

FINAL COURSE: GROUP – II

PAPER – 4: DIRECT TAX LAWS & INTERNATIONAL TAXATION

SOLUTIONS

Division A – Multiple Choice Questions

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

Division B – Descriptive Questions

1. (a) **Computation of Total Income of SJ Industries Ltd. for the A.Y. 2024-25**

	Particulars	Amount (₹)	
I	Income from house property Unrealised rent [Taxable under section 25A, even if SJ Industries Ltd. is no longer the owner of commercial property] <i>Less:</i> 30% of above	3,80,000 <u>1,14,000</u>	2,66,000
II	Profits and gains of business and profession Net profit as per the statement of profit and loss Add: Items debited but to be considered separately or to be disallowed	72,00,000	

(i) Depreciation as per Companies Act, 2013	24,00,000		
(ii) Interest under section 234B for short payment of advance tax [Any interest payable for default committed by assessee for discharging his statutory obligations under Income-tax Act, 1961 which is calculated with reference to the tax on income is not allowable as deduction under section 40(a)(ii). Since the same has been debited to statement of profit and loss, it has to be added back] ¹	60,000		
(iii) Interest and borrowing cost included in Opening and Closing inventory [As per ICDS II, Interest and borrowing cost which does not meet the criteria for recognition as a component of the cost, cannot be included in the cost of inventory. Since the same have been included in the opening and closing inventory, the difference between ₹ 9,50,000, being interest included in opening inventory – ₹ 7,00,000, being interest included in closing inventory, has to be added back]	2,50,000		
(iv) Cash payment in excess of ₹ 10,000 [Disallowance u/s 40A(3) is attracted in respect of expenditure, for which	19,000		

¹*Bharat Commerce and Industries Ltd. v. CIT [1998] 230 ITR 733 (SC)*

<p>payment exceeding ₹ 10,000 in a day has been made in cash. Since expenditure of ₹ 19,000 towards printing and stationery items is debited to the statement of profit and loss, the same has to be added back.</p> <p>However, payment of ₹ 22,000 to producer for dairy farming products is not disallowed since it is covered under the exceptions specified in Rule 6DD]</p>			
<p>(v) Repair work paid to contractor without deduction of tax at source</p> <p>[Disallowance of 30% of the amount of ₹ 3,50,000 paid for carrying out repair work to a contractor without deduction of tax at source would be attracted u/s 40(a)(ia)]</p>	1,05,000		
<p>(vi) Expenditure for transfer of carbon credits</p> <p>[Income by way of transfer of Carbon Credits is chargeable to tax under section 115BBG at a flat rate. No deduction is allowed under any provision of the Act in respect of any expenditure or allowance in relation thereto. Since such expenditure is debited to the statement of profit and loss, the same has to be added back]</p>	35,000		
<p>(vii) Contribution to electoral trust</p>	3,00,000		

	[Contribution to electoral trust is not allowable as deduction from business profits of the company. Since the expenditure has been debited to statement of profit and loss, the same has to be added back while computing business income]		
	(viii) Advertisement in brochure of a political party	40,000	
	[Advertisement charges paid in respect of brochure published by a political party is not allowable as deduction from business profits of the company as per section 37(2B). Since the expenditure has been debited to statement of profit and loss, the same has to be added back while computing business income]		
	(ix) Interest to co-operative bank not paid on or before the due date	2,60,000	
	[Disallowance under section 43B would be attracted for A.Y.2024-25, since the interest was not paid on or before the due date of filing of return]		
	(x) Contribution towards pension scheme of employees	50,000	
	[Contribution towards pension scheme, referred to in section 80CCD, of employees is allowed only to the extent of 10% of salary of the employee in the P.Y. i.e., ₹ 1,00,000 being 10% of ₹ 10,00,000.]		

<p>Therefore, the excess contribution of ₹ 50,000 [i.e., ₹ 1,50,000 – ₹ 1,00,000] is disallowed u/s 36(1)(iva).</p>		35,19,000
<p>Add: Amount taxable but not credited to statement of profit and loss</p> <p>A(2) Expenditure pertaining to previous financial year</p> <p>[Cash payment in excess of ₹ 10,000 made in the current year in respect of expenditure allowed on mercantile basis in the previous financial year, would be deemed as income in the current year as per section 40A(3A)]</p>		1,07,19,000
<p>Less: Items credited to statement of profit and loss, but not includible in business income / permissible expenditure and allowances</p> <p>(i) Unrealised rent</p> <p>[Unrealised rent in respect of commercial property is taxable under the head “Income for house property”. Since the said rent has been credited to the statement of profit and loss, the same has to be deducted while computing business income]</p> <p>(ii) Dividend received from specified foreign company</p>	3,80,000	35,000
		1,07,54,000
	1,60,000	

<p>[Dividend received from specified foreign company is taxable under the head "Income from other sources". Since the said dividend has been credited to the statement of profit and loss, the same has to be deducted while computing business income]</p>			
<p>(iii) Profit from hedging contract</p>	<p>3,00,000</p>		
<p>[Hedging contract is entered into for safeguarding against any loss that may arise due to currency fluctuation. The profit from such contract entered into for meeting loss in foreign currency payments towards imported printing machinery has to be adjusted against the cost of machinery. Since the said profit has been credited to the statement of profit and loss, the same has to be deducted while computing business income]</p>			
<p>(iv) Interest from bank fixed deposit</p>	<p>1,35,000</p>		
<p>[Interest on fixed deposit is taxable under "Income from Other Sources". Since the said interest has been credited to the statement of profit and loss, the same has to be deducted while computing business income]</p>			
<p>A(3) Audit fees of P.Y. 2022-23</p>	<p>22,500</p>		
<p>[30% of ₹ 75,000, being the audit fees disallowed in</p>			

<p>the P.Y. 2022-23 for non-remittance of TDS on or before due date of filing return of income for P.Y. 2022-23 would be allowed in the year of payment of TDS i.e., P.Y. 2023-24]</p> <p>A(4) Transfer of Carbon Credits chargeable to tax under section 115BBG</p> <p>[Income by way of transfer of Carbon Credits chargeable under section 115BBG can be treated as business income or income from other sources, depending upon the facts of the case. In this case, since the question mentions that SJ Industries Ltd. is engaged in production and marketing of diversified products, it is logical to assume that the same is in the nature of business income. Since the amount of ₹ 4 lakh has already been credited to statement of profit and loss, no further adjustment is necessary]</p>	<p><u>Nil</u></p>	
<p>Less: Depreciation as per Income tax Rules</p> <p>A(1) Depreciation under section 32</p> <p><i>Add:</i> Depreciation @7.5% on ₹ 92 lakhs [₹ 95 lakhs, being imported printing machinery - ₹ 3 lakhs, being profit from hedging contract] since, machinery is put to use for less than 180 days].</p>	<p>28,00,000</p> <p>6,90,000</p>	<p>9,97,500</p> <p>97,56,500</p>

	<p><i>Add:</i> Additional depreciation @10% on ₹ 92 lakhs, since machinery is put to use for less than 180 days assuming the conditions for claim of additional depreciation are satisfied².</p>	9,20,000		
			44,10,000	
	Profits and gains from business or profession			53,46,500
III	Income from Other Sources			
	Dividend from specified foreign company		1,60,000	
	Interest from banks on fixed deposits (Gross) [Interest on banks on fixed deposits is taxable as "Income from other sources"] [₹1,35,000 x 100/90]		<u>1,50,000</u>	
	Gross Total Income			<u>3,10,000</u>
	Less: Deduction under Chapter VI-A			59,22,500
	Under section 80GGB [Contribution by a company to an electoral trust or registered political party is allowable as deduction, since payment is made otherwise than by cash. Expenditure incurred by an Indian company on advertisement in brochure published by political party tantamount to contribution to such political party] [₹ 3,00,000 + ₹ 40,000]			3,40,000
	Total income			55,82,500

2. (a) Computation of "Book Profit" for levy of MAT under section 115JB for A.Y.2024-25

Particulars	₹	₹
Net Profit as per Statement of Profit and Loss		20,00,000
<i>Add:</i> Net profit to be increased by the following amounts as per <i>Explanation 1</i> to section 115JB(2):		

²Balance additional depreciation can be claimed in the A. Y.2025-26

<ul style="list-style-type: none"> - Provision for the loss of subsidiary 	1,70,000	
<ul style="list-style-type: none"> - Provision for doubtful debts, being the amount set aside as provision for diminution in the value of any asset 	1,75,000	
<ul style="list-style-type: none"> - Provision for income-tax [As per Explanation 2 to section 115JB, income-tax shall include, inter alia, any interest charged under the Act, therefore, whole of the amount of provision for income-tax including ₹ 55,000 towards interest payable has to be added back] 	2,05,000	
<ul style="list-style-type: none"> - Depreciation 	<u>4,60,000</u>	<u>10,10,000</u>
		30,10,000
<p><i>Less:</i> Net profit to be decreased by the following amounts as per <i>Explanation 1</i> to section 115JB:</p>		
<ul style="list-style-type: none"> - Share in income of an AOP as a member [In a case, where AOP has paid tax on its total income at maximum marginal rate, no income-tax is payable by the company, being a member of AOP, in accordance with the provisions of section 86. Therefore, share in income of an AOP on which no income-tax is payable in accordance with the provisions of section 86, would be reduced while computing book profit, since the same has been credited to profit and loss account] 	2,00,000	
<ul style="list-style-type: none"> - Income from units in UTI [Income from units in UTI not to be reduced while computing the book profits, since the same is taxable in the hands of unitholders] 	-	
<ul style="list-style-type: none"> - Depreciation other than depreciation on revaluation of assets (₹ 4,60,000 – ₹ 2,50,000) 	2,10,000	
<ul style="list-style-type: none"> - Unabsorbed depreciation or brought forward business loss, whichever is less, as per the books of account. Lower of unabsorbed depreciation ₹ 5,00,000 and brought forward business 	<u>5,00,000</u>	

loss ₹ 6,00,000 as per books of accounts has to be reduced while computing the book profit]		9,10,000
Book Profit		21,00,000

Computation of MAT liability under section 115JB

Particulars	₹
15% of book profit	3,15,000
Add: Health & education cess@4%	12,600
Minimum Alternate Tax liability	3,27,600

Notes:

- (1) It is only the specific items mentioned under *Explanation 1* to section 115JB, which can be adjusted from the net profit as per the Statement of Profit and Loss prepared as per the Companies Act for computing book profit for levy of MAT. Since the following items are not specified thereunder, the same cannot be adjusted for computing book profit:
 - Interest to financial institution (unpaid before filing of return) and
 - Penalty for infraction of law
- (2) Provision for gratuity based on actuarial valuation is an ascertained liability [*CIT v. Echjay Forgings (P) Ltd. (2001) 251 ITR 15 (Bom.)*]. Hence, the same should not be added back to compute book profit.
- (3) As per proviso to section 115JB(6), the profits from unit established in special economic zone cannot be excluded while computing the book profit, and hence, such income would be liable for MAT.

(b) Computation of total income of Mr. Nitin for A.Y.2024-25

Particulars	₹	₹
Income from House Property		
Rental income from property in Country X ³	3,60,000	
Less: Municipal taxes paid	12,000	
	3,48,000	
Less: Deduction u/s 24(a) @30%	1,04,400	
		2,43,600

³ In the absence of any information relating to fair rent, municipal value and standard rent, rental income assumed to be gross annual value.

Profits and gains from business or profession		
Royalty ⁴ from Country X for writing article in journals [only the amount which is received during the previous year is includible, since he maintains cash system of accounting]		13,60,000
Income from Other Sources		
Dividend from M Ltd. an Indian company		<u>5,50,000</u>
Gross Total Income		21,53,600
Less: Deduction under Chapter VI-A		
U/s 80E – deduction in respect of interest on educational loan for his son	36,000	
U/s 80QQB – No deduction is allowable since royalty income is for writing articles in journals and newspapers and not for writing books	<u>—</u>	<u>36,000</u>
Total Income		<u>21,17,600</u>

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

Particulars	₹
Tax on total income [30% of ₹ 11,17,600 + ₹ 1,12,500]	4,47,780
Add: Health and education cess @4%	<u>17,911</u>
	4,65,691
Less: Relief under section 91 -	
Average rate of tax in India [[i.e., ₹ 4,65,691/21,17,600 x 100]	21.991%
Average rate of tax in Country X	15%
Doubly Taxed income [Rental income of ₹ 2,43,600 + royalty income of ₹ 13,60,000]	16,03,600
Deduction under section 91 on ₹ 16,03,600 @15%, being lower average Indian tax rate and foreign tax rate.	<u>2,40,540</u>
Net tax liability	<u>2,25,151</u>
Net tax liability (rounded off)	2,25,150

3. (a) As per section 115TD, the accreted income of “M/s SN Charitable Trust”, registered under section 12AB would be chargeable to tax at maximum marginal rate @ 34.944% [30% plus surcharge @12% plus cess@4%] for

⁴ Royalty can also be shown under the head “Income from other sources” instead of “Profits and gains from business or profession.”

the reason of cancellation of registration.

Computation of exit tax payable by M/s SN Charitable Trust	
Particulars	Amount (₹)
Aggregate FMV of total assets as on 31.1.2024, being the specified date (date of order of cancellation of the registration) [See Working Note 1]	12,85,00,000
Less: Total liability computed in accordance with the prescribed method of valuation [See Working Note 2]	<u>3,05,00,000</u>
Accreted Income	<u>9,80,00,000</u>
Tax Liability @ 34.944% of ₹ 9,80,00,000	3,42,45,120
Working Note 1:	
<u>Aggregate fair market value of total assets on the date of cancellation of the registration</u>	
Valuation of Land, being an immovable property purchased in the year 2009	-
[Value of land purchased in the year 2009 not includible in the aggregate fair market value, since the exemption provisions under section 11 and 12 would apply from P.Y.2012-13, being the previous year in which application for registration of trust is made]	
Valuation of Land and building, being an immovable property, purchased in 2015	10,50,00,000
[The fair market value of land and building would be higher of ₹ 1,000 lakhs i.e., price that the land and building would ordinarily fetch if sold in the open market as per registered valuer's certificate and ₹ 1,050 lakhs, being stamp duty value as on the specified date i.e., 31.1.2024]	
Valuation of Quoted equity shares in M/s XP Ltd. [2,000 x ₹ 1,075 per share]	21,50,000
[The fair market value of quoted shares would be ₹ 1,075 per share, being the average of the lowest (₹ 1,051) and highest price (₹ 1,099) of such shares on the specified date i.e., 31.1.2024]	
Balance in current account of a nationalized bank	10,00,000
Balance in fixed deposits with scheduled banks	2,00,00,000
Cash in hand	3,50,000
	<u>12,85,00,000</u>
Working Note 2 - Total liability	
Book value of liabilities in the balance sheet on specified date	11,35,00,000
Less: Capital fund	8,00,00,000

Less: Contingent liability on estimated basis to contractor for which no bills are received	30,00,000
Total liability of M/s SN Charitable Trust	3,05,00,000

The latest day on which such tax has to be paid is 14th April, 2024, being 14 days from 31.3.2024, the date on which the order confirming the cancellation is received.

- (b) (1) STP Ltd. and Fix Ltd. of Canada are deemed to be associated enterprises, since Fix Ltd., a Canadian company provides guarantee for loan of ₹ 9 crores taken by STP Ltd., which is 15% of the total borrowings (i.e., not less than 10%) of STP Ltd. i.e., ₹ 60 crores.

As per section 92B, the transactions entered into between STP Ltd. and Fix Ltd., two associate enterprises, for sale of bedsheets falls within the meaning of “international transaction”.

As STP Ltd. has sold similar bedsheets to other dealers, being unrelated entity, at ₹ 2,300 per unit, the transactions between STP Ltd. and such unrelated party can be considered as a comparable uncontrolled transaction for the purpose of determining the arm’s length price of the transactions between STP Ltd. and Fix Ltd. However, such figure needs to be adjusted by the functional adjustments.

Computation of ALP of transaction between STP Ltd. and Fix Ltd.

Particulars	Amount (in ₹)
Selling price of each bedsheets to unrelated dealers in Canada	2,300
<i>Add:</i> Adjustment of cost of credit [STP Ltd. provides credit for 1 month to unrelated entity whereas it provided credit period of 3 months to Fix Ltd. Therefore, adjustment for the cost of such credit has to be carried out to arrive at arm’s length price. (12% x 2,300 x 2/12)]	46
Arm’s length price of 1 unit of bedsheets	2,346
Arm’s length price of 4 lakh units of bedsheets (A)	93,84,00,000
Sale price of 4 lakh units of bedsheets by STP Ltd. to Fix Ltd. (associated enterprise) (B) [2,200 x 4,00,000]	88,00,00,000
Amount to be added to STP Ltd.’s total income by way of ALP adjustment	5,84,00,000

- (2) Where the primary adjustment to transfer price has been made *suo moto* by STP Ltd. in its return of income, the time limit for the

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repatriation of such excess money (i.e., ₹ 584 lakhs) available with the associated enterprise (i.e., STP Ltd.) is within 90 days from 30.11.2024, being the due date of filing of return u/s 139(1) i.e., 28.2.2025.

- (3) The excess money (i.e., ₹ 584 lakhs) available with the associated enterprise (i.e., Fix Ltd.) not repatriated to India within 90 days from the due date of filing return of income u/s 139(1) would be deemed as an advance made by the STP Ltd. to its associated enterprise, Fix Ltd.

Interest would be calculated on such advance at the rate of one year marginal cost of fund lending rate of SBI as on 1st April of the relevant previous year i.e., 1.4.2024 + 3.25%, since the international transaction is denominated in Indian rupee.

Option to pay additional income-tax, if the excess money not repatriated

STP Ltd. has the option to pay additional income-tax @20.9664% (tax @18% plus surcharge @12% plus cess@4%) on excess money (i.e., ₹ 584 lakhs), in lieu of repatriation of such excess money.

Where additional income-tax is so paid by STP Ltd., it will not be required to make secondary adjustment and compute interest from the date of payment of such tax.

The additional income-tax so paid by STP Ltd. would be treated as the final payment of tax in respect of excess money not repatriated and no further credit would be allowed to STP Ltd. or to any other person in respect of the amount of additional income-tax so paid.

4. (a) (i) Section 194N, provides that every person, including, *inter alia*, a banking company, who is responsible for paying, in cash, any sum or aggregate of sums exceeding ₹ 1 crore during the previous year to any person from one or more accounts maintained by such recipient-person with it, shall deduct tax at source @2% of sum exceeding ₹ 1 crore.

In the present case, M/s Kite & Co. LLP has withdrawn ₹ 1.26 crores in cash in aggregate during the previous year 2023-24. Since aggregate amount of cash withdrawals exceed ₹ 1 crore, bank is required to deduct tax at source on the amount exceeding ₹ 1 crore i.e., ₹ 26 lakhs though he withdraws ₹ 68 lakhs for buying agricultural produce from farmers, agriculturists, being raw material required for manufacturing of finished products by it.

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

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Since interest of ₹ 98,000 on Capital Gains Bond issued by Power Finance Corporation Ltd. is taxable in the hands of Mr. Ajay, being a non-resident, the provisions for tax deduction at source under section 195 are attracted in this case.

- (b) When an assessee is in default or is deemed to be in default in making a payment of tax, the TRO may draw up under his signature a statement in the prescribed form specifying the amount of arrears due from the assessee and shall proceed to recover from such assessee the amount specified in the certificate by *inter alia* attachment and sale of the assessee's movable or immovable property.

The assessee's movable or immovable property shall include any property which has been transferred, directly or indirectly by the assessee to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of any of the persons aforesaid.

In the present case, Mr. Pramod had transferred his land 5 years ago to his son who was 30 years old at that time. He also gifted a diamond necklace to his son's wife on 5.10.2021. He also has bank fixed deposits, receivables from T & Co. Ltd.

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

- (i) bank fixed deposits,
- (ii) receivables from T & Co. Ltd.;

He can also proceed to recover the tax by attaching the diamond necklace gifted to his son's wife.

However, he cannot proceed to recover the tax by attaching the land which he transferred to his son, since at the time of transfer, his son was major.

- (c) If an Indian company, being the borrower, incurs any expenditure by way of interest in respect of any debt issued by its non-resident associated enterprise and such interest exceeds ₹ 1 crore, then, the interest paid or payable by such Indian company in excess of 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to associated enterprise, whichever is lower, shall not be allowed as deduction as per section 94B.

Further, where the debt is issued by lender which is not associated enterprise but an associated enterprise provides an implicit or explicit guarantee to such lender, such debt shall be deemed to have been issued by an associated enterprise and limitation of interest deduction would be applicable.

In the present case, since SAM Ltd., a Country Y company, holds 36% share in XYZ Ltd., an Indian company, i.e., more than 26% of voting power, SAM Ltd. and XYZ Ltd. are deemed to be associated enterprise.

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Since loan of ₹ 120 crores taken by XYZ Ltd., an Indian company from L & T Inc., Country R company, is guaranteed by SAM Ltd., an associated enterprise, such debt shall be deemed to have been issued by an associated enterprise and interest paid or payable to L & T Inc. shall be considered for the purpose of limitation of interest deduction under section 94B.

Computation of income under the head profits and gains of business or profession of XYZ Ltd

Particulars	Amount (in lakhs)
Interest allowable u/s 94B for A.Y. 2023-24	
Gross Profit	2,030
Less: Employee benefits expenses	<u>390</u>
EBITDA	1,640
Interest paid or payable to L & T Inc.	562
Lower of the following would be disallowed	
- Total interest paid or payable in excess of 30% of EBITDA [₹ 562 lakhs – ₹ 492 lakhs (i.e., 30% of ₹ 1,640 lakhs)]	₹ 70 lakhs
- Interest paid or payable to L & T Inc.	₹ 562 lakhs
Interest to be disallowed as deduction for A.Y. 2023-24, which can be carried forward up to 8 assessment years	70
Interest allowable u/s 94B for A.Y. 2024-25	
Gross Profit	1,780
Less: Employee benefits expenses	<u>402</u>
EBITDA	1,378
Interest paid or payable to L & T Inc.	389
Lower of the following would be disallowed	
- Total interest paid or payable in excess of 30% of EBITDA [₹ 389 lakhs – ₹ 413.40 lakhs (30% of ₹ 1378 lakhs)]	Nil
- Interest paid or payable to L & T Inc.	₹ 389 lakhs
Interest to be disallowed as deduction for A.Y. 2024-25	Nil
Brought forward interest of A.Y. 2023-24 allowed as deduction against profits and gains of A.Y. 2024-25	

to the extent of maximum allowable interest expenditure u/s 94B i.e., ₹ 24.4 lakhs [₹ 413.40 lakhs – ₹ 389 lakhs]	
Total interest allowed in A.Y. 2024-25 [₹ 389 lakhs + ₹ 24.40 lakhs)	<u>413.40</u>
Balance of amount of interest relating to A.Y. 2023-24 is eligible for carried forward i.e., ₹ 45.60 lakhs (₹ 70 lakhs minus ₹ 24.40 lakhs) to 7 more subsequent assessment years.	
Income under the head profit and gains of business or profession of XYZ Ltd. for A.Y. 2024-25	
EBITDA	1,378.00
Less: Interest (maximum interest allowable as deduction u/s 94B)	413.40
Depreciation (As per the Income-tax Act, 1961)	<u>254.00</u>
	<u>710.60</u>

5. (a) (i) **Issue Involved:** The issue under consideration is whether 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.

Relevant provision of law: As per section 260A(1), an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law.

Analysis & Conclusion: The High Court have the powers 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.

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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.

The statement is, therefore, not correct.

Note – *The facts given in the question are similar to the facts in SAP Labs India Pvt. Ltd. v. ITO [2023] 454 ITR 121 wherein the issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court in the said case.*

- (ii) **Issue Involved:** The issue under consideration is whether the powers under section 254(2) can be exercised by the Tribunal to recall an order and rehear the entire appeal on merits.

Relevant provision of law: Section 254(1) empowers the Appellate Tribunal to pass such order thereon as it thinks fit, after giving both the parties to the appeal an opportunity of being heard.

Under section 254(2), the Appellate Tribunal, may amend an order passed by it u/s 254(1) with a view to rectifying any mistake apparent from the record.

Analysis & Conclusion: The power u/s 254(2) is limited to rectification of a mistake apparent on record and therefore, the Tribunal must restrict itself within those parameters.

A detailed order was passed by the Tribunal upholding the order passed by the Assessing Officer. While allowing the application u/s 254(2) and recalling its earlier order, the Tribunal had reheard the entire appeal on the merits as if the Tribunal was deciding the appeal against the order passed by the Commissioner (Appeals).

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The subsequent order passed by the Tribunal recalling its earlier order was beyond the scope and ambit of the powers u/s 254(2) and is not tenable in law.

Note – *The facts given in the question are similar to the facts in Reliance Telecom Ltd./Reliance Communications Ltd. (2022) 440 ITR 1 wherein the issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court in the said case.*

- (iii) **Issue Involved:** The issue involved in this case is whether Mr. Yatin's application, for adjustment of tax liability on income surrendered during search by sale of seized gold bars, can be entertained where assessment has not been completed.

Relevant provision of law: The provision contained in section 132B(1) lays down the manner in which the assets seized under section 132 may be dealt with. An assessee is entitled to make an application to the Assessing Officer for adjustment of seized assets towards existing tax liability.

Analysis & Conclusion: Here, the application by the assessee is not for adjustment of any existing liability, but towards the tax liability. In the said provision, the expression used is "the amount of the liability determined". "A liability is determined" only on completion of the assessment. Until the assessment is complete, it cannot be postulated that a liability has been crystallized.

Accordingly, the action of the Assessing Officer rejecting the application on the ground that such action can be taken only after the assessment is completed and a demand has been quantified, is justified.

Note - *The facts given in the question are similar to the facts in Hemant Kumar Sindhi & Another v. CIT (2014) 364 ITR 555 wherein the issue came up before the Allahabad High Court. The above answer is based on the rationale of the Allahabad High Court in the said case.*

- (b) BEPS Action Plan 13 contains a three-tier standardized approach to transfer pricing documentation which consists of:
- (i) **Master file:** Master file requires MNEs to provide tax administrations with high-level information regarding their global business operations and transfer pricing policies. The master file is to be delivered by MNEs directly to local tax administrations.
 - (ii) **Local file:** Local file requires maintaining of transactional information specific to each country in detail covering related-party transactions and the amounts involved in those transactions. In

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addition, relevant financial information regarding specific transactions, a comparability analysis and analysis of the selection and application of the most appropriate transfer pricing method should also be captured. The local file is to be delivered by MNEs directly to local tax administrations.

- (iii) **Country-by-country (CBC) report**: CBC report requires MNEs to provide an annual report of economic indicators viz. the amount of revenue, profit before income tax, income tax paid and accrued in relation to the tax jurisdiction in which they do business. CBC reports are required to be filed in the jurisdiction of tax residence of the ultimate parent entity, being subsequently shared between other jurisdictions through automatic exchange of information mechanism.

A specific reporting regime in respect of CbC reporting and also the master file has been incorporated in the Income-tax Act, 1961. The essential elements have been incorporated in the Income-tax Act, 1961 while remaining aspects would be dealt with in detail in the Income-tax Rules, 1962.

- (i) Section 286 of the Income-tax Act, 1961 contains the provisions relating to CbC reporting requirement and related matters.
- (ii) Section 92D of the Income-tax Act, 1961 contains the provisions relating to maintenance and furnishing of Master file.

- 6. (a) In clause 34(a) of Form 3CD, the tax auditor is required to report whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB, and if yes, to furnish the details mentioned thereunder. While answering the issue of applicability of the provisions of Chapter XVII-B and/or XVII-BB, a number of debatable issues may arise before the assessee as well as the tax auditor. The tax auditor may have a difference of opinion with regard to the applicability of the provisions of TDS/TCS on a particular payment. In such a case, the tax auditor has to report the difference of opinion appropriately as an observation in para 3 of Form 3CA. This requirement is contained in the Guidance Note on Tax Audit.

Also, in clause 21(b)(ii) of Form 3CD, the amount inadmissible under section 40(a)(ia) has to be mentioned.

In case the tax auditor does not comply with the reporting requirements under these clauses and fails to mention the difference of opinion appropriately as an observation in para 3 of Form 3CA, clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 for not exercising due diligence may be invoked.

- (b) Computation of tax liability of SD Ltd. for A.Y. 2024-25 under regular provisions of the Act

Particulars	₹
Total Income before allowing additional depreciation	22,00,000
Less: Additional Depreciation u/s section 32(1)(ia) [₹ 12 lakh x 20%]	2,40,000
Total Income	19,60,000
Applicable Tax Rate (since turnover of P.Y. 2021-22 < ₹ 400 crores)	25%
Tax payable	4,90,000
Add: Health & Education cess@4%	19,600
Tax Liability	5,09,600

Computation of tax liability of SD Ltd. for A.Y. 2024-25 under section 115BAA

Particulars	₹
Total Income before allowing additional depreciation	22,00,000
Less: Additional Depreciation u/s section 32(1)(ia) [not allowable as deduction while computing income u/s 115BAA]	-
Total Income	22,00,000
Applicable Tax Rate	22%
Tax payable	4,84,000
Add: Surcharge@10%	48,400
	5,32,400
Add: Health & Education cess@4%	21,296
Tax Liability	<u>5,53,696</u>
Tax Liability (rounded off)	5,53,700

Since tax payable as per the regular provisions of the Act is lower than the tax payable under the provisions of section 115BAA, it would be beneficial for SD Ltd. not to opt for section 115BAA.

- (c) Computation of total income and tax liability of Strawberry Ltd., a non-resident German company, for the A.Y. 2024-25

Particulars	₹
Profits and gains from business or profession	
Business Income from a unit established at Mumbai	8,00,000
Income from other sources	
- Dividend income from XY Ltd. an Indian company	12,50,000

- Fees for technical services [would be equivalent to the amount of debentures of ₹ 20,00,000 received from an Indian company, issued in consideration of providing technical knowhow]	20,00,000
- Interest on Debentures [₹ 20,00,000 x 8% x 6/12]	80,000
- Dividend on Global Depository Receipts (GDRs) of Y Ltd. an Indian company, issued under a scheme of Central Government against the initial issue of Y Ltd. and purchased in foreign currency by Strawberry Ltd.	5,50,000
- Royalty income received from Z Ltd. an Indian company in pursuance of an agreement approved by Central Government	<u>10,00,000</u>
Gross Total Income/ Total income	<u>56,80,000</u>
Computation of tax liability	
Dividend income of ₹ 12,50,000, taxable @20% u/s 115A	2,50,000
Dividend on GDRs of ₹ 5,50,000, taxable @10% u/s 115AC	55,000
Royalty income of ₹ 10,00,000, taxable @20% u/s 115A, since it is in pursuance of an agreement approved by the Central Government	2,00,000
FTS of ₹ 20,00,000, taxable @40%, since it is not in pursuance of an agreement approved by the Central Government	8,00,000
Interest on debentures of ₹ 80,000, taxable @40%, since debt is incurred in Indian currency, it is not eligible for concessional rate of 20% u/s 115A	32,000
Business income of ₹8,00,000 [taxable @40%]	<u>3,20,000</u>
	16,57,000
<i>Add:</i> Health and education cess@4%	<u>66,280</u>
Tax liability	<u>17,23,280</u>