LL.B. VI Term

Paper – LB – 604 –Taxation

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

Topic-2 : Agricultural Income

Meaning of Agricultural Income [Section 2(1A), 10(1)]

Suggested Reading

- ➢ Meenakshi Subramaniam, "Mushrooms are edible but not- taxable" [2018] 95 taxmann.com 305 (Article)
- ➢ *Singhai Rakesh Kumar v. Union of India* [2001] Taxman 101 (SC)
    a. Income arising from transfer of Land situated in municipal limits would not be agricultural income, is good in law.

- ➢ *Commissioner of Income Tax v. Soundarya Nursery* [2012] 123 Taxman 372 (Madras)
- ➢ *Deputy Commissioner of Income Tax, Hyderabad v. Inventaa Industries (P.) Ltd. [2018] 95 taxmann.com 165 (Hyderabad-Trib.)*

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?

Suggested Reading

- ➢ *Assistant Commissioner of Income Tax, New Delhi v. Col. Joginder Singh* [2014] 45taxmann.com 567 (Delhi-Trib.)

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

[**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)

Suggested Reading

- ➢ *Sachin R Tendulkar v. Deputy Commissioner of Income Tax, Mumbai* [2018] 96 taxmann.com 253 (Mumbai- Trib.)

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

Suggested Reading

- ➢ *Munjal Sales Corporation v. Commissioner of Income Tax, Ludhiana* [2008] 168 Taxman 43 (SC)

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

<u>Topic 5 :</u> <u>Income of Other Persons included in Assessee's Total Income</u> (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

<u>Topic 6 : Assessment -</u> 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. Velkutty* (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

<u>IMPORTANT NOTE</u>:

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

<u>Note</u>: 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.