# 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) From the following particulars compute the 'Income from House Property' of Mr. Mitra for the Assessment Year 2014 - 2015 :**

**Mr. Mitra inherited a property on 1.4.2010 from which gross rental income is ₹ 30,000 per year. Municipal Tax of the property is ₹ 1,000 per quarter of which 50% is borne by the tenant Mr. Mitra took loan of ₹ 80,000 from a bank for heavy repairing of the property out of which he spent ₹ 40,000 for his sister's marriage and the balance spent for repairing of the property. He paid during the year 2013-2014 ₹ 6,000 as interest on bank loan and spent ₹100 per month for collection of rent. [7]**

**Solution**

**Computation of Income from House Property of Mr. Mitra for the A.Y. 2014-2015 relating to the previous year 2013-14**

| Particulars | ₹ | ₹ | ₹ |
|---|---|---|---|
| **Income from House Property** | | | |
| House (fully let-out) | | | |
| Gross Annual Value | 30,000 | | |
| *Less* : Municipal Tax (1,000 x 4) x 50% | 2,000 | | |
| *Less:* Deduction u/s 24(a) | | 28,000 | |
| 30% of Net Annual Value on Standard Deduction | | | |
| Deduction u/s 24(b) | 8,400 | | |
| Interest on Loan $(6,000 \times \frac{40,000}{80,000})$ | 3,000 | | |
| | | 11,400 | |
| **Total Income from House Property** | | | 16,600 |

Notes : 1. Municipal tax paid by tenant is not allowable deduction.

2. Interest on loan will be allowed in proportion to the loan used for the Building.

**(ii) From the following information of Mr. A. S. Ghosh, compute the income from salary for the Assessment Year 2014-15.**

**(1) Net salary ₹ 1,20,000. (2) Amount deducted from salary at source ₹ 10,000 for employee's contribution to R.P.F. and for rent ₹ 500 p.m. (3) Bonus ₹ 10,000 (4) Dearness allowance ₹ 12,000. (5) Conveyance allowance ₹ 5,000. (6) Medical allowance ₹ 4,000. (7) Employer's contribution to R.P.F. @ 13% on basic plus D.A. (8) Interest on R.P.F. @ 14% is ₹ 5,600.**

**He has been provided a rent-free accommodation at Kolkata including furniture costing ₹50,000. [7]**

**Solution:**

**Computation of Income from salary of Mr. A. S. Ghosh, a resident individual, for the Assessment Year 2014-15 relating to previous year 2013-14.**

| Particulars | ₹ | ₹ | ₹ |
|---|---|---|---|
| Net Salary | 1,20,000 | | |
| Add: Amount deducted from salary - | | | |
| Employee's contribution to R.P.F. | 10,000 | | |
| Rent | 6,000 | | |
| Basic Salary | | 1,36,000 | |
| Add: Dearness allowance | | 12,000 | 1,48,000 |
| Add: Bonus | | | 10,000 |
| Add: Medical allowance | | | 4,000 |
| Add: Conveyance allowance | | 5,000 | |
| Less: Exemption u/s 10(14) | | 5,000 | Nil |
| Add: Employer's contribution to R.P.F. (1,48,000 x 13%) | | 19,240 | |
| Less: 12% of salary (1,48,000 X 12%) | | 17,760 | 1,480 |
| Add: Interest on R.P.F (excess of 9.5%) | | | 1,800 |
| Add: Rent-free furnished accommodation | | 24,300 | |
| [u/s. 17(2)(ii)] (1,62,000 X 15%) | | | |
| Add: 10% of cost of furniture (50,000 X 10%) | | 5,000 | |
| | | 29,300 | |
| Less: Rent deducted | | 6,000 | 23,300 |
| Income from Salary | | | 1,88,580 |

**2. (a) Following transactions took place in the factory of Arvind Ltd. —**

**(i) An imported consignment of Raw Materials was received vide Bill of Entry dated 2nd Dec, showing the following Customs Duty payments —**

| | |
|---|---|
| **Basic Customs Duty** | **₹ 23,000** |
| **Additional Duty (CVD)** | **₹ 20,000** |
| **Special Additional Duty** | **₹ 5,800** |

**(ii) A consignment of 1,000 kgs of inputs was received. The Excise Duty paid as per the invoice was ₹ 10,000. While the input was being unloaded 50 kgs were damaged, and were found to be not usable.**

**(iii) Some inputs for final product were received. These were accompanied by a certified Xerox Copy (photo copy) of Invoice No. 356 dated 23rd Dec. indicating the Excise duty of ₹ 6,400 has been paid on inputs. The original for duplicate copy of invoice are not traceable.**

**Indicate the eligibility of CENVAT Credit under the CENVAT Credit Rules, 2004 with explanations where necessary. [7]**

**Solution:**

**Eligibility of Cenvat credit**

| Situation | Eligible Amount | Reasoning |
|---|---|---|
| Imported Consignment | ₹ 25,800 | Countervailing Duty for Excise Duty and VAT Equivalent will be eligible for credit under CENVAT Credit Rules. Basic Customs Duty of ₹ 23,000 is not eligible. |
| Loss of Inputs | ₹ 9,500 | • Inputs used in the manufacture of dutiable finished products alone are eligible for CENVAT Credit.<br>• When inputs are damaged irretrievably before usage in the manufacturing process, duty attributable to such goods cannot be claimed as CENVAT Credit.<br>• Therefore, duty for 950 Kgs alone is eligible for CENVAT Credit = ₹ 10,000 x 950 Kgs used / 1,000 Kgs received. |
| Inputs received under Photocopy of Invoice | ₹ 6,400 | • Duty can be claimed only if inputs have been received and documents evidencing payment of duty is available.<br>• CENVAT Credit is allowable on Photostat copies of authenticated invoices.<br>[Kothari General Foods Corpn Ltd 144 ELT 338 (Tri.)] |
| **Total Credit** | **₹ 53,700** | |

**(b) M/s. Mili Pvt. Ltd., not an SSI unit, purchased fibre 10,000 kg @ ₹ 50 per kg plus excise duty. The said fibre was used to manufacture intermediate product yarn. The said yarn was captively used for the manufacture of fabrics. The said fabric was exempt from duty. The other information are as follows:**

**(i) Normal processing loss: 2% of inputs in manufacture of yarn**
**(ii) Rate of excise duty on all products is 12.36%;**
**(iii) Assessable Value of yarn: ₹ 80 per Kg.;**
**(iv) Assessable Value of Fabric (Total): ₹ 13 lakhs;**
**(v) Colouring Dyes used in the manufacture of Fabric: ₹ 2 lakhs plus excise duty.**
**(vi) Duty on Capital Goods imported during the period and used in the manufacture of yarn: Basic Customs Duty ₹ 20,000; Additional duty of customs under section 3(1) of the Customs Tariff ₹ 30,000; Additional duty of customs under section 3(5) of the Customs Tariff Act ₹ 10,000.**

**Compute - (i) CENVAT Credit available; (ii) Duty payable. [7]**

**Solution:**

Since the final product 'fabrics' is exempt from duty, hence, the intermediate product 'yarn' shall be liable to excise duty. Thus, the CENVAT Credit of raw material fibre shall be available.

The relevant computations are as follows–

| | (Amounts in ₹) |
|---|---|
| (1) Excise duty on yarn : (10,000 kg - 2% Normal Loss = 9,800 kg) x ₹ 80 per kg x 12.36% | 96,902 |
| (2) CENVAT Credit: | |
| (a) On raw material fibre 10,000 kg x ₹ 50 per kg x 12.36% [WN-1] | 61,800 |
| (b) Colouring Dyes [WN-2] | --- |
| (c) Capital goods used in the manufacture of yarn are eligible for 50% credit as follows - | |
| Basic Customs Duty is not eligible for Cenvat credit. | --- |
| Additional Customs Duty u/s 3(1) of CTA - Eligible for 50% credit in the current year and the balance in subsequent year | 15,000 |
| Additional duty of customs u/s 3(5) of CTA - Eligible for 100% credit in current year | 10,000 |
| **Total Credit [2(a) + 2(b) + 2(c)]** | **86,800** |
| **(3) Duty payable in cash [1 - 2]** | **10,102** |

**Working Notes:**

1. Normal loss of inputs is incurred in factory and in relation to manufacture; hence the same shall also be eligible for Cenvat Credit.
2. Colouring Dyes used in the manufacture of fabric shall not be eligible for credit as fabric is exempt from duty.

**3. (a) Miss Titir started a business of manufacturing cosmetic goods. She incurred the following expenses before the commencement of her business:**

| S.N. | | ₹ |
|---|---|---|
| (i) | Expenses for market survey | 25,000 |
| (ii) | Legal charges for drafting an agreement with other for setting up her business | 20,000 |
| (iii) | Expenses for preparation of feasibility report | 15,000 |
| (iv) | Expenditure for raising loan for the business | 4,000 |

**Her business was started on 1.7.08:**

**Book value of assets on 31.3.09 were:**

| S.N. | | ₹ |
|---|---|---|
| (i) | Building | 10,00,000 |
| (ii) | Machinery | 10,00,000 |
| (iii) | Furniture | 4,00,000 |
| (iv) | Stock | 4,00,000 |
| (v) | Patent | 1,00,000 |

**Calculate the allowable preliminary expenditure for the Assessment Year 2014-15. [7]**

**Solution:**

**Calculation of the cost the project:**

| | ₹ |
|---|---|
| Building | 10,00,000 |
| Machinery | 10,00,000 |
| Furniture | 4,00,000 |
| | 24,00,000 |

Eligible Amount of preliminary expenses:

| | ₹ |
|---|---|
| Expenses For Market Survey | 25,000 |
| Legal charges for drafting agreement | 20,000 |
| Expenses for Preparation of feasibility report | 15,000 |
| | 60,000 |

Qualifying amount for deduction u/s 35D lower of the following two:

| | ₹ |
|---|---|
| (a) 5% of the cost of the project i.e. ₹ 24,00,000 x 5% | 1,20,000 |
| (b) Actual amount of preliminary expenses | 60,000 |
| Deduction for A. Y. 2014-15 u/s 35D is $\frac{1}{5}$ th of ₹ 60,000 | 12,000 |

**(b) Compute the duty payable under the Customs Act, 1962 for an imported machinery based on the following information:**

**(i) Assessable value of the imported equipment US $ 12,000.**

**(ii) Date of Bill of Entry 25.03.2014 basic customs duty on this date 20% and exchange rate notified by the Central Board of Excise and Customs US $ 1 = ₹ 65.**

**(iii) Date of Entry inwards 21.03.2014 Basic customs duty on this date 16% and exchange rate notified by the Central Board of Excise and Customs US $ 1 = ₹ 57.**

**(iv) Additional duty payable under Section 3(1) and (2) of the Customs Tariff Act, 1975: 15%.**

**(v) Additional duty under Section 3(5) of the Customs Tariff Act, 1975: 4%.**

**(vi) Education Cess @ 2% in terms of the Finance (No. 2) Act, 2004 and secondary and higher education cess @ 1% in terms of the Finance Act, 2007.**

**Make suitable assumptions where required and show the relevant workings and round off your answer to the nearest Rupee. [7]**

**Solution:**

Computation of Duty

| | Duty | | Total |
|---|---|---|---|
| | **Rate** | **₹** | **₹** |
| Assessable Value (US$ 12,200 x Rate of exchange in force on date of presentation of bill of entry i.e., ₹65) | --- | --- | 7,87,800.00 |
| Add: BCD [As per section 15(1)(a), rate of duty prevalent on date of presentation of bill of entry or date of entry inwards, whichever is later, shall be applicable. Therefore, rate prevalent on 25-03-2013 viz. 20% shall be taken.] | 20.00% | 1,57,560.00 | 1,57,560.00 |
| | | 1,57,560.00 | 9,45,360.00 |
| Add: Additional duty i.e., CVD u/s 3(1) (excise duty excluding EC and SHEC due to exemption) | 15.00% | 1,41,804.00 | 1,41,804.00 |
| | | 2,99,364.00 | 10,87,164.00 |
| Add: Education Cess @ 3% on DUTY sub-total upto last stage | 3.00% | 8,981.00 | 8,981.00 |
| | | 3,08,345.00 | 10,96,145.00 |
| Add: Special CVD u/s 3(5) @ 4% of total value (including duty) | 4.00% | 43,846.00 | 43,846.00 |
| Total (rounded off on nearest rupee) | | 3,52,191.00 | 11,39,991.00 |

**4. (a) An importer imported some goods for subsequent sale in India at $ 30,000 on CIF basis. Relevant exchange rate as notified by the Central Government ₹60. The item imported attracts basic duty at 10% and education Cess as applicable. If similar goods were manufactured in India, Excise Duty payable as per Tariff is 14% plus education Cess of 2% and SAH 1%. Special Additional Customs Duty is 4%. Find the total duty payable. [7]**

**Solution:**

Calculation of duty payable:

| | **(₹)** |
|---|---|
| CIF value USD 30,000 X 60 | 18,00,000 |
| Add: Loading and unloading @1% | 18,000 |

| | |
|---|---|
| Assessable Value | 18,18,000 |
| Add: Basic Customs Duty @10% on ₹18,18,000 | 1,81,800 |
| | 19,99,800 |
| Add: Additional Customs Duty [@14% x ₹19,99,800] | 2,79,972 |
| | 22,79,772 |
| Add: Education Cess 2% on (₹ 1,81,800+ ₹ 2,79,972) | 9,235 |
| Add: SAH @1% on (₹ 1,81,800+ ₹ 2,79,972) | 4,618 |
| | 22,93,625 |
| Add: Special Additional Customs Duty [@4% x ₹22,93,625] | 91,745 |
| Total value of imported goods | 23,85,370 |

Therefore total duty payable ₹5,10,634.

**Notes:**

- While calculating CVD we should not take into account NCCD of excise.
- CVD can also be imposed even if there is exemption from Basic Customs Duty.
- Imported goods contain more than one classification and the importer is unable to give the breakup of each item with value then the highest rate of duty among them will be considered.
- CVD can be levied only when the importer imported manufactured goods. It means CVD can be levied only if goods are obtained by a process of manufacture [Hyderabad Industries Ltd v Union of India (1995) (SC)].

**(b) State with reasons whether service tax will be levied or not on the interest in relation to overdraft, cash credit, bill discount or exchange in the region of Banking and financial services.** **[3]**

**Answer:**

In the context of Banking and other financial instructions, the Hon'ble Tribunal in State Bank of Indore v. CCE 2011 (23) STR 346 (Tri) held that interest in relation to overdraft, cash credit, bill discount or exchange was exempted under Notification No. 29/2004-ST, dated 22.09.2004. The mere fact that the bank did not show separately in the invoice the interest is not very factual to avail the exemption in view of the fact that the assessee, the banking company was regulated by RBI guidelines and public norm requires disclosure of bank's earning, Therefore, the Tribunal held that subject to the appellant adducing evidence as required by the Notification, the matter should stand remanded to the adjudicating authority for passing appropriate order.

**(c) Determine the Point of Taxation in each of following independent cases in accordance with point of Taxation Rules, 2011.**

| S. No. | Date of actual provision of service | Time [date] of Invoice, Bill or Challan as the case may be | Date on which payment received |
|---|---|---|---|
| 1 | 10.04.2013 | 30.04.2013 | 06.04.2013 (part) and 16.04.2013 (remaining) |

| | | | |
|---|---|---|---|
| **2.** | **10.04.2013** | **12.05.2013** | **30.04.2013** |
| **3.** | **10.04.2013** | **12.05.2013** | **05.04.2013 (part) and 25.04.2013 (remaining)** |
| **4.** | **10.04.2013** | **22.05.2013** | **12.06.2013** |

**[4]**

**Solution:**

**Point of Taxation for the different cases:**

| S. No. | Date of completion of service | Time [date] of Invoice, Bill or Challan as the case may be | Date on which payment received | Point of Taxation | Remarks |
|---|---|---|---|---|---|
| 1. | 10.04.2013 | 30.04.2013 | 06.04.2013 (part) and 16.04.2013 (remaining) | 06.04.2013 and 16.04.2013 for the respective amounts | Invoice issued within 30 days. Part payment (in the form of advance received before issue of invoice and remaining payment received after completion of service) |
| 2. | 10.04.2013 | 12.05.2013 | 30.04.2013 | 10.04.2013 | Invoice not issued within 30 days and payment received after completion of service |
| 3. | 10.04.2013 | 12.05.2013 | 05.04.2013 (part) and 25.04.2013 (remaining) | 05.04.2013 and 10.04.2013 for the respective amounts | Invoice not issued within 30 days. Part payment received as advance before completion of service and remaining payment received subsequently |
| 4. | 10.04.2013 | 22.05.2013 | 12.06.2013 | 10.04.2013 | Invoice not issued within 30 days and entire payment received after completion of service |

**5. (a) Ms. Jennifer D' Souza, an individual resident Indian, aged 62 years, frequently visits a foreign university to deliver lectures and receives honorarium of ₹ 3,35,000 for the same. Tax of ₹33,500 was deducted in the foreign country. India did not have any double taxation avoidance agreement with that foreign country. The particulars of income earned in India are stated as follows:**

**(i) In India, her total income amounted to ₹10,20,000.**
**(ii) Contribution to the Public Provident fund - ₹ 1,40,000.**
**(iii) Contribution to the approved Pension Fund of LIC- ₹ 64,000.**
**(iv) Contribution to Central Government Health Scheme during the previous year- ₹36000.**
**(v) Payment of medical Insurance premium, for mother (who is not dependent on her) - ₹21,000.**

**Compute the tax liability of Ms. Jennifer D' Souza for the Assessment Year 2014-15. [7]**

**Solution:**

**Computation of tax liability of Ms. Jennifer D' Souza for the Assessment Year 2014-15**
**Assessee: Ms. Jennifer D' Souza**

**Assessment Year: 2014-15** **Previous Year: 2013-14**

| **Particulars** | **₹** | |
|---|---|---|
| Indian Income | | 10,20,000 |
| Foreign Income | | 3,35,000 |
| **Gross Total Income** | | **13,55,000** |
| Less: Deductions | | |
| Deposit in PPF **[Section 80C]** | 1,40,000 | |
| Contribution to approved Pension Fund of LIC **[Section 80CCC]** | 64,000 | |
| | 2,04,000 | |
| The aggregate deduction under Sections 80C, 80CCC and 80CCD(1) has to be restricted to ₹1,00,000 **[Section 80CCE]** | 1,00,000 | 1,00,000 |
| Contribution to Central Government Health Scheme.**[Section 80D]** | 20,000 | 20,000 |
| (Under Section 80D, the maximum deduction allowed to a senior citizen is ₹20,000) Medical insurance premium paid for mother **[Section 80D]** | 20,000 | 20,000 |
| **GROSS DEDUCTIONS** | | **1,40,000** |
| **TOTAL INCOME** | | **12,15,000** |
| **TAX ON TOTAL INCOME** | | |
| Income Tax payable | 1,89,500 | |
| Education Cess @ 2% | 3,790 | |
| Secondary and Higher Education Cess@ 1% | 1,895 | 1,95,185 |
| **Average rate of tax in India** [ ₹1,95,185/12,15,000 x 100] | | 16.06% |
| **Average rate of tax in foreign country** [ ₹33,500/3,35,000 x 100] | | 10% |
| Rebate under Section 91 shall be limited to the lower of average Indian tax rate or average foreign tax rate **Hence, rebate under Section 91 shall be = (₹335000 x 10%)** | | 33,500 |
| **Tax payable in India (₹ 1,95,185 - ₹ 33500)** | | 1,61,685 |

**(b) Mr. Rajendra Sinha, an individual, furnishes the following information, relating to the assets and liabilities as on 31.03.2014:**

| Sl. No | Particulars | Amount (₹) |
|---|---|---|
| (i) | Plot of land at Mumbai, comprising an area of 1200 square meters, (on which building has been constructed without the approval of the appropriate authority). | 50,00,000 |
| (ii) | Building constructed on land at Mumbai, without the approval of the appropriate authority, and used for his business purposes. | 20,00,000 |
| (iii) | Two residential house properties, (one of the house properties is used for the purpose of business, by Mr. RajendraSinha) | 10,00,000 (each) |
| (iv) | Urban Land was purchased in August 2011 located in Pune, in the name of his son who is suffering from a disability specified under Section 80U of the Income Tax Act, 1961. The age of his son on 31.03.2014 was 17 years. | 5,00,000 |
| (v) | House located in Ahmedabad, shown in his wealth-tax return for the A.Y 2013-14 at ₹50 Lakh was sold on 20.03.2014 for ₹60 Lakh, but the sale deed thereof was executed on 03.04.2014. | 55,00,000 |
| (vi) | Motor cars held as stock-in-trade. | 75,00,000 |
| (vii) | Gold jewellery brought into India from Singapore, where he was residing, on his return to India on 01.11.2009, for permanently residing in India. | 12,00,000 |
| (viii) | Jewellery made of platinum. | 18,00,000 |
| (ix) | Jewellery gifted to wife from time to time, were available with her on the valuation date. The jewellery was acquired for ₹10 Lakhs. | 35,00,000 (Fair Market Value) |
| (x) | Interest in the coparcenary property of the Hindu Undivided Family, of which he is a member. | 25,00,000 |
| (xi) | Cash in hand, recorded in the books of account. | 10,00,000 |
| (xii) | Fixed Deposits in a co-operative bank. | 20,00,000 |
| Liabilities | | |
| (xiii) | Loan borrowed for marriage of daughter | 12,00,000 |
| (xiv) | Loan borrowed for construction of building at Mumbai | 10,00,000 |

**The minor married daughter of Mr. RajendraSinha holds a plot of land at Bhopal, valued at ₹40 Lakhs. The amounts stated against the assets, except cash in hand, are the values determined as per Section 7 of the Wealth Tax Act, 1957 read with Schedule III thereto.**
**Compute the net wealth of Mr. RajendraSinha, as on the valuation date 31.03.2014.**
**State the reasons for inclusion, or exclusion of the various items. [7]**

**Solution:**

**Assessee: Mr. RajendraSinha Valuation Date: 31.03.2014 Assessment Year: 2014-15**

**Computation of net wealth**

| Sl. No. | Particulars | Note | Amount (₹) | Amount (₹) |
|---|---|---|---|---|
| **ASSETS (as per the definition of "Assets", under Section 2(ea) of the Wealth Tax Act, 1957)** | | | | |
| **(i)** | Plot of land in Mumbai. | **1** | | 50,00,000 |
| **(ii)** | Building constructed on land at Mumbai, without the approval of the appropriate authority. | **2** | | NIL |
| **(iii)** | Residential house properties. | **3** | | NIL |
| **(iv)** | Urban Land was purchased in Pune, in the name of his son who is suffering from a disability specified under Section 80U of the Income Tax Act, 1961. | **4** | | NIL |
| **(v)** | House located in Ahmedabad, which has already been sold. | **5** | | NIL |
| **(vi)** | Motor cars held as stock-in-trade. | **6** | | NIL |
| **(vii)** | Gold jewellery brought into India from Singapore | **7** | | NIL |
| **(viii)** | Jewellery made of platinum. | **8** | | 18,00,000 |
| **(ix)** | Jewellery gifted to wife | **9** | | 35,00,000 |
| **(x)** | Interest in the coparcenary property of the Hindu Undivided Family | **10** | | NIL |
| **(xi)** | Cash in hand, in excess of ₹50,000 | **11** | | 9,50,000 |
| **(xii)** | Fixed Deposits in a co-operative bank | **12** | | NIL |
| **(A) TOTAL ASSETS** | | | | **1,12,50,000** |
| **LESS:** | **Liabilities** | | | |
| **(xiii)** | Loan borrowed for marriage of daughter | **13** | | NIL |
| **(xiv)** | Loan borrowed for construction of building at Mumbai | **14** | | NIL |
| **(B) TOTAL LIABILITIES** | | | | **NIL** |
| **(C) NET WEALTH [(A)- (B)]** | | | | **1,12,50,000** |

**NOTE:**

1. Plot of land at Mumbai, comprising an area of 1200 square meters, (on which building has been constructed without the approval of the appropriate authority), is an asset under Section 2(ea) of the Wealth Tax Act, 1957, and is therefore, included in the computation of the net wealth of the assessee. Since, the plot of land comprises an area of more than 500 square meters, it is not eligible for exemption under Section 5(vi) of the Wealth Tax Act, 1957.
2. Building constructed on land at Mumbai, without the approval of the appropriate authority, is not an asset under Section 2(ea) of the Wealth Tax Act, 1957, since the building is being used for the purposes of business.
3. The assessee owns two residential house properties. One of the house property shall be exempt from the levy of wealth tax. This is so because, a house used exclusively for residential purpose is treated as an 'Asset' under Section 2(ea) of the Wealth Tax Act, 1957, but is exempt under Section 5(vi) of the Wealth Tax Act, 1957.
   The other house property shall also be exempt from the levy of wealth tax, because, the residential property is used for the purposes of business.
4. Urban Land is an asset, by virtue of Section 2(ea)(v) of the Wealth Tax Act, 1957. However, since, the same is in the name of his minor son, who suffers from a disability specified under Section 80U of the Income Tax Act, 1961, the clubbing provisions are not applicable as per Section 4(1)(a)(ii) of the Wealth tax Act, 1957.
5. The house property, located in Ahmedabad, was sold during the year and is, therefore, not an asset of the assessee, but is an asset of the beneficial owner, since ownership of the property passes on sale of property and execution of sale deed only confirms the act of the parties.
6. Motor cars held as stock-in-trade do not fall within the Meenakshiew of the definition of an 'Asset', under Section 2(ea) of the Wealth Tax Act, 1957, and hence, is not chargeable to wealth tax.
7. Gold jewellery brought into India on 01.11.2009, from Singapore is exempt under Section 5(v) of the Wealth Tax Act, 1957, for seven successive assessment years, beginning with the Assessment Year 2010-11.
8. Jewellery made of platinum, is an asset under Section 2(ea) of the Wealth Tax Act, 1957, and is, therefore, included in the net wealth.
9. The fair market value of the Jewellery gifted to wife, will be included in the computation of the net wealth of Mr. RajendraSinha, as per the provisions of Section 4(1)(a)(i), read with Rule 18 of Schedule III of the Wealth Tax act, 1957.
10. Interest in the coparcenary property of the Hindu Undivided Family, of which Mr. Rajendra Sinha is a member, is exempt under Section 5(ii) of the Wealth Tax Act, 1957.
11. Cash in hand, in excess of ₹50,000, is includible in the net wealth of an individual, whether such cash is recorded in the books of account, or not.
12. Fixed Deposits in a co-operative bank do not constitute 'assets' within the meaning of Section 2(ea) of the Wealth Tax Act, 1957, and is hence, not included in the computation of the net wealth of the assessee.
13. Loan borrowed for marriage of daughter, is not deductible, since, only loans in relation to assets (under Section 2(ea) of the Wealth Tax Act, 1957) are deductible.
14. Since, building constructed in Mumbai, is used for business purposes, it is excluded from the computation of the net wealth of the assessee. Hence, the loan taken for construction of such property shall also not be admissible as a deduction.

**15.** Assets held by a minor married daughter are not includible in the computation of the net wealth of the any parent under Section 4(1)(a)(ii) of the Wealth Tax Act, 1957. Hence, the value of plot of land at Bhopal, held by the minor married daughter, does not form part of the net wealth of Mr. Rajendra Sinha.

**6. (a) Compute the net VAT liability of Ritesh using the information given as follows:-**

**Raw material purchased from foreign market (including duty paid on imports @ 20%): ₹ 13,200**

**Raw material purchased from local market (including VAT charged on the material @ 4%): ₹ 22,880**

**Raw material purchased from neighbouring state (including CST paid on purchases @ 2%): ₹ 7,854**

**Storage, transportation cost and interest: ₹ 2,750**

**Other manufacturing expenses incurred: ₹ 660**

**Ritesh sold the goods to Binay and earned profit @ 10% on the cost of production. VAT rate on sale of such goods is 12.5%. [7]**

**Solution:**

Computation of net VAT liability (₹)

| | |
|---|---|
| Imported goods (import duty is not eligible as Input credit, hence, import duty will form part of cost) | 13,200 |
| Local purchases [Input VAT is eligible for credit, hence, it will not form part of cost]<br>[Total Price inclusive of VAT ₹ 22,880 – VAT 22,880 x 4 ÷ 104 = 22,880 – 880 = ₹ 22,000] | 22,000 |
| Purchases from other state (CST is ineligible for credit, hence, it will form part of cost) | 7,854 |
| Storage, transportation, interest and other manufacturing expenses [2,750 + 660]<br>[Interest has been included in cost of production, assuming that it is an interest on working capital and operating expenditure; in any other case, it will not form part of cost of production.] | 3,410 |
| Total Cost | 46,464 |
| Add: Profit @ 10 % on cost | 4,646 |
| Sale Price | 51,110 |
| Add: VAT @ 12.5% on sale price | 6,389 |
| Total Invoice Price | 57,449 |
| VAT on Sales | 6,389 |
| Less: Credit of VAT paid on local purchases | 880 |
| VAT payable in cash | 5,509 |

**(b) Sterling Machine Works Ltd., an Indian company declared an income of ₹ 450 crores. However, this income was declared before taking into account the following adjustments:**

- **25,000 machines were sold to Diamond Industries Ltd at a price, which is lower than the normal transaction price by $250 per car. Diamond Industries Ltd. holds 35% shares in Sterling Machine Works Ltd.**

- **Wellington Ltd. was paid a royalty of $ 2,40,00,000, for use of its technical know-how. However, another Indian company had paid $ 2,00,00,000 as royalty to Wellington Ltd. for a similar transaction. Sterling Machine Works Ltd. was completely dependent on the technical knowhow supplied by Wellington Ltd., for the manufacture of the machineries.**
- **Beijing Finance Ltd. extended a loan of Euro 850 crores to Sterling Machine Works Ltd., carrying an interest @10% p.a, which was outstanding in the books of Sterling Machine Works Ltd. as on 31.03.2014. Beijing Finance Ltd. had extended a loan of similar amount to another Indian company @ 9% p.a. Total interest paid for the year was Euro 85 crores. The total assets of Sterling Machine Works Ltd., as on 31.03.2014 was ₹ 100,000 crores.**

**The value of 1$ and 1 Euro may be taken to be ₹62 and ₹82 respectively.**

**With reference to the provisions of the Act, analyse the nature of transactions, and determine the income of the company chargeable to tax for the A.Y 2014-15. [7]**

**Solution:**

The provisions of Chapter X of the Act relate to the determination of the Arm's Length Price , in case of any income arising from an international transaction involving two or more associated enterprises. The term 'Associated Enterprise' has been defined in Section 92A.

With reference to the provisions of Section 92A of the Income Tax Act 1961, the transactions of Sterling Ltd. has been analysed as follows:

| **Transaction of Sterling Ltd. with** | **Whether transacting party an associated enterprise or not?** | **Supporting statutory provision** |
|---|---|---|
| Diamond Industries Ltd. | Associated Enterprise | As per Section 92A(2)(a), a company holding shares carrying more than 26% of the voting power of another company, shall be deemed to be "Associated Enterprises". |
| Wellington Ltd. | Associated Enterprise | Wellington Ltd. and Sterling Industries Ltd. have been considered as "Associated Enterprises", by virtue of Section 92A(2)(g). |
| Beijing Finance Ltd. | Associated Enterprise | Beijing Finance Ltd. and Sterling Industries Ltd. have been considered as "Associated Enterprises", by virtue of Section 92A(2)(c), since this company has financed an amount which is more than 51% of the book value of the total assets of Sterling Ltd. |

**Determination of the total income of Sterling Machine Works Ltd. after necessary adjustments**

| **Particulars** | **Amount (₹ in crores)** |
|---|---|
| Income of Sterling Machine Works Ltd. prior to adjustments | 450 |
| Add: Difference arising out of adjustments in the value of international transactions | |
| (i) Difference in price of machinery supplied to Diamond Industries Ltd. ( 25,000 cars x ₹62 x $ 250) | 38.75 |
| (ii) Difference in excess payment of royalty to Wellington Ltd. | 24.80 |

| | |
|---|---|
| ($ 40,00,000 x ₹62)<br>(iii) Difference in excess interest paid on loan from Beijing Finance Ltd.<br>(Euro 850 crores x 1/100 x ₹82) | 697 |
| **TOTAL INCOME** | 1210.55 |

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

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

**(a) Whether for the purpose of Section 54EC of IT Act, 1961, the period of investment of six months should be reckoned after the date of transfer or from the end of the month in which transfer of capital asset took place? [8]**

**Solution:**

**Facts**

Assessee in individual capacity has sold a flat situated at Lotus Co-operative Society, Usmanpura Ahmedabad for a consideration of ₹64 lacs. The appellant had computed the Capital Gain at ₹Nil and declared the same as per the Return of Income. A working of the Capital Gain was admittedly furnished along with the return of income. The basis for "Nil" capital gain was that the gain was stated to be at ₹56,65,767/- however the assessee had made the investment in NHAI bond of ₹45 lacs and claimed the deduction u/s. 54EC of IT Act. The assessee has also made an investment in "capital gain account scheme" of ₹12 lacs, not in controversy.

**Contention of the Revenue**

The AO has referred the provisions of Section 54EC of IT Act and thereafter discussed that a sale document was registered on 10th of June, 2008; hence, the assessee was required to purchase the NHAI bond within six months from the said date of registration, i.e., 10th June, 2008. However, the assessee had purchased the NHAI bond on 17th of December, 2008, alleged by the AO. A show cause was issued as to why the claim of exemption be not disallowed in respect of the investment made in NHAI bond in the light of the provisions of Section 54EC of IT Act being not invested within six months.

**Contention of the Assessee**

The assessee has informed that the sale consideration was deposited in a capital gain account out of which the investment was made in the specified asset, i.e., NHAI bond to claim the benefit of the provisions u/s.54EC of IT Act. The assessee has also explained to the AO that the last date of expiry of six months from the date of transfer of the Long Term Capital Asset was 10th of December, 2008 however the assessee had allegedly tendered a cheque on 8th December, 2008 vide an application no.157602 to the bank. According to assessee since the application for the purchase of those bonds was tendered in the bank on 8th December, 2008,

which was within the period of six months from the date of the transfer of the Long Term Capital Asset, therefore, the assessee was eligible for the deduction u/s.54EC. According to the assessee the cheque was cleared on 17th of December, 2008.

Alternatively the assessee's contention was that up to the end of the month of December 2008 the said investment was eligible for the deduction. The AO was not convinced and held that the assessee was required to invest the capital gain in the specified asset within a period of six months from the date of the transfer and that requirement was not complied with by the assessee; hence, not eligible for the deduction u/s. 54EC of IT Act. Accordingly an addition of ₹45 lacs was made in the hands of the assessee.

**ITAT Judgment and discussion**

The subtle question is that whether the word "month" refers in this section a period of 30 days or it refers to the months only. Section 54EC, if we read again prescribes that an investment is required to be made within a period of six months. Whether the intention of the legislator was to compute six calendar months or to compute 180 days. To resolve this controversy, we are guided by a decision of Hon'ble Allahabad High Court pronounced in the case of Munnalal Shri Kishan Mainpuri, 167 ITR 415 where answering the dispute in respect of law of limitation the Hon'ble Court has clearly held that there is nothing in the context of section 256(2) to warrant the conclusion that the word 'month' in it refers to a period of 30 days, therefore, refers to six months in Section 256(2) is to six calendar months and not 180 days. Rather, in this cited decision an interesting observation of the court was that while comparing the precedents the contextual setting is to be examined and if entirely distinct and different then do not warrant to apply universally. Even in the case of Tamal Lahiri Vs. Kumar P. N. Tagore, 1978 AIR 18 11/1979 SCC (1) 75, it was opined while interpreting Section 533 of Bangalore Municipal Act, 1932 that the expression six months in the said section means six calendar months and not 180 days. A copy of the judgment is placed before us. The purpose of mentioning this plank of argument is that after scrutinizing few more Sections of The Act it is evident that on some occasion the Legislature had not used the terms "Month" but used the number of days to prescribe a specific period. For example in Section 254(2A) First Proviso it is prescribed that the Tribunal may pass an order granting stay but for a period not exceeding one hundred and eighty days. This is an important distinction made in this statute while subscribing the limitation/ period. This distinction thus resolves the present controversy by itself.

So the logical conclusion is that in the absence of any definition of the word ' month' in The Act, the definition of General Clauses Act 1897 shall be applicable and by doing so there is no attempt on our part to interpret the language of Sec. 54EC , what to say a liberal or literal interpretation. We hereby hold that the Legislature has in its wisdom has chosen to use the word 'month'. This was done by keeping in mind the definition as prescribed in General Clauses Act 1857. Therefore we have also read the word 'month' within the recognized ways of interpretation. Rather we have also seen both; the conventional as well as lexicon meaning. Here there in no attempt to supply casus omissus but replicated as per the language used.

Investment had been made in the month of December, 2008. However the present case there is no dispute about the investment which had actually been made by the assessee. The said investment, alleged to be few days late from the date of transfer in the month of June, 2008. It is not the case of the Revenue that the appellant had altogether fudged the dates. Once the

purpose of the introduction of the section was served by making the investment in the specified assets then that purpose has to be kept in mind while granting incentive.

We hereby hold that the investment in question qualifies for the deduction U/s 54EC. Resultantly assessee's grounds are hereby allowed. The question referred is answered in favour of the assessee.

**(b) Did the Income Tax Appellate Tribunal (ITAT) fall into error in not holding that the loss of ₹4,92,71,000/- on account of derivative transaction was a speculative loss, and was entitled to the benefit of Section 73, in view of the Explanation to Section 73 of the Income Tax Act. [7]**

**Solution:**

**Facts**

The brief facts are that the assessee claimed loss of ₹492.71 lakhs on account of purchase and sale of shares. The assessee argued that the loss in trading of derivatives was not a speculative loss in terms of Section 43(5) of the Income Tax Act and could not be disallowed as speculative loss under any provisions of the Income Tax Act. The Assessing Officer rejected that submission and held that Section 73 applied since it was independent of Section 43(5). Explanation to Section 73 can be applied even if there is delivery based sale purchase of shares and also in situations of trading of derivatives. It was held that the assessee was not engaged in any of the specifically excluded categories of business as to render Explanation to Section 73 inapplicable. The AO held that loss of ₹492.71 lakhs had to be treated as speculative loss and could not be allowed to be adjusted against business income. The CIT (Appeals) rejected the assessee's contentions. Therefore, a further appeal was preferred to the ITAT, which accepted the contention that Explanation to Section 73 applied, and granted the relief claimed. The revenue is in appeal against that part of the impugned order of the Tribunal.

**Decision**

It is no doubt, tempting to hold that since the expression "derivatives" is defined only in Section 43(5) and since it excludes such transactions from the odium of speculative transactions, and further that since that has not been excluded from Section 73, yet, the Court would be doing violence to Parliamentary intendment. This is because a definition enacted for only a restricted purpose or objective should not be applied to achieve other ends or purposes. Doing so would be contrary to the statute. Thus contextual application of a definition or term is stressed; wherever the context and setting of a provision indicates an intention that an expression defined in some other place in the enactment, cannot be applied, that intent prevails, regardless of whether standard exclusionary terms (such as "unless the context otherwise requires") are used.

The stated objective of Section 73- apparent from the tenor of its language is to deny speculative businesses the benefit of carry forward of losses. Explanation to Section 73 (4) has been enacted to clarify beyond any shadow of doubt that share business of certain types or classes of companies are deemed to be speculative. That in another part of the statute, which deals with computation of business income, derivatives are excluded from the definition of speculative transactions, only underlines that such exclusion is limited for the purpose of those provisions or sections. To borrow the Madras High Court's expression, "derivatives are assets, whose values are derived from values of underlying assets"; in the present case, by all accounts

the derivatives are based on stocks and shares, which fall squarely within the explanation to Section 73 (4). Therefore, it is idle to contend that derivatives do not fall within that provision, when the underlying asset itself does not qualify forthe benefit, as they (derivatives – once removed from it and entirely dependent on stocks and shares, for determination of their value).

In the light of the above discussion, it is held that the Tribunal erred in law in holding that the assessee was entitled to carry forward its losses; the question framed is answered in favour of therevenue and against the assessee. The appeal is, therefore, allowed; there shall be no order as to costs.

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

**(a) Will the two units of a single legal entity surrounded by a common boundary wall be considered as one factory for the purpose of availing CENVAT credit, if they have separate central excise registrations? [8]**

**Solution:**

**Sinter Industries Ltd. v. CCEx. [2013] 287 ELT 261 (Guj.)**

**Facts**:

Sintex Industries Ltd., a company registered under the Companies Act, 1956 has two units - a textile division and a plastic division located on a common ground surrounded by a common boundary wall and adjoining each other. Though a part of the single legal entity i.e. Sintex Industries Ltd. having a common PAN under the Income-tax Act, 1961, but the 2 units have been separately registered under the Central Excise Act, 1944. Sintex Industries Ltd. installed DG sets/electricity generation plant in textile division and was using furnace oil as fuel in the generation of electricity. The textile unit availed CENVAT credit on furnace oil used as fuel for the generation of electricity, which was used for captive consumption in their own factory. However, in case of lower utilisation of electricity or when required by the plastic unit, part of the electricity generated was supplied to the plastic division. The Department issued a notice requiring the textile unit to reverse the credit taken on the furnace oil used in the generation of electricity to the extent the same was supplied to the plastic division.

**Assessee's contention**:

The assessee contends that as both the units were located in the same premises surrounded by a common boundary wall adjoining each other and are parts of a single legal entity, and no price was charged for the supply of electricity to the other unit, it could not be treated as supplied to a different entity but must be treated as consumed within its own factory. Separate excise registrations did not make separate entities.

**Decision**:

The High Court rejecting the contention of assessee held that,-

Having obtained separate registration, the assessee was estopped from contending that the said division was a factory within factory simply because both of them were situated within the same boundary wall. Assessee was entitled to credit on eligible inputs utilised for the generation

of electricity only to the extent the same was utilised in the unit registered for that purpose i.e the textile unit but not to the extent it was supplied to the plastic unit bearing separate registration.

**(b) Whether the manufacture and sale of the specified goods that do not physically bear a brand name, from sale outlets, would disentitle the assessee from benefit of SSI exemption?** **[7]**

**Solution:**

***CCEx. v. Australian Foods India (P) Ltd. [2013] 287* ELT 385 (SC)**

**Facts**:

The assessee was engaged in the manufacture and sale of cookies from branded retail outlets of "Cookie Man", acquiring the brand name from M/s. Cookie Man Pvt. Ltd., Australia. No brand name was affixed or inscribed on the cookies, but they were sold in plastic pouches/ containers on which the brand name was affixed. Along with these, the assessee also sold cookies loosely with plain plates and tissue papers, from the counter of the same retail outlet. These loose cookies were not separately manufactured by retail outlets or received separately by the retail outlets. They were taken out of the sealed pouches or containers and displayed for sale separately. Excise duty was paid on the cookies sold in the said pouches/containers but no duty was paid on cookies sold loosely claiming the same as unbranded and therefore eligible for SSI exemption.

**Assessee 's contention**:

As the specified goods did not bear any brand name affixed or inscribed on it or the packaging in which these were sold also did not bear any brand name or logo, the said goods will be considered as unbranded goods and the prescribed SSI exemption cannot be denied.

**Decision**:

It is not necessary for goods to be stamped with a trade or a brand name to be considered as branded goods (under SSI exemption notification). In case of goods like liquids, soft drinks, bulk, dairy products etc., which cannot physically bear the brand name, a scrutiny of the surrounding circumstances is necessary to decide whether it is branded or unbranded. Factors like packaging/ wrapping, accessories, uniform of vendors, invoices, menu cards, hoardings/displays, boards of outlets are to be considered. Exclusive branded outlets from which the goods are sold, is often conclusive/crucial factor to hold goods as branded. In the given case, as the same cookies were sold unbranded from same counter, from outlet carrying the brand name (where no other products were sold), under same invoices as that of the branded cookies, they continued to be branded cookies. Hence, they were not entitled to SSI exemption. It is immaterial that the tissues and plates in which the cookies were served did not bear the brand name.

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

**(a) Whether the assessee manufactures blank CDs/DVDs as an intermediate product to be classifiable as excisable goods?**
**Whether the writ petition was maintainable for quashing of a show cause notice and also of an adjudication order when the alternative remedies by way of an appeal has not been exhausted. [8]**

**Solution:**

**Sidharth Optical Disc Pvt. Ltd v. UOI [2013] 288 ELT 17 (Del)**

**Facts:**

The assessee, a manufacturer of pre-recorded audio CDs, VCDs, DVDs, claimed exemption from payment of central excise duty. The manufacturing process undertaken by the assessee is an integrated one, where the process of manufacture and transfer of data takes place simultaneously. The pre-recorded CDs are manufactured using the basic raw material polycarbonate. The stamping and the moulding takes place simultaneously, i.e in the process of moulding the polycarbonate, the data on the stamper is transferred on to the discs in the form of lands and pits and then the said discs are coated with aluminium layer etc. to form a final pre-recorded disc. The Revenue issued a show cause notice demanding duty/interest/penalty contending that during the manufacture of pre-recorded CDs etc. blank CDs, VCDs etc are manufactured and thereafter the data is recorded, as data cannot be recorded on granules. The blank CDs/ VCDs/ DVDs so produced at the intermittent stage are liable to duty as they are a distinct commodity separately classifiable and dutiable under the Central Excise Tariff Act, 1985 and there is no exemption thereon. The Commissioner having confirmed the demand, the writ petition was filed by the assessee.

**Assessee 's contention:**

The manufacturing process is an integrated one and the manufacture and printing takes place simultaneously and no independent exigible product as blank CD emerged in the intermittent stage. To support its contention the assessee also produced the Expert's opinion for the same.

**Decision:**

It is evident from analysis of the manufacturing process that at no point of time there emerged blank CD's /DVD's as excisable goods. The stamping and moulding takes place simultaneously i.e while liquified polycarbonate solidifies, it is imprinted with data by the stamper. It is not the case where pressed discs after cooling were captively used for the data transfer. Thus, no manufacture takes place of blank CD's. Since first test of manufacture is not satisfied therefore second test of marketability cannot be satisfied as no product comes into existence. Therefore, blank CD's/DVD's/VCD's are not manufactured and are not excisable. The burden to prove the test of manufacture and marketability vests with the department. Considering the second question regarding maintainability of the writ petition, it was held that, 'Ordinarily' a writ petition under Article 266 cannot be entertained when adequate remedy by way of an appeal is available with the assessee. However, when situation warrants, the interference of High Court by exercise of powers under Article 266 is justified. Thus, when there is no disputed question of

fact and SCN demanding duty is found to be misconceived, the writ petition to High Court can be entertained.

**(b) Whether consideration for transfer of sales tax incentive taxable as revenue receipt? [7]**

**Solution:**

**Sun-N-Sand Hotels Pvt. Ltd. Vs. The Dy CIT.**

**Issue:-**

The assessee's contention is that the subsidy/benefit so received is a capital receipt not liable to tax whereas the revenue authorities have considered such sales tax benefits/subsidies as revenue receipt and have taxed accordingly.

**Held:-**

Assessee has sold its sales tax incentives and what it has received is not sales tax benefit/ incentive but sale consideration on transfer of its entitlement and sale consideration is nothing but is a benefit directly arising from business and, is therefore, a revenue receipt. The learned counsel has vehemently supported the assessee's claim by relying upon the Government Policy on Wind Power Generation and to substantiate its claim the assessee has also relied upon the Special Bench decision of the Tribunal in the case of Reliance Industries Ltd. 88 ITD 273. The assessee has also relied upon the decision of the Hon'ble Jammu & Kashmir High Court in the case of Shree Balaji Alloys 333 ITR 335; High Court of Punjab & Haryana 237 CTR 321; High Court of Karnataka 35 DTR 104; High Court of Bombay in the case of Chaphalkar Brothers 351 ITR 309 and High Court of Gujarat in the case of Inox Leisure Ltd. 351 ITR 314.

None of the aforementioned decisions is applicable to the facts of present case as in none of the above cases the assessees have sold their entitlement of sales tax subsidy. Whereas in the present case the assessee has sold it sales tax benefit therefore, it has no hesitation to hold that what the assessee has received is sales consideration for the transfer of its sales tax entitlement and by any stretch of imagination it cannot accept the said consideration as sales tax incentive being capital in nature. After considering the facts as stated hereinabove, what the assessee has received is taxable as revenue receipt.