

PAPER – 16 : DIRECT TAX LAWS AND INTERNATIONAL TAXATION

SUGGESTED ANSWERS

SECTION - A

1.

- (i) (B)
- (ii) (D)
- (iii) (D)
- (iv) (C)
- (v) (A)
- (vi) (C)
- (vii) (A)
- (viii) (D)
- (ix) (C)
- (x) (C)

SECTION – B

2. (a)

Computation of interest under sections 234B and 234C

Particulars	Mr. X	Mr. Y	A Co Ltd	B Co Ltd
Age	52	63	--	--
Option to pay tax	115BAC	Regular	115BA	115BAA
Income from Business	5,00,000	--	10,00,000	16,00,000
Income from Other sources	2,50,000	12,50,000	1,00,000	2,00,000
Total income	7,50,000	12,50,000	11,00,000	18,00,000
Tax rate (Effective incl. SC and cess)			16.692%	25.158%
Tax thereon (incl. Cess)	39,000	1,92,400	1,83,612	4,53,024
Less: Prepaid taxes (Advance tax, TDS/TCS)	-	60,000	2,00,000	2,00,000
Balance tax payable	39,000	1,32,400	NIL	2,53,024
Add: Interest U/s.234 A	@3% on Rs.39,000 1,170	@ 5% 6,620	Nil	@2% 5068
Interest U/s.234 B	@7% on Rs.39,000 2,730	Not applicable	@5% NIL	@9% 22,770

2. (b)

Tax planning / tax management / tax evasion

- (i) The company in this case had to pay the tax demand within 30 days as per section 156. By making payment it avoided being treated as assessee-in-default and also levy of interest under section 220 in case the appeal is decided against it.
This is a case of effective tax management by paying the tax and blocking the levy of interest which may arise in case the appeal is decided against it.
- (ii) When a company incorporates a subsidiary company for the purpose of treating bio degradable waste for generation of power the subsidiary company would be eligible for deduction under section 80JJA @100% of the profits for a period of 5 consecutive assessment years beginning with the assessment year relevant to the previous year in which such business commences.
Thus, establishing a unit by incorporating a subsidiary company for treating bio-degradable waste is an act of tax planning.
- (iii) The amount deposited in Senior Citizen Savings Scheme would fetch interest income which is liable to tax after a deduction of ₹ 50,000 under section 80 TTB.
The money borrowed for the purpose of purchase of electric vehicle would entitle the assessee to claim interest thereon under section 80EEB up to a maximum of ₹ 1,50,000. Thus, the taxpayer has resorted to tax planning.
- (iv) When a company sells goods to its subsidiary company at less than cost deliberately it would mean that it is transferring its profits thereby.
Thus, transfer of goods to subsidiary company below cost is intended to transfer profits and thereby resort to tax evasion

3.

Total income of MVR Ltd for the Assessment Year 2023-24 = ₹ 303 (in lakhs)

4. (a)

Should ROI be filed?

- (i) Section 139(1) requires every resident other than not ordinarily resident, who at any time during the previous year, holds as a beneficial owner or otherwise, any asset (including financial interest in any entity) located outside India or has signing authority in any account located outside India or is a beneficiary of any asset located outside India, to file a return of income compulsorily whether or not he has income chargeable to tax.

Mr. Raj has a house property in Dubai and a bank account in Bank of Dubai. Thus he has assets located outside India.

Therefore, Mr. Raj has to file his return of income mandatorily for the A.Y. 2023-24, even though his total income of ₹ 2,80,000, comprising solely of income from house property and bank interest, is less than the basic exemption limit of ₹ 3,00,000 applicable to a senior citizen.

- (ii) Mrs. Radha's chargeable income from house property would be ₹ 2,52,000 (₹ 3,60,000 less 30% of net annual value; no information is given about the municipal taxes paid). Since this is her only source of income, her gross total income/total income for A.Y. 2023-24 would be ₹ 2,52,000, which is higher than the basic exemption limit.

Hence, she is required to file her return of income for the A.Y. 2023-24 as per section 139(1)(b), on this ground.

Further, clause (iv) to the seventh proviso of section 139(1) provides that a person (other than a company or a firm) who is not required to furnish a return u/s 139(1) has to furnish return on or before the due date if he/she fulfils such other conditions as may be prescribed under Rule 12AB.

Rule 12AB, inter alia, prescribes that any person other than a company or a firm, who is not required to furnish a return under section 139(1), has to file income tax return in the prescribed form and manner on or before the due date if, the aggregate of tax deducted at source and tax collected at source during the previous year, in case of such person, is ₹ 25,000 or more.

As the TCS of ₹ 28,000 ($28,00,000 \times 1\%$) is collected on the purchase of car which is more than ₹ 25,000. Mrs. Radha is required to mandatorily file her return of income for A.Y. 2023-24, even though her gross total income/total income does not exceed the basic exemption limit.

4. (b)

Computation of net asset taken over from Amar (P) Ltd on demerger

		₹ in lakhs
Land		20.00
Building		60.00
Stock		25.00
Debtors		30.00
Cash and bank		15.00
Total		150.00
Less: Liabilities		
Loan (specific)	15.00	
Sundry creditors	27.00	
Share of general loan $50 \times 150 / 250$	30.00	
		72.00
Net assets taken over		78.00
No of shares of Prem P Ltd:		
78,000 equity shares of ₹ 100 each fully paid up.		
Shareholding of Juhi 2% in Amar (P) Ltd. Therefore, she will receive 1560 shares in Prem (P) Ltd.		

Computation of cost of acquisition of shares in Prem (P) Ltd

Cost of acquisition of shares in Amar (P) Ltd X net book value of assets transferred to Prem (P) Ltd / Net worth of Amar (P) Ltd before demerger i.e. paid up capital plus general reserve.
$\text{₹ } 3,00,000 \times \text{₹ } 78 \text{ lakhs} / 130 \text{ lakhs} * = \text{₹ } 1,80,000$ * Share capital + General reserve.
Cost of acquisition shares of Amar (P) Ltd ₹ 3 lakhs and the cost of shares now attributed to shares of Prem (P) Ltd ₹ 1,80,000 and therefore the balance of ₹ 1,20,000 shall be taken as the cost of acquisition of shares of Amar (P) Ltd (post demerger).

Computation of Capital gain in the hands of Juhi for the assessment year 2023-24

Particulars	Details	Amar (P) Ltd	Prem (P) Ltd
Sale consideration	2000×200	4,00,000	
	1560×150		2,34,000
Less: Cost of acquisition			
Of Amar (P) Ltd		1,20,000	
Of Prem (P) Ltd			1,80,000
Capital gain		2,80,000	54,000
		Long-term	Short-term

5 (a)

(i) Adjustment of deemed income against brought forward business loss

Where expenditure was allowed as a deduction and subsequently such expenditure is waived by the creditor is liable to be taxed under section 41(1) of the Act.

In this case, the assessee who claimed the expenditure i.e. X Co Ltd was amalgamated with A Co Ltd. However, the successor A Co Ltd has brought forward loss of X Co Ltd to be set off post-amalgamation.

The waiver of liability due to be paid by amalgamating company i.e. A Co Ltd after amalgamation is taxable, since the benefit of deduction was claimed by the predecessor.

Accordingly, the loss of the erstwhile company must be adjusted to the extent of the expenditure taxable under section 41(1) and only the resultant is eligible for carry forward and set off by the successor viz. A Co Ltd.

Therefore, the action of the Assessing Officer to adjust the deemed income under section 41(1) against brought forward loss eligible for deduction under section 72A is tenable in law.

The facts of the case given in the question are similar to that of **McDowell & Co Ltd v. CIT** (2017) 393 ITR 570 (SC)

(ii) Failure to deduct TDS under section 192 and validity of interest levy in the hands of employee

The responsibility to deduct tax at source on salary income under section 192 of the Act is cast on employer viz. SCC Ltd.

The employer must seek details of the other incomes of the assessee and deduct tax at source in respect of salary income and other incomes reported by the employee.

If the employer has not deducted tax at source under section 192. It is failure of the employer. There is no question of payment of advance tax could arise in respect of salary income by the employee.

Therefore, the employer has to pay interest chargeable for defaulting payment of advance tax under sections 234B and 234C.

The employee cannot be subjected to payment of advance tax and therefore levy of interest under sections 234B and 234C are not tenable in law.

The facts of the case given in the question are similar to that of **Ian Peter Morris v. Asstt. CIT** (2016) 389 ITR 501 (SC)

5. (b)

(i) Power of Survey

- (I) The survey team under section 133A is not empowered to suspend the business of Akshay & Co (P) Ltd. The objective of conducting a survey under section 133A is to collect information, verify records, inspect the premises, etc. Suspension of business is not within the scope of section 133A.
- (II) The authority conducting survey can enter during normal business hours of the taxpayer, In that sense, if a taxpayer functions a movie theatre during night till 1 am, the survey team can enter during such night hours also. However, survey operations cannot be done throughout the night, beyond the normal working hours of the taxpayer. If the survey cannot be completed during the course of working hours or a reasonable time beyond the same, it must be conducted the subsequent day.
- (III) The income-tax authority conducting the survey can make an inventory of any cash, stock or other valuable article or thing checked or verified by him. Even if any excess stock is found during the survey, it cannot be seized during the survey operations. Power of seizure is available only during search operations.
- (IV) The income-tax authority conducting the survey can impound any books of account or other documents except after recording his reasons for so doing.
- (V) The income-tax authority authorised to conduct survey are a Principal Commissioner or Commissioner, a Principal Director or Director, a Joint Commissioner or Joint Director, an Assistant Director or a Deputy Director or an Assessing Officer, or a Tax Recovery Officer; and includes an Inspector.
- (ii) Tax liability for the assessment year 2023-24 ₹ 15,60,000
Tax credit under section 115JAA ₹ NIL

6. (a)

Computation of interest allowance / disallowance [Section 94B]:

As 27% of the shares of EXE Ltd are held by Trafford Ltd they are associated enterprises.	
Further the loan from Middleton Ltd was guaranteed by associated enterprise Trafford Ltd and therefore the interest on loan would be deemed as loan advanced by associated enterprise and interest not exceeding 30% of EBITDA is deductible. The excess interest if any would be disallowed.	
	₹ in crores
EBITDA	80.00
Interest paid to deemed associated AE	27.00
30% of EBITDA being	24.00
Interest liable for disallowance	3.00
The excess interest disallowed under section 94B is eligible for carry forward to subsequent 8 assessment years and would be deemed to be interest expenditure of such subsequent year. It would be eligible for deduction subject to the cap given in section 94B. It cannot be carried forward beyond that time period.	

6. (b)**Total income and Tax liability of Murari for the assessment year 2023-24**

	₹
Total income	22,00,000
Tax thereon	4,72,500
Add: HEC @ 4%	18,900
Total tax liability	4,91,400
Rebate of tax	1,78,688
Rebate U/s.91	44,672
Net tax liability	2,68,037
Net tax liability (Rounded off)	2,68,040

7. (a)

- (i) Two enterprises are deemed to be associated enterprises where one enterprise advances loan constituting not less than 51% of the book value of the total assets of the other enterprise. In this case, since Rancho Inc., a foreign company, has advanced loan to Rancho Ltd., an Indian company, and such loan constitutes 68.75% [$(₹ 55 \times 1,50,000 \times 100 / 1,20,00,000)$] of the book value of total assets of Rancho Ltd., Rancho Inc and Rancho Ltd. are deemed to be associated enterprises. Since the transaction of provision of software backup support by Rancho Ltd. to Rancho Inc. is an international transaction between associated enterprises, the provisions of transfer pricing would be attracted in this case.

	₹
Cost for Rancho Ltd. (per man hour)	4,400.00
Add: Arm's length operating profit margin as % of cost (66.67%)	2933.48
Arm's length price (per man-hour) in	7333.48
Arm's length price of total man-hours spent by Rancho Ltd. for providing software backup support to Rancho Inc.	22,00,04,400

(ii) Adjustment to be made to the total income of Rancho Ltd.

Particulars	Amount (₹)
Arm's length price of total man-hours spent by Rancho Ltd. for providing software backup support to Rancho Inc.	22,00,04,400
Less: Amount billed	14,02,50,000
Adjustment to be made to the total income of Rancho Ltd.	7,97,54,400

7. (b)**Rate of tax applicable to Indian branch of foreign company**

As per section 90 where there is a double tax avoidance agreement between India and any foreign country, then the provision of Income-tax Act, 1961 or provision of the DTAA whichever is more beneficial to the tax payer shall be applicable.

In the instant case, the branch in India filed return of income under section 139 of the Income tax Act and paid tax at 30% as per the DTAA. However the AO computed tax at 40% plus surcharge and education cess. However Explanation 1 of section 90 clarifies that the charge of tax in respect of a foreign company at rate higher than the rate of tax for domestic company shall not be regarded as less favorable.

Therefore the action of the AO is justified.

8. (a)

Scope of total undisclosed foreign income and asset:

The total undisclosed foreign income and asset of any previous year of an assessee shall be –

- (a) the income from a source located outside India, which has not been disclosed in the return of income furnished under section 139 of the Income-tax Act;
- (b) the income from a source, located outside India, in respect of which a return is required to be furnished under section 139 of the Income-tax Act but no return of income has been furnished under section 139;
- (c) the value of an undisclosed asset located outside India;

Any variation made in the income from a source outside India in the assessment or reassessment of the total income of any previous year, of the assessee under the Income-tax Act in accordance with the provisions of sections 29 to 43C (profits and gains of business or profession), or section 57 to section 59 (income from other sources) or section 92C (transfer pricing) which shall not be included in the total undisclosed foreign income.

To avoid double taxation, the income included in the total undisclosed foreign income and asset under the Black Money Act, 2015 shall not be included in the total income computed under the Income-tax Act, 1961.

8. (b)

Comparative study of ICDS 1 with AS 1

ICDS 1	AS 1
Marked to market (MTM) loss or an expected loss shall not be recognized unless permitted by any other ICDS.	Provision is made for all known liabilities and losses on best estimate basis.
ICDS is silent on recognition of anticipated profits.	Anticipated profits are not recognized.
Concept of materiality is not recognized in ICDS.	Materiality should be considered while selecting and applying accounting policy.
Accounting policies shall not be changed without a reasonable cause.	Change in accounting policy permitted if (a) required to be statute; (b) required for compliance of AS (c) Change results in more appropriate presentation of financial statements.
Required in period of change and also required in first year in which change has material effect, if impact is not material in current period but material in later period.	Required in period of change, if impact is not material in current period but material in later periods.

8. (c)

TDS on payment made to non-resident sportsman-section 194E

Any person responsible for paying a non-resident sportsman (including an athlete) must deduct tax at source @20% as per this provision. For non-residents, cess at 4% on 20% will also be applicable.

The income by way of advertising, contribution of articles relating to any game or sports in any newspaper, magazine or journal is also covered for the purpose of TDS @20%.

The non-resident need not file a return of income in respect of the payments referred to in this section if tax was deducted at source including surcharge and cess.

However, if the total income of non-resident includes any other income besides the income of the nature referred to in this provision, such non-resident sportsman must file ROI. This is in spite of the tax on such other income deducted at source at the applicable rate.

8. (d)

Cases of under-reporting of income

The following shall be considered as under-reporting of income:

- (a) Income assessed is greater than the income determined in the return processed under section 143(1)(a);
- (b) The income assessed is greater than the maximum amount not chargeable to tax, where no ROI was furnished or ROI was furnished for the first time under section 148;
- (c) The income reassessed is greater than the income assessed or reassessed immediately before such reassessment;
- (d) The amount of deemed total income assessed or reassessed under section 115JB /section 115JC is greater than the deemed total income determined in the return processed under section 143(1)(a);
- (e) The amount of deemed total income under section 115JB / section 115JC is greater than the maximum amount not chargeable to tax, where no return of income has been filed or where return has been furnished for the first time under section 148.
- (f) The amount of deemed total income assessed under section 115JB/115JC is greater than the deemed total income assessed or reassessed immediately before such reassessment.
- (g) The income assessed or reassessed which has the effect of reducing the loss or converting such loss into income.

The quantum of penalty for under-reporting of income is 50% of the incremental tax.

8. (e)

Key features of a jurisdiction being a tax haven

Following are the features of a jurisdiction being considered as a tax haven:

- (i) **Imposes no or only nominal taxes:** Tax havens impose 'nil' or only nominal taxes and offer themselves as a place to be used by non-residents to escape high taxes in their country of residence.
- (ii) **Lack of transparency:** Lack of transparency in the operation of the legislative, legal or administrative provisions also show the jurisdiction to be identified as tax havens. Lack of transparency in one country can make it difficult for tax authorities of other countries / jurisdictions, to apply their laws effectively.
- (iii) **No exchange of information:** Tax haven 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 transmission of information about taxpayers who are benefiting from the low tax jurisdiction.
- (iv) **No requirement for substantive local presence of the entity:**
The absence of a requirement that the activity be substantive is important because it suggests that a jurisdiction may be attempting to attract investment and transactions that are purely tax driven. It also indicates that a country does not provide a legal or commercial environment or offer any economic advantages that attract substantive business activities in the absence of the tax minimizing opportunities it provides.