



J.K. SHAH[®]
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SUGGESTED SOLUTION

FINAL MAY 2019 EXAM

SUBJECT- DT

Test Code – FNJ 7130

BRANCH - () (Date :)

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Answer 1:

(1 mark x 15 = 15 marks)

1) D 2) B 3) A 4) A 5) A 6) B 7) A 8) E 9) C 10) B 11) B 12) A 13) B 14) B 15) C

Answer 2:

(A)

Section 132B of the Income-tax Act, 1961 deals with the **application of assets seized** under section 132. Such assets will be first applied towards the existing liability under the Income-tax Act, 1961, etc. '**Existing liability**', however, does not include advance tax payable. Further, the amount of liability determined on completion of search assessment (including any penalty levied or interest payable in connection with such assessment) and in respect of which the assessee is in default or deemed to be in default, may be recovered out of such assets. (2 marks)

Where the **nature and source of acquisition of such seized assets is explained** to the satisfaction of the Assessing Officer, the amount of any existing liability mentioned in para 1 above may be recovered out of such asset and the remaining portion, if any, of the asset may be released, with the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be. The release must be made **within 120 days** from the date on which the last of the authorisations for search under section 132 or for requisition under section 132A was executed. The assets would be released to the person from whose custody they were seized. (1.5 marks)

When the **assets consist of 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 para 1 above and the assessee shall be discharged of such liability to the extent of the money so applied. However, the **assets other than money may also be applied for the discharge of such liabilities** if the complete recovery could not be made from the money seized or the money seized was not sufficient. (1.5 marks)

(B)

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 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	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: HEC@4%	3,600	
	93,600	
Penalty leviable@50% of tax payable		46,800
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: HEC@4%	10,800	
	2,80,800	
Penalty leviable@50% of tax payable		1,40,400

(5 marks)

Notes – The following assumptions have been made -

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

Answer 3:

(A)

Section 11(1)(a) stipulates that in order to avail exemption of income derived from property held under trust wholly for charitable or religious purposes, the trust is required to apply for charitable or religious purposes, **85% of its income from such property**. In this case, the trust has earned income of Rs. 3,90,000 for the year ended 31.3.2019. It has also earned short term capital gain from sale of capital asset for Rs. 9,60,000. The trust had utilized the entire amount of Rs. 13,50,000 for the purchase of a building meant for charitable purposes. (2 mark)

The **Supreme Court**, in *S.R.M. M. CT. M. Tiruppani Trust v. CIT (1998) 230 ITR 636*, ruled that the assessee-trust, which applied its income for charitable purposes by purchasing a building for use as a hospital, was entitled to exemption under section 11(1) in respect of such income.

(1 mark)

The ratio of the decision squarely applies to the case of the charitable trust in question. Therefore, the charitable trust is justified in claiming that the purchase of the building amounted to application of its income for charitable purposes. (1.5 marks)

Under section 11(1A), where the whole of the sale proceeds of a capital asset held by a charitable trust is utilised by it for acquiring another capital asset, the capital gain arising therefrom is deemed to have been applied to charitable purposes and would be exempt. Section 11(1A) does not make any distinction between a long-term capital asset and a short-term capital asset. The claim of the charitable trust to the effect that the capital gain is deemed to have been applied to charitable purposes is tenable in law. (1.5 marks)

(B)

As per the section 245D(6B), the Settlement Commission may amend any order passed by it under section 245D(4) to rectify a mistake apparent from the record, **within six months from the end of the month in which order was passed**. (1 mark)

In case where an application for rectification is made by the Principal Commissioner or the Commissioner or the applicant within 6 months from the end of the month in which order under **section 245D (4)** was passed, the Settlement Commission may amend the order within six months from the end of the month in which an application for rectification has been made by the Principal Commissioner or Commissioner or the applicant.

However, an amendment which has the effect of modifying the liability of the applicant shall not be made unless the Settlement Commission –

- (1) has given notice to the applicant and the Principal Commissioner or Commissioner of its intention to do so; and

- (2) has allowed the applicant and the Principal Commissioner or Commissioner an opportunity of being heard. **(3 marks)**

Answer 4:

(A)

The expression “substantial question of law” has not been defined anywhere in the Act. However, it has acquired a definite meaning through various judicial pronouncements. The tests are:

- (1) whether directly or indirectly it affects substantial rights of the parties; or
- (2) the question is of general public importance; or
- (3) whether it is an open question in the sense that issue is not settled by the pronouncement of the Supreme Court or Privy Council or by the Federal Court; or
- (4) the issue is not free from difficulty; or
- (5) it calls for a discussion for alternative view. **(5 marks)**

(B)

In CIT v. Swarnagiri Wire Insulations Pvt. Ltd. (2012) 349 ITR 245, the Karnataka High Court observed that it is a generally accepted principle that the deeming provision of a particular section cannot be breathed into another section. Therefore, the deeming provision contained in section 80- IA(5) cannot override the provisions of section 70(1).

In this case, X Ltd. had incurred loss in eligible business (power generation) on account of claiming depreciation of Rs. 120 lakhs. Hence, section 80-IA becomes insignificant, since there is no profit from which this deduction can be claimed.

It is, thereafter, that section 70(1) comes into play, whereby an assessee is entitled to set off the losses from one source against income from another source under the same head of income. Accordingly, X Ltd. is entitled to the benefit of set off of loss of Rs. 20 lakhs (representing balance depreciation not set-off) pertaining to Unit N engaged in eligible business of power generation against profit of Rs. 70 lakhs of Unit Y carrying on non-eligible business. Therefore, the net profit of Rs. 50 lakhs would be taxable in the A.Y.2019-20.

However, once set-off is allowed under section 70(1) against income from another source under the same head, a deduction to such extent is not possible in any subsequent assessment year i.e., the loss (arising on account of balance depreciation of eligible business) so set-off under section 70(1) has to be first deducted while computing profits eligible for deduction under section 80-IA in the subsequent year. Accordingly, in the A.Y.2020-21, the net profits of Unit N has to be reduced by Rs. 20 lacs for computing the profits eligible for deduction under section 80-IA in that year.

The action of the Assessing Officer in not permitting set-off of loss of eligible business against profits of non-eligible business in this case is, therefore, not correct. **(6 marks)**

(C)

As per section 198, any sum deducted in accordance with the provisions of Chapter XVII-B of the Income-tax Act, 1961 is deemed to be income received while computing the income of the payee.

As per section 203, every person deducting tax at source shall furnish to the payee a certificate in the prescribed form within the prescribed time.

Even in a case where 'X undertakes to pay the tax on the grossed up amount, the non-resident

shall be entitled for issue of certificate for tax deducted at source in respect of payment made 'net of tax' in terms of section 195A. This has been clarified vide CBDT Circular No.785 dated 24.11.1999.

Therefore, X has a legal obligation to issue TDS certificate to the non-resident, even if he has made payment of income "net of tax" to him. **(4 marks)**