PAPER-15: DIRECT TAX LAWS AND INTERNATIONAL TAXATION

SUGGESTED ANSWERS

SECTION-A

1.

(i) (C)
(ii) (A)
(iii) (C)
(iv) (D)
(v) (A)
(vi) (C)
(vii) (A)
(viii) (D)
(ix) (C)
(x) (C)
(xi) (D)
(xii) (B)
(xiii) (A)
(xiv) (D)
(xv) (A)

SECTION-B

2.

Computation of total income of M/s Devi (P) Ltd for the assessment year 2024-25

	Particulars	**₹**	**₹**
Net profit as per Statement of Profit and Loss			43,45,000
Add:			
i)	Raw material purchase from WS & Co LLP for ₹ 15 lakhs on 12.03.2024. WS & Co LLP being a micro enterprise as per the MSMED Act, 2005, the amount paid on 10th July, 2024 is liable for disallowance under section 43B.	7,00,000	
ii)	Gratuity voluntarily paid to dependents of senior manager	NIL	
	No adjustment is required since it is already debited to profit and loss account; it ia an expenditure incurred wholly and exclusively for business purposes and not being capita expenditure, it is an allowable expenditure.		
iii)	Advertisement expenditure to Surya LLP	60,000	
	In a LLP, where director is a designated partner it becomes a relative within meaning of section 40A(2), ₹60,000 being excess payment made to the specified person shall be disallowed.		
iv)	TDS late fee is allowed since it is not in the nature of penalty.	NIL	
	Interest on late payment of TDS is not allowed	25,000	
v)	Belated remittance of EPF recovered from employees for the month of August,2023 and March,2024 - disallowed	1,00,000	
	Employees contribution disallowed since it was remitted late thus not eligible for deduction u/s 36(1) (va).		
vi)	Belated remittance of EPF contribution of employer is allowed under section 43B. So, no adjustment is required.	NIL	
vii)	Incentives to dealers and distributors without deduction of TDS	1,80,000	
	(₹ 60,000 X 10)@ 30%= ₹1,80,000(being 30% of such expenditure on which TDS is not made is disallowed)		
viii)	Additional depreciation-disallowed	3,40,000	
	Since such machine has been in used outside India, additional depreciation shall not be allowed		
ix)	Bonus declared but remained unpaid till the date of filing return on income-Disallowed	15,00,000	
	Bonus shall be allowed in the year in which it will be actually paid,		

	as per section 43B		
x)	Donation to registered political party by net banking ₹1,80,000 and by cash ₹ 20,000	2,00,000	
	Not being an expenditure related to business, the same is disallowed u/s 37; will be considered for deduction u/s 80GGB.		
			31,05,000
			74,50,000
Less			
xi)	Waiver of principal on bank loan for acquiring capital asset-no adjustment required	NIL	
	If the loan was taken for acquiring a capital asset (vacant land), waiver thereof would be a capital receipt and not amount to taxability of the same.		
	Waiver of interest on bank loan	1,20,000	
	Interest is allowed on actual payment as per section 43B. As the same would not have been allowed in any earlier previous year, the write back cannot be considered as income. Therefore, the same is to be deducted.		
			1,20,000
			73,30,000
Less	Deduction u/s 80GGB- paid by net banking		1,80,000
			71,50,000

3. (a)

Computation of income of Anand as per default regime for the Asst. Year 2024-25		
Profits and gains from business or profession		**₹**
Income as per Profit and Loss Account		10,60,000
Add: Depreciation as per books		56,000
		11,16,000
Less: Depreciation as per IT Act (excluding additional depreciation Additional depreciation is not allowable under the new regime		66,000
		10,50,000
Less: Loss from Speculation business – not eligible for set off		Nil
PGBP income		10,50,000
Less: Deduction under chapter VI-A – not allowed under default regime		Nil
Total income		10,50,000
Tax on total income as per default regime		67,500
Add: Cess @ 4%		2,700
Total tax payable		70,200
Computation of total income of Anand as per old regime for the asst. year 2024-25		
Profits and gains from business or profession	**₹**	**₹**
Income as per default regime		10,50,000
Less: Additional depreciation		11,000
Gross total income		10,39,000
Less Deduction under Chapter VI-A		
u/s 80C PPF Max 1,50,000	1,50,000	
U/s 80D	25,000	
		1,75,000
Total income		8,64,000
Tax on total income as per old regime		85,300
Add: HEC @4%		3,412
Tax payable		88,712
Tax payable (round off)		88,710
Decision: It is beneficial for Anand to pay tax as per default regime – Sec.115BAC(1A)		

Alternative Presentation- 1:

Computation of income of Anand as per Old regime for the Asst. Year 2024-25		
Profits and gains from business or profession		₹
Income as per Profit and Loss Account		10,60,000
Add: Depreciation as per books		56,000
		11,16,000
Less: Depreciation as per IT Act (including additional depreciation)		77,000
		10,39,000
Less: Loss from Speculation business – not eligible for set off		Nil
PGBP income		10,39,000
Less: Deduction under chapter VI-A		
u/s 80C PPF Max 1,50,000	1,50,000	
u/s 80D	25,000	
		1,75,000
Total income		8,64,000
Tax on total income as per old regime		85,300
Add: Cess @ 4%		3,412
Total tax payable		88,712
Tax payable (round off)		88,710
Computation of total income of Anand as per Default regime for the asst. year 2024-25		
Profits and gains from business or profession	₹	₹
Income as per old regime		8,64,000
Add: Additional depreciation Additional depreciation is not allowable under the new regime		11,000
Add: Deduction under Chapter VI-A– not allowed under default regime		
u/s 80C PPF Max 1,50,000	1,50,000	
U/s 80D	25,000	
		1,75,000
Total income		10,50,000
Tax on total income as per default regime		67,500
Add: HEC @4%		2,700
Tax payable		70,200
Decision: It is beneficial for Anand to pay tax as per default regime – Sec.115BAC(1A)		

Alternative Presentation- 2:

	New regime	**Old regime**
Profits and gains from business or profession	₹	₹
Income as per Profit and Loss Account	10,60,000	10,60,000
Add: Depreciation as per books	56,000	56,000
	11,16,000	11,16,000
Less: Depreciation as per IT Act (excluding additional depreciation) Additional depreciation is not allowable under the new regime/allowable under old regime.	66,000	77,000
	10,50,000	10,39,000
Less: Loss from Speculation business – not eligible for set off	Nil	Nil
PGBP income	10,50,000	10,39,000
Less: Deduction under chapter VI-A – not allowed under default regime	Nil	
u/s 80C PPF Max 1,50,000		1,50,000
U/s 80D		25,000
Total income	10,50,000	8,64,000
Tax on total income as per New regime/ old regime	67,500	85,300
Add: HEC @4%	2,700	3,412
Total tax payable	70,200	88,712
Tax payable (round off)	70,200	88,710
Decision: It is beneficial for Anand to pay tax as per default regime – Sec.115BAC(1A)		

3. (b)

Computation of total income and tax payable by Ms. Palam Ltd. as per regular provisions of the Act

Particulars	₹	₹
Gross revenue		80,00,000
Less: Manufacturing expenses (excluding depreciation)	30,00,000	
Normal Depreciation (as per the Income-tax Act)	7,00,000	
Additional Depreciation (as per the Income-tax Act)	2,00,000	
		39,00,000
Gross total income		41,00,000
Less: Deduction u/s 80-IA	5,00,000	
Deduction under section 80JJAA	4,00,000	
		9,00,000
Total income		32,00,000
Tax on above @ 25%		8,00,000
Add: Cess @ 4%		32,000
Total tax payable		8,32,000
Computation of total income and tax payable by Ms. Palam Ltd. as per section 115 BAA of the Act		
Total income as per normal provisions		32,00,000
Add: Deductions not allowed		
Additional Depreciation	2,00,000	
Deduction U/s 80-IA – not allowed as per Sec.115BAA	5,00,000	
Deduction U/s.80JJAA - allowed under section 115BAA	Nil	
		7,00,000
Total income		39,00,000
Tax on ₹ 39,00,000 @22%		8,58,000
Add: Surcharge @10%		85,800
Add: Cess @4%		37,752
Total tax payable		9,81,552
Tax liability rounded off		9,81,550
Conclusion: It is beneficial for the company to pay tax as per regular provisions of the Act		

4. (a)

Conditions to be satisfied by a company on conversion into an LLP:

Section 47 (xiiib) says that any transfer of a capital asset or intangible asset by a private company or a unlisted public company to a limited liability partnership or any transfer of a share or shares held in the company by a shareholder as a result of conversion of the company into a limited liability partnership in accordance with the provisions of section 56 or section 57 of the Limited Liability Partnership Act, 2008 shall not be regarded as transfer if the following conditions are satisfied:

(i) All the assets and liabilities of the company before the conversion become the assets and liabilities of the limited liability partnership;

(ii) All the shareholders of the company immediately before the conversion become the partners of the limited liability partnership and profit-sharing ratio in the limited liability partnership are in the same proportion as their shareholding in the company on the date of conversion;

(iii) The shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in profit and capital contribution in the limited liability partnership;

(iv) The aggregate of the profit-sharing ratio of the shareholders of the company in the limited liability partnership shall not be less than 50% at any time during the period of 5 years from the date of conversion;

(v) The total sales, turnover or gross receipt in the business of the company in any of the 3 previous years preceding the previous year in which the conversion takes place does not exceed ₹ 60 lakhs;

(vi) The total value of assets as appearing in the books of account of the company in any of the 3 previous years preceding the previous year in which the conversion takes place does not exceed ₹ 5 crore; and

(vii) No amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for a period of 3 years from the date of conversion.

In this case, the company has brought forward loss and unabsorbed depreciation:
Section 72A(6A) says that where there has been reorganization of business whereby a private company is succeeded by an LLP fulfilling the conditions of clause (xiiib) of section 47, then the accumulated loss and unabsorbed depreciation of the predecessor company shall be deemed to be the loss or allowance of depreciation of the successor LLP of the previous year in which the business organization was effected and other provisions of the Act relating to set off and carry forward of loss and depreciation shall apply accordingly.

In case Bimal does not want to become a partner in the LLP, he must cease to be a shareholder in the company.
He can transfer his shares to some other shareholder before conversion in to LLP so that the unabsorbed depreciation and business loss on the date of conversion would remain intact and could be set off by the successor LLP.

4. (b)

Computation of total income of Paul Ltd.			
	Profits and Gains from Business or profession	**₹**	**₹**
I	Income from civil construction business:		
	Receipts in India	60,00,000	
	Receipts outside India As per section 44BBB, even amount received outside India in respect of civil construction projects in India, will be taxable in India	30,00,000	
	Total receipts	90,00,000	
	Presumptive Income u/s 44BBB @10% of gross receipts	9,00,000	
	Less: Expenses Expenses are not allowed/s 44BBB	Nil	
	Taxable income from civil construction business		9,00,000
II	Income from fee for technical services:		
	Gross amount received as fee for technical services	2,00,000	
	Less: Expenses relating to provision of such consultancy	70,000	
	Taxable income from technical consultancy		1,30,000
	Total income chargeable to tax		10,30,000

5. (a)
Doctrine of partial merger
Section 263 of the Income-tax Act gives the power to Pr. CCIT or CCIT or PCIT or CIT to revise an order which is prejudicial to the interests of the Revenue; or which is erroneous and which was passed by an authority subordinate to him.

Revision under 263 of an order cannot be made when it is the subject matter of appeal.

However, the doctrine of partial merger is applicable in case of section 263 which means that the Commissioner can revise that part of the order which is not in the appeal.

In the present case, the assessee has preferred an appeal for the disallowance of business expenditure of ₹5,00,000 but the second point about the enhancement of depreciation is not a subject matter of the appeal filed by the assessee. As per the doctrine of partial merger, the Commissioner may at his own motion revise the assessment order of the Assessing Officer on the point of enhancement of depreciation.

Where the CIT (A) has disposed off the appeal without passing an order:
An assessment order cannot be said to have been made subject of an appeal if the appeal has been disposed of by the appellate authority without passing an order.

Since, in the present case, the Commissioner wants to revise the matter which is not taken up in appeal by the assessee, there will not be any change in the answer even if the appeal is disposed of by the Appellate Authority.

5. (b)

BM Act, 2015 / ICDS / Advance tax and interest U/s.234A

(i) Since the entire foreign deposit of ₹ 30 lakhs is undisclosed foreign asset, it is liable to tax @ 30% under the Black Money Act, 2015.

(ii) Where the grant or subsidy is related to depreciable fixed asset, it would go to reduce the actual cost of the asset or the written down value of block of assets. In case the asset has already been put to use the receipt of subsidy would be reduced from the WDV of the block of assets to which the asset pertains. In case the asset has not been put to use, the grant or subsidy would be deducted from the actual cost and on the resultant depreciation and additional depreciation would be computed.

(iii) Senior citizens not having any income chargeable under the head "Profits and gains of business or profession", need not pay advance tax.

In the present case, Ramesh is a senior citizen aged 82 years and having income only under capital gains. Thus, he is not liable to pay advance tax instalments and is allowed to discharge is tax liability by payment of self-assessment tax.

(iv) His total pension income would be ₹ 9,34,000 after standard deduction of ₹ 50,000. His income from bank SB interest when added his total income would be ₹ 9.66 lakhs.

He is liable to pay interest under section 234A for the delay in filing of ITR. The delay being 3 months (August, September and October) and interest @ 3% on tax liability (including cess) of ₹ 57,100 (rounded off) being ₹ 1,713. Alternative view: Since the regime to be followed is not mentioned in the question, a student may assume that the assesse has opted to pay tax as per the old regime. In that case, his total income after deduction u/s 80TTB ₹ 32,000 would be ₹ 9.34 lakhs. His tax liability (including cess) would be ₹ 1,00,670 (rounded off) and the interest @1% p.m. for 3 months would be ₹ 3,020.

He is not liable to pay advance tax and hence no interest is attracted under section 234B.

6. (a)

APA and rollback applicability

The benefit of APA can be applied for the assessment year relevant to the previous year in which the APA was entered into and four subsequent financial years. Thus, it will apply for the FY 2024-25 (date of APA 23.10.2024) and 4 subsequent financial years being F.Ys 2025-26, 2026-27, 2027-28 and 2028-29.

The roll back provisions will apply for four preceding assessment years only, preceding the assessment year 2025-26. Hence it cannot be applied for the AY 2020-21.

Roll back provisions will not apply in the following cases:

Where the ROI is not submitted within the "due date" stipulated in section 139(1)., or

Where the APA has the effect of reducing the total income already determined.

For the assessment year 2021-22, the ALP as per APA is less than ALP as per ITR. Therefore, rollback would not apply.

The ROI has been filed belatedly for AY 2022-23, hence rollback will not apply for that year.

For the assessment year 2023-24 and assessment year 2024-25 the ITR was filed before the due date and therefore the rollback provision would apply for both the years.

6. (b)

Computation of total income and tax liability of Rahul for the AY 2024-25

Particulars			₹	₹
Indian Income				4,90,000
Foreign income				15,25,000
Gross total income				20,15,000
Less: Deduction Under chapter VI-A				
PPF	1,50,000			
LIC	35,000			
Investments U/s 80C, 80CCC and 80CCD restricted to ₹ 150000			1,50,000	
Deduction for NPS			50,000	
				2,00,000
Contribution to Health insurance premium shall be allowable as deduction. The amount eligible is ₹ 25000.			25,000	
He shall also be entitled to deduction of health insurance premium of parents u/s 80D, subject to premium paid. Since they are non-residents, he cannot claim higher deduction and shall be limited to ₹ 25000.			25,000	
				50,000
				17,65,000
Tax on total income				3,42,000
Add: Health and education cess				13,680
TOTAL TAX PAYABLE				3,55,680
(Average rate of tax in India				
3,55,680/1765000*100			20.15%	
Average rate of tax in foreign country				
1,52,500/15,25,000*100			10.00%	
Deduction u/s 91 on ₹15,25,000 @ 10%				1,52,500
Lower of average Indian tax rate and foreign tax rate				
Tax payable in India				2,03,180

7. (a)

Tax implication of transfer pricing adjustment in the hands of Tan Ltd

In respect of transaction with Blue LLC

(i) The income of Tan Ltd will increase by ₹ 50 lakhs by way of Primary adjustment.

(ii) There is no need for secondary adjustment as the amount of primary adjustment is less than ₹ 1 crore.

In respect of transaction with Pink Inc

(i) There is no need for primary adjustment as it will result in reduction of total income of Tan Ltd.

(ii) Secondary adjustment is also not applicable.

In respect of transaction with Green GmbH

(i) The income of Tan Ltd will increase by ₹ 2 crores by way of Primary adjustment

(ii) The excess amount lying with Green GmbH (₹ 2 crores) will be treated as deemed loan.

(iii) Green GmbH needs to repatriate the excess money back to Tan Ltd within 90 days (30+31+29) of the assessment order, i.e., on or before 29th January 2024.

(iv) Since, the foreign AE did not repatriate the amount within the time limit, Tan Ltd. will have to add imputed interest income to its total income for the financial year 2024-25.

(v) The rate of interest will be 7% + 3.25% = 10.25%

(vi) There is no need for Tan Ltd. to pay additional income tax since the amount is repatriated by the foreign AE.

7. (b)

Computation of interest to be allowed as per section 94B for M/s Netra Ltd

Particulars		₹ in lakhs	₹ in lakhs
Net Profit – as reported			347.50
Add: Expenses already debited			
Interest (2500 @10.5%)		262.50	
Depreciation		80.00	
Provision for income tax		70.00	
Amortization expenses		20.00	
			432.50
EBITDA			780
Lower of the following shall be disallowed			
Interest paid or payable by Netra Ltd to AE		262.50	
Total interest paid or payable in excess of 30% of EBITDA [₹262.50 – ₹234 (₹780 @ 30%)]		28.50	
			28.50
Interest allowable as deduction			234.00
Amount of interest liable for disallowance			28.50

Working note:

1. Where an Indian company pays interest on borrowings from its associated enterprise or from third party and such borrowing is guaranteed by an associated enterprise, and where such interest expenditure exceeds ₹ 1 crore, then the interest paid or payable by such company in excess of 30% of its EBITDA is liable for disallowance.

2. Disallowed interest of ₹ 28.50 lakhs is eligible for carry forward to the subsequent 8 assessment years and will be allowed as deduction while computing Profits and gains of business or profession, to the extent it is allowable under section 94B.

8. (a)

Stay granted by the Tribunal after the expiry of 365 days

Issue involved

The issue under consideration is whether the stay order can be automatically vacated upon the expiry of extended period of stay of 365 days, where the delay in disposing of the appeal is not attributable to the assessee.

(OR)

The issue under consideration is whether the action of the AO in asking the assesseee to pay the tax on the ground that the stay granted by the ITAT automatically got vacated after the expiry of extended period of stay of 365 days.

Provisions applicable

Where the appeal filed by an assessee before the Appellate Tribunal is not disposed of within the period of stay or extended period of stay granted by the Tribunal, the order of stay shall stand vacated after the expiry of 365 days, even if the delay in disposing of the appeal is not attributable to the assessee. [Third proviso to sec 254(2A)]

Analysis of the issue

The vacation of stay in favour of the Department would lead to a scenario where even if the Department is itself responsible for the delay in hearing the appeal and there is no fault on the assessee, the assessee is liable to pay tax demand.

This will cause undue hardship to the assessee, even where the assessee is not at fault.

In this sense, the provision is arbitrary and disproportionate so far as the assesse is concerned.

Conclusion

Hence the action of the AO is not valid in law.

The Apex Court in Dy. CIT v. Pepsi Foods Ltd (2021) 433 ITR 295 (SC) pointed out that the proviso would lead to automatic vacation of stay upon the expiry of 365 days and even if the tribunal could not take up of the appeal in time for no fault of the assessee. Further vacation of stay in favour of the Department would ensue even if the Department is itself responsible for the delay in hearing the appeal. In this sense, the proviso is manifestly arbitrary being a provision which is capricious, irrational and disproportionate so far as the assessee is concerned.

Accordingly, the apex court held that the third proviso to section 254(2A) has to be read without the word 'even' and the word 'not' appearing after the words 'delay in disposing of the appeal'. It would be "the order of stay shall stand vacated after the expiry of such period or periods, if the delay in disposing of the appeal is attributable to the assessee". Thus, any order of stay shall stand vacated after the expiry of the period or periods mentioned in the section, only if the delay in disposing of the appeal is attributable to the assessee.

8. (b)

Whether the impugned payment is 'royalty' and hence liable for TDS

Issue involved:

The company is procuring softwares which are ready to use for redistribution in India and procuring computer hardwares with softwares inbuilt therein. The issue is whether such acquisition and payment is 'royalty' and hence liable for tax deduction under section 195.

Provisions applicable

Under section 195, TDS would be attracted only if the impugned payments to the non-resident are chargeable to tax in India.

Explanation 2(v) to section 9(1)(vi) says 'royalty' means consideration for transfer of all or any rights (including the granting of licence) in respect of any copyright, literary, artistic or scientific work.

As per Explanation 4, transfer of all or any rights includes transfer of all or any right for use or right to use computer software is also covered by the term 'royalty'.

Analysis

The Apex court in the case of Engineering Analysis Centre of Excellence (P) Ltd v. CIT (2021) 432 ITR 1 (SC) observed that the following would not amount to use of or right to use any copyright and that the amount paid by Indian resident to foreign company is not royalty for use of copyright in the computer software.:

(i) Where computer software is purchased directly by end user resident in India, from a foreign, non-resident supplier or manufacturer;

(ii) Where resident Indian concerns acting as distributors or resellers, purchase computer software from foreign, non-resident suppliers or manufacturers and then, resell the same to resident Indian end users;

(iii) Where the distributor happens to be a foreign, non-resident vendor, who, after purchasing software from a foreign, non-resident seller, resells the same to resident Indian distributors or end users;

(iv) Where computer software is affixed on to hardware and is sold as an integrated unit / equipment by foreign, non-resident suppliers to resident Indian distributors or end users;

It is not a case of use of copyright and it is a case of use of copyrighted article being the software by the end users in India.

Conclusion

Therefore, the amount paid for purchase of software or the hardware in which the software is affixed is not royalty and hence not liable for tax deduction under section 195.

Therefore, EE (P) Ltd need not apprehend TDS provisions being applicable in its case as it is involved in purchase and sale of copyrighted article and not empowering the buyers to use the copyright as such.