

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: Law of Taxation-I  
Semester-VII (Batch: 2012-17)



End Semester Examination: Oct-Nov. 2015

Date: 26<sup>th</sup> October, 2015

Duration: 3 hours

Max. Marks: 50

**Instructions:**

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write anything on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.
- Bare Act is not allowed.
- Wherever Not Provided, AO be read as Assessing Officer, IT act as Income Tax Act, 1961, CIT as Commissioner of Income Tax, ROC as Registrar of Companies, IFOS is Income from Other Sources.

Answer the following questions

Marks

- Q.1 ABC Company appointed Mr. U as senior consultant on legal matters in 2014. The company has three branches at different parts of the country. Mr. U has to visit these places oftenly for matters concerned there with. The expenses were borne by the company. In 2015, it was decided by the company to send Mr. U along with two other employees to Singapore for attending a very important business deal. Mr. U took his wife along with him on the visit as it was an option provided by the company. The travel expenses were again borne by the company for his wife. Upon submitting the return the said amount (travel expenses of his wife) was held taxable by AO at hands of Mr. U, but it was denied by Mr. U. Advice the AO & Mr. U for an amicable solution under appropriate head of income citing suitable authority of law. (07)

OR

Assessee being Chairman & Director of a company, had taken a Keyman Insurance policy on his life in 2013. It was decided by the company to assign the said policy to assessee on surrendering the value from him. Thereafter, for the remaining period of the policy, the insurance premium was paid by the assessee. The AO demanded the tax treatment of the difference amount (between the policy premium paid by the company & surrender money by assessee) to be profits in lieu of salary & to be taxed under section 17 (3) (ii) of IT Act. Whereas it was denied by the assessee & company. What is the proper head of income to tax this differential amount? (07)

Advice to the assessee about the taxability of the said amount citing suitable authorities.

- Q.2 Assessee let out some portion of the commercial space for use as table space with all the facilities like security, power, water & other common amenities. He assessee himself with the income receipt of this activity under business income. The AO also accepted this assessment as it is more favoring to the assessee with depreciation being allowed on the property. The Commissioner Income tax found, this assessment as prejudicial to the interest of the revenue & remanded it back for fresh consideration, thus rejecting its (07)

assessment in business income. The order of the CIT was taken in appeal to Tribunal, where it was held that the assessment is appropriate. The matter went to High Court in appeal. Advice to the revenue & assessee, whose contention is correct citing suitable authorities & appropriate reasons applying the law laid down in IT Act.

OR

Assessee Company was doing business of the sale & purchase of lands & buildings which is having its registered office at Rajkot, Gujarat. Assessee also have a subsidiary company doing business of dairy products at Indore, Madhya Pradesh. The assessee own some flats at Gandhinagar, Gujarat which was given on rent to the employees of the subsidiary company, when later decided to expand its business in Gujarat. The rent is collected from employees & were shown as tax free income by the assessee. The said scheme was objected by the AO as against the provision of law. (07)

Advice the assessee, whether its contention as to income from rent is correct or not citing appropriate authorities?

- Q.3 Assessee was a public company, which was in need to meet out its working expenses in the business. The assessee decided to come up with the issues of the Right shares. The company had to meet with the expenses incurred in this process, like the fee to ROC, stamp duty, expenses to dispatch etc, along with the out of pocket expenses like stationery expenses, bank charges, commission, listing fees etc. The assessee claimed all this as the expenditure allowed under IT Act. It was not accepted by the AO asserting it to be the expenditure of capital nature. The assessee claimed that such expenditure is permitted as per law. Whose contention is correct & why? Advice citing suitable authorities & legal reasons. Whether the activity of the company to issue right shares falls under the business activity? Discuss. (07)

OR

State of Rajasthan announces an annual lottery every year. Assessee was the organizing agent of the state lottery. He was involved in selling of the tickets to customers & other related work. He was expressly disallowed to participate in the lottery draw. In AY 2013-14, he sold 5000 lottery tickets to different people across the state. The receipt of which was 10,000 INR. The total no of tickets with him was 5575. When the lottery was drawn, the first two prizes were found to be among the tickets which were with assessee. As the owner of the tickets he claimed the prize money which was given to him by the state government. The assessee is ignorant about the different heads of income and seek your advice in this regard. He also knows little information about certain deductions permitted under every income head, but not sure about it. Advice the taxability of the total income to assessee and all the possible deductions that can be permitted to him under proper income head. (07)

Give justification to do so & to aid further cite suitable authorities of law supporting your arguments.

- Q.4 Assessee was owner of a building comprising of three different floors. The construction of the building is done in a manner that the entire floors are easily & separately accessible for entrance & exit purpose. The assessee was an employee of Central University. Post retirement, he decided to sale the two floors, the receipt of which was to be taken as exemption under section 54 & 54F of the IT Act. The AO objected to this arrangement by the assessee & directed that for getting advantage under respective sections the sale (07)

should be of the entire residential unit and not in part. The assessee did not agree to this type of settlement as suggested by the AO.

As the former is not sure of the provision of law, advise him citing suitable provision of law & authorities, what should be proper way to assess his income?

OR

Assessee Ms. Geeta Rani, was a lease holder of a property since the year 2000, which was originally held by Ms. Reva Devi. Ms. Reva Devi decided to convert this leasehold right to freehold right in favor of assessee. This transition took place on 29<sup>th</sup> March 2014. After getting the freehold rights over the said property, Ms. Geeta Rani decided to sell it off on 31<sup>st</sup> March 2014. The sale proceed of which were assessed by her & she paid the taxes accordingly. The AO objected to the said assessment and demanded that the property should be considered to be under hold for a long time by the assessee & be taxed accordingly. This was not agreed upon by the assessee as she did the transfer almost immediately of gaining property.

Advice to the assessee, what is the proper income head for taxability of receipt in this case, citing suitable authorities & provision of law.

Q.5 Assessee was a minister in state, who was of the habit of celebrating his birthday every year with pomp & show. The followers of the politician in 2015 decided to show their solidarity with him & make his birth day party as a social event to be organized in the state level. In order to make it success, it was decided that every person in the state will contribute some amount for the birthday. Accordingly the fund was collected. On the birth day celebration the total collection was shown by the minister as under:

- a) Gift given by the family members 91,000 INR
- b) Contributions made by followers 90,000 INR
- c) Contributions collected from common men 25,000 INR

The minister also filed a return in the AY and paid taxes under the head IFOS for expenses shown in b) category, while he assessee's contributions under c) as income from profession & occasion, while a) amount is shown as tax free. This was also accepted by the AO & allowed. The CIT objected to this scheme & remanded the matter afresh.

Advice to the aggrieved party, what is the proper head of income and what all receipts are taxable & which are exempted. Cite suitable authorities in support of your arguments.

OR

The assessee borrowed money from a sister concern and paid interest therein @ 18% per annum. The funds were used to purchase shares from a sister concern which carried dividend @ 4%. The AO & CIT (A) followed the judgement **McDowell** 154 ITR 148 (SC) & disallowed the claim for interest u/s 57(iii) of IT Act on the ground that *no prudent person would borrow funds at 18% to make an investment which yielded 4%* and the transaction was "*clear cut colorable dubious device*" to reduce the tax burden. The assertion of the assessee was that this amount can be allowed as deduction u/s 57(iii) as the transactions entered into by the taxpayer with its sister concern were bonafide. Secondly the tax department has no authority to question the prudence of a businessman since he is the best judge for running his business.



The matter is pending at Tribunal level, advice to the aggrieved whether this is suitable matter for IFOS & section 57(iii) of IT Act? Cite suitable authorities in support of your legal arguments.

Q.6 Discuss the concept of specified domestic transaction under IT Act. (07)

OR

Explain in detail the concept of associated enterprise given in IT Act. (07)

Q.7 Mr. A invested some money in the insurance policy taken in the name of his wife, in the AY 1980-81. The proceeds of the maturity of this policy was further invested by Mrs. A into real estate. The returns filed by the later showed it as her gain, but AO objected & asked reassessment of the said income. (03)

Advice to the aggrieved, the proper head of income citing suitable authorities & legal propositions.

Q.8 Write short note on any two of the following: (350-500 maximum words) (2x2.5 =05)

- (a) Set off & carry forward of losses given under IT Act.
- (b) Role of AAR & Settlement commission in speedy trial.
- (c) Taxing of royalty & technical knowhow under IT Act.

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