



J.K. SHAH[®]
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FINAL MAY 2014 EXAM

DIRECT TAX LAWS

Prelims (Test Code - F M J 4 0 4 9)

(Date : 12 April, 2014)

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Ans. 1

(a)

particulars	₹	₹
1. If the land is gifted on 1.6.1980		
Sale consideration		30,00,000
Less: 1. Expenses on transfer	1,00,000	
2. Indexed cost of acquisition	<u>28,17,000</u>	29,17,000
Long-term capital gain		83,000
Indexed cost of acquisition has been calculated as under:		
Cost of fair market value as on 1.4.1981		
Whichever is more i.e. ₹3,00,000 × $\frac{\text{CII of the year of transfer}}{\text{CII of 1981-82}}$		
₹3,00,000 × $\frac{939}{100} = ₹28,17,000$		
2. If the land is gifted on 15.5.1995		
Sale consideration		30,00,000
Less: 1. Expenses on transfer	1,00,000	
2. Indexed cost of acquisition ₹3,00,000 × $\frac{939}{100}$	<u>28,17,000</u>	29,17,000
Long-term capital gain		83,000

(b)

1. Yes.
2. Yes.
3. No.
4. Neither land nor building under construction shall be treated as an asset.
5. Yes, as it is given by firm and not company.
6. Yes.
7. No, as it not a motor car.
8. On 31.3.2014, neither urban land nor the superstructure which is not yet complete shall be treated as an asset. However on 31.3.2015, the residential house which consists of the building and land apartment thereto shall be treated as an asset.
9. No.
10. Yes.

(c)

1. The conversion of capital asset into stock-in-trade is treated as a transfer within the meaning of section 2(47). In this case, conversion took place on 12.1.2011 i.e. in the previous year 2010-11. Therefore, it will be treated as transfer of the previous year 2010-11. But the capital gain will only arise in the previous year in which such asset is sold i.e. previous year 2013-14.

Capital Gain of Assessment Year 2014-15

Particulars	₹
Full value of consideration (Market value as on the date of conversion)	5,00,000
Less: Indexed cost of acquisition - ₹1,00,000 × $\frac{711}{161}$	4,41,615
Long-term capital gain	58,385

- i. CII has been taken as 711 i.e. the index for the previous year 2010-11 in which the asset is converted as it will be treated as the year of transfer.
- ii. As the asset was acquired by the assessee on 4.1.1989 i.e. previous year 1988-89 CII has been taken as 161.

Business income (Previous year 2013-14):

Particulars	₹
Sale price	6,00,000
Less: Market value as on the date of conversion	5,00,000
Business income	1,00,000

2. If the gold ornaments are still held: There will neither be business income nor capital gain because the asset has, no doubt, been converted into stock-in-trade, but it has not yet been sold or otherwise transferred.

(d)

Net wealth of the firm			₹
(₹20,00,000 + 50,00,000 – 10,00,000)			60,00,000
Interest of the partners in the above firm shall be:			
	X	Y	Z
Upto ₹12,00,000 distributed in capital ratio	7,00,000	3,00,000	2,00,000
Balance ₹48,00,000 in profit sharing ratio (as no agreement exists)	16,00,000	16,00,000	16,00,000
	23,00,000	19,00,000	18,00,000

Out of the above, the value of assets located outside India shall be computed as under Ratio in which the firm holds the assets outside India = $\frac{(20,00,000)}{60,00,000} = \frac{1}{3}$

Wealth Tax

Particulars	X	Y	Z
	₹	₹	₹
Value of interest in the firm	23,00,000	19,00,000	18,00,000
Less: Value of interest in the assets held by firm outside India	-	-	6,00,000
Value of interest in the firm	23,00,000	19,00,000	12,00,000*

* As C is non-resident, the assets of the firm located outside India shall not be included and the value of his interest in the firm, in this case shall be ₹12,00,000.

Ans. 2

Confutation of total income of J Ltd. for the A.Y. 2014-15

Profits and gains of business or profession		
Net profit as per profit and loss account		5,00,00,000
Add: Depreciation in excess of 15% provided on EPABX & Mobile phones not allowable as deduction [See Note (1)]	13,50,000	
Payment for higher studies of director's son abroad not allowable as deduction	35,00,000	
Expenditure on earning dividend from foreign company not deductible [See Note (3)]	25,000	
Payment of ₹29 lacs toward purchase of computer software is royalty, not to be allowed as TDS has not been deducted at source	29,00,000	
Secret commission paid not allowable	<u>13,00,000</u>	<u>90,75,000</u>
		5,90,75,000
Less: (i) Dividend received from foreign company taxable under the head "Income from other sources" [See Note (3)]	10,00,000	
(ii) Additional deduction for account of payment to National Laboratory eligible for weighted deduction @ 200% under section 35(2AA)	45,00,000	
(iii) Bad debts allowable as deduction [₹5,00,000 – ₹ 4,00,000]	<u>1,00,000</u>	<u>56,00,000</u>
		5,34,75,000
Income from Other Sources		
Dividend from foreign company		<u>10,00,000</u>
Total Income		5,44,75,000

Computation of tax liability of J Ltd. for the A.Y. 2014-15

Particulars	₹
Tax @ 15% on dividend of ₹10,00,000 from specified foreign company as per section 115BBD	1,50,000
Tax @ 30% on the balance total income of ₹5,34,75,000	<u>1,60,42,500</u>
	1,61,92,500
Add: Surcharge @ 5% (since total income exceeds ₹1,00,00,000 but does not exceed ₹10 crore)	<u>8,09,625</u>
	1,70,02,125
Add: Education cess & SHEC @ 3%	5,10,064

Notes:

1. EPABX and mobile phones are not computers and therefore, are not entitled to higher depreciation @ 60%. Federal Bank Ltd. v ACIT (Ker). Hence, normal depreciation of 15% shall be allowed.
2. As per Delhi High Court in case of Priya Village Roadshows Ltd. it was held that if there is no creation of a new asset, then the expenditure incurred would be of revenue nature.
3. Under section 115BBD, dividend received by an Indian company from a foreign company in which it holds 26% or more in nominal value of the equity share capital of the company, would be subject to a concessional tax rate of 15% as against the tax rate of 30% applicable to other income of a domestic company. This rate of 15% would be applied on gross dividend, in the sense, that no expenditure would be allowable in respect of such dividend.
4. Depreciation in respect of the discarded machine would be allowed as it form part of block though it is discarded. Yamaha Motor India Pvt. Ltd. (Del).

Note:- The question does not give the P & L A/c and hence in solution MAT calculation has not been done.

Ans. 3

- (a) The belated return can be filed within one year of the end of the relevant assessment year or before the completion of assessment, whichever is earlier. In the above case, the assessment was completed on 31.5.2014 i.e. the date of passing the order (date of service of order is not relevant).

As the assessee has filed the return of income on or after the completion of assessment i.e. 31.5.2014 this return is not valid. In this case he could file the return upto 30.5.2014.

(b)

1. There is no need to give another notice under section 148 and he can assess/re-assess such income along with the income for which proceedings are going on.
2. The Assessing Officer will have to issue a separate notice under section 148 in this case.

(c)

Particulars		₹
Income from salary (₹3,000 × 12)		36,000
Income from capital gain		
Long-term capital gains		2,25,000
Income from other sources		
Interest on Saving Bank Deposits	44,000	
Interest on Government securities	<u>2,000</u>	46,000
		3,07,000
Less: Deductions		
U/s. 80 C	10,000	
U/s 80TTA	10,000	
U/s. 80U	<u>1,00,000</u>	
	1,20,000	
But the deduction cannot exceed GTI exclusive of long-term capital gain -		<u>82,000</u>
Deduction allowed		
Total income		2,25,000
Tax on LTCG [₹2,25,000 – ₹2,00,000 (Shifted)] = 25,000 @ 20%		5,000
Tax on other income Nil + 2,00,000 shifted from LTCG		<u>Nil</u>
Tax payable		5,000
Less: Rebate u/s 87 A		<u>2,000</u>
		3,000
Add: Education cess & SHEC - @ 3%		<u>90</u>
		3,090

Ans. 4

(a)

1. The statement given is not correct. As per the provisions of Section 255, in the event of difference in opinion between the members of the Bench of the Income-tax Appellate Tribunal, the matter shall be decided on the basis of the opinion of the majority of the members. In case the members are equally divided, they shall state the point or points of difference and the case shall be referred by the President of the Tribunal for hearing on such points by one or more of the other members of the Tribunal. Such point or points shall be decided according to the opinion of majority of the members of the Tribunal who heard the case, including those who had first heard it.
2. The statement given is correct As per the decision given by the High Court in the case of. Deepak Kumar Garg v CIT (2010) 327 ITR 448, the power to review the order passed is not an inherent power but need to be expressly provided in the statute by way of specific provisions or by way implication. It was observed that, by virtue of Section 260A(7), the power of re-admission or restoration of the appeal is always enjoyed by the High Court. However, such power cannot be treated to be a power to review its earlier order on merits as it is not expressly provided for in the law.

(b)

Particulars	₹
Step I	
Share of profit of retired partner in the current year profit proportionate for 5 months ($₹7,20,000 \times 2/5 \times 5/12$)	₹1,20,000
Step II	
Share of retired partner in brought forward loss ($₹4,00,000 \times 2/5$)	₹1,60,000
Step III	
Loss to the extent of profit is allowed to be set off	₹1,20,000
Balance loss ₹1,60,000 – ₹1,20,000	₹40,000

Therefore loss of ₹40,000 cannot be carried forward and set off by the firm. Hence the firm shall be allowed to set off the brought forward loss to the extent of ₹3,60,000 (4,00,000 – 40,000)

Total income of the firm

Particulars	₹
Current year business income	₹7,20,000
Less: Brought forward loss ₹4,00,000 – ₹40,000	<u>3,60,000</u>
	3,60,000
Less: Brought forward depreciation	<u>3,00,000</u>
Taxable income	60,000

(c)

Computation of tax liability of Janta for the A.Y. 2014-15	
Particulars	(Amount in ₹)
Income in India	5,30,000
Income from abroad	<u>1,10,000</u>
Gross Total Income	6,40,000
Less: Deduction under section 80C	
Deposit in PPF	70,000
Under section 80CCC	
Contribution to approved Pension Fund of LIC	<u>32,000</u>
	1,02,000
As per section 80CCE, the aggregate deduction u/s 80C, 80CCC and 80CCD cannot exceed ₹1,00,000	1,00,000
Under section 80D	
Contribution to Central Government Health Scheme ₹18,000 but restricted to ₹15,000.	15,000
Medical insurance premium of ₹21,000 paid for father aged 76 years but non-resident. Hence, restricted to ₹15,000.	<u>15,000</u>
Total Income	5,10,000

Tax on Total Income		
Income-tax	27,000	
Add: Education cess and SHEC @ 3%	<u>810</u>	27,810
Average rate of tax in India (i.e. $27,810/5,10,000 \times 100$)	5.453%	
Average rate of tax in foreign country (i.e. $11,000/1,10,000 \times 100$)	10%	
Relief under section 91 on ₹1,10,000 @ 5.453% (lower of average Indian-tax rate or average foreign tax rate)		5,998
Tax payable in India (rounded off)		21,812

Ans. 5

(a) Azimganj Estate (P.) Ltd. v. CIT (2012) 206 Taxman 308 (Cal.)

Fact of the Case:

The assessee, a property developer and builder, in the course of its business activities constructed a building for sale, in which some flats were unsold. During the year, the assessee received rental income from letting out of unsold flats which is disclosed under the head "Income from house property" and claimed the permissible statutory deduction of 30% there from. The Assessing Officer contended that since the assessee had taken the plea that the unsold flats were stock-in-trade of its business and not assets for the purpose of Wealth-tax Act, 1961, therefore, the rental income from the said flats have to be treated as business income of the assessee. Consequently, he rejected the assessee's claim for statutory deduction of 30% of Net Annual Value.

Analysis:

The Calcutta High Court held that the rental income from the unsold flats of a builder shall be taxable as "income from house property" as provided under section 22 and since it specifically falls under this head, it cannot be taxed under the head "Profit and gains from business or profession".

Conclusion:

The assessee would be entitled to claim statutory deduction of 30% from such rental income as per section 24. The fact that the said flats have been claimed as not chargeable to wealth-tax, treating the same as stock-in-trade, will not affect the computation of income under the Income-tax Act, 1961.

(b) CIT v. Naidunia News and Networking (P.) Ltd. (2012) 210 Taxman 73 (MP)

Fact of the Case:

In the present case, the assessee was engaged in the business of printing and distribution of newspapers and magazines. It incurred foreign travel and education expenditure on higher studies in printing technology for its employee, who was the son of the ex-director of the company. However, the said expense was disallowed by the Assessing Officer.

Analysis:

The Madhya Pradesh High Court held that the expenses incurred by the assessee on the foreign travel and education of a regular employee outside India for gaining advanced knowledge of the latest printing technology, which was directly related to the business of the assessee, is allowable under section 37(1).

Conclusion:

The expenditure cannot be disallowed merely because it was incurred in respect of an employee, who was the son of an ex-director of the assessee company.

(c) Hindustan Unilever Ltd. v. DCIT (2010) 325 ITR 102 (Bom.)

Relevant section: 54EC

Fact of the Case:

In this case, the Bombay High Court observed that in order to avail the exemption under section 54EC, the capital gains have to be invested in a long-term specified asset within a period of six months from the date of transfer. Where the assessee has made the payment within the six month period, and the same is reflected in the bank account and a receipt has been issued as on that date.

Analysis:

The exemption under section 54EC cannot be denied merely because the bond was issued after the expiry of the six month period or the date of allotment specified therein was after the expiry of the six month period. For the purpose of the provisions of section 54EC, the date of investment by the assessee must be regarded as the date on which payment is made.

Conclusion:

The High Court held that if such payment is within a period of six months from the date of transfer, the assessee would be eligible to claim exemption under section 54EC.

(d) ACIT v. ICICI Securities Primary Dealership Ltd. (2012) 348 ITR 299 (SC)**Relevant section: 147****Fact of the Case:**

In the above case, the Assessing Officer had completed the assessment of assessee under section 143(3) after taking into consideration the accounts furnished by assessee. After the lapse of four years from relevant assessment year, the Assessing Officer had reopened the assessment of assessee under section 147 on the ground that after re-look of the accounts of the relevant previous year, it was noticed that the assessee company had incurred a loss in trading in share, which was a speculative one. Therefore, such loss can only be set off against speculative income. Consequently, the loss represents income which has escaped assessment. Accordingly, the Assessing Officer came to a conclusion that income had escaped assessment and passed an order under section 147.

Analysis & conclusion:

The Supreme Court observed that the assessee had disclosed full details in the return of income in the matter of its dealing in stocks and shares. There was no failure on the part of assessee to disclose material facts as mentioned in proviso to section 147. Further, there is nothing new which has come to the notice of the Assessing Officer. The accounts had been furnished by the assessee when called upon. Therefore, re-opening of the assessment by the Assessing Officer is clearly a change of opinion and therefore, the order of re-opening the assessment is not valid.

(e) CIT v. Earnest Exports Ltd. (2010) 323 ITR 577 (Bom.)**Relevant section: 254(2)****Fact of the Case:**

In this case, the High Court observed that the power under section 254(2) is limited to rectification of a mistake apparent on record and therefore, the Tribunal must restrict itself within those parameters. Section 254(2) is not a carte blanche for the Tribunal to change its own view by substituting a view which it believes should have been taken in the first instance. Section 254(2) is not a mandate to unsettle decisions taken after due reflection.

Analysis & conclusion:

In this case, the Tribunal, while dealing with the application under section 245(2), virtually reconsidered the entire matter and came to a different conclusion. This amounted to a re-appreciation of the correctness of the earlier decision on merits, which is beyond the scope of the power conferred under section 254(2).

Ans. 6

(a)

Computation of total income of Marwadi Ltd. for the A.Y. 2014-15

Particulars	₹	₹
Net profit as per Profit & Loss Account		14,25,000
Add: Items disallowed/considered separately		
Provision for loss of subsidiary	70,000	
Provision for wealth-tax	90,000	
Provision for income-tax	1,05,000	
Expenses on transfer of shares	15,000	
Interest on deposit credited to buyers on 31.3.2014, but tax deposited after due date of filing return [disallowed under section 40(a)(ia)]	90,000	
Depreciation	<u>3,60,000</u>	<u>7,30,000</u>
		21,55,000
Less: Items credited but not includible under business income or are exempt under the provisions of the Act		
Long-term capital gain on sale of equity shares on which securities transaction tax was paid	3,60,000	
Income from UTI	<u>75,000</u>	<u>4,35,000</u>
		17,20,000
Less: Depreciation (allowable as per Income-tax rules)		<u>2,80,000</u>
		14,40,000

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>
Income from business		3,80,000
Income from capital gains		
Long term capital gain on sale of equity shares on which securities transaction tax was paid		Exempt
Income from Other Sources		
Income from units of UTI	75,000	
Less: Exempt under section 10(35)	<u>75,000</u>	Nil
Total Income		3,80,000
Tax payable @ 30%		1,14,000
Add: Education cess & SHEC @ 3%		<u>3,420</u>
Tax Payable		1,17,420

Computation of Book Profit under section 115JB

Particulars	₹	₹
Net Profit as per Profit & Loss Account		14,25,000
Add: Provision for loss of subsidiary	70,000	
Provision for income-tax	1,05,000	
Depreciation	<u>3,60,000</u>	<u>5,35,000</u>
		19,60,000
Depreciation (₹3,60,000 – ₹1,50,000)	2,10,000	
Income from UTI	75,000	
Brought forward business loss or unabsorbed depreciation as per books of account, whichever is less	<u>6,00,000</u>	<u>8,85,000</u>
Book Profit		10,75,000
18.5% of book profit		1,98,875
Add: Education cess & SHEC @ 3%		<u>5,966</u>
Tax payable under MAT (rounded off)		2,04,840
The tax payable shall be ₹2,04,840.		

MAT credit to be carried forward

Tax on book profit under section 115JB	2,04,840
Less: Tax on total income computed as per normal provisions of the Act	<u>1,17,420</u>
Tax credit to be carried forward	87,420

(b)

Interest payable by Umang under section 234A(1) on assessment u/s 143(3)

Period of delay:	
1.10.2011 to 15.2.2012	5 months
Amount of tax on which interest is payable	
Tax determined u/s 143(3)	80,000
Less: Advance tax paid	<u>20,000</u>
	<u>60,000</u>
Interest u/s 234A(1) $60,000 \times 5 \times 1\%$	3,000

Interest payable by Umang u/s 234A(3) on reassessment u/s 147

Period of delay:	
1.4.2014 to 15.6.2014	3 months
Amount of tax on which interest is payable	
Tax determined u/s 147	1,60,000
Less: Tax on assessment u/s 143(3)	<u>80,000</u>
	<u>80,000</u>
Interest u/s 234A(3) - $80,000 \times 3 \times 1\%$	2,400

Ans. 7

(a)

(1) Non-compliance of section	(2) Penalty under section 271FA	(3) Period	(4) Quantum of penalty under section 271FA	
			(2) × (3)	(₹)
285BA(1)	₹100 per day of continuing default	1.9.2013 to 31.10.2013	61 days × ₹100	6,100
285BA(5)	₹500 per day of continuing default	1.11.2013 to 15.11.2013	15 days × ₹500	7,500
				13,600

(b)

Particulars		₹
For A.Y.2014-15		
(i)	Deduction under section 24(b) ₹2,20,000 [₹24,00,000 × 11% × 10/12]	1,50,000
(ii)	Restricted to	70,000
	Deduction under section 80EE (₹2,20,000 – ₹1,50,000)	
For A.Y.2015-16		
(i)	Deduction under section 24(b) ₹2,64,000 [₹24,00,000 × 11%]	1,50,000
(ii)	Restricted to	30,000
	Deduction under section 80EE	
	(₹1,00,000 – ₹70,000, allowed as deduction in P.Y.2013-14)	

Note - Mr. KT is entitled to deduction under section 80EE, in addition to deduction under section 24(b) since –

1. the loan is sanctioned by Bank of India, being a financial institution, during the period between 1.4.2013 and 31.3.2014;
2. the loan amount sanctioned is less than ₹25 lakh;
3. the value of the house property is less than ₹40 lakh;
4. he does not own any other residential house property.

(c)

1. Clause (48) was inserted in section 10 by the Finance Act, 2012 w.e.f. A.Y.2012-13 to exempt any income received in India in Indian currency by a foreign company on account of sale of crude oil to any person in India.
2. The scope of exemption under section 10(48) has now been expanded so as to include within its ambit, income received in India in Indian currency by a foreign company on account of sale of any other goods or rendering of services, as may be notified by the Central Government in this behalf, to any person.
(Effective from A.Y.2014-15)

(d)

1. The Finance Act, 2012 had inserted sub-section (1D) in section 206C to provide for collection of tax at source @1% by the seller from the buyer, on cash sale of bullion or jewellery, if the sale consideration exceeds ₹2 lakh and ₹5 lakh, respectively.
2. A coin or any other article weighing 10 gms or less was, however, excluded from the applicability of the provisions of this section.
3. Since the exclusion was giving an opportunity for misuse, the exemption has now been withdrawn with effect from 1.6.2013. Consequently, the provisions for tax collection at source under section 206C @1% of sale consideration would be attracted even in respect of cash sale of any coin or any article weighing 10 gms or less, if the sale consideration exceeds ₹2 lakh.
(Effective from 1st June, 2013)

MARKS ALLOCATION SHEET

Que. No.	Sub point No.(if any)	Name of Chapter	Description of Concept	Mark Allocation	Total Marks
1(a)	-	Capital Gain	Calculation of capital Gain – Alternative I	2.5	
1(a)	-	Capital Gain	Calculation of capital Gain – Alternative II	2.5	5
1(b)	-	Wealth tax	Each point has 0.5 mark	5	5
1(c)	-	Capital Gain	Calculation of capital Gain	2	
1(c)	-	Capital Gain	Calculation of Business income	2	
1(c)	-	Capital Gain	Conclusion if gold ornaments are still held	1	5
1(d)	-	Wealth tax	Calculation of interest of the partners	3	
1(d)	-	Wealth tax	Calculation of value of interest in firm	2	5
2	-	PGBP	Calculation of total income	8	
2	-	PGBP	Calculation of tax liability	4	
2	-	PGBP	Reasons of treatment	4	16
3(a)	-	Return of income	Provision	2	
3(a)	-	Return of income	Analysis & conclusion	2	4
3(b)	-	Assessment procedure	Each alternative has 2 marks	4	4
3(c)	-	Deduction	Calculation of taxable income	5	
3(c)	-	Deduction	Calculation of tax payable	3	8
4(a)	-	Appeals & Revision	Each point has 2 marks	4	4
4(b)	-	Assessment of firms	Calculation of total income of firm	4	4
4(c)	-	DTAA	Calculation of total income	5	
4(c)	-	DTAA	Calculation of tax payable in India	3	8
5(a)	-	Income from House Property	Facts of the case	2	
5(a)	-	Income from House Property	Analysis & conclusion	2	4
5(b)	-	PGBP	Facts of the case	2	
5(b)	-	PGBP	Analysis & conclusion	2	4
5(c)	-	Capital Gain	Facts of the case	2	
5(c)	-	Capital Gain	Analysis & conclusion	2	4
5(d)	-	Assessment procedure	Facts of the case	2	
5(d)	-	Assessment procedure	Analysis & conclusion	2	4
5(e)	-	Appeals & Revision	Facts of the case	2	
5(e)	-	Appeals & Revision	Analysis & conclusion	2	4
6(a)	-	MAT	Calculation of total income	3	
6(a)	-	MAT	Calculation of tax payable	1	
6(a)	-	MAT	Calculation of Bok profit	3	
6(a)	-	MAT	Calculation of tax payable under MAT	1	
6(a)	-	MAT	Calculation of MAT credit to be carried forward	2	10
6(b)	-	Interest Payable by / to assessee	Calculation of Interest Payable u/s 234A(1)	3	
6(b)	-	Interest Payable by / to assessee	Calculation of Interest Payable u/s 234A(3)	3	6
7(a)	-	Penalties	Calculation of Penalty	4	4
7(b)	-	Deduction	Calculation of deduction–for A.Y. 2014-15	2	
7(b)	-	Deduction	Calculation of deduction–for A.Y. 2015-16	2	4
7(c)	-	Exemption	Each point has 2 marks	4	4
7(d)	-	TCS	Explanation	4	4