PAPER – 7: DIRECT TAX LAWS & INTERNATIONAL TAXATION

Part - II

*Question No.**1** is compulsory.*

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

Working notes should form part of the respective answers

All questions relate to Assessment Year 2019-20, unless stated otherwise in the question.

Question 1

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, 2019 to 30th April, 2019. The expenses incurred on the project till 31-3-2019 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 2018-19, 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, 2019 and the trust paid the amount of bonus to the employees on 30th December, 2019;

(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 2018-19, 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.

The Suggested Answers for Paper 7:- Direct Tax Laws and International Taxation are based on the provisions of direct tax laws as amended by the Finance Act, 2018, which is relevant for November, 2019 examination. The relevant assessment year is A.Y.2019-20.

(viii) During the previous year 2018-19, 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 1-6-2018 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 were 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 2017. In the previous year 2018-19, the court gave its judgement in favour of the company. The company has received ₹ 2,00,000 till 31-03-2019. 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 2018 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 2019-20 giving a brief explanation to each item of additions or deletions. Ignore provisions of MAT. ***(14 Marks)***

Answer

Computation of Total Income of M/s Anamika Builders and Construction Ltd. for the A.Y. 2019-20

	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[1]. However, since in the present case, actual payment of bonus to employees is made on 30th December 2019, after due date of filing return of income i.e., after 31st October 2019, 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[2]. 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(1), 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 while computing taxable business income. 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,	1,75,000	

[1] Shasun Chemicals & Drugs Ltd v. CIT (2016) 388 ITR 1 (SC)

[2] It was so held in Millennia Developers (P) Ltd. v. DCIT (2010) 322 ITR 401 (Kar.)

	the expenses are capital in nature[3]. 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]		
	(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, it has to be added back]	48,000	
	(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 2018-19, 30% of expenditure i.e., ₹ 3,30,000 would be disallowed]		
	Note - The above treatment is based on the Madras High Court ruling in *M/s. Asianet Communications Ltd vs CIT, 174/2005 on 26.6.2018*		
	Alternate treatment is possible based on the Gujarat High Court ruling in *PCIT vs Ferromatic Milacron India Pvt, Ltd 1233/2018 on 9.10.2018,* 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 *Explanation 3* to sub-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.,		

[3] *as per McGaw-Ravindra Laboratories (India) Ltd. v. CIT (1994) 210 ITR 1002 (Guj.)*

	₹ 11,00,000, has to be added back and depreciation of ₹ 2,75,000 i.e., 25% would be allowed as deduction. Further, disallowance of 30% of expenditure on account of non-deduction of tax at source would also not be attracted.		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. 2018-19 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 31.3.2019 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 2019 to 30th April 2019 (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. 2019-20. 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. 2018-19]			
	(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[4]	
		[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**
II	**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		
				17,500	
	- Actual cost [250 x ₹ 540]	1,35,000			
	- Lower of	4,95,000			

[4] Since this is stated to be the amount of depreciation as per Income-tax Act, it is presumed that the same also includes the depreciation on converted office space.

	• ₹ 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		
	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	**17,500**	
	- Actual cost Nil - 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		
	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**		
	Under section 80GGB		48,000
	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		
	Total Income		**84,36,500**

Question 2

(a) 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 23-01-2019 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 23-01-2019.

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 the 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 30-4-2016.

(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, 2018 and used during the year cost ₹ 23,60,000 (including GST@18%).

(b) Construction of one factory building was completed on 31st December, 2018 and it was put to use w.e.f. 1-1-2019. 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, 2017. Interest payable details are as under:

Period	₹
From 20-10-2017 to 31-03-2018	2,00,000
From 01-04-2018 to 31-12-2018	7,00,000
From 01-01-2019 to 31-03-2019	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 31-03-2019 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. ***(8 Marks)***

(b) *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 2018-19. 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? ***(6 Marks)***

Answer

(a) Computation of total income of Ram Manufacturers LLP for A.Y.2019-20

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**	Nil	
[no adjustment is required since interest@9% p.a. is authorized by the partnership deed and the rate does not exceed 12%]		
- **Salary to working partners** [to be considered separately] [₹ 25,000 x 12 x 4]	12,00,000	
- **Depreciation on non-compete fee**	3,00,000	
[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. 2018-19]		
Note - The above treatment is based on the Madras High Court ruling in *M/s. Asianet Communications Ltd vs CIT, 174/2005 on 26.6.2018*.		
Alternate answer based on the Gujarat High Court ruling in *PCIT vs Ferromatic Milacron India Pvt.*		

Ltd. 1233/2018 on 9.10.2018 is given 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 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 1.4.2018.* *Cost [2016-17]* *₹ 30,00,000* *Less: Depreciation @25% [2016-17]* *₹ 7,50,000* *WDV as on 1.4.2017* *₹ 22,50,000* *Less: Depreciation @25% [2017-18]* *₹ 5,62,500* *WDV as on 1.4.2018* *₹ 16,87,500* *Decpreciation@25% [2018-19]* *₹ 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 23.01.2019 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, 2018 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 actual cost of the P & M would be ₹ 20 lakhs [₹ 23,60,000 x100/118] ***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.*	1,50,000	
(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 31.12.2018 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 ***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.*	2,00,000	5,99,500
- **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		Nil

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].		
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

(b) I. If Mr. Bhist has received interest on investment made in notified Infrastructure Debt Fund

The interest income received by Mr. Bhist, a non-resident, from a notified infrastructure debt fund u/s 10(47) would be subject to a concessional tax rate of 5% (*plus* health and education cess@4%) i.e., 5.2% under section 115A on the gross amount of such interest income.

Accordingly, the tax liability of Mr. Bhist in respect of such income would be ₹ 62,400 (being 5% of ₹ 12 lakhs *plus* health and education cess@4%).

(i) If Mr. Bhist is residing in a Notified Jurisdictional Area (NJA)

Under section 194LB, tax is deductible @ 5% (plus health and education cess@4%) i.e. 5.2% on interest paid by notified infrastructure debt fund u/s 10(47) to a non-resident.

However, since Mr. Bhist is a resident of a NJA, tax would be deductible@30% (plus health and education cess@4%) i.e. 31.2% being the highest of the following rates –

(a) at the rate or rates in force;

(b) at the rate specified in the relevant provision of the Act i.e., 5%;

(c) at the rate of 30%.

Tax to be deducted by notified infrastructure debt fund would be ₹ 3,74,400 (being 30% of ₹ 12 lakhs *plus* health and education cess@4%).

(ii) If Mr. Bhist is stationed outside India, in a place other than a NJA

Tax would be deductible@5% under section 194LB (plus health and education cess@4%) i.e. 5.2% on interest paid by notified infrastructure debt fund u/s 10(47) to Mr. Bhist.

Tax to be deducted by notified infrastructure debt fund would be ₹ 62,400 (being 5% of ₹ 12 lakhs *plus* health and education cess @ 4%).

II. If Mr. Bhist has received fee for technical services (FTS) from an Indian company

If Mr. Bhist, a non-resident, has received FTS from an Indian company instead of interest income from Infrastructure Debt Fund assuming that the agreement for FTS is approved by the Central Government, the same would be subject to tax@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.

The tax liability of Mr. Bhist, in such a case, would be ₹ 1,24,800 (being 10% of ₹ 12 lakhs *plus* health and education cess@4%).

Question 3

(a) 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, 2019. The said Corporate Hospital is not eligible for registration under section 12AA 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, 2013 and obtained registration under section 12AA on 31st March, 2013.	
(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*[5]	*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 2018-19. ***(8 Marks)***

(b) Miss Sapna, a resident of India and a salaried employee employed with a private co., aged 30 years, received the following sums during the previous year 2018-19.

Basic Salary	*₹ 45,000 p.m.*
DA	*10% of basic salary*
Transport Allowance	*₹ 8,000 p.m.*
Medical Allowance	*₹ 3,500 p.m.*

She contributed ₹ 25,000 to approved Pension Fund of LIC. She also paid ₹ 1,75,000 by account payee cheque for mediclaim premium to insure the health of her father, aged 65 years, who is not dependent on her as a lumpsum payment for 5 years including the current previous year.

Apart from this, she also provided guest lecture to a foreign university during the year. She received ₹ 7,92,000 from such university after deduction of tax of ₹ 1,08,000 in the country in which such university is located. India does not have any double taxation avoidance agreement under section 90 of the Income-tax Act, 1961, with that country. Compute the tax liability of Ms. Sapna for the A.Y. 2019-20. ***(6 Marks)***

Answer

(a) Computation of exit tax payable by GVB Charitable Trust

As per section 115TD, the accreted income of "GVB Charitable Trust", registered u/s 12AA, 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.

[5] Should have been shown under A: Properties and assets

Particulars		Amount (₹)
Aggregate FMV of total assets as on 31.3.2019, 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., 31.3.2019]		
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., 31.3.2019]		
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: [Provision for taxation not to be included in the liabilities; total amount of paid up share capital and reserves and surplus would also not be included in liabilities]	Nil	
	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

Particulars	Amount (in ₹)
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**

(b) Computation of total income of Miss Sapna for A.Y.2019-20

Particulars	₹	₹
Salaries [Indian Income]		
Basic Salary (₹ 45,000 x 12 months)	5,40,000	
Dearness Allowance (10% of basic salary of ₹ 5,40,000)	54,000	
Transport Allowance (₹ 8,000 x 12) [Fully taxable]	96,000	
Medical Allowance (₹ 3,500 x 12) [Fully taxable]	42,000	
Gross Salary	7,32,000	
Less: Standard deduction u/s 16 Lower of actual salary or ₹ 40,000	40,000	
Net Salary		**6,92,000**
Income from Other Sources [Foreign Income]		
Income from lectures in foreign university [₹ 7,92,000 plus tax deducted at source of ₹ 1,08,000]		9,00,000
Gross Total Income		**15,92,000**
***Less:* Deduction under Chapter VIA**		
Under section 80CCC – Contribution to approved Pension Fund of LIC	25,000	
Under section 80D – Medical insurance premium of her father, being a resident senior citizen for the year 2018-19, ₹ 35,000 [being 1/5th of the lumpsum premium of ₹ 1,75,000 paid for 5 years] fully allowable, even though he is not dependent on her, since the same does not exceed ₹ 50,000	35,000	
		60,000
Total Income		**15,32,000**

Computation of tax liability of Miss. Sapna for A.Y.2019-20		
Particulars		**₹**
Tax on total income [₹ 1,59,600 (i.e., 30% of ₹ 5,32,000) *plus* ₹ 1,12,500 (Tax on income of ₹ 10 lakh)]		2,72,100
Add: Health and education cess @4%		10,884
Tax Liability		2,82,984

Average rate of tax in India [i.e., ₹ 2,82,984 / ₹ 15,32,000 x 100]	18.47%	
Tax rate in foreign country [1,08,000 /9,00,000] x 100	12%	
Deduction under section 91 on ₹ 9,00,000, being the doubly taxed income@ 12% [being the lower of Indian rate of tax (18.47%) and foreign tax rate (12%)]		1,08,000
Tax Payable		**1,74,984**
Tax Payable (rounded off)		1,74,980

Question 4

(a) (i) Nath Ltd., an Indian company, pays ₹ 8,40,000 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.

(ii) 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?

(iii) 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? ***(8 Marks)***

(b) 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 2018. 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 2014-15, 2015-16, 2016-17 and 2017-18. 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. 2012-13 onwards.

DIY Ltd. had filed its return of income for the A.Y. 2018-19 on 26th August 2018 and for A.Y. 2019-20, on 31st August, 2019. The assessments for the A.Ys 2015-16 to 2018-19 are completed but the assessment of A.Y. 2019-20 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. 2012-13 onwards?

(ii) In respect of A.Y. 2016-17, 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? ***(6 Marks)***

Answer

(a) (i) Tax/TDS implication of non-monetary perquisites

Particulars	₹
Gross salary	8,40,000
Non-monetary perquisites	1,50,000
	9,90,000
Less: Standard deduction u/s 16	40,000
Net Salary	**9,50,000**
Tax liability	**1,06,600**
Average rate of tax (₹ 1,06,600 x 100 / ₹ 9,50,000)	11.221%

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 = 11.221% of ₹ 1,50,000 = ₹ 16,832

Balance tax to be deducted at source from salary = ₹ 1,06,600 – ₹ 16,832 = ₹ 89,768

If the company pays tax of ₹ 16,832 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 under section 10(10CC).

(ii) 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].*

(iii) 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.

(b) (i) No; the Assessing Officer is not correct in applying transfer pricing provisions as per the advance pricing agreement from A.Y.2012-13 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.2018-19 is the first of the five consecutive previous years, roll back provisions can be applied only from A.Y.2015-16 (relevant to P.Y.2014-15) and not from A.Y.2012-13.

(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.2016-17, 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 2019. 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.2018-19 other than A.Y.2016-17), the Assessing Officer would assess or reassess or recompute the total income of the relevant assessment year having regard to the 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.2019-20), 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 5

*(a) Answer any **two** out of the following **three**:*

(i) An Assessee, who is aggrieved by all or any of the following orders, is desirous to know the remedial recourse and the time limit against each order under the Income-tax Act, 1961 -

(1) Passed under section 153A (except an order passed in pursuance of the direction of the Dispute Resolution Panel) by the Assessing Officer.

(2) Passed under section 263 by the Commissioner of Income-tax.

(3) Passed under section 272A by the Principal Commissioner.

(4) Passed under section 254 by the ITAT.

(ii) ABC Ltd., a developer, is engaged in the business of developing of Special Economic Zones, notified on or after 1st April 2005 under the SEZ Act, 2005. It was established in the previous year 2013-14. It had exercised its option for claiming deduction under section 80-IAB from the Assessment Year 2016-17. It received the following incomes during the previous year 2018-19:

Income from the maintenance of SEZ	*₹ 50,40,000*
Income from lease rent from letting out of buildings along with other amenities in SEZ	*₹ 14,25,000*
Interest received from bank deposits (from the refundable security deposits received from lessees)	*₹ 9,50,000*

(1) Calculate the amount of deduction available to ABC Ltd. for the A.Y.2019-20.

(2) On 1st April, 2019, it transferred the operation and maintenance of the SEZ to another company, DEF Ltd. Now, DEF Ltd. wants to claim deduction under section 80-IAB in respect of the income derived from such maintenance of SEZ as was available for ABC Ltd. Comment whether the contention of DEF Ltd. is valid in law.

(iii) 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? ***(2 x 4 Marks = 8 Marks)***

(b) ABC Ltd, a software giant in India, set up a 100% subsidiary company by name SHD Inc. in Switzerland on 1st April, 2018. The subsidiary company, SHD Inc., is mainly engaged in the software services, hardware services and data backup services in three different countries viz., Switzerland, Sweden and India. The following information is furnished by SHD Inc., for FY 2018-19:

Particulars	***In Switzerland***	***In Sweden***	***In India***
Value of assets as per books of account (₹ in crores)	*24*	*12*	*24*
Number of employees working (in thousands)	*30*	*10*	*28*
Pay roll expenditure (₹ in crores)	*4*	*2.6*	*5.4*
Total aggregate income earned	*₹ 80 crores*		

Other Information:

I. Break up of total income:

- *₹ 28 crores derived from the transactions where purchases are made from associated enterprises and sold to non-associated enterprises;*
- *₹ 24 crores derived from the transactions where both purchases and sales are made from/to associated enterprises;*
- *₹ 16 crores derived from the transactions where purchases are made from non-associated enterprises and sold to associated enterprises:*
- *₹ 8 crores by way of income from capital gains on trading of shares;*
- *₹ 4 crores by way of interest from non-associated enterprises;*

II. During FY 2018-19, total 5 board meetings were held, 2 in India, 1 in Sweden and 2 in Switzerland.

Based on the above information, determine the residential status of SHD Inc., applying the provisions of POEM for the A.Y.2019-20. ***(6 Marks)***

Answer

(a) (i) Remedial measures against certain orders and time limit

	Order passed u/s	**Remedy available**	**Time limit**
1.	153A	File an appeal before the Commissioner (Appeals)	Within **30 days** of the date of service of the notice of demand relating to the

		u/s 246A(1) (or) Move a revision petition u/s 264 before the Commissioner or Principal Commissioner	assessment. Within a period of **one year** from: (i) the date of on which the order was communicated to him; or (ii) the date on which he otherwise came to know of it, whichever is earlier.
2.	263	File an appeal before the Appellate Tribunal (ITAT) u/s 253(1)(c)	**within 60 days** of the date on which the order sought to be appealed against is communicated to the assessee.
3.	272A	File an appeal before the Appellate Tribunal (ITAT) u/s 253(1)(c)	**within 60 days** of the date on which the order sought to be appealed against is communicated to the assessee.
4.	254	File an appeal before the High Court u/s 260A	**within 120 days** from the date of receipt of order of ITAT

(ii) (1) Since ABC Ltd., a developer, is engaged in the business of developing an SEZ, notified on or after 1.4.2005, it is eligible for a deduction of 100% of profits and gains derived by it from any business of developing a SEZ for 10 consecutive assessment years out of 15 assessment years beginning from the year in which the SEZ has been notified by the Central Government.

ABC Ltd. has exercised its option for claiming deduction u/s 80-IAB from A.Y. 2016-17. Therefore, it is eligible to claim 100% deduction in the A.Y. 2019-20, being the 4th consecutive assessment year.

Amount of deduction available to ABC Ltd. for A.Y. 2019-20

Particulars	Amount in ₹
Income from the maintenance of SEZ	50,40,000
Income from lease rent from letting out of buildings along with other amenities in SEZ [As per CBDT Circular No. 16/2017 dated 25.04.2017, income from letting out of premises/developed space along with other facilities in an SEZ is chargeable to tax under the head 'Profits and Gains of Business or Profession". Hence, considered for deduction u/s 80-IAB]	14,25,000
Interest received from bank deposits [not chargeable to tax under the head 'Profits and Gains of Business or Profession". Hence, not considered for deduction u/s 80-IAB]	Nil
	64,65,000

Deduction u/s 80-IAB for A.Y. 2019-20 [100% of profits derived from business]	64,65,000

(2) As per section 80-IAB, if an undertaking, being a Developer i.e., ABC Ltd., in the present case, who develops a SEZ on or after 1.4.2005, transfers the operation and maintenance of such SEZ to another Developer i.e., DEF Ltd., the deduction shall be allowed to DEF Ltd. for the remaining period in the ten consecutive assessment years as if the operation and maintenance were not so transferred to the DEF Ltd.

Hence, DEF Ltd. can claim deduction u/s 80-IAB for the remaining period i.e., from A.Y.2020-21 to A.Y.2025-26.

(iii) The issue under consideration is whether "premium" on subscribed share capital can be treated "capital employed in the business of the company" under section 35D to be eligible for increased deduction under section 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, [6]the provisions of the Companies Act, 2013[7] 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. CIT (2017) 393 ITR 113, 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.*

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[6] *Sl. No. IV(i) in Form MGT- 7 read with section 92 of the Companies Act, 2013*

[7] *Corresponding to column III of the form of the annual return in Part II of Schedule V to the Companies Act, 1956 u/s 159*

(b) SHD Inc., a foreign company, would be resident in India in the P.Y. 2018-19, if its place of effective management is in India in that year.

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

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

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

SHD Inc. would be regarded as a company engaged in active business outside India for P.Y. 2018-19 for POEM purpose only if it satisfies all the four conditions cumulatively.

Condition 1: The passive income of SHD Inc. should not be more than 50% of its total income

Total income of SHD Inc. during the P.Y. 2018-19 is ₹ 80 crores

Passive income is the aggregate of, -

(i) income from the transactions where both the purchase and sale of goods is from/to its associated enterprises i.e., ₹ 24 crores; and

(ii) income by way of, *inter alia*, capital gains i.e., ₹ 8 crores and interest i.e., ₹ 4 crores;

Passive Income of SHD Inc. is ₹ 36 crores

Percentage of passive income to total income = ₹ 36 crore/ ₹ 80 crore x 100 = 45%

Since passive income of SHD Inc. i.e., 45% is not more than 50% of its total income, the first condition is satisfied.

Condition 2: SHD Inc. should have less than 50% of its total assets situated in India

Value of total assets of SHD Inc. is ₹ 60 crores [₹ 24 crore + ₹ 12 crore + ₹ 24 crore].

Value of total assets of SHD Inc. in India is ₹ 24 crores

Percentage of assets situated in India to total assets = ₹ 24 crores/₹ 60 crores x 100 = 40%

Since the value of assets of SHD Inc. situated in India is less than 50% of its total assets, the second condition for ABOI test is satisfied.

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

Number of employees working in India is 28,000.

Total number of employees of SHD Inc. is 68,000 [30,000+10,000+28,000].

Percentage of employees working in India to total number of employees is 28,000 x 100/68,000 = 41.176%

Since employees of SHD Inc. working in India are less than 50% of its total employees, the third condition for ABOI test is satisfied.

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

Payroll expenditure on employees in India is ₹ 5.40 crores

Total payroll expenditure of SHD Inc. is ₹ 12 crores [4.0 crore + 2.6 crore + 5.4 crore].

Percentage of payroll expenditure on employees in India to total payroll expenditure is ₹ 5.4 crores/₹ 12 crores x 100 = 45%

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

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

Determination of POEM of SHD Inc.

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

Since SHD Inc. is engaged in active business outside India in P.Y. 2018-19 and majority of its board meetings i.e., 3 out of 5, were held outside India, POEM of SHD Inc. would be outside India.

Therefore, SHD Inc. would be non-resident in India for the P.Y. 2018-19.

Question 6

(a) *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 ₹ 800 lakhs. Is this an impermissible arrangement lacking commercial substance? Support your answer with applicable legal provisions.* ***(4 Marks)***

(b) *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 30-06-2018. 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? ***(4 Marks)***

(c) (i) Explain briefly Jurisdictional double taxation and Economic double taxation. How does the tax law provide for remedial measures? ***(4 Marks)***

(ii) Do you agree that the tax treaties are to be interpreted liberally? If so, why? ***(2 Marks)***

Answer

(a) This is an arrangement whose main purpose is to take money out of reserves available with subsidiary company i.e., MNO Ltd., India without payment of dividend distribution tax under section 115-O.

The dividend distribution tax would be attracted in the hands of MNO Ltd. in both following situations -

- If MNO Ltd. had declared or distributed dividend, tax has to be paid@15% plus surcharge@12% plus health and education cess@4% (i.e., 17.472%) on such distributed income.
- 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, MNO Ltd. In such a case, dividend distribution tax@30% plus surcharge @12% plus health and education cess@4% (i.e. 34.944%) would be levied.

In order to avoid payment of dividend distribution tax, 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 ₹ 279.552 lakhs (₹ 800 lakhs x 34.944%)] is sought to be obtained by way of saving taxes on the amount distributed to the holding company which would be treated as deemed dividend and subject to dividend distribution tax in the hands of MNO Ltd. 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 ₹ 279.552 lakhs (₹ 800 lakhs x 34.944%) arising out of such arrangement does not exceed ₹ 3 crore, GAAR provisions cannot be invoked.

(b) 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 30.7.2018 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.

(c) (i) **Jurisdictional double taxation and economic double taxation**

When source rules overlap, double taxation may arise i.e., tax is imposed by two or more countries as per their domestic laws in respect of the same transaction, income arises or is deemed to arise in their respective jurisdictions. This is known as "jurisdictional double taxation".

This can also be explained with the help of an example. A particular income is taxed in the hands of a person in the country in which it arises (Source State) and also in the country in which such person is a resident (Residence State), by virtue of the domestic tax laws of the respective Contracting States. This gives rise to jurisdictional double taxation.

'Economic double taxation' happens when the same transaction, item of income or capital is taxed in two or more states but in hands of different persons.

For example, in India, income of a firm is subject to tax and partner's share in the income of the firm is exempt. However, if partner is a resident of another country, where share income from firm is taxable, economic double taxation would arise.

In order to avoid jurisdictional double taxation, relief available under the provisions of Double Taxation Avoidance Agreements (DTAAs) with the source country can be utilized, or in the absence of such an agreement, provisions of section 91, providing unilateral relief in the event of double taxation, would be applicable.

Tax treaties generally do not cover instances of economic double taxation. Mutual Agreement Procedure (MAP) provides relief in cases of economic double taxation.

(ii) Yes, I agree with the given statement.

It is a general principle of construction with respect to treaties that they shall be liberally construed so as to carry out the apparent intention of the parties.

[8]Contrary to an ordinary taxing statute, a tax treaty or convention must be given a liberal interpretation with a view to implementing the true intentions of the parties. A literal or legalistic interpretation must be avoided when the basic object of the treaty might be defeated or frustrated in so far as the particular item under consideration is concerned.

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[8] *In John N. Gladden v. Her Majesty the Queen, 85 D.T.C. 5188 at 5190, Source: UOI v. Azadi Bachao Andolan 263 ITR 706 (SC), the principle of liberal interpretation of tax treaties was reiterated by the Federal Court.*