



J.K. SHAH[®]
TEST SERIES
Evaluate Learn Succeed

SUGGESTED SOLUTION

FINAL MAY 2019 EXAM

SUBJECT- DT

Test Code – FNJ 7129

BRANCH - () (Date :)

Head Office : Shraddha, 3rd Floor, Near Chinai College, Andheri (E), Mumbai – 69.

Tel : (022) 26836666

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)

CIT v. St. Peter’s Educational Society (2016) 385 ITR 66 (SC)

The Apex Court took note of the observations of the High Court and made reference to its own precedent in the case of *Queen’s Educational Society v. CIT (2015) 372 ITR 699 (SC)* where it had summarized the legal position as under:

“The law common to sections 10(23C) (iiiad) and (vi) may be summed up as follows:

- (i) Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit;
- (ii) The **predominant object test must be applied** – the purpose of education should not be submerged by a profit making motive;
- (iii) A distinction must be drawn between making of a surplus and the institution being carried on ‘for profit’. No inference arises that merely because imparting education results in making a profit, it becomes an activity for profit;
- (iv) If after meeting the expenditure, a surplus arises incidentally from the activity carried on by the educational institution, it will not cease to be one existing solely for educational purposes;
- (v) The ultimate test is whether on an overall view of the matter in the concerned assessment year, the object is to make profit as opposed to educating persons”.

The Apex Court, in *Queen’s Educational Society’s* case, noted the divergence of opinion among various High Courts on this issue. In that case, it had approved the decision of Delhi, Bombay and Punjab & Haryana High Courts and set aside the judgement of Uttarakhand High Court.

The Apex Court held that the correct tests for determining whether an institution exists solely for educational purposes and not for the purposes of profit were laid down in the Supreme Court decisions in *CIT (Addl.) v. Surat Art Silk Mfg. Association (1980) 121 ITR 1*; *Aditanar Educational Institution v. Addl. CIT (1997) 224 ITR 310*; and *American Hotel & Lodging Assn. Educational Institute v. CBDT (2008) 301 ITR 86*.

It further observed that the Thirteenth proviso to section 10(23C) is of great importance to the assessing authorities who must continuously monitor from assessment year to assessment year

to know **whether such institutions continues to apply their income and invest or deposit their funds in accordance with the law laid down.** The activities of such institutions must be looked at carefully. If they are not genuine or are not being carried out in accordance with all or any of the conditions subject to which approval was given earlier, such approval and exemption must forthwith be withdrawn.

Applying the rationale of the Supreme Court ruling in *Queen's Educational Society's* case, the Apex Court, in this case, held that the institution is established for the sole purpose of imparting education in a specialized field. The Supreme Court, thus, allowed the petition and set aside the order of the Chief Commissioner of Income-tax refusing exemption under section 10(23C)(vi).

(6 marks)

(C)

Section 119(2)(b) empowers the CBDT to authorise any income tax authority to admit an application or claim for any exemption, deduction, refund or **any other relief under the Act** after the expiry of the period specified under the Act, to avoid genuine hardship in any case or class of cases. The claim for carry forward of loss in case of late filing of a return is relatable to a claim arising under the category of "any other relief available under the Act". Therefore, the **CBDT has the power to condone delay in filing of such loss return due to genuine reasons.**

(2 marks)

The facts of the case are similar to the case of *Lodhi Property Company Ltd. v. Under Secretary, (ITA-II), Department of Revenue (2010) 323 ITR 0441*, where the Delhi High Court held that the Board has the power to condone the delay in case of a return which was filed late and where a claim for carry forward of losses was made. The delay was only one day and the assessee had shown justifiable reason for the delay of one day in filing the return of income. If the delay is not condoned, it would cause genuine hardship to the assessee. Therefore, the Court held that the delay of one day in filing of the return had to be condoned.

Further, the CBDT Circular No. 9/2015 dated 09.06.2015 has expressly clarified that CBDT can consider application for such claim where the amount exceeds Rs. 50 lakhs.

Applying the rationale of the above court ruling and the clarification given in CBDT Circular to the case on hand, the CBDT has the power to condone the delay in filing the return of income of Mr. Rajesh and permit carry forward of business loss of Rs. 51 lakhs, since the delay of one hour was due to a genuine and justifiable reason i.e., network problem while e-filing the return.

However, if the claim for carry forward of business loss is 48 lakhs, then, the Principal Chief Commissioner of Income-tax/Chief Commissioner of Income-tax has the power to condone the delay

(since the amount is between 10 lakhs to 50 lakhs). It may be noted that if the claim is less than Rs.10 lakhs, the Principal Commissioner of Income-tax/Commissioner of Income-tax is empowered to condone the delay. This clarification is given in CBDT Circular No. 9/2015 dated 09.06.2015.

(2 marks)