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CA FINAL

SUBJECT- DIRECT TAX

Test Code – FNJ 7419

BRANCH - () (Date :)

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DIVISION – A MULTIPLE CHOICE QUESTION

Case Scenario 1

1. C
2. A
3. C
4. B
5. A

Case Scenario 2

1. C
2. C
3. D
4. C

General MCQs

1. C
2. D
3. D
4. C
5. D
6. C
7. C
8. C

DIVISION – B DESCRIPTIVE ANSWER

ANSWER : 1

Computation of total income of ABC Ltd. for the A.Y. 2021 – 22

Particulars	Rs.
Income Under head PGBP	
Net Profit as per profit and loss account	4,98,88,350
Less : interest on fixed Deposit (to be considered under 'IFOS')	(1,54,900)
Less : Profit on buy back of shares of closely held Indian company (Exempt)	(1,00,000)
Less : Differed Tax	(25,000)
Less : Share from AOP (Not taxable)	(41,100)
Add : Depreciation as per books	1,99,80,500
Add : Provision for bad and doubtful debts	5,16,000

Add : Penalty under Income Tax Act	10,000
Add : Interest for late filling of return	32,000
Add : Provision for unascertained liability	75,000
Add : Provision for Income tax	2,25,000
Sub – total	7,04,05,850
Less : Depreciation as per Income Tax	(2,22,36,000)
Less : Additional Depr. (Can't claim because company opted for Section 115ABB)	Nil
Balance	4,81,69,850
Less : Brought forward Business Loss (Refer Note 1)	(16,16,000)
Balance	4,65,53,850
Less : Unabsorbed depreciation (Refer Note 2)	(4,42,78,000)
Income Under the head PGBP	22,75,850
Add : Income from Other Sources (FD Interest)	1,54,900
Gross total income	
Less : Deduction under section 80C to 80U	
(i) Under section 80IC(Refer Note 3B)	Nil
(ii) Under section 80JJAA (Refer Note 3)	(4,30,000)
Total Income	20,00,750

Notes :

1. ABC Ltd. has opted for section 115ABB therefore it cannot claim set off of losses of earlier assessment years if such losses are attributable to section 32AD. Surprisingly, reference of section 32 AC is missing and therefore, company opting for section 115ABB can claim set off of losses attributable to section 32AC. Therefore, total of brought business loss which can be set – off is Rs. 16,16,000 (Rs. 5,04,000 plus Rs. 11,12,000).
2. ABC Ltd. has opted for section 115 ABB therefore it cannot claim set off of unabsorbed additional depreciation of earlier assessment years. Therefore, total of unabsorbed depreciation which can be set – off is Rs. 4,42,78,000 [Rs. 8,08,000 plus Rs. 4,50,62,000 plus Rs. 30,02,000 less Rs. 42,80,000 less Rs. 3,14,000].
3. ABC Ltd. has opted for section 115 ABB therefore it cannot claim any deduction of Chapter VI – A under the heading “C. – Deduction in respect of certain incomes” other than the provisions of section 80JJAA or 80M.

Company of Tax Liability of ABC Ltd.

Particulars	Rs.
Regular tax @ 22% of Total Income	4,40,165
Add : surcharge (10%)	44,017
	4,84,182
Add : Health & Education Cess : (4%)	19,368
Tax liability under section 115ABB	5,03,550

(14 MARKS)

ANSWER : 2

- (A) As per section 11TD, the accreted income of “Helpage”. A charitable trust, registered under section 12AA which merged with M/s Medicare (P) Ltd., an entity not entitled for registration under section 12AA, would be chargeable to tax at Maximum marginal Rate.

Computation of accreted income in the hands of the Helpage trust arising as a result of merger with M/s. Medicare (P) Ltd.

Particulars	Amount (Rs.)
Aggregate FMV of total assets as on 1.4.2020, being the specified date (date of merger) [See Working Note I]	1,39,10,000
Less : Total liability computed in accordance with the prescribed method of	82,00,000

valuation [See Working Note 2]	
Accreted Income	57,10,000

Computation of Tax Liability in the hands of Helpage trust

Particulars	Amount (Rs.)
Accreted Income (AS computed above)	57,10,000
Tax Liability @ 30%	17,13,000
Add : Surcharge @ 37%	6,33,810
	23,46,810
Add :Health and Education Cess @ 4%	93,872
Total Tax Liability	24,40,682

Particulars	Amount (Rs.)
Working Notes :	
(1) Aggregate fair market value of total assets on the date of merger	-
- Land at Noida, being immovable property, purchased on 1.9.2011	
Since the benefit of section 11 and 12 was available to the trust from A.Y. 2013 – 14, the value of land purchased on P.Y. 2011 – 12, in respect of which benefit under section 11 and 12 was not availed, has to be ignored for computing accreted income	
- Land at Gurgaon, being an immovable property, purchased on 1.9.2014	1,20,00,000
[The fair market value of land would be higher of Rs. 120 Lakhs i.e., price that the land would ordinarily fetch if sold in the open market and Rs. 100 lakhs, being stamp duty value as on the specified date, i.e., 1.4.2020]	
- Quoted equity shares of A Ltd. [5,000 × Rs. 310 per share]	15,50,000
[Rs. 310 per share, being the average of the lowest (Rs. 300) and highest price (Rs. 320) of such shares on the specified date]	
- Preference shares of B Ltd. [2,000 × Rs. 180 per share]	3,60,000
[The fair market value which it would fetch if sold in the open market on the specified date i.e. FMV on 1.4.2020]	
	1,39,10,000
(2) Total liability	
- Reserve and Surplus Rs. 18 lakhs [not includible]	-
- Corpus Fund of Rs. 12 lakhs [not includible]	-
- Provision for taxation Rs. 8 lakhs [not includible]	-
- Other Liabilities [Rs. 120 lakhs – Rs. 18 lakhs – Rs. 12 lakhs – Rs. 8 lakhs]	82,00,000
-	82,00,000

(8 MARKS)

ANSWER : 2 (B)

- Section 9(I) (ii) provides that any income which falls under the head “salaries” is deemed to accrue or arise in India, if it is earned in India. The Explanation thereto further clarifies that income payable for services rendered in India shall be regarded as income earned in India.
- Section 192(I) requires the person responsible for paying any income chargeable under the head “Salaries” to deduct income – tax, at the time of payment, at the average rate of income – tax computed on the basis of the rates in force for the financial year on the amount payable.
- Since the TDS provisions relating to payment of income chargeable under the head “Salaries” form an integrated code along with the charging and computation provisions under the Act, section 192(1) has to be read with section 9(I)(ii) and the Explanation thereto.

Therefore, if any payment under the head “Salaries” falls within section (I)(ii), then TDS provisions under section 192 gets attracted. Consequently, the Indian tax deductor assessee is duty bound to deduct, from the portion of salary paid by it, tax at source under section 192(I) on the entire salary paid to the employee, including special allowance paid abroad to the employee by the foreign company.

- **It was to held by Apex Court in CIT, New Delhi v. Eli Lilly & Co. (India) P. Ltd. (2009) 312 ITR 225.**

In this case, all the employees are resident in India, since they have worked with the Indian collaborate throughout the financial year. If the tax due on special allowance received from the foreign company is paid by the recipient employees, then, the Indian collaborator would not be treated as an assessee – in – default under section 201(I), if these resident – employees have furnished a return of income under section 139, disclosing such income, and have also furnished a certificate to this effect from an accountant in the prescribed form. However, interest under section 201(A) @ 1% per month or part of month shall be payable by the Indian collaborator from the date on which such tax was deductible to the date of furnishing of return by such resident employee.

- In cases where the tax has not been paid by the recipient employee, the Assessing Officer can proceed under section 201(1) to recover the shortfall in payment of tax and interest thereon u/s 201(IA).
- However, no penalty under section 271C would be attracted, if the Indian collaborator was under the genuine and bona fide belief that it was not under any obligation to deduct tax at source from the special allowance paid by the foreign company. This is provided for under section 273B.

(6 MARKS)

ANSWER : 3(A)

Considering the amendment in section 179, that “tax due” includes penalty, interest or any other sum payable under the Income Tax Act, directors cannot

Step – 1 Compute Total income ignoring AMT provisions

Particulars	Rs.
Income under Head PGBP	22,20,000
Add : Income from other sources	1,30,000
Gross Total Income	23,50,000
Less : Deduction under section 80G	(10,000)
Total Income before giving effect to Section 10AA	23,40,000
Less : Deduction under Section 10AA which is lower of	
Total Income before giving effect to Section 10AA (Rs. 23,40,000)	
POB × ET/TT (Rs. 22,20,000 × 90% = Rs. 19,98,000)	(19,98,000)
Total Income	3,42,000

Step : 2 Compute Regular Tax payable by LLP on Step I income

Particulars	Rs.
Total Income	3,42,000
Tax Rate @ 30%	1,02,600
Add : Health & Education Cess 4%	4,104
Regular Tax Liability	1,06,704

Step : 3 Compute Adjusted total income as per section 115JC

Particulars	Rs.
Total Income (as per Step 1)	3,42,000
Add : Deduction under section 80H to 80RRB	Nil
Add : Deduction under section 10AA	19,98,000
Add : Deduction under section 35AD (-) Depreciation	Nil
Adjusted Total income	23,40,000

Step : 4 Compute AMT @ 9% on step 3

Particulars	Rs.
Adjusted Total Income	23,40,000
Tax Rate @ 9%	2,10,600
Add : Health & Education Cess 4%	8,424
Alternate Minimum Tax (AMT)	2,19,024

Step : 5 Final tax liability of LLP [Higher of Step 2 or Step 4]

Final Tax Liability = Higher of Rs. 1,06,704 or Rs. 2,19,024
= Rs. 2,19,024

Note : Ding Dong LLP is eligible to carry forward AMT Credit of Rs. 1,12,320 (Rs. 2,19,024 – Rs. 1,06,704) for next 15 assessment years.

(8 MARKS)**ANSWER : 3(B)****Computation of Arm's Length Price of Products sold to Kio Japan by AB Ltd.**

Particulars	Rs.	Rs.
Price per Unit in a Comparable Uncontrolled Transaction		4,800
Less : Adjustment for Differences -		
(a) Freight and Insurance Charges	(700)	-
(b) Estimated Warranty Costs	(500)	-
(c) Discount for Voluminous Purchase	(200)	(1,400)
Arm's Length Price for Cellular Phone sold to Kio Japan		3,400

Computation of Increase in Total Income of AB Ltd.

Particulars	Rs.	Rs.
Arm's Length Price per Unit		3,400
Less : Price at which actually sold to Kio Japan		(3,000)
Increase in Price per unit		400
No. of Units sold to Kio Japan		2,50,000
Therefore, increase in Total Income of AB Ltd. (2,50,000 × Rs. 400)		10 Crores

(6 MARKS)**ANSWER : 4(A)**

The Supreme Court, in Polyflex India (P) Ltd v CIT (2002) 257 ITR 343, has held that where a statutory levy in respect of goods dealt with by the assessee is discharged and a deduction is allowed thereon, and subsequently, the amount paid is refunded, the first part of section 41(I) (a) would apply i.e. it will be a case where the assessee "has obtained any amount in respect of such expenditure". Where expenditure is actually incurred by reasons of payment of duty on goods and a deduction or allowance is given in the assessment of an earlier period, the assessee is liable to tax on that benefit, as and when he obtains refund of the amount so paid. The possibility of the refund being set at naught on a future date will not be relevant consideration.

Considering the rationale of above ruling, the contention raised by the assessee company is not valid and therefore, refund of excise duty is chargeable to tax under section 41(I) in the year of receipt. However, in future, Supreme Court upholds levy, then the assessee company is again eligible for deduction on actual payment.

(4 MARKS)

ANSWER : 4(B)

Computation of taxable capital gains for A.Y. 2021 – 22

Particulars	Rs.
Full value of consideration	90,00,000
Less : Expenses on transfer (1% of the FVC)	(90,000)
Net consideration	89,10,000
Less : Indexed cost of acquisition	(51,12,000)
Long Term Capital Gain before exemption	37,98,000
Less : Exemption under section 54GB (Rs. 37,98,000 × Rs. 60,00,000/ Rs. 89,10,000)	25,57,576
Taxable capital gains	12,40,424

Deemed cost of new plant and machinery for exemption under section 54GB

Particulars	Rs.	Rs.
(1) Purchase cost of new plant and machinery acquired in July, 2021		59,00,000
Less :		
Cost of vehicles, i.e., cars	8,00,000	
Cost of Air – conditioners installed at the residence of Mr. Akahs	1,00,000	(9,00,000)
		50,00,000
(2) Amount deposited in the specified bank before the due date of filing of return		10,00,000
Deemed cost of new plant and machinery for exemption u/s 54GB		60,00,000

(4 MARKS)

ANSWER : 4(C)

Computation of Total Income of Mr. Raghu

Particulars	A Ltd. (Rs.)	B Ltd. (Rs.)	C Ltd. (Rs.)	Total
Income under the head “Capital Gain”				
Full value of consideration	Exempt under	12,50,000	Exempt under	
Less : Cost of Acquisition	Section 47 (viia)	10,00,000	Section 47 (viiab)	
Long Term Capital Gain chargeable to tax u/s 115AC @ 10%	[Refer Note 1]	2,50,000	[Refer Note 2]	2,50,000
Income under the head “Income from other Sources”.				
Dividend income from GDRs	12,000	15,000	53,000	80,000
Total Income				3,30,000

Note :

- As per section 47(viia), any transfer of a capital asset, being bonds or GDRs referred to in section 115AC(I), made by a non – resident to another non – resident is not treated as transfer provided that transfer is made outside India.

2. As per section 47 (viiab), any transfer of capital asset, being bonds or GDRs referred to in section 115AC(I), made by a non – resident on a recognized stock exchange located in any International Financial Service Centre and where the consideration for such transaction is paid or payable in foreign currency, is not treated as transfer.

Computation of Tax Liability of Mr. Raghu

Particulars	Rs.
Tax on Long Term Capital Gain @ 10% [2,50,000 × 10%]	25,000
Tax on Dividend Income @ 10% [80,000 × 10%]	8,000
Total	33,000
Add : H.E.C. @ 4%	1,320
Tax Liability	34,320

(6 MARKS)

ANSWER : 5 (A)

Gujarat High Court in case of CIT v. Shree Govindbhai Jethalal Nathavani Charitable Trust (2015) 373 ITR 619 was of the view that the issue in the present case has already been settled in case of N.N. Desai Charitable Trust v. CIT (2000) 246 ITR 452(Guj). In that case, the Division Bench observed that, while considering the application for the purpose of section 80G, the authority cannot act as an assessing authority and the enquiry should be confined to finding out if the institution satisfies the prescribed conditions. The Division Bench also made the following observations :

- (i) Section 80G does not relate to assessment of the trust or the institution whose income is not liable to be included in the computation of taxable income under various provisions of the Act. Primarily, section 80G is related to giving deduction in respect of donations made by a person to such trusts and institutions.
- (ii) There are two distinct concepts. The first is whether an institution or fund is such whose income is not liable to be included in the computation of total income, has to be determined on the basis of its status or character. The second is the actual assessment of income, which necessarily takes place in future after donation is received by the donee, on fulfillment of other conditions about application of income by the eligible trusts, which in the very nature of things can operate only after receipt of income. The two are different concepts.
- (iii) The liability to assessment is neither affected on account of grant of recognition under section 80G nor on whether the donor ultimately gets deduction in respect of such donation. Once a trust is registered under section 12AA, its income from property includes donation which is covered by section 11(1) (d) or under section 12. Such donations are deemed to be income from property, which are not to be included in the total income under section 11 or section 12. The enquiry under section 80G, hence, cannot go beyond that.
- (iv) The scope of enquiry cannot include an enquiry as to whether, at the close of the previous year, the donee – trust will actually be able to apply 85% of its income because non – fulfillment of some conditions by the donee – trust as regards application or accumulation cannot be ascertained in praesenti, when the donation is made. The question of whether the trust will be able to apply 85% of its income can be determined only from the facts existing at the close of the assessment year.
- (v) The High Court also noted that similar views were expressed by the Punjab and Haryana High Court in the case of CIT v. O.P. Jindal Global University (2013) 38 Taxmann.com 366. Considering the above, the Commissioner cannot reject an application for grant of approval under section 80G(5) on the ground that the trust has failed to apply 85% of its income for charitable purposes.

ANSWER : 5 (B)

- (i) As per the third proviso of section 147, the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.
Therefore, even when an appeal is pending before Commissioner (Appeals), the Assessing Officer can initiate reassessment proceedings in respect of income chargeable to tax which has escaped assessment, provided such income is not the subject matter of the appeal before the Commissioner (Appeals) i.e., such income which has escaped assessment does not form part of the additions of Rs. 22 lakhs to the returned income, which is the subject matter of appeal.
- (ii) As per section 154(IA), the Assessing Officer can pass an order under 154(I) to rectify a mistake apparent from the record, provided the rectification is in relation to a matter, other than the matter which has been considered and decided in the appeal before Commissioner (Appeals).
Since the issue under consideration in this case relates to rectification of a mistake in respect of a matter which is not the subject matter of appeal, the Assessing Officer can pass an order under section 154 for rectification of the same provided the same is a mistake apparent from the record.
- (iii) As per section 264(4), the Principal commissioner or Commissioner shall not revise any order under section 264, where such order has been made the subject of an appeal to the Commissioner (Appeals). Therefore, under section 264, the Principal Commissioner or Commissioner cannot revise an order which is pending before the Commissioner (Appeals), even if the revision pertains to a matter, other than the matter (s) covered in the appeal.
- (iv) As per section 263, the Commissioner has the power to revise an order prejudicial to the interests of revenue, even if the order is the subject matter of appeal before Commissioner (Appeal). However, the power of the Commissioner under section 263 shall extend to only such matters as had not been considered and decided in such appeal.
In a case where the appeal is pending but not yet decided, the Commissioner cannot exercise his revisionary jurisdiction in respect of those issues which are the subject matter of appeal [**CWT v. Sampathmal Chordia (2002) 256 ITR 440 (Mad.)**].

(4 MARKS)

ANSWER : 5 (C)

- Considering the above mentioned facts and arguments, the Bombay High Court in case of **CIT v. Triumph International Finance (I.) Ltd.(2012) 345 ITR 270** observed that, the obligation to repay the loan or deposit by account payee cheque / bank draft as specified in section 269T is mandatory in nature. The contravention of the said section will attract penalty under section 271E.
- However, the cause shown by the assessee for repayment of the loan otherwise than by account payee cheque / bank draft was on account of the fact that the assessee was liable to receive amount towards the sale price of the shares sold by the assessee to the person from whom loan was received by the assessee. It would have been mere formality to repay the loan amount by account payee cheque / draft and receive back almost the same amount towards the sale price of the shares.
- Also, neither the genuineness of the receipt of loan nor the transaction of repayment of loan by way of adjustment through book entries carried out in the ordinary course of business has been doubted in the regular assessment. Therefore, there is nothing on record to suggest that the amounts advanced by Investment Trust of India to the assessee represented the

unaccounted money of the Investment Trust of India or the assessee and also it cannot be said that the whole transaction was entered into to avoid tax. This is accepted as a reasonable cause under section 273B and therefore no penalty could be imposed.

(4 MARKS)

ANSWER : 6(A)

This issue came up before the supreme Court in K. Lakshmansa and Co. V Commissioner of Income – tax and Anr [2017] 399 ITR 657. The Supreme Court observed that the right to claim refund is automatic once the statutory provisions have been complied with. The statutory obligation to refund, being non – discretionary, carries with it the right to interest. Section 244A is clear and plain – it grants a substantive right of interest and is not procedural.

Under section 244A, it is enough if the refund becomes due under the Income – tax Act, 1961, in which case, the assessee shall, subject to the provisions of that section, be entitled to receive simple interest. The expression “due” only means that a refund becomes due pursuant to an order under the Act which either reduces or waives tax or interest. It does not matter that the interest being waived is discretionary in nature; the moment that discretion is exercised and refund becomes due consequently, a concomitant right to claim interest springs into being in favour of the assessee.

The Supreme Court, thus, did not agree with the Karnataka High Court opinion that when discretionary power has been exercised, no concomitant right to claim interest on refund arises in favour of the assessee. Overruling the High Court Decision, the Supreme Court held that the assessee has a right to interest on refund u/s 244A.

Applying the rationale of the Supreme Court ruling to the case on hand, the action of the Settlement Commission in refusing to grant interest on refund is not correct.

(4 MARKS)

ANSWER : 6(B)

- Under section 90(2), where the Central Government has entered into an agreement for avoidance of double taxation with the Government of any country outside India or specified territory outside India, as the case may be, then, in relation to the assessee to whom such agreement applies, the provisions of the Income – tax Act, 1961 shall apply to the extent they are more beneficial to the assessee. Thus, in view of paragraph 2 of the Article 24(Non – discrimination of the Double Taxation Avoidance Agreement (DTAA), it appears that the Indian branch of Cosmos Limited, incorporated in Mauritius, is liable to tax in India at the rate applicable to domestic company (30%), which is lower than the rate of tax applicable to a foreign company (40%).
- However, Explanation I to section 90 clarifies that the charge of tax in respect of a foreign company at a rate higher than the rate at which a domestic company is chargeable, shall not be regarded as less favourable charge or levy of tax in respect of such foreign company. Therefore, in view of this Explanation, the action of the Assessing Officer in levying tax @ 40% on the Indian branch of Cosmos Ltd. is in accordance with law.

(4 MARKS)

ANSWER : 6(C)

In view of the provisions of section 143(D) of the Act, the assessing officer is first required to process the return of income under section 143(1) even though notice under section 143(2) has been issued.

Therefore, the assessing officer shall first issue intimation under section 143(1) making addition of Rs. 38,000 under section 40A(3) and determine total income at Rs. 8,40,000 (Returned income Rs. 8,02,000 and Rs. 38,000 disallowance).

Thereafter, he shall proceed to complete the assessment under section 143(3) of the Act by making addition of Rs. 4,80,000 towards bogus commission debited to profit and loss account. The assessing officer while passing assessment order under section 143(3) of the Act, shall determine the total income as under :

Computation of Total Income

Particulars	Amount (Rs.)
Total Income determined under section 143(l)	8,40,000
Add : Bogus commission debited to P & L	4,80,000
Income assessed under section 143(3)	13,20,000

(4 MARKS)**ANSWER : 6(D)**

- In the above case, no application had been filed by the applicant (foreign company) before any income – tax authority /Appellate Tribunal/court, raising the question raised in the application filed with AAR.
- One of the Indian companies, however, had raised the question before the Assessing Officer, not on the applicant's behalf or with a view to benefit the applicant, but only to safeguard its own interest, as it had a statutory duty to deduct the proper amount of tax from payments made to a non – resident u/s 195(2) of the Act. Although the question raised pertains to one of the payment made or to be made to the non – resident applicant, it was not one pending determination before any income – tax authority in the applicant's case.
- Therefore, as held by the AAR in Ericsson Telephone Corporation India AB v. CIT (1997) 224 ITR 203, the application filed by the Indian company before the Assessing Officer cannot be treated to have been filed by applicant (foreign company).
- Hence, it would not be proper to reject the application of the foreign company.

(2 MARKS)