Mock Test Paper - Series II: April, 2025

Date of Paper: 9th April, 2025

Time of Paper: 2 P.M. to 5 P.M.

FINAL COURSE: GROUP – II

PAPER – 4: DIRECT TAX LAWS & INTERNATIONAL TAXATION

SOLUTIONS

Division A – Multiple Choice Questions

Answer Keys

MCQ No.	Answer	
1	**(c)**	Tax is deductible@10% on ₹ 20,000 distributed to Mr. Xavier and @5.2% on ₹ 1 lakh distributed to Mr. Yatin
2	**(c)**	Tax Evasion
3	**(b)**	Only the cost of acquisition is allowed as a deduction to Mr. Xavier. Interest expense is not deductible.
4.	**(d)**	Yes; ₹ 510
5.	**(c)**	Yes; ₹ 4,000
6.	**(a)**	No tax is required to be deducted at source u/s 194M.
7.	**(b)**	Yes; ₹ 6,600 to be deducted on the amount payable to Phoenix LLC; No deduction is, however, required on the amount payable to DaVita Inc.
8.	**(a)**	₹ 5,70,960
9.	**(b)**	No, Turmeric Ltd. is not required to deduct tax at source.
10.	**(a)**	Yes, Turmeric Ltd. is required to deduct tax at source of ₹ 1,42,14,720
11.	**(a)**	₹ 1,42,14,720
12.	**(d)**	No, not required to file return of income, if Turmeric Ltd. deducted tax at source on such income.
13.	**(d)**	₹ 5 crores
14.	**(c)**	Only IV
15.	**(c)**	(i) and (iii)

Division B – Descriptive Choice Questions

1. Computation of total income and tax liability of M/s Suraj Industries Ltd. for the A.Y. 2025-26 as per section 115BAA

	Particulars		Amount in ₹
I	**Profits and gains of business and profession**		
	Net profit as per Statement of Profit and Loss		9,50,00,000
	Add: **Items debited but to be considered separately or to be disallowed**		
	(i) Depreciation as per useful life of assets	2,80,00,000	
	(ii) Donation to political party [Since donation to political party is not wholly and exclusively for the purpose of business or profession, it is not allowable as deduction u/s 37. Since the amount of contribution is debited to statement of profit and loss, the same has to be added back]	12,00,000	
	(iii) Contribution to research institution approved and notified by the Central Government for scientific research [As per section 35(1)(ii), 100% deduction is allowed for amount paid to a research institution undertaking scientific research, if such institution is approved for this purpose and notified by the Central Government. However, since company is opting for section 115BAA, deduction in respect of this contribution is not allowed. Since the amount of contribution is debited to statement of profit and loss, the same is required to be added]	50,00,000	
	(vi) Interest on borrowing to State Bank of India (SBI) [10% x ₹ 420 lakhs x 10/12] [Interest on borrowing from SBI upto 31.12.2024, being the date when machinery is installed and put to use, is not allowable as deduction since it has to be capitalized as part of the cost of the asset. Interest for January, February and March 2025 is disallowed as per section	35,00,000	

		43B since it is not paid on or before the due date of filing return of income i.e., 31.10.2025. Since the entire interest has been debited to the statement of profit and loss, it has to be added back while computing business income]		
	(viii)	**Salary for installation of machinery** [As per ICDS V, expenses which are specifically attributable for bringing the fixed asset to its working condition would form part of actual cost. Therefore, salary to foreign technicians for installation of machinery is a capital expenditure and not allowable as deduction. Since it has been debited to the statement of profit and loss, it has to be added back while computing business income]	1,00,00,000	
				4,77,00,000
				14,27,00,000
	Less:	**Items credited but not chargeable to tax or chargeable to tax under other head of income/expenses allowed but not debited**		
	(iv)	**Dividend received from foreign company** [Dividend received from foreign company is taxable under the head "Income from other Source". Since the same has been credited to Statement of Profit and loss, it has to be deducted while computing business income.	15,00,000	
	(v)	**Long-term capital gain on sale of equity shares** [Long-term capital gain on sale of equity shares is taxable under the head "Capital Gains". Since the same has been credited to Statement of Profit and loss, it has to be deducted while computing business income.	4,00,000	

	(vii) Profit on sale of plot of land Capital gains arising on sale of plot of land are taxable under the "Capital Gains". Since the same has been credited to the statement of profit and loss, the same has to be reduced while computing business income]	8,00,000	
	(ix) Bad debt recovered [The deduction of bad debt allowed u/s 36 was ₹ 12 lakhs out of the total debt of ₹ 22 lakhs; The excess of amount recovered i.e., ₹ 11 lakhs over the amount due after bad debt allowance i.e., ₹ 10 lakhs will be taxable as business income. Since the entire amount of ₹ 11 lakhs recovered has been credited to the statement of profit and loss, ₹ 10 lakhs has to be reduced while computing business income.]	10,00,000	
			37,00,000
			13,90,00,000
	***Less*: Depreciation as per Income-tax Rules, 1962**	1,50,00,000	
	Depreciation on assets acquired during the P.Y. 2024-25		
	- **Office building**		
	Purchased and put to use on 15.12.2024 [₹ 300 lakhs x 10% x 50%, since it has been put to use for less than 180 days during the year]	15,00,000	
	- **Computer**		
	Purchased and put to use on 11.5.2024 [₹ 25 lakhs x 40%, since it has been put to use for 180 days or more during the year]	10,00,000	
	- **Plant and machinery**		
	On P & M installed and put to use on 31.12.2024 [₹ 624.5 lakhs (₹ 500 lakhs + ₹ 100 lakhs of salary for installation + ₹ 24.5 lakhs, being interest from 1.6.2024 to 31.12.2024) x 15%		

	x 50%, since it has been put to use for less than 180 days during the year]	46,83,750	2,21,83,750
	Additional depreciation (since company is opting for section 115BAA, additional depreciation is not allowed)	-	-
	Profits and gains from business or profession		**11,68,16,250**
II	**Capital Gains**		
	Profit on sale of plot of land	-	
	[Short-term capital gains arise on sale of plot of land held for less than 24 months. However, in this case, since the transfer is to a 100% subsidiary company, which is an Indian company, the same would not constitute a transfer for levy of capital gains tax as per section 47(iv)]		
	Long-term capital gain on listed equity shares	4,00,000	4,00,000
III	**Income from Other Sources**		
	Dividend received from a foreign company		15,00,000
Gross Total Income			**11,87,16,250**
***Less:* Deduction under Chapter VI-A**			
Deduction under section 80GGB [Donation to political party is not allowable as deduction to Suraj Industries Ltd., since the company is opting for section 115BAA]			-
Deduction under section 80M allowable, even if, company is opting for section 115BAA, to the extent of lower of dividend received and dividend distributed. Therefore, ₹ 12,00,000, being the amount of dividend distributed allowable as deduction			12,00,000
Total Income			**11,75,16,250**

Computation of tax liability as per section 115BAA

Particulars	Amount in ₹
Tax payable on LTCG @10% u/s 112A on ₹ 2,75,000, being the LTCG in excess of ₹ 1,25,000	27,500

Tax @ 22% on ₹ 11,71,16,250	2,57,65,575
	2,57,93,075
Add: Surcharge @ 10% [Domestic company opting for section 115BAA, rate of surcharge is 10%]	25,79,308
	2,83,72,383
Add: Health and education cess @4%	11,34,895
Tax liability	**2,95,07,278**
Tax liability (rounded off)	**2,95,07,280**

2 (a) (i) Computation of total income of Laksh Limited for the A.Y. 2025-26

Particulars	₹ (in lakhs)	
Business income before setting off brought forward losses of Pigeon Ltd.		160.00
Add: Excess depreciation claimed in the scheme of amalgamation of Pigeon Limited with Laksh Limited.		
Value at which assets are transferred by Pigeon Ltd.	150	
WDV in the books of Pigeon Ltd.	100	
Excess accounted	50	
Excess depreciation claimed in computing taxable income of Laksh Ltd. [₹ 50 lakhs × 15%] [*Explanation 2* to section 43(6)]		7.50
		167.50
Set-off of brought forward business loss of Pigeon Ltd. **(See Notes 2 & 4)**		(125.00)
Set-off of unabsorbed depreciation under section 32(2) read with section 72A **(See Notes 2 & 4)**		(20.00)
Set-off of unabsorbed capital expenditure under section 35(1)(iv) read with section 35(4) **(See Note 5)**		(2.50)
Business income		**20.00**

Notes:

1. It is presumed that the amalgamation is within the meaning of section 72A of the Income-tax Act, 1961.

2. In the case of amalgamation of companies, the unabsorbed losses and unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or unabsorbed depreciation of the amalgamated company for the previous year in which the amalgamation was effected and such business loss and unabsorbed depreciation shall be carried forward and set-off by the amalgamated company for a period of 8 years and indefinitely, respectively.

3. As per section 72A(7), the accumulated loss to be carried forward specifically excludes loss sustained in a speculative business. Therefore, speculative loss of ₹ 5.5 lakhs of Pigeon Ltd. cannot be carried forward by Laksh Ltd.

4. Section 72(2) provides that where any allowance or part thereof unabsorbed under section 32(2) (i.e., unabsorbed depreciation) or section 35(4) (i.e., unabsorbed scientific research capital expenditure) is to be carried forward, effect has to be first given to brought forward business losses under section 72.

5. Section 35(4) provides that the provisions of section 32(2) relating to unabsorbed depreciation shall apply in relation to deduction allowable under section 35(1)(iv) in respect of capital expenditure on scientific research related to the business carried on by the assessee. Therefore, unabsorbed capital expenditure on scientific research can be set-off and carried forward in the same manner as unabsorbed depreciation.

6. The restriction contained in section 73 is only regarding set-off of loss computed in respect of speculative business. Such a loss can be set-off only against profits of another speculation business and not non-speculation business. However, there is no restriction under the Income-tax Act, 1961 regarding set-off of normal business losses against speculative income. Therefore, normal business losses can be set-off against profits of a speculative business.

Consequently, there is no loss or allowance to be carried forward by Laksh Ltd. to the A.Y. 2026-27

(ii) Computation of taxable Capital gain in the hands of Mrs. Urvashi for A.Y.2025-26

Particulars	₹
Full value of consideration	15,50,00,000
As per section 50C, the full value of consideration would be actual sales consideration since the stamp duty value as on 15.10.2024 of ₹ 17,00,00,000 does not exceed 110% of actual consideration of ₹ 15,50,00,000.	
Less: **Cost of acquisition**	1,02,00,000
[₹ 1,02,00,000 (Higher of actual cost of ₹ 45,00,000 and Fair market value as on 1.4.2001 of ₹ 1,20,00,000, but restricted to stamp duty value as on 1.4.2001 of ₹ 1,02,00,000)	
[Indexation benefit would not available while computing capital gains since the property is transferred on or after 23.7.2024]	
	14,48,00,000
Less: **Exemption under section 54**	**10,00,00,000**
[Purchase of one residential plot of ₹ 8 crores on 18.2.2025 and deposit of ₹ 3 crores in Capital Gain Account Scheme on 31.3.2025 (before the date of filing of return of income) provided that the construction thereon is completed within the stipulated time of three years, but restricted to maximum of ₹ 10 crores]	
Taxable long term capital gains	**4,48,00,000**

(b) Computation of total income and tax liability of Mr. Pradhyuman for A.Y. 2025-26

Particulars	₹	₹
Income from house property		
Gross annual value[1] of house property in Country M [CMD 52,000 x ₹ 70/CMD]	36,40,000	
Less: Municipal taxes [CMD 6,000 x ₹ 70/CMD]	4,20,000	
Net Annual value	32,20,000	
Less: Deduction @30%	9,66,000	22,54,000

[1] *In absence of any information regarding fair rent and standard rent, actual rent is considered as gross annual value.*

Profits and gains from business and profession		
Income from sole proprietary concern in India	80,00,000	
Share of profit from a partnership firm in India of ₹ 20 lakhs, is exempt under section 10(2A)	Nil	
Business profit	80,00,000	
Less: Business Loss[2] in Country G (CGD 5200 x ₹ 70/CGD)	3,64,000	76,36,000
Income from Other Sources		
Agricultural income from tea gardens in Country G, is taxable in India (CGD 40000 x ₹ 70/CGD)	28,00,000	
Dividend income from Country M (CMD 30000 x ₹ 70/CGD)	21,00,000	49,00,000
Gross Total Income		**1,47,90,000**
Less: **Deductions under Chapter VI-A**		
Under section 80C [deposit in PPF]	1,50,000	
Under section 80D	25,000	
[Medi-claim premium paid ₹ 28,000, restricted to ₹ 25,000]		1,75,000
Total Income		**1,46,15,000**
Tax on total income		
Tax on ₹ 1,46,15,000 [(30% x ₹ 1,36,15,000) plus ₹ 1,12,500]		41,97,000
Add: Surcharge@15%, since total income exceeds ₹ 1 crore but does not exceed ₹ 2 crore		6,29,550
		48,26,550
Add: HEC@4%		1,93,062
		50,19,612
Average rate of tax in India [i.e., ₹ 50,19,612/₹ 1,46,15,000 x 100]	34.3456%	
Rebate u/s 91 in respect of income in Country G		
Average rate of tax in Country G	20%	
Doubly taxed income [₹ 28,00,000 – ₹ 3,64,000]	24,36,000	

[2] *Since the eight year has not expired from the assessment year in which such business loss was incurred, such business loss can be set-off against current year business income.*

Rebate under section 91 on ₹ 24,36,000 @20% (lower of average Indian tax rate and rate of tax in Country G)		4,87,200
Rebate u/s 91 in respect of income in Country M		
Average rate of tax in Country M [CMD 3,000 (30,000 x 10%) + CMD 7800 (52,000 x 15%)/ CMD 82,000] x 100	13.1707%	
Doubly taxed income [₹ 22,54,000 + ₹ 21,00,000]		
Rebate under section 91 on ₹ 43,54,000 @13.1707% (lower of average Indian tax rate and rate of tax in Country G)		5,73,452
Tax liability in India		**39,58,960**

3. (a) (i) 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 ₹ 9 crores (₹ 4.5 crores of educational institution and ₹ 4.5 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.

(ii) Computation of taxable income of public charitable trust

	Particulars	₹
(i)	Income from property held under trust (net)	14,00,000
(ii)	Income (net) from business (incidental to main objects)	6,00,000
(iii)	Voluntary contributions from public [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]	9,00,000
		29,00,000

	Less: 15% of the income eligible for retention / accumulation without any conditions	4,35,000
		24,65,000
	Less: Amount applied for the objects of the trust	
	(i) Amount spent for charitable purposes (₹ 12,80,000 - ₹ 4,80,000)	8,00,000
	(ii) Repayment of loan for construction of orphan home	-
	Taxable Income	**16,65,000**

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. The Fourth proviso to *Explanation 4(ii)* to section 11(1) clarifies that this provision will, however, not apply where application from loan or borrowing is made on or before 31.3.2021.

Since the amount spent on construction of orphanage was allowed as deduction in the P.Y. 2020-21, repayment of loan taken for such purposes will not be allowed as application since it would be tantamount to double deduction.

(b) (i) Provision of scientific research services falls within the scope of international transaction under section 92B. Laurus Labs Limited and Meta Inc. are deemed to be associated enterprises as per section 92A(2)(d), since Meta Inc. guarantees not less than 10% of the total borrowings of Laurus Labs Limited. Since there is an international transaction between associated enterprises, transfer pricing provisions are attracted in this case.

(ii) Where the Assessing Officer has made a primary adjustment of ₹ 310 lakhs to the transfer price and the same has been accepted by Laurus Labs Limited, secondary adjustment has to be made in the books of account as per section 92CE, since the primary adjustment made by the Assessing Officer and accepted by Laurus Labs Limited exceeds ₹ 100 lakhs and the primary adjustment is in relation to P.Y.2022-23. The excess money determined based on the primary adjustment has to be repatriated to India within 90 days from the date of order, failing which the

same would be deemed as an advance and interest would be attracted at the one-year marginal cost of fund lending rate of State Bank of India as on 1.4.2024 + 3.25%, since the international transaction has been denominated in Indian Rupees. In this case, since the excess money has not been repatriated within 90 days, the same would be deemed to be an advance made by Laurus Labs Limited to Meta Inc. and interest would be attracted@12.25% (9% + 3.25%) from 1.4.2024, being the date of the order of the Assessing Officer. The interest would amount to ₹ 37.975 lakhs (i.e., 12.25% of ₹ 310 lakhs) for the P.Y.2024-25.

Alternatively, Laurus Labs Limited can opt to pay additional income-tax@20.9664% (tax@18% plus surcharge@12% plus cess@4%) on ₹ 310 lakhs, which would amount to ₹ 65 lakhs. In such a case, secondary adjustment is not required to be made.

4. (a) (i) The *Explanation* below section 194A(1) provides that where any income by way of interest other than interest on securities is credited to any account, whether called 'interest payable account' or 'suspense account' or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and provisions of section 194A, shall, thus, apply.

However, the CBDT has, vide *Circular No.3/2010 dated 2.3.2010*, clarified that *Explanation* below section 194A(1) will not apply in cases of banks where credit is made to provisioning account on daily/monthly basis for the purpose of macro monitoring only by the use of CBS software.

Since no constructive credit to the depositor's / payee's account takes place while calculating interest on daily / monthly basis in the CBS software used by banks, tax need not be deducted at source on such provisioning of interest by banks for the purposes of macro monitoring only.

In such cases, tax shall be deducted at source on accrual of interest at the end of the financial year or at periodic intervals as per practice of the bank or as per the depositor's or payee's requirement or on maturity or on encashment of time deposit, whichever event takes place earlier and wherever the aggregate amount of interest income credited or paid or likely to be credited or paid during the financial year by the bank exceeds the limits specified in section 194A i.e., ₹ 40,000.

In view of the above, the action of the Assessing Officer in disallowing the interest expenditure credited in a separate account for macro monitoring purpose is not valid and consequent initiation of penalty proceedings under section 271C is not tenable in law.

(ii) (I) Section 194D requires deduction of tax at source@10% from insurance commission, where the commission exceeds ₹ 15,000.

Reinsurance is different from insurance since there is no direct contractual relationship between the person insured and the re-insurer.

In order to attract section 194D, the commission or any other payment covered under the section should be a remuneration or reward for soliciting or procuring the insurance business. The insurance companies do not procure business for the reinsurance company nor does the reinsurer pay commission or other payment for soliciting the business from the insurance companies. Therefore, section 194D has no application.

Hence, when profit commission is paid by a reinsurance company to an insurance company, after the expiry of the term of insurance, in respect of cases where there is no claim during the operation of the reinsurance treaty, tax deduction under section 194D is not attracted.

(II) Section 194J provides for deduction of tax at source @10% on any remuneration or fees or commission, by whatever name called, paid to a director, which is not in the nature of salary in respect of which tax is deductible at source under section 192.

Hence, tax is to be deducted at source under section 194J @10% by Krish Pvt. Ltd. on the commission of ₹ 3,10,000 paid to Amrish, a part-time director. The tax deductible under section 194J would be ₹ 31,000, being 10% of ₹ 3,10,000.

(b) (i) 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 ₹ 20,00,000 received by Moonland Inc., a non-resident not having a PE in India from Tekken Ltd., an Indian company. Accordingly, Tekken Ltd. is required to deduct equalisation levy of ₹ 1,20,000 i.e., @6% of ₹ 20 lakhs, being the amount paid towards online advertisement services provided by Moonland 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.

(ii) The statement is correct.

Under section 245U, the Board for Advance Rulings shall have all the powers vested in the Civil Court under the Code of Civil Procedure, 1908 as are referred to in section 131.

Accordingly, the Board for Advance Rulings shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely -

(1) discovery and inspection;

(2) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;

(3) compelling the production of books of account and other documents; and

(4) issuing commissions.

Therefore, the Board for Advance Ruling has the powers of issuing commissions.

5. (a) (i) (I) As per section 139(1)(b), an individual is required to file his return if his total income, without giving effect to deductions under, *inter alia,* Chapter VI-A and section 10AA, exceeds the basic exemption limit. In this case, Mr. Govind's total income of ₹ 2,00,000 is lower than the basic exemption limit of ₹ 3,00,000/ ₹ 2,50,000, as the case may be. However, such a person who is not required to file his return on account of his total income being lower than the basic exemption limit, would be required to file return of income if, *inter alia*, his turnover in business exceeds ₹ 60 lakhs during the previous year. In this case, since Mr. Govind's turnover from business for the P.Y.2024-25 is ₹ 70 lakhs, he has to file return of his income for A.Y.2025-26.

(II) Gift of ₹ 50 lakhs received from son is not taxable under section 56(2)(x) in the hands of Mr. Vicky, since his son is his relative, and gifts from a relative are excluded from the applicability of section 56(2)(x). The only income of Mr. Vicky for the P.Y.2024-25 would be interest on savings account for a period of 4 days from 28th March, 2025 to 31st March, 2025 on ₹ 50 lakhs, which would be lower than the basic exemption limit. As per section 139(1)(b), an individual is required to file his return if his total income exceeds the basic exemption limit. In this case, Mr. Vicky's total income is lower than the basic exemption limit of ₹ 3,00,000/ ₹ 2,50,000, as the case may be.

However, such a person who is not required to file his return on account of his total income being lower than the basic exemption limit, would be required to file return of income if, *inter alia*, the deposit in his savings account is ₹ 50 lakhs or more during the previous year.

Since a deposit of ₹ 50 lakhs has been made in the savings account of Mr. Vicky in the P.Y.2024-25, he is required to file his return of income for A.Y.2025-26.

(ii) (I) The proposition is not correct as per law. This is because section 254(2) specifically empowers the Appellate Tribunal to amend any

order passed by it, either *suo-moto* or on an application made by the assessee or Assessing Officer, with a view to rectify any mistake apparent from record, at any time within 6 months from the end of the month of the order sought to be amended.

The powers of the Tribunal under section 254(2) relating to rectification of its order are very limited. Such powers are confined to rectifying any mistake apparent from the record. The mistake has to be such that for which no elaborate reasons or inquiry is necessary. Accordingly, the re-appreciation of evidence placed before the Tribunal during the course of the appeal hearing is not permitted. It cannot re-adjudicate the issue afresh under the garb of rectification *[CIT vs. Vardhman Spinning (1997) 226 ITR 296 (P & H), CIT v. Ballabh Prasad Agarwalla (1998) 233 ITR 354 (Cal.) & Niranjan & Co. Ltd. v. ITAT (1980) 122 ITR 519 (Cal.)]*

(II) The proposition is correct in law. A finding of fact cannot be disturbed by the High Court in exercise of its powers under section 260A. The Income-tax Appellate Tribunal is the final fact finding authority and the findings of fact recorded by the Tribunal can be interfered with by the High Court under section 260A only on the ground that the same were without evidence or material, or if the finding is contrary to the evidence, or is perverse or there is no direct nexus between conclusion of fact and the primary fact upon which that conclusion is based.

In *CIT vs. P. Mohanakala (2007) 291 ITR 278 and M. Janardhana Rao v. Joint CIT (2005) 273 ITR 50*, the Apex Court observed that the High Court had set aside the factual findings of the lower authorities and the Tribunal without any valid reason. The Apex Court held that the findings of fact could not be interfered with by the High Court without carefully considering the facts on record, the surrounding circumstances and the material evidence. There is no scope for interference with the factual findings, unless the findings are *per se* without reason or basis, perverse and/or contrary to the material on record.

Hence, only if the issue gives rise to a substantial question of law, an appeal shall lie before the High Court.

(b) Alibaba Ltd. is deemed to have under-reported its income since:

(1) the assessment under 143(3) has the effect of reducing the loss determined in a return processed under section 143(1)(a); and

(2) the reassessment under section 147 has the effect of converting the loss assessed under section 143(3) into income.

Therefore, penalty is leviable under section 270A for under-reporting of income.

Computation of penalty leviable under section 270A

Particulars	₹	₹
Assessment under section 143(3)		
Under-reported income:		
Loss assessed u/s 143(3)	(5,00,000)	
(-) Loss determined under section 143(1)(a)	(7,50,000)	
	2,50,000	
Tax payable on under-reported income @ 25%	62,500	
Add: HEC@4%	2,500	
	65,000	
Penalty leviable@50% of tax payable		32,500
Reassessment under section 147		
Under-reported income:		
Total income reassessed under section 147	4,50,000	
(-) Loss assessed under section 143(3)	(5,00,000)	
	9,50,000	
Tax payable on under-reported income @ 25%	2,37,500	
Add: HEC@4%	9,500	
	2,47,000	
Penalty leviable@50% of tax payable		1,23,500

Note – The applicable rate of tax for Alibaba Ltd. for A.Y.2025-26 is 25%, since its turnover for the P.Y.2022-23 does not exceed ₹ 400 crores.

(c) (i) Principle of *Contmporanea Expositio*

A treaty's terms are normally to be interpreted on the basis of their meaning at the time the treaty was concluded. However, this is not a universal principle.

In *Abdul Razak A. Meman's* (2005) 276 ITR 306, the AAR observed that "there can be little doubt that while interpreting treaties, regard should be had to material *contemporanea expositio*. This proposition is embodied in article 32 of the Vienna Convention and is also referred to in the decision of the Hon'ble Supreme Court in *K. P. Varghese v. ITO [1981] 131 ITR 597*.

(ii) Teleological Interpretation

In this approach the treaty is to be interpreted so as to facilitate the attainment of the aims and objectives of the treaty. This approach is also known as the 'objects and purpose' method.

In case of *Union of India v. Azadi Bachao Andolan 263 ITR 706*, the Supreme Court observed that "the principles adopted for interpretation of treaties are not the same as those in interpretation of statutory legislation. The interpretation of provisions of an international treaty, including one for double taxation relief, is that the treaties are entered into at a political level and have several considerations as their bases."

One instance is where the Apex Court agreed with the contention of the Appellant that "the preamble to the Indo-Mauritius DTAA recites that it is for 'encouragement of mutual trade and investment' and this aspect of the matter cannot be lost sight of while interpreting the treaty.

6. (a) (i) 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.*

(ii) The above arrangement of splitting the investment through two subsidiaries appears to be with the intention of obtaining tax benefit under the treaty. Further, there appears to be no commercial substance in creating two subsidiaries as they do not change the economic condition of investor X Ltd. in any manner (i.e. on business risks or cash flow), and reveals a tainted element of abuse of tax laws. Hence, the arrangement can be treated as an impermissible avoidance arrangement by invoking GAAR. Consequently, treaty benefit would be denied by ignoring Lalit Ltd. and Mohan Ltd., the two subsidiaries, or by treating Lalit Ltd. and Mohan Ltd. as one and the same company for tax computation purposes.

(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.

Mischief Ltd. shall be regarded as a company engaged in active business outside India for P.Y. 2024-25 for POEM purpose only if it satisfies all the four conditions cumulatively.

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

Total income of Mischief Ltd. during the P.Y. 2024-25 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 whether or not involving associated enterprises;

Passive Income of Mischief 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 Maldives)

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

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

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

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

Value of total assets of Mischief Ltd. during the P.Y. 2024-25 is ₹ 610 crores [₹ 210 crores, in India + ₹ 400 crores, in Maldives]

Value of total assets of Mischief Ltd. in India during the P.Y. 2024-25 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 Mischief 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 Mischief 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 Mischief 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 Mischief 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%

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 Mischief Ltd. has satisfied all the four conditions, the company would be said to be engaged in "active business outside India" during the P.Y. 2024-25.

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 Mischief Ltd. is engaged in active business outside India in the P.Y. 2024-25 and majority of its board meetings i.e., 5 out of 8, were held outside India, POEM of Mischief Ltd. would be outside India.

Therefore, Mischief Ltd. would be non-resident in India for the P.Y. 2024-25.