

PAPER – 7: DIRECT TAX LAWS & INTERNATIONAL TAXATION

Part - II

Question Paper comprises of 6 questions. Answer Question No.1 which is compulsory and any **4 out of the remaining 5** questions.

Working notes should form part of the answer

All questions relate to Assessment Year 2020-21, unless stated otherwise in the question.

Question 1

Dinkar Synthetics Ltd. engaged in the business of manufacturing of textile goods of suiting and shirting and operating since 2010 shows Net Profit of ₹ 75 lacs as per Profit and Loss Account for the year ended 31-03-2020.

Net profit has been calculated after debiting/crediting the following items:

- (1) The company used to include interest cost while valuing its stock of finished goods up to the financial year 2018-19. During the financial year 2019-20, the company changed its accounting policy to adopt AS-2 (Accounting standard on valuation of Inventories) as issued by the Institute of Chartered Accountants of India and thereby excluded interest costing while valuation of finished goods. This has resulted in a decrease in the year's profit by ₹ 13.50 Lacs. This policy will continue in future also.
- (2) The company has made provision for Gratuity based on actuarial valuation of ₹ 5 lacs. Actual gratuity paid amounting to ₹ 1,20,000 during financial year 2019-20 was debited to provision of Gratuity Account.
- (3) The company has debited to Profit and Loss account one time Franchise fees of ₹ 20 lakh paid to M/s. Robert Inc., a foreign company, for obtaining franchise on 16th August, 2019. The relevant amount of TDS has been deducted and deposited by the company in time.
- (4) The company lost cash of ₹ 12,00,000 due to theft when it was withdrawn from the bank and taken to administrative office. It is not insured and hence, fully charged as revenue expenditure.
- (5) On December 1, 2019, the company paid Royalty of ₹ 3,00,000 to Mr. Rozer (a non-resident individual) after deducting tax@10% under section 195 read with section 115A. The tax so deducted by the company is not deposited till November 30, 2020. However, Mr. Rozer submits his return of income on July 31, 2020 after including ₹ 3,00,000 in his income and claiming of refund of ₹ 20,000.

The Suggested Answers for Paper 7: Direct Tax Laws and International Taxation are based on the provisions of direct tax laws as amended by the Finance Act, 2019, the Finance (No.2) Act, 2019 and the Taxation Laws (Amendment) Act, 2019, which are relevant for January, 2021 examination. The relevant assessment year is A.Y.2020-21.

On scrutiny of records, the following further information and details were extracted:

- (i) The Company has sold a plot of land to Libra Ltd., a domestic company, for ₹ 35 lacs on 15-04-2019. The same plot was purchased on 01-05-2017 for ₹ 26 lacs by Dinkar Synthetics Ltd. Dinkar Synthetics Ltd. held all the shares of Libra Ltd.
- (ii) The company has obtained a loan of ₹ 5 lakhs from Manu Textiles Private Limited in which it holds 16% voting rights. The accumulated profits of Manu Textiles Private Limited on the date of receipt of loan was ₹ 2 lacs.
- (iii) The company has purchased a new motor car during the year for the purpose of business, on 23-08-20] 9 [to mark the date of incorporation of the company i.e. being 23rd August] for ₹ 12,80,000 (including GST of ₹ 2,80,000). The depreciation on the above car has not been debited to the Profit and Loss Account.
- (iv) The company has the following number of workers employed in the factory (all are covered in Provident Fund)

Particulars of Employees	Number
No. of Employees as at 31-03-2019	480
Add: Additional Employees employed during the year	120
Less: Retrenchment of Employees in 2019-20	70
No. of employees as on 31-03-2020	530

The new employees have been recruited on mass recruitment basis on 01-07-2019 at a pay scale of ₹ 15,000 per month per person. Payment of salary is made through Account Payee Cheques only.

- (v) The Gross Turnover of the Company during the financial year 2017-18 is ₹ 450 crores and the company has not opted for Section 115BAA.

Compute the total income and tax payable of the company for Assessment Year 2020-21 as per the provisions of the Income-tax Act, 1961.

Ignore the provisions of MAT.

(14 Marks)

Answer

Computation of total Income and tax payable of Dinkar Synthetics Ltd. for the A.Y. 2020-21

	Particulars	Amount in ₹	
I	Profits and gains of business and profession		
	Net profit as per profit and loss account		75,00,000

Add: Items debited but to be considered separately or to be disallowed		
<p>(i) Decrease in profit due to non-inclusion of interest while valuing finished goods</p> <p>[As per ICDS 2, interest shall not be included in the cost of inventories, unless they meet the criteria for recognition of interest as a component of the cost as specified in ICDS 9 on borrowing costs. ICDS 9 requires capitalization of borrowing costs attributable to qualifying assets, which include only those inventories that require a period of twelve months or more to bring them to a saleable condition, which is not the case in textile industry. Hence, interest would not form part of cost for inventory valuation as per ICDS 2. Accordingly, no adjustment is required, since interest cost has already excluded while valuing finished goods]</p>	-	
<p>(ii) Provision for gratuity</p> <p>[Provision of ₹ 5 lakhs for gratuity based on the actuarial valuation is not allowed as deduction as per section 40A(7). However, actual gratuity of ₹ 1,20,000 paid is allowable as deduction. Hence, the difference has to be added back to income (₹ 5,00,000 – ₹ 1,20,000)]</p>	3,80,000	
<p>(iii) One time Franchise Fees</p> <p>[Franchise is an intangible asset eligible for depreciation as per section 32. Since one time franchise fees of ₹ 20 lakhs paid for obtaining franchise has been debited to profit and loss account, the same has to be added back while computing business income]</p> <p>Less: Franchise [Depreciation @ 25% on ₹ 20 lakhs, since it has been used for more than 180 days during the year] [20 lakhs – 5 lakhs]</p>	<p>20,00,000</p> <p style="text-align: right;"><u>5,00,000</u></p>	15,00,000
<p>(iv) Loss of cash in transit from bank to administrative office on account of theft</p> <p>[Any loss from theft, dacoity, embezzlement, etc., is</p>	-	

deductible if it is incidental to the carrying on of the business. ¹ Since the loss is due to theft which took place when cash was withdrawn from bank and taken to administrative office, it is incidental to business and thus, allowable as revenue expenditure. Since the same has already been charged as revenue expenditure, no further adjustment is required]		
(v) Royalty on which tax is deducted but not deposited till 30.11.2020 [100% of ₹ 3 lakhs, being royalty paid after deducting tax would be disallowed under section 40(a)(i) while computing the business income of A.Y.2020-21, since tax is not paid before due date of filing return of income.]	3,00,000	21,80,000
Less: Depreciation as per Income-tax Rules, 1962 Motor car [₹ 12.8 lakh x 30%, since car is purchased between 23.8.2019 and 31.3.2020 and put to use for more than 180 days in the P.Y. 2019-20]		96,80,000 3,84,000
Capital Gain Capital gain on transfer of plot to Libra Ltd., a 100% subsidiary Indian company [Any transfer of capital asset by a holding company to its 100% subsidiary Indian company would not be regarded as transfer u/s 47(iv)]		92,96,000 Nil
Income from Other Sources Deemed dividend u/s 2(22)(e) [Loan of ₹ 5 lakhs by Manu Textiles Pvt. Ltd., a company in which the public are not substantially interested, to Dinkar Synthetics Ltd. who is holding 16% i.e., 10% or more of the voting power of the company would be deemed to be dividend to the extent of ₹ 2 lakhs being the accumulated profits. However, since Manu Textiles Pvt. Ltd. is liable to pay DDT, such dividend is exempt u/s 10(34) in the hands of the company.]		Nil
Gross Total Income		92,96,000
Less: Deduction under Chapter VI-A Deduction under section 80JJA [Since Dinkar Synthetics Ltd. is subject to tax audit for A.Y.2020-21 and has		48,60,000

¹ G.G. Dandekar Machine Works Ltd. v. CIT (1993) 202 ITR 161 (Bom.)

<p>employed additional employees during the P.Y. 2019-20 [30% of ₹ 1,62,00,000 (₹ 15,000 x 9 months x 120)]</p> <p>[Note]– As per clause (ii) of Explanation to section 80JJAA, “additional employee” means an employee who has been employed during the previous year and whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the preceding year. As per this definition, all 120 employees employed during the year would qualify as “additional employees”, and hence remuneration paid to them would be eligible for deduction u/s 80JJAA.</p> <p>Alternatively, it is possible to take a view that 70 employees retrenched by the company during the year have to be deducted from the figure of 120 to arrive at the actual number of additional employees. If this view is taken, deduction u/s 80JJAA would be ₹ 20,25,000 [30% of ₹ 67,50,000 (₹ 15,000 x 9 months x 50)] and total income would be ₹ 72,71,000. Tax payable would be ₹ 22,68,550 (rounded off).</p>	
Total Income	44,36,000
Tax payable on ₹ 44,36,000@30% [Since the turnover of the company for the previous year 2017-18 exceeds ₹ 400 crore]	13,30,800
Add: Health and education cess@4%	53,232
Tax liability	13,84,032
Tax liability (rounded off)	13,84,030

Question 2

- (a) RST LLP, a limited liability partnership set up a unit in a Special Economic Zone (SEZ) in the financial year 2015-16 for production of refrigerators. The unit fulfills all the conditions of section 10AA of the Income tax Act, 1961. During the financial year 2018-19, it has also set up a warehousing facility in a district of Tamil Nadu for storage of agricultural produce. It fulfills all the conditions of section 35AD. Capital expenditure in respect of warehouse amounted to ₹ 75 lakhs (including cost of land ₹ 10 lakhs). The warehouse become operational with effect from 1st April, 2019 and the expenditure of ₹ 75 lakhs was capitalized in the book on that date.

Relevant details for the financial year 2019-20 are as follows:

Particulars	₹
Profit of unit located in SEZ	50,00,000

Export sales of above unit	80,00,000
Domestic sales of above unit	20,00,000
Profit from operation of warehouse facility (before considering deduction under section 35AD)	1,05,00,000

Compute income tax (including AMT under section 115JC) payable by RST LLP for Assessment Year 2020-21. **(8 Marks)**

(b) Wioni Inc., a company incorporated in Japan, is engaged in development of infrastructure and providing consultancy in the same field. During the Financial Year 2019-20, its shareholders met in India for three times. The first two meetings were held to discuss the modification of rights attached to various classes of shares and the third meeting was held to discuss and decide about sale of companies' assets situated in India. It provides the following additional information pertaining to Financial Year 2019-20 :

- (i) Dividend declared by a Miani Inc., a Japan based Company: ₹ 54,000 [Miani Inc. holds 70% of its total assets in India].
- (ii) Fees for technical services received from Government of India: ₹ 4,54,000. The Government of India utilised such technical services for a development project carried out by it in Nepal.
- (iii) Interest received from Ms. O, a unit located in IFSC in respect of monies borrowed by Ms. O: ₹ 15,400 (Date of loan 24-12-2019)
- (iv) On 26-8-2019, Wioni Inc. sold 5,000 equity shares held by it in an Indian Company for ₹ 89 per share. These shares were bought by the Wioni Inc. on 28th June, 2009 for ₹ 64 per share. Both the purchase and sale of shares were effected through a recognized stock exchange in India. Fair Market Value of these shares on 31-01-2018 was ₹ 70 per share.

You are required to compute the total income of Wioni Inc. for the assessment year 2020-21 briefly explaining the relevant provisions of the Income-tax Act, 1961. **(6 Marks)**

Answer

(a) **Computation of total income and tax liability of RST LLP for A.Y. 2020-21 (under the regular provisions of the Act)**

Particulars	₹	₹
Profits and gains of business or profession		
Profit from unit in SEZ	50,00,000	
Less: Deduction under section 10AA	40,00,000	
[50,00,000 x 80,00,000/1,00,00,000 x 100%, since it is the 5 th year of manufacturing]		

Business income of SEZ unit chargeable to tax		10,00,000
Profit from operation of warehousing facility for storage of agricultural produce	1,05,00,000	
Less: Deduction u/s 35AD [Deduction@100% in respect of the expenditure incurred prior to the commencement of its operations and capitalized in the books of account on 1.4.2019. Deduction is not available on expenditure incurred on acquisition of land] [₹ 75 lakhs – ₹ 10 lakhs]	65,00,000	
Business income of warehousing facility chargeable to tax		40,00,000
Total Income		50,00,000
Computation of tax liability		
Tax on ₹ 50,00,000@30%		15,00,000
Add: Health and Education cess@4%		60,000
Total tax liability		15,60,000

Computation of adjusted total income and AMT of RST LLP for A.Y. 2020-21

Particulars	₹	₹
Total Income (as computed above)		50,00,000
Add: Deduction under section 10AA		40,00,000
		90,00,000
Add: Deduction under section 35AD	65,00,000	
Less: Depreciation u/s 32[On building@10% of ₹ 65 lakhs ²]	6,50,000	58,50,000
Adjusted Total Income		1,48,50,000
Alternate Minimum Tax@18.5%		27,47,250
Add: Surcharge@12% (since adjusted total income > ₹ 1 crore)		3,29,670
		30,76,920
Add: Health and Education cess@4%		1,23,077
Total tax liability		31,99,997
Tax Liability (Rounded off)		32,00,000

Since the regular income-tax payable is less than the alternate minimum tax payable, the adjusted total income shall be deemed to be the total income and tax is leviable @18.5% thereof plus surcharge@12% and cess@4%. Therefore, the tax liability is ₹ 32,00,000.

² Assuming the capital expenditure of ₹ 65 lakhs is incurred entirely on building

AMT Credit to be carried forward u/s 115JEE

Particulars	₹
Tax liability under section 115JC	32,00,000
Less: Tax liability under the regular provisions of the Income-tax Act, 1961	15,60,000
	16,40,000

- (b) Wioni Inc. is a company incorporated in Japan. It would be resident in India, if its place of effective management is in India in that year.

As per the POEM guidelines, the decisions made by a shareholder for sale of all or substantially all of the company's assets, or the modification of the rights attaching to various classes of shares or the issue of a new class of shares etc. are decisions typically affecting the existence of the company itself or the rights of the shareholders as such, rather than the conduct of the company's business from a management or commercial perspective. Therefore, such decisions are not relevant for determination of a company's place of effective management. Therefore, the POEM of Wioni Inc. is **not** in India and hence, it is a non-resident for A.Y.2020-21.

Taxability of income

As per section 5(2), in case of a non-resident, only income which accrues or arises or which is deemed to accrue or arise to it in India or which is received or deemed to be received in India in the relevant previous year is taxable in India.

Computation of total income of Wioni Inc. for A.Y. 2020-21		
	Particulars	Amount (₹)
(i)	Dividend declared by Miani Inc., a Japan based company which holds 70% of its total assets in India [As per <i>Circular No. 4/2015, dated 26-03-2015</i> , dividends declared and paid by Miani Inc., a foreign company, outside India in respect of shares which derive their value substantially from assets situated in India would not be deemed to be income accruing or arising in India]	Nil
(ii)	Fees for technical services received from Government of India [As per section 9(1)(vii), any fees for technical services would be deemed to accrue or arise in India if they are payable by Government of India. Since FTS is received from Government of India, it is deemed to have accrued or arisen in India irrespective of that fact that it is utilized for a project outside India]	4,54,000
(iii)	Interest received from Ms. O, a unit located in IFSC for monies borrowed by it on 24.12.2019 [As per section 10(15)(ix), interest payable to Wioni Inc., a non-resident, by Ms. O, a unit located in an IFSC, in respect of monies borrowed by it on or after 1.9.2019 is exempt from income-tax]	Nil

(iv)	Long term capital gains		
	Sale consideration (5,000 x ₹ 89)	₹ 4,45,000	
	Less: Cost of acquisition, being higher of	<u>₹ 3,50,000</u>	95,000
	(a) Actual cost i.e., (5,000 x ₹ 64)	₹ 3,20,000	
	(b) lower of	₹ 3,50,000	
	- ₹ 3,50,000 (5,000 x ₹ 70), being fair market value on 31.1.2018 and		
	- ₹ 4,45,000 (5,000 x ₹ 89), being full value of consideration		
	[There would be no tax on long-term capital gains, since only the gain in excess of ₹ 1,00,000 is taxable@10% u/s 112A]		
	Total Income		5,49,000

Question 3

- (a) GNK Trust, a charitable trust following accrual system of accounting registered under Section 12AA of the Income-tax Act, provides services in the field of education. It furnishes the following particulars to you with respect to previous year 2019-20:

Particulars	₹
Gross Receipts received from students	24,41,000
Voluntary Contribution (including anonymous donation ₹ 1,85,000)	5,20,000
Dividend from Indian Companies	5,40,000
Income from mutual funds registered under section 10(23D)	2,85,000
Agricultural income	4,79,000

The following amounts are spent for the purposes of the trust:

Particulars	₹
Amount set aside during the year to be applied in the next 4 years for the purposes of the trust.	2,54,000
Payment to Mr. Lohia, one of the trustees, as rent for the building where the trust carry on its activities. The rent for similar property is ₹ 2,50,000.	1,47,000
During the year, the trust invited foreign teachers but made the payment in the next Financial Year	1,96,000
Other expenses for the purposes of the trust	16,79,000

Compute the total income of the trust and also the tax liability in order to avail the maximum benefits under the provisions of Income-tax Act, 1961. **(8 Marks)**

(b) Mr. Ramanuj Tiwari, aged 65 years resident of India derived the following income for the financial year 2019-20:

(1) Income from business and profession in India	6,00,000
(2) Dividend (gross) from a company in Nigeria (Tax paid in Nigeria ₹ 30,000)	1,50,000
(3) Royalty on books from Spain (₹ 7,60,000 has been received in India on 30-06-2019. Further ₹ 40,000 as TDS has been deducted in Spain on royalty)	8,00,000
(4) Income from Other Sources as follows:	
• Saving Interest from Punjab and Sind Bank	15,000
• Interest Income on FDR's	2,15,000

Further, Mr. Ramanuj Tiwari incurred expenses to the tune of ₹ 1,20,000 on earning the royalty of ₹ 8,00,000. He has also deposited ₹ 1,50,000 in Public Provident Fund Account of his wife during the year.

Compute the Total Income and Tax Payable by Mr. Ramanuj Tiwari for the Assessment Year 2020-21, assuming India does not have Double Taxation Avoidance Agreement with Nigeria and Spain. **(6 Marks)**

Answer

(a) **Computation of total income of GNK Trust for the A.Y.2020-21**

Particulars	₹	₹
Gross receipts from students		24,41,000
Add: Voluntary contributions other than anonymous donation of ₹ 1,85,000		<u>3,35,000</u>
		27,76,000
Add: Dividend from Indian Companies [Exemption u/s 10(34) would not be available, since trust is registered u/s 12AA]	5,40,000	
Income from mutual funds registered u/s 10(23D) [Exemption u/s 10(35) would not be available, since trust is registered u/s 12AA]	2,85,000	
Agricultural income [Exemption u/s 10(1) would be available, even though the trust is registered u/s 12AA]	<u>Nil</u>	<u>8,25,000</u>
		36,01,000

Add: Anonymous donations [to the extent not chargeable to tax@30% under section 115BBC(1)(i)] [₹ 26,000, being 5% of total donations of ₹ 5,20,000 or ₹ 1,00,000, whichever is higher] ³		<u>1,00,000</u>
		37,01,000
Less: 15% of income eligible for being set apart without any condition ⁴		<u>5,55,150</u>
		31,45,850
Less: Amount applied for charitable purposes		
- Payment of rent for the building to Mr. Lohia	1,47,000	
- Amount payable to foreign teachers for services rendered and utilised in India [though payment made to the teachers next year, the same is deductible during the current previous year, since the trust follows accrual system of accounting]	1,96,000	
- Other expenses	<u>16,79,000</u>	<u>20,22,000</u>
		11,23,850
Less: Amount set aside during the year to be applied in the next 4 years		<u>2,54,000</u>
Total income [other than anonymous donation taxable@30% u/s 115BBC(1)(i)]		8,69,850
Add: Anonymous donation taxable @30% u/s 115BBC(1)(i) [See Note below]		<u>85,000</u>
Total Income of the trust (including anonymous donation taxable@30%)		<u>9,54,850</u>

Computation of tax liability of the trust for the A.Y. 2020-21

Particulars	₹
Tax on total income of ₹ 8,69,850 i.e., total income (excluding anonymous donations chargeable to tax@30% u/s 115BBC) [₹ 3,69,850 x 20% plus ₹12,500]	86,470

³ Alternatively, the plain reading of section 13(7) may give rise to a view that the entire anonymous donations would not be eligible for benefit of exclusion from total income under sections 11 and 12, in which case ₹ 1,00,000 should not be added to ₹ 36,01,000 for 15% unconditional exemption.

⁴ As per the Supreme Court ruling in CIT v. Programme for Community Organisation (2001) 116 Taxman 608, 15% of gross receipts would be eligible for accumulation under section 11(1)(a). Alternatively, as per the plain reading of section 11(1), 15% of income can be set apart without any conditions.

Tax on anonymous donations taxable@30% [₹ 85,000 x 30%]	<u>25,500</u>
	1,11,970
Add: Health and education cess@4%	<u>4,479</u>
Total tax liability	1,16,449
Total tax liability (rounded off)	1,16,450

Note - To avail the maximum benefit, the amount set aside should be invested in modes specified under section 11(5) and intimated to the Assessing Officer before the due date of filing of return.

(b) **Computation of total income of Mr. Ramanuj Tiwari for A.Y.2020-21**

Since Mr. Ramanuj Tiwari is resident in India for the P.Y.2019-20, his global income would be subject to tax in India. Therefore, income earned by him in Nigeria and Spain would be taxable in India. He would, however, be entitled to deduction under section 91, since India does not have a DTAA with Nigeria and Spain, and all conditions under section 91 are satisfied.

Particulars	₹	₹
Profits and Gains of Business or Profession		
Income from business and profession in India		6,00,000
Royalty on books from Spain	8,00,000	
Less: Expenses incurred	<u>1,20,000</u>	6,80,000
Income from Other Sources		
Dividend from a company in Nigeria		1,50,000
Interest on saving account with Punjab and Sind Bank		15,000
Interest on fixed deposits		<u>2,15,000</u>
Gross Total Income		16,60,000
Less: Deduction under Chapter VI-A		
Under section 80C – Deposits in PPF	1,50,000	
Under section 80QQB – Royalty income on books ⁵ allowable to the extent of ₹ 3,00,000.	3,00,000	
Under section 80TTB – Deduction allowable in respect of interest on fixed deposits, since Mr. Ramanuj Tiwari is a senior citizen resident in India	<u>50,000</u>	<u>5,00,000</u>
Total Income		11,60,000

⁵ It is assumed that the royalty earned outside India and received in India on 30.6.2019 is in convertible foreign exchange.

Computation of tax liability of Mr. Ramanuj Tiwari for A.Y.2020-21

Particulars	₹
Tax on total income [30% of ₹ 1,60,000 + ₹ 1,10,000, eligible for higher exemption limit of ₹ 3,00,000, since he is a senior citizen]	1,58,000
Add: Health and education cess @4%	<u>6,320</u>
	1,64,320
Less: Rebate under section 91 (See Working Note below)	<u>40,248</u>
Tax Payable	<u>1,24,072</u>
Tax Payable (rounded off)	1,24,070

Calculation of Rebate under section 91:		₹
Average rate of tax in India [i.e., ₹ 1,64,320 / ₹ 11,60,000 x 100]	14.1655%	
Average rate of tax in Nigeria [i.e., ₹ 30,000 / ₹ 1,50,000 x 100]	20%	
Doubly taxed income pertaining to Nigeria		
Dividend from a company in Nigeria	₹ 1,50,000	
Rebate u/s 91 on ₹ 1,50,000 @ 14.1655% [being the lower of average Indian tax rate (14.1655%) and Nigeria tax rate (20%)]		21,248
Average rate of tax in Spain [i.e., ₹ 40,000 / ₹ 8,00,000 x 100]	5%	
Doubly taxed income pertaining to Spain		
Royalty (₹ 8,00,000 – ₹ 1,20,000 – ₹ 3,00,000)	₹ 3,80,000	
Rebate u/s 91 on ₹ 3,80,000 @5% [being the lower of average Indian tax rate (14.1655%) and Spain tax rate (5%)]		<u>19,000</u>
Total rebate under section 91		<u>40,248</u>

Question 4

- (a) Examine the liability to deduct tax at source in respect of the following independent situations:
- M/s Mexil Ltd. is engaged in the business of manufacturing certain article or thing for which the raw material is imported from Russia. For the purpose of making payment to the supplier, the assessee entered into a bank guarantee with BDFH Bank, an Indian Bank against the payment of ₹ 1,10,000 as bank guarantee commission for the Financial Year 2019-20.
 - StudyKart, an online education provider and a trust registered under section 12AA of the Income-tax Act, pays ₹ 98,000 during the Financial Year 2019-20, to Mr. Monty, a non-resident for providing web based lectures.

- (iii) On 31st December, 2019, Mr. Nitin, a resident individual whose gross turnover was ₹ 97 lakhs during the preceding previous year, paid ₹ 65 lakhs to Mr. Basant, a resident individual, as contract payment for repairing his office building.
- (iv) Fly Fly Ltd., an airlines company, paid ₹ 10 lakhs to Airports Authority of India as landing and parking charges of its aircrafts. **(2 x 4 = 8 Marks)**
- (b) On 1-4-2019, Vihaan Ltd., an Indian company, advanced a loan of ₹ 6 crores to Yuvan Inc., a company resident in Singapore. As on the date of loan, the book value of total assets in the books of Yuvan Inc. was ₹ 4 crores. In the Financial Year 2018-19, Yuvan Inc. had revalued its assets and accordingly the value of assets had increased by ₹ 2 crores. Yuvan Ltd. paid the entire loan along with interest thereon on 31st August, 2019. During the Financial Year 2019-20, Vihaan Ltd. also entered into an agreement with Yuvan Inc. to provide 20 thousand medical equipments at a cost of ₹ 7,400 per unit. The Assessing Officer treats them as associate enterprise and wants to re-compute the income of Vihaan Ltd. at arms' length price. You are required to answer the following questions in this respect:
- (1) Would Vihaan Ltd. and Yuvan Ltd. be treated as associate enterprises for the purpose of transfer pricing adopted by the Assessing Officer? If yes, why? '
 - (2) Calculate the arms length price of Vihaan Ltd. which sells the same equipments at the rate of ₹ 9,000 per unit to Y Ltd. and at the rate of ₹ 9,500 per unit to X LLP (both of them are unrelated parties in respect of Vihaan Ltd.). Vihaan Ltd. is not a wholesale dealer.
 - (3) What are the options available to Yuvan Inc.⁶ in respect of such increase in transfer price by income tax authorities, if Vihaan Ltd. accepts such transfer price? **(6 Marks)**

Answer

- (a) (i) No tax is deductible at source on the payment of *inter alia* bank guarantee commission made by a person to a bank.
- As per section 197A(1F), no deduction of tax shall be made from specified payments to notified bodies. Accordingly, the Central Government has notified that no deduction of tax shall be made from the specified payments, which include bank guarantee commission, in case such payment is made by a person to a bank listed in the Second Schedule to the Reserve Bank of India Act, 1934, excluding a foreign bank.
- Thus, M/s Mexil Ltd. is **not** required to deduct tax at source on bank guarantee commission of ₹ 1,10,000 paid to BDFH Bank, an Indian bank, in the F.Y.2019-20.
- (ii) Any person responsible for paying any sum chargeable to tax to a non-corporate non-resident is liable to deduct tax at source at the rates in force.

⁶ To be read as Vihaan Ltd.

Since Mr. Monty, a non-resident has provided web based lectures from outside India, income arising therefrom is not chargeable to tax in India as no income is deemed to accrue or arise in India. Thus, no tax is deductible at source on such payment to him.

Alternatively, it may be possible to take a view that income arising from web lectures may fall within the meaning of "Fees for technical services"⁷. If this view is taken, such income would be deemed to accrue or arise in India, since the services are utilised in India, even though they are rendered from outside India. Therefore, such income would be chargeable to tax in India in the hands of Mr. Monty, a non-resident. Thus, StudyKart, a trust registered u/s 12AA, is required to deduct tax at source under section 195.

- (iii) Since Mr. Nitin is not subject to tax audit in the P.Y. 2018-19, TDS provisions u/s 194C are **not** attracted in respect of payment made in the P.Y. 2019-20 to Mr. Basant, a resident individual, for repairing his office building. However, tax is required to be deducted at source@5% under section 194M, on the payment of ₹ 65,00,000, since such amount exceeds ₹ 50 lakhs, and the payment is made after 1.9.2019.

Therefore, tax deducted at source would be ₹ 3,25,000, being 5% of ₹ 65,00,000.

- (iv) The landing and parking charges which are fixed by the Airports Authority of India are not merely for the "use of the land". These charges are also for services and facilities offered in connection with the aircraft operation at the airport which include providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport⁸.

Therefore, tax of ₹ 20,000 (2% of ₹ 10 lakh) is deductible at source under section 194C by the airline company, Fly Fly Ltd., on payment of ₹ 10,00,000 made towards landing and parking charges to the Airports Authority of India for the previous year 2019-20.

- (b) (1) Two enterprises are deemed to be associated enterprises as per section 92A(2)(c), if a loan advanced by one enterprise to the other enterprise constitutes not less than 51% of the book value of total assets of the other enterprise. Since Vihaan Ltd., an Indian company, advanced loan of an amount of ₹ 6 crores to Yuvan Inc., a Singapore company, which is 150% of the book value of the total assets of Yuvan Inc. (i.e., 150% of ₹ 4 crores), Vihaan Ltd. and Yuvan Inc. are deemed to be associated enterprises.
- (2) Vihaan Ltd. sells equipments at the rate of ₹ 9,000 per unit to Y Ltd. and at ₹ 9,500 per unit to X LLP, both of them being unrelated parties. Since the transactions can

⁷ as decided in certain Tribunal rulings

⁸ *Japan Airlines Co. Ltd. v. CIT / CIT v. Singapore Airlines Ltd. (2015) 377 ITR 372 (SC)*

be considered as comparable uncontrolled transactions for the purpose of determining the arm's length price, Comparable Uncontrolled Price (CUP) method would be most appropriate method.

Since two prices are determined by the most appropriate method, and data set comprises of only two entries, the arm's length price shall be the arithmetical mean of both the values included in the dataset.

Accordingly, arm's length price would be ₹ 9,250 [(₹ 9,000 + ₹ 9,500)/2]. Since the deviation between the arm's length price and actual sale price of the equipment to Yuvan Inc. i.e., ₹ 7,400 per unit is 25%, which exceeds 3% of the price of the international transaction, the arm's length price would be ₹ 9,250 per unit and the total income would increase by ₹ 3.7 crores [i.e. ₹ 1,850 (₹ 9,250 – ₹ 7,400) x 20,000 units]

- (3) On account of the primary adjustment of ₹ 3.7 crores (₹ 1850 x 20,000 units) made by the Assessing Officer, in the total income of Vihaan Ltd. for A.Y.2020-21, secondary adjustment has to be made under section 92CE, since –

- (1) The company has accepted the primary adjustment made by the Assessing Officer;
- (2) The primary adjustment is in respect of A.Y.2020-21; and
- (3) The primary adjustment exceeds ₹ 100 lakhs.

Accordingly, the excess money i.e., 3.7 crores available with the Yuvan Inc. has to be repatriated to India within 90 days of the date of the order of the Assessing Officer.

Alternatively, Vihaan Ltd. can opt to pay additional income-tax @20.9664% (tax @18% plus surcharge @12% plus cess@4%) on ₹ 3.7 crores, which amounts to ₹ 77,57,568.

Question 5

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

- (i) Ms. Maya, a resident individual, engaged in the jewellery making, filed her return of income showing income of ₹ 19,80,000. The Assessing Officer completed the assessment under section 143(3) as the assessee participated in the assessment. The Assessing Officer disallowed a sum of ₹ 3,69,000 as unexplained cash. The assessee claims that the assessment is void as no notice under section 143(2) was served to the assessee. You are required to judge the validity of assessee's claim.
- (ii) In respect of a civil suit, the Calcutta High Court appointed a receiver in respect of properties of Ms. Ghosh and Sons HUF. One such property was situated at Delhi which was sold by the Income Tax Department to Mr. Devang. The karta of the HUF, Mr. Ghosh, objected to such sale stating that no leave was taken from Calcutta High Court for such sale. An application was also filed by the department to take the

permission for such sale. The Calcutta High Court passed an order whereby it directed a civil suit to be pursued at Delhi. However, it overlooked the provisions of section 293 of the Income-tax Act, which puts a bar on filing suit in any civil court against an income-tax authority in respect of any proceedings under the Income-tax Act. The said order was recalled for review by the High Court and error apparent was corrected. Discuss the validity of action taken by the Calcutta High Court.

- (iii) Ms. RSRZ and Co. Ltd., sold one of its factory building for ₹ 14 lakhs on 19-4-2019. The building was acquired on 1-4-2009 and the assessee was using it for manufacturing activity and accordingly, depreciation was also being claimed. After sale of the building, the assessee reinvested the amount of capital gain in long-term specified assets under section 54EC and claimed exemption thereunder. The AO rejected the claim for exemption by the assessee and regarded that since the asset sold was depreciable asset, provisions of section 50 will be applicable and accordingly the assessee is not entitled to exemption under section 54EC. Discuss the validity of AO's claims. **(2 x 4 = 8 Marks)**

- (b) Meenakshi Urban, is a cooperative society engaged in providing credit facilities to its members for the previous year 2019-20, it provides you the following information:

Particulars	₹
Interest received from deposit with other cooperative societies	5,47,000
Interest received from members (including ₹ 2,63,000 for personal purposes of a member)	11,85,000
Rent Received (per month)	36,000
Income from Agency business	2,87,500
Interest received from deposit of idle funds of members	2,04,000
Expenses incurred on agency business	1,24,000
Brought forward loss from earlier years (Financial Year 2018-19)	98,000

Compute the total income of the co-operative society after allowing eligible deduction under section 80-P, if any, and also the tax payable thereon. **(6 Marks)**

Answer

- (a) (i) Section 292BB provides that where the assessee has participated in the proceedings, any notice which is required to be served upon him shall be deemed to have been duly served and the assessee would be precluded from taking any objection that the notice was -
- not served upon him; or
 - not served upon him in time; or
 - served upon him in an improper manner.

However, such deeming provision would not apply where the assessee has raised an objection (regarding non-service of notice or non-service of notice in time or improper service of notice) before the completion of such assessment or reassessment.

In the present case, no notice was served upon Ms. Maya under section 143(2) but Ms. Maya participated in the proceedings and assessment was completed u/s 143(3). Since Ms. Maya has not raised the objection regarding non-service of notice before the completion of assessment u/s 143(3), it would be deemed that the notice under section 143(2) has been duly served upon her in time. .

Therefore, the contention of Ms. Maya is **not** valid and the assessment is valid

Note - *As per the facts given in the question, the assessee claims that the assessment under section 143(3) is void as no notice under section 143(2) was served upon her. Since the question mentions non-service of notice, the above answer is based on the assumption that notice has been issued i.e., the same has been emanated from the Assessing Officer.*

Alternatively, since the question is silent about issuance of notice, it is possible to answer the question on the basis of the assumption that the notice has not been issued by the Assessing Officer. Issue of notice under section 143(2) is mandatory for making a regular assessment under section 143(3). Section 292BB is a deeming provision that seeks to cure defects in any notice issued under any provision of the Income-tax Act, 1961, if the assessee has participated in the proceedings.

For section 292BB to apply, the notice must have emanated from the Department. It is only the infirmities in the manner of service of notice that the section seeks to cure. The section is not intended to cure complete absence of notice itself.

Accordingly, non-issuance of notice under section 143(2) is not a curable defect under section 292BB in spite of participation by the assessee in assessment proceedings.

In the present case, since the assessment of Ms. Maya was completed u/s 143(3) without issuing notice u/s 143(2), the assessment is bad in law and not a curable defect u/s 292BB.

Therefore, the contention of Ms. Maya is valid and the assessment is void in spite of the fact that Ms. Maya participated in the assessment proceedings.

It was so held in CIT v. Laxman Das Khandelwal (2019) 417 ITR 325, wherein the above issue came up before the Supreme Court.

- (ii) The High Court can review its own order, where the grounds for review are:
- (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

- (ii) mistake or error apparent on the face of the record;
- (iii) any other sufficient reason.

Section 293 puts a complete bar on filing suit in any civil court against the Income-tax authority. If the civil suit was not maintainable in view of section 293 and this was the purported defence of the respondents and of the Department, there was no error committed by the High Court in its judgment rendered in exercise of its review jurisdiction calling for interference.

In the present case, Calcutta High Court passed an order directing a civil suit by overlooking the provisions of section 293 and then recalled its own order and corrected the apparent error. The action taken by the Calcutta High Court is valid as the High Court has the inherent power to review its own order to correct a mistake apparent from the record.

Note – *The facts of the case are similar to the facts in Sunil Vasudeva & Others v. Sundar Gupta & Others [2019] 415 ITR 281, wherein the above issue came up before the Supreme Court. The above answer is based on the rationale of the Apex Court in the said case.*

- (iii) As per section 54EC, where the capital gain arising from the transfer of a long-term capital asset, being land or building or both, is invested in the long-term specified asset, being the bonds issued by the National Highways Authority of India (NHAI) or the Rural Electrification Corporation Limited (RECL) or any other bond notified by the Central Government in this behalf, at any time within a period of six months after the date of such transfer, the amount of such capital gain shall not be charged to tax, to the extent of ₹ 50 lakhs.

Section 50 is a special provision for computation of capital gains in the case of depreciable asset, and has limited application in the context of computation of capital gains to the extent that the provisions of sections 48 and 49 would apply with the modifications stated thereunder. It does not deal with exemption which is provided in a totally different provision i.e., section 54EC.

Section 54EC does not make any distinction between depreciable and non-depreciable asset for the purpose of re-investment of capital gains in long term specified assets for availing the exemption thereunder. Further, section 54EC specifically provides that when the capital gain arising on the transfer a long-term capital asset, being land or building or both, is invested or deposited in bonds issued by NHAI or RECL, the assessee shall not be subject to capital gains to that extent [i.e., lower of capital gains or ₹ 50 lakhs]. Therefore, the exemption under section 54EC cannot be denied to the assessee on account of the fiction created in section 50.

Thus, in the present case, the action of the Assessing Officer disallowing the claim for exemption under section 54EC on the reasoning that capital gain on transfer of

depreciable asset (building) is a short-term capital gain in respect of which the provisions of section 50 apply, even if held for more than 24 months, is **not** valid.

Note – The facts of the case are similar to the facts in *CIT v. V.S. Dempo Company Ltd (2016) 387 ITR 354*, wherein the above issue came up before the Apex Court. The above answer is based on the rationale of the Supreme Court in the said case.

(b) **Computation of total income and tax payable by Meenakshi Urban, a Cooperative Society for the A.Y. 2020-21**

Particulars	₹	₹
Income from house property		
Rental income (₹ 36,000 x 12)	4,32,000	
Less: Deduction under section 24(a) @30%	<u>1,29,600</u>	3,02,400
Profits and gains from business or profession		
Credit facility business		
Interest received from deposits with other cooperative society	5,47,000	
Interest received from members	11,85,000	
Interest received from deposit of idle funds of members [Since Meenakshi cooperative society is engaged in the business of providing credit facility to its members, the interest on un-utilised fund would be taxable under the head "Profits and gains from business or profession" ⁹]	<u>2,04,000</u>	19,36,000
Agency business		
Income from agency business	2,87,500	
Less: Expenses incurred	<u>1,24,000</u>	
	1,63,500	
Less: Brought forward loss from F.Y. 2018-19	<u>98,000</u>	<u>65,500</u>
Gross Total Income		23,03,900
Less: Deduction under Chapter VI-A: Section 80P		
- Deduction in respect of profits and gains from credit facility business	19,36,000	
- Deduction in respect of agency business allowable to the extent of	<u>50,000</u>	<u>19,86,000</u>
Total Income		<u>3,17,900</u>

⁹ *Tumkur Merchants Souharda Credit Co-operative Ltd. v. ITO (2015) 230 Taxman 309 (Kar)*

Computation of tax liability	
Tax@30% on ₹ 2,97,900 plus ₹ 3,000 on income upto ₹ 20,000	92,370
Add: Health and education cess@4%	<u>3,695</u>
Tax liability	<u>96,065</u>
Tax liability (rounded off)	96,070

Question 6

- (a) (i) Mr. Mahesh received the draft order from the Assessing Officer as per section 144C of the Income-tax Act, 1961 due to variations determined by the Transfer Pricing Officer in the arm's length price. But Mr. Mahesh did not prefer to file the objection against the draft order before the Dispute Resolution Panel; Instead, he preferred to file appeal before the CIT (Appeals) under section 246A against the final order received from the Assessing Officer.

You are required to advise Mr. Mahesh, whether his contentions are tenable? Discuss the issue with reference to provisions of section 144C of the Income-tax Act, 1961.

- (ii) The Assessing Officer has initiated the penalty proceedings under section 270A for under-reporting of income and launched prosecution proceedings under section 276C for willful evasion of tax at the time of completion of re-assessment of Mr. Pradeep under section 147 of Income-tax Act, 1961.

Mr. Pradeep filed an application for the immunity from imposition of penalty and prosecution before the Assessing Officer. Is he entitled to file application for immunity from penalty and prosecution under section 270A and 276C, respectively, before the Assessing Officer?
(2 x 4 = 8 Marks)

- (b) Horizon Ltd., Russia holds 35% shares in Identiqa Ltd., India. Identiqa Ltd. develops software and does both onsite and offsite consultancy services for the customers. Identiqa Ltd. during the year billed Horizon Ltd. Russia for 120 man-hours at the rate of ₹ 1,800 per man hour. The total cost (direct and indirect) for executing this work amounted to ₹ 2,25,000.

However, Identiqa Ltd. billed Sundry Ltd., India at the rate of ₹ 2,800 per man hour for the similar level of manpower and earned a Gross Profit of 50% on its cost.

The transactions of Identiqa Ltd. with Horizon Ltd. and Sundry Ltd. are comparable, subject to the following differences:

- While Identiqa Ltd. derives technology support from the Horizon Ltd., there is no such support from Sundry Ltd. The value of technology support received from Horizon Ltd. may be put at 18% of normal gross profits.
- As Horizon Ltd. gives business in large volumes, Identiqa Ltd. offered to Horizon Ltd., a quantity discount which may be valued at 10% of normal gross profits.

- *In the case of rendering services to Horizon Ltd., Identiqa Ltd. neither runs any risk nor incurs any marketing costs. On the other hand, in the case of services to Sundy Ltd., Identiqa Ltd. has to assume all the risk and costs associated with the marketing function which may be estimated at 12% of the normal gross profits.*
- *Identiqa Ltd. offered one month credit to Horizon Ltd. The cost of providing such credit may be valued at 2% of the gross profits. No such credit was given to Sundy Ltd.*

Compute the Arm's Length Price alongwith income to be increased under the Cost plus Method with reference to Section 92C read with Rule 10B. (6 Marks)

Answer

- (a) (i) Section 144C requires the eligible assessee, Mr. Mahesh, to file his objections with the Dispute Resolution Panel (DRP) and the Assessing Officer within 30 days of the receipt by him of the draft assessment order.

If he fails to do so, the Assessing Officer will proceed to complete the assessment on the basis of the draft order.

The CBDT has clarified that the assessee has a choice whether to file an objection before the DRP against the draft assessment order or not to exercise this option and file an appeal later before CIT (Appeals) against the final assessment order passed by the Assessing Officer.

Therefore, Mr Mahesh's contention to file an appeal before Commissioner (Appeals) against the final assessment order instead of filing objections before the DRP against the draft assessment order is tenable in law.

- (ii) Section 270AA empowers an assessee to make an application to the Assessing Officer for grant of immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C, if he -

(i) pays the tax and interest payable as per the order of reassessment under section 147, within the period specified in such notice of demand; and

(ii) does not prefer an appeal against such reassessment order.

Therefore, Mr. Pradeep is entitled to file an application for immunity from penalty under section 270A and prosecution under section 276C before the Assessing Officer. He has to do so within one month from the end of the month in which the order of reassessment is received.

However, immunity shall be granted by the Assessing Officer only if the penalty proceedings under section 270A have **not** been initiated on account of the following, namely:—

- misrepresentation or suppression of facts;
- failure to record investments in the books of account;
- claim of expenditure not substantiated by any evidence;
- recording of any false entry in the books of account;

- (e) failure to record any receipt in books of account having a bearing on total income; or
 - (f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction to which the provisions of Chapter X apply.
- (b) Identiqua Ltd, an Indian company and Horizon Ltd., a Russian company, are deemed to associated enterprises as per section 92A(2), since Horizon Ltd. holds shares carrying 35% of the voting power (i.e., not less than 26% of voting power) in Identiqua Ltd. Further, the transaction of developing software and providing consultancy services (both onsite and offsite) fall within the meaning of “international transaction” under section 92B. Hence, transfer pricing provisions would be attracted in this case.

Computation of Arm’s Length Price as per Cost Plus Method		
Gross Profit mark-up on cost in case of Sundry Ltd. [an unrelated party]		50%
Less: Adjustments for functional and other differences		
- Value of technology support [Horizon Ltd. provides technology support, but Sundry Ltd. does not provide such support. Therefore, value of technology support shall be adjusted] [18% of 50%, being gross profit]	9%	
- Quantity discount to Horizon Ltd. [Quantity discount is allowed to Horizon Ltd. as it gives business in large volumes, but the same is not provided to Sundry Ltd. Therefore, it shall be adjusted] [10% of 50%, being gross profit]	5%	
- Risk and cost associated with marketing [Identiqua Ltd. has to bear all the risk and costs associated with the marketing function in case of Sundry Ltd., while there is no such risk in case of services to Horizon Ltd. Therefore, market risk and cost shall be adjusted] [12% of 50%, being gross profit]	6%	
		20%
Add: Cost of credit to Horizon Ltd. [Identiqua Ltd has provided credit of 1 month to Horizon Ltd. but not to the unrelated party. Therefore, adjustment for the cost of such credit has to be carried out to arrive at the ALP] [(2% of 50%, being gross profit]		30%
		1%
Arm’s length gross profit mark up to cost		31%
Cost incurred by Identiqua Ltd. for executing Horizon Ltd.’s work		2,25,000
Add: Adjusted gross profit (₹ 2,25,000 x 31%)		69,750
Arm’s length billed value		2,94,750
Less: Actual Billed Income from Horizon Ltd. (₹ 1800 x 120 man hours)		2,16,000
Total Income of Identiqua Ltd to be increased by		78,750