70 Marks Identical Questions from Our Publications In CA Final Direct Tax, NOV 2017 Exam

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Q 3 (c) Examine in the context of provisions contained under the Income Tax Act and Rules thereunder whether the Transfer Pricing relating to the International Transactions declared by the assessee who have exercised a valid option for application of safe harbor rules can be accepted by the I.T. Authorities for the A.Y. 2017-18 in the following cases : 2×3 =6

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(i) Bhisma Ltd., is an Indian company providing services of data processing with the use of Information Technology to YOK Inc. of U.S.A. a foreign subsidiary of the Indian company. Aggregate of the transactions value of services by Bhisma Ltd. to YOK Inc. during the previous year 2016-17 is of ₹ 200 crores having operating margin of ₹ 29 crores and operating expenses of ₹ 150 crores.

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MAT **Marks**

(ii) Dhanush Ltd., an Indian company providing services relating to Contract of R & D of the Generic Pharmaceutical Drugs to ABC Inc. of UK a foreign company, which has guaranteed 15% of the total borrowings of the Indian company. Aggregate of the transactions value of services by Dhanush Ltd. to ABC Inc. during the previous year 2016-17 is of ₹ 100 crores having operating margin of ₹ 18 crores and operating expenses of ₹ 60 crores.

TRANSFER PRICING

CA MEHUL THAKKER

ASSESSMENT YEAR 2017-18

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10TG. Mutual Agreement Procedure not to apply.– Where transfer price in relation to an eligible international transaction declared by an eligible assessee is accepted by the income tax authorities under section 92CB, the assessee shall not be entitled to invoke mutual agreement procedure under an agreement for avoidance of double taxation entered into with a country or specified territory outside India as referred to in sections 90 or 90A.

Practical 13 Q 3 (c)

Examine the following transactions and discuss whether the transfer price declared by the following assessees, who have exercised a valid option for application of safe harbour rules, can be accepted by the Income-tax Authorities –

	Assessee	International Transaction	Aggregate value of transactions entered into in the P.Y.2013-14 (Rs.in crore)	Declared Operating Margin (Rs.in crore)	Operating Expense (Rs.in crore)
(1)	A Ltd., an Indian company	Provision of system support services to X Inc., which is a "specified foreign company" in relation to A Ltd.	600	90	450
(2)	B Ltd., an Indian company	Provision of data processing services with the use of information technology to Y Inc., its foreign subsidiary	400 Similar Question	62	300
(3)	C & Co., a partnership firm registered under the Partnership Act, 1932	Provision of contract R & D services relating to development of internet technology, to XYZ & Co., a foreign firm, which holds 12% interest in C & Co.	100	20	70
(4)	D Ltd., an Indian company	Provision of contract R & D services relating to generic pharmaceutical drug, to ABC Inc., a foreign company which guarantees 15% of the total borrowings of D Ltd.	50 Similar Question	9	30

(5)	Sole proprietary concern of Mr.E, solely engaged in the original manufacture and export of automobile transmission and steering parts.	100% export of automobile transmission and steering parts to LMN LLP, a foreign LLP, controlled by Mr.E jointly with his relatives.	12	1	10
(6)	F Ltd. an Indian company, solely engaged in the original manufacture and export of noncore auto components.	100% export of non-core auto components to GKG Inc., a foreign company. F Ltd. appoints two-thirds of the Board of Directors of GKG Inc.	12	1	10

In all the above cases, it may be assumed that the Indian entity which provides the services assumes insignificant risk. It may also be assumed that the foreign entities referred to above are non-resident in India.

Would your answer change, if in any of the cases mentioned above, the foreign entity is located in a notified jurisdictional area?

Solution

(1) X Inc. is a specified foreign company in relation to A Ltd. Therefore, the condition of A Ltd. holding shares carrying not less than 26% of the voting power in X Inc is satisfied. Hence, X Inc. and A Ltd. are deemed to be associated enterprises. Therefore, provision of systems support services by A Ltd., an Indian company, to X Inc., a foreign company, is an international transaction between associated enterprises, and consequently, the provisions of transfer pricing are attracted in this case. Systems support services falls within the definition of "software development services", and hence, is an eligible international transaction. Since A Ltd. is providing software development services to a non-resident associated enterprise and has exercised a valid option for safe harbour rules, it is an eligible assessee. Since the aggregate value of transactions entered into in the P.Y.2013-14 exceed Rs. 500 crore, A Ltd. should have declared an operating profit margin of not less than 22% in relation to operating expense, to be covered within the safe harbour rules.

However, since A Ltd. has declared an operating profit margin of only 20% (i.e., $\frac{90}{450} \times 100$) , the same is not in accordance with the circumstance mentioned in Rule 10TD. Hence, it is not binding on the income-tax authorities to accept the transfer price declared by A Ltd.

(2) Y Inc., a foreign company, is a subsidiary of B Ltd., an Indian company. Hence, Y Inc. and B Ltd. are associated enterprises. Therefore, provision of data processing services by B Ltd., an Indian company, to Y Inc., a foreign company, is an international transaction between associated enterprises, and consequently, the provisions of transfer pricing are attracted in this case.

SUGGESTED ANS

Data processing services with the use of information technology falls within the definition of "information technology enabled services", and is hence, an eligible international transaction. Since B Ltd. is providing data processing services to a non-resident associated enterprise and has exercised a valid option for safe harbour rules, it is an eligible assessee.

Since the aggregate value of transactions entered into in the P.Y.2013-14 does not exceed Rs. 500 crore, B Ltd. should have declared an operating profit margin of not less than 20% in relation to operating expense, to be covered within the scope of safe harbour rules. In this case, since B Ltd. has declared an operating profit margin of 20.67% (i.e., $\frac{62}{300} \times 100$), the same is in accordance with the circumstance mentioned in Rule 10TD. Hence, the income-tax authorities shall accept the transfer price declared by B Ltd in respect of such international transaction.

(3) XYZ & Co., a foreign firm holds 12% interest in C & Co., an Indian firm. Therefore, the condition of one enterprise, being a foreign firm, holding not less than 10% interest in another enterprise, being an Indian firm, is satisfied. Hence, XYZ & Co. and C & Co. are deemed to be associated enterprises. Therefore, provision of contract R & D services relating to software development by C & Co., an Indian firm, to XYZ & Co., a foreign firm, is an international transaction between associated enterprises, and consequently, the provisions of transfer pricing are attracted in this case.

Development of internet technology falls within the meaning of "contract R&D services wholly or partly relating to software development", and hence, is an eligible international transaction. Since C & Co., an Indian firm, is providing contract R & D services to a non-resident associated enterprise and has exercised a valid option for safe harbour rules, it is an eligible assessee.

Irrespective of the aggregate value of transactions entered into in the P.Y.2013-14, C & Co. should have declared an operating profit margin of not less than 30% in relation to operating expense, to be covered within the safe harbour rules.

However, since C & Co. has declared an operating profit margin of only 28.57% (i.e., $\frac{20}{70} \times 100$), the same is not in accordance with the circumstance mentioned in Rule 10TD. Hence, it is not binding on the income-tax authorities to accept the transfer price declared by C & Co.

(4) ABC Inc., a foreign company, guarantees 15% of the total borrowings of D Ltd., an Indian company. Since ABC Inc. guarantees not less than 10% of the total borrowings of D Ltd., ABC Inc. and D Ltd. are deemed to be associated enterprises.

Therefore, provision of contract R & D services relating to generic pharmaceutical drug by D Ltd., an Indian company, to ABC Inc., a foreign company, is an international transaction between associated enterprises, and consequently, the provisions of transfer pricing are attracted in this case.

SUGGESTED ANSWER

Provision of contract R& D services in relation to generic pharmaceutical drug is an eligible international transaction. Since D Ltd. is providing such services to a nonresident associated enterprise and has exercised a valid option for safe harbor rules, it is an eligible assessee.

Irrespective of the aggregate value of transactions entered into in the P.Y.2013-14, D Ltd. should have declared an operating profit margin of not less than 29% in relation to operating expense, to be covered within the scope of safe harbour rules.

In this case, since D Ltd. has declared an operating profit margin of 30% (i.e., $\frac{9}{30} \times 100$), the same is in accordance with the circumstance mentioned in Rule 10TD. Hence, the income-tax authorities shall accept the transfer price declared by D Ltd in respect of such international transaction.

(5) LMN LLP, a foreign LLP, is controlled by Mr.E jointly with his relatives. Mr. E also has control over his own sole proprietorship concern. Therefore, the sole proprietorship concern of Mr.E in India and LMN LLP are deemed to be associated enterprises.

Automobile transmission and steering parts fall within the meaning of "core auto components", and hence, 100% export of all such parts originally manufactured by the sole proprietorship concern of Mr.E is an eligible international transaction.

Since the sole proprietorship concern of Mr.E is solely engaged in the original manufacture and 100% export of such parts and has exercised a valid option for safe harbour rules, it is an eligible assessee.

Irrespective of the aggregate value of transactions entered into in the P.Y.2013-14, the sole-proprietorship concern of Mr.E should have declared an operating profit margin of not less than 12% in relation to operating expense, to be covered within the safe harbour rules. However, since A Ltd. has declared an operating profit margin of only 10% (i.e., $\frac{1}{10} \times 100$), the same is not in accordance with the circumstance mentioned in Rule 10TD. Hence, it is not binding on the income-tax authorities to accept the transfer price declared by Mr.E.

(6) F Ltd. and GKG Inc. are deemed to be associated enterprises since F Ltd. appoints more than half of the Board of Directors of GKG Inc. Manufacture and export of non-core auto components is an eligible international transaction. Since F Ltd. is engaged in original manufacture of non-core auto components and 100% export of the same, it is an eligible assessee.

Irrespective of the aggregate value of transactions entered into in the P.Y.2013-14, F Ltd. should have declared an operating profit margin of not less than 8.5% in relation to operating expense, to be covered within the scope of safe harbour rules.

In this case, since F Ltd. has declared an operating profit margin of 10% (i.e., $\frac{1}{10} \times 100$), the same is in accordance with the circumstance mentioned in Rule 10TD. Hence, the income-tax authorities shall accept the transfer price declared by F Ltd in respect of such international transaction.

The safe harbour rules shall not apply in respect of eligible international transactions entered into with an associated enterprise located in a notified jurisdictional area. Therefore, if in any of the cases mentioned above, the foreign entity is located in a NJA, the safe harbour rules shall not be applicable, irrespective of the operating profit margin declared by the assessee.

Readers Note:

Q 4. Answer any **four** out of the following five cases. Your answer should cover these aspects :

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(i) Issue involved ;

(ii) Provisions applicable ;

(iii) Analysis ; and

(iv) Conclusion.

(a) Jashan Hotels Pvt. Ltd., engaged in the business of owning, operating and managing hotels, allowed its employees to receive tips from the customers, by the virtue of their employment. The tips were also collected directly by the hotel-company from the customers, when payment was made by them through credit cards. The hotel-company thereafter disbursed the tips to the employees. The Assessing Officer treated the receipt of the tips as income under the head "Salary" in the hands of the various employees and held that the company was liable to deduct tax at source from such payments under section 192. Since the company had not deducted tax at source on such payments, the assessing officer treated the company as an assessee-in-default under section 201(1) of the Act. Discuss the correctness of the action of the Assessing Officer. **4**

TAX DEDUCTION AND COLLECTION AT SOURCE

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Q4(a)

Practical 6 SIMILAR QUESTION

Hotelia Ltd., engaged in the business of owning, operating and managing hotels, allowed its employees to receive tips from the customers, by virtue of their employment. The tips were also collected directly by the hotel-company from the customers, when payment was made by them through credit cards. The hotel-company thereafter disbursed the tips to the employees. The Assessing Officer treated the receipt of the tips as income under the head “Salary” in the hands of the various employees and held that the company was liable to deduct tax at source from such payments under section 192.

Since the company had not deducted tax at source on such payments, the Assessing Officer treated the company as an assessee-in-default under section 201(1). Discuss the correctness of the action of the Assessing Officer.

Solution

- Section 192(1) requires any person responsible for paying any income chargeable under the head “Salaries” to deduct tax at source at the time of payment. If an employee receives income chargeable under a head other than “Salaries” , section 192 does not get attracted at all.
- The issue under consideration is whether “tips” received by the hotel-company from its customers and distributed to the employees fell within the meaning of “Salaries” to attract tax deduction at source under section 192.
- This issue came up before the Supreme Court in ITC Ltd. v. CIT (TDS) (2016) 384 ITR 14 wherein it was observed in respect of tips collected by the company from the customers and distributed to the employees, the person responsible for paying the employee was not the employer at all, but a third person, namely the customer. As income from tips would be chargeable in the hands of the employees as “Income from Other Sources”, on account of such tips being received from customers and not from the employer, section 192 would not get attracted at all. The Supreme Court further observed that there was no vested right in the employee to claim any amount of tip from his employer.
- Tips are purely voluntary amounts that may or may not be paid by customers for services rendered to them, and hence, would not fall within the meaning and scope of section 15. Further, the amount of tips collected from the customers by the employer and paid to the employees has no reference to the contract of employment at all. Tips were received by the employer in a fiduciary capacity as trustee for payments that were received from customers which they disbursed to their employees for service rendered to the customer. There was, therefore, no reference to the contract of employment when these amounts were paid by the employer to the employee. Due to this reason the tips received by the employees could not be regarded as profits in lieu of salary in terms of section 17(3). The payments of collected tips included and paid by way of a credit card by a customer, would not be payments made “by or on behalf of” an employer. The contract of employment not being the proximate cause for the receipt of tips by the employee from a customer, such payments would be outside the scope of sections 15 and 17.
- Applying the rationale of the above Supreme Court ruling to the case on hand, the action of the Assessing Officer in treating Hotelia Ltd. as an assessee-in-default for non-deduction of tax at source

on the amount of tips collected by it from the customers and distributed to its employees, is not correct.

Reader's Note:

2. PAYMENT OF ACCUMULATED BALANCE DUE TO AN EMPLOYEE

Section:- 192A

2.1 Person liable to deduct tax at source:- Tax is to be deducted by the trustees of Employees' Provident Fund Scheme, 1952 or any other person authorized under the scheme to make payment of accumulated sum to employees.

2.2 Which amount is subject to tax deduction

a. Tax is deductible from accumulated lump sum payment when the employee has not rendered continuous service of 5 years (other than the cases of termination due to ill health, contraction or discontinuance of business, cessation of employment etc.).

b. Out of the lump sum payment, tax deduction shall be made on that portion of payment which is includible in the total income of the employee. Thus, tax deduction shall be made as under:-

Component of lump sum payment	**Is this component taxable in the hands of employee not completing continuous 5 years of service?**	**Is it subject to TDS if other conditions of section 192A are satisfied?**
Employer's Contribution	Taxable under head "Salary"	Subject to TDS
Interest on Employer's Contribution	Taxable under head "Salary"	Subject to TDS
Employee's Contribution	Not Taxable	No TDS required
Interest on Employee's Contribution	Taxable under head "Other Sources"	Subject to TDS

2.3 Time of tax deduction – Tax is deductible at the time of payment.

2.4 Threshold limit – Tax is not deductible where aggregate amount of taxable component of lump sum payment is **less than Rs.50,000.**

2.5 Rate of TDS- Tax is deductible at the rate of 10 per cent of taxable component of lump sum payment. However, if employee fails to furnish PAN, then tax shall be deducted at maximum marginal rate.

Practical 7

Mr. Sharma is an employee of M/s. ABC Ltd. since 01-04-2013. He has resigned on 31-03-2016 and has withdrawn the amount of Rs. 1,00,000 being the balance in his EPF account.

Discuss whether the payment to Mr. Sharma is subject to tax deduction at source?

MAT

Marks

Q4(b) Radhakrishna Cooperative Society, the assessee is engaged in marketing of fertilizers and purchase and processing of seeds. The assessee had claimed deduction under section 80 P(2)(d) on dividend income received from NAFED and one Cooperative bank and also on interest on deposits with Co-operative banks. The Assessing Officer contended that the aforesaid income were not included in the total income and wants to invoke section 14A by disallowing the expenditure incurred with respect to earning income which is not liable to income tax. 4

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VI-A

Discuss whether the action taken by the Assessing Officer is tenable in law.

TAXATION OF TRUSTS OR INSTITUTIONS

&

INCOME WHICH DO NOT FORM PART OF TOTAL INCOME

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Q4(b)

Practical 26

Can the provisions of section 14A of the Income-tax Act, 1961 be applied for disallowing expenditure relating to income for which deduction is available under Chapter VI-A, or the section can be invoked only in respect of expenditure relating to income exempt under the provisions of section 10?

Solution SUGGESTED ANSWER

Chapter III, comprising sections 10 to 13B, deals with incomes which do not form part of total income.

As per section 14A(1), for the purposes of computing the total income under Chapter IV, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Income-tax Act, 1961.

Thus, on a plain reading of section 14A, the intention is to disallow expenditure in relation to income which does not form part of total income i.e., expenditure in relation to income exempt under section 10 to 13B.

Therefore, the provisions of section 14A cannot be invoked for disallowing expenditure relating to income for which deduction is available under Chapter VIA.

Readers Note:

17. PRACTICALS COVERING VARIOUS EXEMPTION

Practical 27

Mr. Divyam avails the benefit of LTC and went by air (economy class) on a holiday in India on 25.01.2017 along with his wife and three children consisting of son aged 4 years and twin daughters of 1 year age. Total cost of tickets reimbursed by his employer was Rs. 90,000 (Rs. 60,000 for 2 adults and Rs. 30,000 for the three children). State with reasons the amount which can be claimed by Mr. Divyam out of the reimbursement as not subject to tax.

Will your answer be different where among his three children the twins were of 4 years of age and the age of the son was of 1 year?

Solution

Mr. Divyam can avail exemption as per section 10(5) on the entire amount of Rs. 90,000 reimbursed by the employer for the LTC as the same was availed for himself, his wife and the three children in India and the journey was also undertaken by economy class airfare. The restriction imposed for two children is not applicable to the multiple births which take place after the first child.

However, if the age of the twin daughters is more than the age of the son, the restriction imposed for two children under the section would be applicable and therefore, Mr. Divyam cannot avail exemption in this case for all the three children. The exemption of LTC can be availed in respect of only two children.

Q4 (c) Mr. Vivek, a resident assessee holds 80% of equity shares in a company and is the executive director of the company. In his personal capacity, he is the owner of certain premises (building) in which he was carrying on a proprietary business. Subsequently the assessee ceased to carry on the business of proprietary firm and leased the building to the company for its business. The company incurred ₹ 3.2 crores towards construction and improvement of this premises, which it continued to use otherwise than as the owner of the premises. The Assessing Officer held that the amounts spent by the company towards repairs and renovation of the building is taxable as deemed dividend in the hands of the assessee. **4**

ICAI Q PAPER

Is the action taken by the Assessing Officer valid ?

MAT

INCOME FROM OTHER SOURCES

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The rule of construction which answers this conundrum is noscitur a sociis. Keeping the aforesaid rule together with rule of purposive construction in mind the word 'advance' which appears in the company of the word 'loan' could only mean such advance which carries with it an obligation of repayment.

Therefore, trade advance which is in the nature of money transacted to give effect to a commercial transaction would not fall within the ambit of the provisions of s. 2(22)(e).

Considering the above, action of A.O. treating advance as deemed dividend is not tenable.

Reader's Note:

Case Study 6

Ambassador Travels(P) LTD is a travel agency. It was involved in the booking resorts for the customers of Holiday Resort (P) Ltd. and Ambassador Tours(India) (P) Ltd. and accordingly entered into normal business transactions as a part of its day-to-day business activities. The assessing officer, after considering the shareholding pattern, came to the conclusion that few transactions fell within the meaning of deemed dividend under section 2(22)(e). Whether the action of assessing officer is tenable in law?

Solution

The Delhi High Court, while dealing with the above facts in **CIT v. Ambassador Travels (P) Ltd. (2009) 318 ITR 376** held as under:

It is quite clear that the assessee was a travel agency and the above two concerns that it had dealings with, that is, M/s Holiday Resort (P) Ltd. and M/s Ambassador Tours (India) (P) Ltd. were also in the tourism business. The assessee was involved in the booking of resorts for the customers of these companies and entered into normal business transactions as a part of its day-to-day business activities. The financial transactions cannot in any circumstances be treated as loans or advances received by the assessee from these two concerns.

Reader's Note:

Q4 (c)

Case Study 7 SIMILAR QUESTION

Vir Vikram Vaid holds 76.26 % of equity shares of Offshore Hookup and Construction Services Pvt. Ltd. (HCSPL) He is also an executive director of the company. In his personal capacity, he is the owner of certain premises in which he was carrying on a proprietary business. Vir Vikram Vaid ceased to carry on the business of proprietary concern and thereafter let out the premises to the HCSPL. The HCSPL incurred Rs. 2.51 crores towards construction and improvement of factory premises, which it continued to use. The

Assessing Officer held that the amounts spent by the HCSPL towards repair and renovation is taxable as deemed dividend in the hands of Vir Vikram Vaid following the decision of Mr. M.D. Jindal v. CIT 164 ITR 28 (Cal.)

Whether the action taken by the assessing officer is sustainable?

Solution SUGGESTED ANS

The Bombay High Court while dealing with the above issue in case of **CIT v. Vir Vikram Vaid (2014) 367 ITR 365** made following observations:

In the present case, no money had been paid to Vir Vikram Vaid by way of advance or loan nor was any payment made for his individual benefit.

The HCSPL spent Rs.2.51 crores towards repair and renovation on the premises owned by the Vir Vikram Vaid. There is no dispute about the fact that the HCSPL had taken rent on the aforesaid premises. Thus, it is case where the asset of the Vir Vikram Vaid may have enhanced in value by virtue of repairs and renovation in respect of which it cannot be brought within definition of the advance or loan to the shareholder. Nor can it be treated as payment by the Company on behalf of the share holder or for the individual benefit of such share holder.

Considering the above, view taken by the assessing officer is unsustainable in the eyes of law.

Reader's Note:

Case Study 8

Pradip Kumar has substantial shareholding in a private company called Sumoson Exports (P) Ltd (SEPL). He has his immovable property which was let out to SEPL. Subsequently, he permitted this property to be offered as collateral security to the Vijaya Bank for enabling the SEPL to obtain the loan from the said Bank. Consequently, board of directors passed a resolution authorizing Pradip Kumar to obtain from the SEPL interest free deposit upto Rs. 50,00,000 as and when required for making available the said property as collateral security to Vijaya Bank.

After 10 years, Pradip Kumar required funds for his personal needs and education of his son abroad. Therefore, he requested the SEPL to purchase the property or release the same so that he can sell it to some other person. On failing to do so, the SEPL gave Rs. 10,00,000 to Pradip Kumar as advance rent.

The assessing officer treated the unadjusted advance as deemed dividend under section 2(22)(e) in the hands of Pradip Kumar. Discuss the legality of the stand taken by Assessing Officer.

MAT **Marks**

Q4 (d) Rural Health Care Trust was formed on 1st April, 2015 with the object of providing medical relief to people residing in rural areas of Assam. The trust applied for registration under section 12AA on 15th May, 2016 to the Commissioner of Income-tax. Till the due date for filing return of income for Assessment Year 2017-18, the Commissioner of Income-tax has not passed any order granting or refusing to grant such registration. The trust has filed its return of income for Assessment Year 2017-18 claiming exemption under section 11 taking a view that as the order has not been passed by the Commissioner of Income-tax within the prescribed period, the trust should be deemed to be registered under section 12AA. **4**

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Discuss and explain, whether the view taken by the trust is correct.

TAXATION OF TRUSTS OR INSTITUTIONS

&

INCOME WHICH DO NOT FORM PART OF TOTAL INCOME

CA MEHUL THAKKER

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3. PROCEDURE FOR REGISTRATION OF TRUST

Section:- 12AA

- Every trust or institution shall submit an application for registration in the prescribed form as required u/s l2AA (1) to the Principal Commissioner or Commissioner of Income-tax.
- On receipt of the application, the Principal Commissioner or Commissioner shall call for such documents or information as he thinks necessary to satisfy himself about the genuineness of activities of the trust or institution. For this purpose, he can also make such inquiries as he may deem necessary.
- After being satisfied about the objects and the genuineness of activities, an order shall be passed in writing, registering the trust or institution.
- If not so satisfied, an order shall be passed in writing, refusing to register. Before refusing registration, reasonable opportunity of being heard shall be given.
- Copy of any such order shall be sent to the applicant.
- The maximum time limit for passing an order u/s.12AA is six months from the end of the month in which the application was received.

Q4(d)

SIMILAR QUESTION

Practical 3

Educare, a trust created with the objective of promoting primary education in rural areas, filed an application for registration under section 12A on **30th April, 2016**. Since the application was not disposed of by the Commissioner on or before **31st October, 2016** as required under section 12AA(2), the trust contended that it was deemed to be registered as per the provisions of section 12AA(1). Examine the correctness of contention of the trust.

Solution

SUGGESTED ANS.

As per the provisions of section 12AA(2), every order granting or refusing registration under section 12AA, shall be passed by the registering authority before the expiry of six months from the end of the month in which the application was received.

The Supreme Court, in **CIT v. Society for Promotion of Education (2016) 382 ITR 6,** held that once an application under section 12AA was made and the same was not responded to within six months, the trust would be deemed as registered with effect from the date following the expiry of the six month period.

Applying the rationale of the above Supreme Court ruling in this case, the trust would be deemed as registered with effect from **1.11.2016.** The contention that the trust is deemed to be registered, since its application for registration has not been disposed of within six months is, therefore, correct.

Reader's Note:

Q4 (e) ABC Ltd., a listed company filed its return of income in which a claim for deduction under chapter VI-A was made. The case was subjected to scrutiny assessment and order under section 143(3) was passed reducing the claim for deduction under chapter VI-A. After 4 years from the end of assessment year a notice under section 148 was issued giving reasons such as subsequent tribunal and other court decisions which show that the deduction was excessively allowed in this case. **4**

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PAPER

Is the action of the Assessing Officer valid ?

ASSESSMENT PROCEDURE,

APPEALS & REVISIONS

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ASSESSMENT YEAR 2017-18

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Practical 28 SIMILAR QUESTION

Q 4 (e)

ICICI Bank submitted Income tax return for the **A.Y.2012-13** under section 139(1). Thereafter, assessing officer selected the case of ICICI bank under section 143(2). During the course of scrutiny proceedings, assessing officer called for the details necessary for the verification of depreciation claim made by ICICI Bank. All the details called for were duly furnished. Thereafter, assessing officer passed the order under section 143(3) accepting the claim of depreciation.

On **10-8-2017**, assessing officer issued notice under section 148 for re-opening the assessment of **A.Y. 2012-13** on the ground that excessive depreciation had been allowed**.** Whether the action taken by assessing officer is tenable?

Solution SUGGESTED ANS.

The **Bombay high court in case of ICICI Bank Ltd. v. DCIT 349 ITR 482** held that re-opening by the assessing officer after the expiry of four year is not justified because

(a) ICICI bank had furnished the return under section 139(1);

(b) The assessment has already been completed under section 143(3) and

(c) ICICI bank had disclosed fully and truly all material facts necessary for the assessment

Readers Note:

39F OTHER PROVISIONS

Section:- 152

(1) In an assessment, reassessment or recomputation made under section 147, the tax shall be chargeable at the rate at which it would have been charged, had the income not escaped assessment.

(2) where an assessment is reopened under section 147, the assessee may claim that the proceedings shall be dropped on his showing that –

(a) he had been assessed on an amount which is not lower than what he would be rightly liable for, even if the income alleged to have escaped assessment had been taken into account;

(b) he has not gone on appeal, reference or revision against any part of the original assessment order.

40. PROTECTIVE ASSESSMENT

- There is no specific provision in the Indian Income-tax Act for such a thing as protective assessment.
- But it is permissible to make a protective assessment, where owing to litigations it is not possible to establish finally as to who is the proper assessee.

Q 5. (a) LLM Bank Ltd. carrying on banking business is incorporated in Melbourne, Australia. It has branches in different countries including India. During the financial year 2016-17 the Indian branch of the bank paid interest of ₹ 20 lakhs and ₹ 15 lakhs respectively to its head office in Melbourne and to the branch office in California. State with reasons whether interest so paid shall be liable to tax in India in the hands of head office and California branch. **4**

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TAXATION OF NON-RESIDENTS

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Further, the PE in India has to deduct tax at source on any interest payable to either the head office or any other branch or PE, etc. of the non-resident outside India.

Permanent establishment includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.

Practical 58 SIMILAR QS (a)

Foreign Bank has opened branch in New Delhi with the permission of Reserve Bank of India. During previous year under 2015-16, New Delhi Branch paid interest to its Head Office. The New Delhi Branch had not deducted TDS on the ground that interest earned by Head Office is not taxable in India since payer and recipient are the same. Discuss the validity of contention raised by New Delhi Branch and other tax consequences if any.

Solution SUGGESTED ANS.

Considering the amendment made to section 9(1) (v), New Delhi Branch of Foreign Bank and its Head Office are treated as separate person. Further, interest earned by Head Office shall be deemed to accrue or arise in India and therefore, it is subject to tax in India. Considering the provisions of section 195 of the Act, New Delhi branch is liable to deduct TDS. Non-deduction would result in disallowance of interest claimed as expenditure by the New Delhi Branch (PE) and may also attract levy of interest and penalty in accordance with relevant provisions of the Income Tax Act, 1961.

Readers Note:

38. INCOME BY WAY OF ROYALTY

Section:- Explanation to section 9(1)(vi)

Explanation 2 to section 9 (1)(vi) deals with the term 'royalty'.

Royalty means consideration (including any lump sum consideration but excluding any consideration which would constitute income by way of capital gains) for the following-

(i) the transfer of all or any rights in respect of a patent, invention, model, design, secret formula or process or trademark in similar property,

(ii) the imparting of any information covering the working of or the use of a patent, invention, model, design, secret formula or process or trademark or similar property,

(iii) the use of any patent, invention, model, design, secret formula or trademark or similar property,

(iv) the imparting of any information regarding technical, industrial, commercial or scientific knowledge, experience or skill,

(v) the use or right to use any industrial, commercial or scientific equipment but not including amounts referred to in section 44 BB,

(vi) The transfer of all or any rights in respect of any copyright literary artistic or scientific work, including films or video tapes for use in connection with radio broadcasting but not considered for the sale, distribution or exhibition of cinematographic films or

(vii) The rendering of services in connection with activities referred to in sub-clause (i) to (vi).

Q5 (c) During October 2016, a search was conducted under section 132 in the business premises of Mr. Q. At that time, the following assessments of Mr. Q were pending before the Assessing Officer : 4

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Assessment under section 143(3) for A.Y. 2014-15 and A.Y. 2015-16; and reassessment proceeding under section 147 for A.Y. 2013-14. Based on the above facts, you are required to explain the provisions applicable in case of the following :

(i) In respect of which assessment years can notice be issued for making post-search assessment ?

(ii) Fate of pending assessments and reassessment.

(iii) State the consequence, if the post-search assessment orders are annulled by the Income Tax Appellate Tribunal.

MAT

1. INCOME TAX AUTHORITIES

2. POWER OF INCOME TAX AUTHORITIES

3. ASSESSMENT IN CASE OF SEARCH OR REQUISITION

4. SETTLEMENT OF CASES

5. ADVANCE RULINGS

6. COLLECTION & RECOVERY OF TAX

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8. INTEREST U/S 234A, 234B, 234C & 234D

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24. PRIOR APPROVAL NECESSARY FOR ASSESSMENT IN CASES OF SEARCH OR REQUISITION

Section:- 153D

No order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner in respect of each assessment year referred to in clause (*b*) of section 153A or the assessment year referred to in clause (*b*) of sub-section (1) of section 153B, except with the prior approval of the Joint Commissioner.

25. PROVISIONS REALTING TO REVIVAL OF PROCEEDINGS WHICH GOT ABATED EARLIER PARTICULARLY WHEN THE PROCEEDINGS UNDER SECTION 153A HAS BEEN ANNULLED IN AN APPEAL OR ANY OTHER LEGAL PROCEEDING.

Section:- 153A (2) and 153(8)

Provisions relating to revival of proceedings which got abated earlier – Sub-section (2) to Section 153A was inserted by Finance Act, 2008 with a retrospective effect applicable from June 1, 2003.

a. As per provisions of section 153A (2), if any proceeding under section 153 A(1) or any order of assessment or reassessment made under section 153A(1) has been annulled in appeal or any other legal proceeding, the abated assessment or reassessment relating to any assessment shall stand revived with effect from the date of receipt of the order of such annulment by the Principal Commissioner or Commissioner.

b. And section 153(8) deals with the time limit for completion of such assessment which shall be shall be one year from the end of the month in which the abated assessment revives or within the period specified in section 153 or in section 153B(1), whichever is later.

26. CONSEQUENCES WHEN ORDER OF ANNULMENT IS SET ASIDE

Section:- Proviso to section 153A(2) and Explanation to Section 153B – Clause (viii)

a. If abovementioned order of annulment is set aside, such revival shall cease to have effect.

b. The period commencing from the date of annulment of a proceeding or order of assessment or reassessment referred to in section 153 A(2) till the date of receipt of order setting aside the order of such annulments by the Principal Commissioner or Commissioner, shall be excluded in computing the period of limitation under section 153B of the Act.

(x) the period commencing from the date on which a reference for declaration of an arrangement to be an impermissible avoidance arrangement is received by the Principal Commissioner or Commissioner under sub-section (1) of section 144BA and ending on the date on which a direction under sub-section (3) or sub-section (6) or an order under sub-section (5) of the said section is received by the Assessing Officer,

If after extending the time, the period available to the assessing officer for making an order is less than 60 days, then the remaining period shall be extended to 60 days.

Practical 18

A search was carried out at the business premises of Ms. Mansi on **10.12.2015** and it was concluded on the same day.

SIMILAR Q5 (c)

(a) Mention the assessment years for which the Assessing Officer shall issue notice under section 153 A requiring the Mansi to file the returns.

(b) What will be the status of assessment proceeding of Assessment year **2013-14** which is pending on the date of search?

(c) For the Assessment year **2010-11**, the assessment has already been completed under section 143(3) of the I.T. Act. However, appeal is pending before the CIT(A). Discuss the impact of search on appellate proceedings which are pending on the date of search.

(d) What is time limit for the completion of above assessments?

(e) The assessing officer would like to complete the assessment of **A.Y. 2016-17** on or before **31.12.2018.** Advise the Assessing Officer.

(f) Ms. Mansi is unwilling to file the return. What shall be the serious consequence?

Solution

SUGGESTED ANS

(a)

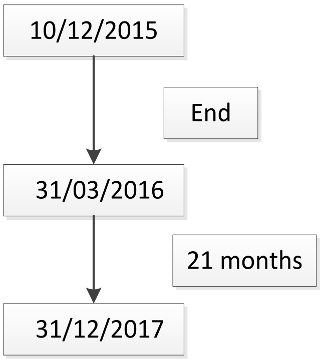
	P.Y.	**A.Y.**
(1)	09-10	10-11
(2)	10-11	11-12
(3)	11-12	12-13
(4)	12-13	13-14
(5)	13-14	14-15
(6)	14-15	15-16

10/12/15 ⟶ Search Date

(b) As per the provisions of section 153A, any assessment or reassessment falling within six assessment years pending on the date of search shall abate (stop). As a result thereof, the assessment proceedings for the **A.Y. 2013-14** shall abate.

(c) As per the provisions of section 153A, only assessment or reassessment proceedings pending on the date of search shall abate and not the appellate proceeding. Therefore, CIT(A) can continue with appellate proceeding despite of search operations.

(d) As per the provisions of section 153B, the time available for completion of assessment or reassessment in respect of each assessment year falling within six assessment years shall be ***21 months*** from the end of the financial year in which the last of the authorizations for **search** u/s 132 **was executed.**



Therefore, the assessing officer shall complete the assessments in the hands of Ms. Mansi on or before **31/12/2017.**

(e) As per the provisions of section 153B, time limit for completion of assessment for 7^{th} A.Y. [i.e. assessment year relevant to previous year in which search is conducted] is also the same as applicable to earlier six assessment years– i.e. – **31/12/2017**. Therefore, the assessing officer is advised to adhere this time limit for completion of assessment for the **A.Y. 2016-17.**

(f) In view of sec. 276CC, Ms. Mansi may be liable for prosecution as under:

"If a person wilfully fails to furnish in due time the return which he is required to furnish under section 153A, he shall be punishable,—

(i) in a case where the amount of tax, which would have been evaded if the failure had not been discovered, exceeds Rs. 25 lacs, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with imprisonment for a term which shall not be less than three months but which may extend to two years and with fine".

Readers Note:

Practical 19

Search was conducted at MT's place by the Excise department on **10/12/15.** Income Tax department issued requisition u/s 132A on **28/12/15** to Excise department.

The Excise department handed over books of accounts, documents etc. to Income Tax department on **3/4/17**.

Answer the following questions:

(i) For which six assessment years, notice u/s 153A shall be issued to MT?

(ii) What is the time limit for completion of the above assessments?

MAT

Marks

Q5 (d) What would be the penalty leviable under section 270 A in case of DEF Ltd. an Indian Company, if none of the additions or disallowances made in the assessment or reassessment qualify under section 270 A(6) and the under-reported income is not on account of misreporting ? 4

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	Particulars of total income of A.Y. 2017-18	Amount in ₹
(1)	As per the return of income furnished u/s 139(1)	(6,00,000)
(2)	Determined under section 143(1)(a)	(3,00,000)
(3)	Assessed under section 143(3)	(1,00,000)
(4)	Reassessed under section 147	4,00,000

Note : The total turnover of DEF Ltd. for the P.Y. 2016-17 was ₹ 10 crores.

MISCELLENEOUS TOPICS

Relevant for May 2017/Nov 2017 Exam

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Compiled by CA Mehul Thakker

Practical 17

Mr. Ram, a resident individual of the age of 55 years, has not furnished his return of income for A.Y.2017-18. However, the total income assessed in respect of such year under section 144 is Rs. 12 lakh. Is penalty under section 270A attracted in this case, and if so, what is the quantum of penalty leviable?

Solution

Mr. Ram is deemed to have under-reported his income since he has not filed his return of income and his assessed income exceeds the basic exemption limit of Rs. 2,50,000. Hence, penalty under section 270A is leviable in his case

Computation of penalty leviable under section 270A

Particulars	Rs.	Rs.
Assessment under section 143(3)		
Under-reported income:		
Total income assessed under section 144	12,00,000	
(-) Basic exemption limit	2,50,000	
	9,50,000	
Tax payable on under-reported income as increased by the basic exemption limit [30% of Rs. 2 lakhs + Rs. 1,25,000]	1,85,000	
Add: EC & SHEC@3%	5,550	
	1,90,550	
Penalty leviable@50% of tax payable		95,275

Note – It is assumed that the under-reported income is not on account of misreporting.

Readers Note:

Practical 18

SIMILAR Q5(d)

ABC Ltd. is a domestic company liable to tax@30%. The following are the particulars furnished by the company for A.Y.2017-18:

Sr. No.	Particulars of Income	Rs.
1.	As per the return of income furnished u/s 139(1)	(15,00,000)
2.	Determined under section 143(1)(a)	(8,00,000)
3.	Assessed under section 143(3)	(5,00,000)
4.	Reassessed under section 147	4,00,000

Is penalty leviable under section 270A on ABC Ltd., and if so, what is the quantum of penalty?

Solution Suggested Ans.

ABC Ltd. is deemed to have under-reported its income since:

1) the assessment under 143(3) has the effect of reducing the loss determined in a return processed under section 143(1)(a); and
2) the reassessment u/s 147 has the effect of converting the loss assessed u/s 143(3) into income.

Therefore, penalty is leviable under section 270A for under-reporting of income.

Computation of penalty leviable under section 270A

Particulars	Rs.	Rs.
Assessment under section 143(3)		
Under-reported income:		
Loss assessed u/s 143(3)	(5,00,000)	
(-) Loss determined under section 143(1)(a)	(8,00,000)	
	3,00,000	
Tax payable on under-reported income@30%	90,000	
Add: EC & SHEC@3%	2,700	
	92,700	
Penalty leviable@50% of tax payable		46,350
Reassessment under section 147		
Under-reported income:		
Total income reassessed under section 147	4,00,000	
(-) Loss assessed under section 143(3)	(5,00,000)	
	9,00,000	
Tax payable on under-reported income@30%	2,70,000	
Add: EC & SHEC@3%	8,100	
	2,78,100	
Penalty leviable@50% of tax payable		1,39,050

Note – The following assumptions have been made –

1) None of the additions or disallowances made in assessment or reassessment qualifies u/s 270A(6); and
2) The under-reported income is not on account of misreporting.

Readers Note:

Q 6. (a) Mr. T prefers appeal with CIT(Appeals) after receiving assessment order under section 143(3) of the Income Tax Act. After filing his appeal, he realizes that certain important issues were not raised in the statement of facts and grounds of appeal submitted. The appellant wants to produce additional evidences before the CIT(Appeals). State the circumstances where the appellant, shall be entitled to produce additional evidence, i.e. documentary, before the Commissioner of Income Tax (Appeals) other than the evidence produced during the proceedings before the Assessing Officer. 4

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- According to *Explanation* to section 251, in disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.
- Thus, in the absence of any statutory restriction, the appellate authority is vested with all the **plenary powers** which the subordinate authority may have in the matter—***Jute Corporation of India* v. *CIT* 187 ITR 688 [1991] (SC).**
- He can do what the Assessing Officer can do and also what Assessing officer has failed to do.
- That means, the **scope of Commissioner (Appeal)'s power is coterminous with that of the Assessing Officer**.
- **Example:** Commissioner (Appeals) has power to reject assessee's books of account which have been accepted by Assessing Officer.

50. WHETER PRODUCTION OF ADDITIONAL EVIDENCE BEFORE COMMISSIONER (A) IS PERMISSIBLE?

Q 6(a)

Rule:- 46A

- The appellant shall not be entitled to produce before the Commissioner (Appeals) any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the Assessing Officer.
- However, in the following cases additional evidence shall be admitted by the Commissioner (Appeals) :

SUGGESTED ANS.

  a. where the Assessing Officer has refused to admit evidence which ought to have been admitted ; or
  b. where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer ; or
  c. where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal ; or
  d. where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.
- No additional evidence shall be admitted unless the Commissioner (Appeals) records in writing the reasons for its admission.
- The Commissioner (Appeals) shall not take into account any additional evidence produced unless the Assessing Officer has been allowed a reasonable opportunity —
  a. to examine the evidence or document or to cross-examine the witness produced by the appellant ; or

b. to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

- Without prejudice to above, the Commissioner (Appeals) may direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal.

51. WHEN ASSESSEE SHALL BE DEEMED TO BE IN DEFAULT?

Section:- 220(4)

If the demand is not paid within the time limit under section 220 (1) [generally thirty days or lesser than 30 days], at the place and to the person mentioned in the said notice the assessee shall be deemed to be in default.

52. ASSESSEE MAY NOT BE DEEMED TO BE IN DEFAULT IN CERTAIN CASES ALTERNATIVELY, IT IS CALLED APPLICATION FOR STAY OF DEMAND ALTERNATIVELY, IT IS CALLED APPLICATION FOR KEEPING DEMAND IN ABEYANCE

Section:- 220(6)

Section 220(6) provides that where an assessee has presented an appeal under section 246A, then, the Assessing Officer may, in his discretion, and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount of dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of.

<u>Consider following case study:</u>

Gajanan Agencies made an application for stay of demand under section 220(6) to the Assessing Officer. Assessing officer directed assessee to pay the demand in 10 equal monthly instalments. Gajanan Agencies challenged this order by a way of writ petition before Madras High Court. Following are the major observations of the Kerala High Court – **Gajanan Agencies v. ITO 210 ITR 865 (1994)**

(a) It was difficult to read this order as an order contemplated under section 220(6). This order was another mode of enforcing the recovery of tax.

(b) It was apparent that the proceedings for collection of tax had not been kept in abeyance at all.

(c) By virtue of this order, the assessee was compelled to pay the entire amount in 10 equal instalments.

MAT **Marks**

Q6 (b) Discuss the correctness or otherwise of the following statements with reference to the provisions of Income Tax Act, 1961 : 3×2 =6

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(i) Central Board of Direct Taxes issues orders, instructions and directions to other income tax authorities as it may deem fit which has to be compulsorily followed by them.

(ii) The Settlement Commission may suo moto amend any order passed by it to rectify any mistake apparent from the record.

(iii) If assessee does not pay the self assessment tax before furnishing the return of income, the return furnished shall be deemed to be a defective return.

1. INCOME TAX AUTHORITIES
2. POWER OF INCOME TAX AUTHORITIES
3. ASSESSMENT IN CASE OF SEARCH OR REQUISITION
4. SETTLEMENT OF CASES
5. ADVANCE RULINGS
6. COLLECTION & RECOVERY OF TAX
7. ADVANCE TAX
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Practical 1 SIMILAR Q 6(b)(i)

Discuss the binding effect of circulars issued by CBDT.

Solution

1. The Supreme Court, in the case of **Navnit Lal C. Javeri v. K. K. Sen, AAC [1965] 56 ITR 198,** held that, a circular issued by the Board under section 119 would be binding on all person and officers employed in the execution of the Act.
2. Delhi High Court in case of **Delhi Flour Mills Co. Ltd. v. CIT [1974] 95 ITR 151** observed that the decisions of the CBDT are not binding upon Courts.

Readers Note:

Practical 2

Can department officers challenge the validity of circulars issued by CBDT on the ground that it is inconsistent with the provisions of Income Tax Act?

Solution

Supreme Court while dealing with the above issue under Central Excise Act, 1944 in case of **Paper Product Ltd. v. CCE [2001]** held as under:

> "Apart from the fact that the circulars issued by the Board are binding on the department, the department is precluded from challenging the correctness of the said circulars even on the ground of the same being inconsistent with the statutory provision."

Considering the ratio laid down by Supreme Court in above case, the department officers cannot challenge the validity of circular issued by CBDT.

Readers Note:

Practical 3

In case of Peria Karamalai Tea & Produce Co. Ltd., the assessment for the **A.Y. 2013-14** was completed under section 143(3) on **10th June, 2015** accepting the claim of interest expenditure under section 36(1)(iii) of the Act even though some funds were diverted to sister concern without interest. Later, on **21st June, 2015,** CBDT issued circular directing that some portion of interest expense must be disallowed when interest free advances were made to sister concern. Later on, the case of **A.Y. 2013-14** was re-opened by issuing and serving a valid notice under section 148 of the Act for taxing some other income which has escaped assessment. Based on this facts, answer the following issues:

(a) Can the above circular be applied during the re-assessment proceeding by the assessing officer with a view to disallow the some portion of interest expense which was fully allowed earlier while passing order under section 143(3) of the Act?

(b) Can the above circular be used for the purpose of initiating the re-assessment proceedings?

Practical 28

Seizures were made from Mr. Om Prakash pursuant to a search conducted in his premises. He filed an application for settlement by claiming to have received the amount by way of loans from several persons. The Settlement Commission accepted his statement and made an order. The CBI, however, conducted enquiry at the instance of the Revenue regarding the claimed amount of loans and opined that the alleged lenders had no means or financial capacity to advance such huge loans to Mr. Om Prakash and were mere name lenders only. The Commissioner filed an application under section 245D(6) praying for the order to be declared void and for withdrawal of benefit granted. Mr. Om Prakash, however, contended that the order of the Settlement Commission was final and any fresh analysis would amount to sitting in judgement over an earlier decision, for which the Settlement Commission was not empowered. Discuss the correctness of Mr. Om Parkash's contention.

Solution

The **Apex Court** in case of **CIT, Jalpaiguri v. Om Prakash Mittal (2005) 273 ITR 0326** held that the declaration contemplated in section 245C is in the nature of voluntary disclosure of concealed income, but it must be true and fair disclosure. Voluntary disclosure and making a full and true disclosure of the income are necessary pre-conditions for invoking the Commission's jurisdiction.

Since, the order of settlement commission was obtained by fraud or misrepresentation of facts, considering the provisions of section 245 D, such order is liable to be set aside.

Hence, the contention of Mr. Om Prakash is not tenable.

Readers Note:

31.7 Power of Settlement Commission to rectify order

The Settlement Commission may, with a view to rectifying any mistake apparent from the record, amend any final order passed by it—

(a) at any time within a period of six months from the end of the month in which the final order was passed; or

(b) at any time within the period of six months from the end of the month in which an application for rectification has been made by the Principal Commissioner or the Commissioner or the applicant, as the case may be:

Provided that no application for rectification shall be made by the Principal Commissioner or the Commissioner or the applicant after the expiry of six months from the end of the month in which final order is passed by the Settlement Commission:

Provided further that an amendment which has the effect of modifying the liability of the applicant shall not be made under this sub-section unless the Settlement Commission has given notice to the applicant and the Principal Commissioner or Commissioner of its intention to do so and has allowed the applicant and the Principal Commissioner or Commissioner an opportunity of being heard.

Consider following illustration for better understanding:-

If order of Settlement Commission(SC) is passed on ***28/06/16***,

Q6(b)(ii)

Situation-I: SC on its own motion

28/06/2016
↓ end of month
30/06/2016
↓ 6 months
31/12/2016

Situation-II: If applicant/commissioner had an made application then time limit for making application

28/06/2016
↓ end of month
30/06/2016
↓ 6 months
31/12/2016

Assume that application is made by Commissioner on 08/12/16
↓ end of month
31/12/2016
↓ 6 months
SC shall pass rectified order on or before 30/06/2017

31.8 Consequences if settlement order is obtained by fraud or misrepresentation

Where a settlement becomes void if it has been obtained by fraud or misrepresentation of facts, the proceedings with regard to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with.

Thereafter, income tax authority concerned shall complete such proceedings at any time before the expiry of two years from the end of the financial year in which the settlement became void, notwithstanding anything contained in any other provisions of the Act.

Practical 29

For the assessment year **2012-13**, Zinga Limited made an application to the settlement commission when the assessment under section 153A for the said assessment year was pending. The application was declared as valid on **10-08-2014**. As a result, the assessing officer ceases to have jurisdiction over the case

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14. THE DETAILS TO BE FURNISHED BY AN ASSESSEE IN THE RETURN OF INCOME

Section:- 139(6) and 139(6A)

The following particulars are required to be submitted with the return as per section 139(6) and section 139(6A).

(1) ***Particulars required to be furnished under section 139(6) by every assessee :***

(1) Income exempt from tax.

(2) Assets of the prescribed nature, value and belonging to the assessee.

(3) His bank account and credit card held by him.

(4) Expenditure exceeding the prescribed limits incurred by him under the prescribed heads.

(5) Such other out goings as may be prescribed.

(2) ***Particulars to be furnished in case of an assessee engaged in any business or profession [Section 139(6A)]:***

(1) The report of audit referred to in section 44AB;

(2) The particulars of location and style of the principal place where he carries on the business or profession; and all branches thereof;

(3) Names and addresses of his partners if any in such business or profession;

(4) If assessee is a member of an association or body of individuals, the names of other members;

(5) The extent of assesses' share and of other partners/ members of the profits of the business or of the branches.

15. DEFECTIVE RETURN

Section:- 139(9)

This section has an overriding effect over all the provisions of Income Tax Act

Rectification of Defect:-

The Assessing Officer <u>may at his discretion intimate</u> to the assessee the <u>defect in the return</u>.

Time Limit for rectification: - The time limit for rectification shall be **<u>15 days from the date of such intimation</u>** or such extended period allowed by the Assessing Officer.

The assessee fails to rectify the defect within 15 days or such extended time limit	*Assessee rectifies the defect after the expiry of 15 days or such extended time but before the assessment is made*
(i) The return shall be treated as an invalid return (ii) The provisions of this Act shall apply as if the assessee had failed to furnish the return	The Assessing Officer may condone the delay and treat return as a valid return.

As per explanation to section 139(9), a return of income shall be regarded as defective in the following cases:

(a) The annexure, statements and columns in the return of income has not been duly filled in.

~~(b) The tax together with interest, if any, payable in accordance with the provisions of section 140A, has not been paid on or before the date of furnishing of the return.~~ – ***deleted by Finance Act, 2016.***

Q 6 (b) (iii)

(c) The return is not accompanied by the following:

- (i) Statement showing the computation of tax.
- (ii) Audit report u/s. 44AB or
- (iii) Proof of TDS/TCS, advance tax or self – assessment tax paid.
- (iv) Proof the compulsory deposit made under Compulsory Deposit Scheme.
- (v) Audited Profit and Loss account, Balance Sheet and Auditor's Report (including Cost Audit Report under section 233B of the Companies Act) if the accounts of the assessee have been audited under any other law.
- (vi) ***Where regular books of account are maintained by the assessee:-***
  - i. Manufacturing Account, Trading Account, Profit and Loss account, or Income and Expenditure account or similar account and Balance Sheet
  - ii. In case of the proprietary business, personal account of the proprietor; in case of firm, AOP/BOI, the accounts of the partners/members and in case of a partner / member his personal account in the firm, AOP/BOI.
- (vii) **Where *regular books are not maintained by the assessee:-***
  - i. statement indicating the turnover, gross receipts, gross profit, expenses and net profit and the basis of such computation
  - ii. Statement of sundry debtors, creditors, stock in trade and cash balance at the end of the previous year

NOTE:

(1) Due to provisions of section 139C/139D and the present ITR forms, it is not possible to attach any certificates, audit reports, computation of total income, financial statements, and proof of various pre-paid taxes. Therefore, practically, return of income may not be regarded as defective because of non-fulfillment of requirements mentioned at point no. (c) above.

(2) Relevant portion from Notification No. 3/2012, dated 04-01-2012

(i) In case of a defective return, the Commissioner shall intimate this to the person through e-mail or by placing a suitable communication on the e-filing website.

(ii) A person shall comply with the notice regarding defective return by uploading the rectified return within the period of time mentioned in the notice.

(iii) The Commissioner may, in order to avoid hardship to the person, condone the delay in uploading of rectified return.

(iv) In case no response is received from the person in reply to the notice of defective return, the Commissioner may declare a return as not having been uploaded at all or process the return on the basis of information available

SECTION 292B: Return, Notice etc. not to be invalid on certain grounds.

In this connection, a reference may be made to section 292B of the Income-tax Act which provides that no return of income, assessment, notice, summons or other proceedings furnished, made, issued or taken shall be invalid merely by reason of mistake, defect or omission in such return of income, order, notice, summons etc.

The provision in section 139(9), however, overrides other provisions of the income-tax Act (including section 292B) in this regard and in a case where any of the specified defect is not removed within the time allowed, the return shall be treated as an invalid return and the provisions of the Income-tax Act apply as if the assessee had failed to furnish the return. – ***Circular No. 281, dated 22-9-1980.***

Fill in the blanks:

(a) The defects mentioned in the section 139(9) are ________ (illustrative / exhaustive) [***Rai Bahadur Bissesswarlal Motilal Malwasie Trust 195 ITR 825 [1992]***(**Cal.)]**

(b) The assesse submitted e-return. But it is not verified at all. Hence, the return was an absolutely ________ (Invalid/Defective) as it had a glaring inherent defect which could not be cured inspite of the deeming effect of section 292B. **[CIT V. Harjinder Kaur 310 ITR 71 (P & H)]**

Q6 (c) Discuss the TDS/TCS applicability in context of Assessment Year 2017-18 in the following cases and state the amount of the TDS/TCS as per Income Tax Act, 1961. (All issues as under are independent) **3×2 =6**

ICAI Q PAPER

(i) Mr. Shan an individual, whose turnover from the business carried on by him during the financial year immediately preceding the financial year exceed 100 lakh, paid fee to an architect of ₹ 50,000 for furnishing his residential house.

(ii) Mr. Shyam purchased a house in Mumbai for consideration of ₹ 90 lakh by cheque from the builder for the use of his residence.

(iii) Mr. Soham purchased licensed copy of computer software from the software vendor (resident of India) along with all right to use it for ₹ 50,000 to be used for business purposes.

MAT

TAX DEDUCTION AND COLLECTION AT SOURCE

CA MEHUL THAKKER

ASSESSMENT YEAR 2017-18

This Publication is Relevant for

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CS/CMA June 2017 & December 2017 Examinations

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Contract Number	Date of Payment	Amount (Rs.)
1.	5.5.2016	20,000
2.	6.6.2016	15,000
3.	8.8.2016	25,000
4.	10.12.2016	25,000
5.	29.01.2017	17,000

Alap Ltd. claims that it is not liable for deduction of tax at source under section 194C. Examine the correctness of the claim made by the company. What would be the position if the value of the contract no. 5 is Rs. 14,000 only and there was no further contract during the year?

Solution

- As per section 194C(5) tax has to be deducted at source where the amount credited or paid or likely to be credited or paid to a contractor or sub-contractor exceeds Rs. 30,000 in a single payment or Rs. 1,00,000 in aggregate during the financial year.
- In the present case, though the value of each contract does not exceed Rs. 30,000, the aggregate amount exceeds Rs. 1,00,000 during the financial year. Hence, Alap Ltd is required to deducted tax at source on the whole amount of Rs. 1,02,000 from the last payment of Rs. 17,000.
- However, no tax deduction is to be made if the value of the last contract is Rs. 14,000 since the aggregate amount in such case would only be Rs.99,000, which does not exceed Rs.1,00,000.

Reader's Note:

8.4 Rate of TDS:-

If payee is an Individual or HUF	1%
If payee is any other person	2%

8.5 No liability to deduct tax at source in following cases:

(a) Individual or Hindu undivided family shall not be liable to deduct income tax on the sum credited or paid to the account of contractor where such sum is exclusively for personal purposes.

(b) Tax is not deductible on any sum credited or paid to the contractor during the course of business of plying, hiring or leasing goods carriages subject to following conditions:

(a) Such contractor owns ten or less goods carriages at any time during the previous year and

(b) Such contractor shall furnish a declaration to that effect along with PAN to the payer.

8.6(E)(i)

Practical 19

T, an individual whose total sales in business during the year ended **31.3.2016** was Rs. 1.20 crores, paid Rs. 9 lacs by cheque on **1.1.2017** to a contractor (an individual), for construction of his factory building. No amount was credited earlier to the account of the contractor in the books of T. Discuss the obligation of T to deduct tax at source.

Solution

- An individual who is liable for tax audit under section 44AB (a) / (b) in the immediately preceding financial year **(2015-16)** is liable to deduct tax at source under section 194C for the financial year 2016-17 in respect of the payment made to contractor exceeding Rs. 30,000 in a single contract and Rs. 1,00,000 in aggregate of contracts during the financial year.
- Turnover of the individual T exceeded Rs.1 crore in the financial year **2015-16.** Therefore, T is liable to get his accounts for that year audited under section 44AB(a). As the payment during **F.Y. 2016-17** to the contractor has exceeded the limits prescribed in section 194C, tax has to be deducted u/s 194C.

Reader's Note:

8.6 Meaning of work :

The expression "work" shall also include

(a) advertising

(b) broadcasting and telecasting including production of programmes for such broadcasting or telecasting

(c) carriage of goods and passengers by any mode of transport other than by railways

(d) catering

(e) manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer, <u>but does not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer.</u>

In case of point no. (e) above, tax shall be deducted:

(i) on the invoice value excluding the value of material, if such value is mentioned separately in the invoice; or

(ii) on the whole of the invoice value, if the value of material is not mentioned separately in the invoice.

Practical 20

Dabur Ltd. has entered into a contract to buy plastic bottles from Packaging Pvt. Ltd as per the designs and specification given to it. For this purpose, Dabur Ltd. sold necessary raw material to Packaging Pvt. Ltd. For the previous year 2016-17, Packaging Pvt. Ltd. has raised following invoices on Dabur Ltd.

Date	Invoice no.	Qty.	Value of Raw Material	Labour Charges	Total Bill Rs.
14/10/16	1020/16-17	10,000	-	-	60,000
31/11/16	1255/16-17	20,000	80,000	45,000	1,25,000

Discuss the TDS obligations of Dabur Ltd. Would your answer differ if Packaging Pvt. Ltd. has purchased raw material from any supplier other than Dabur Ltd?

17.2 Time of deduction:- Tax shall be deducted under this section, either at the time of credit to the account of the payee or at the time of payment thereof, whichever is earlier.

For this purpose, "payment" can be in cash or by issue of a cheque or draft or by any other mode.

17.3 Threshold Limit:- No tax is deductible where the consideration paid or payable for the transfer of an immovable property is **less than Rs.50,00,000.**

17.4 Tax rate:- 1% of consideration

17.5 ***Other points:-***

(a) Provisions of section 203A (pertaining to TAN) shall not apply to a person required to deduct tax under this section.

(b) As discussed above, the provisions of section 194-IA shall not apply if a person acquires agricultural land in India. For this purpose, the definition of section 2(14) shall be relevant.

Section 2(14) defines capital asset which excludes agricultural land in India.

Agricultural land means the land falling ***outside*** urban area.

Meaning of Urban area

(1) Urban area means any area which is situated within the jurisdiction of a municipality or cantonment board having a population of 10,000 or more.

(2) Urban area also includes an area which is situated outside the local limits of such municipality/cantonment board but within distance given below –

Population of municipality / cantonment board	Distance measured aerially
More than 10,000 but not exceeding 1 lakh	2 kilometers
More than 1 lakh but not exceeding 10 lakh	6 kilometers
More than 10 lakhs	8 kilometers

For the above purpose, "population" means the population according to the last preceding census of which the relevant figures have been published before the date of valuation.

(c) For deduction of tax at source under this section, location of immovable property is not relevant. Such property may or may not be situated in India. The main requirement to attract this section is that transferor shall be resident in India.

Q6 (C) (ii)

Practical 35

Mr. X, a resident, acquired a house property at Mumbai from Mr. Y for a consideration of Rs. 90 lakhs (stamp duty value Rs. 98 lakhs), on **20.6.2016.** On the same day, Mr. X made two separate transactions, thereby acquiring an urban plot in Kolkata from Mr. C for a sum of Rs. 49.50 lakhs (stamp duty value Rs. 54 lakhs) and rural agricultural land from Mr. D for a consideration of Rs. 60 lakhs.

Discuss the obligation of Mr. X to deduct tax at source and also find out the amount of TDS assuming that Mr. Y, Mr. C and Mr. D are residents.

Solution

Particulars	Rs.
Since the consideration for transfer of house property at Mumbai exceeds Rs. 50 lakhs, Mr. X, being the transferee, is required to deduct tax @1% u/s 194-IA on Rs. 90 lakhs, being the amount of consideration for transfer of property. It is important to bear in mind that the threshold limit and rate of tax deduction at source are prescribed with reference to the amount of consideration and not with reference to the stamp duty valuation.	90,000
Mr. X is not required to deduct tax as source u/s 194-IA from the consideration of Rs.49,50,000 paid to Mr. C for transfer of urban plot, since the consideration is less than Rs.50 lakhs.	Nil
Mr. X is also not required to deduct tax at source u/s 194-IA from the consideration of Rs. 60 lakhs paid to Mr. D for transfer of rural agricultural land, since the same is specifically excluded from the scope of immovable property for the purpose of tax deduction u/s 194-IA.	Nil

Reader's Note:

18. TAX DEDUCTION AT SOURCE ON FEES FOR PROFESSIONAL OR TECHNICAL SERVICES

Section:- 194 J

18.1 Person liable to deduct tax at source:- Any person, not being an individual or a HUF, who is responsible for paying to a resident any sum by way of -

(a) fees for professional services, or

(b) fees for technical services or

(c) any remuneration or fees or commission by whatever name called, other than those on which tax is deductible under section 192, to a director of a company or

(d) royalty or

(e) any sum referred to in section 28 (va) ;

shall deduct tax at source under this section.

An individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (*a*) or clause (*b*) of section 44AB during the financial year immediately preceding the financial year in which abovementioned sum is credited or paid, shall be liable to deduct income-tax under this section.

However, no tax deduction under this section is required on sum by way of fees for professional services in case such sum is exclusively for personal purposes of such individual or any member of Hindu Undivided Family.

18.2 Time of deduction:- Tax shall be deducted under this section, either at the time of credit to the account of the payee or at the time of payment thereof, whichever is earlier.

For this purpose, credit to "Suspense account" or any other name shall be deemed to be a credit of such income to the account of the payee.

For this purpose, "payment" can be in cash or by issue of a cheque or draft or by any other mode.

18.7 Meaning of royalty: It shall have same meaning as given in explanation 2 to section 9(1)(vi).

Practical 42 Q6(c)(iii)

Treat- Treat Limited purchased animation software from Gajanan Agency for Rs. 12,00,000. It seeks your advice about applicability of TDS provisions / relaxation if any.

Solution

- The Central Government has, vide **Notification No.21/2012 dated 13.6.2012** to be effective from 1st July, 2012, exempted certain software payments from the applicability of tax deduction under section 194J. Accordingly, where payment is made by the transferee for acquisition of software from a resident-transferor, the provisions of section 194J would not be attracted if –
  (1) the software is acquired in a subsequent transfer without any modification by the transferor;
  (2) tax has been deducted either under section 194J or under section 195 on payment for any previous transfer of such software; and
  (3) the transferee obtains a declaration from the transferor that tax has been so deducted along with the PAN of the transferor.
- Considering the impact of above notification, Treat-Treat limited is not required to deduct tax at source from the payment on account of software subject to:
  (1) Such software is acquired in a subsequent transfer without any modification by Gajanan Agency.
  (2) Tax has been deducted either under section 194 J or under section 195 on payment for such software in previous transfer (either by Gajanan Agency or previous transferor).
  (3) It shall obtain declaration from Gajanan Agency that tax has been so deducted.
  (4) It shall also obtain the PAN of Gajanan Agency.

Reader's Note:

19. TAX DEDUCTION FROM PAYMENT OF COMPENSATION IN CERTAIN CASES

Section:- 194LA

19.1 Person liable to deduct tax at source:- Any person responsible for paying to a resident any compensation or enhanced compensation or consideration or enhanced consideration on account of compulsory acquisition of any immovable property (other than agricultural land) is responsible for deduction of tax at source.

19.2 Time of deduction:- Tax is deductible at the time of payment of aforesaid sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

19.3 Threshold Limit:- No deduction shall be made under this section where the amount of such payment or, as the case may be, the aggregate amount of such payments during the financial year **does not exceed Rs.2,50,000.**

ICAI Q PAPER

MAT

Marks

Q 7. (a) Explain the significance of the PE, when such transactions are governed by the Double Taxation Avoidance Agreements (DTAA). **4**

TAXATION OF NON-RESIDENTS

CA MEHUL THAKKER

ASSESSMENT YEAR 2017-18

This Publication is Relevant for

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Question 48

Discuss various models of DTAA / Treaties an also types of DTAA

Answer

Models of DTAA

Tax treaties have been based on models such as:

- OECD model (Organisation of Economic CO-operation and Development)
- U.N. Models Double Taxation Convention between developed and developing countries, 1980.

Most of India's treaties are based on OECD models.

Types of DTAA

DTAA can be divided into following types:

(a) Limited agreements : They are generally entered into to avoid double taxation relating to income derived from operation of aircraft, ships, carriage of cargo and freight.

(b) Comprehensive agreements: They are executed in detail which lay down how incomes under various heads may be dealt with by the countries to the agreement.

Readers Note:

Question 49

The concept of Permanent Establishment is one of the most important concepts in determining the tax implications of cross border transactions. Explain the significance thereof, when such transactions are governed by Double Taxation Avoidance Agreements (DTAA).

Answer

Double Taxation Avoidance Agreements (DTAAs) generally contain an Article providing that business income is taxable in the country of residence, unless the enterprise has a permanent establishment in the country of source, and such income can be attributed to the permanent establishment.

That means, if permanent establishment is in other country, then income attributed to that PE shall be taxed in that source country.

As per section 92F(iiia), the term "Permanent Establishment" includes a fixed place of business through which the business of an enterprise is wholly or partly carried on.

Section 9(1)(i) requires existence of business connection for deeming business income to accrue or arise in India. DTAAs however provide that business income is taxable only if there is a permanent establishment in India.

Therefore, in cases covered by DTAAs, where there is no permanent establishment in India, business income cannot be brought to tax due to existence of business connection as per section 9(1)(i).

However, in cases not covered by DTAAs, business income attributable to business connection is taxable.

Readers Note:

Q7 (b) *"Rule 10MA(2)(iv) of Income Tax Rules requires that the application for rollback provision, in respect of an international transaction, has to be made by the applicant for all the rollback years in which the said international transaction has been undertaken by the applicant."* 4

ICAI Q PAPER

You are required in this context to explain whether the rollback has to be requested for all the four years or applicant can choose the years out of the block of four years.

TRANSFER PRICING

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(d) The order of cancellation shall also specify the effective date of cancellation of the agreement, where applicable.

(e) The order under the Act, declaring the agreement as void ab initio, on account of fraud or misrepresentation of facts, shall be in writing and shall provide reason for such declaration and for non-acceptance of assessee's submission, if any.

(x) Mere filing of a application for an agreement under these rules shall not prevent the operation of Chapter X of the Act for determination of arms' length price under that Chapter till the agreement is entered into.

(xi) The negotiation between the competent authority in India and the competent authority in the other country or countries, in case of bilateral or multilateral agreement, shall be carried out in accordance with the provisions of the tax treaty between India and the other country or countries".

25. NOTIFICATION – RULES FOR ROLLBACK OF APA

No:- 23/2015 dated 14-03-2015

Rules for rollback of an Advance Pricing Agreement notified

- Section 92CC empowers the CBDT to enter into an advance pricing agreement with any person, determining the arm's length price or specifying the manner in which arm's length price is to be determined in relation to an international transaction to be entered into by that person.
- The CBDT can do so with the approval of the Central Government. Section 92CC(9) empowers the CBDT to prescribe a scheme specifying therein the manner, form and procedure in respect of such advance pricing agreement. Further, to reduce current pending as well as future litigation in respect of the transfer pricing matters, section 92CC(9A) provides a roll back mechanism in the advance pricing agreement scheme.
- Accordingly, the advance pricing agreement may, subject to such prescribed conditions, procedure and manner, provide for determining the arm's length price or for specifying the manner in which arm's length price is to be determined in relation to an international transaction entered into by a person during any period not exceeding four previous years preceding the first of the previous years specified in the agreement and the arms length price of such international transaction shall be determined in accordance with the said agreement.
- The CBDT has, vide this notification, in exercise of the powers conferred by section 92CC(9) and 92CC(9A) read with section 295, prescribed the following conditions, procedure and manner for determining the arm's length price or for specifying the manner in which arm's length price is to be determined in relation to an international transaction:

Rule	Particulars	Amendment
10F(ba)	Definition of Applicant	A person who has made an application.
10F(ha)	Definition of Rollback year	Any previous year, falling within the period not exceeding four previous years, preceding the first of the five consecutive previous years referred to in section 92CC(4).
10H(1)	Pre-filing consultation	Any person proposing to enter into an agreement under these rules may, by an application in writing, make a request for a pre-filing consultation. Making a request for a pre-filing consultation has, therefore, become optional. As per Rule 10H(5), the pre-filing consultation shall, among other things,- **(i)** determine the scope of the agreement **(ii)** identify transfer pricing issues **(iii)** determine the suitability of international transaction for the agreement. **(iv)** discuss broad terms of the agreement
10-I	Application for advance pricing agreement.	Earlier, any person who has entered into a pre-filing consultation as referred to in Rule 10H was eligible to file an application for advance pricing agreement. This rule has now been amended to provide that any person referred to in Rule 10G i.e. any person who has undertaken an international transaction or is contemplating to undertake an international transaction will be eligible to make an application for advance pricing agreement. Therefore, an application requesting for pre-filing consultation is not mandatory for making an application for advance pricing agreement.
10M	Terms of the agreement	Rule 10M provides for the terms of the advance pricing agreement. Rule 10M(1) provides that an agreement may among other things, include, the international transactions covered by the agreement, the agreed transfer pricing methodology, if any, the determination of ALP, if any etc.. Clause (va) has now been inserted in Rule 10MA(1) to include rollback provision referred to in Rule 10MA.
10MA	Roll back of the agreement	The said rule provides the following: **1.** the agreement may provide for determining the arm's length price or specify the manner in which arm's length price shall be determined in relation to the international transaction entered into

by the person during the rollback year (hereinafter referred as "rollback provision").

2. **Conditions for applying for rollback provisions:**

The agreement shall contain rollback provision in respect of an international transaction subject to the following, namely:-

(i) the international transaction is same as the international transaction to which the agreement (other than the rollback provision) applies;

(ii) the return of income for the relevant rollback year has been or is furnished by the applicant before the due date as specified in Explanation 2 of section 139(1).

(iii) the report in respect of the international transaction had been furnished in accordance with section 92E;

(iv) the applicability of rollback provision, in respect of an international transaction, has been requested by the applicant for all the rollback years in which the said international transaction has been undertaken by the applicant; and

(v) the applicant has made an application seeking rollback in Form 3CEDA in accordance with sub-rule (5);

3. **Non-applicability of Rollback provision:** Rollback provision shall not be provided in respect of an international transaction for a rollback year, if,-

(i) The determination of arm's length price of the said international transaction for the said year has been subject matter of an appeal before the Appellate Tribunal and the Appellate Tribunal has passed an order disposing of such appeal at any time before signing of the agreement; or

(ii) the application of rollback provision has the effect of reducing the total income or increasing the loss, as the case may be, of the applicant as declared in the return of income of the said year.

4. **Manner for determining arm length price to be the same for rollback years and other previous years:**

Where the rollback provision specifies the manner in which arm's length price shall be determined in relation to an international transaction undertaken in any rollback year then such manner shall be the same as the manner which has been agreed to be provided for determination of arm's length price of the same international transaction to be undertaken in any previous year to which the

		agreement applies, not being a rollback year. **5. <u>Time limit for filling application for rollback provision:</u>** The applicant may furnish along with the application for advance pricing agreement, the request for rollback provision in Form No. 3CEDA with proof of payment of an additional fee of ` 5 lakh at any time – (i) before the first day of the previous year relevant to the first assessment year for which the application for advance pricing agreement is made, in respect of transactions which are of a continuing nature from dealings that are already occurring; or (ii) before undertaking the transaction in respect of remaining transactions. [However, where an application has been filed before 31.03.2015, application for rollback provision along with the proof of payment of additional fee may be filed at any time on or before the 30.6.2015 or the date of entering into the agreement, whichever is earlier. Further, where an agreement has been entered into on or before 31.03.2015, application for rollback provision along with the proof of payment of additional fee may be filed at any time on or before 30.06.2015 and such agreement may be revised to provide for the rollback provision notwithstanding anything contained in Rule 10Q (which provides for revision of advance pricing agreement)] **[As amended by Notification No.33/2015, dated 01.04.2015].**
10RA	Procedure for giving effect to Rollback provision of An Agreement	Rule 10RA has been inserted to provide the "Procedure for giving effect to rollback provision of an Agreement" as follows: (i) The applicant shall furnish modified return of income referred to in section 92CD in respect of a rollback year to which the agreement applies along with the proof of payment of any additional tax arising as a consequence of and computed in accordance with the rollback provision. (ii) The modified return in respect of rollback year shall be furnished along with the modified return to be furnished in respect of first of the previous years for which the agreement has been requested for in the application. (iii) If any appeal filed by the applicant is pending before the Commissioner (Appeals), Appellate Tribunal or the High Court for a rollback year, on the issue which is the subject matter of the rollback provision for that year, the said appeal to the extent of the subject covered under the agreement shall be withdrawn by the applicant before furnishing the modified return for the said year.

		(iv) If any appeal filed by the Assessing Officer or the Principal Commissioner or Commissioner is pending before the Appellate Tribunal or the High Court for a rollback year, on the issue which is subject matter of the rollback provision for that year, the said appeal to the extent of the subject covered under the agreement, shall be withdrawn by the Assessing Officer or the Principal Commissioner or the Commissioner, as the case may be, within three months of filing of modified return by the applicant. (v) The applicant, the Assessing Officer or the Principal Commissioner or the Commissioner, shall inform the Dispute Resolution Panel or the Commissioner (Appeals) or the Appellate Tribunal or the High Court, as the case may be, the fact of an agreement containing rollback provision having been entered into along with a copy of the same as soon as it is practicable to do so. (vi) In case effect cannot be given to the rollback provision of an agreement in accordance with this rule, for any rollback year to which it applies, on account of failure on the part of applicant, the agreement shall be cancelled. Consequently, clause (iv) of Rule 10R(1) providing for cancellation of agreement, has been amended to provide that the CBDT shall cancel an agreement if it is to be cancelled under Rule 10RA.

Answer

An advance pricing agreement shall remain valid for such period not exceeding 5 consecutive previous years as may be specified in the agreement

Readers Note:

Question 18

Shall APA be made applicable to the international transactions carried out in previous year(s) prior to the date of application?

Answer

With effect from 1st October, 2014, as per provisions of section 92CC (9A), the APA may, subject to such prescribed conditions, procedure and manner, provide for determining the ALP or for specifying the manner in which ALP is to be determined in relation to an international transaction entered into by a person during any period not exceeding four previous years preceding the first of the previous years for which the APA applies in respect of the international transaction to be undertaken.

E.g. If ABCD Ltd. has entered into an APA for a period of five years starting from previous year 2014-15, then subject to prescribed conditions, it can avail benefit of APA for the following financial years

Previous Years for which benefit available	Comment
2010-11	Preceding four previous years for which Roll Back Provision is applicable
2011-12	
2012-13	
2013-14	
2014-15 (Year in respect of which APA was entered)	**Five consecutive Previous years for which APA has been entered into**
2015-16	
2016-17	
2017-18	
2018-19	

Readers Note:

Question 19

How determination of ALP shall be made when taxpayer has entered into APA?

Answer

The manner of determination of arm's length price in a case where APA has been entered into, shall be by any method including those already provided in section 92C(1), with necessary adjustments or variations mentioned in APA.

Readers Note:

Q7 (c) The assessment of Nargis Agro Ltd., for Assessment Year 2014-15 was completed under section 143(3). The order so passed does not contain any specific direction for payment of interest under section 234 B, but was being accompanied by form $\boxed{\text{ITNS-150}}$ containing and giving the calculation of interest payable under section 234 B on the Assessed Tax. 4

ICAI Q PAPER

The assessee being aggrieved of the levy of interest under section 234 B seeks your opinion. Kindly advice.

1. **INCOME TAX AUTHORITIES**
2. **POWER OF INCOME TAX AUTHORITIES**
3. **ASSESSMENT IN CASE OF SEARCH OR REQUISITION**
4. **SETTLEMENT OF CASES**
5. **ADVANCE RULINGS**
6. **COLLECTION & RECOVERY OF TAX**
7. **ADVANCE TAX**
8. **INTEREST U/S 234A, 234B, 234C & 234D**

CA MEHUL THAKKER

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Practical 42

The assessee was a partnership firm and the assessment of relevant assessment year was completed under section 143(3) of the Act. It resulted into demand of tax and interest under section 234A Rs.30,460 and under section 234 B Rs. 1,02,322. The assessee contended that it has not been given opportunity of being heard before levy of captioned interest. Is contention of assessee firm is justified?

Solution

While dealing with the similar issue in case of **CIT v. R. Ramalingair [2000] 108 Taxman 1 (Ker.),** High Court concluded as under:-

The liability to pay interest under sections 234A, 234B and 234C arises by operation of law. Such interest liability is automatic and the question of granting opportunity of being heard in the matter does not arise.

Considering the abovementioned ratio, the contention of assessee firm is not justified.

Readers Note:

Practical 43

The assessment order passed did not contain any direction for the payment of interest under section 234B. However, the amount of interest payable under section 234B was contained in the Income-tax Computation Form or 'Form for Assessment of Tax/Refund (I.T.N.S 150). Whether levy of such interest is valid?

Solution

The Supeme Court in case of **CIT Vs. Bhagat Construction Co (P) Ltd. 383 ITR 9** observed that the facts of the present case are squarely covered by the three judges' bench decision of this court in the case of **Kalyankumar Ray v. CIT (1991) 191 ITR 634, wherein it was held that the Form I.T.N.S 150 is also a form for determination of tax payable and when it is signed or initialed by the Assessing Officer, it is certainly an order in writing by the Assessing Officer determining the tax payable within the meaning of section 143(3).** The said form also contains the calculation of interest payable on the tax assessed. This form must, therefore, be treated as part of the assessment order.

The Supreme Court further observed that the provisions of section 234B are attracted the moment an assessee liable to pay advance tax has failed to pay such tax or the advance tax paid by him is less than 90% of the assessed tax. The assessee, thus, becomes liable to pay simple interest at 1% for every month or part of the month.

The Apex Court, accordingly, held that the levy of interest under section 234B is automatic when the conditions specified under that section are met.

Considering the above, levy of interest under section 234B through I.T.N.S. 150 is valid.

Readers Note:

Q7 (d) *"Chapter-VIII of the Finance Act, 2016 has amended the provisions of section 10 and section 40(a) to address the issues and problems relating to taxation of e-commerce transactions."* 2×2 =4

ICAI Q PAPER

Explain in this context the following :

(i) Equalisation Levy

(ii) Meaning of Specified Service

MAT

POWER PACK REVISION MATERIAL

Relevant for Nov 2017 Exam

CA MEHUL THAKKER

ASSESSMENT YEAR 2017-18

23. EQUALISATION LEVY

Section:- Chapter VIII of Finance Act, 2016, 10(50), 40(a)(ib)

To tackle taxation issues in transaction conducted in cyber space, equalization levy has been imposed. Salient features of levy are given below-

(1) Date on which levy come into force:- This levy shall come into force on such date as Central Government may, by notification in the Official Gazette, appoint. Vide Notification No.38/2016 dated 27.5.2016, Equalisation Levy Rules, 2016 were notified, which come into force on **1st June, 2016.**

(2) Charging provision:- Equalisation levy shall be charged at the rate of 6 percent of the amount of consideration for specified services received or receivable by a non-resident from

- a person resident in India and carrying on business or profession or
- from a non-resident having a permanent establishment in India.

"Specified service" for this purpose, means online advertisement, any provision for digital advertising space or any other facility service for the purpose of online advertisement and includes any other service as may be notified by the Central Government in this behalf.

(3) Relaxation from equalization levy:- In the following cases equalization levy is not applicable-

(a) If the non-resident service provider has a permanent establishment in India and income from such specified services is effectively connected to this permanent establishment;

(b) Where the payment for specified service by the person resident in India (or the permanent establishment in India) is not for the purpose of carrying out business or profession.

(c) If the aggregate amount of consideration for specified services received or receivable by a non-resident from a person resident in India (or from a non-resident having a permanent establishment in India) does not exceed Rs.1 lakh in any previous year.

(4) Time limit for deposit of equalization levy:- Every person, being a resident and carrying on business or profession or a non-resident having a permanent establishment in India (here for the purpose of equalization levy referred to as "assessee") shall deduct equalization levy from the amount paid or payable to the non-resident in respect of specified services. The amount of equalization levy so deducted by the payer has to be paid to the credit of the Government by 7th day of the month following the month in which the equalization levy is collected. Even if equalization levy is not deducted, the payer is liable to pay the levy to the credit of Central Government.

(5) Interest for late payment:- Simple interest at the rate of 1 per cent for every month (or part of a month) shall be payable where the equalization levy collected is not credited to the account of the Central Government within the due date of payment.

(6) Penalty:- An assessee will liable for penalty as follows-

Situations	Penalty (in addition to paying equalization levy and interest)
Failure to deduct equalization levy (wholly or partly)	A penalty equal to amount of equalization levy
Failure to deposit equalization levy with Government	Rs.1,000 for each day of default (not to exceed amount of equalization levy)
Failure to furnish statement (Return)	Rs.100 for each day of default

Penalty is not impossible if the assessee proves to the satisfaction of the Assessing Officer that there was reasonable cause for the failure given above.

(7) Consequential amendments in the Income Tax Act:

- **Section 10(50):** Any income arising from any specified service provided on or after 1st June, 2016 and chargeable to equalization levy shall be exempt from tax.

- **Section 40(a)(ib**): Any consideration paid or payable to a non-resident for a specified service on which equalisation levy is deductible, shall be disallowed, if such levy has not been deducted or after deduction, has not been paid on or before the due date under section 139(1) . However such sum shall be allowed as a deduction in the previous year in which such levy has been paid.

24. RAYALA CORPORATION (P) LTD. V. ASSTT. CIT (2016) 386 ITR 500 (SC)

Would rental income from the business of leasing out properties be taxable under the head "Income from house property" or "Profits and gains from business or profession"?

Facts of the case: The assessee company was in the business of renting its properties and received rent which it claims as its business income chargeable under the head "Profits and Gains from business or profession". The Assessing Officer, however, brought to tax the rental income under the head "Income from house property".

Supreme Court's Observations: The Apex Court took note of the specific finding by the authorities that the assessee had stopped its other business activities and continued only the business of leasing out its properties and earning rent therefrom. Thus, it noted that the assessee was engaged only in the business of renting its properties and earning rental income. It made reference to law laid down by it in Chennai Properties & Investments Ltd v. CIT (2015) 373 ITR 673 (SC) that if an assessee is engaged in the business of letting out house property on rent, then, the income from such property, even though in the nature of

Roll No. ....

Total No. of Questions – 7

Total No. of Printed Pages – 15

Time Allowed – 3 Hours

Maximum Marks – 100

MAT

Answers to questions are to be given only in English except in the case of candidates who have opted for Hindi Medium. If a candidate has not opted for Hindi Medium, his/her answers in Hindi will not be valued.

Question **No. 1** is compulsory.

Answer any **five** questions from the remaining **six** questions.

In case, any candidate answers extra question(s)/sub-question(s) over and above the required number, then only the requisite number of questions first answered in the answer book shall be valued and subsequent extra question(s) answered shall be ignored.

Wherever, necessary, suitable assumptions may be made and disclosed by way of a note.

Working notes should form part of the respective answers.

All questions relate to **Assessment Year 2017-18**, unless stated otherwise in the question.

ICAI Q PAPER

Marks

Q 1. (a) Avimanyu, a resident individual held 25% equity shares in FMC Ltd., an Indian company. The company's paid up share capital as on 31st March, 2016 was ₹ 10,00,000 divided into 1,00,000 equity shares of ₹ 10 each issued at a premium of ₹ 20 each. The shares were allotted to the shareholders on 1st October, 2011. **10**

The company had gone for buy back of 30% of its shares on 30th April, 2016 as per the provisions of the Companies Act, 2013.

The company paid ₹ 60 per share on buy back.

MAT

Marks

Explain and compute the tax effect in the hands of FMC Ltd. and Avimanyu in the following situations :

(i) Shares of FMC Ltd. are listed on recognized stock exchange;

(ii) Shares of FMC Ltd. are not listed on any recognized stock exchange.

Cost Inflation Index :

Financial Year	**Cost Inflation Index**
2011-12	785
2016-17	1125

ASSESSMENT OF VARIOUS ENTITIES

CA MEHUL THAKKER

ASSESSMENT YEAR 2017-18

This Publication is Relevant for

CA Final May 2017 & November 2017 Examinations

CS/CMA June 2017 & December 2017 Examinations

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31. SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED INCOME OF DOMESTIC COMPANY FOR BUY-BACK OF SHARES

Section:- Section 115QA to 115QC

31.1 Levy:

Any amount of distributed income by the company on buy-back of shares (not being shares listed on a recognised stock exchange) from a shareholder shall be charged to additional income-tax.

This levy is in addition to income tax chargeable on the total income of domestic company.

31.2 Meaning of "buy back" and "distributed income"

(a) "buy-back" means purchase by a company of its own shares in accordance with the provisions of any law for the time being in force relating to companies;

(b) "distributed income" means the consideration paid by the company on buy-back of shares as reduced by the amount, which was received by the company for issue of such shares, determined in the manner as may be prescribed.

31.3 Rate of tax on the distributed income

The rate of tax on distributed income is 20% increased by surcharge (irrespective of amount of distributed income) and E.C.

31.4 Tax on distributed income cannot be avoided

The domestic company is liable to pay tax on distributed income under this section even if no income-tax is payable on its total income computed under the provisions of the Act.

31.5 Who is liable to pay tax on distributed income and when?

The principal officer of the domestic company and the company shall be liable to pay dividend distribution tax.

Such tax shall be paid within 14 days from the date of payment of any consideration to the shareholder on buy-back of shares.

31.6 Tax on distributed income is the final levy and no further credit for such tax paid

Tax on distributed income paid by a domestic company shall be taken as the final tax payment in respect of the said income.

In respect of tax so paid, no credit is available to the company paying tax, or the recipient of dividend or to any other person.

31.7 Tax on distributed income is not deductible

Neither domestic company nor the shareholders can claim deduction under any other provision of this Act in respect of distributed income as well as tax on distributed income.

31.8 Interest for non-payment of tax [Sec. 115QB]

If the company and the principal officer fails to pay the whole or any part of tax on distributed income within the specified time limit discussed above, then he or it shall be liable to pay interest at the rate of 1% p.m. or a part of month.

Period for which interest is payable

Interest is chargeable for the period commencing from the next date after the last date of payment and ending on the date of actual payment.

Amount on which interest is payable:

Particulars	Rs.
Tax on distributed income	Xxx
Less: Tax paid within the time limit of 14 days	(xxx)
Unpaid tax on distributed income	**Xxxx**

(1) When company is deemed to be in default? [Sec. 115QC]

If principal officer of a domestic company and domestic company does not pay tax on distributed income in accordance with the provisions of section 115QA, then he or it shall be deemed to be an assessee in default in respect of the amount of tax payable by him or it. Consequently, all provisions of the Act regarding collection and recovery of tax shall apply.

31.9 Exemption in the hands of shareholders

Section 10 (34A) provides that any income arising to an assessee, being a shareholder, on account of buy back of shares (not being listed on a recognised stock exchange) by the company as referred to in *section 115QA* is exempt.

Summary

- Buy back of shares
  - Not Listed
    - 115QA -Applicable
      - Domestic company shall pay tax @ 23.072% on Distributed Income.
        - Gain arising in the hands of shareholders is exempt [10(34A)]
  - Listed
    - 115QA -Not Applicable
      - There is no deemed dividend in the hands of shareholder. [Refer exception to section 2(22)] VIMP
        - Gain arising to shareholder is taxable
          - Being Trader
            - Chargeable under the head "PGBP"
          - Being Investor
            - Chargeable under the head "Capital Gain"

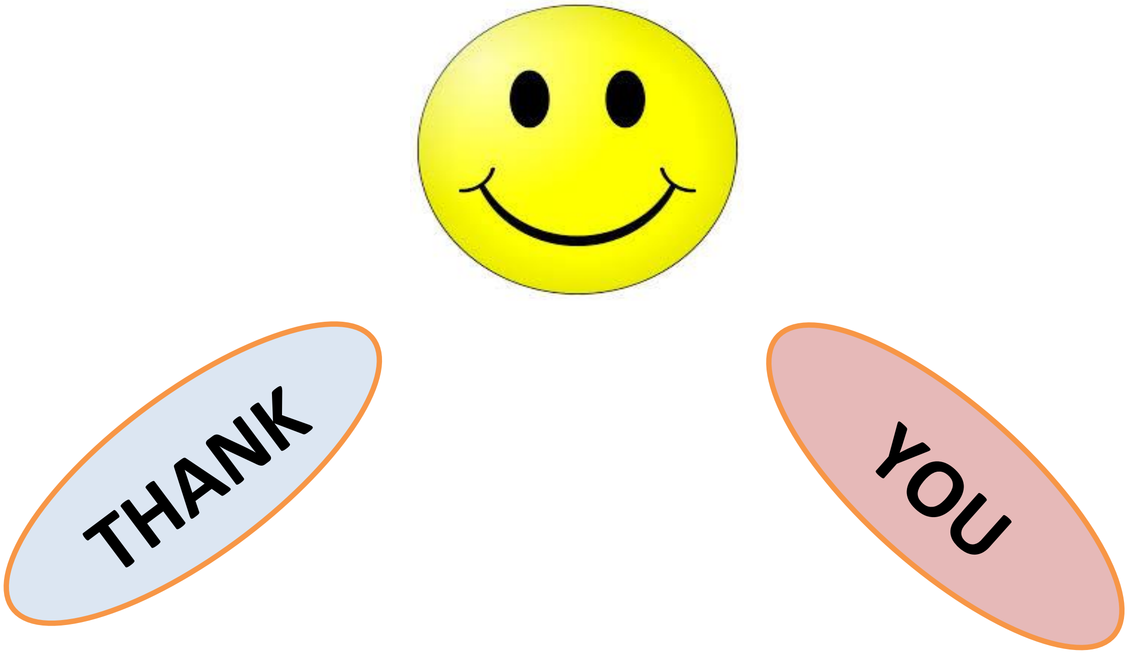
32. CARRY FORWARD AND SET OFF OF LOSSES IN THE CASES OF CERTAIN COMPANIES

Section:- 79

In the case of companies in which the public are not substantially interested, loss will not be carried forward and set off unless the shares of the company carrying not less than 51 per cent of the voting power were beneficially held by the same person(s) both on the last day of the previous year in which loss occurred and on the last day of the previous year in which brought forward loss is sought to be set off.

***Exceptions* -** The aforesaid restriction contained in section 79 shall not be applicable if change in voting power takes place in following two cases:

1. Where a change in voting power takes place in a previous year consequent upon the death of a shareholder or on account of transfer of shares by way of gift to any relative of the shareholder making the gift.



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