Paper 16 – Tax Management and Practice

The following table lists the learning objectives and the verbs that appear in the syllabus learning aims and examination questions:

	Learning objectives	Verbs used	Definition
LEVEL B	KNOWLEDGE What you are expected to know	List	Make a list of
		State	Express, fully or clearly, the details/facts
		Define	Give the exact meaning of
	COMPREHENSION What you are expected to understand	Describe	Communicate the key features of
		Distinguish	Highlight the differences between
		Explain	Make clear or intelligible/ state the meaning or purpose of
		Identity	Recognize, establish or select after consideration
		Illustrate	Use an example to describe or explain something
	APPLICATION How you are expected to apply your knowledge	Apply	Put to practical use
		Calculate	Ascertain or reckon mathematically
		Demonstrate	Prove with certainty or exhibit by practical means
		Prepare	Make or get ready for use
		Reconcile	Make or prove consistent/ compatible
		Solve	Find an answer to
		Tabulate	Arrange in a table
	ANALYSIS How you are expected to analyse the detail of what you have learned	Analyse	Examine in detail the structure of
		Categorise	Place into a defined class or division
		Compare and contrast	Show the similarities and/or differences between
		Construct	Build up or compile
		Prioritise	Place in order of priority or sequence for action
		Produce	Create or bring into existence

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 2015-16, unless stated otherwise.

Section A

Answer any five Questions

1.(a) XYZ Ltd. is engaged in the business of manufacture of garments.

	₹
Sale proceeds of goods (domestic sale)	23,23,900
Sale proceeds of goods (export sale)	4,76,100
Amount withdrawn from general reserve (reserve was created in 1997-98 by debiting P&L A/c)	2,00,000
Amount withdrawn from revaluation reserve	1,50,000
Total	31,50,000
Less: Expenses	
Depreciation (normal)	6,16,000
Depreciation (extra depreciation because of revaluation)	2,70,000
Salary and wages	2,20,000
Income- tax	3,50,000
Outstanding customs duty (not paid as yet)	17,500
Proposed dividend	60,000
Consultation fees paid to a tax expert	21,000
Other expenses	1,39,000
Net Profit	14,56,500

For tax purposes the company wants to claim the following:

- **Deduction under section 80-IB (30 per cent of ₹14,56,500).**
- **Depreciation under section 32 (₹5,36,000)**

The company wants to set off the following losses/allowances:

	For tax purposes ₹	For accounting purposes ₹
Brought forward loss of 2009 -10	14,70,000	4,00,000
Unabsorbed depreciation	-	70,000

Compute the net income and tax liability of XYZ Ltd. for the assessment year 2015-16 assuming that XYZ Ltd. has a (deemed) long-term capital gain of ₹60,000 under proviso (i) to section 54D(2) which is not credited in profit and loss account. [10]

Solution:

Computation of tax liability of XYZ Ltd.

	₹
Net profit as per P&L a/c	14,56,500
Add:	
Excess depreciation [i.e., ₹ 6,16,000 + ₹ 2,70,000 — ₹ 5,36,000]	3,50,000
Income-tax	3,50,000
Customs duty which is not paid	17,500
Proposed dividend	60,000
Total	22,34,000
Less: Amount withdrawn from reserve (i.e., ₹2,00,000 + ₹1,50,000)	3,50,000
Business income	18,84,000
Less: Unabsorbed loss	14,70,000
Business income	4,14,000
Long-term capital gain	60,000
Gross total income	4,74,000
Less: Deduction under section 80 – IB [30% of ₹4,14,000]	1,24,200
Net income (round off)	3,49,800
Tax liability (under normal provisions) [20% of ₹60,000 + 30% of ₹2,89,800, plus 3% of tax as cess]	1,01,910

Computation of Book Profit for the purposes of section 115JB & Tax Liabilities thereon -

Book profit	
Net profit	14,56,500
Add:	
Depreciation [i.e., ₹6,16,000 + ₹2,70,000]	8,86,000
Income tax	3,50,000
Proposed dividend	60,000
Less:	
Amount withdrawn from general reserve	(-) 2,00,000
Unabsorbed depreciation	(-) 70,000
Depreciation (normal)	(-) 6,16,000
Amount withdrawn from revaluation reserve to the extent it does not exceed extra depreciation because of revaluation	(-) 1,50,000
Book profit	17,16,500
Tax liability(19.055% of book profit)	3,27,080

XYZ Ltd. will pay ₹3,27,080 as tax for the assessment year 2015-16 as per section 115JB. Tax credit is however, available in respect of excess tax (i.e., ₹ 2,25,170) under section 115JB.

(b) Discuss in respect of the following items, the manner of treatment for Mrs. A's wealth-tax assessment for the assessment year 2015-16.

1 A house property at Calcutta was given to her as a gift by her husband on October 1, 1965. She, with her husband and children, is living in the house for the last 15 years. Its value on March 31, 2015 was ₹ 3,50,000.

2. She has another house property at Nainital given to her as a gift by her father on January 1, 1972 on the occasion of her birthday. This house is also used by her as her own residence where she lives during summer vacations only. The value of the house on March 31, 2015 was ₹ 22,00,000. [4]

Solution:

1. As a gift of the house was made on October 1, 1965, section 4(1)(a) is not applicable (assuming the gift was chargeable to gift-tax or exempt from gift-tax under section 5 of the said Act for the assessment year 1966-67). Therefore, value of the house would be includible in the net wealth of Mrs. X, who can, however, opt for valuation under section 7(2).
2. Value of the house is to be included in the net wealth of Mrs. X. She can, however, claim exemption under section 5(vi).

2. (a) Mr. Selvam, a manufacturer, purchased raw material for ₹1,04,000 (inclusive of 4% VAT) and capital goods for ₹5,62,500 (inclusive of 12.5% VAT). The manufacturing and other expenses (excluding depreciation) are ₹1,17,000. He sells the resultant product at 80% above cost (VAT on sales is 20%). The capital goods are to be depreciated at 25% straight line. Ascertain the VAT payable in cash as per Gross Product Variant. [6]

Solution:

Computation of VAT liability (amounts in ₹)

Raw material (net of VAT)	[WN-1]	1,00,000
Depreciation on capital goods	[WN-2]	1,40,625
Manufacturing and other expenses		1,17,000
Total cost		**3,57,625**
Add: 80% mark-up on cost		2,86,100
Sale price		**6,43,725**
VAT on sales (20% of ₹6,43,725)		1,28,745
Less: Input tax credit on raw material (₹1,04,000 ×4 ÷104)		4,000
VAT payable in cash		**1,24,745**

Working Notes:

(1) VAT paid on raw material is available as credit, hence cost of raw material = ₹1,04,000 × 100 ÷104 = ₹1,00,000.

(2) No credit is allowed of VAT paid on capital goods, hence depreciation = 25% of ₹5,62,500 = ₹1,40,625.

(b) M/s. Sujata Ltd. purchased fibre 5,000 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 is 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): ₹10 lakhs;

(v) Colouring Dyes used in the manufacture of Fabric: ₹ 1 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 u/s 3(1) of the Customs Tariff ₹20,000; Additional duty of customs u/s 3(5) of the Customs Tariff Act ₹ 6,000.

Compute - (i) CENVAT Credit available; (ii) Duty payable.

M/s. Sujata Ltd. is not eligible for SSI-exemption available under Notification No. 8/2003-CE. [5]

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 : (5,000 kg - 2% Normal Loss = 4,900 kg) * 80 per kg * 12.36%	48,451
2. CENVAT Credit:	
(a) On raw material fibre 5,000 kg x 50 per kg x 12.36% [WN-1]	30,900
(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	10,000
Additional duty of customs u/s 3(5) of CTA - Eligible for 100% credit in current year	6,000
Total Credit [2(a) + 2(b) + 2(c)]	**46,900**
3. Duty payable in cash [1 - 2]	1,551

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.

(c) On 8-4-2014, M/s. Nikhil Agrawal Packaging cleared plastic bottles whose assessable value was ₹10,00,000 and duty payable was ₹1,23,600. On 16-4-2014, the purchaser returned the plastic bottles to M/s. Nikhil Agrawal Packaging. M/s. Nikhil Agrawal Packaging took credit of duty of ₹1,23,600 on basis of invoice issued at the time of clearance of plastic bottles. The Department denies the credit on the ground that the duty on such goods has not been paid, as the due date for payment of duty falls on 05-05-2014. Discuss whether contention of department is correct. [3]

Solution:

The Board vide *Instruction F. No. 267/44/2009-CX. 8, dated 25-11-2009* has clarified in accordance with Rule 8(2) of the Central Excise Rules, 2002, "the duty of excise shall be deemed to have been paid for the purposes of these rules on the excisable goods removed in the manner provided under sub-rule (1) and the credit of such duty is allowed, as provided by or under any rule".

This provision explains that the invoice of the returned goods, would be a valid document for availing credit and duty is deemed to have been discharged.

According to Rule 16(1), the assessee shall be entitled to take CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules, 2004 and utilise this credit according to the said rules.

In view of above, credit on rejected/returned goods, received in the factory before prescribed date for duty payment, can be allowed to be taken under Rule 16(1). Hence, M/s. Nikhil Agrawal Packaging action is correct in law. M/s. Nikhil Agrawal packaging should pay duty of ₹1,23,600 on 05-05-2014 as per Rule 8.

3. (a) Define arm's length principle. Also mention the difficulties in applying the arm's length principle. [7]

Answer:

The arm's length principle seeks to ensure that transfer prices between members of an MNE (Multi National Enterprise) (―controlled transactions), which are the effect of special relationships between the enterprises, are either eliminated or reduced to a large extent. It requires that, for tax purposes, the transfer prices of controlled transactions should be similar to those of comparable transactions between independent parties in comparable circumstances (―uncontrolled transactions). In other words, the arm's length principle is based on the concept that prices in uncontrolled transactions are determined by market forces and, therefore, these are, by definition, at arm's length. In practice, the ―arm's-length price is also called ―market price . Consequently, it provides a benchmark against which the controlled transaction can be compared. The Arm's Length Principle is currently the most widely accepted guiding principle in arriving at an acceptable transfer price. As circulated in 1995 OECD guidelines, it requires that a transaction between two related parties is priced just as it would have been if they were unrelated. The need for such a condition arises from the premise that intra-group transactions

are not governed by the market forces like those between two unrelated entities. The principle simply attempts to place uncontrolled and controlled transactions on an equal footing.

Difficulties in applying the arm's length principle:

The arm's length principle, although survives upon the international consensus, does not necessarily mean that it is perfect. There are difficulties in applying this principle in a number of situations.

i. The most serious problem is the need to find transactions between independent parties which can be said to be exact compared to the controlled transaction.
ii. It is important to appreciate that in an MNE system, a group first identifies the goal and then goes on to create the associated enterprise and finally, the transactions entered into. This procedure obviously does not apply to independent enterprises. Due to these facts, there may be transactions within an MNE group which may not be between independent enterprises.
iii. Further, the reductionist approach of splitting an MNE group into its component parts before evaluating transfer pricing may mean that the benefits of economies of scale, or integration between the parties, is not appropriately allocated between the MNE group.
iv. The application of the arm's length principle also imposes a burden on business, as it may require the MNE to do things that it would otherwise not do (i.e. searching for comparable transactions, documenting transactions in detail, etc).
v. Arm's length principle involves a lot of cost to the group.

3.(b) Suvham Ltd. Collected following sums (exclusive of taxes) –

(1) Transport of passengers on vessel from Chennai to Port Blair : ₹ 6 lakh;

(2) Transport of passengers by vessels from Chennai to Dubai : ₹ 40 lakhs (services of ₹ 6 lakh was provided after crossing maritime zones of India);

(3) Transport of passengers by vessels from Dubai to Chennai : ₹ 50 lakhs (services of ₹ 7 lakh were provided after crossing maritime zones of India);

(4) Transport of passengers by stage carriage : ₹ 10 lakh;

(5) Transport of passengers by contract carriage : ₹ 5 lakh;

(6) Transport of passengers by contract carriage for tour : ₹ 6 lakh;

(7) Transport of passengers by ropeway: ₹ 2 lakh;

(8) Running cruise ships : ₹ 6 lakh (within territorial waters of India);

(9) Metro transport of passengers : ₹ 140 lakhs;

(10) Transport through national waterways: ₹ 8 lakh.

Compute taxable value. [7]

Solution:

Computation of taxable value —

(1) Transport of passengers on vessel from Chennai to Port Blair: ₹ 6 lakh – Covered within negative list under section 66D(o), as transport by vessels takes place within India. It is assumed that vessel is not predominant meant for tourism purpose – Not taxable;

(2) Transport of passengers by vessels from Chennai to Dubai: ₹ 40 lakhs (services of ₹ 6 lakh was provided after crossing maritime zones of India) – Place where passenger embarks for a continuous journey viz. Chennai is the place of provision as per Rule 11 of PoP Rules; further, as per Rule 12, services provided on board a conveyance is provided at the place of first schedule point of departure thereof viz. Chennai. Hence, whole of the sum will be taxable in India.

(3) Transport of passengers by vessels from Dubai to Chennai: ₹ 50 lakhs (services of ₹ 7 lakhs were provided after crossing maritime zones of India) – Place where passenger embarks for a continuous journey viz. Dubai is the place of provision as per Rule 11 of PoP Rules; further, as per Rule 12, services provided on board a conveyance is provided at the place of first schedule point of departure thereof viz. Dubai. Hence, whole of the sum will be not be taxed in India;

(4) Transport of passengers by stage carriage: ₹ 10 lakh – Covered within negative list under section 66D(o);

(5) Transport of passengers by contract carriage: ₹ 5 lakh – Covered within negative list under section 66D(o);

(6) Transport of passengers by contract carriage for tour: ₹ 6 lakh – Not exempt, as meant for tour purposes – Taxable;

(7) Transport of passengers by ropeway: ₹ 2 lakh – Covered within Mega exemption notification No. 25/2012;

(8) Running cruise ships: ₹ 6 lakh (within territorial waters of India) – Cruise ships are predominantly meant for turism purposes, hence, not covered within negative lit – Taxable;

(9) Metro transport of passengers: ₹ 140 lakh – Covered within negative list under section 66D(o);

(10) Transport through national waterways: ₹ 8 lakh – Covered within negative list u/s 66D(o).
Taxable Value = 40 + 6 + 6 = ₹ 52 lakhs.

4. (a) 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 25.03.2015 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 21.03.2015 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% and secondary and higher education cess @ 1%.

Make suitable assumptions where required and show the relevant workings and round off your answer to the nearest Rupee. [6]

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) 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 25-03-2015 viz. 20% shall be taken.]	--- 20.00%	--- 1,57,560.00	7,87,800.00 1,57,560.00
 Add: Additional duty i.e., CVD u/s 3(1) (excise duty excluding EC and SHEC due to exemption)	 15.00%	1,57,560.00 1,41,804.00	9,45,360.00 1,41,804.00
 Add: Education Cess @ 3% on duty sub-total up to last stage	 3.00%	2,99,364.00 8,981.00	10,87,164.00 8,981.00
 Add: Special CVD u/s 3(5) @ 4% of total value (including duty)	 4.00%	3,08,345.00 43,846.00	10,96,145.00 43,846.00
Total (rounded off on nearest rupee)		3,52,191.00	11,39,991.00

(b) What is Provisional Assessment? How it is finalized? Whether any interest is payable or receivable regarding this matter? [8]

Answer:

Rule 7 of Central Excise Rules make provisions in respect of provisional assessment. Provisional assessment can be requested by the assessee. Department cannot itself order provisional assessment.

An assessee can request for provisional assessment in following circumstances – (a) Assessee is unable to determine the value of excisable goods in terms of Section 4 of CEA on account of non-availability of any document or information or (b) Assessee is unable to determine rate of duty applicable.

In aforesaid cases, assessee may request Assistant/Deputy Commissioner in writing giving reasons for provisional assessment of duty. Assessee should give reason why he wishes to have provisional assessment. After such request, the Assistant/Deputy Commissioner may by order allow payment of duty on provisional basis. The Assistant/Deputy Commissioner shall also specify the rate or value at which the duty will be paid on provisional basis. [Rule 7(1)].

Payment of duty on provisional basis will be allowed subject to execution of bond for payment of differential duty [Rule 7(2)].

Finalisation:

Final assessment will be made by Assistant/Deputy Commissioner after getting the required details. In case of such provisional assessment, demand can be raised within one year after the provisional assessment is finalised. After making payment of duty on provisional basis, Assistant/Deputy Commissioner should pass order for final assessment within 6 months from date of order of provisional assessment. This period can be extended by further 6 months by Commissioner and further without any time limit by Chief Commissioner [Rule 7(3)]. If differential amount is payable, interest is payable [Rule 7(4)]. If excess amount was paid, it is refundable with interest [Rule 7(5)]. The refund is subject to provision of Unjust Enrichment [Rule 7(6)].

AC/DC is required to pass order of final assessment after getting relevant information, within six months of date of communication of his order allowing provisional assessment. The period of 6 months can be extended by Commissioner of CE, on making a specific request, for reasons to be recorded in writing. Extension beyond one year for further period can be granted only by Chief Commissioner. [Rule 7(3) of Central Excise Rules].

Interest payable/receivable:

If differential duty is found to be payable, interest as specified in Section 11AA or 11AB will be payable by assessee from first day of the month succeeding the month for which such amount is determined till date of payment thereof. [Rule 7(4)].

If differential amount is found to be refundable to assessee, it shall be refunded with interest at rate as specified in Section 11BB from first day of the month succeeding the month for which refund is determined till the date of refund [Rule 7(5)]. Thus, interest is payable by department is on the same basis as payable by assessee, i.e. not from date of finalisation of provisional assessment, but from month next to the month on which duty was provisionally paid. [Note that u/s 11BB, interest on delayed refund is payable only three months after filing of refund application. This provision does not apply to refund obtainable after finalization of Provisional Assessment].

If duty is paid on provisional basis, refund claim can be filed within one year after duty is adjusted after final assessment.

5. (a) During the accounting period ending March 31,2015, a charitable trust derived (a) income from property held for charitable purposes : ₹3,00,000 (₹1,50,000 received in cash and the remaining balance of ₹1,50,000 is to be received in the year 2016-17), (b) voluntary contribution: ₹2,00,000 with no specific direction, and (c) ₹20,00,000 with specific direction that it shall form corpus of the trust.

During the previous year 2014-15, the trust spends only ₹1,40,000 for charitable purposes. Determine its taxable income on the assumption that the trust has obtained extension of time for applying the unrealised income of ₹1,50,000 in the year of receipt, i.e., 2016-17 whereas it actually spends ₹30,000 in the year 2016-17 and ₹40,000 in the year 2017-18. [4]

Solution:
Taxable income of the trust will be computed as under:
For the assessment year 2015-16 (previous year 2014-15)

	₹
Income from property held under trust for charitable purposes Voluntary contributions with no specific direction	3,00,000 2,00,000
Total Income Less: 15% set apart for future	5,00,000 75,000
Balance Less: Amount spent during the previous year	4,25,000 1,40,000
Shortfall Less: Amount not realised during the previous year	2,85,000 1,50,000
Taxable income	1,35,000

For the assessment year 2018-19 (previous year 2017-18,i.e., the year next following previous year in which the unrealised income of the previous year 2014-15 is received):

	₹	₹
Income received during the previous year 2016-17		1,50,000
Less: Amount spend during		
➢ previous year 2016- 2017	30,000	
➢ previous year 2017 -2018	40,000	70,000
Taxbale income		80,000

Note: Voluntary contributions received with specific direction that they shall form corpus of the trust are not treated as income of the trust.

(b) The following information is submitted by Uma for the assessment year 2015–2016 (i.e., previous year ending March 31,2015)-

	₹
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 2013-14 of a business in Mauritius remitted to India during the previous year 2014-15 (not taxed in India earlier)	**7,70,000**
Gift received from parents of Mrs. Uma	**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 Uma for the assessment year 2015-16 in the following cases -
a. Case 1 - If Uma is resident and ordinarily resident in India,
b. Case 2 - If Uma is resident but not ordinarily resident in India,
c. Case 3- If Uma is non-resident in India. [5]

Solution:
Income of Uma 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

(c) Ganesha Ltd is one hundred per cent subsidiary company of Siva. Ltd. Ganesha Ltd owns Plants A and B (depreciation rate 30 per cent, depreciated value of the block ₹3,00,000 on April 1, 2014). Plant B(old) was purchased and put to use on November 10,2012 (cost being ₹70,000). Plant B is transferred by Ganesha Ltd to Siva Ltd on December 14, 2014 for (a) ₹8,000, (b) ₹2,70,000, (c) ₹4,10,000. It is put to use by Siva Ltd on the same day. Siva Ltd owns Plant C on April 1, 2014 (depreciation rate 30 per cent, depreciated value; ₹60,000). Find out the tax consequences if Siva Ltd is an Indian company or if Siva Ltd is a foreign company. [5]

Solution:

(₹ in 000)

Ganesha. Ltd.	**If Siva Ltd is an Indian company**			**If Siva Ltd is a foreign company**		
	Situation (a)	Situation (b)	Situation (c)	Situation (a)	Situation (b)	Situation (c)

Depreciated value of Plants A and B on April 1, 2014	300	300	300	300	300	300
Less : Money payable in respect of Plant B transferred to Siva Ltd. [see Note 1]	8	270	410	8	270	410
Written down value of the block on March 31, 2015	292	30	Nil	292	30	Nil
Depreciation for the block for the previous year 2014-15	87.6	9	Nil	87.6	9	Nil
Capital gains in case of Ganesha Ltd.						
Sale proceeds of Plant B	8	270	410	8	270	410
Less : Cost of acquisition as per section 50	NA	NA	300	NA	NA	300
Short-term capital gain [*exempt by virtue of section 47(v)] [see Note 2]	NA	NA	Nil*	NA	NA	110
Siva Ltd.						
Depreciated value of the block on April 1, 2014	60	60	60	60	60	60
Add : Actual cost of Plant B acquired from Ganesha Ltd. (see Note 3)	41.65	41.65	41.65	8	270	410
Written down value of the block on March 31, 2015	101.65	101.65	101.65	68	330	470
Depreciation						
- on Plant B @ ½ of 30%	6.25	6.25	6.25	1.2	40.5	61.5
- other asset @ 30%	18	18	18	18	18	18

Notes –

1. If the transferee- company, i.e., Siva Ltd. is on Indian Company, then "actual Cost" shall be ₹41,650 [as is shown in Note 3]. However, in the hands of transferor, i.e., Ganesha Ltd. money payable by Siva Ltd. shall be deducted from the block of asset (it is incorrect to deduct ₹41,650). Consequently, in Situations (b) and (c), quantum of depreciation available to Ganesha Ltd. will be quite low. It is advisable that in such transactions the sale consideration should be fixed keeping in view, the effect of it on the quantum of depreciation available in future.
2. In situations (a) and (b), section 50 is not applicable.
3. Actual cost of plant B in the hands of Siva Ltd, if it is an Indian company.

	₹
Actual cost of plant B in the hands of S. Ltd. on November 10, 2012 Less: Depreciation for the previous year 2012 – 13 (1/2 of 30% of ₹70,000)	70,000 10,500
Balance on April 1, 2013 Less: Depreciation for the previous year 2013- 2014	59,500 17,850
Balance on April 1, 2014	41,650

6. (a) The following particulars are furnished for the Previous Year 2014-15

	₹
Net Profit as per Profit & Loss A/c (after deducting Depreciation of ₹ 6,80,000)	**90,97,000**
Depreciation allowable u/s 32 of Income Tax Act	**7,77,000**
Disallowable expenses	**85,000**
Deduction received u/s 10AA (as calculated)	**78,00,000**
Long Term Capital Gains (on sale of land)	**3,00,000**
Deduction received under Chapter VI A(as calculated):	
80G	**55,000**
80IB	**80,000**

Calculate Tax Liability assuming that the Assessee is an LLP, Firm, Individual, HUF, AOP and BOI.

[9]

Solution:

Statement showing computation of Total Income (applicable for all types of Assessee)

Particulars	₹	₹
Net Profit as per Profit & Loss A/c		90,97,000
Add: Depreciation	6,80,000	
Disallowable expenses	85,000	7,65,000 98,62,000
Less: Depreciation allowable u/s 32 of Income Tax Act.		7,77,000 90,85,000
Less: Deduction received u/s 10AA		78,00,000
Business Proft		12,85,000
Add: Long Term Capital Gains		3,00,000
Gross Total Income		15,85000
Deduction received under Chapter VI A :		
80G	55,000	
80IB	80,000	1,35,000
Total Income		14,50,000

Computation of Adjusted Total Income (applicable for all types of Assessee)

Particulars	₹
Total Income (as computed above)	14,50,000
Add: Deduction claimed u/s 80IB	80,000
Add: Deduction claimed u/s 10AA	78,00,000
Adjusted Total Income	**93,30,000**

Statement showing computation of Tax Liability and Alternate Minimum Tax and Credit on Alternate Minimum Tax for the Assessment Year 2015-16

Particulars	Firm/ LLP	Individual/ HUF/AOP/BOI
Tax on Long Term Capital Gains (@ 20% of ₹ 3,00,000)	60,000	60,000
Tax on balance Total Income (@ 30% for Firm or LLP and at Slab Rate for Individual or HUF or AOP or BOI)	3,45,000	1,70,000
	4,05,000	2,30,000
Add: Education Cess @ 2%	8,100	4,600
Add: Secondary and Higher Secondary Education Cess @ 1%	4,050	2,300
Tax Liability (a)	4,17,150	2,36,900
Tax on Adjusted Total Income @ 18.5%	17,26,050	17,26,050
Add: Education Cess @ 2%	34,521	34,521
Add: Secondary and Higher Secondary Education Cess @ 1%	17,261	17,261
Alternate Minimum Tax (b)	**17,77,832**	**17,77,832**
Tax Payable [Higher than (a) and (b)]	17,77,830	17,77,830
Alternate Minimum Tax credit [(a) – (b)]	13,60,680	15,40,932

6.(b) Mountain Ltd., which is engaged in the manufacture of excisable goods started its business in May, 2014. It availed small scale exemption in terms of Notification No. 8/2003-C.E. dated 01-03-2003 as amended for the financial year 2014-2015. 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 28-06-2014 (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. Mountain Ltd. in cash, if any, during the year 2013-14. Rate of duty on finished goods sold should 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. Mountain Ltd. during the financial year 2014-15 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 7500 Kg. of inputs (7500 × 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 = ₹6,67,440**)**	
CENVAT credit availed on capital goods **[C]** **(**100% of 44,94,400 x 12.36 ÷ 112.36**)** **[WN-2 & 3]**	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.

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

7. Answer the following with the help of decided case laws [3 × 5 =15]

(a) Whether the amount received by the employee on cessation of employment with his employer will be exempted from tax under section 17(3)(i) of the Income-tax Act? [5]

Solution:

CIT vs. Shyam Sundar Chhaparia (2008) 305 ITR 181 (MP)

Relevant Section: 17(3)

The assessee after his retirement was granted an amount of ₹ 27,50,000 as a special compensation in lieu of an agreement for refraining from taking up any employment activities or consultation which would be prejudicial to the business/interest of his employer. The assessee claimed that it was a non-taxable receipt being the compensation for not taking up any competitive employment under a restrictive covenant. The Assessing Officer did not accept the claim of the assessee on the grounds that (i) the decision of the Supreme Court relied on by the assessee was that of an agency whereas the case of the assessee was that of one who was in service, and (ii) section 17(3)(i) was squarely applicable to the case of the assessee. The Commissioner (Appeals) held that as there was restriction for the assessee not to work in business of any type and anywhere, the compensation was received in lieu of loss of future work and was a capital receipt. The Tribunal held in favour of the assessee.

The High Court held that the assessee retired from service on attaining the age of superannuation and hence there was severance of the master-servant relationship and there was no material to suggest that there existed a service contract providing therein a restrictive covenant preventing thereby the assessee from taking up any employment or activities on consultation which would be prejudicial to the business/interest of his employer. Therefore, it could not be termed as profit in lieu of salary because it was not compensation due to or received by the assessee from his employer or partner- employer at or in connection with the termination of his employment. Thus, the Commissioner (Appeals) and the Tribunal rightly held that the amount could not be added for the purpose of income-tax.

(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) Can business contracts, business information, etc., acquired by the assessee as part of the slump sale be described as 'goodwill', be classified as an intangible asset to be entitled for depreciation under section 32(1)(ii)? [5]

Solution:

Areva T and D India Ltd. vs. DCIT (2012) 345 ITR 421 (Delhi)

In the present case, a transferor under a transfer by way of slump sale, transferred its ongoing business unit to the assessee company. On perusal of the sale consideration, it was found that some part of it was attributable to the tangible assets and the balance payment was made by the assessee company for acquisition of various business and commercial rights categorized under the separate head, namely, "goodwill" in the books of account of the assessee. These business and commercial rights comprised the following: business claims, business information, business records, contracts, skilled employees, know-how. The assessee company claimed depreciation under section 32 on the excess amount paid which was classified as "goodwill" under the category of intangible assets.

The Assessing Officer accepted the allocation of the slump sale between tangible and intangible assets (described as Goodwill). However, he claimed that depreciation in terms of section 32(1) (ii) is not allowable on goodwill. He further contended that the assessee has failed to prove that such payment can be categorized under "other business or commercial right of similar nature" as mentioned in section 32(1)(ii) to qualify for depreciation.

The assessee argued that any right which is obtained for carrying on the business effectively, is likely to come within the sweep of the meaning of intangible asset. Therefore, the present case shall qualify for claiming depreciation since business claims, business information, etc, are in the nature of "any other business or commercial rights" However, the Revenue argued that, the business or commercial rights acquired by the assessee would not fall within the definition of intangible assets under section 32.

The Delhi High Court observed that the principle of ejusdem generis provides that where there are general words following particular and specific words, the meaning of the latter words shall be confined to things of the same kind. The Court applied this principle for interpreting the expression "business or commercial rights of similar nature" specified in section 32(1)(ii). It is seen that such rights need not be the same as the description of "know-how, patents, trademarks, licenses or franchises" but must be of similar nature as the specified assets. The use of these general words after the specified intangible assets in section 32(1)(ii) clearly demonstrates that the Legislature did not intend to provide for depreciation only in respect of specified intangible assets but also to other categories of intangible assets, which were neither feasible nor possible to exhaustively enumerate.

Further, it was observed that the above mentioned intangible assets are invaluable assets, which are required for carrying on the business acquired by the assessee without any interruption. In the absence of the aforesaid intangible assets, the assessee would have had to commence business from scratch and go through the gestation period whereas by acquiring the aforesaid business rights along with the tangible assets, the assessee has got a running business. The

aforesaid intangible assets are, therefore comparable to a license to carry on the existing business of the transferor.

Therefore, the High Court held that the specified intangible assets acquired under the slump sale agreement by the assessee are in the nature of intangible asset under the category "other business or commercial rights of similar nature" specified in section 32(1)(ii) and are accordingly eligible for depreciation under section 32(1)(ii).

8. Answer the following with the help of decided case law: [3 × 5 =15]

(a) 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.

(b) Articles of precious metals made and supplied by the applicant to their customers according to their specifications and designs and some articles of jewelry like pendants of various shapes and sizes made by involving various complex processes on raw precious metals is 'Manufacture' as the resultant product has its own distinct character, identity and use.

Whether the process amounted to manufacture or not? And if it is carried out as job work even then it will be manufacture or not? [5]

Solution:

MMTC – Pamp India Pvt. Ltd. v CCEx., Delhi [2013] 292 ELT 129 (A.A.R)

Facts:

The applicants were engaged in refining and minting of products of precious metals namely gold, silver and platinum. The articles of precious metals that were made and supplied by the applicant to their customers included medallions/coins made according to specifications and designs agreed with the customers and some articles of jewelry like pendants of various shapes and sizes. It involved a number of steps of complex processes such as manufacture of dies and moulds, purification of metal, melting of the gold or silver, cold rolling, blanking, pickling and polishing, stamping with the aid of dies made as per designs agreed with their customers and lacquering and packing. The item that they took in was precious metals in raw (bullion) form and what they produced was finished articles, such as medallions and articles of jewelry etc., in marketable form.

Decision: It was held that -

As per section 2(f) of Central Excise Act, 1944, process resulting in a new item with distinct name, character and use amounts to manufacture. Process of Manufacture could be on own account or on job work. Merely because it is on job work, it cannot be precluded from being considered as manufacturing. Job work and manufacturing are not mutually exclusive. From the facts it was clear that the processes undertaken by the applicant resulted in the emergence of goods which have their own distinct character, identity and use. The activities of the applicant, therefore, clearly met the definition of manufacture beyond any shadow of doubt.

(c) Even before the issuance of show cause notice if the Service Tax and Interest amount has been deposited by the assessee, then department cannot hold that the assessee should have known quantum of penalty also on its own and should have deposited at least its 25% within thirty days.

Whether Department's plea that assessee should have known quantum of penalty and deposited at least its 25% within thirty days was justified? [5]

Solution:

CST v. Manan Motors Pvt Ltd. [2013] 31 STR 535 (Guj.)

Facts:

Assessee was engaged in providing services as Authorized Service Station, and had allowed financial institutions like ICICI and HDFC to keep their counters/desks to help them to boost up their business. For such service, assessee received substantial amount under head commission or incentive and was liable to pay service tax on commission received but did not pay. Later, assessee even before the issuance of show cause notice paid the amount of service tax and interest for the defaulted period but did not deposit any penalty amount. Department contended that even if before the issuance of show cause notice, Service Tax and interest has been deposited by the assessee, still he would be required to deposit the penalty as he would

have known as to what penalty would be levied on him, therefore, atleast he should have deposited the 25% of the penalty amount within thirty days.

Decision:

It was held that assessee was not contesting the Service Tax liability and therefore had deposited the entire amount of service tax and interest much before the issuance of show cause notice. At that time, neither any penalty was levied by the department nor any quantum of penalty was fixed. Therefore, the assessee had not committed any illegality in not depositing any penalty amount. Therefore, later when penalty was imposed on assessee penalty levied against the assessee in excess of 25% under Sections 76 and 78 of the Finance Act, 1994 was liable to be set aside.

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

(a) In case of assessee-company was engaged in generation and distribution of power. It supplied power to GEB and ESL - In accordance with agreement of power generation and supply thereof with GEB and ESL tax payable by assessee-company was agreed to be reimbursed by both companies - Whether as per agreement between assessee and GEB, amount of income-tax calculated and paid by GEB was part of tariff charged by assessee on sale of electricity and not reimbursement of expenses and, therefore, it was part of receipts in hands of assessee.

[7]

Solution:

Essar Power Ltd. vs. Addl. CIT (2013) 142 ITD 251 (Mum.)(Trib.)

The assessee-company was engaged in the generation and distribution of power. During the year under consideration, it supplied the power to GEB and ESL. In accordance with the agreement of power generation and supply thereof with GEB and ESL, tax payable by the assessee-company was agreed to be reimbursed by both the companies. For the year under consideration, assessee had shown below the profit and loss account certain amount as provision for tax recoverable. This amount had not been included in the total income of the assessee. According to the assessee it was in the nature of reimbursement of expenditure and, hence, not income in the assessee's hand. The Assessing Officer held that such reimbursement would be added to assessee's total income. The Commissioner (Appeals) upheld the order of the Assessing Officer.

From the agreement between assessee and GEB it is clear that amount of income-tax calculated and paid by GEB is part of tariff charged by the assessee on sale of electricity and not reimbursement of expenses and, therefore, it is part of receipts in the hands of the assessee. And under the Act, the definition of income in clause (24) of section 2 is an inclusive definition. Anything which can properly be described as income is taxable unless, of course, it is exempted under one or the other provisions of the Act. It is from the said angle that the amount paid by the power purchasers by way of tax on the amount of tariff charges received by the assessee can be treated as the income of the assessee. It cannot be overlooked that the said amount is nothing but a tax upon the payments received by the assessee. By virtue of the obligation undertaken by the power purchasers to reimburse the tax to the assessee, it does not mean that it is not the income in the hands of the assessee. The payment of tax received by the assessee is a part of tariff charges as per agreements and, hence, it is an income in the hands of the

assessee. Therefore, the said amount, without allowing any deduction, is liable to be included in the income of the assessee.

(b) Whether the price used for selling of a product below the cost price for penetration of market can be considered as transaction value? [8]

Solution:

CCEx., Mumbai vs. Fiat India Pvt. Ltd. 2012 (283) E.L. T. 161 (S.C.)

Facts of the Case:

The Fiat India Pvt. Ltd. (Fiat) was the manufacturer of motor cars. They were selling Fiat UNO model cars below cost and were making losses in wholesale trade. The purpose was penetrate the market and competing with other manufacturers of similar goods. The prices were not based on manufacturing cost and profit. This was happening over the period of five years. The Assistant Commissioner directed for the provisional assessment of the cars at a price which would include cost of production, selling expenses including transportation and landing charges, wherever necessary and profit margin, on the ground that the cars were not ordinarily sold in the course of wholesale trade as the cost of production is much more than their wholesale price, but were sold at loss for a consideration.

Point of Dispute: -

The Department disputed that as the extra commercial consideration was involved in this case an additional consideration should be added to the price for the purpose of duty. Thus, the Department invoked Best Judgment Assessment.

Decision of the Case:

The Supreme Court held that the duty has to be paid on the "transaction value". Section 4(1)(a) of the Central Excise Act, 1944 defines transaction value as under "in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value.

If any of the ingredients in the above definition is missing then the price shall not be considered as the sole consideration as transaction value.

Supreme Court opined that this is a case of extra commercial consideration in fixing of price and artificially depressing it. Full commercial cost of manufacturing and selling was not reflected in the price as it was deliberately kept below the cost of production. Thus, price could not be considered as the sole consideration for sale. No prudent business person would continuously suffer huge loss only to penetrate market; they are expected to act with discretion to seek reasonable income, preserve capital and, in general, avoid speculative investments. It is immaterial that the cars were not sold to related persons.

In view of the above resorting to best judgment assessment was proper.