An Exclusive Series

of

PRACTICE SESSIONS

on

CA Final DT

(PAPER-7)

Notes for ALL SESSIONS

BY

CA SATISH MANGAL

"FINANCE ACT, 2022"

ASSESSMENT YEAR: 2022-24

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"TAX DEDUCTION AT SOURCE (TDS)"

"QUESTIONS FROM PAST EXAMINATIONS (+) STUDY MATERIAL"

Section 192: *Deduction of tax from salary:-*

Question-1:

Nath Ltd., an Indian company, pays ₹ 8,50,000 to its Chief Financial Officer Mr. Raman as gross salary including taxable allowances and bonus. Besides that, it also provides non-monetary perquisites which cost the company ₹ 1,50,000.

Discuss the TDS implication in the hands of Nath Ltd. as well as in the hands of Raman as regards non-monetary perquisite.

[Nov. 2020 (New Course), Similar Question in May 2003, Study Material]

Answer:

Tax/TDS implication of non-monetary perquisites:

Particulars	₹
Gross salary	8,50,000
Non-monetary perquisites	1,50,000
	10,00,000
Less: Standard deduction u/s 16	50,000
Net Salary	9,50,000
Tax liability	1,06,600
Average rate of tax (₹ 1,06,600 x 100 / ₹ 10,00,000)	10.66%

- Nath Ltd. can deduct tax of ₹ 1,06,600 at source under section 192 from the salary of Mr. Raman.

Alternatively, the company can pay tax on non-monetary perquisites as under:

- Tax on non-monetary perquisites = 10.66% of ₹ 1,50,000 = ₹ 15,990
- Balance tax to be deducted at source from salary = ₹ 1,06,600 – ₹ 15,990 = ₹ 90,610.
- If the company pays tax of ₹ 15,990 on non-monetary perquisites, the same is not a deductible expenditure as per section 40(a)(v). The amount of tax paid towards non-monetary perquisite by the employer is not chargeable to tax in the hands of the employee due to exemption available u/s 10(10CC).

Question-2:

Examine the applicability of provisions relating to TDS and compute the liability, if any, for deduction of tax at source in the following cases for the financial year ended 31-03-2023:

(1) Ravi Kumar, aged 67 years, derived ₹ 6,00,000 as salary from his employer, XYZ Ltd. for the year ended 31-03-2023. The following details are provided by him to the employer:

Particulars	₹

Loss from self-occupied house property at Mumbai	**2,00,000**
Net loss from let-out property	**2,00,000**
Net loss from business activity	**1,00,000**
Interest income from bank	**3,20,000**

[November 2016]

(2) Raj is working with AB Ltd. He is entitled to a salary of ₹ 45,000 per month w.e.f. 1/4/2022. He has a house property which is self-occupied. He paid an interest of ₹ 80,000 on loan, during the previous year 2022-23. The loan was taken for construction of house. He has notified his employer AB Ltd. that there will be a loss of ₹ 80,000 in respect of this house property for financial year ended 31/3/2023. [November 2014, Study Material]

Answer:

(1) As per section 192(2B), XYZ Ltd is required to deduct tax at source at the time of payment of income under the head "Salaries" *after considering the information furnished by Ravi Kumar for the financial year 2022-23 in respect of income under any other head of income (including loss from house property,* ***not any other loss),***

Therefore, XYZ Ltd. is not required to take into account the loss of ₹ 1 lakh from business activity for determining the TDS liability.

Particulars		₹
Income under the head Salaries		6,00,000
Less: Standard deduction u/s 16(ia)		50,000
Taxable salary		5,50,000
Less: Loss from house property:		
Loss from self-occupied house at Mumbai	2,00,000	
Loss from let out property	2,00,000	
	4,00,000	
But, inter-head setoff shall be restricted upto 2,00,000 (Section 71).		2,00,000
		3,50,000
Add: Interest income from Bank		3,20,000
Gross Total Income:		**6,70,000**
Less: Deduction under section 80TTB		50,000
Total Income:		**6,20,000**
Tax on Total Income:	₹	
Upto ₹ 3,00,000	Nil	
3,00,000 to 5,00,000 @ 5%	10,000	
5,00,000 to 6,20,000 @ 20%	24,000	34,000
Add: Health & Education cess @4%		1,360
		35,360
TDS by Bank u/s 194A @ 10% (assumed)		32,000
TDS required by Employer, XYZ Ltd.:		**3,360**

(2) Section 192 provides that tax is required to be deducted on the payment made as salaries. Tax is to be deducted on the estimated income at the average of income tax computed on the basis of the rates in force for the financial year in which payment is made.

The employee may declare details of his other income (including loss under the head "Income from house property") to his employer. In this case, since Mr. Raj has 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 ₹ 45,000 per month paid to Mr. Raj, in the following manner:

Income under the head "salaries" (45,000 X 12)	:	5,40,000
Less: Standard deduction under section 16(ia)	:	**50,000**
		4,90,000
Income under the head "house property"	:	(80,000)
Gross total Income		**: 4,10,000**
Less: Deduction under chapter VI-A	:	Nil
Total Income		**: 4,10,000**
Tax @ 5% on 1,60,000, being the amount arrived after reducing the basic exemption limit of ₹ 2,50,000 from ₹ 4,10,000	:	8,000
Add: Health & Education cess @ 4%	:	320
Tax to be deducted at source :		**8,320**

Question-3:

Decide the following case:

Mr. Ramesh is employed in Raghu Ltd. as senior executive. He availed leave travel assistance (LTA) of ₹ 60,000 in January 2023. He did not produce any evidence for the expenditure incurred. His salary income (computed) before allowing exemption for LTA is ₹ 12,50,000. Mr. Ramesh claimed interest on moneys borrowed for acquisition of his residential house of ₹ 96,000 but did not produce the name, address and PAN of the lender. As employer, how will you treat the claim of exemption of LTA and deduction of housing loan interest claimed by Mr. Ramesh? [May 2018]

Answer:

As per section 192(2D), Mr. Ramesh, a salaried assessee, is required to furnish the evidence or proof or particulars of prescribed claims to his employer, Raghu Ltd. which are as follows:

- The evidence of expenditure for claiming exemption in respect of LTA, and
- The name, address and permanent account number of the lender for claiming deduction of interest under the head "Income from house property".

If he fails to do so, Raghu Ltd. need not consider exemption in respect of LTA and loss from house property on account of provision of interest deduction, while computing tax to be deducted at source from salary income.

Accordingly, tax has to be deducted at source under section 192 on ₹ 12,50,000, being salary income (computed) without considering LTA exemption and loss from house property.

Question-4:

Answer the following case. Your answer should cover these aspects:

(i) Issue involved; (ii) Provisions applicable; (iii) Analysis; and (iv) Conclusion.

Jashan Hotels Pvt. Ltd., engaged in the business of owning, operating and managing hotels, allowed its employees to receive tips from the customers, by the virtue of their employment. The tips were also collected directly by the hotel-company from the customers, when payment was made by them through credit cards. The hotel-company, thereafter, disbursed the tips to the employees. The Assessing Officer treated the receipt of the tips as income under the head "Salary" in the hands of the various employees and held that the company was liable to deduct tax at source from such payments under section 192. Since the company had not deducted tax at source on such payments, the Assessing Officer treated the company as an assessee-in-default under section 201(1) of the Act. Discuss the correctness of the action of the Assessing Officer. [November 2020, November 2017, November 2012]

Answer:

Provision applicable:

Section 192(1) requires any person responsible for paying any income chargeable under the head "Salaries" to deduct tax at source at the time of payment. If an employee receives income chargeable under a head other than "Salaries", section 192 does not get attracted at all.

Issue Involved:

The issue under consideration in this case is whether "tips" received by the hotel-company from its customers and distributed to the employees fell within the meaning of "Salaries" to attract tax deduction at source under section 192 and whether the assessee can be treated as assessee-in-default for non-deduction of tax at source.

Analysis:

This issue came up before the **Supreme Court** in ITC Ltd. v/s CIT (TDS) (2016) wherein the Court has observed that tips being purely voluntary amounts that may or may not be paid by customers for services rendered to them would not, fall within the scope of salary. **Since tips were received by employer in a fiduciary capacity as trustee for payments that were received from customers which they disbursed to their employees for service rendered to customer,** therefore, there was no reference to contract of employment when these amounts were paid by employer to employee. Contract of employment not being proximate cause for receipt of tips by employee from a customer, same would be outside dragnet of sections 15 and 17.

- **Thus tips so disbursed to employees couldn't be chargeable to tax as salary and thus employer was not liable to deduct tax at source from such payments.**
- **Further, income from tips would be chargeable in the hands of the employees as "Income from Other Sources", on account of such tips being received from customers and not from the employer, and hence, section 192 would not get attracted at all.**

Conclusion:

In view of the above, the action of the Assessing Officer in concluding that "tips" received by the hotel- company from its customers and distributed to the employees fell within the meaning of "Salaries" to attract TDS u/s 192 and in treating Jashan Hotels Pvt. Ltd. as an assessee-in-default u/s 201(1), **is not correct.**

Question-5:

Discuss whether tax has to be deducted at source under the provisions of the Income tax Act 1961 in the following situation, which have taken place during the year ended 31.3.2023.

A foreign company seconded some employees to the assessee, an Indian collaborator. The assessee had not deducted tax at source on the home salary/special allowance/s (education allowance or retention allowance) payments made by foreign company / HO to its employees (expatriated to India) outside India in foreign currency. The Revenue authorities, holding the assessee as an "assessee-in-default" under section 201 of the Income-tax Act, 1961 levied interest and penalty on it. Is the same justified? [Nov. 2020 (New Course), May 2014, Study Material]

Answer:

As per section 9:

Any income which falls under the head "salaries" is deemed to accrue or arise in India, if it is earned in India. The Explanation thereto further clarifies that income payable for services rendered in India shall be regarded as income earned in India.

Section 192(1) requires the person responsible for paying any income chargeable under the head "Salaries" to deduct income-tax, at the time of payment, at the average rate of income-tax computed on the basis of the rates in force for the financial year on the amount payable.

Since the TDS provisions relating to payment of income chargeable under the head "Salaries" form an integrated code alongwith the charging and computation provisions under the Act, section 192(1) has to be read with section 9 and the Explanation thereto. Therefore, if any payment under the head 'Salaries falls within section 9, then TDS provisions under section 192 gets attracted. Consequently, the Indian tax deductor assessee is duty bound to deduct, from the portion of salary paid by it, tax at source under section 192(1) on the entire salary paid to the employee, including home salary/ special allowance paid abroad to the employee by the foreign company.

- ✓ This view has also been upheld by the **Supreme Court** in CIT v/s Eli Lilly & Co. (India) P. Ltd.

If the tax due on home salary / special allowance is paid by the recipient-employees, then, the employer-assessee would not be treated as an assessee-in-default under section 201(1), if the employees have furnished a return of income under section 139 on or before the due date of filing return of income, disclosing such income, and have also furnished a certificate to this effect from a Chartered Accountant in the prescribed form. However, interest under section 201 (1A)@1% per month or part of month shall be payable by the employer-assessee from the date on which such tax was deductible to the date of furnishing of return by such employee.

In cases where the tax has not been paid by the recipient employee, the Assessing Officer can proceed u/s 201(1) to recover the shortfall in payment of tax and interest thereon u/s 201(1A).

Section 192A: *Payment of accumulated balance due to an employee:-*

Question-6:

State with reasons whether the provisions of Chapter of TDS are attracted in the following case and what is the net amount receivable by the payee.

Mr. Sharma is an employee of M/s. ABC Ltd. since 01-04-2020. He has resigned on 31-03-2023 and has withdrawn the amount of ₹ 50,000 being the balance in his EPF account. His PAN is available with M/s. ABC Ltd. [July 2021 (New Course), May 2018, Study Material]

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 the Fourth Schedule (Part A) 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.

As per the provisions of the Fourth Schedule (Part A), 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 not be included from the total income of that employee.

In the present case, Mr. Sharma has withdrawn an amount 50,000 on his resignation after rendering a continuous service of three years with M/s. ABC Ltd. Therefore, tax has to be deducted at source @10% u/s 192A on ₹ 50,000, 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 ₹ 45,000 [i.e., ₹ 50,000 - ₹ 5,000, being tax deducted at source, Assuming that Mr. Sharma has furnished his PAN detail to the Payer].

Section 194: *Deduction of tax from Dividend:-*

Question-7:

Discuss whether liability to deduct tax at source arises in the under-mentioned situation in respect of following payment made by residents in India:

Lumnous Pvt. Ltd., whose accumulated profits are ₹ 20 lakhs, wants to disburse a loan of ₹ 25 lakhs to Mrs. Nisha, a resident shareholder holding 20% of the equity shareholding in the company. Can the entire amount of loan be disbursed to the shareholder, keeping in mind the provisions of the Income-tax Act, 1961? The Finance Manager feels that this being a pure loan transaction, there is no bar for disbursing the entire amount. Is his view correct? [November 2018]

Answer:

As per section 2(22)(e), the loan amount of ₹ 25,00,000 disbursed by Lumnous Pvt. Ltd. a company in which the public are not substantially interested to Mrs. Nisha, being a shareholder holding not less

than 10% (20%, in the present case) of the equity shares of the company would be deemed as dividend to the extent of accumulated profits of ₹20,00,000.

₹ 20,00,000 would be deemed as dividend in the hands of Mrs. Nisha, and therefore, would be chargeable to tax in her hands.

Consequently, Lumnous Pvt. Ltd. would be required to deduct tax at source under section 194 at the rates in force i.e., deduct tax of ₹ 2,00,000, being 10% on the deemed dividend of ₹ 20,00,000, since such amount exceeds the threshold limit of ₹ 5,000. Only the balance amount of ₹ 23,00,000 [i.e., ₹ 25,00,000 – ₹ 2,00,000] can be disbursed to the shareholders.

Thus, the view of the Finance Manager that this being a pure loan transaction, the entire amount can be disbursed is incorrect. Only the balance amount of ₹ 23,00,000, after deducting tax of ₹ 2,00,000 at source on deemed dividend of ₹20,00,000, can be disbursed.

Section 194A : *Deduction of Tax from Interest other than "Interest on securities" :-*

Question-8:

Discuss whether tax has to be deducted at source under the provisions of the Income tax Act 1961 in the following situations, which have taken place during the year ended 31.3.2023.

(i) ₹ 80,000 towards interest on compensation credited to the account of the payee by Motor Accidents Claim Tribunal on 30-11-2022.

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

(iii) Dindayal & Co., a partnership firm, has credited a sum of ₹ 67,000 and ₹ 4,000 respectively, as interest to partners L (Resident in India) and M (non-resident) respectively.

[November 2018, November 2016 + May 2014, Study Material]

Answer:

(i) As per section 194A, tax has to be deducted at source @ 10% from interest on the compensation amount awarded by the Motor Accidents Claims Tribunal **at the time of payment**, if the amount of interest payment or the aggregate amount of such interest payments during the financial year exceeds ₹ 50,000. In the present case, since the amount of ₹ 80,000 towards interest on compensation is only credited to the account of the payee by the Motor Accidents Claims Tribunal, **no tax is deductible at source.**

(ii) Section 194A requires deductions 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 (including foreign 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 TDS provisions under section 194A.

Consequently, no tax is required to be deducted at source u/s 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.

(iii) Section 194A requiring deduction of tax at source on any income by way of interest, other than interest on securities credited or paid to a resident, excludes from its scope, income credited or paid by a firm to its partner.

Section 195 which requires tax deduction at source on payment to non-residents, does not provide for any exclusion in respect of payment of interest by firm to its non-resident partner.

Therefore, Dindayal & Co., a partnership firm is not required to deduct tax at source under section 194A on the amount of interest of ₹ 67,000 credited to the account of L, resident in India.

But, tax has to be deducted under section 195, at the rates in force in respect of interest of ₹ 4,000 credited to the account of M, a non-resident.

Question-9:

Maya bank credited ₹ 73,50,000 towards interest due on the deposits in a separate account for macro-monitoring only 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 payable in respect of some deposits exceeded the limit of ₹ 40,000.

The Assessing Officer disallowed the entire interest expenditure where the interest due 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. [May 2011, Study Material]

Answer:

LEGAL POSITION:

The Explanation below section 194A 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 apply accordingly.

BOARD CLARRIFICATION:

The CBDT Circular No. 3/2010 dated 02.03.2010 has 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 he 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, whenever the aggregate amounts of interest income credited or paid or likely to be credited or paid during the financial year by the banks exceeds the limits specified in section 194A.

- ***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 penalty proceedings are also not tenable in law.***

Question-10:

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 the Court in relation to certain proceedings. The Bank did not deduct tax on the interest accrued. The AO 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(lA) for not deducting tax at source on interest accrued.

Examine whether the bank is correct in not deducting tax on the interest accrued. [May 2022]

Answer:

The issue under consideration in the present case is, whether due to non-deduction of tax at source on interest accrued on deposits (FDR) accepted in the name of Registrar General of the High Court in compliance with a direction passed by the Court in relation to certain proceedings, bank can be treated as assessee in default under sections 201(1) and 201(lA)?

Section 194A stipulates deductions of tax at source on interest other than interest on securities.

In the case of UCO Bank, the Hon'ble **Delhi High Court** has held that the provisions of section 194A do not apply *to fixed deposits made in the name of Registrar General of the Court on the directions of the Court during the pendency of proceedings before the Court.* In such cases, till the Court passes the appropriate orders in the matter, **it is not known who the beneficiary of the fixed deposits will be. Amount and year of receipt is also unascertainable.** The Hon'ble High Court thus held that the person who is ultimately granted the funds would be determined by orders that are passed subsequently. *At that stage, undisputedly, tax would be required to be deducted at source to the credit of the recipient.*

The Board has also accepted the aforesaid judgment and clarified that interest on FDRs made in the name of Registrar General of the Court or the depositor of the fund on the directions of the Court, **will not be subject to TDS till the matter is decided by the Court**. *However, once the Court decides the ownership of the money lying in the fixed deposit, the provisions of section 194A will apply to the recipient of the income.*

Applying the rationale of the Delhi High Court and Board clarification to the facts of the present case, order under sections 201(1) and 201(1A) passed treating the bank as an assessee-in-default is not tenable in law, infact, the bank is correct in not deducting tax on the interest accrued .

Section 194B: *Deduction of tax from casual incomes :-*

Question-11:

The following issues arise in connection with the deduction of tax at source under Chapter XVIIB (i.e. under Chapter of TDS). Discuss the liability for tax deduction in these cases:

(i) "Blue Moon", a popular television channel pays ₹ 50 Lacs on 1.7.2022 as prize money to the winner of a famous Quiz Programme "Who will be a Millionaire"?

[May 2019, Nov. 2001, Study Material]

(ii) X is a bookmaker and Mr. Y is a punter. On 22-01-2023, Y has won ₹ 50,000 in Horse Race 1 and suffered a loss of ₹ 20,000 in Horse Race 2. [November 2001 + May 2018]

Answer:

(i) By virtue of words 'card game and other game of any sort' in section 194B winning from any quiz Programme of television channel or radio will be subject to tax deduction u/s 194B. Therefore, Blue Moon, a popular television channel, is required to deduct tax at source @30% from the prize money of ₹ 50 lakh at the time of payment to the winner of a famous quiz programme.

(ii) 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 the winnings before set-off of losses. Thereafter, the net amount, i.e., the 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 × 30%) from winnings of ₹ 50,000. The net amount payable to Mr. Y would be ₹ 15,000 (i.e., ₹ 50,000 – ₹ 20,000, being loss – ₹ 15,000, being TDS).

Question-12:

Answer the following case.

Syed & Co., a dealer in motor cycles conducted motor cycle race on the occasion of its' 25th year anniversary. The prize was given to first 3 winners by way of a luxury motor cycle which was worth ₹ 2 lakhs each. The assessee did not deduct tax at source on the prize given to the winners. The Assessing Officer treated the assessee as an assessee in default and passed order under sections 201(1) and 201(1A). The assessee seeks your advice on the validity of the order and other legal consequences. Advise. **[May 2018, November 2014]**

Answer:

Issue Involved:

Where the assessee fails to deduct tax at source in respect of the winnings, which are wholly in kind, can he be deemed as an assessee-in-default under section 201(1) and 201(1A).

Provision applicable:

The person responsible for paying to any person any income by way of winnings from any lottery or crossword puzzle, card game and any other game of any sort in an amount exceeding ₹ 10,000 shall deduct tax at source @ 30%. However, where the winnings are wholly in kind, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings.

Where any person, who is required to deduct any sum in accordance with the provisions of this Act, does not deduct, or does not pay, or after so deducting fails to pay such tax, then, such person would be deemed to be an assessee in default.

Analysis:

On a combined reading of the above provisions, it is possible to infer that, if any such person fails to "deduct" the whole or any part of the tax, or, after deducting, fails to pay the tax as required by or under the Act, then, such person shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee-in-default in respect of such tax.

The provisions, however, do not cast any duty on any person to deduct tax at source where the winnings are wholly in kind. If the winnings are wholly in kind, as a matter of fact, there cannot be any deduction of tax at source. The word "deduction" employed in this provision postulates a reduction or subtraction of an amount from a gross sum to be paid and payment of the net amount thereafter.

Where the winnings are wholly in kind the question of deduction of any sum therefrom does not arise and in that eventuality, the only responsibility, as cast under the provisions of the Act, is to ensure that tax is paid by the winner of the prize before the prize or winnings is or are released in his favour.

It was so held by the **Karnataka High Court** in CIT v/s Hindustan Lever Ltd. (2014).

Conclusion:

Applying the rationale of the Karnataka High Court to the facts of the present case, order under sections 201(1) and 201(1A) passed treating the dealer as an assessee-in-default is not tenable in law.

However, for this default, the dealer would be liable for penalty equal to the sum of tax deductible and prosecution by way of imprisonment and fine for failing to ensure that tax is paid by the winner of the prize before the winnings are released in his favour.

Section 194C: *Deduction of tax from payment to contractors and sub contractors :-*

Question-13:

Examine the obligation of the person responsible for paying the income to deduct tax and indicate the due date for payment of such tax, wherever applicable, in respect of the following items:

By virtue of an agreement with a catering organization, a nationalized bank pays ₹ 50,000 per month towards supply of food, snacks, etc. during the office hours to the employees of the bank.

[May 2013, May 2003, Study Material]

Answer:

As per section 194C, the definition of "work" shall include catering.

Therefore, TDS @ 2% u/s 194C will get attracted in respect of payments of ₹ 6,00,000 to the catering organization, since each individual payment exceeds ₹ 30,000.

If the catering organization is run by an individual of HUF, tax is to be deducted @ 1% u/s 194C.

Such TDS should be deposited within 7 days from the end of the month of deduction, but, in case of TDS of march month, it can be deposited till 30th April.

Question-14:

Explain the applicability of the provisions relating to the deduction of tax at source in the following transactions:

(1) Max Limited pays ₹1 lac to Mini Limited, a resident contractor, who under the contract dated 15th October, 2022, manufactures the products according to specification of Max Limited by using materials purchased from Max Limited. [May 2010, Study Material]

(2) 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.

[May 2019]

(3) Bharathi Cements Ltd., the assessee, purchases 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. From 01.09.2022 to 20.3.2023 the value of jute bags supplied is ₹ 8,00,000 for which the invoice has been raised on 20.3.2023. While affecting the payment for the same, is the assessee bound to deduct tax at source, assuming that the value of the printing component involved is ₹ 60,000. 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.

[May 2010, Study Material]

(4) 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. **[May 2019 (New Course)]**

Answer:

(1) As per section 194C: Work shall include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer or its associate, but does not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer or its associate. And, additionally, tax shall be deducted at source-

(i) On the invoice value excluding the value of material, if such value is mentioned separately in the invoice ; or

(ii) On the whole of the invoice value, if the value of material is not mentioned separately in invoice.

Therefore, in the given case, Max Ltd. shall deduct TDS @ 2% on payment of ₹ 1,00,000 made to Mini Ltd.

(2) 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.

(3) Section 194C, which deals with TDS on work contract, Explanation of this section provides that "work" shall also include **manufacturing or supplying a product according to the requirements or specification of a customer by using material purchased from such customer or its associate but does not include manufacturing or supplying a product according to the requirements or specification of a customer by using material purchased from a person, other than such**

customer or its associate.

- In the given case, the assessee has not sold any material to Rajkumar & Co. and the supplier has to manufacture the jute bags by purchasing the materials from others.
- In view of the above, the transaction of supply of jute bags does not amount to work carried out in pursuance of contract and hence does not fall within the purview of section 194C.

Therefore, the assessee company is not required for TDS while making payment to Rajkumar & Co.

(4) 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 u/s 194C in this case.

Question-15:

Examine the applicability of provisions relating to deduction/collection of tax at source and compute the liability, if any, for deduction/collection of tax at source in the following case for financial year ended 31st March, 2023 as per provisions contained under the Income-tax Act, 1961:

(1) ₹ 19,50,000 credited to the account of Digitec Studios (a partnership firm) on 31.03.2023 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. [November 2018]

(2) 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 the transportation of gas. It raised the invoice and clearly bifurcated the value of gas as well as the transportation charges. [May 2019]

(3) 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. [May 2019]

(4) Ranu Ltd., engaged in manufacturing of paper, pays ₹ 4,00,000 to the head of labour union to be distributed to various workmen as per the work done by them. The AO wants the assessee to deduct tax on such payment under section 194C. Is the action of AO tenable in law? [November 2019 (New Course)]

Answer:

(1) 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].

(2) 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.

(3) 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.

(4) If the workers are employees of Ranu Ltd., TDS provisions under section 192 would be attracted and tax has to be deducted at the average rate of income-tax, if salary payable to an individual worker exceeds the basic exemption limit.

In such a case, the action of the Assessing Officer requiring Ranu Ltd. to deduct tax at source under section 194C is not tenable in law.

If, however, the workers are contractual workers, then TDS provisions u/s 194C would be attracted and tax has to be deducted @ 1%, if payment to a worker exceeds ₹ 30,000 or aggregate payment during the year to a worker exceeds ₹ 1,00,000. The action of the AO would be tenable in law, if the above conditions are satisfied.

Question-16:

Your answer should cover these aspects:

(i) Issue involved; (ii) Provisions applicable; (iii) Analysis; and (iv) Conclusion.

The assessee firm M/s. Karishma Transport Services entered into contract with a cement company for transporting cement to various places in India for a yearly contract exceeding 10 crores. As the assessee did not have transport vehicles of its own, it engaged the services of other transporters for the said purpose. The cement company effected payments to the assessee towards transportation charges after deduction of tax at source. In its return of income, the assessee showed the income arising out of the business of transport contracts. While making payment to truck operators or owners, the assessee had not deducted tax at source. The Assessing Officer has disallowed 30% of the expenditure for non-deduction of tax as it exceeded the threshold limit specified under the Income tax Act. Is the contention of Assessing Officer valid? [December 2021]

Answer:

Issue Involved:

The issue involved in this case is whether the assessee-firm, M/s. Karishma Transport Services, is liable to deduct tax at source under section 194C in respect of payment to truck operators/owners, where the payment exceeds the threshold limit, in a case where the assessee-firm used the services of the truck owners for execution of contract entered into by it with a cement company.

Provision applicable:

Section 194C requires deduction of tax at source in case of payments to resident contractors/sub-contractors, where the individual payment exceeds ₹ 30,000 or the aggregate payments to residents during the year exceed ₹ 1 lakh.

Where the tax required to be deducted at source has not been deducted or after deduction, has not been paid within the stipulated time, then disallowance u/s 40(a)(ia) is attracted, at 30% of the expenditure in the form of payments made to the residents.

Analysis:

The nature of the contract entered into by the assessee-firm, with the cement company makes it clear that it was the responsibility of the assessee-firm to transport the cement of the company; and how to accomplish this task of transportation was a matter exclusively within the domain of the assessee-firm.

When any truck got engaged for the purpose of execution of the work undertaken by the assessee-firm and freight charges were payable to its operator or owner upon execution of the work, i.e., transportation of the goods, all the essentials of a contract existed; and the truck operator or owner became a sub-contractor.

In this case, the assessee-firm was not acting as a facilitator or intermediary between the cement company and the truck operators or owners because those two parties had no privity of contract between them. The contract of the company for transportation of its goods was only with the assessee-firm and it was the assessee- firm who hired the services of the trucks. The payment made by the assessee-firm to such transporter was clearly a payment made to a sub-contractor.

Therefore, section 194C was applicable and the assessee-firm was under obligation to deduct tax at source in relation to the payments made by it to the truck operators or owners for hiring the vehicles for the purpose of its business of transportation of goods, if the payment exceeded the individual threshold limit of ₹ 30,000/aggregate threshold limit of ₹ 1 lakh specified thereunder.

Conclusion:

The action of the Assessing Officer in disallowing 30% of the expenditure for non-deduction of tax as it exceeded the threshold limit, is correct.

Note:

The facts given in the question are similar to the facts in **Shree Choudhary Transport Co. v/s ITO** [2020], 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.

It may be noted that section 194C provides that no tax is deductible at source where transport charges are made to a contractor/sub-contractor, who owns ten or less goods carriages at any time during the previous

year 2022-23, and have furnished a declaration to this effect along with their PAN. If the transporters satisfy these conditions stipulated u/s 194C, the action of the Assessing Officer would be incorrect.

Section 194DA: *Payment in respect of life insurance policy:-*

Question-17:

Examine the taxability and applicability of TDS provisions in the following cases:

(i) Miss Sony, a resident, received ₹3,80,000 on 31-10-2022 on maturity of her life insurance policy taken on 01-11-2005. The policy sum assured is 2,00,000 and the annual premium being ₹ 45000.

(ii) Miss Puja, a resident, received ₹ 1,20,000 on 01-07-2022 on maturity of her life insurance policy taken on 10-04-2011. The policy sum assured is ₹ 1,00,000 and annual premium being ₹ 32000.

[May 2015, Study Material]

Answer:

Section 194DA provides for deduction of tax @ 5% on income component out of any sum payable to a resident under a life insurance policy, including the sum allocated by way of bonus, other than the amount which is exempt under section 10(10D). Such tax has to be deducted at the time of payment.

However, tax deduction is required only if the payment or aggregate amount of such payment in a financial year to an assessee is ₹1,00,000 or more.

(i) In this case, since the annual premium of ₹ 45000 exceeds ₹ 40000, being 20% of sum assured of ₹ 200000 in respect of a policy taken before 1.4.2012, the maturity proceeds of ₹3,80,000 received by Miss Sony on 31.10.2022 would not be exempt under section 10(10D) in her hands, and the provisions of section 194DA would be attracted and tax is required to be deducted at source @ 5% on income component out of ₹3,80,000.

(ii) In the case, the annual premium of ₹ 32,000 exceeds ₹ 20000 being 20% of sum assured of ₹ 1,00,000 in respect of a policy taken before 1.4.2012 and consequently, the maturity proceeds of ₹ 1,20,000 received on 1.7.2022 would not be exempt under section 10(10D) in the hand of miss puja and the provisions of section 194DA would be attracted and tax is required to be deducted at source @ 5% on income component out of ₹ 1,20,000.

Section 194H: *Deduction of tax from commission or brokerage :-*

Question-18:

Discuss and compute the liability for deduction of tax at source, if any, in the cases stated hereunder, for the financial year ended 31st March, 2023.

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

(ii) On 17.06.2022, a commission of ₹ 40,000 was retained by the consignee 'Harshit Packaging Ltd.' and not remitted to the consignor 'Hari Developers', while remitting the sales consideration. [July 2021 (New Course), November 2015 + November 2014, Study Material]

Answer:

(i) Tax @ 5% has to be deducted u/s 194H in respect of purchase commission of ₹ 25,000 to an agent for purchases made during the year, since the same exceeds the limit of ₹ 15,000 for no TDS there under.

(ii) Section 194H requires TDS @ 5% from payments of commission and brokerage to a resident.

In the given case, 'Harshit Packaging Ltd.', the consignee, has not remitted the commission of ₹ 40,000 to the consignor 'Hari Developers' while remitting the sales consideration.

As per Board Circular (No. 619 dated 4.12.1991): 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, Hari Developers has to deduct tax at source on ₹ 40,000 at the rate of 5%.

Question-19:

Examine the liability to deduct tax at source in respect of the following situation:

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 for the Financial Year 2022-23. [January 2021 (New Course)]

Answer:

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 RBI 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, in the F.Y.2022-23.

Section 194-I: *Deduction of tax from rent:-*

Question-20:

Discuss the liability for deduction of tax at source in the F.Y. 2022-23 in the following cases:

(i) Mr. A has been running a sole proprietary business whose accounts are audited under section 44AB of the income-tax Act, 1961 every year. He pays a monthly rent of ₹ 15,000 for the office premises to Mr. X, the landlord. Besides, he also pays service charge of ₹ 10,000 per month to Mr. X towards the use of furniture and fixtures. [May 2013, May 2003, Study Material]

(ii) Ram gave a building on sub-lease to M Ltd. with effect from 1-6-2022 on a rent of ₹ 20,000 per month. The company also took on hire machinery from Ram with effect from 1-10-2022 on hire charges of 15,000 per month. The rent for building and hire charges of machinery for the year 2022-23 were credit by the company to the account of Ram in its books of account on 31-3-2023. [May 2017, May 2016, Study Material]

Answer:

(i) Mr. A, being an individual whose accounts are required to be audited under section 44AB for the

immediately preceding financial year in which the rent is credited or paid, shall be liable to deduct tax at source under section 194-1 in respect of rental payments made during the financial year 2022-23, if it exceeds the threshold of ₹ 2,40,000 per annum.

As per Explanation to section194-1, **rent means** any payment, by whatever name called, for the use of (either separately or together), building, furniture, fittings etc. Therefore, the rent of ₹ 15,000 p.m. for office premises as well as the service charges of ₹ 10,000 p.m. for use of furniture and fixtures, paid to Mr. X, would fall within the meaning of "rent" under section 194-1.

Since the aggregate rental payments (for both premises and furniture and fittings made to Mr. X during the financial year 2022-23 exceeds ₹ 2,40,000, Mr. A is liable to deduct tax at source @ 10% on ₹ 3,00,000 (i.e., ₹ 1,80,000 for office premises and ₹ 1,20,000 for furniture and fixtures.).

(ii) Tax is deductible u/s 194-I on rent, if the aggregate amount of rental income paid or credited to a person exceeds ₹ 2,40,000. Tax is deductible at the time of payment or credit, whichever is earlier. Rent includes payment under any lease or sub-lease for use of, inter alia, building and machinery.

The aggregate amount credit by M Ltd. to the account of Ram in its book of account on 31.3.2023 towards rent for the P.Y. 2022-23 is ₹ 2,90,000 [i.e., ₹ 2,00,000 (₹ 20,000 x 10) for building and ₹,90,000 (₹ 15,000 x 6) for machinery]. Hence, M Ltd. has to deduct tax @ 10% on rent credited for building and tax @ 2% on rent credited for machinery.

Question-21:

''Skyhigh Airlines Ltd." has paid a sum of ₹ 12 lacs during the year ended 31-3-2023 to Airports Authority of India towards landing and parking charges. Is the company required to deduct any tax at source from such payment? If so, what is the rate of TDS?

[January 2021, November 2020, May 2016, May 2014, Nov. 2011, Study Material]

Answer:

This issue as to whether landing and parking charges could be deemed as rent to attract the provisions of section 194-I came up before the **Supreme Court** in the cases of Japan Airlines Co. Ltd. v/s CIT.

The Court observed that 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.

The purpose is to show that the AAI is providing all these facilities for safe landing and take-off of an aircraft and in this whole process, 'use of the land' pails into insignificance. What is important is that the charges payable are for providing of these facilities. **Therefore, it cannot be treated as 'rent' within the meaning of Section 194-I of the Act.**

Applying the rationale of the above ruling to the case of hand, the payment of landing and parking charges by Skyhigh Airlines Ltd. an airline company, to the Airports Authority of India is liable for deduction of tax at source under section 194-C (having rate of TDS @ 2%).

Section 194-IA: *Deduction of tax on transfer of certain immovable properties:-*

Question-22:

Discuss the TDS applicability in context of Assessment Year 2023-24 in the following cases and state the amount of the TDS as per the Income-tax Act, 1961.

(i) Mr. Shyam purchased a house in Mumbai for consideration of ₹90 lakh by cheque from the builder for the use of his residence. [November 2017]

(ii) Mr. X, a resident, acquired a house property at Mumbai from Mr. Y for a consideration of ₹ 90 lakhs, on 20.6.2022. On the same day, Mr. X made two separate transactions, thereby acquiring 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. [November 2014, Study Material]

Answer:

(i) As per section 194-IA, tax is required to be deducted at source @1% on the amount of consideration paid for purchase of a residential house, being an immovable property, if the amount of consideration or its stamp duty value is ₹50 lakhs or more.

Therefore, Mr. Shyam is required to deduct tax at source of ₹90,000 (1% of ₹90,00,000) from the amount of consideration paid for purchase of a residential house in Mumbai.

(ii) Mr. X is required to deduct tax at source ₹ 90,000/- u/s 194-IA i.e. @ 1% from the consideration of ₹ 90 lakhs paid to Mr. Y for transfer of house property at Mumbai, since the consideration is more than 50 lakhs.

Mr. X is not required to deduct tax at source u/s 194-IA from the consideration of ₹ 49,50,000 paid to Mr. C for transfer of urban plot, since the consideration less than ₹ 50 lakhs (Presuming its stamp duty value is also less than ₹ 50 lakhs).

Mr. X is also not required to deduct tax at source under section 194-IA from the consideration of ₹ 60 lakhs paid to Mr. D for transfer of rural agricultural land, since the same is specifically excluded from the scope of immovable property for the purpose of tax deduction u/s 194-IA.

Question-23:

Param Construction Ltd. sells a flat to Mr. Mani for ₹ 48 Lakhs on 15.01.2023. 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. The flat is registered on 30.03.2023. [July 2021 (New Course)]

Answer:

Section 194-IA requires deduction of tax@1% 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) to a resident transferor.

Tax is not required to be deducted at source where the total amount of consideration for the transfer of immovable property as well as its stamp duty value 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 the immovable property.

In the present case, since the consideration for transfer of flat by Mr. Mani to Param Construction Ltd. is ₹ 52,20,000 (₹ 48 lakhs + ₹ 1,20,000, being ₹ 5,000 x 24 + ₹ 2 lakhs + ₹ 1 lakh) which is not less than ₹ 50 lakhs, Mr. Mani is required to deduct tax @1% on ₹ 52,20,000.

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

Section 194-IB: *TDS on rent by individuals or HUF not liable for TDS u/s 194-I:-*

Question-24:

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

Mr. Santosh has let out his house property on a monthly rent of ₹ 60,000 from 15·01·2023 to Mrs. Preeti. [May 2018]

Answer:

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 @5% 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, an individual, pays rent exceeding ₹ 50,000 per month in the F.Y. 2022-23 to Mr. Santosh, she is liable to deduct tax at source @5% of such rent for F.Y. 2022-23 under section 194-IB.

Thus, ₹ 7,500 [₹ 60,000 × 5% × 2.5] has to be deducted from rent payable for March, 2023. The rent payable to Mr. Santosh for March, 2023 would be ₹ 52,500.

Question-25:

Examine the applicability of provisions relating to deduction/collection of tax at source and compute the liability, if any, for deduction/collection of tax at source in the following cases for financial year ended 31st March, 2023 as per provisions contained under the Income-tax Act, 1961:

(1) 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 does not provide his PAN. The house was taken on rent with effect from 01.07.2022 and he vacated the house on 28.02.2023.

(2) Would there be any change in TDS, if Mr. Ashok furnished his PAN to the tenant?

[November 2018]

Answer:

(1) Since Mr. Shrikanth pays rent exceeding ₹ 50,000 per month in the F.Y. 2022-23, he is liable to deduct tax at source @5% under section 194-IB on such rent for F.Y. 2022-23.

However, since Mr. Ashok does not provide his PAN to Mr. Shrikanth, tax would be deductible @ 20%, instead of 5%**.** Tax has to be deducted from rent payable for the last month of the P.Y. 2022-23. However, since he vacated the premises in February, 2023, tax has to be deducted from rent paid on 1.2.2023 for the month of February, 2022. Tax of ₹ 96,000 [₹ 60,000 x 20% x 8] has to be deducted but the same has to be restricted to ₹ 60,000**,** being rent for February, 2023.

(2) If Mr. Ashok furnished his PAN to Shrikanth, tax would be deductible@5%.

Tax of ₹ 24,000 [₹ 60,000 x 5% x 8] is deductible from rent paid on 1.2.2023 for February month.

Section 194-IC: *TDS on Monetary Payment under Joint Development agreement:-*

Question-26:

Examine the applicability of provisions relating to deduction/collection of tax at source and compute the liability, if any, for deduction/collection of tax at source in the following case for financial year ended 31st March, 2023 as per provisions contained under the Income-tax Act, 1961:

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 ₹ 15,00,000 towards part of consideration on 30.03.2023. [November 2018]

Answer:

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 cash consideration as well, TDS @ 10% on ₹ 25,00,000, being the cash component payable to A, is deductible under section 194-IC. Assuming that only ₹15,00,000, being the amount paid to A on 30.3.2023, has actually been credited to the account of A in the books of B in the P.Y. 2022-23, the TDS liability would be ₹ 1,50,000, being 10% of ₹15,00,000.

It may also be noted here If it is assumed that ₹25,00,000 has been credited to the account of A in the books of B in the P.Y. 2022-23, even though only ₹ 15,00,000 has been actually paid in that year, then, tax has to be deducted @ 10% on ₹25,00,000, being the amount credited to the account of A. TDS liability would be ₹ 2,50,000, being 10% of ₹25,00,000.

Question-27:

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., 1.6.2022. High and Tall Ltd. has planned to develop a high-rise apartment complex on such land by 31.3.2024. 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 31.3.2024.

Discuss the TDS provisions applicable on the above case alongwith the amount of tax deductible. [May 2022]

Answer:

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

Section 194-J: *Deduction of tax from fees for professional or technical services:-*

Question-28:

Explain the applicability of the provisions relating to the deduction of tax at source in the following transactions:

(i) Payment of ₹ 5 lacs made to Mr. Phelps who is an athlete by a manufacturer of a swim wear for brand ambassador. [May 2016, Study Material]

(ii) A company operating a Television Channel makes payment of ₹ 5 lacs to a former cricketer for making running commentary of a one-day cricket match. [May 2010, Study Material]

(iii) Television Company pays ₹ 50,000 to a cameraman for shooting of a documentary film. [May 2019, November 2001, Study Material]

(iv) East Bengal Club, a renowned football club, has engaged Raghu, a resident in India, as its coach at a remuneration of ₹ 6 lakh annually. The club wants to know from you whether it is liable to deduct tax at source from such remuneration. [Question from Study Material]

(v) Payment of fees of ₹ 28,000 for technical services and of ₹ 35,000 for Royalty to Mr. Raj Pal who is having PAN. [November 2019]

(vi) 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. [May 2019]

Answer:

(i) Payment by a manufacturer of swim wear to it brand Ambassador Mr. Phelps, an athlete:

Tax has to be deducted at source @10% u/s 194J in respect of income of ₹ 5 lacs paid to Mr. Phelps, athlete, for advertisement, on the inherent presumption that Mr. Phelps is resident.

Alternatively, if Mr. Phelps is assumed to be a non-resident, who is not a citizen of India, tax has to be deducted at source @ 20.8% (20% plus cess 4%) u/s 194E in respect of income of ₹ 5 lacs paid to Mr. Phelps, an athlete, for advertisement referred u/s 115BBA. [Refer to Foreign Taxation]

(ii) *Payment to a cricket commentator:*

As per section 194-J TDS is required to be deducted on fees for professional services if it exceeds **₹ 30,000** @ 10%.

- ✓ **CBDT has notified commentators to be the professionals under section 194-J.**
- ✓ **Therefore TDS @ 10% shall be deducted on ₹ 5 lakhs.**

(iii) **Since cameraman is a professional,** hence, tax deduction @ 10% is, deductible by the television

company on the payment u/s 194J.

(iv) Section 194J requires deduction of tax at source @10% 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 to section 194J, professional services includes, inter alia, services rendered by a person in the course of carrying on such other profession as is notified by the CBDT for the purpose of section 194J.

Accordingly, the CBDT has, vide Notification No. 88 dated 21.8.2008, in exercise of the powers conferred u/s 194J notified the services rendered by, inter alia, coaches and trainers in relation to the sports activities as professional services for the purpose of section 194J,

Therefore, the club is liable to deduct tax u/s194J from the remuneration payable to the Coach, Raghu.

(v) Liability to deduct TDS@2% (on fees for technical services) / 10% (on royalty) u/s 194J is attracted only in case the payment made as fees for technical services and royalty, individually, exceeds ₹ 30,000 during the financial year to a resident. In the given case, since, the individual payment for fee of technical services i.e., ₹ 28,000 is less than ₹ 30,000, there is no liability to deduct tax at source on fees for technical services. However, since royalty payment exceeds ₹ 30,000 and Mr. Raj Pal is having PAN, tax @ 10% is to be deducted on royalty payment to Mr. Raj Pal.

(vi) 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 the 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 TDS under section 194J.

Question-29:

Explain the liability of TDS in the context of provisions contained in Chapter XVII (i.e. Chapter of TDS) of the Act, in the following cases.

(i) Payment of ₹ 5 lakhs made by Shiv & Company (partnership firm) to Jyoti & Company Ltd. for organising debate competition on the subject '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 sale for the period 1.4.2023 to 30.6.2023.

[November 2018, November 2013, Study Material]

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 lacs was made to Jyoti & Company Ltd., an event management company for organization of a debate competition. Hence, the provisions of section 194J are **not** attracted in this case.

However, TDS provisions under section 194C relating to contract payments would be attracted and consequently, tax has to be deducted @2% under section 194C.

(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 on which tax is deductible at source under section 192.

Hence, tax is to be deducted u/s 194J @ 10% by DAF Pvt. Ltd on the commission of ₹ 2,25,000 paid to KD, a part-time director.

Question-30:

Paras Hospital Pvt. Ltd. the assessee, 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 the payments to the various hospitals including the assessee. All TPAs are corporate entities. The assessee wants to know whether the TPAs are bound to deduct tax at source under section 194J or under section 194C. [Nov. 2021, Question from Study Material]

Answer:

This issue has been clarified by the **CBDT** Circular No. 8/2009 dated 24.11.2009. As per provisions of section 194J, any person, not being an individual or a Hindu Undivided Family, who is responsible for paying to a resident any sum, Inter alia, 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 income-tax on income comprised therein. Further, as per 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 no behalf of insurance companies to hospitals for settlement of medical/insurance claims etc. under various schemes including cashless schemes are liable for TDS u/s 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-31:

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

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 on 31st march 2023. [May 2018]

Answer:

Every person, who is responsible for paying to a 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 the 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 under various schemes including cashless schemes are liable for TDS 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-32:

Examine the liability to deduct tax at source in respect of the following situation:

StudyKart, an online education provider and a trust registered u/s 12AB of the Income-tax Act, pays ₹ 98,000 during the Financial Year 2022-23, to Mr. Monty, a non-resident for providing web based lectures. [January 2021 (New Course)]

Answer:

Any person responsible for paying any sum chargeable to tax to a non-corporate non-resident is liable to deduct tax at source at the rates in force.

Since Mr. Monty, a non-resident has provided web based lectures from outside India, income arising therefrom is not chargeable to tax in India as no income is deemed to accrue or arise in India. Thus, no tax is deductible at source on such payment to him.

Alternatively, it may be possible to take a view that income arising from web lectures may fall within the meaning of "Fees for technical services". If this view is taken, such income would be deemed to accrue or arise in India, since the services are utlised in India, even though they are rendered from outside India. Therefore, such income would be chargeable to tax in India in the hands of Mr. Monty, a non-resident. Thus, StudyKart, a trust registered u/s 12AB, is required to deduct tax u/s 195.

Section 194LA: *TDS on compensation on acquisition of certain immovable properties:-*

Question-33:

Examine the applicability of provisions relating to deduction of tax and compute the liability, if any, for deduction of tax at source in the following case for the financial year ended 31-03-2023:

(i) ₹ 2,60,000 paid on 30-09-2022 as consideration to Mr. B, a resident in India, on account of compulsory acquisition of his residential building acquired for laying railway tracks.

[November 2016]

(ii) ₹ 1,95,000 paid to Mr. X on 01-02-2023 by Karnataka State Government on compulsory acquisition of his urban land. What would be your answer if the land is agriculture land?

[May 2016, Study Material]

(iii) Payment of ₹ 2,25,000 made to Mr. Anthony for compulsory acquisition of his house as per the law of State Government. **[November 2019]**

Answer:

(i) As per section 194LA, tax has to be deducted @ 10% on any sum paid to a resident in respect of compensation on account of compulsory acquisition of any immovable property (other than agricultural land), where the amount of payment or aggregate amount of such payments during the financial year exceeds ₹ 2,50,000.

Thus, in the present case, tax is deductible @ 10% on ₹ 2,60,000, being the amount paid to Mr. B, a resident in India, on account of compulsory acquisition of residential building for laying railway tracks, and accordingly, amount of TDS will be ₹ 26,000/-.

(ii) As per section 194LA, Tax is deductible at source @ 10%, where payment is made to a resident as compensation or enhanced compensation on compulsory acquisition of any immovable property. However, no TDS is required if the aggregate payments in a year does not exceed ₹ 2.5 lakh.

Therefore, no tax is required to be deducted at source on payment of ₹ 1,95,000 to Mr. X, since the aggregate payment does not exceed ₹ 2.5 lakh.

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.

(iii) As per section 194LA, any person responsible for payment to a resident, any sum in the nature of compensation or consideration on account of compulsory acquisition under any law, of any immovable property, is responsible for deduction of tax at source if such payment or the aggregate amount of such payments to the resident during the financial year exceeds ₹ 2,50,000.

In the given case, no liability to deduct tax at source is attracted as the payment made to Mr. Anthony does not exceed ₹ 2,50,000.

Section 194M: *Deduction of tax on payment of certain sums by certain individuals or HUF:-*

Question-34:

Examine the liability to deduct tax at source in respect of the following situations:

On 31st December, 2022, Mr. Nitin, a resident individual whose gross turnover was ₹ 97 lakhs during the preceding previous year, paid ₹ 65 lakhs to Mr. Basant, a resident individual, as contract payment for repairing his office building. **[January 2021 (New Course)]**

Answer:

Since Mr. Nitin is not subject to tax audit in the P.Y. 2021-22, TDS provisions u/s 194C are **not**

attracted in respect of payment made in the P.Y. 2022-23 to Mr. Basant, a resident individual, for repairing his office building. However, tax is required to be deducted at source@5% under section 194M, on the payment of ₹ 65,00,000, since such amount exceeds ₹ 50 lakhs. Therefore, tax deducted at source would be ₹ 3,25,000, being 5% of ₹ 65,00,000.

Section 194N : *Deduction of tax on payment of certain amounts in cash:–*

Question-35:

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 during the financial year 2022-23 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.

[November 2020 (New Course)]

Answer:

As per section 194N, every person, being, a **bank,** a co-operative bank, or a post office, who is responsible for paying any sum or aggregate of sums, in cash, exceeding one crore rupees during the previous year, to any person (herein referred to as the recipient) from one or more accounts maintained by the recipient with it shall, at the time of payment of such sum, deducts an amount equal to 2% of such sum as income-tax.

In the given case, since, withdrawn amount (from current account with Union bank) of M/s Kashdash (P) Ltd. for local payments and for payment of wages and incentives to temporary employees engaged in different events is ₹10 lakhs per month i.e. ₹1.2 crore in aggregate during the previous year, therefore, person responsible for paying such sum i.e. Union bank shall deduct tax at source @ 2% on ₹20 lakhs i.e. amount in excess of ₹1 crore. Accordingly, amount of TDS will be ₹ 40,000.

Notes:

(i) An alternative view it may be taken that TDS will be required on whole amount if it exceeds ₹1 crore, if this interpretation (of amendment as made by the Finance Act, 2020) is taken, then, TDS amount will be ₹ 2,40,000 (i.e. 2% on ₹120 lakhs).

(ii) In the given case, it has been assumed that the recipient has filed the returns of income for all or any of the three assessment years relevant to the three previous years, for which the time limit of file return of income u/s 139(1) has expired, immediately preceding the previous year in which the payment of the sum is made to him.

Question-36:

Decide whether TDS provisions are attracted in the following case:

Krunal & Co. LLP withdrew from its bank account in aggregate ₹ 125 lakhs during the previous year 2022-23. The purpose of withdrawal from bank was for buying agricultural produce, from farmers/agriculturists, being raw material required for manufacture for finished products by it.

[January 2021 (Old Course)]

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

In the present case, M/s Krunal & Co. LLP has withdrawn ₹ 1.25 crores in aggregate during the previous year 2022-23. Since aggregate amount of cash withdrawals exceed ₹ 1 crore, bank is required deducted tax at source on the amount exceeding ₹ 1 crore i.e., ₹ 25 lakhs though he withdraws the same for buying agricultural produce from farmers, agriculturists, being raw material required for manufacture of finished products by it. It has been assumed that Assessee LLP has filed its Income tax return regularly.

Section 194-O: *TDS on payment by e-commerce operator to e-commerce participant:-*

Question-37:

Examine the applicability of provisions relating to deduction/collection of tax at source and compute the liability, if any for deduction/collection of tax at source in the following case for financial year ended 31st March, 2023 as per provisions contained under the Income-tax Act, 1961:

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 28.02.2023 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? [July 2021]

Answer:

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 @1% on ₹ 6 lakhs, being the gross amount of sales facilitated through the e-commerce website.

Therefore, TDS u/s 194-O is ₹ 6,000, being 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 (To facilitate proper administration, the payment gateway may take an undertaking from the E- Commerce Operator (AB).

Question-38:

Mr. Z, a resident individual, starts a new business on 01-11-2022 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 31-03-2023. E-commerce operator credited the following payments from time to time payable to Mr. Z in its books of accounts.

31-12-2022 ₹ 20 lakhs

28-02-2023 ₹ 15 lakhs

Full and final payments have been released by ABC.com to Mr. Z on 31-03-2023 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. [December 2021]

Answer:

As per section 194-O, ABC.com, an e-commerce operator is required to deduct tax @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 ₹ 20,000 (1% x ₹ 20,00,000) and ₹ 15,000 (1% x ₹ 15,00,000) on 31.12.2022 and on 28.02.2023, 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 ₹ 10,000 (1% of ₹ 10,00,000 being the amount received by Mr. Z directly in his bank).

On 31.3.2023, ABC.com is also required to deduct tax of ₹ 15,000 (1% of ₹ 15,00,000), being the amount of full and final payment made on 31.3.2023.

Section 194-P: *Deduction of tax in case of specified senior citizen:-*

Question-39:

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 2022-23:

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 financial year 2022-23. Assume that Mr. Rajat did not opt for section 115BAC.

Discuss the TDS provisions applicable on the above case alongwith the amount of tax deductible. [May 2022]

Answer:

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 the total income of Mr. Rajat for A.Y. 2023-24, 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

Section 194-Q: *TDS on payment of certain sum for purchase of goods:-*

Question-40:

M/s Aryan Ltd., a domestic company having a total turnover of ₹ 12 crores for the financial year 2021-22, purchased goods worth ₹ 85 lakhs (excluding purchase return) from M/s Varun & Co. during the previous year 2022-23. 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 25.05.2022 - ₹ 30 lakhs; On 28.06.2022 - ₹ 25 lakhs; On 10.12.2022 - ₹ 20 lakhs (out of these purchases, goods worth ₹ 5 lakhs were returned on 20.12.2022 due to quality issue for which money was refunded by M/s Varun & Co.); On 20.02.2023 - ₹ 10 lakhs. Assume that the turnover of M/s Varun & Co. during the Financial year 2021-22 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.

Discuss the TDS provisions applicable on the above case alongwith the amount of tax deductible. [May 2022]

Answer:

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. 2021-22 does not exceed ₹ 10 crores.

Since turnover of M/s Aryan Ltd. for the P.Y. 2021-22 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:		
25.05.2022	₹ 30 lakhs	Not required to deduct tax at source
28.06.2022	₹ 25 lakhs	Aggregate value of purchase exceeds ₹ 50 lakhs, hence, M/s Aryan Ltd. is required to deduct tax at source u/s 194Q but only on amount in excess of ₹ 50 lakhs viz. ₹ 5 lakhs; TDS = ₹ 500 [0.1% x ₹ 5 lakhs]
10.12.2022	₹ 20 lakhs	TDS = ₹ 2,000 [0.1% x ₹ 20 lakhs]
20.02.2023	₹ 10 lakhs	TDS = ₹ 500 [₹ 1,000, being 0.1% x ₹ 10 lakhs – ₹ 500, being the TDS on purchase return of ₹ 5 lakhs]

Section 201: *Consequence of failure to deduct or pay tax :–*

Question-41:

M/s Avtar Limited entered in to an agreement for the warehousing of its products with ABC warehousing and deducted tax at source as per the provisions of section 194C out of warehousing charges paid during the year ended on 31.03.2023. The A.O. while completing the assessment for Assessment year 2023-24 of Avtar Limited, asked the company by treating the warehousing charges as rent, as defined in section 194-I, to make payment of difference amount of TDS with interest. It was submitted by the company that the recipient had already paid tax on the entire amount of warehousing charges and therefore, now the difference amount of TDS be not recovered. However, it was prepared to make the payment of due interest of the difference amount TDS. Examine critically the correctness of the action or the treatment given. [May 2017]

Answer:

As per the first proviso to section 201(1), any person who fails to deduct the whole or any part of the tax on the amount credited or payment made to a resident payee shall not be deemed to be an assessee-in-default in respect of such tax if such resident payee has included the warehouse charges for computing its income, paid tax thereon and filed its return of income under section 139.

Thus, the difference amount of TDS cannot be recovered from Avtar Ltd., since ABC warehouse has paid tax on the entire amount of warehousing charges.

However, Avtar Ltd. has to pay interest under section 201(1A) i.e., @1% p.m. or part of month, from the date on which such tax was deductible to the date of furnishing of return of income by such resident payee i.e., ABC Warehousing.

Question-42:

Apple Iron Ltd paid ₹10 lakhs to a lawyer on 01-05-2022 for the professional services rendered by him to the company without deducting tax at source. Again another payment of ₹ 5 lakhs was due

on 31-12-2022 the company deducting tax at source before making payment on 31-12-2022 for the entire amount of ₹ 15 lakhs.

The tax deducted at source was, however, remitted by the company on 30th March 2023.

Compute the interest chargeable u/s 201(1A) of the I.T. Act, 1961. [May 2015, Nov. 2011]

Answer:

Computation of interest chargeable under section 201(1A):

As per the provisions of section 201(1A), if a person who is liable to deduct tax at source fails to deduct tax at source or after deducting such tax fails to pay the tax as required by or under the Act, then he is liable to pay simple interest as follows -

@ 1% for every month or part of month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually deducted; and

@ 1.5% for every month or part of month on the amount of such tax from the date on which such tax was deducted to the date on which tax is actually paid.

Provided that where an order is made by the Assessing Officer for the default u/s 201(1), *the interest shall be paid by the person in accordance with such order.*

In this case, tax is deductible @ 10% under section 194J in respect of fees for professional services. Tax of ₹ 1lakh (10% of ₹10lakhs) was deductible on 1.5.2022 but actually deducted on 31.12.2022. Tax of 1.50 lakh [10%of ₹ 15lakhs (i.e. ₹ 10lakh +5 lakh)] deducted on 31.12.2022 was paid only on 30.3.2023. Since there has been a delay in deduction and deposit of tax, interest under section 201(1A) is attracted

Therefore, in the given case, interest under section 201(1A) would be computed as under:	₹
1% on the tax deductible but not deducted i.e. on ₹ 100000 for 8 months (From 01.05.2022 to 31.12.2023)	8000
1.5% on tax deducted but not deposited i.e. 1.5% on ₹ 150000 for 3 months (From 31.12.2022 to 30.03.2023)	6750
Total interest payable under section 201(1A):	**14750**

Section 200 & 234E: *Duty of Payer and Fee for default in furnishing TDS Return:-*

Question-43:

BNG Ltd., a domestic company has deducted TDS of ₹28,451 during the Qtr 1 of FY 2022-23. They had filed the TDS return for Qtr 1 on 15.09.2022. The Income Tax Department had sent a notice of demand to the company, wherein a fee was levied under section 234E of the Income-tax Act, 1961 (Act) for ₹8,800. The Company paid the demand raised by the Department and also claimed such payment as business expenditure during the A.Y. 2023-24. Discuss whether the demand raised by the Department is correct, as per the provisions of the Act. Also, explain whether fee paid under section 234E can be claimed as deduction while computing the income under the head "Profits and gains of business or profession". [May 2018]

Answer:

There are **two issues** in this case.

- ☞ The first issue is about the correctness of the demand of ₹ 8,800 raised by the Department levying fee under section 234E for filing of TDS return for Quarter 1 of F.Y. 2022-23 on 15.09.2022.
- ☞ The second issue is whether fee paid by BNG Ltd. under section 234E can be claimed as deduction while computing income under the head "Profits and gains of business or profession".

First issue:

Correctness of demand raised by the Department for fee of ₹ 8,800 u/s 234E:

The TDS Return for quarter 1 ended 30th June, 2022 has to be filed on or before 31st July, 2022.

Where a person fails to deliver TDS return 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 the present case, BNG Ltd. has filed the TDS return of Qtr 1 on 15.09.2022. Since there has been a 46 days delay on the part of BNG Ltd. in filing the statement of TDS, it would be liable to pay a fee of ₹ 9,200 (₹ 200 × 46 days) u/s 234E. Therefore, the demand of ₹ 8,800 raised by the Department is incorrect.

Second issue:

Allowability of deduction in respect of fee paid under section 234E while computing income under the head "Profits and gains of business or profession":

As per section 37, any expenditure incurred wholly and exclusively for the purpose of business or profession is allowed as deduction.

This fee is not in the nature of a penalty. The fee for delayed submission of TDS return is also not in the nature of interest for delayed remittance of TDS. The Legislature in its wisdom, has consciously used the word "penalty" and "interest" at other places, in contra-distinction to the word "fee". Since there is no specific prohibition in the Act for denying deduction of fee paid, hence, fee paid under section 234E is allowable as deduction while computing the business income.

"TAX COLLECTION AT SOURCE (TCS)"

"QUESTIONS FROM PAST EXAMINATIONS (+) STUDY MATERIAL"

Question-1:

Decide the following case:

Amin Co. (P) Ltd. is a dealer of motor cars manufactured by Zeet Ltd. Amin Co. (P) Ltd. paid through banking channel ₹ 110 lakhs to Zeet Ltd. for purchase of cars in 10th May, 2022. Of the total motor cars so purchased, 4 motor cars cost ₹ 11 lakhs each and 7 motor cars are for the balance amount. Decide whether any TDS / TCS provisions will apply. ***Will your answer be different if Amin Co. (P) Ltd. is not a dealer of motor cars and had acquired the same for the purpose of plying cars on hire?***

[May 2018]

Answer:

Section 206C(1F) requires every person, being a seller, who receives any amount as consideration for sale of a motor vehicle of the value exceeding ₹ 10 lakhs, to collect tax from the buyer@1% of the sale consideration. However, this provision applies only in respect of transactions of retail sales and does not apply on sale of motor vehicles by manufacturers to dealers.

But, as per section 206C(1H), if consideration for sale of any goods exceeds ₹ 50 lakhs during the previous year and TCS is not collectible under any other provision of section 206C, then, TCS @ 0.1% (on sum exceeding ₹ 50 lakhs) will be collected under this sub-section.

Therefore, Zeet Ltd. is not required to collect tax at source from Amin Co. (P) Ltd on receipt of consideration for sale of motor cars u/s 206C(1F), but, it will be collected @0.1% on ₹ 60 lakhs (i.e. ₹ 110 lakhs *less* ₹ 50 lakhs) u/s 206C(1H), which will be ₹ 6,000.

However, if Amin Co. (P) Ltd. is not a dealer of motor cars but has acquired the same for the purpose of plying cars on hire, Zeet Ltd. is required to collect tax of ₹ 44,000 [₹ 11,00,000 × 4 × 1%] at source at the time of receipt of sale consideration u/s 206C(1F).

Payment of ₹ 66,00,000 [₹ 1,10,00,000 (-) ₹ 44,00,000] has been made for the remaining 7 motor cars (assuming that equal sum of ₹ 9,42,857 [₹ 66,00,000 ÷ 7] has been paid in respect of each car. Accordingly, since the consideration for each car does not exceed ₹ 10 lakhs, no tax has to be collected at source at the time of receipt of consideration on sale of these cars u/s 206C(1F), But, it will be collected @0.1% on ₹ 16 lakhs (i.e. ₹ 66 lakhs *less* ₹ 50 lakhs) u/s 206C(1H), which will be ₹ 1,600.

Question-2:

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

H. Ltd., a manufacturer of luxury cars sold 50 cars on 01·05·2022 to NMP Ltd., its dealer, each car costing ₹ 20 Lakhs. **[May 2018 (New Course)]**

Answer:

Every seller who receives any amount as consideration for sale of a motor vehicle of the value exceeding ₹ 10 lakhs, shall collect tax from the buyer@1% of the sale consideration as per section 206C(1F). However, this provision applies only in respect of transactions of retail sales and does not apply to sale of motor vehicles by manufacturers to dealers.

But, as per section 206C(1H), if consideration for sale of any goods exceeds ₹ 50 lakhs during the previous year and TCS is not collectible under any other provision of section 206C, then, TCS @ 0.1% (on sum exceeding ₹ 50 lakhs) will be collected under this sub-section.

Therefore, H Ltd., a manufacturer, is not required to collect tax at source from NMP Ltd., the dealer, on receipt of consideration for sale of motor cars u/s 206C(1F), but, it will be collected @0.1% on ₹ 950 lakhs (i.e. ₹ 1000 lakhs *less* ₹ 50 lakhs) u/s 206C(1H), which will be ₹ 95,000.

Hence, the amount payable by NMP Ltd. to H Ltd. is ₹ 1000.95 lakhs [viz. 1,000 lakhs (i.e., ₹ 20 lakhs × 50) *add* @0.1% on ₹ 950 lakhs].

Question-3:

Tulsi Private Ltd., a company engaged in ship breaking activity, sold some old and used plates, wood etc., in respect of which it did not collect tax from the buyer. The company claimed that such items are usable as such. Hence these are not 'scrap' to attract the provisions for collection of tax at source. The Assessing Officer treated such items in the nature of 'scrap' and raised a demand u/s 201(1) and interest u/s 201(1A).

Is the action of the Assessing Officer in treating such items as 'scrap' tenable in law? Discuss.

[May 2019, November 2018]

Answer:

The issue under consideration in the present case is, can items which are usable as such be treated as "Scrap" to attract provisions for tax collection at source u/s 206C.

The waste and scrap must be from manufacture/mechanical working of material which is definitely not usable as such because of breakage, cutting up, wear and other reasons.

Any material which is usable as such would not fall within the ambit of the expression scrap. In case of a company engaged in ship breaking activity, the old and used plates, wood etc. are usable as such. Since the items in question were usable as such, therefore, they do not fall within the definition of "scrap"

Thus, in the present case, the action of Assessing Officer in treating such items in the nature of scrap and raising a demand u/s 201(1) and interest u/s 201(1A), is not tenable in law.

Note: The facts of the case given are similar to the facts in CIT v/s Priya Blue Industries (P) Ltd (2016), wherein the above issue came up before the **Gujarat High Court.** The answer is based on the rationale of the Gujarat High Court in the said case.

Question-4:

M/s PMPC, a partnership firm, is engaged in the manufacture of cardboard carton boxes used in packaging industry. During the year it has sold cutting waste generated amounting to ₹ 30 lakhs to

M/s PAPC Ltd., a paper manufacturing company. It uses such cutting waste purchased as raw material for its production.

Discuss the implication of this transaction with respect to tax collected at source. [May 2019]

Answer:

The issue under consideration in the present case is, whether cutting waste generated in manufacturing process of cardboard carton boxes which is usable as such i.e. as raw material in production by a paper manufacturing company, will be liable for tax collection at source u/s 206C.

To attract tax collection at source u/s 206C, the waste and scrap must be from manufacture/mechanical working of material which is definitely not usable as such because of breakage, cutting up, wear and other reasons.

Any material which is usable as such would not fall within the ambit of the expression scrap. In case of a firm engaged in the manufacture of cardboard carton boxes, cutting waste is usable as such. Since the item in question was usable as such, therefore, it does not fall within the definition of "scrap"

Thus, in the present case, no tax is liable to be collected at source u/s 206C on sale of such cutting waste by M/s PMPC to M/s PAPC Ltd.

Question-5:

KLS Ltd. gives a multilevel parking building in front of a shopping mall in Delhi to PQR Ltd. on a lease of 90 years. PQR Ltd. is liable to pay ₹ 3 crores as one time lease premium in addition to an annual lease rent of ₹ 26 lakhs. What will be the TDS/TCS liability in the hands of KLS Ltd. as well as in the hand of PQR Ltd.? What will be your answer if PQR Ltd. does not have PAN?

[November 2019 (New Course)]

Answer:

KLS Ltd., the company granting lease of parking lot, is required to collect tax at source@2% under section 206C from the one-time lease premium of ₹ 3 crores and annual lease rent of ₹ 26 lakhs, i.e. on 3.26 crores at the time of debiting the amount payable by PQR Ltd. (assumed to be resident in India) or at the time of receipt of such amount, whichever is earlier.

In case PQR Ltd. does not have PAN, tax has to be collected by KLS Ltd. at the rate of 5%, being the higher of –

(i) 5% and

(ii) 4%, i.e., twice the TCS rate of 2%

In the hands of PQR Ltd., TDS provisions would not be attracted on the one-time lease premium of ₹ 3 crores paid for acquisition of long-term leasehold rights over land or building, which are not adjustable against periodic payments [CBDT Circular No.35/2016 dated 13.10.2016].

But, TDS provisions would be attracted on annual lease rent of ₹ 26 lakhs u/s 194-I @ 10%.

Question-6:

Examine the applicability of provisions relating to deduction/collection of tax at source and

compute the liability, if any for deduction/collection of tax at source in the following case for financial year ended 31st March, 2023 as per provisions contained under the Income-tax Act, 1961:

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 the Person	Remittance Amount INR	Purpose
Mr. Pradeep	₹ 6,50,000	Maintenance 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?

[July 2021]

Answer:

An authorised dealer who receives an amount for overseas remittance from a buyer, being a person remitting such amount out of India under the Liberalised Remittance Scheme of RBI, is required to collect tax at source @5%.

In case the remittance is for a purpose other than purchase of overseas tour programme package, then, no tax has to be collected at source, if the amount or aggregate of amount remitted by a buyer is less than ₹ 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.

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

Mr. James has to collect tax of ₹ 75,000, being 5% on ₹ 15 lakhs remitted by Mr. Promod towards cost of overseas tour programme package to North and South America. The benefit of tax collection on the amount in excess of ₹ 7 lakh is not available where the remittance is for an overseas tour programme package.

Note: In this case, it appears that the payment is made to a foreign entity for purchase of tour programme package. Therefore, the authorised dealer is required to collect tax at source since the amount has been remitted abroad by the buyer for purchase of tour programme package.

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.

Question-7:

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.2021-22 is ₹ 9.80 crores. The sale of spare parts and service station is ₹ 60 lakhs for F.Y. 2021-22. During F.Y. 2022-23, Raghav Motors Ltd. sold the following cars:

Model of Car	Date of Invoice	Value of Car in ₹ in Lacs
Maruti	14-07-2022	37 lakhs
Maruti	12-08-2022	19 lakhs
Ford	18-10-2022	8 lakhs
Maruti	05-11-2022	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. [December 2021]

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 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 the following dates -

- ₹ 37,000 [1% on ₹ 37,00,000] on 14.7.2022
- ₹ 19,000 [1% on ₹ 19,00,000] on 12.8.2022
- ₹ 12,000 [1% on ₹ 12,00,000] on 5.11.2022

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, there are two views as to whether TCS provisions under section 206C(1H) would be attracted.

Since sale consideration of ₹ 8 lakh in respect of Ford car on 18.10.2022 is the only receipt which is excluded from the purview of TCS u/s 206C(1F), and this receipt does not exceed the annual threshold of ₹ 50 lakhs, a view can be taken that no tax is required to be collected at source u/s 206C(1H).

Alternative view in respect of TCS u/s 206C(1H)

Since the receipt of sale consideration for all vehicles (including the sale consideration of Maruti cars in respect of which TCS u/s 206C(1F) is attracted) exceeds ₹ 50 lakhs during the previous year 2022-23 and the total sales of Raghav Motors Ltd. from the business carried on by it exceed ₹ 10 crores (₹ 10.20 crores i.e., ₹ 9.80 crores + ₹ 0.60 crores) during the financial year 2021-22, a view can be taken that tax is to be collected at source @0.1% of ₹ 8 lakh u/s 206C(1H), amounting to ₹ 800, at the time of receipt of consideration i.e., on 18.10.2022.

In such case, TCS liability will be ₹ 68,000 + ₹ 800 = ₹ 68,800.

Question-8:

In respect of the following case scenario you are required to discuss the provisions related to tax deducted/collected at source and amount of tax deductible for the year ended 31st March 2023.

State Government of Telangana grants a lease of coal mine to M/s XYZ Co. Ltd. on 1.09.2022 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 2022-23. The turnover of M/s XYZ Co. and M/s AB (P) Ltd. for the financial year 2021-22 amounted to ₹ 5 crores and ₹ 6 crores, respectively. [May 2022]

Answer:

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.

"NON-RESIDENTS TAXATION"

"QUESTIONS FROM PAST EXAMINATIONS (+) STUDY MATERIAL"

Section 115A: ***Tax on dividends, interest, royalty and technical service fees in case of Non-Residents and Foreign companies:-***

Question -1:

Red Ltd., a foreign company, had entered into a collaboration agreement, approved by the Central Government, with Blue Ltd., an Indian company on February 21, 2003 and is in receipt of the following payments during the previous year ending March 31, 2023.

(1) Interest on 8 per cent debentures for ₹ 40 lakh issued by Blue Ltd. on July 1, 2022 in consideration of providing of technical know-how, manufacturing process and designs (date of payment of interest: March 31 every year).

(2) Service charges @ 2.5 percent of the value of plant and machinery for ₹ 500 lakh leased out to Blue Ltd. payable each year before March 31.

(3) Apart from the above incomes, Red Ltd. received a long term capital gain amounting to ₹ 1.90 Lakhs on sale of debentures (unlisted) of Green Ltd., an Indian company, purchased in US$.

- **Compute the Total Income of Red Ltd. and determine its tax liability for the assessment year 2023-24. [November 2018, November 2003]**

Answer:

"Computation of total income of Red Ltd., a foreign company, for A.Y. 2023-24"

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 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	2,40,000

Indian company, is deemed to accrue or arise in India, since the debt incurred is not used for a business outside India or for earning income from a source outside India]	
Total Income	**56,80,000**
"Computation of tax liability of Red Ltd. for A.Y. 2023-24"	
Tax@10% on royalty of ₹12.50 lakhs and **fees for technical services** of ₹ 40 lakhs	5,25,000
Tax @10% on long term capital gains of ₹ 1,90,000, as debentures are unlisted on RSE	19,000
Tax @40% on interest on debentures of ₹ 2,40,000 since debt is not incurred by Blue Ltd. in foreign currency	96,000
	6,40,000
Add: Health and Education cess@4%	25,600
Tax Liability	**6,65,600**

Question -2:

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) during the financial year 2022-23. 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 received is fee for technical services from an Indian Company instead of interest income from Infrastructure Debt Fund?

[November 2019 (New Course)]

Answer:

I. <u>If Mr. Bhist has received interest on investment made in notified Infrastructure Debt Fund:</u>

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 / specified in the relevant provision of the Act i.e., 5%;

(b) 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%).

II. <u>If Mr. Bhist has received fee for technical services (FTS) from an Indian company:</u>

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@10% (*plus* health and education cess@4%) i.e. 10.4% under section 115A on the gross amount of such FTS, irrespective of the residing place of Mr. Bhist.

Question -3:

Cherry Ltd., a non-resident German company, has the following incomes in India during the year ended on 31.03.2023:

(i) Dividend income of ₹ 12,50,000 from XY Ltd., an Indian company listed on recognized stock exchange.

(ii) 8% debentures of ₹ 20,00,000 received from X Ltd., an Indian Company, on October 1, 2022, in consideration of providing technical knowhow (date of payment of interest being March 31 every year).

(iii) Dividend received ₹ 5,50,000 on Global Depository Receipts of Y Ltd., an Indian company, issued under a scheme of Central Government against the initial issue of shares of the company and purchased by Cherry Ltd. in foreign currency through an approved intermediary.

(iv) Business Income of ₹ 8,00,000 from a unit established at Mumbai.

(v) Income by way of royalty (other than referred to in section 44DA) amounting to ₹ 10,00,000, received from Z Ltd., an Indian company, in pursuance of an agreement approved by Central Government. As per DTTA between the two countries, such royalty is taxable @12%.

With brief reasons for the treatment of the above incomes, you are required to compute the tax liability of Cherry Ltd. for the Assessment Year 2023-24. [July 2021 (New Course)]

Answer:

<u>"Computation of total income and tax liability of Cherry Ltd., a non-resident German company"</u>

(for the A.Y. 2023-24)

Particulars	₹
Business Income from a unit established at Mumbai	8,00,000
<u>Income from other sources:</u>	
– Dividend income from XY Ltd. an Indian company	12,50,000
– Fees for technical services [would be equivalent to the amount of debentures of	20,00,000

₹ 20,00,000 received from an Indian company, issued in consideration of providing technical knowhow	
– Interest on Debentures [₹ 20,00,000 x 8% x 6/12]	80,000
– Dividend on Global Depository Receipts (GDRs) of Y Ltd. an Indian company, issued under a scheme of Central Government against the initial issue of Y Ltd. and purchased in foreign currency by Cherry Ltd. [₹ 5,50,000 x 100/89.6, since tax would have been deducted at source @ 10.4%]	6,13,839
– Royalty income received from Z Ltd. an Indian company in pursuance of an agreement approved by Central Government [₹10,00,000 x 100/89.6, since tax would have been deducted at source @ 10.4%]	11,16,071
Gross Total Income/ Total income	**58,59,910**
Computation of tax liability:	
Dividend income of ₹ 12,50,000, taxable @20% u/s 115A	2,50,000
Dividend on GDRs of ₹ 6,13,839, taxable @10% u/s 115AC	61,384
Royalty income of ₹ 11,16,071, taxable @10% u/s 115A, since it is in pursuance of an agreement approved by the Central Government	1,11,607
FTS of ₹ 20,00,000, taxable @40%, since it is not in pursuance of an agreement approved by the Central Government	8,00,000
Interest on debentures of ₹ 80,000, taxable @40%, since debt is incurred in Indian currency, it is not eligible for concessional rate of 20% u/s 115A	32,000
Business income of ₹8,00,000 [taxable @40%]	3,20,000
	15,74,991
Add: Health and education cess@4%	63,000
Tax liability	**16,37,991**
Tax liability (rounded off)	**16,37,990**

➢ TDS on dividend has to be deducted to arrive at the net tax payable. The question, however, asks only for tax liability.

Section 115AD: *Tax on income of foreign institutional investors from securities or capital gains arising from their transfer :-*

Question-4:

SOL Inc, a notified Foreign Institutional Investor (FII), derived the following incomes from various sources for the financial year 2022-23:

(1) Income in respect of securities: ₹ 28,50,000

Expenses incurred in respect thereof: ₹ 50,000

(The above income includes an interest of ₹ 16,00,000 received from an Indian Company on the investment in rupee denominated bonds and income from securities as exempt u/s 10(15) ₹ 3,50,000.

(2) Capital Gains:

(i)	**Long Term :**	

	Sale proceeds on sale of securities on 15.01.2023:	**₹ 52,00,000**
	Purchase cost of securities on 25.05.2017:	**₹ 28,00,000**
	Cost Inflation Index: 2017-18 : 272; 2022-23: 331	
(ii)	**Short Term:**	
	Sale proceeds of equity shares of Company A (January 2023):(STT paid on Company A shares)	**₹ 13,50,000**
	Cost of acquisition (August, 2022) :	**₹ 5,50,000**
	Sale proceeds of equity shares of Company B (December, 2022)	**₹ 9,25,000**
	Cost of acquisition (April, 2022) : (STT not paid on Company BShares)	**₹ 4,85,000**

Compute the taxable income of SOL Inc and tax liability for the assessment year 2023-24 as per applicable provisions of the Income-tax Act, 1961, assuming that no other income is derived by SOL Inc (FII) during the financial year 2022-23. [November 2018]

Answer:

Computation of total income of SOL Inc., a notified FII, for A.Y. 2023-24

Particulars	₹	₹
Investment Income		
Income of ₹3,50,000 from securities as exempt u/s 10(15)	Nil	
Income in respect of securities[₹28,50,000 – securities income ₹3,50,000]	25,00,000	
[No deduction is allowable in respect of expenses incurred inrespect thereof]		25,00,000
Long-term capital gains on sale of securities		
Sale consideration	52,00,000	
Less: Cost of acquisition	28,00,000	
[Benefit of indexation is not allowable]		24,00,000
Short-term capital gains on sale of STT paid equity shares ofCompany 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 ofCompany 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		**61,40,000**

Computation of tax liability of SOL Inc. for A.Y.2023-24

Particulars	₹

Tax@5% on interest on ₹ 16,00,000 received from an Indian company on investment in rupee denominated bonds = 5% of ₹16,00,000	80,000
Tax@20% on balance investment income of ₹ 9,00,000 [₹ 25,00,000 – ₹16,00,000]	1,80,000
Tax@10% on long-term capital gains = 10% of ₹24,00,000	2,40,000
Tax@15% on STT paid short-term capital gains on sale of listed equity shares of Company A = 15% of ₹8,00,000	1,20,000
Tax@30% on short-term capital gains on sale of listed equity shares of Company B on which STT is not paid = 30% of ₹4,40,000	1,32,000
	7,52,000
Add: Health & Education cess @ 4%	30,080
Tax Liability	**7,82,080**

Note: The computation of total income and tax liability of an FII, whose income comprises solely of investment income and capital gains on sale of securities is governed by the provisions of section 115AD, as per which

- no deduction is allowable in respect of expenditure to earn investment income and
- benefit of indexation is not allowable in respect of long-term capital gains.

The rates at which tax is to be calculated in respect of investment income and capital gains are also provided in section 115AD.

Section 115D: *Special provisions for computation of total incomes of NRIs :-*

Question -5:

Ajay, a non-resident Indian, has the following sources of income in India during the previous year 2022-23.

	Particulars	₹	₹
(i)	**Income from house property located in India (Computed)**		**1,80,000**
(ii)	**Income from securities exempt u/s 10**		**75,000**
(iii)	**Interest on debentures of Indian company (Subscribed in convertible foreign exchange)**	**1,00,000**	
	Less: Interest on loan taken for purchase of debentures	**20,000**	**80,000**
(iv)	**Long-term capital gains on sale of debentures subscribed in US$:**		
	Cost in 2002-03	**4,00,000**	
	Sale in 2022-23	**6,00,000**	
		2,00,000	
	Less : Commission to brokers	**6,000**	**1,94,000**
	Cost Inflation Index: F.Y. 02-03 -105 : F.Y. 2022-23: 331		

☞ **Compute the tax payable by Ajay for Assessment Year 2023-24 if he opts for the provisions of Chapter- XII-A of the Income-tax Act, 1961. [November 2018, November 2011, May 2004]**

Answer:

Computation of tax liability of Mr. Ajay for the A.Y. 2023-24 as per provisions of Chapter XII-A:-

Particulars	₹	₹
Tax on long term capital gain (1,94,000 X 10%) [See Notes 1 & 2)	19,400	
Tax on interest on debentures being investment income (₹ 1,00,000 X 20%) [See Notes 1 & 3]	20,000	
Tax on balance income of ₹ 1,80,000	Nil	39400
Add: Health & Education cess @ 4%		1576
Total Tax liability:		40976

EXPLANATORY NOTES:-

(1) Computation of total income of Mr. Ajay for the A.Y. 2023-24 as per provisions of Chapter XII-A:

Particulars	₹	₹
Income from house property (computed)		1,80,000
Capital Gains of sale of debentures:		
Sale consideration	6,00,000	
Less: Commission to brokers	6,000	
Net sale consideration	5,94,000	
Cost of acquisition (Refer Note 2)	4,00,000	
Long term capital gain		1,94,000
Income from securities exempt u/s 10		Nil
Interest on debentures of Indian company (Refer Note 3)		1,00,000
Total Income:		**4,74,000**

(2) As per section 115D, the indexation benefit would not be available for calculating cost of acquisition for computing long term capital gains under Chapter XII-A.

(3) No deduction from the interest on debentures being the investment income as per the provisions of section 115D. Therefore, interest on loan taken for purchase of debentures is not deductible.

(4) As per the provisions of section 115E, the tax rate applicable on investment income is 20% and on the long term capital gain the tax rate applicable shall be 10%, the balance income shall be chargeable to tax as per the normal tax rates.

(5) It has been assumed that the debentures referred to in the question are issued by an Indian company which is not a private company and are hence, specified assets. Since the specified assets have been subscribed in convertible foreign exchange, they are foreign exchange assets.

It may be additionally noted that If a non-resident purchases shares in, or debentures of, an Indian company by utilizing foreign currency, capital gain shall be calculated under first proviso to section 48 in the same foreign currency which was initially utilized in purchase of shares and debentures. Capital gains so computed in foreign currency shall be reconverted into Indian currency.

	Since the telegraphic transfer buying rates and telegraphic transfer selling rates of US & on the date of acquisition and date of sale are not given in the question, effect has not been given to the first proviso to section 48 in the above solution.

Question -6:

The following data is furnished by Mr. Sumedh, a non-resident and a person of Indian Origin, for the financial year ended 31-3-2023:

A	**Long term Capital Gain arising of transfer of foreign exchange asset on 31.7.2022 (computed)**	**₹ 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	**₹ 5,90,000**
	Interest on Government Securities	**₹ 95,000**
	Interest on deposits with Pubic Limited Companies	**₹ 2,60,000**
	Income from securities - exempt u/s 10	**₹ 75,000**
B	**Savings and Investments:**	
	Investment in notified savings certificates referred to in section 10(4B) on 30.3.2023	**₹ 2,00,000**
	Investment in shares of Indian Public Limited Companies on 31.12.2023	**₹ 3,00,000**
C	**Tax deducted at source**	**₹ 1,83,800**

- **Compute balance tax payable/refund due for the assessment year 2023-24 in accordance with special provisions applicable to non-resident. [December 2021, May 2019]**

Answer:

Computation of tax liability of Mr. Sumedh as per provisions of Chapter XII-A

(For the A.Y. 2023-24)

Particulars		₹	₹
Tax on long term capital gain:			
Long term capital gain (computed after expense on transfer)	5,70,000		
Less: Exemption u/s 115F	Nil		
[See Notes 1 & 2]	5,70,000 × 10%	57,000	
Tax on interest deposits with Public Limited Companies and Government securities being investment incomes			
(₹ 3,55,000 × 20%) [See Note 1]		71,000	
Tax on balance income of ₹ 5,90,000		30,500	1,58,500
Add: Health & Education cess @ 4%			6,340
	Total Tax liability:		1,64,840

Less: Tax deducted at source		1,83,800
	Refund due:	18,960

EXPLANATORY NOTES:-

(1) Computation of total income of Mr. Sumedh for the A.Y. 2023-24 as per provisions of Chapter XII-A:

Particulars	₹	₹
Capital Gains of sale of foreign exchange asset:		
Long term capital gain computed without expense on transfer	6,50,000	
Less: Expense in connection with such transfer	80,000	
Long term capital gain (Taxable)		5,70,000
Interest on deposits held with Private limited companies		5,90,000
Interest on deposits with Public limited companies (Note 3)		2,60.000
Interest on Government securities (securities of CG assumed)		95,000
Income from securities exempt u/s 10		Nil
Total Income:		**15,15,000**

(2) In the absence of information about sales consideration on transfer of foreign exchange asset, long term capital gain has itself been treated as sales consideration for the purpose of computation of exemption u/s 115F.

Investment in notified savings certificates referred to in section 10(4B) will not qualify for exemption u/s 115F as the investment has been made on 30.03.2023 viz. after the expiry of six months of transfer.

Similarly, investment in shares of Indian public limited companies has been made on 31.12.2023 viz. after the expiry of six months of transfer, hence will not qualify for exemption.

(3) As per the provisions of section 115E, the tax rate applicable on investment income is 20% and on the long term capital gain the tax rate applicable shall be 10%, the balance income shall be chargeable to tax as per the normal tax rates.

Question -7:

(1) A non-resident Indian despite having during the year ended on 31.3.2023 income in India from the investment and long term capital gains is not required to file the return of income for A.Y. 2023-24. Examine and state the correctness or otherwise of this statement.

(2) Mr. Rameshwarm, a non-resident Indian, acquired/purchased shares in foreign currency of a company XYZ Ltd. on 1.1.2008 for ₹ 10,00,000. These shares were sold by him in the recognized stock exchange through a broker on 1.1.2022 for ₹ 30,00,000. The amount of sales consideration of the shares of ₹ 30,00,000 so received by him was again invested in purchase of shares of other company ABC Ltd. on 31.03.2022. The shares of ABC Ltd. purchased on 31.03.2022 were also sold by him on 30.06.2022 for ₹ 35,50,000.

Discuss the tax implications relating to the two transactions of sales of the shares in the relevant assessment years under the Income-tax Act by ignoring the effect of first proviso to section 48.

[November 2018]

Answer:

(1) The statement is correct/partially correct.

A non-resident Indian need not furnish a return of income u/s 139(1), if he satisfies both of the following conditions:-

(a) His total income consists only of investment income or income by way of long- term capital gains or both; and

(b) Tax deductible at source under the provisions of Chapter XVII-B (i.e. Chapter of TDS) has been deducted from such income.

Note: The statement would be correct only if both the above conditions are satisfied.

(2) In A.Y. 2022-23, since Mr. Rameshwarm, has invested whole of the net consideration on transfer of a foreign exchange asset (being shares purchased in XYZ Ltd. in foreign currency), in shares of ABC Ltd., an Indian company, being a specified asset, within a period of six months, the long-term capital gain of ₹ 20,00,000 (₹ 30,00,000, being the sale consideration (-) ₹ 10,00,000, being the cost of acquisition) computed ignoring the effect of indexation, would not be chargeable to tax during the assessment year 2022-23, by virtue of the provisions of section 115F.

In A.Y. 2023-24, however, since Mr. Rameshwarm has sold the shares of ABC Ltd. within a period of three years, the amount not chargeable to tax in A.Y.2022-23 i.e., ₹ 20,00,000 would be chargeable to tax as long-term capital gains in the assessment year 2023-24, being the year of sale of such shares.

Further, short-term capital gain of ₹ 5,50,000 (₹ 35,50,000 - ₹ 30,00,000) would arise on transfer of shares of ABC Ltd., since such asset is held for a period of less than 12 months.

Section 115BBA: *Tax on Non-resident sportsman or sports association: -*

Question -8:

Ricky, a foreign national and a cricketer came to India as a member of South African Cricket Team in the year ended 31st March 2023. He received ₹ 4 lakhs for participation in matches in India.

He also received ₹ 1.5 lakhs for an advertisement of a product on Radio. He wrote an article for a local newspaper and received ₹ 20,000 for it. During his stay in India, he also won a prize of ₹ 25,000 from horse racing in Kolkata. He has no other income in India during the year. You are required to do the following:

(i) Compute his tax liability in India for A.Y. 2023-24.

(ii) Comment whether these incomes are subject to deduction of tax at source.

(iii) Comment whether he is liable to file return of income in India for A.Y. 2023-24.

(iv) What would have been his tax liability, had he been a match referee instead of cricketer?

[Nov. 2020, May 2018, November 2012, Study Material]

Answer:

(i) "Computation of tax liability of Ricky for the A.Y. 2023-24"

Particulars	₹	₹
Income taxable under section 115BBA:		
Income from participation in matches in India	4,00,000	
Advertisement of product on Radio	1,50,000	
Contribution of an article in local newspaper	20,000	
	5,70,000	
Income taxable under section 115BB:		
Winning from horse races	25,000	
Total income:	5,95,000	
Tax @ 20% under section 115BBA on ₹ 5,70,000		1,14,000
Tax @30% under section 115BB on income of ₹ 25,000 from horse races		7,500
		1,21,500
Add: Health & Education cess @4%		4,860
Total tax liability:		1,26,360

(ii) Yes, the above income is subject to tax deduction at source.

Income referred to in section 115BBA (i.e., ₹ 5,70,000, in this case) is subject to tax deduction at source @ 20% under section 194E.

Income referred to in section 115BB (i.e., Winnings of ₹ 25,000 from horse racing, in this case) is subject to tax deduction at source @30% under section 194BB.

Since Ricky is a non-resident, the amount of tax to be deducted calculated at the prescribed rates mentioned above, would be increased by health & 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. Ricky 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 for A.Y. 2023-24.

(iv) The Calcutta High Court has, in **Indcom v/s CIT (2011),** 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.

Particulars	₹	₹
Tax @ 30% under section 115BB on winnings of ₹ 25,000 from horse races		7,500
Tax on ₹ 5,70,000 at the rates in force	₹	
Upto ₹ 2,50,000	Nil	
₹ 2,50,000 – ₹ 5,00,000 [₹ 2,50,000@5%]	12,500	
₹ 5,00,000 – ₹ 5,70,000[₹ 70,000@20%]	14,000	26,500

	34,000
Add: Health & Education cess@4%	1,360
	35,360

Section 195 : *Deduction of tax from other sums :-*

Question -9:

Discuss the liability of TDS in the following case for the Assessment year 2023-24:

K Ltd. an event management company, organized a concert of international artists in India. In this connection, it engaged the service of an overseas agent Mr. X from USA, to bring artist 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 organised in India. The company made the payment of commission of ₹ 5 lakhs to the overseas agent, outside India. [May 2017, May 2016]

Answer:

An overseas agent of an Indian company operates in his own country and no part of his income accrues or arises in India. The commission paid to the non-resident agent for services rendered outside India and remitted directly to him outside India is, thus, not chargeable to tax in India.

Since commission income for contacting and negotiating with international artists by Mr. X, 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 in respect of commission paid to him by K Ltd.

Question -10:

R Ltd. paid ₹ 5,00,000/- as sales commission to Mr. francis (non-resident) who acted as its agent for booking orders from various customers who are outside India. The assessee has not deducted tax at source on the commission payment for the year ended 31.03.2023. On these facts:

(i) Decide whether commission is chargeable to tax in the hands of Mr. francis in India?

(ii) Decide about the deductibility of commission payment in the assessment of R Ltd.?

[November 2008]

Answer:

(i) If the services are rendered by a non-resident outside India & sales commission is paid for such services to non-resident, no income accrues or arises or deemed to accrue or arise to such non-resident in India. This has been clarified in Circular No. 23 dated 23.7.1969.

(ii) Section 40(a)(i) requires deduction of tax at source in respect of any interest, royalty, fees for technical services or other sum chargeable under this Act, which is payable outside India or in India to a non-resident. However, in this case, the commission payable to the non-resident agent is not chargeable to income tax in view of the clarification given by Circular No. 23 dated 23.7.1969 explained in (i) above. Further, Circular No. 786 dated 7.2.2000 clarifies that, in such a case, no tax is required to be deducted at source u/s 195. Hence, disallowance u/s 40(a)(i) would not be attracted, and the commission payment would be deductible in the assessment of R Ltd

Question -11:

Decide whether TDS provisions are attracted in the following case:

Interest of ₹ 82,000 on Capital Gains Bond issued by Power Finance Corporation Ltd. to Mr. Ajay (aged 47), a non-resident individual. [January 2021]

Answer:

Any person responsible for paying interest (other than interest referred to in section 194LB or section 194LC or section 194LD) or any other sum chargeable to tax (other than salaries) to a non-corporate non-resident or to a foreign company is liable to deduct tax at source at the rates prescribed by the relevant Finance Act under section 195.

Since interest of ₹ 82,000 on Capital Gains Bond issued by Power Finance Corporation Ltd. is taxable in the hands of Mr. Ajay, being a non-resident, the provisions for tax deduction at source under section 195 are attracted in this case.

NON-RESIDENTS TAXATION - MISCELLANEOUS PROVISIONS

Section 6: *Determination of Residential Status:-*

Question -12:

Simran (P) Ltd. holds 55% of shares in Al Kuber Ltd., a Company incorporated in Dubai. Al Kuber Ltd. has its offices in India also.

Details relating to Al Kuber Ltd. for year ended March 2023 are as stated below:

(Amt in ₹ crores)

Particulars	India	Dubai
• Fixed Assets after considering Depreciation for tax purposes	1500	650
• Intangible Assets	225	1075
• Other Assets (value as per books of A/c)	800	1900
• Income from trading operations. The above figure includes:	730	1370
a. Income from transactions where sales are to AE	20	40
b. Income from transactions where purchases are from AE	30	55
c. Income from transactions where sales/purchases are to/fromAE	45	80
• Interest & Dividend from investments	560	320
• No. of employees	70	90
✓ Unskilled employees out of the above mentioned total employees (resident in respective countries)	5	30
• Payroll expenses on employees	940	1250
✓ Payroll expenses on Unskilled employees out of the above mentioned total Payroll expenses	100	415
• No. of Board Meetings held	3	4

Determine the residential status of Al Kuber Ltd. for A.Y. 2023-24
[November 2020 (New Course)]

Answer:

AI Kuber Ltd., a company incorporated in Dubai, would be resident in India in the P.Y. 2022-23, if its place of effective management is in India in that year.

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

A company would be said to be engaged in "Active Business Outside India" (ABOI) forPOEM, if -

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

AI Kuber Ltd. would be regarded as a company engaged in active business outside Indiafor P.Y. 2022-23 for POEM purpose only if it satisfies all the four conditions cumulatively.

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

Total income of AI Kuber Ltd. during the P.Y. 2022-23 is ₹ 2,980 crores Passive income is the aggregate of, -

(i) income from the transactions where both the purchase and sale of goods is from/to its associated enterprises i.e., ₹125 crores; and

(ii) income by way of, *inter alia*, interest and dividend i.e., ₹880 crores;

Passive Income of AI Kuber Ltd. is ₹ 1,005 crores (i.e., ₹ 125 crores + ₹ 880 crores) Percentage of passive income to total income = ₹1,005 crore/ ₹2,980 crore x 100 = **33.72%**

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

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

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

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

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

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

Condition 3: Less than 50% of the total number of employees of AI Kuber Ltd.should be situated in India or should be resident in India

Number of employees working in India is 70.

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

Percentage of employees working in India to total number of employees is 70 x 100/160
= **43.75%**

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

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

Payroll expenditure on employees in India is ₹940 crores

Total payroll expenditure of AI Kuber Ltd. is ₹2190 crores [₹940 crore + ₹1250 crore]. Percentage of payroll expenditure on employees in India to total payroll expenditure is **42.92%**, being ₹940 crores x100 /₹2190 crores.

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

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

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

Since AI Kuber Ltd. is engaged in active business outside India in P.Y. 2022-23 and majority of its board meetings i.e., 4 out of 7, were held outside India, POEM of AI Kuber Ltd. would be outside India. Therefore, AI Kuber Ltd. would be non-resident in India for the P.Y. 2022-23.

Question -13:

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. **[November 2018 (New Course)]**

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 are 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 P.Y. 2022-23 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. during the P.Y. 2022-23 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. during the P.Y. 2022-23 is ₹ 500 crores [₹ 160 crores, in India + ₹ 340 crores, in Sri Lanka].

Value of total assets of John Butler Tex. Inc. in India during the P.Y. 2022-23 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 question it is also possible to assume that the condition pertaining to payroll expenditure is not satisfied by the company*

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, the global income of the 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 4 conditions for ABOI. Thus, it would be better to outsource the increased operation to an external agency.

Section 9: *Income deemed to accrue or arise in India:-*

Question -14:

State with reasons whether the following income of the non-resident is deemed to accrue or

arise in India:

M/s XYZ Highway Ltd, a resident Indian company is engaged in the business of building highway projects in India. It has borrowed US $ 250 million from a financial institution resident in US to invest in one of its ongoing projects in India. The rate of interest charged is 8% p.a. Assume 1 US$ = ₹ 69.

Will your answer differ in case the money is invested in one of its ongoing projects in Sri Lanka?

[November 2019]

Answer:

As per section 9(1)(v), interest payable by a person resident in India would be deemed to accrue or arise in India. However, such interest would not be deemed to accrue or arise in India if the interest is payable in respect of moneys borrowed and used, *inter alia*, for the purpose of business or profession carried on by such resident outside India.

In the present case, if M/s XYZ Highway Ltd. has used the money borrowed for its projects in India, interest received by financial institution resident in US would be deemed to accrue or arise in India.

If, M/s XYZ Highway Ltd. used the money borrowed for its projects in Sri Lanka i.e., for business outside India, it would be covered under the exception and the interest received by financial institution resident in US would not be deemed to accrue or arise in India

Question -15:

Explain in brief whether the transaction - Interest of ₹ 5,00,000 paid on money borrowed by Mr. Smith (a Non-resident) for the purpose of doing business of garments at Mumbai to Mr. John (who is also a Non-resident) attracts income-tax in India in the hands of recipient in the Assessment Year 2023-24. **[November 2020 (New Course)]**

Answer:

Income by way of interest payable by a person who is a non-resident would be deemed to accrue or arise in India, where the interest is payable in respect of any money borrowed and used for the purposes of a business or profession carried on by such person in India.

Accordingly, interest income arising to Mr. John, a non-resident, would be deemed to accrue or arise in India since it is in respect of money borrowed by Mr. Smith, a non- resident, for the purpose of business of garments at Mumbai in India. Hence, it would attract income-tax in India in the hands of Mr. John, even though he is a non-resident.

Question -16:

LLM Bank Ltd. carrying on banking business is incorporated in Melbourne, Australia. It has branches in different countries including India. During the financial year 2022-23, the Indian branch of the bank paid interest of ₹20 lakhs and ₹15 lakhs, respectively, to its head office in Melbourne and to the branch office in California. State with reasons whether interest so paid shall be liable to tax in India in the hands of head office and California branch. **[November 2017]**

Answer:

As per section 5, the total income of a non-resident would include all income which is, inter alia, deemed to accrue or arise to him in India in that year.

In the case of a non-resident, being a person engaged in the business of banking, any interest payable by the Permanent Establishment (PE) in India of such non-resident to the head office or any PE or any other part of such non-resident outside India, shall be deemed to accrue or arise in India. [Explanation to section 9(1)(v)]

In the present case, the Indian branch, being a fixed place of business, is the PE in India of LLM Bank Ltd., being a non-resident engaged in the banking business, since such business is carried on in India through the Indian branch.

Accordingly, the interest of ₹20 lakhs paid to its head office in Melbourne and ₹15 lakhs paid to California branch by the Indian branch [being the PE in India of LLM Bank Ltd, a non-resident engaged in the business of banking] shall be deemed to accrue or arise in India and shall be liable to tax in India in the hands of head office and California branch, respectively, in addition to any income attributable to the PE in India.

Question -17:

State with reasons whether the following transactions attract income-tax in India, in the hands of recipients u/s 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 on 25/6/2021, 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 during previous year 2022-23. [November 2020, November 2014]

Answer:

(i) Fees for technical services is taxable under section 9. 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, such income shall be included in the 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, 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 connection" includes not only trading and manufacturing connection; it includes, within its scope, "professional connection" as well. Therefore, the existence of

professional connection amounts to existence of "business connection" u/s 9. Hence, it is taxable in India.

(iii) As per section 9, 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, the amount paid by Government of India for use of patent developed by Mr. A, a non-resident, is deemed to accrue to arise in India. Hence, it is taxable in India.

(iv) ₹ 20 lakhs, being the value of debentures issued by an Indian company in consideration of providing technical know-how, 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. Hence, it is also taxable in India.

Further, as per section 9, 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 hands of Sai Engineering by virtue of section 9. Hence, it is also taxable in India.

Question -18:

Examine in the context of provisions contained under the Income-tax Act, 1961, each of the following independent cases and state in brief whether there exists business connection in each of the cases in India so as to bring the income earned, if any, to taxnet in India:

(i) ABC Ltd., a company resident in Dubai, had set-up a liaison office at Mumbai to receive trade inquiries from customers in India. The work of the liaison office is not only restricted to forwarding of the trade inquiries to ABC Ltd. but the liaison office also negotiates and enters into the contracts on behalf of ABC Ltd. with the customers in India.

(ii) XYZ Inc. a resident of USA, has set up a branch at Hyderabad for the purpose of purchase of raw materials for manufacturing its products. The branch office is also engaged in selling the products manufactured by XYZ Inc. and in providing sales related services to customers in India on behalf of XYZ Inc.

(iii) Mr. Rajesh, a resident in India and based at Delhi, is appointed as an agent by PQR Inc. a company incorporated in UK for tracking the Indian markets. He was canvassing the orders and then communicating to PQR Inc. in UK. He had no authority to accept the orders. All the orders were directly received, accepted and after receipt of the price/value, the delivery of goods was given by PQR Inc. outside India. No purchase of raw material or manufacturing of finished goods took place in India. The agent was entitled to receive the commission on the sales so concluded by PQR Inc. [November 2018]

Answer:

(i) If a Liaison Office is maintained **solely for the purpose of carrying out activities which are preparatory or auxiliary in character,** and such activities are approved by the Reserve Bank of India, **then, no business connection is established.**

In this case, had the liaison office's activities been restricted to forwarding of trade inquiries to ABC Ltd., a Dubai based company, its activities would not have constituted business connection.

However, the activities of the liaison office extends to also negotiating and entering into contracts on behalf of ABC Ltd. with the customers in India, on account of which business connection is established.

(ii) As per the opening sentence in Explanation 2, to section 9(1)(i) "business connection" shall include any business activity carried out through a person in India acting on behalf of the non-resident. Accordingly, in this case, since the branch office is carrying out a business activity by purchasing raw materials in India for XYZ Inc. and selling finished product manufactured by XYZ Inc. to customers in India and providing sales related services to them on behalf of XYZ Inc., business connection is established.

It may be noted that as per clause (a) of Explanation 2, in the case of a non- resident, no business connection would be established if the activities of the person acting on behalf of the non-resident were limited to the purchase of goods or merchandise for the non-resident.

In the present case, however, business connection would be established, since the branch set up at Hyderabad by XYZ Inc. is not solely engaged in purchase of raw materials for XYZ Inc. for manufacturing its products **but is also engaged in selling such manufactured products to customers in India and providing sales related services to them on behalf of XYZ Inc.**

(iii) 'Business connection' shall include any business activity carried out through a person acting on behalf of the non-resident. For a business connection to be established, the person acting on behalf of the non-resident –

(a) must have an authority which is habitually exercised in India to conclude contracts on behalf of the non-resident or;

(b) in a case where he has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident, or habitually secures orders in India, mainly or wholly for the non-resident.

In the present case, business connection would not be established, since Mr. Rajesh does not have the authority to accept or conclude orders in India on behalf of PQR Inc. Moreover, all the orders were directly received, accepted and after receipt of the price/value, the delivery of goods was also given by PQR Inc. outside India. Hence, no business connection is established in this case.

Question -19:

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. [May 2018 (New Course)]

Answer:

As per section 9(1)(i), 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 -20:

Mr. A, a non-resident, staying in England, holds 10% of the total share capital in M/s ABC Ltd. a company incorporated in England. M/s ABC Ltd. directly owns assets in India. Mr. A has transferred his entire share capital to Mr. B an Indian resident when he was in England.

[November 2019]

Answer:

As per section 9(1)(i), income arising through the transfer of a capital asset situated in India would be deemed to accrue or arise in India. As per Explanation 5 to section 9(1)(i), shares in a company registered outside India would be deemed to be situated in India, if the shares derive, directly or indirectly, its value substantially from assets located in India.

However, income from transfer of such shares would not be deemed to accrue or arise in India if such company directly owns assets in India and the transferor neither holds the right of management or control in such company nor holds more than 5% of the total share capital of such company [As per Explanation 7 to section 9(1)(i)].

In the present case, M/s ABC Ltd. is a company incorporated in England which directly owns assets in India. However, since Mr. A holds more than 5% of the total share capital of M/s ABC Ltd, capital gain arising from the transfer of shares of M/s ABC Ltd would be deemed to accrue or arise in India in the hands of Mr. A.

Question -21:

Wioni Inc., a company incorporated in Japan, is engaged in development of infrastructure and providing consultancy in the same field. During the Financial Year 2022-23, 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 pertaining to F.Y. 2022-23:

(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 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 (Date of loan 24-12-2022)

(iv) On 26-8-2022, 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, 2009 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 2023-24 briefly explaining the relevant provisions of the Income-tax Act, 1961.

[January 2021 (New Course)]

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.2023-24.

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. for A.Y. 2023-24		
	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 on 24.12.2022 [As per section 10(15)(ix), interest payable to Wioni Inc., a non-resident, by Ms. O, a unit located in an IFSC, in respect of monies borrowed by it on or after 1.9.2020 is exempt from income-tax]	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	95,000

	- ₹ 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 ₹ 1,00,000 is taxable@10% u/s 112A]	
	Total Income	**5,49,000**

Question -22:

Ms. Black and Brown S.A., (BnB) a 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 various non-resident entities including 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 FY 2022-23: 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 Ltd., 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 the tax payable by BnB on above income. [May 2022]

Answer:

Computation of Tax liability of BnB for the A.Y. 2023-24

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)	55,00,000
FTS would be taxable in the hands of a foreign company, since the FTS has been received in India. Therefore, such FTS would be taxable in the hands of BnB after deducting expenditure on earning such income. Accordingly, ₹ 55 lakhs would be taxable.	
Long-term capital gains from sale of unlisted debentures of White 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	2,69,00,000
Tax payable on total income:	
Tax on long-term capital gain @10% as per section 112(1)(c)(iii)	1,40,000
Tax on other income@40% on ₹ 2,55,00,000	1,02,00,000

	1,03,40,000
Add: Surcharge@2% since total income > ₹ 1 crore but ≤ ₹10 crore	2,06,800
	1,05,46,800
Add: Health and education cess @4%	4,21,872
Tax liability	1,09,68,672
Tax liability (rounded off)	1,09,68,670

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.

Alternate Answer:

If it is assumed that the agreement for FTS is approved by the Central Government, then FTS would be taxable@10% under section 115A. The tax liability would be as follows –

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 the hands of a foreign company, since the FTS has been received in India. Assuming that the Agreement has been approved by the 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 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

Computation of tax liability	₹
Tax liability on total income of ₹ 2,75,00,000	
Tax on long-term capital gain @10% as per section 112(1)(c)(iii)	1,40,000
Tax on Fees for technical services @ 10% on ₹ 61,00,000	6,10,000
Tax on other income @40% on ₹ 2,00,00,000	80,00,000
	87,50,000
Add: Surcharge@2% since total income > ₹ 1 crore but ≤ ₹10 crore	1,75,000
	89,25,000
Add: Health and education cess@4%	3,57,000
Tax liability	92,82,000

Question -23:

Alpha Inc., a non-resident company has an IT enabled business process outsourcing Unit in India (BPO) and it provides certain outsourcing services to a resident Indian entity. Discuss, the tax implications, in the hand of Alpha Inc. due to presence of BPO unit in India.

[November 2018 (New Course)]

Answer:

The CBDT had, vide Circular No.5/2004 dated 28.9.2004, clarified that the non-resident entity or the foreign company will be liable to tax in India only if the IT enabled BPO unit in India constitutes its Permanent Establishment.

In the present case, since Alpha Inc. has an IT enabled Business Process Outsourcing unit in India (BPO) which provides certain outsourcing services to a resident Indian entity, such BPO would be considered as PE of Alpha Inc., as it carries on business in India through the BPO Unit.

In such a case, the profits of Alpha Inc., attributable to the business activities carried out in India by the Permanent Establishment would become taxable in India.

Profits are to be attributed to the Permanent Establishment as if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a Permanent Establishment.

In determining the profits of a Permanent Establishment, there shall be allowed as deduction, expenses which are incurred for the purposes of the Permanent Establishment including executive and general administrative expenses so incurred, whether in the State in which the Permanent Establishment is situated or elsewhere.

"TRANSFER PRICING"

"QUESTIONS FROM PAST EXAMINATIONS (+) STUDY MATERIAL"

Section 92 to 92C: *Chargeability, Associated Enterprises, International transaction, and determination of ALP :-*

Question-1:

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 12-1-2023. 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 31-3-2023.

(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. [November 2018]

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 <u>not</u> 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 <u>not</u> 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-2:

Muskaan Ltd. (MK India) is an Indian company that manufactures cricket kits in India. MK India is eligible for deduction under section 10AA of the Income-tax Act, 1961. For its UK sales, MK India has entered into a marketing arrangement with Kits Sports (KS UK), a UK incorporated firm. MK India uses the patented design provided by KS UK for manufacturing of cricket kits by it. MK India supplied 30,000 sports kits to KS UK for ₹ 5,000 per kit. In the assessment, the Assessing Officer, increased the price charged by MK India from KS UK to ₹ 6,000 per kit. MK India accepts such transfer price adjustment adopted by the Assessing officer. As a result, there is an increase in the income of MK India. You are required to answer the following questions in this respect:

(1) Would MK India and KS UK be treated as associate enterprises for the purposes of transfer pricing adjustment adopted by the Assessing Officer?

(2) What is the liability of KS UK in respect of the change in Arm's Length Price (ALP) in respect of purchases made by it from MK India?

(3) MK India contends that since the income is increased because of the arm's length price adopted by the Assessing Officer, the deduction claimed by it under section 10AA should also be increased accordingly, since the amount of deduction is based upon the amount of the export sale. Discuss whether the contention of MK India is valid. [May 2019]

Answer:

(1) Manufacturing of cricket kits by MK India is wholly dependent on the use of patented design provided by KS UK and therefore MK India and KS UK are deemed to be associated enterprises as per section 92A(2).

Supply of cricket kits by MK India, a resident, to KS UK, a non-resident, would be an international transaction between associated enterprises, and hence, transfer pricing provisions would be attracted in this case.

(2) The increased amount of ₹ 3 crore shall be treated as an advance given by M.K. India to KS UK which is required to be repatriated by KS UK within 90 days from the date of order.

(3) As per the first proviso to section 92C(4), in respect of the increased income of ₹ 3 crores, no deduction under section 10AA shall be allowed to MK India.

Hence, the contention of MK India that deduction u/s 10AA should be increased is **not** valid.

Question-3:

State with brief reasons, whether transfer pricing provisions are attracted in the following cases:

(i) ABC Inc, a London based foreign company transferred engravings valued at ₹ 55 crores to Beta Ltd, an Indian Company during the previous year 2022-23. ABC Inc, holds 32% of voting power in Alpha Ltd, an Indian Company which in turn holds 75% of shares in Beta Ltd.

(ii) Tikku Projects Ltd., an Indian Company, has two units, Tikku Infra and Tikku Trading. While the Tikku Infra is engaged in the development of highway project pursuant to the

agreement entered into with Central Government since past 6 years. Tikku Trading is engaged in the business of trading of construction materials. During the previous year 2022-23, Tikku Trading transferred 12,000 MT of cement at ₹ 14,000 per MT against the prevailing market value at ₹ 16,000 per MT.

(iii) A Ltd, engaged in manufacturing activity of power generation, opted for concessional rate of tax under Section 115BAB. B Ltd, supplied 10,000 MT of power cables valued at ₹ 23,000 per MT to A Ltd. at ₹ 21,000 per MT during the previous year 2022-23. Mr. X, an individual, holding controlling interest in both A Ltd. and B Ltd. [July 2021]

Answer:

(i) International transaction is a transaction between associated enterprises, either or both of whom are non-residents, in the nature of, inter alia, purchase, sale of tangible or intangible property. Transfer pricing provisions would get attracted in respect of an international transaction. In this case, one of the enterprises, i.e., ABC Inc., a London based company, is a non-resident. The transaction in question is the transfer of engravings, i.e., transfer is of an intangible property.

However, two enterprises would be deemed as associated enterprises if one enterprise holds, directly or indirectly, shares carrying not less than 26% voting power in the other enterprise.

In this case, ABC Inc. indirectly holds only 24% voting power / (32% of 75%) in Beta Ltd., an Indian company. Hence, ABC Inc. and Beta Ltd. are not associated enterprises.

Since the transaction of transfer of engravings is not between associated enterprises, it would not fall within the meaning of international transaction. Hence, **transfer pricing provisions would not be attracted in this case.**

(ii) Tikku Infra 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, Tikku Trading is not engaged in any "eligible business". Since Tikku Trading has transferred construction materials to Tikku Infra 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.

For transfer pricing provisions, this transaction would fall within the meaning of "specified domestic transaction", if the aggregate value of such transactions during the year exceeds a sum of ₹ 20 crore.

In this case, however, the aggregate value of transactions between Tikku Infra and Tikku Trading does not exceed ₹ 20 crore. Hence, the transaction is not a specified domestic transaction. Accordingly, transfer pricing provisions would not be attracted in respect of this transaction.

Note: In the absence of information in the question, it is assumed that there are no other such transactions during the year falling within the scope of section 92BA.

(iii) Where a company eligible for benefit under section 115BAB enters into a transaction with any other person with whom it has close connection, and the transactions between them are arranged in a manner resulting in more than ordinary profits arising to the company eligible for benefit u/s 115BAB, then, such transactions would fall within the scope of "specified domestic transaction"

under section 92BA, if the aggregate value of such transactions (listed out in section 92BA) entered into by the company in the previous year exceeds ₹ 20 crore.

In this case, A Ltd. is a company eligible for deduction under section 115BAB which has entered into a transaction with B Ltd., a company in which Mr. X (a person who has controlling interest in A Ltd.) has controlling interest. Further, the said transaction for supply of cables by B Ltd. to A Ltd. results in more than ordinary profits to A Ltd. (on account of the supply being made by B Ltd. to A Ltd. at a lower rate than the arm's length rate).

Also, the aggregate value of such transactions entered into by the two companies exceed ₹ 20 crore. Consequently, the said transactions between A Ltd. and B Ltd. are "specified domestic transactions" u/s 92BA and transfer pricing provisions under the Income-tax Act, 1961 would be attracted.

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 31.3.2023:

(i) 10,000 cars sold to Rida Ltd. 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. for the 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.

(iii) Loan of Euro 1000 Crores carrying interest @ 10% p.a. advanced by Dorf Ltd. a German Company was outstanding on 31.3.2022. 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 for A.Y. 2023-24 keeping in mind that the value of 1$ and of 1 EURO was ₹ 50 and ₹ 55 respectively throughout the year. [November 2007, Study Material]**

Answer:

"Computation of Taxable Income of Anush Motors Ltd."
(For the A.Y. 2023-24)

Particulars	Method of ALP adopted	Explanatory Notes	₹ In Crores
Income computed under chapter IV-D before the following			**300**
Add: (i) Adjustment in respect of Sales of Rida Ltd.	**CUP**	**1**	**10**
(ii) Adjustment in respect of Payment of Royalty to Kyoto Ltd.	**CUP**	**2**	**15**
(iii) Adjustment in respect of Loan advanced by Dorf Ltd	**CUP**	**3**	**550**
Total Income after adjustment on account of transfer pricing:			**875**

EXPLANATORY NOTES:-

- As the section 92- income arising from *international transaction* with associated enterprise and expenses incurred in an *international transaction* with associated enterprise shall be computed having regard to arm's length price.
- *Arm's length price means* the prince in uncontrolled transaction between enterprises other than associated enterprises.
- *International transaction means - a transaction between two or more associated enterprise.*
- The term international transaction is defined in section 92B.

(i)	According to section 92A(2) an enterprise shall be deemed to be an associated enterprise of other enterprise if the enterprise holds more than 26% of the shares in another enterprise. In this case, Rida Ltd holds 30% shares in Anush Motors Ltd. Therefore, the transaction of sale of car by Anush Motors Ltd to Rida Limited is international transaction. In the instant case, $200 per car is under priced in the international transaction as compared to the comparable uncontrolled transaction. This amount of under pricing is liable for adjustment. Adjustment is required to be made for 10000 cars at $200 per car @ ₹50 per $ equivalent to ₹10 crores.
(ii)	According to section 92A(2), if the manufacturing process of one enterprise is dependant on the use of know how, patents, copyrights, etc. of which the other enterprise is the owner, then both the enterprises are said to be Associated enterprises. In this case, it is presumed that the company is dependant on the use of technical know-how and hence the company pays royalty to Kyoto Ltd. Hence, the transaction of payment of royalty to koyoto ltd for the use of technical know-how by anush motors ltd is an international transaction. Anush motors ltd paid excess royalty as compared to the comparable uncontrolled transaction of payment of royalty by another Indian company. Hence $ 30 lakhs being the differential is to be added to the income. The amount liable for adjustment is $30 lakhs @ ₹50 per 1$. Equivalent to ₹15 crores.
(iii)	According to section 92A(2), if the loan advanced by one enterprise to another enterprise is not less than 51% of the book value of the total assets of the other enterprise, both the enterprises are considered as associated enterprises. In the instant case, the total book value of assets as at 31.03.2023 was 90,000 crores. The loan received by Anush Motors Ltd from Dorf Ltd was Euro 1000 crores equivalent to ₹55,000 crores. Since the loan advanced by Dorf Ltd is more than 51% of the total book value of the assets of Anush Motors Ltd., these two enterprises will be treated as Associated Enterprises. Dorf Ltd charged interest @ 10% p.a. to Anush Motors Ltd but charged interest @ 9% p.a. on the loan advanced to another Indian company. Hence, the differential interest on 1%. The amount liable for adjustment is 1% of Euro 1000 crores @ ₹55 per Euro equivalent to ₹550 crores.

Section 92C: *Computation of arm's length price: -*

Question-5:

M Ltd., a US company has a subsidiary, N Ltd. in India. M Ltd. sells computer monitors to N Ltd. for resale in India. M Ltd. also called sells computer monitors to K Ltd., another computer reseller. It sells 50,000 computer monitors to N. Ltd. at ₹ 11,000 per unit. The price fixed for K Ltd. is ₹ 10,000 per unit. The warranty in case of sale of monitor by N Ltd. is handled by N Ltd. However, for sale of monitors by K Ltd., M Ltd. is responsible for the warranty for 3 months. Both M Ltd. and N Ltd. offer extended warranty at a standard rate of ₹ 1,000 per annum.

On these facts, determine the ALP and the effect on the net profit/income of the assessee-company. [May 2017]

Answer:

M Ltd., the foreign company, and N Ltd., the Indian company, are associated enterprises since M Ltd. is the holding company of N Ltd. M Ltd. Sells computer monitors to N Ltd. for resale in India. M Ltd. also sells identical computer monitors to K Ltd. which is not an associated enterprise. The price charged by M 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.

For sale of monitors by K Ltd., M Ltd. is responsible for warranty for 3 months. The price charged by M Ltd. from K Ltd. includes the charges for warranty for 3 months. Hence arm's length price for computer monitors being sold by M Ltd. to N Ltd. would be:

Particulars	₹
Sale price charged by M Ltd. from K Ltd.	10,000
Less: Cost of warranty included in the price charged to K Ltd. (₹ 1,000x3/12)	250
Arm's length price:	9,750
Actual price paid by N Ltd. to M Ltd.	11,000
Difference per unit:	1,250
No. of units supplied by M Ltd. to N Ltd. = 50,000	
Addition required to be made in computation of total income of N Ltd. (₹ 1,250 x 50,000)	6,25,00,000

Question-6:

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 financial year 2022-23 Hitech Ltd. had spent 2400 man hours for developing and maintaining software for NANO Inc. with each hour being billed at ₹ 1,300. Cost incurred by Hitech Ltd. for executing work for NANO Inc. amounts to ₹ 20 lakhs.

Hitech Ltd. had also undertaken developing software for Modi Industries, for which Hitech Ltd. had billed at ₹ 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. [November 2016]**

Answer:

"Computation of Arm's Length Price as per Cost Plus Method"

		₹
Gross Profit Make 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.		20,00,000
[100% - 48.8% = 51.2%]		
Add: Adjusted gross profit (₹ 20,00,000 × 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 (₹ 1300 × 2400 man hours)		31,20,000
Total Income of Hitech Ltd to be increased by:		**7,86,250**

Question-7:

Alpha Inc. having its business in Singapore has advanced a loan of SD 1,50,000 to Alpha Ltd., Bhubaneswar. Book value of total assets of Alpha Ltd. was ₹ 120 lakhs. Alpha Ltd. provides software backup support to Alpha Inc. Alpha Ltd., has spent 30,000 man hours during the financial year 2022-23 for the services rendered to Alpha Inc. The cost to Alpha Ltd., is SD 80 / man-hour. Alpha Ltd. has billed Alpha Inc. at SD 85 / man-hour.

Gama Ltd. in Bhubaneswar which has a similar business model, provides software back up support to Beta Inc. in Penang, Malaysia.

Gama Ltd.'s cost and operating profits are as hereunder:

Particulars	Amount (in lakhs)
Direct costs	**500**
Indirect costs	**100**
Operating profits	**100**

(a) Calculate Arm's Length Price for the transaction between Alpha Ltd. and Alpha Inc. based on the above data of Gama Ltd. using the Transactional Net Margin Method. Assume 1 SD = ₹ 55.

(b) Is any adjustment required be made to the total income of Alpha Ltd.?
Note: SD = Singapore Dollars **[December 2021, May 2019]**

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 Alpha Inc., a foreign company, has advanced loan to Alpha Ltd., an Indian company, and such loan constitutes 68.75% [(₹ 55 x 1,50,000 x 100/1,20,00,000] of the book value of total assets of Alpha Ltd., Alpha Inc and Alpha Ltd. are deemed to be associated enterprises. Since the transaction of provision of software backup support by Alpha Ltd. to Alpha 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 Alpha Ltd. to Alpha Inc

Particulars	₹
Billing per manhour [SD 85/hour x ₹ 55]	4675
Cost per man hour [SD 80/hour x ₹55]	4400
Operating profit per manhour	275
Operating profits to cost (%) [275 x 100/4400] = 6.25%	

Determination of Operating Margin of Comparable Uncontrolled transaction i.e., provision of software backup support. by Gama Ltd. to Beta Inc.

Particulars	₹ in lakhs
Direct Cost	500
Indirect Cost	100
Total cost	600
Operating profits	100
Operating profits to cost (%) [100 x 100/600] = 16.67%	

(a) Computation of Arm's Length Price of provision of software backup support provided by Alpha Ltd. to Alpha Inc. by applying TNMM

Particulars	₹
Cost for Alpha Ltd. (per man hour) [SD 80 x ₹ 55/MD]	4,400.00
Add: Arm's length operating profit margin as % of cost (16.67% of ₹ 4,400)	733.48
Arm's length price (per manhour) in ₹	5,133.48
Arm's length price of total manhours spent by Alpha Ltd. for providing software backup support to Alpha Inc. [₹ 5,133.48 x 30,000 man hours] = ₹ 15,40,04,400	

(b) Adjustment to be made to the total income of Alpha Ltd.

Particulars	₹

Arm's length price of total manhours spent by Alpha Ltd. for providing software backup support to Alpha Inc.	15,40,04,400
Less: Amount actually billed [85 SD x ₹ 55/SD x 30,000 manhours]	14,02,50,000
Arm's length adjustment to be made to the total income of Alpha Ltd.	1,37,54,400

Question-8:

Alfa Ltd., Australia, holds 30% equity shares in Beta Ltd., India. Beta Ltd. develops software and also provides the related support services. Beta Ltd. during the year billed Alfa Ltd., Australia for 150 man-hours at the rate of ₹ 2,500 per man hour. The total cost (direct and indirect) for executing this work amounted to ₹ 3,50,000.

However, Beta Ltd. billed Gama Ltd., India at the rate of ₹ 3,500 per man hour for the similar level of manpower and earned Gross Profit of 40% on its cost.

The transactions of Beta Ltd. with Alfa Ltd. and Gama Ltd. are comparable, subject to the following differences:

(i) **While Beta Ltd. also derives technological support from Alfa Ltd., there is no such support from Gama Ltd. The value of technological support received from Alfa Ltd. may be put at 15% of normal gross profits,**

(ii) **As Alfa Ltd. gives business in large volumes, Beta Ltd. offered to Alfa Ltd., a quantity discount which may be valued at 10% of the normal gross profits,**

(iii) **In the case of rendering services to Alfa Ltd., Beta Ltd. neither runs any risk nor incurs any marketing costs. On the other hand, in the case of services to Gama Ltd., Beta Ltd. has to assume all the risks and costs associated with the marketing function which may be estimated at 20% of the normal gross profits,**

(iv) **Beta Ltd. offered one month credit to Alfa Ltd. The cost of providing such credit may be valued at 5% of the normal gross profits. No such credit was given to Gama Ltd.**

- **Compute the Arm's Length Price alongwith income to be adjusted under the cost plus method with reference to Section 92C read with Rule 10B.**

[May 2022, Similar Question in January 2021 (New Course)]

Answer:

Two enterprises are deemed to be associated enterprises where one enterprise, directly or indirectly, holds shares carrying not less than 26% of the voting power in the other enterprise.

In this case, since Alfa Ltd., a foreign company, holds 30% equity shares in Beta Ltd., an Indian company, Alfa Ltd. and Beta Ltd. are deemed to be associated enterprises. Since the transaction of developing software and providing related support service by Beta Ltd. to Alfa Ltd. is an international transaction between associated enterprises, the provisions of transfer pricing would be attracted in this case.

Computation of Arm's Length Price as per Cost Plus Method		
Particulars	%	%

Gross Profit mark-up on cost in case of Gama Ltd. Ltd. [an unrelated party]		40%
Less: Adjustments for functional and other differences		
- Value of technology support [Alfa Ltd. provides technology support, but Gama Ltd. does not provide such support. Therefore, value of technology support shall be adjusted] [15% of 40%, being gross profit]	6%	
- Quantity discount to Alfa Ltd. [Quantity discount is allowed to Alfa Ltd. as it gives business in large volumes, but the same is not provided to Gama Ltd. Therefore, it shall be adjusted] [10% of 40%, being gross profit]	4%	
- Risk and cost associated with marketing [Beta Ltd. has to bear all the risk and costs associated with the marketing function in case of Gama Ltd., while there is no such risk in case of services to Alfa Ltd. Therefore, market risk and cost shall be adjusted] [20% of 40%, being gross profit]	8%	
		18%
		22%
Add: Cost of credit to Alfa Ltd. [Beta Ltd has provided credit of 1 month to Alfa 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] [(5% of 40%, being gross profit]		2%
Arm's length gross profit mark up to cost		**24%**
Cost incurred by Beta Ltd. for executing Alfa Ltd.'s work		3,50,000
Add: Adjusted gross profit (₹ 3,50,000 x 24%)		84,000
Arm's length billed value		**4,34,000**
Less: Actual Billed Income from Alfa Ltd. (₹ 2,500 x 150 man hours)		3,75,000
Total Income of Beta Ltd to be increased by		**59,000**

Question-9:

State with brief reasons, which method of determination of ALP will be most appropriate in the following cases:

(i) A Co. Ltd., Mumbai is engaged in manufacture of garments. It manufactured and supplied as per the variation and customization in finishing of products to its associated enterprises Xylo Inc. UK as compared to the goods regularly sold to third parties.

(ii) DEF Co. Ltd., is engaged in manufacture of medicines. It manufactured semi-finished drugs in bulk and sold to related parties located in India and outside India. It adds gross profit mark up on direct and indirect costs of production.

(iii) ZY Ltd., Bengaluru provided identical call centre services to both related and unrelated parties. **[January 2021]**

Answer:

(i) A Co. Ltd, Mumbai has manufactured and supplied garments as per the variations and customization in accordance with its AE. However, such customization is not carried by it on the goods sold to other unrelated parties.

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

(ii) DEF Co. Ltd. manufactures semi-finished drugs in bulk and sells them to related parties. In the case of sale of semi-finished goods to related parties, the most appropriate method is the Cost Plus Method, in which adjustment of gross profit mark-up is to be made on the direct and indirect costs of production.

(iii) ZY Ltd., Bengaluru provided identical call centre services to both related and unrelated parties. In respect of provision of services, the most appropriate method can be either the Comparable Uncontrolled Price (CUP) or Cost Plus Method (CPM) and Transactional Net Margin method (TNMM), since in all these three methods there are similar transactions with related parties and unrelated parties; and adjustments are made for functional differences.

Section 92CA: *Reference to Transfer Pricing Officer:-*

Question-10:

Explain with reasoning that the following statement is correct or not.

Assessing Officer can complete the assessment of income from international transaction in disregard of the order passed by the Transfer Pricing Officer by accepting the contention of assessee. **[November 2019]**

Answer:

The statement is not correct.

Section 92CA provides that on receipt of the order of the Transfer Pricing Officer determining the arm's length price of an international transaction, the Assessing Officer shall proceed to compute the total income in conformity with the arm's length price determined by the Transfer Pricing Officer.

The order of the Transfer Pricing Officer is binding on the Assessing Officer. Therefore, the Assessing Officer cannot complete the assessment of income from international transactions in disregard of the order of Transfer Pricing Officer by accepting the contention raised by the assessee.

Question-11:

Answer the following in the context of international transactions:

Proceedings before the TPO were stayed by Court order and it was subsequently lifted. The time limit for completion of assessment after excluding the period of stay due to court order is only 30 days. Within how many more days, the TPO has to pass his order? **[May 2018]**

Answer:

As per section 92CA(3A), where assessment proceedings are stayed by any Court and the time available to the TPO for making an order is less than 60 days, then, such period shall be extended to 60 days.

In the present case, since only 30 days is available after excluding the period of stay, the same will be extended by 30 days and TPO can make an order within 60 days.

Section 92CC and Rule 10MA: *Roll Back of the Agreement :-*

Question-12:

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 2022. 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 2018-19, 2019-20, 2020-21 and 2021-22. 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. 2013-14 onwards.

DIY Ltd. had filed its return of income for the A.Y. 2022-23 on 26th August 2022 and for A.Y. 2023-24, on 31st August, 2023. The assessments for the A.Ys 2019-20 to 2022-23 are completed but the assessment of A.Y. 2023-24 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. 2013-14 onwards?

(ii) In respect of A.Y. 2020-21, the transfer price arrived at by the Board is resulting in reduction in 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?

[November 2019 (New Course)]

Answer:

(i) No; the Assessing Officer is not correct in applying transfer pricing provisions as per the advance pricing agreement from A.Y. 2013-14 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. 2022-23 is the first of the five consecutive previous years, roll back provisions can be applied only from A.Y. 2019-20 (relevant to P.Y. 2018-19) and not from A.Y. 2013-14.

(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. 2020-21, 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 2023. 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. 2022-23 other than A.Y. 2020-21), the Assessing Officer shall pass order modifying the total income of the relevant assessment year (determined in such assessment/reassessment) having regard to and in accordance with APA. Such order of assessment has to be passed within a period of one year from the end of the financial year in which the modified return was furnished.

In respect of pending assessment (i.e., assessment for A.Y. 2023-24), 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.

Question-13:

"Rule 10MA(2)(iv) of Income-tax Rules requires that the application for rollback provision, in respect of an international transaction, has to be made by the applicant for all the rollback years in which the said international transaction has been undertaken by the applicant.

You are required in this context to explain whether the rollback has to be requested for all the four years or applicant can choose the years out of the block of four years. [November 2017]

Answer:

Rule 10MA mandates that the applicability of rollback provision, in respect of an international transaction, has to be requested by the applicant for all the rollback years in which the said international transaction has been undertaken by the applicant

As per Circular No.10/2015 dated 10.06.2015 issued by the CBDT, the applicant does not have the option to choose the years for which it wants to apply for rollback in application filed under rule 10MA(2)(iv) of Income-tax Rules, 1962.

The applicant has to either apply for all the four years or not apply at all.

However, if the covered international transaction(s) did not exist in a rollback year or there is some disqualification in a rollback year, then, the applicant can apply for rollback for less than four years.

However, for other rollback years, it can still apply for rollback.

Question-14:

Answer the following in the context of international transactions:

Company X and Company Y who have 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? [May 2018]

Answer:

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.

Question-15:

Explain with reasoning that the following statement is correct or not. Your answer should be based on the provisions of the Income-tax Act, 1961.

An advance pricing agreement once entered by the tax payer with the Income Tax authorities cannot be modified or revised. [November 2019]

Answer:

The statement is not correct.

As per Rule 10Q, an agreement, after being entered, may be revised by the Board either *suo moto* or on request of the assessee or the competent authority in India or the Director General of Income-tax (International Taxation), if–

(1) there is a change in critical assumptions or failure to meet a condition subject to which the agreement has been entered into;

(2) there is a change in law that modifies any matter covered by the agreement but is not of the nature which renders the agreement to be non-binding; or

(3) there is a request from competent authority in the other country requesting revision of agreement, in case of bilateral or multilateral agreement.

Procedural Obligation and Penal consequence in case of violation:-

Question-16:

X Ltd, operation 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 transaction 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 of the declared income and also issued a show cause notice to levy various penalties. X Ltd seeks your expert opinion.

[November 2009, Study Material]

Answer:

The facts of the case indicate that X Ltd. and Yen Ltd. of Japan are associated enterprises since Yen Ltd. Holds shares carrying more than 26% of the voting power in 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) Since X Ltd. has entered into an international transaction, as defined in section 92B, any amount added or disallowed in computing the total income **u/s 92C(4),** shall be deemed under reported income

for which it is liable for penalty **u/s 270A.** The penalty would be 50% or 200% of the amount of tax as calculated in manner given u/s 270A.

(ii) Failure to maintain the requisite records as required **u/s 92D** in relation to international transaction makes it liable for penalty **u/s 271AA** which will be 2 % of the value of each international transaction.

(iii) Failure to furnish report from an accountant as required section 92E makes it liable for penalty **u/s 271BA** i.e. penalty of ₹1 lakh.

Section 94A : *Tax Implications relating to a person located in NJA:-*

Question-17:

KVS Ltd., the assessee, has soId goods on 12.01.2023 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. [November 2020 (New Course)]

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 method can be used to determine ALP.

Where more than one price is determined by the most appropriate method, CUP method in this case, then, the arithmetic mean has to be taken in cases where the number of entries in the dataset is less than 6 (in this case it is only 2). 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**

Section 92CE: *Secondary adjustment in certain international transactions:-*

Question-18:

ABC Ltd., an Indian company declared income of ₹ 150 crores computed in accordance with Chapter IV-D before making any adjustments in respect of the following transaction for the year ended on 31.03.2023:

Unisea Ltd., a Swedish company advanced a loan of Euro 500 crores carrying interest @ 8% per annum during the F.Y. 2022-23 to ABC Ltd. The total Book Value of assets of ABC Ltd. on 31.03.2023 was ₹ 70,000 crores. The said Swedish Co. also advanced a loan of similar nature & amount to another Indian Co. @ 6% per annum during the F.Y. 2022-23. The total interest paid for the year was 40 crores Euros.

You are required to make primary adjustments, if any, to the above income keeping in mind transfer pricing provisions contained in section 92 for filing return of income for the A.Y. 2023-24.

You have to elaborate on secondary adjustments required to be made if any, under said provisions of Income-tax Act, 1961.

If ABC Ltd. opts for additional tax instead of repatriation of excess money by Unisea Ltd., calculate additional tax liability required to be made.

Value for 1 Euro was ₹ 85, throughout the year. **[November 2020]**

Answer:

ABC Ltd., an Indian company and Unisea Ltd., a Swedish company, are deemed to be associated enterprises since the latter has advanced a loan to the former which constitutes 60.71% of the book value of total assets of the former. Since the loan advanced by Unisea Ltd. is not less than 51% of the book value of the total assets of ABC Ltd., the two companies are deemed to be associated enterprises.

A loan transaction between two enterprises, one of whom is a non-resident (Unisea Ltd., Sweden, in this case), would be an international transaction. Accordingly, transfer pricing provisions would be attracted in this case.

The interest rate charged by Unisea Ltd on loan advanced to ABC Ltd. is 8% p.a whereas the arm's length interest charged in a comparable uncontrolled transaction (with another Indian company) by Unisea Ltd. is 6% p.a. Therefore, the arm's length adjustment (primary adjustment) to be made is = 8% - 6% = 2% of

₹ 42,500 crores (Euro 500 crores x ₹ 85, being the value of 1 Euro) = ₹ 850 crores

Note - Alternatively, the calculation can also be shown as – Euro 40 crores x ₹ 85 x 2/8 = ₹ 850 crores

The total income (after primary adjustment) of ABC Ltd for P.Y.2021-22 = ₹ 150 crores + primary adjustments of ₹ 850 crores = ₹ 1000 crores.

Assuming that the primary adjustment has been made by ABC Ltd. suo moto while filing its return of income for A.Y. 2023-24, ABC Ltd. has to carry out secondary adjustment.

The excess money (i.e., ₹ 850 crores) lying with Unisea Ltd. has to be repatriated within 90 days from 30.11.2023, being the due date for filing return of income.

If the excess money is not repatriated on or before 28th February, 2024, it would be deemed as an advance made by ABC Ltd. to Unisea Ltd. and interest would be chargeable from 30.11.2023 at six month LIBOR as on 30th September, 2023 + 3%, since the loan is denominated in Euros. Such interest would be included in the total income of ABC Ltd.

If ABC Ltd. opts for payment of additional income-tax, it has to pay ₹ 178.2144 crores [i.e., 20.9664% (tax@18% + surcharge@12% + cess@4%) of ₹ 850 crores].

Question-19:

On 1-4-2022, 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 2022-23, 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, 2022. During the Financial Year 2022-23, 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 Inc. be treated as associate enterprises for the purpose of transfer pricing adopted by the Assessing Officer? If yes, why?

(2) Calculate the arms 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?

[January 2021 (New Course)]

Answer:

(1) Two enterprises are deemed to be associated enterprises as per section 92A, 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, 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 AO in the total income of Vihaan Ltd. for A.Y. 2023-24, secondary adjustment has to be made u/s 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. 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-20:

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 31.03.2023. 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 1.04.2022 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?

[July 2021 (New Course)]

Answer:

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 the 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 30.11.2023, being the due date of filing of return u/s 139(1) i.e., 28.2.2024.

(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., 1.4.2023 + 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.

Section 94B: *Limitation on interest deduction in certain cases:-*

Question-21:

X Ltd., a resident Indian Company, on 01-04-2022 has borrowed ₹ 100 crores from M/s. A Inc, a Company incorporated in US, at an interest rate of 9% p.a. The said loan is repayable over a period of 10 years. Further, loan is guaranteed by M/s B Inc incorporated in US. M/s. K Inc, a non-resident, holds shares carrying 30% of voting power both in M/s X Ltd. and M/s B. Inc. M/s K Inc has also deposited ₹ 100 crores with M/s A Inc.

Other information:

Net profit of M/s. X Ltd. was ₹ 10 crores after debiting the above interest, depreciation of ₹ 5 crores and income-tax of ₹ 3.40 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 X Ltd.

Substantiate your answer with reasons. [November 2020 (New Course), May 2018]

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 K Inc holds 30% of voting power i.e., more than 26% of voting power in both X Ltd and M/s B Inc, X Ltd. and M/s B Inc are deemed to be associated enterprises.

Since loan of ₹ 100 crores taken by X Ltd., an Indian company from M/s A Inc, is guaranteed by M/s B Inc, an associated enterprise of X Ltd., such debt shall be deemed to have been issued by an associated enterprise and interest payable to M/s A. 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. X Ltd.

Particulars	₹
Net profit	10,00,00,000

Add: Interest already debited (₹ 100 crores × 9%)		9,00,00,000
Depreciation		5,00,00,000
Income Tax		3,40,00,000
	EBITDA:	**27,40,00,000**
Interest paid or payable by X Ltd.		9,00,00,000
Interest paid or payable in excess of the lower of the following would be disallowed		
30% of EBITDA	₹ 8,22,00,000	
Interest paid or payable to non - resident AE	₹ 9,00,00,000	8,22,00,000
	Interest to be disallowed as deduction:	78,00,000

Question-22:

On 23rd June 2021, 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	For the F.Y. 2021-22	For the F.Y. 2022-23	Particulars	For the F.Y. 2021-22	For the F.Y. 2022-23
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 transferredto 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 2023-24, 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. **[July 2021]**

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 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 u/s 94B Limitation of interest paid to associated enterprise u/s 94B.

Computation of income under the head profits and gains of business or profession of R Ltd. for A.Y. 2023-24

Particulars	Amount (in lakhs)
Interest allowable u/s 94B for A.Y. 2022-23:	
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. 2022-23, which can be carried forward up to 8 assessment years	184
Interest allowable u/s 94B for A.Y. 2023-24:	
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. 2023-24	Nil
Brought forward interest of A.Y. 2022-23 allowed as deduction against profits and gains of A.Y. 2023-24 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. 2023-24 [₹ 238 lakhs + ₹ 136.70 lakhs)	374.70

Balance of amount of interest relating to AY 2022-23 is eligible for carried forward i.e. ₹ 47.30 lakhs (₹ 184 lakhs less ₹ 136.70 lakhs) to 7 more subsequent assessment years.	
Income under the head profit & gains of business or profession of R Ltd. for A.Y. 2023-24	
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

"DOUBLE TAXATION RELIEF"

"QUESTIONS FROM PAST EXAMINATIONS (+) STUDY MATERIAL"

Section 90: *Taxation of income when DTAA exists:-*

Question-1:

Discuss the correctness or otherwise of the following 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. [November 2011, May 2016, Study Material]

Answer:

The statement is correct.

Section 90 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, to the extent they are more beneficial to the assessee.

☞ This was so held in the case of CIT v/s P.V.A.L. Kulandagan Chettiar (2004)(SC).

Question-2:

The double taxation avoidance treaties entered into by the Government of India do not override the domestic law. [November 2018]

Answer:

The statement is **not correct.**

Section 90 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.

Question-3:

The Income–tax Act, 1961 provides for taxation of a certain income earned by Mr. X. The Double Taxation Avoidance Agreement, which applies to Mr. X, excludes the income earned by Mr. X from the purview of tax. Is Mr. X liable to pay tax on the income earned by him? Discuss.

[May 2018, Study Material]

Answer

Section 90 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, 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 such other documents and information, as may be prescribed.

The **Supreme Court** has held, in CIT v/s P.V.A.L. Kulandagan Chettiar (2004), 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.

Mr. X is, therefore, not liable to pay tax on the income earned by him provided he submits the Tax Residence Certificate obtained from the Government of the other country, and provides such other documents and information as may be prescribed.

Question-4:

T Inc., a non-resident entity incorporated in Mauritius, has permanent Establishment (PE) in India. The PE filed its return of income for the assessment year 2023-24 disclosing income of ₹ 100 lakhs and paid tax at the rate applicable to the domestic company i.e.30% plus applicable surcharge and cess on the basis of paragraph 2 of Article 24 of Double Tax Avoidance Agreement (non-discrimination) between India and Mauritius, which reads as follows:

"The taxation on PE which is 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 enterprise of that other state carrying on the same activities in the same circumstances."

However, the Assessing Officer computed the Tax on the PE at the rate applicable to a foreign company (40%). Is the action of AO in accordance with law? [November 2018 (New Course)]

Answer:

Under section 90, where the Central Government has entered into an agreement for avoidance of double taxation with the 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 the Article 24 (Non-discrimination of DTAA), it appears that the PE of T Inc. a non-resident entity, 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 (40%).

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@40% on the PE of T Inc. a non-resident entity, incorporated in Mauritius is in accordance with law.

Section 91: *Taxation of income when no DTAA exist:-*

Question-5:

Mr. Anil Talpade, aged 62 years, a resident individual, furnishes the following particulars of income earned by him in India and in Brazil for the previous year 2022-23. India does not have a double taxation avoidance agreement with Brazil.

S. No.	Particulars	Amount (₹)
1.	Gross Salary in India	4,50,000
2.	Professional Income received 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	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 the Assessment Year 2023-24 assuming he opts for Section 115BAC complying with all the necessary rules. [December 2021]

Answer: Computation of total income of Mr. Anil Talpade for A.Y.2023-24

Particulars	₹	₹
Income from salaries [Standard deduction not allowable, since he opts for section 115BAC]		4,50,000
Income from House Property		
Annual value of self-occupied property in India	Nil	
Less: Interest on housing loan [not allowable, since he opts for section 115BAC]	Nil	Nil
Annual value of house property in Brazil [Rental income from property in Brazil]	1,80,000	
Less: Deduction u/s 24(a) @30% (allowable in respect of let out property)	54,000	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		62,000
Gross Total Income		13,06,000
Less: Deduction under 80C in respect of investment in PPF and deduction under section 80D in respect of medical insurance premium [no deduction is allowable under these sections, since he opts for section 115BAC]		Nil

Total Income:		13,06,000

Computation of tax liability of Mr. Mr. Anil Talpade for A.Y.2023-24

Particulars		Amount (₹)
Upto ₹ 2,50,000	Nil	
₹ 2,50,001 – ₹ 5,00,000 [i.e., ₹ 2,50,000@5%]	12,500	
₹ 5,00,001 – ₹ 7,50,000 [i.e., ₹ 2,50,000@10%]	25,000	
₹ 7,50,001 – ₹ 10,00,000 [i.e., ₹ 2,50,000@15%]	37,500	
₹ 10,00,001 – ₹ 12,50,000 [i.e., ₹ 2,50,000@20%]	50,000	
₹ 12,50,001 – ₹ 13,06,000 [i.e., ₹ 56,000@25%]	14,000	
		139,000
Add: Health & Education Cess@4%		5,560
		1,44,560
Less: Deduction under section 91:		
Average rate of tax in India = ₹1,44,560 x 100/ ₹13,06,000 = 11.0689%		
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 11.0689%, which has to be applied on doubly taxed income of ₹ 7,94,000 [11.0689% x ₹ 7,94,000]		87,887
Tax Payable		56,673
Tax Payable (rounded off)		56,670

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 31.03.2023. However, he received only ₹ 12.50 lakhs during the previous year 2022-23 and the balance is outstanding as on 31.03.2023. 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. DTAA between India and Canada provides for tax@15% in Canada without prejudice to taxation of the same income in India.

He further received ₹ 3.50 lakhs during the year, as dividend from X Ltd., an Indian company. On 1.04.2022, 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 payable by Mr. Naveen in India for the Assessment Year 2023-24, assuming that he does not opt for section 115BAC. [July 2021 (New Course)]

Answer:

Computation of total income of Mr. Naveen for A.Y. 2023-24

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 would 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 for A.Y.2023-24

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 Foreign Tax Credit lower of –		
- Tax payable in Canada@15% on doubly taxed income of ₹ 14,11,000, being income from house property of ₹ 1,61,000 + royalty of ₹ 12,50,000	₹2,11,650	
- Tax payable in India@20.220% [i.e., ₹ 3,59,078/17,75,890 x 100] on ₹ 14,11,000	₹2,85,304	2,11,650
Lower of the two above		
Tax Payable		**1,47,428**
Tax Payable (rounded off)		**1,47,430**

Note: Royalty can also be shown under the head "Income from other sources" instead of "Profits and gains from business or profession

Question-7:

Mr. Dharma Teja, aged about 61 years, furnished the following information in respect of income earned in various places for the previous year ended 31-03-2023:

Name of Country/ Place	Particulars of Income/expenses	Amount in lakhs
India	Pension from State Government	₹ 4,20,000
	Speculative Income	₹ 1,16,000
	Short term capital gains on sale of plot	₹ 1,10,000
	Deposit in PPF Account	₹ 1,50,000
Germany	Agricultural Income (gross)	₹ 90,000
	Royalty on patent developed in respect of new cancer molecule (as a co-owner of the patent) (convertible foreign exchange brought into India on 31-08-22)	₹ 6,00,000
	Dividends from a company incorporated in Germany (gross)	₹ 64,000
Thailand	Business loss (proprietary business) Not eligible for set off against other incomes as per prevailing laws.	₹ 1,06,000
	Gross rental income from a property (no statutory deduction was available there)	₹ 3,00,000
	Municipal taxes paid in respect of the above property (not allowed as deduction)	₹ 20,000

Additional Information:

(1) There is no agreement under section 90 for relief for avoidance of double taxation between India and Germany and Thailand where the incomes have accrued or arisen.

(2) Mr. Dharma Teja is an individual resident in India and he has paid applicable taxes on incomes earned in Germany and Thailand, where the applicable tax rates are 15% and 10% respectively.

Compute the total income and tax payable by Mr. Dharma Teja for A.Y. 2023-24 clearly indicating tax rebate, if any available on incomes earned outside India. [July 2021]

Answer:

Since Mr. Dharma Teja is an individual resident in India for the P.Y.2022-23, his global income would be subject to tax in India. Therefore, income earned by him in Germany and Thailand would be taxable in India. He would, however, be entitled to deduction under section 91, since India does not have a DTAA with Germany and Thailand, and all conditions under section 91 are satisfied.

Computation of total income of Mr. Dharma Teja for A.Y.2023-24

Particulars	₹	₹
Income under the head "Salaries"		
Pension from State Government	4,20,000	

Less: Standard deduction u/s 16(ia)	50,000	
		3,70,000
Income from House Property		
Rental income from property in Thailand	3,00,000	
Less: Municipal taxes	20,000	
	2,80,000	
Less: Deduction u/s 24(a)@30%	84,000	1,96,000
Profits and Gains of Business or Profession		
Speculative income in India	1,16,000	
Less: Set-off of business loss from proprietary business in Thailand under section 70	1,06,000	10,000
Short-term capital gains on sale of plot in India		1,10,000
Income from Other Sources		
Royalty on patent developed from Germany	6,00,000	
Agricultural income from Germany [not exempt u/s 10(1), since it is earned from land situated outside India]	90,000	
Dividend from a company in Germany	64,000	7,54,000
Gross Total Income		14,40,000
Less: Deduction under Chapter VI-A:		
Under section 80C – Deposits in PPF	1,50,000	
Under section 80RRB – Royalty income on patents allowable to the extent of ₹ 3,00,000 since the amount earned outside India brought on 31.8.2023, i.e., within six months from the end of the previous year	3,00,000	4,50,000
Total Income		**9,90,000**

Computation of tax liability of Mr. Dharma Teja for A.Y.2023-24

Particulars		**₹**
Tax on total income [20% of ₹ 4,90,000 + ₹ 10,000, eligible for higher exemption limit of ₹ 3,00,000, since he is a senior citizen]		1,08,000
Add: Health and education cess@4%		4,320
		1,12,320
Less: Rebate under section 91 **(See Working Note below)**		60,506
Tax Payable		**51,814**
Tax Payable (rounded off)		**51,810**
Calculation of Rebate under section 91:	**₹**	
Average rate of tax in India [i.e., ₹ 1,12,320 / ₹ 9,90,000 x 100] = 11.345%		
Doubly taxed income pertaining to Germany		
Agricultural income	90,000	
Dividend from a company in Germany	64,000	

Royalty on patents [₹ 6,00,000 – ₹ 3,00,000]	3,00,000	
	4,54,000	
Rebate under section 91 on ₹ 4,54,000 @11.345% [being the lower of average Indian tax rate (11.345%) and Germany tax rate (15%)]		51,506
Doubly taxed income pertaining to Thailand		
Income from house property less business loss set-off against income chargeable to tax in India (₹ 1,96,000 – ₹ 1,06,000)	90,000	
Rebate under section 91 on ₹ 90,000 @10% [being the lower of average Indian tax rate (11.345%) and Thailand tax rate (10%)]		9,000
Total rebate under section 91 (Germany + Thailand)		**60,506**

Question -8:

During the Previous Year 2022-23, Ms. Sujata, a citizen of India is a resident of both India and a foreign country with which India has a Double Taxation Avoidance Agreement (DTAA), which provides that "the income would be taxable in country where it is earned and not in other country, but would be included for computation of tax rate in such other country."

Her income is ₹ 5,75,000 from business in India and ₹ 14,00,000 from business in foreign country. In foreign country, the rate of tax is 20%. During the year, she paid a premium of ₹ 35,000 to insure the health of her mother, a non-resident, aged 83 years, through her credit card. You are required to compute the tax payable by Ms. Sujata in India for the A.Y.2023-24. Also, show the tax payable by Ms. Sujata in India, had there been no DTAA with such foreign country.

[November 2020 (New Course), November 2016]

Answer:

(i) Computation of tax payable in case where there is a DTAA with the foreign country:

The DTAA with the foreign country provides that the income would be taxable in country where it is earned and not in other country, but it would be included for computation of tax rate in such other country.

Thus, business income of ₹ 14,00,000 in foreign country would not be taxable in India in the hands of Ms. Sujata; *however, such income has to be included in the total income to determine the effective rate of tax applicable on Indian income chargeable to tax in India.*

Computation of tax liability of Ms. Sujata for A.Y.2023-24

Particulars	₹
Business Income	
- Foreign country	14,00,000
- In India	5,75,000
Gross Total Income	19,75,000
Less: Deduction under Chapter VI-A:	
Section 80D – Medical insurance premium of ₹ 35,000 allowable to the extent of ₹ 25,000 [Since her mother aged 83 years is a non-resident]	25,000

Total Income	19,50,000
Tax on total income [30% of ₹ 9,50,000 + ₹ 1,12,500]	3,97,500
Add: Health and education cess@4%	15,900
Tax Liability	4,13,400
Tax rate [₹ 4,13,400 / ₹ 19,50,000 x 100]	21.2%
Tax payable = 21.2% x ₹ 5,50,000 [₹ 5,75,000 – ₹ 25,000]	1,16,600

(ii) Computation of tax payable in case where there is no DTAA with the foreign country:

In such case, Ms. Sujata would be allowed deduction under section 91, since she has satisfied the following conditions :-

(a) She is a resident in India during the relevant previous year i.e., P.Y.2022-23.

(b) The business income of ₹ 14,00,000 accrues or arises to her outside India and such income is not deemed to accrue or arise in India during the previous year.

(c) Such business income has been subjected to tax in the foreign country@20%.

Computation of tax liability of Ms. Sujata for A.Y.2023-24

Particulars	₹
Tax Liability (computed above would remain same)	4,13,400
Less: Rebate under section 91 (See Working Note below)	2,80,000
Tax Payable	1,33,400
Working Note: Calculation of Rebate under section 91:	
Average rate of tax in India [₹ 4,13,400/₹ 19,50,000 x 100]	21.2%
Average rate of tax in Foreign Country	20%
Doubly taxed income (Business income in foreign country)	₹ 14,00,000
Rebate u/s 91 on ₹ 14,00,000 @20% [being the lower of average Indian tax rate (21.2%) and foreign tax rate (20%)]	₹ 2,80,000

Question-9:

Mr. S is a performing musician, resident of India. He has the following income for the year ended 31-3-2023.

(1) Income from music performances in India ₹ 5,00,000.

(2) Income from Country A with which India does not have any Double Taxation Avoidance Agreement ₹ 5,00,000. Tax deducted from this income was at 20%.

(3) Income from Country B during January 2022 ₹ 1,00,000, July 2022 ₹ 1,00,000 and January 2023 ₹ 3,00,000.

Tax withheld by Country B is at 10%.

Country B follows Calendar Year for its tax purposes. India has entered into a Double Taxation Avoidance Agreement with Country B.

(4) Rent received from his property at Chennai ₹ 30,000 per month.

(5) Contribution to PPF is ₹ 1,50,000.

Compute tax payable by Mr. S for the Assessment Year 2023-24. Give necessary working notes for your answer. [November 2019]

Answer:

Computation of total income of Mr. S for A.Y. 2023-24

Particulars	₹	₹
Income from House Property in India:		
Gross Annual Value [Rent received is taken as GAV] [₹ 30,000 p.m. x 12 months]	3,60,000	
Less: Municipal taxes	-	
Net Annual Value (NAV)	3,60,000	
Less: Deduction u/s 24 @30%	1,08,000	2,52,000
Profits and Gains of Business or Profession:		
Income from music performances in India	5,00,000	
Income from Country A	5,00,000	
Income from Country B [Income earned during July 2022 and January 2023 is taxable in India in P.Y. 2022-23]	4,00,000	14,00,000
Gross Total Income		**16,52,000**
***Less:* Deduction under Chapter VIA**		
Under section 80C – Contribution to PPF		1,50,000
Total Income		**15,02,000**

Computation of tax liability of Mr. S for A.Y. 2023-24

Particulars		₹
Tax on total income [₹1,50,600 (i.e., 30% of ₹ 5,02,000)		2,63,100
plus ₹ 1,12,500 (Tax on income of ₹ 10 lakh)]		
Add: Health and education cess @4%		10,524
Tax Liability		2,73,624
Average rate of tax in India [i.e., ₹ 2,73,624 / ₹ 15,02,000 x 100]	18.217%	
Foreign Tax credit:		
For Country A (with which India does not have a DTAA)		
Doubly taxed income	5,00,000	
Deduction under section 91 on ₹ 5,00,000@18.217% [being the lower of Indian rate of tax (18.217%) and Country A tax rate (20%)]		91,085
For Country B (with which India has a DTAA)		

Doubly taxed income [Credit shall be allowed for foreign tax paid by Mr. S in Country B in P.Y. 2022-23 in respect of income which is chargeable to tax in India in P.Y. 2022-23 i.e., for income of ₹ 4,00,000]	4,00,000	
Deduction under section 90: Lower of -		
Tax Payable under the Income-tax Act, 1961 i.e., ₹ 72,868, being 18.217% of ₹4,00,000; and		
Tax paid in Country B i.e., ₹ 40,000, being 10% of ₹ 4,00,000		40,000
Tax Payable		**1,42,539**
Tax Payable (Rounded off)		1,42,540

Question-10:

Mr. Suresh, an individual resident in India aged 60 years, furnishes you the following particulars of income earned in India, Country "X" and Country "Y" for the previous year 2022-23. India has not entered into double taxation avoidance agreement with Country X and has a double taxation avoidance agreement with country Y.

Particulars	₹
Income from profession carried on in India	**8,00,000**
Agricultural income in Country "X" (gross)	**60,000**
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	**1,00,000**
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. Royalty income brought in India in May, 2023.

- **The rates of tax in Country "X" and Country "Y" are 10% and 15%, respectively.**
- **Compute total income and tax payable by Mr. Suresh in India for Assessment Year 2023-24.**

[November 2020 (New Course)]

Answer:

"Computation of total Income of Mr. Suresh for A.Y. 2023-24"

Particulars	₹	₹
Income from House Property [From House situated in country Y]		
Gross Annual Value (in absence of other information like municipal value, etc. Rent has been taken as GAV)	2,40,000	
Less: Municipal taxes paid in that country	10,000	
Net Annual value (NAV):	2,30,000	

Less: Deduction under section 24 i.e. Std. deduction @ 30% of NAV	69,000	1,61,000
Profit and Gains of Business or Profession:		
Income from profession carried on in India	8,00,000	
Less: Set-off of business loss in country Y (Proprietary business)	65,000	7,35,000
Income from Other Source:		
Agricultural income in country X	60,000	
Dividend received from a company in country Y	1,50,000	
Royalty income from a literary book from country X (after deduction expenses of ₹ 1,00,000)	5,00,000	7,10,000
Gross total Income:		16,06,000
Less: **Deduction under Chapter VIA:**		
Under section 80QQB for Royalty income from literary work		3,00,000
Total income:		**13,06,000**

"Computation of tax liability of Mr. Kamesh for A.Y. 2023-24"

Particulars	₹
Tax on total income [₹ 1,10,000 (Upto 10Lacs), since assessee is senior citizen, + 30% of balance i.e. of 3,06,000]	2,01,800
Add: Health & Education cess @ 4%	8,072
	2,09,872
Less: Relief under section 90 and 91 (Refer to Explanatory Notes given below)	62,900
Tax payable:	1,46,972
Tax payable (Rounded off):	**1,46,970**

EXPLANATORY NOTES:

(1) Calculation of relief under section 91:		₹
Average rate of tax in India [i.e. ₹ 2,09,872 / ₹13,06,000 X 100]	16.069%	
Average rate of tax in country X	10%	
Doubly taxed income pertaining to Country X:	₹	
Agricultural income	60,000	
Royalty income [₹ 6,00,000 – ₹ 1,00,000 (Expense) – ₹ 3,00,000 (Deduction under section 80QQB)]	2,00,000	
	2,60,000	
Relief under section 91 on ₹ 2,60,000 @ 10% [being lower of average Indian tax rate (16.069%) and foreign tax rate i.e. Country X tax rate (10%)]		**26,000**
(2) Calculation of relief under section 90:		
Average rate of tax in Country Y	15%	
Doubly taxed income pertaining to country Y:		
Income from house property	161,000	
Dividend	1,50,000	

	3,11,000	
Less: Set-off of Business loss	65,000	
	2,46,000	
Credit shall be allowed for foreign tax paid by Mr. Suresh in Country Y in P.Y. 2022-23 in respect of income which is chargeable to tax in India in P.Y. 2022-23 i.e., for income of ₹ 2,46,000.		
Relief under section 90 on ₹ 2,46,000 @ 15% (being the lower of average Indian tax rate (16.069%) and foreign tax rate Country Y tax rate (15%)]		**36,900**
Total relief under section 90 & 91 (Country X + Country Y):		**62,900**

Question-11:

Mr. Ram, a citizen of USA, resides in San Jose in USA since 2004. He is a non-resident since Asst. Year 2004-05. He works for X Inc., a US based company. He came to India on 10th January, 2022, to visit his aged parents. He could return back on only 31st January, 2023. 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 2022	8750	1313	525	613	71
Feb 2022	6250	938	375	438	71
March 2022	6250	1600	420	420	71
April 2022	6250	1600	420	420	72
May 2022	6250	1600	420	420	72
June 2022	6250	1600	420	420	72
July 2022	6250	1600	420	420	72
August 2022	6250	1600	420	420	72
Sep 2022	6250	1600	420	420	72
October 2022	6250	1600	420	420	72
Nov 2022	6250	1600	420	420	72
Dec 2022	6250	1600	420	420	72
Jan 2023	6250	1600	420	420	72

He has also earned Fixed Deposit Interest in USA on 30-09-2022 US$ 200 (Tax deducted US $ 20) and on 31-03-2023 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 Social Security Taxes.

Return of Income for Asst. Year 2023-24 was filed on 25th August, 2023. You are required to:-

1. **Compute tax payable, if any, by Mr. Ram (Assume that tax as per section 115BAC is opted).**
2. **Advise Mr. Ram the procedure involved to claim Foreign Tax Credit.**

[July 2021 (New Course)]

Answer:

Mr. Ram is a resident for A.Y.2023-24, since his stay in India is for a period of 306 days in the P.Y.2022-23. Therefore, he satisfies the condition of stay in India for a period of 182 days or more in the P.Y.2022-23 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.2022-23 is only for 82 days (i.e., less than 730 days).
- since he is a non-resident in all the ten years immediately preceding P.Y.2022-23, he satisfies the condition of being a non-resident in 9 out of 10 previous years immediately preceding P.Y.2022-23.

Accordingly, he is a resident but not ordinarily resident in India for A.Y.2023-24.

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, 2022 to 31st January, 2023 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.2022-23 exceeds 90 days, he would not be eligible for exemption u/s 10(6)(vi) for A.Y.2023-24 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 for A.Y. 2023-24 under the regular provisions of the Act

Particulars	₹
Salaries:	
For the period from 1st April, 2022 to 31st January, 2023 (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) [Not available, since Ram has opted for section 115BAC]	-
	45,00,000
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	**45,00,000**
Computation of tax liability under section 115BAC:	
Upto ₹ 2,50,000	Nil
₹ 2,50,001 to ₹ 5,00,000@5%	12,500

₹ 5,00,001 to ₹ 7,50,000@10%	25,000
₹ 7,50,001 to ₹ 10,00,000@15%	37,500
₹ 10,00,001 to ₹ 12,50,000@20%	50,000
₹ 12,50,001 to ₹ 15,00,000@25%	62,500
₹ 15,00,001 to ₹ 45,00,000@30%	9,00,000
	10,87,500
Add: Health and education cess@4%	43,500
Tax Liability	**11,31,000**

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 = ₹ 11,31,000 and Foreign tax paid on such income = ₹ 11,52,000 / ₹ 8,49,600 (depending on the assumption made)

First assumption - Assuming that the column 5 figures of SST are not included in the column 3 figures of Federal Tax, 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 31.1.2023 is also 72. Accordingly, the FTC would be ₹ 11,31,000.

The tax payable would be Nil and no interest would be payable u/s 234A for late filing of return.

Second assumption - If we assume that the column 5 figures of SST are included in the column 3 figures of Federal Tax, then the foreign tax paid on such income would be ₹8,49,600 i.e., $ 1180 ($ 1600 - $ 420) x 10 months x 72 (TTBR), since the applicable TTBR is the same for all ten months and assuming that the TTBR as on 31.1.2023 is also 72. Accordingly, the FTC would be **₹ 8,49,600**.

The tax payable would be ₹ 2,81,400 (i.e., ₹ 11,31,000 – FTC of ₹ 849,600). Accordingly, interest u/s 234A would be leviable@1% for one month, assuming the balance tax of ₹ 2,81,400 is paid on 25th August, 2023, being the date of filing of return of income

The following statements/forms need to be furnished by Mr. Ram on or before 31st July, 2023 for claiming FTC -

(i) A statement of income from US offered for tax for the P.Y.2022-23 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-12:

Mr. Chetan, an Indian citizen aged 51 years, left India on 1st April 2018 to settle in Country Y. But owing to some personal unavoidable circumstances, he returned back to India permanently on 1st June 2022.

He has a residential property in Country Y from which he earned an income of $ 25,000 for the year ended 31st March 2023. 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 2023 from his bank account in India.

His income from business in India is ₹ 5,00,000 for the year ended on 31st March 2023. He also received dividend amounting to ₹ 1,25,000 from an Indian company and interest of ₹ 11,500 on saving bank account with SBI, during the year.

The exchange rates of 1 $ on various dates is given below:

1.04.2022 - ₹ 74; 31.03.2023, ₹ 75; 10.05.2023 - ₹ 75.5;

- **Compute the net tax liability of Mr. Chetan in India for the assessment year 2023-24 on the assumption that there is no DTAA between India and Country Y.**

Assume that the assessee does not opt for the provisions of Section 115BAC. [May 2022]

Answer:

Mr. Chetan is a resident in India for A.Y.2023-24, since his stay in India in the P.Y.2022-23 is for 304 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.2014-15 to P.Y.2017-18 + 1 day for leap year) 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.2011-12 to P.Y.2017-18) out of 10 years immediately preceding P.Y.2022-23.

Hence, he is resident and ordinarily resident in India for A.Y.2023-24. 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 for A.Y.2023-24

Particulars	₹	₹
Income from House Property [Residential property in Country Y]		
Annual Value2 ($ 25,000 x ₹ 75, exchange rate on 31.3.2023)	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 for A.Y.2023-24

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/₹ 19,52,890x100]	21.21%	
Average rate of tax in country Y [20% of $ 17,000 ($ 25,000 -	13.60%	
$ 8,000) = $ 3,400/$ 25,000 x 100 = 13.6%		
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

"ASSESSMENT OF TRUSTs"

"QUESTIONS FROM PAST EXAMINATIONS (+) STUDY MATERIAL"

Section 2(15): *Definition of Charitable purpose:-*

Question-1:

Keeping in view that Yoga is the present focus area and has been granted international recognition by the United Nations Organisation (UNO), an institution called "Hindustan Mahan" having 'Yoga' as its main object was registered under section 12AB. For the previous year 2022-23, the total receipts of the institution are ₹ 135 lakhs including ₹ 26.5 lakhs from business activity.

(i) State with reasons whether the institution will continue to retain its "Charitable Status" and be eligible for exemption under section 11 for the Assessment Year 2023-24.

(ii) What would have been the effect, had the main object of the institution been "advancement of any other object of general public utility" and it had applied its receipts from business activities towards such main object? [November 2016, Study Material]

Answer:

(i) As per section 2(15), "Charitable purpose" includes relief of the poor, education, **yoga**, medical relief, preservation of environment etc. or objects of artistic or historic interest and the advancement of any other object of general public utility.

Since **yoga** has been specifically included in the definition of "charitable purpose" it would no longer fall under the residual clause "advancement of any other object of general public utility".

Therefore, "Hindustan Mahan" an institution having yoga as its main object would not be subject to the restriction which is applicable to the "advancement of any other object of general public utility", namely, that it should not carry on any activity in the nature of trade, commerce or business for a cess or fee or any other consideration. Hence, such institution would continue to retain its "charitable" status and be eligible for exemption under section 11 for A.Y. 2023-24, even if it derives income from an activity in the nature of trade for a cess or fee or any other consideration.

(ii) As per the proviso to section 2(15), the "advancement of any other object of general public utility" shall not be a charitable purpose, if the institution is carrying on any activity in the nature of trade, commerce or business, or any activity of rendering nay service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income derived from such activity unless-

- Such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and
- The receipts from such activity does not exceed 20% of the total receipts in that year.

In the present case, since the receipts of ₹ 26.50 lakhs from such activity does not exceed ₹ 27 lakhs, being 20% of total receipts of ₹ 135 lakhs, the institution "Hindustan Mahan" will not lose its charitable

status and will be eligible for tax exemption under section 11 or 12 in the P.Y. 2022-23. Presuming that the activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility.

Question-2:

An institution having its main object as "advancement of general public utility" received ₹ 30 lakhs in aggregate during the P.Y. 2022-23 from an activity in the nature of trade. The total receipts of the institution, including donations, were ₹ 140 lakhs. It applied 85% of its total receipts from such activity during the same year for main object i.e. advancement of general public utility. What would be the tax consequence of such receipt and application thereof by the institution?

[Question from Study Material]

Answer:

As the main object of the institution is "advancement of object of general public utility", the institution will lose its "charitable" status for the P.Y. 2022-23, since it has received ₹ 30 lakhs from an activity in the nature of trade, which exceeds ₹ 28 lakhs, being 20% of the total receipts of the institution undertaking that activity for the previous year.

The application of 85% of such receipt for its main object during the year would not help in retaining its "charitable" status for that year. **The institution will lose its charitable status and consequently, the benefit of exemption of income for the P.Y. 2022-23,** *irrespective of the fact that its approval is not withdrawn or its registration is not cancelled.*

Moreover, as per new insertion made by the Finance Act, 2022, i.e. **section 13(10),** where commercial receipts exceed 20% of the total receipts of the institution, *income chargeable to tax of the trust or institution **shall be computed*** **after allowing deduction for the expenditure** ***(other than capital expenditure)*** **incurred in India, for the objects of the trust or institution,** subject to fulfilment of the following conditions, namely:—

(a) such expenditure is **not from the corpus standing** to the credit of the trust or institution **as on the end of the financial year immediately preceding the previous year** relevant to the assessment year for which income is being computed;

(b) such expenditure is **not from any loan or borrowing;**

(c) **claim of depreciation is not in respect of an asset, acquisition of which has been claimed as application** of income, in the same or any other previous year; and

(d) such expenditure is **not in the form of any contribution or donation to any person.**

- For the purposes of determining the amount of expenditure under sub-section (10), the provisions of **section 40(a)(ia) and section 40A(3) and (3A), shall**, mutatis mutandis, **apply** *as they apply in computing the income chargeable under the head "Profits and gains of business or profession.*
- For the purposes of computing income chargeable to tax under sub-section (10), **no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed** to the assessee under any other provision of this Act.

Section 11: *Provisions relating to incomes eligible for exemptions:-*

Question-3:

M/s Mahan Charitable Trust is running an Educational Institution with hostel facility for the orphan children. It is registered under section 12AB.

The details of income and expenditure of the Trust are as given below:

(a) Voluntary contributions received during the year ₹ 150 lakhs.
This includes:
(i) Corpus donation ₹ 20 lakhs
(ii) Donation of ₹ 20 lakhs from Mr. Michael a foreign donor which was received on 31-3-2023.

(b) Salary paid to teachers and administrative staff ₹ 40 lakhs.

(c) Other general expenses ₹ 10 lakhs include payment to grocery stores of ₹ 30,000 by crossed cheque.

(d) A land belonging to the Trust in a nearby village which was purchased in the year 2013-14 for ₹ 5 lakhs was sold for ₹ 10.50 lakhs and another land adjacent to the Trust premises was purchased for ₹ 12 lakhs to be used as playground for the children.

(e) Five laptops costing ₹ 50,000 each were purchased during the year for teaching purposes.

(f) The Trust had accumulated ₹ 30 lakhs under section 11(2) in the financial year 2017-18 for constructing a 'School building. Amount spent for the said purpose till 31-3-2023 was ₹ 27 lakhs. The project is completed with a saving in project cost.

(g) Two additional rooms measuring 1500 sq. ft each was constructed in the existing hostel for the children. Cost of construction is ₹ 1200 per sq. ft.

(h) It made a corpus donation of ₹ 20 lakhs to a trust registered u/s 12AB, having similar objects.

➢ **Compute taxable income of Mahan Charitable Trust for the assessment year 2023-24. Support your answer with necessary working notes. [May 2019]**

Answer:

"Computation of Total income of the M/s Mahan Charitable Trust"

(For the assessment year: 2023-24)

Particulars	(₹ in lacs)	(₹ in lacs)
➢ Voluntary contributions received (other than corpus donation of ₹ 20 lakhs) [Donation received from foreign donor will not get any special treatment].		130.00
➢ Corpus donation of ₹ 20 Lacs – Exempt u/s 11(1)(d) *assuming that it has been invested or deposited in one or more of the forms or modes specified in section 11(5) maintained specifically for such corpus.*		-
➢ Capital gain on transfer of land (assuming that it was being used in charitable purpose):		
Sales consideration : 10.50		
Less: Purchase price : 5.00		
Long term capital gain : 5.50		5.50

		135.50
Less: 15% of income eligible for accumulated or being set apart without any condition under section 11(1)(a) [i.e. 15 % of ₹ 135.5 Lacs]		20.325
		115.175
Less: Income applied for charitable purpose:		
➢ Salary paid to teachers and administrative staff	40.00	
➢ Other general expense except payment to grocery stores by crossed cheque which is not eligible for exemption by virtue on a New Explanation as added in section 11 by Finance Act, 2018]	9.70	
➢ Capital gain on transfer of land (10.50 Lacs - 5.00 Lacs) since reinvested in new land, will be deemed to be applied for charitable purpose, hence, will qualify for exemption.	5.50	
➢ Excess of purchase price of new land over sale consideration of old land (12 Lacs - 10.50 Lacs) will be treated as application of income for charitable purpose.	1.50	
➢ Cost of laptops purchase for teaching purposes	2.50	
➢ Cost of construction of rooms in existing hostel for the children (1500 sq. ft × 2× 1200 per sq. ft.)	36.00	
➢ Corpus donation to a charitable trust registered u/s 12AB – Not eligible for exemption u/s 11	-	95.20
		19.975
Add: Accumulated amount as per section 11(2) not spent whereas corresponding project has been completed, will be taxable in P.Y. 2022-23 i.e. last year (viz. year of completion of project), not immediately following year to the last year for which the income has been accumulated, *since the Finance Act, 2022 has preponed such taxation to last year out of the period for which the income has been accumulated.*		3.0
Total Income of the trust:		**22.975**

Section 12A, 12AA & 12AB*: Provisions relating to registration:-*

Question-4:

Educare a trust was formed on 1st April, 2019 (with the object of providing medical relief to people residing in rural areas of Assam) and has been granted the registration u/s 12AA. The trust applied for registration u/s 12AB on 15th May, 2021 to the Commissioner of Income-tax. Till the due date for filing return of income for Assessment Year 2022-23, the Commissioner of Income-tax has not passed any order granting or refusing to grant such registration. The trust has filed its return of income for Assessment Year 2022-23 claiming exemption under section 11 taking a view that as the order has not been passed by the Commissioner of Income-tax within the prescribed period, the trust should be deemed to be registered under section 12AB.

Discuss and explain whether the view taken by the trust is correct.

[November 2017, Question from Study Material]

Answer:

Provision applicable:

As per section 12AB, every order granting or refusing registration shall be passed before the expiry of **within 3 months** *from the end of the month in which registration application is uploaded.*

Issue Involved:

The issue under consideration in this case is whether, in a case where the Commissioner of Income-tax has not passed any order for granting or refusing to grant registration within the time limit prescribed under section 12AB, can the trust take a view that it is deemed to be registered u/s 12AB.

Analysis:

Identical issue came up before the **Apex Court** in CIT v/s Society for the Promotion of Education, wherein the Supreme Court affirmed that non-consideration of the application for registration within the time fixed by the legal provision would lead to deemed grant of registration, since the assessee cannot be made to suffer merely because timely decisions are not taken by the Revenue Officers.

Accordingly, in this case, the trust would be deemed to be registered since no order granting or refusing to grant registration has been passed by the CIT on or before 31st August, 2021 and even thereafter upto the due date of filing of return for the A.Y. 2022-23. Therefore, the trust can claim exemption u/s 11 in its return of income for the A.Y.2022-23, since the provisions of section 11 and 12 would apply in relation to the income of the trust from the assessment year from which such trust was earlier granted registration.

Conclusion:

Applying the rationale of the above Supreme Court Ruling to this case, the view taken by the Educare Trust that the trust would be deemed to be registered u/s 12AB, since no order granting or refusing to grant registration has been passed by the Commissioner within the prescribed period of three months **is correct.**

Question-5:

Examine each of the following independent cases of charitable trust/institutions for the assessment year 2023-24:

(i) Raj Charitable trust registered u/s 12AB, received corpus donation of ₹ 5 lakhs during the previous year 2022-23. The trust intends to utilize it during the previous year 2023-24 and claimed that since the donor gave the donation with a specific direction that it is towards the corpus of the trust, it is exempt u/s 11(1)(d). Further, during the year, the trust took a loan of ₹ 20 lakhs from a nationalized bank and out of it, applied ₹ 18 lakhs on the construction of its building. The trust claimed ₹ 18 lakhs as application for charitable purposes during the year.

(ii) Mani Foundations is a charitable trust registered under section 12AB. On 31.07.2022, it gets an approval under section 10(23C) also. The trust intends to know whether it can enjoy the benefits of both the sections that is, section 11 and section 10(23C).

(iii) Little Angels is a charitable institution registered under section 12AA. To continue claiming

the benefits of the exemption provisions contained in sections 11 & 12 for the assessment year 2023-24, it wants to apply for re-registration under section 12AB. What would be the effective date for making the application for re-registration under section 12AB?

The trust wants to confirm whether the registration granted under section 12AB has the same perpetual validity as granted under section 12AA. [May 2022]

Answer:

(i) Corpus donations of ₹ 5 lakhs would be exempt from tax only if they are received with a specific direction that they shall form part of the corpus and are invested in any of the modes specified under section 11(5).

If the same is not so invested, then, it would not be exempt under section 11(1)(d) for P.Y.2022-23.

Application for charitable purposes from a loan or borrowing shall not be treated as application of income for charitable purposes. Accordingly, ₹ 18 lakhs applied by the trust out of loan of ₹ 20 lakhs taken from a nationalized bank cannot be claimed as application for charitable purposes. However, the same can be claimed as application at the time of repayment of loan to the extent of repayment in the relevant previous year.

Therefore, both the claims of Raj Charitable trust are not correct.

(ii) No, the trust cannot enjoy the benefits under both section 11 and 10(23C).

The registration granted to Mani Foundations u/s 12AB for availing exemption u/s 11 would become inoperative from 31.7.2022, being the date on which it is approved under section 10(23C).

The trust, whose registration has become inoperative, may apply to get its registration operative u/s 12AB subject to the condition that on doing so, the approval u/s 10(23C) to such trust shall cease to have any effect from the date on which the said registration becomes operative.

(iii) The effective date of making the application for re-registration under section 12AB is 30.6.2021, being three months from 1st April, 2021. CBDT has, vide Circular No.16/2021 dated 29.8.2021, extended the date upto 31.3.2022.

No, the registration granted under section 12AB would be valid only for 5 years and not perpetually, as in the case of registration granted under section 12AA.

Section 115BBC*: Anonymous Donation:-*

Question-6:

Based on the relevant provisions of Income-tax Act and judicial pronouncements, discuss about the treatment of the following:

(i) On 26th August, 2022, Relief for Poor a public charitable trust, sold one of its building which was held by it for charitable purposes, for ₹ 4 lakhs. The asset was acquired on 23-6-2020 for ₹ 2.5 lakhs. It invested ₹ 3 lakhs in fixed deposits for the tenure of 2 years.

(ii) Save our religion, a trust established for the purpose of religious and charitable purposes. It runs a temple and a school. During the year 2022-23, it received anonymous donation amounting to ₹ 2 crores in temple and ₹ 3 crores in school. [July 2021]

Answer:

(i) As per section 11(1A), where a capital asset held under trust (building, in this case) is transferred, and only a part of the net consideration is utilized for acquiring another capital asset, the amount of capital gains deemed to have been utilised for charitable or religious purposes shall be the excess of the proceeds utilised over the cost of the asset transferred.

In the present case, short-term capital gain of ₹ 1,50,000 [₹ 4,00,000 less ₹ 2,50,000] would arise on transfer of building held under trust, as building is held for a period of not more than 24 months. Further, the trust has invested part of the net consideration i.e., ₹ 3,00,000 out of ₹ 4,00,000, in fixed deposits for the tenure of 2 years.

Where the net consideration on sale of a capital asset is invested in fixed deposits, it is regarded as utilised for acquiring another capital asset. This view has also been upheld in the case of **CIT v/s Ambalal Sarabhai Trust No. 3 [1988] (Guj.-HC).**

Accordingly, capital gains utilised for investing in fixed deposits is deemed to be applied for charitable purpose.

Since only a part of the net consideration of ₹ 3,00,000 out of ₹ 4,00,000 is utilized for investing in fixed deposits, the amount of short-term capital gains to the extent of ₹ 50,000 (being the excess of proceeds utilized i.e., ₹ 3,00,000 over cost of transferred asset i.e., ₹ 2,50,000) would be deemed to be utilised for charitable purpose.

The balance of ₹ 1,00,000 is taxable in the hands of the trust. Applying such income to the objects of the trust would make the transaction, tax neutral.

(ii) As per section 115BBC, anonymous donations received inter alia by trust or institution referred u/s 11 would be taxable @ 30% in excess of higher of -

- 5% of the total donations received by the assessee; or
- ₹ 1 lakh

However, the provisions of section 115BBC would not apply to anonymous donation received by trusts/institutions created or established wholly for religious and charitable purposes (i.e. partly charitable and partly religious institutions/trusts) other than anonymous donation made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution.

In the present case, Save our religion trust is established for religious and charitable purposes and runs a temple and a school. During the P.Y. 2022-23, it received anonymous donation of ₹ 2 crores in Temple and ₹ 3 crores in School. Since it received anonymous donation separately for temple and school, the provisions of section 115BBC would not be attracted in respect of donations of ₹ 2 crores received by Temple.

However, the provisions of section 115BBC would be attracted in respect of anonymous donation received by school. Assuming such anonymous donation is made with a specific direction that such donation is for the school.

Question-7:

A public charitable trust registered u/s 12AB runs a hospital and also a medical college. It furnishes you the following information for the year ended 31 March, 2023:

(i) Gross receipts from Hospital ₹ 425 lakhs.

(ii) Income from business-incidental to main objects ₹ 2 lakhs

(iii) Voluntary contribution received from public ₹ 32 lakhs. It includes corpus donation of ₹ 3 lakhs and anonymous donation of ₹ 5 lakhs

Note: Voluntary contributions are included in gross receipt given in (i) above

(iv) Government grant received of ₹ 8 lakhs.

(v) Hospital operational expenses incurred ₹ 105 lakhs. (This does not include capital expenditure and depreciation)

(vi) Income from medical college (solely for education purpose) ₹ 10 lakhs. Gross receipts of college for the year ₹ 90 lakhs.

(vii) Gross receipts given in (i) above include a sum of ₹ 55 lakhs which has accrued but not received. However, sum of ₹ 18 lakhs has been received only on 31st day of March 2023.

(viii) The trust set apart ₹ 80 lakhs for acquiring a building to expand its hospital. But the amount was paid in May 2023 when sale deed was registered in its name.

(ix) In June 2022 the trust purchase and installed new computer software for ₹ 28 lakhs. The rate of depreciation is 60% as per Income-tax Act, 1961.

(x) The trust incurred ₹ 35 lakhs towards purchase of laptops, computer and printer for the hospital.

(xi) It repaid loan of ₹ 15 lakhs taken earlier for construction of hospital building.

(xii) Donation given towards corpus to a trust registered u/s 10(23C) of ₹ 2 lakhs.

(xiii) Excess of expenditure over income in the previous year 2021-22 of ₹ 25 lakhs.

Compute the Total income of the trust for the assessment year 2023-24 in order to avail maximum benefits within the four corners of Law. [November 2018 + May 2015]

Answer:

"Computation of Total income of the Trust"

(For the assessment year 2023-24)

Particulars	(₹ in lacs)	(₹ in lacs)
➢ Gross receipts from hospital (other than corpus & anonymous contribution of ₹ 8 lakhs)[₹ 425 lacs - ₹ 8 lacs]		417.00
➢ Government Grants (taxable, since only grant for the purpose of corpus of a trust established by the Central or State Government is excluded from the definition of income) [**Note -** Government Grants would be exempted based on the assumption that assessee trust is set up by the Central or State Govt. and the grant is towards the corpus of the trust]		8.0

➢ Corpus donation of ₹ 3 Lacs– Exempt u/s 11(1)(d) assuming that it has been **invested or deposited in one or more of the forms or modes specified in section 11(5) maintained specifically for such corpus.**		-
➢ Anonymous donation of ₹ 1.6 Lacs which is not taxable as per section 115BBC (See Note below).		1.6
Add: Income from business- incidental to main object		2.00
		428.60
Less: 15% of income eligible for accumulated or being set apart without any condition under section 11(1)(a) [i.e. 15 % of ₹ 428.60 Lacs]		64.29
		364.31
Less: Income applied for charitable purpose:		
➢ Hospital operational expenses	105.00	
➢ Cost of new computer software	28.00	
➢ Cost of laptops, computer and printers purchase for the hospital	35.00	
➢ Repayment of loan taken earlier for construction of hospitals buildings – **Repayment of debt incurred for the purpose of trust is application of income provided such construction has not been claimed as an application/exemption earlier,** in view of Explanation 4 to section 11(1) as inserted by the Finance Act, 2021.	15.00	
➢ Corpus donations to a trust registered u/s 10(23C) [Deduction is not permissible in respect of corpus donations to a trust registered u/s 12AA/12AB or approved u/s 10(23C), as per amendment made by F.A. 2020].	-	
➢ Excess of expenditure over income in the P.Y. 2021-22 – **Not to be considered in current year application** by virtue of Explanation 5 to section 11(1).	-	183.00
		181.31
Less: Deemed application as per clause 2 to explanation of section 11(1):		
(i) Amount accrued but not received during the previous year	55.00	
(ii) Income received on 31st March 2023	18.00	73.00
		108.31
Less: Amount set apart for acquisition of a building to expand it hospital [The amount spent in may 2023 in the immediately following year can be treated as application in the P.Y. 2022-23, provided a statement in prescribed form is given to the assessing officer within due date u/s 139(1) as required under section 11(2)].		80.00
		28.31
Income of ₹10 lakhs from Medical College- Exempt u/s 10(23C)(iiiad) because it is solely for education purpose and gross receipts do not exceed 5 crores		

neither individually nor with any source claimed exempt u/s 10(23C)(iiiae), if any, which is not being claimed in the given case.		NIL
Total Income [other than anonymous donation taxable u/s 115BBC]		28.31
Add: anonymous donation taxable u/s 115BBC		3.40
Total Income of the trust:		31.71
Tax liability:		
Tax on anonymous donation of ₹ 3,40,000 [i.e.₹ 5L – ₹ 1.6 L]** @ 30%	1.020	
Tax on other income of ₹ 28,31,000 (i.e. 31,71,000 – 3,40,000) at normal rates:		
Upto ₹ 2,50,000	Nil	
₹ 2,50,000 – ₹ 5,00,000 [₹2,50,000 × 5%]	0.125	
₹ 5,00,000 – ₹ 10,00,000 [₹5,00,000 × 20%]	1.0	
> ₹ 10,00,000 [₹18,31,000 × 30%]	5.493	
	6.738	7.638
Health & Education Cess @ 4%		0.306
Tax payable (rounded off):		7.944

***The exemption limit from 30% Rate is the **higher of the following**:*

5% of the total donations received (i.e. 5% of ₹ 32,00,000) = ₹ 1,60,000, OR ₹ 1,00,000/-.

Note:

Grants of ₹ 8 lakhs received from Government are not included in the total donations, in the above solution, while computing the limit of 5% of total donations u/s 115BBC. This view is taken since Govt. grants are generally given subject to stipulated conditions. However, in Income-tax Form ITR-7, Government grants are included in the total donations for the purpose of computing limit of 5% of total donations u/s 115BBC(1). Hence, the solution can also be worked out by including government grants in total donations for computing the limit of 5% of total donations.

Question-8:

Tutsi Foundations, a public charitable and religious trust registered u/s 12AB, runs a hospital and owns a temple. It furnishes you the following information for the year ended 31st March, 2023:

(i) Gross receipts from hospital ₹ 200 Lakhs.

(ii) Voluntary contributions (not included in gross receipts) received from public amounted to ₹ 35 lakhs. It includes corpus donation of ₹ 5 lakhs and anonymous donation ₹ 10 lakhs. Out of the anonymous donations of ₹ 10 lakhs, ₹ 8 lakhs are made to the donation box of temple.

(iii) Operational expenses incurred for the hospital amounted to ₹ 94 lakhs and for the temple amounted to ₹ 15·lakhs.

(iv) On 1st January 2023, ₹ 6 lakhs was paid to a contractor in cash for the overall maintenance of the hospital. This amount is included in the operational expenses of the hospital.

(v) On 1st May, 2022, the trust purchased and installed new computer software for ₹ 25 lakhs for the hospital: The rate of depreciation is 40% as per the Income-tax Act, 1961.

(vi) The trust gave donation of ₹ 12 lakhs to Balaji trust (having objects of charitable nature),

registered under section 12AB, but not similar to the objects of the donor trust.

Compute the total income and income tax liability of the trust for the A.Y. 2023-24 in such a manner that it can avail the optimal benefit within the four corners of law. [July 2021 (New Course)]

Answer:

"Computation of total income of Tulsi Foundations for the A.Y. 2023-24"

Particulars	₹	₹
Gross receipts from hospitals		2,00,00,000
Add: Voluntary contributions other than corpus donation and anonymous donation		20,00,000
Corpus donation [does not form part of total income *assuming that it has been invested or deposited in one or more of the forms or modes specified in section 11(5) maintained specifically for such corpus.*]		Nil
Anonymous donations for temple [not subject to tax u/s 115BBC]		8,00,000
		2,28,00,000
Add: Anonymous donations other than for temple [to the extent not chargeable to tax@30% u/s 115BBC] [₹1,75,000, being 5% of total donations of ₹35,00,000 or ₹1,00,000, whichever is higher]		1,75,000
		2,29,75,000
Less: 15% of income eligible for being set apart without any condition		34,46,250
		1,95,28,750
Less: **Amount applied for charitable purposes**		
– Operational expenses incurred for hospital and temple [₹ 94 lakhs + ₹ 15 lakhs – ₹ 6,00,000 not treated as application as payment to contractor made in cash]	1,03,00,000	
– Purchase of computer [it is beneficial for the trust to claim cost of computer itself as application of income in the year asset is acquired. If the cost of asset is claimed as application, then, depreciation will not be allowed as deduction as per section 11(6)]	25,00,000	
– Donation to charitable trust registered u/s 12AB allowable as application, since it is not given with a specific direction that it shall form part of corpus of the trust nor is it given out of accumulated income	12,00,000	
		1,40,00,000
Total income [other than anonymous donation taxable@30% under section 115BBC]		55,28,750
Add: Anonymous donation taxable @30% u/s 115BBC		25,000
Total Income of the trust		**55,53,750**

"Computation of tax liability of the trust for the A.Y. 2023-24"

Particulars	₹
Tax on total income of ₹ 55,28,750 i.e., total income [excluding anonymous donations of ₹ 25,000 chargeable to tax @30% u/s 115BBC(1)(i)] [₹ 45,28,750 x 30% plus ₹ 1,12,500]	14,71,125
Tax on anonymous donations taxable@30% [₹ 25,000 x 30%]	7,500
	14,78,625
Add: Surcharge@10%, since total income exceeds ₹ 50 lakhs but does not exceed ₹ 1 crore.	1,47,863
	16,26,488
Add: Health and Education cess @4%	65,060
Total tax liability	16,91,548
Total tax liability (rounded off)	**16,91,550**

Note - To avail the maximum benefit, the amount of ₹ 52,78,750 (i.e., Total income excluding anonymous donation taxable@30% u/s 115BBC i.e., ₹ 55,28,750 – ₹ 2,50,000, being the basic exemption limit) can be accumulated or set apart for such period not exceeding 5 years by exercising an option on or before the due date for filing return of income and such amount should be invested in modes specified u/s 11(5).

Question-9:

Shree Shani foundations, a charitable trust registered u/s 12AB of the I.T. Act runs a hospital. The following particulars pertaining to the Previous Year 2022-23 are furnished to you by the trust:

(i) Gross receipts from the hospital ₹ 345 lakhs.

(ii) Voluntary contributions received from public ₹ 25 lakhs, (including anonymous donation (eligible for accumulation) ₹ 5 lakhs and corpus donation ₹ 2 lakhs from other charitable trusts), are not included in the Gross receipts.

(iii) Hospital expenses ₹ 85 lakhs (revenue in nature and does not include the depreciation on hospital equipment amounting to ₹ 5 lakhs which have been claimed as application of income in the earlier years)

(iv) Gross receipts include a sum of ₹ 4 lakhs that was received on 31-03-2023.

(v) Amount applied for the purpose of hospital ₹ 90 lakhs (includes repayment of loan taken earlier for the construction of hospital ₹ 10 lakhs).

(vi) Donation of ₹ 3 lakhs given towards corpus to a trust registered under section 10(23C).

(vii) Income from business which is incidental to the main object of the trust and separate books of account are also maintained by the trust in respect of such income ₹ 5 lakhs.

Compute the total income of the trust for the Assessment Year 2023-24 in order to avail maximum benefits within the four corners of law. [January 2021]

Answer:

"Computation of total income of Shree Shani Foundations for the A.Y. 2023-24"

Particulars	₹ in lakhs	₹ in lakhs
Gross receipts from Hospital		345.0000

Add: Voluntary contributions other than corpus donations of ₹ 2 lakhs and anonymous donation of ₹ 5 lakhs		18.0000
Add: Corpus donation [does not form part of total income *assuming that it has been invested or deposited in one or more of the forms or modes specified in section 11(5) maintained specifically for such corpus.*]		Nil
Add: Income from business incidental to the main object of the trust [Exemption Provisions of section 11 will equally apply in respect of this income, since such business is incidental to the main object of the trust and separate books of accounts are maintained]		5.0000
		368.0000
Add: Anonymous donations [to the extent not chargeable to tax @30% under section 115BBC] [See Note 1 below]		1.2500
		369.2500
Less: 15% of income eligible for being set apart without any condition		55.3875
		313.8625
Less: **Amount applied for charitable purposes:**		
On revenue account:		
For Hospital (Depreciation in respect of hospital equipment of ₹ 5 lakhs, would not be allowed, since the same had been claimed as application of income in the earlier years)	85.00	
Amount applied for the purpose of hospital including ₹ 10 lakhs paid towards repayment of loan taken earlier for construction of hospital allowable as application of income in view of Explanation 4 to section 11(1) *assuming that when such loan was applied for charitable purpose was not claimed as application.*	90.00	
Corpus donation to a trust registered under section 10(23C) [Deduction is not permissible in respect of corpus donations to a trust registered u/s 12AA/12AB or approved u/s 10(23C), as per amendment made by F.A. 2020]	Nil	175.0000
		138.8625
Less: 85% of the amount of ₹ 4 lakhs received on 31.3.2023 would be deemed to be applied by virtue of Clause 2 of Explanation 2 below to Section 11(1) [See Note 2 below]		3.4000
Total income [other than anonymous donation taxable@30% u/s 115BBC]		135.4625
Add: Anonymous donation taxable @30% u/s 115BBC [See Note 1 below]		3.7500
Total Income of the trust (including anonymous donation taxable@30%)		**139.2125**

Explanatory Notes:

(1) As per section 115BBC, the anonymous donations in excess of the higher of the following would be subject to tax @ 30%;

₹ 1.25 lakh, being 5% of the total donations received i.e., 5% of ₹ 25 lakhs [Voluntary contributions

including Corpus donations ₹ 2 lakhs (+) Anonymous donations ₹ 5 lakhs]; or ₹ 1 lakh

Therefore, anonymous donations of ₹ 3.75 lakh (₹ 5 lakh – ₹ 1.25 lakh) would be subject to tax @30% under section 115BBC.

Such anonymous donations which are subject to tax@30% are not eligible for the benefit of exclusion from total income under sections 11 and 12.

(2) Gross receipts include a sum of ₹ 4 lakhs which is received on 31.3.2023. Since the amount has been received during the previous year 2022-23, such sum has to be included in the gross receipts for the purpose of computing 15% unconditional exemption. However, since such sum cannot be applied during the previous year on account of being received on the last day of the previous year, 85% of such amount i.e., ₹ 3.4 lakhs, is deemed to be applied for the purpose of the trust by virtue of Clause 2 of Explanation 2 below to section 11(1) in the above solution.

Question-10:

Asma Rani Public Charitable Trust runs a hospital cum Rehabilitation Centre to treat patients suffering from leprosy. The trust is registered u/s 12AB and following cash system of accounting, furnishes the following information:

- **Gross Receipts from Hospital ₹ 560 Lakhs**
- **Gross Receipts from Rehabilitation ₹ 220 lakhs**
- **Fees not realized from patients as at 31/3/2023 ₹ 36 Lakhs**
- **Administration Expenses paid for hospital ₹ 335 Lakhs**
- **Administration Expenses paid for Rehab. Centre ₹ 138 Lakhs**
- **Acquired a building for ₹ 150 lakhs on 1/5/2022 for expansion of Rehab. Centre (Cost of land included therein ₹ 85 lakhs). Stamp duty value of Land & Building on the date of registration was ₹ 185 lakhs.**
- **Grant received from State Govt. ₹ 7.50 lakhs**
- **Administration expense includes payments of ₹ 12 lakhs to resident doctors & contractors on which TDS is required to be deducted u/s 192 & 194C but such TDS has not been deducted.**
- **Voluntary contributions (including Corpus Donations for ₹ 10 lakhs) is ₹ 20 Lakhs. These contributions are included in Gross Receipts of hospital.**
- **Anonymous donations received ₹ 8 Lakhs.**
- **Amount donated to Jan Kalyan Trust registered u/s 12AB running similar hospital in Bihar (includes Corpus donation of ₹ 5 Lakhs from hospital receipts) - ₹ 11 Lakhs.**
- **Repayment of loan taken earlier for construction of Rehab. Centre - ₹ 6.65 Lakhs.**
- **The trust set apart ₹ 25 lakhs for acquiring another table & equipment for OT but the amount was spent in October 2023. Form 10 was filed and A.O. was duly informed as required u/s 11(2). Investment made in the units of UTI (mode prescribed u/s 11(5)) of ₹ 15 lakhs upto 31/03/2023.**

➢ **Compute the Total Income of the trust and its I.T. Liability for the A.Y. 2023-24.**

[November 2020 (New Course), Similar Question in May 2018]

Answer:

"Computation of total income of Asma Rani Public Charitable Trust for the A.Y. 2023-24"

Particulars	₹ in lakhs	
Gross receipts from Hospital (other than voluntary contribution of ₹20 lakhs)		540.000
Gross receipts from Rehabilitation Centre		220.000
Grant received from State Govt. [See Note 2 below]		7.500
Fees not realized from patients as at 31.3.2023 (not includible, since trust follows cash system of accounting)		-
		767.500
Add: Voluntary contributions other than corpus donations of ₹10 lakhs		10.000
		777.500
Add: Anonymous donations [to the extent not chargeable to tax @ 30% u/s 115BBC [See Note 1 below]		1.400
		778.900
Less: 15% of income eligible for being set apart without any condition		116.835
		662.065
Less: Amount applied for charitable purposes		
- **On revenue account** – Administrative expenses: For Hospital (Out of ₹ 335 lakhs, ₹ 3.6 lakhs, being 30% of 12 lakhs, would be disallowed, since tax is not deducted u/s 192 & 194C on such amount paid to resident doctors & contractors)	331.40	
For Rehabilitation Centre	138.00	
- **On capital account** – Land & Building [Section 56(2)(x) is not attracted in respect of value of property received by a trust or institution registered u/s 12AA/12AB]	150.00	
- **Donation to Jan Kalyan Trust registered u/s 12AB** [allowable since the same is out of current year income of the trust, even though the objects of the trust are different. Only corpus donations are not permissible to other trusts registered u/s 12AA/12AB. Thus, out of ₹ 11 lakhs, ₹ 5 lakhs towards corpus are not allowable as deduction.]	6.00	
- **Repayment of loan taken earlier for construction of Rehab. Centre – allowable** in view of Explanation 4 to section 11(1) *assuming that when such loan was applied for charitable purpose was not claimed as application.*	6.65	
		632.050
		30.015
Less: Amount set apart for acquiring another table & equipment for OT ₹ 25 lakhs would be treated as application for the previous year 2022-23 to the extent of ₹ 15 lakhs, being the amount of investment made in units of UTI, a mode		15.000

prescribed u/s 11(5), and **excess amount** i.e. 10 lakhs **will be deemed as specified income and will be taxable @30% u/s 115BBI.**		
Total income [other than anonymous donationtaxable@30% u/s 115BBC]		**15.015**
Add: Anonymous donation taxable @30% u/s115BBC [See Note 2 below]		6.600
Total Income of the trust (including anonymousdonation taxable@30%)		**21.615**

"Computation of tax liability of the trust for the A.Y. 2023-24"

Particulars	₹
Tax on total income [Excluding excess anonymous donations and excess accumulated income u/s 11(2) not invested in any specified mode of section 11(5)] [i.e. tax on ₹5,01,500]	12,800
Tax on **specified income u/s 115BBI** i.e. excess amount of ₹10 lakhs liable to tax **@30%**	3,00,000
Tax on anonymous donations taxable@30% [₹6,60,000 x 30%]	1,98,000
	5,10,800
Add: Health and education cess @4%	20,432
Total tax liability	**5,31,232**
Total tax liability (rounded off)	**5,31,230**

Explanatory Notes:

(1)	As per section 115BBC(1)(i), the anonymous donations in excess of the higher of the following would be subject to tax@30%; - ₹ 1.40 lakh, being 5% of the total donations received i.e., 5% of ₹ 28 lakh [Voluntary contributions including Corpus donations ₹ 20 lakhs (+) Anonymous donations ₹8 lakhs]; or - ₹1 lakh Therefore, anonymous donations of ₹ 6.60 lakh (₹ 8 lakh – ₹ 1.4 lakh) would be subject to tax @ 30% under section 115BBC. Such anonymous donations which are subject to tax@30 % are not eligible for the benefit of exclusion from total income under sections 11 and 12
(2)	Grants of ₹ 7.50 lakhs received from State Govt. are not included in the total donations, in the above solution, while computing the limit of 5% of total donations u/s 115BBC(1). This view is taken since Govt. grants are generally given subject to stipulated conditions. However, in Income-tax Form ITR-7, Government grants are included in the total donations for the purpose of computing limit of 5% of total donations u/s 115BBC(1). Hence, the solution can also be worked out by including government grants in total donations for computing the limit of 5% of total donations.
(3)	Corpus donations are not includible in the total Income of the trust, as it is registered u/s 12AB *assuming that it has been invested or deposited in one or more of the forms or modes specified in section 11(5) maintained specifically for such corpus.*

Question-11:

GNK Trust, a charitable trust following accrual system of accounting registered u/s 12AB of the Income-tax Act, provides services in the field of education. It furnishes the following particulars to you with respect to previous year 2022-23:

Particulars	₹
Gross Receipts received from students	**24,41,000**
Voluntary Contribution (including anonymous donation ₹ 1,85,000)	**5,20,000**
Dividend from Indian Companies	**5,40,000**
Income from mutual funds registered under section 10(23D)	**2,85,000**
Agricultural income	**4,79,000**

The following amounts are spent for the purposes of the trust:

Particulars	₹
Amount set aside during the year to be applied in next 4 years for the purposes of the trust	**2,54,000**
Payment to Mr. Lohia, one of the trustees, as rent for the building where the trust carry on its activities. The rent for similar property is ₹ 2,50,000.	**1,47,000**
During the year, the trust invited foreign teachers but made the payment in the next Financial Year	**1,96,000**
Other expenses for the purposes of the trust	**16,79,000**

Compute the total income of the trust and also the tax liability in order to avail the maximum benefits under the provisions of Income-tax Act, 1961. [January 2021 (New Course)]

Answer:

"Computation of total income of GNK Trust for the A.Y. 2023-24"

Particulars	₹	₹
Gross receipts from students		24,41,000
Add: Voluntary contributions other than anonymous donation of ₹ 1,85,000		3,35,000
		27,76,000
Add: Dividend from Indian Companies	5,40,000	
Income from mutual funds registered u/s 10(23D)	2,85,000	
Agricultural income [Exemption u/s 10(1) would be available, even though the trust is registered u/s 12AB]]	Nil	8,25,000
		36,01,000
Add: Anonymous donations [to the extent not chargeable to tax@30% under section 115BBC] [₹ 26,000, being 5% of total donations of ₹ 5,20,000 or ₹ 1,00,000, whichever is higher]		1,00,000
		37,01,000
Less: 15% of income eligible for being set apart without any condition		5,55,150

		31,45,850
Less: Amount applied for charitable purposes		
- Payment of rent for the building to Mr. Lohia	1,47,000	
- Amount payable to foreign teachers for services rendered and utilised in India [though the expense has been incurred during the current previous year and trust follows accrual system of accounting, **but after the amendment as made by Finance Act, 2022, application will be allowed on payment basis,** therefore, payment made to the teachers next year is not deductible in current previous year]	Nil	
- Other expenses	16,79,000	18,26,000
		13,19,850
Less: Amount set aside during the year to be applied in the next 4 years		2,54,000
Total income [other than anonymous donation taxable@30% u/s 115BBC]		10,65,850
Add: Anonymous donation taxable @30% u/s 115BBC		85,000
Total Income of the trust (including anonymous donation taxable@30%)		**11,50,850**

Computation of tax liability of the trust for the A.Y. 2023-24

Particulars	**₹**
Tax on total income of ₹ 10,65,850 i.e., total income (excluding anonymous donations chargeable to tax@30% u/s 115BBC) [₹ 65,850 x 30% plus ₹1,12,500]	1,32,255
Tax on anonymous donations taxable@30% [₹ 85,000 x 30%]	25,500
	1,57,755
Add: Health and education cess@4%	63,102
Total tax liability	1,16,449
Total tax liability (rounded off)	**1,64,450**

Note: To avail the maximum benefit, the amount set aside should be invested in modes specified under section 11(5) and intimated to the Assessing Officer before the due date of filing of return.

"TAXATION OF ACCRETED INCOME (Exit Tax)"

Question-12:

GVB Charitable Trust engaged in the activities of running a charitable hospital and medical college since 8 years, has been merged with a Corporate hospital on 31st March, 2023. The said Corporate Hospital is not eligible for registration under section 12AA/12AB of the Act. The position of assets and liabilities of the Charitable trust as on the date of merger are furnished as under:

A: Properties and Assets: **₹**

(a) Shares and securities held by Trust acquired out of agricultural income exempt u/s 10(1) of the Act: **25 lakhs**

(b) Book value of Quoted shares and securities: **35 lakhs**

Market value (Average of lowest and highest price of such

shares as on date of merger quoted on recognised stock exchange) 40 lakhs

(c) Book value of Land and Buildings held by Trust: 60 lakhs

Value of Immovable Properties (Land & Buildings) as per valuation report from Registered Valuer: 40 lakhs

Stamp Duty value: 38 lakhs

The Trust was created on 1st January, 2015 and obtained registration under section 12AA/12AB on 31st March, 2015.

(d) The Trust holds 40% of equity shares in an unlisted company and the financial position of said unlisted company as on date of merger is as under :

	₹
Book value of assets (other than immovable property)	**25 lakhs**
Fair Market value of Immovable Property	**45 lakhs**
Reserves and Surplus	**15 lakhs**
Provision for taxation	**5 lakhs**
Total amount of Paid-up Equity Share Capital	**25 lakhs**

B: Liabilities:

(a) Liability in respect of shares and securities (unlisted)	**8 lakhs**
(b) Bank Liability in respect of quoted shares and securities	**15 lakhs**
(c) Advance Tax paid	**12 lakhs**

Compute the tax liability, if any, of Charitable Trust, arising out of above merger, giving explanation for treatment of each item in the context of relevant provisions contained in the Act. Assume that the trust has no tax liability in respect of other activities undertaken during previous year 2022-23.

[November 2019 (New Course)]

Answer:

As per section 115TD, the accreted income of "GVB Charitable Trust", registered u/s 12AA/12AB, would be chargeable to tax at maximum marginal rate@34.944% [30% *plus* surcharge@12% *plus* cess@4%] on its merger with another entity not registered u/s 12AA/12AB.

"Computation of exit tax payable by GVB Charitable Trust"

Particulars	Amount (₹)
Aggregate FMV of total assets as on 31.3.2023, being the specified date (date of merger) [See Working Note 1]	1,08,00,000
Less: Total liability computed in accordance with the prescribed method of valuation [See Working Note 2]	23,00,000
Accreted Income:	**85,00,000**
Tax Liability @ 34.944% of ₹ 85,00,000:	29,70,240

Working Note 1

Aggregate fair market value of total assets on the specified date

Share and securities held by the trust, which are acquired out of agricultural income exempt u/s 10(1) shall be ignored by virtue of proviso to section 115TD(2).	Nil

Quoted shares and securities		40,00,000
[The fair market value of quoted shares would be average of the lowest and highest price of such shares quoted on the recognized stock exchange on the specified date i.e., 31.3.2023]		
Land and building, being immovable property		40,00,000
[The fair market value of land and building would be higher of ₹ 40,00,000 i.e., price that it would ordinarily fetch if sold in the open market as per registered valuer's certificate and ₹ 38,00,000, being stamp duty value as on the specified date i.e., 31.3.2023]		
Equity shares in an unlisted company:		
Book value of assets (other than immovable property)	25,00,000	
Fair market value of immovable property	45,00,000	
	70,00,000	
Less: Book value of liabilities in the balance sheet:	Nil	
[Provision for taxation, paid up share capital and reserves and surplus would also not be included in liabilities]	70,00,000	
Value of unlisted shares held by GVB Charitable trust [70,00,000 x 40%]		28,00,000
		1,08,00,000

Working Note 2:

Total liability:

Liability in respect of unlisted shares and securities	8,00,000
Bank liability in respect of quoted shares and securities	15,00,000
Total liability of Charitable Trust:	**23,00,000**

Question-13:

The registration granted under section 12AA of the Income-tax Act, 1961 on 1-4-2009 to M/s S Charitable Trust, was cancelled on 31-1-2023 on a finding that the Trust was merged, with another entity neither having similar objects nor registered under section 12AA/12AB. An appeal was preferred against the order of cancellation, which was dismissed by the Appellate authorities. The order confirming the cancellation was received on 31-3-2023.

The Balance Sheet of M/s S Charitable Trust as on 31.1.2023, and its other information is given hereunder: (All amounts are in lakhs of Rupees)

Particulars	₹
Liabilities	
Capital fund	**800.00**
Sundry creditors	**335.00**
Total	**1135.00**
Assets	
Land (existing since 1-4-2008)	**100.00**

Land and buildings purchased in the year 2015	**800.00**
2000 equity shares of ₹ 1000 each in M/s X Ltd. shares are listed in BSE (at face value)	**20.00**
Balance in current account of a nationalized bank	**10.00**
Balanced in fixed deposits with scheduled banks	**200.00**
Cash in hand	**3.50**
Tax Deducted at Source	**1.50**
Total	**1135.00**

Additional Information:

(1) Stamp duty value of the land (existing since 2008) as on 31-1-2023 was ₹ 120.00 lakhs but if sold in the open market, the property would fetch ₹ 250 lakhs as per a registered valuer's certificate.

(2) Land and building (purchased in 2015), if sold in the open market will fetch ₹ 1000 lakhs as per a registered valuer's certificate. Stamp duty value as on 31-1-2023 was ₹ 1050 lakhs.

(3) The highest and lowest value per share of M/s X Ltd. traded on 31-1-2023 was ₹ 1098 and ₹ 1051 respectively.

(4) Included in Sundry Creditors is ₹ 30 lakhs provided on estimated basis to contractors for which no bills are received.

Based on the above information, calculate the exit tax payable by the Charitable Trust and state the latest day on which the said tax has to be paid. Give working notes wherever necessary. [Nov. 2019]

Answer:

As per section 115TD, the accreted income of "M/s S Charitable Trust", registered under section 12AA would be chargeable to tax at maximum marginal rate @ 34.944% [30% plus surcharge @12% plus cess@4%] on 31.1.2023 for the reason of cancellation of registration granted on 31.01.2023.

Computation of exit tax payable by M/s S Charitable Trust

Particulars	Amount (₹)
Aggregate FMV of total assets as on 31.1.2023, being the specified date (date of order of cancellation of the registration) [See Working Note 1]	15,34,99,000
Less: Total liability computed in accordance with the prescribed method of valuation [See Working Note 2]	3,05,00,000
Accreted Income	**12,29,99,000**
Tax Liability @ 34.944% of ₹ 12,29,99,000	**4,29,80,771**
Tax Liability (rounded off)	**4,29,80,770**

Working Note 1:

Aggregate fair market value of total assets on the date of cancellation of the registration

Valuation of Land, being an immovable property, existing since 2008	2,50,00,000
[The fair market value of land would be higher of ₹ 250 lakhs i.e., price that the land would ordinarily fetch if sold in the open market as per registered valuer's certificate and ₹120 lakhs, being stamp duty value as on the specified date i.e., 31.1.2023]	

Value of land purchased on 1.4.2008 is includible in the aggregate fair market value, since the exemption provisions under section 11 and 12 would apply from P.Y.2008-09, being the previous year in which application for registration of trust is made. Since the question states that registration was granted on 1.4.2009, it is logical to assume that the application was made in the P.Y.2008-09, and hence, benefit of exemption under sections 11 and 12 would be available from P.Y. 2008-09, being the year in which the above land was purchased]

Valuation of Land and building, being an immovable property, purchased in 2015 [The fair market value of land and building would be higher of₹1,000 lakhs i.e., price that the land and building would ordinarily fetch if sold in the open market as per registered valuer's certificate and ₹ 1,050 lakhs, being stamp duty value as on the specified date i.e., 31.1.2023]	10,50,00,000
Valuation of Quoted equity shares in M/s X Ltd. [2,000 x₹ 1,074.50 per share] [FMV of quoted shares would be ₹ 1,074.50 per share, being the average of the lowest (₹ 1,051) and highest price (₹ 1,098) of such shares on the specified date i.e., 31.1.2023]	21,49,000
Balance in current account of a nationalized bank	10,00,000
Balance in fixed deposits with scheduled banks	2,00,00,000
Cash in hand	3,50,000
	15,34,99,000

Working Note 2: Total liability

Book value of liabilities in the balance sheet on specified date	11,35,00,000
- **Less:** Capital fund	8,00,00,000
- **Less:** Contingent liability on estimated basis to contractor for which no bills are received	30,00,000
Total liability of M/s S Charitable Trust	**3,05,00,000**

The latest day on which such tax has to be paid is 14th April, 2023, being 14 days from 31.3.3021, the date on which the order confirming the cancellation is received.

Question-14:

Ramnarayan Foundation Trust was formed on 01-04-2006. It applied for registration u/s 12AA of the Act and got the registration approved from prescribed authority with effect from 01-04-2010. The trust got the exemption from payment of taxes satisfying the conditions laid down in Sections 11 to 13 from 01-04-2010. The trust got dissolved on 29-12-2021.

The Balance Sheet of the Trust on the date of dissolution was as under:

Liabilities	Amount (₹)	Assets	Amount (₹)
Corpus of the trust	**6,00,000**	**Land and Building**	**12,00,000**
Reserves (created out of accumulated amount of 15% each year)	**3,00,000**	**Investment in Equity Shares - Quoted**	**4,00,000**

Loan taken for purchase of Land and Building	**9,00,000**	**Investment in Equity Shares - Unquoted (in Z Ltd.)**	**1,50,000**
Loan taken for the purchase of unquoted shares (taken in year 2007-08)	**1,00,000**	**Cash**	**1,00,000**
		Bank Balance	**50,000**
Total	**19,00,000**	**Total**	**19,00,000**

Additional information:

(i) FMV of Land and Building is ₹ 50,00,000.

(ii) 50% of the Unquoted shares were acquired during the year 2007-08.

(iii) Market Value of quoted shares on the date of dissolution is ₹ 18,00,000.

(iv) Land and Building is acquired out of agricultural income.

(v) With respect to Z Ltd. in which the trust invested in unquoted shares, the following additional information was available as on 29-12-2021:

(a) 1,00,000 Equity Shares with face value of ₹ 10 each

(b) Total Book Value of the assets (other than bullion, jewellery) is ₹ 60,00,000.

(c) Market Value of bullion and jewellery is ₹ 30,00,000.

(d) Liabilities amounting to ₹ 35,00,000.

(vi) The trust distributed the assets on dissolution, valuing ₹ 8,00,000 to another trust registered u/s 12AA/12AB of the Act before 31-12-2022.

➢ **Compute the tax payable by Ramnarayan Foundation Trust for the A.Y. 2023-24 u/s 115TD.**

[December 2021]

Answer:

As per section 115TD, the accreted income of Ramnarayan Foundation trust, a charitable trust, registered under section 12AA would be chargeable to tax at the rate of 34.944% [30% plus surcharge @12% plus cess@4%] on non-distribution of assets on dissolution to another trust registered u/s 12AA/12AB within 12 months from the end of the month in which the dissolution takes place.

Computation of accreted income and tax liability in the hands of Ramnarayan Foundation trust on dissolution

Particulars	Amount (₹)
Aggregate FMV of total assets as on 29.12.2021, being the specified date (date of dissolution) [See Working Note 1]	61,12,500
Less: Total liability computed in accordance with the prescribed method of valuation [See Working Note 2]	9,00,000
Accreted Income	52,12,500
Less: Value of assets distributed within a period of 12 months from the end of the month of dissolution	8,00,000
	44,12,500
Tax Liability@34.944% of ₹ 44,12,500	15,41,904
Tax Liability (rounded off)	15,41,900

Working Notes:	
(1) Aggregate FMV of total assets on the date of dissolution	
- Land and building, FMV as on 29.12.2021, being the specified date, has to be considered and one-fourth of the value of land and building to be ignored, since acquired out of agricultural income exempt u/s 10(1) [₹ 50 lakhs x 3/4]	37,50,000
- Equity shares – quoted [market value on the date of dissolution]	18,00,000
- Equity shares – unquoted in Z Ltd. [Since the trust was registered only on 1.4.2010 and benefit of section 11 and 12 was available to the trust only from A.Y.2011-12, relevant to P.Y.2010-11, the value of 50% of the unquoted shares purchased in P.Y.2007-08, in respect of which benefit under sections 11 and 12 was not allowed, has to be ignored for computing accreted income] Value of unquoted shares = ₹ 4,12,500 [50% of ₹ 8,25,000 (Book value of assets (other than bullion, jewellery) of Z Ltd. i.e., ₹ 60,00,000 + Market value of bullion and jewellery of Z Ltd. i.e., ₹ 30,00,000 – Liabilities of ₹ 35,00,000 x paid up value of shares i.e., ₹ 1,50,000/ total amount of paid up equity share capital as shown in the Balance Sheet of ₹ 10,00,000)]	4,12,500
- Cash	1,00,000
- Bank Balance	50,000
	61,12,500
(2) Total liability	
- Corpus Fund of ₹ 6,00,000 [not includible]	Nil
- Reserves and Surplus ₹ 3,00,000 [not includible]	Nil
- Loan taken for purchase of land and building	9,00,000
- Loan taken for purchase of unquoted shares [Since the entire loan is in relation to unquoted shares acquired during the year 2007-08, when the trust was not eligible for exemption under section 11 and 12, the same is not deductible]	Nil
	9,00,000

TAXATION OF PRIVATE TRUSTS

Question-15:

Mr. Lal Singh created Lal Singh Welfare Trust in June 2022 by duly executing in writing a trust deed. He appointed Ms. Vinita as the trustee. The trust was created to take care of his old parents and his 2 uncles (both being older brothers of his father) where all are dependent on Mr. Lal Singh and continue to live together in their native village in Rajasthan. The income arising out of assets of the trust is to be allocated amongst the beneficiaries each year as per the sole discretion of Ms. Vinita. The beneficiaries to the trust have no other source of income. The income of the trust during P.Y. 2022-23 was ₹ 10 lakhs. Calculate the tax liability of the trust for A.Y. 2023-24.

Would your answer differ if father of Mr. Lal Singh was receiving a monthly pension of ₹ 25,000 apart from the trust? [November 2020 (New Course)]

Answer:

(i) Lal Singh Welfare Trust is created by Mr. Lal Singh to take care his old parents and his two uncles, being relatives dependent on him for support and maintenance. It is created by duly executing in writing a trust deed and Ms. Vinita, being a trustee, is given the discretionary power to decide the allocation of the income each year. Lal Singh Welfare trust can, therefore, be regarded as a discretionary trust.

A discretionary trust will be liable to tax at the maximum marginal rate of income-tax on its entire income. However, where none of the beneficiaries have any other income chargeable to tax exceeding the basic exemption limit in the case of an AOP and none of the beneficiaries is a beneficiary under any other trust, the income would be chargeable to tax at the rate applicable to the income of an association of persons.

Since the beneficiaries of the trust have no other source of income, the income of ₹ 10 lakh of the trust is taxable applying the normal slab rates. Thus, the tax liability would be ₹ 1,17,000 (₹1,12,500 *plus* health and education cess@4%)

(ii) Tax liability would remain same i.e., ₹ 1,17,000 even if father of Mr. Lal Singh is receiving monthly pension of ₹ 25,000 apart from the trust, since his total income i.e., ₹ 2,50,000 [₹ 3,00,000 (₹ 25,000 x 12) *less* standard deduction u/s 16(ia) of ₹50,000] would not exceed the maximum amount not chargeable to tax i.e., ₹2,50,000.

Question-16:

Mr. Jayant and Mr. Basant, created, a trust, out of the insurance policy amount received upon the death of their father. The trust deed named Jayant and Basant as the trustees and Mrs. Kamla and Mrs. Vimla (their sisters) as the beneficiaries. However, it is the discretion of the trustees that they may either accumulate the net income of the trust or pay the same to any one or both the beneficiaries. During the previous year 2022-23, the total income of the trust amounted to ₹ 10,50,000. You are required to discuss the relevant provisions of the Income-tax Act in this regard and calculate the tax payable by the trust, if any.

What would be your answer if the trust was created under the 'Will' of the deceased father and such trust is the only trust so created under the 'Will'? [May 2019]

Answer:

The trust created by Mr. Jayant and Mr. Basant out of the insurance policy amount received upon the death of their father is a private discretionary trust, as it vests with the trustees a discretionary power to pay the beneficiaries, or accumulate the income, as the trustees think fit.

In case of a private discretionary trust, declared by a duly executed trust deed, where the shares of the beneficiaries are unknown, as in this case (It is presumed that the shares are unknown), the trustees, Mr. Jayant and Mr. Basant, would be liable as representative assessees.

Since the income of the trust does not include profits and gains of business, it is taxable at the maximum marginal rate of 42.744% [i.e., 30% + surcharge@37% + cess@4%]. The tax payable would be ₹ 4,48,812, being 42.744% of ₹ 10,50,000.

However, where the trust is created under the "Will" of the deceased father and such trust is the only trust so created under the "Will", then, the income of the trust would be chargeable to at the normal rates applicable to an AOP (i.e. Slab rates).

Question-17:

A discretionary trust is liable to tax at the maximum marginal rate of income tax on their entire income [Section 164(1)]. Discuss the exceptions to the above statement. [Jan. 2021]

Answer:

A discretionary trust will be liable to tax at the maximum marginal rate of income-tax on its entire income. Certain exceptions have been specified where the trust would not be taxed at the maximum marginal rate. The exceptions are as under:

(a) None of the beneficiaries has other income chargeable to tax exceeding the Basic Exemption Limit; or

(b) None of the beneficiaries is a beneficiary under any other trust; or

(c) Where the relevant income or part of the relevant income is receivable under a trust declared by any person by will and such trust is the only trust so declared by him; or

(d) Where trust is created by a non-testamentary instrument before March, 1970 for the exclusive benefit of the relatives of the settlor, or where the settlor is HUF, for the exclusive benefit of its members in circumstances where such relatives or members were mainly dependent on the settlor for their support and maintenance.

If the case falls within any of the above four cases, the relevant income or part thereof is to be taxed at the normal rates applicable to an AOP (i.e. Slab rates).

"MINIMUM ALTERNATIVE TAX (MAT)"

"QUESTIONS FROM PAST EXAMINATIONS (+) STUDY MATERIAL"

Question-1:

Madhav Ltd., a domestic company, furnishes the following particulars in respect of Assessment Year 2023-24: (Amount in ₹)

Profit as per Statement of profit and loss as per Companies Act, 2013	**14,58,000**
Statement of profit and loss includes :	
(a) Credits :	
(1) Dividend income from Domestic companies	**2,25,000**
(2) Share in income of an AOP as a member (the AOP has paid tax at maximum marginal rate)	**1,07,000**
(3) Long-term Capital Gains on sale of shares on which STT was paid at the time of acquisition and sale	**98,000**
(b) Debits:	
(1) Depreciation on Straight line method basis	**2,13,000**
(2) Provision for loss on subsidiary company	**3,26,000**
(3) Provision for gratuity based on actuarial valuation	**1,33,000**
(4) Loss on transfer of business (computed as per AS 13)	**2,14,000**
(5) Provision for income-tax (including ₹ 37,000 of interest payable on income-tax)	**88,000**
Depreciation allowable as per Income-tax Rules	**2,45,100**
Losses brought forward as per books of accounts and as per Income-tax Act, 1961	
- Business loss	**4,59,100**
- Unabsorbed Depreciation	**5,53,000**

You are required to compute the book profits of Madhav Ltd. as per the provisions of section 115JB.

[July 2021]

Answer:

"Computation of book profit of Madhav Ltd. under section 115JB"

Particulars	Amount in ₹	Amount in ₹
Profit as per Statement of profit and loss as per Companies Act, 2013		14,58,000
Add: Net Profit to be increased by the following amounts as per Explanation 1 below section 115JB(2)		
- Depreciation debited on straight line basis	2,13,000	

- Provision for loss on subsidiary company	3,26,000	
- Provision for gratuity based on actuarial valuation [Provision for gratuity based on actuarial valuation is an ascertained liability. Hence, the same should not be added back to compute book profit]	Nil	
- Provision for income-tax	88,000	
[Income-tax shall include, *inter alia*, any interest charged under the Act, therefore, whole of the amount of provision for income-tax including ₹ 37,000 towards interest payable has to be added]		6,27,000
		20,85,000
Less: Net Profit to be reduced by the following amounts as per *Explanation 1* below section 115JB(2)		
- Share in income of an AOP as a member	1,07,000	
[In a case where AOP has paid tax on its total income at maximum marginal rate, no income-tax is payable by the company, being a member of AOP, in accordance with the provisions of section 86. Therefore, share in income of an AOP on which no income-tax is payable in accordance with the provisions of section 86, would be reduced while computing book profit, since the same has been credited to statement of profit and loss]		
- Depreciation debited to statement of profit and loss	2,13,000	
- Unabsorbed depreciation or brought forward business loss, whichever is less, as per the books of account [Lower of unabsorbed depreciation ₹ 5,53,000 and brought forward business loss ₹ 4,59,100 as per books of accounts has to be reduced while computing the book profit]	4,59,100	
		7,79,100
Book Profit		**13,05,900**

Note - It is only the specific items mentioned under *Explanation 1* to section 115JB, which can be adjusted from the net profit as per the Statement of Profit and Loss prepared as per the Companies Act for computing book profit for levy of MAT. Since the following items are not specified thereunder, the same cannot be adjusted for computing book profit:

(1) Dividend income from domestic companies

(2) Long term capital gain on sale of shares on which STT paid

(3) Loss on transfer of business

Question-2:

Mahadev & Sons Ltd. is a Public Company whose accounts have been prepared in accordance with provisions of Schedule III of Company's Act. Its P&L for the year ended 31st March, 2023 shows a Net Profit of ₹ 27 Lakhs. The Company informs the following debit/credits have been made in the P & L A/c before arriving at the above stated Net Profit.

	Credits to the P&L A/c		Debits to the P&L A/c
1	Net Agricultural income in India -11 Lakhs	1	Expenses relating to section 10AA undertaking - 16 Lakhs
2	Profits of industrial undertaking covered & qualified for deduction u/s 10AA – 30 Lakhs	2	Depreciation relating to P.Y. 2021-22 b/f 13 Lakhs
3	Amount withdrawn from reserve created in P.Y. 2021-22 (Book profit was not increased by the amount transferred to reserve in the year 2021-22) - 4 Lakhs	3	Business Loss relating to P.Y. 2021-22b/f 10 lakhs
4	LTCG on sale of equity shares on which STT paid - 3.50 lakhs	4	Current year Depreciation - 12 lakhs
5	Amount withdrawn from Revaluation Reserve – 10 lakhs	5	Interest to bank not paid upto filing of ROI – 5 Lakhs
		6	Provision for unascertained liability-3lakhs
		7	Income-tax – 6 lakhs
		8	Penalty for infraction of Law 2 lakhs

Further Information:

- Depreciation for current year includes ₹ 5 Lakhs towards revaluation of assets.

➢ **Compute the book profit of the Company for the year ended 31.03.2023 liable to tax under MAT.**

[November 2020 (New Course)]

Answer:

Computation of "Book Profit" for levy of MAT under section 115JB for the year ended 31.3.2023

Particulars		₹ in Lakhs
Net Profit as per statement of profit and loss		27
Add: Profit to be increased by the following amounts **(as per Explanation 1 to section 115JB):**		
Expenses relating to 10AA undertaking	NIL	
Depreciation	12	
Interest paid to bank not paid upto filing of ROI	NIL	
Provision for unascertained liabilities	3	
Income tax	6	
Penalty for infraction of Law	NIL	
Brought forward unabsorbed depreciation as lower of brought forward loss unabsorbed depreciation, as per books, is only allowable	13	34
		61

Less:	Profit to be reduced by the following amounts **as per Explanation 1 of section 115JB:**		
	Net Agricultural Income	11	
	Profit from Industrial undertaking qualified for deduction u/s 10AA	NIL	
	Amount withdrawn from reserve [since the book profit was not increased by the amount transferred to such reserve in the assessment year 2022-23, hence, not deductible in computing current year book profit]	NIL	
	Long term capital gain on sale of equity shares on which STT paid	NIL	
	Depreciation (excluding depreciation on revaluation of assets)	7	
	Amount withdrawn from revaluation reserve to the extent of depreciation relating to revaluation component which is in given case ₹ 5 lakhs	5	23
	Book Profit:		**38**

EXPLANATORY NOTES:

(1) Only the specified items mentioned under Explanation 1 below section 115JB (2) can be added back in computing book profit for levy of MAT. Since the following items are not specified in the said Explanation 1, the same cannot be added back for computing book profit:

- Income/expense relating to Industrial undertaking qualified for deduction u/s 10AA,
- Unpaid interest to bank; and Penalty for infraction of law.

(2) Profit on sale of STT paid shares reflected in profit and loss shall be part of book profit, it cannot be reduced, since no express provision is u/s 115JB to exclude such profits while computing book profit.

Question-3:

Sona Ltd., a resident company, earned a profit of ₹ 15 lakhs after debit / credit of the following items to its Statement of Profit and Loss for the year ended on 31/03/2023:

(i) Items debited to Statement of Profit and Loss:

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

(ii) Items credited to Statement of Profit and Loss:

No.	Particulars	₹
1.	Profit from unit established in special economic zone	5,00,000
2.	Share in income of an AOP as a member	1,00,000
3.	Income from securities as exempt u/s 10(15)	75,000

4.	**Long term capital gains**	**3,00,000**
5.	**Amount withdrawn from revaluation reserve**	**1,00,000**

Other Information:

(i) Depreciation includes ₹ 1,50,000 on account of revaluation of fixed assets:

(ii) Depreciation as per Income-tax Rules is ₹ 2,80,000.

(iii) Balance of Statement of Profit and Loss shown in Balance Sheet at the asset side as at 31/03/2022 was ₹ 10 lakhs which includes unabsorbed depreciation of ₹ 4 lakhs.

(iv) The capital gain has been invested in specified assets under section 54EC.

(v) The AOP of which the company is a member has paid tax at maximum marginal rate.

(vi) Provision for income-tax includes ₹ 45,000 of interest payable on income-tax and 25,000 of tax payable on distribution of profit.

- **Compute minimum alternate tax u/s 115JB of the Income-tax Act, 1961, for A.Y. 2023-24.**

[May 2016, Study Material]

Answer:

"Computation of "Book Profit" for the purpose of MAT u/s 115JB for A.Y. 2023-24"

Particulars	₹	₹
Profit as per Statement of Profit and Loss		15,00,000
Add: Profit to be increased by the following amounts (Explanation 1 to section 115JB):		
➢ Provision for the loss of subsidiary	70,000	
➢ Provision for doubtful debts, being the amount set aside as provision for diminution in the value of any asset	75,000	
➢ Provision for income-tax Further, as per Explanation 2 to section 115JB, income-tax shall include, inter alia, any interest charged under the Act & tax payable on distribution of profit, therefore, whole of the amount of provision for income-tax including ₹ 45,000 towards interest payable and ₹ 25,000 towards tax payable on distribution of profit has to be added.	1,05,000	
➢ Depreciation	3,60,000	
➢ Reserve for currency exchange fluctuation, since the amount carried to any reserve, by whatever name called, has to be added back.	5,00,000	11,10,000
		26,10,000
Less: Profit to be decreased by the following amounts (Explanation 1 to section 115JB):		
➢ Share in income of an AOP as a member [As per section 86, where AOP has paid tax on its total income at MMR, no income-tax is payable by the company, i.e. member of AOP. Therefore, as per Explanation 1 to section 115JB, share in	1,00,000	

income of AOP on which no income-tax is payable as per the provisions of section 86, would be reduced while computing book profit, since the same has been credited to statement of profit & loss]		
➢ Income from securities as exempt u/s 10(15) [As per Explanation 1 to section 115JB, such income shall be reduced while computing the book profits, since the same is exempt under section 10(15)]	75,000	
➢ Depreciation other than depreciation in revaluation of assets (₹ 3,60,000 - ₹ 1,50,000)	2,10,000	
➢ Amount withdrawn from revaluation reserve	1,00,000	
➢ Unabsorbed depreciation [As per Explanation 1 to section 115JB, lower of unabsorbed depreciation ₹ 4,00,000 and brought forward business loss ₹ 6,00,000 as per books has to be reduced while computing the book profit]	4,00,000	8,85,000
Book Profit:		17,25,000

"Computation of MAT liability under section 11JB"

Particulars	₹
15% of book profit	2,58,750
Add: Health & education cess @ 4%	10,350
Minimum Alternate Tax :	2,69,100

EXPLANATORY NOTES:

(1) It is only the specific items mentioned under Explanation 1 to section 115JB, which can be adjusted in computing book profit for levy of MAT. Since the following items are not specified thereunder, the same cannot be adjusted for computing book profit:

- Interest to financial institution (unpaid before filing of return) and
- Penalty for infraction of law
- Profit from unit established in SEZ
- Long term capital gains, even if such amount capital gains is invested in specified asset u/s 54EC. [it was so held in the case of N.J. JOSE and Co. P. Ltd. v/s ACIT (Ker.)]

Alternative view:

In the case of CIT v/s Metal and Chromium Plater (P) Ltd., the **Madras High Court** has held that sub-section (5) of section 115JB allows for application of all other provisions contained in the Income-tax Act except specifically barred by that section itself. **Thus, the "book profit" would be further eligible to the benefits set out in the other provisions of the Act,** accordingly, held that *capital gain which form part of the net profit in the statement of profit and loss, in respect of which exemption u/s 54EC is available, should not be taken into account for calculation of minimum alternative tax on book profits u/s 115JB.* ***In view of this ruling, such gain will be excluded in computing book profit.***

(2) Since Provision for gratuity based on actuarial valuation is an ascertained liability, Therefore, the same should not be added back to compute book profit.

Question-4:

Anustup Chandra Flour Mills Ltd., a domestic company engaged in manufacture of wheat flour, furnishes following information pertaining to the year ended 31-3-2023:

(i) Net profit as per the Statement of Profit and Loss is ₹ 77 lakhs after considering the items listed in (ii) to (vi) below.

(ii) The company is a member of Vishnu Foods & Co., an AOP in which the members' shares are determinate and their shares in profit/loss are clearly known. The entire income of the AOP is from business activities. During the year, the company has derived share income of ₹ 9 lakhs from the AOP. The company has spent a sum of ₹ 90,000 towards earning such income.

(iii) The company has provided for income-tax (including interest u/s 234B and 234C of ₹ 62,000) for ₹ 3 lakhs and ₹ 5 lakhs towards share in loss of foreign subsidiary.

(iv) Amount debited to the Statement of Profit and Loss towards interest to a public financial institution is ₹ 12 lakhs. Of this ₹ 4 lakhs was paid on 12-12-2022 only.

(v) The company committed breach of building norms while extending the factory building. The City Corporation initiated proceedings against the company and the company settled the issue by paying compounding fee of ₹ 1 lakh. This amount forms part of general expenses, which has been debited to the Statement of Profit and Loss.

(vi) In the administrative expenses, the company has debited a sum of ₹ 70,000 towards fee for delayed filing of statement of TDS u/s 234E of the I. T. Act, 1961.

(vii) The company has credited revaluation surplus of ₹ 10 lakhs on fair valuation of assets under Ind AS 16 and Ind AS 38 to other equity.

(viii) The company has credited ₹ 5 lakhs to other comprehensive income on fair valuation of equity instruments in which the company has Investment.

During the current year, the depreciation charged as per books of account of the company is the same as allowable under the Income-tax Act, 1961 [before considering the provisions of section 32(2)]. The company proposes to adopt this practice consistently in the future years.

➢ **You are required to compute the income-tax payable by the company for the A.Y. 2023-24. The company is an Indian Accounting standard compliant company. Note: The Turnover of company for the P.Y. 2020-21 was ₹ 50 crores. [November 2019]**

Answer:

"Computation of Total Income of Anustup Chandra Flour Mills Ltd."

as per the normal provisions of the Act for A.Y. 2023-24

Particulars	₹	₹
Net Profit as per statement of profit and loss		77,00,000
Add: **Items debited but to be considered separately or to be disallowed/ amount taxable but not credited**		
(ii) Expenditure on earning share income in AOP	90,000	

[Share income in AOP, which pays tax at MMR is exempt in the hands of the member. Consequently, expenditure on earning exempt income is not allowable as deduction. Since, the same has been debited in the statement of profit & loss, it has to be added back.		
(iii) Provision of income-tax (including interest u/s 234B and 234C) [Provision of income-tax is not allowable as deduction. Also, any interest payable for default committed by the assessee for discharging his statutory obligations under Income-tax Act, 1961 which is calculated with reference to the tax on income is not allowable as deduction. Since the provision and interest have been debited to statement of profit and loss, they have to be added back]	3,00,000	
(iii) Provision for loss of foreign subsidiary [Since the loss of foreign subsidiary is not a loss incurred for the purpose of business of the assessee, it is not allowed while computing business income. Since the same has been debited in the statement to profit and loss, it has to be added back]	5,00,000	
(iv) Interest to a public financial institution [Deduction of any sum, being interest payable on any loan or borrowing from a public financial institution shall be allowed, if such interest has been actually paid. Since ₹ 4 lakhs has been paid on 12.12.2022, the balance ₹ 8 lakhs debited to statement of profit and loss has to be added back, assuming that such sum is not paid on or before due date of filing of return of income	8,00,000	
(v) Compounding fee paid for violation of building norms [The amount paid for compounding an offence is inevitably a penalty and the mere fact that it has been described as compounding fee cannot, in any way, alter the character of the payment which is in the nature of penalty. Hence, the same is not allowable as revenue expenditure. Since the same has been debited to statement of profit and loss, it has to be added back]	1,00,000	
(vi) Fee for delayed filing of statement of TDS [Under section 37, any expenditure incurred wholly and exclusively for the purpose of business or profession is allowed as deduction. The fee for delayed submission of the statement of TDS is not in the nature of interest for delayed remittance of TDS or in the nature of penalty, which are not allowable as deduction while computing business income. Hence, it is allowable as deduction. Since the same has been debited to statement of profit and loss, no further adjustment is required]	-	
(vii) Revaluation surplus on fair valuation of assets under Ind AS 16 and		

38 credited to other equity [No treatment is required under the regular provisions of the Income-tax Act, 1961. Since the same has not been credited to statement of profit and loss, no adjustment is required]	-	
(viii) Fair valuation of equity instruments [No treatment is required under the regular provisions of the Income-tax Act, 1961. Since the same has not been credited to statement of profit and loss, no adjustment is required]	-	
		17,90,000
		94,90,000
Less: **Items credited to statement of profit and loss, but not includible in business income/ permissible expenditure and allowances:**		
(ii) Share income in AOP [Where a company is a member in an AOP, the AOP would have to pay tax at the MMR owing to which, company's share in the total income of AOP will not be included in its total income and will be exempt. Since the same has been credited to the statement of profit and loss, the same has to be reduced while computing business income]		9,00,000
Total income		**85,90,000**

"Computation of book profit under section 115JB for A.Y. 2023-24"

Particulars	₹	₹
Net profit as per the statement of profit and loss		77,00,000
Add: **Net profit to be increased by the following amounts as per *Explanation 1* to section 115JB(2):**		
(ii) Expenditure on earning share income in AOP [Expenditure related to share income in AOP has to be added back while computing the book profit, since no income-tax is payable by the company on share income in AOP]	90,000	
(iii) Provision of income-tax (including interest u/s 234B and 234C) [Income-tax shall include any interest charged under the Act, therefore, entire amount including ₹ 62,000 towards interest has to be added]	3,00,000	
(iii) Provision for loss of foreign subsidiary [Provision for losses of subsidiary companies has to be added back]	5,00,000	8,90,000
		85,90,000
Less: **Net profit to be decreased by the following amounts as per *Explanation 1* to section 115JB(2):**		9,00,000
(i) Share income in AOP [Share income of company in AOP has to be reduced while computing the book profit, since no income-tax is payable by the company on this share]		

Book profit computed as per *Explanation 1* to section 115JB(2)		76,90,000
***Add:* Items credited to OCI that will not be reclassified to profit or loss:** **(vii) Revaluation surplus** on fair valuation of assets ₹ 10 lakhs [Book profit not to be increased by revaluation surplus for assets] **(viii) Income on fair valuation of equity instruments** of ₹ 5 lakhs [Book profit not to be increased by income in fair values of equity instruments]		- - -
Book Profit for levy of MAT		**76,90,000**
"Computation of tax liability for A.Y. 2023-24"		
Minimum Alternate Tax (including HEC) on book profit u/s 115JB: = 15.6% of ₹ 76,90,000		11,99,640
Income-tax (including HEC) **computed as per the normal provisions** of the Act: = ₹ 85,90,000 × 26% (since, the turnover of the company for the P.Y. 2020-21 does not exceed ₹ 400 crores, therefore, the applicable tax rate is 25%). Since the income-tax liability of ₹ 22,33,400 is higher than the MAT liability of ₹ 11,99,640, the income-tax liability as per the normal provisions would be the final payable sum.		22,33,400
Tax Payable		**22,33,400**
***Note-** The numbers used in the computation are not the serial number but are the number of each of the adjustment or of additional information given there against in the question.*		

Question-5:

Alpha and Beta Tyres Limited, an Indian Company engaged in the manufacture of Tyres in Andhra Pradesh has adopted IndAS from 1-4-2018.

The following particulars are provided for the year ended 31.3.2023:

1. **Net profit as per statement of profit and loss is ₹ 20 crores after debit and credit of the following items:**

   Items Debited:

   (i) **Depreciation ₹ 18 crores. Included in depreciation is ₹ 3 crores being amount provided on revalued assets.**

   (ii) **Interest charged for delay in remittance of Tax Deducted at Source ₹ 20 lakhs.**

   Item Credited:

   (i) **Share Income from Association of Persons in which the company is a member ₹ 50 lakhs. (The AOP is charged to tax at Maximum Marginal Rate)**

   (ii) **Amount of ₹ 6 crores withdrawn from revaluation reserves on account of revaluation of assets.**

Other Information:

1. **The application of a financial creditor for corporate insolvency resolution process has been admitted by the Hyderabad Bench of the National Company Law Tribunal under section 7 of**

the Insolvency and Bankruptcy Code, 2016.

2. **Brought forward business loss and depreciation.**

Assessment Year	Business Loss	Depreciation
2016-17	₹3 corers	₹ 1 corers
2017-18	₹ 5 corers	₹ 2 corers

3. **Items credited to other comprehensive income which will not be reclassified to profit or loss:**
   - (i) **Re-measurement of defined employee retirement benefits plans ₹ 50 lakhs.**
   - (ii) **Revaluation surplus of property, plant and equipment ₹ 1 crore.**
4. **The transition amount as on convergence date 1-4-2018 stood at ₹ 5 crores including capital reserve of ₹ 50 lakhs (credit balance).**
5. **Tax payable under the regular provisions of the Income-tax Act is ₹ 0.73 crores.**

(i) Compute Minimum Alternate Tax payable by the company for the Assessment Year 2023-24.

(ii) Compute the amount of MAT credit eligible for carried forward. **[May 2019]**

Answer:

Computation of book profit and MAT liability for A.Y. 2023-24

Particulars		₹
Net profit as per the statement of profit and loss		20
Add: **Net profit to be increased by the following amounts as per *Explanation 1* to section 115JB(2):**		
(i) Depreciation as debited in statement of profit & loss [Amount of depreciation whatever has been debited in P&L is firstly need to be added back in computing book profit]	18	
(ii) Interest charged for delay in remittance of TDS [Income-tax shall include any interest charged under the Act, therefore, amount of ₹ 20 crore towards interest for delay in remittance of TDS has to be added]	0.2	
		18.2
		38.2
Less: **Net profit to be decreased by the following amounts as per *Explanation 1* to section 115JB(2):**		
(i) Depreciation other than depreciation on revaluation of assets [Depreciation other than depreciation on revaluation of assets i.e. ₹ 18 crore - ₹ 3 crore has to be reduced while computing the book profit]	15	
(ii) Amount withdrawn from revaluation reserve [Amount withdrawn from revaluation reserve to the extent of depreciation relating to revaluation component which is in given case ₹ 3 crore has to be reduced while computing the book profit]	3	

(iii) Share income in AOP [Share income of company in AOP has to be reduced while computing the book profit, since no income-tax is payable by the company on share income in AOP]	0.5	
(iv) Brought forward loss & depreciation [Since application for corporate insolvency resolution process has been admitted by NCLT under IBC, 2016, hence, accumulated losses including depreciation will be added back in computing book profit]	11	29.5
Book profit computed in accordance with *Explanation 1* to section 115JB(2)		8.7
***Add:* Items credited to OCI that will not be reclassified to profit or loss:**		
(i) Revaluation surplus of property, plant and equipment [Taxability will arise in the year of realization and since such profit has not actually been realized in current year hence need not to be added while computing the book profit]	-	
(ii) Re-measurement of defined employee retirement benefits plan [Since in AS, it is recognized in profit & loss, but as per Ind AS, it is non-classification adjustment, therefore to align the situation, such benefit has to be added back while computing the book profit]	0.5	
(iii) One fifth of the transition amount (excluding capital reserve) as on convergence date [As per section 115JB(2C), in case of Ind AS compliant company, the book profit of the year of convergence and each of the following four previous years, shall be further increased or decreased, as the case may be, by one fifth of the transition amount (excluding capital reserve), since credit balance has been given in question, hence, need to be reduced]	0.9	1.4
Book Profit for levy of MAT		**10.1**
Minimum Alternate Tax on book profit u/s 115JB = 15% of ₹ 10.1 crore		1.515
Add: Surcharge @ 12% as the book profit exceeds ₹ 10 cr.		0.1818
		1.6968
Add: Health & Education cess @ 4%		0.0689
Minimum Alternate Tax payable by the company		**1.7647**

Computation of amount of MAT credit eligible to be carried forward	
Minimum Alternate Tax	**1.7647**
Less: Income-tax computed as per the normal provisions of the Act as given in the question, assuming that it is inclusive of Health & Education cess	0.7300
MAT credit eligible to be carried forward	**1.0347**

Question-6:

Zenith Formulations Ltd., an Indian Company engaged in pharmaceutical formulations in Tamil Nadu, started adoption of Ind AS compliance with effect from 1st April, 2021. The following particulars are furnished for the year ended 31st March, 2023:-

(i) The book profits after adjustments of all items specified in section 115JB(2) amounted to ₹ 52.26 lakhs (except the adjustment for brought forward losses), for the year ended 31.3.2023.

(ii) Brought forward losses as per books are as under : (₹ In lakhs)

Financial Year	Business loss	Depreciation
2021-22	4.60	4.90
2022-23	1.75	2.20

(iii) The particulars of Other Comprehensive Income for the year ended 31.03.2023:

		(₹ In lakhs)	
A: Other Comprehensive Income (OCI) that may be re-classified to profit & loss:		**Debit**	**Credit**
(i)	Deferred gain Cash flow hedges		5.50
(ii)	Deferred costs of hedging	1.00	
(iii)	Comprehensive income from discontinued operations		4.20
(iv)	Exchange Differences of foreign exchange operations	2.30	
	TOTAL	3.30	9.70

B: Other Comprehensive Income (OCI) that will not be re-classified to profit and loss:		**Debit**	**Credit**
(i)	Changes in fair values of equity instruments	10.00	
(ii)	Deferred gains on cash flow hedges		7.25
(iii)	Deferred costs of hedging	4.10	
(iv)	Share of other comprehensive income of other associates		3.20
(v)	Remeasurements of post employment benefit obligations		4.45
(vi)	Revaluation surplus for assets		7.50
	TOTAL	14.10	22.40

(iv) The transition amount as on convergence date (01-04-2021) stood at ₹ 52.50 lakhs (credit balance) including capital reserve of ₹ 8 lakhs and adjustment of ₹ 4.50 lakhs relating to translation difference in a foreign operation.

(v) The National Company Law Tribunal (NCLT) has admitted an application u/s 7 of Insolvency and Bankruptcy Code, 2020 (IBC) made by financial creditor against the company for initiation of Corporate Insolvency Resolution Process on 30th March, 2023.

(1) Compute the MAT liability for the assessment year 2023-24, applying the provisions relating to Ind AS compliant companies.

(2) Assuming that the income tax under normal provisions of Income-tax Act, 1961 for the assessment year 2023-24 works out to ₹ 7.20 lakhs, compute the tax credit, if any, to be

carried forward by the company including the period up to which it will be available to be carried forward. **[November 2019]**

Answer:

(1) Computation of MAT liability of Zenith Formulations Ltd. u/s 115JB for A.Y.2023-24

Particulars	₹	₹
Book profit after adjustment of items under section 115JB(2) [except brought forward business loss and unabsorbed depreciation]		52,26,000
Less: Brought forward business loss [₹4,60,000 + ₹1,75,000]	6,35,000	
Unabsorbed depreciation [₹4,90,000 + ₹2,20,000]	7,10,000	
[Since Zenith Formulations Ltd. is a company against which an application for corporate insolvency resolution process has been admitted by NCLT under section 7 of the Insolvency and Bankruptcy Code, 2020, **the aggregate amount of loss brought forward and unabsorbed depreciation is allowed** to be reduced from the book profit for the purposes of levy of MAT under section 115JB].		13,45,000
Book profit computed as per Explanation 1 to section 115JB(2)		38,81,000
Add: **Items credited to OCI that will not be reclassified to profit or loss:**		
Deferred gains on cash flow hedges	7,25,000	
Share of Other Comprehensive Income of Other Associates	3,20,000	
Re-measurement of post-employment benefit obligations	4,45,000	
Revaluation surplus for assets ₹ 7,50,000 [Book profit not to be increased by revaluation surplus for assets as per proviso to section 115JB(2A)]	Nil	14,90,000
		53,71,000
Less: **Items debited to OCI that will not be reclassified to profit or loss:**		
Deferred costs of hedging	4,10,000	
Changes in fair values of equity instruments ₹ 10,00,000 [Book profit not to decreased by changes in fair values of equity instruments as per proviso to section 115JB(2A)]	Nil	4,10,000
		49,61,000
Add: **One-fifth of Transition amount [Credit Balance]**		
Transition amount	52,50,000	
Less: Amounts to be excluded from above		
Capital Reserve	8,00,000	
Transition difference in foreign operations	4,50,000	
	40,00,000	
One-fifth of ₹40,00,000		8,00,000
Book Profit for levy of MAT		**57,61,000**
MAT on book profit under section 115JB = 15% of ₹57,61,000		8,64,150

Add: Health and Education cess @4%	34,566
MAT liability for A.Y.2023-24	**8,98,716**
MAT liability for A.Y.2023-24 (rounded off)	8,98,420

(2) Computation of tax credit to be carried forward:

Particulars	₹
MAT liability for A.Y.2023-24 (rounded off)	8,98,420
Income-tax computed as per the normal provisions of the Act for A.Y.2023-24	7,20,000
Since the income-tax liability computed as per the regular provisions of the Income-tax Act,1961 is less than the MAT payable, the book profit would be deemed to be the total income and tax is leviable @15%: The total tax liability (rounded off) is ₹8,98,420.	
Computation of tax credit to be carried forward	
Tax payable for A.Y. 2023-24 on deemed total income	8,98,420
Less: Income-tax payable as per the normal provisions of the Act	7,20,000
Tax credit in respect of tax paid on deemed income	**1,78,720**
[Can be carried forward for 15 Assessment Years i.e., upto A.Y. 2037-38]	

"ALTERNATE MINIMUM TAX"

Question-7:

RST LLP, a limited liability partnership set up a unit in a Special Economic Zone (SEZ) in the financial year 2018-19 for production of refrigerators. The unit fulfills all the conditions of section 10AA of the Income tax Act, 1961. During the financial year 2021-22, it has also set up a warehousing facility in a district of Tamil Nadu for storage of agricultural produce. It fulfills all the conditions of section 35AD. Capital expenditure in respect of warehouse amounted to ₹ 75 lakhs (including cost of land ₹ 10 lakhs). The warehouse becomes operational with effect from 1st April, 2022 and the expenditure of ₹ 75 lakhs was capitalized in the book on that date.

Relevant details for the financial year 2022-23 are as follows:

Particulars	₹
Profit of unit located in SEZ	**50,00,000**
Export sales of above unit	**80,00,000**
Domestic sales of above unit	**20,00,000**
Profit from operation of warehouse facility (before considering deduction u/s 35AD)	**1,05,00,000**

Compute income tax (including AMT u/s 115JC) payable by RST LLP for Assessment Year 2023-24.

[Jan. 2021 (New Course)]

Answer:

Computation of total income and tax liability of RST LLP for A.Y. 2023-24 (under the regular provisions of the Act):

Particulars	₹	₹

Profits and gains of business or profession:		
Profit from unit in SEZ	50,00,000	
Less: Deduction under section 10AA:	40,00,000	
[50,00,000 x 80,00,000/1,00,00,000 x 100%, since it is the 5th year of Mfg.		
Business income of SEZ unit chargeable to tax		10,00,000
Profit from operation of warehousing facility for storage of agricultural produce	1,05,00,000	
Less: Deduction u/s 35AD [Deduction@100% in respect of the expenditure incurred prior to the commencement of its operations and capitalized in the books of account on 1.4.2022. Deduction is **not** available on expenditure incurred on acquisition of land] [₹ 75 lakhs – ₹ 10 lakhs]	65,00,000	
Business income of warehousing facility chargeable to tax		40,00,000
Total Income		**50,00,000**
Computation of tax liability:		
Tax on ₹ 50,00,000@30%		15,00,000
Add: Health and Education cess@4%		60,000
Total tax liability		**15,60,000**

Computation of adjusted total income and AMT of RST LLP for A.Y. 2023-24

Particulars	₹	₹
Total Income (as computed above)		50,00,000
Add: Deduction under section 10AA		40,00,000
		90,00,000
Add: Deduction under section 35AD	65,00,000	
Less: Depreciation u/s 32[On building@10% of ₹ 65 lakhs]	6,50,000	58,50,000
Adjusted Total Income		**1,48,50,000**
Alternate Minimum Tax@18.5%		27,47,250
*Add:*Surcharge@12% (since adjusted total income > ₹ 1 crore)		3,29,670
		30,76,920
Add: Health and Education cess@4%		1,23,077
Total tax liability		31,99,997
Tax Liability (Rounded off)		**32,00,000**

Since the regular income-tax payable is less than the alternate minimum tax payable, the adjusted total income shall be deemed to be the total income and tax is leviable @18.5% thereof plus surcharge@12% and cess@4%. Therefore, the tax liability is ₹ 32,00,000.

"AMT Credit to be carried forward u/s 115JEE"

Particulars	₹
Tax liability under section 115JC	32,00,000

	Less: Tax liability under the regular provisions of the Income-tax Act, 1961	15,60,000	
		16,40,000	

Question-8:

M/s ABC LLP is engaged in export of computer software from a Special Economic Zone. The net profit of the firm as per its Profit & Loss Account for the year ended 31-3-2023 was ₹ 250 lakhs after debit/credit of the following items:

(1) Depreciation ₹ 20 lakhs
(2) Remuneration to its working partners ₹ 200 lakhs
(3) Interest provided on the current account balance of the partners @ 15% p .a. ₹ 15 lakhs
(4) Advertisement in a souvenir published by a political party ₹ 2 lakhs

Additional Information:

(1) The firm commenced business on 1-4-2020.
(2) Depreciation allowable as per Income-tax Rules is ₹ 25 lakhs.
(3) Payment of remuneration to working partners is authorized by the Partnership Deed.
(4) Brought forward business loss and depreciation from Assessment Year 2021-22 was ₹ 50 lakhs and ₹ 30 lakhs respectively.
(5) The total export turnover of the firm was ₹ 25 crores. Amount of export turnover realized within six months was ₹ 15 crores.

Compute the tax payable by the firm under section 115JC and the amount of tax credit allowed to be carried forward. Give working notes for your answer. [November 2020]

Answer:

"Computation of total income and tax liability of M/s ABC LLP for A.Y. 2023-24"

(under the regular provisions of the Income-tax Act, 1961)

Particulars	(₹ in lakhs)	
Profits and gains of business or profession		**250.00**
***Add:* Items debited but to be considered separately or to be disallowed**		
- Depreciation	20.00	
- Remuneration to its working partners	200.00	
- Interest provided on the current account balance of the partners@15% p.a. (Interest on current account would be fully disallowed since the same is not authorized by the partnership deed, it has been assumed).	15.00	
- Advertisement in a souvenir published by a political party [not allowed as deduction as per section 37(2B)]	2.00	**237.00**
***Less:* Permissible expenditure and allowances:**		**487.00**
- Depreciation allowable as per Income-tax Rules, 1962	25.00	
- Unabsorbed depreciation under section 32(2) [allowable as deduction while computing book profit as per Explanation to section 40(b)]	30.00	55.00

Book Profit		**432.00**
On first ₹ 3 lakh of book profit [₹ 3,00,000 × 90%]	2.70	
On balance ₹ 429 lakh of book profit [₹ 429 × 60%]	257.40	
	260.10	
Remuneration actually paid of ₹ 200 lacs is fully allowable as deduction, since it is lower than the specified limit		**200.00**
Business Income		**232.00**
Less: Brought forward business loss for A.Y. 2021-22		50.00
Gross Total Income		**182.00**
Less: Deduction under section 80GGC:		
[Expenditure on advertisement in a souvenir published by a political party not allowable as deduction since it is included within the meaning of the term "contribution" only for the purpose of deduction u/s 80GGB in case of a company]		-
***Less:* Deduction under section 10AA:**		
Profit from SEZ unit x Export Turnover / Total Turnover x 100%		
= ₹ 232 lakhs x 25 / 25 x 100% (since it is the third year of operation) = ₹232 lakhs, restricted to gross total income		182.00
Total Income		**Nil**
Tax liability (since total income is Nil)		**Nil**

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

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

"BUY-BACK, DEEMED INCOME AND BUSINESS TRUST"

"QUESTIONS FROM PAST EXAMINATIONS (+) STUDY MATERIAL"

TAXATION OF BUY-BACK OF SHARES

Section 115QA: ***Tax on distributed income to shareholders:-***

Question-9:

Avimanyu, a resident individual held 25% equity shares in FMC Ltd., an Indian company. The company's paid up share capital as on 31st March, 2022 was ₹10,00,000 divided into 1,00,000 equity shares of ₹10 each issued at a premium of ₹20 each. The shares were allotted to the shareholders on 1st October, 2012.

The company had gone for buy back of 30% of its shares on 30th April, 2022 as per the provisions of the Companies Act, 2013.

The company paid ₹60 per share on buy back.

- **Explain and compute the tax effect in the hands of FMC Ltd. and Avimanyu.**

Cost Inflation Index: F.Y. 2012-13: 200; F.Y. 2022-23: 331. [November 2017]

Answer:

Particulars	₹
In the hands of FMC Ltd.	
Additional income-tax @23.296% (i.e., 20% plus surcharge@12% plus cess@4%) on distributed income of ₹9 lakh would be attracted in the hands of FMC Ltd. under section 115QA on buyback of unlisted shares by the company.	₹2,09,664
Distributed income	
Consideration paid by FMC Ltd. for buyback of shares (₹60 × 30,000 shares)	₹18 lakh
Less: Amount received by the company for issue of shares (₹30 × 30,000 shares)	₹9 lakh
Distributed income:	₹9 lakh
In the hands of Mr. Avimanyu	
Income arising to Mr. Avimanyu, a shareholder, on account of buyback of unlisted shares by FMC Ltd. [which is subject to additional income tax u/s 115QA in the hands of the company] would be exempt in his hands by virtue of section 10(34A).	Nil

"DEEMED INCOME AND ITS TAXATION"

Section 68 to 69D and section 115BBE: ***Deemed incomes and Taxation theirof:-***

Question-10:

Answer the following case. Your answer should cover these aspects:

(i) Issue involved; (ii) Provisions applicable; (iii) Analysis; and (iv) Conclusion.

On 14.10.2022, a search under section 132 of Income-tax Act, 1961 was conducted in the premises of Mr. Sahir, a resident individual. On verification of bank account of the assessee, a sum of ₹ 20 crores was found to have been credited in the bank account of the assessee. The Assessing Officer added such sum as unexplained cash credit under section 68. On appeal, the assessee declared that the sum was received from Mr. Shekhar, one of his close friends. Mr. Shekhar agreed to have transferred such sum to the account of the assessee. However, the Assessing Officer is of the view that since Mr. Shekhar is unable to explain the source of this sum, it should be treated as unexplained cash credit in the hands of the assessee. Whether the claim of the Assessing Officer is justified? [May 2022]

Answer:

Issue Involved:

The issue involved in this case is whether, for cash credit to be genuine, is the assessee required to explain the source of sum in the hands of the lender also.

Provision applicable:

Section 68 brings to tax any sum found credited in the books of an assessee, where the assessee does not offer explanation about the nature and source thereof or the explanation offered by him is not found satisfactory by the Assessing Officer.

The Finance Act, 2022 has extended the scope of this section 68. As per new amendment, where the **sum credited** in assessee's books maintained for any previous year **consists of loan or borrowing *or any such amount, by whatever name called,*** *any explanation offered by such assessee shall be deemed to be not satisfactory, unless:*

(a) the person in whose name such credit is recorded in the books of such assessee also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory.

Analysis:

For cash credits to be genuine, identity of the creditor, capacity of the creditor to advance money and finally, the genuineness of the transaction must be proved. Mere confirmation from Mr. Shekhar will not suffice. Actually, Mr. Shekhar has to prove the nature and source of such sum satisfactorily to the AO.

Conclusion:

Accordingly, the action of the Assessing Officer in bringing to tax unexplained cash credit in the hands of Mr. Sahir is correct, since his friend Mr. Shekhar, from whom he had received ₹ 20 crores which was found credited to his (Mr. Sahir's) bank account, is unable to explain the source of this sum in his hands.

Question-11:

The assessee, M/s Career Network, a partnership firm comprising of four partners, who have contributed capital in the books of the firm, but failed to explain satisfactorily the source of receipt in their individual hands. The Assessing Officer has proposed to tax the amounts credited in their accounts in the books of the firm as cash credit in the hands of the partnership firm.

Is the action of the Assessing Officer Valid? [May 2017]

Answer:

(i) Issue Involved:

The issue under consideration is whether capital contribution of the individual partners credit to their accounts in the books of the firm can be taxed as cash credit in the hands of the firm, where the partners have admitted their capital contribution **but failed to explain satisfactorily the source of receipt in their individual hands.**

(ii) Provisions applicable:

As per section 68, if an assessee fails to explain the nature and source of credit entered in its books of account of any previous year, the sum so credited shall be charged as to income-tax as income of the assessee of that previous year.

The Finance Act, 2022 has extended the scope of this section 68. As per new amendment, where the **sum credited** in assessee's books maintained for any previous year **consists of loan or borrowing *or any such amount, by whatever name called,*** *any explanation offered by such assessee shall be deemed to be not satisfactory, unless:*

(a) the person in whose name such credit is recorded in the books of such assessee also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory.

(iii) Analysis:

After the new amendment, onus is on the giver also to explain the nature and source of the given amount to the assessee firm and if such explanation in the opinion of the Assessing Officer has been found to be unsatisfactory, then, the amount sought to be treated as income of the assessee firm although the firm explains that the partners have contributed capital, but, section 68 will be pressed into service.

(iv) Conclusion:

Hence, applying the new amendment to the case on hand, the action of the Assessing Officer, in proposing to tax the amounts credited in the partners accounts in the books of the firm, in the hands of the firm is valid since partners have failed to explain satisfactorily the source of receipt in their individual hands.

Question-12:

Examine the following statement in the context of provisions contained in the Act relevant for the previous year ended on 31.03.2023:

"The additions to income made by invoking provision of section 68 are subject to normal rates of tax as applicable to the assessee". [November 2013]

Answer:

This statement is incorrect.

Section 115BBE provides, *inter alia,* sums credited in the books of the assessee, which are deemed as income u/s 68, shall be taxed at a flat tax rate of 60% (plus 25 % Surcharge and 4% Health & education cess).

Further, no basic exemption or allowance or expenditure or setoff of loss shall be allowed to the assessee under any provision of the Income-tax Act, 1961 in computing such deemed income.

Question-13:

The Assessing Officer found, during the course of assessment of a firm, that it had paid rent in respect of its business premises amounting to ₹ 60,000, which was not debited in the books of account for the year ending 31.3.2023. The firm did not explain the source for payment of rent. The Assessing Officer proposes to make an addition of ₹ 60,000 in the hands of the firm for the assessment year 2023-24. The firm claims that even if the addition is made, the sum of ₹ 60,000 should be allowed as deduction while computing its business income since it has been expended for purpose of its business.

Examine the claim of the firm. [May 2006, Study Material]

Solution:

The claim of the firm for deduction of the sum of ₹ 60,000 in computing its business income is not tenable. The action of the Assessing Officer in making the addition of ₹ 60,000, being the payment of rent not debited in the books of account (for which the firm failed to explain the source of payment) is correct in law since the same is an unexplained expenditure under section 69C. Section 69C also states that such unexplained expenditure, which is deemed to be the income of the assessee, shall not be allowed as a deduction under any head of income. Therefore, the claim of the firm is not tenable.

Question-14:

In the course of scrutiny assessment of Mr. X, the Assessing Officer, on the basis of information available with him, sought an explanation for the source of the expenditure of ₹ 20 lakhs incurred on the wedding of his daughter. The said expenditure was neither recorded in the books of account maintained nor was the explanation offered by Mr. X satisfactory. What are the consequences?

[May 2014]

Answer:

As per section 69C: If any expenditure is incurred by an assessee in any financial year in respect of which he is not able to offer explanation about the source of such expenditure or the explanation offered by him is not satisfactory in the opinion of the Assessing Officer, then the amount of such unexplained expenditure may be deemed as income of the assessee for such financial year as per section 69C.

Therefore, in this case, the expenditure of ₹ 20 lakhs incurred by Mr. X on the wedding of his daughter may be deemed as income of Mr. X.

Where the total income of Mr. X includes such unexplained expenditure of ₹ 20 lakhs, which is deemed as his income u/s 69C, such deemed income would be taxed at the rate of 60% (ir-respective of basic exemption limit) as per section 115BBE (plus surcharge @ 25% plus health & education cess @ 4%).

Penalty under section 271AAC may be levied for under-reporting of income.

"ALTERNATE TAX REGIME /CONCESSIONAL TAXATION"

"QUESTIONS FROM PAST EXAMS + ADDITIONAL QUESTIONS FOR PRACTICE"

Question-1:

Premium Industries Limited, a domestic company, is engaged in the manufacturing of automatic gearless cars since 01-11-2021 in the State of Tamil Nadu. The net profit of the company as per Statement of Profit and Loss for the year ended 31st March, 2023, revealed profit of ₹ 1,47,50,000 after debiting or crediting the following items:

(i) Depreciation charged during the year amounted to ₹ 34,00,000.

(ii) One time licence fee of ₹ 36 lakhs paid to foreign company for obtaining franchise on 30-11-2022.

(iii) Purchased spare parts valued at ₹ 96 lakhs from XYZ Ltd. in which directors have substantial interest. The market value of the goods is ₹ 82 lakhs.

(iv) New Plant & Machinery acquired on 01-07-2022 for ₹ 75 lakhs and payment of ₹ 10 lakhs made by bearer cheque and balance by way of transfer though RTGS. Cash subsidy of ₹ 15 lakh received from State Govt. on acquisition of Generator which was credited to Statement of profit and loss.

(v) Legal expenses incurred for issue of bonus shares at ₹ 6 lakhs and legal expenses for issue of right shares at ₹ 8 lakhs.

(vi) Short term capital gains on transfer of a capital asset being equity shares in a company on which security transaction tax is charged under the Act ₹ 15,00,000.

(vii) Long term capital gains (arrived at after taking indexation benefit) on transfer of Zero Coupon Bonds: ₹ 8,00,000;

Additional information :

(a) Depreciation eligible under section 32 (before considering adjustment of any of the items described above) ₹ 38 lakhs. However, this includes a sum of ₹ 18.00 lacs towards depreciation on block of assets which are entitled for depreciation at 45%.

(b) During the previous year 2022-23, the company transferred equity shares for a consideration of ₹ 22,00,000 which were acquired through preferential issue made by an Indian Company with the approval of SEBI. Acquisition cost of these shares during 2021 is ₹ 12,00,000.

The Company opted for concessional rate of tax and exemption from MAT under section 115BAB for Assessment Year 2023-24. Compute the total income and tax payable for the Assessment Year 2023-24 clearly stating the reasons for treatment of each item. [July 2021]

Answer:

Computation of total income and tax payable by Premium Industries Ltd. for A.Y.2023-24 in

accordance with the provisions of section 115BAB:			
Particulars	**₹**	**₹**	**₹**
Profits and gains of business or profession:			
Net profit as per statement of profit and loss		1,47,50,000	
Add: Items debited but to be disallowed			
– Depreciationas per books of account	34,00,000		
– One- time licence fee for franchise [Licence fee for franchise is an intangible asset which is eligible for depreciation as per section 32. Since one time licence fee for franchise has been debited to statement of profit and loss, the same has to be added back while computing business income]	36,00,000		
– Purchase of spare parts at a price higher than the fair market value [As per section 40A(2), the difference between the purchase price (₹ 96 lakhs) and the fair market value (₹ 82 lakhs) has to be added back since the purchase price (₹ 96 lakhs) and the fair market value (₹ 82 lakhs) has to be added back since the purchase is from a related party, i.e., XYZ Ltd., a company in which directors of Premium Industries Ltd. have substantial interest and at a price higher than the fair market value]	14,00,000		
– Purchase of Plant and Machinery [Since it is a capital expenditure, it is not allowed to be deducted as per section 37]	75,00,000		
– Legal expenses for issue of bonus shares [There is no fresh inflow of funds or increase in capital employed on account of issue of bonus shares and there is only reallocation of the company's fund. Consequently, since there is no increase in the capital base of the company, legal expenses of ₹ 6 lakhs in connection with issue of bonus shares is a revenue expenditure and is hence, allowable as deduction]	Nil		
– Legal expenses for issue of right shares [Expenses incurred in relation to rights issue are of capital in nature. Hence, not allowed as deduction from business income. Since, it is already debited in statement of profit and loss, the same has to be added	8,00,000		

back while computing business income]		1,67,00,000	
		3,14,50,000	
Less: Items credited but to be considered separately			
– Short term capital gains on equity shares [Not taxable under this head]	15,00,000		
– Long term capital gains on Zero coupon bonds [Not taxable under this head]	8,00,000		
– Cash Subsidy [Subsidy from State Government on acquisition of asset is reduced from the actual cost of the asset. Hence, such subsidy is not the income of Premium Industries Ltd. Since, subsidy is already credited in the statement of profit and loss, the same has to be reduced while computing business income]	15,00,000	38,00,000	
		2,76,50,000	
Less: Depreciation as per Income-tax Rules:			
– Depreciation on other asset [₹ 38 lakhs – ₹18 lakhs]	20,00,000		
– Depreciation on block of assets entitled to depreciation @45% [In case of a company opting for concessional rate of tax u/s 115BAB, depreciation in respect of any block of assets entitled to more than 40%, would be restricted to 40%. Hence, depreciation allowed in respect of such block is [₹ 18 lakhs/45% x 40%]	16,00,000		
– Depreciation on New Plant and machinery [₹ 50 lakhs x 15%, since it has been put to use for more than 180 days during the year] [Any expenditure for acquisition of any asset in respect of which payment or aggregate of payment made to a person in a day, otherwise than by an a/c payee cheque/ bank draft or use of ECS or through prescribed electronic mode, exceeds ₹ 10,000, such expenditure would not form part of actual cost of such asset. Further, where any part of the cost of asset acquired has been met directly or indirectly, inter alia, by State Government, then, so much of the cost as relates to subsidy would not be included in the actual cost. Hence, ₹10 lakhs paid by bearer cheque and ₹ 15 lakhs of cash subsidy received by	7,50,000		

State Government for acquisition of asset would not be included in the actual cost of plant and machinery.]			
– Depreciation on franchise [₹ 36 lakhs x 25% x 50%, since put to use for less than 180 days during P.Y. 2022-23]	4,50,000	48,00,000	2,28,50,000
Capital Gains			
– Short term capital gains on transfer of listed equity shares		15,00,000	
– Long term capital gains on transfer of zero coupon bonds [after indexation benefit]		8,00,000	
– Short term capital gains on transfer of equity shares acquired through preferential issue **[See Note at the end of the solution]**			
Full value of consideration	22,00,000		
Less: Cost of acquisition	12,00,000	10,00,000	
			33,00,000
Total Income			2,61,50,000
Computation of tax payable u/s 115BAB:			
Tax u/s 115BAB on business income [₹ 2,28,50,000 x 15%]		34,27,500	
Tax u/s 111A on Short-term capital gains on transfer of listed equity shares on which STT is paid [₹15 lakhs x 15%]		2,25,000	
Tax u/s 112 on Long-term capital gains on transfer of zero coupon bonds with indexation benefit [₹ 8 lakhs x 20%]		1,60,000	
Tax u/s 115BAB on short term capital gains on transfer of equity shares acquired through preferential issue [₹10 lakhs x 22%]**[See Note at the end of the solution]**		2,20,000	
			40,32,500
Add: Surcharge @10%			4,03,250
			44,35,750
Add: HEC@4%			1,77,430
Tax liability			46,13,180

Note: In additional information (b), it is given that during the P.Y. 2022 -21, the company has transferred equity shares of a company which it acquired through preferential issue made by an Indian company with the approval of SEBI. Cost of acquisition of shares during 2021 is ₹ 12 lakhs. The resultant gain could be either short-term or long-term since the date of acquisition and the date of sale are not mentioned in the question. The above solution is worked out on the assumption that these shares are short term capital assets, being equity shares on which STT is not paid at the time of transfer and, therefore, taxable @22% as per section 115BAB.

Alternatively, it is also possible to assume that such equity shares are short- term capital asset and on which STT is paid at the time of transfer, in which case, such short- term capital gains would be taxable @15% u/s 111A and tax liability would be ₹ 45,33,100. Further, it is also possible to assume that these equity shares are long term capital assets on which STT is paid. In such case, long term capital gain exceeding ₹ 1 lakh would be taxable@10% u/s 112A and tax liability would be ₹ 44,64,460.

It may be noted that since CII has not been given in the question, it is not possible to do the computation assuming that the gain is long-term and STT has not been paid.

Question-2:

A and B are two individuals, and they derived an income of ₹ 14 lakhs each during the previous year 2021-22. While A had no other income except income from salaries, B had to pay interest of ₹ 2,00,000 on loan taken in respect of a self-occupied house property.

You, as a consultant, are required to advise them whether they should opt for concessional rate of tax under section 115BAC or otherwise, showing the tax liability of both individuals.

[July 2021]

Answer:

Computation of Tax Liability of Mr. A & Mr. B for the A.Y. 2022 -22 as per **regular provisions of Income-tax Act:**

Particulars	Mr. A	Mr. B
Income under the head "Salaries"		
Salary	14,00,000	14,00,000
Less: Standard deduction u/s 16(ia)	50,000	50,000
	13,50,000	13,50,000
Less: Set-off loss from house property in respect interest on loan borrowed for self-occupied property as per section 71(3A)	-	2,00,000
Gross Total Income/Total Income	**13,50,000**	**11,50,000**
Tax Liability:		
Upto ₹ 2,50,000	Nil	Nil
₹ 2,50,001 to ₹ 5,00,000 @ 5%	12,500	12,500
₹ 5,00,001 to ₹ 10,00,000 @ 20%	1,00,000	1,00,000
Above ₹ 10,00,000 @30%	1,05,000	45,000
	2,17,500	1,57,500
Add: Health and Education cess @4%	8,700	6,300
Tax liability	**2,26,200**	**1,63,800**

Computation of Tax Liability of Mr. A & Mr. B for the A.Y. 2022-23 as per section 115BAC:

Particulars	Mr. A	Mr. B

Gross Total Income/Total Income (computed as per regular provisions)	13,50,000	11,50,000
Add: Standard deduction u/s 16(ia) [Not allowable as deduction u/s 115BAC]	50,000	50,000
	14,00,000	12,00,000
Add: Set-off loss from house property in respect interest on loan for self-occupied property [not allowable as deduction u/s 115BAC]	-	2,00,000
Total income as per section 115BAC	**14,00,000**	**14,00,000**
Tax Liability		
Upto ₹ 2,50,000	Nil	Nil
₹ 2,50,001 to ₹ 5,00,000 @ 5%	12,500	12,500
₹ 5,00,001 to ₹ 7,50,000 @ 10%	25,000	25,000
₹ 7,50,001 to ₹ 10,00,000 @ 15%	37,500	37,500
₹ 10,00,001 to ₹ 12,50,000 @ 20%	50,000	50,000
₹ 12,50,001 to ₹ 14,00,000 @ 25%	37,500	37,500
	1,62,500	1,62,500
Add: Health and education cess @4%	6,500	6,500
Tax Liability	**1,69,000**	**1,69,000**

Since tax liability of Mr. A as per section 115BAC of ₹ 1,69,000 is lower than the tax liability of ₹ 2,26,200 computed as per the regular provisions of the Act, it is advisable for him to opt for section 115BAC.

However, in case of Mr. B, since his tax liability as the normal provisions of ₹ 1,63,800 is lower than the tax liability of ₹ 1,69,000 as per section 115BAC, it is advisable for him to not opt for section 115BAC and pay tax as per regular provisions.

ADDITIONAL QUESTIONS FOR PRACTICE ON SECTION 115BAC:

Question-3:

Mr. A (50 years) is a businessman. His business income as per profit and loss account for the year ending March 31, 2023 is ₹ 71,88,000. Debit side of the profit and loss account includes the following –

- **Contribution given to National Laboratory [for claiming deduction u/s 35(2AA)]: ₹ 40,000**
- **Revenue expenditure on scientific research related to business of Mr. A [for claiming deduction u/s 35(1)(i)]: ₹ 30,000.**
- **Cash payment of a bill : ₹ 35,000.**

Credit side of the profit and loss account includes the following-

- **Dividend from Indian companies: ₹ 95,000.**
- **Refund of income-tax pertaining to the assessment year 2017-18 (without interest): ₹ 2,000.**

Mr. A is entitled to claim the following deduction (which are not debited to profit and loss account) under the existing tax regime for the current year –

- **Additional depreciation: ₹60,000.**
- **Donation given to Prime Minister's Relief Fund : ₹ 20,000.**
- **Deduction available under section 80JJAA : ₹ 80,000**
- **Deduction under sections 80C, 80D, 80E and 80EEB: ₹ 1,70,000.**

Mr. A wants to know whether he should opt for alternative tax regime from the assessment year 2023-24.

Solution:

	Existing tax regime	Alternative tax regime
	₹	₹
Net profit as per profit and loss account	71,88,000	71,88,000
Add: Contribution to National Laboratory	40,000	40,000
Add: Revenue expenditure on research	30,000	30,000
Add: Cash payment exceeding ₹ 10,000	35,000	35,000
Less: Dividend from Indian companies	(95,000)	(95,000)
Less: Additional depreciation	(60,000)	Not available
Less: Income-tax refund	(2,000)	(2,000)
Total:	71,36,000	71,96,000
Less: Deduction u/s 35(1)(i) [revenue expenditure on scientific research]	(30,000)	(30,000)
Less: Deduction u/s 35(2AA) [contribution to National Laboratory]	(40,000)	Not available
Business income:	70,66,000	71,66,000
Income from other sources (being dividend income)	95,000	95,000
Gross total income	71,61,000	72,61,000
Less: Deductions under Chapter VI-A:		
➢ Under section 80C, 80D, 80E and 80EEB	1,70,000	Not available
➢ Under 80G	20,000	Not available
➢ Under section 80JJAA	80,000	80,000
Total income:	68,91,000	71,81,000
Tax on total income	18,79,800	18,91,800
Add: Surcharge @ 10%	1,87,980	1,89,180
Income-tax and surcharge	20,67,780	20,80,980
Add: Health and education cess	82,711	83,239
Tax liability:	21,50,491	21,64,219

Tax liability of Mr. A is lower under the existing tax regime. Therefore, he is not advised to opt for the alternative tax regime. In the next year, he can compare the two calculations and decide whether (or not) the alternative tax regime is better.

Question-4:

Mr. X (43 years) is a salaried employee, employed by A Ltd. as finance advisor. His income and tax

incentives for the previous year 2022-23 are as follows-	**₹**
Basic salary	**40,00,000**
House rent allowance [out of ₹ 90,000, ₹ 60,000 is exempt under section 10(13A)]	**90,000**
Leave travel concession (LTC) [out of ₹ 1,95,000, ₹ 1,80,000 is exempt u/s 10(5)]	**1,95,000**
NPS contribution by A Ltd. (12% of basic salary)	**4,80,000**
Payment of professional tax	**2,000**
Income from property A (self-occupied)	**(1,05,000)**
Income from property B (let out)	**60,000**
Income from property C (let out)	**(80,000)**
Savings bank account interest received by minor son of X	**800**
Savings bank account interest received by minor daughter of X	**2,000**
Interest on savings bank account of X	**28,000**
Interest on public provident fund credited on March 31, 2023	**3,55,000**
Interest credited to Sukanya Samriddhi Account in the name of minor daughter	**29,000**
Deductions under section 80D, 80E, 80EEA, 80EEB, and 80G	**2,81,000**
NPS contribution by X	**4,00,000**
PPF contribution by X	**20,000**

Mr. X wants to know whether he should opt for alternative tax regime from the assessment year 2023-24.

Solution:

"Computation of Total income and tax liability of Mr. X"

Income from Salaries:	Existing tax regime	Alternative tax regime
Basic salary	40,00,000	40,00,000
House rent allowance	90,000	90,000
Exemption available under section 10(13A)	(60,000)	Not available
Leave travel concession	1,95,000	1,95,000
Exemption available under section 10(5)	(1,80,000)	Not available
NPS contribution by employer	4,80,000	4,80,000
Gross salary:	45,25,000	47,65,000
Less: Standard deduction	(50,000)	Not available
Less: Professional tax payment	(2,000)	Not available
Taxable income from salary:	44,73,000	47,65,000
Income from House Property:		
Income from self-occupied Property A	(1,05,000)	Not available
Income from let out properties:		
[Property B: 60,000 + Property C: (80,000)]	(20,000)	Not available
Income from other sources:		
- Savings bank interest of minor son	800	800
Less: Exemption under section 10(32)	(800)	Not available

- Saving bank interest of minor daughter	2,000	2,000
Less: Exemption under section 10(32)	(1,500)	Not available
- Saving bank interest of X	28,000	28,000
- Interest credited in PPF account of X	3,55,000	3,55,000
Less: Exemption under section 10(11)	(3,55,000)	(3,55,000)
- Interest credited in Sukanya Samriddhi account of minor daughter	29,000	29,000
Less: Exemption under section 10(11A)	(29,000)	(29,000)
Gross total income:	43,76,500	47,95,800
Less: Deductions under Chapter VI-A:		
➢ Under section 80D, 80E, 80EEA, 80EEB and 80G	(2,81,000)	Not available
➢ U/S 80CCD(2) [i.e., employer's contribution towards NPS, subject to maximum of 10%]	(4, 00,000)	(4,00,000)
➢ Under section 80CCD(1B)	(50,000)	Not available
➢ Under sections 80C and 80CCD (1) [section 80C : ₹ 20,000 + section 80CCD(1) : ₹ 3,50,000, subject to maximum of ₹ 1,50,000]	(1,50,000)	Not available
➢ Under section 80TTA	(10,000)	Not available
Total income:	34,85,500	43,95,800
Tax on total income	8,58,150	10,56,240
Add: Surcharge	Nil	Nil
Income-tax and surcharge:	8,58,150	10,56,240
Add: Health and education cess	34,326	42,250
Tax liability:	8,92,476	10,98,490

Tax liability of X is lower under the existing tax regime. Therefore, he is not advised to opt for the alternative tax regime. In the next year, he can compare the two calculations and decide whether (or not) the alternative tax regime is better.

TAXATION OF BUSINESS TRUST & THEIR UNIT HOLDERS

Question-1:

A Real Estate Investment Trust (REIT) received income of ₹ 120 lakhs from Special Purpose Vehicle Company. The break-up of the income so received as follows:

Interest	**₹ 90 lakhs**
Dividend	**₹ 30 lakhs**

- **The REIT distributes ₹ 90 lakhs to its unit -holders, 40% of the unit holder are non-residents.**
- **Examine the tax implication of the above transactions in the hands of the REIT and unit holder including the requirement to deduct tax at source.**

[November 2015]

Answer:

Tax implications in the hands of REIT:

(1) Interest income from SPV:

There would be no tax liability in the hands of REIT due to pass-through status enjoyed by it under section 10(23FC) in respect of interest income from the special purpose vehicle. Therefore, the SPV is not required to deduct tax source on interest payment to the REIT.

However, the REIT has to deducted tax at source under section 194LBA:

- @ 10%, on interest component of income distributed to resident unit holders [i.e., ₹ 4.05 lakhs, being 10% of ₹ 40.50 lakhs (60% X ₹ 90 lakhs X 90/120)]; and
- @ 5%, on interest component of income distributed to foreign company and other non-resident unit holders [i.e., ₹ 1.35 lakhs, being 5% of ₹ 27 lakhs (40% X ₹ 90 lakhs X 90/120)].

(2) Dividend income from SPV:

There would be no tax liability in the hands of the REIT since dividend is exempt under section 10(23FC) in the hands of the REIT. Therefore, the SPV is not required to deduct tax source on interest payment to the REIT.

Since, such dividend is also exempt in the hands of unit holder u/s 10(23D), hence, TDS shall also not be deducted (assuming SPV has not exercised option u/s 115BAA).

Tax implications in the hands of unit holders:

(1) Interest income from SPV:

Interest component out of distributed income is taxable in the hands of the unit holders; @ 5% in case of the unit holders, being foreign companies or other non-residents as per section 115A; and @ Normal rates of tax – in case of resident unit holders.

(2) Dividend income from SPV:

Any distributed income referred to in section 115UA (except proportion of interest income from SPV & rental component), received by unit holders is exempt in their hands u/s 10(23FD). Therefore, there would be no tax liability on dividend component distributed to unit holder in their hands (assuming SPV has not exercised option u/s 115BAA).

Question-2:

KDS Realty Trust., a business trust registered under SEBI (Real Estate Investment Trusts) Regulations, 2014 provides the following particulars of its income for the previous year 2022-23:

(i) Rental income ₹ 3 crore, from the directly owned real estate assets;

(ii) Short term capital gain ₹ 1.5 crore, on sale of listed shares of Brahma Ltd., an Indian company in which KDS Realty Trust holds controlling interest through holding 60% of the shareholding of Brahma Ltd.

(iii) Short term capital gain ₹ 2 crore, on sale of development properties;

(iv) Interest ₹ 1 crore, received from investments in unlisted debentures of real estate companies;

(v) Dividend ₹ 3.5 crore from Brahma Ltd.

Other Information:

KDS Realty Trust has distributed ₹ 10 crore to its unit holders in the previous year 2022-23.

- **Discuss Tax implications (including TDS implications) based on the above income earned by KDS Realty Trust, both in the hands of KDS Realty Trust and its unit holders in the P.Y. 2022-23.**

[November 2016]

Answer:

(i) Rental income of ₹ 3 crores of REIT from directly owned real estate assets:

(a) Tax treatment in the hands of KDS Realty Trust (REIT):

Any income of a business trust, being a REIT, by way of renting or leasing or letting out any real estate asset owned directly by such business trust is exempt in its hands as per section 10(23FCA). Consequently, the rental income is exempt in the hands of the REIT.

As per section 194LBA, REIT to deduct tax on distribution of such rental income component @10% in case of resident unit holder and at rates in force in case of non-resident unit holder.

(b) Tax treatment in the hands of Unit Holders:

The distributed income or any part thereof, received by a unit holder from the REIT, which is in the nature of income by way of renting or leasing or letting out any real estate asset owned directly by such REIT is deemed income of the unit holder as per section 115UA. Therefore, such income is taxable in their hands. The component of rental income received from REIT in the hands of each unit holder would be determined in the proportion of 3/11 by virtue of section 115UA.

(ii) Short-term capital gains of ₹ 1.5 crore on sale of listed shares of Brahma Ltd.:

(a) Tax treatment in the hands of KDS Realty Trust (REIT):

As per section 115UA, the total income of a business trust shall be chargeable to tax at the maximum marginal rate, subject to the provisions of sections 111A and 112.

Accordingly, KDS Realty Trust is liable to tax @ 15% u/s 111A in respect of short-term capital gains on sale of listed shares of special purpose vehicle i.e., Brahma Ltd.

No tax is deductible at source on the short-term capital gain component of income distributed by the REIT to the unit holders.

(b) Tax treatment in the hands of Unit Holders:

Any distributed income referred to in section 115UA, to the extent it does not comprise of interest referred to in section 10(23FC) and rental income referred to in section 10(23FCA), received by unit holders is exempt in their hands under section 10(23FD). Hence, the short-term capital gain component of income will not be taxable in the hands of the unit holders.

(iii) Short-term capital gains of ₹ 2 crore on sale of developmental properties:

(a) Tax treatment in the hands of KDS Realty Trust (REIT):

The short-term capital gains of ₹ 2 crore on sale of developmental properties is taxable at maximum marginal rate viz. 42.744% in the hands of the KDS Realty trust as per section 115UA.

No tax is deductible at source on the short-term capital gain component of the income distributed by the REIT to the unit holders.

(b) Tax treatment in the hands of Unit Holders:

There would be no tax liability on the short-term capital gain component of income distributed to unit holders by virtue of the exemption contained in section 10(23FD).

(iv) Interest of ₹ 1 crore received in respect of investment in unlisted debentures of real estate companies:

(a) Tax treatment in the hands of KDS Realty Trust (REIT):

Interest income received in respect of investment in unlisted debentures of real estate companies is taxable at MMR viz. 42.744%, in the hands of KDS Realty trust as per section 115UA.

No tax is deductible at source when on the interest component of the income is distributed to the unit holders by the REIT.

(b) Tax treatment in the hands of Unit Holders:

No tax liability on interest component of income distributed to unit holders in their hands by virtue of section 10(23FD).

(v) Dividend income of ₹ 3.50 crore from Brahma Ltd.:

(a) Tax treatment in the hands of KDS Realty Trust (REIT):

Any income of a business trust, being a REIT, by way of dividend from SPV, is exempt in its hands as per section 10(23FC). Consequently, such dividend is exempt in the hands of the REIT.

No tax is deductible at source on the dividend component of the income is distributed to the unit holders by the REIT (assuming SPV has not exercised option u/s 115BAA).

(b) Tax treatment in the hands of Unit Holders:

No tax liability on the dividend component of income distributed to unit holders in their hands by virtue of section 10(23FD) assuming SPV has not exercised option u/s 115BAA.

Question-3:

Buildwell Ltd., a Real Estate Investment Trust, registered under relevant SEBI Regulations, holds 51% shares in HATS Ltd. Buildwell Ltd. provides the following information about its income for the F.Y. 2022-23.

(i) **Interest income from HATS Ltd. - ₹ 10 crores**
(ii) **Dividend income from HATS Ltd. - ₹ 3 crores**
(iii) **Short-term capital gains on sale of developmental properties - ₹ 1 crore**
(iv) **Interest received from investments in unlisted debentures of companies - ₹ 10 lakhs**
(v) **Rental income from directly owned real estate assets - ₹ 2.5 crores**

Mr. Vijay, a resident Indian, holds 70% of the units of the REIT. He does not have any other income during the year.

Compute the total income and tax payable in the hands of M/s Buildwell Ltd. and Mr. Vijay.

Note: HATS Ltd. has opted to pay tax under section 115BAA and Mr. Vijay has opted for section 115BAC. Ignore TDS implications. **[May 2022]**

Answer:

Computation of total income and tax payable in the hands of M/s Buildwell Ltd. (REIT) and Mr. Vijay (unit-holder):

Particulars	Buildwell (REIT)	Mr. Vijay (Unit holder)
(i) Interest income of ₹ 10 crore from HATS Ltd. (SPV) Interest income from SPV would be exempt in the hands of REIT by virtue of section 10(23FC)(a). The component of such interest income distributed to unit holders would be deemed as income of the unit holders as per section 115UA(3). Accordingly, ₹ 7 crores being 70% of ₹ 10 crores is taxable in the hands of the unitholder Mr. Vijay.	Nil	7,00,00,000
(ii) Dividend income of ₹ 3 crore from HATS Ltd. (SPV) The dividend distributed by the SPV to the REIT is exempt in the hands of REIT by virtue of section 10(23FC)(b). The component of such dividend income distributed to unitholders is taxable in the hands of unitholders by virtue of the exception contained in section 10(23FD), since HATS Ltd. (SPV) has exercised the option u/s 115BAA. Accordingly, ₹ 2.10 crore, being 70% of ₹ 3 crores, would be taxable in the hands of the unitholder Mr. Vijay.	Nil	2,10,00,000
(iii) Short-term capital gains of ₹ 1 crore on sale of developmental properties STCG on sale of development properties is taxable at maximum marginal rate of 42.744% in the hands of the REIT as per section 115UA(2). There would be no tax liability in the hands of the unit holders on the capital gain component of income distributed to them by virtue of exemption contained in section 10(23FD).	1,00,00,000	Nil
(iv) Interest of ₹ 10 lakh received in respect of investment in unlisted	10,00,000	Nil

	debentures of companies Such interest is taxable@42.744%, being the maximum marginal rate, in the hands of the REIT as per section 115UA(2). There would be no tax liability in the hands of unit holders on interest component of income distributed to them by virtue of section 10(23FD)		
(v)	Rental income of ₹ 2.50 crore from directly owned real estate assets Income by way of renting or leasing or letting out any real estate asset owned directly by REIT is exempt for REIT as per section 10(23FCA). However, the component of such rental income distributed to unit holders is deemed as income of the unit holders as per section 115UA(3). Accordingly, ₹ 1.75 crores, being 70% of ₹ 2.5 crores would be taxable in the hands of Mr. Vijay.	Nil	1,75,00,000
	Total income	1,10,00,000	10,85,00,000

Particulars	₹	₹
Computation of tax payable:		
In the hands of REIT (M/s Buildwell)		
Tax on total income of ₹ 1,10,00,000 @ 42.744% [MMR: 30% + 37% + 4%]	47,01,840	
In the hands of the unit holder, Mr. Vijay who has opted for section 115BAC		
Upto ₹ 2,50,000		Nil
₹ 2,50,001 – ₹ 5,00,000 @5%		12,500
₹ 5,00,001 – ₹ 7,50,000 @10%		25,000
₹ 7,50,001 – ₹ 10,00,000 @15%		37,500
₹ 10,00,001 – ₹12,50,000 @20%		50,000
₹ 12,50,001 – ₹15,00,000 @25%		62,500
₹ 15,00,001 – ₹ 10,85,00,000 @30%		3,21,00,000
		3,22,87,500
Add: Surcharge@15% on tax attributable from dividend income i.e. 15% of (2,10,00,000 X 3,22,87,500 / 10,85,00,000)		9,37,379
Add: Surcharge@37% on tax attributable from balance income since balance TI exceeds ₹5 Cr. i.e. 37% of (8,75,00,000 X 3,22,87,500/10,85,00,000)		96,34,173
		4,28,59,052
Add: Health and education cess@4%		17,14,362
Tax payable		4,45,73,414
Tax payable (Round off)		**4,45,73,410**

Notes:

(i) It has been assumed that 100% of income received by the REIT is distributed to its unitholders.

(ii) Since question specifically contains a note at the end to ignore TDS implications, tax payable is computed without deducting the amount of tax deducted at source.

"TAX ON INCOME OF INVESTMENT FUNDS AND ITS UNIT HOLDERS"

"QUESTIONS FROM PAST EXAMINATIONS (+) STUDY MATERIAL"

Question-1:

An Investment Fund incorporated in India in the form of a company has 20 resident unit-holders, each holding 5 units. Out of these, 16 unit holders are holding units for more than 12 months and 4 unit-holders are holding units for less than 12 months as on 31.03.2023.

The particulars of income of the Investment fund for the previous year 2022-23 are as follows:

(i) Business income - ₹ 20 lakhs.

(ii) Long-term capital losses - ₹ 30 lakhs.

(iii) Income from other sources - ₹ 40 lakhs.

Discuss the tax treatment with respect to the above income in the hands of investment fund as well as in the hands of unit-holders for the A.Y. 2023-24.

What would be the implication in the hands of unit-holders, if the Investment fund distributes only 80% of its income to the unit-holders during the year? [July 2021 (New Course)]

Answer:

As per section 115UB(1), any income accruing or arising to, or received by, a person, being a unit holder of an investment fund, out of investments made in the investment fund shall be chargeable to income-tax in the same manner as if it were the income accruing or arising to, or received by, such person had the investments made by the investment fund, been made directly by him.

Section 10(23FBA) exempts any income, other than income chargeable under the head "Profits and gains of business or profession", in the hands of investment fund. Consequently, income of the same nature as income chargeable under the head "Profits and gains of business or profession" at investment fund level, shall be exempt in the hands of unit holders as per section 10(23FBB). This implies that all income from investment fund is taxable in the hands of unit holders except income under the head "Profits and gains of business or profession".

(1) Business income - ₹ 20 lakhs:

Business income would be taxable in the hands of Investment Fund. Consequently, such income would not be includible in the hands of unit holders.

(2) Long-term capital loss - ₹ 30 lakhs:

Loss other than loss under the head "Profits and gains from business or profession" would not be allowed to be passed through to the investors if such loss has arisen in respect of a unit which has not been held by the unit holder for a period of at least 12 months. However, such loss can be passed through to the investors if such loss has arisen in respect of a unit which has been held by the unit holder for a period of at least 12 months.

Accordingly, **long-term capital loss of ₹ 1.5 lakhs (₹ 30 lakhs / 20 unit holders) each can be carried forward and set-off by 16 unit holders**, holding 5 units each for more than 12 months, against long-term capital gains arising in the subsequent years, since there is no long-term capital gain in the current year. It can be carried forward for a maximum of 8 assessment years.

However, **such loss of ₹ 1.50 lakhs each cannot be carried forward by the 4 unit holders**, holding 5 units each for less than 12 months.

(3) Income from Other Sources - ₹ 40 lakhs:

"Income from Other Sources" would be exempt in the hands of Investment fund.

₹ 2 lakhs (₹ 40 lakhs/ 20 unit holders) would be taxable as income from other sources in the hands of each unit holder.

If the income is not paid or credited to the unit holders during a previous year, it shall be deemed to have been credited to the account of the unit holder on the last day of the previous year in the same proportion in which such person would have been entitled to receive the income had it been paid in the previous year.

Thus, even if investment fund distributed only 80% of its income to the unit holders during the year, the remaining 20% of income would be deemed to be credited to the account of each unit holder on the last day of the previous year i.e., 31.03.2023.

However, income which has been included in the total income of the unit holders in the previous year on accrual basis shall not once again be included in the previous year in which such income is actually paid to him by the investment fund.

Question-2:

The Following are the particulars of income of three investment funds for P.Y. 2022-23:

Particulars	A	B	C
	₹ in lakh		
Business Income		2	(2)
Capital Gains	16	14	(6)
Income from other sources	4	4	8

- **Compute the total income of investment funds and unit-holders for A.Y. 2023-24, assuming that:**
  - **(i) Each investment fund has 20 unit holders each having one unit; and**
  - **(ii) Income from investment in the investment fund is the only income of the unit-holder.**
- **If Investment Fund C has the Following income components for A.Y. 2024-25, what would be the total income of the fund and the unit holder for that year?**
  Business Income ₹ 2 lakh; Capital Gains ₹ 9 lakh; Income from other source ₹ 8 lakh.

[Question from Study Material]

Answer:

Computation of total income of the investment fund for A.Y. 2023-24

Particulars	A	B	C
Business Income	Nil	2,00,000	Nil
Total Income:	Nil	2,00,000	Nil

Computation of total income of a unit holder of the following Investment funds for A.Y. 2023-24

Particulars	A	B	C
Capital Gains	80,000	70,000	-
Income from other sources	20,000	20,000	30,000
Total Income	1,00,000	90,000	30,000

WORKING NOTES:-

(i) The total income of Investment Fund B would be chargeable to tax @ 30% if the fund is a company or firm and at the maximum marginal rate, in any other case.

(ii) In case of Investment Fund C, the business loss of ₹ 2 lakh is set-off against income from other sources of ₹ 8 lakh. Loss of ₹ 6 lakh under the head capital gains cannot be set-off. The same will be pass through to unit holders who have hold units at least 12 months and benefit will be given subject to the provisions of Chapter VI.

(iii) For A.Y. 2024-25, business income of ₹ 2 lakh would be taxable in the hands of the Investment Fund and remaining income will be exempt for such Fund. For unit holder, the brought forward capital loss of ₹ 6 lakh can be set-off against capital gains of ₹ 9 lakh. Capital gains of ₹ 3 lakh (₹ 9 lakh — ₹ 6 lakh) and Income from other sources of ₹ 8 lakh would be taxable in the hands of the unit-holders. The total income of each unit holder for A.Y. 2023- 24 would be ₹ 55,000, comprising of-

Capital gains = ₹ 15,000 [i.e., 3 lakh/20]; Income from other sources = ₹ 40,000 [i.e., ₹ 8 lakh / 20]

"ASSESSMENT OF FIRMS (including LLP)"

"QUESTIONS FROM PAST EXAMINATIONS (+) STUDY MATERIAL"

Question-1:

Ram, Rahim & Robert are equal partners of SSK & Co., which was formed w.e.f. 01.06.2022. The firm is an authorized dealer of watches manufactured by a reputed company. It reported net profit as per profit and loss account of ₹ 2,50,000 after debit/credit of following items:

(i) Depreciation on generator and computers ₹ 1,10,000.

(ii) Working partners' salary ₹ 30,000 per month for each partner.

All the partners are working partners and salary paid is authorized by the deed of partnership.

(iii) Interest on capital to partners @ 18% per annum. The total interest on capital of the firm debited to profit and loss account being ₹ 3,60,000.

(iv) Donation to registered political parties ₹ 80,000 by cash and ₹ 70,000 by electronic transfer.

(v) Monthly rent paid to partner Ram for use of his premises as godown ₹ 30,000 and it is occupied from 01.10.2022. The market rent for the premises is ascertained at ₹ 15,000 per month. No tax was deducted at source on the rent paid.

(vi) Sponsorship fee for local cricket tournament ₹ 4,00,000.

(vii) The firm incurred ₹ 5 lakhs by way of expenditure towards the cost of gold coins awarded to customers on the first day of their showroom inauguration. The cost of each gold coin was less than ₹ 10,000 and one coin was given for each of the buyers on that day selected through lucky dip. No tax was deducted at source on such gold coins given to the customers.

Additional information:

(i) Depreciation on tangible assets allowable u/s 32 is ₹2,37,500.

(ii) One registered trademark was acquired on 10.07.2022 for ₹ 3,00,000. The firm used the trademark w.e.f. 01.12.2022 since there was some dispute in title of the previous owner and was cleared through court decree only in November 2022.

(iii) The total turnover for the firm for the year ended 31.03.2023 was ₹ 80 lakhs. Amount realized by cash ₹ 20 lakhs and the balance of sale proceeds were received through credit card/RTGS/NEFT before 31.03.2023.

❖ **You are required to compute the total income of the firm applying regular provisions and presumptive provisions contained in section 44AD of the Income-tax Act, 1961(Act). Advise the procedural requirement on opting any of the provisions for the purpose of the Act. [May 2018]**

Answer:

Computation of total income of the firm, SSK & Co. for the A.Y. 2023-24 applying the regular provisions of the Income-tax Act, 1961:

Particulars	₹	₹

	Net profit as per profit & loss account		2,50,000
Add:	Expenditure debited to profit & loss account but not allowable as deduction or to be considered separately:		
–	Depreciation as per books of accounts	1,10,000	
–	Salary paid to working partners considered separately [₹ 30,000 × 3 partners × 10 months]	9,00,000	
–	Interest on capital paid to partners in excess of 12% disallowed. Accordingly, ₹ 1,20,000 [₹ 3,60,000 – ₹ 2,40,000 (₹ 3,60,000 × 12/18)], is disallowed	1,20,000	
–	Donation to registered political party [Donation paid to a political party is not an allowable expenditure under section 37 since it is not laid out wholly or exclusively for the purposes of business or profession. Hence, the same has to be added back while computing business income]	1,50,000	
–	Excess rent paid to a partner would be disallowed under section 40A(2), since partner is a related person of the firm [(₹ 30,000 - ₹ 15,000) × 6] [No disallowance would be attracted for non-deduction of tax at source, since the amount of rent does not exceed ₹ 2,40,000]	90,000	
–	Sponsorship fee for local cricket tournament [Such expenditure is incurred for the promotion of the business of the firm/incurred out of business expediency and is an allowable expenditure u/s 37]	Nil	
–	Expenditure on gold coins awarded to customers [Allowed as expenditure u/s 37. No disallowance would be attracted for non-deduction of tax at source, since the value of gold coin awarded to each customer does not exceed ₹ 10,000]	Nil	
			13,70,000
			16,20,000
Less:	Depreciation as per Income-tax Act, 1961:		
–	Tangible assets	2,37,500	
–	Intangible asset–registered trademark [₹ 3,00,000 × 12.5%] [50% of 25%, being the depreciation allowable as deduction, since the asset is put to use for less than 180 days during the year of acquisition]	37,500	
			2,75,000
	Book Profit:		13,45,000
Less:	Salary to working partners:		
	(i) As per prescribed limits	2,70,000	
	On first ₹ 3,00,000 @ 90%	6,27,000	
	On the balance of ₹ 10,45,000 @ 60%	8,97,000	
	(ii) Salary actually paid	9,00,000	

Deduction allowed being (i) or (ii) whichever is less		8,97,000
Profits and gains from business or profession:		**4,48,000**
Gross Total Income:		**4,48,000**
Less: Deduction under Chapter VI-A:		
Under section 80GGC Donation to registered political party		
➢ Paid by cash not allowable	Nil	
➢ ₹ 70,000 paid by electronic transfer would be allowed as deduction, since payment is made in a mode other than cash	70,000	**70,000**
Total Income:		**3,78,000**

Computation of Total Income of A.Y. 2023-24 in accordance with presumptive provisions contained under section 44AD:

For the P.Y.2022-23, the turnover of the firm business is ₹ 80 lakhs. Since its turnover is less than ₹ 200 lakhs, the firm is eligible to opt for presumptive tax scheme under section 44AD.

Accordingly, the business income would be computed applying the presumptive rates of taxation under section 44AD

Particulars	₹
(i) Cash sales = 8% × ₹ 20 lakhs	1,60,000
(ii) Online sales = 6% × ₹ 60 lakhs	3,60,000
[No deduction in respect of any expenditure including working partners' salary is allowable while computing presumptive business income as per section 44AD].	
Business Income/Gross Total Income [₹ 1,60,000 + ₹ 3,60,000]:	**5,20,000**
Less: Deduction under Chapter VI-A:	
Under section 80GGC [Donation to registered political party]	70,000
Total Income:	**4,50,000**

➢ In case the firm wants to declare income of ₹ 3,78,000 as per books of account, advance tax has to be paid in four installments, in the absence of which interest liability under section 234C would be attracted in respect of shortfall in each of the four installments. However, if the firm declares profits of ₹ 4,50,000 on presumptive basis u/s 44AD, advance tax has to be paid in one installment in March, 2023, in the absence of which interest u/s 234C would be attracted only for one month.

Question-2:

X, Y, and HUF of Z (represented by Z) are partners with equal shares in profits and losses of a firm, M/s. Popular Cine Vision, which is engaged in the production of TV serials and telefilms. In the previous year 2021-22, one partner 'A' retired, but his dues have been settled in the previous year 2022-23.

The earlier partnership deed did not authorize payment of remuneration or interest to the partners. The partnership deed was revised by the partners on 1st June, 2022 to authorize payment of remuneration of ₹ 1 lakh per month to each working partner and simple interest at 15% per annum to X & Y on their capital. X, Y and Z are actively associated with the affairs of the Firm.

The Profit and loss account of the firm for the year ended 31st March, 2023 shows a net profit of

₹ 10 Lakhs after debiting / crediting the following:

a. **Interest amounting to ₹ 15 Lakhs paid to X and Y on the balances standing to their capital accounts from 1st April 2022 to 31st march 2023.**
b. **Remuneration to the partners including partner in representative capacity of ₹ 30 Lakhs.**
c. **Interest amounting to ₹ 2 lakhs paid to Z on loan provided by him in his individual capacity at 16 % interest.**
d. **Royalty of ₹ 5 lakhs paid to partner X, who is a litterateur and a professional script writer, for use of his scripts as per an agreement between the firm and X.**
e. **Two separate payments of ₹ 18,000 and ₹ 15,000 made in cash on 1st February, 2023 to Altaf, a hairdresser against his bill for services rendered in January, 2023 and two payments of ₹ 9,000 and ₹ 10,000 made in cash on 1st February and 2nd February 2023 respectively to Priyam, assistant cameraman against her bill for services provided in January 2023.**
f. **Amount of ₹ 5 lakhs provided in the books on 31st March, 2023 as liability for remuneration to Shreyashi, a film artist and a non-resident. Tax deducted at source under section 195 from the amount so credited was paid on 3rd June, 2023.**
g. **Amount of ₹ 6 lakhs provided as gratuity for the year on the basis of actuarial valuation. Gratuity paid to retired employees is ₹ 1.50 lakhs.**
h. **Interest of ₹ 1.20 lakhs received on income-tax refund under section of 244(1A) in respect of assessment year 2012-13.**

The firm has also provided the following additional information:

The amount due to A, the former partner was ₹ 15 Lakhs. The dues were settled on 30th September 2022 by transferring a plot of land purchased one year back having a book value of ₹ 10 lakhs. The difference of ₹ 5 lakhs was credited to partners' capital accounts in their profit sharing ratio. The fair market value of the plot on the date of transfer was ₹ 16 lakhs.

☞ ***Compute total income of the firm for the assessment year 2023-24 stating the reasons for treatment of each item.*** **[June 2009, Study Material]**

Answer:

Profits and Gains from Business or Profession:	₹	₹
Net Profit as per Profit & Loss A/c		10,00,000
Add: ***Expenses disallowed or considered separately :***		
➢ Interest to partners in excess of 12% (Working Note 1)	5,00,000	
➢ Disallowance u/s 40A (3) for aggregate cash payment Exceeding ₹ 10,000 in a single day (Working Note 5)	33,000	
➢ Remuneration to non-resident firm artist disallowed u/s 40(a)(i) (Working Note 6)	Nil	
➢ Provision for gratuity (Working Note 7)	4,50,000	
➢ Partners' Remuneration	30,00,000	

➢ Royalty paid to partner X (Working Note 4)	5,00,000	44,83,000
		54,83,000
Less: Interest on income tax refund (Working Note 8)		1,20,000
Book Profit		53,63,000
Less : Partners' remuneration allowable under section 40(b):		
On first ₹ 3,00,000 @ 90%	2,70,000	
On balance ₹ 50,63,000@ 60%	30,37,800	
	33,07,800	
Actual remuneration paid (30,00,000+5,00,000)	35,00,000	33,07,800
		20,55,200
Capital Gain:		
Short-term capital gain on transfer of land (Working Note 9)		6,00,000
Income from other sources:		
Interest on income –tax refund		1,20,000
Gross Total Income / Total Income		**27,75,200**

Working Notes:

1. As per section 40 (b) simple interest at 12% p.a. to partners after the date of amended partnership deed is allowable. Therefore, interest to partners from 1st April to 31st May 2022 should be disallowed. Further, the excess interest @ 3% paid from 1st June, 2022 to 31st March 2023 should also be disallowed.

		₹
Interest for April and May 2022	15,00,000 x 2/12	2,50,000
Excess interest from June 2022 to March 2023	(15,00,000 x 3/15) x 10/12	2,50,000
		5,00,000

   Note: It is assumed that ₹ 15 lacs is the cumulative interest paid to X and Y during the year.

2. Even though Z is a partner in a representative capacity, he is still a partner. Therefore, remuneration to Z should also be subject to the limits prescribed in section 40(b). **[Rashik Lal & Co. v/s CIT (SC)]**
3. As per Explanation 1 to section 40(b) where an individual is a partner in a firm in a representative capacity, the provisions of section 40(b) shall not apply to any interest payable by the firm to such individual In his personal capacity. Z represents his HUF in the firm. However, Z gave the loan in his individual capacity. Hence, such interest shall be allowed as deduction in full even though the interest rate is more than 12% p.a.
4. From a plain reading of the section 40(b), it is clear that any remuneration, by whatever name called, paid to a working partner, is subject to the limits laid down in section 40(b). Therefore, the royalty of ₹ 5 lakh paid to partner X would also be subject to the limits laid down in section 40(b) Hence, the same has to be added back for computing book profits.
5. The payments of ₹18,000 and ₹15,000 in cash on 1.2.2023 to Altaf, a hairdresser, shall be disallowed by virtue of section 40A(3) because, the aggregate payment of ₹ 33,000 exceeds the limit of ₹10,000 as specified in that section.

In case of payment of bill of the assistant cameraman, since the aggregate payment in cash on a single day does not exceed ₹ 10,000, disallowance under section 40A(3) is not attracted.

6. To avoid the disallowance of section 40(a)(i), tax deducted from the amount of remuneration credited to payee's account on 31st March 2023 has to be deposited within the due date for ROI under section 139(1). Since, the firm has paid the tax only on 3rd June, 2023 i.e. with in due date for ROI, hence the remuneration shall be allowed.
7. As per section 40A(7), any provision made for payment of gratuity is disallowed. However, payment of gratuity during the previous year shall be allowed as deduction. Hence, gratuity of ₹1.50 lacs Paid to retired employees is allowable as deduction. But, the balance provision of ₹ 4.50 lacs (i.e., ₹6 lacs - ₹1.50 lacs) is to be disallowed.
8. Interest on income-tax refund is assessable under the head 'Income from Other sources".
9. Distribution of a capital asset by a firm to its partner on dissolution or reconstitution attracts capital gains tax liability as per the provisions of section 9B and the FMV of the asset on the date of transfer is deemed to be the full value of consideration.

   Therefore, distribution of a plot of land on retirement of a partner would attract section 9B. ₹16 lacs, being the fair market value of the plot on the date of transfer, is deemed to be the full value of consideration. Therefore, the capital gain would be ₹6 lacs (i.e., ₹16 lacs - ₹ 10 lacs).

Tax treatment in accordance with the provisions of section 45(4) of the Act:

As per section 45(4), **on receipt of plot by partner "A" from a firm in connection with the reconstitution of such firm** (i.e. on his retirement), "capital gains" shall be chargeable to tax as income of such firm, which *shall be computed* as follows: **A = B + C – D**

B	**Value of any money received** by partner "A" from firm on the date of such receipt	Nil
C	(+) the amount of **fair market value of the capital asset received** (i.e. plot) by partner "A" from firm on the date of such receipt	16.0L
D	(-) the **amount of balance in the capital account** (represented in any manner) of partner "A" in the books of account of firm at the time of its reconstitution	16.05L
	Amount due to A, the former partner is given at ₹ 15 Lakhs (i.e. capital balance), and net book profit after tax of ₹ 4.2 lakh [viz. Profit of ₹ 6 lakh (i.e. FMV ₹ 16 lakh – Book Value ₹10 lakh) *less* tax@30% i.e. ₹ 1.8 lakh] is to be credited in the capital account of each of the four partners, i.e. ₹ 1.05 lakh each. ***Thus partner "A" capital account would increase to ₹16.05 lakh.*** **This exercise is required to be carried out since section 9B mandates that it is to be deemed that the firm has transferred the plot of land to partner "A" and the short term capital gains of ₹ 6 lakh is chargeable to tax in the hands of the firm.**	
A	**Capital gains chargeable to tax u/s 45(4) in the hands of firm**	(0.05L)

- As per section 45(4), **if the value of "A" in the above formula is negative,** ***its value shall be deemed to be zero.*** *Meaning there by,* ***in this case, nothing will be chargeable to tax u/s 45(4) in the hands of assessee firm.***

For Section 9B & 45(4), Refer to the Chapter of Tax Implications on Reconstitution/dissolution of Firms/AOP/BOI.

Question-3:

On, 1.4.2022, Binu Ltd. of Delhi, a domestic company, engaged in the business of manufacturing of metro rail seats, converted into an LLP by name M/s. Soumya LLP fulfilling all the conditions specified in section 47(xiiib) of the Income-tax Act, 1961. Some of the relevant information is given below in respect of Binu Ltd., as on 31.3.2022:

(a) Voluntary Retirement Scheme (VRS) expenditure incurred by the company during the PY 2020-21 is ₹ 20 lakhs. The company was allowed deduction of ₹ 4 lakhs each for the PYs 2020-21 & 2021-22 under section 35DDA.

(b) 150 equity shares in Toyo Ltd., an Indian company listed in Bombay Stock Exchange were acquired for ₹ 1,900 per share on 31.7.2017. On conversion, these share become the property of M/s. Soumya LLP.

(c) Besides other assets transferred to M/s. Soumya LLP by M/s. Binu Ltd., it also transferred two factory buildings. On 1.4.2022, M/s. Soumya LLP leased out one factory building along with plant, machineries and furniture etc. at a consolidated lease rent of ₹ 50,000 per month.

During the previous year 2022-23, the M/s. Soumya LLP earned a profit of ₹ 25,40,000 after debit/credit of the following items to its Profit and loss account:

(i) Mr. Binu is the working partner of the LLP. He is also a working partner in another firm. He is actively engaged in the business of both the firms. Binu gets, a salary of ₹ 55,000 p.m. from M/s. Soumya LLP and the same is authorised in the deed of LLP.

(ii) Mr. Ayushman, an employee, was deputed to work in the client's office in Mumbai for three months. The LLP has paid his salary in cash for the months when he was in Mumbai, amounting to ₹ 3,45,000 (net of TDS and other deductions), since he did not have a bank account in Mumbai. This payment was included in amount of "salary" debited to profit and loss account. Mr. Ayushman is normally posted in Delhi being theheadquarter of M/s. Soumya LLP.

(iii) Amount of ₹ 25,000 was paid towards penalty for non-fulfilment of delivery conditions of a contract for sale for the reasons beyond its control.

(iv) The LLP had provided an amount of ₹ 18 lakhs being the sum estimated as payable to workers based on agreement to be entered with workers union towards periodical wage revision once in 3 years. The provision, is based on a fair estimation of wage and reasonable certainty of revision once in 3 years.

(v) Depreciation debited to profit and loss account ₹ 5,40,000.

(vi) Gratuity provisions based on actuarial valuations ₹ 6.5 lakhs. (Gratuity actually paid ₹ 4 lakhs

to retired employees debited in Gratuity provision account).

(vii) Profit on sale of shares of M/s. Toyo Ltd. ₹ 1,27,500. These shares were sold on 31.5.2022 for ₹ 2,750 per share. The highest price of Toyo Ltd. quoted on the stock exchange as on 31.1.2018 was ₹ 2,500 per share.

(viii) Repairs to plant & machinery include ₹ 59,000 in respect of plant & machine given on lease.

(ix) Factory licence fee paid ₹ 15,000 for each factory building.

(x) Legal fee includes ₹ 26,000 paid to an advocate for drafting & registering the lease agreement.

Additional Information:

(1) Under an agreement of debt restructuring, the bank has converted unpaid interest amounting to ₹ 9,00,000 up to 31.7.2022 into a new loan account repayable in 3 equal annual instalments. The first instalment was paid in March 2023 by debiting the new loan account.

(2) Mr. Binu, being a working partner, bought a car which is registered in his own name out of the funds of LLP. The car was used exclusively for the purposes of the business of the LLP only. The depreciation on the car amounts to ₹ 15,000 for the PY 2022-23 which is not included in the depreciation amount debited to profit and loss account.

(3) Depreciation as per Income-tax Rules ₹ 8,10,000 (including depreciation on the assets given on lease amounting to ₹ 90,000). It does not include depreciation on car.

(4) The LLP sold import entitlements on 1.5.2022 for ₹ 1,50,000.
This sum is not included in profit and loss account by treating it as capital receipt.

You are required to discuss the implication of such conversion and calculate the total income in the hands of M/s Soumya LLP for the Assessment Year 2023-24. [May 2019]

Answer:

Implication on conversion of company into LLP:

Transfer of capital asset or intangible asset by a private company or unlisted public company to a LLP or any transfer of share held by shareholder to LLP in a conversion of private company into an LLP is not regarded as transfer under section 47 provided the conditions specified therein are satisfied.

Accordingly, transfer of capital asset by Binu Ltd. to M/s Soumya LLP is not regarded as transfer since the conditions specified in section 47(xiiib) as stated in the question stand satisfied and fulfilled.

Computation of Total Income in the hands of M/s Soumya LLP for the A.Y. 2023-24

	Particulars	Amount (₹)		
I	**Profits and gains of business and profession:**			
	Net profit as per the profit and loss account		25,40,000	
	Add: **Items debited but to be considered separately or to be disallowed**			
	(i) **Salary to Binu, working partner** (to be considered separately) [₹ 55,000 x 12]	6,60,000		
	(ii) **Salary paid to Mr. Ayushman, an employee**	-		

	[U/s 40A(3), disallowance is attracted in respect of expenditure for which cash payment exceeding ₹ 10,000 is made on a day to a person. Payment of ₹ 3,45,000 to Mr. Ayushman, an employee, is covered by exception under Rule 6DD since, TDS has been deducted, employee is temporarily posted in Mumbai and does not have a bank account in Mumbai. Since the same has been debited to profit and loss account, no adjustment is required]			
	(iii) Penalty for non-fulfilment of delivery conditions of a contract for sale [Penalty for non-fulfilment of delivery conditions of a contract for sale is not on account of infraction of law. Penalty for breach of contract is business or commercial loss and would be allowable expenditure under section 37. Since the same has been debited to profit and loss account, no adjustment is required]	-		
	(iv) Provision for wages payable to workers [The provision is based on fair estimate of wages and reasonable certainty of revision, and thus is allowable as deduction, as ICDS-X requires 'reasonable certainty for recognition of a provision, which is present in this case. As the provision has been debited to profit and loss account, no adjustment is required while computing business income]	-		
	(v) Depreciation as per books of account	5,40,000		
	(vi) Provision for gratuity [Provision of ₹ 6,50,000 for gratuity based on actuarial valuation is not allowable as deduction as per section 40A(7). However, actual gratuity of ₹ 4,00,000 paid is allowable as deduction. Hence, the difference is to be added back being of ₹ 2,50,000 (₹ 6,50,000 – ₹ 4,00,000)]	2,50,000		
	(viii) Repair to plant and machinery given on lease [Lease rent from factory building along with plant and machinery and furniture is chargeable to tax under the head income from other sources, since the main business of the M/s Soumya LLP is manufacturing of metro rail seats and not letting out	59,000		

	the properties. Therefore, repairs to such plant and machinery to be deducted from lease income taxable under the head "Income from Other Sources. Since the same has been debited to profit and loss account, it has to be added back]			
	(ix) Factory licence fee paid [Factory licence fee in respect of leased out factory building is to be deducted from lease income taxable under the head "Income from Other Sources". Since the same has been debited to profit and loss account, it has to be added back]	15,000		
	(x) Legal fee to advocate for drafting and registering lease agreement [Legal fee to advocate for drafting and registering lease agreement to be deducted from lease income taxable under the head "Income from Other Sources". Since the same has been debited to profit and loss, it has to be added back]	26,000		
			15,50,000	
			40,90,000	
	Add: **Amount taxable but not credited to profit and loss account**			
	AI(4) Profit on sale of import entitlements [Profit on sale of import entitlements is chargeable to tax under the head "Profits and gains from business and profession" under section 28. Since the same has not been credited to profit and loss account, it has to be added]		1,50,000	
			42,40,000	
	Less: **Items credited to profit and loss account, but not includible in business income / permissible expenditure and allowances:**			
	(i) Profit on sale of shares of M/s Toyo Ltd. [Taxable under the head "Capital Gains". Since the same has been credited to profit and loss account, it has to be reduced from business income]	1,27,500		
	AI(a)Voluntary Retirement Scheme expenditure [₹ 20 lakh/5] [One fifth deduction is available in respect of payment for voluntary retirement scheme for five	4,00,000		

	years. Where a private company or unlisted company is succeeded by a LLP fulfilling the conditions laid down in section 47(xiiib), then, deduction in respect of voluntary retirement scheme is available to the LLP for the balance years from the year of succession. Hence, deduction of ₹ 4,00,000 is allowable in P.Y. 2022-23 to M/s Soumya LLP being for 3rd year]			
	AI(1) Interest paid during the year	3,00,000		
	[Conversion of unpaid interest into loan shall not be construed as payment of interest for the purpose of section 43B. The amount of unpaid interest converted into a new loan will be allowable as deduction only in the year in which such converted loan is actually paid. Since ₹ 3 lakhs has been paid in the P.Y. 2022-23, the same is allowable as deduction]			
	AI(2) Depreciation on motor car exclusively used for business purpose	15,000		
	[Depreciation on motor car bought and used exclusively for the purposes of business is allowable though not registered in the name of the firm.]			
	AI(3) Depreciation as per Income-tax Rules [₹ 8,10,000 – ₹ 90,000]	7,20,000		
	[Depreciation on leased out asset to be deducted from lease income taxable under the head "Income from Other Sources. Since the same has been included in depreciation of ₹ 8,10,000, it has to be reduced from it]		15,62,000	
	Book Profit		26,77,500	
	Less: **Remuneration to Mr. Binu, a working partner [Subject to limit specified in section 40(b)**			
	[On first ₹ 3,00,000 of book profit, 90% of book profit or ₹ 1,50,000, whichever is higher and on the balance of book profit, 60% of balance book profit] [₹ 16,96,500 (2,70,000, being 90% of ₹ 3,00,000 + ₹14,26,500, being 60% of ₹ 23,77,500) restricted to actual remuneration paid to Binu.		6,60,000	
				20,17,500
II	**Profits and gains from business and profession** **Capital Gains:**			

	Sale consideration [150 x ₹ 2,750 per share]		4,12,500	
	Less: Cost of acquisition [150 x ₹ 2,500 per share] (Indexation benefit would not be available)		3,75,000	
	[Higher of			
	(i) ₹ 1,900, actual cost, being the cost of acquisition to Binu Ltd. as per section 49]			
	(ii) ₹ 2,500, being the lower of			
	- FMV as on 31.1.2018 [₹ 2,500 per share]			
	- Full value of consideration [₹ 2,750 per share]			37,500
	Long term Capital gains since shares held for more than 12 months [Period of holding of Binu Ltd. is also included]			
III	**Income from Other Sources:**			
	Lease rent [₹ 50,000 x 12]		6,00,000	
	Less: Deductions under section 57:			
	Repair of leased out plant and machinery		59,000	
	Licence fee in respect of leased out factory building		15,000	
	Legal fee for drafting & registering lease agreement		26,000	4,10,000
	Depreciation of assets given on lease		90,000	24,65,000
	Gross Total Income/ Total Income			

Question-4:

Ram Manufactures LLP., engaged in manufacturing activity which is liable for GST@18%. The firm consists of 4 equal partners who contributed ₹ 15 lakhs each as capital. The partnership deed authorises interest on capital @ 9% per annum besides working partner salary of ₹ 25,000 per month to each partner, as all of them are working partners.

A survey under section 133A was conducted in the premises of the firm on 23-01-2023 and during the course of survey (a) bills and vouchers (each below ₹ 10,000) aggregating to ₹ 2,50,000 were found in the premises which were not recorded in the books of account; and (b) unaccounted stock of ₹ 10,50,000 was found in the premises on 23-01-2023.

Note: No effect was given in the books of account of the firm for the above said items even after the conclusion of survey.

The following issues are presented to you:

(i) Depreciation debited in profit and loss account includes ₹ 3,00,000 representing depreciation on non-compete fee of ₹ 30,00,000 being the amount paid to a retired partner on 30-4-2020.

(ii) The firm allowed ₹ 4,00,000 as discount on goods sold to A & Co, a proprietary concern owned by one of the partners.

(iii) Depreciation debited to profit and loss account does not include depreciation on the following:

(a) Plant & Machinery (new) acquired in November, 2022 and used during the year cost ₹ 23,60,000 (including GST@18%).

(b) Construction of one factory building was completed on 31st December, 2022 and it was put to use w.e.f. 1-1-2023. The cost of construction admitted in the books was ₹ 40,90,000.
The firm availed loan from a bank for construction of the above said factory building on 20th October, 2021. Interest payable details are as under:

Period	₹
From 20-10-2021 to 31-03-2022	2,00,000
From 01-04-2022 to 31-12-2022	7,00,000
From 01-01-2023 to 31-03-2023	4,20,000

No amount by way of loan interest was paid till 'due date' of filing the return of income prescribed under section 139(1). The loan interest is not debited to profit and loss account and also not included in the cost of construction of the factory building.

(iv) The net profit of the firm for the year ended 31-03-2023 was ₹ 17,21,375 after deducting interest on capital and working partner salary.

- **You are requested to compute the total income of the firm by giving brief reasons for each of the item given above. [November 2019 (New Course)**

Answer:

"Computation of total income of Ram Manufacturers LLP for A.Y.2023-24"

Particulars	₹	₹
Profits and gains of business or profession		
Net profit of the firm after deducting interest on capital and salary		17,21,375
Add: Items debited but to be considered separately or to be disallowed:		
- **Interest on capital** [no adjustment is required since interest@9% p.a. is authorized by the partnership deed and the rate does not exceed 12%]	Nil	
- **Salary to working partners** [to be considered separately] [₹ 25,000 x 12 x 4]	12,00,000	
- **Depreciation on non-compete fee** [Since no new asset is created by payment of ₹ 30,00,000 as non-compete fee to a retired partner and the expenditure does not result in enduring benefit in the capital field, it is not capital in nature. Hence, depreciation is not allowable on such expenditure in P.Y. 2022-23] **Note** - The above treatment is based on the Madras High Court ruling in M/s. Asianet Communications Ltd v/s CIT. Alternate answer based on the Gujarat High Court ruling in PCIT v/s Ferromatic Milacron India Pvt. Ltd. is given hereunder: Rights acquired under a non-compete agreement gives enduring benefit	3,00,000	

	and protects the assessee's business against competition. The expression "or any other business or commercial rights of similar nature" used in Explanation 3 to section 32(1)(ii) is wide enough to include non-compete rights. Hence, it would be treated as intangible asset and is eligible for depreciation of ₹ 4,21,875 i.e., 25% on WDV as on 1.4.2022. Cost [2020-21] ₹ 30,00,000 Less: Depreciation @25% [2020-21] ₹ 7,50,000 WDV as on 1.4.2021 ₹ 22,50,000 Less: Depreciation @25% [2021-22] ₹ 5,62,500 WDV as on 1.4.2022 ₹ 16,87,500 Decpreciation@25% [2022-23] 4,21,875 Since depreciation of ₹ 3,00,000 is already debited to profit and loss account, the difference of ₹ 1,21,875 is to be deducted from business income.		
	- Discount to A & Co., a related party - disallowance u/s 40A(2) is not attracted in this case, since the transaction is a sale transaction with a related party. Also, the question does not mention that the discount given to A & Co. is excessive.	Nil	15,00,000
			32,21,375
	Add: Amount taxable but not credited to profit and loss account		
	- **Unexplained expenditure** [Expenditure not recorded in the books of account to be treated as unexplained expenditure and would be deemed to be the income of Ram Manufactures LLP as per section 69C. It would be taxable @60% plus surcharge @25% plus health and education cess@4%]	2,50,000	
	- **Unaccounted stock** detected on survey under section 133A on 23.01.2023 chargeable as income	10,50,000	13,00,000
			45,21,375
	Less: Permissible expenditure and allowances:		
	- **Unexplained expenditure of ₹ 2,50,000** [As per section 69C, unexplained expenditure would not be allowed as deduction under any head of income]	Nil	
	- **Depreciation allowable as per Income-tax Rules, 1962**		
	(a) Plant & Machinery acquired in November, 2022 50% of 15% of ₹ 20,00,000 since it is put to use for less than 180 days. [As per Explanation 9 to section 43(1), GST paid on acquisition of P & M would not form part of actual cost where GST input credit has been availed by the firm. Therefore, the	1,50,000	

actual cost of the P & M would be ₹ 20 lakhs [₹ 23,60,000 x 100/118]		
Note - Alternatively, if it is assumed that input credit on machinery has not been availed under GST law, then, depreciation has to be calculated treating actual cost as ₹ 23,60,000. In such case, permissible normal depreciation will be ₹ 23,60,000 x 15% x 50% i.e., ₹ 1,77,000.		
(b) Factory building@50% of 10% on₹ 49,90,000 [₹ 40,90,000 being, construction cost + ₹ 9,00,000 being interest from 20.10.2017 to 31.12.2022 i.e., the date of borrowing upto the date of put to use] since it is put to use for less than 180 days	2,49,500	
- **Additional depreciation**@50% of 20% on plant and machinery used, since it was put to use for less than 180 days=10% x ₹ 20 lakhs	2,00,000	5,99,500
Note - Alternatively, if it is assumed that input credit on machinery has not been availed under GST law, then, permissible additional depreciation will be ₹ 23,60,000 x 20% x 50% i.e., ₹2,36,000.		
- **Interest on loan borrowed for construction of building** [As per section 36(1)(iii), interest for the period after the asset is put to use is allowable as deduction, provided such interest is actually paid on or before due date of filing of return of income as required u/s 43B. Since interest of₹ 4,20,000 for the period after the asset is put to use is not paid till the due date of filing of return of income, it would not be allowed as deduction].		Nil
Book Profit		**39,21,875**
Less: Remuneration to working partners		
Maximum permissible amount u/s 40(b):		
On first ₹ 3 lakh of book profit at 90% [₹ 3,00,000 × 90%]	2,70,000	
On balance of book profit at 60% [₹ 36,21,875 × 60%]	21,73,125	
	24,43,125	
Remuneration actually paid fully allowable as deduction, since it is lower than the specified limit		12, 00,000
Total Income		**27,21,875**
Total income (rounded off)		27,21,880

Question-5:

M/s A & Co.'s return for the Assessment Year 2021-22 was selected for scrutiny. Disallowances to the extent of ₹ 50 lakhs and ₹ 75 lakhs was made since the assessee could not prove that bad debts claimed were supported by requisite evidences and repairs and maintenance which

were booked on an estimate. It was further observed that another partnership firm M/s B & Co was a partner of M/s A & Co. The Assessing Officer proposed to change the status as AOP and complete the assessment.

Discuss whether the proposal of the Assessing Officer to change the status as AOP is correct in law. [July 2021 (New Course)]

Answer:

In this case, the Assessing Officer disallowed bad debts, since the same was not supported by requisite evidence, and also repairs and maintenance which were booked by estimate. He also proposed to change the status of the firm as AOP and complete the assessment.

Section 36(1)(vii) permits deduction of bad debts written off in the books of account. The Act does not require supporting evidence for claim of this deduction. Hence, the Assessing Officer's action in disallowing bad debts since the same were not supported by requisite evidence, is incorrect.

If the repairs are in the nature of current repairs allowable under section 30 or 31, and a provision has been made in respect of such repairs on the basis of a reliable estimate, the same is allowable as deduction subject to satisfaction of conditions laid down in ICDS X.

Therefore, the correctness of the Assessing Officer's action is dependent on the nature of repairs and the satisfaction of conditions laid down in ICDS X.

A partnership firm is a relationship between persons who have agreed to share the profits of the business carried on by all or any of them acting for all. Since firm is not a separate legal entity, it cannot be a partner. In this case, since another partnership firm M/s. B & Co., was a partner in M/s. A & Co., the assessment of M/s. A & Co. cannot be carried out as a firm. Accordingly, the proposed action of the Assessing Officer to change the status of the firm to AOP and complete the assessment is in order.

"ASSESSMENT OF AOP/BOI"

"QUESTIONS FROM PAST EXAMINATIONS (+) STUDY MATERIAL"

Question-1:

T and Q are individuals, who constitute an Association of persons, sharing profit and losses in the ratio of 2 : 1 For the accounting year ended 31st March, 2023, the Profit and Loss account of the business was as under: **(Amount in ₹'000)**

Particulars	Amount	Particulars	Amount
Cost of goods sold	4,250.00	Sales	4,900.00
Remuneration to:		Income from securities	25.00
- T	130.00	exempted u/s 10	
- Q	170.00	Capital Gains-Long Term	640.00
- Employees	256.00		
Interest to :			
- T	48.30		
- Q	35.70		
Other expenses	111.70		
Sales – tax penalty due	39.00		
Net Profit	524.30		
Total	5,565.00		5,565.00

Additional information furnished:

(i) Other expenses include:

(a) wristwatches costing ₹2,500 each were given to 12 dealers, who had exceeded the sales quota prescribed under the sales promotion scheme;

(b) employer's contribution of ₹6,000 to the Provident Fund was paid on 14th January, 2023;

(c) ₹ 30,000 was paid in cash to an advertising agency for publicity.

(ii) Outstanding sales tax penalty was paid on 15th September, 2023. The penalty was imposed by the Sales-tax Officer for non-filing of returns and statements by the due dates.

- **T and Q had, for this year, income from other sources of ₹ 3,60,000 and ₹ 2,32,000 respectively.**

Required to:

(i) Compute the total income of the AOP for the assessment year 2023-24; and

(ii) Ascertain the tax implications for that year in the hands of the individual members.

[November 2005, Study Material]

Answer:

(i) **"Statement of total Income and tax payable by T & Q (AOP)"**

(For the Assessment Year 2023-24) **₹**

Income from Business (see working note 1)	3,12,300
Long term Capital gain	6,40,000
Total Income	**9,52,300**

WORKING NOTE 1 : ***Income from business of AOP:-***

Net profit as per P&L account		5,24,300
Add: *Inadmissible Expenses:*		
Remuneration to T & Q	3,00,000	
Interest to T & Q	84,000	
Sales tax penalty	39,000	
Employer's contribution to PF	Nil	
Advertising expenditure paid in cash ₹30,000 - **100% disallowable u/s 40A(3).**	30,000	4,53,000
		9,77,300
Less: *Incomes exempt and considered separately:*		
Income from securities exempted u/s 10	25,000	
Long term capital gains	6,40,000	6,65,000
Taxable income of AOP from business		**3,12,300**

EXPLANATORY NOTES-

(1) Since the Employer's contribution to PF has been paid during the previous year itself, it is allowable as deduction.

(2) Penalty imposed for delay in filing sales tax return is not deductible since it is on account of infraction of law requiring filing of the return with in the specified period.

(ii) Tax Implications in the hands of members T & Q for the A. Y. 2023-24:

Since one of the members has individual income more than the basic exemption limit, the AOP will be assessed at the maximum marginal rate.

Since the AOP is taxed at maximum marginal rate, the share income of members is not taxable in their hands individually.

Question-2:

JK Associates is an Association of Persons (AOP) consisting of two members, J and K. Shares of the members are: 60% (J) and 40% (K). Income of the AOP for the previous year 2022-23 is ₹ 6 lacs.

Compute tax liability of the AOP and the members in the following situation:

(i) J and K have their income, other than income from AOP, amounting to ₹ 1 lac and ₹ 2.7 lacs, respectively.

(ii) J and K's income other than income from AOP, amount to ₹ 2.4 lac and ₹ 1.20 lacs, respectively.

[Question from Study Material]

Answer:

Computation of tax of AOP is governed by section 167B of the Income-tax Act, 1961. Tax on total

income of AOP is computed as follows:

(i) If individual share of a member is known, and the total income of any member (excluding his share from AOP), exceeds the basic exemption limit, then the AOP will pay tax at the maximum marginal rate i.e. 42.744% (i.e. 30% *plus* 37% surcharge *plus* health & education cess @ 4%).

(ii) If individual share of a member is known and no member has total income (excluding his share from AOP) exceeding the basic exemption limit, then the AOP will pay tax at the rates applicable to an individual.

Section 86 provides for assessment of share in the hands of members of AOP as follows:-

A member's share in the total income of AOP will be treated as follows:-

(i) If an AOP has paid tax at the maximum marginal rate or a higher rate, the member's share in the total income of AOP will be exempt.

(ii) If the AOP has paid tax at normal rates applicable to an individual, the member's share in the income of AOP will be included in his total income and he will be allowed rebate at the average rate of tax in respect of such share.

Tax liability of J K Associates, AOP:

Situation (i):

As K's income, other than that from the AOP exceeds the basic exemption limit, the AOP shall pay tax at maximum marginal rate of 42.744% (i.e. 30% *plus* 37% surcharge *plus* health & education cess @ 4%). Thus the tax payable by AOP = ₹ 6,00,000 x 42.744% = 2,56,464.

Situation (ii):

Since none of the members have income, other than income from the AOP, exceeding the basic exemption limit, the AOP would be taxed at the rates applicable to an individual. Therefore, the AOP's tax liability = ₹32,500 (i.e. Tax) + ₹ 1,300 (i.e. Cess) = ₹ 33,800.

Situation	Particulars		J	K
			₹	₹
(i)	Share of profit from AOP		Exempt	Exempt
	Income from other sources		1,00,000	2,70,000
	Total income		1,00,000	2,70,000
	Tax liability		Nil	1,000
	Less: Rebate u/s 87A (subject to a maximum of **₹ 12,500**)		-	1,000
	Net tax payable:		Nil	Nil
(ii)	Share of profit from AOP	(A)	3,60,000	2,40,000
	Income from other sources		2,40,000	1,20,000
		(B)	6,00,000	3,60,000
	Tax liability		32,500	5,500
	Less: Rebate u/s 87A (subject to a maximum of **₹ 12,500**)		Nil	5500
			32,500	Nil
	Health & Education cess @ 4%		1300	Nil
	Total Tax Payable	(C)	33,800	Nil

Less: Rebate under section 86 in respect of share of profit from AOP at Average rate of tax [viz. Share in AOP i.e. (A) **X** Total Tax i.e. (C) **/** Total Income i.e. (B))	20,280	Nil
Tax liability of Members:	13,520	Nil

"PROFITS AND GAINS OF BUSINESS OR PROFESSION"

"QUESTIONS FROM PAST EXAMINATIONS (+) STUDY MATERIAL"

"SECTION / PROVISION SPECIFIC QUESTIONS"

Section 28: *Chargeability:-*

Question -1:

Explain in brief, the treatment, as to their taxability under the provisions of the Income-Tax Act, 1961, for the assessment year 2023-24 in the following cases:

(i) Sale proceeds of import entitlements amounting to ₹1 lakh has been credited to profit & loss Account which the company claims as capital receipt not chargeable to Income-tax.

(ii) Donations received by a person in the course of carrying on vocation from his followers.

(iii) S Ltd. receives a sum of ₹ 10 lakhs from K Ltd. on 3rd January, 2023 for agreeing not to carry on any business relating to computer software in India for the next three years.

(iv) A company received liquidated damages of ₹ 25 lacs from the suppliers of plant & machinery for failure to supply the plant and machinery within the stipulated time. The assessing officer treated the same as income chargeable to tax as against the claim of the company treating the same as capital receipt. [November 2013 & November 2011]

Answer:

(i) Section 28 provides that profit on sale of import entitlements is chargeable as business income. Accordingly, sale proceeds of import entitlements amounting to ₹1 lakh which represent the profit itself would be taxable as business income, not capital receipt.

(ii) Donations received by a person from his followers in the course of carrying on vocation for the furtherance of the objects of his vocation were receipts arising from the carrying on of his vocation and not casual or non-recurring receipts.

In the case of **Dr. K George Thoms v/s CIT,** the Supreme Court held that such donations are taxable as a business income as there is a direct nexus between the vocation carried on by the assessee and the receipt of such donation.

(iii) As per section 28, any sum received under an agreement for not carrying out any activity in relation to any business (i.e. non-compete fee) is taxable under the head "PGBP".

Accordingly, ₹10 lakhs received by S. Ltd. from K. Ltd. for agreeing not to carry on any business relating to computer software in India for the next three years is taxable.

(iv) The issue under consideration is whether the amount of ₹ 25 lacs received by the company as liquidated damages from the suppliers of plant & machinery for failure to supply the plant and machinery within the stipulated time has to be treated as a capital receipt or a revenue receipt.

On this issue, the **Supreme Court**, in **CIT v/s Saurashtra Cement Ltd.**, has held that the damages

were directly and intimately linked with the procurement of a capital asset, which led to delay in coming into existence of the profit making apparatus. It was not a receipt in the course of profit making process. Therefore, the amount received towards compensation for sterilization of the profit earning source, not in the ordinary course of business, is a capital receipt in the hands of the assessee.

Applying the rationale of the above ruling to the case on hand, the action of the Assessing officer treating the liquidated damages as income chargeable to tax, **is not correct**.

Section 32: *DEPRECIATION:-*

Question -2:

Sakshi Pvt. Ltd was converted into limited liability partnership (LLP) as Sakshi LLP on 1-07-2022. You are provided with the following particulars of Sakshi Pvt. Ltd. as on 31-03-2022:

(i) Unabsorbed depreciation ₹ 25 Lakhs

(ii) Business loss ₹ 23 Lakhs (relating to P.Y. 2015-16)

(iii) Unadjusted MAT credit u/s 115JAA ₹ 6 lakhs

(iv) Written down value of the assets as per section 43(6) of the Income-tax Act:

Plant and Machinery (15%) ₹ 12 Lakhs (Market Value ₹ 18 Lakhs), Plant and Machinery ₹ 60 Lakhs (cost) – deduction claimed u/s 35AD, Building (10%) ₹ 30 Lakhs (Market Value ₹ 120 Lakhs)

(v) Cost of land (acquired in year 2001) ₹ 60 lakhs (Market value ₹ 105 Lakhs)

(vi) Expenditure on voluntary retirement incurred by the company during the P.Y. 2020-21 is ₹ 25 Lakhs. The company has been allowed deduction of ₹ 5 Lakhs for each year for the P.Y. 2020-21 and P.Y. 2021-22 u/s 35DDA.

Explain the tax treatment of each item stated above in the hands of LLP, assuming that the conversion satisfies all the conditions laid down in section 47 (xiiib).

[January 2021, November 2016]

Answer:

Tax treatment in the hands of Sakshi LLP on conversion of Sakshi Pvt. Ltd. into Sakshi LLP:

(i) Unabsorbed depreciation of ₹ 25 lakhs

As per section 72A(6A), Sakshi LLP would be able to carry forward and set-off the unabsorbed depreciation of ₹ 25 lakhs of Sakshi Pvt. Ltd. as on 31.3.2022.

However, if subsequent to the conversion, Sakshi LLP fails to fulfill any of the conditions mentioned in section 47(xiiib), the set-off of depreciation so made in any previous year would be deemed to be the income chargeable to tax in the year in which such conditions are not complied with.

(ii) Business loss of ₹ 23 lakhs (relating to P.Y. 2015-16)

As per section 72A(6A), the business loss of ₹ 23 lakhs of Sakshi Pvt. Ltd. would be deemed to be the loss of Sakshi LLP for P.Y. 2022-23 and it would be able to set off and carry forward such loss.

The carry forward is for 8 assessment years subsequent to the assessment year 2023-24.

However, if subsequent to the conversion, Sakshi LLP fails to fulfill any of the conditions mentioned in section 47(xiiib), the set-off of business loss so made in any previous year would be deemed to be the income chargeable to tax in the year in which such conditions are not complied with.

(iii) Unadjusted MAT credit u/s 115JJAA of ₹ 6 lakhs

As per section 115JAA, in case of conversion of Sakshi Pvt. Ltd. into Sakshi LLP, the credit for MAT paid by Sakshi Pvt. Ltd. cannot be availed by the successor LLP i.e., Sakshi LLP.

(iv) Depreciation and written down value of assets

In case of conversion of Sakshi Pvt. Ltd. into Sakshi LLP, depreciation on assets shall be apportioned between the company and LLP in the ratio of the number of days for which the assets were used by them.

Total Depreciation

Plant and machinery (15%) = ₹ 12 lakhs x 15% = ₹ 1,80,000

Building (10%) = ₹ 30 lakhs x 10% = ₹ 3,00,000

In the hands of Sakshi LLP (for 275 days)

Plant and machinery (15%) = ₹ 1,80,000 x 274/365 = ₹ 1,35,123

Building (10%) = ₹ 3,00,000 x 274/365 = ₹ 2,25,205

WDV in the hands of Sakshi LLP

As per section 43(6), the actual cost of the block of assets in the hands of Sakshi LLP shall be the WDV of the block of assets as in the case of Sakshi Pvt. Ltd. on the date of conversion.

WDV of P & M (15%) = ₹ 12 lakhs – ₹ 44,877 (1,80,000 x 91/365) = ₹ 11,55,123

WDV of Building (10%) = ₹ 30 lakhs – ₹ 74,795 (3,00,000 x 91/365) = ₹ 29,25,205

Actual cost of Plant and machinery on which deduction has been allowed or is allowable to the assessee under section 35AD would be 'NIL' in the hands of Sakshi Pvt. Ltd. and Sakshi LLP.

(v) Cost of land acquired in 2001 at ₹ 60 lakhs (Market value ₹ 105 lakhs)

The cost of acquisition of land in the hands of Sakshi LLP would be the cost for which Sakshi Pvt. Ltd. acquired it, i.e., ₹ 60 lakh.

(vi) Expenditure on voluntary retirement benefit of ₹ 25 lakhs

As per section 35DDA, in case of conversion of Sakshi Pvt. Ltd. into Sakshi LLP, deduction would be available to Sakshi LLP for the remaining periods from the previous year in which conversion took place. Since deduction of ₹ 5 lakh each has been claimed by Sakshi Pvt Ltd. in P.Y. 2020-21 and P.Y. 2021-22, Sakshi LLP would be eligible for deduction of ₹ 5 lakh each for the remaining three previous years, namely P.Y. 2022-23, P.Y. 2023-24 and P.Y. 2024-25 under section 35DDA.

Question-3:

Compute the quantum of depreciation available u/s 32 & also compute WDV of the Income tax Act in respect of the following items of plant and machinery purchased by PQR Textile Ltd., which is engaged in the manufacture of textile fabrics, during the year ended 31.3.2023:

	(₹ in crores)
New machinery installed on 1.5.2022	**84**
New Windmill purchased and installed on 18.6.2022.	**22**
Item purchased after 30th November 2022:	
Lorries for transporting goods to sales depots	**3**
Fork-lift trucks, used inside factory	**4**
Computers installed in office premises	**1**
Computers installed in factory	**2**
New imported machinery	**12**

The new imported machinery arrived at Chennai port on 30.3.2023 and was installed on 3.4.2023. All other items were installed during the year ended 31.3.2023.

The company was newly started during the year. **[May 2014, Study Material]**

Answer:

"Computation of Depreciation Allowance u/s 32 for P.Y. 2022-23 and WDV as on 01.04.2023"

Particulars	Amt. (Cr.)
(1) Plant and Machinery (Block of 15% rate):	
- New machinery installed on 01-05-2022	84.00
Normal Depreciation @ 15%	12.60
Additional Depreciation @ 20%	16.80
Total Depreciation:	29.40
(a) Written Down Value as on 01.04.2023 (viz. 84 – 29.40):	54.60
(2) Plant and Machinery (Block of 15% rate) used for less than 180 days hence, depreciation is restricted 50% of allowable Depreciation):	
- Lorries for transporting goods to depots	3.00
- Fork-lift trucks, used inside a factory	4.00
	7.00
Normal Depreciations @ 7.5% (i.e. 50% of 15 % of 7 Crores)	0.53
Additional Depreciation @ 10% (i.e. 50% of 20% of 4 Crores)	0.40
Total Depreciation:	0.93
(b) Written Down Value as on 01.04.2023 (viz. 7.00 – 0.93):	6.07
Total Depreciation on plant and machinery of Block of 15% rate [(1) +(2)]:	**30.33**
Total WDV of plant and machinery of Block of 15% rate (other than new imported machinery of 12 crores not installed & put to use during the P.Y. 2022-23). [(a) +(b)]:	**60.67**
(3) Plant and Machinery (Block of 40% rate i.e. of computer) used for less than 180 days hence, depreciation is restricted 50% of allowable Depreciation):	
- Computer installed in office premises	1.00
- Computer installed in factory	2.00
	3.00

Normal depreciation @ 30% (i.e. 50% of 40% of 3 crores)	0.60
Additional Depreciation @ 10% (i.e. 50% of 20% of 2 crores)	0.20
Total Depreciation on plant and machinery of Block of 40% rate:	1.80
(c) **WDV of P&M of Block of 40% rate as on 01.04.2023 (viz. 3.00 – 0.80):**	**2.20**
(4) Plant and Machinery (Block of 40% rate i.e. new windmill) put to use for 180 days or more:	
- New windmill purchased and installed on 18.6.2022	22.00
Normal Depreciation @ 40% (i.e. 40% of 22 crores)	8.80
Additional Depreciation @ 20%	4.40
Total Depreciation on plant and machinery of Block of 40% rate:	13.20
(d) **WDV of P&M of Block of 40% rate as on 01.04.2023 (viz. 22.00 – 13.20):**	8.80
Total Depreciation on plant and machinery allowable u/s 32 [(1)+(2)+(3) +(4)]:	**44.33**
Total WDV of plant and machinery (other than new imported machinery of 12 crores not installed & put to use during the P.Y. 2022-23). [(a)+(b)+(c) +(d)]:	**71.67**

EXPLANATORY NOTES:

(1) New imported machinery was not used (even not installed) during the previous year 2022-23, therefore, it would not be eligible for normal as well as additional depreciation for A.Y. 2023-24,

(2) It may be noted that Investment in the following plant and machinery would not be eligible for additional depreciation under section 32(1)(iia):
   (a) Lorries for transporting goods to sales depots, being vehicles / road transport vehicles.
   (b) Computers installed in office premises.

(3) The Motor Vehicles Act, 1988 provides that **"vehicle" excludes, a vehicle of special type adapted for use only in a factory or in any enclosed premises.** *Therefore, fork-lift trucks used inside factory would not fall within the definition of vehicle, hence, eligible for additional Depreciation.*

Section 33AB*: Tea Development Account:-*

Question -4:

G Ltd. is engaged in the business of growing and manufacturing tea in India. For the previous year ending on 31/3/2022, its composite business profits, before allowing deduction u/s 33AB but after debiting or crediting the following amounts, is 60,00,000:

(a) Interest amounting to ₹ 2 lacs on term loan from a bank for purchase of machinery for one of its tea factories.

(b) Profit from sale of green tea leaves plucked in own gardens ₹ 2 lacs.

(c) ₹ 5 lacs written off as bad in respect of a trade debt transferred from Saraswati Tea Limited in previous year 2019-20 pursuant to a scheme of amalgamation approved by the jurisdictional High Court.

Following additional information are furnished by the management:

On 01.09.2022 it deposited a sum of ₹ 11,00,000 in the tea development account. During the previous year 2015-16 G Ltd. had incurred a business loss of ₹ 14,00,000 which has been carried

forward. On 25/01/2023, it withdraws ₹ 10lakhs from deposit account which is utilized as under:

₹ 6,00,000 for purchase on non-depreciable asset as per the scheme specified.

₹ 3,00,000 for purchase of, machinery to be installed in the office premises.

₹ 1,00,000 was spend for the purpose of scheme on 5.4.2023.

(i) You are required to determine business income of G Ltd. and the tax consequences that may arise from the above transaction in the relevant assessment year.

(ii) What will be the consequence if the asset which was purchase for ₹ 6,00,000 is sold for ₹ 8,00,000 in April 2023. [November 2014+November 2009+November 2004, Study Material]

Answer:

"Computation of Business Income of G Ltd. for the A.Y. 2022-23"

Particulars	Amount
Composite business profits before allowing deduction under section 33AB	60,00,000
Less: Profit on sale of green tea leaves plucked in own gardens is agricultural income and the same is exempt u/s 10(1)	2,00,000
Less: Deduction under section 33AB would be the lower of :	
- Amount deposited in tea development account on or before 30.9.2022 [i.e. 11,00,000]	
- 40% of profit of such business[i.e. ₹ 23,20,000, being 40% of ₹ 58,00,000]	11,00,000
	47,00,000
Less: 60% of ₹ 47,00,000, being agricultural income [as per Rule 8]	28,20,000
Business income:	18,80,000
Less: Brought forward business loss of A.Y. 2016-17 set-off as per section 72	14,00,000
Business income chargeable to tax:	4,80,000

WORKING NOTES:

(1) As per section 36(1)(iii), interest paid on term loan, which was taken for purchasing machinery for use in a tea factory i.e. used for the purpose of business, is allowable as deduction (assuming that such interest pertains after the date of first put to use of such machinery).

(2) In the case of CIT v/s T.Veerabhadra Rao, the **Supreme Court** held that the successor of a business is entitled to write off the predecessor's debt as a bad debt and claim deduction if the other conditions are fulfilled. Therefore, the assessee company is entitled to deduction in respect of debt transferred from the amalgamating company, Saraswati Tea Limited.

"Computation of business income of G Ltd .for the A.Y. 2023-24"

Particulars	Amount
The taxability of withdrawal amount i.e. 10Lacs based on their utilization is as follows :	
- ₹ 6,00,000 out of the amount withdrawn from the deposit account, utilized for purchase of non-depreciable asset as per the specified scheme.	Not taxable
- ₹ 3,00,000 being the amount utilized for purchase of machinery to be installed in the office premises is not a permissible utilization. Hence, the amount would be deemed as profit as gain of business of the P.Y. 2022-23 as per section 33AB.	3,00,000

- ₹ 1,00,000 which was spent for the purpose of scheme on 05.02.2023 would be taxable because of not utilization during the same previous year (i.e. year of withdrawn: P.Y. 2022-23). 1,00,000

The entire amount of ₹10 lakh (forming part of ₹ 11 lakh deposited in tea development account) was deducted in the assessment year 2022-23, before segregation agricultural and non agricultural income. Therefore, when any part of such amount becomes taxable, the agricultural and non agricultural portions of income must be segregated.

Accordingly, ₹1,60,000, 40% of ₹ 4,00,000 (₹3,00,000 + ₹1,00,000) would be chargeable to tax as business income and the balance ₹2,40,000, being 60% of ₹ 4,00,000 would be agricultural income exempt from tax.

(ii) Consequences, if asset purchased out of deposit account is sold during the previous year 2023-24:

Since asset is sold before the expiry of 8 years from the end of the previous year in which it was acquired, therefore, ₹6,00,000 would be deemed to be the business income (composite) for A.Y. 2024-25.

However, since the deduction was made before segregation of agricultural income and non-agricultural income, therefore, ₹3,60,000, being 60% of ₹ 6,00,000 would represent agricultural income. The balance ₹ 2,40,000 being 40% of ₹ 6,00,000 would be chargeable to tax as business income .

Moreover, the difference between the sale consideration and purchase price of the Asset would be chargeable to tax as "short terms capital gains", which the computed as follows:

Sales consideration	8,00,000
Less: Cost of acquisition	6,00,000
Short term capital gain	2,00,000

Question -5:

M/s. Gomati P Ltd., a closely held company, is in the business of growing rubber. The profit & loss account for the year ended 31-03-2023 of the company shows a net profit ₹ 37.65 crores after debiting depreciation of ₹ 30 crores.

The company has provided the following additional information:

(i) The company has deposited ₹ 30 crores in a special account with NABARD on 29-04-2023.

(ii) The company has brought forward losses of ₹ 6 crores pertaining to Assessment Year 2015-16. Mr. A who continuously held 60% of shares carrying voting power since incorporation of the company, had sold his entire holding to Mr. B on 01-08-2022.

(iii) The company had an accumulated balance of ₹ 200 crores in the special account with NABARD as on 01-04-2022. It has withdrawn ₹ 40 crores and utilized the same for the following purposes:

- **Purchase of a new sprinkling machine for use in its operation ₹ 10 crores,**
- **Purchase of office appliances for corporate office at Chennai ₹ 10 crores.**
- **Purchase of computers and accessories ₹ 5 crores.**
- **Construction of a godown at a cost of ₹ 1 crore near the rubber estate to store raw rubber.**
- **Repairs to machinery ₹ 35 lakhs.**

(iv) On 31-03-2023, the company has sold machinery which was purchased on 10-05-2015 for ₹ 10 crores. The purchase of the said machinery was in accordance with the scheme of deposit.

(v) Depreciation allowable as per Tax Audit Report is ₹ 28 crores.

➢ **Compute Taxable and Exempt income of M/s. Gomati (P) Ltd.** **[May 2018]**

Answer:

"Computation of Taxable and Exempt Income of M/s Gomati (P) Ltd. for the A.Y. 2023-24"

Particulars		₹
Net profit as per Profit and Loss Account		37,65,00,000
Add: Excess depreciation as per books of account:	₹	
Depreciation as per books of account	30,00,00,000	
Less: Depreciation allowable as per the I.T. Act	28,00,00,000	2,00,00,000
Net profit before allowing deduction under section 33AB:		39,65,00,000
Less: Deduction under section 33AB would be the lower of:		
Amount deposited in Rubber Development Account on or before 30.9.2023 [i.e., ₹ 30,00,00,000]		
40% of profits of such business [i.e., ₹ 15,86,00,000, being 40% of ₹ 39,65,00,000]		15,86,00,000
Net profit after allowing deduction under section 33AB:		**23,79,00,000**
Add: Amount withdrawn from special account with NABARD, which is deemed as profits and gains of business or profession		
(i) Purchase of a new sprinkling machine for use in its operation for ₹ 10 crores, would not be deemed as profits and gains of business or profession, since the said amount is utilized as per the specified scheme.		Nil
(ii) Purchase of office appliances for corporate office at Chennai for ₹ 10 crores, out of the amount withdrawn from the deposit account, would be deemed as profits and gains of business or profession, since the said utilization is not permissible.		10,00,00,000
(iii) ₹ 5 crores utilized for purchase of computers and accessories is permissible. Thus, such amount would not be deemed as profits and gains of business or profession.		Nil
(iv) ₹ 1 crore utilized for construction of a godown near rubber estate to store raw rubber, would not be deemed as profits and gains of business or profession, since the said amount is utilized as per the specified scheme.		Nil
(v) ₹ 35 lakhs utilized for repairs to machinery would not be deemed as profits and gains of business or profession, since the said amount is utilized as per the specified scheme.		Nil
Note - However, no deduction would be allowed in respect of such expenditure mentioned in (i), (iii), (iv) and (v) during the P.Y. 2022-23, since amount is spent out of the amount deposited in special account with NABARD, which has already been allowed as deduction in an earlier assessment year.		

(vi) The remaining amount of ₹ 13.65 crores {₹ 40 crores less ₹ 26.35 crores [utilized above in (i) to (v)]}, which is not utilised during the previous year in which such amount is withdrawn, would be deemed as profits of business or profession.	13,65,00,000
Add: Sale of machinery acquired out of the amount withdrawn from special account in accordance with the scheme of deposit. The cost of such machinery would be deemed as profits and gains of business or profession, since such machinery is sold before the expiry of eight years from the end of the previous year of its acquisition.	10,00,00,000
Total composite business profits:	**57,44,00,000**
Less: 65% of ₹ 57,44,00,000, being agricultural income exempt	37,33,60,000
Business income:	**20,10,40,000**
Less: Brought forward business loss of ₹ 6 crores pertaining to A.Y. 2015-16 not allowed to be set-off against the business profits of the P.Y. 2022-23, since as on 31.3.2023, the shares of M/s Gomati P Ltd carrying 60% (i.e., not less than 51%) of the voting power is held by Mr. B and not by Mr. A, being the person who held such shares as on 31.03.2015, being the last day of previous year 2014-15, in which such loss was incurred.	-
Business income chargeable to tax:	**20,10,40,000**

Section 35D: *Amortisation of certain preliminary expenses:-*

Question –6:

Rama Cements Ltd. is a company engaged in the manufacturing of cement. The company issued 20 lakh equity shares of ₹ 100 each to the general public. The shares were issued at a premium of ₹ 150 per share. The assessee claimed deduction under section 35D in respect of preliminary expenses at 5% of capital employed and added the amount of share premium to the capital employed to arrive at 5% as eligible amount of deduction under section 35D. The Assessing Officer however, disallowed the said expenditure on the basis that capital employed does not include the share premium amount. Is the action of the Assessing Officer tenable in law?

[November 2020 (New Course)]

Answer:

The issue under consideration is whether "premium" on subscribed share capital can be treated "capital employed in the business of the company" u/s 35D to be eligible for increased deduction u/s 35D.

The share premium collected by Rama Cements Ltd. on its subscribed share capital would not be part of "capital employed in the business of the company" for the purpose of section 35D.

If it were the intention of the legislature to treat share premium as being "capital employed in the business of the company", it would have been explicitly mentioned.

Moreover, the provisions of the Companies Act, 2013 dealing with capital structure of the company provides the break-up of "issued share capital" and "subscribed share capital" which does not include share premium at the time of subscription.

Also, section 52 of the Companies Act, 2013 requires a company to transfer the premium amount to be kept in a separate account called "securities premium account".

Hence, in the absence of the reference in section 35D, share premium is not a part of the capital employed and increased amount of deduction due to inclusion of securities premium in capital employed would not be allowed u/s 35D.

However, the contention of the Assessing Officer to disallow the whole of the said expenditure claimed under section 35D is not tenable in law, since only to the extent of 5% of the share premium included by the assessee in capital employed, is not allowable. In other words, the deduction otherwise allowable as per the provisions of section 35D cannot be denied.

Note: The facts of the case are similar to the facts in **Berger Paints India Ltd v/s C**IT (2018), wherein the above issue came up before the Apex Court. The above answer is based on the rationale of the Supreme Court in the said case.

Section 37: *General Deductions:-*

Question - 7:

X & Co. Diagnostic Centre P Ltd. has claimed referral fee paid to doctors as revenue expenditure for the assessment year 2023-24. Tax has been deducted under section 194H of the Income - tax Act, 1961 for the said payments. The Assessing Officer proposes to disallow such expenditure.

Examine the correctness of the action of the Assessing Officer. [May 2014]

Answer:

As per Explanation to section 37, where **expenditure incurred for any purpose which is an offence or which is prohibited by law** shall not be allowed.

As per new additional Explanation as has been added by the Finance Act, 2022, **"expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law"** under the aforesaid Explanation, **shall include the expenditure incurred by an assessee,—**

(i) for any purpose which is an offence under, or which is prohibited by, any law for the time being in force, **in India or outside India**; or

(ii) to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person; or

(iii) to compound an offence under any law for the time being in force, in India or outside India.

- As per the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, *no physician shall give, solicit, receive or offer to give, solicit or receive any gift, gratuity, commission or bonus in consideration of a return for referring any patient for medical treatment.* ***The demand as well as payment of such referral fee is bad in law. It is not a fair practice and is opposed to public policy.***
- Applying the rationale and considering the purpose of section 37, the assessee would not be entitled to deduction of such payments made in contravention of law or opposed to public policy or have pernicious

consequences to the society as a whole. The fact of tax deduction u/s 194H is of no consequence.

Thus, the action of the Assessing Officer in disallowing the referral fee paid by X & Co. Diagnostic Centre P. Ltd. to doctors is correct**.**

Question - 8:

SRM Tech Ltd. is engaged in the manufacture of multi-layer tubes and other specialty packaging and plastic products. It came out with an initial public issue of shares during the relevant assessment year and deposited the share application money received in banks. The share capital was received by the SRM Tech Ltd. to meet capital expenditure for setting up of its factory. As the funds were not immediately required, it made temporary deposits with bank which earned interest. This interest income of ₹ 1.71 crores was treated as abatement of capital cost of the project/factory by the company and set off such interest earned against public issue expenses, in the books of account. The AO is of the opinion that the same should be treated as revenue receipt and taxed the same as income from 'Other Sources'. Decide the correctness of action of the Assessing Officer. [May 2019]

Answer:

The issue under consideration is whether the interest income from share application money is taxable under the head 'Income from Other Sources', or can the same be set-off against public issue expenses.

The assessee-company is statutorily required to keep share application money in a separate account till the allotment of shares was completed. Part of the share application money would normally have to be returned to unsuccessful applicants, and therefore, the entire share application money would not ultimately be appropriated by the company. The interest earned was inextricably linked with the requirement of raising share capital.

Any surplus money deposited in the bank for earning interest is liable to be taxed as "Income from Other Sources". However, the share application money is deposited with the bank not to make additional income but to comply with the statute. The interest accrued on such deposit is merely incidental.

Moreover, the issue of shares relates to capital structure of the company and hence, expenses incurred in connection with the issue of shares are to be capitalized.

Thus, the contention of the Assessing Officer that the interest accrued by SRM Tech Ltd. of ₹ 1.71 crores on deposit of share application money with bank is taxable as income from other sources is **not correct**. Such interest is eligible for set off against the public issue expenses and hence, not taxable as "Income from Other Sources"

Notes:

The facts of the case are similar to the facts in **CIT v/s Sree Rama Multi Tech Ltd. [2019]**, wherein the above issue came up before the Apex Court. The above answer is based on the rationale of the Supreme Court in the said case.

Alternative Answer:

The facts given in the question do not mention about the statutory requirement of deposit of application money. Also, it states that the share capital was received by SRM Tech Ltd. to meet the capital

expenditure for setting up its factory. Reference to share capital instead of share application money appears to indicate that the process of allotment is complete. Furthermore, it is mentioned that as the funds were not immediately required, the company made temporary deposits with bank which earned interest.

Due to these reasons, it is possible to take a view that interest earned on temporary deposit of share capital (and not share application money) with bank, which is to be used to meet the capital cost of factory, is deductible from the cost of the asset(s). It was so held by the Karnataka High Court in **Pr Commissioner Of Income Tax vs M/S Bank Note Paper Mill India Pvt. Ltd.**

Even if this view is taken, the contention of the Assessing Officer would be **incorrect.**

Section 40(a): *Amounts not deductible:-*

Question - 9:

R Limited transferred a building worth ₹ 25 lakhs to the Chief Executive Officer, Mohan Lal, a resident individual on his retirement under an agreement for not carrying on any activity related to its business for a period of five years. In course of assessment under section 143(3), the Assessing Officer found that no tax had been deducted at source by R Limited and on that ground, he disallowed the expenditure by invoking the provision of section 40(a)(ia).

Examine the correctness of the action of the Assessing Officer. [November 2010]

Answer:

As per section 40(a)(ia), non-deduction of tax at source in respect of ANY SUM payable to a resident will attract 30 % disallowance.

In the case of M/s. Asianet Communications Ltd., the **Madras High court** has held that on account of the payment of non-compete fee, the company does not acquire any business, the profit- making apparatus remains the same and there is no new business or new source of income and therefore, **the expenditure has to be treated as revenue in nature.**

In view of the aforesaid ruling, **disallowance will be attracted in respect of 30% of ₹100 lakhs (i.e. non-compete fee as claimed by assessee as revenue expense)** if tax is not deducted at source u/s 194J. Therefore, the action of the Assessing Officer will be correct to the extent of 30% disallowance of ₹100 lakhs since tax which is required to be deducted at source u/s 194J has not been deducted.

However, in the case of Ferromatic Milacron India Pvt. Ltd., the **Gujarat High court** has held that **right acquired by the assessee by payment of non-compete fee is in the nature of an intangible asset and eligible for depreciation u/s 32.**

In view of the aforesaid ruling, in respect of **depreciation** (as claimed by assessee) **on payment of non-compete fee, no disallowance will be attracted** as it is a payment of capital nature even if tax is not deducted at source u/s 194J.

Question - 10:

Anil Food Products (P) Ltd. is engaged in manufacturing and selling various food products. It engaged two transporters for carrying its products to various distributors. In previous year 2022-23, it made payments to two transporters towards freight charges without deduction of tax at source. In course of assessment, the Assessing Officer disallowed 30% freight charges invoking section 40(a)(ia)

for failure to deduct tax at source. The assessee contends that section 40(a)(ia) is not applicable as the amount of freight was not 'payable' at the year-end, but had been actually paid during the previous year. Examine the correctness of the contention of the assessee.

Your answer should cover these aspects: (i) Issue involved, (ii) Provisions applicable, (iii) Analysis and (iv) Conclusion. [November 2018]

Answer:

Issue Involved:

The issue under consideration is whether section 40(a)(ia) would be attracted on the amount of freight which was not 'payable' at the year end but has been actually paid during the previous year.

Provision applicable:

Non-deduction of tax at source on any sum payable to a resident on which tax is deductible at source would attract disallowance of 30% of such sum under section 40(a)(ia).

Analysis:

Section 40(a)(ia) covers not only those cases where the amount is payable but also when it is paid. The obligation to deduct tax at source is mandatory and applicable irrespective of the method of accounting adopted. If the assessee follows the mercantile system of accounting, then, the moment amount was credited to the account of the payee on accrual of liability, tax was required to be deducted. If the assessee follows cash system of accounting, then, tax is required to be deducted at source at the time of making payment.

Section 40(a)(ia) would be attracted for failure to deduct tax in both cases i.e., when the amount is payable or when the amount is paid, as the case may be, depending on the system of accounting followed by the assessee.

Conclusion:

The contention of Anil Food Products (P) Ltd. that the provisions of section 40(a)(ia) would not be attracted on the amount of freight which was not 'payable' at the year end but has been actually paid during the previous year is, thus, not correct.

Note:

The facts of the case are similar to the facts in **Palam Gas Service v/s CIT**, wherein the above issue came up before the Apex Court. The above answer is based on the rationale of the Supreme Court in the said case. The CBDT has also issued Circular No.10/2013 clarifying that the provisions of section 40(a)(ia) would cover not only the amounts which are payable on 31st March of a previous year, but also amounts which are payable at any time during the year. The circular also clarifies that in the context of section 40(a)(ia), the term 'payable' would include 'amounts which are paid during the previous year'.

Question - 11 :

Nikanu Ltd. is an Indian Company involved in manufacturing and trading in cotton garments under the brand name "PCOTT". In order to expand its exports sale, it launched a massive publicity campaign in overseas market. For the purpose of online advertising, it hired the Sky Inc., a New York based company which has no permanent establishment in India and paid ₹ 10 lakhs for its services in the previous year 2022-23.

Discuss the tax and TDS implications of such transaction both in the hands of Nikanu Ltd. and Sky Inc. [May 2018]

Answer:

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

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

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

Question - 12:

M/s. Raghuram Co. Ltd., Mumbai entered into the following agreements with various non-resident entities during the previous year 2022-23:

(i) Paid ₹ 4,00,000 to M/s. Neil Inc., a company based in USA for online advertisement of its products. M/s. Neil Inc., does not have a PE in India.

(ii) Paid ₹ 50,000 to Mr. David, a non-resident individual, against providing digital space for online advertisement of its products.

(iii) Paid ₹ 1,55,000 to M/s LOX Ltd., for providing a platform for sale of its used furniture items. M/s. LOX Ltd., is a company based in New Zealand and does not have a PE in India.

Discuss the relevant provisions of Income-tax Act, in respect of such agreements and also state the tax implications of such payments. [May 2020]

Answer:

- Chapter VIII of the Finance Act, 2016, 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 (PE) in India, from a resident in India who carries out business or profession, or from a non-resident having PE in India. "Specified services" means -

(i) Online advertisement;

(ii) Any provision for digital advertising space or any other facility or service for the purpose of online advertisement;

(iii) Any other service as may be notified by the Central Government.

However, equalization levy is not chargeable where the aggregate amount of consideration for specified service received or receivable in a previous year by the non- resident from a person resident in India and carrying on business or profession, or from a non-resident having a PE in India, does not exceed ₹ 1 lakh.

Further, equalization levy is not attracted where payment for specified service is not for the purposes of carrying out business or profession.

(i) In this case, equalisation levy @6% is chargeable on the amount of ₹ 4,00,000 received by M/s Neil Inc., a non-resident not having a PE in India, from M/s Raghuram Co. Ltd., an Indian company for

online advertisement of its products. Accordingly, M/s Raghuram Co. Ltd. is required to deduct equalisation levy of ₹ 24,000 i.e., @6% of ₹ 4 lakhs, being the amount paid towards online advertisement services provided by M/s Neil Inc.

Non-deduction of equalisation levy would attract disallowance under section 40(a)(ib) of 100% of the amount paid to M/s. Neil Inc. while computing business income of M/s. Raghuram Co. Ltd.

(ii) In this case, equalisation levy is **not** chargeable as the amount of consideration of ₹ 50,000 for digital space for online advertisement paid to Mr. David does not exceed ₹ 1,00,000.

(iii) In this case, equalisation levy is **not** chargeable on the amount of ₹ 1,55,000 received by M/s LOX Ltd., a non-resident not having a PE in India, from M/s Raghuram Co. Ltd., an Indian company, since the said payment was for providing a platform for sale of its used furniture items and not for the purposes of carrying on business or profession.

Question - 13:

Raghu Ltd. made a payment of ₹ 3,00,000 on 30-6-2022 towards procuring online advertisement space to a foreign company which had no place of business in India. The company remitted the equalization levy on 23-3-2023. Calculate interest and penalty payable by Raghu Ltd., if any.

[May 2020]

Answer:

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

In this case, the payment of ₹ 3 lakhs by Raghu Ltd., a resident in India (since it is an Indian company) to a foreign company not having PE in India, for online advertisement space would be subject to Equalisation Levy @ 6%.

Raghu Ltd. is required to deduct equalisation levy of ₹ 18,000 i.e., @ 6% of ₹ 3 lakhs from such payment and such equalisation levy shall be paid to the credit of the Central Govt. by the 7th day of the month immediately following the month in which such levy is deducted.

In case of delayed payment of equalisation levy, **Raghu Ltd. will be liable to pay:**

(1) **Interest @ 1%** per month or part of a month on unpaid equalisation levy comprising the period from 8th day of the month following the month of deduction to the date of deposit to the account of the Central Government, which will be computed as follows:

₹ 18,000 × 1% × (8th July 2022 to 23rd March 2023 i.e. 9 months) = ₹ 1,620;

(2) **Penalty of ₹ 1,000** is leviable for every day during which the failure continues viz. 8th day of the month following the month of deduction to the date of deposit to the account of the Central Govt. However, such penalty shall not exceed the amount of equalisation levy that he failed to pay.

Quantum of penalty: ₹ 1,000 × 260 days (i.e. 8th July 2022 to 23rd March 2023)

= ₹ 2,60,000, but this figure shall be restricted to ₹ 18,000 i.e. amount of equalisation levy.

Final leviable amount of penalty is ₹ 18,000.

Question -14:

XYZ Ltd., an Indian company, to expand its overseas sales/exports, launched a massive advertisement campaign of its products. For the purpose of online advertisement, it utilized the services of MNO Inc., a London based company and JKL Inc., an Australian company. MNO Inc. has a permanent establishment in India, and the service is effectively connected to the permanent establishment in India. JKL Inc. has no permanent establishment in India. During the previous year 2022-23, XYZ Ltd. paid ₹ 3 lakhs to MNO Inc. and ₹ 2 lakhs to JKL Inc. for such services.

Discuss the tax implications/TDS implications of such payment and receipt in the hands of XYZ Ltd., MNO Inc. and JKL Inc. [January 2021]

Answer:

On payment to MNO Inc.

Equalisation levy would not be attracted where the non-resident service provider (MNO Inc., in this case) has a permanent establishment in India and the service is effectively connected to the permanent establishment in India. Therefore, the XYZ Ltd. is not required to deduct equalisation levy on ₹ 3 lakhs, being the amount paid towards online advertisement services to MNO Inc, in this case.

However, tax has to be deducted by XYZ Ltd. at the rates in force under section 195 in respect of such payment to MNO 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.

MNO Inc. is chargeable to income-tax in respect of ₹ 3 lakhs received from XYZ Ltd. @40% and it can claim credit of tax deducted at source by XYZ Ltd.

On payment to JKL Inc.

Equalisation levy of 6% is attracted in respect of the amount of consideration for, inter alia, online advertisement, received or receivable by a non-resident not having permanent establishment in India, from, inter alia, a resident in India, if such consideration exceeds ₹ 1 lakh.

In this case, XYZ Ltd. is required to deduct equalisation levy of ₹ 12,000 i.e., @6% of ₹ 2 lakhs, being the amount paid towards online advertisement services provided by JKL 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.

Section 10(50) provides that any income arising from providing any specified service on or after the date on which the provisions of Chapter VIII of the Finance Act, 2016 comes into force, and chargeable to equalisation levy under that Chapter would be exempt from income-tax. Therefore, ₹ 2 lakh is exempt from income-tax in the hands of JKL Inc.

Question -15:

Atiwna Inc., a non-resident company incorporated in U.S., engaged in manufacturing of computer hardware and software. It also owns an online social networking site, Friendszone. It exports its products globally including India for which it owns a warehouse in Mumbai. Ari Ltd., an Indian Company, imports computer hardware and software from Atiwna Inc. During the previous year 2022-23, Ari Ltd. did not import any article from Atiwna Inc. but paid ₹ 5,45,000 (Date of

payment 23rd June, 2022) to Atiwna Inc. for advertising its business on the platform of Friendszone. However, Ari Ltd., neither deducts TDS nor equalisation levy on such payments. You are required to discuss whether Ari Ltd. is required to deduct equalisation levy or TDS on such payment? If yes, then discuss the consequences of non deduction of such levy in the hands of Ari Ltd.

[July 2021]

Answer:

Equalisation levy @6% is leviable on the amount of consideration for specified services received or receivable by a non-resident, from a resident in India who carries out business or profession, or from a non-resident having permanent establishment in India. Specified services includes online advertisement.

Equalisation levy is not chargeable, where –

(a) the non-resident providing the specified service has a PE in India and the specified service is effectively connected with such PE;

(b) the aggregate amount of consideration for specified service received or receivable during the previous year does not exceed ₹ 1 lakh; or

(c) where the payment for the specified service is not for carrying out business or profession.

In the present case, during the P.Y. 2022-23, Atiwna Inc., a non-resident, provides online advertisement service to Ari Ltd., a resident, for its business and the aggregate amount of consideration is ₹ 5,45,000 i.e, exceeding ₹ 1 lakhs. Atiwna Inc. owns a warehouse in India which constitutes its PE in India.

However, the online advertisement services are not effectively connected with such PE, which is a warehouse for storage of computers.

Hence, equalisation levy @6% is chargeable on the amount of ₹ 5,45,000 received by Atiwna Inc. from Ari Ltd. Accordingly, Ari Ltd. is required to deduct equalisation levy of ₹ 32,700 i.e., @6% of ₹ 5.45 lakhs, being the amount paid towards online advertisement services provided by Atiwna Inc.

Consequences of non-deduction of equalisation levy in the hands of Ari Ltd.

(1) Ari Ltd. is, in any case, liable to pay the levy to the credit of the Central Government.

(2) Non-deduction of equalisation levy would attract disallowance under section 40(a)(ib) of 100% of the amount paid while computing business income of Ari Ltd.

(3) Penalty equal to ₹ 32,700, being the amount of equalisation levy would be leviable on Ari Ltd.

Question -16:

Your answer should cover these aspects:

(i) Issue Involved (ii) Provisions Applicable, (iii) Analysis and (iv) Conclusion

M/s. XYZ.com, an e-commerce operator, incorporated in China has no physical presence in India. It has no permanent establishment in India.

(a) It sells goods worth ₹ 1.20 crores to Indian residents.

(b) Service provided to persons resident in India by way of sale of online advertisement. When amount of bill (or aggregate amount of bills) to a recipient of service during the financial year does not exceed ₹ 1 lakh per recipient of service (Gross amount of all bills is ₹ 70 lakhs).

(c) Service provided to non-residents by way of sale of online advertisements, which target resident

Indian customers, amounting to ₹ 20 lakhs.

The above data pertains to financial year 2022-23. Discuss the implications of Equalisation levy on XYZ.com for the Assessment year 2023-24. [December 2021]

Answer:

(1) Equalisation levy @ 2% is attracted on the amount of consideration received or receivable by an e-commerce operator from e-commerce supply or services made or provided or facilitated by it, inter alia, -

- to a person resident in India; or
- to a non-resident in specified circumstances, which include sale of advertisement targeting a customer who is resident in India.

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

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

(i) XYZ.com has a PE in India; or

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

(iii) The sales/turnover/gross receipts of XYZ.com from taxable e-commerce supply or services is less than ₹ 2 crore in the current previous year i.e., P.Y.2022-23.

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

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

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

(iii) The sales/turnover/gross receipts of XYZ.com from taxable e-commerce supply or services exceeds ₹ 2 crore in the current previous year i.e., P.Y.2022-23 (Working given below)

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

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

Question -17:

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 previous year 2022-23, Sun Ltd. paid ₹ 5 lakh to Shine Inc. for such services and deducted the equalization levy on 15.03.2023 and credited it to the account of Central Government on 15.04.2023.

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?

[May 2022]

Answer:

(i) Interest for delayed remittance of equalization levy:

Equalisation levy = 6% of ₹ 5 lakh = ₹ 30,000

The equalization levy deducted on 15.3.2023 has to be paid to the credit of the Central Government by 7.4.2023 (i.e., 7th of the succeeding month).

However, in this case, Sun Ltd. remitted the same only on 15.4.2023. 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.

Section 41(1): *Deemed Income:-*

Question- 18:

M/s Jonga and Jonga decided to expand its jeep product line and entered into an agreement with K Inc., an American company, which agreed to sell it dies, welding equipment and die models. The purchase consideration was agreed at $ 65000 including cost, insurance and freight and K Inc., agreed to advance a loan to the assessee at 6% interest per annum repayable after 10 years in instalments. The Reserve Bank of India and the concerned Ministry approved the loan agreement.

Later on, XL Inc., took over K Inc., and agreed to waive the principal amount of loan advanced by K Inc., to Jonga and Jonga and to cancel the promissory notes as and when they matured. This was communicated to the assessee-company which filed its return showing ₹ 35 Lakh as cessation of liability in its books of account.

The Income-tax Officer concluded that the waiver of the loan amount represented income and held that the sum of ₹ 35 Lakh is taxable u/s 28(iv) as income. The alternate argument of the Revenue authorities was that the sum would be taxable u/s 41(1) as a waiver of a trading liability.

Examine the validity of Assessing Officer's action. [May 2019]

Answer:

The issue under consideration is whether the sum due by the assessee, M/s. Jonga and Jonga, to K Inc, which has been waived off later on by XL Inc. (which took over K Inc.), constitutes taxable income in the hands of the assessee.

As per section 28(iv), the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of the profession is chargeable to tax under the head "Profits and gains from business or profession".

Where an allowance or deduction has been made in any assessment year in respect of trading liability incurred by assessee and the assessee has obtained some benefit in respect of such trading liability by way of remission or cessation thereof, then, the value of benefit accruing to him shall be taxed as business income under section 41(1) of that previous year

For applicability of section 28(iv), income must arise from business or profession and the benefit received has to be in non-monetary form. In the instant case, the amount of ₹ 35 lakh, being a cash receipt, therefore, does not fall under section 28(iv).

Further, for being covered under section 41(1), the assessee-company should have claimed an allowance or deduction in any assessment for any year in respect of a trading liability incurred by the assessee. Subsequently, during any previous year, if the creditor waives such liability, the assessee-company would be liable to pay tax under section 41.

In the instant case, the loan was taken for procurement of capital assets, namely, plant, machinery and tooling equipment. The purchase amount had not been debited to the trading account or to the profit and loss account in any of the assessment years. Hence, waiver of such loan would not tantamount to cessation of a trading liability.

Thus, the action of Assessing Officer is not correct. The amount of loan waived would not be taxable either under section 41(1) or under section 28(iv).

Notes:

(1) As per section 2(24)(xviii), assistance in the form of waiver by the Central Government or State Government or any authority or body or agency in cash or kind to the assessee would be included in the definition of "income". In this case, the waiver is by a foreign company, and hence, is not included within the scope of definition of "income" under section 2(24).

Further, it may be noted that as per Explanation 10 to section 43(1), deduction on account of, subsidy or grant or reimbursement, by whatever name called, received from any person has to be made while computing actual cost. Since waiver has not been expressly included in the said Explanation, it is possible to take a view that the same is not deductible while computing the actual cost. However, if a view is taken that "waiver" is included within the scope of the phrase "by whatever name called" in the said Explanation, then, the same has to be deducted while computing actual cost.

(2) The facts of the case are similar to the facts in **CIT v/s Mahindra and Mahindra Ltd. [2019]**, wherein the above issue came up before the Apex Court. The above answer is based on the rationale of the Supreme Court in the said case.

Section 44B: *Special Provision for computing income of Shipping business in case of NR :-*

Question- 19:

Sea Port Shipping Line, a non-resident foreign company operating its ships on the Indian ports during the previous year ended on 31.3.2023 had collected freight of ₹ 100 lacs, demurrages of ₹ 20 lacs and handling charges of ₹ 10 lacs inclusive of an amount of ₹ 40 lacs collected in US dollars for the cargo booked for JNPT (Mumbai) from Antwerp. The expenses of operating its fleet during the year for the Indian Ports were ₹ 110 lacs. The company denies its liability to tax in India. Examine.

[November 2009]

Answer:

The provisions of section 44B would apply in this case. This section 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 for carriage of passengers, livestock, mail or goods shipped at any port in India.

(ii) The amount received or deemed to be received in India by the assessee himself or by any other person on his behalf for carriage of passengers, livestock, mail or goods shipped at any port outside India.

✓ *The above amounts will include demurrage charges and handling charges.*

Therefore, in this case, M/s Sea Port Shipping Line is required to pay tax in India on the basis of presumptive tax 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 @7.5 % on the total receipts of ₹ 130 lacs i.e. ₹ 9.75 lacs.

NOTE: If the cargo booked for JNPT (Mumbai) from Antwerp is not received in India, then such freight shall not be included for calculating presumptive income.

Question – 20:

Can brought forward losses and unabsorbed depreciation be set off against the profit determined under section 44B. **[May 2011, Study Material]**

Answer:

Section 44B overrides the provisions of section 28 to 43A (including section 32 relating to depreciation) but not overrides Chapter VI (i.e. Set-off Chapter).

Therefore, From out of profit determined u/s 44B, the assessee is entitled to claim adjustment of business loss of past years, which have been carried forward against its business income computed under the said section.

However, it is not open to the assessee to put unabsorbed depreciation carried forward in the same

bracket as carried over business loss and also seek adjustment of the same.

This view was endorsed by the Calcutta High Court in ***Universal Cargo carriers Inc. v/s CIT.***

Section 44BBA: *Special Provision for computing income of Airline business for NR :-*

Question- 21:

Mr. X, a non-resident, operates an aircraft between Singapore and Chennai. He received the following amounts in the course of the business of operation of aircraft during the year ending 31.3.2023:

(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. X for the purposes of the business during the year ending 31.3.2023 was ₹ 6.75 crores.

Compute the income of Mr. X chargeable to tax in India under the head "profits and gains of business or profession" for the assessment year 2023-24.

[May 2018, Similar Question in May 2019 on Section 44B]

Answer:

Section 44BBA, overrides sections 28 to 43A, incorporates special provisions for computing profits and gains of the business of operation of aircraft in the case of non-residents.

As such, the business income of Mr. X is required to be computed in accordance with the provisions of section 44BBA.

Under section 44BBA, a sum equal to 5% of the aggregate of the following amounts is deemed to be the profits and gains chargeable to tax under the head Profits and gains of business or profession–

(a) The amount 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) The amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mails or goods from any place outside India.

➢ Keeping in view the provisions of section 44BBA, the income of Mr. X chargeable to tax in India under the head "profits and gains of business or profession" is worked out hereunder –

	₹
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 u/s 44BBA at 5% of ₹ 7,00,00,000 is ₹ 35,00,000, which is the income of Mr. X chargeable to tax in India under the head "PGBP" for the A.Y. 2023-24.

Section 44C: *Deduction of Head Office expenditure in the case of non-residents:-*

Question - 22:

The net result of the business carried on by a branch of a foreign company in India forthe financial year ended 31.03.2023 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. 2022-23 of ₹ 25 lakhs.**
vi. **Deductions under Chapter VI-A of ₹ 20 lakhs.**
vii. **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 2023-24.**

[November 2020 (New Course]

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 for A.Y. 2023-24:	₹
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**

"MULTIPLE CONCEPTS BASED QUESTIONS"

Question - 23:

The net profit of ₹ 200 lacs as per P&L Account of "SIMRAN ENTERPRISES", a partnership firm engaged in running hotel business, for the year ended 31.3.2023 has been arrived at after charge of the following:

(i) Depreciation on the hotel building having WDV of ₹ 600 lacs on 1.4.2022 was charged by treating the same as Plant and machinery.

(ii) Expenses of ₹ 2,00,000 incurred for the purpose of promoting family planning among its employees.

(iii) Payment of ₹ 1,00,000 for an advertisement published in the souvenir released on 26th January by a political party approved by the Election Commission.

(iv) Compensation of ₹ 2,00,000 paid to the suppliers of automatic kitchen appliances because of termination of the contract.

(v) Wine and liquor imported in the year 2019-20 for ₹ 30 lacs and available in the stocks on 01.04.2022, having value of ₹ 10 lacs, were confiscated by the government authority and thus, were written off.

(vi) Expenses of ₹ 30 lacs incurred on the replacement of carpets in the lounge, dining hall and at the reception desk areas.

The firm has also provided the following additional information and the details relating to the expenses charged in the P&L Account:

(i) Amount of ₹ 4 lacs equal to US $ 8,000 was remitted and paid to a travel agent of USA as commission for the booking of travelers from USA. Tax at source was not deducted out of such payment.

(ii) Amount of ₹ 30,000 each was paid in cash to four suppliers of vegetable and milk products on 11.7.2022 due to suspension of the banking operations because of all India strike of bank employees.

(iii) Amount of ₹ 6 lacs were written off in the F.Y. 2011-12 as bad debt. However, with constant follow up and efforts, an amount of ₹ 3 lacs was recovered on 18-3-2023 out of the total written off amount, and the same was credited to the "Bad debts Reserve" account.

☞ **Compute the total income of the firm for A.Y. 2023-24 and also give reasons in brief for the treatment given to each of the items. [November 2013]**

Answer:

"Computation of total income of M/s Simran Enterprises for the A.Y. 2023-24"	₹
Income from business and profession:	
Net profit as per profit and loss account	2,00,00,000
Add: Items charged in profit and loss account which are not allowable:	

Excess depreciation on building @ 5% (i.e.15% -10%) on ₹ 600 lacs (See W. N. 1)	30,00,000	
Expenses on promoting family planning amongst the employees (See W. N. 2)	2,00,000	
Advertisement in souvenir of a political party (See W. N. 3)	1,00,000	
Compensation paid to a supplier of kitchen appliances (See W. N. 4)	2,00,000	
Cash to four suppliers of vegetable and milk products (See W. N. 8)	1,20,000	36,20,000
		2,36,20,000
Add: Recovery of bad debts chargeable u/s 41(4) (See W. N. 9)		3,00,000
Total Income:		2,39,20,000

WORKING NOTES:-

(1) Hotel building does not constitute plant and therefore, the excess depreciation charged in the profit and loss account @ 5% (15% - 10%) has to be added back.

(2) Expenses on promoting family planning amongst employees is allowable u/s 36(1)(ix) only to a company. In this case, assessee is a firm, such expenses are not allowable and hence added back.

(3) Advertisement of any nature given in a magazine / souvenir published by a political party is not allowable as per section 37(2B). Moreover, for allowing deduction from GTI, theme of deemed contribution, as applicable in case of company, will not work here.

(4) Compensation paid for breach of a contract for supply of a capital asset is in the nature of capital expenditure. Hence, the same has to be disallowed and added back.

(5) **Loss of stock-in-trade has to be considered as a trading loss.** Section 37 is not relevant here since it is not a case of business expenditure but one of business loss. Business loss is allowable on ordinary commercial principles **[Dr. T.A. Quereshi v/s CIT (2006)(SC)].**
Therefore, since wine and liquor formed part of stock in trade of the firm, confiscation of the same has to be allowed as a business loss. Since already debited, no adjustment is required.

(6) The expenditure incurred on replacement of carpets by a hotel is an expenditure incurred for the purposes of business and is hence, revenue expenditure allowable as deduction u/s 37. Since the same has already been debited to profit and loss account, no further adjustment is required.

(7) The payment of commission to a non-resident outside India without deduction of tax at source is an allowable expense, as there is no income accruing or arising to the non-resident in India and the commission was remitted and paid to him outside India in foreign currency.

(8) The cash payments totaling ₹ 1,20,000 made on the day when bank employees were on strike is not an exception after amendment in Rule 6DD. Therefore, disallowance u/s 40A(3) will be attracted.

(9) The recovery of a debt, which was earlier written off and allowed as deduction u/s 36(1)(vii), is chargeable to tax u/s 41(4) in the year of such recovery. Accordingly, such amount has to be added.

Question - 24:

Preetam Motors Limited is engaged in manufacturing and selling of cars, having an annual turnover of ₹5000 Lakhs. The net profit of the company as per Profit and Loss account for the year ended 31st March, 2023 is ₹150 Lakhs, after debiting or crediting the following items:

(i) One time License fee of ₹ 20Lakhs paid to a foreign company obtaining franchise on 10.06.2022.

(ii) Dividend of ₹12 Lakhs received from a foreign company in which the company holds 32% of equity share capital of the company. ₹50,000 was also expended on earning this income.

(iii) ₹6 lakhs paid to H Ltd. towards feasibility study conducted for examining proposals for technological advancement relating to existing business; however, the project was abandoned without creating a new asset.

(iv) Payments due to railways for use of the assets for transportation of cars during F.Y. 2022-23, the company is likely to make the payment in the month of December 2023 ₹2 Lakhs.

(v) Contributions made to an approved research association used for the purpose of research in social science or statistical research under section 35(1)(iii) ₹1 lakh.

(vi) Deprecation charged to the statement of profit and loss account ₹20 Lakhs.

(vii) The opening and closing stock for the year were ₹90 Lakhs and ₹68 lakhs, respectively. They were overvalued by 10%.

(viii) Payment of ₹18,000 and ₹12,000 by cash on 15th February, 2023 by two separate vouchers to a contractor who carried out work at office premises.

(ix) Legal fees incurred in defending title of factory premises of the company ₹3 lakhs.

(x) Profit of ₹ 3lakhs from hedging contracts entered into for meeting out the loss in foreign currency payment towards an imported machinery purchased from Germany for ₹90lakhs, which was installed on 20.12.2022.

(xi) The company, during the year, employed 100 new workers in the factory from 01.05.2022, to whom it has paid ₹15 lakhs as an additional wages.

(xii) Profit on sale of land ₹20lakhs.

(xiii) Provision for warranty is made for all vehicles sold on scientific and reliable basis for replacement of some spares, free of cost. The statistical data indicates that without such warranty, no customer is prepared to buy a vehicle.

Additional Informations:

(a) Normal depreciation allowable as per the Income-tax act, 1961 ₹ 22lakhs.

(b) Additional depreciation on plant and machinery imported and installed during December 2022 has not been considered while calculating depreciation as per the Income-Tax Act, 1961 as above. The company is not eligible for any deduction u/s 35AD of the Income-tax Act, 1961.

(c) The land sold during the year for ₹70lakhs (Guidelines Value as per stamp valuation authority ₹60lakhs) was purchased by the company during F.Y. 2012-13. This was the only land available with the company as on 01.04.2022.

(d) Cost inflation index F.Y. 2012-13: 200, F.Y. 2022-23: 331.

➢ **Compute the total income and tax payable by Preetam Motors Ltd. (giving reasons for treatment of each item) for the A.Y. 2023-24. Ignore MAT provisions.**

[May 2017 (Similar Question in Nov. 2014, May 2013 & May 2012)]

Answer: "Computation of Total Income of Preetam Motors Ltd. for the A.Y. 2023-24"

	Particulars	Amount (₹)
	Profits and gains of business and profession:	
	Net profit as per profit and loss account	1,50,00,000
	Add: Items debited but to be considered separately or to be disallowed:	
(i)	**License fee for obtaining franchise ₹ 20,00,000 less depreciation thereon of ₹ 5,00,000**	15,00,000
	[Franchise is an intangible asset eligible for depreciation @ 25%.	
	Payment of one-time license fees (debited) : ₹20 lakh	
	(-) Deprecation @ 25% : ₹5 lakh	
	Excess amount debited, required to be added back : ₹15lakh	
(iii)	**Payment to H Ltd. for feasibility study**	NIL
	[Payment towards feasibility study conducted for examining proposals for technological advancement relating to the existing business, where the project was abandoned without creating a new assets, is allowable as revenue expenditure [CIT v/s Priya Village Road shows Ltd.(2011)(Delhi-HC)].	
(iv)	**Payment due to railways for use of railway assets**	2,00,000
	[Since the payment of ₹2 lakhs is likely to be made in December, 2023 i.e., after due date of filing of ROI, the same would be disallowed in the P.Y. 2022-23, by virtue of section 43B).	
(vi)	**Depreciation debited in books of accounts**	20,00,000
(vii)	**Over-valuation of opening and closing stock** [₹22lakhs ×10/110]	2,00,000
	[The amount by which stock is over-valued has to be added for computing business income. ₹22lakhs (₹90lakhs, being the opening stock less ₹68Lakhs, being the closing stock) being the difference between opening and closing stock, has to be adjusted to remove the effect of over-valuation]	
(viii)	**Cash payments to a contractor** for office work (₹18,000 + ₹12,000)	30,000
	[Since the aggregate cash payments to a contractor in a day for office work exceeds the limit of ₹10,000, hence disallowed]	
(ix)	**Legal Fees**	NIL
	[Legal fees incurred in defending title to factory premises is a revenue expenditure incurred the purpose of business and is, therefore, allowable as deduction **[Dalmia Jain & Co. Ltd. (SC)]**	

			1,89,30,000
	Less**: Items credited to statement of Profit and Loss, but not includible in business income:**	**Amount (₹)**	
(ii)	**Dividend received from foreign company less expenditure incurred to earn dividend** (₹12,00,000- ₹50,000) [Dividend of ₹12lakhs received from foreign company is to be taxed under the head "Income from other sources". Since the same has been credited to profit and loss account, it has to be deducted while computing business income. Consequently, expenditure of ₹50,000 relating to the same which has been debited to profit and loss account has to be added back. In effect, the net amount of ₹11,50,000 has to be deducted]	11,50,000	
(x)	**Profit from hedging contract** [Profit from Hedging contract entered into for meeting loss in foreign currency payments towards imported machinery has to be adjusted against the cost of plant and machinery. Since such amount has been credited to profit and loss account, the same has to be deducted]	3,00,000	
(xii)	**Profit on sale of land** [Chargeable to tax under the head "Capital Gains"]	20,00,000	**34,50,000**
			1,54,80,000
	Less: Expenditure to be allowed:		
(v)	**Contribution to approved research association for social science or statistical research** [Allowable @ 100% u/s 35(i)(iii), since already debited in profit and loss, therefore no further adjustment is required.	-	
(a)	**Depreciation as per Income-tax Act, 1961** [Since there is a reduction in the cost of plant and machinery on account of hedging profit of ₹ 3,00,000 the excess depreciation on ₹ 3,00,000 has to be added back to depreciation given as per Income-tax Act, 1961. Hence, ₹ 22,00,000 - ₹ 22,500 (₹ 3,00,000 x 7.5%, being 50% of 15% since the machinery is put to use for less than 180 days)]	21,77,500	
(b)	**Additional depreciation on plant and machinery** [Since plant and machinery was purchased on 20.12.2022, it was put to use for less than 180 days during the year. Hence additional depreciation is to be restricted to 10% (i.e., 50% of 20%) of ₹ 87 lakhs, being actual cost of new plant & machinery after adjusting profit from hedging contract, balance additional depreciation can	8,70,000	

	be claimed in next year.]		30,47,500
	Profits and gains from business and profession		1,24,32,500
II	**Capital Gains:**		
	Full value of consideration	70,00,000	
	Less: Indexed cost of acquisition [₹ 50,00,000 x 331/200]	82,75,000	
	Long-term capital loss to be carried forward	(12,75,000)	
III	**Income from Other Sources:**		
	Dividend received from foreign company		11,50,000
	[Due to deletion of section 115BBD by Finance Act, 2022, dividend received by an Indian company from a foreign company in which it holds 26% or more equity share capital, would be subjected to normal tax treatment. *Meaning there by,* dividend at net basis i.e. 11.5 lakhs (viz. dividend received ₹ 12 lakhs as adjusted by expenditure of ₹50,000 relating to the same) would be subject to tax @ normal rate.]		
	Gross Total Income		1,35,82,500
	Less: **Deductions under Chapter VI-A**		
	Deduction under section 80JJAA		
	[Preetam Motors Ltd. is eligible for deduction u/s 80JJAA since it is subject to tax audit u/s 44AB for A.Y. 2023-24 and it has employed additional employees during the P.Y. 2022-23.		
	Additional wages is ₹ 15 lakhs		
	Deduction under section 80JJAA = 30% of ₹ 15 lakhs]		4,50,000
	Total Income		1,31,32,500

"**Computation of tax payable of Preetam Motors Ltd. for the A.Y. 2023-24**"

Particulars	Amount (₹)
Tax @ 30% on the total income of ₹ 1,31,32,500	39,39,750
Add: Surcharge @ 7% (since total income > ₹ 1 crore but < ₹ 10 crore)	2,75,783
	42,15,533
Add: Health & education cess @ 4%	1,68,621
Total tax liability:	**43,84,154**
Total tax liability (Rounded off):	**43,84,150**

Question -25:

Statement of Profit & Loss of BM Private Ltd., a resident company engaged in manufacturing, shows net profit of ₹ 90,00,000 for the financial year ended on 31st March, 2023 after debit/credit of the following items:

A. Credited to the Statement of Profit and Loss:

(i) Rent received from vacant land ₹ 1,20,000

(ii) Rent received (gross) from a commercial property owned by the company ₹ 2,50,000 (Tax deducted by tenant @ 10%)

(iii) Interest received on income tax refund ₹ 1,00,000

(iv) Profit on sale of unused land ₹ 10,00,000.

B. Debited to the Statement of Profit and Loss:

(i) Depreciation charged to the Statement of Profit and Loss ₹ 12,00,000.

(ii) Donation of ₹ 1,00,000 paid to Swachh Bhart Kosh.

(iii) Contribution to Political Party amounting to ₹ 2,00,000 paid in cash.

(iv) Payment made to transporter ₹ 1,00,000 by account payee cheque, but no tax has been deducted at source. (Transporter is having PAN and furnished declaration that he is covered under section 44AE and not having more than 10 goods carriages at any time during the previous year)

(v) Bonus to employees ₹ 2,00,000 provided. However, payment was made on the occasion of Diwali festival on 18th November, 2023.

(vi) Provision made for income tax ₹ 3,00,000 (including interest of ₹ 50,000 thereon)

(vii) Contribution of ₹ 1,00,000 to a University approved and notified under section 35(1)(ii)

(viii) Loss of ₹ 2,50,000 incurred by way of trading in futures and options (derivatives) in stocks in a recognized stock exchange.

Additional Information:

(1) Depreciation as per Income-tax Act ₹20,00,000. However, while calculating such depreciation, rate applicable to computers has been adopted for (i) accessories like printers and scanners, and (ii) EPABX. The written down value of these items as on 01.04.2022 is:

(a) Printers and Scanners ₹ 3,00,000; (b) EPABX ₹ 5,00,000

(2) Additional depreciation on plant and machinery purchased for ₹ 20,00,000 on 15th October, 2022 has not been considered while calculating depreciation as per Income-tax Act, as above.

(3) Provision for audit fee ₹ 1,00,000 was made in the books for the year ended on 31st March, 2022 without deducting tax at source.
Such fee was paid to auditors in September 2022 after deducting tax at source under Section 194J and tax so deducted was deposited on 6th November, 2022.

(4) The company during the financial year 2013-14 made a provision for an outstanding bill of ₹1,00,000 for purchase of raw material. Out of such outstanding amount, the company has paid ₹ 50,000 in cash on 15th September, 2022.

(5) During the year, the company has issued 1,00,000 equity shares of face value of ₹ 10 each at premium of ₹ 90 each. The fair market value is ₹ 60 per share at the time of issue of shares.

(6) Unused land which was sold during the year for ₹ 50,00,000 was acquired by the company in the financial year 2012-13 for ₹ 40,00,000.

(7) Cost Inflation Index – FY 2012-13: 200; FY 2022-23: 331.

➢ Compute total income of the company for the Assessment Year 2023-24 stating reasons for treatment of each item. Ignore provisions relating to MAT. [November 2016]

Answer:

"Computation of Total Income of BM Private Ltd. for the A.Y. 2023-24"

Particulars		Amount (₹)
I.	**Income from house property:**	
	Rental income from commercial property (in the absence of information about municipal tax, assuming Net Annual Value)	2,50,000
	Less: Deduction under section 24:	
	30% of Net Annual Value	75,000 1,75,000
II.	**Profits and gains of business and profession:**	
	Profit from manufacturing business [Refer to Explanatory Note (1)]	77,25,000
	Less: Set-off of losses from trading in derivatives in a recognized stock exchange [allowed to be set-off against profits from the business of manufacturing as per section 70 since it is not speculative in nature as provided in the definition of transaction speculative u/s 43(5).	(2,50,000) 74,75,000
III.	**Capital Gains [Refer to Explanatory Note (2)]**	
	Sale consideration	50,00,000
	Less: Indexed Cost of Acquisition [₹ 40,00,000 × 331/200]	66,20,000
	Long-term capital loss to be carried forward :	(16,20,000)
IV.	**Income from Other Sources:**	
	Rent received from vacant land	1,20,000
	Interest received on income-tax refund	1,00,000
	Excess of issue price of shares over the fair market value of shares is taxable as per section 56(2)(viib) in the case of BM Pvt. Ltd., not being a company in which public are substantially interested [₹ 40 (i.e., ₹ 100 - ₹ 60) × 1,00,000 shares]	40,00,000 42,20,000
	Gross Total Income:	**1,18,70,000**
	Less: Deductions under Chapter VI-A:	
	Deduction under section 80G:	1,00,000
	Deduction under section 80GGB:	
	Contribution to Political Party [Not allowable as deduction since the contribution is made in cash]	Nil 1,00,000
	Total Income:	**1,17,70,000**

EXPLANATORY NOTES:

(1) "Computation of profit and gains from the business of manufacturing"

Particulars	Amount (₹)
Profit and Gains from Business and Profession:	
Net profit as per profit and loss account	90,00,000
Add: Items debited but to be considered separately or to be	

disallowed:		
➢ **Donation paid to Swachh Bharat Kosh, considered separately:** [Not an expenditure incurred wholly and exclusively for the manufacturing business. Hence, not allowable under section 37]	1,00,000	
➢ **Contribution to political party:** [Not an expenditure incurred wholly and exclusively for the manufacturing business. Hence, not allowable under section 37]	2,00,000	
➢ **Payment to transport contractor:** [As per section 194C, no tax is required to be deducted at source since the payment is to a transport contractor not having more than 10 goods carriages and he has given a declaration to that effect along with his PAN. Hence, disallowance u/s 40(a)(ia) is not attracted.]	-	
➢ **Bonus to employees:** [Since the payment is made after the due date of filing return of income, disallowance under section 43B is attracted]	2,00,000	
➢ **Provision for income-tax (including interest of ₹ 50,000 thereon):** [Not allowable, Disallowance u/s 40(a)(ii) is attracted]	3,00,000	
➢ **Loss from trading in futures and options (derivatives) in stock in a recognized stock exchange:** [Not related to the business of manufacturing, hence, not allowable in computing profits from business of manufacturing]	2,50,000	10,50,000
		1,00,50,000
Add: Cash Payment for purchase of raw material deemed as income [Cash payment in excess of ₹ 10,000 against outstanding bill (which has been allowed as deduction during the P.Y. 2013-14) in the P.Y. 2022-23 would be deemed as income of P.Y. 2022-23 as per section 40A(3A)]		50,000
		1,01,00,000
Less: Expenditure to be allowed:		
(1) Depreciation: [Difference between the normal depreciation of ₹ 18.75 lakhs as per Income-tax Act, 1961 **[See Note* below]** and depreciation charged to the statement of profit and loss of ₹ 12 lakhs].	6,75,000	

***Note**: Printers and scanners form an integral part of the computer system and they would be eligible for depreciation at the higher rate of 40% applicable to computers. However, EPABX is not a computer and is, hence, not entitled to higher depreciation @ 40%

Particulars	₹
Depreciation computed as per Income-tax Act, 1961	20,00,000

Less: Excess Depreciation @ 25% (i.e. 40 – 15) wrongly provided in respect of EPABX = 25% of ₹ 5,00,000	1,25,000		
Correct Depreciation as per Income-tax Act, 1961:	**18,75,000**		
(2) Additional depreciation on new plant and machinery: Since plant and machinery was purchased only on 15.10.2022 i.e. put to use for less than 180 days during the year, Hence additional depreciation is to be restricted to 10% of ₹ 20 lakhs. Balance additional depreciation of ₹ 2 lakhs can be claimed in the next year i.e., A.Y. 2023-24.		2,00,000	
(3) Audit Fees relating to P.Y. 2021-22: [₹ 30,000 being 30% of audit fees of ₹ 1,00,000 would have been disallowed due to non-deduction and deposit of tax at source in F. Y. 2021-22, but since such tax has been deducted and paid in 2022-23, hence the amount of ₹ 30,000 is deductible in P.Y. 2022-23].		30,000 _____-	
(4) Contribution to University: [Contribution to a University approved and notified u/s 35(1)(ii) would qualify for normal deduction @ 100% with effect from A.Y. 2022-23. Since ₹ 1,00,000 has already been debited to the statement of profit and loss, hence, no need of any further deduction]			9,05,000
			91,95,000
Less: Items credited to statement of profit and loss, but not includible in business income, to be treated separately:			
➢ Rent received from vacant land [Chargeable under "I/O/S"]		1,20,000	
➢ Rent received from commercial property owned by the company [Chargeable to tax under the head "Income from house property"]		2,50,000	
➢ Interest received on income tax refund [Chargeable under "I/O/S"]		1,00,000	
➢ Profit on sale of unused land [Chargeable under "Capital Gains"]		10,00,00	14,70,000
Profits and gains from the business of manufacturing:			**77,25,000**

Question –26:

MP Ltd. is engaged in the manufacture of textile since 01.05.2010. Its Statement of Profit and Loss for the financial year ended 31st March, 2023 shows a profit of ₹ 560 lakhs after debiting or crediting the followings items:

(a) Depreciation charged on the basis of useful life of assets as per Companies Act is ₹ 52 lakhs.

(b) Industrial power tariff concession of ₹ 5.40 lakhs, received from Madhya Pradesh Government was credited to Statement of Profit and Loss.

(c) Contribution of ₹ 2.50 lakhs to a scientific laboratory functioning at the national level with a specific direction for use of the amount for scientific research programme approved by the prescribed authority.

(d) Profit of ₹ 8 lakhs on sale of a plot of land to AVM Limited, a domestic company, the

entire shares of which are held by the assessee company. The plot was acquired by MP Ltd. on 30th June, 2019.

(e) Payment of ₹ 3.50 lakhs towards transportation of various materials procured by one of its units to M/s Bansal Transport, a partnership firm, without deduction of tax at source. The firm opts for presumptive taxation under section 44AE and has furnished a declaration to this effect. It also furnished its Permanent Account Number in the tender document.

(f) Bonus paid to staff includes an amount of ₹ 1.50 lakhs which was provided for in the books on 31.03.2022 but has been paid in August 2022.

(g) Interest of 15 lakhs paid on loans taken specifically for purchase of plant and machinery. Out of this ₹ 5 lakhs is for upto the period till such machinery was commissioned.

(h) A debtor who owed the company an amount of ₹ 20 lakhs was declared insolvent and hence, was written off by debiting the Statement of Profit and Loss.

(i) ₹ 5 lakhs, being the additional compensation received from the State Government pursuant to an interim order of Court in respect of land acquired by the State Government in the previous year 2014-15.

(j) In order to expand its overseas business, the company planned online advertisement campaign for which it engaged Fastex Inc., a London based company not having any PE in India, and paid ₹ 5 lakhs for services availed. No tax/TDS was deducted by the company.

(k) ₹ 2 lakhs paid to consultant for expert opinion on new business set-up.

Additional Information:

(i) Normal depreciation computed as per Income-tax Rules on the book assets is ₹ 71 lakhs.

(ii) Debenture of face value of 1500 lakhs having 5 years tenure were issued at a discount of 3% and were subscribed in full.

(iii) The company received a bill for ₹ 3 lakhs on 31st March, 2023 from a supplier of cotton for supply made in March, 2023. The bill was omitted to be recorded in the books in March, 2023. Payment against the bill was made in April, 2023 and necessary entry was made in the books then. The same has been considered in closing inventory valuation during physical verification conducted on 31.03.2023.

(iv) The company has purchased 1000 bales of cotton at ₹ 5,000 per bale from Enpee LLP, a firm in which majority of the directors are partners. The normal selling price in the market for the same material is ₹ 4,600 per bale.

➢ **Compute total business income of the company for A.Y. 2023-24 giving a brief explanation to each item of addition/ deletion.** Ignore MAT and section 115BAA. **[November 2020 (New Course)]**

Answer:

"Computation of Total Business Income of MP Ltd. for the A.Y. 2023-24"

	Particulars	Amount (₹)
	Profits and gains of business and profession	

	Net profit as per profit and loss account	5,60,00,000
	Add: Items debited but to be considered separately or to be disallowed:	
(a)	**Depreciation as per Companies Act**	52,00,000
(e)	**Payment to transport contractor (M/s Bansal Transport)** [As per section 194C, no tax is required to be deducted at source since the payment is to a transport contractor not having more than 10 goods carriages and he has given a declaration to that effect along with his PAN. Hence, disallowance u/s 40(a)(ia) is not attracted.]	-
(f)	**Bonus relating to P.Y. 2021-22** [₹ 1.5 lakhs as allowable in P.Y. 2021-22 itself (not in P.Y. 2022-23) as it has been actually paid on or before the due date of filing of ROI for P.Y. 2021-22, but since it has been debited in P&L of P.Y. 2022-23, hence this amount of ₹ 1.5 lakhs is need to be added back in computing business income for P.Y. 2022-23]	1,50,000
(g)	**Interest paid on loan taken specifically for purchase of plant and machinery** [Interest relating to the period till such plant and machinery was commissioned is not eligible for deduction as revenue expenditure. Remaining Interest i.e. ₹ 10 lakhs, attributable to the period after the machinery is put to use, is eligible for deduction u/s 36 subject to the provisions of section 43B.	5,00,000 -
(h)	**Bad debts written off** [Bad debts write off in the book of account is allowable as deduction under section 36(1)(vii)]	
(j)	**Payment against specified services i.e. online advertisement** [Payment of ₹ 5 lakhs by MP Ltd., a resident in India (since it is an Indian company) to Fastex Inc., a foreign company not having PE in India, for online advertisement space is subject to Equalisation Levy @ 6%. Consequently, MP Ltd. is required to deduct equalisation levy of ₹ 30,000 i.e., @ 6% of ₹ 5 lakhs. Since, MP Ltd. has not deducted such levy hence the payment made to Fastex Inc. will be disallowable u/s 40(a)(ib) in computing business income of MP Ltd.]	5,00,000
(k)	**Payment to consultant for expert opinion on new business set-up** [Since, such expenditure is not related to the existing business hence, not allowable]	2,00,000

A(iv)	**Excessive payment to related person** i.e. Enpee LLP in which majority of directors are partners, assuming substantial interest of directors in firm- **Disallowable under section 40A(2)** which is 1000 bales X ₹ 400/- (₹5,000 - ₹ 4600)	4,00,000	
			6,29,50,000
	Less**: Expense allowable or Items credited to statement of Profit and Loss, but not includible in business income:**	**Amount (₹)**	
(b)	**Industrial power tariff concession received from State Govt.** [Any assistance in the form of, inter alia, concession received from the Central or State Government would be treated as income. Since the same has been credited to statement of profit and loss, no adjustment is required]	-	
(c)	**Contribution to IIT for scientific research programme** [Such contribution qualifies for normal deduction i.e. 100% u/s 35(2AA) from P.Y. 2022-23. Since 100% of contribution has already been debited, therefore no adjustment is need to be done while computing business income]	-	
(d)	**Profit on sale of land to 100% subsidiary (AVM Limited)** [Since the transfer is to a 100% subsidiary company which is an Indian company, the same would not constitute a transfer for levy of capital gains tax as per section 47(iv). Hence corresponding amount which has been credited to the statement of profit and loss, need to be reduced.]	8,00,000	
(i)	**Additional compensation received from State Government** [Since the additional compensation has been received pursuant to an interim order of the Court, the same would be chargeable to tax in the year of final order as per section 45(5). Since the compensation has been credited to the statement of profit and loss, the same has to be deducted]	5,00,000	
A(i)	**Normal depreciation computed as per I.T. Act on book assets** (Assuming that depreciation attributable to capitalised interest has not been considered in this normal depreciation on book assets)	71,00,000	
	Normal depreciation on interest liable to be added in actual cost of Plant & machinery ₹5Lakhs X 15%, assuming period of use is more than 180 days.	75,000	
A(ii)	**Discount on debenture** [In the case of Madras Industrial Investment Corporation v/s CIT, the Supreme Court has held that discount on issue of debentures is of revenue nature and it will be allowed on proportionate basis	9,00,000	

		over the life of the debentures. In this case, the discount on debentures amounts to ₹ 45 lakhs, being 3% of ₹ 1,500 lakhs The company can, therefore, claim an amount of ₹ 9 lakhs (i.e. one-fifth of ₹ 45 lakhs) as expenditure in the return for A.Y. 2023-24]		
	A(iii)	**Purchase of cotton omitted to be recorded in the books** [Since the purchase is made in March, 2023 (i.e., P.Y. 2022-23), in respect of which bill of ₹ 3 lakhs received on 31.3.2023 has been omitted to be recorded in the books in that year, it has to be deducted to compute the business income (assuming that the company is following mercantile system)]	3,00,000	**96,75,000**
		Profits and gains from business and profession		**5,32,75,000**

Question –27:

Dinkar Synthetics Ltd. engaged in the business of manufacturing of textile goods of suiting and shirting and operating since 2010 shows Net Profit of ₹ 75 lacs as per Profit and Loss Account for the year ended 31-03-2023. Net profit has been calculated after debiting/crediting the following items:

(1) The company used to include interest cost while valuing its stock of finished goods up to the financial year 2021-22. During the financial year 2022-23, the company changed its accounting policy to adopt AS-2 (Accounting standard on valuation of Inventories) as issued by the Institute of Chartered Accountants of India and thereby excluded interest costing while valuation of finished goods. This has resulted in a decrease in the year's profit by ₹ 13.50 Lacs. This policy will continue in future also.

(2) The company has made provision for Gratuity based on actuarial valuation of ₹ 5 lacs. Actual gratuity paid amounting to ₹ 1,20,000 during financial year 2022-23 was debited to provision of Gratuity Account.

(3) The company has debited to Profit and Loss account one time Franchise fees of ₹ 20 lakh paid to M/s. Robert Inc., a foreign company, for obtaining franchise on 16th August, 2022. The relevant amount of TDS has been deducted and deposited by the company in time.

(4) The company lost cash of ₹ 12,00,000 due to theft when it was withdrawn from the bank and taken to administrative office. It is not insured and hence, fully charged as revenue expenditure.

(5) On December 1, 2022, the company paid Royalty of ₹ 3,00,000 to Mr. Rozer (a non- resident individual) after deducting tax@10% under section 195 read with section 115A. The tax so deducted by the company is not deposited till November 30, 2023. However, Mr. Rozer submits his return of income on July 31, 2023 after including ₹ 3,00,000 in his income and claiming of refund of ₹ 20,000.

<u>On scrutiny of records, the following further information and details were extracted:</u>

(i) The Company has sold a plot of land to Libra Ltd., a domestic company, for ₹ 35 lacs on 15-04-2022. The same plot was purchased on 01-05-2018 for ₹ 26 lacs by Dinkar Synthetics Ltd. Dinkar Synthetics Ltd. held all the shares of Libra Ltd.

(ii) The company has obtained a loan of ₹ 5 lakhs from Manu Textiles Private Limited in which it holds 16% voting rights. The accumulated profits of Manu Textiles Private Limited on the date of receipt of loan was ₹ 2 lacs.

(iii) The company has purchased a new motor car during the year for the purpose of business, on 23-08-2019 [to mark the date of incorporation of the company i.e. being 23rd August] for ₹ 12,80,000 (including GST of ₹ 2,80,000). The depreciation on the above car has not been debited to the Profit and Loss Account.

(iv) The company has the following number of workers employed in the factory (all are covered in Provident Fund)

Particulars of Employees	Number
No. of Employees as at 31-03-2022	480
Add: Additional Employees employed during the year	120
Less: Retrenchment of Employees in 2022-23	70
No. of employees as on 31-03-2023	530

The new employees have been recruited on mass recruitment basis on 01-07-2022 at a pay scale of ₹ 15,000 per month per person. Payment of salary is made through Account Payee Cheques only.

(v) The Gross Turnover of the Company during the financial year 2020-21 is ₹ 450 crores and the company has not opted for Section 115BAA.

➢ **Compute the total income and tax payable of the company for Assessment Year 2023-24 as per the provisions of the Income-tax Act, 1961. Ignore the provisions of MAT.**

[January 2021 (New Course)]

Answer:

Computation of total Income and tax payable of Dinkar Synthetics Ltd. for the A.Y. 2023-24

	Particulars	Amount in ₹	
I	**Profits and gains of business and profession**		
	Net profit as per profit and loss account		75,00,000
	Add: Items debited but to be considered separately or to be disallowed		
	(i) Decrease in profit due to non-inclusion of interest while valuing finished goods	-	
	[As per ICDS 2, interest shall not be included in the cost of inventories, unless they meet the criteria for recognition of interest as a component of the cost as specified in ICDS 9 on borrowing costs. ICDS 9 requires capitalization of borrowing costs attributable to qualifying assets, which include only those inventories that require a period of twelve months or more to bring them to a saleable condition, which is not the case in textile industry. Hence, interest would not		

	form part of cost for inventory valuation as per ICDS 2. Accordingly, no adjustment is required, since interest cost has already excluded while valuing finished goods]		
	(ii) Provision for gratuity	3,80,000	
	[Provision of ₹ 5 lakhs for gratuity based on the actuarial valuation is disallowed as per section 40A(7). However, actual gratuity of ₹ 1,20,000 paid is allowable as deduction. Hence, the difference has to be added back to income (₹ 5,00,000 – ₹ 1,20,000)]		
	(iii) One time Franchise Fees	15,00,000	
	[Franchise is an intangible asset eligible for depreciation as per section 32. Since one time franchise fees of ₹ 20 lakhs paid for obtaining franchise has been debited to profit and loss account, the same has to be added back while computing business income] 20,00,000		
	Less: Franchise [Depreciation @ 25% on ₹ 20 lakhs, since it has been used for more than 180 days during the year] [20 lakhs – 5 lakhs] 5,00,000		
	(iv) Loss of cash in transit from bank to administrative office on account of theft	-	
	[Any loss from theft, dacoity, embezzlement, etc., is deductible if it is incidental to the carrying on of the business. Since the loss is due to theft which took place when cash was withdrawn from bank and taken to administrative office, it is incidental to business and thus, allowable as revenue expenditure. Since the same has already been charged as revenue expenditure, no further adjustment is required]		
	(v) Royalty on which tax is deducted but not deposited till 30.11.2023	3,00,000	
	[100% of ₹ 3 lakhs, being royalty paid after deducting tax would be disallowed u/s 40(a)(i) while computing the business income of A.Y.2023-24, since tax is not paid before due date of filing of ROI.]		21,80,000
			96,80,000
	Less: Depreciation as per Income-tax Rules, 1962		
	Motor car [on ₹ 4,39,040 (viz. opening WDV for P.Y. 22-23) X 30% since car was purchased between 23.8.2019 and 31.3.2020]		1,31,712
			95,48,288
	Capital Gain		
	Capital gain on transfer of plot to Libra Ltd., a 100% subsidiary Indian company [Any transfer of capital asset by a holding company to its 100% subsidiary Indian company would not be regarded as transfer u/s 47(iv)]		Nil

	Income from Other Sources Deemed dividend u/s 2(22)(e) [Loan of ₹ 5 lakhs by Manu Textiles Pvt. Ltd., a company in which the public are not substantially interested, to Dinkar Synthetics Ltd. who is holding 16% i.e., 10% or more of the voting power of the company would be deemed to be dividend to the extent of ₹ 2 lakhs being the accumulated profits, and will be liable to tax in the hands of the company.]		2,00,000
	Gross Total Income		**97,48,288**
	Less: Deduction under Chapter VI-A		
	Deduction under section 80JJAA [Since Dinkar Synthetics Ltd. is subject to tax audit for A.Y.2023-24 and has employed additional employees during the P.Y. 2022-23 [30% of ₹ 1,62,00,000 (₹ 15,000 x 9 months x 120)] **[Note**– As per clause (ii) of Explanation to section 80JJAA, "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. As per this definition, all 120 employees employed during the year would qualify as "additional employees", and hence remuneration paid to them would be eligible for deduction u/s 80JJAA. Alternatively, it is possible to take a view that 70 employees retrenched by the company during the year have to be deducted from the figure of 120 to arrive at the actual number of additional employees. If this view is taken, deduction u/s 80JJAA would be ₹ 20,25,000 [30% of ₹ 67,50,000 (₹15,000 x 9 months x 50)] and total income would be ₹ 72,71,000. Tax payable would be ₹ 22,68,550 (rounded off).		48,60,000
	Total Income		**48,88,288**
	Total Income (Rounded off)		**48,88,290**
	Tax payable on ₹ 48,88,290@30% [Since the turnover of the company for the previous year 2020-21 exceeds ₹ 400 crore]		14,66,487
	Add: Health and education cess@4%		58,660
	Tax liability		15,25,147
	Tax liability (rounded off)		**15,25,150**

Question –28:

Lotus Co. Ltd., is a listed company located in Jaipur. It is engaged in multiple activities at different locations. Books of account are maintained by each unit separately. The head office maintains books relating to common transactions. All the accounts are consolidated and the return of income is filed at Jaipur.

The following information is furnished unit wise for the year ended 31st March, 2023:

(a) **Medicine manufacturing unit, Delhi:** **The Company has reported Net Profit of ₹ 200 lakhs in the books of account of the said business unit. It entered into an agreement for use of know-how owned by a renowned scientist. It paid royalty of ₹ 5 per unit of medicine sold as royalty and the amount of royalty paid during the previous year 2022-23 was ₹ 36 lakhs. The company deducted tax at source on the amounts paid up to December, 2022 and omitted to deduct tax at source on the royalty of ₹ 8 lakhs due for the period from January, 2023 to March, 2023. The payee admitted the royalty income fully, paid tax and filed his return of income before the "due date" specified in section 139(1).**

The company paid ₹ 33,60,000 being 14% of basic salary plus DA of the employees in notified pension scheme and the amount so paid is debited as expenditure in the books of account.

(b) **Garment manufacturing unit, Tirupur:** **The Company has a manufacturing unit at Tirupur, Tamil Nadu. It reports a Net Profit of ₹ 90 lakhs as per books of account of the unit. It bought a trademark from Mr. Yellow for ₹ 20 lakhs on 01-06-2022 which is charged as expenditure in the books of account.**

The unit paid ₹ 3 lakhs as interest on loan taken from a non-resident Indian. The tax was deducted at source in March, 2023 but it was remitted only on 06-05-2023.

The company paid ₹ 6 lakhs being the amount of income-tax payable by the employees on non-monetary perquisites provided by the company. This amount is debited in the books of account as expenditure.

(c) **Fertilizer producing unit, Narmada:** **The Company established a fertilizer producing unit in Narmada, Gujarat which become operational in June, 2022. It has acquired a Land for ₹ 1 crore and put up a Building for ₹ 3 crores and installed new Plant and Machinery for ₹ 4 crores. The Net Profit as per books of account of the unit is ₹ 220 lakhs (after deducting depreciation on Building of ₹ 30 lakhs and Plant and Machinery of ₹ 60 lakhs).**

(d) **Warehousing facility for storage of edible oils at Chennai:** **It established a warehousing facility for storage of edible oils from 01-08-2022. It made investments such as cost of Land ₹ 2 crores, Building ₹ 3 cores and Plant and Machinery (new) ₹ 5 crores. The Net Profit as per books (without deducting depreciation) was ₹ 70 lakhs.**

Additional information:

The company mobilized capital during the previous year 2022-23 by public issue of shares. The application money was kept in bank pending allotment of shares. The interest income from the said deposit of ₹ 3,20,000 is credited to general reserve.

The company declared interim dividend @10% of share capital being ₹ 30 lakhs in October, 2022. It has 27% shareholding in Wire Inc., Singapore from whom it received ₹ 54 lakhs as dividend in January, 2023. Both dividend received and paid were credited and debited respectively in the Consolidated Statement of Profit and Loss.

The total turnover of the company for previous year 2020-21 was ₹ 282 crores and for

financial year 2021-22 ₹ 405 crores. The company has MAT credit of ₹ 20 lakhs of the assessment year 2008-09. The book profit (computed) for the assessment year 2023-24 is ₹ 620 lakhs.

Compute the total income of the company and optimum income-tax liability for the assessment year 2023-24. [January 2021]

Answer:

Computation of total income and tax liability for A.Y.2023-24 under the regular provisions of the Act

Particulars	₹	₹
Profits and gains of business or profession		
Net profit from Medicine manufacturing unit, Delhi	2,00,00,000	
Add: Items debited but to be disallowed		
- **Royalty on which tax is not deducted** [30% of ₹ 8 lakhs, being payment of royalty without deduction of tax would be disallowed under section 40(a)(ia) while computing the business income of A.Y.2023-24. However, since the payee has admitted the income, paid tax and filed his return of income before due date, the same would be allowable in the P.Y. 2023-24 relevant to A.Y.2023-24, being the year in which tax was deducted and paid]	2,40,000	
- **Employer's contribution to notified pension scheme** [As per section 36(1)(iva), employer's contribution to the account of an employee under a Pension Scheme as referred to in section 80CCD would be allowed as deduction while computing business income only to the extent of 10% of salary and DA of the employee in the previous year. Therefore, ₹ 9,60,000 representing the excess 4% (i.e., ₹ 33,60,000 x 4%/14%) debited to profit and loss account has to be added back while computing business income]	9,60,000	
		2,12,00000
Net profit from Garment manufacturing unit, Tirupur	90,00,000	
Add: Items debited but to be disallowed or to be treated separately		
- **Trademark** [Trademark is an intangible asset which is eligible for depreciation. Since purchase cost of trademark has been debited to profit and loss account, same has to be added back while computing business income]	20,00,000	
- **Interest on loan taken from a non-resident** [No disallowance u/s 40(a)(i) is attracted in respect of interest, since tax has been deducted during the P.Y. 2022-23 and remitted on or before the due date of filing of return of income for A.Y. 2023- 21]	NIL	
- **Income-tax paid on non-monetary perquisites**	6,00,000	

[As per section 40(a)(v), tax paid by employer on non-monetary perquisites is not allowable as deduction. Since the same has been debited to profit and loss account, the same has to be added back while computing business income]			
		1,16,00,000	
Less: Depreciation on trademark u/s 32 [₹ 20 lakhs x 25%]		5,00,000	1,11,00,000
Net profit from Fertilizer producing unit, Narmada		2,20,00,000	
Add: Items debited but to be disallowed or to be treated separately			
- Depreciation on building of ₹ 30 lakhs and on plant and machinery of ₹ 60 lakhs.		90,00,000	
[As per section 35AD, no deduction would be allowed under any other section in any previous year in respect of capital expenditure referred to in section 35AD. Hence, depreciation on building, plant & machinery is not allowable as deduction and the same has to be added back.]			
		3,10,00,000	
Less: Deduction u/s 35AD [Since fertilizer unit commenced operation on or after 1.4.2011, it is a specified business eligible for 100% deduction u/s 35AD in respect of capital expenditure. However, deduction is not available on expenditure incurred on acquisition of land. Deduction u/s 35AD is ₹ 7 crores, being ₹ 3 crore on building and ₹ 4 crore on plant and machinery. Since it is more beneficial for the company to claim deduction u/s 35AD, it is assumed that the company has opted to claim such deduction.]		7,00,00,000	
As per section 73A, loss from the specified business u/s 35AD can be set-off only against profits from another specified business. Since there is no other specified business, such loss has to be carried forward to A.Y. 2023-24.		(3,90,00,000)	
Net profit from Warehousing facility for storage of edible oils at Chennai		70,00,000	
Less: Depreciation u/s 32			
On building of ₹ 3 crores@10%	30,00,000		
On Plant & machinery of ₹ 5 crores@15%	75,00,000		
As per section 70(1), Business loss from one source is allowed to be set off from other source under the same head.		1,05,00,000	(35,00,000)
Net profit of Lotus Co. Ltd.			**2,88,00,000**
Add: Interest on share application money deposited in bank			
[The interest on share application money deposited in a bank is not liable			-

to be taxed, as the deposit was not for making additional income but to comply with the statutory requirement. The interest accrued on such deposit is merely incidental. The interest is eligible for set-off against share issue expenses as has been upheld in the case of CIT v/s Sree Rama Multi Tech Ltd. (SC)]		2,88,00,000
Income from Other Sources:		
Dividend from Wire Inc., a specified foreign company		54,00,000
Gross Total Income		**3,42,00,000**
Less: **Deduction u/s 80M** in respect of inter-corporate dividends [being lower of ₹54 lakh, being dividend received from foreign company and ₹ 30 lakh, being dividend distributed by Lotus Co. Ltd. on or before the due date specified u/s 139(1) of filing return of income]		**30,00,000**
Total Income		**3,12,00,000**
Computation of tax payable under the regular provisions of the Act:		
Tax payable on ₹ 3,12,00,000@25% [Since the turnover of the company for the previous year 2020-21 does not exceed ₹ 400 crore]		78,00,000
Note: Due to deletion of section 115BBD by the Finance Act, 2022, dividend received by Lotus Co. Ltd. from Wire Inc., being a foreign company in which Lotus Co. Ltd. holds 26% or more in the nominal value of equity shares, will be subjected to normal tax treatment, *means,* tax will be calculated@25%, which is already included in aforesaid figure of tax.		
Add: Surcharge @ 7%, since the total income of the company > ₹1 crore ≤ ₹ 10 crores		5,46,000
		83,46,000
Add: Health and education cess @ 4%		3,33,840
Tax liability		**86,79,840**

Computation of tax liability of Lotus Co. Ltd. for the A.Y. 2023-24 under section 115JB

Particulars	₹
Minimum Alternate Tax @15% on book profit of ₹ 6,20,00,000	93,00,000
Add: Surcharge@7%, since the book profit of the company > ₹ 1 crore ≤ ₹ 10 crores	6,51,000
	99,51,000
Add: Health and Education cess@4%	3,98,040
Tax liability under section 115JB	**1,03,49,040**

Since regular income-tax is less than MAT, book profit of ₹ 620 lakhs shall be deemed to be total income and tax is leviable @15% plus surcharge@7% and cess@4%. Therefore, the tax liability is ₹ 1,03,49,040.

MAT Credit to be carried forward	₹
Tax liability under section 115JB	1,03,49,040
Less: Tax liability under the regular provisions of the Income-tax Act, 1961	86,79,840

Amount of Credit (115JAA)	**16,69,200**

MAT credit of ₹ 20,00,000 of A.Y. 2008-09 is allowed to be carried forward till A.Y. 2023-24 and MAT credit of ₹ 16,69,200 relating to A.Y. 2023-24 is allowed to be carried forward till A.Y. 2038-39.

Note: Lotus Co. Ltd. is eligible for concessional rate u/s 115BAA @25.168% i.e., tax@22% plus surcharge@10% plus HEC@4% subject to tax at the rates mentioned in the said sections in Chapter XII.

In case Lotus Co. Ltd. opted for concessional rate of tax u/s 115BAA, it would not be eligible for deduction u/s 35AD in respect of fertilizer producing unit, however, it can claim depreciation u/s 32 on building and plant and machinery. In that case, its total income u/s 115BAA would be - ₹

Profit from Medicine manufacturing unit, Delhi		2,12,00,000
Profit from Garment manufacturing unit, Tirupur		1,11,00,000
Profit from Fertilizer producing unit, Narmada		2,20,00,000
Profit from Warehousing facility for storage of edible oils at Chennai	(35,00,000)	
		5,08,00,000
Dividend from Wire Inc., a specified foreign company	54,00,000	
Gross Total Income		**5,62,00,000**
Less: **Deduction u/s 80M**		**30,00,000**
Total Income		**5,32,00,000**
Tax liability u/s115BAA (22%+surcharge 10%+HEC 4%)= 25.168% on ₹ 532 L		1,33,89,376
Tax liability (Round off)		**1,33,89,380**

Suggestion to Lotus Co Ltd.:

In case Lotus Co Ltd prefers not to claim section 35AD deduction in respect of fertilizer producing unit it would also lose MAT credit of ₹ 20 lakhs as that would lapse by virtue of section 115JAA. Therefore, Lotus Co Ltd should not opt for section 115BAA for assessment year 2023-24, since the tax liability is higher under the regular provisions of the Act, and section 115JB.

Question –29:

The net profit of M/s Dilip Industries Ltd engaged in the manufacturing of Iron and Steel in Belampalli, a notified backward area in Andhra Pradesh, after debit/credit of the following amounts to its Statement of Profit and Loss for the year ended 31-03-2023 was ₹ 1000 lakhs.

Amounts Debited

1. **Depreciation calculated as per useful life of its assets ₹ 350 lakhs.**
2. **The company has paid ₹ 50 lakhs on 01-08-2022 to a research institution recognized and notified by the Central Government which has its object of undertaking scientific research.**
3. **The company has provided interest at 8% p.a. on ₹ 350 lakhs being amount borrowed from a non-banking financial company on 01-05-2022 for purchase of machinery. The interest**

outstanding as on 31-03-2023 was paid on 01-11-2023.

4. **Salary of ₹ 100 lakhs to foreign technicians for installation of machinery at the factory premises was paid without deduction of tax.**
5. **General Expenses include ₹ 35 lakhs, incurred towards bringing drinking water to the village in which the factory is situated.**
6. **Donation includes ₹ 10 lakhs given to a political party.**
7. **The company has incurred expenditure of ₹ 25 lakhs, towards purchase of coal for its smelting furnace for which invoice is not available. However, indirect evidence such as Goods Inward report, online payment made towards the purchases are available. The auditors have made an adverse remark in their Report in this regard.**

Amounts credited

The company had made a sale of for ₹ 20 Lakhs to M/s A. Co Engineers a sole proprietary concern, on 10-10-2021. On 01-02-2022 ₹ 10 lakhs was written off in the books as bad debts. Due to the demise of the sole proprietor, the company could collect only ₹ 7 Lakhs towards the final settlement on 01-03-2023. The amount recovered was shown as Bad debts recovered and credited to Statement of Profit and Loss.

Additional Information

1. **Written down value of its assets as on 01-04-2022 was as follows:**
   a. **Factory Building ₹ 1200 Lakhs,**
   b. **Computers and accessories ₹ 50 Lakhs,**
   c. **Office appliances ₹ 30 Lakhs,**
   d. **Tractors used for movement of raw materials, Semi finished goods and Finished goods within the factory premises 20 lakhs,**
   e. **Plant and Machinery ₹ 800 Lakhs.**

   Additions made to the assets were as follows:
   1. **Factory Buildings ₹ 300 Lakhs - Put to use from 01-11-2022.**
   ii. **Computers ₹ 25 Lakhs - Put to use on 01-05-2022.**
   iii. **Tractors ₹ 15 Lakhs - on 01-08-2022 and ₹ 10 Lakhs - Put to use on 01-02-2023.**
   iv. **Plant and machinery ₹ 500 Lakhs - Installed and put to use on 01-02-2023.**
   v. **Expenditure incurred towards the grant of ISO 9001 certificate ₹ 10 Lakhs. This amount is included in the Property, Plant and Asset Schedule as Intangible asset.**
   f. **The recognition granted to the research association which was engaged in scientific research was subsequently withdrawn by the Government on 28-02-2023.**

You are required to compute the Total Income of the company for the Assessment Year 2023-24. Ignore MAT and the provisions of section 115BAA. [July 2021 (New Course)]

Answer:

Computation of Total Income of M/s Dilip Industries Ltd. for the A.Y. 2023-24

	Particulars	Amount in ₹	
I	**Profits and gains of business and profession** Net profit as per Statement of Profit and Loss		1000.00
	Add: **Items debited but to be considered separately or to be disallowed**		
	(1) Depreciation as per useful life of assets	350.00	
	(2) Contribution to research institution approved and notified by the Central Government for scientific research [As per section 35(1)(ii), 100% deduction is allowed for amount paid to a research institution undertaking scientific research, if such institution is approved for this purpose and notified by the Central Government. As per *Explanation* below section 35(1)(iii), deduction would not be denied merely on the ground that subsequent to payment of such sum by Dilip Industries Ltd., the approval granted to research institution is withdrawn. Since the amount of contribution is already debited to statement of profit and loss, no further adjustment is required]	-	
	(3) Interest on borrowing paid to NBFC after due date of filing return of income [8% x 350 lakhs x 11/12] [Interest on borrowing from NBFC upto 1.2.2023, being the date when machinery is installed and put to use, is not allowable as deduction since it has to be capitalized as part of the cost of the asset. Interest for February and March 2023 is disallowed as per section 43B since it is not paid on or before the due date of filing return of income i.e., 31.10.2023. Since the entire interest has been debited to the statement of profit and loss, it has to be added back while computing business income]	25.67	
	(4) Salary for installation of machinery [As per ICDS V, expenses which are specifically attributable for bringing the fixed asset to its working condition would form part of actual cost. Therefore, salary to foreign technicians for installation of machinery is a capital expenditure and not allowable as deduction. Since it has been debited to the statement of profit and loss, it has to be added back while computing business income]	100.00	
	(5) Expense towards bringing drinking water to the village	-	

	[Expenditure towards bringing drinking water to the village in which the factory is situated will benefit the employees working in the factory and also facilitate the manufacturing activity carried on. Also, being known as a good corporate citizen brings goodwill of the local community, as also with the regulatory agencies and the society at large, thereby creating an atmosphere in which the business can succeed in a greater measure with the aid of such goodwill. It was so held in CIT v/s Madras Refineries Ltd. (2004)(Mad.-HC). Hence, the same is allowable as deduction u/s 37(1). Since it has already been debited to statement of profit and loss, no further adjustment is necessary].		
	(6) Donation to political party	10.00	
	[Since the donation to political party is not wholly and exclusively for the purpose of business or profession, it is not allowable as deduction u/s 37. Since the amount of contribution is debited to statement of profit and loss, the same has to be added back]		
	(7) Expenditure towards purchase of coal	-	
	[Even though payments made online need not be treated as genuine automatically on their face value, the assessee had produced Goods Inward Report, based on which genuineness of the transaction and the related payment can be established [CIT v/s SVE Engineers P Ltd. (Mad.)] Therefore, the said expenditure is allowable as deduction. Since the same has already been debited to the statement of profit and loss, no further adjustment is required. **Note:** Alternatively, since the question is silent regarding the satisfaction of the tax authorities about the genuineness of the transaction based on the Goods Inward Report, the said expenditure can be added back, on the ground that payments made online need not be treated as genuine automatically on their face value]		485.67
			1485.67
	***Less:* Items credited but not chargeable to tax/ expenses allowed but not debited**		
	1. Bad debt recovered	7.00	
	[Since the deduction of bad debt allowed u/s 36 was ₹ 10 lakhs out of the total debt of ₹ 20 lakhs; and the amount		

	recovered in respect of such debt is only ₹ 7 lakhs which is not more than the amount of ₹ 10 lakhs not written off, no amount is chargeable to tax as business income. Since the amount of ₹ 7 lakhs recovered has been credited to the statement of profit and loss, it has to be reduced while computing business income.			
	1. Bad debts		3.00	
	[The company had written off ₹ 10 lakh earlier, and out of the balance ₹ 10 lakhs, only ₹ 7 lakhs could be collected towards final settlement. Therefore, the balance ₹ 3 lakhs will be allowable as deduction, provided it is written off in the books of account]			
	AI1.e.v. Expenditure towards grant of ISO 9001 certificate		10.00	
	Expenditure towards grant of ISO 9001 certificate is not a capital expenditure since it does not create an asset of enduring nature. Accordingly, expenditure towards granting of ISO 9001 is revenue in nature [CIT vs. Infosys Technologies Ltd. (2012)(Kar.)]. Since the same is not debited in statement is profit and loss, it has to be reduced while computing business income].			20.00
				1465.67
	***Less:* Depreciation as per Income-tax Rules, 1962**			
	- **Factory building**			
	On Opening WDV = ₹ 1200 lakhs x 10%	120		
	On factory building purchased on 1.11.2022 [₹ 300 lakhs x 10% x 50%, since it has been put to use For less than 180 days during the year]	15	135.00	
	- **Computer and accessories**			
	On opening WDV = ₹ 50 lakhs x 40%	20		
	On computer purchased on 1.5.2022 [₹ 25 lakhs x 40%, since it has been put to use for more than 180 days during the year]	10	30.00	
	- **Plant and machinery**			
	Office appliances on opening WDV [₹ 30 lakhs x 15%]	4.50		
	Tractors			
	On opening WDV = ₹ 20 lakhs x 15%	3.00		
	On tractor purchased on 1.8.2022 [₹ 15 lakhs x 15%, since it has been put to use for more than 180 days during the year]	2.25		
	On tractor purchased on 1.2.2023 [₹ 10 lakhs x	0.75		

	15% x 50%, since it has been put to use for less than 180 days during the year]			
	Plant and machinery			
	On opening WDV = ₹ 800 lakhs x 15%	120.00		
	On P & M installed on 1.2.2023 [₹ 621 lakhs (₹ 500 lakhs + ₹ 100 lakhs of salary for installation + ₹ 21 lakhs, being interest from 1.5.2022 to 31.1.2023) x 15% x 50%, since it has been put to use for less than 180 days during the year]	46.58		
		177.08		
	Additional depreciation			
	On tractors installed and put to use on 1.8.2022 = 20% x ₹ 15 lakhs, since it is used within factory premises	3.00		
	On tractors installed and put to use on 1.2.2023 = 20% x 50% x ₹ 10 lakhs, since it is used within factory premises	1.00		
	On new plant and machinery installed and put to use on 1.2.2023 = 50% x 20% x ₹ 621 lakhs	62.10	243.18	408.18
	Gross Total Income			1057.49
	Less: **Deduction under Chapter VI-A:**			
	Deduction under section 80GGB [Donation to political party is allowed as deduction to Dilip Industries Ltd., assuming that the payment is made otherwise than by way of cash]			10.00
	Total Income			1047.49

Question –30:

ABC LTD., a manufacturing company, is engaged in the manufacturing of leather products since 01-11-2021 in the State of Tamil Nadu. As per Statement of Profit and Loss for the year ended 31st March, 2023, the company showed profit of ₹ 1,20,00,000 after debiting or crediting the following items:

(i) The opening and closing stock for the year were ₹ 55 lakhs and ₹ 54 lakhs respectively. Opening stock was overvalued by 10% and Closing stock was undervalued by 10%.

(ii) ABC LTD. paid ₹ 10 Lakhs in foreign currency as sales commission during the year without deducting tax at source to Mr. John, a citizen of U.S.A and non-resident, for procuring orders from outside India.

(iii) ₹ 45,000 paid in cash to Mr. Raj employee of the company at the time of his retirement.

(iv) Profit on sale of 2000 shares of M/s. VKL LTD, a listed company ₹ 3,50,000. These shares were sold on 7-10-2022 for ₹ 250 per share. The highest price of VKL LTD. quoted on the stock

exchange as on 31-01-2018 was ₹ 175 per share. The said shares were acquired for ₹ 75 per share on 10.06.2015. STT paid both at the time of purchase and sale of shares.

(v) STCG derived from transfer of a Capital asset on which no depreciation is allowable under the Act ₹ 75,000.

(vi) Profit of ₹ 6 lakhs on sale of plot of land on 24-07-2022 to XYZ LTD, a domestic company, the entire shares of which are held by the assessee company. The plot was acquired by ABC LTD. on 30-09-2021.

(vii) Credits to statement of Profit and Loss Account include dividend of ₹ 50,000 received on September 6, 2022 from a domestic company.

(viii) ₹ 20,000 paid for expenses in connection with the inauguration of a new branch opened for expanding the business.

(ix) ₹ 20,000 paid as penalty to Government for company's failure in performance of a contract within stipulated time. There was delay of 4 months and according to the agreement, the company had to pay a penalty of ₹ 5,000 per month to the Government.

(x) An amount of ₹ 5 lakhs was paid to the manager of the company under Voluntary Retirement Scheme.

(xi) Interest of ₹ 75,000 paid by bank remittance, on deposits made by non-resident buyers of goods manufactured by the company. The said payments were made outside India without TDS.

Additional information:

(1) During the year F.Y. 2022-23, the company has employed 56 additional employees. All these employees contribute to a recognized provident fund. 39 out of 56 employees joined on 1-6-2022 on a salary of ₹ 15,000 per month, 14 joined on 1-7-2022 on a salary of ₹ 45,700 per month, and 3 joined on 1-11-2022 on a salary of ₹ 22,000 per month. The salaries of 9 employees who joined on 1-6-2022 are being settled by bearer cheques every month. Audit u/s 44AB has been done before the due date.

(2) The company has paid through bank ₹ 1,20,000 to National Fund for Rural Development.

(3) The Company opted for concessional rate of tax and exemption from MAT under Section 115BAB for Assessment year 2023-24.

Compute the total income and tax payable for the Assessment Year 2023-24 clearly stating the reasons for treatment of each item. [December 2021]

Answer:

Computation of Total Income of ABC Ltd. for the A.Y. 2023-24 under section 115BAB

	Particulars	Amount (in ₹)	
I	Profits and gains of business and profession		
	Net profit as per Statement of profit and loss		1,20,00,000
	Add: Overvaluation of opening stock [₹ 55,00,000 x 10/110]	5,00,000	

	Undervaluation of closing stock [₹ 54,00,000 x 10/90]	6,00,000	
	Add: Items debited but to be considered separately or to be disallowed		
	(1) Sales commission to Mr. John, a non-resident, for procuring orders from outside India [The commission paid to Mr. John, non-resident agent, for services rendered outside India is not chargeable to tax in India. His commission is paid in foreign currency directly to him and is, therefore, not received by him or on his behalf in India. Since commission income for procuring orders by non- resident who remains outside India is not subject to tax in India, disallowance u/s 40(a)(i) is not attracted in respect of payment of commission to such non-resident outside India even though tax has not been deducted at source.]	Nil	
	(2) Payment to Mr. Raj, an employee, on his retirement [Section 40A(3) provides for disallowance@100% of the expenditure incurred exceeding ₹ 10,000 otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed. However, no disallowance under section 40A(3) is to be made as the amount paid to Mr. Raj is on his retirement since such sum payable does not exceed ₹ 50,000. This exception is provided in Rule 6DD]	Nil	
	(3) Expenses in connection with inauguration of a new branch for expanding business [Expenses in connection with inauguration of a new branch for expanding business is allowable as revenue expenditure since it is incurred wholly or exclusively for business purpose. Since the same is already debited in statement of profit and loss, no further adjustment is required]	Nil	
	(4) Penalty to Government for failure in performance of a contract [The penalty of ₹ 20,000 paid for non-fulfilment of a contract within stipulated time is not for the breach of law but was paid for breach of contractual obligations and therefore, is an allowable expense. Since it is already debited in statement of profit and loss, no further adjustment is required]	Nil	
	(5) Voluntary Retirement Scheme expenditure [Only 1/5th of expenditure on voluntary retirement scheme is allowable over a period of five years u/s 35DDA. Since whole amount of expenditure is debited to statement of profit and loss,	4,00,000	

	4/5th has to be added back [₹ 5,00,000 x 4/5].		
	(6) Interest paid to non-resident buyers of goods, on deposits made by them [Interest paid to non-resident buyer of goods, on deposits made by them is deemed to accrue or arise in India since such interest is paid by the company, a resident, which used such deposit for the purpose of business carried on by it in India. Thus, such interest is chargeable to tax in India and ABC Ltd. is required to deduct tax at source on such interest. Disallowance@100% of interest paid is attracted u/s 40(a)(i), since tax has not been deducted at source.]	75,000	
	(7) Salary paid to employees through bearer cheques [Salary paid through bearer cheques (9 employees x ₹ 15,000 x 10 months) will attract disallowance u/s 40A(3) and hence, the same has to be added back] [See Note at the end of the solution]	13,50,000	29,25,000
			1,49,25,000
	Less: Items credited but chargeable to tax under another head/expenses allowed but not debited		
	1. Profit on sale of shares of M/s VKL Ltd. [Capital Gain arising on sale of shares of VKL Ltd. is taxable under the head "Capital Gains". Since the profit on sale of shares has been credited to the statement of profit and loss, the same has to be deducted while computing business income]	3,50,000	
	2. Short term capital gain on sale of capital asset on which no depreciation is allowable [Short term capital gain arising on sale of capital asset is taxable under the head "Capital Gains". Since such STCG has been credited to the statement of profit and loss, the same has to be deducted while computing business income]	75,000	
	3. Profit on sale of plot of land to 100% subsidiary [Taxability or otherwise to be considered under the head "Capital Gains". Since such profit has been credited to the statement of profit and loss, the same has to be deducted while computing business income]	6,00,000	
	4. Dividend received from domestic company [Dividend income from domestic foreign company is taxable under the head "Income from other sources". Since the said dividend has been credited to the statement of profit and loss, the same has to be deducted while computing business income]	50,000	
	5. Contribution to National Fund for Rural Development	1,20,000	

	[In respect of payment to a National Fund for Rural Development, deduction is allowable u/s 35CCA while computing business income. This deduction is permissible in case of an assessee opting for section 115BAB also]		11,95,000
			1,37,30,000
II	Capital Gains		
	1. Long term capital gain on sale of shares of M/s. VKL Ltd. [Since shares were held for more than 12 months]		
	[Full value of consideration (2,000 x 250)] 5,00,000		
	Less: Cost of acquisition - Higher of (i) and (ii) 3,50,000	1,50,000	
	(i) Actual cost of acquisition (2,000 x ₹ 75): ₹ 1,50,000		
	(ii) ₹ 3,50,000, being lower of fair market value as on 31.1.2018 (i.e., ₹ 3,50,000, being 2,000 x 175) and sale consideration (i.e., ₹ 5,00,000)		
	2. Short term capital gain on sale of capital asset on which no depreciation is allowable	75,000	
	3. Profit on sale of plot of land to 100% subsidiary	Nil	
	[Short-term capital gains arise on sale of plot of land held for less than 24 months. However, in this case, since the transfer is to a 100% subsidiary company which is an Indian company, the same would not constitute a transfer for levy of capital gains tax]		2,25,000
III	Income from Other Sources		
	Dividend income from domestic company [50,000/90 x 100]		55,555
	Gross Total Income		1,40,10,555
	Deduction u/s 80JJAA [See Working Note below]		14,49,000
	Total Income		1,25,61,555
	Total Income (Rounded Off)		1,25,61,560

Computation of tax payable by ABC Ltd. for the A.Y. 2023-24 under section 115BAB

Particulars	₹
Tax on long-term capital gains in excess of ₹ 1 lakh @10% u/s 112A [₹ 50,000 x 10%]	5,000
Tax on short term capital gain of ₹ 75,000 derived from transfer of a capital asset on which no depreciation is allowable @22%	16,500
Tax on dividend income of ₹ 55,555 @22%	12,222
Tax on business income @ 15% of ₹ 1,22,81,000 (i.e., ₹ 1,37,30,000 – ₹14,49,000)	18,42,150
	18,75,872
Add: Surcharge@10%	1,87,587
	20,63,459
Add: Health and education cess@4%	82,538

Tax liability	21,45,998
Less: TDS on dividend income	5,555
Tax payable	21,40,442
Tax payable (Rounded Off)	21,40,440

Working Note: **Computation of deduction u/s 80JJAA:**

No of eligible additional employees [56 (-) 14 = 42] [14 employees who joined on 1.7.2022 do not qualify as "additional employees" since their	33
monthly emoluments exceed ₹ 25,000. However, 3 employees who joined on 1.11.2022 qualify as additional employees, since they have been employed for more than 150 days during the P.Y.2023-24.] Additional employee cost means the total emoluments paid or payable to additional employees employed during the P.Y.2022-23. However, the additional employee cost in respect of 9 employees who joined on 1.6.2022, whose salary is paid by bearer cheque would be Nil.	
Additional employee cost [₹ 15,000 x 30 employees (39 - 9) x 10 months] + [₹ 22,000 x 3 employees x 5 months] = ₹ 45,00,000 + ₹ 3,30,000	₹ 48,30,000
Eligible deduction = 30% of ₹ 48,30,000	₹ 14,49,000

Note: Since it is logical to assume that remuneration paid to employees has been debited to statement of profit and loss, consequently, disallowance would be attracted in respect of remuneration paid to 9 employees by bearer cheque every month. Accordingly, ₹ 13,50,000, being salary paid to 9 employees during the P.Y. 2022-23 has been added back while computing profits and gains of business or profession.

If a view is taken that the details of remuneration paid to employees, given by way of "Additional Information", are only for the purpose of computation of deduction u/s 80JJAA, then, the computation of income under the head "Profits and gains of business and profession" would be without providing for disallowance under section 40A(3) in respect of payment to employees by bearer cheque. In such a case, profits and gains of business or profession would be ₹ 1,23,80,000, gross total income would be ₹ 1,26,60,555 and total income (rounded off) would be ₹ 1,12,11,560. The tax liability would be ₹ 19,14,337 and the tax payable would be ₹ 19,08,780.

Question – 31:

M/s Kaveri Ltd., a manufacturing company, having an annual turnover of ₹ 6,000 lakhs, shows a net profit of ₹ 850 lakhs after debit / credit of following amounts to its Statement of Profit and Loss for the year ended 31st March, 2023:

(a) **Depreciation as per Companies Act ₹ 65 lakhs.**

(b) **Employer's contribution to EPF of ₹ 18 lakhs together with similar amount of Employee's contribution for the month of March, 2023 was remitted on 20th May, 2023. (The due date for the remittance to the credit of employee's EPF account being 15th April, 2023.)**

(c) **GST paid includes an amount of ₹ 10,500 charged as penalty for delayed filing of returns and ₹ 15,400 towards interest for delay in deposit of tax.**

(d) **An amount of ₹ 10 lakhs was incurred on notified skill development project u/s. 35CCD.**

(e) **Loss of ₹ 20 lakhs, on destruction of an old machinery by fire in the factory and ₹ 5 lakhs received as scrap value on this machinery. The insurance company did not admit the claim of the company on the charge of gross negligence.**

(f) **Dividend ₹ 15 lakhs received from a foreign company in which the company holds 32% of the equity share capital of the company, ₹ 50,000 was also expended on earning this income.**

(g) **Profit of ₹ 15 lakhs on sale of a building to X Ltd., a domestic company, the entire shares of which are held by the assessee company. The building was acquired by Kaveri Ltd. on 1st December, 2021.**

Additional information:

(i) **Normal depreciation computed as per Income-tax Rules, 1962 is ₹ 92 lakhs.**

(ii) **During the previous year 2021-22, the company has purchased a new plant and machinery worth ₹ 20 lakhs on 10th January, 2022. Balance of Additional depreciation on this machine is not included in the depreciation computed for the previous year 2022-23.**

(iii) **The company had credited in the account of a sub-contractor, an amount of ₹ 7 lakhs on 31st March, 2022 towards repairs of factory building. The tax deducted on such payment was remitted on 31st December, 2022.**

(iv) **On 15th May, 2023, M/s Kaveri Ltd. declared and distributed dividend of ₹ 20 lakhs.**

Compute the total income and tax payable by M/s Kaveri Ltd. for the Asst. Year 2023-24 clearly stating the reasons for treatment of each item. ***Assume that the company has opted for section 115BAA for the A.Y. 2023-24.*** **[May 2022]**

Answer:

Computation of Total Income of M/s Kaveri Ltd. for the A.Y. 2023-24 under section 115BAA

	Particulars	Amount (in ₹)	
I.	**Profits and gains of business and profession:**		
	Net profit as per Statement of profit and loss		8,50,00,000
	Add: Items debited but to be considered separately or to be disallowed:		
	(a) Depreciation as per Companies Act	65,00,000	
	(b) Employees' contribution to EPF	18,00,000	
	[Since employees' contribution to EPF has not been deposited on or before the due date under the PF Act, the same is not allowable as deduction as per section 36(1)(va) read with Explanations 1 and 2 thereto. Since the same has been debited to Statement of profit and loss, it has to be added back for computing business income].		

		(c) Employer's contribution to EPF [As per section 43B, employers' contribution to EPF is allowable as deduction since the same has been deposited on or before the due date of filing of return under section 139(1). Since the same has been debited to Statement of profit and loss, no further adjustment is necessary]	Nil		
		(d) Penalty for delayed filing of GST return [Penalty imposed for delay in filing GST return is not deductible since it is on account of infraction of the law requiring filing of the return within the specified period. Since the same has been debited to Statement of profit and loss, it has to be added back for computing business income]	10,500		
		(e) Interest for delay in deposit of GST [Interest paid for delay in deposit of GST is compensatory in nature and hence, allowable as deduction. Since the same has been debited to Statement of profit and loss, no further adjustment is necessary]	Nil		
		(f) Expenditure on notified skill development project u/s 35CCD [Expenditure on notified skill development project u/s 35CCD is not allowable as deduction *since the company has opted for section 115BAA*]	10,00,000		
		(g) Loss due to destruction of machinery by fire [Loss of ₹ 20 lakhs due to destruction of machinery caused by fire is not deductible since it is capital in nature. As the loss has been debited to statement of profit and loss, the same is required to be added back while computing business income.	20,00,000		
		(h) Expenditure on earning dividend income [Allowability or otherwise of expenditure on earning dividend income has to be considered under the head "Income from Other Sources". Since the said expenditure has been debited to the statement of profit and loss, the same has to be added back while computing business income]	50,000	1,13,60,500	
				9,63,60,500	
		Less: Items credited but chargeable to tax under another head/expenses allowed but not debited			
		1. Scrap value of machinery [Scrap value of machinery, being capital in nature, has to be reduced from WDV of machinery. Since the same has been credited to the statement of profit and loss, it has to be	5,00,000		

		deducted while computing business income]		
		2. Dividend received from foreign company [Dividend income from foreign company is taxable under the head "Income from other sources". Since the said dividend has been credited to the statement of profit and loss, the same has to be deducted while computing business income]	15,00,000	
		3. Profit on sale of building to 100% subsidiary [Taxability or otherwise to be considered under the head "Capital Gains". Since such profit has been credited to the statement of profit and loss, the same has to be deducted while computing business income]	15,00,000	
		4. Depreciation as per Income-tax Rules Normal depreciation Additional depreciation [Though the balance 10% additional depreciation of the earlier year is allowable as deduction in the current year, *since the company is opting for section 115BAA, additional depreciation is not permissible in this case*]	 92,00,000 Nil	
		5. Payment to a sub-contractor where tax deducted last year was remitted after the due date of filing of return [30% of ₹ 7 lakhs, being payment to a sub- contractor, would have been disallowed u/s 40(a)(ia) while computing the business income of A.Y.2022-23, since tax deducted was remitted after the due date of filing of return. However, the same is allowable in A.Y.2023-24, since the remittance has been made on 31.12.2022]	2,10,000	
				1,29,10,000
				8,34,50,500
II		**Capital Gains:**		
		1. Profit on sale of building to 100% Indian subsidiary [Short-term capital gains arise on sale of building held for less than 24 months. However, in this case, since the transfer is to a 100% subsidiary company and the subsidiary company is an Indian company, the same would not constitute a transfer for levy of capital gains tax as per section 47(iv)]		Nil
III		**Income from Other Sources:**		
		Dividend income from specified foreign company [Although M/s Kaveri Ltd. holds 26% or more equity shares in oreign company, but the Finance Act, 2022 has deleted section		14,50,000

	f 115BBD, therefore, after the amendment, such dividend will be subjected to normal tax treatment. Meaning there by, net amount i.e. 14.5 lakhs (viz. dividend received as adjusted by expenditure on earning such dividend income) will finally be liable to tax at normal rate.]		
	Gross Total Income		**8,49,00,500**
	Less: Deduction under Chapter VI-A:		
	Deduction u/s 80M in respect of inter-corporate dividends [being lower of ₹14.5 lakh, being dividend received from foreign company restricted to amount included in GTI by virtue of the provisions of section 80AB, and ₹ 20 lakh, being dividend distributed by M/s Kaveri Ltd. on or before the due date specified u/s 139(1) of filing return of income]		14,50,000
	Total Income		**8,34,50,500**

Computation of tax payable by M/s Kaveri Ltd. for the A.Y. 2023-24 under section 115BAA

Particulars	₹
Tax on total income @ 22% of ₹ 8,34,50,500	1,83,59,110
Add: Surcharge@10%	18,35,911
	2,01,95,021
Add: Health and education cess@4%	8,07,801
Tax liability	2,10,02,822
Tax payable (rounded off)	**2,10,02,820**

"PGBP & ICDS MIXED PRACTICAL PROBLEMS"

Question – 32:

BG (P) Ltd. is engaged in multiple businesses. The Net Profit as per the statement of profit and loss was ₹ 52 lakhs for the year ended 31.03.2023. A scrutiny of the statement of profit and loss revealed the following items which were debited / credited therein:

(i) Share income @ 25% from a partnership firm ABC & Co. of Pune ₹ 9,50,000.

(ii) The company paid ₹ 1 lakh as service charges to a call centre for attending the calls of customers and suppliers. Tax was deducted at source on such payment @ 2%.

(iii) Expenditure incurred ₹ 8 lakhs for digging of wells near the factory for use by public under Corporate Social Responsibility Scheme as per the Companies Act, 2013.

(iv) Grant received from State Government for acquisition of generator ₹ 10 lakhs. The generator was acquired on 01.06.2022 for ₹ 35 lakhs. A sum of 5 lakhs was paid as advance by cash to the supplier of generator. The grant amount received is credited to statement of profit and loss. Depreciation charged on ₹ 35 lakhs@15%.

Note: Assume that the company is not eligible for additional depreciation.

(v) During the year, the company bought textile goods from local suppliers. Cash payment was made exceeding ₹ 10,000 but below ₹ 20,000 in a day to 15 suppliers aggregating to ₹ 2,00,000.

(vi) Depreciation debited to statement of profit and loss ₹ 10 lakhs (it includes ₹ 8 lakhs being depreciation on assets revalued).

(vii) Provision for deferred tax debited to statement of profit and loss ₹ 6,50,000.

(viii) Trade creditors ₹ 5,00,000 were outstanding for more than 5 years and there is no business relationship with them. The amount was unilaterally transferred to credit of statement of profit and loss.

(ix) Royalty income in respect of patents chargeable under section 115BBF ₹ 12,00,000.

(x) Depreciation eligible under section 32 (before considering adjustment of any of the items described above) ₹ 12,25,000.

Additional information:

(a) The assessee executed only one civil construction contract of the value of ₹ 15 lakhs. The contractee withheld 20% of the contract amount which would be released only after 2 years. The amount withheld has not been credited to statement of profit and loss.

(b) During the year, 1,00,000 equity shares of ₹ 10 each was issued for ₹ 25 per share. The fair market value of the shares as per rule 11UA of the Income-tax Rules, 1962 was determined @ ₹ 17 per share.

(c) During the year, the company advanced ₹ 5,50,000 to one of the directors (having 22% of equity shares and equivalent voting rights in the company) to meet his personal expenses. The company has accumulated profit of ₹ 25 lakhs as on 31.03.2022.

➢ **You are required to compute the total income for the assessment year 2023-24 stating clearly the reasons for treatment for each of the items given above. [May 2018]**

Answer:

Computation of Total Income of BG (P) Ltd. for the A.Y. 2023-24

Particulars		Amount (₹)
I.	**Profits and gains of business and profession:**	
	Net profit as per the statement of profit and loss	52,00,000
	Add: Items debited but to be considered separately or to be disallowed:	
	(ii) Service charges paid to call center [Disallowance for short-deduction of tax at source would not be attracted since the tax@2% deductible at source in respect of payment of service charges to call center, has been fully deducted]	Nil
	(iii) CSR Expenditure incurred [As per Explanation of section 37, CSR expenditure incurred by the company as per the Companies Act is not deemed to be an expenditure incurred by the company for the purposes of business. Hence, the same is not allowable as deduction. Since the same has been debited to statement of profit and loss, it has to be added back]	8,00,000

(v)	**Cash payment in excess of ₹ 10,000 in a day** [Disallowance is attracted in respect of expenditure, for which payment exceeding ₹ 10,000 in a day has been made in cash. Since such expenditure is debited to the statement of profit and loss, the same has to be added back, as per section 40A(3)]	2,00,000	
(vii)	**Provision for deferred tax** [Deferred tax is an accounting concept and there is no provision in the Income-tax Act permitting deduction in respect of the same. Therefore, provision for deferred tax is not an allowable deduction. Since the same has been debited to the statement of profit and loss, it has to be added back for computing business income]	6,50,000	
			16,50,000
			68,50,000
Add:	Income taxable but not credited to statement of profit and loss:		
(a)	**Retention money** [ICDS III requires recognition of contract revenue, including retention money, on percentage of completion method. In this case, since the question mentions that the assessee executed the contract of the value of ₹ 15lakhs, it is logical to assume that 100% of the contract has been completed this year. Therefore, the entire retention money of ₹ 3lakhs has to be recognized in the P.Y.2022-23, since the contract has been fully completed]. **Note –** Since the question also states that the retention money of ₹ 3lakhs (20% of ₹ 15lakhs) would be realized after two years, it is possible to assume that the contract is yet to be completed, in which case only 50% of the said sum has to be recognized in the P.Y. 2022-23 on percentage of completion method. If this view is taken, only ₹ 1.5lakhs has to be recognized as income in the P.Y. 2022-23.		**3,00,000**
			71,50,000
Less:	Items credited to statement of profit and loss, but not includible in business income:		
(i)	**Share income from partnership firm ABC & Co.** [Share income from firm is exempt in the hands of the partner u/s 10(2A). Since the company is a partner in a firm, the share of its income in the firm would be exempt. Since the same has been credited to statement of profit and loss, it has to be reduced to compute business income]	9,50,000	
(iv)	**Grant received from State Government for acquisition of generator** [Grant received from the Government, other than a grant which is	10,00,000	

	taken into account for determination of actual cost of the asset, is included in the definition of income. In this case, as per ICDS VII, since the grant is received for acquisition of generator, the same has to be adjusted in actual cost. As the same has been credited to the statement of profit and loss, it has to be reduced to compute business income]		
(viii)	**Cessation of a trading liability** [Remission or cessation of a trading liability, allowed as deduction in an earlier previous year, would be deemed as income in the year of remission or cessation, as per section 41(1). Since the amount of ₹ 5 lakhs has already been credited to statement of profit and loss, no further adjustment is required]	Nil	
(ix)	**Royalty income in respect of patents chargeable u/s 115BBF** [Royalty income in respect of patents chargeable u/s 115BBF can be treated as business income or income from other sources, depending upon the facts of the case. In this case, since the question mentions that BG (P) Ltd. is engaged in multiple businesses, it is logical to assume that the same is in the nature of business income. Since the amount of ₹ 12 lakh has already been credited to statement of profit and loss, no further adjustment is necessary]	Nil	
			19,50,000
			52,00,000
Less:	**Depreciation under section 32:**		
	Depreciation	12,25,000	
	Less: Depreciation@15% on ₹ 15 lakhs, being amount paid in cash for generator and the amount of grant, not includible in actual cost as per section 43(1) and ICDS VII on Government Grants.	2,25,000	
	Depreciation allowable under the Income-tax Act, 1961	10,00,000	
	Less: Depreciation debited to books of account	10,00,000	Nil
	[Notes: (1) The above computation has been made on the basis that depreciation eligible under section 32 is generally shown under "Additional Information". Alternatively, since in this question, both depreciation as per books of account and depreciation eligible under section 32 have been shown as debited to statement of profit and loss, ₹ 12,25,000 (₹ 10 lakhs, being depreciation debited to books of account (+) ₹ 2,25,000, i.e., 15% of ₹ 15 lakhs, being depreciation not allowable in respect of payment made in cash and grant given by Government) may be added back on this basis. (2) Depreciation eligible under section 32 has been stated as before		

	considering adjustment of any of the items described above. It is also possible to interpret the statement to mean that depreciation for generators @15% of ₹ 20 lakhs has not been included in the said figure of ₹ 12,25,000 and accordingly work out the solution]	
	Profits and gains from business and profession:	52,00,000
II.	**Income from Other Sources:**	
	Consideration received in excess of FMV of equity shares [(₹ 25 (-) ₹ 17) × 1,00,000 equity shares]	8,00,000
	[BG (P) Ltd., a company in which public are not substantially interested has issued equity shares at a premium. In this case, the difference between consideration and FMV is taxable as Income from Other Sources"].	
	Total Income:	**60,00,000**

Explanatory Note: The amount advanced by a company, not being a company in which public are substantially interested, to its shareholder holding not less than 10% of voting power, would be treated as deemed dividend u/s 2(22)(e), to the extent to which the company possesses accumulated profits. Therefore, in this case, ₹ 5,50,000 would be treated as deemed dividend and will be chargeable to tax in the hands of shareholder. It may additionally be noted here that *this transaction would not have any impact on the income of the company* ***because dividend is not a deductible expenditure.***

Question –33:

Anamika Builders and Constructions Ltd., a company resident in India is engaged in the business of construction and real estate. Net profit as per profit and loss account is ₹ 54,80,000 (prepared in accordance with ICDS) after debiting/crediting the following items:

(i) Depreciation debited to books ₹ 8,47,000.

(ii) Gross revenue includes ₹ 5,00,000 in respect of a service contract for maintenance of the office building for Nitup Ltd. for the period from 1st March, 2023 to 30th April, 2023. The expenses incurred on the project till 31-3-2023 amounts to ₹1,27,000 which is included in other expenses.

(iii) The amount of employee benefits include a sum of ₹ 4,41,000 in respect of bonus payable to employees. In the previous year 2022-23, the company and its employee's union had a dispute over payment of bonus. In order to avoid late payment of bonus, the company formed a trust and transferred the amount of bonus payable to employees to the said trust. The dispute was settled in the month of November, 2023 and the trust paid the amount of bonus to the employees on 30th December, 2023;

(iv) Capital gains on sale of shares in Yara Ltd.₹ 3,77,500.

(v) In respect of one of its on-going projects, the assessee had made some structural changes contrary to what was earlier approved by the municipal authorities. Assessee hence paid a sum of ₹ 98,000 as regularization fee in respect of such changes made in the construction plan.

(vi) Other expenses include ₹ 1,45,000 as expenditure incurred on CSR.

(vii) During the previous year 2022-23, the assessee company decided to expand its business and open a retail petrol out let. Accordingly, a sum of ₹ 1,75,000 was deposited with the concerned

authority. However, the assessee could not start this operation and the deposit with the authority was forfeited. Amount paid for advertisement in political parties' brochure ₹ 48,000.

(viii) During the previous year 2022-23, the assessee entered into an agreement with Bat Ltd. As per the agreement, Bat Ltd. has agreed to not to engage in the business of real estate trading. The assessee paid ₹ 11 lakhs without deduction of tax at source on 1-6-2022 as non-compete fee.

Additional Information:

(i) Depreciation as per Income-tax Act, 1961 ₹ 5,14,000. This includes an amount of ₹ 78,000 in respect of fire fighting equipments installed in various business premises / offices of the assessee. During the year, as there was no incidence of fire, these equipments were not used.

(ii) On 26th October, out of 5 unsold office spaces in a mall, the assessee converted one such space into its own office. The fair market value of that space as on that date was ₹ 15,00,000. The cost incurred originally to construct such space was ₹ 10,00,000.

(iii) In respect of ongoing construction contracts, there was a claim for escalation of prices, to the tune of ₹ 8,50,000. The company had filed a lawsuit in the year 2021. In the previous year 2022-23, the court gave its judgement in favour of the company. The company has received ₹ 2,00,000 till 31-03-2023. Gross receipt in the profit and loss account includes ₹ 2,00,000 in respect of such claims.

(iv) The assessee held 250 shares in Yara Ltd. On 1-4-2017, Y Ltd. allotted bonus shares in the ratio of 1 : 1. The company sold all the shares in Yara Ltd. on 24th September 2022 for ₹ 2,050 per share. The company had acquired the original shares for ₹ 540 on 23-06-2015. The fair market value of the shares as at 31st January 2018 was ₹ 1,980 per share.

You are required to compute the total income chargeable to tax in the hands of Anamika Builders and Constructions Ltd., for the Assessment Year 2023-24 giving a brief explanation to each item of additions or deletions. Ignore provisions of MAT. [November 2019 (New Course)]

Answer:

Computation of Total Income of M/s Anamika Builders and Construction Ltd. for the A.Y. 2023-24

	Particulars	Amount in ₹	
I	**Profits and gains of business and profession**		
	Net profit as per profit and loss account		54,80,000
	***Add:* Items debited but to be considered separately or to be disallowed**		
	(i) Depreciation as per books of account	8,47,000	
	(iii) Bonus transferred to the trust for making payment to the employees after settlement of the dispute	4,41,000	
	[The bonus would be allowable as deduction u/s 36(1)(ii), even though the amount of bonus payable was initially remitted to the trust created for the purpose of avoiding late payment of bonus, provided actual payment of bonus is made to the		

	employees on or before the due date. However, since in the present case, actual payment of bonus to employees is made on 30th December 2023, after due date of filing return of income i.e., after 31st October 2023, deduction u/s 36(1)(ii) would not be allowable merely because the amount was remitted to the trust before the stipulated due date. Since the same has been debited to the profit and loss account, it has to be added back]		
	(v) Regularization fee paid to Municipal Authorities [Regularization fee paid to Municipal authorities to regularize the deviation from the earlier approved construction plan in its on-going projects is in the nature of penalty as it is paid to compound an offence. Hence, it does not qualify for deduction u/s 37. As the same has been debited to the profit and loss account, it has to be added back]	98,000	
	(vi) Expenditure incurred on CSR [Under section 37, only expenditure not covered under sections 30 to 36, and incurred wholly and exclusively for the purposes of the business is allowed as a deduction. Any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and hence, shall not be allowed as deduction under section 37. As the same has been debited to the profit and loss account, it has to be added back]	1,45,000	
	(vii) Expenditure on expansion of new business of retail petrol out let [Where expenditure is incurred on project not related to the existing business and the project was abandoned without creating a new asset, the expenses are capital in nature. Retail petrol outlet is not related to the existing business of construction and real estate, the expenditure incurred on setting up such business would not be allowed as deduction. As the same has been debited to the statement of profit and loss, it has to be added back]	1,75,000	
	(vii) Amount paid for advertisement in political parties brochure **[Section 37(2B)** prohibits allowance of any expenditure incurred by an assessee on advertisement in any souvenir, brochure, pamphlet or the like published by a political party. Since the same has been debited to the profit and loss account,	48,000	

	it has to be added back]		
	(viii) Non-compete fees to Bat Ltd.	3,30,000	
	[On account of the payment of non-compete fee, the company does not acquire any business, the profit-making apparatus remains the same and there is no new business or new source of income and therefore, the expenditure has to be treated as revenue in nature. Since company has not deducted tax at source u/s 194J on such non-compete fees during the previous year 2022-23, 30% of expenditure i.e., ₹ 3,30,000 would be disallowed]. This treatment is based on the Madras High Court ruling in *M/s. Asianet Communications Ltd v/s CIT*.		
	Alternate treatment is possible based on the Gujarat High Court ruling in *PCIT v/s Ferromatic Milacron India Pvt, Ltd,* as briefed hereunder:		
	Rights acquired under a non-compete agreement gives enduring benefit and protects the assessee's business against competition. The expression "or any other business or commercial rights of similar nature" used in section 32(1)(ii) is wide enough to include non-compete rights. Hence, such expenditure would be capital expenditure and it would be treated as intangible asset and be eligible for depreciation @25%. In such case, the expenditure which is debited to the profit and loss account, i.e., ₹ 11,00,000, has to be added back and depreciation of ₹ 2,75,000 i.e., 25% would be allowed as deduction.		20,84,000
			75,64,000
	***Add:* Amount taxable but not credited to profit and loss account**		
	AI(ii) Business income on conversion of stock-in trade into capital asset		15,00,000
	[Fair market value of inventory on the date of its conversion or treatment as capital asset, would be chargeable to tax as business income. Since cost of construction of one unsold office space in a mall i.e., ₹ 10,00,000 has already been debited to profit and loss account, the FMV of ₹ 15,00,000 would be chargeable to tax. Hence, such amount has to be included in business income]		
	AI(iii)Claim for Escalation price in respect of ongoing construction contracts		6,50,000
	[As per section 145B, claim for escalation of a price of ₹ 8,50,000 would be deemed to be income of P.Y. 2022-23 i.e., the previous year in which reasonable certainty of its realization is		

	received, being the year in which the judgment in the favour of the company was given. Since only the sum of ₹ 2,00,000 received by the company till 31.3.2023 is included in the profit and loss account, balance ₹ 6,50,000 has to be included in business income]		
			97,14,000
	Less: **Items credited to profit and loss account, but not includible in business income/permissible expenditure and allowances**		
	(ii) Revenue from service contract for maintenance of the office building of Nitup Ltd.	3,73,000	
	[Since the service contract for maintenance of office building is for a period of 61 days i.e., from 1st March 2023 to 30th April 2023 (less than 90 days), the revenue from such contract would be determined on the basis of project completion method. Consequently, the income from contract and the expenditure would also be chargeable/ allowable in the P.Y. 2023-24. Since the revenue of ₹ 5,00,000 is credited and expenditure of ₹ 1,27,000 has been debited to statement of profit and loss, the net amount of ₹ 3,73,000 (₹ 5,00,000 – ₹ 1,27,000) has to be deducted while computing business income of the P.Y. 2022-23]		
	(iv) Capital gains on sale of shares in Yara Ltd.	3,77,500	
	[Capital gains on sale of shares in Yara Ltd. is chargeable to tax under the head "Capital Gains". As the same has been credited to the profit and loss account, it has to be reduced]		
	AI (i) Depreciation as per Income-tax Rules, 1962	**5,14,000**	
	[One of the conditions for claim of depreciation is that the asset must be "used for the purpose of business or profession". Courts have held that, in certain circumstances, such as in the case of stand-by equipments, an asset can be said to be in use even when it is "kept ready for use". Since fire-fighting equipments, being stand by equipments, are kept ready for use, the depreciation on these equipments would be allowable, even though they are not actually used. Since the said amount is already included in the figure of depreciation allowable under the Income-tax Act, 1961, no separate adjustment is required]		
	Business Income		**84,49,500**
	Capital Gain:		
	In respect of Original Shares		
	Sale Consideration [250 shares x ₹ 2,050] 5,12,500		
	Less: Cost of acquisition, being higher of 4,95,000		

	- Actual cost [250 x ₹ 540] 1,35,000 - Lower of 4,95,000 • ₹ 4,95,000 (₹ 1,980 x 250), being fair market value as on 31.1.2018; and • ₹ 5,12,500, being full value of consideration on transfer	**17,500**	
	Long-term capital gain under section 112A [Since shares held for more than 12 months, the gain is a LTCG. Benefit of indexation is, however, not available on LTCG taxable u/s 112A].		
	In respect of Bonus Shares		
	Sale Consideration [250 shares x ₹ 2,050] 5,12,500 Less: Cost of acquisition, being higher of 4,95,000 - Actual cost Nil - Lower of 4,95,000 • ₹ 4,95,000 (₹ 1,980 x 250), being FMV as on 31.1.2018; and • ₹ 5,12,500, being full value of consideration on transfer	**17,500**	
	Long-term capital gain u/s 112A [Since shares held for more than 12 months, the gain is LTCG. Benefit of indexation is, however, not available on LTCG taxable u/s 112A].		35,000
	Gross Total Income		**84,84,500**
	Less: **Deduction under Chapter VI-A u/s 80GGB** Advertisement in souvenir published by a political party is deemed to be a contribution of such amount to the political party and is, therefore, allowable as deduction in the hands of the company assuming that payment is made otherwise than by way of cash		48,000
	Total Income		**84,36,500**

"ICDS BASED QUESTION"

Question –34:

SG Securities Private Ltd. is engaged in the business of trading in shares and securities. The details of shares held by it as stock-in-trade as on 31st March, 2023 are given below:

Shares	Cost per share (₹)	Net realisable value per share (₹)
500 shares of P. Ltd	**50**	**65**
200 shares of Q. Ltd	**35**	**32**
300 shares of R. Ltd	**125**	**110**
250 shares of S. Ltd	**25**	**40**

The company values its year-end stock-in-trade in accordance with Accounting Standard (AS) 13 - "Accounting for investments of the Companies (Accounting Standards) Rules, 2006".

➢ **Determine the amount of adjustments, if any, required to be made in computation of income for Assessment Year 2023-24. [November 2018]**

Answer:

Shares held as stock-in-trade are accounted and disclosed in the financial statements in the same manner as in respect of current investment. As per Accounting Standard (AS) 13, current investments are carried in the financial statements at the lower of cost and fair value determined either on an individual investment basis or by category of investment. However, the more prudent and appropriate method is to carry investments individually at the lower of cost and fair value. Net realizable value (NRV) can be taken as fair value, in this case. Since the company values its year end stock-in-trade in accordance with the AS 13, it would have valued the shares at the lower of cost and fair value on individual investment basis.

Valuation of shares held as stock in trade as per AS 13

Security	Cost (₹)	NRV (₹)	Lower of cost or NRV
500 shares of P. Ltd.	25,000 (500 x 50)	32,500 (500 x 65)	₹ 25,000
200 shares of Q. Ltd.	7,000 (200 x 35)	6,400 (200 x 32)	₹ 6,400
300 shares of R. Ltd.	37,500 (300 x 125)	33,000 (300 x 110)	₹ 33,000
250 shares of S. Ltd.	6,250 (250 x 25)	10,000 (250 x 40)	₹ 6,250
Value of stock-in-trade as per AS 13			**₹ 70,650**

ICDS-VIII on securities requires securities held as stock-in-trade to be valued at actual cost initially recognised or NRV at the end of that previous year, whichever is lower. It also requires the comparison of actual cost initially recognised and NRV to be done category wise and not for each individual security.

Valuation of shares held as stock in trade as per ICDS VIII

Security	Cost (₹)	NRV (₹)	Lower of cost or NRV
500 shares of P. Ltd.	25,000 (500 x 50)	32,500 (500 x 65)	
200 shares of Q. Ltd.	7,000 (200 x 35)	6,400 (200 x 32)	
300 shares of R. Ltd.	37,500 (300 x 125)	33,000 (300 x 110)	
250 shares of S. Ltd.	6,250 (250 x 25)	10,000 (250 x 40)	
Value of stock as per ICDS	75,750	81,900	**₹ 75,750**

SG Securities Pvt. Ltd. is required to value its shares held as stock in trade at ₹ 75,750 as per ICDS VIII for income-tax purpose. Accordingly, its income would be increased by ₹ 5,100 (₹ 75,750 – ₹ 70,650).

Note: AS 13 also permit valuation of shares on category of investment basis, in which case, there would be no increase in total income under the Income-tax Act.

"CAPITAL GAINS"

"QUESTIONS FROM PAST EXAMINATIONS (+) STUDY MATERIAL"

Section 47: *Certain transactions not regarded as transfer :*

Question -1:

X Ltd. is a company in which the whole of its share capital was held by Y Ltd. Both X Ltd. and Y Ltd. are Indian companies. X Ltd. had made investment in shares of ABC Ltd. in 1979 for ₹ 3,00,000 which it sold to Y Ltd. on April 1, 2014 for a consideration of ₹ 30,00,000.

The fair market value of these shares of ABC Ltd., as on April 1, 2001 is ₹ 20,00,000. Y Ltd. disinvested 5% of the shares held by it in X Ltd., in January 2023 by sale to public. It sold the shares in ABC Ltd. in March 2023 acquired by it from X Ltd. for a sum of ₹ 70,00,000.

Discuss the issue with relevant provisions and tax effects of these transactions in the hands of X Ltd. and Y Ltd. in the relevant assessment years.

The cost inflation index Value for the Financial Year 2022-23 is 331. [May 2018]

Answer:

(i) Sale of shares of ABC Ltd. by X Ltd. to Y Ltd. on 1.4.2014

Since both X Ltd and Y Ltd. are Indian companies and Y Ltd. holds 100% of shares of X Ltd., the transfer of capital asset, namely, shares of ABC Ltd., by X Ltd. to Y Ltd. would not be treated as a transfer for attracting capital gains tax liability as per section 47(v).

Hence, no capital gains tax would have been attracted on such transfer in the hands of X Ltd.

(ii) Disinvestment by Y Ltd., of 5% shares held in X Ltd. in January, 2023

As per section 47A, where a holding company ceases to hold 100% of shares of the subsidiary company before the expiry of a period of eight years from the date of transfer of capital asset, the amount of capital gains not charged to tax at the time of transfer would be deemed to be income chargeable under the head "Capital gains" of the previous year in which transfer took place.

However, in this case, the above deeming provision would not apply because the eight year period from the date of transfer expires on 31.3.2022 and the disinvestment by Y Ltd. of 5% shares held in X Ltd. was only in January 2023.

(iii) Sale of shares of ABC Ltd. by Y Ltd. in March 2023

This transaction would attract capital gains tax in the hands of Y Ltd. for the A.Y. 2023-24. The capital gains would be long-term, since the period of holding is more than 24 months.

The cost of acquisition to X Ltd. in the year 1979 (i.e. ₹ 3,00,000) or the fair market value as on 1.4.2001 (₹ 20,00,000), whichever is higher, would be deemed as the cost of acquisition.

Computation of capital gains in the hands of Y Ltd.	₹
Sale consideration	70,00,000

Less: Indexed cost of acquisition [₹ 20,00,000 × 331/100]	66,20,000
Long-term capital gains:	**3,80,000**
Tax on long-term capital gains@20.8% **(₹ 3,80,000 × 20.8%)**	79,040

Note: It is presumed that the shares are not listed on a recognized stock exchange.

Question-2:

SS(P) Ltd., a domestic Indian company having two undertakings engaged in manufacture of cement and steel, decided to hive off cement division to RV(P) Ltd., a domestic Indian company, by way of demerger. The net book value of assets of SS(P) Ltd. before demerger was ₹ 40 crores. The net book value of assets transferred to RV(P) Ltd. was ₹ 10 crores. The demerger was made in January 2023. In the scheme of demerger, it was fixed that for each equity share of ₹ 10 each (fully paid up) of SS(P) Ltd., two equity shares of ₹ 10 each (fully paid up) were to be issued.

One Mr. N.K. held 25,000 equity shares in SS(P) Ltd. which acquired in the financial year 2001-02 for ₹ 6,00,000. Mr. N.K. received 50,000 equity shares from RV(P) Ltd. consequent to demerger in January 2023. He sold all the share of RV(P) Ltd. for ₹ 8,00,000 in March, 2023. In this background you are requested to answer the following:

(i) Dose the transaction of demerger attract any income tax liability in the hands of SS(P) Ltd. RV(P) Ltd?

(ii) State the conditions in brief, which are to be satisfied under the Act for a demerger.

(iii) Compute the capital gain that could arise in the hands of Mr. N.K. on receipt of shares of RV(P) Ltd.

(iv) Compute the capital gain that could arise in the hands of Mr. N.K. on sale of shares of RV(P) Ltd.

(v) Will sale of shares by Mr. N.K. affect the tax benefits availed by SS(P) Ltd. and/or RV(P) Ltd.?

(vi) Is Mr. N.K. eligible to avail any tax exemption under any of the provisions of the Income-tax Act, 1961 on the sale of shares of RV(P) Ltd? If so, state in brief.

Note: Cost Inflation Index: F.Y. 2001-02: 100, 2022-23: 331.

[November 2015, Study Material]

Answer:

(i) Since section 47(vib) provides that any transfer in a demerger, of a capital asset by the demerged company to the resulting company would not be regarded as "transfer" for levy of capital gains tax if the resulting company is an Indian company, Therefore, in this case capital gains tax liability would not be attracted in the hands of SS(P) Ltd. the demerged company, because RV(P) Ltd. is an Indian company.

(ii) Section 2(19AA) defines demerger which requires the satisfaction of following conditions-

(i) All the property of the undertaking(s) and all the liabilities relatable to the undertaking(s), being transferred by the demerger company, immediately before the demerger, should become the property and liabilities of the resulting company by virtue of the demerger, and they should be transferred at the values appearing in its books immediately before the demerger

except the case where resulting company is Ind AS compliant company and recording at value different from the value appearing in the books of account of the demerged company immediately before the demerger in compliance of the Indian Accounting Standards.

(ii) The resulting company issues, in consideration of the demerger, its share to the shareholders of the demerged company on a proportionate based except where the resulting company itself is a shareholder of the demerged company.

(ii) The shareholders holding not less than three-fourth in value of the shares in the demerged company become shareholders of the resulting company by virtue of the demerger otherwise than as a result of the acquisition of the property or assets of the demerged company or any undertaking thereof by the resulting company.

(iii) The transfer of the undertaking is on a going concern basis.

(iv) The demerger is in accordance with the conditions notified u/s 72A(5) by the Central Govt.

(iii) As the section 47 (vid) provides that any issue of share by the resulting company in a scheme of demerger to the shareholders of the demerged company will not be regarded as "transfer" for levy of capital gains tax, if the issue is made in consideration of demerger of the undertaking, therefore, there will be no capital gains liability in the hands of Mr. N.K. on receipt of shares of RV (P) Ltd..

(vi) Yes, capital gains would arise in the hands of Mr. N.K. on sale of shares of RV(P) Ltd.

Sale consideration	8,00,000

Less: Indexed cost of acquisition of shares of RV (P) Ltd.

But, for this purpose, firstly, cost of acquisition of share of RV (P) Ltd. shall be computed, as per section 49(2C), in the following manner:

$$\text{Cost of acquisition of shares of SS(P) Ltd.} \times \frac{\text{Net book value of assets transferred in a demerger}}{\text{Net worth of the demerged company immediately before demerger}}$$

$$= ₹\ 6,00,000 \times \frac{10 \text{ crores}}{40 \text{ crores}} = ₹\ 1,50,000$$

Indexed cost of acquisition of shares of RV (P) Ltd. [₹ 1,50,000 x 331/100]	4,96,500
Long-term capital gain (since period of holding of shares in demerged company is also to be considered)	3,03,500

(v) No, sale of share by Mr. N.K. would not affect the tax benefits availed by SS(P) Ltd. or RV (P) Ltd., *because there is no lock in period on shareholder of demerged company for holding of shares of resulting company.*

(vi) Since, in the given case, the resultant capital gain on sale of shares of RV(P) Ltd. is a long-term capital gain [on account of the period of holding of share in demerged company being considered by virtue of section 2(42A)], Mr. N.K. can avail:

Exemption under section 54F by investing the entire net consideration in purchase (within one

year before and two years after the date of transfer) or construction (within three years after the date of transfer) of one residential house in India.

If part of the net consideration is invested, only proportionate exemption would be available.

Section 48: *Method of computation of capital gain*:-

Question -3:

X had taken a loan under registered mortgage deed dated 16.07.2001 against the house, which was purchased by him on 26.03.2001 for ₹ 5 lakhs. The said property was inherited by his son "A" under "will" in December 2022. For obtaining a clear title he paid the outstanding amount of loan of ₹15 lakhs on 12.02.2023. The said house property was sold by "A" on 16.03.2023 for ₹ 50 lakhs. State with reasons the amount chargeable to capital gains for A.Y. 2023-24.

[November 2004, May 1997, November 1996, Study Material]

Answer:

"Computation of capital gains in the hands of Mr. A for A.Y. 2023-24"		(₹ in Lakhs)
Sale consideration		50.00
Less: ***Indexed cost of acquisition:*** *FMV as at 01.04.2001* i.e. 5.00 x 331/100 = 16.55		
[As per Judgement of BOMBAY HC in case of Manjula J. Shah]		
Amount paid towards discharge of mortgage	15.00	31.55
Long term capital gain:		**18.45**

EXPLANATORY NOTE:

Any amount paid towards discharge of mortgage in respect of inherited property shall be allowed as a deduction. **R.M. Arunachalam (SC)**

As the discharge of mortgage was in the same year of transfer, the question of claiming indexation benefit thereof does not arise.

Question -4:

State the cases where the benefit of indexation of cost is not available for determination of capital gains? [May 2012 and November 2005]

Answer:

In the following cases, the benefit of indexation of cost is not available for determination of capital gains on transfer of capital assets-

1. Transfer of capital assets held for not more than 36 months (24 Months in case of Im-movable property, and 12 Months in the case of listed securities, etc), since capital gains arising therefrom would be a short term capital gains.
2. Transfer of depreciable assets where computation is governed by section 50, since capital gains arising therefrom would always be short term capital gains, even if they are held for more than 36 months (24 Months in case of Building).
3. Transfer of undertaking or division in a slump sale under section 50B.
4. Transfer of listed equity shares or unit of equity oriented fund or business trust on which tax is

leviable u/s 112A (Third proviso to section 48).

5. Transfer of bonds / debentures other than Capital indexed bonds and Sovereign Gold Bond (Fourth proviso to section 48).
6. Transfer of shares in or debentures of an Indian company, acquired by a non-resident in foreign currency (first proviso to section 48).
7. Transfer of a foreign exchange asset by a non-resident Indian, who opts to be governed by the provisions of chapter XII-A (section 115D).
8. Transfer of units by an overseas financial organisation as referred to in section 115AB.
9. Transfer of Euro bonds / GDRSs by a non-resident as referred to in section 115AC.
10. Transfer of securities by Foreign Institutional Investors as referred to in section 115AD.

Section 50B: *Special provisions for computation of capital gains in case of slump sale:-*

Question-5:

Mr. A is a proprietor of Akash Enterprises having 2 units. He transferred on 1.4.2022 his Unit 1 by way of slump sale for a total consideration of ₹ 14 lacs. Unit 1 was started in the year 2004-05. The expenses incurred for this transfer were ₹ 38,000. His Balance Sheet as on 31.3.2022 is as under:

Liabilities	Total (₹)	Assets	Unit 1 (₹)	Unit 2 (₹)	Total
Own Capital	17,00,000	Building	13,00,000	3,00,000	16,00,000
Revaluation Reserve (for building of unit 1)	5,00,000	Machinery	4,00,000	2,00,000	6,00,000
Bank loan (70% for unit 1)	4,00,000	Debtors	2,00,000	1,40,000	3,40,000
Trade creditors (25% for unit 1)	3,50,000	Other asset	2,50,000	1,60,000	4,10,000
Total	29,50,000	Total	21,50,000	8,00,000	21,50,000

Other information:

(i) Revaluation reserve is created by revising upward the value of the building of Unit 1. The stamp duty value on 1.4.2022 is ₹ 10 lakhs.

(ii) No individual value of any asset is considered in the transfer deed.

(iii) Patents were acquired on 1.7.2020 on which no depreciation has been charged.

➢ **Compute the capital gain for the assessment year 2023-24. [Question from Study Material]**

Answer:

"Computation of capital gains on slump sale of Unit 1"

Particulars	₹
Full value of consideration [Fair market value on 1.4.2022]	14,82,500
Less: Expenses on sale	38,000
Net sale of consideration	14,44,500
Less: Net worth **(See Note 1 below)**	11,73,125
Long-term Capital gain:	**2,71,375**

Working Notes:

(1) Computation of Full value of consideration:

Particulars			₹
Fair market value of the capital assets transferred by way of slump sale:			
Building, being an immovable property [stamp duty value on 1.4.2022, being the date of slump sale] **[A]**			10,00,000
Machinery [Book value as appearing in the books of accounts] **[B]**			4,00,000
Debtors [Book value as appearing in the books of accounts] **[C]**			2,00,000
Patents [Book value as appearing in the books of accounts] **[D]**			2,50,000
			18,50,000
Less: Liabilities of Unit 1 [₹ 29,50,000 - ₹ 1,20,000 - ₹2,62,500] **[L]**		25,67,500	
Excluding			
(i) Own Capital	17,00,000		
(ii) Revaluation reserve	5,00,000	22,00,000	3,67,500
FMV of capital assets transferred by way of slump sale [A+B+C+D- L] **[FMV1]**			**14,82,500**
Fair market value of the consideration received or accruing as a result of transfer by way of slump sale [value of the monetary consideration received] **[FMV2]**			**14,00,000**
Full value of consideration [Higher of FMV1 or FMV2]			**14,82,500**

(2) Computation of net worth of Unit 1 of Akash Enterprises:

Particulars	₹	₹
Building (excluding ₹ 5 lakhs on account of revaluation)		8,00,000
Machinery		4,00,000
Debtors		2,00,000
Patents **(See Note 2 below)**		1,40,625
Total assets:		15,40,625
Less: Creditors	87,500	
Bank Loan	2,80,000	3,67,500
Net worth:		**11,73,125**

(3) Written down value of patents as on 1.4.2022:

Value of patents:	₹
Cost as on 1.7.2020	2,50,000
Less: Depreciation @ 25% for Financial Year 2020-21	62,500
WDV as on 1.4.2021	1,87,500
Less: Depreciation for Financial Year 2021-22	46,875
WDV as on 1.4.2022:	**1,40,625**

- For the purposes of computation of net worth, the written down value determined as per section 43(6) has to be considered in the case of depreciable assets. It has been assumed that the

Balance Sheet values of ₹ 4 lakh and ₹ 8 lakh (₹ 13 lakh — ₹ 5 lakh) represent the written down value of machinery and building, respectively, of Unit 1.

- Since the Unit is held for more than 36 months, capital gain arising would be long term capital gain. However, indexation benefit is not available in case of slump sale.

Question-6:

PQR Limited has two units - one engaged in manufacture of computer hardware and the other involved in developing software. As a restructuring drive, the company has decided to sell its software unit as a going concern by way of slump sale for ₹ 385 lacs to a new company called S Limited, in which it holds 74% equity shares.

The balance sheet of PQR limited as on 31st March 2023, being the date on which software unit has been transferred, is given hereunder –

Balance Sheet as on 31.3.2023

Liabilities	₹ (in lacs)	Assets	₹ (in lacs)
Paid up Share Capital	300	Fixed Assets	
General Reserve	150	Hardware unit	170
Share Premium	50	Software unit	200
Revaluation Reserve	120	Debtors	
Current Liabilities		Hardware unit	140
(Ascertained liabilities)		Software unit	110
Hardware unit	40	Inventories	
Software unit	90	Hardware unit	95
		Software unit	35
	750		750

Following additional information are furnished by the management:

(i) The Software unit is in existence since May, 2015.

(ii) Fixed assets of Software unit include land which was purchased at ₹ 40 lacs in the year 2008 and revalued at ₹60 lacs as on March 31, 2023. The stamp duty value on 31.3.2023 is ₹ 55 lakhs.

(iii) Fixed assets of Software unit mirrored at ₹ 140 lacs (₹ 200 lacs minus land value ₹ 60 lacs) is written down value of depreciable assets (Furniture and Plant & machinery) as per books of account. However, the written down value of these assets u/s 43(6) of the I.T. Act is ₹ 90 lacs.

(a) Ascertain the tax liability, which would arise from slump sale to PQR Limited, assuming it does not opt for section 115BAA.

(b) What would be your advice as a tax-consultant to make the restructuring plan of the company more tax-savvy, without changing the amount of sale consideration?

[May 2017, May 2011 and May 2005]

Answer:

(a) As per section 50B, any profits and gains arising from the slump sale effected in the previous year

shall be chargeable to income-tax as capital gains arising from the transfer of capital assets and shall be deemed to be the income of the previous year in which the transfer took place.

If the assessee owned and held the undertaking transferred under slump sale for more than 36 months before slump sale, the capital gain shall be deemed to be long-term capital gain. Indexation benefit is not available in case of slump sale as per section 50B(2).

Ascertainment of tax liability of PQR Limited from slump sale of Software unit:

Particulars	₹ (in lacs)
Full value of consideration for slump sale of Software Unit	385
Less: Cost of acquisition, being the net worth of Software Unit	185
Long term capital gains arising on slump sale	**200**
(The capital gains is long-term as the Software Unit is held for more than 36 months)	
Tax liability on LTCG	
Under section 112 @ 20% on ₹ 200 lacs	40.00
Add: Surcharge@ 7%	2.80
	42.80
Add: Health and Education cess@4%	1.712
	44.512

Working Note:

Computation of Full value of consideration:

			₹ (in lacs)
Fair market value of the capital assets transferred by way of slump sale:			
Land, being an immovable property [stamp duty value on 31.3.2023, being the date of slump sale] **[A]**			55
Other Fixed assets (Furniture and Plant & machinery) [Book value as appearing in the books of accounts] [₹ 200 lakhs - ₹ 60 lakhs] **[B]**			140
Debtors [Book value as appearing in the books of accounts] **[C]**			110
Inventories [Book value as appearing in the books of accounts] **[D]**			35
Less: liabilities of Software Unit [₹ 750 - ₹ 40] **[L]**	710		340
Excluding			
(i) Paid up share capital	300		
(ii) General Reserve	150		
(iii) Share Premium	50		
(iv) Revaluation reserve	120	620	90
FMV of the capital assets transferred by way of slump sale [A+B+C+D- L] **[FMV1]**			250
FMV of the consideration received or accruing as a result of transfer by way of slump sale [value of the monetary consideration received] **[FMV2]**			385
Full value of consideration [Higher of FMV1 or FMV2]			**385**

Computation of net worth of Software Unit

		₹ (in lacs)
(1)	Book value of non-depreciable assets	
	(i) Land (Revaluation not to be considered)	40
	(ii) Debtors	110
	(iii) Inventories	35
(2)	Written down value of depreciable assets under section 43(6) **(See Note below)**	90
Aggregate value of total assets		275
Less: Current liabilities of Software unit		90
	Net worth of software unit	**185**

Note: For computing net worth, the aggregate value of total assets in the case of depreciable assets shall be the written down value of the block of assets as per section 43(6).

(b) TAX ADVICE:

(1) Instead of restructuring by way of slump sale, the management may resort to demerger. According to section 47(vib), any transfer of capital asset in a scheme of demerger will not be regarded as transfer. Hence the transfer of undertaking by means of demerger is a better tax option instead of slump sale.

It is implied here that this exemption will be available **only when** this case of Demerger is **as defined u/s 2(19AA) of the I. T. Act.** *Meaning there by, Conditions to make a case of demerger as given u/s 2(19AA) must be satisfied.*

(2) Another option would be to increase the holding in S Limited to 100% by which S Limited becomes a wholly owned subsidiary of PQR Limited. Subsequently, transfer of the software unit to S Limited would not be a transfer by virtue of section 47 (iv) and hence not liable to capital gains tax subject to fulfillment of conditions u/s 47A. However, this may involve cash outflow to acquire additional 26% holding in S Limited, and it may also be noted here that for this exemption, PQR Limited will have to keep such 100% holding in S Limited for a period of 8 years from the date of slump sale, otherwise the amount exempt would be deemed to be income chargeable under the head "Capital Gains" of the previous year in which such transfer took place.

Section 50C: *Special provisions requiring SDV as sales consideration in certain cases:-*

Question-7:

Mr. Prajapathi intends to sell a piece of urban residential plot held for 48 months, to Mr. Vasan, for a Consideration of ₹ 2 crores, in February, 2023. This asset had been held as investment by Mr. Prajapathi. Both Parties are willing to enter into a written agreement in this regard. Initial payment will be ₹ 40 lakhs. The buyer is given 12 months time for completing the sale, at which point of time, balance amount has to be paid. Following two options are considered:

(i) Payment of ₹ 10 lakhs by account payee cheque on the date of the agreement and ₹ 30 lakhs by cash, the same day, and

(ii) Payment of ₹ 10 lakhs by account payee cheque on the date of the agreement and ₹ 30 lakhs by

ECS through a bank within seven days.

- **An increase of 30% in stamp duty is anticipated with effect from 1st April, 2023.**
- **The parties seek your advice to plan suitably for reduction of capital gains. Advise them suitably as to what payment mode is to be adopted. Should the agreement in question be registered?**

[May 2017]

Answer:

Normally, the stamp duty value on the date of transfer has to be considered for section 50C.

But, where the date of the agreement fixing the amount of consideration for the transfer of the urban residential plot and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of computing the full value of consideration. However, the stamp duty value on the date of agreement can be adopted only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, on or before the date of the agreement for the transfer of such plot.

Advice for reduction of capital gains tax liability:

In both the options given in the question, part payment of ₹ 10 lakhs is made by account payee cheque on the date of the agreement. Therefore, in both the options, the stamp duty value on the date of agreement can be taken as the full value of consideration.

Mr. Prajapathi, thus, need not bear the burden of paying tax on increased stump duty applicable from 1st April, 2023, if he exercises either of the options for making the initial payment of ₹ 40 lakhs.

Advice for mode of payment:

In Option (i), however, the balance initial payment of ₹ 30 lakhs is proposed to be paid by way of cash. This would be in contravention of the provisions of section 269SS, which requires any sum of money receivable, whether as advance or otherwise, in relation to transfer of immovable property, to be paid by way of account payee cheque/bank draft or by way of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, if the same exceeds the threshold of ₹ 20,000. Penalty equivalent to the sum so received in contravention of the provision of section 269SS would be imposable u/s 271D.

In Option (ii), both payments are proposed through modes as permissible u/s 269SS, therefore, to avoid the penalty, it is advisable to opt option (ii).

Section 51 & 56(2)(x): *Treatment of Advance Money Forfeited :-*

Question -8:

Mr. Ramesh purchased a plot of land in Chennai in June 2005 for ₹ 45 lakhs. He decided to sell the property to Mr. Mahesh for ₹ 80 lakhs and receives an advance of 2 lakhs in May, 2009. Mr. Mahesh was unable to complete the agreement and hence, the advance was forfeited by Mr. Ramesh.

Again Mr. Ramesh entered into an agreement to sell the property to Mr. Rakesh for ₹ 95 lakhs and received advance money of ₹ 2.50 lakhs in August, 2022. But again the transfer did not materialize due to which the advance money was again forfeited.

On 4th January, 2023, the property was finally sold to Mr. Mukesh for ₹ 105 lakhs and the stamp duty value on that date was ₹ 135 lakhs. During financial year 2022-23, Mr. Ramesh earned business income of ₹ 35 lakhs.

He acquired a new residential property for ₹ 140 lakhs by investing entire sale consideration and his business income.

Determine the total income of Mr. Ramesh for the assessment year 2023-24.

Cost inflation index for F.Y. 2005-06: 117; F.Y. 2009-10: 148; F.Y. 2022-23: 331. [May 2015]

Answer:

"Computation of total income of Mr. Ramesh"
(For the A.Y. 2023-24)

Particulars	₹ in lakhs	₹ in lakhs
Business Income		35.00
Capital Gains:		
Full value of consideration		
Since SDV exceeds 110% of actual consideration, section 50C will be applicable and the full value of consideration would be the Higher of:		
Actual Consideration	₹ 105 lakhs	
Stamp Duty Value	₹ 135 lakhs	135.00
Less: Indexed cost of acquisition **(See W.N. 1)**		121.65
		13.35
Less: Exemption under section 54F **(See W.N. 2)**		13.35
Long-term capital gain:		Nil
Income from other sources **(See W.N. 3)**		2.50
Total Income:		**37.50**

Working Notes:

(1) Computation of indexed cost of acquisition:

	₹ in lakhs
Cost of acquisition	45.00
Less: Advance received from Mr. Mahesh in May 2009 and forfeited (to be reduced from cost of acquisition as per section 51, since the same is of on or before1.4.2014)	2.00
Cost for the purpose of indexation:	43.00
Indexed cost of acquisition (₹ 43 lakhs X 331/117):	**121.65**

(2) When capital gain is assessed on notional basis as per the provisions of section 50C, and the higher value i.e., the stamp duty value of ₹ 135 lakhs under section 50C has been adopted as the full value of consideration, the entire amount of ₹ 140 lakhs reinvested in the residential house within the prescribed period should be considered for the purpose of exemption under section 54F, irrespective of the source of funds for such reinvestment. **[Gouli Mahadevappa v/s ITO (2013)(Kar.)]**

In this case, since the cost of the new residential property acquired (₹ 140 lakhs) is more than the stamp duty value of ₹ 135 lakhs of the land transferred, the whole of the capital gain of ₹ 13.35 lakh would be exempt under section 54F.

(3) Advance of ₹ 2.50 lakhs received by Mr. Ramesh from Mr. Rakesh in August, 2021 which was forfeited due to the transfer not having materialized, is taxable as per section 56(2)(ix) under the head "Income from other sources", since the same is of on or after 1st April, 2014. Hence, such amount would not be reduced to compute the indexed cost of acquisition while determining capital gains on sale of the property.

Section 45(1A): *Capital Gains in case of damage or destruction of Capital Asset:-*

Question-9:

A manufacturing company was transporting two of its machines from unit 'X' to unit 'Y' on 1st September, 2022 by a truck. On account of a civil disturbance, both the machines were damaged. The insurance company paid ₹ 5 lakhs for the damaged machines. On these facts, for submitting the return of income for the previous year ending 31st March, 2023, your advice is sought as to,-

(i) Whether the damage of machines results in any transfer vis-a-vis exigibility to capital gains?

(ii) How the amounts received from the insurance company are to be treated for taxability?

(iii) Whether there will be any impact on the written down value of the block of plant and machinery as at 31st March, 2023. [May 2017]

Answer:

As per section 45(1A), receipt of insurance compensation in the form of money or any asset is to be treated as consideration and capital gain is accordingly to be charged to tax.

The two qualifying conditions prescribed are

(a) the compensation should have been received because of damage of destruction of capital asset; and

(b) the damage or destruction is as a result of, inter alia, civil disturbance.

As per the facts of the case, both the conditions are satisfied and therefore, by applying the provisions of section 45(1A), our advice to the company regarding the issues raised are as follows:

(i) in the case of damage or destruction as a result of civil disturbance, there is no actual transfer; but for determining nature and computation, it will be treated as deemed transfer and profit and gains from receipt of insurance compensation will be chargeable to tax as capital gain.

(ii) the receipt of insurance compensation of ₹ 5 lakhs has to be treated as the full value of consideration received as a result of such transfer of such capital asset.

(iii) As per the provisions of section 43(6), the receipt of compensation of ₹ 5 lakhs calls for adjustment in the WDV of the block of assets. If the WDV is more than ₹ 5 lakhs, then ₹ 5 lakhs should be deducted from WDV. On the other land, if the WDV is less than ₹ 5 lakhs, the difference would be treated as capital gain which will be computed as short-term (i.e. without indexation, even if period of holding exceeds 36 months) as supported by section 50. Nature of such capital gain will depend upon period of holding of such machines, if period of holding exceeds 36 months, then, such capital gain will be treated as long term is endorsed by the **Supreme Court** in case of CIT v/s V.S. Dempo company Ltd.

Section 45(2): *Capital gain on conversion of capital asset into stock in trade:-*

Question-10:

Tani purchased a land at a cost of ₹ 10 lakhs in the financial year 2002-03 and held the same as her capital asset till 31st March, 2010. Tani started her real estate business on 1st April, 2010 and converted the said land into stock-in-trade of her business on the said date, when the fair market value of land was ₹ 150 lakhs.

She constructed 20 flats of equal size, quality and dimension. Cost of construction of each flat is ₹ 8 lakhs. Construction was completed in December, 2022. She sold 15 flats at ₹ 20 Lakhs per flat between January, 2023 and March 2023. Remaining 5 flats were held in stock as on 31st March, 2023. She invested ₹ 50 lakhs in bonds of Rural Electrification Corporation Ltd. on 31st March, 2023.

Compute the amount of capital gain and business income in the hands of Tani arising from the above transactions for Assessment year 2023-24 indicating clearly the reasons for treatment for each item. Cost inflation Index: FY 2002-03: 105; FY 2010-11:167. [May 2013, Study Material]

Answer:

"Computation of capital gains and business income of Tani for A.Y. 2023-24"

Capital Gains:	₹
Fair market value of land on the date of conversion deemed as the full value of consideration for the purposes of section 45(2)	1,50,00,000
Less: Indexed cost of acquisition [10,00,000 x 167/105]	15,90,476
	1,34,09,524
Proportionate capital gains arising during A.Y. 2023-24 **[₹ 1,34,09,524 X 3/4]**	1,00,57,143
Less: Exemption under section 54EC	50,00,000
Capital gains chargeable to tax for A.Y. 2023-24:	**50,57,143**
Business Income:	
Sale price of flats [15x ₹ 20 lakhs]	3,00,00,000
Less: Cost of flats	1,12,50,000
[Fair market value of land on the date of conversion (₹ 150 lacs x 3/4)]	
Cost of construction of flats [15 x ₹ 8 lakhs]	1,20,00,000
Business Income chargeable to tax for A.Y. 2023-24:	**67,50,000**

EXPLANATORY NOTES:-

(1) **As per section 2(47): Transfer *includes* conversion of a capital asset into stock in trade.**
But, as per section 45(2), the capital gains from the arising from such transfer will be taxable *only in the year in which the stock-in-trade is sold or otherwise transferred.*
Further, Date of conversion shall be date of transfer, therefore indexation will depend on it.

(2) *For the purpose of computing the capital gains,* ***the FMV of the asset on the date of conversion shall be deemed to be the sales consideration for the purpose of section 48.***
In this case, since only 75% of the stock-in-trade (15 flats out of 20 flats) is sold in the P.Y. 2022-23 only proportionate capital gains (i.e.75%) would be chargeable in the A.Y. 2023-24.

(3) **On sale of such stock-in-trade, business income would arise, which is:**
Sales consideration (*less*) FMV of the asset on conversion**.**

(4) It may be noted here that as the **CBDT has clarified** in case of conversion of a capital asset into stock-in-trade and subsequent sale of stock-in-trade, *the period of 6 months is to be reckoned* ***from the date of sale of stock-in-trade for the purpose of exemption under section 54EC.***

In this case, since the investment in bonds of RECL has been made within 6 months of sale of flats, the same qualifies for exemption u/s 54EC. **CBDT Circular No. 791 dated 2.6.2000**

Section 45(5): *Capital gain in case of compulsory acquisition of an asset :-*

Question - 11:

The Government compulsorily acquired land of Mr. Shivam in April 2021 and paid compensation of ₹ 20 lakhs in June 2022. The land was acquired by Mr. Shivam in June 2003 for ₹12 lakhs. He had filed for additional compensation through Court and was awarded ₹ 18 Lakhs in February 2023 but this amount was received only during May 2023. Compute the taxable capital gain from the above transaction indicating the relevant assessment year. Expenses in connection with compulsory acquisition were ₹ 30,000 and for obtaining enhancement of compensation was ₹ 1 lakh. The CIIs for the F.Y. 2003-04, 2020-21, 2021-22 and 2022-23 are 109, 301, 317 and 331 respectively.

[December 2021 (New Course)]

Answer:

Computation of capital gains of Mr. Shivam for the A.Y.2023-24

Particulars	₹
Full value of consideration (Compensation received) [Taxable in the year of receipt i.e., P.Y.2022-23]	20,00,000
Less: Expenses in connection with compulsory acquisition	30,000
	19,70,000
Less: Indexed cost of acquisition [₹ 12,00,000 × 317/109]	34,89,908
Long-term capital loss (since land was held for > 24 months) for the A.Y. 2023-24	15,19,908
Note: Since the year of compulsory acquisition i.e., F.Y.2021-22 is the year of transfer of land, CII for F.Y.2021-22 has to be considered for computing indexed cost of acquisition.	

Computation of capital gains of Mr. Shivam for the A.Y. 2024-25

Particulars	₹
Full value of consideration (Enhanced Compensation received is taxable in the year of receipt i.e., P.Y. 2023-24)	18,00,000
Less: Expenses for obtaining enhanced compensation (allowable as deduction)	1,00,000
	17,00,000
Less: Set-off of b/f long-term capital loss from A.Y.2023-24	15,19,908
Long-term capital gains for the A.Y. 2024-25	1,80,092
Note: No deduction in respect of cost of acquisition is allowable from enhanced compensation.	

Section 112 and 112A: *Tax on long term capital gains :-*

Question-12:

Mr. X bought 10,000 equity shares of TT Ltd., listed in stock exchanges in India and abroad and a constituent of BSE 500 on 15th March, 2003 @ ₹2,250 per share. He sold the shares at ₹ 5,000 per share on 31st December, 2022. The brokerage and securities transaction tax deducted were at 0.5% and 0.075% respectively. Examine the tax liability of Mr. X for the assessment year 2023-24.

Will your answer be different, if instead of selling the shares in the market Mr. X *privately transferred the shares to his son* at the same price? (CII- 2002-03:105; 2022-23:331). [May 2005]

Answer:

"Computation of Tax Liability of Mr. X"

Section 112A: Long term capital gain arising from transfer of equity shares on which securities transaction tax is paid **is taxable @ 10%** in excess of ₹1,00,000. The taxable amount of capital gains is worked out as follows: ₹ in Lakhs

In the absence	If transferred through RSE, then, chargeable to tax u/s 112A @ 10% in excess of ₹1,00,000	If privately transferred, then, chargeable to tax u/s 112 @ 20%
Sale consideration (5000X10000)	500.00	500.00
(-) Brokerage @ 0.5%	2.5	Nil
Net consideration	497.50	500.00
(-) Cost of acquisition (225 lakhs ×331/105)	225.00 (without indexation)	709.29
LTCG / (LTCL):	272.50	(209.29)

Note: In the given case, since, sharers were acquired before 1st February, 2018, assessee has an option to take FMV of 31st January, 2018 as cost of acquisition, but, in the absence of FMV as on 31st January, 2018, actual cost has been presumed as FMV of 31st January, 2018.

Section 54EC: *Capital gain not to be charged on investment in certain bonds:-*

Question - 13:

Ms. RSRZ and Co. Ltd., sold one of its factory building for ₹ 14 lakhs on 19-4-2022. The building was acquired on 1-4-2009 and the assessee was using it for manufacturing activity and accordingly, depreciation was also being claimed. After sale of the building, the assessee reinvested the amount of capital gain in long-term specified assets under section 54EC and claimed exemption thereunder. The AO rejected the claim for exemption by the assessee and regarded that since the asset sold was depreciable asset, provisions of section 50 will be applicable and accordingly the assessee is not entitled to exemption under section 54EC. Discuss the validity of AO's claims.

[Jan. 2021 (New Course), May 2018, November 2016 (Similar Question w.r.t. section 54F)]

Answer:

As per section 54EC, where the capital gain arising from the transfer of a long-term capital asset, being land or building or both, is invested in the long-term specified asset, being the bonds issued by the

National Highways Authority of India (NHAI) or the Rural Electrification Corporation Limited (RECL) or any other bond notified by the Central Government in this behalf, at any time within a period of six months after the date of such transfer, the amount of such capital gain shall be exempt upto ₹ 50 lakhs.

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

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

- This view has been upheld by the **Supreme Court** in the case of CIT v/s V.S. Dempo Company Ltd.

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

Section 54F: *Exemption on the basis of investment of consideration in residential house:-*

Question-14:

Mr. Ankit sold a plot during the financial year 2022-23 and invested the sale proceeds in purchase of a new house in the name of his wife by the end of the financial year i.e., by 31st March, 2022. He claimed deduction under section 54F in respect of the new house purchased by him in the name of his wife. The Assessing Officer, while making assessment for the Assessment Year 2023-24 denied such deduction on the ground that in order to avail benefit under section 54F, it is necessary to invest the sale proceeds in the name of the assessee.

Comment on the validity of action taken by the Assessing Officer. [November 2016]

Answer:

The issue under consideration in this case is whether exemption under section 54F can be denied to Mr. Ankit if sale proceeds of a long term capital asset are invested in a new residential house within the stipulated time limit but the said house is purchased in the name of his wife and not in his name.

This issue came up before the **Delhi High Court** in CIT v/s Kamal Wahal (2013) wherein it was observed that section 54F requires purchase or construction of a residential property within the specified period. It does not require purchase of new residential house property in the name of the assessee himself.

The Court has decided that having regard to the rule of purposive construction and the object of enactment of section 54F, the assessee is entitled to claim exemption u/s 54F in respect of utilization of sale proceeds of plot of land for investment in residential house property in the name of his wife

Applying the rationale of the above **Delhi High Court ruling** in this case, the action of the Assessing Officer in denying the claim for deduction under section 54F in the hands of Ankit due to the reason that he had invested the sale proceeds in purchasing a new residential house in the name of his wife rather than in his name, **is not valid.**

Question-15:

Mr. Rishab, an individual aged 56 years, resident in India furnishes the following particulars of income earned in India for the P.Y. 2022-23:

(i) He has purchased his first residential house during his lifetime for ₹60,00,000 (including stamp duty and registration fees of ₹1,80,000). The registration and possession of the house was completed during April 2022.

(ii) Loan was taken from his friend in the month of April 2022 for purchase of residential house. Interest and repayment of ₹25,000 and ₹1,00,000, respectively, were made on the said loan during the year 2022-23.

(iii) Rent received on residential house (mentioned above) during the year ₹3,00,000.

(iv) Sale of unlisted shares on 17-01-2023, ₹3,20,000, the same were purchased on 09-01-2017 for ₹3,00,000.

(v) He sold a plot of land for ₹75,00,000 at market value on 05-06-2022. This plot of land was purchased on 20-05-2015 for ₹50,00,000 from his friend. The market value of the plot was ₹55,00,000 as per registering authorities at the time of purchase.

(vi) Short term capital gain on sale of gold during the year ₹20,000.

(vii) Brought forward short term capital loss of P.Y. 2017-18, ₹30,000 on shares traded on recognized stock exchange, on which STT was paid.

- **Compute total income of Mr. Rishabh for the A.Y. 2023-24.**

Cost Inflation Index: F.Y. 2015-16: 254; F.Y. 2016-17: 264; F.Y. 2022-23: 331. [November 2017]

Answer:

"Computation of total income of Mr. Rishabh for the A.Y. 2023-24"

Particulars	₹	₹
Income from house property:		
Gross Annual Value [i.e. Rent received, in the absence of other information]	3,00,000	
Less: Municipal taxes	-	
Net Annual Value (NAV)	3,00,000	
Less: Deductions under section 24:		
(a) 30% of NAV	90,000	
(b) Interest on housing loan	25,000	**1,85,000**
Capital Gains:		
Short-term capital gain on sale of gold	20,000	
Less: Set-off of brought forward short-term capital loss of P.Y.2017-18 on		

shares traded in recognized stock exchange as per section 74	20,000	
Taxable short-term capital gain:	**Nil**	
Long-term capital gain on sale of unlisted shares (since held > 24 months)		
Sale consideration	3,20,000	
Less: Indexed cost of acquisition [₹3,00,000 ×331/264]	3,76,136	
Taxable long-term capital gain/(loss):	(56,136)	
Long-term capital gains on sale of plot of land (since held > 24 months)		
Sale consideration	75,00,000	
Less: Indexed cost of acquisition [₹55,00,000 × 331/254]	71,67,323	
[As per section 49(4), stamp duty value considered for determining income taxable under section 56 for A.Y. 2016-17 would be the cost of acquisition for computing capital gains on subsequent sale]	3,32,677	
Less: Exemption u/s 54F [For purchase of residential house property within one year before the date of transfer] 3,32,677 × 60,00,000/ 75,00,000	2,66,142	
	66,535	
Less: Set-off of long-term capital loss on sale of unlisted shares	(56,136)	
Less: Set-off of balance short-term capital loss of P.Y. 2017-18 (As per section 74, brought forward short-term capital loss can be set-off against both long-term capital gain and short-term capital gains)	(10,000)	399
Gross Total Income / Total Income:		**1,85,399**

Question-16:

What are the consequences if the amount deposited in Capital Gains Account Scheme to avail exemption from capital gains is not utilised within the stipulated time? Is there any difference in the tax treatment in the event of death of the assessee before the stipulated time? [May 2012]

Answer:

Where the amount deposited in Capital Gains Account Scheme is not utilized for the specified purpose mentioned under the respective section providing for exemption (like say, section 54, 54B, 54G, etc.) within the specified period of two years or three years, as the case may be, mentioned therein, then the unutilized amount shall be charged under section 45 as capital gain of the previous year in which the specified period of two years or three years, as the case may be, expires.

The tax treatment will be different where before the stipulated time, the assessee expires and the amount is received by his legal heirs.

The **CBDT** has clarified that in the event of death of an individual before the stipulated period, the unutilized amount would not be chargeable to tax in the hands of the legal heirs of the deceased individual, since such unutilized amount is not income but is a part of the estate devolving upon them.

"ASSESSMENT PROCEDURE"

"QUESTIONS FROM PAST EXAMINATIONS (+) STUDY MATERIAL"

Section 139(1): *Filing of Return of Income:-*

Question-1:

Discuss, with reasons, whether the following statement is correct:

Mahesh, a resident and ordinarily resident in India and having a house property and a bank account outside India, is not required to file return of income for Assessment year 2023-24, if his total income is below the maximum amount not liable to tax. [May 2013]

Answer:

The statement is incorrect.

As per section 139(1),

Every person, being a resident (other than not ordinarily resident)**, who is not required to furnish a return under this sub-section and** who at any time during the previous year,

(a) holds, as a beneficial owner or otherwise, any asset located outside India or has signing authority in any account located outside India; or

(b) is a beneficiary of any asset located outside India,

shall furnish, on or before the due date, a return in respect of his income or loss for the previous year in such form and verified in such manner and setting forth such other particulars as may be prescribed.

Therefore, Mahesh has to file a return of income in the prescribed form compulsorily for A.Y 2023-24, *even if his total income is below the basic exemption limit,* since he is a resident and ordinarily resident in India and has a house property and a bank account outside India.

Section 139(3) & section 80: *Return of loss & eligibility of carry forward of loss: -*

Question-2:

The Assessing Officer issued a notice under section 142(1) on the assessee on 24th December 2023 calling upon him to file return of income for Assessment year 2023-24.

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. [November 2011, Question from Study Material]

Answer:

- Any return of loss shall be furnished in accordance with section 139(3).
- Section 80 provides for carry forward of loss where the return furnished as per section 139(3).
- In all other situations, the loss cannot be carried forward for set-off. In a case where an assessee furnish

a return of loss in response to a notice u/s 142 (1), such loss cannot be carried forward for set off.

- ☞ However, this restriction does not apply to unabsorbed deprecation, loss from House property.
- ☞ Accordingly, in the given case, business loss cannot be carried forward and the unabsorbed depreciation is entitled for carry-forward and set-off, though the return is furnished in response to notice u/s 142 (1).

Question-3:

Answer the following case. Your answer should cover these aspects:

(i) Issue involved; (ii) Provisions applicable; (iii) Analysis; and (iv) Conclusion.

Mr. X filed his return of income for A.Y. 2023-24 by declaring a total income of ₹ 10 lakhs. His case was selected for scrutiny assessment and an addition of ₹ 4 lakhs was made by the Assessing Officer on account of disallowances of certain expenses. During the course of the assessment proceedings, Mr. X found that he erroneously failed to claim the set-off of brought forward losses under section 72 amounting to ₹ 3 lakhs, which he was otherwise entitled to. By the time the error was discovered by Mr. X, the time-limit for filling revised return had also expired. Hence, during the course of the proceedings, Mr. X approached the Assessing Officer to allow the set-off of the brought forward losses which was erroneously not claimed in the return of income filed under section 139(1).

Whether the Assessing Officer is bound to accept the request of Mr. X? [May 2022]

Answer:

Issue Involved:

The issue under consideration is whether the Assessing Officer is bound to allow the set-off of brought forward losses under section 72 even if the assessee, Mr. X, in this case, has not claimed the same in the return filed by him and the time limit for filing revised return has expired.

Provision Applicable:

Under section 72, business losses shall be carried forward and shall be set-off against the profits and gains of any business in the next assessment year. It is assumed that the assessee has filed the Return of income within the time stipulated u/s 139(1) and hence is eligible for set off of the unabsorbed loss in the subsequent year.

The wording used in section 72 is "shall", indicating that the provisions relating to set off of brought forward business loss are mandatory provided the loss was determined in pursuance of a return filed under section 139(3) in any earlier previous year.

Analysis:

As per Board Circular No.14 (XL-35) of 1955 dated 11.04.1955, it is the duty of the Assessing Officer to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard, they should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him.

Thus, it is the duty of the Assessing Officer to apply the relevant provisions of the Act for the purpose of determining the true figure of Mr. X's total income and consequential tax liability. Merely because Mr. X has not claimed the set-off of brought forward losses of ₹ 3 lakh in the original return filed and the time limit for filing revised return has expired, it cannot relieve the Assessing Officer of his duty to apply section 72 in

the appropriate case.

Conclusion:

The Assessing Officer is bound to accept the request of Mr. X and allow the set-off of brought forward losses of ₹ 3 lakh under section 72, even if Mr. X has not claimed the same in the return filed, and the time limit for filing the revised return has expired.

Note:

The facts given in the question are similar to the facts in **CIT v/s Mahalakshmi Sugar Mills Co. Ltd.** (1986), wherein the above issue came up before the **Supreme Court.** The above answer is based on the rationale of the Supreme Court ruling in that case, taking note of the CBDT Circular No.14 (XL-35) of 1955 dated 11.04.1955.

Section 139(4), 139(5) & 234F: *Belated return, Revised return & ROI delay filing fee:-*

Question -4:

Arjun's total income for Assessment Year 2023-24 is ₹10 lakhs consisting of salary, capital gain and income from other sources. After considering TDS and advance tax, a sum of ₹50,000 towards tax is still payable. Because of various reasons he could not file his return of income within the prescribed time limit. Arjun approaches you for advice on the following issues:

(i) Whether he can file a return of income on 1st December, 2023?

(ii) Whether he will be able to revise his return of income, in case he discovers any omission or mistake in his return filed on 1-12-2023?

(iii) What amount of interest and fee, he will be subjected to for the default, if any, for the relevant assessment year. **[November 2017]**

Answer:

(i) Whether return can be filed on 1st December, 2023?

As per section 139(4), a belated return for any previous year may be furnished at any time –

(a) before 3 months prior to the end of the relevant assessment year; or

(b) before the completion of the assessment,

whichever is earlier.

Since Arjun has not filed his return of income within the specified due date under section 139(1), he can file a belated return of income u/s 139(4) for A.Y. 2023-24 on 1st December, 2023, if the assessment is not completed till date.

(ii) Whether revised return can be filed?

As per section 139(5), if any person, having furnished a return within the due date or a belated return, discovers any omission or any wrong statement therein, he may furnish a revised return at any time –

(a) Before 3 months prior to the end of the relevant assessment year or

(b) before the completion of assessment,

Whichever is earlier.

In case Mr. Arjun found an omission in the belated return filed by him for A.Y. 2023-24 on

01.12.2023, he can file a revised return u/s 139(5) on or before completion of assessment or before 3 months prior to the end of A.Y. 2023-24 i.e., 31.12.2023, whichever is earlier.

(iii) The quantum of interest and fee u/s 234F which he will be subjected to for the defaults are as follows:

- **Interest under section 234A would be attracted for such default:**
  Since Mr. Arjun is not liable to tax audit u/s 44AB, the due date for filing of return for A.Y. 2023-24 is 31.07.2023. Arjun has filed his return on 1.12.2023 i.e., interest u/s 234A will be payable for 5 months (from 1.8.2023 to 1.12.2023) @ 1% per month or part of month on the amount of tax payable on the total income, as reduced by TDS and advance tax paid.
  Interest u/s 234A = ₹50,000 x 1% x 5 = ₹2,500
- **Fee under section 234F** of ₹5,000 will be attracted since Mr. Arjun has filed his return after due date and his total income exceeds ₹5,00,000.

Question -5:

T an individual filed his return of income for assessment year 2023-24 on 15.6.2023 declaring a total income of ₹ 1,20,000. He later discovered that he had not claimed a particular deduction amounting to ₹ 2,10,000 while computing his business income in the said return. He filed a revised return on 30.10.2023 declaring a total loss of ₹ 90,000. The Assessing officer proposes to disallow the claim of T for carry forward of the business loss amounting to ₹ 90,000 for the reason that the revised return declaring loss for the first time was filed beyond the time prescribed under section 139(3). Examine the validity of the proposed action of the Assessing Officer. [May 2007]

Answer:

Similar issue has been placed before the **Allahabad HC** in the case of Dhampur Sugar Mills Limited.

In this case the High Court was held that the revised return substitutes the original return from the date the original was filed. Once a revised return is filed the original return is deemed to have withdrawn and the revised return is deemed to have been filed on the date the original return was filed.

In view of aforesaid judgment, revised return under section 139(5) substitutes the original return from the date the original return was filed. Hence the revised return filed on 30.10.2023 substitutes the original return filed on 15.06.2023 and is deemed to be filed on 15.06.2023 thereby as per the provisions of section 80 read with section 139(3) the loss of ₹ 90.000 shall be carry forward. Assessing officer was not justified in declining the claim of T, for carry forward of the business loss.

Section 142: *Inquiry before assessment:-*

Question-6:

For the Assessment Year 2023-24, Mr. John, was directed to carry out a special audit of his accounts under section 142(2A) on 1.8.2023, 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? [May 2019]

Answer:

(i) 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. Accordingly, the contention of the assessee that notice requiring special audit is not valid since reasonable opportunity of being heard has not been provided to him by the AO, **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 1.8.2023, 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 27.1.2024.

(iii) Penalty of ₹ 10,000 is leviable u/s 272A for failure to comply with a direction issued u/s 142(2A).

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

Section 143(1): *Assessment On the Basis of Return:-*

Question-7:

The assessment was made under section 143(1) for assessment year 2019-20. The assessee has received a notice under section 148 on 6th apri1 2023 for reopening of assessment. Can the assessee challenge the legality of the notice on the ground of change of opinion?

[November 2020, June 2009, Study Material]

Answer:

Under the scheme of section 143(1), only the adjustments relating to any arithmetical error in the return and incorrect claim which is apparent from any information in the return are permitted. In short, what is permissible is only correction of errors apparent on the basis of the return flied. Thus, while making the adjustments under section 143(1), the Assessing Officer has no power to go beyond the information given in the return and make any allowance or disallowance. Therefore, the intimation given under section 143(1) cannot be treated as an order of assessment. Hence, there being no assessment u/s 143(1), the question of change of opinion does not arise.

Therefore, the assessee cannot challenge the legality of the notice issued under section 148 reopening the assessment on the grounds of change of opinion in a case where no assessment is made under section 143(3), but only an intimation is issued under section 143(1).

❖ ***This inference is supported by the SC in ACIT v/s Rajesh Jhaveri Stock Brokers Pvt. Ltd. (2007).***

Question-8:

State with brief reason, whether the following statements are true or false: (No mark will be awarded for answers without reason.)

(i) 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.

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

(iv) Only an individual can be regarded as a Tax Return Preparer under section 139B.

[November 2018 (New Course)]

Answer:

(i) The statement is false.

Processing u/s 143(1) is necessary even where a notice has been issued to assessee u/s 143(2).

(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 u/s 142A

(iii) 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.

(iv) The statement is true.

The definition of Tax Return Preparer includes only an individual who has been authorised to act as a Tax Return Preparer under the Scheme framed under section 139B.

Section 292BB: *Deemed validity of Notice served: -*

Question-9:

The assessment of R & Sons HUF was completed u/s 143(3) 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.

[January 2021 (Old Course), Similar Question in January 2021 (New Course)]

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. It was so held by the **Supreme Court** in the case of **CIT v/s Laxman Das Khandelwal (2021)**.
- 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.

Section 143(3): *Order for scrutiny assessment:-*

Question-10:

R, an individual, filed his return of income for the assessment year 2023-24 on 15.06.2023. He later discovered that he had not claimed deduction under section 80-C in the said return. 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 R. Is the Assessing Officer justified in doing so? [May 2007, Nov. 2008, Question from Study Material]

Answer:

Judicial View:

Any claim for a deduction not made in the original return can be entertained by Assessing Officer only if such claim is made through a revised return u/s 139(5), and not otherwise. **[Goetze (India) Ltd. (SC)]**

Conclusion:

In the given case Mr. R, filed his return of income on 15.06.2023, within time limit u/s 139(1) but without claiming deduction u/s 80C. He claimed the same deduction through a latter addressing to the Assessing officer. Since he has not filed the revised return within the time limit u/s 139(5) the A.O. is justified in completing the assessment without allowing for the deduction.

Question-11:

Teachwell Education is a trust approved under section 10(23C)(vi) 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 approved for exemption. Hence, the AO wants to pass an order without giving exemption under section 10, which the assessee objects. Whether the AO can pass an order without giving exemption under section 10? You are required to examine this issue with respect to the provisions of Income-tax Act, 1961. [May 2012, Question from Study Material]

Answer:

As the second proviso to section 143(3), *inter alia,* provides that where the Assessing Officer is satisfied that any institution referred to in section 10(23C)(vi), has committed **any specified violation** as defined in Explanation 2 to the fifteenth proviso to section 10(23C) [which also covers carrying out its activities in contravention of the conditions subject to which it was approved for exemption u/s 10(23C)(vi)], he ***shall*** —

(a) send a reference to the Principal Commissioner or Commissioner to withdraw the approval; and

(b) no order making an assessment of the total income or loss of such institution shall be made by him without giving effect to the order passed by the Principal commissioner or Commissioner [either for cancellation of approval or refusing to cancel the approval u/s 10(23C)].

Therefore, in the aforesaid case, the Assessing officer can pass an assessment order without giving exemption under section 10 to Teachwell Education, which is an educational institution approved u/s 10(23C)(vi) only if he **has sent a reference to the Principal Commissioner or Commissioner to withdraw the approval from Teachwell Education** and **no order making an assessment of the total income or loss of such institution shall be made by him without giving effect to the order passed by the Principal commissioner or Commissioner [either for cancellation of approval or refusing to cancel the approval u/s 10(23C)]**.

Section 144C: *Reference to Dispute Resolution Panel:-*

Question-12:

State with reason the validity of the following statement:

"Before completing the assessment of any foreign company, the Assessing Officer has to forward a draft of the proposed order of assessment to the assessee." [November 2015]

Answer:

The statement is valid subject to the condition that assessing officer proposes to make **any variation** which is prejudicial to the interest of such assessee because as per section 144C, the Assessing Officer, in the first instance, has to forward a draft of the proposed order of assessment to the eligible assessee (a foreign company, in this case) if he proposes to make **any variation** which is prejudicial to the interest of such assessee, so as to enable the foreign company to file its objections, if any, to such variation with the Dispute Resolution Panel and the Assessing officer.

Question-13:

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 meaning has 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?

[Question from Study Material]

Answer:

(i) The term **"Dispute Resolution Panel" has been defined to mean** a collegiums comprising of three Principal Commissioners or Commissioner of Income-tax constituted by the board for this purpose.
The term **"Eligible Assessee" means** any person in whose case any variation arises as a consequence of the order of the Transfer Pricing Officer passed under section 92CA(3) and any foreign company or other non-resident.

(ii) The Assessing officer shall forward a draft of the proposed order of assessment to the eligible assessee and on receipt of such order, the eligible assessee shall, within thirty days of the receipt of the draft order file his acceptance of the variations to the Assessing Officer or file his objections, if any to such variation, with the Dispute Resolution Panel and 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,

And issue such directions, as it thinks fit for the guidance of the Assessing Officer to enable him to complete the assessment.

Section 147: *Assessment / Reassessment / Recomputation of loss or allowance:-*

Question-14:

After completion of regular assessment of December 22, 2024, Mr. Anshul received a notice on October 12, 2025 u/s 148 for Assessment Year 2023-24 on the ground that excess depreciation was allowed on certain assets. The Assessing Officer has complied with the procedure for re-opening as given u/s 148A. In the course of reassessment proceedings, the Assessing Officer also disallowed certain

expenses incurred in relation to dividend and tax-free interest, without complying with the procedure as given u/s 148A, for applying section 147 for disallowance of such expenses. The Assessing Officer passed the order disallowing the excess depreciation and certain expenses under section 14A.

[November 2016, November 2010, Question from Study Material]

Answer:

As per section 147, If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (i.e. relevant assessment year).

As per **Explanation to section 147**, For the purpose of assessment or reassessment or recomputation under this section, the **Assessing Officer may assess or reassess the income in respect of any issue,** *which has escaped assessment,* **and such issue comes to his notice subsequently** *in the course of the proceedings under this section,* ***irrespective of the fact that the provisions of section 148A have not been complied with.***

Therefore, in the instant case, the Assessing Officer has the power to disallow expenses under section 14A in addition to disallowing excess depreciation for which notice under section 148 was issued even though the provisions of section 148A have not been complied with for issue relating to disallowance under section 14A. Hence, the action of the Assessing Officer **is correct in law.**

Section 150: *Cases where no time limit for issue of notice:-*

Question - 15:

ABC Ltd., a listed company, filed its return of income in which a claim for deduction under Chapter VI-A was made. The case was subjected to scrutiny assessment and order u/s 143(3) was passed reducing the claim for deduction under Chapter VI-A. After 4 years from the end of assessment year, a notice u/s 148 was issued giving reasons such as subsequent Tribunal and other Court decisions which show that the deduction was excessively allowed in this case.

Is the action of the Assessing Officer valid? [November 2017]

Answer:

Provision applicable:

As per section 147, if any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, he Assessing Officer may, *subject to the provisions of sections 148 to 153,* assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (i.e. relevant assessment year)..

As per section 150 the notice u/s 148 can be issued at any time where assessment/reassessment is being made in consequence of or in order to give effect to the finding or direction of order of Higher Authority (like, Tribunal, Court, etc.)

Issue Involved:

The issue under consideration in this case is whether notice under section 148 issued after 4 years from the end of the assessment year is valid solely on the ground that subsequent tribunal and other court

decisions show that the deduction was excessively allowed.

Analysis:

Since in the given case the income has escaped from assessment in consequence of order of Higher Authority (i.e. Tribunal and Court), hence section 150 will be applicable and as a result of which notice u/s 148 can be issued at any time.

Conclusion:

By giving the overriding effect of section 150 to this case, the notice issued under section 148 by the Assessing Officer on the ground that subsequent tribunal and other court decisions show that the deduction was excessively allowed is, therefore, **valid.**

Section 153: *Time limit for completion of assessment or reassessment:-*

Question-16:

Mr. A filed his return of income for the assessment year 2023-24 on 15th December 2023. The assessing officer completed the scrutiny assessment on 25th December 2024 and served the order on 30th December 2024. However, the Notice of Demand u/s 156 was served on 10th January, 2024. Mr. A claims that demand of tax is invalid since the Notice of Demand was served beyond time. Examine the issue. **[November 2002]**

Answer:

As per section 153- Scrutiny assessment must be completed within a period of 9 months from the end of the relevant assessment year.

- In the case of **Purshottamdas T. Patel**, it was held that assessment is an integrated process which covers not only the determination of total income but the determination of tax as well.

Therefore, if the amount payable is determined with in the prescribed time limit then notice of demand cannot be invalid merely because it is served after the expiry of prescribed time limit for passing the assessment order.

In the given case, **it is presumed that** notice of demand u/s 156 has been made upto 31st December 2024, therefore, the contention of Mr. A is not valid.

Question - 17:

Teachwell Education is a trust approved under section 10(23C)(vi) 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 approved for exemption. Hence, the AO is going to pass an order without giving exemption under section 10. Can the AO get any additional time limit in completing this assessment? You are required to examine this issue with respect to the provisions of Income-tax Act, 1961.

[May 2012, Question from Study Material]

Answer:

As per Explanation 1 to section 153, in case the Assessing Officer makes a reference of the contravention of provision of section 10(23C)(vi) to the Principal Commissioner or Commissioner, the period

commencing from the date on which the Assessing Officer makes a reference to the Principal Commissioner or Commissioner of such contravention and **ending with the date** on which the copy of the order under clause (ii) or clause (iii) of the fifteenth proviso to clause (23C) of section 10 [i.e. copy of the order of withdrawing the approval or refusing to withdraw the approval under section 10(23C)(vi)] is received by the Assessing Officer, shall be excluded for computing the period of limitation for completing the assessment.

Further, as per 1st proviso of Explanation 1 of section 153 in case the time limit available to the Assessing Officer for passing an assessment order, after such exclusion, is less than 60 days, such remaining period of assessment shall be deemed to have been extended to 60 days.

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

Section 154: *Rectification of mistakes:-*

Question - 18:

Is it valid to rectify an assessment order under section 154 due to subsequent change of law on retrospective basis? Also state, whether a Supreme Court judgment would warrant a rectification under section 154 in respect of an order passed earlier by the Assessing Officer?

[November 2014, May 2013, May 2011, November 2006]

Answer:

Rectification of assessment order under section 154 due to subsequent change of law on retrospective basis:

If the assessment order is plainly and obviously inconsistent with the specific and clear provision as amended retrospectively, undisputably there is a mistake apparent from record. In the light of the retrospective amendment, the assessment order had to be rectified. [CIT v/s E. Sefton and Co. (P.) Ltd.]

In view of this, the Assessing Officer can, under section 154, rectify the order of assessment in the light of the later amendment of the law with retrospective effect.

Rectification of assessment order u/s 154 on account of subsequent judgment of Supreme Court:

The Gujarat High Court, in CIT v/s Subodh chandra s. Patel held that non-consideration of judgment of the jurisdictional High Court or the Apex Court would always constitute a mistake apparent from the record regardless of the judgment being rendered prior to or subsequent to the order proposed to be rectified.

However, the Calcutta High Court, in Geo miller and co. v/s DCIT, expressed a different view that a subsequent exposition of law by Supreme Court does not render assessment order as made on mistake.

Question-19:

X Pvt. Ltd's assessment for assessment year 2023-24 was completed under section 143(3) on December 31, 2024. The company went in appeal to the Commissioner (Appeals) and the appeal was decided on August 16, 2029 and the appeal effect was duly given by the Assessing officer on August 25, 2029. Thereafter, on September 1, 2029 the Assessing Officer noticed a mistake in calculation of depreciation on a particular block of assets, which reduced the income by ₹1.10 lakhs The Assessing Officer issued notice under section 154 for the purpose of rectifying the mistake. Is such rectification

permissible? [May 2005]

Answer:

As per section 154, the rectification order can be passed upto 4 years from the end of the financial year in which order sought to be rectified was passed. In the present case, the order sought to be rectified is the order of the Assessing Officer passed on 31st December, 2024. Therefore, rectification u/s 154 could have been passed upto 31.3.2029 Therefore, rectification under section 154 is not possible.

Protective Assessment:-

Question-20:

X and Y are partners of a partnership firm. The Assessing Officer of X is of the opinion that the income returned by X is actually taxable in the hands of Y.

The Assessing Officer, in order to safeguard the interest of the Revenue, assessed the income in the hands of both X and Y. The Assessing Officer recovered the tax due on the same from X and Y. He also imposed penalty under section 270A on Y for under-reporting the same. Comment on the actions of the Assessing Officer. [November 2012]

Answer:

When the ownership of the income is in dispute or is a matter of doubt, it is open to the Assessing Officer, to assess a particular income in the case of the person who is considered as liable to tax and include the same income in the case of another person also as a protective measure. Such an assessment is known as protective assessment.

It must, however, be noted that while protective assessment is permissible, a protective order for recovery is not permissible. In making a protective assessment, the authorities are merely making an assessment and leaving it as a paper assessment until the matter is decided one way or another, in further proceeding like appeal or revision.

Furthermore, a protective order of assessment can be passed but not a protective order of penalty.

Therefore, though the Assessing Officer's action in assessing the income in the hands of both X and Y is valid, the recovery of tax due on the same from X and Y and imposition of penalty under section 270A on Y for under-reporting of income is not valid.

"UPDATED RETURN OF INCOME"

Section 139(8A): *New provisions to allow filing of an Updated Return:-*

Illustration -1:

Mr. A filed the original return of income for the assessment year 2021-22, resulting in refund of ₹ 8,200. Determine his eligibility to file an updated return for such year in the following situations:

Description	Income declared in original return	Updated Return			
		Case 1	Case 2	Case 3	Case 4
Income from Business/Profession	2,00,000	4,00,000	2,00,000	-	10,00,000
Income from House Property	3,00,000	3,00,000	4,00,000	2,00,000	3,00,000
STCG (Other than section 111A)	4,00,000	4,00,000	6,00,000	-	1,00,000
Income from Other Sources	5,00,000	5,00,000	5,00,000	-	5,00,000
Gross Total Income	**14,00,000**	**16,00,000**	**17,00,000**	**2,00,000**	**19,00,000**
Less: Deductions under Section 80C	-	1,50,000	1,50,000	-	1,50,000
Taxable Income	**14,00,000**	**14,50,000**	**15,50,000**	**2,00,000**	**17,50,000**
Tax on Total Income	2,32,500	2,47,500	2,77,500	-	3,37,500
Add: Health & Education cess	9,300	9,900	11,100	-	13,500
Tax Liability	**2,41,800**	**2,57,400**	**2,88,600**	**-**	**3,51,000**
Less: Prepaid Taxes	2,50,000	2,75,000	2,75,000	-	2,75,000
Tax Payable/(Refund Due)	**(8,200)**	**(17,600)**	**13,600**	**-**	**76,000**
Add: Refund Already Granted	**-**	8,200	8,200	8,200	8,200
Tax Payable/(Refundable) u/s 140B	**-**	**(9,400)**	**21,800**	**8,200**	**84,200**
Eligibility to file Updated Return		***Not eligible***	***Eligible***	***Eligible***	***Eligible***
Remarks	-	*Increase in refund*	*Increase in tax liability*	*Increase in tax liability*	*Increase in tax liability*

Question - 2:

Mr. X would like to furnish his updated return for the A.Y. 2021-22. 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 31.3.2023

(ii) as on 28.2.2024

(iii) as on 31.5.2024

- **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. 2021-22 on 23.7.2023**

Answer:

Mr. X may furnish an updated return of his income for A.Y. 2021-22 at any time within 24 months from the end of the relevant assessment year i.e., 31.3.2024.

Accordingly, Mr. X can furnish updated return for A.Y. 2021-22 as on 31.3.2023 and on 28.2.2024. However, he can not furnish such return as on 31.5.2024, since such date falls after 31.3.2024.

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 u/s 139(4)/(5) i.e., 31st Dec. 2022 and before the expiry of 12 months from end of R.A.Y. i.e., 31.3.2023
- @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., 31.3.2023 and before the expiry of 24 months from end of relevant assessment year i.e., 31.3.2024.

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

(i) 31.3.2023 - ₹ 71,250 [25% of 2,85,000, being tax of ₹ 2,50,000 plus interest of ₹ 35,000]

(ii) 28.2.2024 - ₹ 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 proceedings for IEA for the A.Y. 2021-22 are pending.***

Section 140B: *Tax on updated return:-*

Question -3:

X (34 years) is a resident individual. He does not submit his return of income for the assessment year 2021-22 u/s 139(1)/(4). Income-tax Department has not initiated any proceeding so far the assessment year 2021-22. He intends to submit return of income for the assessment year 2021-22 under section 139(8A) on November 29, 2022. The following information is available – ₹

Estimated income for the assessment year 2021-22	**45,15,000**
Advance tax paid on January 4 ,2021	**3,00,000**
TDS /TCS available in form No. 26AS for the assessment year 2021-22	**70,000**
Any other credit / relief for the assessment year 2021-22 available to X	**Nil**

Audit is not required u/s 44AB or under any other provision of the Income-tax Act or under any other law. Due date of submission of return of income is July 31, 2021 (ignoring any extension). X wants to know whether (or not) updated return can be submitted and tax liability which he is required to pay?

Answer:

Updated return under section 139(8A) can be submitted and tax liability will be calculated as follows-

	₹
Income as per updated return	45,15,000
Tax (+ HEC) on ₹ 45,15,000	12,13,680
Less: TDS/TCS credit	70,000
Balance	11,43,680
Less: Advance tax paid during the financial year 2020-21	3,00,000
Balance	8,43,680
Add:	
Interest u/s 234A (from August 1, 2021 to November 29, 2022) (1% x ₹ 8,43,600 x 16 months)	1,34,976
Interest u/s 234B (from April 1,2021 to November 29,2022) (1% X ₹8,43,600 X 20 months)	1,68,720
Interest under section 234C [(15% of ₹ 11,43,600 X 3%) + (45% of ₹ 11,43,600 X 3%) + (75% of ₹ 11,43,600 X 3%) + (100% of ₹ 8,43,600 X 1%)]	54,752
Fee under section 234F for default in furnishing return	5,000
Tax + interest + fee – prepaid tax	12,07,128
Add: Additional tax under section 140B(3) (25% of ₹ 12,02,128)	3,00,532
Tax payable under section 140B before submitting updated return	**15,07,660**

Question-4:

X (44 years) is a resident individual. For the assessment year 2021-22, he submits return of income u/s 139(4) on January 20, 2022 (as filing of belated return for A.Y. 21-22 was allowed upto the end of the relevant A.Y.)**. The following information is taken from the intimation u/s 143(1) pertaining to the assessment year 2021-22 (tax audit not required, due date of submission of ROI is July 31, 2021)-**

	₹
Net income	**20,25,000**
Tax (+ HEC) on net income	**4,36,800**
Less: TDS/TCS credit clamed in return submitted under section 139(4)	**1,30,000**
Balance	**3,06,800**
Less: Advance tax (paid on November 20, 2020)	**1,00,000**
Balance	**2,06,800**
Add:	
Interest under section 234A (1% of ₹ 2,06,800 X 6 months)	**12,408**
Interest under section 234B (1% X ₹ 2,06,800 X 10 months)	**20,680**
Interest under section 234C [(15% of ₹ 3,06,800 X 3 %) + (45% of ₹ 3,06,800 X 3%) + (75% of ₹ 3,06,800 - Rs 1,00,000) X 3% + 100% of ₹ 2,06,800 X1 %]	**11,493**
Fee under section 234F for late furnishing of return	**5,000**
Total	**2,56,381**
Less: self- assessment tax paid on January 20,2022	**2,56,380**
(out of which –	
- **Income- tax : ₹ 2,06,800**	
- **Interest under section 234A : ₹ 12,408**	

- **Interest under section 234B : ₹ 20,680** - **Interest under section 234C : ₹ 11,493** - **Fee under section 234F : ₹ 5,000)** **Balance**	**Nil**
Tax liability as given in section 143(1) intimation-	
Tax on net income	**4,36,800**
Add: interest under sections 234A, 234B and 234C (₹12,408 + ₹20,680 + ₹ 11,493)	**44,581**
Add: Fee under section 234F	**5,000**
Total	**4,86,381**
Less: Prepaid tax [TDS/ TCS : ₹ 1,30,000 + advance tax : Rs 1,00,000 + self –assessment tax : ₹ 2,56,380 (i.e., tax : ₹ 2,06,800+ interest : ₹ 44,581 + fee: ₹ 5,000)]	**4,86,380**
Tax payable or refundable:	**Nil**

For the assessment year 2021-22, X wants to declare an additional income of ₹ 35,50,000 (which was not included in the original return by mistake of his accountant, TDS against this income is ₹ 2,80,000 as per Form No. 26AS which was also not claimed in the original return). He wants to know tax implication if he submits updated return on march 10, 2024 under section 139(8A).

Answer:

Income /tax computation for the assessment year 2021-22 after including undisclosed income – ₹

Net income (i.e., original income: ₹ 20,25,000 + undisclosed income: ₹ 35,50,000	55,75,000
Tax (+ SC + HEC) on net income	16,98,840
Less: TDS / TCS (originally claimed : ₹ 1,30,000 + not claimed earlier: ₹ 2,80,000)	4,10,000
Balance	12,88,840
Less: advance tax paid on November 20, 2020	1,00,000
Balance	11,88,840
Less: Self –assessment tax paid on January 20, 2022	2,06,800
Balance	9,82,040
Add: interest for late payment / short payment of advance tax:	
Interest under section 234B [1% per month on ₹ 11,88,840 from April 1,2021 to January 20, 2022 + 1% per Month on ₹ 9,82,040 from February 1, 2022 to March 10, 2024]	3,74,200
Interest under section 234C [(15% of ₹ 12,88,800 X 3%) + (45% of ₹ 12,88,800 X 3%) +(75% of (₹ 12,88,840 - ₹ 1,00,000) X 3% + 100% of ₹ 11,88,800 X 1%]	61,085

Note: Since assessee has already filed belated return for the relevant assessment year, therefore, *he is not required to pay interest u/s 234A at the time of furnishing of updated return.*

Computation of interest payable at the time of furnishing updated return pertaining to late/short payment of advance tax – ₹

Interest under sections 234B and 234C as calculated above (₹ 3,74,200 + ₹ 61,085)	4,35,285

Less: Interest under section 234B and 234C paid at the time of submission of original return (₹ 20,680 + ₹ 11 493)	32,173
Interest payable at the time of submission of updated return	4,03,112

Computation of additional tax under section 140B(3)- ₹

Tax (+ SC + HEC) payable on the basis of updated return	16,98,840
Less: Prepaid tax under section 140A(1) (i.e., prepaid tax as per original return) (i,e., TDS/TCS: ₹1,30,000 + advance tax 1,00,000 + self –assessment tax: ₹ 2,06,800)	(-) 4,36,800
Less: TDS/TCS in respect of income disclosed in updated return (but not claimed earlier)	(-) 2,80,000
Less: Relief under section 90/90A/91 or AMT/MAT credit, (but not claimed earlier)	Nil
Add: Extra interest payable (as calculated above for late /short payment of advance tax)	4,03,112
Tax and interest	13,85,152
Add: Additional tax under section 140B(3) (i.e., 50% of ₹1385,152)	6,92,576
Tax, interest and additional tax payable as per section 140B (2) (rounded off)	20,77,730
Effective tax rate (for disclosing additional income of ₹ 35,50,000) (₹ 20,77,730 ÷ ₹ 35,50,000	58.53%

Question-5:

Mr. A sold his flat for ₹ 40 lakh (stamp duty value ₹ 35 Lakh) on 10-02-2021. He had purchased this flat in ₹ 25 lakh on 01-04-2019. He did not file his return of income for the previous year in which such flat was sold, *i.e.*, previous year 2020-21 (assessment year 2021-22). The sub-registrar reported the details of such transactions in SFT. Before the income-tax department issues the notice, he wants to file an updated return for the assessment year 2021-22. How much tax, interest, fee and additional income tax, he would be liable to pay on the filing of an updated return. Assume the following:

(a) he did not have any other income for the relevant assessment year;

(b) the due date of filing of original return was 31-07-2021; and

(c) the updated return is filed on 31-05-2022.

He can file an updated return for Assessment Year 2021-22. As he had not filed the return for the assessment year 2021-22 earlier, the tax on the updated return shall be computed as under:

Computation of Income	
Short-term capital gain from sale of flat (₹ 40,00,000 - ₹ 25,00,000)	15,00,000
Total Income	15,00,000
Computation of Tax	
Tax on total income reported in the updated return	2,62,500
Add: Health and Education Cess	10,500
Gross tax liability	**2,73,000**
Less: MAT Credit or AMT Credit	-
Less: Relief under Section 89	-

Less: Foreign tax credit under Section 90, 90A or 91	-
Net tax liability	**2,73,000**
Less: Prepaid Taxes	-
Tax payable on self-assessment under Section 140B	**2,73,000**
Add: Interest under	
(a) Section 234A [See Working Note 1]	27,300
(b) Section 234B [See Working Note 2]	38,220
(c) Section 234C [See Working Note 3]	2,730
Add: Fees for late filing of return under section 234F	5,000
Aggregate tax liability	**3,46,250**
Add: Additional Income-tax [See Working Note 4]	85,313
Total tax payable on self-assessment under Section 140B	**4,31,563**

Working Note 1: Computation of interest under Section 234A:

The interest u/s 234A shall be calculated from the due date of filing of the original return (31-07-2022) till the date of furnishing of the updated return (31-05-2022), *i.e.*, 10 months. The interest shall be computed at the rate of 1% per month on the amount of tax payable under Section 140B, *i.e.*, ₹ 2,73,000.

Thus, the amount of interest under section 234A shall be ₹ 27,300 (₹ 2,73,000 * 1% * 10 months).

Working Note 2: Computation of interest under section 234B:

The interest under section 234B shall be calculated from 1st April of the relevant assessment year till the date of payment of self-assessment tax under section 140B. *Assuming the assessee had paid the self-assessment tax on the date of the filing of updated return, i.e., 31-05-2022,* the interest under section shall be computed for 14 months (01-04-2021 to 31-05-2022). The interest shall be computed at the rate 1% per month on the amount of tax payable under section 140B, *i.e.*, ₹ 2,73,000.

Thus, the amount of interest under section 234B shall be ₹ 38,220 (₹ 2,73,000 * 1% * 14 months).

Working Note 3: Computation of interest under section 234C

For the purpose of determining the amount of advance tax instalment, the capital gain forms part of the estimated income from the date of accrual of such capital gain. As the capital gains accrue to the assessee in the last quarter of the financial year 2020-21, the interest under Section 234C shall be levied at the rate of 1%. As no advance tax is paid by the assessee, the interest shall be charged on the tax payable under section 140B, *i.e.*, 2,73,000.

Thus, the amount of interest under section 234C shall be ₹ 2,730.

Working Note 4: Computation of additional tax:

The additional tax is payable by the assessee on the amount of tax and interest payable under Section 140B. The amount of additional tax shall be 25% of tax and interest as the updated return is filed within 12 months from the end of the relevant assessment year.

Hence, the amount of additional tax shall be ₹ 85,313 [25% of (2,73,000 + 27,300 + 38,220 + 2,730)].

"APPEALS & REVISIONS"

"QUESTIONS FROM PAST EXAMINATIONS (+) STUDY MATERIAL"

Section 246A: *Appealable Orders before Commissioner (Appeals):-*

Question-1:

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.

[November 2020, January 2021 (New Course)]

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.

Question-2:

Your answer should cover these aspects:

(i) Issue involved; (ii) Provisions applicable; (iii) Analysis; and (iv) Conclusion.

A scheme of arrangement was approved by the Delhi High Court pursuant to which the assessee company bought back 5,00,000 shares at the rate of ₹ 18,000 per share for a total consideration of ₹ 900 crores held by its sole shareholder and holding company in Mauritius.

In its return of income, it declared the details of the transaction but denied the liability to pay any tax on the said transaction. Pursuant to notice under section 143(2), an assessment order was passed rejecting the assessee's contention that the transaction was not a buyback in terms of section 115QA but a buy-back pursuant to a scheme approved by the High Court, and holding the assessee liable to

pay tax at 20% on the distributed income of ₹ 900 crores.

The assessee filed a writ petition with High Court against this portion of the assessment order. The Department submitted that since the remedy of appeal was available to the assessee, the writ petition should not be entertained.

In light of the above facts, please discuss whether the assessee company is right in filing a writ petition?

[December 2021]

Answer:

Issue Involved:

The issue under consideration in this case is **whether denial of liability to pay tax under section 115QA is an appealable issue.**

[Note: The issue involved in this case may also be described as **whether the assessee is justified in filing the writ petition**].

Provision Applicable:

When an alternate remedy is available, a taxpayer cannot seek the writ jurisdiction of the High Court.

As per section 246A, any assessee aggrieved against, inter alia, any one of the following orders may appeal to Commissioner (Appeals):

(i) An order against the assessee, where the assessee denies his liability to be assessed under this Act, or

(ii) Any order of assessment under section 143(3), where the assessee objects to the amount of income assessed/tax determined/loss computed, as the case may be.

Section 115QA provides that where shares are bought back at a price higher than the price at which those shares were issued, then, the balance amount will be treated as distribution of income to shareholder and tax@20% will be payable by the company.

Analysis:

The expression "denies his liability to be assessed" is quite comprehensive to include within its fold every case where the assessee denies his liability to be assessed under the Act. Therefore, any determination u/s 115QA, be it regarding quantification of the liability or the question whether such company is liable or not, would fall within the ambit of "an order against the assessee, where the assessee denies his liability to be assessed under this Act".

Accordingly, an appeal u/s 246A to Commissioner (Appeals) would be maintainable against the determination of liability under section 115QA.

Conclusion:

Accordingly, the assessee should have filed an appeal to the Commissioner (Appeals) instead of filing a writ petition. The action of the assessee in filing writ petition is not correct.

Section 220 (6) and section 254: *"Stay Of Demand":-*

Question-3:

A petition for stay of demand was filed by XYZ Ltd. before the 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 1.1.2023 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 1.2.2024 on account of the COVID pandemic and therefore, the disputed matter could not be disposed of. In the meanwhile, in June 2023, XYZ Ltd. had made an application for extension of stay and was granted extension of stay upto 31.12.2023. Thereafter, on 5.1.2024, 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 the assessee stating that the stay period expired on 31.12.2023, after which the order of stay stood vacated automatically. Examine the correctness of contention of the Assessing Officer.

[Dec.'21 RTP, Similar Question in November 2009, May 2002, Study Material]

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 the appeal is not attributable to the assessee. However, the aggregate of the period of stay originally allowed and the period of stay so extended cannot exceed 365 days and the Appellate Tribunal has to dispose of the appeal within the period or periods 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/s Pepsi Foods Ltd (2022).**

Accordingly, if an appeal is not heard by the bench, due to the bench functioning intermittently on account of the COVID pandemic, the delay is not attributable to XYZ Ltd. In such a case, though the extended stay period of 365 days had expired on 31.12.2023, the recovery of ₹ 15 lakhs against the arrear demand of ₹ 25 lakhs made by the Assessing Officer on 5.1.2024 is not in order, since the delay in disposing of the appeal is not attributable to XYZ Ltd. Therefore, the contention of the Assessing Officer is not correct. The order of stay would stand vacated after 31.12.2023, only in a case where the delay in disposing of the appeal had been attributable to XYZ Ltd.

Rule 46A: *Power of CIT (Appeals) to admit an additional evidence:*

Question-4:

Mr. T prefers appeal with CIT(Appeals) after receiving assessment order under section 143(3) of the Income-tax Act. After filing his appeal, he realizes that certain important issues were not raised

in the statement of facts and grounds of appeal submitted. The appellant wants to produce additional evidences before the CIT(Appeals). State the circumstances where the appellant shall be entitled to produce additional evidence, i.e. documentary, before the Commissioner of Income Tax (Appeals) other than the evidence produced during the proceedings before the Assessing Officer.

[November 2017, November 2008, Study Material]

Answer :

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

(i) Where the AO has refused to admit evidence which should have been admitted.

(ii) Where the assessee was prevented by sufficient cause from producing –
(a) Evidence called for by AO, or (b) any evidence, or

(iii) Where an AO has made an order without giving sufficient opportunity to the appellant to produce evidence relevant to the ground of appeal.

Section 253: *Appeals to Appellate Tribunal:-*

Question-5:

An assessee, who is aggrieved from all or any of the following orders, is desirous to know the available remedial recourse and the time limit against each under the I.T. Act, 1961:

(i) Passed under Section 143(3) by the A.O.

(ii) Passed under Section 263 by the CIT.

(iii) Passed under Section 272A by the Director General.

(iv) Passed under Section 254 by the ITAT. **[May 2014, May 2008, Study Material]**

Answer:

The remedial recourse available to the assessee and the time limit to avail the same, in respect of the following orders, are summarized as under:

Nature of order	Remedy available	Time limit
Order u/s 143(3) passed by AO	Rectification u/s 154 – Where there is a mistake apparent on record	Within 4 years from the end of the year In which order sought to be amended was passed.
	Appeal u/s 246A- To the CIT [A].	With in 30 days from the date of service of notice of demand.
	Revision application u/s 264- To the CIT.	Within one year from the date of receipt such order.
Order passed u/s 263 by	Appeal to ITAT	Within 60 days from the date of receipt of

CIT		order of CIT.
Order passed u/s 272A by Director General	Appeal to ITAT	Within 60 days from the date of receipt of order of DGIT.
Order passed u/s 254 by ITAT	Appeal to High Court – If there is substantial question of law	Within 120 days from the date of receipt of order of ITAT.

Section 254 : *Order of the Appellate Tribunal :*

Question -6:

The Income-tax Appellate Tribunal (ITAT) passed an order providing relief as prayed by the assessee on 4-01-2023. In July, 2023 the Tribunal found a mistake apparent from the record and immediately it rectified the mistake and passed an order.

Is the order passed by the Tribunal barred by limitation?

What would be your answer, if the mistake was identified by the Assessing Officer who filed a rectification petition in July, 2023 and the Tribunal passes the rectification order, say, in December, 2023? [May 2015]

Answer:

Section 254(2), dealing with the power of the Appellate Tribunal to pass an order for rectification of mistakes, is in two parts. The first part refers to the *suo moto* 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 the 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 which is to be rectified was passed. In this case since the rectification order is passed in July, 2023 i.e. within 6 Months time limit, the rectification order passed by the Tribunal is not barred by limitation.

Where the application for rectification is made by the AO or assessee within 6 Months from the end of the month in which the order which is 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 which is to be rectified was passed.

This view has been upheld in the case of Sree Ayyanar Spinning & Weaving Mills Ltd. (SC).

In this case, since the rectification petition by the Assessing Officer was filed before the expiry of 6 Months from the end of the month in which the order which is to be rectified was passed, the rectification order passed by the Tribunal is valid, even though the order was passed after the expiry of 6 Months from the end of the month in which the order which is to be rectified was passed.

Section 255: *Procedure of Appellate Tribunal:*

Question-7:

Discuss the correctness or otherwise of the following statement with reference to the provisions of the Income -tax Act, 1961:

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.

[November 2011, May 2001, Study Material, Similar Question in May 2013]

Answer:

The statement given is not correct.

As per section 255, if the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority.

However, if the members are equally divided, they should state the point or points on which they differ. The case shall then be referred by the President of the Appellate Tribunal for hearing on such point or points by one or more of the other members of the Appellate Tribunal.

Thereafter, such point or points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case, including those who first heard it.

Section 260A: *Appeal to High Court:*

Question-8:

Examine the correctness of the following statement in the context of the provisions contained in the Income-tax Act, 1961.

"High Court has an inherent power under the Income-tax Act, 1961, to review an earlier order passed on merits." **[November 2014, November 2011, Study Material]**

Answer:

The statement is correct.

In the case of **CIT v/s Meghalaya Steels Ltd. (2015),** the **Supreme Court** has held that High Courts under article 215 of the Constitution of India, the power of review would inhere in them.

Additionally, the Supreme Court had observed that 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.

The Supreme Court further observed that section 260A does not, in any manner, curtail or restrict the application of the provisions of the Code of Civil Procedure. Section 260A states that all the provisions that would apply qua appeals in the Code of Civil Procedure would apply to appeals under section 260A. That does not in any manner suggest either that the other provisions of the Code of Civil Procedure are necessarily excluded or that the High Court's inherent jurisdiction is in any manner affected.

Question-9:

Being aggrieved by the order of the ITAT, Delhi, an assessee filed an appeal with Honourable High Court of Delhi with a delay of 439 days in filing the appeal. While filing the appeal, the assessee made an application for condonation of delay also citing the reasons that the delay is on account of

"pursuing an alternate remedy by way of filing an application before ITAT under section 254(2) for rectification of mistake apparent from the records". Does the contention of the assessee is maintainable? [November 2019]

Answer:

The issue under consideration is whether delay in filing appeal under section 260A can be condoned where the stated reason for delay is the pursuance of an alternate remedy by way of filing an application before the ITAT under section 254(2) for rectification of mistake apparent on record.

The application before the ITAT under section 254(2) is not an alternate remedy to filing of the application under section 260A. The former is an application for rectifying a 'mistake apparent from the record' which is much narrower in scope than the latter.

Under section 260A, an order of the ITAT can be challenged on substantial questions of law. The appellant had the option of filing an appeal under section 260A while also mentioning in the Memorandum of Appeal that its application under section 254(2) was pending before the ITAT.

The time period for filing an appeal under section 260A does not get suspended on account of the pendency of an application before the ITAT under section 254(2) of the Act.

Accordingly, the delay in filing the appeal before High Court cannot be condoned. Thus, the contention of the assessee, is not maintainable.

- The facts of the case are similar to the facts in Spinacom India (P.) Ltd. v/s CIT, wherein the above issue came up before the Apex Court. The above answer is based on the rationale of the Supreme Court in the said case.

Question-10:

Answer the following case:

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 the 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. [January 2021 (New Course)]

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.

Note: The facts of the case are similar to the facts in **Sunil Vasudeva & Others v/s Sundar Gupta & Others** [2019], wherein the above issue came up before the Supreme Court. The above answer is based on the rationale of the Apex Court in the said case.

Section 263: *Revision of order prejudicial to revenue:-*

Question-11:

The assessment of South West Bank Limited for Assessment Year 2017-18 was made under section 143(3) on 30th November, 2018 allowing deduction under section 36(1)(viia) on account of provision for doubtful debts and deduction in respect of foreign exchange rate difference as claimed in the return of income. Subsequently, the Assessing Officer initiated reassessment proceeding under section 147 in respect of deduction under section 36(1)(viii) for special reserve created by the bank. The order u/s 147 was passed on 31st December 2021. Later, the Principal Commissioner after examining the record of assessment initiated revisionary proceeding under section 263 by issue of show cause notice to the bank and passed an order under section 263 on 31st August, 2022 for disallowing in part deduction under section 36(1)(viia) and deduction for foreign exchange rate difference. The bank claimed that the order passed by the Principle Commissioner under section 263 is barred by limitation.

Examine the correctness or otherwise of the claim of the bank.

[November 2018, November 2015, May 2008]

Answer:

As per section 263: No revision order shall be made under section 263 after the expiry of two years from the end of the financial year in which the **order sought to be revised** was passed.

Under the given case, the issue is "whether the period of limitation for an order passed under section 263 has to be commenced from the original order passed by the Assessing Officer under section 143(3) of the Income –tax Act, 1961 or from the order of reassessment passed under section 147, where the subject matter of revision is different from the subject matter of reassessment under section 147"?

Identical facts have been placed before the **Bombay High Court** in the case of CIT v/s ICICI Bank Ltd.(2012). The **Bombay High Court** relied on the **Supreme Court** decision in the case of CIT v/s Alagendran Finance Ltd. (2007) wherein it was held that in such case where the subject matter of revision was not the same as the subject matter of reassessment, the period of limitation would commence from the date of original assessment and not from the date of reassessment.

In this case, the period of limitation as referred to in section 263 is with reference to the assessment In which the claim of the assessee as to deduction under section 36(1)(viia) on account of provision of doubtful debts and deduction in respect of foreign exchange rate difference was considered. These issues were not the subject matter of reassessment proceedings, which were only in respect of deduction under section 36(1)(viii) for special reserve created by the bank.

In view of the aforesaid rulings, the period of limitation shall be commenced with reference to the original assessment order and not from the date order of reassessment.

Therefore, in this case the revision proceedings are barred by limitation since the original assessment order was made on 30.11.2018 and the revision should have been made by 31.3.2022. However, the revision order was passed only on 31st August, 2022 and hence, the same is barred by limitation and the claim of the bank that the order passed by the Principal Commissioner under section 263 is barred by limitation **is correct.**

Section 264: *Revision of Other Orders:*

Question-12:

Arihant Ltd. filed an appeal to the Commissioner (Appeals) against the order of assessment made by the Assessing Officer. The appeal was allowed by the Commissioner (Appeal). The assessee later found that he was entitled to deduction of ₹ 30,000 as bad debt u/s 36(1)(vii), which he had forgotten to claim and the related amount was also not allowed by the Assessing Officer in the course of assessment. Further, the issue of deduction was not raised by the assessee in appeal before the Commissioner (Appeals) and hence it was also not considered by him in the said appeal.

Subsequently, Arihant Ltd. Applied to Commissioner for revision u/s 264 of the Act, to allow such deduction.

Examine the power of the Commissioner to grant relief to the assessee u/s 264, in such a case.

[November 2014, November 2006]

Answer:

Section 264 provides that the Chief Commissioner / Commissioner shall not revise an order which has been made the subject of an appeal to the Commissioner (Appeals).

Therefore, the fact that the relief claimed in the application filed by the assessee under section 264 was not the subject matter of appeal to the Commissioner (Appeals) dose not alter the position that the order of assessment was the subject of the appeal.

The term 'ORDER' in section 264 refers to the order appealed against and not to the relief claimed in appeal. Therefore, the Commissioner has no power to revise any order under section 264, if the order has been made subject to an appeal to the Appellate Authority, even if the relief claimed in the revision is different from the relief claimed in the appeal.

- It was so held by the **Supreme Court** in Hindustan Aeronautics Ltd. v/s CIT (2000).

In view of this, the Commissioner cannot exercise his powers under section 264 to revise the order of assessment and allow the deduction claimed by Arihant Ltd. in his application.

Question-13:

The assessment of AUM Enterprises, a partnership firm for the assessment year 2023-24 was made u/s 143(3) on 31st July 2023. The assessing officer made two additions to the income of the assessee viz. (i) addition of ₹ 3 lakhs u/s 40(a)(ia) due to non-furnishing of evidence of payment of TDS and (ii) addition of ₹ 8 lakhs on account of unexplained cash-credit.

The assessee contested addition on account of unexplained cash-credit in appeal to the CIT(A). The appeal was decided in January, 2023 against the assessee.

The assessee approached you for your suggestion as to whether it should apply for revision to the CIT u/s 264 or rectification to the AO u/s 154 as regards disallowance u/s 40(a)(ia). Advise.

[May 2018 (New Course), May 2010]

Answer:

Section 264 provides that the Chief Commissioner or Commissioner has no power to revise any order which has been made the subject matter of an appeal to the Commissioner (Appeals), even if the relief claimed in the petition is different from the relief claimed in appeal.

Section 154 provides that where any matter had been considered and decided in any proceeding by way of appeal or revision relating to an order, Assessing Officer may amend the order for rectification of mistake apparent from the record, in relation to a matter other than the matter which has been considered and decided. The concept of partial merger would apply in the case of section 154.

In the present case, since the order passed by the Assessing Officer in respect of the addition of unexplained cash credit of ₹ 8 lakhs became the subject matter of an appeal to the Commissioner (Appeals), the assessee, AUM Enterprise cannot apply for revision under section 264 even if the subject matter of revision i.e., addition of ₹ 3 lakhs under section 40(a)(ia) is different from the subject matter of appeal.

However, AUM Enterprise can apply to the Assessing Officer for rectification of the order in respect of addition of ₹ 3 lakh under section 40(a)(ia), as this matter has not been considered and decided in any proceeding by way of appeal or revision.

In the view of above, the assessee, AUM Enterprise should seek rectification under section 154.

Question-14:

Your answer should cover these aspects:

(i) Issue involved; (ii) Provisions applicable; (iii) Analysis; and (iv) Conclusion.

Nikhil, an individual, furnished his return of income for Assessment Year 2018-19 declaring income of ₹ 80,000 from Short Term Capital Gains on sale of shares and paid tax thereon at 15%. The Assessing Officer issued intimation under section 143(1) accepting the return of income but however, levied tax@30% on such income. The assessee filed an application under section 154 claiming that he erroneously offered to tax the gains arising on sale of shares as Short Term Capital Gains instead of Long Term Capital Gains, STT paid, which are exempt from tax. The Assessing Officer passed a rectification order allowing relief in part by computing tax @ 15% but refused to grant the refund on the ground that it was not claimed in the return of income furnished and the issue was beyond the ambit of section 154. Thereafter, the assessee furnished a revision petition u/s 264, which was rejected by the Commissioner of Income Tax on the plea that the scope of section 154 of the Income-tax Act was

limited and had to be strictly based on the return of income furnished and that intimation under section 143(1) was not an order and not assessable to revisionary jurisdiction. Is the rejection of the revision petition under section 264 by the CIT valid? [December 2021]

Answer:

Issue Involved:

The issue under consideration is whether intimation u/s 143(1) can be regarded as an order, which can be revised by the Commissioner u/s 264.

Provision Applicable:

As per section 264, the Commissioner can revise any order, other than an order to which section 263 applies.

Analysis:

Since section 264 uses the expression "any order", it would imply that the section does not limit the power thereunder to correct errors committed by the subordinate authorities but could even be exercised where errors are committed by assessees. It would even cover situations where the assessee, because of an error, has not put forth a legitimate claim at the time of filing the return and the error is subsequently discovered and is raised in an application under section 264.

The intimation under section 143(1) is to be regarded as an order for the purposes of section 264.

A duty is cast upon the Assessing Officer to assist and aid the assessee in the matter of taxation and to advise the assessee, guide him and not to take advantage of error or mistake committed by the assessee or of his ignorance.

Conclusion:

Accordingly, the Commissioner instead of merely examining whether the intimation was correct based on the material then available ought to have examined the material in the light of the CBDT Circular. The rejection of revision petition is, therefore, not valid.

"MULTIPLE SECTIONS BASED QUESTIONS"

Question-15:

Assessment of Bhajan Ltd. was completed u/s 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) Based on fresh information that there was escapement of income for the same assessment year, can the Assessing Officer initiate reassessment proceedings when the appeal is pending before Commissioner (Appeals)?

(ii) Can the Assessing Officer pass an order u/s 154 for rectification of mistake in respect of issues not being subject matter of appeals?

(iii) Can the assessee-company seek revision u/s 264 in respect of matters other than those preferred

in appeal?

(iv) Can the Commissioner make a revision u/s 263 both in respect of matters covered in appeal and other matters? [May 2015, Similar question in November 2018]

Answer:

(i) As per section 147, the assessing officer may assess or reassess such income which a chargeable to tax and has escaped assessment.

Therefore, even when an appeal is pending before Commissioner (Appeals), the assessing officer can initiate reassessment proceedings in respect of income chargeable to tax which has escaped assessment, provided such income is not the subject matter of the appeal before the Commissioner (Appeals) i.e., such income which has escaped assessment does not form part of additions of ₹15 lakhs to the returned income, which is the subject matter of appeal.

(ii) As per section 154, the Assessing Officer can pass an order under section 154 to rectify a mistake apparent from the record, providing the rectification is in relation to a matter, other than the matter which has considered and decided in the appeal before CIT (Appeals).

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 u/s 154 for rectification of the same provided the same is a mistake apparent from record.

(iii) Section 264 provides that, the Chief Commissioner or Commissioner shall not revise any order u/s 264, where such order has been made the subject of an appeal to the commissioner (Appeals) **on any issue**.

Therefore, u/s 264, the Chief Commissioner or Commissioner cannot revise an order which is pending before the CIT(Appeals), even if the revision pertains to a matter other than the matter (s) covered in the appeal.

(iv) As per section 263, the Chief Commissioner or Commissioner has the power to revise an order prejudicial to revenue, even if the order is the subject matter of appeal before CIT(Appeal). However the power of the Chief Commissioner or Commissioner u/s 263 shall extend to only such matters as had not been considered and decided in such appeal.

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 the subject matter of appeal.

[CWT v/s Sampathmal Chordia (2002) (Mad.)].

"INCOME TAX AUTHORITIES AND THEIR POWERS"

"QUESTIONS FROM PAST EXAMINATIONS (+) STUDY MATERIAL"

Section 119: *Powers of the Central Board of Direct Taxes:-*

Question-1:

Discuss the correctness or otherwise of the following statement with reference to the provisions of Income-tax Act, 1961:

"Central Board of Direct Taxes issues orders, instructions and directions to other income tax authorities as it may deem fit which has to be compulsorily followed by them". [November 2017]

Answer:

The statement is **partially correct.**

As per section 119, the CBDT may issue orders, instructions and directions to other income-tax authorities as it may deem fit which has to be compulsorily followed by them.

However, as per the proviso to section 119, no such orders, instructions or directions shall be issued so as to interfere with the discretion of the Commissioner (Appeals) in the exercise of his appellate functions.

Question-2:

JKL Ltd filed its returns of loss for the Assessment Year 2023-24 on 10.01.2024 beyond the time prescribed under section 139(3) declaring a total loss of ₹ 15,00,000. It approaches you for advice regarding the course of action to be taken to secure the benefit of carry forward of the business loss for set off against future profits. Advise the company suitably in the matter. [May 2007]

Answer:

- **Section 119 gives power to CBDT to relax provision of I. T. Act. In simple words,** CBDT has the power to condone the delay in filing return in cases having claim of carry forward of losses.
- **CIRCULAR 9/2015, DATED 9-6-2015:**

  Monetary limits prescribed for condonation of delay are as under-

Range of Loss	Authority empowered to Condone
Up to ₹ 10,00,000	CIT or PCIT
₹ 10,00,001 - ₹ 50,00,000	CCIT or PCCIT
₹ 50,00,001 and above	**Central Board of Direct Taxes**

- **Conclusion:**

  In the given case, since the loss of JKL Ltd is ₹ 15,00,000, the authority empowered to condone the delay is CCIT or PCCIT. Therefore JKL Ltd. has to file a condonation petition to the CCIT or PCCIT to carry forward the business loss.

Section 131: *Power regarding discovery, production of evidence etc:-*

Question-3:

The Director General of Income-tax after getting the information that Mr. X is in possession of unaccounted cash of ₹ 50 lakhs, issued orders by invoking power vested in him as per section 131 of the Income-tax Act, 1961, 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?**

[November 2014, Question from Study Material]

Answer:

As per section 131 where a Director General of Income-tax has reasons to suspect that any income has been concealed or is likely to be concealed by any person within his jurisdiction he can cause initiation of enquiry or investigation by invoking the powers u/s 131.

This section empowers:

- Discovery and inspection;
- enforcing the attendance of any person;
- compelling of production of books and other documents and
- issuing commission.

- Under Section 131, **there is no power to seize cash.**
- The right course of action available for the Director General of Income-tax is to initiate search proceedings u/s 132 by issuing search warrant and effect seizure through an authorized officer. Before doing so, confidential verification or investigation can be carried out to ascertain the veracity of the information received. The Director General of Income-tax should satisfy by applying his mind that it is a fit case to issue search warrant u/s 132(1).

Section 132: *Power of search and seizure:-*

Question-4:

Books of account and certain assets are found to be in possession of the person whose premises are searched. What are the rebuttable presumptions regarding those items? [November 2015]

Answer:

As per section 132, the **Presumptions** regarding the books of account and assets found in the possession of the person, whose premises are searched are as follows –

(i) That such books of account, other documents, money, bullion, Jewellery, or other valuable article or thing *belongs to such person*.

(ii) That the *contents* of such books of accounts and documents are *true*. And

(iii) That the *signature* and every other part of such books of account and other documents which purports to be in the handwriting of any particular person are in that *person's handwriting*. And in the case of a document stamped, executed or attested by the person by whom it purports to have been so executed

or attested.

Section 132B: *Application of seized or requisitioned assets:-*

Question -5:

Consequent to a search in the premises of Mr. Manav, some gold bars were seized from the locker. Manav voluntarily disclosed some income during the course of search. In order to remove his liability to pay interest under sections 234B and 234C, the assessee filed an application for sale of the gold bars and adjustment of tax liability on undisclosed income out of the sale proceeds while the assessment was still pending. Based on the provisions of applicable sections and court rulings, discuss whether the assessee can do so ? [July 2021, similar question in November 2020]

Answer:

As per section 132B, the amount of existing liability under the Income-tax Act and the amount of liability determined on completion of assessment under section 153A may be recovered out of assets seized under section 132. The words "existing liability" postulates a liability that is crystallized by adjudication.

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

As per the first proviso to section 132B(1)(i), Mr. Manav may make an application to the Assessing Officer for release of the gold bars seized, after adjusting existing liability. However, he has to explain the nature and source of acquisition of the gold bars to the satisfaction of the Assessing Officer. It is not the *ipse dixit* of Mr. Manav but the satisfaction of the Assessing Officer on the basis of the explanation tendered by Mr. Manav which is material.

In this case, Mr. Manav wants to adjust the tax liability on undisclosed income disclosed by him voluntarily during search, which is not possible, since it is only when the liability is determined on the completion of assessment that it would stand crystallized, after which the sale proceeds of gold bars can be adjusted against the said liability.

Note: The facts of the case are similar to the facts in the Allahabad High Court ruling in **Hemant Kumar Sindhi & Another v/s CIT (2014).** The above answer is based on the rationale of the said ruling.

Question - 6:

A search as per section 132 of the Act was conducted on 02.01.2023 and cash of ₹ 40 lacs was seized in. The assessee moved an application on 30.01.2023 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?

[November 2020, May 2018, November 2009, Question from Study Material]

Answer:

As per section 132B, 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.

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 the present case, since the application was made to the Assessing Officer on 30.1.2023 i.e., within the 30 day period, the amount of existing liability may be recovered out of the cash seized and the balance cash may be released within 120 days from the date on which the last of the authorizations for search under section 132 was executed.

Section 133: *Power to call for information:-*

Question-7:

The Assessing Officer issued notices under section 133 to four banks requiring particulars relating to a customer in a specific format duly verified in a prescribed manner. One of the banks refused to part with the information on the ground that the letter did not specify about any proceeding pending against the said customer under the Income-tax Act, 1961.

Discuss the correctness of action of the bank in refusing to furnish the particulars as required by the Assessing Officer. [May 2012]

Answer:

As per section 133(6), power is given to an Assessing Officer to issue notice, for the purposes of the Act, requiring any person, including a banking company, to furnish information in respect of such points or matters or to furnish statement of accounts and affairs verified in the manner specified by the Assessing Officer, as may be useful for, or relevant to, any enquiry or proceeding under the Act. Therefore, the provisions of this section can be invoked even in case of any enquiry and it is not necessary that any proceeding should be pending against the customer for the same.

However, in respect of an enquiry, this power can be exercised by any Income-tax authority below the rank of Principal Director or Director or Principal Commissioner or Commissioner, (other than Joint Director, an Assistant Director or a Deputy Director), only after getting the prior approval of the Principal Director or Director or Principal Commissioner or Commissioner, as the case may be.

Therefore, the Assessing Officer can issue notice under section 133(6) asking for particulars relating to a customer in the specified format duly verified in the prescribed manner from the banking company, even if no proceeding is pending against such customer, provided he has obtained the prior approval of the principal Director or Director or the principal Commissioner or Commissioner, as the case my be.

Hence in such a case, the action of bank in refusing to provide the particulars relating to a customer as required by the Assessing Officer on the ground that no proceeding was pending against the customer, is not correct.

Section 133A: *Power Of Survey:-*

Question-8:

The Assessing Officer surveyed a popular cinema hall by name "Thriller" which is within his jurisdiction at 12 O'clock in the midnight for collecting information which may be useful for the purpose of Income-tax Act, 1961. The concerned cinema hall is kept open for business everyday between 9 p.m. and 1 a.m. The owner of the cinema hall claims that the A.O. could not enter his business premises after sunset and at late in the midnight. The Assessing Officer wanted to take away with him the books of account kept at the premises of the cinema hall.

Examine the validity of the claim made by the owner of cinema hall and the proposed action of the Assessing Officer. [May 2019, November 2011]

Answer:

Section 133A permits the Assessing Officer 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.

But he can exercise his power of survey under section 133A only after obtaining the approval of the Joint Commissioner or Joint Director, as the case may be. Assuming that he has obtained such approval in this case, he is empowered under section 133A

In the case given, the cinema hall is open from 9.00 p.m. to 1.00 a.m. for the conduct of business. The Assessing Officer entered the cinema hall at 12 O'clock in the night which falls within the working hours of the cinema hall. Therefore, the claim made by the owner to the effect that the Assessing Officer could not enter the cinema hall at late night is not in accordance with law.

Further, as per section 133A 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 the Chief Commissioner or the Principal Director General or the Director General or the Principal Commissioner or the Commissioner or the Principal Director or the Director.

Section 133B: *Power to collect certain information:*

Question-9:

An Assessing Officer entered a hotel premises 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 purpose of the Act. The hotel is kept open for business everyday between 9 am to 9 pm. 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 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.

[May 2017, November 2006]

Answer:

As per section 133B, an income-tax authority has the power to enter any place of business during the hours at which such place is open 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 hour.

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.

This section further provides that an income tax authority acting under section 133B shall, on no account, remove or cause to be removed from the place wherein he has entered, any books of account.

Hence, 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.

"PENALTIES & PROSECUTIONS"

"QUESTIONS FROM PAST EXAMINATIONS (+) STUDY MATERIAL"

Section 270A: *Penalty for under reporting and misreporting of income:-*

Question-1:

List out the instances that are treated as "Misreporting of Income" and quantum of penalty that would be attracted in these cases. [July 2021]

Answer:

The following are the instances that are treated as "Misreporting of Income"

- misrepresentation or suppression of facts;
- failure to record investments in the books of account;
- claim of expenditure not substantiated by any evidence;
- recording of any false entry in the books of account;
- failure to record any receipt in the books of account having a bearing on total income; and
- failure to report any international transaction or deemed international transaction or specified domestic transaction.

Where under reporting of income results from misreporting of income by any person, penalty @200% of tax payable on such under-reported income would be attracted

Question-2:

Mr. Pramod, a resident individual of the age of 52 years, has not furnished his return of income for A.Y. 2023-24. However, the total income assessed in respect of such year under section 144 is ₹ 12 lakh. Whether penalty u/s 270A attracted in this case, and if so, what is the quantum of penalty leviable? [May 2018]

Answer:

Mr. Pramod is deemed to have under-reported his income since he has not filed his return of income and his assessed income exceeds the basic exemption limit of ₹ 2,50,000. Hence, penalty u/s 270A is leviable.

Computation of penalty leviable under section 270A

Particulars	₹	₹
Assessment under section 144		
Under-reported income:		
Total income assessed under section 144	12,00,000	
(-) Basic exemption limit	2,50,000	
	9,50,000	
Tax payable on under-reported income as increased by the basic exemption limit [30% of ₹ 2 lakhs + ₹ 1,12,500]	1,72,500	

Add: Health & Education cess @4%	6,900	
	1,79,400	
Penalty leviable@50% of tax payable		89,700

Question-3:

M/s. Universe Ltd. is a domestic company. Its turnover for the Previous Year 2020-21 was ₹ 300 crores. The following are the particulars furnished for the Assessment Year 2023-24:

Particulars	Income (₹)
As per Return of Income filed under section 139(1)	**(8,00,000)**
Determined under section 143(1)(a)	**(4,00,000)**
Assessed under section 143(3)	**(70,000)**
Reassessed under section 147	**3,00,000**

Can penalty be levied u/s 270A on M/s Universe Ltd.? If yes, compute the penalty leviable u/s 270A, if

(i) under-reported income is not on account of mis-reporting.

(ii) under-reported income is on account of mis-reporting. [January 2021]

Answer:

M/s Universe 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.

The applicable rate of tax for Universe Ltd., a domestic company, for A.Y. 2023-24 is 25%, since its turnover for the P.Y. 2020-21 does not exceed ₹ 400 crores

(i) Computation of penalty leviable u/s 270A if under-reported income is not on account misreporting:

Particulars	₹	₹
Assessment under section 143(3)		
Under-reported income:		
Loss assessed u/s 143(3)	(70,000)	
(-) Loss determined under section 143(1)(a)	(4,00,000)	
	3,30,000	
Tax payable on under-reported income @25%	82,500	
Add: HEC@4%	3,300	
	85,800	
Penalty leviable @50% of tax payable		42,900
Reassessment under section 147		
Under-reported income:		
Total income reassessed under section 147	3,00,000	
(-) Loss assessed under section 143(3)	(70,000)	

	3,70,000	
Tax payable on under-reported income @25%	92,500	
Add: HEC @4%	3,700	
	96,200	
Penalty leviable@50% of tax payable		48,100

(ii) Computation of penalty leviable u/s 270A if under-reported income is on account misreporting:

Where under reporting of income results from misreporting of income by any person, penalty would be leviable @200% of tax payable on such under-reported income. Thus, in such case penalty would be -

Particulars	₹	₹
Assessment under section 143(3)		
Tax payable on unreported income [computed in (i) above]	85,800	
Penalty leviable @200% of tax payable		1,71,600
Reassessment under section 147		
Tax payable on under-reported income [computed in (i) above]	96,200	
Penalty leviable @200% of tax payable		1,92,400

Section 270AA: *Immunity from imposition of penalty, etc.:-*

Question-4:

The Assessing Officer has initiated the penalty proceedings u/s 270A for under-reporting of income and launched prosecution proceedings u/s 276C for willful evasion of tax at the time of completion of re-assessment of Mr. Pradeep u/s 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?

[January 2021 (New Course), November 2020]

Answer:

Section 270AA empowers an assessee to make an application to the Assessing Officer for grant of immunity from imposition of penalty under section 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 under section 270A and prosecution under section 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 under section 270A have **not** been initiated on account of **misreporting of income** as specified u/s 270A(9).

Section 271AAB: *Penalty where search has been initiated:-*

Question-5:

In the course of search operation u/s 132 of the Income-tax Act, 1961, in the month of July, 2023, Mr. Khemka has made a declaration u/s 132(4) to the Income Tax authorities on the earning of his income not disclosed in respect of previous year 2023-24. Can that statement save Mr. Khemka from a levy of penalty, if he is yet to file his return of income for assessment year 2024-25?

[November 2018, November 2005]

Answer:

According to section 271AAB, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him, a sum computed at the rate of **30%** of the undisclosed income of the specified previous year, if such assessee —

(i) in the course of the search, in a statement under section 132(4), admits the undisclosed income and specifies the manner in which such income has been derived;

(ii) substantiates the manner in which the undisclosed income was derived; and

(iii) on or before the specified date—

(A) pays the tax, together with interest, if any, in respect of the undisclosed income; and

(B) furnishes the return of income for the specified previous year declaring such undisclosed income therein.

In view of the above, in the given case, even if Mr. Khemka has made a declaration u/s 132(4), penalty @ 30% of undisclosed income of the specified previous year i.e., P.Y. 2023-24 would be attracted u/s 271AAB

Section 275 : *Time Limit for Passing the Penalty order :-*

Question-6:

The Assessing Officer completed the assessment of X. Limited for the assessment year 2023-24 under section 143(3) on 30th December, 2023. The Assessing Officer has initiated the proceeding for penalty under section 270A on 30th December, 2023.

What is the time limit for imposition of such penalty in the following cases -

(i) X. Limited did not contest the assessment order.

(ii) X. Limited contested the assessment order by filing appeal to the Commissioner (Appeals). The appeal was dismissed on 30th December, 2024, on which date the Commissioner received the appeal order.

(iii) The Jurisdictional High Court stayed the penalty proceeding on 25th August, 2024 and the Supreme Court vacated the stay on 3rd November, 2024. [November 2012]

Answer:

Section 275 provides for the time limit for imposing penalty. According to this section, the time limit for imposition of penalty under section 270A in the following cases would be:

(i) If X. Limited did not contest the assessment order:

Where the relevant assessment order is not the subject matter of either appeal or revision, an order imposing penalty shall be passed upto-

"End of the financial year in which assessment proceedings are completed i.e. 31st March, 2024"

OR

"Six month from the end of the month in which penalty proceedings were initiated i.e. 30th June 2024"

(whichever is later)

Therefore, the time limit for imposing penalty in this case would be 30th June, 2024.

(ii) If X. Limited made an appeal to the Commissioner (Appeals) against the assessment order and the appeal was dismissed on 30th December, 2024 on which date the Commissioner received the appeal order:

Where the assessment order or other order is the subject matter of an appeal to the Commissioner (Appeals) under section 246A, and the Commissioner (Appeals) passes the order disposing of such appeal, an order imposing penalty shall be passed upto-

"End of the financial year in which assessment proceedings are completed i.e. 31st March, 2024"

OR

"1 year from the end of the financial year in which order of CIT(A) is received by CIT (31/3/26)"

(whichever is later)

Therefore, the time limit for imposing penalty in this case would be 31st March, 2026.

(iii) If the penalty proceeding is stayed by the High Court on 25th August, 2024 and the stay is vacated by the Supreme Court on 3rd November, 2024:

As per the provisions of the Explanation below section 275, the period of stay is to be excluded from the time limit for imposition of penalty.

However, in this case, the time limit for imposing penalty would expire on 30th June, 2024 being the date of expiry of six months from the end of the month in which action for imposition of penalty is initiated (since it is later than 31.3.2024, being the date of expiry of the financial year in which the assessment proceeding are completed).

The passing of stay order after that date will not have any impact on the time limit for imposing penalty which would be 30th June, 2024.

Section 273A: *Power to reduce or waive penalty in certain cases:-*

Question-7:

State the conditions, if any to be satisfied by the assessee in order to get relief under section 273A(4) regarding the waiver of penalty. Can the Commissioner of income- tax refuse to grant relief, when the conditions laid down in the section are complied by the assessee?

[November 2002, Study Material]

Answer:

As per section 273A(4)- Commissioner may, on an application made by the assessee and after recording his reasons for doing so, reduce or waive the amount of any penalty payable by the assessee under the Act or stay or compound any proceedings for the recovery of such amount if he is satisfied that-

(a) to do otherwise would cause genuine hardship to the assessee , having regard to the circumstances of

the case, and

(b) the assessee has cooperated in any enquiry relating to assessment or any proceeding for the recovery of any amount due from him.

☞ If conditions referred to in 273A are satisfied then the CIT is ***duty bound*** to grant the relief under section 273A. The power under section 273A is a *quasi- judicial power (i.e. almost equal to the power of Court)* and has to be exercised ***judiciously (i.e. in accordance with the intent of Legislature).*** The order under section 273A has to be a speaking order and it must state the reasons as to why relief has been granted or not been granted to the assessee. This view was upheld in the case of NavNirman Pvt. Ltd. v/s CIT [MP].

"MULTIPLE SECTIONS BASED QUESTIONS"

Question-8:

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.

[May 2017, November 2007, Study Material]

Answer:

The penalty leviable in each case is:-

(i) Failure to get books of accounts audited as required under section 44AB–

As per section 271B, 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, is leviable for failure to get books of account audited as per the requirement u/s 44AB.

(ii) Failure to comply with a direction issued under section 142(2A)-

As per section 272A, a sum of ₹ 10,000 is leviable for failure to comply with a direction issued under section 142(2A).

(iii) Failure to furnish report from an accountant as required by section 92E-

As per section 271BA, a sum of ₹ 1,00,000 is leviable for failure to furnish report from an accountant as required under section 92E.

Question-9:

State with reasons the penalty leviable on each of the four independent instances:

(1) The premises of A Ltd. were 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) M/s ABC Trust an eligible investment fund has filed a statement of its activities for the year ended 31-3-2023 on 31-7-2023.

(3) Meena Caterers has received ₹ 1 lakh in cash and ₹ 9 lakh by account payee crossed cheque

from Mr. Arvind for rendering catering services on the occasion of his daughter's wedding.

(4) 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. [November 2019]

Answer:

(1) As per section 271AAB(1A), 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) An eligible investment fund, in respect of its activities in a financial year, is required to furnish within 90 days from the end of the financial year (i.e., by 29th of June), a statement of its activities to the prescribed Income-tax authority under section 9A(5).

In the present case, the eligible investment fund has furnished its statement of its activities on 31.7.2023, i.e., after 29th June 2023, being the due date of furnishing such statement, penalty of ₹ 5,00,000 would be attracted under section 271FAB.

(3) 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 crossed cheque which is a permissible mode of payment.

(4) 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. Even though she has failed to inform and furnish the correct information within 10 days, penalty of ₹ 50,000 is not leviable, since such penalty is attracted only in the case of a prescribed reporting financial institution u/s 271FAA(c) read with section 285BA(6).

"GENERAL / CASE LAW BASED QUESTION"

Question-10:

During the assessment proceedings in respect of Mr. Desai, the Assessing Officer found that some purchases were shown in the trading account for which the details of the suppliers were missing. The assessee did not maintain the daily stock register and also could not offer proper explanation regarding those purchases. The assessing officer rejected the books of accounts of the assessee and made ex-parte assessment under section 144. In the assessment order, the AO treated them unexplained cash credit and made additions to the tune of ₹ 12,26,000 in the declared income. The assessee filed appeals with various appellate authorities but due to lack of satisfactory explanation, his case was dismissed at all levels and the issue finally reached to the Supreme Court. While the appeal was still pending at the Supreme Court, the AO initiated penalty proceeding for concealment of income. During the penalty proceedings, the assessee provided the details of the

creditors to the satisfaction of CIT(A) and thus, the penalty proceedings were dropped.

Now, the assessee approached you as a consultant. You are required to list out what grounds that may be taken by the assessee against the pending assessment proceedings. Base your answer on the relevant provisions of law and decided court rulings. [July 2021]

Answer:

As per section 68, where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income- tax as the income of the assessee for that previous year.

In this case, even though at the time of assessment, the assessee had failed to produce any explanation or evidence in support of the entries regarding the purchases, at the time of penalty proceedings, the assessee had provided the details of the creditors to the satisfaction of the CIT(A), and the penalty proceedings were dropped.

The said penalty proceedings were the outcome of the assessment order treating the purchases from creditors as unexplained cash credit and making addition of ₹12,26,000 u/s 68 to the declared income.

Since the penalty proceedings itself were dropped consequent to satisfaction of the CIT(A) about the details of creditors, resultantly, the basis of initiation of penalty proceedings, namely, addition of ₹12,26,000 under section 68 towards cash credit in the assessment should also be set aside.

Note: The facts of the case are similar to the facts in Supreme Court ruling in **Basir Ahmed Sisodiya v/s ITO** [2020]. The above answer is based on the rationale of the said ruling.

"PROSECUTIONS"

Section 276CC: *Failure to furnish returns of income:-*

Question-11:

The Assessing Officer lodged a complained against M/s Emerald, a firm, under section 276CC of the Income-tax Act 1961 for failure to furnish its return of income for the A.Y. 2023-24 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 sources, 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 ₹ 1,000. The Assessing Officer has accepted the order of the Commissioner (Appeals) and has not referred an appeal against it to the Income-tax Appellate Tribunal. The firm desires to know about the maintainability of the prosecution proceeding in the facts and circumstances of the case. Advise the firm suitably. [May 2017, May 2007, Study Material]

Answer:

Willful failure to file return of income in time u /s 139(1) shall attract prosecution u/s 276CC.

However, in a case where the return of income is not filed with in the due date, prosecution

proceedings will not be attracted if the tax payable by the assessee (not being a company) on the total income determined on regular assessment, as reduced by the advance tax, TDS, **TCS,** and **self assessment tax paid before the expiry of assessment year** does not exceed ₹ 10000.

In this case, even though the tax liability of the firm as per the original order of assessment exceed ₹ 10,000, however, as a result of the order of the Commissioner (Appeals), it got reduced to ₹ 1,000, which is less than ₹ 10,000.

Therefore, Since the tax liability of the firm on final assessment was determined at ₹ 1,000, the prosecution proceedings are not maintainable.

In Guru Nanak Enterprises v/s ITO (2005), where the facts were similar, the **Supreme Court** held that prosecution was unwarranted.

"MULTIPLE SECTIONS BASED QUESTIONS"

Question-12:

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) 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 the tax collected under section 206C.

[May 2018, November 2009, Study Material]

Answer:

(i) Failure to afford facility to the officer authorized as per section 132(1)(iib) is a case for which prosecution can be lunched 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 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 lunched 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 extend to seven years and with fine.

"MODES OF UNDERTAKING TRANSACTIONS"

"QUESTIONS FROM PAST EXAMINATIONS (+) STUDY MATERIAL"

Section 269SS & 269T: *Mode of accepting or taking loan / deposits & repayment their of:-*

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 alongwith 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 2019 for 48 months by cheque and another ₹ 15,000 on 30th June, 2022 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, 2023, due against his first certificate (purchased in 2019) and ₹ 15,500 in cash on 25th March, 2023, 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 jointly with Mrs. A, wife of Mr. A, while repaying back in cash or bearer cheque?**

[November 2010, Study Material]

Answer:

(i) There is no violation of section 269SS at the time of acceptance of the first deposit of ₹ 15,000 on 1.5.2019, since it is not in excess of the threshold limit of ₹ 20,000. However, violation u/s 269SS is attracted at the time of acceptance of the second deposit in cash on 30th June, 2022, 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 u/s 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, there is a violation of the provision of section 269T at the time of first repayment by bearer cheque on 23rd March, 2023, since on that date, the aggregate amount of deposits held by Mr. A with the non-banking company (together with interest payable on such deposit) is more than ₹ 20,000. Therefore, penalty u/s 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, 2023 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 ₹ 20,000.

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.

[November 2019]

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, the 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.

Section 271D: *Penalty for failure to comply with the provisions of section 269SS:-*

Question-3:

Answer the following five case (Your answer should cover these aspects: (i) Issue involved, (ii) Provisions applicable, (iii) Analysis and (iv) Conclusion):

Kumar Bros, the assessee, is a partnership firm. During the course of assessment proceedings, the Assessing Officer noticed that huge amount of cash was accepted by the firm from its partners during the relevant year corresponding to the A.Y. 2023-24. The Assessing Officer was of the view that interest was given to partners on amounts advanced, which conclusively proved that the transaction are between different persons whereby the firm has accepted loans in cash from the partners and thereby initiated penalty proceeding under section 271D in view of violation of section 269SS.

Is the action of Assessing Officer tenable in law? **[May 2017]**

Answer:

(i) Issue Involved:

The issue under consideration is whether penalty under section 271D is imposable for cash Loans / deposits received by a firm from its partners in violation of the provisions of section 269SS.

(ii) Provisions applicable:

Section 269SS prohibits any person from taking any loan or deposit exceeding prescribed limit,

otherwise than by way of account payee cheque/bank draft or use of electronic clearing system through a bank account. In case of contravention of the provisions of section 269SS, penalty equal to the amount of loan or deposit is leviable under section 271D.

(iii) Analysis:

The facts of the case are similar to the facts in CIT v/s Muthoot Financiers (2015), wherein the above issue came up before the **Delhi High Court.** The Court observed that one view is that a partnership firm not being a juristic person, the inter se transaction between the firm and partners are not governed by the provisions of sections 269SS and 269T. A contrary view is that the partners of the firm are distinct as civil entities while the firm as such is a separate and distinct unit for the purpose of assessment.

(iv) Conclusion:

The **Delhi High Court** opined that the two different legal interpretations on the relationship between firm and partners could constitute a reasonable cause in a given case for not invoking section 271D read with section 273B. The issue being a debatable one, there was reasonable cause for not levying penalty. Hence, applying the rationale of the Delhi High Court ruling to the case on hand, the action of the Assessing Officer, in levying penalty under section 271D in this case is **not** tenable in law.

Section 269ST: *Mode of undertaking transactions:-*

Question-4:

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 27-3-2023, 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?

[November 2019 (New Course)]

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 u/s 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 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 u/s 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 27.3.2023, he has violated the provisions of section 269ST, and hence, is liable to pay penalty of ₹3,20,000 u/s 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-5:

Specify the quantum of Fee/Penalty, if any, to be levied in the following case. Your answer must specify the relevant provisions of Income-tax Act, 1961.

Mr. Robert received a sum of ₹2.50 lakhs from Mr. Rajiv on 31-01-2023 in cash in contravention of provisions of section 269ST. [November 2019]

Answer:

As per section 271DA, penalty equivalent to the sum received in contravention of the provisions of section 269ST (i.e., receipt of a sum of ₹ 2 lakh or more in aggregate from a person in a day **otherwise than** by an account payee cheque/bank draft or by use of ECS through a bank A/C or through such other electronic mode as may be prescribed) is leviable.

Accordingly, penalty of ₹ 2.50 lakhs is leviable on Mr. Robert for receiving a sum of ₹ 2.50 lakhs (being a sum in excess of ₹ 2 lakhs) by way of cash from Mr. Rajiv on 31.1.2023.

"ADVANCE RULINGS"

"QUESTIONS FROM PAST EXAMINATIONS (+) STUDY MATERIAL"

Section 245-N: *Definitions*:-

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".

Discuss the correctness or otherwise of this statement, as per the income tax law.

[May 2018 (New Course), May 2005, Study Material]

Answer:

The statement is not correct.

As per section 245N, advance ruling not only includes a determination by the Board for Advance Rulings 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 Board for Advance Rulings -

(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; or

(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, (provided his case falls within any such class or category of persons as the Central Government may specify); or

(iii) In respect of an issue relating to computation of total income which is pending before any income tax authority or the Appellate Tribunal, (provided the applicant is **public sector Company** in this case).

(iv) whether an arrangement, which is proposed to be undertaken by any person **being a resident** or a NR, is an impermissible avoidance arrangement as referred to in Chapter X-A or not.

Section 245Q: *Application for Advance Rulings : -*

Question-2:

Q, a non-resident, made an application to the Board for Advance Rulings on 1.2.2023 in relation to a transaction proposed to be undertaken by him. On 31.3.2023, he decides to withdraw the said application. Can he withdraw the application on 31.3.2023?

[November 2006, November 2013, Study Material]

Answer:

As per section 245Q, an applicant may withdraw an application within thirty days from the date of application.

The Authority for Advance Rulings (AAR), in M.K. Jain AAR No. 644 of 2004, has observed that though section 245Q provides that an application may be withdrawn by the applicant within 30 days from the

date of the application this, however, does not preclude the AAR from permitting withdrawal of the application after the said period with the permission of the AAR, if the circumstances of the case so justify.

In view of the above, since 30 days have already been lapsed from date of application still he can withdraw the application with the permission of the Board for Advance Rulings.

Section 245R: *Procedure on receipt of application: -*

Question- 3:

Describe procedures to be followed by Board for Advance ruling on receipt of application under section 245R and the circumstances in which it should not allow it. [November 2020]

Answer:

The Board on receipt of the application will send a copy to the Commissioner concerned and, wherever necessary, also call upon the Commissioner to furnish the relevant records.

The Board may, after examining the application and the records called for, *either allow or reject the application.*

However, it has been provided specifically that the Board shall not allow an application, in the following cases:

(a) Where the question of law or fact raised in the application is already pending (i.e. as on the date of application) in case of the applicant either before any income tax authority, the Appellate Tribunal or any Court. *However, this will not be applicable in case of notified residents as referred to in 245N(b)(iii) i.e. Public sector company, if it is pending before Income-tax Authority or the Appellate Tribunal.*

(b) Where the question raised relate to the determination of the fair market value of any property.

(c) Where the transaction in relation to which the question is raised, is designed for the avoidance of income-tax. However this will not be applicable in case of *Public sector company*.

However no application shall be rejected *unless an opportunity has been given to the applicant of being heard.* Further where the application is rejected, *reasons for such rejection shall be given in the order and copy of the same shall be sent to the applicant and to the Commissioner.*

- ***Where the application is allowed,*** the Board shall, after examining such further material as may be placed before it by the applicant or obtained by the Board, pronounce its advance ruling on the question specified in the application.
- *On a request received from the applicant*, the Board shall, before pronouncing its advance ruling, provide an opportunity to the applicant of being heard either in person or through a duly authorised representative.
- *The* Board *shall pronounce its advance ruling in writing* ***within six month of the receipt of application.***
- *A copy of the advance ruling pronounced by the* Board*,* duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the Commissioner as soon as may be, after such pronouncement.

- The order of Advance Ruling Board giving its opinion is a *final order* and *no appeal is possible* against such an order.

Question-4:

Answer the following case (Your answer should cover these aspects: (i) Issue involved, (ii) Provisions applicable, (iii) Analysis and (iv) Conclusion):

ECO & Co. filed an application for advance ruling for A.Ys. 2019-20, 2020-21 and 2021-22 with the Board for Advance Ruling (BAR). For the assessment years 2019-20 and 2020-21, notices under section 143(2) were issued to the assessee and subsequently, before the date of filing application with Board for Advance Rulings, notice under section 142(1) along with questionnaire was issued. For the assessment year 2021-22, notice under section 142(1) along with questionnaire was served on the assessee after the date of filing of application with the Board for Advance Rulings.

Can the Board for Advance Rulings, reject the application on the ground that proceedings are already pending?

(You may assume that the provisions relating to Advance Ruling for the earlier assessment year were the same as those prevailing for the A.Y. 2023-24) [May 2017]

Answer:

(i) Issue Involved:

The issue under consideration in this case is whether the Board for Advance Rulings can reject an application for advance ruling on the ground that proceedings are already pending before an income-tax authority, where a notice under section 143(2) in pre-printed format has been served.

(ii) Provisions applicable:

As per the proviso to section 245R(2), the Board for Advance Rulings shall not allow the application where the question raised in the application is already pending before any income-tax authority.

(iii) Analysis:

The facts of the case are similar to the facts in Hyosung Corporation v/s AAR (2016), wherein the above issue came up before the **Delhi High Court**. The Court observed that mere issue of notice under section 143(2) in pre-printed format will not amount to 'proceedings pending' for the purpose of applying the proviso to section 245R(2). However, issue of notice under section 142(1) accompanied by a questionnaire before filing of the application by the assessee with the Board for Advance Rulings would tantamount to 'proceedings pending' before an income-tax authority.

(iv) Conclusion:

Thus, applying the rationale of the Delhi High Court ruling to the case on hand, the application for the assessment year 2021-22 cannot be rejected by the Board for Advance Rulings since notice under section 142(1) issued for the assessment year 2021-22 after the date of filing of application will not result in the proceedings being 'already pending' before an Income-tax authority.

However, for the assessment years 2019-20 and 2020-21, the rejection of the application by Board for Advance Rulings is tenable in law, since notice under section 142(1) along with detailed questionnaire

was issued before the date of filing of such application.

Question-5:

Balmart Inc. of USA entered into the contract with three Indian startup companies operating in e-commerce segment, namely Klipkart Ltd., Mozon Ltd., and Run Run Ltd. for supplying know-how to develop an electronic retailer network.

Balmart Inc. made an application to the Board for Advance Rulings (BAR) on the rate of withholding tax on receipts applicable to it. Klipkart Ltd. also made an application to the Assessing Officer for determination of the rate at which tax is deductible on the payments made to the said non-resident company. The Board for Advance Rulings (BAR) rejected the application of Balmart Inc. on the ground that the question raised in the application is already pending before an Income-tax authority. Examine whether the rejection of application by the BAR is justified in law.

[May 2019, May 2015, Study Material]

Answer:

The matter relates to the admission or rejection of the application filed before the Board for Advance Rulings on this ground that section 245R provides that the Board for Advance Rulings shall not allow the application where the question raised in the application is already pending before any income-tax authority or Appellate Tribunal or any Court.

In the case, no application had been field or contention urged by the applicant foreign company, namely, Balmart Inc., before any income-tax authority/Appellate Tribunal/Court, raising the question raised in the application filed with Board for Advance Rulings. However, one of the Indian companies, namely, Klipkart Ltd. has raised the question before the Assessing Officer, not on the applicant's behalf or with a view to benefit the applicant, but only to safeguard its own interest, as it had a statutory duty to deduct the proper amount of tax from payments made to the foreign company. Although the question raised pertains to one of the payment made to the non-resident applicant, it was not pending determination before any income-tax authority in the applicant's case.

Therefore, as held in *Ericsson Telephone Corporation India AB v/s CIT (1997)(AAR),* the application filed by the Indian company, Klipkart Ltd., before the Assessing Officer cannot be treated to have been filed by the foreign company, Balmart Inc.

Hence, the rejection of the application of Balmart Inc. by the Board for Advance Rulings on the ground that the question raised in the application is already pending before an income-tax authority is **not justified.**

Section 245-W: *Appeal to the High Court:-*

Question-6:

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?

[Question from Study Material]

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.

Section 245 T: *Advance ruling to be void in certain circumstances :-*

Question -7:

Answer the following in context of provisions of the Income-tax Act, 1961:

"Circumstances under which the advance ruling becomes void".

[November 2016, May 2001, Study Material]

Answer:

Circumstances under which advance ruling becomes void:

As per section 245-T, 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 the applicant by fraud or misrepresentation of facts.

"DEDUCTIONS UNDER CHAPTER VI-A & SECTION 10AA"

"QUESTIONS FROM PAST EXAMINATIONS (+) STUDY MATERIAL"

Section 80C: ***Deduction in respect of life insurance premia, contributions to provident fund, subscription to certain equity shares or debentures, etc.:-***

Question -1:

Ms. Madhvi, a resident individual and self-employed industrial designer, furnished the following particulars for the year ended 31.03.2023.

	Particulars	₹
i.	Gross total income	5,00,000
ii.	Housing loan principal repayment. The property is under construction at Jaipur as on 31.03.2023.	1,10,000
iii.	Principal repayment of housing loan from a relative. This property is self-occupied situated at Jodhpur.	50,000
iv.	Contribution to Public Provident Fund in the name of her mother.	70,000
v.	She deposited ₹ 5,000 per month in her account under a pension scheme notified by the Central Government.	

- **Compute total income of Ms. Madhvi for Assessment Year 2023-24 stating reasons for the deduction eligible under appropriate provisions of Chapter VI-A. [November 2011]**

Answer:

"Computation of total income of Ms. Madhvi for the A.Y. 2023-24"

Particulars	₹	₹
Gross Total Income		5,00,000
Less: **Deductions under Chapter VI-A:**		
Section 80C:		
Principal repayment for housing loan taken for house property at Jaipur [See Note 1]	Nil	
Principal repayment for housing loan taken for house property at Jodhpur [See Note 2]	Nil	
Contribution to public provident fund in the name of mother [See Note 3]	Nil	
Section 80 CCD:		
Under sub-section (1):		
Contribution to pension scheme notified by the Central Government [See Note 4]	60,000	60,000
Total Income:		**4,40,000**

Explanatory Notes:

(1)	As per the provisions of section 80C, the deduction for principal repayment of housing loan is provided only in respect of a house property whose income is chargeable to tax under the head 'Income from house property'. As the house property at Jaipur is still under construction, no income is chargeable to tax under the head "Income from house property". Hence, no deduction would be available under section 80C for principal repayment of the housing loan for property under construction at Jaipur.
(2)	The deduction for principal repayment of housing loan under section 80C is provided only in respect of the loan taken from the institutions mentioned under section 80C (like banks, Life Insurance Corporation of India, National Housing Bank, specified employer etc.) However, loan from a relative does not quality for deduction under section 80C. Since in the present case, the loan is taken from a relative, no deduction would be available under section 80C for the repayment of the principal in respect of self-occupied property at Jodhpur.
(3)	The contribution to public provident fund is allowed as deduction only if it is in the name of specified persons mentioned in section 80C, namely self, spouse or any child of such individual. Since mother of the individual is not a specified person as per section 80C, no deduction would be available for the contribution to public provident fund in the name of the mother.
(4)	The deduction u/s 80CCD(1) shall be an amount not exceeding 20% of the gross total income in case of a self employed individual. Therefore the deduction in respect of deposit by Ms. Madhvi to the pension scheme notified by the CG ₹ 60,000 shall be fully allowed as it is with in 20% of GTI.

Section 80D and section 80DDB:- *Deduction in respect of Medical insurance premium and medical treatment of specified deceases:-*

Question-2:

C, an individual, resident in India, paid medical insurance premium amounting to ₹ 20,000 by cash during the year ending 31.3.2023 out of his income chargeable to tax in respect of the policy taken on the health of his dependent father in accordance with the scheme framed by the General Insurance Corporation of India and approved by the Central Government. Besides, he paid ₹90,000 during the year ending 31.3.2023 for the medical treatment of his dependent mother, aged 69 years, in respect of a disease specified in Rule 11DD(1) of the Income-tax Rules, 1962. He received ₹20,000 from the insurance company for the said medical treatment of his mother. C seeks you advice on the deductions, if any, available in respect of these two payments. [November 2006]

Answer:

(1) Where as assessee in an individual, any sum paid as a medical insurance premium on the health of dependent parents of the assessee by cheque shall be allowed as a deduction not exceeding ₹25,000/- (+ 25,000/- in case of senior citizen). In this case Mr. C paid medical insurance premium by way of cash. Hence, deductions shall not be allowed.

(2) As per section 80DDB in respect of medical treatment expenditure incurred on dependent mother the

deduction in limited to actual expenditure incurred on dependent mother the deduction is limited to actual expenditure or ₹40,000, whichever is less.

Where the expenditure is incurred for senior citizens, the limit shall be ₹1,00,000 instead of ₹40,000. However, when any insurance compensation (i.e. ₹ 20,000/-) is received by the assessee, the same shall be reduced from allowable deduction. Hence, deduction will be allowed of ₹ 90,000 – ₹20,000=₹70,000.

Section 80DD: *Deduction in respect of maintenance including medical treatment of a dependent who is person with disability: -*

Question-3:

With brief reasons answer the following in terms of Chapter VI-A of the Income Tax Act, 1961:

Mr. Jaju deposited ₹ 65,000 with Life Insurance Corporation for the maintenance of his mother who suffers from disability of 90%. She is wholly dependent on him. How much is deductible.

[May 2015]

Answer:

As per section 80DD, an assessee, being an individual or HUF, who is resident in India during the previous year, and has -

- Incurred any expenditure for medical treatment (including nursing), training and rehabilitation of person dependent on him, who is suffering from disability or
- Paid or deposited any amount under a scheme framed by LIC or other insurer for the maintenance of a dependent, being a person with disability,

Would be eligible for deduction of ₹ 75,000 in case the dependent is a person with disability. In case the dependent is a person with severe disability, the deduction under this section would be ₹ 1,25,000.

- ✓ Mr. Jaju (assuming resident) would be eligible for deduction under section 80DD since he has deposited money with LIC for maintenance of his mother, who suffers from severe disability (80% or more of one or more disabilities) and is wholly dependent on him.
- ✓ A flat deduction of ₹ 1,25,000 would be available to him under section 80DD, irrespective of the amount deposited with LIC.

Section 80-IA: *Deduction In Respect Of Profits And Gains From Undertakings Engaged In Infrastructure Development, etc.:-*

Question-4:

X Ltd. has two units, unit 'N' and 'Y'. Unit 'N' engaged in the business eligible for deduction u/s 80-IA and had a profit of ₹ 100 lakhs (before depreciation) in assessment year 2023-24. X Ltd. claimed depreciation of ₹ 120 lakhs against the profit of ₹ 100 lakhs from business which was eligible for deduction u/s 80-IA. Unit 'Y', engaged in non-eligible business, had a profit of ₹ 70 lakhs for Assessment Year 2023-24.

The loss of ₹ 20 lakhs, i.e. balance depreciation not set off pertaining to units 'N' was set-off against the profit of unit 'Y' carrying on non-eligible business, by the assessee, X Ltd. The Assessing

Officer was of the view that depreciation relating to a business eligible for deduction u/s 80-IA cannot be set-off against non-eligible business income. Hence, unabsorbed depreciation should be carried forward to the subsequent year to be set off against eligible business income of the assessee of that year.

Give your views on the correctness of the Assessing Officer. [November 2014, Study Material]

Answer:

In the case of CIT v/s Swarnagiri wire insulations Pvt. Ltd. (2012) the **Karnataka High Court** observed that it is a generally accepted principle that the deeming provision of a particular section cannot be breathed into another section. Therefore, the deeming provision contained in section 80-IA cannot override the other provisions of the Act [like section 32(2) etc.].

In this case, X Ltd. had incurred unabsorbed depreciation in eligible business on account of claiming depreciation of ₹ 120 lacs. Hence, section 80-IA becomes insignificant, since there is no profit from which this deduction can be claimed.

It is thereafter that section 32(2) comes into play, whereby an assessee is entitled to set off its unabsorbed depreciation from one source against income from another source. Accordingly, X Ltd. is entitled to the benefit of set off of unabsorbed depreciation of ₹ 20 lacs pertaining to unit N engaged in eligible business against profit of ₹ 70 lacs of unit Y carrying on non-eligible business. Therefore, the net profit of ₹ 50 lacs would be taxable in the A.Y. 2023-24.

However, once set-off of unabsorbed depreciation is allowed u/s 32(2) against income from another source, a deduction to such extent is not possible in any subsequent assessment year i.e., the unabsorbed depreciation so set-off u/s 32(2) has to be first deducted while computing profit eligible for deduction u/s 80-IA in the subsequent year. According, in the A.Y. 2024-25, the net profit of unit N has to be reduced by ₹ 20 lacs for computing the profit eligible for deduction u/s 80-IA in that year.

In view of above, the action of the Assessing Officer in not permitting set-off unabsorbed depreciation of eligible business against profits of non-eligible business in this case is not correct.

Question-5:

Gurudev Engineers Pvt. Ltd is running an industrial undertaking whose profits are eligible for deduction under section 80IA of the Income-tax Act, 1961. During the year ended 31.03.2023, the undertaking was engaged in eligible business referred to in section 80IA, which however, consisted solely of executing works contract awarded by the State Government. Is the assessee eligible to claim deduction under section 80IA in respect of Profits derived from this undertaking? [May 2010]

Answer:

As per Explanation to section 80-IA, any person executing works contract awarded by any person (including the central or state government) in relation to the business referred to in section 80-IA would not be entitled to any deduction under section 80-IA.

In view of the above, Gurudev Engineering Pvt. Ltd. would not be entitled to claim deduction u/s 80-IA in respect of the profits derived from the undertaking.

Section 80-IAC: *Special provision in respect of specified business:-*

Question-6:

Denim Ltd. was incorporated on 01-04-2022 to carry on the business of innovation and development of new processes. It holds a certificate of eligible business from the notified IBMC (Inter Ministerial Board of Certification).

Its total turnover and the profits and gains from such business for the P.Y. 2022-23 and expected turnover and profits and gains in the following years are as follows:

Particulars	P.Y. 2022-23	P.Y. 23-24	P.Y. 24-25	P.Y. 25-26	P.Y. 26-27	P.Y. 27-28	P.Y. 28-29
Total Turnover in Crores	15	18	20	22	24	24.5	24.75
Profits (Losses) in Crores	(2.52)	(1.5)	6.5	8.25	9.5	8	9.50

Is Denim Ltd. eligible for any benefit under the provisions of the Income-tax Act, 1961? If yes, what is the benefit available? [May 2018 (New Course)]

Answer:

Denim Ltd. is an eligible start-up, since –

(1) It is a company engaged in **eligible business** of innovation and development of new processes.

(2) It is incorporated on 1.4.2022, which is during the period 1.4.2016 to 31.3.2023.

(3) Its total turnover does not exceed ₹ 100 crores in any previous year from P.Y.2022-23 to P.Y. 2028-29, hence, it may choose any three consecutive previous years for deduction in the aforesaid period.

(4) It holds a certificate of eligible business from the notified IMBC.

Therefore, Denim Ltd., being an eligible start-up, is eligible for deduction under section 80-IAC of 100% of the profits and gains derived by it from an eligible business for any three consecutive assessment years, at its option, out of ten years beginning from the year in which the eligible start up is incorporated i.e. P.Y. 2022-23.

In the first and second year i.e., P.Y. 2022-23 and P.Y. 2023-24, Denim Ltd. has incurred a loss. In the subsequent five years i.e., P.Y. 2024-25, P.Y. 2025-26, P.Y. 2026-27, P.Y. 2027-28 and P.Y. 2028-29, Denim Ltd. has earned profits from eligible business and can hence, claim 100% of its profits as deduction for any three consecutive assessment years under section 80-IAC from the P.Y. 2024-25 to P.Y. 2028-29.

However, for P.Y. 2024-25, the profits eligible for deduction would be the profits after set-off of brought forward losses of P.Y.2022-23 and P.Y. 2023-24, i.e., ₹ 2.48 crores [i.e., ₹ 6.50 crores – ₹ 2.52 crores – ₹ 1.50 crores] would be the profits eligible for deduction u/s 80-IAC in the P.Y. 2024-25.

Since the profits eligible for deduction in the P.Y. 2024-25 gets reduced due to set-off of earlier year losses, it would be advisable for Denim Ltd. to claim deduction in respect of any three years from P.Y. 2025-26 to P.Y. 2028-29, (and will be more profitable to claim deduction from P.Y. 2026-27 to P.Y. 2028-29).

Section 80P*: Deduction in respect of co-operative society:-*

Question-7:

Chennai Co-operative Society derives income during F.Y. 2022-23 from the following source:

(i)	**Income from processing with the aid of power**	**₹ 20,000**
(ii)	**Income from collective disposal of labour of its members**	**₹ 30,000**
(iii)	**Interest from another co-operative society**	**₹ 15,000**
(iv)	**Income from house property**	**₹ 90,000**
(v)	**Income from other business**	**₹ 60,000**
(vi)	**Income by way of dividend from another co-operative society**	**₹ 25,000**

➢ **Determine its total income for Assessment Year 2023-24.** **[November 2016]**

Answer:

"Computation of total Income of Chennai Co-operative Society for A.Y. 2023-24"

Particulars	₹	₹
I. Income from house property [assumed as computed]		90,000
II. Profits and gains of Business or Profession:		
From processing with the aid of power	20,000	
From collection disposal of labour	30,000	
From other business	60,000	1,10,000
III. Income from other sources:		
Interest received from another co-operative society	15,000	
Dividend received from another co-operative society	25,000	40,000
Gross Total Income:		2,40,000
Less: Deduction under section 80P:		
Interest and dividend from another co-operative society [₹ 15,000 + ₹ 25,000] – fully deductible under section 80P	40,000	
Income from collective disposal of labour – fully deductible u/s 80P.	30,000	
Income from other business ₹ 60,000, deduction restricted to ₹ 50,000 under section 80P	50,000	1,20,000
Total Income:		1,20,000

Question-8:

Meenakshi Urban, is a cooperative society engaged in providing credit facilities to its members for the previous year 2022-23, it provides you the following information:

Particulars	₹
Interest received from deposit with other cooperative societies	**5,47,000**
Interest received from members (including ₹ 2,63,000 for personal purposes of a member)	**11,85,000**
Rent Received (per month)	**36,000**
Income from Agency business	**2,87,500**
Interest received from deposit of idle funds of members	**2,04,000**
Expenses incurred on agency business	**1,24,000**
Brought forward loss from earlier years (Financial Year 2018-19)	**98,000**

Compute the total income of the co-operative society after allowing eligible deduction u/s 80-P, if any, and also the tax payable thereon. [January 2022 (New Course)]

Answer:

Computation of total income and tax payable by Meenakshi Urban, a Cooperative Society

(For the A.Y. 2023-24)

Particulars	₹	₹
Income from house property:		
Rental income (₹ 36,000 x 12)	4,32,000	
Less: Deduction under section 24(a) @30%	1,29,600	3,02,400
Profits and gains from business or profession:		
Credit facility business:		
Interest received from deposits with other cooperative society	5,47,000	
Interest received from members	11,85,000	
Interest received from deposit of idle funds of members [Since Meenakshi cooperative society is engaged in the business of providing credit facility to its members, the interest on un-utilised fund would be taxable under the head "Profits and gains from business or profession". This was so held in the case of Tumkur Merchants Souharda Credit Co-operative Ltd. v/s ITO (2015)(Kar)]	2,04,000	19,36,000
Agency business:		
Income from agency business	2,87,500	
Less: Expenses incurred	1,24,000	
	1,63,500	
Less: Brought forward loss from F.Y. 2018-19	98,000	65,500
Gross Total Income		**23,03,900**
Less: **Deduction under Chapter VI-A: Section 80P**		
- Deduction in respect of profits and gains from credit facility business	19,36,000	
- Deduction in respect of agency business allowable to the extent of	50,000	19,86,000
Total Income		**3,17,900**
Computation of tax liability:		
Tax@30% on ₹ 2,97,900 plus ₹ 3,000 on income upto ₹ 20,000		92,370
Add: Health and education cess@4%		3,695
Tax liability		**96,065**
Tax liability (rounded off)		**96,070**

Section 80QQB: *Deduction in respect of royalty income of authors:-*

Question-9:

With brief reasons answer the following in terms of Chapter VI-A of the I. Tax Act, 1961:

Mr. Manoj, a computer software engineer, co-authored a book on advanced computer

programming along with his friend. He received ₹ 4,10,000 as lump sum royalty in march, 2022. How much of royalty is taxable? [May 2015]

Answer:

First of all, The entire royalty would be included in manoj's income.

Thereafter, Mr. Manoj (assuming resident) is eligible for deduction from gross total income u/s 80QQB, of the whole of the income derived by him on account of any lump sum consideration in the form of royalty in respect of a book, being a work of literary or scientific nature, or ₹ 3,00,000, whichever is less.

Book on Advanced computer programming would fall within the description of work of literary or scientific nature [Dassault System K.K. in Re. (2010) (AAR)].

In this case, the eligible deduction under section 80QQB would be the lower of ₹ 4,10,000, being the amount of lump sum royalty received by Manoj or ₹ 3,00,000.

The net effect is that out of ₹ 4,10,000 included in Manoj's income, he can claim deduction of ₹ 3,00,000 under section 80QQB. The balance of ₹ 1,10,000 would from part of his total income.

"MULTIPLE SECTIONS BASED QUESTIONS"

Question - 10:

Mr. K, who has attained 63 years, has the following income during the P.Y. 2022-23.

- **Salary Income ₹ 6,80,000 (compute as taxable)**
- **Interest on savings bank account with Allahabad Bank ₹ 18,000**

Other particulars given by Mr. K are as under:

(i) Insurance premium paid to Max Life Insurance Ltd. amounting to ₹ 25,000 under a policy taken on life of his son. The sum assured is 250000.

(ii) Insurance premium paid to Life Insurance Corporation of India amounting to ₹ 22,000 under a policy taken on his life the sum assured is ₹ 200000.

(iii) Premium of ₹ 18000 Paid by cheque on health insurance for self to National Insurance Corporation Ltd. and payment in cash of ₹ 5000 to a hospital for preventive health check-up for self.

- **Compute the total income of Mr. K for Assessment Year 2023-24. [May 2013]**

Answer:

"Computation of total Income of Mr. K for the A.Y. 2023-24"

Particulars		₹	₹
Income from salaries			680000
Income from Other Sources (Interest on savings bank Account)			16000
		Gross Total Income:	**696000**
Less: Deductions under Chapter VI-A:			
Under section 80C (Life Insurance premium paid):			
Premium paid in respect of policy taken on life of son (See Note1)	25000		
Premium paid in respect of policy taken on own life (See Note 2)	20000	45000	
Under section 80D (Medical Insurance premium paid) (See Note 3)		23000	

	Under section 80TTB (Interest on savings bank account) (See Note 4)	18000	86000
	Total Income:		610000

Explanatory Notes:

(1)	Mr. K can claim deduction under section 80C in respect of insurance premium paid by him in respect of a policy taken on the life of his son. Since the premium paid is allowed as deduction upto 10% of sum assured (i.e., upto ₹25000 being 10% of ₹ 250000). Since the insurance premium of ₹ 25000 paid is within this limit, the same is fully allowable as deduction under section 80C.
(2)	In respect of premium of ₹ 22000 paid by Mr. K to LIC under an insurance policy taken on his own life, the deduction under section 80C would be restricted to 10% of sum assured. Therefore, the deduction under section 80C in respect of this policy would be restricted to ₹ 20000, being 10% of ₹ 200000.
(3)	Deduction under section 80D is allowable in respect of health insurance premium paid by any mode other than cash and expenses on preventive health check-up (upto ₹ 5000) paid by any mode, including cash. Therefore, both the premium of ₹ 18000 paid by cheque and preventive health check-up of ₹ 5000 paid by cash qualifies for deduction under section 80D.
(4)	As per section 80TTB, deduction shall be allowed from the gross total income of an individual (being a senior citizen) in respect of income by way of deposit in the savings bank account included in the assessee's gross total income, subject to a maximum of ₹ 50000. Therefore, a deduction of full amount of ₹ 18000 is allowable from the gross total income of Mr. K.

Question-11:

The Gross Total Income of Mr. Bharadwaj who is a resident of Varanasi for the year ended 31-03-2023 is ₹ 15 lakhs. Further

(i) He has contributed ₹ 2 lakh towards Clean Ganga Fund set up by the Central Government

(ii) He has incurred medical expenditure of ₹ 50,000 towards surgery for his grandmother who is 85 years of age. (No Premium is paid to keep in force an insurance on her health)

(iii) He has donated ₹ 2 lakhs in cheque and ₹ 50,000 in cash to a political party during its annual conference of which he is a member.

(iv) Repayment of housing loan instalment ₹ 1 lakh during the financial year to his employer XYZ Private Limited.

- **Discuss the allowable deduction to Mr. Bharadwaj from the above information.**

[May 2018 (New Course)]

Answer:

Allowable deduction to Mr. Bhardwaj from Gross Total Income:

(i) Contribution towards Clean Ganga Fund set up by the Central Government: Whole of the contribution i.e., ₹ 2 lakh towards Clean Ganga Fund, set up by the Central Government, is allowable as deduction under section 80G to Mr. Bharadwaj, since he is a resident of India.

(ii) Medical Expenditure of ₹ 50,000 towards surgery of his grandmother: Deduction is allowable under section 80D, in respect of medical expenditure incurred by an assessee for himself or any

member of the family or parents, if any of such person(s) is of the age of 80 years or more and no payment has been made to keep in force an insurance on the health of such person(s). In the present case, no deduction is allowable to Mr. Bharadwaj, since he incurred medical expenditure towards surgery of his grandmother, who does not fall within the definition of "family" u/s 80D.

(iii) **Donation to political party:** Deduction under section 80GGC is allowable to Mr. Bharadwaj in respect of donation of ₹ 2 lakhs made by cheque to a political party. However, no deduction is allowed to him in respect of donation of ₹ 50,000, since such payment is made in cash.

(iv) **Repayment of housing loan:** As per section 80C, deduction in respect of repayment of housing loan is allowable, if the loan is taken from, inter alia, an employer company, where such employer company is a public company or public sector company. Accordingly, in this case, no deduction would be allowable to Mr. Bharadwaj in respect repayment of housing loan, since such loan is taken from his employer company XYZ Pvt. Limited, not being a public company / public sector company.

Question-12:

Examine the correctness of the statement that "there exists no difference in treatment of income claimed under section 10 with those claimed under Chapter VI-A of the Income-tax Act".

[November 2009]

Answer:

- The statement is incorrect.

Section 10 lists out the items of income which do not form part of total income. Thus, such income is fully or partly exempt from tax. Items of income which are exempt u/s 10 shall not form part of any head of income. Therefore, the income which are claimed as exempt u/s 10 are exclude from GTI, in the sense, they are not included in the computation of gross total income.

However, for claiming deduction under Chapter VI-A, the income must be included under the respective head of income for computation of gross total income and thereafter, deduction can be claimed under the respective section as specified in Chapter VI-A to arrive at the total income.

In short, section 10 provides for exemption of income whereas Chapter VI-A provides for deduction from gross total income.

Section 10AA: *Special provisions in respect of newly established Units in SEZ:-*

Question-13:

ABC LLP, a limited liability partnership in India is engaged in development of software and providing IT enabled services through two units, one of which is located in a Notified Special Economic Zone (SEZ) in Chennai. The particulars of previous year 2022-23 furnished by assessee are as follows:

Total Turnover: SEZ unit ₹ 120 lakhs and the other unit ₹ 100 lakhs.

Export Turnover. SEZ unit ₹ 100 lakhs and the other unit ₹ 60 lakhs

Profit: SEZ unit ₹ 50 lakhs and the other unit ₹ 40 lakhs.

The assessee has no other income during the year.

(i) Compute tax payable by ABC LLP for the Assessment year 2023-24.
(ii) Will the amount of tax payable change, if ABC LLP is an overseas entity? [November 2012]

Answer:

Computation of total Income and tax liability of ABC LLP as per normal provisions for A.Y. 2023-24

Particulars	₹ (in lakh)
Business income (before deduction under section 10AA) (₹ 50 lakhs + ₹ 40 lakhs)	90.00
Less: Deduction under section 10AA	
Profit of unit in SEZ x $\frac{\text{Export turnover of unit in SEZ}}{\text{Total turnover of unit in SEZ}}$ = ₹ 50 lakhs X ₹ 100 lakhs / ₹ 120 lakhs	41.67
Total Income:	48.33
Tax on total income @ 30%	14.50
Add: Health & Education cess @ 4%	0.58
Tax liability (as per normal provisions):	15.08

Computation of Adjusted total Income and Alternate Minimum tax as per the section 115JC for A.Y. 2023-24

Particulars	₹ (in lakh)
Total income as per the normal provisions	48.33
Add: Deduction under section 10AA	41.67
Adjusted total income :	90.00
Tax @ 18.5% of Adjusted total income	16.65
Add: Health & Education cess @ 4%	0.666
Alternate minimum tax as per section 115JC:	17.316

Since the tax payable as per the normal provisions of the Act is less than the alternate minimum tax payable, the adjusted total income shall be deemed to be the total income of ABC LLP and the tax payable for A.Y. 2023-24 shall be ₹ 17.316 lakhs.

(ii) In case ABC LLP is an overseas entity, the amount of tax payable shall still be 17.316 lakhs because the provisions of alternate minimum tax are applicable to any non corporate person whether he/it is situated in India / outside India.

Question-14:

X Company engaged in developing and exporting software is having two units, namely Unit-A and Unit-B. Unit-A is setup in Special Economic Zone (SEZ) and Unit-B does not fall under section 10AA of the Act. Company furnishes the following information relating to its 3rd year of operation ended on 31-3-2023:

Items	(Amount in ₹ Lacs)	
	Unit-A	Unit-B

Export Sales	**600**	**780**
Domestic Sales	**100**	**220**
Duty Draw Back	**19**	**35**
Profit on sale of Import Entitlement	**12**	**Nil**
Salaries paid	**270**	**160**
Other expenses	**210**	**260**
Net Profit of the year	**251**	**615**

Additional Information:

(i) Unit-A: Expenses of ₹12 lacs are disallowable under section 43B and sales proceeds in convertible foreign exchange received in India amounted to ₹520 lacs. Export sales of ₹600 lacs include freight of ₹100 lacs and realization of ₹520 lacs includes amount of insurance and freight charges of ₹70 lacs.

(ii) Unit-B: Realisation of export sales in convertible foreign exchange received in was of ₹690 lacs. Expenses charged and are to be disallowed as per section 40A(3) of Act are of ₹60 lacs.

➢ **Compute the total income of X Company for the A.Y. 2023-24 after claiming deduction u/s 10AA.**

[November 2017]

Answer:

"Computation of total income of X Company"

Particular	₹ (in Lacs)
Profit from Unit A [₹251 lacs + ₹12 lacs, being disallowance u/s 43B]	263
Profit from Unit B [₹615 lacs + ₹60 lacs, being disallowance u/s 40A(3)]	675
	938
Less: Exemption under section 10AA [See Working Note below]	174
Total Income:	**764**

Working Note:

"Computation of exemption under section 10AA in respect of Unit A located in a SEZ"

Particulars	₹ (in Lacs)
Total turnover of Unit A = (₹600 lacs + ₹100 lacs) – ₹100 lacs, being freight and insurance included therein. Since freight and insurance has been excluded from export turnover, the same has to be excluded from total turnover also [as held in the case of CIT v/s HCL Technologies Limited (SC)].	600
Export Turnover of Unit A =	
Sale proceeds received in India	520
Less: Insurance and freight not includible in export turnover	70
	450
Profit "derived from" Unit A	

Net profit for the year		251
Add: Disallowance under section 43B		12
		263
Less: **Items of business income which are in the nature of ancillary profits and hence, do not constitute profit 'derived from' business for the purpose of exemption under section 10AA**		
Duty drawback	19	
Profit on sale of import entitlement	12	31
		232
Exemption under section 10AA:		
Profit derived from Unit A X Export turnover of Unit A / Total turnover of Unit A		
= 100% of 232 x 450/600 =		174

"LATEST JUDICIAL PRONOUNCEMENT"

CIT v/s HCL TECHNOLOGIES LIMITED (2018)(SC)

- On the issue **Can expenditure incurred in foreign exchange for provision of technical services outside India, which is deductible for computing export turnover, be excluded from total turnover also for the purpose of computing deduction u/s 10AA,**
- The Supreme Court has held Deduction u/s 10AA is based on the profit from export business, thus, expenses excluded from "export turnover" **must also be excluded from "total turnover", since one of the components of "total turnover" is export turnover. Expenses incurred in foreign exchange for providing technical services outside India are thus, to be excluded from total turnover also.**
- If deductions in respect of freight, telecommunication charges and insurance attributable to delivery of articles, things etc. or expenditure incurred in foreign exchange in rendering of services outside India are allowed only against export turnover but not from the total turnover for computing deduction u/s 10AA, then, *it would give rise to inadvertent, unlawful, meaningless and illogical results causing grave injustice, which could have never have been the intent of the Legislature.* Hence, such **expenditure incurred in foreign exchange for providing technical services outside India is deductible from total turnover also.**

"SET-OFF; OR CARRY FORWARD AND SET-OFF OF LOSSES"

"QUESTIONS FROM PAST EXAMINATIONS (+) STUDY MATERIAL"

Section 72A: *Carry forward and set off of the accumulated losses and unabsorbed depreciation allowance in amalgamation or demerger, etc:*

Question-1:

Samay Impex Ltd. was amalgamated with Delhi Impex Ltd. on 01-04-2022. All the conditions of section 72A are complied with. Samay lmpex Limited has the following carried forward losses as assessed upto Assessment year 2022-23:

Sr. No.	Particulars	Amount in ₹
1.	Speculative loss	5,00,000
2.	Unabsorbed depreciation	18,00,000
3.	Unabsorbed expenditure of capital nature on scientific research	2,00,000
4.	Business Loss	1,25,00,000

- **Delhi Impex Limited has computed a profit of ₹ 175 lakhs for the financial year 2022-23 before setting off the eligible losses of Samay lmpex Ltd. but after providing depreciation@15% per annum on ₹ 160 lakhs, being the consideration at which plant and machinery were transferred to Delhi Impex Ltd.**
- **The written down value of above Plant and Machinery of Samay Impex Limited as per Income Tax Act, 1961 as on 31-03-2022 was ₹ 100 lakhs. The above profit of Delhi Impex Ltd. includes speculative profit of ₹ 15 lakhs.**
- **You are required to compute total income/loss of Delhi Impex Ltd. for Assessment year 2023-24.**
- **The set off should be on the basis of order provided under section 72(2).**

[December 2021, November 2019, November 2010, Study Material]

Answer:

"Computation of total Income of Delhi Impex Limited for the A.Y. 2023-24"

Particulars	₹ in lakhs	
Business income before setting-off brought forward losses of Samay Impex Ltd.		175
Add: Excess depreciation claimed in the scheme of amalgamation of Samay Impex Limited with Delhi Impex Limited.		
Value at which assets are transferred by Samay Impex Ltd.	160	
WDV in the books of Samay Impex Ltd.	100	
Excess accounted	60	
Excess depreciation claimed in computing taxable income of Delhi Impex Ltd. [₹ 60 lakhs × 15%]		9

		184
Set-off of b/f business loss of Samay Impex Ltd.		(125)
Set-off of unabsorbed depreciation u/s 32(2) read with section 72A		(18)
Set-off of unabsorbed capital expenditure on scientific research u/s 35(1)(iv) read with section 35(4)		(2)
Total income		39

Working Notes:

(1) The unabsorbed losses and unabsorbed depreciation of the amalgamating company, Samay Impex Ltd. shall be deemed to be the loss or unabsorbed depreciation of the amalgamated company, Delhi Impex Ltd. for the previous year in which the amalgamation was effected (i.e., P.Y. 2022-23) and such business loss and unabsorbed depreciation shall be carried forward and set-off by the amalgamated company, Delhi Impex Ltd., for a period of 8 years and indefinitely, respectively. Unabsorbed capital expenditure on scientific research can be set-off and carried forward in the same manner as unabsorbed depreciation.

(2) As per section 72A(7), the accumulated loss to be carried forward specifically excludes loss sustained in a speculative business. Therefore, speculative loss of ₹ 5 lakhs of Samay Impex Ltd. cannot be carried forward by Delhi Impex Ltd.

(3) As per section 72(2), in this case, since business loss, unabsorbed depreciation and unabsorbed scientific research capital expenditure of Samay Impex Ltd. is to be carried forward by Delhi Impex Ltd., effect has to be first given to brought forward business losses, and thereafter, unabsorbed depreciation and unabsorbed capital expenditure.

Section 73: *Losses in Speculation Business:-*

Question-2:

Surat Limited, engaged in the business of textiles also effected the sales and purchase of shares of other companies. It suffered loss from such transactions:

(1) Whether such company can set off its losses from share trading from the profit of textile business?

(2) If principal business of such company is sale and purchase of shares of other company, then, what would be your answer? **[May 2018]**

Answer

As per section 73, loss in speculation business can be set-off only against the profits of any other speculation business and not against any other business or professional income.

Explanation below section 73 clarifies that where any part of the business of a company consists in the purchase and sale of the shares of other companies, such a company shall be deemed to be carrying on speculation business to the extent to which the business consists of the purchase and sale of such shares.

However, this deeming provision does not apply, inter alia, to a company, the principal business of which is the business of trading in shares.

(i) Since part of the business of Surat Ltd. consists of sale and purchase of shares of other companies, the company would be deemed to be carrying on speculation business to the extent of purchase and sale of such shares.

Thus, the loss from speculative business i.e., loss from share trading cannot be set-off against the profit of textile business of Surat Ltd.

(ii) If the principal business of Surat Ltd. is to sell and purchase shares of other companies, Surat Limited would not be deemed to be carrying on speculation business.

In such a case, the loss arising from the sale and purchase of shares of other company can be set-off against any other business income. Surat Ltd. can, accordingly, set-off such losses against its profits from textile business.

Section 78(2): *Carry forward and set off of losses on succession:-*

Question-3:

ST & Co., a partnership firm, was dissolved and as per the dissolution deed of the partnership firm, with effect from 18" September, 2022, S, one of the partners of erstwhile firm took over the entire business of the partnership firm in his individual capacity including fixed assets, current assets and liabilities and the other partner was paid his dues. He then continued the business as a sole proprietor with effect from that date. The assessee, relying upon section 78(2), claimed the set-off of the losses suffered by the erstwhile partnership firm against his income earned as an individual proprietor, considering the case as inheritance of business. The claim of the assessee was disallowed by the Assessing Officer.

Examine the correctness of the action of the Assessing Officer. [November 2016]

Answer:

The issue under consideration in this case is whether the loss suffered by an erstwhile partnership firm, which was dissolved, can be carried forward for set-off by the individual partner who took over the business of the firm as a sole proprietor, considering the succession as a succession by inheritance.

Section 78(2) deals with carry forward of losses in case of succession of business. It provides that only the person who has incurred the losses, and no one else, would be entitled to carry forward the same and set it off. An exception provided thereunder is in the case of succession by inheritance.

Upon dissolution, the partnership firm, ST & Co. ceased to exist. Also, the partnership firm, ST & Co. and the sole proprietorship concern are two separate and distinct units for the purpose of assessment. The income earned by the sole proprietor would include his share of loss as an individual but not the loss suffered by the erstwhile partnership firm in which he was a partner.

The exception given in section 78(2), permitting carry forward of losses by the successor in case of inheritance, is not applicable in the present case since the partnership firm was dissolved and ceased to continue. Taking over of business by a partner cannot be considered as a case of inheritance due to death as per the law of succession.

- It was so held by the **Delhi High Court** in **Pramod Mittel v/s CIT (2013).**

Therefore, the action of the Assessing Officer in disallowing the claim of set-off of losses suffered by the erstwhile partnership firm ST & Co. against the income earned as an individual proprietor is correct.

Question-4:

X carrying on a business as sole proprietor, died on 31st March, 2023, On his death, the same business was continued by his legal heirs, by forming a firm. As on 31st March, 2023, a determined business loss of ₹ 5 lacs is to be carried forward under the Income tax Act, 1961.

Does the firm consisting of all legal heirs of Mr. X, get a right to have this loss adjusted against its current income?

[May 2012, November 2005, November 2003, Study Material]

Answer:

Section 78(2) provides that where a person carrying on any business or profession has been succeeded in such capacity by another person, otherwise than by inheritance, then, the successor is not entitled to carry forward and set-off the loss of the predecessor against his income. This implies that generally, set-off of business losses should be claimed by the same person who suffered the loss and the only exception to this provision is when the business passes on to another person by inheritance.

The facts of case given in the question are similar to the case CIT v/s Madhukant M. Mehta (2001), where the **Supreme Court** has held that if the business is succeeded by inheritance, the legal heirs are entitled to the benefit of carry forward of the loss of the predecessor. Even if the legal heirs constitute themselves as a partnership firm, the benefit of carry forward and set off of the loss of the predecessor would be available to the firm.

In this case, the business of X was continued by his legal heirs after his death by constituting a firm. Hence, the exception contained in section 78(2) along with the decision of the Apex court discussed above, would apply in this case. Therefore, the firm is entitled to carry forward the business loss of ₹ 5 lacs of X.

Section 79: *Carry forward and set off of losses in case of certain companies:*

Question-5:

Vaamana Pvt. Ltd., has share capital in the form of equity shares. The shares were held up till 31st March, 2021 by four members, C, D, E and F equally.

The company made losses/profits for the past three assessment years as follows:

Assessment Year	Business Loss (₹)	Unabsorbed Depreciation (₹)	Total (₹)
2019-20	Nil	5,00,000	5,00,000
2020-21	Nil	2,00,000	2,00,000
2021-22	6,00,000	6,00,000	12,00,000
Total	6,00,000	13,00,000	19,00,000

The above figures have been accepted by the Income-tax Department.

During the previous year ended 31.03.2022, C sold his shares to A and during the previous year

ended 31.03.2023, D sold his shares to B.

The profits for the past two previous years are as follows:

31.03.2022 ₹ 8,00,000 (before charging depreciation of ₹ 1,00,000)

31.03.2023 ₹ 15,00,000 (before charging depreciation of ₹ 1,50,000)

Compute the total income for the A.Y. 2023-24. Workings must form part of your answer.

[May 2017, November 2004]

Answer:

C, D, E and F are the four shareholders of Vamana Pvt. Ltd. The shareholding pattern of the company in the last three financial years are given below:

As on 31st day of March	C	D	E	F	A	B
	%	%	%	%	%	%
2021	25	25	25	25	-	-
2022	-	25	25	25	25	-
2023	-	-	25	25	25	25

As per section 79, in case of a closely held company (if not eligible for startup), no loss incurred in the previous year shall be carried forward and set off against the income of the subsequent previous year unless the shares carrying at least 51% of the voting power of the company are beneficially held on the last day of the previous year in which the loss is sought to be set off, by the same shareholders, who beneficially held the shares carrying at least 51% of the voting power on the day of the previous year in which the loss was incurred.

Since shareholders holding at least 51% of the voting power are the same in the P.Y. 2020-21 and P.Y. 2021-22, the restriction imposed by section 79 is not applicable for set-off losses of the P.Y. 2020-21 against income of the P.Y. 2021-22.

Thus, the total income of vamana Pvt. Ltd. for the A.Y. 2022-23 would be as follows:

Particulars		₹
Business profit		8,00,000
Less: Current year's depreciation		1,00,000
		7,00,000
Less: Brought forward business loss as per section 72(2)	6,00,000	
Unabsorbed depreciation of A.Y. 2019-20	1,00,000	7,00,000
Total Income:		**Nil**

Note: Balance unabsorbed depreciation relating to the earlier assessment years can be carried forward to the next assessment year i.e., A.Y. 2023-24 for set-off against income of that year. There is no brought forward business loss and the restriction contained in section 79 is not applicable in case of carry forward of unabsorbed depreciation.

Section 32 governs the carry forward and set off of depreciation for which the shareholding pattern is

not relevant at all.

Consequently, the total income for A.Y. 2023-24 will be determined as under-

Particulars	₹	₹
Business income		15,00,000
Less: Current year's depreciation		1,50,000
		13,50,000
Less: Unabsorbed depreciation		
Assessment year 2019-20 (₹ 5,00,000 – ₹1,00,000 being the set-off in the A.Y. 2022-23)	4,00,000	
Assessment year 2020-21	2,00,000	
Assessment year 2021-22	6,00,000	12,00,000
Total Income for A.Y. 2023-24:		**1,50,000**

"CLUBBING OF INCOME"

"QUESTIONS FROM PAST EXAMINATIONS (+) STUDY MATERIAL"

Section 64(1)(ii): *Remuneration of spouse:-*

Question-1:

Mr. X is a fashion designer having lucrative business. His wife is a model. Mr. X pays her monthly salary of ₹ 2,10,000. The Assessing Officer while admitting that the salary is an admissible deduction, in computing the total income of Mr. X had applied the provision of section 64(1) and clubbed the income (salary) of his wife in hands of Mr. X. Discuss the correctness of the action of the Assessing Officer.

[November 2000, Question from Study Material]

Answer:

As per section 64(1)(ii): In computing the total income of any individual, there shall be clubbed all such income as arises directly or indirectly to the spouse of such individual by way of salary, commission, fees or any other form of remuneration whether in cash or in kind from a concern in which such individual has a substantial interest.

However, no such clubbing shall take place in relation to any income arising to the spouse where the spouse possesses technical or professional qualifications and the income is solely attributable to the application of his or her technical or professional knowledge and experience.

- In the given problem, the wife is a model and has skill, competence and experience and therefore section 64(1)(ii) shall not apply. Hence, the action of the Assessing Officer is not correct.

Question-2:

Mrs. E, wife of Mr. F, is a partner in a firm. Her capital contribution to the firm as on 01-04-2022 was ₹ 5 lacs, out of which ₹ 3 lacs was contributed out of her own sources and ₹ 2 lacs was contributed out of gift from her husband.

As further capital was needed by the firm, she further invested ₹ 2 lacs on 01.05.2022 out of the funds gifted by her husband. The firm paid interest on capital of ₹ 80,000 and share of profit of ₹ 60,000 for the financial year 2022-23.

Advise Mr. F as to the applicability of the provisions of section 64(1)(iv) and the manner thereof in respect of the above referred transactions. **[Question from Study Material]**

Answer:

As per section 64(1)(iv), in computing the total income of any individual, there shall be included all such income as arises, directly or indirectly, subject to the provisions of section 27, to the spouse of such individual from assets transferred directly or indirectly to the spouse by such individual otherwise than for adequate consideration or in connection with an agreement to live apart.

In this instant case, Mr. F has gifted money to his wife, Mrs. E. Mrs. E in turn, invested such gifted money in the capital of a partnership firm, of which she is a partner. Mrs. E has also contributed a sum of ₹ 3 lacs out of her own resources to the capital of the firm.

As per Explanation to section 64(1), for the purpose of clubbing under section 64(1)(iv) where the assets transferred, directly or indirectly, by an individual to his spouse are invested by the transferee in the nature of contribution of capital as a partner in a firm, proportionate interest on capital will be clubbed with the income of the transferor. Such proportion has to be computed by taking into account the value of the aforesaid investment as on the first day of the previous year to the total investment by way of capital contribution as a partner in the firm as on that day.

In view of the above provision, interest received by Mrs. E from the firm shall be included in total income of Mr. F to the extent of ₹ 32,000 i.e., ₹ 80,000 × ₹ 2,00,000 / ₹ 5,00,000.

Share of profit amounting to ₹ 60,000 is exempt under the provisions of section 10(2A). The provisions of section 64 will not apply, if the income from the transferred asset itself is exempt from tax.

Section 64(1)(vi): *Income from assets transferred to son's wife* :-

Question-3:

Mr. A has gifted a house property valued at ₹ 50 lakhs to his wife, Mrs. A, who in turn has gifted the same to Mrs. C, their daughter-in-law. The house was let out at ₹ 25,000 per month throughout the year. Compute the total income of Mr. A and Mrs. C.

Will your answer be different if the said property was gifted to his son, husband of Mrs. C?

[May 2013, Question from Study Material]

Answer:

As per section 64(1)(vi), income arising to the son's wife from assets transferred, directly or **indirectly,** to her by an individual otherwise than for adequate consideration would be included in the total income of such individual.

Income from let-out property is ₹210000 [i.e., ₹ 300000 being the actual rent calculated at ₹ 25000 per month less ₹ 90000, being deduction under section 24 @ 30% of ₹ 300000]

In this case, income of ₹ 210000 from let-out property arising to Mrs. C, being Mr. A's son's wife, would be included in the income of Mr.A, applying the provisions of section 64(1)(vi). Such income would, therefore, not be taxable in the hands of Mrs.C.

In case the property was gifted to Mr. A's son, the clubbing provisions under section 64 would not apply, since the son is not a minor child. Therefore, the income of ₹ 210000 from letting out of property gifted to the son would be taxable in the hands of the son.

Section 64(1A): *Income of minor child:-*

Question-4:

Sachin settled 1/4th share of his property under a trust for the education and maintenance of his minor daughter, Pallavi. Under the terms of the trust deed, the income accruing to the trust, after

meeting the expenses of maintenance and education of Pallavi, was to be accumulated and paid over to her on attaining majority. The Assessing Officer assessed the income arising from 1/4th share of the property, settled for benefit of Pallavi, in the hands of Sachin.

Can the Assessing Officer do so? [May 2016, November 2013, June 2009]

Answer:

As per section 64(1A), the income of a minor child should be included in the total income of that parent, whose total income before such inclusion is higher.

In the case of CIT v/s M.R. Doshi (1995), the **Supreme Court** held that where the income from the trust was to be accumulated until the child attained majority, the clubbing provisions would not get attracted; this is so since no benefit (in such accumulated funds) accrues to the minor child during the period when such child is a minor.

However, in this case, the minor daughter Pallavi is eligible for the benefit during the period when she is a minor, since income from the trust is being used for meeting her education and maintenance expenses.

Only the remaining income is to be accumulated and paid over to her on her attaining majority. Therefore, since benefits under the terms of the trust deed is accruing, even though to a limited extent, to the minor daughter Pallavi during the period when she is a minor, the clubbing provisions under section 64(1A) will get attracted.

Applying the rational of the above ruling, the stand taken by the Assessing Officer to tax the entire income arising from 1/4th share in the house property, settled for the benefits of Pallavi, in the hands of Sachin is incorrect. Only so much of income as is used for meeting the education and maintenance expenses of Pallavi during the current year should be clubbed in the hands of Sachin after providing for an exemption of ₹1,500 under section 10(32) assuming that Sachin's total income is greater than his spouse's total income.

"MISCELLANEOUS QUESTION"

Question-5:

Mr. Vasudevan gifted a sum of ₹ 6 lakhs to his brother's wife on 14.6.2022, on 12.7.2022 his brother gifted a sum of ₹ 5 lakhs to Mr. Vasudevan wife. The gifted amounts were invested as fixed deposit in banks by Mrs. Vasudevan and wife of Mr. Vasudevan's brother on 01.8.2022 at 9% interest. Discuss the consequences of the above under the provisions of the Income tax Act, 1961 in the hands of Mr. Vasudevan and his brother. [May 2011, May 2014, Study Material]

Answer:

In the given case, Mr. Vasudevan gifted a sum of ₹ 6 lakhs to his brother's wife on 14.06.2022 and simultaneously, his brother gifted a sum of ₹ 5 lakhs to Mr. Vasudevan's wife on 12.7.2022.The gifted amounts were invested as fixed deposits in banks by Mrs. Vasudevan and his brother's wife. **These transfers are in the nature of cross transfers.** Accordingly, the income from the assets transferred would be assessed in the hands of the deemed transferor because the transfers are so intimately connected to form part of a single transaction and each transfer constitutes consideration for the other by being mutual or otherwise.

If two transactions are inter-connected and are part of the same transaction in such a way that it can be

said that the circuitous method was adopted as a device to evade tax, the implication of clubbing provisions would be attracted.

It was so held by the **Apex Court** in CIT v/s Keshavji Morarji (1967).

Accordingly, the interest income arising to Mrs. Vasudevan in the form of Interest on fixed deposits would be included in the total income of Mr. Vasudevan and interest income arising in the hands of his brother's wife on fixed deposit of ₹ 5 lakhs alone and not the interest income on the entire fixed deposit of ₹ 6 lakhs, since the cross transfer is only to the extent of ₹ 5 lakhs, would be taxable in the hands of Mr. Vasudevan's brother as per section 64(1).

This is because both Mr. Vasudevan and his brother are the indirect transferors of the income to their respective spouses with an intention to reduce their burden of taxation.

"TONNAGE TAX SCHEME (TTS)"

"QUESTION FROM PAST EXAMINATIONS"

Question:

Tarun Shipping Co. Ltd., having its registered office in Mumbai, plies two ocean-going vessels which it owns. The registered tonnage of two vessels is 47,459, tones and 800 kgs. And 25,759 tones and 400 kgs respectively. In the accounting years 2022-23, the first vessel was operated for 360 days and the second for 199 days.

- ***The accounts of the company reveal the following result:***

(i) Profits from core shipping activity **₹ 60.50 lakhs**

(ii) Profits from incidental activity **₹ 15,000/-**

- **Compute the tax payable by the company for the assessment year 2023-24 taking note of the new provisions of the law relating to taxation of income of shipping companies. [November 2005]**

Answer:

Particulars	Ship –I	Ship-II
Net Tonnage Income – (See Working Note-1)	47, 500 tonnes	25,800 tonnes
Daily tonnage income – (See Working Note –2)	18,295	12,002
Number of days operated	360 days	199 days
Income as per section 115VG	65,86,200	23,88,398
Total Tonnage Income as per section:		89,74,598
Total Income:		89,74,600
Tax Payable @ 30%:		26,92,380
Health & Education cess @ 4%:		1,07,695
Final Payable Sum:		28,00,075
Final Payable Sum (Rounded off):		28,00,080

WORKING NOTES:-

(1) Section 115VG requires that while computing net tonnage capacity the following steps have to be adopted:

(a) Any capacity consisting of Kilograms shall be ignored.

(b) If the tonnage capacity after step (a) is not a multiple of hundred then

i. If the last figures are fifty or more, it shall be rounded off to the next hundred.

ii. If the last figures are less than fifty, it shall be rounded off to the next lower multiple of hundred.

Particulars	Ship – I	Ship – II
Capacity – as given	47,459 tonnes and 800 Kgs	25,759 tonnes and 400 kgs

Less : Exclusion of Kilograms	800 Kgs	400 Kgs
	47,459 tonnes	25,759 tonnes
Add : Rounding off to nearest hundred	41 tonnes	41 tonnes
Net Tonnage	47,500 tonnes	25,800 tonnes

(2) Computation of Daily Tonnage Income:

Particulars	Rate per 100 Tonnes	Ship – I	Ship – II
Net Tonnage		47,500 tonnes	25,800 tonnes
First 1,000 tonnes	70	700	700
From 1,001 to 10,000	53	4,770	4,770
From 10,001 to 25,000	42	6,300	6,300
Above 25,000	29	6,525	232
Daily Tonnage Income		**18,295**	**12,002**

"GENERAL ANTI AVOIDANCE RULES (GAAR)"

"QUESTIONS FROM PAST EXAMINATIONS"

Question-5:

M/s. Highway Drive Limited incorporates a wholly owned subsidiary M/s. Highway Roads Limited in India during the F.Y. 2016-17. 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 for the A.Y. 2023-24.

(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? [December 2021]

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 i 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-6:

MNO Ltd. in Mumbai is a wholly owned subsidiary of a holding company located in Low Tax

Jurisdiction (LTJ). MNO Ltd. has accumulated profit of ₹ 1,500 lakhs. It deposited ₹ 1,000 lakhs in fixed deposit with a branch of foreign bank located in India. Based on the security of the deposit, the holding company located in LTJ availed bank loan of ₹ 700 lakhs. Is this an impermissible arrangement lacking commercial substance? Support your answer with applicable legal provisions.

[November 2019 (New Course)]

Answer:

This is an arrangement whose main purpose is to take money out of reserves available with subsidiary company i.e., MNO Ltd., India without creating any liability to pay tax on dividend income of its holding company in India.

Levy of tax on dividend income would be attracted in the hands of holding company in both following situations –

- If MNO Ltd. declared or distribute dividend out of reserves available with it.
- If MNO Ltd. had directly lent money to its holding company, the provisions of section 2(22)(e) would get attracted, on account of deeming such amount of loan as dividend, since the holding company holds substantial interest in its Indian subsidiary.

In order to avoid payment of tax on such dividend income, MNO Ltd. had adopted a circuitous route of depositing money with foreign bank's branch in India, so that the bank could loan the amount to the holding company.

Tax benefit [of ₹ 148.512 lakhs (₹ 700 lakhs x 21.216% i.e. Rate as given in section 115A subject to surcharge & HEC)] is sought to be obtained by way of saving taxes on the amount received by the holding company which would be treated as dividend. The arrangement disguises the source of funds by routing it through branch of a foreign bank. The branch of foreign bank may also be treated as an accommodating party.

Hence, the arrangement shall be deemed to be an impermissible arrangement lacking commercial substance.

However, in this case, since the tax benefit of ₹ 148.512 lakhs (₹ 700 lakhs x 21.216%) arising out of such arrangement does not exceed ₹ 3 crore, GAAR provisions cannot be invoked.

Question-7:

Explain the expression "Round Trip Financing" in relation to Impermissible Avoidance Agreement (IAA).

[November 2020 (New Course)]

Answer:

An arrangement which lacks commercial substance or is deemed to lack commercial substance would be an impermissible avoidance agreement where the main purpose or one of the main purposes of the arrangement is to obtain a tax benefit. Accordingly, GAAR provisions would be attracted in respect of such impermissible avoidance agreement.

An arrangement, which involves or includes round tripping of funds, is deemed to lack commercial substance.

Round trip financing includes any arrangement in which, through a series oftransactions—

(a) funds are transferred among the parties to the arrangement; and

(b) such transactions do not have any substantial commercial purpose other than obtaining the tax benefit (but for the purposes of Chapter X-A, on GAAR),

without having any regard to—

(A) whether or not the funds involved in the round trip financing can be traced to any funds transferred to, or received by, any party in connection with the arrangement;

(B) the time, or sequence, in which the funds involved in the round trip financing are transferred or received; or

(C) the means by, or manner in, or mode through, which funds involved in the round trip financing are transferred or received

Question-8:

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:-

X Pvt. Ltd., an Indian Company and Y Pvt. Ltd. (100% subsidiary of YAN Ltd.) located in country "A" formed a joint venture company XY Pvt. Ltd. in India on 01.04.2022. As per the joint venture agreement, 51% of shares are held by X Pvt. Ltd. and 49% are held by Y Pvt. Ltd in XY Pvt. Ltd. There is no other business activity in Y Pvt. Ltd.

Y Pvt. Ltd. is designated as Permitted Transferee of YAN Ltd. Permitted Transferee means though shares of XY Pvt. Ltd. are held by Y Pvt. Ltd. all rights of voting, management, right to sell etc. are vested with YAN Ltd.

On 19.03.2023, the shares held by Y Pvt. Ltd. in XY Pvt. Ltd. are sold to P Pvt. Ltd. which is a group company of X Pvt. 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 Pvt. Ltd. are not taxable in India. [November 2018 (Old Course)]

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 Pvt. 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 Pvt. 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 Pvt. 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 Pvt. Ltd. (designated as Permitted Transferee) are being exercised by YAN Ltd. instead of Y Pvt. Ltd, indicates that Y Pvt. 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-9:

Under the provisions of a tax treaty between India and Country V, if a resident of country V makes any capital gains by selling the shares in any Indian Company, such capital gains will be taxable only in Country V and it will be exempt from tax in India. However, as an exception it is also provided that, such exemption is not available if the, transferor holds more than 10% interest in the equity capital of the Indian Company. VFX Ltd., a resident in Country V floated two wholly owned subsidiaries in country V. On 1.4.2022, both the subsidiaries bought 9% shareholding in XYZ Co. Ltd., an Indian Company. These subsidiaries do not have any other income. On 31.12.2022, both of them sold the investment in XYZ Co. Ltd. Each of the subsidiaries claim exemption from Indian capital gains tax amounting to ₹ 2.5 crores from such sale, as each is holding less than 10% equity shares in the Indian Company. Can GAAR be invoked in such case to deny the treaty benefit?

Will your answer be different if the capital gain tax on such sale is calculated at ₹ 1.2 crores each? [May 2019]

Answer:

The arrangement by VFX Ltd., a resident in Country V, of floating two wholly owned subsidiaries and splitting the investment in equity shares of the Indian company through such subsidiaries appears to be with the intention of obtaining tax benefit under the treaty between India and Country V, so that the individual subsidiaries do not hold more than 10% interest in the equity capital of the Indian company.

Further, there appears to be no commercial substance in creating two subsidiaries as they do not change the economic condition of investor VFX Ltd. in any manner (i.e. on business risks or cash flow), and reveals a tainted element of abuse of tax laws.

Since the tax benefit in the P.Y. 2022-23 in aggregate is ₹ 5 crores (₹ 2.5 crores x 2), which exceeds the specified threshold of ₹3 crores, the arrangement can be treated as an impermissible avoidance arrangement and GAAR can be invoked. Consequently, treaty benefit would be denied by ignoring the two subsidiaries, or by treating the two subsidiaries as one and the same company for tax computation purposes.

If the capital gains tax on such sale is calculated at ₹ 1.2 crores each, the tax benefit of ₹ 2.4 crores would be less than the specified threshold of ₹ 3 crores. Hence, GAAR cannot be invoked in such case.

"LIABILITY IN SPECIAL CASES"

"QUESTIONS FROM PAST EXAMINATIONS (+) STUDY MATERIAL"

Section 159: *Tax of deceased person payable by legal representative :-*

Question-1:

What do you understand by the term "Legal representative"? Write a short note on the assessment on the legal representative? [January 2021]

Answer:

As per section 2(29), "Legal representative'' means a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued.

As per section 159, the legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.

For the purpose of making an assessment and for the purpose of levying any sum in the hands of the legal representative –

(a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and

(b) may be continued against the legal representative from that stage at which it stood on the date of the death of the deceased;

(c) any proceedings which could have been taken against the deceased if he had survived, may be taken against the legal representative; and

(d) all the provisions of the Income-tax Act, 1961 would apply accordingly.

Question-2:

Mr. Raja, a resident individual died on 15.1.2023. Some reassessment proceedings in respect of his income chargeable to tax were pending on that date. Mr. Nitin is the legal heir of Late Raja. The Assessing Officer continued the reassessment proceedings without bringing the legal heir Mr. Nitin on record though Mr. Nitin informed the demise of Raja and also participated in the assessment. After the completion of assessment, Mr. Nitin contends that the order of assessment is bad in law. Decide the validity of the contentions of Mr. Nitin. [May 2019]

Answer:

The issue under consideration in this case is *whether the order of assessment of deceased person completed without bringing the legal representative on record is bad in law.*

As per section 159, for making a reassessment of the income of the deceased person, any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal

representative and may be continued against the legal representative from that stage.

In a case where an assessee dies pending any assessment proceedings, the Assessing Officer is required to pass appropriate orders of assessment after due notice to legal representative of deceased assessee.

However, in the instant case, the Assessing Officer continued the assessment proceedings without bringing Mr. Nitin, the legal heir, on record by issuing any notice for such proceedings after the death of his father on 15.01.2022.

Therefore, the contention of the Mr. Nitin that the order of assessment is bad in law, is correct.

Note: The facts of the case are similar to the facts in **CIT v/s Dalumal Shyamumal (2005)** wherein the above issue came up before the **MP High Court.** The above answer is based on the rationale of the High Court in the said case.

Question-3:

Mr. Srinivasan was a Central Government pensioner, who expired on 10-5-2022. An amount of ₹ 10 lakhs in cash was deposited into his savings bank account maintained in a nationalized bank on 28-2-2022, which was reported by the banker u/s 285BA. A notice was issued by the Assessing Officer to Mrs. Srinivasan who is his legal representative to file his Return of Income. Mrs. Srinivasan has approached you as a Tax Consultant as to the course of action to be undertaken by her, since she is unaware of her deceased husband's financial dealings. What will be your advice to Mrs. Srinivasan?

[May 2019 (New Course)]

Answer:

The advice to Mrs. Srinivasan would be on the following lines –

Mrs. Srinivasan, the legal representative of Mr. Srinivasan, would be deemed to be an assessee for the purpose of the Income-tax Act, 1961. Mrs. Srinivasan would be liable to file return of income as a legal representative and pay any sum which Mr. Srinivasan would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased. Any sum includes tax, penalties, interest or any other sum that would have been payable by her deceased husband. The liability of Mrs. Srinivasan would be limited to the extent to which, the estate of the deceased is capable of meeting the liability. No prosecution can, however, be initiated on Mrs. Srinivasan for any offence committed by her deceased husband.

Question-4:

In respect of insolvency proceedings initiated against D Ltd., Mr. Prateek was appointed· as "Official Assignee", You are required to advise him as to whether he will be treated as Representative Assessee in this regard and what will be his status and his liability with respect to other procedures under the Income-tax Act, 1961. **[May 2022]**

Answer:

CBDT Circular No. 4/2019, dated 28.1.2019 has clarified that since Official Assignee does not receive the income or manage the property on behalf of the debtor, he cannot be considered as a 'Representative Assessee' of the debtor under the Act while computing the tax-liability arising from the estate

of the debtor. Therefore, Mr. Prateek appointed as "Official Assignee" in respect of insolvency proceedings initiated against D Ltd. will not be treated as representative assessee.

As property of the insolvent is vested with the Official Assignees as per specific provisions of the Act/Law regulating functioning of the Official Assignees, they have to be treated as a 'juristic entity' for purposes of the Income-tax Act.

For purpose of discharge of tax-liability under the Act, the status of Official Assignee is that of an 'artificial juridical person' as prescribed in section 2(31)(vii), not being one of the 'persons' falling in section 2(31)(i) to (vi).

Therefore, Official Assignee is required to file income-tax return electronically in the ITR Form applicable to 'artificial juridical person' separately for each of the estate of the insolvent, D Ltd., in this case, and the income shall be taxed as per the rates applicable in a particular year to an 'artificial juridical person'.

In view of the above position, Official Assignees would have to obtain a separate PAN for each of the estate of the insolvent.

Section 179: *Liability of directors of private company:-*

Question-5:

There is a tax arrear of ₹ 52 lakhs payable by Super Six Traders (P) Ltd. relating to various assessment years. The court appointed a liquidator on 30-06-2022. The liquidator failed to notify his appointment to the Assessing Officer and also omitted to take note of the tax arrears. He sold some of the assets of the company and settled the suppliers' dues. What would be the legal consequence of the actions of the liquidator? [November 2020 (New Course)]

Answer:

As per section 178, the liquidator of Super Six Traders (P) Ltd. has to give notice of his appointment as liquidator within 30 days of his appointment i.e., on or before 30.7.2022 to the Assessing Officer having jurisdiction to assess the income of the company.

He is debarred from parting with the assets of company in his hands until he is notified by the Assessing Officer of the amount of tax arrears (i.e., ₹ 52 lakhs, in this case) except with the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

Further, on being so notified, he has to set aside an amount equal to the amount notified.

Since the liquidator has failed to notify the Assessing Officer of his appointment within the time specified and has parted with the assets of the company in his hands in contravention of the above provisions, he shall be personally liable for payment of the tax which the company would be liable to pay.

Failure to comply with the above requirement would be an offence punishable u/s 276A with rigorous imprisonment of two years.

Question-6:

A liquidator is appointed by ABC Ltd. which is undergoing liquidation. What are the statutory obligations and restrictions on the part of the liquidator under the Income-tax Act, 1961

after being so appointed? What are the consequences if he fails to perform such obligations?

[July 2021 (New Course)]

Answer:

As per section 178, every person who is the liquidator of any company which is being wound up, whether under the orders of a Court or otherwise, is under a statutory obligation to give notice of such appointment within thirty days to the Assessing Officer who is entitled to assess the company.

The liquidator is debarred from parting with the assets of company and its properties in his hands until he is notified by the Assessing Officer of the amount which will be sufficient to provide for any tax which is then, or is likely thereafter, to become payable by the company except with the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and on being so notified, shall set aside an amount equal to the amount notified.

Consequences on failure to perform such obligations:

If the liquidator fails to notify the Assessing Officer of his appointment within the time specified or fails to set aside the amount intimated by the Assessing Officer as being sufficient to provide for the tax liability of the company or parts with any of the assets or property of the company in his hands in contravention of the above provisions, he shall be personally liable for payment of the tax which the company would be liable to pay.

However, if the amount of any tax payable by the company is notified by the Assessing Officer, the personal liability of the liquidator shall be to the extent of such amount.

Failure to comply with the above requirement would be an offence punishable under section 276A.
