



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.

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

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

ANSWER:**SECTION - A****1. (a)**

Sl. No.	Answer	Justification
(i)	a	As per sec. 271AA, if any person in respect of an international transaction or specified domestic transaction fails to maintain or furnishes an incorrect information or document, the Assessing Officer or Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to 2% of the value of each international transaction or specified domestic transaction entered into by such person.
(ii)	a	Information and documents required to be maintained u/s 92D shall be kept and maintained for a period of 8 years from the end of the relevant assessment year.
(iii)	a	As per sec. 92CC, Advance Pricing Agreement shall be valid for such period not exceeding 5 consecutive previous years as may be specified in the agreement.
(iv)	c	As per section 92, when any specified domestic transaction is carried out between associated enterprises, the said transaction should be carried out at arm's length price. In other words, income arising or allowance of any expenses to an entity resulting from specified domestic transactions with associated enterprise should be computed by having regard to arm's length price of such transaction.
(v)	b	As per sec. 32, the aggregate deduction, in respect of depreciation allowable to the amalgamating company and the amalgamated company in the case of amalgamation shall not exceed in any previous year the deduction calculated at the prescribed rates as if



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		the amalgamation had not taken place and such deduction shall be apportioned between the amalgamating company and the amalgamated company in the ratio of the number of days for which the assets were used by them.
(vi)	c	Claiming depreciation on motor car being used for personal purpose is not allowed u/s 32 of the Income Tax Act, 1961. Therefore, the depreciation claimed by the assessee on the motor car which is being used for personal purpose is an act of Tax Evasion.
(vii)	a	As per section 115BBE any addition under sections 68, 69, 69A, 69B 69C or section 69D is chargeable to tax @ 60% plus surcharge @ 25% and HEC @ 4%. The effective rate is 78%. Further, sec. 115BBE(2) provides that no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed against such income.
(viii)	b	On rent paid exceeding ₹ 10,000 in contravention of sec. 40A(3), the entire expenditure shall be disallowed. Similarly, salary paid to manager of the trust ₹ 9,80,000 without tax deduction at source u/s 192 would attract 30% disallowance. Thus, rent ₹3,60,000 and salary ₹ 2,94,000 will not be treated as application of income by the trust. Thus, the total income of the assessee would get enhanced by ₹ 6,54,000 for the aforesaid transaction.
(ix)	b	As per Section 115A(i)(b), the rate of income tax applicable on royalty is 10%. Therefore, Income tax = 10% of ₹ 10,00,000 = ₹ 1,00,000 Health and Education cess = 4% of ₹ 1,00,000 = ₹ 4,000 Total tax payable = ₹ 1,00,000 + ₹ 4,000 = ₹ 1,04,000
(x)	a	Section 37 provides that no deduction is available in respect of CSR expenditure incurred by a corporate assessee.
(xi)	a	As per provisions of sec. 165 of the chapter VIII of the Finance Act, 2016, Indian company shall be required to deduct an equalization levy @ 6% from the payment of ₹ 5,00,000/- to foreign company for online advertisement
(xii)	a	Sec. 43B provides that deduction of any sum payable to Indian Railways for the use of railway assets shall be available only if it is paid before the due date for furnishing the return specified in section 139(1)



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SECTION – B

2. (a) According to sec. 79, loss sustained by the closely held company shall not allowed to be set off unless in the year of such set off the shareholders holding not less than 51% of beneficial interest in share capital of the company in the year of sustaining the loss shall continue to be the shareholders of the company. Accordingly, the taxable income of the company for the A.Y. 2022-23 shall be nil as detailed here below:

Particulars	₹ in lacs
Income before depreciation	18
<i>Less:</i> Depreciation of the current year	9
Income after depreciation	9
<i>Less:</i> Unabsorbed business loss b/f	9
Taxable income	Nil

However, the abovementioned condition of beneficial ownership shall not be applied for carry forward and set off of unabsorbed depreciation therefore, the company can carry forward and set off the unabsorbed depreciation, even if there is a change in the shareholding pattern between the year in which the loss was suffered and the year in which it seeks to set off such loss. Thus, the taxable income of the company for A.Y. 2023-24 is worked out as follow:

₹ in lacs

Particulars	Amount	Amount
Income before depreciation		45
<i>Less:</i> Depreciation of the current year		7.5
Income after current depreciation		37.50
<i>Less:</i> Unabsorbed Depreciation		
A.Y. 2019-20	15	
A.Y. 2020-21	12	
A.Y. 2021-22	9	36
Taxable income		1.50

- (b) Computation of total income and tax liability of Shri Anuj for the A.Y. 2023-24

Particulars	Amount
Income from India	3,40,000
Income from Country Z	2,00,000



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Gross Total Income	5,40,000
<i>Less:</i> Deduction u/s 80C [Investment in PPF]	10,000
Total income	5,30,000
Tax on above	18,500
<i>Add:</i> Health & Education cess	740
Tax and cess payable	19,240
<i>Less:</i> Relief u/s 90 [$\text{₹ } 2,00,000 \times 3.63\%$] ¹	7,260
Tax payable in India (Rounded off u/s 288B)	11,980

¹ Average rate of Indian tax = $\text{₹ } 19,240 / \text{₹ } 5,30,000 \times 100 = 3.63\%$

3. (a) Sec. 245Q(3) provides that an applicant, who has sought for an advance ruling, may withdraw the application within 30 days from the date of the application. Since more than 30 days have elapsed since the date of application by Mr. Brown, he cannot withdraw the application.

However, the Authority for Advance Rulings (AAR), in M. K. Jain AAR No.644 of 2004, has observed that though sec. 245Q(3) provides that an application may be withdrawn by the applicant within 30 days from the date of the application, this, however, does not preclude the AAR from permitting withdrawal of the application after the said period with the permission of the AAR, if the circumstances of the case so justify.

- (b) Computation of gross profit margin on unrelated transaction

Particulars	Amount (INR)
Sale price of laptop in India	26,000
Expenses incurred by A Ltd	700
Net Sale proceeds of laptop in India [A]	25,300
Purchase price [B]	22,000
Gross profit [A - B]	3,300
GP on sale (%)	12.69%

Computation of arm's length price

Particulars	Amount
Sales price of desktop in India	18,000
<i>Less:</i> Expenses incurred by A ltd	500
<i>Less:</i> Arm's length resale margin @ 12.69 % of sale	2,284
Arm's length purchase price	15,216
Purchase price paid to AE	15,000

Thus, no adjustment is required.



4. (a) Computation of penalty

Particulars		Amount
<u>Under-reported income</u>		
Total income computed by the Assessing Officer	A	1,20,00,000
Total income as per return of income	B	80,00,000
Book profit computed by the Assessing Officer	C	2,10,00,000
Book profit as per return of income	D	2,00,00,000
Under-reported income [(A – B) + (C – D)]		50,00,000
<u>Tax on under-reported income</u>		
Tax on A	P	40,06,080
Tax on B	Q	24,96,000
Tax on C	R	35,05,320
Tax on D	S	33,38,400
Tax on Under-reported income [(P – Q) + (R – S)]	T	16,77,000
<u>Penalty u/s 270A</u>		
- Minimum (being 50% of T)		8,38,500
- Maximum (being 200% of T)		33,54,000

(b) Secondary adjustment in certain cases [Sec. 92CE]

"Secondary adjustment" means an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee.

The provisions are enumerated here-in-below:

✿ Where a primary adjustment to transfer price:

- (i) has been made suo motu by the assessee in his return of income;
 - (ii) made by the Assessing Officer has been accepted by the assessee;
 - (iii) is determined by an advance pricing agreement entered into by the assessee u/s 92CC on or after 01-04-2017;
 - (iv) is made as per the safe harbour rules framed u/s 92CB; or
 - (v) is arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into u/s 90 or 90A for avoidance of double taxation,
- the assessee shall make a secondary adjustment.

✿ **Exception:** Nothing contained in this section shall apply, if:



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- (i) the amount of primary adjustment made in any previous year does not exceed ₹ 1 crore; **or**
- (ii) the primary adjustment is made in respect of an assessment year commencing on or before 01-04-2016.
- ✿ Where, as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee, the excess money (or part thereof) which is available with its associated enterprise, if not repatriated to India within the time as may be prescribed, shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance, shall be computed in such manner as may be prescribed [Sec. 92CE(2)]
- *Excess money* means the difference between the arm's length price determined in primary adjustment and the price at which the international transaction has actually been undertaken;
 - *Primary adjustment* to a transfer price, means the determination of transfer price in accordance with the arm's length principle resulting in an increase in the total income or reduction in the loss, as the case may be, of the assessee;
 - Excess money (or part thereof) may be repatriated from any of the associated enterprises of the assessee which is not a resident in India.

Optional Scheme

- Where the excess money (or part thereof) has not been repatriated within the prescribed time, the assessee may, at his option, pay additional income-tax @ 18% (plus surcharge @ 12% + cess) on such excess money.
- The tax so paid by the assessee shall be treated as the final payment of tax in respect of such money not repatriated and no further credit therefor shall be claimed by the assessee or by any other person in respect of the amount of tax so paid.
- No deduction shall be allowed to the assessee in respect of the amount on which tax has been paid.
- Where the additional income-tax is paid by the assessee, he shall not be required to make secondary adjustment and compute interest from the date of payment of such tax



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5. (a) (i) Difference between tax planning and tax avoidance are as under

Points of distinction	Tax planning	Tax Avoidance
Definition	It is a way to reduce tax liability by taking full advantages provided by the Act through various exemptions, deductions, rebates & relief.	It is an exercise by which the assessee legally takes advantage of the loopholes in the Act.
Feature	Tax planning is a practice to follow the provisions of law within the moral framework.	Tax avoidance is a practice of bending the law without breaking it.
Object	To reduce tax liability by applying script & moral of law.	To reduce the tax liability to the minimum by applying script of law only
Approach	It is futuristic and positive in nature. The planning is made today to avail benefits in future.	It is futuristic but short term in nature, as loophole of the law will be corrected in future by amendments of the law.
Benefit	Generally, arises in long run.	Generally, arises in short run.
Treatment of Law	It uses benefits of the law.	It uses loopholes in the law.
Practice	It is tax saving.	It is tax hedging.
Need	It is desirable	It is avoidable
Morality	It is moral in nature.	It is immoral in nature

(ii) **Computation of total undisclosed foreign income and asset [Sec. 5]**

- ✿ In computing the total undisclosed foreign income and asset of any previous year of an assessee:
 - ☛ No deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee, whether or not it is allowable in accordance with the provisions of the Income-tax Act.
 - ☛ Any income,—
 - a) which has been assessed to tax for any assessment year under the Income-tax Act prior to the assessment year to which this Act applies; or
 - b) which is assessable or has been assessed to tax for any assessment year under this Act,



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shall be reduced from the value of the undisclosed asset located outside India, if, the assessee furnishes evidence to the satisfaction of the Assessing Officer that the asset has been acquired from the income which has been assessed or is assessable, as the case may be, to tax.

- ✿ The amount of deduction in case of an immovable property shall be the amount which bears to the value of the asset as on the first day of the financial year in which it comes to the notice of the Assessing Officer, the same proportion as the assessable or assessed foreign income bears to the total cost of the asset.

Illustration

A house property located outside India was acquired by an assessee in the previous year 2009-10 for ₹ 50 lakh. Out of the investment of ₹ 50 lakh, ₹ 20 lakh was assessed to tax in the total income of the previous year 2009-10 and earlier years. Such undisclosed asset comes to the notice of the Assessing Officer in the year 2021-22. If the value of the asset in the year 2021-22 is ₹ 1 crore, the amount chargeable to tax shall be ₹ 60,00,000 i.e.:

$$₹ 1,00,00,000 - (₹ 20,00,000 / ₹ 50,00,000) = ₹ 60,00,000$$

(b) Computation of Arm's Length Price

Particulars	Amount
Resale Price of Goods Purchased from Megabyte Inc.	11,000
Less: Adjustment for Differences –	
a) Normal Gross Profit Margin at 20% of Sale Price [20% x ₹ 11,000]	2,200
b) Incremental Quantity Discount by Megabyte Inc. [₹ 1,500 – ₹ 500]	1,000
c) Difference in Purchase related expenses [₹ 1,200 – ₹ 200]	1,000
Arms Length Price	6,800

Computation of Increase in Total Income of R Ltd

Particulars	Amount
Price at which actually bought from Megabyte Inc. of France	7,500
Less: Arms Length Price per unit under Resale Price Method	6,800
Decrease in Purchase Price per unit	700
No. of units purchased from Megabyte Inc.	3,000 units
Increase in Total Income (3,000 units x ₹ 700)	₹ 21,00,000



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6. (a) Depreciation in the hands of Smile Ltd. for the assessment year 2023-24

Particulars	Amount
Depreciated value of the Plant A and B on 1 st April, 2022	3,00,000
Less: Plant B transferred to Happy Ltd	20,000
WDV as on 31 st March, 2023	2,80,000
Depreciation for the block P.Y.2022-23	1,12,000
WDV at the end of the year	1,38,000

Depreciation in the hands of Happy Ltd. for the assessment year 2023-24

Particulars	Amount
Depreciated value of the block on 1 st April, 2022	60,000
Add: Actual Cost of Plant B acquired from Smile Ltd (See Note)	33,600
WDV as on 31 st March, 2023	93,600
Depreciation on transferred asset [$\text{₹ } 33,600 * \frac{1}{2} * 40\%$]	6,720
Other Asset @ 40% of ₹ 60,000	24,000
Total Depreciation	30,720

Note: Actual Cost of Plant B in the hands of Happy Ltd.

Particulars	Amount
Actual Cost of Plant B in the hands of Smile Ltd on Nov 10, 2020	70,000
Less: Depreciation for P.Y 2020-21 (1/2 of 40% of ₹70,000)	14,000
Balance on April 1, 2021	56,000
Less: Depreciation for the P.Y.2021-22	22,400
Balance on April 1, 2022	33,600

- (b) Following are the disclosure requirement of ICDS III – Construction Contracts

- ✿ A person shall disclose:
 - a. the amount of contract revenue recognised as revenue in the period; and
 - b. the methods used to determine the stage of completion of contracts in progress.
- ✿ A person shall disclose the following for contracts in progress at the reporting date:
 - a. amount of costs incurred and recognised profits (less recognised losses) upto the reporting date;
 - b. the amount of advances received; and
 - c. the amount of retentions.



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7. (a) (A) Computation of Arms Length Price

Particulars	Amount
Cost of TV Set acquired from Sign Inc	15,000
Less: Cost of Warranty	2,000
Arm's Length Gross Profit mark-up	13,000

(B) Computation of Increase in Total Income

Particulars	Amount
Cost of TV Set acquired from Sky Inc [₹ 16,000 * 1,000]	1,60,00,000
Less: Arm's length Value [₹ 13,000 * 1,000]	1,30,00,000
Therefore, Increase in Total Income	30,00,000

(b) Determination of his residential status

During past few previous years, Sri Sen was in India as under:

P.Y.	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
22-23	-	-	-	-	-	-	-	-	2	31	28	31	92
21-22	-	-	-	-	-	-	-	-	17	8	-	-	25
20-21	-	-	-	-	-	-	-	-	-	20	-	-	20
19-20	30	31	30	31	31	30	31	30	1	-	-	-	245
18-19 and back	30	31	30	31	31	30	31	30	31	31	28 or 29	31	365 or 366

Accordingly, his residential status can be decided as under:

Previous Year	Presence in India (In Days)	Resident (R) or Non-resident (NR)	Condition satisfied to became a resident
2022-2023	92	R	6(1)(c)
2021-2022	25	NR	None
2020-2021	20	NR	None
2019-2020	245	R	Both
2018-2019 & back	365 or 366	R	Both

From the above working, it is apparently clear that Sri Sen is satisfying sec. 6(1) and both conditions of sec. 6(6). Hence, he is resident and ordinarily resident in India for the previous year 2022-23.



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Computation of total income

Particulars	Amount	Amount
<u>Salaries</u>		
Salary from Ram Ltd. [₹ 1,00,000 x 3]	3,00,000	
Less: Standard Deduction	50,000	2,50,000
<u>Income from Other Sources</u>		
Interest from SB Account		13,360
Gross Total Income		2,63,360
Less: Deductions		
- U/s 80C [Investment in PPF]	50,000	
- U/s 80TTA [Interest from SB Account subject to max of ₹ 10,000]	10,000	60,000
Total Income		2,03,360
Tax on above		Nil

Filing of return

As per sec. 139(1), an individual is required to file his return of income where income before giving effect to sec. 54, 54B, 54D, 54EC, 54F, 54G, 54GA, 54GB and chapter VIA (i.e., deduction u/s 80C to 80U) exceeds the maximum amount which is not chargeable to income tax. In other words, if his gross total income (without considering deductions under section 54's) exceeds basic exemption limit, he is required to file return of income mandatorily.

In the instant case, gross total income of Sri Sen is more than basic exemption limit applicable for him, hence he is required to file return of income mandatorily.

Form of ITR

He can file his return of income in ITR 1.



SECTION – C

8. (a) Computation of Total Income of Mr. Amin for A.Y. 2023–24

Particulars	₹	₹	₹
Profits and gains of Business or profession			
Income from business in India			11,00,000
Loss from business in Country “Y”		2,50,000	
Less: Set off against royalty income		2,50,000	-
Income from other Sources			
Dividend from companies in Country “X”		2,00,000	
Royalty income from Country “Y”	6,00,000		
Less: Expenditure thereon	50,000		
	5,50,000		
Loss from business in Country “Y”	2,50,000	3,00,000	5,00,000
Gross Total Income			16,00,000
Less: Deduction under Chapter VI-A			
Section 80D Health insurance premium for father, senior citizen is deductible even though he is not dependent on the assessee.		30,000	
Section 80QQB: As the assessee has authored text-book for schools in Country “Y” hence it is not eligible for deduction.		-	30,000
Total Income			15,70,000
Tax on above			2,83,500
Add: Cess			11,340
Tax and cess			2,94,840
Less: Relief u/s 91 [See Working]			76,339
Tax after relief			2,18,500

Working

Average rate of tax in India ₹ 2,94,840 x 100 / ₹ 15,70,000	18.78%	
Average rate of tax in country X	10%	
Doubly taxed income of country X	2,00,000	
Relief u/s 91 would be 10% or average rate @ 18.78%, whichever is lower [10% on ₹ 2 lakhs]		₹ 20,000



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Doubly taxed income of country Y (after set-off of business loss)	3,00,000	
Rate of tax country Y	25%	
Relief u/s 91 would be @ 18.78% or 25% whichever is lower [18.78% on ₹ 3 lakhs]		₹ 56,339
Relief under section 91		₹ 76,339

- (b) Computation of total income of Z Ltd. for the A.Y.2023-24 (as per other provisions of the Act)

Particulars	Details	Amount
Net profit as per books of accounts		1,23,80,000
<i>Add: Expenditure disallowed but debited in P/L A/c</i>		
Excess Depreciation	1,00,000	
Provisions for Contingencies	75,000	
Wealth Tax	50,000	
Provision for bad debts	40,000	
Proposed Dividend	1,00,000	
Provision for income tax	1,05,000	4,70,000
		1,28,50,000
<i>Less: Amount credited to P/L A/c</i>		
Revaluation Reserve	25,000	
General Reserve	1,00,000	1,25,000
		1,27,25,000
<i>Less: Brought forward business loss</i>		35,50,000
		91,75,000
<i>Less: Unabsorbed Depreciation</i>		66,00,000
Total Income		25,75,000

Computation of Book Profit of Z Ltd. for the A.Y.2023-24

Particulars	Details	Amount
Net profit as per books of accounts		1,23,80,000
<i>Add:</i>		
Provision for contingencies	75,000	
Proposed Dividend	1,00,000	
Provision for income tax	1,05,000	
Provision for Bad Debts	40,000	



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Depreciation	5,00,000	8,20,000
		1,32,00,000
<i>Less:</i>		
Depreciation (ignoring depreciation on revaluation)	4,50,000	
Amount transferred from Revaluation Reserve	25,000	
Amount transferred from General Reserve	1,00,000	5,75,000
Book Profit		1,26,25,000

Computation of tax liability of Z Ltd.

Particulars	Amount
Total income as per other provisions of the Act	25,75,000
Tax on above @ 25% [A]	6,43,750
Book profit u/s 115JB	1,26,25,000
15% of book profit [B]	18,93,750
Tax [Higher of A & B]	18,93,750
<i>Add:</i> Surcharge [As total income is ₹ 1,26,25,000]	1,32,563
Tax & Surcharge	20,26,313
<i>Add:</i> Health & Education Cess @ 4%	81,053
Tax Liability (Rounded off u/s 288B)	21,07,370