PAPER – 7: DIRECT TAX LAWS

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

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

Working notes should form part of the respective answers.

All questions relate to Assessment Year 2018-19, unless stated otherwise in the question.

Question 1

(a) Ram, Rahim & Robert are equal partners of SSK & Co., which was formed w.e.f 01.06.2017. The firm is an authorized dealer of watches manufactured by a reputed company. It reported Net Profit as per profit and loss account of ₹ 2,50,000 after debit / credit of the following items:

(i) Depreciation on generator and computers ₹ 1,10,000.

(ii) Working partners' salary ₹ 30,000 per month for each partner.

All the partners are working partners and the salary paid is authorized by the deed of partnership.

(iii) Interest on capital to partners @ 18% per annum. The total interest on capital of the firm debited to profit and loss account being ₹ 3,60,000.

(iv) Donation to registered political parties ₹ 80,000 by cash and ₹ 70,000 by electronic transfer.

(v) Monthly rent paid to partner Ram for use of his premises as godown ₹ 30,000 and it is occupied from 01.10.2017. The market rent for the premises is ascertained at ₹ 15,000 per month. No tax was deducted at source on the rent paid.

(vi) Sponsorship fee for local Cricket tournament ₹ 4,00,000.

(vii) The firm incurred ₹ 5 lakhs by way of expenditure towards the cost of gold coins awarded to customers on the first day of their showroom inauguration. The cost of each gold coin was less than ₹ 10,000 and one coin was given for each of the buyers on that day selected through lucky dip. No tax was deducted at source on such gold coins given to the customers.

Additional information:

(i) Depreciation on tangible assets allowable u/s 32 ₹ 2,37,500.

(ii) One registered trademark was acquired on 10.07.2017 for ₹ 3,00,000. The firm used the trademark w.e.f. 01.12.2017 since there was some dispute in title of the previous owner and was cleared through court decree only in November 2017.

The Suggested Answers for Paper 7:- Direct Tax Laws are based on the provisions of direct tax laws as amended by the Finance Act, 2017, which is relevant for May, 2018 examination. The relevant assessment year is A.Y.2018-19.

(iii) The total turnover for the firm for the year ended 31.03.2018 was ₹ 80 lakhs. Amount realized by cash ₹ 20 lakhs and the balance of sale proceeds were received through credit card/RTGS/NEFT before 31.03.2018.

You are required to compute the total income of the firm applying regular provisions and presumptive provisions contained in section 44AD of the Income-tax Act, 1961(Act). Advise the procedural requirement on opting any of the provisions for the purpose of the Act. ***(10 Marks)***

(b) Arnold Ltd. (incorporated in UK) has a branch office (PE) in India. The Net Profit of the Branch as per the statement of profit and loss for the year ended 31.03.2018 was ₹ 83 lakhs. It includes the following:

(i) Dividend from Indian companies (listed) ₹ 8,00,000.

(ii) Dividend from Indian companies (unlisted) ₹ 4,00,000.

(iii) Interest received from MMS Ltd. of Mumbai ₹ 7,00,000. The amount was received by the Indian company MMS Ltd. in foreign currency as per loan agreement dated 01.04.2014 (section 194LC applicable).

(iv) Fee for technical services received from Barun Co. Ltd., Kolkata ₹ 25,00,000. The agreement was made on 10.08.2007 and was approved by Central Government. Expenditure incurred for providing technical service amounts to ₹ 6,00,000.

Additional information:

Total income chargeable to tax as per regular provisions of the Income-tax Act, 1961 (Act) is ₹ 20,00,000 (without considering the items (i) to (iv) above).

You are required to compute the book profit tax under section 115JB of the Act for the assessment year 2018-19 and also the total income-tax liability of the assessee.

Your working should be supported by notes. ***(10 Marks)***

Answer

(a) Computation of total income of the firm, SSK & Co. for the A.Y. 2018-19 applying the regular provisions of the Income-tax Act,1961

Particulars	₹	₹
Net profit as per profit & loss account		2,50,000
Add: **Expenditure debited to profit & loss account but not allowable as deduction or to be considered separately**		
- Depreciation as per books of accounts	1,10,000	
- Salary paid to working partners considered separately [₹ 30,000 x 3 partners x 10 months]	9,00,000	

- Interest on capital paid to partners in excess of 12% disallowed[1]. Accordingly, ₹ 1,20,000 [₹ 3,60,000 – ₹ 2,40,000 (₹ 3,60,000 x 12/18)], is disallowed	1,20,000	
- Donation to registered political party	1,50,000	
[Donation paid to a political party is not an allowable expenditure under section 37 since it is not laid out wholly or exclusively for the purposes of business or profession. Hence, the same has to be added back while computing business income]		
- Excess rent paid to a partner would be disallowed under section 40A(2), since partner is a related person of the firm [(₹ 30,000 - ₹ 15,000) x 6]	90,000	
[No disallowance would be attracted for non-deduction of tax at source, since the amount of rent does not exceed ₹ 1,80,000]		
- Sponsorship fee for local cricket tournament	Nil	
[Such expenditure is incurred for the promotion of the business of the firm/incurred out of business expediency and is an allowable expenditure u/s 37]		
- Expenditure on gold coins awarded to customers	Nil	
[Allowed as expenditure u/s 37. No disallowance would be attracted for non-deduction of tax at source, since the value of gold coin awarded to each customer does not exceed ₹ 10,000]		13,70,000
		16,20,000
Less: Depreciation as per Income-tax Act, 1961		
- Tangible assets	2,37,500	
- Intangible asset–registered trademark [₹ 3,00,000 x 12.5%]		
[50% of 25%, being the depreciation allowable as deduction, since the asset is put to use for less than 180 days during the year of acquisition]	37,500	
		2,75,000
Book Profit		13,45,000
Less: Salary to working partners:		
(i) As per prescribed limits		
On first ₹ 3,00,000 @ 90%	2,70,000	

[1] It is assumed that interest on capital is authorized by the partnership deed.

On the balance of ₹ 10,45,000 @ 60%	6,27,000	
	8,97,000	
(ii) Salary actually paid	9,00,000	
Deduction allowed being (i) or (ii) whichever is less		8,97,000
Profits and gains from business or profession		**4,48,000**
Gross Total Income		**4,48,000**
Less: **Deduction under Chapter VI-A**		
Under section 80GGC Donation to registered political party		
• Paid by cash not allowable	Nil	
• ₹ 70,000 paid by electronic transfer would be allowed as deduction, since payment is made in a mode other than cash;	70,000	70,000
Total Income		**3,78,000**

Computation of Total Income of A.Y.2018-19 in accordance with presumptive provisions contained under section 44AD

For the P.Y.2017-18, the turnover of the firm business is ₹ 80 lakhs. Since its turnover is less than ₹ 200 lakhs, the firm is eligible to opt for presumptive tax scheme under section 44AD.

Accordingly, the business income would be computed applying the presumptive rates of taxation under section 44AD

Particulars	₹
(i) Cash sales = 8% x ₹ 20 lakhs	1,60,000
(ii) Online sales = 6% x ₹ 60 lakhs	3,60,000
[No deduction in respect of any expenditure including working partners' salary is allowable while computing presumptive business income as per the provisions of section 44AD].	
Business Income/Gross Total Income [₹ 1,60,000 + ₹ 3,60,000]	**5,20,000**
Less: **Deduction under Chapter VI-A**	
Under section 80GGC [Donation to registered political party]	70,000
Total Income	**4,50,000**

In case the firm wants to declare income of ₹ 3,78,000 as per books of account, advance tax has to be paid in four installments, in the absence of which interest liability under section 234C would be attracted in respect of shortfall in each of the four installments.

However, if the firm declares profits of ₹ 4,50,000 on presumptive basis under section 44AD, advance tax has to be paid in one installment in March, 2018, in the absence of which interest under section 234C would be attracted only for one month.

(b) Computation of "Book Profit" for levy of MAT under section 115JB for A.Y.2018-19

Particulars	₹	₹
Net Profit as per Statement of Profit and Loss		83,00,000
Less: **Net profit to be decreased by the following amounts as per *Explanation 1* to section 115JB:**		
- **Dividend income from listed and unlisted Indian companies, credited to statement of profit and loss** [Dividend income from listed and unlisted Indian companies is exempt u/s 10(34) read with section 115BBDA to the extent of ₹ 10 lakhs, in the hands of a foreign company[2]. To this extent it can be reduced from net profit to arrive at book profit]	10,00,000	
- **Interest income received from an Indian company as per loan agreement dated 1.4.2014, where the loan is given in foreign currency** [Since income by way of interest chargeable to tax@5% under section 115A, being a rate lower than 18.5%, has been credited to statement of profit and loss, the same has to be reduced to arrive at book profit]	7,00,000	
- **Fees for technical services under an agreement approved by the Central Government** [No adjustment is required since the foreign company carries on business through a permanent establishment i.e., a branch in India. Such income, being effectively connected with the branch in India, is taxable@40% under section 44DA. Since the income is not taxable at a rate less than 18.5% it should not be reduced for determining book profit]	Nil	
		17,00,000
Book Profit		**66,00,000**

Computation of tax liability

Particulars	₹	₹
Minimum Alternate Tax on book profit under section 115JB = 18.5% of ₹ 66,00,000		**12,21,000**
Income-tax computed as per the regular provisions of the Act		
- 40% [since Arnold Ltd. is a foreign company] of total income of ₹ 20 lakhs ***plus*** fees for technical services ₹ 19 lakhs (₹ 25 lakhs – ₹ 6 lakhs)]	15,60,000	

[2] Assuming that the company is resident in India due to its POEM, being in India, in that year. Otherwise, the entire dividend of ₹ 12 lakhs has to be reduced to compute book profit.

- Tax @10% of dividend income of ₹ 2 lakhs, being the dividend exceeding ₹ 10 lakhs	20,000	
- Tax@ 5% on interest of ₹ 7 lakhs received from MMS Ltd. as per loan agreement dated 1.4.2014, the loan being given in foreign currency	35,000	
	16,15,000	
Since the income-tax computed as per the regular provisions of the Income-tax Act, 1961, is higher than the MAT liability, the income-tax payable would be computed as per the regular provisions of the Income-tax Act,1961:		
Income-tax computed as per the regular provisions of the Income-tax Act, 1961	16,15,000	
Add: Education cess and SHEC@3%	48,450	
Total income-tax liability	**16,63,450**	

Question 2

BG (P) Ltd. is engaged in multiple businesses. The Net Profit as per the statement of profit and loss was ₹ 52 lakhs for the year ended 31.03.2018. A scrutiny of the statement of profit and loss revealed the following items which were debited / credited therein:

(i) Share income @ 25% from a partnership firm ABC & Co. of Pune ₹ 9,50,000.

(ii) The company paid ₹ 1 lakh as service charges to a call centre for attending the calls of customers and suppliers. Tax was deducted at source on such payment @ 2%.

(iii) Expenditure incurred ₹ 8 lakhs for digging of wells near the factory for use by public under Corporate Social Responsibility Scheme as per the Companies Act, 2013.

(iv) Grant received from State Government for acquisition of generator ₹ 10 lakhs. The generator was acquired on 01.06.2017 for ₹ 35 lakhs. A sum of ₹ 5 lakhs was paid as advance by cash to the supplier of generator. The grant amount received is credited to statement of profit and loss. Depreciation charged on ₹ 35 lakhs@15%.

***Note :** Assume that the company is not eligible for additional depreciation.*

(v) During the year, the company bought textile goods from local suppliers. Cash payment was made exceeding ₹ 10,000 but below ₹ 20,000 in a day to 15 suppliers aggregating to ₹ 2,00,000.

(vi) Depreciation debited to statement of profit and loss ₹ 10 lakhs (it includes ₹ 8 lakhs being depreciation on assets revalued).

(vii) Provision for deferred tax debited to statement of profit and loss ₹ 6,50,000.

(viii) Trade creditors ₹ 5,00,000 were outstanding for more than 5 years and there is no business relationship with them. The amount was unilaterally transferred to credit of statement of profit and loss.

(ix) Royalty income in respect of patents chargeable under section 115BBF ₹ 12,00,000.

(x) Depreciation eligible under section 32 (before considering adjustment of any of the items described above) ₹ 12,25,000.

***Additional information**:*

(a) The assessee executed only one civil construction contract of the value of ₹ 15 lakhs. The contractee withheld 20% of the contract amount which would be released only after 2 years. The amount withheld has not been credited to statement of profit and loss.

(b) During the year, 1,00,000 equity shares of ₹ 10 each was issued for ₹ 25 per share. The fair market value of the shares as per rule 11UA of the Income-tax Rules, 1962 was determined @ ₹ 17 per share.

(c) During the year, the company advanced ₹ 5,50,000 to one of the directors (having 22% of equity shares and equivalent voting rights in the company) to meet his personal expenses. The company has accumulated profit of ₹ 25 lakhs as on 31.03.2017.

You are required to compute the total income for the assessment year 2018-19 stating clearly the reasons for treatment for each of the items given above. ***(16 Marks)***

Answer

Computation of Total Income of BG (P) Ltd. for the A.Y.2018-19

	Particulars	Amount (₹)	
I	**Profits and gains of business and profession**		
	Net profit as per the statement of profit and loss		52,00,000
	***Add:* Items debited but to be considered separately or to be disallowed**		
	(ii) Service charges paid to call center	Nil	
	[Disallowance for short-deduction of tax at source would **not** be attracted since the tax@2% deductible at source in respect of payment of service charges to call center, has been fully deducted]		
	(iii) CSR Expenditure incurred	8,00,000	
	[As per *Explanation 2* to section 37, CSR expenditure incurred by the company as per the Companies Act, 2013 is not deemed to be an expenditure incurred by the company for the purposes of business or profession. Hence, the same is not allowable as deduction. Since the same has been debited to statement of profit and loss, it has to be added back]		
	(v) Cash payment in excess of ₹ 10,000 in a day	2,00,000	
	[Disallowance is attracted in respect of expenditure, for		

	which payment exceeding ₹ 10,000 in a day has been made in cash. Since such expenditure is debited to the statement of profit and loss, the same has to be added back, as per section 40A(3)]		
	(vii) Provision for deferred tax	6,50,000	
	[Deferred tax is an accounting concept and there is no provision in the Income-tax Act, 1961 permitting deduction in respect of the same. Therefore, provision for deferred tax is not an allowable deduction while computing business income. Since the same has been debited to the statement of profit and loss, it has to be added back for computing business income]		16,50,000
			68,50,000
	Add: **Income taxable but not credited to statement of profit and loss**		
	(a) Retention money		**3,00,000**
	[ICDS III requires recognition of contract revenue, including retention money, on percentage of completion method. In this case, since the question mentions that the assessee executed the contract of the value of ₹ 15 lakhs, it is logical to assume that 100% of the contract has been completed this year. Therefore, the entire retention money of ₹ 3 lakhs has to be recognized in the P.Y.2017-18, since the contract has been fully completed]. ***Note*** *– Since the question also states that the retention money of ₹ 3 lakhs (20% of ₹ 15 lakhs) would be realised after two years, it is possible to assume that the contract is yet to be completed, in which case only 50% of the said sum has to be recognized in the P.Y. 2017-18 on percentage of completion method. If this view is taken, only ₹ 1.5 lakhs has to be recognized as income in the P.Y. 2017-18.*		
			71,50,000
	Less: **Items credited to statement of profit and loss, but not includible in business income**		
	(i) Share income from partnership firm ABC & Co.	9,50,000	
	[Share income from firm is exempt in the hands of the partner u/s 10(2A). Since the company is a partner in a firm, the share of its income in the firm would be exempt. Since the same has been credited to statement of profit and loss, it has to be reduced to compute business income]		

	(iv) Grant received from State Government for acquisition of generator [Grant received from the Government, other than a grant which is taken into account for determination of actual cost of the asset, is included in the definition of income. In this case, as per ICDS VII, since the grant is received for acquisition of generator, the same has to be adjusted in actual cost. As the same has been credited to the statement of profit and loss, it has to be reduced to compute business income]	10,00,000	
	(viii) Cessation of a trading liability [Remission or cessation of a trading liability, allowed as deduction in an earlier previous year, would be deemed as income in the year of remission or cessation, as per section 41(1)(a). Since the amount of ₹ 5 lakhs has already been credited to statement of profit and loss, no further adjustment is required]	Nil	
	(**ix) Royalty income in respect of patents chargeable under section 115BBF** [Royalty income in respect of patents chargeable under section 115BBF can be treated as business income or income from other sources, depending upon the facts of the case. In this case, since the question mentions that BG (P) Ltd. is engaged in multiple businesses, it is logical to assume that the same is in the nature of business income. Since the amount of ₹ 12 lakh has already been credited to statement of profit and loss, no further adjustment is necessary][3]	Nil	
			19,50,000
			52,00,000
	Less: **Depreciation**		
	Depreciation under section 32	12,25,000	
	Less: Depreciation@15% on ₹ 15 lakhs, being amount paid in cash for generator and the amount of grant, not includible in actual cost as per second proviso to section 43(1) and ICDS VII on	2,25,000	

[3] In case it is assumed that such income is taxable as "Income from Other Sources", the same has to be reduced to compute business income.

	Government Grants.		
	Depreciation allowable under the Income-tax Act, 1961	10,00,000	
	Less: Depreciation debited to books of account	10,00,000	**Nil**
	*[**Note** – (1) The above computation has been made on the basis that depreciation eligible under section 32 is generally shown under "Additional Information".* *Alternatively, since in this question, both depreciation as per books of account and depreciation eligible under section 32 have been shown as debited to statement of profit and loss, ₹ 12,25,000 (₹ 10 lakhs, being depreciation debited to books of account **(+)** ₹ 2,25,000, i.e., 15% of ₹ 15 lakhs, being depreciation not allowable in respect of payment made in cash and grant given by Government) may be added back on this basis.* *(2) Depreciation eligible under section 32 has been stated as before considering adjustment of any of the items described above. It is also possible to interpret the statement to mean that depreciation for generators @15% of ₹ 20 lakhs has not been included in the said figure of ₹ 12,25,000 and accordingly work out the solution]*		
	Profits and gains from business and profession		52,00,000
II	**Income from Other Sources**		
	Consideration received in excess of FMV of equity shares [(₹ 25 **(-)** ₹ 17) x 1,00,000 equity shares] [BG (P) Ltd., a company in which public are not substantially interested has issued equity shares at a premium. In this case, the difference between consideration and the FMV of shares is taxable as "Income from Other Sources"].		8,00,000
	Total Income		**60,00,000**

***Note** – The amount advanced by a company, not being a company in which public are substantially interested, to its shareholder holding not less than 10% of voting power, would be treated as deemed dividend in the hands of the shareholder, to the extent to which the company possesses accumulated profits. Therefore, in this case, ₹ 5,50,000 would be treated as deemed dividend in the hands of the director-shareholder.*

The company is required to deduct tax at source in respect of such deemed dividend distributed. However, non-deduction will not have any impact, since dividend is not a deductible expenditure. Hence, this transaction would not have any impact on the income of the company. The company is not also required to pay dividend distribution tax on such deemed dividend.

Question 3

(a) Mr. A is taxable in case of certain income as per the Income-tax Act, 1961. The DTAA, which is applicable to him excludes the income earned by him from the purview of tax. Is Mr. A liable to pay tax on the income earned by him under Income-tax Act, 1961? ***(4 Marks)***

(b) Answer the following in the context of international transactions:

(i) Company X and Company Y who have entered into Advance Pricing Agreements (APA) and eligible for rollback provisions merged to form Company XY. Is the Company XY eligible for rollback provisions as it was formed on merger of Company X and Company Y?

(ii) Proceedings before the TPO were stayed by court order and it was subsequently lifted. The time limit for completion of assessment after excluding the period of stay due to court order is only 30 days. Within how many more days, the TPO has to pass his order?

(iii) The gross total income of Sachin Co. Ltd., Pune was ₹ 70 lakhs which is wholly attributable to a unit located in SEZ since April, 2011. Adjustments to total income made by the Assessing Officer by applying the transfer pricing provisions, enhanced the total income by ₹ 50 lakhs. What is the total income of the assessee chargeable to tax and explain why? ***(3 x 2 = 6 Marks)***

(c) BNG Ltd., a domestic company has deducted TDS of ₹ 28,451 during the Qtr 1 of FY 2017-18. They had filed the TDS return for Qtr 1 on 15.09.2017. The Income Tax Department had sent a notice of demand to the company, wherein a fee was levied under section 234E of the Income-tax Act, 1961 (Act) for ₹ 8,800. The Company paid the demand raised by the Department and also claimed such payment as business expenditure during the A.Y. 2018-19. Discuss whether the demand raised by the Department is correct, as per the provisions of the Act. Also, explain whether fee paid under section 234E can be claimed as deduction while computing the income under the head "Profits and gains of business or profession". ***(6 Marks)***

Answer

(a) As per section 90(2), where the Central Government has entered into a Double Taxation Avoidance Agreement with a country outside India, then, in respect of an assessee to whom such agreement applies, the provisions of the Income-tax Act, 1961 shall apply to the extent they are more beneficial to the assessee.

Thus, where the provisions of DTAA are more favourable than the provisions of the Income-tax Act, 1961, the former will prevail over the latter.

In the given problem, as per the provisions of the Income-tax Act, 1961, certain income is taxable in Mr. A's hands; however, as per the DTAA, the same is excluded from the purview of tax in India.

Since the provisions of the DTAA, which are more favourable to Mr. A will prevail, he is not required to pay tax in India on the said income earned by him under the Income-tax Act, 1961.

However, the onus is on Mr. A to furnish necessary evidence to show that the income is covered by the clauses of DTAA to avail the benefit. Mr. A also has to submit the Tax Residence Certificate obtained from the Government of the other country and provide such other information and documents as may be prescribed.

Note *– The above answer is based on the assumption that Mr. A is a resident of another country and he has earned income in India. As per the DTAA with that country, the income is chargeable to tax in the country of residence, and therefore, in order to avail exemption of such income or credit in India in respect of tax paid on such income in the other country, the tax residence certificate is required.*

It is also possible to answer this question on the assumption that Mr. A is resident in India and he has earned income outside India, which is subject to tax in the country of source on the basis of India's DTAA with that country. In such a case, there would be no requirement for submission of tax residence certificate in India for availing exemption in respect of such income or availing credit in India respect of tax paid in that country on such income.

(b)

	Particulars
(i)	The agreement of APA is between the Board and a taxpayer/person. The principle to be followed is that the person who makes the APA application alone would be entitled to enter into the agreement and be entitled for the rollback provisions in respect of international transactions undertaken by it in rollback years. Since Company X and Y were the APA applicants and not the new company XY[4] formed as a result of merger, Company XY would not be eligible for the rollback provisions[5].
(ii)	As per the proviso to section 92CA(3A), where assessment proceedings are stayed by any Court and the time available to the Transfer Pricing Officer for making an order is less than 60 days, then, such remaining period shall be extended to 60 days. In the present case, since only 30 days is available after excluding the period of stay, the same will be extended by 30 days and TPO can make an order within 60 days.
(iii)	As per the proviso to section 92C(4), where the arm's length price is determined by the Assessing Officer by applying transfer pricing provisions, no deduction, *inter alia*, under section 10AA shall be allowed from the income so enhanced by the Assessing Officer.

[4] It is assumed that Company X and Company Y are merged together to form a new Company XY.

[5] CBDT Circular No. 10/2015 dated 10.6.2015 [Answer to Q.13 in the said Circular]

Assuming that the entire turnover represents the export turnover, and consequently, the entire profit of ₹ 70 lakhs is eligible for deduction under section 10AA, the total income would be computed as follows:

Particulars	₹ in lakhs
Income of unit in SEZ (computed)	70
Less: Deduction u/s 10AA = 50% of ₹ 70 lakhs, being the 7th year of operations	35
	35
Add: Enhancement in total income by the Assessing Officer, applying transfer pricing provisions.	50
Total Income	**85**
[No deduction u/s 10AA is allowable in respect of income so enhanced]	

(c) There are two issues in this case.

The first issue is about the correctness of the demand of ₹ 8,800 raised by the Department levying fee under section 234E for filing of TDS return for Quarter 1 of F.Y.2017-18 on 15.09.2017.

The second issue is whether fee paid by BNG Ltd. under section 234E can be claimed as deduction while computing income under the head "Profits and gains of business or profession".

First issue: Correctness of demand raised by the Department for fee of ₹ 8,800 under section 234E

The statement of tax deducted at source for quarter 1 ended 30th June, 2017 has to be filed on or before 31st July, 2017.

Where a person fails to deliver or cause to be delivered the statement of tax deducted at source within the prescribed time, then, he shall be liable to pay, by way of fee, a sum of ₹ 200 for every day during which the failure continues.

The amount of fee shall not, however, exceed the amount of tax deductible.

In the present case, BNG Ltd. has filed the TDS return of Qtr 1 on 15.09.2017. Since there has been a 46 days delay on the part of BNG Ltd. in filing the statement of TDS, it would be liable to pay a fee of ₹ 9,200 (₹ 200 x 46 days) under section 234E.

Therefore, the demand of ₹ 8,800 raised by the Department is incorrect.

Second issue: Allowability of deduction in respect of fee paid under section 234E while computing income under the head "Profits and gains of business or profession"

As per section 37, any expenditure incurred wholly and exclusively for the purpose of business or profession is allowed as deduction.

This fee is not in the nature of a penalty. The fee for delayed submission of the statement of TDS is also not in the nature of interest for delayed remittance of TDS. The Legislature in its wisdom, has consciously used the word "penalty" and "interest" at other places, in contra-distinction to the word "fee". Since there is no specific prohibition in the Act for denying deduction of fee paid, hence, fee paid under section 234E is allowable as deduction while computing the business income.

Note - *The normal filing fee for submission of TDS statement is an allowable deduction while computing business income and the same logic will apply to late fee as well. The late fee leviable under section 234E is similar to fee payable to the ROC for delayed filing of a statutory return under the Companies Act, 2013, which is an allowable expenditure. On similar lines, late fee leviable under section 234E is also an allowable expenditure.*

Question 4

*Answer any **four** out of the following five cases. Your answer should cover (i) Issues involved; (ii) Provisions applicable; (iii) Analysis; and (iv) Conclusion:*

(a) *Bose & Co. is a partnership firm consisting of 4 partners with equal shares. The partnership firm is engaged in execution of civil construction contracts with State Government authorities. The partnership firm deposited ₹ 50 lakhs in State Bank of India (SBI) for the purpose of obtaining guarantee as and when the tenders were applied by the firm. It also kept ₹ 10 lakhs in fixed deposit with Canara Bank, being the surplus funds of the firm. The firm credited interest on bank deposits of ₹ 4,00,000 from SBI and ₹ 80,000 from Canara Bank in Profit and Loss account and computed working partners' salary based on the resultant book profit. The Assessing Officer wants to tax interest incomes as income under the head 'other sources' and accordingly reduced the amount allowable by way of working partners' salary. Is the action of the Assessing Officer tenable in law?*

(b) *Shri Chandok is running a factory in Nagpur for the past 10 years. He sold the factory building for ₹ 80 lakhs and the consideration was appropriated as ₹ 20 lakhs for the building and ₹ 50 lakhs for the land underneath the building. The factory building is the only asset of the block on which depreciation was claimed and whose WDV was ₹ 1,80,000. The indexed cost of acquisition of land amounts to ₹ 22 lakhs. He deposited ₹ 48 lakhs in capital gain bonds of NHAI within 2 months after the sale of the factory building. The Assessing Officer disallowed the claim of exemption on the reasoning that capital gain on transfer of depreciable asset being short-term is not eligible for exemption under section 54EC. Is the action of the Assessing Officer valid in law?*

(c) *Govind Charitable Trust registered under section 12AA is engaged in imparting Yoga to the public. Its aggregate annual receipt was ₹ 60 lakhs and it spent only ₹ 40 lakhs by way of remuneration to Yoga teachers and by way of administration expenses. The trust applied for approval under section 80G to the Commissioner of Income-tax. The application was rejected on the ground that it had not spent 85% of its income for charitable purposes. Decide the validity of the rival contentions.*

(d) *Syed & Co., a dealer in motor cycles conducted motor cycle race on the occasion of its' 25th year anniversary. The prize was given to first 3 winners by way of a luxury motor cycle which was worth ₹ 2 lakhs each. The assessee did not deduct tax at source on the prize given to the winners. The Assessing Officer treated the assessee as an assessee in default and passed order under sections 201(1) and 201(1A). The assessee seeks your advice on the validity of the order and other legal consequences. Advise.*

(e) *Dravid (P) Ltd. is engaged in manufacture of electrical items. It received deposit from the distributors and supplied goods in the market through the distributors. It could not locate some distributors with whom there was no transaction for the past 5 years or so. The income-tax assessment was completed under section 143(3) but the issue of unclaimed deposits of distributors was never discussed. The Assessing Officer issued a notice under section 148 after 4 years from the end of the relevant assessment year but without quantifying the amount of income which had escaped assessment. The assessee challenged the matter in appeal by contending that the Assessing Officer without being definite of the quantum of income escaping assessment could not have initiated reassessment proceedings. Decide the validity of the contention of the assessee.*

(4 x 4 =16 Marks)

Answer

(a) **Issue Involved:** The issue under consideration is whether the following interest income would be taxable under the head 'Profits and Gains from Business or Profession' or under the head 'Income from Other Sources':

(1) interest income of ₹ 4 lakhs on deposit made with bank for obtaining bank guarantee to carry on business; and

(2) interest income of ₹ 80,000 on fixed deposits made out of surplus funds with the firm

Provision applicable: As per the provisions of section 40(b)(v), salary to a working partner is deductible based on the book profits of the firm. In computing the book profits, only items chargeable as business income alone can be included, and not those chargeable under the head "Income from Other Sources".

Income which is chargeable to tax under the Income-tax Act, 1961 would be chargeable under the residuary head "Income from Other Sources", only if such income is not chargeable to tax under any of the other four heads of income.

Analysis: The interest income from the deposits made by the firm for the purpose of obtaining guarantee, as and when tenders were applied by it, is inextricably linked to the business of the firm. Making deposits is an essential requirement for obtaining the bank guarantee which was necessary to apply for tenders. If the firm had not furnished bank guarantee, it would not be eligible for applying for the tenders. Such interest income would, therefore, be taxable under the head "Profits and gains of business or profession". It was so held by the Delhi High Court in *CIT v. K and Co. (2014) 364 ITR 93.*

However, the interest amount on fixed deposits made out of surplus funds available with the firm would be chargeable to tax under the head "Income from Other Sources", since the firm had deposited the amount of surplus funds with the bank solely for the purpose of earning interest. Such interest is taxable under the Income-tax Act, 1961, but does not fall within the scope of income chargeable under any of the other four heads of income. Accordingly, such interest would be chargeable to tax under the head "Income from Other Sources". It was so held by the Supreme Court in *Tuticorin Alkali Chemicals & Fertilizers Ltd. v. CIT [1997] 227 ITR 172.*

Conclusion: Applying the rationale of the above court rulings to the facts of the present case, the action of the Assessing Officer in taxing the interest of ₹ 4 lakhs on deposit made with the bank, for obtaining guarantee for applying for tenders, under the head "Income from Other Sources" and accordingly, reducing the amount allowable by way of working partners' salary, is not tenable in law.

However, similar action relating to interest income of ₹ 80,000 on fixed deposits made out of surplus funds with the firm, is correct/tenable in law.

(b) **Issue Involved:** Where a depreciable asset held for more than 36 months is transferred, can the claim of exemption under section 54EC be denied on the reasoning that capital gain on transfer of depreciable asset is deemed as short-term.

Provision applicable: As per section 54EC, where the capital gain arising from the transfer of a long-term capital asset is invested in the long-term specified asset, [being the bonds issued by the National Highways Authority of India (NHAI) or the Rural Electrification Corporation Limited (RECL) or any other bond notified by the Central Government in this behalf], at any time within a period of six months after the date of such transfer, the amount of such capital gain shall not be charged to tax, to the extent of ₹ 50 lakhs. The maximum permissible investment in such bonds, in respect of capital gains arising in a financial year, is ₹ 50 lakhs, whether such investment is made in the same financial year or in the next financial year within the six month period.

Analysis: Section 50 is a special provision for computation of capital gains in the case of depreciable asset, and has limited application in the context of computation of capital gains to the extent that the provisions of sections 48 and 49 would apply with the modifications stated thereunder.

It does not deal with exemption which is provided in a totally different provision i.e. section 54EC. Section 54EC does not make any distinction between depreciable and non-depreciable asset for the purpose of re-investment of capital gains in long term specified assets for availing the exemption thereunder.

Further, section 54EC specifically provides that when the capital gain arising on the transfer a long-term capital asset is invested or deposited in bonds issued by NHAI, the assessee shall not be subject to capital gains to that extent [i.e., lower of capital gains or investment in bonds upto a maximum of ₹ 50 lakhs]. Therefore, the exemption under

section 54EC cannot be denied to the assessee on account of the fiction created in section 50.

It was so held by the Apex Court in *CIT v. V.S. Dempo Company Ltd (2016) 387 ITR 354*.

Conclusion: Applying the rationale of the Apex Court ruling to the facts of the present case, the action of the Assessing Officer disallowing the claim for exemption under section 54EC on the reasoning that capital gain on transfer of depreciable asset is a short-term capital gain, even though held for more than 36 months, is **not** valid.

(c) **Issue Involved:** Can an application for grant of approval under section 80G(5) be rejected on the ground that the trust has failed to apply 85% of its income for charitable purposes?

Provision applicable: Section 80G provides that donation to any institution or fund would qualify for deduction thereunder only if it is established in India for a charitable purpose and derives such income which would not be liable to inclusion in its total income under the provisions of, *inter alia,* sections 11 and 12.

Analysis: While considering the application for the purpose of section 80G, the authority cannot act as an assessing authority and the enquiry should be confined to finding out if the institution satisfies the prescribed conditions.

Section 80G does not relate to assessment of the trust or the institution whose income is not liable to be included in the computation of taxable income under various provisions of the Act. Primarily, section 80G is related to giving deduction in respect of donations made by a person to such trusts and institutions.

Once a trust is registered under section 12AA, its income from property includes donations received. Such donations are deemed to be income from property, which are not to be included in the total income under section 11 or section 12. The enquiry under section 80G, hence, cannot go beyond that.

The scope of enquiry cannot include an enquiry as to whether, at the close of the previous year, the donee-trust will actually be able to apply 85% of its income. This is because non-fulfillment of some conditions by the donee-trust as regards application or accumulation cannot be ascertained in praesenti, when the donation is made. The question of whether the trust will be able to apply 85% of its income can be determined only from the facts existing at the close of the assessment year.

It was so held by the Gujarat High Court in *CIT v. Shree Govindbhai Jethalal Nathavani Charitable Trust (2015) 373 ITR 619.*

Conclusion: Applying the rationale of the Gujarat High Court ruling to the facts of the present case, the rejection by the Commissioner, of the application made by Govind Charitable Trust for approval under section 80G, on the ground that it had not spent 85% of its income for charitable purposes, is **not valid.**

(d) **Issue Involved:** Where the assessee fails to deduct tax at source in respect of the winnings, which are wholly in kind, can he be deemed as an assessee-in-default under section 201(1) and 201(1A).

Provision applicable: The person responsible for paying to any person any income by way of winnings from any lottery or crossword puzzle, card game and any other game of any sort in an amount exceeding ₹ 10,000 shall deduct tax at source @ 30%.

However, where the winnings are wholly in kind, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings.

Where any person, who is required to deduct any sum in accordance with the provisions of this Act, does not deduct, or does not pay, or after so deducting fails to pay such tax, then, such person would be deemed to be an assessee in default.

Analysis: On a combined reading of the above provisions, it is possible to infer that, if any such person fails to "deduct" the whole or any part of the tax, or, after deducting, fails to pay the tax as required by or under the Act, then, such person shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee-in-default in respect of such tax.

The provisions, however, do not cast any duty on any person to deduct tax at source where the winnings are wholly in kind. If the winnings are wholly in kind, as a matter of fact, there cannot be any deduction of tax at source. The word "deduction" employed in this provision postulates a reduction or subtraction of an amount from a gross sum to be paid and payment of the net amount thereafter.

Where the winnings are wholly in kind the question of deduction of any sum therefrom does not arise and in that eventuality, the only responsibility, as cast under the provisions of the Act, is to ensure that tax is paid by the winner of the prize before the prize or winnings is or are released in his favour[6] .

It was so held by the Karnataka High Court in *CIT v. Hindustan Lever Ltd. (2014) 361 ITR 1.*

Conclusion: Applying the rationale of the Karnataka High Court to the facts of the present case, order under sections 201(1) and 201(1A) passed treating the dealer as an assessee-in-default is not tenable in law.

However, for this default, the dealer would be liable for penalty equal to the sum of tax deductible and prosecution by way of imprisonment and fine for failing to ensure that tax is paid by the winner of the prize before the winnings are released in his favour.

(e) **Issue Involved:** In respect of an assessment completed u/s 143(3), can a notice issued under section 148 after 4 years from the end of the relevant assessment year but without quantifying the amount of income which had escaped assessment, be treated as valid.

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[6] *CBDT Circular No.763 dated 18/2/1998*

Provision applicable: Where an assessment under section 143(3) or 147 has already been made by the Assessing Officer for the relevant assessment year, then, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless such income has escaped on account of failure on the part of the assessee to make a return or to disclose, fully and truly, all material facts necessary for his assessment for that assessment year.

As per section 149, notice under section 148 cannot be issued after the expiry of four years from the end of the relevant assessment year. However, where the escaped income is ₹ 1 lakh or more, notice can be issued upto six years from the end of the relevant assessment year.

Analysis: The reassessment under section 147 after the expiry of 4 years can be made only when there is a failure on the part of the assessee to disclose truly and fully all material facts in relation to assessment; and the amount of escaped income is or is likely to be ₹ 1 lakh or more.

In the present case, Dravid (P) Ltd. received deposit from the distributors and supplied goods in the market through the distributors. However, there were no transactions with certain distributors for the past 5 years or so, since they could not be located. At the time of assessment under section 143(3), the issue of unclaimed deposits from distributors was never discussed.

Non-discussion of such unclaimed deposits during the assessment proceedings, cannot tantamount to failure on the part of the assessee to disclose, fully and truly, all material facts necessary for assessment. Further, only if the amount of escaped income is or is likely be ₹ 1 lakh or more, can notice for reassessment be issued after the expiry of four years.

It was so held by the Allahabad High Court in *Amarnath Agarwal vs. CIT (2015) 371 ITR 17.*

Conclusion: In this case, the amount of income escaping assessment has not been quantified in the notice under section 148 issued after the expiry of four years. Also, from the facts given in the question, there appears to be no failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. Accordingly, applying the rationale of the Allahabad High Court ruling to the facts of the present case, the contention of the assessee that Assessing Officer cannot issue such notice without quantifying the amount of income which has escaped assessment, is valid in law.

Question 5

(a) Ricky, a foreign national and a cricketer came to India as a member of South African Cricket Team in the year ended 31st March 2018. He received ₹ 4 lakhs for participation in matches in India. He also received ₹ 1.5 lakhs for an advertisement of a product on Radio. He wrote an article for a local newspaper and received ₹ 20,000 for it. During his stay in India, he also won a prize of ₹ 25,000 from horse racing in Kolkata. He has no other income in India during the year. You are required to do the following:

(i) Compute his tax liability in India for A.Y. 2018-19.

(ii) *Comment whether these incomes are subject to deduction of tax at source.*

(iii) *Comment whether he is liable to file return of income in India for A.Y.2018-19.*

(iv) *What would have been his tax liability, had he been a match referee instead of cricketer?* ***(8 Marks)***

(b) *M/s. Fly Airlines incorporated as a company in UK operated its flights to India and vice versa during the financial year 2017-18 and collected charges of ₹ 95 lakhs for carriage of passengers and cargo out of which, ₹ 45 lakhs were received in London in Pounds for the passenger fare booked from London to Delhi. The total expenses for the year on operation of such flights were ₹ 165 lakhs. Compute the income chargeable to tax of the foreign airlines.* ***(4 Marks)***

(c) *The Assessing Officer has made two additions in the assessment of Rohit & Co. (sole proprietorship firm):*

(i) *Disallowance under section 43B of ₹ 10 lakhs*

(ii) *Unexplained cash credits of ₹ 80 lakhs.*

The firm filed an appeal before CIT(A) with respect to the second addition only. The CIT(A) confirmed the addition. Further, the assessee has filed an appeal to the Appellate Tribunal w.r.t. addition of unexplained cash credit against the order of CIT(A). The Appellate Tribunal has also confirmed the addition. He then preferred the revision petition before Principal CIT under section 264 for disallowance under section 43B. The petition has been rejected on the ground that the assessment was subject matter of an appeal before the Appellate Tribunal. Is the petition maintainable? ***(4 Marks)***

Answer

(a) (i) Computation of tax liability of Ricky for the A.Y.2018-19

	Particulars	₹	₹
	Income taxable under section 115BBA		
	Income from participation in matches in India	4,00,000	
	Advertisement of product on Radio	1,50,000	
	Contribution of an article in local newspaper	20,000	
		5,70,000	
	Income taxable under section 115BB		
	Income from horse races	25,000	
	Total income	5,95,000	
	Tax @ 20% under section 115BBA on ₹ 5,70,000		1,14,000
	Tax @30% under section 115BB on income of ₹ 25,000 from horse races		7,500

			1,21,500
	Add: Education cess@2% and SHEC@1%		3,645
	Total tax liability		1,25,145
	Total tax liability (rounded off) u/s 288B		**1,25,150**

(ii) Yes, the above income is subject to tax deduction at source.

Income referred to in section 115BBA (i.e., ₹ 5,70,000, in this case) is subject to tax deduction at source @ 20% under section 194E.

Income referred to in section 115BB (i.e., Winnings of ₹ 25,000 from horse racing, in this case) is subject to tax deduction at source @30% under section 194BB.

Since Ricky is a non-resident, the amount of tax to be deducted calculated at the prescribed rates mentioned above, would be increased by education cess@2% and secondary and higher education cess@1%.

(iii) Section 115BBA provides that if the total income of the non-resident sportsman comprises of only income referred to in that section and tax deductible at source has been fully deducted, it shall not be necessary for him to file his return of income.

However, in this case, Mr. Ricky has income from horse races as well.

Therefore, he cannot avail the benefit of exemption from filing of return of income as contained in section 115BBA. Hence, he would be liable to file his return of income for A.Y.2018-19

(iv) '**Match referee' would not fall within the meaning of "sportsmen**" to attract the provisions of section 115BBA[7]. Therefore, although the payments made to non-resident 'match referee' are "income" which has accrued and arisen in India, the same are not taxable under the provisions of section 115BBA. They are subject to the normal rates of tax.

Particulars		₹
Tax @ 30% under section 115BB on winnings of ₹ 25,000 from horse races		**7,500**
Tax on ₹ 5,70,000 at the rates in force	₹	
Upto ₹ 2,50,000	Nil	
₹ 2,50,000 – ₹ 5,00,000 [₹ 2,50,000@5%]	12,500	
₹ 5,00,000 – ₹ 5,70,000[₹ 70,000@20%]	14,000	
		26,500

[7] It was so held in *Indcom v. CIT (TDS)(2011) 335 ITR 485 (Cal.)*

	34,000
Add: Education cess@2% SHEC@1%	1,020
	35,020

(b) Computation of Income chargeable to tax of M/s Fly Airlines

Particulars	Fare booked from India to London, whether received in India or not (₹)	Fare booked from London to Delhi (₹)
Fare	50,00,000 (95,00,000 – 45,00,000)	45,00,000
Deemed income@5% under section 44BBA	2,50,000 [50,00,000 × 5%]	Nil (since the amount is not received in India)
Thus, ₹ 2,50,000 would be chargeable to tax in India for F.Y.2017-18 in the hands of M/s Fly Airlines under the head "Profits and gains of business or profession".		

(c) The issue under consideration is whether the rejection of revision petition filed under section 264, on the ground that the assessment was the subject matter of appeal to the Appellate Tribunal, is justified.

Section 264 provides that the Principal Commissioner has no power to revise any order which has been made the subject matter of an appeal to the Appellate Tribunal, even if the relief claimed in the petition is different from the relief claimed in appeal. It was so held by the Supreme Court in *Hindustan Aeronautics Ltd v. CIT (2000) 243 ITR 898*.

Where an order is appealed against, the entire order gets merged and not just that portion for which the assessee has claimed relief for. The concept of total merger would apply in the case of section 264.

Accordingly, in the present case, since the order passed by the Assessing Officer in respect of the addition of unexplained cash credit of ₹ 80 lakhs became the subject matter of an appeal to the Appellate Tribunal, the Principal Commissioner has no power to revise such order, even if the subject matter of revision i.e., disallowance of ₹ 10 lakhs under section 43B is different.

Hence, the revision petition before Principal Commissioner, is **not** maintainable.

Question 6

(a) MCM is a firm liable to tax at the rate of 30% and has filed its return of income. The following information are provided to you:

(i) Returned Total income - ₹1,00,00,000

(ii) Total income determined U/s 143(1)(a) - ₹1,20,00,000

(iii)	*Total income assessed U/s 143(3)*	-	*₹ 1,60,00,000*
(iv)	*Total income reassessed U/s 147*	-	*₹ 1,90,00,000*

Considering that none of the additions or disallowances made in the assessment or re-assessment as above qualifies under section 270A(6), compute the amount of penalty to be levied U/s 270A of the Income-tax Act, 1961 at the time of assessment U/s 143(3) and at the time of reassessment U/s 147 (Assume under-reporting of income is not on account of misreporting). ***(6 Marks)***

(b) Discuss the following in the context of the provisions of Income-tax Act, 1961:

Penalty to be imposed on an assessee is to be based upon the law as it stood at the time that default was committed or upon the law as it stands in the financial year in which the assessment was made. Suppose an assessee files return of income in response to a notice of reassessment, and any concealment was detected, and at that time the laws relating to imposition of penalty was different from the provisions at the time when the original return was filed, which law should be applicable in this case? ***(4 Marks)***

(c) Smt. Laxmi (age 70), a resident individual furnishes you the following particulars for the previous year 2017-18:

Particulars	***₹***
Income from business in India (computed)	*6,00,000*
Loss from let out property at Chennai	*4,40,000*
Dividend received from a domestic company	*12,00,000*
Business income in country "B" (tax paid thereon at 20%)	*4,00,000*
Rental income from property at Mumbai (computed)	*1,80,000*

Note: *Assume that there is no double taxation avoidance agreement between India and country "B".*

Compute the total income and tax payable by Smt. Laxmi for the A.Y.2018-19. ***(6 Marks)***

Answer

(a) MCM, a firm, is deemed to have under-reported its income since:

(1) its income assessed under 143(3) exceeds its income determined in a return processed under section 143(1)(a); and

(2) the income reassessed under section 147 exceeds the income assessed under section 143(3).

Therefore, penalty is leviable under section 270A for under-reporting of income.

Computation of penalty leviable under section 270A

Particulars	₹	₹
Assessment under section 143(3)		
Under-reported income:		
Total income assessed under section 143(3)	1,60,00,000	
(-) Total income determined u/s 143(1)(a)	1,20,00,000	
	40,00,000	
Tax payable on under-reported income:		
Tax on under-reported income of ₹ 40 lakhs *plus* on total income of ₹ 120 lakhs determined u/s 143(1)(a) *[30% of ₹ 160 lakh + Surcharge@12% +EC & SHEC@3%]*	55,37,280	
Less: Tax on total income determined u/s 143(1)(a) *[30% of ₹ 120 lakhs + Surcharge@12% + EC & SHEC@3%]*	41,52,960	
	13,84,320	
Penalty leviable@50% of tax payable		**6,92,160**
Reassessment under section 147		
Under-reported income:		
Total income reassessed under section 147	1,90,00,000	
(-) Total income assessed under section 143(3)	1,60,00,000	
	30,00,000	
Tax payable on under-reported income:		
Tax on under-reported income of ₹ 30 lakhs *plus* on total income of ₹ 160 lakhs assessed u/s 143(3) *[30% of ₹ 190 lakhs + Surcharge@12% + EC & SHEC@3%]*	65,75,520	
Less: Tax on total income assessed u/s 143(3) *[30% of ₹ 160 lakhs + Surcharge@12% + EC & SHEC@3%]*	55,37,280	
	10,38,240	
Penalty leviable@50% of tax payable		**5,19,120**

(b) The issue under consideration is whether the penalty for concealment of income is to be based upon the law in force at the time the original return was filed or the law in force at the time of assessment/ reassessment.

The penalty imposable on account of the commission of a wrongful act is to be in accordance with the law operating on the date on which the wrongful act was committed. Since the concealment in this case with reference to which the penalty could be imposed is the concealment of income in the return originally filed by the assessee, the law applicable on the date of such wrongful act alone could be applied

The law applicable for imposition of penalty will be the law in force at the time of filing the original return, in which the income is not disclosed/income is concealed, and not the law as it stands on the date on which return in response to the notice under section 148 for reassessment is filed.

Even in a case where a return filed in response to a notice for reassessment involved an element of concealment, the law applicable would be the law as it stood at the time when the original return was filed for the assessment year in question and not the law as it stood on the date on which the return was filed in response to the notice for reassessment.

Accordingly, penalty would be imposable on the basis of the law at the time the original return was filed.

It was so held by the Supreme Court in the case of *CIT v. Onkar Saran and Sons (1992) 195 ITR 1*, wherein the reasoning given in the earlier judgments of the Madras and Delhi High Courts were endorsed.

Note *- Earlier, section 271(1)(c) provided for penalty on account of concealment of particulars of income or furnishing inaccurate particulars of income. However, the Finance Act, 2016 has inserted section 270A with effect from A.Y. 2017-18 providing for levy of penalty in cases of under reporting and misreporting of income. Simultaneously, sub-section (7) was inserted in section 271 to provide that the penal provisions under section 271 shall not apply in relation to A.Y.2017-18 and onwards. Accordingly, in relation to an assessment year prior to A.Y. 2017-18, penalty for concealment of income is leviable under section 271(1)(c) and in relation to A.Y. 2017-18 and onwards, it is to be imposed under section 270A. In this case, the relevant provisions in the Act make it clear as to when penalty leviable thereunder would become applicable or cease to be applicable, as the case may be.*

(c) Computation of total income and tax liability of Smt. Laxmi for A.Y. 2018-19

Particulars		₹	₹
Income from house property			
Rental income from property at Mumbai (computed)	1,80,000		
Less: Loss from let out property at Chennai	(4,40,000)		
		(2,60,000)	
Profits and gains from business and profession			
Business income in India	6,00,000		
Business income in Country B	4,00,000		
		10,00,000	
Less: Loss from house property of ₹ 2,60,000 allowed to			

be set-off to the extent of ₹ 2,00,000	(2,00,000)	8,00,000
Balance loss of ₹ 60,000 from house property to be carried forward to A.Y. 2019-20		
Income from other sources		
Dividend received from domestic company	12,00,000	
Less: Exempt under section 10(34)	10,00,000	2,00,000
Gross Total Income/ Total Income		**10,00,000**
Tax on total income		
Tax on ₹ 2,00,000 @10% under section 115BBDA		20,000
Tax on balance ₹ 8,00,000 [20% x ₹ 3,00,000 + ₹10,000]		70,000
		90,000
Add: Education Cess & SHEC @3%		2,700
		92,700
Average rate of tax in India[i.e., ₹ 92,700 /₹ 10,00,000 x 100]	9.27%	
Average rate of tax in Country B	20%	
Doubly taxed income	4,00,000	
Rebate under section 91 on ₹ 4,00,000 @9.27% [lower of average Indian tax rate and rate of tax in Country B]		37,080
Tax payable in India [₹ 92,700 – ₹ 37,080]		**55,620**

Note:

(1) Since Smt. Laxmi is resident in India for the P.Y.2017-18, her global income would be subject to tax in India.

(2) She would be allowed deduction under section 91 provided all the following conditions are fulfilled:-

(a) She is a resident in India during the relevant previous year.

(b) Income accrues or arises to her outside India during that previous year.

(c) Such income is not deemed to accrue or arise in India during the previous year.

(d) The income in question has been subjected to income-tax in Country B in her hands and she has paid tax on such income in Country B.

(e) There is no agreement under section 90 for the relief or avoidance of double taxation between India and Country B, where the income has accrued or arisen.

Accordingly, Smt. Laxmi is eligible for deduction under section 91 since all the conditions thereunder are fulfilled.

Question 7

(a) Mathi Charitable Trust registered under section 12AA, following cash system of accounting, furnishes you the following information:

(i) Gross receipts from hospital by name "Full Cure" ₹ 400 lakhs.

(ii) Gross receipts from college by name "India Arts College ₹ 180 lakhs (offering recognized degree courses).

(iii) Corpus donations by way of cheque ₹ 30 lakhs and by way of cash ₹ 5 lakhs.

(iv) Anonymous donations by cash ₹ 10 lakhs.

(v) Administrative expenses for hospital ₹ 220 lakhs and for college ₹ 100 lakhs.

(vi) Fees not realized from patients ₹ 20,60,000 and from students of the college ₹ 6,50,000 as on 31st March, 2018.

(vii) Depreciation on assets of the trust ₹ 18,00,000. The entire cost of assets ₹ 300 lakhs claimed as application in the earlier years.

(viii) Acquired a building for ₹ 120 lakhs on 01.06.2017 for expansion of hospital (cost of land included therein ₹ 100 lakhs). Stamp duty value of the land and building on the date of registration of sale deed ₹ 140 lakhs.

(ix) The trust gave donation of ₹ 25 lakhs to Gandhiji Free Trust having objects of charitable nature registered under section 12AA but not similar to the objects of the donor trust.

You are required to compute the total income of the trust and its income-tax liability in such a manner that it can avail the optimal benefit within the four corners of the Income-Tax Act, 1961.

Note:** The trust does not want to seek accumulation of income by virtue of section 11(2) of the Act.* ***(10 Marks)

(b) Decide the following cases:

(i) Amin Co. (P) Ltd. is a dealer of motor cars manufactured by Zeet Ltd. Amin Co. (P) Ltd. paid through banking channel ₹ 110 lakhs to Zeet Ltd. for purchase of cars in January 2018. Of the total motor cars so purchased, 4 motor cars cost ₹ 11 lakhs each and 7 motor cars are for the balance amount. Decide whether any TDS / TCS provisions will apply. Will your answer be different if Amin Co. (P) Ltd. is not a dealer of motor cars and had acquired the same for the purpose of plying cars on hire?

(ii) Mr. Ramesh is employed in Raghu Ltd. as senior executive. He availed leave travel assistance (LTA) of ₹ 60,000 in January 2018. He did not produce any evidence for the expenditure incurred. His salary income (computed) before allowing exemption for LTA is ₹ 12,50,000. Mr. Ramesh claimed interest on moneys borrowed for acquisition of his residential house of ₹ 96,000 but did not produce the name, address and PAN

of the lender. As employer, how will you treat the claim of exemption of LTA and deduction of housing loan interest claimed by Mr. Ramesh? ***(3 x 2 = 6 Marks)***

Answer

(a) Computation of total income of Mathi Charitable Trust for the A.Y.2018-19

Particulars	₹	₹
Gross receipts from Full Cure Hospital		4,00,00,000
Gross receipts from India Arts College		1,80,00,000
		5,80,00,000
Add: Anonymous donations [to the extent not chargeable to tax@30% under section 115BBC(1)(i)] **[See Note 1]**		2,25,000
		5,82,25,000
Less: 15% of income eligible for being set apart without any condition[8]		87,33,750
		4,94,91,250
Less: Amount applied for charitable purposes **[See Note 2]**		
- **On revenue account** – Administrative expenses:		
For Hospital	2,20,00,000	
For College	1,00,00,000	
- **On capital account** – Land & Building [Section 56(2)(x) is not attracted in respect of value of property received by a trust or institution registered u/s 12AA]	1,20,00,000	
- Donation to Gandhiji Free Trust registered u/s 12AA – allowable since the same is out of current year income of the trust, even though the objects of the trust are different. Only corpus donations are not permissible to other trusts registered u/s 12AA	25,00,000	4,65,00,000
Total income [other than anonymous donation taxable@30% under section 115BBC(1)(i)]		**29,91,250**
Add: Anonymous donation taxable @30% u/s 115BBC(1)(i) **[See Note 1]**		7,75,000
Total Income of the trust (including anonymous donation taxable@30%)		**37,66,250**

[8] 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).

Computation of tax liability of the trust for the A.Y. 2018-19

Particulars	₹	₹
Tax on total income of ₹ 29,91,250 [Excluding anonymous donations]		
Upto ₹ 2,50,000	Nil	
₹ 2,50,000 – ₹ 5,00,000 [₹2,50,000 x 5%]	12,500	
₹ 5,00,000 – ₹ 10,00,000 [₹5,00,000 x 20%]	1,00,000	
> ₹ 10,00,000 [₹19,91,250 x 30%]	5,97,375	
	7,09,875	
Tax on anonymous donations taxable@30% [₹ 7,75,000 x 30%]	2,32,500	9,42,375
Add: Education cess & SHEC@3%		28,271
Total tax liability		**9,70,646**
Total tax liability (rounded off)		**9,70,650**

Note – In the above solution, the provisions of section 13(7) have been interpreted in a manner that it excludes only anonymous donations subject to tax@30% under section 115BBC(1)(i). All taxable income of the trust [excluding anonymous donations taxable@30% u/s 115BBC(1)(i)] falls under section 115BBC(1)(ii), and are subject to tax at normal rates and eligible for benefit of unconditional accumulation u/s 11(1). Anonymous donation of ₹ 2,25,000 taxable at normal rates also falls under section 115BBC(1)(ii) and hence, like other taxable income of the trust falling within the scope of this clause, the same would also be eligible for the benefit of unconditional accumulation under section 11(1). The above solution has been worked out on the basis of this interpretation of section 13(7), which in fact, appears to be the real intent of this section. Accordingly, in the above solution, the benefit of unconditional accumulation upto 15% under section 11(1) has been given in respect of anonymous donation of ₹ 2,25,000 subject to tax at normal rates.

However, an alternative view is also possible on the basis of the plain reading of section 13(7), as per which anonymous donation referred to in section 115BBC has to be excluded from the purview of exemption under sections 11 and 12. As per this view, even the anonymous donations of ₹ 2,25,000 subject to tax at normal rates would not be eligible for unconditional accumulation of upto 15%.

The alternative answer based on this view is worked out hereunder:

Computation of total income of Mathi Charitable Trust for the A.Y.2018-19

Particulars	₹ In lakhs	₹ In lakhs
Gross receipts from Full Cure Hospital		400
Gross receipts from India Arts College		180
		580

Less: 15% of income eligible for being set apart without any condition[9]		87.00
		493.00
Less: Amount applied for charitable purposes **[See Note 2]**		
- **On revenue account** – Administrative expenses: For Hospital	220	
For College	100	
- **On capital account** – Land & Building	120	
[Section 56(2)(x) is not attracted in respect of value of property received by a trust or institution registered u/s 12AA]		
- Donation to Gandhiji Free Trust registered u/s 12AA – allowable since the same is out of current year income of the trust, even though the objects of the trust are different. Only corpus donations are not permissible to other trusts registered u/s 12AA	25	
		465.00
Total income [other than anonymous donation taxable@30% under section 115BBC(1)(i)]		28.00
Add: Anonymous donations chargeable at normal rates [higher of ₹ 2.25 lakhs, being 5% of total donations of Rs.45 lakhs, and ₹ 1 lakh]		2.25
Income chargeable at normal rates		30.25
Add: Anonymous donation taxable @30% u/s 115BBC(1)(i) **[See Note 1]**		7.75
Total Income of the trust (including anonymous donation taxable@30%)		**38.00**

Computation of tax liability of the trust for the A.Y. 2018-19

Particulars	₹	₹
Tax on total income of ₹ 30,25,000 [Excluding anonymous donations]		
Upto ₹ 2,50,000	Nil	
₹ 2,50,000 – ₹ 5,00,000 [₹ 2,50,000 x 5%]	12,500	

[9] 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). However, as per plain reading of section 11(1)(a), 15% of income would be eligible for accumulation.

₹ 5,00,000 – ₹ 10,00,000 [₹ 5,00,000 x 20%]	1,00,000	
> ₹ 10,00,000 [₹ 20,25,000 x 30%]	6,07,500	
	7,20,000	
Tax on anonymous donations taxable@30% [₹ 7,75,000 x 30%]	2,32,500	
		9,52,500
Add: Education cess & SHEC@3%		28,575
Total tax liability		9,81,075
Total tax liability (rounded off)		**9,81,080**

Notes [Common for both views]:

(1) **Anonymous donations taxable @30%**

	₹	₹
Donations received (lakhs)		10.00
• 5% of donations received, i.e. 5% of 45 lakhs	2.25	
• Monetary limit	1.00	
Higher of the above		2.25
Anonymous donations taxable@30%		7.75

(2) Where the cost of assets is claimed as application, no deduction for depreciation on such assets would be allowed in determining income for the purposes of application. Therefore, since cost of assets of the trust has been claimed as application of income, no depreciation would be allowed on these assets while determining income for the purposes of application.

(3) Corpus donations, whether received by way of cheque or cash, are not includible in the total income of the trust, as it is registered u/s 12AA.

(4) Since the trust follows cash system of accounting, fees not realized from patients and students would not form part of gross receipts. Therefore, there is no need of applying the provisions of *Explanation 1* to section 11(1) to exclude such income.

(5) The benefit of section 10(23C)(iiiad) is not available in respect of income received by the college, as its gross receipts exceed ₹ 100 lakhs. Further, it has been assumed that benefit of exemption under section 10(23C)(vi) is also not available in respect of income received by the college.

(6) Since corpus donations and anonymous donations are indicated separately and the question does not mention that the same are included in gross receipts, the solution has been worked out on the assumption that corpus donations and anonymous donations are not included in the figure of gross receipts of ₹ 400 lakhs.

(b) (i) Section 206C(1F) requires every person, being a seller, who receives any amount as consideration for sale of a motor vehicle of the value exceeding ₹ 10 lakhs, to collect tax from the buyer@1% of the sale consideration.

However, this provision applies only in respect of transactions of retail sales and does not apply on sale of motor vehicles by manufacturers to dealers.

Therefore, Zeet Ltd. is not required to collect tax at source from Amin Co. (P) Ltd on receipt of consideration for sale of motor cars.

However, if Amin Co. (P) Ltd. is **not** a dealer of motor cars but has acquired the same for the purpose of plying cars on hire, Zeet Ltd. is required to collect tax of ₹ 44,000 [₹ 11,00,000 x 4 x 1%] at source at the time of receipt of sale consideration.

Note *- Payment of ₹ 66,00,000 [₹ 1,10,00,000 (-) ₹ 44,00,000] has been made for the remaining 7 motor cars. It is assumed that equal sum of ₹ 9,42,857 [₹ 66,00,000 ÷ 7] has been paid in respect of each car. Accordingly, since the consideration for each car does not exceed ₹ 10 lakhs, no tax has to be collected at source at the time of receipt of consideration on sale of these cars.*

(ii) As per Rule 26C of the Income-tax Rules, 1962, Mr. Ramesh, a salaried assessee, is required to furnish to his employer, Raghu Ltd.,

- the evidence of expenditure for claiming exemption in respect of LTA, and
- the name, address and permanent account number of the lender for claiming deduction of interest under the head "Income from house property".

If he fails to do so, Raghu Ltd**.** need not consider exemption in respect of LTA and loss from house property on account of provision of interest deduction, while computing tax to be deducted at source from salary income.

Accordingly, tax has to be deducted at source under section 192 on ₹ 12,50,000, being salary income (computed) without considering LTA exemption and loss from house property.