MOCK TEST PAPER 2

FINAL COURSE: GROUP – II

PAPER – 7: DIRECT TAX LAWS & INTERNATIONAL TAXATION

SOLUTIONS

Division A – Multiple Choice Questions

MCQ No.	Most Appropriate Answer	MCQ No.	Most Appropriate Answer
1.	(d)	9.	(c)
2.	(b)	10.	(c)
3.	(c)	11.	(d)
4.	(c)	12.	(c)
5.	(a)	13.	(a)
6.	(b)	14.	(b)
7.	(a)	15.	(c)
8.	(a)		

Division B – Descriptive Questions

1. (a) Computation of Total Income of XYZ Ltd. for the A.Y.2023-24

Particulars		Amount (₹)	
Profits and Gains from Business and Profession			
Profit as per Statement of profit and loss			7,00,00,000
Add: **Items debited but to be considered separately or to be disallowed**			
(a)	Depreciation as per Companies Act, 2013	50,00,000	
(b)	Employees' contribution to EPF	2,00,000	
	[Since employees' contribution to EPF has not been deposited on or before the due date under the PF Act, the same is not allowable as deduction as per Explanation 2 below to section 36(1)(va). Since the same has been debited to Statement of profit and loss, it has to be added back for computing business income].		
(c)	Employer's contribution to EPF	Nil	
	[As per section 43B, employers' contribution to EPF is allowable as deduction since the same has been deposited on or before the due date of filing of return under section 139(1). Since the same has been debited to Statement of profit and loss, no further adjustment is necessary]	1	
(d)	Provision for wages payable to workers	Nil	
	[The provision is based on fair estimate of wages and reasonable certainty of revision, the provision is		

	allowable as deduction, since ICDS X requires 'reasonable certainty for recognition of a provision, which is present in this case. As the provision has been debited to Statement of profit and loss, no adjustment is required while computing business income]		
(e)	Provision for doubtful debts [10% of ₹ 200 lakhs] [Provision for doubtful debts is allowable as deduction under section 36(1)(viia) only in case of banks, public financial institutions, state financial corporations, state industrial investment corporations and non-banking financial corporations. Such provision is not allowable as deduction in the case of a manufacturing company. Since the same has been debited to Statement of profit and loss, it has to be added back for computing business income]	20,00,000	
(f)	Bad debts written off [Bad debts write off in the books of account is allowable as deduction under section 36(1)(vii). Since the same has already been debited to Statement of profit and loss, no further adjustment is required]	Nil	
(g)	Provision for gratuity [Provision of ₹ 500 lakhs for gratuity based on actuarial valuation is not allowable as deduction as per section 40A(7). However, actual gratuity of ₹ 300 lakhs paid is allowable as deduction. Hence, the difference has to be added back]	2,00,00,000	
(h)	Commission paid to recovery agent for realization of a debt. [Commission of ₹ 1 lakh paid to a recovery agent for realisation of a debt is an allowable expense under section 37 as per *DCIT v. Super Tannery (India) Ltd. (2005) 274 ITR 338 (All)*. Since the same has been debited to Statement of profit and loss, and tax has been deducted at source, no further adjustment is required]	Nil	
(i)	Purchase of paper at a price higher than the fair market value [As per section 40A(2), the difference between the purchase price (₹ 30,000 per ton) and the fair market value (₹ 28,000 per ton) multiplied by the quantity purchased (500 tons) has to be added back since the purchase is from a related party, a firm in which majority of the directors are partners, at a price higher than the fair market value]	10,00,000	
(j)	GST not refunded to customers out of GST refund [The amount of GST refunded to the company by the Government is a revenue receipt chargeable to tax under section 41(1). Deduction can be claimed of amount refunded to customers *[CIT v.*	1,00,000 1	

	Thirumalaiswamy Naidu & Sons (1998) 230 ITR 534 (SC)]. Hence, the net amount of ₹ 1,00,000 (i.e., ₹ 3,00,000 minus ₹ 2,00,000) would be chargeable to tax]		2,83,00,000
			9,83,00,000
Less:	**Items credited but to be considered separately/ permissible expenditure and allowances**		
(k)	Industrial power tariff concession received from State Government [Any assistance in the form of, inter alia, concession received from the Central or State Government would be treated as income as per section 2(24)(xviii). Since the same has been credited to Statement of profit and loss, no adjustment is required].	Nil	
(l)	Discount given by Sundry Creditors for supply of raw materials [Discount of 75% given by Sundry Creditors for supply of raw materials is taxable under section 41(1). Since the same has already been credited to Statement of profit and loss, no further adjustment is required]	Nil	
(m)	Depreciation as per Income-tax Act, 1961	80,00,000	
(n)	Over-valuation of stock [₹ 55 lakhs × 10/110] [The amount by which stock is over-valued has to be reduced for computing business income. ₹ 5 lakhs, being the difference between closing and opening stock, has to be adjusted to remove the effect of over-valuation]	5,00,000	
(o)	Additional Depreciation [Additional depreciation@20% is allowable on ₹ 50 lakhs, being actual cost of new plant & machinery acquired on 10.06.2022, as the same was put to use for more than 180 days in the P.Y.2022-23.]	10,00,000	
(p)	Payment to a sub-contractor where tax deducted last year was remitted after the due date of filing of return [30% of ₹ 10 lakhs, being payment to a sub-contractor, would have been disallowed under section 40(a)(ia) while computing the business income of A.Y.2022-23, since tax deducted was remitted after the due date of filing of return. However, the same is allowable in A.Y.2023-24, since the remittance has been made on 31.12.2022]	3,00,000	
			98,00,000
Total Income			**8,85,00,000**

Computation of tax liability of XYZ Ltd. for A.Y.2023-24

Particulars	₹
Tax @30% on the above total income (since the turnover exceeded ₹400 crore in the P.Y. 2020-21)	2,65,50,000
Add: Surcharge @ 7% (since total income exceeds ₹1 crore but less than ₹ 10 crore)	18,58,500
	2,84,08,500
Add: Health and Education cess @ 4%	11,36,340
Total tax liability	**2,95,44,840**

2. (a) As per section 80AC, while computing the total income of an assessee of a previous year ***(P.Y.2022-23, in this case)*** relevant to any assessment year ***(A.Y.2023-24, in this case)***, any deduction is admissible, *inter alia,* under section 80-IA, such deduction shall not be allowed unless it furnishes a return of income for such assessment year on or before the 'due date' specified in section 139(1).

Since the turnover of the partnership firm has exceeded the prescribed threshold limit in the previous year 2022-23, it would be subject to audit under section 44AB, in which case the 'due date' of filing its return of income for A.Y.2023-24 would be 31st October, 2023 as per section 139(1).

Computation of total income and tax liability of M/s. Victory Polyfibres for A.Y.2023-24

I. Where the firm files its return of income on 31st October 2023:

Particulars	₹ in lakhs
Gross Total Income	300.00
Less: Deduction under section 80-IA	200.00
Total Income	**100.00**
Tax liability@ 30%	30.00
Add: Health and Education cess@4%	1.20
Regular income-tax payable	**31.20**

Computation of Alternate Minimum Tax payable [Section 115JC]

Particulars	₹ in lakhs
Total Income	100.00
Add: Deduction under section 80-IA	200.00
Adjusted Total Income	**300.00**
Alternate Minimum Tax (AMT) @ 18.5% on ₹ 300 lakhs	55.50
Add: Surcharge@12% (Since adjusted total income >₹ 1 crore)	6.66
	62.16
Add: Health and Education cess@4%	2.49
Total tax payable (AMT)	**64.65**

Since the regular income-tax payable by the firm is less than the alternate minimum tax payable, the adjusted total income shall be deemed to be the total income of the firm for

P.Y.2022-23 and it shall be liable to pay income-tax on such total income @ 18.5% **[Section 115JC(1)]**. Therefore, the tax payable for the A.Y. 2023-24 would be ₹ 64.65 lakhs.

Tax credit for Alternate Minimum Tax [Section 115JD]

	₹ in lakhs
Total tax payable for A.Y.2023-24 (Alternate Minimum Tax)	64.65
Less: Regular income-tax payable	31.20
To be carried forward for set-off against regular income-tax payable (upto a maximum of fifteen assessment years).	33.45

II. Where the firm files its return of income on 7th December 2023:

Where the firm files its return on 7-12-2023, it would be a belated return under section 139(4). Consequently, as per section 80AC, deduction under 80-IA would not be available. In such circumstances, the gross total income of ₹ 300 lakhs would be the total income of the firm.

Particulars	₹ in lakhs
Income-tax @ 30% of ₹ 300 lakhs	90.000
Add: Surcharge @12% (since total income exceeds ₹ 100 lakhs)	10.800
Income-tax (plus surcharge)	100.800
Add: Health and Education cess @ 4%	4.032
Total tax liability	**104.832**

Practical solution regarding obtaining clarifications:

The practical solution regarding obtaining clarifications would be to file the return of income under section 139(1) on or before the 'due date', i.e., 31.10.2023, and claim deduction under section 80-IA. In such a case, the firm can claim deduction of ₹ 200 lakhs under section 80-IA. Thereafter, consequent to the clarifications obtained, if any change is required, it can file a revised return under section 139(5) by 31.12.2023 which would replace the original return filed under section 139(1). A revised return filed under section 139(5) would replace the original return filed under section 139(1).

If the firm files the return of income under section 139(1) on or before 31.10.2023, its tax liability would stand reduced to ₹ 64.65 lakhs, as against ₹ 104.832 lakhs to be paid if return is furnished after due date. Further, it would also be eligible for tax credit for alternate minimum tax under section 115JD to the extent of ₹ 33.45 lakhs. Therefore, the firm is advised to file its return of income on or before 31.10.2023.

(b) The residential status of a foreign company is determined on the basis of place of effective management (POEM) of the company.

For determining the POEM of a foreign company, the important criteria is whether the company is engaged in active business outside India or not.

A company shall be said to be engaged in "**Active Business Outside India"** (ABOI) for POEM, if

- the passive income is not more than 50% of its total income; **and**
- less than 50% of its total assets are situated in India; **and**
- less than 50% of total number of employees are situated in India or are resident in India; **and**
- the payroll expenses incurred on such employees is less than 50% of its total payroll expenditure.

Singtel Ltd. shall be regarded as a company engaged in active business outside India for P.Y. 2022-23 for POEM purpose only if it satisfies all the four conditions cumulatively.

Condition 1: The passive income of Singtel Ltd. should not be more than 50% of its total income

Total income of Singtel Ltd. during the P.Y. 2022-23 is ₹ 110 crores [(₹ 25 crores + ₹ 50 crores) + (₹ 20 crores + ₹ 15 crores)]

Passive income is the aggregate of, -

(i) income from the transactions where both the purchase and sale of goods is from/to its associated enterprises; and

(ii) income by way of royalty, dividend, capital gains, interest or rental income;

Passive Income of Singtel Ltd. is ₹ 50 crores, being sum total of :

(i) ₹ 15 crores, income from transactions where both purchases and sales are from/to associated enterprises (₹ 5 crores in India and ₹ 10 crores in Singapore)

(ii) ₹ 35 crores, being interest and dividend from investment (₹ 20 crores in India and ₹ 15 crores in Singapore)

Percentage of passive income to total income = ₹ 50 crore/ ₹ 110 crore x 100 = 45.45%

Since passive income of Singtel Ltd. **is 45.45%, which is not more than 50%** of its total income, the first condition is satisfied.

Condition 2: Singtel Ltd. should have less than 50% of its total assets situated in India

Value of total assets of Singtel Ltd. during the P.Y. 2022-23 is ₹ 610 crores [₹ 210 crores, in India + ₹ 400 crores, in Singapore]

Value of total assets of Singtel Ltd. in India during the P.Y. 2022-23 is ₹ 210 crores

Percentage of assets situated in India to total assets = ₹ 210 crores/₹ 610 crores x 100 = 34.43%

Since the value of assets of Singtel Ltd. **situated in India is less than 50%** of its total assets, the second condition for ABOI test is satisfied.

Condition 3: Less than 50% of the total number of employees of Singtel Ltd. should be situated in India or should be resident in India

Number of employees situated in India or are resident in India is 70

Total number of employees of Singtel Ltd. is 160 [70 + 90]

Percentage of employees situated in India or are resident in India to total number of employees is 70/160 x 100 **= 43.75%**

Since employees situated in India or are residents in India of Singtel Ltd. **are less than 50%** of its total employees, the third condition for ABOI test is satisfied.

Condition 4: The payroll expenses incurred on employees situated in India or resident in India should be less than 50% of its total payroll expenditure

Payroll expenses on employees employed in and resident of India = ₹ 8 crores.

Total payroll expenses = ₹ 20 crores (₹ 8 crores + ₹ 12 crores)

Percentage of payroll expenses of employees situated in India or are resident in India to the total payroll expenses = 8 x 100/20 = 40%[1]

Since the payroll expenses incurred on employees situated in India or resident in India **is less than 50% of its total payroll expenditure**, the fourth condition for ABOI test is also satisfied.

Thus, since Singtel Ltd. has satisfied all the four conditions, the company would be said to be engaged in "active business outside India" during the P.Y. 2022-23.

POEM of a company engaged in active business outside India shall be presumed to be outside India, if the majority of the board meetings are held outside India.

Since Singtel Ltd. is engaged in active business outside India in the P.Y. 2022-23 and majority of its board meetings i.e., 5 out of 8, were held outside India, POEM of Singtel Ltd. would be outside India.

Therefore, Singtel Ltd. would be non-resident in India for the P.Y. 2022-23.

3. (a) (i) Computation of taxable income of public charitable trust

	Particulars	₹
(i)	Income from property held under trust	10,00,000
(ii)	Income from business (incidental to main objects)	4,00,000
(iii)	Voluntary contributions from public	7,00,000
	Voluntary contribution made with a specific direction towards corpus are alone to be excluded under section 11(1)(d). In this case, there is no such direction and hence, included.	
		21,00,000
	Less: 15% of the income eligible for retention / accumulation without any conditions	3,15,000
		17,85,000
	Less: Amount applied for the objects of the trust	
	(i) Amount spent for charitable purposes (₹ 11,60,000 - ₹ 3,60,000)	8,00,000
	(ii) Repayment of loan for construction of orphan home (See note below)	-
	Taxable Income	**9,85,000**

Note - As per *Explanation 4(ii)* to section 11(1), any application for charitable or religious purposes, from any loan or borrowing in the concerned year, shall not be treated as application of income for charitable or religious purposes. However, the amount not so treated as application, shall be treated as application in the year in which the loan is repaid. Therefore, the repayment of loan for construction of orphan home can be treated as application of income only if such expenditure on construction of orphanage was not treated as application in year such expenditure was incurred. However, in this case, the amount spent on construction of orphanage was allowed as deduction in the P.Y. 2020-21. Thus, repayment of loan taken for such purposes will not be allowed as application as it would tantamount to double deduction.

(ii) As per Explanation below to section 10(23C)(iiiae), it has been clarified that the limit of annual receipts of ₹ 5 crore is qua 'taxpayer' and not qua 'activity'. Therefore, if the aggregate annual receipts from educational activity and medical activity exceeds ₹ 5 crores, then exemption under sub-clause (iiiad) and (iiiae) cannot be availed.

Since, in the present case, the aggregate annual receipt of ₹ 7 crores (₹ 3 crores of educational institution and ₹ 4 crores from hospital) exceeds the threshold of ₹ 5 crores, exemption under section 10(23C)(iiiad) and (iiiae) cannot be availed, even though the individual receipts have not exceeded ₹ 5 crores.

(b) (i) The statement is **not** correct. As per section 245N, advance ruling not only includes a determination by the Board for Advance Rulings (BAR) in relation to a transaction which has

been undertaken or is proposed to be undertaken by a non-resident applicant, but also includes, *inter alia*, determination by the BAR –

(a) in relation to the tax liability of a non-resident arising out of a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with such non-resident

(b) in relation to the tax liability of a resident applicant, arising out of a transaction which has been undertaken or is proposed to be undertaken by such applicant and such determination shall include the determination of any question of law or of fact specified in the application.

(ii) Chapter VIII of the Finance Act, 2016, "Equalisation Levy", provides for an equalisation levy of 6% of the amount of consideration for specified services received or receivable by a non-resident not having permanent establishment in India, from a resident in India who carries out business or profession, or from a non-resident having permanent establishment in India.

"Specified Service" means -

(1) online advertisement;

(2) any provision for digital advertising space or any other facility or service for the purpose of online advertisement; and

(3) any other service as may be notified by the Central Government.

However, equalisation levy shall **not** be levied-

- where the non-resident providing the specified services **has a permanent establishment in India** and the specified service is effectively connected with such permanent establishment.
- the **aggregate amount of consideration** for specified service received or receivable during the previous year **does not exceed ₹ 1 lakh**.
- where the **payment for specified service** is **not** for the purposes of carrying out business or profession

In the present case, equalisation levy @6% is chargeable on the amount of ₹ 5,00,000 received by PQR Inc., a non-resident not having a PE in India from ABC Ltd., an Indian company. Accordingly, ABC Ltd. is required to deduct equalisation levy of ₹ 30,000 i.e., @6% of ₹ 5 lakhs, being the amount paid towards online advertisement services provided by PQR Inc., a non-resident having no permanent establishment in India. Non-deduction of equalisation levy would attract disallowance under section 40(a)(ib) of 100% of the amount paid while computing business income.

Since, equalisation levy is attracted on the amount of ₹ 5 lakhs, the said amount is exempt from income-tax by virtue of section 10(50) of the Income-tax Act, 1961.

4. (a) (i) Section 192 requires deduction of tax from salary at the time of payment. Thus, the employer is not required to deduct tax at source when salary has not been paid but is merely credited to the account of the employee in its books of account. MNO Ltd. therefore, is not required to deduct tax at source in respect of the salary merely credited to the account of employee Q which is not paid.

If salary has been paid during the year to Q, then, MNO Ltd has to obtain from Q, the evidence/proof/particulars of prescribed claims (including claim for set-off of loss) under the provisions of the Act in such form and manner as may be prescribed.

If Q has not furnished any information about his income/loss under any other head or proof of investments/expenditure qualifying for deduction under section 80C, then, the employer has

to deduct tax without considering any claim for any expenditure or set-off of losses or deduction under section 80C.

(ii) An individual who has total sales, gross receipts or turnover from the business carried on by him exceeding ₹ 1 crore in the immediately preceding financial year i.e., F.Y. 2021-22, is liable to deduct tax at source under section 194C for the financial year 2022-23 in respect of the payment made to contractor exceeding ₹ 30,000 in a single contract and ₹ 1,00,000 in aggregate of contracts during the financial year. Since, turnover of the individual T is ₹ 2.20 crores in the financial year 2021-22 and as the payment during financial year 2022-23 to the contractor has exceeded the limits prescribed in section 194C, tax has to be deducted under section 194C.

The rate of tax deduction is 1% as the contractor is an individual.

(iii) The limit of ₹ 30,000 for non-deduction of tax under section 194J would apply separately for fees for professional services and fees for technical services. This means that if a person has rendered services falling under both the categories, tax need not be deducted if the fee for each category does not exceed ₹ 30,000 even though the aggregate of the amounts credited to the account of such person or paid to him for both the categories of services exceed ₹ 30,000. Therefore, BCD Ltd. is not required to deduct tax at source in respect of the fees either at the time of credit or at the time of payment.

(iv) The definition of "work" under *Explanation* to section 194C includes catering services and therefore, TDS provisions under section 194C are attracted in respect of payments to a caterer. As the payment exceeds ₹ 30,000, the nationalised bank is required to deduct tax at source at 2% on the payments made to catering organisation. If the catering organization is an individual or HUF, then the tax deduction shall be made @1%.

(b) (i) PQR Inc, a foreign company, has advanced loan of ₹ 170 crores to Mahanadi Ltd., an Indian company, which amounts to 56.67% of book value of assets of Mahanadi Ltd. Since the loan advanced by PQR Inc. is 51% or more of the book value of assets of Mahanadi Ltd., PQR Inc. and Mahanadi Ltd. are deemed to be associated enterprises under the Indian transfer pricing regulations.

The deeming provisions would be attracted even if there is a repayment of loan during the same previous year which brings down the said percentage below 51%.

(ii) Queenland plc, a foreign company has the power to appoint 37.50% (3 out of 8) of the directors of an Indian company, Godavari Ltd.

Two enterprises would be deemed to be associated enterprises if more than half of the board of directors of one enterprise are appointed by the other enterprise.

In this case, since Queenland plc has the power to appoint only 37.50% (which is less than half) of the directors of an Indian company, Godavari Ltd., Queenland plc and Godavari Ltd. are **not** deemed to be associated enterprises.

(iii) Since Zoel GmbH, a German company, supplies 92.22% of the raw materials and consumables required by Saraswati Ltd., an Indian company, which is more than the specified threshold of 90%; and the prices and terms of supply are decided by the German company, the two companies are deemed to be associated enterprises.

5. (a) The proviso to section 132B(1)(i) provides that where the person concerned makes an application to the Assessing Officer, within 30 days from the end of the month in which the asset was seized, for release of the asset and the nature and source of acquisition of the asset is explained to the satisfaction of the Assessing Officer, then, the Assessing Officer may, with the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, release the asset after recovering the existing liability under the Income-tax Act,

1961, etc. out of such asset. 'Existing liability', however, does not include advance tax payable. Such asset or portion thereof has to be released within 120 days from the date on which the last of the authorisations for search under section 132 was executed.

In this case, since the application was made to the Assessing Officer within 30 days from the end of the month in which search was conducted, the department may retain only the amount of existing liability, if any, and the balance may have to be released within 120 days from the date on which the last of the authorisations for search under section 132 was executed.

Note: *It may be noted that one of the conditions mentioned above for release of an asset is that the nature and source of acquisition of the asset should be explained to the satisfaction of the Assessing Officer. However, in this case, it has been given that the assessee's application for release of the asset, explaining the sources thereof, was turned down by the Department. If the application was turned down by the Department due to the reason that it was not satisfied with the explanation given by the assessee as to the nature and source of acquisition of the asset, then, the asset (in this case, cash) cannot be released, since the condition mentioned above is not satisfied.*

(b) The time limit for service of notice under section 143(2) is three months from the end of the financial year in which the return of income was furnished by the assessee. The return of income for assessment year 2022-23 was filed by the assessee on 26th September, 2022. Therefore, the notice under section 143(2) has to be served by 30th June, 2023. However, the notice was served on the assessee only on 3rd July, 2023. Hence, the notice issued under section 143(2) is time-barred.

However, as per section 292BB, where an assessee had appeared in any proceedings or co-operated in any enquiry relating to an assessment or reassessment, it shall be deemed that any notice required to be served upon him, has been duly served upon him in time in accordance with the provisions of the Act and such assessee shall be precluded from raising any objection in any proceeding or enquiry that the notice was (a) not served upon him or (b) not served upon him in time or (c) served upon him in an improper manner.

The above provision shall not be applicable where the assessee has raised such objection before the completion of such assessment or reassessment. Therefore, in the instant case, if the assessee, Tai Limited, had raised an objection to the proceeding, on the ground of non-service of the notice under section 143(2) upon it on time, then, the validity of the assessment order can be challenged. In absence of such objection, the assessment order cannot be challenged.

(c) Every jurisdiction, in its domestic tax law, prescribes the mechanism to determine residential status of a person. If a person is considered to be resident of both the Contracting States, relief should be sought from Article 4 of the Tax Treaty. A series of tie-breaker rules are provided in Paragraph 2 Article 4 of Model Convention to determine single state of residence for an individual.

The tie-breaker rule would be applied in the following manner:

1) The first test is based on where the individual has a **permanent home**. Permanent home would mean a dwelling place available to him at all times continuously and not occasionally and includes place taken on rent for a prolonged period of time.

2) If that test is inconclusive for the reason that the individual has permanent home available to him in both Contracting States, he will be considered a resident of the Contracting State where his personal and economic relations are closer, in other words, the place where lies **his centre of vital interests**. Thus, preference is given to family and social relations, occupation, place of business, place of administration of his properties, political, cultural and other activities of the individual.

3) Paragraph (ii) establishes a secondary criterion for two quite distinct and different situations:
   - The case where the individual has a permanent home available to him in both Contracting States and it is not possible to determine in which one he has his centre of

vital interests;

- The case where the individual has a permanent home available to him in neither Contracting State.

In the aforesaid scenarios, preference is given to the Contracting State where the individual has an **habitual abode**.

4) If the individual has habitual abode in both Contracting States or in neither of them, he shall be treated as a resident of the Contracting State of which he is **a national**.

If the individual is a national of both or neither of the Contracting States, the matter is left to be **considered by the competent authorities** of the respective Contracting.

6. (a) There are several flaws in the penalty levied by the Assessing Officer. Firstly, the penalty leviable under section 271D cannot exceed the sum equal to the loan taken. Hence, the maximum penalty leviable would be ₹ 50,000. Secondly, any penalty imposable under section 271D shall be imposed by the Joint Commissioner. Hence, unless the Assessing Officer happens to be a Joint Commissioner the levy of penalty will be invalid. Thirdly, the Assessing Officer cannot, on the one hand, treat the loan as undisclosed income of the assessee and on the other, treat it as a loan for the purpose of section 269SS read with section 271D. Such a treatment will be self-contradictory. The moment the amount of ₹ 50,000 is treated as undisclosed income, it ceases to bear the character of loan and therefore, the foundation for the levy of penalty under section 271D disappears. *[Diwan Enterprises v. CIT and Others (2000) 246 ITR 571]*.

(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) Computation of total income of Mr. Kamesh for A.Y.2023-24

Particulars	₹	₹
Income from House Property [House situated in country Y]	1	
Gross Annual Value[1]	2,40,000	

[1] *Rental Income has been taken as GAV in the absence of other information relating to fair rent, municipal value etc.*

Less: Municipal taxes	10,000	
Net Annual Value	2,30,000	
Less: Deduction under section 24 – 30% of NAV	69,000	
		1,61,000
Profits and Gains of Business or Profession		
Income from profession carried on in India	7,50,000	
Royalty income from a literary book from Country X (after deducting expenses of ₹ 50,000)	5,50,000	
Less: Business loss in country Y set-off[2]	65,000	
		12,35,000
Income from Other Sources		
Agricultural income in country X	50,000	
Dividend from a company in country Y	1,50,000	2,00,000
Gross Total Income		**15,96,000**
***Less:* Deduction under Chapter VIA**		
Under section 80QQB – Royalty income of a resident from literary work[3]		3,00,000
Total Income		**12,96,000**

Note – Since adjusted total income (i.e., ₹ 15,96,000) does not exceed ₹ 20 lakhs, AMT would not be attracted in this case.

Computation of tax payable by Mr. Kamesh for A.Y.2023-24

Particulars	₹
Tax on total income [30% of ₹ 2,96,000 + ₹ 1,12,500]	2,01,300
Add: Health and Education cess@4%	8,052
	2,09,352
Less: Deduction under section 91 **(See Working Note below)**	69,739
Tax Payable	**1,39,613**
Tax payable (rounded off)	1,39,610

Working Note: Calculation of Rebate under section 91

	₹	₹
Average rate of tax in India [i.e., ₹ 2,09,352 / ₹ 12,96,000 x 100]	**16.154%**	
Average rate of tax in country X	**10%**	
Doubly taxed income pertaining to country X		
Agricultural Income	50,000	
Royalty Income [₹ 6,00,000 – ₹ 50,000 (Expenses) – ₹ 3,00,000		
	2,50,000	

1

[2] *As per section 70(1), inter-source set-off of income is permitted.*

[3] *It is assumed that the royalty earned outside India has been brought into India in convertible foreign exchange within a period of six months from the end of the previous year.*

(deduction under section 80QQB)][4]		
	3,00,000	
Deduction under section 91 on ₹ 3,00,000 @10% [being the lower of average Indian tax rate (16.154%) and foreign tax rate (10%)]		30,000
Average rate of tax in country Y	**20%**	
Doubly taxed income pertaining to country Y		
Income from house property	1,61,000	
Dividend	1,50,000	
	3,11,000	
Less: Business loss set-off	65,000	
	2,46,000	
Deduction u/s 91 on ₹ 2,46,000 @16.154% (being the lower of average Indian tax rate (16.154%) and foreign tax rate (20%)]		39,739
Total rebate under section 91 (Country X + Country Y)		**69,739**

Note: Mr. Kamesh shall be allowed deduction u/s 91, since the following conditions are fulfilled:-

(a) He is a resident in India during the relevant previous year (i.e., P.Y.2022-23).

(b) The income in question accrues or arises to him outside India in foreign countries X and Y during that previous year and such income is not deemed to accrue or arise in India during the previous year.

(c) The income in question has been subjected to income-tax in the foreign countries X and Y in his hands and it is presumed that he has paid tax on such income in those countries.

(d) There is no agreement under section 90 for the relief or avoidance of double taxation between India and Countries X and Y where the income has accrued or arisen.

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[4] Doubly taxed income includes only that part of income which is included in the assessee's total income. The amount deducted under Chapter VIA is not doubly taxed and hence, no relief is allowable in respect of such amount – *CIT v. Dr. R.N. Jhanji (1990) 185 ITR 586 (Raj.).*