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

Ques. 1: - A.O. in course of proceedings u/s 147 is trying to probe into some more areas and is asking the details of the same, but assessee is of the view that Principle of Merger in case of proceeding u/s 147 cannot be applied and the fresh notice u/s 148 is required for the new reasons and grounds. Discuss (7 marks)

Ques. 2: - Discuss - do ITAT have the power to: -

- Allow assessee to urge any ground of appeal which was not raised by him before CIT(Appeals);
- Rectify it's own Order its own order in the eternity. (3+7 marks)

Ques. 3: -Treasure Town Co-operative Housing Society charges the monthly subscription and entry-exit charges from the incoming and outgoing member of the society who purchases and sales the flat in the society. The president of the society has received the notice from A.O. issued under section 142(1) read together with section 143(2) to file return of income and give the details of the various sources of the earning from the society. Being a member of the society and CA you are approached to give your view and explain the issue in general so on the various aspects. (8 marks)

Ques. 4: - An assessee, being aggrieved by the order of Assessing Officer, filed an appeal by taking a ground "that notice to make 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. 5: - "The order of the settlement commission is final, conclusive, and is not appealable, hence the order cannot be rectified." Discuss the validity of the given statement. (5 marks)

Ques. 6: - CIT on suo-moto basis issued a notice u/s 263 of the on certain grounds that came to his notice for the hearing to the assessee. The A.O. also on receiving the reasons and grounds of belief accorded the reason and after taking prior approval of the JCIT issued a notice u/s 148. Is the notice of A.O. valid in law? (4 marks)

Ques. 7: - "In case of an assessment the A.O. can only increase or can make the assessment at the returned income but not at income lower than the income declared by the assessee in the return."Elaborate. (8 marks)

Ques. 8: - Jatin 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. 9: - 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)

Ques. 10: - 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 10.3.2012 (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 2006-07 was found to have been based on wrong information given by the assessee. Accordingly the income of Rs.1,32,500 earned on 03.05.05 had escaped assessment, for which, notice under section 148 to reopen the assessment was issued on 11.3.2012. (2 marks each = 6 marks)

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Ques. 11: - Can department prefer appeal in the matter where in earlier years the appeal was not made on the same issue being the consideration involved was below the prescribed limit under the guidelines issued by the CBDT for preferring an appeal in the issue? (4 marks)

Ques. 12: - Mr. Ramandeep filed the return of A.Y.2009-10 declaring an income of Rs.4,25,000. 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 assessee 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. 2009-10. 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)

Ques. 13: - "Section 131(3) stipulates that an A.O. cannot retain in his custody, the books of accounts, information etc beyond a period of 15 days without obtaining the prior approval of the CIT or CCIT." Can CIT or CCIT approve the period of retention of books of accounts, information etc for a period of 2 year? (3 marks)

Ques. 14: - A mistake even apparent from the face of the record of the order issued by the CIT(A) cannot be rectified after the expiry of the four years from the financial year in which the order sought for amendment was passed. Further there would be no difference in the standing even if the rectification will lead to the variation in the tax liability assessed earlier. Discuss. (8 marks)

Ques. 15: - M/s Raj Shakti Traders, a partnership firm sustained business loss of Rs. 3 lakhs, inclusive of admissible depreciation of Rs. 2.15 lakhs (u/s 32 of I.T. Act) for the year ended 31.3.2011. The firm did not file its return for that year. The Assessing Officer issued a notice u/s 142(1) on 12th March, 2012, in compliance to which the firm filed its return for the said year declaring the business loss of Rs. 0.85lakhs and 2.15 lakhs of unabsorbed depreciation, and sought carry forward of the losses for next year. Is the firm's claim justified? (4 marks)

Ques. 16: - "Any claim if made under the return of income but subsequently disallowed shall not attract the penalty u/s 271(1)(c)." Justify the statement giving reason in support of your answer. (5 marks)

Ques. 17: - Penalty under section 271(1)(b) shall be invariably leviable in case of a non compliance of a notice issued, but where there is failure on a certain date agreed upon without the issue of notice the same is not treated as a non-compliance of the notice issued. Examine the validity of the statement. (5 marks)

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

Ques. 19: - 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)

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