

## PAPER – 7: DIRECT TAX LAWS

Question No.1 is compulsory.

Answer any **four** questions from the remaining **five** questions.

Working notes should form part of the respective answers.

All questions relate to Assessment Year 2021-22, unless stated otherwise in the question.

### Question 1

M/s Sunflower Associates, a partnership firm had 5 partners. On 31.3.2020, one of the partners resigned from the firm. Out of the four partners, only 2 are working partners. Partnership deed authorises payment of interest to partners in the range of 13% - 15% and also payment of remuneration to all the four partners @ 20,000 per month. The profit and loss account of the firm showed a net profit of ₹ 80 lakhs after debiting/crediting of the following sums:

- (i) Interest on capital @13% - ₹ 7,15,000
- (ii) Interest on loan taken from one of the partners@ 15% - ₹ 90,000
- (iii) Interest on fixed deposits made out of surplus funds ₹ 35,000 (Gross)
- (iv) Depreciation as per books of accounts ₹ 1,15,650
- (v) It applied for establishing of a unit in SEZ and the letter of approval was granted on 30.3.2020. However, it started the operation of SEZ only on 15.10.2020. The total turnover, export turnover and net profit for the year ended 31.3.2021 were ₹ 120 lakhs, ₹ 40 lakhs and ₹ 7.5 lakhs respectively. The net profit is included in the profit of ₹ 80 lakhs mentioned above.
- (vi) Interest on unsecured loans (₹ 10 lakhs) taken from third parties - ₹ 1,20,000
- (vii) A building having a WDV as on 1.4.2020, of ₹ 36.45<sup>1</sup> was sold during the year for ₹ 90 lakhs. The differential amount was credited to profit and loss account. The building was the only asset in the block.

### Additional Information:

- (a) Brought forward business loss pertaining to A.Y. 2019-20 ₹ 2 lakhs
- (b) On 1.9.2020, the firm commenced a warehousing facility for storage of sugar and incurred ₹ 60 lakhs (including ₹ 35 Lakhs towards cost of land). This expenditure is capitalised in the books but no depreciation is charged on the same.

The Suggested Answers for Paper 7: Direct Tax Laws are based on the provisions of direct tax laws as amended by the Finance Act, 2020, which are relevant for December, 2021 examination. The relevant assessment year is A.Y.2021-22.

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<sup>1</sup> To be read as ₹ 36.45 lakhs

- (c) The entire amount of unsecured loan (mentioned in point (vi) above) was given as interest-free loans to unrelated parties connected with business.
- (d) Out of the amount received from sale of building, the firm invested ₹ 60 lakhs on 15.4.2021 in 7-years specified bonds of the National Highways Authority of India. The bonds were issued on 31.5.2021.
- (e) During the year, Mr. Ratan, one of the partners, contributed ₹ 21 lakhs as capital. However, he is unable to explain the source of the funds.

WDV of the assets as on 1.4.2020 (as per Income-tax Rules)

Name of the asset	WDV (₹)
Electrical fittings	48,000
Laptops	6,000
Printer-cum-Scanner	17,000
Motor car (purchased and put to use on 1.3.2020)	6,80,000
Cost of mobile phones (purchased and put to use on 11.10.2020)	20,000

Compute the total income of the firm for the A.Y. 2021-22 giving reasons/explanations for the treatment of each item under the normal provisions of the Act. No need to calculate tax payable. **(14 Marks)**

**Answer**

**Computation of Total Income of M/s Sunflower Associates, a partnership firm, for the A.Y. 2021-22**

	Particulars	Amount (in ₹)	
I	<b>Profits and gains of business and profession</b>		
	Net profit as per profit and loss account		80,00,000
	<b>Add: Items debited but to be considered separately or to be disallowed</b>		
	(1) <b>Interest to partners on capital</b>	55,000	
	[As per section 40(b), interest to partners authorized by the partnership deed is allowable as deduction subject to a maximum of 12% p.a.] [₹ 7,15,000 x 1%/13%]		
	(2) <b>Interest on loan taken from partner</b>	18,000	
	[As per section 40(b), interest to partners authorized by the partnership deed is allowable as deduction subject to a maximum of 12% p.a., whether it is interest on partner's capital or loan] [₹ 90,000 x 3%/15%]		

(3) Depreciation as per books of account	1,15,650	
(4) Interest on unsecured loan from third parties [Under section 36(1)(iii), the amount of interest paid in respect of capital borrowed “for the purposes of business” is allowable as deduction while computing business income. The scope of “for the purposes of business” is much wider than “for the purpose of earning income, profits or gains”. In this case, the interest paid on unsecured loans taken from third parties were given as interest-free loan to unrelated parties connected with business, and hence, the same is “for the purposes of business” and is allowable as deduction, as it satisfies the test of commercial expediency <sup>2</sup> . Since the same has already been debited to the profit and loss account, no further adjustment is necessary]	-	
		1,88,650
		81,88,650
<b>Less: Items credited but chargeable to tax under another head/expenses allowed but not debited</b>		
1. Interest on fixed deposits made out of surplus fund [Interest received from bank on fixed deposits made out of surplus funds is assessable under the head 'Income from other sources'. Since the same has been credited to profit and loss account, it has to be deducted while computing business income]	35,000	
2. Profit on sale of building [Capital gain on sale of building is taxable under the head “Capital Gains”. Since such gains has been credited to profit and loss account, the same has to be deducted while computing business income]	53,55,000	
		53,90,000
		27,98,650
<b>Less: Depreciation as per Income-tax Rules, 1962</b>		
- Electrical fittings [₹ 48,000 x 10%]	4,800	
- Laptops [₹ 6,000 x 40%]	2,400	

<sup>2</sup> S.A. Builders Ltd. v. CIT (Appeals) [2007] 158 Taxman 74

	- Printer-cum-Scanner [₹ 17,000 x 40%]	6,800	
	- Motor car [₹ 6,80,000 x 30%, since purchased and put to use on 1.3.2020]	2,04,000	
	- Mobile phone [₹ 20,000 x 15% x 50%, since purchased and put to use for less than 180 days]	<u>1,500</u>	<u>2,19,500</u>
	<b>Book Profit</b>		25,79,150
	<b>Less:</b> Salary to working partners		
	(i) As per limits given under section 40(b)		
	On first ₹ 3,00,000 @90%	2,70,000	
	On the balance of ₹ 22,79,150 @ 60%	<u>13,67,490</u>	
		16,37,490	
	(ii) Salary actually paid to working partners [₹ 20,000 x 12 x 2]	4,80,000	
	Deduction allowed being (i) or (ii) whichever is less		<u>4,80,000</u>
			20,99,150
	<b>Less:</b> Brought forward business loss relating to A.Y. 2019-20 set off		<u>2,00,000</u>
	(Section 78 disallowing set-off of share of loss of outgoing partner will not apply in this case, as it is a case of resignation and not retirement or death of partner)		
	<b>Note</b> - Alternate view is possible that resignation is included within the fold of retirement, in which case ₹ 40,000, being share of loss of outgoing partner is not allowed to be set-off. Accordingly, the loss which can be set-off would be only ₹ 1,60,000. In such a case, business income would be ₹ 19,39,150, gross total income would be ₹ 23,29,150 and total income would be ₹ 20,79,150.		
			18,99,150
	<b>Profits and gains from warehousing facility for storage of sugar business</b>		
	100% deduction u/s 35AD in respect of cost of building [₹ 60 lakhs – ₹ 35 lakhs, being cost of land]	<u>(25,00,000)</u>	
	Loss from the specified business of setting up a warehousing facility to be carried forward as per section 73A	25,00,000	-
			<u>18,99,150</u>
II	<b>Capital Gains</b>		
	1. Short term capital gain on sale of building		

III	<b>forming part of block of asset</b> [Since building was the only asset in the block]		
	Full value of consideration	90,00,000	
	Less: Cost of acquisition [WDV as on 1.4.2020]	<u>36,45,000</u>	
		53,55,000	
	Less: Exemption under section 54EC [Investment in bonds of NHAI, the maximum deduction u/s 54EC would be ₹ 50 lakhs]	<u>50,00,000</u>	3,55,000
	[Available against depreciable asset, being a building assuming it is held for more than 24 months <sup>3</sup> and the payment for bonds has been made within six months from the date of transfer, exemption u/s 54EC would be available even if the allotment of bonds was made after the expiry of the six months <sup>4</sup> ]		
	<b>Note –</b> In point (vii) of the question, date of transfer and the period for which the building is held by the firm is not given. The above answer is based on the assumption that the depreciable asset, being building is held for more than 24 months and investment in bonds is made within 6 months from the date of transfer.		
	<b>Income from Other Sources</b>		
	Interest from bank on fixed deposits	35,000	
	Capital contribution of Mr. Ratan, a partner	-	
	[Capital contribution by Mr. Ratan, a partner, would not be deemed to be the income of the firm u/s 68 even if Mr. Ratan is not able to explain the source of the funds. <sup>5</sup> ]		35,000
	<b>Gross Total Income</b>		22,89,150
	<b>Less: Deduction under section 10AA</b> [₹ 7,50,000 x 40,00,000/ ₹ 1,20,00,000 x 100%, being first year of operation]		
	[Unit in SEZ is eligible for deduction u/s 10AA since it obtained the letter of approval on or before 31 <sup>st</sup> March, 2020 and started operations before 31.3.2021.]		2,50,000
	<b>Total Income</b>		<b>20,39,150</b>

<sup>3</sup> CIT v. Dempo Company Ltd (2016) 387 ITR 354 (SC)

<sup>4</sup> Hindustan Unilever Ltd. v. DCIT (2010) 325 ITR 102 (Bom.)

<sup>5</sup> CIT v. M. Venkateswara Rao (2015) 370 ITR 212 (T & AP)

**Question 2**

- (a) *Surbhi Fragrance Ltd. is engaged in manufacturing and selling of pharmaceutical products. The net profit of the company as per profit and loss account for the year ended 31<sup>st</sup> March, 2021 is ₹800 lakhs, after debiting or crediting the following items:*
- (i) *Payment of ₹ 40 lakhs in the month of October 2020 to a foreign company for obtaining know how for a product launched in the month of November 2020.*
  - (ii) *Electricity charges of ₹ 5 lakhs for the month of March 2021 was unpaid up to the due date of filing of return.*
  - (iii) *Loss of ₹ 3 lakhs due to hedging contract against future price fluctuations in respect of import of raw material, used in the course of manufacturing.*
  - (iv) *Depreciation charged to the Statement of Profit and Loss Account was ₹ 40 lakhs.*
  - (v) *Loss of ₹ 1 lakh from hedging contracts entered into for mitigating the loss arising due to fluctuation in foreign currency payment towards an imported machinery purchased from Germany for ₹ 60 lakhs, which was installed in the month of December 2020.*
  - (vi) *Unabsorbed depreciation of ₹ 10 lakhs pertaining to A.Y. 2020-21 from a business which is no longer in existence.*
  - (vii) *₹ 20 lakhs received from Z Ltd. under an agreement in the form of non-compete fees for not carrying out any business in a particular product.*
  - (viii) *Advance received amounting to ₹ 20 lakhs on proposed sale of land, forfeited due to non-receipt of balance amount of ₹ 70 lakhs on time, as per terms of agreement. The land was purchased during FY 2016-17.*
  - (ix) *Excess on sale of unlisted shares - ₹ 15 lakhs (Sold on 15<sup>th</sup> February, 2021).*

**Additional Information:**

- (1) *Normal depreciation allowable as per the Income-tax Act, 1961 ₹ 35 lakhs.*
- (2) *Depreciation on plant and machinery imported and installed during December 2020 has not been considered while calculating depreciation as per Income-tax Act, 1961.*
- (3) *The unlisted shares were acquired on 29.3.2018 for ₹ 80 lakhs.*
- (4) *Cost Inflation Index F.Y. 2016-17 - 264, F.Y. 2017-18 - 272, F.Y. 2020-21- 301.*

*You are required to compute the total income for Assessment Year 2021-22 clearly stating the reasons for treatment of each of the items given above.*

*The return of income of the company is to be filed applying the provision of the section 115BAA.*

**(8 Marks)**

- (b) Mr. David, a foreign national and a professional hockey player came to India in February 2021 to participate in hockey matches. Following are the amounts he earned as income during his stay in India.

Advertisement of a product on T.V. ₹ 1,50,000

Participation in matches in India ₹ 6,00,000

Contribution of articles in newspaper ₹ 20,000

Winning from Horse races ₹ 35,000

Assuming he has no other income from India during the P.Y. 2020-21, you are required to compute his tax liability for the A.Y. 2021-22.

Also discuss the applicability of relevant TDS provisions in respect of such incomes and the amount of TDS, if any. **(6 Marks)**

**Answer**

- (a) **Computation of Total Income of Surbhi Fragrance Ltd.  
for the A.Y. 2021-22 under section 115BAA**

	Particulars	Amount (in ₹)	
I	<b>Profits and gains of business and profession</b>		
	Net profit as per Statement of profit and loss		800,00,000
	<b>Add: Items debited but to be considered separately or to be disallowed</b>		
	(1) <b>Payment toward know-how for a product</b> [Payment towards obtaining know-how is capital expenditure i.e., an intangible asset and eligible for depreciation. Since the same is debited in statement of profit and loss, it has to be added back]	40,00,000	
	(2) <b>Electricity charges unpaid upto the due of filing return of income</b> [Electricity charges are not included within the scope of section 43B <sup>6</sup> , therefore no disallowance would be attracted. Since the same is already debited in statement of profit and loss, no further adjustment is required]	-	
	(3) <b>Loss due hedging contract in respect of raw material</b>	-	

<sup>6</sup> CIT Vs Andhra Ferro Alloys (P.) Ltd. (AP)

	<p>[Loss due to hedging contract against future price fluctuations in respect of import of raw material is not deemed to be speculative transaction. Hence, the same is allowable as deduction while computing income from manufacturing. Since the same is already debited in statement of profit and loss, no further adjustment is required]</p>		
	<b>(4) Depreciation as per books of account</b>	40,00,000	
	<b>(5) Loss from hedging contract in respect of imported machinery from Germany</b>	1,00,000	
	<p>[Loss from hedging contracts entered for mitigating loss arising due to fluctuation in foreign currency payment towards import of machinery has to added to the actual cost of the machinery as per section 43A. Since the same is wrongly debited to statement of profit and loss, same has to be added back].</p>		
		<hr/>	<hr/>
			81,00,000
			8,81,00,000
	<b>Non-compete fees for not carrying out any business in a particular product</b>		
	<p>[Non-compete fees for not carrying out any business in a particular product would be chargeable to tax as business income under section 28(va). Since the same is already credited in statement of profit and loss, no further adjustment is required]</p>		
	<b>Less: Items credited but chargeable to tax under other head/ expenses allowed but not debited</b>		
	<b>1. Advance forfeited in respect sale of land</b>	20,00,000	
	<p>[With effect from A.Y. 2015-16, advance forfeited in respect of sale of land due to non-receipt of balance amount of consideration taxable under the head "Income from other sources". Since the same has been credited to the statement of profit and loss, the same has to be deducted while computing business income]</p>		



2.	<b>Profit on sale of unlisted shares</b> [Profit on sale of unlisted shares is taxable under the head “Capital Gains”. Since profits has been credited to the statement of profit and loss, the same has to be deducted while computing business income]	<u>15,00,000</u>	<u>35,00,000</u>
	<b>Less: Depreciation as per Income-tax Act, 1961 [other than plant &amp; machinery and know-how]</b>	35,00,000	8,46,00,000
	<b>Deprecation on:</b>		
	<b>Plant &amp; Machinery imported</b>   60,00,000		
	Add: Loss on hedging contract   <u>1,00,000</u>		
	<u>61,00,000</u>		
	- Normal depreciation @7.5% of ₹ 61,00,000 [only 50% of the 15% allowable since machinery is put to use for less than 180 days]	4,57,500	
	- Additional depreciation not allowable, since company is opting for section 115BAA	-	
	<b>Know-how @ 12.5% of ₹ 40,00,000 [50% of 25% since know how was obtained in the month of October 2020]</b>	<u>5,00,000</u>	<u>44,57,500</u>
	<i>[Note – It is assumed that the know-how was obtained on or after 4.10.2020. Alternatively, depreciation of ₹ 10 lakhs can be provided, considering that know-how was obtained before this date. Accordingly, total income would be ₹ 8,22,89,560]</i>		
			<u>8,01,42,500</u>
II	<b>Capital Gains</b>		
	<b>Long term capital gain on sale of unlisted shares</b> [Since shares were held for more than 24 months]		
	Full value of consideration [₹ 15,00,000 + ₹ 80,00,000]	95,00,000	
	Less: Indexed cost of acquisition [80,00,000 x 301/272]	88,52,941	6,47,059

<b>III</b>	<b>Income from Other Sources</b>		
	Advance forfeited on sale of land		20,00,000
	<b>Total income/Gross Total Income</b>		<b>8,27,89,559</b>
	<b>Total income/Gross Total Income (rounded off)</b>		<b>8,27,89,560</b>

- (b) Mr. David is a non-resident, since he came to India only in February, 2021 and consequently, his stay in India during the P.Y. 2020-21 would have been for less than 60 days. Therefore, he does not satisfy either condition for being a resident. Since he is a foreign national and a non-resident sportsman, the provisions of section 115BBA would be attracted in respect of income from participation in matches in India, advertisement of product on TV and contribution of articles in newspaper.

**Computation of tax liability of David, a foreign national for the A.Y.2021-22**

Particulars	₹	₹
<b>Income taxable under section 115BBA</b>		
Income from participation in matches in India	6,00,000	
Advertisement of product on TV	1,50,000	
Contribution of articles in newspaper	20,000	
<b>Income taxable under section 115BB</b>		
Income from horse races	<u>35,000</u>	
<b>Total income</b>	8,05,000	
Tax@ 20% under section 115BBA on ₹ 7,70,000		1,54,000
Tax@ 30% under section 115BB on income of ₹ 35,000 from horse races		<u>10,500</u>
		1,64,500
Add: Health and Education cess@4%		<u>6,580</u>
<b>Tax liability</b>		<b>1,71,080</b>
Income referred to in section 115BBA (i.e., ₹ 7,70,000, in this case) is subject to tax deduction at source@ 20.8% under section 194E. Accordingly, tax of ₹ 1,60,160 is required to be deducted at source.		
Income referred to in section 115BB (i.e., ₹ 35,000, in this case) is subject to tax deduction at source@31.2% under section 194BB. Accordingly, tax of ₹ 10,920 is required to be deducted at source.		

**Question 3**

- (a) *Happiness and wellness, a charitable trust registered under section 12A, provides the following information to you with respect to A.Y. 2021-22.*

**Receipts:**

- (i) Voluntary Contribution received ₹ 12,00,000
- (ii) Contribution received in a donation box kept outside the office where it is written on the box that the donations received would be utilized for the purpose of construction of building to be used for charitable activities ₹ 9,00,000
- (iii) Voluntary contribution received from a Non-resident (not included in ₹ 12,00,000 mentioned above) (Date of receipt 29.3.2021) ₹ 2,50,000
- (iv) Rent received from property held under trust ₹ 55,000 per month
- (v) Grant received from state government (for meeting operational expenses) ₹ 3,45,000

**Application:**

- (i) Operational expenses towards the objectives of the trust (including ₹ 55,000 out of amount accumulated last year) ₹ 4,95,000
- (ii) Voluntary contribution to another charitable trust having different objects (out of current year receipts) ₹ 1,50,000
- (iii) Corpus donation to another charitable trust having similar objects (out of current year receipts) ₹ 7,50,000
- (iv) Voluntary contribution to another charitable trust having similar objects (out of last year receipts) ₹ 10,50,000
- (v) Income-tax paid (For A.Y. 2020-21) ₹ 3,13,000

You are required to compute the total income of the trust for the A.Y. 2021-22.

- (b) Mr. Pravek (aged 41 years), a sportsman and an individual resident in India, furnishes the following particulars of income earned in India and from Country Y for the Assessment Year 2021-22. India does not have a Double Taxation Avoidance Agreement with Country Y.

Particulars	Amount (₹)
<b><u>Income from India</u></b>	
Gross Salary	8,40,000
Dividend from Indian companies	10,50,000
<b><u>Income/loss in Country Y</u></b>	
Gift in foreign currency from a friend (not taxed in Country Y)	90,000
Dividend (taxed in Country Y)	2,30,000
Total rent from house property in Country Y (taxed in Country Y)	3,00,000
Municipal taxes in respect of the above house (Not allowed as deduction in Country Y)	30,000

Business loss (not allowed to be set off in Country Y)	1,60,000
Agriculture Income (taxed in Country Y)	2,20,000

**Note:** Country Y taxes dividend at the rate of 10% and all other incomes at the rate of 20%.

Compute total income and tax payable by Mr. Pravek in India for Assessment Year 2021-22 assuming he wants to be taxed under the provisions of section 115BAC.

**Answer**

**(a) Computation of total income of Happiness and wellness,  
a charitable trust for the A.Y.2021-22**

Particulars	₹	₹
Voluntary contributions		12,00,000
Contribution for specific purpose of construction of building [not included in the total income of the trust]		-
Voluntary contribution received from a non-resident <sup>7</sup>		2,50,000
Rent received from property held under trust [₹ 55,000 x 12]		6,60,000
Grant received from State Government		<u>3,45,000</u>
		24,55,000
Less: 15% of income eligible for being set apart without any condition <sup>8</sup>		<u>3,68,250</u>
		20,86,750
Less: Amount applied for charitable purposes		
<b>Operational expenses</b> [Other than operational expenses of ₹ 55,000 incurred out of amount accumulated last year, which is not allowed as application. Thus, ₹ 4,40,000 (₹ 4,95,000 – ₹ 55,000) is allowable as deduction]	4,40,000	
Voluntary contribution to another charitable trust out of current year receipts allowable as application	1,50,000	
Corpus donation to another charitable trust out of current year receipts not allowable as application, even if trust have similar objects	-	

<sup>7</sup> It is assumed that the trust has received such contribution in compliance with Foreign Contribution Regulation Act (FCRA)

<sup>8</sup> As per the Supreme Court ruling in CIT v. Programme for Community Organisation (2001) 116 Taxman 608, 15% of gross receipts would be eligible for accumulation under section 11(1)(a).

Voluntary contribution to another charitable trust out of last year receipts <sup>9</sup> not allowable as application	-	
Income-tax paid for A.Y. 2020-21 is allowable as application	<u>3,13,000</u>	<u>9,03,000</u>
		11,83,750
Less: Amount deemed to have been applied <sup>10</sup>		
Voluntary contributions received from non-residents on 29.3.2021, assuming that he has furnished a statement in the prescribed form to the Assessing Officer and actually applied the same for charitable purposes in the P.Y.2021-22 [₹ 2,50,000 x 85%] <b>[See Note 2 given below]</b>		<u>2,12,500</u>
		9,71,250
Add: <b>Deemed income</b> [Assuming that the amounts mentioned below have been spent out of the amount accumulated under section 11(2) i.e., out of 85% of income required to be applied in the earlier previous year]		
- Accumulated amount utilised for operational expenses [₹ 55,000 would be deemed income of the previous year 2020-21, since the same has not been utilised for the purpose for which it was set apart, but used for regular operational expenses] <sup>11</sup> .	55,000	
- Amount paid to a trust out of last year receipts [Such amount paid to another trust out of accumulated fund would be deemed to be income of the P.Y.2020-21] <sup>12</sup>	<u>10,50,000</u>	11,05,000
<b>Note</b> – In case it is assumed that the operational expenditure of ₹ 55,000 and amount of ₹ 10,50,000 are paid to trust out of 15% unconditional accumulation of last year, then, these amounts should not be added to total income. In such a case total income of the trust would be ₹ 9,71,250.		
<b>Total Income of the trust</b>		<b>20,76,250</b>

<sup>9</sup> It is assumed that the same is out of accumulated income u/s 11(1) or 11(2)

<sup>10</sup> Clause (2) of Explanation 1 to section 11(1)

<sup>11</sup> Section 11(3)(c)

<sup>12</sup> Section 11(3)(d)

**Notes:**

- (1) From a plain reading of section 11(1), 15% of income can be set apart without any conditions. Accordingly, administrative expenses can be deducted from gross receipts and set apart 15% of the net figure.
- (2) Since voluntary contributions of ₹ 2.50 lakhs from non-residents have been received on 29.3.2021, i.e., during the previous year 2020-21, such sum has to be included in the gross receipts for the purpose of computing 15% unconditional exemption. However, since such sum cannot be applied during the previous year on account of being received towards the end of the previous year, 85% of such amount i.e., ₹ 2,12,500, is deemed to be applied for the purpose of the trust by virtue of Clause 2 of Explanation 2 below to section 11(1) in the above solution. However, in the Income-tax Form ITR-7, the entire amount deemed to have been applied during the previous year as per clause (2) of Explanation to section 11(1) has been considered as application. Accordingly, entire sum of ₹ 2.50 lakh can be deemed as application. In such case, the total income of the trust would be ₹ 20,38,750 (considering deemed income) and ₹ 9,33,750 (without considering deemed income).

**(b) Computation of total income of Mr. Pravek for A.Y.2021-22**

Particulars	₹	₹
<b>Income from salaries</b> [Standard deduction not allowable, since he opts for section 115BAC]		8,40,000
<b>Income from House Property</b> [House situated in Country Y]		
Gross Annual Value <sup>13</sup>	3,00,000	
Less: Municipal taxes (assumed to have been actually paid by Mr. Pravek)	<u>30,000</u>	
Net Annual Value	2,70,000	
Less: Deduction under section 24 – 30% of NAV	<u>81,000</u>	
		1,89,000
<b>Profits and Gains of Business or Profession</b>		
Business loss in country Y	(1,60,000)	
Less: Set-off against Income from Other Sources	<u>1,60,000</u>	-
<b>Income from Other Sources</b>		
Dividend from Indian companies	10,50,000	
Gifts in foreign currency from a friend (since it exceeds	90,000	

<sup>13</sup> Rental Income has been taken as GAV in the absence of other information relating to fair rent, municipal value etc.

₹ 50,000 in aggregate)		
Dividend from Country Y	2,30,000	
Agricultural income in Country Y	<u>2,20,000</u>	
	15,90,000	
Less: Set-off of business loss	<u>1,60,000</u>	
		<u>14,30,000</u>
<b>Gross Total Income/Total Income</b>		<b><u>24,59,000</u></b>

**Computation of tax liability of Mr. Pravek for A.Y.2021-22**

Particulars	Amount
Upto ₹ 2,50,000	Nil
₹ 2,50,001 – ₹ 5,00,000 [i.e., ₹ 2,50,000@5%]	12,500
₹ 5,00,001 – ₹ 7,50,000 [i.e., ₹ 2,50,000@10%]	25,000
₹ 7,50,001 – ₹ 10,00,000 [i.e., ₹ 2,50,000@15%]	37,500
₹ 10,00,001 – ₹ 12,50,000 [i.e., ₹ 2,50,000@20%]	50,000
₹ 12,50,001 – ₹ 15,00,000 [i.e., ₹ 2,50,000@25%]	62,500
₹ 15,00,001 – ₹ 24,59,000 [i.e., ₹ 9,59,000@30%]	<u>2,87,700</u>
	4,75,200
Add: Health & Education Cess@4%	19,008
	4,94,208
<b>Less: Deduction under section 91</b>	
Average rate of tax in India = ₹ 4,94,208 x 100 / ₹ 24,59,000 = 20.0979%	
Average rate of tax in Country Y = 16.933% [₹ 23,000 (₹ 2,30,000 x 10%) + ₹ 1,04,000 (₹ 3,00,000 + ₹ 2,20,000) x 20%] / ₹ 7,50,000 x 100]	
Doubly taxed income = ₹ 1,89,000 + ₹ 2,90,000 (₹ 2,30,000 + ₹ 2,20,000 – ₹ 1,60,000) = ₹ 4,79,000	
Lower of the Indian rate of tax and Country Y rate of tax is 16.933%, which has to be applied on doubly taxed income of ₹ 4,79,000 [16.933% x ₹ 4,79,000]	81,109
<b>Tax Payable</b>	<b>4,13,099</b>
<b>Tax Payable (rounded off)</b>	<b>4,13,100</b>

**Question 4**

- (a) Discuss the relevant provisions of the Income-tax Act, with respect to deduction/collection of tax in the following independent situations:

- (i) KPN Ltd., a dealer in cars, sold 2 cars to Himanshu for ₹ 7 lakhs each on 2.11.2020 for his personal purposes.
  - (ii) Vinod, a government employee, paid ₹ 52 lakhs for construction of his house to the contractor on 31.3.2021.
  - (iii) Vignesh, a resident individual paid ₹ 9 lakhs by cheque on 1.1.2021 to Meenakshi, another resident individual for construction of his factory building. The total sales reported by Vignesh for the year ended 31.3.2020 was ₹ 1.20 crores.
  - (iv) J Ltd., an e-commerce operator, facilitated sale of goods of Mr. Raghuveer, from 1<sup>st</sup> March, 2021. The turnover of Mr. Raghuveer from the e-commerce operations was ₹ 9,00,000 and the entire sale proceeds was received by Mr. Raghuveer on 31<sup>st</sup> March, 2021. **(8 Marks)**
- (b) Ramakrishnan Ltd., an Indian company, having a total book value of assets as on 31.3.2021 of ₹ 950 crores, declared income of ₹ 180 crores computed in accordance with Chapter IV-D but before making any adjustments in respect of the following transactions for the year ended 31.3.2021:
- (i) 6,000 cars sold to ABC Inc., an American company, which holds 29% shares in Ramakrishnan Ltd., at \$ 500 per car. Ramakrishnan Ltd. sold 6,000 cars to HIG Ltd. (an unrelated party) at \$ 600 per car during the year.
  - (ii) Royalty of \$ 80,00,000 was paid to LMN Pte. a company incorporated in Singapore for use of technology for the manufacturing of cars. Ramakrishnan Ltd.'s production of cars is wholly dependent on the technology provided by LMN Pte. TYP Pte., another company incorporated in Singapore provides the same technology to another Indian company for \$ 70,00,000.
  - (iii) Loan of Euro 500 crores carrying interest @ 8% p.a. advanced by N.D. Inc., a German company. The entire amount of loan was outstanding as on 31.3.2021. N.D. Inc. also advanced loan of Euro 510 crores to another Indian company @ 7.5% p.a.

Compute the total income of Ramakrishnan Ltd. for the A.Y. 2021-22 making adjustment for the above transaction by briefly explaining the relevant provisions of the Act.

Assume that Ramakrishnan Ltd. has not entered into any Advance Pricing Agreement as well as has not opted for Safe Harbour Rules.

The rate of exchange of 1 Euro was ₹ 85 and for 1 Dollar (\$) was ₹ 70, throughout the previous year. **(6 Marks)**

#### Answer

- (a) (i) TCS under section 206C(1F) @0.75% is not attracted in the hands of KPN Ltd., a dealer in cars, since the value of each motor car does not exceed ₹ 10 lakhs.



TCS under section 206C(1H) @0.075% of the sales consideration exceeding ₹ 50 lakhs is also not attracted in the hands of KPN Ltd. in respect of sale of 2 cars to Himanshu for ₹ 7 lakhs each, since aggregate of such sale i.e., ₹ 14 lakhs, does not exceed the threshold of ₹ 50 lakhs.

- (ii) The provisions of section 194C requiring tax deduction at source from payment to a contractor are not attracted since Mr. Vinod, the payer, is a salaried person and is not engaged in business or profession whose turnover/ gross receipts exceed the prescribed threshold limits. Moreover, the payment is for his personal purposes.

However, Mr. Vinod is required to deduct tax at source @3.75% on ₹ 52 lakhs under section 194M since payment made by him for construction of residential house exceeds the threshold limit of ₹ 50 lakhs specified thereunder.

TDS u/s 194M = 3.75% on ₹ 52 lakhs (since it exceeds ₹ 50 lakhs) = ₹ 1.95 lakhs

- (iii) Since Mr. Vignesh is an individual, whose total sales from business carried on by him exceeds ₹ 1 crore during P.Y. 2019-20, he is required to deduct tax at source under section 194C @0.75% on ₹ 9 lakhs, being sum paid for construction of factory building to Ms. Meenakshi, a contractor, who is a resident individual, as the payment exceeds the individual threshold limit of ₹ 30,000/aggregate threshold limit of ₹ 1 lakh.

TDS u/s 194C = 0.75% (since Meenakshi is a resident individual contractor) on ₹ 9 lakhs (since it exceeds ₹ 30,000) = ₹ 6,750

- (iv) J Ltd, an e-commerce operator is required to deduct tax @0.75% under section 194-O on ₹ 9 lakhs, being the gross amount of sale of goods of Mr. Raghuveer, an e-commerce participant, since such sale of goods in March, 2021 is facilitated by J Ltd. through its digital or electronic facility or platform and the consideration exceeds ₹ 5 lakhs.

TDS u/s 194O = 0.75% on ₹ 9 lakhs (since it exceeds ₹ 5 lakh) = ₹ 6,750

- (b) Ramakrishnan Ltd., an Indian company and ABC Inc., an American company, are deemed to be associated enterprises since ABC Inc. holds shares carrying more than 26% of the voting power in Ramakrishna Ltd.

Ramakrishnan Ltd. and LMN Pte., a Singapore company, are deemed to be associated enterprises, since Ramakrishnan Ltd is wholly dependent on the technology provided by LMN Pte.<sup>14</sup> in manufacturing of cars.

Ramakrishnan Ltd. and N.D. Inc., a Germany company, are deemed to be associated enterprises, since N.D. Inc. has advanced loan to Ramakrishnan Ltd. and such loan constitutes not less than 51% i.e., 4,474% (₹ 85 x 500 x 100/950, of the book value of total assets of Ramakrishnan Ltd.

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<sup>14</sup> Assuming LMN Pte is the owner or it has exclusive rights over the technology

Since the transactions of selling cars, provision for technology and borrowing between associated enterprises are international transactions, the provisions of transfer pricing would be attracted in these cases –

The transactions entered into by Ramakrishnan Ltd. with different companies are, therefore, to be adjusted for computing income chargeable to tax for the A.Y. 2021-22.

**Computation of total income of Ramakrishnan Ltd. for the A.Y. 2021-22**

Particulars	Amount
Income of Ramakrishnan Ltd. as computed under Chapter IV-D, prior to transfer pricing adjustments	1,80,00,00,000
Add: Difference on account of adjustment in the value of international transactions:	
(i) Car sold to ABC Inc. @ \$ 500 each for 6,000 cars [Since Ramakrishnan Ltd. sold cars to unrelated party at \$ 600 per car, adjustment is required to be made of \$ 100 (\$ 100 x 6,000 x ₹ 70)]	4,20,00,000
(ii) Payment of royalty for technology of \$ 80,00,000 to LMN Pte. [Since same technology is provided by another company to unrelated company at \$ 70,00,000, adjustment is required to be made of \$10,00,000 (\$ 10,00,000 x ₹ 70)]	7,00,00,000
(iii) Interest paid on loan of EURO 500 crores to N.D. Inc. @8% p.a. [Since loan is advanced by N.D. Inc. to another company @7.5% p.a., adjustment is required to be made of 0.5% (₹ 85 x 500 crores x 0.5/100)]	2,12,50,00,000
<b>Total Income</b>	<b>4,03,70,00,000</b>

**Question 5**

(a) Answer any **two** out of the three sub-parts:

- (i) M/s Deer Ltd., an Indian company, engaged in the business of development and export of computer software and human resource services, filed its return declaring a loss of ₹ 5 lakhs for the A.Y. 2019-20. It claimed deduction under section 10A<sup>15</sup> for income from software development. The return was selected for regular assessment under section 143(3) and there was an enhancement of total income to tune of ₹ 25 lakhs which was accepted by the assessee.

A notice under section 148 was served on 31.3.2021, for re-opening the assessment on the opinion that excess deduction under section 10A<sup>16</sup> of the

<sup>15</sup> To be read as 10AA

<sup>16</sup> To be read as 10AA

*Income-tax Act has been allowed and the income has escaped assessment to the tune of ₹ 50 lakhs.*

*Is the notice issued by the Assessing Officer justified?*

- (ii) *In the case of M/s HKHR Ltd., the Income-tax Appellate Tribunal decided against the assessee and issued order under section 254. The assessee filed an appeal to the jurisdictional High Court by framing the substantial question of law under section 260A(2)(c). The High Court, without framing the question of law at the time of admission of appeal, issued notices, heard both the parties and decided the appeal affirming the order of the Tribunal on the questions raised by the assessee appellant. You are required to discuss whether the High Court was justified in not formulating the substantial question of law as required under section 260A(3) and adjudicating merely on the questions put forth by the appellant under section 260A(2)(c).*
- (iii) *M/s STP Ltd. has received a notice under section 148 for the Assessment Year 2019-20 on 01-02-2021. They also anticipate similar notices for the Assessment Years 2017-18 and 2018-19 for which they have already furnished return of income. On examination of the books of account produced, you have noticed huge amounts of concealed income. As a consultant, what is your advice to STP Ltd.*

**(4 x 2 = 8 Marks)**

- (b) *Vista Ltd., a British company, had entered into agreements with Yamuna Ltd., and Godavari Ltd., Indian companies in the year 2012 to provide technical services to them to be utilised for the business carried on by them in India. The agreements were approved by the Central Government. Following particulars are provided by Vista Ltd. in respect of previous year 2020-21.*

	<b>Particulars</b>	<b>Amount</b>
(1)	<i>Fees for technical services received from Yamuna Ltd.</i>	<i>250 lakhs</i>
(2)	<i>Expenses incurred for earning such income</i>	<i>30 lakhs</i>
(3)	<i>Fees for technical services received from Godavari Ltd.</i>	<i>200 lakhs</i>
(4)	<i>Expenses incurred for earning such income</i>	<i>21 lakhs</i>
<i>Other expenses [not included in (2) and (4) above]</i>		
(5)	<i>General Expenditure not wholly and exclusively incurred for the business of the PE</i>	<i>8 lakhs</i>
(6)	<i>Amounts paid by the PE to HO (not being in the nature of reimbursement of actual expenses)</i>	<i>14 lakhs</i>
(7)	<i>Amounts paid by the PE to HO (being in the nature of reimbursement of actual expenses)</i>	<i>15 lakhs</i>

*Examine the taxability of the income received by Vista Ltd. on the following assumptions:*

- (i) Vista Ltd., does not have a permanent establishment in India.*
- (ii) Vista Ltd., has a permanent establishment in India and the contracts/ agreements are effectively connected with such PE.*

*Also, discuss the requirements relating to maintaining books of accounts and audit and filing of return of income in India by Vista Ltd. under both the assumptions made above, under the Income-tax Act, 1961.*

**(6 Marks)**

**Answer**

- (a) (i)** Under section 147, the Assessing Officer has the power to reassess any income which has escaped assessment for any assessment year. However, the use of this power is conditional upon the fact that the Assessing Officer has “reason to believe” that income has escaped assessment. The words “reason to believe” in section 147 is significant and reassessment proceedings cannot be initiated merely because of change of opinion of the Assessing Officer on the basis of the same facts and circumstances which have already been considered by him during the original assessment proceedings.

The expression “change of opinion” implies formulation of opinion and then a change thereof. While deciding whether there has been a change of opinion, it has to be seen whether the original assessment has either expressly or by necessary implication expressed an opinion on a matter which is the basis of the escapement of income that is sought to be taxed by way of issue of notice for reassessment. If the assessment order is non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the Assessing Officer any opinion on the questions that are raised in the proposed reassessment proceedings.

Therefore, in this case, if the deduction under section 10AA has been well considered in the original assessment, then, notice under section 148 for reopening the assessment on the opinion that excess deduction has been allowed on the basis of the same facts existing at the time of the original order, would be a mere change of opinion. Accordingly, the notice issued by the Assessing Officer would not be justified.

*Alternatively, if it is assumed that deduction under section 10AA has not been the subject matter of consideration in the scrutiny assessment u/s 143(3), then, the issue of notice under section 148 by the Assessing Officer would be justified.*

**Note** – *The facts given in the question are similar to the facts in ITO v. TechSpan India P. Ltd. [2018] 404 ITR 10, wherein the issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court in the said case.*

- (ii) There lies a distinction between the questions proposed by the appellant for admission of the appeal to the High Court and the questions framed by the High Court. The questions, which are proposed by the appellant, fall under section 260A(2)(c) whereas the questions framed by the High Court fall under section 260A(3). Section 260A(4) provides that the appeal is to be heard on merits only on the questions formulated by the High Court under section 260A(3) and not on the questions proposed by the appellant.

In case the High Court is of the view that the appeal did not involve any substantial question of law, it should have recorded a categorical finding to that effect that the questions proposed by the appellant either do not arise in the case or/and are not substantial questions of law so as to attract the rigour of section 260A for its admission and accordingly, should have dismissed the appeal at the preliminary stage itself. However, this was not done in this case. Instead, the appeal was heard only on the questions urged by the appellant u/s 260A(2)(c).

The High Court was, therefore, not justified since it did not decide the appeal in conformity with the mandatory procedure prescribed in section 260A.

**Note** – The facts given in the question are similar to the facts in *CIT v. A.A. Estate Pvt. Ltd.* [2019] 413 ITR 438, wherein the issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court in the said case.

- (iii) As per section 245C, an assessee may, at any stage of a case relating to him, make an application in the prescribed form and manner to the Settlement Commission.

“Case” means any proceeding for assessment which may be pending before an Assessing Officer on the date on which such application is made.

A proceeding for assessment or reassessment or recomputation u/s 147 is deemed to have commenced from the date of issue of notice u/s 148. Where a notice u/s 148 is issued for any assessment year, a proceeding under section 147 shall be deemed to have commenced on the date of issue of such notice and the assessee can approach the Settlement Commission for other assessment years as well, even if notice under section 148 for such other assessment years have not been issued but could have been issued on that date. However, a return of income for such other assessment years should have been furnished under section 139 or in response to notice u/s 142.

In the case on hand, M/s STP Ltd. has received a notice under section 148 for the A.Y.2019-20 and also anticipates similar notices for the A.Y.2017-18 and A.Y.2018-19, for which return of income has been furnished. Thus, a proceeding for assessment is pending before an Assessing Officer i.e., the basic condition for approaching Settlement Commission is satisfied.

Moreover, since after examination of the books of account, huge amount of concealed income is also noticed, it is presumed that the second condition that the

additional amount of income-tax payable on the income disclosed in the application should exceed ₹ 10 lakhs has also been satisfied.

Based on these facts, assuming that the necessary conditions are fulfilled, our advice as consultant to M/s STP Ltd. would be to approach the Settlement Commission to have its case settled and apply for grant of immunity from penalty and prosecution.

**(b) (i) Where Vista Ltd., a British company, does not have a PE in India**

In this case, Vista Ltd. would be eligible for a concessional rate of tax @10% (plus surcharge@2% and HEC@4%) under section 115A on the fees for technical services of ₹ 450 lakhs (i.e., ₹ 250 lakhs plus ₹ 200 lakhs) received from the Indian companies, Yamuna Ltd. and Godavari Ltd., since the same are in pursuance of agreements<sup>17</sup> approved by the Central Government. No deduction, however, would be allowed in respect of expenditure of ₹ 51 lakhs (i.e., ₹ 30 lakhs and ₹ 21 lakhs) incurred to earn such income.

If tax deductible at source@10.608% has been fully deducted, Vista Ltd. need not file its return of income in India under section 139 for A.Y.2021-22.

**(ii) Where Vista Ltd., a British company, has a PE in India and the contracts/agreements are effectively connected with the PE in India.**

In this case, Vista Ltd. has a PE in India, and the agreements with Yamuna Ltd. and Godavari Ltd. are effectively connected with such PE and such agreements have been entered into in the year 2012<sup>18</sup>. Accordingly, as per section 44DA, the income from rendering technical services shall be computed under the head "Profits and gains of business or profession" in accordance with the provisions of the Income-tax Act, 1961; and shall be subject to tax@40% (plus surcharge@2% and HEC@4%).

Accordingly, expenses of ₹ 30 lakhs and ₹ 21 lakhs incurred for earning fees for technical services of ₹ 250 lakhs and ₹ 200 lakhs, respectively, from Yamuna Ltd. and Godavari Ltd., is allowable as deduction therefrom. Further amount of ₹ 15 lakhs paid by the PE to the HO being in the nature of reimbursement of actual expenses is allowable as deduction. However, expenditure of ₹ 8 lakhs which is not incurred wholly and exclusively for the business of the PE and the amount of ₹ 14 lakhs paid by the PE to the HO, not being in the nature of reimbursement of actual expenses, are not allowable as deduction.

Vista Ltd. is required to maintain books of account under section 44AA and get the same audited under section 44AB and furnish report before the specified date i.e., the date one month prior to the due date of filing return u/s 139(1) for A.Y. 2021-22.

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<sup>17</sup> entered into after 31.3.1976,

<sup>18</sup> i.e., after 31.3.2003

**Question 6**

- (a) *Rose Ltd., an Indian Company engaged in trading of electronic appliances through retail stores all across India, reported a total turnover of ₹ 75 crores during the previous year 2019-20 and ₹ 49 crores during the previous year 2020-21. The customers who purchase appliance from its stores can pay only through cash, cheque, credit card or debit card. Discuss the relevant provisions of the Act with respect to relevant compliances that should have been ensured by Rose Ltd. and in the absence of such compliances, what will be the amount of penalty, if any, that can be levied on Rose Ltd. (4 Marks)*
- (b) *Critically examine the following cases and discuss whether the provisions of General Anti-avoidance Rules (GAAR) can be invoked in these cases?*
- (i) *Divya Ltd., an Indian company has 2 manufacturing units, unit A in the Special Economic Zone (SEZ) and unit B in non-SEZ. Manufacturing activities are carried out in Unit B while unit A only does the packaging of the goods manufactured by unit B. In its books of accounts, it shows the manufacturing to be carried out in unit A and claims allowable deductions. (4 Marks)*
- (ii) *Jeeva Ltd., an Indian company has 2 manufacturing units, unit C in the Special Economic Zone (SEZ) and unit D in non-SEZ. It transfers the goods manufactured by unit D to unit C at a price significantly lower than the market value of the goods and thus becomes eligible for higher deductions. (4 Marks)*
- (c) *Edu-study Pvt. Ltd., a trust registered under section 12AA, runs an educational institution. It paid rent to the landlord of the building being used as school. The trust either did not deduct TDS on rent or deposited the TDS on such rent belatedly. The Assessing Officer imposed a penalty under section 271C. The explanations offered by the assessee were:*
- (i) *The clerk of the trust failed to discharge his duty properly; and*
- (ii) *Since, it is not liable for tax audit under section 44AB, being a trust, it is out of the purview of section 194-I*
- You are required to discuss the validity of the contentions made by the trust briefly explaining the applicable provisions of the Income-tax Act. (6 Marks)*

**Answer**

- (a) As per section 269SU, Rose Ltd. is required to provide facility for accepting payment through the prescribed electronic modes, in addition to the facility for other electronic modes of payment of debit card or credit card provided by Rose Ltd., since its total turnover in business during the immediately preceding previous year. i.e., P.Y. 2019-20 is ₹ 75 crores, which exceeds the prescribed threshold of ₹ 50 crores.

**Prescribed electronic modes are**

- (1) Debit Card powered by RuPay;

- (2) Unified Payments Interface (UPI) (BHIM-UPI); and
- (3) Unified Payments Interface Quick Response Code (UPI QR Code) (BHIM-UPI QR Code).

The failure to provide facility for electronic modes of payment prescribed under section 269SU by Rose Ltd. would attract a penalty under section 271DB of a sum of ₹ 5,000, for every day during which such failure continues.

However, penalty shall not be imposed, if Rose Ltd. proves that there were good and sufficient reasons for such failure. Further, any such penalty shall be imposed by the Joint Commissioner.

- (b) (i) In the present case, Diva Ltd., an Indian company has 2 manufacturing units, unit A in the SEZ and unit B in non-SEZ. Though unit A only does the packaging of goods manufactured by Unit B, the company, in its books of account, shows the manufacture of goods by Unit B as manufacture of goods by unit A to enjoy exemption under section 10AA. This is a case of misrepresentation of facts by showing manufacture of non-SEZ unit as manufacture of SEZ unit. Hence, this is an arrangement of tax evasion and not tax avoidance.

Tax evasion, being unlawful, can be dealt with directly by establishing correct facts. GAAR provisions need not be invoked in such a case.

- (ii) In this case, goods manufactured by unit D, a non-SEZ unit, being a non-eligible business, are transferred to unit C, a SEZ unit, being an eligible business, at a price significantly lower than the market value of the goods to claim higher deduction under section 10AA in respect of unit C.

As there is no misrepresentation of facts or false submissions, it is not a case of tax evasion. The company has tried to take advantage of tax provisions by diverting profits from non-SEZ unit to SEZ unit. However, this is not the intention of the legislation.

Such tax avoidance is specifically dealt with through the provisions contained in section 10AA(9), as per which provisions of section 80-IA(8) would get attracted in such a case. Further, if the aggregate of such transactions entered into in the relevant previous year exceed the threshold of ₹ 20 crore, domestic transfer pricing regulations under section 92BA would be attracted. Hence, the Revenue need not invoke GAAR in such a case, though GAAR and SAAR can co-exist as per clarification given in the CBDT Circular.

- (c) Section 194-I requires deduction of tax at source from any amount paid or credited as rent to a resident, by any person, not being an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him does not exceed ₹ 1 crore in case of a business or ₹ 50 lakhs in case of a profession in the financial year immediately preceding the financial year in which such rent is credited or paid. Section 271C imposes penalty where an assessee who is liable to deduct tax at source, fails to do so.



The threshold turnover limits of ₹ 1 crore/₹ 50 lakh are applicable only to an Individual or HUF carrying on business or profession. Edu Trust Pvt. Ltd., a registered trust, is not an individual or a Hindu undivided family and therefore, the monetary limits specified in section 44AB are not relevant in this case. There is no exemption/threshold limit as such for other persons (i.e., persons other than individuals and HUFs), who are not liable for tax audit under section 44AB. Hence, the trust is liable to deduct tax at source, irrespective of whether or not it is liable for tax audit under section 44AB.

So far as failure on the part of the assessee to remit the tax deducted at source is concerned, there cannot be any justifying circumstance for delay in remittance because the assessee cannot divert tax deducted at source for the Government towards working capital or any other purpose. Thus, the defence available under section 273B does not cover failure in payment of tax deducted.

Accordingly, assessee is liable to pay penalty under section 271C for both non-deduction of tax at source and non-remittance of tax deducted at source. Thus, contentions made by the trust are not valid.

**Note** – The facts given in the question are similar to the facts in *CIT (TDS) v. Eurotech Maritime Academy Pvt. Ltd.* [2019] 415 ITR 463, wherein the issue came up before the Kerala High Court. The above answer is based on the rationale of the High Court in the said case.

*On a plain reading of section 271C, it appears that penalty under this section is attracted only if a person fails to deduct the whole or any part of the tax as required to be deducted at source under any provision of Chapter XVII-B. For failure to remit tax deducted at source to the credit of the Central Government, prosecution under section 276B would be attracted. As per section 276B, such offence would be punishable with rigorous imprisonment for a term which shall not be less than three months but may extend to seven years and with fine.*

*However, the Kerala High Court has, in three cases, decided that penalty under section 271C is also attracted for failure to remit tax deducted at source. It has also opined that relief under section 273B will not be applicable for such failure. This may lead to an inference that both penalty under section 271C and prosecution under section 276B would be attracted where there is a failure to remit tax deducted at source.*