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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.*

Question 1

(a) *"Rameshwarm" after purchase put to use on 15-12-2010 a machine worth ₹ 3,00,000 which is eligible for depreciation @ 15% under the Act. He sold this machine to "Ganesham" on 1-1-2012 for ₹ 3,20,000 (FMV on that date was ₹ 2,50,000), who after having used the machine for his business purposes again sold it back to "Rameshwarm" on 15-11-2012 for ₹ 3,10,000.*

Compute the amount of allowable depreciation and of chargeable capital gain, if any, for assessment years 2011-12 to 2013-14 assuming that this was the only machine in the block of asset held by both "Rameshwarm" and "Ganesham". (7 Marks)

(b) *How does the income of a person who is trying to alienate his assets with a view to avoid tax be dealt with under the Act? (3 Marks)*

(c) *Mr. Kumar, a person of Indian origin was working in Singapore from 1990. He returned to India for permanent settlement in July 2011 when he remitted money into India. For the valuation date 31-03-2013, the following particulars are furnished. You are requested to compute the taxable wealth of Mr. Kumar for the AY 2013-14, giving justification for the inclusion or exclusion of each item:*

Sl. No.	Particulars	Amount ₹
1.	(a) Jewellery purchased in May 2011 out of money remitted to India from Singapore	15 lacs
	(b) Jewellery purchased in July 2011 out of sale proceeds of motor car brought from abroad and sold	14 lacs
2.	(a) Land purchased for industrial purpose on 01-01-2010	5.5 lacs
	(b) Land purchased for industrial purpose on 25-03-2013	7.5 lacs
3.	(a) Loan against the purchase of land on 01-01-2010	2.75 lacs
	(b) Loan against the purchase of land on 25-03-2013	3.5 lacs
4.	Value of assets held by Mrs. Kumar acquired out of the gifts from her husband	
	Shares and securities	2 lacs
	Residential house property at Mumbai	9 lacs

The Suggested Answers for Paper 7:- Direct Tax Laws are based on the provisions applicable for A.Y.2013-14, which is the assessment year relevant for November, 2013 examination.

5.	*Urban land purchased in January 2011 out of the withdrawals from NRE account*	*25 lacs*
6	*Cash in hand*	*1 lac*
7	*Cash at Bank*	*2 lacs*

(10 Marks)

Answer

(a) Computation of allowable depreciation/ chargeable capital gains

In case of Rameshwarm

	₹
Assessment year 2011-12 (P.Y.2010-11)	
WDV as on 01-04-2010	Nil
Addition during the year on 15-12-2010	3,00,000
	3,00,000
Less: Depreciation @ 7.5% (since the machinery is put to use for less than 180 days)	22,500
WDV as on 01-04-2011	2,77,500
Assessment year 2012-13 (P.Y.2011-12)	
Actual Sale consideration	3,20,000
Less: WDV as on 01-04-2011	2,77,500
Short-term capital gains chargeable to tax under section 50	42,500
Assessment year 2013-14 (P.Y.2012-13)	
WDV as on 01-04-2012	Nil
Addition during the year on 15-11-2012 *[See Note 1]*	2,77,500
	2,77,500
Less: Depreciation @ 7.5% (since the machinery is put to use for less than 180 days)	20,813
WDV as on 01-04-2013	2,56,687

In case of Ganesham

	₹
Assessment year 2012-13 (P.Y.2011-12)	
WDV as on 01-04-2011	Nil
Addition during the year on 01-01-2012 [See Note 2]	2,50,000
	2,50,000

Less: Depreciation @ 7.5% (since the machinery is put to use for less than 180 days)	18,750
WDV as on 01-04-2012	2,31,250
Assessment year 2013-14 (P.Y.2012-13)	
Actual Sale consideration	3,10,000
Less: WDV as on 01-04-2012	2,31,250
Short-term capital gains chargeable under section 50	78,750

Notes:

1.	As per *Explanation 4* to section 43(1), where an asset which had once belonged to the assessee and had been used by him for the purpose of his business and thereafter, ceased to be his property by reason of transfer or otherwise, is reacquired by him, the actual cost to the assessee shall be lower of the following: (a) Actual cost when he first acquired the asset *minus* the depreciation actually allowable to him till the date of transfer (i.e., ₹ 2,77,500, in this case); or (b) Actual price for which it is reacquired (i.e., ₹ 3,10,000). Therefore, in this case, the actual cost of machinery reacquired by Rameshwarm would be ₹ 2,77,500, being the lower of the two amounts given above.
2.	As per *Explanation 3* to section 43(1), where the assets were at any time, before the date of acquisition by the assessee, used by any other person for the purposes of business or profession and the Assessing Officer is satisfied that the main purpose of the transfer of such assets was the reduction of his liability (by claiming excess depreciation with reference to enhanced cost), the actual cost to the assessee shall be such an amount as determined by the Assessing Officer, with the previous approval of the Joint Commissioner. Consequently, the cost of machinery in the hands of Ganesham would be ₹ 2,50,000, assuming that the fair market value given in the question is the amount determined by the Assessing Officer, with the previous approval of the Joint Commissioner.

(b) The income of a person who is trying to alienate his assets with a view to avoid tax will be dealt with as per the provisions of section 175.

Accordingly, if it appears to the Assessing Officer during any current assessment year that any person is likely to charge, sell, transfer, dispose of or otherwise part with any of his assets with a view to avoiding payment of any liability under the Income-tax Act, 1961, the total income of such person for the period from the expiry of the previous year to the date when the Assessing Officer commences proceedings under this section is chargeable to tax in that assessment year.

The total income of each completed year or part of any previous year included in such period shall be chargeable to tax at the rates in force in that assessment year and separate assessments will be made for each completed previous year or part of any previous year.

The Assessing Officer may estimate the income of such individual for such period or any part thereof, where it cannot be readily determined in the manner provided in the Act.

The tax chargeable under this section shall be in addition to tax, if any, chargeable under any other provision of the Act.

(c) Computation of Net Wealth of Mr. Kumar for the A.Y.2013-14

	Particulars	₹
1.	Value of jewellery purchased in May 2011 out of money remitted to India from Singapore is exempt under section 5(v), since it is purchased within one year immediately preceding the date of his return to India [See Note 1]	Nil
2.	Value of jewellery purchased in July 2011 out of sale proceeds of motor car brought from abroad is also exempt under section 5(v) [See Notes 1 & 2]	Nil
3.	Land purchased for industrial purpose on 01-01-2010 is an asset under section 2(ea), since two years have elapsed from the date of its acquisition [See Note 3]	5,50,000
4.	Land purchased for industrial purpose on 25-03-2013 is not an asset under section 2(ea) [See Note 3]	Nil
5.	Value of assets includible in the net wealth of Mr. Kumar by virtue of section 4(1)(a) [See Note 4]	
	Shares and Securities [Not an asset under section 2(ea)]	Nil
	Residential House Property at Mumbai [Exempt under section 5(vi)]	Nil
6.	Urban land purchased within one year prior to his return out of withdrawals from NRE account is exempt under section 5(v) [See Notes 1 & 5]	Nil
7.	Cash in hand, in excess of ₹ 50,000, is an asset in case of individuals	50,000
8.	Cash at bank [Not an asset under section 2(ea)]	Nil
	Gross Wealth	6,00,000
	Less: Debts incurred in relation to an asset under section 2(ea), namely, loan against land for industrial purpose, purchased on 01.01.2010, is deductible [See Note 6]	2,75,000
	Net Wealth	3,25,000

Notes:

(1) Section 5(v) gives special concession to persons of Indian origin or citizen of India, who, ordinarily residing in a foreign country, return to India with the intention of permanently residing in India. The value of assets acquired one year immediately preceding the date of return to India and at any time thereafter, out of moneys remitted from foreign country is exempt from wealth tax. However, this exemption is available only for a period of seven successive assessment years commencing with the assessment year next following the date on which such person returned to India.

(2) Even if the assessee has converted the assets, which were brought by him from outside India, into money, and if the money has been used for acquisition of other assets, the asset which is acquired with the sale consideration of the original asset is eligible for exemption, so long as the said asset is available with the assessee. It was so held by the Kerala High Court in *CWT v. K.O. Mathews (2003) 261 ITR 702 (Ker)*.

(3) Any unused land held by the assessee for industrial purposes for a period of two years from the date of its acquisition is not an asset under section 2(ea).

Note - It has been assumed that the lands referred to in item no.2 of the question have not yet been put to use for any industrial purpose and, therefore, qualifies as "unused land".

(4) Assets acquired by Mrs. Kumar out of gifts from her husband, Mr. Kumar, shall be included in the computation of Mr. Kumar's net wealth as per the provisions of section 4(1)(a) *[CWT v. Kishan Lal Bubna (1999) 204 ITR 600 (SC)]*. However, only the value of assets specified in section 2(ea) are includible.

In this case, since shares and securities are not assets under section 2(ea), the value of such assets are not includible in the computation of net wealth of Mr. Kumar. Further, though the value of residential house purchased by Mrs. Kumar is includible in the net wealth of Mr. Kumar, he can claim exemption under section 5(vi) in respect of such house.

(5) Money standing to the credit of such person in his Non-resident (External) Account on the date of his return to India shall be deemed to be money brought by him into India on that date.

(6) Since industrial land purchased on 01.01.2010 is included in computation of net wealth of Mr. Kumar, loan incurred in relation to such asset shall be allowed as a deduction. Loan against the purchase of land on 25.3.2013 is not deductible, since such land is not an asset under section 2(ea).

Question 2

(a) 'Sachin' settled 1/4th share of his property under a trust for the education and maintenance of his minor daughter, 'Pallavi'. Under the terms of the trust deed, the income accruing to the trust, after meeting the expenses of maintenance and education

of 'Pallavi', was to be accumulated and paid over to her on attaining majority. The Assessing Officer has assessed the income arising from the 1/4th share of the property so settled for the benefits of 'Pallavi' in the hands of 'Sachin'.

Is the Assessing Officer justified and correct in doing so? *(5 Marks)*

(b) *HSP Ltd., a company operating chain of hotels charges a nominal amount of ₹ 50 in each bill of the resident guests which is specifically earmarked only for the purpose of 'local charities'. This amount of ₹ 50 so collected in each bill is credited to a separate account named "Charity Account". The Assessing Officer doing assessment for A.Y. 2011-12 has issued a show cause notice to tax this amount of charity as income of the company for the relevant assessment year. The company, for objecting the stand of the Assessing Officer, consults you and seeks your opinion.* *(5 Marks)*

(c) *"Nargis", a resident of India, owned for the financial year ended on 31-03-2013, a house property in London purchased in July, 2002; a shop in Sydney purchased in June, 2004 and space in a commercial complex in New York purchased in April, 2010. She is also having authority to operate the bank account (maintained with Citibank, London) of a company owned by her daughter and son-in-law since July, 2011.*

She has been served in July, 2013 with the notices issued under section 148 of the Act for assessment years 2001-02 to 2012-13. She, for the reason of challenging the action of the Assessing Officer for issuing notices under section 148 for last 12 years, seeks you opinion. Advise her suitably. *(6 Marks)*

Answer

(a) As per section 64(1A) of the Income-tax Act, 1961, the income of a minor child should be included in the total income of that parent, whose total income before such inclusion is higher.

The Supreme Court, in *CIT v. M.R.Doshi (1995) 211 ITR 1 (SC)*, held that where the income from the trust was to be accumulated until the child attained majority, the clubbing provisions would not get attracted, since no benefit accrues to the minor child during the period when such child is a minor.

However, in this case, the minor daughter Pallavi is eligible for the benefits during the period when she is a minor, since income from the trust is being used for meeting her education and maintenance expenses. Only the remaining income is to be accumulated and paid over to her on her attaining majority. Therefore, since benefit under the terms of the trust deed is accruing, even though to a limited extent to the minor, the clubbing provisions under section 64(1A) will get attracted.

Therefore, the stand taken by the Assessing Officer to include the income in the hands of Sachin is correct, though only so much of income as is used for meeting the education and maintenance expenses of Pallavi during the current year is includible in the hands of Sachin.

Further, the income liable for clubbing shall be after providing for an exemption of ₹ 1,500 under section 10(32) assuming that Sachin's total income is greater than his spouse's total income.

(b) The issue under consideration in this case is whether the amount specifically earmarked for the purpose of "local charities" can be included in the total income of HSP Ltd.

The facts of the case given in the question are similar to the facts in *CIT v. Bijli Cotton Mills (P.) Ltd. (1979) 116 ITR 060,* which came up before the Supreme Court. The issue under consideration in that case was whether "Dharmada" collected from customers would form part of trading receipts. As per the Supreme Court ruling, since right from the inception, the amounts were impressed with an obligation in the nature of trust to be spent for charitable purposes only, these amounts were not its trading receipts

In the case on hand, the guests paid the amount of ₹ 50 to the hotel separately for "Charities". The said amount paid by resident guests was in addition to the price / cost of the hotel room. Further, the amount of ₹ 50 so collected in each bill was credited to a separate account named "Charity Account". Applying the rationale of the Supreme Court ruling in *Bijli Cotton Mills* case, the levy was clearly a payment collected for a specific purpose i.e., for 'local charities', and so the payments were validly earmarked for charity. Therefore, such amount credited to a separate "Charity" account would not form part of the price / cost of the hotel room. Accordingly, the action of the Assessing Officer in issuing show cause notice to tax the amount of charity as income of the company is not correct.

The company is advised to file a reply on the above lines before the Assessing Officer claiming that the intent of the show cause notice to tax the amount of charity as income of the company is not correct.

Note – Where by an obligation, income is diverted before it reaches the assessee, it is not taxable in the hands of the assessee, since he is not actually entitled to it. However, an essential condition for non-taxability of income on the basis of the concept of "diversion of income" is the existence of a legal compulsion or contractual obligation or otherwise to do so.

In this case, there appears to be no legal compulsion or contractual obligation or otherwise, requiring the assessee to earmark the amount of ₹ 50 collected in each bill to a separate account called "Charity account".

Therefore, it is possible to take a view that in the absence of any such legal compulsion or contractual obligation or otherwise, the crediting of the amount of ₹ 50 in each bill to a separate account is not diversion of income, but application of income by HSP Ltd. Consequently, if this view is taken, the action of the Assessing Officer in bringing to tax the amount of charity as income of the company would be in order.

(c) Income chargeable to tax shall be deemed to have escaped assessment for the purpose of section 147, where a person, being a resident other than not ordinarily resident in India, is found to have any asset located outside India. Accordingly, the Assessing

Officer can serve a notice under section 148 on such assessee requiring him to furnish a return of income within the specified period, for the purpose of making an assessment, reassessment or recomputation under section 147.

Under section 149, an extended time limit of sixteen years is available for issue of notice under section 148 for an assessment or reassessment, in case income in relation to such assets located outside India has escaped assessment.

As per *Explanation* to section 149, the above provisions, so amended by the Finance Act, 2012, would also apply to any assessment year prior to A.Y.2013-14.

In this case, income chargeable to tax shall be deemed to have escaped assessment for the purpose of section 147, since Nargis has assets located outside India.

Therefore, on this basis, the Assessing Officer formed a belief that the income has escaped assessment and consequently, issued notice under section 148 for 12 assessment years i.e. from A.Y.2001-02 to A.Y.2012-13.

Hence, the Assessing Officer is justified in invoking reassessment provisions in respect of the earlier assessment years also. However, the extended time limit of 16 years for invoking reassessment proceedings would be available only in respect of A.Y.2003-04 and thereafter, since Nargis first purchased an asset outside India only in July 2002.

Accordingly, in view of the above provisions, the action of the Assessing Officer in issuing notices to Nargis under section 148 for the ten assessment years i.e., from A.Y. 2003-04 to A.Y. 2012-13 is in order. However, he cannot issue notice under section 148 for A.Y. 2001-02 and A.Y.2002-03, since the time limit of 4 years or 6 years, as the case may be, has since elapsed.

Question 3

(a) *Examine the following statements in the context of provisions contained in the Act relevant for the previous year ended on 31.03.2013:*

(i) The additions to income made by invoking provisions of section 68 are subject to normal rates of tax as applicable to the assessee.

(ii) Income received by certain foreign companies in Indian currency from sale of crude oil to any person in India is not taxable.

(iii) The provisions of AMT are applicable to all assesses other than the companies.

(6 Marks)

(b) *Examine the correctness or otherwise of the following statements in the context of provisions contained in the Income-tax Act, 1961 and the decided case laws:*

(i) The Assessing Officer is bound to allow the set-off of losses under section 72 even if the assessee has not claimed the same in the return filed.

(ii) The application once made for obtaining the advance ruling cannot be withdrawn.

(6 Marks)

(c) Examine and explain in the context of provisions contained in the Act as to correctness of the action taken by the Assessing Officer for making adjustments of the following items while assessing the book profits of "Sonu Pvt. Ltd." for the year ended 31.03.2013 :

(i) Prior period expenses of ₹ 3 lacs debited in profit and loss account.

(ii) Depreciation @ 9.5%, as per rates prescribed under Schedule XIV of the Companies Act, 1956, on the car valuing ₹ 20 lacs purchased on 01-01-2013, charged for whole of the year in the profit & loss account. (4 Marks)

Answer

(a) (i) The statement is incorrect.

Section 115BBE, inserted by the Finance Act, 2012, brings to tax, *inter alia*, sums credited in the books of the assessee, which are deemed as income under section 68, at the maximum marginal rate of 30% (*plus* surcharge and cesses, as applicable).

Further, no basic exemption or allowance or expenditure shall be allowed to the assessee under any provision of the Income-tax Act, 1961 in computing such deemed income.

(ii) The statement is correct.

Clause (48) has been inserted in section 10 to provide for exemption of income received by certain foreign companies in Indian currency from sale of crude oil to any person in India, subject to fulfillment of the following conditions –

(i) The money has been received under an agreement or arrangement which is either entered into or approved by the Central Government.

(ii) The foreign company, as well as the arrangement or agreement, are notified by the Central Government having regard to the national interest.

(iii) The foreign company is not engaged in any other activity in India, except receipt of income under such arrangement or agreement.

(iii) The statement is correct / incorrect [See Note given below].

The provisions of AMT are applicable to all persons claiming profit linked deductions (i.e., deductions under any section (other than section 80P) in Chapter VIA under the heading “C – Deductions in respect of certain incomes” or section 10AA), other than companies w.e.f. A.Y.2013-14.

The provisions of AMT would, however, be applicable to an individual, HUF, AOP, BOI, whether incorporated or not, or artificial juridical person only if the adjusted total income of such person exceeds ₹ 20 lakh.

Note – The statement can be viewed as correct since AMT applies to all assessees, other than companies. It can be viewed as incorrect since AMT is not applicable to all assessees per se*, but only to those assessees claiming profit linked deductions.*

(b) (i) The statement is correct.

The Supreme Court has, in *CIT v. Mahalakshmi Sugar Mills Co. Ltd. (1986) 160 ITR 920,* held that it is the duty of the Assessing Officer to apply the relevant provisions of the Act for the purpose of determining the true figure of the assessee's total income and consequential tax liability. Merely because the assessee has not claimed the set-off in the return filed, it cannot relieve the Assessing Officer of his duty to apply section 72 in the appropriate case.

As per *CBDT Circular No.14 (XL-35) of 1955 dated 11.04.1955*, it is the duty of the Assessing Officer to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard, they should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him.

Therefore, on the basis of the above Supreme Court ruling and the CBDT Circular, the Assessing Officer is bound to allow the set-off of losses under section 72, even if the assessee has not claimed the same in the return filed, provided the loss was determined in pursuance of a return filed under section 139(3) in any earlier previous year.

Moreover, the wording used in section 72 is "shall", indicating that the provisions relating to set off of carry forward loss are mandatory.

Therefore, the Assessing Officer is bound to allow the claim of set off even if the assessee has not claimed the same in the return filed.

(ii) The statement is incorrect.

As per section 245Q(3), an applicant may withdraw an application within thirty days from the date of application.

The Authority for Advance Rulings (AAR), in *M.K.Jain AAR No.644 of 2004*, has observed that though section 245Q(3) provides that an application may be withdrawn by the applicant within 30 days from the date of the application, this, however, does not preclude the AAR from permitting withdrawal of the application after the said period with the permission of the AAR, if the circumstances of the case so justify.

(c) The Assessing Officer's power is restricted to examining whether the books of account are certified by the authorities under the Companies Act, 1956 as having been properly maintained in accordance with the Companies Act, 1956. Thereafter, he only has the limited power of making additions and deductions as provided for in *Explanation 1* below section 115JB.

The Assessing Officer does not have the jurisdiction to go behind the net profit shown in the audited profit and loss account except to the extent provided in *Explanation 1* below section 115JB. It was so held by the Apex Court in *Apollo Tyres Ltd. v. CIT (2002) 255 ITR 273.*

(i) The action of the Assessing Officer is incorrect

No adjustment is required for prior period expenses which have to be shown separately in the profit and loss account as per AS 5 in view of the specific requirement under section 115JB(2) read with section 211 of the Companies Act, 1956 [*CIT v. Khaitan Chemicals & Fertilizers Ltd (2008) 307 ITR 150 (Del)]*. Further, prior period expense is not an item which can be adjusted in terms of any of the clauses covered in *Explanation 1* below section 115JB.

(ii) The action of the Assessing Officer is correct

As per Schedule XIV to the Companies Act, 1956, depreciation has to be provided on *pro rata* basis in respect of additions made to any asset during the year. Accordingly, depreciation has to be calculated only for 90 days at the rate prescribed in Schedule XIV in respect of car purchased on 1.1.2013. Since depreciation for the whole year has been debited to profit and loss account, the excess depreciation has to be added back, since the same is not in accordance with the requirements of Schedule XIV to the Companies Act, 1956.

Question 4

Examine critically any **four** *out of the following problems/issues/cases in the context of provisions contained in the Act relevant for assessment year 2013-14. Support the answer with the case laws.*

(i) A company received liquidated damages of ₹ 25 lacs from the suppliers of plant & machinery for failure to supply the plant and machinery within the stipulated time. The Assessing Officer treated the same as income chargeable to tax as against the claim of the company treating the same as capital receipt.

(ii) The information and details given in the return, relating to a claim made, is not incorrect but the claim so made has been found to be wrong and not allowable by the Assessing Officer and therefore added to income assessed for the relevant assessment year. The Assessing Officer for the reason of incorrect claim made in the return, which was disallowed during the assessment by adding to income, invoked the provisions of section 271(1)(c). Is the Assessing Officer correct in doing so?

(iii) "Shanaz Ltd" engaged in manufacturing of different products was asked by the Central Excise Department to pay an amount of ₹ 25,00,000/- on certain goods manufactured by it, which was deposited during the year 2002-2003 and was claimed as deduction in the return of income filed for that assessment year. This levy of the excise duty was challenged in the High Court, and the Court in June, 2012 held "that the same is not payable by the company". The Excise Department filed appeal challenging the order of the High Court before the Supreme Court. The Assessing Officer issued a show cause on the basis of the decision of the High Court to tax the benefit derived by the company in A.Y. 2013-14.

(iv) Interest under sections 234B and 234C is not be levied where the assessment of a company has been made by the Assessing Officer on the basis of book profits under section 115JB. What do you say?

(v) The proprietary firm of "Mr. Amolak" a practicing Chartered Accountant, was converted into partnership on 01.09.2012 when his son joined him in the firm for 50% share. All the assets and liabilities of the erstwhile proprietary firm were transferred into the newly constituted partnership firm.

"Mr. Amolak" was credited and paid an amount of ₹ 5 lacs in his account from the firm. Explain as to chargeability of this amount of ₹ 5 lacs in the hands of "Mr. Amolak" when it stands paid for:

(i) transfer of business into partnership;

(ii) goodwill by the incoming partner. *(4 x 4 = 16 Marks)*

Answer

(i) The issue under consideration is whether the amount of ₹ 25 lacs received by the company as liquidated damages from the suppliers of plant & machinery for failure to supply the plant and machinery within the stipulated time has to be treated as a capital receipt or a revenue receipt.

On this issue, the Supreme Court, in *CIT v. Saurashtra Cement Ltd (2010) 325 ITR 4*, affirmed the decision of the High Court holding that the damages were directly and intimately linked with the procurement of a capital asset, which led to delay in coming into existence of the profit-making apparatus. It was not a receipt in the course of profit-making process. Therefore, the amount received by the assessee towards compensation for sterilization of the profit earning source, not in the ordinary course of business, is a capital receipt in the hands of the assessee.

Applying the rationale of the above ruling to the case on hand, the action of the Assessing Officer treating the liquidated damages as income chargeable to tax, is not correct.

(ii) The issue under consideration is whether penal provisions under section 271(1)(c) would be attracted on the ground that the claim made in the return has been found to be wrong, although the information and details given in the return were correct.

The Supreme Court, in *CIT v. Reliance Petroproducts (P) Ltd (2010) 322 ITR 158*, held that the provisions of section 271(1)(c) would be attracted where there has been a concealment of the particulars of income or furnishing of inaccurate particulars of such income.

There is no concealment of income in the case given in the question. Further, it is also not a case of furnishing of inaccurate particulars since no information/detail given in the return was found to be incorrect or inaccurate. Mere making of an incorrect claim (i.e., a claim which has been disallowed), which is not sustainable in law, would not, by itself, tantamount to furnishing inaccurate particulars.

Where there is no finding that any information or detail supplied by assessee in its return were incorrect or false, there is no question of imposing penalty under section 271(1)(c).

Thus, the Assessing Officer is not correct in applying penal provisions under section 271(1)(c).

(iii) The Supreme Court, in *Polyflex India (P) Ltd v CIT (2002) 257 ITR 343,* held that where a statutory levy in respect of goods dealt with by the assessee is discharged and a deduction is allowed therefor, and subsequently, the amount paid is refunded, the first part of section 41(1)(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 reason 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 a relevant consideration.

The taxability under section 41(1), would, however, arise only if the assessee has obtained refund pursuant to the decision of the Court. In this case, since the question does not mention that the refund has been obtained by the company, the deeming provisions of section 41(1) would not be attracted merely due to the reason that the High Court held that excise duty is not payable by the company *[Union of India v. J.K.Synthetics Ltd (1993) 199 ITR 14 (SC)].*

Note – *If, however, the assessee claims and receives refund of the excise duty, the deeming provision in section 41(1) comes into play and it is not necessary that the Revenue should await the verdict of the higher Court. If the higher Court upholds the levy at a later date, the assessee has the remedy to get back the relief.*

Therefore, if the excise duty has been refunded to the assessee pursuant to the decision of the High Court, the same would be subject to tax by virtue of section 41(1) and it is not necessary that the Revenue should await the verdict of the Supreme Court.

(iv) The issue under consideration is whether interest under sections 234B and 234C of the Income-tax Act, 1961 can be levied where a company is assessed on the basis of book profits under section 115JB.

The Supreme Court, in *Joint CIT v. Rolta India Ltd. (2011) 330 ITR 470,* observed that there is a specific provision in section 115JB(5) providing that all other provisions of the Income-tax Act, 1961 shall apply to every assessee, being a company, mentioned in that section.

Section 115JB is a self-contained code pertaining to MAT, and by virtue of sub-section (5) thereof, all other provisions of the Act shall apply to every assessee being a company and hence the liability for payment of advance tax would be attracted.

According to section 207, advance tax shall be payable during any financial year, in accordance with the provisions of sections 208 to 219, in respect of the total income of the assessee which would be chargeable to tax for the assessment year immediately following that financial year.

Under section 115JB(1), where the tax payable on total income is less than 18.5% of "book profit" of a company, the "book profit" would be deemed to be the total income and tax would be payable at the rate of 18.5%.

Since in such cases, the "book profit" is deemed to be the total income, therefore, as per the provisions of section 207, tax shall be payable in advance in respect of such book profit (which is deemed to be the total income) also.

Therefore, interest under sections 234B and 234C would be attracted for failure on the part of the company to pay advance tax on the basis of tax on book profits under section 115JB.

(v) (i) If the amount was paid for transfer of business / profession to partnership

Where a proprietary business is converted into a partnership, the exclusive interest of the proprietor is reduced and the business assets become assets of the firm in which other partner(s) get an interest. Consequently, there is a transfer of interest.

Further, section 47 which lists the transactions not regarded as "transfer" for levy of capital gains tax, does not include within its scope, transfer of capital assets consequent to succession of a sole proprietary concern by a partnership firm. Therefore, the transfer of capital assets by a sole proprietary concern consequent to its conversion into a partnership firm constitutes a transfer.

Since consideration of ₹ 5 lacs is received for such transfer, profit or gain accrues to the transferor for the purposes of section 45. As per section 45(3), the amount of ₹ 5 lacs, recorded in the books of account of the firm, would be the full value of consideration received as a result of transfer and the capital gains resulting from this transfer would be chargeable to tax.

(ii) If the amount is paid by the incoming partner for Goodwill

The Supreme Court, in *CIT v. B.C. Srinivasa Setty (1981) 128 ITR 294*, observed that the income chargeable to capital gains tax is to be computed by deducting from the full value of consideration "the cost of acquisition of the capital asset". If it is not possible to ascertain the cost of acquisition, then, transfer of such asset is not chargeable to tax.

Section 55(2)(a) provides that the cost of acquisition of certain self-generated assets, including goodwill of a business, is Nil. Therefore, in respect of these self-generated assets covered under section 55(2)(a), the decision of the Supreme Court in *B.C. Srinivasa Setty's* case would not apply. However, in respect of other self-generated assets, including goodwill of profession, the decision of the Supreme Court in *B.C. Srinivasa Setty's case,* would continue to be applicable.

In effect, in case of self-generated assets not covered under section 55(2)(a), since the cost is not ascertainable, there would be no capital gains tax liability.

Therefore, in this case, since the consideration of ₹ 5 lakhs is paid towards goodwill of a profession, whose cost is NOT to be taken as 'Nil' since it is not covered under section 55(2)(a), the liability to capital gains tax will not arise.

Question 5

(a) The net profit of ₹ 200 lacs as per P & L Account of "SIMRAN ENTERPRISES", a partnership firm engaged in running hotel business, for the year ended 31-3-2013 has been arrived at after charge of the following:

(i) Depreciation on the hotel building having WDV of ₹ 600 lacs on 1-4-2012 was charged by treating the same as Plant and Machinery.

(ii) Expenses of ₹ 2,00,000 incurred for the purpose of promoting family planning among its employees.

(iii) Payment of ₹ 1,00,000 for an advertisement published in the souvenir released on 26th January by a political party approved by the Election Commission.

(iv) Compensation of ₹ 2,00,000 paid to the suppliers of automatic kitchen appliances because of termination of the contract.

(v) Wine and liquor imported in the year 2010-11 for ₹ 30 lacs and available in the stocks on 1-4-2012, having value of ₹ 10 lacs, were confiscated by the government authority and thus, were written off.

(vi) Expenses of ₹ 30 lacs incurred on the replacement of carpets in the lounge, dinning hall and at the reception desk areas.

The firm has also provided the following additional information and the details relating to the expenses charged in the P & L Account:

(i) Amount of ₹ 4 lacs equal to US $ 8,000 was remitted and paid to a travel agent of USA as commission for the booking of travellers from USA. Tax at source was not deducted out of such payment.

(ii) Amount of ₹ 30,000 each was paid in cash to four suppliers of vegetable and milk products on 11-7-2012 due to suspension of the banking operations because of all India strike of bank employees.

(iii) *Amount of ₹ 6 lacs was written off in the F.Y. 2010-11 as bad debt. However, with constant follow up and efforts, an amount of ₹ 3 lacs was recovered on 18-3-2013 out of the total written off amount, and the same was credited to the "Bad Debts Reserve" account.*

Compute the total income of the firm for A.Y. 2013-14 and also give reasons in brief for the treatment given to each of the items. *(12 Marks)*

(b) *"SVS Propcon" did not make a claim of ₹ 20 lacs in the return of income filed for A.Y. 2012-13 which was disallowed in the previous assessment year under section 43B. However, the said claim was also not considered by the Assessing Officer during assessment proceedings on the ground that no revised return was filed. Can the assessee now make such claim before the appellate authority?* *(4 Marks)*

Answer

(a) Computation of total income of M/s. SIMRAN ENTERPRISES for the A.Y.2013-14

Particulars	₹	₹
Income from business and profession		
Net profit as per profit and loss account		2,00,00,000
Add: Items charged in profit and loss account which are not allowable		
Excess depreciation on building @ 5%(i.e., 15% - 10%) on ₹ 600 lacs [See Note 1]	30,00,000	
Expenses on promoting family planning amongst the employees [See Note 2]	2,00,000	
Advertisement in souvenir of a political party [See Note 3]	1,00,000	
Compensation paid to a supplier of kitchen appliances [See Note 4]	2,00,000	35,00,000
		2,35,00,000
Add: Recovery of bad debts credited in reserve but chargeable under section 41(4) [See Note 9]		3,00,000
Total Income		2,38,00,000

Notes:-

(1) Hotel building does not constitute plant and therefore, depreciation chargeable thereon is 10%. However, depreciation has been charged in the profit and loss account at the rate applicable to plant and machinery i.e., @ 15%. Accordingly, the excess depreciation charged in the profit and loss account @ 5% (15%-10%) has to be added back.

(2) Expenses on promoting family planning amongst employees is allowable under section 36(1)(ix) only to a company assessee. In this case, since the assessee is a firm, such expenses are not allowable and therefore, the same has to be added back.

(3) Advertisement of any nature given in a magazine / souvenir published by a political party is not allowable as per section 37(2B).

(4) Compensation paid for breach of a contract for supply of a capital asset is in the nature of capital expenditure. Hence, the same has to be disallowed and added back *[Swadeshi Cotton Mills Co. Ltd v. CIT (1967) 63 ITR 65 (SC)]*.

(5) Loss of stock-in-trade has to be considered as a trading loss. *Explanation* to section 37(1) is not relevant here since it is not a case of business expenditure but one of business loss. Business loss is allowable on ordinary commercial principles *[Dr. T.A. Quereshi v. CIT (2006) 287 ITR 547 (SC)].*

Therefore, since wine and liquor formed part of stock-in-trade of the firm, confiscation of the same has to be allowed as a business loss. Since the same has been charged to profit and loss account, no further adjustment is required.

(6) The expenditure incurred on replacement of carpets by a hotel is an expenditure incurred for the purposes of business and is hence, a revenue expenditure allowable as deduction under section 37(1). Since the same has already been debited to profit and loss account, no further adjustment is required.

(7) The payment of commission to a non-resident outside India without deduction of tax at source is an allowable expense notwithstanding the withdrawal of *CBDT Circular No.786 dated 07.02.2000 by Circular No.7 of 2009 dated 22.10.2009*, as there is no income accruing or arising to the non-resident in India and the commission was remitted and paid to him outside India in foreign currency. Therefore, disallowance under section 40(a)(i) would not be attracted, even though tax has not been deducted at source.

(8) The cash payments totaling ₹ 1,20,000 made on the day when bank employees were on strike is an exception under Rule 6DD(j). Therefore, disallowance under section 40A(3) is not attracted.

(9) The recovery of a debt, which was earlier written off and allowed as deduction under section 36(1)(vii), is chargeable to tax under section 41(4) in the year of such recovery. Accordingly, such amount has to be added to income despite the fact that the same was credited by the firm in a reserve account.

(b) Yes, the assessee is entitled to raise additional claims before the appellate authorities.

The restriction that an additional claim has to be made by filing a revised return applies only in respect of a claims made before the Assessing Officer. An assessee cannot make a claim before the Assessing Officer otherwise than by filing a revised return. It was so held by the Supreme Court in *Goetze (India) Ltd v. CIT (2006) 157 Taxman 1.*

However, this restriction does not apply to an additional claim made before an appellate authority. The appellate authorities have jurisdiction to permit additional claims before them, though, the exercise of such jurisdiction is entirely the authorities' discretion. It was so held by the Bombay High Court in *CIT v. Pruthvi Brokers & Shareholders (2012) 208 Taxman 498.*

Thus, an additional claim can be raised before the Appellate Authority even if no revised return is filed.

Question 6

(a) *"The penal provisions have been made more and more stringent for levy of penalty on undisclosed income found during the course of search initiated on or after 1st July, 2012." Explain.* *(5 Marks)*

(b) *The assessment for assessment year 2010-11 of XYZ Pvt. Ltd. was completed under section 143(3) by making additions and thus creating a demand. The company filed an appeal against this order before the CIT(A) and was allowed relief. However, this order of CIT(A) was challenged by the department and was reversed by the ITAT. In this context, explain the liability of the company as to payment of interest charged by the Assessing Officer from the date of order of CIT(A) till the date of order by the ITAT under section 220(2) in the following conditions:*

  (i) *The tax demanded as per order was paid in full within the time allowed as per notice issued under section 156.*

  (ii) *The tax demanded as per order was not paid.* *(4 Marks)*

(c) *Peeyush, a Non-Resident Indian returned to India on 12th June, 2012 for permanently residing in India after a stay of about 20 years in U.K., provides the sources of his various income and seeks your opinion to know about his liability to income tax thereon in India in assessment year 2013-14 :*

  (i) *Income of rent of the flat in London which was deposited in a bank there. The flat was given on rent by him after his return to India since July, 2012.*

  (ii) *Dividends on the shares of three German Companies which are being collected in a bank account in London. He proposes to keep the dividend on shares in London with the permission of the Reserve Bank of India.*

  (iii) *He has got two sons, one of whom is of 12 years. Both his sons are staying in London and not returning to India with him. Each of his sons is having income of ₹75,000 in U.K. (not received in India) and of ₹20,000 in India.*

(iv) *During the preceding accounting year when he was a non-resident, he had sold 1000 shares which were acquired by him in British Pound Sterling and the sale proceeds were repatriated. The profit in terms of British Pound Sterling on sale of these 1000 shares was 175% of the cost at ₹37,500 while in terms of Indian Rupee it was ₹50,000.* *(7 Marks)*

Answer

(a) In order to deter the practice of concealment of income, the penal provisions have been made more stringent by insertion of section 271AAB by the Finance Act 2012, which provides for levy of penalty on undisclosed income found during the course of a search, which has been initiated on or after 1st July, 2012, which relates to specified previous year, i.e.-

- the previous year which has ended before the date of search, but the due date of filing return of income for the same has not expired before the date of search and the return has not yet been furnished;
- the previous year in which search is conducted.

Accordingly, under section 271AAB,

- penalty@10% would be attracted, if undisclosed income is admitted during the course of search in the statement furnished under section 132(4), and the assessee explains the manner in which such income was derived, pays the tax, together with interest if any, in respect of the undisclosed income, on or before the specified date (i.e., the due date of filing return of income or the date on which the period specified in the notice issued under section 153A expires, as the case may be) and furnishes the return of income for the specified previous year declaring such undisclosed income.
- If undisclosed income relating to the specified previous year is not admitted during the course of search in the statement furnished under section 132(4) but the same is disclosed in the return of income filed after the date of search and the tax along with the interest, if any, is paid before the specified date, then, the taxpayer will be liable for penalty@20% of undisclosed income.
- In all other cases, penalty ranging from 30% to 90% of undisclosed income would be attracted.

(b) (i) Where the tax demanded as per order was paid in full within the time allowed as per notice issued under section 156

Interest under section 220(2) would be attracted if there is a notice of demand under section 156 and there is a default in paying the amount so demanded within the time stipulated in the notice.

In this case, the company has paid the tax demanded as per the order in full within the time allowed as per the notice issued under section 156. Therefore, the company is not liable to pay interest under section 220(2) for the period from the date of order of CIT(A) to the date of order of ITAT.

This view finds support in the Supreme Court ruling in *Vikrant Tyres Ltd v. First ITO (2001) 247 ITR 821.*

(ii) Where tax demanded as per the order was not paid

Where the assessment made originally by the Assessing Officer is either varied or even set aside by one appellate authority but on further appeal, the original order of the Assessing Officer is restored either in part or wholly, the interest payable under section 220(2) will be computed with reference to the due date reckoned from the original demand notice. The fact that during an intervening period, there was no tax payable by the assessee under any operative order would make no difference to this position *[Girnar Investment Ltd v. CIT (2012) 340 ITR 529 (Del)].*

Therefore, if the company has not paid the tax demanded as per the order within 30 days of service of the notice of demand under section 156, it shall be liable to pay simple interest @ 1% for every month or part of the month comprised in the period commencing from the day immediately following the expiry of the period specified in the original notice of demand till the taxes are paid in full.

(c) Peeyush returned to India on 12th June 2012 for permanently residing in India after staying in UK for 20 years. During the P.Y.2012-13, he stays in India for 293 days. Since he has stayed in India for a period of 182 days or more during the previous year 2012-13, he would be a resident in India for the A.Y.2013-14. However, he would be a resident but not ordinarily resident, assuming that he was a non-resident in nine out of ten previous years preceding P.Y.2012-13/ his stay in India during the seven previous years is less than 730 days. The residential status of Peeyush for A.Y.2013-14 is, therefore, Resident but Not Ordinarily Resident.

As per section 5(1), only income which is received/deemed to be received/accrued or arisen/deemed to accrue or arise in India is taxable in case of a Resident but not Ordinarily Resident. Income which accrues or arises outside India shall not be included in his total income, unless it is derived from a business controlled in, or a profession set up in, India.

(i) Rental income from a flat in London which was deposited in a bank there shall not be taxable in the case of a resident but not ordinarily resident, since both the accrual and receipt of income are outside India.

(ii) Dividends from shares of three German Companies, collected in a bank account in London, would also not be taxable in the case of a resident but not ordinarily resident since both the accrual and receipt of income are outside India.

(iii) As per section 64(1A), all income accruing or arising to a minor child is includible in the hands of the parent, after providing for deduction of ₹ 1,500 per child under section 10(32).

Accordingly, income of ₹ 20,000 accruing to his minor son, aged 12 years, in India is includible in the income of Peeyush, after providing deduction of ₹ 1,500. Therefore, ₹ 18,500 is includible in the income of Peeyush. Income accruing to the minor child outside India (which is also received outside India) is not includible in the income of Peeyush.

It is assumed that his other son is a major son and hence, his income is not includible in the income of Peeyush.

(iv). Repatriation of sale proceeds of 1000 shares sold in the preceding accounting year, when Peeyush was a non-resident, is not taxable in the A.Y.2013-14 since it is not the income of the P.Y.2012-13.

Consequently, only the income includible under section 64(1A) would form part of the total income of Mr. Peeyush for A.Y.2013-14. Since his total income (i.e., ₹ 18,500) is less than the basic exemption limit, there would be no liability to income-tax for A.Y.2013-14.

Question 7

(a) *Explain in the context of provisions contained in Chapter XVII of the Act and also work out the amount of tax to be deducted by the payer of income in the following cases:*

(i) Payment of ₹ 5 lacs made by JCP & Co. to Pingu Events Co. Ltd. for organization of a debate competition on the subject "Preservation of Rural Heritage of Rajasthan".

(ii) "Profit Commission" of ₹ 1 lac paid by a re-insurance company to the insurer company after the expiry of the term of insurance where there was no claim during the treaty.

(iii) KD, a part time director of DAF Pvt. Ltd. was paid an amount of ₹ 2,25,000 as fees which was actually in the nature of commission on sales for the period 01-04-2013 to 30-06-2013. *(6 Marks)*

(b) *Explain in brief, the treatment as to their taxability and/or allowability, under the provisions of the Income-tax Act, 1961, for the assessment year 2013-14, in the following cases:*

(i) Prem Ltd. decided to effect buy-back of share capital by purchase of shares in open market. During the year ended 31.03.2013, Prem Ltd. purchased its own 10,000 shares.

(ii) S Ltd. receives a sum of ₹ 10 lakhs from K Ltd. on 3rd January, 2013 for agreeing not to carry on any business relating to computer software in India for the next three years.

(iii) A company had an inventory of closing stock on 31.03.2013, the cost of manufacturing of which was ₹ 50 lakhs and the Excise duty payable was ₹ 6 lakhs.

Since the Excise duty was eligible for deduction only on actual payment, the company valued the closing stock at ₹ 50 lakhs only. The company paid duty amounting to ₹ 4 lakhs on such stock on clearances upto the date of filing the return.

(iv) *P Ltd. paid ₹ 50 lakhs as sales commission for the year ended 31.03.2013, without deducting tax at source, to Mr. Rodrigues (non-resident) who acted as his agent for booking orders from various customers who are outside India.*

(v) *Can the following transactions be covered under section 43B for disallowance?*

(a) *A bank guarantee given by a company towards disputed tax liabilities.*

(b) *Interest payable to Sales Tax Department but not paid before filing of return.*

(2 x 5 = 10 Marks)

Answer

(a) (i) The services of Event Managers in relation to sports activities alone have been notified by the CBDT as "professional services" for the purpose of section 194J. In this case, payment of ₹ 5 lacs has been made to an event management company for organization of a debate competition. Hence, the TDS provisions under section 194J would not be attracted in this case.

However, TDS provisions under section 194C relating to payment to contractors would be attracted and consequently, tax has to be deducted @ 2% under section 194C. The tax deductible under section 194C would be ₹ 10,000, being 2% of ₹ 5 lacs.

(ii) Section 194D requires deduction of tax at source@10% from insurance commission.

Reinsurance, however, differs from insurance since there is no direct contractual relationship between the person insured and the reinsurer.

In order to attract section 194D, the commission or any other payment covered under the section should be a remuneration or reward for soliciting or procuring the insurance business; the insurance companies do not procure business for the reinsurance company nor does the reinsurer pay commission or other payment for soliciting the business from the insurance companies; therefore, section 194D has no application.

Hence, when profit commission is paid by a reinsurance company to an insurance company, after the expiry of the term of insurance, in respect of such cases where there is no claim during the operation of the reinsurance treaty, TDS under section 194D is not attracted.

(iii) Section 194J provides for deduction of tax at source @10% on any remuneration or fees or commission, by whatever name called, paid to a director, which is not in the nature of salary on which tax is deductible at source under section 192.

Hence, tax is to be deducted at source under section 194J @10% by DAF Pvt. Ltd. on the commission of ₹ 2,25,000 paid to KD, a part-time director. The tax deductible under section 194J would be ₹ 22,500, being 10% of ₹ 2,25,000

(b) (i) There is no tax liability in the hands of Prem Ltd. as the payment is on capital account. Also, any payment made by a company on purchase of its own shares in accordance with section 77A of the Companies Act, 1956 will not constitute dividend under section 2(22). Hence, there is no liability on the part of Prem Ltd. to pay dividend distribution tax, assuming that the purchase of shares is in accordance with section 77A of the Companies Act, 1956.

However, capital gains tax liability would be attracted in the hands of the shareholders under section 46A and the difference between the value of consideration received by the shareholders and the cost of acquisition shall be deemed to be the capital gains arising to the shareholders in the year of purchase of shares by the company.

(ii) As per section 28, any sum received under an agreement for not carrying out any activity in relation to any business (i.e., non-compete fee) is chargeable to income-tax under the head "Profits and gains of business or profession".

Accordingly, ₹ 10 lakhs received by S Ltd. from K Ltd. for agreeing not to carry on any business relating to computer software in India for the next three years is chargeable to income-tax under the head "Profits and gains of business or profession".

(iii) Excise duty liability arises at the time of manufacture of goods and therefore, the same has to be included in the value of closing stock as per section 145A. Therefore, the closing stock has to be valued at ₹ 56 lakhs (i.e., including excise duty payable of ₹ 6 lakhs).

As per section 43B, deduction can be claimed for ₹ 4 lakhs, being excise duty paid on or before the due date of filing the return.

(iv) A foreign agent of an Indian exporter operates in his own country and no part of his income accrues or arises in India. His commission is usually remitted directly to him and is, therefore, not received by him or on his behalf in India. The commission paid to the non-resident agent for services rendered outside India is, thus, not chargeable to tax in India.

Since commission income for booking orders by non-resident who remains outside India is not subject to tax in India, consequently, disallowance under section 40(a)(i) is not attracted in respect of payment of commission to such non-resident outside India even though tax has not been deducted at source. If the amount of ₹ 50 lakhs was remitted to Mr. Rodrigues outside India in foreign currency, then disallowance under section 40(a)(i) would not be attracted for non-deduction of tax at source.

However, since the question states that P Ltd. paid ₹ 50 lakhs as sales commission, it is possible to infer that the payment is made in India (as it is made in Indian currency), in which case, the income would be taxable in the hands of the non-resident. Consequently, disallowance under section 40(a)(i) for non-deduction of tax at source would be attracted.

(v) (a) For claiming deduction of any expense listed under section 43B, the requirement stipulated in that section is the actual payment and not deemed payment. Furnishing of bank guarantee cannot be equated with actual payment. Actual payment requires that money must flow from the assessee to the public exchequer as such as specified in section 43B. Therefore, deduction of an expense covered under section 43B cannot be claimed by merely furnishing a bank guarantee *[CIT v. McDowell & Co Ltd (2009) 314 ITR 167 (SC)]*

(b) The amount of interest payable is part of the sales tax and, therefore, the provisions of section 43B are attracted in respect of such interest also.

Therefore, interest payable to sales tax department, which is not paid before the due date of filing of return of income, would attract disallowance under section 43B [*Mewar Motors v. CIT (2003) 260 ITR 218 (Raj)]*