Final
Group III
Paper 16 : DIRECT TAX LAWS AND INTERNATIONAL TAXATION
(SYLLABUS – 2016)

Objectives

1. (a) Multiple Choice Questions (with reasons)

1. **TDS on income from Investment in securitization fund is covered under section**
   - **A. 196B**
   - **B. 196D**
   - **C. 194LC**
   - **D. 194LBC**
2. **AMT is levied at the rate of _____ of adjusted total income in case of non corporate assessee.**
   - **A. 200**
   - **B. 139**
   - **C. 226**
   - **D. 225**
3. **Stay of proceedings is covered under section**
   - **A. Section 192**
   - **B. Section 192A**
   - **C. Section 193**
   - **D. None of the above**
4. **MAT credit can be carry forward for how long.**
   - **A. 5 years**
   - **B. 10 years**
   - **C. 15 years**
   - **D. 20 years**
5. **The _____ of a company has to intimate the tax authority before he parts with any of the assets of the company or the properties in his hands and has to set aside the amount if any intimated to him by the tax authorities.**
   - **A.** Company Secretary
   - **B.** Cost Accountants
   - **C. Liquidator.**
   - **D. Chartered Accountants**
6. **Which one is the duty of the Tax payer?**
   - **A. Tax Planning**
   - **B. Tax Evasion**

C. Tax Avoidance
D. Tax Management

7. Section _____ deals with the rectification mistakes which are apparent from the record in any order passed by the assessing officer.
   A. 156
   B. 154
   C. 144
   D. 158
8. ICDS-II stands for _____.
   A. Accounting policies
   B. Construction Contract
   C. Revenue recognition
   D. Valuation of inventories
9. MAT stands for _____.
   A. Management Aptitude Test
   B. Minimum Alternate Tax
   C. Minimum adjusted Tax
   D. None of the above
10. Form ___ is required to file an appeal to the commissioner of Income Tax.
   A. 34
   B. 35AC
   C. 26AS
   D. 35

Answer:

Sl/No.	Answer	Reason
1.	D	TDS on income from Investment in securitization fund is covered under section 194LBC.
2.	C	AMT is levied at the rate of 18.5% of adjusted total income in case of non corporate assessee.
3.	D	Stay of proceedings is covered under section 225.
4.	C	The amount of tax credit shall be carried forward and set off but such carry forward shall not be allowed beyond the 15th assessment year immediately succeeding the assessment year in which tax credit becomes allowable.
5.	C	As per section 178(3), the liquidator of a company has to intimate the tax authority before he parts with any of the assets of the company or the properties in his hands and has to set aside the amount if any intimated to him by the tax authorities
6.	D	Tax management is the duty of the Tax payer.
7.	B	Any mistake which is apparent from the record in an order passed by the Assessing Officer can be rectified u/s 154.
8.	D	ICDS-II stands for Valuation of Inventories.
9.	B	MAT stands for Minimum Alternate Tax.

10.	D	An appeal to the Commissioner of Income-tax (Appeals)shall be filed in Form No. 35.

Assessment of income and Computation of tax liability of various Entities

Question No.: 2

Mr P, an employee with M/s PKJ ltd. provides the following information relating to his income for financial year 2017-18.

i. **He received salary ₹ 25,000 per month including conveyance allowance @ ₹ 2,500 per month for official purpose.**
ii. **He deposited ₹ 2,500 per month in his account under a pension scheme notified by the Central Government.**
iii. **He paid a sum of ₹ 60,000 during the year as interest on loan taken in April, 2015 from bank for higher studies of his daughter.**
iv. **He paid health insurance premium for himself and his family members ₹ 8,500 in cash and ₹ 9,000 by credit card.**
v. **He invested ₹ 40,000 in notified bonds under section 80C issued by NABARD in July, 2017.**
vi. **Equity shares having fair market price of ₹ 1,00,000 were allotted to him by the company at a concessional price of ₹ 20,000 on 30.05.2017, which were sold by him for ₹1,80,000 on 28.02.2018.**

Compute the total income of Mr P for the Assessment Year 2018-19 and give reasons for treatment of each of the items.

Answer:

Computation of Total Income of Mr P for the Assessment Year 2018-19

	₹	₹
Income under head salary		
Gross Salary	3,00,000	
Add: Equity shares given at concessional rate	80,000	
	3,80,000	
Less: Conveyance allowance exempt under section 10(14) as spent for official purpose	30,000	3,50,000
Income under head capital gain		
Sale consideration of equity shares sold on 28.02.2018	1,80,000	
Less: Fair Market Price of shares on 30.05.2017	1,00,000	
Short term capital gain		80,000
Gross Total Income		4,30,000
Less: Deduction		
Under section 80C-Bond issued by NABARD	40,000	
Under section 80CCD		

For deposit in pension scheme notified by the Central Government [Restricted to 10% of salary i.e 10% of ₹ 2,70,000]	27,000	
Additional amount of investment u/s 80CCD	3,000	
Under section 80D-Payment of health insurance premium by credit card under section 80E	9,000	
For payment of interest on loan taken from bank for higher studies of daughter	60,000	1,39,000
Total Income		2,91,000
Notes: Payment of ₹ 8,500 made in cash will not qualify for deduction under section 80D		

Question No.: 3

Pankaj, a non-resident Indian, has the following sources of income in India during the previous year 2017-18:

	₹	₹
Income from house property located in India (computed)		**2,70,000**
Dividend from Indian Companies		**75,000**
Interest on debentures of Indian company (Subscribed in convertible foreign exchange)	**1,00,000**	
Less: Interest on loan taken for purchase of debentures	**20,000**	**80,000**
Long-term capital gains on sale of debentures subscribed in US $:		
Cost in 2002-03	**4,00,000**	
Sale in 2017-18	**6,00,000**	
	2,00,000	
Less: Commission to brokers	**6,000**	**1,94,000**

Cost Inflation Index: FY 2002-03-105; F.Y.2017-18-272.

Compute the tax payable by Pankaj for the Assessment year 2018-19, if he opts for the previous of chapter XII-A of the Income Tax, Act 1961.

Answer:

Computation of total income of Mr. Pankaj for the A.Y. 2017-18 as per provisions of Chapter XII-A

	₹	₹
Income from house property located in India (computed)		2,70,000
Capital Gains on sale of debentures		
Sale consideration	6,00,000	
Less: Commission to brokers	6,000	
Net sale consideration	5,94,000	
Cost of acquisition	4,00,000	
Long term capital gain		1,94,000

Dividend income received from Indian companies [exempt under section 10(34)]		Nil
Interest on debentures of Indian company (deduction of expenses not allowed)		1,00,000
Total Income		5,14,000

Computation of tax liability of Mr. Pankaj for the A.Y. 2018-19 as per provisions of Chapter XII-A

	₹	₹
Tax on long term capital gain (₹ 1,94,000 x 10%) [Indexation not allowed]	19,400	
Tax on interest on debentures being investment income (₹ 1,00,000 x 20%)	20,000	
Tax on balance income of ₹ 2,70,000	1,000	40,400
Add: Education cess & SHEC @ 3%		1,212
Total tax liability (rounded off)		41,610

Question No.: 4

The net profit of PKJ Ltd. as per Profit & Loss Account for the previous year 2017-18 is ₹ 100 lakhs after debiting/crediting the following items:

(i) Provision for income-tax: ₹15 lakhs

(ii) Provision for deferred tax: ₹ 8 lakhs

(iii) Proposed Dividend: ₹ 20 lakhs

(iv) Depreciation debited to Profit & Loss Account is ₹12 lakhs. This includes depreciations asset to the tune of ₹ 2 lakhs.

(v) Profit from unit established in Special Economic Zone: ₹ 30 lakhs

(vi) Provision for permanent diminution in value of investments: ₹ 2 lakhs

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

Previous year	Brought forward loss (₹ in lakhs)	Unabsorbed depreciation (₹ in lakhs)
2014-15	2	5
2015-16	-	3
2016-17	10	2

Compute book profit of the company under section 115JB for Assessment Year 2018-19.

Answer:

Computation of book profit of PKJ Ltd under section 115JB for Assessment Year 2018-19

(₹ in Lakh)

	₹	₹
Net profit as per profit and loss account		100
Add: Provision for income tax	15	
Provision for deferred tax	8	
Proposed dividend	20	
Depreciation	12	
Provision for diminution in value of investment	2	57
Less: Depreciation (excluding depreciation on revaluation of assets)	10	
Aggregate of brought forward loss or unabsorbed depreciation, as per books of past years whichever is less	10	20
Book Profit		137

Question No.: 5

X Ltd., a domestic company in which public arc substantially interested, is engaged in the manufacture and sale of cement. Its audited accounts for the year ended 31.3.2018 show a profit of ₹ 35,00,000 .Examination of the accounts reveals that the above profit was arrived at after taking into account the following items of income and expenditure-

	₹	₹
Dividend received from M Ltd, a domestic company registered in i April. 1980 and engaged exclusively in the manufacture of paints. The assessee company has declared dividend of ₹ 30,000		**50,000**
Expenditure incurred in connection with issue of additional share capital in the year		**20,000**
Interest of ₹ 3,50,000 debited to the profit and loss account is made up as under: **a. Interest payable to debenture holder** **b. Interest payable to XYZ ltd** **c. Interest on fixed deposit received from the member of the public** **d. Interest to bank in respect of overdraft**	**30,000** **40,000** **60,000** **2,20,000**	**3,50,000**
Penal interest paid to State Government for delay in payment of cess		**12,000**
Expenditure on maintenance of guest house		**35,000**
Legal charges include payment made to lawyer for conducting the income-tax proceedings before the AO		**8,000**
Depreciation debited to Profit & Loss Account (Depreciation allowable under the Income tax Act ₹ 7,45,000)		**8,95,000**
Payment made to consultants for furnishing a feasibility report regarding the setting up of a new unit in another State.		**15,000**
Expenditure incurred on stamp duty etc. in connection with issue of		**14,000**

debentures in the year.		
Donation to Prime Minister's National Relief Fund		**25,000**

Compute the taxable income of the company for the assessment year 2018-19 giving reasons briefly for the various adjustments you may wish to make to the profit shown in the audited accounts.

Answer:

	₹	₹
Profit as per statement of Profit and loss account		35,00,000
Add:		
Expenses on issue of shares	20,000	
Depreciation in excess of allowable under Income Tax	1,50,000	
Expenses of feasibility report	15,000	
Donations	25,000	2,10,000
		37,10,000
Less:		
Dividend		50,000
Income from Business (GTI)		36,60,000
Income from other sources (Dividend		Exempt
		36,60,000
Less: Deduction		
Under Section 80G-PM NRF 100%		25,000
Total Income		36,35,000

Question No.: 6.a

Bharat Charitable Trust created on 1.1.2010 applied for registration of trust under section 12A of the Income-tax Act before the Commissioner of Income-tax on 1.7.2017 and requested for condonation of delay;

(i) Explain with reasons the period for which the trust is eligible to get exemption under section 11 and 12 of the Income-tax Act.

(ii) Can the exemption under sections 11 and 12 for assessment year 2018-19 be denied if the trust is holding investments in equity shares of a public sector company since 1.4.2014.

(iii) The Trust has also applied for granting exemption under section 80G of the Income-tax Act. But the approval for the same has been rejected by the Commissioner of Income-tax under section 80G (vi) the Income-tax Act on 30.9.2017. The Trust seeks your advice on whether it can file an appeal against the said

rejection before the higher authorities.

Answer:

(i) As per the amendment made by the Finance Act, 2007, the power to condone delay in filing the application for registration has been removed. The assessee is now required to apply for registration before the end of the previous year relevant to the assessment year from which is sought exemption. Hence. Bharat Charitable Trust shall be eligible to get exemption under section 11 and 12 with effect from the financial year 2017-18 only.

(ii) The exemption under section 11 and 12 for A. Y. 2018-19 cannot be denied to the trust for holding investment in equity shares of a public sector company as section 13(1)(d)(iii) denies exemption to a trust holding any shares in company, other than, inter alia, shares in a public sector company. Therefore, a trust cannot be denied exemption for holding shares in a public sector company.

(iii) As per section 253 an appeal can be filed before the Appellate Tribunal against an order passed by the Commissioner under section 80G(5)(vi) rejecting the application of such trusts, for the purpose of recognition under section 80G.

Question No.: 6.b.

The following trusts claim that anonymous donations received by them during the financial year 2017-18 are not liable to tax under section 115BBC:

(i) A charitable trust referred to in section 11 which applied the entire amount of anonymous donations for purposes of the trust during the relevant financial year.

(ii) A trust established wholly for religious purposes which applied 75% of the amount of anonymous donations for the purposes of the objects of the trust during the relevant financial year.

Examine the validity of the claim made by the trusts.

Answer:

(i) As per section 115BBC, anonymous donation received by a trust or institution shall be taxable @30% even if such amount is applied by the trust for its charitable purpose during the year. However, anonymous donation to the extent of 5% of total donations received or ₹ 1,00,000 whichever is more shall not be anonymous donation.

(ii) Section 115BBC is not applicable in case of a anonymous donation received by a trust or institution established wholly for religious purposes. However, to claim full exemption it should apply 85% of the amount received as donation. In this case, 85% of the amount actually applied and 15% of the amount accumulated shall be exempt in the hands of the religious trust.

Question No.: 7

Pankaj Co-Operative Housing Society is a registered Co-operative Housing Society. It is formed with the objective of maintaining the property owned by it. It effects repairs and maintenance of the property of the Members and confers the usual rights and privileges to its Members. During the year ended March, 2018, Mr. X transferred his Membership to Mr. Y, for which the Society received Transfer Fees of ₹ 5.50 Lakhs each from Mr. X and Mr. Y. Mr. Y was not a Member of the Society at the time of transfer .In course of assessment of the Society u/s 143(3) the Assessing Officer charged Transfer Fees to tax under the head "Profit and Gains of Business or Profession". Is the action of the Assessing Officer correct?

Answer:

A co-operative society is a mutual society and, on mutual principles, would not be earning any income in the eye of law. Transfer fee received by a co-operative housing society is not assessable since housing society is a mutual concern and the persons became members of the society before they were entitled to get the flat transferred in their names or were liable to pay the transfer fees. There is an element of mutuality in respect of the transfer fees and therefore the same are not taxable. CIT v Apsara Co-op Housing Society LTD.(1993) 204 ITR 662 (Cal).

Transfer fee received by a co-operative housing society whether from outgoing or from incoming member is not liable to tax on ground of principle of mutuality where predominant activity of such co-operative society is maintenance of property of society. [SIND Co-op Housing Society v ITO Pune (2009) 182 Taxman 346 (Bom)].

Therefore the action of the Assessing Officer is not correct as the receipt is not taxable on the principle of mutuality.

Tax Management, Return and Assessment Procedure

Question No.: 8

Discuss the provision of section 139(4C) in respect of return of income of scientific research association.

Answer:

Every -

- Research Association referred to in sec. 10(21);
- News agency referred to in sec. 10(22B);
- Association or institution referred to in sec. 10(23A) or sec. 10(23B);
- Specified Employee Welfare Fund referred to in sec. 10(23AAA);
- Any university or other educational institution referred to in sec. 10(23C)(iiiad) or (iiiab);
- Any hospital or other medical institution referred to in sec. 10(23C)(iiiae) or (iiiac);
- Fund or institution referred to in sec. 10(23C)(iv);
- Trust or institution referred to in sec. 10(23C)(v);
- Any university or other educational institution referred to in sec. 10(23C)(vi);
- Any hospital or other medical institution referred to in sec. 10(23C)(via);

- Mutual Fund referred to in sec. 10(23D);
- Securitisation trust referred to in sec. 10(23DA);
- Investor Protection Fund referred to in sec. 10(23EC) or sec. 10(23ED);
- Core Settlement Guarantee Fund referred to in sec. 10(23EE);
- Venture Capital Company or Venture Capital Fund referred to in sec. 10(23FB);
- Trade union or an association of such union referred to in sec. 10(24);
- Body or authority or Board or Trust or Commission referred to in sec. 10(46) or 10(29A);
- Infrastructure debt fund referred to in sec. 10(47),

must file a return, if the total income without giving effect to the provisions of sec. 10, exceeds the maximum amount which is not chargeable to income-tax.

Penalty: Where an assessee fails to file return of income under this section, within the time limit, it shall be liable to pay a penalty of ₹ 100 per day during which such failure continues [Sec. 272A(2)].

Question No.: 9.

State with reasons whether return of Income is to be filed in the following cases for the Assessment year 2018-19.

i. **Mr Pankaj, an employee of ICAI, draw a salary of ₹ 4,80,000 and has income from fixed deposit with bank of ₹ 10,000.**
ii. **A registered association eligible for exemption under section 10(23B), has income from house property of ₹ 2,70,000.**
iii. **PKJ, a partnership firm has a loss of ₹ 10,000 during the previous year 2017-18.**
iv. **Mr P, an individual, aged 80 years, has gross total income of ₹ 6,50,000 and he is eligible for deduction of ₹ 1,60,000 under chapter VIA.**

Answer:

i. Mr Pankaj has to file return of income as Notification No. 29/2012, dated 11-2-2012 is not valid for return of assessment year 2018-19.

ii. According to section 139(4C), every institution referred to, in section 10(23B) is required to furnish the return of income if its total income without giving effect to the provisions of section 10 exceeds the maximum amount not chargeable to tax.

In the above case, the registered association has income from hose property of ₹ 2,70,000 before exemption under section 10, which exceeds the basic exemption limit of ₹ 2,50,000. Therefore, it is under an obligation to furnish its return of income for the AY 2018-19.

iii. According to section 139(1), it is mandatory for a firm to furnish its return of income or loss on or before the specified due date. Therefore, M/s PKJ has to furnish its return of loss for the Assessment year 2018-19 on or before the due date.

iv. In this case, the gross total income of Mr P aged 80 years before deduction under section 80C is ₹ 6,50,000, which exceeds the basic exemption limit of ₹ 5,50,000. Therefore Mr P has to furnish return of income for the A.Y 2018-19.

Question No.: 10.

The regular assessment of PKJ Ltd. for the Assessment Year 2014-15 was completed under Section 143(3) on 13.3.2016. There was an audit objection by the Revenue Audit team that interest on loan should be disallowed partly as there was diversion of borrowed fund to sister concern without charge of interest.

Based on the above facts:

(i) State, with reasons, whether the Assessing Officer can issue notice under section 148 on the basis of audit objection of the Revenue Audit team.

(ii) If the action stated in (i) above is not permitted, what is the option open to the Revenue Department to deal with the said audit objection?

Answer:

(i) Section 147 states that, inter alia, if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this Section.

The basic requirements are as follows:

(1) The Assessing Officer should have reason to believe that income chargeable to tax has escaped assessment. The belief should be that of the Assessing Officer and not the audit party.

(2) It is further well established that audit party cannot express opinion on legal issues or issues involving provisions of law [Indian & Eastern Newspaper Society v CIT (1979) 119 ITR 996 (SC)]. Such opinion cannot be the basis upon which the Assessing Officer can initiate reassessment proceedings.

(3) The Income-tax Act, 1961 does not confer jurisdiction on change of opinion on the interpretation of a particular provision earlier adopted by the assessing authority. It is assumed that this issue had already been considered earlier during the course of scrutiny assessment and the Assessing Officer had come to a conclusion that no disallowance of interest paid by the assessee is required, even though loans had been given to sister concern without any interest. Therefore, the same issue cannot be the basis of reassessment, merely because the revenue audit team takes a different view.

Therefore, the Assessing Officer cannot issue notice under section 148 on the basis of audit objection of the Revenue Audit team.

(ii) The option open to the Revenue is initiation of proceedings under section 263, by the jurisdictional Commissioner. He has the power to call for and examine the records, if he is of the opinion that the order passed by the Assessing Officer under section 143(3) is erroneous in so far as it is prejudicial to the interests of the Revenue.

However, where the Assessing Officer has considered the issue in the original assessment and come to a conclusion that no disallowance of interest is called for, the Commissioner cannot initiate revisionary proceedings, merely because he holds a different view. Only where the view taken by the Assessing Officer is unsustainable in law, the Commissioner will be justified in

initiating the revisionary proceedings under section 263. In CIT v Sohana Woollen Mills (2008) 296 ITR 238, it has been held that mere audit objection and merely because a different view can be taken, are not enough to say that the order of the Assessing Officer is erroneous or prejudicial to the interest of revenue.

Note : As per Explanation 2 inserted in Section 263 by the Finance Act, 2015 w.e.f 1-6-2015. If the order passed by the AO is deemed to be erroneous due to the reasons specified in the said Explanation, the commissioner can initiate proceedings u/s 263 in such cases.

Question No.: 11.

A firm furnished its return of income on 30th June, 2018 showing income of ₹ 1,00,000. The return shows other particulars as follows -

Advance tax ₹ 20,000

TDS ₹ 1,000

The AO passed the assessment order enhancing income by ₹ 5,000 on 29-3-2019. Compute interest u/s 234B.

Answer:

Computation of interest u/s 234B

Particulars	**Amount**
Assessed Income	1,05,000
Tax liability before surcharge [₹1,05,000 * 30%]	31,500
Add: Education cess & SHEC @ 3%	945
Tax and cess payable	32,445
Less: Tax deducted at source	1,000
Assessed tax	31,445
90% of above	28,300
Advance tax paid	20,000
Since advance tax paid by the firm is less than 90% of assessed tax, sec. 234B is applicable	
Shortfall (Assessed tax less Advance tax paid)	11,445
Rounded off	11,400
Period of default [From April 2018 to March 2019]	12 months
Interest u/s 234B (1% x ₹11,400 x 12)	1,368

Question No.: 12.

Pankaj Ltd paid a sum of ₹ 15 lakhs as salary to Mr A for which no tax was deducted at source by the company. Mr A filed his return of income and paid the tax due by way of self assessment. The Assessing Officer issued notice to Mr A demanding interest under section 234B as no advance tax was paid by him. Your opinion is sought on the following aspects-

i. **Is the action of AO is valid?**
ii. **If not, is there any other means available to AO to recover the section?**

Answer:

The Finance Act, 2012 has amended Section 209 retrospectively, with effect from 1.04.2012, to provide that in case the payer has filed to deduct tax at sources, then the amount of tax so deductible shall not be reduced from the income tax liability if the resident payee for determining his liability to pay advance tax. Therefore the resident payee would be liable to pay advance tax if the tax deductible was not deducted at source, in which case the interest under section 234B for default in payment of advance tax would also be attracted.

Further interest @ 1% per month or part of the month would be leviable under section 201(1A) on the payer from the month in which tax was deductible till the date of furnishing of return of income by the resident payee.

Question No.: 13

The business premises of Ram Bharose Ltd. and the residence of two of its directors at Delhi were searched under section 132 of the Act by the DDI, Delhi. The search was concluded on 9-8-2017 and following were also seized besides other papers and records:

(i) Papers found in drawer of an accountant relating to Shri Krishna Ltd., Mumbai indicating details of various business transactions. However, Ram Bharose Ltd. is not having any direct or indirect connection of any nature with these transactions and Shri Krishna Ltd., Mumbai and its directors.

(ii) Jewellery worth ₹ 5,00,000 from the bedroom of one of the director, which was claimed by him to be of his married daughter.

(iii) Papers recording certain transactions of income and expenses having direct nexus with the business of the company for the period from 16-4-2013 to date of search. It was admitted by the director that the transactions recorded in such papers have not been incorporated in the books.

You are required to answer on the basis of the aforesaid and the provisions of Act, following questions:

(a) What action the DDI shall be taking in respect of the seized papers relating to Shri Krishna Ltd., Mumbai?

(b) Whether the contention raised by the director as to jewellery found from his bedroom will be acceptable?

(c) What presumption shall be drawn in respect of the papers which indicate transactions not recorded in the books?

(d) Proceedings for how many years shall now be taken up and within which time limit the assessment thereof be completed by the Assessing Officer?

(e) Can the company move an application for settlement of case as per chapter XIX-A of the Act?

Answer:

(a) Since, DDI, Delhi is not having any jurisdiction over Shri Krishna Ltd., Mumbai, the paper seized relating to Shri Krishna Ltd. shall be handed over by him to the Assessing Officer having jurisdiction over such person, within a period of 60 days from the date on which the last of the authorizations for search was executed and the Assessing Officer to whom such papers were handed over will take necessary action under section 132.

(b) The contention raised by the Director will not be acceptable because as per the provisions as per section 132(4A), where any books of account, other documents, money, bullion, jewellery or other valuables are found in the possession or control of any person in the course of search, then, in respect therefore, it may be presumed that the same belong or belongs to that person. Hence, the contention of Director is correct.

(c) As per section 132(4A), if any documents are found during the course of search, it is presumed that the contents of such papers are true and it is in the handwriting of the same person. (a) As per provision of section 153 A, the Assessing Officer will issue notices to the company to furnish the return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which the search is conducted. Therefore, notices for A.Y. 2012-2013 to 2017-18 shall be issued by the Assessing Officer.

(d) Further, the assessment for six assessment years shall be completed within a period of 2 years from the end of the financial year in which the last of the authorization for search was executed. Therefore, the assessment for the six assessment years shall be required to be completed by the Assessing Officer by 31.12.2019 as the search was concluded on9-8-2017.

(e) The application to Settlement Commission can be made as per section 245A only if additional income tax payable on the income disclosed in the application exceeds ₹ 50,00,000.

Question No.: 14

Discuss the provision related to Provisional attachment to protect revenue in certain cases (section 281B).

Answer:

- Where, during the pendency of any proceeding for the assessment or reassessment, the Assessing Officer is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, he may, with the previous approval of the Chief Commissioner, Commissioner, Director General or Director, by order in writing, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.
- Every such provisional attachment shall cease to have effect after the expiry of a period of 6 months from the date of such order.
- However, Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension

shall not in any case exceed 2 years or 60 days after the date of order of assessment or reassessment, whichever is later.

- Where the assessee furnishes a guarantee from a scheduled bank for an amount not less than the fair market value of the property provisionally attached, the Assessing Officer shall, by an order in writing, revoke such attachment. However, where the Assessing Officer is satisfied that a guarantee from a scheduled bank for an amount lower than the fair market value of the property is sufficient to protect the interests of the revenue, he may accept such guarantee and revoke the attachment.
- The Assessing Officer may, for the purposes of determining the value of the property provisionally attached, make a reference to the Valuation Officer referred to in sec. 142A, who shall estimate the fair market value of the property in the manner provided under that section and submit a report of the estimate to the Assessing Officer within a period of 30 days from the date of receipt of such reference.
- An order revoking the provisional attachment shall be made:
  - ✓ within 45 days from the date of receipt of the guarantee, where a reference to the Valuation Officer has been made; or
  - ✓ within 15 days from the date of receipt of guarantee in any other case.
- Where a notice of demand specifying a sum payable is served upon the assessee and the assessee fails to pay that sum within the time specified in the notice of demand, the Assessing Officer may invoke the guarantee furnished, wholly or in part, to recover the amount.
- The Assessing Officer shall, in the interests of the revenue, invoke the bank guarantee, if the assessee fails to renew the guarantee, or fails to furnish a new guarantee from a scheduled bank for an equal amount, 15 days before the expiry of the guarantee.
- The amount realised by invoking the guarantee shall be adjusted against the existing demand which is payable by the assessee and the balance amount, if any, shall be deposited in the Personal Deposit Account of the Principal Commissioner or Commissioner in the branch of the Reserve Bank of India or the State Bank of India or of its subsidiaries or any bank as may be appointed by the Reserve Bank of India as its agent at the place where the office of the Principal Commissioner or Commissioner is situate.
- Where the Assessing Officer is satisfied that the guarantee is not required anymore to protect the interests of the revenue, he shall release that guarantee forthwith.

Grievance Redressal

Question No.: 15.a.

Assessment of Pankaj Ltd. was completed u/s 143(3) with an addition of ₹15 lakhs to the returned income. The assessee-company preferred appeal before the Commissioner (Appeals) which is pending now.

In the backdrop, answer the following:

- **Can the assessee-company seek revision u/s 264 in respect of matters other than those preferred in appeal?**
- **Can the Commissioner make a revision u/s 263 both in respect of matters covered in appeal and other matter?**

Answer:

- As per section 264(4)(d), the Principal Commissioner or Commissioner shall not revise any order under this clause where the order has been made the subject of an appeal to the Commissioner (Appeals) i.e. where a led to CIT (Appeal) on any issue relating to such order. Hence in this case, the Commissioner cannot revise an order which is pending before the Commissioner (Appeal) even if the revision pertains to a matter, other than the matter(s) covered in the appeal.
- As per clause (c) of Explanation to section 263, where an order passed by the Assessing Officer has been subject matter of any appeal, it cannot be revised by the Commissioner. However, in respect of such matters which have not been considered and decided in appeal, the Commissioner has powers under section-263 for revision.

The Supreme Court in the case of Jaykumar B. Patil held that CIT has jurisdiction and power to initiate proceedings under section 263 in respect of issues which are not touched by the Commissioner of Income Tax (Appeals) in his appellate order.

Question No.: 15.b.

Discuss the correctness or otherwise of the following statements with reference to the provision of the Income Tax Act, 1961:

1. **An appeal before Income-tax Appellate Tribunal cannot be decided in the event of difference of opinion between the Judicial Member and the Accountant Member on a particular ground.**
2. **A high court does not have an inherent power to review an earlier order passed by it on merits.**

Answer:

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

Question No.: 16.

Discuss the procedure for application for advance Ruling as per section 245-Q.

Answer:

An applicant desirous of obtaining an advance ruling may make an application stating the question on which the advance ruling is sought in quadruplicate in:

(a) in Form No. 34C in respect of a non-resident applicant;

(b) in Form No. 34D in respect of a resident applicant seeking advance ruling in relation to a transaction undertaken or proposed to be undertaken by him with a non-resident;

(c) in Form No. 34DA in respect of a resident applicant referred to in sec. 245N(b)(iia) falling within any such class or category of person as notified by the Central Government; and

(d) in Form No. 34E in respect of a notified resident referred to in sec. 245N(b)(iii)

(e) in Form No. 34EA in respect of a applicant referred to in sec. 245N(b)(iiia)

and shall be verified in the manner indicated therein.

The application shall be accompanied by a fee of

a. ₹ 10,000 or

b. such fees as may be prescribed.

– whichever is higher

An applicant may withdraw an application within 30 days from the date of the application.

An application shall be presented by the applicant in person or by an authorised representative to the Secretary or any other officer notified in writing by the Secretary or sent by registered post addressed to the Secretary along with a fee (in the form of a Demand Draft drawn in favour of "Authority for Advance Rulings" payable at New Delhi).

An application sent by registered post shall be deemed to have been made on the date on which it is received in the office of the Authority.

If the applicant is not hitherto assessed in India, he shall indicate in Annexure I to the application:

(a) his head office in any other country,

(b) the place where his office and residence is located or is likely to be located in India, and

(c) the name and address of his representative in India, if any, authorised to receive notices and papers and act on his behalf.

The Secretary may send the application back to the applicant if it is defective in any manner for removing the defects within such time as he may allow. Such application shall be deemed to have been made on the date when it is represented after correction.

Question No.: 17

X &Co Ltd. had made an application to the Settlement Commission. The issue in the said application related to cash credits in the books of account. The Commission passed an order making addition to the income on the basis of difference in gross profit rate adopted, which was neither an issue in the application nor in the report of the Commissioner of the Income Tax.

Discuss the validity of the order of the Settlement Commission.

Answer:

The issue under consideration is whether the Settlement Commission can pass an order making addition to the income on the basis of difference in gross profit rate adopted, which was neither an issue in the fin the report of the Commissioner of Income-tax.

Section 245D(5) provides that the Settlement Commission, after examination of records and the report of the after examining such further evidence as may be placed before it or obtained by it, may, in accordance with the provision of the Act, pass such order as it thinks fit.

Further Section 245D(5) provides that the materials brought on record before the Settlement Commission shall be considered by the Members of the concerned Bench before passing any order under section 245D(4).

Consideration means independent examination of the evidence and material brought on record before the settlement commission by the members and application of mind thereto with a view to independently assess the material and evidence, whether adduced by the applicant or by the Commissioner, and come to a conclusion by themselves.

This view has been upheld in case of Supreme Agro Foods P Ltd. v Income-tax Settlement Commission 2013 353 ITR 385 (P & H).

The settlement Commission, therefore, has to consider the material brought on record before it and consideration means independent examination of the evidence and material on record.

In this case, since the material was available before the Settlement Commission and such material has been federation for returning a finding which is relevant for determining the undisclosed income of the applicant, the addition made on the basis of difference in gross profit rate adopted is justified.

Therefore, the order of the Settlement Commission is valid.

Penalties and Prosecutions

Question No.: 18.a.

Compute penalty leviable u/s 270A in case of X Ltd from the following details:

Particulars	Total Income	Tax on Total Income	Book Profit	Tax on Book Profit
Return of income	**80,00,000**	**24,72,000**	**2,00,00,000**	**40,77,770**
Assessed income	**1,20,00,000**	**39,67,560**	**2,10,00,000**	**42,81,659**

b. Discuss the Power of Principal Commissioner or Commissioner to Grant Immunity from Penalty under Sec. 273AA.

Answer:

a. Computation of penalty

Particulars		Amount
Under-reported income		
Total income computed by the Assessing Officer	A	1,20,00,000
Total income as per return of income	B	80,00,000
Book profit computed by the Assessing Officer	C	2,10,00,000
Book profit as per return of income	D	2,00,00,000

Under-reported income [(A – B) + (C – D)]		50,00,000
Tax on under-reported income		
Tax on A	P	39,67,560
Tax on B	Q	24,72,000
Tax on C	R	42,81,659
Tax on D	S	40,77,770
Tax on Under-reported income [(P – Q) + (R – S)]	T	16,99,449
Penalty u/s 270A		
- Minimum (being 50% of T)		8,49,725
- Maximum (being 200% of T)		33,98,898

b.

1. A person may make an application to the Principal Commissioner or Commissioner for granting immunity from penalty, if —

(a) he has made an application for settlement u/s 245C and the proceedings for settlement have abated u/s 245HA; and

(b) the penalty proceedings have been initiated under this Act.

2. The application to the Principal Commissioner or Commissioner shall not be made after the imposition of penalty after abatement.

3. The Principal Commissioner or Commissioner may, subject to such conditions as he may think fit to impose, grant to the person immunity from the imposition of any penalty under this Act, if he is satisfied that the person has, after the abatement, co-operated with the income-tax authority in the proceedings before him and has made a full and true disclosure of his income and the manner in which such income has been derived.

4. The order, either accepting or rejecting the application in full or in part, shall be passed within a period of 12 months from the end of the month in which the application is received by the Principal Commissioner or the Commissioner. Further, no order rejecting the application, either in full or in part, shall be passed unless the assessee has been given an opportunity of being heard.

5. The immunity granted to a person shall stand withdrawn, if such person fails to comply with any condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.

6. The immunity granted to a person may, at any time, be withdrawn by the Principal Commissioner or Commissioner, if he is satisfied that such person had, in the course of any proceedings, after abatement, concealed any particulars material to the assessment from the income-tax authority or had given false evidence, and thereupon such person shall become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

Business Restructuring

Question No.: 19

Pankaj Ltd has two industrial undertakings. Unit 1 is engaged in the production of television sets and Unit 2 is engaged in the production of refrigerators. The Company has, as part of its restructuring program, decided to sell Unit 2 as a going concern, by way of Slump Sale for ₹ 300 Lakhs to a New Company called Amit Ltd, in which it holds 85% Equity Shares. The following are extracted from the Balance Sheet of Pankaj Ltd. as on 31st March, 2018:

Particulars	₹ (in Lakhs)	
	Unit-1	Unit-2
Fixed Assets	112	158
Debtors	88	68
Inventories	85	22
Liabilities	33	65

	₹ (in Lakhs)
Paid-up Share Capital	231
General Reserve	160
Share Premium	39
Revaluation Reserve	105

The Company had set up Unit 2 on 1.4.2013. The written down value of the block of Fixed Assets for tax purpose as on 31st March, 2018 is ₹ 130 lakhs out of which ₹ 75 Lakhs are attributable to Unit 2.

(i) Determine what would be the tax liability of Pankaj Ltd, on account of this Slump Sale.

(ii) How can the restructuring plan of Pankaj Ltd, be modified, without changing the amount of consideration, in order to make it more tax efficient?

Solution:

(i) Computation of Tax Liability of Pankaj Ltd on Slump Sale

Long-Term Capital Gain on sale of Unit 2:

	₹ Lakhs	
Sale Consideration	300.00	
Less: Cost of acquisition (Net Worth of the unit transferred) (See note)	100.00	
Long Term Capital Gain (as the unit was held for more than 36	200.00	
Tax on LTCG at 20% u/s 112	40.00	
Add: Surcharge at 7% (Since the Total Income exceeds ₹ 1 Crore)	2.80	
Tax and Surcharge Payable		42.80
Education and SHEC @ 3%		1.284
Total Tax Liability		44.084

Computation of Net worth of Unit 2 (Refrigeration unit)

Particulars	₹ Lakhs

Depreciable Assets at WDV	75.00
Debtors at Book Value	68.00
Inventories at Book Value	22.00
Total Assets	165.00
Less: Liabilities	65.00
Net worth of Unit 2	100.00

Note:

ii. Modification in the Restructuring Plan: The Company can plan for demerger of the company. Unit 2 may be transferred to Amit Ltd. In this case the shareholders of Pankaj Ltd will get shares of Amit Ltd. in proportion to their shareholding in Pankaj Ltd. There will be no capital gain tax liability as the transaction will not be regarded as a transfer. Alternatively, Pankaj ltd may acquire the balance 15% shares of Amit ltd whereby it becomes the holding company and Amit ltd becomes its 100% subsidiary company. After this, if the unit is transferred to Beta ltd. it will not be regarded as transfer but it shall have to satisfy the conditions laid down otherwise the exemption shall be withdrawn.

Different aspects of Tax Planning

Question No.: 20

State with reason whether the following acts can be considered as;

a. **Tax Planning**
b. **Tax Management**
c. **Tax Evasion**

i. **A partnership firm obtaining declaration from lender in Form 15G/15H and forwarding the same to Income Tax Authorities**

ii. **A company installed an AC 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. **An individual tax payer making tax saver deposit ₹ 1,30,000 in a nationalized bank.**

iv. **A company remitted provident fund contribution of both its own contribution and employee contribution on monthly basis before due date.**

v. **Pankaj Ltd issues a credit note for ₹ 90,000 as brokerage payable to Mr Amit who is son of the managing director of the company. The purpose is to increase the total income of Mr Amit from ₹ 5,00,000 to ₹ 5,90,000 and reduce the income of Pankaj Ltd correspondingly.**

Answer:

i. **An Act of Tax Management:** Partnership firm who is obtaining declaration from lender in Form 15G/15H and forwarding the same to Income Tax authorities is an act of compliance of statutory obligation under the Income Tax Act, 1961.

ii. **An Act of Tax Evasion:** Furniture is eligible for depreciation @ 10% whereas, a plant is eligible for depreciation @ 15%. Therefore an AC fitted at the residence of a director as per terms of his appointment would be furniture eligible for depreciation @ 10% and 15% allowable for plant. Further, furniture at the residence of the director shall be treated as perquisite and the value of the same has to be included while computing his income under the head salary for the purpose of deduction of tax at source. Thus, the default will amount to an act of tax evasion.

iii. **An Act of Tax Planning:** Tax saver deposit of ₹ 1,30,000 made by an individual in a nationalized bank for claiming deduction under section 80C is an act of Tax Planning under the provision of Income Tax.

iv. **An Act of Tax Management:** Remittance of provident fund contribution of both its own and its employees on monthly basis before due date is a compliance of statutory obligation and hence an act of tax management.

v. **An Act of Tax Evasion:** Booking a fictitious expense for reducing the total income is a clear act of tax evasion as it reduces the tax liability of the assessee which is taxable at the flat rate of 30%. Whereas, the son of the managing director attracts the tax liability of 10%.

Income Tax Authorities

Question No.: 21

Discuss the power of Central Board of Direct Taxes (CBDT).

Answer:

1. **Instructions to subordinate authorities [Sec. 119(1)]**

The Board may, from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit for the proper administration of this Act. Such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board

Exception

No such orders, instructions or directions shall be issued—

- So as to require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or
- So as to interfere with the discretion of the Commissioner (Appeals) in the exercise of his appellate functions.

However, the Board can issue administrative instructions.

2. **Issue General or Special order to subordinates [Sec. 119(2)(a)]**

The Board may issue from time to time general or special orders to its subordinate subject to following features:

(a) If it considers it necessary or expedient to do so, for the purpose of proper and efficient management of the work of assessment and collection of revenue.

(b) Such order may be issued whether by way of relaxation of any of the provisions of sec. 115P, 115S, 139, 143, 144, 147, 148, 154, 155, 158BFA, 201(1A), 210, 211, 234A, 234B, 234C, 234E, 270A, 271, 271C, 271CA and 273 or otherwise.

(c) Such orders may be in respect of any class of incomes or class of cases

(d) Such order must not be prejudicial to the assessee.

(e) Such order acts as guidelines, principles or procedures to be followed by other income-tax authorities in the work relating to assessment or collection of revenue or the initiation of proceedings for the imposition of penalties;

(f) Any such order may, if the Board is of the opinion that it is necessary in the public interest so to do, be published and circulated in the prescribed manner for general information.

3. Admit application or claim after expiry of time limit [Sec. 119(2)(b)]

(a) The Board may, by general or special order, admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified under this Act for making such application or claim.

(b) Such order can be issued by the Board, if it considers it desirable or expedient to do so, for avoiding genuine hardship in any case or class of cases.

(c) Such order can be issued to any income-tax authority except Commissioner (Appeals).

4. Relaxation in requirement of the provisions of Chapter IV or Chapter VIA [Sec. 119(2)(c)]

- The Board may, by general or special order, relax any requirement contained in any of the provisions of Chapter IV (Sec.14 to 59) or Chapter VIA (Sec.80A to 80U), where the assessee has failed to comply with any requirement specified in such provision for claiming deduction there under.
- Reasons for issuing such order are to be specified therein;
- The Board can issue such order if it considers it desirable or expedient to do so for avoiding genuine hardship in any case or class of cases;
- Such order can be issued subject to the following conditions:
  - **a)** the default in complying with such requirement was due to circumstances beyond the control of the assessee; and
  - **b)** the assessee has complied with such requirement before the completion of assessment in relation to the previous year in which such deduction is claimed.

Note: The Central Government shall cause every order issued under this clause to be laid before each House of Parliament.

5. Control over income-tax authorities [Sec. 118]

The Board may, by notification in the Official Gazette, direct that any income-tax authority or authorities specified in the notification shall be subordinate to such other income-tax authority or authorities as may be specified in such notification.

Note

An order, circular, instruction or direction issued u/s 119 cannot override the provisions of the Act.

Ecommerce Transactions and Liability in special cases

Question No.: 22 Discuss the manner of computation of income under tonnage tax scheme [Sec.

115VE].

Answer:

- A tonnage tax company (means a qualifying company in relation to which tonnage tax option is in force) engaged in the business of operating qualifying ships shall compute the profits from such business under the tonnage tax scheme.
- The business of operating qualifying ships giving rise to income [referred to in sec. 115V-I(1)] shall be considered as a separate business (hereafter referred to as the tonnage tax business) distinct from all other activities or business carried on by the company.
- The profits shall be computed separately from the profits and gains from any other business.
- The tonnage tax scheme shall apply only if an option to that effect is made in accordance with the provisions of section 115VP.
- Where a company engaged in the business of operating qualifying ships is not covered under the tonnage tax scheme or, has not made an option to that effect, as the case may be, the profits and gains of such company from such business shall be computed in accordance with the other provisions of this Act.

Tonnage income [Sec. 115VF]

The tonnage income shall be computed in accordance with sec. 115VG and the income so computed shall be deemed to be the profits chargeable under the head "Profits and gains of business or profession" and the relevant shipping income referred to in sec. 115V-I(1) shall not be chargeable to tax.

Computation of tonnage income [Sec. 115VG]

The tonnage income of a tonnage tax company for a previous year shall be the aggregate of the tonnage income of each qualifying ship computed in accordance with the following provisions:

- The tonnage income of each qualifying ship shall be the *daily tonnage income* of each such ship multiplied by:
  (a) the number of days in the previous year; or
  (b) the number of days in part of the previous year in case the ship is operated by the company as a qualifying ship for only part of the previous year.

Daily tonnage income of a qualifying ship shall be:

Qualifying ship having net tonnage	Amount of daily tonnage income
Upto 1,000	₹ 70 for each 100 tons
Exceeding 1,000 but not more than 10,000	₹ 700 plus ₹ 53 for each 100 tons exceeding 1,000 tons
Exceeding 10,000 but not more than 25,000	₹ 5,470 plus ₹ 42 for each 100 tons exceeding 10,000 tons
Exceeding 25,000	₹ 11,770 plus ₹ 29 for each 100 tons exceeding 25,000 tons

- The tonnage shall be rounded off to the nearest multiple of 100 tons and for this purpose

- ✓ any tonnage consisting of kilograms shall be ignored and thereafter;
- ✓ if such tonnage is not a multiple of 100, then,
  - if the last figure in that amount is 50 tons or more, the tonnage shall be increased to the next higher tonnage which is a multiple of 100; or
  - if the last figure is less than 50 tons the tonnage shall be reduced to the next lower tonnage which is a multiple of 100.

❖ No deduction or set off shall be allowed in computing the tonnage income under this Chapter.

Income Computation and Disclosure Standards (ICDS)

Question No.: 23 Discuss ICDS II on "Valuation on Inventories".

Answer:

Scope

This Standard shall be applied for valuation of inventories, except

i. Work-in-progress arising under 'construction contract'
ii. Work-in-progress which is dealt with by other Standard
iii. Shares, debentures and other financial instruments held as stock-in-trade
iv. Producers' inventories of livestock, agriculture and forest products, mineral oils, ores and gases to the extent that they are measured at net realisable value
v. Machinery spares, which can be used only in connection with a tangible fixed asset and their use is expected to be irregular[1]

Measurement

Inventories shall be valued at cost, or net realisable value, whichever is lower.

- ➢ Net realisable value is the estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale.
- ➢ In case of dissolution of a partnership firm or association of person or body of individuals, notwithstanding whether business is discontinued or not, the inventory on the date of dissolution shall be valued at the net realisable value. The provision is contrary to law settled by the Apex court in the case of Sakti Trading Co.

Cost of Inventories

Cost of inventories shall comprise of all costs of purchase, costs of services, costs of conversion and other costs incurred in bringing the inventories to their present location and condition.

- ➢ The costs of purchase shall consist of purchase price including duties and taxes, freight inwards and other expenditure directly attributable to the acquisition. Trade discounts, rebates and other similar items shall be deducted in determining the costs of purchase
- ➢ The costs of services shall consist of labour and other costs of personnel directly engaged in providing the service including supervisory personnel and attributable overheads.

- The costs of conversion of inventories shall include costs directly related to the units of production and a systematic allocation of fixed and variable production overheads that are incurred in converting materials into finished goods.
- Other costs shall be included in the cost of inventories only to the extent that they are incurred in bringing the inventories to their present location and condition.
- Interest and other borrowing costs shall not be included in the costs of inventories, unless they meet the criteria for recognition of interest as a component of the cost as specified in the Income Computation and Disclosure Standard on borrowing costs.
- In determining the cost of inventories, the following costs shall be excluded
  a. Abnormal amounts of wasted materials, labour, or other production costs;
  b. Storage costs, unless those costs are necessary in the production process prior to a further production stage;
  c. Administrative overheads that do not contribute to bringing the inventories to their present location and condition;
  d. Selling costs.

Cost Formulae

The standard recognizes 3 cost formulae viz. (i) Specific Identification Method; (ii) First-in-First-Out Method (FIFO); (iii) Weighted Average Method

Change of Method of Valuation of Inventory

The method of valuation of inventories once adopted by a person in any previous year shall not be changed without reasonable cause

Disclosure

Following shall be disclosed:

a. the accounting policies adopted in measuring inventories including the cost formulae used; and
b. the total carrying amount of inventories and its classification appropriate to a person.

Question No.: 24 Discuss ICDS IV on "Revenue Recognition".

Answer:

Scope

The Standard deals with the bases for recognition of revenue arising in the course of the ordinary activities of a person from:

a) the sale of goods;
b) the rendering of services;
c) the use by others of the person's resources yielding interest, royalties or dividends.

- Revenue is the gross inflow of cash, receivables or other consideration arising in the course of the ordinary activities of a person from the sale of goods, from the rendering of services, or from the use by others of the person's resources yielding interest, royalties or dividends. In an agency relationship, the revenue is the amount of commission and not the gross inflow of cash, receivables or other consideration.
- The Standard does not deal with the aspects of revenue recognition which are dealt with by other ICDS.

Sale of Goods

Revenue from sales transactions should be recognized when the following conditions are fulfilled -

a) The seller of goods has transferred to the buyer the property in the goods for a price or all significant risks and rewards of ownership have been transferred to the buyer;

b) The seller retains no effective control of the goods transferred to a degree usually associated with ownership;
c) There is reasonable certainty of its ultimate collection.

Rendering of Services

- Revenue from service transactions shall be recognised by the percentage completion method.
- Under this method, revenue from service transactions is matched with the service transaction costs incurred in reaching the stage of completion, resulting in the determination of revenue, expenses and profit which can be attributed to the proportion of work completed.
- However, when services are provided by an indeterminate number of acts over a specific period of time, revenue may be recognised on a straight line basis over the specific period.
- Revenue from service contracts with duration of not more than 90 days may be recognised when the rendering of services under that contract is completed or substantially completed.

Interest

- Interest shall accrue on the time basis determined by the amount outstanding and the rate applicable.
- Interest on refund of any tax, duty or cess shall be deemed to be the income of the previous year in which such interest is received.
- Discount or premium on debt securities held is treated as though it were accruing over the period to maturity.

Royalty

Royalties shall accrue in accordance with the terms of the relevant agreement and shall be recognised on that basis unless, having regard to the substance of the transaction, it is more appropriate to recognise revenue on some other systematic and rational basis.

Dividend

Dividends are recognised in accordance with the provisions of the Act

Disclosure

Following disclosures shall be made in respect of revenue recognition:

a) in a transaction involving sale of goods, total amount not recognised as revenue during the previous year due to lack of reasonably certainty of its ultimate collection along with nature of uncertainty;
b) the amount of revenue from service transactions recognised as revenue during the previous year;
c) the method used to determine the stage of completion of service transactions in progress; and
d) for service transactions in progress at the end of previous year:
    i. amount of costs incurred and recognised profits (less recognised losses) upto end of previous year;
    ii. the amount of advances received; and
    iii. the amount of retentions.

Black Money Act, 2015

Question No.: 25

a. Computation of total undisclosed foreign income and asset [Sec. 5].

b. Define the following's as per the provisions under Black Money Act, 2015;

i. **Tax Authorities;**

ii. **Change of incumbent.**

Answer:

a. In computing the total undisclosed foreign income and asset of any previous year of an assessee:

- No deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee, whether or not it is allowable in accordance with the provisions of the Income-tax Act.
- Any income,—
  a) which has been assessed to tax for any assessment year under the Income-tax Act prior to the assessment year to which this Act applies; or
  b) which is assessable or has been assessed to tax for any assessment year under this Act,

  shall be reduced from the value of the undisclosed asset located outside India, if, the assessee furnishes evidence to the satisfaction of the Assessing Officer that the asset has been acquired from the income which has been assessed or is assessable, as the case may be, to tax.

The amount of deduction in case of an immovable property shall be the amount which bears to the value of the asset as on the first day of the financial year in which it comes to the notice of the Assessing Officer, the same proportion as the assessable or assessed foreign income bears to the total cost of the asset.

b.

Tax authorities [Sec. 6]

- The income-tax authorities shall be the tax authorities for the purposes of this Act.
- Every such authority shall exercise the powers and perform the functions of a tax authority under this Act in respect of any person within his jurisdiction.
- The jurisdiction of a tax authority under this Act shall be the same as he has under the Income-tax Act
- The tax authority having jurisdiction in relation to an assessee who has no income assessable to income-tax under the Income-tax Act shall be the tax authority having jurisdiction in respect of the area in which the assessee resides or carries on its business or has its principal place of business.

Change of incumbent [Sec. 7]

The tax authority who succeeds another authority as a result of change in jurisdiction or for any other reason, shall continue the proceedings from the stage at which it was left by his predecessor. The assessee in such a case may be given an opportunity of being heard, if he so requests in writing, before passing any order in his case.

International Taxation

Question No.: 26

a. **Write short notes on "Resident of Contracting State".**

b. Mr Pankaj, an individual resident and citizen of India earned remuneration in foreign from a University in foreign country during her stay in that country in the previous year 2017-18. There is no Double taxation avoidance agreement with that country. The remuneration was ₹4,00,000 and ₹ 30,000 was deducted at source by the university. Income from other sources of Mr Pankaj in India, was ₹ 2,67,000.

Compute the relief available to her under Section 91 assuming that Mr Pankaj brings ₹ 3,00,000 in India in convertible foreign exchange by 30.09.2018.

Answer:

a.

Residence as defined in double taxation treaties is different from residence as defined for domestic tax purposes. Tax treaties generally follow the OECD Model Convention.

For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

Where by reason of the provisions of aforesaid paragraph an individual is a resident of both Contracting States, then his status shall be determined as follows:

a. he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);

b. if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

c. if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;

d. if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

Where by reason of the aforesaid provisions, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

b.

Computation of Taxable income of Mr Pankaj for the A.Y 2018-19

Particulars	**Amount (₹)**	**Amount (₹)**
Income from Salary	4,00,000	
Less: Deduction	Nil	4,00,000
Income from other sources		2,67,000
Gross Total Income		6,67,000
Less: Deduction under chapter VIA		Nil
		6,67,000

Tax on 6,67,000		45,900
Add: Education cess and SHEC @3%		1,377
Total Tax		47,277
Less: Relief under section 91		30,000
Balance tax payable		17,280

1. Average rate of tax i.e Tax on Total Income /Total Income x 100
   =47222/667000 x 100=7.089%
2. Average rate of tax of foreign tax
   30000/400000 x 100=7.5%

Hence relief available shall be @7.089% or 7.5% of foreign c=income whichever is less
₹ 4,00,000 x 7.5%= ₹30,000

Question No.: 27

a. State the meaning of International transaction.

b. Brain Inc. London has 35% equity in Salem Ltd. The company Salem Ltd. is engaged in development of software and maintenance of customers across the globe, which includes Brain Inc.

During the year 2017-18, Salem Ltd. spent 2000 man hours for developing and maintaining a software for Brain Inc. and billed at ₹ 1,000 per hour. The cost incurred for executing maintenance work to Brain Inc. for Salem Ltd. amount to ₹15,00,000. Similar such work was done for unrelated party Try Ltd. in which the profit was at 50%. Brain Inc. gives technical support to Salem Ltd. which can be valued at 8% of gross profit. There is no such functional relationship with try Ltd. Salem Ltd. gives credit period of 90 days the cost of which is 3% of the normal billing rate which is not given to other parties.

Compute ALP under cost plus method in the hands of Salem Ltd. and the impact of the same on the total income.

Answer:

a. International transaction:

International transaction means a transaction between two or more associated enterprises, either or both of whom are non-residents, in the nature of

(i) purchase, sale or lease of tangible or intangible property, or
(ii) provision of services, or
(iii) lending or borrowing money, or
(iv) any other transaction having a bearing on the profits, income, losses or assets of such enterprises; &

shall include a mutual agreement or arrangement between two or more associated enterprises

a. for the allocation or apportionment of, or

b. any contribution to, any cost or expense incurred or to be incurred in connection with a

benefit, service or facility provided or to be provided to any one or more of such enterprises [Sec. 92B(1)]

A transaction entered into by an enterprise with a person other than an associated enterprise shall, be deemed to be an international transaction entered into between two associated enterprises,

a) if there exists a prior agreement in relation to the relevant transaction between such other person and the associated enterprise; **or**

b) the terms of the relevant transaction are determined in substance between such other person and the associated enterprise

where the enterprise or the associated enterprise or both of them are non-residents irrespective of whether such other person is a non-resident or not [Sec. 92B(2)]

E.g. X Ltd., an Indian company, and Y Inc., a foreign company, are associated enterprise. Z Plc., a foreign company, (not an associated enterprise of X Ltd.) and Y Inc. enters into an agreement for determining the terms of transactions between X Ltd. and Z Plc. The transaction as may be entered between X Ltd. and Z Plc., which is governed by such an agreement existing between Y Inc. and Z Plc. shall be deemed to be a transaction between two associated enterprises.

Taxpoint

Non-resident means a person who is not a 'resident' including a person who is not ordinarily resident [Sec. 2(30)]

Transaction *includes* an arrangement, understanding or action in concert,—

(A) whether or not such arrangement, understanding or action is formal or in writing; or

(B) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceeding. [Sec. 92F(v)]

For a transaction to be an international transaction, it should satisfy the following two conditions cumulatively:

b) It must be a transaction between two associated enterprises; and

c) At least one of the two enterprises must be a non-resident.

b.

(A) Computation of Arms Length Gross Profit Mark-up

Particulars	**%**
Normal Gross Profit Mark up	50.00
Less: Adjustment for differences	
Technical support from Brain Inc [8% of Normal GP = 8% of 50%]	(4.00)
	46.00
Add**:** Cost of Credit to Brain Inc 3% of Normal Bill [3% ×GP 50%]	1.50
Arm's Length Gross Profit mark-up	47.50

(B) Computation of Increase in Total Income of Brain Inc

Particulars	Amount
Cost of services	15,00,000
Arm's length Billed Value [Cost / [(100 – Arm's Length mark up)] [₹ 15,00,000 / (100% - 47.50%)]	28,57,143
Less: Billed amount [2,000 hours x ₹ 1,000 per hour]	20,00,000
Therefore, Increase in Total Income	**8,57,143**

Case Study Analysis

Question No.: 28

a. Credit of TDS won't be denied to a contractor even if entire work has been sub-contracted to others. Critically comment with case law.

b. Delay in issuing a notice u/s 143(2) would be fatal to the re-assessment proceedings. Critically comment with case law.

Answer:

a. IVRCL-KBL (JV) -va.- ACIT (2016) (Andhra Pradesh)

The assessee was a joint-venture executing civil contract works. It was awarded contracts by the Irrigation Department of the State Government. The assessee gave said contracts subsequently on sub-contract basis to one of its constituents without any margin. The assessee filed its return claiming refund of tax deducted at source from bills paid by the State Government. The assessing authority contended that as no real work was carried on by the assessee, no income had accrued to it and therefore , credit for TDS was not allowable in the hands of the assessee in terms of Rule 37BA (2)(i) of the income tax rules,1962.

The High Court ruled in favour of the assessee by contending that there are two distinct and independent contracts. There is no privity of contract between the government and the constituent of the assessee i.e. sub-contractor. The rights and obligations under the first contract are only that of the Government and the assessee; and those, in the second contract, are only that of the assessee and the sub-contractor. The contractual obligation, to execute the work for the Government, is that of the assessee joint venture alone, and not that of the constituent member of the JV i.e. the sub-contractor. It is evident, therefore, that the contractual receipts under the first contract is only that of the assessee; and the income, arising out of the said contract, is assessable only in their hands, and not in the hands of the sub-contractor. The High Court set aside the order passed by the AO and directed to determine the quantum of credit for TDS which the assessee is entitled to and refund the amount so computed to assessee in accordance with law.

b.

Indus Towers Limited -vs.- DCIT (2017) (Delhi)

The Petitioner is the successor to India Cellular Towers Infrastructure Ltd. ('ICTIL'). ICTIL and India

Cellular Limited ('ICL') filed a scheme of arrangement ('demerger scheme') under Sec. 391 to 394 of the Companies Act, 1956 on 17th/24th April, 2009 for transfer of the passive infrastructure (PI) assets owned by ICL to ICTIL with effect from 1st January, 2009. On 3rd and 31st August 2009, the High Court of Delhi and High Court of Gujarat, respectively, approved the demerger scheme. ICTIL filed a return of income for the AY 2009-10 on 26th September, 2009. On 29th September, 2009, the demerger scheme became effective upon its submission to the Registrar of Companies. As a result, the PI assets owned by ICL stood transferred to ICTIL with effect from 1st January, 2009.

On February 22, 2013, the AO issued a notice u/s. 148 of the Act to ICTIL for re-opening the assessment for AY 2009-10, which already stood concluded, requiring ICTIL to file its return of income within 30 days of the receipt of the notice. The re-opening was ordered because of the receipt of capital assets by ICTIL on 'nil' consideration from ICL and the demerger approved by the High Court was not compliant with the Act. ICTIL requested that the revised return filed by it on March 31, 2010 u/s. 139(5) of the Act should be considered as the return filed in response to the notice was rejected by the Assessing Officer.

Aggrieved, the assessee preferred an appeal before the Delhi High Court.

It was assessee's contention that belief of Assessing Officer was a mere change of opinion and the proceedings have been initiated on the basis of no material and, therefore, assumption of jurisdiction was plainly unsustainable in law. It was further contended that in terms of the proviso to Sec. 153(1), time limit for completion of AY 2009- 10 was December 31, 2011. In addition, the proviso to Sec. 143(2) requires that notice for assessment should be issued within six months from the end of the financial year in which the return was furnished by an assessee.

The High Court held that law on this point was fairly well settled in the decisions in ACIT -vs.- Hotel Blue Moon [2010] 321 ITR 362 (SC) reiterated in CIT -vs.- Madhya Bharat Energy Corporation [2011] 337 ITR 389 (Del) and Pr. CIT -vs.- Jai Shiv Shankar Traders (P.) Ltd. [2016] 383 ITR 448 (Del)]. In the last mentioned judgment, the division bench had held that the delay in issuing a notice under Sec. 143(2) would be fatal to the reassessment proceedings.

The High Court quashed the impugned notice dated 22nd February, 2013 issued to the Petitioner u/s. 148 as well as the consequential order dated 20th January, 2014 disposing of its objections as well as the reassessment proceedings pursuant thereto.

Short Notes

Question No.: 29 Write short notes on the followings;

a. Scope of total undisclosed foreign income and asset [Sec. 4]

b. Penalty for under-reporting and misreporting of income [Sec. 270A]

c. ICDS-IX on "Borrowing Cost"

d. Application for Advance Ruling [Sec. 245-Q]

Answer.

a. Scope of total undisclosed foreign income and asset [Sec. 4]:

- ❖ The total undisclosed foreign income and asset of any previous year of an assessee shall be:
- ✓ the income from a source located outside India, which has not been disclosed in the return of income furnished u/s 139 of the Income-tax Act;
- ✓ the income, from a source located outside India, in respect of which a return is required to be furnished u/s 139 of the Income-tax Act but no return of income has been furnished u/s 139 of the Income-tax Act; and
- ✓ the value of an undisclosed asset located outside India.
- ❖ Any variation made in the income from a source outside India in the assessment or reassessment of the total income of any previous year, of the assessee under the Income-tax Act in accordance with the provisions of section 29 to section 43C (Profits and gains of business or profession) or section 57 to section 59 (Income from other sources) or section 92C (Transfer pricing) of the said Act, **shall not** be included in the total undisclosed foreign income.
- ❖ To avoid double taxation, the income included in the total undisclosed foreign income and asset under this Act shall not form part of the total income under the Income-tax Act.

b. Penalty for under-reporting and misreporting of income [Sec. 270A]

The

- Assessing Officer; or
- Commissioner (Appeals); or
- Principal Commissioner or Commissioner

may, during the course of any proceedings under this Act, direct that any person who has under-reported his income shall be liable to pay a penalty in addition to tax, if any, on the under-reported income.

Taxpoint

- ❖ Penalty proceedings must be initiated before completion of the assessment or appeal order or revision order, as the case may be.
- ❖ Penalty order is different from assessment order. Aggrieved with the penalty order passed by the Assessing Officer, the assessee is required to file separate appeal to the Commissioner (Appeals) or separate revision petition u/s 264 or separate rectification petition u/s 154. Further, appeal can be filed with the Tribunal against the penalty order passed by the Commissioner (Appeals) or Principal Commissioner or Commissioner.
- ❖ Tribunal cannot impose penalty
- ❖ Penalty shall be imposed by the respective income-tax authority on addition made by them. E.g., on addition being made by the Assessing Officer, Commissioner (Appeals) cannot levy penalty. Even the Assessing Officer fails to levy penalty on such addition, Commissioner (Appeals) cannot levy penalty on such addition made by the Assessing Officer. In CIT -vs.- Shadiram Balmukund, the Apex court has held that the Assessing officer can levy penalty on the additions made by him and not on the additions made by Commissioner (Appeals). Similarly, Commissioner (Appeals) can levy penalty on the additions made by him and not on the additions made by the Assessing Officer.

c. ICDS-IX on "Borrowing Cost"

Scope

The Standard deals with treatment of borrowing costs. However, the Standard does not deal with the actual or imputed cost of owners' equity and preference share capital.

Borrowing costs are interest and other costs incurred by a person in connection with the borrowing of funds and include:

a) commitment charges on borrowings;
b) amortised amount of discounts or premiums relating to borrowings;
c) amortised amount of ancillary costs incurred in connection with the arrangement of borrowings;
d) finance charges in respect of assets acquired under finance leases or under other similar arrangements.

Recognition

Borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset shall be capitalised as part of the cost of that asset.

Qualifying asset means:

a. land, building, machinery, plant or furniture, being tangible assets;
b. know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets;
c. inventories that require a period of 12 months or more to bring them to a saleable condition.

Borrowing Costs Eligible for Capitalisation

Specific Borrowing: The extent to which funds are borrowed specifically for the purposes of acquisition, construction or production of a qualifying asset, the amount of borrowing costs to be capitalised on that asset shall be the actual borrowing costs incurred during the period on the funds so borrowed.

Other than specific borrowing: The amount of borrowing costs to be capitalised shall be computed in accordance with this formula: A x B / C

A Borrowing costs incurred during the previous year except on specific borrowings

B i. the average of costs of qualifying asset as appearing in the balance sheet of a person on the first day and the last day of the previous year
ii. in case the qualifying asset does not appear in the balance sheet of a person on the first day, half of the cost of qualifying asset; or
iii. in case the qualifying asset does not appear in the balance sheet of a person on the last day of the previous year, the average of the costs of qualifying asset as appearing in the balance sheet of a person on the first day of the previous year and on the date of put to use or completion, as the case may be,

excluding the extent to which the qualifying assets are directly funded out of specific borrowings

C the average of the amount of total assets as appearing in the balance sheet of a person on the first day and the last day of the previous year, other than assets to the extent they are directly funded out of specific borrowings

Commencement of Capitalisation

The capitalisation of borrowing costs shall commence

- In case of specific borrowing : from the date on which funds were borrowed
- In case of other borrowing : from the date on which funds were utilised

Cessation of Capitalisation

Capitalisation of borrowing costs shall cease:

➢ In case of asset other than inventory	When such asset is first put to use
➢ In case of inventory	When substantially all the activities necessary to prepare such inventory for its intended sale are complete.

Disclosure

The following disclosure shall be made in respect of borrowing costs, namely:—

a) the accounting policy adopted for borrowing costs; and
b) the amount of borrowing costs capitalised during the previous year.

d. Application for Advance Ruling [Sec. 245-Q]

- ❖ An applicant desirous of obtaining an advance ruling may make an application stating the question on which the advance ruling is sought in quadruplicate in:
- ✓ in Form No. 34C in respect of a non-resident applicant;
- ✓ in Form No. 34D in respect of a resident applicant seeking advance ruling in relation to a transaction undertaken or proposed to be undertaken by him with a non-resident;
- ✓ in Form No. 34DA in respect of a resident applicant referred to in sec. 245N(b)(iia) falling within any such class or category of person as notified by the Central Government; and
- ✓ in Form No. 34E in respect of a notified resident referred to in sec. 245N(b)(iii)
- ✓ in Form No. 34EA in respect of a applicant referred to in sec. 245N(b)(iiia)
- ✓ and shall be verified in the manner indicated therein.

- ❖ The application shall be accompanied by a fee of
- ❖ ₹ 10,000 or
- ❖ such fees as may be prescribed.
  - whichever is higher

- ❖ An applicant may withdraw an application within 30 days from the date of the application.
- ❖ An application shall be presented by the applicant in person or by an authorised representative to the Secretary or any other officer notified in writing by the Secretary or sent by registered post addressed to the Secretary along with a fee (in the form of a Demand Draft drawn in favour of "Authority for Advance Rulings" payable at New Delhi).
- ❖ An application sent by registered post shall be deemed to have been made on the date on which it is received in the office of the Authority.
- ❖ If the applicant is not hitherto assessed in India, he shall indicate in Annexure I to the application:
  - ✓ his head office in any other country,
  - ✓ the place where his office and residence is located or is likely to be located in India, and
  - ✓ the name and address of his representative in India, if any, authorised to receive notices and papers and act on his behalf.
- ❖ The Secretary may send the application back to the applicant if it is defective in any manner for removing the defects within such time as he may allow. Such application shall be deemed to have been made on the date when it is represented after correction.

Question No.: 30. Write short notes on the followings

a. Permanent Establishment
b. Power of Authorised officer while carrying search.
c. ICDS-I on "Accounting Policies"
d. Income Tax Authorities

Answer:

a. Permanent Establishment:

One of the important terms that occur in all the Double Taxation Avoidance Agreements is the term 'Permanent Establishment' (PE) which has not been defined in the Income Tax Act. However as per the Double Taxation Avoidance Agreements, PE includes, a wide variety of arrangements i.e. a place of management, a branch, an office, a factory, a workshop or a warehouse, a mine, a quarry, an oilfield etc. Imposition of tax on a foreign enterprise is done only if it has a PE in the contracting state. Tax is computed by treating the PE as a distinct and independent enterprise.

Generally, in Indian context, the term permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on. The term "permanent establishment" shall also include:

a. a place of management;
b. a branch;
c. an office;
d. a factory;
e. a workshop;
f. a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
g. a warehouse in relation to a person providing storage facilities for others;
h. a farm, plantation or other place where agricultural, pastoral, forestry or plantation activities are carried on;
i. premises used as a sales outlet or for receiving or soliciting orders;
j. an installation or structure, or plant or equipment, used for the exploration for or exploitation of natural resources;
k. a building site or construction, installation or assembly project, or supervisory activities in connection with such a site or project, where that site or project exists or those activities are carried on (whether separately or together with other sites, projects or activities) for more than specified months (generally 6 months).

Exclusion

An enterprise shall not be deemed to have a permanent establishment merely by reason of :

a. the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise ;
b. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display ;
c. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d. the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise; or

e. the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the enterprise.

An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, a general commission agent or any other agent of an independent status, where that person is acting in the ordinary course of the person's business as such a broker or agent. However, when the activities of such a broker or agent are carried on wholly or principally on behalf of that enterprise itself or on behalf of that enterprise and other enterprises controlling, or controlled by or subject to the same common control as, that enterprise, the person will not be considered a broker or agent of an independent status within the meaning of this paragraph.

b Power of Authorised officer while carrying search.

While conducting search, authorized officer has following powers -

a. Enter and search any building, etc.: Enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept.

b. Break open the lock of any door, etc.: Break open the lock of any door, box, locker, safe, almirah or other receptacle, where the keys thereof are not available.

c. Search person: Search any person who -
   - has got out of; or
   - is about to get into; or
   - is in,

   the building, place, vessel, vehicle or aircraft if the authorised officer has reason to suspect that such person has secreted about his person any books of account, other documents, money, bullion, jewellery or other valuable article or thing.

d. Require any person to facilitate the authorised officer: Require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record, to afford the authorised officer the necessary facility to inspect such books of account or other documents.

e. Seizure: Seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search.

f. Place marks of identification: Place marks of identification on any books of account or other documents or make extracts or copies therefrom.

g. Make inventory: Make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing.

h. Examine on oath: Examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing. Any statement made by such person during such examination may thereafter be used as evidence in any proceeding.

The examination of any person may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under Act.

c. ICDS-I on "Accounting Policies"

Accounting Policies

Accounting policies adopted by a person shall be such so as to represent a true and fair view of the state of affairs and income of the business, profession or vocation.

Taxpoint: accounting policies should be such that discloses 'true and fair view' and not —'true and correct'.

The treatment and presentation of transactions and events shall be governed by their substance and not merely by the legal form.

Marked to market loss or an expected loss shall not be recognised unless the recognition of such loss is in accordance with the provisions of any other Income Computation and Disclosure Standard.

Fundamental Accounting Assumptions

The fundamental accounting assumptions i.e., Going Concern, Consistency and Accrual are assumed as followed. No specific disclosure is required, if these assumptions are followed, however, if such assumption are not followed, the fact shall be disclosed.

Taxpoint: ICDS does not recognize materiality as an accounting policy

Change in Accounting Policies

An accounting policy shall not be changed without reasonable cause.

Taxpoint: The word 'reasonable cause' is not defined in the ICDS

Disclosure of Accounting Policies

- ✓ All significant accounting policies adopted by a person shall be disclosed.
- ✓ Any change in an accounting policy which has a material effect shall be disclosed (with quantum of the effect, if ascertainable). Where such amount is not ascertainable, the fact shall be indicated.
- ✓ Disclosure of accounting policies or of changes therein cannot remedy a wrong or inappropriate treatment of the item.

d. Income Tax Authorities

a) The Central Board of Direct Taxes (CBDT) constituted under the Central Boards of Revenue Act, 1963
b) Principal Directors General of Income-tax or Principal Chief Commissioners of Income-tax
c) Directors-General of Income-tax or Chief Commissioners of Income-tax
d) Principal Directors of Income-tax or Principal Commissioners of Income-tax
e) Directors of Income-tax or Commissioners of Income-tax or Commissioners of Income-tax (Appeals)

f) Additional Directors of Income-tax or Additional Commissioners of Income-tax or Additional Commissioners of Income-tax (Appeals)

g) Joint Directors of Income-tax or Joint Commissioners of Income-tax

h) Deputy Directors of Income-tax or Deputy Commissioners of Income-tax or Deputy Commissioners of Income-tax (Appeals)

i) Assistant Directors of Income-tax or Assistant Commissioners of Income-tax

j) Income-tax Officers

k) Tax Recovery Officers

l) Inspectors of Income-tax

Taxpoint

- As per sec. 2(7A), Assessing Officer means the Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director or the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders, and the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director who is directed to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Act.
- As per sec. 2(9A), Assistant Commissioner means a person appointed to be an Assistant Commissioner of Income-tax or a Deputy Commissioner of Income-tax u/s 117(1)
- As per sec. 2(15A), Chief Commissioner means a person appointed to be a Chief Commissioner of Income-tax or a Principal Chief Commissioner of Income-tax u/s 117(1)
- As per sec. 2(16), Commissioner means a person appointed to be a Commissioner of Income-tax or a Director of Income-tax or a Principal Commissioner of Income-tax or a Principal Director of Income-tax u/s 117(1)
- As per sec. 2(21), Director General or Director means a person appointed to be a Director General of Income-tax or a Principal Director General of Income-tax or, as the case may be, a Director of Income-tax or a Principal Director of Income-tax, u/s 117(1), and includes a person appointed to be an Additional Director of Income-tax or a Joint Director of Income-tax or an Assistant Director or Deputy Director of Income-tax
- As per sec. 2(28C), Joint Commissioner means a person appointed to be a Joint Commissioner of Income-tax or an Additional Commissioner of Income-tax u/s 117(1).
- As per sec. 2(28D), Joint Director means a person appointed to be a Joint Director of Income-tax or an Additional Director of Income-tax u/s 117(1)