FINAL – May 2018

PAPER 7: DIRECT TAX LAWS
Test Code: FTP 7
Branch : Date: 31.3.
(100 Marks)

Note: ***Question No.1 is compulsory. Candidates are required to answer any five questions from the remaining six questions.***

Question 1

A As per section 50B, any profits and gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of capital assets and shall be deemed to be the income of the previous year in which the transfer took place.

If the assessee owned and held the undertaking transferred under slump sale for more than 36 months before slump sale, the capital gain shall be deemed to be long-term capital gain.

In this case, it is assumed that the undertaking was set up in March 2005, being the period in which land was acquired. Hence, the resultant capital gain on slump sale is a long-term capital gain. However, as per section 50B(2), indexation benefit is not available in case of slump sale.

Computation of Capital Gain arising from slump sale and tax on such gain (6 MARKS)

Particulars	` in lakhs
Slump sale consideration	600.00
Less: Cost of acquisition (net worth) [***See Working Note below***]	454.27
Long-term capital gain	**145.73**
Income-tax @ 20% (under section 112)	29.146
Add: Surcharge@12%, since total income exceeds ` 1 crore.	3.498
	32.644
Add: Education cess@2% and secondary and higher education cess@1%	0.979
Total tax liability	**33.623**

Working Note: Computation of Net worth of the undertaking (4 MARKS)

Particulars		` in lakhs
WDV of block of assets (Plant & Machinery) as per section 43(6)]		200.00
Book value of non-depreciable assets		
- Land (Revaluation not to be considered)	100.00	
- Sundry Debtors	380.00	
- Cash & Bank Balance	2.00	
- Loans & Advances	150.00	
- Closing Stock (` 250 lakhs – ` 22.73 lakhs, being the amount of over-valuation i.e., 10/110 × ` 250) **[See Note below]**	227.27	859.27
		1059.27
Less : Liabilities		
- Unsecured Loans	25.00	

- Bank Borrowing	500.00	
- Sundry Creditors	80.00	605.00
Net worth		**454.27**

Note: *Book value of assets (other than depreciable assets) has to be considered for the purpose of arriving at the net worth. Stock has to be valued at lower of cost or net realizable value as per AS 2 and this is the value to be reflected in the Balance Sheet of an entity. For this reason, the effect of over -valuation of stock has been removed while computing the net worth of the undertaking.*

b. Akash, Bala, Chris and Dinesh are the four shareholders of a private limited company.
The shareholding pattern of the company in the three financial years are given below:

As on 31st day of March	Akash	Bala	Chris	Dinesh	Ganesh	Rajesh
	%	%	%	%	%	%
2016	25	25	25	25	-	-
2017	-	25	25	25	25	-
2018	-	-	25	25	25	25

Section 79 provides that, in case of a closely held company not being an eligible start up referred to in section 80-IAC, no loss incurred in the previous year shall be carried forward and set off against the income of the subsequent previous year unless the shares carrying at least 51% of the voting power of the company are beneficially held on the last day of the previous year in which the loss is sought to be set off, by the same shareholders, who beneficially held the shares carrying at least 51% of the voting power on the last day of the previous year in which the loss was incurred.

Since shareholders holding at least 51% of the voting power are the same on 31 st March 2016 and 2017, the restriction imposed by section 79 is not applicable for set-off of losses of the P.Y. 2015-16 against income of the P.Y. 2016-17. Thus, the taxable income for the assessment year 2017-18 would be: **(5 Marks)**

Particulars	`
Business profit	20,00,000
Less: Current year's depreciation	8,00,000
	12,00,000
Less: Brought forward business loss [as per section 72(2)]	10,00,000
Unabsorbed depreciation [section 32(2)]	2,00,000
Taxable income for A.Y. 2017-18	**Nil**

Balance unabsorbed depreciation relating to the earlier assessment years can be carried forward to the next assessment year i.e., A.Y. 2018 -19. There is no brought forward business loss and section 79 is not applicable in case of carry forward of unabsorbed depreciation. Section 32 governs the carry forward and set off of depreciation for which the shareholding pattern is not relevant at all. Consequently, the income for A.Y.2018 -19 will be determined as under – **(5 marks)**

Particulars	`	`
Business income		50,00,000
Less: Current year's depreciation		10,00,000
		40,00,000
Less: Unabsorbed depreciation:-		

Assessment year 2014-15	14,00,000	
Assessment year 2015-16	12,00,000	
Assessment year 2016-17	7,00,000	33,00,000
Taxable Income for A.Y.2018-19		**7,00,000**

Question 2

(a) Computation of Total Income of Parik Hospitality Ltd. for the A.Y.2018-19 (16 marks)

Particulars	**Amount (`)**	
Profits and Gains from Business and Profession		
Net profit as per profit and loss account		1,52,00,000
Add: **Items debited but to be considered separately or to be disallowed**		
(a) Payment to middleman for purchase of crab etc. in an amount exceeding ` 20,000	30,000	
[Under section 40A(3), disallowance is attracted in respect of expenditure for which cash payment exceeding ` 20,000 is made on a day to a person. Payment of ` 25,000 to fishermen for purchase of crab etc. is covered by exception under Rule 6DD. However, payment of ` 30,000 to middlemen for purchase of crab etc. is not covered under the exception - *CBDT Circular 10/2008 dated 5/12/2008*].		
(b) Contribution towards employees' pension scheme in excess of 10% of salary disallowed under section 40A(9)	50,000	
[Contribution to the extent of 10% of salary (basic salary + dearness allowance, if it forms part of pay for retirement benefits) is allowable as deduction under section 36(1)(iva). In this case, it is presumed that dearness allowance forms part of pay for retirement benefits]		
(c) Payment to transport contractor without deduction of tax at source	-	
[No tax is required to be deducted at source under section 194C in respect of payment to transport contractor, if the contractor furnishes his PAN. In this case, since the contractor has		

furnished his PAN, no tax is required to be deducted in respect of payment of ` 6.50 lakhs made for transport of materials. Hence, no disallowance under section 40(a)(ia) would be attracted in this case for non-deduction of tax at source].		
(f) Expenses on foreign travel of two directors for a collaboration agreement which failed to materialize	10,00,000	
[2Where such expenditure is incurred for a project not related the existing business and the project was abandoned without creating a new asset, the expenses are capital in nature. Brewery project is not related to the existing business of running three star hotels]		
(g) Fees paid to directors without deducting tax at source [30% of `1 lakh]	30,000	
[Disallowance@30% would be attracted under section 40(a)(ia) for non -deduction of tax at source from director's remuneration on which tax is deductible under section 194J]		
		11,10,000
		1,63,10,000
Less: Items credited but to be considered separately / Expenditure to be allowed		
(d) Profit on sale of plot of land to 100% subsidiary	12,00,000	
[Short-term capital gains arises on sale of plot of land held for less than 36 months. However, in this case, since the transfer is to a 100% subsidiary company and the subsidiary company is an Indian company, the same would not constitute a transfer for levy of capital gains tax as per section 47(iv). Since this amount has been credited to the statement of profit and loss, the same has to be deducted for computing business income].		
(e) Contribution to IIT for scientific research	2,50,000	
[Contribution to IIT for scientific research programme approved by the prescribed authority qualifies for weighted deduction@200% under section 35(2AA) . Since 100% of contribution has already been debited to the statement of profit and loss, the balance 100% has to be deducted while computing business income]		
(h) Depreciation	5,00,000	
[Depreciation allowable under the Income-tax Act, 1961 is `15 lakhs whereas the depreciation as per books of account debited to the statement of profit and loss is ` 10 lakhs. Hence, the additional amount of ` 5 lakhs has to be deducted while computing business income]		
(i) Additional compensation received from State Government	10,00,000	

[Since the additional compensation has been received pursuant to an interim order of the Court, the same would be deemed as income chargeable to tax under the head “Capital Gains” in the year of final order as per section 45(5). Since the compensation has been credited to the statement of profit and loss, the same has to be deducted while computing business income]		
(j) Dividend received from foreign company		
[Dividend received from foreign company is taxable under the head “Income from other sources”. Since the said dividend has been credited to the statement of profit and loss, the same has to be deducted while computing business income]	5,00,000	
(i) Interest paid during the year		
[Conversion of unpaid interest into loan shall not be construed as payment of interest for the purpose section 43B. The amount of unpaid interest converted into a new loan will be allowable as deduction only in the year in which such converted loan is actually paid. Since ` 2 lakhs has been paid in the P.Y.2014-15, the same is allowable as deduction]	2,00,000	
(iii) Purchases omitted to be recorded in the books		
[Since the purchase is made in March, 2015 (i.e., P.Y.2014-15), in respect of which bill of ` 2 lakhs received on 31.3.2015 has been omitted to be recorded in the books in that year, it has to be deducted to compute the business income.3 It is logical to assume that the company is following mercantile system of accounting.].	2,00,000	
Income under the head “Profits and Gains of Business or Profession”		
		38,50,000
		1,24,60,000
Income from Other Sources		
Dividend received from foreign company		5,00,000
[Dividend received from a foreign company is chargeable to		

tax under the head "Ïncome from other sources".4]		
Gross Total Income		**1,29,60,000**
Less: Deduction under Chapter VI-A		Nil
Total Income		**1,29,60,000**

Question 3

a.

The Assessing Officer's power is restricted to examining whether the books of account are certified by the authorities under the Companies Act, 1956 as having been properly maintained in accordance with the Companies Act, 1956. Thereafter, he only has the limited power of making additions and deductions as provided for in Explanation 1 below section 115JB.

The Assessing Officer does not have the jurisdiction to go behind the net profit shown in the audited profit and loss account except to the extent provided in Explanation 1 below section 115JB. It was so held by the Apex Court in Apollo Tyres Ltd. v. CIT (2002) 255 ITR 273.

(i) The action of the Assessing Officer is incorrect (2 ½ marks)

No adjustment is required for prior period expenses which have to be shown separately in the profit and loss account as per AS 5 in view of the specific requirement under section 115JB(2) read with section 211 of the Companies Act, 1956 [CIT v. Khaitan Chemicals & Fertilizers Ltd (2008) 307 ITR 150 (Del)]. Further, prior period expense is not an item which can be adjusted in terms of any of the clauses covered in Explanation 1 below section 115JB.

(ii) The action of the Assessing Officer is correct (2 ½ marks)

As per Schedule XIV to the Companies Act, 1956, depreciation has to be provided on pro rata basis in respect of additions made to any asset during the year. Accordingly, depreciation has to be calculated only for 90 days at the rate prescribed in Schedule XIV in respect of car purchased on 1.1.2013. Since depreciation for the whole year has been debited to profit and loss account, the excess depreciation has to be added back, since the same is not in accordance with the requirements of Schedule XIV to the Companies Act, 1956.

(b) (i) Cash gift of ` 1 lakh by Mr. C, Ram's major son, to the HUF of Mr. Ram would not be taxable in the hands of the HUF, since gifts from a relative of the HUF does not fall within the scope of income taxable under section 56(2)(vii). Since Mr. C, being Mr. Ram's son, is a member of Ram's HUF, he is a relative of the HUF. Hence the total income of HUF would be ` 5 lakhs, being the business income computed. **(1.5 marks)**

Note *- Salary income of Mr. Ram, the Karta of the HUF, who is employed in a private company would be taxed in his individual hands, since the remuneration earned by the Karta on account of the personal qualifications and exertions and not on account of the investment of the family funds cannot be treated as income of the HUF.*

(ii) Partial partition (after 31.12.1978) is not recognized and the HUF, which has been hitherto assessed to tax, shall continue to be liable to be assessed as if no such partial partition has taken place [Section 171(9)].

The rental income in this case would continue to be assessed in the hands of the HUF, even after partial partition. Therefore, it is not advisable to do a partial partition. **(1.5 marks)**

(iii) Income of ` 70,000 earned by Minor D by use of his special skill and talent would be taxable in his individual hands. It will not be included in the hands of his parent by virtue of the exception to section 64(1A) contained in the proviso to section 64(1A). **(1.5 marks)**

(iv) As per section 64(2), where a member of the HUF blends his self-acquired property for inadequate consideration with the HUF, income derived therefrom is deemed to arise to the transferor-member and not to the HUF. In this case, Mr. Ram has blended his personal property (i.e., car) with the HUF.

Since there is no consideration in case of blending, the income from car computed in the prescribed manner, [which can be as per the presumptive provisions or lease rental of ` 60,000 (` 10,000 × 6 months) less depreciation] would be deemed as the income of Mr. Ram. **(1.5 marks)**

(6 Marks)

c. (i) Issue Involved: The issue under consideration is whether penalty under section 271D is imposable for cash loans/deposits received by a firm from its partners in violation of the provisions of section 269SS.**(1/2 mark)**

(ii) Provisions applicable: Section 269SS prohibits any person from taking any loan or deposit exceeding prescribed limit, otherwise than by way of account payee cheque/ bank draft or use of electronic clearing system through a bank account. In case of contravention of the provisions of section 269SS, penalty equal to the amount of loan or deposit is leviable under section 271D.

Section 273B provides that no such penalty would be leviable if the assessee proves that there is reasonable cause for such failure. **(1 marks)**

(iii) Analysis: The facts of the case are similar to the facts in *CIT v. Muthoot Financiers (2015) 371 ITR 408*, wherein the above issue came up before the Delhi High Court. The Court observed that one view is that a partnership firm not being a juristic person, the *inter se* transaction between the firm and partners are not governed by the provisions of sections 269SS and 269T. A contrary view is that the partners of the firm are distinct as civil entities while the firm as such is a separate and distinct unit for the purpose of assessment. **(1.5 marks)**

(iv) Conclusion: The Delhi High Court opined that the two different legal interpretations on the relationship between firm and partners could constitute a reasonable cause in a given case for not invoking section 271D read with section 273B. The issue being a debatable one, there was reasonable cause for not levying penalty. Hence, applying the rationale of the Delhi High Court ruling to the case on hand, the action of the Assessing Officer, in levying penalty under section 271D in this case is **not** tenable in law. **(2 marks)**

Question 4

a.

Computation of total income of M/s. SIMRAN ENTERPRISES for the A.Y.2018-19 (12 marks)

Particulars	`	`
Income from business and profession		
Net profit as per profit and loss account		2,00,00,000
Add: *Items charged in profit and loss account which are not allowable*		
Excess depreciation on building @ 5%(i.e., 15% - 10%) on ` 600 lacs **[See Note 1]**	30,00,000	
Expenses on promoting family planning amongst the		

employees **[See Note 2]**	2,00,000	
Advertisement in souvenir of a political party **[See Note 3]**	1,00,000	
Compensation paid to a supplier of kitchen appliances **[See Note 4]**	Nil 4000000	
Disallowed under section 40 (a) (i) since YDS is not deducted		37,00,000
		2,37,00,000
Add: Recovery of bad debts credited in reserve but chargeable under section 41(4) **[See Note 9]**		3,00,000
Total Income		**2,40,00,000**
Less : deduction under section 80GGC		**100000**
TOTAL INCOME		**23900000**

Notes:-

(1) Hotel building does not constitute plant and therefore, depreciation chargeable thereon is 10%. However, depreciation has been charged in the profit and loss account at the rate applicable to plant and machinery i.e., @ 15%. Accordingly, the excess depreciation charged in the profit and loss account @ 5% (15%-10%) has to be added back.

(2) Expenses on promoting family planning amongst employees is allowable under section 36(1)(ix) only to a company assessee. In this case, since the assessee is a firm, such expenses are not allowable and therefore, the same has to be added back.

(3) Advertisement of any nature given in a magazine / souvenir published by a political party is not allowable as per section 37(2B).

(4) Compensation paid for breach of a contract for supply of a capital asset is in the nature of capital expenditure. Hence, the same has to be disallowed and added back *[Swadeshi Cotton Mills Co. Ltd v. CIT (1967) 63 ITR 65 (SC)]*.

(5) Loss of stock-in-trade has to be considered as a trading loss. *Explanation* to section 37(1) is not relevant here since it is not a case of business expenditure but one of business loss. Business loss is allowable on ordinary commercial principles *[Dr. T.A. Quereshi v. CIT (2006) 287 ITR 547 (SC)].*

Therefore, since wine and liquor formed part of stock-in-trade of the firm, confiscation of the same has to be allowed as a business loss. Since the same has been charged to profit and loss account, no further adjustment is required.

(6) The expenditure incurred on replacement of carpets by a hotel is an expenditure incurred for the purposes of business and is hence, a revenue expenditure allowable as deduction under section 37(1). Since the same has already been debited to profit and loss account, no further adjustment is required.

(7) The payment of commission to a non-resident outside India without deduction of tax at source is an allowable expense notwithstanding the withdrawal of *CBDT Circular No.786 dated 07.02.2000 by Circular No.7 of 2009 dated 22.10.2009*, as there is no income accruing or arising to the non-resident in India and the commission was remitted and paid to him outside India in foreign currency. Therefore, disallowance under section 40(a)(i) would not be attracted, even though tax has not been deducted at source.

(8) The cash payments totaling ` 1,20,000 made on the day when bank employees were on strike is an exception under Rule 6DD(j). Therefore, disallowance under section 40A(3) is not attracted.

(9) The recovery of a debt, which was earlier written off and allowed as deduction under section 36(1)(vii), is chargeable to tax under section 41(4) in the year of such recovery. Accordingly, such amount has to be added to income despite the fact that the same was credited by the firm in a reserve account.

b.

The issue under consideration is whether interest under sections 234B and 234C of the Income-tax Act, 1961 can be levied where a company is assessed on the basis of book profits under section 115JB.

The Supreme Court, in *Joint CIT v. Rolta India Ltd. (2011) 330 ITR 470,* observed that there is a specific provision in section 115JB(5) providing that all other provisions of the Income-tax Act, 1961 shall apply to every assessee, being a company, mentioned in that section.ection 115JB is a self-contained code pertaining to MAT, and by virtue of sub-section

(5) thereof, all other provisions of the Act shall apply to every assessee being a company and hence the liability for payment of advance tax would be attracted. **(2 marks)**

According to section 207, advance tax shall be payable during any financial year, in accordance with the provisions of sections 208 to 219, in respect of the total income of the assessee which would be chargeable to tax for the assessment year immediately following that financial year.

Under section 115JB(1), where the tax payable on total income is less than 18.5% of "book profit" of a company, the "book profit" would be deemed to be the total income and tax would be payable at the rate of 18.5%.

Since in such cases, the "book profit" is deemed to be the total income, therefore, as per the provisions of section 207, tax shall be payable in advance in respect of such book profit (which is deemed to be the total income) also.

Therefore, interest under sections 234B and 234C would be attracted for failure on the part of the company to pay advance tax on the basis of tax on book profits under section 115JB. **(2 marks)**

a.

(i) **If the amount was paid for transfer of business / profession to partnership (3 marks)**

Where a proprietary business is converted into a partnership, the exclusive interest of the proprietor is reduced and the business assets become assets of the firm in which other partner(s) get an interest. Consequently, there is a transfer of interest.

Further, section 47 which lists the transactions not regarded as "transfer" for levy of capital gains tax, does not include within its scope, transfer of capital assets consequent to succession of a sole proprietary concern by a partnership firm. Therefore, the transfer of capital assets by a sole proprietary concern consequent to its conversion into a partnership firm constitutes a transfer.

Since consideration of ` 5 lacs **is received for such transfer**, profit or gain accrues to the transferor for the purposes of section 45. As per section 45(3), the amount of

` 5 lacs, recorded in the books of account of the firm, would be the full value of consideration received as a result of transfer and the capital gains resulting from this transfer would be chargeable to tax.

(ii) **If the amount is paid by the incoming partner for Goodwill (3 marks)**

The Supreme Court, in *CIT v. B.C. Srinivasa Setty (1981) 128 ITR 294*, observed that the income chargeable to capital gains tax is to be computed by deducting from the full value of consideration "the cost of acquisition of the capital asset". If it is not possible to ascertain the cost of acquisition, then, transfer of such asset is not chargeable to tax.

Section 55(2)(a) provides that the cost of acquisition of certain self-generated assets, including goodwill of a business, is Nil. Therefore, in respect of these self-generated assets covered under section 55(2)(a), the decision of the Supreme Court in *B.C. Srinivasa Setty's* case would not apply. However, in respect of other self-generated assets, including goodwill of profession, the decision of the Supreme Court in *B.C. Srinivasa Setty's case,* would continue to be applicable.

In effect, in case of self-generated assets not covered under section 55(2)(a), since the cost is not ascertainable, there would be no capital gains tax liability.

Therefore, in this case, since the consideration of ` 5 lakhs is paid towards goodwill of a profession, whose cost is **NOT** to be taken as 'Nil' since it is not covered under section 55(2)(a), the liability to capital gains tax will not arise.

b. Penalty under section 221 is attracted when an assessee is in default or is deemed to be in default in making payment of tax.

The issue under consideration in this case is whether the Assessing Officer was justified in levying penalty under section 221 when the assessee had voluntarily remitted the tax deducted at source, though belatedly.

This issue came up before the Bombay High Court in the case of *Reliance Industries Ltd. v. CIT (2015) 377 ITR 74.* The High Court observed that as per section 201, a person is deemed to be an assessee-in-default for failure to deduct tax or after deduction, pay the tax to the credit of the Government within the prescribed time. **(2 marks)**

In the case on hand, the assessee has deducted the tax but failed to pay the tax so deducted to the credit of the Government within the prescribed time. Hence, it would be deemed to be an assessee-in-default for failure to pay the tax after deduction. Consequently, penalty under section 221 would be attracted.

Further, the assessee would not cease to be liable to penalty under section 221 merely by reason of the fact that before the levy of penalty, he has paid the tax *[Explanation to section 221(1)].*

The action of the Assessing Officer in this case is, therefore, justified. **(3 marks)**

c. Yes, the assessee is entitled to raise additional claims before the appellate authorities.

The restriction that an additional claim has to be made by filing a revised return applies only in respect of a claims made before the Assessing Officer. An assessee cannot make a claim before the Assessing Officer otherwise than by filing a revised return. It was so held by the Supreme Court in *Goetze (India) Ltd v. CIT (2006) 157 Taxman 1.* **(2 marks)**

However, this restriction does not apply to an additional claim made before an appellate authority. The appellate authorities have jurisdiction to permit additional claims before them, though, the exercise of such jurisdiction is entirely the authorities' discretion. It was so held by the Bombay High Court in *CIT v. Pruthvi Brokers & Shareholders (2012) 208 Taxman 498.*

Thus, an additional claim can be raised before the Appellate Authority even if no revised return is filed. **(3 marks)**

Question 6

a. Section 263(2) provides that no revisionary order shall be made under section 263(1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

The issue under consideration is whether the period of limitation for an order passed under section 263 has to be reckoned from the original order passed by the Assessing Officer under section 143(3) of the Income-tax Act, 1961 or from the order of reassessment passed under section 147, where the subject matter of revision is different from the subject matter of reassessment under section 147. **(1 mark)**

The facts of the case are similar to the facts in *CIT v. ICICI Bank Ltd. (2012) 343 ITR 74*, wherein the above issue came up before the Bombay High Court. Similar issue also came up recently before the Bombay High Court *in CIT v. Lark Chemicals Ltd (2014) 368 ITR 655*. The Bombay High Court relied on the Apex Court decision in the case of *CIT v. Alagendran Finance Ltd. (2007) 293 ITR 1*, wherein it was held that in such cases where the subject matter of revision was not the same as the subject matter of reassessment, the period of limitation would commence from the date of original assessment and not from the date of reassessment. **(1 mark)**

In this case, the period of limitation as referred to in section 263 is with reference to the assessment in which the claim of the assessee as to deduction under section 36(1)(viia) on account of provision for doubtful debts and deduction in respect of foreign exchange rate difference was considered. These issues were not the subject matter of re-assessment proceedings, which were only in respect of deduction under section 36(1)(viii) for special reserve created by the bank.

Accordingly, applying the rationale of the Bombay High Court rulings cited above, the period of limitation shall be reckoned with reference to the original assessment order and not from the date of the order of reassessment.

Therefore, in this case, the revision proceedings are barred by limitation since the original assessment order was made on 30.11.2015 and the revision should have been made by 31.3.2017. However, the revision order was passed only on 31st August, 2018 and hence, the same is barred by limitation.

Accordingly, the claim of the bank that the order passed by the Principal Commissioner under section 263 is barred by limitation is correct. **(3 marks)**

b.

(a) Section 11(7) provides that where a trust has been granted registration under section 12AA and the registration is in force for a previous year, then, such trust cannot claim any exemption under any provision of section 10 [other than exemption of agricultural income under section 10(1) and exemption available under section 10(23C)].

Therefore, a charitable trust cannot claim exemption under section 10(35) in respect of income from mutual funds and exemption under section 10(34) in respect of dividends, since it has voluntarily opted for the special dispensation under sections 11 to 13, and consequently has to be governed by the provisions of th ese sections. However, it can claim exemption under section 10(1) in respect of agricultural income, since section 11(7) provides an exception in respect of such income.

Therefore, the claim of Kamala charitable trust, as regards exemption under section 10(34) and section 10(35), is **not** correct. **(3 marks)**

(b) Section 11(6) provides that income for the purposes of application shall be determined without allowing any deduction for depreciation or otherwise in respect of any asset, the cost of acquisition of which has been claimed as an application of income under section 11 in the same or any other previous year.

Accordingly, in this case, since the cost of computers and laptops (i.e., ` 15 lakh) has been claimed and allowed as application of income under section 11 while computing the income of the trust for the P.Y.2017-18, depreciation on computers and laptops will not be allowed for the purpose of determining income for the purposes of application in the P.Y.2018-19.

Therefore, the depreciation claim made by Gandhi charitable trust is **not** correct. **(3 marks)**

c.

As per the provisions of section 281B, there can be provisional attachment of property to protect the interest of Revenue in certain cases i.e. - **(4 marks)**

a. The proceeding for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment should be pending.

b. Such attachment should be necessary for the purpose of protecting the interest of Revenue in the opinion of the Assessing Officer.

c. The previous approval of the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director

General or Principal Director or Director has been obtained by the Assessing Officer.

d. The Assessing Officer, may, by an order in writing attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.

Such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of order made under section 281B(1). However, the period can be extended by the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director, as the case may be, for the reasons to be recorded in writing for a further period or periods as he thinks fit. The total period of extension in any case cannot exceed 2 years or 60 days after the date of order of assessment or reassessment, whichever is later.

The Assessing Officer shall, by order in writing, revoke provision al attachment of a property made under section 281B(1) in a case where the assessee furnishes a guarantee from a scheduled bank, for an amount not less than the fair market value of such provisionally attached property or for an amount which is sufficient to protect the interests of the revenue

Question 7

a. (2 marks for each)

(i) As per the third proviso to section 147, the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment. The doctrine of partial merger would apply in this case.

Therefore, even when an appeal is pending before Commissioner (Appeals), the Assessing Officer can initiate reassessment proceedings in respect of income chargeable to tax which has escaped assessment, provided such income is not the subject matter of the appeal before the Commissioner (Appeals) i.e., such income which has escaped assessment does not form part of the additions of ` 21 lakhs to the returned income, which is the subject matter of appeal.

(ii) As per section 154(1A), the Assessing Officer can pass an order under 154(1) to rectify a mistake apparent from the record, provided the rectification is in relation to a matter, other than the matter which has been considered and decided in the appeal before Commissioner (Appeals). Thus, the doctrine of partial merger holds good for section 154 also.

Since the issue under consideration in this case relates to rectification of a mistake in respect of a matter which is not the subject matter of appeal, the Assessing Officer can pass an order under section 154 for rectification of the same provided the same is a mistake apparent from the record.

(iii) As per section 264(4), the Commissioner shall not revise any order under section 264, where such order has been made the subject of an appeal to the Commissioner (Appeals). Thus, the concept of total merger would apply in the case of section 264.

Therefore, under section 264, the Commissioner cannot revise an order which is pending before the Commissioner (Appeals), even if the revision pertains to a matter, other than the matter(s) covered in the appeal.

(iv) As per section 263, the Commissioner has the power to revise an order prejudicial to revenue, even if the order is the subject matter of appeal before Commissioner (Appeals). However, the power of the Commissioner under section 263 shall extend to only such matters as had not been considered and decided in such appeal. Here again, the doctrine of partial merger would apply.

In a case where the appeal is pending but not yet decided, the Commissioner cannot exercise his revisionary jurisdiction in respect of those issues which a re the subject matter of appeal [*CWT v. Sampathmal Chordia (2002) 256 ITR 440 (Mad.)].*

b.

The first proviso to section 201 provides that the payer (including the principal officer of the company) who fails to deduct the whole or any part of the tax on the amount credited or payment made to a resident payee shall not be deemed to be an assessee -in-default in respect of such tax if such resident payee – **(2 marks)**

(1) has furnished his return of income under section 139;

(2) has taken into account such sum for computing income in such return of income; **and**

(3) has paid the tax due on the income declared by him in suc h return of income,

and the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed.

The date of deduction and payment of taxes by the payer shall be deemed to be the date on which return of income has been furnished by the resident payee.

However, where the payer fails to deduct the whole or any part of the tax on the amount credited or payment made to a resident and is not deemed to be an assessee -in-default under section 201(1) as mentioned above, interest under section 201(1A)(i) i.e., @1% p.m. or part of month, shall be payable by the payer from the date on which such tax was deductible to the date of furnishing of return of income by such resident payee.

Therefore, M/s Cool Sip Limited shall not be required to pay the difference tax in case the above mentioned conditions are fulfilled. However, the company shall be liable to make payment of interest from the date on which such tax was deductible to the date of furnishing of return of income by Topstore Warehousing. **(2 marks)**

Therefore, the submission of the assessee company, in this case, is correct.

c. Section 245Q(3) of the Income-tax Act, 1961 provides that an applicant, who has sought for an advance ruling, may withdraw the application within 30 days from the date of the application. Since more than 30 days have elapsed from the date of application by Mr. Vallish to the Authority for Advance Rulings, he cannot withdraw the application. **(2 marks)**

However, the Authority for Advance Rulings (AAR*),* in *M.K. Jain AAR No.644 of 2004*, has observed that though section 245Q(3) provides that an application may be withdrawn by the applicant within 30 days from the date of the application, this, however, does not preclude the AAR from permitting withdrawal of the application after the said period with its permission, if the circumstances of the case so justify. **(2 marks)**

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