

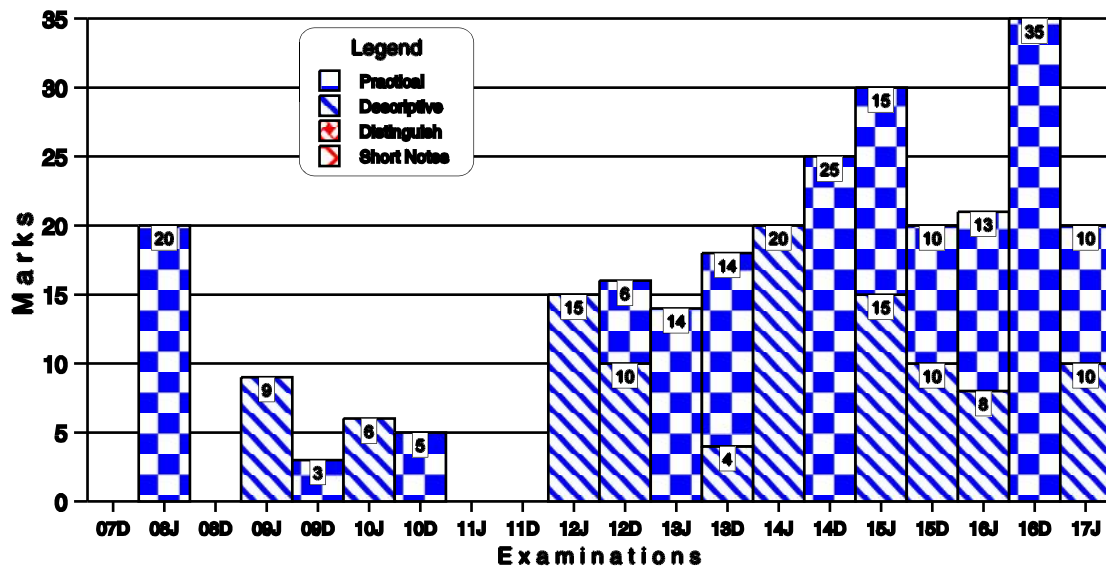
1

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



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) [CSEPM - I]**

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) [CSEPM - I]**

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.

(3 marks) [CSEPM - I]

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 - 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 2017-18 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%.
- “Mat rate to be 9% instead of 18.5% in case of a unit located in an International Financial Services Centre [Section 115JB(7), inserted by the Finance Act, 2016, w.e.f. A.Y. 2017-18.]”
- (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.

- 2009 - Dec [4]** (a) What are the special provisions for computing profits and gains of retail business? **(5 marks) [CSEPM - I]**
- (b) What are the provisions relating to clubbing of income arising to spouse from the assets transferred ? **(5 marks) [CSEPM - I]**

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 ₹ 2 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)**.

“Amendment made by the Finance Act, 2016, w.e.f. A.Y. 2017-18. The above point (iii) relating to payment of salary and interest paid to the partners shall be omitted w.e.f. A.Y. 2017-18. In other words, w.e.f. A.Y. 2017-18, a firm shall not be entitled to deduction on account of interest and salary paid to the partners if he is covered under section 44AD.”

- (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.

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

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) [CSEPM - I]**

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 [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 2017-18?
 (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 2017-18 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 2017-18: 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.

“Mat rate to be 9% instead of 18.5% in case of a unit located in an International Financial Services Centre [Section 115JB(7), inserted by the Finance Act, 2016, w.e.f. A.Y. 2017-18].”

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.

"Dividend received not to be exempt in case it is chargeable to tax in accordance with the provisions of Section 115BBDA [Proviso inserted under section 10(34) [w.e.f. A.Y. 2017-18]"

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 31-03-2016 amounted to ₹ 10,00,000/-. The company lent ₹ 1,10,000/- to Kunal by an account payee bank draft on 01-10-2016. 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 30-03-2017. Examine the effect of the borrowal and repayment of the loan by Kunal on the computation of his total income for the assessment year 2017-18.

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)**]
- Dividend received from an Indian Company which has suffered dividend distribution tax is exempt from tax under section 10(34). However, as per Section 115BBDA (as inserted by Finance Act, 2016), in the case of resident individual/HUF/firm, dividend shall be chargeable to tax at the rate of 10% if aggregate amount of dividend received from a domestic company during the year exceeds ₹ 10,00,000. Exemption under section 10(34) is granted to dividend received from an Indian Company and not to a dividend received from a foreign company.

Tax on certain dividends received from domestic companies.**115BBDA**

1. Notwithstanding anything contained in this Act, where the total income of an assessee, being an individual, Hindu undivided family or a firm, resident in India, includes any income in aggregate exceeding ten lakh rupees, by way of dividends declared, distributed or paid by a domestic company or companies, the income-tax payable shall be the aggregate of:

- (a) *the amount of income-tax calculated on the income by way of such dividends in aggregate exceeding ten lakh rupees, at the rate of ten per cent; and*
- (b) *the amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the amount of income by way of dividends.*
2. *No deduction in respect of any expenditure or allowance or set off of loss shall be allowed to the assessee under any provision of this Act in computing the income by way of dividends referred to in clause (a) of sub-section (1)*
3. *In this section, "dividends" shall have the same meaning as is given to "dividend" in clause (22) of Section 2 but shall not include sub-clause (e) thereof.*

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) [CSEPM - I]**

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) [CSEPM - I]**

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.

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 taxes 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 on the income exempted u/s 10(38)	LLP will not be liable to pay AMT on incomes exempt from tax

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

(3 marks) [CSEPM - I]

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] (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 [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) [CSEPM - I]

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 [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

7.18

■ Solved Scanner CS Prof. Prog. Paper 7 (New Syllabus)

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)]

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 01-10-2016.

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

7.20**■ Solved Scanner CS Prof. Prog. Paper 7 (New Syllabus)**

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 (xiib)** 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 Under LLP

- (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 vs. 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 vs. 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 2017-18. **(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) whose total income exceeds ₹ 1 crore = 15% on income tax payable. 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)**

Answer:

The following are the income exempt from tax under section 10 of the Income tax Act, 1961 in the hands of non-residents:

1. **Interest on NRE A/c [Section 10(4) (ii)]:** In the case of an individual, any income by way of interest on moneys standing to his credit in a Non-Resident (External) Account in any bank in India in accordance with the Foreign Exchange Management Act, 1999 ('FEMA') is exempt.
2. **Tax payable on Royalty or FTS on behalf of foreign company:** Tax payable, under the terms of the agreement, on Royalty or FTS on behalf of foreign company is exempt under section 10(6A).

3. **Tax payable on certain incomes on behalf of foreign company or Non-Resident 'NR':** Tax payable on certain incomes (not being salary, royalty or FTS) on behalf of foreign company or a NR is exempt u/s 10(6B).
4. **Tax payable by Indian Company on behalf of foreign Government etc.:** Tax payable, on behalf of foreign Govt. or foreign enterprises by, Indian company engaged in business of operation of aircraft, on income from leasing of aircraft etc. u/s 10(6BB).
5. **Royalty or FTS received by a specified foreign company:** Royalty or FTS received by specified foreign company is exempt u/s 10(6C).

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

Answer:

Entrepreneurs now have an alternative and innovative form of business organization i.e. Limited Liability Partnership (LLP) which combines the benefits of company and general partnership form of business organizations. LLP has separate legal entity, perpetual succession and limited liability of partners.

From income-tax point of view, LLP is treated as general partnership firm and therefore, its profits will be taxed in the hands of the LLP and not in the hands of its partners.

Difference between Partnership Firm Vs. LLP

Traditional Partnership	LLP
Not a Legal Entity	Legal Entity
Minimum 2 Partners	Minimum 2 Partners
Maximum 20 Partners	No Limit
Partners are jointly liable	To the extent of their contribution
Registration is not compulsory	Compulsory

7.30**Solved Scanner CS Prof. Prog. Paper 7 (New Syllabus)**

BS etc. need not be filled	Filing is compulsory
Audit is not Compulsory	Compulsory if Turnover is ₹ 40 Lakhs or contribution is ₹ 25 Lakhs
Name may be any	Must be approved by Registrar and must have LLP as suffix
Minor can become Partner	Minor can not become Partner

2017 - June [1] (a) Explain the cases of exception under the Income Tax Act, 1961, if any from the general rule "Income earned by a person during a previous year is always taxable in the Assessment Year". **(5 marks)**

2017 - June [2] (a) Explain the provisions contained under the Income Tax Act, 1961 relating to set-off and carry forward of:

- (i) Speculative Business Losses
- (ii) Short-term Capital Losses.

(5 marks)**PRACTICAL QUESTIONS**

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) [CSIG - I]**
- (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) [CSIG - I]**

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 [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.

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, 2017 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) [CSIG - I]**

Answer:

Computation of total income for the firm assessment year 2016-17

(i)	Net Profit	5,40,000
	Add: Salary of partners	<u>1,08,000</u>
		6,48,000
	Less: 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.

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

Answer:

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

	<i>Option 1 [Rent free accommodation]</i>	<i>Option 2 [House Rent allowance]</i>
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)

7.34

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

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

2008 - Dec [5] (a) Gulshan submits the following information relevant for the financial year 2016-17:

	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 2017-18.

(7 marks) [CSEPM - I]

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 2016-17:

7.36

■ Solved Scanner CS Prof. Prog. Paper 7 (New Syllabus)

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

(3 marks) [CSEPM - I]

Answer:

Applicable section: - 56(2)(vi)

- (i) 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.
- (ii) 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.
- (iii) Wrist watch is not a cash gift, hence will not be taxable.

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, 2016 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 2016-17 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 - 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, 2017 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 2017-18. **(7 marks) [CSEPM - I]**

7.38

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

Answer:**Computation of book – profit**

	₹
Net Profit as per P&L	7,35,200
Add: 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
Less: Dividends	28,200
Winning from lotteries	1,40,000
Depreciation	<u>18,000</u>
	9,71,500
Less: 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
Less: 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
Add: cess	6,944
Less: TDS	<u>60,000</u>
Tax payable	<u>1,78,394</u>
Tax payable rounded off	1,78,390

2010 - Dec [3] (a) The book profits of a company in the previous year 2016-17 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 2017-18 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**.

2010 - Dec [3] (a) Sanjay furnishes following particulars of income from his business for the previous year 2016-17:

7.40**Solved Scanner CS Prof. Prog. Paper 7 (New Syllabus)**

- (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) [CSEPM - I]**

Answer:

Computation of tax Liability of Mr. Sanjay**for the Assessment Year 2017-18****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>5,000</u>
		3,025
Add: Edu. Cess & SHEC @ 3%		<u>91</u>
Tax Payable		<u>3,116</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 ₹ 30000)

2010 - Dec [4] (c) Rupesh acquired a residential house on 1st September, 1982 for ₹ 1,00,000. He spent ₹ 25,000 on 1st July, 1984 for improvement of this house property. A further amount of ₹ 50,000 was spent by him on 15th November, 1989 on improvement of the house. Rupesh gifted the said property to his son Bhupesh on 12th October, 1998. Bhupesh also spent the

7.42**Solved Scanner CS Prof. Prog. Paper 7 (New Syllabus)**

following amounts on improvement of the house:

Date of Expenditure	Amount (₹)
15 th July, 1999	60,000
15 th June, 2016	40,000

Bhupesh sold the above house on 30th November, 2016 for a sum of ₹ 15,00,000. Expenses on transfer were 2% of the sale consideration. Compute the capital gains for the assessment year 2017-18, assuming the fair market value of the house as on 1st April, 1984 to be ₹ 3,00,000.

Cost inflation index for various years is as under:

1988-89 —	161
1997-98 —	331
1998-99 —	351
2014-15 —	1024
2016-17 —	1125

(5 marks) [CSEPM - I]**Answer:****Computation of Capital Gains for the assessment year 2017-18**

Sale Consideration	15,00,000
Less: 1. Expenses on transfer	(30,000)
2. Indexed cost of acquisition $(3,00,000 \times 1125/331)$	(10,19,637)
3. Indexed cost of improvement	
(i) By the previous owner $(50,000 \times 1125/161)$	(3,49,379)
(ii) By the assessee	
$[(60,000 \times 1125/351) + (40,000 \times 1125/1125)]$	(2,32,308)
Long term capital loss	1,31,324

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, 2016 to 31st August, 2016. However, she was paying a rent of ₹ 7,000 per month for a house in New Delhi. With effect from 1st September, 2016, 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 2017-18.

(5 marks)

(c) For the previous year 2016-17, 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 2017-18.

(5 marks) [CSEPM - I]

Answer:

(b) Computation of Gross Salary of Savita for Assessment Year 2017-18

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

7.44

Solved Scanner CS Prof. Prog. Paper 7 (New Syllabus)
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 x 5 - (10% of 55,000)]	29,500
(c) 50% of ₹ 55,000 (as she resides in Delhi)	<u>27,500</u>

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 x 7)	35,000
(b) 15% of Salary [(1,32,000 + 1,800 + 2,400) x 15%]	20,430

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

(c) Computation of Total Income of Gopal for the Assessment Year 2017-18

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 x 100%)		20,000
(b) Allowed 50%		
PMDRF (30,000 x 50%)	15,000	
RGF (50,000 x 50%)	<u>25,000</u>	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

(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) 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)]**

2012 - Dec [2] (b) Following is the trading and profit and loss account of Narendra for the year ended 31st March, 2017:

	₹		₹
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		

7.46**Solved Scanner CS Prof. Prog. Paper 7 (New Syllabus)**

General expenses	4,200	
Depreciation on car	12,000	
Profit for the year	<u>98,850</u>	<u> </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) [CSEPM - I]**Answer:****Computation of taxable Income of Narendra under the head Income from business and profession**

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

Income from Business and Profession 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 2017-18:

	₹
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. on 1st August, 2012 and the construction of the house was completed on 1st January, 2016. Total loan is still unpaid. **(5 marks) [CSEPM - I]**

Answer:

Calculation of Income from House Property for the Assessment Year 2017-18

	₹
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	<u>2,50,000</u>
Less: Municipal taxes (borne by the owner)	12,500
Net annual value	<u>2,37,500</u>
Less: Standard deduction @ 30% under section 24	71,250
Interest on loan*	
Pre-Construction Period	<u>1,06,667</u>

7.48**Solved Scanner CS Prof. Prog. Paper 7 (New Syllabus)**

Previous year	2,00,000	3,06,667
Income from house property		<u>1,40,417</u>

* Interest on borrowed amount:

1. Pre-construction period 1.8.2012 to (1.1.2016) i.e. 31.3.2015

Previous year	2011-12	1,33,333	i.e. ₹ 2,00,000 × 8/12
	2012-13	2,00,000	
	2013-14	2,00,000	
		<u>5,33,333</u>	

1/5th ₹ 5,33,333 = ₹ 1,06,667**2. Interest for Previous year 2017-18** 2,00,000**2012 - Dec [5]** (a) Lalit submits the following details of his income for the assessment year 2017-18:

	₹
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 2007-08)	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) [CSEPM - I]**Answer:****Computation of Income of Lalit
for the Assessment Year 2017-18**

	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	-	-
Net income (Total 3,21,000)	2,60,000	-	-	61,000

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.

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:

7.50

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

	₹
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 2017-18.	
	(9 marks)

Answer:

Computation of Tax Liability of Renuka Limited for Assessment Year 2017-18.

(a) Computation of Book Profits :

		₹
Net Profit as per Profit & Loss A/c		90,00,000
<i>Add:</i> 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
<i>Less:</i> 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
<i>Add:</i> Surcharge (as total income is exceed ₹ 1,00,00,000/-) hence surcharge is applicable @ 7%	1,63,429

Tax & Surcharge	24,98,129
Add: Education Cess & SHEC @ 3%	74,944
Tax liability u/s 115 JB (R/off)	25,73,073
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 2017-18:

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 2017-18.	(5 marks)

Answer:

(i) **Computation of Total Income and Income Tax Payable For Assessment Year 2017-18.**

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

7.52**Solved Scanner CS Prof. Prog. Paper 7 (New Syllabus)**

AMT @ 18.5%	14,80,000
Add: EC @ 2% & SHEC @ 1%	44,400
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 2016-17. 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 2017-18:

- (i) Kanha commenced operations of the business of setting-up a warehousing facility for storage of sugar on 1st June, 2016. He incurred capital expenditure on purchase of building during the period from January, 2016 to March, 2016 exclusively for the above business and capitalised the same in its books of account on 1st June, 2016.
- (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 150% for A.Y. 2017-18 of the capital expenditure is available under **section 35AD** for Assessment year 2017-18 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, 150% 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 2017-18. 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 2016-17. **(5 marks)**

(c) The book profits of a company in the previous year 2016-17 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 2017-18 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 2017-18.

	₹
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

7.56

Solved Scanner CS Prof. Prog. Paper 7 (New Syllabus)
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 31.03.2018 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 31.03.2018.

- (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 2016-17:

	₹
(i) Professional fees on 17.08.2016	2,40,000
(ii) Professional fees on 04.03.2017	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 2017-18. **(5 marks)**

(b) Apple Industries Ltd. provides the following information for the financial year 2016-17:

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:

(₹ in lakh)

Previous Year	Brought Forward Losses	Unabsorbed Depreciation
2012-13	1	4
2013-14	1	1
2014-15	10	5

Compute the book profit of the company as per Section 115JB for the assessment year 2017-18. (5 marks)

Answer:

(a) Computation of Tax Liability of Amar for Assessment Year 2017-18

Particulars	Amount (₹)	
Income under head Business & Profession		
Gross fees for services rendered in Pakistan on 17.08.2016	2,90,000	
Gross fees for services rendered in Pakistan on 04.03.2017	1,90,000	
<i>Less: Expenditure incurred</i>	(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	(5,000)	

7.62**Solved Scanner CS Prof. Prog. Paper 7 (New Syllabus)**

Cess @2% of (22,000-5,000)	340	
SHEC @ 1% of (22,000-5,000)	170	17,510
Tax Relief	8,941	(8,941)
Tax Payable		8,569
Rounded off		8,570

Note:

- Gross professional fee = Payment after TDS + TDS
Thus, professional fee on 17.08.2016 = ₹ (2,40,000 + 50,000)
Professional fees on 04.03.2017 = ₹ (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
(i) Tax on double taxed Income in India
= (17,510 × 2,40,000/4,70,000)
= ₹ 8,941
(ii) Tax on double taxed Income in Pakistan
= (80,000 × 2,40,000/4,80,000)
= ₹ 40,000
Tax 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 2016-17**

Particulars	Amount
-------------	--------

	(₹ in lakhs)	
Net profit as per P & L A/c	120	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, 2017 to Neeraj for ₹ 30 lakh of which value applied by stamp valuation authority was ₹ 38 lakh. Sahil purchased this house in March, 2006 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)

7.64

■ Solved Scanner CS Prof. Prog. Paper 7 (New Syllabus)

- (c) An HUF, resident in India, has a gross total income of ₹ 5,40,000 for the assessment year 2017-18. 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 2015-16 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 2017-18:

	₹
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 2014-15	30,000
Brought forward business loss from assessment year 2015-16	15,000
Brought forward loss from the activity of owning and maintaining race horses from the assessment year 2013-14	27,000
Speculation losses of the assessment year 2014-15	35,000

Calculate the gross total income of Jatin for assessment year 2017-18.

(5 marks)

- (c) Alfa Ltd., a domestic company purchased its own unlisted shares on 4th July, 2016. 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, 2016.

(5 marks)

Answer:

- (a) Computation of Gross total Income of Mr. Jatin for the Assessment Year 2017-18:**

Particulars	Amount in (₹)	Amount in (₹)
A. Profits and Gains of Business & Profession Business Profits	14,000	

7.66

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

Less: B/F Business Loss from the AY 2014-15	(15,000)	
Loss to be C/F to next Year	(1,000)	
B. Capital Gains	1,25,000	
Short-term Capital Gains	7,000	
Long-term Capital Gains		
Less: B/F Long-Terms Capital Loss from AY 2013-14	(30,000)	
Loss to be C/F to next Year	(23,000)	1,25,000
C. Income From Other Sources		
Income from owning and maintaining Race Horses	20,000	
Less: B/F Loss from owning and maintaining Race horses from AY 2012-13	27,000	
Balance loss cannot be C/F as the limit of 4 Years expired with this AY	(7,000)	
B/F Speculative losses from the AY 2013-14	(35,000)	
Less: Speculative Incomes	-	
Speculative losses carried forward	(35,000)	-
D. Gross Total Income		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 @ 12%	9,600
Cess & SHEC @ (2% + 1%)	2,688
Total Tax Payable	92,288

* Rate of surcharge applicable 10%

The above tax should be paid on or before 18th July, 2016.

However, it was paid on 29th September, 2016.

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 = ₹ (92,288 × 1/100 × 3) = ₹ 2,768.64

= ₹ 2,769

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, 2017 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.

7.68**Solved Scanner CS Prof. Prog. Paper 7 (New Syllabus)**

- (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 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 2011-12 in Sri Lanka which was not taxed in Sri Lanka. **(5 marks)**

Answer:**(a)**

Analysis of total tax liability of the Company under various financing options.

Particulars	Amount in ₹		
	Option 1	Option 2	Option 3
Share capital	40,00,000	20,00,000	8,00,000
Debt @ 12%	–	20,00,000	32,00,000
Total capital	40,00,000	40,00,000	40,00,000
PBIT (Expected Rate of Return @ 30% of total Capital Employed)	12,00,000	12,00,000	12,00,000
Less: Interest on Loan @ 12%	–	(2,40,000)	(3,84,000)
Profit Before Tax	12,00,000	9,60,000	8,16,000
Less: Tax @ 30.9% on PBT (a)	(3,70,800)	(2,96,640)	(2,52,144)
Net Profit After Tax	8,29,200	6,63,360	5,63,856
Dividend Distribution Tax @ 20.358% (b)	1,68,808	1,35,047	1,14,790
Total Tax liability			
Income Tax (a)	3,70,800	2,96,640	2,52,144
Dividend Distribution Tax (b)	1,68,808	1,35,047	1,14,790

7.70

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

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, 2016 from its subsidiary company which paid dividend distribution tax under section 115-O.
- It distributed dividend of ₹ 33,00,000 on 14th December, 2016 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)**

Answer:

(₹)

Net dividend on which DDT is payable	
Amount of dividend to be distributed to shareholders	33,00,000
Less: Dividend received from subsidiary company on which DDT has already paid	5,00,000
	28,00,000
Less: The company paid dividend to a person on behalf of the New Pension System Trust	3,00,000
Net dividend liable to pay	25,00,000
Computation of DDT	
Alternative I	
₹ 25,00,000 × 20.358% (effective rate)	5,08,950
Alternative II	
₹ 25,00,000 × 100/85	
Gross amount of ₹ 29,41,176	
DDT payable on ₹ 29,41,176 @ 17.304%	5,08,941

Note: There is a nominal difference between Alt I and Alt II, therefore, any can be paid.

2016 - Dec [1] (a) Global Ltd. is a widely-held company engaged in power generation in Assam. At present, the company is having a capital of ₹ 10 crore in fully paid equity shares. The company is considering a proposal to increase its power generation capacity which will require ₹ 5 crores. The additional capital required can be raised either by issue of fully paid equity shares or by issue of 10% debentures. Directors of the company want to raise the funds through equity shares as the company can have fully owned capital. Will you accept the proposal at 20% rate of return (pre-tax) and 30% rate of tax? Give reasons in support of your answer. **(5 marks)**

(b) Karan purchased a plot in 1988-89 for ₹ 2,10,000. He sold the plot on 7th February, 2017 for ₹ 24,00,000 (stamp duty value ₹ 25,40,000). He paid a brokerage of 5% on selling price to a person who arranged for the sale. Out of the sale proceeds of the plot, he invested ₹ 5,00,000 in NHAI Bonds on 31st March, 2017 and ₹ 3,00,000 in bonds of Rural Electrification Corporation Ltd. on 1st September, 2017. Compute the taxable capital gains of Karan, if the cost inflation index (CII) for 1988-89 was 161 and for 2016-17 is 1125. **(5 marks)**

(c) Brisk Ltd. incurred ₹ 52.75 lakhs during the period April, 2016 to June, 2016 on advertisement, professional fees, administration cost, etc. for the purpose of public issue of ₹ 555 crores in July, 2016 and had, therefore, accounted all such expenses under the head 'share issue expenses'. However, the clearance for the public issue was not given by SEBI. The company in its return of income filed for the year ended 31st March, 2017 had claimed such expenses as revenue expenses which were disallowed by the Assessing Officer. The company seeks your opinion. Advise. **(5 marks)**

7.72

■ Solved Scanner CS Prof. Prog. Paper 7 (New Syllabus)

Answer:**(a) Computation of Expected Rate of Return on Capital Employed**

Particulars	Amount in (₹)	
	(Proposal I) Issue of Equity Shares	(Proposal II) Issue of 10% Debenture
Equity Share Capital	15,00,00,000	10,00,00,000
10% Debenture	–	5,00,00,000
Total Capital Employed	15,00,00,000	15,00,00,000
PBIT (Expected Rate of Return @ 20% of total Capital employed)	3,00,00,000	3,00,00,000
Less: Interest on Debenture @ 10%	–	(50,00,000)
Profit Before Tax	3,00,00,000	2,50,00,000
Less: Tax @ 30% on PBT	(90,00,000)	(75,00,000)
Net Profit After Tax	2,10,00,000	1,75,00,000
Expected Rate of Return to Share Holders	14.00%	17.50%

Conclusion: The proposal of deriving additional capital by issuing fully paid up equity shares is not acceptable as it will give lesser rate of return to share holders in future. Therefore, it is beneficial to raise the additional funds through the issue of 10% debentures as it will increase the rate of return to shareholders from 14% to 17.50%.

(b) Computation of taxable capital gains of M/s Karan for AY 2017-18:

(₹)

Sales Consideration of Plot (Stamp duty value u/s 50C has been considered as full value of consideration as the actual sale value is less than the stamp duty value)	25,40,000
Less: Expenses on transfer (5% brokerage on selling price)	(1,20,000)

Net sale consideration	24,20,000
Less: Indexed cost of acquisition $\left(₹2,10,000 \times \frac{1,125}{161} \right)$	14,67,391
Long term capital gains	9,52,609
Less: Exemption under section 54EC (See note below)	5,00,000
Taxable capital gain	4,52,609

Note:

1. "Long term specified asset" for making any investment under the Section on or after 01.04.2017 means any bond by the National Highway Authority of India or Rural Electrical Corporation Limited within a period of six month after the date of such transfer.
2. ₹ 3 lac in Rural Electrical Corporation Limited after 6 months will not be exempted.

**(c) MASCON TECHNICAL SERVICES LTD. V. CIT (Madras High Court):
Share issue expenses cannot be allowed as revenue expenditure even when shares could not be issued due to non-approval by SEBI:**

In the instant case the assessee incurred expenditure for issuing shares. However, on account of non-clearance from the SEBI, shares could not be issued. It claimed deduction for share issue expenses as revenue expenditure by contending that since the expenditure did not yield any desired result, the character of the expenditure had to be decided on the basis of the result that would yield benefit in assessee's business. The Assessing Officer and the CIT (A) disallowed such expenses. The Tribunal also affirmed the view of the Assessing Officer. Aggrieved assessee filed the instant appeal.

The High Court held in favour of revenue as under:

- The impugned expenses were incurred by the assessee for the purpose of widening its capital base. The assessee, admittedly, took steps to go in for public issue and after incurring expenditure, just before the public issue, by reason of the orders from the SEBI, the assessee could not go in for public issue. Thus, the efforts were

aborted.

- There was no justifiable ground to accept the plea of the assessee that on account of the abortive efforts, the expenditure incurred would lose its character as capital expenditure for the purpose of allowing it as a revenue expenditure.

2016 - Dec [2] (a) Explain in brief the treatment as to the taxability and/or allowability, in the context of provisions contained under the Income-tax Act, 1961 for the assessment year 2017-18, in the following cases:

- (i) Aroma Ltd., an investment company, received dividend of ₹ 3,00,000 on equity shares from listed domestic companies. It paid interest of ₹ 2,00,000 on the borrowed funds utilised for making investment in such shares of these companies.
- (ii) Chetan Ltd. did not have any active business carried on by it during the previous year ended on 31st March, 2017 and had incurred capital expenditure on scientific research amounting to ₹ 2,00,000 related to its subsidiary company. **(5 marks)**

Answer:

- (i) The dividend income earned by Aroma Ltd. on the shares held as investment is exempt under the provisions of Section 10(34). As per Section 14A, no expenditure is allowable in respect of income which does not form part of total income. The interest paid on borrowed capital is an expenditure incurred in respect of shares purchased for investment. Since the dividend income received on shares is exempt and does not form part of total income of Aroma Ltd., the interest expenditure is not allowable as deduction in view of Section 14A. [The quantum of disallowance must be in accordance with Rule 8D of the Income-tax Rules, 1962.]
- (ii) **As per Section 35(1)(iv)**, deduction in respect of capital expenditure on scientific research would be admissible under the provisions of **Section 35(2)** only if the scientific research relates to the business carried on by the assessee.
However, in the given case, Chetan Ltd., did not have any active business carried on by it to which the said scientific research related

to. The capital expenditure incurred by Chetan Ltd. related to its subsidiary company. Therefore, Chetan Ltd. is not eligible for deduction under the provisions of **Section 35(1)(iv) read with Section 35(2)**.

2016 - Dec [2A] (Or) (i) Mohan owns a house located in Varansi. The construction of the house was completed in July, 2012. One-fourth floor area of the house is utilised by him for his own residence. He is running his own clinic in another one-fourth floor area of the house. The remaining floor area is let-out for residential purposes on a monthly rent of ₹ 8,000.

The let-out portion of the house remained vacant for two months during the previous year 2016-17. Other details of the entire house are as under:

	₹
Standard rent	1,60,000
Municipal valuation	1,40,000
Municipal tax paid by Mohan	20,000
Interest payable on loan taken for construction of the house	60,000
Repairs and maintenance	8,000
Insurance	4,000

Compute income from house property of Mohan for the assessment year 2017-18.

(5 marks)

(ii) Arvind, a textile merchant and resident Indian is doing business in India and abroad. During the previous year 2016-17, he disclosed the following information:

	₹
Income from business in India	27,00,000
Income from business in Country-A with which India does not have agreement for avoidance of double taxation	15,00,000
Income-tax levied by government in Country-A	5,00,000
Loss from business in Country-B with which also India does not have agreement for avoidance of double	(4,00,000)

7.76

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

taxation

Contribution to public provident fund 1,50,000

Payment of life insurance premium on the life of his father and mother 20,000

Compute the tax liability of Arvind for the assessment year 2017-18.

(5 marks)

- (iii) Nandita Traders, engaged in manufacturing activity, was in receipt of sales-tax subsidy of ₹ 5 lakh from State Government as its manufacturing unit was located in a backward area. The subsidy is related to the sales of its products and was payable only after the commencement of production. Nandita Traders claimed that the subsidy so received is in the nature of capital receipt and hence, cannot be taken as chargeable to tax for the assessment year 2017-18. How will you deal with the situation in the context of provisions of the Income-tax Act, 1961?

(5 marks)

Answer:

(i)

Computation of Income from House Property of Mohan for the AY 2016-17

Particulars	Amount in (₹)	
Annual Value of $\frac{1}{4}$ portion used for his own profession	Nil	
Annual Value of $\frac{1}{4}$ portion used for his own residence	Nil	
Less: Municipal Taxes	Nil	
Net Annual Value	Nil	
Less: Interest on Borrowing ($\frac{1}{4} \times ₹ 60,000$)	(15,000)	
Loss from house property (Self Occupied)		(15,000)
Gross Annual Value of let-out portion ($₹ 8,000 \times 10$)	80,000	
(a) Expected Rent = Fair Rent or Municipal Value whichever is higher subject to Standard Rent i.e. $₹ 1,40,000/2 = 70,000$		
(b) Gross Annual Value = Expected Rent or Actual		

Rent whichever is higher i.e. ₹ 70,000 or (₹ 8,000 × 10) = ₹ 80,000		
Less: Municipal Tax (₹ 20,000 × ½)	(10,000)	
Net Annual Value	70,000	
Less: Standard Deduction (Section 24b) (₹ 70,000 × 30%)	(21,000)	
Less: Interest on Borrowing (₹ 60,000 × ½)	(30,000)	
Income from let out house property		19,000
Income under the head house property		- 4,000

Note : Expenses on Repair and Maintenance and Insurance would not be allowed as deduction in computing the income under the head house property.

(ii) Computation of Taxable Income of Mr. Arvind for assessment year 2016-17:

	(₹)	(₹)
Income from business in India		27,00,000
Income from business in country A	15,00,000	
Loss from business in country B	4,00,000	11,00,000
Gross Total Income		38,00,000
Less: Deduction under Sec. 80C		
Public provident fund	1,50,000	
Life Insurance premium	20,000	
	1,70,000	
Max. Relief permissible		(1,50,000)
Tax on total income		36,50,000

7.78

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

Tax Liability on first ₹ 2,50,000 - NIL	
₹ 2,50,001 - ₹ 5,00,000 - 10%	25,000
₹ 5,00,000 - ₹ 10,00,000 - 20%	1,00,000
Balance @ 30% (₹ 26,50,000 × 30%)	7,95,000
Total Tax (excluding EC & SHEC)	9,20,000
Education Cess & SHEC @ 3%	27,600
Total Tax	9,47,600
Relief under section 91 (Note 1)	(3,89,425)
Tax payable in India	5,58,175

Note 1
Computation of Relief under section 91 of the Income Tax Act, 1961

Average rate of Tax in India ₹ (9,47,600/36,50,000 × 100)	= 25.9616%
Average rate of tax in foreign country (5,00,000/15,00,000 × 100)	= 30%
Doubly Taxed Income	15,00,000
Relief under section 91 (on ₹ 15,00,000 @ 25.96%) i.e. rate 25.9616% or 30% whichever is lower	3,89,425

(iii) Section 4 brings to charge tax on total income *prima facie* in order to come within the scope of the charging provisions. The receipt in question should normally be a revenue receipt. Capital receipt are normally exempt. However capital receipt has been specifically included in the definition of income as under:

Assistance in the form of subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee other than:

- (a) The subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provision of explanation 10 to clause (1) of Section 43; or
- (b) The subsidy or grant by the Central Government for the purpose of the corpus of a trust or institution established by the Central Government or a State Government as the case may be.

Therefore, Nandita Traders, can't be exempted and will be chargeable to tax for the assessment year 2017-18.

2017 - June [2] (b) How will you decide the residential status of the following companies or firms for the Previous Year 2016-17 under the provisions of Income Tax Act, 1961? Give brief reasons for your answer:

- (i) XYZ Pharma Ltd., a company registered in India under the Companies Act, 2013.
- (ii) PQR Ltd., a company incorporated in Germany, of which the control and management of the affairs of the business is situated wholly in India.
- (iii) SVR Ltd., a French company of which the control and management of the affairs of the business is situated wholly outside India in Sapin.
- (iv) ABC Ltd., a company incorporated in Australia, of which the control and management of the affairs of the business is situated partly outside India and partly in India.
- (v) PCR & Co., a partnership firm is doing its business activities in Chennai, India. All the meetings of the partners during the year for decision-making took place in Singapore and Malaysia. **(5 marks)**

2017 - June [2A] (Or) (iii) The profit and loss account of XYZ Ltd. for the year ended 31-3-2017 showed a net profit of ₹ 80,00,000 after making of the following adjustments:

- (a) Depreciation ₹ 24 lakh (including depreciation on revaluation of assets of ₹ 4 lakh).
- (b) Provisions for unascertained liabilities ₹ 2 lakh.
- (c) Transfer to General Reserve ₹ 9 lakh.
- (d) Agricultural Income ₹ 15 lakh.

7.80

■ **Solved Scanner CS Prof. Prog. Paper 7 (New Syllabus)**

- (e) Amount transferred to profit and loss account from general reserve ₹ 3 lakh. Brought forward business losses and unabsorbed depreciation as per books of accounts were ₹ 15 lakh and ₹ 11 lakh respectively. Compute book profits and Minimum Alternate Tax (MAT) under section 115JB payable by XYZ Ltd. for A.Y. 2017-18. **(5 marks)**

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 31.03.2017 for services rendered by him in Tokyo. Besides, he was allowed perquisites by the Government. He is a non-resident for the assessment year 2017-18. Examine the taxability of salary, allowances and perquisites in the hands of J for the assessment year 2017-18.

Answer:

As per **Section 9(I)(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. 2017-18.

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. Advise Mr. Kadam whether it

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	1,50,000	
- Actual HRA	60,000	
- Rent less 10% of salary	42,000	
	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)	5,000	5,000
	1,800	4,500
Add: Education cess @ 1% and SHEC @ 2%	54	135
Total Tax Payable	1,854	4,635

Cash Flow Statement

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

7.82**Solved Scanner CS Prof. Prog. Paper 7 (New Syllabus)**

Less: Outflow: Rent paid	(72,000)	–
Tax on total income	(1,854)	(4,635)
Net Inflow	2,86,146	2,95,365

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. 2017-18:

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 30.06.2015. 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 01.04.2016 was 9.75%. Calculate the perquisite value of such loan in the hands of Ranjit for the assessment year 2017-18, 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 2017. 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 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 16 to Dec 16	$10,00,000 \times 9.75\% \times 9/12$	73,125
For the m/o Jan 17	$9,75,000 \times 9.75\% \times 1/12$	7,922
For the m/o Feb 17	$9,50,000 \times 9.75\% \times 1/12$	7,719
For the m/o Mar 17	$9,25,000 \times 9.75\% \times 1/12$	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 I***. 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. 2017-18:

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 31.03.2016 amounted to ₹ 10,00,000. The company lent ₹ 1,00,000 to K by an account payee bank draft on 1.10.2016. 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 30.03.2017. Examine the effect of the borrowal and repayment of the loan by K on the

computation of his total income for the assessment year 2017-18.

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 31.03.2016. 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 2017-18.

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 30.03.2017 will not affect the taxability of the sum of ₹ 1,00,000 as dividend in his hands.

Q.10 Parimal Managing Director of Heavens Engineering Pvt. Ltd., holds 70% of its paid up capital of ₹ 20 lacs. The balance as at 31.03.2016 in general reserves was ₹ 6 lacs. The company on 1.07.2016 gave an interest - free loan of ₹ 5 lacs to its supervisor having salary of ₹ 4,000 p.m. who inform on 15.08.2016 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 2016 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, 2017 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 2013-14 ₹ 3 lacs. (Book profit was increased by the amount transferred to such reserve in Assessment year 2015-16).

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. 2017-18.

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	
Depreciation	24,00,000	32,00,000
		1,07,00,000
<i>Less:</i> 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 2015-16)	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

7.90**■ Solved Scanner CS Prof. Prog. Paper 7 (New Syllabus)****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, 2017 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, 2016.
- (ii) ₹ 29,000 paid A & Co. a goods transport operator, in cash on 31st January, 2017 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, 2016. The rate of dividend declared is 100% the record date being 10th December, 2016. The share were sold on 1st March, 2017 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 2017-18 indicating reasons for treatment of each item.
Ignore the provisions relating to minimum alternate tax.

Answer:

Computation of total income of XYZ Private Ltd. for the year 2017-18:

Particulars	₹	₹
Income from House Property (Note 1)		
Gross Annual Value (GAV) (Rental income has been taken as GAV in the absence of other information)	6,00,000	
<i>Less:</i> Municipal taxes (not deductible since it has not been paid)	Nil	
Net Annual Value (NAV)	6,00,000	
<i>Less:</i> Deduction under section 24(30% of NAV)	1,80,000	4,20,000
Profits and gains of business or profession:		
Net profit as per profit & Loss account	1,50,00,000	
<i>Add:</i> Licence fee for obtaining Franchise (Note 2)	20,00,000	

7.92

■ Solved Scanner CS Prof. Prog. Paper 7 (New Syllabus)

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. 2018-19 Income from other sources (Note 9)	10,000	

Deemed dividend under section 2(22)(e)		50,000
Total Income		1,62,10,000

Notes:

1. 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

7.94

■ Solved Scanner CS Prof. Prog. Paper 7 (New Syllabus)

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 Piloo Limited. Yaman Limited declared a dividend amounting to ₹ 35 lacs to its shareholders for the financial year 2015-16 in its Annual General Meeting held on 10th July 2016. Dividend distribution tax was paid by Yaman Limited on 21st July, 2016. Piloo Limited declared an interim dividend amounting to ₹ 50 lacs on 15th October 2016. 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

7.98**Solved Scanner CS Prof. Prog. Paper 7 (New Syllabus)**

by Piloo Limited shall be computed as follows:

Particulars	₹ in lacs
Dividend distributed by Piloo Ltd.	50.00
<i>Less:</i> Dividend received from subsidiary Yaman Ltd. (60% of ₹ 35 lacs)	21.00
Net distributed profits	29.00
<i>Add:</i> 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
<i>Add:</i> Surcharge @ 12%	0.61
	5.73
<i>Add:</i> EC @2% and SHEC @ 1%	0.17
	5.90

In order to remove the cascading effect of DDT in a multiplier 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 31.03.2016 in the F.Y. 2016-17. Out

of the dividend received from Y Co. Ltd. X Co. Ltd. distributed dividend of ₹ 15 lacs in the financial year 2016-17.

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)	25.50
Net distributed profits	34.50
Add: increase for the purpose of grossing up of dividend $34.5 \times 15/85$	6.09
Gross dividend	40.59
Additional income tax payable by X Co. Ltd., u/s 115-O [15% of 40.59 lacs]	6.09
Add: Surcharge @ 12%	0.73
	6.82
Add: EC @ 2% and SHEC @ 1%	0.20
	7.02

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 × 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.