

Mock Test Paper - Series II: April, 2024

Date of Paper: 8 April, 2024

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

FINAL COURSE: GROUP - II

PAPER – 4: DIRECT TAX LAWS & INTERNATIONAL TAXATION

Working Notes should form part of the answer. Wherever necessary, suitable assumptions may be made by the candidates and disclosed by way of a note. However, in answers to Questions in Division A, working notes are not required.

All questions relate to Assessment Year 2024-25, unless stated otherwise in the question.

Division A – Multiple Choice Questions

Write the most appropriate answer to each of the following multiple-choice questions by choosing one of the four options given. All questions are compulsory.

Case Scenario I

The following information pertains to Mr. Apoorv, an Indian citizen and non-resident in India, for the previous year 2023-24:

- (i) Dividend from TPO Ltd., an Indian Company (gross) of ₹ 1,30,000.
- (ii) Interest on debentures of SLP Pvt. Ltd. (subscribed in convertible foreign exchange) of ₹ 1,35,000 (gross).
- (iii) He incurred interest on loan taken for purchase of shares of TPO Ltd. and for purchase of debentures of SLP Pvt. Ltd. of ₹ 30,000 and ₹ 20,000, respectively.
- (iv) On 15th March 2024, he sold debentures of Fix Ltd. for ₹ 18,25,000 which were subscribed in convertible foreign exchange on 10th June 2004 in dollars equivalent to ₹ 4,65,000. He paid commission to broker of ₹ 7,000 at the time of sale.
- (v) On 30th April, 2024, he reinvested the sale proceeds of debentures of ₹ 4,80,000 for purchase of listed shares of an Indian company, Fly High Ltd.

Cost Inflation Index: F.Y. 2004-05 - 113; F.Y.2023-24 – 348.

Based on the facts of the above case scenario, choose the most appropriate answer to Q.1 to Q. 5 below:

1. What is the amount of dividend taxable in the hands of Mr. Apoorv and at what rate TPO Ltd. is required to deduct tax at source on dividend income distributed to Mr. Apoorv?
 - (a) ₹ 1,30,000 and 10%
 - (b) ₹ 1,04,000 and 10%
 - (c) ₹ 1,00,000 and 20.8%
 - (d) ₹ 1,30,000 and 20.8%

2. Assuming for the purpose of this MCQ that Mr. Apoorv is a resident in India for the P.Y. 2023-24, determine the amount of dividend taxable in his hands and at what rate TPO Ltd. is required to deduct tax at source on dividend income distributed to him?
 - (a) ₹ 1,30,000 and 10%
 - (b) ₹ 1,04,000 and 10%
 - (c) ₹ 1,00,000 and 20%
 - (d) ₹ 1,30,000 and 20%
3. What is the amount of interest on debentures of SLP Pvt. Ltd. taxable in the hands of Mr. Apoorv and at what rate? Ignore surcharge and cess.
 - (a) ₹ 1,35,000 taxable @20%
 - (b) ₹ 1,05,000 taxable @20%
 - (c) ₹ 1,08,000 taxable at slab rates
 - (d) ₹ 1,05,000 taxable at slab rates
4. What would be the amount of long-term capital gains taxable in the hands of Mr. Apoorv on sale of debentures of Fix Ltd., as per the provisions of Chapter XII-A of the Income-tax Act, 1961? Ignore the effect of first proviso to section 48 (benefit of foreign currency conversion).
 - (a) ₹ 13,53,000
 - (b) ₹ 9,95,772
 - (c) ₹ 9,97,142
 - (d) ₹ 13,60,000
5. Assuming for the purpose of this MCQ that Mr. Apoorv is a resident in India for the previous year 2023-24, what would be the amount of taxable capital gains on sale of debentures of Fix Ltd. in the hands of Mr. Apoorv?
 - (a) ₹ 13,53,000
 - (b) ₹ 3,85,965
 - (c) ₹ 9,95,772
 - (d) ₹ 13,60,000

(5 x 2 = 10 Marks)

Case Scenario II

Omega Inc., a Country F company, maintains an online web-platform through which it provides end user computer software through an End-user Licence Agreement (EULA). Trailor Ltd., an Indian company, has entered into a contract for ₹ 6.7 crores with Omega Inc., for the Financial Year 2023-24, which is approved by the Central Government.

The broad terms of the EULA between the two companies are as follows-

Grant of licence. Omega Inc. grants Trailor Ltd. a limited non-exclusive licence to install, use, access, display and run the click wrap web-based Computer Software (CWCS) on a single local hard disk(s) or other permanent storage media of one

computer. Traylor Ltd. should not make CWCS available over a network where it could be used by multiple computers at the same time.

Reservation of rights and ownership. Omega Inc. reserves all rights not expressly granted to Traylor Ltd. in this EULA. The CWCS is protected by copyright and other intellectual property laws and treaties. Omega Inc. owns the title, copyright and other intellectual property rights in the CWCS. The CWCS is licenced (only for use and not any other purpose), not sold.

Omega Inc. does not have any offices outside Country F.

Extract of Article 12 of India-Country F DTAA

Royalties and Fees for Technical Services

1. *Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.*
2. *However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the royalties or fees for technical services, the tax so charged shall not exceed 10 per cent.*
3. *The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use :*
 - (a) *any copyright of a literary, artistic or scientific work, including cinematograph film or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, including gains derived from the alienation of any such right, property or information*

Based on the facts of the above case scenario, choose the most appropriate answer to Q.6 to Q.9 below:

6. Is Traylor Ltd., India required to deduct tax at source on the payment made to Omega Inc.? If yes, what amount of tax is required to be deducted at source on the said payment?
 - (a) Yes, Traylor Ltd. is required to deduct tax at source of ₹ 1,42,14,720.
 - (b) No, Traylor Ltd. is not required to deduct tax at source.
 - (c) Yes, Traylor Ltd. is required to deduct tax at source of ₹ 2,84,29,440.
 - (d) Yes, Traylor Ltd. is required to deduct tax at source of ₹ 67,00,000
7. Is equalisation levy attracted in respect of the consideration received by Omega Inc., Country F from Traylor Ltd.? If so, in whose hands and at what rate?
 - (a) Omega Inc. has to pay equalisation levy @6% of the consideration
 - (b) Traylor Ltd. is required to deduct equalisation levy @6% of the consideration

- (c) Traylor Ltd. is required to deduct equalisation levy @2% of the consideration
 - (d) Omega Inc. has to pay equalisation levy @2% of the consideration
8. Would Traylor Ltd., India be required to deduct tax at source on the payment made to Omega Inc, if there was no DTAA between India and Country F? If so, what amount of tax is required to be deducted at source on the said payment?
- (a) Yes, Traylor Ltd. is required to deduct tax at source of ₹ 1,42,14,720.
 - (b) No, Traylor Ltd. is not required to deduct tax at source, since such sum is not taxable in the hands of Omega Inc.
 - (c) Yes, Traylor Ltd. is required to deduct tax at source of ₹ 2,84,29,440.
 - (d) Yes, Traylor Ltd. is required to deduct tax at source of ₹ 71,07,360
9. Is equalisation levy attracted in respect of the consideration received by Omega Inc. Country F from Traylor Ltd., if there is no DTAA between India and Country F? If so, in whose hands and at what rate?
- (a) Omega Inc. has to pay equalization levy @6% of the consideration
 - (b) Traylor Ltd. is required to pay equalization levy @2% of the consideration
 - (c) Omega Inc. has to pay equalization levy @2% of the consideration
 - (d) No, equalization levy is not attracted **(2 x 4 = 8 Marks)**

Case Scenario III

Sharma Pvt. Ltd. ("S") files its return of income for the P.Y. 2023-24 on 30th September 2024 declaring loss of ₹ 18,00,000. The rate of income-tax applicable to the company is 25%.

The tax auditor of S, in his audit report submitted under section 44AB, has reported a disallowance of ₹ 2,80,000 towards personal expenditure of directors as no evidence was produced by S in support of this expenditure. However, S did not disallow the same in its computation and return of income.

The return of income was processed by the Centralised Processing Centre making an addition of ₹ 2,80,000 towards personal expenditure and the loss u/s 143(1) was computed at ₹ 15,20,000.

The return of income was selected for scrutiny assessment and by order passed u/s 143(3), the loss as per normal provisions was reduced to ₹ 11,60,000 by making an addition of ₹ 3,60,000.

The assessment was reopened u/s 147 and by order passed u/s 147, the loss as per preceding order u/s 143(3) was converted into income of ₹ 3,20,000.

Based on the facts of the above case scenario, choose the most appropriate answer to Q.10 to Q. 12 below:

10. Which of the following statements regarding penalty on addition of ₹ 2,80,000 towards personal expenditure is correct?

- (i) Since S has claimed deduction of amount incurred towards personal expenditure of directors, S shall be considered to have under-reported its income.
 - (ii) The under-reporting on account of claiming personal expenditure of directors as deduction can be construed as misreporting of income as it is a claim of expenditure not substantiated by any evidence.
 - (iii) Since addition of ₹ 2,80,000 is an adjustment referred to in section 143(1)(a), no penalty is leviable in respect of this addition.
 - (iv) No penalty is leviable if S offers an explanation and the Assessing Officer is satisfied that the explanation is *bona fide* and S has disclosed all the material facts to substantiate the explanation offered.
- (a) (i) and (iv)
 - (b) (ii) and (iv)
 - (c) (iv) only
 - (d) (iii) only
11. What is the amount of penalty leviable u/s 270A as a consequence of assessment u/s 147, if the addition was not on account of misreporting?
- (a) ₹ 1,09,200
 - (b) ₹ 1,92,400
 - (c) ₹ 41,600
 - (d) ₹ 1,85,000
12. Assuming that the additions made in the order u/s 147 are not on account of misreporting of income but only on account of under-reporting, S seeks to claim immunity from imposition of penalty u/s 270A and initiation of proceedings u/s 276C of the Act by filing an application in this regard before the Assessing Officer. What are the other conditions that need to be satisfied by S in this regard?
- (i) Pay the tax and interest payable as per the order u/s section 147 within the period specified in the notice of demand.
 - (ii) Pay the tax as per the order u/s section 147 within the period specified in the notice of demand.
 - (iii) Contest the additions made in the order, after payment of tax and interest, within the period specified in the notice of demand.
 - (iv) No appeal should be or should have been filed against the order.

The correct answer is-

- (a) (ii) and (iv)
- (b) (i) and (iv)
- (c) (i) and (iii)
- (d) (ii) and (iii)

(3 x 2 = 6 Marks)

13. During the P.Y.2023-24, YourCare Charitable Trust registered under section 12AB received donations of ₹ 90 lakhs, out of which ₹ 10 lakhs were corpus donations which were deposited in post office savings bank account and ₹ 20 lakhs were anonymous donations. The trust applied ₹ 40 lakhs towards its objects during the P.Y.2023-24. The tax liability of the trust for A.Y.2024-25 is -
- ₹ 7,51,140
 - ₹ 7,02,000
 - ₹ 6,35,960
 - ₹ 6,42,720
- (2 Marks)**
14. Mr. Sugam, a resident Indian aged 61 years, has income of ₹ 48 lakhs under the head "Profits and gains of business or profession". One of his businesses is eligible for deduction @100% of profits under section 80-IB for A.Y. 2024-25. The profit from such business included in the business income is ₹ 20 lakhs. What would be the tax liability (computed in the most beneficial manner) of Mr. Sugam, assuming that he has no other income during the P.Y. 2023-24.
- ₹ 6,52,500
 - ₹ 11,85,600
 - ₹ 9,23,520
 - ₹ 6,76,000
- (2 Marks)**
15. Mr. Sahil set-up a three-star hotel "Cloud View" in Bhopal on 16.5.2009 and another three-star hotel "Green View" in Mumbai on 1.4.2012. His brother Mr. Akhil is in the business of building and operating hospitals. He has set-up hospital "Lifeline" (with 50 beds capacity) in Mumbai which begins to operate on 1.8.2008 and another hospital "Lifecare" (with 120 beds capacity) in Bhopal which begins to operate on 15.5.2016. For the previous year, 2023-24, Mr. Sahil has profit from hotel "Cloud View" of ₹ 95 lakhs and loss from hotel "Green View" of ₹ 35 lakhs. Mr. Akhil has profit from Hospital "Lifeline" of ₹ 54 lakhs and loss from hospital "Lifecare" of ₹ 25 lakhs for the P.Y. 2023-24. What would be the profits and gains from business or profession of Mr. Sahil and Mr. Akhil and also determine the loss to be carried forward, if both of them opt out to pay tax as per section 115BAC?
- Business income of ₹ 60 lakhs in the hands of Mr. Sahil and amount to be carried forward would be Nil. Business income of ₹ 54 lakhs in the hands of Mr. Akhil and ₹ 25 lakhs loss to be carried forward.
 - Business income of ₹ 95 lakhs in the hands of Mr. Sahil and ₹ 35 lakhs loss to be carried forward. Business income of ₹ 29 lakhs in the hands of Mr. Akhil and no amount to be carried forward.
 - Business income of ₹ 60 lakhs in the hands of Mr. Sahil and amount to be carried forward would be Nil. Business income of ₹ 29 lakhs in the hands of Mr. Akhil and no amount to be carried forward.

- (d) Business income of ₹ 95 lakhs in the hands of Mr. Sahil and ₹ 35 lakhs loss to be carried forward. Business income of ₹ 54 lakhs in the hands of Mr. Akhil and ₹ 25 lakhs to be carried forward. **(2 Marks)**

Division B – Descriptive Questions

Question No. 1 is compulsory.

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

1. Fun Limited, a domestic company, set-up and commenced business of manufacturing of mixer grinder on 01-4-2023 in the State of Madhya Pradesh. The net profit of the company as per Statement of Profit and Loss for the year ended 31st March, 2024, 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) Lumpsum consideration of ₹ 36 lakhs paid to a foreign company for obtaining designs & models of mixer grinder on 12-12-2023.
 - (iii) Purchased raw material valued at ₹ 96 lakhs from Gold Ltd. in which directors have substantial interest. The market value of the goods is ₹ 82 lakhs.
 - (iv) Cash subsidy of ₹ 15 lakhs received from State Government on acquisition of new plant & machinery [mentioned at point (c) in additional information] acquired on 01-07-2023 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 of ₹ 15 lakhs arising on transfer of a capital asset being equity shares in a company on which security transaction tax is charged.

Additional information:

- (a) Depreciation eligible under section 32 is ₹ 36 lakhs.
- (b) During the previous year 2023-24, the company transferred unlisted equity shares for a consideration of ₹ 22,00,000 which were acquired on 1.5.2023. The cost of these shares acquired is ₹ 12,00,000.
- (c) New Plant & Machinery acquired on 01-07-2023 for ₹ 75 lakhs and payment of ₹ 10 lakhs made by bearer cheque and balance by way of transfer through RTGS. Depreciation on this machinery is not included in depreciation amount given at point (a).

Book profits for the previous year 2023-24 is ₹ 320 lakhs.

Compute the total income and tax liability of Fun Limited for the Assessment Year 2024-25 in a most beneficial manner clearly stating the reasons for treatment of each item. **(14 Marks)**

2. (a) The profit and loss account of the Heros and Sons, a partnership firm, showed a net profit of ₹ 80 lakhs after debiting/crediting of the following sums:
- (i) Interest on capital @14% - ₹ 7,00,000
 - (ii) Interest on loan taken from one of the partners@ 15% - ₹ 90,000
 - (iii) Interest on bank fixed deposits made out of surplus funds - ₹ 25,000 (Gross)
 - (iv) Depreciation as per books of accounts - ₹ 1,02,000
 - (vi) A building purchased in the year 2018 having a WDV as on 1.4.2023, of ₹ 36.45 lakhs was sold on 05.11.2023 for ₹ 90 lakhs. The differential amount was credited to profit and loss account. The building was the only asset in the block.

Additional Information:

- (a) The firm has four partners. Only 2 are working partners. Partnership deed authorises payment of interest to partners in the range of 12% - 16% and also payment of remuneration to all the four partners @ ₹ 20,000 per month (not debited to profit and loss account).
- (b) It applied for establishing a unit in SEZ and the letter of approval was granted on 30.3.2020. However, it started the operation of SEZ only on 15.10.2020. The total turnover, export turnover received in convertible foreign exchange upto 30.9.2024 and net profit for the year ended 31.3.2024 were ₹ 120 lakhs, ₹ 40 lakhs and ₹ 7.5 lakhs respectively. The net profit is included in the profit of ₹ 80 lakhs mentioned above.
- (c) Out of the amount received from sale of building, the firm invested ₹ 60 lakhs on 2.4.2024 in 5-years specified bonds of the National Highways Authority of India. The bonds were issued on 31.5.2024.
- (d) Depreciation as per Income-tax Rules, 1962 is ₹ 14,000 excluding depreciation on assets mentioned in (e) and (f) below.
- (e) WDV of Motor car as on 1.4.2023 - ₹ 6,80,000.
- (f) Cost of mobile phones (purchased and put to use on 11.10.2023) ₹ 20,000

Compute the total income of the firm for the A.Y. 2024-25 giving reasons/explanations for the treatment of each item under the normal provisions of the Act. **(8 Marks)**

- (b) Mr. Albert, a non-resident and American citizen, is employed in an American company. The American company has a PE in India. Albert visited India during the F.Y. 2023-24 on official work and stayed for 80 days. His salary for that period was ₹ 25,00,000 which is borne by the Indian PE.

Albert held 1200 shares of Shine Pvt. Ltd. (SPL), an Indian company since 31.12.2018 which he acquired for ₹ 35 per share. For acquiring the

shares, he remitted USD 50,000 to India on 15.12.2018. He sold these shares on 20.8.2023 for ₹ 63 per share.

Albert also held 2000 equity shares of YoC Inc., another American company, which he had acquired for dollars equivalent to ₹ 145 per share in 2018. YoC Inc. follows April to March as its financial year. He sold all these shares for dollars equivalent to ₹ 615 per share to Mishel, another non-resident, on 10.10.2023. The relevant information of YoC Inc. as on 31.3.2024 is given below:

- (i) Total value of assets ₹ 15 crores.
- (ii) Total value of immovable properties worldwide= ₹ 12 crores.
- (iii) Immovable properties held in India (included in (ii) above) - ₹ 8 crores.

Dividend from YoC Inc. received in India on 28.06.2023 was - ₹ 1,32,000.

You are required to compute the total income taxable in India of Mr. Albert ignoring the provisions of DTAA between India and USA.

Exchange rates for 1 USD on the relevant dates is given as hereunder:

Date	Buying Rate (1 US \$)	Selling Rate (1 US\$)
31.12.2018	₹ 68	₹ 70
15.12.2018	₹ 66	₹ 68
20.8.2023	₹ 90	₹ 92

(6 Marks)

3. (a) The Head of Accounts of Heathy Wealthy Foundation, a trust, established for the purpose of promotion of Yoga has approached you to guide about the tax implications of the following:
- (i) During the financial year 2023-24, it received a voluntary contribution of ₹ 150 lakhs with a specific direction that it should form part of the corpus of the trust. The trust invested such amount in the shares of M/s. ABC Private Ltd., a private sector company.
 - (ii) Apart from the above-mentioned ₹ 150 lakhs, during the financial year 2023-24, it received ₹ 80 lakhs as other voluntary contributions and ₹ 50 lakhs as fees towards providing Yoga classes. **(4 Marks)**
- (b) Mr. Shyam is the founder of UVX Trust, a public charitable trust registered u/s 12A of the Income-tax Act, 1961. The trust runs a hospital for the treatment of various diseases. Mr. Umesh, son of Mr. Shyam, was admitted in May 2023 in the hospital for treatment. He was charged a total fee of ₹ 2.20 lakhs as against the amount of ₹ 3.50 lakhs charged by the hospital for similar treatment to the general public.

The Board of trustees were served with a notice by the income tax authorities for cancellation of registration u/s 12AB.

Discuss whether registration can be denied to the trust. What are the further tax implications? **(4 Marks)**

- (c) Mr. Sarthak, an Indian citizen aged 51 years, left India for the first time on 1st April 2020 to settle in Country Y. But owing to some personal unavoidable circumstances, he returned back to India permanently on 1st June 2023.

He has a residential property in Country Y from which he earned an income of \$ 32,000 for the year ended 31st March 2024. He is eligible for basic exemption limit of \$ 9,000 and on balance income, he paid income tax @20% in Country Y. The tax was paid on 10th May 2024 from his bank account in India.

His income from business in India is ₹ 6,20,000 for the year ended on 31st March 2024. He also received dividend amounting to ₹ 2,25,000 from an Indian company and interest of ₹ 13,500 on saving bank account with SBI, during the year.

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

01.04.2023 - ₹ 74; 31.03.2024, ₹ 75; 30.04.2024 - ₹ 75.5;

Compute the net tax liability of Mr. Sarthak in India for the assessment year 2024-25 after providing relief u/s 91 (ignore foreign tax credit rules) on the assumption that there is no DTAA between India and Country Y.

Assume that Mr. Sarthak shifted out of the provisions of section 115BAC. **(6 Marks)**

4. (a) In respect of the following independent case scenarios 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 2024:

- (i) During the previous year 2023-24, Mr. Amit purchased scrap of ₹ 65 lakhs from Mr. Bharat for the purpose of his manufacturing unit. Mr. Amit also furnished a declaration to Mr. Bharat that the scrap shall be utilized for manufacturing process carried on by him and shall not be used for trading purposes. Mr. Amit made the payment of ₹ 49 lakhs during F.Y 2023-24 to Mr. Bharat. Assume turnover of both Mr. Amit and Mr. Bharat from the business carried on by them exceeds ₹ 10 crores in the financial year 2022-23.

(4 Marks)

- (ii) Cloud Ltd., a real estate development company, entered into a Joint Development Agreement with Mr. Ashok, a resident individual, whereby Mr. Ashok would transfer a plot of land measuring 10 acres for a part consideration of ₹ 6.5 crores to be paid on the date of agreement, i.e., 1.6.2023. Cloud Ltd. has planned to develop a high-rise apartment complex on such land by 31.3.2026. Upon completion of the project, Cloud Ltd. would transfer 6 flats in the apartment to Mr. Ashok as final settlement. The FMV of the flats is estimated to be ₹ 1.35 crores each as on 31.3.2026. **(2 Marks)**

- (iii) State Government of Madhya Pradesh grants a lease of coal mine to M/s Maple Co. Ltd. on 01.09.2023 and charged ₹ 12 crores for the lease. M/s Maple Co. Ltd. sold coal for ₹ 1 crore to M/s DL (P) Ltd. during the previous year 2023-24. The turnover of M/s Maple Co. and M/s DL (P) Ltd. for the financial year 2022-23 amounted to ₹ 7 crores and ₹ 8 crores, respectively. **(2 Marks)**

- (b) Aster Ltd., Australia, holds 30% equity shares in Bhuvan Ltd., India. Bhuvan Ltd. develops software and also provides related support services. Bhuvan Ltd. during the year billed Aster Ltd., Australia for 150 man-hours at the rate of ₹ 2,700 per man hour. The total cost (direct and indirect) for executing this work amounted to ₹ 4,52,000.

However, Bhuvan Ltd. billed Gaurav Ltd., India at the rate of ₹ 3,800 per man hour for the similar level of manpower and earned Gross Profit of 40% on its cost.

The transactions of Bhuvan Ltd. with Aster Ltd. and Gaurav Ltd. are comparable, subject to the following differences:

- (i) While Bhuvan Ltd. also derives technological support from Aster Ltd., there is no such support from Gaurav Ltd. The value of technological support received from Aster Ltd. may be put at 15% of normal gross profits.
- (ii) As Aster Ltd. gives business in large volumes, Bhuvan Ltd. offered to Aster Ltd., a quantity discount which may be valued at 10% of the normal gross profits.
- (iii) In the case of rendering services to Aster Ltd., Bhuvan Ltd. neither runs any risk nor incurs any marketing costs. On the other hand, in the case of services to Gaurav Ltd., Bhuvan 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) Bhuvan Ltd. offered one month credit to Aster Ltd. The cost of providing such credit may be valued at 5% of the normal gross profits. No such credit was given to Gaurav Ltd.

Compute the Arm's Length Price alongwith income to be adjusted under the cost plus method. **(6 Marks)**

5. (a) Answer **any two** of the following three sub-parts (i), (ii), (iii) on the basis of decided case laws, bringing out the following –

- (1) Issue involved
- (2) Relevant provisions of law
- (3) Analysis and Conclusion

- (i) In the case of M/s Hyper Ltd., the Income-tax Appellate Tribunal decided against the assessee and issued order under section 254. The assessee filed an appeal to the jurisdictional High Court by framing the substantial question of law under section 260A(2)(c). The High Court, without framing the question of law u/s 260A(3) at

the time of admission of appeal, issued notices, heard both the parties and decided the appeal affirming the order of the Tribunal on the questions raised by the assessee appellant. You are required to discuss whether the High Court was justified in not formulating the substantial question of law as required under section 260A(3) and adjudicating merely on the questions put forth by the appellant under section 260A(2)(c).

- (ii) Krishna Cooperative Society, the assessee is engaged in marketing of fertilizers and purchase and processing of seeds. The assessee had claimed deduction under section 80P(2)(d) on dividend income received from NAFED and one Cooperative bank and also on interest on deposits with Co-operative banks. The Assessing Officer contended that the aforesaid income were not included in the total income and wants to invoke section 14A by disallowing the expenditure incurred with respect to earning income which is not liable to income tax.

Discuss whether the action taken by the Assessing Officer is tenable in law.

- (iii) On 1st May 2023, M Sudarshan, a resident individual, received 1,500 bonus shares from Sugam Pvt. Ltd. in which he held 3,000 equity shares. The Assessing Officer held that since the assessee has not paid any consideration for bonus shares, he was under an obligation in law to offer the market value as income from other sources under section 56(2)(x) of the Act. The Assessing Officer computed the fair value of these bonus shares and added the amount to the income of M Sudarshan as "Income from other sources". Whether the decision of the Assessing Officer is correct in law?
(2 x 4 marks = 8 Marks)

- (b) What is meant by Digital economy? What are the taxation issues in E-Commerce? List out the OECD recommendations under Action Plan 1 which deals with the digital economy.
(6 Marks)

- 6. (a) In the following independent circumstances, discuss whether the provisions of GAAR would be applicable:

- (i) Right Inc., a company incorporated in Country M, holds 1200 equity shares in PS Ltd., an Indian listed entity since 1.4.2016. On 1.5.2023, PS Ltd. issued 1200 bonus shares to Right Inc. As per the treaty between India and Country M, the capital gain is taxable in the country where the transferor of shares is a resident. The tax laws of Country M, exempt capital gains. Right Inc. sells all the shareholding in PS Ltd. on 1.1.2024 and earned a capital gain of ₹ 5 crores.
- (ii) D Ltd., an Indian company, incorporates a wholly owned subsidiary Company C, in Country X which is a Low Tax Jurisdiction with equity share capital of ₹ 1 crore. Out of the equity capital, company

C gives loan to C Ltd., an Indian company at the rate of 5%. There is no other activity in Company C. **(4 Marks)**

- (b) (i) The Income-tax department collected documents from MNO Bank which revealed that M/s. Aster Travels and Consultancy Services (Aster Travels) had remitted substantial amounts abroad. The documents collected include Form 15CB issued by the chartered accountant, list of passengers, copy of their passports, date of travel and invoice raised by the foreign party. On enquiring from the passengers and verifying their passports, it is found that they did not travel abroad during the dates mentioned in the documents. Further, the passengers denied any sort of transactions with Aster Travels. The department, therefore, concluded that the amounts were remitted abroad on the basis of false invoices and for wrong reasons, leading to FEMA violations and that the Form 15CB issued by the chartered accountant facilitated such violations. During the nine-month period in question, the chartered accountant had issued 105 certificates in Form 15CB approximately involving remittances of ₹ 22 crores in favour of Aster Travels.

The chartered accountant submitted that he had issued Form 15CB based on invoices produced by the company and verifying the KYC documents of the signatory to the invoices. He however, failed to bring on record the invoices. He further submitted that since he was not the statutory auditor of the company, he did not examine the books of account before issue of Form 15CB or conduct due diligence of its business activities. He had charged ₹ 3,500 per certificate. Mostly, the fees was collected in cash. Some part of the fee was credited to his bank account.

Examine the ethical implications in this case. **(3 Marks)**

- (ii) XYZ & Co., a partnership firm engaged in trading of electronic goods, furnished the following information:

	Particulars	₹
(i)	Total turnover of F.Y.2023-24	2,78,00,000
(ii)	Aggregate of all receipts during the year (including amount received for turnover mentioned in (i) above)	4,56,00,000
(iii)	Cash receipts out of (i) above	13,00,000
(iv)	Cash receipts out of (ii) above (This is inclusive of the figure mentioned in (iii) above)	19,00,000
(v)	Aggregate of all payments during the year	2,38,00,000
(vi)	Cash payments out of (v) above	3,80,000

Examine whether XYZ & Co. is required to get its books of account audited mandatorily as per section 44AB from the above information. **(3 Marks)**

- (c) Explain the correctness or otherwise of the following statements giving proper reasons thereof:
- (i) Mr. Rakul, a resident individual, is aggrieved by an order passed by the Board for Advance Ruling on 1.10.2023. Since the decision of the Board is binding on the applicant, he has no other option but to accept the ruling of the Board.
 - (ii) M/s Sun Ltd., an Indian public sector company, wants to seek advance ruling from the Board for Advance Rulings (BOAR) in respect of a matter relating to computation of its total income involving a question of law relating to such computation. However, the matter is already pending before the Income-tax Appellate Tribunal (ITAT) as on the date of application for advance ruling i.e., 12.12.2023. It cannot seek the BOAR ruling till the matter is pending before the ITAT. **(4 Marks)**

Mock Test Paper - Series II: April, 2024

Date of Paper: 8 April, 2024

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

FINAL COURSE: GROUP II

PAPER – 4: DIRECT TAX LAWS & INTERNATIONAL TAXATION

SOLUTIONS

Division A – Multiple Choice Questions

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

Division B – Descriptive Questions

1. **Computation of total income and tax liability of Fun Limited for A.Y.2024-25 under regular provisions of the Act**

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			
- Depreciation as per books of account	34,00,000		
- Consideration for designs & models [Consideration for designs & models of Mixer grinder is in the nature capital expenditure and hence, is an intangible asset which is eligible for depreciation as per section 32. Since lumpsum consideration	36,00,000		

has been debited to statement of profit and loss, the same has to be added back while computing business income]				
- Purchased raw material 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 is from a related party, i.e., Gold Ltd., a company in which directors of Fun Limited have substantial interest and at a price higher than the fair market value]	14,00,000			
- 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 ¹]	Nil			
- Legal expenses for issue of right shares [Expenses incurred in relation to rights issue are of capital in nature ² . Hence, not allowed as	<u>8,00,000</u>			

¹ It was held by Apex Court in case of CIT vs. General Insurance Corpn. (2006) 286 ITR 232

² It was held by Karnataka High Court in case of CIT Vs Motor Industries Ltd (1998) 229 ITR 137

deduction from business income. Since, it is already debited in statement of profit and loss, the same has to be added back while computing business income]			
		<u>92,00,000</u>	
		2,39,50,000	
Less: Items credited but to be considered separately			
- Short term capital gains on equity shares [Not taxable under this head]	15,00,000		
- 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 Fun Limited. 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		
		<u>30,00,000</u>	
		2,09,50,000	
Less: Depreciation as per Income-tax Rules			
- Depreciation	36,00,000		
- 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	7,50,000		

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, <i>inter alia</i>, 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 State Government for acquisition of asset would not be included in the actual cost of plant and machinery.]			
- Additional depreciation on New Plant and machinery [₹ 50 lakhs x 20%, since it has been put to use for more than 180 days during the year]	10,00,000		
- Depreciation on Intangible asset, being designs & models of mixer grinder [₹ 36 lakhs x 25% x 50%, since put to use for less than 180 days during P.Y. 2023-24]	4,50,000		
		<u>58,00,000</u>	1,51,50,000
Capital Gains			
- Short term capital gains on transfer of listed equity shares		15,00,000	
- Short term capital gains on transfer of unlisted equity shares [Since not held for more than 24 months]			
Full value of consideration	22,00,000		
Less: Cost of acquisition	<u>12,00,000</u>		
		<u>10,00,000</u>	
			<u>25,00,000</u>
Total Income			<u>1,76,50,000</u>

Computation of tax liability			
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 on other income [₹ 1,61,50,000 x 25%]		40,37,500	
			42,62,500
Add: Surcharge @7% since total income exceeds ₹ 1 crore but does not exceed ₹ 10 crores			<u>2,98,375</u>
			45,60,875
Add: HEC@4%			<u>1,82,435</u>
Tax liability			47,43,310

Computation of tax liability of Fun Limited for the A.Y. 2024-25 under section 115JB

Particulars	₹
Minimum Alternate Tax @15% on book profit of ₹ 3,20,00,000	48,00,000
Add: Surcharge@7%, since the book profit of the company > ₹ 1 crore but ≤ ₹ 10 crores	<u>3,36,000</u>
	51,36,000
Add: Health and Education cess@4%	<u>2,05,440</u>
Tax liability under section 115JB	53,41,440
Since the regular income-tax payable is less than the minimum alternate tax, book profit of ₹ 3,20,00,000 would be deemed to be the total income of Fun Limited and it has to pay tax of ₹ 53,41,440. It would be eligible for MAT credit of	
MAT liability	53,41,440
Tax liability under the regular provisions of the Income-tax Act, 1961	<u>47,43,310</u>
MAT credit	<u>5,98,130</u>
Note – Since Fun Limited set up and registered on or after 1.10.2019 and has commenced operations before 31.3.2024, and engaged in manufacturing business, it is eligible for concessional tax regime under section 115BAB. In case Fun Limited opted for concessional tax regime u/s 115BAB, it would not be eligible to claim additional depreciation u/s 32 on plant and machinery. In that case, its total income and tax liability would be -	

Particulars	₹	₹
Total Income under regular provisions of the Act		1,76,50,000
Add: Additional depreciation [No additional depreciation is allowable under section 32(1)(iia)]		<u>10,00,000</u>
Total Income		<u>1,86,50,000</u>
Computation of tax liability under section 115BAB		
Tax u/s 115BAB on business income [₹ 1,61,50,000 x 15%]	24,22,500	
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 115BAB on short term capital gains on transfer of unlisted equity shares [₹ 10 lakhs x 22%]	<u>2,20,000</u>	
		28,67,500
Add: Surcharge @10%		<u>2,86,750</u>
		31,54,250
Add: HEC@4%		<u>1,26,170</u>
Tax liability		32,80,420
Suggestion to Fun Limited		
Fun Limited should opt for section 115BAB, since the tax liability under section 115BAB is lower than the tax liability under the regular provisions of the Act and section 115JB.		

2. (a) **Computation of Total Income of Heros and Sons, a partnership firm, for the A.Y. 2024-25**

	Particulars	Amount (in ₹)	
I	Profits and gains of business and profession		
	Net profit as per profit and loss account		80,00,000
	Add: Items debited but to be considered separately or to be disallowed		
	(1) Interest to partners on capital	1,00,000	
	[As per section 40(b), interest to partners authorized by the partnership deed is allowable as		

deduction subject to a maximum of 12% p.a.] [₹ 7,00,000 x 2%/14%]		
(2) Interest on loan taken from partner	18,000	
[As per section 40(b), interest to partners authorized by the partnership deed is allowable as deduction subject to a maximum of 12% p.a., whether it is interest on partner's capital or loan] [₹ 90,000 x 3%/15%]		
(3) Depreciation as per books of account	1,02,000	
		<u>2,20,000</u>
		82,20,000
Less: Items credited but chargeable to tax under other head/expenses allowed but not debited		
1. Interest on bank fixed deposits made out of surplus fund	25,000	
[Interest received from bank on fixed deposits made out of surplus funds is assessable 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]		
2. Profit on sale of building	53,55,000	
[Capital gain on sale of building is taxable under the head "Capital Gains". Since such gains has been credited to profit and loss account, the same has to be deducted while computing business income]		<u>53,80,000</u>
		28,40,000
Less: Depreciation as per Income-tax Rules, 1962		
- Depreciation other than on motor car and mobile phones	14,000	
- Depreciation on Motor car [₹ 6,80,000 x 15%]	1,02,000	

	- Mobile phone [₹ 20,000 x 15% x 50%, since purchased and put to use for less than 180 days]	<u>1,500</u>	
	Book Profit		<u>1,17,500</u>
	Less: Salary to working partners		27,22,500
	(i) As per limits given under section 40(b)		
	On first ₹ 3,00,000 @90%	2,70,000	
	On the balance of ₹ 24,22,500 @ 60%	<u>14,53,500</u>	
		17,23,500	
	(ii) Salary actually paid to working partners [₹ 20,000 x 12 x 2]	4,80,000	
	Deduction allowed being (i) or (ii) whichever is less		<u>4,80,000</u>
			22,42,500
II	Capital Gains		
	Short term capital gain on sale of building forming part of block of asset [Since building was the only asset in the block]		
	Full value of consideration	90,00,000	
	Less: Cost of acquisition [WDV as on 1.4.2023]	<u>36,45,000</u>	
		53,55,000	
	Less: Exemption under section 54EC [Investment in bonds of NHAI, the maximum deduction u/s 54EC would be ₹ 50 lakhs]	<u>50,00,000</u>	3,55,000
	[Available against depreciable asset, being a building held for more than 24 months and the payment for bonds has been made within six months from the date of transfer, exemption u/s 54EC would be available even if the allotment of bonds was made after the expiry of the six months ³]		
III	Income from Other Sources		
	Interest from bank on fixed deposits		25,000
	Gross Total Income		<u>26,22,500</u>

³ Hindustan Unilever Ltd. v. DCIT (2010) 325 ITR 102 (Bom.)

Less: Deduction under section 10AA [₹ 7,50,000 x 40,00,000/ ₹ 1,20,00,000 x 100] [Unit in SEZ is eligible for deduction u/s 10AA since it obtained the letter of approval on or before 31 st March, 2020 and started operations before 31.3.2021]	2,50,000
Total Income	23,72,500

(b) Computation of Total income of Mr. Albert for the A.Y. 2024-25

Particulars	₹	₹
Salary [Salary deemed to accrue or arise in India, since it is paid for services rendered in India as per section 9(1)(ii). Hence, it is taxable in the hands of Mr. Albert. Exemption u/s 10(6)(vi) would not be available to him, though he stayed in India for a period of not exceeding 90 days during the previous year since he is receiving salary from an American company which is engaged in business and trade in India through a PE in India and such salary is borne by Indian PE]	25,00,000	
Less: Standard deduction u/s 16(ia)	50,000	24,50,000
Capital Gains Transfer of 1200 equity shares of Shine Pvt. Ltd. [Taxable in India, since shares are situated in India] Sale Consideration (1200 x ₹ 63 per share/91, being average of ₹ 90 (TTBR) + ₹ 92 (TTSR)/2 on 20.8.2023)	\$ 830.77	
Less: Cost of acquisition (1200 x ₹ 35 per share/69, being average of ₹ 68 (TTBR) + ₹ 70 (TTSR)/2 on 31.12.2018)	\$ 608.70	
	\$ 222.07	
Long-term capital gain [\$ 222.07 x ₹ 90, being TTBR on 20.08.2023]		19,986
Transfer of 2000 Equity shares of YoC Inc. [Not taxable in India, since shares of foreign company do not derive its value		Nil

substantially from assets located in India as value of Indian assets do not exceed ₹ 10 crores]		
Income from Other Sources		
Dividend received in India from YoC Inc. [taxable in India, since dividend is received in India]		1,32,000
Gross Total Income/total income		26,01,986
Total income (rounded off)		26,01,990

3. (a) (i) Voluntary contribution of ₹ 150 lakhs received with a specific direction that it will form part of corpus of the trust would be exempt from tax only if it is invested in any of the modes specified under section 11(5) specifically maintained for such corpus. If the same is not so invested, then, it would not be exempt under section 11(1)(d) for P.Y.2023-24.
- Investment in shares of private company is not a specified mode under section 11(5). Hence, ₹ 150 lakhs received by Healthy Wealthy Foundation would not be exempt under section 11.
- (ii) Yoga is included in the definition of “charitable purpose” under section 2(15).
- Accordingly, voluntary contributions of ₹ 80 lakhs and fees towards providing Yoga classes of ₹ 50 lakhs would be income from property held for charitable purposes and eligible for unconditional exemption of 15% under section 11.
- Exemption will be available under section 11 subject to the fulfilment of the necessary conditions.
- (b) As per section 13(6), UVX Trust shall not be denied the benefit of exemption under section 11 in respect of its entire income merely due to the reason that the benefit of medical facilities have been provided to Mr. Umesh, son of Mr. Shyam, being the specified person. Accordingly, the registration of UVX Trust cannot be cancelled by the Income-tax authorities on this basis.
- As per section 12(2), the value of medical facilities provided to Mr. Umesh, being the specified person, at a concessional rate would be deemed to be the income of the trust and such income would not be eligible for exemption under section 11. Hence, ₹ 1,30,000, being the concessional value of medical services would be deemed to be the income of UVX Trust.
- The remaining income would be eligible for benefit of section 11.
- (c) Mr. Sarthak is a resident in India for A.Y.2024-25, since his stay in India in the P.Y.2023-24 is for 305 days which exceeds the minimum required stay of 182 days in that previous year. Also, his stay in India must be more than 730 days in the immediately preceding seven years, and he

must be resident in 7 years (P.Y.2013-14 to P.Y.2019-20) out of 10 years immediately preceding P.Y.2023-24, since he left India for the first time on 1st April, 2020.

Hence, he is resident and ordinarily resident in India for A.Y.2024-25. 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. Sarthak for A.Y.2024-25

Particulars	₹	₹
Income from House Property [Residential property in Country Y]		
Annual Value ⁴ (\$ 32,000 x ₹ 75, exchange rate on 31.3.2024)	24,00,000	
Less: Deduction under section 24 – 30% of NAV	7,20,000	
		16,80,000
Profits and Gains of Business or Profession		
Income from business in India		6,20,000
Income from Other Sources		
Dividend from Indian company [₹2,25,000 x 100/90]	2,50,000	
Interest on savings bank account with SBI	13,500	2,63,500
Gross Total Income		25,63,500
Less: Deduction under Chapter VIA		
Under section 80TTA – Interest on savings bank account (actual interest of ₹ 13,500 or ₹ 10,000, whichever is lower)		10,000
Total Income		25,53,500

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

Particulars	₹
Tax on total income [30% of ₹ 15,53,500 + ₹ 1,12,500]	5,78,550
Add: Health and Education cess@4%	23,142
	6,01,692

⁴ Rental Income has been taken as GAV in the absence of other information relating to fair rent, municipal value etc.

Less: Deduction under section 91 (See Working Note below)	2,41,500
Net Tax Liability	3,60,192
Net Tax liability (rounded off)	3,60,200

Working Note: Calculation of deduction under section 91

Particulars	₹	₹
Average rate of tax in India [i.e., ₹ 6,01,692/₹ 25,53,500x100]	23.56%	
Average rate of tax in country Y [20% of \$ 23,000 (\$ 32,000 - \$ 9,000) = \$ 4,600/\$ 32,000 x 100 = 14.375%	14.375%	
Doubly taxed income		
Income from house property	16,80,000	
Deduction u/s 91 on ₹16,80,000 @14.375% (being the lower of average Indian tax rate (23.56%) and foreign tax rate (14.375%)]		2,41,500

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

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

In this case, tax is required to be deducted at source under section 194Q by the buyer, Mr. Amit, since his turnover in the immediately preceding financial year i.e., F.Y.2022-23 exceeds ₹ 10 crores and he has purchased goods of the value or aggregate of such value exceeding ₹ 50 lakhs in the F.Y.2023-24. TDS u/s 194Q would be 0.1% of the sum exceeding ₹ 50 lakhs and the same has to be deducted at the time of payment or credit of such sum to the account of resident seller, whichever is earlier.

Therefore, in the present case, Mr. Amit is required to deduct tax at source @ 0.1% of ₹ 15,00,000, being the amount exceeding ₹ 50 lakhs (₹ 49,00,000, being the payment made *plus* ₹ 16 lakhs, being the amount credited to the account of Mr. Bharat).

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

- (ii) Mr. Ashok, a resident, is entering into an agreement with Cloud Ltd., a real estate developer, to develop a high-rise apartment complex on his land for a consideration of ₹ 6.5 crore and 6 flats in the apartment. This is a specified agreement under section 45(5A).

As per section 194-IC, Cloud Ltd. is required to deduct tax at source @ 10% on ₹ 6.5 crores, being the consideration paid other than consideration in kind, under a specified agreement to Mr. Ashok.

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 = ₹ 6.5 crore x 10% = ₹ 65 lakhs

- (iii) State Government is required to collect tax at source @2% u/s 206C(1C) on ₹ 12 crores, being the charges for lease of coal mine.

TCS = 2% x ₹ 12 crores = ₹ 24,00,000

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

TCS = 1% of ₹ 1 crore = ₹ 1,00,000.

- (b) 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 Aster Ltd., a foreign company, holds 30% equity shares in Bhuvan Ltd., an Indian company, Aster Ltd. and Bhuvan Ltd. are deemed to be associated enterprises. Since the transaction of developing software and providing related support service by Bhuvan Ltd. to Aster 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 Gaurav Ltd. Ltd. [an unrelated party]		40%
Less: Adjustments for functional and other differences		
- Value of technology support [Aster Ltd. provides technology support, but Gaurav Ltd. does not provide such support. Therefore, value of technology support shall be adjusted] [15% of 40%, being gross profit]	6%	
- Quantity discount to Aster Ltd. [Quantity discount is allowed to Aster Ltd. as it gives business in large volumes, but the same is not	4%	

provided to Gaurav Ltd. Therefore, it shall be adjusted] [10% of 40%, being gross profit]		
- Risk and cost associated with marketing [Bhuvan Ltd. has to bear all the risk and costs associated with the marketing function in case of Gaurav Ltd., while there is no such risk in case of services to Aster Ltd. Therefore, market risk and cost shall be adjusted] [20% of 40%, being gross profit]	8%	<u>18%</u>
		22%
Add: Cost of credit to Aster Ltd. [Bhuvan Ltd has provided credit of 1 month to Aster 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]		<u>2%</u>
Arm's length gross profit mark up to cost		<u>24%</u>
Cost incurred by Bhuvan Ltd. for executing Aster Ltd.'s work		4,52,000
Add: Adjusted gross profit (₹ 4,52,000 x 24%)		<u>1,08,480</u>
Arm's length billed value		5,60,480
Less: Actual Billed Income from Aster Ltd. (₹ 2,700 x 150 man hours)		<u>4,05,000</u>
Total Income of Bhuvan Ltd to be increased by		<u>1,55,480</u>

5. (a) (i) **Issue Involved:** The issue under consideration is whether the High Court is justified in not framing any substantial question of law itself and adjudicating merely on the questions put forth by the appellant.

Relevant provision of law: Section 260A(1) provides that an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law. As per section 260A(3) and 260A(4), if the High Court is so satisfied, it shall formulate that question and the appeal shall be heard only on the question so formulated.

Analysis & Conclusion: There lies a distinction between the questions proposed by the appellant for admission of the appeal to the High Court and the questions framed by the High Court. The questions, which are proposed by the appellant, fall under section 260A(2)(c) whereas the questions framed by the High Court fall under section 260A(3). Section 260A(4) provides that the appeal is to be heard on merits only on the questions formulated by the High Court under section 260A(3) and not on the questions proposed by the appellant.

In case the High Court is of the view that the appeal did not involve any substantial question of law, it should have recorded a categorical finding to that effect that the questions proposed by the appellant either do not arise in the case or/and are not substantial questions of law so as to attract the rigour of section 260A for its admission and accordingly, should have dismissed the appeal at the preliminary stage itself. However, this was not done in this case. Instead, the appeal was heard only on the questions urged by the appellant u/s 260A(2)(c).

The High Court was, therefore, not justified since it did not decide the appeal in conformity with the mandatory procedure prescribed in section 260A.

Note – *The facts given in the question are similar to the facts in CIT v. A.A. Estate Pvt. Ltd. [2019] 413 ITR 438, wherein the issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court in the said case.*

- (ii) **Issue Involved:** The issue under consideration is whether the provisions of section 14A can be invoked in disallowing the expenditure incurred in respect of the income for which deduction is claimed under Chapter VI-A.

Provisions applicable: As per section 14A, expenditure incurred in relation to income which does not form part of the total income under the Act, will not be allowed in computing the total income of the assessee.

Analysis: Deduction under section 80P covered in Chapter VIA is different from the exclusions/exemptions provided under Chapter III. Section 14A is applicable only if an income is not included in the total income as per the provisions of Chapter III of the Income-tax Act, 1961

Income which qualifies for deductions under section 80C to 80U has to be first included in the gross total income of the assessee and then allowed as a deduction.

Therefore, no disallowance can be made u/s 14A in respect of income included in total income in respect of which deduction is allowable u/s 80C to 80U.

Conclusion: Accordingly, the action taken by the Assessing Officer in disallowing the expenditure incurred with respect to income for which deduction under Chapter VI-A is claimed, by invoking the provisions of section 14A is, therefore, **not tenable in law**.

Note – *The facts given in the question are similar to the facts in CIT v. Kribhco (2012) 349 ITR 0618, wherein the issue came up before the Delhi High Court. The above answer is based on the rationale of the Delhi High Court in the said case.*

- (iii) **Issue Involved:** The issue under consideration is whether bonus shares received by shareholders would be taxable under the head 'Income from other sources' as per the provisions of section 56(2)(x), as they are received without consideration.

Provision Applicable: Section 56(2)(x) brings to tax any sum of money or value of property received by any person without consideration or for inadequate consideration from any person.

Analysis: The issue of bonus shares by capitalization of reserves is merely a reallocation of the company's funds. There is no inflow of fresh funds or increase in the capital employed, which remains the same. Thus, there is no addition or alteration to the profit-making apparatus and the total funds available with the company remain the same.

On the other hand, when a shareholder gets bonus shares, the value of the original shares held by him goes down and the market value as well as intrinsic value of the two shares put together will be the same or nearly the same as the value of original share before the issue of bonus shares.

Thus, any profit derived by the assessee shareholder on account of receipt of bonus shares is adjusted by depreciation in the value of equity shares originally held by him.

Conclusion: Accordingly, the action of the Assessing Officer in including the fair value of bonus shares as Income from other sources of M Sudarshan is incorrect.

Note – The facts given in the question are similar to the facts in *PCIT v. Dr. Ranjan Pai (2021) 431 ITR 250*, wherein the issue came up before the Karnataka High Court. The above answer is based on the rationale of the Karnataka High Court in the said case.

- (b) In digital economy transactions like sale, purchase, payment, rendering services are performed through digital or virtual mode. In the digital domain, business does not actually occur in any physical location but instead takes place in "cyberspace."

Taxation issues in e-commerce

The typical taxation issues relating to e-commerce are:

- (i) the difficulty in characterizing the nature of payment and establishing a nexus or link between taxable transaction, activity and a taxing jurisdiction,
- (ii) the difficulty of locating the transaction, activity and identifying the taxpayer for income tax purposes.

The following are OECD recommendations under Action Plan 1 dealing with digital economy:

- (1) **Modifying the existing permanent establishment** rule to provide for whether an enterprise engaged in fully de-materialized digital activities would constitute a PE, if it maintained a significant digital presence in another country's economy.
- (2) **a virtual fixed place of business in the concept of permanent establishments** i.e., creation of a PE when the enterprise maintains a website on a server of another enterprise located in a jurisdiction and carries on business through that website.
- (3) **Imposition of a final withholding tax on certain payments** for digital goods or services provided by a foreign e-commerce provider **or imposition of equalisation levy** on consideration for certain digital transactions received by a non-resident from a resident or from a non-resident having permanent establishment in other contracting state.

6. (a) Applicability of GAAR

- (i) In case of investment made prior to 1.4.2017, income arising from transfer thereof would not be subject to GAAR. Accordingly, income from transfer of shares acquired on 1.4.2016 by Right Inc. would not attract GAAR.

If the original shares are acquired before 1.4.2017, but bonus shares are issued after that date, GAAR provisions would not be attracted on transfer of such bonus shares also.

- (ii) An impermissible avoidance arrangement means an arrangement, the main purpose or one of the main purposes of which is to obtain a tax benefit and also, *inter alia*, lacks commercial substance or is deemed to lack commercial substance. An arrangement is deemed to lack commercial substance if it involves, *inter alia*, round tripping of funds.

In this case, the arrangement of routing money through wholly owned subsidiary Company C in Country X, a low tax jurisdiction, to an Indian company (C Ltd.) involves round tripping of funds even though funds emanating from D Ltd. are not traced back to D Ltd. The alternate course available in this case is direct advance to C Ltd. an Indian company, in which case the interest income would have been chargeable to tax in the hands of D Ltd.

Therefore, the agreement is deemed to lack commercial substance as it involves round tripping of funds. Also, its main purpose is to obtain tax benefit and there is no other activity in Company C.

However, if the tax benefit in the relevant assessment year arising, in aggregate, to all the parties to the arrangement does not exceed ₹ 3 crore, then, GAAR provisions would not be invoked.

- (b) (i) Form 15CB is a certificate of an accountant wherein he certifies that he has examined the agreement between the remitter and the beneficiary requiring such remittance as well as the relevant

documents and books of account required for ascertaining the nature of remittance and for determining the rate of deduction of tax at source. The chartered accountant certifying the form undertakes to have verified the agreement between the remitter and the beneficiary as well as the relevant documents and books of account to ascertain the nature of remittance and determine the rate of TDS. In this case, however, the chartered accountant mentioned that he had only verified KYC of signatory to invoice and the invoices thereof. He had not only failed to justify as to how verification of invoices was considered as sufficient compliance for certifying the forms but also failed to bring on record the said invoices. Thus, he failed to provide any basis on which he relied for issuing Form 15CB certificates to the company.

On account of such failure, clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 for failure to exercise due diligence in discharging his professional responsibilities and failure to obtain sufficient information may be invoked.

- (ii) As per section 44AB, every person carrying on business or profession is required to get his accounts audited before the “specified date” by a Chartered Accountant, if the total sales, turnover or gross receipts in business exceeds ₹ 1 crore in any previous year.

However, tax audit is not required in case of such person carrying on business whose total sales, turnover or gross receipts in business $\leq$ ₹ 10 crore in the relevant previous year (P.Y.), if:-

- aggregate cash receipts including amount received for sales, turnover, gross receipts in the relevant previous year $\leq$ 5% of such receipts; **and**
- aggregate cash payments including amount incurred for expenditure in the relevant P.Y. $\leq$ 5% of such payments or

In this case, the turnover of XYZ & Co. exceeds ₹ 1 crore but does not exceed ₹ 10 crore. Accordingly, it has to be seen whether cash receipts exceed 5% of aggregate receipts and cash payments exceed 5% of aggregate payments, to determine whether tax audit is compulsory.

In this case, the percentage of cash receipts of ₹ 19 lakhs to aggregate receipts of ₹ 456 lakhs is 4.16% and the percentage of cash payments to aggregate payments is 1.597%.

Since the cash payments and cash receipts made during the year do not exceed 5% of aggregate payments and aggregate receipts, respectively, the firm is not required to get its accounts audited

under section 44AB and not required to furnish audit report before the specified date.

- (c) (i) The statement is **not** correct.

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.

Therefore, Mr. Rakul may appeal to the High Court against such order within sixty days from the date of the communication of that order.

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

A resident falling within any class or category of persons as notified by the Central Government i.e., a public sector undertaking can seek advance ruling even if question raised is pending before the Appellate Tribunal.