ANSWER TO Q. NO. 1(a) 7 MARKS

Computation of total income of Mr. Ranjit for A.Y.2018-19

Particulars	Rs.	Rs.
Income from House Property [House situated in Country Q]		
Gross Annual Value	3,20,000	
Less: Municipal taxes (assumed as paid in that country)	12,000	
Net Annual Value	3,08,000	
Less: Deduction under section 24 – 30% of NAV	92,400	
		2,15,600
Profits and Gains of Business or Profession		
Income from profession carried on in India	6,20,000	
Less: Business loss in Country Q set-off	70,000	
	5,50,000	
Royalty income from a literary book from Country P (after deducting expenses of Rs. 30,000)	4,90,000	10,40,000
Income from Other Sources		
Agricultural income in Country P	82,000	
Dividend received from a company in Country Q	97,000	
		1,79,000
Gross Total Income		**14,34,600**
***Less:* Deduction under Chapter VIA**		
Under section 80QQB – Royalty income of a resident from literary work		3,00,000
Total Income		**11,34,600**

Computation of tax liability of Mr. Ranjit for A.Y.2018-19

Particulars	Rs.
Tax on total income [30% of Rs. 1,34,600 + Rs. 1,12,500]	1,52,880
Add: Education cess@2%	3,058
Secondary and higher education cess @ 1%	1,529
	1,57,466
Less: Rebate under section 91 **(See Working Note below)**	66,313
Tax Payable	**91,153**
Tax payable (rounded off)	91,150

Working Note:

Calculation of Rebate under section 91	**Rs.**	**Rs.**
Average rate of Tax in India Rs. 1,57,466/11,34,600 x 100]	**13.88%**	
Average rate of tax in Country P	**12%**	
Doubly taxed income pertaining to Country P		
Agricultural Income	82,000	
Royalty Income [Rs. 5,20,000 – Rs. 30,000 (Expenses) – Rs. 3,00,000 (deduction under section 80QQB)] **14**	1,90,000	
Rebate under section 91 on Rs. 2,72,000 @12% [being the lower of average Indian tax rate (13.88%) and foreign tax rate (12%)]	**2,72,000**	32,640
Average rate of tax in Country Q	**15%**	
Doubly taxed income pertaining to Country Q		
Income from house property	2,15,600	
Dividend	97,000	
	3,12,600	
Less: Business loss set-off	70,000	
Rebate under section 91 on Rs. 2,42,600 @13.88% (being the lower of average Indian tax rate (13.88%) and foreign tax rate (15%)]	**2,42,600**	33,673
Total rebate under section 91 (Country P + Country Q)		**66,313**

ANSWER TO Q. NO. 1(b) 5 MARKS

The claim of depreciation is subject to the following provisions;

1. Where there is demerger of a company the resulting company will be entitled to depreciation on the written down value of the block of assets transferred to it, which will be written down value of the transferred assets of the demerged company immediately before the demerger.

2. Where there is demerger of a company the written down value of the block of assets in the hands of the demerged company shall be written down value of the demerged company for the immediately preceding previous year as reduced by the written down value of the assets transferred to the resulting company pursuant to the demerger.

3. Depreciation on plant and machinery in the hands of X ltd and Y Ltd will be computed below:

	Amount in Crores	
	X Ltd	Y ltd
WDV of plant and machinery	30.00	70.00
Less: Depreciation @ 15%	4.50	10.50
WDV as at 31.3.2018	25.50	59.50

Set off of unabsorbed depreciation:

(i) The unabsorbed depreciation directly relatable to the undertakings transferred to the resulting company is allowed to be carried forward and set off in the hands of the resulting company.

(ii) Where such unabsorbed depreciation is not directly relatable to the undertaking transferred to the resulting company, it has to be apportioned between the demerged company and the resulting company in the same proportion in which the assets of the undertakings have been retained by the demerged company and transferred to the resulting company.

ANSWER TO Q. NO. 1(c) 5 MARKS

Interest under section 234A:

Since the return of Income has been furnished by PF consulting Ltd. on 15.10.2018 i.e 15 days after the due date of filling of return of income (30.09.2018), interest under section 234A will be payable for 1 month @ 1% on the amount of tax payable on the total income, as reduced by tax reliefs and prepaid taxes:

	Amount (Rs.)
Tax on Total Income (Rs. 10,50,000 x 30.9%)	3,24,450
Less: Advance tax paid	2,67,000
Less: Tax deducted at source	24,450
Less: Relief of tax allowed under section 90	10,000
Tax payable on self assessment Interest = Rs. 23,000 x 1%=Rs. 230	23,000

Interest under section 234B:

Where the advance tax paid by the assessee is less than 90% of the assessed tax, the assessee would be liable to pay interest under section 234B.

	Amount (Rs.)
Tax on Total Income (Rs. 10,50,000 x 30.9%)	3,24,450
Less: Tax deducted at source	24,450
Less: Relief of tax allowed under section 90	10,000
Assessed tax 90% of assessed tax = Rs. 2,90,000 x 90%=Rs. 2,61,000	2,90,000

Since the advance tax by PF consulting Ltd (Rs. 2,67,000) is more than 90% of assessed tax (Rs. 2,61,000), its is not liable to pay interest under Section 234B.

Interest under section 234C:

	Amount (Rs.)
Tax on Total Income (Rs. 10,50,000 x 30.9%)	3,24,450
Less: Tax deducted at source	24,450
Less: Relief of tax allowed under section 90	10,000
Tax on returned income/total advance tax payable Rs. 2,90,000 x 90%=Rs. 2,61,000	2,90,000

Calculation of interest payable under section 234C:

Date (a)	Advance tax paid till date(b)	To Be Paid		Advance Tax Payable	Shortfall	Interest
15.06.2017	40,000	12%	34,800	15%	-	Nil
15.09.2017	1,05,000	36%	1,04,400	45%	-	Nil
15.12.2017	2,05,000	75%	2,17,500	75%	12,500	12,500x 1% x 3months 375/-
15.03.2018	2,67,000	100%	2,90,000	100%	23,000	23,000x1% 230/-
Interest payable under section 234C						**605**

ANSWER TO Q. NO. 1(d) 3 MARKS

As per section 64(1), for the purpose of clubbing under section 64(1)(iv), where the assets transferred, directly or indirectly, by an individual to his spouse are invested by the transferee-spouse in the nature of contribution of capital as a partner in a firm, proportionate interest on capital will be clubbed with the income of the transferor-spouse. Such proportion has to be computed by taking into account the value of the aforesaid investment **as on the first day of the previous year** to the total investment by way of capital contribution as a partner in the firm as on that day.

In view of the above provision, interest received by Mrs. Sharadha from the firm shall be included in total income of Mr. Sriram to the extent of **Rs. 40,000 i.e., Rs. 1,00,000 x Rs. 4,00,000/ Rs. 10,00,000.**

Share of profit amounting to Rs. 1,20,000 is exempt from income-tax under the provisions of section 10(2A). The provisions of section 64 will not apply, if the income from the transferred asset itself is exempt from tax.

Answer to Q. No. 2 (16 Marks)

Computation of Total Income of XYZ Ltd for the Assessment Year 2018-19

	Amount (Rs.)	Amount (Rs.)
Profit & Gains from business and profession		7,00,00,000
Net profit as per profit and loss account		
Add: Item debited but to be considered separately		
Depreciation as per books	50,00,000	
Employees contribution to EPF	2,00,000	
Provision for doubtful debts (10% of Rs. 200 Lakhs)	20,00,000	
Payment to relatives sec 40A(2) {500 x (30000-28000)}	10,00,000	
TDS not deposited Sec 40 (30% of 800000/-)	2,40,000	
Sales tax not refunded to customer out of sales tax refund	1,00,000	
Provision for gratuity	2,00,00,000	2,85,40,000
		9,85,40,000
Less: Items credited but to be considered separately		
Additional depreciation not debited to the profit & Loss Account Additional depreciation @ 20% is allowable on Rs. 50 Lakhs	10,00,000	
Over valuation of stock [Rs. 50 Lakhs x 10/110]	4,54,545	14,54,545
		9,70,85,455
Total Income		9,70,85,455
Total Income (rounded off)		9,70,85,460

Computation of tax liability of XYZ ltd for the Assessment Year 2018-19

	Amount (Rs.)
Tax @ 30% on total income of Rs. 9,70,85,460	2,91,25,638
Add: Surcharge @ 7%	20,38,795
	3,11,64,433
Add: Education cess and SHEC @ 3%	9,34,933
Total Tax liability	3,20,99,366
Total Tax Liability (rounded off)	3,20,99,370

Total Income if Alternative approach followed will be 9,30,85,460/- (9,70,85,460 + 2,50,000 + 37,50,000-80,00,000)

Notes:

1. Provisions for wages payable to workers. There has been wage revision every three years. The company was formed in 2012. Since the provisions are based on a fair

estimation of wage and probable revision, the same can be recognized for the purpose of income computation. **[CIT v BHEL Ltd (2013) 352 ITR 88 (Del)**

2. The following items, which are generally given under additional information, have been stated to have been debited/credited to the profit and loss account:
Item No.(2) – Normal Depreciation calculated as per Income-tax Rules Rs. 80 lakhs;
Item No.(4) – Industrial Power Tariff Concession of Rs. 2.50 lakhs received from State Government and treated as a capital receipt.
Item No.(8) - Discount of 75% given on amount of Rs. 50 lakhs payable to A & Co., included in Sundry Creditors.
In the above solution, we have treated the same as given in the question i.e., normal depreciation as per Income-tax Rules, 1962 has been debited to the statement of profit and loss account in addition to depreciation as per Companies Act, 2013, and the industrial power tariff concession and discount on sundry creditors have been credited to the statement of profit and loss; accordingly, no adjustments have been made in respect of the above amounts credited. Depreciation as per Companies Act, 2013 alone has been added back.

Alternative Answer

Since these items are generally given under additional information, it is also possible to solve the question by considering that such items are given under additional information and not given effect to in the profit and loss account. Accordingly, the difference of Rs. 30 lakhs between depreciation as per the Income-tax Act, 1961 and the Companies Act, 2013 has to be reduced while computing business income. Further, the industrial power tariff concession of ` 2.50 lakhs and discount of Rs. 37.50 lakhs to creditors have to be added back while computing business income. The answer would, accordingly, undergo a change.

3. Bad debt write off in the books of account is allowable as deduction under section 36(1)(vii). Since the same has already been debited to profit and loss account, no further adjustment is required.
4. Provision of Rs. 500 lakhs for gratuity based on actuarial valuation is not allowable as deduction as per section 40A(7). However, actual gratuity of Rs. 300 Lakhs paid is allowable as deduction. Hence the difference has to be added back.
5. Commission of Rs. 1 lakhs paid to a recovery agent for realization of a debt is an allowable expense under debited to profit and loss account, no further adjustment is required.

ANSWER TO Q. NO. 3(a) (7 MARKS)

Computation of total income of H Ltd for the Assessment year 2018-19

Particulars	**Amount (Rs.)**	**Amount (Rs.)**
Net profit as per profit and loss account		14,25,000
Add: Items disallowed / considered separately		
Provision for loss of subsidiary	70,000	
Provision for income tax	1,95,000	
Expenses on transfer of shares	15,000	
Interest on deposit credited to buyers on 31.03.2018, but tax deposited after due date of filing return (disallowed under section 40(a)(ia) to the extent of 30%)	27,000	
Depreciation	3,60,000	6,67,000
		20,92,000
Less: Items credited but not includible under business income or are exempt under the provision of the Act		
Long term capital gain on sale of equity shares on which securities transaction tax was paid	3,60,000	
Income from UTI	75,000	4,35,000
		16,57,000
Less: Depreciation (allowable as per Income tax rules)		2,80,000
		13,77,000
Less: Set of brought forward business loss and unabsorbed depreciation Brought forward business loss under section 72	4,20,000	
Brought forward depreciation under section 32	6,40,000	10,60,000
Income from business		3,17,000
Income from capital gain		
Long term capital gain on sale of equity shares on which securities transaction tax was paid		Exempt
Income from other sources		
Income from units of UTI	75,000	
Less: Exempt under section 10(35)	75,000	Nil
Total income		3,17,000
Tax Payable @ 30%		95,100
Add: Education cess and SHEC @ 3%		2,853
Tax Payable		**97,950**

Computation of Book Profit under section 115JB

Particulars	Amount (Rs.)	Amount (Rs.)
Net profit a per profit and loss account		14,25,000
Add: Provision for loss of subsidiary	70,000	
Provision for Income Tax	1,95,000	
Depreciation	3,60,000	6,25,000
		20,50,000
Depreciation (Rs. 3,60,000 – 1,50,000)	2,10,000	
Income from UTI	75,000	
Brought forward business loss or unabsorbed depreciation as per books of account, whichever is less	6,00,000	8,85,000
Book profit		11,65,000
18.5% of book profit		2,15,525
Add: Education cess & SHEC @ 3%		6,466
Tax payable under MAT (rounded off)		2,21,990
The tax payable shall be Rs. 2,21,990		

MAT credit to be carried forward

Particulars	Amount (Rs.)
Tax on book profit under section 115JB	2,21,990
Add: Tax on total income as per normal provisions of the Act	97,950
Tax credit to be carried forward	1,24,040

ANSWER TO Q. NO. 3(b) (3 MARKS)

Where reassessment is made under section 147 in respect of income which had escaped tax, the Assessing Officer jurisdictions is confined only to such income which has escaped tax and does not extend to re opening or reconsidering the whole assessment or permitting the assessee reagitate questions which had been decided in original assessment proceedings, unless relatable to an item sought to be taxed as "escaped income".

CIT v Sun Engineering Works (P) Ltd (1992) 198 ITR 297 (SC).

Therefore, considering the Supreme Court decision in the above case, the assessee cannot seek review of a concluded item, i.e unexplained cash credit, which is unconnected with escaped income. However request for allowing travelling expenditure can be considered because it is relatable to income which is sought to be assessed as escaped income i.e unaccounted sales affected in Chennai.

ANSWER TO Q. NO. 3(c) (3 MARKS)

Computation of Total Income of Quipro Ltd.

Particulars	Amount (Rs.)	Amount (Rs.)
When price charged for comparable Uncontrolled Transaction is	€ 1,00,000	€ 50,000
Price actually paid by Quipro Ltd ($ 80,000 x Rs. 60)	48	48
Less: Price charged in Rupees (under ALP) (1,00,000 x 60) and (50,000 x 60)	60	60
Incremental Profit on adopting ALP (A)	(12)	18
Total Income before adjusting for differences due to Arms Length Price	70	70
Add: Difference on account of adopting Arms Length Price (if [A] is positive)	-	18
Total Income of Quipro Ltd	70	88

Note:
Under section 92(3), Taxable Income cannot be reduced on applying ALP. So, difference on account of ALP is ignored.

ANSWER TO Q. NO. 3(d) (3 MARKS)

The arrangement of routing investment through Country 'Y' results into a tax benefit. Since there is no business purpose in incorporating company Zen Pvt. Ltd. in Country 'Y', it can be said that the main purpose of the arrangement is to obtain a tax benefit. The alternate course available in this case is direct investment in Revolution (P) Ltd. joint venture by Den Pvt. Ltd. The tax benefit would be the difference in tax liabilities between the two available courses.

The next question is, does the arrangement have any tainted element? It is evident that there is no commercial substance in incorporating Zen Pvt. Ltd. as it does not have any effect on the business risk of Den Pvt. Ltd. or cash flow of Den Pvt. Ltd. As the twin conditions of main purpose being tax benefit and existence of a tainted element are satisfied, GAAR may be invoked. **Hence, GAAR provisions can be invoked in this case.**

ANSWER TO Q. NO. 4(a) (4 MARKS)

Computation of Arm's Length Price of Products sold to L ltd by VKS International Ltd.

	Rs. Crores	Rs. Crores
Price in a Comparable Uncontrolled Transaction		11.5
Less: Adjustment of Differences		
Freight and Insurance Charges	(0.20)	
After sales support services	(0.14)	(0.34)
Arm's Length Price Sales to L Ltd.		11.16

Computation of Increase in Total Income of VKS International Ltd.

	Rs. Crores
Arm's Length Price as above	11.16
Less: Price at what actually sold to L Ltd.	10.50
Therefore increase in Total Income of VKS International Ltd.	Rs. 0.66

Working Notes:

1. ALP given under Cost plus Model is not considered because ALP determined under comparable Uncontrolled Transaction Method is considered as Most Appropriate Method in the given case.
2. Under section 92C, when more than one price is determined by the most appropriate method, the Arms length price shall be taken to be the based on the prescribed method. Since only one price is available in Most Appropriate Method, the same is considered here.
3. Since proviso to Section 92C(2) in relation to permissible variation of 3% is not applicable to transactions with person located in Notified Jurisdictional areas. As the Assessee customer is in Notified Jurisdictional area, the principle relating to permissible variation is not applicable.

ANSWER TO Q. NO. 4(b) (4 MARKS)

The issue under consideration is whether "premium" on subscribed share capital can be treated "capital employed in the business of the company" under section 35D to be eligible for increased deduction

Berger Paints India Ltd v. CIT [2017] 393 ITR 113 The Supreme Court observed that the share premium collected by the assessee on its subscribed issued share capital could not be part of "capital employed in the business of the company" for the purpose of section 35D(3)(b). If it were the intention of the legislature to treat share premium as being "capital employed in the business of the company", it would have been explicitly mentioned. Moreover, Sl. No. IV(i) in Form MGT- 7 read with section 92 of the Companies Act, 20131 dealing with capital structure of the company provides the break-up of "issued share capital" and "subscribed share capital" which does not include share premium at the time of subscription. Hence, in the absence of the reference in section 35D, share premium is not a part of the capital employed. Also, section 52 of the Companies Act, 20132 requires a company to transfer the premium amount to be kept in a separate account called "securities premium account".

Accordingly, the amount qualifying for deduction under section 35D would be Rs. 30 lakhs, being 5% of Rs. 600 lakhs [i.e., Rs. 700 lakhs (-) share premium of Rs. 100 lakhs]. The deduction under section 35D for A.Y.2018-19 would be Rs. 6 lakhs, being 1/5th of Rs. 30 lakhs. **The contention of the Assessing Officer is, therefore, correct.**

ANSWER TO Q. NO. 4(c) (4 MARKS)

When a loan is given by a closely held company, it is chargeable to tax as deemed dividend if the loan is given to:

(i) a shareholder (having 10% or more voting power in the company) or
(ii) a concern in which such shareholder is a member or partner and in which he has substantial interest (entitled to 20% of the income of such concern).

The issue under consideration in this case is whether loan to HUF by a closely held company is chargeable to tax as deemed dividend, where the share certificates were in the name of the Karta of the HUF but the annual return mentioned the HUF as a shareholder.

This issue came up before the Supreme Court in Gopal & Sons (HUF) v. CIT (2017) 391 ITR 1, wherein it was observed that, in either scenario, section 2(22)(e) would be attracted. If the HUF was the shareholder, as it held more than 10% voting power, the provisions of section 2(22)(e) would be covered under (i) above. If the Karta was the shareholder, the HUF would be the concern in which the Karta is a member, and hence, the case would be covered under (ii) above.

As per Explanation 3 to section 2(22)(e), "concern" has been defined to mean a HUF, or a firm or an AOP or a BOI or a company. The Supreme Court, accordingly, held that the loan to HUF is to be assessed as deemed dividend under section 2(22)(e).

Applying the rationale of the above Supreme Court ruling to the case on hand, **the loan given by Best Fertilizers (P.) Ltd. to Aakash HUF would be deemed as dividend under section 2(22)(e).**

ANSWER TO Q. NO. 4(d) (4 MARKS)

The issue under consideration in this case is whether the increase in gross total income on account of disallowance of expenditure under section 40(a)(ia) can be considered for the purpose of deduction under section 80-IBA.

The Bombay High Court, in CIT v. Sunil Vishwambharnath Tiwari (2016) 388 ITR 630, observed that if on account of non-deduction of tax at source by a company, expenses have been disallowed under section 40(a)(ia) which goes to increase the income chargeable under the head 'Profits and gains of business or profession', such enhanced income becomes eligible for deduction as profit-linked deduction under Chapter VI-A is with reference to an assessee's gross total income.

The High Court held that the company is entitled to claim profit-linked deduction under Chapter VI-A in respect of the enhanced gross total income as a consequence of disallowance of expenditure under section 40(a)(ia).

Further, the CBDT has, in its Circular No.37/2016 dated 2.11.2016, mentioned that the courts have generally held that if the expenditure disallowed is related to the business activity against which the Chapter VI-A deduction has been claimed, the deduction needs to be allowed on the enhanced profits. Thus, the settled position is that the disallowances made under, inter alia, section 40(a)(ia), relating to the business activity against which the Chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter VI-A is admissible on the profits so enhanced by the disallowance.

Accordingly, applying the rationale of the Bombay High Court ruling and the CBDT Circular in this regard to the facts of this case, ABC Ltd. would be entitled to claim deduction under section 80-IBA in respect of the enhanced profits of Rs.37.60 lakhs, consequent to disallowance under section 40(a)(ia).

ANSWER TO Q. NO. 5(a) (6 MARKS)

Computation of total income of Mysore Co-operative Society for A.Y.2018-19

	Particulars	Rs.	Rs.
I	**Income from house property**		75,000
II	**Profits and Gains of Business or Profession**		
	From processing with the aid of power	40,000	
	From collective disposal of labour	20,000	
	From other business	72,000	
			1,32,000
III	**Income from Other Sources**		
	Interest received from another co-operative society	12,000	
	Dividend received from another co-operative society	15,000	
			27,000
Gross Total Income			**2,34,000**
***Less:* Deduction under section 80P**			
	Interest and dividend from another co-operative society [Rs. 12,000 + Rs. 15,000] - fully deductible under section 80P(2)(d)	27,000	

Income from collective disposal of labour – fully deductible under section 80P(2)(a)(vi), assuming that the stipulated conditions are fulfilled.	20,000	
Income from other business Rs. 72,000, deduction restricted to Rs. 50,000 under section 80P(2)(c)(ii)	50,000	97,000
Total Income		**1,37,000**

Note: Since the gross total income exceeds Rs. 20,000, in case of a co-operative society engaged in manufacturing operations with the aid of power, income from house property is not eligible for deduction under section 80P(2)(f)

ANSWER TO Q. NO. 5(b) (6 MARKS)

As per section 9(1)(vii)(b), income by way of fees for technical services payable by a resident is deemed to accrue or arise in India, except where the fees is payable, inter alia, in respect of services utilized in a business or profession carried on by such person outside India. In this case, since Ganga Ltd. utilizes the technical services for its business in Calcutta, the fees for technical services payable by Ganga Ltd. is deemed to accrue or arise in India in the hands of Mr. Tom Sawyer.

In accordance with the provisions of section 115A, where the total income of a non-corporate non-resident includes any income by way of royalty or fees for technical services other than the income referred to in section 44DA(1), received from an Indian concern in pursuance of an agreement made by him with the Indian concern and the agreement is approved by the Central Government, then, the special rate of tax at 10% of such fees for technical services is applicable. No deduction would be allowable under sections 28 to 44C and section 57 while computing such income.

Section 90(2) makes it clear that where the Central Government has entered into a DTAA with a country outside India, then, in respect of an assessee to whom such agreement applies, the provisions of the Act shall apply to the extent they are more beneficial to the assessee. Therefore, if the DTAA provides for a rate lower than 10%, then, the provisions of DTAA would apply.

a) In this case, since India does not have a DTAA with Country A, of which Tom Sawyer is a resident, the fees for technical services (FTS) received from Ganga Ltd., an Indian company, **would be taxable @10%,** by virtue of section 115A.
b) In this case, the FTS from Ganga Ltd. **would be taxable @5%,** being the rate specified in the DTAA, even though section 115A provides for a higher rate of tax, since the tax rates specified in the DTAA are more beneficial. However, since Tom Sawyer is a non-resident, he has to furnish a tax residency certificate from

the Government of Country A for claiming such benefit. Also, he has to furnish other information, namely, his nationality, his tax identification number in Country A and his address in Country A.

c) In this case, the FTS from Ganga Ltd. **would be taxable @10%** as per section 115A, even though DTAA provides for a higher rate of tax, since the provisions of the Act (i.e. section 115A in this case) are more beneficial.

If Mr. Tom Sawyer has a fixed place of profession in India, and he renders technical services through the fixed place of profession, then, by virtue of section 44DA, such income by way of fees for technical services received by Mr. Tom Sawyer from Ganga Ltd., India, would be computed under the head "Profits and gains of business or profession" in accordance with the provisions of Income-tax Act, 1961, since technical services are provided from a fixed place of profession situated in India and fees for technical services is received from an Indian concern in pursuance of an agreement with the non-resident and is effectively connected with such fixed place of profession. No deduction would, however, be allowed in respect of any expenditure or allowance which is not wholly and exclusively incurred for the fixed place of profession in India.

Mr. Tom Sawyer is required to keep and maintain books of account and other documents in accordance with the provisions contained in section 44AA and get his accounts audited by an accountant and furnish the report of such audit in the prescribed form duly signed and verified by such accountant along with the return of income.

It may be noted that the concessional rate of tax@10% under section 115A would not apply in this case.

ANSWER TO Q. NO. 5(c) (4 MARKS)

(i) The dividend of Rs. 85 lakh declared and distributed in the P.Y.2017-18 is subject to dividend distribution tax under section 115-O in the hands of Delta Ltd. First of all, the dividend received has to be grossed up by applying the rate of 15%. The gross dividend is Rs. 100 lakh [Rs. 85 lakh × 100/85]. Dividend distribution tax @17.304% is Rs. 17.304 lakh.

(ii) In the hands of Mr. Ganesh, dividend received up to Rs. 10 lakh would be exempt under section 10(34). Rs. 2.75 lakh, being dividend received in excess of Rs. 10 lakh, would be taxable@10% as per section 115BBDA. Such dividend would not be exempt under section 10(34). Therefore, tax payable by Mr. Ganesh on dividend of Rs. 2.75 lakh under section 115BBDA would be Rs. 28,325 [i.e., 10% of Rs. 2.75 lakh + cess@3%].

(iii) In the hands of Mr. Rajesh, the entire dividend of Rs. 8.50 lakh received would be exempt under section 10(34), since only dividend received in excess of Rs. 10 lakh would be taxable under section 115BBDA.

ANSWER TO Q. NO. 6(a) (4 MARKS)

a) The statement is incorrect.
b) The statement is incorrect.
c) The statement is incorrect.
d) **The statement is correct**
Non-consideration of application for registration of trust within the stipulated period of 6 months from the end of the month in which application is received would tantamount to deemed registration. It was so observed by the Supreme Court, in CIT v. Society for the Promotion of Education (2016) 382 ITR 6.

ANSWER TO Q. NO. 6(b) (4 MARKS)

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

Accordingly, **the interest income arising to Mrs. Ram in the form of interest on fixed deposits would be included in the total income of Mr. Ram** and interest income arising to Mrs. Lakshman would be taxable in the hands of Mr. Lakshman as per section 64(1), to the extent of income attributable to the amount of cross transfer i.e., Rs. 10 lakhs.

However, the **interest income earned by Mrs. Lakshman on fixed deposit of Rs. 10 lakhs alone would be included in the hands of Mr. Lakshman** and not the interest income on the entire fixed deposit of Rs. 12 lakhs, since the cross transfer is only to the extent of Rs. 10 lakhs.

ANSWER TO Q. NO. 6(c) (4 MARKS)

Section 78(2) provides that where a person carrying on any business or profession has been succeeded in such capacity by another person, otherwise than by inheritance, then, the successor is not entitled to carry forward and set-off the loss of the predecessor against his income. This implies that the only exception is when the business passes on to another by inheritance.

The Apex Court, in **CIT v. Madhukant M. Mehta** (2001) 247 ITR 805, has held that where the business is succeeded by inheritance, the legal heirs are entitled to the benefit of carry forward of the loss of the predecessor. Even if the legal heirs constitute themselves as a partnership firm, the benefit of carry forward and set off of the loss of the predecessor should be made available to the firm.

In this case, the business of Mr. Hari was continued by his legal heirs after his death by constituting a firm. Hence, the exception contained in section 78(2) along with the decision of the Apex Court discussed above, would apply in this case.

Therefore, the firm is entitled to carry forward the business loss of Rs. 5 lacs of Mr. Hari.

ANSWER TO Q. NO. 6(d) (4 MARKS)

As per section 80-IB(1) read with section 80-IB(9), where the gross total income of an assessee includes any profits and gains derived from, inter alia, the business of commercial production of mineral oil, deduction will be allowed at 100% of such profits for a period of seven consecutive assessment years.

The issue under consideration in this case is whether transport subsidy, interest subsidy and power subsidy received from the Government can be treated as profits derived from business or undertaking to qualify for deduction under section 80-IB.

This issue came up before the Supreme Court in **CIT v. Meghalaya Steels Ltd. (2016)** 383 ITR 217, wherein it was observed that an important test to determine whether the profits and gains are derived from business or an undertaking is that there should be a direct nexus between such profits and gains and the undertaking or business. Such nexus should not be only incidental. The profits and gains referred to in section 80-IB has reference to net profit, which can be calculated by deducting from the sale price of an article, all elements of cost which go into manufacturing or selling it. Thus, the profits arrived at after deducting manufacturing costs and selling costs reimbursed to the assessee by the Government, is the profits and gains derived from the business of the assessee.

Accordingly, the Supreme Court held that transport subsidy, interest subsidy and power subsidy from Government were revenue receipts which were reimbursed to the assessee for elements of cost relating to manufacture or sale of their products. Therefore, there is a direct nexus between profits and gains of the undertaking or business, and reimbursement of such subsidies. The subsidies were only in order to

reimburse, wholly or partially, costs actually incurred by the assessee in the manufacturing and selling of its products.

Further, in view of the above Supreme Court ruling, the CBDT has, vide Circular No.39/2016 dated 29.11.2016, clarified that it is a settled position that revenue subsidies received from the Government towards reimbursement of cost of production/manufacture or for sale of the manufactured goods are part of profits and gains of business derived from the industrial undertaking/eligible business, and are thus, admissible for applicable deduction under Chapter VI-A.

Applying the rationale of the Supreme Court ruling in the above case and the clarification given by the CBDT, **the action of the Assessing Officer** in not allowing deduction under section 80-IB in respect of transport subsidy, interest subsidy and power subsidy received by Phi Ltd. from the Government, **is not correct.**

ANSWER TO Q. NO. 7(a) (4 MARKS)

a) **The statement is incorrect**
Filing of appeal by the Assessing Officer against the order of the DRP is not allowed

b) **The statement is incorrect**
The Appellate Tribunal may rectify any mistake apparent from the record in its order at any time within ***six months from the end of the month in which the order was passed***

ANSWER TO Q. NO. 7(b) (4 MARKS)

Mr. Kishore is deemed to have under-reported his income since he has not filed his return of income and his assessed income exceeds the basic exemption limit of Rs. 2,50,000. Hence, penalty under section 270A is leviable in his case.

Computation of penalty leviable under section 270A

Particulars	Rs.	Rs.
Assessment under section 143(3)		
Under-reported income:		
Total income assessed under section 143(3)	21,00,000	
(-) Basic exemption limit	2,50,000	
	18,50,000	
Tax payable on under-reported income as increased by the	4,55,000	

basic exemption limit [30% of Rs. 11 lakhs + Rs. 1,25,000]		
Add: EC & SHEC@3%	13,650	
	4,68,650	
Penalty leviable@50% of tax payable		2,34,325

Note – It is assumed that the under-reported income is not on account of misreporting and rates has been considered as applicable for AY 2018-19.

ANSWER TO Q. NO. 7(c) (4 MARKS)

Tax implications on sale of rural agricultural land and house property representing a capital asset in the hands of Mr. Anand, a salaried employee

(i)	**Tax implications in the hands of Mr. Anand, a salaried employee**
	Since rural agricultural land is not a capital asset, the gains arising on sale of such land is not taxable in the hands of Mr. Anand. However, capital gains would arise on sale of house property, being a capital asset. As per section 50C(1), the stamp duty value of house property on the date of agreement (i.e., Rs. 85 lakh) would be deemed to be the full value of consideration arising on transfer of property. Therefore, Rs. 27 lakh (i.e., Rs. 85 lakh – Rs. 58 lakh, being the purchase price) would be taxable as short-term capital gains in the A.Y.2018-19. It may be noted that under first and second proviso to section 50C(1), the stamp duty value on the date of agreement can be adopted, since the advance was received on the date of agreement through account payee cheque. As the date of agreement is different from the date of registration and part of the consideration was received on or before the date of agreement by way of account payee cheque, the stamp duty value on the date of agreement has been adopted as the deemed sale consideration.
(ii)	**Tax implications in the hands of the buyer – Mr.Sundar, a wholesale trader**
	The house property purchased would be a capital asset in the hands of Mr. Sundar, who is a wholesale trader in spices. The provisions of section 56(2)(vii) is attracted in the hands of Mr. Sundar who has acquired the immovable property, being a capital asset, for inadequate consideration. For the purpose of section 56(2)(vii), Mr. Sundar can take the stamp duty value on the date of agreement instead of the date of registration since he has paid a part of the consideration by a mode other than cash on the date of agreement. Therefore, Rs. 13 lakh, being the difference between the stamp duty value of the property on the date of agreement (i.e., Rs. 85 lakh) and the actual consideration (i.e., Rs. 72 lakh) would be taxable as per section 56(2)(vii) under the head "Income from other sources" in the hands of Mr. Sundar.

	As rural agricultural land is not a capital asset, the provisions of section 56(2)(vii) are not attracted in respect of acquisition of agricultural land for inadequate consideration, since the definition of "property" under section 56(2)(vii) includes only capital assets specified thereunder.
(iii)	**TDS implications in the hands of the buyer, Mr. Sundar**
	Since the sale consideration of house property exceeded Rs. 50 lakh, Mr. Sundar is required to deduct tax at source under section 194-IA. The tax deduction under section 194-IA would be Rs. 72,000, being 1% of Rs. 72 lakh. TDS provisions under section 194-IA are not attracted in respect of transfer of rural agricultural land.

Tax implications on sale of house property representing stock-in-trade in the hands of Mr. Anand, a property dealer

(i)	**Tax implications in the hands of Mr. Anand for A.Y.2018-19**
	If Mr. Anand is a property dealer who has sold the house property in the course of his business, the provisions of section 43CA would be attracted, since the house property represents his stock-in-trade and he has transferred the same for a consideration less than the stamp duty value.
	For the purpose of section 43CA, Mr. Anand can take the stamp duty value on the date of agreement instead of the date of registration, since he has received part of the sale consideration by a mode other than cash on the date of agreement. Therefore, Rs. 27 lakh, being the difference between the stamp duty value on the date of agreement (i.e., Rs. 85 lakh) and the purchase price (i.e., Rs. 58 lakh), would be chargeable as business income in the hands of Mr. Anand.
(ii)	**TDS implications and taxability in the hands of Mr. Sundar for A.Y.2018-19**
	There would be no difference in the TDS implications or taxability in the hands of Mr. Sundar, whether Mr. Anand is a property dealer or a salaried employee. Therefore, the provisions of section 56(2)(vii) would be attracted in the hands of Mr. Sundar who has received house property, being a capital asset, for inadequate consideration. The TDS provisions under section 194-IA would also be attracted since the actual consideration for house property exceeds Rs. 50 lakh.

ANSWER TO Q. NO. 7(d) (4 MARKS)

The CBDT has, vide Circular No. 4/2016 dated 29.2.2016, clarified that while applying the relevant provisions of TDS on a contract for content production, a distinction is required to be made between:

(i) a payment for production of content/programme as per the specifications of the broadcaster/telecaster; and
(ii) a payment for acquisition of broadcasting/telecasting rights of the content already produced by the production house.

In the first situation where the content is produced as per the specifications provided by the broadcaster/telecaster and the copyright of the content/programme also gets transferred to the telecaster/broadcaster, such contract is covered by the definition of the term 'work' in section 194C and, therefore, subject to TDS under that section.1

However, in a case where the telecaster/broadcaster acquires only the telecasting/ broadcasting rights of the content already produced by the production house, there is no contract for ''carrying out any work", as required in section 194C(1). Therefore, such payments are not liable for TDS under section 194C. However, payments of this nature may be liable for TDS under other sections of Chapter XVII-B of the Act.

In this case, since the programme is produced by the production house as per the specifications given by Moon TV, a television channel, and the copyright is also transferred to the television channel, the same falls within the scope of definition of the term 'work' under section 194C. Therefore, the payment of Rs.50 lakhs made by Moon TV to the production house would be subject to tax deduction at source under section 194C.

If, however, the payment was made by Moon TV for acquisition of telecasting rights of the content already produced by the production house, there is no contract for ''carrying out any work", as required in section 194C(1). Therefore, such payment would not be liable for tax deduction at source under section 194C.

(ii) The issue of whether fees/charges taken or retained by advertising companies from media companies for canvasing/booking advertisements (typically 15% of the billing) is 'commission' or 'discount' to attract the provisions of tax deduction at source has been clarified by the CBDT vide its Circular No.5/2016 dated 29.2.2016.

The Circular draws reference to the Allahabad High Court ruling in the case of Jagran Prakashan Ltd. and the Delhi High Court ruling in the matter of Living Media Limited. In

both the cases, the Courts have held that the relationship between the media company and the advertising agency is that of a 'principal-to-principal' and, therefore, not liable for TDS under section 194H.2 Though these decisions are in respect of print media, the ratio is also applicable to electronic media/television advertising as the broad nature of the activities involved is similar.

In view of the above, the CBDT has clarified that no liability to deduct tax is attracted on payments made by television channels to the advertising agency for booking or procuring of or canvassing for advertisements.

Accordingly, in view of the clarification given by CBDT, no tax is deductible at source on the amount of Rs. 15 lakhs retained by Mudra Adco Ltd., the advertising company, from payment due to Cloud TV, a television channel.

Upcoming Batches for May/Nov 19 Exam