

Paper 16 – Direct Tax Laws and International Taxation



Paper – 16
Direct Tax Laws and International Taxation

Full Marks : 100

Time allowed: 3 hours

Part – I

1. Choose the correct alternative and also provide your justification [10 × 2]
1. Notice u/s 143(2) (i.e. notice of scrutiny assessment) should be served within a period of _____ from the end of the financial year in which the return is filed.
- (a) 6 months
(b) 12 months
(c) 24 months
(d) 18 months
- Reason:
To carry out assessment u/s 143(3), the Assessing Officer should serve a notice u/s 143(2). Notice u/s 143(2) should be served within a period of 6 months from the end of the financial year in which the return is filed.
2. MAT shall not apply to any income accruing or arising to a company from
- (a) Life insurance business
(b) Banking business
(c) Business of transmission of electricity
(d) All of the above
- Reason:
The provision of section 115JB is not applicable to any income accruing or arising to a company from life insurance business referred to in sec. 115B
3. As per section 178(3), 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) Managing Director
(b) Manager
(c) Chartered Accountant
(d) Liquidator

Reason:

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

4. An appeal to the Commissioner of Income-tax (Appeals) shall be filed in Form No._____.
- (a) 35
 - (b) 36
 - (c) 34C
 - (d) 35B

Reason:

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

5. If the amount of income in respect of which the penalty is imposed or imposable for the relevant year(s) exceeds ₹ _____, then no order reducing or waiving the penalty under section 273A(1) shall be made by the Principal Commissioner or Commissioner, except with the previous approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General, as the case may be
- (a) 1,00,000
 - (b) 2,00,000
 - (c) 5,00,000
 - (d) 10,00,000

Reason:

If the amount of income in respect of which the penalty is imposed or imposable for the relevant year or, where such disclosure relates to more than one year, the aggregate amount of such income for those years exceeds a sum of ₹ 5,00,000, no order reducing or waiving the penalty under section 273A(1) shall be made by the Principal Commissioner or Commissioner, except with the previous approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General, as the case may be.

6. The provisions of sec. 92 will apply only if the aggregate value of specified domestic transactions entered into by the taxpayer during the year exceeds a sum of ₹ _____.
- (a) 100 crore
 - (b) 5 crore
 - (c) 10 crore
 - (d) 20 crore

Reason:

The provisions of section 92 will apply only if the aggregate value of specified domestic transactions entered into by the taxpayer during the year exceeds a sum of ₹ 20 crore.

7. Advance Pricing Agreement shall be valid for such period not exceeding _____ consecutive previous years as may be specified in the agreement.

- (a) 5
- (b) 3
- (c) 10
- (d) 2

Reason:

As per sec. 92CC, Advance Pricing Agreement shall be valid for such period not exceeding 5 consecutive previous years as may be specified in the agreement.

8. X Marine Lines Inc., a Singapore company engaged in shipping business collected ₹ 150 lakh towards carrying goods from Chennai Port. Its presumptive income chargeable to tax in India would be ₹

- (a) 15 lakhs
- (b) 11.25 lakhs
- (c) 12 lakhs
- (d) Nil

Reason:

₹ 150 lakh × 7.5% = ₹ 11.25 lakhs

9. *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) All of the above

Reason:

As per ICDS IX, *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.
10. U/s 131(3), an income tax authority can not retain in his custody any books or documents for a period _____ without obtaining approval from higher authorities.
- (a) exceeding 30 days
- (b) exceeding 15 days
- (c) upto completion of assessment
- (d) None of the above

Reason:

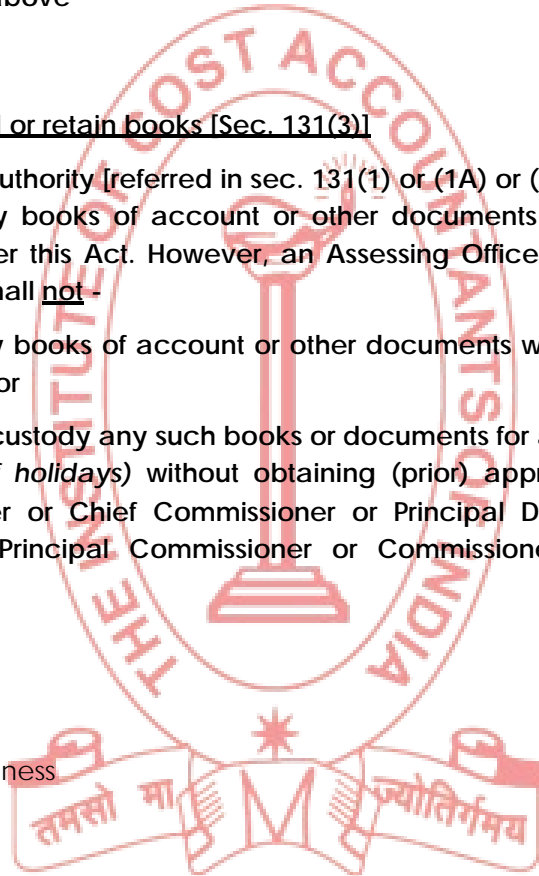
Power to impound or retain books [Sec. 131(3)]

Any income tax authority [referred in sec. 131(1) or (1A) or (2)] may impound and retain in its custody any books of account or other documents produced before it in any proceedings under this Act. However, an Assessing Officer or an Assistant Director or Deputy Director shall not -

- (a) Impound any books of account or other documents without recording his reasons for doing so; or
- (b) Retain in his custody any such books or documents for a period exceeding 15 days (exclusive of holidays) without obtaining (prior) approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner or Principal Director or Director.

Answer:

1. (a) 6 months
2. (a) Life insurance business
3. (d) Liquidator
4. (a) 35
5. (c) 5,00,000
6. (d) 20 crore
7. (a) 5
8. (b) 11.25 lakhs
9. (d) All of the above
10. (b) exceeding 15 days



Part - II

(Answer and Five Questions out of seven questions to be answered)

2. (a) State the power of settlement commission.

[8]

Answer:

Power of Settlement Commission

- **To order Provisional Attachment to protect Revenue [Sec. 245DD]**
 - Where, during the pendency of any proceeding, the Settlement Commission is of the opinion that for the purpose of protecting the interests of the revenue it is necessary to do so, it may, by order, attach provisionally (in the manner provided in the Second Schedule) any property belonging to the applicant.
 - Cessation of Attachment: Every provisional attachment shall cease to have effect after the expiry of a period of 6 months from the date of such order. However, the Commission may, for reasons to be recorded in writing, extend the period by such further period(s) as it thinks fit.
- **To provide Inspection, etc., of Reports [Sec. 245G]**
 - No person shall be entitled to inspect or obtain copies of, any reports given by any income-tax authority to the Commission. However, on an application, the Commission may furnish copies thereof to any such person on payment of the prescribed fee.
 - For the purpose of enabling assessee to rebut any evidence brought on record against him in any such report, the Settlement Commission shall furnish him with a certified copy of any such report or part thereof relevant for the purpose. For this purpose, assessee needs to make an application and payment of the prescribed fee.
- **To grant Immunity from Prosecution and Penalty [Sec. 245H]**
 - The Settlement Commission may grant immunity (subject to such conditions as it may think fit to impose for the reasons to be recorded in writing) from –
 - (a) Prosecution for any offence under this Act or under the Wealth Tax Act; and
 - (b) Imposition of any penalty (wholly or partly) under this Act,
– with respect to the case covered by it.
 - Such immunity can be granted by the Commission, if the assessee -
 - (a) has co-operated with the Settlement Commission in the proceedings before it;
 - (b) has made a full and true disclosure of his income; and
 - (c) has made a full and true disclosure of the manner in which such income has been derived.

Taxpoint:

- Such immunity shall not be granted by the Settlement Commission in cases where the proceedings for the prosecution have been instituted before the date of receipt of the application u/s 245C.
- The Settlement Commission does not have the power to reduce or waive interest statutorily payable u/s 234A, 234B and 234C, except to the extent of granting relief under circulars issued by the Board (see chapter 'Interest')

Answer_MTP_Final_Syllabus-2016_June 2019_Set -2

- It has to be noted that waiver or reduction of interest u/s 220(2A) and other provisions is waived or reduced with certain conditions. If these conditions are satisfied, the Commission has the power to direct waiver or reduction
- Interest u/s 234B shall be charged upto date of the order of Settlement Commission u/s 245D(4)

➤ **Withdrawal of Immunity Granted**

An immunity granted to a person shall stand withdrawn if –

(1) Such person fails to –

- (a) Pay any sum specified in the order of settlement within the time allowed by the Settlement Commission; or
- (b) Comply with any other condition(s) subject to which the immunity was granted.

(2) Such person had, in the course of the settlement proceedings, concealed any particulars material to the settlement or had given false evidence.

➤ **Consequences of Withdrawal of Immunity Granted**

On withdrawal of immunity granted the provisions of this Act shall apply as if such immunity had not been granted.

➤ **Other Power [Sec. 245F]**

- (1) In addition to the powers conferred on the Settlement Commission under this Chapter, it shall have all the powers, which are vested in an income-tax authority under this Act.
- (2) The Commission shall have exclusive jurisdiction from the date on which the application was made. Where an application is rejected or not allowed to be further proceeded or declared invalid, the Commission shall have such exclusive jurisdiction upto the date on which application is rejected, etc.
- (3) The Commission shall have power to regulate its own procedure and the procedure of Benches thereof in all matters or of the discharge of its functions, including the places at which the Benches shall hold their sittings.
- (4) In the absence of any express direction to the contrary by the Settlement Commission, nothing contained in this section shall affect the operation of any other provision of this Act -
 - Requiring the applicant to pay tax on the basis of self-assessment in relation to the matters before the Settlement Commission; and
 - Related to any matters other than those before the Settlement Commission.

Taxpoint: The Settlement Commission shall not have any power to reopen the proceedings. [Sec. 234E]

2. (b) **M/s. QQ Trading Co. a sole proprietary concern, was converted into a company w,e,f 01-09-2018. Before the conversion, the sole proprietary concern had a block of Plant & Machinery (15%), whose WDV as on 1-4-2018 was ₹ 3,00,000. On 1st April itself, a new plant of the same block was purchased for ₹ 1,20,000. After the conversion, the company has purchased the same type of plant on 1-1-2019 for ₹ 1,60,000. Compute the depreciation that would be allocated between the concern & the company. [8]**

Answer_MTP_Final_Syllabus-2016_June 2019_Set -2

Answer:

Computation of depreciation on plant and machinery if there were no succession

Particulars	Plant & Machinery
W.D.V. as on 1/4/2018	3,00,000
Add: Purchase during the year	1,20,000
	4,20,000
Less: Sale during the year	Nil
	4,20,000
Depreciation @ 15% of ₹ 4,20,000	63,000

Allocation of depreciation between sole proprietary concern and the successor company

The depreciation of ₹ 63,000 is to be allocated in the ratio of number of days the assets were used by the sole proprietary concern and the successor company.

Calculation of allowable depreciation to sole proprietary concern

Particulars	Amount
Ex-sole proprietary:	
Plant & machinery are used by sole proprietary concern from 1/4/2018 to 31/8/2018 i.e. 153 days.	
Depreciation for 153 days (₹ 63,000 x 153/365)	26,408

Calculation of allowable depreciation to successor company

Particulars	Amount
Plant & machinery of sole proprietary concern used by the successor company from 1/9/2018 to 31/3/2019 i.e. 212 days. Depreciation for such period (₹ 63,000 x 212/365)	36,592
After conversion	
Depreciation in respect of assets purchased by the successor company on 1/1/2019 is fully allowable in the hands of successor company [50% of 15% on ₹ 1,60,000].	12,000
Total depreciation	48,592

3. Critically examine the following with the help of case law:

[16]

- (a) Directions issued by the DRP without application of mind, simply accepting the TPO's order, without independent reasoning and findings, is liable to be set aside.
- (b) In case of NBFCs, income from NPAs would be taxable on receipt basis

Answer:

(a) *Renault Nissan Automotive India Private Ltd. -vs.- DRP & Others (2018) (Madras)*

The TPO rejected the overseas tested party approach adopted by the assessee and the economic adjustments claimed by the assessee and proposed TP adjustment. The assessee-filed objection before the DRP against the draft assessment order incorporating the adjustment made by the TPO. The DRP issued directions to the AO, which in effect, accepted the conclusion arrived by the TPO in toto.

The assessee filed the writ petition before the High Court against the said directions of the DRP primarily contending that the DRP had passed the order in total non-application of mind to the objections raised by the assessee. It contended that the DRP was not justified in rejecting the objections and confirming the TPO's order simply by stating that it was in agreement with the findings rendered by the TPO without any detailed discussions and independent findings on each issue.

The Court held that perusal of the DRP's order clearly indicated that apart from extracting objections raised by the Petitioner and the relevant portion of the TPO's order dealing with such objection, the DRP had not further discussed anything on the said objection in detail as to how the objections raised by the assessee could not be sustained or as to how the findings rendered by the TPO on such issue had to be accepted.

Noting that sec. 144C(5) r.w.s. 144C(6) contemplates that DRP shall issue directions only after inter alia considering objections raised by the assessee, evidences filed by assessee etc., the Court held that issuance of such directions could not be made mechanically or as an empty formality. It held that, on the other hand, the DRP had to issue directions only after considering the above stated materials and such consideration must be apparent on the face of the order.

It thus held that, in absence of independent reasoning and finding, the DRP had passed a cryptic order without application of mind.

Accordingly, it set aside the DRP's order and directed it to pass a fresh order after considering the objections raised by the assessee in detail and giving independent reasons and findings.

(b) CIT -vs.- Vasisth Chay Vyapar Limited (2018) (SC)

The assessee, an NBFC, had advanced certain Inter-Corporate Deposits (ICD) to another company. As no interest could be received on such deposits for more than six months, in terms of directions given by the Reserve Bank of India (RBI), the taxpayer treated the said ICDs as NPA and did not offer interest income on ICDs.

However, the tax officer imputed interest on said ICDs to income of the assessee by applying mercantile system of accounting. The tax officer contended that RBI directives could not override the provisions of the Act.

The CIT(A) affirmed the order of the tax officer. On further appeal, the Income Tax Appellate Tribunal (ITAT) held in favour of the taxpayer and deleted the addition made by the AO.

The Delhi HC held in favour of the assessee that income in the hands of NBFCs is to be recognised as per the RBI prudential norms regardless of the fact even if they deviate from the mercantile system of accounting. The Hon'ble SC confirmed the order of Delhi HC and accordingly, rejected Revenue's appeal against the order of the Delhi HC.

Answer_MTP_Final_Syllabus-2016_June 2019_Set -2

4. (a) Orange Industries Ltd. provides the following information for the financial year 2018-19:

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

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

(₹ in lakh)

Previous Year	Brought Forward Losses	Unabsorbed Depreciation
2014 - 15	2	3
2015 - 16	2	2
2016 - 17	8	5

Compute the book profit of the company as per section 115JB for the assessment year 2019-20. [8]

Answer:

Computation of Book Profit of Orange Industries Ltd. for the A.Y.2019-20

(₹ In lakhs)

Particulars	Details	Amount
Net profit as per books of accounts		120
<i>Add:</i>		
Proposed Dividend	20	
Provision for income tax	18	
Provision for deferred-tax	10	
Provision for permanent diminution in value of investments	3	
Amount transferred to General Reserve	10	
Depreciation	10	71
		191
<i>Less:</i>		
Depreciation (ignoring depreciation of revaluation)	9	
Lower of brought forward loss and unabsorbed depreciation	10	19
Book Profit		172

Answer_MTP_Final_Syllabus-2016_June 2019_Set -2

4. (b) Distinguish between tax planning, tax avoidance and tax evasion

[8]

Answer:

Difference between tax planning, tax avoidance, tax evasion & tax management.

Points of distinction	Tax planning	Tax Avoidance	Tax Evasion
Definition	It is a way to reduce tax liability by taking full advantages provided by the Act through various exemptions, deductions, rebates & relief.	It is an exercise by which the assessee legally takes advantage of the loopholes in the Act.	It is the illegal way to reduce tax liability by deliberately suppressing income or sale or by increasing expenses, etc., which results in reduction of total income of the assessee.
Feature	Tax planning is a practice to follow the provisions of law within the moral framework.	Tax avoidance is a practice of bending the law without breaking it.	Tax evasion is illegal, both in script & moral.
Object	To reduce tax liability by applying script & moral of law.	To reduce the tax liability to the minimum by applying script of law only	To reduce tax liability by applying unfair means.
Approach	It is futuristic and positive in nature. The planning is made today to avail benefits in future.	It is futuristic but short term in nature, as loophole of the law will be corrected in future by amendments of the law.	It is concerned with past and applied after the liability of tax has arisen. It is done with negative approach to avail benefits by killing the moral of law.
Benefit	Generally, arises in long run.	Generally, arises in short run.	Generally, benefits do not arise but it causes penalty and prosecution.
Treatment of Law	It uses benefits of the law.	It uses loopholes in the law.	It overrules the law.
Practice	It is tax saving.	It is tax hedging.	It is tax concealment.
Need	It is desirable	It is avoidable	It is objectionable
Morality	It is moral in nature.	It is immoral in nature	It is illegal.

5. (a) Indicate briefly the points to be taken into account while preparing annual accounts for the purpose of MAT. [8]

Answer:

Every company shall prepare its Statement of Profit and Loss for the relevant previous year in accordance with the provisions of Schedule III to the Companies Act, 2013. However, in case of banking, insurance or electricity company, such statement should be prepared as per provisions of the Act which governs such company.

➤ While preparing the annual accounts:

Answer_MTP_Final_Syllabus-2016_June 2019_Set -2

- (a) the accounting policies;
- (b) the accounting standards followed for preparing such accounts;
- (c) the method and rates adopted for calculating the depreciation,
- shall be the same as have been adopted for the purpose of preparing such accounts and laid before the company at its annual general meeting.

5. (a) Write short notes on ICDS VII

[8]

Answer:

ICDS VII: Government Grants

Scope

- The Standard deals with the treatment of Government grants. The Government grants are sometimes called by other names such as subsidies, cash incentives, duty drawbacks, waiver, concessions, reimbursements, etc. but does not include Government participation in the ownership of the enterprise
- *Government* refers to the Central Government, State Governments, agencies and similar bodies, whether local, national or international.
- *Government grants* are assistance by Government in cash or kind to a person for past or future compliance with certain conditions. They exclude those forms of Government assistance which cannot have a value placed upon them and the transactions with Government which cannot be distinguished from the normal trading transactions of the person.

Recognition of Government Grants

- Government grants should not be recognised until there is reasonable assurance that (i) the person shall comply with the conditions attached to them, and (ii) the grants shall be received.
- Recognition of Government grant shall not be postponed beyond the date of actual receipt.

Treatment of Government Grants

Grant Relates to	Treatment
Depreciable fixed asset	The grant shall be deducted from the actual cost of the asset or from the written down value of block of assets
Non-depreciable asset requiring fulfillment of certain obligations	The grant shall be recognised as income over the same period over which the cost of meeting such obligations is charged to income
Not directly relatable to the asset acquired	Proportionate amount shall be deducted from the actual cost of the assets or shall be reduced from the written down value of block of assets to which the assets belonged to.
Receivable as compensation for expenses or losses incurred in a previous financial year or	The grant shall be recognised as income of the period in which it is receivable

for the purpose of giving immediate financial support to the person with no further related costs	
In other case	Grants shall be recognised as income over the periods necessary to match them with the related costs which they are intended to compensate

The Government grants in the form of non-monetary assets, given at a concessional rate, shall be accounted for on the basis of their acquisition cost.

Refund of Government Grants

- The amount refundable in respect of a Government grant shall be applied first against any unamortised deferred credit remaining in respect of the Government grant. To the extent that the amount refundable exceeds any such deferred credit, or where no deferred credit exists, the amount shall be charged to profit and loss statement.
- The amount refundable in respect of a Government grant related to a depreciable fixed asset shall be recorded by increasing the actual cost or written down value of block of assets by the amount refundable. Where the actual cost of the asset is increased, depreciation on the revised actual cost or written down value shall be provided prospectively at the prescribed rate.

Disclosure

- Following disclosure shall be made in respect of Government grants:
 - a. nature and extent of Government grants recognised during the previous year by way of deduction from the actual cost of the asset or assets or from the written down value of block of assets during the previous year;
 - b. nature and extent of Government grants recognised during the previous year as income;
 - c. nature and extent of Government grants not recognised during the previous year by way of deduction from the actual cost of the asset or assets or from the written down value of block of assets and reasons thereof; and
 - d. nature and extent of Government grants not recognised during the previous year as income and reasons thereof.

6. (a) Briefly discuss the legal propositions in case of any conflict between the provisions of the Double Tax Avoidance Agreement (DTAA) and the Income-tax Act, 1961. [8]

Answer:

Section 90(2) of the Income-tax Act, 1961 makes it clear that in case of conflict between the provisions of Double Taxation Avoidance Agreement (DTAA) and the Income-tax Act, the provision of DTAA would prevail over the provisions of the Act.

In fact, tax treaties themselves provide that the laws in force in either country will continue to govern the assessment and taxation of income in the respective country except where provisions to the contrary have been made in the tax treaty.

Therefore, we can say that where there is conflict between the provisions as contained in the tax treaty and the provisions of the Income-tax Act, a taxpayer can take advantage of those provisions, which are more beneficial to him. Thus, tax treaties override the Income-tax Act and can be enforced by the appellate authorities and the courts.

6. (b) If a tax payer has legitimately reduced his tax burden by taking advantage of treaty, the benefit cannot be denied to him on the ground of loss of revenue. Explain in the context of decided case law. [7]

Answer:

Every country seeks to tax the income generated within its territory on the basis of one or more connecting factors such as location of the source, residence of the taxable entity, maintenance of a permanent establishment, and so on. A country might choose to emphasize one or the other of the aforesaid factors for exercising fiscal jurisdiction to tax the entity. Depending on which of the factors is considered to be the connecting factor in different countries, the same income of the same entity might become liable to taxation in different countries. This would give rise to harsh consequences and impair economic development. In order to avoid such an anomalous and incongruous situation, the Governments of different countries enter into bilateral treaties, Conventions or agreements for granting relief against double taxation. Such treaties, conventions or agreements are called double taxation avoidance treaties, conventions or agreements.

The Government of India has entered into various Agreements (also called Conventions or Treaties) with Governments of different countries for the avoidance of double taxation and for prevention of fiscal evasion.

The purpose of these Agreements is to avoid double taxation and to encourage mutual trade and investment between the two countries, as also to bring an environment of certainty in the matters of tax affairs in both countries.

The Apex Court in the case of UOI –vs.- Azadi Bachao Andolan has held that an act which is otherwise valid in law cannot be treated as non-est merely on the basis of some underlying motive supposedly resulting in some economic detriment or prejudice to the national interests.

Thus, the benefit cannot be denied to tax payer on the grounds of loss of revenue if he has legitimately reduced his tax burden by taking advantage of treaty.

7. (a) Discuss the meaning of the term 'associated enterprise' as defined under section 92A. [8]

Answer:

As per sec. 92A(1), associated enterprise, in relation to another enterprise, means an enterprise:

- (a) which participates, directly or indirectly, or through one or more intermediaries, in the *management or control or capital* of the other enterprise; or
- (b) in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons

Answer_MTP_Final_Syllabus-2016_June 2019_Set -2

who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

Deemed associated enterprise [Sec. 92A(2)]

For the above purpose, two enterprises shall be deemed to be associated enterprises if, at any time during the previous year fulfill any of the following conditions (if one of following conditions are not satisfied, then mere participation in management or control or capital of the other enterprise, etc. shall not make them associate):

- (a) one enterprise holds (directly or indirectly) shares carrying not less than 26% of the voting power (i.e., equity shares in case of company) in the other enterprise; or
- (b) any person or enterprise holds (directly or indirectly) shares carrying not less than 26% of the voting power in each of such enterprises; or
- (c) the manufacture or processing of goods or articles or business carried out by one enterprise is *wholly* (not partially) dependent on the use of know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights; or
- (d) 90% or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, are supplied by the other enterprise **or** by persons specified by the other enterprise, **and** the prices and other conditions relating to the supply are influenced by such other enterprise; or
- (e) the goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions relating thereto are influenced by such other enterprise; or
- (f) where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual; or
- (g) where one enterprise is controlled by a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family, or by a relative of a member of such Hindu undivided family, or jointly by such member and his relative; or
- (h) where one enterprise is a firm, association of persons or body of individuals, the other enterprise holds not less than 10% interest in such firm, association of persons or body of individuals; or
- (i) a loan advanced by one enterprise to the other enterprise constitutes not less than 51% of the **book value** of the total assets of the other enterprise; or

Taxpoint: *Revaluation of asset shall not be ignored.*

- (j) one enterprise guarantees not less than 10% of the total borrowings of the other enterprise; or
- (k) more than $\frac{1}{2}$ of the board of directors or members of the governing board, **or** one (not $\frac{1}{2}$ of total number of executive director) or more executive directors or executive members of the governing board of one enterprise, are **appointed** by the other enterprise; or

Taxpoint: *Mere power to appoint director is not sufficient, such power must be exercised.*

Answer_MTP_Final_Syllabus-2016_June 2019_Set -2

- (l) more than ½ of the directors or members of the governing board, or one or more of the executive directors or members of the governing board, of each of the two enterprises are **appointed** by the same person or persons; or
- (m) there exists between the two enterprises, any relationship of mutual interest, as may be prescribed.

7. (b) A Co. Ltd. of Chennai and Sky Inc. of Singapore are associate enterprises. A Co. Ltd. imported 1000 television sets at ₹ 16,000 per set without any warranty period. A Co. Ltd. also imports similar TV sets from unrelated party Sign Inc. of Japan. It is imported at ₹ 15,000 per set with warranty time of 2 years. The cost of warranty in respect of goods imported from Sky Inc. for a period of 2 years would cost ₹ 2,000.

Compute arm's length price and the amount of increase in total income of A Co. Ltd. as per CUP method. [8]

Answer:

(A) Computation of Arms Length Price

Particulars	Amount
Cost of TV Set acquired from Sign Inc	15,000
Less: Cost of Warranty	2,000
Arm's Length Gross Profit mark-up	13,000

(B) Computation of Increase in Total Income

Particulars	Amount
Cost of TV Set acquired from Sky Inc [₹16,000 × 1,000]	1,60,00,000
Less: Arm's length Value [₹ 13,000 × 1,000]	1,30,00,000
Therefore, Increase in Total Income	30,00,000

8. Write short note

- (a) Binding effect of advance ruling
(b) Amalgamation u/s 2(1B)
(c) Door to door survey u/s 133B
(d) Provisional attachment u/s 281B

[4 × 5]

Answer:

(a) **Applicability of Advance Ruling [Sec. 245S]**

- The advance ruling pronounced by the Authority u/s 245R shall be binding only:
 - (a) on the applicant who had sought it;
 - (b) in respect of the transaction in relation to which the ruling had been sought; and

- (c) on the Principal Commissioner or Commissioner, and the income-tax authorities subordinate to him, in respect of the applicant and the said transaction.
- The advance ruling shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

(b) Amalgamation u/s 2(1B)

Amalgamation (in relation to companies) means:

- the merger of one or more companies with another company; or
- the merger of two or more companies to form one company;

in such a manner that—

- (a) all assets and liabilities of the amalgamating company or companies immediately before the amalgamation becomes the assets and liabilities of the amalgamated company;
- (b) shareholders (both equity or preference) holding not less than 75% in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders (equity or preference) of the amalgamated company.
- Number of shares allotted to the shareholders of the amalgamating company by the amalgamated company is not relevant.
 - Where C Ltd. merges with Z Ltd., in a scheme of amalgamation, and immediately before the amalgamation, Z Ltd. holds 20% of the share in C Ltd., the aforesaid mentioned condition will be satisfied if shareholders holding not less than $\frac{3}{4}$ th (in value) of the remaining 80% of the shares in C Ltd., i.e., 60% thereof ($\frac{3}{4} \times 80$), become shareholders of Z Ltd., by virtue of the amalgamation. Where, however, the whole of the share capital of a company is held by another company, the merger of the two companies will qualify as an amalgamation within sec. 2(1B), if the other two conditions are satisfied [Circular 5P, dated 9-10-67]

Exceptions:

Following mergers shall not be treated as amalgamation—

- Merger as a result of acquisition of the property of one company by another company pursuant to the purchase of such property by the other company; or
- Merger as a result of distribution of such property to the other company after the winding up of the first-mentioned company.

(c) Power to collect certain information [Sec. 133B] (Door to door survey)

The income-tax authority (being Joint Commissioner, Assistant Director, Deputy Director, Assessing Officer, authorised Inspector) may, for the purpose of collecting any information, which may be useful for, or relevant to the purposes of this Act:

- (a) Enter into —
- Any building or place within the limits of the area assigned to such authority; or

- Any building or place occupied by any person in respect of whom he exercises jurisdiction,
 - where a business or profession is carried on.
- (b) Require any proprietor, employee or any other person who may at that time and place be attending or helping in such business or profession to furnish such information as may be prescribed

Time for Entrance

An Income-tax authority may enter into such place only during the hours at which such place is open for the conduct of business or profession.

Restriction on Income-tax Authority

An income-tax authority shall not remove any books of account or other documents, cash, stock or other valuable article or thing.

(d) Provisional attachment to protect revenue in certain cases [Sec. 281B]

- 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.

