Mock Test Paper - Series I: March, 2024

Date of Paper: 11 March, 2024

Time of Paper: 2 P.M. to 5 P.M.

FINAL COURSE

PAPER – 4: DIRECT TAX LAWS & INTERNATIONAL TAXATION

SOLUTIONS

Division A – Multiple Choice Questions

MCQ No.	Most Appropriate Answer	MCQ No.	Most Appropriate Answer
1.	(a)	9.	(c)
2.	(c)	10.	(b)
3.	(a)	11.	(c)
4.	(c)	12.	(b)
5.	(c)	13.	(a)
6.	(d)	14.	(a)
7.	(b)	15.	(b)
8.	(d)		

Division B – Descriptive Questions

1. **Computation of total income and tax liability of Sheetal Ltd. for A.Y.2024-25 under the regular provisions of the Act**

Particulars	₹	₹
Profits and gains of business or profession		
Net profit from Chemical manufacturing unit, Jaipur	3,00,00,000	
***Add:* Items debited but to be disallowed**		
- **Royalty on which tax is not deducted**	3,00,000	
[30% of ₹ 10 lakhs, being payment of royalty without deduction of tax would be disallowed under section 40(a)(ia) while computing the business income of A.Y.2024-25. However, since the payee has admitted the income, paid tax and filed his return of income before due date, the same would be allowable in the P.Y. 2024-25 relevant to A.Y.2025-26, being		

the year in which tax was deducted and paid]		
- **Employer's contribution to notified pension scheme**	11,20,000	
[As per section 36(1)(iva), employer's contribution to the account of an employee under a Pension Scheme as referred to in section 80CCD would be allowed as deduction while computing business income only to the extent of 10% of salary and DA of the employee in the previous year. Therefore, ₹ 11,20,000 representing the excess 5% (i.e., ₹ 33,60,000 x 5%/15%) debited to profit and loss account has to be added back while computing business income]		
		3,14,20,000
Net profit from Furniture manufacturing unit, Pune	90,00,000	
***Add:* Items debited but to be disallowed or to be treated separately**		
- **Trademark**	25,00,000	
[Trademark is an intangible asset which is eligible for depreciation as per section 32. Since purchase cost of trademark has been debited to profit and loss account, the same has to be added back while computing business income]		
- **Interest on loan taken from a non-resident**	NIL	
[No disallowance under section 40(a)(i) is attracted in respect of interest, since tax has been deducted during the P.Y. 2023-24 and remitted on or before the due date of filing of return of income for A.Y. 2024-25]		
- **Income-tax paid on non-monetary perquisites**	7,00,000	
[As per section 40(a)(v), tax paid by employer on non-monetary perquisites is not allowable as deduction. Since the		

same has been debited to profit and loss account, the same has to be added back while computing business income]		
	1,22,00,000	
Less: Depreciation on trademark u/s 32 [₹ 25 lakhs x 25%]	6,25,000	
		1,15,75,000
Net profit from Fertilizer producing unit, Narmada	2,20,00,000	
***Add:* Items debited but to be disallowed or to be treated separately**		
- Depreciation on building of ₹ 25 lakhs and on plant and machinery of ₹ 45 lakhs [As per section 35AD, no deduction would be allowed under any other section in any previous year in respect of capital expenditure referred to in section 35AD. Hence, depreciation on building and plant and machinery is not allowable as deduction and the same has to be added back.]	70,00,000	
	2,90,00,000	
***Less*:** Deduction u/s 35AD [Since fertilizer unit commenced operation on or after 1.4.2011, it is a specified business eligible for 100% deduction u/s 35AD in respect of capital expenditure. However, deduction is not available on expenditure incurred on acquisition of land. Deduction u/s 35AD is ₹ 5.50 crores, being ₹ 2.50 crore on building and ₹ 3 crore on plant and machinery. Since it is more beneficial for the company to claim deduction u/s 35AD, it is assumed that the company has opted to claim such deduction.]	5,50,00,000	
As per section 73A, loss from the specified business u/s 35AD can be set-off only against profits from another specified business. Since there is no other specified business, such loss has to be carried forward to A.Y. 2025-26.	(2,60,00,000)	
Net profit from Warehousing facility for storage of edible oils at Delhi	70,00,000	

***Less:* Depreciation u/s 32**			
On building of ₹ 3 crores@10%	30,00,000		
On Plant & machinery of ₹ 5 crores@15%	75,00,000	1,05,00,000	
As per section 70(1), Business loss from one source is allowed to be set off from other source under the same head.			(35,00,000)
Net profit of Sheetal Ltd.			**3,94,95,000**
***Add:* Interest on share application money deposited in bank**			-
[The interest on share application money deposited in a bank is not liable to be taxed**,** as the deposit was not for making additional income but to comply with the statutory requirement. The interest accrued on such deposit is merely incidental. The interest is eligible for set-off against share issue expenses.[1]]			
			3,94,95,000
Income from Other Sources			
Dividend from ABC Inc., a foreign company			56,00,000
Gross Total Income			**4,50,95,000**
Less: Deduction under section 80M [In respect of inter-corporate dividends to the extent of dividend distributed by it one month prior to the date for filing return of income u/s 139(1)]			40,00,000
Total Income			**4,10,95,000**
Computation of tax liability under the regular provisions of the Act			
Tax liability on ₹ 4,10,95,000@25% [Since the turnover of the company for the previous year 2021-22 does not exceed ₹ 400 crore]			1,02,73,750
Add: Surcharge @ 7%, since the total income of the company > ₹ 1 crore but ≤ ₹ 10 crores			7,19,163

[1] *CIT v. Sree Rama Multi Tech Ltd. [2018] 403 ITR 426 (SC)*

		1,09,92,913
Add: Health and education cess @ 4%		4,39,717
Tax liability		**1,14,32,630**

Computation of tax liability of Sheetal Ltd. for the A.Y. 2024-25 under section 115JB

Particulars	₹
Minimum Alternate Tax @15% on book profit of ₹ 5,20,00,000	78,00,000
Add: Surcharge@7%, since the book profit of the company > ₹ 1 crore but ≤ ₹ 10 crores	5,46,000
	83,46,000
Add: Health and Education cess@4%	3,33,840
Tax liability under section 115JB	**86,79,840**

Since the regular income-tax liability is more than the minimum alternate tax liability, Sheetal Ltd. is liable to pay tax under normal provisions of the Act.

Tax liability under the regular provisions of the Income-tax Act, 1961	1,14,32,630
Less: MAT Credit of A.Y. 2015-16	20,00,000
	94,32,630

Note - *Sheetal Ltd. is eligible for concessional rate under section 115BAA @25.168% i.e., tax@22% plus surcharge@10% plus HEC@4% subject to tax at the rates mentioned in the said sections in Chapter XII. In case Sheetal Ltd. opted for concessional rate of tax u/s 115BAA, it would not be eligible for deduction u/s 35AD in respect of fertilizer producing unit, however, it can claim depreciation u/s 32 on building and plant and machinery. In that case, its total income u/s 115BAA would be -*

Particulars	₹
Profit from Chemical manufacturing unit, Jaipur	3,14,20,000
Profit from Furniture manufacturing unit, Pune	1,15,75,000
Profit from Fertilizer producing unit, Narmada	2,20,00,000
Profit from Warehousing facility for storage of edible oils at Delhi	(35,00,000)
	6,14,95,000
Dividend from ABC Inc., a foreign company	56,00,000
Gross Total Income	6,70,95,000

Less: Deduction under section 80M [In respect of inter-corporate dividends to the extent of dividend distributed by it one month prior to the date for filing return of income u/s 139(1)]	40,00,000
Total Income	6,30,95,000
Tax liability under section 115BAA (22% + surcharge 10% + HEC 4%) = 25.168% on ₹ 6,30,95,000	
Tax liability	1,58,79,750
Suggestion to Sheetal Ltd. Sheetal Ltd. should not opt for section 115BAA for assessment year 2024-25, since the tax liability under section 115BAA is higher under the regular provisions of the Act and section 115JB.	

2. (a) **Tax treatment in the hands of ABC LLP on conversion of ABC Pvt. Ltd. into ABC LLP**

(i) **Business loss of ₹ 54 lakhs (relating to P.Y. 2019-20)**

As per section 72A(6A), the business loss of ₹ 54 lakhs of ABC Pvt. Ltd. would be deemed to be the loss of ABC LLP for P.Y. 2023-24 and it would be able to set off and carry forward such loss.

The carry forward is for 8 assessment years subsequent to the assessment year 2024-25.

However, if subsequent to the conversion, ABC LLP fails to fulfill any of the conditions mentioned in section 47(xiiib), the set-off of business loss so made in any previous year would be deemed to be the income chargeable to tax in the year in which such conditions are not complied with.

(ii) **Depreciation and written down value of assets**

In case of conversion of ABC Pvt. Ltd. into ABC LLP, depreciation on assets shall be apportioned between the company and LLP in the ratio of the number of days for which the assets were used by them.

Total Depreciation

Plant and machinery (15%) = ₹ 14 lakhs x 15% = ₹ 2,10,000

Building (10%) = ₹ 40 lakhs x 10% = ₹ 4,00,000

In the hands of ABC LLP (for 183 days)

Plant and machinery (15%) = ₹ 2,10,000 x 183/366 = ₹ 1,05,000

Building (10%) = ₹ 4,00,000 x 183/366 = ₹ 2,00,000

WDV in the hands of ABC LLP

As per section 43(6), the actual cost of the block of assets in the hands of ABC LLP shall be the WDV of the block of assets as in the case of ABC Pvt. Ltd. on the date of conversion.

WDV of P & M (15%) = ₹ 14 lakhs – ₹ 1,05,000 (₹ 2,10,000 x 183/366) = ₹ 12,95,000

WDV of Building (10%) = ₹ 40 lakhs – ₹ 2,00,000 (₹ 4,00,000 x 183/366) = ₹ 38,00,000

Actual cost of Plant and machinery on which deduction has been allowed or is allowable to the assessee under section 35AD would be 'NIL' in the hands of ABC Pvt. Ltd. and ABC LLP.

(iii) Cost of land acquired in 2012 at ₹ 80 lakhs (Market value ₹ 120 lakhs)

The cost of acquisition of land in the hands of ABC LLP would be the cost for which ABC Pvt. Ltd. acquired it, i.e., ₹ 80 lakhs.

(iv) Expenditure on voluntary retirement benefit of ₹ 28 lakhs

As per section 35DDA, in case of conversion of ABC Pvt. Ltd. into ABC LLP, deduction would be available to ABC LLP for the remaining periods from the previous year in which conversion took place. Since deduction of ₹ 5.6 lakhs each has been claimed by ABC Pvt Ltd. in P.Y. 2021-22 and P.Y. 2022-23, ABC LLP would be eligible for deduction of ₹ 5.6 lakhs each for the remaining three previous years, namely P.Y.2023-24, P.Y.2024-25 and P.Y.2025-26 under section 35DDA.

(v) Unadjusted MAT credit u/s 115JJAA of ₹ 8.6 lakhs

As per section 115JAA(7), in case of conversion of ABC Pvt. Ltd. into ABC LLP, the credit for MAT paid by ABC Pvt. Ltd. cannot be availed by the successor LLP i.e., ABC LLP.

(vi) Unabsorbed depreciation of ₹ 48 lakhs

As per section 72A(6A), ABC LLP would be able to carry forward and set-off the unabsorbed depreciation of ₹ 48 lakhs of ABC Pvt. Ltd.

However, if subsequent to the conversion, ABC LLP fails to fulfill any of the conditions mentioned in section 47(xiiib), the set-off of depreciation so made in any previous year would be deemed to be the income chargeable to tax in the year in which such conditions are not complied with.

(b) Since Mr. Mani Prasad is resident in India for the P.Y.2023-24, his global income would be subject to tax in India. Therefore, income earned by him in Country M and Country N would be taxable in India. He would, however, be entitled to deduction under section 91, since India does not have a DTAA with Country M and Country N, and all conditions under section 91 are satisfied.

Computation of total income of Mr. Mani Prasad for A.Y.2024-25

Particulars	₹	₹
Income under the head "Salaries"		
Pension from State Government	4,80,000	
Less: Standard deduction u/s 16(ia) [Allowable as per section 115BAC]	50,000	
		4,30,000
Income from House Property		
Rental income from property in Country N[2]	3,20,000	
Less: Municipal taxes	21,000	
	2,99,000	
Less: Deduction u/s 24(a)@30%	89,700	
		2,09,300
Profits and Gains of Business or Profession		
Speculative income in India	1,56,000	
Less: Set-off of business loss from proprietary business in Country N under section 70	1,16,000	
		40,000
Capital Gains		
Short-term capital gains on sale of plot in India		3,20,000
Income from Other Sources		
Agricultural income from Country M [not exempt u/s 10(1), since it is earned from land situated outside India]	86,000	
Dividend from a company in Country M	68,000	
		1,54,000
Gross Total Income		11,53,300
***Less:* Deduction under Chapter VI-A [No deduction allowable as per section 115BAC]**	-	-
Total Income		**11,53,300**

[2] *In the absence of any information relating to fair rent, municipal value and standard rent, rental income is assumed to be the gross annual value.*

Computation of net tax liability of Mr. Mani Prasad for A.Y.2024-25

Particulars		₹
Tax on ₹ 11,53,300		
Upto ₹ 3,00,000	Nil	
₹ 3,00,001 to ₹ 6,00,000 @5%	15,000	
₹ 6,00,001 to ₹ 9,00,000 @10%	30,000	
₹ 9,00,001 to ₹ 11,53,300 @15%	37,995	
		82,995
Add: Health and education cess@4%		3,320
		86,315
Less: Rebate under section 91 **(See Working Note below)**		11,101
Net tax liability		**75,214**
Net tax liability (Rounded off)		**75,210**
Calculation of Rebate under section 91:	**₹**	
Average rate of tax in India [i.e., ₹ 86,315/ ₹ 11,53,300 x 100] = 7.484%		
Doubly taxed income pertaining to Country M		
Agricultural income	86,000	
Dividend from a company in Country M [Not includible, since exempt in Country M]	-	
	86,000	
Rebate under section 91 on ₹ 86,000 @7.484% [being the lower of average Indian tax rate (7.484%) and Country M tax rate (10%)]		6,436
Doubly taxed income pertaining to Country N		
Income from house property *less* business loss set-off against income chargeable to tax in India (₹ 2,09,300 – ₹ 1,16,000)	93,300	
Rebate under section 91 on ₹ 93,300 @5% [being the lower of average Indian tax rate (7.484%) and Country N tax rate (5%)]		4,665
Total rebate under section 91 (Country M + Country N)		**11,101**

3. (a) (i) As per section 11(1A), where a capital asset held under trust (building, in this case) is transferred and only a part of the net consideration is utilized for acquiring another capital asset, the amount of capital gains deemed to have been utilised for charitable or religious purposes shall be the excess of the proceeds utilised over the cost of the asset transferred.

In the present case, short-term capital gain of ₹ 2,00,000 [₹ 4,20,000 *less* ₹ 2,20,000] would arise on transfer of building held under trust, as building is held for a period of not more than 24 months. Further, the trust has invested part of the net consideration i.e., ₹ 3,00,000 out of ₹ 4,20,000, in fixed deposits for the tenure of 2 years.

Where the net consideration on sale of a capital asset is invested in fixed deposits, it is regarded as utilised for acquiring another capital asset[3]. Accordingly, capital gains utilised for investing in fixed deposits is deemed to be applied for charitable purpose.

Since only a part of the net consideration of ₹ 3,00,000 out of ₹ 4,20,000 is utilized for investing in fixed deposits, the amount of short-term capital gains to the extent of ₹ 80,000 (being the excess of proceeds utilized i.e., ₹ 3,00,000 over cost of transferred asset i.e., ₹ 2,20,000) would be deemed to be utilised for charitable purpose.

The balance of ₹ 1,20,000 is taxable in the hands of the trust. Applying such income to the objects of the trust would make the transaction, tax neutral.

(ii) As per section 115BBC, anonymous donations received *inter alia* by trust or institution referred u/s 11 would be taxable @ 30% in excess of higher of -

- 5% of the total donations received by the assessee; or
- ₹ 1 lakh

However, the provisions of section 115BBC would not apply to anonymous donation received by trusts/institutions created or established wholly for religious and charitable purposes (i.e. partly charitable and partly religious institutions/trusts) other than anonymous donation made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution.

In the present case, HelpAge trust is established for religious and charitable purposes and runs a temple and a school. During the P.Y. 2023-24, it received anonymous donation of ₹ 3 crores for Temple and ₹ 8 crores for School. Since it received anonymous donation separately for temple and school, the provisions of section 115BBC would not be attracted in respect of donations of ₹ 3 crores received for Temple.

[3] *CIT v. Ambalal Sarabhai Trust No. 3 [1988] 173 ITR 683 (Guj)/ CIT v. Hindustan Welfare Trust [1994] 206 ITR 138 (Cal)/ CBDT instruction no. 883, dated 24.09.1975*

However, the provisions of section 115BBC would be attracted in respect of anonymous donation received for school.

(iii) Any voluntary contribution received by an electoral trust would be exempt, if such electoral trust:

(i) distributes to a registered political party during the previous year, 95% of the aggregate donations received by it during the year along with the surplus if any, brought forward from any earlier previous year and

(ii) functions in accordance with the rules made by the Central Government.

The electoral trust may, for the purposes of managing its affairs, spend up to 5% of the total contributions received in a year subject to an aggregate limit of ₹ 5 lakh in the first year of incorporation and ₹ 3 lakh in subsequent years.

The total contributions received in any financial year alongwith the surplus from any earlier financial year, if any, as reduced by the amount spent on managing its affairs, shall be the distributable contributions for the financial year.

In the present case, M/s XYZ, an electoral trust incorporated in the year 2022, received voluntary contributions of ₹ 420 lakhs and has brought forward surplus from earlier previous years is ₹ 18 lakhs. It spent ₹ 8 lakhs for the purpose of managing its affairs. However, it is eligible to spend ₹ 3 lakhs being lower of -

- ₹ 21 lakhs, being 5% of total contributions i.e., ₹ 420 lakhs or
- ₹ 3 lakhs, since P.Y. 2023-24, being the subsequent year

for the purpose of managing its affairs.

Accordingly, M/s XYZ, an electoral trust can distribute its distributable contribution of ₹ 435 lakhs [i.e., ₹ 420 lakhs *plus* ₹ 18 lakhs *less* ₹ 3 lakhs] as the same exceeds ₹ 416.10 lakhs (i.e., 95% of ₹ 438 lakhs).

(b) (i) Provision of scientific research services falls within the scope of international transaction under section 92B. Trax & Co. and Olive Inc. are deemed to be associated enterprises as per section 92A(2)(d), since Olive Inc. guarantees not less than 10% of the total borrowings of Trax & Co. Since there is an international transaction between associated enterprises, transfer pricing provisions are attracted in this case.

(ii) Where the Assessing Officer has made a primary adjustment of ₹ 310 lakhs to the transfer price and the same has been accepted by Trax & Co., secondary adjustment has to be made in the books of account as per section 92CE, since the primary adjustment made by the Assessing Officer and accepted by Trax & Co exceeds ₹ 100 lakhs and the primary adjustment is in relation to P.Y.2021-22.

The excess money determined based on the primary adjustment has to be repatriated to India within 90 days from the date of order, failing which the same would be deemed as an advance and interest would be computed at the one-year marginal cost of fund lending rate of State Bank of India as on 1.4.2023 + 3.25%, since the international transaction has been denominated in Indian Rupees.

In this case, since the excess money has not been repatriated within 90 days, the same would be deemed to be an advance made by Trax & Co. to Olive Inc. and interest would be computed @12.25% (9% + 3.25%) from 1.4.2023, being the date of the order of the Assessing Officer. The interest would amount to ₹ 37.975 lakhs (i.e., 12.25% of ₹ 310 lakhs) for the P.Y.2023-24.

Alternatively, Trax & Co. can opt to pay additional income-tax@20.9664% (tax@18% plus surcharge@12% plus cess@4%) on ₹ 310 lakhs, which would amount to ₹ 64,99,584. In such a case, secondary adjustment is not required to be made.

4. (a) As per section 269SU, Marigold Ltd. is required to provide facility for accepting payment through the prescribed electronic modes, in addition to the facility for other electronic modes of payment of debit card or credit card provided by Marigold Ltd., since its total turnover in business during the immediately preceding previous year. i.e., P.Y. 2022-23 is ₹ 70 crores, which exceeds the prescribed threshold of ₹ 50 crores.

Prescribed electronic modes are

(1) Debit Card powered by RuPay;

(2) Unified Payments Interface (UPI) (BHIM-UPI); and

(3) Unified Payments Interface Quick Response Code (UPI QR Code) (BHIM-UPI QR Code).

The failure to provide facility for electronic modes of payment prescribed under section 269SU by Marigold Ltd. would attract a penalty under section 271DB of a sum of ₹ 5,000, for every day during which such failure continues.

However, penalty shall not be imposed, if Marigold Ltd. proves that there were good and sufficient reasons for such failure. Further, any such penalty shall be imposed by the Joint Commissioner.

(b) When an assessee is in default or is deemed to be in default in making a payment of tax, the TRO may draw up under his signature a statement in the prescribed form specifying the amount of arrears due from the assessee and shall proceed to recover from such assessee the amount specified in the certificate by *inter alia* attachment and sale of the assessee’s movable or immovable property.

The assessee's movable or immovable property shall include any property which has been transferred, directly or indirectly by the assessee to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of any of the persons aforesaid.

In the present case, Mr. Raghav had transferred his land 5 years ago to his son who was 40 years old at that time. He also gifted a diamond necklace to his son's wife on 5.10.2023. He also has bank fixed deposits, receivables from S & Co. Ltd. and residential apartment in Australia.

The Tax Recovery Officer can proceed to recover the tax by attaching -

(i) bank fixed deposits

(ii) receivables from S & Co. Ltd.

(iii) residential apartment in Australia

He can also proceed to recover the tax by attaching the diamond necklace gifted to his son's wife.

However, he cannot proceed to recover the tax by attaching the land which he transferred to his son, since at the time of transfer, his son was major.

(c) Capital gain arising in the hands of Angelo and James from transfer of a capital asset situated in India would be deemed to accrue or arise in India. Shares of Flix Inc., Country M, shall be deemed to be situated in India if those shares derive directly or indirectly, its value substantially from assets located in India.

Shares of Flix Inc. would be deemed to derive its value substantially from the assets located in India, if on the specified date, the fair market value of Indian assets (without reduction of liabilities) i.e., fair market value of assets of XYZ Co. –

- exceeds ₹ 10 crores; and
- represents at least 50% of the value of all the assets owned by the Flix Inc.

Specified date would be the date of transfer i.e., 1.6.2023 since book value of the assets of Flix Inc. on the date of transfer i.e., ₹ 1,300 crores exceed the book value of the assets as on the last balance sheet date preceding the date of transfer i.e., ₹ 1,000 crores by at least 15%.

Shares of Flix Inc. derives its value substantially from assets located in India since the fair market value of assets located in India (without reduction of liabilities) on 1.6.2023, being the specified date i.e., ₹ 600 crores exceed ₹ 10 crores and represents more than 50% i.e., 54.545% of the fair market value of assets of Flix Inc. i.e., ₹ 1,100 crores.

Hence, the shares of Flix Inc. would be deemed to be a capital asset situated in India and the capital gains from the transfer of shares of Flix

Inc. by Angelo and James would be deemed to accrue or arise in India. Accordingly, the capital gains arising from transfer of shares of Flix Inc. would be taxable in the hands of Angelo and James in India as per Income-tax Act, 1961.

5. (a) (i) **Issue Involved:** The issue under consideration is whether the stay order can be automatically vacated upon expiry of extended period of stay of 365 days, where the delay in disposing of the appeal is not attributable to the assessee.

Relevant provision of law: The third proviso to section 254(2A) provides that where the appeal filed before the Appellate Tribunal is not disposed of within the period of stay or extended period of stay granted by the Tribunal, the order of stay shall stand vacated after the expiry of 365 days, even if the delay in disposing of the appeal is not attributable to the assessee.

Analysis & Conclusion: This provision would result in the automatic vacation of a stay upon the expiry of 365 days, even if the Appellate Tribunal could not take up the appeal in time for no fault of the assessee. Thus, the vacation of stay in favour of the Department would ensue even if the Department is itself responsible for the delay in hearing the appeal. This will cause undue hardship to the assessee, even where he is not at fault. In this sense, the provision is arbitrary and disproportionate so far as the assessee is concerned.

The contention of the revenue is **not** justified. Any order of stay shall stand vacated after the expiry of the period or periods mentioned in the section, only if the delay in disposing of the appeal is attributable to the assessee.

Note – *The facts given in the question are similar to the facts in DCIT v. Pepsi Foods Ltd (2021) 433 ITR 295, wherein the above issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court ruling in that case.*

(ii) **Issue Involved:** The issue under consideration is whether the participation by the assessee in assessment proceedings would make the omission to issue notice under section 143(2) a curable defect on account of the deeming provision under section 292BB.

Relevant provision of law: As per section 292BB, any notice which is required to be served upon an assessee shall be deemed to have been duly served and the assessee would be precluded from taking any objection that the notice was -

(a) not served upon him; or

(b) not served upon him in time; or

(c) served upon him in an improper manner, if he had appeared in any proceedings or co-operated in any enquiry relating to assessment or re-assessment.

<u>Analysis & Conclusion</u>: Issue of notice under section 143(2) is mandatory for making a regular assessment under section 143(3). Section 292BB is a deeming provision that seeks to cure defects in any notice issued under any provision of the Income-tax Act, 1961, if the assessee has participated in the proceedings.

For section 292BB to apply, the notice must have emanated from the Department. It is only the infirmities in the manner of service of notice that the section seeks to cure. The section is not intended to cure the complete absence of notice itself.

Accordingly, non-issuance of notice under section 143(2) is not a curable defect under section 292BB inspite of participation by the assessee in assessment proceedings.

In the present case, since the assessment of Mr. Sharma was completed u/s 143(3) without issuing notice u/s 143(2), the assessment is bad in law and not a curable defect u/s 292BB. Therefore, the contention of Mr. Sharma is valid and the contention of the Assessing Officer is invalid in spite of the fact that Mr. Sharma participated in the assessment proceedings.

***Note** – The facts given in the question are similar to the facts in CIT v. Laxman Das Khandelwal (2019) 417 ITR 325, 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.*

(iii) **<u>Issue Involved</u>**: The issue under consideration is whether prosecution proceedings can be initiated where tax deducted has been deposited by the assessee *suo moto*, after the time prescribed under the Act but before receiving notice from the income-tax department, along with interest under section 201(1A) and the assessee has shown reasonable cause for such delay.

<u>Relevant provisions of law</u>: Prosecution proceedings are attracted under section 276B, if a person fails to pay to the credit of the Central Government, the tax deducted at source by him as required under the provisions of the Act. The punishment is rigorous imprisonment for not less than 3 months but which may extend to 7 years and with fine.

Section 278AA, however, provides that no person would be punishable for such failure if he proves that there was reasonable cause for the same.

<u>Analysis & Conclusion</u>: The CBDT has, *vide Circular No. 24/2019 dated 9.9.2019*, in exercise of the powers under section 119, listed out the offences covered under Chapter XXII of the Income-tax Act, 1961 in respect of which prosecution proceedings shall be launched by Approving Authority being the Sanctioning

Authority where the quantum of offences exceed the prescribed monetary threshold. Accordingly, in case of failure to pay TDS under section 276B or failure to pay TCS u/s 276BB, no prosecution will be processed if the TDS/TCS amount does not exceed ₹ 25 lakhs and delay in deposit is less than 60 days.

In this case, the company has reasonable and sufficient cause since it was facing financial hardship on account of large sum of money stuck up with the debtors and also with the income-tax department on account of refunds. Inspite of the financial crisis, the company has *suo moto* deposited the TDS along with interest under section 201(1A) of the Act, before receiving any notice from the income-tax department in this regard.

Since it has deposited the TDS along with interest *suo moto* before receiving any notice from the department and it has also shown reasonable cause for such delay in deposit, the company cannot be punishable for the delay in deposit of TDS. The initiation of prosecution proceedings under section 276B against the company and the directors is, therefore, **not** correct.

Note *- The facts given in the question are similar to the facts in ACIT v. AT-Dev Prabha (JV) and others (2023) 454 ITR 59, wherein the above issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court in the said case read along with the CBDT Circular.*

(b) BEPS Action Plan 13 contains a three-tier standardized approach to transfer pricing documentation which consists of:

(i) **Master file**: Master file requires MNEs to provide tax administrations with high-level information regarding their global business operations and transfer pricing policies. The master file is to be delivered by MNEs directly to local tax administrations.

(ii) **Local file**: Local file requires maintaining of transactional information specific to each country in detail covering related-party transactions and the amounts involved in those transactions. In addition, relevant financial information regarding specific transactions, a comparability analysis and analysis of the selection and application of the most appropriate transfer pricing method should also be captured. The local file is to be delivered by MNEs directly to local tax administrations.

(iii) **Country-by-country (CBC) report**: CBC report requires MNEs to provide an annual report of economic indicators viz. the amount of revenue, profit before income tax, income tax paid and accrued in relation to the tax jurisdiction in which they do business. CBC reports are required to be filed in the jurisdiction of tax residence of the ultimate parent entity, being subsequently shared between other jurisdictions through automatic exchange of information mechanism.

A specific reporting regime in respect of CbC reporting and also the master file has been incorporated in the Income-tax Act, 1961. The essential elements have been incorporated in the Income-tax Act, 1961 while remaining aspects would be dealt with in detail in the Income-tax Rules, 1962.

(i) Section 286 of the Income-tax Act, 1961 contains the provisions relating to CbC reporting requirement and related matters.

(ii) Section 92D of the Income-tax Act, 1961 contains the provisions relating to maintenance and furnishing of Master file.

6. (a) (i) In the present case, Shiva Ltd., an Indian company has 2 manufacturing units, unit X in the SEZ and unit Y in non-SEZ. Though unit X only does the packaging of goods manufactured by unit Y, the company, in its books of account, shows the goods manufactured by unit Y as manufacture of goods by unit X to enjoy exemption under section 10AA. This is a case of misrepresentation of facts by showing manufacture of non-SEZ unit as manufacture of SEZ unit. 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, goods manufactured by unit N, a non-SEZ unit, being a non-eligible business, are transferred to unit M, a SEZ unit, being an eligible business, at a price significantly lower than the market value of the goods to claim higher deduction under section 10AA in respect of unit M.

As there is no misrepresentation of facts or false submissions, it is not a case of tax evasion. The company has tried to take advantage of tax provisions by diverting profits from non-SEZ unit to SEZ unit. However, this is not the intention of the legislation.

Such tax avoidance is specifically dealt with through the provisions contained in section 10AA(9), as per which provisions of section 80-IA(8) would get attracted in such a case. 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. 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) Deduction under section 80JJAA is allowable to an assessee to whom section 44AB applies and whose gross total income includes any profits and gains derived from business, in respect of employment of new employees. The amount of deduction is 30% of additional employee cost incurred in the course of such business in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

"Additional employee cost" means the total emoluments paid or payable to additional employees employed during the previous year. However, in the case of an existing business, the additional employee cost shall be nil, if emoluments are paid otherwise than by an account payee cheque or account payee bank draft or use of ECS through bank account or other prescribed electronic mode.

"Emoluments" means any sum paid or payable to an employee in lieu of his employment by whatever name called but does not include, *inter alia*, contribution by employer to provident fund.

"Additional employee" means an employee who has been employed during the previous year and whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the preceding year, but does not include, inter alia, an employee whose total emoluments are more than ₹ 25,000 p.m.

In this case, the contention of the chartered accountant that the emoluments do not include employer contribution to PF is correct. However, emoluments include ₹ 3,500 paid in cash by way of transport allowance to the employee. Hence, the total emoluments per employee is ₹ 28,000 p.m. Due to this reason, the 30 employees employed on 1.4.2022 will not qualify as "additional employees" for the purpose of deduction under section 80JJAA, since their total emoluments are more than ₹ 25,000 p.m. Hence, Right & Co. is not eligible for any deduction under section 80JJAA due to failure to fulfil the condition for being treated as an "additional employee". In this case, the chartered accountant has failed to ensure compliance with the condition stipulated for claim of deduction under section 80JJAA and has wrongly issued the report in Form 10DA certifying the deduction claimed by the assessee under section 80JJAA.

Also, clause 33 of Form 3CD requires section-wise details of deductions, if any, admissible under Chapter VI-A. Here again, the tax auditor has to ensure that the assessee fulfils all the conditions specified in the section under which the deduction is claimed. However, in this case, the tax auditor has failed to do so.

On account of such failure, clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 may be invoked.

(c) Advance ruling pronounced by Board for Advance Rulings is not binding on LT Co. Ltd. Section 245W provides that the applicant who is aggrieved by any ruling pronounced or order passed by the Board for Advance Rulings may appeal to the High Court against such ruling. He has to do so within sixty days from the date of the communication of that ruling or order, in the prescribed form and manner.

Accordingly, if LT Co. Ltd. is aggrieved by the advance ruling pronounced by BAR, it can file an appeal before the High Court on or before 29th June 2024. The High Court can grant extension of a further period of 30 days for filing the appeal, if it is satisfied, on an application made by LT Co. Ltd. in this behalf, that it was prevented by sufficient cause from presenting the appeal within the 60 days period as specified above.