

FINAL EXAMINATION

December 2022

03715

P16(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 indicated 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 2022-23, 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) Robello Ltd. engaged in manufacturing activity was incorporated on 05.06.2020. Its total income for the previous year 2021-22 was ₹ 35 lakhs. How much is its income-tax liability including surcharge and cess for the assessment year 2022-23 if it has opted for section 115BAB?

- (A) ₹ 5,25,000
- (B) ₹ 5,46,000
- (C) ₹ 6,00,600
- (D) ₹ 7,98,000

(ii) Myson Inc. USA has a branch in India for sale of its beverages which is globally known and celebrated brand. The total income of the branch for the assessment year 2022-23 was ₹ 11.40 crores. How much is the income-tax liability of the foreign company in respect of its income from the branch?

- (A) ₹ 49,79,520
- (B) ₹ 47,42,400
- (C) ₹ 35,56,800
- (D) ₹ 29,64,000

- (iii) Dhananjey is a person of Indian origin living in country X for the past 15 years. He visited India every year and stayed for 65 days. He returned to India permanently in May, 2021. His total income consist of (i) income in country X controlled from India ₹ 18 lakhs; (ii) loss from business in country Y managed by his brothers on his behalf ₹ 7 lakhs; and (iii) income in India ₹ 10 lakhs. Assume that there is no DTAA between India and country X and country Y and there is no income-tax in both those countries. How much is his total income liable to tax in India?
- (A) ₹ 28 lakhs
(B) ₹ 21 lakhs
(C) ₹ 10 lakhs
(D) ₹ 8 lakhs
- (iv) Mitra is CFO of Blue Sky (P) Ltd. He joined the company on 01.06.2021 for basic pay ₹ 1,50,000 and dearness allowance @ 50% thereon (eligible for retirement benefits). He was provided rent-free accommodation owned by the employer at Bengaluru. What is the perquisite value of rent-free accommodation?
- (A) ₹ 4,50,000
(B) ₹ 3,37,500
(C) ₹ 2,25,000
(D) ₹ 1,68,750
- (v) Rekha constructed a commercial complex at Pune for which she borrowed ₹ 100 lakhs from SBI in April, 2019 and the construction was completed in January, 2022. Interest on borrowal are as follows
- (i) for financial year 2019-20 ₹ 8 lakhs;
(ii) F.Y. 2020-21 ₹ 9 lakhs; (iii) interest from April, 2021 to January, 2022 ₹ 8 lakhs and (iv) for the month of February 2022 and March, 2022 ₹ 3 lakhs. How much of interest is eligible for deduction under Section 24?
- (A) ₹ 8 lakhs
(B) ₹ 5.60 lakhs
(C) ₹ 11.40 lakhs
(D) ₹ 14.40 lakhs
- (vi) Narayan Ltd. engaged in manufacture of plant medicines was incorporated on 05.03.2019. It incurred ₹ 1 lakhs, ₹ 4 lakhs and ₹ 3 lakhs towards research expenses for the financial year 2018-19, 2019-20 and 2020-21. It commenced regular

manufacture actually from 1st April, 2021. The research expenses include capital expenditure of ₹ 3 lakhs incurred in F.Y.2019-20. How much of research expenditure incurred prior to commencement of business is eligible for deduction in the hands of Narayan Ltd. for the assessment year 2022-23?

- (A) ₹ 5 lakhs
- (B) ₹ 7 lakhs
- (C) ₹ 8 lakhs
- (D) NIL

(vii) Flemingo Ltd. is engaged in a business of construction and sale of residential apartments. During the year 2021-22, it constructed 20 apartments and sold all the apartments for ₹ 700 lakhs. There was no difference between value adopted for stamp duty purposes and actual consideration except in the case of 3 apartments whose stamp duty value was ₹ 60 lakhs; ₹ 55 lakhs and ₹ 50 lakhs and their actual consideration was ₹ 56 lakhs; ₹ 48 lakhs; ₹ 44 lakhs respectively. All these apartments were sold in December, 2021. How much would be added to the income of Flemingo Ltd. in respect of the above transactions relating to 3 apartments?

- (A) ₹ 17 lakhs
- (B) ₹ 13 lakhs
- (C) ₹ 11 lakhs
- (D) ₹ 4 lakhs

(viii) Great Nursing Home is a partnership firm consisting of 3 doctors being partners. The firm has aggregate annual receipt of ₹ 48 lakhs. As per the deed of partnership each partner is eligible for interest @ 12% on the capital contribution of ₹ 5 lakhs each. Also, each partner is eligible for working partner salary of ₹ 50,000 per month. Compute income as per the applicable presumptive provision and how much is the total income of the firm.

- (A) ₹ 7,98,000
- (B) ₹ 4,80,000
- (C) ₹ 22,20,000
- (D) ₹ 24,00,000

- (ix) Sriram transferred a vacant land to Hari for ₹ 90 lakhs in March, 2022. The vacant land was acquired by Sriram in April, 2010 for ₹ 15 lakhs. He entered into an agreement for sale of land with James in February, 2012 and received ₹ 2 lakhs. This amount was forfeited as James backed out of the agreement. The stamp duty value of the vacant land in March, 2022 was ₹ 110 lakhs. How much is the long-term capital gain of Sriram?

Cost inflation index for F.Y. 2010-11 = 167 ; F.Y.2011-12 = 184; F.Y.2021-22 =317.

- (A) ₹ 81,52,690
(B) ₹ 85,32,335
(C) ₹ 77,73,050
(D) ₹ 65,32,330
- (x) Malini won a lottery winning of ₹ 10 lakhs which was credited to her bank account. The payer has deducted tax at source correctly. How much Malini must admit as lottery winning in her return of income by grossing up TDS?
- (A) ₹ 11,21,070
(B) ₹ 12,62,626
(C) ₹ 14,53,490
(D) ₹ 14,28,570

Section-B

2. (a) From the details given below you are required to calculate interest payable under section 234C of the Income-Tax Act. 1961:

A Ltd. made the following payments of advance tax during the financial year 2021-22:

Paid On	₹ In lakhs
June 12, 2021	3.60
September 14, 2021	4.15
December 10, 2021	10.50
March 20, 2022	9.80

The return of income is filed on 31st July, 2022 showing – Business income ₹ 90 lakhs

Long term capital gain taxable @ 20% (as on 05-12-2021) ₹ 15 lakhs

Note: The Company has not opted for any concessional rate of Tax.

- (b) SGT Ltd. is a widely held company. It is currently considering a major expansion of its production facilities and the following alternatives are available:

Particulars	Alternative 1 (₹)	Alternative 2 (₹)	Alternative 3 (₹)
Share capital	20,00,000	15,00,000	60,00,000
15% Debentures	22,00,000	20,00,000	
14% Loan from Bank	18,00,000	25,00,000	

Expected rate of return before tax is 30%.

Rate of dividend of the company since financial year 2001-02 has not been less than 24 % and date of dividend declaration is 30th June every year.

Basic Income-tax rate is 30%. Which alternative should the company opt with reference to tax planning for the assessment year 2022-23? 8

3. KGB Ltd. is engaged in the manufacture of fabrics since 01-04-2012. Its Statement of Profit and Loss for the previous year ended 31st March, 2022 shows a profit of ₹ 720 lakhs after debiting or crediting the following items:
- Industrial power tariff concession of ₹ 3.80 lakhs, received from Karnataka State Government was credited to Statement of profit and loss.
 - Depreciation charged on the basis of useful life of assets as per the Companies Act is ₹ 55 lakhs.
 - The company had provided ₹ 22 lakhs, being sum fairly estimated as payable with reasonable certainty, to workers on agreement to be entered with the workers union towards periodical wage revision once in every three years.
 - Loss ₹ 18 lakhs, due to destruction of a machine by fire due to short circuit debited to Statement of Profit and Loss. The insurance company did not admit the claim of the company on charge of gross negligence and ₹ 4 lakhs received as scrap value credited to profit and loss account.
 - Dividend received from a US company ₹ 14 lakhs.

- (f) Provision for gratuity based on actuarial valuation was ₹ 300 lakhs. Actual gratuity paid debited to gratuity provision account was ₹ 120 lakhs.
- (g) Advertisement charges ₹ 2.20 lakhs, paid by cheque for advertisement published in the souvenir of a political party registered with the Election Commission of India.
- (h) Long-term capital gain ₹ 95,000 on sale of equity shares on which Securities Transaction Tax (STT) was paid at the time of acquisition and sale.

Additional Information:

- (i) Normal depreciation computed as per Income-tax Rules is ₹ 72 lakhs after consideration of scrap value.
- (ii) GST ₹ 10 lakhs collected from its customers was paid by the company on the due dates. On an appeal, the High Court directed the GST department to refund ₹ 4 lakhs to the company. The company in turn refunded ₹ 1 lakh to the customers from whom it was collected and the balance ₹ 3 lakhs is still lying under the head 'Current Liabilities'.

Compute the total income of KGB Ltd. for the A.Y. 2022-23 by analysing and applying the relevant provisions of income-tax law. Briefly explain the reasons for treatment of each item. Ignore the provisions relating to Minimum Alternate Tax. Assume that the company has not opted for section 115BAA.

Show income under proper head as required under Income-Tax Act, 1961. 16

4. (a) With reasons state whether return of income has to be filed in the following cases for the assessment year 2022-23. 8
- (i) Allen a resident individual aged 81 years has total income of ₹ 3,10,000. He has claimed deduction of ₹ 1,50,000 under Section 80C. He has long-term capital gain of ₹ 1,20,000 taxable under Section 112A. He has opted for regular provisions.
 - (ii) Gomes & Co. a partnership firm constituted on 01.04.2021 has business loss of ₹ 22, 000 for the previous year 2021-22.

(iii) Nilgiri Association eligible for exemption under Section 10(23B) has income from house property of ₹ 4,30,000.

(iv) Williams aged 51 is an employee of Chappel Ltd. having salary income of ₹ 2,40,000 before standard deduction and income from bank fixed deposits ₹ 20,000 and interest on public provident fund ₹ 68,000.

(b) Manjit Enterprises is having 2 units viz. P and R. Unit P is transferred on 01.04.2021 by way of slump sale for a total consideration of ₹ 10 lakhs. Unit P was started in the year 2015-16. The expenses incurred for this transfer were ₹ 50,000. Balance sheet as on 31.03.2021 is given below:

Liabilities	Total (₹)	Assets (₹)	Unit P (₹)	Unit R (₹)	Total (₹)
Own capital	20,00,000	Building	18,00,000	8,00,000	26,00,000
Revaluation Reserve (for building of Unit P)	8,00,000	Machinery	6,00,000	4,00,000	10,00,000
Bank loan (80% for unit P)	15,00,000	Debtors	3,00,000	4,40,000	7,40,000
Trade creditors (40% of unit P)	5,00,000	Trade mark	3,00,000	1,60,000	4,60,000
Total	48,00,000	Total	30,00,000	18,00,000	48,00,000

Other information:

- Revaluation reserve is created by revision upward the value of the building of Unit P. The stamp duty value on 01.04.21 is ₹ 25 lakhs.
- No individual value of any asset is considered in the transfer deed.
- Trade Mark was acquired on 01.08.2019 on which no depreciation has been charged.

Compute the capital gain for the assessment year 2022-23.

5. (a) The assessment of Pranav Ltd. was completed under Section 143(3) with an addition of ₹ 22 lakhs to the returned income. The assessee-company preferred an appeal before the Commissioner (Appeals) which is pending now. In this backdrop, answer the following:

- (i) Based on fresh information that there was escapement of income for the same assessment year, can the Assessing Officer initiate reassessment proceedings when the appeal is pending before Commissioner (Appeals)?
- (ii) Can the Assessing Officer pass an order under Section 154 for rectification of mistake in respect of issues not being subject matter of appeal?
- (iii) Can the assessee-company seek revision under Section 264 in respect of matters other than those preferred in appeal?
- (iv) Can the Commissioner make a revision under section 263 both in respect of matters covered in appeal and other matters? 8

(b) State with brief reasons whether the relationship of associated enterprise or deemed associated enterprise is present in the following cases: 8

- (i) A Ltd. has 28% voting power in B Ltd. and 31% voting power in C Ltd. Both B Ltd. and C Ltd. are independent entities engaged in different line of business. Decide the relationship between B Ltd. and C Ltd.
- (ii) Sun Ltd. is engaged in manufacture of medicines for joint pains. It is partly dependent on Moon Ltd. for using the know-how to manufacture the same. Sun Ltd. pays royalty to Moon Ltd as per the regular trade practice.
- (iii) Ram Ltd. is engaged in manufacture of computer hardwares and for this purpose it is dependent on Laxman Ltd. During the financial year 2021-22, 88% of the raw materials for configuring the computer were purchased from Laxman Ltd.
- (iv) The total book value of assets of Plant Ltd. was ₹ 52 crores when it borrowed ₹ 20 crores from Tree Ltd. for expansion of its business.

- (v) The total borrowings of Jupiter Ltd. was ₹ 7 crores of which Venus Ltd. gave guarantee to the extent of ₹ 2 crores.
- (vi) Gautam Ltd. having major stake in many companies which in turn have majority stake in Pluto Ltd. Gautam Ltd. has the authority (voting power) to appoint 4 out of 7 directors in Pluto Ltd.
- (vii) Mukherjee Ltd. is engaged in manufacture of mobile handsets. The entire handsets so manufactured are sold to Banerjee Ltd. The price and terms and conditions relating thereto are decided by Mitra Ltd. being the holding company of Banerjee Ltd. Assume the entities are geographically located in three different countries with Mukherjee Ltd. at Kolkata.
- (viii) Arjun has 90% shareholding in Bheem (P) Ltd. His brother Nakul has 85% shareholding in Hastina P Ltd. Decide the relationship of Bheem (P) Ltd. and Hastina (P) Ltd.
6. (a) Bhalla, a resident individual, an artist deriving income of ₹ 12 lakhs from various programmes performed in a foreign country. Tax of ₹ 1,50,000 was deducted at source in the foreign country out of his income. There is no DTAA between India and the foreign country where he performed. His income in India was ₹ 25 lakhs. He deposited ₹1,50,000 in National Pension Fund account and paid ₹ 60,000 towards health insurance premium for his father (senior citizen) for 3 years. He has not opted for Section 115BAC. Compute his total income tax liability for the assessment year 2022-23. 8
- (b) ETI Ltd., the assessee, has sold goods on 02.01.2022 to LP Ltd., located in notified jurisdictional area (NJA), for ₹ 9.50 crores. During the current financial year, ETI Ltd. charged ₹ 10.50 crores from TP Inc. of country X and ₹ 11 crores from MN Inc. of country Y for sale of identical goods and both of which are neither associated enterprise of ETI Ltd. nor they are situated in any NJA. While sales to TP Inc. and MN Inc. were on CIF basis, the sale to LP Ltd., was on FOB basis, which paid ocean freight and insurance amounting to ₹ 20 lakhs on purchases from ETI Ltd. If sale to TP Inc. and MN Inc. are made on FOB basis, the cost of freight, insurance would amount to ₹ 18 lakhs. India has a Double Taxation Avoidance Agreement with the

country X and country Y. The assessee has a policy of providing after sales support service to the tune of ₹ 13 lakhs to all customers except LP Ltd. which procured the same locally at a cost of ₹ 17 lakhs.

Compute the ALP for the sales made to LP Ltd., and the amount of consequent increase, if any, in the profit of the assessee-company. 8

7. (a) State the time limit for repatriation of excess money in the following cases: 6

(i) AB Ltd. determined ALP of the transactions and made primary adjustment of ₹ 210 lakhs and filed its return of income on 25.09.2022.

(ii) MNO Ltd. filed its return of income for the assessment year 2022-23 on 10.06.2022 and subsequently entered into APA on 30.09.2022. The increase in income because of ALP determination as per APA was ₹ 80 lakhs.

(iii) PQR Ltd. filed its return of income for the assessment year 2021-22 on 05.02.2022 and subsequently entered into APA on 10.03.2022. The increase in income because of APA leading to determination of arm's length price was ₹ 190 lakhs.

(b) Examine the liability for tax deduction at source in the following cases for the assessment year 2022-23:

(i) A notified infrastructure debt fund eligible for exemption under Section 10(47) of the Income-tax Act, 1961 pays interest of ₹ 6 lakhs to a company incorporated in Netherlands. The Netherlands Company incurred expenditure of ₹ 24,000 for earning such interest. The fund also pays interest of ₹ 4 lakhs to Mr. Karan, who is a resident of a notified jurisdictional area. 5

(ii) Lucky Ltd., an event management company, organized a concert of international artists in India. In this connection, it engaged the services of an overseas agent Mr. Marshal from USA to bring artists to India. He contacted the artists and negotiated with them for performance in India in terms of the authority given by the company. He did not take part in event organized in India. The company made the payment of commission equivalent to ₹ 2 lakhs to the overseas agent. 5

8. Write short notes on *any four* of the following :

- (a) Basic approach of Tax Planning
 - (b) Liability of directors of private company in liquidation under Section 179
 - (c) Components of Actual Cost under ICDS V
 - (d) Bilateral Relief and their types
 - (e) Penalty for default in payment of tax
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SUGGESTED ANSWERS TO QUESTIONS

Section – A

1.

2X10 = 20 Marks

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

Section B

(Any five from Question No. 2 to 8)

2 (a)

8 Marks

Total interest payable u/s 234C Rs. 43058.

2. (b)

8 Marks

Rate of Return in % (Net profit / Share Capital):

Option 1 - 41.90%

Option 2 - 52.75%

Option 3 - 20.64%

Alternative 2 offers the maximum rate of return.

Thus, with reference to tax planning, company should opt for the same.

3.

16 Marks

Computation of Total Income of KGB Ltd., for the A.Y. 2022-23

	Amount (Rs.)
I. Profits and gains of business and profession	
Net profit as per the statement of profit and loss	7,20,00,000
Add: Items debited but to be considered separately or items of expenditure to be disallowed	
Depreciation as per the Companies Act	55,00,000
Provision for wages payable to workers [Since the provision is based on a fair estimate of wages payable with reasonable certainty, the provision is allowable as deduction. ICDS X requires a reliable estimate of the amount of obligation and 'reasonable certainty' for recognition of a provision, which is present in this case. As the provision of Rs. 22 lakhs has been debited to statement of profit and loss, no adjustment is required while computing business income]	Nil
Loss due to destruction of machinery by fire	18,00,000

[Loss of Rs.18 lakhs due to destruction of machinery caused by fire is not deductible since it is capital in nature. Since the loss has been debited to statement of profit and loss, the same is required to added back while computing business income]	
Provision for gratuity [Provision of Rs. 300 lakhs for gratuity based on actuarial valuation is not allowable as deduction. However, actual gratuity of Rs. 120 lakhs paid is allowable as deduction. Hence, the difference has to be added back to income [Rs. 300 lakhs (-) Rs. 120 lakhs]	1,80,00,000
Advertisement in souvenir of a political party [Advertisement charges paid in respect of souvenir published by a political party is not allowable as deduction since it is specifically disallowed under section 37(2B)]	2,20,000
Add: Income taxable but not credited to statement of profit and loss	
(ii) GST not refunded to customers out of GST refund received from State Govt. The amount of GST refunded to the company by the Government is a revenue receipt chargeable to tax. Out of the refunded amount of Rs. 4 lakhs, the amount of Rs. 1 lakh stands refunded to customers would not be chargeable to tax. The balance amount of Rs. 3,00,000 not refunded, lying with the company would be chargeable to tax]	3,00,000
	9,78,20,000
Less: Items credited to statement of profit and loss, but not includible in business income/ permissible expenditure and allowances	
Industrial power tariff concession received from State Government [Any assistance in the form of, inter alia, concession received from the Central or State Government would be regarded as income. As the same has been credited to statement of profit and loss, no adjustment is required]	Nil
Dividend received from US company [Dividend received from foreign company is taxable under “Income from other sources”. Since the same has been credited to the statement of profit and loss, it has to be deducted while computing business income]	14,00,000
Scrap value of machinery [Scrap value of machinery, being capital in nature, has to be reduced from WDV of machinery. Since the same has been credited to the statement of profit and loss, it has to be deducted while computing business income]	4,00,000
Long term capital gains on sale of equity shares [The taxability or otherwise of long-term capital gain on sale of equity shares has to be considered while computing income under the head “Capital Gains”. Since such capital gains has been credited to statement of profit and loss, the same has to be reduced to arrive at the business income.]	95,000
Depreciation as per Income-tax Rules, 1961	72,00,000
Profits and gains from business and profession	8,87,25,000
II. Income from other Sources	
Dividend received from foreign company [Dividend received from a foreign company is chargeable to tax under the head” Income from other sources”]	14,00,000
III. Capital Gains	
Long term capital gain on sale of equity shares [Long term capital gains on sale of equity shares on which STT has been paid, is chargeable to tax]	95,000
Gross Total Income	9,02,20,000

Less: Deduction under Chapter VI-A	
Under section 80GGB [Contribution by a company to a registered political party is allowable as deduction, since payment is made otherwise than by cash. Expenditure incurred by an Indian company on advertisement in souvenir published by such political party tantamount to contribution to such political party.]	2,20,000
Total Income	9,00,00,000

4. (a) **8 Marks**

Necessity to file the Return of income

	Particulars
(i)	Not Required to file the Return of income.
	Every person whose total income without giving effect to the provisions of Chapter VI-A if exceeds the maximum amount not chargeable to tax must furnish the ITR on or before the “due date”. In this case, the total income is Rs.3,10,000 + Sec.80C deduction of Rs.1,50,000 aggregating to Rs.4,60,000. Since the basic limit for very senior citizen is Rs.5 lakhs, Allen is not required to file ITR. [The long-term capital gain of Rs. 1.20.000 forms part of the total income whether which does not exceed the limit of Rs.5 lakhs].
(ii)	Yes, required to file the ROI.
	It is mandatory for partnership firms to file their return of income or loss every year. It is immaterial whether the firm has derived any total income or has suffered loss. In this case, though the firm Gomes & Co has loss of Rs.22,000 filing of return of income is mandatory.
(iii)	Yes, required to file the ROI.
	As per section 139(4C) every association must file return of income if the total income before giving effect to the provisions of section 10 exceeds the basic limit not chargeable to tax. In this case, the association before exemption under section 10(23B) has income from house property of Rs.4,30,000 and therefore it has to file its return of income compulsorily for the assessment year 2022-23.
(iv)	Not Required to file the Return of income.
	The salary income of Williams is Rs.1,90,000 after deducting standard deduction of Rs.50,000. The income from other sources in respect of bank deposits is Rs.20,000 for which, eligible deduction under section 80TTA is Rs.10,000. Income by way of interest on PPF is exempt under section 10. Thus, the total income of Williams is Rs.2 lakhs only. As the total income even before Chapter VI-A deduction is Rs.2,10,000, Williams need not file ITR for the assessment year 2022-23.

4. (b) **8 Marks**

Long-term capital gain Rs. 15, 81,250

5. (a) **8 Marks**

Power of Assessing Officer to carry out certain actions

- (i) Yes, it is possible to make reassessment.
As per the third proviso to section 147, the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or

revision, which is chargeable to tax and has escaped assessment.

Therefore, even when an appeal is pending before Commissioner (Appeals), the Assessing Officer can initiate reassessment proceedings in respect of income chargeable to tax which has escaped assessment, provided such income is not the subject matter of the appeal before the Commissioner (Appeals) i.e., such income which has escaped assessment does not form part of the additions of Rs.22 lakhs to the returned income, which is the subject matter of appeal.

(ii) Yes, it is possible to carry out rectification.

As per section 154(1A), the Assessing Officer can pass an order under 154(1) to rectify a mistake apparent from the record, provided the rectification is in relation to a matter, other than the matter which has been considered and decided in the appeal before Commissioner (Appeals).

Since the issue under consideration in this case relates to rectification of a mistake in respect of a matter which is not the subject matter of appeal, the Assessing Officer can pass an order under section 154 for rectification of the same, provided the same is a mistake apparent from the record.

(iii) No, the assessee cannot seek revision u/s 264.

As per section 264(4), the Principal Commissioner or Commissioner shall not revise any order under section 264, where such order has been made the subject matter of an appeal to the Commissioner (Appeals). Therefore, under section 264, the Principal Commissioner or Commissioner cannot revise an order which is pending before the Commissioner (Appeals), even if the revision pertains to a matter, other than the matter(s) covered in the appeal.

(iv) Possible in limited situations only.

As per section 263, the Commissioner has the power to revise an order prejudicial to the interests of the Revenue, even if the order is the subject matter of appeal before Commissioner (Appeals).

However, the power of the Commissioner under section 263 shall extend to only such matters as had not been considered and decided in such appeal.

5. (b) 8 Marks

Associated Enterprises

(i) A Ltd has more than 26% voting power in B Ltd and C Ltd already there is AE relationship between A Ltd and B Ltd and similarly between A Ltd and C Ltd. However, by virtue of such common shareholding in both the companies B Ltd and C Ltd would become deemed AEs.

(ii) When an entity for the purpose of manufacture or processing of goods is wholly (100%) dependent on another enterprise, there would be deemed AE relationship. In this case Sun Ltd is partly dependent on Moon Ltd. Therefore, they are not AEs or deemed AEs.

(iii) When an enterprise depends on 90% or more of raw materials or consumables which are supplied by another enterprise they are deemed to be AEs. In this case, Ram Ltd purchased only 88% of the raw materials from Laxman Ltd and therefore they are not deemed AEs.

(iv) When one enterprise advances loan to another enterprise which is 51% or more of the book value of the total assets of borrowing enterprise, they are deemed AEs. In this case, the borrowing is Rs.20 crores which is less than 51% of the total book value of assets of the borrowing entity. Therefore, they are not deemed AEs.

(v) The total borrowings of Jupiter Ltd was Rs.7 crores of which Venus Ltd gave guarantee to the extent of Rs.2 crores: When an enterprise guarantees 10% or more of the total borrowings of the other enterprise

they are deemed to be AEs. In this case, the total borrowing is Rs.7 crores and the guarantee of Venus Ltd enabling Jupiter Ltd to borrow is Rs.2 crore. Therefore, they are deemed AEs.

- (vi) Gautam Ltd having major stake in many companies which in turn have majority stake in Pluto Ltd. Gautam Ltd has the authority (voting power) to appoint 4 out of 7 directors in Pluto Ltd: When an enterprise or person is eligible to appoint more than half of the directors or members of the governing board of the other enterprise, they are deemed to be AEs. In this case Gautam Ltd has authority to appoint 4 out of 7 directors in Pluto Ltd. Hence, they are deemed to be AEs.
- (vii) When goods or articles manufactured by one enterprise is sold to another enterprise and the prices and the terms and conditions thereof are decided by the other enterprise or persons specified by the other enterprise, there is deemed AE relationship established.
- (viii) When one enterprise is controlled by an individual and other enterprise is controlled by his relative then they are deemed to be associated enterprises. Therefore, Bheem (P) Ltd and Hastina (P) Ltd are deemed AEs.

6. (a) **8 Marks**
 Net tax liability Rs. 7, 56,360

6. (b) **8 Marks**
Computation of ALP

A transaction where one of the parties there to is a person located in a NJA would be deemed to be an international transaction and all parties to the transaction would be deemed as associated enterprises. Accordingly, all the provisions of transfer pricing would be attracted in respect of such a transaction.

Hence, the transactions between ETI Ltd, an Indian company and LP Ltd., located in NJA, would be deemed to be international transactions between associated enterprises. N

The transactions of ETI Ltd. with TP Inc. of Country X and MN Inc. of Country Y for sale of identical goods are comparable uncontrolled international transactions, since they are neither associated enterprises of ETI Ltd. nor are they situated in NJA. Hence, Comparable Uncontrolled Price (CUP) method can be used to determine ALP.

Where more than one price is determined by the most appropriate method, CUP method in this case, then, the arithmetic mean has to be taken in cases where the number of entries in the dataset is less than 6 (in this case it is only 2)

Computation of ALP using CUP method

Particulars	TP Inc.	MN Inc.
	Rs. In crores	Rs. In crores
Price charged by ETI Ltd.(on CIF basis)	10.50	11.00
Less: Ocean freight and insurance, has to be reduced since the price charged to LP Ltd. is on FOB basis	0.18	0.18
Less: Cost of after-sales support service (has to be reduced, since such services are being provided to TP Inc. and MN Inc. but not to LP Ltd.)	10.32	10.82
	0.13	0.13
Arm's Length Price	10.19	10.69

Arithmetic mean of the above prices [(Rs.10.19crores+Rs.10.69crores)/2]	10.44
Less: Price at which goods were sold to LP Ltd.	9.50
Arm's length adjustment [increase in profit of ETI Ltd.]	0.94

The benefit of permissible variation between the ALP and the transfer price based on the rate notified by the Central Government (i.e., maximum of 3% of transaction price) would not be available in respect of such transaction

7. (a) 6 Marks

Primary adjustments and time limit for repatriation

- (i) Where the primary adjustment to transfer price has been made suo moto by the assessee in his return of income, the excess money must be repatriated by the AE within 90 days reckoned from the "due date" of filing of return under section 139(1) of the Act.

In this case the "due date" for repatriation must be counted from 30th November, 2022.

The last date will be 28th Feb., 2023.

- (ii) Where the primary adjustment to transfer price is determined by APA entered into and the APA was entered into before the "due date" of filing of return, the time limit for repatriation of excess money shall be within 90 days reckoned from the "due date" of filing of return under section 139(1) of the Act.

However, the secondary adjustment viz. repatriation of excess money would apply only where the primary adjustment exceeds Rs.100 lakhs.

In this case, the primary adjustment is only Rs.80 lakhs and therefore the secondary adjustment viz. repatriation of excess money will not apply in this case.

- (iii) Where primary adjustment to transfer price is determined by an APA entered into on or after the "due date" for filing the return of income, the time limit for repatriation of excess money viz. 90 days must be counted from the end of the month in which the APA was entered into.

Therefore, the time limit of 90 days must be counted from 31.03.2022 i.e. due date is 29.06.2022.

7. (b) 5 Marks

(i) Obligation to deduct tax at source

5 Marks

As per section 194LB, tax would be deductible @5% plus Cess @ 4% on gross interest paid/credited by a notified infrastructure debt fund, eligible for exemption under section 10(47), to a foreign company.

Therefore, the tax deductible under section 194LB would be Rs. 31,200 (i.e., 5.20% of Rs.6 lakhs).

However, in case the notified infrastructure debt fund pays interest to a person who is a resident of a notified jurisdictional area, section 94A will apply. Accordingly, tax would be deductible @30% (plus health and education cess@4%) under section 94A, even though section 194LB provides for deduction of tax at a concessional rate of 5%. Therefore, the tax deductible in respect of payment of Rs.4 lakh to Mr. Karan, who is a resident of a notified jurisdictional area, would be Rs.1,24,800 being 31.2% of Rs.4,00,000.

(ii) TDS on services of overseas agent outside India: 5 Marks

5 Marks

Section 195 is the governing section for TDS where payment is made to non-residents.

The liability to deduct TDS u/s 195 arises only where there is income chargeable to tax in India.

An overseas agent of an Indian company operates in his own country and no part of his income accrues or arises in India. His commission is usually remitted directly to him and is, therefore, not received by him

or on his behalf in India.

The commission paid to the non-resident agent for services rendered outside India is, thus, not chargeable to tax in India.

Since commission income for contacting and negotiating with artists by Mr. Marshall, a non-resident, who remains outside India is not subject to tax in India, there is no liability for deduction of tax at source. It is assumed that the commission equivalent to Rs. 2 lakh was remitted to Mr. Marshall outside India.

Answer any four from the following

8. (a) 4X4 = 16 Marks

Basic approach of tax planning

1. Reducing taxable income: As a rule, higher the income or profit, higher the tax liability on such income or profit. Gross income is total profits or income from all sources, and taxable income is such gross income less adjustments allowable under various tax laws and other provisions. Such adjustments base itself on the nature of income and expenditure. Opting for the income or expenditure heads that allows maximum set-offs from the gross income reduces taxable income, and ultimately, the tax liability.
2. Deferring payment of taxes to the extent possible: An underestimated dimension of tax planning is timing investments and financial transactions so that the tax liability for such transactions arises at the farthest possible time. While this does not reduce the amount of tax payable, it delays tax outgo, thereby effectively providing interest-free cash on hand. Individuals may not need to resort to such a strategy, but delayed pay-out is valuable for small businesses that very often face cash flow difficulties.

8. (b)
Liability of directors of private company in liquidation under section 179

Where any tax due-
from a private company in respect of any income of any previous year; or
from any other company in respect of any income of any previous year during which such other company was a private company
cannot be recovered, then, every person who was a director of the private company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax.
However, no such director shall be liable if he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

8. (c)
Components of Actual Cost under ICDS V

The actual cost of an acquired tangible fixed asset shall comprise its purchase price, import duties and other taxes, excluding those subsequently recoverable, and any directly attributable expenditure on making the asset ready for its intended use. Any trade discounts and rebates shall be deducted in arriving at the actual cost.

The cost of a tangible fixed asset may undergo changes subsequent to its acquisition or construction on account of:

- a. price adjustment, changes in duties or similar factors; or
- b. exchange fluctuation as specified in ICDS on the effects of changes in foreign exchange rates.

Administration and other general overhead expenses are to be excluded from the cost of tangible fixed assets if they do not relate to a specific tangible fixed asset.

The expenditure incurred on start-up and commissioning of the project, including the expenditure incurred on test runs and experimental production, shall be capitalised.

8. (d)

Bilateral Relief and their types

Bilateral Relief

In this, government of two countries enters into an agreement (known as 'treaties') to provide relief against double taxation of same income. The relief is granted on the basis of terms of such agreement. Generally, such agreement provides relief through following methods:

Exemption Method:

In this method, one country provides exemption to such type of income. Generally, residence country gave up its right and the country of source is then given exclusive right to tax such incomes.

Credit Method:

In this method resident remains liable in the country of residence on its global income, however as far the quantum of tax liabilities is concerned credit or deduction for tax paid in the source country is given by the residence country against its domestic tax as if the foreign tax were paid to the country of residence itself.

Tax point:

In this type of relief, the mechanism for granting relief is provided in the agreement itself.

8. (e)

Penalty for default in payment of tax.

Section 221 deals with penalty for default in payment of tax.

Where an assessee is in default in payment of tax including advance tax and interest payable thereon, the AO shall impose a penalty which in cases of continuing default, may be increased from time to time.

However, the total penalty should not exceed the tax in arrears. The AO should give the assessee a reasonable opportunity of being heard before levying such penalty.

No penalty shall be levied on the assessee for default in payment of tax in cases where he proves to the satisfaction of the Assessing Officer where the default was for good and sufficient reasons.

Explanation to section 221 the assessee would not cease to be liable to pay any penalty for his default merely by reason of the fact that the before the date of levy of such penalty the tax in arrears had actually been paid by him.