MOCK TEST PAPER 1

FINAL (Old) COURSE: GROUP – II

PAPER – 7: DIRECT TAX LAWS

SOLUTIONS

Division A – Multiple Choice Questions

MCQ No.	Sub-part	Most Appropriate Answer
1.	(i)	(b)
	(ii)	(c)
	(iii)	(a)
	(iv)	(d)
	(v)	(d)
2.	(i)	(c)
	(ii)	(a)
	(iii)	(a)
	(iv)	(b)

MCQ No.	Most Appropriate Answer
3.	(d)
4.	(b)
5.	(d)
6.	(c)
7.	(c)
8.	(b)

Division B – Descriptive Questions

1. Computation of Total Income of Comfort Ltd. for the A.Y. 2021-22

Particulars	Amount (Rs.)	
Net profit as per the Statement of profit and loss		6,40,00,000
Add: **Items debited but to be considered separately or to be disallowed**		
(i) Employer's contribution to EPF	Nil	
[As per section 43B, employers' contribution to EPF is allowable as deduction, since the same has been deposited on or before the 'due date' of filing of return under section 139(1) i.e., 31.10.2021. Since the same has been debited to statement of profit and loss, no further adjustment is necessary]		
(iii) Interest on term loan for purchase of plant and machinery [Rs. 50 lakhs x 12% x 8/12]	4,00,000	
[As per the proviso to section 36(1)(iii), interest paid in respect of capital borrowed for acquisition of an asset for the period from the date of borrowing till the date on which such asset is first put to use shall not be allowed as deduction. Since the same has been debited to statement of profit and loss, it has to be added back while computing business income]		

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(iv) Payment to ABC & Co., a sub-contractor, without deduction of tax [30% of Rs. 12 lakh] [Under section 40(a)(ia), 30% of any sum paid to any resident on which tax is deductible is disallowed if tax is not deducted at source. In this case, TDS provisions under section 194C are attracted on payment for processing of raw material. Since tax has not been deducted on such payment, 30% of the expenditure shall be disallowed]	3,60,000	
(v) Depreciation charged as per Companies Act, 2013	78,00,000	85,60,000
		7,25,60,000
***Less:* Items credited to statement of profit and loss, but not includible in business income / permissible expenditure and allowances**		
(ii) Waiver of sundry creditor's outstanding amount [Waiver of Rs. 22,00,000 from the sundry creditors is a benefit in respect of a trading-liability by way of remission or cessation thereof and is, hence, taxable under section 41(1). Since the amount is already credited to statement of profit & loss, no adjustment is necessary]	Nil	
(vi) Industrial power tariff concession received from State Government [Any assistance in the form of, *inter alia,* concession received from the Central or State Government would be treated as income. Since the same has been credited to statement of profit and loss, no adjustment is required]	Nil	
AI (2) Provision for wages payable to workers [The provision based on fair estimate of wages and reasonable certainty of revision is allowable as deduction, since ICDS X requires 'reasonable certainty' for recognition of a provision, which is present in this case. As the provision has not been debited to statement to profit and loss, the same has to be reduced while computing business income]	18,00,000	18,00,000
		7,07,60,000
Less: **Depreciation as per Income-tax Rules, 1962**		
A(1) Depreciation under section 32		
Depreciation on factory building [10% of Rs. 320 lakh]	32,00,000	
Depreciation on plant and machinery		
- Depreciation@7.5% on Rs. 64 lakhs [Rs. 60 lakh, being machinery cost + Rs. 4 lakh, being interest from 1.4.2020 to 30.11.2020] since machinery is put to use for less than 180 days].	4,80,000	
- Depreciation@15% on Rs. 300 lakh [Rs. 360 lakh – Rs. 60 lakh]	45,00,000	
- Depreciation on computers [40% of Rs. 20 lakh]	8,00,000	
	89,80,000	

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Add: Additional depreciation @10% on Rs. 64 lakh, since machinery is put to use for less than 180 days	6,40,000	96,20,000
Gross Total Income		**6,11,40,000**
***Less:* Deduction under Chapter VI-A**		
Under section 80JJAA **[See Working Note below]**		10,08,000
Total Income		**6,01,32,000**

Computation of tax payable by Comfort Ltd. for the A.Y. 2021-22

Particulars	Rs.
Tax payable on Rs. 6,01,32,000@25%, since the turnover of the company for the P.Y. 2018-19 does not exceed Rs. 400 crores	1,50,33,000
Add: Surcharge@7% (since the total income of the company exceeds Rs. 1 crore but does not exceed Rs. 10 crore)	10,52,310
	1,60,85,310
Add: Health and education cess@4%	6,43,412
Tax liability	**1,67,28,722**
Tax liability (Rounded off)	1,67,28,720

Working Note: Computation of deduction under section 80JJAA

Comfort Ltd. is eligible for deduction u/s 80JJAA since the company is subject to tax audit under section 44AB for A.Y.2021-22 and has employed "additional employees" during the P.Y.2020-21.	
Number of additional employees	
Total number of employees employed during the year	32
Less: Employees employed on 1.7.2020, since their total monthly emoluments > Rs. 25,000	8
Employees employed on 1.6.2020 whose emoluments are paid by bearer cheque	6
Number of additional employees [12 employees employed on 1.6.2020 and 6 employed on 1.11.2020]	**18**
Additional employee cost	Rs. 33,60,000
Rs. 27.6 lakh, being Rs. 23,000 × 12 ×10 + Rs. 6 lakh, being Rs. 20,000 x 5 x 6	
Deduction under section 80JJAA [30% of Rs. 33.6 lakh]	Rs. 10,08,000

2. (a) Computation of total income and tax liability of M/s Turnip LLP for A.Y.2021-22 (under the regular provisions of the Income-tax Act, 1961)

Particulars	(Rs. in lakhs)	(Rs. in lakhs)
Profits and gains of business or profession		**330.00**
***Add:* Items debited but to be considered separately or to be disallowed**		
- Depreciation	25.00	
- Remuneration to its working partners	220.00	

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- Interest provided on the current account balance of the partners@15% p.a. (Interest on current account would be fully allowed to the extent of 12%, since the same is authorized by the partnership deed. Thus, interest of Rs. 4.5, being in excess of 12% i.e., Rs. 22.5 x 3%/15% would be disallowed)	4.50	
- Advertisement in a souvenir published by a political party [not allowed as deduction as per section 37(2B)]	2.50	**252.00**
***Less:* Permissible expenditure and allowances**		**582.00**
- Depreciation allowable as per Income-tax Rules, 1962	30.00	
- Unabsorbed depreciation under section 32(2) [allowable as deduction while computing book profit as per *Explanation 3* to section 40(b)]	30.00	60.00
Book Profit		**522.00**
On first Rs. 3 lakh of book profit [Rs. 3,00,000 × 90%]	2.70	
On balance Rs. 519 lakh of book profit [Rs. 519 × 60%]	311.40	
	314.10	
Remuneration actually paid of Rs. 220 lacs is fully allowable as deduction, since it is lower than the specified limit		**220.00**
Business Income		**302.00**
Less: Brought forward business loss for A.Y. 2019-20		70.00
Gross Total Income		**232.00**
***Less:* Deduction under section 10AA**		232.00
Profit from SEZ unit x Export Turnover/ Total Turnover x 100% = Rs. 302 lakhs x 20 / 25 x 100% (since it is the third year of operation) = Rs. 241.60 lakhs, restricted to gross total income		
Less: Deduction under section 80GGC		-
[Expenditure on advertisement in a souvenir published by a political party not allowable as deduction since it is included within the meaning of the term "contribution" only for the purpose of deduction u/s 80GGB in case of a company.]		
Total Income		**Nil**
Tax liability (since total income is Nil)		**Nil**

Computation of adjusted total income of M/s Turnip LLP for levy of Alternate Minimum Tax

Particulars	(Rs. in lakhs)
Total Income (as computed above)	**Nil**
Add: Deduction under section 10AA	232.00
Adjusted Total Income	**232.00**
Alternate Minimum Tax@18.5%	42.9200
Add: Surcharge@12% (since adjusted total income > Rs. 1 crore)	5.1504
	48.0704
Add: Health and Education cess@4%	1.92282
Tax liability under section 115JC	**49.9932**
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	

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tax is leviable @18.5% thereof *plus* surcharge@12% and cess@4%. Therefore, the tax liability is Rs. 49.9932 lakhs.	
AMT Credit to be carried forward under section 115JEE	
Tax liability under section 115JC	49.9932
Less: Tax liability under the regular provisions of the Income-tax Act, 1961	Nil
Amount of Credit	**49.9932**

(b) The residential status of a foreign company is determined on the basis of place of effective management (POEM) of the company.

For determining the POEM of a foreign company, the important criteria is whether the company is engaged in active business outside India or not.

A company shall be said to be engaged in "**Active Business Outside India"** (ABOI) for POEM, if

- the passive income is not more than 50% of its total income; **and**
- less than 50% of its total assets are situated in India; **and**
- less than 50% of total number of employees are situated in India or are resident in India; **and**
- the payroll expenses incurred on such employees is less than 50% of its total payroll expenditure.

Zen technologies shall be regarded as a company engaged in active business outside India for P.Y.2020-21 for POEM purpose only if it satisfies all the four conditions cumulatively.

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

Total income of Zen technologies during the P.Y. 2020-21 is Rs. 110 crores [(Rs. 30 crores + Rs. 45 crores) + (Rs. 25 crores + Rs. 10 crores)]

Passive income is the aggregate of, -

(i) income from the transactions where both the purchase and sale of goods is from/to its associated enterprises; and

(ii) income by way of royalty, dividend, capital gains, interest or rental income;

Passive Income of Zen technologies is Rs. 50 crores, being sum total of :

(i) Rs. 15 crores, income from transactions where both purchases and sales are from/to associated enterprises (Rs. 5 crores in India and Rs. 10 crores in UAE)

(ii) Rs. 35 crores, being interest and dividend from investment (Rs. 25 crores in India and Rs. 10 crores in UAE)

Percentage of passive income to total income = Rs. 50 crore/ Rs. 110 crore x 100 = 45.45%

Since passive income of Zen technologies **is 45.45%, which is not more than 50%** of its total income, the first condition is satisfied.

Condition 2: Zen technologies should have less than 50% of its total assets situated in India

Value of total assets of Zen technologies during the P.Y. 2020-21 is Rs. 610 crores [Rs. 210 crores, in India + Rs. 400 crores, in UAE]

Value of total assets of Zen technologies in India during the P.Y. 2020-21 is Rs. 210 crores

Percentage of assets situated in India to total assets = Rs. 210 crores/Rs. 610 crores x 100 = 34.43%

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Since the value of assets of Zen technologies **situated in India is less than 50%** of its total assets, the second condition for ABOI test is satisfied.

Condition 3: Less than 50% of the total number of employees of Zen technologies should be situated in India or should be resident in India

Number of employees situated in India or are resident in India is 75

Total number of employees of Zen technologies is 160 [75 + 85]

Percentage of employees situated in India or are resident in India to total number of employees is 75/160 x 100 **= 46.875%**

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

Condition 4: The payroll expenses incurred on employees situated in India or resident in India should be less than 50% of its total payroll expenditure

Payroll expenses on employees employed in and resident of India = Rs. 9 crores.

Total payroll expenses = Rs. 20 crores (Rs. 9 crores + Rs. 11 crores)

Percentage of payroll expenses of employees situated in India or are resident in India to the total payroll expenses = 9 x 100/20 = 45%

Since the payroll expenses incurred on employees situated in India or resident in India **is less than 50% of its total payroll expenditure**, the fourth condition for ABOI test is also satisfied.

Thus, since Zen technologies has satisfied all the four conditions, the company would be said to be engaged in "active business outside India" during the P.Y.2020-21.

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

Since Zen technologies is engaged in active business outside India in the P.Y. 2020-21 and majority of its board meetings i.e., 4 out of 7, were held outside India, POEM of Zen technologies would be outside India.

Therefore, Zen technologies would be non-resident in India for the P.Y. 2020-21.

3. (a) As per section 115TD, the accreted income of "M/s Sheetal Charitable Trust", registered under section 12AA would be chargeable to tax at maximum marginal rate @ 34.944% [30% *plus* surcharge @12% *plus* cess@4%] as the trust is merged with an entity not having similar objects and registered under section 12AA on 31.1.2021

Computation of exit tax payable by M/s Sheetal Charitable Trust	
Particulars	**Amount (Rs.)**
Aggregate FMV of total assets as on 31.1.2021, being the specified date (date of merger) **[See Working Note 1]**	15,34,99,000
***Less**:* Total liability computed in accordance with the prescribed method of valuation **[See Working Note 2]**	3,05,00,000
Accreted Income	**12,29,99,000**
Tax Liability @ 34.944% of Rs. 12,29,99,000	**4,29,80,771**
Tax Liability (rounded off)	**4,29,80,770**
Working Note 1:	
Aggregate fair market value of total assets on the date of merger	
Valuation of Land, being an immovable property purchased in the	2,50,00,000

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year 2012 [The fair market value of land would be higher of Rs. 250 lakhs i.e., price that the land would ordinarily fetch if sold in the open market as per registered valuer's certificate and Rs. 120 lakhs, being stamp duty value as on the specified date i.e., 31.1.2021]	
Valuation of Land and building, being an immovable property, purchased in 2015 [The fair market value of land and building would be higher of Rs. 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 Rs. 1,050 lakhs, being stamp duty value as on the specified date i.e., 31.1.2021]	10,50,00,000
Valuation of Quoted equity shares in M/s X Ltd. [2,000 x Rs. 1,074.50 per share] [The fair market value of quoted shares would be Rs. 1,074.50 per share, being the average of the lowest (Rs. 1,051) and highest price (Rs. 1,098) of such shares on the specified date i.e., 31.1.2021]	21,49,000
Balance in current account of a nationalized bank	10,00,000
Balance in fixed deposits with scheduled banks	2,00,00,000
Cash in hand	3,50,000
	15,34,99,000
Working Note 2 - Total liability	
Book value of liabilities in the balance sheet on specified date	11,35,00,000
Less: Capital fund	8,00,00,000
Less: Contingent liability on estimated basis to contractor for which no bills are received	30,00,000
Total liability of M/s Sheetal Charitable Trust	**3,05,00,000**
The latest day on which such tax has to be paid is 14th February, 2021, being 14 days from 31.1.2021, the date of merger.	

(b) (i) As per section 9(1)(v)(b), interest payable by a person resident in India would be deemed to accrue or arise in India. However, such interest would not be deemed to accrue or arise in India if the interest is payable in respect of moneys borrowed and used, *inter alia*, for the purpose of business or profession carried on by such resident outside India.

In the present case, if M/s Pathways Ltd. has used the money borrowed for its projects in India, interest received by financial institution resident in US would be deemed to accrue or arise in India.

If, M/s Pathways Ltd. used the money borrowed for its projects in UAE i.e., for business outside India, it would be covered under the exception and the interest received by financial institution resident in US would not be deemed to accrue or arise in India.

(ii) The statement is correct.

Under section 245U, the Authority for Advance Rulings shall have all the powers vested in the Civil Court under the Code of Civil Procedure, 1908 as are referred to in section 131.

Accordingly, the Authority for Advance Rulings shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely -

(1) discovery and inspection;

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(2) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;

(3) compelling the production of books of account and other documents; and

(4) issuing commissions.

Therefore, the Authority for Advance Ruling has the powers of compelling the production of books of account.

4. (a) **Interest under section 234A:** Since the return of income has been furnished by RS (P) Ltd. on 22nd November, 2021 i.e., 22 days after the due date for filing return of income (31.10.2021), interest under section 234A will be payable for 1 month @ 1% on the amount of tax payable on the total income, as reduced by tax reliefs and prepaid taxes.

Particulars	Rs.
Tax on total income (Rs. 15,00,000 x 31.2%) (Since turnover of P.Y. 2018-19 > Rs. 400 crore)	4,68,000
Less: Advance tax paid	2,80,000
Less: Tax deducted at source	1,35,600
Less: Relief of tax allowed under section 90	22,000
Tax payable on self assessment	**30,400**
Interest = Rs. 30,400 x 1% = Rs. 304	

Interest under section 234B : Where the advance tax paid by the assessee is less than 90% of the assessed tax, the assessee would be liable to pay interest under section 234B.

Computation of assessed tax	Rs.
Tax on total income (Rs. 15,00,000 x 31.2%)	4,68,000
Less: Tax deducted at source	1,35,600
Less: Relief of tax allowed under section 90	22,000
Assessed tax	**3,10,400**
90% of assessed tax = Rs. 3,10,400 x 90% = Rs. 2,79,360	

Since the advance tax paid by RS (P) Ltd. (Rs. 2,80,000) is more than 90% of the assessed tax (Rs. 2,79,360), it is not liable to pay interest under section 234B.

Interest under section 234C

Particulars	Rs.
Tax on total income (Rs. 15,00,000 x 31.2%)	4,68,000
Less: Tax deducted at source	1,35,600
Less: Relief of tax allowed under section 90	22,000
Tax due on returned income/Total advance tax payable	**3,10,400**

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Calculation of interest payable under section 234C:

Date	Advance tax paid till date (Rs.)	Advance tax payable till date %	Minimum % of tax due on returned income to be paid till date to avoid interest u/s 234C (c)		Shortfall	Interest
			%	Amt (Rs.)	(Rs.)	(Rs.)
15.6.2020	38,000	15%	12%	37,248	-	Nil **(See Note below)**
15.9.2020	1,11,000	45%	36%	1,11,744	744	700 x 1% x 3 months = 21
15.12.2020	2,03,000	75%	75%	2,32,800	29,800	29,800 x 1% x 3 months = 894
15.3.2021	2,80,000	100%	100%	3,10,400	30,400	30,400 x 1% = 304
Interest payable under section 234C (Nil + Rs. 21 + Rs. 894 + Rs. 304)						Rs. **1,219**

Note: *Since the advance tax paid by RS (P) Ltd. on 13th June, 2020 is more than 12% of the tax due on returned income (i.e., Rs. 3,10,400), it is not liable to pay any interest under section 234C in respect of this quarter.*

Fee under section 234F

Rs. 5,000 is payable under section 234F by way of fee, since the return was filed after the due date but before 31.12.2021.

(b) **(i)** Failure to afford facility to the officer authorized as per section 132(1)(iib) is a case for which prosecution can be launched under section 275B and such person shall be punishable with rigorous imprisonment for a term which may extend to two years and shall also be liable to fine.

(ii) Willful failure to produce books of account and documents as required under section 142(1) or willful failure to comply with a direction to get the accounts audited under section 142(2A) is a case for which prosecution can be launched under section 276D and such person shall be punishable with rigorous imprisonment for a term which may extend to one year and with fine.

(iii) Deliberate failure to deposit the tax collected under section 206C to the credit of the Central Government is a case for which prosecution can be launched under section 276BB and such person shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.

5. **(a)** **(i)** **(I)** The notice under section 153A can be issued for six assessment years preceding the assessment year relevant to the previous year in which the search is conducted. In this case, the search is conducted in the previous year 2020-21, the relevant assessment year for which is A.Y.2021-22. Therefore, notice can be issued for the six preceding assessment years i.e. for assessment years 2015-16 to 2020-21.

Further, notice for assessment or reassessment can be issued by Assessing Officer for the relevant assessment year or years (i.e. for A.Y.2011-12 to A.Y.2014-15) if the following conditions are satisfied:

(a) The Assessing Officer has in his possession, books of account or other documents or evidence which reveal that the income, represented in the form of

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asset, which has escaped assessment amounts to or is likely to amount Rs. 50 lakhs or more in the relevant assessment year or in aggregate in the relevant assessment years.

(b) The income so referred above has escaped assessment for such year or years; and

(c) The search under section 132 is initiated or requisition under section 132A is made on or after 01.04.2017 (This condition is satisfied since the search has taken place in December, 2020).

The expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

"Asset" shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.

(II) As per section 153A, the assessment or reassessment relating to any assessment year, falling within the above period of six assessment years and for the relevant assessment year or years, pending on the date of initiation of the search under section 132, shall abate. In other words, they will cease to be applicable. Therefore, the assessments under section 143(3) for assessment years 2018-19 and 2019-20 and the reassessment proceeding under section 147 for assessment year 2017-18 **shall abate.**

(ii) (I) **The proposition is not correct as per law.** This is because section 254(2) specifically empowers the Appellate Tribunal to amend any order passed by it, either *suo-moto* or on an application made by the assessee or Assessing Officer, with a view to rectify any mistake apparent from record, at any time within **6 months** from the end of the month of the order sought to be amended.

The powers of the Tribunal under section 254(2) relating to rectification of its order are very limited. Such powers are confined to rectifying any mistake apparent from the record. The mistake has to be such that for which no elaborate reasons or inquiry is necessary. Accordingly, the re-appreciation of evidence placed before the Tribunal during the course of the appeal hearing is not permitted. It cannot re-adjudicate the issue afresh under the garb of rectification *[CIT vs. Vardhman Spinning (1997) 226 ITR 296 (P & H), CIT v. Ballabh Prasad Agarwalla (1998) 233 ITR 354 (Cal.) & Niranjan & Co. Ltd. v. ITAT (1980) 122 ITR 519 (Cal.)]*

(II) **The proposition is correct in law.** A finding of fact cannot be disturbed by the High Court in exercise of its powers under section 260A. The Income-tax Appellate Tribunal is the final fact finding authority and the findings of fact recorded by the Tribunal can be interfered with by the High Court under section 260A only on the ground that the same were without evidence or material, or if the finding is contrary to the evidence, or is perverse or there is no direct nexus between conclusion of fact and the primary fact upon which that conclusion is based.

In *CIT vs. P. Mohanakala (2007) 291 ITR 278 and M. Janardhana Rao v. Joint CIT (2005) 273 ITR 50*, the Apex Court observed that the High Court had set aside the factual findings of the lower authorities and the Tribunal without any valid reason. The Apex Court held that the findings of fact could not be interfered with by the High Court without carefully considering the facts on record, the surrounding circumstances and

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the material evidence. There is no scope for interference with the factual findings, unless the findings are *per se* without reason or basis, perverse and/or contrary to the material on record.

Hence, only if the issue gives rise to a substantial question of law, an appeal shall lie before the High Court.

(iii) The Appellate Tribunal may, on merit, pass an order of stay in any proceedings relating to an appeal. However, such period of stay cannot exceed 180 days from the date of such order. The Appellate Tribunal has to dispose off the appeal within this period of stay. Where the appeal has not been disposed off within this period and the delay in disposing the appeal is not attributable to the assessee, the Appellate Tribunal can further extend the period of stay originally allowed. Section 254(2A) provides that the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed 365 days, even if the delay in disposing of the appeal is not attributable to the assessee. If the appeal is not disposed of within such period or periods, the order of stay shall stand vacated after the expiry of such period or periods.

Accordingly, even if an appeal is not heard by the bench, say, due to the bench not functioning or due to the department seeking adjournment, the stay granted by the Appellate Tribunal shall stand vacated after the period of 365 days, inspite of the assessee having taken all steps to ensure speedy disposal of the appeal and having a good prima facie case.

In the present case, the period of 365 days has expired on 31.12.2020, after which date the order of stay stands vacated. Accordingly, the recovery of Rs. 18 lacs against the arrear demand of Rs. 22 lacs made by the Assessing Officer on 16.2.2021, is in order.

(b) 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 RPS Ltd, an Indian company and LMN Ltd., located in NJA, would be deemed to be international transactions between associated enterprises.

The transactions of RPS Ltd. with TP of New York and NS of London for sale of identical goods are comparable uncontrolled international transactions, since they are neither associated enterprises of RPS 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). However, 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	NS
	Rs. in crores	Rs. in crores
Price charged by RPS Ltd. (on CIF basis)	11.50	12.00
Less: Ocean freight and insurance, has to be reduced since the price charged to LMN Ltd. is on FOB basis	0.20	0.20
	11.30	**11.80**

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Less: Cost of after-sales support service (has to be reduced, since such services are being provided to TP and NS but not to LMN Ltd.)	0.14	0.14
Arm's Length Price	**11.16**	**11.66**
Arithmetic mean of the above prices [(11.16 crores +Rs.11.66 crores)/2]		**11.41**
Less: Price at which goods were sold to LMN Ltd.		10.50
Arm's length adjustment [increase in profit of RPS Ltd.]		**0.91**

6. **(a)** In this case, the business of the firm, M/s. Suhaas & 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 12.12.2020. The firm has, however, filed returns on time upto A.Y.2019-20.

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) Section 269SS prohibits acceptance of any advance of Rs. 20,000 or more in relation to transfer of immovable property otherwise than by way of account payee cheque/bank draft or use of ECS through a bank account or credit card, debit card, net banking, IMPS, UPI, RTGS, NEFT or BHIM, whether or not the transfer has actually taken place.

This provision will not be applicable in a case where both the payer and recipient have agricultural income and neither of them has any income chargeable to tax in India.

In this case, Mr. Ramkumar has accepted an advance of Rs.1 lakh by way of a crossed cheque for transfer of immovable property, i.e., agricultural land, which is in contravention of section 269SS. Further, the exemption from applicability of this provision would not be available even though Mr. Ramkumar, the recipient, has agricultural income because Mr. Bhaskar, the payer of advance, is not having agricultural income.

Accordingly, penalty under section 271D equal to the amount of such advance would be attracted. This is irrespective of Mr. Ramkumar having returned the advance by a crossed cheque.

However, such penalty can be imposed only by the Joint Commissioner.

Accordingly, the proposed action for levy of penalty under section 271D by the Assessing Officer would be valid, only if the Assessing Officer is a Joint Commissioner. If he is not a Joint Commissioner, the proposed action for levy of penalty under section 271D would not be valid.

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(c) (i) Computation of tax payable in case where there is a DTAA with the foreign country

The DTAA with the foreign country provides that the income would be taxable in country where it is earned and not in other country, but it would be included for computation of tax rate in such other country.

Thus, business income of Rs. 21,00,000 in foreign country would not be taxable in India in the hands of Ms. Anuradha, however, such income has to be included in the total income to determine the effective rate of tax applicable on Indian income chargeable to tax in India.

Computation of tax liability of Ms. Anuradha for A.Y.2021-22

Particulars	Rs.
Business Income	
- Foreign country	21,00,000
- In India	8,75,000
Gross Total Income	**29,75,000**
***Less*: Deduction under Chapter VI-A**	
Section 80D – Medical insurance premium of Rs. 35,000 allowable to the extent of Rs. 25,000 [Since her mother aged 63 years is a non-resident]	25,000
Total Income	**29,50,000**
Tax on total income [30% of Rs. 19,50,000 + Rs. 1,12,500]	6,97,500
Add: Health and education cess@4%	27,900
Tax Liability	**7,25,400**
Tax rate [Rs. 7,25,400 / Rs. 29,50,000 x 100]	24.59%
Tax payable = 24.59% x Rs. 8,50,000 [Rs. 8,75,000 – Rs. 25,000]	2,09,015

(ii) Computation of tax payable in case where there is no DTAA with the foreign country

In such case, Ms. Anuradha would be allowed deduction under section 91, since she has satisfied the following conditions:-

(a) She is a resident in India during the relevant previous year i.e., P.Y.2020-21.

(b) The business income of Rs. 21,00,000 accrues or arises to her outside India and such income is not deemed to accrue or arise in India during the previous year.

(c) Such business income has been subjected to tax in the foreign country@18%[1]

Computation of tax liability of Ms. Anuradha for A.Y.2021-22

Particulars	Rs.
Tax Liability (computed above would remain same)	7,25,400
Less: Rebate under section 91 (See Working Note below)	3,78,000
Tax Payable	**3,47,400**
Working Note:	
Calculation of Rebate under section 91	
Average rate of tax in India [Rs. 7,25,400/Rs. 29,50,000 x 100] **24.59%**	

[1] *It is presumed that she has paid tax on such income in that country.*

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Average rate of tax in Foreign Country 18%	
Doubly taxed income (Business income in foreign country) Rs. 21,00,000	
Rebate u/s 91 on Rs. 21,00,000 @18% [being the lower of average Indian tax rate (24.59%) and foreign tax rate (18%)]	3,78,000

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