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.

Section - A

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

(i) Which ICDS is dealt with contingent assets and contingent liabilities, except certain few cases?
(a) ICDS IX
(b) ICDS X
(c) ICDS I
(d) ICDS III.

(ii) No order of rectification can be passed after the expiry of ___________ years from the end of the financial year in which order sought to be rectified was passed:
(a) 2
(b) 3
(c) 4
(d) 6

(iii) Countries that employ explicit policies designed to attract international trade oriented activities by minimization of taxes and reduction or elimination of other restrictions on business operations is described as:
(a) Tax Havens
(b) Tax Planning
(c) Tax Evasion
(d) Tax Management

(iv) Equalisation levy should be deducted if the aggregate amount of consideration paid or payable to a non-resident for specified service in a previous year exceeds:
(a) Rs. 1,00,000
(b) Rs. 1,50,000
(c) Rs. 50,000
(d) Rs. 1,00,00,000.

(v) In case where it is found that a person has under-reported his income, the quantum of penalty is _________% of the amount of tax payable on such under-reported income:
(a) 10%
(b) 50%
(c) 100%
(d) 200%.

(vi) If a person fails to comply with the provisions relating to PAN (i.e. obtaining PAN, quoting PAN, etc.), then penalty can be levied under section 272B for Rs. ___________.
(a) 1,000
(b) 5,000
(c) 7,500
(d) 10,000.

(vii) Dividend received from foreign company will be included in the total income of the tax payer and will be charged to tax at__________.
(a) 15%
(b) 20%
(c) 30%
(d) Normal rate of tax applicable to the assessee.

(viii) An application for advance ruling by a resident applicant for determination of his tax liability arising out of one or more transactions valuing Rs. 100 crore or more in total which has been undertaken or is proposed to be undertaken by him is to be made in Form No._____.
(a) 34D
(b) 34DA
(c) 34E
(d) 34EA

(ix) Which of the following form is used to furnish the return of income?
(a) ITNS 281
(b) Form 26AS
(c) Form 26Q
(d) None of these

(x) Which of the following can be corrected while processing the return of income under section 143(1)?
(a) any arithmetical error in the return
(b) any error in the return of income
(c) any mistake in the return of income
(d) any claim by the taxpayer which is against law

Answer:

(i) (b) ICDS X deals with provisions, contingent liabilities and contingent assets, except - resulting from financial instruments; resulting from executory contracts; arising in insurance business from contracts with policyholders; and covered by another ICDS.

(ii) (c) No order of rectification can be passed after the expiry of 4 years from the end of the financial year in which order sought to be rectified was passed. The period of 4 years is from the date of order sought to be rectified and not 4 years from the date of original order. Hence, if an order is revised, set aside, etc., then the period of 4 years will be counted from the date of such fresh order and not from the original order.

(iii) (a) Many fiscally sovereign territories and countries use tax and non-tax incentives to attract activities in the financial and other services sectors. These territories and countries offer the foreign investor an environment with a no or only nominal taxation which is usually coupled with a reduction in regulatory or administrative constraints. The activity is usually not subject to information exchange because, for example, of strict bank secrecy provisions. These jurisdictions are known as tax havens. In other words, any country which modifies its tax laws to attract foreign capital could be considered a tax haven. The central feature of a haven is that its laws and other measures can be used to evade or avoid the tax laws or regulations of other jurisdictions. A tax haven is a state or a country or territory where income tax are levied at a low rate or no tax at all is levied.

(iv) (a) Every person, being a resident and carrying on business or profession or a non-resident having a permanent establishment in India shall deduct the equalisation levy @6% from the amount paid or payable to a non-resident in respect of the specified service, if the aggregate amount of consideration for specified service in a previous year exceeds Rs. 1,00,000.

(v) (b) The Assessing Officer or Commissioner (Appeals) or Principal Commissioner or Commissioner may, during the course of any proceedings, direct that any person who has under-reported his income shall be liable to pay a penalty @ 50% of the amount of tax payable on under-reported income in addition to tax, if any, on the under-reported income.

(vi) (d) Section 272B provides for penalty of Rs. 10,000 in case of default by the taxpayer in complying with the provisions relating to PAN, i.e., not obtaining PAN, even though he is liable to obtain PAN or knowingly quoting incorrect PAN in any prescribed document in which PAN is to be quoted or intimating incorrect PAN to the person deducting tax or person collecting tax.

(vii) (d) Dividend received from foreign company will be included in the total income of the tax payer and will be charged to tax at the rates applicable to the taxpayer. However, dividend from specified foreign company being defined u/s 115BBD is taxable @ 15%

(viii) (b) An application for advance ruling shall be made by a resident applicant, for determination of his tax liability arising out of one or more transactions valuing Rs.100 crore or more in total which has been undertaken or is proposed to be undertaken by him, in Form No. 34DA. It is prepared in quadruplicate.

(ix) (d) Form ITNS 281 is used for payment of tax deducted at source. Form 26AS, also called as Annual Statement, is a consolidated tax statement which has all tax related information (TDS, TCS, Refund etc) associated with a PAN. Quarterly TDS return (other than salary) is required to be filed in Form 26Q.

(x) (a) Processing of the return u/s 143(1) is like preliminary checking of the return of income. At this stage no detailed scrutiny of the return of income is carried out. The total income or loss is computed after making the basic adjustments (if any), like any arithmetical error in the return; or an incorrect claim, if such incorrect claim is apparent from any information in the return.

2.(a) State the consequences in case of provisional attachment of any property belonging to the assessee by the Assessing Officer. [8]

(b) Mr. Bedi (63 years] is a musician deriving income from concerts performed outside India of Rs. 7,50,000. Tax of Rs. 1,50,000 was deducted at source in the country where the concerts were given and remaining Rs. 6,00,000 is remitted to India. India does not have any agreement with that country for avoidance of double taxation. Assuming that the Indian income of Mr. Bedi is Rs. 3,98,000, what is the relief due to him under section 91 for assessment year 2020-21, assuming that Mr. Bedi has deposited Rs. 20,000 in the public provident fund account during the previous year 2019-20. [8]

Answer:

(a) Where, during the pendency of any proceeding for the assessment or reassessment, the Assessing Officer is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, he may, with the previous approval of the Chief Commissioner, Commissioner, Director General or Director, by order in writing, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.

- Every such provisional attachment shall cease to have effect after the expiry of a period of 6 months from the date of such order. However, Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed 2 years or 60 days after the date of order of assessment or reassessment, whichever is later.
- Where the assessee furnishes a guarantee from a scheduled bank for an amount not less than the fair market value of the property provisionally attached, the Assessing Officer shall, by an order in writing, revoke such attachment. However, where the Assessing Officer is satisfied that a guarantee from a scheduled bank for an amount lower than the fair market value of the property is sufficient to protect the interests of the revenue, he may accept such guarantee and revoke the attachment.
- The Assessing Officer may, for the purposes of determining the value of the property provisionally attached, make a reference to the Valuation Officer referred to in sec. 142A, who shall estimate the fair market value of the property in the manner provided under that section and submit a report of the estimate to the Assessing Officer within a period of 30 days from the date of receipt of such reference.
- An order revoking the provisional attachment shall be made:

  − within 45 days from the date of receipt of the guarantee, where a reference to the Valuation Officer has been made; or

  − within 15 days from the date of receipt of guarantee in any other case.
- Where a notice of demand specifying a sum payable is served upon the assessee and the assessee fails to pay that sum within the time specified in the notice of demand, the Assessing Officer may invoke the guarantee furnished, wholly or in part, to recover the amount.
- The Assessing Officer shall, in the interests of the revenue, invoke the bank guarantee, if the assessee fails to renew the guarantee, or fails to furnish a new guarantee from a scheduled bank for an equal amount, 15 days before the expiry of the guarantee.
- The amount realised by invoking the guarantee shall be adjusted against the existing demand which is payable by the assessee and the balance amount, if any, shall be deposited in the Personal Deposit Account of the Principal Commissioner or Commissioner in the branch of the Reserve Bank of India or the State Bank of India or of its subsidiaries or any bank as may be appointed by the Reserve Bank of India as its agent at the place where the office of the Principal Commissioner or Commissioner is situate.
- Where the Assessing Officer is satisfied that the guarantee is not required anymore to protect the interests of the revenue, he shall release that guarantee forthwith.

(b)

	Rs.
Indian income	3,98,000
Foreign income	7,50,000
Gross total income	11,48,000

Less: Deduction under section 80C	20,000
Net income	11,28,000
Tax on net income	1,48,400
Add : Surcharge	Nil
Tax	1,48,400
Add : Health and education cess	5,936
Tax	1,54,336
Rate of tax in India [i.e., Rs. 1,54,336 ÷ Rs. 11,28,000]	13.68227%
Rate of tax in foreign country [i.e., Rs. 1,50,000 ÷ Rs. 7,50,000]	20%
Doubly taxed income	7,50,000
Rebate under section 91 on Rs. 7,50,000 @ 13.68227%	1,02,617
Tax payable in India (rounded off)	51,720

3. P Ltd. is a manufacturing company (not having any international or specified domestic transaction). The profit and loss account of P Ltd. for the year ending March 31, 2020 is given below-

	Rs.		Rs.
GST	**50,000**	**Sales**	**20,10,000**
Other expenses	**14,15,000**		
Net profit	**5,45,000**		
	20,10,000		**20,10,000**

Other information -

1. Out of GST of Rs. 50,000, only Rs. 47,000 is paid. The payment is mode as follows-

A. Rs. 40,000 on September 2, 2019;

B. Rs. 4,000 on September 72, 2020; and

C. Rs. 3,000 on November 1, 2020.

2. Return of income is submitted on November 10, 2020.

3. During the previous year 2019-20, the following payments are mode in respect of expenses pertaining to earlier years-

A. bonus to employees pertaining to the previous year 2017-18 paid on April 30, 2019: Rs. 15,000;

B. customs duty pertaining to the previous year 2017-18 paid on December 1, 2019: Rs. 25,000;

C. electricity bill payable to BSES pertaining to previous year 2017-18 paid on May 3, 2019: Rs. 35,000;

D. excise duty pertaining to the previous year 2018-19 paid on May 20, 2019: Rs. 40,000; and

E. leave salary payable to employees pertaining to the previous year 2018-19 paid on December 2, 2019: Rs. 45,000.

These payments do not pertain to the previous year 2019-20. Consequently, these are not recorded in the profit and loss account given above. Find out the net income of P Ltd. for the assessment year 2020-21. [16]

Answer:

	Rs.
Net profit as per profit and loss account	5,45,000
Adjustments :	
Add: GST	+ 50,000
Less: GST paid during 2019-20 (deductible on payment basis)	(-) 40,000
Less: GST tax paid during April 1, 2020 and September 30, 2020 (Note 1)	(-) 4,000
Less: Bonus to employees [Note 2]	(-) 15,000
Less: Customs duty [Note 2]	(-) 25,000
Less: Leave salary [Note 3]	(-) 45,000
Net income	4,66,000

Notes:
1. GST debited to the profit and loss account given in the problem is covered by section 43B. The due date of submission of return of income is September 30, 2020. If the payment is made up to September 30, 2020, then it is deductible on accrual basis for the previous year 2019-20. The payment of GST of Rs. 4,000 on September 12, 2020 is, therefore, deductible on accrual basis. The payment made on November 1, 2020 is not deductible for the previous year 2019-20 even if return is submitted after the due date.

2. Bonus to employees pertaining to the previous year 2017-18 is paid on April 30, 2019. Similarly, customs duty to the previous year 2017-18 is paid on December 1, 2019. The due date of submission of return of income for the previous year 2017-18 (or the assessment year 2018-19) is September 30, 2018. As these payments were not made up to September 30, 2018, these were not allowed as deduction for the previous year 2017-18. Payments made after this date is allowable as deduction on payment basis in the year in which the payments is made. Therefore, payment mode on April 30, 2019 and December 1, 2019 are deductible for the previous year 2019-20.

3. For the previous year 2018-19 (i.e., the assessment year 2019-20) the due date of submission of return of income is September 30, 2019. Excise duty and leave salary are covered by section 43B. If payment in respect of these expenses is made up to September 30, 2019 then these payments are deductible on accrual basis for the previous year 2018-19. Excise duty is paid on May 20, 2019. It is deductible for the previous year 2018-19. However, leave salary is paid on December 2, 2019 (i.e., after September 30, 2019 being the due date of submission of return of income). It is not deductible for the previous year 2018-19. It is deductible on payment basis for the previous year 2019-20.

4. Electricity bill payable to BSES is not covered by section 43B. Any expenditure, which is not covered by section 43B is deductible on accrual basis if the taxpayer maintains books of account on accrual basis. Consequently, it was deductible for the previous year 2017-18.

4.(a) State the cases where Form ITR 1 or ITR 4 cannot be used by a person. State the where best judgement assessment shall be made. [4+4=8]

(b) Write down the conditions which are to be satisfied for transactions, not to be regarded as transfer for the purpose of capital gain in the context of conversion of sole proprietary business and firm into company. [4+4=8]

Answer:

(a) Form ITR 1 or ITR 4 cannot be used by a person who:

i. is an ordinarily resident and has,—
   A. assets (including financial interest in any entity) located outside India; or
   B. signing authority in any account located outside India; or
   C. income from any source outside India
ii. has claimed any relief of tax u/s 90 or 90A or deduction of tax u/s 91
iii. has agricultural income, exceeding Rs. 5,000;
iv. has income taxable u/s 115BBDA; or
v. has income of the nature referred to in sec. 115BBE.
vi. is either Director in a company or has invested in unlisted equity shares or has any brought forward / carry forward loss under the head 'Income from House Property'.

In the following situations, best judgement assessment u/s 144 shall be made -

1. If the person fails to file the return u/s 139(1), 139(4) or 139(5); or
2. If the person fails to comply with the terms of notice u/s 142(1); or
3. If the person fails to comply with the directions u/s 142(2A) requiring him to get his accounts audited; or
4. If the person fails to comply with the terms of notice u/s 143(2), requiring his presence or production of evidence and documents.

In any of the given situation, the Assessing Officer is under an obligation to make an assessment under this section. In other words, Best judgment assessment is not the discretionary power of the Assessing Officer but mandatory in nature.

(b) In case of conversion of sole proprietary business into company:

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, the transaction is not regarded as transfer provided following conditions are satisfied:

1. All assets and liabilities of the sole proprietary concern relating to the business immediately before the succession become the assets and liabilities of the company;

2. Proprietor holds not less than 50% of the total voting power in the company and his shareholding continues to remain as such for a period of 5 years from the date of succession; and

3. The sole proprietor does not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company.

In case of conversion of firm into company:

Any transfer of a capital asset, by a firm to a company as a result of succession of the firm by a company in the business carried on by the firm, shall not be regarded as transfer provided following conditions are satisfied:

1. All assets and liabilities of the firm relating to the business immediately before the succession become the assets and liabilities of the company.
2. All the partners of the firm immediately before the succession become the shareholders of the company in the same proportion in which their capital accounts stood in the books of the firm on the date of succession.
3. The partners of the firm do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company; and
4. The aggregate of the shareholding in the company of the partners of the firm is not less than 50% of the total voting power in the company and their shareholding continues to be as such for a period of 5 years from the date of succession.

5.(a) Palam Gas Service is engaged in the business of purchase and sale of LPG cylinders. During the relevant assessment year, assessee received freight payments of Rs. 32 lakhs from Indian Oil Corporation (IOC) with whom the assessee had entered into main contract for carriage of LPG. The transportation of LPG was done through three truck-owners, to whom a total freight payment of Rs. 20 lakhs was made. As per the Assessing Officer, since the assessee has sub-contracted the transportation to these three persons within the meaning of sec. 194C, he was liable to deduct tax on Rs. 20 lakhs. The Assessing Officer thus disallowed these expenses u/s 40(a)(ia). Justify. [8]

(b) The appellant–assessee along with three others had promoted a Company. The said Company was acquired by one Synergy Credit Corporation Limited (the Acquirer Company). The appellant was offered the position of Executive Director in the Acquirer Company. Further, a Non-Compete Agreement was signed between the appellant–Assessee and the Acquirer Company imposing a restriction on the appellant from carrying on any business of Computer Software development and marketing for a period of five years for which the appellant– Assessee was paid a sum of Rs.21,00,000/-. Now critically examine that whether the aforesaid amount of Rs. 21 lakhs is on account of 'salary' or the same is a 'capital receipt'. [8]

Answer:

(a) In the case of Palam Gas Service -vs. - CIT (2017) (SC), the assessee is engaged in the business of purchase and sale of LPG cylinders. During the relevant assessment year, assessee received freight payments of Rs. 32 lakhs from Indian Oil Corporation (IOC) with whom the assessee had entered into main contract for carriage of LPG. The transportation of LPG was done through three truck-owners, to whom a total freight payment of Rs. 20 lakhs was made. As per the Assessing Officer, since the assessee has sub-contracted the transportation to these three persons within the meaning of sec. 194C, he was liable to deduct tax on Rs. 20 lakhs. The Assessing Officer thus disallowed these expenses u/s 40(a)(ia). On appeal, the Commissioner (Appeals) & the ITAT upheld the order of the Assessing Officer. On further appeal, the High Court too ruled in favour of the Revenue.

The Apex Court rejects assessee's plea that since the word used in sec. 40(a)(ia) is 'payable', no disallowance can be made where the freight charges had been paid during the year. The Apex Court acknowledges that grammatically, it may be accepted that the two words, i.e. 'payable' and 'paid', denote different meanings, but held that "when the entire scheme of obligation to deduct the tax at source and paying it over to the Central Government is read holistically, it cannot be held that the word 'payable' occurring in sec. 40(a)(ia) refers to only those cases where the amount is yet to be paid and does not cover the cases where the amount is actually paid." The Apex Court remarks that if the provision is interpreted in the manner suggested by appellant-assessee, "then even when it is found that a person, like the appellant, has violated the provisions of Chapter XVIIB, he would still go scot free." So, it can be said that provision of sec. 40(a)(ia) covers the cases where the amount is actually paid.

(b) In the case of Ian Peter Morris -vs.- ACIT (2016) (SC), The appellant–assessee along with three others had promoted a Company. The said Company was acquired by one Synergy Credit Corporation Limited (the Acquirer Company). The appellant was offered the position of Executive Director in the Acquirer Company. Further, a Non-Compete Agreement was signed between the appellant–Assessee and the Acquirer Company imposing a restriction on the appellant from carrying on any business of Computer Software development and marketing for a period of five years for which the appellant–Assessee was paid a sum of Rs. 21,00,000/-. The question that arose in the proceedings commencing with the Assessment Order is whether the aforesaid amount of Rs. 21 lakhs is on account of 'salary' or the same is a 'capital receipt'. The High Court in the order under appeal took the view that the said amount is 'salary amount' on which interest would be chargeable/leviable u/s 234B and 234C.

However, the High Court's ruling to levy interest u/s 234B & 234C on this income was challenged in appeal. The Supreme Court held that on perusal of the relevant provisions of Chapter VII of the Act, against salary, a deduction, at the requisite rate at which income tax is to be paid by the person entitled to receive the salary, is required to be made by the employer failing which the employer is liable to pay simple interest thereon. In cases where receipt is by way of salary, deductions u/s 192 of the Act are required to be made. No question of payment of advance tax under Part 'C' of Chapter VII of the Act can arise in cases of receipt by way of 'salary'. Therefore, interest obligations u/s 234B and 234C would have no application to the present situation since the High Court has already decided that the non-Compete Agreement was by way of salary. The Apex Court thereby modified the order, deleting interest u/s 234B & 234C. Therefore, it can be said that interest u/s 234B & 234C does not apply on salary income.

6.(a) What is Tax Haven? State the key factors which are used to determine whether a jurisdiction is a tax haven. [2+8=10]

(b) A Co. Ltd. of Chennai and Sky Inc. of Singapore are associate enterprises. A Co. Ltd. imported 1000 television sets at Rs. 16,000 per set without any warranty period. A Co. Ltd. also imports similar TV sets from unrelated party Sign Inc. of Japan. It is imported at Rs. 15,000 per set with warranty time of 2 years. The cost of warranty in respect of goods imported from Sky Inc. for a period of 2 years would cost Rs. 2,000. Compute arm's length price and the amount of increase in total income of A Co. Ltd. as per CUP method. [6]

Answer:

(a) Many fiscally sovereign territories and countries use tax and non-tax incentives to attract activities in the financial and other services sectors. These territories and countries offer the foreign investor an environment with a no or only nominal taxation which is usually coupled with a reduction in regulatory or administrative constraints. The activity is usually not subject to information exchange because, for example, of strict bank secrecy provisions. These jurisdictions are known as tax havens. In other words, any country which modifies its tax laws to attract foreign capital could be considered a tax haven.

The central feature of a haven is that its laws and other measures can be used to evade or avoid the tax laws or regulations of other jurisdictions. A tax haven is a state or a country or territory where income tax is levied at a low rate or no tax at all is levied. Individuals and/or corporate entities can find it attractive to establish shell subsidiaries or move themselves to areas where reduced or nil tax is charged. This creates a situation of tax competition among governments though tax heaven countries may not always be profitable. Some tax heavens have become failure. Different jurisdictions tend to be havens for different types of taxes, and for different categories of people and/or companies.

Four key factors are used to determine whether a jurisdiction is a tax haven:

- Imposes no or only nominal taxes: Tax havens impose nil or only nominal taxes (generally or in special circumstances) and offer themselves, or are perceived to offer themselves, as a place to be used by non-residents to escape high taxes in their country of residence.
- Lack of transparency: Transparency ensures that there is an open and consistent application of tax laws among similarly situated taxpayers and that information needed by tax authorities to determine a taxpayer's correct tax liability is available (e.g., accounting records and underlying documentation). A lack of transparency in the operation of the legislative, legal or administrative provisions is another factor used to identify tax havens. The OECD is concerned that laws should be applied openly and consistently, and that information needed by foreign tax authorities to determine a taxpayer's situation is available. Lack of transparency in one country can make it difficult, if not impossible, for other tax authorities to apply their laws effectively. 'Secret rulings', negotiated tax rates, or other practices that fail to apply the law openly and consistently are examples of a lack of transparency. Limited regulatory supervision or a government's lack of legal access to financial records is contributing factors.
- Lack of effective exchange of tax information with foreign tax authorities: Whether there are laws or administrative practices that prevent the effective exchange of information for tax purposes with other governments on taxpayers benefiting from the no or nominal taxation. Tax havens typically have laws or administrative practices under which businesses and individuals can benefit from strict rules and other protections against scrutiny by foreign tax authorities. This prevents the transmittance of information about taxpayers who are benefiting from the low tax jurisdiction.
- No requirement for a substantive local presence of the entity: The absence of a requirement that the activity be substantial is important because it suggests that a jurisdiction may be attempting to attract investment and transactions that are purely tax driven. It may also indicate that a country does not provide a legal or commercial environment or offer any economic advantages that would attract substantive business activities in the absence of the tax minimising opportunities it provides. The no substantial activities criterion was included in the 1998 Report as a criterion for identifying tax havens because the lack of such activities suggests that a

jurisdiction may be attempting to attract investment and transactions that are purely tax driven.

(b) (A) Computation of Arms Length Price

Particulars	Amount (Rs.)
Cost of TV Set acquired from Sign Inc	15,000
Less: Cost of Warranty	2,000
Arm's Length Gross Profit mark-up	13,000

(B) Computation of Increase in Total Income

Particulars	Amount (Rs.)
Cost of TV Set acquired from Sky Inc [Rs. 16,000 × 1,000]	1,60,00,000
Less: Arm's length Value [Rs. 13,000 × 1,000]	1,30,00,000
Therefore, Increase in Total Income	30,00,000

7.(a) Bran Ltd., a company incorporated in US, sells laser printer cartridge to its 100 per cent Indian subsidiary Alpha Ltd. @ $ 50 per cartridge. Bran Ltd. also sells its laser printer cartridge to another company Toy Ltd. in India @ $ 80 per piece. Total income of Alpha Ltd. for the assessment year 2020-21 is Rs. 12,00,000 after making payment for 100 cartridges @ $50 (1 $ = Rs. 49). Alpha Ltd. has deducted tax at source while making payments to Bran Ltd. In this case, sale to unrelated party Toy Ltd. is @ $ 80. Compute the arm's length price and taxable income of Bran Ltd. and Alpha Ltd. The rate of one dollar may be assumed to be equivalent to Rs. 49 in all transactions for the sake of simplicity. [8]

(b) Write down the consequences of impermissible avoidance arrangement as per sec. 98. [8]

Answer:

(a) Arm's length price: - Arm's length price of laser printer cartridge, which is sold to Alpha Ltd. will be $ 80 per cartridge by comparable uncontrolled price method.

Income of Alpha Ltd. - It will be computed as under—

	Rs.
Income as per books of account	12,00,000
Add: Amount charged by Bran Ltd. [$ 50 x 100 x Rs. 49]	(+) 2,45,000
Less: Arm's length price [$ 80 x 100 x Rs. 49]	(-) 3,92,000
Income (after applying arm's length price)	10,53,000

By virtue of section 92(3), one cannot reduce taxable income by applying arm's length price. Therefore, income of Alpha Ltd. will be Rs. 12,00,000.

Income of Bran Ltd.:

If the transactions are actually on a principal-to-principal basis and are at arm's length and the subsidiary company functions and carries on business on its own, instead of functioning as an agent of the parent company, the mere fact that the Indian company is a subsidiary of the non-resident company will not be considered a valid ground for invoking section 9 for assessing the non-resident.

If the aforesaid conditions are satisfied, then Bran Ltd. is not chargeable to tax in India.

Conversely, if the aforesaid conditions are not satisfied, Bran Ltd. will be chargeable to tax in India in respect of income which arises on sale of goods to Alpha Ltd. However, the adoption of arm's length price by the Assessing Officer will not affect the computation of taxable income of Bran Ltd. [as per second proviso to section 92C(4) when tax is deducted/deductible, the income of recipient enterprise will not be recomputed if arm's length price is adopted in the case of payer-enterprise].

(b) Consequences of impermissible avoidance arrangement:

1. If an arrangement is declared to be an impermissible avoidance arrangement, then, the consequences, in relation to tax, of the arrangement, including denial of tax benefit or a benefit under a tax treaty, shall be determined, in such manner as is deemed appropriate, in the circumstances of the case, including by way of but not limited to the following:

   A. disregarding, combining or recharacterising any step in, or a part or whole of, the impermissible avoidance arrangement;
   B. treating the impermissible avoidance arrangement as if it had not been entered into or carried out;
   C. disregarding any accommodating party or treating any accommodating party and any other party as one and the same person;
   D. deeming persons who are connected persons in relation to each other to be one and the same person for the purposes of determining tax treatment of any amount;
   E. reallocating amongst the parties to the arrangement—

      (i) any accrual, or receipt, of a capital nature or revenue nature; or

      (ii) any expenditure, deduction, relief or rebate;

   F. treating—

      (i) the place of residence of any party to the arrangement; or

      (ii) the situs of an asset or of a transaction,

      at a place other than the place of residence, location of the asset or location of the transaction as provided under the arrangement; or

   G. considering or looking through any arrangement by disregarding any corporate structure.

2. For this purpose:

   (i) any equity may be treated as debt or vice versa;

   (ii) any accrual, or receipt, of a capital nature may be treated as of revenue nature or vice versa; or

   (iii) any expenditure, deduction, relief or rebate may be recharacterised.

8. Write short note (any four): [4×4=16]

(a) Assessment under Black Money & Imposition of Tax Act

(b) Central Board of Direct Taxes (CBDT)

(c) Tax Planning relating to Corporate Restructuring
(d) Scope of ICDS IV
(e) Scrutiny Assessment u/s 143(3).

Answer:
(a) Assessment under Black Money & Imposition of Tax Act:

- The Assessing Officer may, on receipt of an information from an income-tax authority or any other authority under any law for the time being in force or on coming of any information to his notice, serve on any person, a notice requiring him, on the specified date, to produce such accounts or documents or evidence as the Assessing Officer may require for the purposes of this Act.
  - No separate return is required to be filed under this Act
  - There is no time limit for issuance of the aforesaid notice. The Assessing Officer may issue such notice any time on the basis of information.
- The Assessing Officer may, from time to time, serve further notices requiring the production of such other accounts or documents or evidence as he may require.
- The Assessing Officer may make such inquiry, as he considers necessary, for the purpose of obtaining full information in respect of undisclosed foreign income and asset of any person for the relevant financial year or years.
- The Assessing Officer, after considering such accounts, documents or evidence, as he has obtained, and after taking into account any relevant material which he has gathered and any other evidence produced by the assessee, shall by an order in writing, assess the undisclosed foreign income and asset and determine the sum payable by the assessee.

(b) Central Board of Direct Taxes (CBDT): The Central Board of Direct Taxes is a statutory authority functioning under the Central Board of Revenue Act, 1963. The officials of the Board in their ex-officio capacity also function as a Division of the Ministry dealing with matters relating to levy and collection of direct taxes.

The Central Board of Revenue as the apex body of the Department, charged with the administration of taxes, came into existence as a result of the Central Board of Revenue Act, 1924. Initially the Board was in charge of both direct and indirect taxes. However, when the administration of taxes became too unwieldy for one Board to handle, the Board was split up into two, namely the Central Board of Direct Taxes and Central Board of Excise and Customs with effect from 1.1.1964. This bifurcation was brought about by constitution of two Boards u/s 3 of the Central Board of Revenue Act, 1963.

The Central Board of Direct Taxes consists of a Chairman and following six Members: -
1. Chairman
2. Member (Income-tax)
3. Member (Legislation & Computerisation)
4. Member (Personnel & Vigilance)
5. Member (Investigation)
6. Member (Revenue)
7. Member (Audit & Judicial).

(c) Tax Planning relating to Corporate Restructuring**:** Corporate Restructuring is a process of redesigning one or more aspects of a corporate for achieving certain objectives. The objectives of restructuring may be achieving economies of scale or surviving in an adverse economic climate or restructuring of debt or for any other objectives. Such restructuring can be done through various tools. Some of them are as follow:

- Amalgamation
- Demerger
- Slump sale of business
- Buy back of shares
- Capital Reduction
- Conversion of debentures into shares
- Redemption of preference shares
- Conversion into company
- Conversion of an Indian branch of foreign company into an subsidiary company
- Conversion of company into LLP, etc.

(d) Scope of ICDS IV: The Standard deals with the bases for recognition of revenue arising in the course of the ordinary activities of a person from:

1. the sale of goods;
2. the rendering of services;
3. the use by others of the person's resources yielding interest, royalties or dividends.
    - Revenue is the gross inflow of cash, receivables or other consideration arising in the course of the ordinary activities of a person from the sale of goods, from the rendering of services, or from the use by others of the person's resources yielding interest, royalties or dividends. In an agency relationship, the revenue is the amount of commission and not the gross inflow of cash, receivables or other consideration.
    - The Standard does not deal with the aspects of revenue recognition which are dealt with by other ICDS.

(e) Scrutiny Assessment u/s 143(3): Where the Assessing Officer or the prescribed income-tax authority (here-in-after collectively referred to as 'Assessing Officer') considers it necessary to ensure that the assessee has not -

- understated his income; or
- declared excessive loss; or
- under paid the tax,

he can make a scrutiny in this regard and gather such information and evidence as he deems fit. And on the basis of such information and evidence so collected, he shall pass an assessment order. Such order shall be treated as regular assessment order.

Conditions for scrutiny assessment -

- A return has been furnished u/s 139 or in response to a notice u/s 142(1); and
- Assessing Officer considers it necessary or expedient to ensure that the assessee has not understated his income, declared excessive loss or under-paid the tax.