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# EXAMINATION GUIDE

To help out the students in achieving the objective of securing good marks in exams, the author hereby suggests some points for the action by the students. It is felt by the author that most of the students lack in terms of writing power particularly with reference to mapping an answer of a practical question with the relevant provisions of applicable law. Thus it is desired to focus on writing answers of few previous examination queries and compare the same with the answer suggested by the Board of Studies (ICAI).

**General Suggestions:**

1. **Please be brief but concise.**
2. **One must quote the section reference in papers like direct taxes to the extent possible.**
3. **Overwriting should be strictly avoided.**
4. **Students appearing in Hindi Medium should use good level of Hindi rather than mixing Hindi & English both in an improper manner to distract the examiner. However full computation based queries can be attempted in English language.**
5. **Try to give answers in paragraphs and between two paragraphs one blank line must be left.**
6. **Answers to all the parts of a question should be given consecutively.**
7. **Generally stepwise marking is made thus even if complete solution in a given situation is not known, one should try to attempt the solution to the extent possible.**

Some examples of attempting proper answers to the queries are given below for the reference of students:

1. **Discuss the validity or otherwise of the following statements in not more than 50-60 words.**

a) **The "penalty for concealed income" and "penalty for undisclosed income" both are similar to each other.**
**Ans**. In common parlance the term concealed income as well as undisclosed income both have same meaning. However if analyzed technically from the purview of levy of penalty under Income Tax Act 1961 these two are two different expressions/terms.

Penalty for concealed income is levied under section 271(1)(c) whereas penalty for undisclosed income is levied under section 271AAA or 271AAB (depending upon the date of search & seizure).

**b) A trust registered under section 12AA of Income Tax Act remains liable to pay tax liability on the anonymous donations received by it.**
**Ans**. A trust registered under section 12AA of the Income Tax Act 1961 may be a public charitable trust or a public religious trust. As per section 115BBC a public charitable trust is required to pay tax @ 30% on the anonymous donations received by it, in excess of the higher of the following:

i) 5% of total donations received or
ii) One lac rupees

However a public religious trust is not required to pay any tax on anonymous donations received by it.

2. **Comment on the following:**

a) **Mr. Mohit has filed his return of income for the assessment year 2015-16 on 7.7.2015 for an income of ₹ 4.5 Lacs. He received a scrutiny assessment on 10.10.2016 which was issued on 30.9.2016. After providing the information required by the Assessing Officer (AO) and receiving an assessment order he challenges the order passed by the AO in appeal before CIT (Appeals).**

**Ans.** As per provisions of Section 292BB of the Income Tax Act 1961 where a notice is not served on the assessee in time but the assessee has appeared in the proceedings or co-operated in relation to the inquiry relating to an assessment or reassessment it shall be deemed that notice was duly served on him.
In the case mentioned in the question the notice served on the assessee Mr. Mohit was certainly invalid but because he co-operated by way of providing information to the Assessing Officer, he can't challenge the validity of assessment on the ground of invalidity of notice. However if Mr. Mohit wishes to raise his objections on any other ground he may file an appeal before CIT (A) against the order of assessment passed by the Assessing Officer.

**b) XYZ & Co. is assessed for its income escaped assessment for the AY 2008-09 on 15.6.2013. Due to such assessment the amount of remuneration paid to the partners is reduced significantly. However the partners had already filed their return for the AY 2008-09 taking into consideration the actual remuneration distributed to them. On account of reduction in the remuneration partners wish to revise their return of income and claim refunds.**

**Ans.** Normally the assessments of firm and partners are linked with each other. In the case given in the question due to change in the assessment of the firm M/s XYZ & Co. corresponding changes should be made in the hands of the partners because as per provisions of section 28(v) if the firm is not allowed to claim the deductions under section 40(b) then partners shall not be taxable for the amount received as interest, salary, bonus, commission or remuneration in their personal hands.
Assuming that remuneration paid by the firm is disallowed under section 40(b) the partners should be able to claim a refund however such refund can't be claimed now by filing revised return because the revised return date must have expired by 15.6.2013. Thus partners should file a rectification application under section 154 before their respective Assessing Officers to get a refund of excess taxes paid, if any. In the given case if the disallowance were made by invoking section 40A (2) then partners would not be able to claim a refund.

**c) Mr. John has acquired certain assets worth ₹ 50 Lacs by way of gift from his friend Mr. Anthony on 1.6.2014. A tax liability for an amount of ₹ 25 Lacs was due on Mr. Anthony for the AY 2009-10 on the date of making gift. Thus Assessing Officer denies the validity of gift and wishes to recover tax dues from the property transferred to Mr. John.**

**Ans.** According to the provisions of section 281, where during the course of pendency of any income tax proceedings or after their completion an assessee parts with the possession by way of sale, gift, mortgage etc of any of his assets in favor of any other person, such charge or transfer shall be void as against any claim in respect of tax or other sum payable by the assessee.
Thus considering the above provisions the gift of asset worth ₹ 50 Lacs by Mr. Anthony to Mr. John shall be void to the extent of ₹ 25 Lacs and the Income Tax Department can recover its dues from the asset gifted to Mr. John.

**d) A search was conducted on the business premises of M/s Pearl Jewellers on 28.6.2013. Along with returns for the 6 assessment years the assessee also filed his return for the AY 2014-15. An assessment under section 143(3) for the AY 2014-15 was completed on 14.3.2017.**

**Ans.** In the case mentioned in the query the search assessment for 6 assessment years under section 153A shall be completed as per the provisions of section 153B. However the assessment for the previous year in which the search is conducted should also be completed within 24 months from the end of the financial year in which last search authorization was executed.

Thus the assessment for the AY 2014-15 in the given case can be completed only upto 31.3.2016 and not as per the provisions of section 153(1) i.e. 24 months from the end of relevant assessment year. Therefore the assessment order passed in the given query as on 14.3.2017 stands time barred.

**Other Frequent Queries and Their Answers:**

**1. How to prepare for Direct Taxes?**

Ans: Direct Tax is a vast subject and requires practical approach to solve real life problems faced by us in dealing with day-to-day income tax and wealth tax queries. In author's opinion along with this book one should use following tools in obtaining skill to appear this paper for scoring good marks:

a) Bare Act
b) Complier/Suggested Answers issued by the Board of Studies.
c) Other publications issued by Board of Studies like RTP, Amendments & Case Laws.

**2. What should a read for direct taxes subject one day before examination?**

Ans: You may read following material:

a) Board of Studies publication on Case Laws on Direct Taxes
b) Amendments booklet issued by Board of Studies with practical examples
c) Revisionary Test Paper published by Board of Studies for relevant attempt.
d) Author's notes issued on the subject.

Apart from above if time permits you may read the text book for important topics like PGBP, Non-Resident, Transfer Pricing, Capital Gains etc.

**3. How much importance should be given to case laws?**

Ans: The case laws decided by various courts are really important to understand the real intention of law but from the point of view of an exam oriented approach, the author suggests to focus only on those case laws which are published by the Board of Studies.

**4. Are there some must to do topics to be covered or can one do selective study in direct taxes?**

Ans: This paper is quiet comprehensive and needs practical approach to solve queries. A common sense approach combined with knowledge of law can give you the edge to attempt the paper at your best. Remember as compared to other papers in direct taxes the queries never repeat, thus every time you will find some new queries in the exam. Therefore your approach to such kind of paper can't be based on just reading the suggested answers rather author suggests that you should follow flow-chart & tabular approach to revise the provisions for your reference. Remember before attempting a query please read it carefully, think which is the right section to be connected to the answer and then be straight and precise in writing the answer.

**Must to do topics:** Profits & Gains of Business & Profession (PGBP), Capital Gains, Assessment Procedure (including appeals, revision, penalties, Income Tax Settlement Commission & Authority for Advance Ruling), Non-Resident, Transfer Pricing, Double Taxation Relief, Taxation of Trust, Companies, Firms/LLPs and of course Wealth Tax.

# Important Notes

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