

Paper 16 - Direct Tax Laws and International Taxation

Answer to MTP_Final_Syllabus 2016_Jun2023_Set1

Paper 16 - Direct Tax Laws and International Taxation

Full Marks: 100

Time allowed: 3 hours

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

Working notes should form part of the answer.

All questions relate to the Income Tax Act 1961 and pertains to Assessment Year 2023-24, unless otherwise stated in the questions

Section – A

1. Choose the correct alternative and also provide your justification: [10×2=20]

- (i) What is the due date of filing the return of income in case of a company who is required to furnish a report in Form No. 3CEB under section 92E?
- September 30 of the assessment year
 - November 30 of the assessment the year
 - July 31 of the assessment year
 - June 30 of relevant assessment the year
- (ii) Return filed under which of the following sections can be revised u/s 139(5)?
- 139(1)
 - 139(4)
 - 139(5)
 - All of the above
- (iii) Notice u/s 143(2) (i.e. notice of scrutiny assessment) should be served within a period of _____ from the end of the financial year in which the return is filed.
- 3 months
 - 12 months
 - 24 months
 - 18 months
- (iv) As per section 115JB, every taxpayer being a company is liable to pay MAT, if the Income tax payable on the total income, computed as per the provisions of the Income-tax Act in respect of any year is less than _____
- 15.50%
 - 18.00%
 - 15.00%
 - 20.00%
- (v) As per section 178(3), the _____ of a company has to intimate the tax authority before he parts with any of the assets of the company or the properties in his hands and has to set aside the amount if any intimated to him by the tax authorities.
- Managing Director
 - Manager
 - Chartered Accountant
 - Liquidator

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- (vi) Any mistake which is apparent from the record in any order passed by the Assessing Officer can be rectified under section _____.
- 154
 - 147
 - 143
 - 254
- (vii) As per section 115QA (3), tax to credit of Government in case of distributed income of domestic company for buy-back of shares shall be deposited within _____ days from date of payment of any consideration to the shareholder on buy-back of shares.
- 7 days
 - 14 days
 - 10 days
 - 30 days
- (viii) If any person fails to keep and maintain any information and document as required by sec. 92D in respect of an international transaction or specified domestic transaction, the Assessing Officer or Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to _____
- ₹ 5,00,000
 - 2% of the value of each international transaction or specified domestic transaction entered into by such person
 - ₹ 1,00,000
 - 1% of the value of each international transaction or specified domestic transaction entered into by such person
- (ix) X Marine Lines Inc., a Singapore company engaged in shipping business collected ₹ 150 lakhs towards carrying goods from Chennai Port. Its presumptive income chargeable to tax in India would be ₹ _____
- 15 lakhs
 - 11.25 lakhs
 - 12 lakhs
 - Nil
- (x) When an assessee fails to furnish any information relating to a specified domestic transaction, the quantum of penalty as a percentage of value of the transaction would be —
- 2%
 - 1%
 - 5%
 - 3%

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Answer:

1.

Sl. No.	Answer	Justification
(i)	(b)	Reason: As per explanation 2 to sec. 139(1), the due date of filing the return in case of a company who is required to furnish a report in Form No. 3CEB u/s 92E is November 30 of the assessment year.
(ii)	(d)	Reason: If an assessee discovers any omission or wrong statement (bonafide in nature) in the return filed u/s 139(1) or 139(4), he can revise his return u/s 139(5) within specified time. Further, a revised return can again be revised within specified time.
(iii)	(a)	Reason: To carry out assessment u/s 143(3), the Assessing Officer should serve a notice u/s 143(2). Notice u/s 143(2) should be served within a period of 3 months from the end of the financial year in which the return is filed.
(iv)	(c)	Reason: As per sec. 115JB, every taxpayer being a company is liable to pay MAT, if the Income-tax payable on the total income, computed as per the provisions of the Income-tax Act in respect of any year is less than 15% of its book profit.
(v)	(d)	Reason: As per section 178(3), the liquidator of a company has to intimate the tax authority before he parts with any of the assets of the company or the properties in his hands and has to set aside the amount if any intimated to him by the tax authorities.
(vi)	(a)	Reason: Any mistake which is apparent from the record in an order passed by the Assessing Officer can be rectified u/s 154.
(vii)	(b)	Reason: As per section 115QA(3), tax to credit of Government in case of distributed income of domestic company for buy-back of shares shall be deposited within 14 days from date of payment of any consideration to the shareholder on buy-back of shares
(viii)	(b)	Reason: If any person fails to keep and maintain any such information and document as required by sec. 92D in respect of an international transaction or specified domestic transaction, 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.
(ix)	(b)	Reason: $\text{₹ } 150 \text{ lakh} \times 7.5\% = \text{₹ } 11.25 \text{ lakhs}$

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(x)	(a)	Reason: 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.
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Section B

(5 Questions to be answered out of 7 questions. Each question carries 16 marks)

2. (a) North Star Consulting Ltd.'s total income during the previous year ended 31st March 2023 is ₹10,50,000. Tax deducted at source by different payers amounted to ₹24,450 and tax paid in foreign country on a doubly taxed income amounted to ₹ 10,000 for which the company is entitled to relief u/sec. 90 as per the double tax avoidance agreement. During the year, the company paid advance tax as under:

Date of payment	Advance tax paid (₹)
15.06.2022	40,000
12.09.2022	65,000
15.12.2022	1,00,000
15.03.2023	62,000

The company filed its return of income for the A.Y. 2023-2024 on 15th October 2023. Compute interest if any payable by the company under sec. 234A, 234B and 234C. Assume that transfer pricing provision is not applicable. **10 marks**

- (b) What will be the tax planning related to employee's remuneration or salary income? **6 marks**

Answer:

2. (a) (1) Computation of interest and total tax payable for the assessment year 2023-24 and previous year 2022-23

Particulars	₹	₹
Total Income		10,50,000
Tax on total income at 30%	3,15,000	
Health & Education Cess at 4%	12,600	
Tax payable (before TDS, credit u/s 90 Advance Tax)	3,27,600	
Less: Relief u/sec 90	(10,000)	
Less: TDS	(24,450)	
Advance tax payable	2,93,150	
Less: Advance Tax paid (40,000+65,000+ 1,00,000+62,000)	2,67,000	26,150
Add: Interest u/s 234A (26,150x1% ¹ x1 month)		262
Add: Interest u/s 234B (WN 3)		Nil
Add: Interest u/s 234C (WN 4)		1,516

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Net Tax Payable (rounded off)	27,928
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2. Computation of month of delay in filing of return of income for the purpose of sec. 234A-
 - (i) Date of filling return = 15.10.2023
 - (ii) Due date for filling return u/s 139(1) = 30.09.2023 (as subject to audit under sec. 234A)
 - (iii) delay = 15 days = 1 month (part of month)
3. Interest u/s 234B = Nil, since more than 90% of tax payable has been paid before the end of the previous year.
4. Computation of interest u/s 234C

Due date	Advance tax (AT) payable	Cumulative actually paid before due date	Minimum tax payable 80%	Difference	Months	Interest at 1% per month
1	2	3	4	5	6	7
15.06.2022	15% of ₹2,93,150 = ₹43,973	₹ 40,000	₹ 43,973 x 80% = ₹35,178	₹ 3,973	-	Nil
15.09.2022	45% of ₹2,93,150 = ₹1,31,918	₹ 1,05,000	₹1,31,918x 80% = ₹1,05,534	₹ 26,918	3	808
15.12.2022	75% of ₹2,93,150= ₹ 2,20,863	₹ 2,05,000	NA	₹ 14,863	3	446
15.03.2023	100% of ₹2,93,150 = 2,93,150	₹ 2,67,000	NA	₹ 26,150	1	262
						1,516

- (b)** The following aspects should be considered while tax planning related to employee's remuneration or salary income:
1. The salary should not be a consolidated one and on the other hand, it should be divided into basic pay and several allowances as some of the allowance may be fully or partially exempt from tax.
 2. There should be an option to the employee for commuted pension up to the maximum limit permissible in the Act as it is exempt from tax to certain specific limit
 3. There should be a provision for encashment of leave on retirement as it is exempt from tax up to a prescribed limit
 4. The employer's contribution to the provident fund should be atleast upto 12% of the salary as the same is exempt from tax. However, upper cap should be kept in mind.
 5. Perquisites are preferable to fixed allowances as the lower valuation of many perquisites helps in the reduction of tax liability

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6. Commission payable should be based on turnover and it must form part of the salary. This will help in reducing the incidence of tax in respect of House Rent Allowance, etc.
 7. The component of the salary should be available as deduction while computing business income of the employer.
3. M/s Bhagirathi Ltd. a manufacturing company, having an annual turnover of ₹ 7,000 lakhs, shows a net profit of ₹ 850 lakhs after debit/ credit of following amounts to its statement of profit and loss account for the year ended 31st March 2023:
- i) Depreciation as per Companies Act ₹ 65 lakhs
 - ii) Employer's contribution to EPF of ₹18 lakhs together with similar amount of Employee's contribution for the month of March, 2023 was remitted on 20th May, 2023. The due date for the remittance to the credit of employer's EPF account being 15th April, 2023)
 - iii) GST paid includes an amount of ₹ 10,500 charged as penalty for delayed filling of returns and ₹15,400 towards interest for delay in deposit of tax
 - iv) An amount of ₹10 lakhs were incurred on notified skill development project u/sec 35CCD
 - v) Loss of ₹ 20 lakhs, on destruction of an old machinery by fire in the factory and ₹ 5 lakhs received as scrap value on this machinery. The insurance company did not admit the claim of the company on the charge of gross negligence
 - vi) Dividend ₹ 15 lakhs from a foreign company in which the company holds 32% of the equity share capital of the company, (expenditure on earning dividend income ₹ 50,000)
 - vii) profit of ₹ 15 lakhs on the sale of a building to X LTD. a domestic company, the entire shares of which are held by the assessee company. The building was acquired by Bhagirathi LTD on 1st December, 2021.

Additional information:

- (1) Normal depreciation computed as per Income Tax Rules is ₹ 92 lakhs.
- (2) During the previous year 2021-2022 the company has purchased a new plant and machinery worth ₹ 20 lakhs on 10th January, 2022. Balance of additional depreciation on this machine is not included in the depreciation computed for the previous year 2022-2023.
- (3) The company had created in the account of a sub- contractor, an amount of ₹7 lakhs on 31st March, 2022 towards repairs of factory building. The tax deducted on such payment was remitted on 31st December, 2022.
- (4) on 15th May, 2023 M/S Bhagirathi Ltd, declared and distributed dividend of ₹ 20 lakhs.

Compute the total income and tax payable by M/S Bhagirathi Ltd. for the Assessment Year 2023-2024 clearly stating the reasons for treatment of each item. Assume that the company has opted for section 115BAA for the A.Y. 2023-24. **16 marks**

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Answer:

3. Computation of total income and tax payable of P.Y. 2022-23 for the A.Y. 2023-24

Particulars	₹	₹
Net profits as per Profits and Loss Account	850.00	
Add: Depreciation as per Company Act 2013	65.00	
Less: Normal Depreciation for income tax purpose	(92.00)	
Add: Employees' contribution to EPF – Paid after due date, disallowed WN 1	18.00	
Less: Additional depreciation (not deductible) WN 2	---	
Less: Employers contribution to pf as or before the due date of submission of return of income. It is deductible, sec 43B is not applicable.	---	
Add: penalty for late payment for delayed filling of GST WN 6	0.105	
Add: Interest for late deposit of GST (it is deductible) WN 6	---	
Less: Disallowance u/sec 40(a)(ia) payment to sub-contractor [7,00,000 x 30%] WN 3	(2.10)	
Add: expenditure on notified skill development project under sec 35CCCD (not deductible) as the assessee has opted for the alternative tax regime u/sec 115BAA	10.00	
Add: Loss due to destruction of machinery by fire (it is capital loss not deductible) WN 7	20.00	
Add: Dividend received from Foreign Company taxable u/s IFOS WN 4	(15.00)	
Less: Scrap value of machinery (capital nature it has to be deducted from depreciation value block of assets) (since it is credited to the statement of profit & loss, it has to be deducted.	(5.00)	
Add: Expenditure on dividend income (as dividend is taxable u/sec 56, expenditure pertaining to dividend income, as amount is debited to P&L A/c it will be added back	0.50	
Less: profit on sale of building to capital gain under sec 45(not taxable as business income)	(15.00)	
Profits and gains from business or profession		834.505
Capital Gain on transfer of building to 100% Indian company WN 8		Nil
Income from other sources [dividend is taxable u/sec 56 only, pertaining to interest is deductible]		15.00
Gross total income		849.505
Less : deductions under Chapter VI –A		
U/Sec. 80 M Inter corporate Dividends WN 5		15.00
Net Income		834.5050
Tax on total Income @ 22% u/s 115BAA		183.591
Add : Surcharge @10% [u/s 115BAA]		18.359
Total tax payable		201.950
Add: health education cess @ 4 %		8.078
Tax Liability		210.028

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Working notes:

1. Employer's contribution to pf shall be made before the due date of filing return. But employees' contribution shall be paid before the due date specified under the respective act, in order to claim deduction as per sec 36(1)(va).
 2. Deduction of 100% is available for new plant commenced on or after 01.04.2010 or in newly installed capacity in an existing plant, for production purposes. In this case, it is assumed that installed capacity is increased by the additional plant, in respect of this expenditure, no other deduction (i.e. depreciation) shall be allowed under any other provisions.
 3. U/sec 40(a) (ia) In case of expenditure in respect of which TDS has not been deducted or having deducted has not been deposited before the due date of filing of return u/sec 139(1). 30% of such expenditure shall disallowed since tax is deducted during previous and remitted before section 139(1) time limit, disallowance is not attracted.
 4. Dividend received from foreign company is taxable under the head "Income under other sources".
 5. Deduction under section 80M, inter-corporate dividend is deductible to the extent of dividend distributed by the investor to its own shareholders within the due date, dividend income ₹ 15,00,000 or ₹ 20,00,000 whichever is less.
 6. The interest of ₹ 15,400 paid on the delayed deposit of GST in breach of contract, since it is allowable deduction. However, penalty of ₹ 10,500 for delay filing of return is not allowable though it is breach of contract.
 7. Loss of ₹ 20 lakhs due to destruction of machinery 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.
 8. Short term capital gains arise on sale of building held for less than 24 months. However, in this case the transfer is to 100% subsidiary which is an Indian Company, the same would not constitute a transfer for levy of capital gains u/sec. 47(v). Since the amounts has been credited to the Statement of P & L, there is no further adjustment is required.
4. (a) (i) What is Dispute Resolution Committee as per Sec. 245MA? Explain briefly. **5 marks**
- (ii) State the cases where best judgement assessment is applicable. **4 marks**
- (b) M/s AP a wholesale enterprise, has sold one of its undertaking consisting of Machinery A (rate of depreciation 30%), Machinery X (rate of depreciation 15%), Building B (rate of depreciation 10%) for ₹ 15,00,000 on 1/9/2022.
1. Machinery A, originally acquired for ₹ 5,00,000 on 1/8/2019
 2. Machinery X, originally acquired for ₹ 10,00,000, the amount of depreciation allowed on such machinery up to the A.Y. 1988-89 ₹ 2,00,000 and depreciation for A.Y. 1989-90 to 2022-23 (assuming this is the only machinery in the block) is ₹ 7,94,000.
 3. Building B acquired on 17/7/2022 for ₹ 4,00,000.

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4. During the year, new machinery Z (15%) purchased for ₹5,00,000 on 7/7/2022.
Compute depreciation for the A.Y. 2023-24:
- Machinery (rate of depreciation 30%) block [WDV as on 1/4/2022 is ₹9,00,000]
 - Machinery (rate of depreciation 15%) block [WDV as on 1/4/2022 is ₹8,00,000]
 - Building (rate of depreciation 10%) block [WDV as on 1/4/2022 is ₹5,00,000].
- 7 marks**

Answer:

4. (a) (i) The Central Government shall constitute Dispute Resolution Committees (one or more) under Sec. 245MA for dispute resolution in the case of such persons or class of persons, as may be specified by the Board.
The assessee have an option to opt (or not to opt) for dispute resolution in respect of dispute arising from any variation in the specified order in his case and who fulfils the specified conditions.
Notwithstanding anything contained in sec. 144C, upon receipt of the order of the Dispute Resolution Committee, the Assessing Officer shall, —
- a. in a case where the specified order is a draft of the proposed order of assessment u/s 144C(1), pass an order of assessment, reassessment or re-computation; or
 - b. in any other case, modify the order of assessment, reassessment or recomputation, in conformity with the directions contained in the order of the Dispute Resolution Committee within a period of 1 month from the end of the month in which such order is received.

The Dispute Resolution Committee, subject to such conditions, as may be prescribed, shall have the powers to reduce or waive any penalty imposable under this Act or grant immunity from prosecution for any offence punishable under this Act in case of a person whose dispute is resolved under this Chapter.

- (ii) Under this section, assessment shall be made by the Assessing Officer to the best of his judgment after considering all relevant materials which he has gathered. Assessing Officer cannot reduce the tax liability of the assessee by assessment under this section. A refund cannot be granted u/s 144.

In the following cases, the best judgement assessment shall be made under this section-

1. If the person fails to file the return u/s 139(1), 139(4) or 139(5) or an updated return u/s 139(8A); or
2. If the person fails to comply with the terms of notice u/s 142(1); or
3. If the person fails to comply with the directions u/s 142(2A) requiring him to get his accounts audited; or

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4. If the person fails to comply with the terms of notice u/s 143(2), requiring his presence or production of evidence and documents. In any of the given situation, the Assessing Officer is under an obligation to make an assessment under this section. In other words, Best judgment assessment is not the discretionary power of the Assessing Officer but mandatory in nature.

(b) Computation of depreciation for Block

Particulars	Machinery (30%)	Machinery (15%)	Building (10%)
W.D.V. as on 1/4/2022	9,00,000	8,00,000	5,00,000
Add: Purchase during the year	Nil	5,00,000	4,00,000
	9,00,000	13,00,000	9,00,000
Less: Sale under slump sale (Working)	1,71,500	6,000	4,00,000
	7,28,500	12,94,000	5,00,000
Depreciation	2,18,550	1,94,100	50,000

Working: Written down value of the asset sold under slump sale

Particulars	Machinery A	Machinery X	Building B
Original cost of asset sold under slump sale	5,00,000	10,00,000	4,00,000
Less: Depreciation (actual) allowed on such asset in respect of any previous year commencing before 1987-88	Nil	2,00,000	Nil
Less: Depreciation (notional) that would have been allowable from the previous year 1987-88 onwards as if the asset is only asset in the relevant block. * Depreciation ₹ 1,50,000 (for 2019-20) + ₹ 1,05,000 (for 2020-21) + ₹ 73,500 (for 2022-23)	3,28,500*	7,94,000	Nil
Written down value of the asset sold under slump sale	1,71,500	6,000	4,00,000

5. **(a)** Would the amounts paid by resident Indian end-users / distributors to non-resident computer software manufacturers / suppliers, as consideration for the use/resale of the computer software through End-User License Agreement (EULAs) / distribution agreements, be considered as payment of royalty for the use of copyright in the computer software? If yes, is it liable for deduction of tax at source u/s 195? Decide with the help of case law. **10 marks**

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- (b) Can bonus shares received by shareholders be taxable under the head 'Income from other sources' as per the provisions of sec. 56(2)(x), as they are received without consideration? Justify your answer with the help of case laws.

6 marks

Answer:

5. (a) In the case of Engineering Analysis Centre of Excellence P. Ltd -vs.- CIT and Another (2021) (SC), the Apex Court observed that as per the definition given in Explanation 2(v) to sec. 9(1)(vi), "royalty" means consideration for, inter alia, the transfer of all or any rights (including the granting of a licence), in respect of any copyright, literary, artistic or scientific work. As per Explanation 4 thereto, such transfer of all or any rights includes transfer of all or any right for use or right to use a computer software (including the granting of a licence). As per the meaning assigned in the DTAA with Singapore, for example, "royalty" means payment of any kind received as consideration for "the use of, or the right to use, any copyright" of a literary, artistic or scientific work. The meaning of royalty in India's DTAA with other countries like Australia, Canada, France, Italy, USA, Netherlands, Sweden, Taiwan, Japan, China etc. is similar if not identical.

The Apex Court observed the following four categories of cases, in which the distribution agreements and end-user licence agreements did not create any interest or right to such distributors or end-users, which would amount to the use of or right to use any copyright:

- a. where computer software is purchased directly by an end-user, resident in India, from a foreign, non-resident supplier or manufacturer.
- b. where resident Indian companies acting as distributors or resellers, purchase computer software from foreign, non-resident suppliers or manufacturers and then, resell the same to resident Indian end-users.
- c. where the distributor happens to be a foreign, non-resident vendor, who, after purchasing software from a foreign, non-resident seller, resells the same to resident Indian distributors or end-users.
- d. where computer software is affixed onto hardware and is sold as an integrated unit/equipment by foreign, non-resident suppliers to resident Indian distributors or end-users.

In all the above cases, the Apex Court has held that the amount paid by resident Indian end-users or distributors to non-resident computer software manufacturers or suppliers, as consideration for the resale or use of the computer software through end-user licence agreements or distribution agreements, is not royalty for the use of copyright in the computer software.

The provisions contained in the Income-tax Act, 1961 [namely, section 9(1)(vi) read along with Explanations 2 and 4 thereof], which deal with royalty, not being more beneficial to the assessee, have no application in the facts of these cases. Consequently, the consideration paid to the non-resident computer

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software manufacturers or suppliers would not be chargeable to tax India. Hence, no tax is required to be deducted at source u/s 195.

As per section 90(2), the provisions of the Income-tax Act, 1961 will apply only to the extent they are more beneficial to the assessee, in a case where India has entered into a DTAA with the other country. In this case, since the provisions under the DTAA are more beneficial, the taxability of the payment would be determined as per the meaning of royalty assigned under the DTAA's.

- (b) In the case of PCIT -vs.- Dr. Ranjan Pai (2021) 431 ITR 250 (Kar), the issue of bonus shares by capitalization of reserves is merely a reallocation of the company's funds. There is no inflow of fresh funds or increase in the capital employed, which remains the same. Thus, there is no addition or alteration to the profit-making apparatus and the total funds available with the company remain the same. On the other hand, 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.

Accordingly, the High Court held that the bonus shares were not issued in order to evade any tax so to attract the provisions of sec. 56(2)(x). Hence, the provisions of sec. 56(2)(x) would not be attracted in the hands of the recipient shareholders on receipt of bonus shares.

6. (a) X Ltd. is an Indian Company. It is Indian subsidiary of A Inc. (a US company having business connections in US Europe and Asia). X LTD. has taken a loan from A Inc. from the data given below, find out dis allowance under sec. 94B and net income of X LTD. for assessment years 2022-2023 and 2023-2024.

(₹ in crore)

		Previous Year	
		2021-2022	2022-2023
- Business income (calculated after deducting the following)-	(A)	156	400
- Interest to A Inc.	(B)	130	140
- interest to others in India and outside India (recipients are not associated enterprises)	(C)	70	90
- Depreciation (normal and additional) under section 32	(D)	30	20
- Amounts deductible under section 35	(E)	10	5
- Amortization of expenses under section 35D	(F)	15	15
- Investment in allowance under sec 32 AD	(G)	25	Nil
Transfer pricing adjustment under section 92 out of (b) made by IPO	(H)	20	40

10 marks

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- (b) Mr. Bansal, a resident Indian and aged 67 years has, derived following income during the previous year 2022-2023:

Particulars	Amount (₹)
(i) Income from Business in India	2,50,000.00
(ii) Commission (Gross) from a company in Hong Kong (Tax paid in Hong Kong ₹ 60,000)	3,00,000.00
(iii) Dividend (gross) from a company in Hong Kong (Tax paid in Hong Kong ₹ 18,000)	90,000.00
(iv) Interest on fixed deposits and savings Accountant with Banks in India	2,00,000.00

India has no double tax avoidance agreement with Hong Kong. Compute the Income tax payable by Mr. Bansal for Assessment Year 2023-2024. **6 marks**

Answer:

6. (a)

		₹ in crore	
Particulars		2021-2022 Amount	2022-2023 Amount
Business income	(A)	156	400
Add: Disallowance Under section 92 Under section 94B [see note 1]	(H)	20	40
Less: Adjustment of carry forward of disallowance under sec 94AB [see note 2]	(S)	---	9.5
Net income			
Note 1 – Computation of disallowance under sec 94B		235.7	430.5
Interest to A Inc. (deductible under provisions other than sec. 94B [(B)-(H)]=I)	(I)	110	100
Interest to others	(C)	70	90
Total interest (deductible under provisions other than sec 94B [(I)+(C)] = J)	(J)	180	190
Earnings before interest, tax, depreciation and amortization (EBITDA)			
- Business income (taxable if sec. 94B is ignored) [(A)+(H)] = K	(K)	176	440
- add: interest to A Inc. (deductible if sec. 94B is ignored) [(B) – (H)]=[L]	(L)	110	100
- add: Interest to others, depreciation, amortization under section 35D [(C)+(D)+(F)] = [M]	(M)	115	125
EBITDA [(K)+(L)+(M)] = [N]	(N)	401	665
30% of EBITDA	(O)	120.3	199.5
Excess of interest over 30% of EBITDA [(J)-(O)] = [16]	(P)	59.7	Nil
Disallowance under sec. 94B [(P) or (I)] , whichever is less]	(R)	59.7	Nil

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Disallowance to be carried forward to next year [(Q) – (S)]	(Q)	59.7	50.2
Note 2 – Adjustment of carry forward of disallowance under sec. 94B(4)			
- Amount of disallowance brought forward	(Q)		59.7
- 30% of EBITDA not utilized during the current year [(O) – (J)] = 20	(R)	---	9.5
Amount deductible under sec. 94B(4) [(Q)] or [(R)] , whichever is lower	(S)		9.5

- (b) Computation of Total Income and Tax Payable of the previous year 2022-2023 for assessment year 2023-2024:

Particulars	₹	₹
Profits and gains from Business or Profession		
Income from Business in India		2,50,000
Commission Income from HONG KONG		3,00,000
Income from other sources		
Dividend from Company in Hong Kong		90,000
Interest on fixed and savings deposits in India		2,00,000
Gross total Income		8,40,000
Tax on total income [5 % on (₹ 8,40,000- ₹ 3,00,000)]		27,000
Add: Health & Education Cess @ 4%		1,080
Total tax payable		28,000
Average rate of Indian Tax (₹ 28,080/ ₹ 8,40,000)	3.34%	
Average rate of Foreign Tax (₹ 78,000/₹3,90,000)	20.00%	
Less : Relief u/s 91 at 3.34 % on Foreign income of ₹3,90,000		13,026
Net Tax payable (Rounded –off)		15,054

7. (a) Khazana Ltd is an Indian Company engaged in the business of developing and manufacturing Industrial components. Its Canadian Subsidiary Techpro Inc. supplies technical information and offers technical support to Khazana for manufacturing goods, for a consideration of Euro 1,00,000 per year. Income of Khazana Ltd is ₹ 90 Lakhs. Determine the Taxable Income of Khazana Ltd if Techpro charges Euro 1,30,000 per year to other entities in India. What will be the answer if Techpro charges Euro 60,000 per year to other entities. (Rate per Euro may be taken at ₹ 50) **6 marks**
- (b) Mr. Ashoke an Individual resident in India, aged 52 years earned Royalty Income of ₹15 lakhs from XY Inc. of Canada for writing articles in newspapers and magazines for the year ended 31.03.2023. however, has received only ₹ 12.50 lakhs during the previous year 2022-2023 and the balance is outstanding as on 31.03.2023. He maintains cash system of accounting for the royalty income. He also earned a rental income of ₹10,000 which is not allowed as deduction in Canada. DTA between India and Canada provides for tax @ 15% in Canada without prejudice to taxation of the same income in India. He further received

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₹3.5 lakhs during the year, as dividend from X Ltd an Indian company on 01.04.2022 he took an educational loan from bank for his son who was pursuing MBA. Annual repayment of loan and interest amounted to ₹1.20 lakhs and ₹0.24 lakhs respectively.

Compute the total Income and tax payable by Mr. Ashoke in India for the assessment year 2023-24, assuming that he does not opt for selection 115BAC.

10 marks

Answer:

7. (a) Computation of Total Income of Khazana Ltd

Particulars	Amount	Amount
When price charged for Comparable Uncontrolled Transaction	€ 1,00,000	€ 50,000
Price actually paid by Khazana Ltd [€1,00,000 x ₹ 50]	50,00,000	50,00,000
Less: Price charged in Rupees (under ALP)		
[€1,30,000 x ₹ 50]	65,00,000	
[€60,000 x ₹ 50]		30,00,000
Incremental Profit on adopting ALP (A)	(15,00,000)	20,00,000
Total Income before adjusting for differences due to Arm's Length Price	90,00,000	90,00,000
Add: Difference on account of adopting Arm's Length Price [if (A) is positive]	NIL	20,00,000
Total Income of Khazana Ltd.	90,00,000	1,10,00,000

Note: u/s 92(3), Taxable Income cannot be reduced on applying ALP. Therefore, difference on account of ALP which reduces the Taxable Income is ignored.

(b) Computation of income from House Property of previous year 2021-22 for the assessment year 2022-23

Particulars	₹ in lakhs	₹ in lakhs
Income from house property [house situated in country Canada]		
Annual value u/sec 23(1)(a)/(b) (see note 1)	2.40	
Less: Municipal Taxes paid	(0.10)	
Net annual Value	2.30	
Less: Deduction u/sec 24 – 30% of NAV (₹ 2.30 lakhs x 30%)	0.69	
Income from House property		1.61
Profits and gain of business or profession		
Royalty form literary books (less unrealized Royalty ₹2.5 lakhs)		12.50
Income from other sources		
Dividend from X Ltd (₹ 3,50,000 x 100/90) refer note 3		3.89

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Gross Total Income		18.00
Less : deduction under chapter VI-A		
(a) 80E – Interest on educational loan	(0.24)	
(b) 80QQB – royalty	Nil	
		(0.24)
		17.76
Total Income		
Tax on total income		
[₹1.125 lakhs+30% (₹17.76 lakhs-₹10 lakhs)]	3.453	
Add: health and education Cess @ 4 %	0.138	
Total tax payable	3.591	
		1.474
Average rate of Indian tax $(3.591 \div 17.76 \times 100) = 20.22\%$		
Average rate of foreign tax 15%		
Less: Relief u/s 90@ 15 % on foreign income 14.11 lakhs (i.e. 1.61 lakhs + 12.50 lakhs)	(2.12)	
Tax payable		

Note:

1. Determination of annual value of 2nd unit: since it is identical unit, both the house properties occupy equal floor space.
 - (a) Higher of MV or FR
 - (b) Lower of ₹ 1,22,000 as per above or standard rent
2. Deduction u/s 80QQB is not available as “books “shall not include brochures, commentaries, diaries, guide, journals, magazine, newspapers pamphlets, tracks and other publications of similar nature, by whatever name called.
3. Since TDS would have been deducted @ 10 %, the amount includible in the total income need to be grossed up.

8. Short note (any 4 questions to be answered out of 5 questions). [4x4 marks=16 marks]

- (a) Computation of undisclosed foreign income and asset u/s 5 of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.
- (b) Comparison between AS7 and ICDS III.
- (c) Power to impound or retain books of Income Tax Authority [Sec. 131(3)].
- (d) Power of Principal Commissioner or Commissioner to Grant Immunity from Penalty [Sec. 273AA].
- (e) Charge of equalisation levy on e-commerce supply of services [Sec. 165A].

Answer:

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8. (a) Computation of undisclosed foreign income and asset u/s 5 of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015:
- 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,
 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.

(b) Comparison between AS 7 and ICDS III:

	AS 7	ICDS III
Recognition of contract revenue	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
Retention money	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
Allowability of losses including probable / expected loss	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 Work in progress recognition	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

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Early stage of contract – Non-recognition of revenue	<ul style="list-style-type: none"> – 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%
Pre-construction incidental income	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

- (c)** Power to impound or retain books of Income Tax Authority [Sec. 131(3)]:
Any income tax authority [referred in sec. 131(1) or (1A) or (2)] may impound and retain in its custody any books of account or other documents produced before it in any proceedings under this Act. However, an Assessing Officer or an Assistant Director or Deputy Director shall not -
- 1) Impound any books of account or other documents without recording his reasons for doing so;
 - or
 - 2) Retain in his custody any such books or documents for a period exceeding 15 days (exclusive of holidays) without obtaining (prior) approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner or Principal Director or Director.

Time limit for retention: The books of account or other documents seized or deemed seized shall not be retained by the authorised officer for a period exceeding 30 days from the date of the order of assessment u/s 143 or 144 or 147.

Exception:

It can be retained for more than 30 days on fulfillment of the following conditions-

1. The reasons for retaining the same are recorded in writing; and
2. The (prior) approval of the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director for such retention is obtained.

- (d)** Power of Principal Commissioner or Commissioner to Grant Immunity from Penalty [Sec. 273AA]:

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1. A person may make an application to the Principal Commissioner or Commissioner for granting immunity from penalty, if —
 - (A) he has made an application for settlement u/s 245C and the proceedings for settlement have abated u/s 245HA; and
 - (B) the penalty proceedings have been initiated under this Act.
2. The application to the Principal Commissioner or Commissioner shall not be made after the imposition of penalty after abatement.
3. The Principal Commissioner or Commissioner may, subject to such conditions as he may think fit to impose, grant to the person immunity from the imposition of any penalty under this Act, if he is satisfied that the person has, after the abatement, co-operated with the income-tax authority in the proceedings before him and has made a full and true disclosure of his income and the manner in which such income has been derived.
4. The order, either accepting or rejecting the application in full or in part, shall be passed within a period of 12 months from the end of the month in which the application is received by the Principal Commissioner or the Commissioner. Further, no order rejecting the application, either in full or in part, shall be passed unless the assessee has been given an opportunity of being heard.
5. The immunity granted to a person shall stand withdrawn, if such person fails to comply with any condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.
6. The immunity granted to a person may, at any time, be withdrawn by the Principal Commissioner or Commissioner, if he is satisfied that such person had, in the course of any proceedings, after abatement, concealed any particulars material to the assessment from the income-tax authority or had given false evidence, and thereupon such person shall become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

(e) Charge of equalisation levy on e-commerce supply of services [Sec. 165A]:

Equalisation levy shall be charged @ 2% of the amount of consideration received or receivable by an e-commerce operator from e-commerce supply or services made or provided or facilitated by it—

1. to a person resident in India; or
2. to a non-resident in the specified circumstances; or
 - "Specified circumstances" mean—
 - i. sale of advertisement, which targets a customer, who is resident in India or a customer who accesses the advertisement through internet protocol address located in India; and

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- ii. sale of data, collected from a person who is resident in India or from a person who uses internet protocol address located in India
3. to a person who buys such goods or services or both using internet protocol address located in India.

Exception:

The equalisation levy shall not be charged:

1. the consideration received or receivable for e-commerce supply or services shall not include the consideration, which are taxable as royalty or fees for technical services in India, read with the agreement notified u/s 90 or 90A of the Income-Tax Act.
2. where the e-commerce operator making or providing or facilitating e-commerce supply or services has a permanent establishment in India and such e-commerce supply or services is effectively connected with such permanent establishment;
3. where the equalisation levy is leviable u/s 165 [i.e. A supra]; or
4. sales, turnover or gross receipts, as the case may be, of the e-commerce operator from the e-commerce supply or services made or provided or facilitated is less than ₹ 2 crore during the previous year.