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**CA FINAL MAY 2017 EXAM**

**DIRECT TAX LAWS**

**Test Code - F M J 4 0 2 0**

**BRANCH - (MULTIPLE) (Date :19.02.2017)**

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**(Answer-1.a)****(4)**

The Commissioner cannot exercise his power of revision under section 264 where the order sought to be revised has been made the subject of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal [Section 264(4)], even if the relief claimed in the revision is different from the relief claimed in the appeal. This was the view of the Supreme Court in the case of Hindustan Aeronautics Limited vs. CIT (2000) 243 ITR 808 (SC). It is not open to the assessee to seek recourse to revision under section 264 after the appeal is decided.

**(1.5 Marks)**

Therefore, although the matter of addition of Rs. 2 lacs under section 40(a)(ia) was not taken before the Commissioner (Appeals), the assessee, CNK Associates cannot apply for revision under section 264 in respect of the same.

**(0.5 Mark)**

Under section 154(1A), where any matter had been considered and decided in any proceeding by way of appeal or revision, rectification of such matter cannot be done by the Assessing Officer. However, in respect of the matter which has not been considered and decided in the appeal or revision, the order of the Assessing Officer can be rectified under section 154. Thus, the assessee can apply to the Assessing Officer for rectification of the order in respect of addition under section 40(a)(ia), as this matter has not been considered and decided in any proceeding by way of appeal or revision. In view of above, the assessee, CNK Associates should seek rectification under section 154.

**(2 Mark)****(Answer-1.b)****(4)**

Any rectification order under section 154 has to be passed within 4 years from the end of financial year in which the order sought to be amended was passed. Order sought to be amended does not necessarily mean the original order. It could be any order including the amended or rectified order. Where any matter has been considered and decided in any proceeding by way of appeal or revision, the authority passing such order may amend the order in relation to any matter other than the matter, which has been so considered and decided.

**(2 Marks)**

For subsequent rectification, the time limit of 4 years shall be from the end of the financial year in which the earlier rectification order was passed. [Hind Wire Industries Ltd vs. CIT (1995) 212 ITR 639 (SC)]. In the given case, the time limit of 4 years has to be reckoned from the end of the financial year in which the order giving effect to the CIT (Appeal)'s decision was passed. Therefore, the rectification order can be passed by the Assessing Officer at any time before expiry of 4 years from the end of the financial year 2013-14 i.e. on or before 31<sup>st</sup> March, 2018. In this case, the mistake was noticed by the Assessing Officer on 1<sup>st</sup> September, 2017, for which he issued notice under section 154 for rectifying the mistake. Such rectification is permissible as the time limit of 4 years expires only on 31<sup>st</sup> March, 2018.

**(2 Marks)****(Answer-1.c)****(4)**

An assessee can file an appeal to the Tribunal against the order passed by the Principal Commissioner or Commissioner under section 263. However, in this case, the assessee did not file any appeal to the Tribunal against the order of the Commissioner under section 263. He waited for the fresh assessment order to be passed by the Assessing Officer in pursuance of the direction of the Commissioner. The order of any fresh assessment made under section 150 pursuant to a direction contained in an order of revision under section 263 is itself appealable under section 246A(1)(b). Therefore, the mere fact that the assessee did not dispute the order of the Commissioner by filing an appeal to the Tribunal does not take away the right of the assessee to dispute the fresh assessment order by filing appeal to Commissioner (Appeals) under section 246A. Therefore, the stand taken by the Commissioner (Appeals) is not correct in law.

**(2 Marks)****(Answer-2.a)****(4)**

The penalty that could be levied in each case is:-

- (i) Failure to get books of accounts audited as required under section 44AB of the Income tax Act, 1961 – assume equal to ½% of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years, or a sum of Rs. 1,50,000, whichever is less [Section 271B].

**(2 Marks)**

(ii) Failure to comply with a direction issued under section 142(2A) – a sum of Rs. 10,000[Section 272A(1)(d)].

(1 Mark)

(iii) Failure to furnish report from an accountant as required by section 92E - a sum of Rs. 1,00,000 [Section 271BA].

(1 Mark)

**(Answer-2.b)**

(6)

Any income arising from an international transaction, where two or more “associated enterprises” enter into a mutual agreement or arrangement, shall be computed having regard to arm’s length price as per the provisions of Chapter X of the Act.

(1 Mark)

Section 92A defines an “associated enterprise” and sub-section (2) of this section speaks of the situations when the two enterprises shall be deemed to associated enterprises. Applying the provisions of section 92A(2)(a) to (m) to the given facts, it is clear that “Anush Motors Ltd.” is associated with :-

- (i) Rida Ltd. as per section 92A(2)(a), because this company holds shares carrying more than 26% of the voting power in Anush Motors Ltd.;
- (ii) Kyoto Ltd. as per section 92A(2)(g), since this company is the sole owner of the technology used by Anush Motors Ltd. in its manufacturing process;
- (iii) Dorf Ltd. as per section 92A(2)(c), since this company has financed an amount which is more than 51% of the book value of total assets of Anush Motors Ltd.

(3 x 1 = 3 Marks)

The transactions entered into by Anush Motors Ltd. with different companies are, therefore, to be adjusted accordingly to work out the income chargeable to tax for the A.Y. 2017-18.

Particulars	Rs.(in crores)
Income of Anush Motors Ltd. as computed under Chapter IV-D, prior to adjustments as per Chapter X	300.00
<i>Add:</i> Difference on account of adjustment in the value of international transactions:	
(i) Difference in price of car @ \$ 200 each for 10,000 cars (\$ 200 x 10,000 x 63)	12.60
(ii) Difference for excess payment of royalty of \$ 30,00,000 (\$ 30,00,000 x 63) [See Note below]	18.90
(iii) Difference for excess interest paid on loan of EURO 1000 crores (84x1000x1/100)	<u>840.00</u>
<b>Total Income</b>	<b>1,171.50</b>

(2 Marks)

The difference for excess payment of royalty has been added back presuming that the manufacture of cars by Anush Motors Ltd is wholly dependent on the use of know-how owned by Kyoto Ltd.

**Note:** It is presumed that Anush Motors Ltd. has not entered into an Advance Pricing Agreement or opted to be subject to Safe Harbour Rules.

**(Answer-3.a)**

(6)

Computation of income from salaries of Mr. Babu for A.Y.2017-18

Particulars	Rs.
Basic pay (Rs. 25,000 x 10)	2,50,000
Dearness Allowance (Rs. 10,000 x 10)	1,00,000
Bonus	<u>50,000</u>
	4,00,000
<b>Perquisites-</b>	
Rent free accommodation (assumed that D.A is not included for superannuation benefits) – 15% of (Rs. 2,50,000 + Rs. 50,000)	45,000
Value of furniture - 10% of Rs. 3,00,000 for 10 months	25,000
Motor car - Rs. 2700 x 10 (As per perquisite rules)	27,000
Sweeper (Actual cost to company) – Rs. 1500 x 10	15,000
Watchman (Actual cost to company) – Rs. 1500 x 10	15,000
Educational facility for 2 children (assumed that the cost of education per child	

does not exceed Rs. 1,000 p.m.)	NIL
Interest free loan for purchase of house - 10% p.a. on Rs. 5 Lacs for 6 months	25,000
Interest free loan for purchase of computer - 16.50% p.a. of Rs. 50,000 for 3 months	2,063
<b>Income from salary</b>	<b>5,54,063</b>

**(6 Marks)**

**Note:** Motor car owned by employer used partly for official purpose and partly for personal purpose by the employee is taxable as perquisite. The cubic capacity of the engine is less than 1.6 litres. The perquisite value including driver salary is Rs.1800 + Rs.900 per month. The perquisite value is therefore Rs.27,000 (Rs.2,700 x 10).

**(Answer-3.b)**

**(4)**

The cost of inherited property to Mr. Abraham shall be the cost to the previous owner as per provisions of section 49(1)(iii) and therefore, Rs. 5 lacs, being the cost to his father (amount paid by his father on 26.3.1981 for acquiring the property) shall be the cost to Mr. Abraham, who is the new owner. Payment of outstanding loan of the predecessor by the successor for obtaining a clear title of the property by release of Mortgage Deed shall be the cost of acquisition of the successor under section 48 read with section 55(2) of the Act as held by the Apex Court in case of *RM. Arunachalam v. CIT [1997] 227 ITR 222*.

**(1 Mark)**

**Computation of Taxable Capital Gain for the A.Y. 2017-18**

Particulars	Rs.
Sale consideration of house property	50,00,000
<b>Less: Indexed cost of acquisition (See Note below)</b>	
(i) Cost to previous owner (Rs. 5,00,000 × 1125 / 582)	9,66,495
(ii) Loan amount paid by Mr. Abraham (Benefit of CII is available since the loan amount was paid in the financial year 2008-09) (Rs. 15,00,000 × 1125/582)	<u>28,99,485</u>
<b>Capital gains</b>	<b><u>11,34,020</u></b>

**(2 Marks)**

**Note:** Since the property was acquired by Mr. Abraham through inheritance, the cost of acquisition will be cost to the previous owner.

As per the definition of indexation cost of acquisition under clause (iii) of *Explanation* below section 48, indexation benefit will be available only from the previous year in which Abraham first held the asset i.e. P.Y. 2008-09.

However, as per the view expressed by Bombay High Court, in the case of *CIT v. Manjula J. Shah (2013) 355 ITR 474*, in case the cost of acquisition of the capital asset in the hands of the assessee is taken to be cost of such asset in the hands of the previous owner, the indexation benefit would be available from the year in which the capital asset is acquired by the previous owner. If this view is considered, the indexed cost of acquisition would be Rs. 85,24,485 and long term capital loss would be Rs. 35,24,485.

**(1 Mark)**

**(Answer-4)**

**(6)**

**Computation of total income and tax liability of Miss Vivitha for the A.Y. 2017-18**

Particulars	Rs.
Indian Income [Income from playing snooker tournaments in India]	19,20,000
Foreign Income [Income from playing snooker matches in country L]	<u>12,00,000</u>
<b>Gross Total Income</b>	<b>31,20,000</b>
<b>Less:</b>	<b>Rs.</b>
Deduction under Chapter VIA	
<u>Deduction under section 80C</u>	
Life insurance premium of Rs. 1,10,000 paid during the previous year deduction, is within the overall limit of 1.5 lakh. Hence, fully allowable as deduction	1,10,000
<u>Deduction under section 80D</u>	
Medical insurance premium of Rs. 32,000 paid for her father	

aged 62 years. Since her father is a senior citizen, the deduction is allowable to a maximum of Rs. 30,000 (assuming that her father is also a resident in India). Further, deduction is allowable where payment is made by any mode other than cash. Here payment is made by credit card hence, eligible for deduction.

	<u>30,000</u>	<u>1,40,000</u>
<b>Total Income</b>		<b><u>29,80,000</u></b>
<b><u>Tax on Total Income</u></b>		
Income-tax	7,19,000	
Add : Education cess @ 2%	14,380	
Add: Secondary and higher education cess @ 1%	<u>7,190</u>	7,40,570
Average rate of tax in India (i.e. Rs. 7,40,570/Rs. 29,80,000 × 100)	24.8513%	
Average rate of tax in foreign country (i.e. Rs. 1,80,000/Rs. 12,00,000 × 100)	15.00%	
Rebate under section 91 on Rs. 12 lakh @ 15% (lower of average Indian-tax rate or average foreign tax rate)		<u>1,80,000</u>
<b>Tax payable in India (Rs. 7,40,570 – Rs. 1,80,000)</b>		<b><u>5,60,570</u></b>

(4 Marks)

**Note :** Miss Vivitha shall be allowed deduction under section 91, since the following conditions are fulfilled:-

- She is a resident in India during the relevant previous year.
- The income accrues or arises to her outside India during that previous year and such income is not deemed to accrue or arise in India during the previous year.
- The income in question has been subjected to income-tax in the foreign country L in her hands and she has paid tax on such income in the foreign country L.
- There is no agreement under section 90 for the relief or avoidance of double taxation between India and country L where the income has accrued or arisen.

(4 x 0.5 = 2 Marks)  
(12)

(Answer-5)

**Computation of total income of M/s Hyper Ltd. for the A.Y. 2017-18 (As per Normal Provisions)**

Particulars	Rs.	Rs.
Net profit as per Profit & Loss Account		14,25,000
<b>Add: Items disallowed / considered separately</b>		
Provision for loss of subsidiary [since it is not wholly and exclusively for the purpose of business of the assessee]	70,000	
Provision for sales tax [is fully allowable since the sales tax has been paid before the due date]	-	
Provision for income-tax [disallowed under section 40(a)(ii)]	1,05,000	
Expenses on transfer of shares [not deductible from business income. It is to be deducted from gross sale consideration while computing capital gains]	15,000	
Interest on deposit credited on 31.3.2017 and tax deducted in April 2017 which was deposited on 31.7.2017 [not allowed under section 40(a)(ia) @ 30%].	30,000	
Depreciation debited to profit and loss account [only depreciation calculated as per the Income-tax Rules, 1962 is allowable as deduction]	<u>3,60,000</u>	<u>5,80,000</u>
		20,05,000
<b>Less: Items credited but not includible under business income or are exempt under the provisions of the Act</b>		
Long-term capital gain on sale of equity shares on which securities transaction tax was paid, since it is not a business income.	3,60,000	
Income from UTI, since it is not a business income.	<u>75,000</u>	<u>4,35,000</u>
		15,70,000
Less: Depreciation (allowable as per the Income-tax Rules, 1962)		<u>2,80,000</u>
		12,90,000
Less: Set-off of brought forward business loss and unabsorbed depreciation		

Brought forward business loss under section 72	4,20,000	
Brought forward depreciation under section 32	<u>6,40,000</u>	<u>10,60,000</u>
<b>Income from business</b>		<b>2,30,000</b>
<b>Capital Gains</b>		
Long term capital gain on sale of equity shares on which securities transaction tax was paid	3,60,000	
Less: Exempt under section 10(38)	<u>3,60,000</u>	Nil
Income from Other Sources		
Income from units of UTI	75,000	
Less: Exempt under section 10(35)	<u>75,000</u>	Nil
<b>Total Income</b>		<b><u>2,30,000</u></b>
Tax payable @ 30%		69,000
Add: Education cess @ 2%	1,360	
Secondary and higher education cess @ 1%	<u>690</u>	<u>2,070</u>
<b>Tax Payable as per the Income-tax Act, 1961</b>		<b>71,070</b>

(4 Marks)

#### Computation of Book Profit under section 115JB

Particulars	Rs.	Rs.
Net Profit as per Profit & Loss Account		14,25,000
<b>Add: Net Profit to be increased by the following amounts as per Explanation 1 to section 115JB</b>		
Provision for loss of subsidiary	70,000	
Provision for income-tax	1,05,000	
Depreciation debited to profit and loss account	<u>3,60,000</u>	<u>5,35,000</u>
		19,60,000
<b>Less: Net Profit to be reduced by the following amounts as per Explanation 1 to section 115JB</b>		
Depreciation debited to profit and loss account (excluding depreciation on account of revaluation of fixed assets) (i.e., Rs. 3,60,000 – Rs. 1,50,000)	2,10,000	
Income from UTI [since it is an income exempt u/s 10(35)]	75,000	
Brought forward business loss or unabsorbed depreciation as per books of account, whichever is less, taken on cumulative basis	<u>6,00,000</u>	<u>8,85,000</u>
<b>Book Profit</b>		<b><u>10,75,000</u></b>
18.50% of book profit		1,98,875
Add: Education cess @ 2%	3,978	
Secondary and higher education cess @ 1%	<u>1,989</u>	<u>5,967</u>
		<b>2,04,842</b>

(4 Marks)

In case of a company, it has been provided that where income-tax payable on total income computed as per the provisions of the Act is less than 18.50% of book profit, the book profit shall be deemed as the total income and the tax payable on such total income shall be 18.50% thereof plus education cess @ 2% and secondary and higher education cess @ 1%.

(0.5 Mark)

Accordingly, in this case, since income-tax payable on total income computed as per the provisions of the Act is less than 18.50% of book profit, the book profit of Rs. 10,75,000 is deemed to be the total income and income-tax is payable @ 18.50% thereof plus education cess @ 2% and secondary and higher education cess @ 1%. The tax liability, therefore, works out to be Rs. 2,04,842.

(0.5 Mark)

The deduction of business loss as per books of account in the A.Y.2016-17 while computing book profit under section 115-JB will be of no consequence while computing the book profit under section 115JB of A.Y.2017-18.

(0.5 Mark)

Section 115JAA provides that where tax is paid in any assessment year in relation to the deemed income under section 115JB(1), the excess of tax so paid, over and above the tax payable under the other provisions of the Income-tax Act, 1961, will be allowed as tax credit in the subsequent years.

(0.5 Mark)

The tax credit is, therefore, the difference between the tax paid under section 115JB(1) and the tax payable on the total income computed in accordance with the other provisions of the Act. This tax credit is allowed to be carried forward for ten assessment years succeeding the assessment year in which the credit became allowable.

(0.5 Mark)

Such credit is allowed to be set off against the tax payable on the total income in an assessment year in which the tax is computed in accordance with the provisions of the Act, other than section 115JB, to the extent of excess of such tax payable over the tax payable on book profits in that year.

(0.5 Mark)

Particulars	Rs.
Tax on book profit under section 115JB	2,04,842
Less: Tax on total income computed as per the other provisions of the Act	71,070
<b>Tax credit to be carried forward under section 115JAA</b>	<b>1,33,772</b>

(1 Mark)

**Note:** Long-term capital gains on sale of equity shares through a recognized stock exchange on which securities transaction tax (STT) is paid is exempt under section 10(38). One of the adjustments to the book profit is that exempt income under section 10, which is credited to profit and loss account, would be deducted in arriving at the book profit. However, long-term capital gains exempt under section 10(38) is not eligible for reduction while computing book profit under section 115JB. Consequently, expenditure to earn such income should not be added back to arrive at the book profit.