

**Paper 16-DIRECT TAX LAWS
AND
INTERNATIONAL TAXATION**

Answer_MTP_Final_Syllabus 2016_June 2018_Set 1

Paper 16 – Direct Tax Laws and International Taxation

Time Allowed: 3 Hours

Full Marks: 100

Section-A

1. Multiple Choice Questions with Justification 10x 2 = 20 Marks
- i. MAT credit can be set off and carry forward for _____ years.
 - A. 5 years
 - B. 8 years
 - C. 10 years
 - D. 15 years
 - ii. Non-corporate taxpayer to whom the provisions of AMT apply is required to obtain a report from a chartered accountant in Form No. _____ on or before the due date of filing the return of
 - A. 29
 - B. 29A
 - C. 29AB
 - D. 29C
 - iii. As per section 47(vib), any transfer in a demerger of a capital assets by the demerged company to the resulting company is not treated as transfer provided the resulting company is an _____ company.
 - A. Foreign Company
 - B. Domestic Company
 - C. Indian Company
 - D. None of the above
 - iv. Specified domestic transaction means a transaction where the aggregate of such international transaction entered into by the assessee in the previous year exceeds a sum of ₹ _____ crore.
 - A. 5 crore
 - B. 8 crore
 - C. 10 crore
 - D. 20 crore
 - v. Two enterprises shall be deemed to be associated enterprises if one enterprise holds shares carrying not less than ____% of the voting power in another enterprise.
 - A. 10%
 - B. 20%
 - C. 26%
 - D. 51%
 - vi. An application for advance pricing agreement shall be made in Form No _____.
 - A. 3CEE
 - B. 3CED
 - C. 3CEDA
 - D. None of the above
 - vii. The annual compliance report shall be furnished by the assessee to the Director General of Income Tax (International Taxation) in Form No. _____.
 - A. 3CEE
 - B. 3CED
 - C. 3CEF
 - D. None of the above
 - viii. In case of Political Party the return of income is verified by _____.
 - A. Karta
 - B. Principal officer
 - C. Chief executive officer
 - D. Any Partner

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- ix. **TDS rate on Income of FII from securities.**
A. 5%
B. 10%
C. 15%
D. 20%
- x. **MAT provision shall not apply to any income accruing or arising to a company from _____.**
A. **Insurance Business**
B. **Banking Business**
C. **Life Insurance business**
D. **None of the above.**

Answer:

Sl/No.	Options	Reasons
1.	D	The amount of tax credit shall be carried forward and set off but such carry forward shall not be allowed beyond the 15 th assessment year immediately succeeding the assessment year in which tax credit becomes allowable.
2.	D	Every non-corporate taxpayer to whom the provisions of AMT apply is required to obtain a report from a chartered accountant in Form No. 29C on or before the due date of filing the return of income
3.	C	As per section 47(vib), any transfer in a demerger of a capital assets by the demerged company to the resulting company is not treated as transfer provided the resulting company is an Indian company.
4.	D	Specified domestic transaction means a transaction where the aggregate of such transactions entered into by the assessee in the previous year exceeds a sum of ₹ 20 crore.
5.	C	Two enterprises shall be deemed to be associated enterprises if one enterprise holds shares carrying not less than 26% of the voting power in another enterprise.
6.	B	An application for advance pricing agreement shall be made in Form No 3CED.
7.	C	The annual compliance report shall be furnished by the assessee to the Director General of Income Tax (International Taxation) in Form No. 3CEF.
8.	C	In case of Political Party the return of income is verified by Chief Executive Officer.
9.	D	TDS rate on Income of FII from securities is 20%.
10.	C	MAT provision shall not apply to any income accruing or arising to a company from Life Insurance business.

Section-B

Answer any five questions out of seven questions)

2.a. R Ltd files return of Income declaring an income of ₹ 4,40,000 for assessment year 2018-19. A sum of ₹ 23,000 have already been deducted at source on the income of R Ltd. during the financial year 2017-18. The company has paid advance tax as under;

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Due Dates	Amount (₹)
On 15.06.2017	12,000
On 15.09.2017	36,000
On 15.12.2017	30,000
On 15.03.2018	25,000

Calculate the interest payable by R Ltd under section 234C.

8 Marks

2.b. Discuss the Doctrine of form and substance in the context of tax planning.

8 Marks

Answer:2.a.

	Amount (₹)
Tax on ₹ 4,40,000 @ 30%	1,32,000
Add: Education cess and SHEC @ 3%	3,960
	1,35,960
Less: TDS	23,000
Tax due on returned Income	1,12,960

Date upto which tax is payable	Advance tax required to paid to avoid interest u/s 234C	Advance tax paid till date	Interest payable on	Rate and Period of Interest
15.06.2017	12% of ₹ 1,12,960 =13,555	12,000	₹ 16,9444 (15% of ₹ 1,12,960) - 12,000= 4,944	1% p.m for 3 months on ₹ 4,900
15.09.2017	36% of ₹ 1,12,960 =40,666	12,000+36,000=48,000	Nil	Nil
15.12.2017	75% of ₹ 1,12,960 =84,720	48,000+30,000=78,000	84,720-78,000 =6,720	1% p.m for 3 months on ₹ 6,700
15.03.2018	100% of ₹ 1,12,960 =1,12,960	78,000 + 25,000 =1,03,000	1,12,960-1,03,000 =9,960	1% p.m for one months on ₹ 9,900

Sl/No	Interest u/s 234C	Amount (₹)
1.	4,900 x 1% x 3 months	147
2.	--	Nil
3.	6,700 x 3%	201
4.	9,900 x 1%	99
	Total Interest Payable	447

Answer:2.b.

Doctrine of form and substance in the context of tax planning:

The following are certain principles enunciated by the Courts on the question as to whether it is the form or substance of a transaction, which will prevail in income-tax matters:

1. Form of transaction is to be considered in case of genuine transactions: It is well settled that when a transaction is arranged in one form known to law, it will attract tax liability whereas, if it is entered into in another form which is equally lawful, it may not. Therefore, in considering whether a transaction attracts tax or not, the form of the transaction put through is to be considered and not the substance. This rule cannot naturally apply where the transaction, as put through by the assessee, is not genuine but colourable or is a mere device. For here, the question is not one

between 'form' and 'substance' but between appearance and truth. [Motor and General Stores (P) Ltd. -vs.- CIT (1967)]

- 2. True legal relation is the crucial element for taxability:** A firm transferred its business assets to a company formed for its purposes. The same business was carried by the company consisting of the erstwhile partners as its shareholders. The Income-tax Officer sought to withdraw the depreciation allowed (the difference between sale price and written-down value) on machinery. Tribunal and High Court has held that there was change only in the form of ownership as persons behind both firm and company were the same. The Apex Court has held that it is open for the authorities to pierce the corporate veil and look behind the legal facade at the reality of the transaction. The taxing authority is entitled as well as bound to determine the true legal relation resulting from a transaction. The true legal relation arising from a transaction alone determines the taxability of a receipt arising from the transaction [CIT -vs.- B.M. Kharwar (1969) (SC)]
- 3. Substance (i.e. actual nature of expense) is relevant and not the form:** Where the authorities are charged under the Act with the duty of determining the nature or purpose of and payment or receipt on the facts of a case, it is open to them to work at the substance of the matter and the formal aspect may be ignored.
 - In the case of an expenditure, the mere fact that the payment is made under an agreement does not preclude the department from enquiring into the actual nature of the payment [Swadeshi Cotton Mills Co. Ltd. -vs.- CIT (1967) (SC)].
 - In order to determine whether a particular item of expenditure is of revenue or capital nature, the substance and not merely the form should be looked into. [Assam Bengal Cement Co. Ltd. -vs.- CIT (1955) (SC)]. Where the terms of a transaction are embodied in a document, it should not be construed only in its formal or technical aspect. While the words used should be looked at, too much importance should not be attached to the name or label given by the parties and the document should be interpreted so as to accord with the real intention of the parties as appearing from the instrument.
 - Certain shares were held in the name of others, but the deceased was the real owner of the shares as was found with reference to evidence. The High Court had held that the shares were not includible in the estate of the deceased as they were not in his name. The Supreme Court pointed out that, in substance, the deceased was the owner though only beneficially and upheld the inclusion for estate duty purposes [CED -vs.- Alope Mitra (1980)]

Formation of Tax Laws

Article 265 of the Constitution of India states that no tax shall be levied or collected except by authority. In Murthy Match Works case, it is stated that:

"It is well established that the modern State, in exercising its sovereign power of taxation, has to deal with complex factors relating to the objects to be taxed, the quantum to be levied, the conditions subject to which the levy has to be made, the social and economic policies which the tax is designed to subserve, and what not."

Though wide latitude is given to the legislature in the matter of levy of taxes, what is needed, firstly, is that the tax statute should be constitutionally valid to pass the muster of Article 14 of the Constitution of India.

Secondly, liability of tax depends upon the charging section. No tax is complete nor a charge can raise under a fiscal statutes unless the subject, the object and the quantum of tax are prescribed. In the case of State of Tamil Nadu -vs.- M K Kandaswami, the Apex Court has held that the essence of tax laws depends upon three inter-related and distinct concepts which are:

- a. Who is taxable person;
- b. What is taxable event; and
- c. What is subject matter of taxation.

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3. XYZ is engaged in the manufacture of fertilizer since 04.04.2012. Its statement of profit and loss shows a net profit of ₹ 700 Lakhs after debit and credit of the followings items; 16 Marks

1. Depreciation calculated on the basis of useful life of assets as per provisions of the Companies Act, 2013 is ₹ 50 Lakhs.
2. Normal depreciation calculated as per Income Tax Rules is ₹ 80 Lakhs.
3. Employer contribution to EPF of ₹ 2 lakhs together with the Employee's contribution of ₹ 2 Lakhs for the month of March, 2018 was remitted on 08.05.2018
4. The company appended a note to its Income Statement that industrial power traffic concession of ₹ 2.5 Lakhs received from state government and treated as same as capital receipts.
5. The company had provided an amount of ₹ 25 Lakhs being sum estimated as payable to workers based on agreement to be entered with the workers union towards periodical wage revision once in 3 years. The provision is based on a fair estimation on wage and probable revision.
6. The company had made a provision of 10% of its debtors towards bad and doubtful debts. Total sundry debtors of the company as on 31.03.2018 was ₹ 200 Lakhs.
7. A debtor who owed the company an amount of ₹ 40 crores was declared insolvent and hence, was written off.
8. Sundry creditor includes an amount of ₹ 50 Lakhs payable to A & Co. towards supply of raw materials, which remained unpaid due to quality issues. An agreement has been made on 31.03.2018 to settle the amount at a discount of 75% of the outstanding.
9. The opening and closing stock of the year were ₹ 200 lakhs and ₹250 Lakhs respectively. They were overvalued by 10%.
10. Provision for gratuity based on actuarial valuation was ₹ 5 crores. Actual gratuity paid was ₹ 3 crore.
11. Commission of ₹ 1 Lakh paid to a recovery agent for realization of a debt. Tax has been deducted and remitted as per chapter XVIIIB of the Act.
12. The company has purchased 500 units of industrial paper as packing material at a price of ₹ 30,000/ton from PQR, a firm in which majority of the directors are partners. PQR's normal selling price in the market for the same material is ₹ 28,000/ton.

Additional Information:

- a. There was an addition to plant and machinery amounting to ₹ 50 Lakhs on 10.06.2017
- b. The company had credited a sub contractor an amount of ₹ 8 Lakhs on 31.03.2017 towards repairing machinery components. The tax so deducted was remitted on 31.10.2017.
- c. The company has collected ₹ 10 Lakhs as sales tax from its customers and paid the same on the due date. However on an appeal made high court directed the states tax department to

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refund ₹ 2 Lakhs to the customer from whom the amount was collected and the balance of ₹ 1 lakhs is still lying under the head "Current Liabilities".

Compute the total income and tax payable. Ignore MAT provisions.

Answer:3.

Computation of Total Income of XYZ Ltd for the Assessment Year 2018-19

	Amount (₹)	Amount (₹)
Profit & Gains from business and profession		7,00,00,000
Net profit as per profit and loss account		
Add: Item debited but to be considered separately or to be disallowed		
Depreciation as per books	50,00,000	
Employees contribution to EPF (see note 1)	2,00,000	
Provision for doubtful debts (10% of ₹ 200 Lakhs) not allowed as it is allowed only to banks and financial institutions	20,00,000	
Provision for gratuity (See Note 5)	10,00,000	2,82,00,000
		9,82,00,000
Less: Items credited but to be considered separately/ permissible expenditure and allowances		
Additional depreciation not debited to the profit & Loss Account Additional depreciation @ 20% is allowable on ₹ 50 Lakhs, being actual cost of new plant & Machinery acquired on 10.06.2017, assuming that the same is put to use for more than 180 days in the P.Y 2017-18.	10,00,000	
Payment to a sub contractor where tax deducted last year was remitted after the due date of filling of return 30% of ₹ 8 lakhs.	2,40,000	
Overvaluation of stock [₹ 50 Lakhs x 10/110]	4,54,545	16,94,545
		9,65,05,455
Add: Sales tax not refunded to customer out of sales tax refund		1,00,000
Total Income		9,66,05,455
Total Income (rounded off)		9,66,05,460

Computation of tax liability of XYZ Ltd for the Assessment Year 2017-18

	Amount (₹)
Tax @ 30% on total income of ₹ 9,66,05,460	2,89,81,638
Add: Surcharge @ 7%	20,28,715
	3,10,10,353
Add: Education cess and SHEC @ 3%	9,30,311
Total Tax liability	3,19,40,664
Total Tax Liability (rounded off)	3,19,40,660

Notes:

- There are two views regarding the employees contribution to PF deposited after the due date mentioned under the PF Act.
First view: is not allowable as deduction as per section 36(1)(va). The same has also been affirmed by the Gujarat High Court in the case of CIT v Gujarat State Road Corporation (2014) 366 ITR 110 held that employees contribution to Provident Fund deposited after the due date mentioned under the Provident Fund Act shall be not be allowed as deduction.
Second View:

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In CIT v AIMIL Ltd (2010) 321 ITR 508 (Del); CIT v Nipso Polyfabriks Ltd (2013) 350 ITR 327 (HP) and CIT v Kiccha Sugar Co. Ltd (2013) 356 ITR (Uttarakhand), it was held that employee contribution to PF, shall be allowed as deduction from the income of the employee-assessee, if the same is deposited by the employer assessee with the provident fund authority on or before the due date of filing of return for the relevant previous year.

In the above solution, first view has been taken and the employees' contribution to PF has been disallowed while computing business income.

2. Employer's contribution to EPF allowed, since, the payment has been made before the due date specified u/s 139(1).
3. Provisions for wages payable to workers. There has been wage revision every three years. The company was formed in 2012. Since the provisions are based on a fair estimation of wage and probable revision, the same can be recognised for the purpose of income computation. [Cit v BHEL Ltd (2013) 352 ITR 88 (Del)]
4. Bad debt write off in the books of account is allowable as deduction under section 36(1)(vii). Since the same has already been debited to profit and loss account, no further adjustment is required.
5. Provision of ₹ 500 lakhs for gratuity based on actuarial valuation is not allowable as deduction as per section 40A(7). However, actual gratuity of ₹ 300 Lakhs paid is allowable as deduction. Hence the difference has to be added back.
6. Discount of 75% given by the sundry creditors for supply of raw materials is taxable under section 41(1). Since the same has already been credited to profit and loss account, no further adjustment is required.
7. Commission of ₹ 1 lakhs paid to a recovery agent for realisation of a debt is an allowable expense under debited to profit and loss account, no further adjustment is required.
8. Depreciation as per Income Tax Act, 2016 already debited in profit and loss account, hence, no adjustment is required.

4.a. Mrs X filed return of A.Y 2013-14 declaring an income of ₹ 3,25,000. She had been assessed under section 143(3) and the assessing officer made the following additions;

- i. **Unexplained cash credit for want of confirmation from creditors ₹ 2,00,000.**
- ii. **Disallowance in respect of travelling expenditure of ₹ 46,000 for tour to Chennai for effecting sales there, as Mrs X failed to establish that the expenditure had been incurred for the purpose of business.**

At a later stage, he has been served with a notice under section 148 for income escaping assessment in respect of A.Y 2013-14. During the course of reassessment proceedings, the Assessing Officer sought to add unaccounted sales of ₹ 4,00,000 made at Chennai.

During the course of hearing, the assessee produced confirmation from creditors and requested to delete the addition for unexplained cash credit of ₹ 2,00,000 and to allow deduction of travelling expenditure of ₹ 46,000.

Discuss the validity of the contention raised by the assessee.

8 Marks

4.b. X Ltd transferred its fertilizer business to a new company Y Ltd by way of demerger with effect from appointed date of 01.04.2016 after satisfying the conditions of demerger. Further information given;

- i. **WDV of the entire block of plant and machinery held by X Ltd as on 01.04.2016 is ₹ 100 crores;**
- ii. **Out of the above, WDV of block of plant and machinery of fertilizer division is ₹ 70 crore;**
- iii. **X Ltd has absorbed depreciation of ₹ 50 Lakhs as at 31.03.2016;**

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On the above facts:

- i. You are required to explain the provisions of the income tax as to the allowability of depreciation, post merger, in the hands of X Ltd and Y Ltd as at 31.03.2017 duly calculating the depreciation.
- ii. State how the unabsorbed depreciation has to be dealt with for the assessment year 2017-18.

8 Marks

Answer:4.a.

Where reassessment is made under section 147 in respect of income which had escaped tax, the Assessing Officer jurisdiction is confined only to such income which has escaped tax and does not extend to re opening or reconsidering the whole assessment or permitting the assessee re-agitate questions which had been decided in original assessment proceedings, unless relatable to an item sought to be taxed as "escaped income".

CIT v Sun Engineering Works (P) Ltd (1992) 198 ITR 297 (SC).

Therefore, considering the Supreme Court decision in the above case, the assessee cannot seek review of a concluded item, i.e. unexplained cash credit, which is unconnected with escaped income. However, request for allowing travelling expenditure can be considered because it is relatable to income which is sought to be assessed as escaped income i.e. unaccounted sales affected in Chennai.

Answer:4.b.

- (i) As the conditions laid down in section 2(19AA), have been satisfied the depreciation claim is subject to the following provisions:
 1. Where there is demerger of a company the resulting company will be entitled to depreciation on the written down value of the block of assets transferred to it, which will be written down value of the transferred assets of the demerged company immediately before the demerger.[Explanation 2B to section 43(6)]
 2. Where there is demerger of a company the written down value of the block of assets in the hands of the demerged company shall be written down value of the demerged company for the immediately preceding previous year as reduced by the written down value of the assets transferred to the resulting company pursuant to the demerger.[Explanation 2A to section 43(6)]
 3. Depreciation on plant and machinery in the hands of X Ltd and Y Ltd will be computed below:

	Amount in Crores	
	X Ltd	Y Ltd
WDV of plant and machinery	30.00	70.00
Less: Depreciation @ 15%	4.50	10.50
WDV as at 31.3.2017	25.50	59.50

- ii. Set off of unabsorbed depreciation:
- (i) In case of demerger section 72A(4) provides as under:
- (i) The unabsorbed depreciation directly relatable to the undertakings transferred to the resulting company is allowed to be carried forward and set off in the hands of the resulting company.
- (ii) Where such unabsorbed depreciation is not directly relatable to the undertaking transferred to the resulting company, it has to be apportioned between the demerged company and the resulting company in the same proportion in which the assets of the undertakings have been retained by the demerged company and transferred to the resulting company.
- (iii) The demerged company and the resulting company would be allowed to carry forward and set off their respective proportion of unabsorbed depreciation, as calculated above, for indefinite period as per section 32(2). However, brought forward business loss can be carried forward for the unexpired period of 8 years.

5.a. Critically comment with the help of a case law-

“Income from the sub-licensing of property is taxable as house property income and not business income”.

8 Marks

5.b. Critically comment with the help of a case law-

“Securities premium shall not be considered as a part of the capital employed for the purpose of sec. 35D”.

8 Marks

Answer:5.a.

Raj Dadarkar & Associates -vs.- ACIT (2017) (SC)

Income from the sub-licensing of property is taxable as house property income and not business income

The Maharashtra Housing and Developing Authority (MHADA) had constructed buildings. However, there was a reservation for Municipal retail market on the plot on which MHADA had constructed. Therefore, MHADA handed over the ground floor [stilt portion] of the above said buildings to Market Department of Municipal Corporation Greater Bombay (MCGB). In 1993, the Markets Department of the MCGB auctioned the property on a monthly license [stallage charges] basis to run the municipal market. The assessee participated in the auction and was the successful bidder. Accordingly, MCGB handed over possession of the market portion to the assessee. The premises allotted to the assessee was a bare structure, on stilts, that is, a pillar/column, sans even four walls. In terms of the auction, it was the assessee who had to make the entire premises fit to be used a market, including the construction of walls, construction of entire common amenities such as toilet blocks, etc. Accordingly, after taking possession of the premises, the assessee spent a substantial amount on additions/alternations of the entire premises, including demolishing the existing platform and, thereafter, reconstructing the same according to the new plan sanctioned by the MCGB. The assessee constructed 95 shops and 30 stalls of different carpet areas on the premises under the market name 'S Shopping Centre'. The assessee also obtained, in terms of the conditions of the auction, the necessary registration certificate for running a business under the Shop and Establishment Act and other licenses/permissions from MCGB and other Government and semi-Government bodies for carrying on trading activities on the said premises. The assessee was responsible for day-to-day maintenance, cleanliness and upkeep of the market premises. The appellant also had to incur/pay water charges, electricity charges, taxes and repair charges

The assessee collected the following types of receipts from the sub-licensees:

- ❖ Compensation from sub-licensees [same rate of stallage charges and on the same terms and condition as given to the assessee by the MCGB]
- ❖ Leave and license fees
- ❖ Service Charges for providing various services, including security charges, utilities, etc.

The assessee filed the returns of income offering the income from the aforesaid shops and stalls sub-licensed by it as business income. The Assessing Officer computed the income from the shops, and the stalls under head 'Income from House Property'. The Commissioner (Appeals) allowed the appeal of the appellant and reversed the action of the respondent. However, the Tribunal reversed the order of the Commissioner (Appeals) and confirmed the action of the Assessing Officer. Aggrieved by the Tribunal's order, the assessee filed an appeal before the High Court. The High Court dismissed the appeal filed by the assessee.

On appeal, the Apex Court has held that wherever there is an income from leasing out of premises and collecting rent, normally such an income is to be treated as income from house property, in case provisions of sec. 22 are satisfied with primary ingredient that the assessee is the owner of the said building or lands appurtenant thereto. 'Owner of the house property' is defined in sec. 27 which includes certain situations where a person not actually the owner shall be treated as the deemed owner of a building or part thereof.

The assessee is held to be 'deemed owner' of the property in question by virtue of sec. 27. Merely because there is an entry in the object clause of the business showing a particular object, would not be the determinative factor to arrive at a conclusion that the income is to be treated as income from business. Such a question would depend upon the circumstances of each case. The Tribunal being the last forum insofar as factual determination is concerned, the findings have attained finality. The Tribunal held that the service charges received were inseparable from the basic charges of rent. Also, it was undisputed that the assessee did not undertake any systematic or organized activity of providing services to the occupiers, which can constitute receipt as business income for the assessee.

It was for the assessee to produce sufficient material on record to show that its entire income or substantial income was from letting out of the property which was the principal business activity of the assessee. Reliance placed by the assessee on the judgments in Chennai Properties & Investments Ltd. (2015) 14 SCC 793 (SC) and Rayala Corporation (P) Ltd. T (2016) 15 SCC 201 (SC) would be of no avail. In Chennai Properties & Investments Ltd., the entire income of the appellant was through letting out of the two properties it owned and there was no other income of the assessee except the income from letting out of the said properties, which was the business of the assessee.

Answer:5.b.

Berger Paints India Ltd. -vs.- CIT (2017) (SC)

Securities premium shall not be considered as a part of the capital employed for the purpose of sec. 35D.

The appellant is a Limited Company engaged in the business of manufacture and sale of various kinds of paints. A notice was issued by the A.O. to the appellant (assessee) under Section 143(2) of the Act which called upon the appellant to explain as to on what basis the appellant had claimed in the return a deduction under the head "preliminary expenses" amounting to ₹ 7,03,306/- being 2.5% of the "capital employed in the business of the company" under Section 35D of the Act. The appellant (assessee) replied to the notice. The appellant (assessee) contended therein that it had issued shares on a premium which, according to them, was a part of the capital employed in their

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business. The appellant, therefore, contended that it was on this basis; it claimed the said deduction and was, therefore, entitled to claim the same under Section 35D of the Act. The A.O. did not agree with the explanation given by the appellant. He was of the view that the expression "capital employed in the business of the company" did not include the "premium amount" received by the appellant on share capital. The Commissioner (Appeals) has deleted the addition. However, the Tribunal reversed the view taken by the Commissioner (Appeals). The High Court concurred with the Tribunal.

The Apex Court observed that if the intention of the Legislature were to treat the amount of "premium" collected by the Company from its shareholders while issuing the shares to be the part of "capital employed in the business of the company", then it would have been specifically said so in the Explanation (b) of sub-section (3) of Section 35D of the Act. It was, however, not said. Non-mentioning of the words does indicate the legislative intent that the Legislature did not intend to extend the benefit of Section 35D to such sum.

The company's accounts do not show the reserve and surplus as a part of its issued, subscribed and paid up capital. It is taken as part of share holders fund but the same was not a part of the issued, subscribed and paid up capital of the Company.

Similarly, Companies Act which deals with the "issue of shares at premium and discount" requires a company to transfer the amount so collected as premium from the shareholders and keep the same in a separate account called "securities premium account". It does not anywhere says that such amount be treated as part of capital of the company employed in the business for one or other purpose.

Thus, securities premium shall not be considered as a part of the capital employed for the purpose of sec. 35D.

6.a. EF Ltd, an Indian company, is engaged in manufacturing electronic components. 74% of the shares of the company are held by EF Inc. incorporated in USA. EF Ltd has borrowed funds from EF Inc. at LIBOR plus 150 points. The LIBOR prevalent at the time of borrowing is 4% for US \$. The borrowings allowed under the External Commercial Borrowings Guidelines issued under FEMA are LIBOR plus 200 basis points. Discuss whether the borrowings made by EF Ltd. are at Arm's Length. (LIBOR means London Inter Bank Offer Rate). 8 Marks

6.b. Mr Pankaj, a resident Indian aged 67 years, has derived following income during the previous year 2017-18. 8 Marks

Particulars	Amount (₹)
Income from business in India	2,50,000
Commission (Gross) from a company in Hong Kong (Tax paid in Hong Kong ₹ 60,000)	3,00,000
Dividend (Gross) from a company in Hong Kong (Tax paid in Hong Kong ₹ 18,000)	90,000
Interest on Fixed deposit and saving bank account with bank in India	2,00,00
India has no Double Avoidance Agreement with Hong Kong. Compute the Income and Tax payable by Mr. Pankaj for the Assessment year 2017-18.	

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Answer:6.a.

Two enterprises shall be deemed to be Associated Enterprise if, at any time during the Previous year, one Enterprise holds, directly or indirectly, shares carrying not less than 26% of shares/voting power in other enterprise. Hence, EF Ltd and EF Inc. are Associated Enterprises.

The transaction value shall be determined on the basis of Arm's Length Price (ALP) under Uncontrolled Transaction in case of transactions between Associated Enterprises.

However, ALP is not applicable if the computation of Income / Expense / Interest u/s 92(1) or determination of Cost or Expense allocated or apportioned or contributed u/s 92(2), has the effect of (i) reducing the total chargeable to tax, or (ii) increasing the loss, computed on the basis of entries made in the books of account.

Determination of Arm Length Price:

Particulars	Computation	Rate of Interest
Comparable Uncontrolled Rate	LIBOR +2.00%=4.00% + 2.00%	6.00%
Actual Transaction Rate	LIBOR +1.50%=4.00% + 1.50%	5.50%

The transaction has occurred at a rate lower than comparable uncontrolled rate, and hence is not an Arm Length Price. When ALP is adopted, Interest Expenses will increase, thereby reducing taxable Income. Hence, ALP is not applicable u/s 92(2) in the given case.

Answer:6.b.

Computation of Total Income and Tax payable

Particulars	Amount (₹)	Amount (₹)
Profit 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 deposit 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: Education cess @ 2%		540
Add: Secondary and Higher Education cess @ 1%		270
Total Tax Payable		27,810
Average Rate of Indian Tax (27,810 / 8,40,000)		3.31%
Average Rate of Foreign Tax (78,000 / 3,90,000)		20.00%
Less: Relief u/s 91 at 3.31% on Foreign Income of ₹ 3,90,000		12,909
Net Tax Payable		14,901
Tax Payable (Rounded off)		14,900

7.a.US Ltd, a US company has subsidiary, IND Ltd in India. US ltd sells computer monitors to IND ltd, for resale in India. US ltd also sells computer monitor to CMI ltd, another computer reseller. Its sells 50,000 computer monitor to IND ltd at ₹ 11,000 p.u.

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The price fixed for CMI Ltd is ₹ 10,000 p.u. The warranty in case of sale of monitors by IND Ltd is handled by IND Ltd. However, for sale of monitors by CMI Ltd, US Ltd is responsible for the warranty for 3 months. Both US Ltd and IND Ltd offers extended warranty at a standard rate of ₹ 1,000 per annum. On these facts how the assessment of IND Ltd is going to be affected? 8 Marks

7.b. Z resident Indian aged 21 years earned a sum of ₹ 10 lakhs during the previous year 2017-18 from playing Badminton matches in a country with which India does not have Double Avoidance Agreement. Tax of ₹ 2 lakhs was levied on such income in that source country. In India, he earned ₹ 15 Lakhs during the previous year 2017-18. From playing badminton matches. He has deposited ₹ 1 lakhs in Public Provident Fund during the year.

Compute the Income tax liability for assessment year 2018-19.

8 Marks

Answer:7.a.

Two Enterprise shall be deemed to be Associated Enterprise, if, at any time during the previous year, one enterprise holds, directly or indirectly, shares carrying not less than 26% of shares / voting power in the other enterprise.

In the above case, ALP is as follows:

	Amount (₹)
Sale Price	10,000
Less: Adjustment for warranty period of three months (₹ 1,000 x 3/12 months)	(250)
Adjusted Purchase Price i.e Arm's Length Price	9,750
Purchase Price of Ind Ltd	11,000
Less: Arm's Length Price as computed above	(9,750)
Difference being excessive cost disallowed (Income per unit)	1,250
Additional Income (Income per unit of ₹ 1,250 x 50,000 units)	6,25,00,000

Answer:7.b.

Computation of Total Income and Tax payable

Particulars	Amount (₹)	Amount (₹)
Profit and Gains from Business or Profession		
Income from playing outside India	10,00,000	
Income from India	15,00,000	
Taxable profit and gains from Business or Profession		25,00,000
Gross Total Income		25,00,000
Less: Chapter VIA Deduction		
U/s 80C-Contribution to PPF (allowed upto a maximum of ₹ 1,50,000)		(1,00,000)
Total Income		24,00,000
Tax on Total Income (1,12,500 + (24,00,000 - 10,00,000) x 30%)		5,32,500
Add: Education cess @ 2%		10,650
Add: Secondary and Higher Education cess @ 1%		5,325
Total Tax payable		5,48,475
Average Rate of Indian Tax (5,47,475 / 24,00,000)	22.85%	
Average Rate of Foreign Tax (2,00,000 / 10,00,000)	20%	
Less: Relief u/s 91 @ 20% of Foreign Income of ₹ 10,00,000 (least of the above)		2,00,000

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Net Tax Payable (Rounded off u/s 288B)		3,48,480
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8. Write short notes on the following (Any four to be answered out of 5 questions) (4x4=16 Marks)

- a. Scope of total undisclosed foreign income and asset [Sec. 4].
- b. Power of authorised officer.
- c. Cases of under-reporting of income [Sec. 270A(2)].
- d. Manner of computation of income under tonnage tax scheme [Sec. 115VE].
- e. Unilateral Relief.

Answer:8.a

Scope of total undisclosed foreign income and asset [Sec. 4]:

The total undisclosed foreign income and asset of any previous year of an assessee shall be:

- a) the income from a source located outside India, which has not been disclosed in the return of income furnished u/s 139 of the Income-tax Act;
- b) the income, from a source located outside India, in respect of which a return is required to be furnished u/s 139 of the Income-tax Act but no return of income has been furnished u/s 139 of the Income-tax Act; and
- c) the value of an undisclosed asset located outside India.

Any variation made in the income from a source outside India in the assessment or reassessment of the total income of any previous year, of the assessee under the Income-tax Act in accordance with the provisions of section 29 to section 43C (Profits and gains of business or profession) or section 57 to section 59 (Income from other sources) or section 92C (Transfer pricing) of the said Act, shall not be included in the total undisclosed foreign income.

To avoid double taxation, the income included in the total undisclosed foreign income and asset under this Act shall not form part of the total income under the Income-tax Act.

Answer:8.b.

Power of authorised officer:

While conducting search, authorized officer has following powers -

- a. **Enter and search any building, etc.:** Enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept.
- b. **Break open the lock of any door, etc.:** Break open the lock of any door, box, locker, safe, almirah or other receptacle, where the keys thereof are not available.
- c. **Search person:** Search any person who -
 - has got out of; or
 - is about to get into; or
 - is in,the building, place, vessel, vehicle or aircraft if the authorised officer has reason to suspect that such person has secreted about his person any books of account, other documents, money, bullion, jewellery or other valuable article or thing.
- d. **Require any person to facilitate the authorised officer:** Require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record, to afford the authorised officer the necessary facility to inspect such books of account or other documents.
- e. **Seizure:** Seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search.

- f. **Place marks of identification:** Place marks of identification on any books of account or other documents or make extracts or copies therefrom.
- g. **Make inventory:** Make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing.
- h. **Examine on oath:** Examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing. Any statement made by such person during such examination may thereafter be used as evidence in any proceeding.

The examination of any person may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under Act.

Answer:8.c.

Cases of under-reporting of income [Sec. 270A(2)]:

A person shall be considered to have under-reported his income, if:

- a. the income assessed is greater than the income determined in the return processed u/s 143(1)(a);
- b. the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished;
- c. the income reassessed is greater than the income assessed or reassessed immediately before such reassessment;
- d. the amount of deemed total income assessed or reassessed u/s 115JB or 115JC is greater than the deemed total income determined in the return processed u/s 143(1)(a);
- e. the amount of deemed total income assessed u/s 115JB or 115JC is greater than the maximum amount not chargeable to tax, where no return of income has been filed;
- f. the amount of deemed total income reassessed u/s 115JB or 115JC is greater than the deemed total income assessed or reassessed immediately before such reassessment;
- g. the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

Answer:8.d.

Manner of computation of income under tonnage tax scheme [Sec. 115VE]:

A tonnage tax company (means a qualifying company in relation to which tonnage tax option is in force) engaged in the business of operating qualifying ships shall compute the profits from such business under the tonnage tax scheme.

The business of operating qualifying ships giving rise to income [referred to in sec. 115V-l(1)] shall be considered as a separate business (hereafter referred to as the tonnage tax business) distinct from all other activities or business carried on by the company.

The profits shall be computed separately from the profits and gains from any other business.

The tonnage tax scheme shall apply only if an option to that effect is made in accordance with the provisions of section 115VP.

Where a company engaged in the business of operating qualifying ships is not covered under the tonnage tax scheme or, has not made an option to that effect, as the case may be, the profits and gains of such company from such business shall be computed in accordance with the other provisions of this Act.

Answer:8.e.

Unilateral Relief:

If any person who is resident in India in any previous year proves that:

- a) The income has accrued or arose during the previous year outside India (and which is not deemed to accrue or arise in India),
- b) He has paid in any country income-tax on such income, by deduction or otherwise, under the law in force in that country
- c) India does not have any agreement u/s 90 for the relief or avoidance of double taxation with that country.

- then he shall be entitled to the deduction from the Indian income-tax payable by him

(i) of a sum calculated on such doubly taxed income at the average of Indian rate of tax or

(ii) of a sum calculated on such doubly taxed income at the average rate of tax of the said country,

- Whichever is the lower, or at the Indian rate of tax if both the rates are equal.

Notes

- a) The expression 'such doubly taxed income' really purports to indicate that it is only that portion of the income on which tax has been imposed and been paid by the assessee that is eligible for the double tax relief. Thus, where the foreign income which suffered tax in the foreign country was ₹ 88,535, and the income actually taxed in India after allowances and set off of losses (or deduction under chapter VIA) was ₹ 63,141, relief admissible would be calculated on ₹ 63,141 [CIT v. O.VR.SV.VR. Arunachalam Chettiar].
- b) Relief u/s 91 is to be calculated on income country-wise and not on basis of aggregation or amalgamation of income of all foreign countries [CIT v. Bombay Burmah Trading Corpn. Ltd. (2003)].
- c) No benefit is available on income which is deemed to accrue or arise in India, even though such income is doubly taxed.