FINAL – November 2017

DIRECT TAXATION

Test Code – 48
Branch (MULTIPLE) (Date : 20.08.2017)
(50 Marks)

Note: All questions are compulsory.

Question 1(6 Marks)

Computation of tax liability of Ms. Swarnalatha for A.Y.2017 -18

Particulars	`	`
Indian Income		42,00,000
Foreign Income		6,00,000
Gross Total Income		**48,00,000**
Less: **Deduction under section 80C**		
PPF Contribution	1,50,000	
Deduction under section 80D		
Medical insurance premium of mother, being a resident senior citizen, restricted to	30,000	1,80,000
Total Income (2 marks)		**46,20,000**
Tax on total income		12,11,000
Add: Education cess @ 2%		24,220
Secondary and higher education cess @ 1%		12,110
		12,47,330
Average rate of tax in India [i.e., ` 12,47,330/` 46,20,000 x 100]	27%	
Average rate of tax in foreign country [i.e. ` 1,50,000/ ` 6,00,000 x 100]	25%	
Doubly taxed income	6,00,000	
Rebate under section 91 on ` 6,00,000 @25%(lower of average Indian tax rate and foreign tax rate)		1,50,000
Tax payable in India [` 12,47,330 – ` 1,50,000] (4 marks)		**10,97,330**

Note: An assessee shall be allowed deduction under section 91 provided all the following conditions are fulfilled:-

(a) The assessee is a resident in India during the relevant previous year.

(b) The income accrues or arises to him outside India during that previous year.

(c) Such income is not deemed to accrue or arise in India during the previous year.

(d) The income in question has been subjected to income -tax in the foreign country in the hands of the assessee and the assessee has paid tax on such income in the foreign country.

(e) There is no agreement under section 90 for the relief or avoidance of double taxation between India and the other country where the income has accrued or arisen.

In this case, Ms. Swarnalatha is eligible for deduction under section 91 since all the above conditions are fulfilled.

Question 2(6 Marks)(2 marks each)

(i) The notice under section 153A can be issued for six assessment years preceding the assessment year relevant to the previous year in which the search is conducted. In this case, the search is conducted in the previous year 2016 -17, the relevant assessment year for which is A.Y.2017-18. Therefore, notice can be issued for the six preceding assessment years i.e. for assessment years 2011-12 to 2016-17.

(ii) As per section 153A, the assessment or reassessment relating to any assessment year, falling within the above period of six assessment years, pending on the date of initiation of the search under section 132, shall abate. In other words, they will cease to be applicable. Therefore, the assessments under section 143(3) for assessment years 2014-15 and 2015-16 and the reassessment proceeding under section 147 for assessment year 2013-14 shall abate.

(iii) Section 153A provides that where the post -search assessment order is annulled in any appeal or any other legal proceeding, the abated assessment and reassessment proceedings shall stand revived. Therefore, the assessments under section 143(3) relating to assessment years 2014-15 and 2015-16 and the reassessment proceeding relating to assessment year 2013 -14, which abated on initiation of search, shall stand revived.

Question 3(6 Marks)(3 Marks for each part)

Penalty leviable under section 270A in case of M/s. Alpha, a resident firm M/s.

Alpha is deemed to have under-reported its income since:

(1) its income assessed under 143(3) exceeds its income determined in a return processed under section 143(1)(a); and

(2) the income reassessed under section 147 exceeds the income assessed under section 143(3).

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

Computation of penalty leviable under section 270A

Particulars	`	`
Assessment under section 143(3)		
Under-reported income:		
Total income assessed under section 143(3)	62,00,000	
(-) Total income determined u/s 143(1)(a)	45,00,000	
	17,00,000	
Tax payable on under-reported income:		
Tax on under-reported income of ` 17 lakhs *plus* total income of ` 45 lakhs determined u/s 143(1)(a) ***[30% of ` 62 lakh + EC & SHEC@3%]***	19,15,800	
Less: Tax on total income determined u/s 143(1)(a) ***[30% of ` 45 lakh + EC & SHEC@3%]***	13,90,500	
	5,25,300	
Penalty leviable@50% of tax payable		2,62,650
Reassessment under section 147		

Under-reported income:		
Total income reassessed under section 147	81,00,000	
(-) Total income assessed under section 143(3)	62,00,000	
	19,00,000	
Tax payable on under-reported income:		
Tax on under-reported income of ` 19 lakhs *plus* total income of ` 62 lakhs assessed u/s 143(3) ***[30% of ` 81 lakh + EC & SHEC@3%]***	25,02,900	
Less: Tax on total income assessed u/s 143(3) ***[30% of ` 62 lakh + EC & SHEC@3%]***	19,15,800	
	5,87,100	
Penalty leviable@50% of tax payable		2,93,550

Penalty leviable under section 270A in the case of Beta Ltd. , an Indian company

Beta 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 under section 147 has the effect of converting the loss assessed under section 143(3) into income.

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

Computation of penalty leviable under section 270A

Particulars	`	`
Assessment under section 143(3)		
Under-reported income:		
Loss assessed u/s 143(3)	(2,00,000)	
(-) Loss determined under section 143(1)(a)	(6,00,000)	
	4,00,000	
Tax payable on under-reported income@30%	1,20,000	
Add: EC & SHEC@3%	3,600	
	1,23,600	
Penalty leviable@50% of tax payable		61,800
Reassessment under section 147		
Under-reported income:		
Total income reassessed under section 147	6,00,000	
(-) Loss assessed under section 143(3)	(2,00,000)	
	8,00,000	
Tax payable on under-reported income@30%	2,40,000	
Add: EC & SHEC@3%	7,200	
	2,47,200	
Penalty leviable@50% of tax payable		1,23,600

***Note** – The applicable rate of tax for Beta Ltd. for A.Y.2017-18 is 30%, since its turnover for the P.Y.2014-15 exceeded Rs.5 crore.*

Question 4(8 Marks) (4 marks for each part)

(i) Section 147 states that if the Assessing Officer has **reason to believe that any income chargeable to tax has escaped assessment for any assessment year**, he may assess or

reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section.

The Assessing Officer should, therefore, have reason to believe that income chargeable to tax has escaped assessment. The belief should be that of the Assessing Officer and not of the revenue audit team.

Further, the Income-tax Act, 1961 does not confer jurisdiction on the Assessing Officer to change its opinion on the interpretation of a particular provision earlier adopted by it. If the issue had already been considered earlier during the course of scrutiny assessment and the Assessing Officer had come to a conclusion that no disallowance of interest paid by the assessee is required, even though loans had been given to sister concern without any interest, the same issue cannot be the basis of reassessment, merely because the revenue audit team takes a different view.

Therefore, the Assessing Officer cannot issue notice under section 148 on the basis of audit objection of the Revenue Audit team.

If the Assessing Officer has acted only under compulsion of the audit party and not independently, the action of reopening would be invalid.

(ii) The option open to the Revenue is initiation of proceedings under 263, by the jurisdictional Commissioner. He has the power to call for and examine the records, if he is of the opinion that the order passed by the Assessing Officer under section 143(3) is erroneous in so far as it is prejudicial to the interests of the Revenue.

However, where the Assessing Officer has considered the issue in the original assessment and come to a conclusion that no disallowance of interest is called for, the Commissioner cannot initiate revisionary proceedings, merely because he holds a different view. Only where the view taken by the Assessing Officer is unsustainable in law, the Commissioner will be justified in initiating the revisionary proceedings under section 263. It was so held in *CIT vs. Sohana Woollen Mills (2008) 296 ITR 238 (P & H).*

Mere audit objection and possibility of a different view are not sufficient to conclude that the order of the Assessing Officer is erroneous or prejudicial to the interest of revenue.

Question 5(6 Marks) (3 marks each)

A resident can made an application to the Authority of Advance Ruling to seek an advance ruling in the following cases:

(i) Section 245N(b)(iia) enables a resident referred in section 245N(a)(iia) falling within any such class or category of persons as may be notified by the Central Government to make an application to Authority for Advance Rulings. Such notified resident applicant can seek ruling in relation to his tax liability arising out of a transaction which has been undertaken or is proposed to be undertaken by **such applicant**, and such determination shall include the determination of any question of law or of fact specified in the application .

A resident in relation to his tax liability arising out of one or more transactions valuing ` 100 crore or more in total which has been undertaken or prop osed to be undertaken would be an applicant for this purpose.

(ii) Section 245N(b)(iii) enables a resident falling within any such class or category of persons as may be notified by the Central Government to make an application for Advance Ruling. Such notified resident applicant can seek ruling in respect of issues relating to computation of total income which is pending before any income -tax authority or the Appellate Tribunal. Such a resident applicant can make an application to seek determination or decision by the AAR on a question of law or a question of fact relating to such computation of total income specified in the application .

"Public sector companies" as defined in section 2(36A) of the Income-tax Act, 1961 have

been notified as applicant for this purpose.

A resident can also make an application seeking advance ruling in relation to the tax liability of a non-resident arising out of a transaction undertaken or proposed to be undertaken by him with such non-resident.

Question 6(6 Marks) (3 marks each)

(i) As per section 282(1), the service of notice or summon or requisition or order or any other communication under this Act may be made by delivering or transmitting a copy thereof to the person named therein -

(1) by post or such courier services as approved by the CBDT; or

(2) in such manner as provided in the Code of Civil Procedure, 1908 for the purposes of service of summons; or

(3) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000; or

(4) by any other means of transmission of documents as may be provided by rules made by the CBDT in this behalf.

The CBDT is empowered to make rules providing for the addresses (including the address for electronic mail or electronic mail message) to which such communication may be delivered or transmitted to the person named therein.

(ii) The service of notice in the given cases should be on the persons mentioned hereunder: -

Person	Notice to be addressed and served on
A dissolved firm	Any person (not being a minor) who was a partner immediately before dissolution.
A deceased person	The legal heirs of the deceased.
A partitioned HUF	Last Manager of the HUF, or, if he is dead, then, all adult members of the erstwhile HUF.

Question 6(8 Marks)

The Apex Court, in **CIT vs. Om Prakash Mittal** (2005) 273 ITR 326, observed that a plain reading of section 245D(6) shows that every order passed under sub -section (4) has to provide for:-

(i) the terms of settlement; and

(ii) that the settlement would become void, if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

The decision that the order has been obtained by fraud or misrepresentation is that of the Settlement Commission. However, there is no requirement that the action be initiated by the Settlement Commission, suo moto. The Revenue can move the Settlement Commission for decision on an issue if it has material to show that the order was obtained by fraud or misrepresentation of facts.

The Supreme Court observed that the foundation for settlement is an application which an assessee can file at any stage of a case relating to him in such form and manner as may be prescribed. The fundamental requirement of the application under section 245C is that there must be **full and true disclosure of the income along with the manner in which it has been derived.** If an order is obtained by fraud or misrepresentation of facts, it cannot be said that there is a full and true disclosure and therefore, the Legislature has prescribed the condition relating to declaration of the order void when it is obtained by fraud or misrepresentation of facts.

The Supreme Court held that merely because **section 245 -I** provides that the order of settlement is conclusive, it does not take away the power of the Settlement Commission to decide whether the settlement order has been obtained by **fraud or misrepresentation of facts. If the Commissioner is able to establish that the earlier decision was void because of misrepresentation of facts,** then it is open for the Settlement Commission to decide the issue. It cannot be called by any stretch of imagination to be a review of the earlier judgment or the subsequent Bench sitting in appeal over the earlier Bench‟s decision .

Mr. Sunder's contention is, therefore, not correct.

Question 7(4 Marks)(2 marks each)

i) The statement is *not* correct.

As per section 249(3) of the Income-tax Act, 1961, the Commissioner (Appeals) may admit an appeal after the expiry of the period of 30 days sp ecified in section 249(2), if he is satisfied that the appellant had sufficient cause for not presenting the appeal within the prescribed time.

(ii) The statement is not correct.

Section 254(2A) provides that the Appellate Tribunal, where it is possible, may hear and decide an appeal within a period of four years from the end of the financial year in which such appeal is filed.

The Appellate Tribunal may, on merit, pass an order of stay in any proceedings relating to an appeal. However, such period of stay cannot exceed 180 days from the date of such order. The Appellate Tribunal has to dispose of the appeal within this period of stay.

Where the appeal has not been disposed of within this period and the delay in disposing the appeal is not attributable to the assessee, the Appellate Tribunal can further extend the period of stay originally allowed. However, the aggregate of period originally allowed and the period so extended should not exceed 365 days even if the delay in disposing of the appeal is not attributable to the assessee. The Appellate Tribunal is required to dispose off the appeal within this extended period. If the appeal is not disposed of within such period or periods, the order of stay shall stand vacated after the expiry of such period or periods.

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