

**Paper 16 – Direct Tax Laws
And
International Taxation**

Paper 16 – Direct Tax Laws and International Taxation

Time Allowed: 3 Hours

Full Marks: 100

Answer Question No. 1 which is compulsory and any FIVE from Question No 2 to 8.

Section-A

1. Multiple Choice Questions:

10x 1 = 10

- (i) Maximum limit of deduction in respect of rent paid u/s 80GG is _____
A. 2,000
B. 2,500
C. 3,000
D. 5,000
- (ii) Arm's length price is to be determined by applying any of the following methods:
A. Fair market value method
B. Resale price method
C. Stamp duty value method
D. None of the above
- (iii) Prosecution can be launched and the taxpayer can be punished if he commits willful failure to produce before the tax authorities the accounts and documents as demanded under section _____.
A. 139
B. 142 (1)
C. 148
D. None of the above
- (iv) The provision of section 80JJAA is applied to the business of manufacture of goods in a factory where workmen are employed for not less than _____ days in a previous year.
A. 100 days
B. 200 days
C. 300 days
D. 600 days
- (v) Penalty to produce the information and documents within the period allowed s/s 286(6) is _____.
A. ₹ 2,000 per day
B. ₹ 3,000 per day
C. ₹ 5,000 per day
D. None of the above
- (vi) Penalty for failure to furnish the information and the document as required u/s 92D(4) by constituent entity of an International group referred to new Section 286 will attract penalty of ₹ _____.
A. ₹ 2.5 Lakh
B. ₹ 5 Lakh
C. ₹ 10 Lakh
D. None of the above
- (vii) For every non corporate taxpayer to whom the provisions of AMT apply is required to obtain a report from a Chartered Accountant in Form _____ on or before the due date of filling the return of income.
A. Form I
B. Form 29
C. Form 29A
D. Form 29C
- (viii) Where assessed income is more than 2 Lakh then fees for filling an appeal with ITAT would be _____.

- A. ₹ 500
B. ₹ 1000
C. ₹ 1500
D. 1% of assessed income subject to a maximum of ₹ 10,000
- (ix) The loss of a speculation business of any assessment year is allowed to be set off only against the profit and gains of _____.
- A. Business and profession
B. Other sources
C. Speculation business
D. None of the above
- (x) As per section 245(D)(1) on receipt of application under section 245C, the settlement commission shall within _____ days from the date of receipt of the application issue a notice to the applicant requiring him to explain as to why the application made by him be allowed to proceed with.
- A. 5 days
B. 7 days
C. 10 days
D. None of the above

Answer:

1. (i) Correct Answer (D)
Maximum limit of deduction in respect of rent paid u/s 80GG is ₹ 5,000.
- (ii) Correct Answer (B)
Arm's Length price is to be determined by applying any of the following methods,
a. Resale price method
b. Cost Plus method
c. Profit Split method
d. Any other method as prescribed
- (iii) Correct Answer (B)
Prosecution can be launched and the taxpayer can be punished if he commits willful failure to produce before the tax authorities the accounts and documents as demanded under section 142(1).
- (iv) Correct Answer (C)
The provision of section 80JJAA is applied to the business of manufacture of goods in a factory where workmen are employed for not less than 300 days in a previous year.
- (v) Correct Answer (C)
Penalty to produce the information and documents within the period allowed s/s 286(6) is 5,000 per day.
- (vi) Correct Answer (B)
Penalty for failure to furnish the information and the document as required u/s 92D(4) by constituent entity of an International group referred to new Section 286 will attract penalty of ₹ 5 lakh.
- (vii) Correct Answer (D)

MTP_Final_Syllabus 2016_Dec 2017_Set 2

For every non corporate taxpayer to whom the provisions of AMT apply is required to obtain a report from a Chartered Accountant in Form 29C on or before the due date of filling the return of income.

- (viii) Correct Answer (B)
As per section 249(1) ,Where assessed income is more than 2 Lakh then fees for filling an appeal with ITAT would be ₹ 1,000.
- (ix) Correct Answer (C)
The loss of a speculation business of any assessment year is allowed to be set off only against the profit and gains of speculation business.
- (x) Correct Answer (B)
As per section 245(D)(1) on receipt of application under section 245C, the settlement commission shall within 7 days from the date of receipt of the application issue a notice to the applicant requiring him to explain as to why the application made by him be allowed to proceed with.

Section-B

(Answer any Five Questions out of seven questions)

2. (a) Determine the Gross Total Income of X and his wife from the following particulars for the year ending 31.3.2017: 8 Marks
- (i) X and his wife are partners in a firm carrying on cloth business, their respective shares of profit being ₹ 78,000 and ₹ 60,000.
- (ii) Their 16 years old son has been admitted to the benefits of another firm, from which he received ₹ 80,000 as his share of profit in the firm and ₹ 90,000 as interest on capital, The capital was invested out of the minor's own funds amounting to ₹ 9,00,000.
- (iii) A house property in the name of X was transferred to his wife on 1.12.2016 for adequate consideration. The property has been let at a rent of ₹ 30,000 p.m.
- (iv) Debentures of a company of ₹ 1,40,000 and ₹ 1,12,000 purchased two years ago are in the names of X and his wife respectively, on which interest is receivable at 10% p.a. His wife had in the past transferred ₹ 70,000 out of her income to X for the purchase of the debentures in X's name.
- (v) X had transferred ₹50,000 to his wife in the year 2011 without any consideration which was given as a loan by her to Y. She earned ₹ 20,000 as interest during the earlier previous years which was also given on loan to Rekha. During the financial year 2016-17, she received interest at 10% p.a. on ₹ 70,000.
- (vi) X transferred ₹75,000 to a trust, the income accruing from its investment as interest amounted to ₹7,500 out of which ₹5,000 shall be utilized for the benefit of his son's wife and ₹2,500 for the benefit of his son's minor child.

- (b) Determine the deduction u/s 80QQB in each of the following cases for Assessment Year 2017-2018 8 Marks

Particulars	A	B	C
Royalty on Books covered by Sec. 80QQB	5,40,000	6,00,000	8,00,00
Rate of Royalty as % of value of Books	18%	15%	20%
Whether Lump sum payment for assignment of all interest in Copyright	No	No	Yes

MTP_Final_Syllabus 2016_Dec 2017_Set 2

Expenditure for earning Royalty	1,80,000	1,80,000	2,40,000
Is Royalty received from abroad	Yes	No	Yes
Amount remitted to India till 30.09.2016	3,60,000	NA	7,00,000

Answer:

2. (a) Computation of Gross Total Income of X for the assessment year 2017-18

	₹	₹
1. Income from House Property:	2,40,000	
Rental value for 8 months (i.e., before transfer) (8 × 30,000)	72,000	1,68,000
Less: 30% as statutory deduction		
2. Profit from Business:		
(i) Share from firm (Exempt)	Nil	
(ii) Minor Son's share in another firm (Exempt)	Nil	
(iii) Interest on minor's capital with firm (₹ 90,000 – Exemption u/s 10(32) ₹ 1,500)	88,500	88,500
3. Income from other Sources:		
Interest @ 10% on ₹ 70,000 Debentures (only one-half of ₹ 1,40,000 were bought by own funds)	7,000	
Interest received by his wife @ 10% on ₹ 50,000 (being transferred without any consideration)	5,000	
Interest on ₹ 50,000 from his trust (Interest income utilised for the benefit of son's wife)	5,000	17,000
Gross Total Income		2,73,500

Computation of Gross Total Income of Mrs. Y for the assessment year 2017-18

	₹	₹
Income from House Property:		
Rental value for 4 months (i.e., after transfer) (30,000 × 4)	1,20,000	
Less: 30% as statutory deduction	36,000	84,000
Income from business:		
Share from firm (Exempt)	Nil	
Income from Other Sources:		
(i) Interest on ₹ 1,120,000 10% Debentures	11,200	
(ii) Interest on ₹ 70,000 10% Debentures in husband's name but funds invested by her	7,000	
(iii) Interest on ₹ 20,000 @ 10% (This interest is on accrued income of ₹ 50,000, which have been transferred to her by the husband and interest on such accrued income is treated as the income of the transferee, although the income on the transferred amounts is treated as the income of the transferor as it was transferred without any consideration.)	2,000	20,200
Gross Total Income		1,04,200

- (b) Computation of Deduction u/s 80QQB

Particulars	A (₹)	B (₹)	C (₹)
Rate of Royalty as % of value of books (given)	18%	15%	20%
Royalty on Books covered by Sec.80QQB	5,40,000	6,00,000	8,00,000
Less: Amount not brought into India within 6 months	(1,80,000)	N.A.	(1,00,000)
Amount Eligible	3,60,000	6,00,000	7,00,000
Less: Royalty exceeding 15% (3%/18%×3,60,000) for A	(60,000)	NIL	(Lumpsum) NA
Less: Expenditure Incurred (See Note)	(1,20,000)	(1,80,000)	(2,10,000)
Net Royalty qualifying for deduction	1,80,000	4,20,000	4,90,000
Amount deductible u/s 80QQB [Least of ₹ 3,00,000 or Net Royalty as above]	1,80,000	3,00,000	3,00,000

MTP_Final_Syllabus 2016_Dec 2017_Set 2

Note: Computation of Expenditure Deductible

Particulars	A (₹)	B (₹)	C (₹)
Amount of Royalty	5,40,000	6,00,000	8,00,000
Less: Royalty in Foreign Exchange Not Received	(1,80,000)	N.A.	(1,00,000)
Amount Eligible	3,60,000	6,00,000	7,00,000
Expenditure incurred	1,80,000	1,80,000	2,40,000
Eligible Expenditure = $\frac{\text{Amount Eligible} \times \text{Expenditure Incurred}}{\text{Amount of Royalty}}$	1,20,000	1,80,000	2,10,000

3. PKJ Corporation LLP, is carrying on two businesses, viz. Textile Manufacture and Operation of Cold Chain Facility. It gives you the following information for the year ended 31st March 2017.

Net Profit as per Profit & Loss Account:

From Textile Manufacture	10,25,000
From Operation of Cold Chain Facility	20,50,000

The following items are debited to Profit & Loss Account:

- (i) Interest on Capital payable to Partners @ 15% on Total Capital of ₹ 100 Lakhs.
- (ii) Working Partner Salary ₹ 36 Lakhs (i.e. ₹ 1 Lakh each per month for 3 partners).
- (iii) Depreciation on Textile Factory Building ₹ 5 Lakhs.
- (iv) Depreciation on Plant & Machineries of Textile Business ₹ 35 Lakhs.
- (v) Keyman Insurance Policy premium paid ₹ 1,55,000.

Other Information:

Eligible Depreciation u/s 32 for the Previous Year 2016-2017 are -

- (i) On Plant & Machineries of Textile Business ₹ 27 Lakhs.
- (ii) On Factory Building relating to Textile Business ₹ 4 Lakhs.

The Assessee set up and operating a Cold Chain Facility since 1st April 2015. It incurred Capital Expenditure towards Construction of Cold Chain Facility during the period from 1st June 2013 to 31st March 2015 as under:

- Cost of Land (acquired on 1st June 2013) ₹ 30 Lakhs.
- Cost of Construction of Building and Machineries installed till 31st March 2015 ₹ 50 Lakhs.

The Income of the Firm for the Previous Year 2014-2015 (Assessment Year 2016-2017) is given below:

- Income from Textile Manufacture ₹ 12 Lakhs.
- Income from Cold Chain Facility ₹ 60 Lakhs (before deduction u/s 35 AD)

The Firm originally had 4 equal Partners and one Partner retired on 31-03-2016. The Partnership Agreement authorizes payment of Salary and Interest on Capital which are debited to Profit & Loss Account.

You are requested to compute the Total Income of the Firm for the Assessment Year 2017-2018. Note: Ignore Alternate Minimum Tax (AMT) under Section 115JC. 16 Marks

Answer:

3. Computation of total income of PKJ Corporation LLP for the A.Y. 2017-18

	₹	₹
Profits and Gains from Business or Profession		
Consolidated net profit as per profit and loss account (₹10,25,000 + ₹ 20,50,000)	30,75,000	
Add: Expenses debited to profit & loss account but disallowed or to be considered separately		

MTP_Final_Syllabus 2016_Dec 2017_Set 2

(1) Interest on capital payable to partners in excess of 12%	3,00,000	
(2) Working Partner's salary (to be allowed separately)	36,00,000	
(3) Depreciation relating to textile business as per books of account (₹ 5 lakhs + ₹ 35 lakhs)	40,00,000	79,00,000
		1,09,75,000
Less: Depreciation as per Income-tax relating to textile business [₹ 27 lakhs + 5 lakhs]		31,00,000
Book Profit		78,75,000
Less: Remuneration to working partners [See Working Note 2]		36,00,000
Income under the head PGBP for both business		42,75,000
Business income from textile manufacturing business [See Working Note 3]		20,25,000
Balance shall be business income from specified business of operating a cold chain facility [₹42,75,000 - ₹20,25,000]	22,50,000	
Less: Set-off of brought forward loss of specified business under section 73A [See Working Note 4]	11,25,000	11,25,000
Total Income		31,50,000

Working Notes:

(1) Keyman insurance premium paid is allowable as deduction.

(2) Remuneration allowed as per section 40(b)]

On first ₹3,00,000 of book profit — 90% of book profit	2,70,000
On the balance book profit 60% of ₹75,75,000	45,45,000
but limited to actual remuneration paid	36,00,000

(3) Computation of profit from textile manufacturing business:

	₹
Net profit as per profit and loss account	10,25,000
Add: Depreciation relating to textile business as per books of account (₹ 5 lakhs + ₹ 35 lakhs)	40,00,000
	50,25,000
Less: Depreciation relating to textile business as per Income-tax	31,00,000
Balance	19,25,000
Add: Proportionate interest on capital disallowed 1/3 of ₹ 3,00,000 [apportioned in the ratio of net profits of textile business and specified business as per profit and loss account.	1,00,000
Profit from textile manufacturing business	20,25,000

(4) Computation of brought forward loss of specified business of setting up and operating a cold chain facility for P.Y. 2015-16 relevant to Assessment Year 2016-17

	₹
Income from cold chain facility [before deduction under section 35AD]	60,00,000
Less: Deduction under section 35AD [150% of ₹ 50,00,000] (As business has commenced on 1.4.2015 which is on or after 1-4-2013) Expenditure on acquisition of land is not eligible for deduction u/s 35 AD	75,00,000
Loss of specified business for P.Y. 2015-16	15,00,000
Less: 1/4 th of the loss attributable to the retiring partner not allowed to be carried forward as per section 78(1)	3,75,000
Balance loss of the specified business to be c/f as per section 73A to be set off from the specified business in the subsequent years	11,25,000

4. (a) Discuss the power of Principal Commissioner or Commissioner to condone delay in filling a return of loss. 8 Marks

(b) State the tax planning procedure in case of amalgamation of a company. 8 Marks

Answer:

4. (a) 1. Principal Commissioner or Commissioner vested with the power of acceptance/rejection of delayed application for claim of loss provided claim is not more than 10 lakh for any assessment year:
The Principal Commissioners of Income-tax/Commissioners of Income-tax (Pr.CsIT/CsIT) shall be vested with the powers of acceptance/rejection of delayed applications of claim of loss if the amount of such claims is not more than ₹ 10 lakhs for any one assessment year.
2. Principal Chief Commissioner or Chief Commissioner vested with the power of acceptance/rejection of delayed application of claim of loss provided claim is more than 10 lakh but does not exceed ₹ 50 lakh for any assessment year:
The Principal Chief Commissioners of Income-tax/Chief Commissioners of Income-tax (Pr.CCsIT/CCsIT) shall be vested with the powers of acceptance/rejection of delayed applications of claim of loss if the amount of such claims exceeds ₹ 10 lakhs but is not more than ₹ 50 lakhs for any one assessment year.
3. Where the claim of loss is more than ₹ 50 lakhs: The applications/claims for amount exceeding ₹ 50 lakhs shall be considered by the Board.
4. Application for condonation of delay in making claim of loss cannot be entertained beyond a period of 6 years:
No condonation application for claim of loss shall be entertained beyond six years from the end of the assessment year for which such application is made. This limit of six years shall be applicable to all authorities having powers to condone the delay as per the above prescribed monetary limits, including the Board.
5. Time limit for disposal of condonation application of claim of loss:
A condonation application should be disposed of within six months from the end of the month in which the application is received by the competent authority, as far as possible.
6. Conditions for acceptance/rejection of the application
The powers of acceptance/rejection of the application within the monetary limits delegated to the Pr.CCsIT/CCsIT/Pr.CsIT/CsIT in case of such claims will be subject to following conditions:
(i) At the time of considering the case under section 119(2)(b), it shall be ensured that the loss declared is correct and genuine and also that the case is of genuine hardship on merits.
(ii) The Pr.CCsIT/CCsIT/Pr.CIT/CIT dealing with the case shall be empowered to direct the jurisdictional assessing officer to make necessary inquiries or scrutinize the case in accordance with the provisions of the Act to ascertain the correctness of the claim.
7. This circular will cover all such applications for condonation of delay under section 119(2)(b) which are pending as on the date of issue of the Circular.
8. The Board reserves the power to examine any grievance arising out of an order passed or not passed by the authorities mentioned in para 2 above and issue

suitable directions to them for proper implementation of this Circular. However, no review of or appeal against the orders of such authorities would be entertained by the Board.

Where the assessee society failed to file its return within due date on account of delay in getting audit report, in view of fact that said delay was attributable to assessee as it did not supply necessary statements to auditors in time, it was held that Commissioner was justified in rejecting application seeking condonation of delay filed under section 119(2)(6). **[Travancore Cements Employees Co-Operative Bank Ltd. v CIT (2014) 50 taxmann.com 141 (Ker)]**

The assessee approached CBDT and sought for condonation of delay in filing of return and explained that due to last hour rash on last day of filing of return, there were technical snags in website of department and, thus, return could not be uploaded. It could only be uploaded in midnight and, hence, date of filing had been reckoned by department as next day. CBDT rejected petitioner's contention. It was held that since petitioner had not gained anything from delay and had satisfactorily explained reason for delay in filing return, CBDT should have condoned delay of one day in filing return by assessee; mere delay should not defeat claim of assessee **[Regen Infrastructure & Services (P.) Ltd. v CBDT (2016) 238 Taxman 530 (Mad)]**

(b) Tax planning in case of amalgamation

1. The benefit of tax concession is allowed to the amalgamating and amalgamated company only when the amalgamation satisfies the conditions provided under section 2(1B) Of the Income-tax Act. One of the conditions laid down is that all the assets and liabilities of the amalgamating company, as on the date of amalgamation should be taken over by the amalgamated company. Therefore if some assets or liabilities of the amalgamated company are not proposed to be taken over by the amalgamated company, the same should be disposed of or discharged by the amalgamating company before the amalgamation takes effect.
2. Similarly there is a condition that at least 75% of the shareholders of the amalgamated company should become shareholders of the amalgamated company. If more than 25% of the shareholders of the amalgamated company are not willing to become shareholders of the amalgamated company, then so much shares of such shareholders may be purchased by the other shareholders or by the amalgamated company, before the amalgamation, so that at the time of amalgamation the condition of 75% of the shareholders becoming shareholders of the amalgamated company is satisfied.
3. As per section 72A the amalgamated company can carry forward the business loss and unabsorbed depreciation of the amalgamating company only when certain conditions, are satisfied.

Where it is not possible to satisfy conditions of section 72A, the companies may opt for a Reverse Merger i.e. instead of the loss making company merging with the profit making company the profit making company may merge with the loss making company. In this case, the amalgamated company, which was the loss making company will be able to carry forward its own business loss and unabsorbed depreciation and set it off against the profits of the business which has merged with it, in the scheme of amalgamation.

4. As already discussed, the benefit under section 47(viii) shall be allowed only when the shareholders of the amalgamating company are allowed only shares of the amalgamated company in lieu of shares held by them in the amalgamating company. If the shareholders are allotted something more than shares in the amalgamated company viz. bonds or debentures, etc. no benefit will be available 'able under section 47(viii).

5. (a) Can the Commissioner initiate revision proceedings under section 263 on the ground that the Assessing Officer order not initiating penal proceedings was erroneous and prejudicial to the interest of the revenue, in case of where non initiation of penal proceedings was a pre condition for surrender of income by the assessee. Discuss with the relevant case law. 8 Marks
- (b) Whether the Tribunal is right in holding that the rectification order under section 154 was not proper especially when the audit had raised an objection that the interest income was to be brought to tax under the he 'Income from other sources'? Discuss with the relevant case law. 8 Marks

Answer:

5. (a) CIT vs. Subhash Kumar Jain [2011] 335 ITR 364 (P&H)

In the present case, an addition of ₹ 9,91,090 was made in the assessment of the assessee under section 143(3) on account of agricultural income, since the assessee failed to explain the source of agricultural income as declared by him in the return of income. The said addition was made on the basis of the report submitted by the Inspector pointing out the defects in the documents furnished by the assessee. As a result, the assessee made an offer to surrender ₹ 9,91,090 subject to a condition that no penal action under section 271(1)(c) would be initiated. The Assessing Officer accepted the same as the department did not have any documentary evidence against the assessee and the assessment was made only on the basis of the report by the Inspector. Accordingly, the assessment was framed by the Assessing Officer without initiating the penalty proceedings under section 271(1)(c). The Commissioner of Income-tax, exercising his power under section 263, directed the Assessing Officer to frame a fresh assessment order after taking into account the facts attracting the penal action under section 271(1)(c), considering the original order erroneous and prejudicial to the interest of the Revenue.

The issue under consideration in this case is whether, when the Assessing Officer, while passing the assessment order under section 143(3), had given effect to the office note that the surrender of the agricultural income which was made by the assessee would not be subject to penal action under section 271(1)(c) and accordingly not levied penalty, can the Commissioner of Income-tax, in exercise of his power under section 263, hold the order of the Assessing Officer to be erroneous and prejudicial to the interest of the Revenue.

On this issue, the Punjab and Haryana High Court observed that, on perusal of the office note issued by the Assessing Officer, it was clear that the assessee had made surrender of income with a clear condition that no penal action under section 271(1)(c) would be initiated. The office note further depicts that the offer of the assessee was accepted by the Department. Once that was so, the Commissioner cannot take a different view and levy penalty. The High Court relied on the decision of the Bombay High Court in Jivatlal Purtapshi vs. CIT (1967) 65 ITR 261, where it was observed that an order based on an agreement cannot give rise to grievances and the same cannot be agitated.

(b) CIT vs. A. G. Granites P. Ltd. (2009) 311 ITR 170 (Mad.) Relevant Section : 154

The assessee-company, an exporter of granite blocks, filed its return of income admitting an income of ₹ 9,68,900 after claiming deduction under section 10B of the Income-tax Act, 1961, to the extent of ₹ 1,32,389. The return was processed under section 143(1) and refund of ₹ 1,280 was allowed. On verification of the records, it was

MTP_Final_Syllabus 2016_Dec 2017_Set 2

noticed that the assessee had offered interest income on fixed deposit made under the head "Other income", but it was required to be assessed under the head "Income from other sources". Upon a notice under section 154 of the Act to the assessee, the Assessing Officer after considering the reply rectified the assessment order. The appeal filed by the assessee was dismissed by the Commissioner (Appeals). The Tribunal, allowing the appeal filed by the assessee, held that debatable issues were not to be rectified under section 154 of the Act.

Section 154 of the Income-tax Act, 1961, provides for rectification of mistakes, which are apparent from the record. The phraseology "mistake apparent from the record" has been considered by several judicial opinions and all those judicial opinions uniformly held that an error, which is not self-evident, and has to be detected by a process of reasoning, cannot be said to be an error apparent on the face of the record. There is a clear distinction between an erroneous order and an error apparent on the face of the record, while the first can be corrected by the higher forum, the latter can only be corrected by exercise of the power of rectification.

The High Court held that the issue as to the head under which the "interest income" had to be assessed was a debatable issue. Thus, the interest income offered by the assessee under the head "Other income" could not be reassessed under the head "Income from other sources" by way of rectification and on the basis of the objection raised by the audit parties.

6. (a) **Boulevard Inc. French Company, holds 40% of Equity in the Indian Company Vista Technologies Ltd (VTL). VTL is engaged in development of software and maintenance of the same for customers across the globe. Its clientele includes Boulevard Inc.**

During the year, VTL had spent 2,000 Man Hours for developing and maintaining software for Boulevard Inc, with each hour being billed at ₹ 1,250. Costs incurred by VTL for executing work for Boulevard Inc. amount to ₹ 18,00,000.

VTL had also undertaken developing software for Bal Industries Ltd for which VTL had billed at ₹ 2,700 per Man Hour. The persons working for Bal Industries Ltd and Boulevard were part of the same team and were of matching credentials and caliber. VTL had made a Gross Profit of 50% on the Bal Industries work.

VTL's transactions with Boulevard Inc. is comparable to transactions with Bal Industries, subject to following differences –

- 1. Boulevard gives technical knowhow support to VTL which can be valued at 8% of the Normal Gross Profit. Bal Industries does not provide any such support.**
- 2. Since the work for Boulevard involved huge number of man hours, a quantity discount of 14% of Normal Gross Profits was given.**
- 3. VTL had offered 90 Days credit to Boulevard the cost of which is measured at 2% of the Normal Billing Rate. No such discount was offered to Bal Industries Ltd.**

Compute ALP and the amount of increase in Total Income of Vista Technologies Ltd.

8 Marks

- (b) **Mr. Agarwal, a Resident Indian and aged 67 years, has derived following income during the Previous Year 2016-17:**

8 Marks

Particulars	Amount (₹)
Income from Business in India	2,50,000
Commission (Gross) from a Company in Hong Kong (Tax Paid in Hong Kong ₹ 60,000)	3,00,000
Dividend (Gross) from a Company in Hong Kong (Tax Paid in Hong Kong ₹ 18,000)	90,000
Interest on Fixed Deposits and Savings Accountant with banks in India	2,00,000
India has no Double Tax Avoidance Agreement with Hong Kong. Compute the Income and Tax payable by Mr. Agarwal for Assessment Year 2017-18.	

Answer:

6. (a)

1. Computation of Arms Length Gross Profit Mark Up

Particulars	%	%
Normal GP Mark Up		50
Less: Adjustment for Differences		
(a) Technical Support from Boulevard 8% of Normal GP [8% of 50%]	4	
(b) Quantity Discount 14% of Normal GP [14% of 50%]	7	(11)
		39
Add: Cost of credit to Boulevard 2% of Normal Bill	1	1
Arms Length Gross Profit Mark – up		10

2. Computation of Increase in Total Income of VTL

Particulars	₹
Cost of Services Provided to VTL	18,00,000
Arms Length Billed Value $\frac{\text{Cost}}{100 - \text{Arm's Length Mark Up}} = \frac{₹ 18,00,000}{100\% - 40\%}$	30,00,000
Less: Actual Billing to Boulevard [2,000 Hours × ₹ 1,250]	(25,00,000)
Therefore, increase in Total Income of VTL	5,00,000

(b)

Assessee: Mr. Agarwal

Previous Year: 2016-2017

Assessment Year: 2017-2018

Status: Resident Senior Citizen

Computation of Total Income and Tax Payable

Particulars	₹	₹
Profits and Gains from Business or Profession		
Income from Business in India		2,50,000
Commission Income from Hong Kong		3,00,000
Income From Other Sources		
Dividend from Company in Hong Kong		90,000
Interest on Fixed and Savings Deposits in India		2,00,000
Gross Total Income		8,40,000
Tax on Total Income (Basic Exemption ₹ 3,00,000)		88,000
Add: Education Cess @ 2%		1,760
Add: Secondary and Higher Education Cess @ 1%		880
Total Tax Payable		90,640
Average Rate of Indian Tax (90,640 ÷ 8,40,000)	10.79%	
Average Rate of Foreign Tax (78,000 ÷ 3,90,000)	20.00%	
Less: Relief u/s 91 at 10.79% on Foreign Income of ₹ 3,90,000		42,083
Net Tax Payable (Rounded-off)		48,560

7. (a) Speedy Motors Ltd, an Indian Company, declared Income of ₹ 20 Crores computed in accordance with Chapter IV-D but before making any adjustments in respect of the following transactions for the year ending on 31.03.2017:

(a) Royalty of \$ 50,00,000 was paid to Fista Ltd for use of technical know-how in the manufacturing of van. However, Fista Ltd had provided the same know-how to another Indian Company for \$ 45,00,000. The manufacture of Van by Speedy Motors Ltd is wholly dependent on the use of technical know-how, respect of which Fista Ltd has exclusive rights.

(b) Loan of Euro 5 Crores with interest @ 10% p.a. advanced by Hughes Ltd, French Company, was outstanding on 31.03.2017. The Total Book Value of assets of Speedy Motors Ltd on the date was ₹ 500 Crores. Hughes Ltd had also advanced

MTP_Final_Syllabus 2016_Dec 2017_Set 2

similar loan to another Indian Company @ 8% p.a. Total Interest paid for the year was EURO 0.5 Crore.

- (c) 7,000 Vans sold to Hitech Ltd which holds 41% Shares in Speedy Motors Ltd at a price which is less by \$ 100 each van than the price charged from Bento Ltd.

Briefly explain the provisions of the Act affecting all these transactions and compute Taxable Income Speedy Motors Ltd for A.Y.2017-2018 assuming that the value of 1\$ and of 1 EURO was ₹ 65 and ₹ 75 respectively, throughout the year. 8 Marks

- (b) Amit is musician deriving income of ₹ 1,00,000 from performed outside of India. Tax of ₹ 10,000 were deducted at source in the country where the concerts were performed. India does not have any double avoidance taxation agreement with that country. His income in India amounted to ₹ 8,30,000. Compute tax liabilities of Amit for the assessment year 2017-18 assuming he has deposited ₹ 50,000 in Public Provident Fund. ₹ 80,000 in LIC and Medical insurance premium in respect of his father ₹ 25,000. 8 Marks

Answer:

7. (a) 1. Analysis

Entity	Existence of Association	Reason	Section
Fista Ltd	Yes	The Assessee is wholly dependent on use of Technical Know-how which is exclusively owned by Fista Ltd.	92A(2)(g)
Hughes Ltd	Yes	Hughes Ltd has financed an amount which is more than 51% of the Book Value of the Total Assets of Speedy Motors Ltd.	92A(2)(c)
Hitech Ltd	Yes	Hitech Ltd holds Shares carrying more than 26% of the voting power in Speedy Motors Ltd.	92A(2)(a)

2. Computation of Total Income

Assessee: Speedy Motors Ltd

Previous Year: 2016-2017

Assessment Year: 2017-2018

Particulars	₹ in Crores	₹ in Crores
Income as computed under Chapter IVD (before adjustments)		
Add: Adjustments for International transactions		
• Excess Payment of Royalty of \$ 5,00,000 (\$ 5,00,000 × ₹ 65)	3.25	
• Excess Interest Paid on Loan of EURO 5 Crores (€ 75 × 5 Crores × 2 ÷ 100)	7.50	
• Difference in Price of Van @ \$100 each for 7,000 Vans (\$100 × 7,000 × ₹ 65)	4.55	15.30
Taxable Profits and Gains from Business or Profession		4.70

- (b)

Computation of Tax Liability of Mr. Amit Assessment Year 2017 - 18

Particulars	Amount (₹)
Income from concerts performed outside India	80,000
Income earned in India	8,50,000
Gross Total Income	9,10,000
Less: Deductions under Chapter VI-A	
Section 80C	1,50,000
Section 80D	20,000

Total Taxable Income	7,30,000
Tax on Total Income	71,000
Add: Education Cess @ 3%	2,130
Total Tax	73,130
Less: Relief under Section 91	8,014
Tax Payable	65,116

Note:

The relief under section 91 shall be as under:

(a) $\frac{73,130}{7,30,000} \times 80,000 = 8,014$

(b) $\frac{10,000}{80,000} \times 80,000 = 10,000$

Therefore, relief under section 91 is ₹ 8,014.

- 8. Short Notes (Answer any four questions out of five) (4 x 4=16 Marks)**
- A. Power of officer to whom authority is given for search and seizure.**
 - B. Associate Enterprise.**
 - C. Penalty for failure to furnish statement [Section 271 H].**
 - D. Meaning of Advance Ruling and Applicant.**
 - E. Can application made under section 245C(1) to settle commission be revised?**

Answer:

8. (A) **Power of Officer to whom authority is given for search and seizure:** The Officer authorised i.e. the Authorised Officer for search and seizure, shall have the powers to:—
- (i) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;
 - (ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) above where the keys thereof are not available;
 - (iii) search any person who (a) has got out of, or (b) is about to get into, or (c) is in the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;
 - (iv) require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic records, to afford the necessary facility to the authorised officer to inspect all such books of account or other documents;
 - (v) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search. However, the authorised officer shall have no power to seize any bullion, jewellery or other valuable article or thing being stock-in-trade of the business found as a result of search. He shall make a note or inventory of such stock-in-trade of the business.
 - (vi) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;
 - (vii) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing.
- (B) **Associated enterprise [Section 92A(1)]:** For the purposes of this section and sections 92, 92B, 92C, 92D and 92E, "associated enterprise", in relation to another enterprise, means an enterprise—

- (a) which participates, directly or indirectly, or through one or more intermediaries, in the: (i) management, or (ii) control, or (iii) capital of the other enterprise; or
- (b) in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

Thus, section 92A(l)(a) provides that if an enterprise participates in the management, capital or control of another enterprise, then, the other enterprise is to be regarded as associated enterprise of the participating enterprise. Such participation may, however, be direct, indirect or through one or more intermediaries.

Section 92A(1)(a) provides that if one or more persons participates in the management, capital or control of one enterprise and the same persons also participates in the management, capital or control of another enterprises, then, both these enterprises are associated enterprises. In this case also participation may be direct, indirect or through one or more intermediaries.

Examples:

- A. The example of associated enterprise in the nature of clause (a) given above is as under:
 - (i) X Ltd participates in the management or control or capital of Y Ltd. In this case Y Ltd. shall be associated enterprises of X Ltd. as a result of direct participation.
 - (ii) X Ltd. has two intermediaries, both these intermediaries participate in the management or control or capital of Y Ltd. In this case also Y Ltd. shall be associated enterprise of X Ltd., but this is as a result of participation through intermediaries.
- B. The example of associated enterprises in the nature of clause (b) above is as under:

X Ltd. participates in the management or control or capital of both Y Ltd & Z Ltd. In this case, besides Y Ltd. and Z Ltd. being associated enterprises of X Ltd., Y Ltd. and Z Ltd. will also be associated enterprises amongst themselves.

(C) **Penalty for failure to furnish statements, etc. [Section 271H] [W.e.f. 1.7.2012]**

- (1) Penalty for failure to furnish TDS/TCS statement or furnishing incorrect information in the statement [Section 271H(1)]. Without prejudice to the provisions of the Act, a person shall be liable to pay penalty, if, he—
 - (a) fails to deliver or cause to be delivered a statement within the time prescribed in section 200(3) or the proviso to section 206C(3) relating to TCS; or
 - (b) furnishes incorrect information in the statement which is required to be delivered or cause to be delivered under section 200(3) or the proviso to section 206C(3).
- (2) Quantum of penalty [Section 271H(2)]: The penalty referred to in sub-section (1) shall be a sum which shall not be less than ₹ 10,000 but which may extend to ₹ 1,00,000.
- (3) No penalty if statement of TDS/TCS filed within one year [Section 271 H(3)]: Notwithstanding anything contained in the foregoing provisions of this section, no penalty shall be levied for the failure to file TDS/TCS statement within the time prescribed, if the person proves that after paying tax deducted or collected along with the fee and interest, if any, to the credit of the Central Government, he had delivered or caused to be delivered the statement referred to in section 200(3) or the proviso to section 206C(3) before the expiry of a **period of one year from the time prescribed for delivering or causing to be delivered such statement.**

- (4) Penalty applicable only for tax deducted/collected on or after 1.7.2012: The provisions of this section shall apply to a statement referred to in section 200(3) or the proviso to section 206C(3) which is to be delivered or caused to be delivered for tax deducted at source or tax collected at source, as the case may be, on or after 1.7.2012.
- (D) Meaning of "advance ruling" and "applicant" [Section 245N]
- (A) As per section 245N(a), "Advance ruling" means:
- (i) a determination by the Authority in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant; or
 - (ii) a determination by the Authority 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 resident applicant with such non-resident.
 - (iii) a determination by the Authority 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 all the above cases, such determination shall include the determination of any question of law or of fact specified in the application;
 - (iv) a determination or decision by the Authority in respect of an issue relating to computation of total income which is pending before any income-tax authority or the Appellate Tribunal;
 - (v) a determination or decision by the Authority 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 (applicable w.e.f. 1-4-2015).
Further, 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.
- (B) As per section 245N(i), "applicant" means any person who—
- (i) is a non-resident for a transaction which has been undertaken or is proposed to be undertaken by him; or
 - (ii) is a resident for a transaction which has been undertaken or is proposed to be undertaken by him with a non-resident; or
 - (iii) is a resident referred to in clause (iii) of para (A) above falling within any such class or category of persons as the Central Government may, by notification in the Official Gazette, specify (inserted by the Finance (No. 2) Act, 2014, w.e.f. 1-10-2014) see Notification No. 73/2014 in point (2) in the box below; or
 - (iv) a resident referred to in clause (iv) of para (A) above falling within any such class or category of persons as the Central Government may, by notification in the Official Gazette, specify in this behalf see Notification No. 11456, dated 3-8-2000 in point (1) in the box below; or
 - (v) is referred to in clause (v) of para (A) above;
- (E) There is no provision given under the Act for revision of application made to Settlement Commission, hence such application once made cannot be revised.

A 'fall & true' disclosure of income which had not been previously disclosed by the assessee, being a precondition for a valid application under section 245 C(l), the Scheme of Chapter XIXA does not contemplate revision of the income so disclosed in the application. Moreover, if an assessee is permitted to revise his disclosure, in essence, he would be making fresh application in relation to the same case by withdrawing the earlier application. In this regard, section 245C(3), prohibits the withdrawal of the application. [Ajmera Housing Corporation v CIT (2010) 193 Taxman 193 (SC)].

Assessee filed application to Settlement Commission disclosing certain undisclosed income. Thereafter by a letter, he revised undisclosed income by substituting lesser income. Settlement Commission admitted application and assessee paid tax as per revised disclosure. On appeal it was held that it was not permissible for assessee to revise application under section 245C and he was to pay additional tax in terms of original application. [Pukhraj Bhabhutmal Shah v ITO (2015) 55 taxmann.com 219 (Guj)]