

EXAMINATION OF ARTICLED CLERKS**PAPER IV****TAXATION**

MONDAY, 26TH APRIL 2010

TIME : 3 HOURS [1-00 P.M. TO 4-00 P.M.]

(Total Marks—100)

- Notes :* (1) Figures in the bracket indicate *full* marks.
 (2) Answers should be legible, precise and to the point.
 (3) Answers to every question should be on a fresh sheet of paper.
 (4) No tax computations are required under any of the questions.
 (5) Reference to the Act means Income Tax Act, 1961.

	Marks
1. What does the expression "charitable purpose" mean under the Act? Discuss briefly the provisions regarding income of a charitable trust with special reference to accumulation of income.	12
2. Discuss briefly taxation of certain transactions without consideration or for an inadequate consideration as income from other sources in terms of section 56 (vii) of the Act inserted with effect from 01-10-2009.	10
3. Discuss provisions relating to any <i>four</i> of the following :—	20
<ul style="list-style-type: none"> • Dividend Distribution Tax, • Tax planning Vs. Tax Avoidance, • Appeals to High Courts, • Binding nature of CBDT Circulars, • Rectification of mistakes, • Agricultural Income, • Permanent Account Number. 	
4. Explain provisions relating to :—	10
<ul style="list-style-type: none"> • Capital gains in respect of property used for self residence, • Capital gain not to be charged on investment in certain bonds, • Capital gain on transfer of certain capital asset not to be charged in case of investment in residential house. 	
5. Under what circumstances certain transfers are regarded as void u/s 281 of the Act and what are the exceptions to the said provisions?	8
6. Discuss the provisions relating to taxation of Limited Liability Partnership.	5
7. Discuss the principles underlying the provisions of section 273 B of the Act.	5
8. Explain in brief short term capital assets, long term capital assets and their taxability.	5

[Turn over

9. Answer the following with reasons :—

25

- (a) The assessee company was a manufacturer of Indian made foreign liquor (IMFL). Its sales were mainly to military canteen. It offered sample of its products at various military functions so that the personnel could develop taste for it and it could secure bigger order from the Canteen Store Department (CSD). The army unit could not directly purchase liquor from a manufacturer. Liquor had to be purchased through CSD. The amounts spent by the unit towards purchase of that liquor was reimbursed by the assessee not to any individual but to the army unit itself and which went into the coffers of the Government. There was no bar in making such reimbursements.

The assessee claimed such expenditure as business promotion expenses while the department wants to treat this expenditure as entertainment expense.

Kindly advise the assessee company.

- (b) The assessee was in the business of leasing. In the relevant accounting year the assessee had leased out breakers to a lessee company. The assessee, admittedly had supplied the machinery before the end of the financial year and the assessee had received the lease rental for the same. The lessee installed the breakers in the subsequent year. The Assessing Officer disallowed the claim for depreciation on the ground that asset was not put to use in the relevant year.

Whether the assessee is entitled to depreciation? Kindly advise the assessee company.

- (c) An individual assessee has income from different sources including income from business. The accounts of the business are subject to audit under section 44AB of the Act. Is the assessee required to comply with the provisions of S. 44AB of the Act only in respect of his business income?

Kindly advise the assessee.

- (d) During the relevant A.Y. 1993-94, the assessee, B. Suresh, transferred feature film rights for exploitation outside India and earned income in foreign exchange. The assessee claimed deduction u/s.80HHC in respect of the said receipts.

The assessee, *inter alia*, relied upon the scheme of S. 80HHC and contended that the word 'sale' would also include 'lease' as indicated in Rule 9A(7) which states that for the purposes of Rule 9A, the 'sale' of the rights of exhibition of feature films would include the 'lease' of such rights and further contended that, similarly, under Rule 9B(6), it has been, *inter alia*, provided that 'Sale' of rights of exhibition of a feature film would include 'lease' of such rights.

The Assessing Officer held that the assessee was not entitled to deduction u/s.80HHC, *inter alia*, on the ground that the export was not of merchandise or goods as contemplated u/s.80HHC, but was merely an export of 'rights' in the film.

Kindly examine whether such 'rights' would fall in the category of articles of trade and commerce, hence, merchandise and, therefore, eligible for section 80HHC deduction ?

- (e) The assessee company registered under Section 25 of the Act made an application on 10-02-1992 for registration under Section 12A of the Act. The assessee filed its return of income for the assessment year 1996-97, declaring nil income claiming exemption u/s. 11 of the Act, though it had not been registered u/s. 12A of the Act.

The return was processed u/s. 143(1)(a) of the Act. On 07-11-1997 a notice was issued to the assessee u/s. 154 to show cause why the exemption granted u/s. 11 should not be withdrawn. In reply it was stated that as it had made an application for registration it was entitled to exemption u/s.11 of the Act. Meanwhile, the CIT on 20-02-1998 granted registration to the assessee on condition that the eligibility regarding exemption u/s. 11 of the Act would be examined by the A. O. for each assessment year. In an order dated 03-12-1999 passed u/s. 143(3) of the Act, the A. O. rejected the claim of exemption u/s. 11 of the Act.

The appeals filed by the assessee against the said order dated 3-12-1999 were dismissed by the first appellate authority and the Tribunal.

The assessee filed a miscellaneous application u/s. 254(2) of the Act to rectify the mistake apparent on the ground that at the relevant time when the Tribunal dismissed appeal there was an existing decision by the jurisdictional high court where it was held that a trust could claim exemption under Section 11, but it was not brought to the attention of the Tribunal. The Tribunal allowed the miscellaneous application and recalled its earlier order passed in appeal. For allowing the application, the Tribunal relied upon the said decision of the jurisdictional High Court.

Being dissatisfied with the order passed by the Tribunal in miscellaneous application, the Revenue wanted to agitate that the matter on the ground that the Tribunal had committed an error of law or of jurisdiction in exercising power under section 254(2) of the Act and in rectifying the 'mistake apparent from the record'.

Kindly advise.

EXAMINATION OF ARTICLED CLERKS

PAPER V

COMMERCIAL LAWS

WEDNESDAY, 28TH APRIL 2010

TIME : 3 HOURS [1-00 P.M. TO 4-00 P.M.]

(Total Marks—100)

General Instructions :—

- (1) Answers to every question/sub-question should be on a fresh sheet.
- (2) Please do not write cryptic answers. Elaborate your answers with reference to the provisions of the applicable legislation.
- (3) Answer should be legible and precise.

Marks

SECTION-I: THE NEGOTIABLE INSTRUMENTS ACT, 1881

1. Write short notes on any *four* of the following :— 16
 - (a) Define and draft a "Promissory Note".
Explain why a currency note of Rs. 100/- is not a "Promissory Note", though it contains a promise to pay by the Governor of RBI ?
 - (b) In a promissory note amount of Rs 1,000.00 is shown in figure, but in words "Rupees One Lakh Only" is mentioned. The Promisee sues the Promisor for Rupees One Lakh. Advice the Promisor.
 - (c) Explain Holder in due course.
 - (d) Explain the modes of Discharge from liability on Notes, Bills and Cheques?
 - (e) Explain "Noting" and "Certificate of Protest" ?
 - (f) Define "Cheque". Explain "Cheque in the electronic form."
2. Explain the provisions of Sec. 138 and 142 about the dishonourment of cheques for insufficiency of funds and cognizance of such offences. Draft a short notice under Sec. 138 to the defaulter. 9

SECTION-II: THE INDIAN PARTNERSHIP ACT, 1932

3. Discuss in detail the implied authority of a Partner as Agent of the firm ? 9

OR

Define "Partnership", "Partner", "Firm" and "Firm name". Why a Proprietorship concern is not a firm ? Use of which words is not permissible in name of Partnership Firm.

4. Write Short Notes on any *four* of the following :— 16
 - (a) Silent Partner and Working Partner.
 - (b) Disadvantages of a Partnership firm over a Company.
 - (c) Admission of Minor to the benefits of Partnership.
 - (d) Explain "Act of Firm" and "Steps necessary to bind a firm".
 - (e) Dissolution of Partnership Firm on the happening of certain contingencies.
 - (f) Partnership at Will.

[Turn over

SECTION-III : THE INDIAN CONTRACT ACT, 1872

5. Describe "Sound Mind" and "Free Consent" for the purpose of contracting? Discuss in detail all five elements affecting free consent. 10
6. Write short notes on any *three* of the following :— 15
- (a) Explain "Contract of Indemnity" and "Contract of Guarantee"? What is their role in bank loan contracts?
- (b) Explain "Bailment" and "Pledge". When can a pledge by mercantile agent be treated as invalid?
- (c) A contract between "A" and "B" provides that if either party commits breach of contract, he shall be liable to pay Rupees One Lac to the other party without any proof of actual damages. Explain whether such contract is permissible and lawful?
- (d) What considerations and objects are unlawful? Give one short example of a contract in which consideration and object both are unlawful.

SECTION-IV : THE SALE OF GOODS ACT, 1930

7. Write short notes on any *three* of the following :— 15
- (a) Explain "Future Goods" and "Specific Goods".
- (b) Distinguish "Mercantile Agent" and "Power of Attorney Holder".
- (c) Distinguish "Condition" and "Warranty".
- (d) Explain "CIF" Contract and "FOR" Contract.
- (e) Define 'Unpaid Seller'. What are his rights?
8. Answer any *two* of the following :— 10
- (a) 'X', a medium size whole seller obtains a contract from "BOMBAY BEAUTY", a chain of stores having branches in suburbs of Mumbai, for supplying 500 towels every Saturday as per sample piece approved by "BOMBAY BEAUTY". 'X', is aware that he will not be able to maintain the delivery schedule, but thought that he will adjust any shortfall in delivery by delivering more towels next week. Advise him the consequences.
- (b) A Law Book seller delivered "Sale of Goods Act" to a lawyer on approval basis for sale or return in one week's time. But the absent minded lawyer has lost the book in the local train. He now refuses to pay the price saying that he is innocent and not responsible for losing the book. Please advise the book seller of his legal rights.
- (c) Explain "Sale and Agreement to sell". How a Contract of Sale is made?

EXAMINATION OF ARTICLED CLERKS

PAPER VI

GENERAL ACTS

FRIDAY, 30TH APRIL 2010

TIME : 3 HOURS [1-00 P.M. TO 4-00 P.M.]

(Total Marks—100)

Notes.—(1) The questions are required to be given precise and brief answers with reasoning for the answers and without unnecessary elaborations; Please do mention specific case laws wherever applicable. Cryptic answers in “yes” or “not” will not be accepted.

(2) All questions are compulsory.

(3) Please write in neat and clean handwriting.

(4) The marks allotted for each answer is as mentioned in brackets at the end of each question of which please take note.

Marks

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| 1. Your client is a partnership firm comprising of 3 partners, carrying on business in the firm name and style of ABC & Co. in a tenanted premises, the tenancy whereof stands in the name of Partner A. Partner A now wants to retire from the said firm. What advice would you give your clients, ABC & Co. to protect their rights with regard to the tenancy rights to the property, if any? | 5 |
| 2. Your client and her mother are residing in a flat, tenancy whereof stands in the name of her father. Her father has deserted her mother since last 25 years and his whereabouts are not known for the last 5 years. The Landlord has now filed a suit for eviction and has also stopped taking rent from your client and/or her mother since last 3 years. What advice would you give your client about the chances of success of her case and why? | 5 |
| 3. Your client, the Landlord of a property, has issued a notice to quit for bonafide use and requirement to his tenant. Please advise your client as to (a) within how much time can he institute a suit for determination of tenancy after the demand notice? (b) is a demand notice at all required? (c) would your answer be different if it was a notice to quit for non payment of rent? | 3 |
| 4. Your client is a licensee of the premises under a determined license. There are arrears of license fee. He then offers the arrears of compensation/license to the Landlord. Please advise your client whether acceptance of such arrears after the determination of the license will constitute a fresh license? | 3 |
| 5. Your client is the Landlord of premises which has now caught fire and is destroyed. Please advise your client on the question of the continuance of the tenancy of such property. | 3 |

[Turn over

14. There are three Trustees in a Family Trust and there is no clear provision in the trust deed with regard to the rights of Trustees. The Trustees seeks you advice as to the following :— 6
- (a) whether all the Trustees are required to act jointly and/or severally in execution of the Trust or otherwise ?
- (b) what are the rights of the Trustees with regard to the remuneration of Trustees for their skill and in execution of the Trust ?
- (c) what are the rights of reimbursement of the Trustees in execution of the Trust ?
- (d) whether the Co-Trustees are jointly and severally liable for breach of trust committed by one of the Trustee ?
- (e) whether the Co-Trustees will be liable to the beneficiaries for the acts and defaults of their predecessors and/or act of defaults of one another ?
15. A Public Charitable Trust has given its property in a prime location in Mumbai on a "Conducting Basis". On perusal of the Conducting Agreement it appears that there is no clause for "termination for convenience" at all by the Trust. The termination can only happen for cause. There is no default in terms and condition and obligation of the Conductor. The current Trustees feel that the terms of the Agreement are not favourable to the Trust. The Trustees have now approached seeking your advice to the rights of the Trust with regard to the aforesaid situation. Kindly advice them. 5
16. Your client desires to create a public Trust under a Will and has approached you for advice. Kindly advise your client as to the provisions of laws that he has to be aware of. 3
17. A Public Trust desires to file a suit against the trespassers. Please discuss with the Trustees the rights and procedure in respect thereof. 3
18. A Public Trust desires to grant development rights of its property to 'X', 'Y & 'Z' Builders. Advise and discuss with the Public Trust about the same in light of Section 36 of The Bombay Public Trust Act. 3
19. Your client has purchased a flat and shares in a Co-operative Society under an adequately stamped Agreement dated 1-10-2009. Your client now wishes to sell the flat and shares on 1-5-2010. The intending Purchaser in the course of investigation has suggested that there is a lacuna in the Agreement dated 1-10-2009 as the same is not duly registered. Please advise your client on his rights under the said Agreement dated 1-10-2009 as well as the sale transaction of the said flat and shares. 6
20. A family member has five flats in the Society. The bye-laws of the Society allows one vote for one family. Please discuss whether five flats can be owned by the family members in the Society and whether the society is justified in following the maxim one vote for one family. Please quote relevant case law. 4

Marks

21. Your client is Chairman of the Managing Committee of the Society. One of the members in the Society has given his property on 'Leave & License basis' to a multinational company with paid-up capital of over Rs.1 crore. The Society is charging non-occupancy charges to the member at the rate of 200 sq. fts. which has been passed by a resolution of the Society. The member has objected to the charging of the non-occupancy charges. The member has also informed the society that he is pursuing a separate legal action against the Licensee for termination of the license. Please advise the Society as under :—
- (a) whether the Society can charge non-occupancy charges, if so, at what rate ?
- (b) what advice would you give to the Society about the charging of the non occupancy charges in light of the dispute between the member and his Licensee particularly so when a resolution of the Society to charge the same has been passed by the society.
22. (a) You have just passed this Solicitor's exams and you want to set up the practice. You have just paid a subscription in the Yellow pages and similar subscriptions. Please advise if that would tantamount to advertising. 2
- (b) Your Client wants to take away the papers. You are seeking a lawyers lien thereon under the provisions of the contract Act. Are you justified in doing so? If not why not ? 3
- (c) Your client is a NRI and wants to give a Power of Attorney to act on her behalf. Please discuss if you can accept to be the Donee under the Power of Attorney. If not, why not ? 3
- (d) Will you act for a company in litigation where you are also a director of the Company ? 2
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