B.COM (HONS.)
SEMSTER IV
PAPER – E FILING OF RETURNS
QUESTION BANK

Question 1

Mr. Madhusudan is regular in deducting tax at source and depositing the same. In respect of the quarter ended 31st December, 2019a sum of **Rs.** 80,000 was deducted at source from the contractors. The statement of tax deducted at source under section 200 was filed on 23rd March 2020 for the quarter ended 31.12.2019.

(i) Is there any delay on the part of Mr. Madhusudan in filing the statement of TDS?

(ii) If the answer to (i) above is in the affirmative, how much amount can be levied on Mr. Madhusudan for such default under section 234E?

(iii) Is there any remedy available to him for reduction/waiver of the levy?

Answer

(i) Yes, there has been a delay on the part of Mr. Madhusudan in filing the statement of TDS.

As per section 200(3) read with Rule 31A, the statement of tax deducted at source for the quarter ended 31st December, 2019 has to be filed on or before 31stJanuary, 2020. However, the same has been filed only on 23rd March, 2020. Hence, there has been a 52 days delay on the part of Mr. Madhusudan in filing the statement of TDS.

(ii) As per section 234E of the Income-tax Act, 1961, where a person fails to file deliver or cause to be delivered the statement of tax deducted at source within the prescribed time, then, he shall be liable to pay, by way of fee, a sum of **Rs.** 200 for every day during which the failure continues.

The amount of fee shall not, however, exceed the amount of tax deductible.

In this case, since Mr. Madhusudhan has delayed filing the statement of TDS by 52 days, he would be liable to pay a fee of **Rs.** 10,400 (**Rs.** 200 ´ 52 days) under section 234E. The said fee does not exceed the tax deductible (**Rs.** 80,000, in this case).

(iii) The CBDT is empowered to issue general or special orders, whether by way of relaxation of any of the provisions of sections 139, 143, 144, 147 etc. or otherwise, in respect of any class of incomes or class of cases. The CBDT may issue such order(s) from time to time if it considers expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue. Section 234E is included in the list of sections in respect of which the CBDT is empowered to issue order for relaxation of the provisions of the Act.

Hence, the remedy available to Mr. Madhusudhan is that he can file an application to the CBDT under section 119 and seek waiver/reduction of the penalty levied/leviable under section 234E.

Question 2

Smt. Vijaya, proprietor of Lakshmi Enterprises, made turnover of **Rs.** 210 lakhs during the previous year 2017-18. Her turnover for the year ended 31-3-2020 was **Rs.** 90 lakhs.

Decide whether provisions relating to deduction of tax at source are attracted for the following payments made during the financial year 2019-20:

(i) Purchase commission paid to one agent **Rs.** 25,000 on 13.6.2019 towards purchases made during the year.

(ii) Payments to Civil engineer of **Rs.** 5,00,000 for construction of residential house for self use.

Answer

Since Smt. Vijaya's turnover was **Rs.** 210 lakhs in the immediately preceding financial year (i.e., F.Y.2018-19), she is liable to deduct tax at source in the P.Y.2019-20, irrespective of her turnover being only **Rs.** 90 lakhs in the F.Y.2019-20.

(i) Tax@5% has to be deducted under section 194H in respect of purchase commission of**Rs.** 25,000 to an agent for purchases made during the year, since the same exceeds the threshold limit of **Rs.** 15,000 for non-deduction of tax at source thereunder.

(ii) Tax has to be deducted under section 194C in case of payment to resident contractors. The rate of tax is 1% if the payee is an individual or HUF and 2% in case of payees, other than individuals and HUFs.

However, as per section 194C(4), no individual or Hindu undivided family shall be liable to deduct income tax on the sum credited or paid to the account of the contractor where such sum is credited or paid exclusively for personal purposes of such individual or any member of the Hindu undivided family.

In this case, since Smt. Vijaya, an individual, makes payment of **Rs.** 5 lakh to a civil engineer for construction of residential house for self use, she is not liable to deduct tax at source under section 194C from such sum.

Question 3

What is the rate at which the tax is either to be deducted or collected under the provisions of the Act in the following cases?

(i) A partnership firm making sales of timber which was procured and obtained under a forest lease.

(ii) Payment of income of Rs.25 lakh on investments in the securities to the Foreign Institutional Investor.

(iii) A nationalized bank receiving professional services from a registered society made provision on 31-03-2020 of an amount of ` 25 lakh against the service charges bills to be received.

(iv) Payment of **Rs.** 5 lacs made to Mr. Phelps who is an athlete by a manufacturer of a swim wear for brand ambassador.

AnswerApplicable Rate of TDS/TCS

Situation	TCS/TDS	Rate	Note
(i) Partnership firm selling timber obtained under forest lease	TCS	2.5%	1

(ii) Payment of income on investments in the securities to the Foreign Institutional Investors In case the securities are Government securities	TDS	20.8% 5.20%	2
(iii) Professional services rendered by a registered society to a nationalised bank	TDS	10%	3
(iv) Payment by a manufacturer of swim wear to its brand ambassador Mr. Phelps, an athlete If Mr. Phelps is a resident If Mr. Phelps is a non-resident	TDS	 10% 20.8%	4

Notes:

(1) As per section 206C(1), tax has to be collected at source@2½% by the partnership firm, being a seller, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount, whichever is earlier.

(2) As per section 196D, tax has to be deducted at source @ 20.8% (20% plus cess@4%) by any person who is responsible for paying to a Foreign Institutional Investor, any income by way of interest on securities at the time of credit of such income to the account of the payee or at the time of payment of such income, whichever is earlier.

Alternatively, if the said securities are assumed to be government securities, tax is deductible@5.20% (i.e., 5% plus cess@4%) under section 194LD.

(3) Tax has to be deducted at source@10% under section 194J, by the nationalized bank at the time of credit of fees for professional services to the account of the registered society (i.e., on 31.3.2020), even though payment is to be made after that date.

(4) Tax has to be deducted at source@10% under section 194J in respect of income of **Rs.** 5 lacs paid to Mr. Phelps, athlete, for advertisement, on the inherent presumption that Mr. Phelps is a resident.

Alternatively, if Mr. Phelps is assumed to be a non-resident, who is not a citizen of India, tax has to be deducted at source@20.8% (20% plus cess 3%) under section 194E in respect of income of **Rs.** 5 lacs paid to Mr. Phelps, an athlete, for advertisement referred under section 115BBA.

Question 4

Examine the liability for tax deduction at source in the following cases for the assessment year 2020-21:

(i) Wings Ltd. has paid amount of **Rs.** 15 lacs during the year ended 31-3-2020 to Airports Authority of India towards landing and parking charges.

(ii) Omega Ltd., an event management company, organized a concert of international artists in India. In this connection, it engaged the services of an overseas agent Mr. John from UK to bring artists to India. He contacted the artists and negotiated with them for performance in India in terms of the authority given by the company. He did not take part in event organized in India. The company made the payment of commission equivalent to **Rs.** 1 lac to the overseas agent.

(iii) Ramesh gave a building on sub-lease to Mac Ltd. with effect from 1-7-2019 on a rent of**Rs.** 20,000 per month. The company also took on hire machinery from Ramesh with effect from 1-11-2019 on hire charges of **Rs.** 15,000 per month. The rent of building

and hire charges of machinery for the year 2019-20 were credited by the company to the account of Ramesh in its books of account on 31-3-2020.

(iv) **Rs.** 2,45,000 paid to Mr. X on 01-02-2020 by Karnataka State Government on compulsory acquisition of his urban land. What would be your answer if the land is agricultural land?

Answer

(i) TDS on landing and parking charges: The landing and parking charges which are fixed by the Airports Authority of India are not merely for the "use of the land". These charges are also for services and facilities offered in connection with the aircraft operation at the airport which include providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport [Japan Airlines Co. Ltd. v. CIT / CIT v. Singapore Airlines Ltd. (2015) 377 ITR 372 (SC)]. Thus, tax is not deductible under section 194I which provides deduction of tax for payment in the nature of rent.

Hence, tax is deductible @2% under section 194C by the airline company, Wings Ltd., on payment of **Rs.** 15 lacs made towards landing and parking charges to the Airports Authority of India for the previous year 2019-20.

(ii) TDS on services of overseas agent outside India: An overseas agent of an Indian company operates in his own country and no part of his income accrues or arises in India. His commission is usually remitted directly to him and is, therefore, not received by him or on his behalf in India. The commission paid to the non-resident agent for services rendered outside India is, thus, not chargeable to tax in India.

Since commission income for contacting and negotiating with artists by Mr. John, a non- resident, who remains outside India is not subject to tax in India, consequently, there is no liability for deduction of tax at source. It is assumed that the commission equivalent to **Rs.** 1 lakh was remitted to Mr. John outside India.

(iii) TDS on rent for building and machinery: Tax is deductible on rent under section 194-I, if the aggregate amount of rental income paid or credited to a person exceeds**Rs.** 2,40,000. Rent includes payment for use of, inter alia, building and machinery.

The aggregate payment made by Mac Ltd. to Ramesh towards rent in P.Y.2019-20 is **Rs.** 2,55,000 (i.e., **Rs.** 1,80,000 for building and **Rs.** 75,000 for machinery). Hence, Mac Ltd. has to deduct tax@10% on rent paid for building and tax@2% on rent paid for machinery.

(iv) TDS on compensation for compulsory acquisition: Tax is deductible at source @10% under section 194LA, where payment is made to a resident as compensation or enhanced compensation on compulsory acquisition of any immovable property (other than agricultural land).

However, no tax deduction is required if the aggregate payments in a year does not exceed**Rs.** 2,50,000.

Therefore, no tax is required to be deducted at source on payment of **Rs.** 2,45,000 to Mr. X, since the aggregate payment does not exceed **Rs.** 2,50,000.

Since the definition of immovable property specifically excludes agricultural land, no tax is deductible at source on compensation paid for compulsory acquisition of agricultural land.

Question 5

Examine whether tax has to be deducted at source under the provisions of the Income-tax Act, 1961 in the following situations, which have taken place during the year ended 31-32020:

(i) M/s. Jiva& Co., a partnership firm, pays a sum of **Rs.** 43,000 as interest on loan borrowed from an Indian branch of a foreign bank.

(ii) Above firm has paid **Rs.** 42,000 as interest on capital to partner Mr. A, a resident in India, and**Rs.** 44,000 as interest on capital to partner Mr. B, a non-resident.

(iii) The above firm paid **Rs.** 50,000 being share of profit of partner Mr. B, a non-resident.

Answer

(i) Section 194A requires deduction of tax on any income by way of interest, other than interest on securities, credited or paid to a resident, at the rates in force. However, it specifically excludes from its scope, income credited or paid to any banking company to which the Banking Regulation Act, 1949 applies.

An Indian branch of a foreign bank, transacting the business of banking in India, is a banking company to which the Banking Regulation Act, 1949 applies. Therefore, interest payment to such bank will not attract tax deduction under section 194A.

Consequently, no tax is required to be deducted at source under section 194A on interest of**Rs.** 43,000 paid by M/s. Jiva& Co., a partnership firm, on loan borrowed from an Indian branch of a foreign bank.

(ii) Section 194A requiring deduction of tax at source on any income by way of interest, other than interest on securities, credited or paid to a resident, excludes from its scope, income credited or paid by a firm to its partner. Therefore, no tax is required to be deducted at source under section 194A on interest on capital of **Rs.** 42,000 paid by the firm to Mr. A, a resident partner.

Section 195, which requires tax deduction at source on payments to non-residents, does not provide for any exclusion in respect of payment of interest by a firm to its non-resident partner. Therefore, tax has to be deducted under section 195 at the rates in force in respect of interest on capital of **Rs.** 44,000 paid to partner Mr. B, a nonresident.

(iii) As per section 10(2A), share of profit received by a partner from the total income of the firm is exempt from tax. Therefore, the share of profit paid to non-resident partner is not liable for tax deduction at source.

However, section 195(6) provides that the person responsible for paying any sum, whether or not chargeable to tax, to a non-corporate non-resident or to a foreign company, shall be required to furnish the information relating to payment of such sum in the prescribed form and manner.

Question 6

"Come Air Ltd." has paid a sum of **Rs.** 12 lakhs during the year ended 31-3-2020 to Airports Authority of India towards landing and parking charges. The company has deducted tax at source@2% under section 194C on the said payment and remitted the tax deducted within the prescribed time. The Assessing Officer contended that landing and parking charges were levied for use of the land of the airport and hence, the payment was in the nature of rent attracting TDS@10% under section 194-I. Discuss the correctness or otherwise of the contention of the Assessing Officer.

Answer

The issue as to whether the charges fixed by the Airport Authority of India (AAI) for landing and take-off facilities and parking facility for the aircraft are for the "use of the land" by the airline company came up before the Supreme Court in Japan Airlines Co. Ltd. v. CIT / CIT v. Singapore Airlines Ltd. (2015) 377 ITR 372.

The Supreme Court observed that the charges which are fixed by the AAI for landing and take- off services as well as for parking of aircrafts are not for the "use of the land". These charges are for services and facilities offered in connection with the aircraft operation at the airport which include providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport.

There are various international protocols which mandate all authorities manning and managing these airports to construct the airport of desired standards which are stipulated in the protocols. The services which are required to be provided by these authorities, like AAI, are aimed at passengers' safety as well as for safe landing and parking of the aircrafts. Therefore, the services are not restricted to merely permitting "use of the land" of airport. On the contrary, it encompasses all the facilities that are to be compulsorily offered by the AAI in tune with the requirements of the protocol.

The Supreme Court observed that the charges levied on air-traffic includes landing charges, lighting charges, approach and aerodrome control charges, aircraft parking charges, aerobridge charges, hangar charges, passenger service charges, cargo charges, etc. Thus, when the airlines pay for these charges, treating such charges as charges for "use of the land" would tantamount to adopting a totally simplistic approach which is far away from reality.

The Supreme Court opined that the substance behind such charges has to be considered and when the issue is viewed from this angle, keeping the larger picture in mind, it becomes very clear that the charges are not for use of the land per se and, therefore, it cannot be treated as "rent" within the meaning of section 194-I. The Supreme Court, thus, concurred with the view taken by the Madras High Court in Singapore Airlines case and overruled the view taken by the Delhi High Court in United Airlines/Japan Airlines case.

Applying the rationale of the Supreme Court ruling to the facts of this case, the contention of the Assessing Officer that landing and parking charges are levied for use of the land of airport and hence, the charges are in the nature of rent to attract the provisions of tax deduction at source under section 194-I is **not** correct.

Question 7

Mr. Harish, Vice President of ABC Bank, sold his house property in Chennai as well as his rural agricultural land for a consideration of **Rs.** 60 lakh and **Rs.** 15 lakh, respectively, to Mr. Suresh, a retail trader of garments, on 10.10.2019. Mr. Harish had purchased the house property and rural agricultural land in December 2017 for **Rs.** 40 lakh and **Rs.** 10 lakh, respectively. The stamp duty value on the date of transfer, i.e., 10.10.2019, is **Rs.** 85 lakh and **Rs.** 20 lakh for the house property and rural agricultural land, respectively.

(a) Determine the tax implications in the hands of Mr. Harish and Mr. Suresh, if the date of agreement for sale of house property and rural agricultural land is

1.7.2019 and the stamp duty value on the said date was**Rs.** 75 lakh and **Rs.** 15 lakh, respectively. On the said date, Mr. Suresh made payment of **Rs.** 5 lakh by way of account payee cheque to Mr. Harish for purchase of house property. Also, discuss the TDS implications, if any, in the hands of Mr. Suresh, assuming that both Mr. Harish and Mr. Suresh are resident Indians.

(b) Would your answer be different if Mr. Harish is a property dealer and sold the house property in the course of his business?

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

(i)	**Tax implications in the hands of Mr. Harish, 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. Harish. 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.** 75 lakh) would be deemed to be the full value of consideration arising on transfer of property. Therefore, **Rs.** 35 lakh (i.e., **Rs.** 75 lakh – **Rs.** 40 lakh, being the purchase price) would be taxable as short-term capital gains in the A.Y.202-21. 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 as 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 is to be adopted as the deemed sale consideration.
(ii)	**Tax implications in the hands of the buyer – Mr.Suresh, a retail trader**

	The house property purchased would be a capital asset in the hands of Mr. Suresh, who is a retail trader of garments. The provisions of section 56(2)(x) is attracted in the hands of Mr. Suresh who has acquired the immovable property, being a capital asset, for inadequate consideration. For the purpose of section 56(2)(x), Mr. Suresh 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 account payee cheque on the date of agreement. Therefore, Rs. **15 lakh,** being the difference between the stamp duty value of the property **on the date of agreement** (i.e., Rs. 75 lakh) and the actual consideration (i.e., Rs. 60 lakh) would be taxable as per section 56(2)(x) under the head "**Income from other sources**" in the hands of Mr. Suresh, since such difference exceeds the higher of Rs. 50,000 or 5% of consideration. As rural agricultural land is not a capital asset, the provisions of section 56(2)(x) are not attracted in respect of acquisition of agricultural land for inadequate
(iii)	**<u>TDS implications in the hands of the buyer, Mr.Suresh</u>**
	Since the sale consideration of house property exceeded **Rs.** 50 lakh, Mr.
	Suresh is required to deduct tax at source under section 194-IA. The tax deduction under section 194-IA would be **Rs.** 60,000, being 1% of **Rs.** 60 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. Harish, a property dealer:

(i)	**Tax implications in the hands of Mr. Harish for A.Y.2020-21**
	If Mr. Harish 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. Harish 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. 35 lakh**, being the difference between the stamp duty value on the date of agreement (i.e., **Rs.** 75 lakh) and the purchase price (i.e., Rs. 40 lakh), would be chargeable as business income in the hands of Mr. Harish.
(ii)	**TDS implications and taxability in the hands of Mr. Suresh for A.Y.2020-21**

	There would be no difference in the TDS implications or taxability in the hands of Mr. Suresh, whether Mr. Harish is a property dealer or a salaried employee. Therefore, the provisions of section 56(2)(x) would be attracted in the hands of Mr. Suresh who has received house property, being a capital asset, for inadequate consideration. The TDS provisions under section 194IA would also be attracted since the actual consideration for house property exceeds **Rs.** 50 lakh.

Question 8

Siddharth Hospitals Pvt. Ltd. has recently been accorded recognition by several insurance companies to admit and treat patients on cashless hospitalization basis. Payment to the assessee hospital will be made by Third Party Administrators (TPA) who will process the claims of the patients admitted and make payments to the various hospitals including the assessee. All TPAs are corporate entities. The assessee wants to know whether the TPAs are bound to deduct tax at source under section 194J or under section 194C?

Answer

This issue has been clarified by the CBDT Circular No.8/2009 dated 24.11.2009. As per provisions of section 194J(1), any person, who is responsible for paying to a resident any sum by way of fees for professional services, shall, at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to 10% of such sum as TDS.

Further, as per clause (a) of Explanation to section 194J "professional services" includes services rendered by a person in the course of carrying on medical profession.

The services rendered by hospitals to various patients are primarily medical services and, therefore, **the provisions of section 194J are applicable on payments made by TPAs to hospitals** etc. Further, for invoking provisions of section 194J, there is no stipulation that the professional services have to be necessarily rendered to the person who makes payment to hospital. Therefore, TPAs who are making payment on behalf of insurance companies to hospitals for settlement of medical/ insurance claims etc. under various schemes including Cashless Schemes are liable to deduct tax at source under section 194J on all such payments to hospitals etc.

In view of the above, all such transactions between TPAs and hospitals would fall within the ambit of provisions of section 194J.

Question 9

Examine in the context of provisions contained in Chapter XVII of the Act and also work out the amount of tax to be deducted by the payer of income in the following cases:

(i) Payment of **Rs.** 5 lacs made by JCP & Co. to Pingu Events Co. Ltd. for organizing a debate competition on the subject "Preservation of Rural Heritage of Rajasthan".

(ii) "Profit Commission" of **Rs.** 1 lac paid on 10.6.2018 by a re-insurance company to the insurer company after the expiry of the term of insurance and where there was no claim during the treaty.

(iii) KD, a part time director of DAF Pvt. Ltd. was paid an amount of **Rs.** 2,25,000 as fees which was actually in the nature of commission on sales for the period 1.4.2019 to 30.6.2019. **Answer**

(i) The services of Event Managers in relation to sports activities alone have been notified by the CBDT as "professional services" for the purpose of section 194J. In this case, payment of **Rs.** 5 lacs was made to an event management company for organization of a debate competition. Hence, the provisions of section 194J are not attracted.

However, TDS provisions under section 194C relating to contract payments would be attracted and consequently, tax has to be deducted @ 2% under section 194C. The tax deductible under section 194C would be **Rs.** 10,000, being 2% of **Rs.** 5 lacs.

(ii) Section 194D requires deduction of tax at source@5% from insurance commission, where the commission exceeds **Rs.** 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.

(iii) 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 DAF Pvt. Ltd. on the commission of **Rs.** 2,25,000 paid to KD, a part-time director. The tax deductible under section 194J would be **Rs.** 22,500, being 10% of **Rs.** 2,25,000.

Question 10

Examine the applicability of the provisions relating to deduction of tax at source in the following transactions:

(i) Max Limited pays **Rs.** 1,02,000 to Mini Limited, a resident contractor who, under the contract dated 15th October, 2019, manufactures a product according to specification of Max Limited by using materials purchased from Max Limited.

(ii) A company operating a television channel makes payment of **Rs.** 5 lacs to a former cricketer for making running commentary of a one-day cricket match.

(iii) EL Ltd., a foreign company, pays outside India, salary to its employee, Mr. Raghavan, a foreign national and a non-resident, for services rendered in India.

Answer

(i) The definition of "work" under section 194C includes manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer. In the instant case, Mini Limited manufactures the product as per the specification given by Max Limited **by using the raw materials purchased from Max Limited**. **Therefore, it falls within the definition of "work"** under section 194C. Consequently, tax is to be deducted on the invoice value excluding the value of material purchased from such customer if such value is mentioned separately in the invoice. If the material component is not mentioned separately in the invoice, tax is to be deducted on the whole of the invoice value.

(ii) Provisions for deduction of tax at source under section 194J are attracted in respect of payment of fees for professional services, if the amount of such fees exceeds **Rs.** 30,000 in the relevant financial year. The service rendered by a commentator in relation to sports activities has been notified by the CBDT as a professional service for the purposes of section 194J vide its Notification No. 88 dated 21st August, 2008. Therefore, tax is required to be deducted@10% from the fee of **Rs.** 5 lacs payable to the former cricketer.

(iii) Section 195 requires deduction of tax at source by any person responsible for making payment to a non-resident, any interest or any other sum chargeable under the provisions of the Income-tax Act, 1961 (other than income chargeable under the head "Salaries").

Section 192(1) requires "any person" responsible for paying income under the head "Salaries" to deduct tax at source. Therefore, even if the payer is a foreign company, section 192 would be applicable.

TDS provisions under section 192 are attracted, if the salary payable to a nonresident is chargeable to tax in India. Under section 9(1)(ii), income which falls under the head "Salaries" shall be deemed to accrue or arise in India, if it is earned in India. Salary payable for service rendered in India shall be regarded as income earned in India. Therefore, salary paid to Mr. Raghavan, a non-resident, attracts tax liability in India, as he has rendered services in India and the salary is attributable to such services.

Therefore, the foreign company, EL Limited, is liable to deduct tax at source under section 192 from the salary of Mr. Raghavan.

Question 11

Examine in the following cases the obligation of the person paying the income in respect of tax deduction at source and indicate the due date for payment of such tax, wherever applicable:

(i) MNO Ltd., the employer, credited salary due for the financial year 2019-20 amounting to**Rs.** 3,40,000 to the account of Q, an employee, in its books of account on 31.3.2020. Q has not furnished any information about his income/loss from any other head or proof of investments/payments qualifying for deduction under section 80C.

(ii) T, an individual whose total sales in business during the year ended 31.3.2019 was**Rs.** 2.20 crores, paid **Rs.** 9 lacs by cheque on 1.1.2020 to a contractor (an individual), for

construction of his factory building. No amount was credited earlier to the account of the contractor in the books of T.

(iii) BCD Ltd. credited **Rs.** 28,000 towards fees for professional services and **Rs.** 27,000 towards fees for technical services to the account of HG in its books of account on 6.10.2019. The total sum of **Rs.** 55,000 was paid by cheque to HG on 18.12.2019.

Answer

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

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

If Q has not furnished any information about his income/loss under any other head or proof of investments/expenditure qualifying for deduction under section 80C, then, the employer has to deduct tax without considering any claim for any expenditure or set-off of losses or deduction under section 80C.

(ii) An individual who is liable for tax audit under section 44AB in the immediately preceding financial year is liable to deduct tax at source under section 194C for the financial year 2018-19 in respect of the payment made to contractor exceeding **Rs.** 30,000 in a single contract and**Rs.** 1,00,000 in aggregate of contracts during the financial year. Turnover of the individual T is**Rs.** 2.20 crores in the financial year 2017-18. Therefore, T is liable to get his accounts for that year audited under section 44AB. As the payment during financial year 2018-19 to the contractor has exceeded the limits prescribed in section 194C, tax has to be deducted under section 194C.

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

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

Question 12

Examine the liability for tax deduction at source in the following cases for the assessment year 2020-21:

(i) Mr. Anand has been running a sole proprietary business whose accounts are audited under section 44AB with turnover of **Rs.** 202 lakhs for the A.Y. 2019-20. He pays a monthly rent of**Rs.** 10,000 for the office premises to Mr. R, the owner of building and an individual. Besides, he also pays service charges of **Rs.** 6,000 per month to Mr. R towards the use of furniture, fixtures and vacant land appurtenant thereto.

(ii) By virtue of an agreement with a nationalised bank, a catering organisation receives a sum of**Rs.** 50,000 per month towards supply of food, water, snacks etc. during office hours to the employees of the bank.

(iii) An Indian company pays gross salary including allowances and monetary perquisites amounting to **Rs.** 7,30,000 to its General Manager. Besides, the company provides non- monetary perquisites to him whose value is estimated at **Rs.** 1,20,000.

(iv) A notified infrastructure debt fund eligible for exemption under section 10(47) of the Income- tax Act, 1961 pays interest of **Rs.** 5 lakhs to a company incorporated in USA. The US Company incurred expenditure of **Rs.** 12,000 for earning such interest. The fund also pays interest of **Rs.** 3 lakhs to Mr. X, who is a resident of a notified jurisdictional area.

Answer

(i) Where the payer is an individual or HUF whose turnover exceeds the monetary limits specified in clause (a) of section 44AB, he has to deduct tax at source. Since the turnover of Mr. Anand was **Rs.** 202 lakhs for the A.Y.2018-19, he is liable to deduct tax at source under section 194-I in respect of rental payments during the financial year 2019-20.

Accordingly, Mr. Anand is liable to deduct tax at source under section 194-I on the rental payments made. Section 194-I provides that rent includes any payment, by whatever name called, for the use of land or building together with furniture, fittings etc. Therefore, in the given case, apart from monthly rent of **Rs.** 15,000 p.m., service charge of **Rs.** 6,000 p.m. for use of furniture and fixtures would also attract TDS under section 194-I. Since the aggregate rental payments to Mr. R during the financial year 2019-20 exceeds **Rs.** 2,40,000, Mr. Anand is liable to deduct tax at source @10% under section 194-I from rent paid to Mr. R.

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

(iii)

	Rs.
Gross salary, allowances and monetary perquisites	7,20,000
Non-Monetary perquisites	1,20,000
	8,50,000
Less: Standard deduction under section 16(ia)	50,000
	8,00,000
Tax Liability	75,400
Average rate of tax (**Rs.** 75,400 / **Rs.** 8,00,000 × 100)	9.425%

The company can deduct **Rs.** 75,400 at source from the salary of the General Manager. Alternatively, the company can pay tax on non-monetary perquisites as under –

Tax on non-monetary perquisites = 9.425% of **Rs.** 1,20,000 = **Rs.** 11,310

Balance to be deducted from salary = **Rs.** 64,090

If the company pays tax of **Rs.** 11,310 on non-monetary perquisites, the same is not a deductible expenditure as per section 40(a). The amount of tax paid towards nonmonetary perquisite by the employer, however, is not chargeable to tax in the hands of the employee as per section 10(10CC).

(iv) As per section 194LB, tax would be deductible @ 5% on gross interest paid/credited by a notified infrastructure debt fund, eligible for exemption under section 10(47), to a foreign company.

In the first case, since the payment is to a foreign company, health and education cess @4% has to be added to the applicable rate of TDS. Therefore, the tax deductible under section 194LB would be **Rs.** 26,000 (i.e., 5.20% of **Rs.** 5 lakhs).

However, in case the notified infrastructure debt fund pays interest to a person who is a resident of a notified jurisdictional area, section 94A will apply. Accordingly, tax would be deductible @30% (plus health and education cess@4%) under section 94A, even though section 194LB provides for deduction of tax at a concessional rate of 5%. Therefore, the tax deductible in respect of payment of **Rs.** 3 lakh to Mr. X, who is a resident of a notified jurisdictional area, would be **Rs.** 93,600, being 31.2% of **Rs.** 3,00,000.

Question 13

The following issues arise in connection with the deduction of tax at source under Chapter XVII-B. Examine the liability for tax deduction in these cases:

(a) An employee of the Central Government receives arrears of salary for the earlier 3 years. He enquires whether he is liable for deduction of tax on the entire amount during the current year.

(b) A T.V. channel pays **Rs.** 10 lakh on 1.9.2019 as prize money to the winner of a quiz programme, "Who will be a Millionaire"?

(c) State Bank of India pays **Rs.** 50,000 per month as rent to the Central Government for a building in which one of its branches is situated.

(d) A television company pays **Rs.** 80,000 to a cameraman for shooting of a documentary film.

(e) A State Government pays **Rs.** 22,000 on 2.7.2019 as commission to one of its agents on sale of lottery tickets.

(f) A Turf Club awards a jack-pot of **Rs.** 5 lakh to the winner of one of its races on 1.2.2020. **Answer**

(a) As per section 192, tax is deductible at source by any person who is responsible for paying any income chargeable under the head 'Salaries'. However, as per subsection (2A) of that section, the employee will be entitled to relief under section 89 and consequently he will be required to furnish to the person responsible for making the payment, such particulars in the prescribed form (i.e., Form No.10E). The person responsible for making the payment shall compute the relief and take into account the same while deducting tax at source from salary.

(b) Under section 194B, the person responsible for paying by way of winnings from any card game and other game in an amount exceeding **Rs.** 10,000 shall at the time of

payment deduct income-tax at 30%. Therefore, tax of Rs.3 lakh has to be deducted at source from the prize money of **Rs.** 10 lakh payable to the winner.

(c) Section 194-I, which governs the deduction of tax at source on payment of rent, exceeding**Rs.** 2,40,000 p.a., is applicable to all taxable entities except individuals and HUFs, whose turnover/gross receipts do not exceed the monetary limits specified under clause (a) of section 44AB. Section 196, however, provides exemption in respect of payments made to Government from application of the provisions of tax deduction at source.

Therefore, no tax is required to be deducted at source by State Bank of India from rental payments to the Government.

(d) If the cameraman is an employee of the T.V. Company, the provisions of section 192 will apply. However, if he is a professional, TDS provisions under section 194-J will apply. Tax at 10% will have to be deducted at the time of credit of **Rs.** 80,000 or on its payment, whichever is earlier.

(e) Under section 194G, the person responsible for paying to any person stocking, distributing, purchasing or selling lottery tickets shall at the time of credit of the commission or payment thereof, whichever is earlier, amounting to more than **Rs.** 15,000, deduct income-tax at source @5%.

Accordingly, tax@5% under section 194G amounting to **Rs.** 1,100 has to be deducted from commission payment of **Rs.** 22,000 to the agent of the State Government.

(f) The payment by way of winnings from horse race is governed by section 194BB. Under this section, the person responsible for payment shall, at the time of payment, deduct tax at source @ 30%, if the payment exceeds **Rs.** 10,000.

Accordingly, tax@30% amounting to **Rs.** 1,50,000 has to be deducted from the winnings of **Rs.** 5 lakh payable to the winner of the race.

Question 14

Examine and compute the liability for deduction of tax at source, if any, in the cases stated hereunder, for the financial year ended 31st March, 2020

(i) Mr. X, a resident, acquired a house property at Mumbai from Mr. Y for a consideration of **Rs.** 90 lakhs, on 20.6.2019. On the same day, Mr. X made two separate transactions, thereby acquiring an urban plot in Kolkata from Mr. C for a sum of **Rs.** 49,50,000 and rural agricultural land from Mr. D for a consideration of **Rs.** 60 lakhs.

(ii) On 17.6.2019, a commission of **Rs.** 50,000 was retained by the consignee 'ABC Packaging Ltd.' and not remitted to the consignor 'XYZ Developers', while remitting the sale consideration. Examine the obligation of the consignor to deduct tax at source.

(iii) Raj is working with AB Ltd. He is entitled to a salary of **Rs.** 55,000 per month w.e.f. 1.4.2019. He has a house property which is self-occupied. He paid an interest of **Rs.** 80,000 on loan, during the previous year 2019-20. The loan was taken for construction of house. He has notified his employer AB Ltd. that there will be a loss of **Rs.** 80,000 in respect of this house property for financial year ended 31.3.2020.

Answer

		Amount of TDS (Rs.)
(i)	Since the consideration for transfer of house property at Mumbai exceeds **Rs.** 50 lakhs, Mr. X, being the transferee, is required to deduct tax @1% under section 194-IA on **Rs.** 90 lakhs, being the amount of consideration for transfer of property.	90,000
	Mr. X is not required to deduct tax as source under section 194-IA from the consideration of **Rs.** 49,50,000 paid to Mr. C for transfer of urban plot, since the consideration is less than **Rs.** 50 lakhs.	Nil
	Mr. X is also not required to deduct tax at source under section 194-IA from the consideration of **Rs.** 60 lakhs paid to Mr. D for transfer of rural agricultural land, since the same is specifically excluded from the scope of immovable property for the purpose of tax deduction under section 194-IA.	Nil
	Note - Section 194-IA requires every transferee responsible for paying any sum as consideration for transfer of immovable property (land, other than agricultural land, or building or part of building) to deduct tax, at the rate of 1% of such sum, at the time of credit of such sum to the account of the resident transferor or at the time of payment of such sum to the resident transferor, whichever is earlier. However, no tax is required to be deducted where the consideration for transfer of an immovable property is less than **Rs.** 50 lakhs.	
(ii)	Section 194H requires deduction of tax at source@5% from commission and brokerage payments to a resident. However, no tax is to be deducted at source where the amount of such payment does not exceed **Rs.** 15,000. In the given case, 'ABC Packaging Ltd.', the consignee, has not remitted the commission of **Rs.** 50,000 to the consignor 'XYZ	
	Developers' while remitting the sales consideration. Since the retention of commission by the consignee/agent amounts to constructive payment of the same to him by the consignor/principal, deduction of tax at source is required to be made from the amount of commission [CBDT Circular No.619 dated 4/12/1991]. Therefore, XYZ Developers has to deduct tax at source on **Rs.** 50,000 at the rate of 5%.	2,500

(iii)	Section 192 provides that tax is required to be deducted on the payment made as salaries. Tax is to be deducted on the estimated income at the average of income tax computed on the basis of the rates in force for the financial year in which payment is made. The employee may declare details of his other incomes (including loss under the head "Income from house property" but not any other loss) to his employer. In this case, since Mr. Raj has notified his employer AB Ltd. of loss from self-occupied house property, the employer has to take the same into consideration for deduction of tax at source. Therefore, AB Ltd. is required to deduct tax at source on the salary of **Rs.** 45,000 per month paid to Mr. Raj, in the following manner:		
	Income under the head salaries (55,000 ´ 12)	6,60,000	
	Less: Standard deduction under section 16(ia)	50,000	
		6,10,000	
	Income under the head "house property"	(80,000)	
	Gross total income	5,30,000	
	Less: Deduction under Chapter VI-A	Nil	
	Total Income	5,30,000	
	Tax@10% on **Rs.** 1,70,000, being the amount arrived at after reducing the basic exemption limit of **Rs.** 2,50,000 from **Rs.** 4,20,000	18,500	
	Add: Health and Education cess @4% Tax	740	
	to be deducted at source	19,240	18,240

Question 15

A foreign company seconded some employees to the assessee, an Indian collaborator. These employees worked with the Indian collaborator throughout the P.Y.2019-20. The employees were in receipt of salary from the Indian collaborator. They were also in receipt of special allowance directly from the foreign company in foreign currency outside India. The Indian collaborator deducted tax under section 192, on the component of salary paid by it, without taking into account the special allowance paid abroad by the foreign company in foreign currency to these employees. For this reason, the Revenue authorities treated the Indian collaborator as an 'assessee-in-default' under section 201 for non-deduction of tax at source on the "special allowance" component of salary paid by the foreign company.

Is such treatment by the Revenue Authorities and the consequent levy of interest and penalty justified?

Answer

Section 9(1)(ii) provides that any income which falls under the head "salaries" is deemed to accrue or arise in India, if it is earned in India. The Explanation thereto further clarifies that income payable for services rendered in India shall be regarded as income earned in India.

Section 192(1) requires the person responsible for paying any income chargeable under the head "Salaries" to deduct income-tax, at the time of payment, at the average rate of income-tax computed on the basis of the rates in force for the financial year on the amount payable.

Since the TDS provisions relating to payment of income chargeable under the head "Salaries" form an integrated code along with the charging and computation provisions under the Act, section 192(1) has to be read with section 9(1)(ii) and the Explanation thereto. Therefore, if any payment under the head "Salaries" falls within section 9(1)(ii), then TDS provisions under section 192 gets attracted. Consequently, the Indian tax deductorassessee is duty bound to deduct, from the portion of salary paid by it, tax at source under section 192(1) on the entire salary paid to the employee, including special allowance paid abroad to the employee by the foreign company.

It was so held by the Apex Court in CIT, New Delhi v. Eli Lilly & Co. (India) P. Ltd. (2009) 312 ITR 225.

In this case, all the employees are resident in India, since they have worked with the Indian collaborator throughout the previous year 2018-19. If the tax due on special allowance received from the foreign company is paid by the recipient-employees, then, the Indian collaborator would not be treated as an assessee-in-default under section 201(1), if these resident-employees have furnished a return of income under section 139 on or before the due date of filing return of income, disclosing such income, and have also furnished a certificate to this effect from an accountant in the prescribed form. However, interest under section 201(1A)@1% per month or part of month shall be payable by the Indian collaborator from the date on which such tax was deductible to the date of furnishing of return by such resident employee.

In cases where the tax has not been paid by the recipient employee, the Assessing Officer can proceed under section 201(1) to recover the shortfall in payment of tax and interest thereon under section 201(1A).

However, no penalty under section 271C would be attracted, if the Indian collaborator was under the genuine and bona fide belief that it was not under any obligation to deduct tax at source from the special allowance paid by the foreign company. This is provided for under section 273B.