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Answer Paper	
Direct Tax Laws Full	**Duration**: 180
Details: Full Test 1	**Marks**: 100

Instructions:

- All the questions are compulsory
- Properly mention test number and page number on your answer sheet, Try to upload sheets in arranged manner.
- In case of multiple choice questions, mention option number only Working notes are compulsory wherever required in support of your solution
- Do not copy any solution from any material. Attempt as much as you know to fairly judge your performance.

Division A – Multiple Choice Questions

Q-1 Case Study 1

1. A

Explanation: Taxable value of perquisite = the actual amount of expenditure incurred by the employer as reduced by Rs. 2400 p.m. (plus Rs. 900 p.m., if chauffeur is also provided to run the motor car) when engine capacity exceed 1.6lts and when car is used for personal and official purpose.

Particulars	**Rs.**
Depreciation of car[Nil since car is owned by the employee]	Nil
Running and maintenance expenses	25,000
Salary of driver	48,000
Total	73000
Less: (Rs. 2400 + Rs. 900) × 12	39,600
Taxable value of car facility	**33,400**

2. B

Explanation: Value of Perquisite = [FMV –Exercise Price] × No. of shares = [Rs. 600 – Rs. 250] × 500 shares = Rs. 175,000/-.

3. C

Explanation: The taxable value of medical facility = [Rs. 24,000 – Rs. 7,000] = Rs. 17,000/-.

4. D

Explanation: Rs. 3,60,000 + Rs. 1,80,000+ Rs. 175,000+ Rs. 33,400+ Rs. 17,000- Rs. 50,000= Rs. 715,400.

5. A

Explanation:

Computation of deemed profits u/s 44AE-

Type of vehicle	No.	Period during which owned	No. of months	Rate p.m.	(Rs.)
heavy goods	4	01-04-2021 to 31-03-2022	12	13000	624,000
Other than heavy	3	15-07-2021 to 31-03-2022	9	7500	202,500
Profits from the business referred to u/s 44AE					**826,500**

6. D

Explanation: Brother or sister of either of the parents of the individual fall under the ambit of relative. Hence , gift received from them shall not be taxable.

Q-2 Case Study 2

1. D

Explanation: Hence, Rs. 14 lakh is taxable in the hands of the investment fund; and Rs. 28,00,000 ÷35 = Rs. 80,000 is taxable in the hands of each unit holder.

Particulars	Investment Fund	Unit holder
Income under the head "Profits and gains of business or profession" of the investment Fund	**Taxable**	**Exempt**
Income, other than profits and gains of business or profession	**Exempt** Tax to be deducted @ 10% on such income distributed to unit holders in case of resident payee and at rates in force in case of non-resident payee	**Taxable,** as if he had directly made the investment.

2. D

Explanation: Since Investment Fund I is incorporated as LLP , applicable tax rate is 30% plus HEC @ 4%. Hence, Business income of Rs. 14 lakhs is taxable @ 30% (plus cess @ 4%)

3. C

Explanation: The taxability of income in hands of investment funds and unit holder is as under-

	Particulars	investment Fund	Unit Holder

1	Loss under the head " profits and gains of business or profession" incurred by the investment fund	To be carried forward for set-off as per Chapter VI at the Fund level	Not passed on to investors
2	capital loss on transfer of units (i.e, units held by a unit holder for less than 12 months)- remaining after set-off against capital gains in the current year	Not allowed to be carried forward for set-off by the investment fund	Not allowed to be carried forward by the unit-holder. He cannot set-off such losses against his income.
3	Losses (other than losses referred to in (iii) and (iv) above) remaining after set-off against current year income.	Not allowed to be carried forward for set-off by the investment fund	Unit -holder can carry forward and set-off such losses against his income as per Chapter VI

Hence, Business loss of Rs. 4 lakh can be carried forward by the investment fund; capital loss of Rs. 40,000 can be carried forward by each unit holder.

4. C

Explanation: Business income of Rs. 11 lakh [Rs. 15 lakh – Rs. 4 lakh] would be taxable in the hands of Investment Fund.

A-3 D

Explanation: As per Rule 10Q, an agreement, after being entered. may be revised by the Board either suo moto or on request of the assessee or the competent authority in India or the Director General of Income-tax (International Taxation), if –

(i) There is a change in critical assumptions or failure to meet a condition subject to which the agreement has been entered into;

(ii) There is a change in law that modifies any matter covered by the agreement but is not of the nature which renders the agreement to be non-binding; or

(iii) There is a request from competent authority in the other country requesting revision of agreement, in case of bilateral or multilateral agreement.

(2 Marks)

A-4: D

Explanation: As per Section 44AD(2), all deductions allowable u/s 30 to 38 shall be deemed to have been allowed. Accordingly, no deduction shall be allowed for bad debts since the same is deductible u/s 36(1)(vii) and unabsorbed depreciation since the same is deductible u/s 32(2).

No deduction shall be allowed of salary and interest from presumptive income due to omission of proviso to section 44AD(2). Therefore, interest @ 12% to partner Z, which is authorized by the partnership deed, is not allowable as deduction.

Further, business loss of P.Y. 2020.21 can be set-off against current year business income as per Section 72.

(2 Marks)

A-5: C

Explanation: In case of AOP where the share of the members are determinate but none of the members has taxable income exceeding maximum exemption limit, but one or more member is taxable at a rate higher than the maximum marginal rate, the tax shall be charged on that

portion of income of AOP which is relatable to the member taxable at higher rate, at the rate applicable to such member and the balance taxable Income at the maximum marginal rate.

(2 Marks)

A-6: A

Explanation: The reporting provision shall apply in respect of an international group for an accounting year, if the total consolidated group revenue as reflected in the consolidated financial statement (CFS) for the accounting year preceding such accounting year is above a threshold to be prescribed i.e., Rs. 6400 crore.

(1 Marks)

A-7: C

Explanation: 7.5% (shipping business) and 5% (aircraft business) of the following amounts shall be deemed as PGBP:

Particulars	A Inc.	B Inc.
Amount paid/payable in Mumbai on account of carriage of passengers:		
Shipped from Mumbai port to port in Country A	Rs. 20 lakhs	
From Mumbai airport to airport in Country B		Rs. 15 lakhs
Amount paid/payable in Country A/B on account of carriage of passengers:		
Shipped from Mumbai port to port in Country A	Rs. 5 lakhs	

From Mumbai airport to airport in Country B		Rs. 4 lakhs
Amount received/deemed to be received in India on account of carriage of passengers:		
Shipped from port in Country A to Mumbai port	Rs. 7 lakhs	
From airport in Country B to Mumbai airport		Rs. 8 lakhs
Amount received/deemed to be received in Country A/B on account of carriage of passengers:		
Shipped from port in Country A to Mumbai port		
From airport in Country B to Mumbai airport		
Total	**Rs. 32 lakhs**	**Rs. 27 lakhs**
	7.50%	**5%**
Deemed PGBP	**Rs. 2.40 lakh**	**Rs. 1.35 lakh**

(1 Marks)

A-8: A

Explanation: Under section 263(1), if the Principal Commissioner or Commissioner considers that any order passed by the Assessing Officer is erroneous in so far as it Is prejudicial to the interests of the Revenue, he may, after giving the assessee an opportunity of being heard and after making an enquiry, pass an order enhancing or modifying the assessment made by the Assessing Officer or cancelling the assessment and directing fresh assessment.

(1 Marks)

A-9: C

Explanation: In order to provide sufficient time to the Assessing Officer to complete the assessment in a case where reference is made to the Transfer Pricing Officer, section 92CA(3A) provides for determination of arm's length price of international transactions by the Transfer Pricing Officer at least 60 days before the expiry of the time limit u/s 153 or section 153B for making an order of assessment by the Assessing Officer.

(1 Marks)

Division B – Descriptive Questions

Question No. 1 is compulsory

Attempt any four questions from the remaining five questions

ANS-1:

Computation of total income of XYZ Private Ltd. (amount in Rs.)-		
Income from House Property		
Gross Annual Value (GAV) (Rental income)	6,00,000	
Less: Municipal Taxes (not deductible since it has not been paid)	Nil	
Net Annual Value(NAV)	**6,00,000**	
Less: Standard deduction (@30% of NAV)	1,80,000	4,20,000

Income from Profits and gains of Business or profession		
Net profit as per statement of profit and loss	1,50,00,000	
Add: License fee for obtaining franchise [WN-2]	20,00,000	
Municipal taxes in respect of let -out part of office premises [WN-1]	15,000	
Contribution to approved and notified university [WN-4]	----	
Loss due to destruction of machinery by fire [WN-5]	3,00,000	
Amount payable to contractor not having PAN [WN-6]	27,000	
Short-term capital loss on sale of shares of P. Ltd. [WN-7]	20,000	
Depreciation on tangible fixed assets [WN-8]	1,00,000	
	1,74,62,000	
Less: Depreciation under section 32		
Intangible asset (Franchise) 25% of Rs. 20,00,000	5,00,000	
Tangible fixed assets [WN-8]	1,75,000	
Rental income to be taxed under "Income from house property" [WN-1]	6,00,000	

Dividend credited to statement of profit and loss to be excluded [WN-11]	10,000	
Waiver of interest on bank loan credited to statement of profit and loss but not taxable [WN-9]	1,00,000	1,60,77,000
Income from Capital Gains:		
Short-term capital loss (Rs. 20 × 1,000 shares)	20,000	
Short-term capital loss to be carried forward to A.Y. 2023-24	20,000	-----
Income from Other Sources:		
Dividend from Shares of P. Ltd. (Now taxable in hands of shareholder)	10,000	
Deemed dividend under section 2(22)(e) [WN-10]	50,000	60,000
Total Income		**1,65,57,000**

Working Notes:

(1) Rental income from letting out a part of the office premises is taxable under "Income from house property". Since the income has been credited to P & L A/c. It will be deducted while computing business income. Likewise, municipal taxes due in respect of such property, debited to statement of profit and loss has to be added back to compute business income.

(2) Franchise is an intangible asset eligible for depreciation @ 25%. Since one-time licence fees of Rs. 20 lakhs paid to a foreign company for obtaining franchise has been debited to statement of profit and loss, the same has to be added back and the same shall be eligible for depreciation @ 25%.

(3) Rs. 29,000 paid to A& Co., a goods transport operator in cash is deductible, since the limit for disallowance is Rs. 35,000 under section 40A(3) in case of payment to a transport contractor engaged in the business of plying leasing goods carriages.

(4) Contribution to a university approved and notified under section 35(1)(ii) is eligible to 100% deduction. Since the same has been debited to P&L Account, hence no adjustment is required.

(5) Loss of Rs. 3 lakhs due to destruction of machinery caused by fire is not deductible since it is capital in nature.

(6) According to Section 206AA, if PAN is not furnished, the rate of TDS is 20%. Since the company has deducted tax @ 2% and not @ 20% as per the requirement under section 206AA, disallowance under section 40(a)(ia) would be attracted in respect of payment of Rs. 90,000 made to contractor. 30% of such amount shall be disallowed. Proportionate sum to the extent of tax deducted at source shall be allowed as deduction.

(7) Short term capital loss can be set-off only against income under the head "Capital Gains", the short-term capital loss of Rs. 20,000 has to be carried forward to the next year. The provisions of dividend stripping are not applicable as dividend income is taxable in hands of shareholder.

(8) Depreciation as per income–tax Rules, 1962, is deductible while calculating business income. Therefore, Rs. 1.75 lakh depreciation on tangible fixed assets and Rs. 5 lakh on intangible assets is deducted. The amount of Rs. 1 lakh depreciation debited to statement of profit and loss has been added back.

(9) Waiver of principal amount of loan taken from trading activity is a benefit in respect of a trading-liability by way of remission or cessation thereof and is, hence, taxable under section 41(1). It has been so held in **Iskraemeco Regent Ltd. v. CIT [2011] 331 ITR 317(Mad.).** Since the loan waiver has already been credited to statement of profit and loss, no adjustment is required.

Since the loan is for meeting working capital requirement, it is logical to assume that it is taken for trading activity. However, the treatment is different in respect of interest on loan. Since interest on such loan would have not been allowed as deduction in the earlier years as per Section 43B due to non-payment of such interest, waiver of interest will not be taxable. Since

Rs. 1,00,000 representing interest waiver has already been credited to statement of profit and loss, the same has to be deducted for computing business income.

(10) As per section 2(22)(e), any payment by a company in which the public are not substantially interested by way of loan to a shareholder, who is the beneficial owner of shares holding not less than 10% of voting power, is deemed as dividend under section 2(22)(e). Same is taxable in hands of shareholder.

(11) Dividend from shares of Indian company is taxable in the hands of shareholder under the head income from other sources.

(14 Marks)

ANS-2

a(i):

Computation of total income under Chapter XII-A (amount in Rs.)-		
Income from house property (computed)		2,70,000
Capital gains on sale of debentures-		
Full value of consideration	6,00,000	
Less: Commission to brokers	6,000	
Net sale consideration	5,94,000	
Less: Cost of acquisition [WN-1]	4,00,000	
Long-term capital gain		1,94,000
Dividend income received from Indian companies [exempt u/s 10(34)]		75,000

Interest on debentures of Indian company [WN-2]		1,00,000
Total Income (rounded off)		**6,39,000**

Computation of tax liability of Mr. Ajay:	
Tax on investment income u/s 115E (20% × 1,75,000) [WN-3]	35,000
Tax on long term capital gains from foreign exchange asset u/s 115E (10% × Rs. 1,94,000) [WN-3]	19,400
Tax on other income i.e., on Rs. 2,70,000 at normal rates applicable to individual [WN-3]	1,000
Total Income Tax	**55,400**
Add: HEC @ 4%	2,216
Tax payable (rounded off to nearest Rs. 10)	**57,620**

Working notes:

(1) As per Section 115D, the indexation benefit would not be available for calculating cost of acquisition for computing long term capital gains under Chapter XII-A.

(2) No expenditure is allowed to be deducted from the interest on debentures being the investment income as per the provisions of Section 115D. Therefore, interest on loan taken for purchase of debentures is not deductible.

(3) As per the provisions of Section 115E, the tax rate is 20% on investment income and 10% on long-term capital gain. The balance income shall be chargeable to tax as per the normal tax rates.

(4 Marks)

a (ii):

(1) For the previous year 2020-21, business income from the above transaction will be determined as follows (Rs.)-		
Opening stock on 1st April, 2020	Nil	
Purchase of inventory during 2020-21 [Rs. 30,000 ÷ 10 × 100]	3,00,000	
Sales during 2020-21		Nil
Closing value of inventory (cost or market price, whichever is lower)		3,00,000
Net profit	Nil	
Total	**3,00,000**	**3,00,000**

(2) Business income of X for the previous year 2021-22 will be computed as follows (amount in Rs.)-		
Opening stock on 1st April, 2020	3,00,000	
Purchase of inventory during 2020-21	Nil	
Sales during 2020-21		Nil
Fair market value on the date of conversion as per		3,17,500

Section 28(via) [Rs. 31750 ÷10 ×100]		
Closing value of inventory		Nil
Net profit	17500	
Total	**3,17,500**	**3,17,500**

(3) Income under the head "Capital gains" will be as follows (amount in Rs.)-	
Full value of consideration (Rs. 32,500 × 50 ÷10)	1,62,500
Less: Cost of acquisition (being fair market value on the date of conversion) (Rs. 31,750 × 50 ÷ 10)[WN]	1,58,750
Short -term capital gain	**3750**

Working Note: Where the capital gain arises from the transfer of a capital asset referred to in Section 28(via) i.e. stock in trade converted into capital asset, the cost of acquisition of such asset shall be deemed to be the fair market value which has been taken into account for the purposes of Section 28(via) and the period of holding of such capital asset shall be reckoned from the date of conversion or treatment.

(4 Marks)

ANS-2 b:

Determination of Gross Margin of Comparable Uncontrolled transaction i.e. , of SAK Ltd.	
Particulars	**US $**

Direct cost of Service [$ 100 × 8 × 15]	12,000
Indirect cost of Service [$ 200 × 8 × 15]	24000
Total Direct and indirect cost of service	**36,000**
Billing per month	70,000
Gross Margin being gross profit	34,000
Gross margin to Cost percentage [34,000 × 100 ÷ 36,000]	94.44%
Adjustment for functional difference on account of cost of warranty	
Total Direct and indirect cost	**36,000**
Add: Cost of warranty [1% of direct cost of USD 12,000]	120
Total Cost	36,120
Billing per month	70,000
Margin after cost of warranty being profit margin	33,880
Profit margin to cost (%) [after considering functional difference on account of cost of warranty (33,880 × 100 ÷ 36,120)]	93.80%

Computation of arms length price using cost plus method:	
Particulars	**US $**
Direct cost of Services [$ 100 × 9 × 15]	13500

Indirect cost of Service [$ 200 × 9 × 15]	27,000
Total Direct and Indirect cost of service	**40,500**
Add: Interest on loan of US $ 1,00,000 borrowed for purchase of hardware [USD 3,000 (i.e. USD 1,00,000 @ 3%) /12]	250
Total Cost	**40750**
Profit margin by applying the margin of 93.80% of total cost of USD 40,750	**38,224**
Arms Length price	**78,974**
Actual Billing per month	**85,000**

In the present case, since actual billing of USD 85,000 per month to the ABC Inc., an AE, is higher than the Arm's length price of USD 78,974 determined by applying cost plus method, no adjustment is to be made to the income of Amar P Ltd.

(6 Marks)

ANS-3 (a):

Compute the tax payable by the Hindustan Charitable Foundation (amount in Rs.):

Particulars	Amount in Rs.
Fair Market Value (FMV) of Land and Building	1,20,00,000
FMV of Investment in Equity shares - Quoted [WN-3(a)]	30,00,000
FMV of Investment in Equity shares - Unquoted [WN-2 & 3(b)]	9,00,000

Bank Balance	50,000
Cash Balance	50,000
Total Assets	**1,60,00,000**
Less: Liabilities	19,00,000
	141,00,000
Less: Asset acquired out of agricultural income u/s 10(1) [WN-1]	1,20,00,000
	21,00,000
Add: Loan taken for purchase of Land and Building out of agricultural income [WN-1]	17,00,000
Loan taken for purchase of unquoted shares [WN-2]	2,00,000
Accreted Income	**40,00,000**
Less: Asset transferred within 12 months from the end of month in which dissolution took place	10,00,000
	30,00,000
Tax @ 30%	9,00,000
Surcharge @ 12%	1,08,000
	10,08,000
Add: HEC @ 4%	40,320
Total tax liability	**10,48,320**

Working Notes:

(1) As per proviso 1 to Section 115TD(2), any asset that was acquired out of agricultural income and corresponding liability incurred for acquiring such assets shall be excluded. Thus, FMV of Land & Building (on the date of dissolution) of Rs.120,00,000 and loan availed for acquiring such Land & Building is excluded.

(2) Investment in unquoted shares and loan availed for such investment purpose, prior to registration shall be excluded as per proviso 1 to Section 115TD(2).

(3) As per Rule 17CB, -

a) FMV of quoted shares on the date of dissolution amount to Rs.30,00,000;

b) FMV computation for investment in unquoted shares of X Ltd.:

Particulars	**Amount in Rs.**
Book value of all asset (except bullion and jewelry)	1,00,00,000
Market value of Bullion and Jewelry	50,00,000
Total Assets **[A]**	1,50,00,000
Total Liabilities**[B]**	60,00,000
Net Assets**[C = A - B]**	90,00,000
No. of shares in X Ltd.**[D]**	2,00,000
FMV per share in X Ltd.**[E = C/D]**	45/share
FMV of shares held in X Ltd. by Hindustan Charitable Foundation [40,000 shares × 50%× 45] (Only 50% of equity shares is considered for the purpose of FMV	9,00,000

computation since remaining 50% of equity shares was acquired before registration of trust u/s 12AA)	

(8 Marks)

ANS-3 (b):

Computation of Total Income of PQR LLP for Assessment Year 2021-22 (amount in Rs.):		
Profits and Gains of Business or profession:		
Profit from unit located in SEZ	40,00,000	
Less: Deduction u/s 10AA (Rs. 40,00,000 × Rs. 80,00,000 ÷ Rs. 1,00,00,000 [WN-1]	32,00,000	8,00,000
Profits from specified business under Section 35AD [WN-2]		40,00,000
Total Income		**48,00,000**
Computation of tax liability as per normal provisions of Act i.e 30% of Rs. 48,00,000	14,40,000	
Alternate minimum tax (18.5% of ATI) i.e. 18.5% of Rs. 1,38,50,000 [WN-3]	25,62,250	
Since alternate minimum tax is higher than tax as per the provisions of the Act, PQR LLP shall be liable to be pay		25,62,250

alternate minimum tax as per Section 115JC		
Add: Surcharge @ 12% since the Adjusted total income exceeds Rs. 1 crore		3,07,470
Tax including surcharge		**28,69,720**
Add: HEC @ 4%		1,14,789
Total tax payable (rounded off)		**29,84,510**

Working Note:

(1) Deduction under section 10AA is available in respect of units established in SEZ @ 100% of the profits and gains derived from export of such articles or things or from services for a period of 5 consecutive assessment years beginning with the assessment year relevant to the previous year in which the Unit begins to manufacture or produce such articles or things or provide services, as the case may be. Therefore, in this case, the profits from SEZ Unit will be eligible for deduction of 100% of the profits and gains derived from export, since P.Y. 2020-21 is the fifth year of its operations.

The deduction is worked out by the following formula:

Profits and gains from export business

$$= \frac{\text{Export Turnover} \times \text{Profits and gains of business and profession of SEZ unit}}{\text{Total Turnover of SEZ unit}}$$

(2) Deduction @ 100% of the capital expenditure (other than cost of land) is available under section 35AD for A.Y. 2021-22 in respect of specified business of setting up and operating a warehousing facility for storage of agricultural produce.

	(Amount in Rs.)
Profits from business of setting up of warehouse for storage of agricultural	1,05,00,000

produce (before providing for depreciation u/s 35AD)	
Less: Deduction u/s 35AD (100% of Rs. 65 lakhs i.e capital expenditure other than cost of land)	65,00,000
Income from specified business chargeable under "PGBP"	**40,00,000**

Computation of Adjusted Total Income (amount in Rs.):			
Total Income			48,00,000
Add: Deduction u/s 35 AD	65,00,000		
Less: Depreciation under Section 32 [10% of Rs. 65,00,000	6,50,000	58,50,000	
Add: Deduction u/s 10AA		32,00,000	90,50,000
Adjusted Total Income			**1,38,50,000**

(3) If regular income–tax payable for a previous year is less than the alternate minimum tax payable then the adjusted total income shall be deemed to be the total income of that person for such previous year and he shall be liable to pay tax on such income @ 18.5% of adjusted total income.

(4) **Meaning of Adjusted Total Income:** Adjusted Total Income shall be the total income as increased by –

(a) Deductions claimed under section 80IA to 80RRB (other than section 80P);

(b) Deduction under section 10AA;and

(c) Deduction claimed, if any, under section 35AD as reduced by the amount of depreciation allowable in accordance with the provisions of section 32 as if no deduction under

section 35AD was allowed in respect of the assets on which the deduction under that section is claimed.

(6 Marks)

ANS-4

(a) (i):

The aforesaid cases have been dealt with as follows-

(1) As per Section 192, tax is deductible at source by any person who is responsible for paying any income chargeable under the head "Salaries". However, under section 192(2A), the employees will be entitled to relief u/s 89 and consequently he will be required to furnish to the person responsible for making the payment such particulars in such form and verified in such manner as may be prescribed and therefore the person responsible for making the payment shall compute the relief and take it into account while making deduction of tax at source from salary.

(2) As per Section 194B, the person responsible for paying by way of winnings from any card game and other game in an amount exceeding Rs. 10,000 shall at the time of payment deduct tax @ 30%.

Hence, TDS = Rs. 10,00,000 × 30% = Rs. 3,00,000.

(3) As per Section 196, payments made to Central Government are not liable for tax deduction at source.

(4) If the cameraman is an employee of the T.V. Company, the provisions of Section 192 will apply. But if he is a professional man, Section 194-J will apply. Herein, it is assumed that he is a professional person. Since the amount paid exceeds Rs. 30,000, therefore tax @ 10% will have to be deducted at the time of credit of Rs. 50,000 or on its payment, whichever is earlier.

TDS = Rs. 50,000 × 10% = Rs. 5,000.

(5) Under section 194G, the person responsible for paying to any person stocking, distributing, purchasing or selling lottery tickets, shall at the time of credit of the commission or payment thereof, whichever is earlier, deduct income-tax @ 5%. Such deduction shall be made only if the amount of commission exceeds Rs. 15,000.

Therefore, TDS liability in the given case = Rs. 20,000 × 5% = Rs. 2,000

(6) The payment by way of winnings from any horse race is governed by section 194BB. Under this section, the person responsible for payment shall, at the time of payment, deduct tax @ 30% if the amount exceeds Rs. 10,000.

Hence, TDS liability in the given case = Rs. 5,00,000 × 30% = Rs. 1,50,000.

(4 Marks)

ANS-4 (a) (ii):

Issue under consideration: Can items of finished products from ship breaking activity which are usable as such be treated as "Scrap" to attract provisions for tax collection at source under section 206C.

Statutory provisions: According to section 206C, every seller shall collect tax at source @ 0.75% in case of sale of scrap from the buyer at the time of debiting of the amount payable by the buyer to the account of the buyer, or receipt of such amount from the buyer in cash or by cheque or draft or any other mode, whichever is earlier.

"**Scrap"** means waste and scrap from the manufacture or mechanical working of materials which is definitely not usable as such because of brokerage, cutting up, wear and other reasons.

Analysis: The facts of the case are similar to **CIT v. Priya Blue Industries (P) Ltd.[2016] 381 ITR 210(Guj).** The Commissioner (Appeals) observed that the assessee was engaged in ship breaking activity and the products obtained from the activity were finished products which constituted sizable chunk of production done by the ship breakers. The Commissioner (Appeals) agreed with the assessee that such products though commercially known as 'scrap' were definitely not "waste and scrap". He further agreed with the contention of the assessee that

the items in question were usable as such and, therefore, do not fall within the definition of 'scrap" as given in clause (b) of Exp. to section 206C(1).

The Tribunal observed that the 'waste and scrap' must be from manufacture or mechanical working of material which is definitely not usable as such because of brokerage, cutting up, wear and other reasons. Since the assessee is engaged in ship breaking activity, these items/ products are finished products obtained from such activity which are usable as such and hence , are not 'waste and scrap' though commercially known as scrap. The High Court concurred with the views of the Tribunal and held that any material which is usable as such would not fall within the ambit of the expression 'scrap' as defined in clause (b) of the Explanation to section 206C.

Decisions: thus, in the present case there will be no liability on the buyer to collect tax at source. Thus, the action of the Assessing Officer in treating such items as 'scrap' is not tenable in law.

(4 Marks)

ANS-4 (b):

Computation of total income under Chapter XII-A (amounts in Rs.)-		
Long-term Capital gains arising of transfer of foreign exchange asset on 31-7-2020(computed)	6,50,000	
Less: Expenses in connection with transfer	80,000	
Taxable LTCG	**5,70,000**	
Less: Exemption under Section 115F [WN]	Nil	5,70,000
Income From other Sources		
Investment income taxable under Section 115E:		

Interest on Government Securities	95,000	
Interest on deposits with public limited companies	2,60,000	
Dividend income received from Indian companies [taxable in hands of shareholder]	75,000	
Interest on deposits held with Private Limited Companies taxable under normal provisions	5,90,000	10,20,000
Total Income (rounded off)		**15,90,000**

Computation of tax liability of Mr. Ajay (amount in Rs.):	
Tax on investment income u/s 115E (20% × Rs. 4,30,000) [WN-3]	86,000
Tax on long-term capital gains from foreign exchange asset u/s 115E (10% × Rs. 5,70,000) [WN-3]	57,000
Tax on other income i.e on Rs. 5,90,000 at normal rates applicable to individual [WN-3]	30,500
Total Income Tax	**1,73,500**
Add: HEC @ 4%	6940
Tax payable (rounded off to nearest Rs. 10)	180,440
Less: TDS	183,800
Tax refundable	**-3360**

Working Notes:

(1) For getting the benefit of exemption of long term capital gain under Section 115F, the assessee has to invest the whole or part of the net consideration in any specified asset within a period of 6 months after the date of such transfer. Since investment in notified savings certificates referred to in Section 10(4B) and in shares of Indian Public Limited Companies has been made after 6 months from date of transfer of long term specified asset, the benefit of exemption under Section 115F shall not be available to the assessee.

(2) As per the provisions of Section 115E, the tax rate is 20% on investment income and 10% on long-term capital gain. The balance income shall be chargeable to tax as per the normal tax rates.

(6 Marks)

ANS-5

(a) (i):

Interest payable u/s 234B will be:

(1) Computation of interest under section 234B(1): Here, Mr. X paid self-assessment tax on 12-11-2020, hence the interest u/s 234B(1) will be calculated as follows-

(a) Interest till 12-11-2020:

(i) Period for which interest is to be paid = 1-4-2020 to 12-11-2020= 8 months.

(ii) Amount on which interest is payable = Rs. 3,50,000 – Rs. 20,000- Rs. 30,000 = Rs. 3,00,000.

(iii) Interest payable = 3,00,000 × 1% × 8 = Rs. 24,000.

(b) Interest after 12-11-2020:

(i) Period for which interest is to be paid = 1-12-2020 to 3-4-2021 = 5 months.

(ii) Amount on which interest payable = Rs. 3,50,000- Rs. 20,000 – Rs. 30,000- Rs. 80,000= Rs. 2,20,000.

(iii) Interest payable = 2,20,000 ×1% × 5 = Rs. 11,000.

(Self-assessment tax = Rs. 88,000 – Rs. 1,600 – Rs. 6,400)

Total interest under section 234B(1) = Rs. 24,000 +11,000 = Rs. 35,000.

(2) Calculation of interest under section 234B(3):

(a) Period for which interest is to be paid = 1-4-2020 to 15-9-2022 = 30 months.

(b) Amount on which interest payable = Rs. 5,00,000 – Rs. 3,50,000= Rs. 1,50,000.

(c) Interest payable = Rs. 1,50,000 × 1% × 30= Rs. 45,000.

Therefore, total interest payable u/s 234B = Rs. 35,000 + Rs. 45,000 – Rs. 6,400(paid in self-assessment) = Rs. 73,600.

(4 Marks)

OR

A: Section 245R(2) provides that the Authority shall not allow the application where the question raised in the application is already pending before any income tax authority or Appellate Tribunal or any court.

In the above case, no application had been filed or contention urged by the applicant (foreign company) before any income-tax authority/ Appellate Tribunal/ court, raising the question raised in the application filed with Advance Ruling Authority. One of the Indian companies, however, had raised the question before the Assessing Officer, not on the applicant's behalf or with a view to benefit the applicant, but only to safeguard its own interest, as it had a statutory duty to deduct the proper amount of tax from payments made to a non-resident. Although the question raised pertains to one of the payments made or to be made to the non-resident applicant, it was not one pending determination before any income-tax authority in the applicant's case.

Therefore, as held by the Advance Ruling Authority in **Ericsson Telephone Corporation of India AB v. CIT [1997] 224 ITR 203,** the application filed by the Indian company before the Assessing Officer cannot be treated to have been filed by the non-resident . Hence, it would not be proper to reject the application of the foreign company relying on Section 245R(2) of the Income-tax Act. The application is, therefore, maintainable.

(4 Marks)

(a) (ii):

The above issue has been discussed as follows-

(a) Revision under section 264 not to be applied for: It was held in the case of **Hindustan Aeronautics Limited vs. CIT (2000) 243 ITR 808 (SC)** that the Commissioner cannot exercise his power of revision under section 264 where the order sought to be revised has been made the subject of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal even if the relief claimed in the revision is different from the relief claimed in the appeal. Therefore, although the matter of addition of Rs. 2 lakhs under section 40(a)(ia) was not taken before the Commissioner (Appeals), CNK Associates cannot apply for revision under section 264 in respect of the same.

(b) Rectification under section 154 can be applied for: Under section 154, where any matter had been considered and decided in any proceeding by way of appeal or revision, rectification of such matter cannot be done by the Assessing officer. However, in respect of the matter which has not been considered and decided in the appeal or revision, the order of the Assessing Officer can be rectified under section 154. Thus, the assessee can apply to the Assessing Officer for rectification of the order in respect of addition under section 40(a)(ia), as this matter has not been considered and decided in any proceeding by way of appeal or revision.

Therefore, CNK Associates should seek, rectification under section 154.

(4 Marks)

ANS-5 (b):

Chapter VIII of the Finance Act,2016, provides for an equalisation levy of 6% of the amount of consideration for specified services received or receivable by a non-resident not having permanent establishment (PE) in India, from a resident in India who carried out business or profession, or from a non-resident having PE in India.

"Specified services" means-

(i) Online advertisement;

(ii) Any provision for digital advertising space or any other facility or service for the purpose of online advertisement;

(iii) Any other service as may be notified by the Central Government.

However, equalization levy is not chargeable where the aggregate amount of consideration for specified service received or receivable in a previous year by the non-resident in India and carrying on business or profession, or from a non-resident having a PE in India, does not exceed Rs. 1 lakh.

Further, equalization levy is not attracted where payment for specified service is not for the purposes of carrying out business or profession.

(i) In this case, equalization levy @ 6% is chargeable on the amount of Rs. 4,40,000 received by M/s. Neil Inc. , a non-resident not having a PE in India, from M/s. Raghuram Co. Ltd., and Indian company for online advertisement of its products.

Accordingly, M/s. Raghuram Co. Ltd. is required to deduct equalization levy of Rs. 26,400 i.e. @ 6% of Rs. 4.4 lakhs, being the amount paid towards online advertisement services provided by M/s. Neil Inc. Non-deduction of equalisation levy would attract disallowance under section 40(a)(ib) of 100% of the amount paid to M/s. Neil inc. while computing business income of M/s. Raghuram Co. ltd.

(ii) In this case, equalisation levy is not chargeable as the amount of consideration of Rs. 55,000 for digital space for online advertisement paid to Mr. David does not exceed Rs. 1,00,000.

(iii) In this case, equalisation levy is not chargeable on the amount of Rs. 170500 received by M/s. LOX Ltd., a non-resident not having a PE in India, from M/s. Raghuram Co. Ltd., an Indian company, since the said payment was for providing a platform for sale of its used furniture items and not for the purposes of carrying on business or profession.

(6 Marks)

ANS-6 (a):

(i): There is an arrangement of setting up of a unit in SEZ which results in a tax benefit. However, this is a case of tax mitigation where the tax payer is taking advantage of a fiscal incentive offered to him by complying with the conditions imposed and economic consequences of the provisions in the legislation e.g., setting up the business unit in SEZ area. Hence, Revenue would not invoke GAAR as regards this arrangement.

(ii): As there is not 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. This is not the intention of the SEZ legislation. However, such tax avoidance is specifically dealt with through transfer pricing regulations that deny tax benefits. Hence, the Revenue would not invoke GAAR in such a case.

(6 Marks)

ANS-6 (b):

Computation of self-assessment tax payable by Mr. Kamal (amounts in Rs.):	
Tax payable on the basis of a return	2,00,000
Less: (a) Advance tax paid	40,000
(b) Tax deducted at source	60,000
(c) Amount of double taxation relief	10,000
	90,000
Add: Fee u/s 234F - Rs. 5,000 and Interest payable u/s 234A , 234B and 234C (10,000 +20,000 + 8,000)	43,000
Amount payable as self-assessment tax under section 140A	**1,33,000**

Tax consequences: The following are the tax consequences in following cases-

(1) Mr. Kamal pays Rs. 1,05,000: Out of Rs. 1,05,000, Rs. 5,000 shall be adjusted towards fee and Rs. 38,000 shall be adjusted towards interest payable u/s 234A/ 234B / 234C and the balance Rs. 62,000 towards tax payable. The balance tax payable Rs. 28,000 shall be recovered along with interest. Further, Mr. Kamal shall be liable to interest u/s 220 and penalty of upto Rs. 28,000 u/s 221.

(2) Mr. Kamal pays Rs. 35,000: The whole of Rs. 35,000 shall be adjusted towards u/s 234F of Rs. 5,000 and interest payable under section 234A/ 234B/234C . The balance sum payable Rs. 98,000 (tax Rs. 90,000 + interest Rs. 8,000) shall be recovered along with interest. Further, Mr. kamal shall be liable to interest under section 220 and penalty of upto Rs. 90,000 under section 221 (i.e. upto the amount of "tax" in arrears of Rs. 90,000).

(4 Marks)

ANS-6 (c):

Mr. Ravinder shall be deemed to be resident of that country with which he has closer personal and economic relations. Since Mr. Ravinder has a permanent home in UAE and he also has a habitual abode in that country due to his employment in UAE, he shall be deemed to be resident of UAE for A.Y. 2021-22.

However, in order to claim relief under the double taxation avoidance agreement (DTAA), Mr. Ravinder has to obtain a Tax Residency Certificate (TRC) declaring his residence of UAE from the Government of that country and has to provide such other documents and information, as may be prescribed.

As regards, interest income and capital gains, if a concessional rate of tax is provided under the DTAA with UAE , such income would be subject to tax at such concessional rate in the hands of Mr. Ravinder. If the concessional rates provided under the Income-tax Act,1961 in respect of interest and capital gains are more beneficial than the rates provided under DTAA, the income

would be subject to tax at such concessional rates in India. Further, if long-term capital gains have arisen on account of sale of listed shares in recognized stock exchange, such gain exceeding Rs. 1,00,000 would be taxable @ 10% in the hands of the non-resident u/s 112A as per the provisions of the Income-tax Act,1961.

Therefore, the contention of Mr. Ravinder is Not entirely correct, since the DTAA doesnot provide for exemption from income-tax in India, of all such income earned in India, in totality.

(4 Marks)