

LL.B. VI Term

Paper – LB – 604 – Principles of Taxation Laws

Prescribed Legislation : The Income Tax Act, 1961

Prescribed Book :

1. Vinod K. Singhania & Kapil Singhania, *Taxmann's Direct Taxes – Law & Practice*
2. Girish Ahuja & Ravi Gupta, *Direct Taxes – Law and Practice*

Topic 1: Introduction

Concept of – Tax, Cess, Surcharge; Types of taxes: Direct Taxes, Indirect Taxes; Definition of Income [Section 2(24)] – Application of Income or diversion by overriding title - Capital Receipt v. Revenue Receipt - Tests to distinguish (with special reference to 'Salami'); Assessee; Previous Year (section 3); Assessment year; Basis of charge (Receipt, Accrual, and Arisal); General Scheme of Income Tax Act, 1961

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| 1. <i>CIT v. G.R. Karthikeyan</i> , 1993 Supp (3) SCC 222 | 1 |
| 2. <i>CIT v. Sitaldas Tirathdas</i> (1961) 2 SCR 634 | 6 |
| 3. <i>C.I.T. v. Sunil J. Kinariwala</i> (2003) 1 SCC 660 | 12 |

Topic-2 : Agricultural Income – Meaning of Agricultural Income [Section 2(1A), 10(1)]

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| 4. <i>Bacha F. Guzdar v. C.I.T., Bombay</i> , AIR 1955 SC 74 | 17 |
| 5. <i>C.I.T. v. Benoy Kumar Sahas Roy</i> , AIR 1957 SC 768 | 21 |
| 6. <i>Premier Construction Co. Ltd. v. C.I.T., Bombay City</i>
(1948) XVI ITR 380 (PC) | |
| 7. <i>C.I.T. v. Maddi Venkatasubbayya</i> (1951) XX ITR 151 (Mad.) | 36 |
| 8. <i>Sakarlal Naranlal v. C.I.T.</i> , AIR 1965 Guj. 165 | 40 |
| 9. <i>C.I.T. v. H.G. Date</i> (1971) 82 ITR 71 (Bom.) | |
| 10. <i>K. Lakshmanan & Co. v. C.I.T.</i> (1999) 239 ITR 597 (SC) | 52 |

Topic-3 : Residence and Scope of Total Income

Tests for the determination of residential status of Assessee (section 6); Total income of assessee (sections 4 and 5); Income deemed to accrue or arise in India (section 9); Incidence of tax varies with residential status of an assessee?

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| 11. <i>V.V.R.N.M. Subbayya Chettiar v. C.I.T.</i> , AIR 1951 SC 101 | 54 |
| 12. <i>Narottam and Parekh Ltd. v. CIT, Bom. City</i> , AIR 1954 Bom. 67 | 58 |

13. Vodafone International Holdings B.V. v. Union of India (UOI) and Anr, (2012)6SCC613 63

Topic-4 : Heads of Income (Sections 14-59)

Heads of Income (section 14), Rationale; Heads, whether mutually exclusive

Head A : Salaries (Sections 15 to 17) – Chargeability - Meaning of Salary; Perquisites; Profits in lieu of salary

13. *Ram Pershad v. C.I.T.* (1972) 2 SCC 696 : AIR 1973 SC 637 84
14. *C.I.T. v. L.W. Russel*, AIR 1965 SC 49 90

[Head B : Omitted by the Finance Act, 1988 with effect from 1-4-1989]

Head C : Income from House Property (Sections 22 to 27) - Ingredients of section 22 - Annual Value how to be determined - Deductions under section 24 - Deemed owner (section 27)

15. *C.I.T., West Bengal v. Biman Behari Shaw, Shebait* (1968) 68 ITR 815 (Cal.) 95
16. *East India Housing & Land Development Trust Ltd. v. C.I.T.* (1961) 42 ITR 49(SC) 98
17. *R.B. Jodhamal Kuthiala v. C.I.T.*, AIR 1972 SC 126 100

Head D : Profits and Gains of Business and Profession (Sections 28 to 44) –Applicability - Deductions - Bad debts

18. *B.D. Bharucha v. C.I.T.*, AIR 1967 SC 1505 107
19. *C.I.T. v. Mysore Sugar Co. Ltd.*, AIR 1967 SC 723 110

Business Expenditure – Allowability - Tests of distinctions between Business expenditure and Capital expenditure [section 37(1)]

20. *C.I.T. v. Travancore Sugar & Chemicals Ltd.*, AIR 1973 SC 982
21. *Empire Jute Co. v. C.I.T.*, AIR 1980 SC 1946 114
22. *L.B. Sugar Factory & Oil Mills(P.) Ltd. v. C.I.T.*, AIR 1981 SC 395 123
23. *C.I.T. v. Jalan Trading Co. (Pvt.) Ltd.* (1985) 155 ITR 536 (SC)
24. *Bikaner Gypsums Ltd. v. C.I.T.*, AIR 1991 SC 227 128
25. *C.I.T. v. General Insurance Corporation*, 2007 (1) SCJ 800 136

Head E: Capital Gains (Sections 45 to 55) – Definition of capital assets [section 2(14)]; Short term capital assets [section 2(42A)]; Short term capital gains [section 2(42B)]; Long term capital assets and Long term capital gain [section 2(29A) and 2(29B)]; Meaning of ‘Transfer’ [section 2(47)]; computation (section 45); Transactions not amounting to transfer (sections 46 and 47); Mode of computation (section 48); Meaning of ‘adjusted’, ‘cost of improvement’ and ‘cost of acquisition’ (section 55)

26. *N. Bagavathy Ammal v. C.I.T., Madurai*, JT 2003 (1) SC 363 141

Head F: Income from Other Sources (Sections 56 to 59)

27. *C.I.T. v. Rajendra Prasad Moody* (1978) 115 ITR 519 (SC) 145

Topic 5 : Income of Other Persons included in Assessee’s Total Income (Sections 60 to 64) - concept of clubbing of income – justifiability - throwing of separate property into the common stock of Joint Hindu Family and subsequent partition of the same section 64(2)

28. *Philip John Plasket Thomas v. C.I.T.*, AIR 1964 SC 587 148

29. *Batta Kalyani v. Commissioner of Income Tax* (1985) 154 ITR 59 154

30. *J.M. Mokashi v. Commissioner of Income Tax* (1994) 207 ITR 252 (Bom) 157

31. *Mohini Thapar v. C.I.T.* (1972) 4 SCC 493 166

Topic 6 : Assessment - Best Judgment Assessment; Income escaping assessment (Sections 139, 142, 143, 144, 145(2), 147, 148, 149, 150, 151 and 153)

32. *State of Kerala v. C. Velkutti* (1966) 60 ITR 239 (SC) 167

33. *C.I.T. v. Burlop Dealers Ltd.* (1971) 79 ITR 609 (SC) 172

34. *Gemini Leather Stores v. The Income-tax Officer*, AIR 1975 SC 1268 175

35. *The Income Tax Officer v. Lahkmani Mewal Das* (1976) 3 SCC 757 177

36. *Srikrishna (P) Ltd. v. Income-Tax Officer* (1996) 9 SCC 534 183

IMPORTANT NOTE:

1. The topics and cases given above are not exhaustive. The teachers teaching the course shall be at liberty to add new topics/cases.

2. The students are required to study the legislations as amended up-to-date and consult the latest editions of books.

3. The question paper will include one compulsory question. The question papers set for the examinations held during 2010-11 and 2011-12 are printed below for guidance of the students.

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LL.B. III Term Examinations, December 2010

Note: Attempt *five* questions including Question No. 1 which is compulsory.
All questions carry *equal* marks.

1. Attempt briefly any *four* of the following:
 - (i) Explain 'Profits in Lieu of Salary'.
 - (ii) Explain the meaning of 'Deemed owner' as provided in Section 27.
 - (iii) Write the distinction between capital receipt and revenue receipt.
 - (iv) Explain the mutual exclusivity of heads of income.
 - (v) Explain the meaning of 'Transfer' as provided in section 2(47) of the Income Tax Act.
2.
 - (i) Discuss the residential status of an individual.
 - (ii) Discuss the residential status of a company which is registered in India but was controlled and managed from Singapore during the previous year.
3. Define the term 'agriculture' with the help of case law. State the conditions required to be fulfilled for a process performed on an agricultural produce to be an agricultural process.
4. How annual value of a house property is determined? Can there be annual value of a house which cannot be used for residence in view of the injunction contained in the will by which the assessee became the owner of the house?
5. The assessee spent Rs. 5 crores to make arrangements to show direct broadcast of Commonwealth Games on a big screen in his theatre. The amount was spent on the purchase of screen and renovation of theatre to make it fit for this purpose.

Discuss the decide, explaining the difference between capital expenditure and business expenditure, whether the aforesaid expenditure is business expenditure.
6.
 - (i) Discuss the law laid down in N. Bagavathy Ammal V. CIT, Madurai JT 2003 (1) SC 363.
 - (ii) Spell out the distinction between section 57(iii) and Section 37(i) of the Income Tax Act in the light of CIT v. Rajendra Prasad Moody (1978) 115 ITR 519 (SC).
7. Discuss the statutory provisions can case law relating to clubbing of income of a spouse and minor children with that of assessee.
8. Write short notes on any two of the following:
 - (i) Perquisites;
 - (ii) Income;
 - (iii) Distinction between application of income and diversion of income.

LL.B. III Term (Supplementary) Examinations, June-July 2011

Note: Attempt *five* questions including Question No. 1 which is compulsory.
All questions carry *equal* marks.

1. Attempt briefly any *four* of the following:
 - (i) Scope of total income under section 5 of Income Tax Act, 1961
 - (ii) Difference between capital receipt and revenue receipt.
 - (iii) Deemed Owner as defined under Section 27.
 - (iv) What is the meaning of profits in lieu of salary as provided under section 17(3)?
 - (v) Write some of the transactions which are not regarded as transfer within the meaning of section 47.
2. Critically analyse the conditions required to be fulfilled for a process performed on an agricultural produce to be an agricultural process. Support with case laws.
3. (i) When is a Director of a Company taxable under the Head “Salary” for the remuneration he got from the company? Discuss in the light of Ram Pershad v. C.I.T. (1972) 2 SCC 696.
(ii) Whether the contributions paid by the employer to the assessee under the terms of a trust deed in respect of a contract for a deferred annuity on the life of the assessee is a ‘perquisite’ as contemplated by section 17(2) of the Income Tax Act?
4. Discuss the residential status of —
 - (i) An Individual
 - (ii) Hindu Undivided Family
5. Mr. ‘X’ is a successful lawyer who runs a law firm. His wife works as a receptionist cum Accountant in the law firm and draws a salary of Rs. 10,000 per month from the firm. The educational qualification of his wife is class XII pass and currently pursuing her B.A. degree through correspondence. While computing the total income of Mr. ‘X’, the Assessing Officer clubbed the salary of his wife too. Discuss whether Mr. ‘X’ will succeed in avoiding clubbing of his wife’s salary in his total income.
6. (a) Discuss Mutual Exclusivity of Heads of Income.
(b) How is the annual value of house property determined for the purpose of imposing tax under the head ‘Income from House property’.
7. What are the tests of distinctions between Business expenditure and capital expenditure. Discuss in the light of section 37(i). Also discuss the difference between sections 37(i) and section 57(iii).
8. Write short notes on any two of the following:-
 - (i) Deduction on account of Bad Debt in the light of B.D. Bharucha v. CIT, AIR 1967 SC 1505.

- (ii) Discuss the judgement of Supreme Court in N. Bhagavathy Ammal v. CIT, JJ 2003 (1) SC 363.

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LL.B. III Term Examinations, December 2011

Note: Attempt any five questions. All questions carry *equal* marks.

1. (a) Define Incomes and analyse the statement “A any receipt which partakes the nature of income is part of the income.”
Comment in the light of case law.
- (b) The assessee, Mr. X is a partner in a firm having 60% of share in profits and losses. He creates a Trust, where beneficiaries are 3 members of his family. He also transfers 50% of his share in the firm by way of Deed of Assignment in favour of Trust out of love and affection. Mr. X claims 50% of income transferred to the trust as Diversion of Income. Decide with the help of cases.
2. Define the term “Agriculture”.
Discuss whether the following incomes can be treated as Agricultural Income for the purpose of Income Tax? Give reasons.
 - (i) Dividend paid by the company out of Agricultural Income.
 - (ii) Income from sale of sisal fibre made after processing aloe plants.
 - (iii) Interest on arrears of rent in respect of Agricultural Land.
 - (iv) Income from sale of forest trees.
3. (a) A company formed under Companies Act, creates a superannuation fund for the benefit of its employees, where the premium contribution from the employee and company is and rd respectively. Under a clause, the employee can claim to such fund only after expiry of term of 15 years in the said company. The Assessing Officer includes such contribution as taxable under the head salaries for the employees. Decide with the help of cases.
- (b) The assessee, Tea Company, derives its income from sale of tea products. The Director of the company had advanced amount Rs. 20,00,000 to his friend Mr. S, who is a film producer @ 9% p.a. for an upcoming film. Due to certain reasons movie is unsuccessful and the amount advanced is irrecoverable from Mr. S, the assessee company writes off the amount as bad debts. Decide with the help of cases whether the assessee will be successful?
4. (a) Mr. Sebastian Vittel, participates in Formulae 1 Race at Budh Circuit, India and earns by way of endorsements and winnings Rs. 11 crore. The Assessing Officer charges his income under Income Tax Act, 1961 but he claims he is not an assessee and neither resident in India. Decide.

- (b) The Assessee Company Carrying on the business in Ceylon, is a subsidiary company of ABC Ltd., which is registered Office at Mumbai and meeting of Board of Directors and shareholders are also held in Mumbai. The affairs of assessee company are managed by the two managers, with widest powers and authorities which is conferred upon them by way of Power of Attorney. Decide whether the Assessee Company is Resident Company or not?
5. How the annual value of House Property is determined? Discuss “Deemed Owner” under Income from House Property. Give relevant case laws.
6. The assessee, Modi Sugar Mills Pvt. Ltd. Co. is carrying on with the business of sale of sugar and factory is situated at Modinagar in U.P. The road was to be constructed to connect Modinagar with Meerut. Under the development scheme promoted by Government and Sugar Factories were to bear the cost of construction of the road. The Assessee Company contributed Rs. 1,00,000 on request of the Collector. The Assessing Officer considers the amount as Capital Expenditure. Decide and Illustrate with case decisions difference between Capital Expenditure and Revenue Expenditure.
7. (a) The Assessee is a shareholder in a company. The company goes into liquidation and on account of settlement between the company and shareholders, the company transfers agricultural land as part of full and final settlement between them. The assessee claims exemption from tax on agricultural which are entitled to be excluded while computing the Capital Gains on assets received from company on liquidation. Decide with the help of cases.
- (b) Discuss the law laid down in C.I.T. vs. Rajendra Prasad Moody (1978) 115 ITR 519 (SC).
8. The assessee, Mr. K makes a certain cash gifts to his wife Mrs. M. She invests the part of the amount in shares and part in other securities which during a financial year yielded returns in form of individuals and interests. The Assessing Officer includes such individuals and interests in the assessment of Mr. K to which Mr. K objects.
- Decide in the light of provisions relating to aggregation of income along with relevant cases.

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LL.B. III Term Examinations, June-July, 2012

Note: Attempt any five questions. All questions carry *equal* marks.

1. (i) Define Income and analyse the statement “any receipt which partakes the nature of Income is part of the Income under Sec 2(24) of Income Tax Act, 1961.” Comment in the light of case law.
- (ii) Distinguish between application of Income and Diversion of Income with the help of case law.

2. (i) Define the term “Agriculture” and discuss ‘ordinary process employed, to render the produce fit to be taken to the market’ with the help of case law.
(ii) Whether the following incomes can be treated as Agricultural Income for the purpose of Income Tax? Discuss with the help of case law.
 - (a) Dividend paid by the company out of Agricultural Income
 - (b) Income from salt produced by flooding of land with sea water.
 - (c) Compensation from insurance company for damaged caused by hailstorm to the crop.
 - (d) Interest on arrears of rent in respect of agricultural land.
3. (i) When remuneration paid to Managing Director of a company becomes chargeable to income tax under the head “salary”? Discuss with the help of case law.
(ii) What are perquisites? State which are taxable and which are exempt from tax under Income Tax Act, 1961?
4. (i) Discuss residential status of Individual.
(ii) Discuss giving reasons whether the following transactions will give rise to income which will be deemed to accrue or arise in India.
 - (a) Mr. J, chief executive of a company had undertaken foreign tour on various occasion for company work and was out of India for a total number of 225 days during the previous year ending 31.03.2010. He seeks advice for filing his return for assessment year 2010-11.
 - (b) A foreign company having no Indian citizen/resident of India as share holder has shot a TV film entirely on Indian locations. The film is to be telecast exclusively in foreign countries. But it has also agreed with Government of India to give right of telecast in India, free of charge.
5. How the annual value of House Property is determined and what is the significance of deemed owner under Income from House Property?
6. Distinguish between “Capital Expenditure” and “Revenue Expenditure” with the help of case law.
7. (i) Discuss the Basis of charge for capital Gains and exemption provided thereof with the help of case decisions.
(ii) Mr. ‘X’, has substantial interest in XYZ Ltd. And Mrs. ‘X’ is employed by XYZ Ltd. Without any technical or professional qualification to justify the remuneration. Discuss the charge of income tax under Sec 64(1) in light of case decisions.
8. Write short notes on any two with relevant case laws.
 - (i) Bad Debt
 - (ii) Profits in lieu of salary
 - (iii) Distinction between capital receipt and revenue receipt



LL.B. VI Term

Principles of Taxation Laws

Cases Selected and Edited by

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