

Or

What is meant by Thin Capitalisation? Which action plan of BEPS addresses Thin Capitalisation? Explain the provision incorporated in the Income-tax Act, 1961 to address Thin Capitalisation.

Answer

Thin capitalization refers to the process of **funding an entity by debt instead of equity** with a view to take advantage of interest deduction benefits. In other words, thin capitalization refers to the situation where a company is financed through a relatively high level of debt compared to equity.

In line with the recommendations of **OECD BEPS Action Plan 4**, section 94B has been inserted in the Income-tax Act, 1961.

For addressing thin capitalization, **section 94B** provides a cap on the interest expense that can be claimed by an entity in respect of borrowings from its non-resident associated enterprise. As per section 94B, the **total interest paid in excess of 30% of its EBITDA** (Earnings before interest, taxes, depreciation and amortization) **or interest paid or payable to associated enterprise for that previous year, whichever is less, shall not be deductible.** This limitation of interest deduction would be applicable only where the interest expenditure in respect of any debt issued by a non-resident associated enterprise exceeds ₹ 1 crore.

Section 94B is **applicable to an Indian company, or a permanent establishment of a foreign company in India**, being the borrower incurring interest expenditure in respect of debt issued by its non-resident associated enterprise. Debt shall be deemed to have been issued by an associated enterprise, even where the lender is not an associated enterprise, if an associated enterprise provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender.

The **following has been excluded** from the applicability of the provisions of section 94B -

- an Indian company or permanent establishment of a foreign company which is **engaged in the business of banking, insurance and NBFCs.**
- interest paid in respect of a debt issued by a lender which is a permanent establishment in India of a non-resident, being a person engaged in the business of banking.

Question 7

Explain the nexus approach recommended by OECD in BEPS Action Plan 5 which has been adopted in the Income-tax Act, 1961.

Or

Explain the action plan for taxation of income arising from intellectual property rights in India on the basis of OECD recommendations for BEPS action plan-5.

Answer

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

The nexus approach has been recommended by the OECD under BEPS Action Plan 5. This approach requires attribution and taxation of income arising from exploitation of Intellectual property (IP) in the jurisdiction where substantial research and development (R & D) activities are undertaken instead of the jurisdiction of legal ownership.

Accordingly, **section 115BBF has been inserted in the Income-tax Act, 1961 to provide that where the total income of the eligible assessee (being a person resident in India** who is the true and first inventor of the invention and whose name is entered in the patent register as the patentee in accordance with the Patents Act, 1970 and includes every such person, being the true and the first inventor of the invention, where more than one person is registered as patentee under Patents Act, 1970 in respect of that patent.) includes any income by way of **royalty in respect of a patent developed and registered in India, then such royalty shall be taxable at the rate of 10%** (plus applicable surcharge and cess).

For this purpose, developed means **atleast 75% of the expenditure should be incurred in India** by the eligible assessee for any invention in respect of which patent is granted under the Patents Act, 1970.

Question 8

Which action plan of BEPS requires introduction of Limitation of Benefits clause in a tax treaty? Has India introduced Limitation of Benefits clause in its tax treaties in line with the BEPS Action Plan? Discuss.

Answer

BEPS Action Plan 6 – Preventing Treaty Abuse requires introduction of Limitation of Benefits (LOB) clause or Principal Purpose Test (PPT) rule or both to protect against treaty shopping. Treaty shopping is a practice by which a **resident of a third country takes advantage of beneficial treaty provisions between two countries** by establishing a shell or conduit company in one of the two countries, where tax incidence is low.

Given the risk to revenues posed by treaty shopping, countries have committed to ensure a minimum level of protection against treaty shopping (the minimum standard). That commitment will require countries to include in their tax treaties an express statement that their common intention is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping arrangements.

Accordingly, on 10th May, 2016, India and Mauritius has signed a protocol amending the **India-Mauritius tax treaty** at Mauritius. In the said treaty, for the first time, it has been provided that gains from the alienation of shares acquired on or after 1.4.2017 in a company which is a resident of India may be taxed in India. The tax rate on such capital gains arising during the period from 1.4.2017-31.3.2019 should, however, not exceed 50% of the tax rate applicable on such capital gains in India. **A Limitation of Benefit (LOB) Clause has been introduced** which provides that a resident of a Contracting State shall not be entitled to the benefits of 50% of the tax rate applicable in transition period if its affairs are arranged with the primary purpose of taking advantage of concessional rate of tax. Further, a shell or a conduit company claiming to be a resident of a Contracting State shall not be entitled to this benefit. A shell or conduit company has been defined as any legal entity falling within the meaning of resident with negligible or nil business operations or with no real and continuous business activities carried out in that Contracting State.

Question 9

Describe 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.

Answer

Action 13 contains a three-tiered standardized approach to transfer pricing documentation which consists of:

(a) **<u>Master file</u>**: 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.

(b) **<u>Local file</u>**: 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.

(c) **<u>Country-by-country (CBC) report</u>**: 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.**

Question 10

Examine and state the correctness or otherwise of each of the following in the context of BEPS Action Plan and Income-tax Act, 1961 and answer in brief with reasons/contents thereof:

(i) "Country by Country (CBC) report not requires Multi National Enterprises (MNEs) to provide an annual report of economic indicators". Explain with reference to BEPS Action Plan.

(ii) What are the basic three fundamental pillars of BEPS Action Plans?

(i) Why there is a need for international collaboration to protect tax sovereignty of its countries?

Answer

(i) Incorrect – Country by Country (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.

(ii) The Action Plans were structured around three fundamental pillars viz.:

(a) Introducing **coherence** in the domestic rules that affect cross-border activities.

(b) Reinforcing of **'substance'** requirements in existing international standards; Alignment of taxation with location of value creation and economic activity; and

(c) Improving **transparency and tax certainty.**

(iii) There is a need for countries to collaborate on tax matters so that they are able to get their due share of taxes due to following reasons:

- The interaction of **separate sets of domestic laws** enforced by sovereign countries **causes frictions**, including potential double taxation for corporations operating in many countries.
- It also causes gaps, in cases where **corporate income is untaxed**, both in the country of source and in the country of residence, **or is taxed only at nominal rates.**
- BEPS relates primarily to instances where the interaction of different tax rules & tax systems leads to **double non-taxation.**
- It also relates to arrangements that achieve no or low taxation by shifting profits away from the jurisdictions where the activities creating those profits take place.

Question 11

Whether MLI provisions will apply in the following scenarios?

(a) Country A and Country B are signatories to the MLI. Both countries have ratified the MLI agreement as per their domestic legislative process. Country A has notified DTAA with Country B as a CTA, however, Country B has not notified DTAA with Country A.

(b) Country A - Country B DTAA is a CTA under Article 2 of the MLI as both the countries have notified the concerned DTAA. Country A has ratified the MLI under their domestic laws and has deposited the ratification instrument. Country B has not ratified the MLI owing to political instability in their country. In this regard, Country A wishes to invoke the MLI provisions while accessing the Country A – Country B DTAA. Is the action of Country A valid?

Answer

(a) **Since Country B has not notified DTAA** with Country A as CTA, the **MLI provisions will not apply** with regard to the Country A - Country B DTAA, as per Article 2 of the MLI.

(b) Under Article 34 - Entry into Force of the MLI, only when a Country deposits its instrument of ratification, the MLI will enter into force according to the timelines stipulated in the mentioned Article. In the given scenario, **since Country B has not ratified the MLI,** consequently, the MLI with regards to Country B has not entered into force yet. Hence, Country A - Country B CTA under MLI is not in force yet and, therefore, **provisions of the MLI are not applicable. The action of Country A is, therefore, invalid.**

CHAPTER - 25

Application & Interpretation of Tax Treaties

Question 1

What do you mean by double taxation? Discuss the connecting factors which lead to double taxation.

Or

Briefly discuss Jurisdictional double taxation and Economic double taxation. How does the tax law provide for remedial measures?

Answer

The taxability of a foreign entity in any country depends upon two distinct factors, namely, whether it is doing business with that country or in that country. Internationally, term used to determine the jurisdiction for taxation is "connecting factors". **There are two types of connecting factors, namely, "Residence" and "Source".** It means a company can be subject to tax either on its residence link or its source link with a country. Broadly, if a company is doing business with another country (i.e. host/source country), then it would be subject to tax in its home country alone, based on its residence link. However, if a company is doing business in a host/source country, then, besides being taxed in the home country on the basis of its residence link, it will also be taxed in the host country on the basis of its source link.

- **Juridical double taxation:** When source rules overlap, double taxation may arise i.e. tax is imposed by two or more countries as per their domestic laws in respect of the same transaction, income arises or is deemed to arise in their respective jurisdictions. This is known as "juridical double taxation".

  In order to avoid such double taxation, a company can invoke provisions of Double Taxation Avoidance Agreements **(DTAAs) (also known as Tax Treaty or Double Taxation Convention-DTC)** with the host/source country, or in the absence of such an agreement, an Indian company can invoke provisions of section 91, providing unilateral relief in the event of double taxation.

- **Economic double taxation:** 'Economic double taxation' happens when the same transaction, item of income or capital is taxed in two or more states but in hands of different persons (because of lack of subject identity)

Question 2

Explain the meaning of "Treaty" as per Article 2 of Vienna Convention on Law of Treaties, 1969. Why it come into play?

Answer

Article 2 of Vienna Convention on Law of Treaties, 1969 defines "treaty" as an **international agreement concluded between States in written form and governed by international law,** whether embodied in a **single instrument or in two or more related instruments** and whatever its particular designation

Treaties (Double Tax Avoidance Agreements) come into play to mitigate hardship caused by subjecting the same income to double taxation. Tax Treaties attempt to **eliminate double taxation** and try to achieve balance and equity. They aim at sharing of tax revenues by the concerned States on a rational basis.

Question 3

There are two types of DTAA made by India with other countries i.e., Limited DTAAs and Comprehensive DTAAs. Explain the terms.

Answer

Limited DTAAs are those which are **limited to certain types of incomes** only. e.g., DTAA between India and Pakistan is limited to income from international air transport only.

Comprehensive DTAAs are those which **cover almost all types of incomes** covered by any model convention.

Question 4

"In addition to allocating the taxing rights and elimination of double taxation, there are various other important considerations while entering into tax treaty". Elucidate.

Answer

In addition to allocating the taxing rights and elimination of double taxation, there are various other important considerations while entering into a tax treaty, as mentioned below:

- Ensuring **non-discrimination** between residents and non-residents
- **Resolution of disputes** arising on account of different interpretation of treaty by treaty partner.
- Providing **assistance in the collection** of the fair and legitimate share of tax.

Further, in addition to above, there are some other principles which must be considered by countries in their tax system –

(i) **Equity and fairness:** Same income earned by different taxpayers must be taxed at the same rate regardless of the source of income.

(ii) **Neutrality and efficiency:** Neutrality factor provides that economic processes should not be affected by external factors such as taxation. Neutrality is two-fold.

(a) Capital export neutrality and

(b) Capital import neutrality (CIN).

Capital export neutrality (CEN) provides that business decision must not be affected by tax factors between the country of residence and the target country; whereas CIN provides that the level of tax imposed on non-residents as well as the residents must be similar.

(iii) **Promotion of mutual economic relation, trade and investment:** In some cases, it is observed that avoidance of double taxation is not the only objective. The other objective may be to give impetus to a country's overall economic growth and development.

Question 5

Explain the following terms in the context of interpretation of tax treaties:

(a) Principle of Contemporanea Expositio

(b) Teleological Interpretation

Answer

(a) **Principle of Contemporanea Expositio**

A treaty's terms are normally to be **interpreted on the basis of their meaning at the time the treaty was concluded.** However, this is **not a universal principle.**

In Abdul Razak A. Meman's (2005) 276 ITR 306, the AAR observed that "there can be little doubt that while interpreting treaties, regard should be had to material contemporanea expositio. This proposition is embodied in article 32 of the Vienna Convention.

(b) **Teleological Interpretation**

In this approach the treaty is to be **interpreted so as to facilitate the attainment of the aims and objectives of the treaty.** This approach is also known as **'objects and purpose'** method.

In case of Union of India v. Azadi Bachao Andolan 263 ITR 706, the Supreme Court observed that "the principles adopted for interpretation of treaties are not the same as those in interpretation of statutory legislation. The interpretation of provisions of an international treaty, including one for double taxation relief, is that the treaties are entered into at a political level and have several considerations as their bases."

One instance is where the Apex Court agreed with contention of Appellant that "the preamble to the Indo-Mauritius DTAA recites that it is for 'encouragement of mutual trade and investment' and this aspect of the matter cannot be lost sight of while interpreting the treaty.

Question 6

Do you agree that the tax treaties are to be interpreted liberally? If so, why?

Answer

Yes, I agree with the given statement.

It is a general principle of construction with respect to treaties that they **shall be liberally construed** so as to carry out the apparent **intention of the parties.**

Contrary to an ordinary taxing statute, a tax treaty or convention must be given a liberal interpretation with a view to implementing the true intentions of the parties. A literal or legalistic interpretation must be avoided when the basic object of the treaty might be defeated or frustrated in so far as the particular item under consideration is concerned.

Question 7

Examine and state the correctness or otherwise of each of the following statements in the context of international tax treaties between the countries and answer in brief with reasons thereof:

(i) "Providing assistance in the collection of the fair and legitimate share of tax by the countries involved" is the sole objective of Tax Treaties entered among Countries.

(ii) A Protocol is an integral part of the Tax Treaty and has the same binding force as the main clauses therein.

Answer

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

The objectives of tax treaties also include

- **allocating tax rights,**
- **elimination of double taxation,**
- ensuring **non-discrimination** between residents and non-residents and
- **resolution of disputes** of on account of different treaty interpretation.

(ii) The statement is **correct.**

Protocol is like a **supplement to the treaty.** In many treaties, in order to put certain matters beyond doubt, there is a protocol **annexed at the end of the treaty,** which clarifies borderline issues. Thus, one must **refer to protocol before arriving at any final conclusion** in respect of any tax treaty provision.

Question 8

What are the Extrinsic Aids to interpretation of a tax treaty?

Answer

A wide range of extrinsic material is permitted to be used in interpretation of tax treaties. According to Article 32 of the Vienna Convention, the supplementary means of interpretation include the preparatory work of the treaty and the circumstances of its conclusion.

According to Prof. Starke, one may resort to following extrinsic aids to interpret a tax treaty provided that clear words are not thereby contradicted:

(i) Interpretative **Protocols**, Resolutions & Committee Reports setting out agreed interpretations;

(ii) A **subsequent agreement** between the parties regarding the interpretation of the treaty or the application of its provisions [Art. 31(3) of the VCLT];

(iii) **Subsequent conduct of** the state **parties,** as evidence of the intention of the parties and their conception of the treaty;

(iv) **Other treaties, in pari materia** (i.e., relating to the same subject matter), in case of doubt.

Provisions in Parallel Tax Treaties

If the language used in two tax treaties (say treaties: X and Y) are same and one treaty is more elaborative or clear in its meaning (say treaty X) can one rely on the interpretation/explanations provided in a treaty X while applying provisions of a treaty Y?

However, the views of the Indian Judiciary are not consistent in this respect. There are contradictory judgments by Indian courts/tribunal in this regard.

International Articles/Essays/Reports

International Article/Essays/Reports are referred as extrinsic aid for interpretation of tax treaties. Like, in case of CIT v. Vishakhapatnam Port Trust (1983) 144 ITR 146 (AP), the High Court obtained "useful material" through international articles.

Protocol

Protocol is like a **supplement to the treaty.** In many treaties, in order to put certain matters beyond doubt, there is a protocol **annexed at the end of the treaty**, which clarifies borderline issues.

A protocol is an **integral part of a tax treaty** and has the same binding force as the main clauses therein.

Protocol to India France treaty contains the Most Favoured Nation Clause. Thus, one must refer to protocol before arriving at any final conclusion in respect of any tax treaty provision.

Preamble

Preamble to a tax treaty could **guide in interpretation of a tax treaty.** In case of Azadi Bachao Andolan, the Apex Court observed that 'the preamble to the Indo-Mauritius Double Tax Avoidance Treaty recites that it is for the 'encouragement of mutual trade and investment' and this aspect of the matter cannot be lost sight of while interpreting the treaty'. These observations are very significant whereby the Apex Court has upheld 'economic considerations' as one of the objectives of a Tax Treaty.

Mutual Agreement Procedure [MAP]

MAP helps to interpret any ambiguous term/provision through bilateral negotiations. MAP is more authentic than other aids as officials of both countries are in possession of materials/documents exchanged at the time of signing the tax treaty which would clearly indicate the object or purpose of a particular provision. Successful MAPs also serve as precedence in case of subsequent applications.

Question 9

What is Static approach and Ambulatory approach in interpreting tax treaties?

Answer

Static **Approach** - under static approach, a term not defined in the treaty to be assigned the **meaning** which prevailed on the **date of signing** the tax treaty.

Ambulatory Approach - under Ambulatory approach, a term not defined in the treaty to be assigned the **meaning** which is prevailing on the **date of application** of the tax treaty.

Question 10

Explain the following terms "Pacta Sunt Servanda (in good faith)" in view of Principles enunciated in the Vienna Convention on law of treaties.

Answer

Pacta Sunt Servanda (in good faith) implies that every treaty in force-

- is **binding** upon the parties; and
- must be followed by them in **good faith.**

Question 11

What is the General Rule of Interpretation under Vienna Convention of Law of Treaties?

Answer

Article 31 of Vienna Convention of Law of Treaties contains the General Rule of Interpretation. It lays down that following general rule of interpretation:

- A treaty shall be **interpreted in good faith** in accordance with the ordinary meaning to be given to the terms thereof in the context and in the light of its **object and purpose.**
- The context for the purpose of interpretation of a treaty shall comprise, in addition to the text, including its **preamble and annexure**
  - (a) **Any agreement** relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
  - (b) **Any instrument** which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related thereto.
- The following shall be taken into account, together with the context in that:
  - (a) Any **subsequent agreement** between the parties regarding the interpretation of the treaty or the application of its provisions;
  - (b) Any **subsequent practice** in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
  - (c) Any **relevant rules of international law** applicable to relation between the parties.
- A **special meaning** shall be given to a term if it is established that the parties so **intended.**

Question 12

Matrix Inc. incorporated in Country X, holds 26% controlling interest in Pilu Ltd., an Indian Company. Pilu Ltd. declared dividend of ₹ 50,00,000 during the current year. The DTAA between India and Country X, which came into force on 1.1.2018, provides for taxation of dividend @15%. Thereafter, India entered into a DTAA with Country Y, which came into force from 15.5.2018. The India-Country Y DTAA, inter alia, provides for concessional tax rate of 10% in respect of dividend. Country X is an OECD member since 2015 and Country Y is also an OECD member since 2017.

Mr. Jack, CFO of Matrix Inc. seeks your opinion on whether the concessional tax rate provided in the DTAA between India and Country Y can be availed by a resident of Country X and if so, are there any further conditions to be satisfied in this regard. You may assume that the protocol annexed to India's DTAAs with all OECD member countries contain the relevant tax parity clause.

Would your answer change, if Country Y had become an OECD member only in the year 2020?

Answer

The CBDT has, vide Circular No. 3/2022 dated 3.2.2022, clarified that the applicability of the Most Favoured Nation (MFN) clause and benefit of the lower rate or restricted scope of source taxation rights in relation to certain items of income including dividends provided in India's DTAAs with the third State (Country Y, in this case) will be available to the first (OECD) State (Country X, in this case) **only when all the following conditions are met:**

	Condition	Satisfaction of condition in the case on hand
(i)	The second treaty (with the third State) is **entered into after** the signature/ Entry into Force of the treaty between India and the first state	This condition is satisfied as India has entered into a DTAA with Country Y on 15.5.2018, after it has entered into a DTAA with Country X on 1.1.2018.
(ii)	The second treaty is entered into between India and a State which is a **member of the OECD** at the time of signing the treaty with it;	This condition is satisfied as India has entered into a DTAA on 15.5.2018 with Country Y, which is a member of OECD since 2017. Hence, on 15.5.2018, Country Y was an OECD member.
(iii)	India **limits its taxing rights** in the second treaty in relation to rate or scope of taxation in respect of relevant items of income	This condition is satisfied since in DTAA between India and Country Y, dividend is taxable@10%.
(iv)	A **separate notification** has been issued by India, importing the benefits of the second treaty into the treaty with the first State as required by the provisions of section 90(1) of the Income-tax Act, 1961.	In this case, conditions (i), (ii) and (iii) mentioned above have been satisfied. The concessional rate of 10% can be applied for taxing the dividend received by Matrix Inc. from Pilu Ltd., an Indian company, only if India has issued a separate notification importing the benefits of India-Country Y tax treaty into India-Country X tax treaty, as required by the provisions of sections 90(1). If such notification has been issued, **then, the concessional rate of 10% can be applied** for taxing the dividend received by Matrix Inc. from Pilu Ltd., an Indian company; otherwise it cannot be applied, even if other conditions are satisfied.

In case if Country Y became an OECD member only in the year 2020, then, the concessional rate of 10% cannot be applied for taxing dividend received by Matrix Inc. from Pilu Ltd., **since Country Y was not an OECD member** on 15.5.2018, **at the time when India signed the DTAA with it.** Consequently, condition (ii) mentioned above would not be satisfied in such a case. **Hence, dividend received by Matrix Inc. from Pilu Ltd. would be subject to tax@15%.**

CHAPTER - 26
Overview of Model Tax Conventions

Question 1

Explain briefly the significant difference between the UN and OECD Model Tax Convention.

Answer

OECD Model is essentially a model treaty between two developed nations whereas UN Model is a model convention between a developed country and a developing country.

Further, **OECD Model advocates the residence principle**, i.e., it lays emphasis on the right of state of residence to tax the income, whereas the **UN Model** is a compromise between the source principle and residence principle, **giving more weight to source principle** as against the residence principle.

Question 2

When does it become necessary to apply the tie-breaker rule? Discuss the manner of application of the tie-breaker rule.

Answer

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.

Question 3

What are the differences between the OECD Model Convention and UN Model Convention in relation to the article on Permanent Establishment? Examine.

Answer

In relation to Article 5 on Permanent Establishment, the UN Model Convention varies from the OECD Model Convention in the following aspects:

(i) As per Article 5(3)(a) of the OECD Model Convention, **a building site or construction or installation project** constitutes a PE if it lasts more than **twelve months**. The UN Model Convention is wider as it covers "assembly and installation project" and "supervisory" activities in connection thereto and requires the activity in question to continue only for **six months** for constituting a PE.

(ii) Article 5(3)(b) of the **UN Model Convention makes a specific reference to Service PE which is absent in OECD Model Convention**. Under UN Model Convention, furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose would constitute a PE, but only if activities of that nature continue within a Contracting State for a period or periods **aggregating more than 183 days** in any 12 month period commencing or ending in the fiscal year concerned.

In the absence of a Service PE reference in OECD Model Convention, the presence has to be ascertained through general principles under Article 5(1).

(iii) The **UN Model Convention has an additional Article** 5(6) **relating to insurance which is absent in OECD Model Convention.** As per this Article in the UN Model Convention, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person.

In the absence of similar Article in the OECD Model Convention, a PE of an insurance Enterprise has to be determined in accordance with provisions of Article 5(1) or 5(2) of the OECD Model Convention.

Question 4

What is the difference between OECD Model Convention, 2017 and UN Model Convention, 2017 relating to right of Source State to tax business profits of an enterprise? Explain.

Answer

Business profits of an enterprise can only be taxed by the Residence State. **Right of Source State to tax business profits** of an enterprise only arises if it carries on business through a **Permanent Establishment (PE)** situated in that State.

As per the approach under the OECD Model Convention, once a PE is proven, the Source State can tax only such profits as are attributable to the PE. The **UN Model Convention** amplifies this attribution principle by a limited **Force of Attraction rule (FOA)**.

The FOA rule implies that **when a foreign enterprise sets up a PE in State of Source**, it brings itself within the fiscal jurisdiction of that State (State of Source) to such a degree that **profits that the enterprise derives from Source State of Source, whether through the PE or not, can be taxed** by it (State of Source State).

As per Article 7 of the UN Model Convention, if the enterprise carries on business in the other Contracting State through a PE, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to:

(a) that PE;

(b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that PE; or

(c) other business activities carried on in that other State of the same or similar kind as those effected through that PE.

Question 5

XYZ GmBH Germany is a foreign company engaged in manufacturing and sale of LED lights. It opened a branch in Gurugram for sale of LED lights in India. The profit mark up was cost plus 40% in respect of sales made by the branch. The XYZ GmBH, Germany also supplied the goods directly to various customers in India. The turnover of the Gurugram branch for the year is ₹ 155 lakhs and direct sales by XYZ GmBH to Indian customers is ₹ 80 lakhs.

The Assessing Officer wants to tax the profits arising to XYZ GmBH from direct sale to customers in India though PE (i.e., branch in India) had no role to play in it. Decide the validity of the Assessing Officers view in the context of OECD and UN Model tax Convention.

Answer

Business profits of an enterprise can only be taxed by the Residence State. **Source State would have the right to tax business profits of an enterprise only if a PE exists** in its jurisdiction.

Taxability as per OECD Model Convention

The OECD Model Convention provides that if the enterprise of the Residence State carries on business in the Source State through a PE situated therein, then, the profits that are attributable to the PE alone may be taxed in the Source State. **OECD Model does not incorporate "Force of Attraction" rule.**

Accordingly, only profits from turnover of ₹ 155 lakhs, representing sale of LED lights made by the Gurugram branch would be taxable in India in the hands of XYZ GmBH, Germany.

Thus, in this case, **Assessing Officer's proposed action** to bring to tax profit earned by XYZ GmBH, Germany from direct supply to customers in India, in which the PE had no role to play, **is not valid**.

Taxability as per UN Model Convention

The UN Model Convention **amplifies** this attribution principle by a limited **Force of Attraction rule,** which permits Source State taxation of the enterprise, not only in respect of the business carried on by it through a PE in the Source State, but also on business profits arising from sales in Source State of same or similar goods or merchandise as those sold through that PE.

Accordingly, profits from turnover of ₹ 235 lakhs, representing sale of LED lights made by the Gurugram branch as well as the direct sale of LED lights made by XYZ GmBH, Germany to Indian customers would be taxable in India in the hands of XYZ GmBH, Germany.

Therefore, in this case, the **Assessing Officer's proposed action** to bring to tax profit earned by XYZ GmBH, Germany from direct supply to customers in India **is valid**, even though the PE had no role to play.

Question 6

Explain the meaning of "interest" and "fees for technical services" under the UN Model Convention.

Answer

As per Article 11 of the UN Model Convention, **"Interest" essentially means income from debt claims of every kind**, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government **securities** and income from **bonds or debentures,** including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment are not regarded as interest for the purpose of this Article.

As per Article 12A of the UN Model Convention, **"Fees for technical services" is defined as payments for managerial, technical or consultancy services** but excludes payment to an employee, payment for teaching in an educational institution or for teaching by an educational institution, payments by an individual for services for personal use.

Question 7

What are the payments covered within the scope of "Royalties" under the UN Model Convention and OECD Model Convention. Elucidate.

Answer

The term "royalties" as per UN Model Convention means payments of any kind received as a **consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films**, or films or tapes used for radio or television broadcasting, any **patent**, trademark, design or model, plan, **secret formula** or process, or for the use of, **or the right to use, industrial, commercial or scientific equipment** or for information concerning industrial, commercial or scientific experience.

The definition of 'royalties' under the **OECD Model Convention does not include** the following: (a) **rentals for films** or tapes used for radio or television broadcasting and (b) equipment rentals like **rentals for industrial, commercial or scientific equipment**.

Question 8

What is the meaning of Automated Digital Services? Elucidate.

Answer

As per Article 12B of UN Model Convention, "Automated digital services" means **any service provided on the Internet or another electronic network**, in either case requiring minimal human involvement from the service provider.

The term "Automated digital services" includes specially:

(a) **online advertising services;**

(b) online **supply of user data;**

(c) online search engines;

(d) online intermediation platform services;

(e) **social media platforms;**

(f) **digital content** services;

(g) online **gaming;**

(h) cloud computing services; and

(i) standardized online **teaching** services.

Question 9

"The application of tax treaty may result into double taxation for the taxpayers. In the light of the statement, answer the following questions:

(1) What are the approaches for elimination of double taxation under Model Conventions? Explain.

(2) Explain the meaning of Juridical Double Taxation and Economic Double Taxation.

(3) Can the problems of Economic Double Taxation be solved by the above approaches? Explain.

Answer

The Model Conventions specify two approaches -

- **Exemption method** [Article 23A]; and
- **Credit method** [Article 23B]

Under the exemption method, tax exemption may be available in the Residence State. Under the credit method, tax credit may be available in the Residence State for taxes deducted in the Source State. These methods are not mutually exclusive and there may be cases where a treaty may adopt exemption method for certain types of income and credit method for other incomes.

"Juridical double taxation" arises when the same income or capital **is taxable in the hands of the same person by more than one State.**

'Economic double taxation' happens when the same item of income or capital **is taxed in more that one States in hands of different persons.**

Under Model Conventions, double taxation referred, is juridical double taxation, meaning the same income or capital is taxable in the hands of the same person by more than one State. It does not thus encompass situations of economic double taxation, i.e., where two different persons are taxable in respect of the same income or capital. If two States wish to solve problems of economic double taxation, they must do so through bilateral negotiations.

Question 10

Explain the term "Mutual Agreement Procedure" as per Article 25 of Model Tax Conventions under OECD model and UN Model.

Answer

There may be a situation wherein a tax payer may believe that the treatment accorded by either or both Contracting States is not in accordance with the provisions of the tax treaty.

In such a case, there is a need for **dispute resolution** which is addressed by Article 25 of Model Tax Convention under OECD Model and UN Model. This Article requires **competent authorities of both countries to endeavor to resolve the conflict by engaging in bilateral negotiations**.

The UN Model Convention provides two alternatives - Alternative A and Alternative B, for the article on Mutual Agreement Procedure. Under **OECD Model** Convention, the taxpayer may make a **request to either Contracting State** while **UN Model** (Alternative A) contemplates taxpayer going to **Residence State** or the country of his nationality. Alternative B of UN Model Article 25 contemplates reference to an **arbitration process** as part of the Mutual Agreement Procedure.

Question 11

Explain the term "Exchange of information" as per Article 26 of Model Tax Conventions under OECD Model and UN Model and explain importance of Article 26.

Answer

In order **to complete tax cases,** a country **may require certain information** which may be available **with the treaty partner.**

Article 26 provides for the information which may be exchanged and the manner in which such a request has to be made.

The OECD and UN Model Conventions are similar with respect to this Article.

<u>Importance of Article 26</u>

- facilitates **effective exchange** of information between Contracting States.
- curtails cross-border **tax evasion and avoidance.**
- curtails **the capital flight** that is often accomplished through tax evasion & avoidance. This is particularly relevant in the perspective of developing countries.