Group - III

Paper - XVI

DIRECT TAX LAWS AND INTERNATIONAL TAXATION

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory body under an Act of Parliament)

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SYLLABUS - 2016

WORK BOOK

DIRECT TAX LAWS AND INTERNATIONAL TAXATION

FINAL

GROUP – III

PAPER – 16

The Institute of Cost Accountants of India
(Statutory body under an Act of Parliament)
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Preface

Professional education systems around the world are experiencing great change brought about by the global demand. Towards this end, we feel, it is our duty to make our students fully aware about their curriculum and to make them more efficient.

Although it might be easy to think of the habits as a set of behaviours that we want students to have so that we can get on with the curriculum that we need to cover. It becomes apparent that we need to provide specific opportunities for students to practice the habits. Habits are formed only through continuous practice. And to practice the habits, our curriculum, instruction, and assessments must provide generative, rich, and provocative opportunities for using them.

The main purpose of this volume is to encourage our students as we are overwhelmed by their response after publication of the first and second editions. Thus, we are delighted to inform our students about the **e-distribution of the fourth edition of our 'Work book'.**

This book was written to meet the needs of students as it offers the practising format that will appeal to the students to read smoothly. Each chapter includes unique features to aid in developing a deeper under-standing of the chapter contents for the readers. The unique features provide a consistent reading path throughout the book, making readers more efficient to reach their goal.

Discussing each chapter with illustrations integrate the key components of the subjects. In the fourth edition, we expanded the coverage in some areas and condensed others in the said ways.

It is our hope and expectation that this fourth edition of work book will provide further an effective learning experience to the students like the first, second and third edition.

The Directorate of Studies,

The Institute of Cost Accountants of India

DIRECT TAX LAWS AND INTERNATIONAL TAXATION

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Suggested Marks Distribution from Examination Point of View

Only for Practice Purpose

Total 100 Marks	3 Hours	MCQ = 20 Marks
		Others = 80 Marks

Objective Question

20 Marks (2 Marks each questions)	MCQ	1 mark for correct answer
		1 mark for justification

Short Notes / Case Study

Minimum Marks for each Questions	3 Marks
Maximum Marks for each Questions	10 Marks

Practical Problem

Minimum Marks for each Questions	4 Marks
Maximum Marks for each Questions	16 Marks

Study Note – 1

ASSESSMENT OF VARIOUS ENTITIES

Learning Objective: ***There are certain special provisions relating to computation of income and tax liability for class of entities depending on nature, form, business carried on by it, etc. The goal of the study note is to learn special provision relating to computation of income and tax liability of various entities***

1. Choose the correct alternative and also provide your justification

(i) MAT shall not apply to

(a) Any income accruing or arising to a company from Life insurance business

(b) Any person who has exercised the option referred to u/s 115BAA

(c) Any person who has exercised the option referred to u/s 115BAB

(d) All of the above

(ii) While computing book profit u/s 115JB, following amount of income being credited to the statement of Profit and Loss shall not be reduced –

(a) Income covered u/s 115BBF

(b) Income from Other Sources

(c) Income covered u/s 86

(d) All of the above

(iii) Rate of MAT is ____

(a) 15%

(b) 18.5%

(c) 18%

(d) 20%

(iv) As per sec. 115BBF, where the total income of an eligible assessee includes any income by way of royalty in respect of a patent developed and registered in India, tax @ _____ shall be payable on such royalty income.

(a) 10%

(b) 5%

(c) 7.5%

(d) 12.5%

(v) Provision relating to taxation on income from transfer of carbon credit is provided in sec. _____ of the Income-tax Act

(a) 115BBE

(b) 115BBD

(c) 115AD

(d) 115BBG

(vi) A foreign company means a company which is not —

(a) An Indian company

(b) A domestic company

(c) Either an India company or a domestic company

(d) An Indian company as well as a domestic company.

(vii) The registration of a charitable trust can be cancelled under section 12AA by the:

(a) Assessing officer

(b) Commissioner of Income-tax

(c) Chief Commissioner of Income-tax

(d) Central Board of Direct Taxes

(viii) Generally, income of a mutual concern from mutual activity is not taxable. However, exception to this rule is / are:

(a) Where the mutual concern is a mutual insurance society and the income is derived from the carrying on of any business of insurance

(b) Where the mutual concern is a trade, professional or similar association and the income is derived from specific service performed for its member

(c) Both (a) and (b)

(d) None of the above

(ix) The person responsible for making payment to a resident individual investor in respect of an investment in a securitisation trust being referred to in sec. 115TCA, is required to deduct tax at source @

(a) 25%

(b) 30%

(c) 10%

(d)15%

(x) A domestic company for any amount paid as dividend being referred to in sec. 2(22)(e) shall be charged to additional income tax at following rate

(a) 30%

(b) 15%

(c) Nil

(d) 20%

Answer:

(i) (d) All of the above

Reason:

The provision of section 115JB is not applicable to any income accruing or arising to a company from life insurance business referred to in sec. 115B. Further, the provision of sec. 115JB is not applicable to any person who has exercised the option referred to u/s 115BAA or 115BAB

(ii) (b) Income from Other Sources

Reason:

While computing book profit, following income shall be reduced:

(a) Income by way of royalty in respect of patent chargeable to tax u/s 115BBF

(b) Share of profit from AOP, if such share is exempt u/s 86

It is to be noted that computation of book profit does not categorize the income in different heads.

(iii) (a) 15%

Reason:

W.e.f. A.Y. 2020-21, MAT is levied @ 15%

(iv) (a) 10%

Reason:

Where the total income of an eligible assessee includes any income by way of royalty in respect of a patent developed and registered in India, tax @ 10% shall be payable on such royalty income.

(v) (d) 115BBG

Reason:

Provision relating to taxation on income from transfer of carbon credit is provided in sec. 115BBG of the Income-tax Act

(vi) (b) A domestic company

Reason:

As per sec. 2(23A), foreign company means a company which is not a domestic company.

(vii) (b) Commissioner of Income-tax

Reason:

Where a trust or an institution has been granted registration and subsequently the Commissioner is satisfied that the activities of such trust or institution are -

- not genuine; or
- not being carried out in accordance with the objects of the trust or institution,

then, Commissioner can cancel the registration obtained u/s 12A or 12AA

(viii) (c) Both (a) and (b)

Reason:

The Act provides for assessment of income (from mutual activity) of mutual concern in the following cases:

- Where the mutual concern is a mutual insurance society and the income is derived from the carrying on of any business of insurance [Sec. 44 read with sec. 2(24)(vii)]

- Where the mutual concern is a trade, professional or similar association and the income is derived from specific service performed for its member [Sec. 28(iii) read with sec. 44A]
- To some extent, co-operative bank [Deduction u/s 80P]

(ix) (a) 25%

Reason:

The person responsible for making payment to a resident individual investor in respect of an investment in a securitisation trust being referred to in sec. 115TCA, is required to deduct tax at source @ 25%

(x) (a) 30%

Reason:

As per sec. 115-O, a domestic company for any amount paid as dividend being referred to in sec. 2(22)(e) shall be charged to additional income tax @ 30% + surcharge @ 12% + Health and Education cess.

2. (a) Discuss the provision relating to concessional rate of tax in respect of domestic manufacturing company.

Answer:

Tax on income of new manufacturing domestic companies [Sec. 115BAB]

Applicable to*:* Domestic Company

Conditions*:*

(a) The company has been set-up and registered on or after 01-10-2019, and has commenced manufacturing or production of an article or thing on or before 31-03-2023.

(b) The business is not formed by splitting up, or the reconstruction, of a business already in existence.

Exception:

(i) Where business is formed as a result of the re-establishment, reconstruction or revival by the person of the business of any such undertaking as is referred to in sec. 33B, in the circumstances and within the period specified in that section.

(c) The company does not use any machinery or plant previously used for any purpose.

- Any machinery or plant which was used outside India by any other person shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled:

A. such machinery or plant was not, at any time previous to the date of the installation used in India;

B. such machinery or plant is imported into India from any country outside India; and

C. no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of machinery or plant by the person.

- Where in the case of a person, any machinery or plant or any part thereof previously used for any purpose is put to use by the company and the total value of such machinery or plant or part thereof does not exceed 20% of the total value of the machinery or plant used by the company, then, this condition shall be deemed to have been complied with.

(d) The company does not use any building previously used as a hotel or a convention centre, as the case may be, in respect of which deduction u/s 80-ID has been claimed and allowed.

(e) The company is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it.

Exception:

The business of manufacture or production of any article or thing shall not include business of:

(i) development of computer software in any form or in any media;

(ii) mining;

(iii) conversion of marble blocks or similar items into slabs;

(iv) bottling of gas into cylinder;

(v) printing of books or production of cinematograph film; or

(vi) any other business as may be notified by the Central Government in this behalf; and

(f) The total income of the company has been computed:

A. without any deduction u/s 10AA or 32(1)(iia) or 32AD or 33AB or 33ABA or 35(1)(ii) or 35(1)(iia) or 35(1)(iii) or 35(2AA) or 35(2AB) or 35AD or 35CCC or 35CCD or under any provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes" other than the provisions of sec. 80JJAA.

B. Without set off of any loss carried forward from any earlier assessment year if such loss is attributable to any of the deductions referred above; and

C. Depreciation u/s 32 [other than 32(1)(iia)], is determined in the manner as may be prescribed.

***Rate of Tax*: 15% + SC @ 10% + Cess**

Other Points

- Income taxable at special rate shall be taxable at special rate of tax applicable on that income. E.g., short term capital gain covered u/s 111A is taxable @ 15%.

- Where the total income of the person, includes any income, which has neither been derived from nor is incidental to manufacturing or production of an article or thing and in respect of which no specific rate of tax has been provided separately under this Chapter, such income shall be taxed @ 22% and no deduction or allowance in respect of any expenditure or allowance shall be allowed in computing such income.
- The income-tax payable in respect of income being short term capital gains derived from transfer of a capital asset on which no depreciation is allowable under the Act shall be computed @ 22%
- Where the person fails to satisfy the conditions in any previous year, the option shall become invalid in respect of the assessment year relevant to that previous year and subsequent assessment years and other provisions of the Act shall apply to the person as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.
- The loss referred to in the conditions shall be deemed to have been already given full effect to and no further deduction for such loss shall be allowed for any subsequent year.
- The scheme is optional. The option is exercised by the person in the prescribed manner[1] on or before the due date specified u/s 139(1) for furnishing the first of the returns of income which the person is required to furnish under the provisions of this Act. Further, once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.
- Where a person has exercised the option u/s 115BAB, the provision of sec. 115JB (i.e. MAT) is not applicable.
- If any difficulty arises regarding fulfilment of the conditions, the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty and to promote manufacturing or production of article or thing using new plant and machinery. Every guideline issued by the Board shall be laid before each House of Parliament, and shall be binding on the person, and the income-tax authorities subordinate to it.
- Where it appears to the Assessing Officer that, owing to the close connection between the person to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the person more than the ordinary profits which might be expected to arise in such business, the Assessing Officer shall, in computing the profits and gains of such business for the purposes of this section, take the amount of profits as may be reasonably deemed to have been derived therefrom:

  ***Taxpoint*:**

  - In case the aforesaid arrangement involves a specified domestic transaction referred to in sec. 92BA, the amount of profits from such transaction shall be determined having regard to arm's length price as defined in sec. 92F(ii).
  - The amount, being profits in excess of the amount of the profits determined by the Assessing Officer, shall be deemed to be the income of the person. Such income is computed @ 30%

Change in the share-holding due to following reasons shall not be considered, for the purpose of sec. 79:

[1] Uploading Form 10-IB

1. ***Transfer due to death***: Where a change in the said voting power takes place in a previous year consequent upon the death of a shareholder
2. ***Transfer by way of gift***: Where a change in the said voting power takes place in a previous year on account of transfer of shares by way of *gift to any relative* of the shareholder making such gift
3. ***Amalgamation or demerger of foreign company***: Any change in the shareholding of an Indian company which is a subsidiary of a foreign company as a result of amalgamation or demerger of a foreign company subject to the condition that 51% shareholders of the amalgamating or demerged foreign company continues to be the shareholder of the amalgamated or the resulting foreign company.
4. ***Insolvency and Bankruptcy Code***: Where change in the shareholding is taken place pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

2. (b) Following is the profit and loss account of Z Ltd. for the year ended on 31-3-2020

Particulars	Amount	Particulars	Amount
To Raw material consumed	23,25,000	By Sale	1,60,00,000
To Rent	3,50,000	By Closing Stock	10,00,000
To Salary & Wages	12,00,000	By Revaluation Reserve	25,000
To Depreciation	5,00,000	By General Reserve	65,000
To Provision for contingencies	75,000	By Dividend from domestic companies	35,000
To Wealth Tax	50,000		
To Provision for bad debts	40,000		
To Proposed dividend	1,00,000		
To Provision for Income tax	1,05,000		
To Net Profit	1,23,80,000		
	1,71,25,000		1,71,25,000

Additional Information

(a) The amount of depreciation includes depreciation on revaluation of assets ₹ 50,000. Further, for the purpose of Income tax, depreciation is ₹ 4,00,000.

(b) Turnover of the company during the previous year was ₹ 530 crores. However, during the financial year 2017-18, turnover of the company was ₹ 250 crores only.

(c) In past few years, company had suffered losses, following balances are still unabsorbed:

	As per Income tax Act	As per books of Accounts
Depreciation	**₹ 66,00,000**	**Nil**
Losses	**₹ 35,50,000**	**Nil**

Compute tax liability of the company.

Answer:

Computation of total income of Z Ltd. for the A.Y.2020-21 (as per other provisions of the Act)

Particulars	Details	Amount
Net profit as per books of accounts		1,23,80,000
Add: Expenditure disallowed but debited in P/L A/c		
Excess Depreciation	1,00,000	
Provisions for Contingencies	75,000	
Wealth Tax	50,000	
Provision for bad debts	40,000	
Proposed Dividend	1,00,000	
Provision for income tax	1,05,000	4,70,000
		1,28,50,000
Less: Amount credited to P/L A/c		
Revaluation Reserve	25,000	
General Reserve	65,000	
Dividend from domestic companies	35,000	1,25,000
		1,27,25,000
Less: Brought forward business loss		35,50,000
		91,75,000
Less: Unabsorbed Depreciation		66,00,000
Total Income		**25,75,000**

Computation of Book Profit of Z Ltd. for the A.Y.2020-21

Particulars	Details	Amount
Net profit as per books of accounts		1,23,80,000
Add:		
Provision for contingencies	75,000	
Proposed Dividend	1,00,000	
Provision for income tax	1,05,000	
Provision for Bad Debts	40,000	
Depreciation	5,00,000	8,20,000
		1,32,00,000
Less:		
Depreciation (ignoring depreciation on revaluation)	4,50,000	
Amount transferred from Revaluation Reserve	25,000	
Amount transferred from General Reserve	65,000	
Dividend from domestic companies	35,000	5,75,000
Book Profit		**1,26,25,000**

Computation of tax liability of Z Ltd.

Particulars	Amount
Total income as per other provisions of the Act	25,75,000
Tax on above @ 25% **[A]**	6,43,750
Book profit u/s 115JB	1,26,25,000
15% of book profit **[B]**	18,93,750
Tax [Higher of A & B]	18,93,750
Add: Surcharge [As total income is ₹ 1,26,25,000]	1,32,563
Tax & Surcharge	20,26,313
Add: Health & Education Cess @ 4%	81,053
Tax Liability (Rounded off u/s 288B)	**21,07,370**

3. (a) Discuss the provision relating to first time adoption of Ind AS while computing book profit u/s 115JB.

Answer:

First time adoption of Ind AS [Sec. 115JB(2C)]

In case of Ind AS compliant company, the book profit of the year of convergence and each of the following 4 previous years, shall be further increased or decreased, as the case may be, by 1/5th of the transition amount.

- "Transition Amount" means the amount or the aggregate of the amounts adjusted in the other equity (excluding capital reserve, and securities premium reserve) on the convergence date but not including the following:

  A. Aggregate of the amounts adjusted in the other comprehensive income on the convergence date which shall be subsequently re-classified to the profit or loss;

  B. Revaluation surplus for assets in accordance with the Indian Accounting Standards 16 and Indian Accounting Standards 38 adjusted on the convergence date;

  C. Gains or losses from investments in equity instruments designated at fair value through other comprehensive income in accordance with the Indian Accounting Standards 109 adjusted on the convergence date;

  D. Adjustments relating to items of property, plant and equipment and intangible assets recorded at fair value as deemed cost in accordance with paragraphs D5 and D7 of the Indian Accounting Standards 101 on the convergence date;

  E. Adjustments relating to investments in subsidiaries, joint ventures and associates recorded at fair value as deemed cost in accordance with paragraph D15 of the Indian Accounting Standards 101 on the convergence date; and

  F. Adjustments relating to cumulative translation differences of a foreign operation in accordance with paragraph D13 of the Indian Accounting Standards 101 on the convergence date.

- The book profit of the previous year in which the asset or investment referred to in (B) to (E) (*supra*) is retired, disposed, realised or otherwise transferred, shall be increased or decreased, as the case may be, by the aggregate of the amounts relatable to such asset or investment.

- The book profit of the previous year in which the foreign operation referred to in (F) is disposed or otherwise transferred, shall be increased or decreased, as the case may be, by the aggregate of the amounts relatable to such foreign operations.

- "Year of Convergence" means the previous year within which the convergence date falls;

- "Convergence Date" means the first day of the first Indian Accounting Standards reporting period as defined in the Indian Accounting Standards 101.

3. (b) Compute total income of each investment fund for A.Y. 2020-21 from the following details:

Income	Fund A	Fund B	Fund C
Business Income	**Nil**	**5,00,000**	**(2,00,000)**
Capital Gains	**20,00,000**	**15,00,000**	**(5,00,000)**
Income from Other Sources	**5,00,000**	**3,00,000**	**10,00,000**

Further, it is also given that there are 20 unit holder each holding one unit. You are also requested to compute income of unit holder assuming that income from investment fund is the only income of unit holder.

Answer:

Computation of total income of the investment fund for the A.Y. 2020-21

Particulars	Fund A	Fund B	Fund C
Business Income	Nil	5,00,000	Nil
Total Income	Nil	5,00,000	Nil

Such income is taxable at the rate @ 30% if the fund is a company or firm else at maximum marginal rate of tax

Computation of total income of the unit holder for the A.Y. 2020-21

Particulars	Fund A	Fund B	Fund C
Capital Gains [Income / 20]	1,00,000	75,000	
Income from Other Sources [Income / 20] [#(₹ 10 lakh – ₹ 2 lakh) / 20]	25,000	15,000	40,000#
Total Income	1,25,000	90,000	40,000

4. (a) Bangur Charitable Trust has earned income of ₹ 70 lacs during the previous year 2019-20. It has applied the income of ₹ 15 lacs, during the previous year 2019-20 and also applied before the due date u/s 139(1) for deferment of application of income of -

Case 1) ₹ 32 lacs

Case 2) ₹ 45 lacs

- as such income has not yet been received by the trust.

During the previous year 2022-23 such income is received and applied as under -

Previous Year	Amount applied for charitable purposes	
	Case 1	**Case 2**
2022-23	**₹ 12 lacs**	**₹ 15 lacs**
2023-24	**₹ 11 lacs**	**₹ 10 lacs**
2024-25	**₹ 9 lacs**	**₹ 20 lacs**

Compute taxable income of the A.Y. 2020-21 and 2024-25

Answer:

Computation of income of Bangur Charitable Trust for the A.Y. 2020-21

Particulars	Amount	
	Case 1	**Case 2**
Income earned	70 lacs	70 lacs
Less: Free accumulation of income @ 15%	10.5 lacs	10.5lacs
Balance	59.5 lacs	59.5 lacs
Less: Application of income during the previous year	15 lacs	15 lacs
	44.5 lacs	44.5 lacs
Less: Amount for which deferment is allowed [Max. of taxable income before deferment]	32 lacs	44.5 lacs
Taxable income	**12.5 lacs**	**Nil**

Computation of income of Bangur Charitable Trust for the A.Y.2024-25

Particulars	Amount	
	Case I	**Case II**
Amount deferred in the P.Y. 2019-20 and are to be applied till P.Y.2023-24 i.e. one year after the year in which such income is received	32	44.5
Less: Amount applied before 31/3/2024	23	25
Taxable income	**9**	**19.5**

4. (b) Discuss the cases when exemption u/s 11 is forfeited.

Answer:

Forfeiture of Exemption [Sec.13]

Nothing contained in section 11 [or section 12] shall operate in respect of —

- ***Income for private purposes***: Any part of the income from the property held under a trust for private religious purposes, which does not ensure for the benefit of the public.
- ***Income for the benefit of particular religious community***: in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste.
- ***Funds are not invested*** in securities/deposits as per sec.11(5). It is to be noted that holding shares in a public sector company would not disqualify the trust from claiming exemption.
- ***Income applied for the benefit of Interested person***: in the case of a trust for charitable or religious purposes, any income thereof:
  - if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust, any part of such income ensures, directly or indirectly for the benefit of interested person
  - if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied, directly or indirectly for the benefit of any interested person.

Note: The above provision shall not apply to a trust or institution created or established before the commencement of this Act, to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any Interested person, if such use or application is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution

5. Compare 'minimum alternate tax' u/s 115JB and 'alternate minimum tax' u/s 115JC?

Answer:

Comparison between 'minimum alternate tax' and 'alternate minimum tax' are as under:

Particulars	Alternate Minimum Tax (AMT)	Minimum Alternate Tax (MAT)
Applicability	It is applicable on all assessee (other than company) who has claimed any deduction under: • Sec. 80H to Sec. 80RRB (other than sec. 80P); or • Sec. 35AD *less* depreciation u/s 32 • Sec.10AA	It is applicable on Companies (Subject to few exceptions)

	Exception: The provisions shall not apply to an individual or a HUF or an AOP or a BOI, whether incorporated or not, or an artificial juridical person, if the adjusted total income of such person does not exceed ₹ 20 lakh.	
Income	It is calculated on Adjusted Total Income.	It is calculated on Book Profit.
Meaning of income	Adjusted total income means the total income as per income tax provisions in normal course as increased by deduction under: • Sec. 80H to Sec. 80RRB (other than sec. 80P); or • Sec. 35AD *less* depreciation u/s 32 • Sec.10AA	Book Profit means the profit as per profit and loss account of the company prepared in accordance with Schedule III of the Companies Act 2013 as increased/decreased by certain items specified in Explanation to Section 115JB.
Rate of Tax	Rate of AMT is 18.5%. + surcharge + cess	Rate of MAT is 15% + surcharge + cess
Credit	AMT paying assessee can claim its credit for 15 assessment years.	MAT paying companies can claim their credit for 15 assessment years.
Change of constitution	AMT credit in case of change in constitution is not available.	Change in constitution, that is, conversion of private limited company or unlisted public company into LLP shall result in lapse of MAT credit which would have been available to be set off to the company if such conversion had not taken place.
Brought forward loss & unabsorbed depreciation	While computing AMT, brought forward losses and unabsorbed depreciation both shall be taken into account.	While computing MAT, what is allowable to be deducted is brought forward loss or unabsorbed depreciation whichever is less and not both. *[DCIT Vs. Costal Resorts (I) Ltd. (2010) 125 ITD 170 (Cochin)]*
	For the calculation of AMT brought forward loss and unabsorbed depreciation liable to be set-off shall be in accordance with normal provisions of the Income-tax Act, 1961.	For the calculation of MAT brought forward loss and unabsorbed depreciation liable to be set off shall be in accordance with books of account.
	Such set-off of losses or depreciation shall reduce the amount of loss or depreciation to be carried forward in next year.	Such set off of losses or depreciation shall not affect the amount of loss or depreciation to be carried forward in next year.

Deductions	Deductions, rebates, allowances and adjustments except that provided in Chapter VI-A under the heading "C - Deductions in respect of certain incomes" and Section 10AA *are available* in computing Adjusted Total Income.	Deductions, rebates, allowances and adjustments except to the extent covered by the Explanation to Section 115JB *are not available* in computation of Book Profit. *[Growth Avenue Securities (P.) Ltd. vs. DCIT (2010) 126 ITD 179 (Del.)]*

6. (a) Discuss the tax treatment of income of a professional institution.

Answer:

Income of professional institutions [Sec. 10(23A)]

Any income (other than income chargeable under the head "Income from house property" or any income received for rendering any specific services or income by way of interest or dividends derived from its investments) of professional association shall be exempt provided -

(a) Such association or institution is established in India having as its object the control, supervision, regulation or encouragement of the profession of law, medicine, accountancy, engineering or architecture or other specified profession;

(b) Such association or institution applies its income, or accumulates it for application, solely to the objects for which it is established; and

(c) The association or institution is approved by the Central Government.

6. (b) A is an association governed by the provisions of sec. 44A of the Income-tax Act. The subscription receipts for the year ended 31st March, 2020 were ₹ 60,000. The expenditure in the normal course of its activities was ₹ 85,000. Its other income taxable under the Act works out to ₹ 75,000. On these facts, you are consulted as to:

a. How A's taxable income will be determined for assessment year 2020-21.

b. In case the association did not have the other income taxable will there be any difference in the computation of its income?

Answer:

Computation of total income

Particulars	Amount
Other Income	75,000
Less: Deficiency (Note 1)	25,000
Total Income	**50,000**

Note 1: Calculation of deficiency

Particulars	**Amount**
Subscription received	60,000
Less: Expenditure	85,000
Deficiency	**25,000**
Maximum deficiency can be set off against other income is lower of the following: a. Actual Deficiency i.e. ₹ 25,000 b. 50% of other income i.e., ₹ 37,500 being 50% of ₹ 75,000	

In case, association do not have any other taxable income, then the total income shall be nil and the deficiency of ₹ 25,000 shall not be carried forward.

7. Mention any six items which are required to added while computing book profit u/s 115JB

Answer:

Following items are required to be added while computing book profit u/s 115JB (if following amount is debited in the Statement of Profit & Loss):

(a) the amount of income-tax paid or payable, and the provision therefore;

- It includes:
  - Any interest under Income Tax Act;
  - Dividend distribution tax
  - Surcharge and cess on income-tax.
- It does not include:
  - Penalty paid or payable under this Act
  - Any tax, interest or penalty paid or payable under Wealth Tax Act or other Act;
  - Securities Transaction Tax;

(b) the amounts carried to any reserves, by whatever name called;

(c) the amount set aside to provisions made for meeting liabilities, other than ascertained liabilities;

Any provision made to meet unascertained liabilities like provision for gratuity or future losses, etc. should be added back. However, if the provision for gratuity has been made on the basis of actuarial valuation, it becomes ascertained liability, hence should not be added back [Shree Sajjan Mills Ltd. -vs.- CIT (SC)]

(d) the amount by way of provision for losses of subsidiary companies;

(e) the amount or amounts of dividends paid or proposed;

(f) the amount or amounts of expenditure relatable to any income to which sec. 10 or sec. 11 or sec. 12 apply.

(g) the amount or amounts of expenditure relatable to income being share of profit from AOP, if such share is exempt u/s 86

8. Write short note

(a) Tax on income from patent u/s 115BBF

(b) TDS on income of units of Investment Fund [Sec. 194LBB]

(c) Business Trust and its taxability

(d) Meaning of Securitisation Trust

Answer:

(a) Tax on income from patent u/s 115BBF

Where the total income of an eligible assessee includes any income by way of royalty in respect of a patent developed and registered in India, tax @ 10% shall be payable on such royalty income.

- *Eligible Assessee* means a person **resident** in **India** and who is a patentee;
- *Patentee* means the person, being the true and first inventor of the invention, whose name is entered on the patent register as the patentee, in accordance with the Patents Act, and includes every such person, being the true and first inventor of the invention, where more than one person is registered as patentee under that Act in respect of that patent.
- *Developed* means at least 75% of the expenditure incurred in India by the eligible assessee for any invention in respect of which patent is granted under the Patents Act, 1970
- *Royalty*, in respect of a patent, means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head "Capital gains" or consideration for sale of product manufactured with the use of patented process or the patented article for commercial use) for the:

  (i) transfer of all or any rights (including the granting of a licence) in respect of a patent; or

  (ii) imparting of any information concerning the working of, or the use of, a patent; or

  (iii) use of any patent; or

  (iv) rendering of any services in connection with the activities referred above
- *Lump sum* includes an advance payment on account of such royalties which is not returnable.

Other Provisions

- *No deduction for expenditure*: No deduction in respect of any expenditure or allowance shall be allowed to the eligible assessee in computing his royalty income.
- *Option to the assessee*: The eligible assessee is required to exercise the option for taxation of such royalty income in accordance with the provisions of this section, in the prescribed manner, on or before the due date for furnishing the return of income for the relevant previous year.
- *Concessional Rate is not applicable*: Where an eligible assessee opts for taxation of his royalty income in accordance with the provision of this section and he offers the royalty income for any of the 5 assessment years relevant to the previous year succeeding the previous year not in accordance with the provisions this section, then, the assessee shall not be eligible to claim the benefit of this section for 5 assessment years subsequent to the assessment year relevant to the previous year in which such income has not been offered to tax in accordance with this section.

(b) TDS on income of units of Investment Fund [Sec. 194LBB]

Who is responsible to deduct tax: The person responsible for making the payment of any income, other than that proportion of income which is of the same nature as income referred to in sec. 10(23FBB), to a unit holder in respect of units of an investment fund specified in clause (a) of the Explanation 1 to sec. 115UB

When tax shall be deducted: At the time of payment or crediting the payee, whichever is earlier.

Rate of TDS:

Payee	Rate of TDS
Resident	10%
Non-resident (not being a company)	30%
Foreign Company	40%

Note: Where the payee is a non-resident (not being a company) or a foreign company, deduction shall not be made in respect of any income that is not chargeable to tax.

Exemption or relaxation from the provision

When the recipient applies to the Assessing Officer in Form 13 and gets a certificate authorising the payer to deduct tax at lower rate or deduct no tax

(c) Business Trust and its taxability

As per sec. 2(13A), Business Trust means a trust registered as:

(i) an Infrastructure Investment Trust under the SEBI (Infrastructure Investment Trusts) Regulations, 2014; or

(ii) a Real Estate Investment Trust under the SEBI (Real Estate Investment Trusts) Regulations, 2014, and

the units of which are required to be listed on recognised stock exchange in accordance with the aforesaid regulations.

- *Exempted Income of Business Trust [Sec 10(23FC)]*

Any income of a business trust by way of

(a) interest received or receivable from a special purpose vehicle; or

(b) dividend referred to in sec. 115-O(7)

- "Special purpose vehicle" means an Indian company in which the business trust holds controlling interest and any specific percentage of shareholding or interest, as may be required by the regulations under which such trust is granted registration.
- Special purpose vehicle is not required to deduct tax at source on interest paid to the business trust [Sec. 194A(3)(xi)]. However, business trust is required to deduct tax at source @ 10% (5% in case of non-corporate non-resident or foreign company) on interest component of income distributed to the unitholders [Sec. 194LBA]

- *Other Income of Business Trust*

Subject to the provisions of sec. 111A and sec. 112, the total income of a business trust shall be charged to tax at the maximum marginal rate.

(d) Meaning of Securitisation Trust

Securitisation Trust means a trust, being a:

(i) Special purpose distinct entity as defined in regulation 2(1)(u) of the SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008 made under the SEBI Act, 1992 and the Securities Contracts (Regulation) Act, 1956, and regulated under the said regulations; or

(ii) Special Purpose Vehicle as regulated by the guidelines on securitisation of standard assets issued by the RBI; or

(iii) Trust set-up by a securitisation company or a reconstruction company formed, for the purposes of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), or in pursuance of any guidelines or directions issued by the RBI

which fulfils such conditions, as may be prescribed.

Study Note – 2

NON RESIDENT

Learning Objective: ***The goal of the study note is to learn various provisions applicable to an assessee being non-resident. Further, students are required to understand special provision relating to computation of income and tax liability of a non-resident assessee engaged in certain business.***

1. Choose the correct alternative and also provide your justification

(i) Sec. 44B of the Income-tax Act relates to the –

(a) shipping business in the case of non-resident assessee

(b) foreign company engaged in the business of turnkey power project

(c) business of operation of aircraft of non-resident assessee

(d) business of exploration of mineral oils of non-resident assessee

(ii) Section 115A to section 115BBD provides special tax rates on certain income of non-resident. Some of these provisions also states that assessee is not required to furnish return of income if his total income consists of such specified income only and tax has been deducted from such income. Following section(s) have such provision?

(a) Sec. 115AC

(b) Sec. 115BBA

(c) Both (a) and (b)

(d) None of the above

(iii) Section 44C of the Income tax Act imposes restriction on deduction in respect of head office expenditure in the case of non-residents. As per such provision, head office expenditure cannot exceed:

(a) 5% of adjusted total income

(b) 3% of adjusted total income

(c) 8% of adjusted total income

(d) 10% of adjusted total income

(iv) Special rate of tax as provided in sec. 115A on interest on infra-bond being issued to non-resident is:

(a) 5%

(b) 20%

(c) 10%

(d) 15%

(v) Royalty or fees for technical services (other than income covered u/s 44DA) received by a non-resident is taxable at the rate of –

(a) 20%

(b) 10%

(c) 25%

(d) 5%

(vi) Income of a non-resident sportsman by way of participation in India in any game or sport is taxable at the rate of –

(a) 20%

(b) 25%

(c) 10%

(d) not taxable in India

(vii) As per sec. 115ACA, long term capital gain in hands of resident individual on transfer of GDR of an Indian company engaged in specified knowledge based industry or service shall be taxable at the rate of –

(a) 10%

(b) 20%

(c) 5%

(d) Exempt

(viii) The rate of tax u/s 115AD, on short-term capital gains arising from the transfer of equity shares in a company or a unit of an equity oriented funds where such transaction is chargeable to securities transaction tax (STT) is –

(a) 15%

(b) 10%

(c) 20%

(d) 25%

(ix) As per sec. 115JG, capital gain arising from conversion of an Indian branch of foreign company into Indian subsidiary company is not chargeable to tax subject to certain conditions. In this context, you are requested to choose business of foreign company for which such section provides such relief –

(a) business of operation of aircraft

(b) business of shipping

(c) business of banking

(d) any business

(x) Any person who is responsible for paying interest (at the rate notified by the Central Government) to a person being a Foreign Institutional Investor or a Qualified Foreign Investor in respect of investment made by the payee in a rupee denominated bond of an Indian company, is liable to deduct tax @ ___

(a) 5%

(b) 10%

(c) 20%

(d) 30%

Answer:

(i) (a) Shipping business in the case of non-resident assessee

Reason:

As per sec. 43B, in the case of an assessee, being a non-resident, engaged in the business of operation of ships, 7.5% of the specified amounts shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

(ii) (c) Both (a) and (b)

Reason:

As per sec. 115AC(4) and 115BBA(2), it shall not be necessary for a non-resident to furnish a return of his income u/s 139(1) if:

a) his total income in respect of which he is assessable during the previous year consisted only of income referred to in respective sections; and

b) the TDS has been deducted from such income.

(iii) (a) 5% of adjusted total income

Reason:

As per sec. 44C, in the case of an assessee, being a non-resident, no allowance shall be made, in computing the income chargeable under the head "Profits and gains of business or profession", in respect of so much of the expenditure in the nature of head office expenditure as is in excess of the amount computed as hereunder:

a) an amount equal to 5% of the adjusted total income; or

b) the amount of so much of the expenditure in the nature of head office expenditure incurred by the assessee as is attributable to the business or profession of the assessee in India,

whichever is the least.

(iv) (a) 5%

Reason:

As per sec. 115A, interest received from an infrastructure debt fund referred to in sec. 10*(47)* shall be taxable @ 5%.

(v) (b) 10%

Reason:

Royalty or fees for technical services (other than income covered u/s 44DA) received by a non resident is taxable @ 10%. However, income covered u/s 44DA shall be computed under the head "Profits and gains of business or profession" in accordance with the provisions of this Act.

(vi) (a) 20%

Reason:

As per sec. 115BBA, income of a non-resident sportsman by way of participation in India in any game or sport is taxable @ 20%.

(vii) (a) 10%

Reason:

As per sec. 115ACA, long term capital gain in hands of resident individual on transfer of GDR of an Indian company engaged in specified knowledge based industry or service shall be taxable @ 10%.

(viii) (a) 15%

Reason:

The rate of tax u/s 115AD, on short-term capital gains arising from the transfer of equity shares in a company or a unit of an equity oriented funds where such transaction is chargeable to securities transaction tax (STT) is 15%, whereas long term capital gain is taxable @ 10%.

(ix) (c) business of banking

Reason:

Where a foreign company is engaged in the business of banking in India through its branch situated in India and such branch is converted into a subsidiary company thereof, being an Indian company (hereafter referred to as an Indian subsidiary company) in accordance with the scheme framed by the Reserve Bank of India (and subject to the conditions as may be notified by the Central Government), then, the capital gains arising from such conversion shall not be chargeable to tax in the assessment year relevant to the previous year in which such conversion takes place.

(x) (a) 5%

Reason:

As per sec. 194LD, any person who is responsible for paying interest (at the rate notified by the Central Government) to a person being a Foreign Institutional Investor or a Qualified Foreign Investor in respect of investment made by the payee in a rupee denominated bond of an Indian company, is liable to deduct tax @ 5%

2. (a) How could you compute income of a non-resident engaged in the business of exploration of mineral oils?

Answer:

Profits & Gains in connection with the Business of Exploration, etc. of Mineral Oils [Sec. 44BB]

Applicable to	**Non-resident assessee**
Conditions	Assessee must be engaged in the business of - • Providing services or facilities in connection with; or • Supplying plant[1] and machinery on hire, used or to be used in, – the prospecting for, or extraction or production of, mineral oils[2]. 1. Plant includes ships, aircraft, vehicles, drilling units, scientific apparatus and equipment, used for the purpose of the said business 2. Mineral oil includes petroleum and natural gas.
Estimated income	• A sum equal to 10% of the aggregate of the following amount shall be deemed to be the profits and gains of such business chargeable to tax - • The amount paid or payable (whether in or out of India) to the assessee (or to any person on his behalf) on account of the provision of services and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils in India; and

	• The amount received or deemed to be received in India by or on behalf of the assessee on account of the provision of services and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils outside India.
Assessee may claim lower profit	An assessee may claim lower profits and gains if he keeps and maintains books of account as per sec. 44AA and gets his accounts audited and furnishes the report u/s 44AB and thereupon the Assessing Officer shall proceed to make an assessment of the total income of the assessee u/s 143(3) & determine the sum payable by, or refundable to, the assessee

2. (b) What do you mean by place of effective management?

Answer:

Place of effective management

Place of effective management" means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole, are in substance made.' Circular 6/2017 dated 24-01-2017 provides that the process of determination of POEM would be primarily based on the fact as to whether or not the company is engaged in active business outside India (ABOI).

Particulars	POEM
Company is engaged in active business outside India	
– If the majority meetings of the board of directors of the company are held outside India	Outside India
– If Board of directors of the company are standing aside and not exercising their powers of management and such powers are being exercised by either the holding company or any other person (s) resident in India	In India
Company is not engaged in active business outside India then following are required to be ascertained: 1. The person(s) who actually make the key management and commercial decision for conduct of the company's business as a whole 2. Place where these decisions are in fact being made	
– If such place is in India	In India

Taxpoint

❖ A company shall be said to be engaged in "active business outside India" if

a) the passive income is not more than 50% of its total income; and

b) the passive income is less than 50% of its total assets are situated in India; and

c) the passive income is less than 50% of total number of employees are situated in India or are resident in India; and

d) the payroll expenses incurred on such employees is less than 50% of its total payroll expenditure.

❖ *Passive income* of a company shall be 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 (except for banking company or public financial institution) or rental income.

3. (a) USA Airlines incorporated as a company in USA operates its flights to India and vice versa during the year 2019-20 and collects charges of ₹150 lakh for carriage of passengers and cargo out of which ₹90 lakh were received in US Dollars for the passenger fare booked from New York to Mumbai. The total expenses for the year on operation of such flights were ₹195 lakh. Income chargeable to tax of the foreign airlines may please be computed.

Answer:

Computation of income of USA Airlines

Particulars	Fare booked from Mumbai to New York whether paid in India or outside India	Fare booked from New York to Mumbai	
		If paid in India (or deemed to be received in India)	If paid outside India
Fare	₹ 60 lakh [₹150 – ₹90]	₹ 90 lakh	₹ 90 lakh
Taxable Income @ 5% of the above	₹ 3,00,000	₹ 4,50,000	–

3. (b) Write notes on conversion of an Indian branch of Foreign Company into Subsidiary Indian Company.

Answer:

Conversion of an Indian branch of Foreign Company into Subsidiary Indian Company [Sec. 115JG]

Where a foreign company is engaged in the business of banking in India through its branch situated in India and such branch is converted into a subsidiary company thereof, being an Indian company (hereafter referred to as an Indian subsidiary company) in accordance with the scheme framed by the Reserve Bank of India (and subject to the conditions as may be notified by the Central Government), then,

(a) The capital gains arising from such conversion shall not be chargeable to tax in the assessment year relevant to the previous year in which such conversion takes place.

(b) The provisions of this Act relating to treatment of unabsorbed depreciation, set off or carry forward and set off of losses, tax credit in respect of tax paid on deemed income relating to certain companies and the computation of income in the case of the foreign company and the Indian subsidiary company shall apply with such exceptions, modifications and adaptations as may be specified in that notification.

Consequence of failure to Comply with any of the Conditions:

In case of failure to comply with any of the conditions specified in the scheme or in the notification, all the provisions of this Act shall apply to the foreign company and the said Indian subsidiary company without aforesaid benefit, exemption or relief.

Consequence of failure to Comply with any of the conditions after Claiming Benefit:

Where, in a previous year, any benefit, exemption or relief has been claimed and granted to the foreign company or the Indian subsidiary company and, subsequently, there is failure to comply with any of the conditions specified in the scheme or in the notification, then:

(a) Such benefit, exemption or relief shall be deemed to have been wrongly allowed;

(b) The Assessing Officer may, notwithstanding anything contained in this Act, re-compute the total income of the assessee for the said previous year and make the necessary amendment; and

(c) The provisions of sec. 154 shall, so far as may be, apply thereto and the period of 4 years specified in that section being reckoned from the end of the previous year in which the failure to comply with the condition takes place.

4. Discuss the provisions of withholding of tax in respect of following:

- **TDS on payment to non-resident sportsman or sports associations u/s 194E**
- **TDS on certain income from units of a Business Trust u/s 194LBA**
- **Interest on certain bonds, etc u/s 194LD**

Answer:

TDS on payment to non-resident sportsman or sports associations [Sec. 194E]

Who is responsible to deduct tax: Any person who is responsible to pay the following income –

Payee	Income by way of
Sportsman (including an athlete) or an entertainer being non-resident foreign citizen	1. Participation in India in any game (excluding card game or gambling) or sport
	2. Advertising
	3. Contribution of articles relating to any game or sports in any newspaper, magazine or journal.
Sports association being non- resident	Any game (other than card game) or sports organised in India

Rate of TDS: 20% (+ Surcharge + Health & Education Cess)

When tax shall be deducted: At the time of payment or crediting the party whichever is earlier.

TDS on certain income from units of a Business Trust [Sec. 194LBA]

Who is responsible to deduct tax: Any business trust distributing income referred to in sec. 115UA [being of the nature referred to in sec. 10(23FC) or 10(23FCA)] to its unit holder

When tax shall be deducted: At the time of payment or crediting the payee, whichever is earlier.

Rate of TDS:

Payee	Rate of TDS	
	Payment referred to in sec. 10 (23FC)	**Payment referred to in sec. 10 (23FCA)**
If payment is made to a resident unit holder	10%	10%
If payment is made to a unit holder being non-resident (not being a company)	5%	30% + SC + HEC
If payment is made to a unit holder being a foreign company	5%	40% + SC + HEC

Income by way of interest on certain bonds, Govt. securities [Sec. 194LD]

Who is responsible to deduct tax: Any person who is responsible for paying interest (at the rate notified by the Central Government) to a person being a Foreign Institutional Investor or a Qualified Foreign Investor. Such interest is payable at any time on or after 01/06/2013 but before 01/06/2020 in respect of investment made by the payee in:

(i) a rupee denominated bond of an Indian company ; or

(ii) a Government security:

When tax shall be deducted: At the time of payment or crediting the payee, whichever is earlier.

Rate of TDS: 5% (+ SC + HEC)

5. Mr. Crown, a non-resident, gives you the following information for the year ended 31-3-2020

Interest on Government securities (gross)	**21,000**
Dividend on shares of foreign companies received aboard	**52,000**
Income from units of Unit Trust of India (gross)	**10,000**
Interest from deposits in Indian companies (gross)	**30,000**
Income from horse races in India	**20,000**

He has donated a sum of ₹ 10,000 to Municipal Corporation of Delhi for promotion of family planning. He has paid ₹ 2,000 by cheque to New India Assurance Co. for mediclaim for himself. He has also spent ₹16,000 on medical treatment of his minor son who is physically handicapped.

Compute total income of Mr. Crown for the assessment year 2020-21.

Answer:

Computation of Total Income of Mr. Crown, a non-resident, for the A.Y.2020-21

Particulars	Working	Amount	Amount
Income from other sources			
Dividend from			
Foreign company	Non-resident	Nil	
UTI	Exempted u/s 10(35)	Nil	
Interest from			
Government securities		21,000	
Indian company deposits		30,000	51,000
Casual income			
Winning from horse races			20,000
Gross Total Income			71,000
Less: Deduction			
U/s 80D (Medical insurance)		2,000	
U/s 80DD (Handicapped son)	Non-resident	Nil	
U/s 80G (Donation)	Note	6,900	8,900
Total Income			62,100

Note: Computation of Deduction u/s 80G

Computation of Adjusted GTI:

Adj. GTI = GTI – Deduction u/s 80CCC to 80U other than 80G

= ₹ 71,000 – ₹ 2,000 = ₹ 69,000

Qualifying amount for donation = 10% of Adjusted GTI = 10% of ₹ 69,000 = ₹ 6,900

Deduction: In case of donation to Municipal Corporation for family planning, rate of deduction is 100% of qualifying amount. Hence, deduction u/s 80G shall be ₹ 6,900 (being 100% of ₹ 6,900).

6. Mr. Q, a non-resident, operates an aircraft between Singapore and Chennai. He received the following amounts in the course of the business of operation of aircraft during the previous year:

(i) ₹ 2 crores in India on account of carriage of passengers from Chennai.

(ii) ₹ 1 crore in India on account of carriage of goods from Chennai.

(iii) ₹ 3 crores in India on account of carriage of passengers from Singapore.

(iv) ₹ 1 crore in Singapore on account of carriage of passengers from Chennai.

(v) The total expenditure incurred by Mr. Q for the purposes of the business during the year was ₹6.75 crores.

Compute income chargeable to tax of the foreign airlines

Answer:

Computation of income of Mr. Q for the A.Y. 2020-21

Particulars	Amount
Amount received in India on account of carriage of passengers from Chennai	2,00,00,000
Amount received in India on account of carriage of goods from Chennai	1,00,00,000
Amount received in India on account of carriage of passengers from Singapore	3,00,00,000
Amount received in Singapore on account of carriage of passengers from Chennai	1,00,00,000
Total	**7,00,00,000**
Total Income (as per sec. 44BBA being 5% of above)	**35,00,000**

7. A non-resident foreign company has a permanent establishment (PE) in India, in respect of which royalty ₹101 lakh was earned from an Indian company in pursuance of an agreement dated 10th June, 2015 (expenditure incurred on PE in India ₹12,37,600). Compute the gross tax liability of foreign company ignoring TDS/advance tax for the assessment year 2020-21, assuming that there is no other income of the company for the year.

Answer:

Computation of Total Income and Tax Liability

Particulars	Amount
Royalty covered u/s 44DA	1,01,00,000
Less: Expenses	12,37,600
Income	88,62,400
Tax on above [104% {₹ 88,62,400 × 40%} [Rounded off]	36,86,760

8. Discussion the provision relating to deduction of Head Office Expenditure in the case of Non-residents u/s 44C.

Answer:

Deduction of Head Office Expenditure in the case of Non-residents [Sec. 44C]

In case of a non-resident assessee, head office expenditure shall not be allowed (in computing the income chargeable under the head "Profits and gains of business or profession") in excess of the higher of the following amount:

(i) an amount equal to 5% of the adjusted total income; or

(ii) the amount of so much of the expenditure in the nature of head office expenditure incurred by the assessee as is attributable to the business or profession of the assessee in India,

Other Points

- Adjusted total income means the total income without giving effect to:
  - a) Head-office expenditure u/s 44C; or
  - b) Unabsorbed depreciation u/s 32(2); or
  - c) The first proviso to sec. 36(1)(ix) i.e. capital expenditure on family planning; or
  - d) Any loss carried forward u/s 72 or 73 or 74 or 74A; or
  - e) The deductions under Chapter VIA;
- Where the adjusted total income of the assessee is a loss, then (i) shall be computed at the rate of 5% of the average adjusted total income of the assessee.
- Average adjusted total income means average of adjusted total income of 3 assessment years immediately preceding the relevant assessment year. However, where the total income of the assessee is assessable only for last 2 or 1 year(s), then average of last 2 or 1 year(s) shall be considered.

- Head office expenditure means executive and general administration expenditure incurred by the assessee outside India, including expenditure incurred in respect of:

  (a) rent, rates, taxes, repairs or insurance of any premises outside India used for the purposes of the business or profession;

  (b) salary, wages, annuity, pension, fees, bonus, commission, gratuity, perquisites or profits in lieu of or in addition to salary, whether paid or allowed to any employee or other person employed in, or managing the affairs of, any office outside India;

  (c) travelling by any employee or other person employed in, or managing the affairs of, any office outside India; and

  (d) such other matters connected with executive and general administration as may be prescribed.

9. Discuss the provision u/s 115JH which states that foreign company said to be resident in India

Answer:

Foreign company said to be resident in India [Sec. 115JH]

Where,

(i) a foreign company is said to be resident in India in any previous year; and

(ii) such foreign company has not been resident in India in any of the previous years preceding the said previous year,

then, the provisions relating to the computation of total income, treatment of unabsorbed depreciation, set off or carry forward and set off of losses, collection and recovery and special provisions relating to avoidance of tax shall apply with such exceptions, modifications and adaptations as may be specified in notification[1] issued by the Government for the said previous year.

Consequences when such company fails to comply with the conditions

- Where, in a previous year, any benefit, exemption or relief has been claimed and granted to the foreign company and, subsequently, there is failure to comply with any of the conditions specified in the notification, then,:

(i) such benefit, exemption or relief shall be deemed to have been wrongly allowed;

(ii) the Assessing Officer may, notwithstanding anything contained in this Act, re-compute the total income of the assessee for the said previous year and make the necessary amendment as if the exceptions, modifications and adaptations did not apply; and

[1] Notification No. 29/2018 dated 22/06/2018

(iii) the provisions of sec. 154 shall, so far as may be, apply thereto and the period of 4 years specified therein being reckoned from the end of the previous year in which the failure to comply with the conditions takes place.

Other Point

- Where the determination regarding foreign company to be resident in India has been made in the assessment proceedings relevant to any previous year, then the provisions shall also apply in respect of any other previous year, succeeding such previous year, if the foreign company is resident in India in that previous year and the previous year ends on or before the date on which such assessment proceeding is completed.

Study Note – 3

RETURN OF INCOME

Learning Objective: ***Certain class of person is required to file its return of income mandatorily. This study note will help to understand the various provisions relating to filing of return of income.***

1. Choose the correct alternative and also provide your justification

(i) Where the karta of a HUF is absent from India, the return of income can be verified by:

(a) any member of the family

(b) any male member of the family

(c) any other adult member of the family

(d) any member holding power of attorney

(ii) Where assessment has not been completed, belated income tax return for assessment year 2020-21 can be filed upto

(a) 31.03.2021

(b) 31.12.2020

(c) 31.03.2020

(d) 31.12.2021

(iii) Following form number is to be used for filing the return of income by an individual having business income?

(a) ITR 1

(b) ITR 2

(c) ITR 3

(d) ITR 5

(iv) Quoting 'Permanent Account Number' (PAN) is compulsory in the following transaction –

(a) Payment of LIP exceeding ₹ 50,000 in a financial year

(b) Sale or purchase of any immovable property valued at ₹ 4,00,000

(c) Time deposit upto ₹ 35,000 with a bank

(d) None of the above

(v) When assessment has not been completed, revised return can be filed:

(a) Before the end of the relevant assessment year.

(b) Within one year from the end of the relevant assessment year.

(c) Within two years from the end of the relevant assessment year.

(d) None of the above

(vi) In case of companies deriving loss for any assessment year, filing of return of income within due date laid down in section 139(1) is compulsory -

(a) only where the Department issues notice to the assessee-company

(b) for domestic companies only

(c) for foreign companies only

(d) for all companies

(vii) For the assessment year 2020-21, the due date of furnishing return of income for a working partner of a firm whose accounts are required to be audited is –

(a) 31st July, 2020

(b) 30th November, 2020

(c) 31st October, 2020

(d) 31st March, 2020

(viii) Which return of income cannot be revised by the assessee?

(a) Return of loss

(b) Belated return

(c) Both of the above

(d) None of the above

(ix) For an individual assessee, who is absent from India, the return should be verified by –

(a) His guardian

(b) Any person duly authorized by him

(c) His tax consultant

(d) Either of the above

(x) A return filed u/s 139(4) is called –

(a) Belated Return

(b) Original return

(c) Revised return

(d) Loss return

Answer:

(i) (c) any other adult member of the family

Reason:

As per sec. 140, where the karta of a HUF is absent from India, the return of income can be verified by any other adult member of the family.

(ii) (a) 31.03.2021

Reason:

As per sec. 139(4), assessee may file belated return -

- before the end of the relevant assessment year; or
- before the completion of assessment,

- whichever is earlier.

(iii) (c) ITR 3

Reason:

Individuals and HUFs having income from a proprietary business or profession is required to file return of income in ITR 3.

(iv) (a) Payment of LIP exceeding ₹ 50,000 in a financial year

Reason:

Every person shall quote its PAN in all documents pertaining to specified transactions entered into by him. Among other, payment of LIP exceeding ₹ 50,000 in a financial year is a specified transaction. In respect of other options given, the threshold limit is higher then given with the option (in respect of time deposit, the limit is ₹ 50,000 and in case of transaction relating to immovable property the limit is ₹ 10 lakh).

(v) (a) Before the end of the relevant assessment year.

Reason:

As per sec. 139(5), assessee may file revised return -

- before the end of the relevant assessment year; or
- before the completion of regular assessment,

- whichever is earlier.

(vi) (d) for all companies

Reason:

As per sec. 139(1), every company is required to file its return of income irrespective of size of income.

(vii) (b) 30th November, 2020

Reason:

As per Explanation 2 to sec. 139(1), where the assessee is a *working partner* in a firm and the accounts of the firm are required to be audited under any law, then he can file his return by 31st October of the assessment year. For assessment year 2020-21, due date is 30th November 2020.

(viii) (d) None of the above

Reason:

Any return of income filed by the assessee can be revised within stipulated time given u/s 139(5).

(ix) (b) Any person duly authorized by him

Reason:

As per sec. 140, where an individual is absent from India, the return of income can be verified by any person duly authorized by him.

(x) (a) Belated Return

Reason:

Sec. 139(4) deals with filing of belated return.

2. (a) State mandatory provision of filing return of income in case of high value transaction.

Answer:

Mandatory furnishing of return in case of high value transactions [7th Proviso to Sec. 139(1)]

A person (other than firm and company), who is not required to furnish a return as per aforesaid provision, and who during the previous year:

(a) has deposited an aggregate amount exceeding ₹1 crore in one or more current accounts maintained with a banking company or a co-operative bank; or

(b) has incurred expenditure of an aggregate amounts exceeding ₹ 2 lakh for himself or any other person for travel to a foreign country; or

(c) has incurred expenditure of an aggregate amount exceeding ₹ 1 lakh towards consumption of electricity; or

(d) fulfils such other conditions as may be prescribed,

shall furnish a return of his income on or before the due date in such form and verified in such manner and setting forth such other particulars, as may be prescribed.

2. (b) State the steps for filing ITR 1 online.

Answer:

Following are the steps for e-filing of Return Form 1 and Form 4 (online)

Step 1	Logon to 'e-Filing' Portal
Step 2	Go to the 'e-File' menu located at upper-left side of the page ⇒ Click 'Income Tax Return'
Step 3	Select the 'Assessment Year', 'ITR Form Name' from the dropdown list
Step 4	Select the 'Submission Mode' as 'Prepare and Submit Online' from the dropdown list
Step 5	Choose any one of the following option to verify the Income Tax Return: • Digital Signature Certificate (DSC). If you do not have DSC • Aadhaar OTP • EVC using Prevalidate Bank Account Details • EVC using Prevalidate Demat Account Details • Already generated EVC through My Account ⇒ Generate EVC Option or Bank ATM. Validity of such EVC is 72 hours from the time of generation • Don't want to e-verify this Income Tax Return and would like to send signed ITR-V to Bengaluru Click 'Continue'
Step 6	Read the instructions ⇒ Fill in Required details While filling the details in ITR, under category 'Return Filed' Note: Before submitting the data, kindly save the data you have entered by clicking on 'Save as Draft' to recheck any mistakes.
Step 7	Click 'Preview and Submit' button to preview your ITR from before submitting it.
Step 8	Click 'Submit' Taxpayer will get an option to enter OTP for e-verifying the ITR, if an EVC or Aadhaar OTP option is chosen or To attach DSC, if DSC option is chosen to e-verify the ITR. After successful submission, ITD will process your ITR and send an email confirmation stating the same.

3. Manu furnishes the following information for the previous year 2019-20:

(a)	**Loss from business**	**: ₹ 16,00,000**
(b)	**Long-term capital loss**	**: ₹ 10,00,000**
(c)	**Loss from House property**	**: ₹ 2,00,000**

Does Manu require to submit return? Also state the consequences for non filing of return. What is the due date of submission of such return?

Answer:

An individual-assessee is not compulsorily required to furnish return of loss. However, the following losses cannot be carried forward if the return of loss is not submitted within the time allowed u/s 139(1):

(a) Business loss (speculative or otherwise);

(b) Capital loss;

(c) Loss from the activity of owning and maintaining race horses.

Manu is required to file his return of loss by 30-11-2020 (whether audit is required or not).

4. Write the correct answer from the following statements as per provision of 139(1) of Income Tax Act, 1961.

(i) Mr. Rahaman, a salaried employee of Calcutta based company having Taxable Income ₹ 4,00,000 for the Previous year 2019–20, whose due date of filing income tax return is 30th November, 2020.

(ii) Mr. Raghab, a salaried employee of Tata Motors having Taxable income ₹ 8,00,000 for the previous year 2019–20, and fails to file Income Tax Return within Due date as per Income Tax Act. He wants to file Belated Return. The time limit of filing Belated return is within 31st March 2022.

(iii) Mr. Ananda, a Businessman filed Belated Return for the Previous year 2019–20. He wants to submit Revised Return on 31st March 2021, after he discovered that he failed to claim a deduction allowable u/s 80.

(iv) M/s ABC, a Kolkata based partnership firm is required to get its Accounts Audited under Income Tax Act. The Due Date of filing Income Tax Return of the firm for the Previous Year 2019–20 is within 31st July 2020.

(v) Ms. Ankita is the working partner of a partnership firm and the accounts of the firm is required to be audited. Due Date of filing Income Tax Return of Ms. Ankita for the Previous Year 2019–20 is within 31st December, 2020.

Answer:

(i) Due Date of filing Income Tax Return shall be 30th November, 2020.

(ii) He can file belated return upto 31-03-2021.

(iii) A belated return can be revised.

(iv) Partnership firm, whose accounts are required to be audited, is required to submit the return of income by 30-11-2020

(v) Due date of filing return shall be 30-11-2020.

5. State whether the following persons have to mandatorily furnish their return of income for the assessment year 2020-21:

(i) Mr. Choudhury, aged 52 years whose gross total income ₹ 3,00,000 and total income after deduction u/s 80C is ₹ 2,00,000.

(ii) M/s ROXY, a partnership firm, whose total income during the previous year 2019-20 ₹ 50,000.

(iii) Smt. R. Bose aged 62 years, having total income ₹ 2,80,000.

(iv) Renbo India Ltd., a registered company in India, has incurred loss during the previous year 2019-20 ₹2,20,000.

(v) Smt. I. Shing, aged 50 years, whose total income is ₹ 2,40,000 before adjustment of unabsorbed business loss of ₹ 1,00,000.

Answer:

(i) Yes, as his gross total income exceeds basic exemption limit

(ii) Yes, partnership firm is required to file its return of income irrespective of its size of turnover or income

(iii) No, as her gross total income does not exceed basic exemption limit applicable to her (i.e., ₹ 3,00,000)

(iv) Yes, company is required to file its return of income irrespective of its size of turnover or income

(v) An assessee is not compulsorily required to furnish return of loss. However, business loss (among other specified losses) cannot be carried forward if the return of loss is not submitted within the time allowed u/s 139(1).

6. Enumerate the functionalities available at e-filing portal.

Answer:

Few of the functionalities available at e-filing portal are as follow:

- View Form 26AS
- View (with download facility) e-Filed Return / Form
- Tax Credit mismatch
- Download pre-filled XML
- e-Verify Return

- Generate EVC
- Add / Disengage CA or e-Return Intermediary
- Add / Register as Representative
- Filing of Returns
- Filing of Rectification
- Filing of return in response of notice u/s 139(9)
- Status of refund issue or status of demand
- Aadhar linking
- e-Proceedings
- Filing of appeal to CIT(Appeals)
- Registration or updation of Digital Sign
- Refund reissue request
- Validation of Bank Account or Demat Account
- Profile updation

7. What is defective return?

Answer:

Defective Return [Sec. 139(9)]

When a return is termed defective - A return of income is said to be defective where all the following conditions are not fulfilled:

- The return is furnished without paying self-assessment tax along with interest, if any.
- The annexure, statements and columns in the return of income have been duly filled in.
- The return is *accompanied by* the following documents -
  - (a) a statement showing the computation of tax liability;
  - (b) the audit report u/s 44AB (where the report has been submitted prior to the furnishing of return, a copy of audit report together with proof of furnishing the report);
  - (c) the proof of tax deducted or collected at source, advance tax paid and tax paid on self-assessment;
  - (d) where regular books of account are maintained by the assessee:
    - (i) copies of Manufacturing A/c, Trading A/c, Profit and Loss A/c or Income and Expenditure A/c or any other similar account and Balance Sheet;
    - (ii) in the case of –
      - A proprietary business or profession - the personal account of the proprietor;

- A firm, AOP or BOI - personal account of the partners or members; or
- A partner or member of the firm, AOP or BOI - his personal account in the firm, association of persons or body of individuals;

where regular books of account are not maintained by the assessee –

(e) where regular books of account are not maintained by the assessee:

(i) a statement indicating the amount of turnover or gross receipts, gross profit, expenses and net profit of the business or profession and the basis on which such amount have been computed; and

(ii) the amount of sundry debtors, sundry creditors, stock and cash balance as at the end of the previous year.

(f) where the accounts of the assessee have been audited, copies of the audited Profit and Loss A/c, Balance Sheet and a copy of the Auditor's report;

(g) Cost audit report u/s 233B of the Companies Act, 1956 (if any).

Effect: Where the Assessing Officer considers that the return of income furnished by the taxpayer is defective, he may intimate the defect to the taxpayer and give him an opportunity to rectify the defect(s).

Time limit for rectification: The assessee must rectify the error within a period of 15 days from the date of intimation (served on the assessee) or within such extended time as allowed by the Assessing Officer. Where the taxpayer rectifies the defect after the expiry of the period of 15 days or such extended period but before the assessment is completed, the Assessing Officer can condone such delay.

Consequence when defect is not rectified: If defect is not rectified within the time limit, the Assessing Officer will treat the return as an invalid return and provisions of the Act will apply as if the taxpayer had failed to furnish the return at all.

Note: Currently, the assessee is required to furnish paper-less return. i.e., no documents, proof or report (other than some specified report required to be furnished electronically) is required to be attached with return of income. In this regard, return of income shall not be considered as defective return. However, the assessee should retain these documents, proof or report with himself. If called for by the income-tax authority during any proceeding, it shall be incumbent upon the assessee to furnish/produce the same.

8. Discuss the provision relating to filing of return of income in respect of following:

- **Political Party**
- **University**
- **Business Trust**
- **Investment Fund**

Answer:

Return of income of Political Party [Sec. 139(4B)]

The chief executive officer (whether such chief executive officer is known as Secretary or by any other designation) of any political party is required to furnish a return in respect of income of such political party, if the

amount of gross total income before allowing exemption u/s 13A exceeds the maximum amount not chargeable to tax.

Return of income by a University/ College etc. [Sec. 139(4D)]

Every University, college or other institutions referred to in sec. 35(1)(ii) or (iii) is required to furnish a return in respect of income or loss irrespective of size of income or loss.

Return of income of a Business Trust [Sec. 139(4E)]

Every business trust, which is not required to furnish return of income or loss under any other provisions of this section, shall furnish the return of its income in respect of its income or loss in every previous year and all the provisions of this Act shall, so far as may be, apply if it were a return required to be furnished u/s 139(1).

Return of income of Investment Fund [Sec. 139(4F)]

Every investment fund referred to in sec. 115UB, which is not required to furnish return of income or loss under any other provisions of this section, shall furnish the return of income in respect of its income or loss in every previous year and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished u/s 139(1)

9. Who can verify return of income?

Answer:

As per sec. 140, the return of income is required to be verified:

Assessee	Case	Verified by
Individual	In general	Individual himself
	Where the individual concerned is absent from India	Individual himself or by the duly authorized person of such individual
	Where the individual is mentally incapacitated	Guardian of such individual or any other person competent to act on his behalf
	Where by any other reason it is not possible for the individual to verify the return.	Any person duly authorised by him
	Note: When return is verified by any authorised person in that case the return should be accompanied with power of attorney.	
HUF	In general	Karta
	Where the 'karta' is absent from India or is mentally incapacitated	Any adult member of the family.

Firm	In general	Managing partner
	If due to any reason it is not possible for managing partner to verify or where there is no managing partner	Any adult partner
Limited liability partnership	In general	Designated partner
	If due to any unavoidable reason such designated partner is not able to verify the return, or where there is no designated partner as such	Any partner
Local authority	**Principal Officer**	
Political party	Chief Executive Officer	
Company	In general	Managing Director (MD)
	If due to any reason it is not possible for MD to verify or where there is no MD	Any director
	Where an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under Insolvency and Bankruptcy Code, 2016	Insolvency professional appointed by such Adjudicating Authority
	Non-resident company	A person holding a valid power of attorney. Copy of such power of attorney must be attached with the return.
	Company in process of winding up	Liquidator of the company
	Where the management of the company has been taken over by the Central or State Government.	Principal officer
Any other association	Any member or principal officer	
Any other person	Such person or any other person competent to act on its behalf.	

10. What is the due date for filing return of income in case of various assessee?

Answer:

Time limit for filing return of income [Explanation 2 to Sec. 139(1)]

A return should be filed on or before the following due date (of respective assessment year):

Assessee	Due date	
	Earlier	**New**
• Where the assessee is required to furnish a report in Form 3CEB u/s 92E pertaining to international transaction(s)	30th November	30th November
• Where the assessee is a company not having international transaction(s)	30th September	31st October
• *Any other assessee*		
– Where accounts of the assessee are required to be audited under any law	30th September	31st October r
– Where the assessee is a *working partner* (from A.Y. 2020-21, all partner) in a firm and the accounts of the firm are required to be audited under any law	30th September	31st October
– In any other case	31st July	31st July

Impact of Covid 19

Due date in all cases is 30th November, 2020.

Study Note – 4

ASSESSMENT PROCEDURE

Learning Objective: ***The income-tax authorities have right to assess the income of the assessee. This study note will help to understand the provisions relating to various types of assessment.***

1. Choose the correct alternative and also provide your justification

(i) Assessment under section 143(3) shall be made within a period of _____ months from the end of the relevant assessment year.

(a) 18

(b) 12

(c) 36

(d) 24

(ii) Assessment under section 143(3) r.w.s. 147 shall be made within a period of ____ months from the end of the financial year in which notice u/s 148 was _____ .

(a) 21, issued

(b) 9, served

(c) 9, issued

(d) 21, served

(iii) Intimation u/s 143(1) can be send within a period of _____year from the end of the financial year in which the return of income is filed.

(a) 2

(b) 1

(c) 3

(d) 4

(iv) Which of the following can be corrected while processing the return of income under section 143(1)?

(a) any arithmetical error in the return

(b) any mistake in the return of income

(c) any error in the return of income

(d) any claim by the taxpayer which is against law

(v) Notice under section 143(2) (i.e. notice of scrutiny assessment) should be served within a period of _____ from the end of the financial year in which the return is filed.

(a) six months

(b) one years

(c) eighteen months

(d) two years

(vi) Section 144C envisages an alternate dispute resolution mechanism by empowering the CBDT to constitute a _____.

(a) Securities and Exchange Board of India

(b) Dispute Resolution Panel

(c) Constitution of India

(d) Central Board of Direct taxes

(vii) The time limit for rectification of mistakes is a period of ____ from the end of the financial year in which the order sought to be amended was passed.

(a) four years

(b) three years

(c) two years

(d) one year

(viii) Regular assessment means assessment made under section —

(a) 143(3)

(b) 147

(c) Both (A) and (B) above

(d) None of the above

(ix) If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may initiate proceedings of —

(a) Re-assessment

(b) Regular assessment

(c) Self assessment

(d) Best judgement assessment

(x) Assessment is required to be completed within specified time frame. However, while computing such time following period shall be excluded –

(a) Time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be re-heard under the proviso to sec. 129

(b) Period during which the assessment proceeding is stayed by an order or injunction of a court

(c) Both (a) and (b)

(d) None of the above as time limit for assessment cannot be increased in any circumstances

Answer:

(i) (b) 12

Reason:

As per sec. 153(1), assessment must be completed within 12 months from the end of the relevant assessment year.

(ii) (b) 9, served

Reason:

Assessment under section 143(3) r.w.s. 147 shall be made within a period of 9 months from the end of the financial year in which notice u/s 148 was served.

(iii) (b) 1

Reason:

No intimation shall be sent after the expiry of 1 year from the end of the financial year in which the return is made. The period of limitation will run from the date of filing of latest revised return.

(iv) (a) any arithmetical error in the return

Reason:

Where a return has been made u/s 139 or in response to a notice u/s 142(1), such return shall be processed. During processing, the total income or loss shall be computed after making the adjustment (among other) any arithmetical error in the return.

(v) (a) six months

Reason:

No notice u/s 143(2) shall be served on the assessee after the expiry of 6 months from the end of the financial year in which the return is furnished.

(vi) (b) Dispute Resolution Panel

Reason:

Sec. 144C envisages an alternate dispute resolution mechanism by empowering the CBDT to constitute a Dispute Resolution Panel. Dispute Resolution Panel means a collegium comprising of 3 Commissioners of Income-tax constituted by the Board for this purpose

(vii) (a) four years

Reason:

As per sec. 154(7), rectification can be made within 4 years from the end of the financial year in which the order sought to be amended was passed. However, in respect of an application made by the assessee or deductor or collector, the authority shall, within a period of 6 months from the end of the month in which the application is received by it, pass an order -

a. making the amendment; or

b. refusing to allow the claim.

(viii) (a) 143(3)

Reason:

Assessment made u/s 143(3) is regular assessment. Assessment u/s 147 is income escaping assessment.

(ix) (a) Re-assessment

Reason:

If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may initiate proceedings of re-assessment u/s 147.

(x) (c) Both (a) and (b)

Reason:

As per Explanation 1 to sec. 153, in computing the time limitation for completion of assessment, following (among other) period shall be excluded —

1. Time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be re-heard under the proviso to sec. 129; or
2. Period during which the assessment proceeding is stayed by an order or injunction of a court.

2. (a) "The assessing officer has no power to make adjustment of any kind to income returned by an assessee at the time of processing the return of income under section 143(1)." Critically examine the statement.

Answer:

Where a return has been made u/s 139 or in response to a notice u/s 142(1), such return shall be processed in the following manner, namely:—

(a) the total income or loss shall be computed after making the following adjustment:

(i) any arithmetical error in the return;

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;

(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished after the due date;

(iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;

(v) disallowance of deduction claimed u/s 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or 80-IE, if the return is furnished after the due date; or

Such adjustments shall not be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode. The response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within 30 days of the issue of such intimation, such adjustments shall be made.

(b) the tax, interest and fee, if any, shall be computed on the total income computed above;

(c) the sum payable by (or the amount of refund due to), the assessee shall be determined after adjustment of the tax, interest and fee, if any, by any TDS, TCS, advance tax paid, any relief, tax paid on self-assessment and any amount paid otherwise by way of tax, interest or fee;

(d) an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee; and

(e) the amount of refund due to the assessee in pursuance of the determination shall be granted to the assessee.

(f) An intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax or interest or fee is payable by, or no refund is due to, him.

3. Please state the time limit and conditions for issue of notice of reassessment under Section 148 and 149 of the income-tax Act, 1961

Answer:

Issue of notice [Sec. 148]

Before making the assessment u/s 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish a return within such period, as may be specified in the notice.

Note: Notice u/s 148 cannot be issued during pendency of assessment proceedings

Time limit for notice [Sec. 149]

Notice u/s 148 can be issued subject to the following time limit—

Time limit for issue of notice	Size of escaped income	Person authorised to issue notice
Where assessment has already been completed u/s 143(3) or 147		
Upto 4 years from the end of the relevant assessment year	Any amount	Any Assessing Officer with the permission of Joint Commissioner.
Beyond 4 years and upto 6 years from the end of relevant assessment year.	₹ 1,00,000 or more	Assessing Officer after approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.
Where assessment has not been completed u/s 143(3) or 147		
Upto 4 years from the end of relevant assessment year.	Any amount	Any Assessing Officer with the permission of Joint Commissioner.
Beyond 4 years and upto 6 years from the end of relevant assessment year.	₹ 1,00,000 or more	Assessing Officer after approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.
If the person on whom a notice u/s 148 is to be served, is a person treated as the agent of a non-resident u/s 163		
Up to 6 years from the end of relevant assessment year.	Escaped income is of any amount	Assessing Officer
Taxpoint: *The above time limit is for issuance of notice and not for service of notice. If the notice is issued within the above time limit but served to the assessee after the above time limit, shall be a valid notice.*		

Exceptions to the above time limit

1. Where an assessment u/s 143(3) or 147 has been made for the relevant assessment year, no action shall be taken under this section after the expiry of 4 years from the end of relevant assessment year, unless any income chargeable to tax has escaped assessment by reason of failure on the part of the assessee -

- to file a return u/s 139 or in response to a notice issued u/s 142(1) or u/s 148; or
- to disclose fully and truly all material facts necessary for his assessment for that assessment year.

Note:

a. The aforesaid exception is not applicable where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year

b. Production before the Assessing Officer of books of account or other evidence from which material evidence could, with due diligence, have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

2. Where the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment, notice shall be issued upto 16 years from the end of the relevant assessment year,

3. As per sec. 150(1), the notice u/s 148 may be issued at any time for the purpose of making assessment or reassessment in consequence of or to give effect to any findings or directions contained in an order passed by -

- any authority in any proceedings under this Act by way of appeal, reference or revision; or
- a court in any proceeding under any other law.

Exception

The provisions shall not apply in any case where any such assessment (reassessment or recomputation) relates to an assessment year in respect of which an assessment (reassessment or recomputation) could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of aforesaid time-limitation.

4. Briefly discuss the provisions of section 142(2A) of the Income-tax Act, 1961 relating to special audit.

Answer:

Giving direction to get books of account audited [Sec. 142(2A) to (2D)]

The Assessing Officer (after giving reasonable opportunity to the assessee) may direct the assessee to get his accounts audited if he is of the opinion that it is necessary to do so having regard to the -

- nature and complexity of the accounts, volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialised nature of business activity of the assessee; and
- interest of revenue.

Such direction can be issued even if the accounts of the assessee have already been audited u/s 44AB or any other law for the time being in force

Notes:

a. Such direction can be issued only with the prior approval of the Principle Chief Commissioner / Principle Commissioner / Chief Commissioner / Commissioner.

b. The Principle Chief Commissioner / Principle Commissioner / Chief Commissioner / Commissioner nominates such auditor.

c. Such order can be issued at any stage of the proceedings before the Assessing Officer. However, no such order shall be issued after the completion of assessment/reassessment.

Time Limit for audit report: The audit report shall be furnished by the assessee within the period specified by the Assessing Officer. The Assessing Officer has power to extend such period on an application made by the assessee or *suomotu*. However, the aggregate period (fixed originally and extended) shall not exceed 180 days from the date on which such direction is received by the assessee.

Form of audit report: The chartered accountant shall submit the report in Form 6B to the assessee. Thereafter such report is to be submitted by the assessee to the Assessing Officer within such period as allowed by the Assessing Officer.

Audit fees: The audit fees and audit expenditure shall be determined by the Principle Chief Commissioner / Principle Commissioner / Chief Commissioner / Commissioner (which shall be final) and paid by the Central Government.

Consequences of failure to get books of account audited: In case assessee fails to get books of account audited, it -

- will be liable to Best Judgment Assessment u/s 144; and
- attracts penalty and prosecution.

Note: Penalty etc. are attracted only if there is a default by the assessee. If accountant nominated by the Commissioner refuses to audit the accounts, the assessee cannot be held responsible

5. State the time limit prescribed for passing the following order the Income Tax Act:

(i) An order of assessment by the Assessing Officer u/s 143(3);

(ii) An order of assessment by the Assessing Officer u/s 147;

(iii) An order of assessment by the Assessing Officer u/s 144;

(iv) A suo-moto rectification order by the Assessing Officer u/s 154;

Answer:

(i) 12 months from the end of relevant assessment year.

(ii) 9 months from the end of the financial year in which notice u/s 148 was served.

(iii) 12 months from the end of relevant assessment year.

(iv) 4 years from the end of the financial year in which the order sought to be amended was passed

6. Write short note of self assessment u/s 140A

Answer:

Self-Assessment [Sec. 140A]

In self-assessment, assessee itself is responsible to determine its taxable income, tax liability and to pay tax accordingly. Provision of sec. 140A is as follows -

(a) Where any tax is payable (after deducting relief, rebate, advance payment of tax or tax deducted or collected at source or MAT or AMT credit, relief u/s 89, if any) on the basis of return furnished the assessee is required to pay such tax before filing the return.

Taxpoint: A return furnished without paying self-assessment tax & interest, if any, shall be treated as defective return.

(b) If any interest is payable for delayed filing of return (u/s 234A) or default in payment of advance tax (u/s 234B) or for deferment of advance tax (u/s 234C) or fee (u/s 234F) is payable for filing return after due date, then such interest or fee should be paid along with self-assessment tax.

Note: While calculating above interest for the purpose of self-assessment, tax on the total income declared in the return shall be considered.

(c) Where the amount paid by the assessee falls short of the aggregate of tax, interest and fee, the amount so paid shall first be adjusted towards fee and thereafter towards interest payable and the balance, if any, shall be adjusted towards tax payable.

(d) After assessment, any amount paid under this section shall be deemed to have been paid towards such assessment.

(e) If an assessee fails to pay whole or any part of such tax or interest or both in accordance with the provisions of sec. 140A, he shall be deemed to be an *assessee in default*.

7. Can the Assessing Officer issue notice u/s 148 to reopen the same assessment order on the same grounds for which the CIT had issued notice u/s 263 of the Act? Discuss

Answer:

Third proviso to sec. 147 provides that the Assessing Officer may assess or reassess an income which is chargeable to tax and has escaped assessment, other than the income involving matters which are the subject matter of any appeal, reference or revision. Therefore, if the income relates to a matter which is the subject matter of revision u/s 263, then the Assessing Officer cannot issue notice u/s 148 to reopen the assessment order.

8. The Assessing Officer has the power to make an assessment to the best of his judgment, in certain situations. What are they?

Answer:

In the following situations assessment shall be made under sec. 144:

(a) If the person fails to file the return u/s 139(1), 139(4) or 139(5); or

(b) If the person fails to comply with the terms of notice u/s 142(1); or

(c) If the person fails to comply with the directions u/s 142(2A) requiring him to get his accounts audited; or

(d) If the person fails to comply with the terms of notice u/s 143(2), requiring his presence or production of evidence and documents.

Further, as per sec. 145(3), if the Assessing Officer is not satisfied with the correctness or the completeness of the accounts of the assessee or if no regular method of accountancy or accounting standards [as notified by the Central Government u/s 145(2)] is followed by the assessee, the Assessing Officer may make an assessment in the manner provided u/s 144.

9. Write a brief note on provision relating to dispute resolution panel u/s 144C

Answer:

Reference to Dispute Resolution Panel [Sec. 144C]

The dispute resolution mechanism presently in place is time consuming and finality in high demand cases is attained only after a long drawn litigation till Supreme Court. Flow of foreign investment is extremely sensitive to prolonged uncertainity in tax related matter. Therefore, the Income-tax Act is amended to provide for an alternate dispute resolution mechanism which will facilitate expeditious resolution of disputes in a fast track basis. The provision relating to alternate dispute resolution mechanism are as under:

1. The Assessing Officer shall, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order) to the eligible assessee# if he proposes to make any variation in the income or loss returned which is prejudicial to the interest of such assessee.

   # Eligible assessee means:

   (i) Any person in whose case the variation referred to arises as a consequence of the order of the Transfer Pricing Officer passed u/s 92CA(3); and

   (ii) Any foreign company

2. On receipt of the draft order, the eligible assessee shall, within 30 days of the receipt by him of the draft order:

   (a) File his acceptance of the variations to the Assessing Officer; or

   (b) File his objections, if any, to such variation with,—

      (i) The Dispute Resolution Panel; and

      (ii) The Assessing Officer.

$ Dispute Resolution Panel means a collegium comprising of 3 Commissioners of Income-tax constituted by the Board for this purpose.

3. The Assessing Officer shall complete the assessment on the basis of the draft order, if:
   (a) The assessee intimates to the Assessing Officer the acceptance of the variation; or
   (b) No objections are received within 30 days as specified above.

   Time limit for passing of order: The Assessing Officer shall pass such order within 1 month from the end of the month in which,—

   (i) The acceptance is received; or

   (ii) The period of filing of objections (i.e. 30 days) expires.

   The time limit is irrespective of time limit given u/s 153 (or 153B) for passing an assessment order.

4. The Dispute Resolution Panel shall, in a case where any objections are received, issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.
5. The Dispute Resolution Panel shall issue the directions, for guidance of the Assessing Officer, after considering the following:
   a. Draft order;
   b. Objections filed by the assessee;
   c. Evidence furnished by the assessee;
   d. Report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;
   e. Records relating to the draft order;
   f. Evidence collected by it; and
   g. Result of any enquiry made by it.
   6. The Dispute Resolution Panel may, before issuing any directions:
   a. Make such further enquiry, as it thinks fit; or
   b. Cause any further enquiry to be made by any income tax authority and report the result of the same to it.
7. The Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction for further enquiry and passing of the assessment order.
8. If the members of the Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.
9. Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.
10. No direction shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the revenue, respectively.

11. No direction shall be issued after 9 months (irrespective of any limitation given u/s 153) from the end of the month in which the draft order is forwarded to the eligible assessee.
12. Upon receipt of the directions, the Assessing Officer shall, in conformity with the directions, complete, the assessment without providing any further opportunity of being heard to the assessee, within 1 month from the end of the month in which the direction is received.
13. The provisions of this section shall not apply to any assessment or reassessment order passed by the Assessing Officer with the prior approval of the Principal Commissioner or Commissioner as provided in sec. 144BA
14. The Board may make rules for the efficient functioning of the Dispute Resolution Panel and expeditious disposal of the objections filed by the eligible assessee.

10. Distinguish between: 'Tax audit under section 44AB' and 'special audit under section 142(2A)'

Answer:

The difference between tax audit u/s 44AB and audit u/s 142(2A) are as under:

Point of difference	Tax Audit u/s 44AB	Special Audit u/s 142(2A)
Requirement	The tax audit is mandatory in nature and is required to be done in all applicable case.	The special audit is at the direction of the Assessing Office
Appointment of auditor	Auditor is appointed by the assessee	Auditor is appointed is appointed by the Assessing Officer with the prior approval of the Chief Commissioner or commissioner.
Completion of Audit	"The tax audit report should be furnished one month prior to the due date of submission of return of income u/s 139(1). Hence, tax audit report should be furnished by 30th Sept of the relevant assessment year. For assessment year 2020- 21, such report is required to be furnished by 31-10-2020."	The audit report shall be furnished by the assessee within the period specified by the Assessing Officer. The Assessing Officer has power to extend such period on an application made by the assessee or *suomotu*. However, the aggregate period (fixed originally and extended) shall not exceed 180 days from the date on which such direction is received by the assessee.
Form	Form 3CA (or Form 3CB) with Form 3CD	Form 6B
Fees	Fees to the auditor is required to be paid by the assessee	Fees to the auditor shall be paid by the Central Government.
Penalty	Failure to complete and furnish tax	Failure to comply with direction issued u/s

	audit report within prescribed time attracts penalty u/s 271B. The quantum of penalty is lower of the following: **a.** ½% of turnover; or **b.** ₹ 1,50,000	142(2A) attracts penalty of ₹10,000 u/s 271(1)(b).

11. Certain period is required to be excluded from time limit for completion of assessment. State any five such period.

Answer:

Period excluded from time limit for completion of assessment [Expl. 1 to sec. 153]

In computing the time limitation for completion of assessment, following period shall be excluded —

1. Time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be re-heard under the proviso to sec. 129; or
2. Period during which the assessment proceeding is stayed by an order or injunction of a court; or
3. Period commencing from the date on which the Assessing Officer intimates under proviso to sec. 143(3) to the Central Government or the prescribed authority, the contravention of the provisions of sec. 10(21) or (22B) or (23A) or (23B) or (23C)(iv) or (23C)(v) or (23C)(vi) or (23C)(via), and ending with the date on which the copy of the order withdrawing the approval or rescinding the notification, as the case may be, under those clauses is received by the Assessing Officer;
4. Period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited u/s 142(2A) and ending with the last date on which the assessee is required to furnish a report of such audit (where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Commissioner); or
5. Period commencing from the date on which the Assessing Officer makes a reference to the Valuation Officer u/s 142A and ending with the date on which the report of the Valuation Officer is received by the Assessing Officer; or
6. In a case, where an application made before the Settlement Commission u/s 245C is rejected, the period commencing from the date on which such application is made and ending with the date on which the rejection order is received by the Principal Commissioner or Commissioner; or
7. Period commencing from the date on which an application is made before the Authority for Advance Rulings u/s 245Q and ending with the date on which the order rejecting the application is received by the Principal Commissioner or Commissioner; or
8. Period commencing from the date on which an application is made before the Authority for Advance Rulings u/s 245Q and ending with the date on which the order of the advance ruling pronounced by the authority is received by the Principal Commissioner or Commissioner; or

9. Period (maximum period of 1 year) commencing from the date on which a reference (or first reference, if many references are made) for exchange of information is made by an authority competent under an agreement referred to in sec. 90 / 90A and ending with the date on which the information so requested is last received by the Principal Commissioner or Commissioner; or

10. Period commencing from the date on which a reference for declaration of an arrangement to be impermissible avoidance arrangement is received by the Principal Commissioner or Commissioner u/s 144BA(1) and ending on the date on which a direction u/s 144BA (3) or (6) or an order u/s 144BA(5) is received by the Assessing Officer

Note: However, where immediately after the exclusion of the aforesaid time or period, the period available to the Assessing Officer for making an assessment, is less than 60 days, such remaining period shall be extended to 60 days.

Taxpoint

- Where the period available to the Transfer Pricing Officer is extended to 60 days [as per proviso to sec. 92CA(3A)] and the period of limitation available to the Assessing Officer for making an order of assessment (reassessment or recomputation) is less than 60 days, such remaining period shall also be extended to 60 days.
- Where a proceeding before the Settlement Commission abates u/s 245HA, the period of limitation available to the Assessing Officer for making an order of assessment (reassessment or recomputation) shall, after the exclusion of the period u/s 245HA(4), deemed to have been extended to 1 year.

Study Note – 5

INTEREST

Learning Objective: ***The assessee is required to pay interest in certain circumstances. This study note will help to understand the various provisions relating to computation of interest.***

1. Choose the correct alternative and also provide your justification

(i) An assessee who is entitled to get refund shall also be entitled to interest on such refund. Interest on refund is granted @ of –

(a) ½% per month or part thereof

(b) 1½% per month or part thereof

(c) nil as assessee is not entitled for any interest on refund

(d) 1% per month or part thereof

(ii) Interest on refund due to TDS or TCS or Advance tax shall be allowed, provided the amount of refund is not _____ of the tax determined u/s 143(1) or on regular assessment.

(a) less than 90%

(b) less than 10%

(c) more than 10%

(d) less than 20%

(iii) As per sec. 234D, where any refund is granted to the assessee u/s 143(1) and –

- **No refund is due on regular assessment; or**
- **The amount refunded exceeds the amount refundable on the regular assessment**

then he is liable to pay simple interest on the whole or excess amount refunded. What will be the rate of such interest?

(a) 1% for every month or part of the month

(b) 1½% for every month or part of the month

(c) ½% for every month or part of the month

(d) there is no such provision in the Income tax Act

(iv) The provisions relating to interest on delay in payment of refund are given in section _____.

(a) 244A

(b) 244B

(c) 234A

(d) None of these

(v) Interest u/s 234B is not levied if _____ of assessed tax is paid by way of advance tax.

(a) 90%

(b) 100%

(c) 85%

(d) 60%

(vi) Interest u/s 234A / 234B / 234C is payable at the rate of –

(a) one-half percent per month

(b) two percent per month

(c) one percent per month

(d) depends on income

(vii) An assessee is required to pay interest u/s 234B on shortfall of ₹ 1,02,355.43, such amount is rounded off to –

(a) ₹ 1,02,300

(b) ₹ 1,02,355

(c) ₹ 1,02,360

(d) ₹ 1,02,400

(viii) The following particulars are furnished by Ms. Madhuri for the financial year 2019-20:

- **Tax on total income (paid on 30.11.2020) ₹ 50,000.**
- **Date of filing the return 1.12.2020**
- **Due date for filing the return 30.11.2020**

Compute the total interest payable under sections 234A.

(a) ₹ 400

(b) ₹ 500

(c) ₹ 300

(d) None of the above

(ix) Interest under section _____ is levied from the first day of the assessment year, i.e., from 1st April till the date of determination of income under section 143(1) or when a regular assessment is made, then till the date of such a regular assessment.

(a) 234C

(b) 234A

(c) 234B

(d) 234D

(x) Section _____ provides for levy of interest for default in payment of instalment(s) of advance tax.

(a) 234C

(b) 234A

(c) 234B

(d) 234D

Answer:

(i) (a) ½% per month or part thereof

Reason:

As per sec. 244A, an assessee who is entitled to get refund shall also be entitled to interest @ ½% per month or part thereof on such refund.

(ii) (b) less than 10%

Reason:

As per sec. 244A, where refund is due by reason of excess TDS or TCS or Advance tax, no interest on refund shall be allowed if the amount of refund is less than 10% of the tax determined u/s 143(1) or on regular assessment.

(iii) (c) ½% for every month or part of the month

Reason:

As per sec. 234D, in case, where excess refund is granted to the assessee, he is liable to pay simple interest @ ½% for every month or part thereof on the whole or excess amount refunded.

(iv) (a) 244A

Reason:

Sec. 244A deals with interest on delay in payment of refund.

(v) (a) 90%

Reason:

As per sec. 234B, where a person, who is required to pay advance tax, fails to pay -

(a) advance tax at all; or

(b) 90% of assessed tax as advance tax

- then he is liable to pay interest u/s 234B

(vi) (c) one percent per month

Reason:

Interest u/s 234A / 234B / 234C is payable at the rate of 1% per month or part thereof.

(vii) (a) ₹ 1,02,300

Reason:

As per rule 119A, amount on which interest is calculated will be rounded off to the multiple of 100 by ignoring any fraction of 100.

(viii) (b) ₹ 500

Reason:

Calculation of Interest Payable by Ms. Madhuri:

Interest for delayed filing of return of income u/s 234A ₹ 50,000 × 1% = ₹ 500

(ix) (c) 234B

Reason:

Interest u/s 234B is payable for every month or part of a month commencing from 1st day of April of the relevant assessment year and ending on the date of determination of tax u/s 143(1) or on regular assessment.

(x) (a) 234C

Reason:

Payment of advance tax is to be made as per the schedule. In case assessee fails to pay the amount or pays lesser amount as required by the schedule, then assessee will have to pay interest u/s 234C for such deferment.

2. In the case of Ms Laxmi, you are required to compute the interest u/s 234A, 234B & 234C from the following details –

Tax on total income ₹ 1,00,000; Due date for filing the return 30-09-2020; Actual date of filing the return 1-10-2020 and tax paid on 30-9-2020 ₹ 1,00,000.

Answer:

Computation of Interest u/s 234A

Particulars	As per assessed income	
Tax		1,00,000
Less: Advance tax paid	Nil	
TDS	Nil	Nil
Amount on which interest is payable		1,00,000
Period of default (October being part of a month shall be considered)		1 month
Interest u/s 234A (1% × ₹ 1,00,000 × 1)		1,000

Computation of Interest u/s 234B

Since assessee did not pay any amount by way of advance tax, hence she is liable to pay interest u/s 234B.

Particulars	Assessed income
Shortfall	1,00,000
Period of default (From April to September)	6 months
Interest (1% × ₹ 1,00,000 × 6)	6,000

Computation of interest payable u/s 234C

Particulars	Installment of Advance tax			
	15-6	**15-9**	**15-12**	**15-3**
Rate of Advance tax	15%	45%	75%	100%
Amount payable as advance tax	15,000	45,000	75,000	1,00,000

Less: Amount paid till date	Nil	Nil	Nil	Nil
Shortfall (a)	15,000	45,000	75,000	1,00,000
Period of default (b)	3 months	3 months	3 months	1 month
Interest (1% × a × b)	₹ 450	₹ 1,350	₹ 2,250	₹ 1,000
Total interest payable u/s 234C	₹ 5,050			

Total interest payable

Particulars	Amount
U/s 234A	1,000
U/s 234B	6,000
U/s 234C	5,050
Total	12,050

3. State the provision in respect of payment of interest where assessee fails to deduct and pay TDS

Answer:

Interest for failure to deduct and pay tax at source [Sec. 201(1A)]

Condition: Where a person, responsible for deducting tax at source, fails to -

(a) deduct tax at source; or

(b) deposit such tax after deducting the same.

Amount on which interest is to be charged: On the amount of such tax.

Rate of Interest:

Period	Rate of Interest
From the date on which such tax was **deductible** to the date on which such tax is **deducted**	Simple interest @ 1% per month or part thereof
From the date on which such tax was **deducted** to the date on which such tax is **actually paid**	Simple interest @ 1.50% per month or part thereof

Period: From the date on which such tax was deductible to the date on which such tax is actually paid.

Note: In case any person fails to deduct such tax on the sum paid or payable to a resident but is not deemed to be an assessee in default (as per first proviso to sec. 201(1)), the interest shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident.

4. In specified circumstances, interest u/s 234A or 234B or 234C can be waived off. Please provide 5 such circumstances and also state who is empowered to waive such interest.

Answer:

Waiver or reduction of interest u/s 234A, 234B & 234C

1. The Chief Commissioners and the Directors-General (Investigation) is empowered to reduce or waive penal interest u/s 234A, 234B and 234C in the following circumstances* -

(a) Where, in the course of search and seizure operation, books of account have been taken over by the Department and were not available to the taxpayers to prepare his return of income.

(b) Where, in the course of search and seizure operation, cash had been seized, which was not permitted to be adjusted against arrears of tax or payment of advance tax installments falling due after the date of the search.

(c) Any income other than capital gains which was received or accrued after the date of first or subsequent installment of advance tax, which was neither anticipated nor contemplated by the taxpayer and on which advance tax was paid by the taxpayer after the receipt of such income.

(d) Where, as a result of any retrospective amendment of law or the decisions of the Supreme Court after the end of the relevant previous year, certain receipts, which were earlier treated as exempted income, now become taxable.

(e) Where return of income is filed voluntarily without detection by the Income tax Department and due to circumstances beyond control of the taxpayer such return of income was not filed within the stipulated time-limit or advance tax was not paid at the relevant time.

2. The Chief Commissioner of Income Tax/Director–General are empowered to waive or reduce interest u/s 234A, 234B and 234C on income which accrues or arises for any previous year due to the operation of any order of a Court, statutory authority or of the Government (other than an order of assessment, appeal reference or revision passed under the provisions of the Income tax Act) passed after the close of the said previous year [*Order F. No. 212/495/92-ITA-II dt. 2-5-1994*]

Notes:

(a) Board can grant relief u/s 234A, 234B or 234C

(b) Settlement Commission does not have the power to waive or reduce interest u/s 234A or 234B or 234C

(c) Waiver of interest can be considered only if the return of income is filed voluntarily without detection by the Assessing Officer.

5. Interest u/s 234C is payable for deferment of advance tax. However, there are certain exception. You are requested to mention those exception.

Answer:

No interest u/s 234C will be levied in respect of any shortfall in the payment of advance tax due on the returned income, if -

(a) The shortfall is on account of under-estimation or failure to estimate the amount of:

(i) capital gains; or

(ii) income of the nature referred to in section 2(24)(ix) [i.e. lottery, cross-word, etc.];

(iii) income under the head "Profits and gains of business or profession" in cases where the income accrues or arises under the said head for the first time; or

(iv) income of the nature referred to in sec. 115BBDA (i.e., dividend in excess of specified limit)

(b) The assessee has paid the whole of the amount of tax payable in respect of such income as part of the remaining installment(s) of advance tax which were due or where no installment is due, by March 31 of the previous year.

6. State the provisions relating to interest on excess refund granted to the assessee.

Answer:

Interest for excess refund granted to the assessee [Sec. 234D]

Condition: Where any refund is granted to the assessee u/s 143(1) and –

(a) no refund is due on regular assessment; or

(b) the amount refunded exceeds the amount refundable on regular assessment;

Rate of interest: Simple interest @ ½% for every month or part of the month

Amount on which interest is to be charged: On the whole or excess amount refunded

Period: From the date of grant of refund to the date of such regular assessment

Adjustment in interest: *Where amount of refund is reduced or increased by an order u/s 154, 155, 245D, 250, 254, 260, 262, 263 & 264, the amount of interest shall be reduced or increased accordingly.*

7. Write short notes:

(a) Fee for defaults in furnishing TDS return

(b) Fee for default in furnishing return of income

Answer:

(a) Fee for defaults in furnishing statements [Sec. 234E]

Condition: Where a person fails to deliver a quarterly TDS / TCS return within the prescribed time.

Amount of Fee: ₹ 200 for every day during which the failure continues subject to maximum of amount of TDS / TCS

Note:

- The fee shall be paid before delivering a statement.
- The fee is in addition to other consequences of non-delivering such return

(b) Fee for default in furnishing return of income [Sec. 234F]

Where a person required to furnish a return of income u/s 139(1), fails to do so within the due date, he shall pay fee of:

Case	Fee
Total income does not exceed ₹ 5 lakh	₹ 1,000
Total income exceeds ₹ 5 laks	
If the return is furnished on or before 31st December of the assessment year	₹ 5,000
In any other case	₹ 10,000

8. A Ltd. made the following payments of advance tax during the financial year 2019-20:

	₹ in lakh		₹ in lakh
June 15, 2019	**3.70**	**September 15, 2019**	**3.50**
December 15, 2019	**10.25**	**March 18, 2020**	**8.80**

The return of income is filed on 30-11-2020 showing -

Business income **₹ 80 lakh**

Long term capital gain taxable @ 20% (as on 1-12-2019) **₹ 10 lakh**

Compute interest payable u/s 234C.

Answer:

Computation of tax liability for A.Y. 2020-21 (₹ in lakh)

Particulars	Business income	Long term capital gain
Income	80.00	10.00
Tax rate	30%	20%
Tax liability before surcharge	24.00	2.00
Add: Surcharge	Nil	Nil
Tax liability after surcharge	24.00	2.00
Add: Education cess	0.96	0.08
Tax liability after surcharge and cess	**24.96**	**2.08**

Computation of interest payable u/s 234C

Particulars	Installment of Advance tax			
	15/6/2019	**15/9/2019**	**15/12/2019**	**15/3/2020**
Rate of Advance tax	15%	45%	75%	100%
Amount payable				
(24,96,000 x 15%)	3,74,400			
(24,96,000 x 45%)		11,23,200		
[(24,96,000 + 2,08,000) x 75%]			20,28,000	
[(24,96,000 + 2,08,000) x 100%]				27,04,000
Less: Amount paid till date	3,70,000	7,20,000	17,45,000	17,45,000[3]
Shortfall	Nil[1]	4,03,200[2]	2,83,000	9,59,000
Rounded off (a)	Nil	4,03,200	2,83,000	9,59,000
Period of default (b)	--	3 months	3 months	1 month
Interest (1% x a x b)	--	₹ 12,096	₹ 8,490	₹ 9,590
Total interest payable u/s 234C	**₹ 30,176**			

Since assessee has paid at least 12% of tax (i.e. ₹ 2,99,520) on or before 15th June, 2019, hence no interest u/s 234C shall be levied.

1. Since assessee fails to pay 36% of tax (i.e. ₹ 8,98,560) on or before 15th September, 2019, hence interest u/s 234C shall be levied. It is to be noted that interest shall be payable considering 45% of tax.
2. As payment has not been made within due date, hence advance tax paid on 18-03-2020 has not been considered.

Study Note – 6

SURVEY, SEARCH & SEIZURE

Learning Objective: ***The income-tax authorities have power to conduct survey in the premises of the assessee. Further, in certain cases, the authorities may conduct search and seizure operation. This study note will help to understand the various provisions relating to survey, search and seizure along with provision relating to assessment procedure in case of search.***

1. Choose the correct alternative and also provide your justification

(i) The examination on oath u/s 132(4) of a person searched can be done by:

(a) The Assistant Director / Deputy Director / Joint / Additional Director

(b) All the officers accompanying the search party including the Inspectors

(c) The authorised officers

(d) The Income-tax Officer

(ii) U/s 131(3), an income tax authority cannot retain in his custody any books or documents for a period _____ without obtaining approval from higher authorities.

(a) exceeding 30 days

(b) exceeding 15 days

(c) upto completion of assessment

(d) None of the above

(iii) Door to door survey is covered by section

(a) 133B

(b) 133

(c) 133A

(d) 133C

(iv) For conducting survey u/s 133A, the income-tax authority may enter into a place, where it is deemed as business or profession is carried on,:

(a) Only after sunrise and before sunset

(b) During the business hours

(c) Any time

(d) None of these

(v) While search u/s 132, one of the following assets shall not be seized:

(a) Bullion

(b) Cash

(c) Stock-in-trade

(d) None of the above

(vi) As per sec. 132B, asset or any portion thereof shall be released within a period of _____ days from the date on which the last of the authorisations for search u/s 132 or for requisition u/s 132A, as the case may be, was executed.

(a) 30

(b) 60

(c) 120

(d) 180

(vii) In case of an assessee, where search is initiated, assessment shall be made u/s

(a) 153A

(b) 143

(c) 144

(d) 147

(viii) Where a search is initiated under section 132, the Assessing Officer shall assess or reassess the total income of:

(a) four assessment year immediately preceding the assessment year relevant to the previous year in which such search is conducted

(b) five assessment year immediately preceding the assessment year relevant to the previous year in which such search is conducted

(c) six assessment year immediately preceding the assessment year relevant to the previous year in which such search is conducted

(d) sixteen assessment year immediately preceding the assessment year relevant to the previous year in which such search is conducted

Answer:

(i) (c) The authorised officers

Reason:

As per sec. 132(4), the authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under this Act.

(ii) (b) exceeding 15 days

Reason:

Power to impound or retain books [Sec. 131(3)]

Any income tax authority [referred in sec. 131(1) or (1A) or (2)] may impound and retain in its custody any books of account or other documents produced before it in any proceedings under this Act. However, an Assessing Officer or an Assistant Director or Deputy Director shall not -

a) Impound any books of account or other documents without recording his reasons for doing so; or

b) Retain in his custody any such books or documents for a period exceeding *15 days (exclusive of holidays*) without obtaining (prior) approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner or Principal Director or Director.

(iii) (a) 133B

Reason:

As per sec. 133B, the income-tax authority may, for the purpose of collecting any information, which may be useful for, or relevant to the purposes of this Act, enter into:

- Any building or place within the limits of the area assigned to such authority; or
- Any building or place occupied by any person in respect of whom he exercises jurisdiction,

  - where a business or profession is carried on.

(iv) (a) Only after sunrise and before sunset

Reason:

An income-tax authority may enter into –

Place where business or profession is carried on	During the business hours
In case of deemed place of business or profession	Only after sunrise and before sunset

(v) (c) Stock-in-trade

Reason:

Bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, shall not be seized but the authorized officer shall make a note or inventory of such stock-in-trade.

(vi) (c) 120

Reason:

Asset or any portion thereof shall be released within a period of 120 days from the date on which the last of the authorisations for search u/s 132 or for requisition u/s 132A, as the case may be, was executed.

(vii) (a) 153A

Reason:

Where a search is initiated u/s 132 or books of account, other documents or any assets are requisitioned u/s 132A, save as otherwise provided in sec. 153A, 153B, 153C and 153D all other provisions shall apply to the assessment made under this section also.

(viii) (c) six assessment year immediately preceding the assessment year relevant to the previous year in which such search is conducted

Reason:

The Assessing Officer shall issue notice to such person requiring him to furnish the return of income in respect of each assessment year falling within 6 assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and for the relevant assessment year or years.

2. Write notes on deemed or constructive seizure.

Answer:

Deemed or constructive Seizure [Second Proviso to Sec. 132(1)]

Conditions

Where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to reason of its -

- volume, weight or other physical characteristics; or
- being of a dangerous nature.

Procedure

The authorised officer may serve an order on -

- the owner; or
- the person who is in immediate possession or control of any valuable article or things,

- that he shall not remove, part with or otherwise deal with such article or thing without the prior permission of such authorised officer.

Effect

Such action of the authorised officer shall be deemed to be seizure of such article or thing.

Notes:

(a) No such order can be passed for any article or thing, being stock-in-trade.

(b) Though such order can also be passed *for reasons other than those mentioned above, but in that case, the order shall not be deemed* to be seizure of such article or things and it shall not be in force for a period exceeding 60 days from the date of the order [Sec. 132(3) & (8A)]

3. What are the presumptions in case of search?

Answer:

Presumption in case of search [Sec. 132(4A)]

Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are, or is found in the possession or control of any person in the course of search, it may be presumed that -

- Such books of account, other documents, money, bullion, jewellery or other valuable article or thing belongs to such person;
- The contents of such books of account and other documents are true;
- The signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person, are in that person's handwriting; and

- In the case of a document stamped, executed or attested, it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

4. A search was conducted u/s 132 in the business premises of Rana on 15th September, 2019. At that time, assessments u/s 143(3) for A.Y. 2017-18 and A.Y. 2018-19 and reassessment proceeding u/s 147 for A.Y. 2016-17 were pending before the Assessing Officer.

(i) What are the assessment years for which notice can be issued for making post-search assessment?

(ii) What would be the fate of pending assessments and reassessment?

(iii) What would be the effect, if the post-search assessment orders are annulled by the Income-tax Appellate Tribunal?

Answer:

(i) The notice u/s 153A can be issued for 6 assessment years preceding the assessment year relevant to the previous year in which the search is conducted. In the instant case, the search is conducted in the previous year 2019-20, the relevant assessment year for which is A.Y.2020-21. Therefore, notice can be issued for the 6 preceding assessment years i.e. for assessment years 2014-15 to 2019-20. Further, notice for assessment or reassessment can be issued by Assessing Officer for the relevant assessment year or years (i.e. for A.Y.2010-11 to A.Y.2013-14) if certain conditions are satisfied.

(ii) As per section 153A, the assessment or reassessment relating to any assessment year, falling within the aforesaid period of six assessment years and for the relevant assessment year or years, pending on the date of initiation of the search u/s 132, shall abate. Therefore, the assessments u/s 143(3) for assessment years 2017-18 and 2018-19 and the reassessment proceeding u/s 147 for assessment year 2016-17 shall abate**.**

(iii) Section 153A provides that where the post-search assessment order is annulled in any appeal or any other legal proceeding, the abated assessment and reassessment proceedings shall stand revived. Therefore, the assessments u/s 143(3) relating to assessment years 2017-18 and 2018-19 and the reassessment proceeding relating to assessment year 2016-17, which abated on initiation of search, shall stand revived with effect from the date of receipt of the order of such annulment by the Principal Commissioner or Commissioner.

5. During the course of survey operations u/s 133A, the Income-tax authority, impounded the books of account and other documents inspected by him, relating to the assessee and retained in his custody. Is the action of the officer justified under law?

Answer:

As per sec. 133A(3), an income-tax authority shall not -

(a) Impound any books of account or other documents without recording his reasons for doing so; or

(b) Retain in his custody any books of account or other documents for a period exceeding 15 days (exclusive of holidays) without obtaining the approval of the Principal Chief Commissioner or the Chief Commissioner

or the Principal Director General or the Director General or the Principal Commissioner or the Commissioner or the Principal Director or the Director thereof, as the case may be;

(c) Remove or cause to be removed any cash, stock or other valuable article or thing.

6. Write short notes:

a. Survey of certain expenditure

b. Circumstances when search u/s 132 can be conducted

Answer:

a. Survey of certain expenditure [Sec. 133A(5)]

a) The income tax authority (including Inspector), having regard to the nature and scale of expenditure incurred by an assessee, in connection with any function, ceremony or event, is of the opinion that it is necessary or expedient to do so, he may, at any time after such function, ceremony or event, require-

- Assessee, who incurred such expenditure; or
- Any person, who is likely to possess information in respect of such expenditure,

- to furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceeding under this Act.

b) He may record the statements of the assessee or any other person in this regard and such recorded statement may thereafter be used as evidence in any proceeding under this Act.

b. Circumstances when search u/s 132 can be conducted

Any authority (mentioned above) can direct proceedings u/s 132 against the following person where he has *reason to believe* (in consequence of information in his possession, which is something more than mere rumor or gossip) that:

Person	Circumstances
Any person to whom a summons u/s 131(1) or a notice u/s 142(1) was issued to produce any books of account or other documents	Such person has omitted or failed to do so
Any person to whom a summons or notice as aforesaid has been or might be issued	Such person will fail to do so
Any person is in possession of any money, bullion, jewellery or other valuable article or thing	Such money, bullion, jewellery or other valuable article or thing represents either wholly or partly undisclosed income or undisclosed property

***Taxpoint*:** The reason to believe, as recorded by the income-tax authority, shall not be disclosed to any person or any authority or the Appellate Tribunal.

7. Discuss the provision relating to application of assets seized u/s 132.

Answer:

Application of seized or requisitioned assets [Sec. 132B]

The seized assets may be adjusted with:

(a) The amount of any existing liability under -

(i) The Income-tax Act, 1961;

(ii) The Wealth-tax Act, 1957 (now abolished);

- The existing liability does not include advance tax payable.

(b) The amount of liability determined on completion of the assessment u/s 153A;

(c) The amount of liability determined on completion of the assessment of the year relevant to the previous year in which search is initiated or requisition is made;

(including any penalty levied or interest payable in connection with such assessment); and

(d) The amount in respect of which such person is in default or is deemed to be in default or the amount of liability arising on an application made before the Settlement Commission.

8. An income-tax authority visits to the registered office of a company and ask to inspect certain register of the companies which is required to be maintained by the company as per Company law. The company denies to show such registers of the company stating that such registers can be inspected by any member, debenture-holder, other security holder or beneficial owner only. Discuss.

Answer:

As per sec. 134 of the Income-tax Act, the Income tax authority [being Assessing Officer, Deputy Commissioner (Appeals), Joint Commissioner, Commissioner (Appeals) or any other authorized person] may inspect and take copies of any register of the members, debenture-holders or mortgagees of any company or of any entry in such register.

In the light of aforesaid provision, the plea of the company is not correct.

9. Discuss the power of the income tax authority u/s 131 while trying a suit.

Answer:

The income-tax authority [being Assessing Officer, Deputy Commissioner (Appeals), Joint Commissioner, Commissioner (Appeal), Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and the Dispute Resolution Panel] 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 —

(a) Discovery and inspection;

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

(c) Compelling the production of books of account and other documents; and

(d) Issuing commissions

10. Describe the power of authorized officer while conducting search u/s 132.

Answer:

While conducting search, authorized officer has following powers -

a. *Enter and search any building, etc.*: Enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept.

b. *Break open the lock of any door, etc.*: Break open the lock of any door, box, locker, safe, almirah or other receptacle, where the keys thereof are not available.

c. *Search person*: Search any person who -

- has got out of; or
- is about to get into; or
- is in,

the building, place, vessel, vehicle or aircraft if the authorised officer has reason to suspect that such person has secreted about his person any books of account, other documents, money, bullion, jewellery or other valuable article or thing.

d. *Require any person to facilitate the authorised officer*: Require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record, to afford the authorised officer the necessary facility to inspect such books of account or other documents.

e. *Seizure*: Seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search.

f. *Place marks of identification*: Place marks of identification on any books of account or other documents or make extracts or copies therefrom.

g. *Make inventory*: Make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing.

h. *Examine on oath*: Examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing. Any statement made by such person during such examination may thereafter be used as evidence in any proceeding.

The examination of any person may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under Act.

11. State the power of the income tax authority to call for information u/s 133.

Answer:

The income-tax authority [being Assessing Officer, Deputy Commissioner (Appeals), Joint Commissioner or Commissioner (Appeals)] may -

1. Require any firm to furnish him with a return of the names and addresses of the partners of the firm and their respective shares;
2. Require any Hindu undivided family to furnish him with a return of the names and addresses of the manager and the members of the family;
3. Require any person whom he has reason to believe to be a trustee, guardian or agent, to furnish him with a return of the names of the persons for or of whom he is a trustee, guardian or agent, and of their addresses;
4. Require any assessee to furnish a statement of the names and addresses of all persons to whom he has paid in any previous year rent, interest, commission, royalty or brokerage, or any annuity (not being any annuity taxable under the head "Salaries") amounting to more than Rs.1000, together with particulars of all such payments made;
5. Require any dealer, broker or agent or any person concerned in the management of a stock or commodity exchange to furnish a statement of the names and addresses of all persons -
   a) to whom he or the exchange has paid any sum in connection with the transfer of assets; or
   b) on whose behalf or from whom he or the exchange has received any such sum,
   - together with particulars of all such payments and receipts;
6. Require any person, including a banking company or any officer thereof, to furnish information in relation to such points or matters, or to furnish statements of accounts and affairs,
   - which will be useful for, or relevant to, any enquiry or proceeding under this Act.

Taxpoint

- Where no proceeding is pending, the power u/s 133 shall not be exercised by any income-tax authority below the rank of Principal Director or Director or Principal Commissioner or Commissioner, other than the Joint Director or Deputy Director or Assistant Director, without the prior approval of the Principal Director or Director or the Principal Commissioner or Commissioner.
- It is to be noted that power referred in point (6) above may also be exercised by the Principal Director General or Director-General, the Principal Chief Commissioner or Chief Commissioner, the Principal Director or Director or the Principal Commissioner or Commissioner or the Joint Director or Deputy Director or Assistant Director.

Study Note – 7

COLLECTION, RECOVERY & REFUND

Learning Objective: ***This study note will help to understand the various provisions relating to various mode of collection and recovery of tax. Further, in certain circumstances, assessee is eligible for refund. This study note also covers the provision relating to refunds.***

1. Choose the correct alternative and also provide your justification

(i) Where, during the pendency of any proceeding under Income tax Act or after the completion thereof, but before the service of notice by TRO, any assessee creates a charge on or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of, any of his assets in favour of any other person, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding or otherwise. Such provision is mentioned in which section of the Income-tax Act.

(a) Section 281

(b) Section 282

(c) Section 281A

(d) Section 282A

(ii) Where, during the pendency of any proceeding for the assessment or reassessment, the Assessing Officer is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, he may, with the previous approval of the Chief Commissioner, Commissioner, Director General or Director, by order in writing, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule. Such provision is mentioned in which section of the Income-tax Act.

(a) Section 281B

(b) Section 281A

(c) Section 281

(d) Section 282

(iii) As per section 222 of the Income tax Act, 1961, when an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may draw up under his signature a statement in the prescribed form specifying the amount of arrears due from the assessee (such statement being hereafter referred to as "certificate") and shall proceed to recover from such assessee the amount specified in the certificate by one or more of the modes (in accordance with the rules laid down in the Second Schedule). Such mode, inter alia, includes:

(a) attachment and sale of the assessee's movable property

(b) arrest of the assessee and his detention in prison;

(c) both (a) and (b)

(d) none of the above

(iv) As per section 221, when an assessee is in default or is deemed to be in default in making a payment of tax, he shall, in addition to the amount of the arrears and the amount of interest payable _____, be liable, by way of penalty, to pay such amount as the Assessing Officer may direct.

(a) u/s 220(2)

(b) u/s 234B

(c) u/s 220(1)

(d) u/s 234D

(v) On completion of assessment, a demand notice is served for demand raised in the assessment. The assessee should make the payment of amount demanded within _____ of service of such notice

(a) 30 days

(b) 60 days

(c) 15 days

(d) 7 days

(vi) As per section 220(2A), the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may reduce or waive the amount of interest paid or payable by an assessee u/s 220(2), if he satisfied that –

(a) payment of such amount has caused or would cause genuine hardship to the assessee

(b) default in the payment of the amount on which interest has been paid or was payable under the said sub-section was due to circumstances beyond the control of the assessee

(c) the assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him

(d) all of the above

(vii) As per section 223, the Tax Recovery Officer competent to take action u/s 222 shall be –

(a) the Tax Recovery Officer within whose jurisdiction the assessee carries on his business or profession or within whose jurisdiction the principal place of his business or profession is situate

(b) the Tax Recovery Officer within whose jurisdiction the assessee resides or any movable or immovable property of the assessee is situate

(c) any of the above

(d) none of the above

(viii) As per section 222, an appeal from any original order passed by the Tax Recovery Officer shall lie to the –

(a) Chief Commissioner or Commissioner

(b) Commissioner (Appeals)

(c) No appeal is possible

(d) ITAT

Answer:

(i) (a) Section 281

Reason:

As per sec. 281, where, during the pendency of any proceeding under this Act or after the completion thereof, but before the service of notice by TRO, any assessee creates a charge on or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of, any of his assets in favour of any other person, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding or otherwise.

(ii) (a) Section 281B

Reason:

As per sec. 281B, where, during the pendency of any proceeding for the assessment or reassessment, the Assessing Officer is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, he may, with the previous approval of the Chief Commissioner, Commissioner, Director General or Director, by order in writing, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule

(iii) (c) both (a) and (b)

Reason:

When an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may draw up under his signature a statement in the prescribed form (Form 57) specifying the amount of arrears due from the assessee (such statement being hereafter referred to as "certificate") and shall proceed to recover from such assessee the amount specified in the certificate by one or more of the modes mentioned below (in accordance with the rules laid down in the Second Schedule)

a. attachment and sale of the assessee's movable property;

b. attachment and sale of the assessee's immovable property;

c. arrest of the assessee and his detention in prison;

d. appointing a receiver for the management of the assessee's movable and immovable properties.

(iv) (a) u/s 220(2)

Reason:

When an assessee is in default or is deemed to be in default in making a payment of tax, he shall, in addition to the amount of the arrears and the amount of interest payable u/s 220(2), be liable, by way of penalty, to pay such amount as the Assessing Officer may direct.

(v) (a) 30 days

Reason:

As per sec. 220(1), the assessee should make the payment of amount demanded within 30 days of service of notice.

(vi) (d) all of the above

Reason:

The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may reduce or waive the amount of interest paid or payable by an assessee u/s 220(2), if he satisfied that:

(a) payment of such amount has caused or would cause genuine hardship to the assessee;

(b) default in the payment of the amount on which interest has been paid or was payable under the said sub-section was due to circumstances beyond the control of the assessee; and

(c) the assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

(vii) (c) any of the above

Reason:

The Tax Recovery Officer competent to take action u/s 222 shall be:

a) the Tax Recovery Officer within whose jurisdiction the assessee carries on his business or profession or within whose jurisdiction the principal place of his business or profession is situate; or

b) the Tax Recovery Officer within whose jurisdiction the assessee resides or any movable or immovable property of the assessee is situate,

(viii) (a) Chief Commissioner or Commissioner

Reason:

An appeal from any original order passed by the Tax Recovery Officer shall lie to the Chief Commissioner or Commissioner. Such appeal must be presented within 30 days from the date of the order appealed against. Pending the decision of any appeal, execution of the certificate may be stayed if the appellate authority so directs, but not otherwise.

2. What is Garnishee order?

Answer:

Garnishee order

The Assessing Officer or Tax Recovery Officer may by notice in writing require, any person from whom money is due or any person holds or may subsequently hold money for or on account of the assessee, to pay to the Assessing Officer or Tax Recovery Officer so much of the money (subject to maximum of amount payable to assessee) as is sufficient to pay the amount due by the assessee.

If the person to whom a notice is sent fails to make payment in pursuance thereof to the Assessing Officer or Tax Recovery Officer, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear of tax due from him, in the manner provided in sec. 222 to 225.

Any person discharging any liability to the assessee after receipt of a notice shall be personally liable to the Assessing Officer or Tax Recovery Officer to the extent of his own liability to the assessee so discharged or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

A copy of the notice shall be forwarded to the assessee at his last address known to the Assessing Officer or Tax Recovery Officer.

Where a person to whom a notice is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, then, nothing shall be deemed to require such person to pay any such sum or part thereof. But if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Assessing Officer or Tax Recovery Officer to the extent of his own liability to the assessee on the date of the notice, or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

3. Explain the circumstances under which the Assessing Officer can resort to provisional attachment of the property of the assessee.

Answer:

Where, during the pendency of any proceeding for the assessment or reassessment, the Assessing Officer is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, he may, with the previous approval of the Chief Commissioner, Commissioner, Director General or Director, by order in writing, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.

Every such provisional attachment shall cease to have effect after the expiry of a period of 6 months from the date of such order.

However, Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed 2 years or 60 days after the date of order of assessment or reassessment, whichever is later.

4. State the provision when certain transfers are considered as void under the Income-tax Act.

Answer:

Certain transfers to be void [Sec. 281]

- Where, during the pendency of any proceeding under this Act or after the completion thereof, but before the service of notice by TRO, any assessee creates a charge on or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of, any of his assets in favour of any other person, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding or otherwise.
- Assets means land, building, machinery, plant, shares, securities and fixed deposits in banks, to the extent to which any of the assets aforesaid does not form part of the stock-in-trade of the business of the assessee.
- However, such charge or transfer shall not be void if it is made:

(i) for adequate consideration and without notice of the pendency of such proceeding or without notice of such tax or other sum payable by the assessee; or

(ii) with the previous permission of the Assessing Officer.

- This section applies to cases where the amount of tax or other sum payable or likely to be payable exceeds ₹ 5,000 and the assets charged or transferred exceed ₹ 10,000 in value.

5. Who can claim refund?

Answer:

Following person can claim refund -

1. A person who has paid tax more than the amount for which he is chargeable under this Act [Sec. 237];
2. Where the income of one person is included in the total income of other person, such other person is entitled to claim refund on tax paid on such income [Sec. 238(1)]
3. Where due to death, incapacity, insolvency, liquidation or any other cause, a person is unable to claim or receive any refund due to him, his legal representative, trustee, guardian or receiver, as the case may be, can claim and receive such refund for the benefit of such person or his estate [Sec. 238(2)]

Study Note – 8

APPEALS, REVISION, SETTLEMENT OF CASES

Learning Objective: ***This study note will help to understand the various grievance redressal mechanism like appeals, revision and settlement of cases. The study note also covers procedure to file appeals or other petition before various authorities.***

1. Choose the correct alternative and also provide your justification

(i) Fee for filing an appeal u/s 249(1) to the Commissioner of Income tax (Appeals) when the assessed income is more than ₹ 2 lakh is –

(a) ₹ 250

(b) ₹ 500

(c) ₹ 1,000

(d) None of the above

(ii) An assessee aggrieved by the order of Commissioner of Income–tax (Appeals) can file an appeal before the Income tax Appellate Tribunal within certain period from the date on which the order sought to be appealed against is communicated to him. Such appeal has to be filed within –

(a) 60 days

(b) 30 days

(c) 90 days

(d) 120 days

(iii) An appeal to the High Court u/s 260A of the Income-tax Act, 1961 shall lie only if _____.

(a) a substantial question of law is involved

(b) a substantial question of fact is involved

(c) a substantial question is involved

(d) the assessee is not satisfied with the order passed by Hon'ble ITAT

(iv) Generally, first appeal by Income-tax Department lies with –

(a) ITAT

(b) Commissioner (Appeals)

(c) High Court

(d) Central Government

(v) Appeal to Commissioner of Income-tax (Appeals) is to be made in Form –

(a) 35

(b) 36

(c) 36A

(d) plain paper

(vi) An assessee aggrieved with the order of the ITAT can file appeal before High Court within _____.

(a) 120 days

(b) 30 days

(c) 60 days

(d) 180 days

(vii) On whose motion revision by Commissioner u/s 264 of the Income-tax Act, 1961 is possible.

(a) Commissioner's own motion

(b) Application by assessee

(c) Any of the above two options

(d) Assessing Officer

(viii) Time limit for passing a revision order by Commissioner u/s 264, when initiated on his own motion, is –

(a) within 1 year from the date of original order

(b) within 1 year from the end of the financial year in which original order was passed

(c) within 2 year from the date of original order

(d) within 2 year from the end of the financial year in which original order was passed

(ix) Under Income tax Act, an application made to the Settlement Commission _____ allowed to be withdrawn by the assessee.

(a) shall not be

(b) shall be

(c) shall be but subject to approval of the Assessing Officer

(d) shall be but subject to approval of the Commissioner of Income-tax

(x) An application for settlement shall be presented before Settlement Commission in Form _____.

(a) 34B

(b) 34C

(c) 35

(d) 36

Answer:

(i) (c) ₹ 1,000

Reason:

The statement showing fee for filing an appeal before the Commissioner (Appeals)

Where assessed income as computed by the Assessing Officer is -	
Up to ₹ 1,00,000	– ₹ 250
Exceeds ₹ 1,00,000 but does not exceed ₹ 2,00,000	– ₹ 500
Exceeds ₹ 2,00,000	– ₹ 1,000
Where the subject matter of appeal is not covered in above cases	– ₹ 250

(ii) (a) 60 days

Reason:

An appeal before ITAT can be filed within 60 days from the date on which the order sought to be appealed against is communicated to the assessee.

(iii) (a) a substantial question of law is involved

Reason:

Any order of the Tribunal, if the High Court is satisfied that the case involves a substantial question of law, is appealable before High Court.

(iv) (a) ITAT

Reason:

First appeal by Income-tax Department lies with ITAT.

(v) (a) 35

Reason:

Appeal to Commissioner of Income-tax (Appeals) is to be made in Form 35. Appeal to ITAT is to be made in Form 36. Memorandum of cross objection is to be made in Form 36A.

(vi) (d) 120 days

Reason:

An assessee aggrieved with the order of the ITAT can file appeal before High Court within 120 days.

(vii) (c) Any of the above two options

Reason:

Either on own motion of the Principal Commissioner / Commissioner or on an application by the assessee, revision u/s 264 is possible.

(viii) (a) within 1 year from the date of original order

Reason:

Where the Principal Commissioner or Commissioner acts on his own motion, revision order u/s 264 shall be passed within 1 year from the date of original order.

(ix) (a) shall not be

Reason:

An application made to the Commission shall not be allowed to be withdrawn by the assessee.

(x) (a) 34B

Reason:

An application for settlement shall be presented before Settlement Commission in Form 34B.

2. (a) Who can file memorandum of cross objection before the ITAT. Is there any fees for filing such memorandum. What is the time limit for filing the same?

Answer:

As per sec. 253(4), Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Commissioner (Appeals) has been filed by the other party, may file a memorandum of cross objection in Form 36A with the Tribunal within 30 days of receipt of notice that appeal has been filed by the other party. However, Tribunal may admit belated memorandum of cross objection on sufficient cause being shown. There is no fee to file such memorandum.

2. (b) Commissioner (Appeals) can enhance the assessment. Discuss

Answer:

As per sec. 251, in disposing of an appeal, the Commissioner (Appeals) shall have the following powers:

a. in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment;

b. in an appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates u/s 245HA, he may, after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission, in the course of the proceeding before it and such other material as may be brought on his record, confirm, reduce, enhance or annul the assessment;

c. in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;

d. in any other case, he may pass such orders in the appeal as he thinks fit.

- The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.
- In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.

3. (a) Commissioner of Income-tax has power only to revise an order in favour of the assessee. Comment.

Answer:

The Commissioner has power u/s 263 to revise any erroneous order, which are prejudicial to the interest of revenue. The Commissioner may call for and examine the records of any proceeding under the Act. If he considers that any order passed by the Assessing Officer is prejudicial to the interest of the revenue, he can revise and rectify the assessment. No revision order shall be passed u/s 263 without giving the assessee an opportunity of being heard. Such order can be passed by the Commissioner within 2 years from the end of the financial year in which the order sought to be revised was passed.

3. (b) With reference to the provisions of the Income-tax, 1961, critically examine the proposition that 'the Commissioner (Appeals) has no power to decide a matter that was not raised before him'.

Answer:

According to explanation to sec. 251, while disposing an appeal, the CIT(Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant. Thus, the given statement is not correct.

4. Discuss powers of the Settlement Commission to grant immunity from prosecution & penalty u/s 245H of the Income tax Act, 1961. Under what circumstances can immunity granted be withdrawn?

Answer:

As per sec. 245H, the Settlement Commission may grant immunity (subject to such conditions as it may think fit to impose for the reasons to be recorded in writing) from –

(a) Prosecution for any offence under this Act or under the Wealth Tax Act; and

(b) Imposition of any penalty (wholly or partly) under this Act,

– with respect to the case covered by it.

Conditions for granting such immunity

Such immunity can be granted by the Commission, if the assessee -

(a) has co-operated with the Settlement Commission in the proceedings before it;

(b) has made a full and true disclosure of his income; and

(c) has made a full and true disclosure of the manner in which such income has been derived.

Taxpoint:

- Such immunity shall not be granted by the Settlement Commission in cases where the proceedings for the prosecution have been instituted before the date of receipt of the application u/s 245C.
- The Settlement Commission does not have the power to reduce or waive interest statutorily payable u/s 234A, 234B and 234C, except to the extent of granting relief under circulars issued by the Board
- It has to be noted that waiver or reduction of interest u/s 220(2A) and other provisions is waived or reduced with certain conditions. If these conditions are satisfied, the Commission has the power to direct waiver or reduction
- Interest u/s 234B shall be charged upto date of the order of Settlement Commission u/s 245D(4)

Withdrawal of Immunity Granted

An immunity granted to a person shall stand withdrawn if –

(1) Such person fails to -

(a) Pay any sum specified in the order of settlement within the time allowed by the Settlement Commission; or

(b) Comply with any other condition(s) subject to which the immunity was granted.

(2) Such person had, in the course of the settlement proceedings, concealed any particulars material to the settlement or had given false evidence.

Consequences of Withdrawal of Immunity Granted

On withdrawal of immunity granted the provisions of this Act shall apply as if such immunity had not been granted.

5. What are pre-conditions to be fulfilled for exercising revisionary powers by the Commissioner of Income tax under Section 263 of the Income-tax Act, 1961? Can he revise an order without affording an opportunity to the assessee? What is the time limit to exercise such powers? Briefly explain.

Answer:

Any order passed by the Assessing Officer, which is -

(a) Erroneous;

(b) Prejudicial to the interests of the revenue; and

(c) Passed by an authority subordinate to the Commissioner.

- is revised by the Commissioner u/s 263

If the aforesaid conditions are satisfied, the Commissioner may call for and examine the records of any proceeding under the Act. If he considers that any order passed by the Assessing Officer is prejudicial to the interest of the revenue, he can revise and rectify the assessment. No revision order shall be passed u/s 263 without giving the assessee an opportunity of being heard. Such order can be passed by the Commissioner within 2 years from the end of the financial year in which the order sought to be revised was passed.

In computing the above period of limitation following period shall be excluded -

- Time taken in giving an opportunity to the assessee of being re-heard u/s 129; &
- Any period during which any proceeding under this section is stayed by an order or injunction of any court.

***Exception*:** There is no time limit for passing a revision order to give effect to, or in consequence of, an order of the ITAT, the High Court or the Supreme Court.

6. The ITAT can grant indefinite stay for the demand disputed in appeals before it. Discuss

Answer:

The Tribunal may pass an order of stay in any proceedings for a period not exceeding 180 from the date of such order and the Tribunal shall dispose of the appeal within the said period of stay specified in that order.

Further where such appeal is not so disposed of within the said period of stay as specified in the order of stay, the Tribunal may, on an application made in this behalf by the assessee and on being satisfied that the delay in disposing of the appeal is not attributable to the assessee, extend the period of stay, or pass an order of stay for a further period or periods as it thinks fit; so, however, that the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed 365 days and the Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed

Further if such appeal is not so disposed of within the period allowed (original and extended), the order of stay shall stand vacated after the expiry of such period (i.e., 365 days), even if the delay in disposing of the appeal is not attributable to the assessee.

7. State the provision regarding avoidance of repetitive appeals.

Answer:

Special provision for avoiding repetitive appeals [Sec. 158A]

- Where an assessee claims (a declaration in the Form 8 and verified in the prescribed manner) that:
  - any question of law arising in his case for an assessment year which is pending before the Assessing Officer or any appellate authority (such case being hereafter in this section referred to as the relevant case) is identical
  - with a question of law arising in his case for another assessment year which is pending before the High Court or the Supreme Court (such case being hereafter in this section referred to as the other case),
  - and if the Assessing Officer or the appellate authority, as the case may be, agrees to apply in the relevant case the final decision on the question of law in the other case,
  - he shall not raise such question of law in the relevant case in appeal before any appellate authority.
- The Assessing Officer or the appellate authority, as the case may be, may, by order in writing:
  i. admit the claim of the assessee if he or it is satisfied that the question of law arising in the relevant case is identical with the question of law in the other case; or
  ii. reject the claim if he or it is not so satisfied.
- Such order shall be final and shall not be called in question in any proceeding by way of appeal or revision under this Act.
- Where a claim is admitted:
  a. the Assessing Officer or the appellate authority may make an order disposing of the relevant case without awaiting the final decision on the question of law in the other case; and
  b. the assessee shall not be entitled to raise, in relation to the relevant case, such question of law in appeal.
- When the decision on the question of law in the other case becomes final, it shall be applied to the relevant case and the Assessing Officer or the appellate authority, shall, if necessary, amend the order conformably to such decision.

8. State the consequences where settlement becomes void.

Answer:

Consequences where the Settlement becomes Void

- Where a settlement becomes void, the proceedings shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission.

- The income-tax authority concerned may complete such proceedings before the expiry of two years from the end of the financial year in which the settlement became void.

9. How will you calculate additional amount of income tax for the purpose of filing application before Settlement Commission?

Answer:

The additional amount of income-tax payable shall be calculated in accordance with the following provisions –

a. **Where the income disclosed in the application relates to only one previous year** -

Situation	Income for the purpose	Additional amount of tax	
Col. 1	**Col. 2**	**Col. 3**	
If return of such year has not been filed u/s 139 (whether or not assessment has been made)	Income disclosed in the application	Tax as calculated on income shown in col. 2	
If return of such income has been submitted (whether or not assessment has been made)	Income disclosed in the application as well as in the return	Tax as calculated on income shown in col. 2 *Less*: Tax calculated on the total income returned for that year	**** (**)

Where the income disclosed in the application relates to more than one previous year –

(i) Calculate additional amount of income tax payable (as mentioned above) in respect of each year for which the application has been made.

(ii) The aggregate amount of the additional income tax of each of the years shall be the additional amount of income-tax payable.

Study Note – 9

ADVANCE RULING

Learning Objective: ***Certain class of person is eligible to obtain advance ruling with the view to avoid needless litigation and promoting better tax-payer relations. This study note will help to understand the provision relating to advance ruling.***

1. Choose the correct alternative and also provide your justification

(i) The authority for advance ruling will not allow consideration of any question involving determination of _____ of any property.

(a) fair market value

(b) income

(c) reasonable expected rent

(d) none of the above

(ii) An application for advance ruling under section 245Q(1) of the Incomer-tax Rules, 1962 should made in –

(a) Form No. 34B

(b) Form No. 43

(c) Form No. 34C

(d) Form No. 3AA

(iii) The authority for advance ruling is required to pronounce its advance ruling in writing within _____ from the date of application.

(a) 150 days

(b) 120 days

(c) 60 days

(d) None of these

(iv) An application (in quadruplicate) for advance ruling by a resident applicant for determination of his tax liability arising out of one or more transactions valuing ₹ 100 crore or more in total which has been undertaken or is proposed to be undertaken by him is to be made in Form No._____.

(a) 34DA

(b) 34EA

(c) 34E

(d) 34D

(v) Provisions relating to advance ruling are provided in sections _____.

(a) 245N to 245V

(b) 245A to 245L

(c) 237 to 245

(d) 119 to 126

Answer:

(i) (a) fair market

Reason:

The Authority may, after examining the application and the records called for, by order, either allow or reject the application. However, where the question raised in the application -

(i) is already pending before any income-tax authority or Appellate Tribunal [except in the case of a resident applicant falling in sec. 245N(b)(*iii*)] or any court;

(ii) involves determination of fair market value of any property;

(iii) relates to a transaction or issue which is designed *prima facie* for the avoidance of income-tax [except in the case of a resident applicant falling in sec. 245N(b)(*iii*)]

- shall be rejected by the authority.

(ii) (c) Form No. 34C

Reason:

An application for advance ruling under section 245Q(1) of the Incomer-tax Rules, 1962 should made in Form No. 34C

(iii) (d) None of these

Reason:

The Authority shall pronounce its advance ruling in writing within 6 months of the receipt of application.

(iv) (a) 34DA

Reason:

An applicant desirous of obtaining an advance ruling may make an application stating the question on which the advance ruling is sought in quadruplicate in Form No. 34DA in respect of a resident applicant referred to in sec. 245N(b)(iia) falling within any such class or category of person as notified by the Central Government

(v) (a) 245N to 245V

Reason:

Provisions relating to advance ruling are provided in sections 245N to 245V.

2. (a) Write short note on "Applicability of advance ruling".

Answer:

Advance ruling has been introduced in the Income-tax Act providing a scheme for giving Advance Ruling on transaction involving non-residents and certain notified residents with the view to avoid needless litigation and promoting better tax-payer relations. As per section 245S:

(1) The advance ruling pronounced by the Authority u/s 245R shall be binding only—

(a) on the applicant who had sought it;

(b) in respect of the transaction in relation to which the ruling had been sought; and

(c) on the Commissioner, and the income-tax authorities subordinate to him, in respect of the applicant and the said transaction.

(2) The advance ruling shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

2. (b) What is the procedure for making an application for obtaining advance rulings u/s 245Q?

Answer:

Application for Advance Ruling [Sec. 245-Q]

- An applicant desirous of obtaining an advance ruling may make an application stating the question on which the advance ruling is sought in quadruplicate in:

  (a) in Form No. 34C in respect of a non-resident applicant;

  (b) in Form No. 34D in respect of a resident applicant seeking advance ruling in relation to a transaction undertaken or proposed to be undertaken by him with a non-resident;

(c) in Form No. 34DA in respect of a resident applicant referred to in sec. 245N(b)(iia) falling within any such class or category of person as notified by the Central Government; and

(d) in Form No. 34E in respect of a notified resident referred to in sec. 245N(b)(iii)

(e) in Form No. 34EA in respect of a applicant referred to in sec. 245N(b)(iiia)

and shall be verified in the manner indicated therein.

Taxpoint: *From the date of appointment of the Customs Authority for Advance Rulings u/s 28EA of the Customs Act, 1962, no application relating to Customs laws shall be admitted.*

- The application shall be accompanied by a fee of

  a. ₹ 10,000 or

  b. such fees as may be prescribed.

  – whichever is higher

- An applicant may withdraw an application within 30 days from the date of the application.
- An application shall be presented by the applicant in person or by an authorised representative to the Secretary or any other officer notified in writing by the Secretary or sent by registered post addressed to the Secretary along with a fee (in the form of a Demand Draft drawn in favour of "Authority for Advance Rulings" payable at New Delhi).
- An application sent by registered post shall be deemed to have been made on the date on which it is received in the office of the Authority.
- If the applicant is not hitherto assessed in India, he shall indicate in Annexure I to the application:

  (a) his head office in any other country,

  (b) the place where his office and residence is located or is likely to be located in India, and

  (c) the name and address of his representative in India, if any, authorised to receive notices and papers and act on his behalf.

- The Secretary may send the application back to the applicant if it is defective in any manner for removing the defects within such time as he may allow. Such application shall be deemed to have been made on the date when it is represented after correction.

3. Who is applicant for advance ruling?

Answer:

Applicant [Sec. 245N(b)]

Applicant means any person who is:

(a) a non-resident referred to in sub-clause (*i*) of clause (*a*) above; or

(b) a resident referred to in sub-clause (*ii*) of clause (*a*) above; or

(c) a resident who has undertaken or propose to undertake one or more transactions of value of ₹ 100 crore or more in total [Notification No. 73, dated 28-11-2014]

(d) a public sector company [Notification No. 725, dated 03-08-2000]

(e) a resident or a non-resident referred to in sub-clause (*iv*) of clause (*a*) above

(f) an applicant as defined in sec. 28E(c) of the Customs Act, 1962

(g) an applicant as defined in sec. 23A(c) of the Central Excise Act, 1944

(h) an applicant as defined in sec. 96A(b) of the Finance Act, 1994

- makes an application u/s 245Q(1).

4. The Authority for Advance Ruling has the power of compelling the production of books of account. Discuss.

Answer:

Powers of the Authority [Sec. 245U]

The Authority shall, for the purpose of exercising its powers, have all the powers of a civil court under the Code of Civil Procedure, 1908 as are referred to in section 131 of this Act.

Further, sec. 131 provides following power to the income tax authority while trying a suit:

(a) Discovery and inspection;

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

(c) Compelling the production of books of account and other documents; and

(d) Issuing commissions

Thus, the Authority for Advance Ruling has the power of compelling the production of books of account

5. When can an advance ruling become void? Explain

Answer:

Advance ruling to be void in certain circumstances [Sec. 245-T]

- Where the Authority finds, on a representation made to it by the Commissioner or otherwise, that an advance ruling pronounced by it has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void *ab initio* and thereupon all the provisions of this Act shall apply to the applicant as if such advance ruling had never been made.
- A copy of such order shall be sent to the applicant and the Commissioner.

6. What is the composition of AAR?

Answer:

The Authority shall consist of a Chairman and such number of Vice-chairmen, revenue Members and law Members as the Central Government may, by notification, appoint.

- A person shall be qualified for appointment as—

  (a) Chairman, who has been a Judge of the Supreme Court or the Chief Justice of a High Court or for at least 7 years a Judge of a High Court;

  (b) Vice-chairman, who has been Judge of a High Court;

  (c) a revenue Member:

    (i) where the Authority is dealing with an application seeking advance ruling in any matter relating to this Act; the revenue member shall be appointed from the Indian Revenue Service, who is (or is qualified to be), a Member of the Board; or

    (ii) in other case, revenue member shall be appointed from the Indian Customs and Central Excise Service, who is (or is qualified to be), a Member of the Central Board of Excise and Customs,

    on the date of occurrence of vacancy

  (d) a law Member from the Indian Legal Service, who is (or is qualified to be), an Additional Secretary to the Government of India on the date of occurrence of vacancy.

Study Note – 10

PENALTIES AND PROSECUTION

Learning Objective: ***Non-compliance of provisions of the Act leads to penalty and prosecution. This study note will help to understand the various provisions relating to penalty and prosecution.***

1. Choose the correct alternative and also provide your justification

(i) Failure to keep, maintain or retain books of accounts, etc., as required under section 44AA will attract minimum and maximum penalty of –

(a) ₹ 25,000 and ₹ 25,000 respectively

(b) ₹ 25,000 and ₹ 50,000 respectively

(c) ₹ 50,000 and ₹ 50,000 respectively

(d) ₹ 25,000 and ₹ 1,50,000 respectively

(ii) Failure to comply with notice u/s 143(2) will attract minimum and maximum penalty of –

(a) ₹ 10,000 and ₹ 10,000 respectively

(b) ₹ 5,000 and ₹ 10,000 respectively

(c) ₹ 10,000 and ₹ 25,000 respectively

(d) ₹ 5,000 and ₹ 5,000 respectively

(iii) Maximum penalty u/s 270A for misreporting or under-reporting of income is –

(a) 200% of tax payable on misreported income

(b) 50% of tax payable on misreported income

(c) 3 times of the amount of tax payable on misreported income

(d) 70% of the amount of tax payable on misreported income

(iv) Failure to pay tax on dividend u/s 115-O will attract penalty u/s 271C which is –

(a) 2% of the amount of tax failed to pay

(b) ₹ 10,000

(c) ₹ 1,00,000

(d) equivalent of the amount of tax failed to pay

(v) Taking or accepting any loan or deposit in contravention of the provisions of sec. 269SS of the Income-tax Act attracts penalty which is equal to the amount of such loan or deposit. Such penalty is levied under section –

(a) 271D

(b) 271E

(c) 271C

(d) 271A

(vi) Relief under section 273A(1) regarding waiver of certain penalty levied under the Income-tax Act can be availed by the assessee _____.

(a) once in lifetime

(b) twice in lifetime

(c) any number of time as and when he satisfies the conditions of such provision

(d) none of the above

(vii) No order imposing a penalty shall be made by the Assistant Commissioner of the Income-tax or Deputy Commissioner of the Income-tax, where the penalty exceeds ₹ 20,000, except with the prior approval of the _____.

(a) Joint Commissioner

(b) Commissioner

(c) Chief Commissioner

(d) No approval from any higher authority is required

(viii) The Department is empowered to put on prosecution proceeding u/s 276BB for failure to pay tax collected at source u/s 206C to the credit of the Central Government. In such case minimum punishment shall be –

(a) rigorous imprisonment for 3 months with fine

(b) rigorous imprisonment for 6 months with fine

(c) rigorous imprisonment for 12 months with fine

(d) none of the above

Answer:

(i) (a) ₹ 25,000 and ₹ 25,000 respectively

Reason:

As per sec. 271A, if any person fails to keep and maintain any such books of account and other documents as required by sec. 44AA, in respect of any previous year or to retain such books of account and other documents for the specified period, the Assessing Officer or the Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum of ₹ 25,000.

(ii) (a) ₹ 10,000 and ₹ 10,000 respectively

Reason:

As per sec. 272A(1)(d), if any person fails to comply with a notice u/s 142(1) or 143(2) or fails to comply with a direction issued u/s 142(2A), he shall pay, by way of penalty, a sum of ₹ 10,000 for each such default or failure

(iii) (a) 200% of tax payable on misreported income

Reason:

As per sec. 270A, where under-reported income is in consequence of any misreporting thereof by any person, the penalty shall be equal to 200% of the amount of tax payable on under-reported income.

(iv) (d) equivalent of the amount of tax failed to pay

Reason:

As per sec. 271C, if any person fails to pay the whole or any part of the tax as required by or u/s 115-O(2), then, such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to deduct or pay as aforesaid.

(v) (a) 271D

Reason:

As per sec. 271D, if a person takes or accepts any loan or deposit or specified sum in contravention of the provisions of sec. 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit or specified sum so taken or accepted

(vi) (a) once in lifetime

Reason:

Where an order of waiver u/s 273A(1) has been made in favour of any person, whether such order relates to one or more assessment years, he shall not be entitled to any relief under this section in relation to any other assessment year at any time after the making of such order. That means such waiver can be done once in life of assessee. An assessee can claim relief u/s 273A(1) or 273A(4) after claiming relief u/s 273A(4). However, if assessee already claimed relief u/s 273A(1), then no relief u/s 273A(4) or 273A(1) can be granted.

(vii) (a) Joint Commissioner

Reason:

As per sec. 274(2), in the following cases, penalty can be imposed only with the prior approval of the Joint Commissioner:

Where penalty is imposed by the Income-tax Officer	Exceeds ₹ 10,000
Where penalty is imposed by the Assistant Commissioner or Deputy Commissioner	Exceeds ₹ 20,000

(viii) (a) rigorous imprisonment for 3 months with fine

Reason:

As per sec. 276BB, if a person fails to pay to the credit of the Central Government, the tax collected by him as required under the provisions of sec. 206C, he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.

2. Compute penalty leviable u/s 270A in case of X Ltd from the following details:

Particulars	Total Income	Tax on Total Income	Book Profit	Tax on Book Profit
Return of income	**80,00,000**	**24,96,000**	**2,00,00,000**	**33,38,400**
Assessed income	**1,20,00,000**	**40,06,080**	**2,10,00,000**	**35,05,320**

Answer:

Computation of penalty

Particulars		Amount
Under-reported income		
Total income computed by the Assessing Officer	A	1,20,00,000
Total income as per return of income	B	80,00,000
Book profit computed by the Assessing Officer	C	2,10,00,000
Book profit as per return of income	D	2,00,00,000
Under-reported income [(A – B) + (C – D)]		**50,00,000**
Tax on under-reported income		
Tax on A	P	40,06,080
Tax on B	Q	24,96,000
Tax on C	R	35,05,320
Tax on D	S	33,38,400
Tax on Under-reported income [(P – Q) + (R – S)]	T	16,77,000
Penalty u/s 270A		
Minimum (being 50% of T)		8,38,500
Maximum (being 200% of T)		33,54,000

3. Which cases are treated cases of misreporting of income for levy of penalty u/s 270A.

Answer:

Cases of misreporting of income [Sec. 270A(9)]

The cases of misreporting of income shall be the following:

a. misrepresentation or suppression of facts;

b. failure to record investments in the books of account;

c. claim of expenditure not substantiated by any evidence;

d. recording of any false entry in the books of account;

e. failure to record any receipt in books of account having a bearing on total income; and

f. failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.

4. Which cases are treated cases of under-reporting of income for levy of penalty u/s 270A.

Answer:

Cases of under-reporting of income [Sec. 270A(2)]

A person shall be considered to have under-reported his income, if:

a. the income assessed is greater than the income determined in the return processed u/s 143(1)(a);

b. the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished or where return has been furnished for the first time u/s 148;

c. the income reassessed is greater than the income assessed or reassessed immediately before such reassessment;

d. the amount of deemed total income assessed or reassessed u/s 115JB or 115JC is greater than the deemed total income determined in the return processed u/s 143(1)(a);

e. the amount of deemed total income assessed u/s 115JB or 115JC is greater than the maximum amount not chargeable to tax, where no return of income has been filed or where return has been furnished for the first time u/s 148;

f. the amount of deemed total income reassessed u/s 115JB or 115JC is greater than the deemed total income assessed or reassessed immediately before such reassessment;

g. the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

5. Discuss the power of Principal Commissioner or Commissioner to Grant Immunity from Penalty u/s 273AA

Answer;

Power of Principal Commissioner or Commissioner to Grant Immunity from Penalty [Sec. 273AA]

1. A person may make an application to the Principal Commissioner or Commissioner for granting immunity from penalty, if —

   (a) he has made an application for settlement u/s 245C and the proceedings for settlement have abated u/s 245HA; and

   (b) the penalty proceedings have been initiated under this Act.

2. The application to the Principal Commissioner or Commissioner shall not be made after the imposition of penalty after abatement.

3. The Principal Commissioner or Commissioner may, subject to such conditions as he may think fit to impose, grant to the person immunity from the imposition of any penalty under this Act, if he is satisfied that the person has, after the abatement, co-operated with the income-tax authority in the proceedings before him and has made a full and true disclosure of his income and the manner in which such income has been derived.
4. The order, either accepting or rejecting the application in full or in part, shall be passed within a period of 12 months from the end of the month in which the application is received by the Principal Commissioner or the Commissioner. Further, no order rejecting the application, either in full or in part, shall be passed unless the assessee has been given an opportunity of being heard.
5. The immunity granted to a person shall stand withdrawn, if such person fails to comply with any condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.
6. The immunity granted to a person may, at any time, be withdrawn by the Principal Commissioner or Commissioner, if he is satisfied that such person had, in the course of any proceedings, after abatement, concealed any particulars material to the assessment from the income-tax authority or had given false evidence, and thereupon such person shall become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

6. Discuss the limitation for imposing penalties.

Answer:

Bar of limitation for imposing penalties [Sec. 275]

No order imposing a penalty under this Chapter shall be passed after following time limit:

Where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) and the Commissioner (Appeals) passes the order on or after 01-06-2003 disposing of such appeal	An order imposing penalty shall be passed a. before the expiry of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed; or b. within 1 year from the end of the financial year in which the order of the Commissioner (Appeals) is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, whichever is later
Where the relevant assessment or other order is the subject-matter of revision u/s 263 or 264	Penalty order shall not be passed after the expiry of 6 months from the end of the month in which such order of revision is passed

In any other case	Penalty order shall not be passed: a. after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed; or b. six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later

7. What do you understand by 'wilful attempt to evade tax'? Mention the consequences of a willful attempt to evade tax, etc., under section 276C of the income tax Act, 1961.

Answer:

For the purposes of section 276C, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person:

(a) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or

(b) makes or causes to be made any false entry or statement in such books of account or other documents; or

(c) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or

(d) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.

If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable, or under reports his income, or evade the payment of it, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable,—

Attempt to evade tax, penalty or interest chargeable/imposable, or under-reports income		
- If amount sought to be evaded exceeds ₹ 25,00,000	6 months (with fine)	7 years (with fine)
- If such amount involved does not exceed ₹ 25,00,000	3 months (with fine)	2 years (with fine)
Attempt to evade the payment of any tax, penalty or interest.	3 months (with fine)	3 years (with fine)

8. Discuss the provision u/s 270AA relating to immunity from imposition of penalty

Answer:

Immunity from imposition of penalty, etc. [Sec. 270AA]

- An assessee may make an application to the Assessing Officer to grant immunity from imposition of penalty u/s 270A and initiation of proceedings u/s 276C or 276CC, if he fulfils the following conditions:

  a. the tax and interest payable as per the order of assessment or reassessment u/s 143(3) or 147, as the case may be, has been paid within the period specified in such notice of demand; and

  b. no appeal against aforesaid order has been filed.

- An application shall be made within 1 month from the end of the month in which the said order has been received and shall be made in such form (Form 68) and verified in prescribed manner.

- The Assessing Officer shall (on fulfilment of the aforesaid conditions) and after the expiry of the period of filing the appeal to the Commissioner (Appeals), grant immunity from imposition of penalty u/s 270A and initiation of proceedings u/s 276C or 276CC, where the proceedings for penalty u/s 270A has **not** been initiated due to misreporting of income.

- The Assessing Officer shall, within a period of 1 month from the end of the month in which the application is received, pass an order accepting or rejecting such application after giving an opportunity of being heard to the assessee.

- The order made by the assessing officer in this regard is final.

- Where immunity is granted to the assessee, then appeal to Commissioner (Appeals) or an application for revision u/s 264 shall not be admissible against the order of assessment or reassessment.

Study Note – 11

BUSINESS RESTRUCTURING

Learning Objective: ***Restructuring is term used for the act of reorganizing the legal, ownership, operational, or other structures of a company for the purpose of making it more profitable, or better organized for its present needs. This study note will help to understand taxation issues involved in such restructuring.***

1. Choose the correct alternative and also provide your justification

(i) A loss incurring company and a profit making company may _____ in order to reduce the overall incidence of _____ under the Income-tax Act, 1961.

(a) merge, income

(b) merge, tax liability

(c) income, merge

(d) tax liability, merge

(ii) According to section 2(1B), "amalgamation, in relation to companies means, the merger of one or more companies with another company or the merger of two or more companies to form one company" provided all conditions except the following are satisfied:

(a) All assets to be transferred from amalgamating company to the amalgamated company

(b) All liabilities including contingent liabilities to be transferred from amalgamating company to amalgamated company

(c) Shareholders holding at least 3/4th in value of shares of the amalgamating company should become shareholders of the amalgamated company

(d) Shareholders holding at least 9/10th in value of shares of the amalgamating company should become shareholders of the amalgamated company

(iii) One of the following is not treated as amalgamation u/s 2(1B):

(a) Merger as a result of acquisition of the property of one company by another company pursuant to the purchase of such property by the other company

(b) Merger as a result of distribution of such property to the other company after the winding up of the first-mentioned company

(c) Both (a) and (b)

(d) None of the above

(iv) Where a sole proprietary concern is succeeded by a company in the business carried on by it as a result of which the sole proprietary concern sells or otherwise transfers any capital asset to the company, the transaction is not regarded as transfer provided certain conditions are satisfied. One of those condition is:

(a) Proprietor holds not less than 51% of the total voting power in the company and his shareholding continues to remain as such for a period of 3 years from the date of succession

(b) Proprietor holds not less than 51% of the total voting power in the company and his shareholding continues to remain as such for a period of 5 years from the date of succession

(c) Proprietor holds not less than 50% of the total voting power in the company and his shareholding continues to remain as such for a period of 3 years from the date of succession

(d) Proprietor holds not less than 50% of the total voting power in the company and his shareholding continues to remain as such for a period of 5 years from the date of succession

(v) Capital gain on Slump sale is –

(a) always short-term capital gain

(b) always long-term capital gain

(c) Depends on period of holding of capital asset being undertaking transferred

(d) Not taxable

Answer:

(i) (b) merge, tax liability

Reason:

Loss of amalgamating company shall be adjusted with income of amalgamated company. Such adjustment will overall reduce the tax liability of the amalgamated company.

(ii) (d) Shareholders holding at least 9/10th in value of shares of the amalgamating company should become shareholders of the amalgamated company

Reason:

As per sec. 2(1B), amalgamation (in relation to companies) means:

- the merger of one or more companies with another company; or
- the merger of two or more companies to form one company;

in such a manner that—

(a) all assets and liabilities of the amalgamating company or companies immediately before the amalgamation becomes the assets and liabilities of the amalgamated company;

(b) shareholders (both equity or preference) holding not less than 75% in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders (equity or preference) of the amalgamated company.

(iii) (c) Both (a) and (b)

Reason:

As per sec. 2(1B), following mergers shall not be treated as amalgamation -

- Merger as a result of acquisition of the property of one company by another company pursuant to the purchase of such property by the other company; or
- Merger as a result of distribution of such property to the other company after the winding up of the first-mentioned company.

(iv) (d) Proprietor holds not less than 50% of the total voting power in the company and his shareholding continues to remain as such for a period of 5 years from the date of succession

Reason:

As per sec. 47(xiv), where a sole proprietary concern is succeeded by a company in the business carried on by it as a result of which the sole proprietary concern sells or otherwise transfers any capital asset to the company, the transaction is not regarded as transfer provided following conditions are satisfied:

a) All assets and liabilities of the sole proprietary concern relating to the business immediately before the succession become the assets and liabilities of the company;

b) Proprietor holds not less than 50% of the total voting power in the company and his shareholding continues to remain as such for a period of 5 years from the date of succession; and

c) The sole proprietor does not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company.

(v) (c) Depends on period of holding of capital asset being undertaking transferred

Reason:

In case of slump sale, if undertaking is owned and held by the assessee for not more than 36 months immediately preceding the date of its transfer, then capital gain shall be deemed to be short-term capital gain otherwise long-term capital gain. It makes no difference that few of the assets of the undertaking are newly acquired (i.e. for less than 36 months).

2. What is ''slump sale''? Explain provisions in Income Tax Act relating to slump sale.

Answer:

'Slump sale' means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales. If value of an asset or liability is determined for the sole purpose of payment of stamp duty, registration fees or other similar taxes or fees, that should not be regarded as assignment of values to individual assets and liabilities.

Capital gains in case of slump sale [Sec. 50B]

Cost of Acquisition or Improvement	Net worth# of the undertaking
Indexation Benefit	Not available
Nature of gain whether short term or long term	If undertaking is owned and held by the assessee for not more than 36 months, then capital gain shall be deemed to be short-term capital gain otherwise long-term capital gain. Note: Where an undertaking is owned and held by an assessee for more than 36 months immediately preceding the date of its transfer, then it shall be treated as a long-term capital asset. It makes no difference that few of the assets of the undertaking are newly acquired (i.e. for less than 36 months).

Net worth shall be the –

Aggregate value of total assets of the undertaking	****
Less: Value of liabilities of such undertaking as appearing in the books of account	****
Net worth	****

Notes

1. **Effect of revaluation:** If any change has been made in the value of assets on account of revaluation of assets etc. then such change in value shall be ignored.
2. The aggregate value of total assets, in case of:
   - Depreciable assets - WDV of block of assets
   - Capital assets in respect of which the whole of the expenditure has been allowed as a deduction under section 35AD - Nil
   - Other assets - Book value of such assets
3. Treatment of stock: In case of slump sale, no profit under the head 'Profits & gains of business or profession' shall arise even if the stock of the said undertaking is transferred along with other assets.
4. Carry-forward of losses: In case of slump sale, benefit of unabsorbed losses and depreciation of the undertaking transferred shall be available to the transferor company and not to the transferee company.

3. Discuss the tax issues including cost of acquisition and period of holding, determined in the hands of the shareholder determined after demerger, covering deemed dividend and capital gains.

Answer:

Capital gain on transfer of shares in demerged company or resulting company [Sec. 49(2C)/(2D)]

By virtue of sec. 47(vid), any transfer of shares in demerged company (old shares) in lieu of shares of resulting company (new shares) is not liable to capital gain. However, such transaction has following tax impact:

<table>
<tr><td rowspan="4">Cost of shares</td><td rowspan="3">Resulting company</td><td>(Cost of acquisition of Original shares)</td><td>*</td><td>(Net book value of assets transferred to resulting company)</td></tr>
<tr><td colspan="3">Net worth# of the company immediately before such demerger</td></tr>
<tr><td colspan="3"># Net worth= Paid-up share capital + General reserves (as per books of account of the demerged company immediately before demerger)</td></tr>
<tr><td>Demerged company (after demerger)</td><td colspan="3">Cost of acquisition of the original shares
Less: Cost of shares of resulting company (calculated above)
Cost of shares of demerged company (after demerger)</td></tr>
<tr><td rowspan="2">Determination of nature of asset</td><td>Resulting company</td><td colspan="3" rowspan="2">To find whether shares in resulting company are long-term or short term capital asset, the period of holding shall be calculated from date of acquisition of original shares in demerged company (before demerger).</td></tr>
<tr><td>Demerged company</td></tr>
<tr><td rowspan="2">Indexation benefit</td><td>Resulting company</td><td colspan="3">Indexation benefit shall be available from the year in which shares in resulting company were acquired by the assessee.</td></tr>
<tr><td>Demerged company</td><td colspan="3">Indexation benefit shall be available from the year in which original shares in demerged company were acquired by the assessee.</td></tr>
</table>

4. What are the tax concessions available under the Income-tax Act, 1961 in the case of conversion of a firm into a private limited company?

Answer:

Carry forward & Set off of losses on conversion of proprietary concern or partnership firm into company [Sec. 72A(6)]

Condition: A firm is succeeded by a company fulfilling the following conditions as laid down in sec. 47(xiii)

(a) All the assets and liabilities of the firm relating to the business immediately before the succession become the assets and liabilities of the company.

(b) All the partners of the firm immediately before the succession become the shareholders of the company in the same proportion in which their capital account stood in the books of the firm on the date of succession.

(c) The partners of the firm do not receive any consideration or benefit, directly or indirectly in any form or manner, other than by the way of allotment of shares in the company,

(d) The aggregate of the share-holding in the company of the partners of the firm is not less than fifty per cent of the total voting power in the company and their shareholding continue to be as such for a period of five years from the date of succession.

Tax Treatment: The accumulated loss and unabsorbed depreciation of the predecessor firm shall be deemed to be the loss or allowance for depreciation of the successor company for the purpose *of previous year in which re-organisation of business was effected*.

*Taxpoint***:** *Accumulated loss of such firm can be carried forward for further 8 years.*

Effect of non compliance of conditions given u/s 47(xiii) and (xiv) – If any of the conditions laid down in the sec. 47(xiii) are not complied with, the set off of loss or allowance of depreciation made in any previous year by the successor company shall be deemed to be the income of the company and chargeable to tax in the year in which such conditions are violated.

- "*Accumulated Loss*" means so much of the loss of the predecessor firm or the proprietary concern or the private company or unlisted public company before conversion into limited liability partnership or the amalgamating company or the demerged company, as the case may be, under the head "Profits and gains of business or profession" (not being a loss sustained in a speculation business) which such predecessor firm or the proprietary concern or the company or amalgamating company or demerged company, would have been entitled to carry forward and set off under the provisions of section 72 if the reorganisation of business or conversion or amalgamation or demerger had not taken place.
- "*Unabsorbed Depreciation*" means so much of the allowance for depreciation of the predecessor firm or the proprietary concern or the private company or unlisted public company before conversion into limited liability partnership or the amalgamating company or the demerged company, as the case may be, which remains to be allowed and which would have been allowed to the predecessor firm or the proprietary concern or the company or amalgamating company or demerged company, as the case may be, under the provisions of this Act, if the re-organisation of business or conversion or amalgamation or demerger had not taken place.

5. Define 'demerger', 'demerged company' and 'resulting company' under the Income-tax Act, 1961.

Answer:

As per sec. 2(19AA), demerger (in relation to companies) means the transfer, pursuant to a scheme of arrangement u/s 230 to 232 of the Companies Act, 2013, by a demerged company of its one or more undertakings to any resulting company in such a manner that:

(i) *All assets and liabilities are transferred*: All assets and liabilities of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the assets and liabilities of the resulting company.

(ii) *Transfer at Book value*: Assets and liabilities of the undertaking or undertakings being transferred by the demerged company are transferred at its book-value (without considering revaluation) immediately before the demerger.

Note: Any change in the value of assets consequent to their revaluation shall be ignored.

Exception: The provisions is not applicable where the resulting company records the value of the property and the liabilities of the undertaking or undertakings at a value different from the value appearing in the books of account of the demerged company, immediately before the demerger, in compliance to the Indian Accounting Standards specified in Annexure to the Companies (Indian Accounting Standards) Rules, 2015.

(iii) *Consideration in shares*: Resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis except where the resulting company itself is a shareholder of the demerged company.

(iv) *Common share-holders*: Shareholders holding not less than 75% in value of the shares in the demerged company (other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become shareholders of the resulting company or companies by virtue of the demerger, otherwise than as a result of the acquisition of the property or assets of the demerged company or any undertaking thereof by the resulting company.

(v) *Going concern*: Transfer of the undertaking is on a going concern basis.

(vi) *Other specified condition*: The demerger is in accordance with the conditions, if any, notified u/s 72A(5) by the Central Government in this behalf.

As per section 2(19AAA), "Demerged Company" mean the company whose undertaking is transferred pursuant to a demerger to a resulting company.

As per section 2(41A), the term "resulting company" means one or more companies (including a wholly owned subsidiary) to which the undertaking of the demerged company is transferred in a demerger and the resulting company in consideration of such transfer of undertaking, issues shares to the shareholders of the demerged company and includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of demerger.

6. Smile Ltd. is a wholly-owned subsidiary company of Happy Ltd., an Indian company. Smile Ltd. owns Plant-A and Plant-B (depreciation rate 40%, depreciated value of the block ₹3,00,000 on 1st April, 2019). Plant-B was purchased and put to use on 10th November, 2017 (cost being ₹70,000). Plant-B is transferred by Smile Ltd. to Happy Ltd. on 14th December, 2019 for ₹ 20,000. It is put to use by Happy Ltd. on the same day. Happy Ltd. owns Plant-C on 1st April, 2019 (depreciation rate 40%, depreciated value ₹ 60,000). Find out the amount of depreciation in the hands of Smile Ltd. and Happy Ltd. for the assessment year 2020-21.

Answer:

Depreciation in the hands of Smile Ltd. for the assessment year 2020-21:

Particulars	Amount
Depreciated value of the Plant A and B on 1st April, 2019	3,00,000
Less: Plant B transferred to Happy Ltd	20,000
WDV as on 31st March, 2020	2,80,000
Depreciation for the block P.Y.2019-20	1,12,000
WDV at the end of the year	1,38,000

Depreciation in the hands of Happy Ltd. for the assessment year 2020-21:

Particulars	Amount
Depreciated value of the block on 1st April, 2019	60,000
Add: Actual Cost of Plant B acquired from Smile Ltd (See Note)	33,600
WDV as on 31st March, 2020	93,600
Depreciation on transferred asset [₹ 33,600* ½ * 40%]	6,720
Other Asset @ 40% of ₹ 60,000	24,000
Total Depreciation	30,720

Note: Actual Cost of Plant B in the hands of Happy Ltd.

Particulars	Amount
Actual Cost of Plant B in the hands of Smile Ltd on Nov 10, 2017	70,000
Less: Depreciation for P.Y 2017-18 (1/2 of 40% of ₹ 70,000)	14000
Balance on April 1, 2018	56,000
Less: Depreciation for the P.Y.2018-19	22,400
Balance on April 1, 2019	33,600

7. Dona purchases 600 equity shares in XY (P) Ltd. on 1-04-2019 @ ₹ 150 each. On 31-12-2019, XY (P) Ltd. is demerged. In the scheme of demerger, division Y was transferred to Y (P) Ltd. (resulting company). On that date balance sheet of XY (P) Ltd. is as follow –

Liabilities	Division		Total	Asset	Division		Total
	X	Y			X	Y	
6,000 E. Shares			6,00,000	Land	-	2,50,000	2,50,000
General Reserve			4,00,000	Plant	1,75,000	1,00,000	2,75,000
Loan (General)			2,00,000	Investment	2,50,000	-	2,50,000
Loan (Specific)	60,000	75,000	1,35,000	Stock	1,95,000	2,30,000	4,25,000
Creditors	25,000	40,000	65,000	Debtors	55,000	45,000	1,00,000
				Cash and Bank	25,000	75,000	1,00,000
			14,00,000				14,00,000

Y (P) Ltd., in consideration of the demerger, issued equity share of ₹ 100 each (at par) to the shareholders of XY (P) Ltd. on proportionate basis. You are required to compute –

- **Number of shares of Y (P) Ltd. received by Dona and cost thereof.**
- **Cost of acquisition of shares held by Dona in XY (P) Ltd. after demerger.**
- **Capital gain, if Dona sold 200 shares of XY (P) Ltd.@ ₹ 125 & 100 shares of Y(P) Ltd.@ ₹ 110 on 31-03-2020.**

Answer:

Calculation of number of shares of Y (P) Ltd. received by Dona

Particulars	Amount	Amount
Net asset taken over by Y (P) Ltd		
Assets taken over		
Land		2,50,000
Plant		1,00,000
Stock		2,30,000
Debtors		45,000
Cash and bank		75,000
		7,00,000
Less: Liabilities		
Loan (Specific)	75,000	
Creditors	40,000	
Share of General loan (₹ 2,00,000 x ₹ 7,00,000) / ₹ 14,00,000	1,00,000	2,15,000
Net asset taken over		**4,85,000**

No. of shares issued by Y (P) Ltd. (Consideration of ₹ 4,85,000 was discharged by issuing equity shares of ₹ 100 each)	4,850 shares
% of Dona's holding in XY (P) Ltd. (600 shares, out of 6,000 shares of XY (P) Ltd.)	10%
No. of shares allotted in Y (P) Ltd to Dona (10% of 4,850 shares)	485 shares

Cost of such shares is –

$$\frac{\text{Cost of acquisition of shares in XY (P) Ltd. x Net book value of asset transferred to Y (P) Ltd.}}{\text{Net worth of XY (P) Ltd. immediately before demerger (i.e. Paid up capital + General Reserve)}}$$

$$= \frac{(600 \times ₹\ 150) \times ₹\ 4,85,000)}{₹\ 6,00,000 + ₹\ 4,00,000}$$

= ₹ 43,650

Cost of acquisition of shares of XY (P) Ltd. (after demerger) = Original cost of acquisition – Cost of acquisition of shares of Y (P) Ltd. (as computed above)

= ₹ 90,000 – ₹ 43,650 = ₹ 46,350

Computation of capital gain in the hands of Dona for the A.Y. 2020-21

Particulars	Details	Shares of	
		XY (P) Ltd.	Y (P) Ltd.
Sale Consideration	200 x ₹ 125	25,000	-
	100 x ₹ 110	-	11,000
Less: Expenses on transfer		Nil	Nil
Net Sale Consideration		25,000	11,000
Less: i) Cost of acquisition	[(₹ 46,350 x 200)/600]	15,450	-
	[(₹ 43,650 x 100)/485]	-	9,000
ii) Cost of improvement		Nil	Nil
Short Term Capital Gain		**9,550**	**2,000**

8. Discuss the effect of demerger on resulting company.

Answer:

Following are the effect of demerger on the resulting company:

Actual cost of assets to the resulting company

Where, in a demerger, any capital asset is transferred by the demerged company to the resulting company and the resulting company is an *Indian* company, the actual cost of the transferred capital asset to the

resulting company shall be taken to be the same as it would have been if the demerged company had continued to hold the capital asset for the purpose of its own business.

However, such actual cost shall not exceed the written down value of such capital asset in the hands of the demerged company. [*Explanation 7A to sec. 43(1)*]

WDV of depreciable asset in hands of resulting company

Where in a previous year, any asset forming part of a block of assets is transferred by a demerged company to the resulting company, then, the written down value of the block of assets in the case of the resulting company shall be the written down value of the transferred assets of the demerged company *immediately before the demerger* [*Explanation 2B to Sec. 43(6)*]

Allocation of depreciation in the year of demerger

The aggregate deduction, in respect of depreciation allowable to the demerged company and the resulted company in the case of demerger shall not exceed in any previous year the deduction calculated at the prescribed rates as if the demerger had not taken place and such deduction shall be apportioned between the demerged company and the resulting company in the ratio of the number of days for which the assets were used by them.

Set off and carry forward [Sec. 72A]

In the case of a demerger, the accumulated business loss (other than speculation loss) and the allowance for unabsorbed depreciation of the demerged company shall:

(a) where such loss or unabsorbed depreciation is directly relatable to the undertakings transferred to the resulting company, be allowed to be carried forward and set off in the hands of the resulting company;

(b) where such loss or unabsorbed depreciation is not directly relatable to the undertakings transferred to the resulting company, 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, and be allowed to be carried forward and set off in the hands of the demerged company or the resulting company, as the case may be.

9. M/s S & Co., a sole proprietary concern is converted into a company, Sid Co. Ltd. with effect from November 29, 2019. The written down value of assets as on April 1, 2019 are as follows:

Items	Rate of Depreciation	WDV as on 1 April, 2019
Building	**10%**	**₹ 3,50,000**
Furniture	**10%**	**₹ 50,000**
Plant & Machinery	**15%**	**₹ 2,00,000**

Further, on 15-10-2019, M/s S & Co. purchased a plant for ₹ 1,00,000 (rate of depreciation 15%). After conversion, the company added another plant worth ₹ 50,000 (rate of depreciation 15%). Compute the depreciation available to (i) M/s S & Co. and (ii) Sid Co. Ltd. for the A.Y. 2020-21

Answer:

Computation of depreciation on assets if there were no succession

Particulars	Building	Furniture	Plant & Machinery
Rate of depreciation	10%	10%	15%
W.D.V. as on 1/4/2019	3,50,000	50,000	2,00,000
Add: Purchase during the year	Nil	Nil	1,00,000*
	3,50,000	50,000	3,00,000
Less: Sale during the year	Nil	Nil	Nil
	3,50,000	50,000	3,00,000
Depreciation	35,000	5,000	37,500

It is assumed that the assessee is not entitled for additional depreciation.

* Without considering assets acquired after succession.** [(₹ 2,00,000 × 15%) + (₹ 1,00,000 × 15% × ½)]

Allocation of depreciation between sole proprietary concern and the successor company

The depreciation is to be allocated in the ratio of number of days the assets were used by the sole proprietary concern and the successor company.

Calculation of allowable depreciation to sole proprietary concern

Particulars	Amount
Depreciation on assets held as on 01/04/2019	
Assets are used by sole proprietary concern from 1/4/2019 to 28/11/2019 i.e. 242 days, hence depreciation shall be allowed for 242 days	
- Building (₹ 35,000 x 242/366)	23,142
- Furniture (₹ 5,000 x 242/366)	3,306
- Plant and Machinery (₹ 30,000 x 242/366)	19,836
Depreciation on newly acquired assets	
New asset has been used by it from 15/10/2019 to 28/11/2019 i.e. 45 days, hence depreciation shall be allowed for 45 days	
- Plant and Machinery (₹ 7,500 x 45/169)	1,997
Depreciation allowable u/s 32	**48,281**

Calculation of allowable depreciation to successor company

Particulars	Amount
Depreciation on assets held by sole-proprietary concern as on 01/04/2019	
Asset of sole proprietary concern used by the successor company from 29/11/2019 to 31/3/2020 i.e. 124 days, hence depreciation shall be allowed for 124 days	
- Building (₹ 35,000 x 124/366)	11,858
- Furniture (₹ 5,000 x 124/366)	1,694
- Plant and Machinery (₹ 30,000 x 124/366)	10,164
Depreciation on assets acquired by sole-proprietary concern during the year	
New asset has been used by it from 29/11/2019 to 31/03/2020 i.e. 124 days, hence depreciation shall be allowed for 124 days	
- Plant and Machinery (₹ 7,500 x 124/169)	5,503
After conversion	
Depreciation in respect of plant purchased by the successor company is fully allowable in the hands of successor company [50% of 15% on ₹ 50,000].	3,750
Total depreciation	**32,969**

Study Note – 12

DIFFERENT ASPECTS OF TAX PLANNING

Learning Objective: ***Tax liability can be reduced through proper tax planning. This study note will help to understand importance of tax planning. Further, it also covers various aspect involved in tax***

1. Choose the correct alternative and also provide your justification

(i) In respect of which are tax planning cannot be attempted at the time of setting-up of new business entity —

(a) Form of organization

(b) Locational aspects

(c) Nature of business

(d) Corporate restructuring

(ii) Filing return of income within prescribed time limit is _____.

(a) tax planning

(b) tax management

(c) tax evasion

(d) tax avoidance

(iii) "We think time has come for us to depart from Westminster principle _____ tax planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the honestly without resorting to subterfuges."

The aforesaid statement is observed by:

(a) the Apex Court in McDowell & Co. Ltd. case

(b) the Delhi High Court in McDowell & Co. Ltd. case

(c) the Apex Court in Arvind Narotham case

(d) the Finance Minister while presenting Finance Bill, 1985

(iv) What are the objectives of tax planning:

(a) reduction of tax liability through proper utilisation of choices and options given under the Income-tax Act

(b) economic stability by way of productive investment by the tax payer

(c) both (a) and (b)

(d) maximisation of litigation

(v) It is an exercise by which the assessee legally takes advantage of the loopholes in the Act. It is –

(a) tax avoidance

(b) tax management

(c) tax planning

(d) tax evasion

(vi) An exercise undertaken to minimize tax liability through the best use of all available allowances, deductions, exclusions, exemptions, etc., to reduce income-tax liability is known as —

(a) Tax evasion

(b) Tax planning

(c) Tax avoidance

(d) Tax dodging

(vii) Payment of advance tax on or before due date is termed as —

(a) Tax planning

(b) Tax management

(c) Tax avoidance

(d) None of the above.

Answer:

(i) (d) Corporate restructuring

Reason:

Corporate restructuring can not be attempted at the time of setting-up of new business entity.

(ii) (b) tax management

Reason:

Tax management is a procedure to comply with the provisions of the law. Filing of return of income within prescribed time limit is compliance of law.

(iii) (a) the Apex Court in McDowell & Co. Ltd. case

Reason:

The Apex Court in *McDowell & Co. Ltd. –vs.- CTO* (1985) has observed that "tax planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay tax honestly without resorting to subterfuges." In deciding whether a transaction is a genuine or colourable device, it is open for the tax authorities to go behind the transaction and examine the "substance" and not merely the "form".

(iv) (c) both (a) and (b)

Reason:

The basic objectives of tax planning are:

a. Reduction of Tax liability

b. Minimisation of litigation

c. Productive investment

d. Healthy growth of economy

e. Economic stability

(v) (a) tax avoidance

Reason:

Tax avoidance is an exercise by which the assessee legally takes advantage of the loopholes in the Act

(vi) (b) Tax palnning

Reason:

Tax planning is a way to reduce tax liability by taking full advantages provided by the Act through various exemptions, deductions, rebates & relief.

(vii) (b) Tax management

Reason:

Tax management is a procedure to comply with the provisions of the law. Payment of advance tax is compliance of law.

2. Write short notes on organisation tax planning cell

Answer:

Organisation Tax Planning Cells

Various organisation have separate tax planning departments to plan their transactions with a view to attract the least incidence of tax. Organisation of such a cell can be justified on the following grounds:

(a) *Complexity and volume of work*: Where the volume of tax work to be handled is large and highly complex, then it is required to appoint a special tax expert along with the required staff.

(b) *Separate Documentation*: Documentation is an indispensable ingredient of tax management. An assessee has to keep reliable, complete and updated documentation for all the relevant tax files so that the documentary evidence can be made available at a short notice whenever it is required. In absence thereof, an assessee may lose a case for want of proper documentary evidence. Not only that the company has to maintain proper account books, records, vouchers, bills, correspondence and agreements, etc. as a part of tax management. In the case of new industrial undertaking it is better to keep separate accounts for the same.

(c) *Data Collection*: The staff concerned with taxation has to collect and keep on collecting data relating to latest circulars, case laws, rules and provisions, and other government notifications to keep abreast of the current developments.

(d) *Integration*: Tax planner should be consulted by all the departments of the company to know the impact of taxation on their decisions. It would be necessary to integrate and properly link all the departments of the company with the tax planning department.

(e) *Constant Monitoring*: In order to obtain the intended tax benefits, persons connected with tax management should ensure compliance of all the pre-requisites, like procedures, rules etc. Besides, there should be constant monitoring, so that all the tax obligations are discharged and penal consequences avoided.

(f) *Developing Tax effective Alternatives*: Tax laws provides various options for entering into a transactions. A tax planner could guide management in taking important decisions, by considering varieties of alternatives and choices.

(g) *Take advantage of variance allowances and deductions*: An expert tax manager has to keep track of the provisions relating to various allowances, deductions, exemptions, and rebates so as to initiate tax planning measures.

3. Star Gas Ltd. commenced operations of the business of laying and operating a cross country natural gas pipeline network for distribution of 1st April, 2019 The company incurred capital expenditure of ₹ 1,490 lakh (including cost of financial instrument ₹ 2 lakh) during the period January to March, 2019 exclusively for the above business and capitalized the same in its books of account as on 1st April, 2019.

Further, during the financial year 2019-20, it incurred capital expenditure of ₹ 6,600 lakh (including cost of land ₹ 1,100 lakh) exclusively for the above business. Compute the amount of deduction under section 35AD for the assessment year 2020-21, assuring that the company has fulfilled all the conditions specified in section 35AD.

Answer:

Computation of the Amount of Deduction under Section 35AD for the Assessment Year 2020-21

Particulars	₹ in lakh
Capital expenditure incurred during the Year (excluding cost of land) [₹ 6,600 lakh – ₹ 1,100 lakh]	5,500
Capital expenditure incurred prior to commencement of business & capitalized (excluding cost of Financial Instrument) [₹ 1,490 lakh – ₹ 2 lakh]	1,488
Total Deduction u/s 35AD	6,988

4. Explain the doctrine of form and substance in the context of tax planning.

Answer:

Doctrine of form and substance in the context of tax planning

The following are certain principles enunciated by the Courts on the question as to whether it is the form or substance of a transaction, which will prevail in income-tax matters:

1. ***Form of transaction is to be considered in case of genuine transactions*:** It is well settled that when a transaction is arranged in one form known to law, it will attract tax liability whereas, if it is entered into in another form which is equally lawful, it may not. Therefore, in considering whether a transaction attracts tax or not, the form of the transaction put through is to be considered and not the substance. This rule cannot naturally apply where the transaction, as put through by the assessee, is not genuine but colourable or is a mere device. For here, the question is not one between 'form' and 'substance' but between appearance and truth. [Motor and General Stores (P) Ltd. -vs.- CIT (1967)]
2. ***True legal relation is the crucial element for taxability*:** A firm transferred its business assets to a company formed for its purposes. The same business was carried by the company consisting of the erstwhile partners as its shareholders. The Income-tax Officer sought to withdraw the depreciation allowed (the difference between sale price and written-down value) on machinery. Tribunal and High Court has held that there was

change only in the form of ownership as persons behind both firm and company were the same. The Apex Court has held that it is open for the authorities to pierce the corporate veil and look behind the legal facade at the reality of the transaction. The taxing authority is entitled as well as bound to determine the true legal relation resulting from a transaction. The true legal relation arising from a transaction alone determines the taxability of a receipt arising from the transaction [CIT -vs.- B.M. Kharwar (1969) (SC)]

3. ***Substance (i.e. actual nature of expense) is relevant and not the form*:** Where the authorities are charged under the Act with the duty of determining the nature or purpose of and payment or receipt on the facts of a case, it is open to them to work at the substance of the matter and the formal aspect may be ignored.

   - In the case of an expenditure, the mere fact that the payment is made under an agreement does not preclude the department from enquiring into the actual nature of the payment [Swadeshi Cotton Mills Co. Ltd. -vs.- CIT (1967) (SC)].
   - In order to determine whether a particular item of expenditure is of revenue or capital nature, the substance and not merely the form should be looked into. [Assam Bengal Cement Co. Ltd. -vs.- CIT (1955) (SC)]. Where the terms of a transaction are embodied in a document, it should not be construed only in its formal or technical aspect. While the words used should be looked at, too much importance should not be attached to the name or label given by the parties and the document should be interpreted so as to accord with the real intention of the parties as appearing from the instrument.
   - Certain shares were held in the name of others, but the deceased was the real owner of the shares as was found with reference to evidence. The High Court had held that the shares were not includible in the estate of the deceased as they were not in his name. The Supreme Court pointed out that, in substance, the deceased was the owner though only beneficially and upheld the inclusion for estate duty purposes [*CED -vs.- Aloke Mitra (1980)*]

5. Write notes on Tax Evasion and Tax Avoidance

Answer:

Tax evasion is the illegal way to reduce tax liability by deliberately suppressing income or sale or by increasing expenses, etc., which results in reduction of total income of the assessee. Dishonest taxpayers try to reduce their taxes by concealing income, inflation of expenses, submitting misleading information, falsification of accounts and willful violation of the provisions of the Income-tax Act. Such unethical practices often create problems for the tax evaders. Tax department not only imposes huge penalties but also initiate prosecution in such cases. It is illegal, both in script & moral. It is the cancer of modern society and work as a clog in the development of the nation. It is a grave problem in a developing country like ours as it leads to a creation of a 'resource crunch' for developmental activities of the State.

Tax avoidance is an exercise by which the assessee legally takes advantages, with malafide motive, of loopholes in the Act. Tax avoidance is minimizing the incidence of tax by adjusting the affairs in such a manner that although it is within the four corners of the laws, it is done with a purpose to defraud the revenue. It is a practice of dodging or bending the law without breaking it. It is a way to reduce tax liability by applying script of law only. E.g. if A gives gift to his wife, the income from the asset gifted will be clubbed in the hand of A. But

to avoid this clubbing provision "A" decides to give gift to B's wife and B reciprocates it by giving gift to A's wife. This is not tax planning but tax avoidance. Most of the amendments are aimed to curb such loopholes.

6. What are the essentials of tax planning?

Answer:

Following are the essentials of tax planning:

- Uptodate Knowledge of tax laws alongwith circulars, notifications, clarifications and Administrative instructions issued by the CBDT.
- Disclosure of full and true material information
- Avoid sham transactions or make-believe transactions or colourable devices
- Foresight of future development or changes and enterprise's goal.

7. Naresh, who is neither a director nor he has substantial interest in any company, is offered an employment by Freewheel Ltd., Mumbai with the following two alternatives:

Particulars	I	II
Basic pay	66,000	66,000
Bonus	9,000	9,000
Education allowance for 2 children	30,200	-
Education facility for 2 children in school maintained by employer	-	30,200
Sweeper allowance	10,000	-
Sweeper facility	-	10,000
Entertainment allowance	6,000	-
Club facility	-	6,000
Transport allowance for personal use	1,800 pm	-
Free car (1200 cc) facility for performing journey between office to home and vice versa (car owned by employer)	-	12,000
Medical allowance	18,000	-
Medical bills reimbursement facility	-	18,000
Allowance for gas, electricity and water supply	4,500	-

Free gas, electricity and water supply (bills will be in the name of the employer)	**-**	**4,500**
Holiday home allowance	**8,000**	**-**
Holiday home facility	**-**	**8,000**
Lunch allowance	**18,000**	**-**
Free lunch (₹ 70 x 200 days + ₹ 80 x 50 days)	**-**	**18,000**
Diwali gift allowance	**7,500**	**-**
Gift on Diwali	**-**	**7,500**
A rent free unfurnished home – lease rent	**14,000**	**14,000**

Which of the two alternatives Naresh should opt for on the assumption that both employer and employee will contribute 10% of salary towards unrecognized provident fund? Interest free loan of ₹ 20,000 will be given to him for purchasing household items.

Answer:

As both the options are yielding equivalent facilities, hence the option where tax liability can be minimized is the better choice for the assessee. Accordingly, computation of taxable salary of Naresh under both options are as under

Particulars	Working	Option1		Option2	
		Details	Amount	Details	Amount
Basic salary			66,000		66,000
Bonus			9,000		9,000
Allowances					
Children education allowance		30,200			
Less: Exemption u/s 10(14) Rule 2BB	100 x 2 x 12	2,400	27,800		
Transport allowance		21,600			
Less: Exemption u/s 10(14)		Nil	21,600		
Holiday home allowance			8,000		
Medical allowance			18,000		
Sweeper allowance			10,000		

Entertainment allowance			6,000		
Lunch allowance			18,000		
Gas, electricity & water allowance			4,500		
Diwali gift allowance			7,500		
Perquisites u/s 17(2)					
Rent free accommodation					
(Being minimum of the following):					
Rent paid by employer		14,000		14,000	
15% of salary*		26,580	14,000	11,250	11,250
Car facility for performing journey between office to home and vice versa	Exempted				Nil
Education facility				30,200	
Less: Exempted				24,000	6,200
Interest free loan exempted up to ₹ 20,000			Nil		Nil
Sweeper facility					10,000
Club facility					6,000
Holiday home facility					8,000
Medical facility					18,000
Gift	7,500 – 5,000				2,500
Gas, electricity & water facility					4,500
Free lunch facility	(20x200)+(30x50)				5,500
Gross Taxable Salary			2,10,400		1,46,950
Less: Standard Deduction u/s 16(ia)			50,000		50,000
Taxable Salary			**1,60,400**		**96,950**

* Salary for the purpose of -

Particulars	Rent free accommodation	
	Option 1	Option 2
Basic	66,000	66,000
Bonus	9,000	9,000
Children education allowance	27,800	-
Transport allowance	21,600	-
Holiday home allowance	8,000	-
Medical allowance	18,000	-
Sweeper Allowance	10,000	-
Entertainment allowance	6,000	-
Lunch allowance	18,000	-
Gas, electricity & water allowance	4,500	-
Diwali gift allowance	7,500	-
Total	1,96,400	75,000

Note: Contribution to URPF is not taxable.

***Conclusion*:** Option 2 is better.

Study Note – 13

INCOME TAX AUTHORITIES

Learning Objective: ***This study note will help to understand hierarchy of the income-tax authorities alongwith their power and duties.***

1. Choose the correct alternative and also provide your justification

(i) Who among the following is not considered as income-tax authorities u/s 116

(a) CBDT

(b) ITAT

(c) Tax Recovery Officer

(d) Inspector of income-tax

(ii) The Central Board of Direct Taxes consists of a Chairman and _____ Members:

(a) 5

(b) 6

(c) 3

(d) 2

(iii) Out of the following, which is the power of the CBDT

(a) Instructions to subordinate authorities

(b) Issue General or Special order to subordinates

(c) Admit application or claim after expiry of time limit

(d) All of the above

Answer:

(i) (b) ITAT

Reason:

ITAT is quasi-judicial authority.

(ii) (b) 6

Reason:

The Central Board of Direct Taxes consists of a Chairman and following six Members: -

1. Member (Income-tax)
2. Member (Legislation & Computerisation)
3. Member (Personnel & Vigilance)
4. Member (Investigation)
5. Member (Revenue)
6. Member (Audit & Judicial)

(iii) (d) All of the above

Reason:

All of these power are prescribed u/s 119.

2. The jurisdiction of an Assessing Officer cannot be objected by the assesee. Discuss

Answer:

As per sec. 124(3), no person shall be entitled to call in question the jurisdiction of an Assessing Officer:

(a) where he has made a return u/s 139(1), after the expiry of 1 month from the date on which he was served with a notice u/s 142(2) or 143(2) or after the completion of the assessment, whichever is earlier.

(b) where he has made no such return, after the expiry of the time allowed by the notice u/s 142(1) or 148 for the making of the return or by the notice under the first proviso to sec. 144 to show cause why the assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier.

(c) where an action has been taken u/s 132 or 132A, after the expiry of 1 month from the date on which he was served with a notice u/s 153A or 153C or after the completion of the assessment, whichever is earlier.

Where an assessee calls in question the jurisdiction of an Assessing Officer, then the Assessing Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination by the Principal Director General or Director General or the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner before the assessment is made.

3. Write notes on provision relating to succession of income tax authority.

Answer:

Succession of income-tax authority [Sec. 129]

- Whenever in respect of any proceeding under this Act an income-tax authority ceases to exercise jurisdiction and another income tax authority exercises jurisdiction.
- The income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor.

Opportunity of being re-heard

The assessee may demand that before -

- Such succeeding authority reopens previous proceeding or any part thereof; or
- any order of assessment is passed against him,

- he must be given an opportunity of being re-heard.

4. Write notes on jurisdiction of income-tax authorities

Answer:

Jurisdiction of income-tax authorities [Sec. 120]

- Income-tax authorities shall exercise all or any of the powers and perform all or any of the functions assigned to such authorities in accordance with directions of the Board
- The directions of the Board may authorise any other income-tax authority to issue orders in writing for the exercise of the powers and performance of the functions by any of its subordinate.
- The Board or other authorised income-tax authority may have regard to any one or more of the following criteria:
  - (a) territorial area;
  - (b) persons or classes of persons;
  - (c) incomes or classes of income; and
  - (d) cases or classes of cases.
- The Board may, by general or special order, and subject to such conditions, restrictions or limitations as may be specified therein:
  - (a) authorise any Principal Director General or Director General or Principal Director or Director to perform such functions of any other income-tax authority as may be assigned to him by the Board;

(b) empower the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner to issue orders in writing that the powers and functions assigned to, the Assessing Officer in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases, shall be exercised or performed by an Additional Commissioner or an Additional Director or a Joint Commissioner or a Joint Director; and

- Where it is considered necessary or appropriate for the proper management of the work, jurisdiction with more than one income tax authority in relation to any case may be conferred or assigned.
- The Board may direct that for the purpose of furnishing of the return of income or the doing of any other act or thing under this Act or any rule made thereunder by any person or class of persons, the income-tax authority exercising and performing the powers and functions in relation to the said person or class of persons shall be such authority as may be specified in the notification.

5. Who can appoint income-tax authorities?

Answer:

Appointment of income-tax authorities [Sec. 117]

(1) The Central Government may appoint such persons as it thinks fit to be income-tax authorities.

(2) The Central Government may authorise the Board, or a Principal Director General or Director-General, a Principal Chief Commissioner or Chief Commissioner or a Principal Director or Director or a Principal Commissioner or Commissioner to appoint income-tax authorities below the rank of an Assistant Commissioner or Deputy Commissioner.

(3) An income-tax authority authorised in this behalf by the Board may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions.

All these appointments can be made subject to the rules and orders of the Central Government.

Study Note – 14

ECOMMERCE TRANSACTION AND LIABILITY IN SPECIAL CASES

Learning Objective: ***This study note will help to understand the provision of income tax in special cases like death of the assessee, liquidation of company, etc.***

1. Choose the correct alternative and also provide your justification

(i) Equalisation levy u/s 165 shall be payable @ ____ of the consideration for any specified service received or receivable by a person, being a non-resident.

(a) 5%

(b) 6%

(c) 7.5%

(d) 12%

(ii) If a person makes a false statement in any verification or delivers an account or statement, which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to:

(a) 3 years and with fine

(b) 7 years and with fine

(c) 6 months and with fine

(d) 2 years and with fine

(iii) Tonnage taxation scheme is applicable in case of:

(a) Shipping business

(b) Aircraft operation business

(c) Road transport business

(d) All of the above

(iv) As per sec. 115VG, daily tonnage income of a qualifying ship having net tonnage upto 1000 ton is:

(a) ₹ 60 for each 100 tons

(b) ₹ 65 for each 100 tons

(c) ₹ 70 for each 100 tons

(d) ₹ 72 for each 100 tons

Answer:

(i) (b) 6%

Reason:

Equalisation levy shall be payable @ 6% of the consideration for any specified service received or receivable by a person, being a non-resident from:

i. a person resident in India and carrying on business or profession; or

ii. a non-resident having a permanent establishment in India.

(ii) (a) 3 years and with fine

Reason:

As per sec. 176, if a person makes a false statement in any verification or delivers an account or statement, which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to 3 years and with fine.

(iii) (a) Shipping business

Reason:

Tonnage Scheme is a scheme of presumptive taxation whereby the notional income arising from the operation of a ship is determined based on the tonnage of the ship.

(iv) (c) ₹ 70 for each 100 tons

Reason:

Daily tonnage income of a qualifying ship shall be:

Qualifying ship having net tonnage	Amount of daily tonnage income
Upto 1,000	₹ 70 for each 100 tons
Exceeding 1,000 but not more than 10,000	₹ 700 plus ₹ 53 for each 100 tons exceeding 1,000 tons

Exceeding 10,000 but not more than 25,000	₹ 5,470 plus ₹ 42 for each 100 tons exceeding 10,000 tons
Exceeding 25,000	₹ 11,770 plus ₹ 29 for each 100 tons exceeding 25,000 tons

2. The directors of a private company are personally liable to pay the income tax due from the company but their liability does not include liability towards interest and penalty payable by the company. Comment

Answer:

Liability of directors of private company in liquidation [Sec. 179]

Where any tax due from a private company -

- in respect of any income of any previous year; or
- from any other company in respect of any income of any previous year during which such other company was a private company

cannot be recovered, then, every person who was a director of the private company *at any time during the relevant previous year* shall be jointly and severally liable for the payment of such tax. However, no such director shall be liable if he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Here, *tax due* includes penalty, interest or any other sum payable under the Act.

In light of aforesaid provision, the statement is not correct.

3. Write short notes on

(a) Service of notice when family is disrupted or firm, etc., is dissolved

(b) Service of notice in the case of discontinued business

Answer:

(a) ***Service of notice when family is disrupted or firm, etc., is dissolved [Sec. 283]***

- After a finding of total partition has been recorded by the Assessing Officer u/s 171 in respect of any Hindu family, notices under this Act in respect of the income of the Hindu family shall be served on the person who was the last manager of the Hindu family, or, if such person is dead, then on all adults who were members of the Hindu family immediately before the partition.
- Where a firm or other association of persons is dissolved, notices under this Act in respect of the income of the firm or association may be served on any person who was a partner (not being a minor) or member of the association, as the case may be, immediately before its dissolution.

(b) ***Service of notice in the case of discontinued business [Sec. 284]***

Where an assessment is to be made u/s 176, the Assessing Officer may serve on the person whose income is to be assessed, or, in the case of a firm or an association of persons, on any person who was a member of such firm or association at the time of its discontinuance or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice u/s 139(2), and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that section.

4. Explain the provision relating to restrictions on receipt of cash u/s 269T.

Answer:

Mode of undertaking transactions [Sec. 269ST]

No person shall receive an amount of ₹ 2,00,000 or more:

a. in aggregate from a person in a day; or

b. in respect of a single transaction; or

c. in respect of transactions relating to one event or occasion from a person,

otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account or through other prescribed electronic modes.

Exception

The provisions shall not apply to:

(i) any receipt by:

(a) Government;

(b) any banking company, post office savings bank or co-operative bank;

(ii) transactions of the nature referred to in sec. 269SS

(iii) such other persons or class of persons or receipts, which the Central Government may notify.

- The Central Government vide Notification No. 28/2017 dated 05-04-2017 & 57/2017 dated 03-07-2017 has specified following receipt on which the provision is not applicable:

  (a) receipt by a business correspondent on behalf of a banking company or co-operative bank, in accordance with the guidelines issued by the Reserve Bank of India;

  (b) receipt by a white label automated teller machine operator from retail outlet sources on behalf of a banking company or co-operative bank, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007

(c) receipt from an agent by an issuer of pre-paid payment instruments, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007

(d) receipt by a company or institution issuing credit cards against bills raised in respect of one or more credit cards;

(e) receipt which is not includible in the total income u/s 10(17A)

(f) receipt by any person from any banking company, post office savings bank or co-operative bank;

Clarification vide Circular No. 22/2017 dated 03-07-2017

In respect of receipt in the nature of repayment of loan by Non-Banking Financial Companies (NBFCs) and Housing Finance Companies (HFCs), the receipt of one instalment of loan repayment in respect of a loan shall constitute a 'single transaction' as specified in sec. 269ST(b) and all the instalments paid for a loan shall not be aggregated for the purposes of determining applicability of the provisions sec. 269ST.

Penalty [Sec. 271DA]

If a person receives any sum in contravention of the provisions of sec. 269ST, he shall be liable to pay, by way of penalty, a sum equal to the amount of such receipt. However, no penalty shall be imposable if such person proves that there were good and sufficient reasons for the contravention.

Taxpoint: Such penalty shall be imposed by the Joint Commissioner.

5. Representative assessee have right to recover tax paid by him. Comment

Answer:

Right of representative assessee to recover tax paid [Sec. 162]

- Every representative assessee who, as such, pays any sum under this Act, shall be entitled to recover the sum so paid from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may come to him in his representative capacity, an amount equal to the sum so paid.
- Any representative assessee who apprehends that he may be assessed as a representative assessee, may retain out of any money payable by him to the person on whose behalf he is liable to pay tax (hereinafter in this section referred to as the principal), a sum equal to his estimated liability.
- In the event of any disagreement between the principal and such representative assessee, such representative assessee may secure from the Assessing Officer a certificate stating the amount to be so retained pending final settlement of the liability, and the certificate so obtained shall be his warrant for retaining that amount.

- The amount recoverable from such representative assessee at the time of final settlement shall not exceed the amount specified in such certificate, except to the extent to which such representative assessee may, at such time, have in his hands additional assets of the principal.

6. Who is termed as representative assessee?

Answer:

Representative assessee [Sec. 160]

Representative assessee means:

	In respect of the income	Representative Assessee
(i)	of a non-resident specified in Sec. 9(1)	Agent of the non-resident, including a person who is treated as an agent u/s 163
(ii)	of a minor, lunatic or idiot	A guardian or manager who is entitled to receive or is in receipt of such income on behalf of such minor, lunatic or idiot.
(iii)	which is received by the Court of Wards; the Administrator-General; the Official Trustee; or any receiver or manager, appointed by or under any order of a court on behalf of or for the benefit of any person.	Such – Court of Wards; Administrator-General; Official Trustee; or Receiver or Manager
(iv)	which is received by trustee [appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise (including any valid wakf deed)] on behalf of or for the benefit of any person	Such trustee or trustees
(v)	which is received receives or entitled to receive by trustee (appointed under an oral trust) on behalf of or for the benefit of any person	Such trustee or trustees

Taxpoint: Every representative assessee shall be deemed to be an assessee.

7. Discuss the special provision regarding assessment of a person leaving India.

Answer:

Assessment of persons leaving India [Sec. 174]

- When it appears to the Assessing Officer that any individual may leave India during the current assessment year or shortly after its expiry **and** that he has no present intention of returning to India, the total income of such individual for the period from the expiry of the previous year for that assessment year up to the probable date of his departure from India shall be chargeable to tax in that assessment year.
- The total income of each completed previous year or part of any previous year included in such period shall be chargeable to tax at the rate or rates in force in that assessment year, and separate assessments shall be made in respect of each such completed previous year or part of any previous year.
- The Assessing Officer may estimate the income of such individual for such period or any part thereof, where it cannot be readily determined in the manner provided in this Act.
- For the purpose of making an assessment, the Assessing Officer may serve a notice upon such individual requiring him to furnish, within such time, not being less than 7 days, as may be specified in the notice, a return in the same form and verified in the same manner as a return u/s 142(1)(*i*), setting forth his total income for each previous year and his estimated total income for any part of the previous year and the provisions of this Act shall, so far as may be, and subject to the provisions of this section, apply as if the notice were a notice issued u/s 142(1)(i).

8. Are producers of cinematograph films required to submit any statement. If yes, please explain the provision relating thereto?

Answer:

Submission of statements by producers of cinematograph films [Sec. 285B]

Any person carrying on the production of a cinematograph film during the whole or any part of any financial year shall, in respect of the period during which such production is carried on by him in such financial year, prepare and deliver to the Assessing Officer, within 30 days from the end of such financial year or within 30 days from the date of the completion of the production of the film, whichever is earlier, a statement in the prescribed form (Form 52A) containing particulars of all payments of over ₹ 50,000 in the aggregate made by him or due from him to each such person as is engaged by him in such production.

9. Discuss the chargeability provision of equalisation levy.

Answer

As per sec. 165, equalisation levy shall be payable @ 6% of the consideration for any specified service received or receivable by a person, being a non-resident from:

(iii) a person resident in India and carrying on business or profession; or

(iv) a non-resident having a permanent establishment in India.

- Specified service means

(a) **online advertisement**,

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

(c) any other notified service – Sec. 164(i)

- Online means a facility or service or right or benefit or access that is obtained through the internet or any other form of digital or telecommunication network – Sec. 164(f)

Taxpoint

These provisions extend to the whole of India except the State of Jammu and Kashmir.

Exception

The equalisation levy shall not be charged, where:

(a) the non-resident providing the specified service has a permanent establishment in India and the specified service is effectively connected with such permanent establishment;

(b) the aggregate amount of consideration for specified service received or receivable in a previous year from resident in India or from a non-resident having a permanent establishment in India, does not exceed ₹ 1,00,000; or

(c) the payment for the specified service by the person resident in India, or the permanent establishment in India is not for the purposes of carrying out business or profession.

10. Define qualifying ship in the context of tonnage tax scheme.

Answer:

Qualifying ship [Sec. 115VD]

A ship is a qualifying ship if:

a. it is a sea going ship or vessel of 15 net tonnage or more;

- Seagoing ship means a ship if it is certified as such by the competent authority of any country.

b. it is a ship registered under the Merchant Shipping Act, 1958 or a ship registered outside India in respect of which a licence has been issued by the Director-General of Shipping u/s 406 or section 407 of the Merchant Shipping Act, 1958; and

c. a valid certificate in respect of such ship indicating its net tonnage is in force,—

In nutshell, qualifying ship means a sea-going ship having valid certificate

- but does not include—

(i) Factory ships;

- Factory ship includes a vessel providing processing services in respect of processing of the fishing produce.

(ii) Pleasure crafts;

- Pleasure craft means a ship of a kind whose primary use is for the purposes of sport or recreation.

(iii) Harbour and river ferries;

(iv) A seagoing ship or vessel if the main purpose for which it is used is the provision of goods or services of a kind normally provided on land;

(v) Off-shore installations;

(vi) Fishing vessels

(vii) a qualifying ship, which is used as a fishing vessel for a period of more than 30 days during a previous year.

Study Note – 15

INCOME COMPUTATION & DISCLOSURE STANDARDS

Learning Objective: ***The Central Government has notified the ICDS. The rationale behind issuing ICDS is to lessen the uncertainty of alternative accounting treatment due to flexibility offered by Accounting Standards (AS) & also to reduce litigation that crops up when the stand taken by income tax authorities is not in alignment with the AS. This study note will help to understand the provision of various ICDS.***

1. Choose the correct alternative and also provide your justification

(i) ICDS ____ deals with Government Grants

(a) VI

(b) VII

(c) VIII

(d) X

(ii) The ICDS is required to be followed:

(a) by all assessee (other than an individual or a Hindu undivided family who is not required to get his accounts of the previous year audited u/s 44AB)

(b) by all assessee

(c) by all assessee (other than an individual or a Hindu undivided family)

(d) None of the above

(iii) ICDS II shall be applied for valuation of inventories, except:

(a) Work-in-progress arising under 'construction contract'

(b) Shares, debentures and other financial instruments held as stock-in-trade

(c) Machinery spares, which can be used irregularly in connection with a tangible fixed asset

(d) All of the above

(iv) The comparative Accounting Standard with ICDS III is

(a) AS 7

(b) AS 9

(c) AS 2

(d) AS 10

(v) *Borrowing costs* are interest and other costs incurred by a person in connection with the borrowing of funds and include:

(a) commitment charges on borrowings;

(b) amortised amount of discounts or premiums relating to borrowings;

(c) amortised amount of ancillary costs incurred in connection with the arrangement of borrowings;

(d) All of the above

Answer:

(i) (b) VII

Reason:

ICDS VII deals with Government Grants.

(ii) (a) by all assessee (other than an individual or a Hindu undivided family who is not required to get his accounts of the previous year audited u/s 44AB)

Reason:

The standards are required to be followed:

- by all assessee (other than an individual or a Hindu undivided family who is not required to get his accounts of the previous year audited u/s 44AB)
- who follows the mercantile system of accounting,
- for the purposes of computation of income chargeable to income-tax under the head "Profits and gains of business or profession" or "Income from other sources".

(iii) (d) All of the above

Reason:

ICDS II shall be applied for valuation of inventories, except

i. Work-in-progress arising under 'construction contract'

ii. Work-in-progress which is dealt with by other Standard

iii. Shares, debentures and other financial instruments held as stock-in-trade

iv. Producers' inventories of livestock, agriculture and forest products, mineral oils, ores and gases to the extent that they are measured at net realisable value

v. Machinery spares, which can be used only in connection with a tangible fixed asset and their use is expected to be irregular

(iv) (a) AS 7

Reason:

ICDS III and AS 7 deals with construction contract.

(v) (d) All of the above

Reason:

As per ICDS IX, *borrowing costs* are interest and other costs incurred by a person in connection with the borrowing of funds and include:

a) commitment charges on borrowings;

b) amortised amount of discounts or premiums relating to borrowings;

c) amortised amount of ancillary costs incurred in connection with the arrangement of borrowings;

d) finance charges in respect of assets acquired under finance leases or under other similar arrangements.

2. Preamble of ICDS-I states that this ICDS is applicable for computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" and not for the purposes of maintenance of books of accounts. However, Para 1 of ICDS I states that it deals with significant accounting policies. Accounting policies are applied for maintenance of books of accounts and preparing financial statements. What is the interplay between ICDS-I and maintenance of books of accounts?

Answer:

As stated in the Preamble, ICDS is not meant for maintenance of books of accounts or preparing financial statements. Persons are required to maintain books of accounts and prepare financial statements as per accounting policies applicable to them. For example, companies are required to maintain books of account and prepare financial statements as per requirements of Companies Act 2013. The accounting policies mentioned in ICDS-I being fundamental in nature shall be applicable for computing income under the heads "Profits and gains of business or profession" or "Income from other sources".

3. Distinguish between AS 29 and ICDS X

Answer:

Distinguish between AS 29 and ICDS X are as under

Basis of difference	AS 29	ICDS X
Onerous executory contracts	Includes onerous executory contracts within its scope Upfront recognition of liabilities required under onerous contracts	Onerous executory contracts excluded from the scope of ICDS
Recognition of provision	Provision shall be recognized when it is "probable" that an outflow of economic resources will be required to settle an obligation	Provision shall be recognized when it is "reasonably certain" that an outflow of economic resources will be required to settle an obligation
Recognition of reimbursement claims	Reimbursement claims are recognized when the realization of related income is "virtually certain"	Reimbursement claims are recognized when the realization of related income is "reasonably certain"
Meaning of obligation	Clarifies that obligations may be legally enforceable and may also arise from normal business practice, custom and a desire to maintain good business relations or act in an equitable manner.	No specific guidance on meaning of 'obligation

4. Whether ICDS shall apply to computation of Minimum Alternate Tax (MAT) u/s 115JB of the Act or Alternate Minimum Tax (AMT) under section 115JC of the Act?

Answer:

MAT u/s 115JB of the Act is computed on 'book profit' that is net profit as shown in the Profit and Loss Account prepared under the Companies Act subject to certain specified adjustments. Since, the provisions of ICDS are applicable for computation of income under the regular provisions of the Act, the provisions of ICDS shall not apply for computation of MAT.

AMT u/s 115JC of the Act is computed on adjusted total income which is derived by making specified adjustments to total income computed as per the regular provisions of the Act. Hence, the provisions of ICDS shall apply for computation of AMT.

5. State the method of computation of income from construction and service contract.

Answer:

Computation of income from construction and service contracts [Sec. 43CB]

The profits and gains arising from a construction contract or a contract for providing services shall be determined on the basis of percentage of completion method in accordance with the ICDS.

Taxpoint:

- Profits and gains arising from a contract for providing services:

Case	Method
Contract for providing services with duration of not more than 90 days	Project completion method
A contract for providing services involving indeterminate number of acts over a specific period of time	Straight line method

For the purpose of percentage of completion method:

- the contract revenue shall include retention money;
- the contract costs shall not be reduced by any incidental income in the nature of interest, dividends or capital gains.

6. Discuss the various rules prescribed in ICDS IV regarding recognition of revenue.

Answer:

Scope

- The Standard deals with the bases for recognition of revenue arising in the course of the ordinary activities of a person from:
  a) the sale of goods;
  b) the rendering of services;

c) the use by others of the person's resources yielding interest, royalties or dividends.

- *Revenue* is the gross inflow of cash, receivables or other consideration arising in the course of the ordinary activities of a person from the sale of goods, from the rendering of services, or from the use by others of the person's resources yielding interest, royalties or dividends. In an agency relationship, the revenue is the amount of commission and not the gross inflow of cash, receivables or other consideration.
- The Standard does not deal with the aspects of revenue recognition which are dealt with by other ICDS.

Sale of Goods

- Revenue from sales transactions should be recognized when the following conditions are fulfilled -

a) The seller of goods has transferred to the buyer the property in the goods for a price or all significant risks and rewards of ownership have been transferred to the buyer;

b) The seller retains no effective control of the goods transferred to a degree usually associated with ownership;

c) There is reasonable certainty of its ultimate collection.

Rendering of Services

- Revenue from service transactions shall be recognised by the percentage completion method.
- Under this method, revenue from service transactions is matched with the service transaction costs incurred in reaching the stage of completion, resulting in the determination of revenue, expenses and profit which can be attributed to the proportion of work completed.
- However, when services are provided by an indeterminate number of acts over a specific period of time, revenue may be recognised on a straight line basis over the specific period.
- Revenue from service contracts with duration of not more than 90 days may be recognised when the rendering of services under that contract is completed or substantially completed.

Interest

- Interest shall accrue on the time basis determined by the amount outstanding and the rate applicable.
- Interest on refund of any tax, duty or cess shall be deemed to be the income of the previous year in which such interest is received.
- Discount or premium on debt securities held is treated as though it were accruing over the period to maturity.

Royalty

- Royalties shall accrue in accordance with the terms of the relevant agreement and shall be recognised on that basis unless, having regard to the substance of the transaction, it is more appropriate to recognise revenue on some other systematic and rational basis.

Dividend

- Dividends are recognised in accordance with the provisions of the Act

7. What are the fundamental accounting assumptions?

Answer:

As per ICDS I, following are the fundamental accounting assumptions

a. Going Concern,

b. Consistency and

c. Accrual

8. Distinguish between AS 16 and ICDS IX

Answer:

Distinguish between AS 16 and ICDS IX are as under

Basis of difference	AS 16	ICDS IX
Borrowing cost	Borrowing cost includes exchange difference to the extent that they are regarded as an adjustment to interest costs	Borrowing cost does not include exchange differences arising from foreign currency borrowings
Qualifying assets	Qualifying asset defined to be an asset which necessarily takes a substantia period of time to get ready for its intended use or sale	Qualifying assets means Inventory that require a period of 12 months or more to bring them to a saleable condition Specified tangible and intangible assets are qualifying assets (regardless of substantial period condition)
Commencement and cessation of capitalization	Capitalisation will commence when all the three conditions are satisfied (a) incurrence of capital expenditure (b) incurrence of borrowing cost (c) construction activity is in progress and cessation from the date when asset is ready to use	*In case of specific borrowing:* Capitalization will commence from date of borrowing of funds and cessation from the date when asset is put to use *In case of general borrowing* Capitalization will commence from date of utilization of funds and cessation from the date when asset is put to use
Methodology of capitalization	*In case of specific borrowing:* Directly attributable to borrowing cost	*In case of specific borrowing:* Directly attributable to borrowing cost

	In case of general borrowing: Weighted average cost of borrowing applied to capital expenditure	*In case of general borrowing:* Prorate borrowing cost allocation as per normative formulae
Income from temporary deployment of funds	Income from temporary deployment of unutilised funds from specific loans to be reduced from borrowing cost	No similar provision in ICDS
Suspension of capitalization	Capitalization of borrowing costs should be suspended during extended periods in which active development is interrupted	No similar provision in ICDS

Study Note – 16

BLACK MONEY & IMPOSITION OF TAX ACT

Learning Objective: ***This study note will help to understand the provision of this Act. The Act to make provisions to deal with the problem of the Black money that is undisclosed foreign income and assets, the procedure for dealing with such income and assets and to provide for imposition to tax on any undisclosed foreign income and asset held outside India and for matters connected therewith or incidental thereto.***

1. Choose the correct alternative and also provide your justification

(i) The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 extends to

(a) Whole of India except the state of Jammu and Kashmir.

(b) Whole of India

(c) Whole of India except the state of Arunachal Pradesh

(d) Whole of India except the state of Jammu and Kashmir & Assam

(ii) The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 provides that tax @ _____% shall be charged on every assessee for every assessment year in respect of total undisclosed foreign income and asset of the previous year

(a) 30

(b) 20

(c) 60

(d) 50

(iii) Any variation made in the income from a source outside India in the assessment or reassessment of the total income of any previous year, of the assessee under the Income-tax Act in accordance with the provisions of section 29 to section 43C (Profits and gains of business or profession) or section 57 to section 59 (Income from other sources) or section 92C (Transfer pricing) of the said Act, _____ included in the total undisclosed foreign income.

(a) shall not be

(b) shall

(c) may be

(d) are

(iv) As per sec. 5, in computing the total undisclosed foreign income and asset of any previous year of an assessee:

(a) No deduction in respect of any expenditure or allowance or set off of any loss shall be allowed

(b) Deduction in respect of any expenditure or allowance or set off of any loss shall be allowed

(c) Deduction in respect of any expenditure or allowance shall be allowed but set off of any loss shall not be allowed

(d) No deduction in respect of any expenditure or allowance shall be allowed but set off of any loss shall be allowed

(v) As per sec. 10, return is _____

(a) required to be furnished in Form 1

(b) not required to be filed under this Act

(c) required to be furnished in Form 2

(d) None of the above

Answer:

(i) (b) Whole of India

Reason:

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 extends to whole of India

(ii) (a) 30

Reason:

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 provides that tax @ 30% shall be charged on every assessee for every assessment year in respect of total undisclosed foreign income and asset of the previous year.

(iii) (a) shall not be

Reason:

Any variation made in the income from a source outside India in the assessment or reassessment of the total income of any previous year, of the assessee under the Income-tax Act in accordance with the provisions of section 29 to section 43C (Profits and gains of business or profession) or section 57 to

section 59 (Income from other sources) or section 92C (Transfer pricing) of the said Act, shall not be included in the total undisclosed foreign income.

(iv) (a) No deduction in respect of any expenditure or allowance or set off of any loss shall be allowed

Reason:

As per sec. 5, in computing the total undisclosed foreign income and asset of any previous year of an assessee, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed.

(v) (b) not required to be filed under this Act

Reason:

No separate return is required to be filed under this Act

2. How to compute total undisclosed foreign income and asset u/s 5 of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

Answer:

- In computing the total undisclosed foreign income and asset of any previous year of an assessee:
  - No deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee, whether or not it is allowable in accordance with the provisions of the Income-tax Act.
  - Any income,—
    (a) which has been assessed to tax for any assessment year under the Income-tax Act prior to the assessment year to which this Act applies; or
    (b) which is assessable or has been assessed to tax for any assessment year under this Act,

    shall be reduced from the value of the undisclosed asset located outside India, if, the assessee furnishes evidence to the satisfaction of the Assessing Officer that the asset has been acquired from the income which has been assessed or is assessable, as the case may be, to tax.
- The amount of deduction in case of an immovable property shall be the amount which bears to the value of the asset as on the first day of the financial year in which it comes to the notice of the Assessing Officer, the same proportion as the assessable or assessed foreign income bears to the total cost of the asset.

Illustration

A house property located outside India was acquired by an assessee in the previous year 2010-11 for ₹ 50 lakh. Out of the investment of ₹ 50 lakh, ₹ 20 lakh was assessed to tax in the total income of the previous year 2010-11 and earlier years. Such undisclosed asset comes to the notice of the Assessing Officer in the year 2019-20. If the value of the asset in the year 2019-20 is ₹ 1 crore, the amount chargeable to tax shall be ₹ 60,00,000 i.e.,:

₹ 1,00,00,000 – (₹ 20,00,000 / ₹ 50,00,000) = ₹ 60,00,000

3. State the provision relating to assessment u/s 10 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

Answer:

Assessment [Sec. 10]

- The Assessing Officer may, on receipt of an information from an income-tax authority or any other authority under any law for the time being in force or on coming of any information to his notice, serve on any person, a notice requiring him, on the specified date, to produce such accounts or documents or evidence as the Assessing Officer may require for the purposes of this Act.
  - No separate return is required to be filed under this Act
  - There is no time limit for issuance of the aforesaid notice. The Assessing Officer may issue such notice any time on the basis of information.
- The Assessing Officer may, from time to time, serve further notices requiring the production of such other accounts or documents or evidence as he may require.
- The Assessing Officer may make such inquiry, as he considers necessary, for the purpose of obtaining full information in respect of undisclosed foreign income and asset of any person for the relevant financial year or years.
- The Assessing Officer, after considering such accounts, documents or evidence, as he has obtained, and after taking into account any relevant material which he has gathered and any other evidence produced by the assessee, shall by an order in writing, assess the undisclosed foreign income and asset and determine the sum payable by the assessee.
- Such order shall be made within 2 years from the end of the financial year in which the notice was issued by the Assessing Officer [Sec. 11]
- *Best Judgment Assessment*: If any person fails to comply with all the terms of the notice, the Assessing Officer shall, after taking into account all the relevant material which he has gathered, make the assessment of undisclosed foreign income and asset to the best of his judgment and determine the sum payable by the assessee. [Sec. 10(4)]
  - Before making such an assessment, an opportunity of being heard is required to be given to the assessee.

4. State the provision relating to rounding off of undisclosed foreign income and asset. Also state the provision relating to rounding off of amount payable thereon.

Answer:

Rounding off

a. The amount of undisclosed foreign income and asset computed shall be rounded off to the nearest multiple of ₹ 100.

b. Any amount payable or receivable by the assessee shall be rounded off to the nearest multiple of ₹ 10.

5. Does Central Government enter into an agreement with the government of any other country for exchange of information? If yes, the state the provision.

Answer:

Agreement with foreign countries or specified territories [Sec. 73]

The Central Government may enter into an agreement with the Government of any other country:

a. for exchange of information for the prevention of evasion or avoidance of tax on undisclosed foreign income chargeable under this Act or under the corresponding law in force in that country, or investigation of cases of such evasion or avoidance;

b. for recovery of tax under this Act and under the corresponding law in force in that country.

Taxpoint:

- The Central Government may enter into an agreement with the Government of any specified territory outside India
- The Central Government may, by notification, make such provisions as may be necessary for implementing the agreements
- Any specified association in India may enter into an agreement with any specified association in the specified territory outside India and the Central Government may by notification make such provisions as may be necessary for adopting and implementing such agreement.

6. Who shall be treated as tax authorities under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015?

Answer:

Tax authorities [Sec. 6]

- The income-tax authorities shall be the tax authorities for the purposes of this Act.
- Every such authority shall exercise the powers and perform the functions of a tax authority under this Act in respect of any person within his jurisdiction.
- The jurisdiction of a tax authority under this Act shall be the same as he has under the Income-tax Act
- The tax authority having jurisdiction in relation to an assessee who has no income assessable to income-tax under the Income-tax Act shall be the tax authority having jurisdiction in respect of the area in which the assessee resides or carries on its business or has its principal place of business.

7. What do you mean by:

(a) Undisclosed asset located outside India

(b) Undisclosed foreign income and asset

Answer:

(a) *Undisclosed asset located outside India* means an asset (including financial interest in any entity) located outside India, held by the assessee in his name or in respect of which he is a beneficial owner, and he has no explanation about the source of investment in such asset or the explanation given by him is in the opinion of the Assessing Officer unsatisfactory [Sec. 2(11)]

(b) *Undisclosed foreign income and asset* means the total amount of undisclosed income of an assessee from a source located outside India and the value of an undisclosed asset located outside India, referred to in section 4, and computed in the manner laid down in section 5 [Sec. 2(12)]

8. Discuss the scope of total undisclosed foreign income and asset u/s 4 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015

Answer:

Scope of total undisclosed foreign income and asset [Sec. 4]

- The total undisclosed foreign income and asset of any previous year of an assessee shall be:

  (a) the income from a source located outside India, which has not been disclosed in the return of income furnished u/s 139 of the Income-tax Act;

  (b) the income, from a source located outside India, in respect of which a return is required to be furnished u/s 139 of the Income-tax Act but no return of income has been furnished u/s 139 of the Income-tax Act; and

  (c) the value of an undisclosed asset located outside India.

- Any variation made in the income from a source outside India in the assessment or reassessment of the total income of any previous year, of the assessee under the Income-tax Act in accordance with the provisions of section 29 to section 43C (Profits and gains of business or profession) or section 57 to section 59 (Income from other sources) or section 92C (Transfer pricing) of the said Act, **shall not** be included in the total undisclosed foreign income.

- To avoid double taxation, the income included in the total undisclosed foreign income and asset under this Act shall not form part of the total income under the Income-tax Act.

Study Note – 17

INTERNATIONAL TAXATION

Learning Objective: ***International taxation is the study or determination of tax on a person or business subject to the tax laws of different countries or the international aspects of an individual country's tax laws. Governments usually limit the scope or their income taxation in some manner territorially or provide for offsets to taxation relating to extraterritorial income. The manner of limitation generally takes the form of a territorial, residency, or exclusionary system. This study note will help to understand the law relating to international taxation.***

1. Choose the correct alternative and also provide your justification

(i) Countries that employ explicit policies designed to attract international trade-oriented activities by minimization of taxes and reduction or elimination of other restrictions on business operations is described as _____.

(a) Tax Havens

(b) Tax Planning

(c) Tax Evasion

(d) Tax Management

(ii) The credit for tax paid _____ should be allowed in the year in which the foreign taxed income is _____ in India.

(a) overseas, remitted

(b) overseas, doubly taxed

(c) income, doubly taxed

(d) income, remitted

(iii) Relief from double taxation is provided by way of –

(a) Bilateral Relief

(b) Unilateral Relief

(c) Both (a) and (b)

(d) None of the above

(iv) Where there is double taxation avoidance agreement exists with particular foreign country, relief from double taxation on income from such country is available under section –

(a) 90

(b) 90A

(c) 91

(d) 92

(v) Generally, in Indian context, the term permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on. The term "permanent establishment" shall also include –

(a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display

(c) a warehouse in relation to a person providing storage facilities for others

(d) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise

(vi) Transfer Pricing provisions are applicable if –

(a) There is an international transaction between associated enterprises

(b) There is an international transaction between two enterprises and the transaction is not at arm's length price

(c) There is an international transaction between any two parties

(d) None of these

(vii) As per section 92B of the Income-tax Act, international transaction means a transaction between two or more associated enterprises, _____ are non-residents, of specified nature.

(a) either or both of whom

(b) both of whom

(c) one of whom

(d) none of them

(viii) An advance pricing agreement shall not be valid for more than —

(a) 3 Years

(b) 5 Years

(c) 4 Years

(d) 7 Years

(ix) As per provision of sec. 92A, two enterprises shall be deemed to be associated enterprises if, at any time during the previous year fulfill any of the prescribed conditions. In this context fill in the blanks of the following condition:

- **The manufacture or processing of goods or articles or business carried out by one enterprise is _____ dependent on the use of know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has _____.**

(a) wholly or partially; exclusive rights

(b) wholly; exclusive rights

(c) 90%; exclusive rights

(d) wholly; 90% rights

(x) The following methods as per section 92C are used in determination of arm's length prices for international transactions and specified domestic transaction except —

(a) Comparable uncontrolled price method

(b) Resale price method

(c) Cost method

(d) Transactional net margin method

(xi) The monetary limit for aggregate transactions between two enterprises to fall in the category of specified domestic transaction is —

(a) ₹ 5 crore

(b) ₹ 3 crore

(c) ₹ 20 crore

(d) ₹ 25 crore

(xii) When an assessee fails to furnish any information relating to a specified domestic transaction, the quantum of penalty as a percentage of value of the transaction would be —

(a) 2%

(b) 1%

(c) 5%

(d) 3%

Answer:

(i) (a) Tax Havens

Reason:

Any country which modifies its tax laws to attract foreign capital could be considered a tax haven

(ii) (b) overseas, doubly taxed

Reason:

The credit for tax paid overseas should be allowed in the year in which the foreign taxed income is doubly taxed in India.

(iii) (a) Both (a) and (b)

Reason:

Relief from double taxation is provided by way of

- Bilateral Relief [Sec. 90]
- Unilateral Relief [Sec. 91]

(iv) (a) 90

Reason:

Bilateral relief for avoidance of double taxation is available u/s 90.

(v) (b) a warehouse in relation to a person providing storage facilities for others

Reason:

The term permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on. The term "permanent establishment" shall also include:

a. a place of management;

b. a branch;

c. an office;

d. a factory;

e. a workshop;

f. a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;

g. a warehouse in relation to a person providing storage facilities for others;

h. a farm, plantation or other place where agricultural, pastoral, forestry or plantation activities are carried on;

i. premises used as a sales outlet or for receiving or soliciting orders;

j. an installation or structure, or plant or equipment, used for the exploration for or exploitation of natural resources;

k. a building site or construction, installation or assembly project, or supervisory activities in connection with such a site or project, where that site or project exists or those activities are carried on (whether separately or together with other sites, projects or activities) for more than specified months (generally 6 months).

(vi) (a) There is an international transaction between associated enterprises

Reason:

The provision of transfer pricing is applicable if there is an international transaction between associated enterprises. In some case of specified domestic transactions, provision is also applicable,

(vii) (a) either or both of whom

Reason:

International transaction means a transaction between two or more associated enterprises, either or both of whom are non-residents.

(viii) (b) 5 Years

Reason:

The agreement shall be valid for such period not exceeding 5 consecutive previous years as may be specified in the agreement.

(ix) (b) wholly; exclusive rights

Reason:

There is no method like cost method. Though one of the method for determination of arm's length price is cost plus method.

(x) (c) Cost method

Reason:

The manufacture or processing of goods or articles or business carried out by one enterprise is *wholly* (not partially) dependent on the use of know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has *exclusive* rights.

(xi) (c) ₹ 20 crore

Reason:

As per sec. 92BA, the monetary limit for aggregate transactions between two enterprises to fall in the category of specified domestic transaction is ₹ 20 crore.

(xii) (a) 2%

Reason:

Failure to keep and maintain information and document in respect of international transaction or specified domestic transaction [Sec. 271AA]

If any person in respect of an international transaction or specified domestic transaction:

i. fails to keep and maintain any such information and document as required by sec. 92D;

ii. fails to report such transaction which he is required to do so; or

iii. maintains or furnishes an incorrect information or document,

the Assessing Officer or Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to 2% of the value of each international transaction or specified domestic transaction entered into by such person.

2. What is thin capitalization?

Answer:

Thin Capitalization

A company is typically financed or capitalized through a mixture of debt and equity. The way a company is capitalized often has a significant impact on the amount of profit it reports for tax purposes as the tax legislations of countries typically allow a deduction for interest paid or payable in arriving at the profit for tax purposes while the dividend paid on equity contribution is not deductible. Therefore, the higher the level of debt in a company, and thus the amount of interest it pays, the lower will be its taxable profit. For this reason, debt is often a more tax efficient method of finance than equity. Multinational groups are often able to structure their financing arrangements to maximize these benefits. For this reason, country's tax administrations often introduce rules that place a limit on the amount of interest that can be deducted in computing a company's profit for tax purposes. Such rules are designed to counter cross-border shifting of profit through excessive interest payments, and thus aim to protect a country's tax base.

Under the initiative of the G-20 countries, the Organization for Economic Co-operation and Development (OECD) in its Base Erosion and Profit Shifting (BEPS) project had taken up the issue of base erosion and profit shifting by way of excess interest deductions by the MNEs in Action plan 4. The OECD has recommended several measures in its final report to address this issue.

In view of the above, sec. 94B was inserted in line with the recommendations of OECD BEPS Action Plan 4, to provide that interest expenses claimed by an entity to its associated enterprises shall be restricted to 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to associated enterprise, whichever is less.

3. Explain how the arms's length price in relation to an international transaction is computed under the resale price method as per Rule 10B of the Income-tax Rule, 1962.

Answer:

The Arm's Length Price as per resale price method shall be determined as under:

(i) the price at which property purchased or services obtained by the enterprise from an associated enterprise is resold or are provided to an unrelated enterprise, is identified;

(ii) such resale price is reduced by the amount of a normal gross profit margin accruing to the enterprise or to an unrelated enterprise from the purchase and resale of the same or similar property or from obtaining and providing the same or similar services, in a comparable uncontrolled transaction, or a number of such transactions;

(iii) the price so arrived at is further reduced by the expenses incurred by the enterprise in connection with the purchase of property or obtaining of services;

(iv) the price so arrived at is adjusted to take into account the functional and other differences, including differences in accounting practices, if any, between the international transaction or the specified domestic transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of gross profit margin in the open market;

(v) the adjusted price arrived at under (iv) is taken to be an arm's length price in respect of the purchase of the property or obtaining of the services by the enterprise from the associated enterprise.

4. Discuss when an enterprise is taken as 'associated enterprise' under section 92A.

Answer:

Meaning of associated enterprise [Sec. 92A]

Associated enterprise, in relation to another enterprise, means an enterprise:

(a) which participates, directly or indirectly, or through one or more intermediaries, in the *management* or *control* or *capital* of the other enterprise; or

(b) in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

Deemed associated enterprise [Sec. 92A(2)]

For the above purpose, two enterprises shall be deemed to be associated enterprises if, at any time during the previous year fulfill any of the following conditions (if one of following conditions are not satisfied, then mere participation in management or control or capital of the other enterprise, etc. shall not make them associate):

(a) one enterprise holds (directly or indirectly) shares carrying not less than 26% of the voting power (i.e., equity shares in case of company) in the other enterprise; or

(b) any person or enterprise holds (directly or indirectly) shares carrying not less than 26% of the voting power in each of such enterprises; or

(c) the manufacture or processing of goods or articles or business carried out by one enterprise is *wholly* (not partially) dependent on the use of know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has *exclusive* rights; or

(d) 90% or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, are supplied by the other enterprise **or** by persons specified by the other enterprise, **and** the prices and other conditions relating to the supply are influenced by such other enterprise; or

(e) the goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions relating thereto are influenced by such other enterprise; or

(f) where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual; or

(g) where one enterprise is controlled by a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family, or by a relative of a member of such Hindu undivided family, or jointly by such member and his relative; or

(h) where one enterprise is a firm, association of persons or body of individuals, the other enterprise holds not less than 10% interest in such firm, association of persons or body of individuals; or

(i) a loan advanced by one enterprise to the other enterprise constitutes not less than 51% of the **book value** of the total assets of the other enterprise; or

Taxpoint: *Revaluation of asset shall not be ignored.*

(j) one enterprise guarantees not less than 10% of the total borrowings of the other enterprise; or

(k) more than ½ of the board of directors or members of the governing board, **or** one (not ½ of total number of executive director) or more executive directors or executive members of the governing board of one enterprise, are **appointed** by the other enterprise; or

Taxpoint: *Mere power to appoint director is not sufficient, such power must be exercised.*

(l) more than ½ of the directors or members of the governing board, **or** one or more of the executive directors or members of the governing board, of each of the two enterprises are **appointed** by the same person or persons; or

(m) there exists between the two enterprises, any relationship of mutual interest, as may be prescribed.

5. You are a tax consultant to an overseas manufacturing company which is going to start a permanent establishment in India with manufacturing facility in Madurai District of Tamilnadu. Prepare a report for the Chairman of the company highlighting latest transfer pricing provisions applicable in India.

Answer:

The increasing participation of multinational groups in economic activities in the country has given rise to new and complex issues emerging from transactions entered into between two or more enterprises belonging to the same multinational group. The profits derived by such enterprises carrying on business in India can be controlled by the multinational group, by manipulating the prices charged and paid in such intra-group transactions, thereby, leading to erosion of tax revenues. In other words, the course of business between a resident person and an associated non-resident or not ordinarily resident person, is so arranged that the resident makes either no profit or less than the ordinary profit in that business. Such an arrangement would deprive that Indian revenue of the tax which would otherwise be payable by the resident. With a view to provide a statutory framework which can lead to computation of reasonable, fair and equitable profits and tax in India, in case of

such multinational enterprise, new set of special provisions relating to avoidance of tax have been introduced under chapter X in the Income tax Act. These provisions relate to computation of income from international transaction having regard to arm's length price, meaning of associated enterprises, meaning of international transaction, determination of arm's length price, keeping and maintaining of information and documents by persons entering into international transaction, furnishing of a report from an accountant by persons entering into such transactions.

Transfer pricing provisions are enumerated here-in-below for your ready reference:

Computation of income from international transaction having regard to arm's length price [Sec. 92]

The provisions are as under:

- Any income arising from an *international transaction* shall be computed having regard to the *arm's length price*.
- The allowance for any expense or interest arising from an international transaction or specified domestic transaction[1] shall also be determined having regard to the arm's length price.
- Where in an international transaction or specified domestic transaction,
  - two or more *associated enterprises*
  - enter into a mutual agreement or arrangement for the apportionment of, or any contribution to, any cost incurred
  - in connection with a benefit, service or facility provided to any such enterprises,

  the cost apportioned to (contributed by), any such enterprise shall be determined having regard to the arm's length price of such benefit, service or facility.
- The provisions (in any of aforesaid situation) shall not apply in a case where the computation of income or the determination of the allowance for any expense or interest or the determination of any cost or expense allocated or contributed has the *effect of reducing the income* chargeable to tax or increasing the loss, as the case may be, computed on the basis of entries made in the books of account in respect of the previous year in which the international transaction or specified domestic transaction was entered into.
- Any allowance for an expenditure or interest or allocation of any cost or expense or any income in relation to the specified domestic transaction shall be computed having regard to the arm's length price.

6. What are the transactions covered by section 92BA as 'specified domestic transactions'?

Answer:

"Specified Domestic Transaction" in case of an assessee means any of the following transactions, not being an international transaction, namely:

(i) any transaction referred to in sec. 80A;

(ii) any transfer of goods or services referred to in sec. 80-IA(8);

(iii) any business transacted between the assessee and other person as referred to in sec. 80-IA(10);

(iv) any transaction, referred to in any other section under Chapter VI-A or sec. 10AA, to which provisions of sec. 80-IA(8) or (10) are applicable;

(v) any business transacted between the persons referred to in sec. 115BAB(4); or

(vi) any other transaction as may be prescribed,

and where the aggregate of such transactions entered into by the assessee in the previous year exceeds a sum of ₹ 20 crore.

7. Explain the importance provision for transfer pricing

Answer:

Transfer pricing mechanism is very important for following reasons:

1. ***Helpful in correct pricing of Product/Services*:** An effective transfer pricing mechanism helps an organization in correctly pricing its product and services. Since in any organization, transaction between associated parties occurs frequently, it is necessary to value all transaction correctly so that the final product/ services may be priced correctly.
2. ***Helpful in Performance Evaluation*:** For the performance evaluation of any entity, it is necessary that all economic transactions are accounted. Calculation of correct transfer price is necessary for accounting of inter related transaction between two Associated enterprises.
3. ***Helpful in complying Statutory Legislations*:** Since related party transaction have a direct bearing on the profitability or cost of a company, the effective transfer pricing mechanism is very necessary. For example, if the related party transactions are measured at less value, one unit may incur loss and other unit may earn undue profit. This will result in income tax imbalances at both parties end. Similarly, wrong transfer pricing may lead to wrong payment of excise duty, custom duty /sales tax (if applicable) as well.

8. Khazana Ltd is an Indian Company engaged in the business of developing and manufacturing Industrial components. Its Canadian Subsidiary Techpro Inc. supplies technical information and offers technical support to Khazana for manufacturing goods, for a consideration of Euro 1,00,000 per year. Income of Khazana Ltd is ₹ 90 Lakhs. Determine the Taxable Income of Khazana Ltd if Techpro charges Euro 1,30,000 per year to other entities in India. What will be the answer if Techpro charges Euro 60,000 per year to other entitles. (Rate per Euro may be taken at ₹ 50.)

Answer:

Computation of Total Income of Khazana Ltd.

Particulars	Amount	Amount
When price charged for Comparable Uncontrolled Transaction	€ 1,00,000	€ 50,000
Price actually paid by Khazana Ltd [€1,00,000 x ₹ 50]	50,00,000	50,00,000
Less: Price charged in Rupees (under ALP)		
[€1,30,000 x ₹ 50]	65,00,000	
[€60,000 x ₹ 50]		30,00,000
Incremental Profit on adopting ALP (A)	(15,00,000)	20,00,000
Total Income before adjusting for differences due to Arm's Length Price	90,00,000	90,00,000
Add: Difference on account of adopting Arms Length Price [if (A) is positive]	NIL	20,00,000
Total Income of Khazana Ltd.	**90,00,000**	**1,10,00,000**

Note: u/s 92(3), Taxable Income cannot be reduced on applying ALP. Therefore, difference on account of ALP which reduces the Taxable Income is ignored.

9. Videsh Ltd., a US company has a subsidiary, Hind Ltd. in India. Videsh Ltd. sells mobile phones to Hind Ltd. for resale in India. Videsh Ltd. also sells mobile phones to Bharat Ltd. another mobile phone reseller. It sold 48,000 mobile phones to Hind Ltd. at ₹ 12,000 per unit. The price fixed for Bharat Ltd. is ₹ 11,000 per unit.

The warranty in case of sale of mobile phones by Hind Ltd. is handled by itself, whereas, for sale of mobile phones by Bhart Ltd., Videsh Ltd. is responsible for warranty for 6 months. Both Videsh Ltd. and Hind Ltd. extended warranty at a standard rate of ₹ 500 per annum.

On the above facts, how is the assessment of Hind Ltd. going to be affected? Show your calculations also.

Answer:

Computation of Arm's Length Price

Particulars	Amount
Cost of Mobile Phone sold to Bharat Ltd.	11,000
Less: Cost of Warranty	250
Arm's Length Price	10,750

Computation of Increase in Total Income

Particulars	Amount (in lacs)
Cost of mobile phone acquired from Videsh Ltd. [₹ 12,000 x 48,000]	5,760
Less: Arm's length Value [₹ 10,750 x 48,000]	5,160
Therefore, Increase in Total Income	600

10. Compute the 'arm length price' (ALP) in the following cases :

Medical Instruments Ltd. is a 100% India subsidiary of a US company. The parent company sells one of its products to the Indian subsidiary at a price of US$ 100 per unit. The same product is sold to unrelated buyers in India at a price of US$ 125 per unit.

Answer:

Computation of Arm's Length price – Price charged by the US parent company for supply to its 100% subsidiary per unit = 100 US$

And sale price to Unrelated buyers in India per unit = 125 US$

Arm's Lengths price is computed where the international transaction may result in loss to the Government. However, in the instant case, since the price charged from the associated enterprise is lesser than the normal price. Hence, there is no loss to the government. So, arm's Length Price is not required to be calculated in this case.

11. Shri Anuj, an ordinarily resident in India, provides following details of his income for the previous year relevant to the A.Y. 2020-21

- Income from India ₹ 3,40,000

- Income from Country Z ₹ 2,00,000

- Investment in PPF ₹ 10,000

Further, it is to be noted that:

a) India has avoidance of double taxation agreement with Country Z. According to said agreement, income is taxable in the country in which it is earned and not in other country. However, in the other country such income can be included for the purpose of computation of tax rate.

b) Foreign income has been taxed in Country Z @ 20%.

Compute Indian tax payable.

Answer:

Computation of total income and tax liability of Shri Anuj for the A.Y. 2020-21

Particulars	Amount
Income from India	3,40,000
Income from Country Z	2,00,000
Gross Total Income	5,40,000
Less: Deduction u/s 80C [Investment in PPF]	10,000
Total income	**5,30,000**
Tax on above	18,500
Add: Health & Education cess	740
Tax and cess payable	19,240
Less: Relief u/s 90 [₹ 2,00,000 x 3.63%[1]]	7,260
Tax payable in India (Rounded off u/s 288B)	**11,980**

[1.] Average rate of Indian tax = ₹ 19,240 / ₹ 5,30,000 x 100 = 3.63%

12. Define:

(a) Secondary adjustment

(b) Arm's length price

(c) Enterprise

(d) Berry Ratio

Answer:

(a) "Secondary adjustment" means an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee.

(b) Arm's length price means

(i) a price which is applied or proposed to be applied in a transaction

(ii) between persons other than associated enterprises (i.e., unrelated person, resident or non-resident),

(iii) in uncontrolled conditions [Sec. 92F(ii)]

(c) Enterprise means a person (including a permanent establishment[1] of such person) who is, or has been, or is proposed to be, engaged:

- in any activity, relating to the production, storage, supply, distribution, acquisition or control of:
  - (a) articles or goods; or
  - (b) know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature; or
  - (c) any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has *exclusive* rights; or
- in the provision of services of any kind; or
- in carrying out any work in pursuance of a contract; or
- in investment, or providing loan; or
- in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate,

whether such activity or business is carried on, directly or through one or more of its units or divisions or subsidiaries; or

whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or places.

1. *Permanent establishment* includes a fixed place of business through which the business of the enterprise is wholly or partly carried on [Sec. 92F(iiia)]

(d) Berry ratio is the ratio of gross profit to operating expenses. It measures the return on operating expenses. As the functions performed by the tax-payers are often reflected in the operating expenses, this ratio determines the relationship of the income earned in relation to the functions performed. This ratio helps in overcoming the difficulties in applying the RPM, which does not explain the creation of gross profit. This ratio is used in conducting an arm's length analysis of service-oriented industry such as limited risk distributor, advertising, marketing and engineering services. The Berry ratio may be used to test whether service providers have earned enough mark-up on their operating expenses. In essence, the Berry ratio implicity assumes that there is a relationship between the level of operating expenses and the level of gross profits earned by routine distributors and service providers.

13. Megabyte Inc. of France and R Ltd. of India are associated enterprises. R Ltd. imports 3,000 compressors for Air Conditioners from Megabyte Inc. at ₹ 7,500 per unit and these are sold to Pleasure Cooling Solutions Ltd at a price of ₹ 11,000 per unit. R Ltd. had also imported similar products from Cold Inc. Poland and sold outside at a Gross Profit of 20% on Sales. Megabyte Inc. offered a quantity discount of ₹ 1,500 per unit. Cold Inc. could offer only ₹ 500 per unit as Quantity Discount. The freight and customs duty paid for imports from Cold Inc. Poland had cost R Ltd. ₹ 1,200 per piece. In respect of purchase from Cold Inc., R Ltd. had to pay ₹ 200 only as freight charges. Determine the Arm's Length Price and the amount of increase in Total Income of R Ltd.

Answer:

Computation of Arm's Length Price

Particulars	Amount
Resale Price of Goods Purchased from Megabyte Inc.	11,000
Less: Adjustment for Differences –	
a) Normal Gross Profit Margin at 20% of Sale Price [20% x ₹ 11,000]	2,200
b) Incremental Quantity Discount by Megabyte Inc. [₹ 1,500 – ₹ 500]	1,000
c) Difference in Purchase related expenses [₹ 1,200 – ₹ 200]	1,000
Arms Length Price	**6,800**

Computation of Increase in Total Income of R Ltd

Particulars	Amount
Price at which actually bought from Megabyte Inc. of France	7,500
Less: Arms Length Price per unit under Resale Price Method	6,800
Decrease in Purchase Price per unit	**700**
No. of units purchased from Megabyte Inc.	3,000 units
Increase in Total Income (3,000 units x ₹ 700)	₹ 21,00,000

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HEADQUARTERS
CMA Bhawan
12, Sudder Street, Kolkata - 700 016
Ph: +91-33-2252-1031/34/35/1602/
1492/1619/7373/7143
Fax: +91-33-2252-7993/1026/1723

DELHI OFFICE
CMA Bhawan
3, Institutional Area, Lodhi Road
New Delhi - 110003
Ph: + 91-11-24666100/24666124/24666122
Fax: +91-11-43583642

Behind Every Successful Business Decision, there is always a CMA