TAX PAPER 5

(Topic covered: - Assessment Procedure, Appeal, Revision, Search, Seizure, Penalty, and Prosecution)

Time Allowed: - 3 hours M. M. 100

NOTE: - All the references to the sections mentioned in the paper relates to Income Tax Act, 1961 and relevant Assessment Year is 2011-12, unless otherwise stated. All questions are compulsory.

<u>Ques. 1</u>: - A.O. has power to make best of his judgment under certain cases. What are they? (3marks)

<u>Ques. 2</u>: - Discuss - do ITAT have the power to: -

- Allow assessee to urge any ground of appeal which was not raised by him before CIT(Appeals);
- Review it's own Order. (4 marks)

<u>Ques. 3</u>: -False Limited claimed the deduction of the Rs. 40,000 paid on account of registration charges and stamp duty paid in respect of a property, in whose regard the income under the head house property was declared in the return filled. The A.O. while making assessment under section 143(3) disallowed the claim and added the sum of Rs. 40000 in the income. Mr. Confused, CA was approached and was sought for an opinion on the same. CA replied that the addition made by the A.O. are correct, but had company declared the income from such property under the business head on account of that letting was helpful in the business of the business, then the company could have been able to claim the deduction on the same as the business expenditure. Discuss (5 marks)

<u>Ques. 4</u>: - The assessment of ABC a partnership firm for the assessment year 08-09 was done 31st of July 2010. The A.O. made two addition to the income viz. (a) Addition of Rs. 2 Lacs under section 40(a)(ia)due to non furnishing the evidence of the payment of TDS and (b) addition of Rs. 5 lacs on account of unexplained cash credit. The assessee being getting aggrieved by the A.O.'s order preferred an appeal to the CIT (appeals), only on the ground of the unexplained cash credit, but unfortunately the appeal was decided against the assessee on 20th of August 2011. The assessee has approached you for the suggestion that whether they shall apply for revision application to CIT under section 264 or a rectification application to A.O. under section 154 as regards to disallowance under section 40(a)(ia)? (4 marks)

Ques. 5: - Who can be treated as the agent of Non-Resident Foreign Collaborator for the purpose of proceedings or any other matter under the act. (5 marks)

Ques. 6: - An assessee, being aggrieved by the order of Wealth-tax Officer, filed an appeal by taking for the first time a ground "that notice to complete the assessment was not served upon him but he had co-operated in completion of proceedings". Are you in agreement with the view taken by the assessee? (3 marks)

Ques. 7: - Is CIT (Appeals) empowered to consider an appeal filed by an assessee challenging the order of assessment in respect of which the proceedings before the Settlement Commission abates? (4 marks)

Ques. 8: - Does the Assessing Officer have power to make any adjustment to income disclosed by the assessee in the return of income in course of processing the return under section 143(1)? (4 marks)

Ques. 9: - Can a rectification order under section 254 of the Income-tax Act be passed by the Income-tax Appellate Tribunal beyond four years from the date of the order sought to be revised? (3 marks)

Ques. 10: - Sumit voluntarily filed a revised return of income within the prescribed time limit after discovering that interest received from bank was not disclosed in the original return. Can he be absolved of penalty under section 271(1)(c)? (3 marks)

Ques. 11: - What do you mean by substantial question of law? (4 marks)

<u>Ques. 12</u>: - Mr. Kadam is entitled to a salary of Rs.25,000 per month. He is given an option by his employer either to take house rent allowance or a rent free accommodation which is owned by the company. The HRA amount payable was Rs.5,000 per month. The rent for the hired accommodation was Rs.6,000 per month at New Delhi. Advice Mr. Kadam whether it would be beneficial for him to avail HRA or Rent Free Accommodation. Give your advice on the basis of "Net Take Home Cash benefits". (6 marks)

<u>Ques. 13</u>: - A fresh claim before A.O. can be made by filling a revised return only. Discuss (3 marks)

<u>Ques. 14</u>: -Prosecution proceedings on account of failure to furnish the return should be initiated in each and every case, where it is mandatory for the assessee to file the return. (4 marks)

<u>Ques. 15</u>: - Each and every person can apply n number of times to the settlement commission for settling all the disputes and matters which have acquired finality and now only a sum of monies is payable to the authorities. (5 marks)

<u>Ques. 16</u>: - There are certain restrictions as to which cases can be heard for settlement by the settlement commission. Elaborate. (5 marks)

<u>Ques. 17</u>: - A return of income was filed within the statutory time provided under the Act, without making the payment of self assessment tax due as per return. The same was paid before completion of assessment. The Assessing Officer wants to declare the return as invalid. Is the Assessing Officer justified? (5 marks)

<u>Ques. 18</u>: - An assessment reopened under section 147 cannot be dropped. Discuss. (4 marks)

<u>Ques. 19</u>: - M/s Shiv Traders, a partnership firm sustained business loss of Rs.2 lakhs, inclusive of admissible depreciation of Rs.1.15 lakhs (u/s 32 of I.T. Act) for the year ended 31.3.2010. The firm did not file its return for that year. The Assessing Officer issued a notice u/s 142(1) on 1st March, 2011, in compliance to which the firm filed its return for the said year declaring the loss of Rs.2 lakhs, and sought carry forward for next year. Is the firm's claim justified? (4 marks)

<u>Ques. 20</u>: - Mr. X filed the return of A.Y.2008-09 declaring an income of Rs.3,25,000. He had been assessed under section 143(3) and the Assessing Officer made the following additions:

(i) Unexplained cash credit for want of confirmation from creditors Rs.2,00,000.

(ii) Disallowance in respect of travelling expenditure of Rs.46,000 for tour to Chennai for effecting sales there, as Mr. X failed to establish that the expenditure had been incurred for the purpose of business.

At a later stage, he has been served with a notice under section 148 for income escaping assessment in respect of A.Y. 2008-09. During the course of reassessment proceeding, the Assessing Officer sought to add unaccounted sales of Rs.4,00,000 made at Chennai. During the course of hearing, the assessee produced confirmation from creditors and requested to delete the addition for unexplained cash credit of Rs.2,00,000 and to allow deduction of travelling expenditure of Rs.46,000. Discuss the validity of the contention raised by the assessee. (5 marks)

<u>Ques. 21</u>: - What constitutes 'Reason to believe' for invoking the section 147? How does it differ for change of opinion. (7 marks)

<u>Ques. 22</u>: - During the course of survey operations under Section 133A, carried on 5th March, 2011, the Income-tax authority, impounded the books of account and other documents inspected by him, relating to the assessee and retained the same in his custody. Is the action of the officer justified under law? (4 marks)

<u>Ques. 23</u>: - Examine whether the following actions initiated / taken by the Income-tax Authorities are proper and valid under the provisions of the Act.

(i) The Assessing Officer, within his jurisdiction, surveyed the residential house of an assessee who is engaged in money lending business there from on 10.3.2011 (Thursday) at 4.30 p.m.

(ii) The return of income for the Assessment Year 2010-11 filed on 01.2.2011 was selected for Scrutiny Assessment for which first notice under section 143(2) was issued on 27.02.2012.

(iii) The assessment completed under section 143(3) for Assessment Year 2005-06 was found to have been based on wrong information given by the assessee. Accordingly the income of Rs.1,32,500 earned on 03.05.04 had escaped assessment, for which, notice under section 148 to reopen the assessment was issued on 11.3.2011

(2 marks each = 6 marks)