PAPER – 7: DIRECT TAX LAWS & INTERNATIONAL TAXATION

Part - II

*Question No.**1** is compulsory.*

*Answer any **four** questions from the remaining **five** questions.*

Working notes should form part of the respective answers

All questions relate to Assessment Year 2021-22, unless stated otherwise in the question.

Question 1

The net profit of M/s Dilip Industries Ltd engaged in the manufacturing of Iron and Steel in Belampalli, a notified backward area in Andhra Pradesh, after debit/credit of the following amounts to its Statement of Profit and Loss for the year ended 31-03-2021 was ₹ 1000 lakhs.

Amounts Debited

1. *Depreciation calculated as per useful life of its assets ₹ 350 lakhs.*
2. *The company has paid ₹ 50 lakhs on 01-08-2020 to a research institution recognized and notified by the Central Government which has its object of undertaking scientific research.*
3. *The company has provided interest at 8% p.a. on ₹ 350 lakhs being amount borrowed from a non-banking financial company on 01-05-2020 for purchase of machinery. The interest outstanding as on 31-03-2021 was paid on 01-11-2021.*
4. *Salary of ₹ 100 lakhs to foreign technicians for installation of machinery at the factory premises was paid without deduction of tax.*
5. *General Expenses include ₹ 35 lakhs, incurred towards bringing drinking water to the village in which the factory is situated.*
6. *Donation includes ₹ 10 lakhs given to a political party.*
7. *The company has incurred expenditure of ₹ 25 lakhs, towards purchase of coal for its smelting furnace for which invoice is not available. However, indirect evidence such as Goods Inward report, online payment made towards the purchases are available. The auditors have made an adverse remark in their Report in this regard.*

Amounts credited

1. *The company had made a sale of for ₹ 20 Lakhs to M/s A. Co Engineers a sole proprietary concern, on 10-10-2019. On 01-02-2000[1] ₹ 10 lakhs was written off in the books as bad debts. Due to the demise· of the sole proprietor, the company could collect only ₹ 7 Lakhs towards the final settlement on 01-03-2021. The amount recovered was shown as Bad debts recovered and credited to Statement of Profit and Loss.*

The Suggested Answers for Paper 7: Direct Tax Laws and International Taxation are based on the provisions of direct tax laws as amended by the Finance Act, 2020, which are relevant for July, 2021 examination. The relevant assessment year is A.Y.2021-22.

[1] To be read as 01-02-2020

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Additional Information

1. *Written down value of its assets as on 01-04-2020 was as follows:*
   a. *Factory Building ₹ 1200 Lakhs,*
   b. *Computers and accessories ₹ 50 Lakhs, ·*
   c. *Office appliances ₹ 30 Lakhs,*
   d. *Tractors used for movement of raw materials, Semi finished goods and Finished goods within the factory premises 20 lakhs,*
   e. *Plant and Machinery ₹ 800 Lakhs.*

      Additions made to the assets were as follows:

      1. *Factory Buildings ₹ 300 Lakhs - Put to use from 01-11-2020.*
      ii. *Computers ₹ 25 Lakhs - Put to use on 01-05-2020.*
      iii. *Tractors ₹ 15 Lakhs - on 01-08-2020 and ₹ 10 Lakhs - Put to use on 01-02-2021.*
      iv. *Plant and machinery ₹ 500 Lakhs - Installed and put to use on 01-02-2021.*
      v. *Expenditure incurred towards the grant of ISO 9001 certificate ₹ 10 Lakhs. This amount is included in the Property, Plant and Asset Schedule as Intangible asset.*

   f. *The recognition granted to the research association which was engaged in scientific research was subsequently withdrawn by the Government on 28-02-2021.*

   You are required to compute the Total Income of the company for the Assessment Year 2021-22. Ignore MAT and the provisions of section 115BAA. ***(14 Marks)***

Answer

Computation of Total Income of M/s Dilip Industries Ltd. for the A.Y. 2021-22

	Particulars	Amount (in Lakhs)	
I	**Profits and gains of business and profession**		
	Net profit as per Statement of Profit and Loss		1,000.00
	Add: **Items debited but to be considered separately or to be disallowed**		
	(1) Depreciation as per useful life of assets	350.00	
	(2) Contribution to research institution approved and notified by the Central Government for scientific research	-	
	[As per section 35(1)(ii), 100% deduction is allowed for amount paid to a research institution undertaking scientific		

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		research, if such institution is approved for this purpose and notified by the Central Government. As per *Explanation* below section 35(1)(iii), deduction would not be denied merely on the ground that subsequent to payment of such sum by Dilip Industries Ltd., the approval granted to research institution is withdrawn. Since the amount of contribution is already debited to statement of profit and loss, no further adjustment is required]		
	(3)	**Interest on borrowing paid to NBFC after due date of filing return of income [8% x 350 lakhs x 11/12]** [Interest on borrowing from NBFC upto 1.2.2021, being the date when machinery is installed and put to use, is not allowable as deduction since it has to be capitalized as part of the cost of the asset. Interest for February and March 2021 is disallowed as per section 43B since it is not paid on or before the due date of filing return of income i.e., 31.10.2021. Since the entire interest has been debited to the statement of profit and loss, it has to be added back while computing business income]	25.67	
	(4)	**Salary for installation of machinery** [As per ICDS V, expenses which are specifically attributable for bringing the fixed asset to its working condition would form part of actual cost. Therefore, salary to foreign technicians for installation of machinery is a capital expenditure and not allowable as deduction. Since it has been debited to the statement of profit and loss, it has to be added back while computing business income]	100.00	
	(5)	**Expense towards bringing drinking water to the village** [Expenditure towards bringing drinking water to the village in which the factory is situated will benefit the employees working in the factory and also facilitate the manufacturing activity carried on. Also, being known as a good corporate citizen brings goodwill of the local community, as also with the regulatory agencies and the society at large, thereby creating an atmosphere in which the business can succeed in a greater measure with the aid of such goodwill. It was so held in *CIT vs. Madras Refineries Ltd. (2004) 266 ITR 170 (Mad.).* Hence, the same is allowable as deduction u/s 37(1). Since it has already been debited to statement of profit and loss, no further adjustment is necessary].	-	

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(6)	**Donation to political party** [Since the donation to political party is not wholly and exclusively for the purpose of business or profession, it is not allowable as deduction u/s 37. Since the amount of contribution is debited to statement of profit and loss, the same has to be added back]	10.00	
(7)	**Expenditure towards purchase of coal** [Even though payments made online need not be treated as genuine automatically on their face value, the assessee had produced Goods Inward Report, based on which genuineness of the transaction and the related payment can be established [*CIT v. SVE Engineers P Ltd. 388 ITR 11 (Mad.)]* Therefore, the said expenditure is allowable as deduction. Since the same has already been debited to the statement of profit and loss, no further adjustment is required. ***Note** – Alternatively, since the question is silent regarding the satisfaction of the tax authorities about the genuineness of the transaction based on the Goods Inward Report, the said expenditure can be added back, on the ground that payments made online need not be treated as genuine automatically on their face value]*	-	
			485.67
			1,485.67
Less:	**Items credited but not chargeable to tax/ expenses allowed but not debited**		
1.	**Bad debt recovered** [Since the deduction of bad debt allowed u/s 36 was ₹ 10 lakhs out of the total debt of ₹ 20 lakhs; and the amount recovered in respect of such debt is only ₹ 7 lakhs which is not more than the amount of ₹ 10 lakhs not written off, no amount is chargeable to tax as business income. Since the amount of ₹ 7 lakhs recovered has been credited to the statement of profit and loss, it has to be reduced while computing business income.	7.00	
1.	**Bad debts** [The company had written off ₹ 10 lakh earlier, and out of the balance ₹ 10 lakhs, only ₹ 7 lakhs could be collected towards final settlement. Therefore, the balance ₹ 3 lakhs will be allowable as deduction, provided it is written off in the books of account]	3.00	
Al1.e.v.	**Expenditure towards grant of ISO 9001 certificate**	10.00	

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[Expenditure towards grant of ISO 9001 certificate is not a capital expenditure since it does not create an asset of enduring nature. Accordingly, expenditure towards granting of ISO 9001 is revenue in nature *[CIT vs. Infosys Technologies Ltd. (2012) 349 ITR 606 (Kar.)]*. Since the same is not debited in statement is profit and loss, it has to be reduced while computing business income].			20.00
			1,465.67
***Less:* Depreciation as per Income-tax Rules, 1962**			
- **Factory building**			
On Opening WDV = ₹ 1200 lakhs x 10%	120		
On factory building purchased on 1.11.2020 [₹ 300 lakhs x 10% x 50%, since it has been put to use for less than 180 days during the year]	15	135.00	
- **Computer and accessories**			
On opening WDV = ₹ 50 lakhs x 40%	20		
On computer purchased on 1.5.2020 [₹ 25 lakhs x 40%, since it has been put to use for more than 180 days during the year]	10	30.00	
- **Plant and machinery**			
Office appliances on opening WDV [₹ 30 lakhs x 15%]	4.50		
Tractors			
On opening WDV = ₹ 20 lakhs x 15%	3.00		
On tractor purchased on 1.8.2020 [₹ 15 lakhs x 15%, since it has been put to use for more than 180 days during the year]	2.25		
On tractor purchased on 1.2.2021 [₹ 10 lakhs x 15% x 50%, since it has been put to use for less than 180 days during the year]	0.75		
Plant and machinery			
On opening WDV = ₹ 800 lakhs x 15%	120.00		
On P & M installed on 1.2.2021 [₹ 621 lakhs (₹ 500 lakhs + ₹ 100 lakhs of salary for installation + ₹ 21 lakhs, being interest from 1.5.2020 to 31.1.2021) x 15% x 50%, since it has been put to use for less than 180 days during the year]	46.58		
	177.08		

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	Additional depreciation			
	On tractors installed and put to use on 1.8.2020 = 20% x ₹ 15 lakhs, since it is used within factory premises	3.00		
	On tractors installed and put to use on 1.2.2021 = 20% x 50% x ₹ 10 lakhs, since it is used within factory premises	1.00		
	On new plant and machinery installed and put to use on 1.2.2021 = 50% x 20% x ₹ 621 lakhs	62.10	243.18	408.18
	Gross Total Income			**1057.49**
	***Less:* Deduction under Chapter VI-A**			
	Deduction under section 80GGB [Donation to political party is allowed as deduction to Dilip Industries Ltd., assuming that the payment is made otherwise than by way of cash]			10.00
	Total Income			**1047.49**

Question 2

(a) *M/s A Ltd, entered into a scheme of amalgamation with M/s. X Ltd and Y Ltd. (Transferor). The appointed date of the scheme was 01-01-2015. The schemes which also incorporated provisions for filing returns beyond the stipulated time were duly approved and sanctioned by National Company Law Tribunal on 31-05-2018, which was duly filed with the Assessing Officer on 10-06-2018. M/s A Ltd, X Ltd and Y Ltd filed its original return of income for the Asst. Year 2016-17 on 31-08-2016 declaring loss of ₹ 100 lakhs, ₹ 150 lakhs and ₹ 120 lakhs, respectively. M/s A Ltd., thereafter, filed a revised return on 31-12-2018 claiming further loss for Assessment Year 2016-17 based on the revised computation of X Ltd. The Assessing Officer did not entertain the revised return stating that it was time barred, and condonation was not taken from CBDT for filing revised return beyond stipulated time. What is your view?*

(OR)

M/s A & Co.'s return for the Assessment Year 2018-19 was selected for scrutiny. Disallowances to the extent of ₹ 50 lakhs and ₹ 75 lakhs was made since the assessee could not prove that bad debts claimed were supported by requisite evidences and repairs and maintenance which were booked on an estimate. It was further observed that another partnership firm M/s B & Co was a partner of M/s A & Co. The Assessing Officer proposed to change the status as AOP and complete the assessment.

Discuss whether the proposal of the Assessing Officer to change the status as AOP is correct in law. ***(4 Marks)***

(b) *The assessment of AK Ltd. for the assessment year 2016-17 was reopened u/s 148, and a notice by the Assessing Officer (AO) was issued u/s 142(1), requiring the assessee to file a return of income after recording reason in its internal order sheet that ineligible*

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depreciation to the extent of ₹ 10 crores has been claimed. The assessee filed its return in response to the notice and the Authorized Representative (AR) also filed a Power of Attorney in his favour to represent the company. The assessee sought reasons for reopening the assessment, which was overlooked by the AO under the pretext that it is a procedural matter, and the reasons were shown to the AR. The AO completed the reassessment confirming the addition. As a Tax Consultant, examine whether the order passed u/s 147 is valid. ***(4 Marks)***

(c) *Mr. Ram, a citizen of USA, resides in San Jose in USA since 2004. He is a non-resident since Asst. Year 2004-05. He works for X Inc., a US based company. He came to India on 10th January, 2020, to visit his aged parents. He could return back on only 31st January, 2021. He was permitted to work from home in India by his employer. The details of his earnings and withholding tax during the said period is as given below:*

(All figures in US $)

Months	***Salary***	***Federal Tax***	***State Tax***	***Social Security Tax***	***TT Buying rate as on the last day of the month immediately preceding the month in ·which tax has been paid/deducted (in INR) (assumed)***
Jan 2020	*8750*	*1313*	*525*	*613*	*71*
Feb 2020	*6250*	*938*	*375*	*438*	*71*
March 2020	*6250*	*1600*	*420*	*420*	*71*
April 2020	*6250*	*1600*	*420*	*420*	*72*
May 2020	*6250*	*1600*	*420*	*420*	*72*
June 2020	*6250*	*1600*	*420*	*420*	*72*
July 2020	*6250*	*1600*	*420*	*420*	*72*
August 2020	*6250*	*1600*	*420*	*420*	*72*
Sep 2020	*6250*	*1600*	*420*	*420*	*72*
October 2020	*6250*	*1600*	*420*	*420*	*72*
Nov 2020	*6250*	*1600*	*420*	*420*	*72*
Dec 2020	*6250*	*1600*	*420*	*420*	*72*
Jan 2021	*6250*	*1600*	*420*	*420*	*72*

He has also earned Fixed Deposit Interest in USA on 30-09-2020 US$ 200 (Tax deducted US $ 20) and on 31-03-2021 US $ 220 (Tax Deducted US$ 22)

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As per Article 2 of the DTAA, the taxes covered for credit are Federal Income Taxes imposed by Internal Revenue Code but excluding Social Security Taxes.

Return of Income for Asst. Year 2021-22 was filed on 25th August, 2021.

You are required to:-

1. *Compute tax payable, if any, by Mr. Ram (Assume that tax as per section 115BAC is opted).*
2. *Advise Mr. Ram the procedure involved to claim Foreign Tax Credit.* ***(6 Marks)***

Answer

(a) [First Alternative]

The scheme of amalgamation entered into between A Ltd and the transferors, X Ltd. and Y Ltd., enabled A Ltd. to file revised return even after the prescribed time limit for filing or revising such returns had lapsed, without incurring any liability on account of interest, penalty or any other sum. The scheme was sanctioned by NCLT and attained statutory force not only *inter se* A Ltd. and the transferors, X Ltd. and Y Ltd., but also in relation to the Department, since there was no objection raised by the Department to the said scheme which was filed with the Assessing Officer on 10.6.2018.

As a consequence, the amalgamating companies, X Ltd. and Y Ltd., lost their separate identity and character, and ceased to exist upon the approval of the scheme of amalgamation. The scheme, which incorporated provisions for filing revised returns beyond the prescribed time limit, came into force retrospectively from the appointed date, i.e., January 1, 2015. Accordingly, A Ltd. filed its revised return on December 31st, 2018.

In view of section 170(1), the Department was required to receive the revised returns of income for A.Y. 2016-17 and assess the income of A Ltd. taking into account the scheme of amalgamation as sanctioned by the NCLT due to the following reasons:

(a) Section 139(5) requiring filing of revised return before the end of the relevant assessment year (31.3.2017, in this case)[2] would not apply since the revised returns were not filed by A Ltd. on account of any omission or wrong statement in the original return. The delay was due to the time taken to obtain sanction of the scheme from NCLT. It was an impossibility for A Ltd. to have filed the revised returns for A.Y.2016-17 before the due date of March 31, 2017, since NCLT passed the order sanctioning the scheme only on May 31, 2018;

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[2] The time limit for filing revised return u/s 139(5) for A.Y.2016-17 was one year from the end of the relevant assessment year. Therefore, time limit was available upto 31.3.2018 u/s 139(5). However, since section 139(5) was subsequently amended by the Finance Act, 2017 to restrict the time limit therein to end of the relevant assessment year, and students are expected to be aware of the amended provisions, the said provisions are incorporated in the above answer.

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(b) A Ltd. is not required to apply for condonation from CBDT since it was filing revised return of income consequent to scheme of amalgamation with the prior approval and sanction of the NCLT, without any objection from the Department.

Note *– The facts of the above case are based on the facts in Dalmia Power Ltd. & Anr. v. ACIT [2020] 420 ITR 339, wherein the above issue came up before the Supreme Court. The above answer is based on the rationale of the said Supreme Court ruling.*

(a) [Second Alternative]

In this case, the Assessing Officer disallowed bad debts, since the same was not supported by requisite evidence, and also repairs and maintenance which were booked by estimate. He also proposed to change the status of the firm as AOP and complete the assessment.

Section 36(1)(vii) permits deduction of bad debts written off in the books of account. The Act does not require supporting evidence for claim of this deduction. Hence, the Assessing Officer's action in disallowing bad debts since the same were not supported by requisite evidence, is incorrect.

If the repairs are in the nature of current repairs allowable under section 30 or 31, and a provision has been made in respect of such repairs on the basis of a reliable estimate, the same is allowable as deduction subject to satisfaction of conditions laid down in ICDS X. Therefore, the correctness of the Assessing Officer's action is dependent on the nature of repairs and the satisfaction of conditions laid down in ICDS X.

A partnership firm is a relationship between persons who have agreed to share the profits of the business carried on by all or any of them acting for all. Since firm is not a separate legal entity, it cannot be a partner. In this case, since another partnership firm M/s. B & Co., was a partner in M/s. A & Co., the assessment of M/s. A & Co. cannot be carried out as a firm. Accordingly, the proposed action of the Assessing Officer to change the status of the firm to AOP and complete the assessment is in order.

(b) The power to reopen a completed assessment is an exceptional power and whenever the Revenue seeks to exercise such power, it must strictly comply with the requisite conditions, namely, recording of reasons to indicate that the Assessing Officer had reason to believe that income chargeable to tax has escaped assessment which would warrant the reopening of an assessment and furnishing of the reasons to the assessee, when sought for.

The company is required to furnish the return in accordance with notice issued u/s 148. After filing the return of income in pursuance to the notice, the assessee may ask for the copy of reasons recorded for issue of notice u/s 148 and can file objection to the issuance of notice.

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These recorded reasons must be furnished to the assessee when sought for so as to enable the assessee to object to the reasons before the Assessing Officer. It was so held in *GKN Driveshafts (India) Ltd. v. Income-tax Officer (2002) 125 Taxman 963*. Thus, in the absence of reasons being furnished when sought for, the order of reassessment would be bad in law.

In this case, since the assessee sought for reasons for reopening the assessment, the Assessing Officer has to furnish such reasons to the assessee. He cannot refuse to furnish the same to the assessee on any ground, including the reason that they were already shown to the authorised representative.

Accordingly, the action of the Assessing Officer in completing the reassessment without furnishing reasons to the assessee, when sought for by him, is not correct, and hence, the reassessment order passed u/s 147 is **not** valid.

(c) Mr. Ram is a resident for A.Y.2021-22, since his stay in India is for a period of 306 days in the P.Y.2020-21. Therefore, he satisfies the condition of stay in India for a period of 182 days or more in the P.Y.2020-21 for being treated as a resident.

However, he is a "not ordinarily resident" in India –

- since his stay in India in the seven years immediately preceding P.Y.2020-21 is only for 82 days (i.e., less than 730 days).
- since he is a non-resident in all the ten years immediately preceding P.Y.2020-21, he satisfies the condition of being a non-resident in 9 out of 10 previous years immediately preceding P.Y.2020-21.

Accordingly, he is a resident but not ordinarily resident in India for A.Y.2021-22.

In case of a resident but not ordinarily resident, only income which accrues or arises in India or is deemed to accrue or arise in India or which is received in India or is deemed to be received in India would be taxable in India. Income which accrues or arises outside India would be taxable in India only if it is derived from a business controlled in or a profession set up in India.

Since Ram renders service in India, income from salaries for the period from 1st April, 2020 to 31st January, 2021 would be deemed to accrue or arise to him in India and would be taxable in his hands. Since his period of stay in India in the P.Y.2020-21 exceeds 90 days, he would not be eligible for exemption u/s 10(6)(vi) for A.Y.2021-22 in respect of remuneration received as an employee of a foreign enterprise for services rendered by him during his stay in India.

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Computation of total income and tax liability of Mr. Ram for A.Y. 2021-22 under the regular provisions of the Act)

Particulars	₹
Salaries	
For the period from 1st April, 2020 to 31st January, 2021 (10 months x $ 6250 x TTBR 72, since the applicable TTBR is the same for all 10 months from April to January)	45,00,000
Less: Standard deduction u/s 16(ia) [Not available, since Ram has opted for section 115BAC]	-
	45,00,000
Income from Other Sources	**-**
Interest on Fixed Deposits in USA (not taxable in his hands in India since it accrues and is received outside India)	
Total Income	**45,00,000**
Computation of tax liability under section 115BAC	
Upto ₹ 2,50,000	Nil
₹ 2,50,001 to ₹ 5,00,000@5%	12,500
₹ 5,00,001 to ₹ 7,50,000@10%	25,000
₹ 7,50,001 to ₹ 10,00,000@15%	37,500
₹ 10,00,001 to ₹ 12,50,000@20%	50,000
₹ 12,50,001 to ₹ 15,00,000@25%	62,500
₹ 15,00,001 to ₹ 45,00,000@30%	9,00,000
	10,87,500
Add: Health and education cess@4%	43,500
Tax Liability	**11,31,000**

Ram can however claim foreign tax credit in respect of Federal Income Tax paid by him in US, since the same is covered under Article 2 of the India-US DTAA.

The amount of FTC which he can claim would be the lower of -

Tax payable under the Income-tax Act on such income = ₹ 11,31,000

and

Foreign tax paid on such income = ₹ 11,52,000 / ₹ 8,49,600 (depending on the assumption made)

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First assumption - Assuming that the column 5 figures of SST are not included in the column 3 figures of Federal Tax, foreign tax paid on such income would be $ 1600 x 10 months x 72 (TTBR), since the applicable TTBR is the same for all ten months and assuming that the TTBR as on 31.1.2021 is also 72. Accordingly, the FTC would be **₹ 11,31,000.**

The tax payable would, accordingly, be Nil and no interest would be payable u/s 234A for late filing of return.

Second assumption - If we assume that the column 5 figures of SST are included in the column 3 figures of Federal Tax, then the foreign tax paid on such income would be ₹8,49,600 i.e., $ 1180 ($ 1600 - $ 420) x 10 months x 72 (TTBR), since the applicable TTBR is the same for all ten months and assuming that the TTBR as on 31.1.2021 is also 72. Accordingly, the FTC would be ₹ **8,49,600**.

The tax payable would be ₹ 2,81,400 (i.e., ₹ 11,31,000 – FTC of ₹ 849,600). Accordingly, interest u/s 234A would be leviable@1% for one month, assuming the balance tax of ₹ 2,81,400 is paid on 25th August, 2021, being the date of filing of return of income.

Note – The above assumptions arise since it is not clear whether the column 3 figures of Federal Tax include column 5 figures of Social Security Tax.

The following statements/forms need to be furnished by Mr. Ram on or before 31st July, 2021 for claiming FTC -

(i) A statement of income from US offered for tax for the P.Y.2020-21 and of US tax deducted or paid on such income in the prescribed form.

(ii) Certificate or statement specifying the nature of income and the amount of tax deducted therefrom or paid by the assessee from the tax authority of US or from the person responsible for deduction of tax or which is signed by the assessee.

Question 3

(a) An Investment Fund incorporated in India in the form of a company has 20 resident unit-holders, each holding 5 units. Out of these, 16 unit holders are holding units for more than 12 months and 4 unit-holders are holding units for less than 12 months as on 31.03.2021.

The particulars of income of the Investment fund for the previous year 2020-21 are as follows:

(i) Business income - ₹ 20 lakhs.

(ii) Long-term capital losses - ₹ 30 lakhs.

(iii) Income from other sources - ₹ 40 lakhs.

Discuss the tax treatment with respect to the above income in the hands of investment fund as well as in the hands of unit-holders for the A.Y. 2021-22.

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What would be the implication in the hands of unit-holders, if the Investment fund distributes only 80% of its income to the unit-holders during the year? ***(8 Marks)***

(b) Cherry Ltd., a non-resident German company, has the following incomes in India during the year ended on 31.03.2021:

(i) Dividend income of ₹ 12,50,000 from XY Ltd., an Indian company listed on recognized stock exchange.

(ii) 8% debentures of ₹ 20,00,000 received from X Ltd., an Indian Company, on October 1, 2020, in consideration of providing technical knowhow (date of payment of interest being March 31 every year).

(iii) Dividend received ₹ 5,50,000 on Global Depository Receipts of Y Ltd., an Indian company, issued under a scheme of Central Government against the initial issue of shares of the company and purchased by Cherry Ltd. in foreign currency through an approved intermediary.

(iv) Business Income of ₹ 8,00,000 from a unit established at Mumbai.

(v) Income by way of royalty (other than referred to in section 44DA) amounting to ₹ 10,00,000, received from Z Ltd., an Indian company, in pursuance of an agreement approved by Central Government. As per DTTA between the two countries, such royalty is taxable @12%.

With brief reasons for the treatment of the above incomes, you are required to compute the tax liability of Cherry Ltd. for the Assessment Year 2021-22. ***(6 Marks)***

Answer

(a) As per section 115UB(1), any income accruing or arising to, or received by, a person, being a unit holder of an investment fund, out of investments made in the investment fund shall be chargeable to income-tax in the same manner as if it were the income accruing or arising to, or received by, such person had the investments made by the investment fund, been made directly by him.

Section 10(23FBA) exempts any income, other than income chargeable under the head "Profits and gains of business or profession", in the hands of investment fund. Consequently, income of the same nature as income chargeable under the head "Profits and gains of business or profession" at investment fund level, shall be exempt in the hands of unit holders as per section 10(23FBB). This implies that all income from investment fund is taxable in the hands of unit holders except income under the head "Profits and gains of business or profession".

(i) Business income - ₹ 20 lakhs

Business income would be taxable in the hands of Investment Fund. Consequently, such income would not be includible in the hands of unit holders.

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(ii) Long-term capital loss - ₹ 30 lakhs

Loss other than loss under the head "Profits and gains from business or profession" would not be allowed to be passed through to the investors if such loss has arisen in respect of a unit which has not been held by the unit holder for a period of at least 12 months. However, such loss can be passed through to the investors if such loss has arisen in respect of a unit which has been held by the unit holder for a period of at least 12 months

Accordingly, **long-term capital loss of ₹ 1.5 lakhs (₹ 30 lakhs/20 unitholders) each can be carried forward and set-off by 16 unitholders**, holding 5 units each for more than 12 months, against income from long-term capital gains arising in the subsequent years, since there is no long-term capital gain in the current year. It can be carried forward for a maximum of 8 assessment years.

However, **such loss of ₹ 1.50 lakhs each cannot be carried forward by the 4 unitholders**, holding 5 units each for less than 12 months.

(iii) Income from Other Sources - ₹ 40 lakhs

"Income from Other Sources" would be exempt in the hands of Investment fund.

₹ 2 lakhs (₹ 40 lakhs/ 20 unitholders) would be taxable as income from other sources in the hands of each unitholder.

If the income is not paid or credited to the unitholders during a previous year, it shall be deemed to have been credited to the account of the unitholder on the last day of the previous year in the same proportion in which such person would have been entitled to receive the income had it been paid in the previous year.

Thus, even if investment fund distributed only 80% of its income to the unit holders during the year, the remaining 20% of income would be deemed to be credited to the account of each unitholder on the last day of the previous year i.e., 31.03.2021.

However, income which has been included in the total income of the unitholders in the previous year on accrual basis shall not once again be included in the previous year in which such income is actually paid to him by the investment fund.

(b) Computation of total income and tax liability of Cherry Ltd., a non-resident German company, for the A.Y. 2021-22

Particulars	₹
Business Income from a unit established at Mumbai	8,00,000
Income from other sources	
- Dividend income from XY Ltd. an Indian company	12,50,000
- Fees for technical services [would be equivalent to the amount of debentures of ₹ 20,00,000 received from an Indian company, issued in consideration of providing technical knowhow	20,00,000

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- Interest on Debentures [₹ 20,00,000 x 8% x 6/12]	80,000
- Dividend on Global Depository Receipts (GDRs) of Y Ltd. an Indian company, issued under a scheme of Central Government against the initial issue of Y Ltd. and purchased in foreign currency by Cherry Ltd. [₹ 5,50,000 x 100/89.6, since tax would have been deducted at source @ 10.4%]	6,13,839
- Royalty income received from Z Ltd. an Indian company in pursuance of an agreement approved by Central Government [₹10,00,000 x 100/89.6, since tax would have been deducted at source @ 10.4%]	11,16,071
Gross Total Income/ Total income	**58,59,910**
Computation of tax liability	
Dividend income of ₹ 12,50,000, taxable @20% u/s 115A	2,50,000
Dividend on GDRs of ₹ 6,13,839, taxable @10% u/s 115AC	61,384
Royalty income of ₹ 11,16,071, taxable @10% u/s 115A, since it is in pursuance of an agreement approved by the Central Government	1,11,607
FTS of ₹ 20,00,000, taxable @40%, since it is not in pursuance of an agreement approved by the Central Government	8,00,000
Interest on debentures of ₹ 80,000, taxable @40%, since debt is incurred in Indian currency, it is not eligible for concessional rate of 20% u/s 115A	32,000
Business income of ₹8,00,000 [taxable @40%]	3,20,000
	15,74,991
Add: Health and education cess@4%	63,000
Tax liability [3]	**16,37,991**
Tax liability (rounded off)	**16,37,990**

Question 4

(a) Tutsi Foundations, a public charitable and religious trust registered under section 12AA, runs a hospital and also owns a temple. It furnishes you the following information for the year ended 31st March, 2021:

(i) Gross receipts from hospital ₹ 200 Lakhs.

(ii) Voluntary contributions (not included in gross receipts) received from public amounted to ₹ 35 lakhs. It includes corpus donation of ₹ 5 lakhs and anonymous donation ₹ 10 lakhs. Out of the anonymous donations of ₹ 10 lakhs, ₹ 8 lakhs are made to the donation box of temple.

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

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(iii) Operational expenses incurred for the hospital amounted to ₹ 94 lakhs and for the temple amounted to ₹ 15 lakhs.

(iv) On 1st January 2021, ₹ 6 lakhs was paid to a contractor in cash for the overall maintenance of the hospital. This amount is included in the operational expenses of the hospital.

(v) On 1st May, 2020, the trust purchased and installed new computer software for ₹ 25 lakhs for the hospital: The rate of depreciation is 40% as per the Income-tax Act, 1961.

(vi) The trust gave donation of ₹ 12 lakhs to Balaji trust (having objects of charitable nature), registered under section 12AA, but not similar to the objects of the donor trust.

Compute the total income and income tax liability of the trust for the A.Y. 2021-22 in such a manner that it can avail the optimal benefit within the four corners of law. ***(8 Marks)***

(b) Mr. Naveen, an individual resident in India, aged 52 years, earned royalty income of ₹ 15 lakhs from XY Inc. of Canada, for writing articles in journals and newspapers for the year ended 31.03.2021. However, he received only ₹ 12.50 lakhs during the previous year 2020-21 and the balance is outstanding as on 31.03.2021. He maintains cash system of accounting for royalty income.

He also earned a rental income of ₹ 2.40 lakhs (gross) from a house situated in Canada. Municipal taxes paid in respect of the house amounted to ₹ 10,000 which is not allowed as deduction in Canada. DTAA between India and Canada provides for tax@15% in Canada without prejudice to taxation of the same income in India.

He further received ₹ 3.50 lakhs during the year, as dividend from X Ltd., an Indian company. On 1.04.2020, he took an educational loan from bank for his son who was pursuing MBA.

Annual repayment of loan and interest amounted to ₹ 1.20 lakhs and ₹ 0.24 lakhs, respectively. Compute the total income and tax payable by Mr. Naveen in India for the Assessment Year 2021-22, assuming that he does not opt for section 115BAC. ***(6 Marks)***

Answer

(a) Computation of total income of Tulsi Foundations for the A.Y.2021-22

Particulars	₹	₹
Gross receipts from hospitals		2,00,00,000
Add: Voluntary contributions other than corpus donation and anonymous donation		20,00,000
Corpus donation [does not form part of total income]		Nil
Anonymous donations for temple [not subject to tax u/s 115BBC]		8,00,000
		2,28,00,000

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Add: Anonymous donations other than for temple [to the extent not chargeable to tax@30% u/s 115BBC(1)(i)] [₹1,75,000, being 5% of total donations of ₹35,00,000 or ₹1,00,000, whichever is higher] **[See Note 1 at the end of the solution]**		1,75,000
		2,29,75,000
Less: 15% of income eligible for being set apart without any condition **[See Note 2 at the end]**		34,46,250
		1,95,28,750
Less: **Amount applied for charitable purposes**		
- Operational expenses incurred for hospital and temple [₹ 94 lakhs + ₹ 15 lakhs – ₹ 6,00,000 not treated as application as payment to contractor made in cash[4]]	1,03,00,000	
- Purchase of computer [it is beneficial for the trust to claim cost of computer itself as application of income in the year asset is acquired. If the cost of asset is claimed as application, then, depreciation will not be allowed as deduction as per section 11(6)]	25,00,000	
- Donation to charitable trust registered u/s 12AA allowable as application, since it is not given with a specific direction that it shall form part of corpus of the trust nor is it given out of accumulated income	12,00,000	
		1,40,00,000
Total income [other than anonymous donation taxable@30% under section 115BBC(1)(i)]		55,28,750
Add: Anonymous donation taxable @30% u/s 115BBC(1)(i) **[See Note at the end of the solution]**		25,000
Total Income of the trust		**55,53,750**

Computation of tax liability of the trust for the A.Y. 2021-22

Particulars	₹
Tax on total income of ₹ 55,28,750 i.e., total income [excluding anonymous donations of ₹ 25,000 chargeable to tax @30% u/s 115BBC(1)(i)] [₹ 45,28,750 x 30% plus ₹ 1,12,500]	14,71,125

[4] *Explanation 3* below section 11(1) read with section 40A(3)

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Tax on anonymous donations taxable@30% [₹ 25,000 x 30%]	7,500
	14,78,625
Add: Surcharge@10%, since total income exceeds ₹ 50 lakhs but does not exceed ₹ 1 crore.	1,47,863
	16,26,488
Add: Health and Education cess @4%	65,060
Total tax liability	16,91,548
Total tax liability (rounded off)	**16,91,550**

Note - To avail the maximum benefit, the amount of ₹ 52,78,750 (i.e., Total income excluding anonymous donation taxable@30% u/s 115BBC i.e., ₹ 55,28,750 – ₹ 2,50,000, being the basic exemption limit) can be accumulated or set apart for such period not exceeding 5 years by exercising an option on or before the due date for filing return of income and such amount should be invested in modes specified u/s 11(5).

Notes:

(1) As per section 13(7), anonymous donations subject to tax@30% under section 115BBC are not eligible for 15% unconditional exemption. However, the plain reading of section 13(7) may give rise to an alternate view that the anonymous donations referred to in section 115BBC(1)(i) and (ii) may not be eligible for benefit of exclusion from total income under sections 11 and 12. If this view is taken, then ₹ 1,75,000 should not be added to ₹ 228,00,000 for 15% unconditional exemption.

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

On the basis of alternate views arising due to reasons stated in notes (1) & (2) above, three alternative solutions have been worked out below -

Alternative Answer 1 [Based on alternate view in Note 2]

Computation of total income of Tulsi Foundations, a public charitable and religious trust, for the A.Y.2021-22

Particulars	₹	₹
Gross receipts from hospitals		2,00,00,000
Add: Voluntary contributions other than corpus donation and anonymous donation		20,00,000
Corpus donation [does not form part of total income]		Nil

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Anonymous donations for temple [not subject to tax u/s 115BBC]		8,00,000
		2,28,00,000
Less: Operational Expenses [₹ 94 lakhs + ₹ 15 lakhs – ₹ 6 lakhs not treated as application as payment to contractor made in cash]		1,03,00,000
		1,25,00.000
Add: Anonymous donations other than for temple [to the extent not chargeable to tax@30% under section 115BBC(1)(i)] [₹ 1,75,000, being 5% of total donations of ₹ 35,00,000 or ₹ 1,00,000, whichever is higher]		1,75,000
		1,26,75,000
Less: 15% of income eligible for being set apart without any condition		19,01,250
		1,07,73,750
Less: Amount applied for charitable purposes		
- Purchase of computer [it is beneficial for the trust to claim cost of computer itself as application of income in the year asset is acquired. If the cost of asset is claimed as application, then, depreciation will not be allowed as deduction as per section 11(6)]	25,00,000	
- Donation to charitable trust registered u/s 12AA allowable as application, since it is not given with a specific direction that it shall form part of corpus of the trust nor is it given out of accumulated income	12,00,000	
		37,00,000
Total income [other than anonymous donation taxable@30% under section 115BBC(1)(i)]		70,73,750
Add: Anonymous donation taxable @30% u/s 115BBC(1)(i)		25,000
Total Income of the trust		**70,98,750**

Computation of tax liability of the trust for the A.Y. 2021-22

Particulars	₹
Tax on total income of ₹ 70,73,750 i.e., total income [excluding anonymous donations of ₹ 25,000 chargeable to tax @30% u/s 115BBC(1)(i)] [₹ 60,73,750 x 30% plus ₹ 1,12,500]	19,34,625
Tax on anonymous donations taxable@30% [₹ 25,000 x 30%]	7,500

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	19,42,125
Add: Surcharge@10%, since total income exceeds ₹ 50 lakhs but does not exceed ₹ 1 crore.	1,94,213
	21,36,338
Add: Health and Education cess @4%	85,454
Total tax liability	22,21,792
Total tax liability (rounded off)	**22,21,790**

Note - To avail the maximum benefit, the amount of ₹ 68,23,750 (i.e., Total income excluding anonymous donation taxable@30% u/s 115BBC i.e., ₹ 70,73,750 – ₹ 2,50,000, being the basic exemption limit) can be accumulated or set apart for such period not exceeding 5 years by exercising an option on or before the due date for filing return of income and such amount should be invested in modes specified u/s 11(5).

Alternative Answer 2 [Based on alternative view in Note 1]

Computation of total income of Tulsi Foundations for the A.Y.2021-22

Particulars	₹	₹
Gross receipts from hospitals		2,00,00,000
Add: Voluntary contributions other than corpus donation and anonymous donation		20,00,000
Add: Corpus donation [does not form part of total income]		Nil
Add: Anonymous donations for temple [not subject to tax u/s 115BBC]		8,00,000
		2,28,00,000
Less: 15% of income eligible for being set apart without any condition[5]		34,20,000
		1,93,80,000
Less: Amount applied for charitable purposes		
- Operational expenses incurred for hospital and temple [₹ 94 lakhs + ₹ 15 lakhs – ₹ 6,00,000 not treated as application as payment to contractor made in cash[6]]	1,03,00,000	
- Purchase of computer [it is beneficial for the	25,00,000	

[5] *As per the Supreme Court ruling in CIT v. Programme for Community Organisation (2001) 116 Taxman 608, 15% of gross receipts would be eligible for accumulation under section 11(1)(a).*

[6] *Explanation 3* below section 11(1) read with section 40A(3)

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trust to claim cost of computer itself as application of income in the year asset is acquired. If the cost of asset is claimed as application, then, depreciation will not be allowed as deduction as per section 11(6)]		
- Donation to charitable trust registered u/s 12AA allowable as application, since it is not given with a specific direction that it shall form part of corpus of the trust nor is it given out of accumulated income	12,00,000	1,40,00,000
Total income [other than anonymous donation taxable u/s 115BBC(1)(i) and (ii)]		53,80,000
Add: Anonymous donations other than for temple [to the extent not chargeable to tax@30% under section 115BBC(1)(i)] [₹ 1,75,000, being 5% of total donations of ₹ 35,00,000 or ₹ 1,00,000, whichever is higher]		1,75,000
Add: Anonymous donation taxable @30% u/s 115BBC(1)(i)		25,000
Total Income of the trust		**55,80,000**

Computation of tax liability of the trust for the A.Y. 2021-22

Particulars	₹
Tax on total income of ₹ 55,55,000 i.e., total income [excluding anonymous donations of ₹ 25,000 chargeable to tax @30% u/s 115BBC(1)(i)] [₹ 45,55,000 x 30% plus ₹ 1,12,500]	14,79,000
Tax on anonymous donations taxable@30% [₹ 25,000 x 30%]	7,500
	14,86,500
Add: Surcharge@10%, since total income exceeds ₹ 50 lakhs but does not exceed ₹ 1 crore.	1,48,650
	16,35,150
Add: Health and education cess @4%	65,406
Total tax liability	**17,00,556**
Total tax liability (rounded off)	**17,00,560**

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Note - To avail the maximum benefit, the amount of ₹ 51,30,000 (i.e., Total income excluding anonymous donation taxable u/s 115BBC(1) i.e., ₹ 53,80,000 – ₹ 2,50,000, being the basic exemption limit) can be accumulated or set apart for such period not exceeding 5 years by exercising an option on or before the due date for filing return of income and such amount should be invested in modes specified u/s 11(5).

Alternative Answer 3 [Based on alternative views given in Notes 1 and 2]

Computation of total income of Tulsi Foundations for the A.Y.2021-22

Particulars	₹	₹
Gross receipts from hospitals		2,00,00,000
Add: Voluntary contributions other than corpus donation and anonymous donation		20,00,000
Corpus donation [Does not form part of total income]		Nil
Anonymous donations for temple [not subject to tax u/s 115BBC]		8,00,000
		2,28,00,000
Less: Operational Expenses: [₹ 94 lakhs + ₹ 15 lakhs – ₹ 6 lakhs not treated as application as payment to contractor made in cash]		1,03,00,000
		1,25,00,000
Less: 15% of income eligible for being set apart without any condition		18,75,000
		1,06,25,000
Less: Amount applied for charitable purposes		
- Purchase of computer [it is beneficial for the trust to claim cost of computer itself as application of income in the year asset is acquired. If the cost of asset is claimed as application, then, depreciation will not be allowed as deduction as per section 11(6)]	25,00,000	
- Donation to charitable trust registered u/s 12AA allowable as application, since it is not given with a specific direction that it shall form part of corpus of the trust nor is it given out of accumulated income	12,00,000	37,00,000
Total income [other than anonymous donation taxable u/s 115BBC(1)(i) and (ii)]		69,25,000
Add: Anonymous donations other than for temple [to the extent not chargeable to tax@30% under section		1,75,000

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115BBC(1)(i)] [₹ 1,75,000, being 5% of total donations of ₹ 35,00,000 or ₹ 1,00,000, whichever is higher]		
Add: Anonymous donation taxable @30% u/s 115BBC(1)(i)		25,000
Total Income of the trust		**71,25,000**

Computation of tax liability of the trust for the A.Y. 2021-22

Particulars	₹
Tax on total income of ₹ 71,00,000 i.e., total income [excluding anonymous donations of ₹ 25,000 chargeable to tax @30% u/s 115BBC(1)(i)] [₹ 61,00,000 x 30% plus ₹ 1,12,500]	19,42,500
Tax on anonymous donations taxable@30% [₹ 25,000 x 30%]	7,500
	19,50,000
Add: Surcharge @10%, since total income exceeds ₹ 50 lakhs but does not exceed ₹ 1 crore.	1,95,000
	21,45,000
Add: Health and Education cess @4%	85,800
Total tax liability	22,30,800
Total tax liability (rounded off)	**22,30,800**

Note - To avail the maximum benefit, the amount of ₹ 66,75,000 (i.e., Total income excluding anonymous donation taxable u/s 115BBC(1) i.e., ₹ 69,25,000 – ₹ 2,50,000, being the basic exemption limit) can be accumulated or set apart for such period not exceeding 5 years by exercising an option on or before the due date for filing return of income and such amount should be invested in modes specified u/s 11(5).

(b) Computation of total income of Mr. Naveen for A.Y.2021-22

Particulars	₹	₹
Income from House Property		
Rental income from property in Canada[7]	2,40,000	
Less: Municipal taxes paid	10,000	
	2,30,000	
Less: Deduction u/s 24(a) @30%	69,000	
		1,61,000

[7] *In the absence of any information relating to fair rent, municipal value and standard rent, rental income assumed to be gross annual value.*

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Profits and gains from business or profession		
Royalty[8] from Canada for writing article in journals [only the amount which is received during the previous year is includible, since he maintains cash system of accounting]		12,50,000
Income from Other Sources		
Dividend received from X Ltd. an Indian company [since TDS would have been deducted @ 10%, the amount includible in the total income need to be grossed up (₹ 3,50,000 x 100/90)]		3,88,889
Gross Total Income		**17,99,889**
***Less:* Deduction under Chapter VI-A**		
U/s 80E – deduction in respect of interest on educational loan for his son	24,000	
U/s 80QQB – No deduction is allowable since royalty income is for writing articles in journals and newspapers and not for writing books	-	24,000
Total Income		**17,75,889**
Total Income (rounded off)		**17,75,890**

Computation of tax liability of Mr. Naveen for A.Y.2021-22

Particulars		₹
Tax on total income [30% of ₹ 7,75,890 + ₹ 1,12,500,]		3,45,267
Add: Health and education cess @4%		13,811
		3,59,078
Less: Deduction in respect of Foreign Tax Credit lower of -		
- Tax payable in Canada@15% on doubly taxed income of ₹ 14,11,000, being income from house property of ₹ 1,61,000 *plus* royalty of ₹ 12,50,000	₹ 2,11,650	
- Tax payable in India@20.220% [i.e., ₹ 3,59,078/17,75,890 x 100] on ₹ 14,11,000	₹ 2,85,304	
Lower of the two above		2,11,650
Tax Payable		**1,47,428**
Tax Payable (rounded off)		**1,47,430**

[8] *Royalty can also be shown under the head "Income from other sources" instead of "Profits and gains from business or profession.*

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Question 5

(a) Discuss and compute the liability for deduction of tax at source, if any, in the following cases for the Assessment Year 2021-22:

(i) A notified infrastructure debt fund eligible for exemption u/s 10(47) of the Income-tax Act, 1961 pays interest of ₹ 4.50 lakhs to a company incorporated in USA. The US company incurred expenditure of ₹ 15,000 for earning such interest. The fund also pays interest of ₹ 2.50 lakhs to Mr. R, who is a resident of a notified jurisdictional area.

(ii) On 17 .06.2020, a commission of ₹ 40,000 was retained by the consignee 'Harshit Packaging Ltd.' and not remitted to the consignor 'Hari Developers', while remitting the sales consideration.

(iii) Mr. Harsh, an employee of M/s XY Ltd. since 10.04.2017, resigned on 31.03.2021 and withdrew ₹ 80,000 being the balance in his EPF account. His PAN is available with M/s XY Ltd.

(iv) Param Construction Ltd. sells a flat to Mr. Mani for ₹ 48 Lakhs on 15.01.2021. The agreement to sell provides that in addition, Mr. Mani has to pay maintenance charges (of ₹ 5,000 per month) for 24 months in advance ₹ 2,00,000 for car parking to be used exclusively by him and ₹ 1,00,000 for club membership fees to Param Construction Ltd. before the flat is registered in the name of Mr. Mani. The flat is registered on 30.03.2021. ***(8 Marks)***

(b) Paras Ltd. is an Indian company engaged in the manufacturing of supreme quality mink blankets. It has total borrowings of ₹ 60 crores by way of loan as on 31.03.2021. Saksham Ltd. of Germany imported 5 lakh blankets from Paras Ltd. for the resale in Germany @ ₹ 2,000 per unit. Paras Ltd. sold similar blankets to other dealers in Germany @ ₹ 2,100 per unit. Paras Ltd. received a bank guarantee on 1.04.2020 for availing a cash credit limit of ₹ 9 crores for which Saksham Ltd. was the guarantor. The terms of trade for other dealers was to make payment within 1 month from the date of sale of goods by Paras Ltd., whereas for Saksham Ltd., the credit period allowed was 3 months from the date of sale of goods. The cost of capital was 12% per annum and the supply of goods is assumed to be uniform throughout the year.

You are required to determine whether Paras Ltd. and Saksham Ltd. are associated enterprises. If yes, compute the ALP of the transaction between them and the amount to be added to the income of Paras Ltd., if any, by way of an ALP adjustment.

Assuming that the above adjustments to the transfer price have been made suo-moto by Paras Ltd. in its return of income, what is the time limit for the repatriation of such excess money? What are the implications if the excess money is not repatriated within such prescribed time limit? ***(6 Marks)***

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Answer

(a) (i) As per section 194LB, tax would be deductible@5% on gross interest paid/credited by a notified infrastructure debt fund, eligible for exemption under section 10(47), to a non-corporate non-resident or foreign company.

However, in case the notified infrastructure debt fund pays interest to a person who is a resident of a notified jurisdictional area, section 94A will apply. Accordingly, tax would be deductible@30% under section 94A

Since the payment is to a non-corporate non-resident or foreign company, health and education cess @4% has to be added to the applicable rate of TDS.

Therefore, the tax deductible in respect of payment of interest of ₹ 4.50 lakhs to US company would be ₹ 23,400 (i.e., 5.20% of ₹ 4.50 lakhs).

Tax deductible in respect of payment of interest of ₹ 2.50 lakhs to Mr. R, who is a resident of a notified jurisdictional area, would be ₹ 78,000, being 31.2% of ₹ 2,50,000.

(ii) Section 194H requires deduction of tax at source @5%(3.75% from 14.5.2020 to 31.3.2021) from commission and brokerage payments to a resident if the amount of such payment exceeds ₹ 15,000.

In the given case, 'Harshit Packaging Ltd.', the consignee, has retained the commission of ₹ 40,000 while remitting the sales consideration to the consignor 'Hari Developers'.

Since the retention of commission by the consignee/agent amounts to constructive payment of the same to him by the consignor/principal, deduction of tax at source is required to be made from the amount of commission *[CBDT Circular No.619 dated 4/12/1991].*

Therefore, Hari Developers has to deduct tax at source on ₹ 40,000 @ 3.75%. Tax deductible would be ₹ 1,500.

(iii) As per section 192A, in a case where the accumulated balance due to an employee participating in a recognized provident fund is includible in his total income owing to the provisions of Rule 8 of Part A of the Fourth Schedule not being applicable, income-tax@10% is required to be deducted, if the amount of such payment or aggregate amount of such payment to the payee is ₹ 50,000 or more.

Rule 8 of Part A of the Fourth Schedule, *inter alia*, provides that only if an employee has rendered continuous service of five years or more with the employer, then accumulated balance in a recognized provident fund payable to an employee would be excluded from the total income of that employee.

In the present case, Mr. Harsh has withdrawn an amount exceeding ₹ 50,000 on his resignation after rendering a continuous service of less than four years with M/s. XY Ltd.

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Therefore, tax has to be deducted at source@10% under section 192A on ₹ 80,000, being the amount withdrawn on his resignation without rendering continuous service of a period of five years with M/s. XY Ltd. Tax deductible in such a case would, therefore, be ₹ 8,000.

(iv) Section 194-IA requires deduction of tax@1% (0.75% from 14.5.2020 to 31.3.2021) by every transferee responsible for paying any sum as consideration for transfer of immovable property (land, other than agricultural land, or building or part of building) to a resident transferor.

Tax is not required to be deducted at source where the total amount of consideration for the transfer of immovable property is less than ₹ 50 lakhs. Consideration for transfer of any immovable property includes, *inter alia,* club membership fee, car parking fee, maintenance fee, which are incidental to transfer of the immovable property.

In the present case, since the consideration for transfer of flat by Mr. Mani to Param Construction Ltd. is ₹ 52,20,000 (₹ 48 lakhs + ₹ 1,20,000, being ₹ 5,000 x 24 + ₹ 2 lakhs + ₹ 1 lakh) which is not less than ₹ 50 lakhs, Mr. Mani is required to deduct tax @0.75% on ₹ 52,20,000.

Tax deductible by Mr. Mani would be ₹ 39,150.

(b) (1) Paras Ltd. and Saksham Ltd. of Germany are deemed to be associated enterprises, since Saksham Ltd., a German company provides guarantee for loan of ₹ 9 crores taken by Paras Ltd., which is 15% of the total borrowings (i.e., more than 10 %) of Paras Ltd. i.e., 60 crores.

As per section 92B, the transactions entered into between Paras Ltd. and Saksham Ltd., two associate enterprises, for sale of blankets falls within the meaning of "international transaction".

As Paras Ltd. has sold similar blankets to other dealers, being unrelated entity, at ₹ 2,100 per unit, the transactions between Paras Ltd. and such unrelated party can be considered as a comparable uncontrolled transaction for the purpose of determining the arm's length price of the transactions between Paras Ltd. and Saksham Ltd. However, such figure needs to be adjusted by the functional adjustments.

Computation of ALP of transaction between Paras Ltd. and Saksham Ltd.

Particulars	Amount (in ₹)
Selling price of each blanket to unrelated dealers in Germany	2,100
Add: Adjustment of cost of credit [Paras Ltd. provides credit for 1 month to unrelated entity whereas it provided credit period of 3 months to Saksham Ltd. Therefore, adjustment for the cost of such credit has to be carried out to arrive at arm's length price. (12% x 2,100 x 2/12)]	42

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Arm's length price of 1 unit of blanket	**2,142**
Arm's length price of 5 lakh units of blanket (A)	1,07,10,00,000
Sale price of 5 lakh units of blanket by Paras Ltd. to Saksham Ltd. (associated enterprise) (B) [2,000 x 5,00,000]	1,00,00,00,000
Amount to be added to Paras Ltd.'s total income by way of ALP adjustment	**7,10,00,000**

(2) Where the primary adjustment to transfer price has been made *suo moto* by Paras Ltd. in its return of income, the time limit for the repatriation of such excess money (i.e., ₹ 710 lakhs) available with the associated enterprise (i.e., Saksham Ltd.) is within 90 days from 30.11.2021, being the due date of filing of return u/s 139(1) i.e., 28.2.2022.

(3) The excess money (i.e., ₹ 710 lakhs) available with the associated enterprise (i.e., Saksham Ltd.) not repatriated to India within 90 days from the due date of filing return of income u/s 139(1) would be deemed as an advance made by the Paras Ltd. to its associated enterprise, Saksham Ltd.

Interest would be calculated on such advance at the rate of one year marginal cost of fund lending rate of SBI as on 1st April of the relevant previous year i.e., 1.4.2021 + 3.25%, since the international transaction is denominated in Indian rupee.

Option to pay additional income-tax, if the excess money not repatriated

Paras Ltd. has the option to pay additional income-tax @20.9664% (tax @18% plus surcharge @12% plus cess@4%) on excess money (i.e., ₹ 710 lakhs), in lieu of repatriation of such excess money.

Where additional income-tax is so paid by Paras Ltd., it will not be required to make secondary adjustment and compute interest from the date of payment of such tax.

The additional income-tax so paid by Paras Ltd. would be treated as the final payment of tax in respect of excess money not repatriated and no further credit would be allowed to Paras Ltd. or to any other person in respect of the amount of additional income-tax so paid.

Question 6

(a) A liquidator is appointed by ABC Ltd. which is undergoing liquidation. What are the statutory obligations and restrictions on the part of the liquidator under the Income-tax Act, 1961 after being so appointed? What are the consequences if he fails to perform such obligations? ***(4 Marks)***

(b) Explain Base Erosion and Profit Sharing [BEPS]. What are its adverse effects? ***(4 Marks)***

(c) "The application of tax treaty may result into double taxation for the taxpayers. In the light of the statement, answer the following questions-

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(1) What are the approaches for the elimination of double taxation under Model Conventions? Explain.

(2) Explain the meaning of Juridical Double Taxation and Economic Double Taxation.

(3) Can the problems of Economic Double Taxation be solved by the above approaches? Explain. ***(6 Marks)***

Answer

(a) As per section 178, every person who is the liquidator of any company which is being wound up, whether under the orders of a Court or otherwise, is under a statutory obligation to give notice of such appointment within thirty days to the Assessing Officer who is entitled to assess the company.

The liquidator is debarred from parting with the assets of company and its properties in his hands until he is notified by the Assessing Officer of the amount which will be sufficient to provide for any tax which is then, or is likely thereafter, to become payable by the company except with the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and on being so notified, shall set aside an amount equal to the amount notified.

Consequences on failure to perform such obligations

If the liquidator fails to notify the Assessing Officer of his appointment within the time specified or fails to set aside the amount intimated by the Assessing Officer as being sufficient to provide for the tax liability of the company or parts with any of the assets or property of the company in his hands in contravention of the above provisions, he shall be personally liable for payment of the tax which the company would be liable to pay.

However, if the amount of any tax payable by the company is notified by the Assessing Officer, the personal liability of the liquidator shall be to the extent of such amount.

Failure to comply with the above requirement would be an offence punishable under section 276A.

(b) Base Erosion and Profit Shifting (BEPS) refers to tax planning strategies that exploit gaps and mismatches in tax rules to make profits 'disappear' for tax purposes or to shift profits to locations where there is little or no real activity but the taxes are low, resulting in little or no overall corporate tax being paid.

Adverse effects of BEPS:

The following are the adverse effects of BEPS:

- Governments have to cope with less revenue and a higher cost to ensure compliance.
- Undermines the integrity of the tax system, as reporting of low corporate taxes is considered to be unfair.

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- in developing countries, the lack of tax revenue leads to significant under-funding of public investment that could help foster economic growth.
- when tax laws permit businesses to reduce their tax burden by shifting their income away from jurisdictions where income producing activities are conducted, other taxpayers, especially individual taxpayers in that jurisdiction bear a greater share of the burden. This gives rise to tax fairness issues on account of individuals having to bear a higher tax burden.
- Also, enterprises that operate only in domestic markets, including family-owned businesses or new innovative businesses, may have difficulty competing with MNEs that have the ability to shift their profits across borders to avoid or reduce tax. Fair competition is harmed by the distortions induced by BEPS.

(c) The Model Conventions specify two approaches -

- Exemption method [Article 23A]; and
- Credit method [Article 23B]

Under the exemption method, tax exemption may be available in the Residence State. Under the credit method, tax credit may be available in the Residence State for taxes deducted in the Source State. These methods are not mutually exclusive and there may be cases where a treaty may adopt exemption method for certain types of income and credit method for other incomes.

"Juridical double taxation" arises when the same income or capital is taxable in the hands of the same person by more than one State.

'Economic double taxation' happens when the same item of income or capital is taxed in more that one States in hands of different persons.

Under Model Conventions, double taxation referred, is juridical double taxation, meaning the same income or capital is taxable in the hands of the same person by more than one State. It does not thus, encompass situations of economic double taxation, i.e., where two different persons are taxable in respect of the same income or capital. If two States wish to solve problems of economic double taxation, they must do so through bilateral negotiations.

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