

## Paper 16 - Direct Tax Laws and International Taxation

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Taxation

Full Marks: 100

hours

Time allowed: 3

The figures in the margin on the right side indicate full marks.

Working notes should form part of the answer.

PART – I

Answer Question Number 1 which is compulsory

1. Choose the correct alternative and also provide your justification: [10×2=20]

- (i) A person whose total income does not exceed ₹ 5 lakhs, required to furnish a return of income u/s 139, failed to do so within the due date. How much fee he is required to pay?
  - (a) ₹1,000
  - (b) ₹2,000
  - (c) ₹ 5,000
  - (d) ₹10,000.
- (ii) Intimation u/s 143(1) must be send within how many days / months / years from the end of financial year in which return of income is filed?
  - (a) 30 days
  - (b) 180 days
  - (c) 9 months
  - (d) 3 years.
- (iii) What is the due date of installment for upto 45% of advance tax liability of the assessee other than the assessee in respect of an eligible business referred to in sec. 44AD or 44ADA?
  - (a) On or before March 15
  - (b) On or before June 15
  - (c) On or before September 15
  - (d) On or before December 15.
- (iv) When an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may proceed to recover from such assessee the amount specified in the certificate by one or more of the modes available. Which of the following is/ are not incorrect?
  - (a) attachment and sale of the assessee's movable property
  - (b) attachment and sale of the assessee's immovable property
  - (c) appointing a receiver for the management of the assessee's movable and immovable properties
  - (d) All of the above.
- (v) Who will be the appellate authority, for the 2<sup>nd</sup> appeal made by the assessee or the Commissioner (or Principal Commissioner) of Income tax against the order of Commissioner (Appeals)?

- (a) CBDT
  - (b) Income Tax Appellate Tribunal (ITAT)
  - (c) High Court
  - (d) Supreme Court
- (vi) As per ICDS VII, the treatment of government grants related to the depreciable fixed asset will be \_\_\_\_.
- (a) The grant shall be deducted from the actual cost of the asset or from the written down value of block of assets
  - (b) The grant shall be recognised as income of the period in which it is receivable
  - (c) The grant shall be recognised as income over the periods necessary to match them with the related costs which they are intended to compensate
  - (d) The grant shall be added to the actual cost of the asset or from the written down value of assets.
- (vii) In case an assessee fails to furnish any information relating to a specified domestic transaction, what is the quantum of penalty as a percentage of value of the transaction?
- (a) 1%
  - (b) 2%
  - (c) 3%
  - (d) 5%
- (viii) As per section 178(3), the company's \_\_\_\_\_ has to intimate the tax authority before he parts with any of the assets of the company or the properties in his hands and has to set aside the amount if any intimated to him by the tax authorities.
- (a) Chartered Accountant
  - (b) Liquidator
  - (c) Manager
  - (d) Managing Director
- (ix) As per sec. 94B, interest expenses claimed by an entity to its associated enterprises shall be restricted to \_\_\_\_ of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to associated enterprise, whichever is less.
- (a) 30%
  - (b) 25%
  - (c) 20%
  - (d) 50%
- (x) If an assessee discovers any omission or wrong statement (bonafide in nature) in the return filed, he may file the revised return —
- (a) on or before 31<sup>st</sup> December of the relevant assessment year
  - (b) before completion of regular assessment
  - (c) on or before 31<sup>st</sup> December of the relevant assessment year or before completion of regular assessment, whichever is earlier
  - (d) on or before 31<sup>st</sup> December of the relevant assessment year or before completion of regular assessment, whichever is later.

**Answer:**

- (i) (a) Where a person whose total income does not exceed ₹ 5 lakhs, required to furnish a return of income u/s 139, fails to do so within the due date, he shall pay fee of ₹1,000.
- (ii) (c) Intimation as per sec. 143(1) must be send within 9 months from the end of financial year in which return of income is filed.

(iii) (c) The due date of installment for upto 45% of advance tax liability of the assessee other than the assessee in respect of an eligible business referred to in sec. 44AD or 44ADA is on or before September 15. The assessee of an eligible business referred to in sec. 44AD or 44ADA is liable to pay 100% of advance tax liability on or before March 15.

(iv) (d) When an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may proceed to recover from such assessee the amount specified in the certificate by any one or more of the modes available, such as attachment and sale of the assessee's movable property, attachment and sale of the assessee's immovable property, arrest of the assessee and his detention in prison and appointing a receiver for the management of the assessee's movable and immovable properties.

(v) (b) The appellate authority, for the 2<sup>nd</sup> appeal made by the assessee or the Commissioner (or Principal Commissioner) of Income tax against the order of Commissioner (Appeals), will be Income Tax Appellate Tribunal (ITAT).

(vi) (a) As per ICDS VII, the treatment of government grants related to the depreciable fixed asset will be — the grant shall be deducted from the actual cost of the asset or from the written down value of block of assets.

(vii) (b) As per sec. 271 AA, if any person in respect of an international transaction or specified domestic transaction fails to maintain or furnishes an incorrect information or document, the Assessing Officer or Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to 2% of the value of each international transaction or specified domestic transaction entered into by such person.

(viii) (b) As per section 178(3), the liquidator of a company has to intimate the tax authority before he parts with any of the assets of the company or the properties in his hands and has to set aside the amount if any intimated to him by the tax authorities.

(ix) (a) As per sec. 94B, interest expenses claimed by an entity to its associated enterprises shall be restricted to 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to associated enterprise, whichever is less.

(x) (c) If an assessee discovers any omission or wrong statement (bonafide in nature) in the return filed, he can revise his return u/s 139(5). In that case, assessee may file the revised return on or before 31<sup>st</sup> December of the relevant assessment year or before completion of regular assessment, whichever is earlier.

## **PART – II**

**Answer any five questions from question numbers 2 to 8. Each question carries 16 marks**

**[16x5= 80]**

- 2.(a) Tax audit u/s 44AB is applicable to Mr. S, a businessman. For the assessment year 2022-23, the due date of submission of return of income is September 30, 2022. The return, is uploaded on September 25, 2022. Intimation u/s 143(1) is received by email on October 8, 2023. Date of intimation and date of grant of refund is October 6, 2023. The following information are related to how refund is calculated:**

	₹
<b>Tax on income assessed</b>	<b>2,92,430</b>
<b>Add: interest u/s 234C</b>	<b>18,000</b>
<b>Total</b>	<b>3,10,430</b>

Less: Credit for prepaid tax -	
— TDS, TCS and tax paid in advance	4,70,000
— Self-assessment tax paid on August 18, 2022	9,000
Refund due	1,68,570

Compute the amount of interest payable by the Government u/s 244A.

[8]

**Answer:**

Refund of ₹1,68,570 may be segregated as follows:

Option 1: ₹ 9,000 may be taken as refund of self-assessment tax and the balance of ₹ 1,59,570 may be taken as refund of TDS/ TCS/ Advance Tax.

Option 2: As no formula for segregation is provided, it may be assumed that entire amount of refund pertains to refund of TDS/ TCS/ Advance Tax.

In the two alternatives given above, interest u/s 244A will be calculated as follows:

	Option 1		Option 2
Nature of refund	Self-assessment Tax	TDS/ TCS/ Advance Tax	TDS/ TCS/ Advance Tax
Amount of refund (in ₹)	9,000	1,59,570	1,68,570
Amount of refund (in ₹) (rounded off for the purpose of calculation of interest)	9,000	1,59,500	1,68,500
Period for which interest is available	From 25.09.2022 to 06.10.2023	From 01.04.2022 to 06.10.2023 (Note 1)	From 01.04.2022 to 06.10.2023 (Note 1)
No. of months (a part of month is taken as full month)	13	19	19
Interest @ 0.5% per month (in ₹)	585	15,153	16,008

Amount of interest is higher in Option 2. Interest payable by the Government is ₹ 16,008.

Note 1 — if return of income is submitted on or before the due date of submission of return of income given u/s 139(1), interest is payable from the first day of the assessment year to the date on which the refund is granted.

- (b) P Ltd. owns two undertakings. Undertaking-A is eligible for deduction u/s 80-IA and Undertaking-B is not eligible for such deduction. Date of commencement of operation in both the undertaking is 14th September, 2021. The profits earned by both the undertaking are as under:

Previous Year	Undertaking-A (₹ in Lakhs)	Undertaking-B (₹ in Lakhs)
2021-22	(-) 6	(-) 4
2022-23	(-) 4	10
2023-24	5	9
2024-25	8	6
2025-26	9	(-) 3

Calculate total income of P Ltd. for last three assessment years

[8]

**Answer:**

In the given case, the entire loss of the undertaking A has been set-off under Sections 70 & 72 till the A.Y 2024-25

Assessment Year	Unit A	Unit B	GTI	Carried forward losses
2022-23	- 6	- 4	Nil	-10
2023-24	- 4	10	Nil	-4
2024-25	5	9	10	Nil

2025-26	8	6	14	Nil
2026-27	9	- 3	6	Nil

There is no loss brought forward for earlier years for the Assessment Year 2025-26 and subsequent year. However, to compute profit eligible for tax holidays u/s 80-IA, it is assumed that the undertaking is the only unit owned by P. Ltd. Consequently, deduction u/s 80-IA is as under:

**Computation of Total Income**

Particulars	A.Y. 2024-25	A.Y. 2025-26	A.Y. 2026-27
Profit from Unit A	5	8	9
Add: Profit from Unit B	9	6	-3
Gross Total Income (a)	14	14	6
Less: Deduction u/s 80-IA			
Current year profit of Unit A	5	8	9
Less: Notional B/F loss from earlier years	-10	-5	Nil
Balance	-5	3	9
Deduction U/S 80-IA @ 100% (b)	Nil	3	6 (Restricted to GTI)
Total Income [(a)-(b)]	14	11	Nil

3. X Ltd. commences an operation of a warehousing facility for storage of agricultural produce in Andhra Pradesh on 01.04.21. The records of the company reveal the following information:

**Expenses incurred prior to April 1, 2021**

	₹
Purchase of land for warehouse	50,00,000
Warehouse Construction cost	8,10,000
Purchase of know-how for warehouse	10,00,000
Salary paid to staff	68,000
These expenses are capitalized on March 31, 2021.	
Expenses incurred during 2021-22:	
Construction cost of warehouse	60,00,000
Purchase of old plant and machinery (from Germany)	4,00,000
Purchase of new plant and machinery	9,00,000
Purchase of old plant and machinery (from domestic market)	2,00,000
Purchase of goodwill	3,50,000

**Profit and loss account for the year 2021-22:**

	₹		₹
Depreciation of building (@ 5%)	3,40,000	Amount collected from persons using warehouse	78,00,000
Depreciation of machinery (@ 23.333%)	3,50,000		
Cost of know-how (amount written off)	10,00,000		
Other operating expenses	7,51,000		
Donation to a political party	10,000		

Net profit	53,49,000		
	78,00,000		78,00,000

A payment of ₹ 40,000 is made in cash out of other operating expenses. Other operating expenses are deductible under section 37. Compute the taxable income of X Ltd. for the assessment year 2022-23 on the assumption that X Ltd. has the following income from other sources –

- income from the commission agency business: ₹ 10,14,000 (computed under the provisions of the Income-tax Act) and
- dividend from a foreign company: ₹ 65,000. [16]

Answer:

Amount deductible under section 35AD

Expenditure incurred prior to the commencement of operation (to the extent these are capitalized)	
Purchase of land (not qualified for deduction)	Nil
Construction cost of warehouse	8,10,000
Purchase of know-how	10,00,000
Salary to staff	68,000
Expenditure incurred during the previous year:	
Construction cost of warehouse	60,00,000
Purchase of machinery (₹ 2,00,000 + ₹ 4,00,000 + ₹ 9,00,000)	15,00,000
Total	93,78,000
Amount deductible under section 35AD	93,78,000

	₹
Computation of income from warehouse:	
Net profit as per profit and loss account	53,49,000
Add: Depreciation of building (not deductible as cost of building is eligible for deduction under section 35AD)	3,40,000
Add: Depreciation of machinery (not deductible as cost of machinery is qualified for deduction under section 35AD)	3,50,000
Add: Cost of know-how (not deductible as deduction is available under section 35AD)	10,00,000
Add: Amount paid in cash (operating expenses)	40,000
Add: Donation to political party	10,000
Less: Deduction under section 35AD	(-) 93,78,000
Loss from warehouse	(-) 22,89,000

Computation of income:

	₹	₹
Commission agency business	10,14,000	
Warehouse	(-) 22,89,000	
Business income (loss from operating warehouse, being a specified business under section 35AD cannot be set off against any other income except income from a specified business)		10,14,000
Income from other sources (dividend from foreign company)		65,000

Gross total income		10,79,000
Less: Deduction under section 80GGB (donation to a political party)		10,000
Net income		10,69,000

Notes—

1. Second hand imported machinery is taken as new machinery. The business of operating warehouse is formed by using new machinery of ₹13,00,000 and old machinery of ₹2,00,000. Value of old plant and machinery does not exceed 20 per cent of the total value of plant and machinery. Other conditions of section 35AD are satisfied. X Ltd. is, therefore, eligible for deduction under section 35AD.
2. Loss from operating warehouse (by virtue of section 73A) can be set off only against profit and gains, if any, of any other business specified under section 35AD. In this case, X Ltd. does not have any other specified business. Loss will be carried forward (without any time-limit) for being set off against income from operating warehouse or any other specified business under section 35AD.
3. Minimum alternate tax provisions will be applicable. Tax liability will be 31.2% of ₹ 10,69,000 or 15.6% of book profit (i.e. ₹ 53,49,000 + ₹ 10,14,000 + ₹ 65,000), whichever is more.

**4. (a) Which are the appealable orders in case of appeals to Income Tax Appellate Tribunal (ITAT)? [7]**

**Answer:**

The following are the appealable orders to Income Tax Appellate Tribunal (ITAT):

A. Appeal by assessee —

1. An order passed by a Commissioner (Appeals) u/s 154, 250, 270A, 271, 271A, 271J or 272A; or
2. An order passed by a Principal Commissioner or Commissioner u/s 12AA or 12AB [registration of trust], 80G(5)(vi), 263 [revision order], 154, 270A or 271 or 272A; or
3. An order passed by an Assessing Officer u/s 143(3) or 147 or 153A or 153C in pursuance of the directions of the Dispute Resolution Panel or with the approval of the Commissioner (or Principal Commissioner) as referred to in sec. 144BA(12) or an order passed u/s 154 or 155 in respect of such order.
4. An order passed by an Assessing Officer u/s 115VZC(1)
5. An order passed by the prescribed authority u/s 10(23C)(iv) or (v) or (vi) or (via)
6. An order passed by Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Director or Director u/s 272A [penalty].

B. Appeal by the Principal Commissioner or Commissioner —

The Principal Commissioner or Commissioner may direct the Assessing Officer to appeal against the order passed by the Commissioner (Appeals) u/s 154 or 250.

[The Board has directed that the appeal shall be filed by the department only if tax effect exceeds ₹ 50,00,000, subject to certain exceptions].

**(b) on June 30, 2021, F Ltd. finds V Ltd. for amalgamation to expand the business. You are required to compute the tax implication in respect of the following losses/allowances of F Ltd. in the assessments of F Ltd. (i.e., amalgamating company) and V Ltd. (i.e., amalgamated company).**

**Unabsorbed depreciation allowance of the previous year 2002-2003: ₹ 34,000; brought forward business loss of the previous year 2018-19: ₹ 10,20,000; scientific research expenditure which is unabsorbed: ₹ 12,000; bad debts: ₹ 20,000; capital gain arising on transfer of assets to V Ltd.: ₹ 2,50,000 and brought forward capital loss ₹ 40,000. [9]**



**Answer:**

The following Table highlights the tax implications in respect of various items given in the problem on the assumption that assets are transferred in a scheme of amalgamation which satisfies the provisions of section 2(1B).

Loss/allowances of F Ltd. before amalgamation	Tax implication in the hands of	
	V Ltd.	F Ltd.
Unabsorbed depreciation of 2002-03: ₹ 34,000	If amalgamation satisfies the conditions of section 72A, it is deductible, otherwise it is not deductible	As F Ltd. ceased to exist after amalgamation, it is not entitled for deduction.
Brought forward business loss of 2018-19 : ₹ 10,20,000	If amalgamation satisfies conditions of section 72A, it can be set-off and carried forward by V Ltd.; otherwise such right is not available  Allowed subject to conditions of section 35	F Ltd. cannot carry it forward, as it has ceased to exist after amalgamation.  It cannot be carried forward, as F Ltd. has ceased to exist.
Unabsorbed scientific research expenses : ₹ 12,000	Allowed	It is not allowed as deduction as F Ltd. ceased to exist after amalgamation.
Bad debts : ₹ 20,000	It is not taxable in the hands of V Ltd. If, however, assets acquired in the scheme of amalgamation are sold by V Ltd., cost of acquisition for the purpose of computing capital gain would be cost to F Ltd. (indirectly ₹ 2,50,000 will merge in capital gain arising at the time of sale of assets by V Ltd.)	It is not taxable, as transfer of assets in a scheme of amalgamation to an Indian company does not amount to "transfer" for the purpose of charging tax on capital gains.
Capital gain : ₹ 2,50,000	It cannot be set-off and carried forward by V Ltd.	It cannot be carried forward by F Ltd., as it ceased to exist after amalgamation.

- 5.(a) The appellant is a Limited Company engaged in the business of manufacture and sale of various kinds of paints. A notice was issued by the A.O. to the appellant (assessee) u/S 143(2) of the Act which called upon the appellant to explain as to on what basis the appellant had claimed in the return a deduction under the head "preliminary expenses" amounting to ₹7,03,306/- being 2.5% of the "capital employed in the business of the company" u/S 35D of the Act. The appellant contended that it had issued shares on a

premium which, according to them, was a part of the capital employed in their business and therefore, they are entitled to claim the same under Section 35D of the Act. The A.O. did not agree with such explanation . Justify. [8]

**Answer:**

The appellant is a Limited Company engaged in the business of manufacture and sale of various kinds of paints. A notice was issued by the A.O. to the appellant (assessee) under Section 143(2) of the Act which called upon the appellant to explain as to on what basis the appellant had claimed in the return a deduction under the head "preliminary expenses" amounting to Rs.7,03,306/- being 2.5% of the "capital employed in the business of the company" under Section 35D of the Act. The appellant (assessee) replied to the notice. The appellant (assessee) contended therein that it had issued shares on a premium which, according to them, was a part of the capital employed in their business. The appellant, therefore, contended that it was on this basis, it claimed the said deduction and was, therefore, entitled to claim the same under Section 35D of the Act. The A.O. did not agree with the explanation given by the appellant. He was of the view that the expression "capital employed in the business of the company" did not include the "premium amount" received by the appellant on share capital. The Commissioner (Appeals) has deleted the addition. However, the Tribunal reversed the view taken by the Commissioner (Appeals). The High Court concurred with the Tribunal.

The Apex Court observed that if the intention of the Legislature were to treat the amount of "premium" collected by the Company from its shareholders while issuing the shares to be the part of "capital employed in the business of the company", then it would have been specifically said so in the Explanation (b) of sub-section (3) of Section 35D of the Act. It was, however, not said. Non-mentioning of the words does indicate the legislative intent that the Legislature did not intend to extend the benefit of Section 35D to such sum.

The company's accounts do not show the reserve and surplus as a part of its issued, subscribed and paid up capital. It is taken as part of shareholders' fund but the same was not a part of the issued, subscribed and paid up capital of the Company.

Similarly, Companies Act which deals with the "issue of shares at premium and discount" requires a company to transfer the amount so collected as premium from the shareholders and keep the same in a separate account called "securities premium account". It does not anywhere say that such amount be treated as part of capital of the company employed in the business for one or other purpose.

Thus, securities premium shall not be considered as a part of the capital employed for the purpose of sec. 35D.

Reference may be made in the case of Berger Paints India Ltd. -vs.- CIT (2017) (SC).

- (b) The assessee had granted certain loans to its Associated Enterprises (AE) on which no interest was charged. The AO was of the opinion that the granting of loans to AE is an international transaction. The AO worked out interest income thereon to determine the Arm's Length Price. The said order was affirmed by the Tribunal. Justify whether the contention of the A.O. is legally tenable or not. [8]**

**Answer:**

The assessee had granted certain loans to its associated enterprises (AE) on which no interest was charged. The AO was of the opinion that the granting of loans to AE is an international transaction. After so holding the AO worked out interest income thereon to determine the Arm's Length Price. The said order was affirmed by the Tribunal. The assessee challenged the said order in appeal before the Hon'ble High Court.

The primary contention of the assessee before the Hon'ble High Court was that by virtue of reworking interest on loans granted to AE the AO / Department has sought to tax notional or hypothetical income and not real income and as per the provisions of the Income-tax Act, 1961 only real income could have been taxed and therefore the addition as regards notional interest income was not sustainable.

The Hon'ble High Court dismissed the appeal holding that, Chapter X of the Act, is an anti-avoidance measure and not an anti-evasion measure. It is not premised on the basis that the transactions entered into between the parties suffers from under/over invoicing. The value of the transactions is brought in line with the consideration which would pass between two independent parties i.e. non-related / non-associated enterprises, by legislative mandate. It was further held that the Legislature has introduced special provisions in respect of International Transactions to bring the income to tax having regard to Arm's Length Price (ALP). In such case, the parties are obliged to establish the ALP of the International Transactions entered into between the two AE to bring to tax the real income i.e. the correct price of the transactions, shorn of, the price arrived at on account of relationship. It means the real income on application of a new measure. The object of the Transfer Pricing Officer is to put a stop to capital erosion and transfer of profits from one taxable territory to another taxable territory.

So, it can be concluded that Chapter X of the Act, is an anti-avoidance measure and not an anti-evasion measure. The object of the Transfer Pricing Officer is to put a stop to capital erosion and transfer of profits from one taxable territory to another taxable territory.

Reference may be made in the case of Tooltech Global Engineering P. Ltd. vs. ACIT (2015) (Bom).

**6.(a) Describe the term, 'Permanent Establishment' in the context of Double Taxation Avoidance Agreement. Which are the items excluded from the list of Permanent Establishment?**

**[4+5=9]**

**Answer:**

One of the important terms that occurs in all the Double Taxation Avoidance Agreements is the term 'Permanent Establishment' (PE) which has not been defined in the Income Tax Act. However as per the Double Taxation Avoidance Agreements, PE includes, a wide variety of arrangements i.e. a place of management, a branch, an office, a factory, a workshop or a warehouse, a mine, a quarry, an oilfield etc. Imposition of tax on a foreign enterprise is done only if it has a PE in the contracting state. Tax is computed by treating the PE as a distinct and independent enterprise.

Generally, in Indian context, the term permanent establishment<sup>II</sup> means a fixed place of business through which the business of an enterprise is wholly or partly carried on. The term –permanent establishment<sup>II</sup> shall also include:

1. a place of management;
2. a branch;
3. an office;
4. a factory;
5. a workshop;
6. a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
7. a warehouse in relation to a person providing storage facilities for others;
8. a farm, plantation or other place where agricultural, pastoral, forestry or plantation activities are carried on;
9. premises used as a sales outlet or for receiving or soliciting orders;
10. an installation or structure, or plant or equipment, used for the exploration for or exploitation of natural resources;
11. a building site or construction, installation or assembly project, or supervisory activities in connection with such a site or project, where that site or project exists or those activities

are carried on (whether separately or together with other sites, projects or activities) for more than specified months (generally 6 months).

Exclusion:

An enterprise shall not be deemed to have a permanent establishment merely by reason of:

1. the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise ;
2. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display ;
3. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
4. the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise; or
5. the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the enterprise.

An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, a general commission agent or any other agent of an independent status, where that person is acting in the ordinary course of the person's business as such a broker or agent. However, when the activities of such a broker or agent are carried on wholly or principally on behalf of that enterprise itself or on behalf of that enterprise and other enterprises controlling, or controlled by or subject to the same common control as, that enterprise, the person will not be considered a broker or agent of an independent status within the meaning of this paragraph.

- (b) J Inc. of Korea and CD Ltd, an Indian Company are associated enterprises. CD Ltd manufactures Cell Phones and sells them to J.K. & F Inc., a Company based at Nepal. During the year CD Ltd. supplied 2,50,000 Cellular Phones to J Inc. Korea at a price of ₹3,000 per unit and 35,000 units to JK & F Inc. at a price of ₹5,800 per unit. The transactions of CD Ltd with JK & F Inc. are comparable subject to the following considerations: Sales to J Inc. are on FOB basis, sales to JK & F Inc. are CIF basis. The freight and insurance paid by J Inc. for each unit @ ₹700. Sales to JK & F Inc. are under a free warranty for Two Years whereas sales to J Inc. are without any such warranty. The estimated cost of executing such warranty is Rs.500. Since J Inc.'s order was huge in volume, quantity discount of ₹200 per unit was offered to it.

Compute the Arm's Length Price and the subsequent amount of increase in the Total Income of CD Ltd, if any. [7]

**Answer:**

Computation of Arm's Length Price of Products sold to J Inc. Korea by CD Ltd

Particulars	₹	₹
Price per Unit in a Comparable Uncontrolled Transaction		5,800
Less: Adjustment for Differences -		
(a) Freight and Insurance Charges	700	
(b) Estimated Warranty Costs	500	
(c) Discount for Voluminous Purchase	200	(1,400)
Arms's Length Price for Cellular Phone sold to J Inc. Korea		4,400

Computation of Increase in Total Income of CD Ltd

Particulars	₹
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Arm's Length Price per Unit	4,400
Less: Price at which actually sold to J Inc. Korea	(3,000)
Increase in Price per Unit	1,400
No. of Units sold to J Inc. Korea	2,50,000
Increase in Total Income of CD Ltd (2,50,000 x ₹ 1,400)	₹ 35 Crores

- 7. (a) How Arm's Length price u/s 92C is determined by using resale price method? Which are the steps to be followed for application of this method? [5+5=10]**

**Answer:**

Resale price method, by which—

- i. the price at which property purchased or services obtained by the enterprise from an associated enterprise is resold or are provided to an unrelated enterprise, is identified;
- ii. such resale price is reduced by the amount of a normal gross profit margin accruing to the enterprise or to an unrelated enterprise from the purchase and resale of the same or similar property or from obtaining and providing the same or similar services, in a comparable uncontrolled transaction, or a number of such transactions;
- iii. the price so arrived at is further reduced by the expenses incurred by the enterprise in connection with the purchase of property or obtaining of services;
- iv. the price so arrived at is adjusted to take into account the functional and other differences, including differences in accounting practices, if any, between the international transaction or the specified domestic transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of gross profit margin in the open market;
- v. the adjusted price arrived at under (iv) is taken to be an arm's length price in respect of the purchase of the property or obtaining of the services by the enterprise from the associated enterprise.

The steps involved in the application of this method are:

- i. identify the international transaction of purchase of property or services;
- ii. identify the price at which such property or services are resold or provided to an unrelated party (resale price);
- iii. identify the normal gross profit margin in a comparable uncontrolled transaction whether internal or external. The normal gross profit margin is that margin which an enterprise would earn from purchase of the similar product from an unrelated party and the resale of the same to another unrelated party.
- iv. deduct the normal gross profit from the resale price.
- v. deduct expenses incurred in connection with the purchase of goods;
- vi. adjust the resultant amount for the differences between the uncontrolled transaction and the international transaction. These differences could be functional and other differences including differences in accounting practices. Further these differences should be such as would materially affect the amount of gross profit margin in the open market;
- vii. the price arrived at is the arm's length price of the international transaction;

- (b) Mr. A, an individual, resident of India, receives the following payments after TDS during the previous year 2021-22:**

**(i) Professional fees on 17.08.2021 2,40,000**

**(ii) Professional fees on 04.03.2022 1,60,000**

Both the above services were rendered in country X on which TDS of ₹50,000 and ₹30,000 respectively has been deducted. He had incurred an expenditure of ₹2,40,000 for earning both these receipts / income. His income from other sources in India is ₹5,00,000 and he has made payment of ₹70,000 towards LIC. Compute the tax liability of Mr. A and also the relief u/s 91, if any, for A.Y.2022-23. [6]

**Answer:**

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

Particulars	Amount	Amount
Income from profession from foreign	4,80,000	
Less: Expenses	2,40,000	2,40,000
Income from profession in India		5,00,000
Gross Total Income		7,40,000
Less: Deduction u/s 80C		70,000
Total income		6,70,000
Tax on above		46,500
Add: Health & Education cess		1,860
Tax and cess payable		48,360
Average rate of tax [ $\text{₹ } 48,360 / \text{₹ } 6,70,000 \times 100$ ]		7.22%
Rate of tax in Country X		16.67%
Relief u/s 91 [ $7.22\%^{\wedge}$ of $\text{₹ } 2,40,000$ ]		17,328
Tax payable (Rounded off u/s 288B)		31,030

<sup>^</sup> Relief u/s 91 is available at lower rate. i.e., 7.22%.

**8. Write short note (any four):**

**[4×4=16]**

- Advance Ruling
- Tax Authorities as per Black Money and Imposition of Tax Act.
- Disclosure requirement of ICDS X.
- Interest for failure to deduct and pay tax at source.
- Return of Loss.

**Answer:**

**(a) Advance Ruling [Sec. 245N(a)]**

Advance ruling means:

- A determination by the Board for Advance Rulings in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant; or
- A determination by the Board for Advance Rulings in relation to the tax liability of a non-resident arising out of a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with such non-resident; or
- (iia) A determination by the Board for Advance Rulings in relation to the tax liability of a resident applicant, arising out of a transaction which has been undertaken or is proposed to be undertaken by such applicant In above cases, such determination shall include the determination of any question of law or of fact specified in the application.
- (iii) A determination or decision by the Board for Advance Rulings in respect of an issue relating to computation of total income which is pending before any income-tax Board for Advance Rulings or the Appellate Tribunal and such determination or decision shall include the determination or decision of any question of law or of fact relating to such computation of total income specified in the application.
- (iv) A determination or decision by the Board for Advance Rulings whether an arrangement, which is proposed to be undertaken by any person being a resident or a non-resident, is an impermissible avoidance arrangement as referred to in Chapter X-A or not.

**(b) Tax Authorities as per Black Money and Imposition of Tax Act:** As per section 6 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 —

- The income-tax authorities shall be the tax authorities for the purposes of this Act.

- Every such authority shall exercise the powers and perform the functions of a tax authority under this Act in respect of any person within his jurisdiction.
- The jurisdiction of a tax authority under this Act shall be the same as he has under the Income-tax Act
- The tax authority having jurisdiction in relation to an assessee who has no income assessable to income-tax under the Income-tax Act shall be the tax authority having jurisdiction in respect of the area in which the assessee resides or carries on its business or has its principal place of business.

(c) Disclosure requirement of ICDS X: Following disclosure shall be made in respect of each class of provision:

- (1) a brief description of the nature of the obligation;
- (2) the carrying amount at the beginning and end of the previous year;
- (3) additional provisions made during the previous year, including increases to existing provisions;
- (4) amounts used, that is incurred and charged against the provision, during the previous year;
- (5) unused amounts reversed during the previous year; and
- (6) the amount of any expected reimbursement, stating the amount of any asset that has been recognised for that expected reimbursement.

(d) Interest for failure to deduct and pay tax at source:

Condition: Where a person, responsible for deducting tax at source, fails to - (1) deduct tax at source; or

(2) deposit such tax after deducting the same.

Amount on which interest is to be charged: On the amount of such tax. Rate of Interest:

Period	Rate of Interest
From the date on which such tax was deductible to the date on which such tax is deducted	Simple interest @ 1% per month or part thereof
From the date on which such tax was deducted to the date on which such tax is actually paid	Simple interest @ 1.50% per month or part thereof

Period: From the date on which such tax was deductible to the date on which such tax is actually paid.

Note: In case any person fails to deduct such tax on the sum paid or payable to a resident but is not deemed to be an assessee in default (as per first proviso to sec. 201(1)), the interest shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident.

(e) Return of Loss: An assessee, other than few, is not compulsorily required to furnish return of loss. However, the following losses cannot be carried forward if the return of loss is not submitted within the time allowed u/s 139(1) -

- A. Business loss (speculative or otherwise);
- B. Capital loss;
- C. Loss from the activity of owning and maintaining race horses
- D. Loss from business specified u/s 35AD

Notes:

- A. Loss declared in belated return cannot be carried forward. However, set-off of losses of current year is not prohibited while computing the total income, even if the return



- of loss is filed after the due date.
- B. Delay in filing the return of loss may be condoned in certain cases
  - C. Unabsorbed depreciation u/s 32 and loss under the head —Income from house property can be carried forward even if the loss return is filed after the due date u/s 139(1).
  - D. Although the loss of the current year cannot be carried forward unless the return of loss is submitted before the due date but the loss of earlier years can be carried forward if the return of loss of that year was submitted within the due date.