

FINAL EXAMINATION

June 2023

P-16(DTI)
Syllabus 2016

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 required, the candidate may make suitable assumption(s) and state the same clearly in the Answer.

Working notes should form part of the relevant answer.

All questions relate to the Income-tax Act, 1961. All the questions relate to Assessment Year 2023-24, unless otherwise stated.

Answer question No. 1 which is compulsory and any five from Question No. 2 to Question No. 8.

Section -A

1. Choose the most appropriate alternative and give justification in brief / brief working for your answer: 2×10 = 20

(i) Krishna (P) Ltd has total income of ₹ 10 crore which includes dividend income of ₹ 80 lakh; short-term capital gain (STT paid) ₹ 60 lakh; and long-term capital gain (STT paid) ₹ 110 lakh. What is the rate of surcharge applicable on income-tax computed on capital gains? Assume it has not opted for sections 115BA, 115BAA and 115BAB.

- (A) 10%
- (B) 15%
- (C) 25%
- (D) 37%

(ii) Sky & Co is a partnership firm. It has not filed its return of income for the assessment year 2021-22 and has not paid advance tax also. It does not have any TDS/ TCS credit for the said assessment year. In May, 2023 it has approached you for filing updated return of income. How much is the additional income-tax payable by Sky & Co if it files the return of income in June, 2023?

- (A) 10%
- (B) 15%
- (C) 25%
- (D) 50%

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- (iii) A charitable trust registered under section 12AB received ₹ 40 lakh as donation which included anonymous donation of ₹ 10 lakh in the previous year 2022-23. How much is the income-tax payable on anonymous donation for the assessment year 2023-24?
- (A) ₹ 3,12,000
(B) ₹ 2,49,600
(C) ₹ 62,400
(D) NIL
- (iv) Rajesh received ₹ 4,20,000 as consideration on transfer of virtual digital asset on 10.07.2022. The cost of acquisition of that virtual digital asset was ₹ 2,40,000 and the date of acquisition is 28.02.2022. He has business loss of ₹ 1,40,000 for the previous year ended 31.03.2023. How much is his tax liability for the assessment year 2023-24?
- (A) NIL
(B) ₹ 18,720
(C) ₹ 28,080
(D) ₹ 56,160
- (v) Maruti & Co is a dealer of refrigerators and air-conditioners manufactured by Excel (P) Ltd. The turnover of Maruti & Co exceeded the target and hence it was given a motor car by Excel (P) Ltd by way of incentive. 30 motor cars were booked in bulk by Excel (P) Ltd for ₹ 5 lakh each in August, 2022 and when it was delivered to Maruti & Co after festival season in November, 2022 the fair market value of each motor car was ₹ 6 lakh. How much should Excel (P) Ltd deduct tax at source for the car provided to Maruti & Co as incentive?
- (A) NIL
(B) ₹ 50,000
(C) ₹ 60,000
(D) ₹ 1,50,000
- (vi) Ashwin & Co acquired a vacant site for ₹ 25 lakh in 15.06.2020. A search under section 132 was initiated on the vendor of the vacant site in April, 2022 and it was found that the actual consideration for the vacant site was ₹ 80 lakh and not ₹ 25 lakh. What is the maximum time limit for reopening the assessment of Ashwin & Co for the assessment year 2021-22 to tax the undisclosed investment which has escaped assessment?
- (A) 31.03.2023
(B) 31.03.2025
(C) 31.03.2028
(D) 31.03.2032

- (vii) During the course of assessment of Mithun Ltd, the assessee approached Dispute Resolution Committee (DRC) and the assessment order consequent to the direction of DRC was passed. The assessee is aggrieved with the direction of DRC. What is the legal remedy available to the assessee?
- (A) File appeal before DRP for review of its order
 - (B) File appeal before Commissioner (Appeals)
 - (C) File appeal before ITAT
 - (D) File appeal before High Court
- (viii) A & Co (firm) borrowed ₹ 18,000 from Albert on 05.06.2022. It repaid ₹ 6,000 on 31.08.2022. Again, it borrowed ₹ 9,000 on 07.02.2023. All borrowings and repayments were in cash. How much is the amount of penalty leviable under section 271D?
- (A) ₹ 18,000
 - (B) ₹ 21,000
 - (C) ₹ 9,000
 - (D) ₹ 12,000
- (ix) Russel Co Ltd, Mumbai has net profit of ₹ 450 lakh. It has claimed depreciation ₹ 110 lakh, provision for taxation ₹ 90 lakh, and interest on borrowal from associated enterprise in UK ₹ 350 lakh. How much of interest would be liable for disallowance under section 94B for the assessment year 2023-24?
- (A) ₹ 350 lakh
 - (B) ₹ 300 lakh
 - (C) ₹ 50 lakh
 - (D) NIL
- (x) Manjit Ltd, Chennai having international transactions exceeding ₹ 100 crore omitted to furnish report required under section 92E. How much is the penalty leviable for the failure to furnish report under section 92E?
- (A) ₹ 1 lakh
 - (B) ₹ 50 lakh
 - (C) ₹ 1 crore
 - (D) ₹ 2 crore

2. (a) Ray Limited has two units - one engaged in manufacture of Product X and the other involved in developing Product Y. As a restructuring drive, the company has decided to sell its Product Y unit as a going concern by way of slump sale for ₹ 385 lacs to a new company called S Limited, in which it holds 74% equity shares. The balance sheet of Ray limited as on 31st March 2023, being the date on which software unit has been transferred, is given hereunder —

(Amount ₹ in lakhs)

Liabilities	Amount	Assets	Amount
Paid up share capital	300	Fixed Assets	
General reserve	150	Product X unit	170
Share Premium	50	Product Y unit	200
Revaluation reserve	120	Debtors	
Current liabilities		Product X unit	140
Product X unit	40	Product Y unit	110
Product Y unit	90	Inventories	
		Product X unit	95
		Product Y unit	35
	<u>750</u>		<u>750</u>

Following additional information are furnished by the management:

- The Product Y unit is in existence since May, 2017.
- Fixed assets of Product Y unit includes land which was purchased at ₹ 40 lacs in the year 2008 and revalued at ₹ 60 lacs as on March 31, 2020.
- Fixed assets of Product Y unit mirrored at ₹ 140 lacs (₹ 200 lacs minus land value ₹ 60 lacs) is written down value of depreciable assets as per books of account. However, the written down value of these assets under section 43(6) of the Income tax Act, 1961 is ₹ 90 lacs.

Ascertain the tax liability, which would arise from slump sale to S Limited.

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- (b) The tax liability of Essem Enterprises (a partnership firm) for the financial year 2022-23 under the normal provisions of the Income-tax Act is ₹ 18,40,000 and the liability as per the provisions of AMT is ₹ 18,00,000. It has brought forward AMT credit of ₹ 2,00,000. Can the firm adjust the AMT credit? If yes, then how much and what will be the tax liability of the firm after adjustment of AMT credit? 4

- (c) A movable asset worth ₹ 30 lacs and Cash of ₹ 20 lacs were seized on 10.1.2023 in a search conducted in the premises of Vidyut & Co., the assessee, as per section 132 of the Act. The assessee moved an application on 25.2.2023 to release such asset after explaining the sources thereof.

Can the AO release the asset and cash seized, and if so, what is the time period for such release?

3. For the following two cases, furnish your answers under these four heads: (i) Issue involved; (ii) Provisions applicable to the issue; (iii) Analysis of the issue, and (iv) Conclusion

- (a) Mr. Kiran submitted his return of income for the assessment year 2023-24 on 30-7-2023, declaring a total income of ₹ 12, 22,000.

His case was taken up for scrutiny by the Department and the assessment proceedings took place in May, 2023. The Assessing Officer sought to disallow ₹ 5 lakhs on the ground that a certain expenditure claimed as revenue in nature by the assessee, needs to be capitalised.

During the course of the proceedings, Mr. Kiran noticed that he had omitted to claim set off of brought forward loss of ₹ 2.3 lakhs under the head STCG relating to the AY 2019-20 for which the return of income had been furnished on 12-6-2019.

Assume that the time limit for filing revised return of income is over and hence Mr. Kiran submitted an application in writing to the AO to grant the aforesaid benefit of set off. The AO refused to grant the above relief on the ground that though the set off was otherwise valid, the assessee had failed to claim the same in the return of income originally submitted.

Is the action of the AO tenable in law?

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- (b) Mrs Vimala received 2000 equity shares as bonus shares from ABC Pvt Ltd., on 12-3-2023 in the ratio of 1: 1. The fair market value (FMV) of the bonus shares as on the date of allotment was ₹ 3.4 lakhs.

Her assessment was taken up for scrutiny by the Department. The AO contends that since the assessee had not paid any consideration for the bonus shares, she is bound to offer the same as income from other sources under section 56(2)(x) of the Act. The FMV of ₹ 3.4 lakhs was added as income from other sources by the AO.

Is the addition of the AO justified?

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4. (a) Ms. Vibha, aged 37 is a musician, who gives music concerts in Nation N, with which India does not have a DTAA. The following are the broad details of income earned by her during the year ended 31-3-2022:

₹

Income from music concerts in India	5,40,000
Income from music concerts in Nation N (as converted into INR)	6,70,000
Agricultural income in Nation N (exempt in that nation)	2,12,000
Loss from card games	37,000
Life Insurance premium paid in India (Sum assured Rs 10 lakhs)	52,000
PPF paid for her daughter employed in IT sector	1,20,000

In nation N, there is a flat basic deduction of 20% of total income and balance income is taxed at 12%.

You are required to compute the total income and the tax liability of the assessee for the AY 2023-24. Suitable note is to be appended for treatment/computation of tax. She has opted for the provisions of section 115BAA. Calculate the tax rates up to two decimal places.

Vibha is a resident in India.

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(b) The Assessing Officer issued a notice under section 142(1) on the assessee on 24th December, 2022 calling upon him to file return of income for Assessment Year 2023-24. In response to the said notice, the assessee furnished a return of loss and claimed carry forward of business loss and unabsorbed depreciation. State whether the assessee would be entitled to carry forward as claimed in the return.

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(c) **Examine whether GAAR can be invoked in the following independent situation:**

HLtd. is a domestic company. It sets up a subsidiary company S Inc, in nation N, which is a tax haven. The entire capital of ₹ 150 crores has been subscribed by H Ltd. S Inc has advanced a loan of ₹ 60 crores to K Ltd, an Indian company on 1-4-2022 at 8% per annum. This lending is the only activity in S Inc for the PY 2022-23. The Department wants to invoke GAAR in the hands of H Ltd. Will your answer be different, if the loan advanced is ₹ 30 crores?

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5. (a) Determine the applicability of TDS provisions in the following cases:

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(i) Xavier a resident is due to receive ₹ 8,80,000 on 31.03.2023 towards maturity proceeds of a life insurance policy taken on 01.04.2015 for which the sum assured is ₹ 8 lakhs and the annual premium is ₹ 1 lakh.

(ii) MMC (P) Ltd is an advertising agency who received ₹ 5 lakh from Y Co Ltd for advertisement in a television channel. Subsequently MMC (P) Ltd paid ₹ 4,40,000 to television channel. Decide which part of the transaction attracts TDS provisions.

(iii) Ravi Coolers is a partnership firm engaged in providing cold storage facility for fruits and vegetables. Bishnoi a wholesale trade in fruits and vegetables availed cold storage facility measuring 50 tonnes throughout the year and had to pay ₹ 4 lakh to Ravi Coolers. Under what section TDS is attracted?

(iv) Margaret (P) Ltd acted as Third-Party Administrator (TPA) for ABC Insurance Co Ltd in respect of settlement of medical / insurance claims. During the previous year 2022-23, it paid ₹ 6 lakh to KS Hospital for the services rendered to various policyholders by way of settlement of medical claims. How much must be the tax deductible at source in respect of the said payment?

(b) State whether the following situations lead to deemed associated enterprise relationships: 8

- (i) A Co Ltd (foreign company) had 30% shareholding in B Co Ltd w.e.f. 01.04.2020. B Co Ltd came out with public issue of shares in August, 2022 and post this public issue of shares, the shareholding of A Co Ltd got reduced to 22%.
- (ii) F Co Ltd of UK had 10% shareholding in G Co Ltd, Mumbai as on 01.04.2022. More than 90% of the raw materials required by G Co Ltd was supplied by F Co Ltd. However, w.e.f. 1st December, 2022 G Co Ltd stopped purchase of raw material from F Co Ltd. In January, 2023 in order to expand its business G Co Ltd went in for private placement of shares. F Co Ltd subscribed to the shares issued by G Co Ltd and thereby its shareholding became 27% as on 31.03.2023.
- (iii) H Co Ltd a domestic company in which K Ltd (foreign company) had 28% shareholding. It reduced its shareholding to 20% in July, 2022. H Co Ltd went for a bank loan of 50 crore in December, 2022 which was its only borrowing. K Ltd gave guarantee to the bank for the said borrowing by H Co Ltd.
- (iv) M Co Ltd, Mumbai borrowed money from P Ltd (foreign company) on 15.7.2022. The borrowing was 60% of book value of total assets on the date of borrowing. Based on the borrowing M Co Ltd expanded its business and its loan from P Ltd on the book value of assets got reduced to 45% from 1st January, 2023.

6. (a) Duke Ltd, Mumbai is engaged in international transactions by way of supply of goods to related and unrelated parties. For the assessment year 2022-23, the return of income was furnished in October, 2022. The Assessing Officer issued notice under section 143(2) in April, 2023 and in June, 2023 he made reference to the TPO for determination of ALP of the international transactions. Duke Ltd has claimed deduction under section 10AA of ₹ 40 lakh.

State when Assessing Officer can invoke his power to determine the ALP of the transaction by himself and when he can refer to the TPO for computation of ALP. What would happen to the deduction claimed under section 10AA because of increase in ALP? What are the powers of TPO and time limit for passing the order? 8

- (b) Suresh Ltd is engaged in the business of selling machineries meant for textile manufacture. It imported machinery from South Korea for sale in India. It imported machinery for ₹ 6 lakh per unit and sold the same @ ₹ 7 lakh per unit. Siraj Ltd is engaged in trading in similar type of machines. Siraj Ltd imported machine from Germany @ ₹ 4.5 lakh per unit and sold the same @ ₹ 6 lakh per unit. During the year, Suresh Ltd imported 200 machines.

Explain when resale price method should be applied and the steps in computation of resale price method. Compute ALP adjustment to be made in respect of Suresh Ltd.

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7. (a) (i) Discuss the powers of the Settlement Commission to grant immunity from prosecution & penalty u/s 245H of the Income Tax Act, 1961. Under what circumstances immunity granted shall be withdrawn? 6

(ii) Discuss the provision regarding avoidance of repetitive appeals under Income Tax Act, 1961. 4

(b) BCG Pvt. Ltd. has converted itself into a Limited Liability Partnership (LLP) on 1.4.2021 and at the time of conversion, all the conditions specified in section 47(xiii b) have been fulfilled. The unabsorbed business loss and depreciation of the company as on the date of conversion were ₹ 48 lakhs and ₹ 25 lakhs respectively. The business profits of the LLP for the previous year 2021-22 were ₹ 85 lakhs. However on 10.9.2022 two partners (who were erstwhile shareholders of BCG Pvt. Ltd) having in aggregate 50.75 % of the profit sharing in LLP, resigned.

Discuss the tax consequences of the conversion of company into LLP and subsequent resignation of partners. 6

8. You are required to write short notes on any 4 out of 5 sub questions: 4×4 = 16

(a) Who can verify return of income of firm and company u/s 140 of the Income Tax Act, 1961?

(b) Distinguish between AS 7 and ICDS III with regards to Construction Contracts.

(c) Faceless jurisdiction of the Income-Tax Authorities (u/s 130 of the Income Tax Act, 1961)

(d) TDS on certain sums for purchase of goods [Section 194Q of Income Tax Act, 1961]

(e) Chargeability provision of equalization levy

SUGGESTED ANSWERS TO QUESTIONS

SECTION - A

1.

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

SECTION - B

2. (a)

Tax liability (Rs. in lacs) = 44.512

2. (b)

AMT credit

The AMT credit can be adjusted in the year in which the liability of the non-corporate taxpayer to whom the provisions of AMT apply as per the normal provisions is more than the AMT liability.

In this case, the liability as per the normal provisions of the Income-tax Act is Rs.18,40,000 and the liability as per the provisions of AMT is Rs. 18,00,000. Liability as per the normal provisions is more than liability as per the provisions of AMT and, hence, the firm can adjust the AMT credit.

The set off in respect of brought forward AMT credit shall be allowed in the subsequent year(s) to the extent of the difference between the tax on his total income as per the normal provisions and the liability as per the AMT provisions. Thus, after set off of the AMT credit, the liability of the firm cannot be less than liability as per the provisions of AMT.

In this case, the liability as per AMT is Rs. 18,00,000, and, hence, after claiming set off of the AMT credit, the liability of the firm cannot be less than Rs. 18,00,000. Hence, out of the credit of Rs. 2,00,000 the firm can claim credit of Rs. 40,000 only and the balance credit of Rs. 1,60,000 can be carried forward to next year(s).

2. (c)

Conditions and time limit for release of seized asset: [Sec 132B]:

Where the following conditions are satisfied, the amount of any existing liability may be recovered out of such asset and the remaining portion of the asset may be released to the person from whose custody the assets were seized –

1. The person concerned makes an application to the Assessing Officer within 30 days from the end of the month in which the asset was seized for release of asset;
2. The nature and source of acquisition of such asset is explained to the satisfaction of the Assessing Officer; and
3. The Assessing Officer obtains the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

Time limit for release of asset

Asset or any portion thereof shall be released within a period of 120 days from the date on which the last of the authorisations for search u/s 132 or for requisition u/s 132A, as the case may be, was executed.

In this case, since the application was made to the Assessing Officer within the 30 days period, the amount of existing liability may be recovered out of the asset and the balance may be released within 120 days from the date on which the last of the authorizations for search under section 132 was executed.

3. (a)

Case Study 1

Tenability of action of the AO in refusing the benefit of set off Issue involved

The issue involved is whether the AO is justified in refusing to grant the benefit of set off of loss under STCG, on the ground that the same had not been claimed in the return of income originally submitted, but such claim was made only during the assessment proceedings.

Provisions applicable

Under section 74, short-term capital loss can be carried forward and set off for a period of eight assessment years next following the year in which such loss was incurred and remained unabsorbed.

Such carry forward is permitted only if the return of income has been submitted within the time specified in section 139(1).

Analysis of the issue

Here, there is no doubt that the short term capital loss relating to the AY 2019-20 is eligible for carry forward and set off, since the dual conditions remain fulfilled: The return was submitted within the time specified in section 139(1).

Further, the set off is claimed within a period of eight of 8 years.

It is the duty of the Assessing Officer to assist/help an assessee in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard, they should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him.

Thus, it is the duty of the Assessing Officer to apply the relevant provisions of the Act for the purpose of determining the correct amount total income of Mr. Kiran and consequential tax liability. Merely because Mr. Kiran has omitted to claim the set-off of brought forward losses of Rs.2.3 lakh in the original return filed and the time limit for filing revised return has expired, it cannot relieve the Assessing Officer of his duty to apply section 74 in the appropriate case.

Conclusion

The action of the AO is hence not tenable in law. He is bound to allow the benefit of set off of the loss which is a valid claim.

Reference may be made to the decision in the case of CIT v. Mahalakshmi Sugar Mills Co. Ltd. (1986) 160 ITR 920, wherein the above issue was adjudicated by the Supreme Court. The above conclusion is based on the rationale of the Supreme Court decision in that case, taking note of the CBDT Circular No.14 (XL-35) of 1955 dated 11.04.1955.

3. (b)

Case Study 2

Receipt of bonus shares, whether assessable as income from other sources Issue involved

The issue under consideration is whether bonus shares received by shareholders would be taxable under the head 'Income from other sources' as per the provisions of section 56(2) (x), as they are received without consideration and hence the addition made by the AO is justified in law.

Provision Applicable:

As per section 56(2)(x), any sum of money or value of property received by any person without consideration or for inadequate consideration from any person.

The same is taxable as income from other sources, where the same has been so received from any non-relative.

Analysis

When a shareholder gets bonus shares, the value of the original shares held by him goes down and the market value as well as intrinsic value of the two shares put together will be the same or nearly the same as the value of original share before the issue of bonus shares.

Thus, any profit derived by the assessee shareholder on account of receipt of bonus shares is adjusted by depreciation in the value of equity shares originally held by him.

It cannot, therefore, be said that the bonus share is an asset which has been received without any consideration.

Conclusion

The addition made by the AO is hence not justified in law.

Reference may be made to the decision taken in PCIT v. Dr. Ranjan Pai (2021) 431 ITR 250, wherein similar facts were involved.

4. (a)

Total income =	₹ 14,22,000
Average rate of tax in India =	12.287%
Average rate of tax in Nation N =	9.6%
Gross tax liability =	₹ 1,74,720
Relief u/s 91 =	₹ 64,320
Balance tax payable =	₹ 1,10,400

4. (b)

Eligibility for carry forward of loss

As per the provisions of section 139(3), any person who has sustained loss under the head 'Profit and gains of business or profession' is allowed to carry forward such a loss under section 72(1) or section 73(2), only if he has filed the return of loss within the time allowed under section 139(1).

Also, the provisions of section 80 specify that a loss which has not been determined as per the return filed under section 139(3) shall not be allowed to be carried forward and set-off under, inter alia, section 72(1) (relating to business loss) or section 73(2) (losses in speculation business) or section 74(1) (loss under the head "Capital gains") or section 74A(3) (loss from the activity or owning and maintaining race horses) or section 73A (loss relating to a "specified business").

However, there is no such condition for carry forward of unabsorbed depreciation under section 32.

In the given case, the assessee has filed its return of loss in response to notice under section 142(1). As per the provisions stated above, the return filed by the assessee in response to notice under section 142(1) is a belated return and therefore, the benefit of carry forward of business loss under section 72(1) or section 73(2) or section 73A shall not be available.

The assessee shall, however be entitled to carry forward the unabsorbed depreciation as per provisions of section 32(2).

4. (c)

GAAR: Loan advanced to Indian company through subsidiary set up in tax haven

Sec. 102(1) defines an "arrangement" to mean:

- any step in, or a part or whole of,
- any transaction, operation, scheme, agreement or understanding,
- whether enforceable or not, and
- includes the alienation of any property in such transaction, operation, scheme, agreement or understanding.

If the object of the arrangement is to avoid or evade tax or where the arrangement lacks commercial substance, then GAAR can be invoked. Here, in S Inc, there is no other activity, except this lending. Hence it lacks commercial substance and it is clear that the objective is to avoid tax in India in the hands of H Ltd.

The amount of interest involved is Rs. 4.8 crores (8% of Rs 60 crores).

For GAAR to apply, the amount involved should be Rs 3 crores or more. Hence GAAR can be invoked.

If the loan advanced is 30 crores, then the amount of interest involved is Rs 2.4 crores (8% of 30 crores).

Since it is less than 3 crores, GAAR cannot be invoked.

5. (a)

Determination of the applicability of TDS provisions

- (i) As the annual premium exceeds 10% of the sum assured in respect of policy taken after 31.03.2012, the maturity proceeds of Rs.8.80 lakh is not exempt in the hands of Xavier under section 10(10D) of the Act. Therefore, tax is deductible at source @5% on the amount paid less the aggregate of premiums paid. The amount being Rs.8.80 lakh less Rs.8 lakh = Rs.80,000 on which TDS @5% being Rs.4,000 is deductible under section 194DA.
- (ii) Circular No.5 of 2016 enjoins that there are two types of payments involved in advertising business where the client makes payment to advertising agency and the advertising agency subsequently making the payment to television channel or newspaper. It is clarified that TDS is attracted in respect of first payment and not for the second one.
- Therefore, the amount received by advertising agency from client would be subjected to TDS under section 194C i.e. 2% on Rs.5 lakh being Rs.10,000 to be deducted by Y Co Ltd when it makes payment to MMC (P) Ltd.
- However, when Rs.4,40,000 is remitted by MMC (P) Ltd to television channel it is not liable for TDS.
- (iii) As per Circular 1 of 2008 dated 10.01.2008, a cold storage provides service by means of a mechanical process and the storage of goods is only incidental in nature. The customer is not given any right to use any specific space. He does not become a tenant.
- Therefore, payment by Bishnoi to Ravi Coolers does not attract section 194-I but it is liable for tax deduction under section 194C.
- (iv) As per Circular No.8 of 2009 dated 24.11.2009, payment made by TPAs by behalf of insurance companies is in respect of services rendered by hospitals to various patients. The services so rendered is covered by section 194J.
- Therefore, the amount of tax deduction under section 194J is 10% of 6 lakhs, i.e. Rs 60,000.

5. (b)

Situations leading to deemed AE relationships

- (i) Section 92A(2) says that two enterprises shall be deemed to be associated enterprises, if at any time during the previous year one enterprise holds, directly or indirectly, shares carrying not less than 26% of the voting power in the other enterprise.
- In this case, A Co Ltd held more than 26% of voting power in B Co Ltd till the public issue of shares. Therefore, for the financial year 2022-23 they are AEs.
- (ii) Two enterprises shall be deemed to be associated enterprises, if at any time during the previous year one enterprise holds, directly or indirectly, shares carrying not less than 26% of the voting power in the other enterprise.
- In this case, at the time of supply of goods which was more than 90% of the total raw materials required by G Co Ltd, there was no AE relationship with F Co Ltd of UK.
- However, after stopping purchase of raw material F Co Ltd increased its shareholding to 27% and therefore they are AE for the previous year 2022-23.
- (iii) A company said to be an associated enterprise of another entity if it guarantees not less than 10% of the total borrowings of the other enterprise.
- In this case, the shareholding was 28% for part of the year and it got reduced to 20% in July, 2022. After that the borrowing of H Co Ltd was guaranteed by the foreign company K Ltd. Therefore, they are AEs for the assessment year 2023-24 since the shareholding was more than 26% for some time during the previous year.
- (iv) If one enterprise advances loan to another enterprise which is not less than 51% of the book value of total assets of the other enterprise, they are said to be deemed AEs.
- In this case, at the time of borrowing the amount of borrowing was 60% of the book value of the assets of the borrowing company. The subsequent acquisition and the loan getting reduced to less than 51% will not change the situation. Therefore, they are AEs.

6. (a)

AO may invoke the power to determine the ALP if he is of the opinion as under:

The price charged or paid in an international transaction has not been determined in accordance with the norms stipulated [in section 92C(1) or section 92C(2)]; or

Any information and documents relating to an international transaction has not been kept and maintained by the assessee in accordance with the provisions contained in section 92D(1) and the rules made in this behalf (rule 10D); or

The information or data used in computation of ALP by the assessee is not reliable or correct; or

The assessee has failed to furnish within the specified time, any information or documents which he was required to furnish a notice issued under section 92D(3).

However, before invoking the power to determine the ALP, the Assessing Officer must provide an opportunity of being heard to the assessee.

The power of Assessing Officer does not extend to determination of the income of the other enterprise based on ALP computed in the case as per second proviso to section 92D(4).

When the ALP is determined leading to increase in income, no deduction under section 10AA or Chapter VI-A be allowed on the income so increased. In other words, when the income is eligible for deduction under section 10AA or Chapter VI-A, any increase in ALP shall not go to increase such deduction.

Power of TPO:

It is the absolute discretion of the Assessing Officer to make a reference to TPO for the purpose of computation of ALP in relation to the international transaction. However, before making such reference to TPO, the Assessing Officer must take the approval of PCIT /CIT.

The TPO can determine the ALP of the transaction and any other international transaction identified subsequently in the course of proceedings before him as if such transaction is referred to him by the Assessing Officer.

The TPO shall pass an order after determining the ALP which is binding on the Assessing Officer. The Assessing Officer must pass order in conformity with the order of the TPO.

The time limit for TPO to pass the order is at least 60 days before the expiry of the time limit under section 153 for making an order by the Assessing Officer.

6. (b)

Applicability of resale price method

Resale price method is used to test transactions involving distribution function. It is applicable where the assessee purchases goods from related party and resells the same to independent parties.

It is applicable where the reseller (assessee) does not add substantially to the value of the product.

Where the transactions are not comparable and the differences have a material effect on price, necessary adjustments have to be made to eliminate the effect of those differences.

In this regard operating expenses associated with functions performed and risks assumed may be necessary.

Steps in computation of resale price method

Identification of resale price by tested party i.e. the price at which the goods were purchased or services obtained by the enterprise from the AE which is sold to unrelated enterprise.

Resale price is reduced by normal gross profit margin with reference to uncontrolled transaction.

Such price is reduced by expenses incurred in connection with purchase of the product / services.

The price is further adjusted and other differences, including difference in accounting practices which could affect gross profit margin in the open market.

Adjusted price arrived at is to be taken in respect of the purchase of goods by the enterprise from the AE.

Transfer pricing adjustment per machine = ₹ 75,000

For 200 machines Rs.75000 X 200 = Rs.150 lakh to be added to the total income of Suresh Ltd.

7. (a)

(i) Powers of Settlement Commission to grant immunity

As per sec. 245H, the Settlement Commission may grant immunity (subject to such conditions as it may think fit to impose for the reasons to be recorded in writing) from –

- (a) Prosecution for any offence under this Act or under the Wealth Tax Act; and
- (b) Imposition of any penalty (wholly or partly) under this Act, with respect to the case covered by it.

Conditions for granting such immunity:-

Such immunity can be granted by the Commission, if the assessee -

- (a) has co-operated with the Settlement Commission in the proceedings before it;
- (b) has made a full and true disclosure of his income; and
- (c) has made a full and true disclosure of the manner in which such income has been derived.

Tax point:

Such immunity shall not be granted by the Settlement Commission in cases where the proceedings for the prosecution have been instituted before the date of receipt of the application u/s 245C.

- The Settlement Commission does not have the power to reduce or waive interest statutorily payable u/s 234A, 234B and 234C, except to the extent of granting relief under circulars issued by the Board
- It has to be noted that waiver or reduction of interest u/s 220(2A) and other provisions is waived or reduced with certain conditions. If these conditions are satisfied, the Commission has the power to direct waiver or reduction
- Interest u/s 234B shall be charged upto date of the order of Settlement Commission u/s 245D(4)

Withdrawal of Immunity granted

An immunity granted to a person shall stand withdrawn if –

- (1) Such person fails to -
 - (a) Pay any sum specified in the order of settlement within the time allowed by the Settlement Commission; or
 - (b) Comply with any other condition(s) subject to which the immunity was granted.

Such person had, in the course of the settlement proceedings, concealed any particulars material to the settlement or had given false evidence.

(ii) Special provision for avoidance of repetitive appeals [Sec. 158A]

- Where an assessee claims (a declaration in the Form 8 and verified in the prescribed manner) that:
 - any question of law arising in his case for an assessment year which is pending before the Assessing Officer or any appellate authority (such case being hereafter in this section referred to as the relevant case) is identical
 - with a question of law arising in his case for another assessment year which is pending before the High Court or the Supreme Court (such case being hereafter in this section referred to as the other case),
 - and if the Assessing Officer or the appellate authority, as the case may be, agrees to apply in the relevant case the final decision on the question of law in the other case,
 - he shall not raise such question of law in the relevant case in appeal before any appellate authority.
- The Assessing Officer or the appellate authority, as the case may be, may, by order in writing:
 - i. admit the claim of the assessee if he or it is satisfied that the question of law arising in the relevant case is identical with the question of law in the other case; or
 - ii. reject the claim if he or it is not so satisfied.
- Such order shall be final and shall not be called in question in any proceeding by way of appeal or revision under this Act.

- Where a claim is admitted:
 - a. the Assessing Officer or the appellate authority may make an order disposing of the relevant case without awaiting the final decision on the question of law in the other case; and
 - b. the assessee shall not be entitled to raise, in relation to the relevant case, such question of law in appeal.
- When the decision on the question of law in the other case becomes final, it shall be applied to the relevant case and the Assessing Officer or the appellate authority, shall, if necessary, amend the order conformity with such decision.

7. (b)

Tax consequences of conversion of company into LLP

As per section 72A(6A), the LLP would be able to carry forward and set-off the unabsorbed depreciation and business loss of Rs. 48 lakhs and Rs. 25 lakhs, respectively, of BCG Pvt. Ltd. since at the time of conversion, all the conditions specified in section 47(xiiiib) have been fulfilled.

Further, the LLP can set off the unabsorbed depreciation and business loss aggregating to Rs. 73 lakhs against its business profits of Rs. 85 lakhs for A.Y. 2022-23.

However, if in any subsequent year, the LLP fails to fulfil any of the conditions mentioned in section 47(xiiiib), the business loss or unabsorbed depreciation of the company already set off by the LLP would be deemed to be the income chargeable to tax of the LLP for the year in which it fails to fulfil such conditions.

One of the conditions mentioned in section 47(xiiiib) is that the erstwhile shareholders of the company continue to be entitled to receive at least 50% of the profits of the LLP for a period of 5 years from the date of conversion.

Since two partners (who were erstwhile shareholders of BCG Pvt. Ltd.) holding in aggregate 50.75% of the profit-sharing in the LLP have resigned on 10.9.2022, thus the LLP has failed to fulfill this condition.

Therefore, the amount of Rs. 73 lakhs representing unabsorbed depreciation and business losses set-off against profits of the LLP for the A.Y. 2022-23, would deemed to be income of the LLP for the A.Y.2023-24, being the year in which it failed to fulfil the conditions.

8. (a)

Verification of the ROI

As per sec. 140, the return of income is required to be verified:

Assessee	Case	Verified by
Firm	In general	Managing partner
	If due to any reason it is not possible for managing partner to verify or where there is no managing partner	Any adult partner
Company	In general	Managing Director (MD)
	If due to any reason it is not possible for MD to verify or where there is no MD	Any director
	Where an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under Insolvency and Bankruptcy Code, 2016	Insolvency professional appointed by such Adjudicating Authority
	Non-resident company	A person holding a valid power of attorney. Copy of such power of attorney must be attached with the return.

	Company in process of winding up	Liquidator of the company
	Where the management of the company has been taken over by the Central or State Government.	Principal officer

8. (b)

Distinction between AS 7 and ICDS III are as under

AS 7	ICDS III
Contract revenue is required to be recognized if it is possible to reliably measure the outcome of a contract	- The criteria of 'reliable measurement of outcome of contract' omitted - Recognized as per provision of ICDS – III
Silent on treatment of accrual of income	Retention money is required to be considered as part of contract revenue and revenue to be recognized on POCM basis
Losses fully allowable irrespective of commencement, stage of completion and expected profits from other independent contracts	- Losses not allowable unless actually incurred and only on POCM basis - ICDS on accounting policies also does not permit recognition of foreseeable loss
Contract cost which relates to future activity shall be recognized as an asset only if recoverability is probable	Contract cost is to be recognized as an asset
- Revenue is to be recognized only to the extent of recoverable costs - No profit is to be recognized during early stages of contract	Same as AS, however ICDS objectively defines early stage as not to exceed beyond 25%
Contract cost may be reduced by any incidental income that is not included in contract revenue	Contract cost shall be reduced by any incidental income (except interest, dividend and capital gains) that is not included in contract revenue

8. (c)

Faceless jurisdiction of the Income-Tax Authorities

The Central Government may notify a scheme for the purposes of:

- a) exercise of all or any of the powers and performance of all or any of the functions conferred on, or, as the case may be, assigned to income-tax authorities by or under this Act as referred to in sec. 120; or
- b) vesting the jurisdiction with the Assessing Officer as referred to in sec. 124; or
- c) exercise of power to transfer cases u/s 127; or
- d) exercise of jurisdiction in case of change of incumbency as referred to in sec. 129,

So as to impart greater efficiency, transparency and accountability by—

- i. Eliminating the interface between the income-tax authority and the assessee or any other person, to the extent technologically feasible;
- ii. Optimising utilisation of the resources through economies of scale and functional specialisation;

- iii. Introducing a team-based exercise of powers and performance of functions by two or more income-tax authorities, concurrently, in respect of any area or persons or classes of persons or incomes or classes of income or cases or classes of cases, with dynamic jurisdiction.

Tax point

The Central Government may, for the purpose of giving effect to the scheme, direct (upto 31-03-2022) that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

8. (d)

TDS on certain sums for purchase of goods [Sec. 194Q]

Who is responsible to deduct tax: Any person, being a buyer who is responsible for paying any sum to any resident seller for purchase of any goods of the value or aggregate of such value exceeding ₹ 50 lakhs in any previous year.

"Buyer" means a person whose total sales, gross receipts or turnover from the business carried on by him exceed ₹ 10 crore during the financial year immediately preceding the financial year in which the purchase of goods is carried out. However, buyer does not include certain notified person provided they satisfied specified conditions.

When tax shall be deducted:

At the time of payment or crediting the payee, whichever is earlier.

Tax point:

Where any amount is credited to any account (for e.g. "Suspense account" or by any other name) instead of seller account, such crediting shall be deemed to be credit of such sum to the account of the seller.

Rate of TDS:

0.1% of such sum exceeding ₹ 50 lakhs.

In case where seller do not have PAN, then rate of TDS shall be 5%

Tax point

- TDS u/s 194Q shall be deducted on the taxable value i.e. exclusive of GST component. However, on the amount paid as advance, TDS shall be deducted on entire amount since GST component cannot be separately identified. [Circular 13/2021 dated 30-06-2021]
- The provision is not applicable where seller is Central or State Government. The exemption is not applicable where seller is public sector undertaking or corporation. [Circular 20/2021 dated 25-11-2021]

The provisions of this section shall not apply to a transaction on which:

- a. tax is deductible under any of the provisions of this Act; and
- b. tax is collectible u/s 206C other than a transaction to which sec. 206C(1H) applies.

The provision is not applicable in case of following transactions:

- a) Transaction in securities and commodities traded through recognised stock exchange.
- b) Transaction in electricity, renewable energy certificate and energy saving certificate through power exchanges [Circular 13/2021 dated 30-06-2021]

(e) Equalisation levy

As per sec. 165, equalisation levy shall be payable @ 6% of the consideration for any specified service received or receivable by a person, being a non-resident from:

a person resident in India and carrying on business or profession; or a non-resident having a permanent establishment in India.

- Specified service means
 - a) **online advertisement**,
 - b) any provision for digital advertising space or any other facility or service for the purpose of online advertisement and
 - c) any other notified service – Sec. 164(i)

Online means a facility or service or right or benefit or access that is obtained through the internet or any other form of digital or telecommunication network – Sec. 164(f)

These provisions extend to the whole of India except the State of Jammu and Kashmir.

Exception

The equalisation levy shall not be charged, where:

- (a) the non-resident providing the specified service has a permanent establishment in India and the specified service is effectively connected with such permanent establishment;
- (b) the aggregate amount of consideration for specified service received or receivable in a previous year from resident in India or from a non-resident having a permanent establishment in India, does not exceed ` 1,00,000; or
- (c) the payment for the specified service by the person resident in India, or the permanent establishment in India is not for the purposes of carrying out business or profession.