

Solved
Scanner Appendix

CA Final Gr. II
(Solution of November - 2014)

Paper- 7: Direct Tax Laws

Chapter - 1 : Basic Concepts, Residence and Scope of Total Income

2014 - Nov [3] (b)

- (i) Yes it attracts tax in India in hands or recipient u/s 9 as it states that income of NR shall be deemed to accrue or arise in India if it is Royalty fees for technical services for acquiring know how whether or not,
 - the Non-resident has a residence/place of business or business connection in India or,
 - the NR has rendered services in India.
- (ii) Fees paid for appearance in Supreme Court is a legal fee which is covered as a fee for professional service and not included in fees for technical services hence, it out of the purview of section 9 and hence the same is not taxable in the hands of recipient.
- (iii) Royalty and fees for technical services paid to a non-resident/foreign company for acquiring technical know how if it is utilised in india is taxable in the hands of recipient even if the payment is made by government.
Hence it is taxable.
- (iv) According to Section 115a royalty and technical service other than referred in Section 44da received from government in pursuance of an agreement or received from indian concern in pursuance of agreement approved by Central Government or in accordance with industrial policy for the time being in force is taxable in the hands of recipient.

Chapter - 2 : Incomes which do not form part of total Income

2014 - Nov [2] (c) Where seventy-five per cent of the income referred to in Clause (a) or Clause (b) of sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated, or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with namely:

- (a) such person specifies, by notice in writing given to the Assessing Officer in the prescribed manner, the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed ten years.
- (b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5) provided that in computing the period of ten years referred to in Clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court shall be excluded.

Hence in pursuance of the above provisions the action of Assessing Officer is valid.

Chapter - 5 : Profits and Gains of Business or Profession

2014 - Nov [2] (a) No, Depreciation on leased vehicles will be allowed to the lessor even if the vehicles are registered in the name of the lessee in accordance with the Motor Vehicle Act & as per the Supreme Court case of I.C.D.S Ltd. V CIT (2013).

2014 - Nov [4] (a) Total Income of Partnership Firm

Income u/s 44 AD	3,52,000
$\left(44,00,000 \times \frac{8}{100}\right)$	
Less: Salary to partners (W. N. 1)	1,08,000
Interest on partner's capital (W. N. 2)	<u>72,000</u>
Total Income	<u>1,72,000</u>

Working Note 1

Computation of Deduction with respect to partner's remuneration:

Since book profit = ₹ 3,00,000

Therefore, Limit is ₹ 1,50,000 or

90% of Book profit whichever is higher.

Now, 90% of Book Profit = $\frac{90}{100} \times 3,00,000$

= 2,70,000

Actual remuneration paid = ₹ 3,000/ month × 12 × 3 partners

= 1,08,000

∴ Salary paid is within deductible limit

∴ Full remuneration paid is deductible.

Working Note 2

Rate of interest on partner's capital

Capital = ₹ 6,00,000

Interest on capital = ₹ 1,50,000

∴ Rate of interest = $\frac{1,50,000}{6,00,000} \times 100$

= 25%

But the limit for interest as per Section 40(b) is 12%

∴ Interest allowable = $6,00,000 \times \frac{12}{100}$

= 72,000

2014 - Nov [6] (a) Business Income of G Ltd.:

Business Profits before allowing deduction u/s 33AB	60,00,000
Less: Deduction lower of:	
(a) Amount deposited in NABARD / deposit A/c	10,00,000
Or	
(b) 40% PGBP before deduction u/s 33AB (60,00,000 × 40%)	<u>10,00,000</u>
Business Income before set-off	50,00,000
Less: Loss c/f	<u>14,00,000</u>
Income after set-off	<u>36,00,000</u>

Deduction is allowed before setting off the brought forward losses.

Tax Implications:

If amount deposited is utilised for purchase of asset the whole of the actual cost of which is allowed as deduction, for purchasing or any machinery/ plant to be installed in any office/residence other than, amount so utilised shall be deemed to be the income of PY in which assets are purchased. Hence, 3,00,000 for purchase of machinery to be installed in the office previous is treated income and hence taxable in 14-15.

Where any amount is utilised as per scheme for purpose of rev. exp. such exp. shall not be allowed as deduction in computing P/G/B/P.

∴ 1,00,000 spent shall not be allowed as deduction.

If asset is sold before expiry of 10 years, such part of cost of asset as is relatable to the deduction u/s 33AB shall be deemed to be the P/G/B/P of PY in which asset is sold.

Since the asset was non-depreciable, no such implication is attracted.

Chapter - 8 : Income of other Persons Included in Assessee's Total Income

2014 - Nov [3] (a) If Private Ltd. company gives loan to director or family members who are shareholders holding 10% or more voting power, such advance is treated as deemed dividend covered u/s 2(22)(e) and taxable in the hands of shareholder.

Hence, 50,000 will be treated as deemed dividend. Further more, since Mr. Ghosh has transferred the shares to his wife without adequate consideration, the income derived from shares will be clubbed and taxable in the hands of Mr. Ghosh.

Hence, dividend is taxable income for Mr. Ghosh.

Chapter - 9 : Aggregation of Income, Set off & Carry forward of Losses

2014 - Nov [2] (b) Assessing officer is wrong in this case. Provisions of 80-IA says that for computing deduction under section 80-IA, assume that the eligible business is the only business in the initial assessment year & in subsequent assessment years.

Loss of eligible unit can be set-off against the profit of non eligible unit.

Chapter - 13 : Double Taxation Relief

2014 - Nov [3] (c) One of the important terms that transpire in all the Double Taxation Avoidance Agreements is the term 'Permanent Establishment (PE)'. It was not been defined in the Income Tax Act, 1961. However, as per the Double Taxation avoidance agreements, Permanent Establishment includes a wide variety of arrangements. Double taxation avoidance agreements usually restrict the jurisdiction of the contracting states to taxing income of a foreign enterprise only if such enterprise carries on business in another country through permanent establishment. It is a fixed place of business through which business activities of enterprise is wholly or partially conducted in that country for generation of income.

Section 92F of the Indian Income Tax Act, 1961 explains the term "Permanent Establishment (PE)" as a fixed place of business through which the business of the enterprise is wholly or partly carried out. OECD and UN model conventions also provide for definition of the term permanent establishment as it includes a place of management, a branch, an office, a factory, a workshop etc. There is an international accord on the attribution of profits earned by Permanent Establishment on the basis of 'Separate Enterprises' concept and the relevance of the 'arm's length principle'.

Chapter - 19 : Assessment Procedure

2014 - Nov [5] (b), (c)

(b) Summons under Section 131:

1. The Income tax authorities and Dispute Resolution Panel have the powers vested in a Civil Court under the Code of Civil Procedure, 1908 while dealing with the following matters:
 - (a) discovery and inspection;
 - (b) enforcing the attendance of any person including any officer of a banking company and examining him on oath;
 - (c) compelling the production of books of account and documents; and
 - (d) issuing commissions i.e. appointing experts to give report.These powers can be exercised even if no proceedings with respect to such person is pending before him or any income tax authority.
2. Notified Income tax authorities (not below AC) notified by CBDT, shall have the powers referred in Clause (1) above, for making an inquiry or investigation of any person in relation to an agreement under Section 90 or Section 90A, even if no proceedings are pending against such person before any income tax authority.
3. The Income tax authorities, DRP or notified Income tax authorities [referred in Clause (2) above], may impound and retain it in its custody, any books of account or other documents produced before it.

- (c) If there is a retrospective amendment in law, the same can be given effect to by passing a rectification order under section 154. However the period of limitation of four years shall apply.
A mistake arising as a result of subsequent interpretation of law by the Supreme Court would constitute a “mistake apparent from records” and rectification under section 154 is possible.

2014 - Nov [7] (a) (ii), (b), (c)

(a) (ii) According to the New Clause (aa) inserted in the explanation to sub-Section 9 of section 139 of Income tax Act with effect from 1.6.2013. Thus now, even if self assessment tax is not paid before the date of furnishing the return, the return will be treated as defective.

(b) To proceed with fresh assessment permission need to be taken from JC and fresh notice shall be issued to assessee.

(c) (i) Section 144 : Powers of the Joint Commissioner to Issue Directions in Certain Cases

1. **A Joint Commissioner may,**

(a) on his own motion, or

(b) on a reference made to him by the Assessing Officer, or

(c) on the application of an assessee, call for and examine the record of any proceeding in which an assessment is pending.

2. If he considers that having regard to the nature of the case or the amount involved or for any other reason, it is necessary to issue directions, then he may issue such directions as he thinks fit for the guidance of the Assessing Officer (AC/DC/ITO) to enable him to complete the assessment.

3. Such directions shall be binding on the Assessing Officer (AC/DC/ITO).

4. No directions prejudicial to the assessee shall be issued before an opportunity of being heard is given to the assessee.

5. The Directions under section 144A can be issued only if the case is pending in an assessment/reassessment.

6. No appeal can be filed against the Directions issued under section 144A.

- (c) (ii)** Consequences of non Compliance with a Notice Issued under Section 142 (1) (i) or under Section 142 (1)(ii) or 143 (2) or a Direction under Section 142 (2A)
1. It may result in a best judgement assessment u/s 144 and/ or
 2. Penalty u/s 271 (1) (b) - Penalty of ` 10,000 for each such failure and/ or
 3. Prosecution u/s 276D - Imprisonment which may extend upto 1 year with or without fine.
Fine is minimum ` 4/ - per day and maximum ` 10/ - per day for every day during which the default continues.

Chapter - 22 : Appeals & Revision

2014 - Nov [2] (d) As per Section 264 revision is not possible if an appeal has been filled to CIT (A) on any issue.

In the given case Arihant Ltd. had earlier filled an appeal to CIT (A) against the order of assessment made by the AO, so further appeal cannot be made u/s 264.

2014 - Nov [7] (a) (i) As per Section 260A, An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal if the High Court is satisfied that the case involves a substantial question of law.

Chapter - 23 : Penalties, Offences and Prosecution

2014 - Nov [7] (a) (iii) If a person who is required to furnish an annual information return, fails to furnish such return within the time prescribed, such person shall pay penalty of ` 100 for every day during with the failure continues.

Chapter - 25 : Deduction, Collection and Recovery of Tax**2014 - Nov [4] (b)**

(i) In pursuance of the provisions of Section, 194-1A, Every person is liable to deduct tax at source @ 1% on payment made for purchase of immovable property to a person resident in India except for:

- (i) Rural agricultural land
- (ii) Where sale consideration is less than 50 lakhs.

The above provision is effective from 1.6.2014. Hence no TDS is required to be deducted the property was purchased on 30.4.2014. Mr. X will have to deduct TDS @ 1% on payment made for the house property at Mumbai on 20.6.2014. However Mr. C and Mr. D are not required to deduct TDS.

(ii) According to Section 194H, Any person (Other than Individual or HUF not liable to tax audit) has to deduct TDS on commission @ 10% to any resident at the time of credit or payment whichever is earlier.

Hence, consignor must deduct TDS even if the same is retained by the consignee at the time of credit.

(iii) Yes, According to Section 194B.

$$\begin{aligned} \text{TDS liability} &= 4,00,000 \times 30\% \\ &= 1,20,000 \end{aligned}$$

(iv)

Salary (45,000 × 12)		5,40,000
Loss under house property		<u>80,000</u>
	Total Income	<u>4,60,000</u>
	Tax on above	26,000
Less: Rebate u/s 87A		<u>2,000</u>
	Tax	24,000
	EC & SHEC	<u>720</u>
	TDS to be deducted	<u>24,720</u>

Chapter - 26 : Assessment of Individuals**2014 - Nov [3] (d) Gross Total Income of Mr. Z**

Income from other sources

(i) Gift of Immovable Property (exceeding 50,000 stamp value)		18,00,000
(ii) Interest on enhanced compensation		1,70,000
(iii) Interest on F.D.		<u>90,000</u>
Income under the head other sources		20,60,000
Less: Deduction (50% of interest on compensation)		<u>85,000</u>
Gross Total Income		<u>19,75,000</u>

2014 - Nov [5] (a)**Income from House Property**

GAV		3,00,000
Less: Municipal Taxes		<u>35,000</u>
NAV		2,65,000
Less: Deduction u/s 24		
Standard Deduction	79,500	
Interest on borrowed capital	<u>30,000</u>	1,09,500
		1,55,500
Add: Arrear of Rent 30,000 - 30%		<u>21,000</u>
		1,76,500

Capital Gain

Sale Consideration	3,90,000 /	30,00,000
	13%	
Less: Indexed COA	$25,000 \times \frac{1024}{223}$	<u>1,14,798</u>
		28,85,202
Less: Exemption u/s 54		15,00,000
Less: Exemption u/s 54 EC		<u>10,00,000</u>
		3,85,202
		<u>5,61,702</u>

Chapter - 29 : Assessment of Companies**2014 - Nov [1] {C} (a) Income under the head PGBP:**

Net profit as per Profit & Loss A/c	60,00,000
<i>Add:</i> Travelling expense of wife, being personal expense	5,00,000
Payment for license fee, being capital expenditure	10,00,000
Under valuation of closing stock $\left(18,72,000 \times \frac{10}{90}\right)$	2,08,000
	<u>77,08,000</u>
<i>Less:</i> Depreciation on license fee	2,50,000
Waiver of interest not taxable	1,50,000
Under valuation of opening stock $\left(18,00,000 \times \frac{10}{90}\right)$	2,00,000
Audit fee (Last year) $1,00,000 \times 30\%$	30,000
Depreciation under charged	25,000
Dividend from foreign company	3,25,000
	<u>67,28,000</u>

Income under Head Other Sources

Purchase of shares of Private Ltd. Company	
Lower than FMV $5,000 \times (40 - 20)$	1,00,000
Dividend from Foreign Company	3,25,000
	<u>4,25,000</u>
Total Income Tax Calculation	<u>71,53,000</u>
= $\` 3,25,000 \times 15\%$	48,750
= $\` 68,28,000 \times 30\%$	20,48,400
	<u>20,97,150</u>
<i>Add:</i> EC & SHEC	62,915
Tax payable	<u>21,60,065</u>
Total Tax payable R/O	<u>21,60,070</u>

Chapter - 34 : Wealth Tax

2014 - Nov [1] {C} (b) Net Wealth of the company as on valuation date (31.3.2014)

(i) Guest house and land appurtenant thereto in Rural area [Guest house is always an asset according to Sec. 2(ea)]	10,00,000
(ii) 100 acres agricultural land acquired at Gurgaon on 9.9.2013 for construction of residential flats / commercial complex (Only Agricultural land used for agricultural purpose is exempt)	50,00,000
(iii) Not Included (Cash recorded in books of company is not an asset)	
(iv) Not an asset u/s 2(ea)	
(v) Residential flats (employees whose salary exceeds 10 lakhs p.a. is to be included)	5,00,000
$\left(\frac{15,00,000}{6} \right) \times 2$	
(vi) Motor Cars (Does not include Motor cars used by the assessee in the business of running them on hire)	10,00,000
(Debts owed)	75,00,000
<i>Less: Loan for purchase of 100 acres of agricultural land at Gurgaon</i>	<u>30,00,000</u>
Net Wealth	<u>45,00,000</u>

2014 - Nov [6] (b)

(i) Land and Building outside India	-
(ii) House in India (Value as on 31-3-14 taken)	90,00,000
(iii) Urban land (As classified as agricultural land in Government records)	-

(iv) Gift to spouse (Deemed Assets)	10,00,000
(v) Interest of minor son	5,00,000
(vi) House in India	25,50,000
(As per rule 3,4,5)	1,30,50,000
Less: Deduction as per 5 (vi)	90,00,000
	<u>40,50,000</u>

Shuchita Prakashan (P) Ltd.

25/19, L.I.C. Colony, Tagore Town,
Allahabad - 211002

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