

FINAL EXAMINATION

June 2023

P-15(DIT)
Syllabus 2022

DIRECT TAX LAWS AND INTERNATIONAL TAXATION

Time Allowed: 3 hours

Full Marks: 100

The figures in the margin on the right side indicate full marks.

Wherever considered necessary, suitable assumptions may be made and clearly indicated in the answer.

All workings must form part of your answer.

Question No.1 and 8 are compulsory. Answer *any four* from Question No. 2,3,4,5,6 & 7.

Section-A

1. Choose the correct alternative. Provide justification for your answer. 1 mark is allotted for the correct choice and 1 mark for the justification. 2×12=24

(i) The book profit of Tamarai (P) Ltd. computed under section 115JB is ₹ 20 lakh for the financial year 2022-23. How much is the tax liability payable under section 115JB?

- (A) ₹ 3,70,000
- (B) ₹ 3,84,800
- (C) ₹ 3,12,000
- (D) ₹ 3,00,000

(ii) BG, a resident individual aged 67, has filed the return of income for the assessment year 2023-24 on 10th January 2024, showing an income of ₹ 11,00,000. He has opted for old tax regime. He has paid advance tax of ₹ 55,000 and there is TDS credit of ₹ 16,600. How much is payable by way of interest under section 234A? Note: Due date for filing ITR is 31st July,2023.

- (A) NIL
- (B) ₹ 3,060
- (C) ₹ 3,700
- (D) ₹ 4,440

- (iii) Rock Ltd. of Country W is engaged in manufacture of mobile handsets. It has a branch in Delhi through which it sold its goods in India. It decided to make direct sale of same quality of mobile handsets to Indian customers without the support of the branch located in Delhi. Its gross profit was 10% for sale through branch and @ 20% from direct sale to Indian customers. Under which of the following, the profit from direct sale to customers in India is taxable as the income of the branch?
- (A) Force of Attraction Rule
 - (B) Limitation of Benefit Clause
 - (C) Berry Rule
 - (D) Controlled Foreign Company Rule
- (iv) Under which of the following methods, arm's length price shall be the arithmetical mean of all values included in the dataset, irrespective of the number of entries in the dataset? [Note: You may assume that the variation between the arm's length price computed and the transaction price is 15%.]
- (A) Resale Price Method
 - (B) Profit Split Method
 - (C) Cost Plus Method
 - (D) Transactional Net Margin Method
- (v) Which of the following power is not vested with CBDT under section 119(2) of the Act?
- (A) Relaxation of provisions relating to deductions under Chapter VI-A
 - (B) Relaxation of provisions in relation to set-off of losses
 - (C) Relaxation of time limit for filing income-tax return
 - (D) All of the above
- (vi) ₹ 15,000 arising in country B with which India has DTAA, has been taxed in the hands of Mr. Kabir as well as Ms. Yamini. This is an instance of _____ and the remedy for the same is through _____.
- (A) Economic Double Taxation, DTAA
 - (B) Economic Double Taxation, Mutual Agreement Procedure
 - (C) Jurisdictional Double Taxation, DTAA
 - (D) Jurisdictional Double Taxation, Mutual Agreement Procedure

- (vii) Mr. Rayon, a resident individual made an advertisement in a website (owned by a non-resident company) for sale of his house property at Chennai for which he paid ₹ 2,20,000. How much is the amount to be deducted by way of equalisation levy by Mr. Rayon?
- (A) ₹ 13,200
 - (B) ₹ 7,200
 - (C) ₹ 6,600
 - (D) No equalisation levy needs to be deducted
- (viii) Gee Ltd. accepted primary adjustment of ₹ 140 lakhs made by the Assessing Officer in respect of goods sold by it to its associated enterprise (AE) in Singapore. It has an AE in USA also. As regards repatriation of funds to be made which of the following statements is valid?
- (A) Only the AE in Singapore can repatriate funds.
 - (B) The AE in the USA alone can repatriate the funds.
 - (C) Repatriation can be done by any of the AEs, at the option of the assessee.
 - (D) Repatriation can be done by any of the AEs, with the prior approval of the PCIT.
- (ix) A search was conducted in the premises of AB Jewellers on 05.06.2022. The following unaccounted items were found during the course of search: (i) cash on hand ₹ 50 lakh; (ii) Promissory notes ₹ 60 lakh; (iii) land documents ₹ 100 lakh; and (iv) excess jewellery (stock in trade) ₹ 200 lakh. Which of the following could not be seized in a search under section 132?
- (A) Cash on hand
 - (B) Land documents
 - (C) Promissory notes
 - (D) Jewellery (stock in trade)
- (x) An assessee failed to pay to the credit of Central Government tax collected at source under section 206C. If the assessee is prosecuted, what would be the term of imprisonment?
- (A) Imprisonment of minimum 3 months to maximum 3 years
 - (B) Imprisonment of minimum 3 months to maximum 7 years
 - (C) Imprisonment of minimum 6 months to maximum 3 years
 - (D) Imprisonment of minimum 6 months to maximum 7 years

- (xi) Milan Co. Ltd. received ₹ 15 lakh as Government grant in respect of a machinery (capital asset) in the previous year 2021-22. The said grant became refundable in July, 2022. What would be the consequence of such refund of grant as per ICDS?
- (A) It would be added to the WDV of the block of asset to which it relates and depreciation would be allowed on the resultant value from assessment year 2023-24 onwards.
- (B) It is a capital receipt and hence no income tax implication would arise on refund of grant.
- (C) It is a loss incidental to business allowable under section 37.
- (D) It is taxable as income of assessment year 2023-24.
- (xii) Mr. Rajesh is aggrieved by an order passed by the Commissioner of Income-tax imposing penalty under section 270A for under-reporting of income. What is the appellate remedy available to him under the Income-tax Act, 1961 and the specified time limit within which he has to file an appeal?
- (A) He can file an appeal to Appellate Tribunal under section 253 within 60 days from the date on which the order is communicated to him.
- (B) He can file an appeal to Commissioner (Appeals) under section 246A within 60 days from the date on which the order is communicated to him.
- (C) He can file an appeal to Appellate Tribunal under section 253 within 30 days from the date on which the order is communicated to him.
- (D) He can file an appeal to Commissioner (Appeals) under section 246A within 30 days from the date on which the order is communicated to him.

Section-B

2. (a) The Statement of Profit and Loss of Radhe Private Ltd. which is a closely held company which is engaged in the manufacturing and trading of FMCG goods, shows a net profit of ₹ 10,40,000 for the financial year ended 31st March, 2023 after the charge of the following items:

Items debited to the statement of Profit and Loss:

- (i) Interest amounting to ₹ 35,000 for short payment of advance tax paid as per section 234B relating to the assessment year 2023-24.
- (ii) Cash payment of ₹ 78,000 made 01-10-2022 includes the ₹ 46,000 paid to farmers of agriculture produce and ₹ 32,000 was paid for their transportation.
- (iii) Depreciation as per Companies Act, 2013 is ₹ 2,40,000.
- (iv) Provision for income tax is ₹ 55,000.

- (v) Contribution to the electoral trust is ₹ 1,00,000.
- (vi) Interest on term loans obtained from Cooperative Bank not paid before the “due date” of filing of return of income is ₹ 1,30,000.
- (vii) Bonus paid in excess of requirement to relative of director ₹ 25,000.

Additional information:

- (i) Depreciation as per Income-tax Rules: ₹ 2,80,000
- (ii) The business loss of ₹ 3,40,000 was carried forward and unabsorbed depreciation of ₹ 2,20,000 of P.Y. 2020-21. The return of income was filed within the due date specified u/s 139(1).
- (iii) Equity shares in the company were equally held by X, Y, Z and P during the financial year 2021-22. During the financial year 2022-23 X, Y and Z sold all the shares to Q, R and S.

Compute the income chargeable under the head “Profits and gains of business or profession” of Radhe Private Ltd., for the assessment year 2023-24. Adduce brief reasons for the treatment of the given to each of the items taken into consideration in computation of business income of the company. Ignore the provisions of section 115BAA.

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- (b) (i) Ranjit (age 35) a resident in India has total income in India of ₹ 11,20,000. He has income in Country X (source State) of ₹ 4,40,000. Assume the rate of tax in Country X as 20% without basic exemption limit. He has opted for section 115BAC and assume that the incomes are assessable for the assessment year 2023-24. Compute the tax liability of Ranjit as per Exemption with Progression Method.
- (ii) Ramesh is a resident of India employed in X Co. Ltd. He went on 3 months assignment to Country Y. His total salary for the year is ₹ 18 lakhs which includes salary in Country Y of ₹ 6 lakhs which was taxed at 25% without basic exemption limit. Compute his tax liability for the assessment year 2023-24 under full credit method and ordinary credit method. Assume, he opted for section 115BAC.

3+3=6

3. (a) The Assessing Officer (AO) entered the premises of M/s Ravindar Enterprises (assessee located in his jurisdiction) at 10 PM, [after sunset], to conduct a survey under section 133B for collecting certain information relating to assessment. The usual business hours of M/s Ravindar Enterprises is from 3 PM. to 11 PM. During survey, the AO took custody of certain books of account which were in the premises of the assessee. The assessee opposed the act of AO of entering the premises after sunset and taking custody of books of account.

Explain with relevant provisions of the Income-tax Act whether the acts of AO are valid.

(b) Hats LLP, a foreign company, has filed an application for advance ruling on 20th January, 2023, in respect of a construction contract it has undertaken with Deepti Ltd., an Indian company. The ruling sought related to tax implications of certain complex terms in the contract. In this regard, you are required to answer the following:

- (i) Can Hats LLP withdraw on 14th April, 2023, the application for advance ruling, validly filed by it which was pending adjudication?
- (ii) Hats LLP seeks to acquire an immovable property from Deepti Ltd., as part of the contract. Can the ruling be sought, inter alia, in respect of ascertainment of fair market value of the said property? 4

(c) State with reasons whether AE relationship exists in the financial year 2022-23 in the following independent cases:

- (i) In Federicks (P) Ltd., Mumbai 27% of the voting power was held by Brearly Ltd., UK w.e.f. 20th July, 2021. Federicks (P) Ltd. went for capital expansion and issued shares in January, 2022 through private placement. The voting power of Brearly Ltd. got reduced to 23% after the fresh issue of shares by Federicks (P) Ltd.
- (ii) Clive Inc. of USA has 60% voting rights in Gower Ltd. of UK since April, 2020. Gower Ltd. has 40% voting rights in Crowe Ltd. of Mumbai. Is Clive Inc. AE of Crowe Ltd.?
- (iii) Kapil Ltd., Delhi is the exclusive wholesale distributor of medicines in India, which are manufactured in UK, by Greig Ltd. of UK. The price and other conditions are decided by Greig Ltd. There is no other relationship between them. 6

4. (a) Tax assessment of Harshal (P) Ltd. was completed on 20th December, 2022 with additions such as (i) estimated disallowance of expenditure by Assessing Officer ₹ 2 lakh; (ii) estimated income in respect of scrap value by assessee but enhanced based on estimate by the Assessing Officer of ₹ 3 lakh; (iii) addition in respect of expenditure due to assessee's inability to explain the nature of expenditure ₹ 1,20,000; (iv) increase due to ALP determination by TPO ₹ 25 lakhs. Documents and other information as prescribed under section 92D were maintained and the international transactions were declared under Chapter X; and (v) incorrect claim of depreciation by claiming higher rate with resultant disallowance ₹ 6 lakh.

Note: The assessee has disclosed all facts material to the addition in respect of (i) and (ii) above.

Which of the above additions would be treated as under-reported income? How should the assessee must seek immunity from penalty in respect of under-reported income? 9

- (b) Mitra (P) Ltd. is a subsidiary of Chappell Inc. of USA. Mitra (P) Ltd. borrowed ₹ 50 crore from Chappell Inc. during the financial year 2022-23. The actual interest was ₹ 7 crore and ALP of interest payment was determined as ₹ 5.50 crore. EBITDA of Mitra (P) Ltd. was ₹ 11.50 crore. The total income of the company before adjustment of ALP in respect of interest was ₹ 6.50 crore. How much of interest would be disallowed under section 94B? How much is the secondary adjustment? How much must be paid as additional income-tax in case the amount is not repatriated by Chappell Inc.?

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5. (a) Following are the details of income of Chaturvedi (age 45) for the previous year 2022-23:

| | Particulars | ₹ |
|-------|--|------------|
| (i) | Salary income before standard deduction | 8,20,000 |
| (ii) | Self-occupied property–Interest on housing loan to SBI | (2,20,000) |
| (iii) | Interest on fixed deposits with Canara Bank | 1,10,000 |
| (iv) | Savings Bank interest | 20,000 |
| (v) | Recognised Provident Fund contribution | 1,20,000 |
| (vi) | Housing loan principal repaid | 80,000 |

Compute total income and tax liability of Chaturvedi under regular provisions and section 115BAC and suggest which one is to be opted for assessment year 2023-24.

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- (b) Krishna was a director in RSM (P) Ltd. up to 31st March, 2020. He left India in April, 2020 and settled in Country G with his son. When he was in India, he was filing his ITR. In the financial year 2015-16, he acquired an apartment for ₹ 200 lakh in UK. He disclosed the cost of acquisition of apartment as ₹ 80 lakh for income-tax purposes. In May, 2022 based on information from Enforcement Directorate, the partial undisclosed foreign asset came to the notice of the Assessing Officer. The fair market value of the apartment as on 1st April, 2022 was ₹ 300 lakh. Notice under section 10 of the Black Money Act was served in June, 2022.

Decide the amount of undisclosed foreign asset liable to tax and tax payable under the Black Money Act, 2015. What is the time limit for completing the assessment under the Act?

3

- (c) What is meant by 'Permanent Establishment'? State with brief reasons whether PE exists in the following cases in the case of a foreign company located in UK:

- Establish a branch in India.
- Establish a subsidiary company in India.
- Open a liaison office in India with the permission of RBI.
- Appoint an agent in India to work exclusively for the company to market the products and the terms and conditions of trade to be decided by the company in UK.
- Rent a machinery in India with supervisors (employees of foreign company) to maintain and monitor the machinery usage.

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6. (a) Parikshit Ltd, Kolkata is a domestic company with two divisions viz. (i) textile and (ii) automobile. The Board of Directors of the company decided to hive off textile division by way of demerger. The net book value of assets of textile division before demerger was ₹ 50 crore and the total book value of assets of the company was ₹ 150 crore. The scheme of demerger was approved with allotment of 5 equity shares of ₹ 10 each fully paid up from the buying company Kota Ltd. for each equity share held in Parikshit Ltd. The demerger was made in December, 2022.

Burman is one of the shareholders of Parikshit Ltd. with 2000 equity shares acquired in the financial year 2018-19 for ₹ 8,40,000. He sold all the shares received from Kota Ltd. in March, 2023 for ₹ 30,00,000.

Cost inflation index F.Y. 2018-19 = 280; F.Y. 2022-23 = 331

In this background of facts, you are to answer the following:

- (i) Is the transaction of demerger of textile division by Parikshit Ltd. attract any tax consequence in its hands?
 - (ii) How much is the capital gain in the hands of Burman on exchange of shares of Parikshit Ltd. for the shares of Kota Ltd.?
 - (iii) Compute capital gain on transfer of shares of Kota Ltd. by Burman in March, 2023.
 - (iv) Does the sale of share by Burman have any implication in the demerger undertaken by Parikshit Ltd.? 5
- (b) Jim Inc., set up in South Korea, runs an e-commerce portal in India. It does not have a PE in India. During the quarter ended 31st March, 2023, it sold goods for ₹ 340 lakhs to residents in India (who used Indian IP address). There is a delay of 72 days in the remittance of the equalization levy to the credit of the Central Government.
- (i) What is the amount of interest payable for the delayed remittance?
 - (ii) Is there any penalty leviable for the delayed remittance and furnishing of quarterly statement? If so, how much? 4
- (c) Chan Ltd., Chennai imported mobile handsets from its AE Seoul Inc. of Korea for redistribution in India. It imported 24000 units @ ₹ 15,000 per unit and sold the same for ₹ 16,500 per unit. Seoul Inc. gave 3 months' time for payment and gave quantity discount of ₹ 500 per unit. The warranty time was 6 months and the cost of warranty is ₹ 260 per unit. Chan Ltd. bought similar mobile handsets from unrelated party Tree Inc. of Japan at ₹ 12,000 per unit and sold the same for ₹ 15,000 per unit. During the year it imported 24000 units from Tree Inc. The credit period was one month in the case of Tree Inc. and quantity discount was ₹ 1000 per unit and the warranty time was 3 months and the cost of warranty was ₹ 460 per unit. The cost of capital may be taken as 12% per annum.
- Assume the purchases in both the cases were uniform throughout the year.
- State which method of determination of ALP would be the most appropriate method and compute ALP of the transaction. Find out how much must be adjusted to the total income of Chan Ltd. 6

7. (a) Magnet Ltd. has following issues with regard to its assessment and tax management.

You are to provide brief answers to the following:

- (i) It has a refund due of the assessment year 2021-22 of ₹ 5,60,000 which has been withheld. Explain how and when, such withholding of refund is sanctioned by law.
- (ii) The Assessing Officer in order to invoke section 147 and to issue notice under section 148 has sought some information for the assessment year 2018-19. Briefly explain the scope of power of the Assessing Officer under section 148A.
- (iii) For the previous year 2022-23, it has paid advance tax of ₹ 6 lakh on 20th March, 2023. Its total income for the assessment year 2023-24 amounts to ₹ 30 lakh. The rate of tax applicable is 25% plus HEC @ 4%. It wants to know the amount of interest payable under section 234C. 2+3+4=9

(b) Bhist, aged 62, a resident of India, has business activities in India, as well as in Country M, with which India does not have a DTAA.

During the year ended 31st March, 2023, he has derived the following income:

| In India | ₹ |
|--|----------|
| Income from speculation business | 9,67,000 |
| Gross rent received for let-out property | 6,00,000 |
| Property tax paid for above | 72,000 |
| In country M | |
| Loss from business | 1,24,000 |
| Interest from bonds and bank deposits | 6,74,000 |
| Other information | |
| He has paid PPF as under: | |
| For self | 1,20,000 |
| For handicapped brother dependent on him | 80,000 |

Compute the tax liability for the assessment year 2023-24. Assume that he has not opted for the new tax regime. In Country M income after set off of losses is taxed @ 15% without any basic exemption.

Rate of tax may be calculated up to two decimal places.

Section-C

8. (a) Provide the answer to the following case study under the below-mentioned heads:
(i) Issue involved (ii) Provisions applicable to the issue (iii) Analysis of the issue and
(iv) Conclusion.

The assessment of Vishal, was taken up for scrutiny by the Income-tax Department. The Assessing Officer (AO) found that a sum of ₹ 20 lakhs was credited in the bank account of Vishal. It was explained that the said amount had been received by him from his friend Gautam. The amount had been accepted through an account payee crossed cheque by way of loan. When the AO enquired Gautam, he accepted that he had given the amount to Vishal as loan. The AO insisted that mere acceptance by Gautam that he had given the amount to Vishal is not sufficient and that Vishal should prove the creditworthiness of Gautam, otherwise he would add the sum of ₹ 20 lakhs as unexplained cash credit.

Is the AO correct in his contention? State tax liability and penalty in case the amount of loan is taxed as income of Vishal in the assessment. 8

- (b) Arati Ltd., the assessee having international transactions, entered into an Advance Pricing Agreement (APA) for the transactions entered into with its associated enterprise (AE) in Sweden, on 12-01-2023. The assessee has been doing identical transactions for the past 5 years and intends to continue the same in future also.

The applicable method for determination of the ALP is cost-plus method. The ALP for the AY 2023-24 is 540 euros per MT.

The relevant details for the earlier 5 assessment years are as under:

| Asst. year | Date of filing the return of income | ALP per MT (if APA is applied) (Euros) | ALP per MT (as per assessment completed) (Euros) |
|------------|-------------------------------------|--|---|
| 2022-23 | 21-03-2023 | 520 | 530 |
| 2021-22 | 23-10-2022 | 550 | 530 |
| 2020-21 | 12-09-2021 | 560 | 580 |
| 2019-20 | 12-11-2020 | 480 | 490 |
| 2018-19 | 12-10-2019 | 490 | 485 |

In each of these years, the minimum quantity traded is 100 lakh MT, with the above AE. Assume that the transfer pricing provisions and other related provisions have remained unchanged from the assessment year 2018-19 onwards. The return of income for the assessment year 2023-24 is yet to be filed.

In the light of the above facts existing on 1st June, 2023, Arati Ltd. seeks your advice on the following:

- (i) State the assessment years for which the APA can be applied starting with the first year and future.
- (ii) For how many years it can avail rollback benefit out of the given years? Under what situations will the rollback be inapplicable?
- (iii) What is the duty on the part of Arati Ltd. as regards filing of return of income?

SUGGESTED ANSWERS TO QUESTIONS

SECTION – A

1.

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

SECTION – B

2. (a)

Income chargeable under the head “Profits and gains of business or profession” of Radhe Private Ltd. For the AY 2023-24 = ₹ 11,25,000

2. (b)

- (i) Tax liability ₹ 1,53,440
- (ii) Tax liability ₹ 1,92,400

3. (a)

Power of Survey under section 133B

The income-tax authority (being Joint Commissioner, Assistant Director, Deputy Director, Assessing Officer, authorized Inspector) may, for the purpose of collecting any information, which may be useful for, or relevant to the purposes of this Act:

a) Enter into —

- Any building or place within the limits of the area assigned to such authority; or
- Any building or place occupied by any person in respect of whom he exercises jurisdiction, -where a business or profession is carried on.

Require any proprietor, employee or any other person who may at that time and place be attending or helping in such business or profession to furnish such information as may be prescribed.

Time for Entrance:

An Income-tax authority may enter into such place only during the hours at which such place is open for the conduct of business or profession.

Restriction on Income-tax Authority

An income-tax authority shall not remove any books of account or other documents, cash, stock or other valuable article or thing.

Therefore, in the light of above provisions,

- The assessee is located within the jurisdiction of the AO; hence there is no fault on this score;

- Entering the business premises of the assessee during the business hours is valid, and
- Taking custody of books of accounts by AO is restricted. So, AO cannot take custody of books of accounts of M/s Ravindar Enterprises.

3. (b)

Advance ruling

(i) Time limit for withdrawal of Advance ruling

As per section 245Q, an application for advance ruling can be withdrawn within 30 days from the date of the application.

Hence Hats LLP cannot withdraw on 14.04.2023, the application filed by it on 12.01.2023.

(ii) Advance ruling seeking determination of FMV of a property – validity

The Board for Advance Ruling (BAR) has been conferred certain powers in respect of admitting an application filed before it.

It is specifically stated that BAR cannot admit an application seeking determination of the FMV of any property.

Hence it is not possible for Hats LLP to seek advance ruling in this regard.

3. (c)

Ascertaining existence of AE

(i) Where one enterprise holds directly or indirectly not less than 26% of the voting power (equity shares in the case of company) at any time during the previous year in the other enterprise they are deemed associated enterprises.

In this case, Brearly Ltd, UK had 27% of voting power up to January, 2022 in Federicks (P) Ltd. After private placement of shares by Federicks (P) Ltd, the shareholding of Brearly Ltd got reduced to 23%. If the shareholding at any time during the previous year was not less than 26% of the voting power they are deemed to be associated enterprises. In this case, for fraction of the year the shareholding was 27% i.e. from April, 2021 to January, 2022. Therefore, they are deemed AEs.

(ii) Clive Inc. USA has 60% share in Gower Ltd of UK (not less than 26%). The company Gower Ltd has 40% voting rights in Crowe Ltd. The relationship between Gower Ltd and Crowe Ltd is that of AE.

However, the indirect voting rights of Clive Inc. in Crowe Ltd is 60% of 40% (held by Gower Ltd) which is 24%.

Therefore, Clive Inc. and Crowe Ltd are not deemed to be associated enterprises. [Section 92A (2) (a) not satisfied]

(iii) When the goods or articles manufactured or processed by one enterprise, are sold to the other enterprise and the price and conditions relating thereto are decided by such other enterprise, they are deemed to be PEs.

In this case, Kapil Ltd is the exclusive wholesale distributor of medicines in India manufactured by Greig Ltd of UK. The price and other conditions are decided by Greig Ltd. Therefore, they are deemed to be associated enterprises. [Section 92A(2)(i)]

4. (a)

Additions which would be treated as under-reported income.

They are five additions to the income returned by Harshal Ltd. Each of the additions which would be falling in the category of under-reported income needs to be verified.

Estimated disallowance by Assessing Officer:

As per section 270A(6)(c) where the assessee has estimated the disallowance of expenditure and the Assessing Officer has estimated higher amount, then such disallowance of expenditure on estimate basis is not liable for penalty as under-reporting of income.

Estimated income by assessee, enhanced by Assessing Officer:

Where the assessee has estimated the income and the Assessing Officer has also estimated but higher amount such addition is not liable for penalty as under-reporting of income.

Failure to explain the nature of expenditure:

Where the assessee could not explain the nature of expenditure then such amount when added to the income of the assessee it amounts to under-reporting of income.

Increase in income due to ALP:

Where any addition is made in conformity with the ALP determined by the TPO and the assessee has maintained information and documents and declared the international transaction under Chapter X, it is not to be treated as under-reported income.

Incorrect claim of depreciation:

Where the assessee has claimed depreciation excessively such excess claim of expenditure would tantamount to under-reporting of income.

Seeking immunity from penalty in respect of under-reported Income:

The assessee in respect of whom addition is made and such addition is treated as under-reported income must **use section 270AA which is as under:**

The assessee must pay the tax and interest as per the order of assessment within the period specified in the notice of demand.

The assessee must not make an appeal against the aforesaid assessment order.

The application for immunity from penalty in Form 68 must be filed within one month from the end of the month in which the said order was received.

The Assessing Officer shall on fulfillment of the aforesaid conditions and after the expiry of the period of filing the appeal to CIT (Appeals), grant immunity from imposition of penalty under section 270A and initiation of proceedings under sections 276C /276CC where no proceedings for levy of penalty under section 270A was initiated due to mis-reporting of income.

The Assessing Officer shall within one month from the end of the month in which the application for waiver of penalty is received, pass an order accepting or rejecting such application. The order so passed in this regard is final.

4. (b)

Amount liable for disallowance under section 92B (EBITDA)

The amount of EBITDA is Rs. 11.50 crore. The amount eligible for deduction shall be 30% of EBITDA being Rs. 3.45 crore. The interest determined as ALP is Rs. 5.50 crore.

The interest liable for disallowance would be Rs. 2.05 crore.

Quantum of secondary adjustment

The amount of interest debited in the books Rs. 7 crore. The amount of interest allowable in view of ALP is Rs. 5.50 crore. The excess interest is liable for secondary adjustment.

The secondary adjustment = Rs. 1.50 crore.

Additional income-tax in lieu of secondary adjustment:

When the assessee could not repatriate the amount of secondary adjustment from the non-resident AE it can pay tax @ 20.9664%. In such case, no secondary adjustment is required.

The amount of tax payable would be = Rs.31,44,960.

5. (a)

Tax liability of Chaturvedi for the A.Y. 2023-24

| | Regular Provision | Sec.115BAC |
|---------------|--------------------------|-------------------|
| Total Income | 5,40,000 | 9,50,000 |
| Tax thereon | 20,500 | 67,500 |
| Add: HEC @ 4% | 820 | 2,700 |
| | 21,320 | 70,200 |

5. (b)**Undisclosed foreign asset under the Black Money Act**

| | Rs. in lakhs |
|--|---------------------|
| The amount of undisclosed asset value | 180.00 |
| Tax thereon @ 30% | 54.00 |
| Time limit for assessment | |
| 2 years from the end of the financial year in which the notice under section 10 was issued. | |
| Notice issued in June, 2022 and therefore the time limit for completion of assessment under the Black Money Act would be 31st March, 2025. | |

5. (c)**Meaning of PE:**

Permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

Once a PE exists, the income of the PE would be chargeable to tax as business income of the foreign company.

- Establishing a branch in India would amount to location of PE in India.
- Incorporating a subsidiary company in India would not lead to location of PE in India if the subsidiary company carries on business as a legal entity separate from the parent company located outside India.
- Opening a liaison office by obtaining permission from RBI would not lead to location of PE in India. However, if the liaison office breaches the conditions issued in the permission of RBI then it would turn into PE.
- Appointing an exclusive agent to market the products with the terms and conditions of trade decided by foreign company, then being a dependent agent, would lead to location of PE in India.
- Locating a machinery in India with supervisor (employee of foreign company) even if located within the premises of Indian tenant company would lead to location of PE in India.

6. (a)**Issues in demerger**

- Transfer of undertaking under a scheme of demerger by an Indian company to a resulting Indian company is not regarded as transfer as per section 47(vib). Therefore, the transaction of demerger is tax neutral both for Parikshit Ltd and Kota Ltd.
- When a shareholder transfers shares on demerger held in an Indian company to the resulting Indian company is not a transfer as per section 47(vic). Therefore, the transfer of shares by Burman of Parikshit Ltd in exchange for shares of Kota Ltd will not lead to any capital gain in his hands.
- Subsequent sale of shares of Kota Ltd by Burman is liable for Long-term capital gain ₹ 20,07,000
Note: As per section 2(42A)(g), in the case of capital asset being shares in an Indian company which become property in consideration of a demerger, there shall be included the period for which the shares in demerged company were held by the assessee.
- Sale of shares of resulting company by the shareholder of the demerged company will not have any tax implication in the hands of both demerged company and resulting company.

6. (b)

Interest on delayed remittance of Equalisation Levy (EL) = ₹ 20,400

Levy of Penalty

Penalty for failure to pay tax is Rs.100 per day during which the failure continues subject to maximum of the amount failed to pay.

Penalty for failure to furnish quarterly statement is liable for penalty of Rs.100 for every day during which the failure continues. Hence, the penalty would be Rs.7,200 (section 171(b) of the Finance Act, 2016)

6. (c)

Deciding the most appropriate method for determination of ALP and computation of ALP

When the prices charged between comparable transactions of which one is controlled and the other is uncontrolled and where the price could be adjusted between the transactions, Comparable Uncontrolled Price Method (CUP) would be the most appropriate method.

| | |
|--|--------|
| Purchase price of mobile phone sold by unrelated party | 12,000 |
| Adjustment for functional differences: | |
| Add: Quantity discount - difference | 500 |
| Credit period interest @2% on Rs.12,000 | 240 |
| Cost of warranty | 260 |
| Arm's length price | 13,000 |
| Purchase price from AE | 15,000 |
| Amount to be added per unit | 2,000 |
| No. of units purchased from AE 24000 units @ Rs.2000 = Rs. 480 lakhs is the amount to be adjusted. | |

7. (a)

(i) Power to withhold refund:

An Assessing Officer may, for reasons to be recorded in writing and with the previous approval of PCIT / CIT, withhold the refund due to the assessee under section 143(1) up to the date on which the assessment under section 143(3) is made.

This power to withhold refund could be made where the Assessing Officer is of the opinion that the grant of refund is likely to adversely affect the Revenue.

(ii) Enquiry before issuing notice under section 148:

The Assessing Officer shall, before issuing any notice under section 148

- (a) Conduct an enquiry, if required, with the prior approval of the specified authority (as referred to in section 151), with respect to the information which suggest that the income chargeable to tax has escaped assessment;
- (b) Provide an opportunity of being heard to the assessee, by serving upon him a notice to show cause within such time, not being less than 7 days but not exceeding 30 days as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted in (a) above.
- (b) Consider the reply furnished by the assessee and decide on the basis of material available on record including reply of the assessee whether or not it is a fit case to issue notice under section 148, by passing an order, with the approval of the specified authority, within 1 month from the end of the month in which the reply is received by him or where no such reply is furnished by the assessee, within one month from the end of the month in which time or extended time allow to furnish a reply expires.

(iii) Interest under section 234C for deferment of advance tax = ₹ 39,390

7. (b)

Net tax liability after relief under section 91 ₹ **2,73,679**

SECTION C

8. (a)

Unexplained cash credit

Issue involved

The issue involved is whether the AO is correct in his contention that the onus is on the assessee to prove the credit worthiness of the lender, even where the lender accepts he had lent the money in question to the assessee.

Provisions applicable

Section 68 brings to tax any sum found credited in the books of an assessee, where the assessee does not offer explanation about the nature and source thereof, or the explanation offered by him is not found satisfactory by the Assessing Officer.

Analysis

For a cash credit not to be treated as income, the assessee should

- Not only prove the identity of the lender and
- The genuineness of the transaction, but also
- Prove the source for the lender, or in other words, the credit worthiness of the lender or that the lender had the means to lend such amount to the assessee.
- Mere confirmation by the lender that he had lent the amount in question to the assessee will not suffice. A specific amendment has been introduced in this regard to section 68B.

Conclusion

The contention of the AO is hence valid and if Vishal is unable to prove the credit worthiness of Gautham, the AO will be justified in making the addition under section 68B.

8. (b)

Advance Pricing Agreement

- APA will apply from the previous year in which it was entered into and 4 years forward. Thus, it will apply for the AY 2023-24 and four assessment years in future, i.e., 2024-25, 2024-26, 2026-27 and 2027-18.
- Prima facie, the rollback will apply for 4 years backward, i.e. 2022-23, 2021-22, 2020-21 and 2019-20.

Thus, it cannot be applied for AY 2018-19.

Rollback is not applicable where the return of income (ROI) has been filed beyond the 'due date' specified in section 139(1) or when it has the effect of reduction of the total income returned/assessed.

For the AY 2022-23, the ROI has been filed beyond the 'due date' and hence the rollback provisions will not apply.

For the AY 2020-21, if the APA is applied, the same will result in reduction of the total income, hence the rollback cannot be pressed into service.

Rollback will be applicable for the other two years.

- For the AY 2023-24, the assessee has not yet filed the ROI. Hence in the ROI to be filed, Arati Ltd can apply the APA and compute the ALP in accordance with the same. For the AY 2019-20 and 2021-22, Arati Ltd has to furnish a modified return. The modified return has to be filed within a period of 3 months from the end of the month in which the agreement was entered into i.e., on or before 30th April, 2023.