



PAPER – 4: DIRECT TAX LAWS AND INTERNATIONAL TAXATION

The provisions of direct tax laws, as amended by the Finance Act, 2023 and the significant notifications and circulars issued upto 31.10.2023, are relevant for May, 2024 examination. The relevant assessment year is A.Y.2024-25. The October, 2023 edition of the Study Material contains the provisions of direct tax laws as amended by the Finance Act, 2023 and notifications and circulars issued upto 31.7.2023. The said study material has to be read along with the Statutory Update for May, 2024 Examination webhosted at <https://resource.cdn.icai.org/77984bos62600su.pdf> and Judicial Update for May, 2024 Examination webhosted at <https://resource.cdn.icai.org/77983bos62600ju.pdf>.



QUESTIONS

Case Scenario I

The following details pertain to Mr. Sahil and his best friend Mr. Akhil:

Mr. Sahil

Particulars	Amount (₹)
Amount remitted to his elder son Aarav, who is pursuing two-year MBA Program from Columbia University, USA	
- Out of own savings through HDFC Bank, an authorized dealer under Liberalized Remittance Scheme (LRS) of the RBI	
• towards tuition fees on 5.7.2023	3,50,000
• to meet day to day expenses	

-	10.5.2023	1,20,000
-	29.9.2023	90,000
-	01.1.2024	1,35,000
-	Through Axis Bank, an authorized dealer under Liberalized Remittance Scheme (LRS) out of	
•	loan (towards tuition fees) on	
-	11.10.2023	3,50,000
-	10.01.2024	3,50,000
•	Own savings (to meet day to day expenses) on 1.7.2023	1,50,000
	To complete the formalities of admission, Mr. Sahil visited the USA from 10.4.2023 to 13.4.2023 for which he purchased a tour package from M/s Gate 2 Travel, a foreign tour operator and remits money under LRS on 5.4.2023. International travel tickets and hotel accommodation are included in the said package.	5,20,000

Mr. Sahil has furnished undertakings containing the details of earlier remittances to HDFC bank and Axis bank. He has also furnished his PAN to the authorized dealers and to the seller of overseas tour program package.

Mr. Akhil

Mr. Akhil, an Indian citizen got a job offer from M/s Wellbeing Inc., a Dubai-based company of AED 10,500 per month. He left for Dubai on 29.3.2023 and joined M/s Wellbeing Inc. on 1st April 2023. He returned to India on 15.12.2023 on leaves for 15 days. On 23.12.2023, he went on 7 days tour to Bali with his wife and son. Thereafter, he directly went to Dubai with his wife and son. On 16.12.2023, he purchased a tour package for Bali from Make Your Trip, an Indian tour operator for which he paid ₹ 7,50,000 towards flight tickets and hotel accommodation. During F.Y. 2023-24, he has business income of ₹ 4,20,000 from a retail shop in India and interest on fixed deposit and savings account with Canara Bank of ₹ 1,20,000 and ₹ 8,000, respectively.

He is not liable to pay any tax in Dubai. Assume 1 AED = ₹ 23.

From the information given above, choose the most appropriate answer to Q. 1 to Q. 6:

1. Is HDFC Bank required to collect tax at source on the amount remitted by Mr. Sahil? If so, what is the amount of tax to be collected?
 - (a) Yes; TCS of ₹ 2,000 on 29.9.2023 and TCS of ₹ 27,000 on 1.1.2024
 - (b) Yes; TCS of ₹ 500 on 29.9.2023 and TCS of ₹ 27,000 on 1.1.2024
 - (c) Yes; TCS of ₹ 500 on 29.9.2023 and TCS of ₹ 6,750 on 1.1.2024
 - (d) No tax is required to be collected at source since receipts do not exceed ₹ 7 lakh

2. Is Axis Bank required to collect tax at source on the amount remitted by Mr. Sahil? If so, what is the amount of tax to be collected?
 - (a) Yes; TCS of ₹ 7,500 on 1.7.2023; TCS of ₹ 1,750 on 11.10.2023 and TCS of ₹ 1,750 on 10.1.2024
 - (b) Yes; TCS of ₹ 17,500 on 11.10.2023 and TCS of ₹ 17,500 on 10.1.2024
 - (c) Yes; TCS of ₹ 1,750 on 11.10.2023 and TCS of ₹ 1,750 on 10.1.2024
 - (d) No tax is required to be collected at source, on the remittances for education and for other purposes since each receipt does not exceed ₹ 7 lakh

3. Is tax required to be collected at source on the amount remitted for tour package to USA by Mr. Sahil? If so, what is the amount of tax to be collected?
 - (a) Yes; TCS of ₹ 26,000
 - (b) Yes; TCS of ₹ 1,04,000
 - (c) No tax is required to be collected at source, since tour package is purchased from a foreign tour operator
 - (d) No tax is required to be collected at source, since receipt does not exceed ₹ 7 lakh

4. Does Make Your Trip require to collect tax at source on the amount received for tour package to Bali from Mr. Akhil? If so, what is the amount of tax to be collected?
 - (a) Yes; ₹ 2,500 is required to be collected at source

- (b) Yes; ₹ 37,500 is required to be collected at source
- (c) Yes; ₹ 45,000 is required to be collected at source
- (d) No tax is required to be collected at source
5. What is the total income of Mr. Akhil for the A.Y. 2024-25? Assume he has shifted out of the default tax regime u/s 115BAC.
- (a) ₹ 33,88,000
- (b) ₹ 5,48,000
- (c) ₹ 33,96,000
- (d) ₹ 5,40,000
6. What would be the amount of the tax payable/refundable (computed in the most beneficial manner) to Mr. Akhil for the A.Y. 2024-25?
- (a) Tax payable ₹ 7,47,550
- (b) Tax payable ₹ 12,900
- (c) No tax payable/refundable
- (d) Tax Refundable ₹ 45,000

Case Scenario II

Seva Niketan, a charitable trust registered under section 12AB runs an educational institution, which is engaged solely in education and a hospital for treatment of persons suffering from mental disorder solely for philanthropic purposes. The trust furnished the following information:

- (i) The total receipts of the trust for the P.Y. 2023-24 for educational institution is ₹ 3.10 crores and for the hospital it is ₹ 3.40 crores.
- (ii) Voluntary contributions [included in (i) above] received for the P.Y. 2023-24 from the public amounted to ₹ 105 lakhs. It includes corpus donations of ₹ 55 lakhs (for purchase of building for the trust) and anonymous donations of ₹ 20 lakhs.
- (iii) During the P.Y. 2023-24, computers purchased for ₹ 80 lakhs out of
- Corpus fund mentioned in (ii) above ₹ 30 lakhs.

- Loan – ₹ 25 lakhs
 - Voluntary contributions - ₹ 25 lakhs
- (iv) Corpus donations received during the current year are invested in -
- Post Office Savings Accounts ₹ 10 lakhs
 - Canara Bank as Fixed deposits ₹ 5 lakhs
 - Non-banking Financial Corporation (NBFC) ₹ 10 lakhs
- (v) Deposited ₹ 15 lakhs towards post office savings account which were utilised for purchase of building during the P.Y. 2020-21 and P.Y. 2021-22 out of corpus fund ₹ 10 lakhs and ₹ 5 lakhs, respectively.
- (vi) Amount paid to another trust registered u/s 12AB by way of donation of ₹ 10 lakhs. Out of the said amount ₹ 2 lakhs are given as corpus donations.
- (vii) ₹ 6 lakhs, being the amount set apart in the P.Y.2022-23 by the trust for charitable purposes u/s 11(2) utilized in the P.Y. 2023-24 for making donation to another charitable trust, whose object is also education.

From the information given above, choose the most appropriate answer to Q. 7 to Q. 11:

7. Seva Niketan wants to avail exemption under section 10(23C)(iiiad) and 10(23C)(iii ae) in respect of educational institution and hospital for the P.Y. 2023-24. Can it do so?
- (a) Yes, it can do so since annual receipts for each activity do not exceed ₹ 5 crores.
 - (b) No, it cannot do so since the trust is registered under section 12AB.
 - (c) No, it cannot do so since aggregate receipts from education and hospital exceed ₹ 5 crores.
 - (d) No, it cannot do so due to the reasons mentioned in (b) and (c) above.
8. What amount of corpus donations received by the trust would not form part of the total income of the P.Y. 2023-24?

- (a) ₹ 25 lakhs
(b) ₹ 40 lakhs
(c) ₹ 15 lakhs
(d) ₹ 55 lakhs
9. What would be the amount of "specified income" taxable@30% u/s 115BBI for the P.Y. 2023-24?
(a) ₹ 30 lakhs
(b) ₹ 46 lakhs
(c) ₹ 48 lakhs
(d) ₹ 16 lakhs
10. What amount would be considered as application of the trust for the P.Y.2023-24 (excluding unconditional accumulation of 15%), assuming that it has fulfilled the relevant conditions stipulated under section 12A?
(a) ₹ 36.8 lakhs
(b) ₹ 25 lakhs
(c) ₹ 38 lakhs
(d) ₹ 30 lakhs
11. Seva Niketan claims that anonymous donations received during F.Y. 2023-24 are not liable to be taxed under section 115BBC(1)(i). Is the claim of trust valid? If not, determine the tax leviable under section 115BBC.
(a) No; ₹ 6,00,000
(b) No; ₹ 5,70,000
(c) Yes; the trust is not liable to pay tax under section 115BBC(1)(i)
(d) No; ₹ 4,42,500
12. ABC bank provides the following information relating to cash withdrawals by its two customers during the P.Y.2023-24:

Date of cash withdrawal	Mr. Arjun (Savings Account) (₹)	XYZ Co-operative Society (Current Account) (₹)
12.04.2023	20,00,000	-
9.05.2023	-	68,00,000
15.06.2023	25,00,000	-
19.07.2023	-	85,00,000
18.10.2023	35,00,000	-
5.11.2023	-	88,00,000
22.12.2023	25,00,000	-
03.01.2024	-	57,00,000

Co-operative society regularly files its return of income. However, Mr. Arjun has not filed his return of income for the last three years.

Would cash withdrawals by Mr. Arjun and XYZ Co-operative society during the P.Y. 2023-24 attract deduction of tax at source? If yes, how much tax would be deductible by ABC bank.

- (a) Yes; ₹ 1,85,000 and ₹ 3,96,000, respectively
- (b) Yes; ₹ 1,85,000 and ₹ 5,56,000, respectively
- (c) Yes; ₹ 10,000 and ₹ 3,96,000, respectively
- (d) ₹ 1,85,000 in respect of cash withdrawals by Mr. Arjun and no tax is required to be deducted from cash withdrawals by the co-operative society.
13. Blossom Tea Garden, a tea estate in Dibrugarh, Assam received ₹ 23,00,000 as compensation from an insurance company for severe damage to the green leaves due to a hailstorm in July 2023. Blossom tea estate is of the view that the entire receipt under the insurance policy for damage caused by the hailstorm to tea leaves will be agricultural income, hence, would not be chargeable to tax. Examine the contention of Blossom Tea Garden.
- (a) Blossom Tea Garden's contention is incorrect; entire compensation is assessable as income from other sources.

- (b) Blossom Tea Garden's contention is incorrect; entire compensation is assessable as manufacturing income.
- (c) Blossom Tea Garden's contention is incorrect; it's deemed to be profit on sale of standing crop or the produce, therefore the same is taxable as profits and gains from business or profession.
- (d) Blossom Tea Garden's contention is correct; no part of the compensation consists of manufacturing income, and it cannot be apportioned under rule 8 between manufacturing income and agricultural income. Therefore, the income will be agricultural income.
14. Shubh Fragrance Ltd. established in 2015, is engaged in the manufacturing and selling of pharmaceutical products. The net profit of the company as per profit and loss account for the year ended 31st March 2024 is ₹ 900 lakhs, after debiting or crediting the following items:
- (i) Payment of ₹ 50 lakhs in the month of November 2023 to a foreign company for obtaining know-how for a product launched in the month of December 2023.
- (ii) Electricity charges of ₹ 7 lakhs for the month of March 2024 were unpaid up to the due date of filing of return of income.
- (iii) Loss of ₹ 4 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 was ₹ 45 lakhs.
- (v) Loss of ₹ 2 lakh from hedging contracts entered into for mitigating the loss arising due to fluctuation in foreign currency payment towards an imported machinery purchased from Japan for ₹ 65 lakhs, which was installed in the month of December 2023.
- (vi) ₹ 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.

- (vii) 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 F.Y. 2019-20.
- (viii) Excess on sale of unlisted shares - ₹ 15 lakhs (Sold on 15th February 2024).

Additional Information:

- (1) Normal depreciation allowable as per the Income-tax Act, 1961 ₹ 35 lakhs [depreciation, if any required to be computed on the amount debited or credited to Statement of profit or loss is not included].
- (2) The unlisted shares were acquired on 29.3.2021 for ₹ 80 lakhs.
- (3) Cost Inflation Index F.Y. 2019-20 - 289, F.Y. 2020-21 - 301, F.Y. 2023-24 - 348.

The total turnover of the company for previous year 2021-22 was ₹ 282 crores and for the financial year 2022-23 ₹ 405 crores. The company has MAT credit of ₹ 20 lakhs of the assessment year 2016-17. The book profit (computed) for the assessment year 2024-25 is ₹ 1520 lakhs.

Compute the total income and tax liability (computed in the most beneficial manner) for the assessment year 2024-25.

15. Mr. Sanjay is a resident in India aged 55 years. He had an impressive investment portfolio in various mutual funds. He redeemed his entire mutual fund investment portfolio and bought a villa in Lonavala for ₹ 2.00 crores to spend rest of his life there. The details of mutual funds are as under –

S. No.	Type of mutual fund	Date of investment	Date of redemption	Amount invested (in ₹ lakhs)	Amount redeemed (in ₹ lakhs)
1	BLR growth fund	03.04.2020	05.06.2023	120	140
2	ABC Strategic fund	04.05.2023	02.02.2024	46	50

3	ABD fund	Midcap	02.12.2022	05.07.2023	115	118
4	SBA fund	Growth	08.11.2021	12.12.2023	110	120

The funds stated at 1 and 2 have invested 30% of their proceeds in equity shares of domestic companies and funds stated at 3 and 4 have invested 70% of their proceeds in equity shares of domestic companies. The investment pattern of funds remained unchanged over all the years. STT is paid at the time of acquisition and redemption of mutual fund, wherever applicable.

You are required to compute the capital gains chargeable to tax in the hands of Mr. Sanjay for A.Y. 2024-25. CII: 2020-21: 301; 2021-22: 317; 2022-23: 331; 2023-24: 348

16. The Commissioner of Income-tax issued notice to revise the order passed by an Assessing Officer under section 143. During the pendency of proceedings before the Commissioner, on the basis of material gathered during survey under section 133A after issue of the first notice, the Commissioner of Income-tax issued a second notice, the contents of which were different from the contents of the first notice. Examine whether the action of the Commissioner is justified as to the second notice.

17. In respect of Mr. Naksh, who is engaged in the export of fabrics, information is flagged as per the risk management strategy formulated by the CBDT for A.Y.2020-21, A.Y.2021-22, A.Y.2022-23 and A.Y.2023-24.

In case of Mr. Ramesh (friend of Mr. Naksh), who is engaged in trading of commodities, a search was initiated u/s 132 in April 2024, consequent to which the Assessing Officer has in his possession certain documents showing information pertaining to shares of value ₹ 28 lakhs purchased in the P.Y. 2017-18 and shares of value of ₹ 21 lakhs purchased in the P.Y.2018-19.

Can the Assessing Officer issue notice under section 148 to Mr. Naksh and Mr. Ramesh in April 2024? If so, in respect of which assessment years can notice be issued? Is it necessary that they be provided with an opportunity of being heard before issuance of notice?

What would be your answer with respect to issue of notice to Mr. Ramesh if the shares purchased in the P.Y.2017-18 were of ₹ 30 lakhs instead of ₹ 28 lakhs, all other facts remain the same?

18. Mr. Rohit, an Indian citizen, returned to India in March 2013 to assume the role of CEO at ABC (P) Ltd., an Indian company. He served in this capacity from 1st April 2013 to 31st March 2020. Prior to this, from May 2000 to February 2013 he was working with Red Inc, in the USA. In April 2020, he went to the USA to rejoin Red Inc. and permanently settled there. Mr. Rohit visits India every year only for 1 month during his stay in USA. It was found that when he was CEO of ABC (P) Ltd., he accumulated undisclosed income/wealth such as

- (i) shares of listed companies in USA acquired on 10th December, 2012;
- (ii) acquired one apartment in London on 20th April 2015 and
- (iii) established a leather goods manufacturing factory in Malaysia on 15th April 2020.

He also earned income by taking commission from various foreign buyers located outside India during the period between April 2013 to March 2020. The above undisclosed assets came to the notice of Assessing Officer in April 2023, and he issued notice under the Black Money Act, 2015 in July, 2023.

Is the notice issued by the Assessing Officer under the Black Money Act, 2015 on Mr. Rohit tenable in law?

19. Mahesh (Age 50 years) is the CEO of Silver India Ltd. since 01.04.2019. His income in India consists of

- (i) salary (before standard deduction) of ₹ 23 lakhs;
- (ii) interest in respect of self-occupied property of ₹ 1,80,000;
- (iii) interest on bank fixed deposits ₹ 1,60,000.

He has the following income for the year ended 31st March 2024 in Country 'A'.

- (i) Income from business in Country A = USD 25,000;

- (ii) Rent from house property in Country A = USD 4,500;
- (iii) Municipal taxes in respect of the above house (Not allowed as deduction in Country A) = USD 450;
- (iv) Dividend from shares held in Country 'A' where dividend was declared and paid in March, 2024 = USD 10,000;
- (v) Short term capital gain of USD 5,000 on sale of shares of companies registered in Country 'A' and sale proceeds were credited in bank account outside India on 28.03.2024.

India has DTAA with Country 'A' and the tax paid in Country 'A' is eligible for tax credit in India. The fiscal year for income-tax is the same both in India and Country 'A'. Rate of tax is 20% in Country 'A' in respect of all incomes. Income-tax was paid by Mahesh on 25.05.2024 for the incomes of the year ended 31st March 2024 in Country 'A'.

Compute the total income and net tax liability of Mahesh for the A.Y. 2024-25. Assume Mahesh pays tax under section 115BAC.

The TT buying rate of 1 USD on various dates: 29.02.2024 = ₹ 70; 28.03.2024 = ₹ 70.50; 31.03.2024 = ₹ 71; 30.04.2024 = ₹ 72; and 25.05.2024 = ₹ 73.

20. ABC (P) Ltd., Bangalore is engaged in the manufacture of electronic goods and exporting the same to various associated and other enterprises across Southeast Asia. The report with respect to its international transactions with AE has been furnished for all years. The company has applied for APA in respect of the transactions with its AE. Application was filed on 15th February 2023 which was signed on 5th May 2023.

The company also applied in respect of the international transactions to which APA applies for rollback benefit which was agreed and signed in January 2024. The details of the status of income tax assessments are as follows:

- A.Y. 2018-19 – The matter is pending before High Court with regard to acquisition of a company by the assessee and the dispute is about set off of loss of the erstwhile company.
- A.Y. 2019-20 and A.Y. 2020-21 - There is no dispute and the assessments have been completed.

- A.Y. 2021-22 - The assessment for the A.Y. 2021-22 was completed by making reference to the TPO who enhanced the arm's length price of the international transaction by ₹ 500 lakhs.
- A.Y. 2022-23 - ALP of international transaction was disputed before the tribunal which set aside the order for fresh consideration by the Assessing Officer in November 2023.
- A.Y. 2023-24 - The income tax return ('ITR') was filed on 29th December 2023.

If the APA is applied, the ALP determined for the A.Y. 2021-22 would get enhanced by ₹ 300 lakhs as against ₹ 500 lakhs originally determined by TPO.

Discuss the applicability of rollback agreement for various assessment years in case of ABC (P) Ltd.



SUGGESTED ANSWERS/HINTS

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

14. Computation of total income and tax liability of Shubh Fragrance Ltd. for A.Y.2024-25 under the regular provisions of the Act

	Particulars	Amount (in ₹)	
I	Profits and gains of business and profession		
	Net profit as per Statement of profit and loss		9,00,00,000
	Add: Items debited but to be considered separately or to be disallowed		
	(i) Payment towards know-how for a product	50,00,000	
	[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]		
	(ii) Electricity charges unpaid upto the due of filing return of income	-	
	[Electricity charges are not included within the scope of section 43B ¹ , therefore no disallowance would be attracted. Since the same is already debited in statement of profit and loss, no further adjustment is required]		
	(iii) Loss due to hedging contract in respect of raw material	-	
	[Loss due to hedging contract against future price fluctuations in respect of import of raw material is		

¹ CIT Vs Andhra Ferro Alloys (P.) Ltd. (AP)

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]		
(iv) Depreciation as per books of account	45,00,000	
(v) Loss from hedging contract in respect of imported machinery from Japan	2,00,000	
[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].		
		97,00,000
		9,97,00,000
Less: Items credited but chargeable to tax under other head		
(vi) Non-compete fees for not carrying out any business in a particular product	-	
[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]		
(vii) Advance forfeited in respect of sale of land	20,00,000	
[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]		
(viii) Profit on sale of unlisted shares	15,00,000	
[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]		35,00,000
		9,62,00,000
Less: Depreciation as per Income-tax Act, 1961 [other than on imported plant & machinery and know-how]	35,00,000	
Deprecation on:		
Plant & Machinery imported	65,00,000	
<i>Add:</i> Loss on hedging contract	<u>2,00,000</u>	
	<u>67,00,000</u>	

	<ul style="list-style-type: none"> Normal depreciation @7.5% of ₹ 67,00,000 [only 50% of the 15% is allowable since machinery is put to use for less than 180 days] 	5,02,500	
	<ul style="list-style-type: none"> Additional depreciation @10% of ₹ 67,00,000 [only 50% of the 15% is allowable since machinery is put to use for less than 180 days] 	6,70,000	
	<p>Know-how @ 12.5% of ₹ 50,00,000 [50% of 25% since know how was obtained in the month of November 2023]</p>	6,25,000	52,97,500
			9,09,02,500
II	Capital Gains		
	<p>Long term capital gain on sale of unlisted shares [Since shares were held for more than 24 months]</p> <p>Full value of consideration [₹ 15,00,000 + ₹ 80,00,000]</p> <p>Less: Indexed cost of acquisition [80,00,000 x 348/301]</p>	95,00,000	
		<u>92,49,169</u>	2,50,831
III	Income from Other Sources		
	Advance forfeited on sale of land		20,00,000
	Total income/Gross Total Income		<u>9,31,53,331</u>
	Total income/Gross Total Income (rounded off)		9,31,53,330
	Computation of tax liability under the regular provisions of the Act		
	Tax on ₹ 2,50,831@20% under section 112	50,166	

Tax on ₹ 9,29,02,500@25% [Since the turnover of the company for the previous year 2021-22 does not exceed ₹ 400 crore]	<u>2,32,25,625</u>	2,32,75,791
Add: Surcharge @ 7%, since the total income of the company > ₹ 1 crore but ≤ ₹ 10 crores		16,29,305
		<u>2,49,05,096</u>
Add: Health and education cess @ 4%		9,96,204
Tax liability		2,59,01,300

Computation of tax liability of Shubh Fragrance Ltd. for the A.Y. 2024-25 under section 115JB

Particulars	₹
Minimum Alternate Tax @15% on book profit of ₹ 15,20,00,000	2,28,00,000
Add: Surcharge@12%, since the book profit of the company > ₹ 10 crores	<u>27,36,000</u>
	2,55,36,000
Add: Health and Education cess@4%	<u>10,21,440</u>
Tax liability under section 115JB	2,65,57,440

Since the regular income-tax payable is less than the minimum alternate tax payable, the book profit of ₹ 1520 lakhs shall be deemed to be the total income and tax is leviable @15% thereof *plus* surcharge@12% and cess@4%. Therefore, the tax liability is ₹ 2,65,57,440.

MAT Credit to be carried forward	
Tax liability under section 115JB	2,65,57,440
Less: Tax liability under the regular provisions of the Income-tax Act, 1961	<u>2,59,01,300</u>
Amount of Credit (115JAA)	<u>6,56,140</u>
MAT credit of ₹ 20,00,000 of A.Y. 2016-17 is allowed to be carried forward till A.Y. 2031-32 and MAT credit of ₹ 6,56,140 relating to A.Y. 2024-25 is allowed to be carried forward till A.Y. 2039-40.	

Note - Shubh Fragrance Ltd. is eligible for concessional rate under section 115BAA @25.168% i.e., tax@22% *plus* surcharge@10% *plus*

HEC@4% subject to tax at the rates mentioned in the said sections in Chapter XII. In case Shubh Fragrance Ltd. opted for concessional rate of tax u/s 115BAA, it would not be eligible for additional depreciation on plant and machinery. In that case, its total income u/s 115BAA would be-

Particulars	₹
Total income/Gross Total Income under regular provisions of the Act	9,31,53,330
Add: Additional depreciation on plant & machinery	<u>6,70,000</u>
Gross Total Income/ Total Income	<u>9,38,23,330</u>
Tax on ₹ 2,50,831@20% under section 112	50,166
Tax on ₹ 9,35,72,499 @22% under section 115BAA	<u>2,05,85,950</u>
Add: Surcharge @ 10%	<u>20,63,612</u>
	2,26,99,728
Add: Health and education cess @ 4%	<u>9,07,989</u>
Tax liability	<u>2,36,07,717</u>
Tax liability (Rounded Off)	2,36,07,720
Suggestion to Shubh Fragrance Ltd	
In case Shubh Fragrance Ltd opts for section 115BAA for assessment year 2024-25, it would not be eligible for balance 10% additional depreciation on plant & machinery in A.Y. 2025-26 and would also lose MAT credit of ₹ 20 lakhs. Further, once option under section 115BAA has been exercised for any P.Y., it cannot subsequently be withdrawn for the same or any other P.Y. However, in such a case its tax liability for A.Y. 2024-25 would be ₹ 2,36,07,720 which would be lower than tax liability under regular provisions of the Act including MAT.	

15. Computation of capital gains of Mr. Sanjay for A.Y. 2024-25

Particulars	₹	₹
Redemption of BLR growth fund		
Full value of consideration [Redemption value]	1,40,00,000	

Less: Indexed cost of acquisition [₹ 1,20,00,000 × 348/301]	<u>1,38,73,754</u>	
Long term capital gains [Since it is debt fund (as not more than 65% of the proceeds are invested in equity shares of domestic companies) and it was held by Mr. Sanjay for more than 36 months immediately preceding the date of its transfer]		1,26,246
Redemption of ABC Strategic fund Full value of consideration [Redemption value]	50,00,000	
Less: Cost of acquisition	<u>46,00,000</u>	
Short term capital gains [Since it is a specified mutual fund (as not more than 35% of its proceeds are invested in equity shares of domestic companies) which is acquired on or after 1.4.2023, this fund would be considered as short-term capital asset as per section 50AA irrespective of the period of holding]		4,00,000
Redemption of ABD Midcap fund Full value of consideration [Redemption value]	1,18,00,000	
Less: Cost of acquisition	<u>1,15,00,000</u>	
Short term capital gains [Since it is equity-oriented fund (as more than 65% of its proceeds are invested in equity shares of domestic companies) and it was held by Mr. Sanjay for not more than 12 months immediately preceding the date of its transfer]		3,00,000
Redemption of SBA Growth fund Full value of consideration [Redemption value]	1,20,00,000	

<p><i>Less:</i> Cost of acquisition [Indexation benefit would not be available in case of income taxable under section 112A]</p> <p>Long term capital gains [Since it is equity-oriented fund (as more than 65% of its proceeds are invested in equity shares of domestic companies) and it was held by Mr. Sanjay for more than 12 months immediately preceding the date of its transfer]</p>	<p><u>1,10,00,000</u></p>	<p>10,00,000</p>
		<p>18,26,246</p>
<p>Less: Exemption under section 54F</p> <p>Capital gain arising on transfer of a long-term capital asset other than a residential house shall not be chargeable to tax to the extent such capital gain is invested in the purchase of one residential house property in India within one year before or two years after the date of transfer of original asset.</p> <p>Therefore, in the present case, the exemption would be available only in respect of long-term capital gains from redemption of BLR growth fund and SBA Growth fund.</p> <p>Exemption from long term capital gains from redemption of SBA Growth fund [10,00,000 x 1,20,00,000 /1,20,00,000]</p> <p>Exemption from long term capital gains from redemption of BLR short term fund [1,26,246 x 80,00,000 (2 crores – 1.20 crores)/1,40,00,000]</p>		<p>10,00,000</p> <p>72,141</p>
<p>Capital gains chargeable to tax for A.Y.2024-25</p>		<p>7,54,105</p>

16. The action of the Commissioner in issuing the second notice is not justified. The term "record" has been defined in clause (b) of *Explanation 1* to section 263(1). According to this definition "record" shall include and shall be deemed always to have included all records relating to any proceeding under the Act available at the time of examination by the Commissioner. In other words, the information, material, report etc. which were not in existence at the time the assessment was made and came into existence afterwards can be taken into consideration by the Commissioner for the purpose of invoking his jurisdiction under section 263(1). However, at the same time, in view of the express provisions contained in clause (b) of the *Explanation 1* to section 263(1), such information, material, report etc. can be relied upon by the Commissioner only if the same forms part of record when the action under section 263 is taken by the Commissioner,

Issuance of a notice under section 263 succeeds the examination of record by Commissioner. In the present case, the Commissioner initially issued a notice under section 263, after the examination of the record available before him. The subsequent second notice was on the basis of material collected under section 133A, which was totally unrelated and irrelevant to the issues sought to be revised in the first notice. Accordingly, the material on the basis of which the second notice was issued could not be said to be "record" available at the time of examination as emphasized in *Explanation 1(b)* to section 263(1).

17. In respect of Mr. Naksh, the Assessing Officer has information suggesting that income has escaped assessment for the purposes of section 148 and 148A, since information has been flagged for the relevant assessment year as per risk management policy formulated by the CBDT. Notice can be issued for A.Y.2023-24, A.Y.2022-23 and A.Y.2021-22, since the three-year time limit from the end of the relevant assessment year has not expired as on April, 2024. Such notice can be issued after conducting an enquiry, if required, with respect to the information suggesting escapement of income; and providing an opportunity of being heard to Mr. Naksh by serving a show cause notice. Thereafter, on the basis of material available on record including the reply of Mr. Naksh, in response to show cause notice, the Assessing Officer has to decide whether or not it is a fit case to issue notice under

section 148 by passing an order, with the prior approval of Principal Commissioner or Principal Director or Commissioner or Director.

However, notice cannot be issued in respect of A.Y.2020-21, since the three-year time limit from the end of the relevant assessment year (i.e., from 31.3.2021) has since expired on 31st March, 2024.

In case of Mr. Ramesh, since search was conducted under section 132 in April 2024, the Assessing Officer is deemed to have information suggesting that income chargeable to tax has escaped assessment. In this case, the Assessing Officer has in his possession certain documents which reveal that income chargeable to tax, represented in the form of an asset, has escaped assessment. Shares are included in the definition of "asset". However, the income chargeable to tax, represented in the form of shares, which has escaped assessment amounts to ₹ 49 lakhs (i.e., ₹ 28 lakhs + ₹ 21 lakhs). Since the amount is lower than ₹ 50 lakhs, notice cannot be issued beyond 3 years from the end of the relevant assessment year. In this case, the relevant assessment years are A.Y.2018-19 (relevant to P.Y.2017-18) and A.Y.2019-20 (relevant to P.Y.2018-19). The three-year period for A.Y.2018-19 and A.Y.2019-20 expired on 31.3.2022 and 31.3.2023, respectively. Accordingly, notice cannot be issued under section 148 in April 2024.

However, where the income chargeable to tax, represented in the form of shares, which has escaped assessment amounts to ₹ 51 lakhs (i.e., ₹ 30 lakhs + ₹ 21 lakhs), an extended period of 10 years from the end of the relevant assessment year (i.e., from the end of 31.3.2019 and 31.3.2020) would be available under section 149(1)(b) for issue of notice, which has not expired in April, 2024. Therefore, the Assessing Officer can issue notice under section 148 for A.Y.2018-19 and A.Y.2019-20 with the prior approval of specified authority.

In this case, the Assessing Officer need not conduct an enquiry and provide opportunity of being heard to Mr. Ramesh as required u/s 148A for the purpose of issue of notice u/s 148.

Note - Notice cannot be issued under section 148 in respect of the relevant assessment year beginning on or before 1.4.2021, if on the date of issue of such notice, the time limit prescribed for issue of notice under

erstwhile section 153A has expired. In case of Mr. Ramesh, where income represented in the form of assets, being shares, which has escaped assessment amounts to ₹ 50 lakhs or more, the time limit for issue of notice under erstwhile section 153A in case of relevant assessment year beginning on or before 1.4.2021, has also not expired in April 2024. Since search had taken place in the P.Y.2024-25 relevant to A.Y.2025-26, the Assessing Officer could have issued notice for ten assessment years immediately preceding A.Y.2025-26 (i.e., from A.Y.2015-16 to A.Y.2024-25) under the erstwhile section 153A.

18. Validity of notice issued under Black Money Act, 2015

Every assessee would be liable to tax@30% in respect of his undisclosed foreign income and asset of the previous year. Undisclosed foreign asset would be liable to tax in the previous year in which such asset comes to the notice of the Assessing Officer.

Section 2(2) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 defines "assessee" to include a person being -

- (a) a resident in India within the meaning of section 6 of the Income-tax Act, 1961 in the previous year; or
- (b) a non-resident or not ordinarily resident in India within the meaning of section 6(6) of the Income-tax Act, 1961 in the previous year but who was resident in India either in the previous year to which the income referred to in section 4 relates; or in the previous year in which the undisclosed asset located outside India was acquired.

Mr. Rohit **is non-resident for the P.Y. 2023-24** (the previous year in which notice is issued by the Assessing Officer), since he returned to the USA in April 2020 and visited every year only for 1 month. He was also a non-resident for the P.Y. 2012-13, when he acquired shares of listed companies in USA and P.Y. 2020-21, when he established a leather goods manufacturing factory in Malaysia, since he was in India only during the previous years from P.Y. 2013-14 to P.Y. 2019-20. However, he was resident in India in the P.Y. 2015-16, when he acquired one apartment in London.

Accordingly, the issue of notice on Mr. Rohit under section 10 of the Black Money Act, 2015, is tenable in law, in respect of apartment in London since he was resident in the previous year 2015-16 when the property was acquired.

However, notice issued in respect of shares of listed companies in USA acquired in the P.Y.2012-13 and leather goods manufacturing factory established in Malaysia in the P.Y.2020-21 is not tenable in law, since Mr. Rohit was non-resident in the previous years in which undisclosed assets were acquired and also in the previous year in which it comes to the notice of Assessing Officer.

As regards commission earned from various foreign buyers located outside India, notice can be issued to the extent the same relates to P.Y.2015-16 to P.Y.2019-20. Undisclosed foreign income relating to the period prior to P.Y.2015-16 does not fall within the scope of Black Money Law, which is effective only from A.Y.2016-17.

19. Computation of total income of Mahesh for A.Y. 2024-25 as per section 115BAC

Since Mr. Mahesh is a resident in India for the P.Y.2023-24, his global income would be subject to tax in India. Therefore, income earned by him in Country A would be taxable in India.

Particulars	Amount (₹)	Amount (₹)
Salaries		
Salary from Silver Ltd.	23,00,000	
Less: Standard deduction u/s 16(ia)	<u>50,000</u>	22,50,000
Income from house property		
Let out property in Country A		
Gross Annual Value ²	USD 4,500	
Less: Municipal taxes	<u>USD 450</u>	

² Rental Income has been taken as GAV in the absence of other information relating to fair rent, municipal value etc.

Net Annual Value	USD 4,050	
Less: Deduction under section 24 – 30% of NAV	<u>USD 1,215</u>	
	USD 2,835	
[\$ 2,835 x 71, being the last day of previous year i.e., 31.3.2024 as per Rule 115]	2,01,285	
Self-occupied property in India		
Loss from self-occupied property [Interest u/s 24(b) is not allowable in respect of self-occupied property under section 115BAC]	<u>-</u>	2,01,285
Profits and gains from business or profession		
Income from business in Country A [\$ 25,000 x 71, being the last day of previous year i.e., 31.3.2024 as per Rule 115]		17,75,000
Capital Gains		
Short term capital gains on sale of shares of companies registered in Country A [\$ 5,000 x 70, being the last day of the month immediately preceding the month in which the shares are transferred i.e., 29.2.2024 as per Rule 115]		3,50,000
Income from Other Sources		
Interest on bank fixed deposits	1,60,000	
Dividend from shares held in Country A [\$ 10,000 x 70, being the last day of the month immediately preceding the month in which the dividend is declared i.e., 29.2.2024 as per Rule 115]	<u>7,00,000</u>	
		<u>8,60,000</u>
Gross Total Income/Total Income		<u>54,36,285</u>
Total Income (Rounded off)		54,36,290

Computation of Net tax liability of Mahesh for A.Y.2024-25

Particulars		Amount
Upto ₹ 3,00,000	Nil	
₹ 3,00,001 – ₹ 6,00,000 [i.e., ₹ 3,00,000 @5%]	15,000	
₹ 6,00,001– ₹ 9,00,000 [i.e., ₹ 3,00,000 @10%]	30,000	
₹ 9,00,001– ₹ 12,00,000 [i.e., ₹ 3,00,000 @15%]	45,000	
₹ 12,00,001– ₹ 15,00,000 [i.e., ₹ 3,00,000 @ 20%]	60,000	
₹ 15,00,001– ₹ 54,36,290 [i.e., ₹ 39,36,290 @ 30%]	<u>11,80,887</u>	
		13,30,887
Add: Surcharge@10% [Since total income exceed ₹ 50 lakhs but does not exceed ₹ 1 crore]		<u>1,33,089</u>
		14,63,976
Add: Health & Education Cess@4%		<u>58,559</u>
		15,22,535
Less: Foreign tax credit, being lower of -		
- Tax payable in India @28.007% on ₹ 30,26,285, being income from house property of ₹ 2,01,285, business income of ₹ 17,75,000 plus capital gains of ₹ 3,50,000 plus dividend income of ₹ 7,00,000 [i.e., ₹ 15,22,535/ ₹ 54,36,290 x 100] = 28.007%	8,47,572	
- Tax paid in Country A@20% [\$ 44,500 @20% x ₹ 72, being the rate on 30.4.2024, being the last day of the month immediately preceding the month in which tax is paid, i.e., May 2024]	6,40,800	
		<u>6,40,800</u>
Net tax liability		<u>8,81,735</u>
Net tax liability (Rounded off)		8,81,740

20. Rollback year means any previous year, falling within the period not exceeding four previous years, preceding the first of the five consecutive previous years for which advance pricing agreement is valid.

The application for advance pricing agreement may be filed at any time before the first day of the previous year relevant to the first assessment year for which the application is made, in respect of transactions which are of a continuing nature from dealings that are already occurring; or before undertaking the transaction in respect of remaining transactions.

In the present case, since ABC (P) Ltd. has made an application of APA and also opted for rollback provisions, the APA is apparently in respect of international transactions which are of continuing nature. Accordingly, the APA application filed on 15th February 2023 would be in respect of five previous years beginning with P.Y. 2023-24 relevant to the A.Y. 2024-25.

Consequently, APA entered by ABC (P) Ltd. can provide for determining ALP in relation to international transaction entered during rollback years i.e., from A.Y. 2020-21 to A.Y. 2023-24 subject to satisfaction of certain conditions.

In the present case, since A.Y. 2018-19 and A.Y. 2019-20 fall beyond the said four year period, ABC (P) Ltd. cannot avail roll back benefit in respect of these years. From A.Y. 2020-21 -A.Y. 2023-24, the applicability of rollback provisions would be as follows:

Rollback year	Applicability of rollback provisions
A.Y. 2020-21	Yes, rollback provisions are applicable for A.Y. 2020-21.
A.Y. 2021-22	Yes, rollback provisions are applicable for A.Y. 2021-22 even if ALP adjustment was reduced to addition of ₹ 300 lakhs as against addition of ₹ 500 lakhs originally determined by the TPO on account of APA, since such reduction in the amount of ALP adjustment does not result in reducing the total

	income or increasing the total loss, as declared in the return of income of the said year by ABC (P) Ltd.
A.Y. 2022-23	Yes, roll back provisions are applicable for A.Y. 2022-23, since ITAT has only set aside the order for fresh consideration and the matter has not reached finality.
A.Y. 2023-24	No, rollback provisions are not applicable for A.Y. 2023-24, since the return was filed belatedly u/s 139(4) on 29.12.2023.