

Paper 16 - Direct Tax Laws and International Taxation

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Full Marks: 100

Time allowed: 3 hours

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) Interest expenses claimed by an entity to its associated enterprises shall be restricted to a certain percentage of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to associated enterprise, whichever is less. As per sec. 94B, what is the percentage?
- (a) 20%
 - (b) 25%
 - (c) 30%
 - (d) 50%
- (ii) What shall be the interest payable by any assessee, who fails to credit adequate equalisation levy to the account of the Central Government within specified period?
- (a) 1% of such levy for every month or part of a month by which such crediting of the tax is delayed
 - (b) ₹ 100 for every day during which the failure continues
 - (c) Equal to the amount of equalisation levy
 - (d) ₹ 100 for every day during which the failure continues subject to maximum of amount failed to pay.
- (iii) Which of the following is one of the conditions to be satisfied to consider a transaction as transfer for the purpose of capital gain in case where a sole proprietary concern sells or otherwise transfers any capital asset to a company?
- (a) Proprietor must hold at least 10% of the total voting power of the company.
 - (b) Proprietor must hold at least 25% of the total voting power of the company.
 - (c) Proprietor must hold at least 50% of the total voting power of the company.
 - (d) Proprietor must hold at least 51% of the total voting power of the company.
- (iv) As per section 142A, a Valuation Officer should send a report to the Assessing Officer within _____ from the end of the month in which a reference is made by the Assessing Officer under section 142A.
- (a) 12 months
 - (b) 6 months
 - (c) 1 months
 - (d) 2 months
- (v) The specified limit beyond which anonymous donation is taxable:
- (a) Higher of 1% of the total donations received or ₹ 50,000
 - (b) Higher of 5% of the total donations received or ₹ 50,000
 - (c) Higher of 1% of the total donations received or ₹ 1,00,000
 - (d) Higher of 5% of the total donations received or ₹ 1,00,000

- (vi) ICDS II (Valuation of Inventories) does not recognize the following cost formulae?
- (a) Simple Average Method
 - (b) Specific Identification Method
 - (c) First-in-First-Out Method (FIFO)
 - (d) Weighted Average Method
- (vii) In the context of Double Taxation Avoidance Agreements, the term Permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on. It does not include:
- (a) a farm, plantation or other place where agricultural, pastoral, forestry or plantation activities are carried on
 - (b) 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.
 - (c) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources
 - (d) a workshop
- (viii) In conducting an arm's length analysis of service-oriented industries such as limited risk distributor, advertising, marketing and engineering services, berry ratio is used and it measures:
- (a) the return on operating expenses
 - (b) amount of EBIT per rupee of asset invested
 - (c) ability of a company to cover its operating expenses through operating revenue
 - (d) None of the above.
- (ix) As per section 35DD of the Income-tax Act, the quantum of deduction of expenses incurred in case of amalgamation or demerger will be:
- (a) 1/10th of expenses so incurred for a period of 10 years commencing from the year in which amalgamation or demerger takes places.
 - (b) 1/5th of expenses so incurred for a period of 5 years commencing from the year in which amalgamation or demerger takes places.
 - (c) 33½% of expenses so incurred for a period of 5 years commencing from the year in which amalgamation or demerger takes places.
 - (d) 100% of expenses so incurred for a period of 5 years commencing from the year in which amalgamation or demerger takes places.
- (x) As per section 270A(8) of the Income-tax Act, the quantum of penalty in case of under-reported income which is in consequence of any misreporting thereof by any person, will be _____ of the amount of tax payable on under-reported income.
- (a) 50%
 - (b) 100%
 - (c) 150%
 - (d) 200%.

Answer: 1

(i) (c) 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. This provision is applicable to Indian company, or a permanent establishment of a foreign company in India, being the borrower.

(ii) (a) Every assessee, who fails to credit adequate equalisation levy to the account of the

MTP-QA-Dec2022-Final Examination- Syllabus2016-P16-S1

Central Government within specified period, shall pay simple interest @ 1% of such levy for every month or part of a month by which such crediting of the tax is delayed. The other options are related to the penalty provisions of equalisation levy.

- (iii) (c) Where a sole proprietary concern is succeeded by a company in the business carried on by it as a result of which the sole proprietary concern sells or otherwise transfers any capital asset to the company for the purpose of capital gain, one of the conditions to be satisfied to consider the transaction as transfer is — the proprietor must hold at least 50% of the total voting power of the company and lock in period for above share is 5 years from the date of succession.
- (iv) (b) As per Section 142A (6) a Valuation Officer should send a report to the Assessing Officer within 6 months from the end of the month in which a reference is made by the Assessing Officer u/s 142A (1).
- (v) (d) Where the total income of an assessee includes any income by way of anonymous donation in excess of specified limit, which is **higher of** 5% of the total donations received by the assessee or ₹ 1,00,000, such donation shall be taxable.
- (vi) (a) ICDS II (Valuation of Inventories) recognizes 3 cost formulae viz. — Specific Identification Method; First-in-First-Out Method (FIFO); and Weighted Average Method.
- (vii) (b) 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. An enterprise shall not be deemed to have a permanent establishment merely by reason of 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.
- (viii) (a) Berry ratio is used in conducting an arm's length analysis of service-oriented industries such as limited risk distributor, advertising, marketing and engineering services. It is the ratio of gross profit to operating expenses. The ratio measures the return on operating expenses.
- (ix) (b) As per section 35DD of the Income-tax Act, the quantum of deduction of expenses incurred in case of amalgamation or demerger will be 1/5th of expenses so incurred for a period of 5 years commencing from the year in which amalgamation or demerger takes places, provided that no deduction has been claimed for such expenses under any other section.
- (x) (d) Any person who has under-reported his income shall be liable to pay a penalty in addition to tax, if any, on the under-reported income. As per section 270A(8) of the Income-tax Act, the quantum of penalty in case of under-reported income which is in consequence of any misreporting thereof by any person, will be 200% of the amount of tax payable on under-reported income.

PART – II

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

- 2.(a) From the given information, determine the amount of interest payable u/s 234A in the following cases:

	Mr. A (25 years old individual)	Mr. B (63 years old individual)
Due date of filing return for the assessment year 2022-2023	31.07.2022	31.07.2022
Date of return filed	Not filed	05.10.2022
Date of payment of self-assessment tax	Not paid	10.09.2022
Date of completion of assessment	10.01.2022	15.10.2022
Declared Income	—	9,50,000
Assessed Income	7,25,000	9,65,200
Advance tax paid during 2021-22	20,500	21,430
Tax deducted or collected at source	6,000	5,600

[8]

- (b) "Fund can be obtained from various sources have different characteristics in terms of risk, cost and control." — State the areas of the tax planning in relation to capital structure and lease or buy decision in this context. [8]

Answer: 2

- (a) Calculation of interest will be as follows:

Period of default (a part of month is taken as full month)	6 months	2 months
Income assessed	7,25,000	9,65,200
Tax	57,500	1,03,040
(+) Surcharge	—	—
Total tax & surcharge	57,500	1,03,040
(+) Health & Education Cess	2,300	4,122
Total tax payable	59,800	1,07,162
(-) Advance tax paid and Tax deducted or collected at source	26,500	27,030
Shortfall	33,300	80,132
Shortfall (rounded off)	33,300	80,100
Interest @1% per month on shortfall (rounded off)	1,998	1,602

- (b) Fund can be obtained from various sources thus their procurement is always considered as a complex problem by a business organisation. Fund procured from different sources have different characteristics in terms of risk, cost and control.

- Capital Structure — the optimum capital structure is a mix of equity capital and debt funds. Following should be considered in this regard:
 1. Interest on debt fund is allowed as deduction as it is a business expenditure. Therefore, it may increase the rate of return on owner's equity.
 2. Dividend on equity fund is not allowed as deduction as it is the appropriation of profit. Further, the company declaring the dividend shall be liable to pay dividend distribution tax.

3. The cost of raising owner's fund is treated as capital expenditure therefore not allowed as deduction. However, if conditions of sec. 35D is satisfied then such cost can also be amortized.
4. The cost of raising debt fund is treated as revenue expenditure.

- Lease or Buy — when a person needs an asset for his business purposes, he has to decide whether the asset should be purchased or taken on lease. Following should be considered in this regard:

1. Lease rental can be claimed as deduction as revenue expenditure. However, depreciation on leases asset is not allowed.
2. Depreciation on depreciable assets can be claimed as deduction u/s 32.
3. In case, the asset is purchased from the amount taken on loan, interest paid for the period after the asset is first put to use, the deduction on account of interest shall be claimed as revenue expenditure. However, interest paid for the period before the asset is first put to use shall be capitalized.
4. Any gain on transfer of capital asset is subject to capital gain. In this regard, it is to be noted that in case of depreciable asset, asset shall be merged in the respective block of asset.

3. The following information are available in respect of P Ltd. which is engaged in the business of manufacture of garments:

	₹
Sale proceeds of goods (domestic sale)	22,23,900
Sale proceeds of goods (export sale)	5,76,100
Amount withdrawn from general reserve (reserve was created in 1996-97 by debiting P&L A/c)	2,00,000
Amount withdrawn from revaluation reserve	<u>1,50,000</u>
Total	31,50,000
Less : Expenses	
Depreciation (normal)	6,16,000
Depreciation (extra depreciation because of revaluation)	2,70,000
Salary and wages	2,10,000
Wealth-tax	20,000
Income-tax	3,40,000
Outstanding customs duty (not paid as yet)	17,500
Proposed dividend	60,000
Consultation fees paid to a tax expert	21,000
Other expenses	<u>1,39,000</u>
Net profit	14,56,500

The company wants to claim the following deductions:

- Deduction under section 80-IB (30 per cent of ₹14,56,500).
- Depreciation under section 32 (₹5,36,000)

MTP-QA-Dec2022-Final Examination- Syllabus2016-P16-S1

The following losses/allowances are available to set-off:

	For tax purposes (₹)	For accounting purposes (₹)
Brought forward loss of 2015-16	15,20,000	5,00,000
Unabsorbed depreciation	—	69,000

Compute the net income and tax liability of P Ltd. for the assessment year 2022-23 assuming that P Ltd. has a (deemed) long-term capital gain of ₹60,000 under proviso (i) to section 54D(2) which is not credited in statement of profit and loss. [16]

Answer: 3

	₹
Net profit as per P&L A/c	14,56,500
Add:	
Excess depreciation [i.e., ` 6,16,000+` 2,70,000-` 5,36,000]	3,50,000
Wealth-tax	20,000
Income-tax	3,40,000
Customs duty which is not paid	17,500
Proposed dividend	60,000
Total	22,44,000
Less: Amount withdrawn from reserves (i.e., ` 2,00,000 + ` 1,50,000)	3,50,000
Business income	18,94,000
Less: Unabsorbed loss	15,20,000
Business income	3,74,000
Long-term capital gain	60,000
Gross total income	4,34,000
Less : Deductions under section 80-IB [30% of ` 3,74,000]	1,12,200
Net income (rounded off)	3,21,800
Tax liability (under normal provisions) [20% of ` 60,000 + 30% of ` 2,61,800, plus 4% of tax as cess] [A]	94,162
Book profit:	
Net profit	14,56,500
Add:	
Depreciation [i.e., ` 6,16,000 + ` 2,70,000]	8,86,000
Wealth-tax	Nil
Income-tax	3,40,000
Proposed dividend	60,000
Less :	
Amount withdrawn from general reserve	2,00,000
Unabsorbed depreciation	69,000
Depreciation (normal)	6,16,000
Amount withdrawn from revaluation reserve to the extent it does not exceed extra depreciation because of revaluation	1,50,000
Book profit	17,07,500
Tax liability (15.6% of book profit) [B]	2,66,370

P Ltd. will pay ₹2,66,370 as tax for the assessment year 2022-23 as per section 115JB.

4. (a) Which Orders are appealable before CIT (Appeal)?

[8]

- (b) M/s. QQ Trading Co. is a sole proprietary concern and it was converted into a company w.e.f 01-09-2021. The sole proprietary concern had a block of Plant & Machinery (15%), whose WDV as on 1-4-2021 was ₹3,00,000, before the conversion. On 1st April itself, a new plant of the same block was purchased for ₹1,20,000. After the conversion, the QQ Trading Co. has purchased the same type of plant on 1-1-2022 for ₹1,60,000. Calculate the amount of depreciation that would be allocated between the concern & the company. [8]

Answer: 4

- (a) The provisions regarding Appealable Orders for making an appeal to the Commissioner (Appeal) are as follows:

As per u/s 246A:

Order passed by a Joint Commissioner u/s 115VP(3)(ii);

Order against the assessee, where the assessee denies his liability to be assessed under this Act;

- Intimation u/s 143(1) or 143(1B) or 200A(1) or 206CB(1) or Order of assessment u/s 143(3) [Scrutiny assessment] [except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sec. 144BA(12)] or u/s 144 [Best judgment assessment] in respect of income assessed or tax determined or loss computed or residential status;
- Order of assessment, reassessment or recomputation u/s 147 [(except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sec. 144BA(12)], 150 & 153A [except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sec. 144BA(12)];
- Order u/s 154 (Rectification of Mistake) or u/s 155 (other amendments) having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee [except where it is in respect of an order referred to in sec. 144BA(12)]
- Order of assessment or reassessment u/s 92CD(3)
- Order u/s 163 treating assessee as an agent of a non-resident;
- Order u/s 170 relating to assessment on succession;
- Order u/s 171 refusing to recognize partition of an HUF;
- Order u/s 201 or 206C(6A) for default of provisions of TDS/TCS;
- Order u/s 237 relating to refunds;
- Order relating to Penalty;
- Order imposing penalty under chapter XXI
- An order of penalty imposed under chapter XXI or an order of imposing or enhancing penalty u/s 275(1A)
- Any order made by an Assessing Officer other than a Joint Commissioner, as the Board may direct.

As per U/s 248: Where under an agreement or other arrangement –

- the tax deductible u/s 195 on any income (other than interest) is to be borne by the person by whom the income is payable; &
- such person having paid such tax to the credit of the Central Government, claims that no tax was required to be deducted on such income,

he may appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income.

- (b) Computation of depreciation on plant and machinery if there were no succession:

Particulars	Plant & Machinery (₹)
W.D.V. as on 1/4/2018	3,00,000
Add: Purchase during the year	1,20,000
	4,20,000
Less: Sale during the year	Nil
	4,20,000
Depreciation @ 15% of ₹4,20,000	63,000

Allocation of depreciation between sole proprietary concern and the successor company:
The depreciation of ₹63,000 is to be allocated in the ratio of number of days the assets were used by the sole proprietary concern and the successor company.

Calculation of allowable depreciation to sole proprietary concern

Particulars	Amount (₹)
Ex-sole proprietary:	
Plant & machinery are used by sole proprietary concern from 1/4/2021 to 31/8/2021 i.e. 153 days.	
Depreciation for 153 days (₹63,000 x 153/365)	26,408

Calculation of allowable depreciation to Successor Company:

Particulars	Amount (₹)
Plant & machinery of sole proprietary concern used by the successor company from 1/9/2018 to 31/3/2019 i.e. 212 days. Depreciation for such period (₹63,000 x 212/365)	36,592
After conversion	
Depreciation in respect of assets purchased by the successor company on 1/1/2019 is fully allowable in the hands of successor company [50% of 15% on ₹1,60,000].	12,000
Total depreciation	48,592

5.(a) Voluntary subsidies paid by a holding company, to protect the capital investment, to its loss-making subsidiary, has been treated to be a revenue receipt, as contented by the Assessing Officer. Justify. [8]

(b) Yum! Restaurants (Marketing) Private Limited which is the appellant company is a fully owned subsidiary of YRIPL. Purpose of the organisation is that of cost advertisement and promotion to the franchised (economies). The Secretariat for Industrial Assistance approved this purpose. However, few conditions were laid down with regard to the functioning of the Appellant company. The Appellant was obligated to operate as a non-profit entity. And this non-profit entity was based on the principle of Mutuality. After the Assessment Year, the assessee (the Appellant) filled the returns as NIL for income stating its mutual character of this non-profit entity. This was not accepted by the Assessing Officer. Discuss with the help of case law. [8]

Answer:5 (a)

In the case of Siemens Public Communications Network Ltd. vs. CIT (2016) (SC) the subvention received by the Assessee - Company from its parent company in Germany in a situation where the assessee-company was making losses has been treated to be a revenue receipt by the Assessing Officer. Though the first Appellate Authority and the ITAT has reversed the said finding. However, the High Court has restored the view taken by the Assessing Officer referring the decisions of Apex Court in Sahney Steel & Press Works Ltd.,

Hyderabad -vs.- CIT (1997) 7 SCC 764 and CIT -vs.- Ponni Sugars and Chemicals Limited (2008) 9 SCC 337.

In these cases, the Apex Court has held that unless the grant-in-aid received by an Assessee is utilized for acquisition of an asset, the same must be understood to be in the nature of a revenue receipt. However, the aforesaid view tends to overlook the fact that in both Ponni Sugars and Sahney Steel the subsidies received were in the nature of grant-in-aid from public funds and not by way of voluntary contribution by the parent Company as in the present cases. Further, the voluntary payments made by the parent Company to its loss making Indian company can also be understood to be payments made in order to protect the capital investment of the Assessee Company. Thus, it was held that the payments made to the Assessee Company by the parent Company for Assessment Years in question cannot be held to be revenue receipts. Earlier, the same view has also been held in CIT -vs.- Handicrafts and Handlooms Export Corporation of India Ltd. (Delhi)

So, it can be concluded that voluntary subsidies paid by a holding company, to protect the capital investment, to its loss – making subsidiary is capital receipt in the hands of the recipient.

(b) The given matter in the question is a case of Yum! Restaurant (Marketing) Private Limited Vs. CIT (SC) (2020).

Yum! Restaurants (Marketing) Private Limited which is the appellant company is a fully owned subsidiary of YRIPL. Purpose of the organisation is that of cost advertisement and promotion to the franchised (economies). The Secretariat for Industrial Assistance approved this purpose. However, few conditions were laid down with regard to the functioning of the Appellant company. The Appellant was obligated to operate as a non-profit entity. And this non-profit entity was based on the principle of Mutuality.

Thereafter, the Yum! Restaurants (Marketing) Private Limited got into a Tripartite Operating Agreement in furtherance of the approval. The agreement was between the Appellant company, YRIPL and the franchises. As per the agreement the Appellant company received 5% of Gross sales as a fixed contribution for the purpose of Advertising and Other Promotional activities as a mutual benefit to the franchises & the parent company as well.

After the Assessment Year, the assessee(the Appellant) filled the returns as NIL for income stating its mutual character of this non-profit entity. This was not accepted by the Assessing Officer. The Commissioner of the Income Tax department upheld this decision explaining that the rejection was on the basis of the undesirable Commerciality in the activities undertaken by the Appellant company. Thus, making the surplus liable to tax.

The Income Tax Appellate Tribunal held that the essentials of a Doctrine of Mutuality are not fulfilled thus there is no basis to the arguments made by the assessee. The Delhi High Court also upheld this view.

The Apex Court has held that if the realization of money by the taxpayer from both members as well as nonmembers was in the course of the same activity and is tainted with commerciality, then the test of mutuality is not met. Where the participants did not have the right to participate in surplus or were not entitled to get back the unspent portion of their respective contributions, then this was also held to be against the concept of mutuality. In such cases, the income earned inter-se was held to be chargeable to income tax. The doctrine of mutuality bestows a special status to qualify for exemption from tax liability. It is a settled proposition of law that exemptions are to be put to strict interpretation. The Assessee having failed to fulfil the stipulations and to prove the existence of mutuality, the

MTP-QA-Dec2022-Final Examination- Syllabus2016-P16-S1

question of extending exemption from tax liability to the Assessee, that too at the cost of public exchequer, does not arise.

So, it can be concluded that Doctrine of mutuality is not applicable in case of a commercial concern and arrangement.

6.(a) Compute ALP through following information:

- A Ltd. is a distributor of IT products.
- A Ltd. purchases these products from its related party, P Ltd.
- A Ltd. also trades in laptops manufactured by X Ltd.
- P Ltd as well as X Ltd would supply the warranty replacements free of cost to A Ltd.
- Other details are as under:

Particulars	P Ltd. (AE)	X Ltd.
Purchase price of A Ltd.	₹15,000	₹22,000
Sale price of A Ltd.	₹ 18,000	₹26,000
Other expenses incurred by A Ltd.	₹500	₹ 700

[8]

- (b) What do you understand by Foreign Tax Credit in the context of international taxation? Which are the documents required for availment of such credit? [4+4=8]

Answer.(a)

Computation of gross profit margin on unrelated transaction

Particulars	Amount (INR)
Sale price of laptop in India	26,000
Expenses incurred by A Ltd	700
Net Sale proceeds of laptop in India [A]	25,300
Purchase price [B]	22,000
Gross profit [A - B]	3,300
GP on sale (%)	12.69%

Computation of arm's length price

Particulars	Amount
Sales price of desktop in India	18,000
Less: Expenses incurred by A Ltd	500
Less: Arm's length resale margin @ 12.69 % of sale	2,284
Arm's length purchase price	15,216
Purchase price paid to AE	15,000

Thus, no adjustment is required.

- (b) Foreign Tax Credit: An assessee, being a resident shall be allowed a credit for the amount of any foreign tax paid by him in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India, in the prescribed manner.

In a case, where such foreign income is offered to tax in more than one year, credit of foreign tax shall be allowed across those years in the same proportion in which the income is offered to tax or assessed to tax in India.

The credit shall be available against the amount of tax, surcharge and cess payable under

the Act but not in respect of any sum payable by way of interest, fee or penalty.

No credit shall be available in respect of any amount of foreign tax or part thereof which is disputed in any manner by the assessee. However, the credit of such disputed tax shall be allowed for the year in which such income is offered to tax or assessed to tax in India if the assessee within 6 months from the end of the month in which the dispute is finally settled, furnishes evidence of settlement of dispute and an evidence to the effect that the liability for payment of such foreign tax has been discharged by him and furnishes an undertaking that no refund in respect of such amount has directly or indirectly been claimed or shall be claimed.

The credit of foreign tax shall be the aggregate of the amounts of credit computed separately for each source of income arising from a particular country or specified territory outside India and shall be given effect to in the following manner:

- The credit shall be the lower of the tax payable under the Act on such income and the foreign tax paid on such income.

However, where the foreign tax paid exceeds the amount of tax payable in accordance with the provisions of the agreement for relief or avoidance of double taxation, such excess shall be ignored.

- The credit shall be determined by conversion of the currency of payment of foreign tax at the telegraphic transfer buying rate on the last day of the month immediately preceding the month in which such tax has been paid or deducted.

Documents required for availment of credit: Credit of any foreign tax shall be allowed on furnishing the following documents by the assessee within due date of furnishing return of income:

- a statement of income from the country or specified territory outside India offered for tax for the previous year and of foreign tax deducted or paid on such income in Form No.67 and verified in the manner specified therein;
- certificate or statement specifying the nature of income and the amount of tax deducted therefrom or paid by the assessee:

1. from the tax authority of the country or the specified territory outside India; or
2. from the person responsible for deduction of such tax; or
3. signed by the assessee:
 - o The statement furnished and signed by the assessee shall be valid if it is accompanied by:
 - A. an acknowledgement of online payment or bank counter foil or challan for payment of tax where the payment has been made by the assessee;
 - B. proof of deduction where the tax has been deducted.

7.(a) Mr. R, who is a resident Indian, has derived the following incomes for the previous year 2021-22 relevant to the A.Y. 2022-23:

a. Income from profession in India	₹ 2,44,000
b. Income from profession in country A (Tax paid in foreign country @ 5%)	₹ 4,50,000

Compute the tax liability of the assessee in India assuming that as per treaty between India and Country A, ₹4,50,000 is taxable in India. However foreign tax can be set off against the Indian tax liability. [8]

(b) Describe the "International Transaction" as per Section 92B of the Income Tax Act. Specify

Answer:

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

Particulars	Amount (₹)
Income from profession in India	2,44,000
Income from profession in Country A	4,50,000
Gross Total Income	6,94,000
Less: Deduction u/ch. VIA	Nil
Total income	6,94,000
Tax on above	51,300
Add: Health & Education cess	2,052
Tax and cess payable	53,352
Less: Relief u/s 90 [₹ 4,50,000 × 5%]	22,500
Tax payable in India (Rounded off u/s 288B)	30,850

(b) International Transaction: International transaction means a transaction between two or more associated enterprises, either or both of whom are non-residents, in the nature of —

- (i) purchase, sale or lease of tangible or intangible property, or
- (ii) provision of services, or
- (iii) lending or borrowing money, or
- (iv) any other transaction having a bearing on the profits, income, losses or assets of such enterprises; &

shall include a mutual agreement or arrangement between two or more associated enterprises

1. for the allocation or apportionment of, or
2. any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises [Sec. 92B(1)]

A transaction entered into by an enterprise with a person other than an associated enterprise shall, be deemed to be an international transaction entered into between two associated enterprises,

1. if there exists a prior agreement in relation to the relevant transaction between such other person and the associated enterprise; or
2. the terms of the relevant transaction are determined in substance between such other person and the associated enterprise where the enterprise or the associated enterprise or both of them are non-residents irrespective of whether such other person is a non-resident or not [Sec. 92B(2)]

Deemed International Transaction: International transaction shall include:

1. the purchase, sale, transfer, lease or use of tangible property including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity or any other article, product or thing;
2. the purchase, sale, transfer, lease or use of intangible property, including the transfer of ownership or the provision of use of rights regarding land use, copyrights, patents, trademarks, licences, franchises, customer list, marketing channel, brand, commercial

- secret, know-how, industrial property right, exterior design or practical and new design or any other business or commercial rights of similar nature;
3. capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;
 4. provision of services, including provision of market research, market development, marketing management, administration, technical service, repairs, design, consultation, agency, scientific research, legal or accounting service;
 5. a transaction of business restructuring or reorganisation, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or at any future date;
8. **Write short note (any four):** **[4×4=16]**
- (a) **Organisation of Tax Planning Cells.**
 - (b) **Tonnage Tax Scheme**
 - (c) **Comparative study of ICDS II with AS 2**
 - (d) **Tax on Income from Patent**
 - (e) **Computation of total undisclosed foreign income and asset as per Black Money and Imposition of Tax Act.**

Answer (a)

Various organisation have separate tax planning departments to plan their transactions with a view to attract the least incidence of tax. Organisation of such a cell can be justified on the following grounds:

- a. **Complexity and volume of work:** Where the volume of tax work to be handled is large and highly complex, then it is required to appoint a special tax expert along with the required staff.
- b. **Separate Documentation:** Documentation is an indispensable ingredient of tax management. An assessee has to keep reliable, complete and updated documentation for all the relevant tax files so that the documentary evidence can be made available at a short notice whenever it is required. In absence thereof, an assessee may lose a case for want of proper documentary evidence. Not only that the company has to maintain proper account books, records, vouchers, bills, correspondence and agreements, etc. as a part of tax management. In the case of new industrial undertaking it is better to keep separate accounts for the same.
- c. **Data Collection:** The staff concerned with taxation has to collect and keep on collecting data relating to latest circulars, case laws, rules and provisions, and other government notifications to keep abreast of the current developments.
- d. **Integration:** Tax planner should be consulted by all the departments of the company to know the impact of taxation on their decisions. It would be necessary to integrate and properly link all the departments of the company with the tax planning department.
- e. **Constant Monitoring:** In order to obtain the intended tax benefits, persons connected with tax management should ensure compliance of all the pre-requisites, like procedures, rules etc. Besides, there should be constant monitoring, so that all the tax obligations are discharged and penal consequences avoided.
- f. **Developing Tax effective Alternatives:** Tax laws provides various options for entering into a transactions. A tax planner could guide management in taking important decisions, by considering varieties of alternatives and choices.
- g. **Take advantage of variance allowances and deductions:** An expert tax manager has to keep track of the provisions relating to various allowances, deductions, exemptions, and rebates so as to initiate tax planning measures.

(b) Tonnage Tax Scheme: To make the Indian shipping industry more competitive, a tonnage tax scheme for taxation of shipping profits was introduced. Some of the basic features of the tonnage tax scheme are as follows:-

- It is a scheme of presumptive taxation whereby the notional income arising from the operation of a ship is determined based on the tonnage of the ship.
- The notional income is taxed at the normal corporate rate applicable for the year.
- Tax is payable even if there is a loss in an year.
- A company may opt for the scheme and once such option is exercised, there is a lock in period of 10 years. If a company opts out, it is debarred from re-entry for 10 years.
- Since this is a preferential regime of taxation, certain conditions like creation of reserves, training etc. are required to be met.
- A company may be expelled in certain circumstances.

A company owning at least one qualifying ship may join. A qualifying ship is one with a minimum tonnage of 15 tons and having a valid certificate. Certain types of ships like fishing vessels, pleasure crafts etc. are excluded in terms of sec. 115V-D. The business of operating qualifying ships is to be considered a separate business and separate accounts are to be maintained.

A company opting for the scheme is not allowed any set-off of loss nor is any depreciation allowed. However, both loss and depreciation are deemed to have been allowed and notional adjustments are made against the relevant shipping income. Although depreciation is not allowed, it is necessary to bifurcate the qualifying ships and non-qualifying ships at the time a company joins the scheme.

(c) Comparative study of ICDS II with AS 2:

Basis of difference	AS 2	ICDS II
Valuation of service inventory	No specific provision	NA
Opening inventory	No specific provision	<ul style="list-style-type: none"> • Value of opening inventory of a business shall be the same as the value of inventory at the end of the immediately preceding financial year • In case of commencement of business, cost of inventory on the day of commencement of business will be opening inventory
Change in method of inventory valuation	Change permitted if (i) required by statute; (ii) required for compliance of AS; (iii) change results in more appropriate presentation of financial statements	Method of valuation once adopted shall not be changed without reasonable cause
Inventory valuation in case of certain dissolutions	No specific provision	In case of partnership firm, AOP or BOI inventory on the date of dissolution shall be valued at NRV, whether or not business is discontinued

(d) Tax on Income from Patent: Where the total income of an eligible assessee includes any

income by way of royalty in respect of a patent developed and registered in India, tax @ 10% shall be payable on such royalty income.

- Eligible Assessee means a person resident in India and who is a patentee;
 - Patentee means the person, being the true and first inventor of the invention, whose name is entered on the patent register as the patentee, in accordance with the Patents Act, and includes every such person, being the true and first inventor of the invention, where more than one person is registered as patentee under that Act in respect of that patent.
 - Developed means at least 75% of the expenditure incurred in India by the eligible assessee for any invention in respect of which patent is granted under the Patents Act, 1970
 - Royalty, in respect of a patent, means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head –Capital gains^{II} or consideration for sale of product manufactured with the use of patented process or the patented article for commercial use) for the:
 - i. transfer of all or any rights (including the granting of a licence) in respect of a patent; or
 - ii. imparting of any information concerning the working of, or the use of, a patent; or
 - iii. use of any patent; or
 - iv. rendering of any services in connection with the activities referred above
 - Lump sum includes an advance payment on account of such royalties which is not returnable.
- (e) Computation of total undisclosed foreign income and asset as per Black Money and Imposition of Tax Act: In computing the total undisclosed foreign income and asset of any previous year of an assessee:
- No deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee, whether or not it is allowable in accordance with the provisions of the Income-tax Act.
 - Any income,—
 1. which has been assessed to tax for any assessment year under the Income-tax Act prior to the assessment year to which this Act applies; or
 2. which is assessable or has been assessed to tax for any assessment year under this Act, shall be reduced from the value of the undisclosed asset located outside India, if, the assessee furnishes evidence to the satisfaction of the Assessing Officer that the asset has been acquired from the income which has been assessed or is assessable, as the case may be, to tax.

The amount of deduction in case of an immovable property shall be the amount which bears to the value of the asset as on the first day of the financial year in which it comes to the notice of the Assessing Officer, the same proportion as the assessable or assessed foreign income bears to the total cost of the asset.