

Gurukripa Guideline Answers to CA Final Direct Taxes May 2011 Exams

QUESTIONS ARE ARRANGED CHAPTERWISE

EXEMPTIONS

Question 1:

4 Marks

Which are the conditions to be satisfied by an Electoral Trust for claiming the benefit of exemption of its income? Is this benefit available in respect of all the income earned by an Electoral Trust?

Solution:

1. Voluntary contributions received by an electoral trust shall be exempt. **[Sec.13B]**
2. **Conditions:**
 - (a) 95% of the aggregate donations received during the previous year along with the surplus brought forward from earlier previous year is distributed to any Political Party registered u/s 29A of the Representation of the People Act, 1951,
 - (b) Electoral Trust should function in accordance with the rules made by the Central Government.

INCOME FROM SALARIES

Question 2:

4 Marks

Mr. Ramanand after putting 25 years of service opted for voluntary retirement and under approved scheme received an amount of ₹ 20 lakhs as VRS compensation on 01-02-2011. He was advised by his tax consultant to claim exemption to the extent as specified in Section 10(10C) and also the relief under Section 89. He is order to have an expert opinion, consults you and asks whether such a treatment of VRS compensation is permissible under the Act?

Solution:

1. W.e.f AY 2010–11, no exemption u/s 10(10C) shall be allowed, if the assessee has claimed relief u/s 89 in respect of VRS Compensation. The assessee shall be allowed to claim either exemption u/s 10(10C) or relief u/s 89.
2. Therefore, in the given case Mr.Ramanand shall claim exemption u/s 10(10C) or Relief u/s 89 but not both.

Question 3:

4 Marks

Mr. Divyam avails the benefit of LTC and went by air (economy class) on a holiday in India on 25.01.2011 along with his wife and three children consisting of son aged 4 years and twin daughters of 1 year age. Total cost of tickets reimbursed by his employer was ₹ 90,000 (₹ 60,000 for 2 adults and 30,000 for the three children). State with reason the amount which can be claimed by Mr. Divyam out of the reimbursement as not subject to tax? Will your answer the different where among his three children the twins were of 4 years of age and the age of the son was of 1 year?

Solution:

The LTC exemption is available **only for two children** of an individual born after 1.10.1998. In reckoning this limit of two children, children born out of **multiple births after the first birth** will be treated as one child only.

Case 1: First Son and then twin daughters: The exemption shall apply to all the three children as the twins will be considered as one child. Therefore, the entire ₹ 90,000 can be claimed as exemption.

Case 2: First Twin daughters and then Son: The exemption will apply only to the twin daughters (Considered as two children) and not the son. Here only ₹ 80,000 can be claimed as exemption.

Question 4:

4 Marks

Mr. is working with MNO Limited for the last 10 years. He was granted an option on 1.7.2008 by the Company to purchase 800 equity shares at a price of ₹ 250 per share. The period during which the option can be exercised to purchase 800 shares at a pre-determined price of ₹ 250 per share commencing on 1.7.2008 and ending on 31.3.2011. Mr. M exercised the option on 15-3-2010 to purchase 500 shares. Fair market value on the said date was ₹ 6490 on the Bombay Stock Exchange and ₹ 6500 on the national Stock Exchange. The NSE has recorded the higher volume of trading in that share.

The Company has allotted him 500 shares on 24th April, 2010. The fair market value on the date of allotment was ₹ 7100 per share on NSE and ₹ 7110 on the BSE, that has recorded the higher volume of trading in that share. The option was granted for making available rights in the nature of intellectual property rights.

Determine the taxability of perquisite. Does it make any difference if the option was granted for providing technical know-how?

Solution:

1. **Sweat Equity Shares** means Equity Shares Issued by a Company to its Employees or Directors, at a discount or for consideration other than cash, for – (a) providing know-how, or (b) making available intellectual property rights, or (c) value additions, by whatever name called.
2. **Fair Market Value:** Where the shares are Listed in more than one Recognised Stock Exchange – **Average** of Opening and Closing Price in the Stock Exchange that records the **highest volume of trading** in Shares on the date of exercising of option. Mr. M exercised the option on 15.3.2010 to purchase 500 shares. Fair market value on the said date was ₹6490 on the Bombay Stock Exchange and ₹ 6500 on the national Stock Exchange. Therefore, the FMV will be taken at ₹ 6500.
3. **Value of Perquisite:** FMV of Sweat Equity Shares on date of exercise of Option **Less:** Amt recovered from Employee

$$= ₹ 6500 - ₹ 250 = ₹ 6250 \times 500 \text{ shares} = ₹ 31,25,000.$$

PROFITS AND GAINS OF BUSINESS OR PROFESSION

Question 5:

2 × 6 = 12 Marks

Examine the taxability or allowability or otherwise treatment to be given while computing income under the head "Income from Business or Profession" to be declared in the return of income for the financial year ended on 31-3-2011, in the following cases:

	Case	Taxability/ Allowability
(i)	Amount received towards power subsidy with a stipulation that the same is to be adjusted in the electricity bills.	Power subsidy received by an Assessee is revenue in nature, since it goes to reduce the Electricity Bills and hence taxable u/s 28. [Rajaram Maize Products 251 ITR 427 (SC)]
(ii)	Donations received by a person in the course for carrying on vocation from his followers.	The assessee carried on a vocation of practicing against atheism and was engaged in a movement for the spread of religion. Sum received as donations from his friends, shall be treated as Business or Professional Income. [Dr. K. George Thomas 156 ITR 412]
(iii)	Profit derived by an assessee engaged in carrying the business as dealers in shares on exchange of the shares held as stock in trade of one Company with the shares of other Company.	Profit derived from sale and purchase of securities by a dealer in shares will be treated as business income and chargeable to tax under the head profits and gains of business or profession.
(iv)	Interest received by a contractor on the amount of compensation awarded by an arbitrator resolving the dispute relating to the work done.	Interest Income on the awards of arbitration are trading receipts, and hence taxable as Business Income. [Govinda Choudhry & Sons 203 ITR 881 (SC)]
(v)	The amount of margin money forfeited by an bank on the failure of its constituents of not taking the delivery of the shares purchase by such bank on their behalf.	Forfeiture of margin money deposits represents Bank's business income. Lakshmi Vilas Bank Ltd [1996] 220 ITR 305 (SC). It cannot be reduced from the cost of the investment for which such margin money was received.
(vi)	Depreciation on the "decoders" given on loan to the cable operators but owned by the assessee who is engaged in the business of distributing satellite channels.	Where the assessee, engaged in the business of providing satellite signals and distribution of satellite channels, provides decoders on loan to cable operators and the assessee retains the full control of decoders, the assessee is entitled to depreciation on decoders on loan. [CIT vs Turner International India (P) Ltd. 297 ITR 373 (Del)]

Question 6:

4 Marks

X Co. Ltd. was amalgamated with Y Co. Ltd. on 30.04.2010. X Co. Ltd was engaged in real estate and whereas Y Co. Ltd. was engaged in manufacture of textile articles. Y Co. Ltd. after amalgamation altered its objects clause of Memorandum of Association, to carry on real estate business.

The stock in trade of X Co. Ltd (being vacant lands) was taken over at ₹ 110 lakhs by Y Co. Ltd. as against their original cost of ₹ 125 lakhs to X Co. Ltd. For the purpose of amalgamation, Y Co. Ltd incurred ₹ 25 lakhs towards development of those lands obtained on amalgamation. It sold the entire land for ₹ 160 lakhs during the year ended 31.03.2011.

Determine the tax implication of the transaction in the hands of Y Co. Ltd. for the assessment year 2011-12.

Solution:**1. Cost of Acquisition:**

- (a) U/s 43C, Cost of Acquisition of Stock in Trade in a scheme of Amalgamation = Cost to the Amalgamating Company + Cost of Improvement and Expenses incurred for the transfer.
- (b) Therefore, Cost of Acquisition in the given case is ₹ 110 lakhs + ₹ 25 lakhs = ₹ 135 lakhs.

2. Taxable Business Income:

Sale Consideration – Cost of Acquisition = ₹ 160 lakhs – ₹ 135 lakhs = ₹ 25 lakhs.

CAPITAL GAINS**Question 7:**

6 Marks

“Any transfer of Capital Asset or Intangible Asset by a Private Company or Unlisted Public Company to a LLP or any transfer of share or shares held in a Company by a shareholder on conversion of a Company into a LLP in accordance with Section 56 and Section 57 of the Limited Liability Partnership Act, 2008, shall not be regarded as a transfer for the purposes of levy of capital gains tax under Section 45 subject to fulfillment of certain conditions”. Explain in the context of the provisions contained in the Act.

Solution:**Refer Page 7.12, Q.No.23****Question 8:**

10 Marks

PQR Limited has two units – one engaged in manufacture of computer hardware and the other involved in developing software. As a restructuring drive, the Company has decided to sell its software unit as a going concern by way of slump sale for ₹ 385 lakh to a new Company called S Limited, in which it holds 74% equity shares.

The Balance Sheet of PQR limited as on 31st March 2011, being the date on which software unit has been transferred, is given hereunder –

Balance Sheet as on 31.3.2011

Liabilities	₹ in lakh	Assets	₹ in lakh
Paid up Share Capital	300	<u>Fixed Assets</u>	
General Reserve	150	Hardware unit	170
Share Premium	50	Software unit	200
Revaluation Reserve	120	<u>Debtors</u>	
<u>Current Liabilities</u>		Hardware unit	140
Hardware unit	40	Software unit	110
Software unit	90	<u>Inventories</u>	
		Hardware unit	95
		Software unit	35
	750		750

Following additional information are furnished by the Management:

- (i) The Software unit is in existence since May, 2007.
- (ii) Fixed assets of software unit includes land which was purchased at ₹ 40 lakh in the year 2004 and revalued at ₹ 60 lakh as on March 31, 2011.
- (iii) Fixed assets of software unit mirrored at ₹ 140 lakh (₹ 200 lakh minus land value ₹ 60 lakh) is written down value of depreciable assets as per books of account. However, the written down value of these assets under section 43(6) of the Income-tax Act is ₹ 90 lakh.
- (a) Ascertain the tax liability, which would arise from slump sale to PQR Limited.
- (b) What would be your advise as a tax-consultant to make the restricting plan to the company more tax-savvy, without changing the amount of sale consideration?

Solution:

Assessee: PQR Ltd

Previous Year:2010–11

Assessment Year: 2011–12

1. Computation of Tax Liability arising on Slump Sale**1. Net Worth of Unit-II**

Particulars	Rs.Lakhs
Depreciable Assets at WDV	90.00
Land at Book Value (Revalued figure shall not be considered)	40.00

Particulars	Rs.Lakhs
Debtors at Book Value	110.00
Inventories at Book Value	35.00
Total Assets	275.00
Less: Liabilities	(90.00)
Net Worth of Software Unit	185.00

2. **Calculation of Long-term Capital Gain (Unit owned for more than 36 Months):****Note:** Since the unit is sold as such, benefit of Indexation shall not apply. [Section 50B]

Particulars	Rs.Lakhs
Sale Consideration	385.00
Less: Net Worth of Business Transferred (Pt.No.1)	185.00
Long Term Capital Gain	200.00
Tax on above at 20% u/s 112 [Rs.200.00 Lakhs × 20%]	40.00
Add: Surcharge at 7.5% (Since the Total Income exceeds Rs.1 Crore)	3.00
Tax and Surcharge Payable	43.00
Add: Education Cess at 2%	0.86
Add: Secondary and Higher Education Cess at 1%	0.43
Total Tax Liability under Slump Sale	44.29

B. Modification in the Restructuring Plan**Option 1: S Ltd – 100% Subsidiary**1. **Plan of Action:**

- (a) **100% Equity Holding:** PQR Ltd may hold 100% Equity Shares of S Ltd (i.e. 100% Holding Company).
 (b) **Transfer of Software Unit:** Software Unit to be transferred after Acquisition of 100% Shares by PQR Limited.

2. **Impact:** Assets transferred by the Indian Holding Company to its 100% subsidiary Company is not a transfer u/s 47 and the transaction would **not attract Capital Gains**.3. **Conditions attached:** But the above transfer requires fulfillment of following conditions —

- (a) Holding Co. should not cease to hold 100% Shares for 8 Years from date of transfer of such business, or
 (b) Subsidiary Co. shall not convert the Capital Assets into Stock in Trade within 8 years.

4. **Effect of Non-fulfillment:** If the **conditions are not fulfilled**, the transferor Company is **liable for Capital Gains** and the **exception** given u/s 47(iv) shall be **withdrawn**. (Sec. 47A(1))**Option 2: S Ltd – Demerger**1. **Plan of Action:** PQR Limited may go in for demerger and transfer the Software Unit to S Ltd.2. **Impact:** Transfer of Capital Assets by a Demerged Company (PQR Ltd) to a Resulting Company is **not a transfer** u/s 47 if the Resulting Company is an Indian Company.**INCOME OF OTHER PERSONS INCLUDED IN ASSESSEE'S TOTAL INCOME****Question 9:****5 Marks**

Mayur gifted amount of ₹ 5,00,000 to the wife of his brother which was used by her for the purchase of a house and simultaneously on the same day brother of Mayur gifted shares owned by him in a Foreign Company worth ₹ 5,00,000 to the minor son of Mayur. What will be the impact of such transfers in the hands of both the transferors and the transferees?

Solution:1. **Principle:** Income from assets transferred in a cross-transfer would be assessed in the hands of the Transferor, if –

- (a) Transfers are so intimately connected to form part of a single transaction, and
 (b) Each transfer constitutes consideration for the other by being mutual or otherwise.

2. **Inference:** In the given case, income accruing from House Property should be included in the total income of Mr. Mayur's Brother and income from the shares would be taxable in the hands of Mr. Mayur, as Mr. Mayur and his brother are indirect Transferors of their income yielding assets, to their Minor Child and Spouse respectively, and such transfer has been made so as to reduce their burden of taxation.

ASSESSMENT OF A COMPANY

Question 10:

3 × 2= 6 Marks

Examine the following statements in the context of the provisions contained in the various Chapters of the Act:

	Statement	Correct/ Incorrect	Reason
(i)	The provisions of Section 115JB are not applicable in case of Foreign Companies.	Incorrect	Sec.115JB is applicable to an assessee being Company. Company includes a Foreign Co.
(ii)	The provisions of Dividend Distribution Tax are also applicable to an undertaking or enterprise engages in developing, operating and maintaining a Special Economic Zone.	Incorrect	DDT is not chargeable either in the hands of developer of SEZ or enterprise or the person receiving such dividend.

ASSESSMENT OF TRUST

Question 11:

4 Marks

“Save Wild Life” is an institution, having main object ‘preservation of wildlife’, used the entire income derived from an activity in the nature of trade for its main object during the previous year ended on 31.03.2011. The institution seeks your opinion to know whether such utilization of its income be treated for “Charitable Purpose”? Would your answer be different, if the main object of the institution is “Advancement of object of general public utility”?

Solution:

1. W.r.e.f. AY 2009–10, preservation of Environment, which includes water sheds forests and wildlife, is treated as charitable purpose. The entire income derived from an activity in the nature of trade for its main object will be considered as charitable purpose and the exemption u/s 11 shall apply.
2. If the object of the Charitable Trust is General Public Utility and it involves in carrying of any activity in the nature of trade, commerce or business, or rendering any service in relation to trade, commerce, or business for cess, fees or other consideration and the aggregate value of receipts from the said activities does not exceed Rs.10,00,000, the benefit of exemption shall continue.

TAXATION OF NON RESIDENTS

Question 12:

4 Marks

Can the brought forward losses and unabsorbed depreciation be set off against the profit determined u/s 44B?

Solution:

- (a) Sec.44B refers to the presumptive income of a non resident involved in shipping business.
- (b) The brought forward losses and unabsorbed depreciation from this business can be set off against the profits determined under this section.

DTAA

Question 13:

8 Marks

Nandita, an individual resident retired employee of the Prasar Bharati aged 60 years, is a well-known dramatist deriving income of ₹ 1,10,000 from theatrical works played abroad. Tax of ₹ 11,000 was deducted in the country where the plays were performed. India does not have any Double Tax Avoidance Agreement under section 90 of the Income-tax Act with that country. Her income in India amounted of ₹ 5,10,000. In view of tax planning, she has deposited ₹ 70,000 in Public Provident Fund and paid contribution to approved Pension Fund of LIC ₹ 32,000, along with subscription to notified long-term infrastructure bonds ₹ 25,000. She also contributed ₹ 18,000 to Central Government Health Scheme during the previous year and gave payment of medical insurance premium of ₹ 21,000 to insure the health of his father, a non-resident aged 76 years, who is not dependent on her. Compute tax liability of Nandita for the Assessment year 2011–12.

Assessee: Nandita**Previous Year: 2010–11****Assessment Year: 2011–12****Computation of Total Income and Tax Payable**

Particulars	Rs.	Rs.
Profits and Gains from Business or Profession		
(a) Income from plays outside India		1,10,000
(b) Income from India		5,10,000
Taxable Profits and Gains from Business or Profession		6,20,000

Particulars		Rs.	Rs.
Gross Total Income			6,20,000
Less: Chapter VI–A Deduction			
(a) U/s 80C – Contribution to PPF	70,000		
Approved Pension Fund of LIC (Restricted to 30,000)	30,000		
80CCF Infrastructure Bonds (Restricted to 20,000)	20,000	1,00,000	
(b) U/s 80D – Medical Insurance Premium Paid	[W.N. 2]	<u>30,000</u>	
(15,000 + 15,000)			1,30,000
Total Income			4,80,000
Tax on Total Income (Basic Exemption Rs. 1,90,000)			29,000
Add: Education Cess @ 2 %			580
Add: Secondary and Higher Education Cess @1 %			290
Total Tax Payable			29,870
Average Rate of Indian Tax	(29,870 ÷ 4,80,000)	6.22%	
Average Rate of Foreign Tax	(11,000 ÷ 1,10,000)	10.00%	
Less: Relief u/s 91 at 6.22 % on Foreign Income of Rs. 1,10,000 (Least of the above)			(6,842)
Net Tax Payable			23,030

Working Notes:

Mediclin Insurance paid assumed to be by other than cash. U/s 80D, premium paid for the parents shall be separately allowed to the extent of Rs.15,000. Father being a non resident is not eligible for the exemption allowed for the Senior Citizens.

Question 14:

4 Marks

Explain in the context of provisions of the Act:

Question	Answer
(i) The underlying idea behind DTAA.	Double Taxation means taxation of same income of a person in more than one country i.e. both under Indian Income Tax Act, 1961 and Income Tax law of other country. Double Taxation Avoidance Agreements are agreements entered into by the Government of India with the Government of other Countries. Effect of DTAA: - If no tax liability is imposed under the Income Tax Act on a particular income, then no liability will arise on that income. - If the tax liability is imposed by the Act on a particular income and there is a difference between the provision of the Act and the agreement, then the provision or the conditions of agreement which is more beneficial to the assessee can be enforced.
(ii) Rate of tax in other country.	Foreign income of a person generally becomes liable to tax in two countries. The foreign country in which the income is earned will tax the income earned at the rate existing in that country. The income will also be subject to tax in the country in which the individual is a resident. To avoid such double taxation, DTAA has been entered into with foreign countries. Where such agreement does not exist, the income will be taxed in both the countries, but relief u/s 91 can be claimed on the doubly taxed income.

TDS**Question 15:**

4 Marks

Maya Bank credited Rs.73,50,000 towards interest due on time deposits in a separate account for macro-monitoring only by using Core-branch Banking Solutions (CBS) software. No tax was deducted at source in respect of interest on deposits so credited even where the interest payable in respect of some deposits exceeded the limit of ₹ 10,000.

The Assessing Officer disallowed the entire interest expenditure where the interest due on time deposits exceeded the limit of ₹ 10,000 and also levied penalty under section 271C. Decide the correctness of action of the Assessing Officer.

Solution:

- TDS need not be deducted by banks on **provisioning of interest** on time deposits **on daily or monthly basis**, using Core Branch Banking Solutions (CBS), for the purpose of macro monitoring.
- In such cases, tax shall be deducted at source on accrual of interest at the end of financial year or at periodic intervals as per practice of the bank or as per the depositor's / payee's requirement or on maturity or on encashment of time deposits; whichever is earlier. **[Circular No. 3/2010 dt. 02.03.2010]**

ASSESSMENT PROCEDURE

Question 16:

5 Marks

State whether the following assessee have to file return of income and if so, the due date for the assessment year 2011-12:

- (i) A Public Charitable Trust registered under the Act, running an educational institution with aggregate annual receipt of ₹ 65,00,000 and Total Income of ₹ 3,20,000. Are the accounts of the trust liable for audit under section 44AB of the Act?
 - (a) If the Total Income without exemptions u/s 10 and Chapter VI A deductions exceeds maximum amount not chargeable to tax, the trust should file its return of Income.
 - (b) The activities of a Public charitable Trust is not in the nature of Business or Profession and will not be subject to audit u/s 44AB. The Trust will be subject to audit u/s 12A if the total Income before claiming exemption exceeds the maximum amount not chargeable to tax. The due date for filing return of income shall be 30th September.
- (ii) **A Registered Trade Union having income from let out property of ₹ 1,00,000.**
 - (a) If the Total Income without exemptions u/s 10 and Chapter VI A deductions exceeds maximum amount not chargeable to tax, the Trade Union should file its return of Income.
 - (b) House Property Income is exempt for a Trade Union u/s 10(24). Hence, if House Property is the only income for the Trade Union, then it is not required to file the Return of Income.
- (iii) **A public trust hospital having an aggregate annual receipt of ₹ 200 lakhs and availing exemption under section 10(23C) (via) with total income of ₹ 1,00,000.**
 - (a) If the Total Income without exemptions u/s 10 and Chapter VI A deductions exceeds maximum amount not chargeable to tax, the trust should file its return of Income.
 - (b) Due date for filing return of income when Public Trust Hospital is subject to audit shall be 30th September.

Question 17:

4 Marks

Is it valid in law of rectify an Assessment Order u/s 154 due to subsequent change of law on retrospective basis? Also state, whether a Supreme Court judgement would warrant a rectification u/s 154 in respect of an order passed earlier by the Assessing Officer?

Solution:

1. **Case 1: Retrospective change in law:** If the assessment order is plainly and obviously inconsistent **with the specific and clear provision amended retrospectively**, indisputably there is a mistake apparent from record. The Assessing officer has the right to rectify the same. **[E Sefton & Co. P Ltd. 179 ITR 435 (Cal.)]**
2. **Case 2: Supreme Court Judgement:**
 - (a) **Situation 1:** Where originally, while passing orders under section 264, Commissioner took view that power subsidy was a capital receipt not taxable under the Act, it was not open to Commissioner to rectify his own order under section 154 on basis of a judgment of Apex Court subsequently passed holding that subsidy in question was a revenue receipt. **[Mepco India Ltd. vs. CIT (SC)]**
 - (b) **Situation 2:** Non-consideration of decision of the jurisdictional High Court or the Apex Court would always **constitute a mistake apparent from the record** regardless of the judgment being rendered prior to the order proposed to be rectified. Therefore, the **Tribunal can rectify such a mistake** by exercising its powers u/s 254 (2). **[Subodhchandra S Patel 265 ITR 445 (Guj.)]**
 - (c) Based on the above judgements rectification is possible, if the judgement was passed prior to the order and not subsequently.

LIABILITY IN SPECIAL CASES

Question 18:

6 Marks

The procedure relating to the recovery of due tax or the arrears of taxes from a non resident is different than the resident assessee. Comment and state how such recovery is to be made along with its limitation.

Solution:

1. The Agent of the Non-resident, including a person who is treated as an agent u/s 163 is treated as the Representative Assessee of the Non-resident.
2. Representative assessee is subject to the same duties, responsibilities and liabilities applicable under the provisions of the Act as applicable to the assessee,
3. The representative assessee is liable to the assessment in his own name under representative capacity,

4. The tax is to be levied and recovered from him in the like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him.

PENALTY AND PROSECUTIONS

Question 19:

3 Marks

Examine the following statements in the context of the provisions contained in the various Chapters of the Act:

(iii)	Penalty for concealment can be imposed even in the case where the claim of the assessee is debatable or arguable.	Incorrect	Even if Assessee has disclosed NIL income and on verification of the record, it is found that certain income has been concealed or has wrongly been shown, in that case, penalty can still be levied. JCIT vs Saheli Leasing and Industries Ltd 324 ITR 170 (SC)
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AAR

Question 20:

3 Marks

Mr. Balram is a Non Resident. The appeal pertaining to the Assessment Year 2010–11 is pending before the Income-tax Appellate Tribunal, the issue involved being computation of export profit and tax thereon. The same issue persists for the Assessment Year 2011-12 as well. Mr. Balram's brother Mr. Krishna has obtained as Advance Ruling under Chapter XIX – B of Income-tax Act, 1961 from the Authority for Advance Ruling on an identical issue. Mr. Balram proposes to use the said ruling for his assessment pertaining to the assessment year 2011-12. Can he do so?

Solution:

- As per Section 245S, The advance ruling shall be **binding only**–
 - On the applicant** who had sought it.
 - In **respect of the transaction** in relation to which the ruling had been sought; and
 - On the **Commissioner and the Income Tax Authorities** subordinate to him, in respect of the applicant and the said transaction.
- In view of the above, Mr. Balram cannot use the ruling obtained by his friend for his assessment.

SETTLEMENT COMMISSION

Question 21: Settlement Commission

6 Marks

Seizures were made from Mr. Sunder pursuant to a search conducted in his premises. He filed an application for settlement by claiming to have received the amount by way of loans from several persons. The Settlement Commission accepted his statement and made an order. The CBI, however, conducted enquiry at the instance of the Revenue regarding the claimed amount of loans and opined that the alleged lenders had no mean or financial capacity to advance such huge loans to Mr. Sunder and were mere name lenders only. The Commissioner filed an application under section 245(6) praying for the order to be declared void and for withdrawal of benefit granted. Mr. Sunder, however, contended that the order of the Settlement Commission was final and any fresh analysis would amount to sitting in judgement over an earlier decision, for which the Settlement Commission was not empowered. Discuss the correctness of Mr. Sunder's contention.

Solution:

- Where the facts of the statement obtained are fraudulent, the settlement shall become void. In such case the proceedings shall be deemed to have been revived from the stage at which the application was allowed.
- In the given case, the Settlement commission has accepted the statement of Mr. Sunder, which the CBI finds out to be false. Therefore, such settlement becomes void. The Income Tax Authority can complete the proceedings **within two years** from the end of financial year in which settlement becomes void.
- Hence, contention of Mr. Sunder that order of the Settlement Commission is final and that reviews cannot be made is not correct.

WEALTH TAX

Question 22:

3 Marks

How shall the assets retained pursuant to an order passed as per section 37A (5A) of the W.T. Act, 1957 be dealt with?

Solution:

- Recovery of Liability under Direct Tax Laws:** The assets seized may be **used to recover** the following amounts:

- (a) Amount of **any existing liability** under the the Wealth-tax Act, 1957.
 - (b) Amount of **tax liability on income assessed for the block period** (including any penalty levied or interest payable in connection with such assessment) and in respect of which such person is in default or is deemed to be in default.
2. **Money:** If the **assets consist solely of money**, or partly of money and partly of other assets, the Assessing Officer may **apply such money in the discharge of the liabilities** referred to above.
 3. **Assets other than money:** The amount **realised by the sale of the assets** shall be **applied towards discharge of liabilities** referred above. Such assets shall be **deemed to be under distraint**.

Question 23:

3 Marks

Can summons enforcing attendance and to take evidence on oath be issued by a Valuation Officer to the seller of the building for which a reference under Section 16A has been made by the W.T.O.?

Solution:

1. Under Section 37 of the Wealth Tax Act, the Valuation Officer shall have the same powers as are vested in a court under the Code of Civil Procedure to enforce the attendance of any person, including any officer of banking company and examine him on oath.
2. Therefore summons enforcing attendance and to take evidence on oath can be issued by a Valuation Officer to the seller of the building for which a reference u/s 16A is made.

Question 24 :

4 Marks

Mr. 'W' gifted a gold chain worth ₹ 1,00,000 to the adopted minor child of his son. On 31st March, 2011, the Net Wealth of Mr. 'W' is worth ₹ 50 lakh whereas the net wealth of W's wife is ₹ 60 lakh. Besides, the Net Wealth of W's son is worth ₹ 30 lakh while the Net Wealth of his daughter-in-law is worth ₹ 40 lakh. State with reason, in whose Net Wealth the value of gifted chain will be included?

Will it make any change in your answer if the marriage of the parents of adopted minor child does not subsist and the child is maintained by his father?

Solution:

1. U/s 4(1)(a)(ii) **Child** means only legitimate child and includes adopted children.
2. **If the marriage of the Parents subsists** – The Value of the gifted chain will be clubbed in the hands of the parent whose Net Wealth is greater before including the minor's asset. In the given case, the value of the Gold Chain will be clubbed in the hands of W's daughter-in-law whose Net Worth is higher.
3. **If the marriage does not subsist** – The Value of the gifted chain will be clubbed in the hands of parent who maintains the minor child in Relevant Previous Year. In the given case, the value of the Gold Chain will be clubbed in the hands of W's son who maintains the child.

LATEST CASE LAWS, CIRCULARS AND NOTIFICATIONS

S.No.	Sec/ Rule	ISSUE	CITATION
1	Sec.17(1) R 6(b)	W.e.f. 01.09.2010 the Interest earned in excess of 9.5% on Recognised Provident Fund will be taxable under the head Salaries.	Notification No.24/2011 dated 13.05.2011
2	-	In order to redress the grievance, it has been decided that during the financial year 2011-12, cases of senior citizens and small taxpayers, filing income-tax returns in ITR-1 and ITR-2 will be subjected to scrutiny only where the Income Tax department is in possession of credible information. Senior citizens for this purpose would be individual taxpayers who are 60 years of age or more. Small taxpayers would be individual and HUF taxpayers whose gross total income, before availing deductions under Chapter VI-A, does not exceed Rupees ten lakh.	PRESS RELEASE [NO. 402/92/2006-MC (07 OF 2011)], DATED 14-3-2011
3	Income Tax (Third Amendment) Rules, 2011	W.e.f 01.04.2011, SARAL II Form will be substituted with SAHAJ. Form SUGAM (ITR-4S) is applicable for an Individual or a HUF deriving business income computed in accordance with special provisions referred u/s 44AD and 44AE.	Notification No.18/2011 dated 05.04.2011

S.No.	Sec/ Rule	ISSUE	CITATION
4	80 C	In respect of insurance premium, "annuity plan of the ICICI Prudential Life Insurance Company Limited", is replaced with "annuity plan of the TATA AIG Life Insurance Company."	Corrigendum Notification No. 20/2011 [F.No. 178/04/2009-IT(A-I)], Dated 21-4-2011
5	32	EPABX and Mobile Phones are not Computers. They are entitled only for 15% depreciation and not 60% depreciation.	Federal Bank vs Asst. CIT (Ker) 332 ITR 319
6	115 JB	Revaluation reserve not credited to P&L A/c at the time of creation will not be allowed as a deduction at the time of withdrawal.	Indo Rama Synthetics vs CIT 330 ITR 363
7	147	The opinion of District Valuation Officer is not an information for the purpose of reopening assessment u/s 147.	Asst.CIT vs Dhariya Constructions. 197 Taxman 202 [SC]
8	10(10C)	Amount received by retired employee of RBI opting for early retirement scheme of RBI is eligible for exemption u/s 10(10C).	Chandra Ranganathan vs CIT 326 ITR 49 (SC)
9	234B	The Interest u/s 234B shall be from 1 st day of Relevant Assessment Year to the date of Order u/s 245 D(1) and not upto the date of 245D(4).	Brij Lal vs CIT 194 Taxman 566 (SC)

**PROCEDURE FOR REGULATING REFUND OF EXCESS AMOUNT OF TDS DEDUCTED AND/OR PAID
CIRCULAR NO. 2/2011 [F.NO. 385/25/2010-IT(B)], DATED 27-4-2011**

In supersession of the Circular No. 285, dated 21-10-1980 (**See Pg. 30.2**), the Board prescribes the following procedure for regulating refund of amount paid in excess of tax deducted and/or deductible in respect of TDS on residents covered under sections 192 to 194LA of the Income-tax Act, 1961.

This circular will not be applicable to TDS on non-residents falling under sections 192, 194E and 195 which are covered by circular No. 7/2007 issued by the Board.

- The excess payment to be refunded would be the difference between –
 - the actual payment made by the deductor to the credit of the Central Government; and
 - the tax deductible at source.
- Excess payment is discovered by the deductor –
 - During the financial year concerned:** The present system permits credit of the excess payment in the quarterly statement of TDS of the next quarter during the financial year.
 - Beyond the financial year concerned:** Such claim can be made to the Assessing Officer (TDS) concerned. However no claim of refund can be made after two years from the end of financial year in which tax was deductible at source.
- To avoid double claim of TDS by the deductor as well as by the deductee, the following safeguards must be exercised by the Assessing Officer concerned.
 - The applicant deductor shall establish before the Assessing Officer that –
 - it is a case of genuine error and that the error had occurred inadvertently;
 - that the TDS certificate for the refund amount requested has not been issued to the deductee(s); and
 - that the credit for the excess amount has not been claimed by the deductee(s) in the return of income or the deductee(s) undertakes not to claim such credit.
 - Prior administrative approval of the Additional Commissioner or the Commissioner (TDS) concerned shall be obtained, depending upon the quantum of refund claimed in excess of Rupees One Lakh and Rupees Ten Lakh respectively.
 - After meeting any existing tax liability of the deductor, the balance amount may be refunded to the deductor.
- In view of provisions of section 200A of the Income-tax Act prescribing processing of statement of TDS and issue of refund with effect from 1-4-2010, this circular will be applicable for claim of refunds for the period upto 31-3-2010.