



PAPER – 4: DIRECT TAX LAWS & INTERNATIONAL TAXATION

The provisions of direct tax laws, as amended by the Finance Act, 2023 and the significant notifications and circulars issued upto 30.04.2024, are relevant for November 2024 examination. The relevant assessment year is A.Y.2024-25. The October, 2023 edition of the Study Material contains the provisions of direct tax laws as amended by the Finance Act, 2023 and notifications and circulars issued upto 31.7.2023. The said study material has to be read along with the Statutory Update for November, 2024 Examination webhosted at <https://resource.cdn.icai.org/80554bos64747.pdf> and Judicial Update for November, 2024 Examination webhosted at <https://resource.cdn.icai.org/80581bos64778.pdf>.



QUESTIONS

Case Scenario I

Trio Inc., a company incorporated in Country T, is engaged in manufacturing of computer hardware parts. It also owns an online social networking site, Attire. Nice Ltd., an Indian Company, imports computer hardware parts from Trio Inc. During the previous year 2023-24, Nice Ltd. did not import any computer hardware parts from Trio Inc. but paid ₹ 5,50,000 on 24th July, 2023 to Trio Inc. for advertising its business on the platform of Attire. However, Nice Ltd. neither deducted tax at source nor equalisation levy on such payment.

On 1-4-2023, Nice Ltd. advanced a loan of ₹ 2.5 crores to Xylo Inc., an Australian company. As on the date of loan, the book value of total assets in the books of Xylo Inc. was ₹ 4.52 crores. Out of the ten directors of Xylo Inc.,

five are appointed by Nice Ltd. Xylo Inc. repaid the entire loan along with interest thereon on 31st March, 2024.

On 9.11.2023, Trio Inc. sold 3,500 equity shares held by it in an Indian Company, XYZ Ltd. for ₹ 102 per share. These shares were bought by Trio Inc. on 15th April, 2011 for ₹ 36.40 per share. Both the purchase and sale of shares were effected through a recognized stock exchange in India and STT is paid on purchase and sale. Fair Market Value of these shares on 31-01-2018 was ₹ 90 per share.

CII for F.Y.2011-12 – 182; F.Y.2023-24 – 348.

Nice Ltd. 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 for the A.Y. 2023-24. However, Nice Ltd. does not prefer to file the objection against the draft order before the Dispute Resolution Panel; Instead, it wants to file an appeal before the CIT (Appeals) under section 246A against the final order received from the Assessing Officer.

From the information given above, choose the most appropriate answer of MCQs 1 to 4:

1. In respect of payment made by Nice Ltd. for advertising services provided by Trio Inc., which of the following statements are correct?
 - (a) Equalisation levy is not attracted and no penalty leviable for non-deduction
 - (b) Tax is deductible at source u/s 195 by Nice Ltd. and hence, interest is payable for non-deduction of TDS
 - (c) Equalization levy of ₹ 33,000 is deductible by Nice Ltd. and penalty of ₹1,000 per day is attracted for non-deduction
 - (d) Equalization levy of ₹ 33,000 is deductible by Nice Ltd. and penalty of ₹ 33,000 is attracted for non-deduction
2. Are Nice Ltd. and Trio Inc. associated enterprises? If so, why?
 - (a) Yes, since loan advanced by Nice Ltd. to Xylo Inc. is not less than 51% of the book value of total assets of Xylo Inc.

- (b) Yes, since not less than 50% of the directors of Xylo Inc. are appointed by Nice Ltd.
- (c) Yes, due to either (a) or (b) above.
- (d) No, Nice Ltd. and Xylo Inc. are not associated enterprises, since the loan has been repaid before the end of the previous year i.e., before 31.3.2024.
3. Compute the amount of long-term capital gains arising to Trio Inc. on transfer of listed shares of XYZ Ltd. What would be the tax treatment of such capital gains under the Income-tax Act, 1961?
- (a) ₹ 42,000. The same would be taxable@10% u/s 112A
- (b) ₹ 42,000. However, the said amount would not be subject to any tax.
- (c) No capital gain would arise, since cost of acquisition would be ₹ 102.
- (d) ₹ 1,13,400; The same would be taxable@20% u/s 112, since benefit of concessional rate @10% u/s 112A will not be available to a foreign company
4. Which of the following statements are correct, in relation to the remedies available to Nice Ltd. under the Income-tax Act, 1961, if it is not satisfied with the draft order passed by the Assessing Officer?
- (a) It can file an objection before the Dispute Resolution Panel against the draft assessment order
- (b) It can file an appeal before CIT (Appeals) after getting the final assessment order
- (c) Either (a) or (b)
- (d) Both (a) and (b)

Case Scenario II

Mr. Bhuvan places bulk order on ABC Marketplace Ltd., an e-commerce operator for buying 100 toasters, a product listed by DEF Seller, a partnership firm. ABC Marketplace acts as Buyer-side ECO for Mr. Bhuvan as well as Seller-

side ECO for DEF seller and charges a convenience fee of ₹10/toaster to DEF Seller. DEF Seller processes the order and charges the buyer ₹1170/toaster, including packaging, shipping and convenience fees. DEF Seller pays XYZ Logistics ₹ 5/toaster for shipping, MNO retailer ₹ 15/toaster for packaging and convenience fees of ₹ 10/toaster. DEF Seller raised invoice of ₹ 1170 per toaster.

Mr. Sarthak placed an order for 500 decor wall clocks on Open Network for Digital Commerce (ONDC). These clocks are listed and owned by ABC marketplace Ltd. Mr. Sarthak made a payment of ₹ 665/ wall clock on ONDC platform via Paytm. ONDC credited ₹ 655/ wall clock after deducting its convenience fees to ABC Marketplace Ltd. The invoice of ₹ 665/ wall clock include shipping charges of ₹ 10/ wall clock, packaging cost of ₹ 15/ wall clock and convenience fees of ₹ 10/ wall clock.

From the information given above, choose the most appropriate answer of MCQ 5 to 9:

5. Is there any tax required to be deducted in respect of order placed by Mr. Bhuvan. If yes, by whom and what amount of tax needs to be deducted?
 - (a) Yes, tax of ₹ 1140 is required to be deducted by ABC Marketplace Ltd.
 - (b) Yes, tax of ₹ 1170 is required to be deducted by ABC Marketplace Ltd.
 - (c) Yes, tax of ₹ 1170 is required to be deducted by DEF Seller
 - (d) No tax is required to be deducted as order value does not exceed ₹ 5,00,000.

6. Is there any tax required to be deducted in respect of order placed by Mr. Sarthak. If yes, by whom and what amount of tax needs to be deducted?
 - (a) Yes, tax of ₹ 3,325 is required to be deducted by ONDC
 - (b) Yes, tax of ₹ 3,275 is required to be deducted by ABC Marketplace Ltd.
 - (c) Yes, tax of ₹ 3,325 is required to be deducted by Mr. Sarthak

- (d) No tax is required to be deducted as the order value does not exceed ₹ 5,00,000.
7. Would your answer to MCQ 5 be different in respect of the order placed by Mr. Bhuvan if it is assumed that DEF seller is an Individual and this is the only sales order received on ABC Marketplace Ltd.?
- (a) No, tax of ₹ 1140 is still required to be deducted by ABC Marketplace Ltd.
- (b) No, tax of ₹ 1170 is still required to be deducted by ABC Marketplace Ltd.
- (c) No, tax of ₹ 1170 is still required to be deducted by DEF Seller
- (d) Yes, tax is not required to be deducted in this case.
8. Assume that Mr. Bhuvan replaced 5 toasters and returned 5 toasters out of 100 toasters, what would be the adjustment of tax deduction in respect of these 10 toasters?
- (a) No adjustment is required for tax deducted in respect of replaced toasters and the amount of tax deducted on returned toasters would be refunded to DEF seller by ABC Marketplace Ltd.
- (b) No adjustment is required for tax deducted in respect of replaced and returned toasters.
- (c) No adjustment is required for tax deducted in respect of replaced toasters and the amount of tax deducted on returned toasters would be adjusted against the next sale, if any.
- (d) The amount of tax deducted on replaced and returned toasters would be refunded to DEF seller.
9. Assume that ABC Marketplace Ltd. provides a discount of ₹ 10 each to both Mr. Bhuvan and Mr. Sarthak on sale of toasters and wall clocks. Is there any tax required to be deducted at source? If yes, on what amount tax is deductible?
- (a) Yes; on ₹ 1,17,000 for sale of toasters and on ₹ 3,32,500 for wall clocks

- (b) Yes; on ₹ 1,16,000 for sale of toasters and on ₹ 3,22,500 for wall clocks
- (c) Yes; on ₹ 1,17,000 for sale of toasters and on ₹ 3,27,500 for wall clocks
- (d) No tax is required to be deducted as the order value does not exceed ₹ 5,00,000 in both cases.
10. Dynamic Ltd., an Indian company, took on lease a commercial premises for its operations. After some years, the company decided to vacate the premises and relocate to a new location. However, disputes arose with the lessor regarding the terms of vacating the premises. To resolve the dispute and avoid prolonged litigation, Dynamic Ltd. agreed not to claim the security deposit of ₹ 3.4 crores it had initially paid to the lessor at the start of the lease. Whether the amount of security deposit foregone by Dynamic Ltd. allowable as deduction while computing business income?
- (a) Yes, allowable as deduction as such expenditure is of revenue nature and incurred on account of dispute
- (b) No, deduction would not be allowed as such expenditure is of capital nature
- (c) Yes, allowable as deduction over the five years period
- (d) Yes, allowable as deduction since the amount of foregone security deposit becomes the income of lessor.
11. Satya Trust, a public charitable trust registered u/s 12AB of the Income-tax Act, 1961 runs a hospital for the treatment of various diseases. Mr. Shaurya, son of Mr. Neeraj, who is the founder of this trust, was admitted in the hospital for heart surgery. He was charged a total fee of ₹ 3.6 lakhs as against the amount of ₹ 7.4 lakhs charged by the hospital for similar treatment to the general public. The Board of trustees are of the opinion that on account of providing this benefit to Mr. Neeraj, the registration of the trust can be cancelled, and exemption under section 11 would be denied to the trust in respect of entire income for the P.Y. 2023-24. Is the opinion of the Board of trustees', correct?

- (a) No; registration cannot be cancelled, however, the exemption under section 11 would be denied to the trust in respect of entire income of the trust for the P.Y. 2023-24.
- (b) Yes, registration can be cancelled, and trust would not be eligible for exemption under section 11
- (c) No; registration cannot be cancelled, and entire income is eligible for exemption under section 11.
- (d) No; registration cannot be cancelled, and the value of benefit provided to Mr. Neeraj would be deemed as income of the trust.
12. Mr. Aviral opened a bank account in Country "R" on 1.7.2020. He has made deposits of foreign currency equivalent to ₹ 5 lakhs on 1.7.2020, ₹ 7 lakhs on 1.10.2020, ₹ 12 lakhs on 1.9.2022 and ₹ 25 lakhs on 1.3.2024, in that bank, out of Indian income which has not been assessed to tax in India. The deposit of ₹ 12 lakhs on 1.9.2022 is made out of the withdrawal of earlier deposits made on 1.7.2020 and 1.10.2020 with the said bank. Further, out of ₹ 25 lakhs deposited by him on 1.3.2024, Mr. Arvind withdrew ₹ 2 lakhs on 31.3.2024. The value of an undisclosed asset in form of bank account under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 will be taken as:
- (a) ₹ 49 lakhs
- (b) ₹ 47 lakhs
- (c) ₹ 37 lakhs
- (d) ₹ 35 lakhs
13. G Ltd., a resident Indian Company, on 01-04-2023 has borrowed ₹ 80 crores from M/s. M Inc, a Company incorporated in Country F, at an interest rate of 8% p.a. The said loan is repayable over a period of 12 years. Further, loan is guaranteed by M/s A Inc incorporated in Country F. M/s. C Inc, a non-resident, holds shares carrying 40% of voting power both in M/s G Ltd. and M/s A Inc. M/s C Inc has also deposited ₹ 80 crores with M/s M Inc.

Interest payable by G Ltd. to M Inc. would be subject to limitation of interest deduction because –

- (i) M/s. C Inc. holds shares carrying 40% voting power in G Ltd.
- (ii) M/s. C Inc. holds shares carrying 40% voting power both in G Ltd. and M/s. A Inc.
- (iii) M/s. A Inc. guarantees the loan taken by G Ltd. from M/s. M Inc.
- (iv) M/s. C Inc. has deposited ₹ 80 crores with M/s. M Inc.

The most appropriate answer is -

- (a) (i) and (iv) above
 - (b) (ii) and (iii) above
 - (c) (i) and (iii) above
 - (d) Either (a) or (b)
14. M/s Cure Ltd., an Indian company, is engaged in the manufacturing of pharmaceutical products since 2020. Net profit as per statement of Profit and Loss for the year ended 31st March, 2024 was ₹ 95,45,000 after debiting or crediting the following items:
- (a) Paid ₹ 6,00,000 as expenses for public issue of shares. The public issue could not materialize on account of non-clearance by SEBI.
 - (b) Goods purchased of ₹ 5 lakhs from M/s Sunny Traders (a micro enterprise as per MSMED Act, 2006) was delivered on 25.02.2024. Payment terms were agreed for 25 days from the date of delivery as per the contract in writing with Sunny Traders. The payment was actually made on 29.03.2024. However, no Interest or late payment charges were agreed upon between the parties in case of delay in payment.
 - (c) Expense of ₹ 7,25,000 incurred for providing freebies to medical practitioners.
 - (d) Depreciation of ₹ 12,50,000 charged on the basis of useful life of assets.
 - (e) One-time license fee of ₹ 10 lakhs paid to a foreign Company for obtaining a franchise on 17th September, 2023.

- (f) The profit from setting up a warehouse in rural area for storage of sugar (before claiming deduction under section 35AD) is ₹ 17 lakhs. The warehouse commenced its operations on 24th November, 2023.
- (g) Power subsidy of ₹ 5,30,500 was received on 12-09-2023 with a stipulation that the same is to be adjusted in the electricity bills for the financial year 2022-23. The subsidy received was not included in the income for the year 2022-23.
- (h) The company earned ₹ 4,80,000 of profit from the sale of 3,000 shares of M/s ABC Ltd., a listed company. The shares were sold on 08-09-2023 for ₹ 260 per share. The highest price of ABC Ltd. quoted on stock exchange as on 31.01.2018 was ₹ 180 per share. These shares were purchased for ₹ 100 per share on 16-08-2015. STT paid both at the time of purchase and sale.
- (i) PNB waived a loan of ₹ 8,00,000 in a one-time settlement which includes ₹ 6,00,000 principal amount and ₹ 2,00,000 of arrear of interest amount. The loan was taken on 12.9.2020 to meet working capital requirement.

The Company furnished the following additional information relating to it:

- (i) Company has employed 50 new additional workers during the F.Y. 2023-24 on regular basis w.e.f. 01.07.2023 at the wages of 23,000 per month per employee. The regular employees participate in recognized provident fund. Wages to Additional workers were paid through an account payee cheque.
- (ii) The company has invested ₹ 40 lakhs in the construction of a warehouse (including land of ₹ 25 lakhs) in a rural area for the storage of sugar as an additional line of business.
- (iii) Depreciation as per the Income-tax Rules, 1962 without considering any adjustments given above is ₹ 9,20,000.
- (iv) The company's turnover for the financial year 2021-22 was ₹ 395 crores.
- (v) Book Profit of the company for the A.Y. 2024-25 is ₹ 99.50 lakhs.

Compute the total income of the company and optimum income-tax liability for the assessment year 2024-25. Your answer must give reasons for treatment of each item given above and also for the tax liability.

15. XYZ & Co., a partnership firm consisting of three working partners A, B and C and one non-working partner D, engaged in the business of manufacturing and selling electric kettles.

Following information is furnished for receipts and payments of the previous year 2023-24:

(i)	Total turnover	2,80,00,000
(ii)	Consideration for transfer of plot at New Delhi [profits on sale is credited to P & L A/c]	57,00,000
(iii)	Cash receipts [out of turnover in (i) above]	10,50,000
(iv)	Receipts by way of cheque other than A/c payee cheque [out of turnover in (i) above]	2,00,000
(v)	Amount of sales consideration for plot received in cash [out of (ii) above]	16,80,000
(vi)	Total Payments	1,95,00,000
(vii)	Cash payments [out of (vi) above] [each payment does not exceed ₹ 10,000 except salary of ₹ 12,000 p.m. made to a clerk which is debited to P & L A/c]	4,50,000

Net profit as per the Profit and Loss A/c is ₹ 8,65,000 after debiting or crediting the following:

- Interest @ 15% is provided to partner B on his capital of ₹ 10 lakh as authorized by the partnership deed.
- ₹ 60,000 p.m. paid as remuneration to each partner as authorised by partnership deed.

Additional information

- The firm had brought forward business loss of ₹ 75,000 of Assessment Year 2020-21. Till A.Y. 2023-24, the firm gets its books of accounts audited every year.

- The firm acquired plot on 30.4.2019 for ₹ 12,00,000. Cost Inflation Index for F.Y. 2019-20 :289; F.Y. 2023-24: 348.
 - (i) This year firm do not want to get its books of accounts audited. Advise the firm on this and compute the total income of the firm for the A.Y. 2024-25.
 - (ii) Compute the total income of the firm for the A.Y. 2024-25 assuming that instead of ₹ 2,00,000, firm received ₹ 4,00,000 by cheque other than A/c payee cheque.
16. Beta, a Real Estate Investment Trust (REIT), registered under relevant SEBI Regulations, holds 65% shares in H Ltd. Beta REIT provides the following information about its income for the F.Y. 2023-24.
- (i) Interest income from H Ltd. - ₹ 12 crores
 - (ii) Dividend income from H Ltd. - ₹ 2 crores
 - (iii) Short-term capital gains on sale of developmental properties - ₹ 1.2 crore
 - (iv) Interest received from investments in unlisted debentures of companies - ₹ 12 lakhs
 - (v) Rental income from directly owned real estate assets - ₹ 2 crores
- Mr. Arpan, a resident Indian, holds 70% of the units of the REIT. He acquired units in the REIT at an issue price of ₹ 1.5 crores. He does not have any other income during the year. During the P.Y. 2023-24, REIT distributed ₹ 20 crores to its unit holders.
- Compute the total income in the hands of Beta Ltd. and Mr. Arpan.
- Note:** H Ltd. has opted to pay tax under section 115BAA. Ignore TDS implications.
17. ABC Telecom Ltd. has entered into agreements with various distributors to sell its prepaid products. According to the agreement, the distributors purchase prepaid products at a discounted price from ABC Telecom Ltd. and are free to sell these products at any price below the printed price. The distributors make a profit based on the margin between their purchase price and the sale price to retailers or consumers. The distributors pay for the products in advance, irrespective of when they

sell them. ABC Telecom Ltd. does not credit or pay any income to the distributors and is not involved in the transactions between the distributors and third-party buyers.

Examine whether ABC Telecom Ltd. is obligated to deduct tax at source on the income/profit component earned by the distributors.

18. The Assessing Officer surveyed a popular Sports Complex by the name "SDX" which is within his jurisdiction at 9:30 pm in the night for collecting information which may be useful for the purpose of Income-tax Act, 1961. The concerned Sports Complex is kept open for business every day between 5 a.m. and 10 p.m. The owner of the Sports Complex claims that the A.O. could not enter his business premises after sunset and late in the night. The Assessing Officer wanted to take away with him the books of account and cash kept at the premises of the Sports Complex. Examine the validity of the claim made by the owner of Sports Complex and the proposed action of the Assessing Officer.
19. State with reasons the penalty leviable on each of the **three** independent instances:
- (1) M/s ABC Trust, an eligible investment fund referred u/s 9A has filed a statement of its activities for the year ended 31-3-2024 on 31-7-2024.
 - (2) Meena Caterers has received ₹ 1 lakh in cash and ₹ 9 lakh by account payee cheque from Mr. Arvind for rendering catering services on the occasion of his daughter's wedding.
 - (3) The premises of Tip Ltd. was searched and undisclosed income of ₹ 18 crores was determined. The Company did not admit the undisclosed income in a statement under section 132(4) but declared the same in a return furnished and paid the tax with interest thereon.
20. Mr. Ram Prakash, a resident Indian aged 58 years, has business interest in India and in some other foreign nations also. He has derived income from two other nations X and Y, with which India does not have DTAA. The particulars of income earned in the two nations X, Y and in India during the P.Y. 2023-24 are as under:

Particulars of Income	(₹)		
	X	Y	India
Gross rental receipts from commercial property	2,50,000	2,50,000	-
Share income from Partnership firm (loss) [The partnership deed was not evidenced by an instrument in writing]	(1,20,000)	(1,30,000)	-
Business income	2,80,000	3,40,000	1,80,000
STCG from sale of vacant site on 11.11.2023	10,80,000	Nil	-
Long-term capital gains on sale of residential house in Delhi on 1.3.2024	-	-	37,00,000
Agricultural Income	3,40,000	1,80,000	5,20,000

The following investments were made in India during the year ended 31.3.2024:

Particulars of Income	(₹)
Purchase of residential house at Delhi on 18.3.2024 in joint name with spouse	25,00,000
Contribution to PPF	1,50,000

Income-tax rate structure:

Country X

(₹)	Tax rate
Upto ₹ 3 lakhs	Nil
₹ 3 to ₹ 6 lakhs	15%
Above ₹ 6 lakhs	22%

Country Y

Flat 27% without any basic exemption limit.

Tax treatment/ concessions in other nations

- (i) No statutory allowance/deduction in respect of house property income in Country X as well as Country Y.
- (ii) Loss from firm can be set off against other business income in Country Y only (and not in Country X).
- (iii) Agricultural income is exempt in Country X only (and not in Country Y).

Compute the net tax liability of Mr. Ram Prakash for the assessment year 2024-25 assuming that he is paying tax under section 115BAC.

21. Peter Inc., is a company incorporated under the laws of USA. The value of its global assets are ₹ 50 crores. The value of assets in India are ₹ 25 crores. Its turnover during the P.Y. 2023-24 is US \$ equivalent to ₹ 90 crores. Out of 10 board meetings held during the F.Y.2023-24, only 4 meetings are held in India. The key management and commercial decisions for conduct of the company's business as a whole are, however, made by the directors located in India at the meetings held in India. Your client, Payal Ltd, an Indian company, wishes to remit an amount towards professional fees to Peter Inc. on which tax is required to be deducted in India.

Determine the residential status of Peter Inc. for A.Y.2024-25 under the Income-tax Act, 1961. Advise Payal Ltd as to whether tax on fees for professional services paid to Peter Inc. has to be deducted under section 194J or section 195.

22. B Ltd. is an Indian Company located in Special Economic Zone (SEZ) in which TQR Inc., a Country C company is holding 30% shares and voting power. Following transactions were entered between these two companies during the year 2023-24:
- (a) B Ltd. sold 90,000 pieces of LED sticks at \$ 10 per LED stick to TQR Inc. Identical LED sticks were sold by B Ltd. to an unrelated party, namely, G Inc. in Country C at \$ 12 per LED stick.
 - (b) B Ltd. borrowed loan of \$ 3,50,000 from a Country C lender on the strength of guarantee given by TQR Inc. and for the purpose of giving guarantee, B Ltd. paid \$ 15,000 as guarantee fee to TQR Inc.

However, for the same amount of loan taken by an unrelated party in India, TQR Inc. had charged guarantee fees of \$ 12,000.

- (c) B Ltd. paid \$ 18,000 to TQR Inc. for getting the details of various potential customers to improve its business outside India in global market. TQR Inc. provided the same services and details to an unrelated party in India for \$ 16,000.

Examine the relationship of B Ltd. and TQR Inc. of Country C and the nature of various transactions entered into between them during the year 2023-24.

- (i) What are the adjustments, if any, required to be made to the total income of B Ltd. under transfer pricing provisions. One Country C dollar may be taken as ₹ 85.
- (ii) If the said adjustments are made by the Assessing Officer, can B Ltd. claim deduction under section 10AA in respect of the enhanced income?



SUGGESTED ANSWERS

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

14. Computation of Total Income of M/s Cure Ltd. for the Assessment Year 2024-25 under normal provisions of the Act

	Particulars	₹	₹
I	Profits and gains from business or profession		
	Net profit as per statement of profit & loss		95,45,000
	Add: Item debited but to be considered separately or disallowed		
	(a) Expenditure for public issue of shares	6,00,000	
	[Share issue expenses is a capital expenditure, even though it could not go in for public issue on account of non-clearance by SEBI. Such expenditure was incurred only for the purpose of expansion of the capital base of the company. Since the same has been debited to statement of profit and loss, it has to be added back]		
	(b) Payment to micro enterprise for purchases	-	
	[As per section 43B(h), no deduction shall be allowed for any sum payable by an assessee to a micro or small enterprise unless such sum is actually paid, where a due date of payment is agreed upon in writing, within such due date, subject to a maximum of 45 days from the day of acceptance/ deemed acceptance. Deduction is allowed in that previous year in which such sum is actually paid.]		

<p>In this case the actual date of payment is 29.03.2024 i.e. before 31.03.2024. Hence, purchase of ₹ 5 lakhs shall be allowed as deduction because the payment was made before 31.03.2024]</p>		
<p>(c) Expenses on freebies to medical practitioners [Expenses incurred for providing freebies to medical practitioners are an expense which is prohibited by the law. Any expenditure incurred for any purpose which is prohibited by law is not deemed to have been incurred for the purpose of business or profession and hence, has to be disallowed from business income]</p>	7,25,000	
<p>(d) Depreciation on the basis of useful life of assets</p>	12,50,000	
<p>(e) One-time license fee [Franchise is in the nature of an intangible asset eligible for depreciation @25%. Since one-time license fees of ₹ 10 lakhs paid to a foreign company for obtaining franchise has been debited to statement of profit and loss, the same has to be added back]</p>	10,00,000	35,75,000
<p>Less: Items credited but to be considered separately/ permissible expenditures and allowances</p>		1,31,20,000
<p>(f) Profit from setting of warehouse in rural area for storage of sugar</p>	17,00,000	

<p>[Since it is a specified business, its profits would be computed separately]</p>		
<p>(g) Power subsidy received from the Central Government</p>		
<p>[As per ICDS VII, Government grant (subsidy) which is receivable as compensation for expenses or losses incurred in a previous financial year shall be recognized as income of the period in which it is received. It would be taxable in P.Y. 2023-24 as the subsidy is received in P.Y. 2023-24. Since such subsidy has been credited to statement of profit and loss, no further adjustment is required]</p>		
<p>(h) Profit from sale of shares of M/s ABC Ltd.</p>	<p>4,80,000</p>	
<p>[Capital gain on sale of shares of ABC Ltd. is liable to tax under the head "Capital Gains". Since the profit on sale of shares has been credited to the statement of profit & loss, the same has to be deducted while computing business income]</p>		
<p>(i) Waiver of principal on bank loan</p>		
<p>[Waiver of principal amount of loan taken for working capital requirement is a benefit in respect of a trading liability by way of remission or cessation thereof and is, hence, taxable u/s 41(l). Since the principal amount has already been credited to statement of profit and loss, no adjustment is required]</p>		

<p>(i) Waiver of interest on bank loan</p> <p>[As per section 43B, since the interest is allowable only on actual payment, deduction in respect of interest due loan would not have been allowed as deduction in any previous year. Therefore, waiver of such interest cannot be brought to tax by invoking section 41(1). Since such interest has been credited to statement of profit and loss, the same has to be deducted while computing business income].</p> <p>AI(iii) Depreciation as per Income-tax Rules, 1962</p> <table border="1"> <tr> <td>- On Franchise Fee [₹ 10 lakhs x 25%]</td> <td>2,50,000</td> <td></td> <td></td> </tr> <tr> <td>- On other assets</td> <td>9,20,000</td> <td>11,70,000</td> <td>35,50,000</td> </tr> </table>	- On Franchise Fee [₹ 10 lakhs x 25%]	2,50,000			- On other assets	9,20,000	11,70,000	35,50,000	2,00,000		
- On Franchise Fee [₹ 10 lakhs x 25%]	2,50,000										
- On other assets	9,20,000	11,70,000	35,50,000								
<p>Profits & Gains from manufacture of pharmaceutical products</p> <p>Profits & gains from setting of warehouse in rural area for storage of sugar</p> <p>Net profit before deduction u/s 35AD</p> <p>Less: Deduction u/s 35AD [100% deduction u/s 35AD in respect of cost of warehouse (₹ 40 lakhs – ₹ 25 lakhs, being cost of land, not allowable)]</p>	17,00,000		95,70,000								
	15,00,000		2,00,000								
			97,70,000								

II Income from Capital Gains		
Long-term capital gains on sale of shares M/s ABC Ltd. [Since shares were held for more than 12 months]		
Full Value of consideration (3000 shares X ₹ 260)	7,80,000	
Less: Cost of acquisitions [higher of (i) and (ii)]	5,40,000	2,40,000
(i) Actual cost of acquisition (3000 X ₹ 100) ₹ 3,00,000		
(ii) Being lower of fair market value as at 31.01.2018 (i.e. ₹ 5,40,000 being 3000 x ₹ 180) and sale consideration (i.e. ₹ 7,80,000)		
Gross Total Income		1,00,10,000
Less: Deduction under Chapter VI-A Under Section 80JJAA (₹ 23,000 x 9 x 50) x 30%		31,05,000
Total Income		69,05,000

Computation of tax liability for the A.Y. 2024-25 under normal provisions of the Act

Particulars	₹
Tax on Long-term capital gains u/s 112A = 10% of (₹ 2,40,000 – 1,00,000)	14,000
Tax on remaining income of ₹ 66,65,000 @25% [Since turnover during F.Y. 2021-22 is less than ₹ 400 crores]	16,66,250
	16,80,250
Add: Health & education cess @4%	67,210
	17,47,460

**Computation of tax liability of M/s Cure Ltd. for the A.Y. 2024-25
under section 115JB**

Particulars	₹
Minimum Alternate Tax @15% on book profit of ₹ 99,50,000	14,92,500
Add: Health and Education cess@4%	<u>59,700</u>
Tax liability under section 115JB	15,52,200

**Computation of Total Income of M/s Cure Ltd. for the Assessment
Year 2024-25 under section 115BAA**

Particulars	₹
Total Income under regular provisions of the Act	69,05,000
Add: Deduction u/s 35AD	15,00,000
	84,05,000
Less: Depreciation @10% on warehouse building	1,50,000
Total Income under section 115BAA	82,55,000
Tax liability	
Tax on Long-term capital gains u/s 112A = 10% of (₹ 2,40,000 – 1,00,000)	14,000
Tax on remaining income of ₹ 80,15,000 @22%	17,63,300
	17,77,300
Add: Surcharge @10%	1,77,730
	19,55,030
Add: Health & education cess @4%	78,201
Tax liability	20,33,231
Tax liability (Rounded off)	20,33,230

Suggestion to M/s Cure Ltd.

Since the tax liability under the regular provisions of the Act is ₹ 17,47,460, which is higher than MAT liability vis-à-vis tax liability of ₹ 20,33,230 computed under section 115BAA, it is not beneficial for Cure

Ltd. to opt for the special provisions under section 115BAA for A.Y. 2024-25.

15. (i) As per section 44AD, a resident individual, HUF or Partnership firm (but not LLP) engaged in eligible business and who has not claimed deduction under section 10AA or Chapter VIA under "C – deductions in respect of certain incomes" is an eligible assessee. Eligible business means whose total turnover/ gross receipts in the P.Y. \leq ₹ 200 lakhs or $>$ ₹ 200 lakhs but \leq ₹ 300 lakhs, if its cash receipts do not exceed 5% of total turnover/gross receipts. Such eligible assessee can declare 8%/6%, as the case may be, of total turnover/ sales/ gross receipts or a sum higher than the aforesaid sum claimed to have been earned by the assessee, as its business income.

In this case, XYZ & Co., a partnership firm, can declare profits as per the presumptive provisions of section 44AD, since the percentage of receipts in cash of ₹ 12.50 lakhs to the total turnover/gross receipts of ₹ 280 lakhs is 4.46%. In such a case, it is not required to get its books of account audited under section 44AB.

Computation of total income of XYZ & Co. for the A.Y. 2024-25

Particulars	₹	₹
Profits and Gains of business or profession		
Presumptive income under section 44AD [₹ 16,05,000, being 6% of ₹ 2,67,50,000 (excluding cash receipts and amount received by cheque other than A/c payee cheque and ₹ 1,00,000, being 8% of ₹ 12,50,000) [See Note 1]	17,05,000	
Less: Brought forward business loss under section 72 [See Note 2]	<u>75,000</u>	
		16,30,000

Capital Gains		
Sale consideration	57,00,000	
Less: Indexed cost of acquisition [₹ 12,00,000 x 348/289]	<u>14,44,983</u>	
Long-term capital gains, since plot is held for more than 24 months		<u>42,55,017</u>
Gross Total Income/ Total Income		<u>58,85,017</u>
Gross Total Income/ Total Income (Rounded off)		<u>58,85,020</u>

Notes:

- (1) Interest on capital and working partner salary are not deductible while computing the presumptive income of a partnership firm under section 44AD.
 - (2) Brought forward business loss of assessment year 2020-21 can be set-off against current year business income as per section 72.
- (ii) In case, XYZ & Co. received ₹ 4,00,000 instead of ₹ 2,00,000 by cheque other than A/c payee cheque it cannot declare profits as per the presumptive provisions of section 44AD, since the percentage of cash receipts of ₹ 14.50 lakhs to the total turnover/gross receipts of ₹ 280 lakhs is 5.17%.

As per section 44AB, every person carrying on business or profession is required to get his accounts audited before the "specified date", if the total sales, turnover or gross receipts in business exceeds ₹ 1 crore in any previous year.

However, tax audit is not required in case of such person carrying on business whose total sales, turnover or gross receipts in business \leq ₹ 10 crore in the relevant previous year (P.Y.), if -

- aggregate cash receipts including amount received for sales, turnover, gross receipts in the relevant previous year \leq 5% of such receipts; and

- aggregate cash payments including amount incurred for expenditure in the relevant P.Y. \leq 5% of such payments or

In this case, the turnover of XYZ & Co. exceeds ₹ 1 crore but does not exceed ₹ 10 crore. Accordingly, percentage of cash receipts to aggregate receipts and percentage of cash payments to aggregate payments need to be checked.

The percentage of cash receipts of ₹ 31.30 lakhs [₹ 16,80,000 + ₹ 10,50,000 + ₹ 4,00,000] to aggregate receipts of ₹ 337 lakhs is 9.287% and the percentage of cash payments of ₹ 4,50,000 to aggregate payments of ₹ 1,95,00,000 is 2.308%.

Since the cash receipts made during the year exceed 5% of aggregate receipts, the firm is required to get its accounts audited under section 44AB.

Computation of total income of XYZ & Co. for the A.Y. 2024-25

Particulars	₹	₹
Net profit as per profit & loss account	8,65,000	
<i>Add:</i> Interest paid to partner B allowable to the extent of 12%. Thus, excess interest of ₹ 30,000 [3% of ₹ 10 lakhs] would be disallowed.	30,000	
Salary paid to working partners considered separately.	28,80,000	
Salary to clerk would be disallowed as per section 40A(3), since payment exceeding ₹ 10,000 made in cash [₹ 12,000 x 12]	1,44,000	
	39,19,000	
<i>Less:</i> Profit on sale of land [Taxable under the head "Capital Gains"]	45,00,000	
Book Profits/loss	(5,81,000)	

Less: Salary to working partners -			
(i) As per section 40(b) in case of loss, limit is	1,50,000		
(ii) Salary actually paid only to working partners	21,60,000		
Deduction allowed being (i) or (ii), whichever is less		1,50,000	
Business Loss (It can be set-off against long-term capital gains Brought forward business loss relating to A.Y. 2020-21 of ₹ 75,000 will be carried forward to the subsequent year)		7,31,000	
Capital Gains			
Sale consideration		57,00,000	
Less: Indexed cost of acquisition [₹ 12,00,000 x 348/289]		<u>14,44,983</u>	
Long-term capital gains, since plot is held for more than 24 months		42,55,017	
Less: Current year business loss		<u>(7,31,000)</u>	35,24,017
Gross Total Income/ Total Income			35,24,017
Gross Total Income/ Total Income (Rounded off)			35,24,020

16. Computation of total income in the hands of Beta, REIT and Mr. Arpan (unit-holder)

Particulars	Beta (REIT)	Mr. Arpan (Unit-holder)
(i) Interest income of ₹ 12 crores from H Ltd. (SPV)	Nil	8,40,00,000
Interest income from SPV would be		

<p>exempt in the hands of REIT by virtue of section 10(23FC)(a). The component of such interest income distributed to unit holders would be deemed as income of the unit holders as per section 115UA(3). Accordingly, ₹ 8.4 crores being 70% of ₹ 12 crores is taxable in the hands of the unitholder Mr. Arpan.</p>		
<p>(ii) Dividend income of ₹ 2 crores from H Ltd. (SPV) The dividend distributed by the SPV to the REIT is exempt in the hands of REIT by virtue of section 10(23FC)(b). The component of such dividend income distributed to unitholders is taxable in the hands of unitholders by virtue of the exception contained in section 10(23FD), since H Ltd. (SPV) has exercised the option u/s 115BAA. Accordingly, ₹ 1.40 crore, being 70% of ₹ 2 crores, would be taxable in the hands of the unitholder Mr. Arpan.</p>	Nil	1,40,00,000
<p>(iii) Short-term capital gains of ₹ 1.2 crore on sale of developmental properties STCG on sale of development properties is taxable at maximum marginal rate in the hands of the REIT as per section 115UA(2). There would be no tax liability in the hands of the unit holders on the capital gain component of income distributed to them by virtue of exemption contained in section 10(23FD).</p>	1,20,00,000	Nil

<p>(iv) Interest of ₹ 12 lakh received in respect of investment in unlisted debentures of companies</p> <p>Such interest is taxable at maximum marginal rate in the hands of the REIT as per section 115UA(2). There would be no tax liability in the hands of the unit holders on the interest component of income distributed to them by virtue of section 10(23FD).</p>	<p>12,00,000</p>	<p>Nil</p>
<p>(v) Rental income of ₹ 2 crores from directly owned real estate assets</p> <p>Income by way of renting or leasing or letting out any real estate asset owned directly by REIT is exempt in the hands of the REIT as per section 10(23FCA). However, the component of such rental income distributed to unitholders is deemed as income of the unit holders as per section 115UA(3). Accordingly, ₹ 1.4 crores, being 70% of ₹ 2 crores would be taxable in the hands of Mr. Arpan.</p>	<p>Nil</p>	<p>1,40,00,000</p>
<p>(vi) Other income distributed to unitholders</p> <p>As per section 115UA(3A), any sum other than interest and dividend received from SPV, rental income and income which are chargeable to tax in the hands of REIT, in the present case it is STCG on sale of developmental properties and interest on unlisted debentures, would be chargeable to</p>	<p>-</p>	<p>37,60,000</p>

<p>tax under section 56(2)(xii) in the hands of unitholders as income from other sources. In the present case, ₹ 37,60,000 [₹ 1.876, being 70% of ₹ 2.68 [₹ 20 crores – ₹ 17.32 (₹ 12 crores + ₹ 2 crores + ₹ 1.2 crores + ₹ 12 lakhs + ₹ 2 crores)] Less ₹ 1.5 crores, being the issue price of units held by Mr. Arpan} would be taxable as Income from other sources.</p>		
Total income	1,32,00,000	11,57,60,000

16. The same issue came up before the Supreme Court in the case of *Bharti Cellular Ltd. vs. ACIT [2024] 462 ITR 247*, wherein the Apex Court noted that the obligation to deduct tax at source in terms of section 194H arises when the legal relationship of principal and agent is established. Agency is a triangular relationship between the principal, agent and the third party. The legal position of a distributor is generally regarded as different from that of an agent. Based on perusal of agreement between assessee and distributors / franchisee, the franchisee/distributor paid the discounted price regardless of, and even before, the pre-paid products being sold and transferred to the retailers or the actual consumer. The franchisee/distributor was free to sell the prepaid products at any price below the price printed on the pack. The franchisee/distributor determined his profits/income.

Section 194H fixes the liability to deduct tax at source on the 'person responsible to pay' and the liability to deduct tax at source arises when the income is credited or paid by the person responsible for paying. The expression "direct or indirect" used in *Explanation (i)* to section 194H is meant to ensure that "the person responsible for paying" does not dodge the obligation to deduct tax at source, even when the payment is indirectly made by the principal-payer to the agent-payee. However, deduction of tax at source in terms of section 194H is not to be extended and widened in ambit to apply to true/genuine business transactions, where the assessee is not the person responsible for paying or crediting income. In the present case, the ABC Telecom Ltd., being an

assessee neither pays nor credit any income to the person with whom he has contracted.

ABC Telecom Ltd. is not privy to the transactions between distributors/franchisees and third parties. It is, therefore, impossible for ABC Telecom Ltd. to deduct tax at source and comply with section 194H, on the difference between the total/sum consideration received by the distributors/franchisees from third parties and the amount paid by the distributors/franchisees to them. In the present case, the contractual obligations of the franchises or distributors did not reflect a fiduciary character of the relationship, or the business being done on the principal's account.

Applying the rationale of the Apex Court ruling in the case on hand, section 194H is not applicable in the hands of ABC Telecom Ltd. and it would not be under a legal obligation to deduct tax at source on the income/profit component in the payments received by the distributors/franchisees from the third parties/customers.

- 17.** The Assessing Officer can exercise his power of survey under section 133A only after obtaining the approval of the Principal Director General or the Director General or the Principal Chief Commissioner or the Chief Commissioner.

Assuming that he has obtained such approval in this case, he is empowered under section 133A to enter any place of business of the assessee within his jurisdiction only during the hours at which such place is open for the conduct of business.

In the case given, the "SDX" a popular Sports Complex is open from 5.00 a.m. to 10.00 p.m. for the conduct of business. The Assessing Officer entered the Sports Complex at 9:30 pm in the night which falls within the working hours of the Sports Complex.

Therefore, the claim made by the owner to the effect that the Assessing Officer could not enter the Sports Complex at night is not valid.

Further, as per section 133A(3)(ia), the Assessing Officer may, impound and retain in his custody for such period as he thinks fit, any books of account or other documents inspected by him after recording reasons for doing so. However, the Assessing Officer cannot remove cash kept at

the sports complex. Moreover, he shall not retain any books of account or other documents in his custody for a period exceeding 15 days (excluding holidays) without obtaining the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or the Principal Commissioner or Commissioner or Principal Director or Director, as the case may be.

19. (1) An eligible investment fund, in respect of its activities in a financial year, is required to furnish within 90 days from the end of the financial year (i.e., by 29th of June), a statement of its activities to the prescribed Income-tax authority under section 9A(5).

In the present case, M/s ABC Trust, an eligible investment fund has furnished its statement of its activities on 31.7.2024, i.e., after 29th June 2024, being the due date of furnishing such statement, accordingly penalty of ₹ 5,00,000 would be attracted under section 271FAB.

- (2) No penalty would be leviable on Meena caterers under section 271DA, since it received only ₹ 1 lakh in cash, (which is less than the permissible threshold of ₹ 2 lakhs) in respect of transactions relating to rendering of catering services on the occasion of Mr. Arvind's daughter marriage from Mr. Arvind. The balance ₹ 9 lakh was paid by way of account payee cheque which is a permissible mode of payment.
- (3) As per section 271AAB(1A), penalty @60% of undisclosed income would be attracted, since Tip Ltd. had not admitted the undisclosed income in a statement under section 132(4) though declared the same in a return furnished and paid the tax with interest thereon.

20. **Computation of total income of Mr. Ram Prakash for the A.Y. 2024-25**

Particulars	₹	
Income from house property		
Rent received [₹ 2.5 lakhs + ₹ 2.5 lakhs]	5,00,000	
Less: Deduction u/s 24(a) at 30% of NAV	1,50,000	3,50,000

Profits and gains of business or profession		
Own business income [₹ 2,80,000 (Country X) + ₹ 3,40,000 (Country Y) + ₹ 1,80,000 (India)]	8,00,000	
Loss from partnership firm in Country X [₹ 1.2 lakh] and Country Y [₹ 1.3 lakhs] [Share of profit from foreign firm is not exempt, since the partnership is not evidenced by an instrument. Hence, loss can be set-off against business income]	(2,50,000)	5,50,000
Capital gains		
Long-term capital gains on transfer of residential house in Delhi	37,00,000	
Less: Exemption u/s 54 – Purchase of residential house in Delhi in joint name with wife within two years from the date of transfer	25,00,000	
Net long-term capital gains	12,00,000	
Short-term capital gains on transfer of vacant site in Country X	10,80,000	22,80,000
Income from other sources		
Agricultural income in Country X and Country Y [₹ 3.4 lakhs + ₹ 1.8 lakhs]	5,20,000	
Agricultural income from land situated in India [exempt u/s 10(1)]	-	5,20,000
Gross Total Income		37,00,000
Less: Deduction under Chapter VI-A: Section 80C – PPF [Not available as per section 115BAC]		-
Total Income		37,00,000

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

Particulars	₹
Tax on ₹ 42.2 lakhs, being non-agricultural income [₹ 37 lakhs] + agricultural income [₹ 5.2 lakhs]	
Tax on LTCG of ₹ 12 lakhs@20%	2,40,000
Tax on other income of ₹ 30.2 lakhs	
Upto ₹ 3,00,000	Nil
₹ 3,00,001 – ₹ 6,00,000 [i.e., ₹ 3,00,000 @5%]	15,000
₹ 6,00,001 – ₹ 9,00,000 [i.e., ₹ 3,00,000 @10%]	30,000
₹ 9,00,001 – ₹ 12,00,000 [i.e., ₹ 3,00,000 @15%]	45,000
₹ 12,00,001 – ₹ 15,00,000 [i.e., ₹ 3,00,000 @ 20%]	60,000
₹ 15,00,001 – ₹ 30,20,000 [i.e., ₹ 15,20,000 @ 30%]	<u>4,56,000</u>
	8,46,000
(-) Tax on ₹ 8.2 lakhs, being agricultural Income [₹ 5.2 lakhs] + Basic Exemption Limit [₹ 3 lakhs]	37,000
	8,09,000
<i>Add:</i> Health and education cess @4%	32,360
	8,41,360
Indian rate of tax = $8,41,360 \times 100/37,00,000 = 22.74\%$	
<i>Less:</i> Rebate u/s 91 on income of Country X + Country Y	3,63,314
Net Tax liability	4,78,046
Net Tax liability (Rounded off)	4,78,050

Computation of average rate of tax in Country X

Particulars	₹
Gross rental receipts from commercial property [No deduction is allowed from this in Country X]	2,50,000
Share income from partnership firm (loss) to be ignored	-
Business income	2,80,000
STCG from sale of vacant site on 11-11-2023	10,80,000
Agricultural income [Exempt in Country X]	-
Total income	16,10,000
Rates of tax in Country X	
Upto 3 lakhs Nil	-
3 to 6 lakhs 15%	45,000
Above 6 lakhs 22%	2,22,200
	2,67,200
Average rate of tax in Country X = $\frac{2,67,200}{16,10,000} \times 100 = 16.596\%$	

Computation of Rebate u/s 91

Particulars	₹
Country X	
Gross rental receipts form commercial property (₹ 2.5 lakhs – ₹ 0.75 lakhs, being 30% of ₹ 2.5 lakhs)	1,75,000
Share of loss from partnership firm	(1,20,000)
Business income	2,80,000
STCG from sale of vacant site on 11-11-2023	10,80,000
Agricultural income [Not included in doubly taxed income as it is exempt in Country X]	-
Doubly Taxed Income (in Country X)	14,15,000
Double Taxation Relief at Indian rate of tax (22.74%) or rate of tax in Country E (16.596%), whichever is lower	16.596%
Double Taxation Relief = 16.596% of ₹ 14.15 lakhs = ₹ 2,34,833	

Country Y	
Gross rental receipts from commercial property [₹ 2.5 lakhs (-) 30% of ₹ 2.5 lakhs]	1,75,000
Business income	3,40,000
Share of loss from partnership firm	(1,30,000)
Agricultural income	1,80,000
Doubly Taxed Income (in Country Y)	5,65,000
Rate of tax in Country Y	27%
Double Taxation Relief at Indian rate of tax (22.74%) or rate of tax in Country Y (27%), whichever is lower	22.74%
Double Taxation Relief = 22.74% of ₹ 5,65,000 = ₹ 1,28,481	
Double Taxation Relief [Country X & Country Y] = ₹ 2,34,833 + ₹ 1,28,481	3,63,314

21. In the given case, Peter Inc. is a company incorporated under the laws of USA and hence, it is a foreign company under the Income-tax Act, 1961. However, the said company shall be considered to be resident in India if its place of effective management is in India. In this case, the company does not satisfy the active business outside India test since 50% of its assets are located in India. Since it has failed the active business test outside India on account of 50% of its assets being located in India, the persons who take key management and commercial decisions for conduct of the company's business as a whole and the place where the decisions are made are the key factors in determining whether the POEM of the company is in India. The facts of the case clearly state that the key management decisions and commercial decisions for conduct of the company's business as a whole are made by the directors located in India and at the meetings held in India. Therefore, the POEM of Peter Inc. is in India in the P.Y.2023-24, irrespective of the fact that majority of the board meetings are held outside India.

Section 194J applies when professional fees are being paid to a resident, whereas section 195 applies when payments are made to a non-corporate non-resident or a foreign company. Section 194J is income

specific and section 195 is payee specific. CBDT *vide Notification No. 29/2018 dated 22nd June 2018* has clarified that the foreign company shall continue to be treated as a foreign company even if it is said to be resident in India on account of its POEM being in India, and all the provisions of the Act shall apply accordingly. Where more than one provision of Chapter XVII-B of the Act applies to the foreign company as resident as well as a foreign company, the provision applicable to the foreign company alone shall apply. Further, in case of conflict between the provision applicable to the foreign company as resident and the provision applicable to it as foreign company, the latter shall generally prevail. Hence, Payal Ltd shall deduct tax under section 195 while making payment of fees for professional services to Peter Inc., a foreign company resident in India.

22. B Ltd, the Indian company and TQR Inc., the Country C company are deemed to be associated enterprises as per section 92A(2)(a), since TQR Inc. holds shares carrying 30% of voting power (which is not less than 26% of the voting power) in B Ltd.

As per *Explanation* to section 92B, the transactions entered into between two associated or deemed associated enterprises for sale of product, lending or guarantee and provision of services relating to market research are included within the meaning of "international transaction".

Accordingly, transfer pricing provisions would be attracted and the income arising from such international transactions have to be computed having regard to the arm's length price.

- (i) In this case, from the information given, the arm's length price has to be determined by taking the comparable uncontrolled price (CUP) method to be the most appropriate method.

Particulars	₹ in lakhs
Amount by which total income of B Ltd. is enhanced on account of adjustment in the value of international transactions:	
(i) Difference in price of LED stick @ \$ 2 each for 90,000 pieces sold to TQR Inc. [$\$ 2 (\$ 12 - \$ 10) \times 90,000 \times ₹ 85$]	153.00

(ii) Difference for excess payment of guarantee fee to TQR Inc. for loan borrowed from foreign lender [$\$ 3,000 (\$ 15,000 - \$ 12,000) \times ₹ 85$]	2.55
(iii) Difference for excess payment for services to TQR Inc. [$\$ 2,000 (\$ 18,000 - \$ 16,000) \times ₹ 85$]	<u>1.70</u>
	<u>157.25</u>

- (ii) B Ltd. cannot claim deduction under section 10AA in respect of ₹ 157.25 lakhs, being the amount of income by which the total income is enhanced by virtue of the first proviso to section 92C(4), since the adjustments are made by the Assessing Officer to determine the arm's length price.