

Roll No.....

Total No. of Questions - 7

Time Allowed - 3 Hours

Total No. of Printed Pages - 8

Maximum Marks - 100

DAK

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 answers in Hindi will not be valued. Working notes should form part of the answer

Question No.1 is compulsory.

Attempt any five questions from the remaining six questions.

1. (A) PQR Limited has two units - one engaged in manufacture of computer hardware and the other involved in developing software. As a restructuring drive, the company has decided to sell its software unit as a going concern by way of slump sale for Rs.385 lakh to a new company called S Limited, in which it holds 74% equity shares.

The balance sheet of PQR limited as on 31st March 2011, being the date on which software unit has been transferred is given hereunder:-

Balance Sheet as on 31.3.2011

Liabilities	in lakh	Assets	inlakh
Paid up Share Capital	300	<u>Fixed Assets</u>	
General Reserve	150	Hardware unit	170
Share Premium	50	Software unit	200
Revaluation Reserve	120	<u>Debtors</u>	
<u>Current Liabilities.</u>		Hardware unit	140
Hardware unit	40	Software unit	110
]
Software unit	90	<u>Inventories</u>	
		Hardware unit]

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		Software unit	95
			35
	750		750

Following additional information are furnished by the management:

- (i) The Software unit is in existence since May, 2007.
 - (ii) Fixed assets of software unit includes land which was purchased at Rs. 40 lakh in the year 2004 and revalued at Rs. 60 lakh as on March 31, 2011.
 - (iii) Fixed assets of software unit mirrored at Rs. 140 lakh (Rs 200 lakh minus land value Rs. 60 lakh) is written down value of depreciable assets as per books of account. However, the written down value of these assets under section 43(6) of the Income-tax Act is Rs. 90 lakh.
- (a) Ascertain the tax liability. which would arise from slump sale to PQR Limited.
 - (b) What would be your advice as a tax-consultant to make the restructuring plan of the company. more tax - savvy. without changing the amount of sale consideration?

(Mark 10)

Solution:

(a)

Computation of Capital Gains of M/s. PQR Ltd.

For A.Y. 2011-12

(Rs. In lakhs)

Particulars	Working Note No.	Amount (Rs.)	Amount (Rs.)
Full value of consideration			385.00
<u>Less:</u>			
Cost of Acquisition	1	<u>185.00</u>	
Long-term capital gains	2-3		200.00
Tax Liability	4		44.29

Working Note:

1. In case of slump sale, cost of acquisition is the “net worth” on the date of transfer.

“Net worth” = Aggregate value of total assets of undertaking *Less* value of liabilities of such undertaking

as appearing in the books of accounts.

The WDV for income-tax purposes shall be relevant. The figures shall be taken before revaluation. Current assets shall be considered although they are not capital assets, since the act uses the words “total assets”. Current assets shall be included, for the reason also that section 50B overrides all the provisions of the Act.

The computation of net-worth shall be as follows: -

	(Rs. In lakhs)	
(a) Fixed Assets		
Land	Rs. 40	
Other assets (as per income-tax)	Rs. 90	
(b) Debtors	Rs. 110	
(c) Inventories	Rs. 35	
Total Assets		<u>Rs. 275</u>
Less Current Liabilities	<u>Rs. 90</u>	
Net Worth		<u>Rs. 185</u>

2. Since the unit was set-up in May 2007, in May 2010, it has completed 36 months. Since the unit is held for more than 36 months, the unit is a long-term capital asset in terms of section 50B.
3. Although a long-term capital asset, indexation will not be allowed.
4. Rate of taxation for long-term capital gains is 20% (plus surcharge @ 7.5%, educational cess and secondary higher educational cess, if applicable).

(b) As a tax consultant, i will advise the following: -

- (i) Since the assessee company has a 74% holding in the transferee company, the transaction can be in the manner of demerger. In such a case, the transaction will be exempt.
- (ii) Alternatively, the transaction can be a 100% holding subsidiary transfer. The capital gain will be exempt in such a case also.

Note: Students may note that it is not a good planning to do the transaction on asset-by-asset basis instead of slump sale. Although one may get indexation for land, but same may not be substantial. Further, the rate of tax will change from 20% to 30% for transfer of inventories, debtors and fixed assets, and no deduction for current liabilities would be allowed.

(B) How shall the assets retained pursuant wan order passed as per section 37A (5A) of the W.T. Act, 1957 be dealt with? **(Mark 3)**

Solution:

Section 37A deals with search and seizure (which is similar to section 132 of IT Act). The provisions of section 37A(5B) states that the assets shall be dealt in the manner provided u/s. 37C. Provisions of section 37C are similar to section 132B of the Income-tax Act, 1961. Section 37C of W-T Act is reproduced

“37C. (1) The assets retained under sub-section (5A) of section 37A may be dealt with in the following manner, namely :—

(i) the amount of the existing liability referred to in clause (iv) of the said sub-section and the amount of the liability determined on completion of the regular assessment or reassessment for all the assessment years for which the net wealth referred to in clause (i) of that sub-section is assessable to tax (including any penalty levied or interest payable, in connection with such assessment or reassessment) and in respect of which the assessee is in default or is deemed to be in default may be recovered out of such assets;

(ii) if the assets consist solely of money, or partly of money and partly of other assets, the Assessing Officer may apply such money in the discharge of the liabilities referred to in clause (i) and the assessee shall be discharged of such liabilities to the extent of the money so applied;

(iii) the assets other than money may also be applied for the discharge of any such liability referred to in clause (i) as remains undischarged and for this purpose such assets shall be deemed to be under distraint as if such distraint was effected by the Assessing Officer under authorisation from the Chief Commissioner or Commissioner under sub-section (5) of section 226 of the Income-tax Act as made applicable to this Act by section 32, and the Assessing Officer may recover the amount of such liabilities by the sale of such assets and such sale shall be effected in the manner laid down in the Third Schedule to the Income-tax Act as made applicable to this Act by section 32.

(2) Nothing contained in sub-section (1) shall preclude the recovery of the amount of liabilities aforesaid by any other mode laid down in this Act.

(3) Any assets or proceeds thereof which remain after the liabilities referred to in clause (i) of sub-section (1) are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized.

(4) (a) The Central Government shall pay simple interest at the rate of fifteen per cent per annum on the amount by which the aggregate of the money retained under section 37A and of the proceeds, if any, of the assets sold towards the discharge of the existing liability referred to in clause (iv) of sub-section (5A) of that section exceeds the aggregate of the amounts required to meet the liabilities referred to in clause (i) of sub-section (1) of this section.

(b) Such interest shall run from the date immediately following the expiry of the period of six months from the date of the order under sub-section (5A) of section 37A to the date of the regular assessment or reassessment referred to in clause (i) of sub-section (1) or, as the case may be, to the date of the last of such assessments or reassessments.”

(C) Can summons enforcing attendance and to take evidence on oath be issued by a Valuation Officer to the seller of the building for which a reference under Section 16A has been made by the W.T.O.?

(Mark 3)

Solution:

U/s. 37 of Wealth-tax Act, 1957, Valuation officer has same powers as are available to Civil Procedure Code i.e: -

(a) discovery and inspection;

- (b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;
- (c) compelling the production of books of account and other documents; and
- (d) issuing commissions.

Therefore, he has power for summoning and enforcing attendance and to take evidence on oath.

(D) Mr. W., gifted a gold chain worth Rs. 1,00,000 to the adopted minor child of his son. On 31st March.20 11, the net wealth of Mr. W is worth RS. 50 lakh whereas the net wealth of W's wife is Rs.60 lakh. Besides, the net wealth of W's son is worth Rs. 30 lakh while the net wealth of his daughter-in-law is worth RS.40 lakh. State with reason, in whose net wealth the value of gifted chain will be included?

Will it make any change in your answer if the marriage of the parents of adopted minor child does not subsist and the child is maintained by his father ? **(Mark 4)**

Solution:

Adopted child is also a child. Mr. W made a gift to his grandson. Clubbing provisions will apply and the gifted chain (which is a taxable asset) is to be clubbed in hands of mother (W's daughter-in-law), since her net wealth is higher.

In case the marriage does not subsist, and the child is maintained by father, clubbing will still continue to be done in hands of mother. In case mother does not want clubbing to continue in her hands, she will have to make application to AO and the AO may discontinue the clubbing in her hands. In that case, clubbing will be done in hands of father.

2. (A) The procedure relating to the recovery of due tax or the arrears of taxes from a non resident is different than the resident assessee. Comment and state how such recovery is to be made along with its limitation. **(Mark 6)**

Solution:

U/s. 228A, In case there is a Double Taxation Avoidance Agreement (DTAA) between Government of India and Foreign Country for recovery of tax etc., recovery is done as follows: -

- a. For assessee's having *property outside India*, who are deemed to be in default, TRO can forward a Certificate, u/s. 222 to the CBDT. Thereafter, CBDT shall take needful action in accordance with DTAA.

- b. Similarly, if CBDT received a *certificate from a Foreign Govt* for recovery of tax due from a person having property in India, CBDT will forward such certificate to the TRO. Thereafter, the TRO can proceed to make recovery as per provisions u/s. 222.
- c. Section 228A does not give limitation. The limitation may be based on DTAA of India with that country or within reasonable time, if same is not given in DTAA.

(B) Explain in the context of provisions of the Act:

- (i) The underlying idea behind DTAA.
- (ii) Rate of tax in other country.

(Mark 3)

Solution:

Over the world, there is a problem of double/ multiple taxation. The problem arises because the same income is taxable in multiple countries for one of the following reasons: -

1. Residence Rule: - As per this rule Income is taxable in country in which person is resident.
2. Accrual / Receipt Rule: - Income is taxable at place of accrual and place of receipt.

Due to above, there may be taxability in multiple countries. In order to prevent double/ multiple taxation, the countries across the world enter into DTAA with other countries. U/s. 90 and 90A, the DTAA can be done between India and another country, or India and any territory, and specified association of India and specified association of other country.

Rate of tax in other country is a significant factor in deciding the country of taxation, and assessee can many times misuse the tax rates. As held in *UOI vs Azadi Bachao Andolan (SC)*, the rate of taxation as per domestic law or DTAA shall be adopted, whichever is beneficial to the assessee.

(C) "Any transfer of a capital asset or intangible asset by a private company or unlisted public company to a LLP or any transfer of share or shares held in a company by a shareholder on conversion of a company into a LLP in accordance with section 56 and section 57 of the Limited Liability Partnership Act, 2008, shall not be regarded as a transfer for the purposes of levy of capital gains tax under section 45 subject to fulfillment of certain conditions". Explain in the context of the provisions contained in the Act.

(Mark 6)

Solution:

Capital gain on conversion of company to LLP is exempt, if following conditions are complied: -

1. All assets and liabilities immediately before succession are transferred to LLP.
2. All shareholders of company immediately before succession become shareholders of LLP.
3. The shareholders become shareholders in same proportion in which their share capital accounts stood on date of succession.
4. Shareholders do not receive any consideration or benefit, directly or indirectly, in any form, other than membership of LLP.
5. Aggregate of shareholding of shareholders in LLP is not less than 50% (of voting power), and their holding continues for 5 years.
6. Total sales/ turnover/ gross receipts of company in any of the 3 years preceding the year of conversion do not exceed Rs. 60 lakhs.
7. For a period of 3 years from date of conversion, the accumulated profits of the company on the date of conversion are not paid to any partner of the LLP, whether directly or indirectly.

In case if the conditions laid are not complied, the amount shall be taxable

- in the year of such non-compliance.
- Same will be taxable in hands of successor LLP. (Sec. 47A(4))

3. Answer any **four** out of **five**:

(A) Mr. Ramanand after putting 25 years of service opted for voluntary retirement and under approved scheme received an amount of Rs. 20 lakhs as VRS compensation on 01-01-2011. He was advised by his tax consultant to claim exemption to the extent as specified in section 10(10C) and also the relief under section 89. He in order to have an expert opinion, consults you and asks whether such a treatment of VRS compensation is permissible under the Act? **(Mark 4)**

Solution:

As per amendments brought by Finance (No. 2) Act, 2009, an assessee cannot claim both exemption u/s. 10(10C) and u/s. 89(1). If assessee opts for section 10(10C) exemption, no rebate u/s. 89(1) shall be allowed.

(B) "Save Wild Life" is an institution, having main object '*preservation of wildlife*', used the entire income derived from an activity in the nature of trade for its main object during the previous year ended on 31-03-2011. The institution seeks your opinion to know whether such utilization of its income be treated for "*charitable purpose*" ? Would your answer be different, if the main object of the institution is "*advancement of object of general public utility*"? **(Mark 4)**

Solution:

By the Finance Act, 2010, the definition of "charitable purpose" u/s. 2(15) has been amended to include preservation of wildlife. Therefore, assessee is for "charitable purpose".

If the main object of "advancement of object of general public utility", then it will be covered in residuary clause of section 2(15), "any other object of general public utility". In such a case, the first proviso and second proviso to section 2(15) will be operational. First proviso states that the activities shall not be carried in the nature of business or any fees shall not be charged. However, second proviso states that fees can be charged but annual collection shall not exceed Rs. 10 lakhs.

(C) Which are the conditions to be satisfied by an electoral trust for claiming the benefit of exemption of its income ? Is this benefit available in respect of all the income earned electoral trust **(Mark 4)**

Solution:

U/s. 13B, any voluntary contributions earned by an approved electoral trust is exempt if following conditions are satisfied: -

(a) 95% of aggregate donations during P.Y. plus Brought forward are given are distributed to any political party

(b) such trust functions in accordance with Central govt rules (Nothing has been prescribed till date).

The exemption is limited to voluntary contributions. For other incomes, like property income, interest income etc., no exemption is given.

(D) Mr. Divyam avails the benefit of LTC and went by air (economy class) on a holiday in India on 25.01.2011 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 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 ?
(Mark 4)

Solution:

As per Rule 3 of the Income-tax Rules, LTC is a taxable perquisite. But exemption is available for lower of the following figures: -

- a. Amount of LTA received
- b. Amount actually spent by employee
- c. Amount as per rules (Rules cover economy air fare)

The exemption is available for tour of employee or his "family member". The act does not use the word "member of household". "**Family member**" means: -

- spouse
- children (only two surviving children)
- parents, brothers and sisters wholly/ mainly dependent on assessee.

However, the restriction on two surviving children shall not apply if: -

- (1) Children are born before 01.10.98;
- (2) Multiple birth occur after one child.

In the present case, the deduction is allowable for the ticket expenses of assessee and spouse.

Situation one: two twin daughters were born after birth of first boy

Deduction will be allowed for all three children. Therefore deduction of Rs. 30,000 will be allowed.

Situation two: two twin daughters were born prior to birth of first boy

Deduction will be allowed only for two children. Assuming that cost of airtickets for all three children was same, deduction will be restricted to Rs. 20,000.

(E) Mr. M is working with MNO Limited for the last 10 years. He was granted an option on 1.7.2008 by that' company to purchase 800 equity shares at a price of Rs.250 per share. The period during which the option can be exercised to purchase 800 shares at a pre-determined price of Rs.250 per share commencing on 1.7.2008 and ending on 31.3.2011. Mr. M exercised the option on 15-3-2010 to purchase 500 shares. Fair market value on the said date was Rs.6490 on the Bombay Stock Exchange and Rs.6500 on the National Stock Exchange. The NSE has recorded the higher volume of trading in that share.

The company has allotted him 500 shares on 24th April, 2010. The fair market value on the date of allotment was Rs.7100 per share on NSE and Rs.7110 on the BSE that has recorded the higher volume of trading in that share. The option was granted for making available rights in the nature of intellectual property rights.

Determine the taxability of perquisite. Does it make any difference if the option was granted for providing technical know-how? **(Mark 4)**

Solution:

As per provisions of Rule 3, issue of shares under ESOP amounts to perquisite. In the present case, since the NSE has recorded highest volume, the valuation shall be done on basis of average market price as per NSE on date of exercise of option. The value shall be as follows: -

$$\begin{aligned}
 &= (6500 - 250) \times 500 \text{ shares} \\
 &= 6250 \times 500 \\
 &= 3125000
 \end{aligned}$$

Under explanation (b) to section 17(2) (vi), "sweat equity shares" means equity shares issued by a company to its employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

Therefore there will be no difference if the shares are provided as a know-how or as an intellectual property right.

4. (A) Examine the following statements in the context of the provisions contained in the various Chapters of the Act:

- (i) *"The provisions of section 115JB are not applicable in case of foreign companies."*
- (ii) *"The provisions of dividend distribution tax are also applicable to an undertaking or enterprise engaged in developing, operating and maintaining a Special Economic Zone (SEZ) "*.
- (iii) *"A penalty for concealment can be imposed even in the case where the claim of the assessee is debatable or arguable."*

(Mark 3x3=9)

Solution:

(i) In *Praxair Pacific Ltd. In re (2010)(AAR)*, it has been held that if Foreign company is not having any branch or Permanent Establishment (PE) in India, MAT not applicable. Therefore, MAT will apply, only if foreign company has a PE in India and that too in respect to Indian Income.

(ii) U/s. 10(34) r/w section 115-O, Dividend Distribution tax (DDT) does not apply to an enterprise

which is engaged in developing, operating and maintaining a SEZ. Deduction is therefore not allowable.

(iii) As per the law on date: -

(a) Mens-rea is not applicable to penalty proceedings under I-T Act. Thus even if there is no culpable state of mind, penalty can be levied. [Dharmendra Textiles (2009)(SC)]

(b) However, the penalty provisions use the words “concealment”, “inaccurate particulars”. These suggest that penalty cannot be levied unless there is a deliberate act on part of assessee. [Rajasthan Spinning & Weaving Mills (2009)(SC); CIT vs Reliance Petroproducts (2010)(SC)]

As clearly held in CIT vs Reliance Petroproducts Ltd (SC), mere disallowance of claim of assessee on debatable issue does not mean that penalty shall be levied. Penalty can be levied only for deliberate defiance of the act.

(B) Can the brought forward losses and unabsorbed depreciation be set off against the profit determined under section 44B ? **(Mark4)**

Solution:

Section 44B deals with non-resident who is engaged in shipping business. The provisions of section 44B state that the income from shipping business shall be taken at 7.50% of the income accrued or received in India. Section 44B overrides the other provisions of Chapter IV-D. Therefore, no deduction shall be allowed under any other provision of business head. Unabsorbed depreciation is treated as depreciation for the year u/s. 32(2). Since section 44B overrides section 32(2), no deduction for unabsorbed depreciation shall be allowed.

However, deduction shall be allowed for brought forward loss, as the set-off of brought forward loss is governed by section 72. Section 44B does not override section 72.

(C) Mr. Balram is a non-resident. The appeal pertaining to the assessment year 2010-11 is pending before the Income-tax Appellate Tribunal, the issue involved being computation of export profit and tax thereon. The same issue persists for the assessment year 2011-12 as well. Mr. Balram's brother Mr. Krishna has obtained an advance ruling under Chapter XIX - B of Income tax Act, 1961 from the Authority for Advance Ruling on an identical issue. Mr. Balram proposes to use the said ruling for his assessment pertaining to the assessment year 2011-12. Can he do so ? **(Mark 3)**

Solution:

The ruling given by AAR is a decision in persona and not a decision in rem. It means that the ruling obtained by Mr. Krishna (brother of Mr. Balram) is applicable only in the case of My. Krishna. Mr. Balram cannot take the benefit of said ruling. Also even if Mr. Balram applies to AAR, the application may be rejected on the ground that the same issue is pending before ITAT.

5 (A) Examine the taxability or allow ability' or otherwise treatment to be given while computing income under the head , "*Income from Business or Profession*" to be declared in the return of income for the financial year ended on 31-3-2011, in the following cases:

- (i) Amount received towards power subsidy with a stipulation that the same is to be adjusted in the electricity bills.
- (ii) Donations received by a person in the course of carrying on vocation from his followers.
- (iii) Profit derived by an assessee engaged in carrying the business as dealers in shares on exchange of the shares held as stock in trade of one Company with the shares of other Company.
- (iv) Interest received by a contractor on the amount of compensation awarded by an arbitrator resolving the dispute relating to the work done.
- (v) The amount of margin money forfeited by a bank on the failure of its constituents of not taking the delivery of the shares purchased *by* such bank on their behalf.
- (vi) Depreciation on the "decoders" given on loan to the cable operators but owned by the assessee who is engaged in the business of distributing satellite channels. **(Mark 2x6=12)**

Solution:

- (i) As held in *Sahaney Steels Ltd. (SC)*, power subsidy, if it is to be adjusted in the cost of the bills, is a revenue subsidy. A revenue subsidy is taxable as business income. Similar view has been given in *Ponney Sugar (SC)*.
- (ii) Perquisites arising out of any business or profession carried on by assessee is taxable as business income u/s. 28(iv). Same is taxable as business income.
- (iii) Assessee held the shares of one company as stock-in-trade. Profit derived from exchange of shares of one company by shares of another company is an incidental income arising out of business, having a nexus with the business. Same is taxable as business income.
- (iv) Interest received by assessee on account of work done by contractor, is an incidental income (being revenue receipt) arising out of the business or profession carried on by assessee. Same

is taxable.

- (v) Forfeiture of margin money is a business income in the case of bank, as the same arises out of ordinary course of business or profession carried on by bank. The same is not speculative income, as although the transaction is settled otherwise than by delivery, but the same is due to breach of contract by the account holders. [Shantilal (SC) relied on]
- (vi) For claiming depreciation, assets shall be “owned” by assessee and “used” for the purposes of business or profession carried on by assessee. In present case, asset being “decoders” are owned by assessee (who has given it on loan) and same is used for business of satellite distribution. Therefore, assessee is eligible for deduction of depreciation. The deprecation shall be allowed @ 15% treating it as plant.

(B) X Co. Ltd. was amalgamated with Y Co. Ltd. on 30.04.2010. X Co. Ltd. was engaged in real estate and whereas Y Co. Ltd. was engaged in manufacture of textile articles. Y Co. Ltd. after amalgamation altered its objects clause of Memorandum of Association. to carry on real estate business.

The stock in trade of X Co. Ltd. (being vacant lands) was taken over at Rs.110 lakhs by Y Co. Ltd. as against their original cost of Rs.125 lakhs to X Co. Ltd. for the purpose of amalgamation Co. Ltd incurred Rs. 25 lakhs towards. development of those lands obtained on amalgamation. It sold the entire land for Rs.160 lakhs during the year ended 31.03.2011.

Determine the tax implication of the transaction in the hands of Y Co. Ltd. for the assessment year 2011-12. **(Mark 4)**

Solution:

U/s. 43C, any asset (being stock-in-trade) received on amalgamation shall be valued at following cost: -

Cost of amalgamating company + cost of transportation + cost of improvement

In present case, X Ltd. Was engaged in real estate. After amalgamation, the memorandum of Y Ltd. was also amended to bring the business of real estate as its business. The cost of stock for Y Ltd. shall be

$$= 125 \text{ lakhs} + 25 \text{ lakhs}$$

$$= 150 \text{ lakhs}$$

It may be noted that the transaction cost (Rs. 110 lakhs) shall be irrelevant.

6 (A) Nandita, an individual resident retired employee of the Prasar Bharati aged 60 years, is a well-known dramatist deriving income of Rs. 1.10,000 from theatrical works played abroad, Tax of Rs. 11,000 was deducted in the country where the plays were performed. India does not have any Double Tax Avoidance Agreement under section - 90 of the Income-tax Act with that country, Her income in India amounted to Rs.5,10,000, In view of tax planning, she has deposited Rs.70,000 in Public Provident Fund and paid contribution to approved Pension Fund of LIC 32,000 along with subscription to notified long-term infrastructure bonds Rs.25,000. She also contributed Rs. 18,000 to Central Government Health Scheme during the previous year and gave payment of medical insurance premium of Rs. 21,000 to insure the health of his father, a nonresident aged 76 years, who is not dependent on her. Compute tax liability of Nandita for the Assessment year 2011-12. **(Mark 8)**

Solution:

Income under the head business or profession

Income from plays abroad	Rs. 1,10,000
Income in India	<u>Rs. 5,10,000</u>
Less:	
U/s. 80C & 80CCC (PPF+ LIC Pension fund)	Rs. 1,00,000
U/s. 80CCF (paid Rs. 25,000)	Rs. 20,000
U/s. 80D (Central government health Scheme)	Rs. 15,000
U/s. 80D (for father being senior non-resident)	<u>Rs. 15,000</u>
Total income	<u>Rs. 4,70,000</u>
Tax on Rs. 4,70,000	Rs. 46,350
Less: Credit u/s. 91 on doubly taxed income	
Rs. 1,10,000	
@ 9.86 % (average rate in India); or	
@ 10% (average rate abroad),	
whichever is less	<u>Rs. 10,846</u>
Net tax payable	<u>Rs. 35,504</u>

(B) Is it valid in law to rectify' an assessment order under section 154 due to subsequent change of law on retrospective basis? Also state, whether a Supreme Court judgment would warrant a rectification under section 154 in respect of an order passed earlier by the Assessing Officer?

(Mark 4)

Solution:

It has been held in *CIT vs India Cements Ltd. (2000) (Mad.)* that where AO passed assessment based on settled law/ decision on the date of assessment; and

- subsequently Supreme Court decision was given against assessee or
- law was amended retrospectively

Rectification cannot be done as there was no “mistake apparent on record”. However, contrary decisions are also available on the subject.

(C) Maya Bank credited Rs.73,50,000 towards interest due on time deposits in a separate account for macro-monitoring only by using Core-branch Banking Solutions (CBS) software. No tax was deducted at source in respect of interest on deposits so credited even where the interest payable in respect of some deposits exceeded the limit of Rs.10,000.

The Assessing Officer disallowed the entire interest expenditure where the interest due on time deposits credited exceeded the limit of Rs.10,000 and also levied penalty under section 271C. Decide the correctness of action of the Assessing Officer. **(Mark 4)**

Solution:

In the present case, Maya Bank Ltd has credited the amount only for macro-monitoring purposes using CBS. As per latest CBDT Circular no. 3 / 2010 dated 02.03.2010, it has been clarified that in case of CBS, TDS is not to be deducted at the time of credit to separate account for monitoring purposes, but at the time of credit to the account of account holder on a monthly quarterly or half-yearly basis as per the bank policy.

The AO applied section 40(a)(ia) for disallowing interest and further levied penalty u/s. 271C for not deducting TDS. However, in view of this circular, assessee is not required to deduct TDS at the time of credit to separate account as per CBS. Therefore, TDS is not deductible in present case. Thus, the action of the AO in disallowing there interest expenditure and levying penalty u/s. 271C is not correct.

7 (A) Seizures were made from Mr. Sunder 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 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 lender.; had no means or financial capacity to advance such huge loans to Mr. Sunder 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. Sunder, however, contended that the order of the Settlement Commission was final and any fresh analysis would amount to sitting in judgment over an earlier decision, for which the Settlement Commission was not empowered. Discuss the correctness of Mr. Sunder's contention. **(Mark 6)**

Solution:

Generally, the order passed by Settlement Commission is final. However, if it is found subsequently that the order was obtained out of fraud or misrepresentation of facts, then the order would be treated as void. In present case, assessee contended that the loans are genuine. However, the findings of the CBI subsequently evolved that the creditors are not credit-worthy and therefore should have been added u/s. 68. In such a case, it seems that the order of settlement commission was obtained by assessee, by way of misrepresentation or fraud. Therefore, department is correct in its action.

(B) Mayur gifted amount of Rs. 5, 00,000 to the wife of his brother which was used by her for the purchase of a house and simultaneously on the same day brother of Mayur gifted shares owned by him in a foreign company worth Rs. 5.00.000 to the minor son of Mayur. What will be the impact of such transfers in the hands of both the transferors and the transferees '? **(Mark 5)**

Solution:

In hands of transferors, there is no tax treatment.

In hands of transferees: -

- (a) Gift of cash to brother's wife by Mayur: - The gift is given to a "relative" u/s. 56(2)(vii). Therefore same is exempt.
- (b) Gift received from father's brother: - One needs to see the relationship from the angle on donee. From the angle of Mayur's son, he received the gift from his father's brother. Same is a gift from relative.

(C) State whether the following assesses has to filed return on income and if so. the due date for the assessment year 2011-12:

(i) A public charitable trust registered under the Act. running an educational institution with aggregate annual receipt of Rs.65.00.000 and total income of Rs.3.20, 000. Is the accounts of the trust liable for audit under section 44AB of the Act?

(ii) A registered trade union having income from let out property of Rs.1, 00,000.

(iii) A public trust hospital having an aggregate annual receipt of Rs.200 lakhs and availing exemption under section 10(23C) (via) with total income of Rs.1,10,000. **(Mark 5)**

Solution:

(i) U/s. 10(23C)(iiiad), an institution existing solely for educational purposes whose gross receipts are upto Rs. 1 crores is exempt from income-tax. However, u/s. 139(4A), such institution has to file the return, if the income of such institution is above the basic exemption limit before giving deduction u/s. 10(23C). Also u/s. 44AB, tax audit is required to be done, if the turnover or gross receipts exceeds Rs. 60 lakhs. For tax audit, it is irrelevant that the income is exempt or not.

In present case, assessee is an educational institution with gross receipts of Rs. 65 lakhs. Therefore, it is exempt u/s. 10(23C)(iiiad). Also, since the income (before exemption u/s. 10(23C)(iiiad)) of the institution is Rs. 3,20,000, which is above basic exemption limit, return is required to be filed u/s. 139(4A). Further, since the turnover is above Rs. 60 lakhs, tax audit will be required to be done. Due date for A.Y. 2011-12 is 30.09.2011.

(ii) Income from house property and Income from Other Sources of a registered trade union is exempt u/s. 10(24). However, u/s. 139(4A) such institution has to file a return if the income before giving exemption u/s. 10(24) is above the basic exemption limit.

In present case, the registered trade union is exempt u/s. 10(24). Further, since the income of such trade union (assuming that there is no other income) before giving exemption u/s. 10(24) is also below basic exemption limit (Rs. 1,60,000), therefore, such trade union is not required to file the return of income.

- (iii) U/s. 10(23C)(iiiad), an institution existing solely for philanthropic purposes whose gross receipts are above Rs. 1 crores is exempt from income-tax if it obtains approval of CCIT. However, u/s. 139(4A), such institution has to file the return, if the income of such institution is above the basic exemption limit before giving deduction u/s. 10(23C).

In present case, assessee is a hospital with gross receipts of Rs. 200 lakhs. Therefore, it is exempt u/s. 10(23C)(via). The question is silent as to whether the “total income” has been taken before exemption u/s. 10(23C) or after exemption u/s. 10(23C). In case the income is taken before exemption, since the income before exemption u/s. 10(23C) is below basic exemption limit (Rs. 1,60,000), assessee is not required to file return of income.

However, if the “total income” after exemption is given, one needs to consider the income which is eligible u/s. 10(23C). If before giving exemption u/s. 10(23C), the income was above basic exemption limit, then assessee would be required to file return u/s. 139(4A). Due date for A.Y. 2011-12 is 30.09.2011.