Answer 1 (6 marks) (3 marks each)

1. According to section 2(14), the expression "capital asset" means property of any kind held by an assessee, whether or not connected with his business or profession.
   As per section 2(47), transfer, in relation to a capital asset, includes sale, exchange or relinquishment of the asset or the extinguishment of any rights therein or the compulsory acquisition thereof under any law.
   This Question is based on the case decided by Madras High Court in **K. R. Srinath**. where the court held that:
   The right to obtain a conveyance of immovable property falls within the expression "property of any kind" used in section 2(14) of the Income-tax Act, 1961, and is, consequentiy, a capital asset. The payment of earnest money in order to obtain such a right constitutes its cost of acquisition. Where such a right is given up, there is a transfer of a capital asset."
   In view of the afore said case, the tax liability of Mr. X is be calculated as follows:

Full value of consideration	` 30,00,000
Less: Cost of acquisition	` 10,00,000
Capital Gains	**` 20,00,000**

2. **Computation of capital gains for assessment year 2018-19**
   Assuming that exemption under section 10(38) is not available.

Sales Price proceeds of 1,000 shares	:	175X1,000	` 1,75,000
Less: Cost of Acquisition (see Note]	:		NIL
Long term Capital Gains			**` 1,75,000**

   Note: According to section 55, the cost of acquisition of bonus shares shall be taken to be NIL. If however the bonus shares are allotted before 01-04-2001, then the fair market value as on 01-04-2001 shall be the cost of acquisition of the bonus shares.

Answer 2 (6 marks)

Section 50C provides that where the consideration received or accruing as a result of the transfer of land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall be deemed to be the full value of the consideration for the purposes of section 48 and capital gains shall be computed accordingly. It is further provided that where the assessee claims that the value adopted or assessed or assessable for stamp duty purposes exceeds the fair market value of the property as on the date of transfer, and he has not disputed the value so adopted or assessed in any appeal or revision or reference before any authority or Court, the Assessing Officer may refer the valuation of the relevant asset to a Valuation Officer in accordance with section 55A of the Income-tax Act. If the fair market value determined by the Valuation Officer is less than the value adopted or assessed or assessable for stamp duty purposes, the Assessing Officer shall take such fair market value to be the full value of consideration. However, if the fair market value determined by the Valuation Officer is more than the value adopted or assessed or assessable for stamp duty purposes, the Assessing Officer shall not adopt such fair market value and shall take the full value of consideration to be the value adopted or assessed for stamp duty purposes. In the present case, Mr. X has sold the house property to Mr. A and as per the provisions of section 50C, the Assessing Officer should have charged capital gain on the sale consideration as adopted or assessed for stamp duty purposes i.e. ` 16,00,000. Hence, the Assessing Officer is not correct in charging capital gains on the value of

` 20,00,000 as determined by the Valuation Officer.

Hence, the amount of capital gains on which *X' is required to pay capital gains tax shall be computed as under:

Period of holding	:	18.06.2007 to 17.10.2017	**(Long term)**
Sales Price (As per section 50C)	:		` 16,00,000
Less: Indexed Cost of Acquisition	:		` 10,54,264

Long Term Capital Gain ` 5,45,736 **(4 marks)**

Therefore the answer is as under: **(2 marks)**

(i) In view of provisions of section 50C of the Income-tax Act, the Assessing Officer is not correct in charging capital gains on the value of ` 20,00,000 as determined by the valuation officer.

(ii) Long Term Capital Gains of `5,45,736 are assessable in hands of Mr. X in Assessment Year 2018-19.

Answer 3 (12 marks)

It may be noted that block of assets for computing depreciation are made in respect of all businesses of the assessee taken together and are not created businesswise. Hence, there will be one block of assest of depreciation rate 15 % for Plant & Machinery for the Steel Rolling Mill at Kanpur as well as Fertilizer unit at Cuttak.

Mr. X

Assessment Year 2018-19

Income under the head Profits and Gains from Business or Profession:

Profits before Depreciation from Kanpur Steel Rolling Mill	₹ 4,20,000
Profits before Depreciation from Cuttack Fertilizer unit	₹ 6,22,000
	₹ 10,42,000
Less: Depreciation for the financial year 2017-18	₹ 6,90,500*
Less: Unabsorbed depreciation of F/Y 2016-17	₹ 3,51,500***
Total Income	**NIL**

Income under the head Capital Gains:

Short Term Capital Gains	**₹ 1,28,000****
Less: Unabsorbed depreciation of F/Y 2016-17	₹ 1,28,000***
Total Income	**NIL**

**** Computation of Depreciable allowable for previous year 2017-18:***

Depreciation on Block of Plant and Machinery (15% Rate)

Opening WDV as on 01.04.2017 in Steel Rolling Mill	₹ 3,20,000
Opening WDV as on 01.04.2017 of Motor car & Jeep at Kanpur and Cuttack	₹ 3,00,000
Add: Purchases in June 2017 in Fertilizer unit	₹ 44,40,000
	₹ 50,60,000
Less: Sales consideration of machinery sold in Steel Rolling Mill	₹ 5,10,000
	₹ 45,50,000
Less: Depreciation for the year @ 15%	₹ 6,82,500
WDV as on 01.04.2018	**₹ 38,67,500**

Note: Additional Depreciation u/s 32(1)(iia) shall not be available on old Plant & Machinery.

Depreciation on Block of Furniture (10% Rate)

Opening WDV as on 01.04.2017	₹ 80,000
Less: Depreciation for the year @ 10%	₹ 8,000
WDV as on 01.04.2018	**₹ 72,000**

Depreciation on Block of Buildings (10% Rate)

Opening WDV as on 01.04.2017	₹ 9,00,000
Less: Sold during the year for ₹ 10,28,000 restricted to	₹ 9,00,000
WDV as on 01.04.2018	**₹ NIL**
Total Depreciation for the financial year 2017-18	**₹ 6,90,500**

** Computation of Short Term Capital Gains	
Sales Consideration of the building at Kanpur	₹ 10,28,000
Less: Opening WDV as on 01.04.2017	₹ 9,00,000
Short Term Capital Gains	₹ 1,28,000

Since return of A/Y 2017-18 was filed after the due date, the loss of ` 2,42,000 of A/Y 2017-18 shall not be carried forward. However, depreciation of ` 9,00,000 shall be carried forward to A/Y 2018-19. This depreciation can be set off against any head of income and therefore ` 3,51,500 has been set off against business income & ` 1,28,000 against STCG. The balance unabsorbed depreciation of 4,20,500 shall be carried forward to Assessment Year 2019-20. It may be noted that Loss and depreciation carried forward can be set off even if the business to which they relate has been discontinued.

Answer 4 (6 marks)

Explanation 5 to section 43 (1) provides as under:

Where a building previously the property of the assessee is brought into use for the purpose of the business or profession of the assessee, the actual cost to the assessee shall be the actual cost of the building to the assessee as reduced by an amount equal to the depreciation calculated at the rate in force ON THAT DATE that would have been allowable had the building been used for the purposes of business or profession since the date of its acquisition.

Hence, the actual cost as per Explanation 5 to section 43(1) shall be computed as under:

	Actual Cost	10,00,000
Less:	Depreciation for A/Y 2016-17 @ 5%	50,000
	Depreciation for A/Y 2017-18 @ 10%	95,000
	Actual Cost for A/Y 201819	**8,55.000**

Hence, depreciation for A/Y 2018-19 @ 10% is 85,500 (3 marks)

As per Explanation 2 to section 43(1):

Where an asset is acquired by the assessee by way of gift or inheritance, the actual cost of the asset to the assessee shall be the WDV in the hands of the previous owner at the time of transfer of asset computed by assuming that the asset was the only asset in the block of assets. **(1 mark)**

The depreciation is to be reduced only if the previous owner had claimed depreciation. Assuming that in the present case, the father did not claim depreciation on the said building, the actual cost to Mr. X shall remain to be the actual cost to the father i.e. ` 10,00,000. **(1 mark)**

Therefore in A/Y 2018-19, Mr. X will claim depreciation of ` 10,00,000 @ 10% = ` 1,00,000. **(1 mark)**

Answer 5 (6 marks) (2 marks each)

(i) **TDS on landing and parking charges:** The landing and parking charges which are fixed by the Airports Authority of India are not merely for the "use of the land". These charges are also for services and facilities offered in connection with the aircraft operation at the airport which include providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport. Therefore, TDS is not deductible under section 194-1. **(Singapore Airlines Ltd. (SC).**

Tax is deductible @ 2% under section 194C by the airline company, Wings Ltd., on payment of ` 15 lacs made towards landing and parking charges to the Airports Authority of India for the previous year 2017-18.

(ii) **TDS on rent for building and machinery:** Tax is deductible on rent under section 194-1, if the aggregate amount of rental income paid or credited to a person exceeds ` 1,80,000. Rent includes payment for use of, inter alia, building and machinery. The aggregate payment made by Mac Ltd. to Ramesh towards rent in P.Y.2017-18 is ` 1,85,000 (i.e., ` 1,35,000 for building and ` 50,000 for machinery). Hence, Mac Ltd. has to deduct tax @10% on rent paid for building and tax @ 2% on rent paid for machinery.

(iii) **TDS on compensation for compulsory acquisition:** Tax is deductible at source @10% under section 194LA. where payment is made to a resident as compensation or enhanced compensation on compulsory acquisition of any immovable property (other than agricultural loan). However, no tax deduction is required

if the aggregate payments in a year does not exceed ` 2,50.000. Therefore, no tax is required to be deducted at source on payment of ` 1,95,000 to Mr. X, since the aggregate payment does not exceed ` 2,50,000 lakh. Since the definition of immovable property specifically excludes agricultural land, no tax is deductible at source on compensation paid for compulsory acquisition of agricultural land ever if compensation exceeded ` 2,50,000.

Answer 6 (4 marks)

An error was initially committed by the assessee while e-filing his return. Incomes which were exempt ought not to have been shown as part of his total income. However, the assessee had shown the impugned amounts as exempt, in the schedule of exempt income. While processing such return under section 143(1)(a), the system could not have detected this error and hence was processed, accepting the income returned by the assessee.

There is a mistake apparent from record in the intimation sent under section 143(1). Therefore, Assessing Officer is bound to entertain the rectification application filed under section 154 and delete the exempt incomes from the total income of assessee.

Hence, the action of the Assessing Officer is not correct.

Answer 7 (5 marks)

The matter relates to the admission or rejection of the application filed before the Authority for Advance Rulings on the ground specified in clause (i) of the first proviso to section 245R(2). The said clause 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 this case, no application had been filed or contention urged by the applicant foreign company, namely Macline Cola Co., before any income-tax authority/Appellate Tribunal/court, raising the question raised in the application filed with AAR. However, one of the Indian companies, namely, Coca Cola Ltd., 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 to tax from payments made to the foreign company. 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 in **Bresson Telephone Corporation India AB v. CIT (AAR)**, the application filed by the Indian company. Coca Cola Ltd., before the Assessing Officer cannot be treated to have been filed by the foreign company, Macline Cola Co.

Hence, the rejection of the application of Macline Cola Co. by the AAR on the ground that the question raised in the application is already pending before an income-tax authority is not justified.

Answer 8 (5 marks)

As per section 245R(2), the Authority may, after examining the application and the records called for, either allow or reject the application. However, the Authority shall not allow the application where the question raised in the application is already pending in his case before any income-tax authority, ITAT or Court in regard to:

- **a non-resident applicant referred to in section 245N(b)(i),**
- **a resident applicant in relation to a transaction with a non-resident referred to in section 245N(b)(ii), and**
- **a resident applicant referred to in section 245N(b)(iia).**

The applicant in the present case is the foreign company. The case of foreign company is not pending before any income tax authority, ITAT or Court.

The facts of the Question are similar to Ericsson Telephone Corporation India AB v. Commissioner of Income-tax [1997] (AAR).

In this case, it was held that the question raised in the application by foreign company is not pending in case of the foreign company before Income Tax Authority/ITAT/Court. The Indian company in question 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 pertained to one of the payments made to the applicant, it was not one

pending determination before any other authority in the applicant's case. Therefore, it would not be proper to reject the application, relying on section 245R of the Income-tax Act.
Hence rejection of the application of the foreign company by the AAR is not justified.

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