

MAY 2011

FINAL
GROUP-II PAPER-7
DIRECT TAX LAWS

Roll No.

Total No. of Questions – 7

Total No. of Printed Pages – 8

Time Allowed – 3 Hours

Maximum Marks – 100

DAK

Answers to questions are to be given only in English except in the case of candidates who have opted for Hindi Medium. If a candidate has not opted for Hindi medium, his answers in Hindi will not be valued.

Working notes should form part of the answer

Question No. 1 is compulsory.

Attempt any **five** questions from the remaining **six** questions.

1. (A) PQR Limited has two units – one engaged in manufacture of computer hardware and the other involved in developing software. As a restructuring drive, the company has decided to sell its software unit as a going concern by way of slump sale for ₹ 385 lakh to a new company called S Limited, in which it holds 74% equity shares. 10

The balance sheet of PQR limited as on 31st March 2011, being the date on which software unit has been transferred, is given hereunder –

Balance Sheet as on 31.3.2011

Liabilities	₹ in lakh	Assets	₹ in lakh
Paid up Share Capital	300	<u>Fixed Assets</u>	
General Reserve	150	Hardware unit	170
Share Premium	50	Software unit	200
Revaluation Reserve	120	<u>Debtors</u>	
<u>Current Liabilities</u>		Hardware unit	140
Hardware unit	40	Software unit	110
Software unit	90	<u>Inventories</u>	
		Hardware unit	95
		Software unit	35
	750		750

DAK

P.T.O.

Following additional information are furnished by the management :

- (i) The Software unit is in existence since May, 2007.
 - (ii) Fixed assets of software unit includes land which was purchased at ₹ 40 lakh in the year 2004 and revalued at ₹ 60 lakh as on March 31, 2011.
 - (iii) Fixed assets of software unit mirrored at ₹ 140 lakh (₹ 200 lakh minus land value ₹ 60 lakh) is written down value of depreciable assets as per books of account. However, the written down value of these assets under section 43(6) of the Income-tax Act is ₹ 90 lakh.
 - (a) Ascertain the tax liability, which would arise from slump sale to PQR Limited.
 - (b) What would be your advice as a tax-consultant to make the restructuring plan of the company more tax-savvy, without changing the amount of sale consideration ?
- (B) How shall the assets retained pursuant to an order passed as per section 37A (5A) of the W.T. Act, 1957 be dealt with ? 3
- (C) Can summons enforcing attendance and to take evidence on oath be issued by a Valuation Officer to the seller of the building for which a reference under section 16A has been made by the W.T.O. ? 3
- (D) Mr. 'W' gifted a gold chain worth ₹ 1,00,000 to the adopted minor child of his son. On 31st March, 2011, the net wealth of Mr. 'W' is worth ₹ 50 lakh whereas the net wealth of W's wife is ₹ 60 lakh. Besides, the net wealth of W's son is worth ₹ 30 lakh while the net wealth of his daughter-in-law is worth ₹ 40 lakh. State with reason, in whose net wealth the value of gifted chain will be included ? 4
- Will it make any change in your answer if the marriage of the parents of adopted minor child does not subsist and the child is maintained by his father ?

2. (A) The procedure relating to the recovery of due tax or the arrears of taxes from a non resident is different than the resident assessee. Comment and state how such recovery is to be made along with its limitation. 6
- (B) Explain in the context of provisions of the Act : 4
- (i) The underlying idea behind DTAA.
- (ii) Rate of tax in other country.
- (C) “Any transfer of a capital asset or intangible asset by a private company or unlisted public company to a LLP or any transfer of share or shares held in a company by a shareholder on conversion of a company into a LLP in accordance with section 56 and section 57 of the Limited Liability Partnership Act, 2008, shall not be regarded as a transfer for the purposes of levy of capital gains tax under section 45 subject to fulfilment of certain conditions”. Explain in the context of the provisions contained in the Act. 6
3. Answer any **four** out of **five** : 4
- (A) Mr. Ramanand after putting 25 years of service opted for voluntary retirement and under approved scheme received an amount of ₹ 20 lakhs as VRS compensation on 01-01-2011. He was advised by his tax consultant to claim exemption to the extent as specified in section 10(10C) and also the relief under section 89. He in order to have an expert opinion, consults you and asks whether such a treatment of VRS compensation is permissible under the Act ?
- (B) “**Save Wild Life**” is an institution, having main object ‘*preservation of wildlife*’, used the entire income derived from an activity in the nature of trade for its main object during the previous year ended on 31-03-2011. The institution seeks your opinion to know whether such utilization of its income be treated for “*charitable purpose*” ? Would your answer be different, if the main object of the institution is “*advancement of object of general public utility*” ? 4

(4)

DAK

Marks

- (C) Which are the conditions to be satisfied by an electoral trust for claiming the benefit of exemption of its income ? Is this benefit available in respect of all the income earned by an electoral trust ? 4
- (D) Mr. Divyam avails the benefit of LTC and went by air (economy class) on a holiday in India on 25.01.2011 along with his wife and three children consisting of son aged 4 years and twin daughters of 1 year age. Total cost of tickets reimbursed by his employer was ₹ 90,000 (₹ 60,000 for 2 adults and 30,000 for the three children). State with reasons the amount which can be claimed by Mr. Divyam out of the reimbursement as not subject to tax ? Will your answer be different where among his three children the twins were of 4 years of age and the age of the son was of 1 year ? 4
- (E) Mr. M is working with MNO Limited for the last 10 years. He was granted an option on 1.7.2008 by the company to purchase 800 equity shares at a price of ₹ 250 per share. The period during which the option can be exercised to purchase 800 shares at a pre-determined price of ₹ 250 per share commencing on 1.7.2008 and ending on 31.3.2011. Mr. M exercised the option on 15-3-2010 to purchase 500 shares. Fair market value on the said date was ₹ 6490 on the Bombay Stock Exchange and ₹ 6500 on the National Stock Exchange. The NSE has recorded the higher volume of trading in that share. 4
- The company has allotted him 500 shares on 24th April, 2010. The fair market value on the date of allotment was ₹ 7100 per share on NSE and ₹ 7110 on the BSE, that has recorded the higher volume of trading in that share. The option was granted for making available rights in the nature of intellectual property rights.
- Determine the taxability of perquisite. Does it make any difference if the option was granted for providing technical know-how ?

DAK

4. (A) Examine the following statements in the context of the provisions contained in the various Chapters of the Act : 3×3
= 9
- (i) *“The provisions of section 115JB are not applicable in case of foreign companies”.*
- (ii) *“The provisions of dividend distribution tax are also applicable to an undertaking or enterprise engaged in developing, operating and maintaining a Special Economic Zone (SEZ)”.*
- (iii) *“A penalty for concealment can be imposed even in the case where the claim of the assessee is debatable or arguable”.*
- (B) Can the brought forward losses and unabsorbed depreciation be set off against the profit determined under section 44B ? 4
- (C) Mr. Balram is a non-resident. The appeal pertaining to the assessment year 2010-11 is pending before the Income-tax Appellate Tribunal, the issue involved being computation of export profit and tax thereon. The same issue persists for the assessment year 2011-12 as well. Mr. Balram’s brother Mr. Krishna has obtained an advance ruling under Chapter XIX – B of Income-tax Act, 1961 from the Authority for Advance Ruling on an identical issue. Mr. Balram proposes to use the said ruling for his assessment pertaining to the assessment year 2011-12. Can he do so ? 3
5. (A) Examine the taxability or allowability or otherwise treatment to be given while computing income under the head *“Income from Business or Profession”* to be declared in the return of income for the financial year ended on 31-3-2011, in the following cases : 2×6
= 12
- (i) Amount received towards power subsidy with a stipulation that the same is to be adjusted in the electricity bills.

- (ii) Donations received by a person in the course of carrying on vocation from his followers.
- (iii) Profit derived by an assessee engaged in carrying the business as dealers in shares on exchange of the shares held as stock in trade of one Company with the shares of other Company.
- (iv) Interest received by a contractor on the amount of compensation awarded by an arbitrator resolving the dispute relating to the work done.
- (v) The amount of margin money forfeited by a bank on the failure of its constituents of not taking the delivery of the shares purchased by such bank on their behalf.
- (vi) Depreciation on the "decoders" given on loan to the cable operators but owned by the assessee who is engaged in the business of distributing satellite channels.

(B) X Co. Ltd. was amalgamated with Y Co. Ltd. on 30.04.2010. X Co. Ltd. was engaged in real estate and whereas Y Co. Ltd. was engaged in manufacture of textile articles. Y Co. Ltd. after amalgamation altered its objects clause of Memorandum of Association, to carry on real estate business.

4

The stock in trade of X Co. Ltd. (being vacant lands) was taken over at ₹ 110 lakhs by Y Co. Ltd. as against their original cost of ₹ 125 lakhs to X Co. Ltd. for the purpose of amalgamation. Y Co. Ltd incurred ₹ 25 lakhs towards development of those lands obtained on amalgamation. It sold the entire land for ₹ 160 lakhs during the year ended 31.03.2011.

Determine the tax implication of the transaction in the hands of Y Co. Ltd. for the assessment year 2011-12.

6. (A) Nandita, an individual resident retired employee of the Prasar Bharati aged 60 years, is a well-known dramatist deriving income of ₹ 1,10,000 from theatrical works played abroad. Tax of ₹ 11,000 was deducted in the country where the plays were performed. India does not have any Double Tax Avoidance Agreement under section 90 of the Income-tax Act with that country. Her income in India amounted to ₹ 5,10,000. In view of tax planning, she has deposited ₹ 70,000 in Public Provident Fund and paid contribution to approved Pension Fund of LIC ₹ 32,000, along with subscription to notified long-term infrastructure bonds ₹ 25,000. She also contributed ₹ 18,000 to Central Government Health Scheme during the previous year and gave payment of medical insurance premium of ₹ 21,000 to insure the health of his father, a non-resident aged 76 years, who is not dependent on her. Compute tax liability of Nandita for the Assessment year 2011-12. 8

(B) Is it valid in law to rectify an assessment order under section 154 due to subsequent change of law on retrospective basis ? Also state, whether a Supreme Court judgement would warrant a rectification under section 154 in respect of an order passed earlier by the Assessing Officer ? 4

(C) Maya Bank credited ₹ 73,50,000 towards interest due on time deposits in a separate account for macro-monitoring only by using Core-branch Banking Solutions (CBS) software. No tax was deducted at source in respect of interest on deposits so credited even where the interest payable in respect of some deposits exceeded the limit of ₹ 10,000. 4

The Assessing Officer disallowed the entire interest expenditure where the interest due on time deposits credited exceeded the limit of ₹ 10,000 and also levied penalty under section 271C.

Decide the correctness of action of the Assessing Officer.

- (A) Seizures were made from Mr. Sunder pursuant to a search conducted in his premises. He filed an application for settlement by claiming to have received the amount by way of loans from several persons. The Settlement Commission accepted his statement and made an order. The CBI, however, conducted enquiry at the instance of the Revenue regarding the claimed amount of loans and opined that the alleged lenders had no means or financial capacity to advance such huge loans to Mr. Sunder and were mere name lenders only. The Commissioner filed an application under section 245D(6) praying for the order to be declared void and for withdrawal of benefit granted. Mr. Sunder, however, contended that the order of the Settlement Commission was final and any fresh analysis would amount to sitting in judgement over an earlier decision, for which the Settlement Commission was not empowered. Discuss the correctness of Mr. Sunder's contention. 6
- (B) Mayur gifted amount of ₹ 5,00,000 to the wife of his brother which was used by her for the purchase of a house and simultaneously on the same day brother of Mayur gifted shares owned by him in a foreign company worth ₹ 5,00,000 to the minor son of Mayur. What will be the impact of such transfers in the hands of both the transferors and the transferees? 5
- (C) State whether the following assesseees have to file return of income and if so, the due date for the assessment year 2011-12 : 5
- (i) A public charitable trust registered under the Act, running an educational institution with aggregate annual receipt of ₹ 65,00,000 and total income of ₹ 3,20,000. Is the accounts of the trust liable for audit under section 44AB of the Act?
 - (ii) A registered trade union having income from let out property of ₹ 1,00,000.
 - (iii) A public trust hospital having an aggregate annual receipt of ₹ 200 lakhs and availing exemption under section 10(23C) (via) with total income of ₹ 1,10,000.