Paper 16 – Tax Management and Practice

Time Allowed: 3 hours **Full Marks: 100**

This paper contains 9 questions, divided in two sections Section A and Section B. In total 7 questions are to be answered. Answer any five questions from Section A (out of six questions - Questions Nos. 1 to 6).

In Section B, Question No.9 is compulsory and answer any one question from the remaining two questions of the section (i.e. out of Question nos. 7 & 8).

Students are requested to read the instructions against each individual question also. All workings must form part of your answer. Assumptions, if any, must be clearly indicated.

All the questions relate to the assessment year 2014-15, unless stated otherwise.

Section A

Answer any five Questions

1. (a) Calculation of Income Tax in the case of an employee below the age of sixty years having a handicapped dependent (With valid PAN furnished to employer), for A.Y. 2014-2015:

S. No.	Particulars	₹
1	Gross Salary	3,20,000
2	Amount spent on treatment of a dependant, being person with disability (but not severe disability)	7000
3	Amount paid to LIC with regard to annuity for the maintenance of a dependant, being person with disability(but not severe disability)	50,000
4	GPF Contribution	25,000
5	LIP Paid	10,000

[5]

Solution:

Computation of Tax

S.No.	Particulars	₹
1	Gross Salary Less: Deduction U/s 80DD (Restricted to ₹50,000/- only)	3,20,000 50,000
2	Taxable income Less: Deduction U/s 80C (i) GPF ₹25,000/- (ii) LIP ₹ 10,000/- = ₹35,000/-	2,70,000 35,000
3	Total Income	2,35,000
4	Income Tax thereon/payable Add: (i) Education Cess @2% (ii) Secondary and Higher Education Cess @1%	3,500 70 35
5	Total Income Tax payable	3,605

6	Rounded off to	3,610

(b) Mr. Y submits the following particulars of his income for the assessment year 2014-2015

	(₹)
Income (other than income from business & profession)	**4,00,000**
Dividend from Indian Company	**1,000**
Interest on Bank Deposit	**2,000**
Life Insurance Premium paid	**6,000**
Donation to Jawahar Lal Nehru Memorial Fund	**15,000**
Donation to Prime Minister's National Relief Fund	**16,000**
Donation to a Public Charitable Institution	**24,000**
Donation to a University for statistical research approved U/s 35(1)(iii)	**5,000**

Determine the net income and tax liability for the assessment year 2014-2015. [9]

Solution:

Computation of Taxable Income:-

	₹
Income	4,00,000
Dividend from Indian Co.	1,000 (exempt)
Interest on Bank Deposit	2,000
Gross total Income	**4,02,000**
Less: Deductions under Chapter VI-A	
U/s 80C for Life Insurance Premium	6,000
U/s 80G (see Note 1)	35,500
U/s 80GGA for Donation to University (see note 3)	5,000
Net Income	**3,55,500**
Tax on ₹ 3,55,500 [(3,55,500 – 2,00,000)x 10%]	15,550
Add : Surcharge @ 10%	NIL
Add : Education Cess @ 2%	311
Add : Additional SHE Cess @ 1%	156
Net Tax payable	16,017

Note 1: Computation of deduction u/s 80G in respect of donations-

	₹
Qualifying amount:-	
Donation to Jawahar Lal Nehru Memorial Fund	15,000
Donation to Prime Minister's National Relief Fund	16,000
Donation to Public Charitable Institution	24,000
Gross qualifying amount	**55,000**
(i) Donation to Jawahar Lal Nehru Memorial Fund (without any maximum limit)	15,000
(ii) Donation to Prime Minister's National Relief Fund (without any maximum limit)	16,000
(iii) Donation to Public Charitable Institution [least of (a) ₹ 24,000 & (b) ₹ 39,100 being 10% of adjusted gross total income calculated in Note 2]	24,000
Net qualifying amount	**55,000**
Amount deductible:	
50% of Net Qualifying Amount of Item (i) & (iii) [i.e., 50% of (15,000 + 24,000)]	19,500
100% of Net Qualifying Amount of item(ii)	16,000
	35,500

Note 2: Adjusted gross total income –

		₹
Gross total income		4,02,000
Less: Amount of deduction under Chapter VI-A (except 80G)		
U/s 80 C	6,000	
U/s 80 GGA	5,000	11,000
Adjusted gross total income		3,91,000

Note-3 : Deduction u/s 80 GGA is allowed in the Case where gross total income does not include income from business profession.

2. **(a) Determine the assessable value for purpose of excise duty under the Central Excise Act, 1944 in the following cases:**

   (i) An assessee sells his excisable goods for ₹ 120 per piece and does not charge any duty of excise in his invoice. Subsequently it was found that the goods were not exempted from excise duty but were liable at 20% advalorem.

   (ii) Certain excisable goods were sold for ₹ 120 per piece and 20% advalorem is the rate of excise duty. Subsequently it was found that the price cum duty was in fact ₹ 140 per piece as the assessee had collected ₹ 20 per piece separately.

(iii) The cum duty price per piece was ₹120 and the assessee had paid duty at 20% advalorem. Subsequently it was found that the rate of duty was 30% advalorem and the assessee had not collected anything over and above ₹ 120 per piece. [8]

Solution:

The assessable value shall be calculated as under-

$$\text{Assessable Value} = \frac{\text{Price cum duty - Permissible deductions}}{100 + \text{Rate of Excise duty}} \times 100$$

It is assumed that all the prices given in question excludes permissible deductions i.e. sales taxes and other taxes and EC & SHEC have also been ignored.

(i) $\text{Assessable Value} = \frac{\text{Price cum duty - Permissible deductions}}{100 + \text{Rate of Excise duty}} \times 100$ i.e., $\frac{120}{100+20} \times 100 = ₹\ 100$

(ii) $\text{Assessable Value} = \frac{\text{Price cum duty + Additional consideration - Permissible deductions}}{100 + \text{Rate of Excise duty}} \times 100$

i.e., $\frac{120+20}{100+20} \times 100 = ₹116.67$

(iii) $\text{Assessable Value} = \frac{\text{Price cum duty - Permissible deductions}}{100 + \text{Rate of Excise duty}} \times 100$ i.e., $\frac{120}{100+30} \times 100 = ₹\ 92.30$

(b) Give the consequences regarding excise duty liability if goods manufactured by EOU (Export Oriented unit) & brought to DTA (Domestic tariff Area). [6]

Answer:

Goods manufactured by EOU (Export Oriented unit) & brought to DTA (Domestic tariff Area) will be liable to excise duty equal to customs duty [Proviso to section 3(1) of the Central Excise Act].

Any excisable goods -

(i) manufactured by a 100% Export Oriented Units (EOU) and

(ii) brought to any other place in India (termed, "Domestic Tariff Area" or DTA) are also liable to excise duty.

However, Excise duty = Aggregate of customs duties which would be leviable under Customs Act, 1962, or any other law on like goods produced/manufactured outside India if imported into India.

For this purpose -

(i) Valuation as per Customs law : The value of such goods shall be determined in accordance with the provisions of the Customs Act, 1962 and the Customs Tariff Act, 1975 ; and

(ii) Highest rate to be taken in case of different rates: Where in respect of any such like goods, any duty of customs is leviable at different rates, then, the highest of those rates shall be taken.

3. (a) State briefly with reasons whether credit under the CENVAT Rules, 2004 would be available in the following cases:

(i) Inputs are pilfered from the store-room.

(ii) Final product is cleared in durable and returnable packing material.

(iii) An input becomes a waste and is sold as scrap.

(iv) Inputs used in trial runs **[7]**

Answer:

The admissibility of CENVAT credit is discussed as under –

(i) Inputs are pilfered from the store-room: No, since credit on inputs is available only for inputs used in the factory of manufacturer of final products. If the inputs are lost in the store-room without being used at all, credit of duty paid on such inputs will not be available.

(ii) Final product is cleared in durable and returnable packing material: Yes, The definition of 'input' covers all goods used in the factory of production by the manufacturer and such packing has relationship with the manufacture of the final products therefore, Cenvat credit will be available on durable and returnable packing material. Besides this, since the proportionate cost of durable container is included in assessable value of final product, they are eligible for Cenvat credit.

(iii) An input becomes a waste and is sold as scrap: Yes. If inputs becomes waste and sold as scrap, it cannot be said that input is cleared 'as such' [Rule 3(4) of the Cenvat Credit Rules 2004]. What is cleared is 'waste' and duty will be payable as if waste has been removed. In case the inputs have become waste during the manufacturing process, then the CENVAT credit shall be allowed on such waste, even if such waste is exempted or chargeable with nil rate of duty.

(iv) Inputs used in trial runs: Yes. Inputs used in trial runs during the production or commissioning of plant are eligible for CENVAT credit as they are used in the manufacture of final product. Since trial run/ production is a pre-requisite for manufacture of the final product, hence, they bear relationship with the manufacture of the final product. Hence, they are eligible as 'input'. - Fertiliser Corporation of India v. CCEx.

(b) The Net Profit of X Ltd. for the year ended March 31, 2014 amounted to ₹ 7,50,000 after debiting/crediting the following items:

Particulars	₹
Provision for bonus (paid on November 15,2014)	30,000
Provision for commission to employees (paid on December 1,2013)	76,000
Payment of annual installment under an approved agreement to a foreign collaborator for technical knowhow	1,00,000
Legal expenses incurred for issue of capital	30,000
Interest paid on unpaid purchase price of business assets	15,000
Cost of goods purchased from Y Co. Ltd. which was paid by bearer cheque	50,000
Sales include sale of gold not being stock in trade (indexed cost of acquisition ₹ 1,70,000)	2,00,000
Rent received from Staff for the quarters allotted	75,000
Rent received for commercial property rented to a foreign bank	1,50,000
Expenditure on scientific research include cost of land ₹ 30,000 and ₹ 20,000 paid to approved national laboratory. Land revenue in connection with worker's quarters and let-out commercial property (paid on June 15,2013)	12,000

Calculate Taxable Income of the company for the Assessment Year 2014-15. The answer should clearly indicate the basis for treatment of each item. [7]

Solution:

Computation of Taxable Income of the company for the Assessment Year 2014-15, relating to the Previous Year 2013-14

	Particulars	₹	₹
	Net Profit as per Profit and Loss Account		7,50,000
Add:	Disallowed Expenses		
	Provision for bonus	30,000	
	Provision for commission	76,000	
	Legal expenses incurred for issue of capital [being capital expenditure]	30,000	
	Expenditure on scientific research	50,000	
	Land revenue for commercial property	8,000	
	Goods purchase by bearer cheque u/s 40A(3)	50,000	2,44,000
			9,94,000
Less:	Disallowed Income		
	Rent received from commercial property	1,50,000	
	Sale of gold (not being stock in trade)	2.00.000	3.50.000
			6,44,000
Less:	Allowable Expenses		
	Expenses on scientific research u/s 35 (1) (20,000 x 125%)		25,000
	Income from Business		6,19,000
	Income from House Property		
	Gross annual value	1,50,000	
Less.	Municipal Tax	Nil	
Less:	Standard deduction u/s 24(a) (30% of 1,50,000)	45,000	1,05,000
	Income from long-term capital gain		
	Sales value of gold	2,00,000	
Less:	Indexed cost of acquisition	1,70,000	30,000
	Gross Total Income		7,54,000

Note:

(1) Provision for Bonus and Provision for commission is allowable as deduction under cash basis u/s 43B.

(2) Interest paid on Unpaid purchase price of Business assets is allowable u/s 36(1) (iii).

(3) Scientific research expenditure through an approved national laboratory is allowable as

deduction @ 125% on such payment whereas deduction u/s 35(1) is not allowable on the purchase of land.

(4) Rent received from staff-quarter is business income.

(5) Land revenue will be allowed as deduction for staff-quarter only, i.e. ₹$\left(12,000x\frac{1,50,000}{2,25,000}\right)$=₹8,000 .

4. (a) Compute taxable value and service tax from following sums received by M/s. ABC Medical Centre (exclusive of service tax) (Ignore small service provider's exemption) -

(1) Testing (with Transmission of medical samples between laboratories): ₹ 6 lakh ;

(2) Medicines consumed as a part of health care services : ₹ 5 lakh ;

(3) Preventive health care services : ₹4 lakh ;

(4) Treatment along with Facilities provided such as TV, AC, room rent, meal to patient (as a part of package): ₹33 lakh ;

(5) Genetic affinity examination for determining biological father : ₹4 lakh ;

(6) Hair transplant services due to injury in a fire accident: ₹7 lakh ;

(7) Cosmetic surgery of a film star : ₹16 lakh ;

(8) Conducting medical examinations of individuals : ₹1 lakh [5]

Solution:

Computation of service tax liability

(1) Testing (with Transmission of medical samples between laboratories) - Exempt;

(2) Medicines consumed as a part of health care services - Such medicine are never sold - Dominant nature is heath care services, which is exempt - Fully exempt.

(3) Preventive health care services : ₹ 4 lakh - Exempt ("care" is also exempt);

(4) Treatment along with Facilities provided such as TV, AC, room rent, meal to patient (as a part of package): ₹ 33 lakh - Natural bundling in ordinary course of business - Essential character is "health care services", which is exempt - Fully exempt;

(5) Genetic affinity examination for determining biological father : ₹ 4 lakh - Not related to "diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy" - Not exempt - Taxable ;

(6) Hair transplant services due to injury in a fire accident : ₹ 7 lakhs – Exempt, as it has been done to restore damage due to fire accident;

(7) Cosmetic surgery of a film star : ₹ 16 lakhs – Not exempt – Taxable;

(8) Conducting medical examinations of individuals: ₹ 1 lakhs – Exempt;

Taxable value = ₹ (4 + 16) lakhs = ₹ 20 lakhs and service tax thereon @ 12.36% = ₹ 2,47,200.

(b) AB Ltd. Carried out following works, all of which are leviable to sales-tax/VAT as transfer of property involved in the execution of works contract (the sum charged given below are exclusive of all taxes) -

(1) New constructions: ₹ 50 lakh;

(2) Additions and alterations to damaged structures on land to make them workable: ₹ 25 lakhs;

(3) Supply along with erection, commissioning and installation of plants: ₹ 72 lakhs;

(4) Maintenance and repair of goods: ₹ 40 lakhs;

(5) Maintenance and repair of immovable property: ₹ 30 lakhs;

Compute taxable value and service tax thereon. [5]

Solution:

Computation of taxable value & service tax: Since data regarding valuation under Rule 2A(i) is not given, value is computed as per Rule 2A(ii) at specified % of gross amount charged.

	Amount charged ₹	% of amount charged	Taxable Value ₹
New constructions (It is "original works")	50,00,000	40.00%	20,00,000
Additions and alterations to damaged structures on land to make them workable (It is "original works")	25,00,000	40.00%	10,00,000
Supply along with erection, commissioning and installation of plants (It is "original works")	72,00,000	40.00%	28,80,000
Maintenance and repair of goods	40,00,000	70.00%	28,00,000
Maintenance and repair of immovable property	30,00,000	60.00%	18,00,000
Total Taxable Value under Rule 2A(ii)			1,04,80,000
Service Tax @ 12.36%			**12,95,328**

(c) "Duty drawback rates are of following types – (A) All Industry Rate (B) Brand Rate and (C) Special Brand Rate." — Describe. [4]

Answer:

The types of duty drawback rates are described as follows:

A. All Industry Drawback Rates - All Industry Drawback rates are fixed by Directorate of Drawback, Dept. of Revenue, Ministry of Finance, Govt. of India. The rates are periodically revised – normally on 1st June every year.

Whenever specific rates are provided, drawback shall be payable only if amount is more than 1% of FOB value, except when the drawback claim per shipment exceeds ₹500. Revised rates have been announced vide Notification No. 68/2007-Cus(NT) dated 16-7-2007 [earlier Notification No. 81/2006-Cus(NT) dated 13-7-2006].

The all industry drawback rates are given in two ways – (a) when Cenvat facility has been availed and (b) when Cenvat facility not availed. The difference between the two is central excise portion of duty drawback. If rate indicated in both is same, it means that it pertains to only customs portion and is available irrespective of whether exporter has availed Cenvat or not – Condition No 5 to Notification No. 68/2007-Cus(NT) dated 16-7-2007 [earlier No. 81/2006-Cus(NT) dated13-7-2006].

Duty drawback rate shall not exceed 33% of market price of export goods (Rule 8A w.e.f. 15-2-2006). In case of some cases, value cap has been fixed. In such cases, maximum drawback allowable per unit of quantity has been specified (This is to avoid misuse by over-valuation of export goods].

B. Brand Rate of duty drawback – It is possible to fix All Industry Rate only for some standard products. It cannot be fixed for special type of products. In such cases, *brand rate* is fixed under rule 6. The manufacturer has to submit application with all details to Commissioner, Central Excise. Such application must be made within 60 days of export. This period can be extended by Central Government by further 30 days. Further extension can be granted even upto one year in if delay was due to abnormal situations as explained in MF(DR) circular No. 82/98-Cus dated 29-10-1998.

Duty drawback rate shall not exceed 33% of market price of export goods (Rule 8A w.e.f. 15-2- 2006).

C. **Special Brand Rate of duty drawback –** All Industry rate is fixed on average basis. Thus, a particular manufacturer or exporter may find that the actual excise/customs duty paid on inputs or input services are higher than All Industry Rate fixed for his product. In such case, he can apply under rule 7 of Drawback Rules for fixation of Special Brand Rate, within 30 days from export. The conditions of eligibility are (*a*) the All Industry Rate fixed should be less than 80% of the duties paid by him (*b*) rate should not be less than 1% of FOB value of product except when amount of drawback per shipment is more than ₹500 (*c*) export value is not less than the value of imported material used in them – i.e. there should not be 'negative value addition'.

5. (a) The book profits of Star Heights Ltd., for the previous year 2013-14 computed in accordance with Section 115JB is ₹ 37.50 Lakhs. If the total income computed for the same period as per the provisions of the Income Tax Act, 1961 is ₹ 7.50 Lakhs, compute the tax payable by the company in the Assessment Year 2014-15. Is Star Heights Ltd. eligible for any tax credit? If so, for how many years, shall Star Heights Ltd. avail such tax credit? [5]

Solution:

Computation of tax payable in the Assessment Year 2014-15 by Star Heights Ltd.

Particulars	**Amount (₹)**
(A) Tax on total income computed in accordance with the provisions of the Income tax act, 1961 = ₹7.50 Lakhs × 30%	2,25,000
(B) Income tax @ 18.5% of the book profits = ₹37.50 Lakhs × 18.5%	6,93,750
Since, the tax payable on book profits exceed the tax payable on total income computed in accordance with the provisions of the Income Tax Act, 1961, therefore Star Heights Ltd. is liable to pay Minimum Alternate Tax.	
Tax payable on book profit Add: Surcharge Add: Education Cess @ 2% Add: Senior and higher Education Cess @ 1%	6,93750 Nil 13,875 6937.50
(C) TAX PAYABLE IN THE ASSESSMENT YEAR 2014-15	**7,14,562.50**
(D) TAX CREDIT AVAILABLE TO THE COMPANY [(A)- (B)] Tax credit shall be available to Star Heights Ltd. for ten succeeding assessment years for set-off against the tax payable on total income during such period. If the credit is not so set off, it shall lapse.	**4,68,750**

(b) Dream House Constructions Ltd. furnishes the following particulars of its wealth for the valuation date as on 31.03.2014:

	Particulars	₹ in lacs
(i)	Land in urban area (held as stock in trade since 1998)	70
(ii)	Motor cars (including one imported car worth ₹35lacs used for hiring)	45
(iii)	125 acres of land acquired at Ghaziabad township on 15.5.2012 for construction of commercial complex	150
(iv)	Two Residential flats of 950 sq feet each provided to 2 employees (salary of one employee exceeds ₹5 lacs per annum)	30
(v)	Farm house of 8 acres at a remote village	7
(vi)	Cash in hand as per cash book	5
Liabilities:		
(i)	Loan for purchase of land at urban area	50
(ii)	Loan for purchase of land at Ghaziabad	100
(iii)	Wealth-tax liability for A.Y. 2014-15	10
(iv)	Loan for construction of residential flats	10

Compute the net wealth of the company for the A. Y. 2014 – 2015. [5]

Solution:

Computation of Net Wealth of Dream House Constructions Ltd.

Sl. No.	Particulars	₹ in lacs
Assets [as per the definition of assets under Section 2(ea) of the Wealth Tax Act, 1957]		
(i)	Land in urban area (held as stock in trade since 1998) - **[NOTE 1]**	70
(ii)	Motor cars (excluding imported car not being an asset since it is used for hiring) [45 lac - 35 lac]	10
(iii)	Land at Ghaziabad township - **[NOTE 2]**	Nil
(iv)	**(a)** Residential flat provided to an employee drawing salary less than ₹5 lacs per annum - not an asset **(b)** Residential flat provided to an employee drawing salary exceeding ₹5 lacs per annum is an asset [30 x 1/2]	Nil 15
(v)	Farm house at a remote village - **[NOTE 3]**	Nil
(vi)	Cash in hand as per cash book - **[NOTE 4]**	Nil
		95
Less: Liabilities		
(i)	Loan for purchase of land in urban area - **[NOTE 1]**	50

(ii)	Loan for purchase of land at Ghaziabad - not deductible since the land, being stock-in-trade, is not an asset under section 2(ea). **[NOTE 2]**	Nil
(iii)	Wealth-tax liability for A.Y.2014-15 - wealth tax liability is not deductible	Nil
(iv)	Loan for construction of residential flats - the portion relating to taxable asset (1/2) is deductible i.e. ½ x10lacs	5
	Total Liabilities	**55**
	Net Wealth	**40**

NOTE:

1. Land in urban area is a taxable asset, under the provisions of Wealth Tax Act, 1957 since itis held as stock-in-trade for more than 10 years. Hence, loan for purchase of land in urban area is deductible.
2. Since the assessee is engaged in construction business, land and building would form part of his stock-in-trade. Hence, land at Ghaziabad townshipis not taxable.Loan for purchase of land at Ghaziabad is not deductible since the land, being stock-in-trade, is not an asset under Section 2(ea) of the Wealth Tax Act, 1957.
3. Farm house at a remote village is not an asset as it is not situated within25 km of a municipality.
4. Cash in hand as per cash book is not an asset since it represents cashrecorded in the books

(c) The transfer price adopted for an international transaction of sale of goods by an Indian Company during the financial year 2013-14 is ₹ 35 lakhs, whilst the Arm's Length Price determined using the most appropriate method are ₹ 32 Lakhs and ₹ 42 lakhs. With reference to transfer pricing provisions, discuss whether any adjustment is required. The rate of permissible variation prescribed by the Central Government may be assumed to be, 2% of the transfer price for this class of international transaction. [4]

Solution:

The proviso to Section 92C(2) provides that Arm's Length Price shall be taken to be the arithmetical mean of prices, where more than one price is determined by the most appropriate method.

However, if the arithmetical mean, so determined, is within such percentage of transfer price, as prescribed by the Central Government, then, the transfer price shall be deemed to be the arm's length price and no adjustment is required to be made.

In the given case, the arithmetical mean of prices is = ₹(32 Lakhs + 42 Lakhs)/2 = ₹37 Lakhs.

Variation permitted as percentage of transfer price = ₹35 Lakhs x 2% = ₹70,000

The Arithmetic Mean is ₹ 37 Lakhs and the permissible variation is ₹70,000 (2% of the transfer price). Thus, the Arithmetic Mean is not within the prescribed limit of the transfer price.

Hence, the Arm's Length Price shall be ₹ 37 Lakhs.

6. (a) Z Ltd. is engaged in the business of manufacture of computer hardware since 2006. During the previous year 2013-14, the following assets acquired put to use:

(₹ 000)

Particulars	**Block 1 ₹**	**Block 2 ₹**	**Block 3 ₹**
Rate Of Depreciation	**15%**	**30%**	**60%**
No. of assets in the block	**10**	**10**	**15**
Depreciated value of the block on 1.4.13	**2,800**	**3,500**	**1,500**
Addition of plant (during P.Y. 2013-14)			
Paint P	**5,700**	**—**	**—**
Plant Q	**—**	**400**	**—**
Plant R	**—**	**—**	**1,700**
Sale of old plants	**500**	**2,870**	**5,200**

Plants P, Q and R are aquared during May 2013 and put to use during September 2013. However, plant B is put to use in the last week of March 2014.
Find out the amount of depreciation, addition depreciation and capital Gain. [7]

Solution:

Calculation of Depreciation and Additional Depreciation for year 2014-15

Particulars	Block 1 15%	Block 2 30%	Block 3 60%
	₹	₹	₹
Opening W.D.V.	28,00,000	35,00,000	15,00,000
Add : Purchase	12,00,000	4,00,000	12,00,000
	85,00,000	39,00,000	32,00,000
Less : Sales value of old plant	50,000	28,70,000	52,00,000
	80,00,000	10,30,000	20,00,000

Calculation of Depreciation

	Block 1	Block 2	Block 3	Total
Depreciation for 6 months	Nil	1,54,500	—	1,54,500
Depreciation for full year	12,00,000	—	—	12,00,000
(80,00,000 x 15%)				13,54,500
Additional Depreciation				
Value od assets	57,00,000	4,00,000	17,00,000	
Use for	180days	Less then	180 days	
	or more	180 days	or more	
Rate of depreciation	20%	10%	20%	
Amount of Depreciation	11,40,000	40,000	3,40,000	15,20,000

Total amount of Depreciation (additional + normal) =15,20,000 + 13,54,500 = 28,74,500

Note : For Block 3 no depreciation is to be charged as closing W. D. V. is negative(—). ₹ 20,00,000 and is to be treated as short term capital gain.

(b) Determine the cost of production on manufacture of the under-mentioned product for purpose of captive consumption in terms of Rule 8 of the Central Excise Valuation Rules, 2000 (amount in ₹)

Direct material	**11,648**
Direct wages & salaries	**8,400**
Works overheads	**6,200**
Quality control costs	**3,500**
Research and development costs	**2,400**
Administrative overheads	**4,100**
Selling and distribution costs	**1,600**
Realizable value of scrap	**1,200**

The Administrative Overheads are in relation to production activities.
Material cost includes Excise duty ₹ 1,648. **[7]**

Answer:

Calculation of cost of production in terms of Rule 8 of Valuation Rules, 2000 (amounts in ₹)

Direct material (11,648 – 1,648 = 10,000)	WN 1	10,000
Direct wages & salaries		8,400
Works overheads		6,200
Quality control costs	WN 2	3,500
Research and development costs	WN 2	2,400
Administrative overheads	WN 2	4,100
Selling and distribution costs	WN 3	-
Total		34,600
Less : Realisable Value of scrap	WN 4	1,200
Cost of production		33,400
Value of excisable goods under Rule 8 @ 110% of cost of production		36,740

Working notes:

1. Raw-material cost shall be taken net of excise duty assuming Cenvat credit is available
2. Quality control cost, Research and Development cost and Administration overheads related to production shall form part of cost of production as per CAS-4.
3. Selling and distribution costs shall not form part of cost of production
4. Realizable value of scrap shall be deducted to arrive at cost of production.

Section B

Question no. 9 is compulsory and Answer any one Question from 7 & 8.

7. Answer the following Questions [3x5=15]

(a) Mr. Vinod Dutta, an Indian resident, won a Tata Indica worth ₹ 6 Lakhs, as the first prize in a lottery. According to Section 194B of the Income Tax Act, 1961, tax has to be deducted at source from the winnings of lottery at the time of payment of the prize money.

Explain the procedure to be adopted before handing over the Tata Indica (the lottery prize) to Mr. Vinod Dutta.

Solution:

Section 194B of the Income Tax Act, 1961 provides that where the winnings are wholly in kind or partly in kind and partly in cash, but the cash part of it is not sufficient to meet the liability for tax deduction at source, in respect of the whole of the winnings, the person responsible shall, before releasing the winnings, ensure that, the tax has been paid in respect of the winnings.

Therefore, in the case under consideration, the entire winnings being in kind, a sum equal to the tax to be deducted at source (i.e. ₹1,80,000 being 30% of ₹6,00,000) must be collected from the assessee, by the agent and remitted to the Government account before releasing the lottery prize to him.

Thus, ₹1,80,000 - being 30% of ₹ 6,00,000 must be collected from the assessee, by the agent and remitted to the Government account before releasing the Tata Indicato him.

(b) Mr. Rupesh Kumar, an Indian resident, is a practicing Cost and Management Accountant. He was paid ₹90,000 on 1st September, 2013 towards fees for his professional services, without deducting tax at source. Later on, a further sum of ₹1,00,000, was due to him on 1st March, 2014, from which tax of ₹20,000 was deducted at source. The tax so deducted, was deposited on 26thJune, 2014. Compute interest payable by the deductor under Section 201(1A) of the Income Tax Act, 1961.

Solution:

Section 194J of the Income Tax Act, 1961 provides for deduction of tax at source @ 10%, in respect of fees for professional services. Since, there is delay in deduction and deposit of tax, interest under Section 201(1A) is attracted.

As per the provisions of Section 201(1A), if a person, who is liable to deduct tax at source, fails to deduct tax at source or after deducting such tax, fails to pay the tax required by the Act, then he is liable to pay interest as follows:

(i) 1% for every month or part of month, on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually deducted.

(ii) 1.5% for every month or part of the month on the amount of such tax from the date on which such tax was deducted to the date on which tax is actually paid.

Therefore, in the given case, interest under **Section 201(1A)** would be computed as follows:

Particulars	Computation	Amount (₹)
1% on tax deductible, but not deducted	1% on ₹9,000 for 7 months	630
1.5% on tax deducted, but not deposited	1.5% on ₹20,000 for 4 months	1,200
TOTAL		**1,830**

Thus, interest payable by the person liable to deduct tax at source, amounts to ₹1,830.

(c) Can the second proviso to section 32(1) be applied to restrict the additional depreciation under section 32(1)(iia) to 50%, if the new plant and machinery was put to use for less than 180 days during the previous year?

Solution:

Relevant Judicial Case: MM Forgings Ltd. v. ACIT (2012) 349ITR 0673 (Mad.)

In this case, the Assessing Officer, by applying the second proviso to section 32(1), restricted the allowability of depreciation to 50% of the amount of additional depreciation computed under section 32(1)(iia), since the new plant and machinery was put to use for less than 180 days during the previous year. The assessee argued that he has satisfied all the conditions stipulated under section 32(1)(iia), and therefore, the depreciation under section 32(1)(iia) should not be restricted to 50% by resorting to the second proviso to section 32(1).

The Commissioner (Appeals) and Appellate Tribunal, however, affirmed the action of the Assessing Officer.

On appeal, the Madras High Court observed that clause (iia) was inserted by the Finance Act, 2002, with effect from April 1, 2003, in the second proviso to section 32(1). Therefore, it was imperative that on and after April 1, 2003, the claim of the assesseemade under section 32(1)(iia) had to be necessarily allowable by applying the second proviso to section 32(1).

As per the second proviso to section 32(1), which specifically mentions that where an asset referred to in, inter alia, clause (iia) of section 32(1) is acquired by the assessee during the previous year and is put to use for the purpose of business or profession for a period of less than 180 days in that previous year, the deduction in respect of such asset shall be restricted to 50% of the amount calculated at the prescribed percentage under section 32(1)(iia).

The Madras High Court held that if an asset is acquired on or after 1.04.2003, it was mandatory that the claim of the assessee made under section 32(1)(iia) had to be necessarily assessed by applying the second proviso to section 32(1). Since there is a statutory stipulation restricting the allowability of depreciation to 50% of the amount computed under section 32(1)(iia), where the asset is put to-use for less than 180 days, the amount of depreciation allowable has to be restricted to 50% of the amount computed under section 32(1)(iia). The High Court, accordingly, affirmed the order of the Tribunal.

8. Answer the following Questions [8+7=15]

(a) Whether the charges towards pre-delivery inspection and after-sale-service recovered by dealers from buyers of the cars would be included in the assessable value of cars?

Answer:

Facts of the case:
The appellants were manufacturers of various types of motor vehicles chargeable to duty on ad valorem basis. Department observed that while selling the vehicles to the customers, the dealers added their own margin known as the dealer's margin to the price at which the vehicles were made available to them by the appellants. This dealer's margin contained provision for rendering pre-delivery inspection and three after sale services. Hence, the Department contended that the cost of post delivery inspection and after sale services were to form part of the assessable value of the automobile while discharging the duty liability.

Decision of the case:
The Larger Bench of the Tribunal in the case of Maruti Suzuki India Ltd. vs. CCE 2010 (257) E.L. T. 226 (Tri. – LB) has drawn the following propositions:

(i) Transaction value includes the amount paid by reason of/in connection with sales of goods

The Court noted that the transaction value does not merely include the amount paid to the assessee towards price, but also includes any amount a buyer is liable to pay by reason of or in connection with the sale of the goods, including any amount paid on behalf of assessee to the dealer or the person selling the vehicles. The reason of sale and inter connection thereto are essential elements to contribute for assessable value.

Measure of levying is expanded and its composition is broad based to bring all that a buyer is liable to pay or incur by reason of sale or in connection on therewith. The transaction value, therefore, is not confined to the amount actually paid and is not restricted to flow back of consideration or part thereof to the assessee directly but even for discharge of sales obligations both in present and future. Thus, all deferred and future considerations are added to assessable value.

(ii) Definition of transaction value is extensive, at the same time restrictive and exhaustive in relation to the items excluded therefrom

Extensive

The use of expressions like "includes in addition to" and "including but not limited to" in the definition clause establishes that it is of very wide and extensive in nature.

Restrictive and exhaustive

At the same time, it precisely pinpoints the items which are excluded therefrom, with the prefix as "but does not include''. Exclusions being defined no presumption for further exclusions is permissible. Hence, the definition is restrictive and exhaustive in relation to the items excluded therefrom.

(iii) PDI and after sales service charges is a payment on behalf of the assessee to the dealer by the buyer

Both, direct benefit as well as indirect benefit (wholly or partly), flowing from buyer to assessee, resulting from the payment made by the buyer to the dealer in connection with or by reason of the sale transaction will have to be included in the assessable value. Being so, any amount collected by the dealer towards pre-delivery inspection or after sale services from the buyer of the goods under the understanding between the manufacturer and the dealer or forming part of the activity of sales promotion of the goods would be a payment on behalf of the assessee to the dealer by the buyer, and hence, it would form part of the assessable value of such goods.

Hence, it was held that the charges towards pre-delivery inspection and after-sale-service recovered by dealers from buyers of the cars would be included in the assessable value of cars.

(b) In case the testing is critical to ensure marketability of manufactured product i.e. the manufacture is not complete without testing; is CENVAT credit of the testing material allowed?

Answer:

Flex Engineering Ltd. vs. Commissioner of Central Excise, U.P. 2012 (276) E.L. T. 153 (SC)
Facts of the Case:

The Flex Engineering Ltd. ('Flex' in short), a manufacturer was engaged in the manufacturing of various types of packaging machines, marketed Automatic Form Fill and Seal Machines ('F&S machines' in short) ,. The machines were 'made to order', in as much as all the dimensions of the packaging/sealing pouches, for which the F&S machine is required, are provided by the customer. The purchase order contained the following inspection clause:

"Inspection/ trial will be carried out at your works in the presence of our engineer before dispatch of equipment for the performance of the machine.''

As the machine ordered was customer specific, if after inspection by the customer it was found deficient in respect of its operations for being used for a particular specified packaging, it could not be delivered to the customer, till it was re-adjusted and tuned to make it match with the required size of the pouches as per the customer's requirement. On completion of the above process and when the customer was satisfied, an entry was made in the RG-1 register declaring the machine as manufactured, ready for clearance.

As per the above clause, testing material to be used was Flexible Laminated Plastic Film in roll form & Poly Paper which are duty paid.

Point of Dispute:

The Department denied CENVAT credit on the material used for testing of the packaging machines. Two questions were raised to the High Court in this regard:

(i) Whether duties paid on testing material would be eligible as credit under rule 57A of the erstwhile Central Excise Rules, 1944 [now rule 2(k) of the CENVAT Credit Rules, 2004]?

(ii) Whether such use of material in testing in view of the purposes mentioned above, could be said to be used in the manufacture of or use in relation to the manufacture of the final products viz., machines as assembled?

The High Court answered both the above questions in the negative. According to the High Court, anything required to make the goods marketable must form a part of the manufacture and any raw material or any materials used for the same would be a component part of the end product. It thus observed that materials used for testing after manufacture of the final product, viz. the F&S machine, is only to detect the deficiency in the final product and therefore, could not be considered as the goods used in or in relation to the manufacture of the final product. The Flex made an appeal to the Supreme Court against the above order.

Decision of the Case:

The Supreme Court held that the process of manufacture would not be complete if a product is not saleable as it would not be marketable. Thus, the duty of excise would not be leviable on it.

The Supreme Court was of the opinion that the process of testing the customized F&S machines was inextricably connected with the manufacturing process, in as much as, until this process is

carried out in terms of the afore-extracted covenant in the purchase order, the manufacturing process is not complete, the machines are not fit for sale and hence, not marketable at the factory gate. The Court was, therefore, of the opinion that the manufacturing process in the present case gets completed on testing of the said machine. Hence, the afore-stated goods viz. the flexible plastic films used for testing the F&S machines are inputs used in relation to the manufacture of the final product and would be eligible for CENVAT credit under rule 57A of the erstwhile Central Excise Rules, 1944 [now rule 2(k) the CENVAT Credit Rules, 2004].

9. Answer the following Questions [7+8 =15]

(a) Mr. Sanghai had sold a commercial property, which was a long term asset and invested the same in purchase and construction of a flat in a apartment in Mumbai, within the one year of sale of asset and claimed deduction u/s 54F of Income Tax Act, but later the builder has not completed the possession of the apartment within 3 years and the apartment remained under construction even after 3 years. The period of 3 years is lapsed without any mistake of Mr. Sanghai now? Will Mr. Sanghai be liable to tax on the capital gains derived from the sale of the commercial property (or) Will Mr. Sanghai be freed from the liability of capital gains tax?
Discuss allowability of exemption u/s. 54F if builder does not complete construction of house within three Years?

Solution:

The exemption u/s 54F is for those assesses who gets long term gains on any asset other than house property and who uses all the sales consideration within a specified period for purchase or constructing a residential house. The specified period in case of house purchase is one year before or two years after the date of transfer of asset on which gains were made. However, for construction, section 54 provides, time limit of three years. Therefore, the case explained above gains all popularity here. What would be the plight of the assessee when the construction gets delayed for no fault of his?
While the plain reading and strict application of the provision u/s 54F compel one to think that exemption is not allowable in case of any delay beyond 3 years, higher judicial authorities have rescued taxpayers by giving relief in those cases where they found that most of the sales consideration have been spent for construction of house, still some portions were not complete for various reasons. The appellate authorities have taken the view that section 54F being relief provision, should be viewed in a bit of relaxed manner. **Few judgments are given below in this regard which provides that exemption can be claimed even if construction is not completed within 3 years.** However, remember the **court needs to be satisfied** that either full amount or **most** of the amount of **sales consideration was already used**.

The decision of Tribunal was:

To qualify investment **for construction under section 54F the crucial date is the date of allotment of flat by DDA and payment of installments was only a follow-up action and taking possession of the flat is only a formality**, of course, installments have to be paid by the allottee as per the schedule fixed by the DDA. The Board after referring to the above mentioned Circular extended

the facility of exemption under sections 54 and 54F in respect of allotment of flats/house by co-operative societies and other institutions, and the allotment and construction of the flat by co-operative societies and other institutions are to be considered in similar manner for the purpose of allowing exemption under section 54. The above circulars are binding on the revenue authorities under section 119 of the Act. Since the flat has been allotted to the assessee by the builder who would fall in the category of other institutions mentioned in the circulars, it has to be taken as a case of construction of the residential flat and not as a purchase of a residential flat.

The decision has elaborated on the reasons why the CBDT issued circulars for such relief and that the word "institution 'in the circular will include "builder".
Hence, exemption u/s. 54F can be claimed even if construction is not completed within 3 years but when substantial payment been made.

Reference Cases:
1. Mrs. Seetha Subramanian. vs Assistant Commissioner Of Income-Tax. [59 ITD 94] ITAT , Madras :- CIT ,
2. SatishChandraGupta v. Assessing Officer [1995] 54 ITD 508
3. CIT vs. Hilla J.B. Wadia [1995] 216 ITR 376 (Bom).

(b) Whether the transfer of goods as a contribution for capital be considered as Sale?

Solution:

Query – *Transfer of goods on sale of the business as a whole by a proprietor to a company in which he is a promoter, as his contribution for capital, is a 'sale' under Uttar Pradesh Value Added Tax Act, 2008*

Analysis : Relevant Extracts **of the State Act**

Section 2(ac) of the State Act defines sale as follows:

"*sale*" with its grammatical variations and cognate expressions, means any transfer of property in goods (otherwise than by way of a mortgage, hypothecation, charge or pledge) by one person to another, for cash or for deferred payment or for any other valuable consideration….

Section 2(aq) of the State Act defines turnover of sale as:

"*turnover of sale*" means the aggregate of amount of sale prices of goods, sold or supplied or distributed *by way of sale by a dealer,* either directly or through another, whether on his own account or on account of others;

Section 2 (h) of the State Act defines dealer as:
"*dealer*" means *any person who carries on* in Uttar Pradesh (whether regularly or otherwise) *the business of buying, selling, supplying or distributing goods* directly or indirectly, for cash or deferred payment or for commission, remuneration or other valuable consideration….

Extract of Rule 8 of Uttar Pradesh VAT Rules, 2008 determining taxable turnover is as follows:
"For the purposes of determining taxable turnover of sale, amounts specified below shall be deducted from the turnover of sale, determined in accordance with rule 7, if included in such turnover of sale

(iii) all amounts realized from the sale by the dealer of his business as a whole;…"

It clear from the aforesaid provisions as well as from the scheme of the State Act that, what constitutes a "turnover" is only the aggregate amount for which goods are either bought or sold, and that the purchase or sale must be in respect of a "sale" as defined in the Act. In other words, *only sales which take place in the course of trade or business are taken into account in determining the turnover under the State Act.* The definition of the word "dealer" shows that every person, who buys or sells goods, is not a dealer, but only a person, who carries on the business of buying, selling, supplying or distributing goods. And the transaction must be in the course of his trade or business. Applying the above principles, it will be wrong to say that the transfer of a person's business or stock in trade into a firm or a company, as contribution of his capital therein amounts to a sale of goods in the course of trade or business as a dealer; and such a transaction involve any sale of goods. The transferor does not part with property in the goods. He only shares his rights therein with the other members under the contract of becoming a shareholder of the Company.

Even assuming there is a sale, it is not a sale in the course of trade or business, nor is it a transaction by a "dealer" as defined in the State Act.