PAPER – 7: DIRECT TAX LAWS & INTERNATIONAL TAXATION

Part - II

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

*Answer any **four** questions out of the remaining **five** questions.*

Working notes should form part of the answer

All questions relate to Assessment Year 2022-23, unless stated otherwise in the question.

Question 1

M/s Kaveri Ltd., a manufacturing company, having an annual turnover of ₹ 6,000 lakhs, shows a net profit of ₹ 850 lakhs after debit / credit of following amounts to its Statement of Profit and Loss for the year ended 31st March, 2022:

(a) Depreciation as per Companies Act ₹ 65 lakhs.

(b) Employer's contribution to EPF of ₹ 18 lakhs together with similar amount of Employee's contribution for the month of March, 2022 was remitted on 20th May, 2022. (The due date for the remittance to the credit of employee's EPF account being 15th April, 2022.)

(c) GST paid includes an amount of ₹ 10,500 charged as penalty for delayed filing of returns and ₹ 15,400 towards interest for delay in deposit of tax.

(d) An amount of ₹ 10 lakhs was incurred on notified skill development project u/s. 35CCD.

(e) Loss of ₹ 20 lakhs, on destruction of an old machinery by fire in the factory and ₹ 5 lakhs received as scrap value on this machinery. The insurance company did not admit the claim of the company on the charge of gross negligence.

(f) Dividend ₹ 15 lakhs received from a foreign company in which the company holds 32% of the equity share capital of the company, ₹ 50,000 was also expended on earning this income.

(g) Profit of ₹ 15 lakhs on sale of a building to X Ltd., a domestic company, the entire shares of which are held by the assessee company. The building was acquired by Kaveri Ltd. on 1st December, 2020.

Additional information:

(i) Normal depreciation computed as per Income-tax Rules, 1962 is ₹ 92 lakhs.

(ii) During the previous year 2020-21, the company has purchased a new plant and machinery worth ₹ 20 lakhs on 10th January, 2021. Balance of Additional depreciation on this machine is not included in the depreciation computed for the previous year 2021-22.

The Suggested Answers for Paper 7: Direct Tax Laws and International Taxation are based on the provisions of direct tax laws as amended by the Finance Act, 2021, which are relevant for May, 2022 examination. The relevant assessment year is A.Y.2022-23.

(iii) The company had credited in the account of a sub-contractor, an amount of ₹ 7 lakhs on 31st March, 2021 towards repairs of factory building. The tax deducted on such payment was remitted on 31st December, 2021.

(iv) On 15th May, 2022, M/s Kaveri Ltd. declared and distributed dividend of ₹ 20 lakhs.

Compute the total income and tax payable by M/s Kaveri Ltd. for the Asst. Year 2022-23 clearly stating the reasons for treatment of each item. ***Assume that the company has opted for section 115BAA for the A.Y. 2022-23.*** ***(14 Marks)***

Answer

Computation of Total Income of M/s Kaveri Ltd. for the A.Y. 2022-23 under section 115BAA

	Particulars	Amount (in ₹)	
I.	**Profits and gains of business and profession**		
	Net profit as per Statement of profit and loss		8,50,00,000
	Add: **Items debited but to be considered separately or to be disallowed**		
	(a) Depreciation as per Companies Act	65,00,000	
	(b) Employees' contribution to EPF	18,00,000	
	[Since employees' contribution to EPF has not been deposited on or before the due date under the PF Act, the same is not allowable as deduction as per section 36(1)(va) read with *Explanations 1 and 2* thereto. Since the same has been debited to Statement of profit and loss, it has to be added back for computing business income].		
	(c) Employer's contribution to EPF	Nil	
	[As per section 43B, employers' contribution to EPF is allowable as deduction since the same has been deposited on or before the due date of filing of return under section 139(1). Since the same has been debited to Statement of profit and loss, no further adjustment is necessary]		
	(d) Penalty for delayed filing of GST return	10,500	
	[Penalty imposed for delay in filing GST return is not deductible since it is on account of infraction of the law requiring filing of the return within the		

		specified period[1]. Since the same has been debited to Statement of profit and loss, it has to be added back for computing business income]		
	(e)	**Interest for delay in deposit of GST** [Interest paid for delay in deposit of GST is compensatory in nature and hence, allowable as deduction. Since the same has been debited to Statement of profit and loss, no further adjustment is necessary]	Nil	
	(f)	**Expenditure on notified skill development project u/s 35CCD** [Expenditure on notified skill development project u/s 35CCD is **not** allowable as deduction since the company has opted for section 115BAA]	10,00,000	
	(g)	**Loss due to destruction of machinery by fire** [Loss of ₹ 20 lakhs due to destruction of machinery caused by fire is not deductible since it is capital in nature. As the loss has been debited to statement of profit and loss, the same is required to be added back while computing business income.	20,00,000	
	(h)	**Expenditure on earning dividend income** [Allowability or otherwise of expenditure on earning dividend income has to be considered under the head "Income from Other Sources". Since the said expenditure has been debited to the statement of profit and loss, the same has to be added back while computing business income]	50,000	1,13,60,500
				9,63,60,500
	Less: **Items credited but chargeable to tax under another head/expenses allowed but not debited**			
	1.	**Scrap value of machinery** [Scrap value of machinery, being capital in nature, has to be reduced from WDV of	5,00,000	

[1] *CIT v. Ratanchand Bholanath (S.S) (1986) 160 ITR 500 (M.P.)*

		machinery. Since the same has been credited to the statement of profit and loss, it has to be deducted while computing business income]		
	2.	**Dividend received from specified foreign company** [Dividend income from specified foreign company is taxable under the head "Income from other sources". Since the said dividend has been credited to the statement of profit and loss, the same has to be deducted while computing business income]	15,00,000	
	3.	**Profit on sale of building to 100% subsidiary** [Taxability or otherwise to be considered under the head "Capital Gains". Since such profit has been credited to the statement of profit and loss, the same has to be deducted while computing business income]	15,00,000	
	4.	**Depreciation as per Income-tax Rules**		
		Normal depreciation	92,00,000	
		Additional depreciation [Though the balance 10% additional depreciation of the earlier year is allowable as deduction in the current year, since the company is opting for section 115BAA, additional depreciation is not permissible in this case]	Nil	
	5.	**Payment to a sub-contractor where tax deducted last year was remitted after the due date of filing of return** [30% of ₹ 7 lakhs, being payment to a sub-contractor, would have been disallowed u/s 40(a)(ia) while computing the business income of A.Y.2021-22, since tax deducted was remitted after the due date of filing of return. However, the same is allowable in A.Y.2022-23, since the remittance has been made on 31.12.2021]	2,10,000	
				1,29,10,000
				8,34,50,500
II	**Capital Gains**			
	1.	**Profit on sale of building to 100% Indian subsidiary**		Nil

	[Short-term capital gains arise on sale of building held for less than 24 months. However, in this case, since the transfer is to a 100% subsidiary company and the subsidiary company is an Indian company, the same would not constitute a transfer for levy of capital gains tax as per section 47(iv)]		
III	**Income from Other Sources**		
	Dividend income from specified foreign company		15,00,000
	[Since M/s Kaveri Ltd. holds 26% or more equity shares in foreign company, such foreign company is a specified foreign company u/s 115BBD. Expenditure on earning dividend income from specified foreign company is not allowable as deduction.]		
	Gross Total Income		**8,49,50,500**
	***Less:* Deduction under Chapter VI-A**		
	Deduction u/s 80M in respect of inter-corporate dividends [being lower of ₹ 15 lakh, being dividend received from specified foreign company, and ₹ 20 lakh, being dividend distributed by M/s Kaveri Ltd. on or before the due date specified u/s 139(1) of filing return of income]		15,00,000
	Total Income		**8,34,50,500**

Computation of tax payable by M/s Kaveri Ltd. for the A.Y. 2022-23 under section 115BAA

Particulars	₹
Tax on business income @ 22% of ₹ 8,34,50,500	1,83,59,110
Add: Surcharge@10%	18,35,911
	2,01,95,021
Add: Health and education cess@4%	8,07,801
Tax liability	2,10,02,822
Tax payable (rounded off)	2,10,02,820

Question 2

(a) Buildwell Ltd., a Real Estate Investment Trust, registered under relevant SEBI Regulations, holds 51% shares in HATS Ltd. Buildwell Ltd. provides the following information about its income for the F.Y. 2021-22.

(i) Interest income from HATS Ltd. - ₹ 10 crores

(ii) Dividend income from HATS Ltd. - ₹ 3 crores

(iii) Short-term capital gains on sale of developmental properties - ₹ 1 crore

(iv) Interest received from investments in unlisted debentures of companies - ₹ 10 lakhs

(v) Rental income from directly owned real estate assets - ₹ 2.5 crores

Mr. Vijay, a resident Indian, holds 70% of the units of the REIT. He does not have any other income during the year.

Compute the total income and tax payable in the hands of M/s Buildwell Ltd. and Mr. Vijay.

Note:** HATS Ltd. has opted to pay tax under section 115BAA and Mr. Vijay has opted for section 115BAC. Ignore TDS implications.* ***(8 Marks)

(b) Ms. Black and Brown S.A., (BnB) a company incorporated in Country X, appointed Mr. Lal Singh as an agent in India. Lal Singh habitually maintains in India, stock of goods or merchandise and regularly delivers the same on behalf of various non-resident entities including BnB. BnB does not have a permanent establishment or a fixed place of profession in India. Also, there is no DTAA between India and Country X.

BnB earned the following incomes from India during the FY 2021-22:

Income from delivery of goods by Mr. Lal Singh ₹ 2 crores.

Fee for technical services ₹ 55 lakhs (After deducting ₹ 6 lakhs spent on earning such income)

Long-term capital gains from sale of unlisted debentures of White Ltd., an Indian Company (subscribed in US$) ₹ 14 lakhs

BnB had paid a sum equal to ₹ 50 lakhs as tax in Country X in respect of the above-mentioned income earned from India.

You are required to discuss the relevant provisions of Income-tax Act with respect to the taxability of incomes earned by BnB in India and compute the tax payable by BnB on above income. ***(6 Marks)***

Answer

(a) Computation of total income and tax payable in the hands of M/s Buildwell Ltd. (REIT) and Mr. Vijay (unit-holder)

Particulars		Buildwell (REIT)	Mr. Vijay (Unit-holder)
(i)	Interest income of ₹ 10 crore from HATS Ltd. (SPV) Interest income from SPV would be exempt in the hands of REIT by virtue of section 10(23FC)(a).	Nil	7,00,00,000

	The component of such interest income distributed to unit holders would be deemed as income of the unit holders as per section 115UA(3). Accordingly, ₹ 7 crores being 70% of ₹ 10 crores is taxable in the hands of the unitholder Mr. Vijay.		
(ii)	**Dividend income of ₹ 3 crore from HATS Ltd. (SPV)** The dividend distributed by the SPV to the REIT is exempt in the hands of REIT by virtue of section 10(23FC)(b). The component of such dividend income distributed to unitholders is taxable in the hands of unitholders by virtue of the exception contained in section 10(23FD), since HATS Ltd. (SPV) has exercised the option u/s 115BAA. Accordingly, ₹ 2.10 crore, being 70% of ₹ 3 crores, would be taxable in the hands of the unitholder Mr. Vijay.	Nil	2,10,00,000
(iii)	**Short-term capital gains of ₹ 1 crore on sale of developmental properties** STCG on sale of development properties is taxable at maximum marginal rate of 42.744% in the hands of the REIT as per section 115UA(2). There would be no tax liability in the hands of the unit holders on the capital gain component of income distributed to them by virtue of exemption contained in section 10(23FD).	1,00,00,000	Nil
(iv)	**Interest of ₹ 10 lakh received in respect of investment in unlisted debentures of companies** Such interest is taxable@42.744%, being the maximum marginal rate, in the hands of the REIT as per section 115UA(2)**.** There would be no tax liability in the hands of the unit holders on the interest component of income distributed to them by virtue of section 10(23FD).	10,00,000	Nil
(v)	**Rental income of ₹ 2.50 crore from directly owned real estate assets** Income by way of renting or leasing or letting out any real estate asset owned directly by REIT is exempt in the hands of the REIT as per section	Nil	1,75,00,000

10(23FCA). However, the component of such rental income distributed to unitholders is deemed as income of the unit holders as per section 115UA(3). Accordingly, ₹ 1.75 crores, being 70% of ₹ 2.5 crores would be taxable in the hands of Mr. Vijay.		
Total income	**1,10,00,000**	**10,85,00,000**

Particulars	₹	₹
Computation of tax payable		
In the hands of REIT (M/s Buildwell)		
Tax on total income of ₹ 1,10,00,000 @ 42.744% [Maximum marginal rate – 30% + surcharge@37% + cess@4%]	**47,01,840**	
In the hands of the unitholder, Mr. Vijay who has opted for section 115BAC		
Upto ₹ 2,50,000		Nil
₹ 2,50,001 – ₹ 5,00,000 @5%		12,500
₹ 5,00,001 – ₹ 7,50,000 @10%		25,000
₹ 7,50,001 – ₹ 10,00,000 @15%		37,500
₹ 10,00,001 – ₹12,50,000 @20%		50,000
₹ 12,50,001 – ₹15,00,000 @25%		62,500
₹ 15,00,001 – ₹ 10,85,00,000 @30%		3,21,00,000
		3,22,87,500
Add: Surcharge@37% since total income exceeds ₹ 5 crores		1,19,46,375
		4,42,33,875
Add: Health and education cess@4%		17,69,355
Tax payable		**4,60,03,230**

Notes:

(i) It has been assumed that 100% of income received by the REIT is distributed to its unitholders.

(ii) Since question specifically contains a note at the end to ignore TDS implications, tax payable is computed without deducting the amount of tax deducted at source.

(b) Computation of Tax liability of BnB for the A.Y.2022-23

Particulars	₹
Income from delivery of goods by Mr. Lal Singh, an agent of BnB As per section 9(1)(i), business profits of a foreign company would be deemed to accrue or arise in India, if such income accrues or arises through or from any business connection in India. In case of BnB, business connection is established, since Mr. Lal Singh acting on its behalf habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on its behalf. Therefore, such income is taxable in the hands of BnB.	2,00,00,000
Fee for technical services (FTS) FTS would be taxable in the hands of a foreign company, since the FTS has been received in India. Therefore, such FTS would be taxable in the hands of BnB after deducting expenditure on earning such income. Accordingly, ₹ 55 lakhs would be taxable.	55,00,000
Long-term capital gains from sale of unlisted debentures of White Ltd. an Indian company, would be taxable in the hands of BnB, since it arises from the capital asset situated in India.	14,00,000
Total Income	**2,69,00,000**
Tax payable on total income	
Tax on long-term capital gain @10% as per section 112(1)(c)(iii)	1,40,000
Tax on other income@40% on ₹ 2,55,00,000	1,02,00,000
	1,03,40,000
Add: Surcharge@2% since total income > ₹ 1 crore but ≤ ₹10 crore	2,06,800
	1,05,46,800
Add: Health and education cess @4%	4,21,872
Tax liability	**1,09,68,672**
Tax liability (rounded off)	1,09,68,670
Note – No credit will be available in respect of ₹ 50 lakhs paid as tax in Country X since there is no DTAA with Country X and the provisions of section 91 providing for deduction in cases where there is no DTAA will not apply to BnB, being a foreign company.	

Alternate Answer

If it is assumed that the agreement for FTS is approved by the Central Government, then FTS would be taxable@10% under section 115A. The tax liability would be as follows –

Particulars	₹
Income from delivery of goods by Mr. Lal Singh, an agent of BnB As per section 9(1)(i), business profits of a foreign company would be deemed to accrue or arise in India, if such income accrues or arises through or from any business connection in India. In case of BnB, business connection is established, since Mr. Lal Singh acting on its behalf habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on its behalf. Therefore, such income is taxable in the hands of BnB.	2,00,00,000
Fee for technical services (FTS) FTS would be taxable in the hands of a foreign company, since the FTS has been received in India. Assuming that the Agreement has been approved by the Central Govt., as per section 115A, such FTS would be taxable in the hands of BnB without deducting expenditure on earning such income. Accordingly, ₹ 61 lakhs would be taxable.	61,00,000
Long-term capital gains from sale of unlisted debentures of White Ltd. an Indian company, would be taxable in the hands of BnB, since it arises from the capital asset situated in India.	14,00,000
Total Income	**2,75,00,000**

Computation of tax liability

Particulars	₹
Tax liability on total income of ₹ 2,75,00,000	
Tax on long-term capital gain @10% as per section 112(1)(c)(iii)	1,40,000
Tax on Fees for technical services @ 10% on ₹ 61,00,000	6,10,000
Tax on other income @40% on ₹ 2,00,00,000	80,00,000
	87,50,000
Add: Surcharge@2% since total income > ₹ 1 crore but ≤ ₹10 crore	1,75,000
	89,25,000
Add: Health and education cess@4%	3,57,000
Tax liability	**92,82,000**

Question 3

(a) Examine each of the following independent cases of charitable trust/institutions for the assessment year 2022-23:

(i) Raj Charitable trust registered under section 12AB, received corpus donation of ₹ 5 lakhs during the previous year 2021-22. The trust intends to utilize it during the

previous year 2022-23 and claimed that since the donor gave the donation with a specific direction that it is towards the corpus of the trust, it is exempt from tax under section 11(1)(d). Further, during the year, the trust took a loan of ₹ 20 lakhs from a nationalized bank and out of it, applied ₹ 18 lakhs on the construction of its building. The trust claimed ₹ 18 lakhs as application for charitable purposes during the year.

(ii) *Smile Foundations is a 'not for profit' trust that runs a secondary school. The total receipts consisting of voluntary contributions and the government grants of the trust during the previous year 2021-22 amounted to ₹ 30 lakhs (₹ 14 lakhs and 16 lakhs respectively). Is the trust required to get an approval to claim exemption under section 10(23C)?*

(iii) *Mani Foundations is a charitable trust registered under section 12AB. On 31.07.2021, it gets an approval under section 10(23C) also. The trust intends to know whether it can enjoy the benefits of both the sections that is, section 11 and section 10(23C).*

(iv) *Little Angels is a charitable institution registered under section 12AA. To continue claiming the benefits of the exemption provisions contained in sections 11 & 12 for the assessment year 2022-23, it wants to apply for re-registration under section 12AB. What would be the effective date for making the application for re-registration under section 12AB?*

The trust wants to confirm whether the registration granted under section 12AB has the same perpetual validity as granted under section 12AA. ***(8 Marks)***

(b) *Mr. Chetan, an Indian citizen aged 51 years, left India on 1st April 2018 to settle in Country Y. But owing to some personal unavoidable circumstances, he returned back to India permanently on 1st June 2021.*

He has a residential property in Country Y from which he earned an income of $ 25,000 for the year ended 31st March 2022. He is eligible for basic exemption limit of $ 8,000 and on balance income, he paid income tax @20% in Country Y. The tax was paid on 10th May 2022 from his bank account in India.

His income from business in India is ₹ 5,00,000 for the year ended on 31st March 2022. He also received dividend amounting to ₹ 1,25,000 from an Indian company and interest of ₹ 11,500 on saving bank account with SBI, during the year.

The exchange rates of 1 $ on various dates is given below:

1.04.2021 - ₹ 74; 31.03.2022, ₹ 75; 10.05.2022 - ₹ 75.5;

Compute the net tax liability of Mr. Chetan in India for the assessment year 2022-23 on the assumption that there is no DTAA between India and Country Y.

Assume that the assessee does not opt for the provisions of Section 115BAC. ***(6 Marks)***

Answer

(a) (i) Corpus donations of ₹ 5 lakhs would be exempt from tax only if they are received with a specific direction that they shall form part of the corpus and are invested in any of the modes specified under section 11(5).

If the same is not so invested, then, it would not be exempt under section 11(1)(d) for P.Y.2021-22.

Application for charitable purposes from a loan or borrowing shall not be treated as application of income for charitable purposes. Accordingly, ₹ 18 lakhs applied by the trust out of loan of ₹ 20 lakhs taken from a nationalised bank cannot be claimed as application for charitable purposes. However, the same can be claimed as application at the time of repayment of loan to the extent of repayment in the relevant previous year.

Therefore, both the claims of Raj Charitable trust are not correct.

(ii) Smile foundations is an education institution existing solely for educational purposes and not for the purposes of profit.

It is substantially financed by the Government, since government grants of ₹16 lakhs constitute 53.33% of its total receipts of ₹ 30 lakhs (₹14 lakhs voluntary contributions + ₹ 16 lakhs government grants), which is more than 50% of its total receipts.

The income of the institution is exempt u/s 10(23C)(iiiab).

Hence, it is not required to get the approval of prescribed authority for claiming exemption under section 10(23C).

(iii) No, the trust cannot enjoy the benefits under both section 11 and 10(23C).

The registration granted to Mani Foundations under section 12AB for availing exemption under section 11 would become inoperative from 31.7.2021, being the date on which it is approved under section 10(23C).

The trust, whose registration has become inoperative, may apply to get its registration operative under section 12AB subject to the condition that on doing so, the approval under section 10(23C) to such trust shall cease to have any effect from the date on which the said registration becomes operative.

(iv) The effective date of making the application for re-registration under section 12AB is 30.6.2021, being three months from 1st April, 2021. CBDT has, vide Circular No.16/2021 dated 29.8.2021, extended the date upto 31.3.2022.

No, the registration granted under section 12AB would be valid only for 5 years and not perpetually, as in the case of registration granted under section 12AA.

(b) Mr. Chetan is a resident in India for A.Y.2022-23, since his stay in India in the P.Y.2021-22 is for 304 days which exceeds the minimum required stay of 182 days in that previous year. Also, his stay in India is for 1461 days (i.e., 365 days each in P.Y.2014-15 to P.Y.2017-18 + 1 day for leap year) during the last seven years (which exceeds the minimum specified requirement of 730 days in the immediately preceding seven years) and he has been resident in 7 years (P.Y.2011-12 to P.Y.2017-18) out of 10 years immediately preceding P.Y.2021-22.

Hence, he is resident and ordinarily resident in India for A.Y.2022-23. Accordingly, his global income would be subject to tax. He would, however, be entitled for deduction under section 91 in respect of doubly taxed income earned in Country Y.

Computation of total income of Mr. Chetan for A.Y.2022-23

Particulars	₹	₹
Income from House Property [Residential property in Country Y]		
Annual Value[2] ($ 25,000 x ₹ 75, exchange rate on 31.3.2022)	18,75,000	
Less: Deduction under section 24 – 30% of NAV	5,62,500	
		13,12,500
Profits and Gains of Business or Profession		
Income from business in India		5,00,000
Income from Other Sources		
Dividend from Indian company [₹1,25,000 x 100/90]	1,38,889	
Interest on savings bank account with SBI	11,500	
		1,50,389
Gross Total Income		**19,62,889**
***Less:* Deduction under Chapter VIA**		
Under section 80TTA – Interest on savings bank account (actual interest of ₹ 11,500 or ₹ 10,000, whichever is lower)		10,000
Total Income		**19,52,889**
Total Income (rounded off)		**19,52,890**

[2] Rental Income has been taken as GAV in the absence of other information relating to fair rent, municipal value etc.

Computation of tax liability of Mr. Chetan for A.Y.2022-23

Particulars	₹
Tax on total income [30% of ₹ 9,52,890 + ₹ 1,12,500]	3,98,367
Add: Health and Education cess@4%	15,935
	4,14,302
Less: Deduction under section 91 **(See Working Note below)**	1,78,500
Net Tax Liability	2,35,802
Net Tax liability (rounded off)	**2,35,800**

Working Note: Calculation of deduction under section 91

Particulars	₹	₹
Average rate of tax in India [i.e., ₹ 4,14,302/₹ 19,52,890x100]	21.21%	
Average rate of tax in country Y [20% of $ 17,000 ($ 25,000 - $ 8,000) = $ 3,400/$ 25,000 x 100 = 13.6%	13.60%	
Doubly taxed income		
Income from house property	13,12,500	
Deduction u/s 91 on ₹13,12,500 @13.60% (being the lower of average Indian tax rate (21.21%) and foreign tax rate (13.60%)]		1,78,500

Question 4

(a) In respect of the following independent case scenarios you are required to discuss the provisions related to tax deducted/collected at source and amount of tax deductible for the year ended 31st March 2022.

(i) Mr. Rajat aged 79 years, a retired resident individual, maintains a savings bank account (S) and a fixed deposit account (F) with ABC Bank, Delhi. He provides the following details to ABC Bank in respect of financial year 2021-22:

Interest on (S)	*₹ 75,100*
Pension from employer (received in savings account S)	*₹ 55,000 per month*
Interest from fixed deposit account (F)	*₹ 1,20,000*

He does not have any other income during the financial year 2021-22. Assume that Mr. Rajat did not opt for section 115BAC.

(ii) High and Tall Ltd., a real estate development company, entered into a Joint Development Agreement with Mr. John, a resident individual, whereby Mr. John would transfer a plot of land measuring 10 acres for a part consideration of ₹ 6 crores to be paid on the date of agreement, i.e., 1.6.2021. High and Tall Ltd. has

planned to develop a high-rise apartment complex on such land by 31.3.2024. Upon completion of the project, High and Tall Ltd. would transfer 6 flats in the apartment to Mr. John as final settlement. The FMV of the flats is estimated to be ₹ 1.20 crores each as on 31.3.2024.

(iii) M/s Aryan Ltd., a domestic company having a total turnover of ₹ 12 crores for the financial year 2020-21, purchased goods worth ₹ 85 lakhs (excluding purchase return) from M/s Varun & Co. during the previous year 2021-22. M/s Varun & Co., a resident firm, has furnished its PAN to Aryan Ltd. Details of payments for purchases from M/s Varun (P) Ltd. are given below:

On 25.05.2021 - ₹ 30 lakhs; On 28.06.2021 - ₹ 25 lakhs; On 10.12.2021 - ₹ 20 lakhs (out of these purchases, goods worth ₹ 5 lakhs were returned on 20.12.2021 due to quality issue for which money was refunded by M/s Varun & Co.); On 20.02.2022 - ₹ 10 lakhs. Assume that the turnover of M/s Varun & Co. during the Financial year 2020-21 was ₹ 8 crores and the above amounts were credited to M/s Varun & Co.'s account in the books of M/s Aryan Ltd. on the same date.

(iv) State Government of Telangana grants a lease of coal mine to M/s XYZ Co. Ltd. on 1.09.2021 and charged ₹ 10 crores for the lease. M/s XYZ Co. Ltd. sold coal for ₹ 1 crore to M/s AB (P) Ltd. during the previous year 2021-22. The turnover of M/s XYZ Co. and M/s AB (P) Ltd. for the financial year 2020-21 amounted to ₹ 5 crores and ₹ 6 crores, respectively. ***(8 Marks)***

(b) Alfa Ltd., Australia, holds 30% equity shares in Beta Ltd., India. Beta Ltd. develops software and also provides the related support services. Beta Ltd. during the year billed Alfa Ltd., Australia for 150 man-hours at the rate of ₹ 2,500 per man hour. The total cost (direct and indirect) for executing this work amounted to ₹ 3,50,000.

However, Beta Ltd. billed Gama Ltd., India at the rate of ₹ 3,500 per man hour for the similar level of manpower and earned Gross Profit of 40% on its cost.

The transactions of Beta Ltd. with Alfa Ltd. and Gama Ltd. are comparable, subject to the following differences:

(i) While Beta Ltd. also derives technological support from Alfa Ltd., there is no such support from Gama Ltd. The value of technological support received from Alfa Ltd. may be put at 15% of normal gross profits,

(ii) As Alfa Ltd. gives business in large volumes, Beta Ltd. offered to Alfa Ltd., a quantity discount which may be valued at 10% of the normal gross profits,

(iii) In the case of rendering services to Alfa Ltd., Beta Ltd. neither runs any risk nor incurs any marketing costs. On the other hand, in the case of services to Gama Ltd., Beta Ltd. has to assume all the risks and costs associated with the marketing function which may be estimated at 20% of the normal gross profits,

(iv) Beta Ltd. offered one month credit to Alfa Ltd. The cost of providing such credit may be valued at 5% of the normal gross profits. No such credit was given to Gama Ltd.

Compute the Arm's Length Price alongwith income to be adjusted under the cost plus method. ***(6 Marks)***

Answer

(a) (i) Mr. Rajat is a specified person as per section 194P as he is of age of 79 years, having pension income and only interest on fixed deposit with ABC Bank. His pension income is also received in savings bank with ABC Bank.

As per section 194P, ABC Bank (specified bank) is required to deduct tax at source on the basis of rates in force on the total income of Mr. Rajat for A.Y. 2022-23, computed after giving effect to -

- deduction allowable under Chapter VI-A; and

- rebate allowable under section 87A

Particulars	₹	₹
Pension (₹ 55,000 x 12)	6,60,000	
Less: Standard deduction u/s 16(ia)	50,000	6,10,000
Interest on fixed deposit	1,20,000	
Interest on Saving bank account	75,100	1,95,100
Gross Total Income		**8,05,100**
Deduction u/s 80TTB [Interest on fixed deposit and savings account, restricted to 50,000, since Mr. Rajat is a resident Indian of the age of 79 years]		50,000
Total Income		**7,55,100**
Tax to be deducted by the specified bank i.e., ABC Bank [20% x ₹ 2,55,100 (₹ 7,55,100 – ₹ 5,00,000) + ₹ 10,000 (being 5% of ₹ 2,00,000)] plus HEC@4%		63,461

(ii) Mr. John, a resident, is entering into an agreement with High and Tall Ltd., a real estate developer, to develop a high-rise apartment complex on his land in consideration of ₹ 6 crore and 6 flats in the apartment. This is a specified agreement under section 45(5A).

As per section 194-IC, High and Tall Ltd. is required to deduct tax at source @ 10% on ₹ 6 crores, being the consideration paid other than consideration in kind, under a specified agreement to Mr. John.

Tax is to be deducted at the time of credit of such sum or payment, whichever is earlier.

Tax u/s 194-IC would be = ₹ 6 crore x 10% = ₹ 60 lakhs

(iii) M/s Varun & Co. is **not** required to collect tax at source on the sale of goods to M/s Aryan Ltd., since his turnover for the P.Y. 2020-21 does not exceed ₹ 10 crores.

Since turnover of M/s Aryan Ltd. for the P.Y. 2020-21 exceeds ₹ 10 crores and the aggregate value of purchases from M/s Varun & Co. exceeds ₹ 50 lakhs, M/s Aryan Ltd. is required to deduct tax at source u/s 194Q@0.1% of such sum exceeding ₹ 50 lakhs. However, the provisions of section 194Q are applicable with effect from 1.7.2021.

In case of purchase return, if the money is refunded by the seller, then, this tax deducted on purchase return would be adjusted against the next purchase from the same seller.

Applicability of TDS on purchases from M/s Varun & Co		
25.05.2021	₹ 30 lakhs	Not required to deduct tax at source
28.06.2021	₹ 25 lakhs	Aggregate value of purchase exceeds ₹ 50 lakhs but still M/s Aryan Ltd. is not required to deduct tax at source u/s 194Q as the provisions of section 194Q are effective only from 1.7.2021
10.12.2021	₹ 20 lakhs	TDS = ₹ 2,000 [0.1% x ₹ 20 lakhs]
20.02.2022	₹ 10 lakhs	TDS = ₹ 500 [₹ 1,000, being 0.1% x ₹ 10 lakhs – ₹ 500, being the TDS on purchase return of ₹ 5 lakhs]

(iv) State Government is required to collect tax at source@2% u/s 206C(1C) on ₹ 10 crores, being the charges for lease of coal mine.

TCS = 2% x ₹ 10 crores = ₹ 20,00,000

M/s XYZ Co. Ltd. is required to collect tax at source @1% u/s 206C(1) on sale of coal to M/s AB (P) Ltd.

TCS = 1% of ₹ 1 crore = ₹ 1,00,000.

(b) Two enterprises are deemed to be associated enterprises where one enterprise, directly or indirectly, holds shares carrying not less than 26% of the voting power in the other enterprise.

In this case, since Alfa Ltd., a foreign company, holds 30% equity shares in Beta Ltd., an Indian company, Alfa Ltd. and Beta Ltd. are deemed to be associated enterprises. Since the transaction of developing software and providing related support service by Beta Ltd. to Alfa Ltd. is an international transaction between associated enterprises, the provisions of transfer pricing would be attracted in this case.

Computation of Arm's Length Price as per Cost Plus Method

Particulars	%	%
Gross Profit mark-up on cost in case of Gama Ltd. Ltd. [an unrelated party]		40%
Less: Adjustments for functional and other differences		
- Value of technology support [Alfa Ltd. provides technology support, but Gama Ltd. does not provide such support. Therefore, value of technology support shall be adjusted] [15% of 40%, being gross profit]	6%	
- Quantity discount to Alfa Ltd. [Quantity discount is allowed to Alfa Ltd. as it gives business in large volumes, but the same is not provided to Gama Ltd. Therefore, it shall be adjusted] [10% of 40%, being gross profit]	4%	
- Risk and cost associated with marketing [Beta Ltd. has to bear all the risk and costs associated with the marketing function in case of Gama Ltd., while there is no such risk in case of services to Alfa Ltd. Therefore, market risk and cost shall be adjusted] [20% of 40%, being gross profit]	8%	18%
		22%
Add: Cost of credit to Alfa Ltd. [Beta Ltd has provided credit of 1 month to Alfa Ltd. but not to the unrelated party. Therefore, adjustment for the cost of such credit has to be carried out to arrive at the ALP] [(5% of 40%, being gross profit]		2%
Arm's length gross profit mark up to cost		**24%**
Cost incurred by Beta Ltd. for executing Alfa Ltd.'s work		3,50,000
Add: Adjusted gross profit (₹ 3,50,000 x 24%)		84,000
Arm's length billed value		**4,34,000**
Less: Actual Billed Income from Alfa Ltd. (₹ 2,500 x 150 man hours)		3,75,000
Total Income of Beta Ltd to be increased by		**59,000**

Question 5

(a) Your answer should cover these aspects:

- *Issue involved*
- *Provision applicable*
- *Analysis and*
- *Conclusion*

(i) *Mr. X filed his return of income for A.Y. 2022-23 by declaring a total income of ₹ 10 lakhs. His case was selected for scrutiny assessment and an addition of ₹ 4 lakhs was made by the Assessing Officer on account of disallowances of certain expenses. During the course of the assessment proceedings, Mr. X found that he erroneously failed to claim the set-off of brought forward losses under section 72 amounting to ₹ 3 lakhs, which he was otherwise entitled to. By the time the error was discovered by Mr. X, the time-limit for filling revised return had also expired. Hence, during the course of the proceedings, Mr. X approached the Assessing Officer to allow the set-off of the brought forward losses which was erroneously not claimed in the return of income filed under section 139(1). Whether the Assessing Officer is bound to accept the request of Mr. X?*

OR

On 14.10.2021, a search under section 132 of Income-tax Act, 1961 was conducted in the premises of Mr. Sahir, a resident individual. On verification of bank account of the assessee, a sum of ₹ 20 crores was found to have been credited in the bank account of the assessee. The Assessing Officer added such sum as unexplained cash credit under section 68. On appeal, the assessee declared that the sum was received from Mr. Shekhar, one of his close friends. Mr. Shekhar agreed to have transferred such sum to the account of the assessee. However, the Assessing Officer is of the view that since Mr. Shekhar is unable to explain the source of this sum, it should be treated as unexplained cash credit in the hands of the assessee.

Whether the claim of the Assessing Officer is justified?

(ii) *On 1st May, 2020, D. Venkatswami, a resident individual, received 1,000 bonus shares from ABC Pvt. Ltd. in which he held 1,000 equity shares. The Assessing Officer held that since the assessee has not paid any consideration for bonus shares, he was under an obligation in law to offer the market value as income from other sources under section 56(2)(vii)(c) of the Act. The Assessing Officer computed the fair value of these bonus shares and added the amount to the income of D. Venkatswami as "Income from other sources".*

Whether the decision of the Assessing Officer is correct in law? ***(4 x 2 = 8 Marks)***

(b) *Sun Ltd., an Indian company, is engaged in the business of manufacture and sale of carpets. To expand its international sales, it hired the services of a London based company, Shine Inc., for online advertisements. Shine Inc. has no permanent establishment in India. During the previous year 2021-22, Sun Ltd. paid ₹ 5 lakh to Shine Inc. for such services and deducted the equalization levy on 15.03.2022 and credited it to the account of Central Government on 15.04.2022.*

You are required to -

(i) *Compute interest leviable to Sun Ltd. on the delayed payment of equalization levy.*

(ii) *What are the circumstances under which penalty cannot be imposed?*

(iii) Sun Ltd. is aggrieved by the order imposing penalty. What is the time limit for filing of appeal against the order of the Assessing Officer imposing the penalty? ***(6 Marks)***

Answer

(a) (i) [First Alternative]

Issue Involved: The issue under consideration is whether the Assessing Officer is bound to allow the set-off of brought forward losses under section 72 even if the assessee, Mr. X, in this case, has not claimed the same in the return filed by him and the time limit for filing revised return has expired.

Provision Applicable: Under section 72, business losses shall be carried forward and shall be set-off against the profits and gains of any business in the next assessment year. It is assumed that the assessee has filed the Return of income within the time stipulated u/s 139(1) and hence is eligible for set off of the unabsorbed loss in the subsequent year.

The wording used in section 72 is "shall", indicating that the provisions relating to set off of brought forward business loss are mandatory provided the loss was determined in pursuance of a return filed under section 139(3) in any earlier previous year.

Analysis: As per *CBDT Circular No.14 (XL-35) of 1955 dated 11.04.1955,* it is the duty of the Assessing Officer to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard, they should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him.

Thus, it is the duty of the Assessing Officer to apply the relevant provisions of the Act for the purpose of determining the true figure of Mr. X's total income and consequential tax liability. Merely because Mr. X has not claimed the set-off of brought forward losses of ₹ 3 lakh in the original return filed and the time limit for filing revised return has expired, it cannot relieve the Assessing Officer of his duty to apply section 72 in the appropriate case.

Conclusion: The Assessing Officer is bound to accept the request of Mr. X and allow the set-off of brought forward losses of ₹ 3 lakh under section 72, even if Mr. X has not claimed the same in the return filed, and the time limit for filing the revised return has expired.

Note – This facts given in the question are similar to the facts in *CIT v. Mahalakshmi Sugar Mills Co. Ltd. (1986) 160 ITR 920,* wherein the above issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court ruling in that case, taking note of the *CBDT Circular No.14 (XL-35) of 1955 dated 11.04.1955.*

[Second Alternative]

Issue Involved: The issue involved in this case is whether, for cash credit to be genuine, is the assessee required to explain the source of sum in the hands of the lender also.

Provision applicable: Section 68 brings to tax any sum found credited in the books of an assessee, where the assessee does not offer explanation about the nature and source thereof or the explanation offered by him is not found satisfactory by the Assessing Officer.

Analysis: For cash credits to be genuine, Mr. Sahir has to prove the identity of the creditor, Mr. Shekhar, in this case, the capacity of the creditor to advance money and finally, the genuineness of the transaction.

Mere confirmation from Mr. Shekhar will not suffice.

Conclusion: Accordingly, the action of the Assessing Officer in bringing to tax unexplained cash credit in the hands of Mr. Sahir is correct, since his friend Mr. Shekhar, from whom he had received ₹ 20 crores which was found credited to his (Mr. Sahir's) bank account, is unable to explain the source of this sum in his hands.

Note - The facts given in the question are similar to the facts in *CIT v. Sadiq Sheikh (2020) 429 ITR 163*, wherein the above issue came up before the Bombay High Court. The above answer is based on the rationale of the Bombay High Court in that case.

(ii) **Issue Involved:** The issue under consideration is whether bonus shares received by shareholders would be taxable under the head 'Income from other sources' as per the provisions of section 56(2)(x), as they are received without consideration.

Provision Applicable: Section 56(2)(x) brings to tax any sum of money or value of property received by any person without consideration or for inadequate consideration from any person.

Analysis: When a shareholder gets bonus shares, the value of the original shares held by him goes down and the market value as well as intrinsic value of the two shares put together will be the same or nearly the same as the value of original share before the issue of bonus shares.

Thus, any profit derived by the assessee shareholder on account of receipt of bonus shares is adjusted by depreciation in the value of equity shares originally held by him.

Conclusion: Accordingly, the action of the Assessing Officer in including the fair value of bonus shares as Income from other sources of D. Venkatswami is incorrect**.**

Note – The facts given in the question are similar to the facts in *PCIT v. Dr. Ranjan Pai (2021) 431 ITR 250*, wherein the issue came up before the Karnataka High Court. The above answer is based on the rationale of the Karnataka High Court in the said case.

(b) (i) Interest for delayed remittance of equalization levy

Equalisation levy = 6% of ₹ 5 lakh = ₹ 30,000

The equalization levy deducted on 15.3.2022 has to be paid to the credit of the Central Government by 7.4.2022 (i.e., 7th of the succeeding month).

However, in this case, Sun Ltd. remitted the same only on 15.4.2022.

The delay in this case is 8 days.

Simple interest@1% is leviable per month or part of month by which crediting of tax is delayed.

Accordingly, interest would be 1% of ₹ 30,000 = ₹ 300

(ii) Circumstances under which penalty cannot be imposed

No penalty for failure to deduct or pay equalisation levy shall be imposable, if Sun Ltd. proves to the satisfaction of the Assessing Officer that there was reasonable cause for the said failure.

Further, no order imposing a penalty shall be made unless Sun Ltd. has been given a reasonable opportunity of being heard.

(iii) Time limit for filing appeal

If Sun Ltd. is aggrieved by the order imposing penalty, it may appeal to Commissioner (Appeals) within a period of 30 days from the date of receipt of the order of the Assessing Officer imposing the penalty.

Question 6

(a) State with reason, whether the following acts can be considered as Tax Planning or Tax Management or Tax Evasion.

(i) An individual assessee deposits a sum of ₹ 10,000 in Sukanya Samriddhi Account of his daughter, so that his total income is reduced from ₹ 5,05,000 to ₹ 4,95,000 which entitles him to rebate under section 87A and consequently his tax liability becomes Nil.

(ii) A company obtaining declaration in Form No.60 from customers who are required to provide their PAN but the same is not allotted to them.

(iii) A partnership firm made a payment of ₹ 35,000 for purchase of a refrigerator which is installed at the residence of one of the partners. However, the same is shown as being installed in the office of the firm for claiming depreciation.

(iv) A company pays ₹ 4 lakhs to Mrs. D (wife of Director Mr. D), who, although being a qualified professional but is a house-wife. The purpose is to increase the total

income of Mrs. D (upto ₹ 5 lakhs) and claim expenditure in the books of the company without provision of any professional service by Mrs. D to the company.

(4 Marks)

(b) In respect of insolvency proceedings initiated against D Ltd., Mr. Prateek was appointed as "Official Assignee", You are required to advise him as to whether he will be treated as Representative Assessee in this regard and what will be his status and his liability with respect to other procedures under the Income-tax Act, 1961. ***(4 Marks)***

(c) What is meant by Digital economy? What are the taxation issues in E-Commerce? List out the OECD recommendations under Action Plan 1 which deals with the digital economy. ***(6 Marks)***

Answer

(a)

	Answer	Reason
(i)	**Tax planning**	Depositing money in Sukanya Samriddhi Account of his daughter for claiming deduction under section 80C to reduce total income from ₹ 5,05,000 to ₹ 4,95,000 in order to avail rebate under section 87A, which consequently reduces his tax liability to 'Nil', is a permitted tax planning measure under the provisions of income-tax law.
(ii)	**Tax management**	Obtaining declaration from customers in Form No. 60 by the company is in the nature of compliance of statutory obligation under the Income-tax Law.
(iii)	**Tax evasion**	A refrigerator fitted at the residence of a partner and shown as being installed in the office of the firm for claiming depreciation would tantamount to furnishing of false particulars with an attempt to evade tax.
(iv)	**Tax evasion**	Payment of ₹ 4 lakhs to Mrs. D (wife of Director Mr. D) without provision of any professional services, to increase her total income upto ₹ 5 lakhs and to correspondingly reduce the company's total income is a method of reducing the tax liability of the company by recording a fictitious transaction. The company is liable to tax at a flat rate of 30%/25%/22%, as the case may be, whereas Mrs. D would not be liable to pay any tax, since her total income does not exceed ₹ 5,00,000, consequent to which she would be eligible for tax rebate of ₹ 12,500 under section 87A. Reducing tax liability by recording a fictitious transaction would tantamount to tax evasion.

(b) CBDT Circular No. 4/2019, dated 28.1.2019 has clarified that since Official Assignee does not receive the income or manage the property on behalf of the debtor, he cannot be considered as a 'Representative Assessee' of the debtor under the Act while computing the tax-liability arising from the estate of the debtor. Therefore, Mr. Prateek appointed as "Official Assignee" in respect of insolvency proceedings initiated against D Ltd. will not be treated as representative assessee.

As property of the insolvent is vested with the Official Assignees as per specific provisions of the Act/Law regulating functioning of the Official Assignees, they have to be treated as a 'juristic entity' for purposes of the Income-tax Act.

For purpose of discharge of tax-liability under the Act, the status of Official Assignee is that of an 'artificial juridical person' as prescribed in section 2(31)(vii), not being one of the 'persons' falling in section 2(31)(i) to (vi).

Therefore, Official Assignee is required to file income-tax return electronically in the ITR Form applicable to 'artificial juridical person' separately for each of the estate of the insolvent, D Ltd., in this case, and the income shall be taxed as per the rates applicable in a particular year to an 'artificial juridical person'.

In view of the above position, Official Assignees would have to obtain a separate PAN for each of the estate of the insolvent.

(c) In digital economy transactions like sale, purchase, payment, rendering services are performed through digital or virtual mode. In the digital domain, business do not actually occur in any physical location but instead takes place in "cyberspace."

Taxation issues in e-commerce

The typical taxation issues relating to e-commerce are:

(i) the difficulty in characterizing the nature of payment and establishing a nexus or link between taxable transaction, activity and a taxing jurisdiction,

(ii) the difficulty of locating the transaction, activity and identifying the taxpayer for income tax purposes.

The following are OECD recommendations under Action Plan 1 dealing with digital economy:

(1) **Modifying the existing permanent establishment** rule to provide for whether an enterprise engaged in fully de-materialized digital activities would constitute a PE, if it maintained a significant digital presence in another country's economy.

(2) **a virtual fixed place of business in the concept of permanent establishments** i.e., creation of a PE when the enterprise maintains a website on a server of another enterprise located in a jurisdiction and carries on business through that website.

(3) **Imposition of a final withholding tax on certain payments** for digital goods or services provided by a foreign e-commerce provider **or imposition of equalisation levy** on consideration for certain digital transactions received by a non-resident from a resident or from a non-resident having permanent establishment in other contracting state.