SUPPLEMENTARY

ILLUSTRATIONS

PAPER - 16

DIRECT TAX LAWS AND INTERNATIONAL TAXATION

ILLUSTRATIONS

Illustration 1

Compute gross total income of Minakshi Ltd. under the head Profits & gains of business or profession for the assessment year 2018-19

Profit & Loss A/c for the year ended 31/3/2018

Particulars	Amount	Particulars	Amount
To Opening stock	4,00,000	By Sales	17,80,000
To Purchases of raw material	5,00,000	By Closing Stock	5,00,000
To Conversion cost	4,00,000	By Interest on debenture	10,000
To Customs duty	1,70,000	By Bad debt recovery	25,000
To Salary and wages	80,000	(Previously allowed)	
To Bonus to employee	15,000	By Interest on income tax Refund	6,000
To Carriage inward	20,000	By Rent from house property	40,000
To Advertisement	30,000		
To Interest	2,000		
To Carriage outward	38,000		
To Depreciation	50,000		
To Provision for income tax	20,000		
To Compensation paid to director	1,00,000		
To Provision for bad debt	10,000		
To Audit fees	20,000		
To Bad debt	30,000		
To Traveling expenses	25,000		
To Municipal tax	5,000		
To Net profit	4,46,000		
	23,61,000		23,61,000

Additional information

(a) Minakshi, holder of 21% share, sold goods to the company for ₹ 40,000 though market value is lower by ₹10,000. Payment to her made by way of bearer cheque.
(b) Advertisement expenses relate to purchase of a machinery for advertisement. Depreciation allowed on such machinery is ₹2,250.
(c) Ritu, holder of 21% share, purchased goods from the company for ₹30,000 though market value is ₹ 35,000. She made payment by way of bearer cheque.
(d) Purav, who supplies more than 25% of goods, sold goods to company for ₹10,000 however, market value of such goods was ₹ 8,000.
(e) Outstanding salary ₹ 20,000 is paid on 30-12-2018.
(f) Bonus is not paid till due date of furnishing return.
(g) Provision for bad debts is in excess of ₹ 1,000.
(h) Salary paid in excess of requirement to non-relative ₹ 2,000 and to relative of director ₹ 6,000.
(i) Traveling expenses is on traveling of Minakshi for 10 days out of which she used 8 days for acquiring a new machine from Jaipur for company and 2 days for meeting her relative. However, Minakshi agreed to refund proportionate cost.
(j) On 31-7-2017, company purchased a machine from Jaipur costing ₹ 5,00,000.
(k) Customs duty paid on 30-11-2018. However, company paid ₹ 5,000 on 30-7-2017 outstanding customs duty of earlier year
(l) Company incurred capital expenditure of ₹ 1,00,000 for promoting family planning among its workers.
(m) Carriage inward shows the expenditure incurred for acquiring machine from Jaipur.
(n) Interest paid is related to loan taken for purchasing debenture.

(o) As on 1-4-2017, company holds following assets –

Assets	Rate	Value
Plant & Machinery	15%	6,00,000
Furniture	10%	1,00,000

Compute gross total income for assessment year 2018-19. Ignore provision of sec. 115JB.

Solution:

Computation of gross total income of Minakshi Ltd.
for the A.Y. 2018-19

Particulars	Notes	Details	Amount	Amount
Income from house property				
Gross Annual value (Rent received)			40,000	
Less: Municipal tax			5,000	
Net annual value (NAV)			35,000	
Less: Standard deduction u/s 24(a) [30% of NAV]			10,500	24,500
Profits & gains of business or profession				
Net profit as per Profit and Loss A/c			4,46,000	
Add: Expenditure disallowed but debited in P/L A/c				
Depreciation	1	50,000		
Provision for income tax	2	20,000		
Provision for bad debt	3	10,000		
Municipal tax	4	5,000		
Excessive payment to Minakshi	5	10,000		
Cash payment to Minakshi in excess of ₹ 10,000	6	30,000		
Advertisement expenditure	7	30,000		
Bonus	8	15,000		
Excess payment of salary to relative of director	9	6,000		
Travelling expenses	10	25,000		
Customs duty	11	1,70,000		
Carriage inward	10	20,000		
Interest	12	2,000	3,93,000	
			8,39,000	
Less: Expenditure allowed but not debited to P/L A/c				
Customs duty of earlier years	11	5,000		
Expenditure on promoting family planning among employees	13	20,000		
Depreciation u/s 32	1	2,91,250		
Less: Income taxable under other head but credited in P/L A/c				
Rent from house property	14	40,000		
Interest on debenture	14	10,000		
Interest on refund of income tax	14	6,000	3,72,250	4,66,750
Income from other sources				
Interest on debenture		10,000		
Less: Interest on borrowed capital	12	2,000	8,000	
Interest on refund of income tax			6,000	14,000
Gross Total Income				**5,05,250**

Notes

1. Depreciation is allowed as per Income tax Act being calculated as under -

Particulars	Details	Amount
Block 1: Plant and Machinery @ 15%		
W.D.V. as on 1/4/2017	6,00,000	
Add: Purchase during the year	5,40,000#	
	11,40,000	
Less: Sale during the year	-	
	11,40,000	
Depreciation @ 15% [₹ 11,40,000 x 15%]	1,71,000	
Additional depreciation @ 20% [₹ 5,40,000 x 20%]	1,08,000	2,79,000
Block 2: Furniture @ 10%		
W.D.V. as on 1/4/2017	1,00,000	
Add: Purchase during the year	-	
	1,00,000	
Less: Sale during the year	-	
	1,00,000	
Depreciation @ 10% [₹ 1,00,000 x 10%]		10,000
On machinery for advertisement		2,250
Depreciation allowed u/s 32		2,91,250

Computation of actual cost of machinery purchased during the year -

Particulars	Amount
Purchase cost	5,00,000
Carriage inward	20,000
Traveling cost *	20,000
Actual cost of purchased machinery	5,40,000

* Since traveling cost for 10 days was ₹ 25,000. Hence cost for 8 days (used for acquiring the new machine) is ₹ 20,000.

2. Income tax is not allowed u/s 40(a).
3. Any anticipatory loss is not allowed.
4. Municipal tax is not allowed as deduction from business income but allowed from Income from house property.
5. Since Minakshi has a substantial interest in the company, hence, excessive payment is disallowed u/s 40A(2).
6. Payment of allowed expenditure otherwise than by account payee cheque or demand draft in excess of ₹ 10,000 shall be disallowed u/s 40A(3).
7. Any capital expenditure is not allowed.
8. By virtue of sec. 43B, bonus to employees is allowed as deduction on payment basis.
9. Excessive payment to relative of director is disallowed [Sec. 40A(2)].
10. Since traveling expenditure and carriage inward is related to acquisition of machine, hence the same should be added with the cost of machine. Further, personal expenditure of Minakshi being refundable shall not be treated as expenditure.
11. By virtue of sec. 43B, customs duty is allowed as deduction on payment basis.
12. Interest on loan taken for acquisition of debenture is deductible from income from debenture.
13. Any capital expenditure on promoting family planning among employees by a company is allowed in 5 equal installments [Sec. 36(1)(ix)].
14. Rent from house property is taxable under the head Income from house property, whereas interest income (including interest on income tax refund) is taxable under the head Income from other sources.

15. Any excessive payment received from a person who has substantial interest is not governed by sec. 40A(2).
16. A person supplying 25% of raw material is not treated as person who holds substantial interest. Hence excessive payment to Purav is allowed.
17. Compensation paid to director shall be allowed u/s 37(1).
18. Sec. 43B covers bonus and commission paid to employee but does not cover salary paid to employee.

Illustration 2

Ram & Mrs. Ram submit the following particulars of their income relevant for the assessment year 2018-19:

1. Mrs. Ram receives a salary of ₹ 30,000 and taxable allowance of ₹ 22,500 from G Ltd. in which her father-in-law holds 25% of equity share capital and she herself holds 10% of equity capital.
2. Ram receives a salary of ₹ 11,340 from S Ltd., in which Mrs. Ram, her sisters and brother hold 21% of equity share capital.
3. Ram is a (10% share) partner in EFG, a partnership firm, which is engaged in the business identical to G Ltd. and receives ₹ 75,000 as salary and interest from the firm during the relevant previous year. None of the relatives of Ram has any interest in the firm.
4. Mrs. Ram is employed by the firm EFG on a salary of ₹ 9,000 p.a.
5. She receives dividend of ₹ 11,000 (Gross) from G Ltd. and ₹ 9,000 (Gross) from S Ltd.
6. Interest of minor daughter of Ram from a partnership firm is ₹ 43,500
7. Mrs. Ram transferred ₹ 1,00,000 on 20-5-1973 and ₹ 70,000 on 15-6-1973 to her daughter-in-law, who invested the aforesaid fund in a partnership firm at 12% p.a. Out of interest income, her daughter-in-law has purchased debentures in an Indian companies and during the previous year she receives ₹ 2,000 as interest.

Find out taxable income of Mr. and Mrs. Ram on the following assumptions:

a. That Ram is not a beneficial shareholder in G Ltd. throughout the previous year.
b. That Ram holds 10 shares in G Ltd. only during 15 days of the previous year.

Solution:

Computation of total income for A.Y. 2018-19

Particulars	Case a		Case b	
	Mr. Ram	Mrs. Ram	Mr. Ram	Mrs. Ram
Salary from G Ltd.		52,500	52,500	
Salary from S Ltd.		11,340		11,340
Business income (salary and interest from EFG)	75,000		75,000	
Salary from EFG		9,000		9,000
Dividend from G Ltd. And S Ltd. (Exempt)	-	-	-	-
Interest income of son's wife (int. on deb.)#		8,400		8,400
Income of minor daughter (₹ 43,500 – ₹ 1,500) [sec. 10(32)]		42,000	42,000	
Total Income	**75,000**	**1,23,240**	**1,69,500**	**28,740**

#for transfer before 31-5-1973 clubbing is not applicable

Illustration 3

A is an association governed by the provisions of sec. 44A of the Income-tax act. The subscription receipts for the year ended 31st March, 2018 were ₹ 60,000. The expenditure in the normal course of its activities was ₹ 85,000. Its other income taxable under the Act works out to

₹ 75,000. On these facts, you are consulted as to:

a. How A's taxable income will be determined for assessment year 2018-2019.
b. In case the association did not have the other income taxable will there be any difference in the computation of its income?

Solution

Computation of total income

Particulars	**Amount**
Other Income	75,000
Less: Deficiency (Note 1)	25,000
Total Income	**50,000**

Note 1: Calculation of deficiency

Particulars	**Amount**
Subscription received	60,000
Less: Expenditure	85,000
Deficiency	**25,000**
Maximum deficiency can be set off against other income is lower of the following: a. Actual Deficiency i.e. ₹ 25,000 b. 50% of other income i.e., ₹ 37,500 being 50% of ₹ 75,000	

In case, association do not have any other taxable income, then the total income shall be nil and the deficiency of ₹ 25,000 shall not be carried forward.

Illustration 4

Smart (a non resident) has computed his tax liability as under –

Particulars	Details	Amount
Income from business A		2,80,000
Long term capital gain	10,000	
Less: Income from business B u/s 71	(10,000)	Nil
Income from other sources		30,000
Gross Total Income		3,10,000
Less: Deduction u/s 80CCC to 80U		-
Total Income		3,10,000
Tax liability		3,090

Comment on the above computation.

Solution:

Computation made by Smart is incorrect, as because first intra head set-off shall be made, thereafter inter head set-off can be made. The correct computation is shown below -

Computation of total income and tax liability of Smart for the A.Y. 2018-19

Particulars	Details	Amount
Profits & Gains of Business or Profession		
Income from business A	2,80,000	
Income from business B u/s 70	(10,000)	2,70,000
Capital Gains		
Long term capital gain		10,000
Income from other sources		30,000
Gross Total Income		3,10,000

Less: Deduction u/s 80CCC to 80U	-
Taxable Income	3,10,000
Tax liability [{₹ 10,000 x 20% + (₹ 3,00,000 – ₹ 2,50,000) x 5%} x 103%]	4,640

Illustration 5

A private limited company has share capital in the form of equity share capital. The shares were held until 31st March, 2016 by 4 members A, B, C and D equally. The company made losses/profits for the past three assessment years are as follow:

Asst. Year	Business Loss	Unabsorbed depreciation	Total
2014-15	Nil	₹ 15,00,000	₹ 15,00,000
2015-16	Nil	₹ 12,00,000	₹ 12,00,000
2016-17	₹ 9,00,000	₹ 9,00,000	₹ 18,00,000

The above figures have been accepted by the tax department.

During the previous year 31-3-2017, A sold his shares to Y and during the previous year 31-3-2018, B sold his shares to Z. The profits for the past two years are as follows:
31-3-2017 ₹ 18,00,000 (before charging depreciation ₹ 9,00,000)
31-3-2018 ₹ 45,00,000 (before charging depreciation ₹ 7,50,000)
Compute taxable income for A.Y. 2018-19

Solution:

According to sec. 79, loss sustained by the closely held company shall not allowed to be set off unless in the year of such set off the shareholders holding not less than 51% of beneficial interest in share capital of the company in the year of sustaining the loss shall continue to be the shareholders of the company. Accordingly, the taxable income of the company for the A.Y. 2017-18 shall be nil as detailed here below:

Particulars	₹ in lacs
Income before depreciation	18
Less: Depreciation of the current year	9
Income after depreciation	9
Less: Unabsorbed business loss b/f	9
Taxable income	**Nil**

However, the abovementioned condition of beneficial ownership shall not applied for carry forward and set off of unabsorbed depreciation therefore, the company can carry forward and set off the unabsorbed depreciation, even if there is a change in the shareholding pattern between the year in which the loss was suffered and the year in which it seeks to set off such loss. Thus, the taxable income of the company for A.Y. 2018-19 is worked out as follow:

₹ in lacs

Particulars	Amount	Amount
Income before depreciation		45
Less: Depreciation of the current year		7.5
Income after depreciation		37.50
Less: Unabsorbed business loss b/f		
A.Y. 2014-15	15	
A.Y. 2015-16	12	
A.Y. 2016-17	9	36
Taxable income		1.50

ILLUSTRATIONS

Illustration 6

Mr. Kamal has given you the following particulars to compute his house property income:

Particulars	H1	H2	H3	H4	H5
Situated at	Patna	Nasik	Dhanbad	Pune	Abu
Used for	Let out as residence	Let out as office	Own residence	Own business	Own residence
Municipal tax @ 5%	15,000	8,000	2,000	3,000	1,500
Municipal tax paid by him	60%	20%	30%	38%	40%
Sewerage tax (paid)	5%	2%	5%	-	3%
Water tax (Unpaid)	5%	3%	3%	2%	2%
Rent of the similar property in the area	20,000 p.m.	2,50,000 p.a.	5,000 p.m.	25,000 p.m.	2,000 p.m.
Standard rent per annum as per Rent control Act	2,00,000	2,10,000	50,000	2,00,000	3,00,000
Rent received for the year	2,50,000	1,80,000	Nil	Nil	Nil
Land revenue	10,000	20,000	30,000	-	-
Ground rent	-	-	-	10,000	25,000
Repairs	20,000	30,000	3,00,000	5,000	-
Rent collection charges	2,000	-	-	-	-
Cost of staircase lighting	1,000	-	1,000	2,000	1,000
Garden maintenance cost	500	-	2,000	3,000	2,000
Interest on loan for payment of municipal tax	500	200	300	250	400
Interest on loan taken for repairs	2,000	3,000	-	250	-
Interest on loan for construction @ 10% for current year, (loan date)	20,000 (1/7/1975)	10,000 (1/10/1985)	32,000 (17/9/1978)	5,000 (1/11/2004)	32,000 (1/4/2009)
Construction completed on	1/7/1978	1/10/1988	7/9/1981	1/10/2007	1/8/2014
Vacancy period	-	2 months	-	-	2 months

Additional information:

1. Rent of H1 includes charges for staircase lighting ₹ 2,000 and garden maintenance ₹ 1,000.
2. Property H2 has been let out to same tenant since beginning at same rent. In the current year, arrears rent received by a court decision ₹ 50,000.
3. Unrealised rent on H1 of current year ₹ 5,000 and preceding year ₹ 6,000.
4. Unrealised rent of H2 recovered in current year ₹ 10,000 relating to A.Y. 1999-2000.

Solution:

Working: Computation of GAV

Step	Particulars	Explanation	H1	H2	H3	H5
1st	Municipal value	1	3,00,000	1,60,000	40,000	30,000
	Fair rent		2,40,000	2,50,000	60,000	24,000
	Standard rent		2,00,000	2,10,000	50,000	3,00,000
	Reasonable Expected Rent		2,00,000	2,10,000	50,000	30,000
2nd	Actual rent receivable	2	2,47,000	1,80,000	-	-
3rd	Higher of above		2,47,000	2,10,000	50,000	30,000
4th	Gross Annual Value (GAV)		2,47,000	1,80,000[4]	50,000	30,000

Explanation

1. Calculation of Net Municipal value

Property	NMV (₹)
H1	(15,000/5) * 100 = 3,00,000
H2	(8,000/5) * 100 = 1,60,000
H3	(2,000/5) * 100 = 40,000
H5	(1,500/5) * 100 = 30,000

2. **Computation of ARR** (Actual rent received including rent for amenities - Cost of amenities)
H1: ₹ 2,50,000 – ₹ 3,000 (i.e. Rent charged for staircase lighting and Garden maintenance) = ₹ 2,47,000
H2: ₹ 1,80,000 – Nil = ₹ 1,80,000

3. Rent for vacancy period has already been adjusted in ARR in step 2 as rent received is given.

4. In House 2, till step 3 ARR is less than RER, but such shortage is due to vacancy [otherwise ARR would have been ₹ 2,16,000 [being (₹ 1,80,000/10) * 12]. Therefore, GAV (due to step 4) will be the ARR.

5. **Interest on loan on H5**
Interest for post-construction period ₹ 32,000
Pre-construction period: From 1/4/2009 to 31/3/2014 = 5 years.
Total interest for pre-construction period: ₹ 32,000 x 5 = ₹ 1,60,000
Interest allowed on account of pre-construction period = ₹ 1,60,000 x 1/5 = ₹ 32,000

Computation of income from house property of Mr. Kamal for the A.Y. 2018-19

Particulars	Details	Details	Amount
House 1: **Let out** [Sec. 23(1)]			
Gross Annual Value (Working)		2,47,000	
Less: Municipal Tax	9,000		
Sewerage tax	15,000	24,000	
Net Annual Value		2,23,000	
Less: Deduction u/s			
24(a) Standard Deduction	66,900		
24(b) Interest on loan for repairs	2,000		
Interest on loan for construction	20,000	88,900	1,34,100
House 2: **Let out** [Sec. 23(1)]			
Gross Annual Value (Working)		1,80,000	
Less: Municipal Tax	1,600		
Sewerage tax	3,200	4,800	
Net Annual Value		1,75,200	
Less: Deduction u/s			
24(a) Standard Deduction	52,560		
24(b) Interest on loan for repairs	3,000		
Interest on loan for construction	10,000	65,560	1,09,640
House 3: **Self-occupied** [Sec. 23(2)(a)]			
Net Annual Value		Nil	
Less: Deduction u/s			
24(b) Interest on loan (maximum limit)		30,000	(-) 30,000
House 4: **Used for own business purpose**			Nil
House 5: **Deemed to be let out** [Sec. 23(4)]			
Gross Annual Value (Working)		30,000	
Less: Municipal Tax	600		

Sewerage tax	900	1,500	
Net Annual Value		28,500	
Less: Deduction u/s			
24(a) Standard Deduction	8,550		
24(b) Interest on loan for construction	64,000	72,550	(-) 44,050
Add: Recovery of Unrealised Rent & Arrears Rent Receipts [Sec. 25A]		60,000	
Less: Standard deduction u/s 24(a) @ 30%		18,000	42,000
Income from house property			**2,11,690**

Notes

a) Income on providing amenities shall be taxable under the head income from other sources. Hence, ₹ 1,000 (being income on providing staircase lighting) and ₹ 500 (being income on maintaining garden) shall be taxable under the head income from other source.

b) In the given case, there are two options:
Option 1: Take House 3 as Self-occupied (S/O) and House 5 as Deemed to be let out (DLO)
Option 2: Take House 5 as Self-occupied (S/O) and House 3 as Deemed to be let out (DLO)

Income from house property shall be computed by applying each option separately are as under:

Particulars	**Option1**		**Option2**	
	House 3 S/O	**House 5 DLO**	**House 3 DLO**	**House 5 S/O**
Gross Annual Value	Nil	30,000	50,000	Nil
Less: Municipal Tax & Sewerage Tax	Nil	1,500	2,600	Nil
Net Annual Value (A)	Nil	28,500	47,400	Nil
Less: Deduction u/s				
24(a) Standard deduction (30% of NAV)	Nil	8,550	14,220	Nil
24(b) Interest on loan (# Explanation 5)	30,000	64,000#	32,000	30,000
Total deduction (B)	30,000	72,550	46,220	30,000
Income from House Property [(A) – (B)]	(-) 30,000	(-) 44,050	1,180	(-) 30,000
Income	(-) 74,050		(-) 28,820	

So, assessee shall opt house 3 as self occupied.

Illustration 7

M/s. QQ Trading Co. a sole proprietary concern, was converted into a company w,e,f 01-09-2017. Before the conversion, the sole proprietary concern had a block of Plant & Machinery (15%), whose WDV as on 1-4-2017 was ₹ 3,00,000. On 1st April itself, a new plant of the same block was purchased for ₹ 1,20,000. After the conversion, the company has purchased the same type of plant on 1-1-2018 for ₹ 1,60,000. Compute the depreciation that would be allocated between the concern & the company.

Solution:

Computation of depreciation on plant and machinery if there were no succession

Particulars	Plant & Machinery
W.D.V. as on 1/4/2017	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 1/4/2017 to 31/8/2017 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 1/9/2017 to 31/3/2018 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 1/1/2018 is fully allowable in the hands of successor company [50% of 15% on ₹ 1,60,000].	12,000
Total depreciation	**48,592**

Illustration 8

C Ltd (an Infrastructure Company) issued Zero Coupon Bond on 1/8/2017 @ ₹ 45 (face value ₹ 100) redeemable at par after 125 months. Public subscribed for 50,000 bonds. Find amount allowed as deduction u/s 36(1)(iiia).

Solution:

Deduction allowed u/s 36(1)(iiia)

Total amount of discount	50,000 x (₹ 100 – ₹ 45)	₹ 27,50,000
Period of life of the bond		125 months
Cost per month	₹ 27,50,000/125 months	₹ 22,000
No. of months in the P.Y.2017-18 for which the bonds remains outstanding	Period from 01/08/2017 to 31/03/2018	8 months
Amount allowed as deduction in the previous year 2017-18	₹ 22,000 * 8 months	₹ 1,76,000

Illustration 9

Apple Industries Ltd. provides the following information for the financial year 2017-18:

Net profit as per statement of profit and loss after debiting/crediting the following :	₹ 120 lakh
Proposed dividend	₹ 30 lakh
Profit from unit established in SEZ	₹ 20 lakh
Provision for income-tax	₹ 18 lakh
Provision for deferred tax	₹ 10 lakh
Provision for permanent diminution in value of investments	₹ 3 lakh
Depreciation debited to statement of profit and loss ₹ 10 lakh includes	
depreciation on revaluation of assets to the tune of	₹ 1 lakh

Bought forward losses and unabsorbed depreciation as per books of the company are as follows:(₹ in lakh)

Previous Year	Brought Forward Losses	Unabsorbed Depreciation
2013 – 14	1	4
2014 – 15	1	1
2015 – 16	10	5

Compute the book profit of the company as per section 115JB for the assessment year 2018-19.

Solution:

Computation of Book Profit of Apple Industries Ltd. for the A.Y.2018-19 (₹ In lakhs)

Particulars	Details	Amount
Net profit as per books of accounts		120
Add:		
Proposed Dividend	30	
Provision for income tax	18	
Provision for deferred-tax	10	
Provision for permanent diminution in value of investments	3	
Depreciation	10	71
		191
Less:		
Depreciation (ignoring depreciation of revaluation)	9	
Lower of brought forward loss and unabsorbed depreciation	10	19
Book Profit		172

Illustration 10

The book profits of a company in the previous year 2017-18 computed in accordance with section 115JB are ₹ 60,00,000. If the total income for the same period computed as per the provisions of the Income-tax Act, 1961 is ₹ 12,00,000 calculate the tax payable by the company in the assessment year 2018-19 and also indicate whether the company is eligible for any tax credit.

Solution:

Computation of Tax Liability of …… for the A.Y. 2018-19

Particulars	Amount
Total Income	12,00,000
Tax on above	3,60,000
Add: Education Cess & SHEC	10,800
Tax & Cess payable [A]	3,70,800
Book Profit	60,00,000
Tax on above [B]	11,10,000
Add: Education Cess & SHEC	33,300
Tax & Cess payable u/s 115JB [B]	11,43,300
Tax liability [Higher of (A) and (B)]	11,43,300

Illustration 11

X Ltd. charged depreciation on its fixed assets at the rate prescribed in the income tax rules. However, the Assessing Officer disallowed the same and allowed the rate as prescribed in the Companies Act, 2013 for the purpose of computation of book profit under section 115JB for the previous year 2017-18. Examine the legality of action taken by the Assessing Authority.

Solution:

This issue was settled by the Supreme Court in *Malayala Manorama Co. Ltd. -vs.- CIT*. The Apex Court observed that for the purpose of computation of book profit under section 115JB, the Assessing Officer's power is restricted to examining whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. Thereafter, he only has the limited power of making additions and deductions as provided for in Explanation 1 to section 115JB. The Assessing Officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in Explanation 1 to section 115JB. Where an assessee is consistently charging depreciation in its books of account at the rates prescribed in Income-tax Rules and the accounts of the assessee have been prepared and certified as per the provisions of the Companies Act, the Assessing Officer does not have any jurisdiction under section 115JB to rework the net profit of the assessee by substituting the rates of depreciation prescribed under the Companies Act. Applying the ratio of the Supreme Court decision to this case, it may be concluded that the action of the Assessing Officer is not correct.

Illustration 12

Y Ltd. is a company in which 80% shares are held by G Ltd. declared a dividend amounting to ₹ 30 lakh to its shareholders for the financial year 2016-17 in its annual general meeting held on 18th May, 2017. Dividend distribution tax was paid by Y Ltd. on 20th May, 2017. G Ltd. declared an interim dividend amounting to ₹ 40 lakh on 1st December, 2017 for the year ended 31st March, 2018.

Compute the amount of tax on dividend payable by G Ltd. What would be your answer, if 52% shares of G Ltd. are held by S Ltd., an Indian company?

Solution:

Computation of Dividend Distribution Tax Payable by G Ltd.

Particulars	Amount
Dividend declared by G Ltd	40,00,000
Less: Dividend received from Y Ltd. [₹ 30,00,000 x 80%]	24,00,000
	16,00,000
Dividend Distribution Tax [103% (112% (₹ 16,00,000 x 15%/85%))]	3,25,720

Illustration 13

The net profit of Renuka Ltd. an Indian company, as per its profit and loss account prepared as per the Income-tax Act, 1961 is ₹ 90,00,000 after debiting and crediting following items :

	₹
Provision for income-tax	5,00,000
Provisions for deferred tax	3,00,000
Proposed dividend	7,50,000
Depreciation including depreciation on revaluation of assets ₹ 20,00,000 debited to profit and loss account	60,00,000
Profit from industrial unit in SEZ area	80,000
Provision for permanent diminution in the value of investments	70,000
Compute tax liability under section 115JB for the assessment year 2018-19.	

Solution:

Computation of Book Profit for the purpose of Sec. 115JB

Particulars	Details	Amount
Net profit as per books of accounts		90,00,000
Add:		
Provision for income tax	5,00,000	
Provisions for deferred tax	3,00,000	
Proposed dividend	7,50,000	
Depreciation	60,00,000	75,50,000
		1,65,50,000
Less:		
Depreciation (without considering depreciation on revaluation)	40,00,000	
Provision for permanent diminution in the value of investments	70,000	
Profit from industrial unit in SEZ area	Nil	40,70,000
Book Profit		1,24,80,000

Computation of Tax Liability under section 115JB

Particulars	Amount
Book profit u/s 115JB	1,24,80,000
18.5% of book profit	23,08,800
Add: Surcharge [As total income exceeds ₹ 1,00,00,000/-]	1,61,616
Tax & Surcharge	24,70,416
Add: Education Cess & SHEC @ 3%	74,112
Tax Liability u/s 115JB [R/off]	25,44,530

The tax liability u/s 115JB is required to be compared with tax liability calculated on income calculated as per other provisions of the Act.

Illustration 14

Smile Ltd. is a wholly-owned subsidiary company of Happy Ltd., an Indian company. Smile Ltd. owns Plant-A and Plant-B (depreciation rate 40%, depreciated value of the block ₹ 3,00,000 on 1st April, 2017). Plant-B was purchased and put to use on 10th November, 2015 (cost being ₹ 70,000). Plant-B is transferred by Smile Ltd. to Happy Ltd. on 14th December, 2017 for ₹ 20,000. It is put to use by Happy Ltd. on the same day. Happy Ltd. owns Plant-C on 1st April, 2017 (depreciation rate 40%, depreciated value ₹ 60,000). Find out the amount of depreciation in the hands of Smile Ltd. and Happy Ltd. for the assessment year 2018-19.

Solution:

Depreciation in the hands of Smile Ltd. for the assessment year 2018-19:

Particulars	Amount
Depreciated value of the Plant A and B on 1st April, 2017	3,00,000
Less: Plant B transferred to Happy Ltd	20,000
WDV as on 31st March, 2018	2,80,000
Depreciation for the block P.Y.2017-18	1,12,000
WDV at the end of the year	1,38,000

Depreciation in the hands of Happy Ltd. for the assessment year 2018-19:

Particulars	Amount
Depreciated value of the block on 1st April, 2017	60,000
Add: Actual Cost of Plant B acquired from Smile Ltd (See Note)	33,600
WDV as on 31st March, 2018	93,600
Depreciation on transferred asset [₹ 33,600* ½ * 40%]	6,720
Other Asset @ 40% of ₹ 60,000	24,000
Total Depreciation	30,720

Note: Actual Cost of Plant B in the hands of Happy Ltd.

Particulars	Amount
Actual Cost of Plant B in the hands of Smile Ltd on Nov 10, 2015	70,000
Less: Depreciation for P.Y 2015-16 (1/2 of 40% of ₹ 70,000)	14000
Balance on April 1, 2016	56,000
Less: Depreciation for the P.Y.2016-17	22,400
Balance on April 1, 2017	33,600

Illustration 15

From the following particulars of Sigma Ltd., calculate the amount of tax payable by the company for the assessment year 2018-19:

		₹ in lakhs
(i)	Business income from sale of equity shares and units of equity oriented mutual fund (non-delivered based)	8.00
(ii)	Speculative income from other transactions	4.00
(iii)	Non-speculative business income	12.00
(iv)	Income other than business income	9.00
(v)	Securities transaction tax (it is not deducted from above incomes)	2.50
(vi)	Deductions allowed under section 80CCC to 80U	3.00
(vii)	Advance tax (not deducted from above income)	0.01

Solution:

Computation of Tax Liability of the Sigma Ltd. for the Assessment Year 2018-19

Particulars	***Amount*** (₹ in lakhs)
Business Income (Speculative and non- Speculative)	24.00
Less: Securities Transaction Tax	2.50
Business Income	21.50
Other Incomes	9.00
Gross Total Income	30.50
Less: Deductions allowed u/s 80CCC to 80U	3.00
Total Income	27.50
Tax payable @ 30.90% [i.e., 30% + 3% ed. Cess & SHEC]	8.4975

Illustration 16

P Ltd. owns two undertakings. Undertaking-A is eligible for deduction u/s 80-IA and Undertaking-B is not eligible for such deduction. Date of commencement of operation in both the undertaking is 14th September, 2017. The profits earned by both the undertaking are as under:

Previous Year	**Undertaking-A (₹ in Lakhs)**	**Undertaking-B (₹ in Lakhs)**
2017-18	(–) 6	(–) 4
2018-19	(–) 4	10
2019-20	5	9
2020-21	8	6
2021-22	9	(–) 3

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

Solution:

In the given case, the entire loss of the undertaking A has been set-off under Sections 70 & 72 till the A.Y 2020-21

Assessment Year	**Unit A**	**Unit B**	**GTI**	**Carried forward losses**
2018-19	- 6	- 4	Nil	-10
2019-20	- 4	10	Nil	-4
2020-21	5	9	10	Nil
2021-22	8	6	14	Nil
2022-23	9	- 3	6	Nil

There is no loss brought forward for earlier years for the Assessment Year 2021-22 and subsequent year. However, to compute profit eligible for tax holidays u/s 80-IA, it is assumed that the undertaking is the only unit owned by P. Ltd. Consequently, deduction u/s 80-IA is as under:

Computation of Total Income

Particulars	**A.Y. 2020-21**	**A.Y. 2021-22**	**A.Y. 2022-23**
Profit from Unit A	5	8	9
Add: Profit from Unit B	9	6	-3
Gross Total Income (a)	14	14	6
Less: Deduction u/s 80-IA			
Current year profit of Unit A	5	8	9
Less: Notional B/F loss from earlier years	-10	-5	Nil
Balance	-5	3	9

Deduction U/S 80-IA @ 100% (b)	Nil	3	6 (Restricted to GTI)
Total Income [(a)-(b)]	14	11	Nil

Illustration 17

Sun bright Ltd., an Indian company furnished following particulars of its income for the previous year 2017-18. Calculate its total income and income tax liability for the assessment year 2018-19:

	₹
Income from business	5,20,000
Dividend received during the year:	
— from Indian company	20,000
— from foreign company	5,000
Gains from transfer of capital assets:	
— short term capital gains	25,000
— long term capital gains	50,000
Agricultural income in India	35,000

Additional information:

(i) Business expenses already charged from business income include ₹ 10,000 revenue expenditure and ₹ 30,000 capital expenditure on family planning programme for employees.

(ii) Company has debited following donations in the profit and loss account of the business of company.
- — Rajiv Gandhi Foundation: ₹ 50,000 ; and
- — Prime Minister's National Relief Fund: ₹ 25,000.

Solution:

Computation of Total Income of Sun Bright Ltd.
for the Assessment Year 2018-19

Particulars	Amount	Amount
Income from Business		5,20,000
Profit as per Profit & Loss A/c		
Add: Disallowed Expenditure		
(i) Donation	75,000	
(ii) Capital Expenditure on Family Planning (₹ 30,000 - ₹ 6,000)	24,000	99,000
		6,19,000
Capital Gain		
- Long term	50,000	
- Short term	25,000	75,000
Income from Other Sources		
Dividend from		
- Indian Company	Exempt	
- foreign Company*	5,000	
Agricultural Income	Exempt	5,000
Gross Total Income		6,99,000
Less: Deduction u/s		
- 80G (Prime Minister's National Relief Fund + 50% of Rajiv Gandhi Foundation)		50,000
Total Income		6,49,000

Computation of Tax Liability

Particulars	Tax on LTCG	Other Income
Total Income	50,000	5,99,000
Rate	20%	30%
Tax	10,000	1,79,700
Total tax		1,89,700
Surcharge		Nil
Tax including surcharge		1,89,700
Education Cess @ 3%		5,691
Total tax (Rounded Off)		1,95,390

***** It is assumed that foreign company is not a specified foreign company u/s 115BBD.

Illustration 18

Star Gas Ltd. commenced operations of the business of laying and operating a cross country natural gas pipeline network for distribution of 1st April. 2017 The company incurred capital expenditure of ₹1,490 lakh (including cost of financial instrument ₹2 lakh) during the period January to March, 2017 exclusively for the above business and capitalized the same in its books of account as on 1st April, 2017.

Further, during the financial year 2017-18, it incurred capital expenditure of ₹ 6,600 lakh (including cost of land ₹1,100 lakh) exclusively for the above business. Compute the amount of deduction under section 35AD for the assessment year 2018-19, assuring that the company has fulfilled all the conditions specified in section 35AD**.**

Solution:

Computation of the Amount of Deduction under Section 35AD for the Assessment Year 2018-19

Particulars	₹ in lakh
Capital expenditure incurred during the Year (excluding cost of land) [₹ 6,600 lakh – ₹ 1,100 lakh]	5,500
Capital expenditure incurred prior to commencement of business & capitalized (excluding cost of Financial Instrument) [₹ 1,490 lakh – ₹ 2 lakh]	1,488
Total Deduction u/s 35AD	6,988

Illustration 19

Lucent Ltd. purchased a machinery on 1st April, 2017 for ₹ 10 crore by availing 70% loan facility from bank. The machine was put to use into effective production on 1st February, 2018. The interest on loan works out to 12% per annum. Advise Lucent Ltd. on the treatment of interest payment made on this loan and depreciation allowable for the previous year 2017-18. You may assume that this is the only machine in its block.

Solution:

Computation of Depreciation

Particulars	Amount (in Crore)	Amount (In Crore)
Block: Plant & Machinery (Rate 15%)		
W.D.V. as on 1/4/2017		Nil

Add: Purchase	10	
Interest on loan upto Jan. 2018 (₹ 10 cr * 12% * 10/12)	1	11
		11
Depreciation [₹ 11 cr. * 15% * ½]		0.825

Interest cost from Feb 2018 shall be allowed as deduction u/s 36(1)(iii).

Illustration 20

A company wants to raise capital of ₹ 40,00,000 for a project wherefrom earnings before tax would be 30% of the capital employed. The company can raise debt finance @ 12% p.a.
The following three alternatives for raising capital are available for the company:
(i) ₹ 40,00,000 by equity capital
(ii) ₹ 20,00,000 by equity capital and ₹ 20,000,000 by loans
(iii) ₹ 8,00,000 by equity capital and ₹ 32,00,000 by loans.
Assume that the company would distribute the entire amount of profits and dividend. The tax rate is 30.9% and dividend distribution tax rate is 20.358%. Work out which one of the above three alternatives should the company opt to minimise its tax liability?

Solution:

Computation of Tax Benefit in different Alternative

Particulars	Alt – (i)	Alt – (ii)	Alt – (iii)
Equity Capital	40,00,000	20,00,000	8,00,000
12% loans	—	20.,00,000	32,00,000
EBIT	12,00,000	12,00,000	12,00,000
Cost to Company			
Interest on loan	—	2,40,000	3,84,000
Net Profit before tax and dividend	12,00,000	9,60,000	8,16,000
Tax Payable @ 30.9% (A)	3,70,800	2,96,640	2,52,144
Profit after tax	8,29,200	6,63,360	5,63,856
Dividend Distribution Tax @ 20.358% (B)	1,68,810	1,35,047	1,14790
Profit after cost of capital	6,60,390	5,28,313	4,49,066
Total tax paid (A +B)	**5,39,610**	**4,31,687**	**3,66,934**

Hence, the company should opt Alternative-(iii) to minimise its tax liability.

Illustration 21

From the following information, advice as to which shall be a better option, *i.e.* repair or replacement of machine:
— The cost of repair is ₹ 90,000 and the machine will work for 4 years.
— An expenditure of ₹18,00,000 shall be incurred on the purchase of new machine and the scrap value of machine after 10 years would be ₹ 72,000.
— On purchase of new machine the production will increase and the profit of the organisation will increase from ₹ 9,00,000 to ₹ 15,00,000 per year.
— Rate of interest is 15% (on purchase).
— The old machine can be sold at present for ₹ 1,50,000 and after 4 years it would be sold for ₹30,000.
— The rate of income-tax is 30% and no surcharge is payable. Education cess is applicable as per rules.

Solution

NPV Computation – Under Repair Option

Cost of repair	90,000
Life	4 years
Tax Rate	30%
ROI	15%
Post Tax ROI (15% x 70%)	10.50%
Scrap Value	30,000
Post Tax Scrap Value (30000 X 70%)	21,000
Profit per year	9,00,000
Post Tax Profit per year (900000 X 70%)	6,30,000
NPV	[6,30,000 x PVIFA(10.50%,4)] + [21,000 x PVIF (10.50%,4)]-90,000
	= 18,99,676.18
Equated NPV over 4 Years	NPV/PVIFA (10.5%,4)
Yearly NPV	6,05,802.72

NPV Computation – Under Purchase Option

Cost of new machine	18,00,000
Scarp Value on Sales of Old Machine	1,50,000
Net Outflow	16,50,000
Profit	15,00,000
Post tax Profit annually for 10 years	10,50,000
Scrap Value	72,000
Post Tax Scrap Value	50,400
NPV	[10,50,000 x PVIFA(10.5%,10)]+[50400xPVIF(10.5%,10)]-16,50,000
	= 46,84,081.20
Equated NPV over 4 Years	NPV/PVIFA (10.5%,10)
Yearly NPV	7,78,862.85

Since, equated annual NPV is higher under new machine replacement option. The machine should be replaced.

Illustration 22

A Ltd. wants to acquire a machine on 1st April, 2017. It will cost ₹ 60 lakh. It is expected to have a useful life of 5 years. Scrap value will be ₹ 10,000. If the machine is purchased through borrowed funds, rate of interest is 11.5% per annum. Loan is repayable at the end of 5 years. If machine is acquired through lease, lease rent would be ₹ 16 lakh per annum.

Profit before depreciation and tax is expected to be ₹ 4.50 crore every year. Depreciation is charged @ 15% on written down value. Besides, additional depreciation is available in the first year. Investment allowance is, however, not available. Average rate of tax may be taken at 32.445%.

A Ltd. seeks your advice whether it should —

(i) Acquire the machine through own funds or borrowed funds; or

(ii) Take it on lease.

Present value factor shall be taken @ 10%. At this rate present values of rupee one are — year 1: 0.9091; year 2: 0.8264; year 3: 0.7513; year 4: 0.6830; and year 5: 0.6209.

Solution:

In all the scenarios, profit is same, therefore, we can advice on the basis of present value of Outflow and loans.

(I) *Purchasing machine through own funds*

Particulars	Year					
	0	**1**	**2**	**3**	**4**	**5**
Cash Outflow	60,00,000	–	–	–	–	–
Less: Tax Relief on Depreciation @ 32.44%	–	2,92,005	2,48,204	2,10,974	1,79,328	1,52,428
Less: Sale Proceeds of machine	–	–	–	–	–	10,000
Total	60,00,000	2,92,005	2,48,204	2,10,974	1,79,328	1,62,428
Present Value factor @ 10%	1	0.9091	0.8264	0.7513	0.6830	0.6209
Present value cash outflows	60,00,000	2,65,462	2,05,116	1,58,505	1,22,481	1,00,852
Net value of cash inflows less outflows= 51,47,584						

(II) *Acquiring machine on lease*

Particulars	Year					
	0	**1**	**2**	**3**	**4**	**5**
Cash Outflows on lease rent:	–	16,00,000	16,00,000	16,00,000	16,00,000	16,00,000
Less: Tax Relief on Lease Rent @ 32.45%	–	5,19,120	5,19,120	5,19,120	5,19,120	5,19,120
Net Cash Outflow	–	10,80,880	10,80,880	10,80,880	10,80,880	10,80,880
Discount factor @ 10%	1	0.9091	0.8264	0.7513	0.6830	0.6209
PV of Cash Outflows	–	9,82,628	8,93,239	8,12,065	7,38,241	6,71,118
Net Present Value of Cash Outflows = 40,97,291						

Conclusion: Cash outflow is least if machine is acquired on lease. Hence, machine shall be acquired on lease.

Working Notes: Calculation of Tax relief on Depreciation and Balancing Allowance

Year	Opening Balance	Depreciation @ 15%	Tax Relief @ 33.99%
1	60,00,000	9,00,000	2,92,005
2	51,00,000	7,65,000	2,48,204
3	43,35,000	6,50,250	2,10,974
4	36,84,750	5,52,713	1,79,328
5	31,32,037	4,69,806	1,52,428
			10,82,939

Illustration 23

Virat Ltd. is a widely held company. It is currently considering a major expansion of its production facilities and the following alternative are available:

Particulars	Alt-1	Alt-2	Alt-3
	(₹)	**(₹)**	**(₹)**
Share capital	50,00,000	20,00,000	10,00,000
14% Debentures	—	20,00,000	15,00,000
18% Loan from Bank	—	10,00,000	25,00,000

Expected rate of return before tax is 30%. Rate of dividend of the company since 1995 has not been less than 22% and date of dividend declaration is 30th June every year. Which alternative should the company opt with reference to tax planning?

Solution:

Before taking the source of finances i.e. Capital or borrowings, the comparison between pre commencement period and post commencement period should be made. The comparison is as follows:

(a) (i) Dividend is not deductible either for pre commencement period or in the post commencement period in India;

(ii) Interest is capitalised for pre-commencement period, i.e. added to the cost of project (cost of fixed assets) and its depreciation is calculated on capitalised value of assets. In post commencement period, interest is fully deductible.

(b) (i) Cost of raising finance in case of capital is not deductible as revenue expenditure but amortised u/s 35D of the Act. If such expenditure is incurred after the commencement of the business, Section 35D is applicable provided the expenditure is undertaken for expansion purposes.

(ii) Cost of borrowing funds in case of pre commencement period is capitalised and in case of post commencement period, it is deductible fully in the year.

The above consideration will go a long way in suggesting the managements of corporate entities to adopt a suitable capital structure and selecting the appropriate financing sources by providing an optimal capital mix for the organization.

Computation of Net Benefit in different Alternative

Particulars	Alt - 1	Alt - 2	Alt – 3
Share Capital	50,00,000	20,00,000	10,00,000
14% Debentures	—	15,00,000	15,00,000
18% loan from Bank	—	25,00,000	25,00,000
EBIT	15,00,000	15,00,000	15,00,000
Cost to Company			
Debenture Interest	—	2,80,000	2,10,000
Interest on loan from Bank	—	1,80,000	4,50,000
Net Profit before tax and dividend	15,00,000	10,40,000	8,40,000
Tax Payable @ 30.9%	4,63,500	3,21,360	2,59,560
Profit after tax	10,36,500	7,18,640	5,80,400
Dividend @ 22%	11,00,000	4,40,000	2,20,000
Profit after cost of capital	(63,500)	2,78,640	3,60,400

Hence, Alt-3 is better.

Illustration 24:

Nadal, a professional tennis player and a non-Indian citizen during the Financial Year 2017-18 participated in India in a Tennis Tournament and won the prize money of ₹25 lacs. He contributed articles on the tournament in a local newspaper for which he was paid ₹3 lakh. He was also paid ₹7,50,000 by a Soft Drink Company for appearance in a TV advertisement. All his expenses in India were though met by the sponsors, but he had incurred ₹5,00,000 towards his travel cost to India. He was a non resident for tax purposes in India during the financial year 2017-18. What would be his tax liability in India for A. Y. 2018-19? Is he required to file his return of Income?

Solution:

U/s 115BBA, where a sportsman who is not a citizen of India receives any income by way of i) participating in any game in India; or ii) advertisement; or iii) contributing articles relating to any game or sport in India in newspapers, magazines or journals, then such income shall be chargeable to tax @ 20% + cess @ 3% on the tax.

Accordingly, his income for the A.Y. 2018-19 are as under:

Particulars	Amount
Tennis tournament prize	25,00,000
Amount received on contributing articles in the newspaper	3,00,000
Amount received on advertisement	7,50,000
Total Income	**35,50,000**
Tax on above [₹ 35,50,000 x 20% x 103%]	**7,31,300**

Notes

a. While computing income, no deduction in respect of any expenditure or allowance shall be allowed
b. It shall not be necessary for the assessee to furnish return of his income if:
   (*i*) his total income consisted only of income referred to in sec. 115BBA; and
   (*ii*) the tax deductible at source has been deducted from such income

Illustration 25

Arvind, a textile merchant and resident Indian is doing business in India and abroad. During the previous year 2017-18, he disclosed the following information:

	₹
Income from business in India	27,00,000
Income from business in Country-A with which	
India does not have agreement for avoidance of double taxation	15,00,000
Income-tax levied by government in Country-A	5,00,000
Loss from business in Country-B with which also	
India does not have agreement for avoidance of double taxation	(4,00,000)
Contribution to public provident fund	1,50,000
Payment of life insurance premium on the life of his Father and mother	20,000

Compute the tax liability of Arvind for the assessment year 2018-19.

Solution:

Computation of total income and tax liability for the A.Y. 2018-19

Particulars	Amount
Income from business in India	27,00,000
Income from business in Country A	15,00,000
Income from business in Country B	(-) 4,00,000
Gross Total Income	38,00,000
Less: Deduction u/s 80C	1,50,000
Total income	36,50,000
Tax on above	9,07,500
Add: Education cess & SHEC	27,225
Tax and cess payable	9,34,725
Average rate of tax [₹ 9,34,725 / ₹ 36,50,000 x 100]	25.61%

Rate of tax in country A	33.33%
Relief u/s 91 [25.61%[1] of ₹ 15,00,000]	3,84,150
Tax payable (Rounded off u/s 288B)	**5,50,580**

[1] Indian average tax rate: 25.61%
Foreign average tax rate: 33.33%
Relief u/s 91 is available at lower of aforesaid rate. i.e., 25.61%

Illustration 26

Amar, an individual, resident of India, receives the following payments after TDS during the previous year 2017-18:

(i)	Professional fees on 17.08.2017	2,40,000
(ii)	Professional fees on 04.03.2018	1,60,000

Both the above services were rendered in Pakistan on which TDS of ₹50,000 and ₹30,000 respectively has been deducted. He had incurred an expenditure of ₹2,40,000 for earning both these receipts/income. His income from other sources in India is ₹3,00,000 and he has made payment of ₹70,000 towards LIC. Compute the tax liability of Amar and also the relief under section 91, if any, for assessment year 2018-19.

Solution:

Computation of total income and tax liability of Mr. Amar for the A.Y. 2018-19

Particulars	Amount	Amount
Income from profession from foreign	4,80,000	
Less: Expenses	2,40,000	2,40,000
Income from profession in India		3,00,000
Gross Total Income		5,40,000
Less: Deduction u/s 80C		70,000
Total income		4,70,000
Tax on above		11,000
Add: Education cess & SHEC		330
Tax and cess payable		11,330
Average rate of tax [₹ 11,330 / ₹ 4,70,000 x 100]		2.41%
Rate of tax in Pakistan		16.67%
Relief u/s 91 [2.41%^ of ₹ 2,40,000]		5,784
Tax payable (Rounded off u/s 288B)		5,550

^ Relief u/s 91 is available at lower rate. i.e., 2.41%

Illustration 27

Videsh Ltd., a US company has a subsidiary, Hind Ltd. in India. Videsh Ltd. sells mobile phones to Hind Ltd. for resale in India. Videsh Ltd. also sells mobile phones to Bharat Ltd. another mobile phone reseller. It sold 48,000 mobile phones to Hind Ltd. at ₹ 12,000 per unit. The price fixed for Bharat Ltd. is ₹ 11,000 per unit. The warranty in case of sale of mobile phones by Hind Ltd. is handled by itself, whereas, for sale of mobile phones by Bhart Ltd., Videsh Ltd. is responsible for

warranty for 6 months. Both Videsh Ltd. and Hind Ltd. extended warranty at a standard rate of ₹500 per annum.
On the above facts, how is the assessment of Hind Ltd. going to be affected?

Solution:

Computation of Arms Length Price

Particulars	Amount
Cost of Mobile Phone sold to Bharat Ltd.	11,000
Less: Cost of Warranty	250
Arm's Length Price	10,750

Computation of Increase in Total Income

Particulars	Amount (in lacs)
Cost of mobile phone acquired from Videsh Ltd. [₹ 12,000 * 48,000]	5,760
Less: Arm's length Value [₹ 10,750 x 48,000]	5,160
Therefore, Increase in Total Income	600

Illustration 28

A non-resident foreign company has a permanent establishment (PE) in India, in respect of which royalty ₹ 101 lakh was earned from an Indian company in pursuance of an agreement dated 10th June, 2014 (expenditure incurred on PE in India ₹ 12,37,600). Compute the gross tax liability of foreign company ignoring TDS/advance tax for the assessment year 2018-19, assuming that there is no other income of the company for the year.

Solution:

Computation of Total Income and Tax Liability

Particulars	Amount
Royalty covered u/s 44DA	1,01,00,000
Less: Expenses	12,37,600
Income	88,62,400
Tax on above [103% {₹ 88,62,400 * 40%} [Rounded off]]	36,51,310

Illustration 29

ABC India Limited ('the Company') is engaged in the business of import and sales of computers, laptops & printers. The company is a 100% subsidiary ABC Inc., USA. The company purchases laptops from ABC Inc., USA at negotiated rates and sells to independent customers in India under its own terms and conditions.

The company also trades in computers and printers which it procures from independent vendors in USA and sell to its own customers in India under its own terms and condition.

Below is the profit and loss account of the company.

Particulars	₹	Particulars	₹
Opening stock		*Sales*	
- Computers	500	- Computers	8,000
- Printers	200	- Printers	2,000

- Laptops	800	- Laptops	11,000
Purchases (Imports)		*Closing Stock*	
- Computers	5,000	- Computers	800
- Printers	1,300	- Printers	250
- Laptops	6,000	- Laptops	1,200
Gross profit c/f	9,450		
	23,250		**23,250**
		Gross profit c/f	9,450
Salary	2,000		
Rent	1,000		
Fright Outward	250		
Travel and Conveyance	300		
PBITD	5,900		
	9,450		**9,450**

Other relevant information:

1. Credit period of 2 months is allowed for customers of computers and printers and hence 2% extra margin towards interest cost is factored in sale price.
2. Purchase of materials accounted at landed costs. It is estimated that around 20% of the purchase cost reported in P&L is towards customs duty and clearing charges.
3. Delivery of computers and printers made at company's cost. For laptop, the customers collect the goods for company premises.
4. For laptop purchases, the company has incurred ocean freight (around ₹300) whereas for computer and printers the terms of import are CIF, Chennai.

Question and Solution: -

1.	Identify the Associated Enterprise in the scenario?
Ans:	ABC Inc., USA by virtue of ownership criteria.
2.	Identify the International transaction?
Ans:	Purchase of the laptop during the year of ₹ 4,800 (₹6,000 less 20%)
3.	Which is the comparable uncontrolled transaction here?
Ans:	Sale of computers and printers (since they are similar product to laptops), procured from, as well as sold to independent parties.
4.	What is the normal gross profit margin on the comparable transactions?
Ans:	Gross profit as per trading account [8,000 + 2,000 + 800 + 250 – 500 – 200 – 5,000 – 1,300]: 4,050 *Less*: Interest elements factored in sale price [2% of [8,000 + 2,000]: 200 *Less*: Fright outward costs: 250 Normal gross profit: 3,600 Normal gross profit percentage [3,600 / 10,000 x 100]: 36% At this stage, the difference in the terms of sales transactions of computers and printers vis-a-vis the sale transactions of laptops are considered. The difference in terms of purchase will be adjusted in subsequent stage.
5.	What is the price of laptop being purchased from the AE, is resold to unrelated enterprise?
Ans:	₹11,000

Nested table in answer 4:

Gross profit as per trading account	4,050
[8,000 + 2,000 + 800 + 250 – 500 – 200 – 5,000 – 1,300]	
Less: Interest elements factored in sale price [2% of [8,000 + 2,000]	200
Less: Fright outward costs	250
Normal gross profit	3,600
Normal gross profit percentage [3,600 / 10,000 x 100]	36%

6.	What is the resultant cost of sales after deducting 'Normal Gross Profit Margin'
Ans:	₹7,040 (i.e. ₹11,000 less 36% Normal Gross Profit Margin)
7.	What are the expenses incurred in connection with purchase?
Ans:	₹1,200 (since it is mentioned that around 20% of the purchase cost reported in P&L is toward freight, customs duty and clearance charges)
8.	What are the functional difference, including accounting practices, between the international transaction and the comparable uncontrolled transaction, which could materially affect the amount of gross profit margin?
Ans:	₹ 300 on account of ocean freight
9.	What is the cost of sale after adjustment made as per 7 & 8 above?
Ans:	₹ 5,540 (i.e. ₹7,040 *less* ₹1,200 *less* ₹300)
10.	How is the arm's length purchase price determined?
Ans:	

Price as arrived at 9 above	₹5,540
Add: Amount in closing stock (80% of ₹1200)	₹960
	₹6,500
Less: Amount in opening stock (80% of ₹800)	₹640
Arm's length price of purchase	₹5,860

11.	Is the purchase price at arm's length?
Ans:	Yes. Since the purchase price is ₹4,800 is less than arm's length price determined at ₹5,860.

Illustration 30

Compute arm's length price from following information

Particulars	Related Party	Unrelated Party
Price paid (inclusive of taxes)	INR 25,000	INR 23,500
Delivery terms	CIF	FOB
Quantity	100 pcs	110 pcs
Availability of Input Tax Credit	No	Yes
Quantity	100 pcs	110 pcs
Freight cost	-	INR 1,200
Insurance cost	-	INR 700
Input Tax Credit	-	INR 2,000

Solution:

Computation of ALP

Particulars	Amount
Price paid to unrelated party (inclusive of taxes)	INR 23,500
Adjustments of differences -	
Delivery terms – Freight cost	INR 1,200
Delivery terms – Insurance cost	INR 700
Quantity	-
Input tax credit available	(INR 2000)
Arm's Length Price	INR 23,400

Illustration 31

Compute arm's length price from following information

Particulars	Related Party	Unrelated Party
Price paid (inclusive of taxes)	INR 25,000	INR 23,500
Delivery terms	CIF	FOB
Quantity	100 pcs	110 pcs
Availability of Input Tax Credit	No	Yes
Quantity	100 pcs	110 pcs
Freight cost	-	INR 1,200
Insurance cost	-	INR 700
Input Tax Credit	-	INR 2,000
Credit period	90 days	Upon dispatch
Interest rate on working capital	12% p.a.	-

Solution:

Computation of ALP

Particulars	Amount
Price paid (inclusive of taxes)	INR 23,500
Adjustments of differences	
Delivery terms – Freight cost	INR 1,200
Delivery terms – Insurance cost	INR 700
Input Tax Credit available	(INR 2000)
Credit period (Interest on INR 23,500 for 3 months @ 12% p.a.)	INR 705
Arm's length price	INR 24,105

Illustration 32

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.	INR 15,000	INR 22,000
Sale price of A Ltd	INR 18,000	INR 26,000
Other expenses incurred by A Ltd	INR 500	INR 700

Solution:

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.

Illustration 33

A sold a machine to B (associated enterprise) and in turn B sold the same machinery to C (an independent party) at sale margin of 30% for ₹ 4,00,000 but B has incurred ₹ 4,000 in sending the machine to C. From the above data, determine arm's length price.

Solution:

Computation of Arm's Length Price

Particulars	Details	Amount
Sales price to B		4, 00,000
Less: Gross Margin	4,00,000 × 30%	1, 20,000
Balance		2, 80,000
Less: Expenses incurred by B		4,000
Arm's length price		2,76,000

Illustration 34

Choose the correct alternative

1.	The return of income is to be furnished in _______.
	a. ITNS 281 b. Form 26AS c. Form 26Q **d. None of these**
	Reason: Form ITNS 281 is used for payment of tax deducted at source. Form 26AS. 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.

2.	When an assessee has paid advance tax more than the tax due on the returned income and the return is filed before the 'due date' specified in section 139(1), the refund amount is eligible for interest @ —
	a. 1% per month b. ½% per month c. ¾% per month d. 1.50% per month
	Reason: As per sec. 244A, interest @ ½% p.m. is payable on refund due to the assessee.

3.	Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Commissioner (Appeals) has been filed by the other party, may file a memorandum of cross objection with the Tribunal in Form _____ and within _________ days of receipt of notice that appeal has been filed by the other party.
	a. Form 36A; 15 days b. Form 36A; 45 days c. Form 36A; 30 days d. Form 36; 60 days
	Reason: Memorandum of cross objection shall be file din Form 36A within 30 days of receipt of notice that appeal has been filed by the other party.

4.	Where revision u/s 264 has been initiated by the assessee, the application must be made within __________ from the date on which the order in question was communicated to the assessee or the date on which he otherwise came to know of it, whichever is earlier.
	a. 1 year b. 4 years c. 2 years d. 30 days
	Reason: Where revision u/s 264 has been initiated by the assessee, the application must be made within 1 year from the date on which the order in question was communicated to the assessee or the date on which he otherwise came to know of it, whichever is earlier.

5.	A survey is conducted in the premises of the assessee and assessments are reopened for some assessment years. An application for settlement could be made to the Settlement Commission when the additional amount of income-tax payable on the income disclosed in the application exceeds ₹ —
	a. 50 lakhs b. 25 lakhs c. 10 lakhs d. 100 lakhs
	Reason: Where an application before the Commission is filed in a case where proceedings for assessment or reassessment have been initiated as a result of search or as a result of requisition of books of account or assets, etc., additional amount of income tax payable on the income disclosed in application should exceeds ₹ 50 lakh. In any other case, additional amount of income tax payable on the income disclosed in application should exceeds ₹ 10 lakh.

6.	X Marine Lines Inc., a Singapore company engaged in shipping business collected ₹ 150 lakh towards carrying goods from Chennai Port. Its presumptive income chargeable to tax in India would be ₹
	a. 15 lakhs b. 11.25 lakhs c. 12 lakhs d. Nil
	Reason: ₹ 150 lakh x 7.5% = ₹ 11.25 lakhs

7.	When an assessee fails to furnish any information relating to a specified domestic transaction, the quantum of penalty as a percentage of value of the transaction would be —
	a. 2% b. 1% c. 5% d. 3%
	Reason: As per sec. 271AA, If any person in respect of an international transaction or specified domestic transaction fails to maintains or furnishes an incorrect information or document, the Assessing Officer or Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to 2% of the value of each international transaction or specified domestic transaction entered into by such person.

8.	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
	Reason: 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.

Clarification related to guidelines for establishing 'Place of Effective Management' (PoEM) in India [Circular 25/2017 dated 23-10-2017]

The concept of "Place of Effective Management" (POEM) for deciding residency status of a company, other than an Indian company, was introduced in the Income-tax Act, 1961 which has become effective from 1st April, 2017, i.e. Assessment Year 2017-18 onwards.

Guiding Principles for determination of POEM of a company were issued on 24th January, 2017 vide Circular No. 06 of 2017. Further, vide Circular No. 08 of 2017 dated 23rd February, 2017, it has been clarified that the POEM provisions shall not apply to a company having turnover or gross receipts of ₹ 50 crore or less in a financial year.

The stakeholders have been raised concern that as per the extant guidelines, POEM may be triggered in cases of certain multinational companies with regional headquarter structure merely on the ground that certain employees having multi-country responsibility or oversight over the operations in other countries of the region are working from India, and consequently, their income from operations outside India may be taxed in India.

In this regard, it may be mentioned that Para 7 of the guidelines provides that the place of effective management in case of a company engaged in active business outside India (ABOI) shall be presumed to be outside India if the majority meetings of the board of directors (BOD) of the company are held outside India.

However, Para 7.1 of the guidelines provides that if on the basis of facts and circumstances it is established that the Board of directors of the company are standing aside and not exercising their powers of management and such powers are being exercised by either the holding company or any other person(s) resident in India, then the POEM shall be considered to be in India.

It has also been provided that for this purpose, merely because the BOD follows general and objective principles of global policy of the group laid down by the parent entity which may be in the field of Pay roll functions, Accounting, Human resource (HR) functions, IT infrastructure and network platforms, Supply chain functions, Routine banking Operational procedures, and not being specific to any entity or group of entities per se; would not constitute a case of BOD of companies standing aside.

In view of the above, it is clarified that so long as the Regional Headquarter Operates for subsidiaries/ group companies in a region within the general and objective principles of global policy of the group laid down by the parent entity in the field of Pay roll functions, Accounting, HR functions, IT infrastructure and network platforms, Supply chain functions, Routine banking operational procedures, and not being specific to any entity or group of entities per se; it would, in itself, not constitute a case of BoD of companies standing aside and such activities of Regional Headquarter in India alone will not be a basis for establishment of PoEM for such subsidiaries/ group companies.

It is further clarified that the provisions of General Anti-Avoidance Rule contained in Chapter X-A of the Income-tax Act, 1961 may get triggered in such cases where the above clarification is found to be used for abusive/ aggressive tax planning.

Clarification on applicability of section 9(1)(i) relating to indirect transfer in case of redemption of share or interest outside India [Circular No. 28/2017, dated 07-11-2017]

As per sec. 9(1)(i), all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India or through the transfer of a capital asset situate in India, shall be deemed to accrue or arise in India.

Explanation 5 to section 9(1)(i) provides that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.

Concerns were raised by investment funds, including private equity funds and venture capital funds that on account of the extant indirect transfer provisions in the Act, non-resident investment funds investing in India, which are set up as multi-tier investment structures, suffer multiple taxation of the same income at the time of subsequent redemption or buyback. Such taxability arises firstly at the level of the fund in India on its short term capital gain / business income and then at every upper level of investment in the fund chain on subsequent redemption or buyback.

Vide Finance Act, 2017, Category I and Category II FPIs have already been exempted from indirect transfer provisions of the Act through insertion of proviso to Explanation 5 to section 9(1)(i) of the Act, with effect from 01.04.2015.

There could be situations in multi-tiered investment structures, where interest or share held indirectly by a non-resident in an Investment Fund or a Venture Capital Company or a Venture Capital Fund (hereinafter referred to as 'specified funds'), is redeemed in an upstream entity outside India in consequence of transfer of shares or securities held in India by the specified funds, the income of which have been subject to tax in India. In such cases, application of indirect transfer provisions on redemption of share or interest in the upstream entity may lead to multiple taxation of the same income. In respect of Category I and Category II FPIs though, such multiple taxation will not take place on account of the insertion of proviso to Explanation 5 to section 9(1)(i) of the Act, vide Finance Act, 2017.

The CBDT has received representations to exclude investors above the level of the direct investor who is already chargeable to tax in India on such income from the ambit of indirect transfer provisions of the Act.

In order to address this concern, the CBDT has clarified that the provisions of section 9(1)(i) read with Explanation 5, shall not apply in respect of income accruing or arising to a non-resident on account of redemption or buyback of its share or interest held indirectly (i.e. through upstream entities registered or incorporated outside India) in the specified funds (namely, investment funds, venture capital company and venture capital funds) if such income accrues or arises from or in consequence of transfer of shares or securities held in India by the specified funds and such income is chargeable to tax in India.

However, the above benefit shall be applicable only in those cases where the proceeds of redemption or buyback arising to the non-resident do not exceed the pro-rata share of the non-resident in the total consideration realized by the specified funds from the said transfer of shares or securities in India. It is further clarified that a non-resident investing directly in the specified funds shall continue to be taxed as per the extant provisions of the Act.

ILLUSTRATIONS

Maximum exemption limit in case of gratuity

In case of gratuity received at the time of termination of service by an employee being covered by the Payment of Gratuity Act, minimum of the following is exempt from tax u/s 10(10)(ii):

1. Actual Gratuity received;
2. ₹ 10,00,000; or
3. $^{15}/_{26}$ x Completed year of service x Salary p.m.

The maximum limit for gratuity notified under the Payment of Gratuity Act, 1972 has been increased from ₹ 10 lakh to ₹ 20 lakh with effect from 29.3.2018.

Clarification on Cash sale of agricultural produce by cultivators / agriculturist [Circular No. 27/2017, dated 03-11-2017]

The provisions of sec. 40A(3) provide for the disallowance of expenditure exceeding ₹ 10,000 made otherwise than by an account payee cheque/draft or use of electronic clearing system through a bank account. However, Rule 6DD carves out certain exceptions from application of the provisions of section 40A(3) in some specific cases and circumstances, which *inter alia*, include payments made for purchase of agricultural produce to the cultivators of such produce. Therefore, no disallowance under section 40A(3) can be made if the trader makes cash purchases of agricultural produce from the cultivator.

Further, section 269ST, subject to certain exceptions, prohibits receipt of ₹ 2 lakh or more, otherwise than by an account payee cheque/draft or by use of electronic clearing system through a bank account from a person in a day or in respect of a single transaction or in respect of transactions relating to an event or occasion from a person. Therefore, any cash sale of an amount of ₹ 2 lakh or more by a cultivator of agricultural produce is prohibited under section 269ST.

Furthermore, the provisions relating to quoting of PAN or furnishing of Form No. 60 under Rule 114B do not apply to the sale transaction of ₹ 2 lakh or less.
In view of the above, it is clarified that cash sale of the agricultural produce by its cultivator to the trader for an amount less than ₹ 2 lakh will **not** -

a) result in any disallowance of expenditure under section 40A(3) in the case of trader.
b) attract prohibition under section 269ST in the case of the cultivator; and
c) require the cultivator to quote his PAN/ or furnish Form No. 60.

Long-term specified asset notified for the purpose of claiming exemption u/s 54EC

Section 54EC provides exemption from capital gain from the transfer of a long-term capital assets where the assessee has invested the whole or any part of the capital gain in a long-term specified asset. As per clause (ba) of *Explanation* to section 54EC "long term specified asset" means any bond redeemable after three years and issued on or after 01.04.07 by the National Highways Authority of India (NHAI) or by the Rural Electrification Corporation Limited (RECL) or any other bond notified by the Central Government in this behalf.

The Central Government has further notified that any bond redeemable after three years and issued by the **Power Finance Corporation Limited** on or after 15.06.17 or by the **Indian Railway Finance Corporation Limited** on or after 08.08.17 as 'long-term specified asset'.

Further, no tax shall be deducted on interest payable on aforesaid bonds u/s 193.

Contributory Health Service Scheme notified for the purpose of section 80D [Notification No. 9 / 2018 dated 16-2-2018]

Under section 80D, a deduction to the extent of ₹ 25,000 (₹ 30,000, in case of resident senior citizens) is allowed in respect of premium paid to effect or keep in force an insurance on the health of self, spouse and dependent children or any contribution made to the Central Government Health Scheme or such other health scheme as may be notified by the Central Government.

Accordingly, the Central Government has notified the Contributory Health Service Scheme of the Department of Atomic Energy, contribution to which would qualify for deduction under section 80D.

Amendments to the Tax Return Preparer Scheme, 2006 as notified u/s 139B [Notification No. 4/2018, dated 19-01-2018]

Section 139B provides that for the purpose of enabling any specified class or classes of persons in preparing and furnishing returns of income, the CBDT may, without prejudice to the provisions of section 139, frame a Scheme, by notification in the Official Gazette, providing that such persons may furnish their returns of income through a Tax Return Preparer authorised to act as such under the Scheme.

As per scheme, any individual who hold a graduation degree from a recognized Indian University in the fields of Business Administration or Management or Commerce or Economics or Law or Mathematics or Statistics shall be eligible to act as Tax Return Preparer.

As per amended scheme, an individual, who holds a bachelor degree from a recognised Indian University or institution, or has passed the intermediate level examination conducted by the Institute of Chartered Accountants of India or the Institute of Company Secretaries of India or the Institute of Cost Accountants of India, shall be eligible to act as Tax Return Preparer.

Other amendment to the scheme were also made vide this notification.

Exception, Modification and Adaptation for Taxation of Foreign Companies as Resident in India based on POEM u/s 115JH [Notification No. 29/2018 dated 22/06/2018]

In a case where a foreign company is said to be resident in India on account of its Place of Effective Management (hereinafter referred to as PoEM) being in India u/s 6(3) of the Act in any previous year and such foreign company has not been resident in India in any of the previous years preceding the said previous year, then, notwithstanding anything contained in the Act, the provisions of the Act relating to the computation of total income, treatment of unabsorbed depreciation, set off or carry forward and set off of losses, collection and recovery and special provisions relating to avoidance of tax shall apply to the foreign company for the said previous year with exceptions, modifications and adaptations specified here under:

(i) If the foreign company is assessed to tax in the foreign jurisdiction, and,—
   - (a) where it is required to take into account depreciation for the purpose of computation of its taxable income, the written down value (hereinafter referred to as WDV) of the depreciable asset as per the tax record in the foreign country on the 1st day of the previous year shall be adopted as the opening WDV for the said previous year,
   - (b) in cases not covered by (a), the WDV shall be calculated in the manner, as though the asset was installed, utilised and the depreciation was actually allowed as per the provisions of the laws of that foreign jurisdiction and the WDV so arrived at as on the 1st day of the previous year, shall be adopted to be the opening WDV for the said previous year.

(ii) If the foreign company is not assessed to tax in the foreign jurisdiction, then WDV of the depreciable asset as appearing in the books of account as on the 1st day of the previous year maintained in accordance with the laws of that foreign jurisdiction shall be adopted as the opening WDV for the said previous year.

(iii) If the foreign company is assessed to tax in the foreign jurisdiction, its brought forward loss and unabsorbed depreciation as per the tax record shall be determined year wise on the 1st day of the said previous year.

(iv) If the foreign company is not assessed to tax in the foreign jurisdiction, its brought forward loss and unabsorbed depreciation as per the books of account prepared in accordance with the laws of that country shall be determined year wise on the 1st day of the said previous year.

(v) The brought forward loss and unabsorbed depreciation of the foreign company as arrived at paras (iii) or (iv), as the case may be, shall be deemed as loss and unabsorbed depreciation brought forward as on the 1st day of the said previous year and shall be allowed to be set off and carried forward in accordance with the provisions of the Act for the remaining period calculated from the year in which they occurred for the first time taking that year as the first year.

Provided that the losses and unabsorbed depreciation of the foreign company shall be allowed to be set off only against such income of the foreign company which have become chargeable to tax in India on account of it becoming Indian resident.

(vi) In cases where the brought forward loss and unabsorbed depreciation referred to in para (iii) or (iv), as the case may be, originally adopted in India are revised or modified in the foreign jurisdiction due to any action of the tax or legal authority, the amount of the loss and unabsorbed depreciation shall be revised or modified for the purposes of set off and carry forward as referred to in para (v).

(vii) In cases where the accounting year does not end on 31st March, the foreign company shall be required to prepare profit and loss account and balance sheet for the period starting from the date on which the accounting year immediately following said accounting year begins, upto 31st March of the year immediately preceding the period beginning with 1st April and ending on 31st March during which the foreign company has become resident. The foreign company shall also be required to prepare profit and loss account and balance sheet for succeeding periods of twelve months, beginning from 1st April and ending on 31st March, till the year the foreign company remains resident in India on account of its PoEM.

(viii) For the purpose of carry forward of loss and unabsorbed depreciation in cases where the accounting year followed by the foreign company does not end on 31st March and the period starting from the date on which immediately following year begins upto 31st March of the year, immediately preceding the period beginning with 1st April and ending on 31st March during which it has become resident, is,—

(a) less than six months, it shall be included in that accounting year;

(b) equal to or more than six months, that period shall be treated as a separate accounting year.

Thus, if the accounting year followed by the foreign company is calendar year, the accounting year immediately preceding the accounting year in which the foreign company is held to be resident in India, shall be increased by three months, i.e., 1st January to 31st March; and if the accounting year followed by the foreign company is from 1st July to 30th June, the accounting year immediately preceding the accounting year in which the foreign company is held to be resident in India, shall be of nine months from 1st July to 31st March.

(ix) In cases covered under para (viii), loss and unabsorbed depreciation as per tax record or books of account, as the case may be, of the foreign company shall, be allocated on proportionate basis.

(x) Where more than one provision of Chapter XVII-B of the Act applies to the foreign company as resident as well as foreign company, the provision applicable to the foreign company alone shall apply.

(xi) Compliance to those provisions of Chapter XVII-B of the Act as are applicable to the foreign company prior to its becoming Indian resident shall be considered sufficient compliance to the provisions of said Chapter.

(xii) The provisions contained in sub-section (2) of section 195 of the Act shall apply in such manner so as to include payment to the foreign company.

(xiii) The foreign company shall be entitled to relief or deduction of taxes paid in accordance with the provisions of section 90 or section 91 of the Act.

(xiv) In a case where income on which foreign tax has been paid or deducted, 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 in respect of the income to which it relates and shall be in accordance with the provisions of rule 128 of the Income-tax Rules, 1962.

<u>Explanation.</u> — For the purposes of this notification,—

(i) the term "Foreign jurisdiction" would mean the place of incorporation of the foreign company.

(ii) the rate of exchange for conversion into rupees of value expressed in foreign currency, wherever applicable, shall be in accordance with provision of rule 115 of the Income-tax Rules, 1962.

B. the exceptions, modifications and adaptations referred to in para A shall not apply in respect of such income of the foreign company becoming Indian resident on account of its PoEM being in India which would have been chargeable to tax in India, even if the foreign company had not become Indian resident.

C. in a case where the foreign company is said to be resident in India during a previous year, immediately succeeding a previous year during which it is said to be resident in India; the exceptions, modifications and adaptations referred to in para A shall apply to the said previous year subject to the condition that the WDV, the brought forward loss and the unabsorbed depreciation to be adopted on the 1st day of the previous year shall be those which have been arrived at on the last day of the preceding previous year in accordance with the provisions of this notification.

D. any transaction of the foreign company with any other person or entity under the Act shall not be altered only on the ground that the foreign company has become Indian resident.

E. subject to the above, the foreign company shall continue to be treated as a foreign company even if it is said to be resident in India and all the provisions of the Act shall apply accordingly. Consequently, the provisions specifically applicable to,—
   (i) a foreign company, shall continue to apply to it;
   (ii) non-resident persons, shall not apply to it; and
   (iii) the provisions specifically applicable to resident, shall apply to it.

F. in case of conflict between the provision applicable to the foreign company as resident and the provision applicable to it as foreign company, the later shall generally prevail. Therefore, the rate of tax in case of foreign company shall remain the same, i.e., rate of income-tax applicable to the foreign company even though residency status of the foreign company changes from non-resident to resident on the basis of PoEM.

   This notification shall be deemed to have come into force from the 1st day of April, 2017.

Relaxation for Start-ups on Issue of Shares at Price exceeding their FMV [Notification No. 24/2018 dated 24/05/2018]

As per provision of sec. 56(2)(viib), where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be treated as income of the company

It is notified that the provisions of sec. 56(2)(viib) of the Act shall not apply to consideration received by a company for issue of shares that exceeds the face value of such shares, if the consideration has been received for issue of shares from an investor in accordance with the approval granted by the Inter-Ministerial Board of Certification in respect of start ups having capital upto specified limit.

Relaxation in the provisions relating to levy of Minimum Alternate Tax (MAT) in case of companies against whom an application for corporate insolvency resolution process has been admitted under the Insolvency and Bankruptcy Code, 2016 [Press Release dated 06/01/2018]

The existing provisions of section 115JB of the Income-tax Act, 1961 ('the Act'), inter alia, provide, that, for the purposes of levy of Minimum Alternate Tax (MAT) in case of a company, the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account shall be reduced from the book profit.

In this regard, representations have been received from various stakeholders that the companies against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the Insolvency and Bankruptcy Code, 2016 ('the IBC'), are facing hardship due to restriction in allowance of brought forward loss for computation of book profit under section 115JB of the Act.

With a view to minimize the genuine hardship faced by such companies, it has been decided, that, with effect from Assessment Year 2018-19 (i.e. Financial Year 2017-18), in case of a company, against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the IBC, the amount of total loss brought forward (including unabsorbed depreciation) shall be allowed to be reduced from the book profit for the purposes of levy of MAT under section 115JB of the Act.