PAPER 7: DIRECT TAX LAWS & INTERNATIONAL TAXATION

The provisions of direct tax laws, as amended by the Finance Act, 2022 and the significant notifications and circulars issued upto 30.4.2023, are relevant for November, 2023 examination. The relevant assessment year is A.Y.2023-24. The October, 2021 edition of the Study Material has to be read along with the Supplementary Study Paper 2022, containing the provisions of direct tax laws as amended by the Finance Act, 2022 and notifications and circulars issued upto 31.10.2022, and the webhosted Statutory Update and Judicial Update for November, 2023 Examination. The Supplementary Study Paper 2022 has been webhosted at https://resource.cdn.icai.org/72303bos58234.pdf, the Statutory Update for November, 2023 Examination has been webhosted at https://resource.cdn.icai.org/74470bos60409.pdf, and the Judicial Update for November, 2023 Examination has been webhosted at https://resource.cdn.icai.org/72695bos58611.pdf, respectively.

QUESTIONS AND ANSWERS

Case Scenario 1

The Assessing Officer, with prior approval of Chief Commissioner of Income-tax, surveyed the business premises of A Ltd., which was within his jurisdiction, at 9 p.m. on 1.6.2022 for the purpose of obtaining information which may be relevant to the proceedings under the Income-tax Act, 1961. The survey operations continued till 11 p.m. On 15.6.2022, the Assessing Officer entered the business premises of B Ltd. which was also within his jurisdiction at 8.30 p.m. for the purpose of collecting information which may be useful for the purposes of the Income-tax Act, 1961 and left the premises at 9.30 p.m. The business premises of A Ltd. is kept open for business every day between 10 a.m. and 10 p.m. and the business premises of B Ltd. is kept open for business every day between 9.30 a.m. to 9.30 p.m.

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

In July, 2022, the business premises of C Ltd. was searched after following the due procedure laid down under section 132, consequent to which the Assessing Officer has in his possession certain documents showing information pertaining to shares of value ₹ 28 lakhs purchased in the P.Y.2016-17 and shares of value of ₹ 21 lakhs purchased in the P.Y.2017-18.

On the basis of the facts given above, choose the most appropriate answer to Q.1 to Q.6 below, based on the provisions of the Income-tax Act, 1961 –

1. Is the action of the Assessing Officer in entering the business premises of A Ltd. at 9 p.m. and continuing survey operations till 11 p.m. valid? Also, is the action of the Assessing officer in entering the business premises of B Ltd. at 8.30 p.m. valid?

(a) Yes, the action of the Assessing Officer, in both cases, is valid.

(b) No, the action is not valid in both cases, as the Assessing Officer cannot enter the premises of A Ltd. and B Ltd. after sunset.

(c) No, the action is not valid in the case of A Ltd., as the survey operations continued beyond business hours. However, the action of the Assessing officer in the case of B Ltd. is valid.

(d) The action of the Assessing Officer is valid in the case of A Ltd. but not in the case of B Ltd.

2. Is the action of the Assessing Officer in impounding and retaining books of account and other documents of A Ltd. and B Ltd., after recording reasons for doing so, valid, where he had not taken specific permission from the Chief Commissioner for this action?

(a) No, the action of the Assessing Officer is not valid in the case of both A Ltd. and B Ltd.

(b) Yes, the action of the Assessing Officer is valid in the case of both A Ltd. and B Ltd.

(c) The action of the Assessing Officer is valid in the case of A Ltd. but not in the case of B Ltd.

(d) The action of the Assessing Officer is valid in the case of B Ltd. but not in case of A Ltd.

3. Can the Assessing Officer issue notice u/s 148 to A Ltd. in August, 2022, in respect of A.Y.2019-20, A.Y.2020-21 and A.Y.2021-22, consequent to survey conducted in the business premises of A Ltd?

(a) No, since the survey conducted is itself not valid

(b) Yes, he can do so; compliances stipulated u/s 148A are not necessary.

(c) Yes, he can do so, after following the compliances stipulated u/s 148A.

(d) Yes, he can do so with the prior approval of the specified authority u/s 151; other compliances stipulated u/s 148A are not necessary.

4. Would the action of the Assessing Officer in entering the premises of A Ltd. at 9 p.m. and impounding and retaining books of account been valid if he had surveyed A Ltd. only for the purpose of verifying whether tax has been deducted/collected at source in accordance with the provisions of the Income-tax Act, 1961?

(a) Yes, the action of the Assessing Officer in entering the premises and impounding and retaining books of account would be valid.

(b) No, the action of the Assessing Officer in entering the premises at 9 p.m. and impounding and retaining books of account is not valid.

(c) The action of the Assessing Officer in entering the premises at 9 p.m. is valid but not the action of impounding and retaining books of account.

(d) The action of the Assessing Officer in entering the premises at 9 p.m. is valid but not the action of continuing the survey beyond 10 p.m.

5. Can the Assessing Officer issue notice u/s 148 for bringing to tax income escaping assessment in the case of C Ltd., without following the compliances stipulated u/s 148A?

(a) Yes, he can do so with the prior approval of the specified authority u/s 151.

(b) No, he can do so only after following the compliances stipulated u/s 148A.

(c) No, he cannot issue notice u/s 148, since the three-year time limit from the end of the relevant assessment years has expired.

(d) No, he cannot issue notice, since "shares" do not fall within the meaning of asset for invoking the extended time limit beyond three years.

6. Can the Assessing Officer issue notice under section 148 for bringing to tax income escaping assessment in case of C Ltd., without following the compliances stipulated u/s 148A, if the shares purchased in the P.Y.2016-17 were of ₹ 30 lakhs instead of ₹ 28 lakhs, all other facts remaining the same?

(a) Yes, he can do so, with the prior approval of the specified authority u/s 151

(b) No, he can do so only after following the compliances stipulated u/s 148A.

(c) No, he cannot issue notice u/s 148, since the three-year time limit from the end of the relevant assessment years has expired.

(d) No, he cannot issue notice, since "shares" do not fall within the meaning of asset for invoking the extended time limit beyond three years.

Case Scenario 2

The following are the details about Alpha Co-operative society (referred to as Alpha Co-op), Beta Co-operative Society (referred to as Beta Co-op) and Gamma Co-operative Bank (referred to as Gamma Co-op) for the P.Y.2022-23 -

Alpha Co-op is engaged in providing credit facilities solely to its members, the profits and gains from which is ₹ 20 lakhs (computed) for the P.Y.2022-23. Alpha Co-op also derives interest of ₹ 3 lakhs from investments in Delta Co-operative Society.

Beta Co-op is engaged in marketing of agricultural produce grown by its members, the profits and gains from which is ₹ 40 lakhs (computed) for the P.Y.2022-23. It has employed 8 new employees with salary of ₹ 22,000 p.m. on 1.6.2022. Salary is paid by ECS through bank account. It gets its books of accounts audited under section 44AB. It also earns interest of ₹ 12 lakhs on fixed deposits with Axis Bank and ICICI Bank.

Gamma Co-op is engaged in banking business in Bangalore, the profits and gains from which is ₹ 110 lakhs (computed) for the P.Y.2022-23. It also gets its books of account audited under section 44AB. It is not a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

On the basis of the facts given above, choose the most appropriate answer to Q.7 to Q.11 below, based on the provisions of the Income-tax Act, 1961 -

7. Would Alpha Co-op and Gamma Co-op be entitled to deduction under section 80P for A.Y.2023-24, if they do not opt for section 115BAD?

   (a) Alpha Co-op is entitled to deduction u/s 80P only in respect of interest of ₹ 3 lakhs and not in respect of profits and gains of ₹ 20 lakhs. Gamma Co-op is not entitled to deduction u/s 80P.

   (b) Alpha Co-op is entitled to deduction u/s 80P only in respect of profits and gains of ₹ 20 lakhs and not in respect of interest of ₹ 3 lakhs. Gamma Co-op is entitled to deduction u/s 80P in respect of profits and gains of ₹ 110 lakhs.

   (c) Alpha Co-op is entitled to deduction u/s 80P both in respect of profits and gains of ₹ 20 lakhs and interest of ₹ 3 lakhs. Gamma Co-op is entitled to deduction u/s 80P in respect of profits and gains of ₹ 110 lakhs

   (d) Alpha Co-op is entitled to deduction u/s 80P both in respect of profits and gains of ₹ 20 lakhs and interest of ₹ 3 lakhs. Gamma Co-op is not entitled to deduction u/s 80P.

8. Would the provisions of alternate minimum tax (AMT) be attracted in case of Alpha Co-op, Beta Co-op and Gamma Co-op for A.Y.2023-24, if they do not opt for section 115BAD?

   (a) Yes, the AMT provisions would be attracted in case of Alpha Co-op, Beta Co-op and Gamma Co-op

   (b) The AMT provisions would be attracted only in case of Alpha Co-op and Gamma Co-op

   (c) The AMT provisions would be attracted only in case of Alpha Co-op and Beta Co-op

   (d) The AMT provisions would be attracted only in case of Beta Co-op.

9. What would be the tax liability (rounded off) of Beta Co-op for A.Y.2023-24, if it opts for section 115BAD? It may be assumed that the gross total income is the same under the normal provisions of the Act and section 115BAD.

   (a) ₹ 1,69,130

   (b) ₹ 3,02,020

   (c) ₹ 10,68,950

   (d) ₹ 11,75,850.

10. What would be the tax liability (rounded off) of Beta Co-op for A.Y.2023-24, if it does not opt for section 115BAD? AMT provisions, if applicable, have to be considered.

   (a) ₹ 1,87,200

   (b) ₹ 2,06,540

   (c) ₹ 2,30,880

   (d) ₹ 8,11,200

11. Would it be beneficial for Alpha Co-op, Beta Co-op and Gamma Co-op to opt for section 115BAD for A.Y.2023-24? It may be assumed that the gross total income is the same under the normal provisions of the Act and section 115BAD in all cases.

   (a) It would be beneficial for Alpha Co-op and Gamma Co-op to opt for section 115BAD, but not for Beta Co-op.

   (b) It would not be beneficial for Alpha Co-op, Beta Co-op and Gamma Co-op to opt for section 115BAD

   (c) It would be beneficial for Alpha Co-op to opt for section 115BAD, but not for Beta Co-op and Gamma Co-op.

   (d) It would be beneficial for Gamma Co-op to opt for section 115BAD, but not for Alpha Co-op and Beta Co-op.

12. ABC Ltd. held a dealer conference on 22nd and 23rd August, 2022 in Cochin to educate the dealers about the new product being launched by it and how the product is better than the similar products of other companies available in the market. The spouse was allowed to accompany the dealer and they could stay in the hotel from 20th August, 2022 (being a Saturday). Leisure trip was organised for dealers and their spouse on 20th and 21st August, 2022, being the weekend. The expenses on airfare, hotel stay and leisure trip of all dealers and their spouse was met by ABC Ltd.

The break-up of the expenditure incurred by ABC Ltd. in relation to Mr. Ashok Sharma, a dealer, for the purpose of the above dealer conference, is as follows –

	Particulars of expenses	₹
(i)	To and fro airfare for Mr. Ashok Sharma from New Delhi	25,000
(ii)	To and fro airfare for Mrs. Ashok Sharma from New Delhi	25,000
(iii)	Hotel stay (including breakfast and dinner) for Mrs. and Mr. Ashok Sharma on 20th and 21st August, 2022 [The expenditure was equal for each person and each day]	30,000
(iv)	Hotel stay (including breakfast and dinner) for Mrs. and Mr. Ashok Sharma on 22nd and 23rd August, 2022 [The expenditure was equal for each person and each day]	28,000
(v)	Expenses for leisure trip on 20th and 21st August, 2022 attributable to Mr. and Mrs. Ashok Sharma [The expenditure was equal for each person and each day]	22,000
(vi)	Conference expenses on 22nd and 23rd August, 2022 attributable to Mr. Ashok Sharma	20,000

What would be the value of benefit or perquisite to Mr. Ashok Sharma on which tax is deductible at source under section 194R?

(a) ₹ 65,000

(b) ₹ 77,000

(c) ₹ 83,500

(d) ₹ 91,000

13. Compute the "specified income" taxable@30% u/s 115BBI in case of a registered charitable trust, EduAid, running an educational institution, from the information given below relating to P.Y. 2022-23. The main object of the trust is education.

<table>
<tr><th></th><th colspan="3">Particulars</th><th>Amount in ₹</th></tr>
<tr><td>(1)</td><td colspan="3">Corpus donations received by the trust
The same have been invested as follows -</td><td>12,20,000</td></tr>
<tr><td></td><td colspan="2">Mode of investment</td><td>₹</td><td></td></tr>
<tr><td></td><td>(i)</td><td>Deposit in Post Office Savings Bank Account</td><td>2,00,000</td><td></td></tr>
<tr><td></td><td>(ii)</td><td>Fixed deposits with SBI</td><td>5,00,000</td><td></td></tr>
</table>

<table>
<tr><td></td><td>(iii)</td><td colspan="2">Deposit with a co-operative land development bank</td><td>1,10,000</td><td></td></tr>
<tr><td></td><td>(iv)</td><td colspan="2">Deposit with a NBFC engaged in retail car finance.</td><td>4,10,000</td><td></td></tr>
<tr><td>(2)</td><td colspan="4">Income applied by the trust for the benefit of the following donors -</td><td>65,000</td></tr>
<tr><td></td><td></td><td>Name of the donor</td><td>Total contribution to the trust upto 31.3.2023 (₹)</td><td>Income applied for the benefit of the donor (₹)</td><td></td></tr>
<tr><td></td><td>(i)</td><td>Vallish</td><td>24,000</td><td>15,000</td><td></td></tr>
<tr><td></td><td>(ii)</td><td>Ritesh</td><td>48,000</td><td>20,000</td><td></td></tr>
<tr><td></td><td>(iii)</td><td>Arjun</td><td>96,000</td><td>30,000</td><td></td></tr>
<tr><td>(3)</td><td colspan="4">Income applied by the trust for the benefit of Mr. Vaibhav Gupta, trustee of the trust</td><td>25,200</td></tr>
<tr><td>(4)</td><td colspan="4">Income applied by the trust for the benefit of Mr. Shyam Lal, Mr. Manohar Arora and Mr. Sridhar Agarwal, being the employees of the trust, by way of interest-free loan to them for pursuing higher education.</td><td>32,000</td></tr>
<tr><td>(5)</td><td colspan="4">Value of educational service made available by the trust through its educational institution to the two children of Mr. Vaibhav Gupta</td><td>14,500</td></tr>
<tr><td>(6)</td><td colspan="4">Value of educational service made available by the trust through its educational institution to the children of Mr. Manohar Arora and Mr. Sridhar Agarwal</td><td>21,300</td></tr>
<tr><td>(7)</td><td colspan="4">Amount set apart in the P.Y.2021-22 by the trust for charitable purposes u/s 11(2) utilized in the P.Y.2022-23 for making donation to another charitable trust, whose object is also education.</td><td>2,13,000</td></tr>
</table>

The correct answer is -

(a) ₹ 6,78,200

(b) ₹ 6,92,700

(c) ₹ 7,10,200

(d) ₹ 8,54,700

14. ABC Ltd. has failed to deduct tax at source on payment to contractors during the P.Y. 2022-23, even though the payments exceeded the threshold limits under section 194C. XYZ Ltd. has deducted tax of ₹ 62 lakhs at source on payments to contractors on time during the P.Y.2022-23 but has not remitted the same upto 31.3.2024. Which of the following

statements is correct as regards the consequences for failure to deduct tax at source and failure to remit tax so deducted under the provisions of the Income-tax Act, 1961?

(a) Interest under section 201(1A), penalty under section 271C and prosecution under section 276B would be attracted both in the hands of ABC Ltd. and XYZ Ltd.

(b) Interest under section 201(1A) and penalty under section 271C would be attracted in case of ABC Ltd. Interest under section 201(1A), penalty under section 271C and prosecution under section 276B would be attracted in case of XYZ Ltd.

(c) Interest under section 201(1A) and penalty under section 271C would be attracted in case of ABC Ltd. Interest under section 201(1A) and prosecution under section 276B would be attracted in case of XYZ Ltd.

(d) Interest under section 201(1A) would be attracted in case of ABC Ltd. Interest under section 201(1A), penalty under section 271C and prosecution under section 276B would be attracted in case of XYZ Ltd.

15. Mr. X, a resident Indian, is in receipt of income from Ganga REIT, Yamuna REIT and Indus REIT in the P.Y.2022-23, the particulars of which are as follows –

Particulars	Ganga REIT	Yamuna REIT	Indus REIT
Special Purpose Vehicle (SPV) of REIT	A Ltd. (opts for section 115BAA)	B Ltd. (does not opt for section 115BAA)	C Ltd. (does not opt for section 115BAA)
Date of purchase of units of REIT by Mr. X	1.4.2022	1.1.2022	1.4.2022
Dividend component of income received from SPV and distributed by REIT to Mr. X in June, 2022	₹ 40,000	₹ 35,000	₹ 42,000

The record date is 1st June, 2022 for all the three REITs mentioned above. Are Ganga REIT, Yamuna REIT and Indus REIT required to deduct tax at source on the dividend component of income received from SPV and distributed to Mr. X? Also, would the dividend stripping provisions of section 94(7) be attracted, if Mr. X sells the units held by him in all three REITs at a loss in January, 2023?

(a) Yamuna REIT and Indus REIT are required to deduct tax at source@10% but not Ganga REIT. Dividend stripping provisions u/s 94(7) would not be attracted, since the sale of units of all three REITs was effected in January, 2023, i.e., after three months from the record date.

(b) Yamuna REIT and Indus REIT are required to deduct tax at source@10% but not Ganga REIT. Dividend stripping provisions u/s 94(7) would be attracted in case of

sale of units of Indus REIT at a loss in January, 2023 by Mr. X but not in case of sale of units of Ganga REIT and Yamuna REIT.

(c) Ganga REIT is required to deduct tax at source@10% whereas Yamuna REIT and Indus REIT are not required to deduct tax at source. Dividend stripping provisions u/s 94(7) would be attracted in case of sale of units of Yamuna REIT and Indus REIT at a loss by Mr. X in January, 2023 but not in case of sale of units of Ganga REIT.

(d) Ganga REIT is required to deduct tax at source@10% whereas Yamuna REIT and Indus REIT are not required to deduct tax at source. Dividend stripping provisions u/s 94(7) would be attracted in case of sale of units of Indus REIT at a loss in January, 2023 by Mr. X but not in case of sale of units of Ganga REIT and Yamuna REIT.

16. The Statement of Profit and Loss of Manav Ltd., engaged in manufacturing activity for the year ended 31st March, 2023, exhibits a Net Profit of ₹ 180 lakhs after debiting/ crediting the following items:

(a) Interest of ₹ 24 lakhs relating to F.Y.2022-23, which is settled by issuing 8% debentures of ₹ 100 each in August, 2023.

(b) Income-tax assessment of A.Y.2021-22 was completed in September, 2022 with a tax demand of ₹ 5,80,000 which included surcharge of ₹ 50,700 and cess of ₹ 22,308. The entire sum has been duly paid during the F.Y. 2022-23.

(c) Provision for gratuity based on actuarial valuation ₹ 180 lakhs.

(d) Expenditure incurred towards foreign travel of directors ₹ 6.5 lakhs to explore opening of a branch in a foreign country to market its products in the said foreign country.

(e) Paid ₹ 82,000 for purchase of raw material on 26th January, 2023 by making payment in cash to a supplier in a single day.

(f) Paid ₹ 11 lakhs to ST Inc. of Japan for online digital advertisement. ST Inc. has no PE in India. No tax was deducted at source nor was equalization levy paid on the said amount.

(g) Incurred ₹ 4.6 lakhs on activities related to Corporate Social Responsibility as required under section 135 of Companies Act, 2013.

(h) Sold a vacant land to its wholly owned subsidiary Petal (P) Ltd., Mumbai. The long-term capital gain of ₹ 18 lakhs is credited to the Statement of Profit and Loss.

(i) Paid ₹ 2.2 lakhs to a university as donation to be used for research in social science approved under section 35(1)(iii). Out of this, ₹ 1.2 lakh was paid through net banking and balance by cash.

(j) Interim dividend distributed during the year of ₹ 65 lakhs.

(k) Contributed ₹ 60 lakhs towards employees' pension scheme notified by the Central Government u/s 80CCD calculated at 15% of aggregate of salary and dearness allowance (forming part of retirement benefits) payable to employees as per the terms of employment.

(l) Depreciation ₹ 36 lakhs.

(m) ₹ 36 lakhs by way of dividend received from Knight Pte. of Singapore in which Manav Ltd. has 28% voting power.

(n) Paid ₹ 6 lakhs as donation to a recognised political party by way of account payee crossed cheque.

Additional Information:

(i) Normal depreciation as per Income-tax Act, 1961 - ₹ 62 lakhs.

(ii) Additional depreciation as per Income-tax Act,1961- ₹ 24 lakhs

(iii) Brought forward unabsorbed depreciation (out of normal depreciation) of A.Y. 2020-21 ₹ 14 lakhs.

(iv) Actual gratuity paid during the year of ₹ 105 lakhs is debited to provision for gratuity account.

You are required to compute the total income and tax liability of Manav Ltd. for A.Y. 2023-24 with brief reasons for the treatment of each item given above. Manav Ltd. has opted to pay tax as per the provisions of section 115BAA.

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

(i) Delta Ltd., an Indian company, which was incorporated on 1.4.2022 purchases coal from Phi Ltd., another Indian company, for ₹ 75 lakhs during the P.Y.2022-23, to manufacture steel. Delta Ltd. furnishes a declaration that such coal is used to manufacture steel and not for trading. What are the TCS/TDS implications on such transaction, if Delta Ltd.'s turnover was ₹ 12 crores in the P.Y.2022-23; and Phi Ltd.'s annual turnover ranges between ₹ 16 crores and ₹ 18 crores in the last few years?

Would your answer change if Delta Ltd. was incorporated on 1.4.2021 and its turnover in the P.Y.2021-22 is ₹ 10 crores?

(ii) Sigma Ltd., a car manufacturer, sold the following cars to the car dealers, Epsilon Ltd. and Omega Ltd., in the P.Y.2022-23-

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

The turnover in the P.Y.2021-22 of Sigma Ltd. is ₹ 12 crores, Epsilon Ltd. is ₹ 14 crores and Omega Ltd. is ₹ 9 crores.

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

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

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

19. Mr. Ram, who gets his accounts audited under section 44AB filed his original return of income under section 139 for A.Y.2020-21 on 28.12.2020 declaring income of ₹ 12 lakhs and for A.Y.2021-22 on 31.10.2021 declaring loss of ₹ 5 lakhs.

    (i) He wants to file an updated return of income under section 139(8A) for A.Y.2021-22 on 30.11.2022 declaring total income of ₹ 7 lakhs. Can he do so? Examine.

    (ii) Based on your answer to (i), what would be the time limit for completion of assessment under section 143(3) in respect of A.Y.2020-21 and A.Y.2021-22?

20. Consequent to search under section 132 in the premises of Mr. Ajay Verma, the Assessing Officer has in his possession, cash of ₹ 160 lakhs, which has not been recorded in the books of account and other documents maintained in the normal course of business. Mr. Ajay Verma is engaged in jewellery business and his brought forward business loss relating to A.Y.2020-21 was ₹ 90 lakhs and unabsorbed depreciation relating to that year was ₹ 30 lakhs. He wants to set-off the brought forward business loss and unabsorbed depreciation against income of ₹ 160 lakhs, represented in the form of undisclosed money discovered during search. Can he do so? Examine.

21. “The arm’s length price (ALP) determined by the Tribunal, which is the final fact-finding authority, is final and cannot be the subject matter of scrutiny by the High Court as it does not give rise to a substantial question of law; accordingly, in an appeal u/s 260A, the High

Court is precluded from examining the correctness of determination of the ALP" – Examine the correctness of this statement with reference to a recent Supreme Court ruling.

22. Analyze the tax consequence in the hands of Mr. Smith, a non-resident, for A.Y. 2023-24 in respect of fees for technical services (FTS) received from ABC Ltd., an Indian company, in pursuance of an agreement approved by the Central Government, if -

(a) India has no Double Tax Avoidance Agreement (DTAA) with Country A

(b) India has a DTAA with Country A, which provides for taxation of such FTS @8%.

(c) India has a DTAA with Country A, which provides for taxation of such FTS@15%.

Assume that Mr. Smith is a resident of Country A and he has no fixed place of his profession in India and that the technical services are utilised by ABC Ltd. for its business in India.

Also, examine whether Mr. Smith would be exempt from filing his return of income if tax deductible at source had been fully deducted in each case mentioned above in a manner most beneficial to him; and his total income comprises only of the said fees from technical services.

23. Mr. Raj (aged 45 years), a resident of India employed with a private company in India, received the following sums during the F.Y. 2022-23:

(i)	Basic Salary	₹ 62,000 p.m.
(ii)	Dearness Allowance - 10% of basic salary	
(iii)	Royalty Income (gross) received from Country 'M' in respect of a literary book	₹ 9,80,000
(iv)	Expenses incurred for earning royalty	₹ 98,000
(v)	Rental Income (gross) from a house property situated in Country 'N'	₹ 2,80,000
(vi)	Dividend from a company incorporated in Country 'N' (Gross)	₹ 2,20,000

Mr. Raj purchased a residential house in Bhopal for his residence on 1st August, 2022 for a consideration of ₹ 23,00,000 and paid 1% stamp duty on it.

He paid ₹ 26,000 towards his health insurance premium and ₹ 50,000 to insure the health of his father, a non-resident aged 72 years, who is not dependent on him.

The rate of tax in Country 'M' is flat 12% and the rate of tax in Country 'N' is 20% in respect of dividend income and 15% in respect of rental income. No standard deduction is allowed in Country 'N' from rental income.

Assuming that India does not have a Double Taxation Avoidance Agreement with both the countries, you are required to compute the total income of Mr. Raj and net tax liability thereon for A.Y. 2023-24 as per the provisions of Income-tax Act,1961, after providing deduction u/s 91. Mr. Raj has not opted to pay tax as per the provisions of section 115BAC.

24. Aster Inc., a company based in Canada, owns, operates and manages a digital platform which acts as a marketplace for buying and selling E-readers of different brands globally and which also hosts advertisements. Through this website, Aster Inc. sold E-readers of ABC Ltd. and XYZ Inc. to customers during the P.Y. 2022-23, the details of which are given in the table below –

Seller	Customers	Number of E-readers	Price per E-reader
ABC Ltd., an Indian Company engaged in designing, manufacturing and selling E-readers	Indian Customers	2,500	₹ 10,000
	Customers outside India buying E-readers using internet protocol address located in India	250	US$ 150 [1 US$ = ₹ 80]
XYZ Inc., a Singapore based company not having any PE in India, engaged in designing, manufacturing and selling E-readers	Indian Customers	2,000	₹ 12,000
	Customers outside India buying E-readers using internet protocol address located in India	1,000	US$ 150 [1 US$ = ₹ 80]

During the previous year 2022-23, ABC Ltd. paid ₹ 25,00,000 to Aster Inc. for hosting advertisement for promoting sale to customers outside India; and XYZ Inc. paid ₹ 32,00,000 to Aster Inc. for hosting advertisement for promoting sale to customers in India. Examine the equalization levy implications in respect of the transactions entered into with ABC Ltd. and XYZ Ltd. Assume that Aster Inc. does not have a PE in India.

25. XYZ GmBH Germany is a foreign company engaged in manufacturing and sale of LED lights. It opened a branch in Gurugram for sale of LED lights in India. The profit mark up was cost plus 40% in respect of sales made by the branch. The XYZ GmBH, Germany also supplied the goods directly to various customers in India. The turnover of the Gurugram branch for the P.Y. 2022-23 is ₹ 155 lakhs and direct sales by XYZ GmBH to Indian customers is ₹ 80 lakhs.

The Assessing Officer wants to tax the profits arising to XYZ GmBH from direct sale to customers in India though PE (i.e., branch in India) had no role to play in it. Decide the validity of the Assessing Officers view in the context of OECD and UN Model tax Convention.

SUGGESTED ANSWERS

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

16. Computation of Total Income of Manav Ltd. for the A.Y.2023-24

Particulars	₹	₹
Income from Profits and gains of business or profession		
Profit as per Statement of Profit and Loss		1,80,00,000
Add: Items debited but to be considered separately or to be disallowed		
(a) Term loan interest arrears settled by issuing 8% debentures	24,00,000	
As per *Explanation 3C* to section 43B, issue of debentures by which the interest liability is deferred to a future date shall not be deemed to have been actually paid. Since issue of debentures is not equivalent to discharge of interest on term loan, interest would be disallowed. Since ₹ 24 lakhs towards interest for F.Y. 2022-23 is debited to statement of profit and loss, the same has to be added back.		
(b) Tax demand of A.Y. 2021-22 ₹ 5,80,000 which includes surcharge and cess of ₹ 50,700 and ₹ 22,308, respectively	5,80,000	
As per *Explanation 3* to section 40(a)(ii) the term 'tax' shall include any surcharge or cess, by whatever name called, on such tax. Therefore, both surcharge and cess partake the character of income-tax and hence, are liable for disallowance along with tax. Since tax of ₹ 5,80,000		

including surcharge and cess is debited to Statement of Profit and Loss, the same has to be added back.			
(c) Provision for gratuity Provision of ₹ 180 lakhs for gratuity based on actuarial valuation is not allowable as deduction as per section 40A(7). However, actual payment of gratuity of ₹ 105 lakhs is allowable as deduction. Hence, the difference has to be added back.	75,00,000		
(d) Expenses on foreign travel of directors Expenses on foreign travel of directors for exploring opening of a branch in foreign country for marketing its products relates to the existing business of the company and is, therefore, eligible for deduction. Since the same has been debited to the Statement of Profit and Loss, no adjustment is required.	-		
(e) Cash payment for purchase of raw material in an amount exceeding ₹ 10,000 Under section 40A(3), disallowance is attracted in respect of expenditure for which cash payment exceeding ₹10,000 is made on a day to a person. Cash payment of ₹ 82,000 for purchase of raw material on 26th January, 2023 is, therefore, liable for disallowance.	82,000		
(f) Expenses on online digital advertisement Expenses on online digital advertisement to a non-resident company, which has no PE in India, is liable for deduction of equalisation levy. Since equalization levy is not deducted and paid, 100% disallowance is attracted in respect of such payment under section 40(a)(ib). Since ₹ 11 lakhs has been debited to Statement of Profit and Loss, the same has to be added back.	11,00,000		
(g) Expenditure on CSR Activities: As per *Explanation 2* to section 37(1), expenditure incurred on CSR activities is not deductible. Assuming that such expenditure is not deductible under sections 30 to 36, the entire amount is liable for disallowance. Since ₹ 4.6 lakhs has been debited to Statement of Profit and Loss, the same has to be added back.	4,60,000		

(i) Contribution to University for research in social science As per section 35(1)(iii), contribution to university for research in social science is eligible for 100% deduction. However, since Manav Ltd. has opted for concessional tax regime under section 115BAA, deduction under section 35(1)(iii) is not allowable. Since ₹ 2.2 lakhs has been debited to Statement of Profit and Loss, the same has to be added back.	2,20,000	
(j) Interim dividend distributed Interim dividend distributed is not allowable as deduction. Since the same has been debited to Statement of Profit and Loss, the said amount same has to be added back to arrive at business income.	65,00,000	
(k) Contribution towards employee's pension scheme in excess of 10% of salary disallowed Contribution to the extent of 10% of salary (basic salary + dearness allowance, if it forms part of pay for retirement benefits) is allowable as deduction under section 36(1)(iva). In this case, 5%, which is in excess of 10% i.e., ₹ 60,00,000 x 5/15, would be disallowed.	20,00,000	
(l) Depreciation debited to the Statement of Profit and Loss	36,00,000	
(n) Donation to recognised political party Donation to political party not allowable as deduction under section 37.	6,00,000	
		2,50,42,000
		4,30,42,000
Less: **Items credited to Statement of Profit and Loss which are to be considered separately/ expenditure to be allowed**		
(h) LTCG on sale of vacant land Capital gains on transfer of capital assets are taxable under the head "Capital Gains". However, long term capital gain on sale of vacant land of ₹ 18 lakhs to wholly owned subsidiary is not liable to tax since it is not regarded as 'transfer'. Since the same is credited to the Statement of Profit and Loss, it has to be deducted while computing business income.	18,00,000	
(m) Dividend received from foreign company Dividend received from foreign company is taxable under the head "Income from other sources". Since the said	36,00,000	

dividend has been credited to the Statement of Profit and Loss, the same has to be deducted while computing business income.		
AI(i) Depreciation as per Income-tax Act, 1961	62,00,000	
AI(ii) Additional Depreciation as per Income-tax Act, 1961, not allowable as deduction, since company is opting for section 115BAA	Nil	1,16,00,000
		3,14,42,000
Less: **Brought forward unabsorbed depreciation**		
Unabsorbed depreciation out of normal depreciation is allowable as deduction though company has opted for section 115BAA, since such deprecation is not attributable to additional depreciation in respect of which deduction is not permissible u/s 115BAA.		14,00,000
		3,00,42,000
Income from Other Sources		
Dividend received from foreign company		36,00,000
Gross Total Income		**3,36,42,000**
Less: **Deductions under Chapter VI-A**		
Deduction under section 80M in respect of dividend distributed, restricted to the amount of dividend received from domestic/ foreign company is allowable though company has opted for section 115BAA.		36,00,000
Deduction under section 80GGB in respect of donation to recognised political party not available since company has opted for section 115BAA.		Nil
Total Income		**3,00,42,000**
Computation of tax liability		
Income-tax on ₹ 3,00,42,000@ 22% (u/s 115BAA)		66,09,240
Add: Surcharge@10% (irrespective of the total income)		6,60,924
		72,70,164
Add: Health and Education Cess@4%		2,90,807
Tax liability		**75,60,971**
Tax liability (rounded off)		**75,60,970**

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

However, for the provisions of section 194Q to be attracted, a buyer is required to have total sales or gross receipts or turnover from the business carried on by it exceeding ₹ 10 crores during the financial year immediately preceding the financial year in which the purchase of goods is carried out. The CBDT has, vide *Circular No. 13/2021, dated 30.6.2021*, clarified that since this condition would not be satisfied in the year of incorporation, the provisions of section 194Q shall **not** apply in the year of incorporation. Since Delta Ltd. is incorporated in the P.Y. 2022-23, it would not qualify as a "buyer" for the purpose of section 194Q for the said previous year, inspite its turnover exceeding ₹ 10 crores in the current previous year.

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

The answer would not change even if Delta Ltd. was incorporated on 1.4.2021 and its turnover in the P.Y.2021-22 is ₹ 10 crores, since the said turnover does not exceed ₹ 10 crores.

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

The second step is to examine whether the provisions of section 194Q would be attracted in the hands of the dealers, namely, Epsilon Ltd. and Omega Ltd. Since the turnover of Epsilon Ltd. in the P.Y.2021-22 exceeds ₹ 10 crore and the value of cars purchased from Sigma Ltd. in the P.Y.2022-23 exceeds ₹ 50 lakhs, Epsilon Ltd. has to deduct tax@0.1% of ₹ 70 lakhs (i.e., ₹ 120 lakhs – ₹ 50 lakhs), at the time of credit to the account of Sigma Ltd. or at the time of payment, whichever is earlier. However, Omega Ltd. is not required to deduct tax at source under section 194Q, since its turnover in the P.Y.2021-22 does not exceed ₹ 10 crores.

The third step is to examine whether the provisions of section 206C(1H) would be attracted in the hands of Sigma Ltd. Sigma Ltd.'s turnover for P.Y.2021-22 exceeds ₹ 10 crores and the value of cars sold to Epsilon Ltd. and Omega Ltd. exceed ₹ 50 lakhs each. Hence, it falls within the meaning of "seller" under section 206C(1H). Accordingly, in respect of sale of cars to Omega Ltd., Sigma Ltd. is required to collect tax@0.1% of ₹ 30 lakhs (i.e., ₹ 80 lakhs – ₹ 50 lakhs) at the time of receipt. However,

no tax is to be collected by Sigma Ltd. from Epsilon Ltd., since the transaction has already been subject to TDS u/s 194Q in the hands of Epsilon Ltd.

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

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

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

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

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

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

19. (i) Yes, he can do so. If a person has a loss in any previous year and has furnished a return of loss under section 139(3) on or before the due date of filing return of income u/s 139(1), he shall be allowed to furnish an updated return, if such updated return is a return of income. Accordingly, in this case, since the original return of Mr. Ram was filed on the due date u/s 139(1) i.e., on 31.10.2021, he can file an updated return within 2 years from the end of A.Y.2021-22, i.e., on or before 31.3.2024. Accordingly,

he can file an updated return of income on 30.11.2022 declaring total income of ₹ 7 lakhs, after paying tax due on such total income along with interest under section 234B and section 234C and additional income-tax at 25% of aggregate of tax and interest payable (since the updated return is filed before 31.3.2023, i.e., before 12 months from the end of A.Y.2021-22).

(ii) The time limit for completion of assessment for A.Y.2020-21 would be 30.9.2022, being 18 months from the end of the assessment year.

The time limit for completion of assessment for A.Y.2021-22 would be 31.12.2023, i.e., 9 months from the end of F.Y.2022-23, being the financial year in which the updated return was furnished.

20. No, he cannot do so. As per section 79A, no loss (whether brought forward or otherwise) or unabsorbed depreciation under section 32(2) can be set-off against undisclosed income included in the total income of any previous year of an assessee consequent to, *inter alia*, a search under section 132, while computing his total income for such previous year.

Accordingly, in this case, Mr. Ajay Verma cannot set-off the brought forward business loss of ₹ 90 lakhs and unabsorbed depreciation of ₹ 30 lakhs against the undisclosed income of ₹ 160 lakhs included in his total income of P.Y.2022-23 consequent to search u/s 132.

21. The statement is **not** correct.

The Apex Court, in *SAP Labs India Pvt. Ltd. v. ITO [2023] 454 ITR 121*, laid down the following with respect to the powers of High Court to consider the substantial question of law involving determination of arm's length price (ALP):

- While determining the ALP, the Tribunal has to follow the guidelines stipulated under Chapter X of the Income-tax Act, 1961, namely, sections 92 to 92F of the Act and Rules 10A to 10E of the Income-tax Rules, 1962. Any determination of the ALP under Chapter X not in accordance with the relevant provisions of the Income-tax Act, 1961 and Rules can be considered as perverse and it may be considered as a substantial question of law as perversity itself can be said to be a substantial question of law. Therefore, there cannot be any absolute proposition of law that in all cases where the Tribunal has determined the ALP, the same is final and cannot be the subject matter of scrutiny by the High Court in an appeal under section 260A.

  When the determination of the ALP is challenged before the High Court, it is always open for the High Court to consider and examine whether the ALP has been determined while taking into consideration the relevant guidelines under the Act and the Rules.

- The High Court can examine the question of comparability of two companies or selection of filters and examine whether the same is done judiciously and on the basis of the relevant material/evidence on record. The High Court can also examine whether the comparable transactions have been taken into consideration properly or

not, i.e., to the extent as to whether non-comparable transactions are considered as comparable transactions or not.

Therefore, in an appeal challenging the determination of the arm's length price, it is always open for the High Court to examine in each case, within the parameters of section 260A, whether while determining the ALP, the guidelines laid down under the Income-tax Act, 1961 and the Income-tax Rules, 1962 are followed or not and whether the determination of the ALP and the findings recorded by the Tribunal while determining the ALP are perverse or not.

22. As per section 9(1)(vii)(b), income by way of fees for technical services payable by a resident is deemed to accrue or arise in India, except where the fees is payable, *inter alia,* in respect of services utilized in a business or profession carried on by such person outside India. In this case, since ABC Ltd. utilizes the technical services for its business in India, the fees for technical services payable by ABC Ltd. is deemed to accrue or arise in India in the hands of the non-resident, Mr. Smith.

In accordance with the provisions of section 115A, where the total income of a non-corporate non-resident includes any income by way of fees for technical services other than the income referred to in section 44DA(1), received from an Indian concern in pursuance of an agreement made by him with the Indian concern and the agreement is approved by the Central Government, then, the special rate of tax at 10% of such fees for technical services is applicable. No deduction would be allowable under sections 28 to 44C and section 57 while computing such income. The non-resident would be exempt from the requirement of filing return of income under section 139(1), if tax deductible at source has been fully deducted and the rate of tax deduction is not less than the rate specified in section 115A and his total income comprises only of income referred to in section 115A.

Section 90(2) makes it clear that where the Central Government has entered into a DTAA with a country outside India, then, in respect of an assessee to whom such agreement applies, the provisions of the Act shall apply to the extent they are more beneficial to the assessee.

(a) In this case, since India does not have a DTAA with Country A, of which Mr. Smith is a resident, the fees for technical services (FTS) received from ABC Ltd., an Indian company, would be taxable @10%, by virtue of the provisions of section 115A (*plus* surcharge, if applicable, and health and education cess@4%). If tax deductible at source at the said rate has been fully deducted, he would be exempt from the requirement of filing return of income under section 139(1), since his total income comprises only of such fees for technical services taxable u/s 115A.

(b) In this case, the FTS from ABC Ltd. would be taxable @8%, being the rate specified in the DTAA, even though section 115A provides for a higher rate of tax, since the tax rate specified in the DTAA is more beneficial. However, since Mr. Smith is a non-resident, he has to furnish a tax residency certificate from the Government of Country A for claiming such benefit. Also, he has to furnish other information, namely, his

nationality, his tax identification number in Country A and his address in Country A. Further, he would not be exempt from the requirement to file return of income under section 139(1), since tax would have been deducted at 8%, being the rate specified in the DTAA, which is lower than the rate of 10% u/s 115A.

(c) In this case, the FTS from ABC Ltd. would be taxable @10% as per section 115A (plus surcharge, if applicable, and health and education cess@4%), even though DTAA provides for a higher rate of tax, since the provisions of the Act (i.e. section 115A in this case) are more beneficial. If tax deductible at source at the said rate has been fully deducted, he would be exempt from the requirement of filing return of income under section 139(1), since his total income comprises only of such fees for technical services taxable u/s 115A.

23. Computation of total income and tax liability of Mr. Raj for A.Y. 2023-24

Particulars	Amount in ₹	Amount in ₹
Salaries		
Basic Salary [₹ 62,000 x 12]	7,44,000	
Add: Dearness Allowance (10% of 7,44,000)	74,400	
	8,18,400	
Less: Standard deduction u/s 16(ia)	50,000	
		7,68,400
Income from house property (Country N)		
Gross Annual Value[1]	2,80,000	
Less: Deduction u/s 24@30%	84,000	
		1,96,000
Income from Other Sources		
Royalty income from a literary book from Country M (after deducting expenses of ₹ 98,000)	8,82,000	
Dividend income from a company in Country N	2,20,000	
		11,02,000
Gross Total Income		**20,66,400**
Less: **Deductions under Chapter VI-A**		
U/s 80C - 1% stamp duty on residential house	23,000	
U/s 80D – Medical insurance premium	50,000	

[1] *In the absence of any information regarding expected rent, actual rent is considered as gross annual value.*

- For self, restricted to ₹ 25,000 - For father, being a non-resident, restricted to ₹ 25,000		
U/s 80QQB - Royalty income of a resident in respect of literary work	3,00,000	
		3,73,000
Total Income		**16,93,400**

Computation of net tax liability of Mr. Raj for A.Y.2023-24		
Particulars	**Amount in ₹**	**Amount in ₹**
Tax on total income (30% of 6,93,400)+ ₹ 1,12,500		3,20,520
Add: Health and Education Cess@4%		12,821
Tax liability		3,33,341
Less: Deduction u/s 91 (See Working Note below)		1,41,392
Net tax liability		**1,91,949**
Net tax liability (rounded off)		**1,91,950**

Working Note – Computation of deduction u/s 91		**₹**
Average rate of tax in India (₹ 3,33,341/16,93,400 x 100)	19.6847%	
Average Rate of Tax in Country M	12%	
Average Rate of Tax in Country N [(₹ 44,000 + ₹ 42,000)/5,00,000)	17.2%	
Doubly taxed income in Country M = ₹ 5,82,000 ₹ 9,80,000 (royalty) - ₹ 98,000 (expenses incurred) - ₹ 3,00,000 (deduction u/s 80QQB)]		
Deduction u/s 91 in respect of royalty income earned in Country M (lower of 19.6847% and 12%) **i.e., 12% on doubly taxed income of ₹ 5,82,000**		69,840
Doubly taxed income in Country N = ₹ 4,16,000 (₹ 1,96,000, being income from house property + ₹ 2,20,000, being dividend income)		
Deduction u/s 91 in respect of income earned in Country N (lower of 19.6847 % and 17.2%) **i.e., 17.2% on doubly taxed income of ₹ 4,16,000**		71,552
Total deduction under section 91		**1,41,392**

24. Section 165A of the Finance Act, 2016 provides for equalisation levy@2% on the amount of consideration received or receivable by an e-commerce operator from e-commerce supply or services made or provided or facilitated by it to -

- a person resident in India,
- a non-resident in the specified circumstance (sale of advertisement, which targets a customer, who is resident in India or a customer who accesses the advertisement through internet protocol address located in India) and
- a person who buys such goods or services or both using internet protocol address located in India.

Consideration received or receivable from e-commerce supply or services shall **not** include consideration for sale of such goods which are owned by a person resident in India or by a permanent establishment in India of a person non-resident in India, if sale of such goods is effectively connected with such permanent establishment.

Sale of E-readers

In the present case, Aster Inc. is an e-commerce operator since it is a non-resident owning, operating and managing a digital platform for online sale of E-readers. Equalisation levy would be attracted on the amount of consideration received for sale of E-readers of XYZ Inc., a non-resident not having a PE in India, to Indian customers as well as to customers buying E-readers using internet protocol address located in India. However, amount of consideration received for sale of E-readers owned by ABC Ltd., being an Indian company, would not be subject to equalization levy.

Since receipts from e-commerce supply of E-readers of XYZ Inc. exceed ₹ 2 crores, Aster Inc. is liable to pay equalization levy of ₹ 7,20,000 @2% of ₹ 3,60,00,000 [(₹ 12,000 x 2,000 E-readers) + (1,000 E-readers x ₹ 12,000 ($ 150 x ₹ 80)].

Hosting of advertisement

As per section 165 of the Finance Act, 2016, an equalisation levy @6% is leviable on the amount of consideration for online advertisement received or receivable by a non-resident not having permanent establishment in India from a resident in India who carries on business or profession, or from a non-resident having permanent establishment in India.

In the present case, ABC Ltd. is required to deduct equalization levy of ₹ 1,50,000 i.e., @6% of ₹ 25,00,000 being the amount received by Aster Inc. a non-resident not having PE in India for online advertisement. However, XYZ Inc., a foreign company not having PE in India, is not required deduct equalization levy for consideration paid to Aster Inc. for online advertisement.

Equalization levy under section 165A would, however, be attracted in the hands of Aster Inc. on consideration received in respect of online advertisement services provided to XYZ Inc. being a non-resident, since such advertisement would target customers resident in

India. Moreover, total receipts from e-commerce supply or services by Aster Inc. exceed ₹ 2 crores. Accordingly, Aster Inc. is required to pay equalization levy of ₹ 64,000 @2% of ₹ 32,00,000.

25. Business profits of an enterprise can only be taxed by the Residence State. Source State would have the right to tax business profits of an enterprise only if a PE exists in its jurisdiction.

Taxability as per OECD Model Convention

The OECD Model Convention provides that if the enterprise of the Residence State carries on business in the Source State through a PE situated therein, then, the profits that are attributable to the PE alone may be taxed in the Source State. OECD Model does not incorporate "Force of Attraction" rule.

Accordingly, only profits from turnover of ₹ 155 lakhs, representing sale of LED lights made by the Gurugram branch would be taxable in India in the hands of XYZ GmBH, Germany.

Thus, in this case, the Assessing Officer's proposed action to bring to tax profit earned by XYZ GmBH, Germany from direct supply to customers in India, in which the PE had no role to play, is not valid.

Taxability as per UN Model Convention

The UN Model Convention amplifies this attribution principle by a limited Force of Attraction rule, which permits Source State taxation of the enterprise, not only in respect of the business carried on by it through a PE in the Source State, but also on business profits arising from sales in Source State **of same or similar goods or merchandise as those sold through that PE**.

Accordingly, profits from turnover of ₹ 235 lakhs, representing sale of LED lights made by the Gurugram branch as well as the direct sale of LED lights made by XYZ GmBH, Germany to Indian customers would be taxable in India in the hands of XYZ GmBH, Germany.

Therefore, in this case, the Assessing Officer's proposed action to bring to tax profit earned by XYZ GmBH, Germany from direct supply to customers in India is valid, even though the PE had no role to play.