IMPORTANT ADJUSTMENT FOR NOVEMBER, 2013 EXAMINATION

UNDER THE HEAD BUSINESS INCOME

Explain in brief, in respect of following independent situation, the tax treatment under the provisions of the income tax Act, 1961.

01. The company remitted ₹ 5 lakhs as interest to a company incorporated in UAE on a loan taken two years ago. Tax deducted u/s 195 from such interest and same was deposited on 15th July 2013. The said interest was debited to profit and loss account.

➔ Deduction can be availed in the financial year of actual deposit as per section 40(a)(i). The assessee can claim deduction only in the FY 2013-14.

02. Indian Overseas Bank sanctioned and disbursed a term loan in the financial year 2009-10 for a sum of ₹ 50 lakhs. Interest of ₹ 8 lakhs was in arrears. The bank has converted the arrear interest into a new loan repayable in ten equal installments. During the year, the company has paid two installments and the amount so paid has been reduced from funded interest in the balance sheet.

➔ U/s 43B, interest on loan due to any schedule bank is allowed as deduction, if such interest is actually paid irrespective of the method of accounting followed. Conversion of arrear interest into a fresh loan by a bank cannot be considered as actual payment of interest. However, converted loan when actually paid is allowed as deduction, being two installments of ₹ 160,000 actually paid is deductible.

03. Liquidated damages of ₹ 3 lakhs received from Flux Ltd for delay in supply of plant and machinery has been shown under the head "other income" in profit & loss account.

➔ Liquidated damages received by a company from the supplier of plant for failure to supply machinery in time is a compensation for sterilization of the profit earning source and treated as a capital receipt. As the amount has been wrongly credited to the profit and loss account, the same should be deducted.

04. The company paid the full consideration for building and occupied the same, but registration is under process as on the end of the previous year.

➔ Section 32 specifies that the assessee should be the owner of the asset. The very concept of depreciation suggests that tax benefit on account of depreciation legitimately belongs to one who has invested in the capital asset and is utilised the capital asset. So, depreciation can be claimed even through registration has not yet taken place.

05. The subscription receipt for the year ended 31st March, 2013 was ₹ 360,000 and related expenditure was ₹ 385,000. Other income of association governing u/s 44A is ₹ 175,000.

➔ As per section 44A the income from subscriptions shall be set off against expenditure incurred solely for the protection or advancement of the interest of its member. Excess of expenditure over subscription shall be first be set off against other income of associations. However, deduction admissible by way of deficiency shall not exceed one-half of the income of association.

06. Mr. Vignesh was a partner in a firm as the kartha of his HUF. On the amount deposited by the partners, the firm paid interest to Mr. Vignesh, in his individual capacity had made deposits in the same firm in which he was a partner.

➔ Section 40(b) specifies that where an individual is a partner in a firm, in a representative capacity, interest paid by the firm to such individual in his individual capacity shall not be taken into account for section 40(b).

07. Mr. Aditya succeeded to his father's business in the year 2010. During the previous year Mr. Aditya has written off the balance in the name of Mr. Ashish which relates to supply made by his father, when he carried on business.

➔ Section 36(1) specifies that bad debts is allowed as deduction if it is written off in the books of accounts of the assessee, even though the debt represents the amount due for the supplies made by previous owner.

08. Sale proceeds of import entitlement amounting to ₹ 1 lakh has been credited to profit & loss account, which the company claims as capital receipt not chargeable to tax.

➔ Section 28 charging section clearly specifies that the sale of the rights gives rise to profit or gain taxable under the head profit and gain from business or profession.

09. A sum of ₹ 6,000 on account of liability foregone by a creditor has been taken to general reserve. The same was charged to the revenue account in the AY 2010-11.

➔ Liability foregone by the creditor is taxable u/s 41(1) and treated as business income.

10. The refund of excise duty has been obtained by the assessee on the basis of a decision of the CESTAT and the matter has been taken up further appeal to the Court by department.

➔ Where expenditure is actually incurred by reason of payment of duty on goods and a deduction or allowance is given in the assessment of an earlier year, the assessee is liable to discharge that benefit as and when he obtains refund of the amount so paid. Once the assessee gets back the amount which was claimed and allowed as business expenditure during the earlier year, the deemed provision in section 41(1) comes into play. Therefore, refund of excise duty subject to tax u/s 41(1) and it is not necessary to await the verdict of a Higher Court.

11. PVR Ltd incurred expenditure amounting to ₹ 500,000 in connection with the issue of rights shares and ₹ 400,000 in connection with the issue of bonus shares.

➔ Expenditure incurred by a company in connection with issue of shares with a view increase its capital base constitutes a capital expenditure. Hence right issue expenditure is not allowed as business expenditure. On the other hand, the issue of bonus shares does not result in inflow of fresh funds or increase in the capital employed. It is merely capitalisation of reserve. Total funds available with the company remain same on issue of bonus shares. Hence, ₹ 400,000 is deductible from business profit.

12. Clause for payment of salary to working partners through appears in the deed, but the same is silent as to quantum and manner of distribution.

➔ Section 40(b)(v) does not lay-down any condition that the partnership deed should fix the remuneration or the method of quantifying remuneration. Accordingly, CBDT circular No. 739 dated 25.3.1996 which requires that either the amount of remuneration payable to each individual should be fixed in the agreement or the partnership agreement deed should lay down the manner of quantifying such remuneration goes beyond section 40(b)(v). A partnership deed which provides that the remuneration would be as per the provisions of the Act meaning thereby that the remuneration would not exceed the maximum remuneration provided in the Act is valid and deduction is admissible. **{(In re Durga Dass Devki Nandan)(2011)(HP)}**

13. Interest of ₹ 5,000 paid an overdraft of ₹ 2 lakhs taken for making payment of installment of advance tax of ₹ 1.25 lakhs.

➔ Interest on overdraft taken for making payment of installment of advance tax is not an expenditure wholly and exclusively incurred for the purpose of business u/s 37(1).

14. Amount of ₹ 250,000 contributed to employees welfare trust.

➔ Any contribution or payment is not required as per respective law but paid to employee under contractual obligation of an employment is not deductible u/s 40A(9)

15. Income tax refund includes amount of ₹ 5,500 of interest allowed thereon.

➔ Interest on income tax refund is chargeable under the head income from other sources and not under the head PGBP.

NOVEMBER 2013 EXAMINATION

Direct Tax Laws – Quick Insight The Highlights of the Book are

- For the first time MULTI-COLOUR presentation for the subject Direct Tax Laws
- Finance Act, 2012 along with recent Circulars, Notifications and Citations up to 30 April, 2013 have been incorporated. Relevant for November 2013 examination.
- Track sheet for significant case laws (2013, 2012, 2011, 2010) to act as a ready refresher before the day of examination
- Every section is independently dealt without diluting the concepts
- Use of simple language without going into complex legal terms, handy for practioners also
- Majority of the sections have operative words, which must be used without interchanging with another word. All such operative words are highlighted in bold letters for easy identification and quick recapitulation
- Useful for all professional students, Finance Professionals who are dealing in Direct Taxes, and who have time constraint in reading voluminous books
- Lucid explanation of case laws
- Special issues such as provisions relating to International taxation, double taxation and transfer pricing are presented in a friendly manner
- Challenging areas such as assessment procedure, search and seizure, appeals & revision and Settlement Commission are dealt with methodically
- The book has been compiled with the help of many qualified professionals to bring out the entire syllabus in **just 230 pages** along with illustrations.