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**SUGGESTED SOLUTION**

**CA FINAL NOV '19**

**SUBJECT- DIRECT TAX LAWS**

**Test Code – FNJ 7313**

**BRANCH - () (Date :)**

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## SECTION - A

ANSWER : 1

1. A
2. D
3. B
4. C
5. C
6. B
7. B
8. B
9. A
10. D
11. B
12. A
13. C
14. B
15. D
16. C
17. A
18. C
19. C
20. D

## SECTION - B

ANSWER : 1

Computation of total income MNO Corporation LLP for the A.Y. 2019 – 20

Profits and Gains form Business or Profession		
Net profit as per profit and loss account (Note) (Rs. 10,25,000 + Rs. 20,50,000)		30,75,000
Add : Items debited to profit & Loss account but not allowable as deduction / to be considered separately		
(1) Interest on capital payable to partners in excess of 12% disallowed under section 40(b) (Rs. 100 lakhs × 3%)	3,00,000	
(2) Working Partner' salary (to be considered separately)	36,00,000	
(3) Depreciation as per books of account (Rs. 5 lakhs + Rs. 35 lakhs) relating to textile business	40,00,000	
(4) Keyman insurance premium paid (allowable as deduction, since it is incurred wholly and exclusively for the purpose of business – Circular No. 762, dated 18.2.1998)	-	
		79,00,000
		1,09,75,000
Less : Depreciation under section 32 of the Income – tax Act, 1961 (relating to textile business) [Rs. 27 lakhs + Rs. 4 lakhs]		31,00,000
<b>Book Profit</b>		<b>78,75,000</b>
<b>Less : Remuneration to working partners [Subject to limits</b>		

specified in section 40(b)] On first Rs. 3,00,000 of book profit On the balance of book profit Rs. 75, 75,000 [Rs. 78,75,000 – Rs. 3,00,000].	90% of book profit or Rs. 1,50,000, whichever is higher 60% of balance book profit	2,70,000 45,45,000	
Restricted to actual remuneration paid		48,15,000	36,00,000
<b>Income under the head profits and gains of business or profession</b>			<b>42,75,000</b>
Income from textile manufacturing business (See notes 5 and 6)			20,25,000
Income from specified business of operating a cold chain facility [Rs. 42,75,000 – Rs. 20,25,000]		22,50,000	
<b>Less : set – off of brought forward loss of specified business under section 73A (See notes 1 to 4 below)</b>		15,00,000	7,50,000
<b>Total Income</b>			<b>27,75,000</b>

**Note :**

- (1) Computation of loss of specified business of setting up and operating a cold chain facility for P.Y. 2017 – 18 relevant to Assessment Year 2018 – 19.

Particulars	Amount	Amount (Rs.)
Income from cold chain facility [before deduction under section 35AD]		30,00,000
Less : Deduction under section 35AD [100% of Rs. 50,00,000] <b>(See notes 2 and 3)</b>		(50,00,000)
Loss of specified business for P.Y. 2017 – 18		(20,00,000)
Income from Textile Business	12,00,000	
Loss to be carried forward as per section 73A read with section 78 [Rs. 20,00,000 × ¼] to be set – off against profits of any specified business of the subsequent years <b>(See note 4 below)</b>		(5,00,000)
Loss to be carried forward in A.Y. 2019 – 20		(15,00,000)

- (2) Computation of profit from textile manufacturing business

Particulars	Amount (Rs.)
Profit and Gains from Business or Profession	
Net profit as per profit and loss account	10,25,000
Add : Depreciation as per books of account (Rs. 5 lakhs + Rs. 35 lakhs) relating to textile business	40,00,000
	50,25,000
Less : Depreciation under section 32 of the Income – tax Act, 1961 (relating to textile business)	31,00,000
	19,25,000
Add : Interest on capital of Rs. 3,00,000 disallowed [apportioned in the ratio of net profits of textile business and specified business as per profit and loss account (1 : 2)] [1/3 × Rs. 3,00,000] <b>(See note 6 below)</b>	1,00,000
	20,25,000

- (6) The deduction of depreciation is in respect of the assessee and hence any disallowance of excess depreciation shall be for the assessee. Similarly Remuneration and Interest paid by Firm to its partners id for the Firm and not for any particular business and hence, the net profit although computed individually upto now shall be aggregated for the purpose of these deductions or disallowances.

**ANSWER : 2**

(a)(i) **Computation to MAT payable by Alpha and Beta Tyres Limited under section 115jB for A.Y. 2019 – 20**

<b>Particulars</b>	<b>Rs.</b>	<b>Rs.</b>
Net profit as per statement of profit and loss		20,00,00,000
Add : Net profit to be increased by the following amounts as per Explanation 1 to Section 115JB (2) :		
- Depreciation	18,00,00,000	
- Interest charged for delay in remittance of TDS [As per Explanation 2 to Section 115JB, income – tax shall include, inter alia, any interest charged under the Act. Therefore, interest on delay in remittance of TDS has to be added back]	20,00,000	18,20,00,000
		38,20,00,000
Less : Net profit to be decreased by the following amounts as per Explanation 1 to section 115JB(2) :		
- Depreciation other than depreciation on revaluation of assets [Rs. 18 crore – Rs. 3 crore]		15,00,00,000
- Share income from Association of Persons	50,00,000	
[Share income of company in AOP has to be reduced while computing the book profit, since no income – tax is payable by the company on share income in AOP, as the AOP is chargeable to tax at Maximum Marginal Rate]		
- Amount withdrawn from revaluation reserve [Rs. 6 crore] to the extent it does not exceed depreciation on revaluation of assets [Rs. 3 crore]	3,00,00,000	
- Brought forward business loss of Rs. 8 crore [Rs. 3 core + Rs. 5 crore] and unabsorbed depreciation of Rs. 3 crore [Rs. 1 crore + Rs. 2 crore]	11,00,00,000	
[Since Alpha and Beta Tyres Limited is a company against which an application for corporate insolvency resolution process has been admitted by NCLT under section 7 of the Insolvency and Bankruptcy Code, 2016, the amount of total loss brought forward (including unabsorbed depreciation) is allowed to be reduced from the book profit for the purposes of levy of MAT under section 115JB].		29,50,00,000
<b>Books profit computed in accordance with Explanation 1 to Section 115 JB (2)</b>		8,70,00,000
Add : <b>Items credited to OCI that will not be reclassified to profit of loss :</b>		
Re – measurement of defined employee benefit plan	50,00,000	
Revaluation surplus of property, plant and equipment Rs. 1 crore [Book profit not to be increased by revaluation surplus for assets]	Nil	50,00,000
		9,20,00,000
Add : One – fifth of Transition amount [Credit Balance]		

Transition amount	5,00,00,000	
Less : Amounts to be excluded from transition amount		
Capital Reserve	50,00,000	
	4,50,00,000	
One – fifth of Rs. 4,50,00,000		90,00,000
<b>Book Profit for levy of MAT</b>		<b>10,10,00,000</b>

<b>Computation of MAT</b>	<b>Rs.</b>
MAT on book profit under section 115 JB = 18.5% of Rs. 10,10,00,000	1,86,85,000
Add : Surcharge @ 12% (since book profit exceeds Rs. 10 crore)	22,42,200
	2,09,27,200
Less : Marginal relief	1,32,200
	2,07,95,000
Add : Health and education cess @4%	8,31,800
MAT liability for A.Y. 2019 – 20	<b>2,16,26,800</b>

**Working Note : Computation of marginal relief**

<b>Particulars</b>	<b>Rs.</b>
MAT on book (including surcharge) computed on total income of Rs. 10.10 crore	2,09,27,200
Less : Maximum tax (including surcharge) which can be levied on total income of rs. 10.10 crore :	2,07,95,000
Tax (including surcharge @ 7%) on Rs. 10 crore	1,97,95,000
Add : Income exceeding Rs. 10 crore	10,00,000
	2,07,95,000
Marginal relief	1,32,200

**(ii) Computation of MAT credit to be carried forward**

MAT liability for A.Y. 2019 – 20 (rounded off)	2,16,26,800
Income – tax computed as per the normal provisions of the Act for A.Y. 2019 – 20	73,00,000
Since the income – tax liability computed as per the regular provisions of the Income – tax Act, 1961 is less than the MAT payable, the book profit of Rs. 10,10,00,000 would be deemed to be the total income and tax is leviable @ 18.5%. the total tax liability (rounded off) is Rs. 2,16,26,800.	
<b>Computation of tax credit to be carried forward :</b>	
Tax payable for A.Y. 2019 – 20 on deemed total income	2,16,26,800
Less : income – tax payable as per the normal provisions of the Act.	73,00,000
Tax credit in respect of tax paid on deemed income	<b>1,43,26,800</b>

**(8 MARKS)**

**(b) Computation of tax payable / refund due to Mr. Sumedh for A.Y. 2019 – 20**

<b>Particulars</b>	<b>Rs.</b>	<b>Rs.</b>
Long – term capital gains on transfer of foreign exchange asset on 31.7.2018	6,50,000	
Less : Expenditure wholly and exclusively incurred with such transfer	80,000	
		57,000

<b>Less : Exemption under section 115F</b>			
- Investment of Rs. 2,00,000 in notified saving certificates referred to in section 10 (4B) on 30.3.2019		Nil	
[Investment in notified saving certificates referred to in section 10(4B) is to be made within six months after the date of transfer i.e., on or before 31.1.2019. Since investment is made after 31.1.2019, no exemption would be allowed]		Nil	
- Investment of Rs. 3,00,000 in shares of Indian Public Limited Companies on 31.12.2019 [Investment in specified assets, being shares in an Indian company is to be made within six months after the date of transfer i.e., on or before 31.1.2019. Since investment is made after 31.1.2019, no exemption would be allowed]			Nil 5,70,000
<b>Income from other sources</b>			
<b>Investment Income<sup>2</sup></b>			
Interest on Government Securities	95,000		
Interest on deposits with public limited companies	<u>2,60,000</u>	3,55,000	
Other Incomes			
Dividend from domestic companies of Rs. 75,000 [Exempt under section 10(34)]		Nil	
Interest on deposits with private limited companies		5,90,000	
			9,45,000
Total Income			<b>15,15,000</b>

Particulars	Rs.	Rs.
Tax liability [applying the special provisions under Chapter XII – A]		
Tax @ 20% on investment income = 20% of Rs. 3,55,000	71,000	
Tax @ 10% on long – term capital gains = 10% of Rs. 5,70,000	57,000	
Tax on balance income of Rs. 5,90,000 at slab rate [Rs.18,000, being 20% of Rs. 90,000 + Rs. 12,500]	30,500	
		1,58,500
Add : Health and education cess @4%		6,340
Tax liability		<b>1,64,840</b>
Less : TDS		1,83,800
<b>Refund due</b>		<b>18,960</b>

(6 MARKS)

**ANSWER : 3**

(a) **Computation of total income of M/s. Mahan Charitable Trust for the A.y. 2019 - 20**

Particulars	Rs.	Rs.
Voluntary contributions received during the eyar		1,50,00,000
Less : Corpus Donation		20,00,000
		1,30,00,000
Income from property held under trust [Capital Gains from sale of land (Rs. 10.50 lakhs – Rs. 5 Lakhs) <sup>3</sup> ]		5,50,000

		1,35,50,000
Less : 15% of income eligible for being set apart without any condition <sup>4</sup>		20,32,500
		1,15,17,500
<b>Less :</b> Amount applied for charitable purposes		
Salary paid to teachers and administrative staff	40,00,000	
General expenses [Rs. 10,00,000 – Rs.30,000, payment by crossed cheque disallowed due to application of section 40A(3)]	9,70,000	
Capital gains re – invested in purchase of land for the purpose of the trust deemed to be applied for charitable purposes [Rs. 10.50 lakhs – Rs. 5 lakhs]	5,50,000	
Excess of purchase price of new land over sale consideration of old land treated as application of income since the new land is used for the purpose of the trust [Rs. 12 lakhs – rs. 10.50 lakhs] – Cost of laptops purchased for teaching purposes [Rs. 50,000 × 5]	2,50,000	
– Cost of construction of hostel rooms [2 × Rs. 1200 × 1500 sq. ft]	36,00,000	
– Corpus donations of Rs. 20 lakhs to a trust registered u/s 12AA not permissible as deduction	Nil	
		95,20,00
		19,97,500
Amount accumulated for constructing a school building (Rs. 30 lakhs) less amount actually spent (Rs. 27 lakhs) taxable in the P.Y. 2019 – 20 (A.Y. 2020- 21), being the year immediately succeeding the P.Y. 2018 – 19 (A.Y. 2019 – 20), the year in which project is completed		Nil
<b>Total income</b>		<b>19,97,500</b>
<b>Note</b> - If the trust exercises the option to apply the donations received (to the extent of Rs. 17.475 lakhs, being taxable portion of income of the trust i.e., Rs. 19,97,500 – Rs. 2,50,000, the basic exemption limit) from Mr. Michael on 31.3.2019 on or before the due date of filing of return u/s 139(1) in the prescribed form, the income would be deemed to have been applied for charitable purposes in the A.Y. 2019 – 20. However, Rs. 17.475 lakhs should be applied before the end of the previous year 2019 – 20.		

(8 MARKS)

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

In this case, Since Beta Inc., a foreign company, has advanced loan to Beta Ltd., an Indian company, and such loan constitutes 57.6% [(Rs. 45 × 1,60,000 × 100/ 1,25,00,000)] of the book value of total assets of Beta Ltd., Beta Inc and Beta Ltd. are deemed to be associated enterprises.

Since the transaction of provision of software backup support by Beta Ltd. to Beta Inc. is an international transaction between associated enterprises the provisions of transfer pricing would be attracted in this case.

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

Particulars	Rs.
Billing per manhour [SD 90.75/ hour × Rs. 45]	4,083.75
Cost per man hour [SD 75/ hour × Rs. 45]	3,375.00
<b>Operating profit per manhour</b>	<b>708.75</b>
<b>Operating profits to cost (%) [708.75 × 100/3375] = 21%</b>	

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

Particulars	Rs. In lakhs
Direct Cost	600
Indirect Cost	200
<b>Total Cost</b>	<b>800</b>
Operating profits	200
<b>Operating profits to cost (%) [200 × 100/ 800] = 25%</b>	

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

Particulars	Rs.
Cost of Beta Ltd. (per man hour) [SD 75 × Rs. 45/SD]	3,375.00
Add : Arm's length operating profit margin as % of cost (25% of Rs. 3,375)	843.75
<b>Arm's length price (per mahour) in INR</b>	<b>4,218.75</b>
Arm's length price of total manhours spent by Beta Ltd. for providing software backup support to Beta Inc. [Rs. 4,218.75 × 50,000 man hours] = Rs. 21,09,37,500	

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

Particulars	Rs.
Arm's length price of total manhours spent by Beta Ltd. for providing software backup support to Beta Inc.	21,09,37,500
Less : Amount actually billed [90.75 SD × Rs. 45/SD × 50,000 manhours]	20,41,87,500
<b>Arm's length adjustment to be made to the total income of Beta Ltd.</b>	<b>67,50,000</b>

(6 MARKS)

**ANSWER : 4**

- (a) TDS under section 194 C is attracted on any sum payable to a resident contractor / sub – contractor for carrying out any work. However, “work” shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using raw material purchased from a person, other than such customer, as such a contract is a ‘contract for sale’.

In this case, M/s Lion & Co. has to supply cushion for the chairs to Deer Co Ltd. according to the specifications of the customer by using materials purchased from a person other than the customer, Deer Co Ltd. Thus, the sub – contract for production of cushions is a ‘contract for sale’ and not a ‘works contract’.



- (b) As per section 206C(1), a seller of, inter alia, scrap is required to collect tax @ 1% from the buyer. Scarp means waste and scrap from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, ware and other reasons.

However, tax is not required to be collected at source if the resident buyer furnishes to the person responsible for collecting tax, a declaration in the prescribed form that such scrap is to be utilized for the purposes of , inter alia, manufacturing.

Thus, no tax is required to be collected at source by M/s. PMPC, the seller, on sale of scrap to M/s PAPC, if M/s. PAPc furnishes to M/s. PMPC, a declaration in the prescribed form that such scrap is to be utilized as raw material for production of paper.

(2 MARKS)

(c) **[First Alternative]**

The issue under consideration is whether the bank is required to deduct tax at source on the amount of interest paid or payable on fixed deposits in the name of Registrar General of High Court.

Under section 194A, the bank is obliged to deduct tax at source in respect of any credit or payment of interest (exceeding Rs. 10,000) on deposits made with it. The expression "Payee" under section 194A would mean the recipient of income whose account is maintained by the person paying interest.

However, in this case, the actual payee is not ascertainable and the person in whose name the interest is credited is not a person liable to pay tax under the Act, The Registrar General is recipient of neither the amount credited to his account nor to interest accruing thereon. Therefore, he cannot be considered as a 'payee' for the purposes of section 194A. In the absence of a payee, the machinery provisions for deduction of tax from interest credited become ineffective.

The credit by the bank in the name of the Registrar General would, thus, not attract the provisions of section 194A. Therefore, the bank is correct in not deducting tax on the interest accrued.

Note – This issue came up before the Delhi High Court in UCO Bank v. Dy. CIT (2014) 369 ITR 335. The above answer is based on the Delhi High Court ruling in the said case. The CBDT has, vide Circular No. 23/2015 dated 28.12.2015 accepted the aforesaid judgment and clarified that interest on fixed deposits made in the name of the Registrar General of the Court or the depositor of the fund on the directions of the Court, will not be subject to TDS till the matter is decided by the Court.

(c) **[Second Alternative]**

- (a) Under 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 income – tax at 30%.

Therefore, Blue Moon, a popular television channel, is required deducted tax at source @ 30% from the prize money of Rs. 50 lakh at the time of payment to the winner of a famous quiz programme.

- (b) Section 194J requires deduction of tax at source @ 10% from the amount credited or paid by way of fees for professional services, where such amount or aggregate of such amounts credited or paid to person exceeds Rs. 30,000 in a financial year.

“Blue Moon”, a television channel is required to deduct tax at source @ 10% under section 194J at the time of credit or payment, whichever is earlier, on the professional fees payable to the cameraman for shooting multi – episodes of a long documentary serial, since such amount exceeds Rs. 30,000 during the financial year.

Note – Alternatively, if the cameraman is an employee of the T.V. Channel, the provisions of section 192 will apply at the time of payment and tax would have to be deducted at the average rate of tax.

**(4 MARKS)**

- (d) (i) ABC & Co., an Indian LLP, and XYZ LLP, a foreign LLP, are deemed to be associated enterprises, since XYZ LLP is controlled by A & B, who are the partners of ABC & Co., along with their relatives.

Engine, engine part including cooling systems and engine valves fall within the meaning of “core auto components”, and hence, export of all such parts originally manufactured by ABC & Co. is an eligible international transaction.

Since the Indian LLP is solely engaged in the manufacture and export of such parts and has exercised a valid option for Safe Harbour Rules, it is an eligible assessee.

The Indian LLP should have declared an operating profit margin of not less than 12% in relation to operating expense, to be covered within the Safe Harbour Rules.

However, since ABC & Co. an Indian LLP has declared an operating profit margin of only 7.5% (Rs. 4.5/Rs. 60 crore × 100), the same is not in accordance with the circumstance mentioned in Rule 10TD.

Hence, ABC & Co. an Indian LLP, has to make primary adjustment.

Accordingly, it has to declare operating profits margin of Rs. 7.2 crore, being 12% of operating expenses i.e. Rs. 60 crore.

Thus, primary adjustment of Rs. 2.7 crore [i.e., Rs. 7.2 crore – Rs. 4.5 crore] has to be made by ABC & Co.

- (ii) The Safe Harbour Rules shall not apply in respect of eligible international transactions entered into with an associated enterprise located in a notified jurisdictional area.

Therefore, if the foreign LLP is located in a NJA, the safe Harbour Rules shall not be applicable, irrespective of the operating profit margin declared by the assessee.

**(6 MARKS)**

**ANSWER : 5**

- (A) Section 133B(2) of the Income – tax Act, 1961 empowers an income – tax authority to enter any place of business during the hours at which such place is open for the conduct of

business. The hotel is open from 8.00 a.m. to 10.00 p.m. for the conduct of business. The Assessing Officer entered the hotel at 8.30 p.m. which falls within the working hours. The claim made by the hotelier to the effect that the Assessing Officer could not enter the hotel after sunset is not in accordance with law.

Section 133B(3) provides that an income tax authority acting under this section shall, on no account, remove or cause to be removed from the place wherein the has entered, any books of account. In view of this clear prohibition in section 133B(3), the proposed action of the Assessing Officer to take away with him the books of account kept at the hotel is not valid in law.

**(4 MARKS)**

- (B)** The proviso to section 132B(1)(i) provides that where the person concerned makes an application to the Assessing Officer, within 30 days from the end of the month in which the asset was seized, for release of the asset and the nature and source of acquisition of the asset is explained to the satisfaction of the Assessing Officer, then, the Assessing Officer may, with the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner of Commissioner, release the asset after, recovering the existing liability under the Income – tax Act, 1961, etc. out of such asset. ‘Existing liability’, however, does not include advance tax payable. Such asset or portion thereof has to be released within 120 days from the date on which the last of the authorizations for search under section 132 was executed.

In this case, since the application was made to the Assessing Officer within the 30 day period the amount of existing liability may be recovered out of the asset and the balance may be released within 120 days from the date on which the last of the authorizations for search under section 132 was executed.

**Note :** It may be noted that one of the conditions mentioned above for release of an asset is that the nature and source of acquisition of the asset should be explained to the satisfaction of the Assessing Officer. However, in this case, it has been given that the assessee’s application for release of the asset, explaining the sources thereof, was turned down by the Department. If the application was turned down by the Department due to the reason that it was not satisfied with the explanation given by the assessee as to the nature and source of acquisition of the asset, then, the asset (in this case, cash) cannot be released, since the condition mentioned above is not satisfied.

**(4 MARKS)**

- (C)** A DTAA is an international agreement entered between two nations. Vienna convention has codified the customs and the principles of international tax law. Various principles laid down under VCLT aids in interpretation of tax treaty. It contains the rules applicable to tax treaties concluded after it came into force between States that are parties to the VCLT. It codifies earlier international practice and is customary international law and hence the rules of interpretation contained in it also apply to tax treaties entered into by India even though India is not a party to the Vienna Convention.

It was held in Union of India v. Azadi Bachao Andolan – (2003) 263 ITR 706 (SC) that one cannot interpret tax treaty in a way a domestic law is being interpreted. VCLT codifies the principles of interpretation of tax treaties based on customary law.

**Article 26 – Pacta Sunt Servanda**

Treaty in force is binding upon the parties to it and must be performed by them in good faith.

**Article 27 : internal law & Observance of Treaties**

A party to a treaty cannot invoke provisions of internal law as justification for its failure to perform obligations under a treaty.

This is brought out under section 90(2) of the Income – tax Act which states that provisions of Act or treaty whichever is more beneficial to assessee shall apply.

**Article 31 of VCLT**

- “a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms thereof in the context and in the light of its object and purpose”.
- The treaty should be interpreted by giving ordinary meaning to it. According to Article 31 of VCLT, special meaning shall be given to a term if it is intended by the parties to it.
- An ordinary meaning is not equivalent to a grammatical or dictionary definition
- In case of Abdul Razak A Meman (supra), AAR while deciding the case, took into consideration the object and purpose of the treaty which was to promote mutual economic relations.

**Article 32 of VCLT**

- When the ordinary meaning results in ambiguity or absurdness, then the supplementary material may be resorted to .
- When meaning of particular words and phrases in a treaty are doubtful, their construction should be governed by the general object of the treaty and by the context.
- Supplementary material shall include notes of discussion between the parties which led to the signing of treaty, speeches delivered by Finance Minister, press note/ press releases issued by CBDT with the signing of the treaty.
- In case of Abdul Razak A Meman (supra), all these documents were referred to interpret the India – UAE Tax treaty.

**(3 MARKS)**

**(D)**

No.	Interest u/s 234C shall not leviable on shortfall in tax paid on account of under – estimate or failure to estimate the following :
1.	The amount of Capital Gains
2.	Income referred to in Section 2(24)(ix) : Winning from lotteries, crossword puzzles etc.
3.	PGBP income, where such income accrues or arises for the first time to the assessee for the first time
4.	Dividend income referred u/s 115BBDA

However, the assessee should have paid the whole amount of tax payable in respect of the above, had such income been a part of the Total income, as part of the remaining Advance Tax installments which are due or where no such installments are due, by 31<sup>st</sup> March of the FY.

**(3 MARKS)**

**ANSWER : 6**

- (a) Successful tax planning must conform to two tests, viz, conformity with the current law and flexibility.

In order to satisfy the first test the essential requisite is a comprehensive knowledge for the law, rules and regulations on the part of the tax planner. This knowledge of law extends not only to the provisions of the taxing statutes and the case law that has developed on those statutes, but also to other branches of law, both civil and personal, so that the tax planner’s device does not get defeated by the universal principles of jurisprudence.

The second test of flexibility seeks to ensure that the success of the tax planning device is not nullified by statutory negation. Flexibility essentially means that the device provides for suitable changes in accepted forms. Wherever possible, tax planning schemes should be

flexible, designed so as to avoid irretrievable situations. The tax planner should, therefore, be watchful of all significant developments related to his field.

**(4 MARKS)**

(b) The advice to Mrs. Srinivasan would be on the following lines –

Mrs. Srinivasan, the legal representative of Mr. Srinivasan, would be deemed to be an assessee for the purpose of the Income – tax Act, 1961. Mrs. Srinivasan would be liable to file return of income as a legal representative and pay any sum which Mr. Srinivasan would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased. Any sum includes tax, penalties, interest or any other sum that would have been payable by her deceased husband. The liability of Mrs. Srinivasan would be limited to the extent to which the estate of the deceased is capable of meeting the liability. No prosecution can, however, be initiated on Mrs. Srinivasan for any offence committed by her deceased husband.

**(4 MARKS)**

(c) (i) **The statement is not correct.**

The objectives of tax treaties also include

- Allocating tax rights,
- Elimination of double taxation,
- Ensuring non – discrimination between residents and non – residents and
- Resolution of disputes of on account of different treaty interpretation.

(ii) **The statement is correct.**

Protocol is like a supplement to the treaty. In many treaties, in order to put certain matters beyond doubt, there is a protocol annexed at the end of the treaty, which clarifies borderline issues. Thus, one must refer to protocol before arriving at any final conclusion in respect of any tax treaty provision.

**(6 MARKS)**