MOCK TEST PAPER

PAPER 6C: INTERNATIONAL TAXATION

Solution to Case Study 1

Answers to MCQs

Q. No.	Answer
1	(b)
2	(a)
3	(b)
4	(a)
5	(b)

Answer to Descriptive Questions

Answer to Q.6

Explanation 4 to section 9(1)(vi) provides that the consideration for transfer of any right for use or right to use of computer software (including granting of a licence) constitutes royalty.

Consequently, the provisions of tax deduction at source under section 194J would be attracted in respect of consideration paid by LMN Co Ltd. of London for use or right to use computer software purchased from Excel (P) Ltd., an Indian company, since the same falls within the definition of royalty and the payment is made to a resident[1].

As per *Notification No.21/2012 dated 13.6.2012*, certain software payments, have been excluded from the applicability of tax deduction under section 194J, by virtue of section 197A(1F). Accordingly, where payment is made for acquisition of software from a resident-transferor, the provisions of section 194J would not be attracted if –

(1) the software is acquired in a subsequent transfer without any modification by the transferor [In other words, it is a "ready to use" software with no modification or value addition made by the transferor];

(2) tax has been deducted either u/s 194J or u/s 195 on payment for any previous transfer of such software; and

(3) the transferee obtains a declaration from the transferor that tax has been so deducted along with the PAN of the transferor.

Answer to Q.7

Time limit for repatriation of excess money

Assessment Year	Determination of Primary Adjustment to Transfer Price	Time limit for repatriation of excess money	Date by which excess money has to be repatriated - On or before
(1)	(2)	(3)	(4)
2019-20	Primary adjustment to	90 days from the date of order of	19.7.2022

[1] *It is possible to take an alternate view that clause (ba) of the Explanation to section 194J makes reference of the term 'royalty' to the Explanation 2 to section 9(1)(vi) and does not cover Explanation 4 to section 9(1)(vi) which deals with computer software and payment in regard thereto. If this view is taken, TDS u/s 194J would* ***not*** *be attracted in respect of consideration paid by LMN Co Ltd. of London for use or right to use computer software purchased from Excel (P) Ltd., an Indian company*

	transfer price determined in the order of the ITAT and accepted by ABC Co. Ltd.	ITAT i.e., 90 days from 20.4.2022	
2020-21	Primary adjustment to transfer price determined vide Assessment Order u/s 143(3) and accepted by ABC Co. Ltd.	90 days from the date of assessment order i.e., 90 days from 20.12.2021	20.3.2022
2021-22	Primary adjustment to transfer price made *suo moto* by ABC Co. Ltd.	90 days from the due date of filing of return, i.e., 90 days from 30.11.2021	28.2.2022

Consequence of non-repatriation of excess money within the prescribed time limit.

In all the above cases the primary adjustment exceeds one crore and the same relates to A.Y.2017-18 and later assessment years. Hence, section 92CE will be attracted and ABC Co. Ltd. has to carry out secondary adjustment.

Consequently, if the excess money is not repatriated within the time limits given in column (3) above, the same would be deemed to be an advance made by ABC Co. Ltd. to such associated enterprises and interest on such advance would be computed in the prescribed manner and included in the total income of the company.

In case the international transaction is denominated in Indian rupees, the rate of interest applicable is one year marginal cost of fund lending rate of SBI as on 1st April of the relevant previous year + 3.25%. In case, the international transaction is denominated in foreign currency, at 6 month LIBOR as on 30th September of the relevant previous year + 3%.

Answer to Q.8

(i) When a reference is made to DRP, the time limit for giving direction by the DRP is 9 months from the end of the month in which the draft order is forwarded to the eligible assessee. The Assessing Officer forwarded draft assessment order on 30.01.2021. The assessee had filed objections on 15.02.2021, which is within 30 days from the date of receipt of draft order. The DRP has time up to 31.10.2021 for giving the direction to the Assessing Officer.

The DRP gave the directions to the Assessing Officer within 9 months i.e. on 01.09.2021. Therefore, the Assessing Officer has to pass an order on or before 31.10.2021 i.e., within one month from the end of the month in which the direction from DRP was received. In this case, the Assessing Officer also passed the order on 28.9.2021, which is within the above time limit.

Therefore, the order passed by the Assessing Officer is not barred by limitation.

(ii) The assessee has to file an appeal before the Income-tax Appellate Tribunal against such order passed the Assessing Officer which is in accordance with the directions of the DRP.

Answer to Q.9

As per clause (iva) of *Explanation 2* to section 9(1)(vi), consideration for use or right to use any industrial, commercial or scientific equipment is royalty but it excludes the amounts which are referred to in section 44BB viz. by way of hire charges for using plant and machinery in extraction of mineral oils etc.

Therefore, the payment made by ABC Ltd. to Ribe Co Ltd. is **not** royalty.

The payment made by ABC Co. Ltd., an Indian company, for obtaining plant and machinery on hire is deemed to accrue or arise in India u/s 9(1)(i) in the hands of the non-resident, Ribe Co. Ltd., Sweden since it is for supplying the plant and machinery on hire for use in extraction of mineral oils in India. Hence, ABC Co. Ltd. has to deduct tax at source under section 195 in respect of such payment.

Since Ribe Co. Ltd. is a non-resident engaged in the business of providing services in connection with, or supplying plant and machinery on hire used in the extraction of mineral oils, a sum equal to ₹ 85 lakhs, i.e.,

10% of ₹ 850 lakhs would be deemed to be the profits and gains of such business chargeable to tax as its business income as per section 44BB.

Ribe Co. Ltd., being a foreign company, has to pay tax@41.6% (i.e., 40% plus HEC @ 4%) on the income of ₹ 85 lakhs. The tax liability would be ₹ 35,36,000.

However, Ribe Co. Ltd. can declare lower profits than ₹ 85 lakhs, if it maintains books of account under section 44AA and gets them audited under section 44AB. If Ribe Ltd. does not opt for presumptive provisions of section 44BB, the Assessing Officer shall proceed to make an assessment under section 143(3).

Solution to Case Study 2

Answers to MCQs

Q. No.	Answer
1	(a)
2	(a)
3	(c)
4	(d)
5	(d)

Answers to Descriptive Questions

Answer to Q. 6

Since Mr. Arnav is a resident of India and also Country Z in the P.Y.2021-22, his residential status with reference to UN Model Convention, would be determined applying the tie-breaker rule in the following manner:

(i) The first test is based on where he has a **permanent home**.

(ii) Since he has permanent home both in India and Country Z, he will be considered a resident of the Contracting State where **his personal and economic relations are closer**, in other words, the place where lies **his centre of vital interests**. Thus, preference is given to his family and social relations, occupation, place of business, place of administration of his properties, his political, cultural and other activities.

(iii) Since he has centre of vital interests i.e., business establishment both in India and Country Z, he shall be treated as a resident of the Contracting State of which he has a **habitual abode**.

(iv) Habitual abode depends on the frequency, duration and regularity of stay in a country. Since he is a resident in both countries, and the residential status in India is based on the number of days of stay in India and assuming that the residential status of Country Z is also based on the number of days of stay in that country, he would have habitual abode in both India and Country Z.

In such a case, he would be considered resident of that country of which he is **a national**.

Since Mr. Arnav is a national of Country Z, he would be said to be resident of Country Z for P.Y.2021-22.

Answer to Q.7

Salary received by Dr. Narayan from US Government - Such salary is in connection with co-operative technical assistance programme under an agreement between Government of India and the USA, hence, it would be exempt in the hands of Dr. Narayan u/s 10(8).

Income of Dr. Narayan from business in USA - Income of Dr. Narayan from business in USA would also be exempt u/s 10(8), since it accrues or arises outside India and is not deemed to accrue or arise in India. It

is stated in the question that this income is subject to tax in USA.

Rental income of Ms. Kaushalya in USA – Rental income in USA is exempt u/s 10(9), since such income accrues or arises outside India to Ms. Kaushalya, being a family member who accompanying to Dr. Narayan in India, and the said income from house property accrues or arises outside India and is not deemed to accrue or arise in India. It is stated in the question that the income is subject to tax in USA.

Answer to Q.8

As per clause (a) of the *Explanation* below to section 9(1)(v), in the case of a non-resident, being a person engaged in the business of banking, any interest payable by the PE in India of such non-resident to the head office outside India, shall be deemed to accrue or arise in India. Such interest shall be chargeable to tax in the hands of such non-resident in addition to any income attributable to the PE in India.

Further, the PE in India shall be deemed to be a person separate and independent of the non-resident person of which it is a PE and the provisions of the Act relating to computation of total income, determination of tax and collection and recovery would apply accordingly.

Also, the PE in India has to deduct tax at source on any interest payable to the head office outside India. Non-deduction would result in 100% disallowance of interest claimed as expenditure by the PE and may also attract levy of interest and penalty in accordance with relevant provisions of the Act.

Branch is a fixed place of business through which the business of the enterprise is wholly or partly carried on; thus, it constitutes permanent establishment of the enterprise.

In the present case, interest payable by the branches (PE) of Alpha Banking Corporation Ltd., being a person engaged in the business of banking to the head office shall be deemed to accrue or arise in India. Thus, such interest shall be chargeable to tax in India in addition to any income attributable to the branches in India.

Therefore, branches are required to deduct tax at source under section 195 at the rates in force on the amount of interest payable to the head office.

Answer to Q.9

The contention of the assessee that the proceedings under the Black Money Act is barred by limitation is not tenable in law. The time limitation given in the Income-tax Act will not apply for the purpose of Black Money Act. There is no time limit for initiation of proceedings under the Black Money Law, therefore, proceedings can be initiated against Ram Mohan, even though 10 years have elapsed from the last assessment year in which he was assessed in India.

Every assessee would be liable to tax@30% in respect of his undisclosed foreign income and asset of the previous year. Undisclosed foreign asset would be liable to tax in the previous year in which such asset comes to the notice of the Assessing Officer.

Since Mr. Ram Mohan left India permanently in August, 2009, he is a non-resident in India for the previous year 2021-22, the year in which the notice under the Black Money Act was served on him. However, he was resident in India during the previous year 2008-09, being the year in which he accumulated assets outside India which were not disclosed by him in the return of income.

The term "assessee" defined under section 2(2) of the Black Money Act, *inter alia,* includes a person being a non-resident or not ordinarily resident in India within the meaning of section 6(6) of the Income-tax Act, 1961 in the relevant previous year, but who was resident in India in the previous year in which the undisclosed asset located outside India was acquired. Accordingly, Ram Mohan who was resident in India in the P.Y.2008-09 would be an assessee under the Black Money Act, even though he is a non-resident for P.Y.2021-22.

Accordingly, Ram Mohan is liable to pay tax@30% in respect of undisclosed foreign asset during the previous year 2021-22, the year in which such assets came to the notice of the Assessing Officer.

The relevant date for determination of the value of undisclosed assets would be the first day of April of the

previous year in which the Assessing Officer came to know of the undisclosed asset located outside India. The notice under the Black Money Act was served in May, 2021 and the question states that it came to the notice of Joint Director of Income-tax (Investigation) in April, 2021. Accordingly, the fair market value of the asset as on 1.4.2021 would be adopted.

He is also liable to pay penalty, in addition to tax, if any, payable by him, of a sum equal to three times the tax so computed.

The value of the undisclosed asset would be the fair market value of an asset (including financial interest in any entity) determined in the prescribed manner as laid down in Rule 3 of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015.

The value of residential apartments would be the higher of,—

(i) its cost of acquisition; and

(ii) the price that the property shall ordinarily fetch if sold in the open market on the valuation date

The value of bank deposits would be the sum of all the deposits made in the account with the bank since the date of opening of the account. However, where any deposit is made from the proceeds of any withdrawal from the account, such deposit shall not be taken into consideration while computing the value of the account.

SOLUTION TO CASE STUDY 3

Answers to MCQs

Q. No.	Answer
1.	(d)
2.	(c)
3.	(c)
4.	(d)
5.	(b)

Answers to Descriptive Questions

Answer to Q.6

Computation of capital gain chargeable to tax and tax liability in the hands of Babylon Co Ltd., New York

(i) If the shares of Himalaya Co Ltd. are unlisted shares

Particulars	Amount (in ₹)
Full value of consideration for transfer of shares of Himalaya Co. Ltd.	18,04,00,000
Less: Cost of acquisition of shares of Himalaya Co. Ltd. (₹ 64.5 million, being $2.15 million x ₹ 60 x 1/2)	6,45,00,000
Long term capital gains u/s 112 [Since the shares of Himalaya Co. Ltd. have been held for more than 24 months]	**11,59,00,000**
Tax on LTCG@10% u/s 112 (without foreign currency fluctuation benefit and indexation benefit)	1,15,90,000
Add: Surcharge @5% (Since the total income exceeds ₹ 10 crores)	5,79,500
	1,21,69,500
Add: HEC@4%	4,86,780
Tax liability	**1,26,56,280**

(ii) If the shares of Himalaya Co Ltd. are listed on recognized stock exchange

Particulars		Amount (in ₹)
Full value of consideration for transfer of shares of Himalaya Co. Ltd.		18,04,00,000
Less: Cost of acquisition of shares of Himalaya Co. Ltd.		
Higher of		
- Cost of acquisition [$2.15 million x ₹ 60 per $ x 50% / 10]	6,45,00,000	
- Lower of fair market value of shares as on 31.1.2018 i.e., ₹ 6.70 crores, being 50% of ₹ 13.40 crores) and sale consideration i.e., ₹ 18.04 crores	6,70,00,000	6,70,00,000
Long term capital gains u/s 112A [Since the shares of Himalaya Co. Ltd. have been held for more than 12 months]		**11,34,00,000**
Tax on LTCG exceeding ₹ 1 lakh@10% u/s 112A (without foreign currency fluctuation benefit and indexation benefit)		1,13,30,000
Add: Surcharge@5% (Since the total income exceeds ₹ 10 crores)		5,66,500
		1,18,96,500
Add: HEC@4%		4,75,860
Tax liability		**1,23,72,360**

Answer to Q.7

As per clause (b) of *Explanation 1* to section 6(1), an Indian citizen or a person of Indian origin who, being outside India, comes on a visit to India in any previous year and whose total income, other than from foreign sources, in that previous year exceeds ₹ 15 lakhs, would be resident in India if he stays in India for a period of 182 days or more during that previous year; or stays in India for a period of 120 days or more during that previous year and 365 days or more during 4 years immediately preceding that previous year.

As per section 6(1A), an individual, being a citizen of India whose total income, other than the income from foreign sources, exceeds ₹ 15 lakhs during the previous year would be deemed to be resident in India in that previous year, if he is not liable to tax in any other country. A citizen of India who is deemed to be resident in India under section 6(1A) would, by default, be treated as "not ordinarily resident" in India as per section 6(6).

Residential status of Mr. Rahul, if he does not pay any income-tax in Country N

In this case, since Mr. Rahul is an Indian citizen who has total income other than from foreign sources i.e., income from house property in Pune, exceeding ₹ 15,00,000, and he is not liable to tax in Country N, he would be a deemed resident for the A.Y. 2022-23 as per section 6(1A).

Consequently, by default, he would be a **"not ordinarily resident"** in India as per section 6(6), without having to satisfy any further conditions. The number of days of stay in India is not relevant for attracting the provisions of section 6(1A).

Taxability of income

As per section 5(1), in case of a resident but not ordinarily resident, income which accrues or arises or which is deemed to accrue or arise to him in India or which is received or is deemed to be received in India would be includible in his total income. Income which accrues or arises to him outside India would be included in his total income only if it is derived from a business controlled in or a profession set up in India.

Computation of total income of Mr. Rahul, a deemed resident, for A.Y. 2022-23

Particulars	Amount (in ₹)
Salary	
Salary for employment in Country N [Not taxable, since it does not accrue or arise in India nor is it deemed to accrue or arise in India and is also not received in India]	**Nil**
Income from house property	
Income from house property in Pune [computed] [Taxable, since it is deemed to accrue or arise in India as the property is situated in India]	22,00,000
Total Income	**22,00,000**

Residential status of Rahul if he pays income-tax@15% in Country N

In case Rahul pays income-tax @15% in Country N, he would be non-resident in India for A.Y. 2022-23, even though he is an Indian citizen who comes on a visit to India for 123 days (31+30+31+31) [i.e., 120 days or more] during P.Y. 2021-22 and his total income other than from foreign sources exceed ₹ 15,00,000, since he has stayed in India for only 240 days (60 days x 4 years) during the four immediately preceding previous years i.e., P.Y. 2017-18 to P.Y. 2020-21. The minimum period of stay required in the four immediately preceding previous years for being treated as a resident is 365.

Accordingly, his total income for A.Y.2022-23 would comprise of only income of ₹ 22 lakh from house property in Pune, since income which accrues or arises in India or which is deemed to accrue or arise to him in India or which is received or deemed to be received in India alone would be taxable in the hands of non-resident in India.

Answer to Q.8

As per section 92B, the transactions entered into between Earth (P) Ltd., an Indian company, and Sun Pte. Ltd., Singapore, being associated enterprises, for purchase of electronic goods would be international transactions.

As Earth (P) Ltd. purchased electronic goods from Sun Pte. Ltd., being a related party for resale to independent parties and Earth (P) Ltd. does not add substantial value to such goods, **resale price method** would be the most appropriate method to determine the ALP of the transactions between associated enterprises. Since Earth (P) Ltd. purchased similar electronic goods from Raindrops Ltd., an unrelated entity, and sold the same to unrelated parties, this transaction can be considered as uncontrolled transaction and the gross profit margin of 18% earned on sale of such goods can be considered for the purpose of determining the arm's length price of the transactions between Earth (P) Ltd. and Sun Pte. Ltd. However, functional adjustments need to be given effect to in arriving at the ALP.

Computation of ALP of transaction between Earth (P) Ltd. and Sun Pte. Ltd.	
Particulars	**Amount (in ₹)**
Resale price of goods purchased from Sun Pte. Ltd.	18,00,00,000
Less: Profit margin with reference to uncontrolled transaction between Earth (P) Ltd. and Raindrops Ltd. (18% on sale)	3,24,00,000
	14,76,00,000
Functional adjustments	
Adjustment for benefit of brand value of Sun Pte. Ltd. [Sun Pte. Ltd has its brand value internationally. Therefore, adjustment of benefit of brand value has to be carried out to arrive at ALP (1% of sale price)]	18,00,000
Adjustment of cost of warranty [Sun Pte. Ltd. provides warranty for 6 months whereas unrelated party has provided warranty of 12 months. Therefore, adjustment for the cost	

of such warranty has to be carried out to arrive at arm's length price (2% of sale price x 6/12)]	(18,00,000)
Arm's length price	**14,76,00,000**

SOLUTION TO CASE STUDY 4

Answers to MCQs

Q. No.	Answer
1	(b)
2	(a)
3	(d)
4	(d)
5	(c)

Answers to Descriptive Questions

Answer to Q.6

As per section 286(7), the CBC reporting requirement shall apply in respect of an international group for an accounting year, if the total consolidated group revenue as reflected in the consolidated financial statement (CFS) for the accounting year preceding such accounting year is above ₹ 6400 crores.

In the present case, Vindyas (P) Ltd., being the constituent entity resident in India, has to file a CbC report for the reporting accounting year since the consolidated group revenue for the preceding accounting year exceeds the threshold of ₹ 6400 crores and World Well Inc., being a parent entity is a resident of Country X where it is not required to file CbC report. Accordingly, as per these provisions, Vindyas (P) Ltd. has to furnish a CbC report in India.

If a constituent entity, resident in India, is not designated as alternate reporting entity of an international group, it is required to furnish CbC report under section 286(4) in Form No.3CEAD, if the parent entity of the group is resident of a country or territory,-

(1) in which it is not obligated to file report of the nature of CbC report;

(2) with which India does not have an arrangement for exchange of the CbC report; or

(3) there has been a systemic failure of the country or territory i.e., such country is not exchanging information with India even though there is an agreement and this fact has been intimated to the entity by the prescribed authority.

However, as per section 286(5), if an international group, having parent entity which is not resident in India, had designated an alternate reporting entity for filing its report with the tax jurisdiction in which the alternate reporting entity is resident, then, the entities of such group operating in India would not be obliged to furnish report if the specified conditions are fulfilled.

In the given case, since World Well Inc., being a non-resident parent entity, had designated Fire Ltd. for filing its CbC report in UK in which Fire Ltd. is a resident, Vindyas Ltd., is not required to file CbC report in India, even though the group turnover exceeds ₹ 6400 crores, if the following conditions are satisfied -

- Fire Ltd has furnished CbC report in UK on or before the date specified by UK;
- the CbC report is required to be furnished under the law for the time being in force in UK;
- UK has entered into an agreement with India providing for exchange of the said report;
- the prescribed authority has not conveyed any systemic failure in respect of UK to any constituent entity of the group that is resident in India;

- the UK Country has been informed in writing by Fire Ltd., that it is the alternative reporting entity on behalf of the international group and
- the same has been informed to the prescribed authority by Vindyas (P) Ltd. in accordance with section 286(1).

Answer to Q.7

Computation of total income and tax liability of Pacific Inc. for the A.Y. 2022-23

Particulars		₹
Business Income of Pacific Inc. [Since, it is a resident in India, global income would be taxable in India]		3,20,00,000
Short-term capital gain on transfer of building at Hyderabad (since held for not more than 24 months)		
Full value of consideration [Stamp duty value since it exceeds 110% of actual consideration (i.e., ₹ 231 lakhs, being 110% of ₹ 210 lakhs)]	₹ 2,40,00,000	
Less: Cost of acquisition	₹ 1,82,00,000	58,00,000
Income from Other Sources		
- Interim dividend from an Indian company [₹12,00,000 x 100/79.2, since tax would have been deducted at source @20.8% u/s 195]		15,15,152
- Vacant land acquired for inadequate consideration from Welfare Trust Vijayawada, registered u/s 12AB, would not be chargeable, since provisions of 56(2)(x) are not attracted in respect of property received from trust registered u/s 12AB		Nil
Gross Total Income/Total Income		**3,93,15,152**
Total Income (rounded off)		**3,93,15,150**
Computation of tax liability		**₹**
Dividend income [taxable@20% under section 115A, since provision applicable for foreign company would continue to apply though Pacific Inc. became resident in India because of POEM for the A.Y. 2022-23]		3,03,030
Other income of ₹ 3,78,00,000 [taxable@40% [rate applicable for foreign company would apply though Pacific Inc. became resident in India because of POEM for the A.Y. 2022-23]		1,51,20,000
		1,54,23,030
Add: Surcharge@2%, since total income exceeds ₹ 1 crore but does not exceed ₹10 crores		3,08,461
		1,57,31,491
Add: Health and education cess@4%		6,29,260
Tax liability [2]		**1,63,60,751**
Tax liability (rounded off)		**1,63,60,750**

Answer to Q.8

Every assessee would be liable to tax@30% in respect of his undisclosed foreign income and asset of the previous year. Undisclosed foreign asset would be liable to tax in the previous year in which such asset comes to the notice of the Assessing Officer.

[2] *TDS on dividend has to be deducted to arrive at the net tax payable. The question, however, asks only for tax liability*

Section 2(2) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 defines "assessee" to include a person being -

(a) a resident in India within the meaning of section 6 of the Income-tax Act, 1961 in the previous year; or

(b) a non-resident or not ordinarily resident in India within the meaning of section 6(6) of the Income-tax Act, 1961 in the previous year, who was resident in India either in the previous year to which the income referred to in section 4 relates; or in the previous year in which the undisclosed asset located outside India was acquired.

Tenability of notice issued by the Assessing Officer

Mr. James, a citizen of USA, is non-resident for the P.Y. 2021-22 (the previous year in which notice is issued by the Assessing Officer), since he returned to USA in April, 2018. He was also a non-resident for the P.Y. 2010-11, when he acquired shares of listed companies in USA and P.Y. 2018-19, when he established a leather goods manufacturing factory in Singapore, since he was in India only during the previous years from P.Y. 2011-12 to P.Y. 2017-18. However, he was resident in India in the P.Y. 2013-14, when he acquired one apartment in London.

Accordingly, the issue of notice on Mr. James under section 10 of the Black Money Act, 2015, is tenable in law, in respect of apartment in London since he was resident in the previous year 2013-14 when the property was acquired.

However, notice issued in respect of shares of listed companies in USA acquired in the P.Y.2010-11 and leather goods manufacturing factory established in Singapore in the P.Y.2018-19 is not tenable in law, since Mr. James was non-resident in the previous years in which undisclosed assets were acquired and also in the previous year in which the asset comes to the notice of the Assessing Officer.

Power of Joint Commissioner to give directions to the Assessing Officer under the Black Money Law

Yes, as per section 144A of the Income-tax Act, 1961, a Joint Commissioner is empowered to issue such directions as he thinks fit for the guidance of Assessing Officer to enable him to complete the assessment under the Black Money law also.

Time limit for completion of assessment under the Black Money Law

The time limit for passing an order of assessment under Black Money Law is two years from the end of the financial year in which notice under section 10(1) is issued by the Assessing Officer. Accordingly, in the present case, the assessment has to be completed on or before 31.3.2024 i.e., within two years from the financial year ending on 31.3.2022, being the financial year in which notice was issued.

Solution to Case Study 5

Answers to MCQs

Q. No.	Answer
1	(c)
2	(b)
3	(d)
4	(d)
5	(a)

Answers to Descriptive Questions

Answer to Q.6

Computation of total income of Aroma (P) Ltd.

Particulars	₹ in lakhs	₹ in lakhs
Income from sale of essential oils and perfumes		720
Income from apparel division		400
Software development division	700	
Add: Disallowances made by the Assessing Officer	80	
		780
Gross Total Income		**1,900**
Less: Deduction u/s 10AA [100% of ₹ 700 lakhs would be the deduction allowable in respect of its export profits. Deduction would **not** be allowable in respect of ₹ 80 lakhs, being the amount of enhancement in total income consequent to addition made by the TPO for computing arm's length price. Since it is mentioned in the question that the company is engaged in software development for its AE in USA, its entire profits would be export profits i.e., the export turnover would be the same as total turnover]	700	
Deduction u/s 80JJAA [30% of additional employee cost i.e., 30% of ₹ 800 lakhs]	240	
		940
Total Income		**960**

Tenability of disallowance of advertisement expenditure applying Bright Line Test

The Delhi High Court, in *Bausch & Lomb Eyecare (India) (P.) Ltd. v. Addl. CIT [2016] 381 ITR 227*, held that advertisement expense is **not** an international transaction and there is no machinery provision for computation of advertisement, marketing, promotion (AMP) expense adjustment.

In *Sony Ericsson Mobile Communications India (P) Ltd v. CIT (2015) 374 ITR 118*, the Delhi High Court held that **bright line test has no statutory mandate** and a broad-brush approach is not mandated or prescribed. It further opined that the exercise to separate "routine" and "non-routine" advertising, marketing and promotion or brand building exercise by applying the bright line test of non-comparables should not be sanctioned.

Applying the rationale of the above rulings of the Delhi High Court, the TPO's action in applying the "Bright Line Test" for disallowing or adjusting the advertisement expenditure to the extent of ₹ 2 crores is **not** tenable.

Answer to Q.7

Gopinath is non-resident in India for A.Y.2022-23, since his stay in India during the P.Y.2021-22 is only for 31 days. Hence, only income accruing or arising in India or which is deemed to accrue or arise or which is received or deemed to be received in India would be included in his total income and subject to tax in his hands for A.Y.2022-23. He would be not ordinarily resident for A.Y.2023-24 and 2024-25, in which case, income arising outside India would be subject to tax only if is from a business controlled from India or profession set up in India.

For A.Y.2022-23, since he is a non-resident, he can opt to be taxed under the special provisions under Chapter XII-A, since he is a citizen of India. Accordingly, he has to examine whether the computation of total income and tax liability under the special provisions under Chapter XII-A are more beneficial to him *vis-à-vis* the regular provisions of the Income-tax Act, 1961.

Computation of total income and tax liability of Gopinath for A.Y.2022-23 under Chapter XII-A

Particulars	Amount (₹)	Amount (₹)
Salaries		
Salary from Aroma (P) Ltd.	1,70,000	
Less: Standard deduction u/s 16(ia)	50,000	
		1,20,000
Income from house property in India (computed)		75,000
Long-term capital gains on sale of listed shares (STT paid) acquired in foreign currency		3,30,000
Income from Other Sources		
Interest on debentures in Indian companies		
Purchased in foreign currency	35,000	
Purchased in rupees	25,000	
		60,000
Gross Total Income		**5,85,000**
***Less:* Deduction under Chapter VI-A**		
U/s 80C – Life insurance premium paid for self	1,50,000	
U/s 80D – Medical insurance premium [paid otherwise than in cash] – restricted to Rs.25,000.	25,000	
U/s 80GGC - [Deduction in respect of donation to registered political party in India by cheque]	60,000	
	2,35,000	
Restricted to		**2,20,000**
[Deduction under Chapter VI-A is allowable against gross total income other than LTCG on sale of shares acquired in foreign currency and interest on debentures purchased in foreign currency.		
Therefore, deduction under Chapter VI-A has to be restricted to ₹ 2,20,000, being salary income ₹ 1,20,000 *plus* income from house property ₹ 75,000 and interest on debentures in Indian companies purchased in rupees ₹ 25,000].		
Total Income		**3,65,000**

Computation of tax liability	₹
Tax on interest on debentures purchased in foreign currency i.e., ₹ 35,000 @20%	7,000
Tax on LTCG on sale of listed shares (STT paid) acquired in foreign currency i.e., ₹ 3,30,000@10%	33,000
	40,000
Add: Health & Education Cess@4%	1,600
Tax liability	**41,600**

Computation of total income and tax liability of Gopinath for A.Y.2022-23 under the regular provisions of the Act

Particulars	Amount (₹)
Total Income = ₹ 3,65,000	
Tax liability:	
Tax on LTCG i.e., ₹ 2,30,000@10% [LTCG in excess of ₹ 1 lakh taxable @10% u/s 112A]	23,000
Interest on debentures purchased in foreign currency@20% u/s 115A [₹ 35,000 x 20%]	7,000
	30,000
Add: Health & Education Cess@4%	1,200
Tax liability	**31,200**
Since the regular provisions of the Act are more beneficial to Gopinath, he should compute his total income and pay tax under the regular provisions of the Act. His tax liability for A.Y.2022-23 would be ₹ 31,200.	

Note *– The tax liability as per the provisions of section 115BAC would be higher than the tax liability computed under the regular provisions since the total income would be higher by ₹ 2,70,000 (i.e., standard deduction of ₹ 50,000 and Chapter VI-A deductions of ₹ 2,20,000). The other income would, therefore, be ₹ 2,70,000 against which the basic exemption limit of ₹ 2,50,000 would be first exhausted. The remaining 20,000 would be subject to tax@5%, and the tax liability on such income would be ₹ 1,040 (including cess). The tax liability u/s 112A and 115A would be the same under section 115BAC also. Hence, the total tax liability would increase by ₹ 1,040 if he opts for section 115BAC. Therefore, he would not opt for section 115BAC for A.Y.2022-23.*

Answer to Q.8

As per section 9(1)(i), business profits of a non-resident would be deemed to accrue or arise in India, if such income accrues or arises through or from any business connection in India. In such a case, such income would be taxable in the hands of such non-resident in India.

Further, as per *Explanation 1* to section 9(1)(i), in case of a business, of which all operations are not carried out in India, the income of the business which is deemed to accrue or arise in India due to business connection in India shall be only such part of the income as is reasonably attributable to the operations carried out in India.

As per *Explanation 2A* to section 9(1)(i), significant economic presence of a non-resident in India shall also constitute business connection in India. Significant economic presence means, in respect of any goods, services or property carried out by a non-resident with any person in India, if aggregate of payments arising from such transaction or transactions during the previous year exceeds ₹ 2 crores. However, only so much of income attributable to such transactions with any person in India shall be deemed to accrue or arise in India.

Since the aggregate of payments from sale of goods to Electra Ltd. in India by Delta Corporation, Japan, exceeds Rs.2 crores, there is a significant economic presence of Delta Corporation, Japan, in India which constitutes business connection. Accordingly, so much of income as is attributable to the sale of goods to Electra Ltd. in India (i.e., Rs.45 lakhs, being 15% of Rs.300 lakhs) would be deemed to accrue or arise in India.

Explanation 3A to section 9(1)(i) provides that income attributable to operations in India for establishing business connection would include income from*, inter alia,* sale of goods and services using data collected from a person who resides in India or from a person who uses internet protocol address located in India.

Accordingly, profits earned by Beta Corporation, Japan, by selling goods directly to Electra Ltd., India, making use of data obtained from Mars Ltd., an Indian company, gives rise to business connection and hence, income attributable to such operations carried out in India (i.e., Rs.38 lakhs, being 20% of Rs.190 lakhs) would be deemed to accrue or arise in India.

Answer to Q.9

Yes, the provisions of section 228A of the Income-tax Act, 1961 enable the income-tax authorities to help tax authorities of Country X, with which India has a DTAA, to make recovery from Steve under the Income-tax Act, 1961, since Steve is resident in India.

For this purpose, the Government of Country X has to send a certificate to the CBDT for the recovery of any tax due under the law of Country X from Steve. The CBDT may forward such certificate to any Tax Recovery Officer (TRO) having jurisdiction over Steve or within whose jurisdiction Steve's property is situated.

The TRO shall, then, proceed to recover the amount specified in the certificate in the manner in which he would proceed to recover the amount specified in a certificate drawn up by him under section 222 [i.e., by attachment and sale of Steve's property, by appointing a receiver for management of his property etc.]

Thereafter, the TRO has to remit any sum so recovered to the CBDT after deducting the expenses in connection with the recovery proceedings.