PAPER – 16: Tax Management & 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 C	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
	SYNTHESIS How you are expected to utilize the information gathered to reach an optimum conclusion by a process of reasoning	Discuss	Examine in detail by argument
		Interpret	Translate into intelligible or familiar terms
		Decide	To solve or conclude
	EVALUATION How you are expected to use your learning to evaluate, make decisions or recommendations	Advise	Counsel, inform or notify
		Evaluate	Appraise or asses the value of
		Recommend	Propose a course of action

Paper 16 – Tax Management & 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 2016-17, unless stated otherwise.

Section A

Answer any five Questions

Question 1.

(a) Compute the tax Liability and the Marginal relief in the following situations, for resident assessees with taxable Income as under for Previous year 2015 – 2016:

Name of Individual	A	B	C
Age of Assessee	45 years	65 years	84 years
Total Income	₹ 1.04 Crores	₹ 1.04 Crores	₹ 1.04 Crores

[5]

Solution:

Particulars	A	B	C
1. (a) Tax on Total Income	1,25,000 +(1,04,00,000 – 10,00,000) × 30% = 29,45,000	1,20,000 + (1,04,00,000 – 10,00,000) × 30% = 29,40,000	1,00,000 + (1,04,00,000 – 10,00,000) × 30% = 29,20,000
(b) Surcharge at 12%	3,53,400	3,52,800	3,50,400
Total of above	32,98,400	32,92,800	32,70,400
2. (a) Tax if Income = ₹1 Crore	1,25,000 + (1,00,00,000 – 10,00,000)× 30% = 28,25,000	1,20,000 + (1,00,00,000 – 10,00,000) × 30% = 28,20,000	1,00,000 + (1,00,00,000 – 10,00,000) × 30% = 28,00,000
(b) Amount of Income exceeding ₹1 Crore	4,00,000	4,00,000	4,00,000
Total of above	32,25,000	32,20,000	32,00,000
3. Marginal relief (1-2)	73,400	72,800	70,400
4. Tax Payable (1-3)	32,25,000	32,20,000	32,00,000
5. Edu cess at 2% on (4)	64,500	64,400	64,000
6. SHEC at 1% on (4)	32,250	32,200	32,000
7. Tax Payable	33,21,750	33,16,600	32,96,000

Note: The above Assessees Mr. A, Mr. B and Mr. C fall in the three categories of Individuals based on age, and different Basic Exemption Limits are applicable for them. The maximum Income for which Marginal Relief is applicable for the three categories are as under –

Category	I	II	II
Description	Individuals other than (II) and (III)	Resident Senior Citizens of the age 60 - 80 Years	Resident Very Senior Citizens of the age 80 Years or more
Income upto which Marginal Relief is applicable	₹ 1,05,10,542	₹ 1,05,09,638	₹ 1,05,06,024

Beyond these levels of income, Marginal Relief would be Nil for the above categories of Assesses.

(b) Ms. Vivitha paid a sum of $ 5,000 to Mr. Kulasekhara, a Management Consultant practicing in Colombo, specializing in Project Financing. The payment was made in Colombo. Mr. Kulasekara is Non-Resident. The Consultancy related to a project in India with possible Ceylonese collaboration. Is this payment chargeable to tax in India in the hands of Mr. Kulasekhara, since the services were used in India? [3]

Answer:

Fees for Technical Services paid by Resident or Non-Resident, for the purpose of carrying on Business or Profession in India or to earn any Income from any Source in India is deemed to accrue or arise in India. Hence, it is taxable for all Assessees, irrespective of their Residential Status.

The above payment of $ 5,000 made by Ms. Vivitha to Mr. Kulasekhara, a Non-Resident, related to a project in India, is taxable in the hands of Mr. Kulasekhara, in India.

(c) Mr. Ravi, an IAS Officer, was posted to USA by the Government of India on 11.07.2015 for a period of 3 years, He was paid salary of ₹ 3 Lakhs for the period 01.04.2015 to 01.07.2015 and of ₹ 12 Lakhs for period upto 31.03.2016. He left India for USA in the night of 10.07.2015 and did not come even for a day until 31.03.2016. Examine the taxability of the above Income. [2]

Answer:

Principle:

U/s 9(1)(iii), Salaries paid by Government of India to an Indian Citizen for services rendered outside India shall be deemed to accrue or arise in India, and is hence taxable in India, irrespective of whether he is a Resident or Non-Resident in India during the Relevant Previous Year.

U/s 10(7), Allowances or Perquisites provided by the Government of India to an Indian Citizen for services rendered outside India, is fully exempt from Tax.

Conclusion: In the above case, the entire Salary of ₹15 Lakhs of Mr. Ravi who is appointed by the Government of India is **taxable** in India as Salaries u/s 9(1)(iii).

(d) Sea Port Shipping Line, a Non-Resident Foreign Company operating its ships on the Indian Ports during the Previous Year ended on 31.03.2016 had collected freight of ₹100 Lakhs, Demurrages of ₹20 Lakhs and Handling Charges of ₹10 Lakhs inclusive of an amount of ₹ 40 Lakhs collected in US Dollars for the cargo booked for JNPT (Mumbai) from Antwerp. The

expenses of operating its fleet during the year for the Indian Ports were ₹110 Lakhs. The Company denies its liability to tax in India. Examine. [4]

Solution:

U/s 172 read with Sec.44B, in case of a Non-Resident who carries on the business of carriage of goods, passengers, mails or livestock shipped at any port in India, 7.5% of the amount paid / payable (including Demurrage and Handling Charges) to the Non-Resident in respect of that carriage shall be deemed to be income accruing in India, irrespective of whether the income is paid or payable in or outside India.

The tax on the above amount shall be paid before the departure of the ship or arrangements must be made by the master of the ship for its payment within 30 days of the departure of the ship.

The Non-Resident is entitled to opt for regular assessment under the other provisions of the Act. Such claim shall be made before the end of the Assessment Year.

Sea Port Shipping Line, being a Non-Resident Shipping Company, should pay tax on the deemed Business Income of ₹9.75 Lakhs [(₹100 Lakhs + ₹20 Lakhs + ₹10 Lakhs) × 7.5%] amounting to ₹4,02,000 [₹9.75 Lakhs × 40% (i.e. ₹3,90,000) + EC at 2% on ₹ 3,90,000 + SHEC at 1% on ₹3,90,000]. But, the Company can opt for regular assessment under the regular provisions of the Act, before the end of AY 2016-2017.

Question 2.

(a) Gold Constructions undertakes works contracts and maintains sufficient records to quantify the labour and other service charges. From the details given below, calculate the taxable turnover, input tax credit and net vat payable under the State VAT Law –

(i) Total contract price (excluding VAT) ₹ 1,80,00,000

(ii) Materials purchased and used for the contract taxable at 12.5% VAT (inclusive of VAT) ₹33,75,000.

(iii) Labour charges paid for execution of the contract ₹ 40,00,000.

(iv) Other service charges paid for the execution of the contract ₹ 20,00,000.

(v) Cost of consumables used not involving transfer of property in goods ₹10,00,000.

Gold Constructions also purchased a plant for use in the contract for ₹20,80,000 (inclusive of VAT). In the VAT invoice relating to the same, VAT was charged at 4% separately. Assume 100% input tax credit is available on capital goods immediately. Make suitable assumptions where required and show the workings. [6]

Solution:

Following deductions are available from total value of works contract –

(i)	Labour charges	₹ 40,00,000
(ii)	Other service charges	₹ 20,00,000
(iii)	Consumables of which property is not transferred	₹ 10,00,000
	Total deductions	₹ 70,00,000

Hence value for purpose of Vat on works contract - ₹ 1,10,00,000 [₹ 1,80,00,000 - ₹ 70,00,000].

Vat payable on the works contract is not given in the question. Hence, it is assumed to be 12.5%.
Thus, Vat payable @ 12.5% on ₹ 1,10,00,000 is ₹ 13,75,000
Calculation of Input Tax Credit available –
(I) Materials purchased and used for the contract taxable at 12.5% VAT (inclusive of VAT) ₹33,75,000. Hence, Vat on purchase is ₹ 3,75,000 ([₹ 33,75,000 × 12.50)/112.5].
(II) Vat on capital goods - 4% of ₹ 20,80,000 i.e. ₹ 83,200. Entire credit on capital goods is available.

Hence, total input tax credit available is ₹ 4,58,200 [₹ 3,75,000 + ₹ 83,200].

Hence, net Vat payable by cash = ₹ 13,75,000 - ₹ 4,58,200 = ₹ 9,16,800.

(b) State the important features of the Foreign Trade Policy. **[4]**

Answer:

The key features of FTP are –
- Free Export-Import: Export – Import is free unless specifically regulated by the provisions of the Policy or any other law for the time being in force.
- Restrictions for strategic and health reasons: There are restrictions on exports and imports for various strategic, health and other reasons. If the goods are not banned, the government can give a permission/license for specific reasons.
- Export Promotion Schemes: Exports are promoted through various promotional schemes.
- Duty exemptions, drawbacks and rebates available: To provide for tax free exports, the taxes on exports are either exempted or adjusted or refunded on both outputs and inputs, through schemes of Duty Exemption, Duty Refund (Drawbacks and Rebates).
- Free import of capital goods for exports: Even capital goods can be imported at NIL duty for the purpose of exports under the scheme of EPCG.
- Special Schemes for EOU: For united undertaking to export all their production, there are special schemes so that they can avoid taxes at every stage under the scheme of EOU.
- Deemed Exports: In certain cases imports get duty exemption/concession for certain special purposes. In such cases, to enable domestic suppliers compete with the international suppliers, the supplies of domestic suppliers are treated as deemed exports.

(c) A Small Scale Industrial unit (SSI) is required to pay the following Central Excise duties by October 5, 2015 for clearances effected from its factory in respect of final products manufactured during the month of September, 2015:

Basic Excise Duty (B.E.D.)	**₹ 56,000**
National Calamity Contingent Duty (N.C.C.D)	**₹ 1,000**

- **Balance available as credit at the beginning September, 2015 were: B.E.D.: ₹25,000, N.C.C.D. ₹ 2,000**
- **No inputs were received during the month. However, certain inputs were received on October 1, 2015 on which total duty paid by the suppliers of inputs was : B.E.D.: ₹16,000**
- **Excise duty paid on Capital goods received during the month was as follows: B.E.D.: ₹20,000.**

For the month of September, 2015 you are required to determine:

1. **The credit available for utilization;**
2. **The permissible extent to which such credit available may be utilized against payment of B.E.D,, N.C.C.D.; and**
3. **The B.E.D. payable through account current (P.L.A.)** **[4]**

Solution:

The relevant points/notes are –

- Separate column will be required for NCCD, which can be used only for payment of NCCD.
- Credit is available on inputs on receipt thereof in factory. Since inputs were received on 1-10-2015, credit thereof cannot be taken in September, 2015. It can be taken only in October, 2015.

Computation of credit available, utilized and duty paid for September, 2015 by a SSI-unit:

Particulars	CENVAT	NCCD
Opening Balance	25,000	2,000
Add: Credit on capital good received in September 2015 (Since assessee is an SSI unit, it is assumed that it is eligible for SSI exemption and, therefore, 100% credit on capital goods in available in the year of receipt)	20,000	Nil
Total credit available	45,000	2,000
CENVAT payable in September, 2015	56,000	1,000
Less: Credit Set-off (to the extent of -		
➢ Duty payable or		
➢ Credit available, whichever is less	45,000	1,000
Duty payable in cash through account current (Duty payable – Credit set-off)	11,000	0
Balance CENVAT Credit carried forward	0	1,000

Question 3.

(a) Speedy Motors Ltd, an Indian Company, declared Income of ₹20 Crores computed in accordance with Chapter IV-D but before making any adjustments in respect of the following transactions for the year ended on 31.03.2016:

A. Royalty of $50,00,000 was paid to Fista Ltd. for use of technical know-how in the manufacturing of van. However, Fista Ltd had provided the same know-how to another Indian Company for $ 45,00,000. The manufacture of Van by Speedy Motors Ltd is wholly dependent on the use of technical know-how, in respect of which Fista Ltd has exclusive rights.

B. Loan of Euro 5 Crores with interest @ 10% p.a. advanced by Hughes Ltd, a French Company, was outstanding on 31.03.2016. The Total Book Value of assets of Speedy Motors Ltd on the date was ₹500 Crores. Hughes Ltd had also advanced similar loan to another Indian Company @ 8% p.a. Total Interest paid for the year was EURO 0.5 Crore.

C. 7,000 Vans sold to Hitech Ltd which holds 41% Shares in Speedy Motors Ltd at a price which is less by $ 100 each van than the price charged from Bento Ltd.

Briefly explain the provisions of the Act affecting all these transactions and compute Taxable Income of Speedy Motors Ltd for A.Y.2016-2017 assuming that the value of 1$ and of 1 EURO was ₹65 and ₹ 75, respectively, throughout the year. [5]

Solution:

1. Analysis:

Entity	Existence of Association	Reason	Section
Fista Ltd.	Yes	The Assessee is wholly dependent on use of Technical Know-how which is exclusively owned by Fista Ltd.	92A(2)(g)
Hughes Ltd.	Yes	Hughes Ltd has financed an amount which is more than 51% of the Book Value of the Total Assets of Speedy Motors Ltd.	92A(2)(c)
Hitech Ltd.	Yes	Hitech Ltd holds Shares carrying more than 26% of the voting power in Speedy Motors Ltd.	92A(2)(a)

2. Computation of Total Income

Assessee: Speedy Motors Ltd. Previous Year: 2015 – 2016 Assessment year: 2016–17

Particulars	₹ in Crores	₹ in Crores
Income as computed under Chapter IVD (before adjustments)		20.00
Less: Adjustments for International transactions		
• Excess Payment of Royalty of $ 5,00,000 ($ 5,00,000 × ₹ 65)	3.25	
• Excess Interest Paid on Loan of EURO 5 Crores (€ 75 × 5 Crores × 2 ÷ 100)	7.50	
• Difference in Price of Van @ $100 each for 7,000 Vans ($100 ×7,000 × ₹65)	4.55	15.30
Taxable Profits and Gains from Business or Profession		**4.70**

(b) What are the basis of selection of Most Appropriate Method? [2]

Answer:

The Most Appropriate Method shall be adopted having regard to the nature of transaction or class or associated persons or functions performed by such persons, as CBDT may prescribed.

(c) A builder has entered into agreement to sale a flat (carpet area 1800 sq ft to customer. The breakup of his charges are as follows:

(1) Price of flat (including apportioned value of cost of land) : ₹ 50,00,000
(2) Prime Location Charges (PLC) (extra charges for getting sea view) : ₹ 2,50,000
(3) Charges for providing space for covered parking : ₹ 1,20,000
(4) Club membership fee (for club to be formed after construction is complete): ₹ 1,60,000
(5) Charges for carrying out modifications as required by customer : ₹ 2,00,000
(6) Stamp duty for executing sale deed on actual basis : ₹ 4,00,000
(7) Documentation Charges : ₹ 80,000
(8) Maintenance charges to maintain building till the residential complex is handed over to Housing Society of members: ₹ 2,00,000.

The builder received payment of ₹ 15,00,000 before construction was complete and balance amount was received after obtaining completion certificate from the Corporation. The builder has availed services for construction of flat on which service tax of ₹ 40,000 had been paid. He had used cement, steel and building material during construction, on which excise duty paid was ₹ 50,000. Compute the service tax payable. [7]

Solution:

Computation of value of taxable service and service tax liability (amount in ₹):

1	Price of flat (including apportioned value of cost of land)	50,00,000
2	Prime Location Charges (PLC) (extra charges for getting sea view) (These charges are part of construction service of flat. These are part of 'naturally bundled services'.)	2,50,000
3	Charges for providing space for covered parking (These charges are part of construction service of flat.)	1,20,000
4	Club membership fee (for club to be formed after construction is complete) These are not part of construction service of flat. These are not part of 'naturally bundled services'.	Nil
5	Charges for carrying out modifications as required by customer (These charges are part of construction service of flat.)	2,00,000
6	Stamp duty for executing sale deed on actual basis (Stamp duty is not a part of service. It is only reimbursement of expenses incurred on behalf of customer.)	Nil
7	Documentation Charges (These charges are part of construction service of flat.)	80,000
8	Maintenance charges to maintain building till the residential complex is handed over to Housing Society of members. (These are not part of construction service of flat. These are not part of 'naturally bundled services').	Nil
	Total Amount	56,50,000
	Less: Abatement (75%) (Since carpet area is less than 2000 sq ft and amount charged is less than ₹ 1,00,00,000)	42,37,500
	Taxable Value	14,12,500
	Service-tax payable @ 14.5%	1,66,750
	Less: CENVAT credit of input services (CENVAT credit of excise duty paid on building material cannot be availed.)	40,000
	Net service tax payable	2,04,813

Question 4.

(a)(i) A bill of entry was presented on 1st November, 2015. The vessel carrying goods arrived on 11th November, 2015. Entry inwards was granted on 12th November, 2015 and the bill of entry was assessed on that date and was also returned to the importer for payment of duty on that date. The duty amounting to ₹ 2,40,000 was paid by the importer on 20th November, 2015. Calculate

the amount of interest payable under section 47(2) of the Customs Act, 1962, given that there were two holidays on 14th and 15th November, 2015. [3]

Solution:

Importer has to pay interest under section 47(2) of the Customs Act @ 15% p.a. only if he fails pay duty within 2 working days (i.e., excluding holidays) from date of return of assessed bill of entry to him.

In this case, -

Date of return of assessed bill of entry	12 Nov 15
Add: Two working days 13th and 16th November [14th and 15th are holidays]	2 working days
Due date for payment of duty	16 Nov 15
Actual Date of Payment of Duty	20 Nov 15
Period of delay in payment of duty [Date of Payment – Due Date]	4
Duty payable	2,40,000
Rate of Interest	15.00%
Interest = ₹ 2,40,000 × 15% × 4 ÷ 365 days	394.52

(a)(ii) After visiting USA, Mrs. & Mr. Z brought to India a laptop computer valued at ₹ 75,000, personal effects valued at ₹ 85,000 and a personal computer for ₹ 50,000. Calculate the customs duty payable? [3]

Solution:

Computation of custom duty (Amount in ₹)

(1) Laptop	[WN-1]	Exempt
(2) Personal effects	[WN-2]	Nil
(3) Personal Computer	[WN-3]	50,000
Total dutiable goods imported (that can be accommodated in General Free Allowance)		50,000
Less: general Free Allowance		45,000
Balance Goods on which duty is payable		5,000
Customs Duty payable @ 36.05%		1,803

Working Notes:

(1) Laptop Exempt: The laptop brought by Mr. & Mrs. Z will not be included in assessable value of Baggage, since one laptop computer imported by any passenger (other than a member of the crew) of 18 years or above as a part of the baggage has been exempted from the whole of customs duty.

(2) Personal effects are not included in the value of baggage.

(3) It has been assumed that the assessee stayed for more than 3 days, hence, under Rule 3 of the Baggage Rules, 1998, the general free allowance of ₹ 45,000 will be available.
Hence, the value of personal computer i.e., ₹ 50,000 will be reduced by the General Free Allowance and duty shall be levied on the balance of ₹ 5,000.

(4) The general free allowance cannot be pooled with another person. Hence, Mr. Z & Mrs. Z will be separately allowed the general free allowance. Thus, personal computer can be claimed exempt either by Mr. Z or Mrs. Z.

(b)(i) An excisable product is covered under the Provisions of the Legal Metrology Act, 2009 and falls in the category of 'specified goods' subject to excise duty on the basis of retail sale price. Following particulars are made available: MRP printed on the package is ₹ 10,500 per unit. The price is inclusive of excise duty of 12.5%. Compute the assessable value, and excise duty payable if it is eligible for an abatement of 38%. [3]

Solution:

As per Explanation 1 to Section 4A of the Central Excise Act, Retail Sale Price means price inclusive of all taxes, local or otherwise. Hence, the excise duty shall be computed as follows -

Particulars	₹
Retail Sale price (inclusive of all taxes, local or otherwise)	10,500
Less: Abatement @ 38%	3,990
Assessable Value under section 4A	6,510
Duty @ 12.50% (rounded off to nearest rupee)	814

(b)(ii) Compute assessable value and amount of excise duty payable under the Central Excise Act, 1944 and rules made thereunder from the following information:

Particulars	No. of Units	Price at Factory Per Unit	Price at Depot per Unit	Rate of Duty Ad valorem
(i) Goods transferred from factory to depot on 15th March, 2016	**1000**	**₹ 200**	**₹ 220**	**12.5%**
(ii) Goods actually sold at depot on 25th March, 2016	**750**	**₹ 225**	**₹ 250**	**8%**

[3]

Solution:

According to Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, in cases where the goods are not sold at factory gate, but are transferred by the assessee to his depot, the assessable value for the goods cleared from factory and sold from deport shall be normal transaction value of such goods at the depot at or about the same time at which the goods being valued are removed from the factory.

Calculation of central excise duty (Amount in ₹)

Assessable Value = 800 units × ₹ 220	1,76,000
Excise duty payable (₹ 1,76,000 × 12.5%)	22,000

Note: It is assumed that price stated in question does not include duties of excise leviable thereon.

(b)(iii) A particular Central Excise Notification grants full exemption to all products of Printing Industry including Newspapers and printed Periodicals. A manufacturer, who is Manufacturing Cardboard Cartons and subsequently doing varied printing on them, claims the benefit of the said Exemption Notification on the ground that every material on which, printing work is done becomes a product of the Printing Industry. Is the claim of the Manufacturer Justified? Give reasons. [2]

Solution:

The Exemption Notification is in respect of a product of Printing Industry. The Cardboard Carton is a product of Packaging Industry, and in common parlance the Cardboard Carton remains a Carton only, whether any printing is done on it or not. Where a Packing Manufacturer also prints on the cardboard/packing manufactured by him, he will not be entitled for the benefit of Exemption Notification because, any amount of printing on cardboard will not make it a product of printing Industry. [Rollatainers Ltd. 72 ELT793 (SC)]. Therefore, the claim of the Manufacturer does not hold good.

Question 5.

(a) The Assessment was made u/s 143(1) for AY 2011-2012. The Assessee has received a notice u/s 148 on 06.04.2014 for re-opening of assessment. Can the Assessee challenge the legality of notice on the ground of change of opinion? [3]

Answer:

Intimation u/s 143(1) cannot be considered as completion of assessment in respect of any previous year.

Further, Section 147 provides for income escaping assessment, even when the original assessment under other sections has been carried out, provided notice is served on the Assessee within the due date specified u/s 149, i,e, 4 years from the end of the relevant assessment year.

Hence, the Assessee cannot contest the validity of notice based on the change of opinion since the assessment u/s 143(1) cannot be considered as the conclusion of matters in respect of relevant Assessment Year.

(b) X Ltd transferred its fertilizers business to a new Company Y Ltd by way of demerger, w.e.f appointed date as 01.04.2015 after satisfying the conditions of Demerger. Further information given -

1) **WDV of entire block of Plant & Machinery held by "X" Ltd as on 01.04.2015 is ₹ 100 Crores.**
2) **Out of the above, WDV of Block of Plant and Machinery of Fertilizer Division is ₹70 Crores.**
3) **X Ltd has Unabsorbed Depreciation of ₹50 Lakhs as at 31.03.2015.**

On the above facts, you are required to explain the provisions of the Income Tax Act as to –

(i) **Allowability of Depreciation, post-merger for X Ltd and Y Ltd as at 31.03.2016 duly calculating the depreciation.**
(ii) **State how the Unabsorbed Depreciation has to be dealt with for the Assessment Year 2016-2017. [5]**

Solution:

Under Explanation 2A & 2B of Sec.43(6), where in any Previous Year, any asset forming part of Block of Assets is transferred by a Demerged Company to the Resulting Company -

WDV of Assets after Demerger in the hands of the Demerged Company:
= WDV of Assets before Demerger Less WDV of Assets transferred to Resulting Company
= ₹ 100 Crores – ₹ 70 Crores = ₹30 Crores.

WDV of Assets in the hands of the Resulting Company:
= WDV of Transferred Assets of Demerged Company immediately before Demerger
= ₹70 Crores.

Computation of Depreciation

Particulars	X Ltd	Y Ltd
WDV of Assets	30	70
Less: Depreciation @ 15%	(4.5)	(10.5)
WDV of Assets as on 31.03.2016	**25.5**	**59.5**

Treatment of Unabsorbed Depreciation:

(1) If Unabsorbed Depreciation is directly relatable to Resulting Company: It is set off in the hands of Resulting Company.

(2) If Unabsorbed Depreciation is not directly relatable to the undertaking transferred to the Resulting Company: Apportioned between Demerged Company and Resulting Company in the ratio –

$$\frac{\text{Loss of Demerged Company prior to Demerager} \times \text{Assets transferred to Resulting Company}}{\text{Total Assets of Demeraged Company prior to Demerger}}$$

(3) Since the Unabsorbed Depreciation is not directly related to the Undertaking transferred to the Resulting Company, it shall be set off as follows: (₹ In Lakhs)

Particulars	X Ltd.	Y Ltd.
Unabsorbed Depreciation to be carried forward for the purposes of set off	15 (50 × 30/100)	35 (50×70/100)

Note: It is assumed that Total Assets of the Demerger Company prior to Demerger, Consists only of Plant and machinery.

(c) Tani purchased a Land at a Cost of ₹10 Lakhs in the Financial Year 1983-1984 and held the same as her Capital Asset till 31.03.2012. Tani started her Real Estate Business on 01.04.2012 and converted the said Land into Stock-in-Trade of her business on the said date, when the Fair Market Value of the Land was ₹ 150 Lakhs.

She Constructed 20 flats of equal size, quality and dimension. Cost of construction of each flat is ₹8 Lakhs. Construction was completed in December, 2015. She sold 15 flats at ₹20 Lakhs per flat between January 2016 and March 2016. Remaining 5 flats were held in stock as on 31.03.2016. She invested ₹50 Lakhs in Bonds issued by RECL on 31.03.2016.

Compute the amount of chargeable Capital Gain and Business Income in the hands of Tani arising from above transactions for Assessment Year 2016-2017 indicating clearly the reasons for treatment for each item. CII: FY 1983-1984 - 116, FY 2012-2013 - 852, FY 2015-2016 - 1081. [6]

Solution:

Assessee: Tani   Previous Year: 2015 – 2016   Assessment Year: 2016 – 2017

1. **Transfer:** Conversion of capital asset into stock - in trade is a transfer u/s 2(47).

2. **Year of Chargeability**: The Capital Gain is taxable in the Previous Year in which such converted stock is sold otherwise transferred.
3. Year of Indexation: Indexation shall apply only on the basis of Year of Conversion.
4. Computation: In the year of sale or transfer of stock, the Income shall be computed as under -
   (a) Capital Gain = Fair Market Value of Stock on date of Conversion Less Indexed Cost of Acquisition.
   (b) Business Income = Consideration received on Sale Less FMV of Capital Asset on date of conversion.
5. Since, only 15 out of 20 Flats have been sold in the Previous Year, only proportionate amount based on Number of Flats to be taken for Profits and Gains of Business or Profession and Capital Gains.
6. **Benefit u/s 54EC**: Capital Gains arising from conversion of Capital Asset into Stock-in-Trade shall be invested in specified assets u/s 54EC within 6 months from the **date such Stock-in-Trade is sold or otherwise transferred in terms of Sec.45(2).**

Computation of Business Income and Capital Gains **(In Lakhs)**

Particulars	₹	₹
Profits and Gains of Business or Profession:		
Sale of Asset (15 Flats × 20 Lakh each)	300.00	
Less: FMV on the date of transfer ($150 \times \frac{15}{20}$)	(112.50)	
Less: Cost of Construction (15 Flats × 8 Lakhs each)	(120.00)	
Profits and gains of Business or Profession		**67.50**
Capital Gains:		
Consideration for transfer = Fair market value on date of conversion	112.50	
Less: Expenses for transfer	Nil	
Net Consideration	112.50	
Less: Indexed Cost of Acquisition –		
$\frac{\text{Cost of Acquisition} \times \text{CIT of Year of Conversion}}{\text{CIT of Year of Acquisition}} = (10 \times \frac{852}{116} \times \frac{15}{20})$	(50.09)	
Long Term Capital Gains (Before Exemption)	57.41	
Less: Exemption u/s 54EC	(50.00)	
Long Term Capital Gains (After Exemption)		**7.41**
Gross Total Income		**74.91**

Question 6.

(a)(i) A Charitable Institution registered u/s 12A of the Income Tax Act, 1961 filed in Form No. 10 for seeking permission to accumulate unapplied Income u/s 11(2) of the Act for the objects of the Institution and submitted it to the Assessing Officer along with the resolution for accumulation. The A.O found that the objects for which accumulation was sought were not particularized in as much as they covered the entire range of objects of the Institution. Can the Assessing Officer deny the benefit of accumulation in such case? [2]

Answer:

The claim for accumulation of unapplied income cannot be denied, even if the objects for which accumulation is sought are not particularized in as much as they cover entire range of objects of true. [Bharat Krishak Samaj v. DIT (2008) 166 Taxman 147 (Del.)]

Therefore, the Assessing Officer cannot deny the benefit of accumulation.

(a)(ii) Mahesh, a Resident and Ordinarily resident in India and having a House Property and a Bank Account outside India is not required to file Return of Income for AY 2016-17, if his Total Income is below the maximum amount not liable to tax. Is this statement correct? [2]

Answer:

A Person (Ordinarily resident) who is not required to furnish a return and who during the previous year has any asset (including any Financial Interest in any entity) located outside India or signing authority in any account located outside India has to furnish a Voluntary Return u/s 139(1).

(a)(iii) Smarajit, whose Income consists of Salary Income only, files his return of income for assessment year 2013-14 on 02.04.2015. Is the return a valid return? [2]

Answer:

U/s 139(4), where an assessee who fails to file the return of Income within the due date u/s 139(1), may file a belated return either before the completion of assessment or within one year from the end of the relevant assessment year.

In the given case, Mr. Smarajit, filed the return of income for thye assessment year 2013-14 on 02.04.2015, i.e. after the time limit mentioned u/s 139(4). So, it shall be treated as an Invalid Return.

(a)(iv) What are the circumstances under which an assessee is said to be "assessee in default"? [2]

Answer:

Assessee in Default includes person who –

1. fail to deduct and remit TDS (Sec. 191).
2. Fail to pay tax and any other sum demanded (Sec. 220).

(b)(i) A Ltd. have received services from a foreign company. Under the agreement, they are liable to pay know-how charges tax free. TDS @ 40% is liable to be made under Income-tax law. The sum paid tax-free: ₹ 588; rate of TDS: 41.2% and service tax: 14.5%. Compute the amount of service tax payable. [3]

Solution:

Where the price set out in the Consultancy Agreement is net of all duties, taxes and other Government charges which, where applicable, were payable in addition to the price; then, consideration inclusive of income-tax deducted at source shall be assessable value for the purpose of the Act in the hands of the service recipient. Since the price of contract was net of

taxes, the tax payable in India was to form part of contract price. Thus, consideration charged for the service provided shall include income-tax deducted at source as per terms of contract.

In this case, —

1. TDS is sum received: Tax deducted at source is sum received by the person on whose behalf tax is deducted (section 198 of the Income-tax Act, 1961) and, is therefore, a part of consideration paid.
2. Grossing up : The consideration/sum paid shall be calculated by way of statutory grossing up specified in section 195A of the Income-tax Act, 1961 as follows :
   (a) Grossed up sum = Sum paid (net of tax) ÷ (100 - TDS rate)
   (b) Here, grossed up sum = ₹ 588 ÷ (100 - 41.2)% = ₹ 1,000.
3. Value: Therefore, the value of taxable service received is ₹ 1,000 and service tax ₹ 145.

(b)(ii) Barin Sugar Mills is engaged in the manufacture of sugar. Government of India had issued directions under the Sugar Control Order for sugar companies to maintain buffer stock of sugar of certain quantity for a specified period. In order to compensate the sugar mill the government had extended buffer stock subsidy towards storage, interest and insurance charges in respect of the buffer stock of sugar actually held by the sugar mill. The department has issued a show cause notice to the assessee raising a demand of service tax on the ground that the amount received by the sugar mill as buffer subsidy is covered under the taxable service of 'storage and warehousing'. Discuss whether the action of the department is sustainable in law. [3]

Solution:

On similar facts, it was held in CCEx. v. Nahar Industrial Enterprises Ltd. [2010] 29 STT 172 (P&H) that-

- Since ownership of stock of sugar, kept at directions of Government under Law, continued to vest with assessee-mill, hence, storage was on behalf of assessee himself. Hence, it was a case of self-service.
- No services were provided to Government.
- Even otherwise, subsidy was received not for services provided to Government. There was no contractual relationship between Government and assessee as to provision of service. The flow of subsidy was not due to any reciprocity.
- Further, as per Rule 6(2)(vii) of the Service Tax (Determination of Value), Rules, 2006 subsidies and grant received from Government not directly affecting the value of service shall not form part of value.

Hence, the action of the Department is not correct in law.

Section B

(Question No. 9 is compulsory and answer any one question from the remaining two questions)

Question 7.

(a) Can the transmission, wheeling and SLDC charges paid by a company engaged in distribution and supply of electricity, under a service contract, to the transmission company be

treated as fees for technical services so as to attract TDS provisions under section 194J or in the alternative, under 194C? [7]

Solution:

Ajmer Vidyut Vitran Nigam Ltd., In re (2013) 353 ITR 640 (AAR)

The AAR, considering the definition of fees for technical services under section 9(1)(vii) and the process involved in proper transmission of electrical energy, held that transmission and wheeling charges paid by the applicant to the transmission company are in the nature of fees for technical services, in respect of which the applicant has to withhold tax thereon under section 194J.

As regards SLDC charges, the AAR opined that the main duty of the SLDC is to ensure integrated operation of the power system in the State for optimum scheduling and dispatch of electricity within the State. The SLDC charges paid appeared to be more of a supervisory charge with a duty to ensure just and proper generation and distribution in the State as a whole. Therefore, such services were not in the nature of technical service to the applicant. Resultantly, it does not attract TDS provisions under section 194J or under section 194C.

(b) Can an assessee who has surrendered his income in response to the specific information sought by the Assessing Officer in the course of survey, be absolved from the penal provisions under section 271(1)(c) for concealment of income? [8]

Solution:

MAK Data P. Ltd. v. CIT (2013) 358 ITR 593 (SC)

Facts:

The assessee-company filed its return of income for the A.Y. 2012-13 declaring an income of ₹16.17 lakh along with tax audit report. The assessee's case was selected for scrutiny and notices were issued under section 143(2) and section 142(1). During the course of assessment proceedings, it was noticed by the Assessing Officer that certain documents, namely, share application forms, bank statements, memorandum of association of companies, affidavits, copies of income-tax returns and assessment orders and blank share transfer deeds duly signed, had been found in the course of survey proceedings under section 133A conducted on December 16, 2011, in the case of a sister concern of the assessee, and the same were impounded.

The Assessing Officer issued a show cause notice dated October 26, 2014 to the assessee seeking specific information regarding the documents pertaining to share applications found in

the course of survey, particularly, blank transfer deeds signed by persons who had applied for the shares.

In its reply to the show cause notice, the assessee made an offer to surrender a sum of ` 40.74 lakhs by way of voluntary disclosure without admitting any concealment or any intention to conceal and subject to non-initiation of penalty proceedings and prosecution. The Assessing Officer, however, completed the assessment bringing the sum of ` 40.74 lakhs to tax and levied penalty under section 271(1)(c) for concealment of income and not furnishing true particulars.

Supreme Court's Observations:

The Apex Court observed that the assessee had stated that the surrender of the additional sum was with a view to avoid litigation, to buy peace and to channelize the energy and resources towards productive work and to make amicable settlement with the Income tax Department. The Court observed that these types of defenses are, however, not recognized under the statute. It further observed that the survey was conducted and documents were impounded ten months before the assessee filed its return of income. The Court opined that had it been the intention of the assessee to make full and true disclosure of its income, it would have filed the return declaring an income inclusive of the amount which was surrendered later during the course of the assessment proceedings. It is the statutory duty of the assessee to record all its transactions in the books of account, to explain the source of payments made by it and to declare its true income in the return of income filed by it from year to year.

Apex Court's Decision:

The Apex Court was, therefore, of the view that surrender of income in this case is not voluntary, in the sense, that the offer of surrender was made in view of detection made by the Assessing Officer in the survey conducted in the sister concern of the assessee.

The Apex Court, therefore, held that levy of penalty is correct in law.

Question 8.

(a) Whether the respondent, being a loan licensee, can be regarded as manufacturer in respect of medicaments manufactured by Job worker within the meaning of the Central Excise Act, 1944? [8]

Solution:

CCEx. v. Cosme Farma Laboratories Ltd. [2015] 318 ELT 545 (SC)

Facts:

- The respondent was a manufacturer of medicaments having license under the provisions of the Drugs and Cosmetics Act, 1940. The respondent also got certain medicaments manufactured through other job workers as a loan licensee under the provisions of said Act and Rules made thereunder.

- As per the agreement, raw material as well as packing material was supplied to the job workers and the job workers manufactured the medicaments with help of their own labour force and machinery under the supervision of the respondents so as to ensure the quality of the 'medicaments manufactured.
- The department demanded duty treating the respondents as manufacturer in respect of the medicaments manufactured by the job workers.

Decision: It was held that –

- **Job workers were manufacturer** : The manufacturing activity was done only by the job workers in their premises and with the help of their labour force and machinery. Simply because the job workers had to adhere to the quality control or the specification with regard to the quality prescribed by the respondent, it would not mean that the loan licensee was the manufacturer.
- **Manufacturer under the Drugs and Cosmetics Act, 1940 cannot be regarded as manufacturer under the Central Excise Act, 1944** : The term 'manufacturer' or the loan licensee used under the provisions of the Drugs and Cosmetics Act, 1940 has nothing to do with the manufacturing activity or term 'manufacture' under the provisions of the Central Excise Act, 1944. Both the Acts have been enacted for different purposes.
- Under the provisions of the Drugs and Cosmetics Act, 1940, though the drugs/ medicaments might not have been manufactured by the one who is a licensee, he becomes responsible and liable for defective or substandard drugs under the provisions of the said Act. On the other hand, the provisions of the Central Excise Act, 1944 are for the purpose of imposing duty on the goods manufactured. The manufacturer becomes liable to pay duty as per the provisions of the said Act.

Relationship between parties on Principal and Principal basis - Job Worker to be treated as manufacturer & liable to pay duty : As per the agreement between respondent and job worker the relationship between the parties is that of the Principal and Principal and not that of the Principal and agent. Manufacturing activity was done by job workers in their premises, with help of their labour force and machinery. Thus, the job workers were not manufacturing the drugs as agents of the respondent or on behalf of the respondent, but they were carrying out the manufacturing activity independently and therefore, they were manufacturers of the drugs as per the provisions of the Central Excise Act, 1944 and liable to duty.

(b) Whether the assessee would not be entitled to credit of duty paid on tower and its parts as it did not qualify as "capital goods" or "inputs"? Whether tower would not qualify as "part" or "component" or "accessory" of the capital goods i.e. antenna? [7]

Solution:

Bharti Airtel Ltd. v. CCEx. [2014] 35 STR 865 (Bom.)

Facts of the case:

- Assessee company was engaged in providing cellular telephone services. It availed the CENVAT credit on excise duty paid on towers parts and shelters (TPS)/ prefabricated buildings (TPS/PFB), printers purchased, treating them as 'capital goods' or 'inputs' and used the credit for payment of the service tax.
- Department issued a show cause notice on ground that the credit was wrongly taken and utilised.

Decision: It was held that -

- **Towers and its parts are not capital goods**: The tower and parts thereof in completely knocked down condition or semi knocked down condition fall under the Chapter Heading 7308 of Central Excise Tariff, which is not covered within the definition of "capital goods" as given under Rule 2(a) of the CENVAT Credit Rules, 2004.
- TPS/PFB were neither components, spares and accessories of goods falling under any of the chapters or headings of the Central Excise Tariff Schedule as specified in the definition of capital goods covered under Rule 2(a) CENVAT Credit Rules, 2004. No credit considering these items as capital goods would be available.
- **Tower - A "supporting structure" for antenna (which is capital goods) is not a part or accessory of antenna**: Accessory or its parts are uitlised to make the goods a finished product or article which would go into composition of another article. However, towers on which antennas are installed can neither be treated as part of antenna nor are they accessory of the antenna.
- **Towers and its parts are not goods hence cannot be regarded as inputs**: TPS and PFB were fastened and were fixed to the earth and after their erection they became immovable and therefore were non-marketable and non-excisable. Hence, they cannot not be called as goods and cannot be classified as inputs so as to fall within the definition of Rule 2(k) of the CENVAT Credit Rules, 2004.
- Thus, the items were neither capital goods under Rule 2(a) nor inputs under Rule 2(k) of the CENVAT Credit Rules, 2004 and hence CENVAT credit of the duty paid thereon was not admissible to the assessee.

Question 9.

(a) Whether the royalty charges paid by the assessee to the buyer will be includible in the assessable value? [8]

Solution:
Lakhanpal Ltd. v. CCEx. & Cus. [2015] 323 ELT 645 (SC)

Facts:

- The assessee was engaged in the manufacturing and marketing of torches under the brand name "Novino" to the brand owner as well as other buyers.
- Nearly 50% of the sale was to the brand owner and remaining 50% was to the other buyers.
- For the use of the brand name the assessee paid royalty to the brand owner @ 2.5% in respect of sales to the other buyers.
- The Department sought to include the value of royalty charges so paid while determining the assessable value contending that there was additional flow of consideration in form of royalty and thereby the provisions of Rule 6 of the Valuation Rules, 2000 was attracted.
- The assessee contended that the flow of additional consideration was from the 'assessee to the buyer which was contrary to Rule 6 which stipulates inclusion in case of flow from the 'buyer to the assessee'

Decision: It was held that - '

The royalty paid by the manufacturer to the brand owner for the use of its brand name was not to be included as additional consideration to arrive at the assessable value of the goods, since according to Rule 6, the additional consideration which flows directly or indirectly from the buyer to the assessee can be added to the price.

In the instant case, the royalty was paid by the assessee to the buyer, as opposed to the above rules, hence the same cannot be included in the assessable value of the goods.

(b) Where a charitable trust applied for issuance of registration under section 12AA within a short time span (nine months, in this case) after its formation, can registration be denied by the concerned authority on the ground that no charitable activity has been commenced by the trust? [7]

Solution:

DIT (Exemptions) v. Meenakshi Amma Endowment Trust (2013) 354 ITR 219 (Kar.)

The High Court observed that, with the moneys available with the trust, it cannot be expected to carry out activity of charity immediately after its formation. Consequently, in such a case, it cannot be concluded that the trust has not intended to do any activity of charity.

In such a situation, the objects of the trust as mentioned in the trust deed have to be taken into consideration by the authorities for satisfying themselves about the genuineness of the trust and not the activities carried on by it.

Later on, if it is found from the subsequent returns filed by the trust, that it is not carrying on any charitable activity, it would be open to the concerned authorities to withdraw the registration granted or cancel the registration as per the provisions of section 12AA(3).

The registration cannot be denied on the ground that the trust has not carried out any charitable activity so far in the short span of time after its formation.