Test Series: October, 2022

MOCK TEST PAPER 2

FINAL COURSE: GROUP – II

PAPER – 7: DIRECT TAX LAWS & INTERNATIONAL TAXATION

SOLUTIONS

Division A – Multiple Choice Questions

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

Division B – Descriptive Questions

1. (a) Computation of Business Income of S Ltd. for the A.Y.2022-23

Particulars	Amount (₹)	
Profits and gains of business and profession		
Net profit as per the statement of profit and loss		5,60,00,000
Add: **Items debited but to be considered separately or to be disallowed**		
(a) **Depreciation as per Companies Act**	52,00,000	
(c) **Contribution to National Laboratory**	-	
[Contribution to National laboratory for scientific research qualifies for 100% deduction u/s 35(2AA). Since 100% has been debited to the statement of profit and loss, no adjustment required to be made while computing business income]		
(e) **Payment to transporter**	-	
[No tax is required to be deducted at source u/s 194C on payment to a transporter declaring income under section 44AE, who has furnished a declaration to that effect along with PAN. Therefore, disallowance@30% of payment for non-deduction at source u/s 40(a)(ia) would **not** be attracted in respect of payment of ₹ 3.50 lakhs to M/s. BP Transport]		
(f) **Interest on loan for purchase of plant and machinery**	5,00,000	
[Interest on loan taken for purchase of plant and machinery for use in business is allowable as deduction u/s 36(1)(iii) for the period after the date the asset is first put to use. Hence, such interest for the period upto the date the asset is first put to use is not allowable as deduction.		

	Accordingly, out of ₹ 15 lakhs paid towards such interest, only ₹ 10 lakhs is allowable as deduction. ₹ 5 lakhs, being interest paid upto the the date till such machinery was commissioned has to be added back while computing business income]		
(g)	**Bad debts written off** [No adjustment is required in respect of debt of ₹ 20 lakhs written off owing to insolvency of the debtor, since bad debts written off in the books of account is fully allowable as deduction u/s 36(1)(vii). Since the said amount has already been debited to the statement of profit and loss, no further adjustment is required]	-	
(i)	**Payment for online advertisement services** [Since the payment for online advertisement services is made to a non-resident not having PE in India, equalization levy@6% has to be deducted. Since the same has not been deducted, disallowance@100% of the payment would be attracted u/s 40(a)(ib)]	5,00,000	
(j)	**Expenses on foreign travel of two directors for a collaboration agreement which failed to materialize** [Where expenditure is incurred for a project not related to the existing business and the project was abandoned without creating a new asset, the expenses are capital in nature.[1] Since the amount has been debited to the statement of profit and loss, the same has to be added back]	2,00,000	
AI(iv)	**Purchase of cotton at a price higher than the FMV** [Since the purchase is from a related party, a firm in which majority of the directors of the company are partners, at a price higher than the fair market value, the difference between the purchase price (₹ 5,000 per bale) and the fair market value (₹ 4,600 per bale) multiplied by the quantity purchased (1000 bales) has to be added back]	4,00,000	68,00,000
			6,28,00,000
	Less: **Items credited to statement of profit and loss, but not includible in business income/ permissible expenditure and allowances**		
(b)	**Industrial power tariff concession received from State Government** [Any assistance in the form of, *inter alia*, concession received from the Central or State Government would be treated as income. Since the same has been credited to statement of profit and loss, no adjustment is required]	-	
(d)	**Profit on sale of plot of land**	8,00,000	

[1] *Mc Gaw-Ravindra Laboratories (India) Ltd. v. CIT (1994) 210 ITR 1002 (Guj).*

	[Short-term capital gains arise on sale of plot of land held for less than 24 months. However, in this case, since the transfer is to a 100% subsidiary company, which is an Indian company, the same would not constitute a transfer for levy of capital gains tax as per section 47(iv). Since the same has been credited to the statement of profit and loss, the same has to be reduced while computing business income]		
(h)	**Additional compensation received from State Government in respect of land** [Since the additional compensation has been received pursuant to an interim order of the Court, the same would be deemed as income chargeable to tax under the head **"Capital Gains"** in the year of final order as per section 45(5). Since the compensation has been credited to the statement of profit and loss, the same has to be deducted while computing business income"]	5,00,000	
AI(i)	**Depreciation as per Income-tax Rules, 1962** [₹ 71,00,000, being normal depreciation on book assets + ₹ 75,000, being 15% of ₹ 5,00,000, being the interest on loan taken for acquiring plant and machinery upto the date of commissioning]	71,75,000	
AI(ii)	**Discount on issue of debentures** [Allowable as deduction over the tenure of debentures i.e., 5 years Hence, 1/5th allowable as deduction in P.Y.2021-22 (1/5th of ₹ 45 lakhs, being 3% of ₹ 1500 lakhs)]	9,00,000	
AI(iii)	**Purchases omitted to be recorded in the books of account** Since the purchase is made in March, 2022 (i.e., P.Y. 2021-22), in respect of which bill of ₹ 3 lakhs received in March, 2022, which has been omitted to be recorded in the books in this year, it has to be deducted to compute the business income[2] It is logical to assume that the company is following mercantile system of accounting	3,00,000	96,75,000
Profits and gains from business and profession			**5,31,25,000**

2. (a) Computation of book profit for levy of MAT under section 115JB for A.Y. 2022-23

Particulars	₹	₹
Net Profit as per Statement of Profit and Loss		95,00,000
Add: Net Profit to be increased by the followings amounts as per *Explanation 1* below section 115JB(2)		
- Depreciation	10,00,000	

[2] *Kedarnath Jute Manufacturing Company Ltd. v. CIT (1971) 82 ITR 363 (SC)*

- Provision for doubtful debts i.e. provision for diminution in value of asset i.e. debtors	2,00,000	
- Reserve for currency fluctuation reserve	1,25,000	
		13,25,000
		1,08,25,000
Less: Net Profit to be decreased by the followings amounts as per *Explanation 1* below section 115JB(2)		
- Net agricultural income	5,00,000	
Net agricultural income is to be reduced, since it is exempt under section 10(1)]		
- Depreciation other than deprecation on revaluation of assets is to be reduced while computing book profit [10,00,000 – 1,90,000]	8,10,000	13,10,000
Book profit under section 115JB		**95,15,000**

Computation of Minimum Alternate Tax under section 115JB

Particulars	₹
15% of book profit (₹ 95,15,000 x 15%)	14,27,250
Add: Health & Education cess@4%	57,090
Minimum Alternate Tax under section 115JB	**14,84,340**

Notes:

(1) Only the specified items mentioned under *Explanation 1* below section 115JB(2) can be added back or deducted to the net profit as per the Statement of Profit and Loss prepared as per the Companies Act for computing book profit for levy of MAT. Since the following items are not specified in the said *Explanation 1*, the same cannot be added back or deducted for computing book profit:

- Penalty for infraction of law
- Unpaid interest to financial institutions
- Profits from a new industrial undertaking eligible for deduction under section 80-IA

(2) For computing the book profit, since provisions for GST is an ascertain liability, it is not added back.

(3) No adjustment is required in respect of interest on borrowed capital of ₹ 1,00,000 payable to Y, not debited to statement of profit and loss, since the net profit as per the Statement of Profit and Loss prepared as per the Companies Act and the items specified for exclusion/inclusion under section 115JB alone have to be considered while computing the book profit for levy of MAT.

(4) Depreciation as per Income-tax Act, 1961 is not relevant for computing book profit for levy of MAT.

(b) (i) International transaction is a transaction between associated enterprises, either or both of whom are non-residents, in the nature of, *inter alia*, purchase, sale of tangible or intangible property. Transfer pricing provisions under the Income-tax Act, 1961 would get attracted in respect of an international transaction. In this case, one of the enterprises, i.e., ABC Inc., a

London based company, is a non-resident. The transaction in question is the transfer of engravings, i.e., transfer is of an intangible property.

However, two enterprises would be deemed as associated enterprises if one enterprise holds, directly or indirectly, shares carrying not less than 26% voting power in the other enterprise.

In this case, ABC Inc. indirectly holds only 24% voting power / (32% of 75%) in Beta Ltd., an Indian company. Hence, ABC Inc. and Beta Ltd. are not associated enterprises.

Since the transaction of transfer of engravings is not between associated enterprises, it would not fall within the meaning of international transaction. Hence, transfer pricing provisions would not be attracted in this case.

(ii) Tikku Infra is eligible for deduction@100% of the profits derived from its eligible business (i.e., the business of developing an infrastructure facility, namely, a highway project in this case) under section 80-IA. However, Tikku Trading is not engaged in any "eligible business". Since Tikku Trading has transferred construction materials to Tikku Infra at a price lower than the fair market value, it is an inter-unit transfer of goods between eligible business and other business, where the consideration for transfer does not correspond with the market value of goods.

This transaction would fall within the meaning of "specified domestic transaction" to attract transfer pricing provisions, only if the aggregate value of such transactions during the year exceeds a sum of ₹ 20 crore.

In this case, however, the aggregate value of transactions between Tikku Infra and Tikku Trading does not exceed ₹ 20 crore. Hence, the transaction is not a specified domestic transaction to attract transfer pricing provisions under the Income-tax Act, 1961. Accordingly, transfer pricing provisions would not be attracted in respect of this transaction.

Note - In the absence of information in the question, it is assumed that there are no other such transactions during the year falling within the scope of section 92BA.

(iii) Where a company eligible for benefit under section 115BAB enters into a transaction with any other person with whom it has close connection, and the transactions between them are arranged in a manner resulting in more than ordinary profits arising to the company eligible for benefit u/s 115BAB, then, such transactions would fall within the scope of "specified domestic transaction" under section 92BA, if the aggregate value of such transactions (listed out in section 92BA) entered into by the company in the previous year exceeds ₹ 20 crore.

In this case, A Ltd. is a company eligible for deduction under section 115BAB which has entered into a transaction with B Ltd., a company in which Mr. X (a person who has controlling interest in A Ltd.) has controlling interest. Further, the said transaction for supply of cables by B Ltd. to A Ltd. result in more than ordinary profits to A Ltd. (on account of the supply being made by B Ltd. to A Ltd. at a lower rate than the arm's length rate).

Also, the aggregate value of such transactions entered into by the two companies exceed ₹ 20 crore. Consequently, the said transactions between A Ltd. and B Ltd. are "specified domestic transactions" under section 92BA and transfer pricing provisions under the Income-tax Act,1961 would be attracted.

3. (a) (i) The contention of the institution is **not** correct. Since the institution has receipts from a university specified under section 10(23C)(iiiad) and a hospital specified under section 10(23C)(iiiae), and the combined receipts of ₹ 6.1 crore exceed the threshold receipt of ₹ 5 crore, the institution would **not** be eligible for exemption under sections 10(23C)(iiiad) and 10(23C)(iiiae). The institution has to make an application to the Principal Commissioner or Commissioner within the prescribed time limit for grant of approval for claiming exemption under section 10(23C)(vi) and (via).

(ii) The proposed action of the trust is **not** correct. As per *Explanation 5* to section 11(1), with effect from A.Y.2022-23, no set off or deduction or allowance of any excess application of any of the year preceding the previous year shall be made in computation of income required to be applied or accumulated during the previous year. Accordingly, excess application of ₹27 lakhs in the P.Y.2020-21 cannot be set-off while computing income required to be applied or accumulated during the P.Y.2021-22.

(iii) The proposed claim of the trust is **not** correct. As per clause (ii) of *Explanation 4* to section 11(1), application for charitable purposes from a loan or borrowing shall not be treated as application of income for charitable purposes. However, the amount not so treated as application, or part thereof, would be treated as application for charitable purposes in the previous year in which the loan is repaid from the income of that year and to the extent of such repayment.

Accordingly, the trust cannot claim ₹ 38 lakhs as application of income of A.Y.2022-23, since the amount is spent out of loan taken from Canara Bank. However, it can treat the amount of ₹ 2.8 lakhs repaid during the P.Y.2021-22 as application of income in that year.

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

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

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

Computation of tax payable of Ms. Radha for A.Y.2022-23

Particulars	₹
Business Income	
- Foreign country	21,00,000
- In India	8,75,000
Gross Total Income	**29,75,000**
***Less*: Deduction under Chapter VI-A**	
Section 80D – Medical insurance premium of ₹ 35,000 allowable to the extent of ₹ 25,000 [Since her mother aged 63 years is a non-resident]	25,000
Total Income	**29,50,000**
Tax on total income [30% of ₹ 19,50,000 + ₹ 1,12,500]	6,97,500
Add: Health and education cess@4%	27,900
Tax Liability	**7,25,400**
Tax rate [₹ 7,25,400 / ₹ 29,50,000 x 100]	24.59%
Tax payable = 24.59% x ₹ 8,50,000 [₹ 8,75,000 – ₹ 25,000]	**2,09,015**
Tax payable (rounded off)	2,09,020

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

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

(a) She is a resident in India during the relevant previous year i.e., P.Y.2021-22.

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

(c) Such business income has been subjected to tax in the foreign country@18%[3]

Computation of tax payable of Ms. Radha for A.Y.2022-23

Particulars		**₹**
Tax Liability (computed above would remain same)		7,25,400
Less: Rebate under section 91 (See Working Note below)		3,78,000
Tax Payable		**3,47,400**
Working Note:		
Calculation of Rebate under section 91		
Average rate of tax in India [₹ 7,25,400/₹ 29,50,000 x 100]	**24.59%**	
Average rate of tax in Foreign Country	18%	
Doubly taxed income (Business income in foreign country)	₹ 21,00,000	
Rebate u/s 91 on ₹ 21,00,000 @18% [being the lower of average Indian tax rate (24.59%) and foreign tax rate (18%)]		3,78,000

4. **(a)** (i) Section 206C(1G) provides for collection of tax@ 5% by every person, being a seller of an overseas tour programme package, who receives any amount from the buyer who purchases the package. The threshold limit of ₹ 7 lakh is not applicable in case of collection of tax at source by a seller of an overseas tour programme package from a buyer who purchases such package. Hence, tax has to be collected@5% of the amount received by the seller of an overseas tour programme package from a buyer even if the amount is less than ₹ 7 lakh.

However, as per Notification No. 20/2022 dated 30.3.2022, TCS u/s 206C(1G) would not be applicable, if the buyer is an individual who is not a resident in India in terms of section 6(1) and (1A); and who is visiting India.

Mr. Aryan, an Indian citizen living in Australia, came on a visit to India during the P.Y. 2021-22. He does not have any source of income in India. During that previous year, he stayed in India for only 21 days (4 days in February + 17 days in March). Since his stay in India during the P.Y.2021-22 is less than 182 days, he is non-resident in India for the said previous year.

Accordingly, in this case, since Mr. Aryan is a non-resident who is visiting India, M/s. Satya Travels, the tour package operator, is not required to collect tax at source under section 206C(1G) on the amount of ₹ 5.2 lakh received from him for purchase of tour programme package to Malaysia.

(ii) For the provisions of section 194Q to be attracted, a buyer is required to have a total sales or gross receipts or turnover from the business carried on by it exceeding ₹ 10 crore during the financial year immediately preceding the financial year in which the purchase of goods is carried out. The CBDT has, vide Circular No. 13/2021, dated 30.6.2021, clarified that since this condition would not be satisfied in the year of incorporation, the provisions of section 194Q shall not apply in the year of incorporation. Since Shristi Ltd. is incorporated in the P.Y.

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

2021-22, it would not qualify as a "buyer" for the purpose of section 194Q for the said previous year, inspite of its turnover exceeding ₹ 10 crores in the said previous year.

However, since Filip & Co.'s turnover for the F.Y. 2020-21 exceeds ₹ 10 crores and its receipts from Shristi Ltd. exceed ₹ 50 lakhs, TCS provisions under section 206C(1H) would be attracted in its hands. TCS would be attracted at the time of receipt of consideration (i.e., in respect of receipts in excess of sale consideration of ₹ 50 lakhs).

No tax is to be collected u/s 206C(1H) on 1.9.2021, since the aggregate receipts till that date i.e., ₹ 32 lakhs, has not exceeded the threshold of ₹ 50 lakhs.

Tax of ₹ 1300 (i.e., 0.1% of ₹ 13 lakhs) has to be collected u/s 206C(1H) by M/s Filip & Co. on 18.10.2021 (₹ 31 lakh – ₹ 18 lakhs, being the balance unexhausted threshold limit).

Tax of ₹ 1,800 (i.e., 0.1% of ₹ 18 lakhs) has to be collected u/s 206C(1H) by M/s. Filip & Co. on 18.12.2021.

(iii) In a case where sale of goods of an e-commerce participant (Mr. Adheer) is facilitated by an e-commerce operator (WINKLE) through its e-commerce website, section 194-O requires the e-commerce operator to deduct tax at source@1% on ₹ 52 lakhs, being the gross amount of sales facilitated through the e-commerce website.

As per section 206AA, in case where the deductee has not furnished his PAN, tax is required to deducted at source at higher of 1% or 5%. Accordingly, tax has to be deducted at source @5% of ₹ 52 lakhs = ₹ 2.6 lakhs.

(b) (i) <u>Where Turnip Inc. and Sam Inc. have no permanent establishment in India</u>

Equalisation levy would not be attracted in the present case since Turnip Inc., a non-resident service recipient does not have a permanent establishment in India. Therefore, the Turnip Inc. is not required to deduct equalisation levy @ 6% on ₹ 5 lakhs, being the amount paid towards online advertisement services to Sam Inc.

However, equalisation levy @2% under section 165A is attracted on ₹ 5 lakhs, being the amount of consideration received by Sam Inc, an e-commerce operator from e-commerce services provided by it to Turnip Inc., a non-resident in the specified circumstance, namely, sale of advertisement, which targets a customer, who is resident in India, since the gross receipt of Sam Inc. in the P.Y. 2021-22 exceeds ₹ 2 crores.

(ii) <u>Where Turnip Inc. has a permanent establishment in India but Sam Inc. does not have a permanent establishment in India</u>

In the present case, equalisation levy @6% is chargeable on the amount of ₹ 5,00,000 received by Sam Inc., a non-resident not having a PE in India from Turnip Inc., a non-resident having a PE in India. Accordingly, Turnip Inc. is required to deduct equalisation levy of ₹ 30,000 i.e., @6% of ₹ 5 lakhs, being the amount paid towards online advertisement services provided by Sam Inc., a non-resident having no permanent establishment in India. Non-deduction of equalisation levy would attract disallowance under section 40(a)(ib) of 100% of the amount paid while computing business income.

Since, equalisation levy is attracted on the amount of ₹ 5 lakhs, the said amount is exempt from income-tax by virtue of section 10(50) of the Income-tax Act, 1961.

(iii) <u>Where Sam Inc. has a permanent establishment in India and the advertisement services are effectively connected with such PE</u>

Equalisation levy would not be attracted where the non-resident service provider (Sam Inc., in this case) has a permanent establishment in India and the service is effectively connected to the permanent establishment in India. Therefore, Turnip Inc. is not required to deduct equalisation levy on ₹ 5 lakhs, being the amount paid towards online advertisement services to Sam Inc, in this case.

Since equalisation levy is **not** attracted in this case, exemption under section 10(50) of the Income-tax Act, 1961 would not be available.

It is immaterial whether Turnip Inc. has a PE in India or not for the purpose of equalisation levy implication of advertisement transaction, as in both the cases, equalisation levy would not be attracted.

However, since Sam Inc. has a PE in India and advertisement services are effectively connected with the PE in India, income attributable from such advertisement would be deemed to accrue or arise in India in the hands of Sam Inc. under section 9(1)(i) and be taxable in the hands of Sam Inc. under the Income-tax Act, 1961.

5. (a) Dispute Resolution Committee (DRC) would resolve dispute in the case of a person who opts for dispute resolution under Chapter XIX-AA in respect of dispute arising from any variation in the specified order in his case and who fulfils the specified conditions. Specified order includes an assessment order passed under section 143(3), where the aggregate sum of variations made *vide* such order does not exceed ₹ 10 lakh; the total income as per such return furnished by the assessee for the assessment year relevant to such order does not exceed ₹ 50 lakhs and such order is not based on search or requisition or survey or any information under a DTAA.

In the present case, Mr. Sanjay cannot file an application before DRC, since the assessment order received on 12.12.2022 is not a specified order since total income as per return furnished by Mr. Sanjay of ₹ 5,00,000 exceeds the threshold limit of ₹ 50,00,000 though he satisfies the specified conditions on account of no order of detention being made and no prosecution proceedings being initiated or launched against him.

However, Mr. Sanjay, can file an appeal before the Commissioner of Income-tax (Appeals) under section 246A(1) against such order passed under section 143(3) within 30 days of the date of service of the notice of demand relating to the assessment. Moreover, in case he does not want to prefer an appeal, then he can move a revision petition before the Principal Commissioner or Commissioner of Income-tax under section 264 within a period of one year from the date of on which the order was communicated to him or the date on which he otherwise came to know of it, whichever is earlier.

(b) Section 119(2)(b) empowers the CBDT to authorise any income tax authority to admit an application or claim for any exemption, deduction, refund or **any other relief under the Act** after the expiry of the period specified under the Act, to avoid genuine hardship in any case or class of cases. The claim for carry forward of loss in case of late filing of a return is relatable to a claim arising under the category of "any other relief available under the Act". Therefore, the CBDT has the power to condone delay in filing of such loss return due to genuine reasons.

The facts of the case are similar to the case of *Lodhi Property Company Ltd. v. Under Secretary, (ITA-II), Department of Revenue (2010) 323 ITR 0441*, where the Delhi High Court held that the Board has the power to condone the delay in case of a return which was filed late and where a claim for carry forward of losses was made. The delay was only one day and the assessee had shown justifiable reason for the delay of one day in filing the return of income. If the delay is not condoned, it would cause genuine hardship to the assessee. Therefore, the Court held that the delay of one day in filing of the return had to be condoned.

The CBDT Circular No. 9/2015 dated 09.06.2015 expressly clarifies that the following authorities to be approached for this purpose:

Quantum of loss	Authority to be approached
Where the loss is upto ₹10 lakhs	The Principal CIT or CIT
Where the loss is above ₹ 10 lakhs but upto ₹50 lakhs	The Principal CCIT or CCIT
Where the loss is above ₹ 50 lakhs	The CBDT

Applying the rationale of the above court ruling and the clarification given in CBDT Circular to the case on hand, the CBDT has the power to condone the delay in filing the return of income of Mr. Rajesh and permit carry forward of business loss of ₹ 51 lakhs, since the delay of one hour was due to a genuine and justifiable reason i.e., network problem while e-filing the return.

Based on the circular mentioned above, if the claim for carry forward of business loss is 48 lakhs, then, the Principal Chief Commissioner of Income-tax/Chief Commissioner of Income-tax has the power to condone the delay.

(c) (i) 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.

(ii) "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 than one States in hands of different persons.

(iii) 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.

6. **(a)** As per section 269SU, Rupal Ltd. is required to provide facility for accepting payment through the prescribed electronic modes, in addition to the facility for other electronic modes of payment of debit card or credit card provided by Rupal Ltd., since its total turnover in business during the immediately preceding previous year. i.e., P.Y. 2020-21 is ₹ 51 crores, which exceeds the prescribed threshold of ₹ 50 crores.

Prescribed electronic modes are

(1) Debit Card powered by RuPay;

(2) Unified Payments Interface (UPI) (BHIM-UPI); and

(3) Unified Payments Interface Quick Response Code (UPI QR Code) (BHIM-UPI QR Code).

The failure to provide facility for electronic modes of payment prescribed under section 269SU by Rupal Ltd. would attract a penalty under section 271DB of a sum of ₹ 5,000, for every day during which such failure continues.

However, penalty shall not be imposed, if Rupal Ltd. proves that there were good and sufficient reasons for such failure. Further, any such penalty shall be imposed by the Joint Commissioner.

(b) (i) In the present case, Dweep Ltd., an Indian company has 2 manufacturing units, unit M in the SEZ and unit N in non-SEZ. Though unit M only does the packaging of goods manufactured by Unit N, the company, in its books of account, shows the manufacture of goods by Unit N as manufacture of goods by unit M to enjoy exemption under section 10AA. This is a case of misrepresentation of facts by showing manufacture of non-SEZ unit as manufacture of SEZ unit. Hence, this is an arrangement of tax evasion and not tax avoidance.

Tax evasion, being unlawful, can be dealt with directly by establishing correct facts. GAAR provisions need not be invoked in such a case.

(ii) In this case, goods manufactured by unit Q, a non-SEZ unit, being a non-eligible business, are transferred to unit P, a SEZ unit, being an eligible business, at a price significantly lower than the market value of the goods to claim higher deduction under section 10AA in respect of unit P.

As there is no misrepresentation of facts or false submissions, it is not a case of tax evasion. The company has tried to take advantage of tax provisions by diverting profits from non-SEZ unit to SEZ unit. However, this is not the intention of the legislation.

Such tax avoidance is specifically dealt with through the provisions contained in section 10AA(9), as per which provisions of section 80-IA(8) would get attracted in such a case. Further, if the aggregate of such transactions entered into in the relevant previous year exceed the threshold of ₹ 20 crore, domestic transfer pricing regulations under section 92BA would be attracted. Hence, the Revenue need not invoke GAAR in such a case, though GAAR and SAAR can co-exist as per clarification given in the CBDT Circular.

(c) (i) **<u>Where XYZ Ltd., a Country P company, does not have a PE in India</u>**

In this case, XYZ Ltd. would be eligible for a concessional rate of tax @10% (plus surcharge@2% and HEC@4%) under section 115A on the fees for technical services of ₹ 567 lakhs (i.e., ₹ 265 lakhs plus ₹ 302 lakhs) received from the Indian companies, Y Ltd. and G Ltd., since the same are in pursuance of agreements[4] approved by the Central Government. No deduction, however, would be allowed in respect of expenditure of ₹ 59 lakhs (i.e., ₹ 35 lakhs and ₹ 24 lakhs) incurred to earn such income.

If tax deductible at source@10.608% has been fully deducted, XYZ Ltd. need not file its return of income in India under section 139 for A.Y.2022-23.

(ii) **Where XYZ Ltd., a Country P company, has a PE in India and the contracts/agreements are effectively connected with the PE in India.**

In this case, XYZ Ltd. has a PE in India, and the agreements with Y Ltd. and G Ltd. are effectively connected with such PE and such agreements have been entered into in the year 2015[5]. Accordingly, as per section 44DA, the income from rendering technical services shall be computed under the head "Profits and gains of business or profession" in accordance with the provisions of the Income-tax Act, 1961; and shall be subject to tax@40% (*plus* surcharge@2% and HEC@4%).

Accordingly, expenses of ₹ 35 lakhs and ₹ 24 lakhs incurred for earning fees for technical services of ₹ 265 lakhs and ₹ 302 lakhs, respectively, from Y Ltd. and G Ltd., is allowable as deduction therefrom. Further amount of ₹ 15.2 lakhs paid by the PE to the HO being in the nature of reimbursement of actual expenses is allowable as deduction. However, expenditure of ₹ 8.2 lakhs which is not incurred wholly and exclusively for the business of the PE and the amount of ₹ 14.6 lakhs paid by the PE to the HO, not being in the nature of reimbursement of actual expenses, are <u>not</u> allowable as deduction.

XYZ Ltd. is required to maintain books of account under section 44AA and get the same audited under section 44AB and furnish report before the specified date i.e., the date one month prior to the due date of filing return u/s 139(1) for A.Y. 2022-23.

[4] *entered into after 31.3.1976,*
[5] *i.e., after 31.3.2003*