

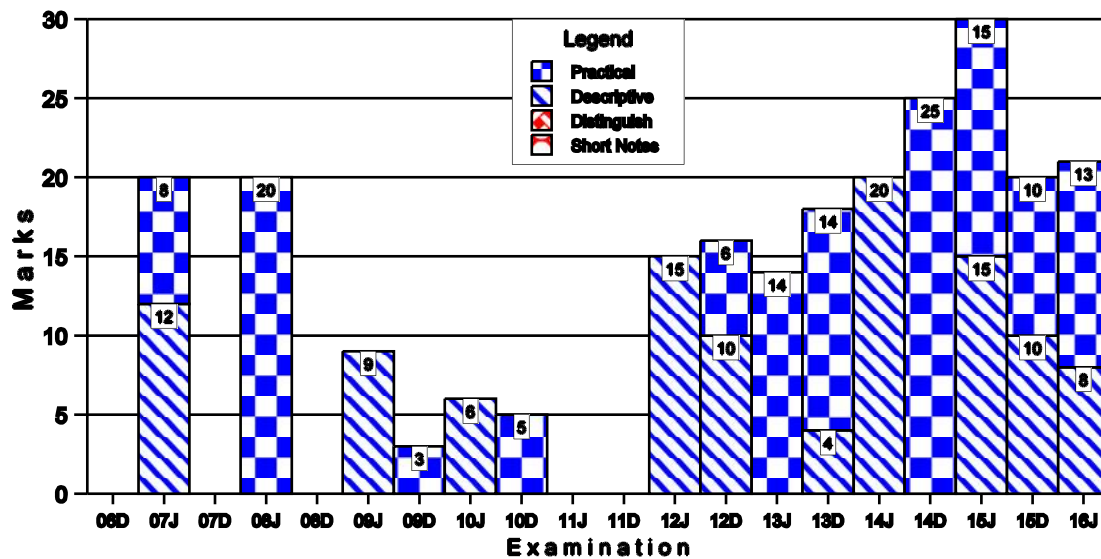
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Taxation of Individuals, Partnership Firms/LLP and Companies

This Chapter includes

- Basic Concepts and Taxation of Individuals
- Taxation of Companies.
- Taxation of Firm/Limited Liability Partnership (LLP)

Marks of Short Notes, Distinguish Between, Descriptive & Practical Questions



CS Professional Programme (Module III)

DESCRIPTIVE QUESTIONS

2007 - June [3] (a) What is 'minimum alternate tax' (MAT) ? What is the treatment of following debited to profit and loss account while calculating book profit:

- (i) Provision for doubtful debt
- (ii) Penalty for non-payment of income-tax
- (iii) Dividend tax
- (iv) Banking cash transaction tax
- (v) Proposed dividend
- (vi) Excise duty due, but not paid
- (vii) Provision for gratuity
- (viii) Depreciation

(12 marks)

Answer:

Minimum Alternate Tax (MAT)

Where in the case of a company, the income-tax payable on the total income as computed under the Income-tax Act, in respect of previous year relevant to the assessment year 2016-17 or thereafter is less than 18.5% of book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income (book profit) shall be the amount of the income tax at the rate of 18.5%.

Thus in case of a company income tax payable shall be higher of the following two amounts:

1. Tax on total income computed as per the normal provisions of the Act by charging applicable normal rates and special rates if any, income included in the total income of the company is taxable at special rates.
2. 18.5% of book profit.

For the purpose of computing "book profit", the net profit as per profit and loss account is adjusted for items given under **Section 115 JB**, by adding them back to net profit or deducting from it. Treatment of the following

debited to P & L Account while calculating book profit:

- (i) Provision for doubtful debt–added back to net profit.
- (ii) Penalty for non-payment of income tax-not to be added back.
- (iii) Dividend tax –added back to net profit.
- (iv) Banking cash transaction tax–not to be added back.
- (v) Proposed dividend–added back to net profit.
- (vi) Excise duty due, but not paid–not to be added back.
- (vii) Provision for gratuity–not to be added back.
- (viii) Depreciation–The whole amount of depreciation is to be added back and the amount of depreciation which is not on account of revaluation of assets is then required to be deducted from the net profit.

Book Profit:

‘Book Profit’ is arrived at after making specified adjustments to the net profit as shown in the profit and loss account so prepared. The adjustment can be made as per the following steps:

STEP - 1:

The net profit as shown in the profit and loss account (prepared as per Part II and III of Schedule VI) for the relevant previous year, shall be increased by the following amounts mentioned in clauses (a) to (k) below, **where any of these is debited to the profits and loss account:**

Clause	Add Item	Explanation
(a)	The amount of income-tax paid or payable, and the provision therefor	A. For the purposes of clause (a), the amount of income tax shall include- <ol style="list-style-type: none"> 1. any tax on distributed profit under section 115-O or on distributed income under section 115R. 2. any interest charged under this Act, whether such interest is charged under section 234A/B/C or interest

		<p>for late deposit of TDS of any other interest charged under Income Tax Act.</p> <ol style="list-style-type: none"> 3. Surcharge, if any 4. Education Cess on income tax, if any 5. SHEC on income tax, if any <p>B. Any interest paid or payable under income tax, if debited to profit and loss account should be added back to such net profits.</p> <p>C. Any penalty paid or payable under income tax, if debited to profit and loss account should not be added back to such net profits</p> <p>D. Security Transaction Tax is not to be added tax.</p>
(b)	The amounts carried to any reserves by whatever name called	<ol style="list-style-type: none"> A. Every kind of reserve is to be added to net profit to determine book profit. B. Amount transferred to reserve account under section 36(1)(viii) (relating to special reserve to be created by certain financial corporations) though allowed as deduction while computing the business income, should be added back to compute book profits for the purpose of section 115JB. C. Where any amount has been transferred to reserve as per the provisions of section

		80-IA(6), 80-IAB(6), 10A(1A) or 10AA, the same is also to be added back.
(c)	The amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities	<p>A. Any provision made to meet unascertained liabilities like provisions of gratuity, provisions of future losses, etc. should be added back to such net profit. However, if the provisions for gratuity has been made on the basis of actuarial valuation, it becomes an ascertained liability and hence should not be added back. [Echjay Forgings (P.) Ltd. (2001)]</p> <p>B. Provision for leave encashment made on scientific basis is an ascertained liability. [Bharat Earth Movers (SC)]. Hence, should not be added back.</p> <p>C. Provision for warranty is allowed as deduction if it has been made on scientific basis.</p> <p>D. Debenture redemption fund shall not be added as the liability is ascertained. [IOL Ltd vs CIT (2003)]</p>
(d)	The amount by way of provision for losses of subsidiary companies	Even actual loss of subsidiary company, if debited to the profit and loss account, should be added back.
(e)	The amount or amounts of dividends paid or proposed;	Dividend whether on equity or preference share paid or proposed should both be added.

(f)	The amount or amounts of expenditure relatable to any income to which section 10 (excluding the expenditure relating to income referred to in clause (38) relating to long-term capital gain on transfer of shares through a recognized stock exchange), 11 or 12 apply (i.e. incomes which are exempt from tax)	<p>A. Any expense other than mentioned in clause (f) should not be added back for computing book profit even if such expense is not allowable under the Income-tax Act. [Echjay Forgings (P.) Ltd. (2001)]</p> <p>B. Expenditure relatable to income referred to in section 10(38) should not be added back as income referred to in section 10(38) is not deductible while computing book profits and such income is liable to MAT.</p> <p>C. Expenses relating to an income which is allowed as deduction either under section 10AA or 80-IAB should be added back.</p>
(fa)	The amount or amounts of expenditure relatable to, income, being share of the assessee in the income of an association of persons or body of individuals, on which no income-tax is payable in accordance with the provisions of section 86.	Inserted in A.Y. 2016-17
	Amount of expenditure relatable to income from capital gains arising on transactions in securities (other than short term capital gains arising on transactions on which	Inserted in A.Y. 2016-17

	securities transaction tax is not chargeable), accruing or arising to an assessee being a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992.	
(g)	The amount of depreciation	Depreciation as per the accounts shall be added
(h)	The amount of deferred tax and provisions thereof	Deferred tax means both deferred tax asset as well as deferred tax liability.
(i)	The amount or amounts set aside as provision for diminution in the value of any asset	As per clause (i), following shall be added back while computing the book profits: (i) Provision for bad and doubtful debts as it amounts to provision for diminution in value of assets i.e. debtors. (ii) Provision for diminution in value of any investment or asset as per AS-13 or AS-28.
(j)	The amount standing in revaluation reserve relating to revalued assets on the retirement or disposal of such assets if such amount is not credited to the profit and loss account.	

STEP - 2

The profit as per the Profit and Loss Account shall be reduced by the following:

Clause	Less Items	Explanation
(i)	The amount withdrawn from any reserve or provision	However the provision will not apply to- <ul style="list-style-type: none"> • a reserve created before the 1.4.1997 otherwise than by way of a debit to the profit and loss account. • a reserve created on or after the 1.4.1997 but not adjusted in Book Profit u/s 115JB.
(ii)	The amount of income to which any of the provisions section 10 [excluding the income referred to in section 10(38)], 11, 12 apply, if any such amount is credited to the profit and loss account.	
(iia)	The amount of depreciation debited to the profit and loss account (excluding the depreciation on account of revaluation of assets)	
(iib)	The amount withdrawn from revaluation reserve and credited to the profit and loss account, to the extent it does not exceed the amount of depreciation on account of revaluation of assets referred to in clause (iia)	

(iic)	The amount of income, being the share of the assessee in the income of an association of persons or body of individuals, on which no income tax is payable in accordance with the provisions of section 86, if any such amount is credited to the profit and loss account	Inserted in A.Y. 2016-17
(iii)	The amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.	<p>A. The loss shall, however, not include depreciation.</p> <p>B. Further the provision of this clause shall not apply if the amount of brought forward loss or unabsorbed depreciation is Nil.</p>
(vii)	The amount of profits of sick industrial company for the assessment year commencing from the assessment year relevant to the previous year in which the said company has become a sick industrial company under sub-section (1) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.	The term "Net Worth" here shall have the same meaning as referred in section 3 of the Sick Industrial Companies (Special Provision) Act, 1985.
(viii)	The amount of deferred tax, if	

any such amount is credited to Profit and Loss Account.

- 2009 - June [3]** (a) When will the 'book profits' of a company deemed to be the total income of the company for the purposes of levy of minimum alternate tax (MAT) under section 115JB? (3 marks)
- (b) Indicate briefly the points to be taken into account while preparing annual accounts for the purpose of MAT. (3 marks)
- (c) The MAT does not apply to foreign companies operating in India. Do you agree ? Give reasons. (3 marks)

Answer:

- (a) Minimum alternate tax on certain companies under **Section 115 JB** Wherein the case of a company, the income tax payable on the total income as computed under the Income Tax Act, in respect of previous year relevant to the assessment year 2016-17 or thereafter is less than 18.5% of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income (book profit) shall be the amount of the income tax at the rate of 18.5%.
- (b) According to **sub-section (2) of section 115 JB** requires the company to prepare its profit and loss account for the relevant previous year in accordance with provisions of Part II and III of Schedule III of the companies Act, 2013. However, while preparing the annual accounts including profit and loss account:
- (a) The accounting policies of the company;
- (b) The accounting standards followed for preparing such accounts including profit and loss accounts;
- (c) The method and rates adopted for calculating the depreciation by the company, shall be the same as have been adopted for the purpose of preparing such accounts including profit and loss account as laid before the company at its annual general meeting in accordance with on the provisions of **section 129** of the Companies Act, 2013. But where the company has adopted or adopts the financial year which is different from the previous year under the Income Tax Act, (a), (b) and (c) aforesaid shall correspond to the

accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including profit and loss account for such financial year or part of such financial year falling within the relevant previous year.

- (c) No, MAT is applicable to any Company (whether Indian or Foreign, resident or non-resident, closely held or widely held company). So MAT is applicable to foreign companies too which is operating in India.

Judicial Decisions:

Applicability of section 115JB is not confined to a domestic company but it applies to both resident company and a non-resident company.

2010 - June [2] (a) Answer the following :

- (i) What is the quantum of Minimum Alternate Tax (MAT) for a 'domestic company' and 'foreign company' for the assessment year 2016-17?
 (c) Discuss the concept of 'deemed dividend' under section 2(22).
 (3 marks each)

Answer:

- (a) (i) The quantum of Minimum Alternate Tax (MAT) for a 'domestic company' and 'foreign company' for the assessment year 2016-17 are as under:

Company	Rate
In the case of a Domestic Company	18.5%
In the case of a Foreign Company	18.5%

Surcharge for assessment year 2016-17: The amount of income tax computed as above shall be increased by a surcharge of 7% in case of domestic companies and 2% in case of foreign companies provided the total income of such domestic/ foreign company exceeds ₹ 1 cr. If total income of the company exceeds ₹ 10 cr., surcharge in case of domestic company shall be 12% and 5% in case of foreign company.

Education Cess: Education Cess @ 2% shall be levied on the total tax (including surcharge) payable by the assessee.

SHEC: SHEC @ 1% shall be levied on the total tax (including surcharge) payable by the assessee. In other word SHEC shall be half of education cess.

Answer:

(c) Dividend in its ordinary connotation means the sum paid to or received by a shareholder proportionate to his shareholding in a company out of the total sum distributed. However, Section 2(22) of the Income tax Act, 1961 has devised a special inclusive definition of dividend. As per the definition given in Section 2(22), 'dividend' includes the following disbursements by the company to the shareholders, to the extent of accumulated profits:

- (a) **Distribution** of accumulated profits, whether capitalized or not, when such distribution by the Company to its Shareholders, entails the release of all or any part of the Company's assets.
- (b) **Distribution** of Debentures, Debentures-Stock or Deposits Certificates in any form, with or without interest and Distribution of Bonus Shares to Preference Shareholders, to the extent the Company possesses accumulated profits, whether capitalized or not.

Bonus Shares	Market Value of such shares shall be taxable in the hands of preference shareholders. Bonus shares given to equity shareholders are not treated as dividend.
Debentures, Debenture Stock, etc.	Market rate shall be adopted. If not, it shall be valued according to the accepted principles of valuation.

- (c) **Distribution** on liquidation, to the extent such distribution is attributable to the accumulated profits of the Company immediately before its liquidation, whether capitalized or not. Any Distribution after the date of liquidation shall not be treated as dividend. It is a repayment towards capital.
- (d) **Distribution** on reduction of capital, to the extent the Company possesses accumulated profits, whether such profits are capitalized

or not.

- (e) **Payment** of any sum by a Company in which the public are not substantially interested, by way of Advance or Loan, to the extent the Company possesses accumulated profits, to-
- (i) A Shareholder, who is the beneficial owner of shares carrying not less than 10% voting power.
 - (ii) Any concern in which such shareholder is a member or partner, having beneficial entitlement to not less than 20% of such concern's income.
 - (iii) Any payment on behalf, or for the individual benefit, of such Shareholder.

Note: "Concern" means a HUF or a Firm or an AOP or BOI or a Company.

Exceptions: Dividend does not include:

- Distribution covered by (c) and (d) above, in respect of Shares issued for full cash consideration, where the Shareholder is not entitled to participate in the surplus assets upon liquidation.
- Advance or Loan to a shareholder or concern, by a Company carrying on lending business, in the ordinary course of its business.
- Dividend paid by a Company, which is set off wholly, or in part against previous payments made and deemed as dividend by (e) above, to the extent it is so set-off.
- Payment made on purchase of its own shares as per 68 of Companies Act, 2013.
- Distribution of shares pursuant of a demerger by the resulting company, to the shareholders of the demerged company, whether or not, there is a reduction of capital in the demerged company.

Illustration 1:

YOYO Ltd. is a company in which the public are not substantially interested, Kunal is a shareholder of the company holding 15% of the equity shares. The accumulated profits of the company as on 31-03-2015 amounted to ₹ 10,00,000/-. The company lent ₹ 1,10,000/- to Kunal by an account payee bank draft on 01-10-2015. The loan was not connected with the business of the company. Kunal repaid the loan to the company

by an account payee bank draft on 30-03-2016. Examine the effect of the borrowal and repayment of the loan by Kunal on the computation of his total income for the assessment year 2016-17.

Solution:

As per section 2(22)(e), any payment by a company, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares holding not less than 10% of the voting power, shall be treated as deemed dividend to the extent to which the company possesses accumulated profits.

Since, YOYO Ltd. is a company in which the public are not substantially interested i.e. closely held company and the company has accumulated profits of ₹ 10,00,000/- on 31-03-2015, the loan of ₹ 1,10,000/- given by the company to Kunal, who holds more than 10% of the equity shares in the company, shall be treated as deemed dividend in the hands of K as per section 2(22)(e).

Further, the liability arises the moment the loan is borrowed by the shareholder and it is immaterial whether the loan is repaid before the end of the accounting year or not.

NOTE:

- Any income by way of dividends referred u/s 115-O is excluded from the total income of shareholder u/s 10(34)
- U/s 115-O any dividend declared, distributed or paid by a domestic company, whether out of current or accumulated profits, shall be charged to additional tax @ 15% in addition to normal income tax chargeable on the income of the company. This is known as Corporate Dividend Tax.
- Corporate Dividend Tax is not leviable on deemed dividend u/s 2(22)(e), and it will be taxed in the hands of shareholders.
- Meaning of Substantial part of Business: Advance or Loan to a Shareholder or Concern, by a Company carrying on lending business (substantial), in the ordinary course of its business will not be liable for

deemed dividend u/s 2(22). The word substantial can be in relation to turnover, overall profitability, percentage of manpower and also the capital employed for that division. [CIT vs Parle Plastics Ltd (2011)]

2012 - June [3] What is the difference between ‘minimum alternate tax’ under section 115JAA and ‘alternate minimum tax’ under section 115JC? Who is subject to these taxes? Also discuss the implication of these tax es in the case of an overseas entity having a permanent establishment (PE) in India. (15 marks)

Answer:

Difference between MAT & AMT:

Minimum Alternate Tax (MAT)	Alternate Minimum Tax (AMT)
<p>It is applicable on Company assessee only. Here Company includes the following –</p> <ul style="list-style-type: none"> • Any company incorporated and registered in India • Any body corporate incorporated outside India (i.e. foreign companies) • Any concern declared by the board to be a company • A guarantee company including a mutual association or company carrying on charitable activities 	<p>It is applicable to a person who has claimed any deduction under:</p> <ul style="list-style-type: none"> • Section 80-IA to 80RRB other than section 80P; • Section 10AA; or • Section 35AD <p>AMT shall not apply to Individual, HUF, BOI or Artificial or Juridical persons (AJP) if their adjusted total income does not exceed ₹ 20,00,000/-.</p>
It is calculated on Book Profit	It is calculated on Adjusted Total Income
Rate of MAT is 18.5% + surcharge + cess	Rate of AMT is 18.5% + surcharge + cess
Companies are liable to pay MAT	LLP will not be liable to pay AMT on

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on the income exempted u/s 10(38) | incomes exempt from tax

2012 - Dec [1] (a) Discuss briefly the treatment of un-availed tax credit of minimum alternate tax (MAT) in case of conversion of a private company or unlisted public company into a limited liability partnership (LLP).

(3 marks)

Answer:

Section 115JAA(7) w.e.f. 1.04.2011, Assessment Year 2011-12 and onwards, provides that in case of conversion of a private company or unlisted public company into a Limited Liability Partnership Act, 2008, the provisions of Section 115JAA shall not apply to the successor LLP, that is to say tax credit will not be allowed to such LLP.

2012 - Dec [3] (a) Discuss with the help of an example, the cascading effect of dividend distribution tax and the remedial action taken by the government.

(7 marks)

Answer:

Tax on distributed profits of domestic companies [Section 115-O (1)]:

The Domestic Company shall, in addition to the income tax chargeable in respect of its total income, be liable to pay additional income-tax on any amount declared, distributed or paid by such company by way of dividend (whether interim or otherwise), whether out of current or accumulated profits. Such additional income-tax shall be payable @15% plus surcharge @12% plus education cess @2% plus SHEC @1% of the amount so declared, distributed or paid.

Tax Rates:

Tax on distributed profit shall be computed after grossing up the tax by using following formula:

Rate of Dividend Distribution Tax before surcharge and cess =

$$\frac{\text{Amount Distributed} \times 15\%}{85\%} = 17.647\%$$

Dividend received from subsidiary company to be reduced from the above dividend to be distributed [Section 115-O (1A)]:

For the purpose of computation of tax on distributed profits, the amount of

dividend distributed by the domestic company during the financial year shall be reduced by the following:

- (i) The amount of dividend, if any, received by the domestic company during the financial year, if such dividend is received from its subsidiary and,-
 - (a) where such subsidiary is a domestic company, the subsidiary has paid the tax which is payable under this section on such dividend; or
 - (b) where such subsidiary is a foreign company, the tax is payable by the domestic company under section 115BBD on such dividend; However, the same amount of dividend shall not be taken into account for reduction more than once;
- (ii) The amount of dividend, if any, paid to any person for, or on behalf of, the New Pension System Trust referred to in section 10(44).

For the purpose of section 115-O (1A), a company shall be a subsidiary of another company, if such other company holds more than half in nominal value of the equity share capital of the company.

NOTE:

- The above additional tax shall be payable even if no income-tax is payable by such company on its total income. [Section 115-O (2)]
- For the purposes of section 115-O (1A), a company shall be a subsidiary of another company, if such other company holds more than half in nominal value of the equity share capital of the company.
- Section 115BBD is applicable when an Indian company holds 26% or more in nominal value of equity shares in the foreign company. But for taking the benefit under section 115-O (1A) the Indian company should hold more than half (instead of 26%) in the nominal value of the equity share capital of the company.

Example:

Where the amount of dividend paid or distributed by a company is ₹ 85, then DDT under the amended provision would be calculated as follows:

Dividend amount distributed	=	₹ 85
Increase by ₹ 15 [i.e. (85*0.15)/(1-0.15)]		

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Increased amount	=	₹ 100
DDT @ 15% of ₹ 100	=	₹ 15
Tax payable u/s 115-O is	=	₹ 15
Dividend distributed to shareholders	=	₹ 85
Effective rate of dividend distribution tax		
The effective rate of dividend distribution tax payable shall be as under:		
Tax payable u/s 115-O on ₹ 85 distributed	=	₹ 15
Therefore DDT rate on ₹ 100 distributed shall be $15 / 85 \times 100$	=	17.64706%
Add: Surcharge @ 12% of 17.647	=	2.11764%
Total		19.7647%
Add: EC & SHEC @ 3%	=	0.59294%
Total effective DDT rate applicable	=	20.35764%

Hence, the effective rate of DDT has been increased to 20.35764% approximately.

Alternatively the net amount of dividend paid on distributed should first be grossed up and DDT should be paid @17.304% (15%+12%SC+3%EC & SHEC)

Question:

Chitti Ltd., an Indian company wishes to distribute ₹ 10 lakhs as dividend to its shareholders. It has received ₹ 5 lakhs as dividend from its subsidiary domestic company on which subsidiary company has already paid D.D.T. Determine the amount of dividend distribution tax payable if such dividend on or after 01-10-2015.

Answer:

Net dividend on which DDT is payable	(₹)
Amount of dividend to be distributed to shareholders	10,00,000
Less: Dividend received from subsidiary company on which DDT has already been paid	5,00,000

Net dividend liable to DDT	5,00,000
Computation of DDT	
Alternative 1	
₹ 5,00,000 x 20.35765% (effective rate)	1,017,88
Alternative 2	
Net dividend to be grossed up	
₹ 5,00,000 x 100/85	
Gross amount ₹ 5,88,235	
DDT payable on ₹ 5,88,235 @17.304%	1,017,88

2013 - Dec [3] (b) What is the time-limit in the following different cases:

- (i) To file return of income under section 139(1) by an assessee who is required to furnish audit report under section 92E.
- (ii) To file a revised return, if the assessee discovers any omission or wrong statement in the originally filed return. (2 marks each)

Answer:

- (i) 30th November of the assessment year.
- (ii) Revised return can be filed at any time:
 - (i) before the expiry of one year from the end of the relevant assessment year or
 - (ii) before the completion of the assessment, whichever is earlier.

2014 - June [2] (b) A CEO of an unlisted public company approached you with a proposal to convert the company into a Limited Liability Partnership (LLP) without attracting any liability towards capital gain tax. Draft a suitable reply. (5 marks)

Answer:

To,
CEO
XYZ LTD.

Sir,

As per Section 45 of the Income Tax Act, 1961, Income will be chargeable

as Capital gains if there is a capital asset and there is transfer of the capital asset during relevant previous year.

But as per Section 47 (xiiib) Nothing contained in Section 45 shall apply to any transfer of a capital asset or intangible asset by a private company or unlisted public company (hereafter in this clause referred to as the company) to a limited liability partnership or any transfer of a share or shares held in the company by a shareholder as a result of conversion of the company into a limited liability partnership in accordance with the provisions of Section 56 or Section 57 of the Limited Liability Partnership Act.

Provided that:

- (a) all the assets and liabilities of the company immediately before the conversion become the assets and liabilities of the limited liability partnership;
- (b) all the shareholders of the company immediately before the conversion become the partners of the limited liability partnership and their capital contribution and profit sharing ratio in the limited liability partnership are in the same proportion as their shareholding in the company on the date of conversion;
- (c) the shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in profit and capital contribution in the limited liability partnership;
- (d) the aggregate of the profit sharing ratio of the shareholders of the company in the limited liability partnership shall not be less than 50%, at any time during the period of 5 years from the date of conversion;
- (e) the total sales, turnover or gross receipts in the business of the company in any of the three previous years preceding the previous year in which the conversion takes place does not exceed ₹ 60,00,000; and
- (f) no amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for a period of 3 years from the date of conversion.

Thanking You
Company Secretary
XYZ LTD.

Question:

- (i) Who shall verify the return of income of a limited liability partnership?
- (ii) ABC LLP is liquidated. What is the liability of partners of ABC LLP in respect of its tax dues?
- (iii) DCB LLP has a profit of ₹ 500 lacs after charging interest on capital for B amounting to ₹ 10 lacs calculated at 15% p.a. as per the agreement, but before considering remuneration to partners. What is the maximum admissible amount of remuneration to partners are working partners and remuneration is authorized by the LLP instrument?

Answer:

- (i) Under section 140, in the case of a limited liability partnership (LLP), the return of income shall be verified by the designated partner. Where for any unavoidable reason, such designated partner is not able to verify the return, or where there is no designated partner as such, the return of LLP can be verified by any partner.
- (ii) Section 167C provides for the liability of partners of LLP in liquidation. In the case of liquidation of an LLP and where tax due from the LLP cannot be recovered, every person who was a partner of the LLP at any time during the relevant previous year will be jointly and severally liable for payment of tax unless he proves that non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the LLP.

(iii) Computation of maximum admissible remuneration to working partners:

Particulars	₹ (in lacs)
Net profit before considering partners' remuneration	500
Add: Interest in excess of 12% p.a. allowed to B (₹ 10 lacs x 3/15)	2
Book profit	502

Maximum amount admissible as remuneration to working partners under section 40(b):	
On first ₹ 3 lacs of book profit, 90% of books profit or ₹ 1,50,000 whichever is more	2.70
On balance book profit 60% of ₹ 499 lacs	299.40
Maximum admissible remuneration	302.10

2014 - June [2A] (Or) (i) A corporate assessee, who inadvertently failed to claim deduction under section 80IB during the initial years, cannot claim deduction under the said section for the remaining years during the period of eligibility, in spite of fulfillment of stipulated conditions. Examine the assertion contained in the above para in the background of judicial decision.

(5 marks)

- (ii) Whether MAT credit admissible under section 115JAA has to be set-off against the assessed tax payable before calculating interest under sections 234A, 234B and 234C. (5 marks)
- (iii) Discuss the provisions regulating determination of fair market value of ESOPs. (5 marks)

Answer:

(i) Where assessee is a company entitled to deduction under section 80 IB which it did not claim in the initial years, it can claim the said deduction for the remaining years during the period of eligibility, if the conditions are satisfied. [*Praveen Soni v CIT (2011) (Del)*]

(ii) No, MAT credit admissible in terms of Section 115JAA has to be set off against the tax payable before calculating interest only under sections 234B and 234C. [*CIT v Deccan Creations Pvt. Ltd. (2011) (Kar)*]

(iii) **Determination of Fair Market Value (FMV) of ESOPs on the date of exercise of option:**

(a) **Where shares in the company are listed on a single stock exchange:** FMV will be average of opening and closing prices of

shares on the date of exercise of option. If on the date of exercise of option there is no trading in shares, the FMV shall be the closing price of the share on any recognised stock exchange on a date closest to the date of exercise of option and immediately preceding such date of exercise of option.

- (b) **Where shares in the company are listed on more than one recognised stock exchange:** FMV will be average of opening and closing price of shares on the date of exercise of option on a recognised stock exchange which records the highest volume of trading in the shares.

If on the date of exercise of option there is no trading in shares, the FMV shall be the closing price of the share on a recognised stock exchange which records the highest volume of trading on a date closest to the date of exercise of option and immediately preceding such date of exercise of option.

- (c) **Where shares in the company are not listed on a recognised stock exchange:** FMV will be value on a "specified date" as determined by a Category I merchant banker registered with SEBI.

Specified date means the date of exercise of option or any date earlier than the date of exercise of option, not being a date which is more than 180 days earlier than the date of exercise of option.

2015 - June [1] (c) Explain whether the benefit of exemption under section 54EC would be available in the case of 'capital gains arising on transfer of depreciable asset'. (5 marks)

Answer:

Benefit under section 54EC, etc. available even on transfer of depreciable assets:

Although as per Section 50 the profit arising from the transfer of depreciable asset shall be a gain arising from the transfer of short term capital asset, hence short term capital gain but Section 50 nowhere says that depreciable asset shall be treated as short term capital asset. Section 54EC [or say 54EC or 54F, etc.] is in independent provision which is not controlled by

Section 50. If the conditions necessary under Section 54E are complied with by the assessee, he will be entitled to the benefit envisaged in Section 54E, even on transfer of depreciable assets held for more than 36 months. [*CIT V Assam Petroleum Industries (P.) Ltd. (2003)*].

2015 - June [2] (b) Comment on the following in the context of provisions contained in the Income-tax Act, 1961:

- (i) The provisions of section 115JB are applicable in case of foreign companies. (2 marks)
- (ii) The provisions of dividend distribution tax are applicable to an undertaking or enterprise engaged in developing, operating and maintaining a special economic zone (SEZ). (3 marks)

Answer:

- (i) Section 115JB of the Income Tax Act, 1961, states that all companies having book profits under the Companies Act shall have to pay MAT at the rate of 18.5%, there is no provision restricting its applicability to only domestic companies. Thus, MAT is applicable to all companies irrespective of it being a domestic company or a foreign company. However, MAT is required to be computed with reference to book profits computed on the basis of profit and loss account prepared as per the Companies Act, and the Companies Act requires only foreign companies, having a place of business within India, to prepare and file its financial statements with the Registrar of Companies. Hence, the MAT provisions shall not apply to foreign companies, which do not have any presence in India.

Alternative Answer:

The Authority for Advance Ruling has delivered the ruling in the case of the Timken Company holding that the provisions of Section 115JB of the Income-tax Act, 1961 levying MAT on the book profit of a company would not apply to a foreign company not having any physical presence in India. Hence, provisions of Section 115JB are applicable only to those foreign companies which have physical presence in India.

(ii) Applicability of DDT on SEZ

Finance Act, 2011 inserted a proviso to sub-section 6 of Section 115-O by which the provisions of Section 115-O shall also be applicable on an enterprise or undertaking engaged in developing, operating and maintaining a SEZ.

2015 - June [2] (c) Explain the meaning of 'eligible expenses' for the purposes of claiming benefit under section 35D. Also enumerate these eligible expenses. (5 marks)

Answer:

Preliminary expenses are specified expenses incurred before setting up of the business or the expenses are incurred in connection with extension of an undertaking or in connection with setting up of a new unit.

Specified preliminary expenses are:

- (a) Preparation of feasibility report;
- (b) Conducting market survey or any other survey necessary for the business;
- (c) Preparation of Project report;
- (d) Engineering services relating to the business;
- (e) Legal charges for drafting an agreement relating to the setting up or conduct of the business;
- (f) Legal charges for drafting and printing of Memorandum of Association (MOA) and Articles of Association (AOA);
- (g) Registration fees of a company paid to Registrar of Companies;
- (h) Expenses and legal charges incurred in drafting, printing and advertising for prospectus;
- (i) Expenditure incurred on issue of shares or debentures like underwriting commission, brokerage.

2015 - Dec [2] (b) Narrate the provisions of the Income-tax Act, 1961, with respect to surcharge on income-tax for various types of assesseees for the assessment year 2016-17. (5 marks)

(c) State the rate of deduction allowable under the Income-tax Act, 1961 while assessing income from business or profession in the following cases:

- (i) For acquisition and installation of new plant or machinery by a manufacturing company.

- (ii) For expenditure (revenue or capital) on in-house scientific research by a company engaged in business or manufacture or production of any article other than those specified in the Eleventh Schedule of the Income-tax Act, 1961.
- (iii) Contribution to approved scientific research association including social and statistical research.
- (iv) Capital expenditure (other than on acquisition of land, goodwill or financial instrument) incurred for setting-up and operating cold chain facility.
- (v) Expenditure incurred by companies on notified skill development projects. (5 marks)

Answer:

- (b) Provisions of Income Tax Act, 1961 with respect to Rate of Surcharge are discussed below:
1. For resident individuals (including senior citizens and super senior citizens). Co-operative societies, firms and local authorities whose total income exceeds ₹ 1 crore - 12% on income tax payable.
 2. For domestic company having a total income of exceeding ₹ 1 crore but not exceeding ₹ 10 crore - 7% on income tax payable.
 3. For domestic company having a total income of exceeding ₹ 10 crore - 12% on income tax payable.
 4. For company other than a domestic company having a total income exceeding ₹ 1 crore but not exceeding ₹ 10 crore - 2% on income tax payable.
 5. For company other than a domestic company having a total income exceeding ₹ 10 crore - 5% on income tax payable.
- (c) (i) Section 32 AC(1) — @ 15%
- (ii) Section 35 – An assessee can claim the following expenditure as a deduction:
- (a) revenue expenses (Sec. 35)
 - (b) capital expenses
- All revenue expenses laid out or expended on scientific research during the previous year are full allowed as a deduction. It has further been provided that following revenue expenses, expended or laid out during three years immediately preceding the

commencement of the business shall be deemed to be the expenditure of the previous year in which the business commences and therefore, shall be allowable in that year to the extent these are certified by the prescribed authority.

- (iii) Payment to outside agencies for:
 - (a) Scientific research [Sec. 35 (1) (ii) & ii (a)]-175%
 - (b) Research in Social Science or Statistical - 125% research [Sec. 35 (1) (iii)]
- (iv) Sec. 35AD (1A) — 150%
- (v) Sec. 35CCD — 150%

2016 - June [2] (c) Give examples of five incomes in India which are exempt under section 10 in respect of non-residents. (5 marks)

2016 - June [2A] (Or) (iii) What is an LLP? How is it different from a partnership firm? (3 marks)

PRACTICAL QUESTIONS

2007 - June [3] (b) Sun Bright Ltd., an Indian company, furnishes following particulars of its income for the previous year 2015-16. Calculate its total income and income-tax liability for the assessment year 2016-17:

	₹
Income from business	5,20,000
Dividend received during the year:	
— from Indian company	20,000
— from foreign company	5,000
Gains from transfer of capital assets:	
— short term capital gains	25,000
— long term capital gains	50,000
Agricultural income in India	35,000

Additional information:

- (i) Income from business includes ₹ 1,50,000 profit earned from a new small scale industry set up on 1st October, 2015 which is eligible for deduction under section 80-IB.
- (ii) Business expenses already charged from business income include

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₹ 10,000 revenue expenditure and ₹ 30,000 capital expenditure on family planning programme for employees.

(iii) Company has debited following donations in the profit and loss account of the business of company:

- Rajiv Gandhi Foundation: ₹ 50,000; and
- Prime Minister's National Relief Fund: ₹ 25,000.

(8 marks)

Answer:

**Computation of Total Income for the
Assessment Year 2016-17**

	Amount ₹
Income from Business as per P/L A/c	5,20,000
<i>Add:</i> Disallowed Expenditure	
(a) Donation	75,000
(b) Capital Expenditure on Family Planning (₹ 30,000-6,000)	(+) 24,000
	<u>99,000</u>
	6,19,000
Capital Gains on long term	50,000
Capital Gain on short-term	25,000
Dividend from Indian Co.	75,000
Dividend from Foreign Co.	Exempt
Agriculture Income	<u>5,000</u>
Gross Total Income	<u>5,000</u> 6,99,000

Less: Deduction

Under Section 80-G

(i) PMNRF	25,000		
(ii) 50% of Rajiv Gandhi Foundation	<u>25,000</u>	<u>50,000</u>	<u>(50,000)</u>
Total Income			<u>6,49,000</u>
Tax Liability			
(i) 20% on LTCG	[50,000]		10,000
(ii) 30% on other Income	[5,99,000]		<u>1,79,700</u>
			1,89,700
(iii) Surcharge			<u>NIL</u>
			1,89,700
(iv) 2% Education Cess & 1% SHEC			<u>5,691</u>
Tax Liability			<u>1,95,390</u>

2008 - June [1] A company claims deduction of certain expenditures in computation of its total income under the Income-tax Act, 1961. Consider the allowability or otherwise of the following expenditures giving brief reasons for your answers:

- (i) Payments made by the company for sponsoring a sports tournament.
- (ii) Water pollution treatment plant installed permanently in the factory in compliance with statutory requirements.
- (iii) As a holding company, it has borrowed money and advanced the same to its subsidiary in whose business it has deep interest. The subsidiary uses the same for its business. The company claims interest paid on such borrowings as a deduction.
- (iv) Expenditure incurred for earning share income from a firm.
- (v) Provision made in the accounts of the company on a scientific basis in respect of liabilities estimated to arise under warranty provided to customers in respect of products sold. (4 marks each)

Answer:

- (i) This is an activity of business promotion through advertisement and the sponsoring of the tournaments carries with it. Hence it is allowable as a revenue expenditure.

- (ii) It is a revenue expenditure because expenses incurred under a statutory stipulation rather than on personal wish.
- (iii) Where it is obvious that a holding company has deep interest in its subsidiary and hence if the holding company advances borrowed money to its subsidiary and the same has been used by the subsidiary for some business purpose, then the assessee will be entitled to a deduction of interest under **Section 36(1) (iii)**.
- (iv) According to **Section 14-A**, if the income is exempt any expenditure incurred on earning that income shall not be allowed as deduction.
- (v) Warranty provided on a scientific basis or past experience is allowable as deduction.

2009 - Dec [2] (b) Modern Ltd. entered into an agreement with Synergy Ltd. for granting on lease to Synergy Ltd. its 8000 sq. mtr. land lying vacant adjacent to the factory premises of Synergy Ltd. for a period of 12 years commencing from May, 2003. Under the terms of the agreement, Synergy Ltd. had to build a factory building, pay an annual rent @ ₹100 per sq. mtr. of the leased land of 8,000 sq. mtr. and surrender the building to Modern Ltd. at the end of the lease without any consideration. Synergy Ltd. complied with the terms and conditions of the lease agreement.

The depreciated value of the building surrendered and taken possession by Modern Ltd. in May, 2015 was ₹4.22 crore. Accounts department of Modern Ltd. is of the opinion that an equivalent amount is to be taken in the accounts of the year 2015-16 as income received.

Critically examine the matter and offer your comments. (3 marks)

Answer:

Accounts Department's opinion of Modern Ltd. is incorrect. The depreciated value of the building is of course to be brought into the books of accounts.

However, the equivalent amount viz. ₹ 4.22 crores cannot be treated as income from the business. By its very nature it is a capital receipt and is not a revenue income. The amount cannot be treated as a revenue receipt unless it is conclusively established that this represented deferred rent as the lease rent was unreasonably low. Further Modern Ltd. is not in the business of real estate to treat the benefit as incidental revenue receipt earned during the course of such business.

2010 - Dec [3] (a) The book profits of a company in the previous year 2015-16 computed in accordance with section 115JB is ₹ 15 lakh. If the total income computed for the same period as per the provisions of the Income-tax Act, 1961 is ₹ 3 lakh, calculate the tax payable by the company in the assessment year 2016-17 and also indicate whether the company is eligible for any tax credit. (5 marks)

Answer :

1. Calculation of tax liability u/s 115JB:

Particulars	Details	Amount
Book profit	Given	15,00,000
Tax Liability	18.5% of ₹ 15 lakhs	2,77,500
Add: Surcharge		NIL
Tax Liability after surcharge		2,77,500
Add: Education cess and SHEC @ 3%	3% of ₹ 2,77,500	8,325
Tax Liability after cess		2,85,825

2. Calculation of tax liability as per Income Tax Act, 1961:

Particulars	Details	Amount
Total Income	Given	3,00,000
Tax Liability	30% of ₹ 3 lakhs	90,000
Add: Education cess and SHEC @ 3%		2,700
Tax Liability after cess		92,700

3. Computation of Final Tax payable:

Particulars	Details	Amount
Tax Liability	Tax Liability u/s 115JB > Normal Tax liability	2,85,825
Actual tax liability		2,85,825

The company is eligible for MAT tax credit of ₹ 1,93,125 (₹ 2,85,825 - ₹ 92,700), which can be carried forward for 10 years or is to be awaited within 10 years u/s 115JAA.

2012 - Dec [2] (b) Whether minimum alternate tax (MAT) under section 115JB is payable in advance and interest under sections 234B and 234C is payable on failure to pay such advance tax? Also explain whether MAT credit admissible under section 115JAA has to be set-off against the assessed tax payable before calculating the interest under sections 234A, 234B and 234C. You may take help of decided case law, if any. (6 marks)

Answer :

Companies liable to pay tax on the basis of MAT under section 115JB are required to pay advance tax and interest under sections 234B and 234C is payable on failure to pay such advance tax. [JCIT v Rolta India Ltd. (2011)]

For the purpose of computing interest chargeable under section 234A, 234B and 234C, credit of MAT under section 115JAA has to be set off against the assessed tax payable. [CIT v Tulsian NEC Ltd. (2011)]

2013 - June [2] (a) The net profit of Renuka Ltd., an Indian company, as per its profit and loss account prepared as per the Income-tax Act, 1961 is ₹ 90,00,000 after debiting and crediting following items:

	₹
Provision for income-tax	5,00,000
Provisions for deferred tax	3,00,000
Proposed dividend	7,50,000
Depreciation including depreciation on revaluation of assets ₹ 20,00,000 debited to profit and loss account	60,00,000
Profit from industrial unit in SEZ area	80,000
Provision for permanent diminution in the value of investments	70,000
Compute tax liability under section 115JB for the assessment year 2016-17.	(9 marks)

Answer:

Computation of Tax Liability of Renuka Limited for Assessment Year 2016-17.

(a) Computation of Book Profits :

		₹
Net Profit as per Profit & Loss A/c		90,00,000
Add: Non-admissible expenditure :		
— Provision for Income-tax	5,00,000	
— Provision for Deferred tax	3,00,000	

— Proposed Dividend	7,50,000	
— Depreciation	60,00,000	
Provision for diminution	70,000	76,20,000
		1,66,20,000
Less: Inadmissible Incomes and Expenditure :		
Depreciation allowed		40,00,000
Book Profits		1,26,20,000

(b) Computation of Tax liability under section 115 JB	
Book Profit u/s 115 JB	1,26,20,000
18.5% of Book Profit	23,34,700
Add: Surcharge (as total income is exceed ₹ 1,00,00,000/-) hence surcharge is applicable @ 5%	1,16,735
Tax & Surcharge	24,51,435
Add: Education Cess & SHEC @ 3%	73,543
Tax liability u/s 115 JB (R/off)	25,24,978
Total Tax liability as per normal tax rates @ 30% of ₹ 1,26,20,000	37,86,000
Add: Education Cess @ 2%, and SHEC @ 1%	1,19,259
Here, the tax liability as per MAT provision is less than the tax liability as per normal tax provisions, therefore the tax payable shall be ₹ 39,05,259.	39,05,259

2013 - June [3] (a) A limited liability partnership (LLP) has following income for the assessment year 2016-17: ₹

Profit from business eligible for deduction @ 100% of profits under section 80-IA	32,00,000
Profit from other business	48,00,000

Compute the tax payable by the LLP, assuming that it has no other income during the assessment year 2016-17. (5 marks)

Answer:

(i) **Computation of Total Income and Income Tax Payable
For Assessment Year 2016-17.**

As per the normal provisions of the Act	₹
Profits & gains of business or profession (Total)	80,00,000
Less : Deduction under section 80-IA	<u>32,00,000</u>
Total Income	48,00,000
Tax payable @ 30%	14,40,000
Add : EC @ 2% & SHEC @ 1%	<u>43,200</u>
Tax Payable	<u>14,83,200</u>

(ii) **Computation of Alternate Minimum Tax (AMT)**

	₹
Profits & Gains of business or profession	48,00,000
Add : Deduction under section 80IA	<u>32,00,000</u>
Adjusted Total Income	80,00,000
AMT @ 18.5%	14,80,000
Add: EC @ 2% & SHEC @ 1%	<u>44,400</u>
AMT Payable	<u>15,24,400</u>

Here, as per Section 115JC, since the income tax payable as per normal provisions of the Income Tax Act is less than the AMT, the LLP would be liable to pay ₹ 15,24,400 as tax.

2013 - Dec [2] (b) X Ltd. charged depreciation on its fixed assets at the rate prescribed in the income tax rules. However, the Assessing Officer disallowed the same and allowed the rate as prescribed in the Companies Act, 2013 for the purpose of computation of book profit under section 115JB for the previous year 2015-16. Examine the legality of action taken by the Assessing Authority. (5 marks)

Answer:

The action of the Assessing Officer is not sustainable in law. He has limited power to look into that the books of account have been properly maintained as per Indian Companies Act, 2013. He does not have the power to question the profit shown in the profit and loss account. This issue was settled by the Supreme Court in *Malayala Manorama Co. Ltd. v. CIT (2008) 300 ITR 251*.

The Apex Court observed that for the purpose of computation of book profit under section 115JB, the Assessing Officer's power is restricted to examining whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. Thereafter, he only has the limited power of making additions and deductions as provided for in Explanation 1 to section 115JB. The Assessing Officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in Explanation 1 to section 115JB. Where an assessee is consistently charging depreciation in its books of account at the rates prescribed in Income-tax Rules and the accounts of the assessee have been prepared and certified as per the provisions of the Companies Act, the Assessing Officer does not have any jurisdiction under section 115JB to rework the net profit of the assessee by substituting the rates of depreciation prescribed under the Companies Act.

Applying the ratio of the Supreme Court decision to this case, it may be concluded that the action of the Assessing Officer is not correct.

2013 - Dec [3] (a) Comment in brief on allowability of following expenditure while computing the income under the head 'profits and gains of business or profession' for the assessment year 2016-17:

- (i) Kanha commenced operations of the business of setting-up a warehousing facility for storage of sugar on 1st June, 2015. He incurred capital expenditure on purchase of building during the period from January, 2015 to March, 2015 exclusively for the above business and capitalised the same in its books of account on 1st June, 2015.
- (ii) Ms. Radha incurred expenditure on purchase of computer software and capitalised such expenditure in her books of account.
- (iii) Murli is operating a pharmaceutical factory. he incurred expenditure in providing freebies to medical practitioners. (3 marks each)

Answer:

- (i) Deduction of 100% of the capital expenditure is available under section 35AD for Assessment year 2016-17 in respect of specified business of setting up and operating a warehousing facility for storage of sugar, if following conditions are fulfilled:

- (a) Operations are commenced on or after 01-04-2014.
- (b) If expenditure is incurred prior to the commencement of its operations wholly and exclusively for the specified business, and the amount is capitalised in the books of accounts of the assessee on the date of commencement of its operations; and
- (c) Expenditure should not be incurred on acquisition of any land, goodwill or financial instrument.

Hence, 100% deduction will be allowed for capital expenditure incurred and capitalised, excluding the expenditure incurred on acquisition of land.

- (ii) The expenses incurred by assessee on purchase of computer softwares are revenue in nature in view of rapid advances and changes in technical know how.

Thus, such expenditure shall be allowable.

- (iii) As per Circular No. 5/2012, Dated 1-8-2012, some pharmaceutical and allied health sector industries are providing freebies (freebies) to medical practitioners and their professional associations in violation of the regulations issued by Medical Council of India (the 'Council') which is a regulatory body constituted under the Medical Council Act, 1956. The Claim of any expense incurred in providing above mentioned or similar freebies in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 shall be inadmissible under section 37(1) of the Income Tax Act being an expense prohibited by the law.

This disallowance shall be made in the hands of such pharmaceutical or allied health sector Industries or other assessee which has provided aforesaid freebies and claimed it as a deductible expense in its accounts against income.

The sum equivalent to value of freebies enjoyed by the aforesaid medical practitioner or professional associations is also taxable as business income or income from other sources as the case may be depending on the facts of each case.

Thus, expenditure incurred by Murli in providing freebies to medical practitioners is disallowed.

2014 - Dec [1] (b) XYZ LLP has income of ₹ 72,00,000 under the head 'profits and gains of business or profession'. One of its business is eligible for deduction @ 100% of profits under section 80-IB for the assessment year 2016-17. The profit from such business included in the business income is ₹ 58,00,000. Compute the tax payable by the LLP, assuming that it has no other income during the previous year 2015-16. (5 marks)

(c) The book profits of a company in the previous year 2015-16 computed in accordance with section 115JB are ₹ 60,00,000. If the total income for the same period computed as per the provisions of the Income-tax Act, 1961 is ₹ 12,00,000, calculate the tax payable by the company in the assessment year 2016-17 and also indicate whether the company is eligible for any tax credit. (5 marks)

Answer:

(b) (i) Computation of Total Income and Income Tax Payable for Assessment Year 2016-17.

	₹
As per the normal provision of the Act	
Profits & Gains of business or Profession (Total)	72,00,000
Less: Deduction under section 80-IB	58,00,000
Total income	<u>14,00,000</u>
Tax payable @ 30%	4,20,000
Add: EC @ 2% SHEC @ 1%	12,600
Tax Payable	<u>4,32,600</u>

(ii) **Computation of Alternate Minimum Tax (Amount)**

	₹
Profits & Gains of business or profession	14,00,000
Add: Deduction under section 80 IB	58,00,000
Adjusted Total Income	<u>72,00,000</u>
AMT @ 18.5%	13,32,000
Add: EC @ 2% & SHEC @ 1%	39,960
	<u>13,71,960</u>

Here, as per Section 115JC, Since, the income tax payable as per normal provisions of the Income Tax Act is less than the AMT, the LLP would be liable to pay ₹ 13,71,960 as tax.

Particulars	Amount (₹)
(iii) Computation of Alternate Minimum Tax (AMT)	
Adjusted Total Income (including profit u/s 80-IB)	72,00,000
AMT on adjusted Total Income @ 18.5%	13,32,000
Education Cess & SHEC @ 3% (2% + 1%)	39,960
Total Tax	13,71,960
(iv) Tax payable (higher of AMT or Normal Tax)	13,71,960
(v) Tax Credit	9,39,360

Note:

Since the regular income tax payable is less than AMT, the adjusted total income would be deemed to be the income of LLP and it would be liable to tax @ 18.5% plus cess. Further the LLP would be eligible for credit in 10 subsequent years to the extent of difference between the AMT and Normal Tax, in the year in which the tax payable under regular provisions exceeds the AMT.

Answer:**(c)****1. Calculation of tax liability u/s 115 JB:**

Particulars	Details	Amount
Book profit	Given	60,00,000
Tax liability	18.5% of 60 lakh	11,10,000
Add: Surcharge		NIL
Tax liability after surcharge		11,10,000
Add: Edu. cess & SHEC @ 3%		33,300
Tax liability after cess		<u>11,43,300</u>

2. Calculation of tax liability as per Income Tax Act, 1961:

Particulars	Details	Amount
Total income	Given	12,00,000
Tax liability	30% of 12 lakh	3,60,000
Add: Edu. cess & SHEC @ 3%		10,800
Tax liability after cess		<u>3,70,800</u>

3. Computation of final tax payable:

Particulars	Details	Amount
Tax liability	Tax liability u/s 115J B> Normal Tax liability	11,43,300
Actual Tax liability		11,43,300

The company is eligible for MAT tax credit of ₹ 7,72,500 (₹ 11,43,300 - ₹ 3,70,800) which can be carried forward for 10 years or is to be awaited within 10 years u/s 115 JAA.

2014 - Dec [2A] (Or) (a) You are the Financial Controller in a manufacturing company having turnover exceeding ₹ 800 crore. Write a report for your Managing Director highlighting the legal position pertaining to the following:

- (i) Tax on distributed income by a company for buy-back of unlisted shares.
- (ii) Time-limit for completion of assessment/ reassessment when a reference is made to the Transfer Pricing Officer (TPO).
- (iii) Allowance for acquisition and installation of new plant and machinery under section 32AC.
- (iv) Tax consequences of assignment of keyman insurance policy before maturity by employer-company to its employee. (15 marks)

Answer:

- (i) A company, having distributable reserves, has two options to distribute the same to its shareholders either by declaration and payment of dividends to the shareholders or by way of purchase of its own shares (i.e. buy back of shares) at a consideration fixed by it. In the first case, the payment by company is subject to DDT and income in the hands of shareholders is exempt. In the second case the income is taxed in the hands of shareholder as capital gains.

Unlisted Companies, as part of tax avoidance scheme, are resorting to buy back of shares instead of payment of dividends in order to avoid payment of tax by way of DDT particularly where the capital gains arising to the shareholders are either not chargeable to tax or are taxable at a lower rate.

In order to curb such practice the Act has amended the Act, by

insertion of new Chapter XII-DA, to provide as under:

(1) Tax on distributed income to shareholders [Section 115QA]

(A) Additional income tax on buy back of shares [Section 115QA(1)]

- (i) In addition to the income tax payable by the company on its total income as per the provisions of the Act, the domestic company shall be liable to pay additional income tax @ 20% on any amount of distributed income paid by the company on buy back of shares not being shares listed on a recognised stock exchange.
- (ii) Rate of additional income tax is 20%+12%SC+3%Cess i.e. 23.072%

(B) Additional income tax payable even if the total income of domestic company is exempt [Section 115QA(2)]

Notwithstanding that no income tax is payable by a domestic company on its total income computed in accordance with the provisions of this Act, the tax on the distributed income under section 115QA(1) shall be payable by such company.

(C) Time limit for deposit of additional income tax [Section 115QA(3)]

The principal officer of the domestic company and the company shall be liable to pay the tax to the credit of the Central Government within 14 days from the date of payment of any consideration to the shareholders on buy back of shares referred to in Section 115QA(1).

(D) Additional income tax to be treated as final payment [Section 115QA(4)]

The tax on the distributed income by the company shall be treated as the final payment of tax in respect of the said income and no further credit therefore shall be claimed by the company or by any other person in respect of the amount of tax so paid.

(E) Income charged to tax not allowed as deduction [Section 115QA(5)]

No deduction under any other provision of this Act shall be allowed to:

- (a) the company; or
- (b) a shareholder

In respect of the income which has been charged to tax under section 115QA(1) or the tax thereon.

(2) Interest payable for delayed payment of tax [Section 115QB]

Where the principal officer of the domestic company and the company fails to pay the whole or any part of the tax on the distributed income referred to in Section 115QA(1), within the time allowed under section 115QA(3) of that section, he or it shall be liable to pay simple interest @ 1% for every month or part thereof on the amount of such tax for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.

(3) When company is deemed to be assessee in default [Section 115QC]

If any principal officer of a domestic company and the company does not pay tax on distributed income in accordance with the provisions of Section 115QA, then, he or it shall be deemed to be an assessee in default in respect of the amount of tax payable by him or it and all the provisions of this Act for the collection and recovery of income tax shall apply.

Exemption to the shareholder on account of buy back of shares [Section 10(34A)] [W.e.f. A.Y. 2014-15]

Since, the company has to pay additional income tax on buy back of shares, any income arising to an assessee, being a shareholder, on account of buy back of shares (not being listed on recognised stock exchange), shall be exempt.

- (ii) Where a reference under section 92CA(1) is made, an order under section 92CA(3) may be made at any time before 60 days prior to the date on which the period of limitation referred to in Section 153, or as the case may be, in Section 153B for making the order of assessment

or re-assessment or re-computation or fresh assessment, as the case may be, expires.

- (iii) The date of installation of machinery or plant costing more than ₹ 100 crores for investment allowance @ 15% u/s 32AC extended to 31.03.2017 and 15% shall also be allowed to any assessee who installed new asset of ₹ 100 crore or less but more than ₹ 25 crores in any previous year upto 31.03.2017.
- (iv) Where maturity amount is received by the legal heir on the death of employee under keyman insurance policy, then such amount is taxable as Income from other sources in the hands of recipient.

2015 - June [1] (a) Amar, an individual, resident of India, receives the following payments after TDS during the previous year 2015-16:

	₹
(i) Professional fees on 17.08.2015	2,40,000
(ii) Professional fees on 04.03.2016	1,60,000

Both the above services were rendered in Pakistan on which TDS of ₹ 50,000 and ₹ 30,000 respectively has been deducted. He had incurred an expenditure of ₹ 2,40,000 for earning both these receipts/income. His income from other sources in India is ₹ 3,00,000 and he has made payment of ₹ 70,000 towards LIC.

Compute the tax liability of Amar and also the relief under section 91, if any, for assessment year 2016-17. (5 marks)

(b) Apple Industries Ltd. provides the following information for the financial year 2015-16:

Net profit as per statement of profit and loss after debiting/crediting the following:	₹ 120 lakh
Proposed dividend	₹ 30 lakh
Profit from unit established in SEZ	₹ 20 lakh
Provision for income-tax	₹ 18 lakh
Provision for deferred tax	₹ 10 lakh
Provision for permanent diminution in value of investments	₹ 3 lakh
Depreciation debited to statement of profit and loss ₹ 10 lakh includes depreciation on revaluation of assets to the tune of	₹ 1 lakh

Brought forward losses and unabsorbed depreciation as per books of the company are as follows:

Previous Year	Brought Forward Losses	Unabsorbed Depreciation
2011-12	1	4
2012-13	1	1
2013-14	10	5

(₹ in lakh)

Compute the book profit of the company as per section 115JB for the assessment year 2016-17. (5 marks)

Answer:

(a) Computation of Tax Liability of Amar for Assessment Year 2016-17

Particulars	Amount (₹)	
Income under head Business & Profession		
Gross fees for services rendered in Pakistan on 17.08.2015	2,90,000	
Gross fees for services rendered in Pakistan on 04.03.2016	1,90,000	
Less: Expenditure incurred	(2,40,000)	2,40,000
Income from other sources	3,00,000	3,00,000
Gross total Income		5,40,000
Deduction u/s 80C		
Payment towards LIC	70,000	(70,000)
Total Income		4,70,000
Tax Liability		
Tax on first 2,50,000	Nil	
Tax on remaining 2,20,000@10%	22,000	
Rebate u/s 87A	(2,000)	

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Cess @2% of (22,000-2,000)	400	
SHEC @ 1% of (22,000-2,000)	200	20,600
Tax Relief	10,519	(10,519)
Tax Payable		10,081
Rounded off		10,080

Note:

- Gross professional fee = Payment after TDS + TDS
Thus, professional fee on 17.08.2015 = ₹ (2,40,000 + 50,000)
Professional fees on 04.03.2016 = ₹ (1,60,000 + 30,000)
- Tax Relief u/s 91
Income for services rendered in Pakistan taxed in India
= (2,40,000 + 50,000 + 1,60,000 + 30,000) - 2,40,000
= ₹ 2,40,000
Income assessed in Pakistan
= (2,40,000 + 50,000 + 1,60,000 + 30,000)
= ₹ 4,80,000
Tax paid in Pakistan = (50,000 + 30,000) = ₹ 80,000
 - Tax on double taxed Income in India
= (20,600 × 2,40,000/4,70,000)
= ₹ 10,519
 - Tax on double taxed Income in Pakistan
= (80,000 × 2,40,000/4,80,000)
= ₹ 40,000Tax relief u/s 91 will be lower of (i) or (ii)
Tax relief = ₹10,519

**(b) Computation of Books Profits of Apple Industries Ltd.
for FY 2015-16**

Particulars	Amount (₹ in lakhs)	
	Net profit as per P & L A/c	120
<i>Add:</i>		
Proposed dividend	30	
Provision for Income Tax	18	
Provision for deferred Tax	10	
Provision for permanent diminution in value of investments	3	
Depreciation debited to P/L statement	10	71
<i>Less:</i>		
Depreciation (excluding dep. on revaluation)	9	
Aggregate unabsorbed depreciation (4+1+5)	10	(19)
Book Profit U/s 115JB		172

Note: Since, unabsorbed depreciation is less than brought forward losses, unabsorbed depreciation is taken.

Profit from unit established in SEZ is not deductible.

2015 - June [2A] (Or) (i) (a) Tinoo Ltd. is eligible to claim deduction of ₹ 2 crore under section 80-IA. It has filed its return of income after the due date as specified in section 139(1). Discuss the allowability of deduction under section 80-IA. (2 marks)

(b) Sahil sold a residential house on 15th March, 2016 to Neeraj for ₹ 30 lakh of which value applied by stamp valuation authority was ₹ 38 lakh. Sahil purchased this house in March, 2005 for ₹ 12 lakh but the stamp duty value of the same was ₹ 15 lakh. In the context of these transactions, compute the following —

(i) Income out of this transaction, if any, in the hands of Neeraj.

(ii) Cost of acquisition to Neeraj. (2 marks)

(c) An HUF, resident in India, has a gross total income of ₹ 5,40,000 for the assessment year 2016-17. It made a payment of ₹ 50,000 for life

insurance premium of one of its members. Whether the HUF is entitled to claim the rebate as per Section 87A? (1 mark)

Answer:

- (a) No deduction shall be allowed to the assessee unless he furnishes a return of his income of the relevant assessment year on or before the due date specified under section 139(1).
- (b) (i) In order to prevent tax avoidance by transferring immovable property at prices significantly lower than the circle rates Section 56 (2)(vii) has been amended with effect from Assessment Year 2014-15 to provide that where any immovable property is received for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees the difference between the stamp duty value and the consideration shall be chargeable to tax in the hands of the individuals or HUF as “Income from other sources.”
- (a) In this case, Sahil has sold the residential house to Neeraj at ₹ 30 lakhs whereas the stamp value ₹ 38 lakhs thus the difference amount i.e. ₹ 8 lakhs would be chargeable as income from other sources in the hands of Neeraj.
- (b) As per the provisions of Section 49(4) the cost of acquisition of residential property in the hands of Neeraj shall be taken as ₹ 38 lakhs.
- (ii) Cost of acquisition is the price which the purchaser has paid. Therefore, the cost of acquisition to Neeraj is ₹ 30 lakh.
- (c) No. Rebate under section 87A is available only in the case of a resident individual if his/her taxable income is ₹ 5,00,000 or less.

2015 - Dec [1] (a) Jatin submits the following information relevant for the assessment year 2016-17:

	₹
Short-term capital gains	1,25,000
Income from owning and maintaining race horses	20,000
Income from units of mutual fund	17,000
Long-term capital gains in respect of buildings	7,000

Business profits	14,000
The following items have been brought forward:	
Long-term capital loss in respect of assessment year 2013-14	30,000
Brought forward business loss from assessment year 2014-15	15,000
Brought forward loss from the activity of owning and maintaining race horses from the assessment year 2012-13	27,000
Speculation losses of the assessment year 2013-14	35,000

Calculate the gross total income of Jatin for assessment year 2016-17.

(5 marks)

- (c) Alfa Ltd., a domestic company purchased its own unlisted shares on 4th July, 2015. The consideration for buy-back amounting to ₹ 10.50 lakh was paid on the same day. The amount received by the company two years back for issue of such shares was ₹ 6.5 lakh. The Assessing Officer has issued a notice to tax the gains on shares to which company denies. State the correctness of the contention of Assessing Officer and also compute the tax payable, if any. Also, compute the amount of interest, if any, payable by company assuming that the tax due is paid to the credit of the Central Government on 29th September, 2015.

(5 marks)

Answer:

- (a) **Computation of Gross total Income of Mr. Jatin for the Assessment Year 2016-17:**

Particulars	Amount in (₹)	Amount in (₹)
A. Profits and Gains of Business & Profession		
Business Profits	14,000	
Less: B/F Business Loss from the AY 2013-14	(15,000)	
Loss to be C/F to next Year	(1,000)	
B. Capital Gains		
Short-term Capital Gains		

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Long-term Capital Gains	1,25,000	
Less: B/F Long-Terms Capital Loss from AY 2012-13	7,000	
Loss to be C/F to next Year	(30,000)	1,25,000
C. Income From Other Sources	(23,000)	
Income from owning and maintaining Race Horses		
Less: B/F Loss from owning and maintaining Race horses from AY 2011-12	20,000	
Balance loss cannot be C/F as the limit of 4 Years expired with this AY	27,000	
B/F Speculative losses from the AY 2012-13	(7,000)	
Less: Speculative Incomes	(35,000)	
Speculative losses carried forward	-	-
D. Gross Total Income	(35,000)	1,25,000

(c) As per section 115QA of the Income Tax Act, 1991, any amount of distributed income by the company on buy-back of shares (not being shares listed on a recognised stock exchange) from a shareholder shall be charged to tax.

Further, such company shall be liable to pay additional income-tax at the rate of 20% on the distributed income.

Thus, the contention of the Assessing Officer relating to taxability of the resulting from the buy back of shares is correct.

Computation of Tax Payable by Alfa Ltd.

Particulars	Amount (in ₹)
Consideration for Buy Back	10,50,000
Consideration received for issue of shares	(6,50,000)
Distributed Income	4,00,000
Additional Tax @ 20%	80,000
Surcharge @ 10%	8,000

Cess & SHEC @ (2% + 1%)	2,640
Total Tax Payable	90,640

* Rate of surcharge applicable 10%

The above tax should be paid on or before 18th July, 2015.

However, it was paid on 29th September, 2015.

Thus, for this delay interest is payable @ 1% per month for each month in whole or part. Therefore, interest is payable for 3 months.

Interest = ₹ (90,640 × 1/100 × 3) = ₹ 2,719.20

= ₹ 2,719

2016 - June [1] (a) A company wants to raise capital of ₹ 40,00,000 for a project wherefrom earnings before tax would be 30% of the capital employed. The company can raise debt finance @ 12% p.a.

The following three alternatives for raising capital are available for the company:

- (i) ₹ 40,00,000 by equity capital
- (ii) ₹ 20,00,000 by equity capital and ₹ 20,00,000 by loans
- (iii) ₹ 8,00,000 by equity capital and ₹ 32,00,000 by loans.

Assume that the company would distribute the entire amount of profits as dividend. The tax rate is 30.9% and dividend distribution tax rate is 20.358%.

Work out which one of the above three alternatives should the company opt to minimise its tax liability? (5 marks)

(c) Comment with reasons on the taxability or otherwise of the following incomes for the year ended on 31st March, 2016 as per the Income-tax Act, 1961:

- (i) Akhil, a not ordinarily resident, earned ₹ 65,000 from a business in Australia when he was in Australia. Later the profits were remitted to India.
- (ii) Birender, an ordinarily resident and a financial consultant, received a fee of ₹ 50,000 from an Indian company carrying on business in Canada for the services rendered there. The fee was directly deposited in a bank in Canada.
- (iii) Chandan, an ordinarily resident, earned agricultural income of ₹ 25,000 from land in England. He spent the entire income for his

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son's education in India.

- (iv) Dinesh, a citizen of India, got employment in Burma. He left India on 1st September, 2015 after earning ₹ 5,00,000 in India. He earned ₹ 7,00,000 in Burma during the previous year.
- (v) Girish, a resident, brought to India, his income earned in 2010-11 in Sri Lanka which was not taxed in Sri Lanka. (5 marks)

2016 - June [2A] (Or) (ii) From the following information, determine the tax payable under section 115-O by a domestic company on the dividend distributed by it where the rate of dividend distribution tax is 20.358%:

- It received dividend of ₹ 5,00,000 on 20th November, 2015 from its subsidiary company which paid dividend distribution tax under section 115-O.
- It distributed dividend of ₹ 33,00,000 on 14th December, 2015 to its shareholders.
- Out of ₹ 33,00,000, the company paid dividend of ₹ 3,00,000 to a person on behalf of the New Pension System Trust. (3 marks)

CS Executive Programme (Module I)

SHORT NOTES

2008 - Dec [4] (b) Write a short note on the following:

- (i) The activities of a co-operative society which are eligible for deduction under section 80P. (3 marks)

Answer:

The activities of a co-operative society which are eligible for deduction @ 100% under Section 80P are as follows:

- (i) Income from banking business & providing credit facilities to its members
- (ii) Cottage Industry
- (iii) Marketing agricultural produce
- (iv) Purchase of agricultural implements

- (v) Processing of agricultural produce without aid of power of its member
- (vi) Collective disposal of Labour for its members
- (vii) Primary Society engaged in supply of milk, oilseeds, fruits etc
- (viii) Investment in securities
- (ix) Letting of Godowns & warehouses.

2010 - Dec [6] (a) Write a short note on the following:

- (v) Tax on income of foreign institutional investors from capital gains arising from transfer of their securities. (3 marks)

Answer:

Tax on income of Foreign Institutional Investors from securities or capital gains arising from their transfer [Section 115AD] – (Applicable only to Foreign Institutional Investors)

Special provisions regarding rate of tax:

Where the total income of the above assessee includes:

- (a) Income received in respect of securities (other than units of mutual funds covered under section 10(23D) or of Unit Trust of India); or
- (b) Income by way of short-term or long-term capital gains arising from the transfer of such securities,

The income-tax on the total income shall be chargeable as under:

- | | |
|--|--|
| (i) on the income in respect of securities referred to in clause (a) above | 20% |
| (ii) on the income by way of interest referred to in section 194LD | 05% |
| (iii) on the income by way of short-term capital gains referred to in clause (b) above | 30% |
| (iv) on the income by way of long term capital gains referred to in clause (b)above | 10% |
| (v) on the balance income included in total income | special/
normal rate
as the case
may be |

2011 - Dec [5] (a) Write a short note on the following:

- (i) Deduction in respect of interest on loan taken for higher education.

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(3 marks)

Answer:

The deduction under section 80E is available to an individual if following conditions are satisfied:

1. Deduction available only to Individual not to HUF or other type of Assessee.
2. Deduction amount:– The amount of interest paid is eligible for deduction and moreover there is no cap on the amount to be deducted. You can deduct the entire interest amount from your taxable income. However there is no benefit available on the repayment of principal amount of the loan.
3. Deduction available if Interest has been paid during the previous year and was paid out of income chargeable to tax which means if repayment is made from income not chargeable to tax then deduction will not be available.
4. Interest should have been paid on loan taken by him from any financial institution or any approved charitable institution for the purpose of pursuing his higher education. Interest on Loan taken from relatives or friends will not be eligible for deduction under section 80E.
5. Loan should have been taken for the purpose of pursuing higher studies of Individual, Spouse, Children of Individual or of the student of whom individual is legal Guardian.
6. The whole of the amount paid during previous year towards interest is allowed as deduction and deduction shall be allowed for 8 assessment years starting from the assessment year in which the assessee starts paying the interest on loan, or until the interest thereon is paid by the assessee in full, whichever is earlier.

DESCRIPTIVE QUESTIONS

2009 - Dec [4] (a) What are the special provisions for computing profits and gains of retail business? (5 marks)

(b) What are the provisions relating to clubbing of income arising to spouse from the assets transferred ? (5 marks)

Answer:

- (a) Provisions under section 44 AD shall become Applicable in case of an assessee engaged in any business except the business of plying, hiring or leasing goods carriage, 8% of the total turnover or such higher income as may be returned by the assessee shall be deemed to be the profits of such business. This provision applies only if the total turnover of sales of such retail business does not exceed ₹ 1 crore. In calculating such presumptive profits @ 8% of sales the said provisions shall have to be considered:
- (i) All deductions u/s 30 to 38 including depreciation shall be deemed to have been allowed [i.e no expenditure shall be allowed as deduction from such income @ 8% of T/o]
 - (ii) Provisions of Sec. 44AA & 44AB pertaining to maintaining of books of Accounts & disallowance with reference to monetary limits of transactions shall not apply. However all such data which [i.e. maintenance of books of accounts is not required] shall show the calculation of sales, stock, debtors, creditors shall be maintained by the assessee.
 - (iii) In case of an assessee which is a firm to which prov. of 44AD are applied, the salary/remuneration & interest paid to its partners shall be deducted from the income computed under this provisions & the allowance of salary/Remuneration & interest shall be subject to the conditions & limits specified in sec 40(b)
 - (iv) WDV of assets used for the purpose of such business shall be calculated as if depreciation has been actually provided.
- (b) As per the provision of Sec 64(1) (iv) in computing the total income of the individual, all such income arising directly or indirectly to the spouse of such individual from assets transferred to the spouse by such individual otherwise than for adequate consideration or in connection with an agreement to live apart shall be clubbed in the income of transferor. However any further income earned on such clubbed income shall be taxable in the hands of spouse.
Income from assets transferred to any person for the benefit of the spouse of the transferor as per the provision of sec. 64(1) (vii) shall be taxable in the hands of transferor of the asset.

Condition for clubbing:

1. The relationship of husband and wife must exist both at the time of transfer of asset and at the time of accrual of income.
2. Consideration must be NIL or inadequate.
3. Where such assets or cash transfer by way of gift to the spouse is invested by the transferee in any business (except by way of capital contribution in a partnership firm), the income shall be clubbed in the following manner.

$$\frac{\text{Investment in the business on the 1}^{\text{st}} \text{ day of the p. y. out of the transfer fund made by the spouse}}{\text{Total investment in the business as on the 1}^{\text{st}} \text{ day of the p. y. made by the spouse}} \times \text{Income such business of the spouse}$$

No clubbing provision shall persist where both the spouse are prof. qualified and are partners earning income by virtue of the qualifications.

2009 - Dec [5] (c) “Loss under any head of income for any assessment year can be set-off against the income from other heads of income but when it has to be carried forward for being set-off, it can only be set-off from income under the same head.” Explain. (5 marks)

Answer:

Income of a person is computed under five heads. ‘Sources’ of income derived by an individual may be many but yet they could be classified under the same head. For instance, an individual may have a dual employment, yet the income would be classified under the head ‘Salaries’. However, given the mechanism of computing taxable salary income, it would be safe to say that an individual cannot incur losses under this head of income. Consider a situation where Harsh has two properties – one, occupied by him and the other, let out. Harsh pays interest on loan of ₹ 1.50 lakh on the property occupied and derives net rental income of ₹ 1.50 lakh from the let-out property. In case of a self-occupied property, income is computed as nil and interest expenditure results in loss. The loss of ₹ 1.50 lakh can be set off against rent income of ₹ 1.50 lakh; the income chargeable under the head ‘House property’ will be ‘Nil’.

An exception to intra head set off is loss under the head ‘Capital gains’, which may arise from transfer of any capital asset. Long-term capital loss arises from transfer of shares or units where holding period is more than 12

months and in respect of other assets holding period is more than 36 months prior to sale. Transfer of assets held for less than prescribed period results in short-term capital loss. Long-term capital loss cannot be set off against short-term capital gains. but S. Term loss can be adjusted against S.T.C.G or LTCG.

Further, loss incurred from speculation loss (e.g. from shares or commodities) cannot be set off against any other income.

Also, it is unlikely that the benefit of set off of loss under an activity or source will be available, where the income from an activity or source is exempt from taxation.

2010 - June [3] (a) An asset is transferred by a person to another person under a partly revocable transfer whereby a part of the asset will revert back to the transferor. Who shall be liable to pay tax in respect of income from the asset transferred as per section 61? (2 marks)

Answer:

All income arising to any person by virtue of a revocable transfer or partly revocable transfer of assets shall be chargeable to income-tax as the income of the transferor and shall be included in his total income. Therefore transferor shall be liable to pay tax in respect of income from the assets transferred as per section 61.

2010 - June [4] (c) Discuss the cases in which payment by way of loan/advance to the extent of accumulated profits by a closely held company is treated as dividend under section 2(22)(e). (4 marks)

Answer:

As per section 2(22)(e) of Income Tax Act 1961: "any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) [made after the 31st day of May, 1987, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern, in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern)] or any payment by any such company on

behalf, or for- the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits”

Private Limited Companies generally give Loan or Advance to their director and family members who are again shareholders holding 10% or more voting power or to a concern in which such shareholder has substantial interest. Such loan or advance is treated as deemed dividend covered under section 2(22)(e) and taxable in the hands of shareholders or concern as the case may be.

Following points are to be understood with reference to the above:

- (i) Sub-clause (e) applies when distribution or payment referred to therein are connected with accumulated profits. The undistributed income, when accumulated from year to year, generates what is known as "accumulated profit". Accumulated profits shall include all profits of the company till the date of distribution or payment.
- (ii) Current profits are included in "accumulated profits" in section 2(22)(e) of I.T. Act 1961. The expression "accumulated profits" was defined in the 1961 Act so as to include current profit up to date of distribution or payment.
- (iii) The phrase "accumulated profits" does not mean aggregate of assessed profits but commercial profits. If certain disbursements have been disallowed in the assessment proceedings but the expenditure had in fact been incurred, they should be excluded from accumulated profits. In computing commercial profits, all the disbursements made and expenditure incurred for the purpose of business should be taken into account.

2011 - Dec [3] (c) Describe the provisions relating to chargeability of cash credits in respect of which the assessee has no satisfactory explanation.

(5 marks)

Answer:

Under section 68 of the Act where any sum is found credited in the books of an assessee maintained for any accounting year and the assessee is not in a position to offer explanation about the nature and sources thereof or the

explanation offered by him is not satisfactory in the opinion of the assessing officers, the sum so credited may be treated as the assessee in respect of the accounting year in which the cash credit are found to have made in the books. This section comes into operation only when the following conditions are satisfied:

1. The assessee maintains books of account
2. The assessee fails to explain the source and nature of the sum credited; and
3. The explanation offered by the assessee is not satisfactory and the assessing officer comes to the conclusion that it is the undisclosed income of the assessee.

2012 - June [3] (c) What is meant by 'block of assets'? Explain. (3 marks)

Answer:

Block of Assets

As per section 2(11), Block of assets means a group of assets falling within a class of assets comprising,

- (a) Tangible assets being buildings, machinery, plant or furniture.
- (b) Intangible assets, being Know-how, patents, copyrights, trademarks, licenses, in respect of which the same percentage of depreciation is prescribed.

Each class of assets other than intangible assets may have different blocks or groups on which separate rates of depreciation are prescribed and for each such rate, separate block will be formed.

2012 - Dec [1] {C} (Or) (c) What are the provisions of section 54F in relation to capital gains on transfer of asset other than a residential house?

(5 marks)

Answer:

Any long term capital gain, arising to an individual or HUF from the transfer of any long term capital asset, not being residential house property shall be exempt in full, if the entire net sales consideration is invested in purchase of one residential house within one year before or 2 years after the date of transfer of such an asset or in the construction of one residential house within 3 years after the date of such transfer. Where part of the net sales consideration is invested, then Long term capital gain shall be exempted

proportionately.

The proportionate exemption shall be that amount of capital gains which bears the same proportion which the amount invested in the new house bears to the net consideration price of the asset transferred i.e.

$$\frac{\text{Capital Gain} \times \text{Amount Invested}}{\text{Net Sales Consideration}}$$

The above exemption shall be available only when the assessee does not own more than one residential house property on the date of transfer of such asset exclusive of the one which he has bought for claiming exemption u/s 54F.

2012 - Dec [4] (b) (ii) Explain the provisions relating to taxation of winnings from lotteries. (3 marks)

(c) "Capital gains arise in the previous year in which the transfer took place." Are there any exceptions to this rule? Explain. (5 marks)

Answer:

(b) Taxation of winnings from lotteries

Any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever are chargeable to tax as "Income from other sources". Although winning from lotteries is part of total income of the assessee, such income is taxable at a special rate 30%. Deduction of any expenses, allowances or loss are not allowed from such winnings.

Answer:

(c) Capital gain arises in the previous year in which the transfer of the asset takes place even if the consideration for the transfer is received or released in later years. However, there are 3 exceptional cases where capital gain is taxable not in the year of transfer of the asset but in some other year. These exceptions are:

- (i) Damage or destruction of any capital asset by fire or other calamities
- (ii) Conversion of capital asset into stock-in-trade
- (iii) Compulsory acquisition of an asset.

PRACTICAL QUESTIONS

2008 - Dec [5] (a) Gulshan submits the following information relevant for the financial year 2015-16:

	Profit (₹)	Loss (₹)
Salary income	8,00,000	–
Income from house property:		
House-A	25,000	–
House-B	–	30,000
Profits and gains of business or profession:		
Business-A	12,000	–
Business-B	–	20,000
Business-C (<i>Speculative</i>)	22,000	–
Business-D (<i>Speculative</i>)	–	35,000
Capital gains:		
Short term capital gains	10,000	–
Short term capital loss	–	30,000
Long-term capital gains on sale of building	16,000	–
Income from other sources:		
Loss on maintenance of race horses	–	15,000

Determine the net income of Gulshan for the assessment year 2016-17.

(7 marks)

Answer:

<u>Income from Salary</u>		8,00,000
Income from HP (House A)	25,000	
(House B)	(30,000)	(5,000)
<u>Income from Business & Profession</u>		
Business A	12,000	
Business B	(20,000)	(8,000)
<u>Income from speculative business</u>		
Business C	22,000	
Business D	(35,000)	(13,000)
<u>Income from Capital gain</u>		

Short term capital gain	10,000	
Short term capital loss	(30,000)	
Long term capital gains	16,000	(4,000)
Income from other sources		
Loss on maintenance of race horses		(15,000)
Net Income of Gulshan	₹ 7,95,000*	

***Notes:**

- Loss from PGBP can not be set-off against salary income.
- Loss from speculative business can be set-off against speculative income only.
- Capital loss would be allowed to adjusted against capital gain only.
- Loss on maintenance of race horses can not be set off against other incomes.

2009 - June [5] (b) Discuss the taxability or otherwise of the following gifts received by Madhuri, a lady, during the financial year 2015-16:

- ₹ 30,000 from her elder sister.
- ₹ 50,000 from the daughter of her elder sister.
- Wrist watch valued at ₹ 6,000 from her friend. (3 marks)

Answer:

Applicable section: - 56(2)(vi)

- Gift received from elder sister will not be taxable as per the IT Act, 1961 as she is a relative of Madhuri and any sum received from a relative is not taxed as per the provisions of the Act.
- Amount received from the daughter of her sister would have been taxable, had it exceeded ₹ 50,000. Up to ₹ 50,000 it is not chargeable to tax.
- Wrist watch is not a cash gift, hence will not be taxable.

2009 - Dec [5] (a) Anurag sells a plot of land on 8th July, 2015 for ₹ 40 lakh and paid brokerage on its sale @ 1%. He purchased this plot on 19th December, 1988 for ₹ 4,20,000. On 1st February, 2016, he purchased a residential house for ₹ 15 lakh. He owns one residential house on 8th July,

2015. The cost inflation index for 1988-89 was 161 and for 2015-16. Find out the amount of capital gains chargeable to tax for the assessment year 2016-17. Suppose Anurag sells the new residential house before 1st February, 2019, what will be the taxable amount of capital gains and in which year it will be charged to tax ? If Anurag purchases any other residential house before 1st February, 2018, what will be the taxable amount of capital gains and in which year it will be charged to tax ? (5 marks)

(b) Danny has the following investments in the previous year ended 31st March, 2016:

- (i) ₹ 7,160 received as interest on securities of Karnataka government.
- (ii) ₹ 9,000 received as interest on securities of a listed paper manufacturing company.
- (iii) ₹ 7,200 received as interest on the unlisted securities of a sugar company.
- (iv) ₹ 30,000, 11% securities (unlisted) of a textile company.
- (v) ₹ 20,000, 10% Tamil Nadu government loan.
- (vi) ₹ 50,000, 13.5% listed debentures of Dolly Ltd.

Interest on all securities is payable on 30th June, and 31st December. The bank charges 1.5% commission on net realisation of interest as collection charges.

Danny also received ₹ 15,000 as director's fee from a company. His other incomes are — winnings from horse race: ₹ 25,000 (gross); and interest on post office savings bank account: ₹ 6,000.

Find out taxable income of Danny from other sources for the assessment year 2016-17. (5 marks)

Answer:

(a) Computation of income from Capital Gains of Mr. Anurag for the Assessment Year 2016-17

<i>Particulars</i>	<i>Amount (₹)</i>
Sales consideration	40,00,000
Less: Brokerage on Sales @ 1%	<u>40,000</u>
Net sales consideration	39,60,000
Less: Indexed Cost of Acquisition $4,20,000 \times \frac{1081}{161}$	<u>28,20,000</u>
LTCG	11,40,000
Less: Exemption under section 54F $11,40,000 \times \frac{15,00,000}{39,60,000}$	<u>4,31,818</u>
Taxable Income from Capital Gains	7,08,182

If Mr. Anurag sells the new house before February, 2019 then ₹ 4,31,818 being the amount of capital gains exempted during the Assessment Year 2016-17 under section 54F will be chargeable to tax for the year in which the house is sold as long-term capital gains.

If Mr. Anurag purchases any other residential house before February 1, 2016 but after July 8, 2018 then he will not have any tax liability on account of Capital Gain. If Mr. Anurag purchases any other residential house before July 8, 2018 (i.e., within two years from the date of transfer of the original asset) then ₹ 4,31,818 will be taxable as long-term capital gains for the year in which another house is purchased.

(b) Computation of Income from other sources of Mr. Danny for the Assessment Year 2016-17

Particulars	Amount (₹)
Karnataka Government Securities (No TDS)	7,160
Paper Company Securities (9,000 × 100/90)	10,000
Sugar Mill Company Securities (7,200 × 100/90)	8,000
Textile Company Securities	3,300
Tamilnadu Government Loan (No TDS)	2,000
Dolly Ltd. Debentures (listed)	6,750
Director's Fee	15,000
Winnings from Horse races	25,000
Interest on Post Office Saving Bank A/c (Exempt upto ₹ 10,000)	Nil

Gross Receipts	77,210
Less: Deduction under Section 57 for collection charges	516
Taxable income from other sources	<u>77,726</u>

Computation of Collection Charges

Particulars	Amount (₹)
<u>Amount of Collection charges for securities:</u>	
Karnataka Government Securities (No TDS)	7,160
Paper Company Securities	9,000
Sugar Mill Company Securities	7,200
Textile Company Securities [3,300 × 90/100]	2,970
Tamilnadu Government Loan	2,000
Dolly Ltd. Debentures [6,750 × 90/100]	<u>6,075</u>
<u>Total Net Collection:</u>	<u>34,405</u>
Collection Charges @ 1.5%	
$34,405 \times 1.5/100 = ₹ 516$	

2010 - June [1] {C} (c) Particulars of income received by Mrs. Sarita for the year ended 31st March, 2016 are as follows:

- (i) Family pension received from the Government of Madhya Pradesh ₹ 15,000.
- (ii) Royalty received from a publisher ₹ 42,700. She spent ₹ 2,700 on books, stationery, typing etc.
- (iii) Winnings from lotteries (*gross*) ₹ 90,000.
- (iv) Winnings from horse race (*net*) ₹ 35,000.
- (v) Interest from tax-free debentures of a public company (listed) ₹ 18,000.
- (vi) Interest on tax free notified government bonds ₹ 10,000.
- (vii) Dividend received from a foreign company (*net*) ₹ 8,000. Nothing has been paid to the Government of India out of tax deducted at source.

From the above information, compute income from other sources of Mrs. Sarita for the assessment year 2016-17. (5 marks)

Answer:

Calculation of Income from other Sources of Mrs. Sarita

(for the Assessment Year 2016-17)

Family Pension(1/3rd is exempt)		₹ 10,000
Royalty Income	₹ 42,700	
Less: Expenses	<u>₹ 2,700</u>	₹ 40,000
Wining from lotteries		₹ 90,000
Wining from Horse Races (gross)		₹ 50,000
Interest from tax free debentures		₹ 20,000
Interest on tax free government bonds		Nil
Dividend received form foreign company		<u>₹ 8,000</u>
Income from other sources		<u>₹ 2,18,000</u>

2010 - June [3] (c) Ram and Shyam are partners in Mozart Co., a partnership firm, which is engaged in manufacturing carpets. They share profits and losses in the ratio of 2:3. The profit and loss account of the firm for the year ended 31st March, 2016 is as follows:

<i>Liabilities</i>		₹
Cost of goods sold		10,00,000
Depreciation		50,000
Salary to staff		1,00,000
Remuneration to partners:		
Ram	₹ 2,50,000	
Shyam	₹ <u>1,20,000</u>	3,70,000
Interest on capital @ 15%:		
Ram	₹ 45,000	
Shyam	₹ <u>67,500</u>	1,12,500
Sundry expenses		1,00,500
Net profit		<u>7,35,200</u>
		<u>24,68,200</u>
<i>Assets</i>		
Sales		23,00,000
Dividends		28,200
Winnings from lotteries (₹ 2,00,000)		<u>1,40,000</u>
		<u>24,68,200</u>

Additional information:

- (i) The firm donated ₹ 30,000 to National Defence Fund and this amount

is included in sundry expenses.

- (ii) Depreciation admissible under the income-tax rules is ₹ 68,000.
- (iii) The firm is evidenced by partnership deed.

Compute the taxable income and amount of tax liability of the firm for the assessment year 2016-17. (7 marks)

Answer:

Computation of book – profit

	₹
Net Profit as per P&L	7,35,200
<i>Add:</i> Interest paid to partners in excess of 12%	
Ram	9,000
Shyam	13,500
Remuneration of partners	3,70,000
Donation	<u>30,000</u>
	11,57,700
<i>Less:</i> Dividends	28,200
Winning from lotteries	1,40,000
Depreciation	<u>18,000</u>
	9,71,500
<i>Less:</i> Remuneration of partners	<u>3,70,000</u>
	<u>6,01,500</u>
Income from other sources	
Winning from lotteries	2,00,000
Dividends	<u>exempt</u>
	<u>2,00,000</u>
Gross total income	8,01,500
<i>Less:</i> Deduction u/s 80G	<u>30,000</u>
Total Income	<u>7,71,500</u>
Calculation of Tax	
30% on 2,00,000	60,000
On balance 30 % (7,71,500 – 2,00,000)	<u>1,71,450</u>
	2,31,450
<i>Add:</i> cess	6,944
<i>Less:</i> TDS	<u>60,000</u>
Tax payable	<u>1,78,394</u>
Tax payable rounded off	1,78,390

2010 - June [6] (a) Naveen owns a house at Indore. Its municipal valuation

is ₹ 24,000. He incurred the following expenses in respect of the house property:

Municipal tax @ 20%, fire insurance premium ₹ 2,000 and land revenue ₹ 2,400. He took a loan of ₹ 25,000 @ 16% per annum on 1st April, 2013. The whole amount is still unpaid. The house was completed on 1st April, 2015. Find out the income from house property for the assessment year 2016-17 in respect of the following options:

- (i) If the house is used by the assessee throughout the previous year for his residential purpose; and
- (ii) If the house is let-out for residential purposes on monthly rent of ₹ 2,000 from 1st April, 2015 to 31st January, 2016 and self-occupied for the remaining period. (6 marks)

Answer:

- | | |
|--|-----------|
| (i) Gross Annual Value of the house shall be Nil | |
| Gross Annual Value | NIL |
| Less: Deduction | ₹ 6,400 |
| Income from House Property | ₹ (6,400) |
| (ii) Gross Annual Value | ₹ 24,000 |
| Less: Municipal tax paid | ₹ 4,800 |
| Net Annual Value | ₹ 19,200 |
| Less: 30% Statutory deduction | ₹ 5,760 |
| Interest on loan (4,000+2,400) | ₹ 6,400 |
| Income from House Property | ₹ 7,040 |

2010 - Dec [3] (a) Sanjay furnishes following particulars of income from his business for the previous year 2015-16:

- (i) Net profit as per profit and loss account ₹ 72,000 after charging the following:
 - (a) Depreciation on building ₹ 31,000
 - (b) Provision for discount on debtors ₹ 40,000
 - (c) Private household expenses ₹ 50,000
 - (d) Charity (unapproved) ₹ 7,000
 - (e) Computer for scientific research ₹ 60,000
 - (f) Payment of expenses made through bearer cheque ₹ 25,000
 - (g) Security deposit ₹ 16,000

- (h) Audit fee paid in cash ₹ 25,000
- (i) Patent purchased during the year ₹ 75,000
- (j) Market survey feasibility report expenses ₹ 50,000 on new project costing ₹ 6,00,000.
- (ii) Opening stock ₹ 66,000 valued at 10% above cost and closing stock ₹ 72,000 valued at 10% below cost.
- (iii) Income credited to profit and loss account include—
 - (a) Bank interest on fixed deposits ₹ 9,000
 - (b) Refund of excise duty ₹ 18,000 earlier allowed as deduction
 - (c) Bad debts recovered ₹ 5,000.

Compute total income of Sanjay and his tax liability if he is a senior citizen assuming depreciation on building as per the Income-tax Act, 1961 is ₹ 50,000. (7 marks)

Answer:

**Computation of tax Liability of Mr. Sanjay
for the Assessment Year 2016-17**

Profits and Gains of Business and Profession

Net Profit		72,000
Add: Expenses Inadmissible		
Depreciation on Building	31,000	
Provision for discount on debtors	40,000	
Household Expenses	50,000	
Charity	7,000	
Expenses paid through bearer cheque	25,000	
Security deposit	16,000	
Audit Fees	25,000	
Patent (Depreciation considered separately)	75,000	
Market Survey Expenses	44,000	
opening stock over valued	6,000	
closing stock under valued	<u>8,000</u>	3,27,000
Less: Expenses Allowed		
Depreciation on Building	50,000	
Depreciation on Patent	<u>18,750</u>	68,750
Less: Income from other head		
Bank Interest on Fixed Deposits		9,000

Profits and Gains of Business and Profession	3,21,250
Income from other source-Bank Interest	9,000
Gross Total Income	3,30,250
Less: Deductions	Nil
Total Income	3,30,250
Tax Liability	
Tax on ₹ 3,30,250	8,025
Less: Rebate u/s 87A	<u>2,000</u>
	6,025
Add: Edu. Cess & SHEC @ 3%	<u>181</u>
Tax Payable	6,206
Rounded off	<u>6,210</u>

Working Notes:

1. Least of the following shall be eligible as Market Survey Expenses

- (a) Actual Expenditure incurred ₹ 50,000
 (b) 5% of project cost ₹ 30,000

Hence, ₹ 30,000 shall be allowed for deduction in 5 equal installments i.e. ₹ 6,000 (1/5 of ₹ 30,000)

2010 - Dec [4] (c) Rupesh acquired a residential house on 1st September, 1981 for ₹ 1,00,000. He spent ₹ 25,000 on 1st July, 1983 for improvement of this house property. A further amount of ₹ 50,000 was spent by him on 15th November, 1988 on improvement of the house. Rupesh gifted the said property to his son Bhupesh on 12th October, 1997. Bhupesh also spent the following amounts on improvement of the house:

<i>Date of Expenditure</i>	<i>Amount (₹)</i>
15 th July, 1998	60,000
15 th June, 2015	40,000

Bhupesh sold the above house on 30th November, 2015 for a sum of ₹ 15,00,000. Expenses on transfer were 2% of the sale consideration. Compute the capital gains for the assessment year 2016-17, assuming the fair market value of the house as on 1st April, 1983 to be ₹ 3,00,000. Cost inflation index for various years is as under:

1987-88 — 150

1996-97 —	305	
1997-98 —	331	
2013-14 —	939	
2015-16 —	1081	(5 marks)

Answer:

**Computation of Capital Gains
for the assessment year 2016-17**

Sale Consideration	15,00,000
Less: 1. Expenses on transfer	(30,000)
2. Indexed cost of acquisition $(3,00,000 \times 1081/305)$	(10,63,279)
3. Indexed cost of improvement	
(i) By the previous owner $(50,000 \times 1081/150)$	(3,60,333)
(ii) By the assessee	
$[(60,000 \times 1081/331) + (40,000 \times 1081/1081)]$	(2,35,952)
Long term capital loss	1,89,564

2011 - June [2] (b) From the following information, compute the total income of Anurag for the assessment year 2016-17 and calculate his tax liability assuming he is not allowed any deduction under sections 80C to 80U:

	₹
Income from salary	1,80,000
Income from house property	40,000
Business loss	(-) 1,90,000
Loss from a specified business referred to under section 35AD	(-) 60,000
Short-term capital loss	(-) 60,000
Long-term capital gains	2,40,000
	(5 marks)

Answer:

**Computation of total Income of Anurag
for the A. Y. 2016-17**

7.70

Solved Scanner CS Prof. Prog. M—III Paper 7 (New Syllabus)

Income from salary		1,80,000
Income from house property	40,000	
Less: Business loss adjusted	<u>10,000</u>	30,000
Business Loss	- 1,90,000	
Less: Set off against capital gain	1,80,000	
Less: Set off against house property	10,000	Nil
Loss from specified business not allowed to be set off	16,000	
Income from capital gain		
Long term capital gain	2,40,000	
Less: short term capital loss	<u>60,000</u>	
	1,80,000	
Less: Business Loss adjusted	<u>1,80,000</u>	Nil
Gross total Income		2,10,000
Less: Deductions		Nil
Total Income		2,10,000
Total tax liability		Nil

2011 - June [3] (a) After serving for 29 years and 7 months in Mansha Steels Ltd., Narayan retired on 30th September 2015. He is covered by the Payment of Gratuity Act, 1972. The company has paid him a gratuity of ₹ 4,19,800. At the time of retirement, he was getting basic salary ₹ 11,800, dearness allowance ₹ 2,260 and house rent allowance ₹ 1,400 per month. Determine the amount of gratuity exempt under section 10(10). (5 marks)

Answer:

Exemption shall be allowed to the extent of the minimum of the following amounts	
(a) Amount of gratuity received	₹ 4,19,800
(b) 15 days salary for every year of services $(14,060 \times \frac{15}{26} \times 30)$	₹ 2,43,346
(c) ₹ 10,00,000	
Therefore ₹ 2,43,346 is exempt from tax	

2012 - June [1] {C} (c) Sanjeev owns a house property. Following are the details about the property:

Municipal value of house : ₹ 72,000 per annum.

Fair rent of house : ₹ 66,000 per annum.

Standard rent of house : ₹ 60,000 per annum.

The house was let out at ₹ 6,000 per month but was sold on 1st January, 2016.

Find out income from house property for the assessment year 2016-17.

(5 marks)

Answer:

Computation of Income from House Property For the Assessment Year 2016-17

Gross Annual Value Shall Be higher of Expected Rent or Actual Rent Received

(i) Expected rent shall be higher of Municipal Value or Fair Rent whichever is higher but limited to standard rent

Municipal Value (72,000 × 9/12) = 54,000

Fair Rent for 9 Months(66,000 × 9/12) = 49,500

Standard Rent for 9 months (60,000) × 9/12 = 45,000

Therefore Expected Rent shall be ₹ 45,000

(ii) Actual Rent Received (6,000 × 9) 54,000

Gross Annual Value 54,000

Less: Standard Deduction @ 30% 16,200

Income from House Property **37,800**

2012 - June [2] (b) Savita submits the following information regarding her salary income:

Basic salary ...₹ 11,000 per month

City compensatory allowance ...₹ 150 per month

Children education allowance ...₹ 400 per month (for 3 children)

Reimbursement of medical expenses ...₹ 25,000

She was entitled to house rent allowance of ₹ 6,000 per month from 1st April, 2015 to 31st August, 2015. However, she was paying a rent of ₹ 7,000 per month for a house in New Delhi. With effect from 1st September, 2015, she was provided with an accommodation by the company for which the company was paying a rent of ₹ 5,000 per month. Compute her gross salary for the assessment year 2016-17.

(5 marks)

7.72

Solved Scanner CS Prof. Prog. M—III Paper 7 (New Syllabus)

(c) For the previous year 2015-16, gross total income of Gopal is ₹ 12,50,700. During the previous year he has made the following payments:

	₹
(i) Contribution to recognised provident fund	18,000
(ii) Donation to Rajiv Gandhi Foundation	50,000
(iii) Donation to Prime Minister Drought Relief Fund	30,000
(iv) Donation to Prime Minister National Relief Fund	20,000
(v) Donation to a government hospital for family planning	1,00,000
(vi) Financial assistance to poor students	50,000
(vii) Medical insurance premium	20,000

Compute total income of Gopal for the assessment year 2016-17.

(5 marks)

Answer:

(b) Computation of Gross Salary of Savita for Assessment Year 2016-17

Basic Salary (11,000 × 12)		1,32,000
City Compensatory allowance (150 × 12)		1,800
Children Education Allowance (400 × 12)	4,800	
Less: Exempt 100 p.m. upto 2,400 2 children (200 × 12)	<u>2,400</u>	2,400
Reimbursement of Medical Expenses	25,000	
Less: Exempt	<u>15,000</u>	10,000
House Rent Allowance (6,000 × 5)	30,000	
Less: Exempt (see Note 1)	<u>27,500</u>	2,500
Rent Free Accommodation (See Note 2)		11,918
GROSS SALARY		1,60,618

Note:

(i) HRA shall be exempted to the minimum of the following:

(a) HRA received

30,000

- (b) Actual rent - 10% of salary
 [7,000 × 5 - (10% of 55,000)] 29,500
 (c) 50% of ₹ 55,000 (as she resides in Delhi) 27,500

Therefore, House rent allowance of ₹ 27,500 shall be exempted.

(ii) Value of Rent free accommodation:

Least of following shall be taxable

- (a) Actual amount of Rent paid by employer (5,000 × 7) 35,000
 (b) 15% of Salary [(1,32,000 + 1,800 + 2,400) × 15%] 20,430

Therefore, value for rent free accommodation shall be ₹ 11,918.

(c) Computation of Total Income of Gopal for the Assessment Year 2016-17

Gross Total Income		12,50,700
Less: Deduction under chapter VI-A		
Deduction under section 80-C (RPF) 18,000		
Deduction under Section 80-D (Medical Insurance Premium) 20,000		
Deduction under section 80-G (Donation) <u>1,60,000</u>		1,98,000
Total Income		10,52,700

Working Note:

(i) Calculation of Deduction under section 80-G

(A) Donations to which qualify limit does not apply

- (a) Allowed 100%
 PMNRF (20,000 × 100%) 20,000
 (b) Allowed 50%
 PMDRF (30,000 × 50%) 15,000
 RGF (50,000 × 50%) 25,000 40,000

(B) Donations which are subject to qualifying limit

- (a) Donation to Government for family planning
 (100% of ₹ 1,00,000) 1,00,000
 Within 10% of adjusted total income

7.74

Solved Scanner CS Prof. Prog. M—III Paper 7 (New Syllabus)

(10% of 12,17,700) i.e. ₹ 1,21,770

Total Donation Allowed**1,60,000**

Adjusted total income: (Gross Income - Deductions under Chapter VI-A except under Section 80G) i.e. 12,50,700-18,000,-15,000 = 12,17,700.

2012 - Dec [2] (b) Following is the trading and profit and loss account of Narendra for the year ended 31st March, 2016:

	₹		₹
Opening stock	20,250	Sales	3,83,600
Purchases	1,80,500	Closing stock	23,200
Wages	10,200	Gift from father	10,000
Donation to Prime Minister		Income-tax refund	2,500
National Relief Fund	20,000		
Building rent	60,000		
Repairs of car	5,300		
Medical expenses (<i>personal</i>)	8,000		
General expenses	4,200		
Depreciation on car	12,000		
Profit for the year	<u>98,850</u>		
	<u>4,19,300</u>		<u>4,19,300</u>

Additional information:

- (i) Opening stock has been undervalued by 10% of cost while closing stock has been valued at its cost.
- (ii) One-third of the building rent is related to self-residential house.
- (iii) The car is used equally for business as well as for personal purposes.
- (iv) Wages includes wages of household servant ₹ 250 per month.

From the above information, you are required to determine the taxable income of Narendra under the head income from business and profession.

(10 marks)

Answer:

Computation of taxable Income of Narendra under the head Income from business and profession

		₹
Net profit as per Profit & Loss Account		98,850
<i>Add: Items disallowed</i>		
	₹	
Donation to PMRF	20,000	
Building Rent 60,000 × 1/3	20,000	
Repairs of Car 5,300 × ½	2,650	
Medical Expenses	8,000	
Depreciation of Car 12,000 × ½	6,000	
Wages of servant 250 × 12	3,000	59,650
		1,58,500
<i>Less: Items not taxable:</i>		
Gift from father	10,000	
Income tax refund	2,500	12,500
		1,46,000
<i>Less: Opening stock undervalued</i>	$\frac{20,250}{90} \times 10 =$	2,250
		1,43,750

2012 - Dec [4] (a) Anand owns a house at Delhi. From the following particulars, compute the income from house property for the assessment year 2016-17:

		₹
Municipal valuation		2,50,000
Fair rent		2,80,000
Actual rent (₹ 25,000 per month)		3,00,000
Standard rent		2,60,000
Municipal taxes paid (half of it was borne by the tenant)		25,000
Expenses on repairs		5,000
Fire insurance premium paid		5,000
Ground rent		6,000
Unrealised rent		1 month
Vacancy period		1 month

He had borrowed a sum of ₹ 20,00,000 @ 10% p.a. from LIC Housing Ltd.

7.76

Solved Scanner CS Prof. Prog. M—III Paper 7 (New Syllabus)

on 1st August, 2011 and the construction of the house was completed on 1st January, 2015. Total loan is still unpaid. (5 marks)

Answer:

**Calculation of Income from House Property
for the Assessment Year 2016-17**

		₹
Gross Annual Value		
(i) Expected Rent (Higher of fair value of ₹ 2,80,000 and municipal value of ₹ 2,50,000 but subject to standard rent of ₹ 2,60,000)	2,60,000	
(ii) Rent actually received/ receivable (₹ 25, 000 × 11)	<u>2,75,000</u>	
Higher of (i) and (ii)		2,75,000
Less: Loss due to vacancy		<u>25,000</u>
Gross annual value		2,50,000
Less: Municipal taxes (borne by the owner)		<u>12,500</u>
Net annual value		2,37,500
Less: Standard deduction @ 30% under section 24		71,250
Interest on loan*		
Pre-Construction Period	1,06,667	
Previous year	<u>2,00,000</u>	3,06,667
Income from house property		<u>1,40,417</u>

* Interest on borrowed amount:

1. Pre-construction period 1.8.2011 to (1.1.2015) i.e. 31.3.2014

Previous year 2010-11	1,33,333	i.e. ₹ 2,00,000 × 8/12
2011-12	2,00,000	
2012-13	<u>2,00,000</u>	
	<u>5,33,333</u>	

1/5th ₹ 5,33,333 = ₹ 1,06,667

2. Interest for Previous year 2015-16 2,00,000

2012 - Dec [5] (a) Lalit submits the following details of his income for the assessment year 2016-17:

₹

Income from salary	3,00,000
Loss from let-out house property	40,000
Income from sugar business	50,000
Brought forward loss of iron ore business (discontinued in financial year 2006-07)	1,20,000
Short-term capital loss	60,000
Long-term capital gains	40,000
Dividend	5,000
Income from lottery winnings (<i>gross</i>)	50,000
Winnings in card games (<i>gross</i>)	6,000
Agricultural income	20,000
Long-term capital gains from the shares (<i>STT paid</i>)	10,000
Short-term capital loss from shares under section 111A	15,000
Bank interest	5,000

Calculate gross total income and losses to be carried forward.

(5 marks)

Answer:

**Computation of Income of Lalit
for the Assessment Year 2016-17**

	Salary	Business Income	Long-term capital gain	Income from other sources
	₹	₹	₹	₹
Salary	3,00,000	-	-	-
Business Income	-	50,000	-	-
Long term capital gain	-	-	40,000	-
Winning from lottery	-	-	-	50,000
Winnings from card games	-	-	-	6,000
Bank interest	-	-	-	5,000
Total	3,00,000	50,000	40,000	61,000
<i>Less: Current year losses</i>				
Loss from house property	40,000	-	-	-
Short term capital loss	-	-	40,000	-
Balance	2,60,000	50,000	-	61,000
<i>Less: Brought forward business loss</i>	-	50,000	-	-

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Net income (Total 3,21,000)	2,60,000	-	-	61,000
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The following losses will be carried forward:

1. Current year's short term capital loss of ₹ 60,000 is adjusted against long-term capital gain of ₹ 40,000. The unadjusted amount of ₹ 20,000 will be carried forward.
2. Short-term capital loss of ₹ 15,000 pertaining to transfer of securities (subject to STT) will be carried forward.
3. Brought forward loss of iron ore business is set off against the current year's business to the extent of ₹ 50,000. The unadjusted amount of ₹ 70,000 will be carried forward.

Assumptions:

- (i) Dividend is from an Indian company, therefore exempt.
- (ii) Agricultural income is generated in India, therefore exempt.

CS Inter Gr. I

DESCRIPTIVE QUESTIONS

2006 - Dec [1] {C} (d) Discuss in brief the special provisions for computing profits and gains of business under section 44AD of the Income-tax Act, 1961. (3 marks)

Answer:

The scheme is applicable to an assessee engaged in any business except the business of plying, hiring or leasing goods carriage and the total turnover from such business does not exceed ₹1 crore in the previous year.

A sum equal to 8% of the total turnover in the previous year is deemed to be the profit of such business chargeable under the head profit and gains from business and profession. The assessee can, however declare a higher income in his return.

All deductions under section 30 to 38, including depreciation are deemed to have been allowed and no further deduction is allowed under this section.

However, in the case of the firm, the normal deduction in respect of salary and interest to partners under section 40(b) shall be allowed.

- provision for maintenance of books of account u/s 44AA /compulsory audit u/s 44AB not applicable
- It is possible to declare lower income, provided the tax payer maintains books of account under section 44AB and gets his books of account audited and furnishes report of audit by the specified date as required under section 44AB irrespective of turnover.

2007 - June [2] (b) Explain the provisions of the Income-tax Act, 1961 regarding set-off and carry forward of losses from transfer of capital assets. (5 marks)

Answer:

Where in respect of any Assessment year, the net result of the computation under the head capital gains is a loss to the assessee; it can be carried forward to the following assessment year. The short term and long term losses shall be separately carried forward. In case of short term capital loss it can be set off against income, if any under the head 'capital gains' assessable for that assessment year in respect of any other capital asset. But in case of long term capital loss, it can be set off only against long term capital gain.

While losses on transfer of capital assets, whether short term or long term cannot be set off against any other income of the assessee under other heads of income i.e, heads other than capital gains in the previous year in which such loss was incurred, it can be carried forward to set off against capital gains if any during the next 8 assessment year.

2007 - June [3] (b) Briefly answer the following:

- (v) What are the special provisions for computing income on presumptive basis in the case of tax payers engaged in the business of civil constructions? (1 mark)
- (vi) What deductions are allowed under Section 24 while computing 'income from house property'? (1 mark)

Answer:

- (v) For an assessee engaged in the business of civil construction or supply for civil construction, a sum equal to 8% of the gross receipts

paid or payable to the assessee in the previous year on account of such business shall be deemed to be the profits and gains of such business chargeable to tax under the head profits and gains of business or profession'. The assessee can however voluntarily declare higher income in his return. This scheme is applicable only to those assesseees whose gross receipts from the above mentioned business do not exceed ₹ 1 crore.

- (vi) Deductions allowable u/s 24 while computing income from H/P are
- (i) Standard deduction @ 30% of NAV in case where NAV is negative deduction shall be NIL.
 - (ii) Deduction for interest on Housing Loan subject to the following conditions
 - (a) Income of self occupied property ₹ 30,000/- or ₹ 2,00,000/- as applicable or Actual Amount paid/accrued /payable whichever is less
 - (b) In case of Let out/Deemed Let out property the actual amount of interest paid/payable during the year when the maximum limit of 30,000/-/2,00,000/- does not apply
 - (c) 1/5th of accumulated interest pertaining to the pre-construction period shall be suitably adjusted alongwith the actual interest for the relevant year for calculating the allowable interest limits.

2008 - June [1] {C} (a) Attempt the following:

- (iv) What are 'intangible assets' ? Give examples. (3 marks)
- (v) "Loss can be carried forward only by the person, who has incurred the loss." Discuss. (3 marks)

Answer:

- (iv) Assets which are not corporeal, not capable of being touched, smelt and are represented by right of the persons through such as knowhow, patents, copyrights, trademarks, licences, franchises or any other business or commercial right acquired on or after April 1, 1998.
- (v) The general principal under the Income Tax Act is that the loss of one person cannot be availed for set off or carry forward by another person unless there is a specific provision enabling such benefit or requiring

such treatment. Even where a business is transferred, the unabsorbed depreciation allowance and other losses of the predecessor cannot be assigned to the successor so as to enable carry forward and set off of such loss and allowance against the profits of the successor. However, there are few exceptions to this well accepted principle as under:

1. In the case of succession by way of inheritance, the successor of business can carry forward and set off the loss of his predecessor
2. In case of amalgamation, de-merger, reorganization of business whereby a firm or a proprietary concern is succeeded by a company, the benefit of carry forward and set off of the past losses and unabsorbed depreciation of the amalgamating company/demerged company/firm or proprietary concern is allowed in the hands of amalgamated company/resulting company/succeeded company
3. When clubbing provision applies, loss is required to be clubbed in the same manner as income. The person in whose hands the loss is so clubbed can set off and carry forward such loss as if it is determined in his case.

PRACTICAL QUESTIONS

2006 - Dec [1] {C} (a) A firm of Company Secretaries consisting of 3 partners earned a net surplus of ₹ 2,08,000 during the accounting year ended 31st March, 2016 after charging interest on capitals amounting to ₹ 36,000 calculated @ 18% per annum on the capitals of partners but before charging remuneration to partners. You are required to calculate the taxable income of the firm and tax thereon after allowing the maximum allowable remuneration to partners under the provisions of the Income-tax Act, 1961. (3 marks)

(b) Compute the value of perquisites in respect of rent free furnished house, if Ashok stays in a city with a population of (i) more than 25 lakh; (ii) less than 25 lakh. Ashok is in receipt of the following amounts from his employer during the previous year ended 31st March, 2015: Basic pay: ₹ 1,80,000; Dearness allowance : 25% of basic pay; Commission; 5% of basic pay; and Bonus; ₹ 8,000; His employer has paid income-tax of

₹ 5,000 and professional tax of ₹ 1,500 on his behalf. Besides, his employer provided refrigerator and television costing ₹ 24,000 and paid ₹ 500 per month towards rent of other furniture provided. (3 marks)

Answer:

(a) Computation of taxable income of Firm for the assessment year 2016-17

Calculation of book profits

	₹
Net surplus as per profit and loss account	2,08,000
Add: Disallowance of interest in excess of 12%	12,000
Book Profits	2,20,000
Less: Remuneration allowed u/s 40(b)	
On first ₹ 2,20,000 @ 90% or ₹ 1,50,000	1,98,000
Taxable income of firm	22,000
Tax on ₹ 22,000 @ 30%	6,600
Add: Surcharge	Nil
Add: Education cess & SHEC	198
Total tax after rounding off u/s 288B	<u>6,800</u>

Answer:

(b) Salary for the purpose of rent free accommodation

	₹
Basic salary	1,80,000
Dearness allowance (25% of basic pay)	45,000
Commission (5% of basic pay)	9,000
Bonus	8,000
Professional tax	1,500
Income tax (paid by the employer)	<u>5,000</u>
Total	<u>2,48,500</u>

Where the population more than 25 lakhs

Value of rent free unfurnished accommodation shall be

15% of salary = ₹ 37,275

Value of furnished accommodation = 37,275 + 2,400 + 6,000 = ₹ 45,675

Where population is less than 25 lakhs

Value of rent free unfurnished accommodation shall be 10% of salary =

Value of furnished accommodation = 24,850 + 2,400 + 6,000 = ₹ 33,250

2006 - Dec [2] (a) A perusal of Ram Mohan's bank account revealed the following deposits during the financial year 2015-16:

- (i) Gift from his friend on 8th December, 2015 on his birthday: ₹ 12,000.
- (ii) Dividends from shares of various Indian companies : ₹ 13,200.
- (iii) Gift from his fiancée on 5th February, 2016: ₹ 85,000.
- (iv) Gift from his mother's friend on 7th July, 2015 on his engagement; ₹ 28,000.
- (v) Gift from his sister in Netherlands on 29th September, 2015: ₹ 2,20,000.
- (vi) Interest on bank deposits: ₹ 30,000.

Compute his total income for the assessment year 2016-17 assuming that his income from house property (computed) is ₹ 72,000. (5 marks)

Answer:

Computation of total income for the assessment year 2016-17

	₹
Income from house property	72,000
Income from other sources	
Gift from friend	12,000
Gift from fiancé	85,000
Gift from mother's friend	28,000
Gift from sister (Netherlands) Exempted	—
Dividend from shares	exempt
Interest on bank deposits	<u>30,000</u>
Gross total Income	<u>1,55,000</u>
Less: Deduction	Nil
Total income	<u>2,27,000</u>

2007 - June [1] {C} Attempt the following:

- (iv) Arun, a resident of Meerut, receives ₹ 38,000 per annum as basic salary. In addition, he gets ₹ 12,000 per annum as dearness allowance, which does not form part of basic salary, 5% commission on turnover achieved by him (turnover achieved by him during the relevant previous year 2015-16 is ₹ 6,00,000) and ₹ 7,000 per annum as house rent allowance. He, however, pays ₹ 8,000 per annum as house rent. Determine the quantum of house rent allowance exempt

from tax.

(3 marks)

Answer:

Minimum of the following three shall be exempt from tax: ₹

Actual amount received	7,000
40% of salary (38,000 + 30,000)	27,200
Rent paid in excess of 10% salary (8,000 – 6,800)	1,200
Therefore, ₹ 1,200 will be exempt	

2007 - Dec [3] Comment on the correctness or otherwise of the following statements/propositions with reference to the relevant provisions of tax laws:

- (i) An assessee can have a loss from a house property. (5 marks)
- (ii) In case of depreciable assets forming part of block of assets, there can be a short term capital gain but no short term capital loss. (5 marks)

Answer:

(i) Correct Statement: There can be loss from house in the following cases:

- (a) In respect of a self occupied house property, the net annual value is taken as nil. No deductions are allowed except for interest on borrowed funds up to a maximum of ₹ 30,000/2,00,000 as the case may be
- (b) In respect of any other type of house property, namely of interest & municipal tax actually paid a house property which is fully let out, etc. There are no restrictions on deductions and therefore, there can be loss under this head in respect of such properties due to municipal taxes as well as deductions. Similarly, deductions under section 24 in case of property deemed to be let out, can be more than net annual value.

(ii) Incorrect Statement: In case of depreciable assets forming part of block of assets, there can be a short term capital loss if all the assets of the block are sold/ transferred during the year and net sale consideration is less than value of the block. In this case the deficit will be treated as a short term capital loss.

2008 - June [2] (a) The net profits of Jolly Brothers, a partnership firm, consisting of three partners carrying on business for the accounting year ended 31st March, 2016 was ₹ 5,40,000. The said net profits after charging salary payable to all the partners were amounting to ₹ 1,08,000, but before

crediting interest to partners' accounts on their fixed capitals amounting to ₹ 10 lakh totally. The partnership deed provided for payment of interest on fixed capital at 18% per annum.

The partnership deed does not, however, specify any salary entitlement to partners. On this information, you are required to -

- (i) compute the taxable income of the firm; and
- (ii) calculate the remuneration allowable under provisions of the Income-tax Act, 1961 to all the partners, if the partnership deed had provided for the payment of remuneration to them. (5 marks)

Answer:

Computation of total income for the firm assessment year 2015-16

(i)	Net Profit	5,40,000
	<i>Add:</i> Salary of partners	<u>1,08,000</u>
		6,48,000
	<i>Less:</i> Interest allowable to maximum extent of 12% on ₹10,00,000	<u>1,20,000</u>
	Total Income	<u>5,28,000</u>
(ii)	The allowable remuneration to partners if the partnership deed so authorize will be computed as under	
	On 1st ₹ 3,00,000 @ 90% or ₹ 1,50,000 whichever is more	2,70,000
	Balance @ 60%	<u>1,36,800</u>
	Maximum Remuneration allowed	<u>4,06,800</u>

2008 - June [3] (b) Mrs. Padma (age: 25 years) is offered an employment by Pritam Ltd. at a basic salary of ₹ 24,000 per month; other allowances according to rules of the company are - Dearness allowance: 18% of basic pay (not forming part of salary for calculating retirement benefits); Bonus: 1 month basic pay; and Project allowance: 6% of basic pay.

The company gives Mrs. Padma an option either to take a rent-free unfurnished accommodation at Mumbai for which the company would directly bear the rent of ₹ 15,000 per month or to accept a house rent allowance of ₹ 15,000 per month and find out her own accommodation. If Mrs. Padma opts for house rent allowance, she will have to pay ₹ 15,000 per month for an unfurnished house.

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Which one of the two options should be opted by Mrs. Padma in order to minimise her tax liability? (5 marks)

Answer:

For determining which one is better option, the following taxable income is calculated of Mrs. Padma

	Option 1 [Rent free accommodation]	Option 2 [House Rent allowance]
Basic Salary (24000*12)	2,88,000	2,88,000
Dearness Allowance (18% of ₹ 2,88,000)	51,840	51,840
Bonus	24,000	24,000
Project Allowance (6% of ₹ 2,88,000)	17,280	17,280
Rent free accommodation	49,392	—
House rent allowance	—	36,000
Income from salary	4,30,512	4,17,120

Mrs. Padma should therefore, opt for House Rent Allowance (Option 2)

Note-1 Calculation of taxable perquisite of rent free accommodation:

	₹
Basic Salary	2,88,000
Bonus	24,000
Project Allowance	17,280
	3,29,280
(a) 15% of salary	49,392
(b) Rent of the house	1,80,000

Whichever is less

Note -2

Amount of house rent allowance exempt from tax is the minimum of the following:

(a) ₹ 1,80,000 (being house rent allowance)

(b) ₹ 1,51,200 (Rent paid in excess of 10% of the salary)

(c) ₹1,44,000 (being 50% of salary)

Therefore, amount exempt is ₹ 1,44,000

Amount taxable is ₹ 1,80,000 -1,44,000 = ₹ 36,000

Topic not yet asked but equally important for examination

Salary and Allowances

Q.1 J, a citizen of India, employed in The Indian Embassy at Tokyo, Japan. He received salary and allowances at Tokyo from the Government of India for the year ended 31.03.2016 for services rendered by him in Tokyo. Besides, he was allowed perquisites by the Government. He is a non-resident for the assessment year 2016-17. Examine the taxability of salary, allowances and perquisites in the hands of J for the assessment year 2016-17.

Answer:

As per Section 9(l)(iii), salaries payable by the Government to a citizen of India for services rendered outside India shall be deemed to accrue or arise in India. As such, salary received by J is chargeable to tax even though he is a non-resident for A.Y. 2016-17.

As per Section 10(7), all allowances or perquisites paid or allowed as such outside India by the Government to a citizen of India for rendering services outside India is exempt from tax.

Therefore, the allowances and perquisites received by J are exempt as per Section 10(7).

Q.2 Mr. Kadam is entitled to a salary of ₹ 25,000 per month. He is given an option by his employer either to take house rent allowance or a rent free accommodation which is owned by the company. The HRA amount payable was ₹ 5,000 per month. The rent for the hired accommodation was ₹ 6,000 per month at New Delhi. Advice Mr. Kadam whether it

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would be beneficial for him to avail HRA or Rent Free Accommodation.
Give your advice on the basis of “Net Taken Home Cash Benefits.”

Answer:

Computation of tax liability of Kadam under both the options:

Particulars	Option I HRA (₹)	Option II RFA (₹)
Basic Salary (₹ 25,000 × 12 months)	3,00,000	3,00,000
Perquisites value of rent free accommodation (15% of ₹ 3,00,000)	NA	45,000
House Rent Allowance (₹ 5,000 × 12 months) ₹ 60,000		
Less: Exempt u/s 10(13A) least of the following		
- 50% of Basic Salary	<u>1,50,000</u>	
- Actual HRA	60,000	
- Rent less 10% of salary	<u>42,000</u>	
	18,000	
Income taxable under the head “Salaries”	3,18,000	3,45,000
Less: Deduction under chapter VI A	–	–
	3,18,000	3,45,000
Tax on total income	6,800	9,500
Less: Rebate u/s 87A (Since, total income is less than ₹ 5,00,000)	2,000	2,000
	4,800	7,500
Add: Education cess @ 1% and SHEC @ 2%	144	225
Total Tax Payable	4,944	7,725

Cash Flow Statement

Particulars	Option I – HRA	Option II – RFA
Inflow: Salary	3,60,000	3,00,000

Less: Outflow: Rent paid	(72,000)	–
Tax on total income	(4,944)	(7,725)
Net Inflow	2,83,056	2,92,275

Since, the net cash inflow under option II (RFA) is higher than in option I- (HRA), it is beneficial for Mr. Kadam to avail option II, i.e., Rent Free Accommodation.

Q.3 Explain in brief about the treatment to be given in the following case under the Income Tax Act, 1961, for A.Y. 2016-17:

Pankaj, a salaried employee, received from his employer medical allowance of ₹ 12,000 and reimbursement of ₹ 16,000 on account of medical facilities.

Answer:

The medical allowance of ₹ 12,000 received by Pankaj from his employer shall be chargeable to tax under the income from salary as per Section 17(1).

However, according to Clause (V) of proviso to Section 17(2), out of reimbursement of ₹ 16,000 on account of medical facilities an amount of ₹ 15,000 will be exempt and only the balance of ₹ 1,000 will be the chargeable value of perquisites.

Q.4 Ranjit has taken an interest free loan of ₹ 10 lacs from his company. The amount is utilized by him for purchasing a house on 30.06.2014. The house is self occupied. As per the scheme of the company, loan would be recovered in 40 equal monthly installments recoverable immediately after completion of 18th month from the date of purchase. Assuming the SBI lending rate of similar loan on 01.04.2015 was 9.75%. Calculate the perquisite value of such loan in the hands of Ranjit for the assessment year 2016-17, is it possible to get deduction of perquisite value of interest under section 24(b)? Does it make any difference, if the house is given on rent?

Answer:

First installment will be due on 1st January 2016. Amount of installment will be ₹ 10,00,000 ÷ 40 = ₹ 25,000

Therefore, value for perquisite for interest free loan will be calculated by applying the interest rate charged by the State Bank of India on the first day

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of the relevant previous year on the outstanding amount of loan as reduced by the interest, if any, actually paid by the employee.

Therefore, the value of perquisites will be as follows:

		₹
From April 15 to Dec 15	$10,00,000 \times 9.75\% \times 9/12$	73,125
For the m/o Jan 16	$9,75,000 \times 9.75\% \times 1/12$	7,922
For the m/o Feb 16	$9,50,000 \times 9.75\% \times 1/12$	7,719
For the m/o Mar 16	$9,25,000 \times 9.75\% \times 1/12$	7,516
	Total	96,282

Therefore, the perquisite value of interest free loan will be ₹ 96,282.

Interest on capital borrowed for the purchase, construction, re-construction, repair or renewals of house property is deductible under section 24(b). In this case, capital is borrowed from the employer without interest. There is no interest paid or payable in respect of the amount of loan of ₹ 10 lacs. Consequently, no deduction under section 24(b) would be available, whether the house is self occupied or let out.

House Property

Q.5 How do you deal with the following issue under the respective provisions of the Income Tax Act, 1961?

The assessee who was deriving income from 'house property' realized a sum of ₹ 52,000 on the account of display of advertisement hoarding of various concerns on the roof of the building. He claims that this amount should be considered under the head "house property" and not under "other sources".

Answer:

The question came up for consideration before the Calcutta High Court in *Mukherjee Estate (P) Ltd. v CIT (2000) 244 ITR 1*. It was decided that the assessee let out the roof for advertisement for hoarding and that the income cannot be considered as income from house property as hoarding do not

form part of the building. Such, income is chargeable under the head “income from other sources”.

Capital Gain

Q.6 Explain in brief about the treatment to be given in the following case under the Income Tax Act, 1961 for the A.Y. 2016-17:

A farmer (resident of Jaipur) sold his rural agricultural land situated in Nepal and received Indian rupees 2 lacs over the cost of acquisition of this land.

Answer:

The definition of capital assets under section 2(14), specifically excludes rural agricultural land in India. Therefore, it follows that if such land is situated outside India, it would fall within the definition of capital assets under section 2(14). Accordingly, capital gains on sale of rural agricultural land situated in Nepal would be subject to tax in the hands of the farmer, since he is a resident in India.

Q.7 A shareholder of demerged Indian Company received listed shares from the resulting company in the scheme of demerger. The shareholder want to transfer the said shares received subsequent to the demerger for consideration. Your advice is sought on the tax consequences as to the shares received on demerger and sought to be transferred.

Answer:

As per the provisions of the Section 47(vii) any transfer or issue of shares by the resulting company to the shareholders of the demerged company in a scheme of demerger is not regarded as transfer for the purpose of capital gains under section 45 if the transfer or is made in consideration of the demerger of the undertaking.

As a consequence of the demerger, the existing shareholders of the demerged company will receive shares in a resulting company. When the shareholder subsequently intends to transfer the said shares, the cost of such shares will have to be arrived at as per the provisions of Section 49(2c).

According to the said provision the cost of acquisition of shares in the resulting company will be the amount which bears to the cost of acquisition of shares held by the assessee in the demerged company, the same proportion as the net book value of the assets transferred in a demerger bears to the net worth of the demerged company immediately before such demerger.

As per the provisions of Section 2(42A)(g), for determining the period of holdings of such shares, the period for which shares of the demerged company was held by the assessee would also be considered.

If the listed shares are held for more than one year and transferred through a recognized stock exchange and securities transaction tax has been paid on such sale, the long-term capital gain arising there from would be exempt under section 10(38). If the total holding period does not exceed one year, then the short-term capital gains arising on sale of such shares would be taxable @ 15% under section 111A.

Income from Other Sources

Q.8 Dhaval is in business of manufacturing customized kitchen equipments. He is also the Managing Director and held nearly 65% of the paid up share capital of Aarav (P) Ltd. A substantial part of the business of Dhaval is obtained through Aarav (P) Ltd. for this purpose, Aarav (P) Ltd. passed on the advance received from its customer to Dhaval to execute the job work entrusted to him.

The Assessing officer held that the advance money received by Dhaval is in the nature of loan given by Aarav (P) Ltd. to him and accordingly is deemed dividend within the meaning of provisions of Section 2(22)(e) of the Income Tax Act, 1961. The assessing officer, therefore, made the addition by treating advance money as the deemed dividend income of Dhaval.

Examine whether the action of the Assessing Officer is tenable in law.

Answer:

As per Section 2(22)(e) in case a company, not being a company in which the public are substantially interested, makes payment of any sum by way of advance or loan to a shareholder holding not less than 10% of voting

power/share capital of the company then, the payment so made shall be deemed to be dividend in the hands of such shareholder to the extent to which the company possesses accumulated profits.

In the present case Dhaval is holding 65% of the paid-up capital of Aarav (P) Ltd. has passed on advance received from its customer to Dhaval for execution of job work entrusted to Dhaval.

Since Aarav (P) Ltd. is not a company in which public are substantially interested, the applicability of the provisions of Section 2(22)(e) in respect of such transaction has to be examined in *CIT V Rajkumar (2009) 318 ITR 462 (Del.)*, it was held that trade advance given to the shareholder which is in the nature of money transacted to give effect to a commercial transaction, would not be deemed to be dividend in the hands of the shareholder under section 2(22)(e). The Delhi High Court ruling in *CIT v Ambassador Travels (P/Ltd. (2009) 318 ITR 376* also support the above view).

In the present case, the payment is made to Dhaval by Aarav (P) Ltd. for execution of work is in the course of commercial transaction and therefore, it shall not be deemed as dividend in the hands of Dhaval under section 2(22)(e). Hence, the action of Assessing Officer is enable in law.

Q.9 M N Q Ltd. is a company in which the public are not substantially interested. K is the shareholder of the company holding 15% of the equity shares. The accumulated profits of the company as on 31.03.2015 amounted to ₹ 10,00,000. The company lent ₹ 1,00,000 to K by an account payee bank draft on 1.10.2015. The loan was not connected with the business of the company. K repaid the loan to the company by an account payee bank draft on 30.03.2016. Examine the effect of the borrowal and repayment of the loan by K on the computation of his total income for the assessment year 2016-17.

Answer:

As per Section 2(22)(e), any payment made by a company in which the public are not substantially interested, by way of advance or loan to the shareholder being a person who is the beneficial owner of shares holding not less than 10% of the voting power shall be treated as dividend to the extent to which the company possesses accumulated profits.

In The instant case MNQ Ltd., is a company in which public are not

substantially interested. The company has accumulated profits of ₹ 10,00,000 on 31.03.2015. The loan given by the company to K was not in the course of business. K holds more than 10% of the equity shares in the company. Therefore assuming that K has voting power equivalent to his shareholding Section 2 (22) (e) comes into play and the sum of ₹ 1,00,000 representing the amount lent by the company to K, is includible or dividend in the total income of K for the assessment year 2016-17.

Under section 2 (22) (e) the liability arises the moment loan is borrowed by the shareholder and it is immaterial whether the loan is repaid before the end of the accounting year or not. Therefore the repayment of loan by K to the company on 30.03.2016 will not affect the taxability of the sum of ₹ 1,00,000 as dividend in his hands.

Q.10 Parmial Managing Director of Heavens Engineering Pvt. Ltd., holds 70% of its paid up capital of ₹ 20 lacs. The balance as at 31.03.2015 in general reserves was ₹ 6 lacs. The company on 1.07.2015 gave an interest - free loan of ₹ 5 lacs to its supervisor having salary of ₹ 4,000 p.m. who inform on 15.08.2015 advanced the said amount of loan so taken from the company to Shri Parimal. The assessing officer had taxed the amount of advance in the hands of Parimal. Is the action of Assessing officer correct?

Answer:

The company had advanced a loan to an employee who in turn had advanced the same to the Managing Director of the company holding 70% of the capital. By virtue of the provisions of Section 2 (22) (e), the same shall be treated as the payment by a company in which public are not substantially interested on behalf of, or for individual benefit of any such share holder (who holds not less than 10% of the voting power), to the extent to which the company possesses accumulated profits.

In this case the company has reserve of ₹ 6 lacs on 31st March, of the preceding year and the amount of loan advanced on 15th July 2015 is ₹ 5 lacs. Therefore the payment is to be treated as deemed dividend. The amount of interest free loan of ₹ 5 lacs given by the company to the supervisor who in turn had given the same to Mr. Parimal shall be construed as the amount given for the benefit of Mr. Parimal and is treated as deemed

dividend chargeable to tax in the hands of Mr. Parimal. This has been held by the Supreme Court in the Case of *L. Alagsunderam Chettiar V CIT (2001) 252 ITR 893*.

Assessment of Companies

Q.1 XYZ Limited's Profit & Loss Account for the period ended 31st March, 2016 shows a net profit of ₹ 75 lacs after debiting/crediting the following items:

- (i) Depreciation ₹ 24 lacs (including ₹ 4 lacs on revaluation).
- (ii) Interest to financial institution not paid before due date of filing return of income ₹ 6 lacs.
- (iii) Provision for doubtful debts ₹ 1 lac.
- (iv) Provision for unascertained liabilities ₹ 2 lacs.
- (v) Transfer to General Reserve ₹ 5 lacs.
- (vi) Net-Agricultural Income ₹ 6 lacs.
- (vii) Amount withdrawn from Reserve created during 2012-13 ₹ 3 lacs. (Book profit was increased by the amount transferred to such reserve in Assessment year 2014-15).

Other information:

Brought forward loss and unabsorbed depreciation as per books are ₹ 12 lacs and ₹ 10 lacs, respectively.

Compute minimum alternate tax under section 115JB for A.Y. 2016-17.

Answer:

Computation of Book Profit of XYZ Limited under section 115JB:

Particulars	₹	₹
Net profit as per profit and loss account		75,00,000
<i>Add:</i> Net profit to be increased by the following amounts as per explanation 1 to Section 115JB		
Transfer to General Reserve	5,00,000	
Provision for unascertained liabilities	2,00,000	
Provision for doubtful debts	1,00,000	

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Depreciation	24,00,000	32,00,000
		1,07,00,000
Less: Net profit to be reduced by the following amount as per explanation 1 to Section 115JB		
Amount transferred from reserve and credited to profit and loss account (since the book profit was increased by the amount transferred to such reserve in the assessment year 2014-15)	3,00,000	
Depreciation (excluding revaluation)	20,00,000	
Net Agricultural Income [exempt under section 10(1)]	6,00,000	
Loss brought forward (₹ 12 lacs) or unabsorbed depreciation (₹ 10 lacs) as per books, whichever is less	10,00,000	39,00,000
Book profit for computation of MAT under section 115JB		68,00,000

Computation of Minimum Alternate Tax (MAT) under section 115JB:

Particulars	₹	₹
18.50% of Book Profit (18.50% of ₹ 68 lacs)		12,58,000
Add: Education cess @ 2%	25,160	
Secondary & higher education cess @ 1%	12,580	37,740
Minimum Alternate Tax payable under section 115JB		12,95,740

Note: Explanation 1 to Section 115JB does not require adjustment of interest not paid before due date of filing return of income while computing book profit.

Q.2 XYZ Private Limited is engaged in manufacture and sale of ceramic tiles. The net profit of the company as per its profit and loss account for the year ended 31st March, 2016 is ₹ 150 lacs after debiting or crediting the following items:

- (i) One-time license fee of ₹ 20 lacs paid to people Ltd. (an Indian company) for obtaining franchise on 1st June, 2015.
- (ii) ₹ 29,000 paid A & Co. a goods transport operator, in cash on 31st January, 2016 for carrying company's product to the warehouse.
- (iii) Rent of ₹ 6 lacs received from letting out a part of its premises. Municipal tax in respect of the said part of the building is ₹ 15,000 remains unpaid due to court litigation.
- (iv) ₹ 2 lacs, being contribution to a university approved and notified under section 35(1)(ii).
- (v) ₹ 3 lacs being loss due to destruction of machinery caused by a fire due to short circuit. The Insurance company did not admit the claim of the company.
- (vi) ₹ 5 lacs paid to contractor for repair work at the company's factory. No tax was deducted on such payment.
- (vii) Dividend of ₹ 0.10 lac from P Ltd. on 1,000 equity shares of ₹ 10 each purchased at ₹ 100 per share on 10th October, 2015. The rate of dividend declared is 100% the record date being 10th December, 2015. The share were sold on 1st March, 2016 at ₹ 80 per share. Loss of ₹ 0.20 lac has been debited to Profit & Loss Account.
- (viii) Depreciation on tangible fixed assets ₹ 1.10 lacs.

Additional Information:

- (i) Depreciation on tangible fixed assets as per Income tax Rules ₹ 1.75 lacs.
- (ii) The company has obtained a loan of ₹ 2 lacs from ABC Private Limited in which it holds 16% voting rights. The accumulated profits held by ABC Private Limited on the date of loan was ₹ 0.50 lac.

Compute total income of XYZ Private Limited for the assessment year 2016-17 indicating reasons for treatment of each item.

Ignore the provisions relating to minimum alternate tax.

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Answer:**Computation of total income of XYZ Private Ltd. for the year 2016-17:**

Particulars	₹	₹
Income from House Property (Note 1)		
Gross Annual Value (GAV)	6,00,000	
(Rental income has been taken as GAV in the absence of other information)		
Less: Municipal taxes (not deductible since it has not been paid)	Nil	
Net Annual Value (NAV)	6,00,000	
Less: Deduction under section 24(30% of NAV)	1,80,000	4,20,000
Profits and gains of business or profession:	1,50,00,000	
Net profit as per profit & Loss account		
Add: Licence fee for obtaining Franchise (Note 2)	20,00,000	
Municipal taxes in respect of let-out part of office premises (Note 1)	15,000	
Contribution to approved and notified university (treated separately) (Note 4)	2,00,000	
Loss due to destruction of machinery by fire (Note 5)	3,00,000	
Amount paid to contractor without deduction of tax at source @ 30% of ₹ 5 lacs (Note 6)	1,50,000	

Short term capital loss on sales of shares of P Ltd. (Note 7)	20,000	
Depreciation on tangible fixed assets (Note 8)	1,10,000	
	1,77,95,000	
Less: Depreciation under section 32 (Note 8) 1,75,000 Intangible assets (Franchise) 25% of ₹ 20,00,000 (Note 2)	5,00,000	6,75,000
Weighted deduction under section 35(1)(ii) (Note 4) ₹ 2,00,000 X 175% (Contribution of University)		3,50,000
Rental income to be taxed under income from house property (Note 1)	6,00,000	
Dividend credited to Profit & Loss account to be excluded (Note 7)	10,000	1,61,60,000
Capital Gain (Note 7) short term capital loss (₹ 20 × 1000 share)	20,000	
Less: Dividend exempt under section 10(34)	10,000	
Short term capital loss to be carried forward to A.Y. 2017-18 Income from other sources (Note 9)	10,000	
Deemed dividend under section 2(22)(e)		50,000
Total Income		1,62,10,000

Notes:

- Rental income from letting out a part of the office premises is taxable under 'income from house property'. Therefore, it has to be deducted while calculating business income since the income has been credited to profit & loss account. Likewise municipal taxes due in respect of such property, debited to profit & loss account has to be added back to compute business income.

There is an alternate view that rental income from letting out part of the excess premises by an assessee who is engaged in business is only exploitation of the commercial asset by an assessee who is engaged in business and hence, the same constitutes business income only. In such case also municipal taxes is not allowable as deduction since the same has not been paid on or before the due date of filing of return of income as required under section 43B.

2. Franchise is an intangible asset eligible for depreciation @ 25%. Since one time licence fees of ₹ 20 lacs paid for obtaining franchise has been debited to profit and loss account, the same has to be added back. Depreciation @ 25% has to be provided in respect of the intangible asset since it has been used for more than 180 days during the year.
3. ₹ 29,000 paid to A&Co., a goods transport operator in cash is deductible while computing business income, as the limit for disallowance under section 40A(3) would be attracted in case of payment to a transport contractor only when it exceeds ₹ 35,000. Since, it is already debited to profit and loss account, no further adjustment is required.
4. Contribution to a University approved and notified under section 35(1)(ii) is eligible for a weighted deduction of 175%. Therefore, the contribution of ₹ 2 lacs debited to profit & loss account has been added back and ₹ 3.50 lacs (being 175% of ₹ 2 lacs) has been deducted while computing business income.
5. Loss of ₹ 3 lacs due to destruction of machinery caused by fire is not deductible since it is capital in nature.
6. Payment to contractor would attract disallowance @ 30% of the expenditure.
7. As per Section 94(7), where any person buys any shares within 3 months prior to the record date and sells such shares within 3 months after such date and the dividend received on such shares is exempt, then the loss arising out of such purchase and sale of shares shall be ignored to the extent of dividend income.

	₹
Loss on purchase and sale of shares (₹ 100 - ₹ 80) × 1000 shares	20,000
Less: Dividend exempt under section 10(34)	10,000
Short term capital loss	10,000

Since, short term capital loss can be set-off only against income under the head "Capital Gains", the short term capital loss of ₹ 10,000 has to be carried forward to the next year. Dividend of ₹ 10,000 credited to profit & loss account has to be deducted and short-term capital loss of ₹ 20,000 debited to profit & loss account has to be added back.

8. Depreciation as per Income Tax Rules, 1962, is deductible while calculating business income. Therefore, ₹ 1.75 lacs depreciation on tangible assets and ₹ 5 lacs on intangible assets is deducted. The amount of ₹ 1 lac depreciation debited to profit & loss account has been added back.
9. As per Section 2(22)(e), any payment by a company in which the public are not substantially interested by way of loan to a shareholder, who is the beneficial owner of shares holding not less than 10% of voting power, is deemed as dividend to the extent to which to company possesses accumulated profits. Accordingly, in this case ₹ 50,000 would be deemed as dividend under section 2(22)(e).

Q.3 ABC Limited has claimed exemption on the income from long-term capital gains under section 54EC by investing in bonds of National Highway Authority of India within the prescribed time, in the computation of 'book profit' under section 115JB. The company claimed exclusion of long-term capital gains because of exemption available on it by virtue of Section 54EC. The Assessing Officer reckoned the book profit including long-term capital gains for the purpose of levy of minimum alternate tax payable under section 115JB.

In the action of the Assessing Officer justified in law?

Answer:

The issue under consideration in this case is whether long-term capital gain exempted by virtue of Section 54EC can be included in the book-profit computed under section 115JB for levy of minimum alternate tax.

It may be noted that minimum alternate tax is attracted under section 115JB, on account of tax on total income being less than 18.5% of book profit. Chapter XII-B is a self contained code for computation of book profit. The net profit as per the profit and loss account for the relevant previous year prepared in accordance with Schedule III of the Companies Act, 2013, as increased/reduced by the specific adjustments provided for in Explanation I to Section 115JB would be the book profit for levy of MAT under section 115JB. Therefore, if an assessee has claimed exemption under section 54EC by investing in bonds of National Highway Authority of India within the prescribed time, the long-term capital gain so exempt would still be taken into account for computing book profit under section 115JB for levy of MAT. Since, Explanation I to Section 115JB does not provide for such deduction. As long as long-term capital gains are part of the profits included in the profit and loss account prepared in accordance with Schedule III of the Companies Act, 2013. Capital gains cannot be excluded unless provided under Explanation I to Section 115JB. It was so held by the Kerala High Court in N.J. Jose and Co. Ltd. v ACIT (2010) 321ITR0132.

Therefore, the action of Assessing Officer is justified in law.

Q.4 ABC (P) Ltd. made a provision of ₹ 30 lacs for doubtful debts by debit to profit & loss account. The Assessing Officer while computing book profit under section 115 JB, wants to add back the provisions. Is the Assessing Officer justified in making such addition for computing book profit?

Answer:

Explanation (1) below section 115JB (2) has been amended to provide that the net profit should be increased by inter alia, the amount set aside as provision for diminution in the value of any asset, if the same has been debited to profit and loss account, for computing the book profit.

Therefore, the Assessing Officer is justified in adding back the provisions of ₹ 30 lacs for doubtful debts while computing book-profit.

Q.5 Yaman Limited is a company in which 60% of the shares are held by Pilloo Limited. Yaman Limited declared a dividend amounting to ₹ 35 lacs to its shareholders for the financial year 2014-15 in its. Annual

General Meeting held on 10th July 2015. Dividend distribution tax was paid by Yaman Limited on 21st July, 2015. Piloo Limited declared an interim dividend amounting to ₹ 50 lacs on 15th October 2015.

Compute the amount of tax on dividend payable by Piloo Limited.

What would be your answer if 58% shares of Piloo Limited are held by Kafi Limited an Indian Company?

Answer:

As per Section 115-O, dividend distribution tax @ 17.304% (i.e. 15% plus surcharge @ 12% education cess @ 2% and SHEC @ 1%) is leviable on dividend declared, distributed or paid by a domestic company. As per Schedule 115-O (1A) a holding company receives dividend from its domestic subsidiary company can reduce the same from dividend declared, distributed or paid by it. The dividend from its domestic subsidiary company should be received in the same financial year in which the holding company declare distributes or pays the dividend. Further, the dividend shall not be considered for reduction more than once.

The conditions to be fulfilled for this purpose are as follows:

- (1) The domestic subsidiary company should have paid the dividend distribution tax which is payable on such dividend;
- (2) The recipient holding company should be a domestic company.

For this purpose, a holding company is a company which holds more than 50% of the nominal value of equity shares of another company.

Section 115-O(1B) provides that for the purposes of determining the tax or distributed profits payable in accordance with Section 115-O, any amount by way of dividends referred to in Section 115-O(1), as reduced by the amount referred to in Section 115-O (1A) [referred to as net distributed profits], shall be increased to such amount as would after reduction of the tax on such increased amount at the rate specified in Section 115-O(1), be equal to the net distributed profits.

On the basis of the aforesaid provisions dividend distribution tax payable by Piloo Limited shall be computed as follows:

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Particulars	₹ in lacs
Dividend distributed by Piloo Ltd.	50
Less: Dividend received from subsidiary Yaman Ltd. (60% of ₹ 35 lacs)	21
Net distributed profits	29
Add: Increase for the purpose of grossing up of dividend $29 \times 100/85 = 34.12 - 29.00$	5.12
Gross dividend	34.12
Additional income-tax payable by Piloo Ltd. u/s 115-O [15% of ₹ 34.12 lacs]	5.12
Add: Surcharge @ 12%	0.61
	5.73
Add: EC @2% and SHEC @ 1%	0.17
	5.9

In order to remove the cascading effect of DDT in a multifier corporate structure, Section 115-O was amended by the Finance Act, 2012. Accordingly in case any domestic company (Piloo Ltd. in this case) and such subsidiary company (Yaman Ltd.) Has paid the DDT as payable on such dividend, then, dividend distributed by the holding company (Piloo Ltd.) in the same year to the extent of dividend received from the subsidiary (Yaman Ltd.), shall not be subject to DDT under section 115-O, irrespective of whether the holding company (Piloo Ltd.) is a subsidiary of any other company (Kafi Ltd., in this case).

Therefore inspite of the fact that Piloo Ltd. is a subsidiary of Kafi Ltd. it can reduce the amount of dividend received from Yaman Ltd. for computation of dividend distribution tax. Therefore dividend distribution tax payable by Piloo Ltd. shall be 17.304% of ₹ 34.12 lacs (grossed up amount) i.e. ₹ 5.90 lacs.

Q.6 X Co. Ltd. a domestic company, holds 51% of the share capital of Y Co. Ltd. which is another domestic company. Y Co. Ltd. paid total dividend of ₹ 50 lacs for the year ended on 31.03.2015 in the F.Y. 2015-16. Out of the dividend received from Y Co. Ltd. X Co. Ltd. distributed dividend of ₹ 15 lacs in the financial year 2015-16.

Explain with reasons the amount of dividend chargeable to tax and

dividend distribution tax payable by X Co. Ltd., would your answer be different if X Co. Ltd. has distributed dividend of ₹ 60 lacs?

Answer:

The dividend received by X Co. Ltd. from Y Co. Ltd. is exempt from tax under section 10(34) if such dividend is covered by Section 115-O.

X Co. Ltd. while paying dividend distribution tax under section 115-O is eligible to reduce the dividend received from its subsidiary company from the dividend paid/ declared by it in the same financial year. Since, the dividend of ₹ 15 lacs paid by X Co. Ltd. is less than the dividend of ₹ 25.5 lacs received from its subsidiary, i.e. Y Co. Ltd. the tax liability under section 115 O would be NIL.

In case X Co. Ltd. has distributed dividend of ₹ 60 lacs, the dividend distribution tax to be paid by X Co. Ltd. shall be computed as follows:

Particulars	₹ in lacs
Dividend distributed by X Co. Ltd.	60.00
Less: dividend received from subsidiary Y Co. Ltd. (51% of ₹ 50 lacs)	<u>25.5</u>
Net distributed profits	<u>34.5</u>
Add: increase for the purpose of grossing up of dividend $34.5 \times 15/85$	<u>6.09</u>
Gross dividend	<u>40.59</u>
Additional income tax payable by X Co. Ltd., u/s 115-O [15% of 40.59 lacs]	6.09
Add: Surcharge @ 12%	<u>0.73</u>
	6.82
Add: EC @ 2% and SHEC @ 1%	<u>0.2</u>
	<u>7.02</u>

Note: As per new sub section (13) of Section 115-O, for the purpose of grossing up the rate specified in sub-section (1) has to be considered. The rate specified in sub-section (1) is 15%. Further is the example given in the explanatory memorandum to the finance (No.2) bill 2014 grossing up has been done at the rate of 15%.

However, it is also possible to take a view that grossing up should be done

at the rate of 17.304% (i.e. 15% plus surcharge @ 12% plus education cess @ 2% and SHEC @ 1%) which is the effective ratio of dividend distribution tax.

Limited Liability Partnership

Q.1

- (i) Who shall verify the return of income of a limited liability company?
- (ii) XYZ LLP is liquidated. What is the liability of partners of XYZ LLP in respect of its tax dues?
- (iii) PQR LLP has a profit of ₹ 500 lacs after charging interest on capital for P amounting to ₹ 15 lacs calculated at 15% p.a. as per the agreement, but before considering remuneration to partners. What is the maximum admissible amount of remuneration to partners assuming all the partners are working partners and remuneration is authorised by the LLP instrument?

Answer:

- (i) Under section 140 in this case of Limited Liability Partnership (LLP), the return of income shall be verified by the designated partner. Where for any unavoidable reason such designated partner is not able to verify the return, or where there is no designated partner as such the return of LLP can be verified by any partner.
- (ii) Section 167C provides for the liability of partners of LLP in liquidation. In the case of liquidation of an LLP and where tax due from the LLP cannot be recovered, every person who was partner of the LLP at any time during the relevant previous year will be jointly and severally liable for payment of tax unless he proves that non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the LLP.
- (iii) **Computation of maximum admissible remuneration to working partners:**

Particulars	₹ in lacs
Net profit before considering partner's remuneration	500
Add: Interest to partner, P in excess of 12% p.a. [$₹ 15 \times 3/15$]	3
Book profit under section 40(b)	503
Maximum amount admissible as remuneration to working partners under section 40(b)	
On first ₹ 3 lacs of book profit 90%	2.70
On balance book profit i.e. ₹ 500 lacs at 60%	300.00
Maximum admissible remuneration	302.70

Tax planning

Q.2 Explain the doctrine of form and substance in the context of tax planning?

Answer:

The following are certain principles enunciated by the courts on the question as to whether it is the form or substance of a transaction, which will prevail in income-tax matters.

- (i) **Form of transaction is to be considered in case of genuine transactions:** It is well settled that when a transaction is arranged in one form known to law it will attract tax liability whereas, if it is entered into in another form which is equally lawful it may not. Therefore, in considering whether a transaction attracts tax or not, the form of the transaction put through is to be considered and not the substance. However, this rule applies only to genuine transactions. [*CIT v. Motor and General Stores (P) Ltd. (1967) 66 ITR 692 (AP)*].
- (ii) **True legal relation is the crucial element for taxability:** It is open for the authorities to pierce the corporate veil and look behind the legal facade at the reality of transaction. The taxation authority is entitled as well as bound to determine the true legal relation resulting from a transaction. The true legal relation arising from a transaction alone determines the taxability of a receipt arising from the transaction [*CIT v. BM Kharvar (1969) 72 ITR 603(SC)*].

(iii) **Substance (i.e. actual nature of expense) is relevant and not the form:**

- (a) In the case of an expenditure, the mere fact that the payment is made under an agreement does not preclude. The department from enquiring into the actual nature of the payment [*Swadeshi Cotton Mills Co. Ltd. v. CIT (1967) 63 ITR (SC)*].
- (b) In order to determine whether a particular item of expenditure is of revenue or capital nature the substance and not merely the form should be looked into. [*Assam Bengal Cement Co. Ltd. v. CIT (1955) 27 ITR 34 (SC)*].

Q.3 Specify with reason whether the following acts can be considered as (i) tax management; or (ii) tax planning; or (iii) tax evasion:

- (i) Mr. P deposits ₹ 1 lac in PPF account so as to reduce his total income from ₹ 3.40 lacs to ₹ 2.40 lacs.
- (ii) PQR Industries Ltd. installed an air conditioner costing ₹ 75,000 at the residence of a director as per terms of his appointment; but treats it as fitted in quality control section in the factory.
This is with the objective to treat it as plant for the purpose of computing depreciation.
- (iii) SQL Limited maintains register of tax deduction at source effected by it to enable timely compliance.
- (iv) R Ltd. issue a credit note of ₹ 90,000 for brokerage payable to Suresh, who is son of R, Managing Director of the company. The purpose is to increase his total income from ₹ 1,60,000 to ₹ 2,50,000 and reduce its income correspondingly.

Answer:

- (i) It is a case of tax planning, since depositing money in PPF and claiming deduction under section 80C is as per the provision of law.
- (ii) It is a case of tax evasion as the air conditioner fitted at residential place is furniture depreciable @10% whereas the rate of depreciation applicable for plant and machinery is higher. The wrong treatment unjustifiably increases the amount of depreciation and consequently, reduce profit.
- (iii) It is a tax management because maintaining register of payment subject to TDS helps in complying with the obligation under the Income Tax Act, 1961.

- (iv) Net effect of the transaction is reduction of tax liability of the company by improper means. The company is liable to tax at a flat rate of 30% whereas Suresh would not be liable to pay tax. Since his income does not exceed the basic exemption limit of ₹ 2,50,000. The issue of credit note to reduce the liability of company amounts to tax evasion.

Repeatedly Asked Questions		
No.	Question	Frequency
1	Distinguish between the 'Recognised provident fund' and 'statutory provident fund' 07 - Dec [4] (a) (i), 12 - Dec [6] (c) (i)	2 Times
2	Distinguish between the 'Long-term capital gains' and 'short-term capital gains'. 09 - June [3] (a) (ii), 10 - Dec [5] (a) (i), 11 - June [4] (b) (iii)	3 Times