LAST DAY

1. Section 115R-[Effective from 1.6.2013]

Rationalisation of rates of additional income-tax on income distributed by mutual funds

The income distributed to a unit holder of the Unit Trust of India or a Mutual Fund shall be charged to tax under section 115R at the rates given below:

Particulars	*Where recipient is an INDIVIDUAL or HUF*	*Where recipient is any other person*
Distribution by equity oriented mutual funds or UTI in respect of Unit Scheme, 1964	Nil	Nil
Distribution by a money market mutual fund or a liquid fund	25%	30%
Distribution by a debt fund other than a money market mutual fund or liquid fund	12.5% **25%(w.e.f.01.6.2013)**	30%
Distribution by a mutual fund under an infrastructure debt fund scheme to a non-resident/ foreign company	5%	5%

Note: The above rates will be increased by surcharge (always 10%) and education cess (3%).

2. Sections 167C & 179-[Effective from 01.06.2013]

Question

The Income tax department failed to recover tax due amounting to Rs. 1 crore from ABC Pvt Limited. Further, interest and penalty to be recovered were Rs. 52 lacs. Income tax department issued notice to directors of this company to pay all the dues. Directors paid tax Rs. 1 crore but denied liability towards interest and penalty. Whether denial by directors is valid in the eyes of law if demand pertains to:-

(a) A.Y. 2011-12

(b) A.Y. 2014-15

Answer

(a) <u>If demand pertains to A.Y. 2011-12</u>

Consider following provisions before amendment

Liability of Directors of private company in liquidation [Section 179]

a) Where **any tax due from a private company** in respect of income of any previous year **cannot be recovered,** then, every person who was a director of such company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax.

b) 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.

c) Section 179 has an overriding effect over the provisions of Companies Act.

Considering the above provisions, department can recover only "tax due" and not the interest and penalty. Therefore, denial by directors for interest and penalty is valid.

(b) <u>If demand pertains to A.Y. 2014-15</u>

Consider following provisions after amendment

Liability of Directors of private company in liquidation [Section 179]

a) Where any **tax due** from a private company in respect of income of any previous year **cannot be recovered,** then, every person who was a director of such company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax.

b) 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.

c) Section 179 has an overriding effect over the provisions of Companies Act.

d) Further, this section has been amended w.e.f. 1st June, 2013 to clarify that "tax due" includes penalty, interest or any other sum payable under this Act.

Considering the above amendment, directors can not deny the liability to interest and penalty when company fails to pay the same.

Similar amendment has brought into section 167 C which deals with liability of partners of limited liability.

3. Section 90 & 90A-[Effective retrospectively from A.Y. 2013-14]

Requirement of Tax Residency Certificate (TRC) to contain "prescribed particulars" dispensed with

(i) Old provisions require, on the part of non-resident to produce **Tax Residency certificate (TRC) from his country, containing prescribed particulars**, so that he can avail relief under section 90 and 90A .

(ii) This created a hardship on the part of non-resident because foreign country tax officers may issue TRC as per the format prevailing under their law.

(iii) That's why amendment has been brought which now requires to obtain TRC from his country (Words "Containing prescribed particulars" have been omitted) . That means, non resident will get relief under section 90 or 90A even though TRC may not contain prescribed particulars

(iv) However, sub-section (5) has been inserted in sections 90 and 90A to require the **assessee to provide such other documents and information, as may be prescribed**.

<u>Students shall also consider following Notification</u>:

Notification No.57 / 2013 dated 01.08.2013

Documents and information, to be furnished by the assessee for claiming treaty benefits, prescribed

For claiming treaty benefits, sections 90(4) and 90A(4) provide that a certificate issued by the Government of a foreign country would constitute proof of tax residency, without any further conditions regarding furnishing of "prescribed particulars" therein.

Further, sections 90(5) and 90A(5) require an assessee to **provide such other documents and information, as may be prescribed,** for claiming the treaty benefits, in addition to such certificate issued by the foreign Government.

Accordingly, the assessee shall provide the following information in Form No. 10F:

(i) Status (individual, company, firm etc.) of the assessee;

(ii) Nationality (in case of an individual) or country or specified territory of incorporation orregistration (in case of others);

(iii) Assessee's tax identification number in the country or specified territory of residenceand in case there is no such number, then, a unique number on the basis of which theperson is identified by the Government of the country or the specified territory of whichthe assessee claims to be a resident;

(iv) Period for which the residential status, as mentioned in the certificate referred to insection 90(4) or section 90A(4), is applicable; and

(v) Address of the assessee in the country or specified territory outside India, during theperiod for which the certificate, as mentioned in (iv) above, is applicable.

However, the assessee may not be required to provide the information or any part thereof, ifthe information or the part thereof, as the case may be, is already contained in the TRCreferred to in section 90(4) or section 90A(4).

The assessee shall keep and maintain such documents as are necessary to substantiate theinformation provided. An income-tax authority may require the assessee to provide the saiddocuments in relation to a claim by the said assessee of any relief under an agreementreferred to in section 90(1) or section 90A(1), as the case may be.

4. Section 132B-[Effective from 01.06.2013]

Practical

Debate Limited provides following information:-

(i)	Tax on returned income for the relevant previous year	Rs.32,00,000
(ii)	TDS was deductible by ABC Edu Pvt Ltd on interest income (but ABC Edu Pvt Ltd failed to deduct TDS)	Rs. 2,00,000
(iii)	Cash seized during search operations (search took place during the relevant previous year). Debate Limited written a letter to AO for adjusting this cash against advance tax liability	Rs.25,00,000
(iv)	Advance tax paid during previous year	Rs.2,00,000

Debate Limited claims that it is not liable for interest under section 234B of the Act on the following grounds:

(a) Advance tax payable is Rs. 30,00,000 and

(b) It had paid 90% of advance tax payable

Examine the correctness of contention raised by Debate Limited.

Before, we go to the solution, lets comprehend amendment first.

Application of seized assets for recovery of advance tax payable not allowed

Section 132B has been substituted with a new section with effect from June 1, 2002. Under the substituted section, all assets which are seized under section 132 or requisitioned under section 132A shall be dealt with as follows against:

1. **Existing Liability** on the day of seizure or requisition under Income-tax Act, Wealth-tax Act, Expenditure-tax Act, Gift-tax Act and Interest-tax Act.
2. Liability determined on completion of assessment under section 153A (including assessment of the previous year in which search is initiated) if such person is in default or deemed to be in default for such liability.

For the removal of doubts, it is hereby declared that the "existing liability" does not include advance tax payable in accordance with the provisions of Part C of Chapter XVII. ***(Amendment by FA 2013, w.e.f. 1st June,2013)***

Solution

Computation of Advance Tax Payable

Particulars	Amount Rs.
Tax on Returned Income	32,00,000
Less: Tax Deducted at Source (it can be reduced only when it has been actually deducted)	Nil
	32,00,000

In order to overcome, interest liability of section 234B, Debate Limited shall pay 90% of Rs. 32,00,000. But in this case, Debate Limited had made following payments towards Advance Tax.

Computation of Total Advance Tax Paid

Particulars		Amount Rs.
(i)	Cash seized cannot be adjusted against advance tax liability (Refer amendment)	Nil
(ii)	Advance tax paid	2,00,000
Total Advance Tax paid		**2,00,000**

Total advance tax paid is Rs.2,00,000 which is less than 90% of Rs.32,00,000. Hence, contention of Debated Limited is not tenable.

5. Section 142(2A)-Effective from 01.06.2013]

Scope of reasons for directing special audit of accounts expanded

Old Provision	New Provision
Under section 142(2A), if at any stage of the proceeding, the Assessing Officer having regard to the ***"nature and complexity of the accounts of the assessee"*** and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the approval of the Chief Commissioner or Commissioner, direct the assessee to get his accounts audited by an accountant and to furnish a report of such audit.	Section 142(2A) now provides that if at any stage of the proceedings before him, the Assessing Officer, 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*** – ***specialized nature of business activity of the assessee,*** **and the interests of the revenue,** is of the opinion that it is necessary so to do, he may, with the previous approval of the Chief Commissioner or the Commissioner, direct the assessee to get his accounts audited by an accountant and to furnish a report of such audit.

6. Section 153 & 153B

Practical

The case of Tip Top Private Ltd. for the A.Y. 12-13 was selected under scrutiny. During scrutiny proceedings, the competent authority, India on 15-02-15, had made a reference for exchange of information to the competent authority, U.K. Such information was received by Commissioner on 10-09-15. Further, competent authority, India made reference for exchange of information on 19-03-15 to competent authority, U.S. Competent authority, U.S. supplied information on 18-03-16. Find out the revised time limit for completion of assessment under section 143(3).

Before, we go to the solution, lets comprehend amendment first.

Time periods are excluded from the time limit for passing Assessment Orders [Explanation 1 to section 153 &Explanation to section 153B]

The following time periods are excluded from the time limit for passing assessment orders.

(i) Time taken in reopening and re – hearing u/s 129.

(ii) Period for which the assessment proceedings are stayed by any Court.

(iii) Period allowed for **special audit u/s 142(2A)** to be carried out and for furnishing of the said audit report; or ***(applicable Upto 31st May 2013)***

(iv) Period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under section 142(2A)and—

> **(a) ending with the last date on which the assessee is required to furnish a report of such audit under that sub-section; or**
>
> (b) **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, *(Amendment by FA 2013, wef 1st June,2013)***

(v) The period commencing from the date on which the assessing officer intimates the Central Government or prescribed authority the contravention of conditions by entities covered u/.s. 10(21), 10(22B), 10(23A), 10 (23B), 10(23C), ending with the date on which the copy of the order withdrawing the approval or rescinding the notification under those clauses is received by the assessing officer.

(vi) In a case where an application made before the income-tax Settlement Commission under section 245C is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which such application is made and ending with the date on which the order u/s. 245D(1) is received by the Commissioner.

(vii) Time between date on which an application is made before the Authority for Advance Rulings and ending with the date on which the order rejecting the application or, as the case may be, the date on which the advance ruling pronounced by it is received by the Commissioner.

(viii) the period commencing from the date on which a reference for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information so requested is received by the Commissioner or a period of one year, whichever is less. (Applicable upto 31st May 2013)

(ix) ***the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information requested is last received by the Commissioner or a period of one year, whichever is less.(Amendment by FA 2013 w.e.f. 1st June, 2013)***

If after extending the time, the period available to the assessing officer for making an order is less than 60 days, then the remaining period shall be extended to 60 days.

But for point no. (vi), if after extending the time, the period available to the assessing officer for making an order is less than one year, then the remaining period shall be extended to 1 year.

Solution:

Step 1: **Regular Time Limit**
2 years from the end of Assessment Year
End of the Assessment year + 2 years
31.3.2013 + 2 years
31.3.2015

Step 2: **Revised Time Limit**
Original Time Limit + days lost (*the period commencing from the date on which a reference or first (15.02.15) of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A* ***and*** *ending with the date on which the information requested is last (18.03.16) received by the Commissioner or a period of one year, whichever is less.*
31.03.2015 + One year
31.3.2016

Step 3: **Minimum Time Limit**
Day on which authority can reassume jurisdiction + 60 days
18.03.2016 + 60 days
17.05.2016

Step 4: **Effective Time Limit**
Step 2 or Step 3 whichever is later
17.05.2016

7. Section 252(3)-[Effective from 01.06.2013]

Question

Who can be appointed as President of Income Tax Appellate Tribunal?

Answer

The Central Government shall appoint—

(a) a person who is a sitting or retired Judge of a High Court and who has completed not less than seven years of service as a Judge in a High Court; or
(b) the Senior Vice-President or one of the Vice-Presidents of the Appellate Tribunal,

to be the President of Tribunal. ***(Amendment by FA 2013 w.e.f. 1st June, 2013)***

8. Section 206C(1D)-[Effective from 01.06.2013]

Tax Collection at Source provisions under section 206C to also be attracted on cash sale of any coin or any other article weighing 10 gms or less, if the consideration exceeds Rs. 2 lakh

1. The Finance Act, 2012 had inserted sub-section (1D) in section 206C to provide for collection of tax at source@1% by the seller from the buyer, on cash sale of bullion or jewellery, if the sale consideration exceeds Rs.2 lakh and Rs.5 lakh, respectively.

2. A coin or any other article weighing 10 gms or less was, however, excluded from the applicability of the provisions of this section.

3. Since the exclusion was misused, the amendment has been made. Consequently, the provisions for tax collection at source under section 206C @1% of sale consideration would be attracted even in respect of cash sale of any coin or any article weighing 10 gms or less, if the sale consideration **exceeds Rs. 2 lakh.**

9. New Section 271FA-[Effective from 01.04.2014]

For good understanding of this provision, kindly refer ICAI supplementary applicable for May 2014 exams

10. Wealth Tax-Section 14A & 14B

Electronic filing of annexure-less return of net wealth

(a) Section 14 of the Wealth-tax Act provides for furnishing of return of net wealth as on the valuation date in paper format in prescribed form.

(b) Documents and reports are required to be furnished along with return of wealth.

(c) In order to facilitate filing of paper-less return of net wealth, sections 14A and 14B have been inserted and section 46 has been amended with effect from June 1,2013.

(d) After the amendment, Wealth tax Act will have provision similar to sections 139C and 139D of the Income-tax Act which regulate filing of annexure-less return of income in electronic form by certain class of income-tax assessees.

11. Section 2(ea)

Meaning of Urban Land

Urban land" means land situate—

(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand; or

(b) in any area within the distance, measured aerially,—

- **(i)** not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in sub-clause (*i*) and which has a population of more than ten thousand but not exceeding one lakh; or
- **(ii)** not being more than six kilometres from the local limits of any municipality or cantonment board refered to in sub-clause (*i*) and which has a population of more than one lakh but not exceeding ten lakh; or
- **(iii)** not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in sub-clause (i) and which has a population of more than ten lakh,

Explanation.— "population" means the population according to the last preceding census of which the relevant figures have been published before the date of valuation."

Urban land when not treated as asset- In the following cases land is not treated as "asset".

(a) Land classified as agricultural land in the records of the Government and used for agricultural purposes.

(b) Land on which construction of a building is not permissible under any law for the time being in force in the area in which such land is situated.

(c) Land occupied by any building which has been constructed with the approval of the appropriate authority.

(d) Any unused (i.e., not put to any use) land held by the assessee for industrial purposes for a period of 2 years from the date of its acquisition by him.

(e) Any land held by the assessee as stock-in-trade for a period of 10 years from the date of its acquisition by him.