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) Whether the addition and mixing of polymers and additives to base bitumen results in the manufacture of a new marketable commodity and as such exigible to Excise duty?

Answer:

Facts of the Case:

This questions has answered with the help of famous case of Supreme Court between CCE vs. Osnar Chemical Pvt. Ltd. 2012 (276) E.L. T. 162 (SC), where Osnar Chemical Pvt. Ltd. (Osnar) was engaged in the supply of Polymer Modified Bitumen (for short "PMB"). It entered into a contract with M/s. Afcons Infrastructure Ltd. (Afcons) for supply of PMB at their work site. As per the agreement, the base bitumen and certain additives were to be supplied by Afcons to Osnar directly at the site, where Osnar, in its mobile polymer modification plant, was required to heat the bitumen at a temperature of 160°C with the help of burners. To this hot bitumen, 1% polymer and 0.2% additives were added under constant agitation, for improving its quality by increasing its softening point and penetration. The process of agitation was to be continued for a period of 12 to 18 hours till the mixture becomes homogenous and the required properties were met. The said bitumen in its hot agitated condition was mixed with stone aggregates which were then used for road construction. The Osnar paid duty on PMB processed at their factory in Mumbai but had not paid the same for the conversion done at their work site.

Point of Dispute:

Revenue contended that the aforesaid process carried out by the assessee (Osnar) amounted to manufacture of PMB in terms of section 2(f) of the Central Excise Act, 1944.

It was submitted that the end products, viz. PMB and Crumbled Rubber Modified Bitumen (CRMB) were different from bitumen, in as much as polymers and additives were the raw materials consumed in the process of manufacture of the said final products and were therefore, covered by the definition of the term "manufacture" in section 2(f) of the Act. The Revenue further added that PMB and CRMB were exigible to Excise duty, both falling under a specific entry, while bitumen is classifiable under Chapter sub heading 2713 20 00, and polymer is classifiable under Chapter sub heading 3901 90 00, the finished products, PMB and CRMB were classifiable under Chapter sub heading 2715 00 90. Further, Revenue submitted that PMB and CRMB were commercially known in the market for being bought and sold and therefore, satisfied the test of marketability which is one of the essential conditions for the purpose of levy of excise duty.

Decision of the Case:

The Supreme Court was of the view that "manufacture" could be said to have taken place only when there was transformation of raw materials into a new and different article having a different identity, characteristic and use. It was a well settled principle that mere improvement in quality did not amount to manufacture. It was only when the change or a series of changes take the commodity to a point where commercially it could no longer be regarded as the

original commodity but was instead recognized as a new and distinct article that manufacture could be said to have taken place.

The Court held that in the Schedule to the Central Excise Tariff Act, no such process or processes have been specified in the Section notes or Chapter notes in respect of Petroleum Bitumen falling under Tariff Item 2713 20 00 or even in respect of bituminous mixtures falling under Tariff Item 2715 00 90 to indicate that the said process amounts to manufacture. Thus, it was evident that the said process of adding polymers and additives to the heated bitumen to get a better quality bitumen, viz. PMB or CRMB, could not be given an extended meaning under the expression manufacture in terms of section 2(f)(ii) of the Act. The Supreme Court thus concluded that the process of mixing polymers and additives with bitumen did not amount to manufacture.

(b) Whether the benefit of exemption meant for imported goods can also be given to the smuggled goods?

Answer:

Decision of the case:

The question which arose before the Apex Court for consideration in the case of CCus. (Prev.), Mumbai vs. M. Ambalal & Co. 2010 (260) E.L.T. 487 (SC) that whether goods that were smuggled into the country could be considered as 'imported goods' for the purpose of granting the benefit of the exemption notification.

The Apex Court held that the smuggled goods could not be considered as 'Imported goods' for the purpose of benefit of the exemption notification. It opined that if the smuggled goods and imported goods were to be treated as the same, then there would have been no need for two different definitions under the Customs Act, 1962.

The Court observed that one of the principal functions of the Customs Act was to curb the ills of smuggling on the economy. Hence, it held that it would be contrary to the purpose of exemption notifications to give the benefit meant for imported goods to smuggled goods.

(c) Whether the exempted goods on which duty has been paid by mistake by the assessee and refund thereof has also not been claimed would be excluded while computing turnover for preceding year for claiming SSI exemption?

Answer:

Facts of the case:

The appellant was a manufacturer of goods falling under Chapter headings 32 and 84 of the first schedule to the Central Excise Tariff Act, 1985. The goods falling under Chapter heading 84 were wholly exempt from duty vide an exemption notification, but the appellant by mistake paid the excise duty on it and did not even claim refund of the same. For goods falling under Chapter heading 32, the appellant wanted to claim SSI exemption. It satisfied all the conditions for claiming the said exemption.

For the purposes of computing the eligible turnover for SSI exemption, the assessee excluded the goods which were exempted although duty was paid mistakenly on them. However, the

Revenue contended that clearances of such goods should be included while computing the eligible turnover.

Decision of the Case:

The Supreme Court in the case of Bonanzo Engg. & Chemical P. Ltd. vs. CCEx. 2012 (277) E.L. T. 145 (SC) opined that SSI exemption would be allowable to the assessee, as they meet all the conditions thereof. The amount of clearances in the SSI exemption notification needs to be computed after excluding the value of exempted goods. Merely because the assessee by mistake paid duty on the goods which were exempted from the duty payment under some other notification, did not mean that the goods would become goods liable for duty under the Act. Secondly, merely because the assessee had not claimed any refund on the duty paid by him would not come in the way of claiming benefit of the SSI exemption.

Accordingly the appeal was allowed in the favor of the appellant-assessee. The Court directed the adjudicating authority to apply the SSI exemption notification in the assessee's case without taking into consideration the excess duty paid by the assessee under the other exemption notification.

(d) Whether non-disclosure of a statutory requirement under law would amount to suppression for invoking the larger period of limitation under section 11A?

Answer:

Facts of the case:

The respondent - assessee was engaged in manufacture of various toilet preparations such as after-shave lotion, deo-spray, mouthwash, skin creams shampoos, etc. The respondent procured Extra Natural Alcohol (ENA) from the local market on payment of duty, to which Di-ethyl Phthalate (DEP) is added so as to denature it and render the same unfit for human consumption. The Department alleged that the intermediate product i.e. Di-ethyl Alcohol manufactured as a result of addition of DEP to ENA, was liable to central excise duty.

Issue:

The question which arose before the High Court in the instant case is whether non-disclosure as regards manufacture of Denatured Ethly Alcohol amounts to suppression of material facts thereby attracting the larger period of limitation under section 11A.

Decision of the case:

The Tribunal in the case of CCEx. & C vs. Accrapac (India) Pvt. Ltd. 2010 (257) E.L.T. 84 (Guj.) noted that denaturing process in the cosmetic industry was a statutory requirement under the Medicinal & Toilet Preparations (M&TP) Act. Thus, addition of DEP to ENA to make the same unfit for human consumption was a statutory requirement. Hence, failure on the part of the respondent to declare the same could not be held to be suppression as Department, knowing the fact that the respondent was manufacturing cosmetics, must have the knowledge of the said requirement. Further, as similarly situated assesses were not paying duty on denatured ethyl alcohol, the respondent entertained a reasonable belief that it was not liable to pay excise duty on such product.

The High Court upheld the Tribunal's judgment and pronounced that non-disclosure of the said fact on the part of the assessee would not amount to suppression so as to call for invocation of the extended period of limitation.

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

(a) A manufacturer having a factory at Kanpur has uniform price of ₹1,100 per unit (excluding taxes) for sale anywhere in India. During financial year 2012-13, he made following sales:-

i.	**Sale at factory gate in Kanpur**	**1,000 units – no transport charges**
ii.	**Sale to buyers in Delhi**	**1,500 pieces – actual transport charges incurred ₹18,000.**
iii.	**Sale to buyers in Chennai**	**600 pieces – actual transport charges incurred ₹48,000.**
iv.	**Sale to buyer in Mumbai**	**900 pieces – actual transport charges incurred ₹33,000.**
v.	**Sale to buyer in Patna**	**800 pieces – actual transport charges incurred ₹24,800.**

Find assessable value per unit under the central excise.

Answer:

In this question, since the goods are sold at uniform price of ₹1,100 per unit (excluding taxes) for sale anywhere in India, hence the manufacturer will get deduction on account of cost of transportation on average or equalized basis as per Rule 5 of Central Excise Valuation Rules, 2000.

The assessable value per unit shall be [Price per unit – Cost of transport on average basis] i.e. [₹1,100 - ₹25.79] = ₹1074.21. The cost of transport on average basis shall be computed as under, -

Total actual transport charges incurred during the year (Nil + ₹18,000 + ₹48,000 + ₹33,000 + ₹24,800)	1,23,800
Total number of unit sold (1,000 + 1,500 + 600 + 900 + 800)	4800
Average or Equalised Freight (Transport Charges) per unit (₹1,23,800 ÷ 4,800)	25.79

(b) Determined the basis of valuation under section 4 or section 4A of the Central Excise Act, 1944 in the following cases,

(i) Package products with MRP printed/ marked thereon, exported to Nepal.

(ii) A packaged commodity covered under MRP notification and also the Legal Metrology Act, 2009 unpacked and shown to the customer, tested and then sold to the customer.

(iii) Chocolates distributed as free gift along with his bottles of soft drinks.

(iv) Ice creams sold in bulk to hotels.

Answer:

The above cases have been discussed as follows:

(a) As per Ledger Metrology Act/Rules, there is no need to declare any MRP on the goods to be exported. Hence, in such cases, Section 4A cannot apply and hence, the valuation shall be done as per section 4.

(b) Valuation u/s 4A [Whirlpool of India Ltd. v. UOI 2007 (218) E.L.T. 167 (SC) – already discussed].

(c) The price of chocolates so printed on labels of Pepsi bottles was purely for advertisement purposed. Further, the packs of chocolates were distributed as free gifts, thus there was no 'sale' involved of such chocolate packs. Moreover, Pepsico was an Industrial consumer.
Therefore, MRP on such packs was not required to be declared, hence the valuation was to be made under section 4.
- Jayanti Food Processing Pvt. Ltd. V. CCEx. [2007] 215 ELT 327 (SC)

(d) Since Hotel is an Institutional consumer as per LMPC Rules, hence, MRP is not required to be declared on ice-cream packs sold to them. Therefore, even if MRP is declared on those packs, such packs are to be valued under section 4, and not section 4A.
Further, as per LMPC Rules, the package sold to hotels was a wholesale package and not a retail package, hence, even in that view, there was no requirement to declared RSP on such pack. – Jayanti Food Processing Pvt. Ltd. v. CCEx. [2007] 215 ELT 327 (SC).

(c) State whether the following elements are to be included or not as part of the 'Transaction value' under section 4 of the Central Excise Act, 1944.

(i) Erection and commissioning charges

(ii) System software etched in the computer system

(iii) Cylinder holding charges

(iv) After - sales warranty charges

Answer:

(i) Any payment made by buyer to assessee is includible in assessable value only if it is in 'connection' with sale. In case of erection and commissioning charges for erecting machinery at site, these are incurred after goods are removed from the factory. These may be in 'relation' to sales but are not in 'connection' with sales as there is no 'cause and effect' relationship between the two. Hence these are not includable in assessable value. This is also confirmed *vide* CBE&C Circular No. 643/34/2002-CX, dated 1-7-2002.

(ii) A computer manufacturer loads bought out computer software on computer while selling. Thus, the system software is loaded on computer while computer is cleared from the factory. Computer software as such is exempt from duty. Department had earlier clarified that value of computer software etched or loaded on computer will be includible. However, if computer software is supplied separately on floppy disc or tapes, its value will not be includible. [However, as per CBE&C circular dated 28-2-2003, value of computer software will not be includible in assessable value of computer].

(iii) In case of durable and returnable containers, the container is returnable after the gas or other material inside is used. Often, manufacturing companies take some deposit and charge some rent for the container. These are 'cylinder holding charges'. CBE&C, *vide* its Circular No. 643/34/2002- CX, dated 1-7-2002, has clarified that rental charges or cost of maintenance of reusable metal containers like cylinders etc. are to be included in assessable value. This view is correct as such rental charges and the sale of gas are so intrinsically connected that there can be no sale without such charges.

(iv) Compulsory after sales warranty charges are includible as the sale goods and such charges are inseparable. However, optional service charges are not includable as there is no connection between the sale of goods and the optional service charges.

3. Answer all Questions [3x5=15]

(a) An importer imported some goods on 1st May, 2012 and the goods were cleared from Mumbai port for warehousing on 8th May, 2012 by submitting Bill of Entry, exchange rate was ₹56 per US $. FOB value US $ 10,000. The rate of duty on 8th May, 2012 was 20%. The goods were warehoused at Pune and were cleared from Pune warehouse on 30th September, 2012, when rate of basic customs duty was 16% and exchange rate was ₹58.75 per 1 US $. What is the duty payable while removing the goods from Pune on 30th September, 2012? CVD @10% and Special CVD @4% are applicable.

You are required to find:

I) The total Customs duty payable?

II) The interest if any payable?

Answer:

	(US $)
FOB	10,000
ADD: 20% Freight on FOB	2,000
ADD: 1.125% Insurance on FOB	112.50
CIF	12,112.50
ADD: 1% on CIF	121.125
Assessable Value	12,233.63

	(₹)	
Assessable Value	6,85,083.28	(i.e. 12,233.63 x ₹56)
Add: BCD 16%	1,09,613.32	(I.e. 6,85,083.28 x 15%)
Balance	7,94,696.60	
Add: CVD 10%	79,469.66	(i.e. 7,94,696.60 x 10%)
Balance	8,74,166.26	
Add: 2% Ed. Cess	3,781.66	(i.e. 1,89,082.98 x 2%)
Add: 1%SAH Ed. Cess	1,890.83	(i.e. 1,89,082.98 x 1%)
Balance	8,79,838.75	
Add: Spl. CVD 4%	35,193.55	(i.e. 8,79,838.75 x 4%)
Value of import	9,15,032.30	
Amount of Customs duties	2,29,949.02	

Interest:

(i.e. ₹2,29,949.02x 15% x 56/365) 5,292.00

May 24 days + June 30 days + July 31 days+ Aug 31 days + Sep 30 days= 146 days

145 days –90 days = 55 days

OR,

Distinguished between Pilfered goods u/s 13 and Lost or destroyed goods u/s 23 of the Customs Act, 1962.

Answer:

Distinguished between Pilfered goods u/s 13 vs. Lost or destroyed goods u/s 23

Pilfered goods u/s 13	Lost or destroyed goods u/s 23
Pilferage refers to that in small quantities	Lost or destroyed postulates loss or destroyed by whatever reason whether theft, fire, accident etc.
In this case, the importer is not liable to pay duty leviable on such goods.	The duty payable on lost goods is remitted by Assistant/Deputy Commissioner.
In this case, if the pilfered goods are retrieved duty becomes payable.	In this case, restoration is impossible if the goods one destroyed.
The pilferage must have occurred after the unloading of the goods but before the proper officer has made an order for clearance for home consumption under section 47 or deposit on a warehouse under section 60.	In this case, the goods must have been lost or destroyed at any time before their clearance for home consumption. Thus, it also covers the cases where the goods are lost after the duty has been paid and order for clearance has been given but before the goods are actually cleared.
These provisions do not apply to warehoused goods.	Section 23(i) is applicable to warehoused goods also.
The importer does not have to prove pilferage, as it is obvious at the time of examination by the proper officer.	In this case, the burden is cast on the importer to satisfy the Assistant/Deputy Commissioner that the imported goods have been lost or destroyed at any time before the physical clearance of the goods for home consumption.

(b) Discuss whether any duty drawback is admissible under section 75 in the following cases and if yes, what is the quantum of such duty drawback—

	FOB value of exported goods (₹)	Rate or amount of drawback	Market price of goods (₹)	Value of imported material used in goods (₹)
(a)	2,00,000	0.75% of FOB value	1,60,000	1,00,000
(b)	98,000	1% of FOB value	1,00,000	60,000
(c)	90,000	0.8% of FOB value	1,05,000	52,500
(d)	2,800	1.5%	3,100	2,600
(e)	3,00,000	40% of FOB value	2,25,000	1,80,000
(f)	1,20,000	₹ 30 per kg.	66,000	48,000

	(2,000 kgs.)			
(g)	**4,40,000**	**3.5% of FOB value**	**5,06,000**	**4,95,000**

Answer:

The admissibility or otherwise of duty drawback in the aforesaid cases in discussed hereunder—

(a) Drawback Admissible ₹1,500: Even if the rate of drawback is less than 1% of FOB value of goods, drawback will be admissible because the amount of drawback i.e. 0.75% of 2,00,000 i.e. ₹1,500/- exceeds ₹500.

(b) Drawback Admissible ₹980: The amount of drawback is admissible because it is 1% or more of the FOB value of the goods & more than ₹500.

(c) Drawback Admissible ₹720: Even if the rate of drawback is less than 1% of FOB value of goods, drawback will be admissible because the amount of drawback i.e. 0.8% of ₹90,000 i.e. ₹720/- exceeds ₹500.

(d) Drawback Inadmissible: Even if the drawback is 1.5% of FOB value, drawback will be inadmissible as the amount thereof is 1.5% of 2,800 i.e. ₹42, which is less ₹50.

(e) Drawback Admissible ₹50,000: The amount of drawback i.e. 40% of 3,00,000 i.e. ₹1,20,000 shall be restricted to 1/3rd of the Market price of the goods i.e. 1/3rd of 2,25,000. Hence, the amount of drawback admissible shall be ₹75,000.

(f) Drawback Admissible: In this case the market price of the goods ₹66,000 is more than the amount of drawback i.e. 2,000 kgs. × ₹30 i.e. ₹60,000.

(g) Drawback Inadmissible: No drawback shall be allowed in this case, as the export value i.e. FOB value of the goods is less the value of imported material used therein.

(c) State the differences between orders under Section 6A(1) and 6A(2).

Answer:

(a) Order under Section 6A(1): The assessing authorities are required to pass orders under Section 6A(1) of the CST Act, in case the dealer failed to submit Form 'F' declarations. In this case, the claim for stock transfers is rejected for non-submission of 'F' Forms. Genuineness of the movement of goods otherwise than by way of sale is not decided in the orders passed under this Section. The order is purely on account of non-submission of 'F' Forms. Since 'F' Forms are not submitted, the claim from stock transfers otherwise by way of sale is rejected and tax is levied.

(b) Forms and documents in support of claim for inter-state movement of goods otherwise than by way of sale submitted by the dealer. The assessing authority may reject the claim of the dealer for exemption on stock transfers and levy CST on the such inter-state transfers treating the same as inter-state sales, if he is not satisfied about the movement of goods otherwise than by way of sale.

(c) The basic difference between order under Section 6A(1) and 6A(2) is that in case of order under Section 6A(1) the demand is due to non-submission of 'F' Forms, while in case of order under Section 6A(2) the demand is due to levy of CST treating the movement of goods as a result of sale, rejecting the claim of the dealers that movement is otherwise than as a result of sale.

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

(a) Mr. Kalishanker, a Cost Accountant, raised an invoice for ₹84,270 (75,000 + 9,270 service tax) to a client on 20.4.12. The client, however, has paid a lump-sum of ₹80,000 on 28.7.12 for full and final settlement.

How much service tax Mr. Kalishanker has to pay and when does this tax become due for payment?

What will be his liability, if the client refuses to pay service tax and pay only ₹76,000 in total?

Answer:

As per rule 7 of Point of Taxation Rules, 2011, whereby point of taxation shall be the date of making or receiving the payment, as the case may be.

Therefore, service tax liability will be ₹9,888 (₹80,000 @ 12.36%) and due date of payment of service tax quarterly ended 5th / 6th October 2012.

If client paid ₹76,000 as his full & final settlement -

Service tax liability = $\frac{₹76,000 \times 12.36}{112.36}$ =₹8,360

(b) State briefly whether the following service under the Finance Act, 1994 relating to service tax are taxable service.

i. Service provided in the State of Rajasthan by a person having a place of business in the State of Jammu and Kashmir.

ii. Service provided from India for use outside India.

iii. Service provided from outside India and received in India by Individual otherwise than purpose of use in business or commerce.

iv. Service provided to an Export Oriented Unit.

Answer:

(i) These are taxable services. Services rendered within India (except in the state of Jammu and Kashmir) are come under the service tax net, provided these services are taxable services.

(ii) These services can be considered as export of services, which are exempted from the service tax liability.

(iii) Services in the nature of import are taxable if these are imported for the purpose of business or commerce. Services imported for the purpose of personal use by individuals are exempted from service tax.

(iv) Service provided to export oriented undertaking is liable to service tax. Service rendered to EOU or supplies of services by EOU in domestic market is not presently exempt from service tax.

(c) M/s Martin Pvt. Ltd. is a distributor or selling agent authorized by a State in India. Following is the details of lotteries of a distributor to be organized by the State.

Particulars	**Lakhpati (Printed)**	**Crorepati (Online)**
No. of tickets proposed	**7,50,000**	**8,50,000**
Face value of ticket	**₹ 10 each**	**₹ 500 each**
Guaranteed prize payout	**@60%**	**@90%**
No. of tickets sold	**6,00,000**	**7,35,000**

Calculate the service tax under composition scheme as per Rule 6(7C) of the Service Tax Rules, 1994.

Answer:

Lakhpati lottery tickets - Printed	
No. of tickets proposed	7,50,000 tickets
Face value of ticket	₹ 10 each
Total face value	₹ 75,00,000
Guaranteed prize payout	@60%
Multiples of TEN lakhs or part of TEN lakhs	8 (i.e. ₹75,00,000/ ₹10,00,000)
Service tax payable for every ₹10 lakhs or part thereof	₹ 11,000
Total Service tax (subject to Cess)	88,000 (i.e. 8 x ₹ 11,000)

Crorepati lottery tickets –Online	
No. of tickets sold	7,35,000 tickets
Face value of ticket	₹ 500 each
Total face value	₹ 36,75,00,000
Guaranteed prize payout	@90%
Multiples of TEN lakhs or part of TEN lakhs	368 (i.e. ₹ 36,75,00,000/ ₹10,00,000)
Service tax payable for every ₹ 10 lakhs or part thereof	₹ 7,000
Total Service tax (subject to Cess)	₹ 25,76,000 (i.e. 368 x ₹ 7,000)

Total service tax liability payable by M/s Martin Pvt. Ltd.

Particulars	**Amount in₹**
Lakhpati lottery tickets - Printed	88,000
Crorepati lottery tickets – Online	25,76,000
Sub-total	26,64,000
Add: Education cess @2%	53,280
Add: Secondary and Higher Education cess @1%	26,640
Total service tax liability	27,43,920

Section B

Answer all the Questions

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

Answer the followings with the help of decided case laws-

(a) Would making an incorrect claim in the return of income per se amount to concealment of particulars or furnishing inaccurate particulars for attracting the penal provisions under section 271(1)(c), when no information given in the return is found to be incorrect?

Answer:

In the case of CIT vs. Reliance Petro Products Pvt. Ltd. (2010)322 ITR 158 (SC), the Supreme Court observed that in order to attract the penal provisions of section 271(1) (c), there has to be concealment of the particulars of income or furnishing inaccurate particulars of income. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. Making an incorrect claim (i.e. a claim which has been disallowed) would not, by itself, tantamount to furnishing inaccurate particulars.

The Apex Court, therefore, held that where there is no finding that any details supplied by the assessee in its return are incorrect or erroneous or false, there is no question of imposing penalty under section 271(1)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee.

(b) Can winnings of prize money on unsold lottery tickets held by the distributor of lottery tickets be assessed as business income and be subject to normal rates of tax instead of the rates prescribed under section 115BB?

Answer:

In the case of CIT vs. Manjoo and Co. (2011) 335 ITR 527 (Kerala), the Kerala High Court observed that winnings from lottery is included in the definition of income by virtue of section 2(24)(ix).

Further, in practice, all prizes from unsold tickets of the lotteries shall be the property of the organising agent. Similarly, all unclaimed prizes shall also be the property of the organising agent and shall be refunded to the organising agent.

The High Court contended that the receipt of winnings from lottery by the distributor was not on account of any physical or intellectual effort made by him and therefore cannot be said to be "income earned" by him in business. The said view was taken on the basis that the unsold lottery tickets cease to be stock-in-trade of the distributor because, after the draw, those tickets are unsaleable and have no value except waste paper value and the distributor will get nothing on sale of the same except any prize winning ticket if held by him, which, if produced will entitle him for the prize money. Hence, the receipt of the prize money is not in his capacity as a lottery distributor but as a holder of the lottery ticket which won the prize. The Lottery Department also does not treat it as business income received by the distributor but instead treats it as prize money paid on which tax is deducted at source.

Further, winnings from lotteries are assessable under the special provisions of section 115BB, irrespective of the head under which such income falls. Therefore, even if the argument of the assessee is accepted and the winnings from lottery is taken to be received by him in the course of his business and as such assessable as business income, the specific provision contained in section 115BB, namely, the special rate of tax i.e. 30% would apply.

Therefore, the High Court held that the rate of 30% prescribed under section 115BB is applicable in respect of winnings from lottery received by the distributor.

(c) Whether the Tribunal was justified in directing the Assessing Officer to allow the claim of the assessee for exemption under section 10(10C) of the Income-tax Act, 1961 to the extent of ₹5,00,000 by applying the prospective amendment retrospectively?

Answer:

Fact of the case

The assessee's employer had determined the ex-gratia amount payable to the assessee on his voluntary retirement of ₹ 7,13,513, but out of this amount only one-fifth, i.e., ₹1,42,703 was actually paid to the assessee in the previous year relevant to the assessment year 2003-04. The assessee, however, claimed deduction for a total sum of ₹ 5,00,000, the maximum limit under section 10(10C) of the Income-tax Act, 1961. The Assessing Officer allowed exemption only for ₹ 1,42,703 and added back the balance. The assessee preferred an appeal, whereupon the Commissioner (Appeals) partly allowed the appeal. The appeal preferred by the Department was dismissed by the Tribunal.

The High Court in the case of Income-tax Officer vs. Dhan Sai Srivas (2009) 315 ITR 318 (Chhattisgarh) held that under the scheme, the liability to pay was incurred and the amount became payable at the time when the employee was released, having opted for the voluntary retirement under the scheme. Salary or benefit in lieu of salary payable to an employee opting for voluntary retirement was chargeable to tax under section 15(a) as soon as it became due, though not paid. The amount so received was exempt from being charged to tax to the extent of ₹ 5,00,000 by reason of section 10(10C) of the Act. Even if the payment was stretched over a period of years, it would not become chargeable to tax in any subsequent assessment year.

Section 10(10C) of the Act was inserted in order to make voluntary retirement more attractive and beneficial to employees opting for voluntary retirement. Therefore, this has to be interpreted in a manner beneficial to the optee of voluntary retirement, if there is any ambiguity.

It could not have been the intention of the Legislature to restrict the benefit under section 10(10C) of the Act to employees, who retired before April 1, 2004, to the extent of the amount actually received by them at the time of voluntary retirement for that particular assessment year and to other employees of the same organization who opted for voluntary retirement after that to extend that benefit for the amount received by them as well as the amount receivable by them in the subsequent financial years. Therefore, the amendment to clause (10C) of section 10 of the Act by the Finance Act, 2003 with effect from April 1, 2004 adding the words "or receivable" after the words "received" is clarificatory.

(d) Would refund of excise duty and grant of interest subsidy under the incentive scheme formulated by Central Government for public interest, namely, to accelerate industrial development, generate employment and create opportunities for self-employment in state of Jammu and Kashmir be treated as a revenue receipt or a capital receipt?

Answer:

In the case of Shree Balaji Alloys vs. CIT (2011) 333 ITR 335 (J&K), the Tribunal contended that excise duty refund and grant of interest subsidy received by the assessee in pursuance of the New Industrial Policy introduced in Jammu and Kashmir were revenue receipt and not capital receipt on the grounds that:

(i) the aforesaid incentives were not given to establish industrial units because the industry was already established.

(ii) the incentives were available only on commencement of commercial production.

(iii) the incentives were recurring in nature.

(iv) the incentives were not given for acquisition of capital assets.

(v) the incentives were given for easy market accessibility and to run the business more profitably.

The High Court observed that the fact that incentives would become available to industrial units entitled thereto from the date of commencement of commercial production and the fact that these were not granted for creation of new assets were not the sole criteria for determining the nature of subsidy. The fact that such incentives were provided to achieve a public purpose should also be considered to determine the nature of subsidy and hence, such subsidy could not be construed as a production or operational incentive for the benefit of the assessee. Hence, the aforesaid incentives are capital receipts not liable to taxation.

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

(a) From the following information, determine the tax liability of KMD Ltd., domestic company, for the Assessment Year 2012-2013 and 2013-2014.

S. No.	Assessment year	Book-profits (₹)	Total income (₹)
1.	2012-2013	2,90,000	1,35,000
2.	2013-2014	3,00,000	2,00,000

[5]

Answer:

Surcharge is not considered assuming, Net Income less than ₹ 1 crore

Assessment Year	Book-profit (₹)	Total Income (₹)	Tax on Book-Profit (₹)	Tax on Total Income @ 30.9% rounded off u/s 288B (₹)	Tax Credit = Tax on Book Profits (–) Tax on Total Income (₹)	Tax Payable after tax credit set off, if any (₹)	Tax credit balance (₹)
2012-2013	2,90,000	1,35,000	@ 19.055% on 2,80,000 = 55,260	@ 30.9% on 1,35,000 = 41,715	13,545	55,260	13,545
2013-2014	3,00,000	2,00,000	@ 19.055% on 3,00,000 = 57,165	@ 30.9% on 2,00,000 = 61,800	—	48,255 [61,800 – 13,545]	—

Note: Tax Payable is rounded off to the nearest multiple of ₹ 10 (Sec. 288B)

(b) W Ltd is a qualifying shipping company which has got two qualifying ships during the Previous Year 2012-2013:

Ship	Tonnage weight	No. of operational days
Ship A	**37,959 tonnes and 990 kg**	**300 days**
Ship B	**25,580 tonnes and 275 kg**	**365 days**

Compute its tonnage income under Tonnage Tax Scheme for the Assessment Year 2013-2014.

[5]

Answer:

Ship A	Ship B
(i) Tonnage consisting of kilograms is ignored. (ii) If such tonnage is not a multiple of 100 tonnes and the last two digits are more than 50, the tonnage is increased to the next higher tonnage which is a multiple of 100. (iii) Tonnage rounded off = 38,000 tonnes	(i) Tonnage consisting of kilograms is ignored. (ii) If such tonnage is not a multiple of 100, and last two digits are 50 or more, the tonnage is increased to next higher tonnage which is a multiple of 100 (iii) Tonnage rounded off - 25,600 tonnes

Income— computation under TTS		Income— computation under TTS	
Daily TI:	₹	Daily TI:	₹
First 1,000 tonnes = ₹ 46 × 10 = Next 9,000 tonnes = ₹ 35 × 90 = Next 15,000 tonnes = ₹ 28 ×150 = Balance 13,000 tonnes = ₹ 19 ×130 =	460 3,150 4,200 2,470	First 1,000 tonnes = ₹ 46 × 10 = Next 9,000 tonnes = ₹ 35 × 90 = Next 15,000 tonnes = ₹ 28 × 150 = Balance 600 tonnes = ₹ 19 × 6 =	460 3,150 4,200 114
Daily TI:	10,280	Daily TI:	7,924
Total TI for the Previous Year ₹ 10, 280 × 300	30,84,000	Total TI for the Previous Year ₹ 7,924 × 365	28,92,260

(c) Compute the taxable income of Chamber of Commerce from the following data:

	1 (₹)	2 (₹)	3 (₹)
Gross receipts for specified services rendered to members	**3,50,000**	**3,00,000**	**4,00,000**
Expenses incurred in connection with the above	**1,50,000**	**1,50,000**	**3,00,000**
Interest on bank deposits	**80,000**	**60,000**	**1,20,000**
Receipt from members	**3,00,000**	**4,50,000**	**5,00,000**
Expenditure incurred on members	**2,10,000**	**6,75,000**	**5,20,000**

[5]

Answer:

(a) Statement showing computation of taxable income:

	1(₹)	2 (₹)	3 (₹)
Net income from rendering specific services (Gross receipts – Expenses)	2,00,000	1,50,000	1,00,000
Less: Deficiency set off [maximum to the extent of 50% of total assessable income before set off of deficiency (as per notes)]	—	1,05,000	1,00,000
Business Income (A)	2,00,000	45,000	Nil
Interest on bank deposit under other heads	80,000	60,000	1,20,000

Less: Deficiency although allowable upto 50% of total assessable income which could not be set off against business income	—	—	10,000
Other Income (B)	80,000	60,000	1,10,000
Gross Total Income (A)+(B)	2,80,000	1,05,000	1,10,000
Less: Deduction u/s 80C to 80U	Nil	Nil	Nil
Total Income	2,80,000	1,05,000	1,10,000

Note 1: Surplus of ₹ 90,000 under case 1 is not taxable as it is from mutual activity.

Note 2: Deficiency under case 2 and 3 would not allow but for the benefit given u/s 44A.

Note 3:

	Case 2 (₹)	Case 3 (₹)
Surplus from specified services	1,50,000	1,00,000
Interest income	60,000	1,20,000
	2,10,000	2,20,000
Less: Deduction u/s 80C to 80U	Nil	Nil
	2,10,000	2,20,000

Note 4: In case 3, 50% of the assessable income is ₹ 1,10,000 (i.e. 50% of ₹2,20,000) but it will be set off from business income which in this case is ₹1,00,000 and the balance shall be set off from the other income.

(b) In the case of social club neither surplus from members nor surplus on account of specific services rendered to it members is taxable. Further, if there is any deficiency from mutual activity, it cannot be set off as provisions of section 44A are applicable only in case of trade, professional or similar association.

Therefore, income of a club will be calculated as under:

	1 (₹)	2 (₹)	3 (₹)
Receipt from members	3,00,000	4,50,000	5,00,000
Gross receipts for specified services rendered to members	3,50,000	3,00,000	4,00,000
	6,50,000	7,50,000	9,00,000
Less: Expenses	3,60,000	8,25,000	8,20,000
Surplus/ (Deficiency)	2,90,000	(75,000)	80,000

The above surplus is exempt and deficiency is not allowed to be set off.

	1 (₹)	2 (₹)	3 (₹)
Interest on bank deposits	80,000	60,000	1,20,000

Gross Total Income	80,000	60,000	1,20,000
Less: Deduction	Nil	Nil	Nil
	80,000	60,000	1,20,000

(d) Rahul a resident Indian, has derived the following income for the previous year relevant to the Assessment Year 2013-2014.

Particulars	**Amount (₹)**
Income from profession	**8,00,000**
Share of income from a partnership in country X (tax paid in Country X for this income in equivalent Indian ₹45,000)	**5,50,000**
Commission income from a concern in country Y (tax paid in country Y @ 20%, converted in equivalent Indian Rupees)	**1,55,000**
Interest on scheduled banks [other than savings account]	**35,000**

Rahul wishes to know whether he is eligible to any double taxation relief, if so, its quantum. India does not have any Double Taxation Avoidance Agreement with countries X and Y.

[5]

Answer:

(1) Computation of Total Income for the Assessment Year 2013-14

Particulars	Amount (₹)	Amount (₹)
Income from Business:		
Income from profession	8,00,000	
Share income in partnership firm in country X	5,50,000	13,50,000
Income from Other Sources:		
Interest from schedule bank	35,000	
Commission earned in country Y, assumed from other sources	1,55,000	1,90,000
Total Income		15,40,000

(2) Computation of Tax Liability on Total Income for the Assessment Year 2013-14

Particulars	Amount (₹)
Tax on Total Income of ₹ 15,40,000	2,92,000
Add: Surcharge on Income Tax (assuming total income is less than one crore)	Nil
Add: Education Cess @ 2%	5,840
Add: Secondary and Higher Education Cess @ 1%	2,920
	3,00,760
Less: Double taxation relief : (5,50,000 + 1,55,000) = 7,05,000 x 10.78%	75,999
Tax Payable	2,24,761

Note: (i) Average rate of tax in the foreign country = [(45,000 + 31,000)/ (5,50,000 +1,55,000)] =10.78%

(ii) Average rate of tax in India:

= 3,00,760/ 15,40,000 x 100 = 19.53%

Whichever is less, is applicable

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

(a) (i) 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 28.05.2012 which was received by the assessee on 2.6.2012. The assesss filed the return on 30.6.2012. Is the return valid? [2]

Answer:

No. As per section 139(4), if return is not furnished within the time allowed under section 139(1), the person may furnished his return of income of any previous year at any time before the assessment is made or before the end of one year from the end of relevant assessment year.

In this case assessment is completed under section 144. So, return filed by assessee is not valid.

(ii) Return of income for previous year 2010-2011 was submitted by R on 16.07.2011. The Assessing Officer wants to take the case for scrutiny assessment and service the notice on (I) 27.09.2012; (II) 31.10.2012. Is the notice valid? [3]

Answer:

As per section 143(2), no notice shall be served on the assessee after the expiry of 6 months from the end of the financial year in which the return is furnished.

(a) Yes,
(b) No, Notice can be served only till 30.09.2012.

(b) (i) Return of income for previous year 2010-11 was submitted by Raju on 28.07.2011 declaring an income of ₹11,40,000. A revised return was filed on 18.05.2012 declaring an income of ₹8,80,000 up to what time a notice for scrutiny can be served by the Assessing Officer. [3]

Answer:

Since revised return is filed on 18.05.2012, notice for scrutiny can be served up to 30.9.2013 i.e., six months from the end of the financial year in which revised return was filed.

(ii) Can father, mother, son and his wife, presently assessed as Hindu undivided family as well as individual, form on association of persons as well as a source of income not belonging to the Hindu undivided family? [2]

Answer:

No, HUF is a separate and a distinct tax entity. The income of a HUF can be assessed in the hand of the HUF alone and not in the hands of any of its members, unless specifically provided by law.

(c) The Assessing Officer while making the assessment of assessment year 2004-05, passed an order on 5.7.2006 disallowing certain expense which was being allowed to the assessee right from assessment year 1971-1972 to the assessment year 2003-04. The assessee filed an appeal against the aforesaid assessment order made under section 143(3) to CIT (Appeal) then to ITAT and so on which finally went up to the Supreme Court. The Supreme Court on 15.10.2011 held that said expense is not allowable.

Discuss whether the Assessing Officer can issue notice for reassessment of income right from assessment year 1971-72 in view of the no time limit applicable as per section 150(1). [5]

Answer:

The order which was subject matter of appeal was passed by the Assessing Officer on 5.7.2006 and according to section 150(2) as per the provisions as existed on 5.7.2006 the Assessing Officer could issue notice for reassessment only for a maximum period of 6 years.

Thus as on 5.7.2006, notice under section 148 could not be issued for assessment year 1971-72 to assessment year 1999-00 as it falls beyond the period of 6 years.

Although as per section 150(1) notice for reassessment could be issued at any time but it has to be read with section 150(2) which prohibits the issue of notice beyond a time period which was applicable on the date of order which was subject matter of appeal, etc. Thus notice in this case can be issued for assessment year 2000-01 to assessment year 2005-06.

(8) Answer any one Question [1x5]

(a) Mr. Sujit furnishes the following particulars for the compilation of his Wealth Tax return for Assessment Year 2013-14.

- **i. Gifts of jewellery made to wife from time to time aggregating ₹80,000.Market value on valuation date ₹4,50,000**
- **ii. Flat purchased under installment payment scheme in 1998 for ₹ 10,50,000. Used for purposes of his residence and market value as on 31.3.2013. (Installment remaining unpaid ₹2,60,000) ₹35,00,000**
- **iii. Urban land transferred to minor handicapped child valued on 31.3.2013 ₹6,00,000. [5]**

Answer:

Assessee: Sujit Valuation Date: 31.03.2013 Assessment Year: 2013-14

Computation of Taxable Wealth

Particulars	Taxable	Reasons
Gift of Jewellery made to wife	₹ 4,50,000	Deemed asset u/s 4. Fair Market Value of the Jewellery is taxable.
Flat used for residence	NIL	Taxable as an asset u/s 2(ea)(i) but the assessee can claim exemption u/s 5(vi). So full value of the asset is exempt from tax.
Urban Plot in the hands of the minor	NIL	Asset held by the minor who is handicapped u/s 80U, clubbing provisions does not apply.

(b) SPD Ltd. a widely held company owns the following assets as on 31.3.2013: -

i. **Land at Rajarhat (West Bengal) purchased in 2003 on which a residential complex consisting of 24 flats, to be sold on ownership basis, is under construction for last 18 months.**
ii. **Two office flats at Noida purchased for resale in the year 2002.**
iii. **Shares of Group Companies, break-up value of which is ₹ 22,00,000**
iv. **Cash at construction site ₹11,00,000**
v. **Residential flat in occupation of company's whole-time director drawing a salary of ₹5,50,000 per annum.**

Which of the above assets will be liable for wealth? Give reasons in brief. [5]

Answer:

Assessee: SDP Ltd.

Valuation Date: 31.3.2013

Assessment Year: 2013-14

Nature of Asset	Amount Taxable	Reasons
Land at Rajarhat purchased in 2003	NIL	Land on which construction is started – Once construction activity starts on urban land, it loses its character of urban land and is outside purview of definition of 'assets'.
Residential Flats at Noida purchased in 2005 for resale	NIL	House Property held as stock-in-trade - not an asset u/s 2(ea)
Shares of Group Companies	NIL	Not an asset u/s 2(ea)
Cash at construction site	NIL	Any amount recorded in the books of account is not an asset u/s 2(ea)
Residential House Property for	NIL	Since Gross Annual Salary of Whole Time Director is less than ₹ 10 Lakhs - not an asset u/s

Whole-Time Director		2(ea)

(9) Answer any two Questions [2x5=10]

(a) Legend India Ltd. is an Indian company. The following incomes are noted from its books of account:

Income from a business in India 3,80,000

Income from a business in a foreign country with whom India has ADT agreement 3,32,000

According to the ADT agreement, ₹3,32,000 is taxable in India. However, it can also be taxed in the foreign country @ 16.65% which can be set off against Indian tax liability. Find out the Indian tax liability. [5]

Answer:

Computation of Indian Tax liability of Legend India Ltd. (Amount in ₹)

Income from a business in a foreign country with whom India has ADT agreement	3,32,000
Income from business in India	3,80,000
Total Income	7,12,000
Total Tax payable in India (7,12,000 x 30.9%)	2,20,008
Less: Tax paid in foreign country @ 16.65% of ₹3,32,000 (as per ADT agreement)	55,278
Net Indian tax Liability (rounded off to nearest ₹10)	1,64,730

(b) Sunil, aged 64 years, is resident in India. His income is ₹33,60,000 from a business in India and 8,90,000 from a business in a foreign country with whom India has agreement for avoidance of double taxation (ADT). According to the ADT agreement, income is taxable in the country in which it is earned and not in other country. However, in the other country, such income can be included for computation of tax rate. According to the tax laws of the foreign country, Sunil has paid ₹44,500 as tax in that country. During the previous year, Sunil has paid ₹48,000 as tuition fee for his daughter in India and ₹2,00,000 as tuition fee for his son outside India for full time education. Sunil has also received an interest of ₹64,000 on Government securities. Find out the tax liability of Sunil. Does it make any difference, if Sunil is a non-resident? [5]

Answer:

The relevant computation are (Amount in ₹)

Business income in India	33,60,000
Interest on Government Securities	64,000
Gross Total Income	34,24,000
Less: Deduction u/s 80C [WN]	48,000
Total Income	33,76,000
Add: Foreign income to be included for rate purposes	8,90,000
Total income for tax purposes [A]	42,66,000

Income tax on [A]	11,09,800
Add: EC and SHEC @3%	33,294
Total Tax [B]	11,43,094
Average Rate of Tax (₹11,43,094 ÷ ₹42,66,000 x 100)	26.80%
Indian Tax liability [₹ 33,76,000 x 26.80%] (rounded off to nearest ₹10)	3,06,350

Working Note: Deduction under section 80C is not available for tuition fee paid outside India.

(c) Amit, an Indian resident, has paid tax in a foreign country in respect of his income which accrued in that country. India has no double taxation avoidance agreement with that country. Such income is also taxable in India. Is there any relief available to him in respect of the tax paid by him? Explain. [5]

Answer:

Relief where no double taxation avoidance agreement exists [Section 91]: The assessee shall be allowed relief in respect of such income under section 91 provided all the following conditions are fulfilled -

(a) The assessee is a resident in India during the relevant previous year.
(b) The income accrues or arises to him outside India during that previous year.
(c) Such income is not deemed to accrue or arise in India during the previous year.
(d) The income in question has been subjected to income-tax in the foreign country in the hands of the assessee and the assessee has paid tax on such income in the foreign country.
(e) There is no agreement under section 90 for the relief or avoidance of double taxation between India and the other country where the income has accrued or arisen.

Double Taxation Relief (DTR): In such a case, the assessee shall be entitled to a deduction from the Indian income-tax payable by hum. The deduction would be a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax in the said country, whichever is lower, or at the Indian rate of tax if both the rates are equal. In other words, lower of the following sums shall be deductible from Indian income tax-

(a) Doubly taxed income x Indian rate of tax.
(b) Doubly taxed income x Rate of tax paid in other country.

Indian rate of tax: "Indian rate of tax" means the rate determined by dividing the amount of Indian income-tax after deduction of any relief due under the provisions of this Act but before deduction of any relief due under this Chapter, by the total income.

Rate of tax of the said country: "Rate of tax of the said country" means income-tax and super-tax actually paid in the said country in accordance with the corresponding laws in force in the said country after deduction of all relief due, but before deduction of any relief due in the said country in respect of double taxation, divided by the whole amount of the income as assessed in the said country.

Notes: Doubly taxed income: The Rajasthan High Court in CIT v. Dr. R.N. Jhanji [1990] 185 ITR 586 (Raj.) has held that where a part of foreign income is eligible for deduction under Chapter VI-A,

then only that part of income shall be eligible for relief under section 91 which is included in total income that is income after availing deduction under Chapter V1-A.

The Bombay High Court in CIT v. Bombay Burmah Trading Corporation Ltd. [2003] 259 ITR 423 (Bom.) has held that relief under section 91 is calculated on the income country-wise and not on the basis of aggregation or amalgamation of income from all foreign sources.