

2 MAY 2024

NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination-Jan-May- 2024

UG-VIII Semester

Subject- Direct Taxation (Compulsory)

Marks. 100

Time: Three Hours

Instructions:

1. Attempt any five questions... Marks have been indicated against each question.
2. No clarifications can be sought during the examination.
3. Bare Act is not allowed.

Q.1) XYZ Ltd acquires from the Government of Rajasthan, India a lease of certain limestone quarries for a period of 25 years for the purpose of manufacturing cement. In addition to rent and royalties, the company agrees to pay to the Government annually a sum of 75000 as a protection fee for the whole period of lease and in consideration of this payment, the Government undertook not to grant any lease to any person for the manufacturing of cement in a limited specific area. Are protection fees paid by the assessee to avoid competition deductible as revenue expenditure under section 37 of the Income Tax Act, 1961? Is there any restriction provided under the Income Tax Act, 1961? Discuss.

(Marks 20)

Q.2) Discuss the categories of residential status of persons defined under the Income Tax Act, 1961? Explain along with Double Taxation Avoidance Agreements that how these categories are determined and affect the tax liability of an assessee.

(Marks 20)

Q.3) The assessee, Mr. Sunil Sawant an individual, is in employment of Hyundai Ship Management Pte. Ltd., Singapore (HSM, in short), and works on merchant vessels and tankers plying on international routes. In addition to this salary income, the assessee also derives income from bank interest on Fixed Deposit Made at Indian Bank and pension from Indian Army, his former employer. There is also no dispute that the assessee stays in India, in the relevant previous year, was less than 182 days, and for preceding four years has been in India for 460 days. In the income tax return filed by the assessee, the salary received by the assessee from HSM was not offered to tax. The income tax return filed by the assessee was selected for scrutiny assessment, and, in the course of resultant assessment proceedings, the Assessing Officer required the assessee to show cause as to why salary received by the assessee from HSM, for services rendered as ship crew, not be brought to tax in India. It was explained by the assessee that as assessee was a non-resident, the scope of his income liable to be taxed in India was restricted to income accruing or arising in India, income deemed to accrue or arise in India, or income received or is deemed to be received in India. Since the salary income in respect of ship crew is accruing and arising outside India, it is outside the ambit of limited scope of Section 5(2). As for salary income being credited to HSBC Mumbai bank account in India, assessee's contention was that salary income deposited in bank account in India, directly from bank account of the company outside India was not taxable in India. Reliance was placed on judicial precedents. None of these submissions, however, impressed



the A.O. The Assessing Officer was of the view that the assessee's explanation cannot be accepted because section 6(5) provides that where a person's status is resident for one of the sources of his income, his status for all the sources of income is to be taken as resident, and because assessee's status for pension and interest, by his own admission, is that of 'resident' - an inference based on assessee having shown pension and interest income as his taxable income in the return of income, the status of the assessee for all his sources of income is required to be taken as 'resident'. The Assessing Officer further observed that, "Otherwise also, the assessee is a resident in India for one of the sources of income i.e. pension, because he was a government employee and is getting pension." The Assessing Officer was also of the view that since appointment letter was issued by foreign employer's agent in India; it is to be deemed that the salary income accrued in India. A reference was made to Hon'ble Supreme Court's judgment in the case of CIT Vs. ABC Ltd for the proposition that if an assessee acquires a right to receive income, the income is said to have accrued to him even though it may be received later, on its being ascertained. It was also noted that "by receiving the appointment letter and details of salary to be paid, the assessee gets right to receive the salary". The AO further took note of the fact that the salary cheques were credited to assessee's account with HSBC Bank. It was in this backdrop that the salary of Rs.25 Lakhs received from HSM was brought to tax in the hands of the assessee. Aggrieved, assessee carried the matter in appeal before the CIT (A) but without any success. Learned CIT (A) upheld the stand of the Assessing Officer. ITAT Mumbai also upheld the judgment of CIT (A).

Discuss the case.

(Marks 20)

Q.4) Pankaj doing trade in textile in Jodhpur is also a shareholder in a private limited company (A&B) owned by his family members. The company is engaged in manufacture of textile and it went in for a term loan and working capital loan of Rs. 150Lakh on 10-03-20 from a bank (State Bank of India) NLU Jodhpur branch. Pankaj offered his building as collateral security for the loan extended by bank. The company could not repay the loan and the bank hence harassed the directors for repayment. An agreement was reached between the bank and Pankaj on 25-10-21 whereby a part of the property would be sold and the bank would directly obtain the proceeds from the buyer, towards settlement of the loan. The bank sold the said building worth Rs.180 lakhs and adjusted the loan amount and returned the remaining amount. The assessee, Pankaj hence claimed that the sale consideration never reached him and has been diverted by overriding title. Hence, he contended that no capital gain would be taxable in his hand on sale of such building. The assessee contended that the amount realized by the bank and adjusted towards its loan due is diverted by overriding title. The assessing officer was not agreeing with the contention of the assessee and charged total profit of sale proceeds as capital gain. Decide the issue with the help of suitable provisions and cases.

(Marks 20)

Q.5) Discuss the methods of Determination of Gross Annual value and chargeability of income from the house property provided under The Income Tax Act-1961. Discuss the tax treatment where actual rent received or receivable is less due to vacancy, as well as actual rent being less. What are the deductions available for self-occupied property?

(Marks 20)



Q.6) Write short note on the followings.

(Marks, 10*2=20)

- (i) Concept of Income under Income Tax Act, 1961
- (ii) Business Expenditure under Section 37 of Income Tax Act, 1961

