CA FINAL

Test Code – JKN-INT-22

(Date: 25-09-2020)

(Marks - 100)

Answers to questions are to be given only in English except in the case of candidates who have opted for Hindi medium. If a candidate who has not opted for Hindi medium, his / her answers in Hindi will not be valued.

The Question Paper comprises five case study questions. The candidates are required to answer any four case study questions out of five.

Answers in respect of Multiple Choice Questions are to be marked on the OMR Answer Sheet only.

Answers to other questions are to be written on the descriptive type answer book.

Answers to Multiple Choice Questions, if written in the descriptive type answer book will not be evaluated.

Candidates may use calculator.

All questions related to Assessment Year 2020-21, unless stated otherwise in the questions / case studies.

Case Study 1

K Limited – Ind Limited – Nepal Limited

K Limited of Korea and Ind Ltd. an Indian Company are associated enterprises. Ind Ltd. Manufactures Cell Phones and sell them to Nepal Limited, a Company based at Nepal. During the year Ind Ltd. Supplied 2,50,000 Cell Phones to K Limited Korea at a price of Rs. 8,000 per unit and 35,000 units to Nepal Limited at a price of Rs.16,800 per unit. There are no other customers for Ind Ltd. during this year. The transactions of Ind Ltd. with Nepal Limited are comparable subject to the following considerations-

1. Sales to K Limited are on FOB basis, sales to Nepal Limited are CIF basis. The freight and insurance paid by K Limited for each unit @ Rs. 700.
2. Sales to Nepal Limited are under a free warranty for two years whereas sales to K Limited are without any such warranty. The estimated cost of executing such warranty is Rs. 500.

3. Since K Limited's order was huge in volume, quantity discount of Rs. 200 per unit was offered to it.

4. Ind Ltd. has borrowed funds amounting to Rs. 100 crores, from its parent company at LIBOR plus 150 basis points. The fund is utilized for capital investment purposes viz. expansion of capacity. The LIBOR prevalent at the time of borrowing is 6% for US$, thus its cost of borrowing is 7.50%. The borrowings allowed under the External Commercial Borrowings guidelines issued under FEMA, for example, say is LIBOR plus 250 basis points, then it can be said that Arm's length borrowing rate is 7.50% whereas actual borrowing is at 6.50% and thus at not at arm's length. The benefit of this lower rate of interest is not passed on to non-Associated Enterprise;

5. Installed Capacity: 4,00,000 units. Industry utilization rate: 90%. The company works for 300 days in a year at 8 hours per day and has 300 employees. Cost of employees Rs. 1,00,000. Total depreciation charged during the year Rs. 10,00,000. Net profit for the year for Ind Ltd. Rs. 8,54,000. Net Profit ratio is 8%. The benefit of lower depreciation and savings in man power cost are not passed on to non-associated enterprises;

Case of Melina Limited

Melina Limited is a company, resident in state R that is assessing alternative locations to set up a new manufacturing plant in light of its expanding business. Three states with similar economic and political environments are identified as alternatives for this purpose. However, given that only state S has a tax treaty in force with state R, state S is chosen as the location for building the plant. The Assessing Officer of State S states that since principle purpose of setting up plant in state S was to avail favourable benefits under tax treaty, the assessee has violated Principle Purpose Test provided under OECD Model Tax Convention and therefore, benefit of tax treaty shall be denied. In the alternative, the assessing officer intends to invoke General Anti Avoidance Rule [GAAR];

Choose the correct alternative for the following MCQs: (2 x 5=10 Marks)

1.1 Taxation in the hands of one person in Country X and taxation of same income in the hands of another person in Country Y is a type of _____________:

(a) Jurisdictional Double Taxation

(b) Economic Double Taxation

(c) No Double Taxation

(d) Geographical Double Taxation

1.2 DTAAs are analysed based on principles provided in:
- (a) OECD Model Tax Convention
- (b) UN Model Tax Convention
- (c) Either (A) or (B)
- (d) Vienna Convention

1.3 Functional Differences are adjusted from the transaction price / margins of:
- (a) Tested party;
- (b) Untested party;
- (c) Comparable;
- (d) Depends on assessee's choice;

1.4 _______________ is not a type of PE currently in vogue:
- (a) Fixed Place PE;
- (b) Technological PE;
- (c) Virtual PE;
- (d) Service PE

1.5 Technical fees are paid to a foreign company, which is a resident in India. TDS on such fees, shall be deducted under section ___:
- (a) 194J
- (b) 194H
- (c) 195
- (d) No TDS

You are required to answer the following issues:

1.6 Compute Arms' Length Price in respect of transaction between Ind Limited and K Limited? **(8 Marks)**

1.7 Discuss the concept of Principle Purpose Test [PPT] provided in DTAA? **(3 Marks)**

1.8 State whether GAAR or PPT can be invoked in the case of Melina Limited? **(4 Marks)**

Case Study 2

Arrangement of Happy Limited

Happy Ltd., an Indian Company is a wholly-owned subsidiary of Happy Inc. Happy Ltd. is engaged in provision of software development services to its associated enterprise Happy Inc. The following is the income statement of Happy Ltd. for the year ended 31.03.2020

Happy Ltd.

All figures in Rupees' 000

Revenue from associated enterprises	
- Total Operating Income	95,000
Costs	
- Payroll	40,000
- Rent	16,500
- Depreciation	9,500
- General administration expenses	8,200
- Other operating expenses	11,800
- Total operating expenses	86,000
- Operating Profit	9,000

Net Cost plus mark-up (%) [Operating profit / total operating expenses] 10.46%

For the financial year ended 31st March, 2020, Happy Ltd. has earned a Net Cost Plus mark-up of 10.46% from its associated enterprises. Accordingly, Happy Ltd believes that its international transaction with Happy Inc., relating to the provision of software services, is consistent with the arm's length standard from the Indian transfer pricing perspective. For this purpose, it has identified the following five comparable companies for benchmarking analysis:

Comparable Company 1

(Rs. In Crores)

Profit and Loss Account (Summary) year ended						
Comparable 1	**March 2016**	**March 2017**	**March 2018**	**March 2019**	**March 2020**	**Total**
1) Time period	12 months	12 months	12 months	12 months	12 months	
2) Total Income	125	143	155	134	175	732
3) Total Cost	118	129	140	128	159	674
4) Net profit [=(2)-(3)]	7	14	15	6	16	58

5)	Net Cost plus mark-up [=(4)/(3)*100]	5.93%	10.8%	10.71%	4.69%	10.06%	-
6)	Weighted Average [={Total of col. (4)/ Total of col. (3)}*100]	-	-	-	-	-	8.61%

Comparable Company 2

(Rs. In Crores)

Profit and Loss Account (Summary) year ended							
Comparable 2		**March 2016**	**March 2017**	**March 2018**	**March 2019**	**March 2020**	**Total**
1)	Time period	12 months	12 months	12 months	12 months	12 months	
2)	Total Income	152	134	155	143	157	741
3)	Total Cost	118	129	140	128	135	674
4)	Net profit [=(2)-(3)]	34	5	15	15	22	91
5)	Net Cost plus mark-up [=(4)/(3)*100]	28.81%	3.88%	10.71%	11.72%	16.30%	
6)	Weighted Average [={Total of col. (4)/ Total of col. (3)}*100]	-	-	-	-	-	13.50%

Comparable Company 3

(Rs. In Crores)

Profit and Loss Account (Summary) year ended							
Comparable 3		**March 2016**	**March 2017**	**March 2018**	**March 2019**	**March 2020**	**Total**
1)	Time period	12 months	12 months	12 months	12 months	12 months	
2)	Total Income	15	13	15	14	17	74
3)	Total Cost	13	12	14	12	15	66
4)	Net profit [=(2)-(3)]	2	1	1	2	2	8
5)	Net Cost plus mark-up [=(4)/(3)*100]	15.38%	8.33%	7.14%	16.67%	13.33%	
6)	Weighted Average [={Total of col. (4)/ Total of col. (3)}*100]	-	-	-	-	-	12.12%

Comparable Company 4

(Rs. In Crores)

Profit and Loss Account (Summary) year ended						
Comparable 4	**March 2016**	**March 2017**	**March 2018**	**March 2019**	**March 2020**	**Total**
1) Time period	12 months	12 months	12 months	12 months	12 months	
2) Total Income	215.38	183.68	176.85	244.73	267.57	1088.21
3) Total Cost	191.21	162.55	169.29	212.11	223.34	958.50
4) Net profit [=(2)-(3)]	24.17	21.13	7.56	32.62	44.23	129.71
5) Net Cost plus mark-up [=(4)/(3)*100]	12.64%	13.00%	4.47%	15.38%	19.80%	-
6) Weighted Average [={Total of col. (4)/ Total of col. (3)}*100]	-	-	-	-	-	13.53%

Comparable Company 5

(Rs. In Crores)

Profit and Loss Account (Summary) year ended						
Comparable 5	**March 2016**	**March 2017**	**March 2018**	**March 2019**	**March 2020**	**Total**
1) Time period	12 months	12 months	12 months	12 months	12 months	
2) Total Income	231.15	138.89	157.86	424.37	327.75	1280.02
3) Total Cost	211.29	132.46	129.19	392.21	303.34	1168.49
4) Net profit [=(2)-(3)]	19.86	6.43	28.67	32.16	24.41	129.71
5) Net Cost plus mark-up [=(4)/(3)*100]	9.40%	4.85%	22.19%	8.20%	8.05%	-
6) Weighted Average [={Total of col. (4)/ Total of col. (3)}*100]	-	-	-	-	-	11.10%

Place of Effective Management

Under the domestic income tax law of State A, companies incorporated in that State or having their place of effective management in that State are regarded as resident. Under the domestic law of State B, only companies that have their place of effective management in that State are residents thereof. The State A- State B tax convention is identical to OECD Model Tax Convention.

Choose the correct alternative for the following MCQs:

(2 x 5=10 Marks)

2.1 The provisions relating to limitation of interest deduction in respect of debt issued by a non-resident associated enterprise are not applicable to an Indian company engaged in the business of:

(a) Information Technology
(b) Banking and Insurance
(c) Bio-technology
(d) Aviation

2.2 Arms' length range is used when number of comparables is more than ___ :

(a) 2 (b) 6
(c) 5 (d) 8

2.3 Unexhausted basic exemption limit, if any, of a non-resident can be adjusted against –

(a) Only LTCG taxable@20%
(b) Only STCG taxable@15%
(c) Both (a) and (b)
(d) Neither (a) nor (b)

2.4 Which of the following statements is true:

(1) Under IT Act, a company whose place of effective management is in India can still be regarded as non-resident if it is incorporated outside India;
(2) The first tie-breaker test is to look at habitual abode of an Individual
(3) It is only under UN Model Tax Convention that "place of incorporation" is considered as a criteria for determination of residential status;
(4) Both OECD and UN Model Tax Conventions have the same set of tie-breaker tests for an Individual

(a) All statements are true (b) Only 1, 3 and 4
(c) Only 3 and 4 (d) Only 3 above

2.5 An agent, in relation to income which is deemed to accrue or arise in India to a non-resident, is considered as a representative assessee. However, an agent, in relation to a non-resident person does not include –

(a) An employee in India of the non-resident

(b) A trustee in India of the non-resident

(c) A broker in India dealing with the non-resident person only through a non-resident broker, where both non-residents carry on transactions in the ordinary course of business

(d) A person in India having business connection with the non-resident

You are required to answer the following issues:

2.6 Assuming that TPO accepts all comparables selected by Happy Limited as genuine, and that weighted average margins of comparables are properly computed, you are required to determine whether transactions conducted by Happy Limited with Happy Inc are at ALP?

(5 Marks)

2.7 Assume that the assessee earns its entire revenue from associated enterprise. You are required to compute arms' length price by adopting CUP Method? Further, check whether transaction is at ALP.

(5 Marks)

2.8 Advise XYZ Limited which is incorporated in State B but has POEM in State A as to how its residential status would be determined for the year?

(5 Marks)

Case Study 3

Technical know-how provided by ST

A foreign Company, ST has entered into an agreement with an Indian Company KN for supply of know-how and the agreement is within the Industrial Policy conditions laid down by the Central Government. In the year 2019-20, Rs. 50 lacs were paid, under the agreement, to ST by KN.

ST claims to have spent Rs. 14 Lacs as expenses in India to be recognized as a deduction. In the following situations, what will be your decision on the tax liability of the parties:

1. The agreement having been entered into before 1st June,2002 and approved by the Government, KN pays to the Indian income-tax authorities the tax payable by ST;

2. There is no term in the agreement that KN has to bear the tax liability; the royalty payable is decided to be Rs. 59 lacs (net of taxes) instead of Rs. 50 lacs.

XY Pvt Limited

XY Pvt Ltd., a company having registered head office in Singapore, for the first time had carried out operations during the year 2019-20 of purchase of goods in India on four occasions. Immediately after purchase, the company exported the same to China. The total value of such exports was Rs. 100 Lacs, on which it earned profits of Rs. 20 Lacs, before the expenses of Rs. 12 Lacs, which were directly paid by H.O. The company seeks your advice regarding its tax liability in India.

Global Airlines

M/s Global Airlines incorporated as a company in USA operated its flights to India and vice versa during the year 2019-20 (April, 2019 to March, 2020) and collected charges of Rs. 125 lacs of carriage of passengers and cargo out of which Rs. 65 lacs were received in U.S Dollars for the passenger fare booked from New York to Mumbai. The total expenses for the year on operation of such flights were Rs. 195 Lacs.

Nepal Limited

Nepal Limited, a foreign company has entered into an agreement with an Indian company on 1st February 2002 under which industrial equipment belonging to the firms has been leased to the latter for an annual lumpsum payment of $50,000.

Choose the correct alternative for the following MCQs: (2X5=10 Marks)

3.1 In relation to the Equalisation levy, the due date for submission of statement in prescribed format is ____

(a) 31st July of the immediately following financial year
(b) 30th September of the immediately following financial year
(c) 30th November of the immediately following financial year
(d) 30th June of the immediately following financial year

3.2 The fees for making application to the Authority of Advance Rulings where total value of transactions does not exceed Rs. 100 crores is Rs. ______

(a) 10 lakhs
(b) 7 Lakhs
(c) 5 Lakhs
(d) 2 Lakhs

3.3 Which of the following statements is true in the case of Gross Basis Taxation provided under Chapter XII of the IT Act?

(a) The deduction under Chapter VI-A is always allowed while computing the income

(b) In certain provisions of Chapter XII, the assessee is not mandated to file return of income

(c) The rates of tax provided in Chapter XII are all inclusive, i.e. no need to add surcharge and cess;

(d) The deduction for expenses are allowed in certain cases;

3.4 A foreign company is required to do the following under IT Act 1961:

(a) Always furnish a return of income

(b) Always withhold tax at source

(c) Always withhold equalisation levy

(d) Always opt for chapter XII for computing income

3.5 The following are Notified Jurisdiction Areas as per Section 94A:

(a) Cyprus (b) Panama

(c) Pakistan (d) None of the above

You are required to answer the following issues:

3.6 Determine Tax liability and TDS implications for ST, foreign company in both scenarios highlighted in the question above?

(5 Marks)

3.7 How much of income for the AY. 2020-21 shall be subjected to tax? Assume that the place of effective management of XY Pvt. Ltd. is in Singapore.

(4 Marks)

3.8 Compute the income chargeable to tax of the foreign airlines [Global Airlines].

(3 Marks)

3.9 How will the lease rent be taxed in the hands of the Nepal Limited, a foreign company in respect of assessment year 2020-21?

(3 Marks)

Case Study 4

1. **XYZ Limited** India provides you with the following profit and loss account for the year ending 31 March 2020 and identifies certain issues for your guidance and advise:

Particulars	Rs.	Particulars	Rs.
To Advertising Expenses	3,20,000	By Sales	1,40,00,000
To Fees for technical services	6,20,000	By Dividend covered under section 115BBD	1,00,000
To Promotional expenses	2,00,000		
To Royalty charges	10,00,000		
To Dividend paid	6,20,000		
To Purchases from related parties	2,00,000		
To Discount to related parties	1,20,000		
To non-compete fees	3,00,000		
To Expenses on abandoned projects	1,00,000		
To Provision for Doubtful Debts	60,000		
To loss on sale of Machines	20,000		
To loss on sale of preference shares	3,60,000		
To Marked to Market loss	16,00,000		
To Commodity trading loss	32,00,000		
To Securities Transaction Tax	10,000		
To Rent	10,00,000		
To Sales Commission	6,00,000		
To Compounding fees	1,00,000		
To Tax paid outside	3,00,000		

India			
To Managerial Remuneration	1,00,000		
To Gift tax	60,000		
To Salary paid	16,00,000		
To Conference expenses	3,00,000		
To Interest paid	2,00,000		
To Bad Debts	6,00,000		
To Net profit	5,10,000		
Total	**1,21,00,000**	**Total**	**1,21,00,000**

2. GAAR:

(a) An Indian company X Limited, is a closely held company and it is a subsidiary of Y Limited incorporated in Country C1. X Limited was regularly distributing dividend but stopped distributing dividend from 01.04.2003, the date when DDT was introduced in India. X Limited allowed its reserves to grow by not paying out dividends. As a result, no DDT was paid by the company. Subsequently, buy back of shares was offered by X Limited to its shareholder company Y Limited. Y Limited paid tax on capital gains arising on such transaction. The officer alleges that X Limited has purposely deferred the dividend in order to avoid taxation on such dividend for large number of years. Discuss

(b) In the above question, let us presume, that there is a DTAA between India and Country C1, which provides that capital gains arising in India to a resident of Country C1 will not be taxed in India provided that the resident incurs $200,000 annually as operating expenditure. The said shareholder Y Limited incurs an operating expenditure above that limit and is therefore, entitled to the treaty benefit. Y Limited therefore does not pay any tax on such capital gains. Can GAAR be invoked on the ground that avoid dividend distribution and subsequent arrangement of ploughing back profits to shareholder through a capital gains transaction which is not taxable in India, is mainly done in order to obtain tax benefits in India?

(c) In the above question, let us presume that there are three shareholders of the company X Limited i.e. Y Limited (resident of country C1), D Limited and E Limited (resident of country C2). All three shareholders are associated enterprises. DTAA with country C2 provides India right of taxation of capital gains as per domestic law. After GAAR coming into force, X Limited makes an offer of buy back of shares to all its three shareholders. Only Company Y Limited accepts that offer and other shareholders decline. In the process, the accumulated reserves of X Limited are exhausted and Y Limited does not pay any tax in India. Examine.

Choose the correct alternative for the following MCQs:

(1 x 8 = 8 Marks)

4.1 The amount of Dividend Distribution Tax [DDT] payable by the company is:

(a) 1,27,447 (b) 0

(c) 1,06,891 (d) Indeterminate;

4.2 Out of total advertising expenses, an amount of Rs. 120,000 is paid to non-residents who do not have a PE in India. Equalisation levy on such amount is __________:

(a) 7,200 (b) 6,000

(c) 0 (d) Indeterminate

4.3 Which of the following benefits are not allowable to a non-resident, while computing her total income and tax liability for A.Y.2020-21 under the Income-tax Act, 1961?

(a) Deduction of 30% of gross annual value while computing her income from house property in Bangalore, India

(b) Tax rebate upto INR 12,500 from tax payable on her total income upto INR 5,00,000

(c) Deduction for donation made by her to Prime Minister's National Relief Fund

(d) Deduction for interest earned by her on NRO savings account

4.4 The term liable to tax vs. subjected to tax was first discussed by Supreme Court in the following decision:

(a) UOI vs. Azadi Bachao Andolan

(b) CIT vs. Vodafone International BV;

(c) UOI vs. Samchar Patrika Limited;

(d) CIT vs. Hannity Corporations Limited;

4.5 Marked to Market Loss concept is covered in ICDS __

(i) 1;

(ii) 3;
(iii) 6;
(iv) 9;

(a) i and iii
(b) i and iv
(c) i, ii and iv
(d) All the above

4.6 The Assessing Officer finds discount allowed by XYZ Limited of Rs. 1,20,000 is unreasonable and highly disproportionate to the percentage of discount generally allowed to unrelated parties. He wants to invoke the provisions of section 40A(2)(b) to disallow the discount. In this context, the following statements are untrue:

(1) The Assessing officer has to provide an opportunity of being heard before he invokes provisions of section 40A(2)(b) to disallow the discount expense;
(2) The Assessing Officer cannot disallow the entire expense but has to work out the unreasonable portion of discount for disallowance;
(3) The provisions of SDT will apply to the said transaction;
(4) The provisions of Section 40A(2) will not apply

(a) 1 and 4
(b) Only 4
(c) 3 and 4
(d) 1, 2 and 3

4.7 The sales commission of Rs. 6,00,000 has been paid for conducting sales outside India by regular agents of the company. In this connection, tax deduction at source will occur under the following section(s):

(a) Section 194H
(b) Section 195
(c) Section 195 or 194H depending on residential status of agent;
(d) No tax deduction required;

4.8 The fair market value of an unlisted share, held directly or indirectly by a company or an entity registered or incorporated outside India, for the purposes of section 9(1)(i), shall be computed in accordance with which of the following methods -

(a) Net asset value, as certified by a Chartered Accountant
(b) Discounted Cash Flow method, as certified by a Chartered Accountant, as increased by liabilities, if any, considered in such valuation

(c) Any internationally accepted valuation methodology for valuation of shares on arm's length basis, as determined by a merchant banker or a Chartered Accountant, as increased by liabilities, if any, considered in such valuation

(d) Fair market value of all assets of the company computed on an arm's length basis, as certified by a Chartered Accountant

You are required to answer the following issues:

4.9 XYZ Limited, India had a permanent establishment in USA which carries on business of extraction of oils in different areas of USA. It uses specialised machines which was purchased at a cost of Rs. 1,00,000. Currently, the machines are present in UK. The same is sold to a UK company for Rs. 80,000. The resultant loss is debited to the profit and loss. You are required to discuss in which jurisdiction the loss would be allowable relying upon the OECD model tax convention;

(4 Marks)

4.10 XYZ Limited may unfairly claim a "Double Dip" Benefit on such loss. In this context, you are required to examine the concept of Double Dip and the suggestions in this regard

(4 Marks)

4.11 Discuss the concept of "Limitation of Benefit" Clause appearing in India – Mauritius DTAA and state under which Action Plan of BEPS, the same is covered

(3 Marks)

4.12 You are required to discuss applicability of GAAR in the scenarios stated in 2(A), 2(B) and 2(C) above

(2 x 3 = 6 Marks)

Case Study 5

You are an expert advisor in the field of International Taxation, trade practices and allied laws. The following 5 Case For Opinions ['CFO'] have been provided to you for your analysis.

CFO – 1: M/s. Global Architects Inc a company incorporated in Country F1 is engaged in providing architectural design services all over the world. It receives an offer from Lovely Resorts Pvt Limited, an Indian company, for design and development of resorts all over India. India – F1 tax treaty provides that architectural services are technical services and payment for the same may be taxed in India. However, if such services are provided by a firm or individual, then such payment is taxable in India only if the firm has a fixed base in India or stay of partners / employees exceed 180 days.

M/s. Global Architects intends to form a partnership firm with a third party (director of the company) having only nominal share in the firm. The firm intends to enter into agreement to carry out the services in India. The company wants to second its trained manpower to the firm.

Thus, the partnership firm will claim the tax treaty benefit and no tax will be paid in India. The company intends to understand implications under GAAR.

CFO – 2: A company X Limited, has property that it proposes to transfer to a third party. Such a transfer would result in capital gains in its hands. Another company Y Limited (which is related to X Limited) has a carried forward capital loss. X Limited (instead of selling the property directly to third party) transfers the property to its above mentioned related party Y Limited at book value, which is less than fair market value of the property. Such a transfer does not result in any capital gains in the hands of X Limited (which would have resulted had the transfer been made to a third party). Soon after, the related party Y Limited, transfers the property directly to a third party at fair market value and sets off the resulting capital gains with its carried forward capital loss.

CFO – 3: Shri Corona Kumar is employed as a crew member in an Indian ship as per section 3(18) of the Merchant Shipping Act, 1958. His voyage details show that the date of joining the ship was entered in the Continuous Discharge Certificate (CDC) as 1.11.2018 and the date of signing off in the CDC as 03.05.2019. He remained in India before he flew by air to Colombo, Sri Lanka on 31.10.2019 and joined as crew of the ship again on 02.12.2019 at Colombo port which was the date of entry recorded in the CDC. He received salary income of ` 15 lakhs for the financial year 2019-20. He has remained in India for more than 500 days in 4 previous years preceding the previous year 2019-20. Assume that he was on 'eligible voyage' during the previous year 2019-20. Determine the residential status of Shri Corona Kumar and the taxability of his salary income earned in the previous year 2019-20.

CFO – 4: Techno Engineering, GMBH, a German foreign company entered into an agreement for the execution of electrical work in India for Super Thermal Power Ltd. Separate payments were made towards drawings and designs by Super Thermal Power Ltd. to the German Company which were termed as "Engineering Fee".

The German Company is not having any permanent establishment (PE) in India for doing the business and operates from Germany only.

Will the payment made towards drawings and designs by Super Thermal Power Ltd. to Techno Engineering be subject to tax in India, and if so, why?

CFO – 5: In a contract for supply of equipment, the seller gives information so as to guide the buyer to install the equipment at site and thereafter to use. The Assessing Officer wants to treat a portion of total payment to such seller as royalty since such activity of seller has "imparted knowledge" in the buyer. Is the contention of Assessing Officer correct?

Choose the correct alternative for the following MCQs:

(2 x 5=10 Marks)

5.1 Following statements are true in the context of section 9:

(1) Section 9 follows a "look through" approach and not "look at" approach;

(2) Section 9 does not require actual rendering of technical services in India for determining taxation of FTS;

(3) Section 9 has extra territorial jurisdiction;

(4) Section 9 creates deeming fictions;

(a) 1, 2 (b) 1, 2, 3

(c) 1, 2, 4 (d) 1, 2, 3, 4

5.2 For constructing a hotel, an Indian company entered into a contract with a foreign contractor. The foreign company was also to provide various managerial and technical services. The Assessing Officer wants to tax this amount as FTS. However, the assessee claims that such services being in relation to construction project, the same cannot be regarded as FTS. In this context, the correct interpretation is as under:

(a) There is no FTS rendered by the foreign company, hence, no taxation in India;

(b) The services rendered are technical in nature but are covered in the exception below section 9(1)(vii);

(c) The consideration paid for managerial and technical services was characterized as "FTS" since the exclusion dealt with consideration payable in relation to construction of a project and not with services rendered in this regard.

(d) The services of foreign contractor creates a business connection in India;

5.3 Interest, royalty and fees for technical services are covered under the following provisions / standards:

(a) Section 115A

(b) ICDS – IV

(c) Both the above

(d) Section 9A

5.4 Following are the two tests which are important for determination of fixed place PE:

(a) Permanence Test and Place of Disposal Test;

(b) Location Test and Duration Test;

(c) Agency Test and Construction Test;

(d) None of the above;

5.5 In CFO – 3 above, residential status of Shri Corona Kumar for the FY 2019-20 shall be:

(a) Resident but not Ordinary Resident;

(b) Resident and Ordinary Resident;

(c) Non-Resident;

(d) Insufficient data;

You are required to answer the following issues:

5.6 Can GAAR be invoked for facts stated in CFO - 1?

(4 Marks)

5.7 Discuss applicability of GAAR for facts stated in CFO – 2

(4 Marks)

5.8 Would the payments towards drawings and designs be taxable in India in the hands of Techno Engineering GMBH, the German company.

(3 Marks)

5.9 Determine whether contentions of Assessing Officer are correct in CFO – 5? Rely only on provisions of IT Act

(4 Marks)