

PAPER – 15 : DIRECT TAX LAWS AND INTERNATIONAL TAXATION

SUGGESTED ANSWERS

SECTION - A

1.

- (i) (D)
- (ii) (A)
- (iii) (A)
- (iv) (A)
- (v) (B)
- (vi) (D)
- (vii) (C)
- (viii) (C)
- (ix) (A)
- (x) (C)
- (xi) (B)
- (xii) (C)
- (xiii) (D)
- (xiv) (B)
- (xv) (C)

SECTION – B

2.

- (i) Income from business as per normal provisions = ₹ 20,05,000
- (ii) Book profit under section 115JB = ₹ 22,50,000

3. (a)

Tax Planning, Tax Management, Tax Evasion

- (i) Filing ITR before the due date for availing carry forward benefit of business loss is Tax management
- (ii) Setting up of a warehouse to avail tax benefit u/s 35AD - Tax planning
- (iii) Payment of medical insurance premium of ₹ 45,000 for a parent, aged 76 - Tax planning
- (iv) Collecting PAN Details of contractors to whom TDS as per section 194C is to be made - Tax management
- (v) Recording in the books of account, salary payment to J, who is not actually employed by the assessee - Tax evasion
- (vi) Paying advance tax instalments in accordance with section 211. – Tax management
- (vii) Gifting a property to major son in order to divert rental income being taxed at a lower rate of tax – Tax planning

3. (b)

• **In the case of slump sale**

Slump sale means transfer of one or more undertaking for a lump sum consideration without values being assigned to individual assets and liabilities in such transfer.

Any profits or gains arising from slump sale effected shall be chargeable to income-tax as capital gain arising from long-term capital asset if the undertaking was owned and held for more than 36 months preceding the date of transfer. Since it is stated that the automobile division was operational for more than 10 years the capital gain is liable to tax as long-term capital gain.

It is liable to tax @ 20% + surcharge @7% + HEC @4%. The effective rate would be 22.256% on ₹ 160 lakhs (₹ 500 lakhs minus ₹ 340 lakhs).

The tax liability would be ₹ 35,60,960.

- **In the case of demerger**

Demerger is defined in section 2(19AA) where all the property of the undertaking of the demerged company held immediately before demerger is transferred and becomes the property of the resulting company. In this case, Tiger (P) Ltd would be demerged company and Lion Ltd would be the resulting company.

Section 47(vib) says any transfer in a demerger, of a capital asset by the demerged company to the resulting company is not to be regarded as transfer, if the resulting company is an Indian company. In this case, both Tiger (P) Ltd and Lion Ltd are Indian companies. Therefore, the transaction of demerger will not attract any tax liability.

If the sale consideration is discharged by the resulting company by issuing shares to the demerged company, there would be no tax consequence. On the other hand, if the shareholders of the demerged company receive shares in return for the shares held in demerged company it would attract capital gains tax based on their individual holding, cost of acquisition, period of holding and other factors.

It is advisable to prefer demerger than slump sale of automobile division.

4. (a)

Total income of Sun Ltd for the AY 2023-24 = ₹ Nil

4. (b)

Total Income ₹ 11,10,000

Tax liability ₹ 1,17,520

5. (a)

Invoking section 263 when the matter is pending before CIT (Appeals)

Section 263 empowers PCCIT / CCIT / PCIT or CIIT to call for and examine the record of any proceeding under the Act if he considers that any order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the Revenue.

The CIT may enhance or modify the assessment or cancel the assessment and direct a fresh assessment.

When the matter is pending before CIT (Appeals), the doctrine of partial merger will apply.

Therefore, section 263 could be invoked in respect of matters not covered in the appeal.

Therefore, the action of the CIT is tenable in law.

Invoking section 264 when the matter is pending before CIT (Appeals):

As per section 264 in the case of any order passed by an income-tax authority subordinate to PCCIT or CCIT or PCIT / CIT, he may either of his own motion or on an application made by the assessee call for record of any proceeding and make such enquiry and make an order not being prejudicial to the Revenue.

When the assessee has preferred an appeal in respect of some of the matters and has not preferred appeal in respect of some of the matters contained in the assessment order, the doctrine of total merger would apply.

Once the assessee has approached CIT (Appeals) in respect of some of the matters, he cannot prefer revision under section 264.

This is because the assessment order of the Assessing Officer fully merges with that of the appellate order and therefore, it cannot be subjected to revision under section 264.

5. (b)

Interest U/S 234C payable for AY 2023-24 ₹ 3,663

6. (a)

Meaning of “Permanent Establishment”

Permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

It includes especially

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop; and
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources. (Any two)

The term “permanent establishment” also encompasses

- (a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than 6 months;
- (b) the furnishing of services including consultancy services by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue within a contracting state for a period or periods aggregating more than 183 days in any 12 month period commencing or ending in the fiscal year concerned.

As per OECD model

permanent establishment does not include the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise. (Any two)

As per UN Model

permanent establishment does not include use of facilities for the purpose of storage or display of goods or merchandise belonging to the enterprise. (Any two)

If the goods are delivered then as per UN model PE is said to exist.

6. (b)

Total Income ₹ 11,85,000

Tax liability ₹ 1,02,600 (Round off)

7. (a)

Computation of ALP of ZX Ltd

Two enterprises are deemed to be associated enterprises where one enterprise, directly or indirectly, holds shares carrying not less than 26% of the voting power in the other enterprise.

In this case, since SD LLP., a foreign company, holds 32% of the voting powers in ZX Ltd, an Indian company, These two entities. are deemed to be associated enterprises.

Since the transaction of developing software and providing related support service by the assessee to SD LLP is an international transaction between associated enterprises, the provisions of transfer pricing would be attracted in this case.

ALP in INR	₹ 9,69,48,000
Actual price charged to SD LLP	₹ 8,64,00,000
Difference in profit to be adjusted by way of addition in the hands of ZX Ltd.	₹ 1,05,48,000

7. (b)

Thin capitalization

As per section 94B where an Indian company being the borrower incurs any expenditure by way of interest to the AEs **exceeding ₹ 100 lakhs** which is deductible in computing income under the head “Profits and gains of business or profession” in respect of any debt issued by a non-resident being an associated enterprise of such borrower, the interest to the extent it exceeds 30% of EBITDA is not eligible for deduction.

	₹ in lakhs
Interest paid to AE	125.00
EBITDA	300.00
Interest payment limited to 30% of EBITDA	90.00
Excess interest liable for disallowance (₹ 125 lakhs minus ₹ 90 lakhs)	35.00
The disallowed portion of interest is eligible for carry forward for 8 assessment years immediately succeeding the assessment year 2023-24	

8. (a)

Can the “intimation” be revised by the PCIT?

Issue involved

The issue involved is whether an Intimation served on an assessee u/s 143(1) can be regarded as an “order” which can be revised by the PCIT u/s 264. In other words, whether intimation is an “order” amenable for revisionary jurisdiction of the PCIT.

Provisions applicable

As per section 264, in the case of any order, other than the one to which section 263 applies, the PCIT may, either on his own motion, or upon an application by the assessee, call for the record of any proceeding under the Act, may make an inquiry or cause an inquiry to be conducted, and may pass such order as he thinks fit, not being an order prejudicial to the assessee.

Analysis

Section 264 uses the words “any order”; hence it would imply that the section does not limit the power thereunder to correct errors committed by the subordinate authorities but could even be exercised where errors are committed by assessees. It would even cover situations where the assessee, because of an error, has not put forth a legitimate claim at the time of filing the return and the error is subsequently discovered and is raised in an application under section 264.

The intimation under section 143(1) is to be regarded as an order for the purposes of section 264. Further, as per CBDT circular, a duty is cast upon the Assessing Officer to assist and aid the assessee in the matter of taxation and to advise the assessee, guide him and not to take advantage of error or mistake committed by the assessee or of his ignorance.

When the AO has failed in his duty, the PCIT should come to the rescue of the taxpayer.

Conclusion

In view of the above, intimation u/s 143(1) can be regarded as an “order” for the purposes of section 264 and is amenable to the revisionary jurisdiction of the PCIT.

8. (b)

(i) Period of validity of APA:

When the assessee enters into an APA with the Department, it is valid for 5 consecutive previous years commencing from the previous year in which the APA was entered into.

If the application is filed and the APA is entered into the financial year 2023-24 it would be valid and applicable from F.Y.2023-24 to F.Y.2027-28 (5 consecutive years).

(ii) Fees payable:

When the amount of international transaction proposed to be undertaken exceeds ₹ 100 crore the fee payable along with application for APA would be ₹ 10 lakh.

(iii) Binding nature:

An APA entered into shall be binding on

- the person in whose case and in respect of the transaction in relation to which the APA has been entered into; and
- the PCIT or CIT and the income-tax authorities subordinate to him, in respect of the said person and the said transaction

However, the APA would not be binding if there is any change in law or facts which have a bearing on such APA.

(iv) APA vis a vis ALP determination

Once APA is entered in to the ALP shall be determined in accordance with APA only. It shall override the provisions of section 92 C or section 92CA.
