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BRANCH - () (Date :)

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ANSWER : 1

Computation of Total Income of BAS Industries Ltd. for the A.Y.2020 – 21

Particulars		Amounts (Rs.)	
I	Income from house property		
	Unrealised rent [Taxable under section 25A, even if assessee is no longer the owner of commercial property]		3,80,000
	Less : 30% of above		1,14,000
			2,66,000
II	Profit and gains of business and profession		
	Net profit as per the statement of profit and loss		72,00,000
	Add : Items debited but to be considered separately or to be disallowed		
	(i) Depreciation as per Companies Act, 2013	24,00,000	
	(ii) Interest under section 234B for short payment of advance tax	60,000	
	[Any interest payable for default committed by assessee for discharging his statutory obligations under Income – tax Act, 1961 is not allowable as deduction]		
	(iii) Interest and borrowing cost included in Opening and Closing inventory	2,50,000	
	[As per ICDS II, interest and borrowing cost which does not meet, the criteria for recognition as a component of the cost, cannot be included in the cost of inventory. Since the same have been included in the opening and closing inventory, the difference between Rs. 9,50,000, being interest included in opening inventory – Rs. 7,00,000, being interest included in closing inventory, has to be added back]		
	(iv) Cash payment in excess of Rs. 10,000	19,000	
	[Disallowance u/s 40A(3) is attracted in respect of expenditure for which payment exceeding Rs. 10,000 in a day has been made in cash. Since expenditure of Rs. 19,000 towards printing and Stationery items is debited to the statement of profit and loss, the same has to be added back. However, payment of Rs. 22,000 to producer for dairy farming products is not disallowed since it is covered under the exceptions specified in rule 6DD]		
	(v) Repair work paid to contractor without deduction of tax at source	1,05,000	
	[Disallowance of 30% of the amount of Rs. 3,50,000 paid for carrying out repair work to a contractor without deduction of tax at source would be attracted u/s 40(a)(ia)]		
	(vi) Expenditure for transfer of carbon credits	35,000	

	[Income by way of transfer of Carbon Credits is chargeable to tax under section 115BBG at a flat rate. No deduction is allowed under any provision of the Act in respect of any expenditure or allowance in relation thereto. Since such expenditure is debited to the statement of profit and loss, the same has to be added back]			
	(vii) Contribution to electoral trust	3,00,000		
	[Contribution to electoral trust is not allowable as deduction while computing business profits of the company. Since the contribution has been debited to statement of profit and loss, the same has to be added back while computing business income.			
	(viii) Advertisement in brochure of a political party	40,000		
	[Advertisement charges paid in respect of brochure published by a political party is not allowable as deduction from business profits of the company as per section 37(2B). Since the expenditure has been debited to statement of profit and loss, the same has to be added back while computing business Income]			
	(ix) Interest to co – operative bank not paid before 30.09.2020	2,60,000		
	[Disallowance under section 43B would be attracted for A.Y. 2020 – 21, since the interest was not paid on or before the due date of filing of return]			
	(x) Contribution towards pension scheme of employees	50,000		
	[Contribution towards pension scheme, referred to in section 80CCD, of employees is allowed only to the extent of 10% of Rs. 10,00,000. Therefore, the excess contribution of Rs. 50,000 [i.e. Rs. 1,50,000 – Rs. 1,00,000] is disallowed under section 36(1)(iva).			
			35,19,000	
			1,07,19,000	
	Add: Amount taxable but not credited to statement of profit and loss			
	A(2) Expenditure pertaining to earlier financial year		35,000	
	[Cash payment is excess of Rs. 10,000 made in the current year in respect of expenditure allowed on mercantile basis in the earlier year, would be deemed as income in the current year under section 40A(3A)]			

			1,07,54,000	
	Less : Items credited to statement of profit and loss, but not includible in business income / permissible expenditure and allowances			
	(i) Unrealised rent :	3,80,000		
	[Unrealised rent in respect of commercial property is taxable under the head "Income for house property". Since the said rent has been credited to the statement of profit and loss, the same has to be deducted while computing business income]			
	(ii) Dividend received from specified foreign company	1,60,000		
	[Dividend received from specified foreign company is taxable under the head "Income from other sources". Since the said dividend has been credited to the statement of profit and loss, the same has to be deducted while computing business income]			
	Note: Since the question does not list the expenditure of Rs. 20,000 incurred on earning dividend income under "A. Items debited to the Statement of profit and Loss", such expenditure has not been added back.			
	(iii) Profit from hedging contract	3,00,000		
	[Hedging contract is entered into for safeguarding against any loss that may arise due to currency fluctuation. The profit from such contract entered into for meeting loss in foreign currency payments towards imported printing machinery has to be adjusted against the cost of machinery. Since the said profit has been credited to the statement of profit and loss, the same has to be deducted while computing business income]			
	(iv) Interest from bank fixed deposit	1,35,000		
	[Interest on fixed deposit is taxable under "Income from Other sources". Since the said Interest has been credited to the statement of profit and loss, the same has to be deducted while computing business income]			
	A (3) Audit fees of P.Y. 2018 – 19	22,500		
	[30% of Rs. 75,000, being the audit fees disallowed in the P.Y. for non – remittance of TDS on or before due date of filing for P.Y. 2018 – 19 would be allowed in the year of payment of TDS i.e.,			

	P.Y. 2019 – 20]			
	A(4) Transfer of Carbon Credits chargeable to tax under section 115BBG	Nil		
	[Income by way of transfer of Carbon Credits chargeable under section 115BBG can be treated as business income or income from other sources, depending upon the facts of the case. In this case, since the question mentions that BAS Industries Ltd. is engaged in production and marketing of diversified products, it is logical to assume that the same is in the nature of business income. Since the amount of Rs. 4 lakh has already been credited to statement of profit and loss, no further adjustment is necessary]		9,97,500	
			97,56,500	
	Less: Depreciation as per Income tax Rules			
	A(1) Depreciation under section 32	28,00,000		
	Add : Depreciation @ 7.5% on Rs. 92 lakhs [Rs. 95 lakhs, being imported printing machinery – Rs. 3 lakhs, being profit from hedging contract] since, machinery is put to use for less than 180 days].	6,90,000		
	Add : Additional depreciation @10% on Rs. 92 lakhs, since, machinery is put to use for less than 180 days assuming the conditions for claim of additional depreciation are satisfied. [Balance additional depreciation can be claimed in the A.Y. 2021 – 22]	9,20,000	44,10,000	
	Profit and gains from business or profession			53,46,500
II	Income from Other Sources			
I	Dividend from specified foreign company [No deduction is allowable in respect of expenditure incurred on earning dividends]		1,60,000	
	Interest from banks on fixed deposits (Gross)		1,50,000	
	[Interest on banks on fixed deposits is taxable as “Income from other sources”] [Rs. 1,35,000 × 100/90]			3,10,000
	Gross Total Incomes			59,22,500
	Less : Deduction under Chapter VI – A			
	Under section 80GGB [Contribution by a company to an electoral trust and registered political party is allowable as deduction, since payment is made otherwise than by cash. Expenditure incurred by an Indian company on advertisement in brochure published by political party tantamount to contribution to such political party][Rs. 3,00,000 + Rs. 40,000]			3,40,000
	Total Income			55,82,500

ANSWER : 2

(A) Computation of total income of Mathi Charitable Trust for the A.Y. 2020 - 21

Particulars	Rs.	Rs.
Gross receipts from full Cure Hospital		4,00,00,000
Gross receipts from India Arts College		1,80,00,000
		5,80,00,000
Less : 15% of Income eligible for being set apart without any condition		87,00,000
[As per the Supreme Court ruling in CIT v. programme for community organisation (2001), 15% of gross receipts would be eligible for accumulation under section 11(1)(a).]		
		4,93,00,000
Less : Amount applied for Charitable purposes [See Note 2]		
- On revenue account – Administrative expenses :		
For Hospital	2,20,00,000	
For College	1,00,00,000	
- On capital account – Land & Building	1,20,00,000	
[Section 56(2) (x) is not attracted in respect of value of property received by a trust or institution registered u/s 12AA]		
- Donation to Gandhiji Free Trust registered u/s 12AA – allowable since the same is out of current year income off the trust, even though the objects of the trust are different. Only corpus donations are not permissible to other trusts registered u/s 12AA	25,00,000	4,65,00,000
Total income (other than anonymous donation taxable @ 30% under section 115BBC)		28,00,000
Add : Anonymous donation taxable @ 30% u/s 115BBC(1)(i) p[See Note 1]		10,00,000
Total Income of the trust (Including anonymous donation taxable @ 30%)		38,00,000

Computation of Tax liability of the Trust for the Assessment Year 2020 – 21

Particulars	Rs.	Rs.
Tax on total income of Rs. 30,25,000 [Excluding anonymous donations]		
Upto Rs. 2,50,000	Nil	
Rs. 2,50,000 – Rs. 5,00,000 [Rs. 2,50,000 × 5%]	12,500	
Rs. 5,00,000 – Rs. 10,00,000 [Rs. 5,00,000 × 20%]	1,00,000	
> Rs. 10,00,000 [Rs. 20,25,000 × 30%]	6,07,500	
	7,20,000	
Tax on anonymous donations taxable @ 30%. [Rs. 7,75,000 × 30%]	2,32,500	
		9,52,500
Add : Health & Education cess @ 4%		38,100
Total tax liability		9,90,600

Notes :

- | | | |
|---|------|-------|
| (1) Anonymous donations taxable @ 30% | Rs. | Rs. |
| Donations received (lakhs) | | 10.00 |
| • 5% of donations received, i.e. 5% of 45 lakhs | 2.25 | |
| • Monetary limit | 1.00 | |
| Higher of the above | | 2.25 |
| Anonymous donations taxable @ 30% | | 7.75 |
- (2) Where the cost of assets is claimed as application, no deduction for depreciation on such assets would be allowed in determining income for the purposes of application. Therefore, since cost of assets of the trust has been claimed as application of income, no depreciation would be allowed on these assets while determining income for the purposes of application.
- (3) Corpus donations, whether received by way of cheque or cash, are not includible in the total income of the trust, as it is registered under section 12AA.
- (4) Since the trust follows cash system of accounting, fees not realized from patients and students would not form part of gross receipts. Therefore, there is no need of applying the provisions of Explanation 1 to section 11(1) to exclude such income.
- (5) Since corpus donations and anonymous donations are indicated separately and the question does not mention that the same are included in gross receipts, the solution has been worked out on the assumption that corpus donations and anonymous donations are not included in the figure of gross receipts of Rs. 400 lakhs.

(8 MARKS)**(B)**

- (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 Rs. 15 lacs made towards landing and parking charges to the Airports Authority of India for the previous year 2019-20

- (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 Rs. 2,40,000. 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. 2019 – 20 is Rs. 2,60,000 (i.e., Rs. 1,35,000 for building and Rs. 1,25,000 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 Rs. 2,50,000. Therefore, no tax is required to be deducted at source on payment of Rs. 1,95,000 to Mr. X, since the aggregate payment does not exceed Rs. 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 even if compensation exceeded Rs. 2,50,000.

(3*2 = 6 MARKS)

ANSWER : 3

(A)

Anustup Chandra Flour Mills Ltd.

Assessment Year 2020 – 21

Computation of Total Income as per Normal Provisions of Income Tax Act

Net Profit as per Profit & Loss Account	77,00,000
(i) Share of Income from AOP is exempt under section 86 since one or more member has total income which exceeds the taxable limit.	- 9,00,000
(ii) Since share from AOP is exempt, the expenses towards earning of such income to be disallowed under section 14A.	+ 90,000
(iii) Income tax disallowed under section 40 and interest paid under Income tax Act disallowed as per Federal Bank Ltd. v. CIT	+ 3,00,000
(iv) Loss of foreign subsidiary shall not to be allowed in the hands of holding company.	+ 5,00,000
(v) Interest to financial institution not paid till due date of filing of return disallowed under section 43B.	+ 8,00,000
(vi) Compounding fees is in the nature of penalty. Penalty for infraction of any law is disallowed [Mamta Enterprises].	+ 1,00,000
(vii) Fees under 234E for delayed filing of TDS returns is neither interest nor penalty and hence allowed.	-
(viii) Revaluation surplus has not tax treatment. No adjustment required since it is not routed through Profit & Loss Account	-
(ix) No Tax treatment on fair valuation of equity instruments No adjustment required since not routed through Profit & Loss Account	-
Total Income	85,90,000
Tax thereon @25%	21,47,500
Add : 4% Health & Education cess	85,900
Total tax	22,33,400

Computation of Book Profits as per Section 115JB

Net Profit as per Profit & Loss Account	77,00,000
Add :	
(i) Expenses on earning the share of income from AOP since share of income from AOP is exempt under section 86	90,000
(ii) Income tax and interest under the Income tax Act	3,00,000
(iii) Loss of foreign subsidiary company	5,00,000
(iv) Revaluation surplus on fair valuation of assets to be added at the time of disposal/ realisation of assets. Hence, no adjustment required.	Nil
(v) Gain on fair valuation of equity instruments to be added at the time of sale of equity instruments. Hence, no adjustment required.	Nil
Less : Share from AOP since it is exempt under section 86	-9,00,000

Book Profits as per Section 115JB	76,90,000
Tax Thereon @ 15%	11,53,500
Add : 4% Health & Education cess	46,140
Tax Liability on Book Profit	11,99,640

The tax liability of the company is therefore Rs. 22,33,400.

1. No adjustment is required in computation of book profits under section 115JB for following expenses :
 - (i) Interest to financial institution
 - (ii) Compounding fees for breach of building laws
 - (iii) Filing fees for late filing of TDS returns
2. As Supreme Court in Malayala Manorama Co. Ltd., the company can follow rates of depreciation given in Income Tax Act, while preparing Profit and Loss Account as per the Companies Act.

(8 MARKS)

(B)

	Particulars														
(i)	<p>The agreement of APA is between the Board and a taxpayer/ person. The principle to be followed is that the person who makes the APA application alone would be entitled to enter into the agreement and be entitled for the rollback provisions in respect of international transactions undertaken by it in rollback years.</p> <p>Since company X and Y were the APA applicants and not the new company XY formed as a result of merger. Company XY would not be eligible for the rollback provisions.</p> <p>CBDT Circular No. 10/2015 dated 10.06.2015</p>														
(ii)	<p>As per the proviso to section 92CA(3A), where assessment proceedings are stayed by any Court and the time available to the Transfer Pricing officer for making an order is less than 60 days, then, such remaining period shall be extended to 60 days.</p> <p>In the present case, since only 30 days is available after excluding the period of stay, the same will be extended by 30 days and TPO can make an order within 60 days.</p>														
(iii)	<p>As per the proviso to section 92C(4), where the arm's length price is determined by the Assessing Officer by applying transfer pricing provisions, no deduction, inter alia, under section 10AA shall be allowed from the income to enhanced by the Assessing Officer.</p> <p>Assuming that the entire turnover represents the export turnover, and consequently, the entire profit of Rs. 70 lakhs is eligible for deduction under section 10AA, the total income would be computed as follows :</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Particulars</th> <th style="text-align: right;">Rs. In lakhs</th> </tr> </thead> <tbody> <tr> <td>Income of unit in SEZ (Computed)</td> <td style="text-align: right;">70</td> </tr> <tr> <td>Less : Deduction u/s 10AA = 50% of Rs. 70 lakhs, being the 8th year of operations</td> <td style="text-align: right;">35</td> </tr> <tr> <td></td> <td style="text-align: right;">35</td> </tr> <tr> <td>Add: Enhancement in total income by the Assessing Officer, applying transfer pricing provisions.</td> <td style="text-align: right;">50</td> </tr> <tr> <td>Total Income</td> <td style="text-align: right;">85</td> </tr> <tr> <td>[No deduction u/s 10AA is allowable in respect of income so enhanced]</td> <td></td> </tr> </tbody> </table> <p>Note – If it is assumed that the gross total income of Rs. 70 lakhs is after provision of deduction @ 50% in respect of export profits under section 10AA, the total income of Sachine Co. Ltd. would be Rs. 120 lakhs i.e. Rs. 70 lakhs, being Gross Total Income, after giving effect to deduction u/s 10AA + Rs. 50 lakhs, being income enhanced by Assessing Officer, No deduction under section 10AA would be allowed to Sachine Co. Ltd. in respect of Rs. 50 lakhs enhanced by the Assessing Officer.</p>	Particulars	Rs. In lakhs	Income of unit in SEZ (Computed)	70	Less : Deduction u/s 10AA = 50% of Rs. 70 lakhs, being the 8 th year of operations	35		35	Add: Enhancement in total income by the Assessing Officer, applying transfer pricing provisions.	50	Total Income	85	[No deduction u/s 10AA is allowable in respect of income so enhanced]	
Particulars	Rs. In lakhs														
Income of unit in SEZ (Computed)	70														
Less : Deduction u/s 10AA = 50% of Rs. 70 lakhs, being the 8 th year of operations	35														
	35														
Add: Enhancement in total income by the Assessing Officer, applying transfer pricing provisions.	50														
Total Income	85														
[No deduction u/s 10AA is allowable in respect of income so enhanced]															

ANSWER : 4

(A) COMPUTATION OF INCOME OF MR. RISHABH ASSESSMENT YEAR 2020 - 21

Rent Received	3,00,000
Less : 30% Deduction	90,000
	2,10,000
Less : Interest on capital borrowed for acquisition of property	25,000
Income from House property	1,85,000

Income from Capital Gains

(i) On Unlisted Shares		
Holding Period	: 09.01.2018 to 17.01.2020	Long Term
Sale Price		3,20,000
Indexed COA	: 3,00,000 × 289/272	3,18,750
Long Term Capital Gain		1,250
(ii) Capital Gains on sale of Plot of Land		
Holding period	: 20.05.2014 to 05.06.2019	Long Term
Sale Price		70,00,000
Cost of Acquisition as per section 49(4)	: 55,00,000	
Indexed Cost of Acquisition	: 55,00,000 × 289 /240	66,22,917
Long Term Capital Gain		3,77,083
Less : Exemption under section 54F	: 3,77,083 × 60 lakh / 70 lakh	
		3,23,214
Long Term Capital Gain		53,869
(iii) Short Term Capital Gains on Gold		20,000
Total Capital Gains		75,119
Less : Short Term Capital Loss on sale of traded shares Brought forward		30,000
Capital Gains Long Term		45,119
Total Income		2,30,119
Total Income (Round Off)		2,30,120
Total Tax (After rebate under section 87A)		NIL

Notes :

- Exemption under section 54F is available on transfer of any long term capital asset not being a residential house. Therefore, exemption under section 54F is available on long term capital gains arising on sale of plot.
- Exemption under section 54F is available for the house property purchased one year before the date of transfer. Since plot is sold on 05.06.2019, the house property purchased in April, 2019 is eligible for exemption.
- Cost of new house purchased in April, 2019 is eligible for exemption.
- Exemption under section 54F is

$$\text{Long Term Capital Gains} \times \frac{\text{Cost of new asset purchased}}{\text{Net Consideratin of asset sold}}$$

- Exemption under section 54F is available since assessee does not own any other

- house except the house so purchased on the date of transfer.
6. For unlisted shares, the period of holding is more than 24 months to qualify as long Term Capital Assets.
 7. For immovable property the period of holding is more than 24 months to qualify as long term capital asset.
 8. Repayment of Loan is not eligible for deduction under section 80C since 80C benefit is available if loan is repaid to banks / financial institutions / approved employer.
 9. The cost of plot of land has been taken as Rs. 55,00,000 as per section 49(4). Rs. 5,00,000 would have been taxable in hands of Mr. Rishab under section 56(2)(x) at the time of purchase being SDV – Purchase Price.
 10. Short term capital loss can be set off against short term capital gains as well as Long Term Capital Gains.
 11. Short Term Capital Loss on shares traded on stock exchange is eligible for set off and carrying forward.
 12. Tax Liability would have been same even if entire short term capital loss Rs. 30,000 brought forward is set off against long term capital gains or Short Term Capital Gains.

(8 MARKS)

(B) A company is said to be engaged in “ACTIVE BUSINESS OUTSIDE INDIA” and hence its POEM is outside India.

If it satisfies all the following conditions				
Passive income is 50% or less of its Total Income	Less than 50% of total assets situated in India	Less than 50% of total employees situated in India or are resident in India	Payroll expenses of employees situated in India or resident in India is less than 50% of total payroll expenditure.	Majority meetings of Board of Directors are held outside India

Note 1 : The value of assets shall be

(c) **Depreciable assets** – Average of its value for tax purpose at the beginning and end of Previous Year.

(d) **Other assets** – Value as per books of account

Note 2 : **Number of Employees** shall be average of number of employees at the beginning and end of the previous year. Employees shall include persons who are not directly employed but performs functions similar to employees e.g. contractual persons.

Note 3 : **Passive income shall be aggregate of**

- (i) Income from transactions where both the purchase and sale of goods is from / to its associated enterprises and
- (ii) Income by way of royalty, dividend, capital gains, interest and rental income whether derived from associated or non – associated enterprises.

Now, as per the information given in the question :

(a) The percentage of total assets in India viz – a – viz total assets all over the world is computed as under :

Total Assets worldwide = 90 + 70 + 40 + 180 + 30 + 90 = Rs. 500 crore

Total Assets in India = 90 + 40 + 30 = Rs. 160 crore

Assets situated in India : Total Assets = 160 : 500
= $160 / 500 \times 100 = 32\%$

- (b) The percentage of passive income viz – a – viz total income worldwide is computed below:

Passive Income = Rs. 43 Crore

Total Income = Rs. 100 Crore

Passive Income : Total Income = 43%

- (c) **Number of Employees in India** : Total Employees worldwide = 40 : 100 = 40%

Therefore, the answers are as under :

- (i) All conditions of “**ACTIVE BUSINESS OUTSIDE INDIA**” are satisfied and therefore the POEM of John Butler Tax Inc. **shall be outside India.**

- (ii) As per POEM Rules, Employees shall include persons who are not directly employed but performs functions similar to employees e.g. contractual persons. If 30 employees are employed in India, then,

Number of Employees in India : Total Employee = 70 : 130 = 53.84%

Then company shall not be said to have “ACTIVE BUSINESS OUTSIDE INDIA”.

If outsourcing of work is done to an external agency which will engage 15 employees then number of Employee in India : Total Employee = 55 : 115 = 47.82%

The company shall be said to have “ACTIVE BUSINESS OUTSIDE INDIA :

Therefore, the choice of outsourcing is better.

(6 MARKS)

ANSWER : 5

- (A)** Computation of Total Income of Company X Assessment Year 2020 - 21

Unit A	
Net Profit as per Profit & Loss Account	251 lakhs
Add : Disallowance under section 43B	12 lakhs
	263 lakhs
Unit B	
Net Profit as per Profit & Loss Account	615 lakhs
Add : Disallowance under section 43B	60 lakhs
	675 lakhs
Profit and Gains of Business or Profession	938 lakhs
Less : Deduction under section 10AA	174 lakhs
Total Income	764 Lakhs

Note 1 : Computation of deduction under section 10AA

Profit of the Business = 263 lakhs – 19 lakhs – 12 lakhs

= 232 lakhs **(See Note 3)**

Export Turnover	= 520 lakhs – 70 lakhs = 450 lakhs (See Note 4)
Total Turnover	= 500 lakhs + 100 lakhs = 600 lakhs (See Note 5)

Deduction under section 10AA

$$= \text{Profit of the Business} \times \frac{\text{Export Turnover}}{\text{Total Turnover}}$$

$$= 232 \text{ Lakhs} \times 450 / 600 = 174 \text{ Lakhs}$$

Note 2 : 100 % of export profits are eligible for deduction under section 10AA for the first five years of operation. Since in given case, its 3rd year of operations, 100% of export profits are deductible under section 10AA.

Note 3 : In case of Liberty India (Supreme Court), Supreme Court has ruled that Duty draw back and profit as sale of import entitlement are not eligible for deduction under section 10AA.

Note 4 : Export Turnover does not include freight and insurance and Rs. 70 lakhs has been excluded. Export turnover is the sale proceeds received in India within 6 months from end of previous year.

Note 5 : Total Turnover shall include domestic sales and FOB value of exports.

(6 MARKS)

(B) The issue under consideration is whether the rejection of revision petition filed under section 264, on the ground that the assessment was the subject matter of appeal to the Appellate Tribunal, is justified. Section 264 provides that the Principal Commissioner has no power to revise any order which has been made the subject matter of an appeal to the Commissioner of Income – tax (Appeals) or Appellate Tribunal, even if the relief claimed in the petition is different from the relief claimed in appeal.

Where an order is appealed against, the entire order gets merged and not just that portion for which the assessee has claimed relief for. The concept of total merger would apply in the case of section 264.

Accordingly, in the present case, since the order passed by the Assessing Officer in respect of the addition of unexplained cash credit of Rs. 80 lakhs became the subject matter of an appeal to the Appellate Tribunal, the Principal Commissioner has no power to revise such order, even if the subject matter of revision i.e., disallowance of Rs. 10 lakhs under section 43B is different.

Hence, the revision petition before Principal Commissioner, is not maintainable.

(4 MARKS)

(C) As per Section 271AAB, the Assessing Officer may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under section 132, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him, -

(a) a sum computed at the rate of 30% of the undisclosed income of the specified previous year, if such assessee –

- (i) In the course of the search, in a statement under sub – section (4) of section 132, admits the undisclosed income and specifies the manner in which such income has been derived ;
 - (ii) Substantiates the manner in which the undisclosed income was derived; and
 - (iii) On or before the specified date –
 - (A) Pays the tax, together with interest, if any, in respect of the undisclosed income ; and
 - (B) Furnishes the return of income for the specified previous year declaring such undisclosed income therein;
- (b) a sum computed at the rate of 60% of the undisclosed income of the specified previous year, if it is not covered by clause(a) above.

Explanation – For the purposes of this section –
 “Specified previous year” means the previous year –

- (i) Which has ended before the date of search, but the date of furnishing the return of income under sub – section (1) of section 139 for such year has not expired before the date of search and the assessee has not furnished the return of income for the previous year before the date of search; or
- (ii) In which search was conducted;

Since the due date of filling of return for previous 31.3.2019 has not expired on the date of search, previous year 31.3.2019 is “Specified previous year” as per section 217AAB,

Therefore, Mr. Khemka has to pay a penalty of 30% of the undisclosed income as per section 271AAB even if he makes the statement under section 132.

(4 MARKS)

ANSWER : 6

- (A)** Section 245D(6) states that every order passed under section 245D(4) by the Settlement Commission has to provide for :
- (i) the terms of settlement; and
 - (ii) That the settlement would become void, if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

The foundation for settlement is an application which an assessee can file at any stage of a case relating to him in such form and manner as may be prescribed. The fundamental requirement of the application under section 245C is that there must be full and true disclosure of the income along with the manner in which it has been derived.

Merely because it has been provided under section 245 – I that the order of settlement is conclusive, it does not take away the power of the Settlement Commission to decide whether the settlement order has been obtained by fraud or misrepresentation of facts.

In this case, CBI found that the loans given to Mr. Murari were bogus. If the Commissioner is able to establish that the earlier decision of Settlement Commission was wrong because of misrepresentation of facts, then, it is open for the Settlement Commission to declare the settlement to be void. It cannot be called by any stretch of imagination to be a review of the earlier judgment of settlement commission.

Therefore, if Settlement Commission finds that settlement was obtained by fraud or misrepresentation of facts, then it is empowered to declare the settlement as void. The contention of Mr. Murari is, therefore, incorrect.

(4 MARKS)

(B) In relation to Article 5 on Permanent Establishment, the UN Model Convention varies from the OECD Model Convention in the following aspects:

(i) As per Article 5(3)(a) of the OECD Model Convention, a building site or construction or installation project constitutes a PE if it lasts more than twelve months. The UN Model Convention is wider as it covers “assembly and installation project” and “supervisory” activities in connection thereto and requires the activity in question to continue only for six months for constituting a PE.

(ii) Article 5(3)(b) of the UN Model Convention makes a specific reference to Service PE which is absent in the OECD Model Convention. Under the UN Model Convention, furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose would constitute a PE, but only if activities of that nature continue within a Contracting State for a period or periods aggregating more than 183 days in any 12 month period commencing or ending in the fiscal year concerned.

In the absence of a Service PE reference in OECD Model Convention, the presence has to be ascertained through general principles under Article 5(1).

(iii) The UN Model Convention has an additional Article 5(6) relating to insurance which is absent in OECD Model Convention. As per this Article in the UN Model Convention, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person.

In the absence of similar Article in the OECD Model Convention, a PE of an insurance Enterprise has to be determined in accordance with provisions of Article 5(1) or 5(2) of the OECD Model Convention.

(4 MARKS)

(C) Income chargeable to tax shall be deemed to have escaped assessment for the purpose of section 147, where a person, being a resident other than not ordinarily resident in India, is found to have any asset located outside India. Accordingly, the Assessing Officer can serve a notice under section 148 on such assessee requiring him to furnish a return of income within the specified period, for the purpose of making an assessment or reassessment under section 147.

Under section 149, an extended time limit of sixteen years is available for issue of notice under section 148 for an assessment or reassessment, in case income in relation to such assets located outside India has escaped assessment.

In this case, income chargeable to tax shall be deemed to have escaped assessment for the purpose of section 147, since Nargis has assets located outside India.

Therefore, on this basis, the Assessing Officer formed a belief that the income has escaped assessment and consequently, issued notice under section 148 for 13 assessment years i.e. from A.Y. 2006 – 07 to A.Y. 2019 – 20.

Hence, the Assessing Officer is justified in invoking reassessment provisions in respect of the earlier assessment years also. However, the extended time limit of 16 years for invoking reassessment proceedings would be available only in respect of A.Y. 2008 – 09 and thereafter, since Nargis first purchased an asset outside India only in July 2007.

Accordingly, in view of the above provisions, the action of the Assessing Officer in issuing notices to Nargis under section 148 for the 11 assessment years i.e., from A.Y. 2008 – 09 to A.Y. 2019 – 20 is in order. However, he cannot issued notice under section 148 for A.Y. 2006 – 07 and A.Y. 2007 – 08, since the time limit of 4 years or 6 years, as the case may be, has since elapsed.

(4 MARKS)

- (D)** As per section 9(1)(i) (e), in the case of a foreign company engaged in the business of mining of diamonds, no income shall be deemed to accrue or arise in India to it through or from the activities which are confined to display of uncut and unassorted diamonds in any notified special zone.

Since this benefit is available only in case of a foreign company engaged in the business of mining of diamonds, Mr. A, a foreign citizen and a diamond merchant from US, cannot avail of such benefit.

The income of Rs. 10 crores from display of uncut and unassorted diamonds would, accordingly, be deemed to accrue or arise in the hands of Mr. A by virtue of business connection in India.

(2 MARKS)

ANSWER -7

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

19. B

20. D