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SUGGESTED SOLUTION
CA FINAL NOVEMBER 2016 EXAM

DIRECT TAXATION

Test Code - F N J 6 0 1 2

BRANCH - (MUMBAI) (Date : 26.06.2016)

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Answer-1 (a) :

Under section 144, the Assessing Officer, after taking into account all relevant material which he has gathered, is under an obligation to make an assessment of the total income or loss to the best of his judgment and determine the sum payable by the assessee in the following cases –

- (1) Where any person fails to make the return under section 139(1) and has not filed a belated return under section 139(4) or a revised return under section 139(5).
- (2) Where any person fails to comply with all the terms of a notice issued under section 142(1) or fails to comply with a direction issued under section 142(2A) for getting the accounts audited.
- (3) Where any person, having made a return, fails to comply with all the terms of a notice issued under section 143(2).

(3 x 1 = 3 Marks)

Further, section 145(3) of the Income-tax Act, 1961 permits the Assessing Officer to make an assessment in the manner provided in section 144:

- (i) where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee; or
- (ii) where the method of accounting under section 145(1) has not been regularly followed by the assessee;
- (iii) where the income has not been computed in accordance with "Income Computation and Disclosure Standards" notified by the Central Government under section 145(2).

(3 x 1 = 3 Marks)

Answer-1 (b) :

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.

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 2012-13 i.e. on or before 31st March, 2017. In this case, the mistake was noticed by the Assessing Officer on 1st September, 2016, 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 31st March, 2017.

(4 Marks)

Answer-2 (a) :

As per section 194-I dealing with deduction of tax at source from payment of rent, the rate of TDS applicable is 2% for machinery hire charges and 10% for building lease rent. The scope of the section includes within its ambit, rent for machinery, plant and equipment. Tax is required to be deducted at source from payment of rent, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of building and machinery, irrespective of whether such assets are owned or not by the payee.

The limit of Rs. 1,80,000 for tax deduction at source will apply to the aggregate rent of all the assets. Even if two separate agreements are entered into, one for sub-lease of building and another for hiring of machinery, rent and hire charges under the two agreements have to be aggregated for the purpose of application of the threshold limit of Rs. 1,80,000. In this case, since the payment for rent and hire charges credited to the account of J, the payee, aggregates to Rs. 2,30,000 (Rs. 1,40,000 + Rs. 90,000), tax is deductible at source under section 194-I. Tax is deductible @10% on Rs. 1,40,000 (rent of building) and @2% on Rs. 90,000 (hire charges of machinery).

(4 Marks)

Answer-2 (b) :

An assessee, who is aggrieved by the order of the Assessing Officer under section 143(3) passed on 1.1.2016, had moved an application for revision of order under section 264 on 11.1.2016. The order passed by the Assessing Officer under section 143(3) is an order appealable before the Commissioner (Appeals). The time limit for filing an appeal is 30 days from the date of order i.e., upto 31.1.2016. This time limit had not expired on 11.1.2016 and the assessee had also not waived his right of appeal while filing the application for revision on 11.1.2016 before the Commissioner of Income-tax. The application filed before the Commissioner of Income-tax for revision under section 264 by the assessee will only be considered when the conditions specified under section 264(4) have been complied with. One of the conditions is that the Commissioner shall not revise any order where an appeal against the order lies to the Commissioner (Appeals) or Appellate Tribunal and the time within which such appeal may be made has not expired, unless the assessee has waived his right of appeal. In the present case, the time limit had not expired on 11.1.2016 and the assessee had also not waived the right of appeal while filing the application for revision before the Commissioner of Income-tax on 11.1.2016 under section 264. Therefore, the Commissioner's refusal to entertain such application is correct.

Note : In real life situations, the Commissioner could have kept the proceedings in abeyance till the expiry of the time prescribed for filing appeal by the assessee and thereafter could have assumed jurisdiction for making revision besides taking an undertaking from the assessee for waiving his right of appeal. In reality, taxpayers usually will not prefer revision in such short time period nor would the Commissioner reject the application, the moment it is received by him.

(4 Marks)

Answer-2 (c) :

(i) Failure to afford facility to the officer authorized as per section 132(1)(iib) is a case for which **prosecution can be launched under section 275B** and such person shall be punishable with rigorous imprisonment **for a term which may extend to two years and shall also be liable to fine.**

(1 Mark)

(ii) Willful failure to produce books of account and documents as required under section 142(1) or willful failure to comply with a direction to get the accounts audited under section 142(2A) is a case for which **prosecution can be launched under section 276D** and such person shall be **punishable with rigorous imprisonment for a term which may extend to one year and with fine.**

(1 Mark)

(iii) Deliberate failure to deposit the tax collected under section 206C to the credit of the Central Government is a case for which **prosecution can be launched under section 276BB** and such person shall be **punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.**

(2 Marks)

Answer-3 (a) :

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 - a sum 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 271(1)].

(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-3 (b) :

The powers under section 131(1A) deal with power of discovery and production of evidence.

(1 Mark)

They do not confer the power of seizure of cash or any asset. The Director General, for the purposes of making an enquiry or investigation relating to any income concealed or likely to be concealed by any person

or class of persons within his jurisdiction, shall be competent to exercise powers conferred under section 131(1), which confine to discovery and inspection, enforcing attendance, compelling the production of books of account and other documents and issuing commissions. Thus, the power of seizure of unaccounted cash is not one of the powers conferred on the Director General under section 131(1A). (1 Mark)

However, under section 132(1), the Director General has the power to authorize any Additional Director or Additional Commissioner or Joint Director or Joint Commissioner etc. to seize money found as a result of search [Clause (iii) of section 132(1)], if he has reason to believe that any person is in possession of any money which represents wholly or partly income which has not been disclosed [Clause (c) of section 132(1)]. (2 Marks)

Therefore, the proper course open to the Director General is to exercise his power under section 132(1) and authorize the Officers concerned to enter the premises where the cash is kept by Mr. Mogambo and seize such unaccounted cash. (2 Marks)

Answer-4 :

Interest under section 234A

Since the return of income has been furnished by PA Consulting Ltd. on 15th October, 2016 i.e. 15 days after the due date for filing return of income (30.9.2016), interest under section 234A will be payable for 1 month @ 1% on the amount of tax payable on the total income, as reduced by tax reliefs and prepaid taxes.

Particulars	Rs.
Tax on total income (Rs. 10,50,000 x 30.9%)	3,24,450
Less: Advance tax paid	2,67,000
Less: Tax deducted at source	24,450
Less: Relief of tax allowed under section 90	10,000
Tax payable on self assessment	<u>23,000</u>

Interest = Rs. 23,000 x 1% = Rs. 230

(2 Marks)

Interest under section 234B

Where the advance tax paid by the assessee is less than 90% of the assessed tax, the assessee would be liable to pay interest under section 234B. Computation of Assessed tax:

Particulars	Rs.
Tax on total income (Rs. 10,50,000 x 30.9%)	3,24,450
Less: Tax deducted at source	24,450
Less: Relief of tax allowed under section 90	10,000
Assessed tax	<u>2,90,000</u>

90% of assessed tax = Rs. 2,90,000 x 90% = Rs. 2,61,000

(2 Marks)

Since the advance tax paid by PA Consulting Ltd. (Rs. 2,67,000) is more than 90% of the assessed tax (Rs.2,61,000), it is not liable to pay interest under section 234B.

Interest under section 234C

Particulars	Rs.
Tax on total income (Rs. 10,50,000 x 30.9%)	3,24,450
Less: Tax deducted at source	24,450
Less: Relief of tax allowed under section 90	10,000
Tax due on returned income/Total advance tax payable	2,90,000

(2 Marks)

Calculation of interest payable under section 234C:

Date (a)	Advance tax paid till date (b)	Minimum % of tax due on returned income to be paid till date to avoid interest under section 234C (c)		Advance tax payable till date in case condition mentioned in (c) is not met	Shortfall	Interest
	Rs.	%	Amount Rs.			
15.06.2015	40,000	12%	34,800	15%	-	Nil (See

						Note below)
15.09.2015	1,05,000	36%	1,04,400	45%	-	Nil (See Note below)
15.12.2015	2,05,000	75%	2,17,500	75%	12,500	12,500 x 1% x 3 months = 375
15.03.2016	2,67,000	100%	2,90,000	100%	23,000	23,000 x 1% = 230
Interest payable under section 234C (Nil + Nil + Rs.375 + Rs.230)						Rs.605

(4 Marks)

Note: Since the advance tax paid by PA Consulting Ltd. on 15th June, 2015 is more than 12% of the tax due on returned income (i.e., Rs. 2,90,000) and the advance tax paid on 12th September, 2015 is more than 36% of the tax due on returned income, it is not liable to pay any interest under section 234C in respect of these two quarters.

Answer-5 :

(i) The Assessing Officer, under section 133A, is empowered to conduct a survey on the business premises of an assessee within his jurisdiction only during the hours at which such place is open for the conduct of business. In the present case, the assessee was engaged in money lending business from his residence which shall be construed as business premises and therefore, the action of the Assessing Officer to conduct survey on residential premises on Thursday, being a working day, at 4.30 p.m., which falls within the working hours, is correct.

(4 Marks)

(ii) The assessment under section 143(3) was completed for the assessment year 2009-10 and the notice under section 148 was issued on 11.03.2016. The validity of the notice is discussed hereunder.

An assessment completed under section 143(3) can be reopened under section 148 (where the income escaping assessment is more than Rs. 1 lac) within a period of 6 years from the end of the assessment year in which the income was first assessable. The income of Rs. 1,32,500 which escaped assessment could be subjected to reassessment within a period of 6 years from the end of the assessment year to which it relates. The time limit of 6 years from the end of the relevant assessment year would expire on 31.03.2016. Since the notice was served on 11.03.2016, it is valid in law. After serving notice under section 148, the time limit for completion of assessment would be 1 year from the end of the financial year in which the notice was served. Therefore, the time limit for completion of assessment, in this case, would be upto 31.3.2017.

(4 Marks)