TAX PAPER 3

(Topic covered: - Capital Gain & Other Sources)

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 2012-13, unless otherwise stated. All questions are compulsory.

Ques. 1: - Capital Gain being the income chargeable at special rate hence is the special income and is chargeable to tax at the flat rate of the 20% irrespective of the fact that the assessee is claiming exemption u/s 11 and 12. Justify the validity of the statement. (5 marks)

Ques. 2: - Provisions of section 2(22)(e) i.e. of Deemed Dividend are attracted in all type of financial transaction i.e. if any Loan or Advances that are given by the Pvt. or a closely held company to any person who is directly or indirectly substantially interested in the company. (7 marks)

Ques. 3: - Rahul is engaged in share trading and declares the income under the head business and profession. In the course of the tax audit one of your colleagues has noticed that Mr. Rahul has suffered loss on certain transactions when he traded on same in the period of near to record date and hence he is of the view that provisions of dividend stripping shall get attracted and the loss arising on such transaction is not allowed. He has approached you to guide him. You are required to write a note for him explaining the details and applicability and otherwise of the provision. (8 marks)

Ques. 4: - Income derived from the sale of the export incentive is the part of income from other sources and not the income from the business and profession. A.O. represents the following views and wants to tax the same under section 56 and thereby disallowing the claim of assessee for various expenses. Is A.O. justified. (5 marks)

Ques. 5: - In case of property development agreement; where the land belongs to one and property is being developed by the another for a certain consideration as part of the same building that is being developed by him, there is no capital gain as neither there is any gain (which can be calculated) on the transaction, nor there is transfer of the capital asset and since the essential conditions of section 45(1) are not satisfied therefore the transaction is not chargeable to tax. (8 marks)

Ques. 6: - A entered into an agreement for sale of certain properties in which there were tenants subject to vacant possession. He had accordingly to pay certain consideration to the tenants for their agreeing to vacate the properties and claimed such payments to secure vacant possession as expenses incurred in connection with the transfer of the property within the meaning of section 48(1) of the Act. Would 'A' succeed in his claim? (3 marks)

Ques. 7: - Jay entered into an agreement with Shy for the sale of his property and received earnest money of Rs.2,00,000 on 1.4.2011. The balance of Rs.4,00,000 was to be paid within 3 months, failing which Jai was entitled to a compensation of Rs. 50,000. The earnest money was also liable to forfeited. Shy defaulted in the payment of the balance within the time specified and therefore the earnest money was forfeited. A suit was also filed for breach of contract and Rs.50,000 was awarded, which was received on 28.3.2012. Discuss the nature of the two receipts from the point of view of taxability. (5 marks)

Ques. 8: - Section 54F states that the capital gain shall be exempt where assessee invest the amount of capital gain in a house property within specified period provided that assessee doesn't own more than one residential property. But where the assessee invest the amount of capital gain in more than one house and he already has a residential property than he shall not be allowed any exemption even in respect of the a house property from among those new purchased. Elaborate. (8 marks)

Ques. 9: - Where a firm transfers any asset to the partner on the retirement in such case it is just settlement off and between the partners but it is not chargeable to capital gain tax, as this is not the distribution of the asset at the time of dissolution of firm. Elucidate. (6 marks)

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<u>Ques. 10</u>: - Mr. Razak has applied for the 100,000 shares of Vaswani Industries of face value of Rs. 10 each issued for Rs. 235 per share. Application money paid at the time of application was Rs. 125 per share. But Mr. Razak was allotted only 80000 shares. But since Mr. Razak failed to pay the money after application money hence the shares were forfeited. Discuss the tax implication in the hands of Vaswani Industries and Mr. Razak. (5 marks)

<u>Ques. 11</u>: - Mr. Shah, a property Dealer purchased a property on 15.08.2009 for Rs. 2.5 Cr (Value as per section 50C at the time of purchase was Rs. 3.2 Cr) at the lake side of the city with the view to resell it and earn the profits, but due to the location factor and on the force of the family members Mr. Shah kept the property and shifted his residence on 15.05.2011 by incurring the expenditure of Rs. 22 lacs on the repairs colour etc. (FMV on 15.05.2011 was Rs. 7.8 Cr) Mr. Shah had shown the property in the till 31.03.2011 in balance sheet as stock. Mr. Shah has approached you to give your expert guidance and note on the various issues involved in the case. (8 marks)

<u>Ques. 12</u>: - State the Conditions specified u/s 47(xiiib) for the conversion of a Pvt. Ltd to an LLP. Now solve:
A Pvt. Ltd has got converted to LLP under the reverse conversion scheme from a company status to a Firm Status on 1.4.2011. The following are the particulars of A Pvt. Ltd. on 31.03.2011: -

- Unabsorbed Depreciation of Rs. 13.32 Lacs
- Business Loss of Rs. 27.05 Lacs
- Unadjusted MAT credit of Sec. 115JB Rs. 10 Lacs
- WDV of Assets
    - Building (10%) - Rs. 20 Lacs
    - Plant & Machinery (15%) - Rs. 68 Lacs
    - Furniture (10%) - Rs. 30 Lacs
- Cost of Land Purchased in year 2001 - Rs. 200 Lacs
- VRS Expenditure of Rs. 40 Lacs of incurred in P.Y. 2009-10 which were duly claimed u/s 35DDA in As. Y. 2011-12.

Assume that conversion fulfills all the conditions of section 47(xiiib), explain the treatment of the same in the hands of LLP. What difference it would make if the conversion had taken place on 31.8.2011. (10 marks)

<u>Ques. 13</u>: - For claiming exemption u/s 54 the capital gain so aroused from the transaction need to be invested in another house property. There is no limitation on to the number of house properties in which the same can be invested. Discuss. (8 marks)

<u>Ques. 14</u>: - Does redemption of preference shares amount to a 'transfer' within the meaning of section 2(47) of the Income-tax Act in the hands of the shareholder? What will be the nature of excess realisation by a shareholder over the cost of acquisition of such shares for purpose of income-tax? Discuss. (5 marks)

<u>Ques. 15</u>: - Mr. & Mrs. Sharma mortgaged the property with bank in the scheme of the reverse mortgage of the SBI formulated in line with the government policy. After the death of the couple the legal heirs of the couple were given option by the bank to pay off the figure of loan so paid to couple in form of the installments along with the interest of till date. The heirs paid off the entire amount within the said time limit and took the title of the property. Now legal heirs are of the view that the sum of money paid to discharge the loan is part of cost of improvement and shall be allowed as deduction, while computing the capital gain at the time of actual transfer of the property. As an expert they have approached you to give your opinion on the same. (5 marks)

<u>Ques. 16</u>: - Discuss the taxability issues involved when a security held in physical form is converted into dematerialized form and sold, with regards to the holding period. (4 marks)

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