

PAPER – 7: DIRECT TAX LAWS & INTERNATIONAL TAXATION

Part - II

Question No.1 is compulsory.

Answer any **four** questions from the remaining **five** questions.

Working notes should form part of the respective answers

All questions relate to Assessment Year 2021-22, unless stated otherwise in the question.

Question 1

ABC LTD., a manufacturing company, is engaged in the manufacturing of leather products since 01-11-2019 in the State of Tamil Nadu. As per Statement of Profit and Loss for the year ended 31st March, 2021, the company showed profit of ₹ 1,20,00,000 after debiting or crediting the following items:

- (i) The opening and closing stock for the year were ₹ 55 lakhs and ₹ 54 lakhs respectively. Opening stock was overvalued by 10% and Closing stock was undervalued by 10%.
- (ii) ABC LTD. paid ₹ 10 Lakhs in foreign currency as sales commission during the year without deducting tax at source to Mr. John, a citizen of U.S.A and non-resident, for procuring orders from outside India.
- (iii) ₹ 45,000 paid in cash to Mr. Raj employee of the company at the time of his retirement.
- (iv) Profit on sale of 2000 shares of M/s. VKL LTD, a listed company ₹ 3,50,000. These shares were sold on 7-10-2020 for ₹ 250 per share. The highest price of VKL LTD. quoted on the stock exchange as on 31-01-2018 was ₹ 175 per share. The said shares were acquired for ₹ 75 per share on 10.06.2015. STT paid both at the time of purchase and sale of shares.
- (v) STCG derived from transfer of a Capital asset on which no depreciation is allowable under the Act ₹ 75,000.
- (vi) Profit of ₹ 6 lakhs on sale of plot of land on 24-07-2020 to XYZ LTD, a domestic company, the entire shares of which are held by the assessee company. The plot was acquired by ABC LTD. on 30-09-2019.
- (vii) Credits to statement of Profit and Loss Account include dividend of ₹ 50,000 received on September 6, 2020 from a domestic company.
- (viii) ₹ 20,000 paid for expenses in connection with the inauguration of a new branch opened for expanding the business.

The Suggested Answers for Paper 7: Direct Tax Laws and International Taxation are based on the provisions of direct tax laws as amended by the Finance Act, 2020, which are relevant for December, 2021 examination. The relevant assessment year is A.Y.2021-22.

- (ix) ₹ 20,000 paid as penalty to Government for company's failure in performance of a contract within stipulated time. There was delay of 4 months and according to the agreement, the company had to pay a penalty of ₹ 5,000 per month to the Government.
- (x) An amount of ₹ 5 lakhs was paid to the manager of the company under Voluntary Retirement Scheme.
- (xi) Interest of ₹ 75,000 paid by bank remittance, on deposits made by non-resident buyers of goods manufactured by the company. The said payments were made outside India without deduction of tax.

Additional information:

- (1) During the year F.Y. 2020-21, the company has employed 56 additional employees. All these employees contribute to a recognized provident fund. 39 out of 56 employees joined on 1-6-2020 on a salary of ₹ 15,000 per month, 14 joined on 1-7-2020 on a salary of ₹ 45,700 per month, and 3 joined on 1-11-2020 on a salary of ₹ 22,000 per month. The salaries of 9 employees who joined on 1-6-2020 are being settled by bearer cheques every month. Audit under section 44AB has been done before the due date.
- (2) The company has paid through bank ₹ 1,20,000 to National Fund for Rural Development.
- (3) The Company opted for concessional rate of tax and exemption from MAT under Section 115BAB for Assessment year 2021-22.

Compute the total income and tax payable for the Assessment Year 2021-22 clearly stating the reasons for treatment of each item. **(14 Marks)**

Answer

Computation of Total Income of ABC Ltd. for the A.Y. 2021-22 under section 115BAB

Particulars		Amount (in ₹)	
I	Profits and gains of business and profession		
	Net profit as per Statement of profit and loss		1,20,00,000
	Add: Overvaluation of opening stock [₹ 55,00,000 x 10/110]	5,00,000	
	Undervaluation of closing stock [₹ 54,00,000 x 10/90]	6,00,000	
	Add: Items debited but to be considered separately or to be disallowed		
(1) Sales commission to Mr. John, a non-resident, for procuring orders from outside India		Nil	
	[The commission paid to Mr. John, non-resident agent, for services rendered outside India is not chargeable to tax in India. His commission is paid		

	<p>in foreign currency directly to him and is, therefore, not received by him or on his behalf in India. Since commission income for procuring orders by non-resident who remains outside India is not subject to tax in India, disallowance under section 40(a)(i) is not attracted in respect of payment of commission to such non-resident outside India even though tax has not been deducted at source.^{1]}</p>		
	<p>(2) Payment to Mr. Raj, an employee, on his retirement</p> <p>[Section 40A(3) provides for disallowance@100% of the expenditure incurred exceeding ₹ 10,000 otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed. However, no disallowance under section 40A(3) is to be made as the amount paid to Mr. Raj is on his retirement since such sum payable does not exceed ₹ 50,000. This exception is provided in Rule 6DD]</p>	Nil	
	<p>(3) Expenses in connection with inauguration of a new branch for expanding business</p> <p>[Expenses in connection with inauguration of a new branch for expanding business is allowable as revenue expenditure since it is incurred wholly or exclusively for business purpose. Since the same is already debited in statement of profit and loss, no further adjustment is required]</p>	Nil	
	<p>(4) Penalty to Government for failure in performance of a contract</p> <p>[The penalty of ₹ 20,000 paid for non-fulfilment of a contract within stipulated time is not for the breach of law but was paid for breach of contractual obligations and therefore, is an allowable expense. Since it is already debited in statement of profit and loss, no further adjustment is required]</p>	Nil	

¹ Decided by Delhi High Court in *CIT v. Maruti Suzuki India Limited* [2018] 407 ITR 165

<p>(5) Voluntary Retirement Scheme expenditure [Only 1/5th of expenditure on voluntary retirement scheme is allowable over a period of five years u/s 35DDA. Since whole amount of expenditure is debited to statement of profit and loss, 4/5th has to be added back [₹ 5,00,000 x 4/5].</p>	4,00,000	
<p>(6) Interest paid to non-resident buyers of goods, on deposits made by them [Interest paid to non-resident buyer of goods, on deposits made by them is deemed to accrue or arise in India since such interest is paid by the company, a resident, which used such deposit for the purpose of business carried on by it in India. Thus, such interest is chargeable to tax in India and ABC Ltd. is required to deduct tax at source on such interest. Disallowance@100% of interest paid is attracted under section 40(a)(i), since tax has not been deducted at source therefrom.]</p>	75,000	
<p>(7) Salary paid to employees through bearer cheques [Salary paid through bearer cheques (9 employees x ₹ 15,000 x 10 months) will attract disallowance u/s 40A(3) and hence, the same has to be added back] [See Note at the end of the solution]</p>	13,50,000	
		29,25,000
		1,49,25,000
<p>Less: Items credited but chargeable to tax under another head/expenses allowed but not debited</p>		
<p>1. Profit on sale of shares of M/s VKL Ltd. [Capital Gain arising on sale of shares of VKL Ltd. is taxable under the head "Capital Gains". Since the profit on sale of shares has been credited to the statement of profit and loss, the same has to be deducted while computing business income]</p>	3,50,000	
<p>2. Short term capital gain on sale of capital asset on which no depreciation is allowable [Short term capital gain arising on sale of capital asset is taxable under the head "Capital Gains".</p>	75,000	

	Since such STCG has been credited to the statement of profit and loss, the same has to be deducted while computing business income]		
	3. Profit on sale of plot of land to 100% subsidiary	6,00,000	
	[Taxability or otherwise to be considered under the head "Capital Gains". Since such profit has been credited to the statement of profit and loss, the same has to be deducted while computing business income]		
	4. Dividend received from domestic company	50,000	
	[Dividend income from domestic foreign company is taxable under the head "Income from other sources". Since the said dividend has been credited to the statement of profit and loss, the same has to be deducted while computing business income]		
	5. Contribution to National Fund for Rural Development	1,20,000	
	[In respect of payment to a National Fund for Rural Development, deduction is allowable under section 35CCA while computing business income. This deduction is permissible in case of an assessee opting for section 115BAB also]		
			<u>11,95,000</u>
			1,37,30,000
II	Capital Gains		
	1. Long term capital gain on sale of shares of M/s. VKL Ltd. [Since shares were held for more than 12 months]		
	[Full value of consideration	5,00,000	
	(2,000 x ₹ 250)]		
	Less: Cost of acquisition - Higher of (i) <u>3,50,000</u>	1,50,000	
	and (ii)		
	(i) Actual cost of acquisition (2,000 x ₹ 75)		
	₹ 1,50,000		
	(ii) ₹ 3,50,000, being lower of fair market value as on 31.1.2018 (i.e., ₹ 3,50,000, being 2,000 x 175) and sale consideration (i.e., ₹ 5,00,000)		
	2. Short term capital gain on sale of capital asset	75,000	
	on which no depreciation is allowable		

	3. Profit on sale of plot of land to 100% subsidiary [Short-term capital gains arise on sale of plot of land held for less than 24 months. However, in this case, since the transfer is to a 100% subsidiary company and the subsidiary company is an Indian company, the same would not constitute a transfer for levy of capital gains tax ²]	Nil	
			2,25,000
III	Income from Other Sources		
	Dividend income from domestic company [50,000/90 x 100]		55,555
	Gross Total Income		1,40,10,555
	Deduction u/s 80JJAA [See Working Note below]		14,49,000
	Total Income		1,25,61,555
	Total Income (Rounded Off)		1,25,61,560

Computation of tax payable by ABC Ltd. for the A.Y. 2021-22 under section 115BAB

Particulars	₹	₹
Tax on long-term capital gains in excess of ₹ 1 lakh @10% u/s 112A [₹ 50,000 x 10%]		5,000
Tax on short term capital gain of ₹ 75,000 derived from transfer of a capital asset on which no depreciation is allowable @22%		16,500
Tax on dividend income of ₹ 55,555 @22%		12,222
Tax on business income@15% of ₹ 1,22,81,000 (i.e., ₹ 1,37,30,000 – ₹14,49,000)		<u>18,42,150</u>
		18,75,872
Add: Surcharge@10%		<u>1,87,587</u>
		20,63,459
Add: Health and education cess@4%		<u>82,538</u>
Tax liability		21,45,998
Less: TDS on dividend income		<u>5,555</u>
Tax payable		<u>21,40,442</u>
Tax payable (Rounded Off)		21,40,440

² as per section 47(iv)

Working Note - Computation of deduction u/s 80JJAA

No of eligible additional employees [56 (-) 14 = 42] [14 employees who joined on 1.7.2020 do not qualify as “additional employees” since their monthly emoluments exceed ₹ 25,000. However, 3 employees who joined on 1.11.2020 qualify as additional employees, since they have been employed for more than 150 days during the P.Y.2021-22.]	33
Additional employee cost means the total emoluments paid or payable to additional employees employed during the P.Y.2020-21. However, the additional employee cost in respect of 9 employees who joined on 1.6.2020, whose salary is paid by bearer cheque would be Nil.	
Additional employee cost [₹ 15,000 x 30 employees (39 - 9) x 10 months] + [₹ 22,000 x 3 employees x 5 months] = ₹ 45,00,000 + ₹ 3,30,000	₹ 48,30,000
Eligible deduction = 30% of ₹ 48,30,000	₹ 14,49,000

Note – Since it is logical to assume that remuneration paid to employees has been debited to statement of profit and loss, consequently, disallowance would be attracted in respect of remuneration paid to 9 employees by bearer cheque every month. Accordingly, ₹ 13,50,000, being salary paid to 9 employees during the P.Y.2020-21 has been added back while computing profits and gains of business or profession.

If a view is taken that the details of remuneration paid to employees, given by way of “Additional Information”, are only for the purpose of computation of deduction under section 80JJAA, then, the computation of income under the head “Profits and gains of business and profession” would be without providing for disallowance under section 40A(3) in respect of payment to employees by bearer cheque. In such a case, profits and gains of business or profession would be ₹ 1,23,80,000, gross total income would be ₹ 1,26,60,555 and total income (rounded off) would be ₹ 1,12,11,560. The tax liability would be ₹ 19,14,337 and the tax payable would be ₹ 19,08,780.

Question 2

- (a) (i) Samay Impex Ltd. was amalgamated with Delhi Impex Ltd. on 01-04-2020. All the conditions of section 72A are complied with. Samay Impex Limited has the following carried forward losses as assessed upto Assessment year 2020-21:

Sr. No.	Particulars	Amount in ₹
1.	Speculative loss	5,00,000
2.	Unabsorbed depreciation	18,00,000
3.	Unabsorbed expenditure of capital nature on scientific research	2,00,000
4.	Business Loss	1,25,00,000

Delhi Impex Limited has computed a profit of ₹ 175 lakhs for the financial year 2020-21 before setting off the eligible losses of Samay Impex Ltd. but after providing depreciation@15% per annum on ₹ 160 lakhs, being the consideration at which plant and machinery were transferred to Delhi Impex Ltd.

The written down value of above Plant and Machinery of Samay Impex Limited as per Income Tax Act, 1961 as on 31-03-2020 was ₹ 100 lakhs. The above profit of Delhi Impex Ltd. includes speculative profit of ₹ 15 lakhs.

You are required to compute the total income/loss of Delhi Impex Ltd. for Assessment year 2021-22.

The set off should be on the basis of order provided under section 72(2). **(4 Marks)**

- (ii) The Government compulsorily acquired land of Mr. Shivam in April 2019 and paid compensation of ₹ 20 lakhs in June 2020. The land was acquired by Mr. Shivam in June 2003 for ₹ 12 lakhs. He had filed for additional compensation through Court and was awarded ₹ 18 Lakhs in February 2021 but this amount was received only during May 2021. Compute the taxable capital gain from the above transaction indicating the relevant assessment year. Expenses in connection with compulsory acquisition were ₹ 30,000 and for obtaining enhancement of compensation was ₹ 1 lakh

Cost inflation index: FY 2003-04 :109; FY 2019-20: 289; FY 2020-21: 301;

FY 2021-22:317

(4 Marks)

- (b) Alpha Inc. having its business in Singapore has advanced a loan of SD 1,50,000 to Alpha Ltd., Bhubaneswar. Book value of total assets of Alpha Ltd. was ₹ 120 lakhs. Alpha Ltd. provides software backup support to Alpha Inc. Alpha Ltd., has spent 30,000 man hours during the financial year 2020-21 for the services rendered to Alpha Inc. The cost to Alpha Ltd., is SD 80 / man-hour. Alpha Ltd. has billed Alpha Inc. at SD 85 / man-hour.

Gama Ltd. in Bhubaneswar which has a similar business model, provides software back up support to Beta Inc. in Penang, Malaysia.

Gama Ltd.'s cost and operating profits are as hereunder:

Particulars	Amount (in lakhs)
Direct costs	500
Indirect costs	100
Operating profits	100

- (a) Calculate Arm's Length Price for the transaction between Alpha Ltd. and Alpha Inc. based on the above data of Gama Ltd. using the Transactional Net Margin Method. Assume 1 SD = ₹ 55.

- (b) Is any adjustment required be made to the total income of Alpha Ltd.?

Note: SD = Singapore Dollars

(6 Marks)

Answer**(a) (i) Computation of total income of Delhi Impex Limited for the A.Y. 2021-22**

Particulars	₹ in lakhs	
Business income before setting-off brought forward losses of Samay Impex Ltd.		175
<i>Add:</i> Excess depreciation claimed in the scheme of amalgamation of Samay Impex Limited with Delhi Impex Limited.		
Value at which assets are transferred by Samay Impex Ltd.	160	
WDV in the books of Samay Impex Ltd.	100	
Excess accounted	60	
Excess depreciation claimed in computing taxable income of Delhi Impex Ltd. [₹ 60 lakhs × 15%]		9
		184
Set-off of b/f business loss of Samay Impex Ltd.		(125)
Set-off of unabsorbed depreciation u/s 32(2) read with section 72A		(18)
Set-off of unabsorbed capital expenditure on scientific research u/s 35(1)(iv) read with section 35(4)		(2)
Total income		39

Notes:

- (1) The unabsorbed losses and unabsorbed depreciation of the amalgamating company, Samay Impex Ltd. shall be deemed to be the loss or unabsorbed depreciation of the amalgamated company, Delhi Impex Ltd. for the previous year in which the amalgamation was effected (i.e., P.Y.2020-21) and such business loss and unabsorbed depreciation shall be carried forward and set-off by the amalgamated company, Delhi Impex Ltd., for a period of 8 years and indefinitely, respectively. Unabsorbed capital expenditure on scientific research can be set-off and carried forward in the same manner as unabsorbed depreciation.
- (2) As per section 72A(7), the accumulated loss to be carried forward specifically excludes loss sustained in a speculative business. Therefore, speculative loss of ₹ 5 lakhs of Samay Impex Ltd. cannot be carried forward by Delhi Impex Ltd.
- (3) As per section 72(2), in this case, since business loss, unabsorbed depreciation and unabsorbed scientific research capital expenditure of Samay

Impex Ltd. is to be carried forward by Delhi Impex Ltd., effect has to be first given to brought forward business losses, and thereafter, unabsorbed depreciation and unabsorbed capital expenditure.

(ii) **Computation of capital gains of Mr. Shivam for the A.Y.2021-22**

Particulars	₹
Full value of consideration (Compensation received) [Taxable in the year of receipt i.e., P.Y.2020-21]	20,00,000
Less: Expenses in connection with compulsory acquisition	30,000
	19,70,000
Less: Indexed cost of acquisition [₹ 12,00,000 × 289/109]	31,81,651
Long-term capital loss (since land was held for > 24 months) for the A.Y. 2021-22	12,11,651
Note – Since the year of compulsory acquisition i.e., F.Y.2019-20 is the year of transfer of land, CII for F.Y.2019-20 has to be considered for computing indexed cost of acquisition.	

Computation of capital gains of Mr. Shivam for the A.Y.2022-23

Particulars	₹
Full value of consideration (Enhanced Compensation received is taxable in the year of receipt i.e., P.Y.2021-22)	18,00,000
Less: Expenses for obtaining enhanced compensation (allowable as deduction)	1,00,000
	17,00,000
Less: Set-off of b/f long-term capital loss from A.Y.2021-22	12,11,651
Long-term capital gains for the A.Y. 2022-23	4,88,349
Note – No deduction in respect of cost of acquisition is allowable from enhanced compensation.	

- (b) Two enterprises are deemed to be associated enterprises where one enterprise advances loan constituting not less than 51% of the book value of the total assets of the other enterprise.

In this case, since Alpha Inc., a foreign company, has advanced loan to Alpha Ltd., an Indian company, and such loan constitutes 68.75% [(₹ 55 x 1,50,000 x 100/1,20,00,000)] of the book value of total assets of Alpha Ltd., Alpha Inc and Alpha Ltd. are deemed to be associated enterprises. Since the transaction of provision of software backup support by

Alpha Ltd. to Alpha Inc. is an international transaction between associated enterprises, the provisions of transfer pricing would be attracted in this case.

Determination of Operating Margin of transaction of provision of software backup support by Alpha Ltd. to Alpha Inc

Particulars	₹
Billing per manhour [SD 85/hour x ₹ 55]	4675
Cost per man hour [SD 80/hour x ₹55]	4400
Operating profit per manhour	275
Operating profits to cost (%) $[275 \times 100/4400] = 6.25\%$	

Determination of Operating Margin of Comparable Uncontrolled transaction i.e., provision of software backup support. by Gama Ltd. to Beta Inc.

Particulars	₹ in lakhs
Direct Cost	500
Indirect Cost	100
Total cost	600
Operating profits	100
Operating profits to cost (%) $[100 \times 100/600] = 16.67\%$	

1. Computation of Arm's Length Price of provision of software backup support provided by Alpha Ltd. to Alpha Inc. by applying TNMM

Particulars	₹
Cost for Alpha Ltd. (per man hour) [SD 80 x ₹ 55/MD]	4,400.00
Add: Arm's length operating profit margin as % of cost (16.67% of ₹ 4,400)	733.48
Arm's length price (per manhour) in ₹	5,133.48
Arm's length price of total manhours spent by Alpha Ltd. for providing software backup support to Alpha Inc. $[\text{₹ } 5,133.48 \times 30,000 \text{ man hours}] = \text{₹ } 15,40,04,400$	

(2) Adjustment to be made to the total income of Alpha Ltd.

Particulars	₹
Arm's length price of total manhours spent by Alpha Ltd. for providing software backup support to Alpha Inc.	15,40,04,400
Less: Amount actually billed [85 SD x ₹ 55/SD x 30,000 manhours]	14,02,50,000
Arm's length adjustment to be made to the total income of Alpha Ltd.	1,37,54,400

Question 3

- (a) Ramnarayan Foundation Trust was formed on 01-04-2006. It applied for registration u/s. 12AA of the Act and got the registration approved from prescribed authority with effect from 01-04-2010. The trust got the exemption from payment of taxes satisfying the conditions laid down in Sections 11 to 13 from 01-04-2010. The trust got dissolved on 29-12-2019.

The Balance Sheet of the Trust on the date of dissolution was as under:

Liabilities	Amount (₹)	Assets	Amount (₹)
Corpus of the trust	6,00,000	Land and Building	12,00,000
Reserves (created out of accumulated amount of 15% each year)	3,00,000	Investment in Equity Shares - Quoted	4,00,000
Loan taken for purchase of Land and Building	9,00,000	Investment in Equity Shares - Unquoted (in Z Ltd.)	1,50,000
Loan taken for the purchase of unquoted shares (taken in year 2007-08)	1,00,000	Cash	1,00,000
		Bank Balance	50,000
Total	19,00,000	Total	19,00,000

Additional information:

- (i) FMV of Land and Building is ₹ 50,00,000.
- (ii) 50% of the Unquoted shares were acquired during the year 2007-08.
- (iii) Market Value of quoted shares on the date of dissolution is ₹ 18,00,000.
- (iv) Land and Building is acquired out of agricultural income.
- (v) With respect to Z Ltd. in which the trust invested in unquoted shares, the following additional information was available as on 29-12-2019:
 - (a) 1,00,000 Equity Shares with face value of ₹ 10 each
 - (b) Total Book Value of the assets (other than bullion, jewellery) is ₹ 60,00,000.
 - (c) Market Value of bullion and jewellery is ₹ 30,00,000.
 - (d) Liabilities amounting to ₹ 35,00,000.
- (vi) The trust distributed the assets on dissolution, valuing ₹ 8,00,000 to another trust registered u/s 12AA of the Act before 31-12-2020.

Compute the tax payable by Ramnarayan Foundation Trust for the A.Y. 2021-22 u/s 115TD.

(8 Marks)

- (b) Mr. Anil Talpade, aged 62 years, a resident individual, furnishes the following particulars of income earned by him in India and in Brazil for the previous year 2020-21. India does not have a double taxation avoidance agreement with Brazil.

S. No.	Particulars	Amount (₹)
1.	Gross Salary in India	4,50,000
2.	Professional Income received in Country Brazil	5,80,000
3.	Dividend Income in Country Brazil	88,000
4.	Rent from House Property Situated in Country Brazil	1,80,000
5.	Interest Income on FDR'S with Bank of Baroda, Pune Branch.	62,000
6.	Paid interest on Housing Loan to Punjab National Bank, Pune branch for the residential property, where he and his family resides	2,00,000
7.	Investment in Public Provident Fund	1,50,000
8.	Medical insurance Premium paid for himself	32,000

Assume the tax rate in Country Brazil is 16%.

Compute the total income and tax liability of Mr. Anil Talpade for the Assessment Year 2021-22 assuming he opts for Section 115BAC complying with all the necessary rules.

(6 Marks)

Answer

- (a) As per section 115TD, the accreted income of Ramnarayan Foundation trust, a charitable trust, registered under section 12AA would be chargeable to tax at the rate of 34.944% [30% plus surcharge @12% plus cess@4%] on non-distribution of assets on dissolution to another trust registered u/s 12AA within 12 months from the end of the month in which the dissolution takes place.

Computation of accreted income and tax liability in the hands of Ramnarayan Foundation trust on dissolution

Particulars	Amount (₹)
Aggregate FMV of total assets as on 29.12.2019, being the specified date (date of dissolution) [See Working Note 1]	61,12,500
Less: Total liability computed in accordance with the prescribed method of valuation [See Working Note 2]	<u>9,00,000</u>
Accreted Income	52,12,500
Less: Value of assets distributed within a period of 12 months from the end of the month of dissolution	<u>8,00,000</u>
	<u>44,12,500</u>

Tax Liability@34.944% of ₹ 44,12,500	15,41,904
Tax Liability (rounded off)	15,41,900
Working Notes:	
(1) Aggregate FMV of total assets on the date of dissolution	
- Land and building , FMV as on 29.12.2019, being the specified date, has to be considered and one-fourth of the value of land and building to be ignored, since acquired out of agricultural income exempt u/s 10(1) [₹ 50 lakhs x 3/4]	37,50,000
- Equity shares - quoted [market value on the date of dissolution]³	18,00,000
- Equity shares – unquoted in Z Ltd. [Since the trust was registered only on 1.4.2010 and benefit of section 11 and 12 was available to the trust only from A.Y.2011-12, relevant to P.Y.2010-11, the value of 50% of the unquoted shares purchased in P.Y.2007-08, in respect of which benefit under sections 11 and 12 was not allowed, has to be ignored for computing accreted income] Value of unquoted shares = ₹ 4,12,500 [50% of ₹ 8,25,000 (Book value of assets (other than bullion, jewellery) of Z Ltd. i.e., ₹ 60,00,000 + Market value of bullion and jewellery of Z Ltd. i.e., ₹ 30,00,000 – Liabilities of ₹ 35,00,000 x paid up value of shares i.e., ₹ 1,50,000 ⁴ / total amount of paid up equity share capital as shown in the Balance Sheet of ₹ 10,00,000)]	4,12,500
- Cash	1,00,000
- Bank Balance	<u>50,000</u>
	<u>61,12,500</u>
(2) Total liability	
- Corpus Fund of ₹ 6,00,000 [not includible]	Nil
- Reserves and Surplus ₹ 3,00,000 [not includible]	Nil
- Loan taken for purchase of land and building	9,00,000
- Loan taken for purchase of unquoted shares [Since the entire loan is in relation to unquoted shares acquired during the year 2007-08, when the trust was not eligible for exemption under section 11 and 12, the same is not deductible]	<u>Nil</u>
	<u>9,00,000</u>

³ In the absence of information regarding lowest and highest price of quoted shares as on dissolution, market value of such shares, as given in the question, is considered

⁴ In the absence of paid up value of such shares, value shown the Balance Sheet is considered

(b) **Computation of total income of Mr. Anil Talpade for A.Y.2021-22**

Particulars	₹	₹
Income from salaries [Standard deduction not allowable, since he opts for section 115BAC]		4,50,000
Income from House Property		
Annual value of self-occupied property in India	Nil	
Less: Interest on housing loan [not allowable, since he opts for section 115BAC]	<u>Nil</u>	
	Nil	
Annual value of house property in Brazil [Rental income from property in Brazil ⁵]	1,80,000	
Less: Deduction u/s 24(a) @30% (allowable in respect of let out property)	<u>54,000</u>	1,26,000
Profits and gains from business or profession		
Professional income from Brazil		5,80,000
Income from Other Sources		
Dividend from Brazil		88,000
Interest on FDRs with Bank of Baroda		<u>62,000</u>
Gross Total Income		13,06,000
Less: Deduction under 80C in respect of investment in PPF and deduction under section 80D in respect of medical insurance premium [no deduction is allowable under these sections, since he opts for section 115BAC]		<u>Nil</u>
Total Income		<u>13,06,000</u>

Computation of tax liability of Mr. Mr. Anil Talpade for A.Y.2021-22

Particulars	Amount (₹)
Upto ₹ 2,50,000	Nil
₹ 2,50,001 – ₹ 5,00,000 [i.e., ₹ 2,50,000@5%]	12,500
₹ 5,00,001 – ₹ 7,50,000 [i.e., ₹ 2,50,000@10%]	25,000
₹ 7,50,001 – ₹ 10,00,000 [i.e., ₹ 2,50,000@15%]	37,500

⁵ In the absence of any information relating to fair rent, municipal value and standard rent, rental income assumed to be GAV

₹ 10,00,001 – ₹ 12,50,000 [i.e., ₹ 2,50,000@20%]	50,000	
₹ 12,50,001 – ₹ 13,06,000 [i.e., ₹ 56,000@25%]	<u>14,000</u>	
		139,000
Add: Health & Education Cess@4%		5,560
		1,44,560
Less: Deduction under section 91		
Average rate of tax in India = ₹1,44,560 x 100/ ₹13,06,000 = 11.0689%		
Rate of tax in Brazil = 16%		
Doubly taxed income = ₹ 1,26,000 + ₹ 5,80,000 + ₹ 88,000 = ₹ 7,94,000		
Lower of the Indian rate of tax and Brazil rate of tax is 11.0689%, which has to be applied on doubly taxed income of ₹ 7,94,000 [11.0689% x ₹ 7,94,000]		87,887
Tax Payable		56,673
Tax Payable (rounded off)		56,670

Question 4

- (a) (i) Mr. Z, a resident individual, starts a new business on 01-11-2020 for sale of unique T-shirts. He obtained a valid PAN in his name and registers himself on ABC.com (a Singapore based website), an e-commerce operator, for sale of his products in India.

Mr. Z sold goods worth ₹60 lakhs through ABC.com upto 31-03-2021. E-commerce operator credited the following payments from time to time payable to Mr. Z in its books of accounts.

31-12-2020 ₹ 20 lakhs

28-02-2021 ₹ 15 lakhs

Full and final payments have been released by ABC.com to Mr. Z on 31-03-2021 after deducting a commission of 10% on gross sale proceeds.

Mr. Z received ₹ 10,00,000 directly in his bank out of above ₹ 60 lakhs through PayTM Wallet directly connected by ABC.com to the account of Mr. Z.

Discuss the TDS provisions applicable on the above transactions alongwith the date and amount of tax deductible. **(4 Marks)**

- (ii) Raghav Motors Ltd., Ludhiana, is a dealer in cars of Ford and Maruti Cars and also runs a service station. The sale of cars of Raghav Motors Ltd. for F.Y.2019-20 is ₹ 9.80 crores. The sale of spare parts and service station is ₹ 60 lakhs for F.Y.2019-20.

M/s. Om Ltd., dealing in textile manufacturing, bought following cars from Raghav Motors Ltd. during F.Y. 2020-21 for business purposes:

Model of Car	Date of Invoice	Value of Car in ₹ in Lacs
Maruti	14-07-2020	37 lakhs
Maruti	12-08-2020	19 lakhs
Ford	18-10-2020	8 lakhs
Maruti	05-11-2020	12 lakhs

The payment against each invoice was made on the date of invoice itself.

You are required to calculate the amount of TCS applicable, if any, to be collected by Raghav Motors Ltd. as per the relevant provisions of section 206C. **(4 Marks)**

- (b) The following data is furnished by Mr. Ashish, a non-resident and a person of Indian Origin, for the financial year ended 31-3-2021:

Particulars	Amounts (₹)
Long-term capital gains arising on transfer of specified foreign exchange asset on 31-05-2020 (computed)	8,50,000
Expenditure wholly and exclusively incurred in connection with such transfer (not considered above)	30,000
Interest on deposits held with private limited companies	2,93,000
Interest on Government Securities	1,00,000
Income from Short Term Capital gains u/s 111A	2,00,000
Investment in notified savings certificates of Central Government on 30-3-2021	1,50,000
Investment in shares of Indian public limited companies on 31-12-2021	1,80,000
Tax deducted at source	1,55,000

Compute balance tax payable/refund due for the assessment year 2021-22 in accordance with special provisions applicable to non-residents. **(6 Marks)**

Answer

- (a) (i) As per section 194-O, ABC.com, an e-commerce operator is required to deduct tax @0.75% on the gross amount of sale of goods (T-shirts, in the present case) of Mr. Z, a resident individual, an e-commerce participant, since such sale of goods is facilitated by ABC.com through its digital or electronic facility or platform.

ABC.com is required to deduct tax at the time of credit of such sum or payment, whichever is earlier. Any payment received directly by Mr. Z for the sale of goods,

facilitated by ABC.com, would be deemed to be amount credited or paid by ABC.com to Mr. Z.

Accordingly, ABC.com is required to deduct tax of ₹ 15,000 (0.75% x ₹ 20,00,000) and ₹ 11,250 (0.75% x ₹ 15,00,000) on 31.12.2020 and on 28.02.2021, respectively, being the dates on which such amounts were credited in books of account of ABC.com, since the date of credit is earlier than the date of payment in these two cases.

ABC.com is also required to deduct tax of ₹ 7,500 (0.75% of ₹ 10,00,000 being the amount received by Mr. Z directly in his bank).

On 31.3.2021, ABC.com is also required to deduct tax of ₹ 11,250 (0.75% of ₹ 15,00,000), being the amount of full and final payment made on 31.3.2021.

- (ii) As per section 206C(1F), Raghav Motors Ltd., a seller is required to collect tax at source@1% (0.75% for period from 14th May, 2020 to 31st March, 2021) of the sale consideration received from M/s. Om Ltd., a buyer, on sale of motor vehicle of the value exceeding ₹ 10 lakhs.

Accordingly, Raghav Motors Ltd. is required to collect tax at source u/s 206C(1F) on the following dates -

- ₹ 27,750 [0.75% on ₹ 37,00,000] on 14.7.2020

- ₹ 14,250 [0.75% on ₹ 19,00,000] on 12.8.2020

- ₹ 9,000 [0.75% on ₹ 12,00,000] on 5.11.2020

Total amount of TCS is ₹ 51,000.

In all three cases mentioned above, the payment was received on the date of sale of Maruti cars, hence, the tax has to be collected on the respective dates of sale mentioned above.

In respect of Ford car, the value of which is ₹ 8,00,000, tax is not required to be collected under section 206C(1F), since its value does not exceed ₹ 10,00,000.

Further, as regards receipt of sale consideration of ₹ 8 lakh in respect of Ford car, there are two views as to whether TCS provisions under section 206C(1H) would be attracted.

Since sale consideration of ₹ 8 lakh in respect of Ford car on 18.10.2020 is the only receipt of Om Ltd. which is excluded from the purview of TCS u/s 206C(1F), and this receipt does not exceed the annual threshold of ₹ 50 lakhs, a view can be taken that no tax is required to be collected at source u/s 206C(1H).

Alternative view in respect of TCS u/s 206C(1H)

Since the receipt of sale consideration for all vehicles (including the sale consideration of Maruti cars in respect of which TCS u/s 206C(1F) is attracted) exceeds ₹ 50 lakhs during the previous year 2020-21 and the total sales of Raghav

Motors Ltd. from the business carried on by it exceed ₹ 10 crores (₹ 10.20 crores i.e., ₹ 9.80 crores + ₹ 0.60 crores) during the financial year 2019-20, a view can be taken that tax is to be collected at source @0.075% of ₹ 8 lakh u/s 206C(1H), amounting to ₹ 600, at the time of receipt of consideration i.e., on 18.10.2020.

In such case, TCS liability will be ₹ 51,000 + ₹ 600 = ₹ 51,600

(b) Computation of tax payable by Mr. Ashish., a non-resident as per special provisions applicable to non-residents for the A.Y. 2021-22

Particulars	₹
Capital gains	
Long-term capital gains on transfer of specified asset	₹ 8,50,000
Less: Expenditure incurred in connection with such transfer	<u>₹ 30,000</u>
	₹ 8,20,000
Less: Investment in shares of Indian Public Limited companies [Deduction u/s 115F not allowable, since investment is made after 6 months from the date of transfer]	<u>Nil</u>
Taxable LTCG	₹ 8,20,000
Short-term capital gains u/s 111A	<u>₹ 2,00,000</u>
	10,20,000
Income from Other Sources	
- Interest on deposits held with private limited companies [deposits with private limited companies are not foreign exchange assets, hence, taxable at normal rates of tax]	2,93,000
- Interest on Government Securities [Investment income, as Government securities are foreign exchange asset, assuming the same were acquired in foreign currency]	<u>1,00,000</u>
Gross Total Income	14,13,000
Less: Deduction u/s 80C in respect of NSC ⁶	<u>1,50,000</u>
Total Income	<u>12,63,000</u>

⁶ "Notified savings certificate" referred to in the question refers to NSC VIII issue, since currently, subscription can be made only in NSC VIII issue. It may be noted that only resident individuals are permitted to subscribe to such issue. The question, however, states that Mr. Ashish has made investment in notified savings certificate, though, being a non-resident, he cannot actually do so. The above solution has been worked out on the basis of the information as given in the question i.e., Mr. Ashish has made the investment in NSC. It is also possible to answer the question by stating that Mr. Ashish, being a non-resident, is not eligible to subscribe for NSC VIII issue and hence, the question of deduction u/s 80C does not arise.

Particulars	₹
Computation of tax payable/refundable	
LTCG of ₹ 8,20,000 taxable @10% [10% of ₹ 8,20,000]	82,000
STCG of ₹ 2,00,000 [taxable @15%]	30,000
Interest on Government securities [Investment income] [20% of ₹ 1,00,000]	20,000
Interest on deposits held with private limited companies ₹ 1,43,000 [₹ 2,93,000 – ₹ 1,50,000], which is less than the basic exemption limit of ₹ 2,50,000	<u>Nil</u>
	1,32,000
Add: Health and education cess@4%	<u>5,280</u>
Tax liability	1,37,280
Less: TDS	<u>1,55,000</u>
Tax refundable	<u>17,720</u>

Alternative answer

**Computation of tax payable by Mr. Ashish., a non-resident
as per special provisions applicable to non-residents for the A.Y. 2021-22**

Particulars	₹
Capital gains	
Long-term capital gains on transfer of specified asset	₹ 8,50,000
Less: Expenditure incurred in connection with such transfer	<u>₹ 30,000</u>
	₹ 8,20,000
Less: Investment in shares of Indian Public Limited companies [Deduction u/s 115F not allowable, since investment is made after six months from the date of transfer]	<u>Nil</u>
	8,20,000
Short-term capital gains u/s 111A	2,00,000
Income from Other Sources	
- Interest on deposits held with private limited companies [deposits with private limited companies are not foreign exchange assets, hence, taxable at normal rates of tax]	2,93,000
- Interest on Government Securities [Not classified as investment income as Government securities are not foreign exchange assets, assuming the same were not acquired in foreign currency]	<u>1,00,000</u>

Gross Total Income	14,13,000
Less: Deduction u/s 80C in respect of NSC	<u>1,50,000</u>
Total Income	<u>12,63,000</u>
Particulars	₹
Computation of tax payable/refundable	
LTTCG of ₹ 8,20,000 taxable@10% [10% of ₹ 8,20,000]	82,000
STCG of ₹ 2,00,000 [taxable@15%]	30,000
Tax on Interest on Government securities and Interest on deposits held with private limited companies on ₹ 2,43,000 [₹ 3,93,000 – ₹ 1,50,000], which is less than the basic exemption limit of ₹ 2,50,000	<u>Nil</u>
	1,12,000
Add: Health and education cess@4%	<u>4,480</u>
Tax liability	<u>1,16,480</u>
Less: TDS	<u>1,55,000</u>
Tax refundable	<u>38,520</u>

Question 5

(a) Your answer should cover these aspects:

- Issue Involved
- Provisions Applicable,
- Analysis and
- Conclusion

(i) Nikhil, an individual, furnished his return of income for Assessment Year 2018-19 declaring income of ₹ 80,000 from Short Term Capital Gains on sale of shares and paid tax thereon at 15%. The Assessing Officer issued intimation under section 143(1) accepting the return of income but however, levied tax@30% on such income. The assessee filed an application under section 154 claiming that he erroneously offered to tax the gains arising on sale of shares as Short Term Capital Gains instead of Long Term Capital Gains, STT paid, which are exempt from tax. The Assessing Officer passed a rectification order allowing relief in part by computing tax @ 15% but refused to grant the refund on the ground that it was not claimed in the return of income furnished and the issue was beyond the ambit of section 154. Thereafter, the assessee furnished a revision petition u/s 264, which was rejected by the Commissioner of Income Tax on the plea that the scope of section 154 of the Income-tax Act was limited and had to be strictly based on the return of income furnished and that intimation under section 143(1) was not an order and not assessable to revisionary jurisdiction. Is the rejection of the revision petition under section 264 by the CIT valid? **(4 Marks)**

(OR)

The assessee firm M/s. Karishma Transport Services entered into contract with a cement company for transporting cement to various places in India for a yearly contract exceeding 10 crores. As the assessee did not have transport vehicles of its own, it engaged the services of other transporters for the said purpose. The cement company effected payments to the assessee towards transportation charges after deduction of tax at source. In its return of income, the assessee showed the income arising out of the business of transport contracts. While making payment to truck operators or owners, the assessee had not deducted tax at source. The Assessing Officer has disallowed 30% of the expenditure for non-deduction of tax as it exceeded the threshold limit specified under the Income tax Act. Is the contention of Assessing Officer valid? **(4 Marks)**

- (ii) A scheme of arrangement was approved by the Delhi High Court pursuant to which the assessee company bought back 5,00,000 shares at the rate of ₹ 18,000 per share for a total consideration of ₹ 900 crores held by its sole shareholder and holding company in Mauritius.

In its return of income, it declared the details of the transaction but denied the liability to pay any tax on the said transaction. Pursuant to notice under section 143(2), an assessment order was passed rejecting the assessee's contention that the transaction was not a buyback in terms of section 115QA but a buy-back pursuant to a scheme approved by the High Court, and holding the assessee liable to pay tax at 20% on the distributed income of ₹ 900 crores.

The assessee filed a writ petition with High Court against this portion of the assessment order. The Department submitted that since the remedy of appeal was available to the assessee, the writ petition should not be entertained.

In light of the above facts, please discuss whether the assessee company is right in filing a writ petition? **(4 Marks)**

- (b) M/s. XYZ.com, an e-commerce operator, incorporated in China has no physical presence in India. It has no permanent establishment in India.

- (a) It sells goods worth ₹ 1.20 crores to Indian residents.
- (b) Service provided to persons resident in India by way of sale of online advertisement. When amount of bill (or aggregate amount of bills) to a recipient of service during the financial year does not exceed ₹ 1 lakh per recipient of service (Gross amount of all bills is ₹ 70 lakhs).
- (c) Service provided to non-residents by way of sale of online advertisements, which target resident Indian customers, amounting to ₹ 20 lakhs.

The above data pertains to Financial year 2020-2021. Discuss the implications of Equalisation levy on XYZ.com for the Assessment year 2021-22. **(6 Marks)**

Answer**(a) (i) [First Alternative]**

Issue Involved: The issue under consideration is whether intimation u/s 143(1) can be regarded as an order, which can be revised by the Commissioner u/s 264.

Provision Applicable: As per section 264, the Commissioner can revise any order, other than an order to which section 263 applies.

Analysis: Since section 264 uses the expression "any order", it would imply that the section does not limit the power thereunder to correct errors committed by the subordinate authorities but could even be exercised where errors are committed by assessees. It would even cover situations where the assessee, because of an error, has not put forth a legitimate claim at the time of filing the return and the error is subsequently discovered and is raised in an application under section 264.

The intimation under section 143(1) is to be regarded as an order for the purposes of section 264

⁷A duty is cast upon the Assessing Officer to assist and aid the assessee in the matter of taxation and to advise the assessee, guide him and not to take advantage of error or mistake committed by the assessee or of his ignorance.

Conclusion: Accordingly, the Commissioner instead of merely examining whether the intimation was correct based on the material then available ought to have examined the material in the light of the CBDT Circular⁸. The rejection of revision petition is, therefore, not valid.

(a) (i) [Second Alternative]

Issue Involved: The issue involved in this case is whether the assessee-firm, M/s. Karishma Transport Services, is liable to deduct tax at source under section 194C in respect of payment to truck operators/owners, where the payment exceeds the threshold limit, in a case where the assessee-firm used the services of the truck owners for execution of contract entered into by it with a cement company.

Provision applicable: Section 194C requires deduction of tax at source in case of payments to resident contractors/sub-contractors, where the individual payment exceeds ₹ 30,000 or the aggregate payments to residents during the year exceed ₹ 1 lakh.

Where the tax required to be deducted at source has not been deducted or after deduction, has not been paid within the stipulated time, then disallowance u/s 40(a)(ia) is attracted, at 30% of the expenditure in the form of payments made to the residents.

⁷ As per CBDT Circular

⁸ Circular No. 14(XL-35) of 1955, dated April 11, 1955 and article 265 of the Constitution of India.

Analysis: The nature of the contract entered into by the assessee-firm, with the cement company makes it clear that it was the responsibility of the assessee-firm to transport the cement of the company; and how to accomplish this task of transportation was a matter exclusively within the domain of the assessee-firm.

When any truck got engaged for the purpose of execution of the work undertaken by the assessee-firm and freight charges were payable to its operator or owner upon execution of the work, i.e., transportation of the goods, all the essentials of a contract existed; and the truck operator or owner became a sub-contractor.

In this case, the assessee-firm was not acting as a facilitator or intermediary between the cement company and the truck operators or owners because those two parties had no privity of contract between them. The contract of the company for transportation of its goods was only with the assessee-firm and it was the assessee-firm who hired the services of the trucks. The payment made by the assessee-firm to such transporter was clearly a payment made to a sub-contractor.

Therefore, section 194C was applicable and the assessee-firm was under obligation to deduct tax at source in relation to the payments made by it to the truck operators or owners for hiring the vehicles for the purpose of its business of transportation of goods, if the payment exceeded the individual threshold limit of ₹ 30,000/aggregate threshold limit of ₹ 1 lakh specified thereunder.

Conclusion: The action of the Assessing Officer in disallowing 30% of the expenditure for non-deduction of tax as it exceeded the threshold limit, is correct.

Note – The facts given in the question are similar to the facts in *Shree Choudhary Transport Co. v ITO [2020] 426 ITR 0289*, wherein the issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court in the said case.

It may be noted that section 194C provides that no tax is deductible at source where transport charges are made to a contractor/sub-contractor, who owns ten or less goods carriages at any time during the previous year 2020-21, and have furnished a declaration to this effect along with their PAN. If the transporters satisfy these conditions stipulated u/s 194C, the action of the Assessing Officer would be incorrect.

- (ii) **Issue Involved:** The issue under consideration in this case is whether denial of liability to pay tax under section 115QA is an appealable issue.

[Note - The issue involved in this case may also be described as whether the assessee is justified in filing the writ petition].

Provision Applicable: When an alternate remedy is available, a taxpayer cannot seek the writ jurisdiction of the High Court.

As per section 246A, any assessee aggrieved against, *inter alia*, any one of the following orders may appeal to Commissioner (Appeals):

- (i) An order against the assessee, where the assessee denies his liability to be assessed under this Act, or
- (ii) Any order of assessment under section 143(3), where the assessee objects to the amount of income assessed/tax determined/loss computed, as the case may be.

Section 115QA provides that where shares are bought back at a price higher than the price at which those shares were issued, then, the balance amount will be treated as distribution of income to shareholder and tax@20% will be payable by the company.

Analysis: The expression “denies his liability to be assessed” is quite comprehensive to include within its fold every case where the assessee denies his liability to be assessed under the Act. Therefore, any determination u/s 115QA, be it regarding quantification of the liability or the question whether such company is liable or not, would fall within the ambit of “an order against the assessee, where the assessee denies his liability to be assessed under this Act”.

Accordingly, an appeal u/s 246A to Commissioner (Appeals) would be maintainable against the determination of liability under section 115QA.

Conclusion: Accordingly, the assessee should have filed an appeal to the Commissioner (Appeals) instead of filing a writ petition. The action of the assessee in filing writ petition is **not correct**.

- (b) (1) Equalisation levy @ 2% is attracted on 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, *inter alia*, -
 - to a person resident in India; or
 - to a non-resident in specified circumstances, which include sale of advertisement targeting a customer who is resident in India.

XYZ.com is an e-commerce operator since it is a non-resident managing an electronic facility for online sale of goods and provision of services.
- (2) Equalisation levy@2% would **not** be attracted, if -
 - (i) XYZ.com has a PE in India; or
 - (ii) Equalization levy@6% is deductible by the service recipients, resident in India, in respect of online advertisement services rendered to them; or
 - (iii) The sales/turnover/gross receipts of XYZ.com from taxable e-commerce supply or services is less than ₹ 2 crore in the current previous year i.e., P.Y.2020-21.
- (3) In this case, Equalisation levy @ 2% would be attracted since -
 - (i) XYZ.com does not have a PE in India.

- (ii) The amount of billing (or the aggregate amount of billing) to each recipient of advertisement service (being a person resident in India) does not exceed ₹ 1 lakh. Consequently, there would be no requirement for them to deduct equalization levy of 6%.
- (iii) The sales/turnover/gross receipts of XYZ.com from taxable e-commerce supply or services exceeds ₹ 2 crore in the current previous year i.e., P.Y.2020-21 (Working given below)

(4) **Value of taxable e-commerce supply or services**

Particulars	₹
(a) E-commerce supply of goods to residents	1,20,00,000
(b) E-commerce services to residents (Equalisation levy@2% is attracted in the hands of XYZ.com, since Equalisation levy@6% is not deductible by the service recipients on account of the billing/aggregate amount of billing being less than ₹ 1 lakh)	70,00,000
(c) E-commerce services to non-residents by way of sale of online advertisements targeting Indian customers	<u>20,00,000</u>
Taxable e-commerce supply or services	<u>2,10,00,000</u>
Equalisation levy @ 2%	4,20,000

Question 6

- (a) *M/s. Highway Drive Limited incorporates a wholly owned subsidiary M/s. Highway Roads Limited in India during the F.Y. 2016-17. Its main business is to develop infrastructure facility and is eligible for deduction u/s 80-IA. Accordingly the company has claimed deduction u/s 80-IA for the A.Y. 2021-22.*
- (i) *Highway Roads Limited derives income other than income from developing infrastructure facilities and discloses such income as income from developing infrastructure facilities, thus enjoying the benefit u/s 80-IA.*
- (ii) *Highway Roads Limited purchases the supplies for the development of infrastructure facilities from M/s. Highway Drive Limited at a price lesser than the fair price, thus transferring the income of M/s. Highway Drive Limited to M/s. Highway Roads Limited and enjoying the benefit of section 80-IA on such income.*
- Can GAAR be invoked in both the instances mentioned above? (4 Marks)**
- (b) *As per Income Tax Act, the Assessing Officer is empowered to provisionally attach any property of the assessee if he is of the opinion that it is necessary to do so for the purpose of protecting the interests of the revenue.*

Can the Assessing Officer revoke Provisional attachment of property if the assessee furnishes a bank guarantee. If yes, from whom and to what extent of value of the Bank guarantee needs to be furnished as per law.

Is the Assessing Officer empowered to invoke such Bank guarantee under any circumstances? Discuss. (4 Marks)

- (c) (i) *In what context is the term "Thin Capitalisation" used?*

Is there any threshold limit prescribed by the Act for claiming deduction u/s.94B of the Act for addressing Thin Capitalisation? Discuss its applicability to different entities. Whether any entities are excluded from its application? (4 Marks)

- (ii) *There are two types of DTAA made by India with other countries i.e., Limited DTAA's and Comprehensive DTAA's. Explain the terms. (2 Marks)*

Answer

- (a) (i) In the present case, Highway Roads Ltd. derives income other than income from developing infrastructure facilities and discloses such income as income from developing infrastructure facilities to avail benefit of deduction u/s 80-IA. This is a case of misrepresentation of facts by showing non-eligible income as income eligible for deduction u/s 80-IA. Hence, this is an arrangement of tax evasion and not tax avoidance.

Tax evasion, being unlawful, can be dealt with directly by establishing correct facts. GAAR provisions need not be invoked in such a case.

- (ii) In this case, there is a close connection between Highway Drive Limited, ineligible assessee, and Highway Roads Ltd, an eligible assessee, since the eligible assessee is a wholly owned subsidiary of ineligible assessee. The purchase transaction has been arranged in such a way that it produces more than ordinary profits to the eligible assessee.

However, such tax avoidance is specifically dealt with through the provisions contained in section 80-IA(10). Further, if the aggregate of such transactions entered into in the relevant previous year exceed the threshold of ₹ 20 crore, domestic transfer pricing regulations under section 92BA would be attracted.

It is not the intention of the legislation to invoke GAAR in such situations. Hence, the Revenue need not invoke GAAR in such a case, though GAAR and SAAR can co-exist as per clarification given in the CBDT Circular.

- (b) Yes, as per section 281B(3), the Assessing Officer can, by order in writing, revoke provisional attachment of a property made u/s 281B in a case where the assessee furnishes a guarantee.

Such bank guarantee should be from a scheduled bank and for an amount not less than the fair market value of such provisionally attached property or for an amount which is sufficient to protect the interests of the Revenue.

The Assessing Officer is empowered to invoke bank guarantee in the following circumstances -

- (i) Where a notice of demand specifying a sum payable is served upon the assessee and the assessee fails to pay such sum within the time specified in the notice of demand, the Assessing Officer may invoke the bank guarantee, wholly or partly, to recover the said amount
 - (ii) In a case where the assessee fails to renew the bank guarantee or fails to furnish a new guarantee from a scheduled bank for an equal amount, fifteen days before the expiry of such guarantee, the Assessing Officer shall, in the interests of the revenue, invoke the bank guarantee.
- (c) (i) Thin capitalization refers to the process of funding an entity by debt instead of equity with a view to take advantage of interest deduction benefits. In other words, thin capitalization refers to the situation where a company is financed through a relatively high level of debt compared to equity.

For addressing thin capitalization, section 94B provides a cap on the interest expense that can be claimed by an entity in respect of borrowings from its non-resident associated enterprise. As per section 94B, the total interest paid in excess of 30% of its EBITDA (Earnings before interest, taxes, depreciation and amortization) or interest paid or payable to associated enterprise for that previous year, whichever is less, shall not be deductible. This limitation of interest deduction would be applicable only where the interest expenditure in respect of any debt issued by a non-resident associated enterprise exceeds ₹ 1 crore.

Section 94B is applicable to an Indian company, or a permanent establishment of a foreign company in India, being the borrower incurring interest expenditure in respect of debt issued by its non-resident associated enterprise. Debt shall be deemed to have been issued by an associated enterprise, even where the lender is not an associated enterprise, if an associated enterprise provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender.

The following has been excluded from the applicability of the provisions of section 94B -

- an Indian company or permanent establishment of a foreign company which is engaged in the business of banking and insurance
 - interest paid in respect of a debt issued by a lender which is a permanent establishment in India of a non-resident, being a person engaged in the business of banking.
- (ii) Limited DTAA's are those which are limited to certain types of incomes only. e.g., DTAA between India and Pakistan is limited to income from international air transport only.

Comprehensive DTAA's are those which cover almost all types of incomes covered by any model convention.