DIRECTORATE OF DISTANCE EDUCATION
NALSAR UNIVERSITY OF LAW, HYDERABAD

M.A. (International Taxation)

Academic Year: 2023-2024

Second Semester Examination (June, 2024)

Paper III - 1.2.6. Income from Immovable Property and Capital Gains

1.2.8 Income from Immovable property and Capital Gains (Batches:2022-2024 & 2021-2023)

Duration of the Examination: 2 ½ hours **Total Marks : 70 marks**

INSTRUCTIONS TO CANDIDATES

a) **Read the instructions carefully and adhere to the same.**
b) **Please mention your DDE ID No., date of the exam, name of the programme & subject on the Answer Sheet and the Additional Answer Sheets, if any.**
c) **The questions to be interpreted as given and no clarification can be sought from the Invigilator.**
d) **Clearly indicate the question numbers while answering them. Answers without question numbers / wrong question numbers will not be evaluated.**
e) **Write the answers clearly and neatly. Answers in illegible handwriting will not be taken into consideration.**
f) **Candidates are prohibited to carry phones or any other electronic devices, books, material etc. in the Examination Hall.**
g) **Copying is strictly prohibited and is considered as a serious academic mis-conduct and the University will take action as it deems fit.**

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1) Moly Alliance (hereinafter referred to as 'MA') is a part of an International Health Care Group dedicated to prevention, diagnosis and treatment of infectious diseases. It is incorporated in the Netherlands. After negotiations with Bruno Dassault (hereinafter referred to as 'BD') another company incorporated in the Netherlands it formed a wholly owned subsidiary in the Netherlands in 2006 named "Shan". MA and BD each held 50% shares in Shan.

In January 2007 MA entered into a share purchase agreement acquiring the shares of an Indian company, called Sema Biotechnics Ltd,(Sema). Shan was shown as a permitted assignee. Thus shares in Sema were acquired by Shan or in the name of Shan. The original capital flowed from MA and BD.

With a view to ensuring the achievement of better progress in business by Sema, MA and BD felt that Sema needed the backing and support of a leading global vaccine company. MA and BD started looking for a strategic alliance in relation to their larger interest in the field of immunotherapy in developing countries and also in relation to the activities of Sema.

Sanofi Pasteur Holding (hereinafter 'Sanofi'), another company incorporated in the Netherlands, came forward to acquire 80% of the stakes in Sema from MA and BD through their subsidiary Shan for a consideration of Rs.2,500 crores. With a view to further improve the business and performance, MA and BD sold 80% of their respective shares in Shan to Sanofi in August, 2009. Thus, holding structure of Shan was 80% held by Sanofi, 10% of MA and 10% by BD.

Sanofi treated as an assessee in default under section 201(1) of the Act in respect of payments made by it to MA and BD for acquisition of the majority controlling interest in Sema through the transfer of the shares of Shan. Revenue Department alleged that since the underlying capital asset was situated in India, transaction between Sanofi and MA and BD with regards to sale and purchase of shares of Shan is taxable in India. Determine whether Department will succeed in its claim?

(25 Marks)

2) Whether the following would be considered as 'immovable property' for the purposes of Article 6:

- **a.** Right to enjoy immovable property on a time sharing basis; **(10 marks)** and
- **b.** Machinery embedded in the earth to constitute a fertilizer plant. **(10 marks)**

3) Write a short note on the controversy around beneficial ownership in capital gains. **(25 marks)**

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