

**MOCK TEST PAPER 2**  
**FINAL COURSE: GROUP – II**  
**PAPER – 7: DIRECT TAX LAWS & INTERNATIONAL TAXATION**  
**SOLUTIONS**

**Division A – Multiple Choice Questions**

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

**Division B – Descriptive Questions**

1. (a) **Computation of Total Income of Suraj Industries Ltd. for the A.Y. 2022-23**

	Particulars	Amount (₹)		
I	<b>Income from house property</b> Unrealised rent [Taxable under section 25A, even if Suraj Industries Ltd. is no longer the owner of commercial property] Less: 30% of above		3,80,000 <u>1,14,000</u>	2,66,000
II	<b>Profits and gains of business and profession</b> Net profit as per the statement of profit and loss <b>Add: Items debited but to be considered separately or to be disallowed</b>		72,00,000	
	(i) <b>Depreciation as per Companies Act, 2013</b>	24,00,000		
	(ii) <b>Interest under section 234B for short payment of advance tax</b> [Any interest payable for default committed by assessee for discharging his statutory obligations under Income-tax Act, 1961 which is calculated with reference to the tax on income is not allowable as deduction under section 40(a)(ii). Since the same has been debited to statement of profit and loss, it has to be added back] <sup>1</sup>	60,000		

<sup>1</sup>Bharat Commerce and Industries Ltd. v. CIT [1998] 230 ITR 733 (SC)

<p><b>(iii) Interest and borrowing cost included in Opening and Closing inventory</b>  [As per ICDS II, Interest and borrowing cost which does not meet the criteria for recognition as a component of the cost, cannot be included in the cost of inventory. Since the same have been included in the opening and closing inventory, the difference between ₹ 9,50,000, being interest included in opening inventory – ₹ 7,00,000, being interest included in closing inventory, has to be added back]</p>	2,50,000	
<p><b>(iv) Cash payment in excess of ₹ 10,000</b>  [Disallowance u/s 40A(3) is attracted in respect of expenditure, for which payment exceeding ₹ 10,000 in a day has been made in cash. Since expenditure of ₹ 19,000 towards printing and stationery items is debited to the statement of profit and loss, the same has to be added back.  However, payment of ₹ 22,000 to producer for dairy farming products is not disallowed since it is covered under the exceptions specified in Rule 6DD]</p>	19,000	
<p><b>(v) Repair work paid to contractor without deduction of tax at source</b>  [Disallowance of 30% of the amount of ₹ 3,50,000 paid for carrying out repair work to a contractor without deduction of tax at source would be attracted u/s 40(a)(ia)]</p>	1,05,000	
<p><b>(vi) Expenditure for transfer of carbon credits</b>  [Income by way of transfer of Carbon Credits is chargeable to tax under section 115BBG at a flat rate. No deduction is allowed under any provision of the Act in respect of any expenditure or allowance in relation thereto. Since such expenditure is debited to the statement of profit and loss, the same has to be added back]</p>	35,000	
<p><b>(vii) Contribution to electoral trust</b>  [Contribution to electoral trust is not allowable as deduction from business profits of the company. Since the expenditure has been debited to statement of profit and loss, the same has to be added back while computing business income]</p>	3,00,000	
<p><b>(viii) Advertisement in brochure of a political party</b></p>	40,000	

[Advertisement charges paid in respect of brochure published by a political party is not allowable as deduction from business profits of the company as per section 37(2B). Since the expenditure has been debited to statement of profit and loss, the same has to be added back while computing business income]			
(ix) <b>Interest to co-operative bank not paid on or before the due date</b>	2,60,000		
[Disallowance under section 43B would be attracted for A.Y.2022-23, since the interest was not paid on or before the due date of filing of return]			
(x) <b>Contribution towards pension scheme of employees</b>	50,000		
[Contribution towards pension scheme, referred to in section 80CCD, of employees is allowed only to the extent of 10% of salary of the employee in the P.Y. i.e., ₹ 1,00,000 being 10% of ₹ 10,00,000. Therefore, the excess contribution of ₹ 50,000 [i.e., ₹ 1,50,000 – ₹ 1,00,000] is disallowed u/s sec.36(1)(iva).]			35,19,000
<b>Add: Amount taxable but not credited to statement of profit and loss</b>			<b>1,07,19,000</b>
<b>A(2) Expenditure pertaining to previous financial year</b>			
[Cash payment in excess of ₹ 10,000 made in the current year in respect of expenditure allowed on mercantile basis in the previous financial year, would be deemed as income in the current year as per section 40A(3A)]			35,000
			<b>1,07,54,000</b>
<b>Less: Items credited to statement of profit and loss, but not includible in business income / permissible expenditure and allowances</b>			
(i) <b>Unrealised rent</b>	3,80,000		
[Unrealised rent in respect of commercial property is taxable under the head "Income for house property". Since the said rent has been credited to the statement of profit and loss, the same has to be deducted while computing business income]			
(ii) <b>Dividend received from specified foreign company</b>	1,60,000		

<p>[Dividend received from specified foreign company is taxable under the head "Income from other sources". Since the said dividend has been credited to the statement of profit and loss, the same has to be deducted while computing business income]</p>			
<p><b>(iii) Profit from hedging contract</b> [Hedging contract is entered into for safeguarding against any loss that may arise due to currency fluctuation. The profit from such contract entered into for meeting loss in foreign currency payments towards imported printing machinery has to be adjusted against the cost of machinery. Since the said profit has been credited to the statement of profit and loss, the same has to be deducted while computing business income]</p>	3,00,000		
<p><b>(iv) Interest from bank fixed deposit</b> [Interest on fixed deposit is taxable under "Income from Other Sources". Since the said interest has been credited to the statement of profit and loss, the same has to be deducted while computing business income]</p>	1,35,000		
<p><b>A(3) Audit fees of P.Y. 2020-21</b> [30% of ₹ 75,000, being the audit fees disallowed in the P.Y. 2020-21 for non-remittance of TDS on or before due date of filing return of income for P.Y. 2020-21 would be allowed in the year of payment of TDS i.e., P.Y. 2021-22]</p>	22,500		
<p><b>A(4) Transfer of Carbon Credits chargeable to tax under section 115BBG</b> [Income by way of transfer of Carbon Credits chargeable under section 115BBG can be treated as business income or income from other sources, depending upon the facts of the case. In this case, since the question mentions that Suraj Industries Ltd. is engaged in production and marketing of diversified products, it is logical to assume that the same is in the nature of business income. Since the amount of ₹ 4 lakh has already been credited to statement of profit and loss, no further adjustment is necessary]</p>	Nil	9,97,500	
<p><b>Less: Depreciation as per Income tax Rules</b> <b>A(1) Depreciation under section 32</b></p>	28,00,000	97,56,500	

III	Add: Depreciation @7.5% on ₹ 92 lakhs [₹ 95 lakhs, being imported printing machinery - ₹ 3 lakhs, being profit from hedging contract] since, machinery is put to use for less than 180 days].	6,90,000		
	Add: Additional depreciation@10% on ₹ 92 lakhs, since machinery is put to use for less than 180 days assuming the conditions for claim of additional depreciation are satisfied <sup>2</sup> .	9,20,000		
			44,10,000	
	<b>Profits and gains from business or profession</b>			<b>53,46,500</b>
	<b>Income from Other Sources</b>			
	Dividend from specified foreign company		1,60,000	
	<b>Interest from banks on fixed deposits (Gross)</b>		<u>1,50,000</u>	
	[Interest on banks on fixed deposits is taxable as "Income from other sources"] [₹1,35,000 x 100/90]			<u>3,10,000</u>
	<b>Gross Total Income</b>			<b>59,22,500</b>
	<b>Less: Deduction under Chapter VI-A</b>			
	Under section 80GGB [Contribution by a company to an electoral trust or registered political party is allowable as deduction, since payment is made otherwise than by cash. Expenditure incurred by an Indian company on advertisement in brochure published by political party tantamount to contribution to such political party] [₹ 3,00,000 + ₹ 40,000]			3,40,000
	<b>Total income</b>			<b>55,82,500</b>

2. (a) **Computation of Total Income of M/s Little Smiles & Associates, a partnership firm, for the A.Y. 2022-23**

	Particulars	Amount (in ₹)	
I	<b>Profits and gains of business and profession</b>		
	Net profit as per profit and loss account		80,00,000
	<b>Add: Items debited but to be considered separately or to be disallowed</b>		
	(1) <b>Interest to partners on capital</b>	55,000	
	[As per section 40(b), interest to partners authorized by the partnership deed is allowable as deduction subject to a maximum of 12% p.a.] [₹ 7,15,000 x 1%/13%]		
	(2) <b>Interest on loan taken from partner</b>	18,000	
	[As per section 40(b), interest to partners authorized by the partnership deed is allowable as deduction subject		

<sup>2</sup>Balance additional depreciation can be claimed in the A.Y. 2023-24

	to a maximum of 12% p.a., whether it is interest on partner's capital or loan] [₹ 90,000 x 3%/15%]		
	<b>(3) Depreciation as per books of account</b>	1,15,650	
			<u>1,88,650</u>
			81,88,650
	<b>Less: Items credited but chargeable to tax under another head/expenses allowed but not debited</b>		
	<b>1. Interest on bank fixed deposits made out of surplus fund</b>	35,000	
	[Interest received from bank on fixed deposits made out of surplus funds is assessable under the head 'Income from other sources'. Since the same has been credited to profit and loss account, it has to be deducted while computing business income]		
	<b>2. Profit on sale of building</b>	53,55,000	
	[Capital gain on sale of building is taxable under the head "Capital Gains". Since such gains has been credited to profit and loss account, the same has to be deducted while computing business income]		<u>53,90,000</u>
			27,98,650
	<b>Less: Depreciation as per Income-tax Rules, 1962</b>	14,000	
	- Depreciation on Motor car [₹ 6,80,000 x 30%, eligible for higher depreciation since purchased and put to use on 1.1.2020]	2,04,000	
	- Mobile phone [₹ 20,000 x 15% x 50%, since purchased and put to use for less than 180 days]	<u>1,500</u>	<u>2,19,500</u>
	<b>Book Profit</b>		25,79,150
	<b>Less: Salary to working partners</b>		
	(i) As per limits given under section 40(b)		
	On first ₹ 3,00,000 @90%	2,70,000	
	On the balance of ₹ 22,79,150 @ 60%	<u>13,67,490</u>	
		16,37,490	
	(ii) Salary actually paid to working partners [₹ 20,000 x 12 x 2]	4,80,000	
	Deduction allowed being (i) or (ii) whichever is less		<u>4,80,000</u>
			20,99,150
<b>II</b>	<b>Capital Gains</b>		
	<b>1. Short term capital gain on sale of building forming part of block of asset</b> [Since building was the only asset in the block]		
	Full value of consideration	90,00,000	
	Less: Cost of acquisition [WDV as on 1.4.2021]	<u>36,45,000</u>	
		53,55,000	

	Less: Exemption under section 54EC [Investment in bonds of NHAI, the maximum deduction u/s 54EC would be ₹ 50 lakhs]	<u>50,00,000</u>	3,55,000
	[Available against depreciable asset, being a building held for more than 24 months and the payment for bonds has been made within six months from the date of transfer, exemption u/s 54EC would be available even if the allotment of bonds was made after the expiry of the six months <sup>3</sup> ]		
<b>III</b>	<b>Income from Other Sources</b>		
	Interest from bank on fixed deposits		35,000
	<b>Gross Total Income</b>		24,89,150
	<b>Less: Deduction under section 10AA</b> [₹ 7,50,000 x 40,00,000/ ₹ 1,20,00,000 x 100%, being second year of operation]		
	[Unit in SEZ is eligible for deduction u/s 10AA since it obtained the letter of approval on or before 31 <sup>st</sup> March, 2020 and started operations before 31.3.2021]		2,50,000
	<b>Total Income</b>		<b>22,39,150</b>

- (b) Since Mr. Guru Charan is an individual resident in India for the P.Y.2021-22, his global income would be subject to tax in India. Therefore, income earned by him in Country M and Country N would be taxable in India. He would, however, be entitled to deduction under section 91, since India does not have a DTAA with Country M and Country N, and all conditions under section 91 are satisfied.

**Computation of total income of Mr. Guru Charan for A.Y.2022-23**

Particulars	₹	₹
<b>Income under the head "Salaries"</b>		
Pension from State Government	3,90,000	
Less: Standard deduction u/s 16(ia) [Not allowable as per section 115BAC]	<u>          -</u>	
		3,90,000
<b>Income from House Property</b>		
Rental income from property in Country N <sup>4</sup>	3,00,000	
Less: Municipal taxes	<u>20,000</u>	
	2,80,000	
Less: Deduction u/s 24(a)@30%	<u>84,000</u>	
		1,96,000
<b>Profits and Gains of Business or Profession</b>		
Speculative income in India	1,16,000	

<sup>3</sup> Hindustan Unilever Ltd. v. DCIT (2010) 325 ITR 102 (Bom.)

<sup>4</sup> In the absence of any information relating to fair rent, municipal value and standard rent, rental income is assumed to be the gross annual value.

Less: Set-off of business loss from proprietary business in Country N under section 70	<u>1,06,000</u>	
		10,000
<b>Short-term capital gains</b> on sale of plot in India		2,10,000
<b>Income from Other Sources</b>		
Agricultural income from Country M [not exempt u/s 10(1), since it is earned from land situated outside India]	90,000	
Dividend from a company in Country M	<u>64,000</u>	
		<u>1,54,000</u>
<b>Gross Total Income</b>		9,60,000
<b>Less: Deduction under Chapter VI-A [No deduction allowable as per section 115BAC]</b>	-	<u>-</u>
<b>Total Income</b>		<u><b>9,60,000</b></u>

**Computation of tax liability of Mr. Guru Charan for A.Y.2022-23**

Particulars	₹
Tax payable on ₹ 9,60,000	
Upto ₹ 2,50,000	Nil
₹ 2,50,000 to ₹ 5,00,000 @ 5%	12,500
₹ 5,00,000 to ₹ 7,50,000 @ 10%	25,000
₹ 7,50,000 to 9,60,000 @15%	31,500
Add: Health and education cess@4%	<u>69,000</u>
	<u>2,760</u>
	<b>71,760</b>
Less: Rebate under section 91 (See Working Note below)	<u>11,228</u>
<b>Tax Payable</b>	<b>60,532</b>
<b>Tax Payable (rounded off)</b>	<b>60,530</b>
<b>Calculation of Rebate under section 91:</b>	₹
Average rate of tax in India [i.e., ₹ 71,760/ ₹ 9,60,000 x 100] = 7.475%	
<b>Doubly taxed income pertaining to Country M</b>	
Agricultural income	90,000
Dividend from a company in Country M [Not includible, since exempt in Country M]	<u>-</u>
	90,000
Rebate under section 91 on ₹ 90,000 @7.475% [being the lower of average Indian tax rate (7.475%) and Country M tax rate (10%)]	6,728
<b>Doubly taxed income pertaining to Country N</b>	
Income from house property less business loss set-off against income chargeable to tax in India (₹ 1,96,000 – ₹ 1,06,000)	90,000
Rebate under section 91 on ₹ 90,000 @5% [being the lower of average Indian tax rate (7.475%) and Country N tax rate (5%)]	<u>4,500</u>
<b>Total rebate under section 91 (Country M + Country N)</b>	<u><b>11,228</b></u>



3. (a) As per section 115TD, the accreted income of "M/s Shanti Niketan Charitable Trust", registered under section 12AA would be chargeable to tax at maximum marginal rate @ 34.944% [30% plus surcharge @12% plus cess@4%] for the reason of cancellation of registration.

Computation of exit tax payable by M/s Shanti Niketan Charitable Trust	
Particulars	Amount (₹)
Aggregate FMV of total assets as on 31.1.2022, being the specified date (date of order of cancellation of the registration) [See Working Note 1]	12,85,00,000
<b>Less:</b> Total liability computed in accordance with the prescribed method of valuation [See Working Note 2]	<u>3,05,00,000</u>
<b>Accreted Income</b>	<b><u>9,80,00,000</u></b>
Tax Liability @ 34.944% of ₹ 9,80,00,000	<b>3,42,45,120</b>
<b>Working Note 1:</b>	
<b><u>Aggregate fair market value of total assets on the date of cancellation of the registration</u></b>	
<b>Valuation of Land, being an immovable property purchased in the year 2009</b>	-
[Value of land purchased in the year 2009 not includible in the aggregate fair market value, since the exemption provisions under section 11 and 12 would apply from P.Y.2012-13, being the previous year in which application for registration of trust is made]	
<b>Valuation of Land and building, being an immovable property, purchased in 2015</b>	10,50,00,000
[The fair market value of land and building would be higher of ₹ 1,000 lakhs i.e., price that the land and building would ordinarily fetch if sold in the open market as per registered valuer's certificate and ₹ 1,050 lakhs, being stamp duty value as on the specified date i.e., 31.1.2022]	
<b>Valuation of Quoted equity shares in M/s XP Ltd. [2,000 x ₹ 1,075 per share]</b>	21,50,000
[The fair market value of quoted shares would be ₹ 1,075 per share, being the average of the lowest (₹ 1,051) and highest price (₹ 1,099) of such shares on the specified date i.e., 31.1.2022]	
<b>Balance in current account of a nationalized bank</b>	10,00,000
<b>Balance in fixed deposits with scheduled banks</b>	2,00,00,000
<b>Cash in hand</b>	3,50,000
	<b>12,85,00,000</b>
<b>Working Note 2 - Total liability</b>	
<b>Book value of liabilities in the balance sheet on specified date</b>	11,35,00,000
<b>Less:</b> Capital fund	8,00,00,000
<b>Less:</b> Contingent liability on estimated basis to contractor for which no bills are received	30,00,000
<b>Total liability of M/s Shanti Niketan Charitable Trust</b>	<b>3,05,00,000</b>
The latest day on which such tax has to be paid is 14 <sup>th</sup> April, 2022, being 14 days from 31.3.2022, the date on which the order confirming the cancellation is received.	

(b) **Computation of income to be declared by the branch in its return of income**

<b>Computation of Head Office expenses allowable u/s 44C:</b>		
<b>Particulars</b>	<b>₹</b>	<b>₹</b>
Net profit of the branch		28,00,000
<b>Add:</b> Head office expenditure debited to profit and loss	1,20,00,000	
Unabsorbed depreciation	17,00,000	
Capital expenditure for promoting family planning	7,00,000	
Brought forward business loss	25,00,000	
Deductions under Chapter VI-A	<u>20,00,000</u>	
		<u>1,89,00,000</u>
<b>Adjusted total income</b>		<b><u>2,17,00,000</u></b>
<b>Note – Depreciation for the current financial year and capital expenditure on scientific research are not required to be added back for computing adjusted total income.</b>		
<b>Head office expenses allowable u/s 44C = ₹ 10,85,000</b>		
Being the lower of -		
(i) 5% of ₹ 2,17,00,000 = ₹ 10,85,000		
(ii) Actual Head Office expenses allocated to the branch = ₹ 1,20,00,000		
<b>Income to be declared by the branch for A.Y.2022-23</b>		
<b>Particulars</b>		<b>₹</b>
Net profit of the branch		28,00,000
<b>Add:</b> Head office expenditure debited to profit and loss		<u>1,20,00,000</u>
		1,48,00,000
<b>Less:</b> Head office expenses allowable u/s 44C		<u>10,85,000</u>
<b>Income to be declared by the branch</b>		<b><u>1,37,15,000</u></b>

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

In the present case, M/s K & Co. LLP has withdrawn ₹ 1.26 crores in cash in aggregate during the previous year 2021-22. Since aggregate amount of cash withdrawals exceed ₹ 1 crore, bank is required to deduct tax at source on the amount exceeding ₹ 1 crore i.e., ₹ 26 lakhs though he withdraws ₹ 68 lakhs for buying agricultural produce from farmers, agriculturists, being raw material required for manufacturing of finished products by it.

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

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

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

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

In the present case, Mr. Balveer had transferred his land 5 years ago to his son who was 40 years old at that time. He also gifted a diamond necklace to his son's wife on 5.10.2019. He also has bank fixed deposits, receivables from S & Co. Ltd. and residential apartment in UK.

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

- (i) bank fixed deposits,
- (ii) receivables from S & Co. Ltd.;
- (iii) residential apartment in UK.

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

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

- (c) (i) As per section 9(1)(i), all income accruing or arising, whether directly or indirectly, through or from any business connection in India is deemed to accrue or arise in India.

In this case, there was a professional connection between the firm of solicitors in Bhopal and the barrister in Australia.

The expression "business" includes not only trade and manufacture; it includes, within its scope, "profession" as well.

Therefore, the existence of professional connection amounts to existence of "business connection" under section 9(1)(i)<sup>5</sup>.

Hence, the amount of 6,500 Australian dollars paid to the barrister in Australia as per the terms of the professional engagement constitutes income which is deemed to accrue or arise in India under section 9(1)(i). Hence, it is taxable in India.

- (ii) Fees for technical services is taxable under section 9(1)(vii). In this case, the separate payments made towards drawings and designs (described as "engineering fee") are in the nature of fee for technical services and, therefore, it is taxable in India by virtue of section 9(1)(vii), since the services are utilized for execution of electrical work in India<sup>6</sup>.

As per *Explanation* below section 9(2), where income is deemed to accrue or arise in India under section 9(1)(vii), such income shall be included in the total income of the non-resident German company, regardless of whether it has a residence or place of business or business connection in India.

- (iii) ₹ 12 lakhs, being the value of debentures issued by an Indian company in consideration of providing technical know-how for use in its business in India, is in the nature of fee for technical services, deemed to accrue or arise in India to TPL Engineering, a non-resident foreign company, under section 9(1)(vii). Hence, it is taxable in India.

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<sup>5</sup> It was so held by the Supreme Court in *Barendra Prasad Roy v. ITO* (1981) 129 ITR 295.

<sup>6</sup> *Aeg Aktiengesellschaft v. CIT* (2004) 267 ITR 209 (Kar.)

**Interest on debentures:** Further, as per section 9(1)(v), income by way of interest payable by a person who is a resident of India is deemed to accrue or arise in India<sup>7</sup>. Therefore, interest income from debentures of an Indian company is deemed to accrue or arise in India in the hands of TPL Engineering by virtue of section 9(1)(v). Hence, it is taxable in India.

5. (a) (i) Section 144C requires the eligible assessee, XYZ Ltd., to file his objections within 30 days of the receipt of draft assessment order from the Assessing Officer with the DRP and the Assessing Officer

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, XYZ Ltd. can choose to file an appeal before Commissioner (Appeals) against the final assessment order instead of filing objection before the DRP against the draft assessment order passed by the Assessing Officer.

In case XYZ Ltd. files objection before the DRP, then, he has the right to appeal to Appellate Tribunal, if he is aggrieved by the final order passed by the Assessing Officer in pursuance of the directions of the DRP.

- (ii) As per section 132B, the amount of existing liability under the Income-tax Act and the amount of liability determined on completion of assessment under section 148 may be recovered out of assets seized under section 132. The words “existing liability” postulates a liability that is crystallized by adjudication.

Likewise, “a liability is determined” only on completion of the assessment. Until the assessment is complete, it cannot be postulated that a liability has been crystallized.

It is only when the liability is determined on the completion of assessment that it would stand crystallized and in pursuance of which a demand can be raised and recovery can be initiated. Accordingly, the assessee may make an application to the Assessing Officer within 30 days from the end of the month in which the asset was seized, for release of the assets seized.

However, in the present case, the assessee moved an application before the Assessing Officer for adjustment of tax liability on income surrendered during search by sale of seized gold bars.

In this case, assessment is not complete and the liability has not been crystallised.

Therefore, the action of the Assessing Officer in turning down the application of the assessee is in order, since the assets seized cannot be adjusted against tax liability on income surrendered during search<sup>8</sup>.

- (c) BEPS Action Plan 13 contains a three-tier standardized approach to transfer pricing documentation which consists of:

- (a) **Master file:** Master file requires MNEs to provide tax administrations with high-level information regarding their global business operations and transfer pricing policies. The master file is to be delivered by MNEs directly to local tax administrations.

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<sup>7</sup> since the debt incurred is not utilized for a business outside India or for earning income from a source outside India

<sup>8</sup> It was so held in *Hemant Kumar Sindhi & Another v. CIT* (2014) 364 ITR 555 (All)

- (b) **Local file:** Local file requires maintaining of transactional information specific to each country in detail covering related-party transactions and the amounts involved in those transactions. In addition, relevant financial information regarding specific transactions, a comparability analysis and analysis of the selection and application of the most appropriate transfer pricing method should also be captured. The local file is to be delivered by MNEs directly to local tax administrations.
- (c) **Country-by-country (CBC) report:** CBC report requires MNEs to provide an annual report of economic indicators viz. the amount of revenue, profit before income tax, income tax paid and accrued in relation to the tax jurisdiction in which they do business. CBC reports are required to be filed in the jurisdiction of tax residence of the ultimate parent entity, being subsequently shared between other jurisdictions through automatic exchange of information mechanism.

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

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

6. (a) In this case, the business of the firm, M/s. Trimurty & Co., has been discontinued when scrutiny assessment of A.Y.2019-20 was in progress and notice of discontinuance was given to the Assessing Officer on 10.7.2021. The firm has, however, filed returns on time upto A.Y.2020-21.

As per section 189, the Assessing Officer is required to make an assessment of the total income of the firm as if no such discontinuance has taken place. Accordingly, all the provisions of the Income-tax Act, 1961, including provisions relating to levy of penalty or any other sum chargeable under any provision of the Act would apply to such assessment.

If the Assessing Officer, is satisfied that the firm was guilty of any act for which penalty can be imposed under the Act, he may direct imposition of penalty.

Every person who was a partner at the time of discontinuance would be jointly and severally liable for the amount of tax, penalty or other sum payable. The provisions of the Income-tax Act, 1961 would apply to any such assessment or imposition of penalty or other sum.

In this case, since the discontinuance has taken place after scrutiny assessment proceedings for A.Y.2019-20 has commenced, the proceedings may be continued against the persons who were partners of the firm (at the time of discontinuance) from the stage at which the proceedings stood at the time of discontinuance.

- (b) **Computation of tax liability of Sun Ltd. for A.Y. 2022-23 under regular provisions of the Act**

Particulars	₹
Total Income before allowing additional depreciation	22,00,000
Less: Additional Depreciation u/s section 32(1)(ia) [ ₹ 12 lakh x 20% ]	2,40,000
<b>Total Income</b>	<b>19,60,000</b>
Applicable Tax Rate (since turnover of P.Y. 2019-20 < ₹ 400 crores)	25%
Tax payable	4,90,000
Add: Health & Education cess@4%	19,600
<b>Tax Liability</b>	<b>5,09,600</b>

**Computation of tax liability of Sun Ltd. for A.Y. 2022-23 under section 115BAA**

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

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

- (c) A transaction where one of the parties thereto is a person located in a NJA would be deemed to be an international transaction and all parties to the transaction would be deemed as associated enterprises. Accordingly, all the provisions of transfer pricing would be attracted in case of such a transaction.

Hence, the transactions between ETI Ltd, an Indian company and LP Ltd., located in NJA, would be deemed to be international transactions between associated enterprises.

The transactions of ETI Ltd. with TP Inc. of Country X and MN Inc. of Country Y for sale of identical goods are comparable uncontrolled international transactions, since they are neither associated enterprises of ETI Ltd. nor are they situated in NJA. Hence, Comparable Uncontrolled Price (CUP) method can be used to determine ALP.

Where more than one price is determined by the most appropriate method, CUP method in this case, then, the arithmetic mean has to be taken in cases where the number of entries in the dataset is less than 6 (in this case it is only 2). Moreover, the benefit of permissible variation between the ALP and the transfer price based on the rate notified by the Central Government (i.e., maximum of 3% of transaction price) would **not** be available in respect of such transaction

**Computation of ALP using CUP method**

Particulars	TP Inc.	MN Inc.
	₹ in crores	₹ in crores
Price charged by ETI Ltd. (on CIF basis)	10.50	11.00
Less: Ocean freight and insurance, has to be reduced since the price charged to LP Ltd. is on FOB basis	<u>0.18</u>	<u>0.18</u>
	<b>10.32</b>	<b>10.82</b>
Less: Cost of after-sales support service (has to be reduced, since such services are being provided to TP Inc. and MN Inc. but not to LP Ltd.)	<u>0.13</u>	<u>0.13</u>
Arm's Length Price	<b><u>10.19</u></b>	<b><u>10.69</u></b>
<b>Arithmetic mean of the above prices [(₹ 10.19 crores + ₹ 10.69 crores)/2]</b>		<b>10.44</b>
Less: Price at which goods were sold to LP Ltd.		<u>9.50</u>
<b>Arm's length adjustment [increase in profit of ETI Ltd.]</b>		<b><u>0.94</u></b>