Paper 16 - TAX MANAGEMENT AND PRACTICE

Full Marks: 100

Section A
Answer all Questions

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

Answer the following with the help of decided case laws-

(a) Does the fabrication, assembly and erection of waste water treatment plant amount to manufacture?

Solution:

Facts of the case

The assessee was engaged in fabrication, assembly and erection of waste water treatment plant. As per the assessee, the plant could not function as such until it was wholly built including the civil construction. Since, after being completely built, waste water treatment plant became immovable, duty could not be levied on it.

However, the Department alleged that the assessee had fabricated/ manufactured the waste water treatment plant. It further alleged that waste water treatment plant came into existence in an unassembled form before the same was installed and assembled to the ground with civil work. It became operational after it was embedded in the civil work and, therefore, the excise duty was payable on it.

Decision of the case

The High Court in the case of Larsen & Toubro Limited vs. UOI 2009 (243) E.L.T. 662 (Bom.) opined that mere bringing of the duty paid parts in an unassembled form at one place, i.e. at the site does not amount to manufacture unless an excisable movable product (say a plant) comes into existence by assembly of such parts. In the present case, the petitioner had stated that the waste water treatment plant did not come into existence unless all the parts were put together and embedded in the civil work. Waste water treatment plant did not become a plant until the process which included the civil work, was completed. Thus, the Court held that no commercial movable property came into existence until the assembling was completed by embedding different parts in the civil works. Hence, the fabrication, assembly and erection of waste water treatment plant do not amount to manufacture.

(b) Whether the carpet, in which jute is predominant by weight, but the surface is entirely of polypropylene, should be classified as jute carpet or polypropylene carpet?

Solution:
Facts of the case

The assessee was engaged in the manufacture of the carpets in which jute predominated by weight over every other single textile material. However, Revenue contended that the same should be classified as polypropylene carpet.

Decision of the case

In this regard, the Apex Court in the case of CCEx., Bhubneshwar vs. Champdany Industries Limited 2009 (241) E.L. T. 481 (S.C.) considered the following points:

(i) Relying on Note 1 to Chapter 57, Revenue argued that the surface of the carpet being entirely of polypropylene, the same should be classified as polypropylene carpet. The Supreme Court viewed that role of Chapter Note is limited to decide whether the goods in question are "carpets and other textile floor coverings" for the purposes of Chapter 57 or not. Once the goods are carpets and falling under Chapter 57, the role of Chapter Note 1 comes to an end.

Further referring to the relevant statutory provisions laid down in Section Notes 2(A) and 14(A) of Section XI, the Apex Court held since the impugned goods admittedly fell under Chapter 57 and consisted of more than two textile materials, it had to be classified on the basis of that textile material which predominated by weight over any other single textile material. As, in the goods in question, jute admittedly predominated by weight over each other single textile material, the said carpet could only be classified as jute carpets and nothing else. The contrary interpretation given by the Revenue was incorrect.

(ii) Relying on the concept of essentiality test, Revenue argued that as the exposed surface of the carpet was polypropylene fiber and not jute, these goods could not be classified as jute carpets. The Court held the said argument of the Revenue to be erroneous because it was against the principle of predominance test.

(iii) Learned counsel for the Revenue further argued that the common parlance test should be applied for classifying the carpets and the carpets, to the common man, would not appear to be jute carpet but polypropylene carpet. The Supreme Court observed that it is already established principle that while interpreting statutes like the Excise Tax Acts or Sales Tax Acts, the common parlance test can be accepted only if any term or expression is not properly defined in the Act. Therefore, going by the aforesaid principle, the Court held that common parlance test did not have any application here.

(iv) Learned counsel for the Revenue argued that for the purpose of classification in this case, rule 3 of the 'Rules for the Interpretation of the First Schedule to the Central Excise Tariff Act, 1985' should be applied. Applying the said rule, Revenue wanted to classify the carpets under the residuary sub-heading 5702 90 of Heading 5702 - "others". In this regard, the Apex Court observed that Revenue's stand in this case was contrary to the decision of Supreme Court in *HPL Chemicals Ltd. vs. Commissioner of Central Excise, Chandigarh (2006) 5 SCC 208,* wherein it was held that rule 3(a) of the Interpretative Rules provides that if the goods are covered by a specific heading, the same cannot be classified under the residuary heading at all.

Apart from that, the Court noted that the point of rule 3, which had been argued by the learned counsel for the Revenue, was not part of its case in the show-cause notice. It is well settled that in Court, Revenue cannot argue a case not made out in its show-cause notice.

In the light of the above discussion, the Apex Court pronounced that the said carpets shall be classified as jute carpets and not as polypropylene carpet.

(c) In case of combo-pack of bought out tooth brush sold along with tooth paste manufactured by assessee, is tooth brush eligible as input under the CENVAT Credit Rules, 2004?

Solution:
Facts of the case

The assessee was engaged in the manufacture of tooth paste. It was sold as a combo pack of tooth paste and a bought out tooth brush. The assessee availed CENVAT credit of central excise duty paid on the tooth brush. Revenue contended that the tooth brush was not an input for the manufacture of the tooth paste and the cost of tooth brush was not added in the M.R.P. of the combo pack and hence the assessee had availed CENVAT credit of duty paid on tooth brush in contravention of the provisions of the CENVAT Credit Rules, 2004.

Decision of the case

The High Court in the case of CCUs. vs. Prime Health Care Products 2011 (272) E. L. T. 54 (Guj.) noted that the process of packing and re-packing the input that was, toothbrush and tooth paste in a unit container would fall within the ambit of "manufacture" [as per section 2(f) (iii) of the Central Excise Act, 1944].

Further, the word "input" was defined in rule 2(k) of the CENVAT Credit Rules, 2004 which also included accessories of the final products cleared along with final product. There was no dispute about the fact that on toothbrush, excise duty had been paid. The toothbrush was put in the packet along with the tooth paste and no extra amount was recovered from the consumer on the toothbrush.

Considering the definition given in the rules of "input" and the provisions contained in rule 3, the High Court upheld the Tribunal's decision that the credit was admissible in the case of the assessee.

(d) Merely because assessee has sustained loss more than the refund claim, is it justifiable to hold that it is not a case of unjust enrichment even though the assessee failed to establish non-inclusion of duty in the cost of production?

Solution:

The High Court in the case of CCE vs. Gem Properties (P) Ltd. 2010 (257) E.L.T. 222 (Kar.) answered the question of law in favour of the Revenue. The Court observed that indisputably, the assessee was not liable to pay the duty and was entitled to the refund of the excise duty wrongly paid by it. The claim of the assessee had been rejected on the ground that if the application was allowed, it would amount to unjust enrichment because all the materials sold by the assessee had been inclusive of the duty. Therefore, the burden had been heavy on the assessee to prove that while computing the cost of the material it had not included the duty paid by it.

The Court elucidated that merely because the assessee had sustained the loss in the relevant year, could not be a ground to hold it had not been a case of unjust enrichment. It was evident from the Chartered Accountant's certificate that the cost of the duty was included while computing the cost of production of the material. Therefore, on facts of the case, the High Court held that assessee could not be granted relief since it had failed to establish that the cost of the duty was not included while computing the cost of the products.

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

(a) Solid Shoes Co., a manufacturer of footwear, used to purchase various raw materials like fabrics, rubber, chemicals, solvent, etc., which were mixed together. The thin layer of such mixture was sandwiched between two sheets of textile fabric through a calendaring machine. The resultant product 'Double Textured Rubberized Fabric' (DTRF) was cut and stitched as per requirement and was used as shoe-uppers. At times, DTRF was sent to job-workers for stitching purposes. After completing the entire process, the vulcanisation of footwear was done and then, it would be available for sale as footwear.

Some of the DTRF was used in the manufacture of canvas shoes, which were exempt from duty. The department contended that the intermediate product DTRF was a distinct product with specific properties and was used in considerable quantities for making rain-coats, holdalls, hand-bags, etc., in the outside market. Since the DTRF was excisable goods and it was used in the manufacture of exempted final product being canvas shoes, therefore DTRF was liable to excise duty. However, the department didn't have sufficient evidence to prove its marketability.

Examine whether contention of the department is correct by referring to case law, if any, in the light of explanation added to section 2(d) of the Central Excise Act, 1944 w.e.f. 10th May, 2008.

Solution:

Facts of the case

The facts of the case are similar to the Supreme Court's judgment in Bata India Ltd. v. CCEx. [2010] 252 ELT 492 (SC) in which the Apex Court held that - Marketability is an essential ingredient of a product being liable to excise duty and the burden to prove that an article is marketable in the condition in which the Department wants to levy excise duty lies on Department itself. Marketability doesn't mean hypothetical possibility of a purchase and sale of commodity; there must be sufficient proof that product is commercially known product. The mere fact that the product in question was sent outside for some job-work is not an indication to show that product is commercially distinct or marketable product. Marketability means commercial capability of being bought and sold.

Decisions of the case

In this case, the Department didn't have sufficient evidence to prove marketability. A mere test report from a chemical examiner would not prove commercial identity. On the contrary, evidences furnished by the assessee viz. statements of footwear consultants, a professor of IIT, assessee's production manager, and footwear Design & Development Institute, etc. would show that the product in question (i.e. DTRF) was not a commercially known product and, hence, it was not marketable. Thus, the same was not liable to excise duty.

Under the present section 2(d), capability of being bought and sold for a consideration constitutes deemed marketability; there is no further requirement that the product must be commercially known. Even then, in this case, since the Department didn't have evidence to prove that DTRF was capable of being bought and sold for a consideration, therefore, the same was not excisable.

(b) Discuss whether remission of duty shall be granted or not, in the following cases, under the Central Excise Rules, 2002:

(i) Excisable goods manufactured in the factory are claimed by the manufacturer as unfit for consumption or for marketing.
(ii) Duty paid goods were damaged due to breakage in handling.
(iii) Finished goods entered in Daily Stock Account (DSA) were stolen from the factory.

Solution:
Rule 21 of Central Excise Rule, 2002 inter alia provides that where it is shown to the satisfaction of the commissioner that goods have been lost or destroyed by natural cause or by unavoidable accident or are claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal, the Commissioner may remit the duty payable on such

goods, subject to such conditions as may be imposed by him by an order in writing. With reference to the said rule, the cases under consideration are discussed as follows:-

(i) Remission of duty shall be granted as the goods have been claimed as unfit for consumption or for marketing by the manufacturer.

(ii) Remission cannot be granted on duty paid goods as there is no provision for granting remission of duty after removal of goods.

(iii) Remission of duty in case of theft is not allowed as the goods are available for consumption somewhere else. It was also held in Gupta Metal Sheets v. CCEx. [2008] 232 ELT 796 (Tri.-LB), that loss by theft or dacoity is not eligible for remission of duty, since the loss by theft or dacoity cannot be regarded as loss due to natural cause or due to unavoidable accident. Theft or decoity is a mere incident; not an accident. Also, the word 'lose' implies that the goods are unavailable for consumption; whereas in case of theft or decoity, the stolen goods enter the market for consumption.

(c) Briefly discuss purpose and periodicity of various Excise Returns (ERs) to be filed under the Central Excise Rules, 2002.

Solution:

ER 1: Manufacturer should submit monthly return for production and removal and CENVAT credit to be filed by every assessee in form ER-1(in duplicate) by 10th of following month from the end of the relevant month.

ER 2: EOU/STP units to file monthly return in respect of excisable goods manufactured and inputs/ capital goods received in unit in form ER-2 (in duplicate) by 10th of following month from the end of the relevant month.

ER 3: Quarterly return for clearance of goods and Cenvat Credit to be filed by SSI units and Other units claiming clearance based exemption in form ER-3 (in duplicate) by 10th of following month from the end of relevant Quarter and for Other units 20th of the month following the particular quarter.

ER 4: Assessees paying duty of ₹1 crore or more per annum through PLA are required to submit Annual Financial Information Statement for each financial year by 30th day of November of succeeding year in prescribed form ER-4.

ER 5: Specified assessees are required to submit Information relating to Principal Inputs every year before 30th April of each financial year in form ER-5, to Superintendent of Central Excise. Any alteration in principal inputs is also required to be submitted to Superintendent of Central Excise in form ER-5 within 15 days.

ER 6: Assessee who is required to submit ER-5 is also required to submit monthly return of receipt and consumption of each of Principal Inputs in form ER-6 to Superintendent of Central Excise by 10th of following month.

ER 7: Every assessee should submit Annual Installed Capacity Statement by 30th April of the succeeding Financial Year except those manufacturers who are exempted from filing Annual Installed Capacity Statement vide Notification No. 26/2009-CE-(NT), dated 18.11.2009.

ER 8: An assessee is availing the exemption under Notification No. 1/2011-CE dt. 1-3-2011 namely paying duty @1% or 2% as the case may be and does not manufacture any other products should submit Quarterly return by 10th of the following month from the end of relevant quarter. For the year end quarter 31st March.

3. Answer all Questions

(a) Compute the amount of interest, if any, u/s 18 of the Customs Act, 1962 in the following independent cases-

(i) ABC Ltd. imported goods valuing ₹250 lakh vide a Bill of Entry presented before the proper officer on 1.11.2011, on which the rate of customs duty was 10%. The proper officer decided that the goods are subject to chemical examination and therefore, the same were provisionally assessed at a value of ₹250 lakh and ABC Ltd. paid provisional duty ₹30 lakhs on the same date. ABC Ltd. wants to voluntarily pay duty of ₹10 lakhs on 15.12.2011. Can it do so what are the condition which are to be complied before such payment.

(ii) In the above case, if the final duty is assessed on 31.12.11 amounting to ₹47 lakh, calculate the interest liability under section 18. [5]

Solution:

(i) The department has clarified vide Circular No. 40/2011-Cus, dated 09-09-2011 that whenever any importer or exporter intimates to the proper officer in writing that he desires to pay voluntarily certain amount of duty of customs, at any time before finalization of the provisional assessment, the following conditions must be satisfied before such payment:

(a) Such duty should be paid, along with interest on the amount of duty so being paid, @ 18% from the first day of the month in which the duty is provisionally assessed till the date of payment thereof;
(b) The term and conditions of the bond and the amount of security of surety furnished at the time of provisional assessment shall remain unchanged; and
(c) No refund of duty will be granted till the assessment is finalised.

Thus, on above compliances, ABC Ltd. can provisionally pay duty.

(ii) Wherever the importer or exporter pays any amount of duty before finalisation of assessment, he shall not incur interest on the amount of duty so paid for the period from the date of such payment till the finalization of assessment. Consequent to final assessment, the interest due will be calculated from the first day of the month in which the duty is provisionally assessed till the date of payment of duty. Also, the amount of duty that is initially provisionally paid or paid in the interim period and interest paid, if any, shall be adjusted against the duty finally assessed, and the interest payable.

Thus, the interest liability shall be calculated as under-

	Voluntary payment on 15.12.2011	Final payment on 31-12-2011
Duty paid	₹10,00,000	₹7,00,000
Interest period starts from 1st day of the month in which the duty is provisionally assessed	1.11.2011	1.11.2011
Interest period ends on the date of payment of duty	15.12.2011	31.12.2011
No. of days for which interest payable	44	60

Rate of interest notified u/s 28AA of the Customs Act, 1962	18%	18%
Interest	₹21,699	₹20,712
Total Sum paid /payable(including interest)	₹10,21,699	₹7,20,712

Since final duty is ascertained ₹47,00,000, the importer shall be liable to pay deficiency of ₹7,00,000 i.e. [₹47,00,000 - ₹30,00,000 - ₹10,00,000] plus interest as calculated above.

OR,

State briefly the provision relating to abatement of duty on damaged or deteriorated goods under Customs Act, 1962. [5]

Solution:

Abatement of duty on damaged or deteriorated goods [Section 22]: Where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs -

(a) that any imported goods had been damaged or had deteriorated at any time before or during the unloading of the goods in India; or
(b) that any imported goods, other than warehoused goods, had been damaged at any time after the unloading thereof in India but before their examination under section 17, on account of any accident not due to any wilful act, negligence or default of the importer, his employee or agent; or
(c) that any warehoused goods had been damaged at any time before clearance for home consumption on account of any accident not due to any wilful act, negligence or default of the owner, his employee or agent,

then, such goods shall be chargeable to duty determined in the following manner -

Duty leviable on such Damaged or deteriorated goods =

$$\frac{\text{Duty chargeable on the goods before the damage or deterioration}}{\text{Value of the goods before damage or deterioration}} \times \text{Value of the damaged or deteriorated goods}$$

Abatement of duty on damaged or deteriorated goods = Duty leviable on the goods before damage – Duty leviable on the goods after damage

Valuation of damaged/deteriorated goods:
The value of damaged or deteriorated goods may be ascertained by either of the following methods (at the option of the owner):

(1) The value of such goods may be ascertained by the proper officer; or
(2) Such goods may be sold by proper officer by public auction or by tender or with consent of owner in any other manner and the gross sale proceeds shall be deemed to be the value of such goods.

(b) M/s. Abanti Associates is a registered dealer engaged in the manufacturing of steel in the state of Maharastra. During the year 2011-12 the firm has procured raw material of ₹25,50,320

(VAT@4%) and purchased plant and machinery for ₹30,00,000 (VAT @4%) and ₹8,00,000 (CST @2%) for use in the manufacturing of steel. Sales of materials made during the year is ₹35,00,000 (VAT @ 4%) and interstate sales is ₹10,58,000 (@2% CST). Besides above, branch transfer of ₹4,80,000 was made to Kolkata, calculate the following as per white paper on vat law in India
(i) Output tax;
(ii) Input tax credit;
(iii) Balance tax payable; and
(iv) Input tax credit, if any, to be carried forward. [5]

Solution:

(i) Statement showing VAT and CST payable on sales

Description	Value (₹)	VAT (₹)	CST (₹)
4% VAT Sales	35,00,000	1,40,000	--
2% CST Sales	10,58,000	--	21,160
Branch transfer	4,80,000	--	--
Total	50,38,000	1,40,000	21,160

(ii) Statement showing input tax credit:

Description	Value (₹)	ITC (₹)	CST (₹)
4% VAT purchases (raw material)	25,50,320	1,02,013	--
Plant and machinery			
- 4% VAT Purchases	30,00,000	1,20,000	--
- 2% CST Purchases	8,00,000	--	16,000
Total	63,50,320	2,22,013	16,000

(iii) Balance tax payable is nil. Since, input tax credit is more than output tax.
(iv) Input tax credit attributable to the branch transfer not allowed to the extent of 2%.

₹1,02,013 x 4,80,000/50,38,000 = ₹9,719
₹9,719 x 2/4 = 4,860
Therefore, available ITC on input goods is ₹97,153, plus ₹1,20,000 on capital goods.

Hence, VAT payable	= ₹1,40,000
Less: ITC	= ₹2,17,153
	= ₹77,153
CST payable on interstate sale	= ₹21,160
Les: ITC	= ₹77,153
Excess Input tax credit c/f	= ₹55,993

Note:
(a) input tax on plant and machinery is taken fully.
(b) CST of ₹16,000 on purchase is considered as part of cost of purchases.

(c) A show cause notice demanding customs duty was issued in case of clearances made by a 100% Export Oriented Undertaking (EOU) to Domestic Tariff Area (DTA). Is the show cause notice tenable? [5]

Solution:

Goods removed from a 100% Export Oriented Unit to Domestic Tariff Area are liable to pay excise duty. As per Rule 17 of Central Excise Rules, 2002 goods shall be removed from a 100% Export Oriented Unit to Domestic Tariff Area under an invoice by following the procedure specified in rule 11 of Cenvat Credit Rules, 2004, and the duty leviable on such goods shall be paid by utilizing the CENVAT credit or by crediting the duty payable to the account of the Central Government in the manner specified in rule 8 of the Central Excise Rules, 2002 *[CCEx. & Cus.* **v** *Suresh Synthetics* (2007) (SC)].

Exemption on DTA Clearance by 100% EOU [Notification no. 23/2003-C.E., Dated 31.3.2003]

DTA clearances by 100% EOU are exempt from-

(a) 50% of the basic duties leviable thereon;

(b) Additional duty of customs u/s 3(5) of customs tariff Act, 1975. Exemption from additional duty is available only if the goods so removed are not exempt from payment of sales tax/ VAT in India.

Hence, the show cause notice is tenable.

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

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

(i) Publication of advertisement in magazine run by it : ₹15 lakhs;
(ii) Preparation of advertisements: ₹7 lakhs;
(iii) Aerial advertisement: ₹3 lakhs;
(iv) Commission for arranging advertisement for newspapers: ₹17 lakhs;
(v) Advertisement charges for advertisement on conveyance run by it: ₹9 lakh;
(vi) Internet advertisement charges: ₹6 lakhs;
(vii) Canvassing Advertisement: ₹13 lakhs. **[5]**

Solution:

Computation of value of taxable service and service tax thereon

Particulars	₹ in lakhs
(i) Publication of advertisement in magazine – Exempted u/s 66D(g)	Nil
(ii) Preparation of advertisements - taxable	7.00
(iii) Aerial advertisement - Exempted u/s 66D(g)	Nil
(iv) Commission for arranging advertisement for newspapers – taxable u/s 66F(1)	17.00
(v) Advertisement charges for advertisement on conveyance run by it – Exempted u/s 66D(g)	Nil
(vi) Internet advertisement charges – Exempted u/s 66D(g)	Nil
(vii) canvass Advertisement – Exempted u/s 66D(g)	Nil
Value of taxable Services	**24.00**

Service tax liability = ₹24 Lakhs x 12.36% = ₹2.9664 lakhs

(b) Bonne Ltd. is engaged in providing erection, commissioning or installation services. Compute the value of taxable services for the month of October, 2012 with the help of the following particulars furnished by it-

Receipts	**Amount (₹)**
Installation of thermal insulation	**24,00,000**
Commissioning of Mechanized Food Grain Handling Systems	**11,00,000**
Installation of transformer	**31,00,000**

Installation of street lights for a local authority	**8,00,000**
Erection of fire proofing system in airport	**1,35,00,000**

All the receipts are excluding service tax. Bonne Ltd. is not eligible for small service provider's exemption under notification No. 33/2012. Assume that all the aforesaid works were leviable to sales-tax as transfer of property involved in execution of works contract. [5]

Solution:

Since all the aforesaid works were leviable to sales- tax as works contract, hence, it is works contract within the meaning of section 65B(44) and is liable to be valued as per Rule 2A(ii) of the Valuation Rules, 2006, in absence of data regarding computation of actual value under Rule 2A(i).

Erection, commissioning or installation work amounts to "original works" within the meaning of Rule 2A(ii) of the Valuation Rules, 2006 and value thereof is to be computed @40% of total amount.

Particulars	**₹**
Installation of thermal insulation – Taxable	24,00,000
Commissioning of Mechanized Food Grain Handling Systems – Service of original works in relation to commissioning of Mechanized Food Grain Handling System is exempt	NIL
Installation of transformer- Taxable	31,00,000
Installation of street lights for a local authority - Service of original works provided to a local authority predominated for use other than for a commerce/ business/ profession is exempt.	NIL
Erection of fire proofing system in airport – Erection service of original works provided to an airport is exempt	NIL
Total sum	55,00,000
Taxable Value @40%	22,00,000

(c) A life insurance company furnishes following data of its business of the year and requests you to compute its service tax liability assuming that it had opted for option under Rule 6(7A) of the Service Tax Rules, 1994 (premium received is exclusive of taxes)-

(i) Risk cover policies (only risk cover provided; no investment involved): ₹15 lakhs;

(ii) Investment/ Saving Policies where sum invested was 90% of the premium and was informed to the policyholders at the time of providing the service: ₹180 lakhs;

(iii) Other investment/ saving policies issued during the year: ₹70 lakhs;

(iv) Renewal premium received on investment/ saving policies issued during previous years: ₹18 lakhs. [5]

Solution:

Computation of service tax liability under Rule 6(7)

Particulars	**Taxable Value (₹)**	**Rate of Service tax (%)**	**Tax liability (₹)**
(i) Risk cover policies (only risk cover provided; no investment involved)	15,00,000	12.36	1,85,400
(ii) Investment/ Saving Policies where sum invested was 90% of the premium and	18,00,000 (1,80,00,000 x10%)	12.36	2,22,480

was informed to the policyholders at the time of providing the service			
(iii) Other investment/ saving policies issued during the year	2,10,000 (70,00,000 x 3%)	12.36	25,956
(iv) Renewal premium received on investment/ saving policies issued during previous years	27,000 (18,00,000 x 1.5%)	12.36	3,337
Tax Liability			**4,37,173**

Section B
Answer all the Questions

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

Answer the following with the help of decided case laws

(a) Can advance given to employees and security deposit paid to the landlord by the amalgamating company, which became irrecoverable, be allowed as a business loss in the hands of the amalgamated company?

Solution:

Facts of the case

The amalgamating company had given certain advances to employees and had made a security deposit with the landlords for obtaining lease of premises for purposes of its business. Both the advance given and the security deposit paid by the amalgamating company became irrecoverable and were written off in the books of account of the assessee - amalgamated company. The Assessing Officer disallowed the said claims on the ground that the same is not directly related to carrying on of the business of the assessee - amalgamated company nor is it incidental to the same.

Decision of the case

On the above mentioned issue, the Delhi High Court in the case of CIT vs. Triveni Engg. & Industries Ltd. (2012) 343 ITR 245 (Delhi) held that advances to employees were given by the amalgamating company in the ordinary course of business by way of temporary financial accommodation to be recovered out of the salary paid to the employees. The giving of such advances was necessitated in order to share up the personal finances of the employees, to meet any emergency/ financial commitment and keep the employees motivated, contended and happy. Therefore, such advances given to persons who had been employed by the assessee company which have become irrecoverable would be treated as business loss.

However, as regards the allowability of non-recoverable security deposit given to the landlord for obtaining lease of premises for purposes of business, the High Court observed that the security deposits were refundable and therefore, were not in the form of rent. They were given for securing the premises on rent. The assessee had obtained a right to use the property, i.e., tenancy right, which is a capital asset. Therefore, it is not allowable as business loss.

(b) Is the commission paid to doctors by a diagnostic centre for referring patients for diagnosis be allowed as a business expenditure under section 37 or would it be treated as illegal and against public policy to attract disallowance?

Solution:

The Punjab and Haryana High Court in the case of CIT vs. Kap Scan and Diagnostic Centre P. Ltd. (2012) 344 ITR 476 (P&H) held that the argument of the assessee that giving commission to the private doctors for referring the patients for various medical tests was a trade practice which could not be termed to be illegal and therefore, the same cannot be disallowed under section 37(1), is not acceptable. Applying the rationale and considering the purpose of Explanation to section 37(1), the assessee would not be entitled to deduction of payments made in contravention of law. Similarly, payments which are opposed to public policy being in the nature of unlawful consideration cannot also be claimed as deduction. The assessee cannot take a plea that businessmen are entitled to conduct their business even contrary to law and claim deduction of certain payments as business expenditure, notwithstanding that such payments are illegal or opposed to public policy or have pernicious consequences to the society as a whole.

As per the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, no physician shall give, solicit, receive, or offer to give, solicit or receive, any gift, gratuity, commission or bonus in consideration of a return for referring any patient for medical treatment.

The demanding as well as paying of such commission is bad in law. It is not a fair practice and is opposed to public policy and should be discouraged. Thus, the High Court held that commission paid to doctors for referring patients for diagnosis is not allowable as business expenditure.

(c) Is it permissible under section 147 to reopen the assessment of the assessee on the ground that income has escaped assessment, after a change of opinion as to a loss being a speculative loss and not a normal business loss, consequent to a mere re-look of accounts which were earlier furnished by the assessee during assessment under section 143(3)?

Solution:

Facts of the case

In the above case, the Assessing Officer had completed the assessment of assessee under section 143(3) after taking into consideration the accounts furnished by assessee. After the lapse of four years from relevant assessment year, the Assessing Officer had reopened the assessment of assessee under section 147 on the ground that after re-look of the accounts of the relevant previous year, it was noticed that the assessee company had incurred a loss in trading in share, which was a speculative one. Therefore, such loss can only be set off against speculative income. Consequently, the loss represents income which has escaped assessment. Accordingly, the Assessing Officer came to conclusion that income had escaped assessment and passed an order under section 147.

Decision of the case

The above case are similar to the case of ACIT vs. ICICI Securities Primary Dealership Ltd. (2012) 348 ITR 299 (SC) wherein the Supreme Court observed that the assessee had disclosed full details in the return of income in the matter of its dealing in stocks and shares. There was no failure on the part of assessee to disclose material facts as mentioned in proviso to section 147. Further, there is nothing new which has come to the notice of the Assessing Officer. The accounts had been furnished by the assessee when called upon. Therefore, re-opening of the assessment by the Assessing Officer is clearly a change of opinion and therefore, the order of re-opening the assessment is not valid.

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

Solution:

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

Also, the High Court considered the decision of the Apex Court in the case of Addl. CIT vs. Gurjargravures (P.) Ltd.(1978) 111 ITR 1, wherein it was held that in case an additional ground was raised before the appellate authority which could not have been raised at the stage when the return was filed or when the assessment order was made, or the ground became available on account of change of circumstances or law, the appellate authority can allow the same.

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

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

Therefore, in the case of CIT vs. Pruthvi Brokers & Shareholders (2012) 208 Taxman 498 (Bom.) the Bombay High Court, considering the above mentioned decisions, held that additional grounds can be raised before the Appellate Authority even otherwise than by way of filing return of income. However, in case the claim has to be made before the Assessing Officer, the same can only be made by way of filing a revised return of income.

6. Profit and Loss account of X Ltd., a public limited company, discloses a net profit of ₹11 lakh for the year ending March 31, 2013. From scrutiny of records the following position emerged:

(i) **Workmen and staff welfare expenditure debited in profit and loss account includes a sum of ₹1,10,000 being the cost of construction of a primary school exclusively for the benefit of children of employees.**

(ii) **A sum of ₹20,000 was debited in profit and loss account, being penalty by way of 1 per cent reduction in selling price imposed by the purchaser for non-fulfillment of delivery conditions of contract of sale due to factors beyond the price imposed by the purchaser for non-fulfillment of delivery conditions of contract of sale due to factors beyond the control of the company.**

(iii) **General Manager was paid a monthly salary of ₹9,500 and was provided with perquisite of the total value of ₹20,000 during the previous year.**

(iv) **Foreign technician (appointment approved by the Central Government) covered under section 10(6)(viia) who has come for the first time for production of sophisticated products of the company, was paid salary of ₹1.50 lakh and perquisites ₹26,000 per annum.**
(v) **Guest house expenses of ₹60,000 was debited to profit and loss account.**
(vi) **Interest account includes payment of ₹25,000 in respect of funds borrowed separately for acquisition of machinery.**
(vii) **Company received remuneration of ₹1 lakh for supply of know-how in the installation of machinery in pursuance of an agreement approved by the Board from a foreign enterprise.**
(viii) **Managing Director incurred expenses on his foreign tour for promotion of sales outside India ₹90,000 debited to profit and loss account.**
(ix) **During the year one machinery (rate of depreciation: 15 per cent) was sold for ₹22,000. Its original cost and written down value on income-tax basis as on April 1, 2012 were ₹40,000 and ₹ 3,000 respectively and the surplus was credited to capital reserve account.**

Compute the taxable income of the company for the assessment year 2013-14 after taking the following into account:

(i) **Depreciation on all assets including all additions mode during the year on straight line basis charged to profit and loss account amounted to ₹2 lakh.**
(ii) **Depreciated value of assets on April 1, 2012 is as follows: Plant and Machinery: ₹18,00,000 (rate of depreciation : 15 per cent), building : ₹5,90,000 (rate of depreciation : 10 per cent).**
(iii) **Plant and machinery (new) additions during the year amounted to ₹80,000 (assume normal depreciation at 15 per cent on 3 shifts working, date of installation: April 10, 2012).**
(iv) **Plant and machinery (solar power generating system) additions during the year amounted to ₹1.20 lakh (assume normal depreciation at 100 per cent and 3 shifts working, date of installation: April 10, 2012).**

Indicate the reasons for the particular treatment given by you to the different items. [10]

Solution:

	₹
Profit as per Profit & Loss account	11,00,000
Add:	
Cost of school building being capital expenditure hence disallowed	1,10,000
Guest house expenses [now it is deductible under section 37(1)]	Nil
Depreciation written off (separately considered)	2,00,000
	14,10,000
Less: Depreciation on all assets [see Note 2]	4,84,700
[70,000 + 2,78,700 + 16,000 + 1,20,000]	
Business Income	9,25,300
Any other income	Nil
Gross total income	9,25,300
Less: Deduction	Nil
Net Income	9,25,300

Notes:
1. Penalty of ₹20,000 is an expenditure incidental to business.
2. Depreciation is calculated as under:

Block of assets	**Building**	**Plant & Machinery**	**Plant & Machinery**
Rate of Depreciation	**(10%)**	**(15%)**	**(100%)**
	(₹)	**(₹)**	**(₹)**
Depreciation value as on April 1, 2012	5,90,000	18,00,000	

Add: Cost of assets acquired during the year	1,10,000	80,000	1,20,000
Less: Sale proceeds of assets sold during the year		22,000	
Written down value	7,00,000	18,58,000	1,20,000
Amount of depreciation	70,000	2,78,700	1,20,000
Additional depreciation		16,000	

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

(a) (i) For assessment year 2005-06, assessment of X Ltd. is completed under section 143(1) [income assessed ₹ 6,50,000]. On March 28, 2012, the assessing officer issues a notice under section 148 to X Ltd. that an income of ₹1,05,000 has escaped assessment. The said notice is received by X Ltd. on April 3, 2013. Is the notice valid? [3]

Solution:

In this case notice can be issued up to March 31, 2012. A clear distinction has been made out between "issue of notice" and "service of notice" under the Act. Section 149 prescribed the period of limitation. It categorically prescribed that no notice under section 148 shall be issued after the prescribed limitation has lapsed. Section 148(1) provide for service of notice as a condition precedent to making the order or reassessment. Once a notice is issued within the period of limitation, jurisdiction becomes vested in the Assessing Officer to proceed to reassess. The mandate of section 148(1) is that reassessment shall not be made until there has been service. The requirement of issue of notice is satisfied when a notice is actually issued. In this case, admittedly, the notice is issued within the prescribed period of limitation as March 31,2012 is the last day of that period. Service under the Act is not a condition precedent to conferment of jurisdiction on the Assessing Officer to deal with the matter but it is a condition precedent to the making of the order of assessment. The Assessing Officer has issued notice within limitation.

(ii) For the assessment year 2011-12, R could not file the return within the due date. The Assessing Officer passed the order under section 144 on 31.05.2012 which was received by the assessee on 5.6.2012. The assesss filed the return on 2.6.2012. Is the return valid? [2]

Solution:

No. The belated return can be filed within one year of the end of the relevant assessment year or before the completion of assessment, whichever is earlier. In this case, the assessment was completed on 31.5.2012 i.e. the date of passing the order (date of service of order is not relevant).

As the assessee has filed the return of income on or after the completion of assessment i.e. 31.5.2012 this return is not valid. In this case he could file the return upto 30.5.2012.

(b) Bombay Suburban Co-operative Society, which is engaged in processing agricultural produce of its members, without the aid of power, and its marketing, furnishes the following particulars, determine its net income for the assessment year 2013-14: income from processing of agricultural produce : ₹28,000; income from marketing agricultural produce: ₹7,000; dividends

from another co-operative society : ₹67,000; income from letting of godowns: ₹15,000; and income from agency business : ₹87,000. [5]

Solution:

	₹	₹
Income from letting of godowns		15,000
Business income:		
• From processing	28,000	
• From marketing	7,000	
• From agency	87,000	1,22,000
Dividend income		67,000
Gross total income		2,04,000
Less: Deduction in respect of income from		
a. Processing of agricultural produce [sec. 80P(2)(a)]	28,000	
b. Marketing of agriculture produce [sec. 80P(2)(a)(iii)]	7,000	
c. Agency business [sec. 80P(2)(c)]	50,000	
d. Dividend [sec. 80P(2)(d)]	67,000	
e. Letting of godowns [sec. 80P(2)(e)]	15,000	1,67,000
Net income		37,000

(c) Find out the time-limit for imposition of penalty in the following cases:

(i) On February 10, 2011, the Assessing Officer completes the assessment for the assessment year 2009-10 under section 143(3). For imposing concealment penalty under section 271(1)(c), the Assessing Officer initiates penalty proceedings on February 10, 2011.

(ii) In the aforesaid case suppose the assessee files an appeal to the Commissioner (Appeals). The Commissioner (Appeals) passes the order on April 17, 2012 and which is received by the assessee and the Commissioner on April 28, 2012 and May 2, 2012, respectively.

(iii) Suppose in (1) supra, the Commissioner revises the assessment under section 263 by his order dated August 16, 2011 which is received by the assessee on September 3, 2011.

(iv) Suppose in (1) supra penalty proceedings have been stayed by the Bombay High Court on August 29, 2011. The Supreme Court, however, vacates the stay order on November 6, 2011.

(v) Suppose in (2) supra, the Bombay High Court has stayed penalty proceeding from August 18, 2012 to September 20, 2012. [5]

Solution:

The time- limit for completion of penalty proceeding is as follows:

	Case 1	Case 2	Case 3	Case 4	Case 5
1. Last day of the financial year in which penalty proceeding was initiated	March 31, 2011	March 31, 2011	-	March 31, 2011	March 31, 2011
2. Six months from the end of the month –					
• In which penalty proceeding was initiated	August 31, 2011	-	-	August 31, 2011	-
• In which order of the	-	March	-	-	March

Commissioner (Appeals) is received by the Commissioner • In which order under section 263 is passed by the commissioner	 -	31, 2014 -	 February 29, 2012	 -	31, 2014 -
3. Date by which order of penalty order shall be passed [(1) or (2), whichever is later]	August 31, 2011	March 31, 2014	February 29, 2012	August 31, 2011	March 31, 2014
4. Date by which penalty order shall be passed after excluding the time during which proceeding were stayed by the Court in the case of stay order: • In case 4 from August 29, 2011 to November 6, 2011 [i.e., 69 days] • In case 5 from August 18, 2012 to September 20, 2012 (i.e., 33 days)	 - -	 - -	 - -	 November 8, 2011	 - May 3, 2014

(d) TQ trust derives a total income of ₹8,40,000. Out of ₹8,40,000, ₹1,70,800 is meant for public charitable purposes and the balance ₹6,69,200 is for the benefits of T (29 years) and Q (31 years) whose individual shares are not known. The trust has actually applied ₹60,000 towards public charitable purposes during the previous year. Determine the tax liability of the trust for the assessment year 2013-14 under the following situations:

(i) **T and Q are neither beneficiaries under any other trust nor their taxable income exceeds ₹2,00,000.**
(ii) **T is member of another trust (no income is derived for the trust), though taxable income of T and Q does not exceed ₹2,00,000.**
(iii) **Taxable income of T and / or Q is ₹2,00,010 though they are not beneficiaries under any other trust.** **[5]**

Solution:

	Under situation (i) ₹	Under situation (ii) or (iii) ₹
Tax on ₹7,54,380 if it were income of an association of persons [see Note 1]	83,302	NA
Tax on ₹85,180 if it were income of an association of persons [see Note 2]	NA	Nil
Tax on ₹6,69,200 @30.9% [see Note 3]	NA	2,06,783
Total	83,302	2,06,783
Total (rounded off)	83,300	2,06,780

Notes:

1. ₹8,40,000 – 15% of ₹1,70,800 - ₹60,000 = ₹7,54,380
2. ₹1,70,800 – 15% of ₹1,70,800 - ₹60,000 = ₹85,180
3. ₹ 7,54,380 - ₹ 85,180 or ₹8,40,000 - ₹1,70,800 = ₹6,69,200

4. Tax will be charged at the maximum marginal rate, if income consists of profits and gains from business.

8. Answer any one Question [1x5]

(a) Mr. Shankar owns a house property at Patna, which is let out at ₹90,000 p.a. The annual value of the property as per municipal records also is ₹90,000. Municipal taxes are partly borne by the owner (₹3,000) and partly by the tenant (₹4,000). Repair expenses are borne entirely by the tenant (₹3,000). The difference between the unbuilt area and specified area does not exceed 5%. The property was acquired on 10.05.1992 for ₹12,50,000. Determine for the purposes of Wealth-tax Act, the value of the property as on 31.03.2013 in the following situations:

(i) The house is built on a freehold land;

(ii) It is build on a leasehold land, the unexpired period of lease of the land is more than 50 years;

(iii) If the area of the plot on which the house is built is 800 sq. metres, FSI permissible is 1.4 and FSI utilized is 1088 Sq. metres (136 metres x 8 storey's);

(iv) The tenant had made interest free deposit of ₹ 50,000 with the landlord.

Solution:

Assessee: Mr. Shankar **Valuation Date: 31.3.2013** **Assessment Year: 2013-14**

For Situations (i) & (ii):

Computation of Value of House Property

Computation of Gross Maintainable Rent **(Amount in ₹)**

Particulars	No Rental Deposit	Rental Deposit excess of 3 Mths
Actual Annual Rent	90,000	90,000
Add: Municipal Taxes borne by the tenant	4,000	4,000
I/9th of Actual Rent Receivable since repair expenses are borne by the tenant (₹90,000/ 9)	10,000	10,000
Rental Deposits - 15% Interest on ₹ 50,000	Nil	7,500
GROSS MAINTAINABLE RENT	1,04,000	1,11,500
Less: Municipal Taxes Paid	7,000	7,000
Less: 15% of Gross Maintainable Rent	15,600	16,725
Net Maintainable Rent	81,400	87,775
Case (a) Capitalization of Net Maintainable Rent - Freehold Land NMR x 12.5	10,17,500	10,97,188
Case (b) Capitalization of Net Maintainable Rent - Leasehold Land - Unexpired Lease > 50 Years = NMR×10	8,14,000	8,77,750

Property Acquired after 31.3.1974 i.e. 10.5.1992	12,50,000	12,50,000
Therefore, Value of the Property (whether on Lease-hold Land or on Freehold Land)	12,50,000	12,50,000

For Situation (iii): In case of excess unbuilt area:

Unbuilt Area = (Actual Area of the Land **less** Built up Area) = (800 sq. mt **less** 136 sq. mt). = 664 sq. mt.
Excess Unbuilt Area = (Unbuilt Area **less** Specified Area) = 664 sq. mt. **less** 70% of 800 sq. mt. = 664 Less 560 = 104 sq. mt
% of Excess Unbuilt Area = **Excess Unbuilt Area** × **100/Aggregate Area** = 104 × 100/800 = 13%

Therefore, Value of the Property = Substituted Net Maintainable Rent i.e. ₹12,50,000 + 30% of SNMR = ₹ 16,25,000.

(b) When is a person deemed to have concealed the particulars of his net wealth within the meaning of section 18 of the Wealth-tax Act, 1957? Explain the procedure with respect to imposition of penalty on concealment of income.

Solution:

Person deemed to have concealed the particulars of his net wealthy in the following situation:-
(i) No return of wealth has been submitted means the tax on wealth assessed;
(ii) Facts material to the computation of net wealth not explained/ substantiated;
(iii) Non-filing of return within the prescribed time;
(iv) Value of any asset returned is less than 70% of the value assessed;
(v) Undeclared assets found during course of search.

Penalty:
If the Assessing Officer, Commissioner (Appeals), Commissioner of Wealth-tax, Chief Commissioner or Appellate Tribunal, in the course of any proceedings under the wealth-tax Act, is satisfied that any person has concealed the particular of any assets or has filed inaccurate particulars of any assets or debts, he or it may be order in writing, direct that such person shall pay a minimum penalty of 100% the tax sought to be so evaded by reason of such default. The maximum penalty shall be 500% the amount of tax sought to be evaded.

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

(a) Computation if more than one ALPs determined: Consider the tax effect of the following –
  (i) M/s. ABC Ltd. of India imported 1,000 Mobile phones from US Inc. being its associated enterprise, @ ₹2,500 per Mobile phone. The ALP's thereof, determined as per the most appropriate method, are (per mobile phone): ₹2,350, ₹2,400 and ₹2,450.
  (ii) M/s. PQR Ltd. of India exported 50,000 Handicraft items to US Inc. being its associated enterprise in US, @ ₹2,000 per price. The ALP's thereof, determined as per the most appropriate method, are: ₹2,020, ₹2,060 and ₹2,100.

Notified percentage by Central Government under section 92C –3%

Solution:

(i) Arithmetical mean of prices determined by most appropriate method:

$$\frac{2,350 + 2,400 + 2,450}{3} = ₹2,400$$

3% of Actual international transaction price = $\frac{2,500 \times 3}{100}$ = ₹75

Difference between Actual price – Arithmetic mean i.e. ₹2,500 – 2,400 = 100

∴ In this case arms length price shall be taken as ₹2,400 because the difference between the actual transaction price and the arm's length price is more than 3% of actual transaction price.

∴ Tax effect on ₹1,00,000 (1,000 mobile x ₹100).

(ii) Arithmetical mean of prices determined by most appropriate method:

$$\frac{2,020 + 2,060 + 2,100}{3} = ₹2,060$$

3% of Actual international transaction price = $\frac{2,000 \times 3}{100}$ = ₹60

Difference between Arithmetic mean of arms length price - Actual international transaction price i.e. ₹2,060 – ₹2,000 = 60

The arm's length price shall be taken as ₹2,000 since the difference between the arm's length price and the actual transaction price does not exceed 3% of actual transaction price. Hence, arm's length price shall be taken as ₹2,000.

Tax effects = Nil.

(b) Explain the provisions of advance pricing agreement.

Solution:

Advance Pricing Agreement is an agreement between a taxpayer and a taxing authority on an appropriate transfer pricing methodology for a set of transactions over a fixed period of time in future. The APA offers better assurance on transfer pricing methods and are conducive in providing certainty and unanimity of approach.

Sections 92CC and 92CD have been inserted by the Finance Act, 2012 with effect from July 1, 2012 to provide a framework for advance pricing agreement under the Act. These provisions provide the following-
Board may enter into APA - Section 92CC empowers the Board (with the approval of the Central Government) to enter into an advance pricing agreement with any person.

Purpose of APA - Such APA shall include determination of the arm's length price or specify the manner in which arm's length price shall be determined, in relation to an international transaction to be entered into, by that person.

How to compute ALP - The manner of determination of arm's length price in such cases shall be any method including those already provided in section 92C(1), with necessary adjustments or variations.

APA to supersede provisions of section 92Cor 92CA - The arm's length price of any international transaction, which is covered under such APA, shall be determined in accordance with the APA so entered into. The provisions of section 92C or 92CA which normally apply for determination of arm's length price will be modified to this extent. As a consequence, arm's length price shall be determined in accordance with APA.

Validity of APA - The APA shall be valid for such previous years as are specified in the agreement which in no case shall exceed five consecutive previous years.

Effectiveness of APA - The APA shall be binding only on the person and the Commissioner (including income-tax authorities subordinate to him) in respect of the transaction in relation to which the agreement has been entered into. The APA shall not be binding if there is any change, in law, or facts having bearing on such APA.

APA obtained by fraud - The Board is empowered to declare, with the approval of Central Government, any such agreement to be void ab initio, if it finds that the agreement has been obtained by the person by fraud or misrepresentation of facts. Once an agreement is declared void ab initio, all the provisions of the Act shall apply to the person as if such APA had never been entered into.

For the purpose of computing any period of limitation under the Act, the period beginning with the date of such APA and ending on the date of order declaring the agreement void ab initio shall be excluded. However, if after the exclusion of the aforesaid period, the period of limitation referred to in any provision of the Act is less than 60 days, such remaining period shall be extended to 60 days.

Procedures - The Board is empowered to prescribe a scheme providing for the manner, form, procedure and any other matter generally in respect of the advance pricing agreement.

Pending proceedings - Where an application is made by a person for entering into such an APA, proceedings shall be deemed to be pending in the case of the person for the purposes of the Act like for making enquiries under section 133.

Modified return within 3 months - The person entering into such APA shall necessarily have to furnish a modified return within a period of 3 months from the end of the month in which the said APA was entered into in respect of the return of income already filed for a previous year to which the APA applies. The modified ret urn has to reflect modification to the income only in respect of the issues arising from the APA and in accordance with it.

(c) Write a note on effect of advance pricing agreement.

Solution:

Effect of Advance Price Agreement [Section 92CD] -

i. Assessee to file modified return of income in accordance with the advance pricing agreement [Section 92CD(1)] -

Notwithstanding anything to the contrary contained in section 139, where any person has entered into an agreement and prior to the date of entering into the agreement, any return of income has been furnished under the provisions of section 139 for any assessment year relevant to a previous year to which such agreement applies, such person shall furnish, within a period of three months from the end of the month in which the said agreement was entered into, a modified return in accordance with and limited to the agreement.

ii. Assessing Officer to assess or reassess the completed assessment according to advance price agreement [Section 92CD(3)] -

If the assessment or reassessment proceedings for an assessment year relevant to a previous year to which the agreement applies have been completed before the expiry of period allowed for furnishing of modified return under section 92CD(1), the Assessing Officer shall, in a case where modified return is filed in accordance with the provisions of section 92CD(1), proceed to assess or reassess or recompute the total income of the relevant assessment year having regard to and in accordance with the agreement.

iii. Assessing Officer to complete assessment according to modified return if it is pending on the date of filing modified return [Section 92CD(4)] -

Where the assessment or reassessment proceedings for an assessment year relevant to the previous year to which the agreement applies are pending on the date of filing of modified return in accordance with the provisions of section 92CD(1), the Assessing Officer shall proceed to complete the assessment or reassessment proceedings in accordance with the agreement taking into consideration the modified return so furnished.

iv. Period of completion of assessment on the basis of modified return [Section 92CD(5)] -

(A) In case assessment or re-assessment has been already completed -

Notwithstanding anything contained in section 153 or section 153B or section 144C, the order of assessment, reassessment or recomputation of total income under section 92CD(3) shall be passed within a period of one year from the end of the financial year in which the modified return under section 92CD(1) is furnished.

(B) In case assessment or reassessment is pending -

Similarly, the period of limitation as provided in section 153 or section 153B or section 144C for completion of pending assessment or reassessment proceedings referred to in section 92CD(4) shall be extended by a period of twelve months.