PAPER – 7 : DIRECT TAX LAWS

Working notes should form part of the answer.

Question No.1 is compulsory.

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

All questions relate to the assessment year 2015-16, unless stated otherwise in the question.

Question 1

(a) PQR LLP, a limited liability partnership set up a unit in Special Economic Zone (SEZ) in the financial year 2010-11 for production of washing machines. The unit fulfills all the conditions of section 10AA of the Income-tax Act, 1961. During the financial year 2013-14, it has also set up a warehousing facility in a district of Tamil Nadu for storage of agricultural produce. It fulfills all the conditions of section 35AD. Capital expenditure in respect of warehouse amounted to ₹ 75 lakhs (including cost of land ₹ 10 lakhs). The warehouse became operational with effect from 1st April, 2014 and the expenditure of ₹ 75 lakhs was capitalized in the books on that date.

Relevant details for the financial year 2014-15 are as follows:

Particulars	*₹*
Profit of unit located in SEZ	*40,00,000*
Export sales of above unit	*80,00,000*
Domestic sales of above unit	*20,00,000*
Profit from operation of warehousing facility (before considering deduction under Section 35AD).	*1,05,00,000*

Compute income tax (including AMT under Section 115JC) payable by PQR LLP for Assessment Year 2015-16. *(10 Marks)*

(b) SS(P) Ltd., a domestic Indian company having two undertakings engaged in manufacture of cement and steel, decided to hive off cement division to RV(P) Ltd., a domestic Indian company, by way of demerger. The net book value of assets of SS(P) Ltd. before demerger was ₹ 40 crores. The net book value of assets transferred to RV(P) Ltd. was ₹ 10 crores. The demerger was made in January 2015. In, the scheme of demerger, it was fixed that for each equity share of ₹ 10 each (fully paid up) of SS(P) Ltd., two equity shares of ₹ 10 each (fully paid up) were to be issued.

One Mr. N.K. held 25,000 equity shares in SS(P) Ltd. which were acquired in the financial year 2001-02 for ₹ 6,00,000. Mr. N.K. received 50,000 equity shares from RV(P) Ltd. consequent to demerger in January 2015. He sold all the shares of RV(P) Ltd. for ₹ 8,00,000 in March, 2015. In this background you are requested to answer the following:

The Suggested Answers for Paper 7:- Direct Tax Laws are based on the provisions of direct tax laws, as amended by the Finance (No.2) Act, 2014. The relevant assessment year is A.Y.2015-16, which is the assessment year applicable for November, 2015 examination.

(i) *Does the transaction of demerger attract any income tax liability in the hands of SS(P) Ltd. and RV(P) Ltd. ?*

(ii) *State the conditions in brief, which are to be satisfied under the Act for a demerger.*

(iii) *Compute the capital gain that could arise in the hands of Mr. N.K. on receipt of shares of RV(P) Ltd.*

(iv) *Compute the capital gain that could arise in the hands of Mr. N.K. on sale of shares of RV(P) Ltd.*

(v) *Will the sale of shares by Mr. N.K. affect the tax benefits availed by SS(P) Ltd. and/or RV(P) Ltd.?*

(vi) *Is Mr. N.K. eligible to avail any tax exemption under any of the provisions of the Income-tax Act, 1961 on the sale of shares of RV(P) Ltd.? If so, state in brief.*

Note:

Financial Year	Cost inflation index
2001-02	*426*
2014-15	*1024*

(10 Marks)

Answer

(a) Computation of total income and tax liability of PQR LLP for A.Y.2015-16 (under the regular provisions of the Income-tax Act, 1961)

Particulars	₹	₹
Profits and gains of business or profession		
Unit in SEZ	40,00,000	
Less: Deduction under section 10AA [See Note (1) below]	32,00,000	
Business income of SEZ unit chargeable to tax		8,00,000
Profit from operation of warehousing facility	1,05,00,000	
Less: Deduction under section 35AD [See Note (2) below]	97,50,000	
Business income of warehousing facility chargeable to tax		7,50,000
Total Income		15,50,000
Computation of tax liability (under the normal/regular provisions)		
Tax@30% on ₹15,50,000		4,65,000
Add: Education cess@2% and SHEC@1%		13,950
Total tax liability		4,78,950

Computation of adjusted total income of PQR LLP for levy of Alternate Minimum Tax

Particulars	₹	₹
Total Income (as computed above)		15,50,000
Add: Deduction under section 10AA		32,00,000
		47,50,000
Add: Deduction under section 35AD	97,50,000	
Less: Depreciation under section 32		
On building @10% of ₹ 65 lakhs[1]	6,50,000	91,00,000
Adjusted Total Income		1,38,50,000
Alternate Minimum Tax@18.5%		25,62,250
Add: Surcharge@10% (since adjusted total income > ₹1 crore)		2,56,225
		28,18,475
Add: Education cess@2% and SHEC@1%		84,554
		29,03,029
Tax liability under section 115JC (rounded off)		29,03,030

Since the regular income-tax payable is less than the alternate minimum tax payable, the adjusted total income shall be deemed to be the total income and tax is leviable @ 18.5% thereof *plus* surcharge@10% and cess@3%. Therefore, the tax liability is ₹ 29,03,030.

AMT Credit to be carried forward under section 115JEE	₹
Tax liability under section 115JC	29,03,030
Less: Tax liability under the regular provisions of the Income-tax Act, 1961	4,78,950
	24,24,080

Notes:

(1)	Deduction under section 10AA in respect of Unit in SEZ = $\text{Profits of the Unit in SEZ} \times \frac{\text{Export turnover of the Unit in SEZ}}{\text{Total turnover of the Unit in SEZ}}$ $= ₹\ 40,00,000 \times \frac{₹\ 80,00,000}{₹\ 1,00,00,000}$ $= ₹\ 32,00,000$
(2)	Weighted deduction@150% of the capital expenditure is available under section 35AD for A.Y.2015-16 in respect of specified business of setting up and operating a warehousing facility for storage of agricultural produce which

[1] Assuming the capital expenditure of ₹ 65 lakhs is incurred entirely on buildings

	commences operation on or after 01.04.2012. Further, the expenditure incurred, wholly and exclusively, for the purposes of such specified business, shall be allowed as deduction (weighted deduction, in this case) during the previous year in which he commences operations of his specified business if the expenditure is incurred prior to the commencement of its operations and the amount is capitalized in the books of account of the assessee on the date of commencement of its operations. Deduction under section 35AD would, however, not be available on expenditure incurred on acquisition of land. In this case, since the capital expenditure of ₹ 65 lakhs (i.e., ₹ 75 lakhs – ₹ 10 lakhs, being expenditure on acquisition of land) has been incurred in the F.Y.2013-14 and capitalized in the books of account on 1.4.2014, being the date when the warehouse became operational, ₹ 97,50,000, being 150% of ₹ 65 lakhs would qualify for deduction under section 35AD.

(b)

(i)	No, the transaction of demerger would not attract any income-tax liability in the hands of SS(P) or RV(P) Ltd. As per section 47(vib), any transfer in a demerger, of a capital asset, by the demerged company to the resulting company would not be regarded as "transfer" for levy of capital gains tax if the resulting company is an Indian company. Hence, capital gains tax liability would not be attracted in the hands of SS(P) Ltd., the demerged company, in this case, since RV(P) Ltd. is an Indian company
(ii)	As per section 2(19AA), demerger should satisfy the following conditions – (i) All the property of the undertaking and all the liabilities relatable to the undertaking, being transferred by the demerged company, immediately before the demerger, should become the property and liabilities, respectively, of the resulting company by virtue of the demerger; They should be transferred at the values appearing in its books of account immediately before the demerger. (ii) The resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis except where the resulting company itself is a shareholder of the demerged company. (iii) The shareholders holding not less than three-fourths in value of the shares in the demerged company become shareholders of the resulting company by virtue of the demerger otherwise than as a result of the acquisition of the property or assets of the demerged company or any undertaking thereof by the resulting company. (iv) The transfer of the undertaking is on a going concern basis.

	(v) The demerger is in accordance with the conditions notified Under section 72A(5) by the Central Government in this behalf.	
(iii)	There would be no capital gains liability in the hands of Mr. N.K. on receipt of shares of RV (P) Ltd., since as per section 47(vid), any issue of shares by the resulting company in a scheme of demerger to the shareholders of the demerged company will not be regarded as "transfer" for levy of capital gains tax, if the issue is made in consideration of demerger of the undertaking.	
(iv)	Yes, capital gains would arise in the hands of Mr. N.K. on sale of shares of RV (P) Ltd.	
	Sale consideration	8,00,000
	Less: Indexed cost of acquisition of shares of RV (P) Ltd.	
	Cost of acquisition of shares of RV(P) Ltd. as per section 49(2C):	
	Cost of acquisition of shares of SS(P) Ltd. × (Net book value of assets transferred in a demerger / Net worth of the demerged company immediately before demerger)	
	₹ 6,00,000 × (10 crores / 40 crores) = ₹ 1,50,000	
	Indexed cost of acquisition of shares of RV (P) Ltd. [₹ 1,50,000 × 1024/426]	3,60,563
	Long-term capital gain (since period of holding of shares in demerged company is also to be considered)	4,39,437
(v)	No, sale of shares by Mr. N.K. would not affect the tax benefits availed by SS(P) Ltd. or RV (P) Ltd. One of the conditions to be satisfied is that the shareholders holding not less than three-fourths in value of the shares in the demerged company become shareholders of the resulting company by virtue of the demerger. It is presumed that the condition is satisfied in this case. There is no stipulation that they continue to remain shareholders for any period of time thereafter.	
(vi)	Since the resultant capital gain on sale of shares of RV(P) Ltd. is a long-term capital gain (on account of the period of holding of shares in demerged company being considered by virtue of section 2(42A)(g)), Mr. N.K. can avail exemption –	

	(1) under section 54EC by investing the long-term capital gains in bonds of National Highways Authority of India (NHAI) or Rural Electrification Corporation Ltd. (RECL) within a period of 6 months from the date of transfer; or (2) under section 54F by investing the entire net consideration in purchase (within one year before and two years after the date of transfer) or construction (within three years after the date of transfer) of one residential house in India. If part of the net consideration is invested, only proportionate exemption would be available.

Question 2

Parik Hospitality Limited is engaged in the business of running hotels of 3-star category. The Company's Statement of Profit and Loss for the previous year ended 31st March, 2015 shows a net profit of ₹ 152 lakhs after debiting or crediting the following items:

(a) Payment of ₹ 0.25 lakh and ₹ 0.30 lakh in cash on 3rd December, 2014 and 10th December, 2014 respectively for purchase of crab, lobster and squid to Mr. Raja, a fisherman, and Mr. Khalid, a middleman for these products, respectively.

(b) Contribution towards employees' pension scheme notified by the Central Government under section 80CCD for a sum of ₹ 3 lakhs calculated at 12% of basic salary and Dearness Allowance payable to the employees.

(c) Payment of ₹ 6.50 lakhs towards transportation of various materials procured by one of its hotels to M/s. Bansal Transport, a partnership firm, without deduction of tax at source. The firm has furnished its Permanent Account Number in the tender document.

(d) Profit of ₹ 12 lakhs on sale of a plot of land to Avimunya Limited, a domestic company, the entire shares of which are held by the assessee company. The plot was acquired by Parik Hospitality Limited on 1st June, 2013.

(e) Contribution of ₹ 2.50 lakhs to Indian Institute of Technology with a specific direction for use of the amount for scientific research programme approved by the prescribed authority.

(f) Expense of ₹ 10 lakhs on foreign travel of two directors for a collaboration agreement with a foreign company for a brewery project to be set up. The negotiation did not succeed and the project was abandoned.

(g) Fees of ₹ 1 lakh paid to independent directors for attending Board meeting without deduction of tax at source under section 194J.

(h) Depreciation charged ₹ 10 lakhs.

(i) ₹ 10 lakhs, being the additional compensation received from the State Government pursuant to an interim order of Court in respect of land acquired by the State Government in the previous year 2011-12.

(j) Dividend received from a foreign company ₹ 5 lakhs.

Additional information:

(i) As a corporate debt restructuring, the bank has converted unpaid interest of ₹ 10 lakhs upto 31st March, 2014 into a new loan account repayable in five equal annual installments. The first installment of ₹ 2 lakhs was paid in March, 2015 by debiting new loan account.

(ii) Depreciation as per Income-tax Act, 1961 ₹ 15 lakhs.

(iii) The company received a bill for ₹ 2 lakhs on 31st March 2015 from a supplier of vegetables for supply made in March, 2015. The bill was omitted to be recorded in the books in March, 2015. The bill was paid in April, 2015 and the necessary entry was made in the books then.

Compute total income of Parik Hospitality Limited for the Assessment Year 2015-16 indicating the reason for treatment of each item. Ignore the provisions relating to minimum alternate tax. (16 Marks)

Answer

(a) Computation of Total Income of Parik Hospitality Ltd. for the A.Y.2015-16

Particulars	Amount (₹)	
Profits and Gains from Business and Profession		
Net profit as per profit and loss account		1,52,00,000
Add: Items debited but to be considered separately or to be disallowed		
(a) Payment to middleman for purchase of crab etc. in an amount exceeding ₹ 20,000	30,000	
[Under section 40A(3), disallowance is attracted in respect of expenditure for which cash payment exceeding ₹ 20,000 is made on a day to a person. Payment of ₹ 25,000 to fishermen for purchase of crab etc. is covered by exception under Rule 6DD. However, payment of ₹ 30,000 to middlemen for purchase of crab etc. is not covered under the exception - *CBDT Circular 10/2008 dated 5/12/2008*].		
(b) Contribution towards employees' pension scheme in excess of 10% of salary disallowed under section 40A(9)	50,000	
[Contribution to the extent of 10% of salary (basic salary + dearness allowance, if it forms part of pay for retirement benefits) is allowable as deduction under section 36(1)(iva). In this case, it is presumed that dearness allowance forms part of pay for retirement benefits]		
(c) Payment to transport contractor without deduction of tax at source	-	

[No tax is required to be deducted at source under section 194C in respect of payment to transport contractor, if the contractor furnishes his PAN. In this case, since the contractor has furnished his PAN, no tax is required to be deducted in respect of payment of ₹ 6.50 lakhs made for transport of materials. Hence, no disallowance under section 40(a)(ia) would be attracted in this case for non-deduction of tax at source].		
(f) Expenses on foreign travel of two directors for a collaboration agreement which failed to materialize	10,00,000	
[[2]Where such expenditure is incurred for a project not related the existing business and the project was abandoned without creating a new asset, the expenses are capital in nature. Brewery project is not related to the existing business of running three star hotels]		
(g) Fees paid to directors without deducting tax at source [30% of ₹1 lakh]	30,000	
[Disallowance@30% would be attracted under section 40(a)(ia) for non-deduction of tax at source from director's remuneration on which tax is deductible under section 194J]		
		11,10,000
		1,63,10,000
Less: Items credited but to be considered separately / Expenditure to be allowed		
(d) Profit on sale of plot of land to 100% subsidiary	12,00,000	
[Short-term capital gains arises on sale of plot of land held for less than 36 months. However, in this case, since the transfer is to a 100% subsidiary company and the subsidiary company is an Indian company, the same would not constitute a transfer for levy of capital gains tax as per section 47(iv). Since this amount has been credited to the statement of profit and loss, the same has to be deducted for computing business income].		
(e) Contribution to IIT for scientific research	2,50,000	
[Contribution to IIT for scientific research programme approved by the prescribed authority qualifies for weighted deduction@200% under section 35(2AA). Since 100% of contribution has already been debited to the statement of profit and loss, the balance 100% has to be deducted while		

[2] *McGaw-Ravindra Laboratories (India) Ltd. v. CIT (1994) 210 ITR 1002*

computing business income]		
(h) Depreciation [Depreciation allowable under the Income-tax Act, 1961 is ₹15 lakhs whereas the depreciation as per books of account debited to the statement of profit and loss is ₹ 10 lakhs. Hence, the additional amount of ₹ 5 lakhs has to be deducted while computing business income]	5,00,000	
(i) Additional compensation received from State Government [Since the additional compensation has been received pursuant to an interim order of the Court, the same would be deemed as income chargeable to tax under the head "Capital Gains" in the year of final order as per section 45(5). Since the compensation has been credited to the statement of profit and loss, the same has to be deducted while computing business income]	10,00,000	
(j) Dividend received from foreign company [Dividend received from foreign company is taxable under the head "Income from other sources". Since the said dividend has been credited to the statement of profit and loss, the same has to be deducted while computing business income]	5,00,000	
(i) Interest paid during the year [Conversion of unpaid interest into loan shall not be construed as payment of interest for the purpose section 43B. The amount of unpaid interest converted into a new loan will be allowable as deduction only in the year in which such converted loan is actually paid. Since ₹ 2 lakhs has been paid in the P.Y.2014-15, the same is allowable as deduction]	2,00,000	
(iii) Purchases omitted to be recorded in the books [Since the purchase is made in March, 2015 (i.e., P.Y.2014-15), in respect of which bill of ₹ 2 lakhs received on 31.3.2015 has been omitted to be recorded in the books in that year, it has to be deducted to compute the business income.[3] It is logical to assume that the company is following mercantile system of accounting.].	2,00,000	

[3] *Kedarnath Jute Manufacturing Company Ltd. v. CIT (1971) 82 ITR 363 (SC)*

		38,50,000
Income under the head "Profits and Gains of Business or Profession"		1,24,60,000
Income from Other Sources		
Dividend received from foreign company [Dividend received from a foreign company is chargeable to tax under the head "Ïncome from other sources".[4]]		5,00,000
Gross Total Income		1,29,60,000
Less: Deduction under Chapter VI-A		Nil
Total Income		1,29,60,000

Question 3

(a) State with reasons the validity of the following statements:

(i) Before completing the assessment of any foreign company, the Assessing Officer has to forward a draft of the proposed order of assessment to the assessee.

(ii) Charitable trusts and institutions registered under section 12AA, cannot claim exemption under any of the clauses of Section 10. (4 Marks)

(b) Explain section 278C applicable in respect of offences committed by Hindu undivided families. (2 Marks)

(c) Fox Limited failed to furnish information and documents sought by the Transfer Pricing Officer (TPO). Can TPO levy penalty for such failure? How much would be the quantum of penalty imposable for the said failure? (4 Marks)

(d) Details given below relate to investments made in new plant & machinery by companies which are eligible for deduction under section 32AC. (6 Marks)

Company Name	*Previous years*	
	2013-14	*2014-15*
	₹ in crores	
ABC Ltd.	*30*	*85*
MNO Ltd.	*20*	*50*
RST Ltd.	*70*	*20*

Compute deduction under section 32AC and give reasons in brief for the amount computed.

[4] Only dividend received from domestic companies would be exempt under section 10(34), since dividend distribution tax is paid by the companies on such dividend.

Answer

(a) (i) The statement is valid.

As per section 144C, the Assessing Officer, in the first instance, has to forward a draft of the proposed order of assessment to the eligible assessee (a foreign company, in this case) if he proposes to make any variation in the income or loss returned which is prejudicial to the interest of such assessee, so as to enable the foreign company to file its objections, if any, to such variation with the Dispute Resolution Panel and the Assessing Officer.

Even if such variation does not arise as a consequence of the order of the Transfer Pricing Officer, such draft assessment order has to be served on the foreign company.

(ii) The statement is not valid.

Where a trust or institution has been granted registration under section 12AA and the registration is in force for a previous year, then, such trust or institution can still claim exemption of agricultural income under section 10(1) as well as exemption available under section 10(23C).

Therefore, the statement that such trust or institution cannot claim exemption under any of the clauses of section 10 is not valid, since it can still claim exemption under section 10(1) and under section 10(23C).

(b) As per section 278C(1) of the Income-tax Act, 1961, where an offence under the Income-tax Act, 1961 has been committed by a Hindu undivided family (HUF), the karta shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, the karta shall not be liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

As per section 278(2), where an offence under the Income-tax Act, 1961 has been committed by a HUF and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any member of the HUF, such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(c) Under section 271G, if any person who has entered into an international transaction or specified domestic transaction fails to furnish any such information or document as required by section 92D(3) sought for by the Transfer Pricing Officer, then, such person shall be liable to a penalty which may be levied by the Assessing Officer or the Transfer Pricing Officer or the Commissioner (Appeals). Thus, with effect from 1st October, 2014, the Transfer Pricing Officer is a competent authority to levy penalty.

Section 271G confers aforesaid power to the Transfer Pricing Officer for levy of penalty.

Penalty would be a sum equal to 2% of the value of international transaction or specified domestic transaction for each such failure.

(d) Deduction under section 32AC

Company	Investment in new plant and machinery		Deduction under section 32AC
	P.Y.2013-14	P.Y.2014-15	
	₹ in crores		
ABC Ltd.	30	85	Since the aggregate investment in new plant and machinery during the P.Y.2013-14 and P.Y.2014-15 exceeds ₹ 100 crores, ABC Ltd. would be entitled to deduction of 15% on aggregate investment of ₹ 115 crores under section 32AC(1). Therefore, the deduction under section 32AC for the P.Y.2014-15 would be ₹ 17.25 crores.
MNO Ltd.	20	50	The investment in new plant and machinery in the P.Y.2014-15 exceeds ₹ 25 crores. Hence, MNO Ltd. would be entitled to deduction under section 32AC(1A)@ 15% of ₹ 50 crores, being the amount invested in new plant and machinery in the P.Y.2014-15. Therefore, the deduction under section 32AC for the P.Y.2014-15 would be ₹ 7.50 crores.
RST Ltd	70	20	In this case, neither the current year investment in new plant and machinery exceeds ₹ 25 crore nor the aggregate investment in new plant and machinery during the previous years 2013-14 and 2014-15 exceeds ₹ 100 crores. Therefore, RST Ltd. would not be entitled to any deduction under section 32AC for the P.Y.2014-15.

Question 4

*Answer any **four** out of the five following cases:*

(a) The assessment of South West Bank Limited for Assessment Year 2010-11 was made under section 143(3) on 30th November, 2011 allowing deduction under section 36(1)(viia) on account of provision for doubtful debts and deduction in respect of foreign

exchange rate difference as claimed in the return of income. Subsequently, the Assessing Officer initiated reassessment proceeding under section 147 in respect of deduction under section 36(1)(viii) for special reserve created by the bank. The order under section 147 was passed on 31st December, 2013. Later, the Principal Commissioner after examining the record of assessment initiated revisionary proceeding under section 263 by issue of show cause notice to the bank and passed an order under section 263 on 31st August, 2014 for disallowing in part deduction under section 36(1)(viia) and deduction for foreign exchange rate difference. The bank claims that the order passed by the Principal Commissioner under section 263 is barred by limitation.

Examine the correctness or otherwise of the claim of the bank.

(b) *Mr. Santhanam holding 25% voting power in VKS Manufacturing Private Limited permitted his own land to be mortgaged to a bank for enabling the company to obtain a loan. Mr. Santhanam requested the company to release the property from the mortgage. The company failed to do so, but for retaining the benefit of bank loan it gave an advance of ₹ 10 lakhs to Mr. Santhanam, which was authorized by a resolution passed by the Board of Directors. The company's accumulated profit on the date of payment of advance was ₹ 50 lakhs. The Assessing Officer proposes to tax the amount of ₹ 10 lakhs by invoking the provision of section 2(22)(e).*

Is the proposition of the Assessing Officer correct in law?

(c) *X & Co., a partnership firm consisting of three partners, enhanced working partner salary from ₹ 25,000 per month for each partner to ₹ 50,000 per month for each partner. The increase in working partner salary was authorised by the deed of partnership.*

The Assessing Officer during the course of assessment contended that the remuneration paid to working partners @ ₹ 50,000 per month for each partner as excessive and applied section 40A(2)(a) though the payment was within the statutory limit prescribed under section 40(b)(v). Decide the correctness of action of the Assessing Officer.

(d) *Two brothers say, A and B, inherited lands equally consequent to demise of their father. Subsequently, those lands were compulsorily acquired by the State Government. Both A and B received compensation, enhanced compensation and interest on enhanced compensation. They admitted these as income in their individual status. Now the Assessing Officer wants to assess income from compulsory acquisition of lands in the status of Association of Persons (AOP).*

Is the action of Assessing Officer justified in law?

(e) *A Co-operative society engaged in banking business received a letter from the Assistant Commissioner of Income-tax (ACIT), to furnish details of all persons who have made time deposit of ₹ 1 lakh or above during the period from 1.4.2013 to 31.3.2015.*

There is no pending proceeding against the Co-operative society at the time of receipt of letter.

As a Chartered Accountant, what would be your advise to the cooperative society regarding legality of the notice? (4 × 4 = 16 Marks)

Answer

(a) Section 263(2) provides that no revisionary order shall be made under section 263(1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

The issue under consideration is whether the period of limitation for an order passed under section 263 has to be reckoned from the original order passed by the Assessing Officer under section 143(3) of the Income-tax Act, 1961 or from the order of reassessment passed under section 147, where the subject matter of revision is different from the subject matter of reassessment under section 147.

The facts of the case are similar to the facts in *CIT v. ICICI Bank Ltd. (2012) 343 ITR 74*, wherein the above issue came up before the Bombay High Court. Similar issue also came up recently before the Bombay High Court *in CIT v. Lark Chemicals Ltd (2014) 368 ITR 655*. The Bombay High Court relied on the Apex Court decision in the case of *CIT v. Alagendran Finance Ltd. (2007) 293 ITR 1*, wherein it was held that in such cases where the subject matter of revision was not the same as the subject matter of reassessment, the period of limitation would commence from the date of original assessment and not from the date of reassessment.

In this case, the period of limitation as referred to in section 263 is with reference to the assessment in which the claim of the assessee as to deduction under section 36(1)(viia) on account of provision for doubtful debts and deduction in respect of foreign exchange rate difference was considered. These issues were not the subject matter of re-assessment proceedings, which were only in respect of deduction under section 36(1)(viii) for special reserve created by the bank.

Accordingly, applying the rationale of the Bombay High Court rulings cited above, the period of limitation shall be reckoned with reference to the original assessment order and not from the date of the order of reassessment.

Therefore, in this case, the revision proceedings are barred by limitation since the original assessment order was made on 30.11.2011 and the revision should have been made by 31.3.2014. However, the revision order was passed only on 31st August, 2014 and hence, the same is barred by limitation.

Accordingly, the claim of the bank that the order passed by the Principal Commissioner under section 263 is barred by limitation is correct.

(b) The issue under consideration is whether loan or advance given to a shareholder by the company, in return of an advantage or benefit conferred on the company by the shareholder, can be deemed as dividend under section 2(22)(e) of the Income-tax Act, 1961 in the hands of the shareholder

The facts of the case are similar to the facts in *Pradip Kumar Malhotra v. CIT (2011) 338 ITR 538*, wherein the above issue came up before the Calcutta High Court.

The High Court observed that the phrase "by way of advance or loan" appearing in section 2(22)(e) must be construed to mean those advances or loans which a shareholder enjoys simply on account of being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than 10% of the voting power.

In case such loan or advance is given to such shareholder as a consequence of any further consideration received from such a shareholder which is beneficial to the company, such advance or loan cannot be a deemed dividend within the meaning of the Act.

Thus, gratuitous loan or advance given by a company to a shareholder, who is the beneficial owner of shares holding not less than 10% of the voting power, would come within the purview of section 2(22)(e) to the extent of accumulated profits of the company but not the cases where the loan or advance is given in return for an advantage conferred upon the company by such shareholder.

In this case, advance of ₹ 10 lakhs was given by VKS Manufacturing (P) Ltd. to Mr. Santhanam holding 25% of voting power in lieu of non-release of his personal property from mortgage thereby enabling the company to retain the benefit of loan obtained from bank. Therefore, applying the rationale of the Calcutta High Court ruling in *Pradip Kumar Malhotra's* case, such advance cannot be brought within the purview of section 2(22)(e), since it was not in the nature of gratuitous advance but was given to protect the interest of the company.

The proposition of the Assessing Officer to tax the amount of ₹ 10 lakhs by invoking the provisions of section 2(22)(e) in this case is, therefore, not correct.

(c) The issue under consideration is whether remuneration paid to working partners as per the partnership deed can be considered as unreasonable and excessive for attracting disallowance under section 40A(2)(a) of the Income-tax Act, 1961 even though the same is within the limit prescribed under section 40(b)(v).

The facts of the case are similar to the facts in *CIT v. Great City Manufacturing Co. (2013) 351 ITR 156*, wherein the above issue came up before the Allahabad High Court.

The High Court observed that section 40(b)(v) prescribes the limit of remuneration to working partners, and deduction is allowable up to such limit while computing the business income. If the remuneration paid is within the ceiling limit provided under section 40(b)(v), then, recourse to provisions of section 40A(2)(a) cannot be taken.

The Assessing Officer is only required to ensure that the remuneration is paid to the working partners mentioned in the partnership deed, the terms and conditions of the partnership deed provide for payment of such remuneration to the working partners and the remuneration is within the limits prescribed under section 40(b)(v). If these conditions

are complied with, then the Assessing Officer cannot disallow any part of the remuneration on the ground that it is excessive.

Hence, applying the rationale of the Allahabad High Court ruling in *Great City Manufacturing Co.'s* case, the increased remuneration which is authorized by the partnership deed and is within the limits specified under section 40(b)(v) and paid to working partners, cannot be disallowed by invoking the provisions of section 40A(2)(a).

The action of the Assessing Officer in this case is, therefore, not correct.

(d) The issue under consideration is whether in a case where land inherited by two brothers is compulsorily acquired by the State Government, the resultant capital gain would be assessed in the status of "Association of Persons" (AOP) or in their individual status.

The facts of the case are similar to the facts in *CIT v. Govindbhai Mamaiya (2014) 367 ITR 498*, wherein the above issue came up before the Supreme Court.

The Supreme Court observed that as per section 4 of the Hindu Succession Act, 1956, income from the asset inherited by a son from his father has to be assessed as income of the son individually. Further, as per section 8 of the Hindu Succession Act, 1956, the property of the father devolves on his son in his individual capacity and not as family property. Thus, the income is chargeable to tax in their individual status.

"Association of Persons" means an association in which two or more persons join in a common purpose or common action. Thus, an association of persons could be formed only when two or more persons voluntarily combine together for certain purposes.

In this case, the property in question came to the possession of the assessees (two brothers) through inheritance i.e., by operation of law. It is not a case where any "association of persons" was formed by volition of the parties. Further, even the income earned in the form of interest is not because of any business venture of the assessees, but is the result of the act of the Government in compulsorily acquiring the said land. Thus, the basic test to be satisfied for making an assessment in the status of AOP is absent in this case.

Thus, applying the rationale of the Supreme Court ruling in *Govindbhai Mamaiya's* case, the income from compulsory acquisition of land inherited by the legal heirs, A & B, is taxable in their individual hands and not in the status of AOP.

The proposed action of the Assessing Officer to assess such income in the status of AOP is, therefore, not justified in law.

(e) The issue under consideration is whether, in a case where no proceeding is pending against a person, can the Assessing Officer call for information. It is assumed that such details were sought for under section 133(6) of the Income-tax Act, 1961.

The facts of the case are similar to the facts in *Kathiroor Service Co-operative Bank Ltd. v. CIT (CIB) (2014) 360 ITR 0243*, wherein the above issue came up before the Supreme Court.

The Supreme Court observed that the Assessing Officer has been empowered to requisition information which will be useful for or relevant to any enquiry or proceeding under the Income-tax Act, 1961 in the case of any person[5].

However, an income-tax authority below the rank of the Principal Director/Director or Principal Commissioner/Commissioner can exercise this power in respect of an enquiry in a case where no proceeding is pending, only with the prior approval of the Principal Director/Director or the Principal Commissioner/Commissioner.

Information of general nature could be called for from banks. In this case, if the letter/notice been issued after obtaining approval of the competent higher authorities mentioned above, the Assistant Commissioner of Income-tax (ACIT) has not erred in issuing letter/notice to the co-operative society requiring them to furnish information regarding persons who have made time deposits of ₹ 1 lakh or more. For such enquiry under section 133(6), letter/notice could be validly issued by ACIT, after obtaining the approval of Principal Director/Director/Principal Commissioner/Commissioner.

If prior approval of the competent higher authority is not obtained, the co-operative society can contest the validity of the notice issued. The co-operative society should furnish a preliminary reply to the ACIT stating that it would furnish the necessary details sought for, when it is assured by the ACIT that the necessary approvals of higher authorities has been obtained.

The advice to the co-operative society needs to be framed on the above lines.

Note – Answers to all sub-parts of question 4 are based on interpretation of case laws. The answers given above are based on particular legal decisions wherein the facts of the case and issue under consideration are similar to the facts given and issue(s) raised in the questions. However, it may also be possible to answer some of these questions on the basis of other case laws wherein the facts and issue(s) are similar.

Question 5

(a) RKJ Private Limited's assessment for Assessment Year 2011-12 was completed under section 143(3) on 15th November, 2012. The company received a notice under section 148 dated 15th July, 2015 requiring the company to submit a return of income for Assessment Year 2011-12 on the ground of escapement of certain income from assessment.

The company has approached you for advice on the principles to be followed by it before notice under section 143(2) for the purpose of reassessment is issued by the Assessing Officer.

State the principles to be followed by company and the Assessing Officer. (4 Marks)

(b) A Real Estate Investment Trust (REIT) received income of ₹ 120 lakhs from Special Purpose Vehicle company. The break-up of the income so received is as follows:

[5] Second proviso to section 133(6)

Interest *₹ 90 Lakhs*

Dividend *₹ 30 Lakhs*

The REIT distributes ₹ 90 lakhs to its unit-holders, 40% of the unit holders are non-residents.

Examine the tax implication of the above transactions in the hands of the REIT and unit holders including the requirement to deduct tax at source. *(6 Marks)*

(c) XE Ltd. is an Indian Company in which Zilla Inc., a US company, has 28% shareholding and voting power. Following transactions were effected between these two companies during the financial year 2014-15.

(i) XE Ltd. sold 1,00,000 pieces of T-shirts at $ 2 per T-Shirt to Zilla Inc. The identical T-Shirts were sold to unrelated party namely Kennedy Inc., at $ 3 per T-Shirt.

(ii) XE Ltd. borrowed $ 2,00,000 from a foreign lender based on the guarantee of Zilla Inc. For this, XE Ltd. paid $ 10,000 as guarantee fee to Zilla Inc. To an unrelated party for the same amount of loan, Zilla Inc. collected $ 7000 as guarantee fee.

(iii) XE Ltd. paid $15,000 to Zilla Inc. for getting various potential customers details to improve its business. Zilla Inc. provided the same service to unrelated parties for $ 10,000.

Assume the rate of exchange as 1 $ = ₹ 64

XE Ltd. is located in a Special Economic (SEZ) and its income before transfer pricing adjustments for the year ended 31st March, 2015 was ₹ 1,200 lakhs.

Compute the adjustments to be made to the total income of XE Ltd. State whether it can claim deduction under section 10AA for the income enhanced by applying transfer pricing provisions. *(6 Marks)*

Answer

(a) The principles laid down by the Supreme Court in *GKN Driveshafts (India) Ltd. v. ITO (2003) 259 ITR 19,* which would serve as rules of guidance and act as a binding precedent in cases where notice of reassessment is issued, are given hereunder:

(i) Where a notice under section 148 is received, the proper course for the company is to file a return of income in response to the same.

(ii) Thereafter, if the company desires, it can seek reasons recorded by the Assessing Officer for issue of notice.

(iii) If the reasons are asked for by the assessee, the Assessing Officer is bound to supply such reasons, within a reasonable time.

(iv) On receipt of the reasons, the company can file its objections against the issuance of notice, and if so done, the Assessing Officer is bound to dispose of the same by passing a speaking order even before proceeding with the assessment.

Only after the same, the Assessing Officer can issue a notice under section 143(2).

(b) Tax implications in the hands of REIT and unit holders

(1) Interest income from SPV: There would be no tax liability in the hands of REIT due to pass-through status enjoyed by it under section 10(23FC) in respect of interest income from the special purpose vehicle. Therefore, the SPV is not required to deduct tax at source on interest payment to the REIT.

However, the REIT has to deduct tax at source under section 194LBA –

- @10%, on interest component of income distributed to resident unit holders [i.e., ₹ 4.05 lakhs, being 10% of ₹ 40.50 lakhs (60% × ₹ 90 lakhs × 9/12[6])]; and
- @5%, on interest component of income distributed to non-corporate non-resident unit holders and foreign companies [i.e., ₹ 1.35 lakhs, being 5% of ₹ 27 lakhs (40% × ₹ 90 lakhs × 9/12)].

Interest component of income distributed to unit holders is taxable in the hands of the unit holders,–

@5%, in case of unit holders, being non-corporate non-residents or foreign companies as per section 115A; and

@ normal rates of tax – in case of resident unit holders.

(2) Dividend income from SPV: There would be no tax liability in the hands of the REIT since dividend is subject to dividend distribution tax under section 115-O in the hands of SPV; Hence, the dividend income is exempt under section 10(34) in the hands of the REIT.

Any distributed income referred to in section 115UA, to the extent it does not comprise of interest received or receivable from SPV, received by unit holders is exempt in their hands under section 10(23FD). Therefore, there would be no tax liability on the dividend component of income distributed to unit holders in their hands.

(c) XE Ltd, the Indian company and Zilla Inc., the US company are deemed to be associated enterprises as per section 92A(2)(a), since Zilla Inc. holds shares carrying not less than 26% of the voting power in XE Ltd.

As per *Explanation* to section 92B, the transactions entered into between these two companies for sale of product, lending or guarantee and provision of services relating to market research are included within the meaning of "international transaction".

Accordingly, transfer pricing provisions would be attracted and the income arising from such international transactions have to be computed having regard to the arm's length price. In this case, from the information given, the arm's length price has to be determined taking the comparable uncontrolled price method to be the most appropriate method.

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[6] The interest component of income received from the REIT in the hands of each unit-holder would be determined in the proportion of 90/120 as per section 115UA(1)

Particulars		₹ in lakhs
Amount by which total income of XE Ltd. is enhanced on account of adjustment in the value of international transactions:		
(i)	Difference in price of T-Shirt @ $ 1 each for 1,00,000 pieces sold to Zilla Inc.($ 1 x 1,00,000 x 64)	64.00
(ii)	Difference for excess payment of guarantee fee to Zilla Inc. for loan borrowed from foreign lender($ 3,000 x 64)	1.92
(iii)	Difference for excess payment for services to Zilla Inc.($ 5,000 x 64)	3.20
		69.12
XE Ltd. cannot claim deduction under section 10AA in respect of ₹ 69.12 lakhs, being the amount of income by which the total income is enhanced by virtue of the first proviso to section 92C(4)		

Question 6

(a) Mr. Kamesh, an individual resident in India furnishes you the following particulars of income earned in India, Country "X" and Country "Y" for the previous year 2014-15. India has not entered into double taxation avoidance agreement with these two countries.

Particulars	*₹*
Income from profession carried on in India	*7,50,000*
Agricultural income in Country "X" (gross)	*50,000*
Dividend received from a company incorporated in Country "Y" (gross)	*1,50,000*
Royalty income from a literary book from Country "X" (gross)	*6,00,000*
Expenses incurred for earning royalty	*50,000*
Business loss in Country "Y" (Proprietary business)	*65,000*
Rent from a house situated in Country "Y" (gross)	*2,40,000*
Municipal tax in respect of the above house (not allowed as deduction in country "Y")	*10,000*

Note: Business loss in Country "Y" not eligible for set off against other incomes as per law of that country.

The rates of tax in Country "X" and Country "Y" are 10% and 25%, respectively.

Compute total income and tax payable by Mr. Kamesh in India for Assessment Year 2015-16. (7 Marks)

(b) Books of account and certain assets are found to be in possession of the person, whose premises are searched. What are the rebuttable presumptions regarding those items? (3 Marks)

(c) Mr. Ram (age 56) is Karta of his HUF. The HUF consists of himself, his wife and two sons viz. Mr. C (age 28) and Minor D (age 16). The HUF is assessed to income tax and has business income from the year 2000-01 onwards. The business income of HUF for

the year ended 31.3.2015 is ₹ 5,00,000 (computed). Mr. Ram is employed in a private company and his salary income for the same period is ₹ 6,10,000 (computed).

You are requested to answer the following treating each of them as independent situations:

(i) Mr. C gave cash gift of ₹ 1,00,000 to the HUF of Mr. Ram. What would be the total income of HUF?

(ii) The HUF has one house property fetching rent of ₹ 10,000 per month and some movable assets. There is a proposal to make a partial partition of HUF by allotting the house property to Mr. C. Is it advisable to do a partial partition?

(iii) Minor D earned ₹ 70,000 by use of his special skill and talent. How would his income be taxed?

(iv) A car owned personally by Mr. Ram was blended with HUF during the year. It was leased out for a monthly rent of ₹ 10,000 from 1-10-2014. How would this income be taxed? *(6 Marks)*

Answer

(a) Computation of total income of Mr. Kamesh for A.Y.2015-16

Particulars	₹	₹
Income from House Property [House situated in country Y]		
Gross Annual Value[7]	2,40,000	
Less: Municipal taxes (assumed as paid in that country)	10,000	
Net Annual Value	2,30,000	
Less: Deduction under section 24 – 30% of NAV	69,000	
		1,61,000
Profits and Gains of Business or Profession		
Income from profession carried on in India	7,50,000	
Less: Business loss in country Y set-off[8]	65,000	
		6,85,000
Income from Other Sources		
Agricultural income in country X	50,000	
Dividend received from a company in country Y	1,50,000	
Royalty income from a literary book from Country X (after deducting expenses of ₹ 50,000)	5,50,000	
		7,50,000
Gross Total Income		15,96,000

[7] Rental Income has been taken as GAV in the absence of other information relating to fair rent, municipal value etc.

[8] As per section 70(1), inter-source set-off of income is permitted.

Less: Deduction under Chapter VIA		
Under section 80QQB – Royalty income of a resident from literary work[9]		3,00,000
Total Income		12,96,000

Computation of tax liability of Mr. Kamesh for A.Y.2015-16

Particulars	₹
Tax on total income [30% of ₹2,96,000 + ₹1,25,000][10]	2,13,800
Add: Education cess@2%	4,276
Secondary and higher education cess @ 1%	2,138
	2,20,214
Less: Rebate under section 91 (See Working Note below)	71,820
Tax Payable	1,48,394
Tax payable (rounded off)	1,48,390

Working Note: Calculation of Rebate under section 91		₹
Average rate of tax in India [i.e., ₹ 2,20,214 / ₹ 12,96,000 x 100]	17%	
Average rate of tax in country X	10%	
Doubly taxed income pertaining to country X	₹	
Agricultural Income	50,000	
Royalty Income [₹ 6,00,000 – ₹ 50,000 (Expenses) – ₹ 3,00,000 (deduction under section 80QQB)][11]	2,50,000	
	3,00,000	
Rebate under section 91 on ₹ 3,00,000 @10% [being the lower of average Indian tax rate (17%) and foreign tax rate (10%)]		30,000
Average rate of tax in country Y	25%	
Doubly taxed income pertaining to country Y		
Income from house property	1,61,000	
Dividend	1,50,000	
	3,11,000	

[9] It is assumed that the royalty earned outside India has been brought into India in convertible foreign exchange within a period of six months from the end of the previous year.

[10] It is assumed that Mr. Kamesh is not a senior citizen or very senior citizen

[11] Doubly taxed income includes only that part of income which is included in the assessees total income. The amount deducted under Chapter VIA is not doubly taxed and hence, no relief is allowable in respect of such amount – *CIT v. Dr. R.N. Jhanji (1990) 185 ITR 586 (Raj.).*

Less: Business loss set-off	65,000	
	2,46,000	
Rebate under section 91 on ₹ 2,46,000 @17% (being the lower of average Indian tax rate (17%) and foreign tax rate (25%)]		41,820
Total rebate under section 91 (Country X + Country Y)		71,820

Note: Mr. Kamesh shall be allowed deduction under section 91, since the following conditions are fulfilled:-

(a) He is a resident in India during the relevant previous year (i.e., P.Y.2014-15).

(b) The income in question accrues or arises to him outside India in foreign countries X and Y during that previous year and such income is not deemed to accrue or arise in India during the previous year.

(c) The income in question has been subjected to income-tax in the foreign countries X and Y in his hands and it is presumed that he has paid tax on such income in those countries.

(d) There is no agreement under section 90 for the relief or avoidance of double taxation between India and Countries X and Y where the income has accrued or arisen.

(b) As per section 132(4A), the rebuttable presumptions regarding the books of account and assets found in the possession of the person, whose premises are searched are as follows -

(i) Such books of account and assets belong to such person

(ii) The contents of such books of account are true; and

(iii) The signature and every other part of such books of account which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting.

(c) (i) Cash gift of ₹ 1 lakh by Mr. C, Ram's major son, to the HUF of Mr. Ram would not be taxable in the hands of the HUF, since gifts from a relative of the HUF does not fall within the scope of income taxable under section 56(2)(vii). Since Mr. C, being Mr. Ram's son, is a member of Ram's HUF, he is a relative of the HUF. Hence the total income of HUF would be ₹ 5 lakhs, being the business income computed.

Note - Salary income of Mr. Ram, the Karta of the HUF, who is employed in a private company would be taxed in his individual hands, since the remuneration earned by the Karta on account of the personal qualifications and exertions and not on account of the investment of the family funds cannot be treated as income of the HUF.

(ii) Partial partition (after 31.12.1978) is not recognized and the HUF, which has been hitherto assessed to tax, shall continue to be liable to be assessed as if no such partial partition has taken place [Section 171(9)].

The rental income in this case would continue to be assessed in the hands of the HUF, even after partial partition. Therefore, it is not advisable to do a partial partition.

(iii) Income of ₹ 70,000 earned by Minor D by use of his special skill and talent would be taxable in his individual hands. It will not be included in the hands of his parent by virtue of the exception to section 64(1A) contained in the proviso to section 64(1A).

(iv) As per section 64(2), where a member of the HUF blends his self-acquired property for inadequate consideration with the HUF, income derived therefrom is deemed to arise to the transferor-member and not to the HUF. In this case, Mr. Ram has blended his personal property (i.e., car) with the HUF.

Since there is no consideration in case of blending, the income from car computed in the prescribed manner, [which can be as per the presumptive provisions or lease rental of ₹ 60,000 (₹ 10,000 × 6 months) less depreciation] would be deemed as the income of Mr. Ram.

Question 7

(a) Can Commissioner (Appeals) refuse to admit an appeal even though such appeal is filed within time? (3 Marks)

(b) Mr. Madhusudan is regular in deducting tax at source and depositing the same. In respect of the quarter ended 31st December, 2014 a sum of ₹ 75,000 was deducted at source from the contractors. The statement of tax deducted at source under section 200 was filed on 23rd March, 2015 for the quarter ended 31.12.2014.

(i) Is there any delay on the part of Mr. Madhusudan in filing the statement of TDS?

(ii) If the answer to (i) above is in the affirmative, how much amount can be levied on Mr. Madhusudan for such default under section 234E?

(iii) Is there any remedy available to him for reduction/waiver of the levy? (6 Marks)

(c) Smt. Vijaya, proprietor of Lakshmi Enterprises, made turnover exceeding ₹ 100 lakhs during the previous year 2013-14. Her turnover for the year ended 31-3-2015 was ₹ 90 lakhs.

Decide whether provisions relating to deduction of tax at source are attracted for the following payments made during the financial year 2014-15:

(i) Purchase commission paid to one agent ₹ 25,000 towards purchases made during the year.

(ii) Payments to Civil engineer of ₹ 5,00,000 for construction of residential house for self use. (4 Marks)

(d) Explain the powers of Settlement Commission to amend its order. *(3 Marks)*

Answer

(a) As per section 249(4), the Commissioner (Appeals) can refuse to admit an appeal, even though such appeal is filed within the stipulated time, where at the time of filing of the appeal:

(a) In a case where a return of income has been filed by the assessee, the assessee has not paid the tax due on the income returned by him; or

(b) In a case where no return of income has been filed by the assessee, the assessee has not paid an amount equal to the amount of advance tax which was payable by him.

However, in case (b), the assessee/appellant can apply to the Commissioner (Appeals) for exemption from the requirement of prepayment of advance tax. The Commissioner (Appeals) may, for any good and sufficient reason to be recorded in writing, exempt him from the said requirement.

(b) (i) Yes, there has been a delay on the part of Mr. Madhusudan in filing the statement of TDS.

As per section 200(3) read with Rule 31A, the statement of tax deducted at source for the quarter ended 31st December, 2014 has to be filed on or before 15th January, 2015. However, the same has been filed only on 23rd March, 2015. Hence, there has been a 67 days delay on the part of Mr. Madhusudan in filing the statement of TDS.

(ii) As per section 234E of the Income-tax Act, 1961, where a person fails to file deliver or cause to be delivered the statement of tax deducted at source within the prescribed time, then, he shall be liable to pay, by way of fee, a sum of ₹ 200 for every day during which the failure continues.

The amount of fee shall not, however, exceed the amount of tax deductible.

In this case, since Mr. Madhusudhan has delayed filing the statement of TDS by 67 days, he would be liable to pay a fee of ₹ 13,400 (₹ 200 x 67 days) under section 234E. The said fee does not exceed the tax deductible (₹ 75,000, in this case).

(iii) The CBDT is empowered to issue general or special orders, whether by way of relaxation of any of the provisions of sections 139, 143, 144, 147 etc. or otherwise, in respect of any class of incomes or class of cases. The CBDT may issue such order(s) from time to time if it considers expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue. The Finance (No.2) Act, 2014 has included section 234E in the list of sections in respect of which the CBDT is empowered to issue order for relaxation of the provisions of the Act.

Hence, the remedy available to Mr. Madhusudhan is that he can file an application to the CBDT under section 119 and seek waiver/reduction of the penalty levied/leviable under section 234E.

(c) Since Smt. Vijaya's turnover exceeds ₹ 100 lakhs in the immediately preceding financial year (i.e., F.Y.2013-14), she is liable to deduct tax at source in the P.Y.2014-15, irrespective of her turnover being less than ₹100 lakhs in the F.Y.2014-15.

(i) Tax@10% has to be deducted under section 194H in respect of purchase commission of ₹ 25,000 to an agent for purchases made during the year, since the same exceeds the threshold limit of ₹ 5,000 for non-deduction of tax at source thereunder.

(ii) Tax has to be deducted under section 194C in case of payment to resident contractors. The rate of tax is 1% if the payee is an individual or HUF and 2% in case of payees, other than individuals and HUFs.

However, as per section 194C(4), no individual or Hindu undivided family shall be liable to deduct income tax on the sum credited or paid to the account of the contractor where such sum is credited or paid exclusively for personal purposes of such individual or any member of the Hindu undivided family.

In this case, since Smt. Vijaya, an individual, makes payment of ₹ 5 lakh to a civil engineer for construction of residential house for self use, she is not liable to deduct tax at source under section 194C from such sum.

Note – It is possible to take a view that TDS provisions under section 194J would be attracted in respect of payment to civil engineer for construction of residential house. Tax has to be deducted@10% under section 194J in case of payment to resident in respect of, inter alia, fees for professional services, where such payment is in excess of ₹ 30,000 per annum.

However, as per the third proviso to section 194J, no individual or Hindu undivided family shall be liable to deduct income tax on the sum by way of fees for professional services, in case such sum is credited or paid exclusively for personal purposes of such individual or any member of the Hindu undivided family.

In this case, since Smt. Vijaya, an individual, makes payment of ₹ 5 lakh to a civil engineer for construction of residential house for self use, she is not liable to deduct tax at source under section 194J from such sum.

(d) As per the section 245D(6B), the Settlement Commission may amend any order passed by it under section 245D(4) to rectify a mistake apparent from the record, within six months from the date of the order.

However, an amendment which has the effect of modifying the liability of the applicant shall not be made unless the Settlement Commission –

(1) has given notice to the applicant and the Principal Commissioner or Commissioner of its intention to do so; and

(2) has allowed the applicant and the Principal Commissioner or Commissioner an opportunity of being heard.