Paper 16 – Tax Management and Practice

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

Whenever required, the candidate may make suitable assumptions and state them clearly on the answers.

Working notes should form part of the relevant answer.

Section A
(Answer all the Questions)

1. Answer any three Question [3x5=15]

Answer the following with the help of decided case law:

(a) Whether turpentine oil is manufactured with the aid of power and whether assessee will not be entitled the benefit of exemption? [5]

Solution:
CCEx. v. Gurukripa Resins Pvt. Ltd. [2011] 270 ELT 3 (SC)

Facts:

The assessee was engaged in the manufacture and clearance of "Rosin" and "Turpentine oil". The turpentine oil manufactured without the aid of power, was chargeable with Nil rate of duty, but Turpentine oil, in relation to which manufacture was carried on with the aid of power, was liable to excise duty @ 16%. The turpentine oil was manufactured from Rosin. Rosin was lifted to manufacturing platform which was subsequently heated to remove impurities and purified material was heated to make vapours of Turpentine oil which was condensed by using water and vapours of turpentine oil were converted into turpentine oil. The water which was used for condensation was lifted to 30 ft height with the aid of electric motor. The Department denied exemption treating that turpentine oil was manufactured with the aid of power and the same was liable to excise duty @ 16%.

Decision:

The Supreme Court held that lifting of water to overhead tank with the aid of electric motor is integrally connected with the manufacture of turpentine oil since without sprinkling of water on vapours, condensation is not possible and without condensation turpentine oil cannot be obtained. The Supreme Court observed that an activity or operation which is essential requirement and is integrally connected with further operation for production of ultimate goods, and the process without which manufacture of the final product is impossible, would be a process in relation to manufacture. Thus, in this case, water used for condensation is essential for carrying out manufacturing activity which is lifted with help of electric motors. Thus, the assessee used power in or in relation to manufacture of turpentine oil and hence, was not eligible for exemption.

(b) CENVAT Credit cannot be utilized for paying sums payable under Section 11D of Central Excise Act, 1944. Comments. [5]

Solution:

CCEx. v. Inductotherm (I) Pvt. Ltd. [2012] 283 ELT 359 (guj.)

Facts:

The respondent was a manufacturer of induction furnace and engineering goods. He was engaged in export as well as domestic clearances of the finished goods. The respondents removed certain parts of induction furnaces "as such" without any manufacturing activity at a higher value and paid duty on the same which was collected from buyers. The said duty was paid by utilising CENVAT credit. Since the respondents paid excess duty (i.e. in excess of such CENVAT availed on such inputs) such amount was demanded from them. The respondents contended that they have already deposited the amount demanded under section 11D of Central Excise Act, 1944 by utilising CENVAT credit.

Decision:

The High Court iheld that as per provisions of Rule 3(4) of CENVAT Credit Rules, 2004, CENVAT credit can be utilised for payment of any duty of excise of any final product. In this case inputs are removed as such but higher amount of duty is collected for which demand is raised under section 11D. CENVAT credit could not be utilised for payment of such excess duty as demanded u/s 11D.

Besides this assessee's claim for refund of excess amount of CENVAT credit lying unutilised on account of exports, cannot be admitted through such practices. For this purpose procedure as provided in Rule 5 of Cenvat Credit Rules, 2004 is required to be followed.

(c) Principle of law enunciated from the decision of Supreme Court is applicable to all cases, irrespective of stage of pendency as it is assumed that Supreme Court judgment is law from inception, unless, Supreme Court expressly states that the decision would have a prospective effect.

Whether CESTAT was correct in dismissing the appeal and application? [5]

Solution:

Steel Authority of India Ltd. v. CESTAT [2013] 293 ELT 510 (Cat)

Facts:

SAIL, a Government Company, challenged the order of CESTAT in which CESTAT dismissed the appeal filed by SAIL and also dismissed the application filed praying for dispensation of requirement of pre-deposit, taken up for hearing on September 19, 2012. Both were dismissed on the ground that SAIL had not produced the requisite clearance from Committee of Secretaries for disputes (COD), which was a requirement for the legal proceedings to be proceeded with, as directed in ONGC-III case [2009] 233 ELT 30 (SC). However, these directions were recalled (annulled) by subsequent decision of Apex Court in Electronics Corporation of India Ltd. [2011] 265 ELT 11 (SC).

Decision:

It is a well settled principle that decision of Supreme Court enunciating a principle of law is applicable to all cases, irrespective of stage of pendency thereof because it is assumed that what is enunciated by Supreme Court is law from inception, unless, Supreme Court expressly states that the decision would have a prospective effect.

Thus, it was held that after the order of Supreme Court which recalled the decision requiring COD clearance, Tribunal erred in dismissing the application and appeal of SAIL on ground that it had not even applied for clearance from COD. The same would be applicable even in the case of the fact that the appeal of the assessee was filed before the date of this recalled judgment.

(d) 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? [5]

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.

2. Answer any two Questions [2x5=10]

(a) Chetan Ltd., which is engaged in the manufacture of excisable goods started its business in May, 2013. It availed small scale exemption in terms of Notification No. 8/2003-C.E. dated 01-03-2003 as amended for the financial year 2013-2014. The following details are provided:

(Amount in ₹)

15,000 kg of inputs purchased @ ₹ 1011.24 per kg.	
(inclusive of central excise duty @ 12.36%)	**1,51,68,600**
Capital goods purchased on 28-06-2013 (inclusive of excise duty at 12.36%)	**44,94,400**
Finished goods sold (at uniform transaction value throughout the year)	**3,00,00,000**

Calculate the amount of excise duty payable by M/s. Chetan Ltd. in cash, if any, during the year 2013-14. Rate of duty on finished goods sold may be taken at 12.36% for the year and you may assume that the selling price is exclusive of central excise duty. There is neither any processing loss nor any inventory of input and output. Show your workings and notes with suitable assumptions as required. [5]

Solution:

The excise duty payable by M/s. Chetan Ltd. during the financial year 2013-14 is as follows

(amount in ₹):

Clearances of finished goods made during the year	3,00,00,000
Less: Exemption of ₹ 150 lakhs	1,50,00,000
Dutiable clearances	1,50,00,000
Duty @ 12.36% **[A]**	18,54,000
CENVAT credit available on inputs used in the manufacture of dutiable clearances (No CENVAT credit available in respect of exempt clearances):	
Final products cleared during the year (in Kgs.) **[WN-1]**	15,000
Uniform Transaction Value (₹ 300 lakhs ÷15000 Kg.) (₹)	2,000
No. of units comprised in dutiable clearances (₹150 lakhs ÷ ₹ 2,000 approx)	7,500
Inputs consumed in manufacture of dutiable clearances (Kg.)	7,500
CENVAT credit attributable to 7,500 Kg. of inputs (7,500 × 1011.24 x 12.36 ÷112.36) **[B]**	8,34,300
(Alternative Computation: Since 50% of clearances are dutiable, therefore, 50% of inputs are eligible for CENVAT credit. Hence, CENVAT credit = 1,51,68,600 x 50% × 12.36 ÷112.36)	
CENVAT credit availed on capital goods (100% of 44,94,400 x 12.36 ÷ 112.36) **[WN-2 & 3] [C]**	4,94,400
Duty payable [A – B- C]	5,25,300

Working Notes:

(1) Since there is neither any processing loss nor inventory of input and output, it implies that all goods manufactured have been sold and entire quantity of inputs has been used in manufacturing these goods.

(2) In respect of units availing SSI exemption, no CENVAT credit is available on inputs consumed in exempt clearances of ₹150 lakh.

(3) In respect of units availing SSI exemption, CENVAT credit on capital goods can be availed but utilized only after clearances of ₹150 lakh. Further, entire credit on capital goods can be taken in the same financial year by such units.

(b) (i) Dhanraj & Co. furnish the following expenditure incurred by them and want you to find the assessable value for the purpose of paying excise duty on captive consumption. Determine the cost of production in terms of rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and as per CAS-4 (Cost Accounting Standard - 4)

- **Direct material cost per unit inclusive of excise duty at 12.36% - ₹ 2,400**
- **Direct wages - ₹ 500**
- **Other direct expenses - ₹ 200**
- **Indirect materials - ₹ 150**
- **Factory Overheads - ₹ 300**
- **Administrative overhead (25% relating to production capacity) ₹ 200**
- **Selling and distribution expenses - ₹ 200**
- **Quality Control - ₹ 50**
- **Sale of scrap realized - ₹40**
- **Actual profit margin - 20%. [3]**

(ii) Nitu Ltd., manufactures two products A and B, A being a product specified under section 4A of the Central Excise Act, 1944. The sale prices of A and B are ₹ 60 and ₹ 40.80 per unit, respectively. The selling price of product B includes 12% basic excise duty, as increased by 3% education cess and secondary higher education cess, also 2% CST. For product A, 30% abatement is allowable under section 4A. 10,000 units of each product were removed from the factory to sales depots. Common inputs were used to manufacture product A and B. Total excise duty was paid on these inputs for ₹ 12,360. You are required to compute the excise duty liability. Product A is exempted from excise duty. Nitu Ltd. opted to pay an amount on exempted final product. [2]

Solution to (b)(i):

Particulars	Amount (₹)
Direct Material (exclusive of Excise Duty) [₹ 2,400 x 100/112.36]	2,136.00
Direct Labour	500.00
Direct Expenses	200.00
Works Overhead [indirect material (₹150) (+) Factory OHs (₹ 300)]	450.00
Quality Control Cost	50.00

Research & Development Cost	Nil
Administration Overheads (to the extent relates to production activity)	50.00
Less: Realizable Value of scrap	(40.00)
Cost of Production	3,346
Add 10% as per Rule 8	335
Assessable Value	**3,681**

Solution to (b)(ii):

Statement showing net excise duty liability of Nitu Ltd.

Particulars	Value in ₹
Excise duty liable to pay on Product B	44,001
An amount liable to pay on product A	25,200
Total	69,201
Less: CENVAT credit allowed	12,360
Net excise duty liability	56,841

Working note:

(1) Product A (Maximum Retail Price product):
Sale value for 10,000 units = ₹ 6,00,000 (i.e. ₹ 60 per unit x 10,000 units)
Less: abatement @ 30% on ₹ 6 lacs = (₹ 1,80,000)
Assessable Value = ₹ 4,20,000
An amount @6% payable on exempted final product is ₹ 25,200 (i.e. ₹ 4,20,000 x 6%)

(2) Product B (other than MRP product):
Sale value for 10,000 units = ₹ 4,08,000 (i.e. ₹ 40.80 per unit x 10,000 units)
Excise duty= ₹ 44,001 [(i.e. ₹ 4,08,000 x 100/102) x 12.36/112.36]

(c) "A 100% Export-Oriented Undertaking (EOU) engaged in manufacture of excisable goods should pay excise duty in a special manner and general provisions do not apply to them." Discuss. [5]

Solution:

The aforesaid statement is correct. The relevant provisions are discussed as under -

(i) 100% EOU removing goods in Domestic Tariff Area (DTA) *i.e.* other parts of India: Proviso of Section 3(1) of Central Excise Act, 1944, provides that in case of any excisable goods which are, produced or manufactured by a 100% EOU and brought to any other place in India, the duties of excise which shall be levied and collected thereon, shall be an amount equal to the aggregate of the duties of customs, which would be leviable under the Customs Act, 1962, on like goods produced or manufactured outside India if imported into India.

(ii) Valuation of goods as per provisions of Customs Act, 1962: The value of such goods will be determined in accordance with the provisions of Customs Act, 1962 and Customs Tariff Act, 1975 if the duty to be levied is ad-valorem.

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

(iv) Exemption in respect of clearances made by 100% EOU to DTA [Notification No. 23/2003-C.E., dated 31-3-2003]: DTA clearances by 100% EOU are exempt from -

(1) 50% of the basic customs duties leviable thereon;

(2) additional duty of customs under section 3(5) of Customs Tariff Act, 1975.

Exemption from additional duty under section 3(5) is available only if the goods so removed are not exempt from payment of sales tax/VAT in India. Thus, if goods are leviable to VAT/sales tax in India, then such goods will be exempt from levy of additional duty of customs under section 3(5).

3. Answer all Questions

(a) A commodity is imported into India from a country covered by a notification issued by the Central Government under section 9A of the Customs Tariff Act, 1975.

Following particulars are made available:
CIF value of the consignment: US$25,000
Quantity imported: 500 kgs.
Exchange rate applicable: ₹60=US$1
Basic customs duty: 20%.
Education and secondary and higher education cess as applicable.

As per the notification, the anti-dumping duty will be equal to the difference between the costs of commodity calculated @ US$70 per kg. and the landed value of the commodity as imported.

Appraise the liability on account of normal duties, cess and the anti-dumping duty.
Assume that only 'Basic Customs Duty' (BCD) and education and secondary and higher education cess are payable. [5]

Solution*:*

The following points are to be taken note of -

(1) The question clearly states that only basic customs duty, EC and SHEC thereon and anti-dumping duty are leviable on the goods in question and no other duty viz. additional duty of customs u/s 3(1) of the Customs tariff Act or special additional duty of customs under section 3(5) of the Customs tariff Act is leviable.

(2) For the purposes of the notifications imposing anti-dumping duty, "landed value" means the assessable value as determined under the Customs Act, 1962 and includes all duties of customs except duties levied under sections 3, 8B, 9 and 9A of the said Customs Tariff Act, 1975.

(3) No EC and SHEC is imposable on anti-dumping duty.

Keeping in mind the aforesaid, the relevant computations are as under *(amounts in ₹)* -

CIF Value of the consignment (in Indian ₹) [US $ 25000 × 60]	15,00,000
Add: Landing Charges @ 1 %	15,000
Assessable Value	**15,15,000**
Add: Basic Customs Duty @ 20%	3,03,000
Add: EC and SHEC @ 3% on Basic Customs Duty	9,090
Landed Value/Cost of the goods [A]	**18,27,090**
Cost of commodity for the purposes of anti-dumping notification [500 Kg. x US$ 70 per Kg. x ₹60 per dollar] **[B]**	21,00,000
Anti dumping duty [B - A]	**2,72,910**

OR

Compute the customs duty payable from the following data -

Machinery imported from USA by air	**US$ 8,800**
Accessories compulsorily supplied with Machine	**US$ 1,200**
Air freight	**US$ 3,000**
Insurance	**US$ 100**
Local agent's commission	**₹ 4,500**
Exchange rate	**1 US$ = ₹ 40**
Customs duty on machine	**10% ad valorem**
Customs duty on accessory	**20% ad valorem**
Additional duty of Customs 12%, but effective rate by exemption notification	**8%**
Additional duty of customs under section 3(5) of Customs Tariff Act, 1975	**4%**
Education Cess + Secondary and Higher Education Cess	**2% + 1%**

[5]

Solution:

Computation of customs duty payable -

Cost of machinery inclusive of accessory (FOB) (See Note)	US$	10,000
Add: Cost of insurance	US$	100
Add: Air freight (restricted to 20% of FOB)	US$	2,000
Total	US$	12,100
Total (in Indian ₹) US$ 12,100 × ₹40 (being the exchange rate)	₹	4,84,000.00
Add: Agency commission	₹	4,500.00
CIF value	₹	4,88,500.00
Add: Landing charges (@ 1% of CIF value)	₹	4,885.00
Assessable value	₹	4,93,385.00
Add: Basic Customs duty (10% of assessable value) [A]	₹	49,338.50
Total for Additional duty of Customs leviable under section 3(1)	₹	5,42,723.50
Add: Additional duty of Customs u/s 3(1) equal to excise duty @ 8% [B]	₹	43,417.88
Add: Education cess and SHEC @ 3% of [A] + [B] [C]	₹	2,782.69

Total for Additional duty of Customs u/s 3(5) Add: Additional duty of Customs u/s 3(5) @ 4% [D]	₹ ₹	5,88,924.07 23,556.96
Total imported cost (rounded off)	₹	6,12,481
Total customs duty payable = [A] + [B] + [C] + [D] (rounded off)	₹	1,19,096

Working Notes:

(1) As per Accessories (Conditions) Rules, 1963, accessories and spare parts compulsorily supplied with main implements are chargeable at the same rate as applicable to main machine. Therefore, such accessories shall also be chargeable with duty at the rate applicable to the machinery i.e. @ 10% ad valorem.

(2) Though actual air freight is US $ 3,000, it is limited to 20% of FOB value of goods as per Rule 10(2) of Customs Valuation (Determination of Value of Imported Goods)Rules, 2007.

(3) Agency Commission, which is incurred in India, is not regarded as buying Commission and therefore will be added to determine the CIF value.

(b) A consignment of 900 metric tonnes of edible oil of Malaysian origin was imported by a charitable organization in India for free distribution to below poverty line citizens in a backward area under the scheme designed by the Food and Agricultural Organization. This being a special transaction, a nominal price of US$ 10 per metric tonne was charged for the consignment to cover the freight and insurance charges. The Customs House found out that at or about the time of importation of this gift consignment, there were following imports of edible oil of Malaysian origin:

S. No.	Quantity imported in metric tons	Unit price in US $ C.I.F.
1.	20	280
2.	100	260
3.	500	200
4.	900	175
5.	400	180
6.	780	160

The rate of exchange on the relevant date was 1 US $ = ₹43.00 and the rate of basic customs duty was 10% ad valorem. There is no countervailing duty or special additional duty.

Calculate the amount of duty leviable on the consignment under the Customs Act, 1962 with appropriate assumptions and explanations where required. [5]

Solution:

In the instant case, while determining the transaction value of the goods, following factors need consideration—

(1) In the given case, US $10 per metric tonne has been paid only towards freight and insurance charges and no amount has been paid or payable towards the cost of goods. Thus, there is no transaction value for the subject goods.

(2) In such case the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued.

(3) The transaction value of comparable import should be at the same commercial level

and in substantially same quantity as the goods being valued.

(4) Therefore consignments of 20 and 100 metric tonnes cannot be considered to be of substantially the same quantity. Hence, remaining 4 consignments are left for our consideration.

(5) Remaining 4 consignments are in comparable quantities which can be considered for valuation purposes. However, the unit prices in 4 consignments are different. Rules 4(3) of Customs Valuation (DVIG) Rules, 2007 stipulates that in applying rule 4 of the said rules, if more than one transaction value of identical goods is found, the lowest of such value shall be used to determine the value of imported goods.

Accordingly, the unit price of the consignment under valuation shall be US $ 160 per metric tonne.

Particulars	Value
CIF value of 900 metric tonnes @ US $160 per m.t. (in US$)	1,44,000
Rate of exchange (for 1 US $)	43
CIF value in Indian ₹	61,92,000
Add: landing charges @ 1% of CIF value	61,920
Assessable	62,53,920
value Customs Duty @ 10%	6,25,392
Add: EC and SHEC @ 3% of BCD	18,762
Total duty payable	6,44,154

(c) Discuss briefly with reference to decided case laws as to how the 'value' shall be determined under section 14 of the Customs Act, 1962 read with Customs Valuation Rules, 1988 in the following cases :

(i) Goods are offered at specially reduced price to buyer and the buyer is asked not to disclose the specially reduced price to any other party in India.

(ii) There has been a price rise between the date of contract and the date of importation.

(iii) The contract was over 6 months before the date of shipment.

(iv) The sale involves special discounts limited to exclusive agents. [5]

Solution:

(i) Where sales are made to buyers at specially reduced prices, the prices so offered cannot be said to be the ordinary prices. In Padia Sales Corporation v Collector of Customs (1993) 66 ELT 35 (SC) the Supreme Court held that where the goods are offered to the buyers is asked not to disclose the specially reduced price to any other party, then the said price will not be acceptable.

(ii) Where there is a price rise at the time when the goods are imported in comparison to the price when the contract was made then, the price at the time of importation will be taken to be the value of the goods. In Rajkumar Knitting Mills Pvt. Ltd. v Collector of Customs (1998) 98 ELT 292 (SC), the Supreme Court held that the contract price may have bearing while determining the value of the goods, but he value is to be determined at the time of importation of the goods.

(iii) In Eicher Tractors Ltd. v Commissioner of Customs, Mumbai (2000) 122 ELT 321 (SC) the Supreme Court held that the price paid by the importer to the vendor in the ordinary course of commerce shall be taken to be the value of imported goods. Since the buyer and the seller are not related and the price is the sole consideration for sale, the discounted price was taken as the assessable value. However this decision has been nullified by the Customs Valuation Price of Imported Goods Rules, 2002 and consequently, where the sale involves special discounts limited to exclusive agents, such discounted price shall not be accepted as the assessable value.

(iv) Where high sea sales are made, the price charged by the importer from the assessee will be taken to be the value of the goods. Similar view was expressed by the Tribunal in Godavari Fertilizers v C.C.Ex. (1996) 81 ELT 535 (Tri.).

4. Answer any two Questions [2x5=10]

(a) Usha provides technical consultancy service in Maharashtra. In the financial year 2012-2013, aggregate value of taxable services provided by him was ₹ 47,00,000. Besides, he provided tax-free services of ₹5,00,000. In the financial year 2013-14, aggregate value of taxable services provided by him in the first quarter ending June 30,2013 is ₹50,00,000. From the information given below find out service tax payable by him for the quarter ending September 30, 2013

	₹
Amount received during July 2013 for services rendered before July 1, 2013	**56,180****
Amount received during August 2013 for services rendered before July 1, 2013	**37,079****
Amount received during September 2013 for services rendered before July 1, 2013	**16,629****
Services completed during July 1, 2013 and September 30, 2013 (invoice issued within 30 days of providing service) (out of these services, advance of ₹ 2,00,000 was received on May 1,2013**	**38,50,000***
Advance received on September 5, 2013 (service not rendered up to September 30, 2013)	**2,00,000****

***Exclusive of service tax. **Inclusive of service tax.**

Usha always issues invoice within 30 days from the date of completion of service. [5]

Solution:

Value of taxable services provided by Usha in the immediately preceding year is not more than ₹50 lakh. In the current financial year (upto June 30, 2013), value of taxable services provided by Usha is not more than ₹50 lakh. Consequently, up to June 30, 2013, service tax is payable on "payment" basis. However, from July 1, 2013, he will have to pay tax on accrual or receipt basis, whichever is earlier. Service tax liability for the quarter ending September 30, 2013 shall be as follows –

Different activities during quarter ending September 30,2013	Value before service tax ₹	Service tax [12.36% of(2)] ₹	Value inclusive of service tax [(2) + (3)] ₹
(1)	(2)	(3)	(4)

Step 1 - Amount received during the quarter ending September 30, 2013 for service rendered before July 1, 2013 (i.e., ₹56,180 + ₹ 37,079 + ₹16,629)	97,800	12,088	1,09,888
Step 2 - Add: Value of invoice issued during the quarter ending September 30, 2013	38,50,000	4,75,860	43,25,860
Step 3 - Add: Advance received during the quarter ending September 30,2013	1,78,000	22,000	2,00,000
Step 4 - Less: Advance (which is received during quarter ending September 30, 2013 or which was received earlier) adjusted against invoices issued during the quarter ending September 30, 2013	1,78,000	22,000	2,00,000
Value of taxable services for the quarter ending September 30, 2013 (Step I + Step 2 + Step 3 - Step 4)	39,47,800	4,87,948	44,35,748

Note – value (inclusive of service tax) should be posted in Column 4. In Such a case, Column 2 = [Column 4 x 100 ÷ 112.36]. Column 3 will be 12.36% of Column 2.

(b) Compute the service tax liability from the following particulars for the financial year 2013-14:

Particulars	Amount(₹)
Gross Amount (excluding all taxes) charged by the service provider for providing works contract service	**1,50,000**
Actual Value of material transferred in the above works contract (VAT under the relevant State VAT Law has been paid on this value)	**1,05,000**
Excise Duty paid on Inputs	**13,125**
Service Tax paid on input services	**1,500**
Excise Duty paid on the capital goods, purchased during the year, used in the provision of works contract service	**1,500**
Rate of Service Tax	**12.36%**

[5]

Solution:

Computation of Service Tax Liability as per Rule 2A(i) of the Service Tax (Determination of Value) Rules, 2006:

Particulars	Amount (₹)
Gross Amount charged by the service provider for providing works contract service	1,50,000
Less: Actual Value of material transferred in the above works contract **[Note-1]**	1,05,000
Value of service portion in the execution of works contract	45,000
Service Tax on ₹45,000 @ 12.36%	5,562
Less: CENVAT Credit on Inputs **[Note-2]**	---
Less: CENVAT Credit on input services	1,500
Less: CENVAT Credit on the capital goods (50%) **[Note-3]**	750
Service Tax payable	**3,312**

Notes:

1. Since VAT has been paid on the actual value of property in goods transferred in the execution of the works contract, such value adopted for the purposes of payment of VAT has been taken as the value of the property in goods transferred in the execution of the said works contract [Clause (c) of Explanation to Rule 2A(i) of the Valuation Rules].

2. CENVAT Credit of duties or cess paid on any inputs, used in or in relation to the said works contract, is not available. [Explanation to Rule 2A) of the Valuation Rules].

3. Only 50% of the duty paid on the capital goods is available as CENVAT Credit, in the current year [Rule 4(2)(a) of the CENVAT Credit Rules, 2004].

(c) Discuss whether the following services are chargeable to service tax -

(i) Commission received for canvassing advertisement for publishing.
(ii) Pre-school education provided by Star Play School. Star Play School is not recognized by any authority.
(iii) Charges are collected by a developer for distribution of electricity within a residential complex.
(iv) Publication of advertisement in Hindustan Times. [5]

Solution:

(i) Canvassing advertisement - It is not in the negative list and chargeable to tax.

(ii) Pre-school education - It is in negative list under Category 12. It is not chargeable to tax. Even if school is not recognized, it is not chargeable to tax.

(iii) Collection by a developer for distribution of electricity - Such service is not covered in the negative list and chargeable to service tax. The developer or the housing society would be covered under the negative list only if it is entrusted with such function by Central or a State Government or if it has a license under the Electricity Act, 2003 for distribution of electricity.

(iv) Advertisement - Charges for publication of advertisement in a magazine/newspaper is covered in the negative list (Category 7). It is not chargeable to tax.

Section B
(Answer all the Questions)

5. Answer any three Questions [3x5=15]

Answer the following with the help of decided case laws:

(a) Can an assessee make an additional/new claim before an appellate authority, which was not claimed by the assessee in the return of income (though he was legally entitled to), otherwise than by way of filing a revised return of income? [5]

Solution:

Relevant Judicial Case: CIT v. Pruthvi Brokers & Shareholders (2012) 208 Taxman 498 (Bom.)

While considering the above mentioned issue, the Bombay High Court observed the decision of the Supreme Court, in the case of Jute Corporation of India Ltd. v. CIT(1991) 187ITR 688 and National Thermal Power Corporation. Ltd v. CIT (1998) 229ITR 383, that an assessee is entitled to raise additional claims before the appellate authorities. The appellate authorities have jurisdiction to permit additional claims before them, however, the exercise of such jurisdiction is entirely the authorities' discretion.

Also, the High Court considered the decision of the Apex Court in the case of Add/. CIT v. Gurjargravures(P.) Ltd.(1978) 111 ITR 7, wherein it was held that in case an additional ground was raised before the appellate authority which could not have been raised at the stage when the return was filed or when the assessment order was made, or the ground became available on account of change of circumstances or law, the appellate authority can allow the same.

The Supreme Court, in the case of Goetze (India) Ltd v. CIT (2006) 157 Taxmann 1, held that the assessee cannot make a claim before the Assessing Officer otherwise than by filing an application for the same. The additional claim before the Assessing Officer can be made only by way of filing revised return of income.

The decision in the above mentioned case, however, does not apply in this case, since the Assessing Officer is not an Appellate Authority.

Therefore, in the present case, the Bombay High Court, considering the above mentioned decisions, held that additional grounds can be raised before the Appellate Authority even otherwise than by way of filing return of income. However, in case the claim has to be made before the Assessing Officer, the same can only be made by way of filing a revised return of income.

(b) Can the rental income from the unsold flats of a builder be treated as its business income merely because the assessee has, in its wealth tax return, claimed that the unsold flats were stock-in-trade of its business? [5]

Solution:

Azimganj Estate (P.) Ltd. vs. CIT (2012) 206 Taxman 308 (Cal.)

The assessee, a property developer and builder, in the course of its business activities constructed a building for sale, in which some flats were unsold. During the year, the assessee received rental income from letting out of unsold flats which is disclosed under the head "Income from house property" and claimed the permissible statutory deduction of 30% therefrom. The Assessing Officer contended that since the assessee had taken the plea that the unsold flats were stock-in-trade of its business and not assets for the purpose of Wealth-tax Act, 1961, therefore, the rental income from the said flats have to be treated as business income of the assessee. Consequently, he rejected the assessee's claim for statutory deduction of 30% of Net Annual Value.

On this issue, the Calcutta High Court held that the rental income from the unsold flats of a builder shall be taxable as "income from house property'' as provided under section 22 and since it specifically falls under this head, it cannot be taxed under the head "Profit and gains from business or profession". Therefore, the assessee would be entitled to claim statutory deduction of 30% from such rental income as per section 24. The fact that the said flats have been claimed as not chargeable to wealth-tax, treating the same as stock-in-trade, will not affect the computation of income under the Income-tax Act, 1961.

(c) Whether consideration for transfer of sales tax incentive taxable as revenue receipt? [5]

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.

(d) 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. [5]

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 for the 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 the revenue and against the assessee. The appeal is, therefore, allowed; there shall be no order as to costs.

6. ABC Ltd. is engaged in manufacture of chemical (since 1960) and paper (since 2009). The following data is noted from the balance sheet of ABC Ltd. as on March 31, 2013 —

	(₹ in thousand)
Equity share capital	60,00
Preference share capital	10,00
General reserve	40,00
Revaluation reserve	6,00
Share premium Total	8,00
Total	1,24,00

	(₹ in thousand)		
	Chemical division	Paper division	Total
Land	30,00	20,00	50,00
Plant and machinery	16,00	36,00	52,00
Stock	5,00	9,00	14,00
Debtors and other current assets	4,00	11,00	15,00
Less : Creditors	4,00	3,00	7,00
Total	51,00	73,00	1,24,00

Revaluation reserve was created by making upward revision of land belonging to chemical division (₹1 lakh) and paper divisions (₹5 lakh). The company wants to transfer paper division on April 1, 2013 by way of slump sale for a total consideration of ₹108 lakh (transfer expenses being ₹38,000). By taking into consideration the following additional information, find out the amount of capital gains and other tax consequences.

1. Transfer agreement does not specify value of individual assets/liabilities. However, the value of land of paper division for the purpose of stamp duty is ₹46 lakh. The same amount is adopted by the stamp valuation authority of the MP Government.

2. The rate of depreciation on plant and machinery owned by ABC Ltd. is 15 per cent. The depreciated value of the block (consisting of chemical division and paper division) on April 1,2013 is ₹70 lakh for income-tax purpose. Apart from transferring plant and machinery of paper division, the company purchases an old Plant P for ₹1 lakh and sells Plant Q for ₹20 lakh (situation 1) or ₹50 lakh (situation 2) in September 2013. Plant P and Q belong to chemical division.

Plant and machinery (old) of the paper division was purchased in May 2009 for ₹95 lakh. The division started commercial production in June 2009. However, one of the plants (cost ₹10 lakh) was put to use in March 2010. No other asset for paper division is purchased/ sold between May 2009 and March 2013. [10]

Solution:

ABC Ltd. transfers paper division for a lump sum consideration. Transfer satisfies all conditions of section 2(42C). Paper division was set up in 2009 and it is transferred on April 1, 2013. The capital gain (or loss) will be long-term. The sale consideration is ₹ 108 lakh. The cost of acquisition is net worth of paper division which will be determined as follows—

Computation of written down value for the purpose of computing depreciation

	Situation 1 ₹	Situation 2 ₹
Depreciated value of the block of assets of chemical and paper divisions on April 1, 2013	70,00,000	70,00,000
Add : Cost of Plant P	(+)1,00,000	(+)1,00,000
Less : Sale proceeds of Plant Q	(-)20,00,000	(-)50,00,000
Balance (a)	51,00,000	21,00,000
Less : Depreciated value of assets of paper division, it cannot exceed (a) **[see Note]**	(-)50,05,119	(-)21,00,000
Written down value	94,881	Nil
Less : Depreciation available to ABC Ltd. for the previous year 2013-14	14,232	Nil

Note - Computation of depreciated value of assets of paper division (as if paper division only paper division) is owned by ABC Ltd.—

Depreciated value on April 1, 2009	Nil
Add: Cost of assets acquired and put to use during 2009-10	95,00,000
Written down value on March 31, 2010	95,00,000
Less: Depreciation for 2009-10 (15% of ₹85 lakh + 7.5% of ₹10 lakh)	13,50,000
Depreciated value on April 1, 2010	81,50,000
Less: Depreciation for 2010-11	12,22,500
Depreciated value on April 1, 2011	69,27,500
Less: Depreciation for 2011-12	10,39,125
Depreciated value on April 1, 2012	58,88,375
Less: Depreciation for 2012 -13	8,83,256
Depreciated value on April 1, 2013	50,05,119

Computation of net worth of paper division

	Situation 1 ₹	Situation 2 ₹
Land (excluding ₹5 lakh which was added by revaluation)	15,00,000	15,00,000
Plant and machinery (i.e., amount considered while computing written down value)	50,05,119	21,00,000
Stock	9,00,000	9,00,000
Debtors and other current assets	11,00,000	11,00,000
Total	85,05,119	56,00,000
Less : Creditors	3,00,000	3,00,000
Net worth	82,05,119	53,00,000

	Situation 1 ₹	Situation 2 ₹
Computation of capital gain on transfer of paper division		
Sale consideration	1,08,00,000	1,08,00,000
Less: Cost of acquisition (being net worth, indexation benefits is not available)	82,05,119	53,00,000
Expenses on transfer	38,000	38,000
Long-term capital gain	25,56,881	54,62,000

7. Answer any two Questions [2x5=10]

(a) (i) 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. [3]

(ii) For the assessment year 2009-10, assessment of X Ltd. is completed under section 143(1) [income assessed: ₹ 4,47,000]. On March 28, 2014, the Assessing Officer issues a notice under section 148 to X Ltd. that an income of ₹ 45,760 has escaped assessment. The said notice is received by X Ltd. on April 3, 2014. Is the notice valid? [2]

Solution to (a)(i):

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 Indica to him.

Solution to (a)(ii):

In this case notice can be issued up to March 31, 2014. A clear distinction has been made out between "issue of notice" and "service of notice" under the Act. Section 149 prescribes the period of limitation. It categorically prescribes that no notice under section 148 shall be issued after the prescribed limitation has lapsed. Section 148(1) provides for service of notice as a condition precedent to making the order of reassessment. Once a notice is issued within the period of limitation, jurisdiction becomes vested in the Assessing Officer to proceed to reassess. The mandate of section 148(1) is that reassessment shall not be made until there has been service. The requirement of issue of notice is satisfied when a notice is actually issued. In this case, admittedly, the notice is issued within the prescribed period of limitation as March 31, 2014 is the last day of that period. Service under the Act is not a condition precedent to conferment of jurisdiction on the Assessing Officer to deal with the matter but it is a condition precedent to the making of the order of assessment. The Assessing Officer has issued notice within limitation — R.K. Upadhaya v. Shanabhai P. Patel [1987] 166 ITR 163 (SC).

(b) Company X which has an accumulated business loss of ₹10,00,000 and unabsorbed depreciation of ₹7,00,000 wants to reorganize its business by amalgamating with a rival company Y, which is engaged in the same line of production but with a smaller capital, but has an efficient management set up and more modern machinery. Company Y is agreeable to the amalgamation.

What are the alternative courses available to the companies for effecting the merger and how would you advise them as to the best course of action? [5]

Solution:
The alternatives for merger that are available to X and Y are: (i) merger of X into Y, whereby X goes out of existence; (ii) merger of Y into X, whereby Y goes out of existence; and (iii) merger of X and Y into a new company, whereby a new company, say Z, is formed and both X and Y go out of existence.

All the three mergers can take place under one of the following situations—

i. If the merger is not an "amalgamation" within the meaning of section 2(1B).

ii. If the merger is an "amalgamation" within the meaning of section 2(1B), though it does not satisfy provisions of section 72A.

iii. If the merger satisfies conditions of sections 2(1B) and 72A.

Under the aforesaid situations, the set off of accumulated business loss of ₹10,00,000 and unabsorbed depreciation of ₹7,00,000 is possible in the following cases :

	Whether set off of unabsorbed business loss/ depreciation allowance is possible?		
	Situation (i)	Situation (ii)	Situation (iii)
(i) Merger of X into Y (X goes out of existence after merger)	No	No	Yes
(ii) Merger of Y into X (Y goes out of existence)	Yes	Yes	Yes
(iii) Merger of X and Y into Z (X and Y go out of existence,			

Z is formed as a new company)	No	No	Yes

To conclude, it can be said that if the conditions of section 72A are satisfied, any of the three alternatives for mergers can be adopted, as in all the cases the loss can be set off by the amalgamated company. If, however, conditions of section 72A are not satisfied, alternative (ii) (i.e., merger of company Y into X) should be adopted, as in this case, company X would be able to carry forward and setoff of loss/depreciation even if the merger does not fulfill the requirement of section 2(1B). This kind of merger is also known as reverse merger.

(c) The following information is submitted by X for the assessment year 2014 – 2015 (i.e., previous year ending March 31,2014)-

	₹
Capital gain on sale of a property situated in Pune (amount is received in Mauritius)	**18,10,000**
Income from a business in Pune controlled from Mauritius	**20,50,000**
Income from a business in Mauritius controlled from Pune (amount is received in Mauritius)	**15,90,000**
Rent from a commercial property in UK received in Mauritius but later on remitted to India	**28,80,000**
Consultancy fees received from an Indian company (for a project situated in UK) (amount is deposited in his account with Citibank, Pune branch, however, it is withdrawn by him in Mauritius)	**10,50,000**
Interest from deposits with an Indian company received in Mauritius	**1,30,000**
Profits for the year 2012-13 of a business in Mauritius remitted to India during the previous year 2013-14 (not taxed in India earlier)	**7,70,000**
Gift received from parents of Mrs. X	**10,00,000**
Royalty received from the Government of West Bengal (paid to him in Mauritius for project situated in Mauritius)	**3,00,000**

Determine the net income of X for the assessment year 2014-15 in the following cases —
Case 1 - If X is resident and ordinarily resident in India,
Case 2 - If X is resident but not ordinarily resident in India,
Case 3 - If X is non-resident in India. **[5]**

Solution:

Income of X as calculated as under —

	Nature of income	Case 1 ₹	Case 2 ₹	Case 3 ₹
Capital gain on transfer of Pune property	Indian income	18,10,000	18,10,000	18,10,000
Business income in Pune	Indian income	20,50,000	20,50,000	20,50,000
Business income in Mauritius				
(business is controlled from Pune)	Foreign income	15,90,000	15,90,000	Nil
Rent from UK property	Foreign income	28,80,000	Nil	Nil
Consultancy fees for Indian company	Indian income	10,50,000	10,50,000	10,50,000

Interest on deposit with an Indian company	Indian income	1,30,000	1,30,000	1,30,000
Passed untaxed profit	Not income of current year	Nil	Nil	Nil
Gift from relatives	Not taxable	Nil	Nil	Nil
Royalty from Government	Indian income	3,00,000	3,00,000	3,00,000
Net income		**98,10,000**	**69,30,000**	**53,40,000**

8. Answer any one Question [1x5]

(a) XYZ is a charitable society registered under the Societies Registration Act. On the ground that it was pursuing an objective that involved the carrying of an activity for profit, the Assessing Officer wants to levy wealth-tax on it. Is such a society liable to wealth-tax? [5]

Solution:

Under section 3 of the Wealth-tax Act, the only taxable entities are individuals, Hindu undivided families and companies. A society registered under the Societies Registration Act is neither an "individual" nor a "Hindu undivided family". Moreover it is not an association of persons or body of individuals, or body of trustees which can, by stretching the Supreme Court rulings in Trustees of Gordhandass Govindram Family Charity Trust v. GIT [1973] 88 ITR 47 or CWT v. Kripashankar Dayashankar Worah [1971] 81 ITR 763, be treated as an individual. A society acquires an artificial juridical character which is separate from its members.

(b) X furnishes the following particulars for the compilation of his wealth-tax return for assessment year 2014-15:

Particulars	**₹**
1. Gifts of jewellery made to wife from time to time aggregating ₹60,000 market value on valuation date	**3,00,000**
2. Flat purchased under installment payment scheme in 1972 for ₹7,50,000, used for purposes of his residence and market value as on March 31, 2014 (installment remaining unpaid : ₹50,000)	**18,00,000**
3. Urban land transferred to minor handicapped child valued on March 31, 2014	**5,00,000**

Explain how you will deal with these items. Make suitable assumptions, if required. [5]

Solution:

Computation of net wealth of X

	₹

Jewellery held by wife	3,00,000
Flat: ₹ 7,50,000	
Less: Debt due ₹ 50,000	
Balance ₹ 7,00,000	--- *
[*exempt under section 5(vi)]	
Urban land held by minor child [not to be included as the minor child is handicapped]	---
Net wealth	**3,00,000**

9. Answer any two Questions [2x5=10]

(a) Ravi, aged 66 years and ordinarily resident in India, is a professional. He has earned ₹4,00,000 from services provided outside India. His foreign income was taxed at 20% in that country where services were rendered. India does not have any tax treaty with that country. Assuming that Indian income of Ravi is ₹3,00,000, what relief of tax under section 91 of the Income-tax Act, 1961 will be allowed to him? Ravi has contributed ₹32,000 towards public provident fund. [5]

Solution:

Computation of total income, tax payable and relief under section 91 (amounts in ₹) -

Indian Income		3,00,000
Income from services provided outside India		4,00,000
Gross Total Income		7,00,000
Less: Deduction under section 80C (PPF ₹ 32,000)		32,000
Total Income		6,68,000
Income Tax on total income (age: 66 years; Basic Exemption: 2,50,000)		58,600
Add: Education Cess and SHEC @ 3%		1,758
Total Tax		60,358
Indian Rate of Tax (Average Rate of Tax) [Total Tax ÷ Total Income]	9.04%	
Foreign Rate of Tax (given)	20.00%	
Doubly Taxed Income	4,00,000	
Less: Relief under section 91 to the extent of the lower of —		
(i) Doubly taxed Income × Indian Rate of Tax	36,160	
(ii) Doubly Taxed Income × Foreign Rate of Tax	80,000	36,160
Tax payable (rounded off to nearest ₹10)		24,200

(b) State the criteria which are to be satisfied to call a transaction as an international transaction. [5]

Solution:

As per Section 92B of the Income Tax Act, 1961, an international transaction is one which satisfies the following criteria:

(i) The transaction is between two or more associated enterprises, either or both of whom are non-residents.

(ii) It is in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, lending/borrowing of money or, any other transaction having a bearing on the profits, income, losses or assets of such enterprises.

(iii) It includes a transaction in the nature of a mutual agreement/ arrangement between two or more associated enterprises, for the allocation or apportionment of any contribution, cost or expense incurred (or to be incurred) in connection with a benefit, service or facility provided (or to be provided) to any one or more of such enterprises.

(c) Discuss taxation aspect in relation to the international mergers and acquisitions. [5]

Solution:

The taxation aspect of international mergers and acquisitions are:

(1) Amalgamation/Merger/Demerger: In this globalist economy, the cross-border mergers and acquisitions are regular phenomena. Most of the countries across the globe have exempted cross-border mergers/amalgamation, if the amalgamated company is a company belonging to that country. The expression 'merger/amalgamation' has been defined in the taxation law itself.

For example, the Income-tax Act, 1961 defines amalgamation under section 2(1B) of the Act and provides various incentives including tax-exemption to transfer of assets in the course of amalgamation [refer section 47(vi), 47(via) and 47(vii)] and provision for carry forward of unabsorbed losses/depreciation by amalgamated company.

However, the tax incentives are available only if amalgamated company is an Indian company. No tax incentive is available on amalgamation of Indian company with any foreign company, where the amalgamated company is a foreign company. In that event, the foreign company is eligible for tax incentives, if any, provided by the tax laws of its home country.

Similar tax incentives are provided in the case of demerger as well.

(2) Acquisitions: The cross-border acquisitions may take the form of asset purchase by way of slump sale or itemized sale. It may also take the form of stock purchase. In either case, the tax-laws generally do not provide any tax incentive, which are taxed as per the law applicable and respective DTAAs (Double Taxation Avoidance Agreements).