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ASSESSMENT OF VARIOUS ENTITIES

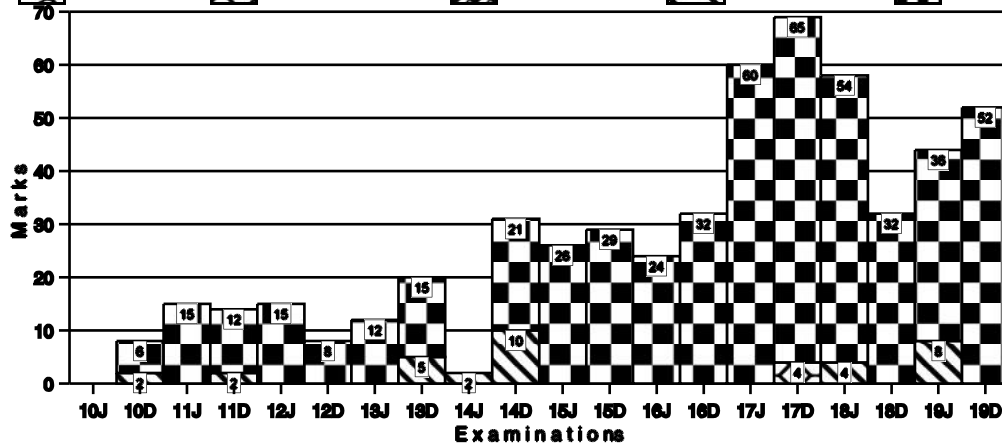
THIS CHAPTER INCLUDES

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| <ul style="list-style-type: none"> • Definitions • Tax on distributed income to unit holders • Tax on income from Securitisation Trusts • Tax on income of unit holder and business trust • Tax on income of investment fund and its unit holders | <ul style="list-style-type: none"> • Tax on income from Patent • Tax on income from transfer of carbon credits • Religious or Charitable Trust • Local Authority • Mutual Concern |
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Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions

Legend

 Objective
  Short Notes
  Distinguish
  Descriptive
  Practical



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CHAPTER AT A GLANCE

Rate of Tax for Company Assessee	
Income of a company is taxable as under:	
Short term capital gain covered u/s 111A	15%
Long term Capital gain covered u/s 112A	10%
Long term capital gain	20%
Winning from lottery, cross-word puzzles, etc.	30%
Other Income	
— In the case of a domestic company:	
• Where its total turnover or gross receipts during the previous year 2017-18 does not exceed ₹ 400 crore	25%
• In other case	30%
— In the case of a foreign company:	
• Royalty received from Government or an Indian concern in pursuance of agreement made by it with the Indian concern after March 31, 1961, but before April 1, 1976, or fees for rendering technical services in pursuance of an agreement made by it after February 29, 1964, but before April 1, 1976, and where such agreement has in either case been approved by Central Government	50%
• Other incomes	40%

Surcharge: The rates of surcharge on Income Tax (as a percentage of Income Tax) are as follows:

			A.Y. 2020-21		
Range of Total Income	Above 50 lakh to ₹ 1 crore	Above ₹ 1 crore to ₹ 2 crore	Above ₹ 2 crore to ₹ 5 crore	Above ₹ 5 crore to ₹ 10 crore	Above ₹ 10 crore
Assessee Liable to Surcharge	Rate (as a % of Income Tax)				
Individual HUF AOP or BOI Artificial Juridical	10%	15%	25%	37%	
Firm	Nil	12%	12%	12%	12%
Co-operative Society	Nil	12%	12%	12%	12%
Local Authority	Nil	12%	12%	12%	12%
Domestic Company	Nil	7%	7%	7%	12%
Foreign Company	Nil	2%	2%	2%	5%

SHORT NOTES

2017 - Dec [8] Write short note on the following:

(d) Liability of members after partition of HUF

(4 marks)

Answer:

Liability of Members after partition of HUF Section 171

In case total partition took place during the previous year the total income of the joint family in respect of the period upto the date of partition shall be assessed as if so far no partition had taken place; and each member or

group of members shall, in addition to any tax for which he or it may be separately liable and notwithstanding anything contained in clause(2) of **Section 10**, be jointly and severally liable for the tax on the income so assessed and in case total partition took place after the expiry of the previous year, the total income of the previous year of the joint family shall be assessed as if no partition had taken place, and each member or the group of members shall be jointly and severally liable for tax on the income so assessed.

In case of partial partition taken place after the 31st December 1978, the HUF shall continue to be liable to be assessed under this Act as if no such partition had taken place and each member or group of members of such HUF immediately before such partial partition and the HUF shall be jointly and severally liable for any tax, penalty, interest, fine or other sum payable under this Act by the HUF in respect of any period, whether before or after such partition. The several liability of any member or group of members aforesaid shall be computed according to the partition of the HUF property allotted to him or it at such partial partition.

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DESCRIPTIVE QUESTIONS

2008 - Dec [4] (a) Subsequent to the demise of Mrs. X, her sons constituted a firm and ran the same business. Can the firm claim set off of unabsorbed business loss of late X? **(3 marks)**

Answer:

Where any person carrying on business or profession has been succeeded in such capacity by another person otherwise than by inheritance, then the successor cannot have the loss of predecessor carried forward and set off against his income. Where the business is succeeded by inheritance, the legal heirs are entitled to the benefit of the loss of predecessor. Even if the legal heirs constitutes themselves as a partnership firm, the benefit of predecessor's loss should be made available to the firm.

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2010 - May [2] (b) State the situation under which the clubbing provisions of Income tax operate as to the incomes of husband and wife.

(4 marks) [CAFG - II New]

Answer :

According to **Section 64(1)**, while computing the total income of any individual all the following incomes of spouse shall be included in the hands of individual, if all such income arising directly or indirectly to the spouse by way of:

- (1) Salary, commission, fees or any other form of remuneration, whether in cash or in kind, from a concern in which such individual has substantial interest;
- (2) Income from any asset (other than house property) transferred to the spouse by the individual otherwise than for adequate consideration or in connection with an agreement to live apart .
- (3) As per **Section 27(I)**, an individual who transfers, otherwise than for adequate consideration, any house property, to his or her spouse, not being a transfer in connection with an agreement to live apart, is deemed to be the owner of the house property so transferred. Accordingly, in such a case, the income from house property would be taxable in the hands of the individual.

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2010 - Nov [5] Attempt the following :

- (a) CG Ltd. is engaged in the business of conversion of jumbo rolls of films into saleable packets/rolls of standard size.

Is the company entitled to claim deduction under Section 80-IB?

(4 marks) [CAFG - II New]

Answer :

As per the Supreme Court's decision in the case of India Cine Agencies VS. CIT conversion of jumbo rolls of films into saleable packets / rolls of standard size is manufacturing activity.

Deduction **u/s 80IB** is available to the Industrial Undertaking who is engaged in the business of manufacturing or production of article or thing. Under the given circumstances, business of CG Ltd. is that of manufacturing as per India Cine Agencies (Supra) and therefore the company is entitled to deduction **u/s 80 IB** of the Act.

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2010 - Dec [6] (a) An assessee borrows money on mortgage of his property for his daughter's marriage and pays interest. Is such interest paid deductible from the property income? **(2 marks)**

Answer:

Merely because the loan is charged on the property, interest does not become deductible, because the amount is not borrowed for the purpose of acquiring or constructing the property.

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2011 - May [4] (b) Can the brought forward losses and unabsorbed depreciation be set off against the profit determined under section 44B ?

(4 marks) [CAFG - II New]

Answer :

The provisions of **Section 44B** requires a NR to compute its income on the presumptive basis and use of **Sec. 44B** is mandatory and not optional. Therefore, there is no possibility of having a business loss where income is computed on presumptive basis **u/s 44B**. In case, the brought forward losses mentioned in the question are taken to be business losses there is an inbuilt presumption that such losses and depreciation relate to another business of the non-resident and not the shipping business. In such a case, both business loss and unabsorbed depreciation of another business can be set-off against the profits determined **u/s 44B** in respect of shipping business.

—— Space to write important points for revision ———

2011 - Dec [1] {C} (b) Provide brief answers (not exceeding three or four sentences) for the following:

(viii) What is an oral trust and in whose hands will the income of such trust be assessed? **(2 marks)**

Answer:

An oral trust means a trust which is not declared by a duly executed instrument in writing and which is not deemed to be trust declared by a duly executed instrument in writing. Income of an oral trust, terms whereof are not recorded in writing and intimated to the assessing officer, within the specified time will be chargeable to income-tax at the maximum marginal rate of tax. However, income of an oral trust, terms whereof are recorded in writing and forwarded to the assessing officer within the specified time limit, will be chargeable to income-tax at the maximum marginal rate of tax, only if, the share of the beneficiaries are indeterminate or unknown and where the share of the beneficiaries are definite and known, the tax will be levied and recovered from the trustees in the same manner and to the same extent as would be livable or recoverable from the beneficiaries.

Where only a part of the trust income is chargeable to tax, the share of the beneficiary, which is chargeable to tax is to be determined in the same proportion which such part bears to the whole income of the trust e.g. the total income of a trust is ₹ 90,000 out of which a beneficiary received ₹ 30,000 and only 1/3rd of the trust income is chargeable to tax.

Income of Oral Trust is assessed as under:

Which is received receives or entitled to receive by trustee (appointed under an oral trust) on behalf of or for the benefit of any person: **Such trustee or trustees.**

—— Space to write important points for revision ———

2012 - Nov [6] (d) A company which is entitled to claim deduction under section 80-IB has received duty drawback under a scheme framed by the Central Government under the Customs Act, 1962. Can such duty drawback form part of profit of eligible undertaking for the purpose of deduction under section 80-IB? **(3 marks) [CAFG - II New]**

Answer :

Section 80-IB provides for allowing deduction in respect of profits and gains derived from eligible business of the industrial undertaking.

The issue under consideration is whether duty drawback can be regarded as "profits and gains derived from eligible business of the industrial undertaking".

For a receipt to be treated as having been "derived from" the industrial undertaking, the same should be directly and inextricably connected with the business of the industrial undertaking. The connection should be direct and not remote.

The facts of the case are similar to the facts of the case in ***Liberty India v. CIT (2009) 317 ITR 218***, wherein the Supreme Court observed that duty drawback is an incentive which flows from the schemes framed by the Central Government or from the Customs Act, 1962. Profits derived by way of incentives such as duty drawback cannot be credited against the cost of manufacture of goods debited in the profit and loss account and they do not fall within the expression "profits derived from industrial undertaking" under **Section 80-IB**. They belong to the category of ancillary profits of such undertaking. Hence, duty drawback receipts cannot form part of the profits derived from the eligible business for the purpose of the deduction under **Section 80-IB**.

Applying the same rationale to the present case, duty drawback would not form part of profit of eligible undertaking for the purpose of deduction under **Section 80-IB**.

—— Space to write important points for revision ———

2013 - Nov [3] (b) Examine the correctness or otherwise of the following statements in the context of provisions contained in the Income Tax Act, 1961 and the decided case laws:

- (i) The Assessing Officer is bound to allow the set-off of losses under section 72 even the assessee has not claimed the same in the return filed.

(3 marks) [CAFG - II New]

Answer:

The statement is correct. The Supreme Court held in ***CIT vs. Mahalakshmi Sugar Mills Co. Ltd. (1986)*** that it is the duty of the AO to apply the relevant provisions of the Act for the purpose of determining true figure of the assessee's total income. Only because the assessee fails to claim the benefit of a set off in his return, it cannot relieve the AO of his duty to apply **Section 72** in an appropriate case.

—— Space to write important points for revision ———

2013 - Dec [5] Answer the following with the help of decided case law:

- (a) Can, the benefit of self-occupation of house property under section 23(4) of the Income-tax Act, 1961 be denied to HUF on the ground that it cannot occupy a house property, being a fictional entity? **(5 marks)**

Answer :**Provision of Law:**

As per **Section 23 (4)** of the Income Tax Act, where the assessee is having more than two self occupied properties, then he may exercise an option to treat any two of the properties to be self-occupied. The other properties will be deemed to be let out. It means that the annual value of two self-occupied properties opted by the assessee can be taken as nil.

Fact of the Case:

The issue similar to present case decided in case of ***CIT vs. Hariprasad Bhojnagarwala (2012)342 ITR 69 (Guj.) (Full Bench)***. The assessee, being a Hindu Undivided Family (HUF), claimed the benefit of self occupation of a house property under **section 23(2)**. However, the Assessing Officer did not accept the said claim and denied the benefit of self occupation of house property by the HUF arguing that such benefit is available only to the owner who can reside in his own residence i.e., only an individual assessee, who is a natural person, and not to a imaginary assessable entity being HUF or a firm, etc.

Decision: On the above mentioned issue, the Gujarat High Court observed as follows:

- That a firm, which is a fictional entity, cannot physically reside in a house property and therefore a firm cannot claim the benefit of this provision, which is available to an assessable entity who can actually occupy the house.

- The HUF is a group of individuals related to each other i.e., a family comprising of a group of natural persons. The said family can reside in the house, which belongs to the HUF. Since a HUF cannot consist of artificial persons, it cannot be said to be a fictional entity.
- Since singular includes plural, the word "owner" would include "owners" and the words "his own" used in **Section 23(2)** would include "their own".

Therefore, the Court held that the HUF is entitled to claim benefit of self-occupation of house property under **section 23(2)** of income tax act.

—— Space to write important points for revision ———

2014 - June [7] Answer sub-divisions:

- (c) (ii) Can father, mother, son and his wife presently assessed as Hindu undivided family, as well as individual, form an association of persons as well as a source of income not belonging to the Hindu undivided family? **(2 marks)**

Answer:

No, HUF is a separate and distinct tax entity. The income of a HUF can be assessed in the hand of the HUF alone and not in the hands of any of its members unless specifically provided by law.

—— Space to write important points for revision ———

2014 - Dec [8] (a) Madubaala Finance Ltd., has started a new NBFC Division for its leasing activities. For the new NBFC Division, the company anticipates GST liability but wants to light/contest the levy of GST. The NBFC Division plans to collect from its customers on an *ad-hoc basis*, amounts towards possible GST liability (which will be disputed by the company with GST authorities). These amounts so collected will not be parked in a separate interest-bearing account. These amounts will be refundable to the customers, if the assessee were to succeed before the GST authorities.

The management wishes to know whether the above collections from customers be treated as the income of the company, and if taxed, under what head of income will the same be taxed. **(5 marks)**

- (b) Jupiter Pharma Ltd., a pharmaceutical company, plans to collect “service charges” from the tenants of the buildings owned by it. The service agreement is dependent upon the rental agreement, which is executed by the company with the tenants. Services provided under the service agreement are in respect of staircase of the building, lift, common entrance, main road leading to the building through the compound, drainage facilities, open space in/around the building, air condition facility, etc.

The company wishes to know whether the service charges collected will be taxed under the head ‘Income from house property’ or as income from other sources. Advise them suitably. **(5 marks)**

Answer:

- (a) Taxability of collections towards disputed GST liability:**

The situation outlined in the problem resembles the one adjudicated by the **Apex Court in Sundaram Finance Ltd. vs. ACIT (2012) 349 ITR 356 (SC)**. According to the assessee, in order to safeguard itself against, *inter alia*, the possible sales tax liabilities, the assessee received ₹ 36.5 lacs as contingent deposits; from its customers which were “refundable”, if the assessee was to succeed in its challenge to the levy of the said GST. According to the assessee, the sum of ₹ 36.5 lacs was therefore an impress with a liability to refund, that the said sum had the character of “deposits” and hence, were not taxable in the year of receipt, but would be taxable only in the year in which the liability to refund the GST ceased (in case the assessee failed in the pending GST appeals).

The Supreme Court observed that:

- It is well settled that in determining whether a receipt is liable to be taxed, the taxing authorities cannot ignore the legal character of the transaction which is the source of the receipt.
- The taxing authorities are bound to determine the true legal character of the transaction. In the present case, the assessee had received ₹ 36.5 lacs in the assessment year in question.
- The said sum of ₹ 36.5 lacs was not kept in a separate interest bearing bank account but it formed part of the business turnover.

In view of the above, applying the substance over form test the Supreme Court was satisfied that in the present case the said sum of ₹ 36.5 lacs constituted trading receipt/ business income. The said amount was collected from the customers. The said amount was collected towards GST liability. The said amount formed part of the turnover.

The ratio of the Supreme Court decision is squarely applicable and hence the collections in questions towards disputed GST liability will be taxed as income. Since it is a trading receipt, it will be taxed under the head "Profits and gains of business or profession".

(b) Taxability of service charges collected from tenants:

The Bombay High Court had to consider a similar situation in the case of ***CIT vs. J.K. Investors (Bom) Ltd. (2012) 211 Taxman 383 (Bom)***. The Bombay High Court observed and held thus:

- (i) It is an undisputed fact that no services are being provided by the assessee to the occupants of its property and that the service charges have to be included as a part of its rental income.
- (ii) The test to determine whether the service agreement is different from the rent agreement would be whether the service agreement could stand independently of the rent agreement. In the instant case, the service agreement is dependent upon the rent agreement, as in the absence of the rent agreement there could be no service agreement.
- (iii) It may also be pointed out that according to the assessee, the services being provided under the service agreement are in respect of staircase of the building, lift, common entrance, main road leading to the building through the compound, drainage facilities, open space in/around the building, air condition facility, etc. These are services which are not separately provided, but go along with the occupation of the property.
- (iv) Therefore, the amounts received as service charges are to be considered as a part of the rent received and subjected to tax under the head 'Income from house property'.

Applying the ratio of the above judgment, the advice will be that the service charges collected will be taxed as income from house property and not as income from other sources.

—— Space to write important points for revision ——

2018 - June [8] In the light of decided case laws, answer the following [Your answer should be under the following heads: (i) Issue involved (ii) Brief discussion on provisions applicable to the issue (iii) Analysis of the issue involved and (iv) Conclusion (*Citation of the case law is NOT required*)]:

- (e) Saipriya Charities had applied for registration of the trust u/s 12AA on 01.04.2019. No order was passed in this regard by the Commissioner of Income-tax/Director (Exemptions). Hence, the trust took the view that its application was accepted and proceeded to file its return of income. Is this view of the trust correct in law? **(4 marks)**

Answer:

Issue Involved:

The issue under consideration in this case is whether, in a case where the Commissioner of Income-tax has not passed any order for granting or refusing to grant registration within the prescribed time limit under Section 12AA, the trust can take the view that it is deemed to be registered under Section 12AA.

Provisions applicable:

As per Section 12AA, every order granting or refusing registration shall be passed before the expiry of 6 months from the end of the month in which the application was received.

Analysis:

Non-consideration of the application for registration within the time fixed by the legal provision would lead to deemed grant of registration, since the assessee cannot be made to suffer merely because the timely decisions are not taken by the Revenue Officers.

Accordingly, in this case, the trust would be deemed to be registered since no order granting or refusing to grant registration has been passed by the CIT on or before 30th September, 2019 and even thereafter upto the due date of filing of return for the A.Y.2020-21.

Conclusion:

The view taken by the assessee trust that the trust would be deemed to be registered under Section 12AA, since no order granting or refusing to grant registration has been passed by the Commissioner of Income-tax within the prescribed period of six months is, therefore, correct.

Reference may be made to the decision in CIT v. Society for the Promotion of Education (2016) 382ITR 6 (SC).

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2019 - June [5] In the light of decided case laws, answer the following [Your answer should be under the following heads: (i) Issue involved (ii) Brief discussion on provisions applicable to the issue (iii) Analysis of the issue involved and (iv) Conclusion (Citation of the case law is NOT required)]:

(b) “Ghosh Group of Educational Institutions”, running three famous colleges in Kolkata, claimed exemptions under section 10(23C). In all these three colleges, there is a net surplus after meeting all its expenses. The Assessing Officer (AO) rejected the claim for exemption on the ground that the presence of net surplus leads to the inference that the assessee-institution does not exist solely for educational purposes.

Is the rejection of the AO justified in law?

(d) Vishal Hotels Ltd., runs a famous restaurant. Customers frequenting the same, add tips to be given to the servers in the food bill while making the payment. The tips so collected by the hotel is pooled and distributed to all the employees. The Assessing Officer of the TDS Ward has issued a notice stating that the assessee should deduct tax at source from the tips distributed to the employees, since the same is nothing but payment of salaries. Assessee seeks your advice. **(4 × 2 = 8 marks)**

Answer:

(b) Exemption u/s 10(23C):

Issue involved:

The issue under consideration in this case is whether the AO is justified in rejecting the claim for **exemption u/s 10(23C)**, on the ground that the assessee-institution does not exist solely for educational purposes.

Provisions applicable:

Section 10(23C)(iiia) postulates three requirements, namely,

- (i) the education institution must exist solely for educational purposes;
- (ii) it should not be for purposes of profit; and
- (iii) the aggregate annual receipts of such institution should not exceed the amount as may be prescribed.

Analysis of the issue:

The following tests would apply for determining whether an educational institution exists solely for education purposes and not for purposes of profit:

- (i) Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit;
- (ii) The predominant object test must be applied - the purpose of education should not be submerged by a profit making motive;
- (iii) A distinction must be drawn between the making of surplus and an institution being carried on "for profit". Merely because imparting of education results in making a profit, it cannot be inferred that it becomes an activity for profit;
- (iv) If after meeting expenditure, surplus arises incidentally from the activity carried on by the educational institution, it will not cease to be one existing solely for educational purposes.

The ultimate test is whether on an overall view of the matter in the concerned assessment year, the object is to make profit as opposed to educating persons.

Conclusion:

Therefore, the action of the Assessing Officer, rejecting the claim for exemption u/s 10(23C) not valid.

Reference may be made to the decision of the Apex Court in **Queen's Educational Society v. CIT (2015) 372 ITR 699 (SC)**.

(d) TDS from tips collected by employer from customers:

Issue involved:

The issue under consideration in this case is whether “tips” received by the hotel-company from its customers and distributed to the employees fell within the meaning of “Salaries” to attract tax deduction at source under **section 192**.

Provisions applicable:

Section 192(1) requires any person responsible for paying any income chargeable under the head “Salaries” to deduct tax at source at the time of payment. If an employee receives income chargeable under a head other than “Salaries”, **section 192** does not get attracted at all.

Analysis of the issue:

- In respect of tips collected by the company from the customers and distributed to the employees, the person responsible for paying the employee is not the employer at all, but a third person, namely the customer.
- There is no vested right in the employee to claim any amount of tip from his employer. Tips are purely voluntary amounts that may or may not be paid by customers for services rendered to them.
- As income from tips would be chargeable in the hands of the employees as “Income from Other Sources”, on account of such tips being received from customers and not from the employer, **section 192** would not get attracted at all.
- Tips are received by the employer in a fiduciary capacity as trustee to their employees for service rendered to the customer. There is, therefore, no reference to the contract of employment when these amounts are paid by the employer to the employee. Due to this reason the tips received by the employees could not be regarded as profits in lieu of salary.
- The payments of collected tips included and paid by way of a credit card by a customer, would not be payments made “by or on behalf of” an employer. The contract of employment not being the proximate cause for the receipt of tips by the employee from a customer, such payments would be outside the scope of **sections 15 and 17**, and hence **section 192** would not get attracted.

- Hence, such payments would not fall within the meaning and scope of the income chargeable to tax under the “Salaries”.

Conclusion:

Hence, the Assessing Officer is not correct in concluding that “tips” received by the hotel company from its customers and distributed to the employees fell within the meaning of “Salaries” to attract tax deduction at source under section 192.

Reference may be made to the decision of the **Apex Court in ITC Ltd. v. CIT (TDS) (2016) 384 ITR 14.**

— Space to write important points for revision —

PRACTICAL QUESTIONS

2008 - Nov [3] (a) Explain in brief about the treatment to be given in each of the following cases under the I.T. Act, for A.Y. 2020-21 :

- (iv) A loss of ₹ 85,000 was sustained by Simran in the activity of owning and maintaining camels for races. **(2 marks) [CAFG - II New]**
- (v) Interest of ₹ 20,000 on bank FDRs received by minor son of Rajesh. These FDRs were made by the minor son out of his earnings from stage acting. **(2 marks) [CAFG - II New]**

Answer :

- (iv) **Sec. 74A(3)** lays down the provisions for set-off and carry forward of loss from the activity of owning and maintaining race horses. According to provisions of **Section 74A(3)**, the losses incurred by an assessee from the activity of owning and maintaining race horses cannot be set-off against the income from any other source other than the activity of owning and maintaining race horses. Therefore, set-off and carry forward of loss from the activity of owning and maintaining camels is not covered under the **Section 74A(3)** since the scope of this section is confined to the activity of owning and maintaining race horse only. The loss from the activity of owning and maintaining camels for races governed by **Section 72** if such activity is the business. Accordingly, the loss from the activity of owning and

maintaining of camels for races can be set-off against any income of current year except salary and unadjusted amount shall be carried forward for set-off against any business income for a maximum period of 8 assessment years immediately succeeding the assessment year in which the loss was incurred.

- (v) **Section 64(1A)** provides the provisions for clubbing of minor's income. The section provides that all income accruing or arising to a minor is to be included in the income of his parent, whose total income (excluding the income includible under this section) is greater. However, income derived by the minor from manual work and that from any activity involving his skill, talent or specialized knowledge or experience will not be included in the income of his parent. Since, interest of ₹ 20,000 on bank FDRs received by minor son of Rajesh does not arise to minor on account of his manual work nor by activity involving his skill, talent or specialized knowledge or experience, therefore such interest should be included in income of Mr. Rajesh or Mrs. Rajesh whose income is higher.

— Space to write important points for revision —

2008 - Dec [2] (c) The audited accounts of Vivitha Biochemicals Ltd. for the year ended 31.03.2020 were approved by shareholders in the general meeting of the company. The company has been consistently charging depreciation at the rates laid down in the Income-tax Rules, 1962, for the past several years. While calculating the MAT liability under section 115JB of the Income-tax Act, 1961, the Assessing Officer wants to add back a sum of ₹ 33 lacs on the ground that the company has charged depreciation at the rates prescribed under the Income-tax Act, 1961 and not as per the Companies Act. The company seeks your advice for rebutting the aforesaid view. Advise the company suitably. **(4 marks)**

Answer:

The Supreme Court in **Malayala Manorama Co. Ltd. V CIT** has dealt with the issue under the predecessor **Section 115J** however, the ratio of this decision still hold goods. The Supreme Court pointed out:

- (i) The Companies Act, 2013 permits companies to adopt a higher rate of depreciation than one prescribed in Schedule II

- (ii) In its earlier decision in ***Apollo Tyres Ltd. v CIT*** the court had held that the assessing officer while computing the income **u/s 115J** has only the power of examining whether the books of accounts are certified by the authorities under companies act as having been properly maintained in accordance with the companies act. The assessing officer thereafter has the limited power of making increases and reductions as provided in the explanation to the said section. To put differently the assessing officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the explanation to **Section 115J**. The ratio of this decision still holds well in the impugned situation as well.

The aforesaid decisions should be incorporated in the advice to the taxpayer to show that the AO cannot go behind the audited and approved accounts, except to add back or deduct the items stated in the explanation to **Section 115J**.

— Space to write important points for revision —

2008 - Dec [7] (b) During the year ended 31.03.2020, M/s. Bose Bio-medicals (partnership firm) submitted its return on 30.11.2019 declaring a business loss of ₹ 1.2 lacs besides unabsorbed depreciation of ₹ 2 lacs. During the year ended 31.03.2020, it ran two new industrial undertakings whose profits are eligible for deduction u/s. 80-IB. Old business was shut down. The results for the year ended 31.03.2020 are:

Results of industrial undertaking X ---- Profit ₹ 8 lacs.

Results of industrial undertaking Y ----- Loss ₹ 3 lacs.

Compute the total income of the firm for the assessment year 2020-21

(5 marks)

Answer:

Following points are to be noted:

- 1 Since the return of income of assessment year 2020-21 has been filed belatedly, unabsorbed business loss cannot be carried forward. **[Section 139(3)]**. The prohibition however does not apply to unabsorbed depreciation.
2. While computing deduction **u/s 80-IB** (I) each industrial undertaking should be considered separately. Loss of one unit cannot be set-off

against the profit of another. This is because the deduction is with reference to the undertaking and not the assessee (ii) deduction u/s 80-IB cannot exceed gross total income.

3. Brought forward depreciation should however be adjusted while computing the business income/ gross total income.

Total income of the firm for AY 2020-21

Profits and Gains of business or profession	₹
Profit of undertaking X	8,00,000
Loss: of undertaking Y	<u>3,00,000</u>
Gross business income	5,00,000
Less: Brought forward depreciation	<u>2,00,000</u>
Gross total Income	3,00,000
Less: Deduction u/s 80-IB	3,00,000
Total Income	Nil

— Space to write important points for revision —

2009 - May [6] (c) Can an assessee who fulfills all the prescribed conditions having total income of ₹ 1,84,000, paid house-rent @ ₹ 4,800 p.m. in respect of the residential accommodation occupied by him at Mumbai, claim the deduction for the house-rent so paid while computing his taxable income?

(3 marks) [CAFG - II New]

Answer :

An individual, who is not in receipt of house rent allowance and complying with all the conditions as specified in **Section 80GG**, shall be entitled to claim deduction (in respect of rent paid by him for the residential accommodation) of an amount, equal to the least of the following limits, under **Section 80GG** -

	₹
(i) Actual rent less 10% of total income (₹ 57,600 less 10% of ₹ 1,84,000)	39,200
(ii) 25% of total income (25% of ₹ 1,84,000)	46,000
(iii) Amount calculated at ₹ 5,000 p.m.	60,000
Deduction allowable (least of the above)	39,200

Note -

Assumed that ₹ 1,84,000 is the total income before providing deduction under **section 80GG**.

2009 - June [2] Vasudha & Co. is a partnership firm dealing in commodities and consists of two partners V and H. The summarized details of its Profit and Loss Account for the year ended 31.3.2020 are given below:

	₹		₹
To Rent to Mr. R	3,00,000	By Gross Profit B/d	12,20,000
" Commodities transaction tax	12,800	" Income -Tax refund	10,800
" General Expenses	1,20,000	" Interest on Bank deposits	42,000
" Interest on capitals:			
V	1,50,000		
H	1,80,000		
" Remuneration (as per partnership deed):			
V	96,000		
H	84,000		
" Net Profit	3,30,000		
	12,72,800		12,72,800

The results pertaining to the earlier years which still remain unabsorbed, are as under:

Particulars	Assessment year	
	2018-19	2019-20
Return filed on	19.07.2018	31.12.2019
Unabsorbed business loss	₹ 20,000	₹ 1,50,000
Unabsorbed deprecation	₹ 50,000	₹ 60,000

You are required to compute the total income of the firm for the assessment year 2020-21, considering the following factors also :

- TDS from rent to Mr. R. was remitted on the following dates:
 For rent up to and including the month of January, 2020
 (Rent ₹ 25,000 per month for 10 months) 07.01.2020
 For the month of February, 2020 04.04.2020
 For the month of March, 2020. 07.07.2020
- Deposits were made with the bank to comply with Government regulation pertaining to the assessee's commodities trade, and the interest accrued thereon has been credited to the P & L Account.
- Interest paid to partners is at 15% per annum.
- Income-tax refund includes interest of ₹ 1,800 received from the Income-tax Department for delayed refund. **(15 marks)**

Answer:

**Total Income of M/S Vasudha & Co.
Status Partnership Firm
Assessment Year 2020 - 21**

	Amount (₹)
Profits and gains from business or profession (W. Note 1)	2,38,200
Income from other sources (W. Note 2)	<u>43,800</u>
Gross Total Income	2,82,000
Deduction under Chapter VI-A	<u>Nil</u>
Total Income	<u>2,82,000</u>
Tax on above ₹ 2,82,000 @ 30%	84,600
Add: Health and Education Cess @ 4%	3,384
Tax payable	87,984
Round Off u/s 288B	87,980

Working Note 1

Computation of Business Income

Net Profit as per P & L A/c 3,30,000Less: Items not covered by this head of income: 10,800

I. T Refund

Interest on bank deposits

(It is immaterial that deposit were made to comply with Govt. regulations)

42,000	<u>52,800</u>
	2,77,200

Add: Interest on partner's capitals in excess of 12%

V 30,000

H	<u>36,000</u>	<u>66,000</u>
		3,43,200

Add: Remuneration to Partners

V 96,000

H	<u>84,000</u>	<u>1,80,000</u>
		5,23,200

Book Profit (A)

Less: Remuneration to working partners (W. Note 4) 1,80,000set-off of eligible items: (W. Note 5) 1,30,000Chargeable income from business 2,13,200

Commodities transaction tax is a permissible deduction

Working Note 2 income from other sources

Interest Portion in IT Refund	1,800	
Interest on bank deposits	<u>42,000</u>	43,800

Working Note 3 Disallowance u/s 40(a)(ia)

As per the amended provision, the time available for remitting the TDS is due date of filing return of income.

Working Note 4

Computation of book profit and remuneration allowable u/s 40(b)

Profit as per (A) in working note 1	5,48,200	
For computing book profits, unabsorbed depreciation has to be deducted, as it become depreciation of current year u/s 32 (2)	<u>1,10,000</u>	
Book Profits	<u>4,38,200</u>	
Permissible deduction u/s 40(b) on 3,00,000 @ 90%	2,70,000	
On Balance ₹ 1,38,200 @ 60%	<u>82,920</u>	
Total	<u>3,52,920</u>	
Actual Remuneration (Which is Less)	1,80,000	

Working Note 5

The requirement u/s 80 read with section 139(3) for filling the return for claiming benefit of set off applies to business only and not to depreciation. So business loss of assessment year 2020-2021 alone will be hit, since return was filed belatedly.

For assessment year 2018-2019 the return was filed in time.

So eligible items are 20,000 + 50,000 (AY 2018-2019) and 60,000 (AY 2019-2020) i.e. 1,30,000/-

— Space to write important points for revision —

2009 - Dec [6] (a) Mr. Ankit was a partner in a firm in his capacity as the Karta of his HUF, representing the HUF. On the amounts deposited by the partner, the firm paid interest. Ankit in his individual capacity had made deposit in the said firm. The assessee firm claimed that the interest paid in his individual capacity should not be disallowed. The Assessing Officer did not agree and disallowed the interest paid to Mr. Ankit in his individual

capacity, under section 40 (b) of the Income-tax Act, 1961. Is the aforesaid interest allowable as deduction in the hands of the firm? **(3 marks)**

Answer:

According to Explanation 1 to **Section 40(b)**, where one is partner in a firm on behalf or for the benefit of any other person, interest paid by the firm to such individual otherwise than partner in a representative capacity is not taken into account for the purpose of **Section 40(b)** in view of aforesaid provision, the action of Assessing Officer is not correct.

— Space to write important points for revision —

2009 - Dec [6] (b) On 1st April, 2019, Mr. A & Mrs. A purchased entire shares of M/s. Thakur Company Private Limited in which public are not substantially interested. The company had unabsorbed business loss and accumulated depreciation from earlier years.

Accumulated non-speculative business losses — ₹ 3 lakhs

Unabsorbed Depreciation — ₹ 8 lakhs

The company made sufficient profits during the Asst. year 2020-21 to accommodate above allowances.

- (i) State the effect of changes of shareholders in the right of the company to carry forward the losses and unabsorbed depreciation for set off.

(5 marks)

- (ii) Is it different if the shares are acquired by Mr. A & Mrs. A by way of gift ?

(2 marks)

Answer:

- (i) The effect of change in shareholding rights to carry forward and set off of business loss and unabsorbed depreciation are as follows:

M/s. Thakur Company Private Ltd is a closely held company. As per provisions of **Section 79** of income tax act, a closely held company will be entitled to carry forward and set off business losses provided the person beneficially holding 51% of voting power on the following two dates are same.

- On the last day of the previous year in which loss was incurred.
- On the last date of the previous year in which the company wants to set off the brought forward loss.

That means. to carry forward of loss, same person on the last day of the year loss are required to beneficially hold 51% of voting power on the last day of the year of setoff.

In the present case 100% beneficial holding on 31st March, 2019 are not the same as on 31st March, 2018 so the business loss of ₹ 3 lakhs can not be carry forward and set off against profit for the Asst. Year 2020-21.

Provisions of **Section 79** as above is applicable only in case of carry forward and set off of business loss. Carry forward of unabsorbed depreciation stands in different footings and provisions of **Section 79** is not applicable. So M/s Thakur Company Pvt. Ltd is eligible for set off unabsorbed depreciation.

- (ii) Where a change in voting power takes place in a previous year on account of transfer of shares by way of gift, the restriction as per provision in Section 79 is not applicable. So if Mr. A & Mrs. A acquired shares of Ms/. Thakur Company Pvt. Ltd. by way of gift both business loss and accumulated depreciation can be carried forward and set off against profit of the Asst. year 2020-21.

———— Space to write important points for revision —————

2010 - May [5] (c) Following issues have been raised by Navi Limited in connection with its eligibility for claiming deduction under Section 80-IB for your consideration; and advise, for the assessment year 2020-21.

- (i) It operates two separate industrial units, One unit is eligible for deduction under Section 80-IB, while the other unit is not eligible for such deduction. If the eligible unit has profit and the other unit has loss, should it claim deduction after setting off the loss of the other unit against profit of the eligible unit?
- (ii) Its profit from one unit includes sale of import entitlement, duty drawback and interest from customers for delayed payment. Is it permissible to claim deduction on these items of income?

(7 marks) [CAFG - II New]

Answer :

- (i) The issue for consideration is whether the profit of eligible undertaking under **Section 80-IB** is to be reduced by the loss of non-eligible undertaking for the purpose of computation of deduction under this section. **Supreme Court in CIT vs Canara Workshop Private Limited** held that in computing the profit qualifying for deduction in respect of an eligible undertaking, the loss incurred by other non-eligible undertakings should not be set off. The income computed before set off should be the basis for determining the amount of deduction.

Therefore, Navi Limited should claim deduction on profit from the eligible unit without setting off loss suffered in the other unit. It may be noted that the aggregate deduction u/c VI A, however cannot exceed the gross total income of the assessee.

- (ii) Under **Section 80-IB**, where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking referred to in the section, there shall be allowed, in computing the total income of assessee, a deduction from such profits and gains at the specified percentage and for such number of years as specified in the section. **Supreme Court in CIT vs. Sterling Foods (1999)** held that sale of import entitlement and duty drawback cannot be construed as income derived from industrial undertaking. Therefore, such income cannot be included in computing income for the purpose of deduction under **Section 80-IB**.

Interest income derived by an undertaking on delayed collection of sale proceeds shall be treated as income derived from the industrial undertaking, and therefore, the same would be eligible for deduction under **Section 80-IB**.

———— Space to write important points for revision —————

2010 - Nov [1] {C} (d) Mrs. E, wife of Mr. F is a partner in a firm. Her capital contribution to the firm as on 01-04-2019 was ₹ 5 lakhs, out of which ₹ 3 lakhs was contributed out of her own sources and ₹ 2 lakhs was contributed out of gift from her husband.

As further capital was needed by the firm, she further invested ₹ 2 lakhs on 01-05-2019 out of the funds gifted by her husband. The firm paid interest on capital of ₹ 80,000 and share of profit of ₹ 60,000 for the financial year 2019-20.

Advise Mr. F as to the applicability of the provision of Section 64 (1) (iv) and the manner thereof in respect of the above referred transactions.

(5 marks) [CAFG - II New]

Answer :

Applicability of provisions of **Section 64(1) (iv)** of the Act :

As per **Section 64 (1) (iv)** read with Explanation **2A to Sec. 64 (1)**, where the assets (in a given case, cash) transferred directly or indirectly by an individual to his spouse, are invested in the nature of capital contribution as partner in a firm, that part of interest receivable by the spouse from the firm in any previous year, which bears the same proportion to the interest receivable by the spouse from the firm as the value of investment as on the first day of the previous year bears to the total investment by way of capital contribution as a partner in the firms on the said day, shall be included in the total income of the individual in that previous year. In short, interest is required to be apportioned to the amount gifted by Mr. E as on the first day of relevant previous year which bears to the total amount of contribution of Mrs. E as on the first day of relevant previous year.

Therefore, the receivable interest is required to be proportioned between Mr. F and Mrs. E as under in view of provisions of S.64 (1) (iv) of the Act :

In the hands of Mrs. E	In the hands of Mr. F
Interest on capital ₹ 80,000/- x 3/5 = 48,000.00	Interest on capital ₹ 80,000/- x 2/5 = 32000.00

It is further pointed out that only interest income is required to be clubbed in the hands of Mr. F and not profit received from the firm which is exempt **u/s 10(10) (2A)**.

— Space to write important points for revision —

2010 - Nov [2] (a) ABC Limited was amalgamated with XYZ Limited on 01-04-2019. All the conditions of Section 2 (1B) were satisfied.

ABC Limited has the following carried forward losses as assessed till the Assessment Year 2019-20:

- | | |
|---|-------------|
| (i) Speculative Loss | ₹ 4 lakhs |
| (ii) Unabsorbed Depreciation | ₹ 18 lakhs |
| (iii) Unabsorbed expenditure of capital nature on scientific research | ₹ 2 lakhs |
| (iv) Business Loss | ₹ 120 lakhs |

XYZ Limited has computed a profit of ₹ 140 lakhs for the financial year 2019-20 before setting off the eligible losses of ABC Limited but after providing depreciation at 15% per annum on ₹ 150 lakhs, being the consideration at which plant and machinery were transferred to XYZ Limited. The written down value as per income -tax record of ABC Limited as on 31st March, 2019 was ₹ 100 lakhs.

The above profit of XYZ Limited includes speculative profit of ₹ 10 lakhs. Compute the total income of XYZ Limited for Assessment Year 2020-21 and indicate the losses/ other allowances to be carried forward by it.

(10 marks) [CAFG - II New]

Answer :

**Assessee- XYZ Limited
Computation of total income
A.Y. 2020-21**

Particulars	Amount (₹ in lakhs)
Business income before setting-off brought forward losses of ABC Ltd.	140.00
Add: Excess depreciation claimed in the scheme of amalgamation of ABC Limited with XYZ Limited	
Value at which assets are transferred by ABC Ltd.	150
WDV in the books of ABC Ltd.	<u>100</u>
Excess accounted	50

Excess depreciation claimed in computing taxable income of XYZ Ltd. [50 × 15/100]	7.50
	147.50
Set-off of brought forward business loss of ABC Ltd.	(120.00)
Set-off of unabsorbed depreciation under section 32(2) read with section 72A	(18.00)
Set-off of unabsorbed capital expenditure	(2.00)
	7.50

Notes:

1. The unabsorbed losses and unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or unabsorbed depreciation of the amalgamated company for the previous year in which the amalgamation was effected and such business loss and unabsorbed depreciation shall be carried forward and set-off by the amalgamated company for a period of 8 years and indefinitely, respectively.
2. The accumulated loss to be carried forward specifically except loss from speculative business. Therefore, speculative loss of ₹ 4 lakhs of ABC Ltd. cannot be carried forward by XYZ Ltd.
3. **Section 72(2)** provides that where any allowance or part thereof unabsorbed under **Section 32(2)** (i.e., unabsorbed depreciation or **Section 35(4)** (i.e., unabsorbed scientific research capital expenditure) is to be carried forward, effect has to be first given to brought forward business losses under **Section 72**.
4. **Section 35(4)** provides that the provision of **Section 32(2)** relating to unabsorbed depreciation shall apply in relation to deduction allowable under **Section 35(1)(iv)** in respect of capital expenditure on scientific research related to the business carried on by the assessee. Therefore, unabsorbed capital expenditure on scientific research can be set-off and carried forward in the same manner as unabsorbed depreciation.

5. The restriction contained in **Section 73** is only regarding set-off of loss computed in respect of speculative business. Such a loss can be set-off only against profits of another speculation business and not non-speculation business. However, There is no restriction under the Income-tax Act, 1961 regarding set-off normal business losses against speculative income. Therefore, normal business losses can be set-off against profits of a speculative business. Consequently, there is no loss or allowance to be carried forward by XYZ Ltd.

— Space to write important points for revision —

2010 - Dec [7] (a) Mr. Y a resident individual, submits the following particulars of his income and outgoings:

Inflows: Income as partner of M/s F. Industries

Salary received by cheque	₹ 1,20,000
Share in net profits of firm (retained in firm)	₹ 30,000

Outflows:

- (i) Contribution towards pension plans of LIC for himself of ₹ 10,000/-. The sum was paid by M/s F Industries and debited to his capital account. He has also taken the said policy in the name of his wife for the same amount for which payment was made by cheque (account payee).

- (ii) Contribution towards medical insurance premia:

Name of Policy Holder	Amount of Premium	Mode of Payment
1. Dependent Mother	1,500	Cash
2. Father who is retired Govt. Officer receiving Pension	1,750	Cheque
3. Major Son unemployed	3,000	Cheque
4. Wife dependent on Y	3,500	1500 by cheque 2000 by cash
5. Self out of gifts received from father in law by cheque	5,000	By cheque

Y is also maintaining his brother who is suffering from disability. He was hospitalized and the total estimated expenditure was ₹ 75,000/-. Y deposited ₹ 15,000 on March 31, 2020 in cash and the balance at the time of discharge from hospital in April, 2020.

Compute deductions available under chapter VIA for the Assessment year 2020-21. **(6 marks)**

Answer:

Deduction u/s 80CCC:

- (i) For pension plans for himself, no deduction as the payment is made out of exempt income.
 - (ii) For pension plan of wife: not available
- Hence, total allowable deduction is Nil

Deduction u/s 80D

Name of the policy holder	Premium Paid	Amount Eligible	Reasons
Dependent mother	1,500	Nil	paid in cash
Father not dependent on him	1,750	Nil	not dependent
Major dependent son	3,000	3,000	-
Wife: dependent on assessee	1,500	1,500	-
Wife: depended on assessee	2,000	Nil	paid in cash
self out of gifts	5,000	Nil	
Amount of deduction		4,500	

Deduction u/s 80DD

If any payment is incurred towards a dependent for disability, a fixed sum of ₹ 75,000 is eligible for deduction, the actual spent is not relevant.

— Space to write important points for revision —

2011 - June [7] The Profit & Loss Account of Mr. A. Basu for the previous year 2019-20 is given below:

Particulars	₹	Particulars	₹
Cost of goods sold	16,00,000	Sales	34,70,000
Salaries	9,00,000	Rent of staff quarters	3,00,000
Rent of business premises, owned by the assessee	2,50,000	Sale price of Machinery block on 31.03.2020	5,00,000
Repairs and renewals	1,40,000		
Income Tax paid	60,000		
GST	1,00,000		
GST	2,00,000		
Legal expenses	3,00,000		
Municipal taxes payable for staff quarters	10,000		
Provision for bad debts	60,000		
Contingency reserve	1,00,000		
Employers contribution to recognized fund	50,000		
Net profit	<u>5,00,000</u>		
	<u>42,70,000</u>		<u>42,70,000</u>

Additional information:

- (i) Salaries include:
 - (a) ₹ 1,20,000 was paid outside India to an employee, "resident" in India but neither tax was deducted nor tax has been paid thereon,
 - (b) ₹ 90,000 was paid in India to an employee "resident" in India but neither tax deducted therefrom nor paid thereon.
- (ii) GST of ₹ 50,000 for the assessment year 2020-21 was paid on 1st January, 2020, but it was not included in the profit & loss A/c.
- (iii) GST amounting ₹ 1,30,000 was paid on 30th May, 2020 and the balance was proposed to be paid on 1st August, 2020, the due date of furnishing return of income is 31st July, 2020.

- (iv) Repairs/renewals include remodeling and renovation of revenue nature costing ₹ 80,000. The balance is capital expenditure.
- (v) Legal expenses include:
- Lawyer fee of ₹ 50,000 paid by single bearer cheque to K, nephew of the proprietor. The Assessing Officer disallowed a sum of ₹ 10,000, being found in excess of the desired qualifications;
 - Gift of ₹ 1,20,000, made to wife, a tax-adviser, but disallowed by the A.O.
- (vi) Employers contribution include:
- ₹ 30,000 credited to their account on due date under Provident Fund rules;
 - ₹ 20,000 not credited to their account and proposed to be credited in October, 2019.
- (vii) Commission receipts of ₹ 2,00,000 have not been credited to the profit and loss account as their recovery seems to be doubtful.
- (viii) WDV of machinery on 01.04.2019 was ₹ 6,50,000.
- (ix) WDV of business premises and staff quarters as on 01.04.2019: ₹ 10,00,000 and ₹ 30,00,000 respectively.
Depreciation @ 10% on business premises and @ 5% on staff quarters.
Compute taxable profits for the previous year 2019-20, A.Y.2020-21.

(15 marks)**Answer:****Mr. A. Basu****Computation of Business Profits for Assessment Year 2020-21**

Particulars	₹	₹
Net Profit as per profits & loss a/c		5,00,000
Add: Inadmissible Expense:		
(i) Rent of the business premises owned by the assessee	2,50,000	
(ii) Remodeling and renovation being repairs of capital nature	60,000	
(iii) Income tax paid	60,000	

(iv) GST remaining unpaid up to date of furnishing return of income	70,000	
(v) Legal expenses includes:		
(a) gift made to wife	1,20,000	
(b) fees paid to lawyer	10,000	
(c) Fees paid other than by crossed a/c payee cheque	40,000	
(vi) Salaries paid outside to a resident employee without TDS	1,20,000	
(vii) Salaries paid in India to a resident employee without TDS below taxable limit	—	
(viii) Municipal tax payable for staff quarters	10,000	
(ix) Provision for bad debts	60,000	
(x) Reserve	1,00,000	
(xi) Employers contribution credited to their account after due date	20,000	
(xii) Commission receipts which have accrued during the year not credited to P/L account	2,00,000	11,20,000
		16,20,000
Less: (i) GST allowable on payment	50,000	
(ii) Sale price of machine, being capital receipts	5,00,000	
(iii) Depreciation		
(a) Staff quarters 5% of 30,00,000	1,50,000	
(b) Business Premises 10% of 10,00,000	1,00,000	8,00,000
Taxable business profits		8,20,000

Working Note:

Sale of machinery block: Sale of Machinery Block results into short term capital loss of ₹ 1,50,000 (₹ 6,50,000 - ₹ 5,00,000) under section 50.

No capital loss, whether short term or long term, can be set-off against any income. It is to be carried forward for next 8 assessment year.

— Space to write important points for revision —

2011 - Dec [2] (d) The following details are available relating to Mr. Harivallabh, who always files the return of income within the time stipulated under Section 139(1) of the Income Tax Act, 1961:

(₹ in lacs)

- | | |
|------------------------------|-----|
| (i) Assessment year 2019-20 | |
| Long-term capital loss | 3.2 |
| (ii) Assessment year 2020-21 | |
| Long-term capital gain | 5.3 |

The LTCG during the assessment year 2020-21 is from sale of shares in a recognised stock exchange.

The Assessing Officer contends that brought forward LTCG loss of ₹ 3.2 lacs should be set off against above LTCG of ₹ 5.3 lacs for the current year and hence there is no LTCG loss of assessment year 2019-20 which can be further carried forward. Is the same justified? **(5 marks)**

Answer:

According to Section 71, long term capital loss can be set-off against long term capital gain.

According to Section 112A [Added by F.A. 2018 - Applicable from the A.Y. 2019-20] long term capital gain on transfer of

- equity share
- equity oriented unit
- units of business trust

in excess of 1,00,000 shall be taxable @ 10%

Hence, Assessing Officer contends that brought forward LTCG loss of ₹ 3.2 lacs should be set-off against above LTCG of ₹ 5.3 lacs is correct. There is no LTCG loss of assessment year 2019-20 which can be further carried forward.

— Space to write important points for revision —

2011 - Dec [8] (b) Vivitha Logistics Ltd., engaged in the business of logistics support and infrastructural activities (started on 12.5.2010), has set up a cold chain facility during the current year. The particulars of investment relating to this cold chain facility business are as under:

	(₹ in lacs)
Land	40
Building	100
Machinery	200
Non-compete fee paid to machinery manufacturer	60
Profit from cold chain facility (covered by section 35AD) before depreciation	120

The assessee has earned profits of ₹ 150 lacs from the business of infrastructural activity (covered by Section 35AD of the Income-tax Act, 1961), ₹ 40 lacs from the logistics support business and ₹ 2 lacs as income from other sources.

Determine the total income of the assessee and the loss, if any, to be carried forward, as per normal provisions. Notes on treatment of each item above, should form part of your answer. Logistics support business is not covered by Section 35AD.

Where the return of income is being filed on 3rd December, 2020, will the right of carry forward of loss be affected? **(7 marks)**

Answer:

Computation of loss from specified business

As per **Section 35AD of the Income-tax Act, 1961**,

- (a) the assessee can set off the entire capital expenditure against the profits from this business. However, investment in land and goodwill will not be considered.
- (b) Deduction will not be available under any other provision. This means that depreciation will not be available.

The assessee can set off the income from “specified business” against income from any other “specified business” but not against other business profit.

Such unabsorbed business loss has to be carried forward under **Section 73A**. The problem clearly states that the cold chain facility business and infrastructure facility business run by the assessee are covered by the term “specified business” of **Section 35AD**.

In the light of above, total income computed is as under:

Profit and gains of business or profession		(₹ in lacs)
(i) Logistics support business		40
(ii) Specified business covered by sec 35AD		
(a) From infrastructural activities	150	
(b) From cold chain facility set off	(-) 150	
Income from specified business		Nil
(Balance ₹ 90 lacs is carried forward u/s 73A)		
Chargeable income under this head		40
Income from other sources		
Interest from bank deposit		<u>2</u>
Total income		<u>42</u>

Working note:

Income from cold chain business covered by sec 35AD

Profit from business	120
Less: Capital expenditure deductible in full	
Building	100
Machinery	200
Non-compete fee paid to machinery manufacturer	<u>60</u>
Total	<u>360</u>
Loss from cold chain facility business	<u>240</u>

Carry forward of loss u/s 73A

The need for filling of return within the time stipulated **u/s 139(1)** enjoined by **sec. 139(3)** is for the purpose of carrying forward losses under **Sections 72(1), 73(2) 74(3) or 74A(3)**. Loss under **Section 73A** is not covered. Hence filling the return of income on 3rd December, 2020 will not affect the right of carry forward of loss as per **Section 73A**.

— Space to write important points for revision —

2012 - May [6] (b) X carrying on a business as sole proprietor, died on 31st March, 2020. On his death, the same business was continued by his legal heirs, by forming a firm. As on 31st March 2020, a determined business loss of ₹ 5 lacs is to be carried forward, under the Income Tax Act, 1961.

Does the firm consisting of all legal heirs Mr. X, get a right to have this loss adjusted against its current income. (3 marks) [CAFG - II New]

Answer:

There is a normal law, that loss can be carried forward by the same assessee who incurs loss. But **Section 78(2)** provides that where a person carrying on any business or profession has been succeeded in such capacity by another person, otherwise than by inheritance, then successor is not allowed to carry forward the loss of predecessor against his income.

In the given case, business of Mr. X was continued by his legal heirs after his death by constituting a firm. And merely legal heirs constitutes a firm for continuing the business of predecessor would not give impact on his entitlement of carry forward of losses. Therefore firm is entitled to carry forward of loss of ₹ 5 lacs.

— Space to write important points for revision —

2012 - June [6] Dr. Basu is running a Nursing Home with his wife Dr. (Mrs.) Basu as a partnership firm Dr. Basu Nursing Home. On the basis of the following particulars, compute the total income of the firm (Dr. Basu Nursing Home), Dr. Basu and Dr. (Mrs.) Basu for the assessment year 2020-21.

(a) Particulars of income of the Nursing Home: ₹

- | | |
|---|----------|
| (i) Income as per Income and Expenditure Account | 3,20,000 |
| (ii) Firm's tax not provided in the account | 48,000 |
| (iii) Donation to Public Charitable Trust exempt u/s. 80G debited in the A/c. | 35,000 |

(b) Particulars of Income of Dr. Basu:

- (i) 40% of profit from Nursing Home as per books ₹ 1,28,000
- (ii) Dr. Basu purchased 500 shares of Saha (P) Ltd. at ₹ 110 each in May, 2003. On 14.5.2019 Dr. Basu sold 300 shares at ₹ 400 per share. He invested ₹ 40,000 out of the net sale proceeds in Bonds of RECL in June, 2019. The balance of 200 shares were sold in December, 2019 at ₹ 380 per share.
- (iii) Dr. Basu is a substantial shareholder and Director in Saha (P) Ltd. from which he received director's fees amounting to ₹ 4,000.

- (iv) Dr. Basu has obtained a loan of ₹ 50,000 from the said company for renovating the Nursing Home. The balance sheet of Saha (P) Ltd. for the Accounting year, inter alia, disclosed the following particulars:
- | | |
|---|---------------|
| (a) General Reserve | 40,000 |
| (b) Profit & Loss Account (Cr. Balance) | <u>20,000</u> |
| | <u>60,000</u> |
- (v) Share of income from property belonging to HUF of which Dr. Basu is the Karta amounts to ₹ 30,000.
- (c) Particulars of Income of Dr. (Mrs.) Basu: ₹
- | | |
|---|----------|
| (i) 60% share of profit from Nursing Home as per books | 1,92,000 |
| (ii) Income from dividend from UTI | 18,000 |
| (iii) Income from house property (as computed under Income-tax Act) | 48,000 |
- (d) Particulars of Income of Master Piyush:
Piyush minor son of Dr. Basu and Dr. (Mrs.) Basu has been admitted to the benefits of partnership in M/s. Basu Chemists which is carrying on business as Chemists and Druggists. The said firm has two other partners Sohan (brother of Dr. Basu) and Priya [sister of Dr. (Mrs.) Basu]. Piyush's share of profits is determined at ₹ 20,000.
- (Note:** Capital Gains Index of 2003 - 04 = 109, and 2019-20 = 289)
- (15 marks)**

Answer:

Computation of Total Income of the Firm

	₹
Income as per Income and Expenditure Account	3,20,000
Add: Donation to public charitable trust (added back)	35,000
Gross: Total Income	3,55,000
Donation to public charitable trust qualifying amount being restricted to 10% of Gross Total Income (₹ 35,500 or actual whichever is lower) i.e. 50% of ₹ 35,000	17,500
Total Income:	<u>3,37,500</u>

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Total tax payable by the firm @ 30%	1,01,250
Add: Health and Education cess @4% of Income Tax	4,050
Total tax	1,05,300

Computation of Total Income of Dr. Basu

	₹
1. His income from the Nursing Home is not taxable(as tax is already paid by firm)	Nil
2. Capital Gains	
Sale Proceeds: 300 shares of ₹ 400 each	1,20,000
200 shares of ₹ 380 each	76,000
	<u>1,96,000</u>
Less: Indexed cost: 55,000 × 289/109	<u>1,45,826</u>
Long term capital gain	50,174
3. Income from other sources:	
(a) Director fees	4,000
(b) Deemed dividends u/s 2 (22) (e) for having taken a loan from the company in which the assessee has substantial holding/is director u/s 10(34)	<u>exempt</u>
Gross Total Income	54,174
Deduction under chapter VIA	Nil
Total income	54,174
Computation of total income of Dr. (Mrs.) Basu	
1. 60% share from Nursing Home is not taxable (as tax is already paid by the firm)	Nil
2. Income from house property (net) as per IT Act, 1961...	48,000
3. Income from other sources-dividend from UTI	Exempt
Gross Total Income	48,000
Less: Deduction under Chapter VIA	Nil
Total Income	48,000

Note:

1. Share of profit from the firm accruing to minor son is not included in the total income of parent as share of profit to a partner is exempt.
2. Share of income from property belonging to HUF, taxable in hands of HUF, exempt u/s 10 in the hands of Dr. Basu.

3. **Amendment to Section 115-O and 2(22)(e):**

With effect from 1st April 2018, loan or advance given by a company (on or after April 1, 2018) which is deemed as dividend under section 2(22)(e) will be subject to the following provisions—

1. On such deemed dividend, the company which gives loan or advance will have to pay dividend tax under Section 115-O at the rate of 30% (without grossing up) [+ 12% of such tax as surcharge + 4% of tax and surcharge as health and education cess, effective rate: 34.944%.
2. Such deemed dividend will be exempt in the hands of recipient by virtue of Section 10(34).

— Space to write important points for revision —

2012 - Dec [2] © For the year ended 31.03.2020, Gamma Ltd. has earned the following dividend income:

- 1 From shares held in SUN Inc., a foreign company, in which it holds 20% of nominal value of equity share capital — ₹ 90,000
- 2 From shares held in MOON Inc., a foreign company, in which it holds 35% of nominal value of equity share capital — ₹ 2,00,000
- 3 From shares held in Indian companies — ₹ 70,000

The assessee - company has incurred expenditure of ₹ 30,000 for earning aforesaid dividend, the break up of which is as follows:

- (1) ₹ 8,000 (SUN Inc.)
- (2) ₹ 12,000 (MOON Inc.)
- (3) ₹ 10,000 (Indian Companies)

The business income of the assessee computed under the provisions of the Income-tax Act 1961 is ₹ 20 lakh. Compute the total income and tax liability of Gamma Ltd. for the AY 2020-21, ignoring MAT provisions. **(8 marks)**

**Answer:**

Computation of total income of Gamma Ltd. for the AY 2019-20	
Particulars	Amount
Profits and gains of business or profession	20,00,000
Income from other sources (Working Note 1)	2,82,000
Total Income	22,82,000
Working note 1	
From Sun Inc.-net dividends (90,000-8,000) is taxable at normal rates	82,000
From Moon Inc. gross dividends is taxable @15% u/s 115BBD	2,00,000
Dividends From shares in Indian company- exempt u/s 10(34)	Nil
Total income under the head other sources	2,82,000
Computation of tax liability of Gamma Ltd. for the AY 2019-20	
Tax @ 15% u/s 115BBD on ₹ 2,00,000	30,000
Tax @ 30% on balance income of ₹ 20,82,000	6,24,600
Add: Health and Education cess @4%	26,184
Total tax liability	6,80,784

— Space to write important points for revision —

2013 - May [7] (b) Mr. A has gifted a house property valued at ₹ 50 lakhs to his wife, Mrs. B, who in turn has gifted the same to Mrs. C, their daughter-in-law. The house was let out at ₹ 25,000 per month throughout the year. Compute total income of Mr. A and Mrs. C.

Will your answer be different if the said property was gifted to his son, husband of Mrs. C?

(4 marks) [CAFG - II New]

Answer :

As per **Section 27(I)**, an individual who transfers otherwise than for adequate consideration any house property to his spouse, not being a transfer in connection with an agreement to live apart, shall be deemed to be the owner of the house property so transferred.

Therefore, in this case, Mr. A would be the deemed owner of the house property transferred to his wife Mrs. B without consideration.

As per **Section 64(1)(vi)**, income arising to the son's wife from assets transferred, directly or indirectly, to her by an individual otherwise than for adequate consideration would be included in the total income of such individual.

Income from let-out property is ₹ 2,10,000 [i.e., ₹ 3,00,000, being the actual rent calculated at ₹ 25,000 per month less ₹ 90,000, being deduction under section 24@30% of ₹ 3,00,000]

In this case, income of ₹ 2,10,000 from let-out property arising to Mrs. C, being Mr. A's son's wife, would be included in the income of Mr. A, applying the provisions of section 27(I) and Section 64(1)(vi). Such income would, therefore, not be taxable in the hands of Mrs. C.

In case the property was gifted to Mr. A's son, the clubbing provisions under section 64 would not apply, since the son is not a minor child. Therefore, the income of ₹ 2,10,000 from letting out of property gifted to the son would be taxable in the hands of the son. It may be noted that the provisions of section 56(2)(vii) would not be attracted in the hands of the recipient of house property, since the receipt of property in each case was from a "relative" of such individual. Therefore, the stamp duty value of house property would not be chargeable to tax in the hands of the recipient of immovable property, even though the house property was received by her or him without consideration.

Note:

The first part of the question can also be answered by applying the provisions of **Section 64(1)(vi)** directly to include the income of ₹ 2,10,000 arising to Mrs. C in the hands of Mr. A. [without first applying the provisions of **Section 27(I)** to deem Mr. A as the owner of the house property transferred to his wife Mrs. B without consideration], since **Section 64(1)(vi)**

speaks of clubbing of income arising to son's wife from indirect transfer of assets to her by her husband's parent, without consideration. Gift of house property by Mr. A to Mrs. C, via Mrs. B, can be viewed as an indirect transfer by Mr. A to Mrs. C.

— Space to write important points for revision —

2013 - June [3] (c) Following details pertaining to Mr. Vaamana, a resident Indian aged 58 years, are furnished to you:

	(₹)
(i) Salary received from ABC Ltd.	7,20,000
(ii) Profession tax paid by employer	12,000
(iii) Loss from own business not covered by Section 35 AD	2,20,000
(iv) Long term capital gains from sale of listed shares in recognised stock exchange, held for more than one year	1,30,000
(v) Long term capital gains from sale of residential house property	1,20,000
(vi) Winning from T.V. games show (Net of TDS ₹ 30,000)	70,000
Expenses incurred for participating in the show	5,000
(vii) Loss in card games	12,000
(viii) Loss from agricultural lands in India	32,000
Compute the total income of the assessee under proper heads of income for the assessment year 2020-21.	
	(7 marks)

Answer:

**Computation of total income Mr. Vaamana
Assessment Year 2020-21**

Particulars	Amount (₹)	Amount (₹)
Salaries		
Received from employer	7,20,000	
Profession tax paid by employer (to be treated as perquisite)	12,000	
Less: Standard deduction	50,000	7,32,000
Less: Professional tax paid	12,000	62,000
		6,70,000

Income chargeable under this head		
Profits and gains of business or profession		
Loss from non-speculative business not covered by Sec.- 35AD	(2,20,000)	
(Cannot be set off against salaries)		
Capital gains		
Long-term capital gains:		
(a) From sale of listed shares in recognized stock exchange ₹ 1,30,000	30,000	
	<u>1,20,000</u>	
(b) From sale of residential house property	<u>1,50,000</u>	
Total LTCG		0
Business loss can be set off against LTCG		
Hence chargeable LTCG is		
Balance business loss ₹ 1 lac to be carried forward		
Income from other sources		
(a) Income from T.V. Games show Gross	1,00,000	
No expenditure is allowable from this income u/s 58(4)		
(No other loss can be set off against this winnings)		1,00,000
(b) Loss from card games		
(Can neither be set off, nor carried forward)	(12,000)	
Income chargeable under this head		
Gross total income/Total income		7,70,000

Note:

1. It is assumed that the long term capital gain arising from sale of listed shares is chargeable to STT.
2. Agricultural income being net loss, the same has to be ignored.
3. As per section 112A, Long term capital gain taxable @ 10% in excess of 1 lakh.

— Space to write important points for revision —

2013 - June [8] (a) “VKS Infra Pvt. Ltd.” is an Indian company engaged in undertaking infrastructure projects. In April, 2019, it has received a big highway project for expansion of existing roads in one area and also for relaying of existing roads in another area. There is an apprehension in the mind of the managing director of the company that these projects will not entitle the company to claim deduction under section 80 IB(4). Advise the company suitably. **(5 marks)**

Answer:

Widening /re-laying of existing roads whether eligible for benefit of **Section 80-IB(4)**

As per **Section 80IA(1)** of the Income Tax Act, 1961, where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in **sub-section (4)**, there shall, in accordance with the subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to hundred per cent of the profits and gains derived from such business for 10 consecutive assessment years.

Sub-section (4)(I) provides for a deduction to an undertaking engaged in developing, or operating and maintaining, or developing, operating and maintaining any infrastructure facility subject to satisfaction of the conditions laid down in the Section.

The explanation to **Sub-section 80IA(4)(I)** states that for the purpose of this clause, infrastructure facility means inter alia:

- (a) a road including toll road, a bridge or a rail system;
- (b) a highway project including housing or other activities being an integral part of the highway project;"

References were received by the Board as to whether widening of existing roads constitutes creation of new infrastructure facility for the purpose of **Section 80IA(4)(I)**.

The issue has been examined by the Board. In Circular 4/2010 dt. 18th May 2010, it was decided that widening of an existing road by constructing additional lanes as a part of a highway project by an undertaking would be regarded as a new infrastructure facility for the purpose of **Section 80IA(4)**.

However, simply re-laying of an existing road would not be classifiable as a new infrastructure facility for this purpose. Advise should be tendered on the above lines.

—— Space to write important points for revision ———

2013 - Dec [6] VKS Polymers LLP is a LLP consisting of the partners L, M and N. The LLP derives income from a trading unit (D) as well as a manufacturing unit (E). The summarised details of the profits and other related aspects for the year ended are as under:

	₹ in lacs
Profits from unit D	40
Profits from unit E	60

The turnover of the company is 120 crores and transfer pricing provisions are not attracted. Unit E is eligible to claim 100% deduction under Section 80-ID and all necessary conditions stand fulfilled.

The assessee is planning to file the return of income on 30th September, 2020. Compute the total income and tax payable for the assessment year 2020-21.

There is some doubt in the mind of the Taxation Manager over two issues relating to unit D. The assessee seeks your view whether it can file the return of income on 1st November, 2020, after the issues are settled. The assessee has prepaid taxes to the extent of ₹ 13 lacs and hence it is felt that there will be no interest chargeable under Sections 234A, 234B and 234C. Advise the assessee suitable.

(10 marks)

Answer :

- (i) When the return of income has been filed on 30.09.2020 [within due date laid down in Sec. 139 (1)]

Computation of Total Income and tax as per normal provisions

Particulars	(₹ in Lacs)
Gross Total Income	100.00
Less: Deduction u/s 80-ID	60.00
Total Income	40.00
Tax Liability as per normal provisions @31.2%	12.48

Computation of Adjusted Total Income and AMT as per Sec. 115 JC

Particulars	(₹ in Lacs)
Total Income	40.00
Add: Deduction u/s 80-ID	60.00
Adjusted Total Income	100.00
Tax Liability @ 19.24% u/s 115JC Adjusted total income does not exceed 1 crore	19.24
Tax Payable (Higher of Tax on Adjusted Total Income and Total Income)	19.24

- (ii) When the return of income has NOT been filed within due date laid down in Sec. 139(1)

As per the provisions of Sec. 80AC, no deduction will be available u/s 80-ID when the return of income is filed beyond the due date laid down in Sec. 139 (1).

When no deduction is available u/s 80-ID; the AMT provisions u/s 115 JC will not apply.

The total income and tax payable as per normal provisions will be as under:

Particulars	(₹ in Lacs)
Gross Total income	100.00
Less: Deduction U/s 80 - ID (Not allowable in view of sec. 80AC)	Nil
Total Income	100.00
Tax Liability as per normal provisions @ 31.2%	31.20

It can be seen from above that there will be a heavily increased tax liability, if the return is filed on 1st Nov, 2020. The assessee is therefore advised to file the return of income on 30-9-2020.

In case of any error, a revised return can be filed on 1-11-2020.

— Space to write important points for revision —

2013 - Dec [7] (c) The following are the broad details pertaining to Excel Pvt. Ltd., for the assessment year 2019-20. (all amounts are ₹ in lacs):

From specified business covered by Section 35AD: Loss 12

From other non-speculation business :

Unabsorbed depreciation 8

Business loss excluding depreciation 7

The return of income had been filed on 11.01.2020.

For the assessment year 2020-21, the broad position is as under:

From specified business covered by Section 35AD: Profit 9

From other non-speculation business:

Depreciation of FY 2019-20 alone 3

Business income before depreciation 22

How will the brought forward items be set off in the assessment year 2020-21 and what is the business income for the assessment year 2020-21? **(5 marks)**

Answer:

Set off and carry forward of business loss

In terms of **Section 80 and 139(3)**, for carrying forward business loss covered by **Section 72**, the return of income should be filed within the due date as per **Section 139(1)**. Hence the assessee cannot carry forward the non-speculation business loss of ₹ 7 lacs.

Unabsorbed depreciation is not covered by above and hence the unabsorbed depreciation of ₹ 8 lacs can be carried forward and the same will be deemed to be current depreciation.

The need for filing of return within the time stipulated **u/s 139(1)** enjoined by **Sec. 139(3)** is for the purpose of carrying forward losses under **Sections 72(1), 73(2), 74(3) or 74A(3)**. **Loss under Section 73A** is not covered.

Hence filing the return of income on 11-1-2020 will not affect the right of carry forward of loss as per **Section 73A**, which covers loss from specified business **u/s 35AD**.

Loss from specified business covered by **Sec. 35AD** can be set off only against profit from specified business covered by **Sec. 35AD**.

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Business income for AY 2020-21	(₹ in lacs)
From specified business covered by section 35 AD : Profit	9
Less: brought forward loss from specified business set off	9
Balance income	Nil
From other non-speculation business:	
Business income before depreciation	22
Less: Current depreciation as per sec 32 (2) [3+8]	11
Balance income	11
Business income chargeable to tax	11

— Space to write important points for revision —

2014 - May [7] (c) Mr. Vasudevan gifted a sum of ₹ 6 lakhs to his brother's wife on 14-6-2019, On 12-7-2019, his brother gifted a sum of ₹ 5 lakhs to Mr. Vasudevan's wife. The gifted amounts were invested as fixed deposits in banks by Mrs. Vasudevan and wife of Mrs. Vasudevan's brother on 01-8-2019 at 9% interest. Discuss the consequences of the above under the provisions of the Income Tax Act, 1961 in the hands of Mr. Vasudevan and his brother.

(4 marks) [CAFG - II New]

Answer:

In the given case, Mr. Vasudevan gifted a sum of ₹ 6 lakhs to his brother's wife on 14.06.2019 and simultaneously, his brother gifted a sum of ₹ 5 lakhs to Mr. Vasudevan's wife on 12.07.2019. The gifted amounts were invested as fixed deposits in banks by Mrs. Vasudevan and his brother's wife. These transfers are in the nature of cross transfers. Accordingly, the income from the assets transferred would be assessed in the hands of the deemed transferor because the transfers are so intimately connected to form part of a single transaction and each transfer constitutes consideration for the other by being mutual or otherwise.

If two transactions are inter-connected and are part of the same transaction in such a way that it can be said that the circuitous method was adopted as a device to evade tax, the implication of clubbing provisions would be attracted. It was so held by the **Apex Court in CIT vs. Keshavji Morarji (1967) 66 ITR 142.**

Accordingly, the interest income arising to Mrs. Vasudevan in the form of interest on fixed deposits would be included in the total income of Mr. Vasudevan and interest income arising in the hands of his brother's wife would be taxable in the hands of Mr. Vasudevan's brother as per Section 64(1).

This is because both Mr. Vasudevan and his brother are the indirect transferors of the income to their respective spouses with an intention to reduce their burden of taxation.

Note :

In the hands of Mr. Vasudevan's brother, interest income earned by his spouse on fixed deposit of ₹ 5 lakhs alone would be included and not the interest income on the entire fixed deposit of ₹ 6 lakhs, since the cross transfer is only to the extent of ₹ 5 lakhs.

— Space to write important points for revision —

2014 - Nov [2] (b) X Ltd. has two units, unit 'N' and unit 'Y'. Unit 'N' engaged in the business of power generation installed a windmill and had a profit of ₹ 100 lakhs in Assessment Year 2020-21. X Ltd. claimed depreciation of ₹ 120 lakhs on windmill against the profit of ₹ 100 lakhs from power generation business which was eligible for deduction u/s 80-IA. Unit 'Y', engaged in manufacturing of wires, non-eligible business, had a profit of ₹ 70 lakhs for Assessment Year 2020-21.

The loss of ₹ 20 lakhs, i.e. balance depreciation not set-off pertaining to unit 'N' was set-off against the profits of unit 'Y' carrying on non-eligible business, by the assessee, X Ltd. The Assessing Officer was of the view that depreciation relating to a business eligible for deduction u/s 80-IA cannot be set-off against non-eligible business income.

Hence, unabsorbed depreciation should be carried forward to the subsequent year to be set off against eligible business income of the assessee of that year.

Give your views on the correctness of the action of the Assessing Officer.

(4 marks) [CAFG - II New]

Answer:

In CIT v. Swarnagiri Wire Insulations Pvt. Ltd. (2012) 349 ITR 245, the Karnataka High Court observed that it is a generally accepted principle that the deeming provision of a particular section cannot be breathed into another section. Therefore, the deeming provision contained in **Section 80-IA(5)** cannot override the provisions of **Section 70(1)**.

In this case, X Ltd. had incurred loss in eligible business (power generation) on account of claiming depreciation of ₹ 120 lacs. Hence, **Section 80-IA** becomes insignificant, since there is no profit from which this deduction can be claimed.

It is thereafter that **Section 70(1)** comes into play, whereby an assessee is entitled to set off the losses from one source against income from another source under the same head of income. Accordingly, X Ltd. is entitled to the benefit of set off of loss of ₹ 20 lacs (representing balance depreciation not set-off) pertaining to Unit N engaged in eligible business of power generation against profit of ₹ 70 lacs of Unit Y carrying on non-eligible business. Therefore, the net profit of ₹ 50 lacs would be taxable in the A.Y.2020-21. However, once set-off is allowed under **Section 70(1)** against income from another source under the same head, a deduction to such extent is not possible in any subsequent assessment year i.e., the loss (arising on account of balance depreciation of eligible business) so set-off under **Section 70(1)** has to be first deducted while computing profits eligible for deduction under **Section 80-IA** in the subsequent year. Accordingly, in the A.Y.2021-22, the net profits of Unit N has to be reduced by ₹ 20 lacs for computing the profits eligible for deduction under **Section 80-IA** in that year. The action of the Assessing Officer in not permitting set-off of loss of eligible business against profits of non-eligible business in this case is, therefore, not correct.

— Space to write important points for revision —

2014 - Nov [3] (a) Mr. Ghosh held 15% equity shares in ABC Ltd., a private limited company. He gifted all the shares held by him in ABC Ltd., to his wife Mrs. Ghosh on 25/5/2019. The transfer was made without adequate consideration. On 20/6/2019, Mrs. Ghosh obtained a loan of ₹ 80,000 from ABC Ltd., when the company's accumulated profit was ₹ 50,000. What are the tax implications on the above transactions? **(4 marks) [CAFG - II New]**

Answer:

Under section 2(22)(e), any payment by a closely held company by way of loan or advance to its shareholder, being a person who is the beneficial owner of shares, holding not less than 10% of the voting power, is deemed as dividend to the extent to which the company possesses accumulated profits and company require to pay dividend distribution tax u/s 115-0 @ 30%. Such dividend exempt u/s 10(3a) in the hands of share holder.

Therefore, in order to attract the deeming provisions under **Section 2(22)(e)**, the recipient of loan should be a registered shareholder as well as the beneficial owner of share.

In this case, ABC Ltd. liable to pay DDT @ 30% and dividend exempt in the hand of Mr. Ghosh.

— Space to write important points for revision —

2014 - Dec [1] (a) Shree Ram Charitable Trust registered under section 12AA of the Income-tax Act, 1961 runs a school. During the year ended 31st March, 2020, it sold one building for a sum of ₹ 50 lacs. The building was acquired by the trust at ₹ 10 lacs in the year 2014-15. The trust utilised ₹ 41 lacs out of sale consideration in construction of an additional school building. Advise the trust on the taxable capital gain.

(Cost inflation indices are: FY 2014-15 240
 FY 2019-20 289

(4 marks)

(b) The Statement of Profit & Loss of Alpha Limited, a domestic company for the year ended 31st March, 2020 discloses a net profit of ₹ 120 lacs after debiting/crediting the following items:

- | | |
|----------------------------------|-------------|
| (i) Provision for doubtful debts | ₹ 2.40 lacs |
| (ii) Provision for income tax | ₹ 18 lacs |

- (iii) Provision for deferred tax ₹ 9 lacs
- (iv) Depreciation ₹ 15 lacs
(including depreciation on revaluation of assets of ₹ 3 lacs.)
- (v) Profit from export in unit set up in special Economic Zone ₹ 22 lacs
(eligible for deduction under section 10AA)
- (vi) Provision for loss of subsidiary company ₹ 20 lacs
- (vii) Profit on sale of land held as capital asset for 10 years ₹ 10 lacs

The Company has informed you that the entire capital gain on sale of land was invested in bonds of Rural Electrification Corporation Limited within six months from the date of sale.

Details of brought forward losses and unabsorbed depreciation as per books of the company:

Previous Year	Brought forward loss (₹ in lacs)	Unabsorbed depreciation (₹ in lacs)
2016-17	-	4
2017-18	2	3
2018-19	8	2

Compute "book profit" under section 115JB of the Income-tax Act, 1961 for the Assessment Year 2020-21. **(10 marks)**

Answer:

- (a) As per **Section 11(1A)** of the Income-tax Act, where a capital asset held under trust is transferred and if only a part of the net consideration is utilised for acquiring the new capital asset, so much of such capital gain as is equal to the amount, if any by which the amount so utilised exceeds the cost of the transferred asset shall be considered to have been applied for the objects of the trust and the exemption shall be restricted to such amount.

In the given case, the amount of capital gain = ₹ 50 lacs - ₹ 10 lacs = ₹ 40 lacs. The amount considered to be applied for the objects of the trust and exempted **under Section 11(1A)** = ₹ 41 lacs - ₹ 10 lacs = ₹ 31 lacs.

The balance capital gain of ₹ 9 lacs shall be treated as part of other income. Exemption, however, can also be claimed by utilizing 85% of the taxable capital gain towards the objects of the trust within the previous year.

(b) Computation of “Book Profit” of Alpha Limited for Assessment Year 2020-21:

Particular	₹ in lakhs	₹ in lakhs
Net profit as per Statement of Profit & loss		120.00
Add: Provision for doubtful debts	2.40	
Provision for income tax	18.00	
Provision for deferred tax	9.00	
Depreciation	15.00	
Provision for loss of subsidiary company	20.00	64.40
Less: Depreciation (excluding depreciation on revaluation)	12.00	184.40
Lower of brought forward loss or unabsorbed depreciation as per Books	9.00	21.00
Book profit		163.40

Notes:

1. Profit from export in unit set up in Special Economic Zone though eligible for deduction under **Section 10AA** for computation of total income is not eligible for deduction in computing "book profit" for determination of minimum alternate tax.
2. Investment in bonds of Rural Electrification Corporation Limited entitles the assessee company to claim exemption of capital gain in computation of total income. But in computation of "book profit" under **Section 115JB**, capital gain cannot be excluded nor exemption under Section 54F can be claimed.

— Space to write important points for revision —

2014 - Dec [3] (b) The return of income for the assessment year 2019-20 was filed by Mr. Suryanarayana on 21-12-2019. The summarised results were as under:

	(₹ In lac)
Unabsorbed business loss	32
Unabsorbed depreciation	22
Unabsorbed tax holiday relief u/s 80-IB of Unit B	12
For the assessment year 2020-21 for which the returns of income will be filed on 29-09-2020, the pertinent data are as below:	
Sales turnover	1250
Business income before current depreciation	76
Depreciation of current year only	19
Tax holiday relief u/s 80-IB of Unit B	38

Compute the total income of the assessee for the assessment year 2020-21.

(7 marks)

Answer:

Assessment year 2019-20

For the assessment year 2019-20, the return of income was filed on 21-12-2019, which is beyond the due date specified **u/s 139(1)**.

Hence, the assessee cannot carry forward business loss [as per Section 80 read with **Section 139(3)**].

The assessee can however carry forward the unabsorbed depreciation to future years, since there is no requirement that return of income should be filed within the date specified **u/s 139(1)** for the same.

As per **Section 80AC**, where the return of income is filed beyond the due date, the assessee will not be entitled to claim deduction **u/s 80-IB**. So this benefit will also lapse.

Assessment year 2020-21

Since the return of income will be filed within the due date, the assessee can claim deduction **u/s 80-IB**.

Profits and gains of business or profession	
Business income before current depreciation	76
Less: Depreciation for AY 2020-21 (As per Sec. 32(2) , unabsorbed depreciation has to be added to current depreciation)	41
Business income/gross total income	35
Less: Deduction under chapter VIA	
Tax holiday relief u/s 80-IB (To be restricted to GT)	35
Total Income	0

If time limit is available balance of deduction u/s 80-IB of ₹ 3 lacs can be carried forward.

— Space to write important points for revision —

2015 - May [3] (b) With brief reasons answer the following in terms of Chapter VI-A of the Income-tax Act, 1961:

- (ii) Mr. Jaju deposited ₹ 65,000 with life insurance corporation for the maintenance of his mother who suffers from disability of 90%. She is wholly dependent on him. How much is deductible?
- (iii) Mr. Shiva has gross total income of ₹ 3,75,000. He has given the following donations:
- | | |
|--------------------------------------|--|
| National Children's Fund | ₹ 25,000 - by cheque |
| Prime Minister's Drought Relief Fund | ₹ 30,000 - by cheque |
| National Blood Transfusion Council | ₹ 40,000 - by cash |
| National Illness Assistance Fund | ₹ 20,000 - equally by cash and cheque. |

Compute the amount deductible under section 80G.

- (iv) Mr. Manoj a computer software engineer co-authored a book on advanced computer programming alongwith his friend. He received ₹ 4,10,000 as lumpsum royalty in March, 2020. How much of royalty is taxable?

(6 marks) [CAFG - II New]

Answer:

	Deduction (₹)	Reasons										
(ii)	1,25,000	<p>As per Section 80DD, an assessee, being an individual or HUF, who is resident in India during the previous year, and has -</p> <ul style="list-style-type: none">- incurred any expenditure for medical treatment (including nursing), training and rehabilitation of person dependent on him, who is suffering from disability or- paid or deposited any amount under a scheme framed by LIC or other insurer for the maintenance of a dependent, being a person with disability, would be eligible for deduction of ₹ 75,000, in case the dependent is a person with disability. In case the dependent is a person with severe disability, the deduction under this section would be ₹ 1,25,000. <p>Mr. Jaju would be eligible for deduction under section 80DD since he has deposited money with LIC for maintenance of his mother, who suffers from severe disability (80% or more of one or more disabilities) and is wholly dependent on him. A flat deduction of ₹ 1,25,000 would be available to him under section 80DD, irrespective of the amount deposited with LIC.</p>										
(iii)	60,000	<p>Mr. Shiva would be eligible for deduction under section 80G in respect of the donations made during the previous year as follows:</p> <table><tr><th>Donation to</th><th>Amount of donation (₹)</th><th>Mode of donation</th><th>% of donation eligible for deduction</th><th>Amount of deduction (₹)</th></tr><tr><td>National Children's Fund</td><td>25,000</td><td>Cheque</td><td>100%</td><td>25,000</td></tr></table>	Donation to	Amount of donation (₹)	Mode of donation	% of donation eligible for deduction	Amount of deduction (₹)	National Children's Fund	25,000	Cheque	100%	25,000
Donation to	Amount of donation (₹)	Mode of donation	% of donation eligible for deduction	Amount of deduction (₹)								
National Children's Fund	25,000	Cheque	100%	25,000								

		Prime Minister's Drought Relief Fund	30,000	Cheque	50%	15,000
		National Blood Transfusion Council	40,000	Cash	100%	Nil (Cash donation in excess of ₹ 10,000 would not qualify for deduction)
		National Illness Assistance Fund	20,000	₹ 10,000 by cheque & ₹ 10,000 by cash	100%	20,000 (The whole amount qualifies for deduction, since cash donation in this case does not exceed ₹ 10,000)
(iv)	3,00,000	<p>The entire royalty would be first included in Manoj's income under the head "Income from other sources".</p> <p>Thereafter, Mr. Manoj is eligible for deduction from gross total income under section 80QQB, of the whole of the income derived by him on account of any lumpsum consideration in the form of royalty in respect of a book, being a work of literary or scientific nature, or ₹ 3,00,000, whichever is less.</p> <p>Book on Advanced computer programming would fall within the description of work of literary or scientific nature [Dassault Systems K.K. In Re. (2010) 322 ITR 125 (AAR)].</p>				

		<p>In this case, the eligible deduction under section 80QQB would be the lower of ₹ 4,10,000, being the amount of lumpsum royalty received by Manoj or ₹ 3,00,000.</p> <p>The net effect is that out of ₹ 4,10,000 included in Manoj's income, he can claim deduction of ₹3,00,000 under section 80QQB. The balance of ₹ 1,10,000 would form part of his total income.</p>
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Note : It has been assumed that Mr. Jaju, Mr. Shiva and Mr. Manoj are resident Indians.

— Space to write important points for revision —

2015 - May [7] (b) Examine the correctness of the claim made by the assessee in the below mentioned case.

Mr. Johny has business income of ₹ 4,28,000 and salary income of ₹1,30,000 for the financial year 2019-20. His minor son has agricultural income of ₹ 1,00,000 for the same year. The Assessing Officer clubbed the agricultural income of minor son for determining the income tax liability of Mr. Johny.

Mr. Johny contends that the agricultural income is exempt U/s. 10(1) and not covered by Section 2(24) hence should not be clubbed even for adopting higher income-tax rate.

(4 marks) [CAFG - II New]

Answer:

The facts of the case are similar to **Suresh Chand Talera v. Union of India (2006) 282 ITR (341) (M.P.)**.

In that case, the High Court observed that the definition of income under **Section 2(24)** is inclusive and not exhaustive. Hence, the fact that agricultural income has not been specified as one of the items in **Section 2(24)** does not mean that agricultural income is not included in the word "income" wherever the word "income" has been used in the Act.

Section 10 provides that in computing the income of the previous year of a person, any income falling in any of the clauses mentioned therein shall not be included. The first clause mentioned therein is "agricultural income".

Thus, **Section 10** makes it clear that agricultural income is income but by express provision therein, agricultural income has been excluded from the total income of an assessee for the purpose of levy of income-tax.

However, **Section 4(1)**, which is the charging Section, provides that while the total income of a person is to be determined in accordance with the provisions of the **Income-tax Act, 1961**, the rate or rates at which income-tax will be paid on such income for any assessment year will be stipulated in the relevant Finance Act. The Annual Finance Act provides that the net agricultural income shall be taken into account in the manner provided therein for the purpose of determining the rates of income-tax applicable to the income of the assessee.

Therefore, agricultural income of the minor child of the assessee has to be included in the income of the assessee for the purpose of determining the rate of income-tax applicable to the income of the assessee.

Applying the rationale of the above ruling, the contention of Mr. Johnny is incorrect. The agricultural income of his minor son, has to be included in the income of Mr. Johnny for rate purposes, since the phrase “income as arises or accrues to his minor child” used in **Section 64(1A)** includes agricultural income also.

— Space to write important points for revision —

2015 - June [2] (a) Ray Charitable Trust was formed on 1st April, 2018. The object of the trust is to provide financial assistance to the individuals who are below the poverty line and undergoing medical treatment in hospitals. The trust makes direct payments to the concerned hospitals where the individuals are admitted for treatment.

The trust applied for registration under Section 12AA of the Income-tax Act, 1961 on 4th April, 2020 and the registration was granted by the Commissioner of Income Tax on 30th April, 2020.

Income of the trust from properties held in trust and voluntary contribution (not forming part of corpus of the trust) during the previous year 2018-19 and 2019-20 were ₹ 3.50 lacs and 5 lacs respectively. The trust applied ₹ 2 lacs and 3.50 lacs respectively, out of such incomes of the two years, towards its objects/purpose.

The trustees seek advice from you as to whether the trust is entitled to exemption under Section 11 in the assessment for Assessment Year 2019-2020, even though registration under Section 12AA was sought and granted in April, 2020. The proceeding for Assessment Year 2019-20 is pending before the Assessing Office.

What should be your opinion?

(4 marks)

- (b)** BKG LLP, a Limited liability partnership engaged in production of micro ovens is entitled to deduction under Section 10AA of the Income-tax Act, 1961 in respect of export profit of a unit established in a notified special economic zone (SEZ). It has another unit engaged in production of same item, but this unit is not entitled to deduction under Section 10AA. Relevant details are furnished below:

Profit of unit located in SEZ	₹ 30,50,000
Export sales of above unit	₹ 90,00,000
Domestic sales of above unit	₹ 10,00,000
Profit of unit located in other area	₹ 10,00,000

Compute the income-tax liability of the assessee-LLP for Assessment Year 2020-21.

(10 marks)

Answer:

- (a) Benefit of registration to trust for earlier year:**

As per, the finance (No. 2) Act, 2014, with effect from 1st October, 2014 in case where a trust or institution has been granted registration under **Section 12AA**, the benefit of **Section 11 and 12** shall be available in respect of any income held under trust in any assessment proceeding for an earlier assessment year which is pending before the assessing officer as on the date.

However, the above benefits are subject to condition that the objects and activities of the trust or institution in the relevant earlier assessment year should be the same as those on the basis of which registration under **Section 12AA** was granted.

Therefore, Roy Charitable Trust should be advised to claim the benefit of **Section 11** in respect of income from property held in trust and voluntary contribution received during the previous year 2018-19 and 2019-20 in assessment proceeding for assessment year 2020-21, if the above condition is satisfied.

(b) Computation of total income and tax liability of BKG LLP for assessment year 2020-21 under normal provisions

Particulars	(₹)	(₹)
Profit of unit located in SEZ	30,50,000	
Less: Deduction under Section 10AA		
$\left[\begin{array}{l} \text{Profit of business of Undertaking} \\ \text{being SEZ unit} \end{array} \right] \times \frac{\text{Export Turnover of Undertaking}}{\text{Total Turnover of business of Undertaking}}$ $[\text{₹ } 30,50,000 \times 90,00,000 \div 1,00,00,000]$	27,45,000	
Taxable profits of SEZ unit		3,05,000
Profit located in other area		10,00,000
Total income		13,05,000
Tax on above @ 30%	3,91,500	
Health and Education cess @ 4%	15,660	
Total Tax Payable		4,07,160

Computation of adjusted total income and alternate minimum tax for the assessment year 2020-21

Particulars	(₹)
Total income as computed	13,05,000
Add: Deduction under Section 10AA	27,45,000
Adjusted total income	40,50,000
Tax on above @ 18.5%	7,49,250
Since tax on adjusted total income is higher than tax calculated on total income, adjusted total income is deemed to be total income.	
Tax payable (7,49,250 + Health and Education cess @ 4%)	7,79,220

2015 - June [3] (c) Brett Lee gives you the following information for the previous year 2019-20:

	₹
(i) Income from business (computed)	6,00,000
(ii) Dividend income from shares in listed Indian companies	90,000
(iii) Consultancy charges paid to investment consultant for investing in shares referred in (ii) above. This has been deducted while computing business income given in (i) above.	8,000
(iv) Interest expenditure relating to both taxable and non-taxable income. The entire amount has been deducted while computing income from business given in (i) above.	1,00,000

Value of investments on the first and last days of the previous year are ₹ 8 lakhs and ₹ 10 lakhs respectively.

Value of total assets appearing in Balance Sheet on the first and last day of the previous year are ₹ 40 lakhs and ₹ 50 lakhs respectively.

Brett Lee claims that no expenditure was incurred for earning exempt income during the year. The Assessing Officer is not satisfied with the claim of the assessee.

Compute the total income of Brett Lee for the assessment year 2020-21.

(6 marks)

Answer:

Expenditure in relation to exempt income:

Expenditure incurred in relation to exempt income is not allowed as deduction while computing the income chargeable to tax, as per **Section 14A of the Income-tax Act, 1961**. However, if the Assessing Officer is not satisfied with the correctness of the claim of the assessee in relation to exempt income or with the claim made by the assessee that no expenditure was incurred in relation to exempt income, he shall determine the amount of expenditure in relation to such income in the manner provided in Rule 8D.

Computation of amount as per rule 8D

Particulars	₹
Amount of expenditure directly relating to exempt income:	
Consultancy charges paid to investment consultant	8,000
Calculation of interest expenditure attributable to exempt income	
Interest expenditure × Average value of investment on the first and last day of the previous year ÷ Average of total assets of the assessee appearing in the balance sheet on the first and last day of the previous year i.e. ₹ 1,00,000 × 9,00,000 ÷ 45,00,000	20,000
One percent of the average value of investment, income from which is exempt from tax i.e. 1% of the average value of investment in shares. i.e. ₹ 9,00,000 × 1%	9,000
Total amount of expenditure in relation to exempt income	37,000
Computation of total income	
Income from business	6,00,000
Add: Amount of expenditure added U/s.14A	37,000
Total Income	6,37,000

Further an assumption is to be made as follows:

Since it has been stated in the question that Mr. Brett Lee claims no expenditure was incurred by him for exempt income earned, it is logical to assume that total interest expenditure of ₹ 1,00,000 has been deducted to arrive at the income from business of ₹ 6,00,000. The amount of interest expenditure in relation to exempt income has been added back to compute the resultant total income.

— Space to write important points for revision —

2015 - June [6] (b) Lasya (P) Ltd. engaged in manufacture of toys, reported a net profit of ₹ 60,00,000 in the Profit and Loss Account for the year ended 31.03.2020. The following amounts were debited/credited to profit and loss account:

- (i) Non-compete fee paid to an ex-director ₹ 10,00,000 on 10.12.2019 and no tax was deducted at source.
- (ii) One employee who was employed only upto December, 2019 was paid salary of ₹ 5,00,000 and on which no tax was deducted at source. The whereabouts of the employee is not known and it is not possible to ascertain whether he has admitted and paid income tax on such salary income.
- (iii) ₹ 11,50,000 was incurred towards sponsoring of higher studies of a director's son in United Kingdom.
- (iv) ₹ 15,00,000 was incurred on glow-sign boards displayed at dealer outlets and on which depreciation at 15% was claimed.
- (v) One factory in Meerut was closed and a sum of ₹ 12,00,000 was paid as retrenchment compensation to employees on its closure.
- (vi) Dividend received from its subsidiary company located in Mysore ₹ 1,05,000.
- (vii) ₹ 1,20,000 representing amount forfeited after the buyer of a vacant site backed out of the agreement.

Compute the total income of Lasya (P) Ltd. for the assessment year 2020-21 (ignore MAT provisions). **(6 marks)**

Answer:

Lasya (P) Ltd.

Computation of total income for the year ended 31.03.2020

Particulars	₹
Net Profit as per Profit and Loss Account	60,00,000
<i>Add:</i>	
Non-compete fee paid to ex-director and on which TDS under Section 194J should have been deducted. However, the disallowance is limited to 30% as per Section 40(a)(ia).	3,00,000
Salary paid to an employee without deduction of tax at source is liable for disallowance at 30% as Section 40(a)(ia) will apply. The scope of disallowance U/s 40(a)(ia) has been widened by the Finance (No.2) Act, 2014	1,50,000

Expenditure incurred for sponsoring higher studies of director's son has no nexus to the business of the assessee company and hence is not deductible. [<i>Echjay Forgings Ltd v. ACIT (2010) 328 ITR 286 (Bom)</i>].	11,50,000
Retrenchment compensation paid to employees on closure of one unit when the business of the assessee is continued, such expenditure is deductible. Therefore, the amount paid is a deductible expenditure. [<i>CIT v. DCM Ltd. (2010) 320 ITR 307 (Del)</i>]	
	76,00,000
Less:	
Expenditure incurred on glow-sign boards displayed in dealers outlets is revenue expenditure as they have short life and the sign board is not an asset of permanent nature. It is eligible for deduction as revenue expenditure. Since depreciation at 15% has already been claimed, the balance is deductible. [₹15 lakhs minus ₹ 2,25,000] [<i>CIT v. Orient Ceramics & Industries Ltd. (2013) 358 ITR 49 (Del)</i>]	12,75,000
Dividend received from its subsidiary company exempt under Section 10(34)	1,05,000
Advance forfeited on transfer of capital asset taxable under the head 'other sources' hence, excluded now.	1,20,000
	15,00,000
Income from Business (A):	61,00,000
Income from Other sources (B): Advance forfeited for transfer of vacant site	1,20,000
Total Income (A + B)	62,20,000

— Space to write important points for revision —

2015 - Dec [2] (a) VKS Hotels (P) Ltd. located in Nilgiri District of Tamilnadu State, was established in April, 2016. Nilgiri District is a specified district having 'World Heritage Site' status and is eligible for deduction under Section 80-ID of the Income Tax Act, 1961. It furnishes you the following information for the year ended 31.03.2020:

- (i) Net Profit as per Profit and Loss Account ₹ 20 lakhs.
- (ii) Depreciation debited in the books ₹ 70 lakhs.
- (iii) Amount received towards Dharmadha by separately mentioning in the sales bills ₹ 7,00,000. This has not been credited to Profit and Loss Account.
- (iv) ₹ 10 lakhs was paid towards use of trademark for 10 years in April, 2019. This has been debited to Profit and Loss Account.
- (v) Provision for gratuity based on actuarial valuation debited to Profit and Loss Account ₹ 8 lakhs.
- (vi) Dividend received from subsidiary Indian company credited to Profit and Loss Account ₹ 2,00,000.
- (vii) Depreciation as per Income Tax Rules ₹ 60 lakhs.
- (viii) ₹ 5,00,000 was paid towards feasibility study for examining proposals for commencing a textile business and the project was abandoned.

Compute the total income of VKS Hotels (P) Ltd. for the Assessment Year 2020-21. Ignore MAT provisions. **(7 marks)**

Answer:

Computation of total income of Raghu Hotels (P) Ltd. for the Asst. year 2020-21

Particulars	₹	₹
Net Profit as per Profit and Loss Account		20,00,000
Add:		
Depreciation debited to Profit and Loss Account		70,00,000
Amount paid towards use of trademark is a revenue expenditure since the assessee has not purchased trademark on outright basis		Nil
Provision for gratuity debited to Profit and Loss Account not allowable – Sec. 40A(7)		8,00,000

Expenditure towards feasibility of study for new business not allowable business (since this is unrelated to existing business - <i>CIT Vs. Priya Village Roadshows Ltd. 332 ITR 594</i>)		5,00,000
		1,03,00,000
Less: Amount received from Dharmada not liable to tax - Bijili Cotton Mills (P) Ltd.'s case Supreme Court	7,00,000	
Dividend received from subsidiary company - Exempt U/s 10(34)	2,00,000	
Depreciation as per Income-tax Rules	60,00,000	69,00,000
Gross Total Income		34,00,000
Less: Deduction U/s 80-ID @ 100% of the profits		34,00,000
Total Income		NIL

— Space to write important points for revision —

2015 - Dec [6] (b) Rishikesh Fertilizers Ltd., seeks your opinion on the deductibility of the following items debited to the Profit and Loss Account, while computing its business income:

- ₹ 50,000 paid as secret commission to a Government department official, an unidentified person. The payment has been approved by the Board as a normal trade practice.
- ₹ 2 lakhs incurred towards issue of convertible debentures, the debentures being convertible into equity shares after one year from the date of issue.
- ₹ 1 lakh paid to a local gang for rescuing an executive director who was kidnapped.

(7 marks)

Answer:

- Any expenditure incurred in contravention of any law, for the time being in force, is not deductible **U/s 37** of the Income-tax Act, 1961, even though it is incurred wholly and exclusively for the purposes of business.

Secret commission paid to a Government official is covered by the above and hence is not deductible. It is not relevant that it is a trade practice or has been approved by the Board. This is not secret commission to some general public, but to a Govt. official, which is not ethical.

Further, since no tax would be deducted at source (as the payee is not identified), the provisions of **Section 40(a)(ia)** will also be attracted. Disallowance will arise on this count also.

Some of the earlier decisions rendered on the issue holding that secret commission might be allowable, will not hold good after the introduction of **Section 40(a)(ia)**.

- (ii) Expenses relating to issue of convertible debentures is in respect of a loan and cannot be equated to expenses incurred for issue of share capital. It is a deductible expenditure.

It is immaterial that the debentures are convertible into equity shares after one year. Hence ₹ 2 lacs can be allowed as deduction.

In the case of **CIT Vs. Secure Meters 321 ITR 611 (SC)** the Supreme Court has clearly held that expenditure on issue of debentures, whether partly or fully convertible, is a deductible expenditure.

- (iii) Ransom money paid to for rescuing the executive director, who was kidnaped, cannot be said to be an expenditure incurred in contravention of any law, for the time being in force and not deductible **U/s 37** of the Income-Tax Act, 1961.

Therefore the said payment can be claimed as deduction, being a payment made wholly and exclusively in connection with the business. Without the executive director, the functioning of the company will be affected and hence expenditure incurred to rescue him will be deductible.

Similar view was taken in **CIT Vs. Khem Chand Moti Lal Jain, Tobacco Products (P) Limited 340 ITR 99 (P&H)**.

2015 - Dec [9] Sanvitha Manufacturing Industries Ltd. reports a net profit of ₹ 15 lakhs for the year ended 31.03.2020 after debit/credit of the following items:

A. Items debited to Profit and Loss Account:

	₹
(i) Provision for income tax	5,00,000
(ii) Expenditure towards amalgamation of Cochin Industries P Ltd., Cochin in December 2019.	8,00,000
(iii) Fees for technical services paid to foreign company without deduction of tax at source and no TDS was remitted till the date specified in Section 139(1).	1,00,000
(iv) Provision for Bad and Doubtful Debts	6,00,000
(v) Depreciation	40,00,000
(vi) Cash payments for purchase of raw materials in excess of ₹ 10,000. Aggregate of such payments	7,00,000
(vii) Bank term loan interest (actually paid during the year and up to the 'due date' for filing the return specified in Section 139(1) ₹ 3,00,000)	8,00,000
(viii) Rent paid for a branch premises owned by one of the directors who has 22% stake in the company. (25% of the expenditure is excessive to the prevailing market rent).	12,00,000

B. Items credited to Profit and Loss Account:

(i) Revaluation reserve in respect of fixed assets	7,50,000
(ii) Agricultural income –net	3,50,000
(iii) Deferred tax liability	4,00,000

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Additional Information :

- (i) Depreciation debited to Profit and Loss Account given above includes ₹ 10,00,000 in respect of assets revalued.
- (ii) The following amounts are brought forward as on 01.04.2019, relating to the Assessment Year 2019-20:

Particulars	As per Books of Account ₹	As per Income Tax assessment ₹
Business Loss	22,00,000	Nil
Unabsorbed Depreciation	17,00,000	35,00,000

You are required to compute for the Assessment Year 2020-21:

- (i) Income liable to tax under Section 115JB of the Income Tax Act, 1961; and
- (ii) Total income chargeable to income tax, as per normal provisions.

(15 marks)

Answer:

Sanvitha Manufacturing Industries Ltd.

Computation of income liable to tax under Section 115JB for the A.Y. 2020-21

Particulars		₹
Net Profit as per Profit and Loss Account		15,00,000
<i>Add:</i>	Provision for income-tax	5,00,000
	Expenditure towards amalgamation of Cochin Industries (P) Ltd. Cochin in December 2019 -need not be added back for computing income liable to tax u/s 115JB	Nil
	Fees for technical services paid to foreign company without deduction of tax at source - though liable for disallowance u/s 40(a)(I), no adjustment is required u/s 115JB.	Nil

	Provision for bad and doubtful debts -tantamount to provision for diminution in value of asset i.e. sundry debtor - hence added		6,00,000
	Depreciation debited to P&L account - added		40,00,000
	Cash payment for purchase of raw materials exceeding ₹ 10,000. Aggregate payments ₹ 7,00,000 - does not require any adjustment U/s115JB		Nil
	Bank term loan interest whether paid or not has no significance while computing income liable to tax U/s 115JB		Nil
	Rent paid to branch premises to a person having substantial interest is liable for disallowance U/s 40A(2)(b) but has no impact while computing income U/s 115JB.		Nil
			66,00,000
Less:	Amount withdrawn from revaluation reserve credited to P&L account	7,50,000	
	Agricultural income exempt U/s.10	3,50,000	
	Deferred tax liability credited to P&L account	4,00,000	15,00,000
			51,00,000
Less:	Depreciation excluding depreciation in respect of assets revalued (₹40 lakhs minus ₹10 lakhs)	30,00,000	
	Brought forward business-Loss or-unabsorbed depreciation as per books of account - whichever is less is deductible	17,00,000	
			47,00,000
	Income liable to tax U/s115 JB		4,00,000

Sanvitha Manufacturing Industries Ltd.
Computation of total income for the A.Y.2020-21

Particulars		₹
Net Profit as per Profit and Loss Account		15,00,000
Add:	Provision for income-tax	5,00,000
	Expenditure towards amalgamation of Cochin Industries (P) Ltd. Cochin in December 2019 - the expenditure is deductible in 5 equal annual instalments. 4/5th of the expenditure is added back (Section 35DD).	6,40,000
	Fees for technical services paid to foreign company without deduction of tax at source -liable for disallowance u/s 40(a)(I).	1,00,000
	Provision for bad and doubtful debts -disallowed	6,00,000
	Depreciation debited to P&L account - added back	40,00,000
	Cash payment for purchase of raw materials exceeding ₹ 10,000. Aggregate payments ₹ 7,00,000- disallowed u/s 40A(3)	7,00,000
	Bank term loan interest actually paid is only allowable. Unremitted portion of term loan interest added back	5,00,000
	Rent paid to branch premises to a person having substantial interest: Liable for disallowance u/s 40A(2)(b)	3,00,000
		88,40,000

Less:	Amount withdrawn from revaluation reserve credited to P&L account	7,50,000	
	Agricultural income exempt U/s10	3,50,000	
	Deferred tax liability credited to P&L account	4,00,000	15,00,000
			73,40,000
Less:	Depreciation excluding depreciation in respect of assets revalued (₹ 40 lakhs minus ₹10 Lakhs)	30,00,000	
	Unabsorbed depreciation brought forward from earlier years	35,00,000	
			65,00,000
	Total Income		8,40,000

— Space to write important points for revision —

2016 - May [3] (a) M/s. XYZ is commenced the business of manufacturing iron rods on 1st April, 2019. It had employed 200 workmen during the year which included the following.

Workman	No. of persons	Salary per month (in ₹)
Casual Labour	50	5,000
Workmen employed through contractor	25	7,500
Skilled labour	50	12,500
Semi-skilled labour	50	6,000
Skilled labour employed from 01-10-2019	25	12,500

Compute deduction available to M/s. XYZ if the profits derived during the financial year 2019-20 is ₹ 100 lakhs. **(6 marks) [CAFG - II New]**

Answer:

Computation of deduction under Section 80JJAA

Additional wages paid to new workers:

$$(\text{₹ } 12,500 \times 50 \times 12) + (\text{₹ } 6,000 \times 50 \times 12) = \text{₹ } 1,29,75,000 + (12,500 \times 25 \times 6)$$

Deduction under Section 80 JJAA:

$$30\% \text{ of ₹ } 1,29,75,000 = \text{₹ } 38,92,500$$

Working Note:

Number of new regular workmen:

Total No. of workmen employed	200
Less: Casual Labour	50
Less: Employed through contract labour	25
Less: Workmen employed for a period of less than 150 days	Nil
Total number of new regular workmen	125

— Space to write important points for revision —

2016 - June [3] (b) Krishna Ltd. distributed a dividend of ₹ 42 lakhs on 28.09.2019. It has received the following dividends:

- A sum of ₹ 5,00,000 from Info-Computer (P) Ltd. in which it holds 90% equity capital. Info Computer (P) Ltd. paid DDT under Section 115-O on the dividend paid.
- A sum of ₹ 20,00,000 from Norway Trading LLC, Dubai in which Krishna Ltd. has 60% equity capital.

From the above information, compute the amount of dividend distribution tax payable by Krishna Ltd. **(8 marks)**

Answer:

Computation of Dividend Distribution Tax payable by Krishna Ltd.

Particulars	Note	(₹)	(₹)
Amount of dividend distributed			42,00,000
Less: Deduction permissible under Section 115-O(1A)			

Dividend received from Indian subsidiary, Info-Computer P Ltd.	1	5,00,000	
Dividend received from foreign subsidiary, Norway Trading LLC, Dubai	2	20,00,000	
			25,00,000
Net Dividend			17,00,000
Grossing up of dividend $17,00,000 \times 100 / 85$			20,00,000
DDT @ 15%		3,00,000	
Add: Surcharge @ 12%	3	36,000	
Add: Health and Education cess @ 4% on ₹ 3,36,000		13,440	
Total Tax Liability			3,49,440

Note 1: Amount of dividend received by a domestic company from its subsidiary which is also a domestic company and who has paid DDT shall be reduced for computing DDT of the parent company in terms of **Section 115-O(1A)**.

Note 2 : When dividend is received from a foreign company and the tax is payable by the recipient domestic company under **Section 115BBD** (by virtue of holding more than 26% or more in the nominal value of equity share capital of the foreign company), such amount shall also be reduced for computing the DDT payable by the recipient domestic company.

Note 3: Surcharge on dividend distribution is applicable @ 12% regardless of quantum of dividend or the total income of the paying company.

— Space to write important points for revision —

2016 - June [6] Ind Bharat Ltd. is engaged in manufacturing of textiles. Its Statement of Profit & Loss shows a Net Profit of ₹ 108 lakhs for the year ended 31.03.2020, after debiting or crediting the following items:

- (i) Depreciation debited as per SLM basis ₹ 10 lakhs.
- (ii) Normal depreciation allowable ₹ 21 lakhs. The company has made addition to machinery, a new twisting machine on 12th June, 2019 of ₹ 15 lakhs. The new machine was put to use on 30th June, 2019.

- (iii) The company made cash payment for purchases on 05.06.2019 (bank holiday) ₹ 2,00,000.
 - (iv) A bad debt write off in Financial Year 2015-16 of ₹ 5,00,000 was allowed in the assessment. ₹ 2,00,000 was recovered this year and is credited to general reserve.
 - (v) Cash payment of ₹ 80,000 to a transporter on 04.06.2019 and who furnished his PAN.
 - (vi) GST of ₹ 1,50,000 for the Financial Year 2018-19 was paid on 10.02.2020.
 - (vii) Rent paid ₹ 2,40,000 inclusive of GST of ₹ 28,000. Tax was not deducted on the GST on rent paid.
 - (viii) Expenditure towards alteration of Memorandum of Association for increase in authorized share capital ₹ 1 lakh.
 - (ix) Legal expenses for issue of bonus shares ₹ 5,00,000.
 - (x) Donation paid to a political party ₹ 4,50,000 by cheque and ₹ 2,70,000 by cash.
 - (xi) Purchase of raw material from a company in which the directors are interested for ₹ 32,00,000 and the market value of the goods is ₹ 30 lakhs.
 - (xii) Expenditure incurred towards complying with Corporate Social Responsibility obligation under the Companies Act, 2013 ₹ 3 lakhs.
- Compute the total income and tax payable by the company for the Assessment Year 2020-21. Ignore MAT provisions. **(16 marks)**

Answer:

**Computation of total income and tax payable of Ind Bharat Ltd.
For the Assessment year 2020-21**

Particulars	₹ in lakhs	
Net Profit as per Profit and Loss Account		108.00
Add: Amount debited to Profit & Loss Account but not allowed and other amounts		
Depreciation as per SLM method		10.00
Cash payment for purchases on bank holiday - allowed		—

Bad debt recovered during the year credited to general reserve is chargeable to tax as the write off was allowed in the assessment earlier		2.00
Cash payment to transporter is liable for disallowance since the payment exceeds ₹ 35,000		0.80
TDS on rent payment excluding GST is Hence no disallowance		—
Expenses in connection with alternation of Memorandum of Association for enhancing authorized capital is not deductible. [Punjab State Industrial Development Corpn Ltd. v. CIT 225 ITR 792 (SC)]		1.00
Donation to political party considered under Section 80GGB		7.20
Expenditure being excessive or unreasonable compared to fair market value to be disallowed under Section 40A(2)(a)		2.00
Expenditure incurred towards CSR, not allowable in view of Section 37(1)		3.00
		134.00
Less: Deductions allowed		
Normal Depreciation	21	
Additional depreciation @ 20% on ₹ 15 lakhs	3	
GST paid is deductible on payment basis under Section 43B . Since it is debited on payment no adjustment is required	—	

Legal expenses for issue of bonus shares is deductible revenue expenditure as held in CIT Vs. General Insurance Corporation 240 ITR 139 . Since the amount is already debited hence no adjustment is required	_____	
		24.00
Business income/ Gross Total Income		110.00
Less: Deduction under Chapter VI-A		
Donation to political party by cash not allowed		
Donation to political party by cheque allowed U/s.80GGB		4.50
Total Income		105.50
Income tax liability @ 30%	31,65,000	
Surcharge @ 7% is applicable as the income exceeds ₹ 100 lakhs	2,21,550	
Health and Education cess @4%	1,35,462	
Total tax liability	35,22,012	

_____ Space to write important points for revision _____

2016 - Dec [5] Peacock Ltd. is engaged in manufacturing of steel and cement. Its Statement of Profit & Loss shows a Net Profit of ₹ 45 lakhs for the year ended 31.03.2020. The following information is provided to you:

- A provision was made to meet the loss suffered by subsidiary company by debiting Profit & Loss A/c ₹ 15 lakhs.
- Provision for bad and doubtful debts debited to Profit & Loss A/c is ₹ 10 lakhs.
- Deferred tax reversed and credited to Profit & Loss A/c ₹ 7 lakhs.
- Agriculture income credited to Profit & Loss A/c ₹ 2 lakhs.
- Dividend from Indian companies credited to Profit & Loss A/c ₹ 1 lakh.

- (f) Long term capital loss from off market sale of shares of listed companies ₹ 50,000. This is debited to Profit & Loss A/c.
- (g) A liability of ₹ 5 lakhs relating to earlier year omitted to be recorded in the books of account is now recorded by debiting Profit & Loss A/c.
- (h) Proposed dividend debited to Profit & Loss A/c ₹ 6 lakhs.
- (i) Amount of depreciation debited to Profit & Loss A/c ₹ 12 lakhs which includes depreciation on account of revaluation of assets of ₹ 3 lakhs.
- (j) The company has brought forward business loss of ₹ 4 lakhs and unabsorbed depreciation of ₹ 10 lakhs as per the books of account.
- (k) The company made one contract payment of ₹ 8 lakhs without deduction of tax at source.
- (l) Provision for income tax debited to Profit & Loss A/c ₹ 20 lakhs.
- Compute the minimum alternate tax under Section 115JB payable by the company for the assessment year 2020-21. *Ignore regular computation provisions.* **(16 marks)**

Answer:

**Computation of Book Profit & MAT of Peacock Ltd.
For A.Y. 2020-21**

	(₹)	(₹)
Net Profit as per Profit & Loss Account		45,00,000
<i>Add:</i>		
Provision for loss of subsidiary company		15,00,000
Provision for bad and doubtful debts - being a provision for diminution in value of asset		10,00,000
Long term capital loss on sale of shares through off market transaction debited to profit and loss account not to be adjusted (<i>Apollo Tyres Ltd v. CIT (255 ITR 273 (SC))</i>)		Nil

Prior period item of liability debited to Profit and loss account not to be adjusted (Tamilnadu Cement Corpn Ltd v. Joint CIT (340 ITR 58 (Mad)))		Nil
Proposed dividend debited to Profit and loss account		6,00,000
Depreciation debited to Profit and loss account		12,00,000
Contract payment without deduction of tax at source - not liable to be adjusted		Nil
Provision for income tax debited to profit and loss account		20,00,000
		1,08,00,000
Less:		
Deferred tax liability reversed and credited to profit and loss account is excluded	7,00,000	
Agricultural income credited to profit and loss account -excluded	2,00,000	
Dividend from Indian Companies-excluded	1,00,000	
Depreciation excluding depreciation on revalued amounts is deductible	9,00,000	
Brought forward loss or unabsorbed depreciation as per books of account whichever is less to be deducted	4,00,000	(23,00,000)
Book Profit u/s.115JB		85,00,000
MAT at 15.% plus cess @4%		13,26,000
Rounded off		13,26,000

Note: (k) Contract Payment of ₹ 8,00,000 without TDS is not relevant for calculation of Book Profit.

— Space to write important points for revision —

2016 - Dec [6] (a) India Green LLP is carrying on two businesses viz. (i) wind power generation; and (ii) solar panels trade and erection. The firm has maintained two separate books of account. The wind power generation was commenced in the financial year 2014-15 and the solar panels trade and erection business in the financial year 2018-19. The following details are furnished:

- (i) Net Profit from wind generation before deduction under Section 80-IA ₹ 55 lakhs.
- (ii) Net Profit from solar panels trade and erection ₹ 30 lakhs before debiting interest on capital and working partners' salary.
- (iii) The LLP agreement provides for interest on capital and working partner salary payable only in respect of solar panels trade and erection. No such payment is permissible out of the income of wind power generation. The amount of capital of the partners as per partnership agreement in solar panels trade and erection which is eligible for interest is ₹ 100 lakhs and the LLP agreement authorizes working partner salary of ₹ 18 lakhs.
- (iv) The LLP has not claimed deduction under Section 80-IA so far. There is no unabsorbed depreciation or business loss brought forward by the LLP from either of the businesses.
- (v) The depreciation on wind mill meant for generation of power claimed so far amounts to ₹ 300 lakhs. The WDV of the wind mill as on 01.04.2019 is to be taken as 'nil'.

Compute the total income of the LLP for the assessment year 2020-21. *Computation should be made in the manner, most beneficial to the assessee.*

(6 marks)

- (b)** H. Ltd. is engaged in manufacturing of steel. It set up a manufacturing unit in a notified backward area in the State of West Bengal. It acquired new plant and machineries at a cost of ₹ 20 crores for such unit on 01.07.2019. It further invested ₹ 25 crores in plant and machinery on 31.12.2019. Investment on 31.12.2019 includes machinery worth ₹ 10 crores previously used by another manufacturer.

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- (i) Compute depreciation under Section 32 and other deductions, if any admissible under the Income-tax Act for assessment year 2020-21. Also compute written down value as on 01.04.2020.
- (ii) Will your answer be different, if the manufacturing unit is set up by H. LLP, a limited liability partnership, instead of as a limited company?

(10 marks)**Answer:****(a)****Computation of Total Income of India Green LLP**

Particulars	Wind Power	Solar Panels
Net Profit as per Profit and Loss Account	55,00,000	30,00,000
Less: Interest on capital allowable @ 12%		12,00,000
Book Profit		18,00,000
Less: Working partner salary		
On first ₹ 3,00,000 @ 90% ₹ 2,70,000		
On the balance ₹ 15 lakhs @ 60% <u>9,00,000</u>		11,70,000
	55,00,000	6,30,000
Gross Total Income (55 lakhs + 6.30 lakhs)		61,30,000
Less: Deduction U/s. 80-IA @ 100% on ₹ 55 lakhs		55,00,000
Total Income		6,30,000

Note: Deduction **U/s.80-IA** is to be allowed as and when claimed by the assessee for 10 consecutive assessment years commencing from the assessment year in which such claim is made. The depreciation on wind mill already adjusted including losses if any when already adjusted against other incomes, it need not be again reckoned for deciding the quantum of deduction **under Section 80-IA. [Velayudhaswamy Spinning Mills (P) Ltd. v. Asst. CIT (2010) 340 ITR 477 (Mad)]**

(b) (i) Computation of Depreciation u/s 32 of H. Ltd. A.Y. 2020-21

Particulars	₹ (in crores)
Cost of Plant & Machinery acquired on 01/07/2019	20.00
Add: Addition on 31/12/2019	25.00
	45.00
Less: Depreciation at Normal rate	
@ 15% on 20.00 crores	3.00
@ 7.5% on 25.00 crores	<u>1.875</u>
	4.875
Less: Additional Depreciation	
@ 35% on 20.00 crores	7.00
@ 17.5% on 15.00 crores	<u>2.625</u>
	9.625
WDV as on 01/04/2020	30.50

Computation of Investment Allowance u/s 32 AC

Total Cost of New Plant & Machinery	35.00
Investment Allowance @ 15%	5.25

- (ii)** Yes, In case of LLP Deduction u/s 32 AC for Investment Allowance will not be available.

— Space to write important points for revision —

2017 - June [2] (a) Mitra & Co. a partnership firm consisting of 5 partners was constituted on 01.04.2019. On the same date all the partners contributed capital of ₹ 5 lakhs each. Also, one partner Ashwin contributed a vacant land owned by him as his capital contribution on the same date besides capital contribution in cash. The land was inherited by him from his father in June 2011 when the fair market value was ₹ 15 lakhs. It was acquired originally by his father in April, 2002 for ₹ 1 lakh. The fair market value on the date of contribution was ₹ 30 lakhs and it was recorded in the books at ₹ 40 lakhs by credit to his capital account.

The firm was engaged in developing and trading of vacant sites. It incurred development expenses of ₹ 18 lakhs on the land contributed by the partner Ashwin. The total extent of land contributed amounts to 30,000 sq. ft. After leaving space for road, park etc. the firm could plot 8 sites of 2400 sq.ft. each, which were sold for ₹ 10 lakhs each after incurring brokerage @ 2.5% of the sale price. The stamp duty valuation was ₹ 12 lakhs for each plot of land.

The deed of partnership provides for monthly working partner's salary of ₹ 20,000 each and interest on capital (including contribution of land) at 15% per annum.

Cost inflation index : F.Y. 2002-03 = 105; F.Y. 2011-12 = 184; F.Y. 2019-20 = 289

Compute the presumptive income under Section 44AD and income as per the regular provisions of the firm for the Assessment Year 2020-21. Also, work out the tax implication in the hands of partner, Mr. Ashwin. **(8 marks)**

(b) ACHARYA LLP, a limited liability partnership in India is engaged in development of software and providing IT enabled services through two units, one of which is located in a notified Special Economic Zone (SEZ) in Chennai (commenced from 01.04.2008). The particulars relating to previous year 2019-20 furnished by the assessee are as follows:

Total Turnover : SEZ unit ₹ 120 lakhs and the other unit ₹ 100 lakhs

Export Turnover : SEZ unit ₹ 100 lakhs and the other unit 60 lakhs

Profit : SEZ unit ₹ 48 lakhs and the other unit ₹ 42 lakhs

Amount debited to Profit and Loss Account towards Special Economic Zone Re-Investment Reserve Account ₹ 21 lakhs.

The Assessee has no other income during the year.

- (i) Compute tax payable by ACHARYA LLP for the Assessment Year 2020-21.
- (ii) Will the amount of tax payable change, if ACHARYA LLP is an overseas entity? **(8 marks)**

Answer:

(a)

**Computation of Total Income of Mitra & Co.
for the Assessment Year 2020-21**

		Regular provisions	Presumptive provisions
Sale consideration		80,00,000	80,00,000
Income @ 8%			6,40,000
Cost of land as recorded in the books (As per Section 45(3))	40,00,000		
Brokerage @ 2.5%	2,00,000		
Development expenses	18,00,000		
Interest on capital-cash ₹ 25 lakhs @ 12%	3,00,000		
Interest on capital in kind ₹ 40 lakhs @ 12%	4,80,000	67,80,000	
Book Profit		12,20,000	
Less: Deduction U/s. 40(b)			
Actual salary paid ₹ 20,000 × 50 × 12 (A)	12,00,000		
Allowable U/s. 40(b)			
On first ₹ 3,00,000 @ 90%	2,70,000		
On balance ₹ 9,20,000 @ 60%	5,52,000		
(B)	8,22,000		
Lesser of the two is deductible		8,22,000	
		3,98,000	

Add: The difference between fair market price and sale consideration under Section 43CA. FMV exceeds more than 5% of sale consideration.			
₹ 2,00,000 × 8		16,00,000	16,00,000
Total Income		19,98,000	22,40,000
Impact on partner Mr. Ashwin			
Sale consideration (deemed)	40,00,000		
Less: Indexed cost			
₹ 1,00,000 × 289/105 [See Note below]	2,75,238		
Long-term capital gain	37,24,762		
Income from Business			
Interest on capital-cash	60,000		
Interest on capital contributed - in kind	4,80,000		
Working partner salary @ 20%			
₹ 8,22,000	1,64,400		
Total Income	44,37,733		

Note 1: Ashwin inherited the land from his father in June 2011 and his father had acquired the same in April, 2002. There are number of High Court decisions which state that in such a situation, one has to go back till the capital asset was acquired in a mode other than those not regarded as "Transfer".

Note 2: As per Amendment made by Finance Act, 2018 w.e.f. 1st April 2018 where the value adopted or assessed or assessable by the stamp valuation authority does not exceed 105% of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purpose of Section 48, be deemed to be the full value of the consideration.

And where the value adopted or assessed or assessable by the stamp valuation authority exceeds 105% of the consideration received or accruing as a result of the transfer then Stamp Duty Value shall, for the purpose of Section 48, be deemed to be the full value of the consideration.

(b) **Computation of Total Income and
Tax Payable by Acharya LLP
for the A.Y. 2020-21**

Particulars	Amount (₹)
Profits and gains of business or profession	
From eligible business (i.e. SEZ unit)	48,00,000
From non eligible business	42,00,000
Gross Total Income	90,00,000
Less: Deduction u/s 10AA	
(i) Amount transfer to SEZ Re-Investment Reserve Account 21,00,000	
or	
(ii) 50% of Export Profit $\left(48,00,000 \times \frac{1,00,00,000}{1,20,00,000} \right) \times 50\%$ 20,00,000	
(Whichever is less)	20,00,000
Total Income	70,00,000
Tax on Total Income @ 30%	21,00,000
Add: Health and Education cess @ 4%	84,000
Total Tax Payable	21,84,000

(ii) No the amount of tax payable will not change if Acharya LLP is an overseas entity.

— Space to write important points for revision —

2017 - June [3] (b) (i) Balaji Airlines Ltd. paid ₹ 10 lakhs to Airport Authority of India towards landing and parking charges. The payment was towards use of land in the airport besides technical services involving navigation, security and other ancillary services. The tax was deducted at source under Section 194C at 2%. The Income Tax Officer (TDS) held that the assessee ought to have deducted tax under Section 194-I i.e. towards rent. Discuss the consequence of the action of the Assessing Officer and also the correctness of such decision. **(4 marks)**

(ii) Venkat & Co. a partnership firm was constituted on 01.06.2017 with four partners. All the partners contributed ₹ 10 lakhs each by way of capital. While examining the return of the Assessment Year 2019-20, the Assessing Officer verified the source of investments made by the partners. Not satisfied with the explanation of the partners/firm, the Assessing Officer assessed to tax ₹ 25 lakhs as unexplained cash credit under Section 68 of the Act in the hands of the firm. Decide the validity of the action of the Assessing Officer. **(4 marks)**

Answer:

(i) ***Japan Airlines Co. Ltd. V. Commissioner of Income Tax [2015] (Supreme Court)***

Landing and Parking charges payable by Airlines in respect of aircrafts are not for the 'use of land' per se but the charges are in respect of number of facilities provided by the Airport Authority of India. Thus landing and parking charges payable by Airlines would attract TDS under **Section 194C** and not under **Section 194-I**.

The Supreme Court held as under:

(1) We are convinced that the charges which are fixed by the AAI for landing and take-off services as well as for parking of Aircrafts are not for the 'use of land'. These charges are for services and facilities offered in connection with the aircraft operation at the airport. These services include providing of air traffic services, found safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport.

- (2) Therefore, it is held that the charges are not for use of land per se and therefore, it cannot be treated as 'Rent' within meaning of **Section 194-I** of the Act. However, TDS shall be deducted under **Section 194C**.

Hence, the action of the assessing officer is not correct.

- (ii) No, the action of the Assessing Officer is not valid.

Amount brought as capital in the firm could not be assessed as cash credit in the firm. Merely due to partners failed to prove source of amount introduction as capital in their individual hands, such deposit to be added in the hands of partners only and not in the hands of assessee firm.

However, the Assessing Officer may convey such information to the jurisdiction officer of the partners and explained credit may be added to the income of the partners concerned in terms of **Section 69**.

— Space to write important points for revision —

2017 - June [4] (b) The statement of profit & loss of BG (P) Ltd, a resident company engaged in manufacturing activity, shows a net profit of ₹ 36 lakhs for the year ended 31.03.2020, after debit/credit of the following items:

Credited to Profit and Loss Account:

- (i) Long term capital gain on sale of vacant site ₹ 25,00,000.
- (ii) Dividend from Indian companies ₹ 10,20,000.
- (iii) Rent from commercial property ₹ 3,00,000.

Debited to Profit and Loss Account:

- (i) Depreciation ₹ 13,00,000.
- (ii) Donation to electoral trust ₹ 80,000.
- (iii) Advertisement in souvenir of political party ₹ 45,000.
- (iv) Interest paid to non-resident ₹ 1,00,000 (without deduction of tax at source).
- (v) Salary payable to managing director ₹ 15,00,000 but not paid till 31.03.2020. (no tax was deducted at source).
- (vi) Sold goods for ₹ 5 lakhs to a firm in which the wife of managing director had 25% share. Discount @ 10% of the sale price was given to the firm.

- (vii) Loss from trading in commodity derivatives ₹ 1,60,000.
 (viii) Provision for income-tax ₹ 4,25,000.
 (ix) Proposed dividend ₹ 7,50,000.

Additional Information:

Depreciation allowable as per the Income-tax Act, 1961 ₹ 14,50,000.

The long-term capital gain on sale of unused land (computed) is ₹ 21,20,000.

The company purchased a residential building in December 2019 by investing the entire sale consideration. The newly acquired building was meant to be used as quarters by managing director.

Compute the total income of the company for the Assessment Year 2020-21.
 Ignore MAT provisions. (11 marks)

Answer:

Computation of Total Income of BG Pvt. Ltd. for the A.Y. 2020-21

Particulars	Amount (₹)	Amount (₹)
Net profit as per P & L A/c		36,00,000
Less: Amount credited to P & L A/c but not taxable under the head profits & Gains of Business or profession		
(i) Long Term capital gain on sale of vacant site	25,00,000	
(ii) Dividend from Indian companies	10,20,000	
(iii) Rent from commercial Property	3,00,000	(38,20,000)
		(2,20,000)
Add: Amount debited to P & L A/c but not allowed		
(i) Depreciation	13,00,000	
(ii) Donation to electoral trust	80,000	
(iii) Advertisement in souvenir of political party	45,000	
(iv) Interest paid to non-resident (without TDS)	1,00,000	
(v) 30% of salary payable to Managing Director (without TDS) (15,00,000 × 30%)	4,50,000	
(vi) Loss from trading in commodity	1,60,000	

(vii) Provision for Income Tax	4,25,000	
(viii) Proposed Dividend	7,50,000	33,10,000
		30,90,000
Less: Allowed Expenses		
Depreciation as per Income Tax Rules		14,50,000
Income from Business		16,40,000
Less: Loss from Trading in commodity derivatives		1,60,000
Income from Business		14,80,000
Income from Capital Gains		
Long Term Capital Gain on sale of unused land	21,20,000	
Less: Exemption u/s 54F (Available to individual & HUF)	Nil	21,20,000
Income from House Property		
Gross Annual value being Rent from commercial property	3,00,000	
Less: Municipal Taxes paid	Nil	
Net Annual value	3,00,000	
Less: Deduction u/s 24		
(1) 30% of Net Annual value as Standard deduction	90,000	2,10,000
Income from other sources		
Dividend from Indian Companies		Exempt
Gross Total Income		38,10,000
Less: Deduction u/s 80GGB		
Donation to Electoral Trust		80,000
Total Income		37,30,000

— Space to write important points for revision —

2017 - June [5] (b) Brahma Ltd., discarded certain number of assets forming part of a block of assets during the previous year 2019-20. The Assessing Officer has disallowed the depreciation pertaining to such discarded assets. Discuss whether such action of the Assessing Officer is tenable in law.

(4 marks)

(c) Maushyaputra Ltd., issued debentures of ₹ 5 crores, redeemable after six years. The debenture holders were given an option of taking up the interest for all the six years upfront, at a discount. All the debenture holders opted for the same. The company complied with the TDS formalities. The Assessing Officer is of the view that only one-sixth of the interest is allowable in the current year.

Is the contention of the Assessing Officer correct in law? **(5 marks)**

Answer:

(b) The action of the Assessing Officer is tenable in law:

Provisions of **Section 32** regarding claim of depreciation are given herein below:

WDV of Block of Asset as on 1 st day of the previous year	xxx
Add: Assets acquired/purchased during the previous year	xxx
	xxx
Less: Assets sold/disposed off during the previous year	xxx
WDV (Balance) of computation of Depreciation at prescribed rate	xxx

Note -1:

Depreciation on Discarded Assets:

The issue under consideration is whether disallowance of depreciation made by the AO in arriving at the WDV of the block of asset, with regard to the discarded asset is justified.

One of the conditions for claim of depreciation under section 32 is that the eligible asset must have been put to use for the purpose of business or profession.

The other aspect to be considered is whether merely discarding an obsolete machinery, which is physically available, will attract the expression "moneys payable appearing in section 43(6), so as to deduct its value from the WDV of the block.

The expression used for the purposes of the business in section 32 when used with respect to discarded machinery would mean the use in the business not only in the relevant financial year/previous year but also in the earlier financial years.

The discarded machinery may not be actually used in the relevant previous year but depreciation can be claimed as long as it was used for the purposes of business in the earlier year provided in block continues to exist in the relevant previous year.

Therefore, the condition for claiming depreciation in respect of the discarded machine would be satisfied if it was used in the earlier previous years for the business.

Coming to the issue of “moneys payable” as per section 43(6), the machinery has not been sold as machinery or scrap or disposed off, and it continues to exist, hence it will not form part of “moneys payable” which alone is deductible while computing the WDV of the block to which it belongs.

The disallowance by the AO is hence not tenable in law,

Such a view was taken in the case of *CIT V. Yamaha Motor India Pvt. Ltd.* (2010) 328 ITR 297 (Del.).

(c) The contention of the assessing officer is not correct in law:

Taparia Tools Ltd. V. Joint commissioner of Income Tax (2015) 372 ITR 605 (SC) facts of the case:

The assessee issued non-convertible debenture and gave two options as regards payment of interest to the subscribers/debenture holders, they could either receive interest periodically (i.e. half yearly) at 18% per annum over a period of five years, or opt for one time upfront payment of ₹ 55 per debenture. In second option, ₹ 55 per debenture was to be paid immediately upfront on account of interest. At the end of debenture period of five years, the debentures were to be redeemed at the face value of ₹ 100. The said upfront payment of interest on debentures were shown by the assessee as deferred revenue expenditure in the books of accounts to be written off over a period of five years. Notwithstanding this accounting treatment given to the payment qua-interest, assessee claimed such expenditure as fully deductible expenditure in the first year, being the year of payment. The Assessing Officer, However, treated the

expenditure as “Deferred Revenue Expenditure” to be allowed over the tenure of debenture and hence, allowed only one fifth of the payment made and disallowed the balance of claim.

Supreme Court’s Observations: The Supreme Court observed that while examining the allowability of deduction, the Assessing Officer as to consider the genuineness of borrowing. Under **Section 36(1)(iii)**, any amount paid on account of interest is in admissible deduction, if the capital was borrowed by the assessee and the borrowings was for the purpose of business or profession. The Supreme Court opined that once genuineness was proved and conditions of **Section 36(1)(iii)** read with **Section 43(2)** were satisfied, the benefit of deduction in the year in which the amount of interest was actually paid or incurred can not be denied. In the present case, the Assessing Officer has not disputed the issues of debenture and use of funds for business purpose.

Moreover, the Supreme Court also noted that there is no concept of deferred revenue expenditure in the Income Tax Act, 1961, except under specified Section such as **Section 35D** meant for amortization over a period of time. Normally, revenue expenditure in the year in which it is incurred. However, if the assessee wants to spread the expenditure over a period of ensuring years, it can be allowed only if the principle of matching concept is satisfied. Entries in books of accounts are not conclusive and the matter has to be examined on the touch stone of the provisions contained in the act.

The Supreme Court took note that the assessee had issued debentures with two options for payment of interest and if the interest is allowed by spread over it would amount to treating both the methods of interest payment at par, which was clearly un-sustainable by discharging the liability in the first year itself, the assessee had benefitted by making payment of a lesser amount of interest in comparison to the interest which was payable under the first option over a period of five years. When the assessee did not seek spread over of expenditure and had claimed the entire expenditure in the same year and return was filed in that manner. The assessing officer was bound to carry out the assessment by applying the provisions of the act and not to go beyond

the said return. The statute enables an entitled the assessee to claim the entire upfront interest paid in the year of payment.

Supreme Court Decision: The Supreme Court, accordingly, held that the assessee would be entitled to deduction of the entire upfront interest paid in the same year in which amount was actually paid.

Conclusion: On the basis of above decision of Supreme Court. The contention of the Assessing Officer is not correct in law.

— Space to write important points for revision —

2017 - June [6] (a) Pradhan (P) Ltd. gives you the following information for the Financial Year 2019-20:

- (i) It paid a refundable deposit of ₹ 5 lakhs to the landlord where the company has commenced manufacturing activity during the year.
- (ii) It paid ₹ 3 lakhs to a hotel accommodation where the training programme for the marketing force was conducted.
- (iii) Paid non-compete fee of ₹ 10 lakhs to a director who was associated with the company for the last 15 years.
- (iv) It filed the quarterly statement of TDS for the quarter ended 30.09.2019 on 05.01.2020. The amount of tax deducted and remitted in the quarter is ₹ 60,000.
- (v) It received interest-free loan of ₹ 7 lakhs from its subsidiary company in December 2019 to meet its working capital requirements. The subsidiary company has accumulated profit of ₹ 20 lakhs.
- (vi) It engaged a famous tennis player Mr. Mahesh as Brand Ambassador for promoting its products and paid ₹ 2 lakhs as fee to him.
- (vii) It acquired a luxury car for ₹ 15 lakhs by making payment by cheque on 01.10.2019.
- (viii) It paid ₹ 30,000 to travel agents for purchase of train and air tickets to the company officials during the year.

You are requested to state in brief the consequences of the above transaction as per TDS/TCS provisions of the Income-tax Act, 1961.

(8 marks)

Answer:**(a) (i) TDS on security deposit adjusted at the end of the lease period:**

No TDS is required to be deducted at the time of payment of security deposit. Since it cannot be treated as advance rent. However, TDS has to be deducted when the security deposit has been adjusted.

- (ii) The company is required to deduct tax at source @ 10% of amount paid to a hotel accommodation because the amount paid is more than ₹ 1,80,000 in a year under **Section 194-I**.
- (iii) Amount paid to a past director as non-compete fee of ₹ 10 lakhs is liable to deduct tax at source @ 10% **u/s 194-J**.
- (iv) The company is liable to pay fee for default in furnishing quarterly returns of TDS ₹ 200 per day during which the failure continues **u/s 234-E**.
However, such fees shall not exceed the amount of TDS/TCS deductible/collectible in quarterly returns. Thus, the amount of late fees will be ₹ 13,200.
- (v) Loan of ₹ 7 lakhs from its subsidiary company will be treated as deemed dividend under **Section 2(22)(e)** because the subsidiary company has accumulated profit of ₹ 20 lakhs on the date of loan given to the company.
- (vi) Fees of ₹ 2 lakhs paid to Mr. Mahesh as Brand Ambassador for promoting its products is liable to deduct tax at source @ 10% under **Section 194-J**.
- (vii) **Section 206C(1F)**: Every person, being a seller, who receives any amount as consideration for sale of a Motor Vehicle of the value exceeding ₹ 10 lakhs, shall at the time of Receipt of such amount collect from the buyer, a sum equal to 1% of the sale consideration as Income Tax. Hence, the seller of car is required Collect Tax (TCS) from the company @ 1%.
- (viii) The company is not required to deduct tax at source on payment of ₹ 30,000 to Travel agent for purchase of train and air tickets.

Note: Amendment to Section 115-O and 2(22)(e):

With effect from 1st April 2018, loan or advance given by a company (on or after April 1, 2018) which is deemed as dividend under Section 2(22)(e) will be subject to the following provisions:

1. On such deemed dividend, the company which gives loan or advance will have to pay dividend tax under Section 115-O at the rate of 30% (without grossing up) [+ 12% of such tax as surcharge + 4% of tax and surcharge as health and education cess, effective rate: 34.944%.
2. Such deemed dividend will be exempt in the hands of recipient by virtue of Section 10(34).

— Space to write important points for revision —

2017 - June [7] (a) Mr. Ram gave cash gift of ₹ 10 lakhs to his younger brother Mr. Bharat's wife Smt. Mandavi. On the same date Mr. Bharat gave gift to wife of Mr. Ram viz, Smt. Sita a vacant land measuring 2000 sq.ft. The stamp duty valuation of the land on the date of gift was ₹ 8 lakhs.

Smt. Mandavi invested ₹ 8 lakhs in bank fixed deposit fetching interest at 7% per annum and commenced a business with the balance of ₹ 2 lakhs along with her own capital of ₹ 3 lakhs. The profit for the year from the business amounts to ₹ 1,50,000.

Determine the tax implication of the above transaction in the hands of all the parties. Would your answer be different if all of them are non-relatives?

(8 marks)

Answer:

As per **Section 56(2)(x)**, the following shall be taxable under the head "income from other sources".

When an individual or a HUF receives, in any previous year, from any person or persons.

- (a) any sum of money, without consideration, the aggregate value of which exceeds ₹ 50,000, the whole of the aggregate value of such sum;
- (b) any immovable property,-
 - (i) without consideration, the stamp duty value of which exceeds ₹ 50,000, the stamp duty value of such property;
 - (ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding ₹ 50,000, the stamp duty value of such property as exceeds such consideration;
 - (iii) Stamp duty value exceeds 105% of consideration.

Provided that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of agreement may be taken for the purpose of the sub-clause.

Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of agreement for the transfer of such immovable property.

- (c) any property, other than immovable property:
- (i) without consideration, the AGGREGATE fair market value of which exceeds ₹ 50,000, the whole of the aggregate fair market value of such property;
 - (ii) for a consideration which is less than the AGGREGATE fair market value of the property by an amount exceeding ₹ 50,000, the aggregate fair market value of such property as exceeds such consideration.

Provided further that this clause shall not apply to any sum of money or any property received from any relative.

Explanation: For the purpose of this clause, “relative” means:

- (i) spouse of the individual;
- (ii) brother or sister of the individual;
- (iii) brother or sister of the spouse of the individual;
- (iv) brother or sister of either of the parents of the individual;
- (v) any lineal ascendent or descendent of the individual;
- (vi) any lineal ascendent or descendent of the spouse of the individual.
- (vii) spouse of the person referred to in clause (ii) to (vi)

In view of the above legal position, in the present case, the gift of ₹ 10 lakhs to his younger brother Mr. Bharat’s wife Smt. Mandvi by Mr. Ram is exempt from Tax, since the brother’s wife is relative within the definition of relative as specified under **Section 56(2)(x)**.

Where the brother of Ram i.e. Mr. Bharat gifted vacant land to Smt. Sita (wife of Mr. Ram), **Section 56(2)(x)** is not attracted in the hands of Smt. Sita. Since she falls in the definition of relative.

In the present case, there is an indirect transfer of asset by Mr. Ram to his brother's wife Smt. Mandvi i.e. ₹ 10 lakhs without any consideration. The income from FD interest received by Smt. Mandvi and Income from business shall be clubbed with the income Mr. Bharat.

Amount to be clubbed:

Interest on FD (8,00,000 × 7%) = 56,000

Business Income $\left(1,50,000 \times \frac{2,00,000}{5,00,000}\right)$ = 60,000

1,16,000

It is assumed that amount gifted on 1st day of April, 2019.

— Space to write important points for revision —

2017 - Dec [2] (a) Ganga Ltd., is a company in which 70% of the shares are held by Himalaya Ltd. Ganga Ltd., declared a dividend amounting to ₹ 40 lacs to its shareholders for the financial year 2018-19, in its Annual General Meeting held on 19th May, 2019. Dividend distribution tax was paid by Ganga Ltd. on 21st May, 2019. Himalaya Ltd. declared an interim dividend amounting to ₹ 60 lacs on 15th June, 2019.

Compute the amount of tax on dividend payable by Himalaya Ltd. Detailed note on the provisions involved is essential. **(6 marks)**

(b) Sanvitha & Co., is a partnership firm trading in fertilisers, consisting of two partners S and V, who both have individual incomes from all the other sources (except remuneration and interest from this firm) in excess of ₹ 10 lakhs.

For the year ended 31.03.2020, the turnover of the assessee is likely to be ₹ 90 lakhs.

The partnership deed provides for payment of remuneration to S, the working partner at ₹ 6 lakhs per annum and ₹ 1.2 lakhs per annum to V, non-working partner. S and V are amenable to drafting these terms differently, as per your advice.

Partners' capitals are ₹ 10 lakhs each and the deed authorises payment of simple interest at 15%.

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Assuming that books of account are maintained, the profits before considering remuneration and interest on capital is ₹ 12.4 lakhs.

In the light of above, state

- (i) Whether it will be advisable to opt for presumptive taxation u/s 44AD, if the firm and the partners are desirous of reducing their overall tax liability (tax of firm and the partners), or should the firm go for maintenance of accounts and audit u/s 44AB. **(8 marks)**
- (ii) Will your answer be different, if the assessee were an LLP? **(2 marks)**

Answer:

(a) Section 115-0 (IA) Reduction in Dividend Distribution Tax:

- (i) The amount of dividend, if any, received by the domestic company during the financial year, if such dividend is received from its subsidiary company and;
 - (a) Where such subsidiary is a domestic company, the subsidiary has paid the tax which is payable under this Section on such dividend; or
 - (b) Where such subsidiary is a foreign company, the tax is payable by the domestic company under **Section 115** BBD on such dividend.

Provided that the same amount of dividend shall not be taken into account for reduction more than once.

In view of the above provisions of the Income Tax Act, 1961, the amount of tax on dividend payable by Himalaya Ltd. calculated as under:

Dividend declared by Himalaya Ltd.	60,00,000
Less: Dividend Received from Ganga Ltd. (i.e. Subsidiary Company) $\left(40,00,000 \times \frac{70}{100} \right)$	28,00,000
Dividend Distribution tax payable on dividend	32,00,000
Dividend Distribution Tax on amount of dividend of ₹ 32,00,000 @ 20.555% = $32,00,000 \times \frac{20.555}{100} =$	₹ 6,57,760

Alternative solution Dividend	32,00,000
Add: Increase for the purpose of grossing up of dividend = $(32,00,000 \times \frac{100}{85} - 32,00,000)$	5,64,706
Gross Dividend	37,64,706
Dividend Distribution Tax @ 17.76% = $\left[37,64,706 \times \frac{17.76}{100} \right]$	6,68,612

- (b) (i) **Firm:** Whether presumptive taxation **u/s 44AD** is to be opted. Where books are maintained.

Where the shows profits below 8% of the turnover, he/it should maintain books of account and get the accounts audited **u/s 44AB**. In case of a firm, such profits are after deduction of interest and remuneration to partners; In other words, same cannot be deducted from the 8% amount so calculated.

Where the books are maintained and the accounts are audited as per **Section 44AB**, the firm will be allowed deduction of the interest and remuneration, as per **Section 40(b)**. To the extent such payments are allowed in the hands of the firm, the same will be included in the individual hands of the partners.

Partners are already having total income in excess of ₹ 10 lakhs and hence any interest on capital and remuneration received from the firm will get taxed at 31.2%.

Particulars	₹
Income of the firm before interest and remuneration to partners	12,40,000
Less: Interest on capital at 12%	2,40,000
Book profits of the firm as per Section 40 (b)	10,00,000
Less: Remuneration to S	6,00,000
Lower of (90% of 3 lakhs and balance 60% of ₹ 7 lakhs) 6.9 lakhs; Subject to Ceiling ₹ 6 lakhs as per partnership deed.	
Note: Remuneration to non-working partners not allowable.	
Total income of the firm	4,00,000

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Tax rate is 31.2% for firm (₹ 1,24,800) as well as the incomes from firm apportioned to partners (since the income of partners before considering any receipt from firm already exceeds ₹ 10 lakhs). Hence, income which will get taxed at 31.2% are 4 L+ 6 (Remuneration of S) and 2.4 L (interest on capitals) 12.4L at 31.2% ₹ 3,86,880/.

When the firm opts for presumptive taxation

As per Section 44AD , profits of the firm will be 8% of 90 lakhs	7,20,000
This alone will get taxed at 31.2% Tax payable will be ₹	2,24,640
Partnership deed should not contain any clause about payment of remuneration or interest to partners.	
By opting for presumptive tax u/s 44AD , tax saving will be (3,86,880 - 2,24,640)	1,62,240

(ii) Where the assessee is a LLP

For a LLP, there is no option to get assessed as per **Section 44AD**. Hence, it is bound to maintain books of account and get its accounts audited **u/s 44AB**.

—— Space to write important points for revision ———

2017 - Dec [3] (a) Mr. Manekshaw a resident sold a residential property for ₹ 90 lakhs to Mr. Sunderlal on 17.08.2019. The stamp duty valuation on the date of sale was ₹ 105 lakhs. Earlier in February, 2019 an agreement was entered into by the parties and Mr. Sunderlal gave ₹ 5 lakhs as advance by means of electronic transfer. The stamp duty valuation at the time of agreement was ₹ 95 lakhs. Mr. Manekshaw paid ₹ 1 lakh as commission to broker, Mr. Vaidya. The property was acquired by Mr. Manekshaw in December, 2002 for ₹ 20 lakhs.

In July, 2019 Mr. Manekshaw sold a vacant site to Mr. Dayal for ₹ 30 lakhs. The stamp duty valuation of the site at the time of sale was ₹ 27 lakhs. The site was acquired in April, 2015 for ₹ 7 lakhs.

Mr. Manekshaw acquired a residential building in June, 2019 for ₹ 120 lakhs by availing a bank loan. Stamp duty and registration fee paid for the property amounts to ₹ 6 lakhs. He repaid the bank loan out of the sale proceeds of both the assets referred earlier. The new residential building was let out for a monthly rent of ₹ 1 lakh from 01.07.2019. Interest for the year 2019-20 in respect of the property amounts to ₹ 6 lakhs.

Compute the total income of Mr. Manekshaw for the Assessment Year 2020-21.

Cost inflation index F.Y. 2002-03 = 105; F.Y. 2015-16 = 254;

F.Y. 2019-20 = 289

(9 marks)

Answer:

Computation of Total Income of Mr. Manekshaw for the A. Y. 2020-21

Income from House Property		
Gross Annual Value		
being Actual Rent (1,00,000 × 9) =	9,00,000	
Less: Municipal Tax	—	
Net Annual Value	9,00,000	
Less: Deduction u/s 24		
(i) 30% of NAV as Standard deduction	2,70,000	
(ii) Interest on loan	6,00,000	
Income from Capital Gain:	8,70,000	30,000
Sale consideration of residential property		
Actual sale consideration	90,00,000	
or		
Stamp duty value on the date of agreement exceeds 105% of the consideration (See Note)	95,00,000	
Gross sale consideration	95,00,000	
Less: Brokerage	1,00,000	
Net Sale consideration	94,00,000	
Less: Index cost of Acquisition		
$\left(20,00,000 \times \frac{289}{105} \right)$	55,04,762	
L T C G	38,95,238	

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Less: Exemption u/s 54 1,26,00,000 (Subject to Max. of L T C G)	38,95,238	NIL
Sale consideration of Vacant Site		
Actual sale consideration	30,00,000	
or		
Stamp duty value	27,00,000	
(whichever is higher)	30,00,000	
Less: Index cost of Acquisition $\left(7,00,000 \times \frac{289}{254}\right)$	7,96,457	
Long term capital gain	22,03,543	22,03,543
Gross total income		22,03,543
Less: Deduction under chapter VI-A (Restricted to ₹ 1,50,000)	₹ 6,00,000	1,50,000
Total Income		20,53,543

Note:
As per Amendment made by Finance Act, 2018 w.e.f. 1st April 2018

where the value adopted or assessed or assessable by the stamp valuation authority does not exceed 105% of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purpose of Section 48, be deemed to be the full value of the consideration.

And where the value adopted or assessed or assessable by the stamp valuation authority is exceeds 105% of the consideration received or accruing as a result of the transfer then Stamp duty Value shall, for the purpose of Section 48, be deemed to be the full value of the consideration.

— Space to write important points for revision —

2017 - Dec [4] (a) Ms. Pallavi is partner in a firm with 30% share. Her capital contribution representing her own funds in the firm on 01.04.2018 was ₹ 5 lakhs. She received a gift of ₹ 10 lakhs from her husband on 01.07.2018 and invested ₹ 7 lakhs as her capital contribution in the firm. She withdrew the entire interest on capital and working partner salary and share of profit for the year ended 31.03.2019. Her capital on 01.04.2019 was ₹ 12 lakhs in the firm. She received a gift of ₹ 4 lakhs from her father-in-law on 01.05.2019 and invested the same into the firm.

For the year ended 31.03.2020, her income from the firm are as under:

Interest on capital at 12% on ₹ 16 lakhs for 11 months ₹ 1,76,000.

Interest on capital at 12% on ₹ 12 lakhs for 1 month = ₹ 12,000.

Share of profit from the firm ₹ 90,000.

State how Ms. Pallavi's income from the firm would be taxed for the Assessment Year 2020-21. **(5 marks)**

Answer:

(i) **Under Section 64(1) (ii):** Income of Individual to include income of spouse from a concern in which individual has substantial interest. (i.e. 20% voting power/share in profit at any time during the previous year) In view of the above provisions interest on ₹ 7,00,000 @ 12% i.e. ₹ 84,000 must be clubbed with Income of Ms. Pallavi's husband.

(ii) **Under Section 64 (I) (vi):** Income of individual to include income of son's wife: Assets transferred by an individual to son's wife without adequate consideration, Income from such asset shall be clubbed in the hands of transferor.

In view of the above provisions of Income Tax Act, interest on ₹ 4,00,000 @ 12% p.a. for 11 months shall be clubbed with income of Ms. Pallavi's father-in-law i.e. ₹ 4,00,000 × 12% × 11/12 = ₹ 44,000

(iii) Share of profit from firm is exempt.

— Space to write important points for revision —

2017 - Dec [4] (b) Sony Textiles (P) Ltd., Surat earned a profit of ₹ 20 lakhs after debit/credit of the following items to its statement of profit and loss for the year ended 31.03.2020:

	Particulars	₹
Items debited to statement of profit and loss:		
(i)	Provision for the loss of subsidiary	2,00,000
(ii)	Provision for doubtful debts	1,50,000
(iii)	Provision for income-tax	3,00,000
(iv)	Provision for Gratuity (based on actuarial valuation ₹ 5 lakhs)	7,00,000
(v)	Depreciation	5,60,000
(vi)	Interest to financial institution (unpaid till filing of return on 01.12.2020)	2,50,000
(vii)	Penalty for infraction of law	60,000
Items credited to statement of profit and loss:		
(i)	Royalty in respect of patent (Chargeable to tax under Section 115BBF)	6,00,000
(ii)	Share income as partner in a firm	1,20,000
(iii)	Dividend from subsidiary company	75,000
(iv)	Long term capital gains on sale of vacant land	4,00,000

Other information:

- (i) Depreciation includes ₹ 1,60,000 on account of revaluation of fixed assets.
- (ii) Depreciation as per Income-tax Rules is ₹ 2,80,000.
- (iii) Income tax liability on income computed as per regular provisions for the Assessment Year 2020-21 is ₹ 1,22,070 excluding tax on royalty chargeable to tax under Section 115BBF.

Compute minimum alternate tax under Section 115JB of the Income-tax Act, 1961 for Assessment Year 2020-21 and tax credit eligible for carry forward by the company under Section 115JAA. **(11 marks)**

Answer:

Computation of Book profit and MAT of Sony Textiles Pvt. Ltd. for the A. Y. 2020-21			
Net Profit as per P and L A/c			20,00,000
Add: Items debited to statement of profit and loss but not allowed:			
(i) Provision for the loss of subsidiary	2,00,000		
(ii) Provision for doubtful debts	1,50,000		
(iii) Provision for Income-tax	3,00,000		
(iv) Provision for Gratuity (Excess)	2,00,000		
(v) Depreciation on revaluation of Fixed Assets	<u>1,60,000</u>	10,10,000	
Less: Items credited to statement of profit and loss but not includible:			30,10,000
(i) Royalty in respect of patent (chargeable to tax under Section 115 BBF)	6,00,000		
(ii) Share income as partner in a firm	1,20,000		
(iii) Dividend from subsidiary company	<u>75,000</u>	7,95,000	
Book Profit			22,15,000
MAT under Section 115JB @ 15.60%			3,45,540
MAT Payable Rounded off			3,45,540
Tax under normal Provisions excluding Tax on Royalty	1,22,070		
Add: Tax on Royalty in respect of patent @ 10.4% of ₹ 6,00,000	<u>62,400</u>	1,84,470	
MAT Credit Available (MAT-Normal Tax)			2,41,700

— Space to write important points for revision —

2017 - Dec [6] (a) Discuss how the following items which have been debited to the Statement of Profit & Loss of Vaibhav Polymers Ltd., will be dealt with, in computing its business income:

- (i) ₹ 20 lakhs paid to ten workmen on account of voluntary retirement of the said employees;
 - (ii) ₹ 2 lakhs paid towards advertisement in a souvenir published by a political party, by way of account payee cheque;
 - (iii) One of the units of the company was closed and retrenchment compensation of ₹ 12 lakhs was paid to the employees in that unit;
 - (iv) Loss incurred by way of trading in commodity derivative transactions in recognized stock exchange relating to its agro division ₹ 2,20,000.
- (8 marks)**

Answer:

- (i) **Section 35DDA: Amortisation of Expenditure incurred under voluntary Retirement Scheme:**

Where an assessee incurs any expenditure by way of payment of any sum to an employee in connection with his voluntary retirement, in accordance with any scheme of voluntary retirement, 1/5th of the amount so paid shall be allowed as deduction for 5 years.

The deduction shall be allowed from the previous year in which actual payment is made.

In view of the above Provisions of Income Tax Act 4/5th of ₹ 20 lakhs shall be added back to profit of the company.

- (ii) **Section 37 (2B): Payments made to Political Party:**

Notwithstanding any thing contained in **Section 37(1)**, no allowance shall be made in respect of expenditure incurred by an assessee on advertisement in any souvenir, brochure, tract pamphlet or the like published by a political party.

In view of the above provision of the Income Tax Act, ₹ 2 lakh paid towards advertisement in a souvenir published by a political part, by way of account payee cheque shall be disallowed and added back to profit.

- (iii) **CIT v. DCM Ltd. (Delhi):**

The payment of compensation to workers on closure of one of the unit of the company is treated as a revenue expenditure is allowed as deduction. There is no treatment required.

- (iv) Loss incurred by way of trading in commodity derivative transactions in recognised stock exchange relating to its agro division ₹ 2,20,000 first it can be added to profit and then set off from business Income of the company.

— Space to write important points for revision —

2017 - Dec [7] (a) In “A Pvt. Ltd.”, a closely-held company, following are some of the shareholders holding equity shares entitled to dividend and voting power:

Mr. Janak (individual)	12%
Janak (HUF)	5%
Thilagam & Co. (LLP)	30%
B Pvt. Ltd.	25%

On 12.01.2020, the company declared dividend of ₹ 50 lakhs net, after paying dividend distribution tax u/s 115-O.

During the year, Mr. Janak obtained a loan of ₹ 7 lakhs on 13.04.2019, which was repaid on 30.03.2020. As on 13.04.2019, the credit balance in Profit and Loss account of the company was ₹ 5 lakhs.

Janak (HUF) has received dividend of ₹ 8 lakhs from equity-oriented approved mutual funds.

For investing in the company's shares, Thilagam & Co. (LLP) has borrowed some funds on which interest of ₹ 2 lakhs was paid during the year ended 31.03.2020, tax being duly deducted at source and paid to the credit of the Central Govt.

Determine the income-tax liability in respect of each of the shareholders, in respect of the aforesaid receipts. **(8 marks)**

Answer:

Computation of Total Income and Tax Liability of Mr. Janak (Individual)

Income from other sources:	
(i) Dividend from A Pvt. Ltd. (50,00,000 × 12%) (Exempt u/s 10(34)) Dividend (deemed Dividend) u/s 2(22)(e) upto the amount	6,00,000 —

of credit balance of P and L A/c on the date of loan obtained from A Pvt. Ltd. (Since he holds More than 10% equity shares) Exempt u/s 10(34) Gross Total Income being TI Tax Payable on Add: Health and Education Cess @4%	
	Nil
	—
	—
	Nil
(ii) Total Income and Tax Liability of Janak (HUF) Income from other sources: Dividend from A Pvt. Ltd. 2,50,000 Exempt u/s 10(34) Dividend Received from equity oriented approved Mutual fund exempt u/s 10(35) <u>8,00,000</u> Gross Total Income being Total Income	— — Nil Nil
(iii) Total Income and Tax Liability of Thilagam & Co. (LLP) Income from other sources Dividend from A Pvt. Ltd. (50,00,000 × 30%) (Taxable because it is more than ₹ 10 lakh) Tax @ 10% on Amount exceeding ₹ 10 lakh Add: Health and Education cess @ 4% Tax payable	 15,00,000 50,000 2,000 52,000
Note: Interest Exp. not allowed. Tax liability of B Pvt. Ltd. For the purpose of Section 115 BBDA , Corporate Shareholders are not covered. Hence, the dividend received will not be by Section 115 BBDA , regardless of the quantum of dividend received.	

Note:

Amendment to Sections 115-O and 2(22)(e):

With effect from 1st April 2018, loan or advance given by a company (on or after 1st April, 2018) which is deemed as dividend under Section 2(22)(e) will be subject to the following provisions:

1. On such deemed dividend, the company which gives loan or advance will have to pay dividend tax under Section 115-O at the rate of 30% (without grossing up) [+ 12% of such tax as surcharge + 4% of tax and surcharge as health and education cess, effective rate: 34.944%.
2. Such deemed dividend will be exempt in the hands of recipient by virtue of Section 10(34)

—— Space to write important points for revision ———

2017 - Dec [7] (b) Raghunath (P) Ltd. is engaged in multiple business activities. It has brought forward business loss of Assessment Year 2013-14 of ₹ 15 lakhs and unabsorbed depreciation of ₹ 20 lakhs. The company has 10 shareholders each having 10% of the equity share capital of the company.

Four shareholders transferred the shares to their relatives in October, 2019. One shareholder died in February, 2020 and yet another shareholder gifted his shares to his son in August, 2020.

The company for the previous year 2019 -20 earned Net Profit of ₹ 10 lakhs (computed) as per regular provisions before set off of brought forward loss and depreciation given above. Its book profit under Section 115JB for the Assessment Year 2020-21 is ₹ 25 lakhs (computed).

- (i) How much of accumulated loss and unabsorbed depreciation, the company could carry forward to the subsequent assessment years?
- (ii) Assume, the company converted into LLP in April, 2020. In the light of such conversion consider the amount of accumulated loss and depreciation which it can carry forward. Will there be any reduction of benefit on violation of any condition?

(8 marks)

Answer:

Section 79:

Brought forward with effect from 1.4.2020 (A.Y. 2020-21) – To facilitate ease of doing business in the case of an eligible start-up, section 79 has been substituted so as to provide that loss incurred in any year prior to the previous year, in the case of closely held eligible startup, shall be allowed to be carried forward and set off against the income of the previous year on satisfaction of either of the two conditions as below:

- No loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, unless on the last day of the previous year, the shares of the company carrying not less than fifty-one percent of the voting power beneficially held by persons who beneficially held shares of the company carrying not less than fifty one per cent of the voting power on the last day of the year or years in which the loss was incurred.
- the loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, if, all the shareholders of such company who held shares carrying voting power on the last day of the year or years in which the loss was incurred, continue to hold those shares on the last day of such previous year and such loss has been incurred during the period of seven years beginning from the year in which such company is incorporated.

These provisions does not apply to—

- a company where change of shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016
- a company, its subsidiary and the subsidiary of such subsidiary, where the Tribunal, has suspended the Board of Director of such company and new directors nominated by CG has been appointed and change of shareholding of such company and subsidiary companies taken place in pursuant to a resolution plan approved by the Tribunal.

General Notes

1. Losses cannot be set-off against the incomes referred to in **Section 115BB** i.e. lottery income, crossword puzzles, incomes in TV shows, etc.
2. Losses must be set-off in the immediate succeeding year and the loss not so set-off shall lapse.

(i) Computation of Total Income of Raghunath Pvt. Ltd.	
Net Profit (computed)	10,00,000
Less: B/F loss	10,00,000
Total Income	Nil
Loss to be carried forward (15,00,000 – 10,00,000) =	5,00,000
Unabsorbed depreciation to be carried forward	20,00,000
(ii) Set-off and carry forward of losses	
As per Sec. 72A(6A) , accumulated loss under head PGBP (Except Speculative Loss) and the unabsorbed depreciation of the predecessor company, shall be deemed to be the loss or allowance for depreciation of the successor LLP of the year in which conversion takes place.	
However, if any of the aforementioned conditions are not complied with, the set-off of loss or allowance of depreciation made in any previous year by LLP, shall be deemed to be the income of the LLP chargeable to tax in the year in which such conditions are not complied with.	
MAT Credit: In the hands of the predecessor company shall not be allowed to the successor LLP.	

— Space to write important points for revision —

2018 - June [2] (a) PQR Co. Ltd. engaged in manufacturing activity reports a Net Profit of ₹ 15 lakhs for the year ended 31.03.2020. The below said items are debited / credited to statement of profit and loss.

- (i) CSR expenditure incurred during the year ₹ 5 lakhs.
- (ii) Non-compete fee paid to DEF Ltd. for not marketing their products in North-Eastern States ₹ 10 lakhs. The non-complete agreement bars DEF Ltd. for a period of 5 years ending 31.03.2024. No tax was deducted at source on the said payment.
- (iii) A building was constructed on the leasehold land for ₹ 30 lakhs and it was completed on 30.11.2019. The lease agreement is for 3 years and after the lease period, the building must be handed over to the lessor.
- (iv) The company during the year paid donation of ₹ 1 lakh to Dalmia Research Centre Ltd. which is engaged in approved scientific research.
- (v) The company introduced VRS scheme during the financial year 2016-17 and paid ₹ 60 lakhs as VRS compensation. The company transferred the entire unamortized amount of ₹ 24 lakhs to statement of profit and loss.
- (vi) Paid ₹ 2 lakhs to Registrar of Companies as fee for issue of bonus shares.
- (vii) It incurred ₹ 25 lakhs towards feasibility study for new product manufacture which eventually was aborted.
- (viii) Cost of EPABX and mobile phones acquired on 01.06.2019 for use by executives ₹ 10 lakhs. Depreciation @ 60% was charged in the books.
- (ix) Compounding fee paid for violation of municipal laws in construction of buildings ₹ 1,20,000.
- (x) Depreciation debited ₹ 24,60,000.
- (xi) Royalty from patent developed by the company credited to Statement of profit and loss ₹ 22 lakhs.
- (xii) Dividend received from foreign company in which the assessee company holds 26% shares ₹ 8 lakhs.

Additional Information:

Eligible depreciation ₹ 32,30,000 under Section 32 without considering item (iii) and (viii) given above.

You are required to compute the total income and income tax liability of PQR Ltd. for the assessment year 2020-21.

Note: Your answer must be supported by reasons for treatment of each item. Ignore MAT provisions. **(12 marks)**

(b) A partnership firm with three equal partners authorized payment of monthly salary of ₹ 1 lakh each to all the partners w.e.f.01.04.2019. Earlier, the partnership deed authorized payment of monthly salary of ₹ 50,000 each to all the partners. The business of the firm has more than doubled during the financial year 2019-20 and the partners anticipating such increase in business/profit have changed accordingly the condition for working partner salary.

The profit of the firm was ₹ 50 lakhs for the year ended 31.03.2020 and the corresponding profit was ₹ 20 lakhs for the year ended 31.03.2019. The partners of the firm want to know whether increase in payment of salary to working partners would be subjected to disallowance under Section 40A(2)(a). **(4 marks)**

Answer:

(a)

PQR Co. Ltd.

Computation of Total Income for the Asst. Year 2020-21

	₹
Net Profit as per statement of profit and loss	15,00,000
Add:	
CSR expenditure debited, not deductible in view of Explanation 2 to Section 37	5,00,000
Non-compete fee on which tax was not deducted at source as per Section 194J and hence @ 30% to be disallowed as per Section 40(a)(ia)	3,00,000
Building on leasehold land debited to Statement of profit and loss is eligible for depreciation only. Hence disallowed	30,00,000

16.118 ■ Scanner CMA Final Gr. III Paper 16 (2016 Syllabus)

VRS Compensation to be amortised in 5 annual instalments as per Section 35DDA. The unamortized amount is ₹ 24 lakhs of which ₹ 12 lakhs is deductible in assessment year 2020-21 and balance ₹ 12 lakhs in assessment year 2021-22. As the full amount has been debited to Statement and profit and loss, the excess ₹ 12 lakhs is added back.		12,00,000
Expenditure towards feasibility study for examining new line of activity has no connection to the present business and hence it is a capital expenditure to be disallowed.		25,00,000
Depreciation on the cost of EPABX and mobile phones debited to Statement of profit and loss @ 60% disallowed		6,00,000
Compounding fee paid for violation of local laws in construction is a expenditure for violation of law hence not deductible (Millenia Developers v. DCIT (2010) 322 ITR 401(Ker).		1,20,000
Depreciation debited in the books		24,60,000
		1,21,80,000
Less: Depreciation on leasehold building on ₹ 30 lakhs @5% (since the building was put to use for less than 180 days)	1,50,000	
Donation to scientific research company eligible for deduction @ 100% only. As the amount is already debited no adjustment is required. [Section 35(1)(ia)]	Nil	
Amount paid to ROC as fee for issue of bonus shares is deductible expenditure as the payment does not create any asset or increase in capital base	Nil	
Depreciation on EPABX and mobile phones @ 15% on ₹ 10 lakhs	1,50,000	
Royalty from patent credited to P&L – considered separately	22,00,000	

Dividend from foreign companies – considered separately	8,00,000	
Depreciation eligible under Section 32	32,30,000	
		65,30,000
Income from Business or Profession		56,50,000
Royalty from patent developed by the company		22,00,000
Dividend from foreign companies		8,00,000
Total Income		86,50,000
Computation of Tax liability		
On ₹ 56,50,000 @ 30%		16,95,000
Royalty from patent ₹ 22 lakhs @ 10%		2,20,000
Dividend from foreign companies ₹ 8 lakhs @ 15%		1,20,000
		20,35,000
Add: Health & Education Cess @ 4%		81,400
Total tax liability		21,16,400

- (b) The issue under consideration is whether remuneration paid to working partners as per the partnership deed can be considered as unreasonable and excessive for attracting disallowance under Section 40A(2) of the Income Tax Act, 1961 even though the same is within the limits prescribed under Section 40(b)(v).

The facts of the case are similar to the facts in CIT v. Great city Manufacturing Co., wherein the above issue came up before the Allahabad High Court.

The High Court observed that Section 40(6) prescribes the limits of remuneration to working partners and deduction is available upto such limits while computing the business income. If the remuneration paid is within the ceiling limit provided under 40(b)(v), then, recourse to provisions of Section 40A(2) cannot be taken.

16.120 ■ Scanner CMA Final Gr. III Paper 16 (2016 Syllabus)

Hence, applying the rationale of the Allahabad High Court ruling in Great city Manufacturing Co. Case, the increased remuneration which is authorised by the partnership deed and is within the limits specified under Section 40(b)(5) and paid to working partners, cannot be disallowed by invoking the provisions of Section 40A(2).

— Space to write important points for revision —

2018 - June [4] (a) Mahavishnu Tea Pvt. Ltd., is engaged in the business of tea as well as development of infrastructural facility (covered by Section 35 AD).

The company has brought forward business loss of 3 lakhs from tea business and ₹ 4 crores from the business of infrastructural facility, relating to the AY 2019-20.

During the year ended 31.03.2020, the company has shown a net profit of ₹ 82 lakhs from business of tea in its books, before current depreciation of ₹ 12 lakhs. From the infrastructural facility business, it has earned profit of 2.2 crores.

The company has credited a sum of ₹ 30 lakhs in the share application money on 28.02.2020, for which it is unable to explain the source satisfactorily.

Compute the total income of the company for the assessment year 2020-21.

(8 marks)

(b) Lakshmi Fertilizers Ltd. set up an industrial unit for manufacturing fertilizers in notified backward area in the State of Bihar, on 11.05.2018. The following details of investment in plant and machinery are made available to you:.

Date of investment / installation	Type of assets purchased	Amount (₹ in crores)
21.07.2019	Plant and machinery (including second hand machinery ₹ 2 crores)	32
01.12.2019	Plant and machinery	10

All the assets were put to use immediately. Excepting the machinery for ₹ 2 crores, all other assets are new.

Compute the depreciation allowable under Section 32 of the Income-tax Act, 1961 and the WDV of the relevant block of assets.

Is the assessee entitled for any other benefit in respect of aforesaid investments? If so, what is the benefit available?

Would your answer be different where such manufacturing unit is set up by a partnership firm?

Append suitable notes, wherever required.

(8 marks)

Answer:

(a) **Set off and carry forward**

Particulars	(₹ in lakhs)	
Income from tea business		
Net profit as per books	82	
Less: Current depreciation	12	
Profit from tea business	70	
Chargeable profits at 40%	28	
Less: Brought forward business loss	3	
Chargeable income from tea business		25
Income from specified business covered by Section 35AD		
Net profit as per books	220	
Less: Brought forward loss from specified business	220	
Chargeable income from specified business		Nil
Income from other sources		
Unexplained cash credit		30
[Share application money not explainable]		
Gross total income/total income		55

Notes:

1. Brought forward loss from specified business covered by Section 35AD can be set off only against income from specified business in the current year.
2. Balance loss of ₹ 1.8 crores (4 - 2.2) from specified business can be carried forward to subsequent year.
3. Unexplained cash credit of ₹ 30 lakhs cannot be reduced by brought forward loss from specified business, as per Section 115BBE(2).

(b) Computation of depreciation under Section 32 for Lakshmi Fertilizers Ltd. for A.Y. 2020-21

Particulars		₹ (in crores)
Plant and machinery acquired on 21.07.2019		32.00
Plant and machinery acquired on 01.12.2019		<u>10.00</u>
Gross block as on 31.03.2019		42.00
Less: Depreciation @ 15% on ₹ 32 crore	4.80	
Depreciation @ 7.5% (50% of 15%) on ₹ 10 crore	0.75	
Additional Depreciation @ 35% on ₹ 30 crore	10.50	
Additional Depreciation @ 17.5% (50% of 35%) on 10 Crore	<u>1.75</u>	<u>17.80</u>
Closing WDV as on 31.03.2020		<u>24.20</u>

Computation of deduction u/s 32AC & 32AD for Lakshmi Fertilizers Ltd. for A.Y. 2020-21

	₹ In Crores
Deduction under Section 32AC(1A) @ 15% on ₹ 40 crore (since investment in new plant and machinery acquired and installed in the previous year 2018-19 by the assessee., a manufacturing Company exceeds ₹ 25 crore)	6
Deduction under Section 32AD @ 15% on ₹ 40 crore	<u>6</u>
Total benefit available to the assessee-company	12

Where the assessee is a partnership firm

Yes, the answer would be different, where the manufacturing unit is set up by a firm.

However, it would be eligible for deduction of ₹ 6.30 crore under Section 32AD.

Notes:

- (i) Where an eligible asset is put to use for less than 180 days, normal and additional depreciation available will be 50% of the specified rate.
- (ii) Additional depreciation as well as deduction u/s 32AC is available only in respect of new plant and machinery. Second hand machinery is not eligible.

———— Space to write important points for revision —————

2018 - June [6] (b) (Monohar & Hari LLP is engaged in multiple business activities. The following information is furnished for the year ended 31.03.2020:

- (i) Net profit as per Profit and Loss Account ₹ 52 lakhs.
- (ii) Working partner salary debited to Profit and Loss Account ₹ 40,20,000 as authorized by the LLP agreement.
- (iii) Interest on capital paid to partners @ 15% ₹ 15,75,000. This is authorized by the LLP agreement.
- (iv) Depreciation debited to Profit and Loss Account ₹ 8,10,000.
- (v) Eligible depreciation under Section 32 ₹ 10,35,000.
- (vi) The Net Profit includes profit from under taking located in SEZ (4th year) ₹ 20 lakhs. The total turnover is ₹ 200 lakhs and the export turnover is ₹ 150 lakhs.
- (vii) The unit has earned income from generation of power and the eligible deduction under Section 80-IA amounts to ₹ 8 lakhs.

You are required to compute the total income of the firm and also the alternative minimum tax (AMT) and decide the final tax liability of the firm for the assessment year 2020-21.

(10 marks)

Answer:

Manohar & Hari LLP

Computation of the Total Income for the Asst. Year 2020-21

As per Normal Provisions		₹
Net Profit as per Profit and Loss Account		52,00,000
<i>Add:</i>		
Working partner salary debited to Profit and loss account		40,20,000
Interest on capital in excess of 12% disallowed		3,15,000
Depreciation debited to P&L account		8,10,000
		1,03,45,000
<i>Less:</i>		
Eligible depreciation under Section 32		10,35,000
Book Profit		93,10,000
<i>Less: Deduction U/s.40(b)</i>		
On first ₹ 3 lakhs @ 90%	2,70,000	
On the balance ₹ 90,10,000 @ 60%	54,06,000	56,76,000
Restricted to the amount authorized by LLP Agreement		40,20,000
Gross Total Income		52,90,000
Deduction U/s. 10AA in respect of unit in SEZ		
₹ 20,00,000 × 150 /200	15,00,000	
Deduction U/s. 80-IA	8,00,000	23,00,000
Total Income		29,90,000
Tax there on @ 30%	(A)	8,97,000

Computation of adjusted total income U/s.115 JC		
Total income as per normal provisions		29,90,000
Add: Deduction under Section 80-IA		8,00,000
Deduction U/s. 10AA		15,00,000
Adjusted total income		52,90,000
Tax thereon @ 18.5%	(B)	9,78,650
Computation of final tax liability		
Higher of (A) or (B) shall be the tax payable		9,78,650
Add: Health & Education cess @ 4%		39,146
Total Tax Payable		10,17,796

— Space to write important points for revision —

2018 - June [8] In the light of decided case laws, answer the following [Your answer should be under the following heads: (i) Issue involved (ii) Brief discussion on provisions applicable to the issue (iii) Analysis of the issue involved and (iv) Conclusion (*Citation of the case law is NOT required*)]:

- Bharathi Co-operative Housing Society collects fees at the time of transfer of flat, from the outgoing member, as well as the incoming member. As per the bye-laws, the receipts are used for meeting the various expenses of the society. During the year ended 31.03.2020, the society has collected a sum of ₹ 5 lakhs as transfer fees from outgoing members and like amount from the incoming members. The Assessing Officer (AO) has brought to tax the entire receipts of ₹ 10 lakhs. Is his action valid in law?
- Kaushiba Logistics Pvt. Ltd., borrowed a sum of ₹ 50 lakhs from a bank for business purposes. For the sanction of the bank loan, two directors gave guarantee to the bank. The assessee paid guarantee commission of ₹ 80,000 to the two directors in this regard and claimed the same as business expenditure. The AO has disallowed the same on the ground that this is an indirect payment of dividend to the two directors. Is this correct?

- (c) A, B and C were partners in the firm RR & Co. B died on 31.03.2019. The firm was dissolved and the business was continued in the same name by A. The firm has unabsorbed losses to the tune of ₹ 10 lakhs. Against the individual business income earned by A, the losses of the erstwhile firm were set off. This has been disallowed by the AO. Is this disallowance justified? **(4×3=12 marks)**

Answer:

(a) Issue involved

The issue under consideration is whether the transfer fees received by a co-operative housing society from its incoming and outgoing members is chargeable to tax.

Provisions involved

Any transfer fee received by a co-operative housing society, whether from outgoing or from incoming members, are not liable to tax in the hands of the co-operative society on account of the principle of mutuality, since the predominant activity of such co-operative society is maintenance of property of the society and there is no taint of commerciality, trade or business.

Analysis

Under the bye-laws of the society, charging of transfer fees had no element of trading or commerciality. Both the incoming and outgoing members have to contribute to the common fund of the assessee. The amount paid was to be exclusively used for the benefit of the members as a class.

Further, Section 28(iii), which provides that income derived by a trade, professional or similar association from specific services performed for its members shall be treated as business income, can have no application since the co-operative housing society is not a trade or professional association.

Conclusion

Therefore, the action of the Assessing Officer, in bringing to tax the transfer fees under the head "Profits and gains of business or profession" in the hands of Bharati Co-operative Housing Society is not correct.

Refer the decision in Sind Co-operative Housing Society v. ITO (2009) 317ITR47.

(b) Issue involved

The issue under consideration in this case is whether guarantee commission paid by a company to its employee directors is deductible as its business expenditure, where such guarantee was given by the employee directors to the bank for enabling credit facility to the company, and whether it can be contended that the same would have been payable as dividend had it not been paid as commission.

Provisions involved

In the absence of any specific disallowance, an expenditure incurred wholly and exclusively for the purpose of business has to be allowed under Section 37. It has also to be seen whether such payment was a device used to outwit the provisions of Section 115-0, which requires payment of dividend distribution tax.

Analysis

The directors of the company are employees of the company and are entitled to remuneration for the services rendered as employees. In this case, they also provided personal guarantee to banks, since it was a pre-condition laid down by the bank to provide financial assistance to the company. This act of providing personal guarantee was clearly beyond the scope of their services as employees of the company.

The assessee-company, in its commercial wisdom, passed a resolution resolving that the directors be paid commission for providing their personal guarantees for the financial assistance availed by the assessee-company from the bank. In such a case, the Assessing Officer only has to determine whether the transactions are real and genuine.

As regards Section 36(1)(ii), the recipient directors were not entitled to receive the amount as commission in lieu of dividend. Dividend is paid to all the shareholders and the recipient directors were not the only shareholders of the company. The payment of commission, hence, cannot be taken as payment of dividend, since payment of dividend would result in payment to all the shareholders and not to select shareholders.

Conclusion

Therefore, the action of the Assessing Officer, holding that if the amount was not paid to them as commission, the same would have been payable as dividend, and contending that the company avoided dividend distribution tax under Section 115-0 which was otherwise payable, is not valid.

Reference may be made to *Controls & Switchgear Contractors Ltd. v. Dy. CIT (2014) 365 ITR 312*.

(c) Issue involved

The issue under consideration in this case is whether the loss suffered by an erstwhile partnership firm, which was dissolved, can be carried forward for set-off by the individual partner who took over the business of the firm as a sole proprietor, considering the succession as a succession by inheritance.

Provisions involved

Section 78(2) deals with carry forward of losses in case of succession of business. It provides that only the person who has incurred the losses, and no one else, would be entitled to carry forward the same and set it off. An exception provided thereunder is in the case of succession by inheritance.

Analysis

Upon dissolution, the partnership firm, RR & Co. ceased to exist. Also, the partnership firm, RR & Co. and the sole proprietorship concern are two separate and distinct units for the purpose of assessment. The income earned by the sole proprietor would include his share of loss as an individual but not the loss suffered by the erstwhile partnership firm in which he was a partner.

The exception given in Section 78(2), permitting carry forward of losses by the successor in case of inheritance, is not applicable in the present case since the partnership firm was dissolved and ceased to continue. Taking over of business by a partner cannot be considered as a case of inheritance due to death as per the law of succession.

Conclusion

The action of the Assessing Officer in disallowing the claim of set-off of losses suffered by the erstwhile partnership firm RR & Co. against the income earned as an individual proprietor is, therefore, correct.

Reference may be made to the decision in Pramod Mittal v. CIT (2013) 356ITR 45 (Delhi).

— Space to write important points for revision —

2018 - Dec [3] (a) Vimala Boilers Pvt. Ltd. furnishes the following summarized position of its statement of profit and loss and pertinent additional information thereto, for the year ended 31.03.2020:

[All amounts are ₹ in lakhs]

- (i) Net profit as per books 26
- (ii) Share income from an AOP 6
- Expenditure debited in books for earning such income 0.8
- (iii) Compounding fee paid to the Corporation authorities 1.2
- (iv) Provision for income-tax 2
- (v) Provision for loss of foreign subsidiary 4
- (vi) CSR expenditure debited to statement of profit and loss 14
- (vii) Royalty received relating to business (Chargeable at 10%) 6
- (viii) The brought forward business loss and depreciation are as under (₹ in lakhs):

Particulars	As per books	As per Income Tax Act
Business loss for AY 2019-20	4	12
Unabsorbed Depreciation	3	11

- (ix) The members as well as their shares in the AOP (in which the assessee is a member) are specific and determinate
- Compute Minimum Alternate Tax (MAT) payable by the company for the Assessment Year 2020-21. The company is not an Ind-AS compliant company.

(8 marks)

Answer:

Computation of book profits u/s. 115JB of Vimala Boilers Pvt. Ltd. for the A.Y. 2020-21

	(₹ in lakhs)
(i) Net profit as per books	26
(ii) Share income from an AOP	0
[This is not an AOP which pays tax at the maximum marginal rate. Hence, no adjustment is required]	
Expenditure debited in books for earning such income [as above]	0
(iii) Provision for income-tax	2
[This is an item to be specifically added back for MAT]	
(iv) Provision for loss of foreign subsidiary	4
[This is an item to be specifically added back for MAT]	
(v) CSR expenditure debited to P & L a/c	0
[No need to add back this expenditure for MAT]	
(vi) Royalty received relating to business	- 6
[To be considered separately, as it is taxed at special rate of 10%]	
	26
Less: Lower of B/fwd business loss or depreciation	3
Book Profit	23
Tax payable Royalty at 10%	0.6
Other income at 15%	3.45
	3.45
Add: Edu Cess and SAH Edu Cess at 4%	0.14
Total tax as per MAT provisions	3.59
Rounded off	3.59

Note:

Compounding fee paid to the Corporation authorities, which is in the nature of penalty, will be disallowed while computing income as per normal provisions, but will not have any impact in the computation of book profits as per MAT provisions.

— Space to write important points for revision —

2018 - Dec [3] (b) AKP is a public charitable trust created under a trust deed for providing relief to physically challenged persons and registered under Section 12AA. The following are the particulars of receipts of the trust during the year ending March 31, 2020:

Particulars	₹ in lakhs
Income from properties held by trust (net)	15
Income (net) from business (incidental to main objects)	14
Voluntary contributions from public (including the corpus donation of ₹ 7 lakhs)	18

The trust applied ₹ 18 lakh towards various activities and programmes undertaken for the benefit of physically challenged persons during the year. The trust has also paid ₹ 8 lakh towards repayment of a loan taken two years back for the purpose of construction of its centre for training the handicapped persons in various handicraft works and sports.

Determine the tax liability, if any of the trust for the Assessment Year 2020-21 and also state how the trust can mitigate such liability. **(8 marks)**

Answer:

Computation of Taxable Income of Public Charitable Trust for the A.Y. 2020-21

Particulars	Amount
(i) Income from property held by trust (net)	15,00,000
(ii) Income (net) from business [incidental to main objects]	14,00,000
(iii) Voluntary contribution from Public Charitable Trust [voluntary contribution made with specific direction towards corpus are alone to be excluded U/s 11 (1) (d)].	11,00,000
	40,00,000
Less: 15% of the income eligible for retention/accumulation without any condition	6,00,000
	34,00,000

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Less: Amount applied for the objects of the trust:	
(i) Amount spent for charitable purpose	18,00,000
(ii) Repayment of loan	8,00,000
Taxable Income	8,00,000

Tax Liability on ₹ 8,00,000 at tax rates applicable in case of individual

0.74675

Rounded off

0.74680

— Space to write important points for revision —

2018 - Dec [5] Answer any **four** of the following [Your answer should be under the following heads: (i) Issue involved (ii) Brief discussion on provisions applicable to the issue (iii) Analysis of the issue involved, and (iv) Conclusion [Citation of case law is NOT required]:

- Ram and Rahim were Executive Directors of Saraswati Tea Pvt. Ltd. In respect of a bank loan, they gave their personal guarantee. The assessee-company paid them guarantee commission of ₹ 1 lakh each. The Assessing Officer feels that this is a disguised payment of dividend under Section 2(22) and is not a commission which is deductible as business expenditure. He has disallowed the same. Is the action of the AO valid in law?
- Govinda and Vaamana were partners in a firm, which got dissolved consequent to the demise of Govinda. The firm had unabsorbed losses. Vaamana, who took over the business, has set off the said loss in his personal hands in the subsequent year. Such set off is not allowed by the Assessing Officer. Is his action correct?
- MNC Ltd. is engaged in the business of managing and operating hotels. The assessee allowed the employees to accept tips from customers. Some customers paid the bill and tips to the employees through credit card. The assessee, being employer collected the amounts and disbursed tips to the employees on monthly basis. The assessee did not deduct tax at source on the said payments as the amounts were not in the nature of salary. Does the action of the assessee satisfy the legal requirements?

- (d) Dempo Ltd. transferred its factory building for ₹ 65 lakhs. The company owned only one such building in the block of assets. The written down value of the factory building was ₹ 13.95 lakhs. The company acquired the building 10 years ago for ₹ 40 lakhs. It deposited ₹ 50 lakhs in REC bonds within one month after the transfer of factory building. The company claimed exemption under Section 54EC. Is the claim of the company tenable in law?
- (e) Jayakrishna Flour Mills Pvt. Ltd., has derived an income of ₹ 1.2 crore from generation and distribution of electricity, using windmills. Such profits have been claimed as 100% deduction under Section 80-IA. The assessee has other income from certain other activities also, which form part of the total income. The assessee has paid interest of ₹ 60 lakhs to a bank in respect of the term loans on the windmills. The Assessing Officer wants to invoke the provisions of Section 14A in respect of such interest. Can he do so? **(4×4=16 marks)**

Answer:

(a) Allowability of commission paid to directors:

Issue involved:

The issue under consideration in this case is whether guarantee commission paid by a company to its employee directors is deductible as its business expenditure, where such guarantee was given by the employee directors to the bank for enabling credit facility to the company, and whether it can be contended that the same would have been payable as dividend had it not been paid as commission.

Provisions applicable:

In the absence of any specific disallowance, expenditure incurred wholly and exclusively for the purpose of business has to be allowed under Section 37. It has also to be seen whether such payment was a device used to outwit the provisions of Section 115-O, which requires payment of dividend distribution tax.

Analysis of the issue:

The directors of the company are employees of the company and are entitled to remuneration for the services rendered as employees. In this case, they also provided personal guarantee to banks, since it was a precondition laid down by the bank to provide financial assistance to the company.

This act of providing personal guarantee was clearly beyond the scope of their services as employees of the company.

The assessee-company, in its commercial wisdom, passed a resolution resolving that the directors be paid commission for providing their personal guarantees for the financial assistance availed by the assessee-company from the bank. In such a case, the Assessing Officer only has to determine whether the transactions are real and genuine.

As regards Section 36(1)(ii), the recipient directors were not entitled to receive the amount as commission in lieu of dividend. **Dividend is paid to all the shareholders and the recipient directors were not the only Shareholders of the company. The payment of commission, hence, cannot be taken as payment of dividend, since payment of dividend would result in payment to all the Shareholders and not to Shareholders holding prescribed percentage of the voting power/share capital in the company.**

Conclusion:

Therefore, the action of the Assessing Officer, holding that if the amount was not paid to them as commission, the same would have been payable as dividend, and contending that the company avoided dividend distribution tax under Section 115-O which was otherwise payable, is **not valid**.

Reference may be made to the decision in *Controls & Switchgear Contractors Ltd. v. Dy. CIT* (2014) 365 ITR 312.

- (b) Issue Involved:** Govinda and Vaamana were partner in a firm and dissolved. The firm has unabsorbed losses, Vaamana, who took over the losses, can he setoff the said loss. In his personal hand in subsequent year.

Applicable Provision: Section 78(2), where any person carrying on any business or profession has been succeeded in such capacity by another person otherwise than by inheritance, such other person shall not be allowed to carry forward and set-off against his incurred by the predecessor.

Analysis: The High Court observed that upon dissolution the partnership firm ceased to exist. Also the partnership firm and proprietorship concern are two separate and distinct unit for the purpose of assessment. As per **Section 170(1)**, the partnership firm shall be assessed as such from the 1st April of the previous year till the date of dissolution. Therefore, the Income of the sole proprietorship shall be taxable in the hand of the assessee as an individual.

Section 78(2) however, deals with carry forward of losses in case of succession of business of it provide that only the person who has incurred the losses, and on one would be entitled to carry forward the same and set it off. An exception provided there under is in the case of succession by inheritance.

High Court decision is that, loss suffered by the erstwhile partnership firm before dissolution of the firm can not be carried forward by the success sole proprietor, since it is not a case of succession by inheritance.

Conclusion: Applying the above sector and analysis by High Court in case of Pramod Mittal, Vaama can not set-off the said loss in his personal hand in the subsequent year. Action of Assessing Officer is correct.

(c) TDS on tips collected by a hotel from customers:

Issue involved

The issue is whether tax is required to be deducted at source under Section 192 from the tip (collected from customers) distributed by the assessee-employer. In other words, it has to be seen whether the action of the assessee satisfies the legal requirements.

Provisions applicable

Section 192 provides that tax is to be deducted at source by the employer from salary at the time of payment, if the amount of salary (after permissible deductions under Sections 80C, 80D, etc.) exceeds the maximum amount not chargeable to tax.

Analysis of the issue

The employer has collected the tips paid by the customers voluntarily and was not collected as a matter of right. Further the employment contract does not show the obligation to collect tips and disburse to employees.

There is no vested right in the employee to claim the amount of tips from the employer. It is voluntary payment which cannot be called as salary within the meaning of Section 15.

When an amount is received from a person other than employer, such payment cannot be charged to tax under the head “salaries”. Therefore, the provision of Section 192 does not get attracted.

Conclusion:

The action of non-deduction of tax at source from tips collected from customers and distributed to the hotel employees satisfies the legal requirement.

Reference may be made to the decision in *ITC Ltd vs. CIT (TDS) 384 ITR 14 (SC)*

- (d) **Facts of the Case:** The company owned only one such building in the block of assets the company acquired the building 10 years ago, and it transferred its factory building for ₹ 6 lakhs. It deposited ₹ 50 lakhs in REC bonds within one month after the transfer of factory building. The company claimed exemption **under Section 54EC**. The issue valued in this case whether the claim of the company is tenable in law.

Provisions applicable: In order to avail the exemption **under Section 54EC** the capital gains have to be invested in a long-term specified asset within a period of six months from the date of transfer. Where the assessee has made the payment within the six month period, and the same is reflected in the bank account and a receipt has been issued as on that date.

Analysis: For the purpose of the provisions of **Section 54EC**, the date of investment by the assessee must be regarded as the date on which payment is made. Therefore, held that if such payment is within a period of six months from the date of transfer, the assessee would be eligible to claim exemption **under Section 54EC**.

Conclusion: In view of the above provision the claim of the company is tenable in law.

(e) **Issue Involved :** In the present case, the assessee is a pvt. company engaged in generation and distribution of electricity, using windmills. The assessee had claimed deduction **under Section 80-IA** on such profits. The assessee has paid interest of ₹ 60 lakhs to the bank in respect of the term loans on the windmills. The Assessing Officer wants to invoke the provisions of **Section 14A** in respect of such interest.

Applicable Provisions: In the case of *CIT V. Kribhco* the High Court observed that **Section 14A** is not applicable for deductions, which are permissible and allowed under chapter VIA. Section 14A is applicable only if an income is not included in the total income as per the provisions of chapter III of the Income Tax Act, 1961. Deduction under chapter VIA are different from the exclusion/ exceptions provided under chapter III.

Analysis: The word “do not form part of the total income under this Act” used in **Section 14A** are significant and important. Income which qualifies for deduction **under Section 80C to 80U** has to be first included in the total income of the assessee and then allowed as a deduction.

However, income referred to in chapter III do not form part of the total income and therefore, as **Section 14A**, no deduction shall be allowed in respect to the expenditure incurred by the assessee in relation to such income which does not form part of the total income.

Conclusion: In view of above provision and according to the observation of the High Court, no disallowance can be made **under Section 14A** in respect of income included in total income is respect of which deduction is allowable **under Section 80C to 80U**.

— Space to write important points for revision —

2019 - June [2] (a) Mrs. Malavika commenced the business of warehousing of food grains on 1st April, 2019.

The under-mentioned summarised data relating to the warehousing business are furnished to you:

Particulars	(₹ in lakhs)
Net profit from business	126.5
Capital expenditure on Land & Building (35 + 20) incurred on 19.05.2019	55

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Warehouse building additional cost incurred towards above building (completed on 20.12.2019)	50
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The assessee did not derive any other income during the year.
You are required to compute the total income and the tax payable by the assessee for the assessment year 2020-21. **(8 marks)**

Answer:

Since the assessee is eligible for deduction u/s 35AD, provisions of AMT will be applicable and its impact has to be seen

Particulars	(₹ in lakhs)
Net profit from business	126.5
Less: Deduction u/s 35D (for warehouse business)	
Capital expenditure on land ₹35 lakhs not eligible	Nil
Warehouse building (₹20 + ₹50) lakhs (A)	70
Business income after above deduction	56.5
Less: Depreciation allowable (₹20L × 10% + ₹50L × 5%)	4.5
Chargeable business income/total income (B)	52
Tax on above (₹1,12,500 + 30% of ₹42L)	13.725
Add: SC at 10% as income exceeds ₹50L	1.373
	15.098
Add: Cess on above at 4%	0.604
Tax liability as per normal provisions	15.702
Alternate minimum tax	
Adjusted total income (A) + (B)	122
AMT at 18.5%	22.57

ADD: SC at 15% as income exceeds ₹ 1 crore	3.386
	25.956
Add: cess at 4%	1.038
AMT	26.994

Since the regular income-tax is lower than the AMT,

- adjusted total income will be deemed to be the total income (₹122 lakhs) and
- the tax payable will be ₹26.994 lakhs

— Space to write important points for revision —

2019 - June [2] (c) On 20th Feb., 2020, Vaamana Textiles Pvt. Ltd., has given a trade advance of ₹ 50 lakhs to Ms. Poorvisha, a shareholder holding 30% of the equity shares and voting power in the company. On this date, the company has credit balance of ₹ 35 lakhs in the profit and loss account. Ascertain the quantum of deemed dividend which is assessable in the hands of Ms. Poorvisha. **(4 marks)**

Answer:

Deemed dividend:

Section 2(22)(e) provides that “dividend” includes any payment by a company in which public are not substantially interested, of any sum by way of

- advance or loan
- to a shareholder who is the beneficial owner of shares holding not less than 10% of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits.

Some Courts in the recent past has held that trade advances in the nature of commercial transactions would not fall within the ambit of the provisions of **section 2(22)(e)**.

In view of the above, the CBDT has, vide circular 19/2017, dated 12.06.2017, clarified that it is a settled position that trade advances,

which are in the nature of commercial transactions, would not fall within the ambit of the word 'advance' in **section 2(22)(e)** and therefore, the same would not to be treated as deemed dividend.

Hence in the given situation there will not be any amount which is assessable as deemed dividend.

———— Space to write important points for revision —————

2019 - June [3] King Metals (P) Ltd. reports a Net Profit ₹ 10,20,000 as per Statement of Profit and Loss for the year ended 31.03.2020. The following additional information is provided:

- (i) Opening stock as on 01.04.2019 was ₹ 9,00,000 and the closing stock as on 31.03.2020 was ₹ 16,50,000. The opening stock was overvalued by 10% and the closing stock was undervalued by 10%.
- (ii) Dividend received from a foreign company credited to Statement of Profit and Loss ₹ 31,000. The company has 2% shareholding in the foreign company.
- (iii) The company sold a vacant land for ₹ 23 lakhs on 05.07.2019. The original cost of acquisition is ₹ 12 lakhs. The indexed cost of acquisition is ₹ 16,17,000 Profit on sale of vacant land has been credited to Statement of Profit and Loss. The company subscribed to REC bonds for ₹ 5,30,000 on 20.12.2019.
- (iv) The company made a provision for bad and doubtful debts @ 5% of debtors on the closing date. The debtors outstanding as on 31.03.2020 was ₹ 62 lakhs.
- (v) Depreciation debited to Statement of Profit and Loss ₹ 7,50,000. Depreciation allowable as per Income-tax Rules ₹ 6,55,000
- (vi) Salary expenditure includes. ₹ 3,60,000 paid to son of managing director who was no way connected with the business of the company. It also includes commission paid to a director's son 3% being ₹ 2,40,000 and whereas for other commission agents it was paid @ 2%.
- (vii) The company has paid term loan interest to SBI relating to previous year 2018-19 ₹ 2,10,000 in December, 2019. It has not paid term loan interest of ₹ 1,90,000 of the previous year 2019-20 during the year and proposes to make the payment only in January, 2021.

- (viii) The company took factory premises on lease and paid lease rent of ₹ 60,000 per month for 2 months to Mr. Akhil. No tax was deducted on such rent payment.
- (ix) Directors sitting fee of ₹ 50,000 was paid to 5 directors during the year. Tax was deducted for 2 directors and for the balance no tax deduction was made.
- (x) Provision for loss of subsidiary included in administrative expenses ₹ 2 lakhs.
- (xi) Amount credited to Statement of Profit and Loss by transfer from revaluation reserve amounts to ₹ 1,10,000.
- (xii) Provision for gratuity debited to Statement of profit and loss ₹ 7 lakhs. Actual gratuity paid during the year debited to provision account ₹ 4 lakhs.
- (xiii) A bad debt claim of ₹ 1,60,000 relating to the assessment year 2016-17 allowed in assessment was recovered and was credited to general reserve account.

You are required to compute the income of King Metals (P) Ltd. by giving brief explanations for each of the adjustments given above. **(16 marks)**

Answer:

Computation of Total Income of King Metals (P) Ltd for the Asst. Year 2020 - 21

	₹	₹
Profits and gains of business or profession		
Net Profit as per Statement of profit and loss		10,20,000
<i>Add:</i>		
Undervaluation of closing stock to be adjusted		1,83,333
Overvaluation of opening stock by 10% to be adjusted		81,818
Provision for bad and doubtful debts - disallowed		3,10,000
Depreciation debited to statement of profit and loss		7,50,000

Salary paid to son managing director having no nexus to the business of the company is not allowable under section 37		3,60,000
Excess commission paid to the director's son is liable for disallowance under section 40A(2)		80,000
Term loan interest debited to Statement of profit and loss of the previous year 2018-19 not allowable under section 43B		1,90,000
Premises lease rent paid ₹60,000 per month for 2 months being ₹1,20,000. It is not liable for tax deduction under section 194-IB as the section will apply only to individual and HUF taxpayers. No adjustment is required.		Nil
Directors sitting fee paid without deduction of tax at source liable for disallowance @ 30% under section 40(a)(ia) [30% of ₹1,50,000]		45,000
Provision for loss of subsidiary company -disallowed		2,00,000
Provision for gratuity debited to Statement of profit and loss ₹7 lakhs not deductible in view of section 40A(7) . However, the amount actually paid is eligible for deduction. The excess provision is disallowed.		3,00,000
Bad debt claim allowed in assessment year 2016-17 recovered during the year but credited to general reserve is chargeable to tax as income		1,60,000
		36,80,151
Less:		
Dividend received from foreign company excluded and to be taxed under the head 'other sources'	31,000	

Profit on sale of vacant land credited to Statement of profit and loss, to be considered under the head 'capital gains'	11,00,000	
Depreciation allowable as per Income-tax rules	6,55,000	
Interest on term loan of the previous year 2018-19 paid in December, 2018 deductible under section 43B	2,10,000	
Amount withdrawn from revaluation reserve and credited to Statement of profit and loss excluded	1,10,000	
		21,06,000
Income from Business		15,74,151
Capital Gain:		
Sale consideration	23,00,000	
Less: Indexed cost of acquisition	16,17,000	
	6,83,000	
Less: Exemption U/s 54EC eligible for corporate taxpayers' also	5,30,000	
		1,53,000
Income from Other Sources:		
Dividend received from foreign company		31,000
Total Income (Rounded off)		17,58,150

— Space to write important points for revision —

2019 - June [5] In the light of decided case laws, answer the following [Your answer should be under the following heads: (i) Issue involved (ii) Brief discussion on provisions applicable to the issue (iii) Analysis of the issue involved and (iv) Conclusion (Citation of the case law is NOT required)]:

- (a) Mr. Dhanapal, a resident individual, sold a house plot purchased 48 months back for ₹ 70 lakhs and invested the net sale proceeds in purchase of a residential house within 6 months from the date of sale. He does not own any other residential house. The new house, however, is in the name of his wife. The Assessing Officer refuses to grant exemption under section 54F on the ground that the new residential house is not in the name of the assessee.
Is the rejection justified?
- (c) Anustup Chandra Textiles Ltd., had borrowed a sum of ₹ 2 crores from a bank during the period when its business was being set up. From the surplus funds, it made short-term deposits and earned interest of ₹ 3 lakhs. The assessee claimed that it was not a revenue receipt but a capital receipt, since the interest was earned prior to commencement of business and in any case, the interest received would be offset by the interest paid on the loan borrowed. The Assessing officer negative the claim of the assessee.
Is the AO justified in his action? (4 × 2 = 8 marks)

Answer:

(a) Exemption u/s 54F:

Issue involved:

The issue under consideration in this case is whether exemption under **section 54F** can be denied to the assessee, if the net sale proceeds of a long term capital asset are invested in a new residential house within the stipulated time limit but the said house is purchased in the name of his wife and not in his name.

Provisions applicable:

Section 54F requires purchase or construction of a residential property within the specified period. It does not require purchase of new residential house property in the name of the assessee himself. It only requires the assessee to purchase or construct a residential house within the stipulated time limit.

Analysis of the given issue:

In this case, Mr. Dhanapal had not purchased the new house in the name of a stranger or somebody who is unconnected with him, but had purchased it in the name of his wife.

The entire investment for purchase of new residential house had come out of the sale proceeds of the plot belonging to Mr. Ankit and there was no contribution from his wife.

Therefore, having regard to the rule of purposive construction and the object of enactment of **section 54F**, Mr. Dhanapal is entitled to claim exemption u/s 54F in respect of utilization of sale proceeds of plot of land for investment in residential house property in the name of his wife.

Conclusion:

As a consequence, the action taken by the Assessing Officer in rejecting the claim for deduction under **section 54F** in the hands of Ankit due to the reason that he had invested the sale proceeds in purchasing a new residential house in the name of his wife rather than in his name, is not valid.

Reference may be made to the decision in **CIT v. Kamal Wahal (2013) 351 ITR4**.

(c) Taxability of interest from deposits made out of borrowed funds:

Issue involved:

The issue under consideration is whether the interest income of ₹2 lakhs on short-term fixed deposits made out of the unspent amount of term loan disbursed to BSL Ltd., would be a capital receipt not chargeable to tax or a revenue receipt chargeable to tax.

Provisions applicable:

Interest which is chargeable to tax under the **Income-tax Act, 1961** would be assessable under the head "Income from Other Sources",

- (i) if such income is not exempt, and
- (ii) is not chargeable to tax under any other head including "Profits and gains of business or profession."

Analysis of the issue:

Interest earned by the assessee is clearly its income and unless it can be shown that there is exemption under any provision of the Act, like **section 10**, such income will be taxable.

The fact that the source of income was borrowed money does not detract anything from the revenue character of the receipt.

The interest payable on funds borrowed for the business prior to commencement of such business can be capitalized. However, such interest payable cannot be adjusted against interest received on investment of surplus funds assessable under **section 56** under the head "Income from Other Sources".

In this case, since the assessee had deposited the amount of surplus funds available with it prior to commencement of business with the bank solely for the purpose of earning interest, such interest, in the absence of specific exemption in respect thereof, is chargeable to tax under the head "Income from Other Sources".

Conclusion:

Accordingly, the action of the AO is legally valid/ justified.

Reference may be made to the decision of the **Allahabad High Court in PC1T vs. Sangam Power Generation Co. Ltd.**

— Space to write important points for revision —

2019 - Dec [2] (c) On 20th Feb., 2020 Vaamana Textiles Pvt. Ltd., has given a trade advance of ₹50 lakhs to Ms. Poorvisha, a shareholder holding 30% of the equity shares and voting power in the company. On this date, the company has credit balance of ₹35 lakhs in the profit and loss account.

Ascertain the quantum of deemed dividend which is assessable in the hands of Ms. Poorvisha. **(4 marks)**

2019 - Dec [3] Barun Co. Ltd. is engaged in the business of manufacture of chemicals since June, 2005. The Statement of Profit and Loss for the year ended 31.03.2020 shows a Net Profit of ₹35,60,000 and aggregate turnover which never exceeded ₹25 crores. The following additional information is provided:

- (a) Depreciation debited in the books ₹19,40,000 (it includes depreciation on revalued plant and machinery of ₹3,00,000). Amount of depreciation deductible under Income-tax Rules ₹13,15,000.
- (b) Interest payable to financial institutions ₹5,20,000 debited in the books but ₹3,90,000 was actually paid during the previous year and up to the date of filing the return of income under section 139(1).
- (c) Provision for doubtful debts ₹8 lakhs being 5% on debtors debited to Statement of Profit and Loss.

- (d) Expenditure towards issue of bonus shares ₹2 lakhs and alteration of memorandum of association for increasing the authorized capital ₹1 lakh. Both have been debited in the books as expenditure.
- (e) Purchase of agricultural produce being raw material for manufacture by making cash payment on 15.08.2019 ₹60,000 and on 26.01.2020 ₹40,000. Also, cash payments of ₹50,000 made for purchases of the previous year 2018-19 on 03.05.2019.
- (f) Contract payments made during the year ₹5,10,000 to ABC Ltd., Chennai. Tax was not deducted at source in respect of the payments of ₹1,50,000.
- (g) Dividend from subsidiary company credited to Statement of Profit and Loss ₹90,000.
- (h) Provision for taxation ₹2 lakhs and proposed dividend ₹80,000 debited to Statement of Profit and Loss.

Compute Total income and tax liability as per regular provision and under section 115JB (MAT Provision) for the assessment year 2020-21.

(16 marks)

Note: You have to deal with each and every item given above and provide brief reasons for treatment given.

2019 - Dec [4] (a) Vishwa & Co., a partnership firm has earned a net profit of ₹ 6.2 lakhs after debiting the following items:

	(₹ in lakhs)
(i) Depreciation as per books for the current year	2
(ii) Interest to partners at 15%	9
(iii) Remuneration to working partners	7

Additional information:

(i) Depreciation for the current year as per Income-tax Rules, 1962	4
(ii) Unabsorbed depreciation of AY 2019-20 pertaining to a business which was discontinued	3
(iii) Brought forward business loss of AY 2019-20	5
(iv) Remuneration as per partnership deed to working Partners	8
(v) Interest to partners as per partnership deed 15%	

You are required to compute the total income for the firm, when the firm files its return of income on 30.07.2020.

Assuming that a best judgment assessment under section 144 is made, what will be the total income assessed?

(8 marks)

2019 - Dec [5] In the light of decided case laws, answer *any four* of the following:

[Your answer should be under the following heads: (i) Issue involved (ii) Brief discussion on provisions applicable to the issue (iii) Analysis of the issue involved, and (iv) Conclusion [*Citation of the case law* is NOT required:

- (a) Sagoserve Cooperative Society was a cooperative society deriving income of ₹2 crore, for which deduction was allowed under section 80P(2)(d). The total income of the assessee was ₹3 crore. The Assessing Officer disallowed 40% of interest expenditure, invoking the provisions of section 14A. According to the AO, out of the aggregate income of ₹5 crore, ₹2 crore did not form part of the same.
Is the disallowance made by the AO justified?
- (b) Lavanya Syndicates Pvt. Ltd., owns several house properties, let out on commercial basis to various kinds of people like business houses, corporate entities, etc. One of the objectives of the company is to own and derive income from letting out various kinds of immovable property. The rental income derived was offered by the company as its business income. Various deductions for earning such income was claimed, as also depreciation on the buildings owned by the company.
The Assessing Officer treated the rental income as income from house property and granted deduction only u/s 24.
Discuss whether the treatment of the impugned income made by the company is correct.
- (c) Mr. Pandurang sold a residential house property and invested whole of the long-term capital gain for purchasing a residential flat. The possession was not handed over by the builder to the assessee even after 3 years, even though the entire sale consideration had been paid. The Assessing Officer refused to grant exemption u/s 54 on the ground that the prescribed condition for purchase of a residential house had not been complied with, in as much as the possession had not been handed over. Judge the correctness of the action of the Assessing Officer.

- (d) Bluesky Airlines, the assessee-company was operating an airlines in India. Payment of ₹34 lakhs was made during the year to the Airport Authority of India. The assessee deducted tax at source at 2% u/s 194-C. The AO contended that the same was for parking charges and being payment made for use of land, section 194-I will apply. Is the contention of the Assessing Officer correct in law?
- (e) The assessee was dealing in Indian Made Foreign Liquor (IMFL). It was purchasing IMFL in wholesale from the State Govt., and selling it for higher price in the market. The Department recovered documents during survey which showed that the assessee had sold IMFL at price higher than what had been sold. Addition was made u/s 68 for suppressed sales. The assessee objected to the same. Is the objection sustainable? **(4×4=16 marks)**

2019 - Dec [7] (a) Mr. Rupesh is a resident and ordinary resident has furnished following particulars of income earned during the previous year relevant to the assessment year 2020-21:

		In ₹
(i)	Income from agriculture in Pakistan, received there but latter on ₹86,000 is remitted to India.	3,41,000
(ii)	Income from property in USA received outside India (out of this ₹92,000 is used in Canada for meeting education expenses of his son and ₹2,48,000 is latter remitted to India.	3,40,000
(iii)	Income from business in Iran which is controlled from New Delhi (₹70,000 is received in India)	4,05,000
(iv)	Dividend paid by Indian Company on May 10, 2019 but received outside India	1,95,800
(v)	Profits from a business in New Delhi and managed from outside India (60% of profit is received outside India)	92,000
(vi)	Profits on sale of a building in India but received in Nepal	8,74,000

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(vii)	Pension from a former employer in India, received in Iran	2,55,000
(viii)	Gift in foreign currency from a friend received in India on September 6, 2019.	80,000

Find out gross total income for the assessment year 2020-21. **(8 marks)**