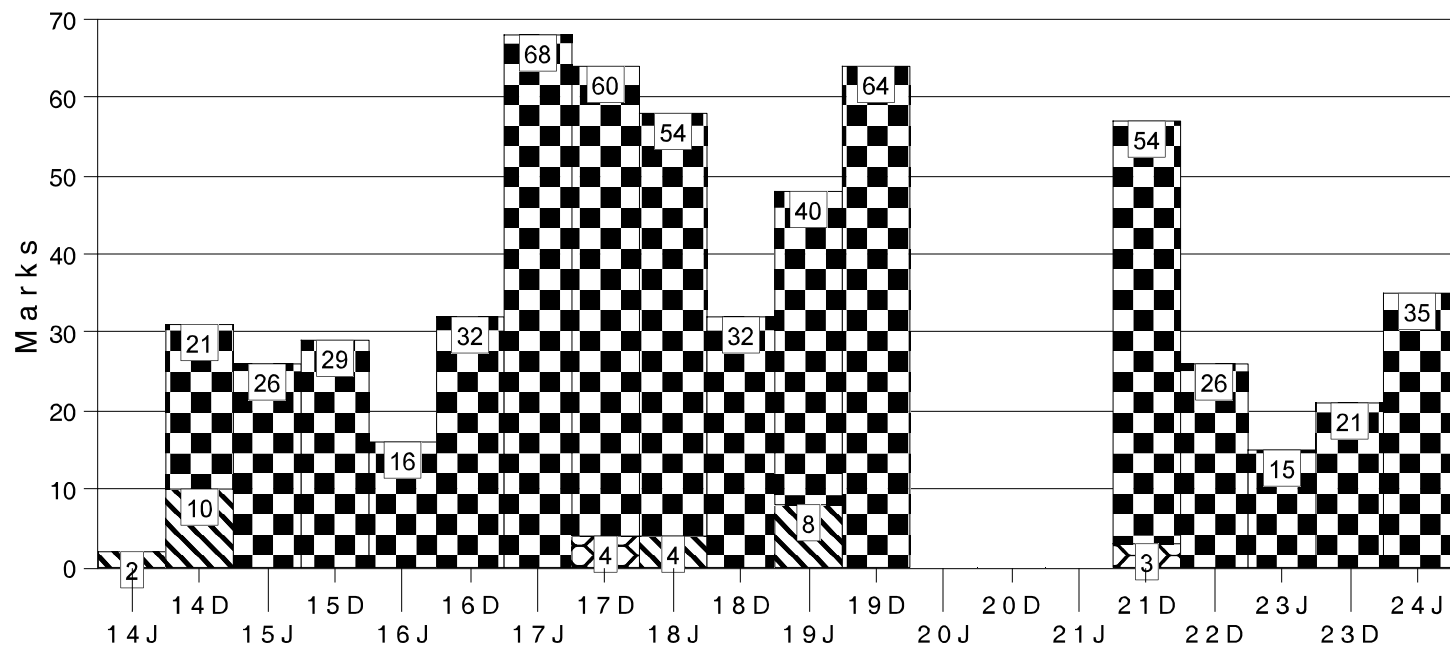
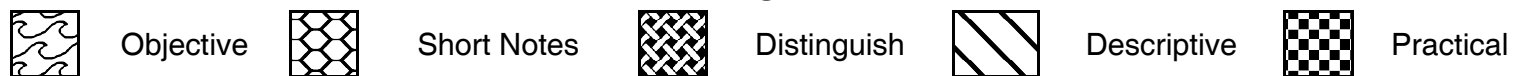


Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions

Legend



Examinations

15.23

1 **ASSESSMENT OF INCOME AND COMPUTATION OF TAX LIABILITY OF VARIOUS ENTITIES**

THIS CHAPTER INCLUDES

1. Assessment of Individual	4. Assessment of Trust
2. Assessment of Non-resident	5. Assessment of Mutual Association
3. Assessment of Company	

CHAPTER AT A GLANCE

Rate of Tax for Company Assessee	
Income of a company is taxable as under:	
Short term capital gain covered u/s 111A	15%
Long term Capital gain covered u/s 112A	10%
Long term capital gain	20%
Winning from lottery, cross-word puzzles, etc.	30%
Other Income	
— In the case of a domestic company:	
<ul style="list-style-type: none"> • Where its total turnover or gross receipts during the previous year 2020-21 does not exceed ₹ 400 crore 	25%
<ul style="list-style-type: none"> • In other case 	30%

— In the case of a foreign company:					
<ul style="list-style-type: none"> Royalty received from Government or an Indian concern in pursuance of agreement made by it with the Indian concern after March 31, 1961, but before April 1, 1976, or fees for rendering technical services in pursuance of an agreement made by it after February 29, 1964, but before April 1, 1976, and where such agreement has in either case been approved by Central Government 					50%
<ul style="list-style-type: none"> Other incomes 					40%
Surcharge: The rates of surcharge on Income Tax (as a percentage of Income Tax) are as follows:					
Range of Total Income	Above 50 lakh to ₹ 1 crore	Above ₹ 1 crore to ₹ 2 crore	Above ₹ 2 crore to ₹ 5 crore	Above ₹ 5 crore to ₹ 10 crore	Above ₹ 10 crore
Assessee Liable to Surcharge	Rate (as a % of Income Tax)				
Individual HUF AOP or BOI Artificial Juridical	10%	15%	25%	37%	
Firm	Nil	12%	12%	12%	12%
Co-operative Society	Nil	12%	12%	12%	12%
Local Authority	Nil	12%	12%	12%	12%
Domestic Company	Nil	7%	7%	7%	12%
Foreign Company	Nil	2%	2%	2%	5%

Residential Status	
Resident in India	<p>An individual is said to be a resident in India, if he satisfies any one of the following conditions –</p> <p>(i) He is in India in the previous year for a period of 182 days or more [Sec. 6(1)(a)]; or</p> <p>(ii) He is in India for a period of 60 days or more during the previous year and for 365 or more days during 4 Previous years immediately preceding the relevant previous year [Sec. 6(1)(c)]</p> <p>Tax point: Given Conditions are alternative in nature i.e. assessee needs to satisfy any one condition.</p>
Non-Resident in India	<p>An assessee who is not satisfying sec. 6(1) shall be treated as a non-resident in India for the relevant previous year.</p>
Exceptions to the above rule	<p>A. In the following cases, condition (ii) of sec. 6(1) [i.e. sec. 6(1)(c)] is irrelevant:</p> <ol style="list-style-type: none"> 1. An Indian citizen, who leaves India during the previous year for employment purpose. 2. An Indian citizen, who leaves India during the previous year as a member of crew of an Indian ship. <p>Tax point: Above assessee shall be treated as resident in India only if he resides in India for 182 days or more in the relevant previous year.</p> <p>B. In case of an Indian citizen or a person of Indian origin comes on a visit to India during the previous year; modified condition (ii) of sec. 6(1) is applicable:</p>
Case	Modified condition (ii) of sec. 6(1)
<p>His total income, other than the income from foreign sources!, exceeds ₹ 15 lakhs during the previous year</p>	<p>He is in India for a period of 120 days or more (but less than 182 days) during the previous year and for 365 or more days during 4 previous years immediately preceding the relevant previous year</p>

<p>His total income, other than the income from foreign sources, does not exceed ₹ 15 lakhs during the previous year</p>	<p>He is in India for a period of 182 days or more during the previous year and for 365 or more days during 4 previous years immediately preceding the relevant previous year</p>
<p>**Person of Indian origin: A person is deemed to be of Indian origin if he or either of his parents or grandparents were born in undivided India. Here, grand parents may be paternal or maternal.</p> <p>“Income from foreign sources” means income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India) and which is not deemed to accrue or arise in India.</p> <p>C. An individual shall be deemed to be resident in India, if following conditions are satisfied:</p> <ol style="list-style-type: none"> a. He is a citizen of India b. His total income, other than the income from foreign sources, exceeds ₹ 15 lakhs during the previous year; c. He is not satisfying any of the basic conditions given u/s 6(1) [i.e., 182 days or 60 days + 365 days]; and d. He is not liable to tax in any other country or territory by reason of his domicile or residence or any other Criteria of similar nature. <p>[Sec. 6(1A)]</p> <p>Tax point: However, if such individual has satisfied either of the basic conditions, then he shall be treated as resident in India u/s 6(1).</p> <p>Further note that the exception is not applicable in case of foreign citizen even if he is a person of Indian origin.</p> <p>If these conditions are satisfied, then such individual shall be deemed as resident irrespective of number of days of his stay in India.</p> <p>In case of NRIs and foreign nationals who were stranded in India due to Covid 19, the Government has assured that their stay in the country during the period will not be counted for the purpose of determining their residency status for taxation purpose.</p>	

In case of an individual, being a citizen of India and a member of the crew of a ship, the period or periods of stay in India shall, in respect of an eligible voyage, not include the period beginning on the date entered into the Continuous Discharge Certificate in respect of joining the ship by the said individual for the eligible voyage and ending on the date entered into the Continuous Discharge Certificate in respect of signing off by that individual from the ship in respect of such voyage. In simple words, in the Continuous Discharge Certificate the date of joining is recorded as 1st January 2021 and the date of ending the voyage is recorded as 31st January 2021, then the entire period of 31 days shall be excluded from his stay in India.

“Eligible voyage” shall mean a voyage undertaken by a ship engaged in the carriage of passengers or freight in international traffic where

- i. for the voyage having originated from any port in India, has as its destination any port outside India; and
- ii. for the voyage having originated from any port outside India, has as its destination any port in India.’

HUF	Management is wholly or partly situated in India	Karta satisfies all conditions of Sec. 6(6)
Company		
(a) Indian Co.	Always resident.	
(b) Other Co.	Place of effective management is in India	
Firm	Management is wholly or partly situated in India	Not applicable
AOP		
BOI		
Other person		

Computation of Income on Presumptive Basis	
A. Shipping Business in the case of Non-residents [Sec. 44B]	
Applicable to all non-resident assessee	
Condition	Assessee must be engaged in the business of operation of ships.
Estimated income	Income taxable under the head “Profits & gains of business or profession” from such business shall be estimated at 7.5% of the amount being aggregate of the following: The amount paid or payable (whether in or out of India) to the assessee (or to any person on his behalf) on account of the carriage of passengers, livestock, mail or goods shipped at any port in India; and The amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India
Notes: The amount paid or payable or received or deemed to be received, as the case may be, shall also include demurrage charges or handling charges or any other amount of similar nature.	
B. Profits & Gains in connection with the Business of Exploration, etc. of Mineral Oils [Sec. 44BB]	
Applicable to	Non-resident assessee
Conditions	Assessee must be engaged in the business of <ul style="list-style-type: none"> • Providing services or facilities in connection with; or • Supplying plant¹ and machinery on hire, used or to be used in, – the prospecting for, or extraction or production of, mineral oils.

	<ol style="list-style-type: none"> 1. Plant includes ships, aircraft, vehicles, drilling units, scientific apparatus and equipment, used for the purpose of the said business 2. Mineral oil includes petroleum and natural gas.
Estimate income	<p>A sum equal to 10% of the aggregate of the following amount shall be deemed to be the profits and gains of such business chargeable to tax -</p> <p>The amount paid or payable (whether in or out of India) to the assessee (or to any person on his behalf) on account of the provision of services and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils in India; and</p> <p>The amount received or deemed to be received in India by or on behalf of the assessee on account of the provision of services and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils outside India.</p>
Assessee may claim lower profit	<p>An assessee may claim lower profits and gains if he keeps and maintains books of account as per Sec. 44AA and gets his accounts audited and furnishes the report u/s 44AB and thereupon the Assessing Officer shall proceed to make an assessment of the total income of the assessee u/s 143(3) and determine the sum payable by, or refundable to, the assessee</p>
C. Profits and Gains of the Business of Operation of Aircraft [Sec. 44BBA]	
Applicable to	All non-resident assessee
Condition	Assessee must be engaged in the business of operation of aircraft.

Estimated income	Income of such business shall be estimated at 5% of the aggregate of the following - The amount paid or payable (whether in or out of India) to the assessee (or to any person on his behalf) on account of the carriage of passengers, livestock, mail or goods from any place in India; and The amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods from any place outside India.
D. Profits and Gains of Foreign Companies engaged in the Business of Civil Construction, etc. in certain Turn- key Power Projects [Sec. 44BBB]	
Applicable to	A foreign company
Condition	Assessee must be engaged in the business of civil construction; or erection of plant or machinery or testing or commissioning thereof, In connection with a turnkey power project approved by the Central Government in this behalf. Approval issued by the Department of Power in the Ministry of Energy shall be deemed to be the approval of the Central Government for this Section.
Estimated income	Income of such business shall be estimated at 10% of the amount paid or payable (whether in or out of India) to the said assessee (or to any person on his behalf) on account of such civil construction, erection, testing or commissioning.
Assessee may claim lower profit	An assessee may claim lower profits and gains if he keeps and maintain books of account as per sec. 44AA and gets his accounts audited and furnishes the report u/s 44AB

	and thereupon the Assessing Officer shall proceed to make an assessment of the total income of the assessee u/s 143(3) and determine the sum payable by, or refundable to, the assessee.
Set-off not allowed	Where an assessee declares profits and gains of business for any P.Y. in accordance with sub-section (1) of 44BBB, no set-off of unabsorbed depreciation and b/f loss shall be allowed for such P.Y. to assessee.
E. Special Provision for Computing Income by way of Royalties, etc. in case of Non-resident [Sec. 44DA]	
Applicable to	A non-resident (not being a company) or a foreign company
Conditions	Assessee has earned income by way of royalty or fees for technical services received from the Government or an Indian concern in pursuance of an agreement made with the Government or the Indian concern; Assessee carries on business in India through a permanent establishment situated therein, or performs professional services from a fixed place of profession situated therein; and Right, property or contract in respect of which royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed place of profession, as the case may be.
Agreement date	After 31/3/2003
Tax Treatment	Income shall be computed under the head "Profits and gains of business or profession" in accordance with the provisions of this Act:

Deduction not permissible	No deduction shall be allowed in respect of - any expenditure or allowance which is not wholly and exclusively incurred for the business of such permanent establishment or fixed place of profession in India; or amounts paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to its head office or to any of its other offices.		
Note: Assessee shall keep and maintain books of account and other documents as per sec. 44AA and get his accounts audited u/s 44AB and upload one month prior to the due date of filing of the return of income, the report of such audit in Form 3CE duly signed and verified by chartered accountant.			
Capital Gain on Transfer of Shares/Debentures by a Non-Resident [First Proviso to Sec. 48 and Rule 115 A]			
Step	Conversion of	Particulars	Conversion rate
1.	Sale consideration	Find sale consideration in Indian currency	At average exchange rate ¹ on the date of transfer
2.	Expenditure on transfer	Find expenditure on transfer in Indian currency	At average exchange rate on the date of transfer (not on the date of transfer (not on the date when expenditure was incurred)
3.	Cost of acquisition	Find cost of acquisition in Indian currency	At average exchange rate on the date of acquisition.

4.	Capital gain in foreign currency	Step 1- Step 2- Step 3	Not applicable
5.	Taxable Capital gain	Capital gain so calculated (in step 4) will be reconverted into Indian currency)	At buying rate ² on the date of transfer

- 1. Average exchange rate:** It is the average of the telegraphic transfer buying rate and telegraphic transfer selling rate.
- 2. Buying Rate:** It is telegraphic transfer buying rate of such currency. Telegraphic transfer buying/selling rate in relation to a foreign currency is a rate of exchange adopted by the State Bank of India for purchasing/selling such currency where such currency is made available by that bank through telegraphic transfer.

Special Provision in relation to certain income of Non-residents [Sec. 115A to Sec. 115AC]
Following table enumerated the provisions relating to Sec. 115A to 115AC

Sec.	115A (1)(a)	115 A(1)(b)	115 AB	115 AC
Particulars	Non-resident	Non-resident	Overseas financial organizations	Non-resident
Income covered	Dividends or Interest received from notified infrastructure bonds or Govt. or an Indian concern on money borrowed in	Royalty or fees for technical services (other than income covered u/s 44DA) received as per agreement	Long-term capital gains arising from the transfer of units of UTI or mutual fund specified u/s 10(23D) purchased in foreign currency	Interest on notified foreign currency bonds of Indian/public sector company Dividend on GDR LTCG arising

	foreign currency; or interest of the nature and extent referred to in sec. 194LC / 194LD / 194LBA(2)	entered with Government or an Indian concern ¹ on or after 1-4-1976		on transfer of such bonds or Global Depository Receipts (GDR)	
Special tax rate	5% (infra bonds or referred to in sec. 194LC or 194LD or 194LBA)/20% (other cases)	20%	10%	10%	
Special Provision in relation to certain income of Non-residents [Sec. 115A to Sec. 115AC]					
Following table enumerated the provisions relating to sec. 115ACA to 115BBD					
Sec.	115ACA	115AD	115BBA (1)(a)	115BBA (1)(b)	115BBD
Particular					
Applicable on	Resident individual	Foreign Institutional Investor	Foreign Institutional Investor	Non-resident sports association	Indian Company
Income covered	Dividend on GDR\$ of an Indian company engaged in specified knowledge based industry or service* issued as ESOP Long term capital gains on transfer of such GDR	Income on securities (other than unit referred to in sec. 115AB) or STCG or LTCG on transfer of such securities	Income by way of: participation in India in any game or sport; or advertisement; or contribution of articles relating to any game or sport in India in news-	Any amount guaranteed to be paid or payable to such association for any game or sport played in India	Dividend from specified foreign company. Specified foreign company means a foreign company in which the Indian company

			papers, magazines or journals. In case of entertainer, any income received or receivable from his performance in India, Tax point: Match Referee is not considered as sportsmen.		holds 26% or more in nominal value of the equity share capital of the company.
Applicable on	10%	Note : 1	20%	2%	15%
Allowability of expenditure u/s 28 to 44C & sec. 57	No	No	No	No	No
Deduction u/ ch VIA	Not available	Not available	Not available	Not available	Not available
Index benefit	Not Available	Not Available	Not Applicable	Not Applicable	Not Applicable
Requirement to furnish return	Yes	Yes	No	N	Yes
Others	Assessee must be an employee of such company or its subsidiary		Winning from lottery, cross-word puzzles etc. is taxable @ 30% u/s 115BB		

TDS on Payment to Non-Resident Sportsman or Sports Associations [Sec. 194E]					
Who is responsible to deduct tax: Any person who is responsible to pay the following income–					
Payee		Income by way of			
Sportsman (including an athlete) or an entertainer being non-resident foreign citizen		1. Participation in India in any game (excluding card game or gambling) or sport 2. Advertising 3. Contribution of articles relating to any game or sports in any newspaper, magazine or journal.			
Sports association being nonresident		Any game (other than card game) or sports organised in India			
Assessment of Private Trust					
Where Beneficiaries Share is Known		ORAL Trust		Where Beneficiaries Share is Unknown	
Income includes business income, then taxable @ Maximum Marginal Rate of tax (MMR) [Sec. 161(1A)] Exception If following conditions are satisfied then taxable- @ applicable to the total income of each beneficiary (a) The trust is declared by will; (b) Such trust is exclusively for the benefit of any relative	Income does not include business income or include business income but fall in exception, then beneficiary's share is separately taxable in the hands of trustee or beneficiary (u/s 166) @ applicable	Taxable @ MMR [Sec. 164A] Oral trust means a trust which is not declared by a duly executed instrument in writing [including any wakf deed] and which is not deemed to be a trust	Income does not include business income and fall in following cases, then @ AOP (i.e., individual rate) (a) None of the beneficiaries has income exceeding the max. amount not chargeable to tax in the case of an AOP nor is a beneficiary under any	Assessee falling under these cases (see left) and having business income and satisfying following condition then taxable @ AOP (a) The trust is declared by will; (b) Such trust is exclusively for the benefit of any relative dependent on him for support and maintenance; and	In any other case having business income or not @ MMR [Sec. 164(1)]

<p>dependent on him for support and maintenance; and (c) Such trust is the only trust declared by him</p>	<p>to the total income of each beneficiary [Sec. 161(1)]</p>	<p>declared by a duly executed instrument in writing However, following oral trust is not treated as oral trust: A trust which is not declared by a duly executed instrument in writing [including wakf deed] shall be deemed to be a trust declared by a duly executed instrument in writing if a statement in writing, signed by trustees, setting out the purpose or purposes of the trust, particulars as to the trustees, the beneficiaries and the trust</p>	<p>other trust; or (b) Income is receivable under a trust declared by any person by will and such trust is the only trust so declared by him; or (c) Income is receivable under a trust created before 1-3-1970 by a non-testamentary instrument & the AO is satisfied that the trust was created bona fide exclusively for the benefit of the relatives of settlor, or where settlor is a HUF, exclusively for the benefit of members of family, in circumstances where such relatives or members were mainly dependant on settlor for support and maintenance; or (d) the trustee receives income for provident fund,</p>	<p>(c) Such trust is the only trust declared by him</p>
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		<p>property, is forwarded to the AO: (i) where the trust has been declared before 1-6-1981, within 3 months from 1-6-81; (ii) in any other case, within 3 months from the date of such declaration. i.e., share is unknown then @ MMR & share is known then @ applicable to beneficiaries</p>	<p>superannuation fund, etc. created bonafide by a person carrying on a business (or profession) exclusively for the benefit of persons employed in such business</p>		
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SHORT NOTES

2017 - Dec [8] Write short note on the following:

(d) Liability of members after partition of HUF

(4 marks)

Answer:

Liability of Members after partition of HUF Section 171

In case total partition took place during the previous year the total income of the joint family in respect of the period upto the date of partition shall be

assessed as if so far no partition had taken place; and each member or group of members shall, in addition to any tax for which he or it may be separately liable and notwithstanding anything contained in clause(2) of **Section 10**, be jointly and severally liable for the tax on the income so assessed and in case total partition took place after the expiry of the previous year, the total income of the previous year of the joint family shall be assessed as if no partition had taken place, and each member or the group of members shall be jointly and severally liable for tax on the income so assessed.

In case of partial partition taken place after the 31st December 1978, the HUF shall continue to be liable to be assessed under this Act as if no such partition had taken place and each member or group of members of such HUF immediately before such partial partition and the HUF shall be jointly and severally liable for any tax, penalty, interest, fine or other sum payable under this Act by the HUF in respect of any period, whether before or after such partition. The several liability of any member or group of members aforesaid shall be computed according to the partition of the HUF property allotted to him or it at such partial partition.

2021 - Dec [5] Write short notes on Liability of directors of private company under section 179 of the Income Tax Act. **(3 marks) [Sec. C - Six LAQ]**

Answer:

Where any tax due from a private company-

- in respect of any income of any previous year; or
- From any other company in respect of any income of any previous year during which such other company was a private company.

Cannot be recovered, then, every person who was a director of the private company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax.

However, no such director shall be liable if he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Tax point: Tax Due includes penalty, interest fees or any other sum payable under the Act.

DESCRIPTIVE QUESTIONS

2012 - Nov [6] (d) A company which is entitled to claim deduction under section 80-IB has received duty drawback under a scheme framed by the Central Government under the Customs Act, 1962. Can such duty drawback form part of profit of eligible undertaking for the purpose of deduction under section 80-IB? **(3 marks) [CAFG - II New]**

Answer:

Section 80-IB provides for allowing deduction in respect of profits and gains derived from eligible business of the industrial undertaking.

The issue under consideration is whether duty drawback can be regarded as "profits and gains derived from eligible business of the industrial undertaking".

For a receipt to be treated as having been "derived from" the industrial undertaking, the same should be directly and inextricably connected with the business of the industrial undertaking. The connection should be direct and not remote.

The facts of the case are similar to the facts of the case in ***Liberty India v. CIT (2009) 317 ITR 218***, wherein the Supreme Court observed that duty drawback is an incentive which flows from the schemes framed by the Central Government or from the Customs Act, 1962. Profits derived by way of incentives such as duty drawback cannot be credited against the cost of manufacture of goods debited in the profit and loss account and they do not fall within the expression "profits derived from industrial undertaking" under **Section 80-IB**. They belong to the category of ancillary profits of such undertaking. Hence, duty drawback receipts cannot form part of the profits derived from the eligible business for the purpose of the deduction under **Section 80-IB**.

Applying the same rationale to the present case, duty drawback would not form part of profit of eligible undertaking for the purpose of deduction under **Section 80-IB**.

2013 - Nov [3] (b) Examine the correctness or otherwise of the following statements in the context of provisions contained in the Income Tax Act, 1961 and the decided case laws:

- (i) The Assessing Officer is bound to allow the set-off of losses under section 72 even the assessee has not claimed the same in the return filed. **(3 marks) [CAFG - II New]**

Answer:

The statement is correct. The Supreme Court held in *CIT vs. Mahalakshmi Sugar Mills Co. Ltd. (1986)* that it is the duty of the AO to apply the relevant provisions of the Act for the purpose of determining true figure of the assessee's total income. Only because the assessee fails to claim the benefit of a set off in his return, it cannot relieve the AO of his duty to apply **Section 72** in an appropriate case.

2013 - Dec [5] Answer the following with the help of decided case law:

- (a) Can, the benefit of self-occupation of house property under section 23(4) of the Income-tax Act, 1961 be denied to HUF on the ground that it cannot occupy a house property, being a fictional entity? **(5 marks)**

Answer:

Provision of Law:

As per **Section 23 (4)** of the Income Tax Act, where the assessee is having more than two self occupied properties, then he may exercise an option to treat any two of the properties to be self-occupied. The other properties will be deemed to be let out. It means that the annual value of two self-occupied properties opted by the assessee can be taken as nil.

Fact of the Case:

The issue similar to present case decided in case of *CIT vs. Hariprasad Bhojnagarwala (2012)342 ITR 69 (Guj.) (Full Bench)*. The assessee, being a Hindu Undivided Family (HUF), claimed the benefit of self occupation of a house property under **section 23(2)**. However, the Assessing Officer did not accept the said claim and denied the benefit of self occupation of house property by the HUF arguing that such benefit is available only to the owner who can reside in his own residence i.e., only an individual assessee, who is a natural person, and not to a imaginary assessable entity being HUF or a firm, etc.

Decision: On the above mentioned issue, the Gujarat High Court observed as follows:

- That a firm, which is a fictional entity, cannot physically reside in a house property and therefore a firm cannot claim the benefit of this provision, which is available to an assessable entity who can actually occupy the house.
- The HUF is a group of individuals related to each other i.e., a family comprising of a group of natural persons. The said family can reside in the house, which belongs to the HUF. Since a HUF cannot consist of artificial persons, it cannot be said to be a fictional entity.
- Since singular includes plural, the word "owner" would include "owners" and the words "his own" used in **Section 23(2)** would include "their own".

Therefore, the Court held that the HUF is entitled to claim benefit of self-occupation of house property under **section 23(2)** of income tax act.

2014 - June [7] Answer sub-divisions:

- (c) (ii) Can father, mother, son and his wife presently assessed as Hindu undivided family, as well as individual, form an association of persons as well as a source of income not belonging to the Hindu undivided family? **(2 marks)**

Answer:

No, HUF is a separate and distinct tax entity. The income of a HUF can be assessed in the hand of the HUF alone and not in the hands of any of its members unless specifically provided by law.

2014 - Dec [8] (a) Madubaala Finance Ltd., has started a new NBFC Division for its leasing activities. For the new NBFC Division, the company anticipates GST liability but wants to light/contest the levy of GST. The NBFC Division plans to collect from its customers on an *ad-hoc basis*, amounts towards possible GST liability (which will be disputed by the company with GST authorities). These amounts so collected will not be parked in a separate interest-bearing account. These amounts will be refundable to the customers, if the assessee were to succeed before the GST authorities.

The management wishes to know whether the above collections from customers be treated as the income of the company, and if taxed, under what head of income will the same be taxed. **(5 marks)**

(b) Jupiter Pharma Ltd., a pharmaceutical company, plans to collect "service charges" from the tenants of the buildings owned by it. The service agreement is dependent upon the rental agreement, which is executed by the company with the tenants. Services provided under the service agreement are in respect of staircase of the building, lift, common entrance, main road leading to the building through the compound, drainage facilities, open space in/around the building, air condition facility, etc.

The company wishes to know whether the service charges collected will be taxed under the head 'Income from house property' or as income from other sources. Advise them suitably. **(5 marks)**

Answer:

(a) Taxability of collections towards disputed GST liability:

The situation outlined in the problem resembles the one adjudicated by the **Apex Court in Sundaram Finance Ltd. ACIT (vs.2012) 349 ITR 356 (SC)**. According to the assessee, in order to safeguard itself against, *inter alia*, the possible sales tax liabilities, the assessee received ₹ 36.5 lacs as contingent deposits; from its customers which were "refundable", if the assessee was to succeed in its challenge to the levy of the said GST. According to the assessee, the sum of ₹ 36.5 lacs was therefore an impress with a liability to refund, that the said sum had the character of "deposits" and hence, were not taxable in the year of receipt, but would be taxable only in the year in which the liability to refund the GST ceased (in case the assessee failed in the pending GST appeals).

The Supreme Court observed that:

- It is well settled that in determining whether a receipt is liable to be taxed, the taxing authorities cannot ignore the legal character of the transaction which is the source of the receipt.
- The taxing authorities are bound to determine the true legal character of the transaction. In the present case, the assessee had received ₹ 36.5 lacs in the assessment year in question.

- The said sum of ₹ 36.5 lacs was not kept in a separate interest bearing bank account but it formed part of the business turnover. In view of the above, applying the substance over form test the Supreme Court was satisfied that in the present case the said sum of ₹ 36.5 lacs constituted trading receipt/ business income. The said amount was collected from the customers. The said amount was collected towards GST liability. The said amount formed part of the turnover. The ratio of the Supreme Court decision is squarely applicable and hence the collections in questions towards disputed GST liability will be taxed as income. Since it is a trading receipt, it will be taxed under the head “Profits and gains of business or profession”.

(b) Taxability of service charges collected from tenants:

The Bombay High Court had to consider a similar situation in the case of *CIT vs. J.K. Investors (Bom) Ltd. (2012) 211 Taxman 383 (Bom)*. The Bombay High Court observed and held thus:

1. It is an undisputed fact that no services are being provided by the assessee to the occupants of its property and that the service charges have to be included as a part of its rental income.
2. The test to determine whether the service agreement is different from the rent agreement would be whether the service agreement could stand independently of the rent agreement. In the instant case, the service agreement is dependent upon the rent agreement, as in the absence of the rent agreement there could be no service agreement.
3. It may also be pointed out that according to the assessee, the services being provided under the service agreement are in respect of staircase of the building, lift, common entrance, main road leading to the building through the compound, drainage facilities, open space in/around the building, air condition facility, etc. These are services which are not separately provided, but go along with the occupation of the property.
4. Therefore, the amounts received as service charges are to be considered as a part of the rent received and subjected to tax under the head ‘Income from house property’.

Applying the ratio of the above judgment, the advice will be that the service charges collected will be taxed as income from house property and not as income from other sources.

2018 - June [8] In the light of decided case laws, answer the following [Your answer should be under the following heads: (i) Issue involved (ii) Brief discussion on provisions applicable to the issue (iii) Analysis of the issue involved and (iv) Conclusion (*Citation of the case law is NOT required*)]:

- (e) Saipriya Charities had applied for registration of the trust u/s 12AA on 01.04.2022. No order was passed in this regard by the Commissioner of Income-tax/Director (Exemptions). Hence, the trust took the view that its application was accepted and proceeded to file its return of income. Is this view of the trust correct in law? **(4 marks)**

Answer:

Issue Involved:

The issue under consideration in this case is whether, in a case where the Commissioner of Income-tax has not passed any order for granting or refusing to grant registration within the prescribed time limit under Section 12AB, the trust can take the view that it is deemed to be registered under Section 12AB.

Provisions applicable:

As per Section 12AB, every order granting or refusing registration shall be passed before the expiry of 6 months from the end of the month in which the application was received.

Analysis:

Non-consideration of the application for registration within the time fixed by the legal provision would lead to deemed grant of registration, since the assessee cannot be made to suffer merely because the timely decisions are not taken by the Revenue Officers.

Accordingly, in this case, the trust would be deemed to be registered since no order granting or refusing to grant registration has been passed by the CIT on or before 30th September, 2023 and even thereafter upto the due date of filing of return for the A.Y.2024-25.

Conclusion:

The view taken by the assessee trust that the trust would be deemed to be registered under Section 12AB, since no order granting or refusing to grant registration has been passed by the Commissioner of Income-tax within the prescribed period of six months is, therefore, correct.

Reference may be made to the decision in CIT v. Society for the Promotion of Education (2016) 382ITR 6 (SC).

2019 - June [5] In the light of decided case laws, answer the following [Your answer should be under the following heads: (i) Issue involved (ii) Brief discussion on provisions applicable to the issue (iii) Analysis of the issue involved and (iv) Conclusion (Citation of the case law is NOT required)]:

(b) "Ghosh Group of Educational Institutions", running three famous colleges in Kolkata, claimed exemptions under section 10(23C). In all these three colleges, there is a net surplus after meeting all its expenses. The Assessing Officer (AO) rejected the claim for exemption on the ground that the presence of net surplus leads to the inference that the assessee-institution does not exist solely for educational purposes.

Is the rejection of the AO justified in law?

(d) Vishal Hotels Ltd., runs a famous restaurant. Customers frequenting the same, add tips to be given to the servers in the food bill while making the payment. The tips so collected by the hotel is pooled and distributed to all the employees. The Assessing Officer of the TDS Ward has issued a notice stating that the assessee should deduct tax at source from the tips distributed to the employees, since the same is nothing but payment of salaries. Assessee seeks your advice. **(4 × 2 = 8 marks)**

Answer:

(b) Exemption u/s 10(23C):

Issue involved:

The issue under consideration in this case is whether the AO is justified in rejecting the claim for **exemption u/s 10(23C)**, on the ground that the assessee-institution does not exist solely for educational purposes.

Provisions applicable:

Section 10(23C)(iiiad) postulates three requirements, namely,

- (i) the education institution must exist solely for educational purposes;
- (ii) it should not be for purposes of profit; and
- (iii) the aggregate annual receipts of such institution should not exceed the amount as may be prescribed.

Note:

The presently prescribed limit for these two sub-clauses is ₹1 crore as per Rule 2BC of the Income-tax Rule.

In order to provide benefit to small trust and institutions, the Budget 2021-22 has proposed that the exemption under sub-clause (iiiad) and (iii ae) shall be increased to ₹ 5 crore.

This amendment is applicable from 1st April, 2022 and will accordingly apply to the assessment year 2022-23 and subsequent assessment years.

Analysis of the issue:

The following tests would apply for determining whether an educational institution exists solely for education purposes and not for purposes of profit:

1. Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit;
2. The predominant object test must be applied - the purpose of education should not be submerged by a profit making motive;
3. A distinction must be drawn between the making of surplus and an institution being carried on "for profit". Merely because imparting of education results in making a profit, it cannot be inferred that it becomes an activity for profit;
4. If after meeting expenditure, surplus arises incidentally from the activity carried on by the educational institution, it will not cease to be one existing solely for educational purposes.

The ultimate test is whether on an overall view of the matter in the concerned assessment year, the object is to make profit as opposed to educating persons.

Conclusion:

Therefore, the action of the Assessing Officer, rejecting the claim for exemption u/s 10(23C) not valid.

Reference may be made to the decision of the Apex Court in **Queen's Educational Society v. CIT (2015) 372 ITR 699 (SC)**.

(d) TDS from tips collected by employer from customers:

Issue involved:

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

Provisions applicable:

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

Analysis of the issue:

- In respect of tips collected by the company from the customers and distributed to the employees, the person responsible for paying the employee is not the employer at all, but a third person, namely the customer.
- There is no vested right in the employee to claim any amount of tip from his employer. Tips are purely voluntary amounts that may or may not be paid by customers for services rendered to them.
- As income from tips would be chargeable in the hands of the employees as "Income from Other Sources", on account of such tips being received from customers and not from the employer, **section 192** would not get attracted at all.
- Tips are received by the employer in a fiduciary capacity as trustee to their employees for service rendered to the customer. There is, therefore, no reference to the contract of employment when these

amounts are paid by the employer to the employee. Due to this reason the tips received by the employees could not be regarded as profits in lieu of salary.

- The payments of collected tips included and paid by way of a credit card by a customer, would not be payments made “by or on behalf of” an employer. The contract of employment not being the proximate cause for the receipt of tips by the employee from a customer, such payments would be outside the scope of **Sections 15 and 17**, and hence **Section 192** would not get attracted.
- Hence, such payments would not fall within the meaning and scope of the income chargeable to tax under the “Salaries”.

Conclusion:

Hence, the Assessing Officer is not correct in concluding that “tips” received by the hotel company from its customers and distributed to the employees fell within the meaning of “Salaries” to attract tax deduction at source under section 192.

Reference may be made to the decision of the **Apex Court in ITC Ltd. v. CIT (TDS) (2016) 384 ITR 14.**

PRACTICAL QUESTIONS

2012 - Dec [2] (c) For the year ended 31.03.2024, Gamma Ltd. has earned the following dividend income:

- 1 From shares held in SUN Inc., a foreign company, in which it holds 20% of nominal value of equity share capital — ₹ 90,000
- 2 From shares held in MOON Inc., a foreign company, in which it holds 35% of nominal value of equity share capital — ₹ 2,00,000
- 3 From shares held in Indian companies — ₹ 70,000

The assessee - company has incurred expenditure of ₹ 30,000 for earning aforesaid dividend, the break up of which is as follows:

- (1) ₹ 8,000 (SUN Inc.)
- (2) ₹ 12,000 (MOON Inc.)
- (3) ₹ 10,000 (Indian Companies)

The business income of the assessee computed under the provisions of the Income-tax Act 1961 is ₹ 20 lakh. Compute the total income and tax liability of Gamma Ltd. for the AY 2024-25, ignoring MAT provisions. **(8 marks)**

Answer:

Computation of total income of Gamma Ltd. for the AY 2024-25	
Particulars	Amount
Profits and gains of business or profession	20,00,000
Income from other sources (Working Note 1)	3,32,000
Total Income	23,32,000
Working note 1	
From Sun Inc.-net dividends (90,000-8,000) is taxable at normal rates	82,000
From Moon Inc. gross dividends is taxable @ 15% u/s 115BBD	2,00,000
Dividends From shares in Indian company.	70,000
Total income under the head other sources	3,32,000
Computation of tax liability of Gamma Ltd. for the AY 2024-25	
Tax @ 15% u/s 115BBD on ₹ 2,00,000	30,000
Tax @ 30% on balance income of ₹ 21,32,000	6,39,600
Add: Health and Education cess @4%	26,784
Total tax liability	6,96,384

2013 - May [7] (b) Mr. A has gifted a house property valued at ₹ 50 lakhs to his wife, Mrs. B, who in turn has gifted the same to Mrs. C, their daughter-in-law. The house was let out at ₹ 25,000 per month throughout the year. Compute total income of Mr. A and Mrs. C.

Will your answer be different if the said property was gifted to his son, husband of Mrs. C? **(4 marks) [CAFG - II New]**

Answer:

As per **Section 27(I)**, an individual who transfers otherwise than for adequate consideration any house property to his spouse, not being a transfer in connection with an agreement to live apart, shall be deemed to be the owner of the house property so transferred.

Therefore, in this case, Mr. A would be the deemed owner of the house property transferred to his wife Mrs. B without consideration.

As per **Section 64(1)(vi)**, income arising to the son's wife from assets transferred, directly or indirectly, to her by an individual otherwise than for adequate consideration would be included in the total income of such individual.

Income from let-out property is ₹ 2,10,000 [i.e., ₹ 3,00,000, being the actual rent calculated at ₹ 25,000 per month less ₹ 90,000, being deduction under section 24 @ 30% of ₹ 3,00,000]

In this case, income of ₹ 2,10,000 from let-out property arising to Mrs. C, being Mr. A's son's wife, would be included in the income of Mr. A, applying the provisions of section 27(I) and Section 64(1)(vi). Such income would, therefore, not be taxable in the hands of Mrs. C.

In case the property was gifted to Mr. A's son, the clubbing provisions under section 64 would not apply, since the son is not a minor child. Therefore, the income of ₹ 2,10,000 from letting out of property gifted to the son would be taxable in the hands of the son. It may be noted that the provisions of section 56(2)(vii) would not be attracted in the hands of the recipient of house property, since the receipt of property in each case was from a "relative" of such individual. Therefore, the stamp duty value of house property would not be chargeable to tax in the hands of the recipient of immovable property, even though the house property was received by her or him without consideration.

Note:

The first part of the question can also be answered by applying the provisions of **Section 64(1)(vi)** directly to include the income of ₹ 2,10,000 arising to Mrs. C in the hands of Mr. A. [without first applying the provisions of **Section 27(I)** to deem Mr. A as the owner of the house property transferred to his wife Mrs. B without consideration], since **Section 64(1)(vi)**

speaks of clubbing of income arising to son's wife from indirect transfer of assets to her by her husband's parent, without consideration. Gift of house property by Mr. A to Mrs. C, via Mrs. B, can be viewed as an indirect transfer by Mr. A to Mrs. C.

2013 - June [3] (c) Following details pertaining to Mr. Vaamana, a resident Indian aged 58 years, are furnished to you:

	(₹)
(i) Salary received from ABC Ltd.	7,20,000
(ii) Profession tax paid by employer	12,000
(iii) Loss from own business not covered by Section 35 AD	2,20,000
(iv) Long term capital gains from sale of listed shares in recognised stock exchange, held for more than one year	1,30,000
(v) Long term capital gains from sale of residential house property	1,20,000
(vi) Winning from T.V. games show (Net of TDS ₹ 30,000)	70,000
Expenses incurred for participating in the show	5,000
(vii) Loss in card games	12,000
(viii) Loss from agricultural lands in India	32,000

Compute the total income of the assessee under proper heads of income for the assessment year 2024-25. **(7 marks)**

Answer:

**Computation of total income of Mr. Vaamana
Assessment Year 2024-25**

Particulars	Amount (₹)	Amount (₹)
Salaries		
Received from employer	7,20,000	
Profession tax paid by employer (to be treated as perquisite)	<u>12,000</u>	
Less: Standard deduction	50,000	
	7,32,000	
Less: Professional tax paid	<u>12,000</u>	
Income chargeable under this head	<u>62,000</u>	6,70,000
Profits and gains of business or profession		

Loss from non-speculative business not covered by Sec.- 35AD (Cannot be set off against salaries)	(2,20,000)	
Capital gains		
Long-term capital gains:		
(a) From sale of listed shares in recognized stock exchange ₹ 1,30,000	30,000	
(b) From sale of residential house property	<u>1,20,000</u>	
Total LTCG	<u>1,50,000</u>	
Business loss can be set off against LTCG Hence chargeable LTCG is		0
Balance business loss ₹ 1 lac to be carried forward		
Income from other sources		
(a) Income from T.V. Games show Gross No expenditure is allowable from this income u/s 58(4) (No other loss can be set off against this winnings)	1,00,000	
(b) Loss from card games (Can neither be set off, nor carried forward) Income chargeable under this head	(12,000)	1,00,000
Gross total income/Total income		<u>7,70,000</u>

Note:

1. It is assumed that the long term capital gain arising from sale of listed shares is chargeable to STT.
2. Agricultural income being net loss, the same has to be ignored.
3. As per section 112A, Long term capital gain taxable @ 10% in excess of 1 lakh.

2013 - June [8] (a) "VKS Infra Pvt. Ltd." is an Indian company engaged in undertaking infrastructure projects. In April, 2023, it has received a big highway project for expansion of existing roads in one area and also for relaying of existing roads in another area. There is an apprehension in the mind of the managing director of the company that these projects will not entitle the company to claim deduction under section 80 IB(4). Advise the company suitably. **(5 marks)**

Answer:

Widening /re-laying of existing roads whether eligible for benefit of **Section 80-IB(4)**

As per **Section 80IA(1)** of the Income Tax Act, 1961, where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in **sub-section (4)**, there shall, in accordance with the subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to hundred per cent of the profits and gains derived from such business for 10 consecutive assessment years.

Sub-section (4)(I) provides for a deduction to an undertaking engaged in developing, or operating and maintaining, or developing, operating and maintaining any infrastructure facility subject to satisfaction of the conditions laid down in the Section.

The explanation to **Sub-section 80IA(4)(I)** states that for the purpose of this clause, infrastructure facility means inter alia:

- (a) a road including toll road, a bridge or a rail system;
- (b) a highway project including housing or other activities being an integral part of the highway project;”

References were received by the Board as to whether widening of existing roads constitutes creation of new infrastructure facility for the purpose of **Section 80IA(4)(I)**.

The issue has been examined by the Board. In Circular 4/2010 dt. 18th May 2010, it was decided that widening of an existing road by constructing additional lanes as a part of a highway project by an undertaking would be regarded as a new infrastructure facility for the purpose of **Section 80IA(4)**.

However, simply re-laying of an existing road would not be classifiable as a new infrastructure facility for this purpose. Advise should be tendered on the above lines.

2013 - Dec [6] VKS Polymers LLP is a LLP consisting of the partners L, M and N. The LLP derives income from a trading unit (D) as well as a manufacturing unit (E). The summarised details of the profits and other related aspects for the year ended are as under:

15.56

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	₹ in lacs
Profits from unit D	40
Profits from unit E	60

The turnover of the company is 120 crores and transfer pricing provisions are not attracted. Unit E is eligible to claim 100% deduction under Section 80-ID and all necessary conditions stand fulfilled.

The assessee is planning to file the return of income on 30th September, 2024. Compute the total income and tax payable for the assessment year 2024-25.

There is some doubt in the mind of the Taxation Manager over two issues relating to unit D. The assessee seeks your view whether it can file the return of income on 1st November, 2024, after the issues are settled. The assessee has prepaid taxes to the extent of ₹ 13 lacs and hence it is felt that there will be no interest chargeable under Sections 234A, 234B and 234C. Advise the assessee suitable. **(10 marks)**

Answer:

1. When the return of income has been filed on 30.09.2024 [within due date laid down in Sec. 139 (1)]

Computation of Total Income and tax as per normal provisions

Particulars	(₹ in Lacs)
Gross Total Income	100.00
Less: Deduction u/s 80-ID	60.00
Total Income	40.00
Tax Liability as per normal provisions @31.2%	12.48

Computation of Adjusted Total Income and AMT as per Sec. 115 JC

Particulars	(₹ in Lacs)
Total Income	40.00
Add: Deduction u/s 80-ID	60.00
Adjusted Total Income	100.00

Tax Liability @ 19.24% u/s 115JC Adjusted total income does not exceed 1 crore	19.24
Tax Payable (Higher of Tax on Adjusted Total Income and Total Income)	19.24

2. When the return of income has NOT been filed within due date laid down in Sec. 139(1)

As per the provisions of Sec. 80AC, no deduction will be available u/s 80-ID when the return of income is filed beyond the due date laid down in Sec. 139 (1).

When no deduction is available u/s 80-ID; the AMT provisions u/s 115 JC will not apply.

The total income and tax payable as per normal provisions will be as under:

Particulars	(₹ in Lacs)
Gross Total income	100.00
Less: Deduction U/s 80 - ID (Not allowable in view of sec. 80AC)	Nil
Total Income	100.00
Tax Liability as per normal provisions @ 31.2%	31.20

It can be seen from above that there will be a heavily increased tax liability, if the return is filed on 1st Nov, 2024. The assessee is therefore advised to file the return of income on 30-9-2024.

In case of any error, a revised return can be filed on 1-11-2024.

- 2013 - Dec [7]** (c) The following are the broad details pertaining to Excel Pvt. Ltd., for the assessment year 2023-24. (all amounts are ₹ in lacs):

From specified business covered by Section 35AD: Loss	12
From other non-speculation business :	
Unabsorbed depreciation	8
Business loss excluding depreciation	7

The return of income had been filed on 11.01.2024.

For the assessment year 2024-25, the broad position is as under:

From specified business covered by Section 35AD: Profit 9

From other non-speculation business:

Depreciation of FY 2023-24 alone 3

Business income before depreciation 22

How will the brought forward items be set off in the assessment year 2024-25 and what is the business income for the assessment year 2024-25? (5 marks)

Answer:

Set off and carry forward of business loss

In terms of **Section 80 and 139(3)**, for carrying forward business loss covered by **Section 72**, the return of income should be filed within the due date as per **Section 139(1)**. Hence the assessee cannot carry forward the non-speculation business loss of ₹ 7 lacs.

Unabsorbed depreciation is not covered by above and hence the unabsorbed depreciation of ₹ 8 lacs can be carried forward and the same will be deemed to be current depreciation.

The need for filing of return within the time stipulated **u/s 139(1)** enjoined by **Sec. 139(3)** is for the purpose of carrying forward losses under **Sections 72(1), 73(2), 74(3) or 74A(3)**. **Loss under Section 73A** is not covered. Hence filing the return of income on 11-1-2024 will not affect the right of carry forward of loss as per **Section 73A**, which covers loss from specified business **u/s 35AD**.

Loss from specified business covered by **Sec. 35AD** can be set off only against profit from specified business covered by **Sec. 35AD**.

Business income for AY 2024-25	(₹ in lacs)
From specified business covered by section 35 AD : Profit	9
<i>Less:</i> brought forward loss from specified business set off	9
Balance income	Nil
From other non-speculation business:	
Business income before depreciation	22
<i>Less:</i> Current depreciation as per sec 32 (2) [3+8]	11
Balance income	11
Business income chargeable to tax	11

2014 - May [7] (c) Mr. Vasudevan gifted a sum of ₹ 6 lakhs to his brother's wife on 14-6-2023, On 12-7-2023, his brother gifted a sum of ₹ 5 lakhs to Mr. Vasudevan's wife. The gifted amounts were invested as fixed deposits in banks by Mrs. Vasudevan and wife of Mrs. Vasudevan's brother on 01-8-2023 at 9% interest. Discuss the consequences of the above under the provisions of the Income Tax Act, 1961 in the hands of Mr. Vasudevan and his brother. **(4 marks) [CAFG - II New]**

Answer:

In the given case, Mr. Vasudevan gifted a sum of ₹ 6 lakhs to his brother's wife on 14.06.2023 and simultaneously, his brother gifted a sum of ₹ 5 lakhs to Mr. Vasudevan's wife on 12.07.2023. The gifted amounts were invested as fixed deposits in banks by Mrs. Vasudevan and his brother's wife. These transfers are in the nature of cross transfers. Accordingly, the income from the assets transferred would be assessed in the hands of the deemed transferor because the transfers are so intimately connected to form part of a single transaction and each transfer constitutes consideration for the other by being mutual or otherwise.

If two transactions are inter-connected and are part of the same transaction in such a way that it can be said that the circuitous method was adopted as a device to evade tax, the implication of clubbing provisions would be attracted. It was so held by the **Apex Court in CIT vs. Keshavji Morarji (1967) 66 ITR 142.**

Accordingly, the interest income arising to Mrs. Vasudevan in the form of interest on fixed deposits would be included in the total income of Mr. Vasudevan and interest income arising in the hands of his brother's wife would be taxable in the hands of Mr. Vasudevan's brother as per Section 64(1).

This is because both Mr. Vasudevan and his brother are the indirect transferors of the income to their respective spouses with an intention to reduce their burden of taxation.

Note:

In the hands of Mr. Vasudevan's brother, interest income earned by his spouse on fixed deposit of ₹ 5 lakhs alone would be included and not the interest income on the entire fixed deposit of ₹ 6 lakhs, since the cross transfer is only to the extent of ₹ 5 lakhs.

2014 - Nov [2] (b) X Ltd. has two units, unit 'N' and unit 'Y'. Unit 'N' engaged in the business of power generation installed a windmill and had a profit of ₹ 100 lakhs in Assessment Year 2024-25. X Ltd. claimed depreciation of ₹ 120 lakhs on windmill against the profit of ₹ 100 lakhs from power generation business which was eligible for deduction u/s 80-IA. Unit 'Y', engaged in manufacturing of wires, non-eligible business, had a profit of ₹ 70 lakhs for Assessment Year 2024-25.

The loss of ₹ 20 lakhs, i.e. balance depreciation not set-off pertaining to unit 'N' was set-off against the profits of unit 'Y' carrying on non-eligible business, by the assessee, X Ltd. The Assessing Officer was of the view that depreciation relating to a business eligible for deduction u/s 80-IA cannot be set-off against non-eligible business income.

Hence, unabsorbed depreciation should be carried forward to the subsequent year to be set off against eligible business income of the assessee of that year.

Give your views on the correctness of the action of the Assessing Officer.

(4 marks) [CAFG - II New]

Answer:

In CIT v. Swarnagiri Wire Insulations Pvt. Ltd. (2012) 349 ITR 245, the Karnataka High Court observed that it is a generally accepted principle that the deeming provision of a particular section cannot be breathed into another section. Therefore, the deeming provision contained in **Section 80-IA(5)** cannot override the provisions of **Section 70(1)**.

In this case, X Ltd. had incurred loss in eligible business (power generation) on account of claiming depreciation of ₹ 120 lacs. Hence, **Section 80-IA** becomes insignificant, since there is no profit from which this deduction can be claimed.

It is thereafter that **Section 70(1)** comes into play, whereby an assessee is entitled to set off the losses from one source against income from another source under the same head of income. Accordingly, X Ltd. is entitled to the benefit of set off of loss of ₹ 20 lacs (representing balance depreciation not set-off) pertaining to Unit N engaged in eligible business of power generation against profit of ₹ 70 lacs of Unit Y carrying on non-eligible business. Therefore, the net profit of ₹ 50 lacs would be taxable in the A.Y.2024-25.

However, once set-off is allowed under **Section 70(1)** against income from another source under the same head, a deduction to such extent is not possible in any subsequent assessment year i.e., the loss (arising on account of balance depreciation of eligible business) so set-off under **Section 70(1)** has to be first deducted while computing profits eligible for deduction under **Section 80-IA** in the subsequent year. Accordingly, in the A.Y.2024-25, the net profits of Unit N has to be reduced by ₹ 20 lacs for computing the profits eligible for deduction under **Section 80-IA** in that year.

The action of the Assessing Officer in not permitting set-off of loss of eligible business against profits of non-eligible business in this case is, therefore, not correct.

2014 - Nov [3] (a) Mr. Ghosh held 15% equity shares in ABC Ltd., a private limited company. He gifted all the shares held by him in ABC Ltd., to his wife Mrs. Ghosh on 25/5/2023. The transfer was made without adequate consideration. On 20/6/2023, Mrs. Ghosh obtained a loan of ₹ 80,000 from ABC Ltd., when the company's accumulated profit was ₹ 50,000. What are the tax implications on the above transactions?

(4 marks) [CAFG - II New]

Answer:

Under section 2(22)(e), any payment by a closely held company by way of loan or advance to its shareholder, being a person who is the beneficial owner of shares, holding not less than 10% of the voting power, is deemed as dividend to the extent to which the company possesses accumulated profits. Therefore, in order to attract the deeming provisions under **Section 2(22)(e)**, the recipient of loan should be a registered shareholder as well as the beneficial owner of share.

Note: There is a change in the dividend taxation regime with the abolishment of dividend distribution tax in case of dividend paid/ distributed by domestic companies after 1st April 2020, hence, Section 10(34) which provided exemption from dividend received (after payment of Dividend Distribution Tax) is provided with a sunset clause i.e., the exemption would not be applicable on income received by way of dividend on or after 1st April 2020. Hence, such deemed dividend will be taxable in the hands of recipient.

2014 - Dec [1] (a) Shree Ram Charitable Trust registered under section 12AB of the Income-tax Act, 1961 runs a school. During the year ended 31st March, 2024, it sold one building for a sum of ₹ 50 lacs. The building was acquired by the trust at ₹ 10 lacs in the year 2017-18. The trust utilised ₹ 41 lacs out of sale consideration in construction of an additional school building. Advise the trust on the taxable capital gain.

(Cost inflation indices are: F.Y. 2017-18 272

F.Y. 2023-24 348

(4 marks)

(b) The Statement of Profit & Loss of Alpha Limited, a domestic company for the year ended 31st March, 2024 discloses a net profit of ₹ 120 lacs after debiting/crediting the following items:

1. Provision for doubtful debts	₹ 2.40 lacs
2. Provision for income tax	₹ 18.00 lacs
3. Provision for deferred tax	₹ 9.00 lacs
4. Depreciation (including depreciation on revaluation of assets of ₹ 3 lacs.)	₹ 15.00 lacs
5. Profit from export in unit set up in special Economic Zone (eligible for deduction under section 10AA)	₹ 22.00 lacs
6. Provision for loss of subsidiary company	₹ 20.00 lacs
7. Profit on sale of land held as capital asset for 10 years	₹ 10.00 lacs

The Company has informed you that the entire capital gain on sale of land was invested in bonds of Rural Electrification Corporation Limited within six months from the date of sale.

Details of brought forward losses and unabsorbed depreciation as per books of the company:

Previous Year	Brought forward loss (₹ in lacs)	Unabsorbed depreciation (₹ in lacs)
2020-21	-	4
2021-22	2	3
2022-23	8	2

Compute "book profit" under section 115JB of the Income-tax Act, 1961 for the Assessment Year 2024-25. **(10 marks)**

Answer:

- (a) As per **Section 11(1A)** of the Income-tax Act, where a capital asset held under trust is transferred and if only a part of the net consideration is utilised for acquiring the new capital asset, so much of such capital gain as is equal to the amount, if any by which the amount so utilised exceeds the cost of the transferred asset shall be considered to have been applied for the objects of the trust and the exemption shall be restricted to such amount.

In the given case, the amount of capital gain = ₹ 50 lacs - ₹ 10 lacs = ₹ 40 lacs. The amount considered to be applied for the objects of the trust and exempted **under Section 11(1A)** = ₹ 41 lacs - ₹ 10 lacs = ₹ 31 lacs.

The balance capital gain of ₹ 9 lacs shall be treated as part of other income. Exemption, however, can also be claimed by utilizing 85% of the taxable capital gain towards the objects of the trust within the previous year.

- (b) **Computation of “Book Profit” of Alpha Limited for Assessment Year 2024-25:**

Particular	₹ in lakhs	₹ in lakhs
Net profit as per Statement of Profit & loss		120.00
<i>Add:</i> Provision for doubtful debts	2.40	
Provision for income tax	18.00	
Provision for deferred tax	9.00	
Depreciation	15.00	
Provision for loss of subsidiary company	20.00	64.40
<i>Less:</i> Depreciation (excluding depreciation on revaluation)	12.00	184.40
Lower of brought forward loss or unabsorbed depreciation as per Books	9.00	21.00
Book profit		163.40

Notes:

1. Profit from export in unit set up in Special Economic Zone though eligible for deduction under **Section 10AA** for computation of total income is not eligible for deduction in computing "book profit" for determination of minimum alternate tax.
2. Investment in bonds of Rural Electrification Corporation Limited entitles the assessee company to claim exemption of capital gain in computation of total income. But in computation of "book profit" under **Section 115JB**, capital gain cannot be excluded nor exemption under Section 54F can be claimed.

2014 - Dec [3] (b) The return of income for the assessment year 2023-24 was filed by Mr. Suryanarayana on 21-12-2023. The summarised results were as under:

	(₹ In lac)
Unabsorbed business loss	32
Unabsorbed depreciation	22
Unabsorbed tax holiday relief u/s 80-IB of Unit B	12
For the assessment year 2024-25 for which the returns of income will be filed on 29-09-2024, the pertinent data are as below:	
Sales turnover	1,250
Business income before current depreciation	76
Depreciation of current year only	19
Tax holiday relief u/s 80-IB of Unit B	38
Compute the total income of the assessee for the assessment year 2024-25.	
(7 marks)	

Answer:**Assessment year 2023-24**

For the assessment year 2023-24, the return of income was filed on 21-12-2023, which is beyond the due date specified **u/s 139(1)**.

Hence, the assessee cannot carry forward business loss [as per Section 80 read with **Section 139(3)**].

The assessee can however carry forward the unabsorbed depreciation to future years, since there is no requirement that return of income should be filed within the date specified **u/s 139(1)** for the same.

As per **Section 80AC**, where the return of income is filed beyond the due date, the assessee will not be entitled to claim deduction **u/s 80-IB**. So this benefit will also lapse.

Assessment year 2024-25

Since the return of income will be filed within the due date, the assessee can claim deduction **u/s 80-IB**.

Profits and gains of business or profession	
Business income before current depreciation	76
Less: Depreciation for A.Y. 2024-25 (As per Sec. 32(2) , unabsorbed depreciation has to be added to current depreciation)	41
Business income/gross total income	35
Less: Deduction under chapter VIA	
Tax holiday relief u/s 80-IB (To be restricted to GT)	35
Total Income	0

If time limit is available balance of deduction u/s 80-IB of ₹ 3 lacs can be carried forward.

2015 - May [3] (b) With brief reasons answer the following in terms of Chapter VI-A of the Income-tax Act, 1961:

- (ii) Mr. Jaju deposited ₹ 65,000 with life insurance corporation for the maintenance of his mother who suffers from disability of 90%. She is wholly dependent on him. How much is deductible?
- (iii) Mr. Shiva has gross total income of ₹ 3,75,000. He has given the following donations:
- | | |
|--------------------------------------|--|
| National Children's Fund | ₹ 25,000 - by cheque |
| Prime Minister's Drought Relief Fund | ₹ 30,000 - by cheque |
| National Blood Transfusion Council | ₹ 40,000 - by cash |
| National Illness Assistance Fund | ₹ 20,000 - equally by cash and cheque. |

Compute the amount deductible under section 80G.

- (iv) Mr. Manoj a computer software engineer co-authored a book on advanced computer programming alongwith his friend. He received ₹ 4,10,000 as lumpsum royalty in March, 2024. How much of royalty is taxable? **(6 marks) [CAFG - II New]**

Answer:

	Deduction (₹)	Reasons
(ii)	1,25,000	<p>As per Section 80DD, an assessee, being an individual or HUF, who is resident in India during the previous year, and has -</p> <ul style="list-style-type: none"> - incurred any expenditure for medical treatment (including nursing), training and rehabilitation of person dependent on him, who is suffering from disability or - paid or deposited any amount under a scheme framed by LIC or other insurer for the maintenance of a dependent, being a person with disability, <p>would be eligible for deduction of ₹ 75,000, in case the dependent is a person with disability. In case the dependent is a person with severe disability, the deduction under this section would be ₹ 1,25,000.</p> <p>Mr. Jaju would be eligible for deduction under section 80DD since he has deposited money with LIC for maintenance of his mother, who suffers from severe disability (80% or more of one or more disabilities) and is wholly dependent on him.</p> <p>A flat deduction of ₹ 1,25,000 would be available to him under section 80DD, irrespective of the amount deposited with LIC.</p>
(iii)	60,000	<p>Mr. Shiva would be eligible for deduction under section 80G in respect of the donations made during the previous year as follows:</p>

		Donation to	Amount of donation (₹)	Mode of donation	% of donation eligible for deduction	Amount of deduction (₹)
		National Children's Fund	25,000	Cheque	100%	25,000
		Prime Minister's Drought Relief Fund	30,000	Cheque	50%	15,000
		National Blood Transfusion Council	40,000	Cash	100%	Nil (Cash donation in excess of ₹ 10,000 would not qualify for deduction)
		National Illness Assistance Fund	20,000	₹10,000 by cheque & ₹10,000 by cash	100%	20,000 (The whole amount qualifies for deduction, since

						cash donation in this case does not exceed ₹10,000)
(iv)	3,00,000	<p>The entire royalty would be first included in Manoj's income under the head "Income from other sources". Thereafter, Mr. Manoj is eligible for deduction from gross total income under section 80QQB, of the whole of the income derived by him on account of any lumpsum consideration in the form of royalty in respect of a book, being a work of literary or scientific nature, or ₹ 3,00,000, whichever is less.</p> <p>Book on Advanced computer programming would fall within the description of work of literary or scientific nature [<i>Dassault Systems K.K. In Re. (2010) 322 ITR 125 (AAR)</i>].</p> <p>In this case, the eligible deduction under section 80QQB would be the lower of ₹ 4,10,000, being the amount of lumpsum royalty received by Manoj or ₹ 3,00,000.</p> <p>The net effect is that out of ₹ 4,10,000 included in Manoj's income, he can claim deduction of ₹3,00,000 under section 80QQB. The balance of ₹ 1,10,000 would form part of his total income.</p>				

Note : It has been assumed that Mr. Jaju, Mr. Shiva and Mr. Manoj are resident Indians.

2015 - May [7] (b) Examine the correctness of the claim made by the assessee in the below mentioned case.

Mr. Johnny has business income of ₹ 4,28,000 and salary income of ₹ 1,30,000 for the financial year 2023-24. His minor son has agricultural income of ₹ 1,00,000 for the same year. The Assessing Officer clubbed the agricultural income of minor son for determining the income tax liability of Mr. Johnny.

Mr. Johnny contends that the agricultural income is exempt U/s. 10(1) and not covered by Section 2(24) hence should not be clubbed even for adopting higher income-tax rate.

(4 marks) [CAFG - II New]

Answer:

The facts of the case are similar to ***Suresh Chand Talera v. Union of India (2006) 282 ITR (341) (M.P.)***.

In that case, the High Court observed that the definition of income under **Section 2(24)** is inclusive and not exhaustive. Hence, the fact that agricultural income has not been specified as one of the items in **Section 2(24)** does not mean that agricultural income is not included in the word "income" wherever the word "income" has been used in the Act.

Section 10 provides that in computing the income of the previous year of a person, any income falling in any of the clauses mentioned therein shall not be included. The first clause mentioned therein is "agricultural income". Thus, **Section 10** makes it clear that agricultural income is income but by express provision therein, agricultural income has been excluded from the total income of an assessee for the purpose of levy of income-tax.

However, **Section 4(1)**, which is the charging Section, provides that while the total income of a person is to be determined in accordance with the provisions of the **Income-tax Act, 1961**, the rate or rates at which income-tax will be paid on such income for any assessment year will be stipulated in the relevant Finance Act. The Annual Finance Act provides that the net agricultural income shall be taken into account in the manner provided therein for the purpose of determining the rates of income-tax applicable to the income of the assessee.

Therefore, agricultural income of the minor child of the assessee has to be included in the income of the assessee for the purpose of determining the rate of income-tax applicable to the income of the assessee.

Applying the rationale of the above ruling, the contention of Mr. Johny is incorrect. The agricultural income of his minor son, has to be included in the income of Mr. Johny for rate purposes, since the phrase "income as arises or accrues to his minor child" used in **Section 64(1A)** includes agricultural income also.

2015 - June [2] (a) Ray Charitable Trust was formed on 1st April, 2021. The object of the trust is to provide financial assistance to the individuals who are below the poverty line and undergoing medical treatment in hospitals. The trust makes direct payments to the concerned hospitals where the individuals are admitted for treatment.

The trust applied for registration under Section 12AB of the Income-tax Act, 1961 on 4th April, 2024 and the registration was granted by the Commissioner of Income Tax on 30th April, 2024.

Income of the trust from properties held in trust and voluntary contribution (not forming part of corpus of the trust) during the previous year 2022-23 and 2023-24 were ₹ 3.50 lacs and 5 lacs respectively. The trust applied ₹ 2 lacs and 3.50 lacs respectively, out of such incomes of the two years, towards its objects/purpose.

The trustees seek advice from you as to whether the trust is entitled to exemption under Section 11 in the assessment for Assessment Year 2023-2024, even though registration under Section 12AB was sought and granted in April, 2023. The proceeding for Assessment Year 2024-25 is pending before the Assessing Office.

What should be your opinion?

(4 marks)

(b) BKG LLP, a Limited liability partnership engaged in production of micro ovens is entitled to deduction under Section 10AA of the Income-tax Act, 1961 in respect of export profit of a unit established in a notified special economic zone (SEZ). It has another unit engaged in production of same item, but this units is not entitled to deduction under Section 10AA. Relevant details are furnished below:

Profit of unit located in SEZ	₹ 30,50,000
Export sales of above unit	₹ 90,00,000
Domestic sales of above unit	₹ 10,00,000
Profit of unit located in other area	₹ 10,00,000

Compute the income-tax liability of the assessee-LLP for Assessment Year 2024-25. **(10 marks)**

Answer:

(a) Benefit of registration to trust for earlier year:

As per, the finance Act, 2020, with effect from 1st June, 2020 in case where a trust or institution has been granted registration under **Section 12AB**, the benefit of **Section 11 and 12** shall be available in respect of any income held under trust in any assessment proceeding for an earlier assessment year which is pending before the assessing officer as on the date.

However, the above benefits are subject to condition that the objects and activities of the trust or institution in the relevant earlier assessment year should be the same as those on the basis of which registration under **Section 12AB** was granted.

Therefore, Roy Charitable Trust should be advised to claim the benefit of **Section 11** in respect of income from property held in trust and voluntary contribution received during the previous year 2022-23 and 2023-24 in assessment proceeding for assessment year 2024-25, if the above condition is satisfied.

Note: 1

12AB inserted with effect from the 1st day of June, 2020, in place of Section 12AA which provides as under:

The Principal Commissioner or Commissioner, on receipt of an application made under clause (ac) of sub-section (1) of section 12A, shall-

(a) where the application is made under sub-clause (i) of the said clause, pass an order in writing registering the trust or institution for a period of five years;

- (b) where the application is made under sub-clause (ii) or sub-clause (iii) or sub-clause (iv) or sub-clause (v) or item (B) of sub-clause (vi) of the said clause-
- (i) call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about-
 - (A) the genuineness of activities of the trust or institution; and
 - (B) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects;
 - (ii) after satisfying himself about the object of the trust or institution and the genuineness of its activities under item (A), and compliance of the requirements under item (B), of sub-clause (i),-
 - (A) pass an order in writing registering the trust or institution for a period of five years; or
 - (B) if he is not so satisfied, pass an order in writing_
 - (I) in a case referred to in sub-clause (ii) or sub-clause (iii) or sub-clause (v) of clause (ac) of sub-section (I) of section 12A rejecting such application and also cancelling its registration;
 - (II) in a case referred to in sub-clause (iv) or in item (B) of sub-clause (vi) of sub-section (I) of section 12A, rejecting such application, after affording a reasonable opportunity of being heard;
 - (B) for clause (c), the following clause shall be substituted, namely:-
 - (c) where the application is made under item (A) of sub-clause (vi) of the said clause or the application is made under sub-clause (vi) of the said clause, as it stood immediately before its amendment vide the Finance Act, 2023, pass an order in writing provisionally registering the trust or institution for a period of three years from the assessment year from which the registration is sought;

Note: 2

All the Trust registered under section 12AA are also required to get fresh registration under section 12AB if period of 5 years expired on or after 1st June 2020.

(b) Computation of total income and tax liability of BKG LLP for assessment year 2024-25 under normal provisions

Particulars	(₹)	(₹)
Profit of unit located in SEZ	30,50,000	
Less: Deduction under Section 10AA		
$\left[\begin{array}{l} \text{Profit of business of Undertaking} \\ \text{being SEZ unit} \end{array} \right] \times \frac{\text{Export Turnover of Undertaking}}{\text{Total Turnover of business of Undertaking}}$ [₹ 30,50,000 × 90,00,000 ÷ 1,00,00,000]	27,45,000	
Taxable profits of SEZ unit		3,05,000
Profit located in other area		10,00,000
Total income		13,05,000
Tax on above @ 30%	3,91,500	
Health and Education cess @ 4%	15,660	
Total Tax Payable		4,07,160

Computation of adjusted total income and alternate minimum tax for the assessment year 2024-25

Particulars	(₹)
Total income as computed	13,05,000
Add: Deduction under Section 10AA	27,45,000
Adjusted total income	40,50,000
Tax on above @ 18.5%	7,49,250

Since tax on adjusted total income is higher than tax calculated on total income, adjusted total income is deemed to be total income.	
Tax payable (7,49,250 + Health and Education cess @ 4%)	7,79,220

2015 - June [3] (c) Brett Lee gives you the following information for the previous year 2023-24:

	₹
(i) Income from business (computed)	6,00,000
(ii) Dividend income from shares in listed Indian companies	90,000
(iii) Consultancy charges paid to investment consultant for investing in shares referred in (ii) above. This has been deducted while computing business income given in (i) above.	8,000
(iv) Interest expenditure relating to both taxable and non-taxable income. The entire amount has been deducted while computing income from business given in (i) above.	1,00,000

Value of investments on the first and last days of the previous year are ₹ 8 lakhs and ₹ 10 lakhs respectively.

Value of total assets appearing in Balance Sheet on the first and last day of the previous year are ₹ 40 lakhs and ₹ 50 lakhs respectively.

Brett Lee claims that no expenditure was incurred for earning exempt income during the year. The Assessing Officer is not satisfied with the claim of the assessee.

Compute the total income of Brett Lee for the assessment year 2024-25.

(6 marks)

Answer:

Expenditure in relation to exempt income:

Expenditure incurred in relation to exempt income is not allowed as deduction while computing the income chargeable to tax, as per **Section 14A of the Income-tax Act, 1961**. However, if the Assessing Officer is not satisfied with the correctness of the claim of the assessee in relation to

exempt income or with the claim made by the assessee that no expenditure was incurred in relation to exempt income, he shall determine the amount of expenditure in relation to such income in the manner provided in Rule 8D.

Computation of amount as per rule 8D

Particulars	₹
Amount of expenditure directly relating to exempt income:	
Consultancy charges paid to investment consultant	8,000
Calculation of interest expenditure attributable to exempt income	
Interest expenditure × Average value of investment on the first and last day of the previous year ÷ Average of total assets of the assessee appearing in the balance sheet on the first and last day of the previous year i.e. ₹ 1,00,000 × 9,00,000 ÷ 45,00,000	20,000
One percent of the average value of investment, income from which is exempt from tax i.e. 1% of the average value of investment in shares. i.e. ₹ 9,00,000 × 1%	9,000
Total amount of expenditure in relation to exempt income	37,000
Computation of total income	
Income from business	6,00,000
<i>Add:</i> Amount of expenditure added U/s.14A	37,000
Total Income	6,37,000

Further an assumption is to be made as follows:

Since it has been stated in the question that Mr. Brett Lee claims no expenditure was incurred by him for exempt income earned, it is logical to assume that total interest expenditure of ₹ 1,00,000 has been deducted to arrive at the income from business of ₹ 6,00,000. The amount of interest expenditure in relation to exempt income has been added back to compute the resultant total income.

2015 - June [6] (b) Lasya (P) Ltd. engaged in manufacture of toys, reported a net profit of ₹ 60,00,000 in the Profit and Loss Account for the year ended 31.03.2024. The following amounts were debited/credited to profit and loss account:

- (i) Non-compete fee paid to an ex-director ₹ 10,00,000 on 10.12.2023 and no tax was deducted at source.
- (ii) One employee who was employed only upto December, 2023 was paid salary of ₹ 5,00,000 and on which no tax was deducted at source. The whereabouts of the employee is not known and it is not possible to ascertain whether he has admitted and paid income tax on such salary income.
- (iii) ₹ 11,50,000 was incurred towards sponsoring of higher studies of a director's son in United Kingdom.
- (iv) ₹ 15,00,000 was incurred on glow-sign boards displayed at dealer outlets and on which depreciation at 15% was claimed.
- (v) One factory in Meerut was closed and a sum of ₹ 12,00,000 was paid as retrenchment compensation to employees on its closure.
- (vi) Dividend received from its subsidiary company located in Mysore ₹ 1,05,000.
- (vii) ₹ 1,20,000 representing amount forfeited after the buyer of a vacant site backed out of the agreement.

Compute the total income of Lasya (P) Ltd. for the assessment year 2024-25 (ignore MAT provisions). **(6 marks)**

Answer:

Lasya (P) Ltd.

Computation of total income for the year ended 31.03.2024

Particulars	₹
Net Profit as per Profit and Loss Account	60,00,000
<i>Add:</i>	
Non-compete fee paid to ex-director and on which TDS under Section 194J should have been deducted. However, the disallowance is limited to 30% as per Section 40(a)(ia).	3,00,000

Salary paid to an employee without deduction of tax at source is liable for disallowance at 30% as Section 40(a)(ia) will apply. The scope of disallowance U/s 40(a)(ia) has been widened by the Finance (No.2) Act, 2014	1,50,000
Expenditure incurred for sponsoring higher studies of director's son has no nexus to the business of the assessee company and hence is not deductible. [<i>Echjay Forgings Ltd v. ACIT (2010) 328 ITR 286 (Bom)</i>].	11,50,000
Retrenchment compensation paid to employees on closure of one unit when the business of the assessee is continued, such expenditure is deductible. Therefore, the amount paid is a deductible expenditure. [<i>CIT v. DCM Ltd. (2010) 320 ITR 307 (Del)</i>]	
	76,00,000
<i>Less:</i>	
Expenditure incurred on glow-sign boards displayed in dealers outlets is revenue expenditure as they have short life and the sign board is not an asset of permanent nature. It is eligible for deduction as revenue expenditure. Since depreciation at 15% has already been claimed, the balance is deductible. [₹15 lakhs minus ₹ 2,25,000] [<i>CIT v. Orient Ceramics & Industries Ltd. (2013) 358 ITR 49 (Del)</i>]	12,75,000
Dividend received from its subsidiary company	10,05,000
Advance forfeited on transfer of capital asset taxable under the head 'other sources' hence, excluded now.	1,20,000
	15,00,000
Income from Business (A):	61,00,000

Income from Other sources (B): Advance forfeited for transfer of vacant site	1,20,000
Dividend received from its subsidiary company	1,05,000
Total Income (A + B)	63,25,000

Note:

Dividend income taxable in hands of shareholders w.e.f. 1-4-2020

Till Assessment Year 2020-21, the dividend income from a domestic company was exempted in the hands of shareholder by virtue of exemption under section 10(34) of the Income Tax Act. But in this case, the company was liable to pay Dividend Distribution Tax (DDT) under section 115-O. However, the Finance Act, 2020 has made provisions of section 115-O ineffective which means that the domestic companies are no more liable to pay DDT on such dividend paid by them. Thus, with effect from A.Y. 2021-22, the dividend income is taxable in the hands of the shareholders and the burden of tax payment is shifted from company to the shareholders.

2015 - Dec [2] (a) VKS Hotels (P) Ltd. located in Nilgiri District of Tamilnadu State, was established in April, 2019. Nilgiri District is a specified district having 'World Heritage Site' status and is eligible for deduction under Section 80-ID of the Income Tax Act, 1961. It furnishes you the following information for the year ended 31.03.2024:

- (i) Net Profit as per Profit and Loss Account ₹ 20 lakhs.
- (ii) Depreciation debited in the books ₹ 70 lakhs.
- (iii) Amount received towards Dharmadha by separately mentioning in the sales bills ₹ 7,00,000. This has not been credited to Profit and Loss Account.
- (iv) ₹ 10 lakhs was paid towards use of trademark for 10 years in April, 2023. This has been debited to Profit and Loss Account.
- (v) Provision for gratuity based on actuarial valuation debited to Profit and Loss Account ₹ 8 lakhs.
- (vi) Dividend received from subsidiary Indian company credited to Profit and Loss Account ₹ 2,00,000.
- (vii) Depreciation as per Income Tax Rules ₹ 60 lakhs.

- (viii) ₹ 5,00,000 was paid towards feasibility study for examining proposals for commencing a textile business and the project was abandoned. Compute the total income of VKS Hotels (P) Ltd. for the Assessment Year 2024-25. Ignore MAT provisions. **(7 marks)**

Answer:

Computation of total income of Raghu Hotels (P) Ltd. for the Asst. year 2024-25

Particulars	₹	₹
Net Profit as per Profit and Loss Account		20,00,000
<i>Add:</i>		
Depreciation debited to Profit and Loss Account		70,00,000
Amount paid towards use of trademark is a revenue expenditure since the assessee has not purchased trademark on outright basis		Nil
Provision for gratuity debited to Profit and Loss Account not allowable – Sec. 40A(7)		8,00,000
Expenditure towards feasibility of study for new business not allowable business (since this is unrelated to existing business - <i>CIT Vs. Priya Village Roadshows Ltd. 332 ITR 594</i>)		5,00,000
		1,03,00,000
<i>Less:</i> Amount received from Dharmada not liable to tax - Bijili Cotton Mills (P) Ltd.'s case Supreme Court	7,00,000	
Dividend received from subsidiary company	2,00,000	
Depreciation as per Income-tax Rules	60,00,000	69,00,000
Gross Total Income		34,00,000
<i>Less:</i> Deduction U/s 80-ID @ 100% of the profits		34,00,000
Total Income		NIL

2015 - Dec [6] (b) Rishikesh Fertilizers Ltd., seeks your opinion on the deductibility of the following items debited to the Profit and Loss Account, while computing its business income:

- (i) ₹ 50,000 paid as secret commission to a Government department official, an unidentified person. The payment has been approved by the Board as a normal trade practice.
- (ii) ₹ 2 lakhs incurred towards issue of convertible debentures, the debentures being convertible into equity shares after one year from the date of issue.
- (iii) ₹ 1 lakh paid to a local gang for rescuing an executive director who was kidnaped. **(7 marks)**

Answer:

- (i) Any expenditure incurred in contravention of any law, for the time being in force, is not deductible **U/s 37** of the Income-tax Act, 1961, even though it is incurred wholly and exclusively for the purposes of business.

Secret commission paid to a Government official is covered by the above and hence is not deductible. It is not relevant that it is a trade practice or has been approved by the Board. This is not secret commission to some general public, but to a Govt. official, which is not ethical.

Further, since no tax would be deducted at source (as the payee is not identified), the provisions of **Section 40(a)(ia)** will also be attracted. Disallowance will arise on this count also.

Some of the earlier decisions rendered on the issue holding that secret commission might be allowable, will not hold good after the introduction of **Section 40(a)(ia)**.

- (ii) Expenses relating to issue of convertible debentures is in respect of a loan and cannot be equated to expenses incurred for issue of share capital. It is a deductible expenditure.

It is immaterial that the debentures are convertible into equity shares after one year. Hence ₹ 2 lacs can be allowed as deduction.

In the case of **CIT Vs. Secure Meters 321ITR 611 (SC)** the Supreme Court has clearly held that expenditure on issue of debentures, whether partly or fully convertible, is a deductible expenditure.

- (iii) Ransom money paid to for rescuing the executive director, who was kidnaped, cannot be said to be an expenditure incurred in contravention of any law, for the time being in force and not deductible **U/s 37** of the Income-Tax Act, 1961.

Therefore the said payment can be claimed as deduction, being a payment made wholly and exclusively in connection with the business. Without the executive director, the functioning of the company will be affected and hence expenditure incurred to rescue him will be deductible.

Similar view was taken in ***CIT Vs. Khem Chand Moti Lal Jain, Tobacco Products (P) Limited 340 ITR99 (P&H)***.

2015 - Dec [9] Sanvitha Manufacturing Industries Ltd. reports a net profit of ₹ 15 lakhs for the year ended 31.03.2024 after debit/credit of the following items:

A. Items debited to Profit and Loss Account:

	₹
(i) Provision for income tax	5,00,000
(ii) Expenditure towards amalgamation of Cochin Industries P Ltd., Cochin in December 2023.	8,00,000
(iii) Fees for technical services paid to foreign company without deduction of tax at source and no TDS was remitted till the date specified in Section 139(1).	1,00,000
(iv) Provision for Bad and Doubtful Debts	6,00,000
(v) Depreciation	40,00,000
(vi) Cash payments for purchase of raw materials in excess of ₹ 10,000. Aggregate of such payments	7,00,000
(vii) Bank term loan interest (actually paid during the year and up to the 'due date' for filing the return specified in Section 139(1) ₹ 3,00,000)	8,00,000
(viii) Rent paid for a branch premises owned by one of the directors who has 22% stake in the company. (25% of the expenditure is excessive to the prevailing market rent).	12,00,000

B. Items credited to Profit and Loss Account:

(i) Revaluation reserve in respect of fixed assets	7,50,000
(ii) Agricultural income –net	3,50,000
(iii) Deferred tax liability	4,00,000

Additional Information :

- (i) Depreciation debited to Profit and Loss Account given above includes ₹ 10,00,000 in respect of assets revalued.
- (ii) The following amounts are brought forward as on 01.04.2023, relating to the Assessment Year 2023-24:

Particulars	As per Books of Account ₹	As per Income Tax assessment ₹
Business Loss	22,00,000	Nil
Unabsorbed Depreciation	17,00,000	35,00,000

You are required to compute for the Assessment Year 2024-25:

- (i) Income liable to tax under Section 115JB of the Income Tax Act, 1961; and
- (ii) Total income chargeable to income tax, as per normal provisions.

(15 marks)

Answer:**Sanvitha Manufacturing Industries Ltd.****Computation of income liable to tax under Section 115JB for the A.Y. 2024-25**

Particulars		₹
Net Profit as per Profit and Loss Account		15,00,000
<i>Add:</i>	Provision for income-tax	5,00,000
	Expenditure towards amalgamation of Cochin Industries (P) Ltd. Cochin in December 2022 -need not be added back for computing income liable to tax u/s 115JB	Nil

	Fees for technical services paid to foreign company without deduction of tax at source - though liable for disallowance u/s 40(a)(I), no adjustment is required u/s 115JB.		Nil
	Provision for bad and doubtful debts -tantamount to provision for diminution in value of asset i.e. sundry debtor - hence added		6,00,000
	Depreciation debited to P&L account - added		40,00,000
	Cash payment for purchase of raw materials exceeding ₹ 10,000. Aggregate payments ₹ 7,00,000 - does not require any adjustment U/s115JB		Nil
	Bank term loan interest whether paid or not has no significance while computing income liable to tax U/s 115JB		Nil
	Rent paid to branch premises to a person having substantial interest is liable for disallowance U/s 40A(2)(b) but has no impact while computing income U/s 115JB.		Nil
			66,00,000
<i>Less:</i>	Amount withdrawn from revaluation reserve credited to P&L account	7,50,000	
	Agricultural income exempt U/s.10	3,50,000	
	Deferred tax liability credited to P&L account	4,00,000	15,00,000
			51,00,000
<i>Less:</i>	Depreciation excluding depreciation in respect of assets revalued (₹40 lakhs minus ₹10 lakhs)	30,00,000	

	Brought forward business-Loss or-unabsorbed depreciation as per books of account - whichever is less is deductible	17,00,000	
			47,00,000
	Income liable to tax U/s115 JB		4,00,000

**Sanvitha Manufacturing Industries Ltd.
Computation of total income for the A.Y.2024-25**

Particulars		₹
Net Profit as per Profit and Loss Account		15,00,000
<i>Add:</i>	Provision for income-tax	5,00,000
	Expenditure towards amalgamation of Cochin Industries (P) Ltd. Cochin in December 2023 - the expenditure is deductible in 5 equal annual instalments. 4/5th of the expenditure is added back (Section 35DD).	6,40,000
	Fees for technical services paid to foreign company without deduction of tax at source -liable for disallowance u/s 40(a)(l).	1,00,000
	Provision for bad and doubtful debts -disallowed	6,00,000
	Depreciation debited to P&L account - added back	40,00,000
	Cash payment for purchase of raw materials exceeding ₹ 10,000. Aggregate payments ₹ 7,00,000- disallowed u/s 40A(3)	7,00,000
	Bank term loan interest actually paid is only allowable. Unremitted portion of term loan interest added back	5,00,000

	Rent paid to branch premises to a person having substantial interest: Liable for disallowance u/s 40A(2)(b)		3,00,000
			88,40,000
<i>Less:</i>	Amount withdrawn from revaluation reserve credited to P&L account	7,50,000	
	Agricultural income exempt U/s10	3,50,000	
	Deferred tax liability credited to P&L account	4,00,000	15,00,000
			73,40,000
<i>Less:</i>	Depreciation excluding depreciation in respect of assets revalued (₹ 40 lakhs minus ₹10 Lakhs)	30,00,000	
	Unabsorbed depreciation brought forward from earlier years	35,00,000	
			65,00,000
	Total Income		8,40,000

2016 - May [3] (a) M/s. XYZ is commenced the business of manufacturing iron rods on 1st April, 2023. It had employed 200 workmen during the year which included the following.

Workman	No. of persons	Salary per month (in ₹)
Casual Labour	50	5,000
Workmen employed through contractor	25	7,500
Skilled labour	50	12,500

Semi-skilled labour	50	6,000
Skilled labour employed from 01-10-2022	25	12,500

Compute deduction available to M/s. XYZ if the profits derived during the financial year 2023-24 is ₹ 100 lakhs. **(6 marks) [CAFG - II New]**

Answer:

Computation of deduction under Section 80JJAA

Additional wages paid to new workers:

$(₹12,500 \times 50 \times 12) + (₹ 6,000 \times 50 \times 12) + (12,500 \times 25 \times 6) = ₹ 1,29,75,000$

Deduction under Section 80 JJAA:

30% of ₹ 1,29,75,000 = ₹ 38,92,500

Working Note:

Number of new regular workmen:

Total No. of workmen employed	200
Less: Casual Labour	50
Less: Employed through contract labour	25
Less: Workmen employed for a period of less than 150 days	Nil
Total number of new regular workmen	125

2016 - June [6] Ind Bharat Ltd. is engaged in manufacturing of textiles. Its Statement of Profit & Loss shows a Net Profit of ₹ 108 lakhs for the year ended 31.03.2024, after debiting or crediting the following items:

- Depreciation debited as per SLM basis ₹ 10 lakhs.
- Normal depreciation allowable ₹ 21 lakhs. The company has made addition to machinery, a new twisting machine on 12th June, 2023 of ₹ 15 lakhs. The new machine was put to use on 30th June, 2023.
- The company made cash payment for purchases on 05.06.2023 (bank holiday) ₹ 2,00,000.
- A bad debt write off in Financial Year 2019-20 of ₹ 5,00,000 was allowed in the assessment. ₹ 2,00,000 was recovered this year and is credited to general reserve.

- (v) Cash payment of ₹ 80,000 to a transporter on 04.06.2023 and who furnished his PAN.
- (vi) GST of ₹ 1,50,000 for the Financial Year 2022-23 was paid on 10.02.2024.
- (vii) Rent paid ₹ 2,40,000 inclusive of GST of ₹ 28,000. Tax was not deducted on the GST on rent paid.
- (viii) Expenditure towards alteration of Memorandum of Association for increase in authorized share capital ₹ 1 lakh.
- (ix) Legal expenses for issue of bonus shares ₹ 5,00,000.
- (x) Donation paid to a political party ₹ 4,50,000 by cheque and ₹ 2,70,000 by cash.
- (xi) Purchase of raw material from a company in which the directors are interested for ₹ 32,00,000 and the market value of the goods is ₹ 30 lakhs.
- (xii) Expenditure incurred towards complying with Corporate Social Responsibility obligation under the Companies Act, 2013 ₹ 3 lakhs.
- Compute the total income and tax payable by the company for the Assessment Year 2024-25. Ignore MAT provisions. **(16 marks)**

Answer:

**Computation of total income and tax payable of Ind Bharat Ltd.
For the Assessment year 2024-25**

Particulars	₹ in lakhs	
Net Profit as per Profit and Loss Account		108.00
<i>Add:</i> Amount debited to Profit & Loss Account but not allowed and other amounts		
Depreciation as per SLM method		10.00
Cash payment for purchases on bank holiday - allowed		_____
Bad debt recovered during the year credited to general reserve is chargeable to tax as the write off was allowed in the assessment earlier		2.00

Cash payment to transporter is liable for disallowance since the payment exceeds ₹ 35,000		0.80
TDS on rent payment excluding GST is Hence no disallowance		—
Expenses in connection with alternation of Memorandum of Association for enhancing authorized capital is not deductible. [<i>Punjab State Industrial Development Corpn Ltd. v. CIT 225 ITR 792 (SC)</i>]		1.00
Donation to political party considered under Section 80GGB		7.20
Expenditure being excessive or unreasonable compared to fair market value to be disallowed under Section 40A(2)(a)		2.00
Expenditure incurred towards CSR, not allowable in view of Section 37(1)		3.00
		134.00
<i>Less:</i> Deductions allowed		
Normal Depreciation	21	
Additional depreciation @ 20% on ₹ 15 lakhs	3	
GST paid is deductible on payment basis under Section 43B . Since it is debited on payment no adjustment is required	—	
Legal expenses for issue of bonus shares is deductible revenue expenditure as held in <i>CIT Vs. General Insurance Corporation 240 ITR 139</i> . Since the amount is already debited hence no adjustment is required	—	
		24.00

Business income/ Gross Total Income		110.00
<i>Less:</i> Deduction under Chapter VI-A		
Donation to political party by cash not allowed		
Donation to political party by cheque allowed U/s.80GGB		4.50
Total Income		105.50
Income tax liability @ 30%	31,65,000	
Surcharge @ 7% is applicable as the income exceeds ₹ 100 lakhs	2,21,550	
Health and Education cess @4%	1,35,462	
Total tax liability	35,22,012	

2016 - Dec [5] Peacock Ltd. is engaged in manufacturing of steel and cement. Its Statement of Profit & Loss shows a Net Profit of ₹ 45 lakhs for the year ended 31.03.2024. The following information is provided to you:

- (a) A provision was made to meet the loss suffered by subsidiary company by debiting Profit & Loss A/c ₹ 15 lakhs.
- (b) Provision for bad and doubtful debts debited to Profit & Loss A/c is ₹ 10 lakhs.
- (c) Deferred tax reversed and credited to Profit & Loss A/c ₹ 7 lakhs.
- (d) Agriculture income credited to Profit & Loss A/c ₹ 2 lakhs.
- (e) Dividend from Indian companies credited to Profit & Loss A/c ₹ 1 lakh.
- (f) Long term capital loss from off market sale of shares of listed companies ₹ 50,000. This is debited to Profit & Loss A/c.
- (g) A liability of ₹ 5 lakhs relating to earlier year omitted to be recorded in the books of account is now recorded by debiting Profit & Loss A/c.
- (h) Proposed dividend debited to Profit & Loss A/c ₹ 6 lakhs.
- (i) Amount of depreciation debited to Profit & Loss A/c ₹ 12 lakhs which includes depreciation on account of revaluation of assets of ₹ 3 lakhs.

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- (j) The company has brought forward business loss of ₹ 4 lakhs and unabsorbed depreciation of ₹ 10 lakhs as per the books of account.
- (k) The company made one contract payment of ₹ 8 lakhs without deduction of tax at source.
- (l) Provision for income tax debited to Profit & Loss A/c ₹ 20 lakhs.

Compute the minimum alternate tax under Section 115JB payable by the company for the assessment year 2024-25. *Ignore regular computation provisions.* **(16 marks)**

Answer:

**Computation of Book Profit & MAT of Peacock Ltd.
For A.Y. 2024-25**

	(₹)	(₹)
Net Profit as per Profit & Loss Account		45,00,000
<i>Add:</i>		
Provision for loss of subsidiary company		15,00,000
Provision for bad and doubtful debts - being a provision for diminution in value of asset		10,00,000
Long term capital loss on sale of shares through off market transaction debited to profit and loss account not to be adjusted (<i>Apollo Tyres Ltd v. CIT (255 ITR 273 (SC))</i>)		Nil
Prior period item of liability debited to Profit and loss account not to be adjusted (<i>Tamilnadu Cement Corpn Ltd v. Joint CIT (340 ITR 58 (Mad))</i>)		Nil
Proposed dividend debited to Profit and loss account		6,00,000
Depreciation debited to Profit and loss account		12,00,000
Contract payment without deduction of tax at source - not liable to be adjusted		Nil

Provision for income tax debited to profit and loss account		20,00,000
		1,08,00,000
<i>Less:</i>		
Deferred tax liability reversed and credited to profit and loss account is excluded	7,00,000	
Agricultural income credited to profit and loss account -excluded	2,00,000	
Dividend from Indian Companies (Note-1)	1,00,000	
Depreciation excluding depreciation on revalued amounts is deductible	9,00,000	
Brought forward loss or unabsorbed depreciation as per books of account whichever is less to be deducted	4,00,000	(23,00,000)
Book Profit u/s.115JB		85,00,000
MAT at 15.% plus cess @4%		13,26,000
Rounded off		13,26,000

Note:

Dividend income taxable in hands of shareholders w.e.f. 1-4-2020
Till Assessment Year 2020-21, the dividend income from a domestic company was exempted in the hands of shareholder by virtue of exemption under section 10(34) of the Income Tax Act. But in this case, the company was liable to pay Dividend Distribution Tax (DDT) under section 115-O. However, the Finance Act, 2020 has made provisions of section 115-O ineffective which means that the domestic companies are no more liable to pay DDT on such dividend paid by them. Thus, with effect from A.Y. 2020-21, the dividend income is taxable in the hands of the shareholders and the burden of tax payment is shifted from company to the shareholders.

2016 - Dec [6] (a) India Green LLP is carrying on two businesses viz. (i) wind power generation; and (ii) solar panels trade and erection. The firm has maintained two separate books of account. The wind power generation was commenced in the financial year 2018-19 and the solar panels trade and erection business in the financial year 2022-23. The following details are furnished:

- (i) Net Profit from wind generation before deduction under Section 80-IA ₹ 55 lakhs.
- (ii) Net Profit from solar panels trade and erection ₹ 30 lakhs before debiting interest on capital and working partners' salary.
- (iii) The LLP agreement provides for interest on capital and working partner salary payable only in respect of solar panels trade and erection. No such payment is permissible out of the income of wind power generation. The amount of capital of the partners as per partnership agreement in solar panels trade and erection which is eligible for interest is ₹ 100 lakhs and the LLP agreement authorizes working partner salary of ₹ 18 lakhs.
- (iv) The LLP has not claimed deduction under Section 80-IA so far. There is no unabsorbed depreciation or business loss brought forward by the LLP from either of the businesses.
- (v) The depreciation on wind mill meant for generation of power claimed so far amounts to ₹ 300 lakhs. The WDV of the wind mill as on 01.04.2023 is to be taken as 'nil'.

Compute the total income of the LLP for the assessment year 2024-25. *Computation should be made in the manner, most beneficial to the assessee.*

(6 marks)

(b) H. Ltd. is engaged in manufacturing of steel. It set up a manufacturing unit in a notified backward area in the State of West Bengal. It acquired new plant and machineries at a cost of ₹ 20 crores for such unit on 01.07.2023. It further invested ₹ 25 crores in plant and machinery on 31.12.2023. Investment on 31.12.2023 includes machinery worth ₹ 10 crores previously used by another manufacturer.

- (i) Compute depreciation under Section 32 and other deductions, if any admissible under the Income-tax Act for assessment year 2024-25. Also compute written down value as on 01.04.2024.
- (ii) Will your answer be different, if the manufacturing unit is set up by H. LLP, a limited liability partnership, instead of as a limited company?
(10 marks)

Answer:

(a)

Computation of Total Income of India Green LLP

Particulars	Wind Power	Solar Panels
Net Profit as per Profit and Loss Account	55,00,000	30,00,000
Less: Interest on capital allowable @ 12%		12,00,000
Book Profit		18,00,000
Less: Working partner salary		
On first ₹ 3,00,000 @ 90% ₹ 2,70,000		
On the balance ₹ 15 lakhs @ 60% <u>9,00,000</u>		11,70,000
	55,00,000	6,30,000
Gross Total Income (55 lakhs + 6.30 lakhs)		61,30,000
Less: Deduction U/s. 80-IA @ 100% on ₹ 55 lakhs		55,00,000
Total Income		6,30,000

Note: Deduction **U/s.80-IA** is to be allowed as and when claimed by the assessee for 10 consecutive assessment years commencing from the assessment year in which such claim is made. The depreciation on wind mill already adjusted including losses if any when already adjusted against other incomes, it need not be again reckoned for deciding the quantum of deduction **under Section 80-IA. [Velayudhaswamy Spinning Mills (P) Ltd. v. Asst. CIT (2010) 340 ITR 477 (Mad)]**

(b) (i) Computation of Depreciation u/s 32 of H. Ltd. A.Y. 2024-25

Particulars	₹ (in crores)
Cost of Plant & Machinery acquired on 01/07/2023	20.00
Add: Addition on 31/12/2023	25.00
	45.00
Less: Depreciation at Normal rate	
@ 15% on 20.00 crores	3.00
@ 7.5% on 25.00 crores	<u>1.875</u>
	4.875
Less: Additional Depreciation	
@ 20% on 20.00 crores	4.00
@ 10% on 15.00 crores	<u>1.50</u>
	5.50
WDV as on 01/04/2024	34.625

Computation of Investment Allowance u/s 32 AC

Total Cost of New Plant & Machinery	35.00
Investment Allowance @ 15%	5.25

- (ii) Yes, In case of LLP Deduction u/s 32 AC for Investment Allowance will not be available.

2017 - June [2] (a) Mitra & Co. a partnership firm consisting of 5 partners was constituted on 01.04.2023. On the same date all the partners contributed capital of ₹ 5 lakhs each. Also, one partner Ashwin contributed a vacant land owned by him as his capital contribution on the same date besides capital contribution in cash. The land was inherited by him from his father in June 2014 when the fair market value was ₹ 15 lakhs. It was acquired originally by his father in April, 2005 for ₹ 1 lakh. The fair market value on the date of contribution was ₹ 30 lakhs and it was recorded in the books at ₹ 40 lakhs by credit to his capital account.

The firm was engaged in developing and trading of vacant sites. It incurred development expenses of ₹ 18 lakhs on the land contributed by the partner Ashwin. The total extent of land contributed amounts to 30,000 sq. ft. After leaving space for road, park etc. the firm could plot 8 sites of 2400 sq.ft.

each, which were sold for ₹ 10 lakhs each after incurring brokerage @ 2.5% of the sale price. The stamp duty valuation was ₹ 12 lakhs for each plot of land.

The deed of partnership provides for monthly working partner's salary of ₹ 20,000 each and interest on capital (including contribution of land) at 15% per annum.

Cost inflation index : F.Y. 2005-06 = 117; F.Y. 2014-15 = 240; F.Y. 2023-24 = 348

Compute the presumptive income under Section 44AD and income as per the regular provisions of the firm for the Assessment Year 2024-25. Also, work out the tax implication in the hands of partner, Mr. Ashwin. **(8 marks)**

(b) ACHARYA LLP, a limited liability partnership in India is engaged in development of software and providing IT enabled services through two units, one of which is located in a notified Special Economic Zone (SEZ) in Chennai (commenced from 01.04.2009). The particulars relating to previous year 2023-24 furnished by the assessee are as follows:

Total Turnover : SEZ unit ₹ 120 lakhs and the other unit ₹ 100 lakhs

Export Turnover : SEZ unit ₹ 100 lakhs and the other unit 60 lakhs

Profit : SEZ unit ₹ 48 lakhs and the other unit ₹ 42 lakhs

Amount debited to Profit and Loss Account towards Special Economic Zone Re-Investment Reserve Account ₹ 21 lakhs.

The Assessee has no other income during the year.

- (i) Compute tax payable by ACHARYA LLP for the Assessment Year 2024-25.
- (ii) Will the amount of tax payable change, if ACHARYA LLP is an overseas entity? **(8 marks)**

Answer:

(a)

**Computation of Total Income of Mitra & Co.
for the Assessment Year 2024-25**

		Regular provisions	Presumptive provisions
Sale consideration		80,00,000	80,00,000
Income @ 8%			6,40,000

Cost of land as recorded in the books (As per Section 45(3))	40,00,000		
Brokerage @ 2.5%	2,00,000		
Development expenses	18,00,000		
Interest on capital-cash ₹ 25 lakhs @ 12%	3,00,000		
Interest on capital in kind ₹ 40 lakhs @ 12%	<u>4,80,000</u>	<u>67,80,000</u>	
Book Profit		12,20,000	
<i>Less: Deduction U/s. 40(b)</i>			
Actual salary paid ₹ 20,000 × 5 × 12 (A)	12,00,000		
Allowable U/s. 40(b)			
On first ₹ 3,00,000 @ 90%	2,70,000		
On balance ₹ 9,20,000 @ 60%	<u>5,52,000</u>		
(B)	8,22,000		
Lesser of the two is deductible		8,22,000	
		3,98,000	
<i>Add: The difference between fair market price and sale consideration under Section 43CA. FMV exceeds more than 20% of sale consideration.</i>		Nil	Nil
Total Income		3,98,000	6,40,000

Impact on partner Mr. Ashwin			
Sale consideration (deemed)	40,00,000		
<i>Less:</i> Indexed cost			
₹ 1,00,000 × 348/117 [See Note below]	2,97,436		
Long-term capital gain	37,02,564		
Income from Business			
Interest on capital-cash	60,000		
Interest on capital contributed - in kind	4,80,000		
Working partner salary @ 20% ₹ 8,22,000	1,64,400		
Total Income	44,06,964		

Note 1: Ashwin inherited the land from his father in June 2014 and his father had acquired the same in April, 2005. There are number of High Court decisions which state that in such a situation, one has to go back till the capital asset was acquired in a mode other than those not regarded as “Transfer”.

Note 2: As per Amendment made by Finance Act, 2020 w.e.f. 1st April 2020 where the value adopted or assessed or assessable by the stamp valuation authority does not exceed 110% of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purpose of Section 48, be deemed to be the full value of the consideration.

And where the value adopted or assessed or assessable by the stamp valuation authority is exceeds 110% of the consideration received or accruing as a result of the transfer then Stamp Duty Value shall, for the purpose of Section 48, be deemed to be the full value of the consideration.

Note 3:**In section 43CA of the Income-tax Act:**

(a) in sub-section (1), after the proviso, the following proviso shall be inserted, namely:—

Provided further that in case of transfer of an asset, being a residential unit, the provisions of this proviso shall have the effect as if for the words "one hundred and ten per cent.", the words "one hundred and twenty per cent." had been substituted, if the following conditions are satisfied, namely:—

- (i) the transfer of such residential unit takes place during the period beginning from the 12th day of November, 2021 and ending on the 30th day of June, 2022;
- (ii) such transfer is by way of first time allotment of the residential unit to any person; and
- (iii) the consideration received or accruing as a result of such transfer does not exceed two crore rupees.;

**(b) Computation of Total Income and
Tax Payable by Acharya LLP
for the A.Y. 2024-25**

(i)

Particulars	Amount (₹)
Profits and gains of business or profession	
From eligible business (i.e. SEZ unit)	48,00,000
From non eligible business	42,00,000
Gross Total Income	90,00,000
Less: Deduction u/s 10AA	
(i) Amount transfer to SEZ Re-Investment Reserve Account	21,00,000

or	
(ii) 50% of Export Profit	
$\left(48,00,000 \times \frac{1,00,00,000}{1,20,00,000} \right) \times 50\%$	<u>20,00,000</u>
(Whichever is less)	20,00,000
Total Income	70,00,000
Tax on Total Income @ 30%	21,00,000
Add: Health and Education cess @ 4%	84,000
Total Tax Payable	21,84,000

- (ii) No the amount of tax payable will not change if Acharya LLP is an overseas entity.

2017 - June [3] (b) (i) Balaji Airlines Ltd. paid ₹ 10 lakhs to Airport Authority of India towards landing and parking charges. The payment was towards use of land in the airport besides technical services involving navigation, security and other ancillary services. The tax was deducted at source under Section 194C at 2%. The Income Tax Officer (TDS) held that the assessee ought to have deducted tax under Section 194-I i.e. towards rent. Discuss the consequence of the action of the Assessing Officer and also the correctness of such decision. **(4 marks)**

- (ii) Venkat & Co. a partnership firm was constituted on 01.06.2021 with four partners. All the partners contributed ₹ 10 lakhs each by way of capital. While examining the return of the Assessment Year 2023-24, the Assessing Officer verified the source of investments made by the partners. Not satisfied with the explanation of the partners/firm, the Assessing Officer assessed to tax ₹ 25 lakhs as unexplained cash credit under Section 68 of the Act in the hands of the firm. Decide the validity of the action of the Assessing Officer. **(4 marks)**

Answer:**(i) Japan Airlines Co. Ltd. V. Commissioner of Income Tax [2015] (Supreme Court)**

Landing and Parking charges payable by Airlines in respect of aircrafts are not for the 'use of land' per se but the charges are in respect of number of facilities provided by the Airport Authority of India. Thus landing and parking charges payable by Airlines would attract TDS under **Section 194C** and not under **Section 194-I**.

The Supreme Court held as under:

- (1) We are convinced that the charges which are fixed by the AAI for landing and take-off services as well as for parking of Aircrafts are not for the 'use of land'. These charges are for services and facilities offered in connection with the aircraft operation at the airport. These services include providing of air traffic services, found safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport.
- (2) Therefore, it is held that the charges are not for use of land per se and therefore, it cannot be treated as 'Rent' within meaning of **Section 194-I** of the Act. However, TDS shall be deducted under **Section 194C**.

Hence, the action of the assessing officer is not correct.

(ii) No, the action of the Assessing Officer is not valid.

Amount brought as capital in the firm could not assessed as cash credit in the firm. Merely due to partners failed to prove source of amount introduction as capital in their individual hands, such deposit to be added in the hands of partners only and not in the hands of assessee firm.

However, the Assessing Officer may convey such information to the jurisdiction officer of the partners and explained credit may be added to the income of the partners concerned in terms of **Section 69**.

2017 - June [4] (b) The statement of profit & loss of BG (P) Ltd, a resident company engaged in manufacturing activity, shows a net profit of ₹ 36 lakhs for the year ended 31.03.2024, after debit/credit of the following items:

Credited to Profit and Loss Account:

- (i) Long term capital gain on sale of vacant site ₹ 25,00,000.
- (ii) Dividend from Indian companies ₹ 10,20,000.
- (iii) Rent from commercial property ₹ 3,00,000.

Debited to Profit and Loss Account:

- (i) Depreciation ₹ 13,00,000.
- (ii) Donation to electoral trust ₹ 80,000.
- (iii) Advertisement in souvenir of political party ₹45,000.
- (iv) Interest paid to non-resident ₹ 1,00,000 (without deduction of tax at source).
- (v) Salary payable to managing director ₹ 15,00,000 but not paid till 31.03.2024. (no tax was deducted at source).
- (vi) Sold goods for ₹ 5 lakhs to a firm in which the wife of managing director had 25% share. Discount @ 10% of the sale price was given to the firm.
- (vii) Loss from trading in commodity derivatives ₹ 1,60,000.
- (viii) Provision for income-tax ₹ 4,25,000.
- (ix) Proposed dividend ₹ 7,50,000.

Additional Information:

Depreciation allowable as per the Income-tax Act, 1961 ₹ 14,50,000.

The long-term capital gain on sale of unused land (computed) is ₹ 21,20,000.

The company purchased a residential building in December 2023 by investing the entire sale consideration. The newly acquired building was meant to be used as quarters by managing director.

Compute the total income of the company for the Assessment Year 2024-25.

Ignore MAT provisions.

(11 marks)

Answer:

Computation of Total Income of BG Pvt. Ltd. for the A.Y. 2024-25

Particulars	Amount (₹)	Amount (₹)
Net profit as per P & L A/c		36,00,000
<i>Less:</i> Amount credited to P & L A/c but not taxable under the head profits & Gains of Business or profession		

(i) Long Term capital gain on sale of vacant site	25,00,000	
(ii) Dividend from Indian companies	10,20,000	
(iii) Rent from commercial Property	3,00,000	(38,20,000)
		(2,20,000)
<i>Add: Amount debited to P & L A/c but not allowed</i>		
(i) Depreciation	13,00,000	
(ii) Donation to electoral trust	80,000	
(iii) Advertisement in souvenir of political party	45,000	
(iv) Interest paid to non-resident (without TDS)	1,00,000	
(v) 30% of salary payable to Managing Director (without TDS) (15,00,000 × 30%)	4,50,000	
(vi) Loss from trading in commodity	1,60,000	
(vii) Provision for Income Tax	4,25,000	
(viii) Proposed Dividend	7,50,000	33,10,000
		30,90,000
Less: Allowed Expenses		
Depreciation as per Income Tax Rules		14,50,000
Income from Business		16,40,000
<i>Less: Loss from Trading in commodity derivatives</i>		1,60,000
Income from Business		14,80,000

Income from Capital Gains		
Long Term Capital Gain on sale of unused land	21,20,000	
<i>Less: Exemption u/s 54F (Available to individual & HUF)</i>	Nil	21,20,000
Income from House Property		
Gross Annual value being Rent from commercial property	3,00,000	
<i>Less: Municipal Taxes paid</i>	Nil	
Net Annual value	3,00,000	
<i>Less: Deduction u/s 24</i>		
(1) 30% of Net Annual value as Standard deduction	90,000	2,10,000
Income from other sources		
Dividend from Indian Companies (Note-1)		10,20,000
Gross Total Income		48,30,000
<i>Less: Deduction u/s 80GGB</i>		
Donation to Electoral Trust		80,000
Total Income		47,50,000

Note:

Dividend income taxable in hands of shareholders w.e.f. 1-4-2021

Till Assessment Year 2021-22, the dividend income from a domestic company was exempted in the hands of shareholder by virtue of exemption under section 10(34) of the Income Tax Act. But in this case, the company was liable to pay Dividend Distribution Tax (DDT) under section 115-O. However, the Finance Act, 2020 has made provisions of section 115-O ineffective which means that the domestic companies are no more liable to

pay DDT on such dividend paid by them. Thus, with effect from A.Y. 2022-23, the dividend income is taxable in the hands of the shareholders and the burden of tax payment is shifted from company to the shareholders.

2017 - June [5] (b) Brahma Ltd., discarded certain number of assets forming part of a block of assets during the previous year 2023-24. The Assessing Officer has disallowed the depreciation pertaining to such discarded assets. Discuss whether such action of the Assessing Officer is tenable in law.

(4 marks)

(c) Maushyaputra Ltd., issued debentures of ₹ 5 crores, redeemable after six years. The debenture holders were given an option of taking up the interest for all the six years upfront, at a discount. All the debenture holders opted for the same. The company complied with the TDS formalities. The Assessing Officer is of the view that only one-sixth of the interest is allowable in the current year.

Is the contention of the Assessing Officer correct in law? **(5 marks)**

Answer:

(b) The action of the Assessing Officer is tenable in law:

Provisions of **Section 32** regarding claim of depreciation are given herein below:

WDV of Block of Asset as on 1 st day of the previous year	xxx
<i>Add:</i> Assets acquired/purchased during the previous year	xxx
	xxx
<i>Less:</i> Assets sold/disposed off during the previous year	xxx
WDV (Balance) of computation of Depreciation at prescribed rate	xxx

Note -1:

Depreciation on Discarded Assets:

The issue under consideration is whether disallowance of depreciation made by the AO in arriving at the WDV of the block of asset, with regard to the discarded asset is justified.

One of the conditions for claim of depreciation under section 32 is that the eligible asset must have been put to use for the purpose of business or profession.

The other aspect to be considered is whether merely discarding an obsolete machinery, which is physically available, will attract the expression “moneys payable appearing in section 43(6), so as to deduct its value from the WDV of the block.

The expression used for the purposes of the business in section 32 when used with respect to discarded machinery would mean the use in the business not only in the relevant financial year/previous year but also in the earlier financial years.

The discarded machinery may not be actually used in the relevant previous year but depreciation can be claimed as long as it was used for the purposes of business in the earlier year provided in block continues to exist in the relevant previous year.

Therefore, the condition for claiming depreciation in respect of the discarded machine would be satisfied if it was used in the earlier previous years for the business.

Coming to the issue of “moneys payable” as per section 43(6), the machinery has not been sold as machinery or scrap or disposed off, and it continues to exist, hence it will not form part of “moneys payable” which alone is deductible while computing the WDV of the block to which it belongs.

The disallowance by the AO is hence not tenable in law, Such a view was taken in the case of *CIT V. Yamaha Motor India Pvt. Ltd. (2010) 328 ITR 297 (Del.)*.

- (c) The contention of the assessing officer is not correct in law:
Taparia Tools Ltd. V. Joint commissioner of Income Tax (2015) 372 ITR 605 (SC) facts of the case:

The assessee issued non-convertible debenture and gave two options as regards payment of interest to the subscribers/debenture holders, they could either receive interest periodically (i.e. half yearly) at 18% per annum over a period of five years, or opt for one time upfront payment of ₹ 55 per debenture. In second option, ₹ 55 per debenture was to be

paid immediately upfront on account of interest. At the end of debenture period of five years, the debentures were to be redeemed at the face value of ₹ 100. The said upfront payment of interest on debentures were shown by the assessee as deferred revenue expenditure in the books of accounts to be written off over a period of five years. Notwithstanding this accounting treatment given to the payment qua-interest, assessee claimed such expenditure as fully deductible expenditure in the first year, being the year of payment. The Assessing Officer, However, treated the expenditure as “Deferred Revenue Expenditure” to be allowed over the tenure of debenture and hence, allowed only one fifth of the payment made and disallowed the balance of claim.

Supreme Court’s Observations: The Supreme Court observed that while examining the allowability of deduction, the Assessing Officer as to consider the genuineness of borrowing. Under **Section 36(1)(iii)**, any amount paid on account of interest is in admissible deduction, if the capital was borrowed by the assessee and the borrowings was for the purpose of business or profession. The Supreme Court opined that once genuineness was proved and conditions of **Section 36(1)(iii)** read with **Section 43(2)** were satisfied, the benefit of deduction in the year in which the amount of interest was actually paid or incurred can not be denied. In the present case, the Assessing Officer has not disputed the issues of debenture and use of funds for business purpose.

Moreover, the Supreme Court also noted that there is no concept of deferred revenue expenditure in the Income Tax Act, 1961, except under specified Section such as **Section 35D** meant for amortization over a period of time. Normally, revenue expenditure in the year in which it is incurred. However, if the assessee wants to spread the expenditure over a period of ensuring years, it can be allowed only if the principle of matching concept is satisfied. Entries in books of accounts are not conclusive and the matter has to be examined on the touch stone of the provisions contained in the act.

The Supreme Court took note that the assessee had issued debentures with two options for payment of interest and if the interest is allowed by spread over it would amount to treating both the methods of interest

payment at par, which was clearly un-sustainable by discharging the liability in the first year itself, the assessee had benefitted by making payment of a lesser amount of interest in comparison to the interest which was payable under the first option over a period of five years. When the assessee did not seek spread over of expenditure and had claimed the entire expenditure in the same year and return was filed in that manner. The assessing officer was bound to carry out the assessment by applying the provisions of the act and not to go beyond the said return. The statute enables an entitled the assessee to claim the entire upfront interest paid in the year of payment.

Supreme Court Decision: The Supreme Court, accordingly, held that the assessee would be entitled to deduction of the entire upfront interest paid in the same year in which amount was actually paid.

Conclusion: On the basis of above decision of Supreme Court. The contention of the Assessing Officer is not correct in law.

2017 - June [6] (a) Pradhan (P) Ltd. gives you the following information for the Financial Year 2023-24:

- (i) It paid a refundable deposit of ₹ 5 lakhs to the landlord where the company has commenced manufacturing activity during the year.
- (ii) It paid ₹ 3 lakhs to a hotel accommodation where the training programme for the marketing force was conducted.
- (iii) Paid non-compete fee of ₹ 10 lakhs to a director who was associated with the company for the last 15 years.
- (iv) It filed the quarterly statement of TDS for the quarter ended 30.09.2023 on 05.01.2024. The amount of tax deducted and remitted in the quarter is ₹ 60,000.
- (v) It received interest-free loan of ₹ 7 lakhs from its subsidiary company in December 2023 to meet its working capital requirements. The subsidiary company has accumulated profit of ₹ 20 lakhs.
- (vi) It engaged a famous tennis player Mr. Mahesh as Brand Ambassador for promoting its products and paid ₹ 2 lakhs as fee to him.
- (vii) It acquired a luxury car for ₹ 15 lakhs by making payment by cheque on 01.10.2023.

(viii) It paid ₹ 30,000 to travel agents for purchase of train and air tickets to the company officials during the year.

You are requested to state in brief the consequences of the above transaction as per TDS/TCS provisions of the Income-tax Act, 1961.

(8 marks)

Answer:

(a) (i) TDS on security deposit adjusted at the end of the lease period:

No TDS is required to be deducted at the time of payment of security deposit. Since it cannot be treated as advance rent. However, TDS has to be deducted when the security deposit has been adjusted.

(ii) The company is required to deduct tax at source @ 7.5% of amount paid to a hotel accommodation because the amount paid is more than ₹ 2,40,000 in a year under **Section 194-I**.

(iii) Amount paid to a past director as non-compete fee of ₹ 10 lakhs is liable to deduct tax at source @ 7.5% **u/s 194-J**.

(iv) The company is liable to pay fee for default in furnishing quarterly returns of TDS ₹ 200 per day during which the failure continues **u/s 234-E**. However, such fees shall not exceed the amount of TDS/TCS deductible/collectible in quarterly returns. Thus, the amount of late fees will be ₹ 13,200.

(v) Loan of ₹ 7 lakhs from its subsidiary company will be treated as deemed dividend under **Section 2(22)(e)** because the subsidiary company has accumulated profit of ₹ 20 lakhs on the date of loan given to the company and required to deduct TDS @ 7.5%.

(vi) Fees of ₹ 2 lakhs paid to Mr. Mahesh as Brand Ambassador for promoting its products is liable to deduct tax at source @ 7.5% under **Section 194-J**.

(vii) **Section 206C(1F)**: Every person, being a seller, who receives any amount as consideration for sale of a Motor Vehicle of the value exceeding ₹ 10 lakhs, shall at the time of Receipt of such amount collect from the buyer, a sum equal to .75% of the sale consideration as Income Tax. Hence, the seller of car is required Collect Tax (TCS) from the company @ .75%.

(viii) The company is not required to deduct tax at source on payment of ₹ 30,000 to Travel agent for purchase of train and air tickets.

Note:

Dividend income taxable in hands of shareholders w.e.f. 1-4-2020

Till Assessment Year 2021-22, the dividend income from a domestic company was exempted in the hands of shareholder by virtue of exemption under section 10(34) of the Income Tax Act. But in this case, the company was liable to pay Dividend Distribution Tax (DDT) under section 115-O. However, the Finance Act, 2020 has made provisions of section 115-O ineffective which means that the domestic companies are no more liable to pay DDT on such dividend paid by them. Thus, with effect from A.Y. 2022-23, the dividend income is taxable in the hands of the shareholders and the burden of tax payment is shifted from company to the shareholders.

2017 - June [6] (b) Parthiv, aged 45, is resident of India. During the F.Y. 2023-24, interest of ₹ 3,10,000 was credited to his Non-resident (External) Account with UBI ₹ 70,000 being interest on fixed deposit with UBI, was credited to his saving bank account during this period. He also received ₹ 13,000 as interest on this saving account. Is Parthiv required to file return of income? What will be your answer, if he also owns one shop in Delhi having area of 250 sq.ft., for which he has received gross rent of ₹ 21,000 per month, property taxes being borne by the tenant? **(8 marks)**

Answer:

An individual is required to furnish a return of income under Section 139(1) if his total income, before giving effect to the deductions under Chapter VI-A, exceeds the maximum amount not chargeable to tax i.e. ₹ 2,50,000 (for A.Y. 2024-25).

Computation of total income of Mr. Parthiv for A.Y. 2024-25

Particulars	₹
Income from other sources	
Interest earned from Non-resident (External Account ₹ 3,10,000 Section 10(4)(ii), assuming that Mr. Parthiv has been permitted by RBI to the aforesaid account	
Interest on fixed deposit with SBI	70,000
Interest on savings bank account	13,000

Gross Total Income	83,000
Less: Deduction under Section 80TTA (Interest on saving bank account)	10,000
Total Income	73,000

Since the total income of Mr. Parthiv for A.Y. 2024-25, before giving effect to the deductions under Chapter VI-A, is less than the basic exemption limit of ₹ 2,50,000, he is not required to file return of income for A.Y. 2024-25.

Situation 2

When he receives shop rent, his income from house property is ₹ 21,000 × 12 = ₹ 2,52,000

Standard deduction of 30% is available. Net income is ₹ 1,76,400.

This will get added to the gross total income.

As this does not exceed ₹ 2,50,000 he will not be required to file the return of income.

2017 - June [7] (a) Mr. Ram gave cash gift of ₹ 10 lakhs to his younger brother Mr. Bharat's wife Smt. Mandavi. On the same date Mr. Bharat gave gift to wife of Mr. Ram viz, Smt. Sita a vacant land measuring 2000 sq.ft. The stamp duty valuation of the land on the date of gift was ₹ 8 lakhs.

Smt. Mandavi invested ₹ 8 lakhs in bank fixed deposit fetching interest at 7% per annum and commenced a business with the balance of ₹ 2 lakhs along with her own capital of ₹ 3 lakhs. The profit for the year from the business amounts to ₹ 1,50,000.

Determine the tax implication of the above transaction in the hands of all the parties. Would your answer be different if all of them are non-relatives?

(8 marks)

Answer:

As per **Section 56(2)(x)**, the following shall be taxable under the head "income from other sources".

When an individual or a HUF receives, in any previous year, from any person or persons.

(a) any sum of money, without consideration, the aggregate value of which exceeds ₹ 50,000, the whole of the aggregate value of such sum;

- (b) any immovable property,-
- (i) without consideration, the stamp duty value of which exceeds ₹ 50,000, the stamp duty value of such property;
 - (ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding ₹ 50,000, the stamp duty value of such property as exceeds such consideration;
 - (iii) Stamp duty value exceeds 110% of consideration.

Provided that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of agreement may be taken for the purpose of the sub-clause.

Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of agreement for the transfer of such immovable property.

As per Finance Act 2021 in section 56 of the Income-tax Act, in sub-section (2), in clause (x),—

- (a) in sub-clause (b), in item (B), after the third proviso, the following proviso shall be inserted, namely:—

“Provided also that in case of property being referred to in the second proviso to sub-section (1) of section 43CA, the provisions of sub-item (ii) of item (B) shall have effect as if for the words “ten per cent.”, the words “twenty per cent.” had been substituted;”;

- (c) any property, other than immovable property:
- (i) without consideration, the AGGREGATE fair market, value of which exceeds ₹ 50,000, the whole of the aggregate fair market value of such property;
 - (ii) for a consideration which is less than the AGGREGATE fair market value of the property by an amount exceeding ₹ 50,000, the aggregate fair market value of such property as exceeds such consideration.

Provided further that this clause shall not apply to any sum of money or any property received from any relative.

Explanation: For the purpose of this clause, “relative” means:

- (i) spouse of the individual;
- (ii) brother or sister of the individual;
- (iii) brother or sister of the spouse of the individual;
- (iv) brother or sister of either of the parents of the individual;
- (v) any lineal ascendent or descendent of the individual;
- (vi) any lineal ascendent or descendent of the spouse of the individual.
- (vii) spouse of the person referred to in clause (ii) to (vi)

In view of the above legal position, in the present case, the gift of ₹ 10 lakhs to his younger brother Mr. Bharat’s wife Smt. Mandvi by Mr. Ram is exempt from Tax, since the brother’s wife is relative within the definition of relative as specified under **Section 56(2)(x)**.

Where the brother of Ram i.e. Mr. Bharat gifted vacant land to Smt. Sita (wife of Mr. Ram), **Section 56(2)(x)** is not attracted in the hands of Smt. Sita. Since she falls in the definition of relative.

In the present case, there is an indirect transfer of asset by Mr. Ram to his brother’s wife Smt. Mandvi i.e. ₹ 10 lakhs without any consideration. The income from FD interest received by Smt. Mandvi and Income from business shall be clubbed with the income Mr. Bharat.

Amount to be clubbed:

Interest on FD (8,00,000 × 7%)	=	56,000
Business Income $\left(1,50,000 \times \frac{2,00,000}{5,00,000} \right)$	=	<u>60,000</u>
		<u>1,16,000</u>

It is assumed that amount gifted on 1st day of April, 2022.

2017 - Dec [2] (b) Sanvitha & Co., is a partnership firm trading in fertilisers, consisting of two partners S and V, who both have individual incomes from all the other sources (except remuneration and interest from this firm) in excess of ₹ 10 lakhs.

For the year ended 31.03.2024, the turnover of the assessee is likely to be ₹ 90 lakhs.

The partnership deed provides for payment of remuneration to S, the working partner at ₹ 6 lakhs per annum and ₹ 1.2 lakhs per annum to V, non-working partner. S and V are amenable to drafting these terms differently, as per your advice.

Partners' capitals are ₹ 10 lakhs each and the deed authorises payment of simple interest at 15%.

Assuming that books of account are maintained, the profits before considering remuneration and interest on capital is ₹ 12.4 lakhs.

In the light of above, state

- (i) Whether it will be advisable to opt for presumptive taxation u/s 44AD, if the firm and the partners are desirous of reducing their overall tax liability (tax of firm and the partners), or should the firm go for maintenance of accounts and audit u/s 44AB. **(8 marks)**
- (ii) Will your answer be different, if the assessee were an LLP? **(2 marks)**

Answer:

(b) (i) Firm: Whether presumptive taxation **u/s 44AD** is to be opted.

Where books are maintained.

Where the shows profits below 8% of the turnover, he/it should maintain books of account and get the accounts audited **u/s 44AB**. In case of a firm, such profits are after deduction of interest and remuneration to partners; In other words, same cannot be deducted from the 8% amount so calculated.

Where the books are maintained and the accounts are audited as per **Section 44AB**, the firm will be allowed deduction of the interest and remuneration, as per **Section 40(b)**. To the extent such payments are allowed in the hands of the firm, the same will be included in the individual hands of the partners.

Partners are already having total income in excess of ₹ 10 lakhs and hence any interest on capital and remuneration received from the firm will get taxed at 31.2%.

Particulars	₹
Income of the firm before interest and remuneration to partners	12,40,000

Less: Interest on capital at 12%	2,40,000
Book profits of the firm as per Section 40 (b)	10,00,000
Less: Remuneration to S Lower of (90% of 3 lakhs and balance 60% of ₹ 7 lakhs) 6.9 lakhs; Subject to Ceiling ₹ 6 lakhs as per partnership deed. Note: Remuneration to non-working partners not allowable.	6,00,000
Total income of the firm	4,00,000

Tax rate is 31.2% for firm (₹ 1,24,800) as well as the incomes from firm apportioned to partners (since the income of partners before considering any receipt from firm already exceeds ₹ 10 lakhs). Hence, income which will get taxed at 31.2% are 4 L+ 6 (Remuneration of S) and 2.4 L (interest on capitals) 12.4L at 31.2% ₹ 3,86,880/.

When the firm opts for presumptive taxation

As per Section 44AD , profits of the firm will be 8% of 90 lakhs	7,20,000
This alone will get taxed at 31.2% Tax payable will be ₹	2,24,640
Partnership deed should not contain any clause about payment of remuneration or interest to partners.	
By opting for presumptive tax u/s 44AD , tax saving will be (3,86,880 - 2,24,640)	1,62,240

- (ii) Where the assessee is a LLP
For a LLP, there is no option to get assessed as per **Section 44AD**. Hence, it is bound to maintain books of account and get its accounts audited **u/s 44AB**.

2017 - Dec [3] (a) Mr. Manekshaw a resident sold a residential property for ₹ 90 lakhs to Mr. Sunderlal on 17.08.2023. The stamp duty valuation on the date of sale was ₹ 105 lakhs. Earlier in February, 2023 an agreement was entered into by the parties and Mr. Sunderlal gave ₹ 5 lakhs as advance by means of electronic transfer. The stamp duty valuation at the time of agreement was ₹ 95 lakhs. Mr. Manekshaw paid ₹ 1 lakh as commission to broker, Mr. Vaidya. The property was acquired by Mr. Manekshaw in December, 2005 for ₹ 20 lakhs.

In July, 2023 Mr. Manekshaw sold a vacant site to Mr. Dayal for ₹ 30 lakhs. The stamp duty valuation of the site at the time of sale was ₹ 27 lakhs. The site was acquired in April, 2018 for ₹ 7 lakhs.

Mr. Manekshaw acquired a residential building in June, 2023 for ₹ 120 lakhs by availing a bank loan. Stamp duty and registration fee paid for the property amounts to ₹ 6 lakhs. He repaid the bank loan out of the sale proceeds of both the assets referred earlier. The new residential building was let out for a monthly rent of ₹ 1 lakh from 01.07.2023. Interest for the year 2023-24 in respect of the property amounts to ₹ 6 lakhs.

Compute the total income of Mr. Manekshaw for the Assessment Year 2024-25.

Cost inflation index F.Y. 2005-06 = 117; F.Y. 2018-19 = 280;

F.Y. 2023-24 = 348

(10 marks)

Answer:

Computation of Total Income of Mr. Manekshaw for the A. Y. 2024-25

Income from House Property		
Gross Annual Value		
being Actual Rent (1,00,000 × 9) =	9,00,000	
<i>Less:</i> Municipal Tax	—	
Net Annual Value	9,00,000	
<i>Less:</i> Deduction u/s 24		
(i) 30% of NAV as Standard deduction	2,70,000	
(ii) Interest on loan	6,00,000	
Income from Capital Gain:	8,70,000	30,000

Sale consideration of residential property		
Actual sale consideration	90,00,000	
or		
Stamp duty value on the date of agreement exceeds 110% of the consideration (See Note)	1,05,00,000	
Gross sale consideration	1,05,00,000	
Less: Brokerage	1,00,000	
Net Sale consideration	1,04,00,000	
Less: Index cost of Acquisition $\left(20,00,000 \times \frac{348}{117}\right)$	59,48,718	
L T C G	44,51,282	
Less: Exemption u/s 54 1,26,00,000 (Subject to Max. of L T C G)	44,51,282	NIL
Sale consideration of Vacant Site		
Actual sale consideration	30,00,000	
or		
Stamp duty value	27,00,000	
(whichever is higher)	30,00,000	
Less: Index cost of Acquisition $\left(7,00,000 \times \frac{331}{280}\right)$	8,27,500	
Long term capital gain	21,72,500	21,72,500
Gross total income		22,02,500
Less: Deduction under chapter VI-A (Restricted to ₹ 1,50,000)	₹ 6,00,000	1,50,000
Total Income		20,52,500

Note:

As per Amendment made by Finance Act, 2020 w.e.f. 1st April 2020 where the value adopted or assessed or assessable by the stamp valuation authority does not exceed 110% of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purpose of Section 48, be deemed to be the full value of the consideration.

And where the value adopted or assessed or assessable by the stamp valuation authority is exceeds 110% of the consideration received or accruing as a result of the transfer then Stamp duty Value shall, for the purpose of Section 48, be deemed to be the full value of the consideration.

2017 - Dec [4] (a) Ms. Pallavi is partner in a firm with 30% share. Her capital contribution representing her own funds in the firm on 01.04.2022 was ₹ 5 lakhs. She received a gift of ₹ 10 lakhs from her husband on 01.07.2022 and invested ₹ 7 lakhs as her capital contribution in the firm. She withdrew the entire interest on capital and working partner salary and share of profit for the year ended 31.03.2023. Her capital on 01.04.2023 was ₹ 12 lakhs in the firm. She received a gift of ₹ 4 lakhs from her father-in-law on 01.05.2023 and invested the same into the firm.

For the year ended 31.03.2024, her income from the firm are as under:

Interest on capital at 12% on ₹ 16 lakhs for 11 months ₹ 1,76,000.

Interest on capital at 12% on ₹ 12 lakhs for 1 month = ₹ 12,000.

Share of profit from the firm ₹ 90,000.

State how Ms. Pallavi's income from the firm would be taxed for the Assessment Year 2024-25. **(5 marks)**

Answer:

- (i) **Under Section 64(1) (ii):** Income of Individual to include income of spouse from a concern in which individual has substantial interest. (i.e. 20% voting power/share in profit at any time during the previous year) In view of the above provisions interest on ₹ 7,00,000 @ 12% i.e. ₹ 84,000 must be clubbed with Income of Ms. Pallavi's husband.
- (ii) **Under Section 64 (I) (vi):** Income of individual to include income of son's wife: Assets transferred by an individual to son's wife without adequate consideration, Income from such asset shall be clubbed in the hands of transferor.

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In view of the above provisions of Income Tax Act, interest on ₹ 4,00,000 @ 12% p.a. for 11 months shall be clubbed with income of Ms. Pallavi's father-in-law i.e. ₹ 4,00,000 × 12% × 11/12 = ₹ 44,000

(iii) Share of profit from firm is exempt.

2017 - Dec [4] (b) Sony Textiles (P) Ltd., Surat earned a profit of ₹ 20 lakhs after debit/credit of the following items to its statement of profit and loss for the year ended 31.03.2024:

Particulars		₹
Items debited to statement of profit and loss:		
(i)	Provision for the loss of subsidiary	2,00,000
(ii)	Provision for doubtful debts	1,50,000
(iii)	Provision for income-tax	3,00,000
(iv)	Provision for Gratuity (based on actuarial valuation ₹ 5 lakhs)	7,00,000
(v)	Depreciation	5,60,000
(vi)	Interest to financial institution (unpaid till filing of return on 01.12.2023)	2,50,000
(vii)	Penalty for infraction of law	60,000
Items credited to statement of profit and loss:		
(i)	Royalty in respect of patent (Chargeable to tax under Section 115BBF)	6,00,000
(ii)	Share income as partner in a firm	1,20,000
(iii)	Dividend from subsidiary company	75,000
(iv)	Long term capital gains on sale of vacant land	4,00,000

Other information:

- (i) Depreciation includes ₹ 1,60,000 on account of revaluation of fixed assets.
- (ii) Depreciation as per Income-tax Rules is ₹ 2,80,000.
- (iii) Income tax liability on income computed as per regular provisions for the Assessment Year 2024-25 is ₹ 1,22,070 excluding tax on royalty chargeable to tax under Section 115BBF.

Compute minimum alternate tax under Section 115JB of the Income-tax Act, 1961 for Assessment Year 2024-25 and tax credit eligible for carry forward by the company under Section 115JAA. **(11 marks)**

Answer:

Computation of Book profit and MAT of Sony Textiles Pvt. Ltd. for the A.Y. 2024-25		
Net Profit as per P and L A/c		20,00,000
Add: Items debited to statement of profit and loss but not allowed:		
(i) Provision for the loss of subsidiary	2,00,000	
(ii) Provision for doubtful debts	1,50,000	
(iii) Provision for Income-tax	3,00,000	
(iv) Provision for Gratuity (Excess)	2,00,000	
(v) Depreciation on revaluation of Fixed Assets	<u>1,60,000</u>	10,10,000
Less: Items credited to statement of profit and loss but not includible:		30,10,000
(i) Royalty in respect of patent (chargeable to tax under Section 115 BBF)	6,00,000	
(ii) Share income as partner in a firm	1,20,000	
(iii) Dividend from subsidiary company	75,000	<u>7,95,000</u>
Book Profit		22,15,000
MAT under Section 115JB @ 15.60%		3,45,540
MAT Payable Rounded off		3,45,540

	Tax under normal Provisions excluding Tax on Royalty	1,22,070	
<i>Add:</i>	Tax on Royalty in respect of patent @ 10.4% of ₹ 6,00,000	62,400	1,84,470
	MAT Credit Available (MAT-Normal Tax)		1,61,070

Note:

Dividend income taxable in hands of shareholders w.e.f. 1-4-2020

Till Assessment Year 2020-21, the dividend income from a domestic company was exempted in the hands of shareholder by virtue of exemption under section 10(34) of the Income Tax Act. But in this case, the company was liable to pay Dividend Distribution Tax (DDT) under section 115-O. However, the Finance Act, 2020 has made provisions of section 115-O ineffective which means that the domestic companies are no more liable to pay DDT on such dividend paid by them. Thus, with effect from A.Y. 2021-22, the dividend income is taxable in the hands of the shareholders and the burden of tax payment is shifted from company to the shareholders.

2017 - Dec [6] (a) Discuss how the following items which have been debited to the Statement of Profit & Loss of Vaibhav Polymers Ltd., will be dealt with, in computing its business income:

- (i) ₹ 20 lakhs paid to ten workmen on account of voluntary retirement of the said employees;
- (ii) ₹ 2 lakhs paid towards advertisement in a souvenir published by a political party, by way of account payee cheque;
- (iii) One of the units of the company was closed and retrenchment compensation of ₹ 12 lakhs was paid to the employees in that unit;
- (iv) Loss incurred by way of trading in commodity derivative transactions in recognized stock exchange relating to its agro division ₹ 2,20,000.

(8 marks)

Answer:

- (i) **Section 35DDA: Amortisation of Expenditure incurred under voluntary Retirement Scheme:**

Where an assessee incurs any expenditure by way of payment of any sum to an employee in connection with his voluntary retirement, in accordance with any scheme of voluntary retirement, 1/5th of the amount so paid shall be allowed as deduction for 5 years.

The deduction shall be allowed from the previous year in which actual payment is made.

In view of the above Provisions of Income Tax Act 4/5th of ₹ 20 lakhs shall be added back to profit of the company.

(ii) **Section 37 (2B): Payments made to Political Party:**

Notwithstanding any thing contained in **Section 37(1)**, no allowance shall be made in respect of expenditure incurred by an assessee on advertisement in any souvenir, brochure, tract pamphlet or the like published by a political party.

In view of the above provision of the Income Tax Act, ₹ 2 lakh paid towards advertisement in a souvenir published by a political part, by way of account payee cheque shall be disallowed and added back to profit.

(iii) **CIT v. DCM Ltd. (Delhi):**

The payment of compensation to workers on closure of one of the unit of the company is treated as a revenue expenditure is allowed as deduction. There is no treatment required.

(iv) Loss incurred by way of trading in commodity derivative transactions in recognised stock exchange relating to its agro division ₹ 2,20,000 first it can be added to profit and then set off from business Income of the company.

2017 - Dec [7] (a) In “A Pvt. Ltd.”, a closely-held company, following are some of the shareholders holding equity shares entitled to dividend and voting power:

Mr. Janak (individual)	12%
Janak (HUF)	5%
Thilagam & Co. (LLP)	30%
B Pvt. Ltd.	25%

On 12.01.2024, the company declared dividend of ₹ 50 lakhs net, after paying dividend distribution tax u/s 115-O.

During the year, Mr. Janak obtained a loan of ₹ 7 lakhs on 13.04.2023, which was repaid on 30.03.2024. As on 13.04.2023, the credit balance in Profit and Loss account of the company was ₹ 5 lakhs.

Janak (HUF) has received dividend of ₹ 8 lakhs from equity-oriented approved mutual funds.

For investing in the company's shares, Thilagam & Co. (LLP) has borrowed some funds on which interest of ₹ 2 lakhs was paid during the year ended 31.03.2024, tax being duly deducted at source and paid to the credit of the Central Govt.

Determine the income-tax liability in respect of each of the shareholders, in respect of the aforesaid receipts. **(8 marks)**

Answer:

Computation of Total Income and Tax Liability of Mr. Janak (Individual)

Income from other sources:		
(i) Dividend from A Pvt. Ltd.		
(50,00,000 × 12%) (Note-1)	6,00,000	—
Dividend (deemed Dividend) u/s 2(22)(e) upto the amount of credit balance of P and L A/c on the date of loan obtained from A Pvt. Ltd.		
(Since he holds More than 10% equity shares)		6,00,000
Gross Total Income being TI		6,00,000
Tax Payable on		22,500
Add: Health and Education Cess @4%		900
		23,400
(ii) Total Income and Tax Liability of Janak (HUF)		
Income from other sources:		
Dividend from A Pvt. Ltd. (Note-1)		2,50,000
Dividend Received from equity oriented approved Mutual fund exempt u/s 10(35)	8,00,000	—
Gross Total Income being		2,50,000
Total Income		2,50,000
Note: Interest Exp. not allowed.		

<p>Tax liability of B Pvt. Ltd. For the purpose of Section 115 BBDA, Corporate Shareholders are not covered. Hence, the dividend received will not be by Section 115 BBDA, regardless of the quantum of dividend received.</p>	
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Note:

Dividend income taxable in hands of shareholders w.e.f. 1-4-2020

Till Assessment Year 2020-21, the dividend income from a domestic company was exempted in the hands of shareholder by virtue of exemption under section 10(34) of the Income Tax Act. But in this case, the company was liable to pay Dividend Distribution Tax (DDT) under section 115-O. However, the Finance Act, 2020 has made provisions of section 115-O ineffective which means that the domestic companies are no more liable to pay DDT on such dividend paid by them. Thus, with effect from A.Y. 2021-22, the dividend income shall be taxable in the hands of the shareholders and the burden of tax payment is shifted from company to the shareholders.

2017 - Dec [7] (b) Raghunath (P) Ltd. is engaged in multiple business activities. It has brought forward business loss of Assessment Year 2017-18 of ₹ 15 lakhs and unabsorbed depreciation of ₹ 20 lakhs. The company has 10 shareholders each having 10% of the equity share capital of the company.

Four shareholders transferred the shares to their relatives in October, 2023. One shareholder died in February, 2024 and yet another shareholder gifted his shares to his son in August, 2024.

The company for the previous year 2023-24 earned Net Profit of ₹ 10 lakhs (computed) as per regular provisions before set off of brought forward loss and depreciation given above. Its book profit under Section 115JB for the Assessment Year 2024-25 is ₹ 25 lakhs (computed).

- (i) How much of accumulated loss and unabsorbed depreciation, the company could carry forward to the subsequent assessment years?

- (ii) Assume, the company converted into LLP in April, 2024. In the light of such conversion consider the amount of accumulated loss and depreciation which it can carry forward. Will there be any reduction of benefit on violation of any condition? **(8 marks)**

Answer:

Carry forward and set off of losses in case of certain companies [Section 79]

Section 79(1) where a change in shareholding has taken place during the previous year in the case of a company, not being a company in which the public are substantially interested, no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, unless on the last day of the previous year, the shares of the company carrying not less than fifty-one per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year or years in which the loss was incurred:

Provided that even if the said condition is not satisfied in case of an eligible start-up as referred to in section 80-IAC, the loss incurred in any year prior to the previous year shall be allowed to be carried forward and set off against the income of the previous year if all the shareholders of such company who held shares carrying voting power on the last day of the year or years in which the loss was incurred, continue to hold those shares on the last day of such previous year and such loss has been incurred during the period of ten years beginning from the year in which such company is incorporated.

Section 79(2) Nothing contained in sub-section (1) shall apply,—

- (a) to a case where a change in the said voting power and shareholding takes place in a previous year consequent upon the death of a shareholder or on account of transfer of shares by way of gift to any relative of the shareholder making such gift;
- (b) to any change in the shareholding of an Indian company which is a subsidiary of a foreign company as a result of amalgamation or demerger of a foreign company subject to the condition that fifty-one per cent shareholders of amalgamating or demerged foreign company continue to be the shareholders of the amalgamated or the resulting foreign company;

- (c) to a company where a change in the shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016 (31 of 2016), after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner;
- (d) to a company, and its subsidiary and the subsidiary of such subsidiary, where,—
 - (i) the Tribunal, on an application moved by the Central Government under section 241 of the Companies Act, 2013 (18 of 2013), has suspended the Board of Directors of such company and has appointed new directors nominated by the Central Government, under section 242 of the said Act; and
 - (ii) a change in shareholding of such company, and its subsidiary and the subsidiary of such subsidiary, has taken place in a previous year pursuant to a resolution plan approved by the Tribunal under section 242 of the Companies Act, 2013 (18 of 2013) after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner;
- (e) to a company to the extent that a change in the shareholding has taken place during the previous year on account of relocation referred to in the Explanation to clauses (viiac) and (viiad) of section 47;
- (f) to an erstwhile public sector company subject to the condition that the ultimate holding company of such company, immediately after the completion of strategic disinvestment, continues to hold, directly or through its subsidiary or subsidiaries, at least fifty-one per cent of the voting power of such company in aggregate.

Section 79(3) Notwithstanding anything contained in sub-section (2), if the condition specified in clause (f) of the said sub-section is not complied with in any previous year after the completion of strategic disinvestment, the provisions of sub-section (1) shall apply for such previous year and subsequent previous years.

General Notes

1. Losses cannot be set-off against the incomes referred to in **Section 115BB** i.e. lottery income, crossword puzzles, incomes in TV shows, etc.
2. Losses must be set-off in the immediate succeeding year and the loss not so set-off shall lapse.

(i) Computation of Total Income of Raghunath Pvt. Ltd.	
Net Profit (computed)	10,00,000
<i>Less: B/F loss</i>	10,00,000
Total Income	Nil
Loss to be carried forward	
(15,00,000 – 10,00,000) =	5,00,000
Unabsorbed depreciation to be carried forward	20,00,000
(ii) Set-off and carry forward of losses	
<p>As per Sec. 72A(6A), accumulated loss under head PGBP (Except Speculative Loss) and the unabsorbed depreciation of the predecessor company, shall be deemed to be the loss or allowance for depreciation of the successor LLP of the year in which conversion takes place.</p> <p>However, if any of the aforementioned conditions are not complied with, the set-off of loss or allowance of depreciation made in any previous year by LLP, shall be deemed to be the income of the LLP chargeable to tax in the year in which such conditions are not complied with.</p> <p>MAT Credit: In the hands of the predecessor company shall not be allowed to the successor LLP.</p>	

2018 - June [2] (a) PQR Co. Ltd. engaged in manufacturing activity reports a Net Profit of ₹ 15 lakhs for the year ended 31.03.2024. The below said items are debited / credited to statement of profit and loss.

- (i) CSR expenditure incurred during the year ₹ 5 lakhs.
- (ii) Non-compete fee paid to DEF Ltd. for not marketing their products in North-Eastern States ₹ 10 lakhs. The non-complete agreement bars DEF Ltd. for a period of 5 years ending 31.03.2028. No tax was deducted at source on the said payment.
- (iii) A building was constructed on the leasehold land for ₹ 30 lakhs and it was completed on 30.11.2023. The lease agreement is for 3 years and after the lease period, the building must be handed over to the lessor.
- (iv) The company during the year paid donation of ₹ 1 lakh to Dalmia Research Centre Ltd. which is engaged in approved scientific research.
- (v) The company introduced VRS scheme during the financial year 2020-21 and paid ₹ 60 lakhs as VRS compensation. The company transferred the entire unamortized amount of ₹ 24 lakhs to statement of profit and loss.
- (vi) Paid ₹ 2 lakhs to Registrar of Companies as fee for issue of bonus shares.
- (vii) It incurred ₹ 25 lakhs towards feasibility study for new product manufacture which eventually was aborted.
- (viii) Cost of EPABX and mobile phones acquired on 01.06.2023 for use by executives ₹ 10 lakhs. Depreciation @ 60% was charged in the books.
- (ix) Compounding fee paid for violation of municipal laws in construction of buildings ₹ 1,20,000.
- (x) Depreciation debited ₹ 24,60,000.
- (xi) Royalty from patent developed by the company credited to Statement of profit and loss ₹ 22 lakhs.
- (xii) Dividend received from foreign company in which the assessee company holds 26% shares ₹ 8 lakhs.

Additional Information:

Eligible depreciation ₹ 32,30,000 under Section 32 without considering item (iii) and (viii) given above.

You are required to compute the total income and income tax liability of PQR Ltd. for the assessment year 2024-25.

Note: Your answer must be supported by reasons for treatment of each item. Ignore MAT provisions. **(12 marks)**

(b) A partnership firm with three equal partners authorized payment of monthly salary of ₹ 1 lakh each to all the partners w.e.f.01.04.2023. Earlier, the partnership deed authorized payment of monthly salary of ₹ 50,000 each to all the partners. The business of the firm has more than doubled during the financial year 2023-24 and the partners anticipating such increase in business/profit have changed accordingly the condition for working partner salary.

The profit of the firm was ₹ 50 lakhs for the year ended 31.03.2024 and the corresponding profit was ₹ 20 lakhs for the year ended 31.03.2023. The partners of the firm want to know whether increase in payment of salary to working partners would be subjected to disallowance under Section 40A(2)(a). **(4 marks)**

Answer:

(a)

PQR Co. Ltd.

Computation of Total Income for the Asst. Year 2024-25

	₹
Net Profit as per statement of profit and loss	15,00,000
<i>Add:</i>	
CSR expenditure debited, not deductible in view of Explanation 2 to Section 37	5,00,000
Non-compete fee on which tax was not deducted at source as per Section 194J and hence @ 30% to be disallowed as per Section 40(a)(ia)	3,00,000
Building on leasehold land debited to Statement of profit and loss is eligible for depreciation only. Hence disallowed	30,00,000
VRS Compensation to be amortised in 5 annual instalments as per Section 35DDA. The unamortized amount is ₹ 24 lakhs of which ₹ 12 lakhs is deductible in assessment year 2024-25 and balance ₹ 12 lakhs in assessment year	

2025-26. As the full amount has been debited to Statement and profit and loss, the excess ₹ 12 lakhs is added back.		12,00,000
Expenditure towards feasibility study for examining new line of activity has no connection to the present business and hence it is a capital expenditure to be disallowed.		25,00,000
Depreciation on the cost of EPABX and mobile phones debited to Statement of profit and loss @ 60% disallowed		6,00,000
Compounding fee paid for violation of local laws in construction is a expenditure for violation of law hence not deductible (Millenia Developers v. DCIT (2010) 322 ITR 401(Ker).		1,20,000
Depreciation debited in the books		24,60,000
		1,21,80,000
<i>Less:</i> Depreciation on leasehold building on ₹ 30 lakhs @5% (since the building was put to use for less than 180 days)	1,50,000	
Donation to scientific research company eligible for deduction @ 100% only. As the amount is already debited no adjustment is required. [Section 35(1)(ia)]	Nil	
Amount paid to ROC as fee for issue of bonus shares is deductible expenditure as the payment does not create any asset or increase in capital base	Nil	
Depreciation on EPABX and mobile phones @ 15% on ₹ 10 lakhs	1,50,000	
Royalty from patent credited to P&L – considered separately	22,00,000	

Dividend from foreign companies – considered separately	8,00,000	
Depreciation eligible under Section 32	32,30,000	
		65,30,000
Income from Business or Profession		56,50,000
Royalty from patent developed by the company		22,00,000
Dividend from foreign companies		8,00,000
Total Income		86,50,000
Computation of Tax liability		
On ₹ 56,50,000 @ 30%		16,95,000
Royalty from patent ₹ 22 lakhs @ 10%		2,20,000
Dividend from foreign companies ₹ 8 lakhs @ 15%		1,20,000
		20,35,000
Add: Health & Education Cess @ 4%		81,400
Total tax liability		21,16,400

(b) The issue under consideration is whether remuneration paid to working partners as per the partnership deed can be considered as unreasonable and excessive for attracting disallowance under Section 40A(2) of the Income Tax Act, 1961 even though the same is within the limits prescribed under Section 40(b)(v).

The facts of the case are similar to the facts in CIT v. Great City Manufacturing Co., wherein the above issue came up before the Allahabad High Court.

The High Court observed that Section 40(6) prescribes the limits of remuneration to working partners and deduction is available upto such

limits while computing the business income. If the remuneration paid is within the ceiling limit provided under 40(b)(v), then, recourse to provisions of Section 40A(2) cannot be taken.

Hence, applying the rationale of the Allahabad High Court ruling in Great city Manufacturing Co. Case, the increased remuneration which is authorised by the partnership deed and is with in the limits specified under Section 40(b)(5) and paid to working partners, cannot be disallowed by invoking the provisions of Section 40A(2).

2018 - June [4] (a) Mahavishnu Tea Pvt. Ltd., is engaged in the business of tea as well as development of infrastructural facility (covered by Section 35 AD).

The company has brought forward business loss of 3 lakhs from tea business and ₹ 4 crores from the business of infrastructural facility, relating to the A.Y. 2023-24.

During the year ended 31.03.2024, the company has shown a net profit of ₹ 82 lakhs from business of tea in its books, before current depreciation of ₹ 12 lakhs. From the infrastructural facility business, it has earned profit of 2.2 crores.

The company has credited a sum of ₹ 30 lakhs in the share application money on 28.02.2024, for which it is unable to explain the source satisfactorily.

Compute the total income of the company for the assessment year 2024-25.

(8 marks)

(b) Lakshmi Fertilizers Ltd. set up an industrial unit for manufacturing fertilizers in notified backward area in the State of Bihar, on 11.05.2022. The following details of investment in plant and machinery are made available to you:

Date of investment / installation	Type of assets purchased	Amount (₹ in crores)
21.07.2023	Plant and machinery (including second hand machinery ₹ 2 crores)	32
01.12.2023	Plant and machinery	10

All the assets were put to use immediately. Excepting the machinery for ₹ 2 crores, all other assets are new.

Compute the depreciation allowable under Section 32 of the Income-tax Act, 1961 and the WDV of the relevant block of assets.

Is the assessee entitled for any other benefit in respect of aforesaid investments? If so, what is the benefit available?

Would your answer be different where such manufacturing unit is set up by a partnership firm?

Append suitable notes, wherever required.

(8 marks)

Answer:

(a) Set off and carry forward

Particulars	(₹ in lakhs)	
Income from tea business		
Net profit as per books	82	
<i>Less:</i> Current depreciation	12	
Profit from tea business	70	
Chargeable profits at 40%	28	
<i>Less:</i> Brought forward business loss	3	
Chargeable income from tea business		25
Income from specified business covered by Section 35AD		
Net profit as per books	220	
<i>Less:</i> Brought forward loss from specified business	220	
Chargeable income from specified business		Nil
Income from other sources		
Unexplained cash credit		30
[Share application money not explainable]		
Gross total income/total income		55

Notes:

1. Brought forward loss from specified business covered by Section 35AD can be set off only against income from specified business in the current year.
2. Balance loss of ₹ 1.8 crores (4 - 2.2) from specified business can be carried forward to subsequent year.
3. Unexplained cash credit of ₹ 30 lakhs cannot be reduced by brought forward loss from specified business, as per Section 115BBE(2).

(b) Computation of depreciation under Section 32 for Lakshmi Fertilizers Ltd. for A.Y. 2024-25

Particulars		₹ (in crores)
Plant and machinery acquired on 21.07.2023		32.00
Plant and machinery acquired on 01.12.2023		<u>10.00</u>
Gross block as on 31.03.2023		42.00
Less: Depreciation @ 15% on ₹ 32 crore	4.80	
Depreciation @ 7.5% (50% of 15%) on ₹ 10 crore	0.75	
Additional Depreciation @ 20% on ₹ 30 crore	6.00	
Additional Depreciation @ 10% (50% of 20%) on 10 Crore	<u>1.00</u>	<u>12.55</u>
Closing WDV as on 31.03.2024		<u>29.45</u>

Computation of deduction u/s 32AC & 32AD for Lakshmi Fertilizers Ltd. for A.Y. 2024-25

	₹ In Crores
Deduction under Section 32AC(1A) @ 15% on ₹ 40 crore (since investment in new plant and machinery acquired and installed in the previous year 2022-23 by the assessee., a manufacturing Company exceeds ₹ 25 crore)	6

Deduction under Section 32AD @ 15% on ₹ 40 crore	<u>6</u>
Total benefit available to the assessee-company	12

Where the assessee is a partnership firm

Yes, the answer would be different, where the manufacturing unit is set up by a firm.

However, it would be eligible for deduction of ₹ 6.30 crore under Section 32AD.

Notes:

- (i) Where an eligible asset is put to use for less than 180 days, normal and additional depreciation available will be 50% of the specified rate.
- (ii) Additional depreciation as well as deduction u/s 32AC is available only in respect of new plant and machinery. Second hand machinery is not eligible.

2018 - June [6] (b) (Monohar & Hari LLP is engaged in multiple business activities. The following information is furnished for the year ended 31.03.2024:

- (i) Net profit as per Profit and Loss Account ₹ 52 lakhs.
- (ii) Working partner salary debited to Profit and Loss Account ₹ 40,20,000 as authorized by the LLP agreement.
- (iii) Interest on capital paid to partners @ 15% ₹ 15,75,000. This is authorized by the LLP agreement.
- (iv) Depreciation debited to Profit and Loss Account ₹ 8,10,000.
- (v) Eligible depreciation under Section 32 ₹ 10,35,000.
- (vi) The Net Profit includes profit from under taking located in SEZ (4th year) ₹ 20 lakhs. The total turnover is ₹ 200 lakhs and the export turnover is ₹ 150 lakhs.
- (vii) The unit has earned income from generation of power and the eligible deduction under Section 80-IA amounts to ₹ 8 lakhs.

You are required to compute the total income of the firm and also the alternative minimum tax (AMT) and decide the final tax liability of the firm for the assessment year 2024-25. **(10 marks)**

Answer:**Manohar & Hari LLP****Computation of the Total Income for the Asst. Year 2024-25**

As per Normal Provisions		₹
Net Profit as per Profit and Loss Account		52,00,000
<i>Add:</i>		
Working partner salary debited to Profit and loss account		40,20,000
Interest on capital in excess of 12% disallowed		3,15,000
Depreciation debited to P&L account		8,10,000
		1,03,45,000
<i>Less:</i>		
Eligible depreciation under Section 32		10,35,000
Book Profit		93,10,000
<i>Less: Deduction U/s.40(b)</i>		
On first ₹ 3 lakhs @ 90%	2,70,000	
On the balance ₹ 90,10,000 @ 60%	54,06,000	56,76,000
Restricted to the amount authorized by LLP Agreement		40,20,000
Gross Total Income		52,90,000
Deduction U/s. 10AA in respect of unit in SEZ		
₹ 20,00,000 × 150 /200	15,00,000	
Deduction U/s. 80-IA	8,00,000	23,00,000
Total Income		29,90,000

Tax there on @ 30%	(A)	8,97,000
Computation of adjusted total income U/s.115 JC		
Total income as per normal provisions		29,90,000
Add: Deduction under Section 80-IA		8,00,000
Deduction U/s. 10AA		15,00,000
Adjusted total income		52,90,000
Tax thereon @ 18.5%	(B)	9,78,650
Computation of final tax liability		
Higher of (A) or (B) shall be the tax payable		9,78,650
Add: Health & Education cess @ 4%		39,146
Total Tax Payable		10,17,796

2018 - June [8] In the light of decided case laws, answer the following [Your answer should be under the following heads: (i) Issue involved (ii) Brief discussion on provisions applicable to the issue (iii) Analysis of the issue involved and (iv) Conclusion (*Citation of the case law is NOT required*)]:

- (a) Bharathi Co-operative Housing Society collects fees at the time of transfer of flat, from the outgoing member, as well as the incoming member. As per the bye-laws, the receipts are used for meeting the various expenses of the society. During the year ended 31.03.2024, the society has collected a sum of ₹ 5 lakhs as transfer fees from outgoing members and like amount from the incoming members. The Assessing Officer (AO) has brought to tax the entire receipts of ₹ 10 lakhs. Is his action valid in law?
- (b) Kaushiba Logistics Pvt. Ltd., borrowed a sum of ₹ 50 lakhs from a bank for business purposes. For the sanction of the bank loan, two directors gave guarantee to the bank. The assessee paid guarantee commission of ₹ 80,000 to the two directors in this regard and claimed the same as

business expenditure. The AO has disallowed the same on the ground that this is an indirect payment of dividend to the two directors. Is this correct?

- (c) A, B and C were partners in the firm RR & Co. B died on 31.03.2023. The firm was dissolved and the business was continued in the same name by A. The firm has unabsorbed losses to the tune of ₹ 10 lakhs. Against the individual business income earned by A, the losses of the erstwhile firm were set off. This has been disallowed by the AO. Is this disallowance justified? **(4 × 3 = 12 marks)**

Answer:

(a) Issue involved

The issue under consideration is whether the transfer fees received by a co-operative housing society from its incoming and outgoing members is chargeable to tax.

Provisions involved

Any transfer fee received by a co-operative housing society, whether from outgoing or from incoming members, are not liable to tax in the hands of the co-operative society on account of the principle of mutuality, since the predominant activity of such co-operative society is maintenance of property of the society and there is no taint of commerciality, trade or business.

Analysis

Under the bye-laws of the society, charging of transfer fees had no element of trading or commerciality. Both the incoming and outgoing members have to contribute to the common fund of the assessee. The amount paid was to be exclusively used for the benefit of the members as a class.

Further, Section 28(iii), which provides that income derived by a trade, professional or similar association from specific services performed for its members shall be treated as business income, can have no application since the co-operative housing society is not a trade or professional association.

Conclusion

Therefore, the action of the Assessing Officer, in bringing to tax the transfer fees under the head "Profits and gains of business or profession" in the hands of Bharati Co-operative Housing Society is not correct.

Refer the decision in Sind Co-operative Housing Society v. ITO (2009) 317ITR47.

(b) Issue involved

The issue under consideration in this case is whether guarantee commission paid by a company to its employee directors is deductible as its business expenditure, where such guarantee was given by the employee directors to the bank for enabling credit facility to the company, and whether it can be contended that the same would have been payable as dividend had it not been paid as commission.

Provisions involved

In the absence of any specific disallowance, an expenditure incurred wholly and exclusively for the purpose of business has to be allowed under Section 37. It has also to be seen whether such payment was a device used to outwit the provisions of Section 115-0, which requires payment of dividend distribution tax.

Analysis

The directors of the company are employees of the company and are entitled to remuneration for the services rendered as employees. In this case, they also provided personal guarantee to banks, since it was a pre-condition laid down by the bank to provide financial assistance to the company. This act of providing personal guarantee was clearly beyond the scope of their services as employees of the company.

The assessee-company, in its commercial wisdom, passed a resolution resolving that the directors be paid commission for providing their personal guarantees for the financial assistance availed by the assessee-company from the bank. In such a case, the Assessing Officer only has to determine whether the transactions are real and genuine.

As regards Section 36(1)(ii), the recipient directors were not entitled to receive the amount as commission in lieu of dividend. Dividend is paid to all the shareholders and the recipient directors were not the only shareholders of the company. The payment of commission, hence, cannot be taken as payment of dividend, since payment of dividend would result in payment to all the shareholders and not to select shareholders.

Conclusion

Therefore, the action of the Assessing Officer, holding that if the amount was not paid to them as commission, the same would have been payable as dividend, and contending that the company avoided dividend distribution tax under Section 115-0 which was otherwise payable, is not valid.

Reference may be made to *Controls & Switchgear Contractors Ltd. v. Dy. CIT (2014) 365 ITR 312*.

(c) Issue involved

The issue under consideration in this case is whether the loss suffered by an erstwhile partnership firm, which was dissolved, can be carried forward for set-off by the individual partner who took over the business of the firm as a sole proprietor, considering the succession as a succession by inheritance.

Provisions involved

Section 78(2) deals with carry forward of losses in case of succession of business. It provides that only the person who has incurred the losses, and no one else, would be entitled to carry forward the same and set it off. An exception provided thereunder is in the case of succession by inheritance.

Analysis

Upon dissolution, the partnership firm, RR & Co. ceased to exist. Also, the partnership firm, RR & Co. and the sole proprietorship concern are two separate and distinct units for the purpose of assessment. The income earned by the sole proprietor would include his share of loss as an individual but not the loss suffered by the erstwhile partnership firm in which he was a partner.

The exception given in Section 78(2), permitting carry forward of losses by the successor in case of inheritance, is not applicable in the present case since the partnership firm was dissolved and ceased to continue. Taking over of business by a partner cannot be considered as a case of inheritance due to death as per the law of succession.

Conclusion

The action of the Assessing Officer in disallowing the claim of set-off of losses suffered by the erstwhile partnership firm RR & Co. against the income earned as an individual proprietor is, therefore, correct.

Reference may be made to the decision in Pramod Mittal v. CIT (2013) 356ITR 45 (Delhi).

2018 - Dec [3] (a) Vimala Boilers Pvt. Ltd. furnishes the following summarized position of its statement of profit and loss and pertinent additional information thereto, for the year ended 31.03.2024:

[All amounts are ₹ in lakhs]

- | | |
|--|-----|
| (i) Net profit as per books | 26 |
| (ii) Share income from an AOP | 6 |
| Expenditure debited in books for earning such income | 0.8 |
| (iii) Compounding fee paid to the Corporation authorities | 1.2 |
| (iv) Provision for income-tax | 2 |
| (v) Provision for loss of foreign subsidiary | 4 |
| (vi) CSR expenditure debited to statement of profit and loss | 14 |
| (vii) Royalty received relating to business (Chargeable at 10%) | 6 |
| (viii) The brought forward business loss and depreciation are as under (₹ in lakhs): | |

Particulars	As per books	As per Income Tax Act
Business loss for AY 2023-24	4	12
Unabsorbed Depreciation	3	11

- (ix) The members as well as their shares in the AOP (in which the assessee is a member) are specific and determinate

Compute Minimum Alternate Tax (MAT) payable by the company for the Assessment Year 2024-25. The company is not an Ind-AS compliant company. (8 marks)

Answer:

Computation of book profits u/s. 115JB of Vimala Boilers Pvt. Ltd. for the A.Y. 2024-25

	(₹ in lakhs)
(i) Net profit as per books	26
(ii) Share income from an AOP	0
[This is not an AOP which pays tax at the maximum marginal rate. Hence, no adjustment is required]	
Expenditure debited in books for earning such income [as above]	0
(iii) Provision for income-tax	2
[This is an item to be specifically added back for MAT]	
(iv) Provision for loss of foreign subsidiary	4
[This is an item to be specifically added back for MAT]	
(v) CSR expenditure debited to P & L a/c	0
[No need to add back this expenditure for MAT]	
(vi) Royalty received relating to business	- 6
[To be considered separately, as it is taxed at special rate of 10%]	26
<i>Less:</i> Lower of B/fwd business loss or depreciation	3
Book Profit	23
Tax payable Royalty at 10%	0.6
Other income at 15%	3.45
	3.45
<i>Add:</i> Health and Education Cess at 4%	0.14
Total tax as per MAT provisions	3.59
Rounded off	3.59

Note:

Compounding fee paid to the Corporation authorities, which is in the nature of penalty, will be disallowed while computing income as per normal provisions, but will not have any impact in the computation of book profits as per MAT provisions.

2018 - Dec [3] (b) AKP is a public charitable trust created under a trust deed for providing relief to physically challenged persons and registered under Section 12AB. The following are the particulars of receipts of the trust during the year ending March 31, 2024:

Particulars	₹ in lakhs
Income from properties held by trust (net)	15
Income (net) from business (incidental to main objects)	14
Voluntary contributions from public (including the corpus donation of ₹ 7 lakhs)	18

The trust applied ₹ 18 lakh towards various activities and programmes undertaken for the benefit of physically challenged persons during the year. The trust has also paid ₹ 8 lakh towards repayment of a loan taken two years back for the purpose of construction of its centre for training the handicapped persons in various handicraft works and sports.

Determine the tax liability, if any of the trust for the Assessment Year 2024-25 and also state how the trust can mitigate such liability. **(8 marks)**

Answer:

Computation of Taxable Income of Public Charitable Trust for the A.Y. 2024-25

Particulars	Amount
(i) Income from property held by trust (net)	15,00,000
(ii) Income (net) from business [incidental to main objects]	14,00,000
(iii) Voluntary contribution from Public Charitable Trust [voluntary contribution made with specific direction towards corpus are alone to be excluded U/s 11 (1) (d)].	11,00,000
	40,00,000
<i>Less:</i> 15% of the income eligible for retention/ accumulation without any condition	6,00,000
	34,00,000

<i>Less:</i> Amount applied for the objects of the trust:	
(i) Amount spent for charitable purpose	18,00,000
(ii) Repayment of loan	8,00,000
Taxable Income	8,00,000

Tax Liability on ₹ 8,00,000 at tax rates applicable in case of individual

75,400

2018 - Dec [5] Answer any **four** of the following [Your answer should be under the following heads: (i) Issue involved (ii) Brief discussion on provisions applicable to the issue (iii) Analysis of the issue involved, and (iv) Conclusion [Citation of case law is NOT required]:

- (a) Ram and Rahim were Executive Directors of Saraswati Tea Pvt. Ltd. In respect of a bank loan, they gave their personal guarantee. The assessee-company paid them guarantee commission of ₹ 1 lakh each. The Assessing Officer feels that this is a disguised payment of dividend under Section 2(22) and is not a commission which is deductible as business expenditure. He has disallowed the same. Is the action of the AO valid in law?
- (b) Govinda and Vaamana were partners in a firm, which got dissolved consequent to the demise of Govinda. The firm had unabsorbed losses. Vaamana, who took over the business, has set off the said loss in his personal hands in the subsequent year. Such set off is not allowed by the Assessing Officer. Is his action correct?
- (c) MNC Ltd. is engaged in the business of managing and operating hotels. The assessee allowed the employees to accept tips from customers. Some customers paid the bill and tips to the employees through credit card. The assessee, being employer collected the amounts and disbursed tips to the employees on monthly basis. The assessee did not deduct tax at source on the said payments as the amounts were not in the nature of salary. Does the action of the assessee satisfy the legal requirements?

- (d) Dempo Ltd. transferred its factory building for ₹ 65 lakhs. The company owned only one such building in the block of assets. The written down value of the factory building was ₹ 13.95 lakhs. The company acquired the building 10 years ago for ₹ 40 lakhs. It deposited ₹ 50 lakhs in REC bonds within one month after the transfer of factory building. The company claimed exemption under Section 54EC. Is the claim of the company tenable in law?
- (e) Jayakrishna Flour Mills Pvt. Ltd., has derived an income of ₹ 1.2 crore from generation and distribution of electricity, using windmills. Such profits have been claimed as 100% deduction under Section 80-IA. The assessee has other income from certain other activities also, which form part of the total income. The assessee has paid interest of ₹ 60 lakhs to a bank in respect of the term loans on the windmills. The Assessing Officer wants to invoke the provisions of Section 14A in respect of such interest. Can he do so? **(4 × 4 = 16 marks)**

Answer:

(a) Allowability of commission paid to directors:

Issue involved:

The issue under consideration in this case is whether guarantee commission paid by a company to its employee directors is deductible as its business expenditure, where such guarantee was given by the employee directors to the bank for enabling credit facility to the company, and whether it can be contended that the same would have been payable as dividend had it not been paid as commission.

Provisions applicable:

In the absence of any specific disallowance, expenditure incurred wholly and exclusively for the purpose of business has to be allowed under Section 37.

Analysis of the issue:

The directors of the company are employees of the company and are entitled to remuneration for the services rendered as employees. In this case, they also provided personal guarantee to banks, since it was a precondition laid down by the bank to provide financial assistance to the company.

This act of providing personal guarantee was clearly beyond the scope of their services as employees of the company.

The assessee-company, in its commercial wisdom, passed a resolution resolving that the directors be paid commission for providing their personal guarantees for the financial assistance availed by the assessee-company from the bank. In such a case, the Assessing Officer only has to determine whether the transactions are real and genuine.

As regards Section 36(1)(ii), the recipient directors were not entitled to receive the amount as commission in lieu of dividend. **Dividend is paid to all the shareholders and the recipient directors were not the only Shareholders of the company. The payment of commission, hence, cannot be taken as payment of dividend, since payment of dividend would result in payment to all the Shareholders and not to Shareholders holding prescribed percentage of the voting power/share capital in the company.**

Conclusion:

Therefore, the action of the Assessing Officer, holding that if the amount was not paid to them as commission, the same would have been payable as dividend, is **not valid**.

Reference may be made to the decision in *Controls & Switchgear Contractors Ltd. v. Dy. CIT (2014) 365 ITR 312*.

- (b) Issue Involved:** Govinda and Vaamana were partner in a firm and dissolved. The firm has unabsorbed losses, Vaamana, who took over the losses, can he setoff the said loss. In his personal hand in subsequent year.

Applicable Provision: Section 78(2), where any person carrying on any business or profession has been succeeded in such capacity by another person otherwise than by inheritance, such other person shall not be allowed to carry forward and set-off against his incurred by the predecessor.

Analysis: The High Court observed that upon dissolution the partnership firm ceased to exist. Also the partnership firm and proprietorship concern are two separate and distinct unit for the purpose of assessment. As per **Section 170(1)**, the partnership firm shall be

assessed as such from the 1st April of the previous year till the date of dissolution. Therefore, the Income of the sale proprietorship shall be taxable in the hand of the assessee as an individual.

Section 78(2) however, deals with carry forward of losses in case of succession of business of it provide that only the person who has incurred the losses, and on one would be entitled to carry forward the same and set it off. An exception provided there under is in the case of succession by inheritance.

High Court decision is that, loss suffered by the erstwhile partnership firm before dissolution of the firm can not be carried forward by the success sole proprietor, since it is not a case of succession by inheritance.

Conclusion: Applying the above sector and analysis by High Court in case of Pramod Mittal, Vaama can not set-off the said loss in his personal hand in the subsequent year. Action of Assessing Officer is correct.

(c) TDS on tips collected by a hotel from customers:

Issue involved

The issue is whether tax is required to be deducted at source under Section 192 from the tip (collected from customers) distributed by the assessee-employer. In other words, it has to be seen whether the action of the assessee satisfies the legal requirements.

Provisions applicable

Section 192 provides that tax is to be deducted at source by the employer from salary at the time of payment, if the amount of salary (after permissible deductions under Sections 80C, 80D, etc.) exceeds the maximum amount not chargeable to tax.

Analysis of the issue

The employer has collected the tips paid by the customers voluntarily and was not collected as a matter of right. Further the employment contract does not show the obligation to collect tips and disburse to employees.

There is no vested right in the employee to claim the amount of tips from the employer. It is voluntary payment which cannot be called as salary within the meaning of Section 15.

When an amount is received from a person other than employer, such payment cannot be charged to tax under the head “salaries”. Therefore, the provision of Section 192 does not get attracted.

Conclusion:

The action of non-deduction of tax at source from tips collected from customers and distributed to the hotel employees satisfies the legal requirement.

Reference may be made to the decision in *ITC Ltd vs. CIT (TDS) 384 ITR 14 (SC)*

(d) Facts of the Case:

The company owned only one such building in the block of assets the company acquired the building 10 years ago, and it transferred its factory building for ₹ 65 lakhs. It deposited ₹ 50 lakhs in REC bonds within one month after the transfer of factory building. The company claimed exemption **under Section 54EC**. The issue valued in this case whether the claim of the company is tenable in law.

Provisions applicable:

In order to avail the exemption **under Section 54EC** the capital gains have to be invested in a long-term specified asset within a period of six months from the date of transfer. Where the assessee has made the payment within the six month period, and the same is reflected in the bank account and a receipt has been issued as on that date.

Analysis:

For the purpose of the provisions of **Section 54EC**, the date of investment by the assessee must be regarded as the date on which payment is made. Therefore, held that if such payment is within a period of six months from the date of transfer, the assessee would be eligible to claim exemption **under Section 54EC**.

Conclusion: In view of the above provision the claim of the company is tenable in law.

(e) **Issue Involved :** In the present case, the assessee is a pvt. company engaged in generation and distribution of electricity, using windmills. The assessee had claimed deduction **under Section 80-IA** on such profits. The assessee has paid interest of ₹ 60 lakhs to the bank in respect of the term loans on the windmills. The Assessing Officer wants to invoke the provisions of **Section 14A** in respect of such interest.

Applicable Provisions: In the case of *CIT V. Kribhco* the High Court observed that **Section 14A** is not applicable for deductions, which are permissible and allowed under chapter VIA. Section 14A is applicable only if an income is not included in the total income as per the provisions of chapter III of the Income Tax Act, 1961. Deduction under chapter VIA are different from the exclusion/ exceptions provided under chapter III.

Analysis: The word “do not form part of the total income under this Act” used in **Section 14A** are significant and important. Income which qualifies for deduction **under Section 80C to 80U** has to be first included in the total income of the assessee and then allowed as a deduction.

However, income referred to in chapter III do not form part of the total income and therefore, as **Section 14A**, no deduction shall be allowed in respect to the expenditure incurred by the assessee in relation to such income which does not form part of the total income.

Conclusion: In view of above provision and according to the observation of the High Court, no disallowance can be made **under Section 14A** in respect of income included in total income in respect of which deduction is allowable **under Section 80C to 80U**.

2019 - June [2] (a) Mrs. Malavika commenced the business of warehousing of food grains on 1st April, 2023.

The under-mentioned summarised data relating to the warehousing business are furnished to you:

Particulars	(₹ in lakhs)
Net profit from business	126.5
Capital expenditure on Land & Building (35 + 20) incurred on 19.05.2022	55

Warehouse building additional cost incurred towards above building (completed on 20.12.2023)	50
--	----

The assessee did not derive any other income during the year.

You are required to compute the total income and the tax payable by the assessee for the assessment year 2024-25. **(8 marks)**

Answer:

Since the assessee is eligible for deduction u/s 35AD, provisions of AMT will be applicable and its impact has to be seen

Particulars	(₹ in lakhs)
Net profit from business	126.5
<i>Less:</i> Deduction u/s 35D (for warehouse business)	
Capital expenditure on land ₹35 lakhs not eligible	Nil
Warehouse building (₹20 + ₹50) lakhs (A)	70
Business income after above deduction	56.5
<i>Less:</i> Depreciation allowable (₹20L × 10% + ₹50L × 5%)	4.5
Chargeable business income/total income (B)	52
Tax on above (₹1,12,500 + 30% of ₹42L)	13.725
<i>Add:</i> SC at 10% as income exceeds ₹50L	1.373
	15.098
<i>Add:</i> Cess on above at 4%	0.604
Tax liability as per normal provisions	15.702
Alternate minimum tax	
Adjusted total income (A) + (B)	122
AMT at 18.5%	22.57

Add: SC at 15% as income exceeds ₹ 1 crore	3.386
	25.956
Add: cess at 4%	1.038
AMT	26.994

Since the regular income-tax is lower than the AMT,

- adjusted total income will be deemed to be the total income (₹122 lakhs) and
- the tax payable will be ₹26.994 lakhs

2019 - June [2] (b) State whether 'business connection' is established as envisaged by section 9 of the Income-tax Act, 1961, in the under-mentioned situations:

- Jupier Pvt. Ltd., London (JPL), a non-resident company, has set up a liaison office at Kolkata, with the permission of the RBI. Indian customers, who are briefed of the products of JPL by the liaison office, interact directly with JPL for placing and processing of their orders.
- Madan & Co. (MC), is acting on behalf of Nelson Inc., Sydney, a non-resident company. MC can accept the order, negotiate the price and coordinate with Nelson Inc. for delivery of product to the Indian clients. MC is paid commission in this regard. **(4 marks)**

Answer:

Business connection:

- When a liaison Office is maintained solely for the purpose of carrying out activities which are preparatory or auxiliary in character, and such activities are approved by the Reserve Bank of India, then, no business connection is established.

Indian customers, who are briefed of the products of JPL by the liaison office, interact directly with JPL for placing and processing of their orders. The liaison office does not procure orders or process them. Hence there is no business connection, as envisaged by **section 9**.

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

- must have an authority which is habitually exercised in India to conclude contracts on behalf of the non-resident or;
- in a case where he has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident, or
- habitually secures orders in India, mainly or wholly for the non-resident.

Here, MC can accept the order, negotiate the price and coordinate with MC for delivery of product to the Indian clients. Hence there exists a business connection in this situation.

2019 - June [2] (c) On 20th Feb., 2024, Vaamana Textiles Pvt. Ltd., has given a trade advance of ₹ 50 lakhs to Ms. Poorvisha, a shareholder holding 30% of the equity shares and voting power in the company. On this date, the company has credit balance of ₹ 35 lakhs in the profit and loss account. Ascertain the quantum of deemed dividend which is assessable in the hands of Ms. Poorvisha. **(4 marks)**

Answer:

Deemed dividend:

Section 2(22)(e) provides that "dividend" includes any payment by a company in which public are not substantially interested, of any sum by way of

- advance or loan
- to a shareholder who is the beneficial owner of shares holding not less than 10% of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits.

Some Courts in the recent past has held that trade advances in the nature of commercial transactions would not fall within the ambit of the provisions of **Section 2(22)(e)**.

In view of the above, the CBDT has, vide circular 19/2017, dated 12.06.2017, clarified that it is a settled position that trade advances, which are in the nature of commercial transactions, would not fall within the ambit of the word 'advance' in **Section 2(22)(e)** and therefore, the same would not to be treated as deemed dividend.

Hence in the given situation there will not be any amount which is assessable as deemed dividend.

2019 - June [3] King Metals (P) Ltd. reports a Net Profit ₹ 10,20,000 as per Statement of Profit and Loss for the year ended 31.03.2024. The following additional information is provided:

- (i) Opening stock as on 01.04.2023 was ₹ 9,00,000 and the closing stock as on 31.03.2024 was ₹ 16,50,000. The opening stock was overvalued by 10% and the closing stock was undervalued by 10%.
- (ii) Dividend received from a foreign company credited to Statement of Profit and Loss ₹ 31,000. The company has 2% shareholding in the foreign company.
- (iii) The company sold a vacant land for ₹ 23 lakhs on 05.07.2023. The original cost of acquisition is ₹ 12 lakhs. The indexed cost of acquisition is ₹ 16,17,000 Profit on sale of vacant land has been credited to Statement of Profit and Loss. The company subscribed to REC bonds for ₹ 5,30,000 on 20.12.2023.
- (iv) The company made a provision for bad and doubtful debts @ 5% of debtors on the closing date. The debtors outstanding as on 31.03.2024 was ₹ 62 lakhs.
- (v) Depreciation debited to Statement of Profit and Loss ₹ 7,50,000. Depreciation allowable as per Income-tax Rules ₹ 6,55,000
- (vi) Salary expenditure includes. ₹ 3,60,000 paid to son of managing director who was no way connected with the business of the company. It also includes commission paid to a director's son 3% being ₹ 2,40,000 and whereas for other commission agents it was paid @ 2%.

- (vii) The company has paid term loan interest to SBI relating to previous year 2022-23 ₹ 2,10,000 in December, 2023. It has not paid term loan interest of ₹ 1,90,000 of the previous year 2023-24 during the year and proposes to make the payment only in January, 2025.
- (viii) The company took factory premises on lease and paid lease rent of ₹ 60,000 per month for 2 months to Mr. Akhil. No tax was deducted on such rent payment.
- (ix) Directors sitting fee of ₹ 50,000 was paid to 5 directors during the year. Tax was deducted for 2 directors and for the balance no tax deduction was made.
- (x) Provision for loss of subsidiary included in administrative expenses ₹ 2 lakhs.
- (xi) Amount credited to Statement of Profit and Loss by transfer from revaluation reserve amounts to ₹ 1,10,000.
- (xii) Provision for gratuity debited to Statement of profit and loss ₹ 7 lakhs. Actual gratuity paid during the year debited to provision account ₹ 4 lakhs.
- (xiii) A bad debt claim of ₹ 1,60,000 relating to the assessment year 2020-21 allowed in assessment was recovered and was credited to general reserve account.

You are required to compute the income of King Metals (P) Ltd. by giving brief explanations for each of the adjustments given above. **(16 marks)**

Answer:

Computation of Total Income of King Metals (P) Ltd. for the Asst. Year 2024 - 25

	₹	₹
Profits and gains of business or profession		
Net Profit as per Statement of profit and loss		10,20,000
<i>Add:</i>		
Undervaluation of closing stock to be adjusted		1,83,333
Overvaluation of opening stock by 10% to be adjusted		81,818

Provision for bad and doubtful debts - disallowed	3,10,000
Depreciation debited to statement of profit and loss	7,50,000
Salary paid to son managing director having no nexus to the business of the company is not allowable under section 37	3,60,000
Excess commission paid to the director's son is liable for disallowance under section 40A(2)	80,000
Term loan interest debited to Statement of profit and loss of the previous year 2022-23 not allowable under section 43B	1,90,000
Premises lease rent paid ₹60,000 per month for 2 months being ₹1,20,000. It is not liable for tax deduction under section 194-IB as the section will apply only to individual and HUF taxpayers. No adjustment is required.	Nil
Directors sitting fee paid without deduction of tax at source liable for disallowance @ 30% under section 40(a)(ia) [30% of ₹1,50,000]	45,000
Provision for loss of subsidiary company -disallowed	2,00,000
Provision for gratuity debited to Statement of profit and loss ₹7 lakhs not deductible in view of Section 40A(7) . However, the amount actually paid is eligible for deduction. The excess provision is disallowed.	3,00,000
Bad debt claim allowed in assessment year 2020-21 recovered during the year but credited to general reserve is chargeable to tax as income	1,60,000
	36,80,151

<i>Less:</i>		
Dividend received from foreign company excluded and to be taxed under the head 'other sources'	31,000	
Profit on sale of vacant land credited to Statement of profit and loss, to be considered under the head 'capital gains'	11,00,000	
Depreciation allowable as per Income-tax rules	6,55,000	
Interest on term loan of the previous year 2022-23 paid in December, 2022 deductible under section 43B	2,10,000	
Amount withdrawn from revaluation reserve and credited to Statement of profit and loss excluded	1,10,000	
		21,06,000
Income from Business		15,74,151
Capital Gain:		
Sale consideration	23,00,000	
<i>Less:</i> Indexed cost of acquisition	16,17,000	
	6,83,000	
<i>Less:</i> Exemption U/s 54EC eligible for corporate taxpayers' also	5,30,000	
		1,53,000
Income from Other Sources:		
Dividend received from foreign company		31,000
Total Income (Rounded off)		17,58,150

2019 - June [5] In the light of decided case laws, answer the following [Your answer should be under the following heads: (i) Issue involved (ii) Brief discussion on provisions applicable to the issue (iii) Analysis of the issue involved and (iv) Conclusion (Citation of the case law is NOT required)]:

- (a) Mr. Dhanapal, a resident individual, sold a house plot purchased 48 months back for ₹ 70 lakhs and invested the net sale proceeds in

purchase of a residential house within 6 months from the date of sale. He does not own any other residential house. The new house, however, is in the name of his wife. The Assessing Officer refuses to grant exemption under section 54F on the ground that the new residential house is not in the name of the assessee.

Is the rejection justified?

- (c) Anustup Chandra Textiles Ltd., had borrowed a sum of ₹ 2 crores from a bank during the period when its business was being set up. From the surplus funds, it made short-term deposits and earned interest of ₹ 3 lakhs. The assessee claimed that it was not a revenue receipt but a capital receipt, since the interest was earned prior to commencement of business and in any case, the interest received would be offset by the interest paid on the loan borrowed. The Assessing officer negative the claim of the assessee.

Is the AO justified in his action?

(4 × 2 = 8 marks)

Answer:

(a) Exemption u/s 54F:

Issue involved:

The issue under consideration in this case is whether exemption under **section 54F** can be denied to the assessee, if the net sale proceeds of a long term capital asset are invested in a new residential house within the stipulated time limit but the said house is purchased in the name of his wife and not in his name.

Provisions applicable:

Section 54F requires purchase or construction of a residential property within the specified period. It does not require purchase of new residential house property in the name of the assessee himself. It only requires the assessee to purchase or construct a residential house within the stipulated time limit.

Analysis of the given issue:

In this case, Mr. Dhanapal had not purchased the new house in the name of a stranger or somebody who is unconnected with him, but had purchased it in the name of his wife.

The entire investment for purchase of new residential house had come out of the sale proceeds of the plot belonging to Mr. Dhanapal and there was no contribution from his wife.

Therefore, having regard to the rule of purposive construction and the object of enactment of **section 54F**, Mr. Dhanapal is entitled to claim exemption u/s 54F in respect of utilization of sale proceeds of plot of land for investment in residential house property in the name of his wife.

Conclusion:

As a consequence, the action taken by the Assessing Officer in rejecting the claim for deduction under **section 54F** in the hands of Ankit due to the reason that he had invested the sale proceeds in purchasing a new residential house in the name of his wife rather than in his name, is not valid.

Reference may be made to the decision in **CIT v. Kamal Wahal (2013) 351 ITR4**.

(c) Taxability of interest from deposits made out of borrowed funds:

Issue involved:

The issue under consideration is whether the interest income of ₹2 lakhs on short-term fixed deposits made out of the unspent amount of term loan disbursed to BSL Ltd., would be a capital receipt not chargeable to tax or a revenue receipt chargeable to tax.

Provisions applicable:

Interest which is chargeable to tax under the **Income-tax Act, 1961** would be assessable under the head "Income from Other Sources",

- (i) if such income is not exempt, and
- (ii) is not chargeable to tax under any other head including "Profits and gains of business or profession.

Analysis of the issue:

Interest earned by the assessee is clearly its income and unless it can be shown that there is exemption under any provision of the Act, like **section 10**, such income will be taxable.

The fact that the source of income was borrowed money does not detract anything from the revenue character of the receipt.

The interest payable on funds borrowed for the business prior to commencement of such business can be capitalized. However, such interest payable cannot be adjusted against interest received on investment of surplus funds assessable under **section 56** under the head "Income from Other Sources".

In this case, since the assessee had deposited the amount of surplus funds available with it prior to commencement of business with the bank solely for the purpose of earning interest, such interest, in the absence of specific exemption in respect thereof, is chargeable to tax under the head "Income from Other Sources".

Conclusion:

Accordingly, the action of the AO is legally valid/ justified.

Reference may be made to the decision of the **Allahabad High Court in PC1T vs. Sangam Power Generation Co. Ltd.**

2019 - Dec [2] (b) State whether "business connection" is established as envisaged by section 9 of the Income-tax Act, 1961, in the under-mentioned situations:

- (i) Jupiter Pvt. Ltd., London (JPL), a non-resident company, has set up a liaison office at Kolkata, with the permission of the RBI. Indian customers, who are briefed of the products of JPL by the liaison office, interact directly with JPL for placing and processing of their orders. **(2 marks)**
- (ii) Madan & Co. (MC), is acting on behalf of Nelson Inc., Sydney, a non-resident company. MC can accept the order, negotiate the price and coordinate with MC for delivery of product to the Indian clients. MC is paid commission in this regard. **(2 marks)**

Answer:

Business connection

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

Indian customers, who are briefed of the products of JPL by the liaison office, interact directly with JPL for placing and processing of their orders. The liaison office does not procure orders or process them. Hence, there is no business connection as envisaged by **Section 9**.

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

- Must have an authority which is habitually exercised in India to conclude contracts on behalf the non-resident or;
- In a case where he has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident, or
- Habitually secures orders in India, mainly or wholly for the non-resident.

Here, MC can accept the order, negotiate the price and co-ordinate with MC for delivery of product to the India clients. Hence, there exists a business connection in this situation.

2019 - Dec [2] (c) On 20th Feb., 2024 Vaamana Textiles Pvt. Ltd., has given a trade advance of ₹50 lakhs to Ms. Poorvisha, a shareholder holding 30% of the equity shares and voting power in the company. On this date, the company has credit balance of ₹35 lakhs in the profit and loss account.

Ascertain the quantum of deemed dividend which is assessable in the hands of Ms. Poorvisha. **(4 marks)**

Answer:

Deemed dividend

Section 2(22)(e) provides that "dividend" includes any payment by a company in which public are not substantially interested, of any sum by way of:

- advance or loan
- to a shareholder who is the beneficial owner of shares holding not less than 10% of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial

interest or any payment by any such company on behalf, or for the individual benefit, or any such shareholder, to the extent to which the company in either case possesses accumulated profits.

Some Courts in the recent past has held that trade advances in the nature of commercial transactions would not fall within the ambit of the provisions of **Section 2(22)(e)**.

In view of the above, the CBDT has, vide circular 19/2017, dated 12.06.2017, clarified that it is a settled position that trade advances, which are in the nature of commercial transactions, would not fall within the ambit of the word 'advance' in **Section 2(22) (e)** and therefore, the same would not to be treated as deemed dividend.

Hence, in the given situation there will not be any amount which is assessable as deemed dividend.

2019 - Dec [3] Barun Co. Ltd. is engaged in the business of manufacture of chemicals since June, 2010. The Statement of Profit and Loss for the year ended 31.03.2024 shows a Net Profit of ₹35,60,000 and aggregate turnover which never exceeded ₹25 crores. The following additional information is provided:

- (a) Depreciation debited in the books ₹19,40,000 (it includes depreciation on revalued plant and machinery of ₹3,00,000). Amount of depreciation deductible under Income-tax Rules ₹13,15,000.
- (b) Interest payable to financial institutions ₹5,20,000 debited in the books but ₹3,90,000 was actually paid during the previous year and up to the date of filing the return of income under section 139(1).
- (c) Provision for doubtful debts ₹8 lakhs being 5% on debtors debited to Statement of Profit and Loss.
- (d) Expenditure towards issue of bonus shares ₹2 lakhs and alteration of memorandum of association for increasing the authorized capital ₹1 lakh. Both have been debited in the books as expenditure.
- (e) Purchase of agricultural produce being raw material for manufacture by making cash payment on 15.08.2023 ₹60,000 and on 26.01.2024 ₹40,000. Also, cash payments of ₹50,000 made for purchases of the previous year 2022-23 on 03.05.2023.

- (f) Contract payments made during the year ₹5,10,000 to ABC Ltd., Chennai. Tax was not deducted at source in respect of the payments of ₹1,50,000.
- (g) Dividend from subsidiary company credited to Statement of Profit and Loss ₹90,000.
- (h) Provision for taxation ₹2 lakhs and proposed dividend ₹80,000 debited to Statement of Profit and Loss.

Compute Total income and tax liability as per regular provision and under section 115JB (MAT Provision) for the assessment year 2024-25.

(16 marks)

Note: You have to deal with each and every item given above and provide brief reasons for treatment given.

Answer:

**Computation of Income of Barun Co. Ltd.
for the Assessment Year 2024 - 25**

Net Profit as per Statement of Profit and Loss.		35,60,000
<i>Add:</i>		
Depreciation debited		19,40,000
Interest payable to financial institutions is disallowed to the extent it is not paid up to the date of filing the return under Section 139(1)		1,30,000
Provision for doubtful debts		8,00,000
Expenditure towards issue of bonus shares is allowed as there is no fresh inflow of funds or increase in capital employed. [CIT v. General Insurance Corpn. (2006) 286 ITR 232 (SC)]		Nil
Expenditure towards increasing the authorized capital is a capital expenditure to be disallowed [Punjab State Industrial Development Corpn. Ltd. v. CIT (1997) 225 ITR 792 (SC)]		1,00,000

Purchase of agricultural produce on independence day and Republic Day are allowable and no disallowance under Section 40A(3)		Nil
Cash payment made for purchases/expenditures claimed in the earlier year is liable for disallowance under Section 40A(3A)		50,000
Contract payments without deduction of tax at source liable for disallowance @ 30% of ₹ 1,50,000		45,000
Provision for taxation and proposed dividend debited to Statement of Profit and Loss – added back		2,80,000
		69,05,000
<i>Less:</i>		
Depreciation allowable as per Income tax rules	13,15,000	
Dividend from subsidiary company credited to profit and loss account – to be considered under the head 'other sources' and hence, deducted now	90,000	14,05,000
Income from business and profession		55,00,000
Income from other sources		
Dividend (Note-1)		90,000
Total Income		55,90,000
Tax thereon @ 25% + 4% HEC		14,53,400

Note:

Dividend income taxable in hands of shareholders w.e.f. 1-4-2020

Till Assessment Year 2020-21, the dividend income from a domestic company was exempted in the hands of shareholder by virtue of exemption under section 10(34) of the Income Tax Act. But in this case, the company was liable to pay Dividend Distribution Tax (DDT) under section 115-O. However, the Finance Act, 2020 has made provisions of section 115-O ineffective which means that the domestic companies are no more liable to pay DDT on such dividend paid by them. Thus, with effect from A.Y. 2021-22, the dividend income is taxable in the hands of the shareholders and the burden of tax payment is shifted from company to the shareholders.

Computation of Book Profit of Barun Co. Ltd. u/s 115 JB for the Assessment Year 2024 – 25

Net Profit as per Statement of Profit and Loss	35,60,000
<i>Add:</i>	
Depreciation debited in the books to the extent it is attributable to revalued assets is liable for disallowance	3,00,000
Interest payable to financial institutions is not to be adjusted while computing book profit	Nil
Provision for doubtful debts liable for add back under Section 115 JB	8,00,000
Expenditure towards issue of bonus shares is not liable for any adjustment under Section 115 JB	Nil
Expenditure towards increasing the authorized capital though a capital expenditure is not liable for any adjustment under Section 115 JB	Nil
Purchase of agricultural produce on independence day and Republic Day – on adjustment under Section 115 JB	Nil
Cash payment made for purchases / expenditures claimed in the earlier year – not liable for any adjustment under Section 115 JB	Nil

Contract payments without deduction of tax at source liable for disallowance @ 30% of ₹ 1,50,000 under Section 40(a)(ia) but no adjustment under Section 115 JB	Nil
Provision for taxation and proposed dividend debited to Statement of Profit and Loss – added back	2,80,000
Book Profit under section 115JB	49,40,000
<i>Less:</i>	
Tax thereon @ 15%.	7,41,000
<i>Add:</i> Health and Education cess @ 4%.	29,640
	7,70,640

2019 - Dec [4] (a) Vishwa & Co., a partnership firm has earned a net profit of ₹ 6.2 lakhs after debiting the following items:

	(₹ in lakhs)
(i) Depreciation as per books for the current year	2
(ii) Interest to partners at 15%	9
(iii) Remuneration to working partners	7

Additional information:

(i) Depreciation for the current year as per Income-tax Rules, 1962	4
(ii) Unabsorbed depreciation of AY 2023-24 pertaining to a business which was discontinued	3
(iii) Brought forward business loss of AY 2023-24	5
(iv) Remuneration as per partnership deed to working Partners	8
(v) Interest to partners as per partnership deed 15%	

You are required to compute the total income for the firm, when the firm files its return of income on 30.07.2024.

Assuming that a best judgment assessment under section 144 is made, what will be the total income assessed? **(8 marks)**

Answer:**Computation of total income of Vishwa & Co., for the A.Y. 2024 - 25**

Particulars	Amount (₹)
Net profit before remuneration to working partners	6,20,000
<i>Add:</i> Depreciation as per books	2,00,000
Remuneration as per books	7,00,000
Adjustment for interest [Interest is allowable at 12% maximum same debited at 15% in books, hence difference is added back i.e., 9 – 7.2L	1,80,000
<i>Less:</i> Depreciation as per sec 32 Unabsorbed depreciation of A.Y. 2023 – 24 has to be added to current depreciation, as per the provisions of Section 32(2)	7,00,000
Book profits as per Section 40(b).	10,00,000
<i>Less:</i> Remuneration to working partners: Ceiling (First 3 lakhs 90% and 60% of balance). This is within the limit given in the partnership deed, hence allowable	6,90,000
Business income before considering set off	3,10,000
<i>Less:</i> Brought forward business loss	5,00,000
Business income / Total income (Loss)	(1,90,000)

When assessment is made u/s 144

Interest and remuneration to partners will not be allowed while making the assessment.

Total income in case of best judgment assessment

Particulars	Amount (₹)
Net profit before remuneration to working partners	6,20,000
<i>Add:</i> Depreciation as per books	2,00,000

Remuneration as per books	7,00,000
Interest to members debited	9,00,000
<i>Less:</i> Depreciation as per sec 32 Unabsorbed depreciation of AY 2023-24 has to be added to current depreciation, as per the provisions of Section 32(2)	7,00,000
Business income before b/wd losses	17,20,000
<i>Less:</i> Brought forward business loss	5,00,000
Business income/Total income	12,20,000

2019 - Dec [5] In the light of decided case laws, answer *any four* of the following:

[Your answer should be under the following heads: (i) Issue involved (ii) Brief discussion on provisions applicable to the issue (iii) Analysis of the issue involved, and (iv) Conclusion [*Citation of the case law* is NOT required:

- (a) Sagoserve Cooperative Society was a cooperative society deriving income of ₹2 crore, for which deduction was allowed under section 80P(2)(d). The total income of the assessee was ₹3 crore. The Assessing Officer disallowed 40% of interest expenditure, invoking the provisions of section 14A. According to the AO, out of the aggregate income of ₹5 crore, ₹2 crore did not form part of the same.
Is the disallowance made by the AO justified?
- (b) Lavanya Syndicates Pvt. Ltd., owns several house properties, let out on commercial basis to various kinds of people like business houses, corporate entities, etc. One of the objectives of the company is to own and derive income from letting out various kinds of immovable property. The rental income derived was offered by the company as its business income. Various deductions for earning such income was claimed, as also depreciation on the buildings owned by the company.
The Assessing Officer treated the rental income as income from house property and granted deduction only u/s 24.
Discuss whether the treatment of the impugned income made by the company is correct.

- (c) Mr. Pandurang sold a residential house property and invested whole of the long-term capital gain for purchasing a residential flat. The possession was not handed over by the builder to the assessee even after 3 years, even though the entire sale consideration had been paid. The Assessing Officer refused to grant exemption u/s 54 on the ground that the prescribed condition for purchase of a residential house had not been complied with, in as much as the possession had not been handed over. Judge the correctness of the action of the Assessing Officer.
- (d) Bluesky Airlines, the assessee-company was operating an airlines in India. Payment of ₹34 lakhs was made during the year to the Airport Authority of India. The assessee deducted tax at source at 2% u/s 194-C. The AO contended that the same was for parking charges and being payment made for use of land, section 194-I will apply. Is the contention of the Assessing Officer correct in law?
- (e) The assessee was dealing in Indian Made Foreign Liquor (IMFL). It was purchasing IMFL in wholesale from the State Govt., and selling it for higher price in the market. The Department recovered documents during survey which showed that the assessee had sold IMFL at price higher than what had been sold. Addition was made u/s 68 for suppressed sales. The assessee objected to the same. Is the objection sustainable? **(4 × 4 = 16 marks)**

Answer:

(a) Applicability of Section 14A

Issue involved:

The issue under consideration in this case is whether **Section 14A** can be invoked to disallow expenditure relating to income covered by deduction under Chapter VIA.

Provisions applicable:

Section 14A enjoins that no deduction shall be allowed in respect of expenditure relating to income which does not form part of the total income of the assessee.

Analysis of the given issue:

In the given situation, the income in question was not covered by any exemption under any of the clause of **Section 10**.

This was an income which formed part of the gross total income of the assessee, for which deduction was availed u/s 80P(2)(d).

Section 14A is applicable only in respect of expenditure relating to income which is exempt **under Section 10** and not where the impugned income is one for which deduction is available under Chapter VIA.

Conclusion:

The action of the Assessing officer invoking the provisions of **Section 14A** in the given situation is incorrect.

Reference may be made to the decision in CIT vs Kribhco 349 ITR 18 (Del).

(b) Business income or income from house property:

Issue involved:

The issue under consideration whether the income derived by the company by letting out the properties owned by it is assessable as business income or as income from house property.

Provisions applicable:

Where the income in question is one earned as a mere owner of the property, it will be income from house property covered by **Section 22**. If the income is one derived from the business of the company, which included letting out the properties owned. It would be business income covered by **Section 28**, for which various deduction under **Sections 29 to 44** will be available.

Analysis:

Where there is a letting out of premises and collection of rents the assessment on property basis may be correct but not so, where the letting or sub-letting is part of a trading operation. The directing line is difficult to find; but in the case of a company with its professed objects and the manner of its activities and the nature of its dealings with its property, it is possible to say on which side the operations fall and to what head the income is to be assigned.

In the given case, the objects of the company include carrying of business of letting out properties. The income has not been earned as mere owner of the let out properties.

Conclusion:

The contention of the assessee-company is hence correct.

Reference may be made to the decisions of the Apex Court the case of Chennai Properties and Investments Ltd. v. CIT [2015] 373 ITR 673 (SC), reiterated by the Apex Court in Rayala Corporation (P) Ltd. v. ACIT (2016) 72 taxmann. Com 149 (SC).

(c) Exemption under Section 54:

Issue involved:

The issue involved is whether the exemption u/s 54 can be denied to the assessee on the ground that the possession of the new residential flat had not been handed over to him by the builder.

Provisions applicable:

Exemption will be available **under Section 54**, where the long-term capital gain derived by a resident individual/HUF is invested, *inter alia*, in purchase of another residential house within a period of 2 years from the date of transfer.

Analysis of the issue:

In the given case, the assessee had paid the entire sale consideration to the builder for purchase of the new residential house/flat. Thus, he had complied with the required condition stipulated **u/s 54** for grant of exemption.

There is no provision which prohibits exemption **u/s 54** where the possession of the flat is not handed over to the assessee.

Conclusion:

The Assessing Officer is not justified in denying exemption **u/s 54** to the assessee.

Reference may be made to the decision of the Karnataka High Court in CIT vs Sakuntala Devi 389 ITR 366 (Kar).

(d) TDS u/s 194-C or 194-I?

Issue involved:

The issue involved is whether in respect of the payments made by the assessee (operating its airlines) to the AAI, tax deducted **u/s 194-C or u/s 194-I?**

Provisions applicable:

As per **Section 194-C**, where any payment is made by a company to another company for contractual services, tax has to be deducted at source at 1.5% of the payments.

As per **Section 194-I**, in simple terms, where the payment is made for lease of land, tax has to be deducted under that section at the applicable rate, where such payment exceeds ₹ 2.4 lakhs per annum.

Analysis of the issue:

The payment made by the assessee – airlines was not just for use of land alone, but for number of services like parking space, aero bridge, customer support services for passengers, etc. It was for a bundle of contractual services and not merely for use of the land for landing or parking.

Section 194-I can have applicable only where the payment is made, *inter alia*, for lease of land/building and not where variety of services are provided to the assessee.

Conclusion:

As a result, **Section 194C** will govern the issue and not Section 194-I. The contention of the AO is incorrect.

Reference may be made to the decision of the Apex Court in Japan Airlines Co. Ltd. vs. CIT (2015) 60 taxmann. Com 71 (SC).

(e) Unexplained cash credit:**Issue involved:**

The issue involved is whether the addition u/s 68 is justified in law.

Provisions applicable:

Section 68 enjoins that where any sum is found credited in the books of an assessment maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

Analysis of the issue:

During survey it was found that the assessee – had sold 'IMFL' in excess of price shown in books of account and return. The Assessing Officer on basis of documents recovered made addition of income of the assessee on account of suppressed sales.

There was no restriction with respect to price for which liquor had to be sold by a person holding licence to run bars under the Aabkari Act. Since, the price was variable and sale suppression detected during survey was actual price for which liquor was sold, the addition made on account of sale suppression was to be sustained.

Conclusion:

The assessee's contention is therefore incorrect and is not sustainable. Reference may be made to the decision of the Kerala High Court in CIT v. Archana Trading Co. [2018] 257 Taxman 386 Ker.

2019 - Dec [7] (a) Mr. Rupesh is a resident and ordinary resident has furnished following particulars of income earned during the previous year relevant to the assessment year 2024-25:

		In ₹
(i)	Income from agriculture in Pakistan, received there but latter on ₹86,000 is remitted to India.	3,41,000
(ii)	Income from property in USA received outside India (out of this ₹92,000 is used in Canada for meeting education expenses of his son and ₹2,48,000 is latter remitted to India.	3,40,000
(iii)	Income from business in Iran which is controlled from New Delhi (₹70,000 is received in India)	4,05,000
(iv)	Dividend paid by Indian Company on May 10, 2023 but received outside India	1,95,800
(v)	Profits from a business in New Delhi and managed from outside India (60% of profit is received outside India)	92,000

(vi)	Profits on sale of a building in India but received in Nepal	8,74,000
(vii)	Pension from a former employer in India, received in Iran	2,55,000
(viii)	Gift in foreign currency from a friend received in India on September 6, 2023.	80,000

Find out gross total income for the assessment year 2024-25. (8 marks)

Answer:

Computation of gross total income of Mr. Rupesh, a resident and ordinary resident of India for the A.Y. 2024-25

	In ₹
Income accrued and received outside India: Income from agriculture in Pakistan even if only ₹ 86,000 has been received	3,41,000
Income from property in USA received outside India: Income received outside India (even if ₹ 92,000 spent in Canada the entire amount is taxable in India)	3,40,000
Income from business in Iran which is controlled from New Delhi: Taxable on receipt basis – ₹ 70,000 + Balance of ₹ 3,35,000 is also taxable as the assessee is resident	4,05,000
Dividend paid by Indian Company on May 10, 2023 but received outside India: Income deemed to accrue or arise in India is taxable (Note-1)	1,95,800
Profits from a business in New Delhi and managed from outside India (60% of profit is received outside India): Total amount is taxable as accrued outside India	92,000
Profits on sale of a building in India but received in Nepal: Income deemed to accrue and arise in India and taxable in India	8,74,000

Pension from a former employer in India, received in Iran: Income deemed to accrue and arise in India. Taxable after standard deduction of ₹ 2,15,000 (₹ 2,55,000 – ₹ 50,000)	2,05,000
Gift in foreign currency from a friend received in India on September 6, 2023 is taxable as income from other sources and taxable	80,000
Gross Total Income	25,32,800

Note - 1:

There is a change in the dividend taxation regime with the abolishment of dividend distribution tax in case of dividend paid/distributed by domestic companies after 1 April, 2020, hence, Section 10(34) which provided exemption from dividend received (after payment of Dividend Distribution Tax) is provided with a sunset clause i.e., the exemption would not be applicable on income received by way of dividend on or after 1 April, 2020.

2019 - Dec [7] (b) Mr. Ron, a nonresident, is engaged in business of shipping and operating its ships in Indian ports during the previous year ending on March 31, 2024 had collected freight ₹100 lakhs (collected in US dollars) for the cargo booked for Paradeep Port from London and ₹45 lakhs for shipping goods from Mumbai. Besides above demurrages 20 lakhs and handling charges ₹10 lakhs also collected. The expenses of operating its fleets during the year for Indian ports were ₹110 lakhs (out of which two lakhs paid in cash). He has brought forward loss of ₹2 lakhs from trading business in India which is discontinued during the year 2022-23. He has opted for payment of tax under section 44B (presumptive scheme).

Compute taxable income and explain the basis taken for computation of such income. **(8 marks)**

Answer:

**Computation of Total Income Mr. Ron, a non-resident, for
A.Y. 2024-25 under Section 44B.**

	₹ in lakhs
Freight collected for cargo booked for paradeep port from London	100.00

Freight collected for shipping goods from Mumbai	45.00
Demurrages and handling charges	30.00
Total receipt	175.00
Income from shipping business (7.5% of the amount received including demurrages and handling charges is deemed to be taxable income under Section 44B) – Note – 1	13.125
<i>Add:</i> Disallowances of expenses under Section 43A(3) – not applicable – refer Note – 1	---
Total Income from business	13.125
<i>Less:</i> Brought forward business loss	2.00
Net Income	11.125

Note: 1: Section 44B overrides Sections 28 to 43A. It should be noted that accordingly deduction under this provisions are not applicable. So, expenses are not deducted.

However, other provisions those relating to carry forward and set off of losses will be applicable. Hence, carry forward of Loss of ₹ 2 lakhs is deducted to arrive the taxable income.

2021 - Dec [1] MS. P is a dealer in real estate. She buys and sells immovable property like land, buildings, etc. on 30th June, 2021, she had purchased a building for ₹ 55 lakhs.

As on 31st March 2022, the building remained unsold and the net realizable (NRV) of the building was ₹ 51.5 lakhs only. Closing stock is valued by her at cost or NRV, whichever is lower.

On 1st April, 2023, she converted this building into capital asset, passing necessary entries in the books there for. The stamp duty valuation as on this date was ₹ 53 lakhs. The building was not suitable for her personal use and hence she sold it on 12th March, 2023 for ₹ 51 lakhs, expenses on sale being ₹ 40,000.

Determine the income-tax consequences in the hands of Ms. P for the A.Y. 2024-25 relating to the above. **(6 marks) [Sec. C - One LAQ]**

Answer:

As per amendment made by the Finance Act, 2018, where any business asset is converted into personal asset (capital asset), there will be tax consequence; fair market value of the asset transferred as on the date of transfer will have to be considered and business income calculated, as per section 28(via).

In the given situation, being a business asset, inventory on 31-3-2023, would have been valued at cost or NRV whichever is lower (as given in the problem), i.e. for ₹ 51.5 lakhs. Thus, the opening value as on 1-4-2023 as per books is ₹ 51.5 lakhs.

As per section 28(via), the fair market value of the asset transferred, determined in the prescribed manner has to be determined and adopted for ascertaining the business income. As per the relevant Rule, the FMV is the value adopted for stamp valuation purposes, i.e. 53 lakhs.

Therefore, the difference between 53 L and 51.5 L i.e. ₹ 1.5 lakhs will be treated as business income for the AY 2024-25.

For purposes of capital gain, the FMV as on 1-4-2023 so adopted, will be the cost of acquisition. The date of conversion will be treated as date of acquisition.

Computation of Capital Gain

Sales Consideration	51.00 Lakh
Less: Expenses on sale	<u>0.40 Lakh</u>
Net Sale consideration	50.60 Lakh
Less: Cost of Acquisition	<u>53.00 Lakh</u>
Short term capital Loss	<u>2.40 Lakh</u>

2021 - Dec [1] DKC softeck is a company incorporated in UK in which 55% of shares are held by the FAM softeck which is in India. DKC softeck has 4 branches in India. The details relating to the DKC softeck for the P.Y. 2023-24, are as under:

Particulars	India (In Crores)	UK (In crores)
Value of fixed assets:		
Market (NRV) values	145	70
Depreciated Values	135	160

Book value before depreciation	155	85
Intangible assets	35	180
Other assets (value as per books of account)	25	35
Income from trading operations	90	145
The above figure includes		
(a) Income from transactions where purchase are from associated enterprises and sales are made to non - associated enterprises.	10	25
(b) Income from transactions where sales are to associated enterprises and purchases are from non-associated enterprises.	15	20
(c) Income from transactions where both purchases and sales are from associated Enterprises.	35	65
Interest and dividend from the Investments	45	20
Number of employees	150	200
Out of the 200 employees in UK		
15 are resident of India		
Out of the 150 employees are India		
30 are non - resident in India		
Salary given to the employees	30	40
Bonus given during festivals	5	8

Determine the residential status of DKC Softeck for the A.Y. 2024-25 if out of 9 board meetings held 6 meetings are held in India.

(8 marks) [Sec. C - Two LAQ]

Answer:

The residential status of a foreign company is determined on the basis of place of effective management (POEM) of the company. For determining the POEM of a foreign company, the important criteria is whether the company is engaged in active business outside India or not (ABOI). A company shall be said to be engaged in "Active Business Outside India" (ABOI) for POEM, if the passive income is not more than 50% of its total income; and less than 50% of its total assets are situated in India; and less than 50% of total number of employees are situated in India or are resident in India; and the payroll expenses incurred on such employees is less than 50% of its total payroll expenditure. DKC softeck shall be regarded as a company engaged in active business outside India for P.Y.2023-24 for POEM purpose only if it satisfies all the four conditions cumulatively.

Condition 1: The passive income of DKC softeck should not be more than 50% of its total income

Total income of DKC softeck during the P.Y. 2023-24 is ₹ 300 crores [(₹ 90 crores +145 crores) + (45 crores + 20 crores)]

Passive income is the aggregate of, -

- (i) Income from the transactions where both the purchase and sale of goods is from/to its associated enterprises; and
- (ii) Income by way of royalty, dividend, capital gains, interest or rental income;

Passive Income of DKC softeck is ₹ 100 crores, being sum total of:

- (i) ₹ 35 crores, income from transactions where both purchases and sales are from/to associated enterprises (₹ 15 crores in India and ₹ 20 crores in UK)
- (ii) ₹ 65 crores, being interest and dividend from investment (₹ 45 crores in India and ₹ 20 crores in UK)

Percentage of passive income to total income = ₹ 100 crore/ ₹ 300 crore x 100 = 33.33%

Since passive income of DKC softeck is 33.33%, which is not more than 50% of its total income, the first condition is satisfied.

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

Value of total assets of DKC softeck during the P.Y. 2023-24 is ₹ 570 crores [₹195 crores, in India + ₹ 375 crores, in UK]

Note:

Value of fixed assets are taken at the depreciated values and others at the book value.

Percentage of assets situated in India to total assets = ₹ 195 crores/₹570 crores x 100 = 34.21%

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

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

Number of employees situated in India or are resident in India is 135 [(150-30) +15]. Total number of employees of DKC softeck is 350 [150 + 200].

Percentage of employees situated in India or are resident in India to total number of employees is $135/350 \times 100 = 38.57\%$.

Since employees situated in India or are residents in India of DKC softeck are less than 50% of its total employees, the third condition for ABOI test is satisfied.

Condition 4: The payroll expenses incurred on employees situated in India or resident in India should be less than 50% of its total payroll expenditure. Payroll expenses on employees employed in and resident of India = $(35/150 \times 120) + (48/200 \times 15) = 28 + 3.6 = 31.6$ crores total payroll expenses = ₹83 crores (₹35 crores + ₹48 crores)

Percentage of payroll expenses of employees situated in India or are resident in India to the total payroll expenses = $31.6/83 \times 100 = 38\%$.

Since the payroll expenses incurred on employees situated in India or resident in India is less than 50% of its total payroll expenditure, the fourth condition for ABOI test is also satisfied. Thus, since DKC softeck has satisfied all the four conditions, the company would be said to be engaged in "active business outside India" during the P.Y.2023-24.

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

Though DKC softex is engaged in active business outside India in the P.Y. 2023-24 but the majority of its board meetings i.e., 6 out of 9, were held in India, POEM of DKC softex shall be in India. The assessee will be treated as resident.

2021 - Dec [2] Keshava charitable trust was created on 10.03.2008 with the objective of helping the physically challenged people and advancement of any other object of general public utility. The charitable trust sells art and crafts items through which it received an income of ₹ 10,00,000. Total receipts of the trust during the previous year 2023-24 is ₹ 80,00,000. Total receipts includes anonymous donation of ₹12,00,000 with no specific directions for use. It has utilized ₹70,00,000 for the objectives of the trust and accumulated ₹10,00,000 for future use.

The accumulated funds are planned to be applied outside India. Examine the taxability of income.

(6 marks) [Sec. C - One LAQ]

Answer:

An institution having its main object as " advancement of any other object of general public utility", derives income from the activity in the nature of trade during a financial year, would retain its charitable status if the receipts from such activity does not exceed 20% of the total receipts in that year. As the total receipts from the business is 12.5% (10 lakhs/80 lakhs *100) which is less than 20% of the total receipts, the status of charitable trust will not be affected. The exemption u/s 11 or 12 shall not be applicable in respect of anonymous donation with a specific direction that the donation shall form part of the corpus of the trust or institution, such anonymous donation would not be exempt by virtue of sec 11(1)(d). It would be taxable at 30% as per sec 115BBC. So, an amount of ₹ 12 lakhs would be taxable at 30%. As per sec 11, accumulation of 15% of income is permissible. For computing this 15%, voluntary contributions referred to in the sec 12 shall be deemed to be part of income. Also, accumulation must be with the object of application of the accumulated amount for charitable or religious purposes in India at a later date. Such facility of accumulation is not available for those trusts whose income is to be applied outside India. The accumulation of ₹ 10 lakhs is within the permitted limit of 15% of income but as the same is accumulated for the objective of being applied outside India, the facility of accumulation U/S 11 is not available and would be included in the total income.

2021 - Dec [2] In M/S WER Ltd, shareholding structure is as follows:

Central government 20%

Reserve bank of India 22%

Promoters of the company 58%,

Examine whether WER Ltd is a widely held government company u/s 2(18) or not? **(4 marks) [Sec. C - Two LAQ]**

Answer:

Company in which public are substantially interested [Sec. 2(18)] .

A company is said to be a company in which the public are substantially interested (also known as widely held company):

Government company: A company owned by the Government or the Reserve Bank of India or in which not less than 40% of the shares are held (whether singly or taken together) by the Government or the Reserve Bank of India or a corporation owned by that bank; In the above case, the 42% shares (which is not less than 40%) of M/S WER Ltd., is held together by the Central Government and RBI.

So, M/S WER Ltd is a government company in which public are substantially interested as per sub section 18 of section 2.

2021 - Dec [1] Arnold Ltd, Mumbai is engaged in manufacture of toys. It is the subsidiary of Tony Ltd of UK. It wanted to expand its operations and accordingly wanted term loan of ₹100 crores. Based on the guarantee provided by Tony Ltd, a nationalized bank in India gave term loan of ₹80 crores on 1.6.2023 for interest @8% per annum. Besides this, Arnold Ltd availed loan of ₹20 crores from a yet another bank by giving its own properties as security in December, 2023. No other borrowings were made by Arnold Ltd except these two borrowings. The total book value of assets of Arnold Ltd was ₹ 200 crores as on 1.6.2023. The net profit of Arnold Ltd as per statement of Profit and loss for the year ended 31st March, 2024 was ₹3 crores. The following amounts are debited to Statement of profit and Loss:

- (i) Depreciation ₹5 crores;
- (ii) Interest to bank (on term loan based on guarantee of Tony Ltd referred above) ₹6 crores;
- (iii) Interest on bank loan (based on own security) ₹1.60 crore;
- (iv) Provision for taxation ₹ 2 crores;

- (v) Staff salary ₹12 crores;
- (vi) Administrative expenses ₹15 crores; and
- (vii) Proposed dividend ₹3 crores.

You are required to compute the quantum of interest allowable in the hands of Arnold Ltd. for the Assessment Year 2024-25 and interest eligible for carry forward to subsequent assessment years. **(6 marks) [Sec. C - Three LAQ]**

Answer:

Computation Interest eligible for deduction In the hands of Arnold Ltd.

The Interest which is deductible, is lower of:

- (a) 30% of EBIT DA or (i.e. 17.60 crore × 30%) = 5.28 crore
- (b) Interest paid or payable to associated enterprises 6.00 crore

$$\begin{aligned} \text{EBIT DA} &= \text{Net profit} + \text{Depreciation} \\ &\quad + \text{Interest} + \text{Provision for Tax} \\ &= 3 \text{ crore} + 5 \text{ crore} + 6 \text{ crore} + 2 \text{ crore} + 1.6 \text{ crore} \\ &= 17.60 \text{ crore} \end{aligned}$$

- Therefore Interest eligible for deduction = ₹ 5.28 crore
- Interest liable for disallowance and eligible for carry forward to subsequent 8 assessment years = (6 crore – 5.28 crore) = 0.72 crore

2021 - Dec [2] Amar & Co is a partnership firm consisting of 4 equal partners with 25% share there in. The partnership firm has Net Profit of ₹11,20,000 after adjustment of the following:

- (i) Interest on capital to partners @ 15% as authorized by the deed ₹4,50,000
- (ii) Working partner salary to partners ₹6,00,000 as per deed.
- (iii) The firm paid rent of ₹2,70,000 to a partner for the premises occupied by it. No tax was deducted at source on the said payment.
- (iv) The firm paid ₹60,000 as brokerage to Ramji and tax was deducted at source on 31st March, 2024 and was remitted in July 2024.
- (v) The firm remitted ₹60,000 being provident fund recovered from its employees of the previous year 2023-24 on 12th May, 2024.
- (vi) The firm paid ₹5 lakhs towards patent to a non-resident in March, 2024 being the amount payable for the financial year 2023-24. The tax deducted at source at the time of payment was remitted in June 2023.

Additional information:

Provident fund payable for the previous year 2022-23 ₹ 50,000 was remitted in January, 2024. This amount was shown as liability in the balance sheet as at 31st March, 2023. You are required to compute the "Book profit" of the firm.

(6 marks) [Sec. C - Three LAQ]

Answer:**Computation of Book Profit**

Net profit of firm	11,20,000
Add: (i) Salary to partners	6,00,000
(ii) Interest to partners in excess of 12% $\left(4,50,000 \times \frac{3}{15}\right)$	90,000
(iii) 30% of Rent $(2,70,000 \times 30\%)$	<u>81,000</u>
Book Profit	<u>18,91,000</u>

2021 - Dec [2] Mr. Jadeja (85 years old) purchased a house property of ₹ 15 lakhs in Jaipur on 24-02-2006. He received a rental income of ₹ 30,000 p.m. from that house property and paid a municipal tax of ₹20,000 and ₹ 5,000 was payable as on 31-03-2024. On 03-10-2023, he sold his property for ₹ 1.5 crores and paid ₹ 3 lakhs as commission to the broker. He purchased 2 new residential house properties worth ₹ 49 lakhs and ₹ 53 lakhs respectively in Kanpur on 31-07-2024. He received ₹ 36,000 as interest on fixed deposits.

- Compute total income of Mr. Jadeja for A.Y. 2024-25.
- Comment on whether he is required to file return of income u/s 139(1).CII: 2002-03: 105, 2004-05: 113, 2005-06: 117, 2023-24:348

(6 marks) [Sec. C - Four LAQ]

Answer:**(i) Computation of Total Income of Mr. Jadeja**

Sale consideration of HP	1,50,00,000
Less: Commission paid to Broker	<u>3,00,000</u>
	1,47,00,000
Less: Index cost of Acquisition $\left(15,00,000 \times \frac{348}{113}\right)$	<u>46,19,469</u>
L T C P	1,00,80,531

Less: Exemption u/s 54 (49,00,000 + 53,00,000)		<u>1,02,00,000</u>
Taxable LTCG	(B)	<u>Nil</u>
Income from House Property		
Gross Annual value being Rent		
Received (30,000 × 6)		1,80,000
Less: Municipal Tax paid		<u>20,000</u>
Net Annual Value		1,60,000
Less: Deduction u/s 24		
30% of NAV		<u>48,000</u>
Income form HP	(A)	<u>1,12,000</u>
GTI = A + B		1,12,000
Less: Deduction u/s chapter (VI)		<u>NIL</u>
Total Income		<u>1,12,000</u>

- (ii) According to sec 139 (1), a person other than a company or a firm, if his total income or the total income of any person in respect of which he is assessable under this Act [income before giving effect to sec. 54, 54B, 54D, 54EC, 54F, 54G, 54GA, 54GB and chapter VIA (i.e., deduction u/s 80C to 80U)] during the previous year exceeded the maximum amount which is not chargeable to income tax, shall, on or before the due date, furnish a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed. For Mr. Jadeja, the total income before giving effect to sec 54 and deduction u/s 80TTA is ₹ 1,04,18,195 which exceeds maximum amount which not chargeable to tax of ₹5,00,000, he is required for the A. Y. 2024-25.

2021 - Dec [1] Parikh purchased a vacant land at Cuttack at a cost of ₹90 lakhs in December 2009 and held the same as his capital asset till 30th September, 2023. He started real estate business on 1st October, 2021 and converted the said land into stock in trade of his business on the said date, when the fair market value of the land was ₹ 360 lakhs. He constructed 30 apartments of equal size, quality and dimension and the construction was completed in December, 2023. Cost of construction of each apartment is ₹15 lakhs. He sold 20 apartments at ₹ 35 lakhs per apartment during the period

from January, 2024 to February 2024. The remaining 10 apartments were held in stock as on 31st March, 2024. He also holds a penthouse in Bengaluru, construction of which was completed in March, 2023, as stock-in-trade. He let out the penthouse to Amit, a salaried individual, for ₹ 60,000 per month from April, 2023 to March, 2025., who has furnished his PAN to him. Parikh paid municipal tax of ₹40,000 in December, 2023 relating to the year 2022-23. He invested ₹20 lakhs in bonds issued by National Highway Authority of India on 31st March, 2024; ₹20 lakhs in bonds of Rural Electrification Corporation Ltd on 31st August, 2024; ₹10 lakhs in bonds of Rural Electrification Corporation Ltd on 30th September, 2024 and ₹10 lakhs in bonds of National Highway Authority of India on 31st December, 2024. Parikh is subjected to tax audit for the previous year 2023-24.

Cost inflation indices:

F.Y.2009-10; 148; F.Y.2019-20; 289; F.Y.2020-21; 301 F.Y.2023-24; 348

Based on the above facts, you are required to answer the following:

- (i) Compute income under the head "Capital Gains" in the hands of Parikh for the Assessment Year 2024-25.
- (ii) Compute income under the head "Profits and gains of business or profession" in the hands of Parikh for the Assessment Year 2024-25.
- (iii) Compute income under the head "House property" in the hands of Parikh for the Assessment Year 2024-25.:
- (iv) Briefly state the TDS responsibilities of the tenant Amit in respect of rent paid by him. **(12 marks) [Sec. D - Case Study Question]**

Answer:

(i) **Computation of Capital Gain of Parikh**

Deemed Sale consideration	3,60,00,000
Less: Index cost of Acquisition $\left(90,00,000 \times \frac{348}{148} \right)$	<u>2,11,62,162</u>
LTCG	1,48,37,838
Less: Exemption u/s 54EC	<u>40,00,000</u>
Total Taxable LTCG	<u>1,08,37,838</u>
of which 2/3 LTCG is Taxable in this A.Y.	72,25,225

(ii) **Computation of Income from Business**

Sale consideration of 20 apartments (20 × 35 Lakh)	7,00,00,000
Less: (i) Cost of Land $\left(3,60,00,000 \times \frac{20}{30}\right)$	(2,40,00,000)
(ii) Cost of construction of 20 Apartments (20 × 15 Lakh)	<u>(3,00,00,000)</u>
Income from Business	<u>1,60,00,000</u>

(iii) **Income from House Property**

Gross Annual Value (60,000 × 12)	7,20,000
Less: Municipal Tax paid	<u>40,000</u>
Net Annual Value	6,80,000
Less: Standard Deduction u/s 24	<u>2,04,000</u>
Income from HP	<u>4,76,000</u>

(iv) Liability to deduct TDS by tenant Amit:

- Amit has to deduct tax at source on rent paid as per section 194-IB since the rent paid exceeds ₹50,000 per month or part of a month.
- TDS on ₹7,20,000 @ 5% thereon is deductible. The amount being ₹36,000.
- It is deductible only in March, 2024 being the last month of the previous year in the financial year 2023-24.

2022 - Dec [3] KGB Ltd. is engaged in the manufacture of fabrics since 01-04-2014. Its Statement of Profit and Loss for the previous year ended 31st March, 2024 shows a profit of ₹ 720 lakhs after debiting or crediting the following items:

- Industrial power tariff concession of ₹ 3.80 lakhs, received from Karnataka State Government was credited to Statement of profit and loss.
- Depreciation charged on the basis of useful life of assets as per the Companies Act is ₹ 55 lakhs.
- The company had provided ₹ 22 lakhs, being sum fairly estimated as payable with reasonable certainty, to workers on agreement to be entered with the workers union towards periodical wage revision once in every three years.

- (d) Loss ₹ 18 lakhs, due to destruction of a machine by fire due to short circuit debited to Statement of Profit and Loss. The insurance company did not admit the claim of the company on charge of gross negligence and ₹ 4 lakhs received as scrap value credited to profit and loss account.
- (e) Dividend received from a US company ₹ 14 lakhs.
- (f) Provision for gratuity based on actuarial valuation was ₹ 300 lakhs. Actual gratuity paid debited to gratuity provision account was ₹ 120 lakhs.
- (g) Advertisement charges ₹ 2.20 lakhs, paid by cheque for advertisement published in the souvenir of a political party registered with the Election Commission of India.
- (h) Long-term capital gain ₹ 95,000 on sale of equity shares on which Securities Transaction Tax (STT) was paid at the time of acquisition and sale.

Additional Information:

- (i) Normal depreciation computed as per Income-tax Rules is ₹ 72 lakhs after consideration of scrap value.
- (ii) GST ₹ 10 lakhs collected from its customers was paid by the company on the due dates. On an appeal, the High Court directed the GST department to refund ₹ 4 lakhs to the company. The company in turn refunded ₹ 1 lakh to the customers from whom it was collected and the balance ₹ 3 lakhs is still lying under the head 'Current Liabilities'. Compute the total income of KGB Ltd. for the A.Y. 2024-25 by analysing and applying the relevant provisions of income-tax law. Briefly explain the reasons for treatment of each item. Ignore the provisions relating to Minimum Alternate Tax. Assume that the company has not opted for section 115BAA. Show income under proper head as required under Income-Tax Act, 1961. **(16 marks)**

Answer:**Computation of Total Income of KGB Ltd., for the A.Y. 2024-25**

	Amount ₹
I. Profits and gains of business and profession	
Net profit as per the statement of profit and loss	7,20,00,000

<i>Add:</i> Items debited but to be considered separately or items of expenditure to be disallowed	
Depreciation as per the Companies Act	55,00,000
Provision for wages payable to workers [Since the provision is based on a fair estimate of wages payable with reasonable certainty, the provision is allowable as deduction. ICDS X requires a reliable estimate of the amount of obligation and 'reasonable certainty' for recognition of a provision, which is present in this case. As the provision of ₹ 22 lakhs has been debited to statement of profit and loss, no adjustment is required while computing business income]	Nil
Loss due to destruction of machinery by fire	18,00,000
[Loss of ₹ 18 lakhs due to destruction of machinery caused by fire is not deductible since it is capital in nature. Since the loss has been debited to statement of profit and loss, the same is required to added back while computing business income]	
Provision for gratuity [Provision of ₹ 300 lakhs for gratuity based on actuarial valuation is not allowable deduction. However, actual gratuity of ₹ 120 lakhs paid is allowable as deduction. Hence, the difference has to be added back to income [₹ 300 lakhs (-) ₹ 120 lakhs]	1,80,00,000
Advertisement in souvenir of a political party [Advertisement charges paid in respect of souvenir published by a political party is not allowable as deduction since it is specifically disallowed under section 37(2B)]	2,20,000

<i>Add:</i> Income taxable but not credited to statement of profit and loss.	
(ii) GST not refunded to customers out of GST refund received from State Govt. The amount of GST refunded to the company by the Government is a revenue receipt chargeable to tax. Out of the refunded amount of ₹ 4 lakhs, the amount of ₹ 1 lakh stands refunded to customers would not be chargeable to tax. The balance amount of ₹ 3,00,000 not refunded, lying with the company would be chargeable to tax]	3,00,000
	9,78,20,000
<i>Less:</i> Items credited to statement of profit and loss, but not includible in business income/permissible expenditure and allowances	
Industrial power tariff concession received from State Government [Any assistance in the form of, <i>inter alia</i> , concession received from the Central or State Government would be regarded as income. As the same has been credited to statement of profit and loss, no adjustment is required]	Nil
Dividend received from US company [Dividend received from foreign company is taxable under "Income from Other sources". Since the same has been credited to the statement of profit and loss, it has to be deducted while computing business income]	14,00,000
Scrap value of machinery [Scrap value of machinery, being capital in nature, has to be reduced from WDV of machinery. Since the same has been credited to the statement of profit and loss, it has to be deducted while computing business income]	4,00,000

Long term capital gains on sale of equity shares [The taxability or otherwise of long-term capital gain on sale of equity shares has to be considered while computing income under the head "Capital Gains". Since such capital gains has been credited to statement of profit and loss, the same has to be reduced to arrive at the business income.]	95,000
Depreciation as per Income-tax Rules, 1961	72,00,000
I. Profits and Gains from Business and Profession	8,87,25,000
II. Income from Other Sources	
Dividend received from foreign company [Dividend received from a foreign company is chargeable to tax under the head "Income from Other sources"]	14,00,000
III. Capital Gains	
Long term capital gain on sale of equity shares [Long term capital gains on sale of equity shares on which STT has been paid, is chargeable to tax	95,000
Gross Total Income	9,02,20,000
<i>Less: Deduction under Chapter VI-A</i>	
Under section 80GGB [Contribution by a company to a registered political party is allowable as deduction, since payment is made otherwise than by cash. Expenditure incurred by an Indian company on advertisement in souvenir published by such political party tantamount to contribution to such political party.]	2,20,000
Total Income	9,00,00,000

2022 - Dec [7] (b) Examine the liability for tax deduction at source in the following cases for the assessment year 2024-25:

- (i) A notified infrastructure debt fund eligible for exemption under Section 10(47) of the Income-tax Act, 1961 pays interest of ₹ 6 lakhs to a company incorporated in Netherlands. The Netherlands Company incurred expenditure of ₹ 24,000 for earning such interest. The fund also pays interest of ₹ 4 lakhs to Mr. Karan, who is a resident of a notified jurisdictional area. **(5 marks)**
- (ii) Lucky Ltd., an event management company, organized a concert of international artists in India. In this connection, it engaged the services of an overseas agent Mr. Marshal from USA to bring artists to India. He contacted the artists and negotiated with them for performance in India in terms of the authority given by the company. He did not take part in event organized in India. The company made the payment of commission equivalent to ₹ 2 lakhs to the overseas agent. **(5 marks)**

Answer:

- (i) **TDS on Interest from Infrastructure Debt Fund [Sec. 194LB]:**
Who is responsible to deduct tax: Any person responsible for paying income by way of interest by an infrastructure debt fund referred to in Sec. 10(47) to a **non-resident or a foreign company.**
When tax shall be deducted: At the time of payment or crediting the payee, whichever is earlier.
Rate of TDS: 5% (+ SC + HEC)
- (ii) **TDS on Other Sums Payable to Non-Resident [Sec. 195]:**
Who is responsible to deduct tax: Any person (resident or non-residents) responsible for paying any sum chargeable under this Act (excluding income chargeable under the head "Salaries") to a non-resident.
When tax shall be deducted: At the time of payment or crediting the payee, whichever is earlier.
Rate of TDS: At the rate in force during the financial year
Therefore, Lucky Ltd. is responsible to deduct tax.

2023 - June [2] (a) The Statement of Profit and Loss of Radhe Private Ltd. which is a closely held company which is engaged in the manufacturing and trading of FMCG goods, shows a net profit of ₹ 10,40,000 for the financial year ended 31st March, 2024 after the charge of the following items:

Items debited to the statement of Profit and Loss:

- (i) Interest amounting to ₹ 35,000 for short payment of advance tax paid as per section 234B relating to the assessment year 2024-25.
- (ii) Cash payment of ₹ 78,000 made 01-10-2023 includes the ₹ 46,000 paid to farmers of agriculture produce and ₹ 32,000 was paid for their transportation.
- (iii) Depreciation as per Companies Act, 2013 is ₹ 2,40,000.
- (iv) Provision for income tax is ₹ 55,000.
- (v) Contribution to the electoral trust is ₹ 1,00,000.
- (vi) Interest on term loans obtained from Cooperative Bank not paid before the "due date" of filing of return of income is ₹ 1,30,000.
- (vii) Bonus paid in excess of requirement to relative of director ₹ 25,000.

Additional information:

- (i) Depreciation as per Income-tax Rules: ₹ 2,80,000
- (ii) The business loss of ₹ 3,40,000 was carried forward and unabsorbed depreciation of ₹ 2,20,000 of P.Y. 2021-22. The return of income was filed within the due date specified u/s 139(1).
- (iii) Equity shares in the company were equally held by X, Y, Z and P during the financial year 2022-23. During the financial year 2023-24 X, Y and Z sold all the shares to Q, R and S.

Compute the income chargeable under the head "Profits and gains of business or profession" of Radhe Private Ltd., for the assessment year 2024-25. Adduce brief reasons for the treatment of the given to each of the items taken into consideration in computation of business income of the company. Ignore the provisions of section 115BAA. **(9 marks)**

Answer:

Income chargeable under the head "Profits and gains of business or profession" of Radhe Private Ltd. For the AY 2024-25 = ₹ 11,25,000

2023 - June [5] (a) Following are the details of income of Chaturvedi (age 45) for the previous year 2023-24:

	Particulars	₹
(i)	Salary income before standard deduction	8,20,000
(ii)	Self-occupied property-Interest on housing loan to SBI	(2,20,000)
(iii)	Interest on fixed deposits with Canara Bank	1,10,000
(iv)	Savings Bank interest	20,000
(v)	Recognised Provident Fund contribution	1,20,000
(vi)	Housing loan principal repaid	80,000

Compute total income and tax liability of Chaturvedi under regular provisions and section 115BAC and suggest which one is to be opted for assessment year 2024-25. **(6 marks)**

Answer:

Tax liability of Chaturvedi for the A.Y. 2024-25

	Regular Provision	Sec.115BAC
Total Income	5,40,000	9,50,000
Tax thereon	20,500	67,500
Add: HEC @ 4%	820	2,700
	21,320	70,200

2023 - Dec [2] Small (P) Ltd. engaged in various activities, reports a net profit of ₹ 20,60,000 after debit/credit of the following items to its Statement of Profit and Loss for the year ended 31st March, 2024:

Items debited to Statement of Profit and Loss:	₹
Interest paid to non-resident without deduction of tax at source	8,00,000
Proposed dividend	1,00,000
Bank term loan interest unpaid [because of dispute regarding rate of interest. It would be paid only after the 'due date' specified in section 139(1)]	1,20,000

Provision for bad and doubtful debts	2,00,000
Depreciation (includes ₹ 40,000 on account of revaluation of assets)	1,70,000
Items credited to Statement of Profit and Loss:	
Agricultural income	60,000
Long-term capital gain on sale of vacant land	2,10,000
Long-term capital gain on sale of shares (STT Paid)	95,000

Additional Information:

Depreciation allowable as per Income-tax Act	2,40,000	
	As per books (₹)	As per Income-tax Act (₹)
Brought forward business loss	1,10,000	1,30,000
Brought forward depreciation	90,000	1,50,000

You are required to compute-

- (i) Income from business as per normal provisions; and
- (ii) Book profit under section 115JB.

Note: Give brief reasons for treatment of each item considered by you in your answer. **(14 marks)**

Answer:

- (i) Income from business as per normal provisions = ₹ 20,05,000
- (ii) Book profit under section 115JB = ₹ 22,50,000

2023 - Dec [4] (b) Mr. Wesley a non-resident (age 56 years) furnishes the following information relating to the previous year 2023-24:

Particulars	₹
Interest on deposits with limited companies in India	2,10,000
Short-term capital gain from sale of shares in listed companies, (STT paid).	4,60,000

Long-term capital gain, from transfer of specified foreign exchange asset, sold on 01-06-2023. The long-term capital gain is a computed figure. Note: Expenditure incurred wholly and exclusively in connection with transfer ₹ 17,000 has not been deducted while computing the capital gain given above.	6,67,000
Investment in shares of public limited companies in India on 22-11-2023.	2,10,000

Compute total income and tax liability of Wesley as per Chapter XII-A of the Income-tax Act, 1961. **(7 marks)**

Answer:

Total Income: $4,60,000 + 6,67,000 - 17,000 = ₹ 11,10,000$

Tax liability ₹ 1,17,520

2024 - June [2] Moonshine Ltd. engaged in manufacturing activity was incorporated in the year 2010. It has reported a Net Profit of ₹ 82,00,000 for the year ended 31st March, 2024 in its Statement of Profit and Loss. The following information is given to you:

- (i) Opening stock ₹ 36,00,000. It is undervalued by 10%.
- (ii) Closing stock ₹ 33,00,000. It is overvalued by 10%.
- (iii) Employees contribution to recognized provident fund ₹ 24 lakhs. Of this, ₹ 4,00,000 representing contribution for 2 months was remitted 10 days beyond the prescribed 'due date'.
- (iv) Employer's contribution to recognized provident fund ₹ 24 lakhs. The whole amount of the entire year was remitted on 21.05.2024.
- (v) Paid commission to Mr. Quinto, a non-resident agent for procuring orders for sale of goods in Japan ₹ 3 lakhs. No tax was deducted at source though the entire payment was made before the end of the previous year.
- (vi) Depreciation debited in the books ₹ 16,50,000. Depreciation under section 32 in respect of assets other than (vii) below, computed as per Income-tax rules, 1962 was ₹ 19,50,000.
- (vii) Acquired a machinery for ₹ 20 lakhs on 05.08.2023. It was installed and put to use from 10.10.2023.

- (viii) Paid as interest for late filing of GST return ₹ 50,000.
- (ix) Paid ₹ 2,00,000 by way of fee for increasing its authorized share capital.
- (x) A vacant plot was sold for ₹ 24 lakhs to Jupiter (P) Ltd. being its wholly owned subsidiary company. The stamp duty value of the plot was ₹ 30 lakhs. The profit on sale of plot as per books of account of ₹ 10 lakhs is credited in the Statement of Profit and Loss.
- (xi) On 1st August, 2023 the company sold a factory building for ₹ 80 lakhs (being the only building owned by it). The WDV of the building as on 1st April, 2023 was ₹ 34 lakhs. The building was used for business for the past 7 years. The company bought capital gain bonds of NHA1 for ₹ 46 lakhs in November, 2023 for the purpose of availing exemption under section 54EC.

The company has not opted for section 115BAA. You are requested to assess the total income of Moonshine Ltd. for the assessment year 2024-25 by giving reasons for treatment of each item given above. **(14 marks)**

2024 - June [3] (a) Amar (aged 35) owns 2 residential house properties, of which, one is used for own residential purpose and the other is let out for a monthly rent of ₹ 50,000. He bought these houses by taking housing loan from SBI. During the financial year 2023-24, he paid interest on housing loan amounting to ₹ 2,50,000 each for both the houses and total principal repayment of ₹ 2,00,000. He is doing business by name Mercury Traders in which his income (computed) amounts to ₹ 11,80,000.

Determine his income as per section 115BAC and regular provisions. Also suggest which one should be opted by Amar for the assessment year 2024-25. **(7 marks)**

2024 - June [4] (b) Dravid (age 45) is a non-resident but an Indian citizen. On 11.04.2021, he bought 10,000 equity shares of PQR Ltd., a listed Indian Company for USD 5 per share. Dravid sold all the shares on 12.06.2023 for ₹ 770 per share (STT paid). Out of the sale proceeds, Dravid bought 11,550 equity shares of another listed Indian company by name EFG Ltd. on 13.07.2023 for ₹ 500 per share. Also, he subscribed to REC bonds for ₹ 10 lakhs on 15.09.2023. The buying and selling rates of US Dollars on different dates are as follows:

Date	TT Buying Rate	TT Selling Rate
11.04.2021	70	74
12.06.2023	76	78
13.07.2023	80	84

Cost inflation index F.Y. 2021-22 = 317; F.Y. 2023-24 = 348

Assess the capital gain of non-resident Dravid for the assessment year 2024-25. **(7 marks)**

2024 - June [7] (b) On 01.04.2023, Deer Ltd. an Indian company borrowed ₹ 120 crore from Shine Inc. a company incorporated in Country Z for interest @ 8% per annum. The said loan is repayable in a period of 8 years. The loan was guaranteed by Tiger Inc. of Country Z who has 33% shareholding in Deer Ltd. and who deposited matching amount of loan with Shine Inc.

For the year ended 31st March, 2024 Deer Ltd. reported a Net Profit of ₹ 5 crores after debiting (i) interest on the above loan ₹ 9 crore; (ii) provision for income-tax ₹ 3 crore; (iii) depreciation ₹ 5 crore; and (iv) amortisation ₹ 2 crore.

Deer Ltd. wants to know how much of interest paid to Shine Inc. is eligible for deduction while computing the income under the head 'Profits and gains of business or profession' and your answer must explain the legal position besides computation of interest allowable or otherwise. **(7 marks)**

TOPIC NOT YET ASKED BUT EQUALLY IMPORTANT FOR EXAMINATIONS

DESCRIPTIVE QUESTIONS

Q. 1. J, a citizen of India is employed in the Indian Embassy at Tokyo, Japan. He received salary and allowances at Tokyo from the Government of India during the year ending 31.03.2024 for the services rendered by him in Tokyo. Besides, he was allowed perquisites by the Government. He is a non-resident for the assessment year 2024-25. Examine the taxability of salary, allowances and perquisites in the hands of J for the assessment year 2024-25.

Answer:

Sec. 9 (1) (iii) which deals with salary payable abroad by the Government to a citizen of India provides as under :

Salary received by Indian nationals from the government, in respect of services rendered out of India, is deemed to accrue or arise in India. By virtue of Section 10(7), any allowance or perquisite paid abroad is, however, fully exempt from tax.

Section 10(7) provides as under:

Any allowances or perquisites paid or allowed as such outside India by the Government to a citizen of India for rendering service outside India;
In view of the above, the salary of Mr. J is chargeable to tax. Allowances and perquisites are, however, exempt from tax.

Q. 2. Who can be treated as an agent of a non-resident foreign collaborator for the purpose of proceedings and / or any other matters under the Income Tax Act?

Answer:

According to Section 163 of the Income-tax Act, “agent” in relation to a non-resident includes any person in India –

- (a) Who is employed by or on behalf of the non-resident, or
- (b) Who has any business connection with the non-resident, or
- (c) From or through whom the non-resident is in receipt of any income, whether directly or indirectly or;
- (d) Who is the trustee of the non-resident.

Q. 3. (i) Who may be regarded as a statutory agent of non-resident under the Income-tax Act, 1961 ?

- (ii) Can representative assessee be made liable for penalty under the Act?

Answer:

- (i) According to Section 163 of the Income-tax Act, “agent” in relation to a non-resident includes any person in India –
 - (a) Who is employed by or on behalf of the non-resident, or
 - (b) Who has any business connection with the non-resident, or
 - (c) From or through whom the non-resident is in receipt of any income, whether directly or indirectly or;
 - (d) Who is the trustee of the non-resident.

- (ii) Section 160(2) deems every representative assessee to be an assessee for the purpose of the Income-tax Act. This provision brings in the various provisions of the Act including Sections empowering imposition of penalty. A representative assessee is thus liable not only for an assessment of tax upon him but also for penalty if the circumstances call for such imposition.

PRACTICAL QUESTIONS

Q. 1. Ajay, a non-resident Indian, has the following sources of income in India during the previous Year 2023-24.

	Particulars	₹	₹
(i)	Income from house property located in India (computed)		1,80,000
(ii)	Dividend from Indian Companies		75,000
(iii)	Interest on debentures of India Company (Subscribed in convertible foreign exchange)	1,00,000	
	Less: Interest on loan taken for purchase of Debentures	<u>20,000</u>	80,000
(iv)	Long term capital gains on sale of debentures		
	Subscribed in US \$:		
	Cost in 2008-09	4,00,000	
	Sale in 2023-24	<u>6,00,000</u>	
		2,00,000	
	Less: Commission to brokers	<u>6,000</u>	1,94,000

Compute the tax payable by Ajay for Assessment Year 2024-25, if he opts for the provision of Chapter XII-A of the Income –Tax Act, 1961.

Answer:

Computation of tax liability of Mr. Ajay for the A.Y. 2024-25 as per provisions of Chapter XII-A

Particulars	₹
Tax on long term capital gain (₹ 1,94,000 x 10%) [See notes 1 & 2]	19,400
Tax on interest on debentures being investment income (₹ 1,00,000 x 20%) [See notes 1&3]	20,000
Tax on balance income of 2,55,000	250
	39,650
<i>Add:</i> Health and Education cess @4%	<u>1,586</u>
Total Tax Liability	<u>41,236</u>
Total Tax Liability (round off)	41,240

Notes:

- Computation of total income of Mr. Ajay for the A.Y. 2023-24 as per provisions of Chapter XII-A**

Particulars	₹	₹
Income from House Property		
Income from house Property (computed)		1,80,000
Capital Gains on sale of debenture		
Sale consideration	6,00,000	
<i>Less:</i> commission to brokers	<u>6,000</u>	
Net Sale consideration	5,94,000	
Cost of acquisition (Refer Note 2)	4,00,000	
Long term capital gain		1,94,000
Income from Other Sources		75,000
Dividend income received from Indian companies (Note-6)		
Interest on debentures of Indian Company [Refer Note 3]		1,00,000
Total Income		5,49,000

2. As per Section 115D, the indexation benefit would not be available for calculation cost of acquisition for computing long term capital gains under Chapter XII-A.
3. No expenditure is allowed to be deducted from the interest on debentures being the investment income as per the provision Section 115D. Therefore, interest on loan taken for purchased of debentures is not deductible.
4. As per provision of Section 115E, the tax rate applicable on investment income is 20% and on the long term capital gain the tax rate applicable shall be 10%. The balance income shall be chargeable to tax as per the normal tax rates.
5. It has been assumed that the debentures referred to in the question are issued by an Indian company which is not a private company and are hence, specified assets. Since the specified assets have been subscribed in convertible foreign exchange they are foreign exchange assets.
6. There is a change in the dividend taxation regime with the abolishment of dividend distribution tax in case of dividend paid/distributed by domestic companies after 1st April 2020, hence, Section 10(34) which provided exemption from dividend received (after payment of Dividend Distribution Tax) is provided with a sunset clause i.e., the exemption would not be applicable on income received by way of dividend on or after 1st April 2020. Hence such deemed dividend will be taxable in the hands of recipient.

Note : If a non-resident purchase shares in, or debentures of, an Indian company by utilizing foreign currency, capital gain shall be calculated under first proviso to Section and debentures. Capital gain so computed in foreign currency shall be reconverted into Indian currency. Since the telegraphic transfer buying rates and telegraphic transfer selling rates of US\$ on the date of acquisition and date of sale are not given in the question, effect has not been given to the first proviso to Section 48 in the above solution.

Q. 2. Mr. X, a non-resident Indian, acquired 10,000 shares in A Ltd. (an Indian Company) for ₹ 100,000 by utilizing foreign currency (\$) on 15/07/2023. On 11/09/2023, Mr. X sold such shares for ₹ 2,25,000 and

utilized the proceeds in acquisition of 5000 shares of B Ltd. (an Indian Company) after paying expenditure on transfer on 11/09/2023 ₹ 25,000. Compute capital gain liability in the previous year 2023-24.

Date	US \$ Buying rate	US \$ Selling rate
15/07/2023	45	46
11/07/2023	48	50
11/09/2023	746	48

Answer:

Since the assessee is a non-resident and shares of an Indian company were acquired by utilizing foreign currency, hence, first proviso to Sec. 48 and Rule 115A shall be applicable on above transactions. Computation of capital gain for the A.Y. 2024-25:

Particulars	Working	Rate applied	Amount
Sale consideration	₹ 2,25,000/47	Average Rate as on 11/09/2023	\$ 4,787.23
Less: Expenditure on transfer	₹ 25,000/47	Average Rate as on 11/09/2023	\$ 531.92
NetSale consideration			\$ 4,255.21
Less: Cost of acquisition	₹ 1,00,000/45.5	Average Rate as on 15/07/2023	\$ 2,197.80
Short term Capital Gain (in \$)			\$ 2057.51
Short term Capital Gain (in INR)	\$ 2057.51 /46	Buying rate as on 11/09/2023	₹ 94,645

FOR NOTES

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