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SUBJECT- Elective (International Taxation)

Test Code - FNJ 7311

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ANSWER CASE STUDY – 1

I. MULTIPLE CHOICE QUESTIONS (2*5 = 10 MARKS)

1. C
2. A
3. B
4. D
5. B

II. DESCRIPTIVE

Any income arising from an international transaction, where two or more "associated enterprises" enter into a mutual agreement or arrangement, shall be computed having regard to arm's length price as per the provisions of Chapter X of the Act.

The items that are to be considered for transfer pricing adjustments are as under:

(a) Sales to SL, XY Inc and AB LLC;

(b) Royalty payments received from D Inc., and
(c) Interest on borrowings from Danubes Inc., Dubai.

Export sales to foreign companies

Sales to SL

Section 92A defines an "associated enterprise" and sub-section (2) of this section speaks of the situations when the two enterprises shall be deemed to be associated enterprises.

In SL, TCL holds 14/50 i.e. 28% of the voting power.

Since TCL holds more than 26% of the voting power in SL, TCL and SL are deemed to be associated enterprises.

SL is a non-resident company. The transaction is for sale of the product. Hence, the sales made by TCL to SL are international transactions.

Sales to GSL

In GSL, TCL holds 18/80 i.e. 22.5% of the voting power

Since TCL holds less than 26% of the voting power, GSL is not an associated enterprise.

Sales to XY Inc and AB LLC

Both these companies are located in notified jurisdictional areas (NJA). As per section 94A,

following are the consequences:

(i) all the parties to the transaction shall be deemed to be associated enterprises within the meaning of section 92A;

(ii) Transactions of purchase and sale shall be treated as international transactions;

(iii) Transfer pricing provisions will apply to such transactions.

Hence, the transactions in question have to be tested with reference to the ALP.

GSL is not an associated enterprise and hence the selling price of Rs. 12,000 per MT to GSL can be taken as the ALP, as per CUP method.

Considering the above, the understatement of profits on account of lower selling price is:

Name of the party	Qty in MT	Rate per MT (Rs.)	ALP	Difference per MT	Total amount (Rs. In lakhs)
SL	8,00,000	11,800	12,000	200	1600
XY Inc.	3,00,000	11,900	12,000	100	300
AB LLC.	2,00,000	11,700	12,000	300	600
				Total adjustment to ALP	**2,500**

Royalty receipts

D Inc., is a wholly owned subsidiary of TCL and is a non-resident company. Hence it is an associated enterprise.

Royalty falls within the meaning of international transaction, since it is payment for supply of know-how, being an intangible property.

D Inc., is currently paying a royalty of 2 million USD per annum (year ended 31 -3-2020) to TCL for supply of know-how. For similar supply of know how to Epsilon LLC., a wholly owned Government Company in Japan, TCL receives annual royalty of 3 million.

Under CUP Method, ALP has to be taken as 3 million USD

Understatement of royalty is 1 million USD, i.e. 1 M USD x Rs.70 =Rs.700 lakhs.

Borrowings

If one enterprise advances loan to the other enterprise of an amount of 51% or more of the book value of the total assets of such other enterprise, the two enterprises would be deemed to be associated enterprises.

As on the date of borrowing, the amount advanced is Rs.200 crores out of Rs.330 crores, which comes to 60.6%.

Hence Danubes Inc., is deemed to be an associated enterprise of TCL. Interest payments

are also covered by the term "international transaction".

Danubes Inc., has charged interest at 8% and TCL has paid interest of Rs.16 crores for the year ended 31- 3-2019.

Interest rate charged to other parties is 7%. This has to be taken as the ALP rate.

In the light of this, the interest payment should have been 16x7/8 i.e., Rs.14 crores There has been an excess payment of Rs.2 crores w.r.t. ALP.

Total income of TCL

The total income of TCL, after considering the above adjustments will be as under:

Particulars	Amount (Rs. in cr)
Net profit as given prior to TP adjustments	32.2
Add: Difference on account of value in international transactions	
(i) Export sales	25.0

(ii) Royalty receipts	7.0
(iii) Interest payment	2.0
Total Income	**66.2**

(15 marks)

ANSWER CASE STUDY – 2

I. MULTIPLE CHOICE QUESTIONS (2*5 = 10 MARKS)

1. C
2. B
3. D
4. B
5. C

II. DESCRIPTIVE

ANSWER 1.

Mr. Harry Smith is a non-resident in India for A.Y.2020-21, since he has stayed in India only for 55 days in the P.Y.2019-20. Ms. Rita Smith would also be non-resident in India for A.Y.2020-21, since she has also stayed in India only for 55 days in the P.Y.2019-20.

Since Mr. Harry Smith is a non-resident sports person, who is not a citizen of India, the special provisions under section 115BBA would apply to him for income from participation in swimming competition in India, advertisement of product on TV and contribution of articles in newspaper. Income from horse races would, however, be taxable@30% under section 115BB.

Since Ms. Rita Smith is a non-resident entertainer, who is not a citizen of India, the special provisions under section 115BBA would apply to her for computation of income from music performances.

Computation of tax liability of Harry Smith for the A.Y.2020-21

Particulars	Rs.	Rs.
Income taxable under section 115BBA		
Income from participation in swimming competition in India	15,00,000	
Advertisement of product on TV	2,00,000	
Contribution of articles in newspaper	20,000	
Income taxable under section 115BB		
Income from horse races	25,000	
Total income	**17,45,000**	
Tax@ 20% under section 115BBA on Rs. 17,20,000		3,44,000
Tax@ 30% under section 115BB on income of Rs. 25,000 from horse races		7,500
		3,51,500

Add: Health & Education cess@4%		14,060
Total tax liability of Harry Smith for the A.Y.2019-20		**3,65,560**

Computation of tax liability of Rita Smith for the A.Y.2020-21

Particulars	Rs.	Rs.
Income taxable under section 115BBA		
Income from music performances given in India	2,00,000	
Total income	**2,00,000**	
Tax@ 20% under section 115BBA on Rs. 2,00,000		40,000
Add: Health & Education cess@4%		1,600
Total tax liability of Rita Smith for the A.Y.2019-20		**41,600**

(5 marks)

ANSWER 2.

Computation of tax liability of Mr. Mahesh Sharma for A.Y.2020-21

Particulars	Rs.	Rs.
Indian Income		45,00,000
Foreign Income		12,00,000
Gross Total Income		**57,00,000**
Less: **Deduction under section 80C**		
PPF Contribution	75,000	
Deduction under section 80D		
Medical insurance premium of father, being a resident senior citizen, fully allowable, since it does not exceed Rs. 50,000.	32,000	
Deduction under section 80DD		
Maintenance including medical treatment of his dependent sister, being a person with disability [Flat deduction, irrespective of expenditure incurred]	75,000	1,82,000
Total Income		**55,18,000**
Tax on total income		**14,67,900**
Add: Surcharge@10% (since total income exceeds Rs.50 lakhs but is less than Rs.1 crore)		**1,46,790**

		16,14,690
Add: Health and Education cess@4%		**64,588**
		16,79,278
Average rate of tax in India [i.e., Rs. 16,79,278/ Rs. 55,18,000 x 100]	**30.43%**	
Average rate of tax in Country P [i.e. Rs. 3,36,000/ Rs. 12,00,000 x 100]	**28%**	
Doubly taxed income	**12,00,000**	
Rebate under section 91 on Rs. 12,00,000 @28% (lower of average Indian tax rate and Country P tax rate]		**3,36,000**
Tax payable in India [Rs. 16,79,278 – Rs. 3,36,000]		**13,43,278**
Tax Payable (rounded off)		**13,43,280**

Note: Deduction under section 91 is allowable to Mr. Mahesh Sharma, since he fulfils the following conditions are fulfilled:-

(a) He is a resident in India during the relevant previous year, since his stay in India during the P.Y.2019-20 was more than 182 days.

(b) The income of Rs.12 lakhs from concerts accrues or arises to him outside India in Country P during that previous year.

(c) Such income is not deemed to accrue or arise in India during the previous year.

(d) The income in question has been subjected to income-tax in Country P in his hands and he has paid tax on such income in Country P.

(e) There is no agreement under section 90 for the relief or avoidance of double taxation between India and Country P where the income has accrued or arisen.

In this case, Mr. Mahesh Sharma is eligible for deduction under section 91, since all the above conditions are fulfilled.

(5 marks)

ANSWER 3

The REIT enjoys pass-through status in respect of rental income from real estate asset owned by it directly and interest income from special purpose vehicle, (i.e., A Ltd., in this case, since it is an Indian company in which REIT holds controlling interest). Therefore, such income is taxable in the hands of the unit holders.

(1) **Rental income component of income distributed by REIT:** The distributed income or any part thereof, received by Vallish from the REIT, which is in the nature of income by way of renting or leasing or letting out any real estate asset owned directly by such REIT is deemed income of the unit-holder as per section 115UA(3). Accordingly, Rs.1,25,000 would be deemed income of Vallish as per section 115UA(3). The REIT has to deduct tax at source under section 194LBA@31.2% (being the rate in force) in case of distribution to Vallish, being a non-resident.

(2) **Interest component of income distributed by REIT:** Interest component of income received from a special purpose vehicle, A Ltd., in this case, and distributed to a unit holder is taxable@5.2% in the hands of the unit holder. Accordingly, such interest component of Rs. 62,000 is taxable in the hands of Vallish. The REIT has to deduct tax at source under section 194LBA @5.2%, on Rs. 62,000, since Vallish is a non- resident.

(3) **Dividend component of income distributed by REIT:** Any distributed income referred to in section 115UA, to the extent it does not comprise of interest [referred to in sub-clause (a) of section 10(23FC)] and rental income from real estate assets owned directly by the business trust [referred to in section 10(23FCA)] received by unit holders, is exempt in their hands under section 10(23FD). Therefore, by virtue of section 10(23FD), Rs. 58,000, being the dividend component [referred to in sub- clause (b) of section 10(23FC)] of income distributed to Vallish would be exempt in his hands. Therefore, there is no liability on the REIT to deduct tax at source on the dividend component of income distributed by it to Mr. Vallish.

(5 marks)

ANSWER CASE STUDY – 3

I. MULTIPLE CHOICE QUESTIONS (2*5 = 10 MARKS)

1. **C**
2. **B**
3. **C**
4. **A**
5. **B**

II. DESCRIPTIVE

ANSWER 1

Computation of total income of resident Ramji for the A.Y.2020-21		
Particulars	**Rs.**	**Rs.**
Income from house property		
Annual Value of house in USA = $ 10,000 x 70	7,00,000	
Less: Deduction@30%	2,10,000	4,90,000
Profits and gains of business or profession		
Income from business carried on in India	8,00,000	
Business income in Sri Lanka (4,00,000 LKR/2.54) [Taxable onlyin Sri Lanka – Hence, not included in computation of total income][1]	Nil	
Income chargeable under this head		8,00,000
Income from Other Sources		
Agricultural income in Sri Lanka (1,00,000 LKR/2.54)	39,370	
Dividend income from a company incorporated in the USA ($ 20,000 x 71) – Since dividend was declared on 10.1.2019, the rate as on 31.12.2018 has to be considered for conversion.	14,20,000	
Royalty income from a detective novel published in Sri Lanka (7,00,000 LKR/2.54)	2,75,591	
Income chargeable under this head		17,34,961
Gross Total Income		**30,24,961**
Less: **Deductions under Chapter VI-A**		
Section 80QQB [Royalty income from detective novel[2]]		2,75,591
Total Income		**27,49,370**

[1] Alternatively, the income can first be included in total income to determine the rate of tax on remaining income as per Article 23(2) of the India-Sri Lanka DTAA.

[2] Assuming that the same is in the nature of literary work

(5 MARKS)

ANSWER 2

A resident applicant can make an application for advance ruling for determining the tax liability of a non-resident arising out of a transaction which has been undertaken or is proposed to be undertaken by the resident applicant with such non-resident.

Therefore, Mayur Co. Ltd., a resident, can file an application for advance ruling for determining the rate of withholding tax on royalties paid to a non-resident, PQR Inc. Germany.

Even though it has filed its return of income on 30.8.2019, since notice under section 143(2) has been issued on 10.1.2020 only after the application for advance ruling was made

in September, 2019, it would not be treated as a case where an application is pending before the income-tax authority. This is because the application was not pending before the income-tax authority on the date of making the application for advance ruling. It was so held in *Sin Oceanic Shipping ASA vs. AAR (2013) 357 ITR 102 (Delhi).*

Therefore, the application filed by Mayur Co. Ltd. seeking advance ruling is permissible in law.

Permissibility of PQR Inc., a foreign company, seeking advance ruling when application filed by Mayur Co. Ltd. is pending before the AAR

The application filed by Mayur Co. Ltd. is pending before the AAR for ruling. The issue in respect of which PQR Inc. wants to file an application is the same issue for which Mayur Co. Ltd. has already made an application.

The Income-tax Act, 1961 does not contain any specific provision debarring the non-resident from making an application to the AAR where the application by the resident is pending before the AAR. However, there is no requirement for filing the same, since the said issue has already been raised by the resident applicant for the same transaction.

Therefore, it is advisable that PQR Inc. does not file an application in respect of the same transaction to the AAR. **(4 MARKS)**

ANSWER 3

Section 195(6) requires the person responsible for paying to a non-corporate non-resident or a foreign company, any sum, whether or not chargeable under the provisions of the Income-tax Act, 1961, to furnish the information relating to payment of such sum in Form 15CA and 15CB.

As per Rule 37BB(2), the person responsible for paying to a non-corporate non-resident, or to a foreign company, any sum which is not chargeable under the provisions of the Income-tax Act, 1961, shall furnish the information in Part D of Form No.15CA.

Rule 37BB(3), however, provides that no information is required to be furnished for any sum which is not chargeable under the provisions of the Act, if, *inter alia*, the remittance is of the nature specified in the specified list given thereunder.

Payment of tuition fees by Vijay Jain for his son studying abroad is not income chargeable to tax in the hands of his son. Further, since the remittance is in the nature finding place in the specified list given in Rule 37BB(3)(ii), no information is required to be furnished in respect thereof in Part D of Form No.15CA or Form 15CB.

Hence, there is no form is required to be obtained from Chartered Accountant and filed before income-tax authorities.

(4 MARKS)

ANSWER 4

The issue under consideration is whether bright line test can be used by the Assessing Officer to determine the excess/non-routine advertising, marketing and promotion(AMP) expenditure incurred by the taxpayer for building brand of its associated enterprises in India.

The Delhi High Court, in *Bausch & Lomb Eyecare (India) (P.) Ltd. v. Addl. CIT [2016] 381 ITR 227, held that a*dvertisement expense is not an international transaction and there is no machinery provision for computation of AMP expense adjustment.

In *Sony Ericsson Mobile Communications India (P) Ltd v. CIT (2015) 374 ITR 118,* the Delhi High Court held that bright line test has no statutory mandate and a broad-brush approach is not mandated or prescribed. It further opined that the exercise to separate "routine" and "non-routine" advertising, marketing and promotion or brand building exercise by applying the bright line test of non-comparables should not be sanctioned

Hence, applying the rationale of the above rulings of the High Court, the Assessing Officer is not justified in adopting the "Bright Line Test" for disallowing or adjusting the advertisement expenditure in computing arm's length price.

Note – There are other court rulings on this issue, and the question can be answered on the basis of any such ruling(s).

(2 MARKS)

ANSWER CASE STUDY – 4

I. MULTIPLE CHOICE QUESTIONS (2*5 = 10 MARKS)

1. **B**
2. **C**
3. **D**
4. **A**
5. **D**

II. DESCRIPTIVE

Answer to Q.1:

Income of a non-resident from transfer of a capital asset situated in India is deemed to accrue in India as per the provisions of section 9(1)(i) of the Income-tax Act,1961. As per *Explanation 5* to section 9(1)(i), an asset being any share or interest in a company or entity incorporated outside India shall be deemed to be situated in India if, if the share or interest, derives directly or indirectly, its value substantially from assets located in India.

Further, *Explanation 6* to section 9(1)(i), provides that the share or interest in a company or entity registered or incorporated outside India, shall be deemed to derive its value substantially from the assets (whether tangible or intangible) located in India, if on the specified date, the value of Indian as sets:

- exceeds the amount of INR 10 crores; and
- represents at least 50% of the value of all assets owned by the company, or entity, as the case may be

Specified date for this purpose would be the date on which the accounting period of the company or entity ends preceding the date of transfer of a share or an interest.

However, in case the book value of the assets of the company or entity on the date of transfer exceeds by at least 15%, the book value of the assets as on the last balance sheet date preceding the date of transfer, the date of transfer shall be the specified date.

Value of an asset means Fair Market value as on specified date, of such asset without reduction of liabilities in respect of the asset.

Further, section 90(2) provides that where the Indian Government has entered into DTAAs

which are applicable to the taxpayers, then, the provisions of the Act or the provisions of the DTAA, whichever is more beneficial to the taxpayer, shall apply.

In light of the above, the provisions of the DTAA and the provisions of the Act have been examined with respect to the each of the Groups below.

(a) Transfer of shares of Singapore Intermediary Co by US Co.

In the instant case, specified date is 31.05.2020

Fair value of assets of Singapore Intermediary Co as on 31.5.2020 - INR 50 crores

Fair value of Ind Co as on 31.5.2020 (without reduction of liabilities) - INR 200 crores

Fair value of Ind Co as held by Singapore Intermediary Co (20%) - INR 40 crores

Since, the value of assets located in India i.e., INR 40 crores exceeds INR 10 crores and also exceeds 50% of the value of assets of Singapore Intermediary Co, the shares of Singapore Intermediary Co would be deemed to derive its value substantially from assets located in India.

Hence, the shares of Singapore Intermediary Co would be deemed to be a capital asset situated in India and the capital gains from transfer of shares of Singapore Intermediary Co would be deemed to accrue or arise in India. Accordingly, the gains would be taxable in the hands of US Co in India as per the Income-tax Act, 1961. However, the provisions of the applicable DTAA would need to be examined.

The India-US DTAA would be the applicable DTAA, for the purpose of analysing taxability in India of the transfer of shares of Singapore Intermediary Co by US Co, since in the instant case, India is the 'country of source' and US is the 'country of residence'.

As per Article 13 of the India-US DTAA, US and India may tax capital gains in accordance with the provisions of its domestic law. Hence, the capital gains income from transfer of shares of Singapore Intermediary Co by US Co shall be taxable in India.

(4 MARKS)

(b) Transfer of shares of Mauritius Intermediary Co by Germany Co.

In the instant case, specified date is 31.05.2020

Fair value of assets of Mauritius Intermediary Co as on 31.5.2020 - INR 60 crores

Fair value of Ind Co as on 31.5.2020 (without reduction of liabilities) - INR 200 crores

Fair value of Ind Co as held by Mauritius Intermediary Co (25%) - INR 50 crores

Since, the value of assets located in India i.e., INR 50 crores exceeds INR 10 crores and also exceeds 50% of the value of assets of Mauritius Intermediary Co, shares of Mauritius Intermediary Co would be deemed to derive its value substantially from assets located in India.

Hence, the shares of Mauritius Intermediary Co would be deemed to be a capital asset situated in India and the capital gains from transfer of shares of Mauritius Intermediary Co would be deemed to accrue or arise in India. Accordingly, the gains would be taxable in the hands of Germany Co in India as per the Income-tax Act, 1961. However, the provisions of the applicable DTAA would need to be examined.

The India-Germany DTAA would be the applicable DTAA, for the purpose of analysing taxability in India of the transfer of shares of Mauritius Intermediary Co by Germany Co,

since in the instant case, India is the 'country of source' and Germany is the 'country of residence'.

Clauses (1) to (3) of Article 13 of the India-Germany DTAA, would not be relevant to the instant case. As per clause (4) of Article 13 of the India-Germany DTAA, "gains from the alienation of shares in a company which is a resident of a Contracting State may be taxed in that State".

In the instant case, the shares being transferred are those of Mauritius Intermediary Co, which is not a resident of India. Accordingly, the instant case would not be covered under clause (4) of Article 13 and the residual clause (5) of Article 13 would be applicable. As per clause (5), "Gains from the alienation of any property other than that referred to in paragraphs 1 to 4 shall be taxable only in the Contracting State of which the alienator is a resident". The alienator is Germany Co, which is a resident of Germany and not India and accordingly, the capital gains shall be taxable only in Germany and is not taxable in India.

Since the provisions of the DTAA can be applied, where they are more beneficial to the taxpayer than the provisions of the Act, in the instant case, the provisions of the DTAA can be applied and accordingly, the capital gains would not be taxable in India.

(4 MARKS)

(c) Transfer of shares of Australian Intermediary Co by Cyprus Co.

In the instant case, specified date is 31.05.2020

Fair value of assets of Australian Intermediary Co as on 31.5.2020 - INR 300 crores

Fair value of Ind Co as on 31.5.2020 (without reduction of liabilities) - INR 200 crores

Fair value of Ind Co as held by Australian Intermediary Co (51%) - INR 102 crores

Since, the value of assets located in India i.e., INR 102 crores exceeds INR 10 crores but it does not represent at least 50% of the value of assets of Australian Intermediary Co, shares of Australian Intermediary Co would not be deemed to derive its value substantially from assets located in India.

Hence, the shares of Australia Intermediary Co would not be deemed to be a capital asset situated in India and the capital gains from transfer of shares of Australia Intermediary Co would not be deemed to accrue or arise in India. Accordingly, the gains would not be taxable in the hands of Cyprus Co in India as per the Income-tax Act, 1961.

Accordingly, it would not be necessary to examine the provisions of the applicable DTAA.

(3 MARKS)

(d) Transfer of shares of Spain Intermediary Co by UK Co.

In the instant case, specified date is 31.03.2020

Fair value of assets of Spain Intermediary Co as on 31.3.2020 - INR 12 crores

Fair value of Ind Co as on 31.3.2020 (without reduction of liabilities) - INR 200 crores

Fair value of Ind Co as held by Spain Intermediary Co (4%) - INR 8 crores

Since, the value of assets located in India i.e., INR 8 crores does not exceed INR 10 crores, shares of Spain Intermediary Co would not be deemed to derive its value substantially f rom assets located in India.

Hence, the shares of Spain Intermediary Co would not be deemed to be a capital asset situated in India and the capital gains from transfer of shares of Spain Intermediary Co would not be deemed to accrue or arise in India. Accordingly, the gains would not be taxable in the hands of UK Co in India as per the Income-tax Act, 1961.

Accordingly, it would not be necessary to examine the provisions of the applicable DTAA.

(4 MARKS)

ANSWER CASE STUDY – 5

I. MULTIPLE CHOICE QUESTIONS (2*5 = 10 MARKS)

1. **B**
2. **A**
3. **A**
4. **C**
5. **B**

II. DESCRIPTIVE

ANSWER 1.

As per Section 6(3) of the Income-tax Act, 1961, a foreign company can be considered to be resident if its POEM is in India. POEM has been defined as the place where the key commercial and strategic decisions are made. Additionally, the CBDT Guidelines on determining POEM have to also be kept in mind while undertaking this assessment.

In the given facts, RB Pvt. Ltd. is a foreign company as it has been incorporated in Mauritius. As per the CBDT guidelines, one has to assess whether this company satisfies the test of Active Business Outside India (‘ABOI’). For the same, the following information needs to be looked at:

(1)	(2)	(3)	(4)	(5)
Particulars	**Mauritius**	**India**	**Total**	**% of (3) to total in (4)**
Value of assets	Rs.2 lakhs	Rs.50,000	Rs.2,50,000	20.00%
Number of employees	3	1	4	25.00%
Payroll expenses on employees	Rs.15 lakhs	Rs.5 lakhs	20	25.00%

It can be seen that the value of assets in India is only 20% of the total assets of the company, the number of employees in India is only 25% of the total number of employees and the payroll expenses incurred on such employees is only 25% of its total payroll expenditure. Thus, three out of four conditions for active business outside India are met. However, the passive income test has also to be met for ABOI.

Particulars	Rs.
Income from transactions where both purchases and sales are from/to associated enterprises	0
Total income by way of dividend and interest	4,00,000
Total income (Income from Product Sales from Modern Bazaar plus income by way of dividend and interest)	15,00,000

Passive income = income from transactions where both purchases and sales are from/to associated enterprises + total income by way of dividend and interest = Rs.4 lakhs

Percentage of passive income to total income = 4/15 × 100 = 27%

In this case, the passive income is less than 50% of the company's total income. Hence, the passive income test is met and the company has its Active Business Outside India.

The CBDT Guidelines state that if a foreign company's Active Business is Outside India, as long as the majority of board meetings are held outside India, the POEM would be outside India.

In the given facts, majority of board meetings take place outside India as three out of four meetings are held in Mauritius. Also, the *de facto* authority vests with Mr. Rai who lives in Mauritius. He has had the final word on the product lines. Every time there is a matter involving expenditure more than Rs.25,000, it is subject to his final approval.

Hence, RB Pvt. Ltd. can argue that the company is a non-resident, since its POEM is outside India. The reasons for the conclusion are quite different from those given by the lawyer in an informal conversation.

(8 MARKS)

Answer 2:

(a) Equalisation levy@6% is attracted on the amount of consideration for specified services received or receivable by a non-resident not having PE in India from a resident in India who carries on business or profession or from a non-resident having PE in India. Specified services include online advertisement and any provision for digital advertising space or any other facility or service for the purpose of online advertisement.

In this case, RB Pvt. Ltd. is a non-resident having a PE in India. Since there is an office in Pune for carrying on work of the company, RB Ltd. has a PE in India. Facebook Inc is a non-resident not having PE in India. It receives consideration of Rs.10 lakhs from RB Pvt. Ltd., a non-resident having PE in India, for online advertisement services provided by it. Hence, equalization levy@6% on Rs.10 lakhs is attracted in the hands of Facebook Inc.

In the hands of RB Pvt. Ltd., the amount of Rs.10 lakhs paid to Facebook Inc. would be allowable as business expenditure, provided equalization levy has been deducted at source.

(4 MARKS)

(b) RB Pvt. Ltd. is liable to deduct equalization levy of Rs.60,000 from the amount of Rs.10 lakhs payable to Facebook Inc. In case it fails to so deduct equalization levy, it shall, notwithstanding such failure, be liable to pay the levy to the credit of the Central Government by 7th April, 2020. Further, penalty of an amount equal to Rs. 60,000 would be attracted for failure to deduct equalization levy. Also, disallowance of the expenditure of Rs.10 lakhs would be attracted under section 40(a)(ib) while computing business income of RB Pvt. Ltd.

(3 MARKS)