Paper 16 – Tax Management & Practice

Question 1.

(i) 'D', an Indian citizen left India for the first time on 20.9.2013 for employment in Denmark. During the Previous Year 2014-15 he comes to India on 5.5.2014 for 150 days. Determine the residential status of 'D' for the Assessment Years 2014-15 and 2015-16.

Solution :

During the Previous Year 2013-14 (A.Y. 2014-15) 'B' was in India for 175 days (30+31+30+31+31+21) and therefore, does not satisfy the first condition. As regards the second condition, although he was here in the four preceding Previous Years for more than 365 days as he was permanently in India but for the relevant Previous Year 2013-14 he should have been here for 182 days instead of 60 days as he is a citizen of India and leaves India in 2013-14 for employment abroad.

He neither satisfies the first, nor the second condition and is therefore, Non-Resident in India. Similarly, during the previous year 2014-15 (A.Y. 2015-16) he visits India for 150 days. In this case also, the period of 60 days will be substituted by 182 days as he is a citizen of India. Therefore, he will be a Non-Resident in India even for the Previous Year 2014-15 (A.Y. 2015-16).

(ii) A Hindu Undivided Family (Mr. W is Karta, X, Y and Z are coparceners) carries on cloth business in Bhutan. X comes to India and starts a cloth business at Mumbai in partnership with some other persons. The capital contributed by X to this firm is found to have come from the family. Subsequently, Y joins the firm as partner. Later on another business is started at Varanasi with the same persons and one outsider as partner. Z joins this firm. The Assessing Officer wants to treat the family as resident on the ground that its coparceners are partners in firms, financed out of the family funds, and the firms are resident in India. Is the Assessing Officer legally correct?

Solution:

A case on similar facts was examined by the Supreme Court of India in the case of CIT vs. Nandlal Gandalal (1960) 40 ITR 1, wherein the Apex Court pointed out that both under the Hindu Law and under the Law of Partnership, the Hindu Undivided Family as such could exercise no control over the management of a firm in which some of its coparceners were partners, even if capital contributed by coparceners was found to have come from the family.

The position in Hindu Law with regard to coparcener who has entered into partnership with others is well settled. The partnership is a contractual partnership and is governed by the Indian Partnership Act, 1932. The partnership is between the coparcener individually and the other partners and not between the family and other partners. This remains so even if the coparcener is accountable to the family for the income received. Thus, control and management over the firm's business lies in the hands of individual coparceners and not in the hands of the family. The Assessing Officer is, therefore, not justified while holding the HUF as resident in India.

(iii) Mr. Khan discloses following particulars of his receipts during the Previous Year 2014-2015:

(a) Salary income earned at Pune but received in China ₹ 5,00,000.

(b) Profits earned from a business in South Africa which is controlled in India, half of the profits being received in India ₹4,40,000.

(c) Income from property, situated in Nairobi and received there ₹1,50,000.

(d) Income from agriculture in Bangladesh and brought to India ₹1,90,000.

(e) Dividend-paid by an Indian company but received in Itali on 15th May, 2014 ₹44,000.

(f) Interest on USA Development Bonds, one half of which was received in India ₹1,52,000.

(g) Past foreign untaxed income brought to India ₹4,20,000.

(h) Gift of $1000 from father, settled in USA, received in India ₹1,60,000.

(i) Capital Gains on sale of Land in Delhi, consideration received in Canada ₹5,00,000.

(j) Income from structure-designing consultancy service, set up in Germany, controlled from India, profits being received outside India ₹8,00,000.

(k) Loss from foreign business, controlled from India, sales being received in India ₹4,00,000.

Determine his Gross Total Income for the Previous Year 2014-2015 if he is

(i) Resident and Ordinarily Resident,

(ii) Resident but not Ordinarily Resident,

(iii) Non Resident.

Solution:

Computation of Gross Total Income for the Previous Year 2014-15

Particulars	ROR	RNOR	NR
(a) Salary earned at Pune but received at China. Salary is deemed to accrue or arise at a place where services are rendered, place of receipt being immaterial [Sec. 9(1)(ii)] Hence, it is taxable in all cases	5,00,000	5,00,000	5,00,000
(b) Profits of ₹ 4,40,000 earned from a business in South Africa, controlled in India:			
A. One half of profits are taxable on receipt basis	2,20,000	2,20,000	2,20,000
B. Other half profits—from foreign business controlled in India (in case of resident and ordinarily resident, place of control is of no relevance)	2,20,000	2,20,000	—
(c) Income from property in Nairobi and received there : income accruing or arising outside India	1,50,000	—	—
(d) Income from agriculture in Bangladesh and brought to India: It is not income received in India as receipt means first receipt. Hence, it is not taxable in case of "not ordinarily resident" and "non-resident". In case of "ordinarily resident", it is income accruing or arising outside India. Hence, it is taxable. It should be noted that it is not agricultural income as it is not received from land, situated in India, and hence not derived from sources of income being exempted u/s 10(1).	1,90,000	—	—

(e) Dividend paid by an Indian company but received in Itali: Dividend paid by an Indian Company is deemed to accrue or arise in India. However, any dividend paid, declared or distributed by a domestic company on or after 1st April,2005 is exempt from tax u/s 10(34). Therefore, such dividend is not taxable	—	—	—
(f) Interest on USA Development Bonds: A. One half of taxable on receipt basis B. Other half is taxable only in case of "ordinarily resident" as it is foreign income accruing or arising outside India	 76,000 76,000	 76,000 —	 76,000 —
(g) Past untaxed foreign income brought to India. It is not an income received in India. Furthermore, it is not the income of the Previous Year 2014-15. Hence, it is not taxable in any case	—	—	—
(h) Gift from a relative is not taxable	—	—	—
(i) Capital gain is deemed to accrue or arise in India u/s 9(1)(i)	5,00,000	5,00,000	5,00,000
(j) Income from consultancy profession, set up outside India, profits being received outside India: Taxable in case of "ordinarily resident", as income accruing or arising outside India and received outside India [Sec.5(1)(c)] In case of "not ordinarily resident, as it is not income from profession set up in India, control and management applies to business and not to professions. Hence, it is not taxable [Sec. 5(1) (c) r.w. proviso]	8,00,000	—	—
(k) Loss from foreign business, controlled from India Income includes loss also. Profits are embedded in sales. As sales realization were received in India, the place of control and management is not relevant. Business loss can be set off against business profits and thereafter against the income of any other head except income from salary and chance winnings (Sec. 70)	(4,00,000)	(4,00,000)	(4,00,000)
Gross Total Income	23,32,000	11,16,000	8,96,000

(iv) Mr. Sakti, an Indian citizen, earns the following income during the Previous Year 2014-2015 (A.Y. 2015-16):

(a) Profits from a business in Mumbai, managed from France ₹10,40,000.

(b) Pension for services rendered in Kenya but kept with State Bank in Kenya with the permission of the Reserve Bank of India ₹3,60,000.

(c) Income from property in Kuwait, received in India ₹3,70,000.

(d) Profits from business in Nepal and deposited in a bank there ₹24,000.

(e) Income received in Oman from a profession, which was set up in India, extended to Oman and managed from Kenya ₹3,00,000.

(f) Profit on sale of machinery in India but received in Italy ₹2,52,000.

(g) Profits, before allowing depreciation, from business Kuwait 50% of profits were received in India ₹4,00,000.
Total depreciation ₹5,00,000.

(h) Interest on foreign bank deposit, received by his minor son in India Bank deposit was made out of funds gifted by grandfather ₹3,40,000.

(i) A German company credited commission to his Bank Account outside India for sale of goods by him in India ₹3,50,000

(j) Commission earned and received by him outside India on export orders collected by him in India for foreign exporters, without any authority being given to him by them ₹4,60,000.

(k) Dividends remitted in India by an Egyptian company to him under his instruction through Bank of Patiala ₹3,60,000.

Determine his Gross Total Income for the Previous Year 2014-2015 if he is

(i) Resident and Ordinarily Resident;

(ii) Resident but not Ordinarily Resident; and

(iii) Non Resident.

Solution:

Computation of Gross Total Income for the Previous Year 2014-15

Particulars	ROR	RNOR	NR
(a) Profits from a business at Mumbai, managed from France: Income from business accrues at the place where the business is done, place of management being of no relevance. Hence, it is taxable in all cases.	10,40,000	10,40,000	10,40,000
(b) Pension for services rendered in Kenya, received there: – Pension is deemed to accrue or arise at a place where services are rendered	3,60,000	—	—
(c) Rent of house property, situated in Kuwait, but received in India	3,70,000	3,70,000	3,70,000
(d) Profits from business in Nepal and deposited in Bank there: Income accruing or arising outside India	24,000	—	—
(e) Income from profession in Oman which was set up in India, received there, managed from there: Foreign Income accruing or arising outside India from a Profession set up in India is taxable in case of ROR and RNOR. Its control and management is not relevant	3,00,000	3,00,000	—
(f) Profit on sale of machinery in India but received in Italy: Income from asset situated in India is deemed to accrue or arise in India. Hence, it is taxable in all cases	2,52,000	2,52,000	2,52,000
(g) Profits from foreign business	4,00,000	2,00,000	2,00,000
(h) Depreciation of foreign business It can be set off first from business profits and thereafter against the income of any other head u/s 32(2)	(5,00,000)	(2,50,000)	(2,50,000)
(i) Income of a minor child is included in total income of that parent whose income, before including such income is greater [Sec.64(1A)], however, an exemption upto ₹ 1,500 is to be allowed u/s 10(32)	3,38,500	3,38,500	3,38,500

(j) Commission from German company received outside India is deemed to accrue or arise in India because of business connection in India u/s 9(1)(i)	3,50,000	3,50,000	3,50,000
(k) Commission earned and received outside India on export orders collected in India is deemed to accrue or arise in India [Explanation 2 of Sec.9(1)(i) w.e.f. A.Y. 2007-08]	4,60,000	4,60,000	4,60,000
(l) Dividends from foreign company received outside India	3,60,000	—	—
Gross Total Income	37,54,500	30,60,500	27,60,500

(v) Compute Income for Mr. Om Prakash for the Previous Year 2014-15.

(a) Salary accrued and received in India ₹45,000.

(b) Profit from hotel business in Japan ₹90,000.

(c) Dividends declared in Japan received in India ₹22,500.

(d) Gain from transfer of capital asset in India ₹52,500.

(e) Interest on Debentures of a company in New York received in India ₹28,500.

(f) Royalty received in Germany from a resident in India for technical services provided for a business in Germany ₹30,000.

(g) Interest received in UK from Mr. Robert, a non-resident, on loan provided to him for business in India ₹9,000.

(h) Fees from an Indian company carrying on business in the UK for technical services rendered in London, directly deposited in his bank account in India ₹37,500.

Compute the Gross Total Income of Mr. Om Prakash for the relevant Previous Year 2014-15 (A.Y. 2015-16), if he is (i) Ordinarily Resident, (ii) Not Ordinarily Resident, (iii) Non Resident.

Solution:

Computation of Gross Total Income of Mr. Om Prakash for the Previous Year 2014-2015

	ROR	RNOR	NR
(a) Salary accrued and received in India	45,000	45,000	45,000
(b) Profit from hotel business in Japan	90,000	—	—
(c) Dividends declared in Japan received in India	22,500	22,500	22,500
(d) Gains from transfer of a capital asset in India deemed to accrue or arise in India	52,500	52,500	52,500
(e) Interest on debentures of a company in New York but received in India	28,500	28,500	28,500
(f) Royalty received in Germany from a resident in India for technical services provided for a business in Germany	30,000	—	—
(g) Interest received in UK from Mr. Robert, a non-resident, on loan provided to him for business in India	9,000	9,000	9,000
(h) Fees from an Indian company, carrying on business in UK for technical services rendered in London, directly deposited in his Bank Account in India	37,500	37,500	37,500
Gross Total Income	3,15,000	1,95,000	1,95,000

Question 2:

(i) Akash joined a company on 01.07.2014 and was paid the following emoluments and allowed perquisites as under:

Emoluments: Basic Pay ₹ 40,000 per month; D.A. ₹ 20,000 per month; Bonus ₹ 20,000 per month.

Perquisites :

(a) Furnished accommodation owned by the employer and provided free of cost;

(b) Value of furniture therein ₹ 4,80,000; Hire charges of Furniture provided ₹ 20,000 p.a.;

(c) Motor car owned by the company (with engine c.c. less than 1.6 litres) along with chauffeur for official and personal use, expenses met by Employer;

(d) Sweeper salary paid by company ₹ 1,500 per month; amount recovered @ ₹ 200 pm;

(e) Watchman salary paid by company ₹ 1,500 per month; amount recovered @ ₹ 300 pm;

(f) Educational facility for 2 children provided free of cost. The school is owned and maintained by the company. Elder child studies in class V and younger child in class II. Tuition fee per month ₹ 1,600 & ₹ 900 respectively;

(g) Loan of ₹ 5,00,000 repayable within 7 years given on 1.9.2014 for purchase of a house. No repayment was made during the year. Interest charged by employer @ 2% p.a. Interest chargeable as per Income Tax Act @ 10% p.a.;

(h) Interest free loan for purchase of computer ₹ 50,000 given on 01.02.2015. No repayment was made during the year. Interest rate as per Income Tax Act, 1961 @16.5% p.a.;

(i) Corporate membership of a club. The initial fee of ₹ 1,00,000 was paid by the company. Akash paid the bills for his use of club facilities.

You are required to compute the income of Akash under the head "Salaries" in respect of Assessment Year 2015-16.

Solution: Assessee: Mr. Akash Assessment Year: 2015-16

Computation of Income from Salary

Particulars	Amount (₹)
Basic Pay (40,000 x 9 months)	3,60,000
Add: Dearness Allowance (20,000 x 9 months)	1,80,000
Add: Bonus (20,000 x 9 months)	1,80,000
Add: Taxable Value of Perquisite related to: -	
- furnished accommodation (Note 1)	1,44,000
- motor car provided by employer [(1,800 + 900) x 9 months]	24,300
- salary of sweeper [(1,500 – 200) x 9 months]	11,700
- salary of watchman [(1,500 – 300) x 9 months]	10,800
- educational facilities (Note 2)	5,400
- interest free housing loan (Note 3)	23,333
- interest free computer loan (Note 4)	1,375
Gross Income from Salary	9,40,908

Note 1: Salary for the purpose of computing taxable value of furnished accommodation:

Particulars	**Amount (₹)**
Basic Salary	3,60,000

Dearness Allowance	1,80,000
Bonus	1,80,000
	7,20,000

Assuming, Mr. Akash stays in a city where population is more than 25,00,000 as per 2001 census,

Value of unfurnished accommodation = 15% of salary
= 15% of ₹ 7,20,000
=₹1,08,000

Value of furniture provided = 10% p.a. of actual cost
= 10% of ₹ 4,80,000 × 9/12
= ₹ 36,000

(Assuming, value of furniture given in the problem represents actual cost.)

Note 2 : Computation of taxable value of perquisite – related to educational facility.

Where the school is owned and maintained by employer, if the cost of education provided is less than ₹1,000 p.m. then the value of perquisite is NIL. If the cost of education exceeds ₹1,000 p.m. then the value of perquisite will be equal to the actual cost of education provided in excess of ₹1,000 p.m. per child maximum for two children.

Value of perquisite for elder child = ₹ (1,600–1,000)×9 m = ₹ 5,400 (where 9 months = from 1.7.2014 to 31.3.2015)

Value of perquisite for younger child = NIL, since tuition fee per month is less than ₹ 1,000.

Assuming, cost of education provided to Akash's children is less than ₹ 1,000 p.m. value of perquisite provided is NIL.

Note 3: Computation of taxable value of perquisite – related to interest free housing loan.

Value of Perquisite = Interest @ 10% p.a. less Actual interest charged
= (10% - 2%) x ₹ 5,00,000 x 7/12 = ₹ 23,333

Note 4 : Computation of taxable value of perquisite – interest free loan to purchase computer

Value of Perquisite = Interest @ 16.50% p.a. less Actual interest charged
= (16.50% - 0%) x ₹ 50,000 x 2/12 = ₹ 1,375

(ii) During the Previous Year ending March 31, 2015, Anu, a salaried employee (age: 40 years), received ₹10,70,000 as basic salary and ₹20,000 as arrears of bonus of the financial year 1994-95. During the Previous Year 1994-95, Anu has received ₹60,000 as salary. Anu deposits ₹ 1,500 (during 1994-95) and ₹13,000 (during 2014-15) in public provident fund.

Solution:

The admissible relief under section 89, in respect of bonus paid in the financial year 2014-15 will be computed as under:

	Taxable income and tax liability on "receipt" basis		**Taxable income and tax liability on "accrual" basis**	
Assessment Year	**2015 –16**	**1995 – 96**	**2015 – 16**	**1995 – 96**
	₹	**₹**	**₹**	**₹**
Salary	10,70,000	60,000	10,70,000	60,000
Arrears of salary	20,000	-	-	20,000

Gross Salary	10,90,000	60,000	10,70,000	80,000
Less: Standard seduction				
under section 16(i)	Nil	12,000	Nil	12,000
Gross Total Income	10,90,000	48,000	10,70,000	68,000
Less: Deduction under section 80C				
Net Income	13,000	Nil	13,000	Nil
Tax on net income	10,77,000	48,000	10,57,000	68,000
Less: Rebate under section 88	1,48,100	2,600	1,42,100	6,600
Tax	Nil	300	Nil	300
Add : Surcharge	1,48,100	2,300	1,42,100	6,300
Tax and surcharge	Nil	-	Nil	-
Add : Education cess	1,48,100	2,300	1,42,100	6,3 00
Add: Secondary and higher	2,962	-	2,842	-
education cess				
Tax liability	1,481	-	1,421	-
	1,52,543	2,300	1,46,363	6,300

Tax liability of the two Assessment Years on receipt basis (1,52,543 + 2,300) ₹1,54,843

Tax liability of the two Assessment Years on accrual basis (1,46,363 + 6,300) ₹1,52,663

Tax relief under section 89 for the Assessment Year 2015-16 (i.e., ₹1,54,843 - ₹1,52,663) ₹2,180

Tax payable for the Assessment Year 2015 -16 (i.e., ₹1,52,543 - ₹2,180) ₹1,50,363

Note : For the Assessment Year 1995 - 96, an assessee, having income under the head "salaries", is eligible for deduction u/s 16 (1) of a sum equal to $33\frac{1}{3}$ % of the salary or ₹12,000 whichever is less. However, Section 16(i) has been omitted by finance Act, 2005.

(iii) Mrs. Hemalatha has made payments of ₹5 Lakhs to a Contractor (for business purposes) during the last two quarters of the Previous Year. Her turnover for the preceding financial year was ₹105 Lakhs. Is there any obligation to deduct tax at source?

Answer:

1. **Principle:**

   (a) Assessees whose Gross Turnover exceeds the limit during the Previous Year are subject to audit u/s 44AB. Section 194C is applicable to Individuals and HUF who are subject to tax audit u/s 44AB during the preceding financial year. (Limit is ₹1 Crore)

   (b) U/s 194C, tax has to be deducted in respect of payments made to Contractors or Sub-Contractors if the sum credited or paid or likely to be credited or paid exceeds ₹ 30,000 for single contract, or the aggregate of sum credited during the financial year exceeds ₹75,000.

   (c) Payments made to a Contractor by Individual or HUF shall be subject to TDS at 1% (for Individuals/ HUF)/ 2% (for others)

2. **Analysis and Conclusion:**

   (a) In the given case, Turnover of Mrs. Hemalatha during the preceding Financial Year exceeds ₹1 Crore. Hence, she would be subject to Tax audit u/s 44AB during the preceding financial year.

   (b) Since the payments made to the Contractor for business purpose during the financial year exceeds ₹75,000, she is under an obligation to deduct tax as provisions of Section 194C are attracted.

(iv) Bharathi Cements Ltd, the Assessee, purchases jute bags from Raj Kumar & Co. The latter has to supply the jute bags with the logo and address of the Assessee, printed on it. From 01.09.2014 to 20.03.2015, the value of jute bags supplied is ₹8,00,000, for which the invoice has been raised on 20.03.2015. While effecting the payment for the same, is the Assessee bound to deduct tax at source, assuming that the value of the printing component involved is ₹60,000. You are informed that the Assessee has not sold any material to Raj Kumar & Co. and that the latter has to manufacture the jute bags in its plant using Raw Materials purchased by it from outsiders.

Answer:

1. **Definition of Work for TDS u/s 194C**: 'Work' includes, manufacturing or supplying a product according to the requirement or specification of a customer, by using material purchased from such customers.
2. If the Contractor purchases such materials from a person other than the customer, then such "manufacture or supply" is not work, for TDS purpose (i.e. Such Contract is a Contract for Sale).
3. **Conclusion:** Hence the sale of jute bags to the Assessee is a contract for sale, and hence it shall not be liable for TDS u/s 194C.

(v) Discuss whether tax has to be deducted at source under the provisions of the Income Tax Act, 1961 in the following situations, which have taken place during the year ended 31.03.2015:

(a) M/s Jiva & Co. a Partnership Firm, pays a sum of ₹43,000 as Interest on Loan borrowed from Indian Branch of a Foreign Bank.

(b) Above Firm has paid ₹14,000 as Interest on Capital to Partner Mr. A, a Resident in India and ₹ 22,000 as Interest on Capital to Partner Mr. B, a Non-Resident.

Answer:

1. **Principle:**

   (a) Under Sec.195, TDS needs to be deducted on payment of Interest (excluding Interest u/s 194LB /194LC/194LD), including Interest on Securities, or any other sum chargeable to Income-Tax in India, not being Salaries.

   (b) U/s 194A, TDS is not required on Interest credited or paid to a Partner (who is resident), by the Firm.
2. **Conclusion:** In the above case, TDS needs to be deducted u/s 195 on Payment made to a Indian Branch of a Foreign Bank, and on Interest Paid to Mr. B being non-Resident.

(vi) R Ltd paid ₹5 Lakhs as Sales Commission to Mr. Francis (Non-Resident) who acted as its Agent for booking orders from various customers who are outside India. The Assessee has not deducted tax at source on the commission payment for the year ended 31.03.2015. On these facts:

(a) Decide whether the Commission is chargeable to tax in the hands of Mr. Francis in India.

(b) Decide about the deductibility of the Commission Payment in the assessment of R Ltd.

Answer:

1. **Taxability of Commission**: The Non-Resident has acted as an agent for R Ltd for getting orders from customers who are outside India. Such Commission Income shall not be deemed to accrue or arise in India, and hence the amount of Commission is not taxable in India for the Non-Resident Agent.
2. **Sec.195 Scope**: TDS obligation u/s 195 arises only if the Income is taxable in India. Hence, in this case, Tax need not be deducted u/s 195 by R Ltd on its Commission Payments to the Non-Resident.
3. **Allow ability of Deduction**: Since the payment is not subject to TDS, there is no question of disallowance of expenditure u/s 40(a)(i) for the said Assessment Year.

(vii) Compute the amount of TDS on the following payments made by M/s S Ltd during the Previous Year 2014- 2015 as per the provisions of the Income Tax Act, 1961 –

(a)	**01.10.2014**	**Payment of ₹2,00,000 to Mr. "R" a transporter who is having PAN.**
(b)	**01.11.2014**	**Payment of Fee for Technical Services of ₹25,000 and Royalty of ₹ 20,000 to Mr. Shyam who is having PAN.**
(c)	**30.06.2014**	**Payment of ₹ 25,000 to M/s X Ltd for repair of building.**
(d)	**01.01.2015**	**Payment of ₹ 2,00,000 made to Mr. A for purchase of diaries made according to specifications of M/s S Ltd. However, no material was supplied for such diaries to Mr. A by M/s S Ltd.**
(e)	**01.01.2015**	**Payment of ₹ 80,000 made to Mr. Bharat for Compulsory Acquisition of his House as per Law of the State Government.**
(f)	**01.02.2015**	**Payment of Commission of ₹ 6,000 to Mr. Y.**

Solution:

Assessee: M/s. S Ltd. **Previous year: 2014 – 2015** **Assessment year: 2015 – 2016**

Computation of amount of Tax to be Deducted at Source

Date	Particulars	TDS (₹)	Reason
01.10.2014	Payment of ₹2,00,000 to Mr. R, a transporter, having PAN	Nil	TDS need not be deducted u/s 194C irrespective of the type/ size of transporter, if he submits PAN.
01.11.2014	Payment of Fee for Technical Services ₹25,000 and Royalty ₹20,000 to Mr. Shyam who is having PAN	Nil	TDS need not be deducted u/s 194J since Payments does not exceed ₹30,000 on Fees for Technical Services and Royalty considered separately.
30.06.2014	Payment of ₹25,000 to M/s. X Ltd for Repair of Building	Nil	U/s 194C, TDS is to be deducted for payment exceeding ₹30,000 only. Payment is below the limit, and hence No TDS need to be deducted.
01.01.2015	Payment to Mr. A for purchase of diaries but no material was supplied for such diaries to Mr. A by M/s S Ltd	Nil	The transaction is a Contract of Sale u/s 194C and does not attract TDS. Where material is not supplied by Customer, it is not Works Contract.
01.01.2015	Payment of ₹80,000 made to Mr. Bharat for compulsory acquisition of his house	Nil	TDS is not attracted u/s 194LA, since payment does not exceed ₹2,00,000
01.02.2015	Payment of Commission of ₹6,000 to Mr. Y	600 (₹ 6,000 ×10%)	Since aggregate Commission paid exceeds ₹ 5,000, TDS is to be deducted at

			10%
	Total	600	

Question 3:

(i) X Ltd. acquired a printing machine for ₹ 26,00,000. Transport Cost, including loading and unloading charges ₹ 35,000. Expenses incurred during the trial run period ₹ 3,00,000. Output generated during trial run period was sold for ₹ 1,90,000. Depreciation @ 15%. Compute WDV. Would your answer differ if the output generated during trial run period was ₹ 4,00,000.

Solution:

Assessee : X Ltd
Previous Year: 2014-15
Computation of Depreciation

Particulars	Amount (₹)	Amount (₹)
Expenses incurred during trial run period *Less* : Income from sale of output generated during trial run period	3,00,000 (1,90,000)	3,00,000 (4,00,000)
Net Cost / Gain	1,10,000	(1,00,000)
Actual Cost of the Machine *Add* : Net Cost during trial run *Less* : Net Gain during trial run	26,35,000 1,10,000 —	26,35,000 — (1,00,000)
Actual Cost of Machine for charging depreciation	27,45,000	25,35,000
Less : Depreciation @ 15%	4,11,750	3,80,250
Written Down Value (W.D.V.)	23,33,250	21,54,750

(ii) Z Ltd. purchased machinery (rate of depreciation 15%) from Japan for US$ 2,50,000 on 17.08.2013 (US $ = ₹ 63.25) by borrowing from Trade Bank Ltd. Z Ltd. took a forward contract on 11.07.2014, when the exchange rate was ₹ 66.25 per US$. This was put to use from 23.11.2013. Compute Depreciation for the Previous Years 2013-14 and 2014-15.

Solution:

Assessee: Z Ltd
Previous Year: 2013-14 & 2014-15
Computation of Depreciation and Written Down Value

Particulars	Amount (₹)
Cost of the Asset (US$ 2,50,000 × ₹ 63.25)	1,58,12,500
Less : Depreciation @ 50% of 15% (since Put to Use < 180 days) for Previous Year 2013-14 (₹ 1,58,12,500 × 50% × 15%)	(11,85,938)
WDV as on 01.04.2014 *Add* : Exchange Rate Difference [US$ 2,50,000 × ₹ (66.25 – 63.25)]	1,46,26,562 7,50,000
WDV for claiming depreciation *Less* : Depreciation @ 15% for the Previous Year 2014-15 (₹1,53,76,562× 15%)	1,53,76,562 23,06,484
WDV as on 01.04.2015	1,30,70,078

(iii) XYZ Bros., a sole-proprietorship concern, was converted into X Ltd. on 20.9.2014. Before the conversion, the concern had a block of furniture (rate of depreciation @ 10%), whose WDV as on 01.04.2014 was ₹ 7,50,000. On 01.05.2014, a new furniture of the same block was purchased for ₹50,000. X Ltd. purchased another furniture of the same type on 20.12.2014 for ₹ 48,000. Compute depreciation that would be claimed by XYZ Bros. and X Ltd. for the Previous Year 2014-15.

Solution :

(1) Depreciation shall have to be calculated at the prescribed rates, as is applicable for a going concern, without considering the event of amalgamation or demerger.
(2) Depreciation shall have to be apportioned between the predecessor and the successor in the ratio of number of days for which such assets were held for their business purpose and used by them.

Depreciation to be apportioned = [W.D.V. as on 1.4.2014 + New Purchases on 01.05.2014] × 10%
= ₹ (7,50,000 + 50,000) × 10% = ₹ 8,00,000 × 10% = ₹ 80,000

Apportionment of Depreciation and Allowable Depreciation

Assessee	No. of Days	Depreciation on Assets exists on the date of succession	Depreciation on Assets acquired after Succession	Total Depreciation for the Previous Year 2014-15
XYZ Bros. (Sole-Proprietorship concern)	01.04.2014 to 20.9.2014 = 173 days	₹ 80,000 × 173/365 = ₹ 37,912	Nil	₹ 37,912
X Ltd. (Company)	21.09.2014 to 31.3.2015 = 192 days	₹ 80,000 × 192/365 = ₹ 42,082	₹ 48,000 × 50% × 10% = ₹ 2,400 (Put to use < 180 days)	₹ 44,482

(iv) P Ltd. was taken over by Q Ltd. with effect from 31.7.2014. This satisfies the conditions of Sec. 2(1B) of the Income Tax Act, 1961. From the following information, compute deductions admissible u/s 32 to P Ltd and Q Ltd. for the previous year 2014-15.

Assets	**Rate of Depreciation**	**WDV in the hands of P Ltd (as on 01.04.2014)**	**Transfer Value to Q Ltd. (₹)**
Building	**10%**	**15,00,000**	**22,50,000**
Plant & Machinery	**15%**	**10,00,000**	**7,50,000**
Motor Car	**15%**	**4,00,000**	**3,00,000**
Computers	**60%**	**2,50,000**	**1,00,000**
Furniture	**10%**	**1,50,000**	**70,000**

Solution :

(1) Depreciation shall have to be calculated at the prescribed rates, as is applicable for a going concern, without considering the event of amalgamation or demerger.
(2) Depreciation shall have to be apportioned between the predecessor and the successor in the ratio of number of days for which such assets were held for their business purpose and used by them.

Depreciation Statement as per Income Tax Act, 1961

Particulars of Block of Assets	Rate Of Dept.	W.D.V as on 01.04.2014	Additional Actual Cost	Debenture	Net Value of Block	Depreciation for the Current Year	W.D.V. as on 31.3.2015
1	2	3	4	5	6	7	
Block I – Building	10%	15,00,000	Nil	Nil	15,00,000	1,50,000	13,50,000
Block – II Plant & Machinery	15%	10,00,000	Nil	Nil	10,00,000	1,50,000	8,50,000
Block –III Motor Car	15%	4,00,000	Nil	Nil	4,00,000	60,000	3,40,000
Block – IV Computers	60%	2,50,000	Nil	Nil	2,50,000	1,50,000	1,00,000
Block – V Furniture	10%	1,50,000	Nil	Nil	1,50,000	15,000	1,35,000
		33,00,000			33,00,000	5,25,000	27,75,000

TOTAL DEPRECIATION ADMISSIBLE ₹10,50,000

Apportionment of Depreciation and Allowable Depreciation

Assessee	No. of Days	Depreciation on Assets on the date of amalgamation	Depreciation on Assets acquired after amalgamation	Total Depreciation for the Previous Year 2014-15
P Ltd.	01.04.2014 to 31.7.2014 = 122 days	₹ 5,25,000 × 122/365 = ₹ 1,75,479	Nil	₹ 1,75,479
Q Ltd.	01.08.2014 to 31.3.2015 = 243 days	₹ 5,25,000 × 243/365 = ₹ 3,49,521	Nil	₹ 3,49,521

Question 4:

(i) Orian International Ltd. incurs an expenditure of ₹600 crores for acquiring the right to operate telecommunication services for Odisha and Jharkhand. The payment was made in August 2013 and the licence to operate the services was valid for 12 years. In December 2014, the company transfers part of the licence, in respect of Odisha to Excel International Ltd. for a sum of ₹560 crores and continue to operate the licence in Jharkhand. What is the deduction allowable u/s 35ABB to Orian International Ltd. for the Assessment Year 2014-15?

Solution:

Assessee: Jammer International Ltd. Previous Year: 2014-15 Assessment Year: 2015-16

U/s 35ABB, where part of the Telecom Licence is transferred and Net Consideration received on such transfer, is more than the expenditure remaining unallowed, the amount of deduction shall be computed as follows :

(i) Unallowed amount as on 01.04.2014	= Total Expenditure Less Deduction for Financial Year 2013-14 = ₹600 crores Less (₹600 crores / licence period of 12 years) = ₹600 crores less ₹50 crores= ₹550 crores.
(ii) Net Consideration received	= ₹560 crores
(iii) Remaining period of licence	= 11 years (including current Previous Year)
(iv) Deduction u/s 35 ABB	= Nil
(v) Business Income	= ₹ (560 – 550) = ₹ 10 crores.

(ii) What would be your advice regarding admissibility of the following items of expenditure in computing the business income:

(a) A donation of ₹ 2 lakh made to a University for starting a laboratory for scientific research (i) relating to the assessee's business, (ii) not relating to the assessee's business.

(b) Travelling expenses include a sum of ₹ 15,000 incurred by a director in travelling abroad for negotiating purchase of plant and purchase of plant and machinery.

(c) Amount payable as damages to Government on account of shortfall in export target.

(d) Overdraft from bank for payment of income tax, interest charged by the bank is ₹ 20,000.

(e) Payment of interest of ₹ 60,000 on monies borrowed from bank for payment of dividends to shareholders.

(f) ₹ 72,000 paid for shifting of business from the original site to the present place which is more advantageously located.

(g) Retrenchment compensation of ₹ 5 lakh paid to the workmen on the closure of one of the units.

(h) Fees paid to the Registrar of Companies for bringing about a change in the Memorandum and Articles of Association in regard to issue of Equity.

Solution :

(a) The donation has been made to University to be used for scientific research for starting a laboratory. If the University is approved for the purpose of Sec. 35(1)(ii), then irrespective of the consideration whether the scientific research is related to assessee's business or not, deduction could be claimed @ 175% of amount paid. If it is not approved, donation could not be claimed as a deduction under Sec. 35 in the computation of business income. However, the assessee could claim deduction from Gross Total Income under Sec. 80G if the same is eligible.

(b) Travelling expenses incurred by the director for negotiating the purchase of plant and machinery is a capital expenditure and hence to be disallowed.

(c) The payment is not for any infraction of law but for failure to reach a target undertaken by the company being payment made wholly in the course of business, it is deductible.

(d) Interest on overdraft taken to pay income tax is not allowable under Sec. 36(1)(iii).

(e) Interest on borrowings utilized for payment of dividend is allowable under Sec. 36(1)(iii).

(f) Shifting expenses of business premises resulting in an expenditure of enduring benefit is a capital expenditure and is not allowable.

(g) Retrenchment compensation payable to workmen on the total closure of a business cannot be allowed as deduction as the expenses are not incurred for the purpose of carrying on of its business. When, however, the tax-payer closes one of its units and

continues to carry on the same business as before, the compensation will be admissible under Sec. 37(1).

(h) Fee paid to Registrar of Companies for bringing about change in Memorandum and Articles of Association is a capital expenditure, where it relates to issue of equity shares. Where alterations are warranted by the changes made in the Companies Act, the expenses are allowable.

(iii) Mr. Thaper has estates in Rubber, Tea and Coffee. He derives income from them. He has also a nursery wherein he grows plants and sells. For the previous year ending 31.3.2015, he furnishes the following particulars of his sources of income from estates and sale of Plants. You are requested to compute the taxable income for the Assessment year 2015-2016.

(a) Manufacture of Rubber ₹ 10,00,000

(b) Manufacture of Coffee grown and cured ₹ 7,00,000

(c) Manufacture of Tea ₹ 14,00,000

(d) Sale of Plants from Nursery ₹ 2,00,000.

Solution:

Assessee: Mr. Tony **Previous Year: 2014-15** **Assessment Year: 2015-2016**

From the words 'Mr. Tony has estates', it is presumed that he had grown Tea, Coffee and Rubber, and also Plants in his Estates, and the amount given is the Profits of the Business.

Computation of Taxable Income is as under —

Particulars	Agricultural Income	Non-Agricultural Income
Growing and Manufacture of Rubber [Rule 7A]	10,00,000 × 65% = ₹ 6,50,000	10,00,000 × 35% = ₹ 3,50,000
Grown and Cured Coffee [Rule 7B]	7,00,000×75% = ₹ 5,25,000	7,00,000 × 25% = ₹ 1,75,000
Growing and Manufactured of Tea [Rule 8]	14,00,000 × 60% = ₹ 8,40,000	14,00,000 × 40% = ₹ 5,60,000
Growing & Sale of Plant by Nursery [See Note]	₹ 2,00,000	—
Total	₹22,15,000	₹ 10,85,000
Taxable Income	Exempt u/s 10(1)	₹ 10,85,000

(iv) A firm of Cost Accountants earned a net profit of ₹ 8,00,000. Such profit is derived after charging interest @10% p.a. ₹ 2,00,000 and after charging remuneration of ₹ 8,00,000. There is unabsorbed depreciation of ₹ 2,00,000 and brought forward losses of ₹ 3,00,000. Determine the amount of taxable income of the firm.

Solution:

Computation of taxable income of the firm

Particulars	₹
Net Profit as per Profit & Loss Account	8,00,000
Interest paid partners is allowable expenditure	—
Remuneration as per books of accounts (refer notes)	(+)8,00,000

Profits & Gains from Business & Profession	16,00,000
Remuneration allowed to partners being minimum of the following: Maximum remuneration allowed to partners (note) ₹ 9,30,000	
Profits & Gains from Business & Profession	8,00,000
Less : Brought Forward Loss	3,00,000
Less : Unabsorbed depreciation	2,00,000
Taxable Profits & Gains from Business & Profession	3,00,000

Working Note:

Computation of allowable remuneration to Partners	
Profits & Gains of Business & profession after interest	₹ 16,00,000
But before remuneration	
Less : Unabsorbed depreciation	₹ 2,00,000
Book Profit for the purpose of computation of remuneration	₹ 14,00,000
Maximum Remuneration allowed to partners (3,00,000 x 90% + 11,00,000 x 60%)	₹9,30,000

Question 5:

(i) 'G' was born in England in 1966. His father was born in America in 1936. 'G's' grandfather was born in Labore in 1916. Will 'G' be a Resident in India if he visits India for 180 days during the previous year 2014-15.

Answer:

No. G is a person of Indian origin as his grandfather was born in Lahore in 1916 i.e., in undivided India and therefore, the second condition is not applicable in his case and the first condition is not satisfied as he visits India for less than 182 days.

(ii) Mr. A is to receive Interest from a Notified Infrastructure Debt Fund eligible for exemption u/s 10(47) of ₹6,00,000. Mr. A is a Resident of Notified Jurisdictional Area u/s 94A. Explain the tax treatment in the hands of Mr. A.

Answer:

Computation of Tax Payable on the Interest

Particulars	₹
Interest Income received from a Notified Infrastructure Debt Fund	6,00,000
Tax @ 5% u/a 115A since the Fund is eligible for exemption u/s 10(47)	30,000
Add: Education Cess @ 2%	600
Add: Secondary and Higher Education Cess @ 1%	300
Total Tax Payable on the Interest Income	30,900

Note: TDS shall be deducted at the rate of 30% u/a 94A, since the Income is received by a Resident in Notified Jurisdictional Area. Since the provisions of Sec. 94A contain a non-obstante clause, the rate of 30% u/a 94A shall be applied as against the rate of 5% as specified u/s 194LB. However, Mr. A is eligible for refund of excess tax deducted by way of TDS.

(iii) State the consequences if Firm fails to fulfill condition under section 184 of the Income Tax Act, 1961.

Answer:

The following are the consequences when the Firm is – (a) assessed u/s 144, (Best Judgment) or (b) fails to fulfill the conditions u/s 184 –

(a) In the hands of Firm: No deduction shall be allowed in respect of any payment of Interest, Salary, Bonus, Commission or Remuneration made by such Firm to any of its Partners u/s 40(b).

(b) In the hands of Partners: Interest, Salary, Bonus, Commission or Remuneration disallowed as above, shall not be treated as Income u/s 28(v).

Note: When a Firm fails to fulfill the conditions u/s 184, it shall not be assessed as an AOP. It shall only be assessed as a Firm subject to above provisions.

(iv) Ellumurate the steps in computation of total income of a Partnership Firm.

Answer:

Step 1: Determine the Residential Status of the Firm u/s 6(2).
Step 2: Determine the Income chargeable to tax u/s 5.
Step 3: Compute the Total Income of the Firm.
Step 4: Compute Tax Liability at 30% Plus Education Cess @ 2% Plus SHEC @ 1%.
Step 5: Consider the application of AMT, and the final amount of Tax Payable.

(v) A Farmer, being Resident of Jaipur, sold his Rural Agricultural Land situated in Nepal and received Indian Rupees 2 Lakh over the cost of acquisition of this land. Explain the taxability of the sale.

Answer:

1. Principle: U/s 2/(14), only Rural Agricultural Lands in India are not a Capital Asset.
2. Analysis and conclusion: In the given case, the farmer has sold Rural Agricultural Lands in Nepal. Therefore, the transaction attracts Capital Gains as the sale falls under the definition of Capital Gain.
   Hence, the amount of LTCG of ₹ 2 lakhs.

(vi) What are the incomes exempted under the hand of Political Parties?

Answer:

Exempted Incomes: The following Incomes are exempt from tax:

(a) Income from House Property;
(b) Income from Other Sources;
(c) Voluntary Contributions received;
(d) Capital Gains.

Question 6:

(i) Mr. Parekh is an employee of XYZ Ltd. getting a salary of ₹ 40,000 per month which is 'due' on the last day of the month but is paid on the 5th of next month. He is paid the salary of April, 2015 and May, 2015 in advance in March, 2015. What will be his gross income for the assessment year 2015 – 2016?

Answer:

Income from salary is taxable on due or receipt basis whichever is earlier. Salary for the months of April, 2014 to March, 2015 will be taxable on 'due' basis. However, salary paid in advance in the months of March, 2015 for the months of April and May, 2015 will also be included in the income of the previous year 2014–15 because the same has been paid in March, 2015 although it is not 'due.' The gross income shall be as under:

	₹
Salary for the months April, 2014 to March, 2015 (40,000 × 12) Advance salary of April and May, 2015 received in March, 2015 (40,000 × 2)	4,80,000 80,000
	5,60,000

(ii) Explain in brief, the treatment as to their taxability and/ or allowability, under the Income-Tax Act, 1961, in the ' following case: S Ltd receives a sum of ₹10 Lakhs from K Ltd, for agreeing not to carry on any business relating to Computer Software in India for the next three years which was received on 3rd January.

Answer:

The tax treatment is viewed from two angles, i.e. Payee and Payer, as under

1. Taxability of receipt for S Ltd: By virtue of Sec. 28(va), the above receipt is taxable under the head "Profit and gains of Business or Profession".
2. Allowability of Expense for K Ltd: Payments covered u/s 194J includes payments referred u/s 28(va), i.e. sum received for not carrying out any activity or not sharing any know-how, patent, etc. So, TDS has to be deducted at the rate of 10%. Otherwise, the expenditure will not be allowable as a deduction for K Ltd.

(iii) A Ltd lets out its property to B. B sub-lets it. How is the sub-letting receipt will assessed in the hands of B?

Answer:

If sub-letting is in the ordinary course of business, such Income is taxable under the head "Profits and Gains of Business or Profession". Otherwise, it will be taxable under the head "Income from Other Sources".

(iv) Mr. Rupesh Sharma, an IFS, was posted to USA by the Government of India on 11.07.2014 for a period of 3 years. He was paid salary of ₹ 6 Lakhs for the period 01.04.2014 to 01.07.2014 and of ₹20 Lakhs for period upto 31.03.2015. He left India for USA in the night of 10.07.2014 and did not come even for a day until 31.03.2015. Examine the taxability of the above Income.

Answer:

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

(b) U/s 10 (7), Allowance or perquisites provided by the government of India to an Indian Citizen for services rendered outside India, is fully exempt from tax.

2. Conclusion: In the above case, the entire salary of ₹ 26 lakhs of Mr. Ravi who appointed by the government of India is taxable in India as salaries u/s 9(1) (iii).

(v) What are the advantages while computing arm's length price Transactional Net Margin Method?

Answer:

- It is based on Net Margins are less affected by Transactional differences.
- The Net Margins are also more tolerant to Functional Differences between Controlled and Uncontrolled transactions than Gross Profit Margins
- It is not necessary to determine the Functions performed and responsibilities assumed by more than one of the associated enterprises.
- It is favorable where one of the parties to the transaction is Complex and has many Inter-related activities or when it is difficult to obtain reliable information about one of the parties.

(vi) What are the methods in computation of arm's length pricing in relation to International Transaction/specified Domestic Transactions?

Answer:

Methods of Computation [Sec.92C & Rule 10B]: ALP in relation to an International Transaction / Specified Domestic Transaction shall be determined by any of the following methods -

(a) Comparable Uncontrolled Price Method,
(b) Resale Price Method,
(c) Cost Plus Method,
(d) Profit Split Method,
(e) Transactional Net Margin Method,
(f) Other method prescribed by CBDT. (Note)

Question 7:

(i) The W.D.V. of the block of assets as on 1.4.2014 was ₹ 10 lacs. Rate of Depreciation @ 15%. An asset of the same block was acquired on 11.5.14 for ₹ 6 lacs. There was a fire on 18.9.2014 and the assets were destroyed by fire and the assessee received a sum of ₹ 24 lacs from the insurance company. Compute the Capital Gain assuming:

(a) All the assets were destroyed by fire
(b) Part of the block was destroyed by fire

Would your answer differ if the assessee received ₹14,00,000 from insurance company assuming:

(a) All the assets were destroyed by fire
(b) Part of the block was destroyed by fire

Solution :

If Compensation received ₹ 24,00,000

Block of Assets u/s 2(11)

	Particulars	All assets destroyed	Part of Block destroyed
1.4.14	W.D.V. of the Block	10,00,000	10,00,000
	Add : Cost of New Asset purchased relating to the Block	6,00,000	6,00,000
		16,00,000	16,00,000
	Less : Compensation received	24,00,000	24,00,000
	Short Term Capital Gains	8,00,000	8,00,000
		u/s 50(2)	u/s 50(1)

If Compensation Received ₹ 14,00,000

Block of Assets u/s 2(11)

	Particulars	All assets destroyed	Part of Block destroyed	
1.4.14	W.D.V. of the Block	10,00,000	10,00,000	
	Add : Cost of New Asset purchased relating to the Block	6,00,000	6,00,000	
		16,00,000	16,00,000	
	Less : Compensation received	14,00,000	14,00,000	
	Short Term Capital Loss	2,00,000	2,00,000	= WDV (Depreciation to be charged on WDV)
	Less : Depreciation @ 15%	u/s 50(2)	30,000	
			1,70,000	

(ii) Rahim acquired a plot of land on 1.06.75 for ₹ 6,00,000. He converts the plot into stock in trade of his real estate dealing business on 18.02.2007 when the fair market value of the plot was ₹35,00,000. The stock-in-trade is sold by him on 18.5.2014 for ₹ 40,00,000 (FMV as on 1.04.81 was ₹ 4,00,000 and FMV as on 1.4.1976 ₹4,50,000).

Solution :

The conversion of capital asset into stock-in-trade is treated as a transfer as per Sec. 2(47). Capital asset was converted into stock-in-trade on 18.2.2007 i.e. Previous Year 2006-07.

Computation of Capital Gains

	₹
Consideration for Transfer (FMV)	35,00,000
Less : Indexed Cost of Acquisition 6,00,000 × $\frac{519}{100}$	31,14,000
Long Term Capital Gains	3,86,000

Computation of Business Income

	₹
Sale Proceeds of HP	40,00,000
Less : FMV on the date of conversion	35,00,000
Business Income	5,00,000

When assets acquired by assessee prior to 1.4.1981:
Index cost of acquisition: (Fair market value on 1.4.1981 or cost of acquisition whichever is higher × Cost of Inflation Index for the year of transfer) ÷ 100

(iii) The Depository Account shows the following details of M's holdings:

Date of Credit	Particulars	Quantity
10.11.2001	**Shares of XYZ LTD. purchased in physical form on 10.11.2001 @ ₹ 20 per share**	**300**
30.11.2002	**Purchased dematerialised shares of Y Ltd. on 25.11.2002 @ ₹70 per share**	**500**
06.12.2004	**Shares of XYZ LTD. held in physical form, were got dematerialised on 01.12.2004**	

M sold 600 dematerialised shares on 6th June 2014 @ ₹ 250 per share. Brokerage is paid @2% of sale price. Compute Capital Gains.[Ignore the exemption available u/s10(38)]

Solution :

(a) Person Liable : The sale of shares held under dematerialized format with a depository is chargeable to tax as the income of the beneficial owner.

(b) Cost of Acquisition and period of holdings : The cost of acquisition and the period of holding shall be determined on FIFO Method. [Circular No. 768 dated 24.6.1998]

 (i) FIFO Method will be applied for each Account independently.

 (ii) When physical stock is dematerialized, the date of credit into the Depository Account shall be considered for the purpose of FIFO Method, but indexed cost of acquisition shall be computed on the basis of year of acquisition.

	₹
Consideration for Transfer	
600 Share @ ₹ 245 per share	1,47000
Less : Indexed Cost of Acquisition	
(i) $500 \times 70 \times \frac{1024}{447}$	(80,179)
(ii) $100 \times 20 \times \frac{1024}{426}$	(4,808)
Long Term Capital Gain	62,013

(iv) ABC & Co. is a partnership firm, consisting 3 partners A, B and C. The firm is dissolved on 31.12.14. The assets of the firm were distributed to the partners as under :

Particulars	Block of Machinery (given to P)	Stock (given to Q)	Land (given to R)
Year of acquisition	1990-91	2002-03	1978-79
Cost of acquisition (₹)	27,20,000	4,00,000	10,000
Market value as on 31.12.14	17,00,000	6,00,000	27,00,000
WDV as on 31.12.14	10,40,000	—	—
Value at which given to partners as per agreement	12,00,000	4,50,000	18,00,000
Market value as on 1.4.81	—	–	2,70,000

Compute the income taxable in the hands of the firm for the Assessment Year 2015-16. What shall be the cost of acquisition of such assets to the partners of the firm?

Solution :

Computation of Short Term Capital Gains on Block of Machinery

	₹
Sale consideration (i.e. the market value)	17,00,000
Less : Cost of Acquisition (WDV of the block)	10,40,000
Short Term Capital Gains	**6,60,000**

Income from Business (on transfer of stock)

	₹
Market value of stock	6,00,000
Less : Cost of Acquisition	4,00,000
Business Income	2,00,000

Computation of Capital Gains on transfer of land

	₹
Consideration for transfer	27,00,000
Less : Indexed cost of Acquisition : $2,70,000 \times \frac{1024}{100}$	27,64,800
Long Term Capital Gains	(64,800)

Cost of acquisition of assets to the partners

	₹
Partner "A"	12,00,000
Partner "B"	4,50,000
Partner "C"	18,00,000
Less : Indexed cost of Acquisition : $2,70,000 \times \frac{1024}{100}$	27,64,800
	6,85,200

Question 8:

(i) A holds 15,000 shares (10% of total share holding) in B Ltd. which he had purchased on 10.2.96 for ₹ 6,00,000. The company went into liquidation on 16.7.2014 and paid a sum of ₹ 20 per share in cash and an asset whose market value as on the date of distribution i.e. 5.10.14 was ₹ 21,20,000 to A. The accumulated profits of the company were ₹ 15 lacs.

(a) Compute the income of A for the A.Y. 2015-16 assuming that he has no other income.

(b) Compute the Capital Gain chargeable to tax if the asset of B Ltd. is sold by A for ₹ 25 lacs on 28.3.15.

Solution :

Computation of Capital Gains of Mr. A for the A.Y. 2015-16

	₹
(a) (i) Capital Gain on transfer of shares:	
Total consideration (15,000×20+21,20,000)	24,20,000
Less : Proportionate amount of deemed dividend (10% of ₹ 12,82,106)	(1,28,211)
Less : Indexed Cost of Acquisition 6,00,000 × $\frac{1024}{281}$	(21,86,477)
Long Term Capital Gains	1,05,312
(ii) Income from others Sources	
Dividend from Indian Company	Exempted
	1,05,312

(b) Capital Gain on transfer of asset (B Ltd.):	
Full Value of Consideration	25,00,000
Less : Cost of Acquisition (being the market value as on the date of distributions)	21,20,000
Short Term Capital Gains	3,80,000

Accumulated Profit = ₹ 15,00,000

Dividend tax @ 16.995% (15% + 10% + 2% Education cess + 1% SHEC)

Hence, the amount to be distributed plus tax @ 16.995%

on such amount should be ₹ 15,00,000

∴ Amount of tax = ₹ 15,00,000 x $\frac{16.995}{116.995}$ = 2,17,894

∴ Profits available for distribution = ₹ (15,00,000 – 2,17,894) = ₹ 12,82,106.

(ii) Ravi owns a residential house which was purchased by him in 1975 for ₹ 2,00,000. The FMV as on 1.4.81 was ₹ 1,80,000. This house is sold by him on 16.7.2014 for a consideration of ₹ 25,50,000. The brokerage and expenses on transfer was ₹ 75,000. Compute Capital Gains for the Assessment Year 2015-16.

If he invests ₹ 5,00,000 for purchase of a new house on 15.3.2015.

If the HP so purchased in 15.3.2015 is again sold in 21.10.15 for ₹ 9 lacs, what will be the tax liability?

Solution :

When assets acquired by assessee prior to 1.4.1981:

Index cost of acquisition: (Fair market value on 1.4.1981 or cost of acquisition whichever is higher × Cost of Inflation Index for the year of transfer) ÷ 100

Computation of Capital Gains for the A.Y. 2015-16

	₹
Consideration for transfer	25,50,000
Less : Expenses on transfer	(75,000)
Net Consideration	24,75,000
Less : Indexed Cost of Acquisition [2,00,000 x $\frac{1024}{100}$]	20,48,000
Long Term Capital Gain	4,27,000
Less : Exemption u/s 54	
Cost of New HP Purchased ₹ 5,00,000	
(exemption restricted upto the balance of LTCG)	(4,27,000)
Taxable Long Term Capital Gain	NIL

If the HP purchased in 15.3.2015 is again sold on 21.10.15 for ₹ 9 lacs, there arise Short Term Capital Gain. The cost of acquisition shall be adjusted to the extent of Long Term Capital Gain exemption already availed.

Computation of Capital Gains for the A.Y. 2015-16

	₹	₹
Consideration for transfer		9,00,000
Less : Cost of Acquisition		
Cost of purchase	5,00,000	
Less : Exemption u/s 54 availed during A.Y. 2015-16 now withdrawn	NIL	5,00,000
		4,00,000

(iii) Samdarshi acquired shares of G Ltd. on 15.12.99 for ₹5 lacs which were sold on 14.6.14 for ₹26 lacs. Expenses on transfer of shares ₹20,000. He invests ₹18 lacs in the bonds of Rural Electrification Corporation Ltd. on 16.10.2014.

(a) Compute Capital Gain for the Assessment Year 2015-16.

(b) State the period for which the bonds should be held by the assessee. What will be the consequences if such bonds are sold within the specified period?

(c) What will be the consequences if Samdarshi takes a loan against the security of such bonds?

Solution :

(a) **Computation of Capital Gains for the A.Y. 2015-16**

	₹
Consideration for transfer	26,00,000
Less: Expenses on Transfer	20,000
Net Consideration	25,80,000
Less: Index Cost of Acquisition (5,00,000 x $\frac{1024}{389}$)	(13,16,195)
Long-term Capital Gains	12,63,805
Less: Exemption u/s 54EC	12,63,805
Taxable Long-Term Capital Gain	NIL

(b) Samdarshi should not transfer or convert (otherwise than transfer) into money such bonds within 3 years from the date of their acquisition.
If these bonds are transferred or converted into money within 3 years, Capital Gain of ₹12,63,805 exempted earlier shall attract taxability towards Long-term Capital Gain of the Previous Year in which such asset is transferred or converted into money.

(c) If any loan is taken against security of such bonds, it shall be taxable as Long-term Capital Gains of the Previous Year in which such loan is taken against the security of such bonds.

(iv) P Ltd. owns an industrial undertaking manufacturing chemicals in Bangalore owns the following assets-

(a) Plant and Machinery (WDV ₹ 5 lacs) sold for ₹10 lacs.

(b) Building (WDV ₹ 12 lacs) sold for ₹ 50 lacs.

(c) Furniture and Fixtures (WDV ₹ 50,000) sold for ₹ 1,80,000

(d) Land cost of acquisition ₹ 5,00,000 during 1984-85 and sold for ₹ 30 lacs

The industrial undertaking was shifted as per policy of the Government from urban area to other area. The new assets acquired during the period 01.01.15 to 31.3.15 are as under:

Plant and machinery ₹ 20 lacs; Buildings ₹ 40 lacs.

Compute Capital Gain chargeable to tax for the Assessment Year 2015-16.

Solution :

Computation of Capital Gains for the A.Y. 2015-16

	₹	₹
Short-term Capital Gains on Depreciable assets		
(i) Plant & Machinery (10,00,000 – 5,00,000)	5,00,000	
(ii) Buildings (50,00,000 – 12,00,000)	38,00,000	
(iii) Furniture & Fixtures (1,80,000 – 50,000)	1,30,000	44,30,000
Long-term Capital Gains on Industrial Land :		
Consideration for transfer	30,00,000	
Less : Indexed Cost of Acquisition		
$5,00,000 \times \frac{1024}{125}$	(40,96,000)	(10,96,000)
Total Capital Gains		33,34,000
Less : Exemption u/s 54G		
Plant & Machinery	20,00,000	
Building	40,00,000	
	60,00,000	
but restricted to ₹ 33,34,000 [₹33,34,000 — 1,30,000, being STCG on furniture, not eligible for the purpose of claiming exemption u/s 54G]		32,04,000
Short Term Capital Gains (on furniture)		1,30,000

Question 9 :

(i) Mr. JK gets the following gifts during the Previous Year 2014-2015.

	Date of Gift	Name of the Donor	Amount of Gift (₹)
1.	01.07.2014	Gift from R, a friend, by cheque	50,000
2.	01.09.2014	Cash gift from N, nephew	1,00,000
3.	01.12.2014	Gift of diamond ring on his birthday, by a friend, C	75,000
4.	15.12.2014	Cash gifts of ₹ 31,000 each made by four friends on the occasion of his marriage	1,24,000
5.	21.12.2014	Cash gift made by wife's sister on house opening ceremony	51,000
6.	15.01.2015	Cash gift from a close friend of father-in-law.	1,51,000
7.	31.01.2015	Cash gift made by great-grandfather	1,51,000
8.	01.02.2015	Cash gift received under the Will of a friend, who is seriously ill.	1,65,000
9.	15.02.2015	Cash gift made by a business friend on his birthday	51,000
10.	31.03.2015	Cash gifts made by three friends of ₹ 25,000 each	75,000

Besides this, JK is engaged in the business of sale and purchase of retail goods. He maintains no account books. Gross turnover from retail trading is ₹ 50,00,000. Compute his total income for the Assessment Year 2015-2016.

Solution :

Computation of Taxable Income for the AY 2015-2016

Particulars	Amount (₹)
1. Income from retail trading business [Sec. 44 AD] (8% ₹ 50,00,000)	4,00,000
2. Income from Other Sources (money gifts):	
(i) Cash gift from a friend, by cheque	50,000
(ii) Cash gift from nephew, not covered by the definition of relative	1,00,000
(iii) Gift of diamond ring — Jewellery gift taxable	75,000
(iv) Cash gifts on the occasion of marriage are not chargeable even if such gifts are made by unrelated persons	—
(v) Cash gift made by wife's sister, a relative, not taxable	—
(vi) Cash gift by a friend of father-in-law, unrelated person	1,51,000
(vii) Cash gift made by great-grand father, a relative	—
(viii) Cash gift received under Will in contemplation of death of a friend	—
(ix) Cash gift made by a business friend on his birthday	51,000
(x) Cash gifts, made by three friends, of ₹ 25,000 each	75,000
Total Income	9,02,000

(ii) Suman purchased in 2004, 10,000 Shares of Power Ltd. for ₹ 5 Lakhs by borrowing money from a bank. He holds them as 'Investments'. He received dividend during the Previous Year 2014-15. He has paid interest of ₹ 85,000 on the loan to the bank during the Previous Year. Please advise Suman, how should he deal with these facts in computing his income?

Answer :

(a) In computation of total income under the Income Tax Act, the expenditure incurred in relation to income, which does not form part of Total Income, shall not be allowed as deduction. [Section 14A]

(b) Dividend Income is exempt u/s 10(34) and hence does not form part of Total Income. Therefore, the interest payment is not an allowable expenditure.

(iii) Ms. A widow of Mr. A received family pension of ₹20,000 during the assessment year 2015-16. Discuss the taxability of Family Pension.

Answer :

Family pension means pension received by the family members of the deceased employee. It is chargeable to tax under the head 'Income from Other Sources'.

Deduction u/s 57: Least of the following is allowed as a deduction -

(a) $33\frac{1}{3}$% of gross pension

(b) ₹ 15,000

Exemptions :

(a) Family pension received by family members of Army personnel who are recipient of gallantry awards [Section 10(18)].

(b) Family pension received by the widow or children or nominated heirs of a member of the armed forces (including para-military forces) whose death has occurred in the course of operational duties [Section 10(19)].

Conclusion:

Amount received		20,000
Less: Deduction		
- $33\frac{1}{3}$% of gross pension (20,000 x $33\frac{1}{3}$%) = 6,667		
- ₹ 15,000	15,000	6,667
		13,333

(iv) Discuss the taxability of gifts received by an Assessee.

Answer :

1. Applicability: Gifts received by Individual and HUF irrespective of Residential Status.
2. Taxability: Any sum of money, aggregate value of which exceeds ₹ 50,000, is received during the Previous Year without consideration, by an Individual or a HUF from any person(s) on or after 1.4.2007, then the whole of the aggregate of such sum will be taxable.
3. Exceptions:
   (a) Gifts received from the following persons not taxable -
      - From a relative, or
      - On the occasion of the marriage of the individual, or
      - Under a will or by way of inheritance, or
      - In contemplation of death of the payer, or
      - From any Local Authority, or
      - From any Fund/Foundation/University/Educational Institution or Hospital or other Medical Institution or Trust or Institution referred u/s 10(23C), or

- From any Trust / Institution registered u/s 12AA, or
- By an HUF from its member.

(b) Gifts received in kind not taxable.

4. **Relative means:**
   (a) Spouse of the individual,
   (b) Brother or sister of the individual,
   (c) Brother or sister of the spouse of the individual,
   (d) Brother or sister of either of the parents of the individual,
   (e) Any lineal ascendant or descendant of the individual,
   (f) Any lineal ascendant or descendant of the spouse of the individual,
   (g) Spouse of the person referred to in clauses (b) to (f) above.

Question 10:

(i) Mrs. M holds 7% equity shares in B Ltd., where her married sister, Mrs. N also holds 14% equity shares. Mr. M is employed with B Ltd., without holding technical professional qualification. The particulars of their income for the Previous Year 2014-2015 are given as follows:

	Income of Mr. M	**Income of Mrs. M**
(a) Gross Salary from B Ltd.	**2,04,000**	**—**
(b) Dividend from B Ltd.	**—**	**12,000**
(c) Income from House Property	**1,80,000**	**—**

Solution :

Computation of Total Income of Mr. M & Mrs. M for the A.Y. 2015-2016

Particulars	**Mr. M (₹)**	**Mrs. M (₹)**
Gross Salary	2,04,000	
Taxable Salary to be included in the total income of Mrs M [Sec. 64(1)(ii)]	—	2,04,000
Add: Income from House Property	1,80,000	
Add: Income from Other Sources :	—	—
Dividends to Mrs. M, but under Sec. 10(34)exempt	—	Nil
Total Income	1,80,000	2,04,000

Note:

1. In the instant case, Mrs. M along with his sister holds substantial interest in B Ltd. and Mr. M does not hold professional qualification. Accordingly, remuneration of Mr. M has been included in the total income of Mrs. M.
2. If the requisite conditions of clubbing are satisfied, clubbing provision will apply even if their application results into lower incidence of tax.

(ii) Mr. B holds 5% shares in A Ltd., where his brother and nephew hold 11% and 6% shares, respectively. Mrs. B gets commission of ₹ 2,00,000 from A Ltd. for canvassing orders. She holds no technical/professional qualification. Mr. B earns income of ₹ 10,00,000 from sugar business. Compute their Total Income for the Assessment Year 2015-16.

Solution :

Computation of Total Income for the AY 2015-16

Particulars of income	Mr. B (₹)	Mrs. B (₹)
Income from sugar business	10,00,000	—
Commission for canvassing orders from A Ltd.	—	2,00,000
Total Income	10,00,000	2,00,000

Note: In the instant case, Mr. B holds 5% and his brother holds only 11% shares in A Ltd. The total of their shareholding is less than 20%. They have no substantial interest.
Therefore, commission income is assessable as income of Mrs. B.

(iii) Mrs. Z is the owner of the business units A and B. A unit has been started with capital contribution from Mr. Z and B unit has been started out of capital contribution from Mrs. Z. The particulars of their income for the Previous Year 2014-2015 are as follows:

Particulars	**Mrs. Z (₹)**	**Mr. Z (₹)**
(i) Income from A unit	**—**	**(–) 9,00,000**
(ii) Income from B unit	**6,00,000**	**—**
(iii) Income from House Property	**—**	**3,75,000**

How would you assess them for the Assessment Year 2015-2016?

Solution:

(a) Mrs. Z is assessable on the profits from B unit. She cannot set-off the loss from A unit against the profits of B unit. Thus, she would be assessed on ₹ 6,00,000.

(b) The loss from A unit will be included in the total income of Mr. Z in view of Sec. 64(1)(iv). "Income" includes "loss" also. Mr. Z is entitled to set-off business loss of A's unit against Income from House Property. Thus, loss of ₹ 5,25,000 would be carried forward but could be set-off only against business profits.

(iv) Mr. N discloses the following incomes for the Previous Year 2014-2015:

House Property	**Business or Profession**		**Capital Gains**		**Income from Other Sources**
(₹)	**Speculation (₹)**	**Non-speculation (₹)**	**STCG (₹)**	**LTCG (₹)**	
A 60,000	**P 4,00,000**	**X 6,00,000**	**C 7,00,000**	**F 8,00,000**	**Family pension 105,000**
B (-) 50,000	**S (-)3,00,000**	**Y (-) 4,00,000**	**D (-) 4,00,000**	**E (-)6,00,000**	**Loss (-) 60,000 letting out from machinery/plant**

Determine income under head of income for the A. Y. 2015-2016

Solution :

Aggregation of income under each head of income: A. Y. 2015-2016

House Property	Business or Profession		Capital Gains		Income from Other Sources
(₹)	Speculation (₹)	Non-speculation (₹)	STCG (₹)	LTCG (₹)	(₹)
A 60,000	P 4,00,000	X 6,00,000	C 7,00,000	F 8,00,000	Family pension 105,000
B (-)50,000	S (-)3,00,000	Y (-)4,00,000	D (-)4,00,000	E (-)6,00,000	Loss (-) 60,000 letting out machinery/ plant
10,000	1,00,000	2,00,000	3,00,000	2,00,000	45,000

(v) A discloses the following incomes from business or profession for the Previous Year 2014-2015:

(a) Profit from X business ₹ 8,00,000

(b) Loss from Y business ₹ (-)2,00,000

(c) Loss from profession Z (-) ₹ 2,50,000

(d) Profit from speculation business – M ₹ 2,00,000

(e) Loss from speculation business – N ₹ (-)3,00,000

Determine the Income from Business or Profession for the Assessment Year 2015-2016

Solution :

Income from Business or Profession for the AY 2015-2016

Particulars	₹
(a) X	8,00,000
(b) Y	(-) 2,00,000
(c) Z	(-) 2,50,000
Total Income from Non Speculation Business and Profession	3,50,000
Income from Speculation Business	
(a) M	2,00,000
(b) N	(-) 3,00,000
Loss from Speculation Business	1,00,000

Speculation loss cannot be set-off against the income from business profit, though both of them fall under the same head of income.

Thus, taxable business profits for the Assessment Year 2015-2016 is ₹ 3,50,000. The speculation loss will be carried forward for future set-off for 4 Assessment Years, immediately succeeding the Assessment Year for which it was first computed [Sec. 73(4)].

The time-limit of 4 years is applicable from the Assessment Year 2016-2017 and subsequent year.

(vi) Mr. Samir submits the following information for the A.Y. 2015-16.

Particulars	₹
Taxable Income from Salary	**2,64,000**
Income from House property :	
House 1 Income	**37,000**
House 2 loss	**(53,000)**
Textile Business (discontinued on 10.10.2014)	**(20,000)**
Brought forward loss of textile business - A.Y. 2011-12	**(80,000)**
Chemical Business (discontinued on 15.3.2014)	
– b/f loss of Previous Year 2011-12	**(25,000)**
– unabsorbed depreciation of Previous Year 2011-12	**(15,000)**
– Bad debts earlier deducted recovered in July '2014	**40,000**
Leather Business	**62,000**
Interest on securities held as stock in trade	**10,000**

Determine the Gross Total Income for the Assessment Year 2015-16 and also compute the amount of loss that can be carried forward to the subsequent years.

Solution :

Computation of Gross Total Income A.Y. 2015-16

Particulars		₹	₹
I. Income from Salary			2,64,000
II. Income from House property :			
House 1 Income		37,000	
House 2 Loss		(53,000)	(16,000)
III. Profits and Gains of Business or Profession :			
(i) Textile business loss		(20,000)	
(ii) Chemical business – Bad debts recovered taxable u/s 41(4)	40,000		
Less : (i) Set off of brought forward loss of P.Y. 2010-11 u/s. 72	(25,000)	15,000	
		(5,000)	
(iii) Leather Business Income	62,000		
(iv) Interest on securities held as stock-in-trade	10,000	72,000	
		67,000	
Less: B/f business loss ₹ 80,000 restricted to		67,000	Nil
Gross Total Income			2,48,000

Notes :

1. The unabsorbed loss of ₹ 13,000 (80,000-67,000) of Textile business can be carried forward to A.Y. 2016-17 for set-off u/s. 72, even though the business is discontinued.
2. The unabsorbed depreciation of ₹ 15,000 is eligible for set-off against any income other than salary income. Since, Gross Total Income contains the balance of Income from Salary only,

unabsorbed depreciation cannot be adjusted, and hence, carried forward for adjustment in the subsequent years.

Question 11:

(i) Mr. N is employed at a gross salary of ₹ 12,00,000. He gets ₹ 18,000 interest on bank deposit. He has made the following investment/deposit during the year 2014-2015:

	₹
1. Life insurance premium:	
(a) Own life, insured for ₹ 80,000	**15,000**
(b) Brother's life, dependent on him	**5,000**
(c) Major son, not dependent on him	**4,000**
2. Contribution to unrecognised provident fund	**60,000**
3. Contribution to public provident fund	**20,000**
4. Contribution to ULIP	**5,000**
5. Repayment of loan to SBI to purchase a residential house: 50% repayment is towards interest.	**1,20,000**
He has paid education fees for his 3 children:	
A	**12,000**
B	**9,000**
C	**6,000**

Besides, interest of ₹ 1,632 on NSC-VIII, (purchased during the year 2008-2009) has been credited on them during the year 2014-2015.

Compute deduction u/s 80C for the Assessment Year 2015-2016.

Solution :

Computation of Deduction u/s 80C of Mr. N for the Assessment Year 2015-2016

Particulars	**₹**	**₹**
Deduction in respect of contribution to approved savings (Sec. 80C):		
1. Life insurance premium(assumed issued before 1st April, 2012);		
(i) Own life	15,000	
(ii) Brother's life	—	
(iii) Major son	4,000	
2. Contribution to unrecognised provident fund	—	
3. Contribution to ULIP	5,000	
4. Contribution to public provident fund	20,000	
5. Repayment of housing loan to SBI	60,000	
6. Accrued interest on NSC- VIII issue	1,632	
7. Education fees for two children:		
A	12,000	
B	9,000	
	1,26,632	
Deduction available upto ₹ 1,50,000		**1,26,632**

(ii) Mr. Jamal, a resident assessee, runs a manufacturing business in Delhi. For the Previous Year 2014-2015, he disclosed his Taxable Income as below:

Business Profits ₹ 2,55,000

Long-term Capital Gains ₹ 75,000

Short-term Capital Gain ₹ 25,000
He has hired furnished accommodation for his own use and pays ₹ 4,000 p.m. He has paid donation amounting to ₹ 10,000 to National Defence Fund. He has deposited ₹ 50,000 under a scheme framed by the Life Insurance Corporation for maintenance of his dependant brother with a disability. The disability is certified by the medical authority. Compute his Total Income for the Assessment Year 2015-2016.

Solution :
Computation of Total Income of Mr. Jamal — Assessment Year 2015-2016

Particulars	₹	₹
Income from Business (computed)		2,55,000
Long-term Capital Gain (computed)		75,000
Short-term Capital Gain (computed)		25,000
Gross Total Income		3,55,000
Deductions from Gross Total Income:		
(i) Deposit for maintenance of a dependent with disability [Sec. 80DD]	50,000	
(ii) Charitable donations to National Defence Fund [Sec. 80G]:		
Amount of Deduction @ 100% of ₹ 10,000	10,000	
	60,000	
(iii) Expenditure incurred on rent [Sec. 80GG] [W.N.1]	24,000	(84,000)
Total Income		2,71,000

Workings Note :

Particulars	₹	₹
Expenditure incurred on rent [Sec. 80GG]:		
• [Rent paid -10% of AGTI], i.e. 48,000 – 21,000 = 27,000, or		
• 25% of AGTI, i.e. 25% of 2,70,000 = 67,500, or		
• ₹ 2,000 p.m. = ₹ 24,000		
whichever is less, is to be deducted, i.e. ₹ 24,000		
Adjusted Gross Total Income for Sec. 80GG:		
Gross Total Income		3,55,000
Less: Aggregate of		
2. (i) All permissible deduction from GTI except for deduction for u/s 80GG	60,000	
(ii) Any Long-term Capital Gain	25,000	85,000
Adjusted Gross Total Income [AGTI] for Sec. 80GG		2,70,000

(iii) Mr. J is suffering with 60% locomotor disability which is certified by medical authority. He is employed as Technical Supervisor with Airtel at a salary of ₹ 40,000 p.m.

Particulars	₹
(a) Income from Government securities	**20,000**
(b) Long-term Capital Loss	**(-) 40,000**
(c) Short-term Capital Gain (Sec. 111A)	**1,00,000**
(d) Insurance commission (gross)	**1,00,000**

(e) Interest on Saving Fund A/c from Bank 10,000

He has incurred the following expenses:

(a) Medical insurance paid by cheque for his father, resident in India and 70 years ₹18,000.

(b) Deposit with LIC for maintenance of father, mainly dependant on him for support and maintenance and suffering from low-vision with a severe disability of 80%, as per certificate of the medical authority ₹1,00,000.

(c) Rent paid for the year 2014-2015 for accommodation hired by him ₹72,000.

Compute his Total Income for the Assessment Year 2015-2016.

Solution :

Computation of Total Income for the Assessment Year 2015-2016

Particulars	₹	₹
1. Income from Salaries		4,80,000
2. Income from Capital Gains :		
(a) Short-term Capital Gains (Sec. 111A)		1,00,000
(b) Long-term Capital Loss to be carried forward		Nil
3. Income from Others Sources :		
(a) Interest from Government securities	20,000	
(b) Interest on Savings Fund A/c with Bank	10,000	
(c) Insurance commission	1,00,000	1,30,000
Gross Total Income		**7,10,000**
Less : Deductions under Chapter VIA:		
Medical insurance (Sec. 80D)	18,000	
Deduction in respect of maintenance including medical treatment of a dependant, a person with severe disability (Sec. 80DD)	1,00,000	
Deduction in respect of Interest on Savings Fund A/c (Sec. 80TTA)	10,000	
Deduction in case of a person with disability (Sec. 80U)	50,000	
Deduction u/s 80GG :(Least of the followings)		
(a) (i) Rent paid less 10% of Adjusted Gross Total Income 72,000-53,200 = 18,800,		
(b) (ii) 25% of 5,32,000 Adjusted Gross Total Income= 1,33,000, (iii) 2,000 p.m. × 12 = 24,000		
Whichever is less, is or be deducted	18,800	1,96,800
Total Income		**5,13,200**

Adjusted Total Income = GTI – all deduction available except deduction available u/s 80GG
= 7,10,000 – 18,000 – 1,00,000 – 10,000 – 50,000
= 5,32,000

(iv) From the following details compute the Total Income of Mr. X, a resident of Delhi, for the A.Y. 2015-16.

Particulars	₹
(a) Salary including Dearness Allowance	**6,00,000**
(b) Bonus	**60,000**
(c) Contribution to a Recognised Provident Fund	**36,000**
(d) Life Insurance Premium	**57,000**
(e) Rent paid by the Employer for flat provided to Mr. X	**90,000**

(f) Cost of Furniture provided by the employer at the aforesaid flat	**80,000**
(g) Rent recovered from Mr. X by employer	**36,000**
(h) Bills paid by the employer for gas, electricity and water provided free of cost at the above flat	**18,000**
(i) Mr. X was provided with Company's car (with driver) also for personal use, not possible to determine expenditure on personal use and all expenses were borne by the employer.	

Particulars	**₹**
Mr. X owns a house. The particulars are :	
Rent received (12 months)	**72,000**
Municipal valuation	**48,000**
Municipal taxes paid	**12,000**
Insurance charges	**1,000**
Collection charges	**3,400**
Interest on borrowing used for construction of house (constructed in June 2004)	**48,000**
Other Information :	
Dividend received from UTI	**14,000**
Deposits under National Saving Certificate	**20,000**

Solution :

Assessee : Mr. X

Previous Year : 2014-15 **Assessment Year : 2015-16**

Computation of Total Income

Particulars	₹	₹
Income under the head Salary:		
Salary including Dearness Allowance		6,00,000
Bonus		60,000
Gross Salary before including value of perquisites		6,60,000
Value of Concessional Furnished Accommodation [Rule 3(1)]		
Least of Rent Paid by employer		
[₹ 90,000 or 15% of Salary ₹ 7,70,000]	90,000	
Add : 10% of Furniture Value [₹ 80,000 × 10%]	8,000	
Less : Rent recovered from Mr. X	(36,000)	62,000
Gas, Electricity and Water provided by the employer		18,000
Motor Car provided to the employee for use (assumed capacity upto 1.6 liitres) [(₹ 1,800 p.m. + ₹ 900 p.m. for chauffeur) × 12 Months)] as per Rule 3		32,400
Gross Income from Salary		7,72,400
Income from House Property :		
Gross Annual Value u/s 23(1)- Higher of Municipal Value ₹ 48,000 or Rent Received ₹ 72,000	72,000	
Less : Municipal Taxes paid	(12,000)	
Net Annual Value	60,000	
Less : Deduction		
Standard deduction @ 30% of Net Annual Value u/s 24(a)	(18,000)	
Interest on borrowed capital u/s 24(b)	(48,000)	(6,000)

Income from Other Sources :		
Income from UTI	14,000	
Exemption u/s 10(35)	(14,000)	Nil
GROSS TOTAL INCOME		7,66,400
Less : Deduction under Chapter VIA - Section 80C		
- Contribution to RPF	36,000	
- LIC Premium	57,000	
- Deposits in NSC	20,000	
	1,13,000	
Deduction u/s 80C restricted to ₹ 1,50,000 [Sec. 80CCE]		(1,13,000)
Total Income (Rounded Off u/s 288A)		6,53,400

(v) The books of account maintained by a National Political Party registered under the Representation of the People Act, 1951 for the year ended on 31-3-2015 disclose the following receipts:

(a)	**Rent of property let out to a departmental store at Chennai**	**₹12,00,000**
(b)	**Interest on deposits other than banks**	**₹3,00,000**
(c)	**Contribution from 100 persons (who have secreted their names) of ₹35,000 each**	**₹ 35,00,000**
(d)	**Contribution @ ₹ 25 each from 1,00,000 members in cash**	**₹25,00,000**
(e)	**Net Profit of cafeteria run in the premises at Delhi**	**₹5,00,000**

Compute the total income of the political party for the Assessment Year 2015-2016, with reason for inclusion or otherwise.

Solution :

Computation of income of National Political Party for the AY 2015-2016.

Particulars	₹
(a) Rent from property: Exempt under Sec. 13A	—
(b) Income from Business—Profits of cafeteria	5,00,000
(c) Income from Other Sources:	
(i) Interest on deposit other than banks: Exempt under Sec. 13A	—
(ii) Contributions from 100 persons exceeding ₹ 20,000 each (See Note below)	35,00,000
(iii) Contributions from 1,00,000 members: Exempt Sec. 13A.	—
Total Income	**40,00,000**

Note : Any income of a political party received by way of voluntary contributions is exempt, provided:

(a) it keeps and maintains such books of account and other documents as would enable the Assessing Officer to properly deduce its income there from;

(b) it keeps and maintains a record, name and address of the person who has contributed in excess of ₹ 20,000; and

(c) its accounts are audited by an accountant defined in Explanation to Sec. 288(2).

Thus, in order to claim exemption in respect of voluntary contributions exceeding ₹ 20,000, a political party is required to keep and maintain a record, and names, addresses of persons who have made such contributions. The legislative intention is to ensure that there is transparency in the process of collection of funds [Common Cause vs. Vol. 222 ITR 260 (SC)]. Hence, no

exemption can be allowed in respect of contributions exceeding ₹ 20,000 from persons who have secreted their names.

(vi) AB & Co., a partnership concern had established an undertaking for manufacturing computer software in Special Economic Zone. It furnishes the following particulars of its second year operations, ended on 31-03-2015:

Particulars	₹ (in lakh)
Total Sales of business	200.00
Export Sales	160.00
Profit of the business	20.00

Out of the total export sales, realisation of sale of ₹ 10 lakh is difficult because of the deficiency of the buyer. Realisation of rest of the sales is received in time.
The plant and machinery used in the business had been depreciated @ 15% on SLM basis of depreciation and depreciation of ₹ 4.5 lakh was charged to the Profit and Loss Account.
Compute the taxable income of AB & Co for the Assessment Year 2015-2016.

Solution:
Computation of Taxable Income for the A.Y. 2015-16

Particulars	₹ (in lakh)
Profit of business	20,00,000
Add : Depreciation charged on SLM basis	4,50,000
	24,50,000
Less: Depreciation on WDV basis @ 15% of 25,50,000 –[See Note below]	3,82,500
	20,67,500
Less: Deduction under Sec. 10AA : 20,67,500 × 75 ÷100	15,50,625
Taxable Income	5,16,875

Note :

1. Computation of Depreciation:

	₹
Total purchase price of machine : [4,50,000 ÷15] × 100	30,00,000
Less: Depreciation in the first year @ 15%	4,50,000
WDV at the end of first year	25,50,000
Less: Depreciation for second year @ 15%	3,82,500
WDV at the end of second year	21,67,500

2. Export Turnover:

Export Sales	1,60,00,000
Less: Remittance not received due to insolvency of buyer	10,00,000
	1,50,00,000

(vii) B Ltd. grows sugarcane to manufacture sugar. The data for the financial year 2014-15 is as follows :

Cost of cultivation of sugarcane	**₹ 7,00,000**
Market value of sugarcane when transferred to factory	**₹ 12,00,000**
Other manufacturing cost	**₹ 7,00,000**
Sales of sugar	**₹ 30,00,000**

Salary of Managing Director who looks after all operations of the Company ₹ 5,00,000
Determine its Business Income and Agricultural Income.

Solution :

(1) **Business Income :**

Sales of Sugar	₹ 30,00,000
Less: Market value of sugarcane when transferred to factory	₹ 12,00,000
Other manufacturing cost	₹ 7,00,000
Salary of Managing Director	₹ 5,00,000
	₹ 6,00,000

(2) **Agricultural Income :**

Market value of sugarcane when transferred to factory	₹ 12,00,000
Less: Cost of cultivation	₹ 7,00,000
	₹ 5,00,000

(viii) Mr. P has estates in Rubber, Tea and Coffee. He has also a nursery wherein he grows plants and sells. For the Previous Year ending 31.3.2015, he furnishes the following particulars of his sources of income from estates and sale of Plants. You are requested to compute the taxable income for the Assessment Year 2015-2016:

Manufacture of Rubber	**₹ 20,00,000**
Manufacture of Coffee grown and cured	**₹ 7,00,000**
Manufacture of Tea	**₹ 10,50,000**
Sale of Plants from Nursery	**₹ 2,00,000**

Solution :

Computation of Taxable Income for the Assessment Year 2015-16

Rule	Nature of Business	Agl Inc.	Non-Agl Inc.
7A	Sale of centrifuged latex or cenex manufactured from rubber [65% is Agricultural Income]	13,00,000	7,00,000
7B	Sale of grown and cured coffee by seller in India [75% is Agricultural Income]	5,25,000	1,75,000
8	Growing and Manufacturing Tea [60% is Agricultural Income]	6,30,000	4,20,000
	Sale of plants from nursery	2,00,000	-
	Total	26,55,000	12,95,000

Computation of Tax Liability :

	₹
(a) Total Income (Agricultural Income + Non-agricultural Income)	39,50,000
(b) Tax on (a) above	10,10,000
(c) Total of (Agricultural Income + Basic Exemption Limit)	29,05,000
(d) Tax on (c) above	6,96,500
(e) Tax Payable (b) – (d)	3,13,500
Add: Education Cess @ 2%	6,270
Add: SHEC @ 1%	3,135
Total Tax Liability	3,22,905
Tax payable rounded off u/s 288B	3,22,910

Question 12:

(i) The following is the extract Profit and Loss Account for the year ended 31.3.2015 of ABC (LLP) having 3 partners :

Dr. Extract Profit and Loss Account for the year ended 31.3.2015 Cr.

	₹	₹		₹	₹
Establishment & other expenses		50,00,000	Gross Profit		70,20,000
Interest to partner @ 15%			Profit on sales of equity shares sold after 2 years through Recognized Stock Exchange		1,40,000
A	90,000				
B	1,20,000				
C	60,000	2,70,000	Rent from house property		60,000
Salary to designated partners			Interest on bank deposits		10,000
A	2,40,000		Profit on equity shares sold after 10 months through Recognized Stock Exchange		1,20,000
B	1,80,000				
		4,20,000			
Net Profit		16,60,000			
		73,50,000			73,50,000

Additional information:

1. **Establishment expenses include ₹ 1,20,000 on account of bonus which was due on 31.3.2015.**
2. **The LLP is eligible for 100% deduction under section 80-IC as it is established in notified area in Himachal Pradesh.**
3. **Shares were sold through recognized stock exchange and securities transaction tax of ₹1,000 is included in the establishment expenses on account of the same.**

Compute the tax payable by the Limited Liability Firm.

Solution:

Computation of Total Income of ABC (LLP) for the A.Y. 2015-16

Particulars	₹	₹	₹
Income under the head House Property			
Actual Rent		60,000	
Less : Deduction 30%		18,000	42,000
Business Income			
Net Profit as per P&L A/c		16,60,000	
Less : Income credited but either exempt or taxable under other head			
- Rent	60,000		
- Profit on sale of shares sold after 2 years	1,40,000		
- Interest on bank deposit	10,000		
- Profit on sale of shares sold after 10 months	1,20,000	3,30,000	
		13,30,000	
Add : Expenses disallowed			
Bonus as per section 43B	1,20,000		
Securities Transaction Tax	1,000		
Interest to partners in excess of 12%	54,000		

Salary to partners	4,20,000	5,95,000	
Book Profit		19,25,000	
Less : Salary as per section 40(b) (See working note)		4,20,000	15,05,000
Short-term Capital Gain on sale of equity shares			1,20,000
Income from Other Sources			10,000
Gross Total Income			16,77,000
Less : Deduction under section 80-IC		15,05,000	
Deduction under section 80TTA [Assumed interest is from Savings Account]		10,000	15,15,000
Total Income			**1,62,000**

Regular Income Tax Payable on Total Income

(1)	Short-term Capital Gain of ₹ 1,20,000 @ 15%	18,000
(2)	Balance total income ₹ 42,000 @ 30%	12,600
		30,600

Adjusted Total Income	
Total Income	1,62,000
Add: Deduction u/s Chapter VIA	15,05,000
	16,67,000

Where the regular Income Tax payable for a Previous Year by a person (other than a company) is less than the Alternate Minimum Tax payable for such Previous Year, the Adjusted Total Income shall be deemed to be the total income of such person and he shall be liable to pay Income-tax on such Total Income at the rate of 18.5% [Section115JC (1)]

To whom Alternate Minimum Tax shall be applicable [Section 115JEE (1)]

The provisions of Alternate Minimum Tax shall apply to a non-corporate assessee who has claimed any deduction under:

(a) Sections 80-IA to 80RRB other than section 80P; or

(b) Section 10AA; Or

(c) Section 35AD

Alternate Minimum Tax (AMT) @18.5% on ₹ 16,67,000 = ₹ 3,08,395 [Higher of ₹ 30,600]

Hence, adjusted total income shall be total income and the tax payable shall be the Alternate Minimum Tax *i.e.* on ₹ 16,67,000 @ 18.5% + 3% (EC + SHEC).

Tax Payable

	₹
Alternate minimum tax 18.5% on ₹ 16,67,000	3,08,395
Add : 3% Education Cess & SHEC	9,252
	3,17,647
Rounded off	3,17,650

Working Note

1. Book Profit	19,25,000

Maximum salary allowed	
First 3,00,000 of book Profit — 90%	2,70,000
Balance ₹ 16,25,000 of book Profit 60%	9,75,000
	12,45,000

Salary allowed shall be ₹ 12,45,000 or ₹ 4,20,000 whichever is lower i.e. ₹ 4,20,000.

2. Long term Capital Gains arising from transfer of Equity Shares through Recognized Stock Exchange, on which STT is paid, is exempted from Tax [Sec.10(38)]

(ii) Shivam Charitable Trust submits the particulars of its receipts and outgoing during the Previous Year 2014-2015 as below :

1	**Income from property held under trust for charitable purposes**	**₹ 30,00,000**
2	**Voluntary contribution (out of which ₹ 7,50,000 will form part of the corpus)**	**₹ 22,50,000**
3	**Donations paid to blind charitable school**	**₹ 9,00,000**
4	**Scholarship paid to poor students**	**₹ 6,00,000**
5	**Amount spent on holding free eye camps in urban slums**	**₹ 4,50,000**
6	**Amount set apart for setting up an old age home by March 2017**	**₹ 15,00,000**

Compute the total income of the trust for the Previous Years 2014-2015 and 2017-2018 if it spends ₹ 3,00,000 during the Previous Year 2016-2017 and ₹ 5,00,000 during the Previous Year 2017-2018 in setting up the old age home.

Solution :

(a) Computation of the Taxable Income of the trust for Previous Year 2014-2015/AY 2015-2016.

	₹	₹
(a) Income from property held under charitable trust		30,00,000
(b) Income from voluntary contributions (₹ 22,50,000 - ₹ 7,50,000)		15,00,000
Total		45,00,000
Less : 15% set apart for future application		6,75,000
Balance		38,25,000
Less: Income applied for charitable purposes:		
(i) Donations to blind charitable school	9,00,000	
(ii) Scholarship to poor students	6,00,000	
(iii) Free eye camps in urban slums	4,50,000	
Total	19,50,000	
Amount set apart for old age home	15,00,000	34,50,000
Taxable Income		3,75,000

(b) Previous Year 2017-2018 /AY 2018-2019:

Amount set apart for old age home	₹15,00,000
Less : 1. Amount spent during 2016-2017	₹ (3,00,000)
2. Amount spent during 2017-2018	₹ (5,00,000)
Taxable Income	₹7,00,000

(iii) Mr. Bala Cooperative Society Ltd. furnishes the following particulars of its income for the Previous Year ended on 31st March 2015:

(a)	**Interest on Government securities**	**60,000**
(b)	**Profits from banking business**	**5,50,000**
(c)	**Income from purchase and sale of agricultural implement and seeds to its members**	**2,50,000**
(d)	**Income from marketing of agricultural produce of its members**	**4,00,000**
(e)	**Profits and gains of business**	**2,20,000**
(f)	**Income from cottage industry**	**3,50,000**
(g)	**Interest and dividends (gross) from other cooperative societies**	**30,000**

Compute Total Income of the society and calculate the Tax Payable by it for the Assessment Year 2015-2016.

Solution :

Dinesh Pally Co-operative Society Ltd.

Computation of income of the for the Previous Year 2014-2015 relating to the Assessment Year 2015-2016 :

Particulars	**₹**	**₹**
1. Profits and Gains of Business or Profession:		
a) Banking business	5,50,000	
b) Income from purchase and sale of agricultural implements and seeds to its members	2,50,000	
c) Income from marketing of agricultural produce of its members	4,00,000	
d) Profits and gains of business	2,20,000	
e) Income from cottage industry	3,50,000	17,70,000
2. Income from Other Sources:		
a) Interest on Government securities	60,000	
b) Interest and dividends from other cooperatives	30,000	90,000
Gross Total Income		18,60,000
Less: Deduction allowable from gross total income under Sec. 80P		
1. Banking business [Assumed it is a Rural Development Bank]	5,50,000	
2. Income from purchase and sale of agricultural implement and seeds to its members	2,50,000	
3. Income from marketing of agricultural produce of its members	4,00,000	
4. Income from cottage industry	3,50,000	
5. Interest on Government securities(not eligible for deduction)	Nil	
6. Interest and dividends from other cooperative societies	30,000	15,80,000
Total Income		2,80,000

Computation of Tax Liability :

Particulars	**Rate**	₹
On first ₹ 10,000	10%	1,000
On next ₹ 10,000	20%	2,000
On balance ₹ 2,60,000	30%	78,000
Income Tax Payable		81,000
Add: Education cess @ 2%		1,620
Add: SHEC @ 1%		810

Tax Payable		**83,430**

Note: It is assumed that the provisions of Alternate Minimum Tax are not applicable.

(iv) Classic Exporters Ltd, runs a new industrial undertaking set up in 2006-2007 which satisfies the conditions of Sec. 80-IB. Given below is the extract Profit and Loss Account for the Previous Year 2014-2015 :

Particulars	₹	Particulars	₹
Stock	6,00,000	Domestic sales	27,00,000
Purchases	23,00,000	Export sales	43,00,000
Salaries and wages	9,70,000	Export incentives Sec. 28(iiia)/(iiic)	50,000
Entertainment expenses	1,30,000	Profit of foreign branch	2,50,000
Freights and insurance attributable to exports	6,00,000	Brokerage/commission/interest/ rent, etc	1,50,000
Travelling expenses	2,20,000	Transfer from contingency reserve	10,00,000
Depreciation	1,50,000	Stock	4,50,000
Selling expenses	1,20,000		
Income tax paid	90,000		
Income-tax penalty	20,000		
Wealth tax paid	10,000		
Custom duty payable against demand notice	30,000		
Provision for unascertained liabilities	20,000		
Provision for ascertained liabilities	50,000		
Proposed dividend	3,00,000		
Loss of subsidiary company	50,000		
Net Profit	32,40,000		
	89,00,000		89,00,000

You are further informed:

(a) Excise duty for 2013-2014, amounting ₹ 1,20,000 was paid on 15th December 2014.

(b) Depreciation under Sec. 32 is ₹ 2,20,000.

(c) During the year 2010-2011, contingency reserve, amounting ₹ 10,00,000, debited to Profit and Loss A/c, was added back to the extent of ₹ 4,00,000 in the computation of Book-Profits. The company has transferred the said reserve to the Profit and Loss A/c during the year.

(d) Brought forward business loss/depreciation:

PY	Accounting purposes		Tax purposes	
	Loss	Depreciation	Loss	Depreciation
2010-2011	(-) 10,00,000	(-) 1,00,000	(-) 5,00,000	(-) 2,50,000
2011-2012	(-) 2,00,000	(-) 3,00,000	(-) 1,00,000	(-) 2,00,000

Compute the following: (a) Total Income, (b) Book-Profits and (c) Tax Liability.

Solution :

(a) Computation of Total Income for the AY 2015-2016

Particulars	₹	₹
Net Profit as per Profit & Loss A/c		32,40,000
Add : Expenses debited to P&L A/c – disallowed		
(i) Income tax	90,000	
(ii) Wealth tax	10,000	
(iii) Custom duty payable	30,000	
(iv) Provision for unascertained liability	20,000	
(v) Proposed dividend	3,00,000	
(vi) Loss of subsidiary company	50,000	
(vii) Income-tax penalty	20,000	
(viii) Depreciation	1,50,000	6,70,000
		39,10,000
Less : Allowable Expenses and wrong credits in P&L A/c		
(i) Withdrawals from contingency reserve	10,00,000	
(ii) Excise duty	1,20,000	
(iii) Depreciation	2,20,000	
(iv) Brokerage, commission, interest and rent, etc.	1,50,000	14,90,000
Business Profits		24,20,000
Add: Income from Other Sources: Brokerage/ commission, etc.		1,50,000
Aggregate Income		25,70,000
Less:		
(i) Brought forward losses (Sec. 72)	6,00,000	
(ii) Brought forward depreciation [Sec. 32(2)]	4,50,000	10,50,000
Gross Total Income		15,20,000
Less: Profit from industrial undertaking Sec. 80IB: 30% of ₹ 15,20,000 as included in GTI		4,56,000
Total Income		10,64,000

(b) Computation of Book Profits for the AY 2015-2016

Particulars	₹	₹
Net Profits as per Profit & Loss A/c		32,40,000
Add : Expenses disallowed		
(i) Income tax	90,000	
(ii) Provision for unascertained liability	20,000	
(iii) Proposed dividend	3,00,000	
(iv) Loss of subsidiary	50,000	4,60,000
Less : Allowable expenses and wrong credit in P & L A/c		37,00,000
(i) Withdrawals from contingency reserve	4,00,000	
(ii) Brought forward business loss or depreciation whichever is less		
2010-2011 Depreciation	1,00,000	
2011-2012 Loss	2,00,000	7,00,000
Book-Profits		**30,00,000**

(c) Computation of Tax Liability for the AY 2014-2015

Particulars	₹
(a) Tax on Total Income (including Education Cess and SHEC) = 30.9% of 10,64,000	3,28,776
(b) Tax on Book Profits (including Education Cess and SHEC) = 19.055% on 30,00,000	5,71,650
Tax payable [Higher of (a) & (b)]	5,71,650

Note :

(i) No adjustment is required for depreciation debited to Profit and Loss A/c because it is not on account of revaluation of any asset.

(ii) MAT credit available ₹ (5,71,650 – 3,28,776) = ₹ 2,42,874

(iii) Any penalty, interest, etc. paid under any of the direct tax laws or for infraction of any other laws and debited to Profit & Loss Account will be allowed and hence, need not be added back.

Question 13:

(i) During the Previous Year 2014-15, Mrs. A (aged 46 years) pays the following installments of advance tax :

	₹
On September 15, 2014	**6,000**
On December 15, 2014	**8,000**
On March 15, 2015	**10,000**
On March 16, 2015	**8,000**

Mrs. A files return of ₹ 6,01,000. Assessment is also completed on the basis of income returned by Mrs. A after making addition of ₹ 25,000 (date of assessment order : January 20, 2016). Mrs. A is entitled to tax credit of ₹ 12,510 on account of tax deducted at source. Compute interest under sections 234B and 234C.

Solution :

Interest liability under section 234B

	₹
Income (6,01,000+25,000)	6,26,000
Tax on ₹6,26,000	51,706
Less: Tax deducted at source	12,510
Assessed tax	39,196
90% of assessed tax	35,276
Advance tax paid during 2013-14 (i.e., ₹ 6,000 + 8,000 + 10,000 + 8,000)	32,000

Since advance tax during the Previous Year 2014-15 is less than 90% of assessed tax, Mrs. A is liable to pay interest under section 234B, i.e., on the shortfall of ₹ 7,196 (being ₹ 39,196 – 32,000) for 10 months (₹ 7,196 × 1/100 × 10) which comes to ₹ 720.

Interest liability under section 234C :

Tax on ₹ 6,01,000 = 45,200 + 3% on Education and Higher Education Cess = 46,556

Due date	Advance Tax Payment (₹)	Advance Tax paid (₹)	Cumulative Advance Tax paid before due date (₹)	Shortfall in Payment (₹)	Surplus Months (₹)		Interest @ 1% p.m. (₹)
15.9.2014	30% of ₹ 46,556 = 13,967	6,000	6,000	7,967	—	3	239
15.12.2014	60% of ₹ 46,556 = 27,934	8,000	14,000	13,934	—	3	418
15.3.2015	100% of ₹ 46,556 = 46,556	18,000	32,000	14,556	—	1	146
							803

(ii) Compute the Advance Tax payable by R from the following estimated income submitted for the Previous Year 2014-15.

	₹
(1) Income from Salary	**3,84,000**
(2) Rent from house property (per annum)	**1,70,000**
(3) Interest on Government securities	**10,000**
(4) Interest on bank deposits	**6,000**
(5) Receipt from horse race (net)	**21,000**
(6) Agricultural Income	**90,000**
(7) Contribution towards PPF	**10,000**

Tax deducted at source by the employer on salary is ₹ 9,680.

Solution:

Computation of Estimated Total Income for the Previous Year 2014-15

	₹	₹
Income from Salary: Gross salary	3,84,000	
Less : Deduction	Nil	3,84,000
Income from House Property: Rent received	1,70,000	
Less : Statutory deduction u/s 24(*a*) @ 30%	51,000	1,19,000
Income from Other Sources: Interest on Government securities	10,000	
Interest on Bank Deposit	6,000	
Horse Races (Gross)	30,000	46,000
Estimated Gross Total Income		5,49,000
Less : Deduction under section 80C		10,000
		5,39,000

Estimated Tax: Step-1 : Aggregate of Agricultural income + Non-Agricultural income (90,000 + 5,39,000) = 6,29,000		
Tax on : Income from Horse Race of ₹ 30,000 @ 30%	9,000	
Balance income of ₹ 5,99,000	44,800	
		53,800
Step-2 : Aggregate of Basic exemption limit of agricultural income (2,50,000 + 90,000) = 3,40,000		
Tax on ₹ 3,40,000		9,000
Step-3 : Tax on non-agricultural income		
Tax under step-1 - Tax under step-2 (53,800– 9,000) = 44,800		
Estimated tax payable		44,800
Add: Education cess @2%		896
Add: SHEC @1%		448
Less : Estimated TDS		46,144
on salary	9,680	
on horse races	9,000	(18,680)
Advance tax payable		27,464
First installment payable by 15.9.2014 (30%)		8,239
Second installment payable by 15.12.2014 (30%)		8,239
Third installment payable by 15.3.2015 (balance 40%)		10,986

Working notes:

1. Computation of gross winnings from horse races:

Net Amount	₹ 21,000
Grossing up 24,000 X100/70	₹ 30,000
Tax deducted at source (Gross amount ₹ 30,000 – Amount received ₹ 21,000)	₹ 9,000

(iii) Find out the amount of advance tax payable by Mr. A on specified dates under the Income Tax Act, 1961 for the Previous Year 2014-15:

	₹
Business income	**5,50,000**
Long Term Capital Gain on 31-5-2014	**3,20,000**
Winning from lotteries on 12-6-2014	**1,00,000**
Bank interest	**20,000**
Other income	**10,000**
Investment in PPF	**80,000**
Tax deducted at source : Case I **Case II**	**96,000** **50,000**

Solution:

Computation of Total Income of Mr. A for the Previous Year 2014-15:

Particulars	**Details**	**Amount (₹)**
Profits and Gains of Business or Profession		550,000

Capital gains : Long Term Capital Gains		3,20,000
Income from Other Sources Winning from lotteries Bank interest Other income	 1,00,000 20,000 10,000	 1,30,000
Gross Total Income		10,00,000
Less : Deduction u/s 80C — Deposits in PPF Deduction u/s 80TTA	80,000 10,000	 90,000
Total Income		9,10,000

Computation of Tax liability of Mr. A for the Previous Year 2014-15:

Income	**Case 1 (₹)**	**Case 2 (₹)**
Long Term Capital Gain (₹ 3,20,000 @ 20%)	64,000	64,000
Winning from lotteries (₹ 1,00,000 @ 30%)	30,000	30,000
Balance Income (₹ 2,50,000)	Nil	Nil
Tax	94,000	94,000
Add : Education cess & SHEC	2,820	2,820
	96,820	96,820
Less : Tax Deducted at Source	96,000	50,000
Total Tax Payable	820	46,820

Advance tax to be paid on specified dates

Case I: Since amount of tax payable is less than ₹10000, assessee is not liable to pay advance tax.

Case II : Advance Tax Payable

Due Date	**Tax Liability (₹)**	**Amount of Instalment (₹)**
15.09.2014	30% of 46,820 = 14,046	14,046
15.12.2014	60% of 46,820= 28,092	28,092 – 14,046 = 14,046
15.03.2015	100% of 46,820= 46,820	46,820-14,046-14,046= 18,728

(iv) Mr. Prasad, ordinarily resident in India, furnished the following particulars of his income/ savings during the Previous Year 2014-2015.

(a)	**Income from foreign business (Including ₹ 2,00,000 from business connection in India) accruing outside India**	**15,00,000**
(b)	**Loss from Indian business**	**(–) 2,00,000**
(c)	**Income from house property**	**4,00,000**
(d)	**Dividends gross from Indian companies**	**60,000**
(e)	**Deposit in Public Provident Fund**	**70,000**
(f)	**Tax paid in foreign country**	**2,50,000**

There is no double taxation avoidance treaty. Compute the tax liability.

Solution:

(1) Computation of Total Income for the Assessment Year 2015-16

Particulars	Amount (₹)	Amount (₹)
1. Income from House Property		4,00,000
2. Income from Business:		
(a) Income from Indian Business	(2,00,000)	
(b) (i) Income from foreign business accruing or arising outside India	13,00,000	
(ii)income from foreign business deemed to accrue or arise in India	2,00,000	13,00,000
3. Income from other sources		
Dividends from Indian Companies- exempted u/s 10(34)		Nil
Gross Total Income		17,00,000
Less: Deduction for approved savings u/s 80C – PPF deposits		70,000
Total Income		16,30,000

(2) Computation of Tax liability on Total Income for the Assessment Year 2015-16

Particulars	Amount (₹)
Tax on Total Income of ₹ 16,30,000	3,14,000
Add: Surcharge on Income Tax (assuming total income is less than one crore)	Nil
Add: Education Cess @ 2%	6,280
Add: Secondary and Higher Education Cess @ 1%	3,140
	3,23,420
Less: Double taxation relief : 13,00,000 x 16.67%	2,16,710
Tax Payable	1,06,710

Note: 1. Relief is allowed on the doubly taxed income either at average rate of Indian tax or average rate of foreign income tax, whichever is lower:-

(a) Average rate of Indian income tax : 3,23,420/ 16,30,000 × 100 = 19.84%

(b) Average rate of foreign income tax: (2,50,000/15,00,000) × 100 = 16.67%

2. The amount of doubly taxed income has been worked out as under:

Income from foreign business, accruing outside India	15,00,000
Less: Income from business connection deemed to accrue or arise in India which is not entitled to double taxation relief.	2,00,000
Doubly taxed income	13,00,000

3. Loss from Indian business has been set-off against Profits from foreign business which is deemed to accrue or arise in India. The mode of set-off increases the amount of double taxation relief.

(v) Ms. Dipika, a resident Indian, furnishes the details for the Assessement Year 2015-2016 :

Particulars	Amount (₹)
(1) Income from profession	**1,94,000**
(2) Share of income from a partnership in country X (tax paid in Country X for this income in equivalent Indian Rupees 10,000)	**50,000**

(3) Commission income from a concern in country Y (tax paid in country Y @ 20%, converted in equivalent Indian Rupees)	40,000
(4) Interest on scheduled banks [other than savings account]	20,000

Ms. Dipika wishes to know whether she 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.

Solution :

(1) Computation of Total Income for the Assessment Year 2015-16

Particulars	Amount (₹)	Amount (₹)
(a) Income from Business or Profession:		
(i) Income from Profession	1,94,000	
(ii) Share of income in partnership firm in country X	50,000	2,44,000
(b) Income from other sources:		
(i) Interest from scheduled bank	20,000	
(ii) Commission earned in Country Y, assumed from other sources	40,000	60,000
Total Income		**3,04,000**

(2) Computation of Tax Liability on Total Income for the Assessment Year 2015-16

Particulars	Amount (₹)
Tax on Total Income of ₹ 3,04,000	5,400
Add: Surcharge on Income Tax	Nil
Add: Education Cess @ 2%	108
Add: Secondary and Higher Education Cess @ 1%	54
	5,562
Less: Double taxation relief : 90,000 x 1.833%	(1,647)
Tax Payable	3,915
Rounded off u/s 288B	3,920

Notes : (i) Average rate of tax in the foreign country = 20% i.e. [(₹ 10,000 + 20% of ₹ 40,000)/ (50,000+40,000)] ×100 = 20%

(ii) Average rate of tax in India = (5,562/3,04,000) × 100 = 1.83%

Question 14:

(i) ThomasF LLP of France and Squar Ltd of India are associated enterprises. Squar Ltd. imports 3,000 compressors for Air Conditioners from ThomasF at ₹ 7,800 per unit and these are sold to Paharpur Cooling Solutions Ltd at a price of ₹ 11,000 per unit. Squar Ltd. had also imported similar products from Cold Ltd and sold outside at a Gross Profit of 20% on Sales.

ThomasF offered a quantity discount of ₹ 1,500 per unit. Cold Ltd. could offer only ₹ 500 per unit as Quantity Discount. The freight and customs duty paid for imports from Poland had cost to Squar Ltd. ₹1,200 a piece. In respect of purchase from Cold Ltd, Squar had to pay ₹ 200 only as freight charges.

Determine the Arm's Length Price and the amount of increase in Total Income of Squar Ltd.

Solution:

A. Computation of Arm's Length Price of Products bought from ThomasF, France by Squar Ltd.

Particulars	₹	₹
Resale Price of Goods Purchased from ThomasF		11,000
Less: Adjustment for differences		
(a) Normal gross Profit margin @ 20% of sale price [20% × ₹ 11,000]		2,200
(b) Incremental Quantity Discount by ThomasF [₹ 1,500 – ₹ 500]		1,000
(c) Difference in Purchase related Expenses [₹ 1,200 – ₹ 200]		1,000
Arms Length Price		**6,800**

B. Computation of Increase in Total Income of Squar Ltd

Particulars	₹	₹
Price at which actually bought from ThomasF LLP of France		7,800
Less : Arms Length Price per unit under Resale Price Method		(6,800)
Decrease in Purchase Price per Unit		1,000
No. of Units purchased from ThomasF		1,000
Increase in Total Income of Squar Ltd [3,000 Units × ₹ 1,000]		₹ 30,00,000

(ii) Plasco Inc., a Italian Company, holds 45% of Equity in the Indian Company Chirag Technologies Ltd (CTL). CTL is engaged in development of software and maintenance of the same for customers across the globe. Its clientele includes Plasco Inc.

During the year, CTL had spent 2,400 Man Hours for developing and maintaining software for Plasco Inc, with each hour being billed at ₹ 1,300. Costs incurred by CTL for executing work for Plasco Inc. amount to ₹ 25,00,000.

CTL had also undertaken developing software for Harsha Industries Ltd for which CTL had billed at ₹ 2,700 per Man Hour. The persons working for Harsha Industries Ltd and Plasco Inc. were part of the same team and were of matching credentials and caliber. CTL had made a Gross Profit of 60% on the Harsha Industries work.

CTL's transactions with Plasco Inc. are comparable to the transactions with Harsha Industries, subject to the following differences:

- **(a) Plasco gives technical know-how support to CTL which can be valued at 8% of the Normal Gross Profit. Harsha Industries does not provide any such support.**
- **(b) Since the work for Plasco involved huge number of man hours, a quantity discount of 14% of Normal Gross Profits was given.**
- **(c) CTL had offered 90 days credit to Plasco the cost of which is measured at 2% of the Normal Billing Rate. No such discount was offered to Harsha Industries Ltd.**

Compute ALP and the amount of increase in Total Income of Chirag Technologies Ltd.

Solution:

(A) Computation of Arms Length Gross Profit Mark-up

Particulars	₹	₹
Normal Gross Profit Mark up		60.00
Less : Adjustment for differences		
(a) Technical support from Branch [8% of Normal GP = 8% of 60%]	4.80	

(b) Quantity discount 14% of normal Gross Profit [14% of 60%]	8.40	(13.20)
		46.80
Add: Cost of Credit to Plasco 2% of Normal Bill [2% ×GP 60%]	1.20	1.20
Arm's Length Gross Profit mark-up		48.00

(B) Computation of Increase in Total Income of Plasco Ltd

Particulars	₹	₹
Cost of services provided to CTL		25,00,000
Arm's length Billed Value		38,46,154
Less: Billed amount [2,400 hours x ₹ 1,300 per hour]		31,20,000
Therefore, Increase in Total Income of Plasco		7,26,154

(iii) Harmony Ltd is an Indian Company engaged in the business of developing and manufacturing Industrial components. Its Canadian Subsidiary Su-power Inc. supplies technical information and offers technical support to Harmony for manufacturing goods, for a consideration of Euro 2,00,000 per year.
Income of Harmony Ltd is ₹ 180 Lakhs. Determine the Taxable Income of Harmony Ltd if Su-power charges Euro 2,60,000 per year to other entities in India. What will be the answer if Su-power charges Euro 1,20,000 per year to other entitles. (Rate per Euro may be taken at ₹ 50)

Solution:

Computation of Total Income of Harmony Ltd.

Particulars		
When Price Charged for Comparable Uncontrolled Transaction	2,00,000	1,20,000
Price actually paid by Harmony Ltd [€ 2,00,000 x 50]	1,00,00,000	1,00,00,000
Less: Price charged in Rupees (under ALP) [€ 2,60,000 x 50] [€ 1,20,000 x 50]	1,30,00,000	60,00,000
Incremental Profit on adopting ALP [A]	(30,00,000)	40,00,000
Total Income before adjusting for differences due to Arm's Length Price	1,80,00,000	1,80,00,000
Add: Difference on account of adopting Arm's Length Price [if (A) is positive]	Nil	40,00,000
Total Income of Harmony Ltd	1,80,00,000	2,20,00,000

Note : U/s 92(3), Taxable Income cannot be reduced on applying ALP. Therefore, difference on account of ALP which reduces the Taxable Income is ignored.

(iv) The gross total income of Mr. Raju for the assessment year 2015-16 is ₹7,20,000 which includes long-term capital gain ₹80,000, short-term capital gain referred to in section 115A ₹70,000 and interest on saving bank deposit ₹12,000. Compute the tax payable by Mr. Raju assuming he deposited ₹1,00,000 in PPF and paid premium for health insurance by cheque amounting to ₹15,000.

Solution:

Computation of tax payable by Raju for the assessment year 2015-16

	₹	₹
Gross total income		7,20,000
Less: Deductions		
U/s 80C	1,00,000	
U/s 80D	15,000	
U/s 80TTA	10,000	1,25,000
Total Income		5,95,000
Tax on ₹5,95,000		
Long-term capital gain ₹80,000 @ 20%	16,000	
Short-term capital gain ₹70,000 @ 15%	10,500	
Balance total income ₹4,45,000	19,500	
	46,000	
Less: rebate u/s 87A	2,000	
	44,000	
Add: Education cess & SHEC @ 3%	1,320	
	42,680	

(v) Total income of Mr. Varun who is aged 46 years, for the previous year ending 31.3.2015 is ₹4,44,900. Compute the tax payable by him for the assessment year 2015-16.

Solution:

Tax on income of previous year is calculated at the rate prescribed for the relevant assessment year. For previous year 2014-15, the income-tax shall be payable at the rates prescribed for assessment year 2015-16. It will be calculated as under:

	Rate of tax	**Tax of payable**
		₹
First ₹2,50,000	Nil	-
Next ₹1,94,900 (rate for income tax between the slab of ₹2,50,000 & ₹5,00,000 is 10%)	10%	19,490
Less: rebate u/s 87A		2,000
		17,490
Add: EC & SHEC @ 3%		525
		18,015
Total tax (round off)		18,020

Note.—

Tax payable is rounded off to nearest rupees ten. For this purpose any part of a rupee consisting of paise shall be ignored. Thereafter, if the last digit of tax payable is ₹5 or more, it is rounded off to higher ten, whereas if the last digit of tax payable is less than ₹5, it is rounded off to lower ten.

(vi) Total income of Mrs. Gupta aged 60 years, a resident of India, for the previous year 2014-15 is ₹9,76,300.

(A) Compute her tax liability for the assessment year 2015-16.

(B) What will be tax payable if Mrs. Gupta is non-resident in India.

Solution:

(A) Since, Mrs. Gupta is a woman who is 60 years old, and resident in India, her tax liability will be computed as under:

	Rate of tax	Total Tax
First ₹3,00,000	Nil	-
Next ₹2,00,000 (on income exceeding ₹3,00,000 but up to ₹5,00,000)	10%	20,000
Next ₹4,76,300 (on income exceeding ₹5,00,000 but upto ₹10,00,000)	20%	95,260
		1,15,260
Add: Education cess + SHEC @ 3%		3,458
		1,18,718
Total tax (round off)		1,18,720

Note: tax payable is round off to nearest rupees ten. Since the last digit of tax payable is ₹ 5 or more, it is round off to higher ten.

(B) Since, Mrs. Gupta is a non- resident, the basic exemption limit in her case shall be ₹2,50,000 instead of ₹ 3,00,000.

	Rate of tax	Total Tax
	₹	₹
First ₹2,50,000	Nil	Nil
Next ₹2,50,000 (income exceeding ₹2,50,000 but up to ₹5,00,000)	10%	25,000
Next ₹4,76,300	20%	95,260
		1,20,260
Add: Education cess + SHEC @ 3%		3,608
		1,23,868
Total tax (Round off)		1,23,870

(vii) Ms. Komal discloses the following particulars of her income during the Previous Year 2014-2015:

(a) Dividends from Sri Lankan companies received in India ₹ 6,00,000.
Dividends were received partly in cash and partly in shares. Face value of shares is ₹1,00,000 but their market value is ₹ 4,00,000. However, currently there is no buyer in the market.

(b) Pension remitted to her in India by Sri Lankan Government after deduction of tax at source (₹ 15,000) ₹ 1,65,000.

(c) Fees received in Ceylon for arguing a patent case in Delhi High Court on behalf of a fellow-lawyer friend of Mumbai ₹ 3,00,000.

(d) Commission credited to her account in India under her instructions by law firms in India, for referring clients from outside India but commission was received in Mauritius ₹2,00,000.

(e) Share of income from a Partnership firm, in which she is a partner received in Kolkata ₹2,50,000.

(f) Income from law practice in Mauritius and Qatar, received there, but practice was set up in Delhi ₹ 4,80,000.

(g) 5% commission for the Year 2014-2015 from publishers of law books on their annual Profits, received in India, commission has been paid after setting off ₹ 30,000 for books purchased by her. She has purchased the dealership rights from Mumbai Law House on 1 January, 2014 ₹ 1,50,000.

(h) Gift from a foreign client, received outside India ₹30,000.

Determine her Gross Total Income for the Previous Year 2014-2015 if she is (i) Resident and Ordinarily Resident; (ii) Resident but not Ordinarily Resident; and (iii) Non Resident

Solution:

Computation of Gross Total Income for the Previous Year 2014-15

Particulars	ROR	RNOR	NR
(a) Dividend received in India			
A. Cash dividend	2,00,000	2,00,000	2,00,000
B. Dividend in kind to be valued at market price of shares	4,00,000	4,00,000	4,00,000
(b) Pension received outside India and not deemed to accrue or arise in India [CIT vs. Kalyanakrishnan 195 ITR 534]	1,85,000	-	-
(c) Fees for arguing patent case in Delhi, but received in Ceylon – Income from business connection deemed to accrue or arise in India	3,00,000	3,00,000	3,00,000
(d) Commission credited to the account of payee under her instruction in the books of payer is a deemed receipt in India [Raghava Reddy vs.CIT (1962) 441 ITR 720 (SC)]	2,00,000	2,00,000	2,00,000
(e) Share income received from Partnership firm exempt from tax – as tax liability borne by Firm	-	-	-
(f) Income from profession set up in India, extended outside India -Income being received outside India	4,80,000	4,80,000	—
(g) Commission on account of dealership rights, received in India @ 5% or the annual Profits of the publishers - Commission not to be apportioned between seller and purchase on time basis	1,80,000	1,80,000	1,80,000
(h) Gift from a foreign client, received outside India [Sec. 28(iv)]	30,000	-	-
Gross Total Income	19,75,000	17,60,000	12,80,000

Question 15:

(i) Cash Book of M/S Brinda Rubber for financial year 2014-15 is given below :

Cash Book

Dr.			***Cr.***
Particulars	**Amount (₹)**	**Particulars**	**Amount (₹)**
To, Balance b/d	**15,750**	**By, Salaries & Wages A/c**	**10,78,000**
To, Sale of centrifuged latex	**15,45,800**	**By, Electricity Charges A/c**	**32,500**
To, Interest on Bank FD	**38,000**	**By, Printing & Stationery A/c**	**2,890**
		By, Other Expenses A/c	**28,110**
		By, Amount deposited to Special A/c [specified by Rubber Board and approved by Central Govt.] **By, Amount deposited to a account not specified by Central Govt.**	**2,00,000** **2,00,000**
		By, Bank Charges A/c	**1,550**
		By, Balance c/d	**56,500**
	15,99,550		**15,99,550**

Profits and Gains of Business or Profession

Additional Information:

1. **Deprecation allowed u/s 32 of Income Tax Act is ₹ 28,200 but depreciation to be charged to the Profit & Loss A/c is ₹ 31,550.**
2. **Unabsorbed business loss brought forward is ₹ 30,000 [A.Y. 2012-13].**

You are required to prepare extracted Profit & Loss A/c and calculate the Taxable Business Profit for the Assessment Year 2014-15.

Solution:

Extracted Profit & Loss A/c for the year ended 31st March, 2015

Particulars	Amount (₹)	Particulars	Amount (₹)
To, Salaries & Wages A/c	10,78,000	By, Sale of centrifuged latex	15,45,800
To, Electricity Charges A/c	32,500	By, Interest on Bank FD	38,000
To, Printing & Stationery A/c	2,890		
To, Other Expenses A/c	28,110		
To, Bank Charges A/c	1,550		
To, Depreciation A/c	31,550		
To, Net Profit - transferred	4,09,200		
	15,83,800		15,83,800

Statement showing calculation of Business Income

Particulars	Amount (₹)
Net Profit as per Profit & Loss A/c Add: Depreciation debited to Profit & Loss A/c	4,09,200 31,550

		4,40,750
Less: depreciation allowable under Section 32		28,200
Income chargeable under other head		38,000
Business Profit		3,74,550
Less: Deduction u/s 33AB:		
Least of the following:		
(a) 40% of the Profit from the business	₹ 1,49,820	
(b) Amount deposited within the specifed time in the specifed account	₹ 2,00,000	1,49,820
Profit of the Business		2,24,730
Less: Agricultural Income [as per Rule 7A]		1,46,075
Business Income		78,655
Less: Unabsorbed business loss		30,000
Taxable Business Income		48,655

(ii) X Ltd. is a company engaged in the business of growing, manufacturing and selling of tea. For the accounting year ended 31st March, 2014, its composite business Profits, before an adjustment under section 33AB of the Income-tax Act, were ₹ 80 lakhs. In the year, it deposited ₹ 45 lakhs with NABARD.

The company has a business loss of ₹10 lakhs brought forward from the Previous Year.

The company withdrew in February, 2014 ₹20 lakhs from the deposit account to buy a non-depreciable asset for ₹18 lakhs and could not use the balance before the end of the accounting year. The withdrawal and the purchase were under a scheme approved by the Tea Board.

The non-depreciable asset was sold in November, 2014 for ₹ 29 lakhs.

Indicate clearly the tax consequences of the above transactions and the total income for the relevant years.

Solution:

Computation of Total Income of X Ltd. for A.Y. 2014-15

Particulars	₹
Net Profits before adjusting deduction u/s 33AB	80,00,000
Less: Deduction u/s 33AB - Lower of : (i) 40% of ₹80 lakhs = ₹32 lakhs; or (ii) actual amount deposited with NABARD = ₹45 lakhs	32,00,000
Profits after adjusting deduction u/s 33AB	48,00,000
As per Rule 8 of Income-tax Rules, 40% of this sum is subject to income-tax and the balance 60% is treated as agricultural income. Hence, the business income is 40% of ₹48 lakhs	19,20,000
Add: Non-utilisation of amount withdrawn: ₹ 2 lakhs [i.e. (₹20 lakhs – ₹18 lakhs)] 40% is taxable as business income (the balance 60% is treated as agricultural income).	80,000

Business Income Less: Business loss brought forward from the Previous Year	20,00,000 10,00,000
Total Income	10,00,000

Computation of total income of X Ltd. for A.Y. 2015-16

Particulars	₹
Business income (See Note 2) Capital gains (Short-term) (See Note 1)	7,20,000 11,00,000
Total Income	18,20,000

Note 1 - Computation of capital gains

Particulars	₹
Sale proceeds *Less:* Cost of acquisition	29,00,000 18,00,000
Short Term Capital Gains (since the period of holding is less than 36 months)	11,00,000

Note 2 - Computation of business income:
Since the asset is sold within 8 years, the cost of the asset i.e. ₹ 18 lakhs should be treated as income since the same has been allowed as deduction in the Assessment Year 2014-15.
However, out of this ₹18 lakhs, 60% would be agricultural income and the balance 40% i.e. ₹ 7.2 lakhs would be business income of P.Y. 2014-15. This is because deduction under section 33AB was allowed in P.Y. 2013-14 before disintegration of income into agricultural income and non-agricultural income.

(iii) Free Call Ltd. obtained a telecom licence on 15.6.11 for a period of 8 years ending on 31.3.2019 against a fee of ₹ 60 crores to be paid in four installments of ₹24 crores, ₹14 crores, ₹12 crores, ₹10 crores by June 2011, June 2012, June 2013 and June 2014 respectively. Explain how the payment for licence fee shall be dealt under the Income Tax Act, 1961.

Solution :
Assessee : Free Call Ltd.
Previous Year : 2014-15 **Assessment Year : 2015-16**

(a) U/s 35ABB, expenditure incurred for the purpose of acquiring any right to operate telecommunication services is allowed equally as deduction throughout the unexpired life of the licence. Deduction shall be allowed only for the actual payment made.
(b) If only part payment is made, amortization is based on the amount paid and not on the basis of total consideration. For any further payments, deduction/amortization is allowed equally for the remaining unexpired useful life.
(c) Computation of amount of eligible deduction u/s 35 ABB:

Previous Year	Amount paid (₹ Crores)	Unexpired Period of Licence on the date of actual payment	Amount of Deduction (₹ Crores)
2011-12	24.00	8 years	3.00

2012-13	14.00	7 years	[3.00 + (14.00/7)] = 5.00
2013-14	12.00	6 years	[5.00+ (12.00/6)] = 7.00
2014-15	10.00	5 years	[7.00+ (10.00/5)] = 9.00

(iv) What is the due date of filling of return of income in case of a non-working partner of a firm whose accounts are not liable to be audited?

Answer :

Due date of furnishing return of income in case of non-working partner shall be 31st July of the Assessment Year whether the accounts of the firm are required to be audited or not.

A working partner for the above purpose shall mean an individual who is actively engaged in conducting the affairs of the business or profession of the firm of which he is a partner and is drawing remuneration from the firm.

(v) What do you mean by annexure less return? What is the manner of filling the return of income?

Answer :

The return of income required to be furnished in Form No.ITR-1,ITR-2,ITR-3,ITR-4, ITR-5, ITR-6 or ITR-7 shall not be accompanied by a statement showing the computation of the tax payable on the basis of the return, or proof of the tax, if any, claimed to have been deducted or collected at source or the advance tax or tax on self-assessment, if any, claimed to have been paid or any document or copy of any account or Form or report of audit required to be attached with the return of income under any of the provisions of the Act.

Manner of filling the return: The return of income referred to in sub-rule (1) may be furnished in any of the following manners, namely:-

(i) Furnishing the return in a paper form;
(ii) Furnishing the return electronically under digital signature;
(iii) Transmitting the data in the return electronically and thereafter submitting the verification of the return in Form ITR-V;
(iv) Furnishing a bar-coded return in paper form.

(vi) Is e-filling of return mandatory? State the assessee's for whom e-filling of returns is mandatory?

Answer :

CBDT has vide notification No. 34/2013 dated 01.05.2013 has made it mandatory for the following category of the Assesses to file their Income Tax Return Online from A.Y. 2013-14 :-

(a) It is mandatory for every person (not being a co. or a person fling return in ITR 7) to e-file the return of income if its total income exceeds ₹5,00,000
(b) an individual or a Hindu Undivided Family, being a resident, having assets (including financial interest in any entity) located outside India or signing authority in any account located outside India and required to furnish the return in Form ITR-2 or ITR-3 or ITR-4, as the case may be.
(c) Every person claiming tax relief under Section 90, 90A or 91 shall file return in electronic mode.

(d) Those who are required to get their Account audited under Section 44AB, 92E, 115JB.
(e) A company required to furnish the return in Form ITR-6.

However, as per instruction of ITR 7 From assessment year 2013-14 onwards in case an assessee who is required to furnish a report of audit under section 10(23C)(iv), 10(23C)(v), 10(23C)(vi), 10(23C)(via), 10A, 12A(1)(b), 44AB, 80-IA, 80-IB, 80-IC, 80-ID, 80JJAA, 80LA, 92E or 115JB he shall file the report electronically on or before the date of fling the return of income.

(vii)Pinewood Hotels and Resorts Limited is engaged in business of owning, operating and managing hotels. The tips are paid by the guests by way of charge to the Credit Cards in the Bills. The Company disburses the same to the Employees at periodic intervals. Explain with reasons whether the Company is responsible for deducting tax at source from disbursement of tips to its Employees.

Answer:

Here, the tips are charged to the Bill and disbursed to the employees at periodic intervals and thus, they form part of the Salary of the Employees. Thus, the Company is responsible to deduct tax u/s 192 in respect of the disbursement of tips to its Employees, provided the salary exceeds the maximum amount not chargeable to tax. [CTT (TDS) Vs ITC Ltd 338 ITR 598 (Del.)]

(viii) MNO Limited paid a sum of ₹15 Lakhs as salary to Mr. X for which no tax was deducted at source by the Company. Mr. X filed his Return of Income and paid the tax due by way of Self Assessment. Assessing Officer issued notice to Mr. X demanding Interest u/s 234B as no Advance Tax was paid by him. Your opinion is sought on the following aspects,
(a) Is the action of AO valid
(b) If not, is there any other means available to AO to recover the Interest?

Answer:

1. In the given case, since MNO Ltd has failed to deduct tax at source for the salary paid to Mr. X, it shall be liable to pay Interest u/s 234B. Mr. X is liable to pay only the tax and not the Interest u/s 234B.
2. The action of the Assessing Officer is not valid. However, the Assessing Officer can recover the Interest from the Employer (MNO Ltd).
   [DTT vs Maersk Co. Ltd. (2011) 334 ITR 79 (Uttarakhand - FB)]

(ix) A Foreign Company seconded some employees to the Assessee, an Indian Collaborator. The Assessee had not deducted Tax at source on the Home Salary / Special Allowance/s (Education Allowance or Retention Allowance) payments made by Foreign Company / HO to its employees (expatriated to India) outside India in Foreign Currency. The Revenue Authorities, holding the Assessee as an 'Assessee-in-default' u/s 201 of the Income Tax Act, 1961, levied Interest and Penalty on it. Is the same justified?

Answer:

1. **Provision:** TDS is to be deducted u/s 192 on Retention Salary provided by Foreign Company to its employees who work in India for the Joint Venture in which such Foreign Company is arise a partner, as the Retention Salary is deemed to accrue or arise in India u/s 9(1).

2. **Conclusion:** In the given case, as the Salary Income to the seconded employees are deemed to Accrue or arise in India, Indian Collaborator is liable to deduct TDS. Since TDS is not deducted by the Assessee, Revenue is justified in treating the Assessee as an Assessee-in-default'.

(x) Maya Bank credited ₹73,50,000 towards interest due on time deposits in a separate account for macro-monitoring only by using Core-branch Banking Solutions (CBS) software. No tax was deducted at source in respect of interest on deposits so credited even where the interest payable in respect of some deposits exceeded the limit of ₹ 10,000.
The Assessing Officer disallowed the entire interest expenditure where the interest due on time deposits exceeded the limit of ₹10,000 and also levied penalty u/s 271C. Decide the correctness of action of the AO.
Answer:

1. TDS need not be deducted by Banks if they create Provision for Interest accrued on time deposits on daily or monthly basis, using Core Branch Banking Solutions (CBS), for the purpose of macro monitoring.
2. In such cases, TDS shall be made on accrual of Interest at the earliest of the following dates - (a) End of the Previous Year, (b) Periodic Intervals as per Bank's Practice, (c) As per Depositor's / Payee's requirement, and (d) On Maturity / Encashment of Time Deposits.
3. Hence in the given case, Maya Bank will not be liable to deduct tax at source for Interest accrued based on CBS software. Consequently, there is no disallowance / Liability for Penalty, subject to compliance with Point 2 above.

Question 16:

(i) State with reasons in brief, whether Service Tax is payable in the following cases -
- **(a) Services provided to Special Economic Zone (SEZ) and SEZ Developer, except where services are wholly consumed within SEZ;**
- **(b) Services provided by SEZ to DTA (Domestic Tariff Area);**
- **(c) Services provided by Indian Agents undertaking marketing in India of goods of a Foreign Seller.**

Answer:

(a) Services provided to Special Economic Zone (SEZ) Unit and SEZ Developer, except where services are wholly consumed within SEZ:
- ➢ Service Tax (ST) shall be charged, collected & paid by Service Provider. However, Refund of Service Tax Paid is given to Service Receiver, where the services are not wholly consumed within SEZ.

(b) Services provided by SEZ to DTA:
- ➢ Provision of Services by Units in SEZ to Units in DTA shall be liable to Service Tax [C.No.105/8/2008 dt. 16.09.2008] The same is considered as Import of Services and the Receiver of Service shall be liable on Reverse Charge Basis.

(c) Services provided by Indian Agents undertaking marketing in India of goods of a Foreign Seller:
- ➢ Booking of orders for Foreign Supplier, for supply of goods in India, cannot be treated as Export of Services, because service was not provided outside India, and not used outside India. Hence, the same is liable for Service Tax. **[Cani Merchandising P Ltd (2008) 11 STR10 (Tri-Del.)]**

(ii) From the following particulars for the financial year 2014-15, find out whether M/s. Sweety Manufacturing Co. is eligible for small scale exemption under Notification No. 8/2003-C.E., dated 01.03.2003 for the financial year 2015-16.

S. No	Particulars	₹ (in Lakhs)
(a)	**Clearance of excisable goods exempted from payment under a Notification other than 8/2003-C.E**	**100.00**
(b)	**Clearance of goods to United Nations exempted under Notification No. 108/95-C.E**	**50.00**
(c)	**Total Exports [including export to Bhutan ₹ 50 lakhs]. Other exports are to USA & UK**	**250.00**
(d)	**Clearance of goods (duty paid based on annual capacity of production under section 3A of the Central Excise Act, 1944).**	**190.00**

Show your calculations, working and explanations clearly, wherever required.

Solution:

Eligibility of M/s Sweety Manufacturing Co. for SSI Exemption

Particulars	**(₹ Lakhs)**
(a) Clearance of excisable goods exempted from payment under a notification other than 8/2003	100.00
(b) Clearance of Account Books bearing Branch Name of another person (Heading 4820) - Removal under other's Branch name excluded	Nil
(c) Clearance of goods to UN – excluded as exempted under Notification No. 108/95-C.E	Nil
(d) Exports - Exports to Bhutan alone considered	50.00
(e) Clearance of goods (duty paid on Annual Capacity of Production) - included as it is excisable	190.00
Aggregate Clearances	340.00

- **SSI Exemption** would be granted to a manufacturer if his aggregate value of clearances is does not exceed ₹400 Lakhs in the Previous Financial Year.
- To determine the aggregate value of clearances, all excisable goods cleared for home consumption must be included.
- In the given case, M/s Sweety Manufacturing Co. is eligible to avail SSI Exemption as his aggregate clearances in the Previous Financial Year are less than ₹ 400 Lakhs.

(iii) Mr. Amit is regularly paying excise duty and value added tax on his manufacturing and sales activities respectively. He seeks your advice while calculating the Value Added Tax on sales as well as net VAT liability from the following information:
Purchases from local market (VAT inclusive of @12.5%) ₹ 2,58,750.
Manufacturing expenses is ₹ 1,60,000.
Profit on Cost @75%.
Excise Duty @12.36%
Output VAT @12.5%.

Answer:

Computation of Tax Payable:

Cost of Purchases Manufacturing expenses	₹ 2,30,000 [₹ 2,58,750× 100/112.5] ₹ 1,60,000
Total cost Profit @75% on cost	₹ 3,90,000 ₹ 2,92,500 [₹ 3,90,000 × 75/100]
Assessable Value	₹ 6,82,500
Add: Excise Duty	₹ 84,357 [₹ 6,82,500 × 12.36/100]
Taxable Turnover Add: Output VAT	₹ 7,66,857 ₹ 95,857 [₹ 7,66,857 × 12.50/100]
Aggregate Sales	₹ 8,62,714
Value Added Tax payable Less: Input Tax Credit [₹ 2,58,750 - ₹ 2,30,000]	₹ 95,857 ₹ 28,750
Net Value Tax Payable	₹ 67,107

(iv) Vendibility criterion/Marketability is a litmus test to be fulfilled before any goods can be subjected to levy of excise duty. Discuss this statement with the help of decided cases.

Answer:

The provisions relating to marketability of goods is discussed as under –

(1) Marketability: Marketability is the capability of the product of being bought and sold into the market. The Supreme Court in the Tariff schedule, it will not be liable to duty of excise unless it is marketable in the condition in which the department wants to levy excise duty.

(2) Important aspects of marketability: Certain important features with respect to marketability are –

- **A.** Actual sale is not necessary to constitute marketability.
- **B.** The usage in captive consumption is not a determining factor of marketability.
- **C.** There is no requirement that the article, material or substance must be commercially known product and must be worthwhile to trade in. [this is evident from the Explanation to section 2(d) of the Central Excise Act]

D. The goods must be marketable in the condition in which the department wants to levy excise duty. Thus, theoretical possibility of goods being sold is not enough to constitute marketability. If must be shown that article is actually capable of being sold.

E. The fact that the product in question is generally not bought and sold or has no demand in the market is irrelevant.

F. Marketability is not confined to territorial limits of India.

G. There need not be a market of whole lot of persons to constitute marketability. Even a single buyer can constitute marketability. – AP State Electricity Board v. CCEx. [1994] 70 ELT 3 (SC)

H. Burden of proof of marketability is on the revenue department.

(3) Concept of "Deemed Marketability": Explanation to Section 2(d) introduces a concept of "deemed marketability" by providing that "goods" include any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.

Question 17:

(i) M/s. Alok International Ltd. have imported one machine from England. They have given the following particulars:

	Particulars	Amount
(a)	**F.O.B. value of machine**	**£ 8,000**
(b)	**Air freight paid**	**£ 2,500**
(c)	**Design and development charges paid in England**	**£ 500**
(d)	**Commission @ 2% of F.O.B. Value paid to local agent in Indian Currency**	
(e)	**Date of Bills of Entry is 24th October [rate of Basic Customs Duty is 20%. Exchange rate as notified by C.B.E.C is ₹ 68 per Sterling Pound]**	
(f)	**Date of arrival of aircraft is 20th October when rate of Basic Customs Duty was 18%, exchange rate as notified by C.B.E.C. was ₹ 70 Per Sterling pound.**	
(g)	**CVD rate is 10% plus Education Cess 2% and Secondary and Higher Education Cess is 1%.**	
(h)	**Rate of Special additional duty is 4%.**	
(i)	**Insurance charges, though actually paid, details are not available.**	

Compute assessable value and determine Customs Duty Payable by M/s. Alok International Ltd. Give brief notes also wherever necessary.

Solution:

Part 1: Computation of assessable value

FOB Price	£ 8,000.00
Exchange rate notified by the CBEC (in force on date of presentation of bill of entry)	₹ 68.00
	₹
FOB price in Indian ₹	5,44,000.00
Add: Local agent's commission @ 2% of FOB [Includible]	10,880.00

Add: Development work [Development work other than in India is includible. Hence, £ 500 paid in UK is includible × ₹ 68 = ₹ 34,000]	34,000.00
Add: Cost of transport [Actual is £ 2,500; while in case of import by air, it cannot exceed 20% of FOB i.e. 20% of 8,000 = 1,600 £ × ₹ 68]	1,08,800.00
Add: Insurance @ 1.125% of FOB as not ascertainable	6,120.00
CIF	**7,03,800.00**
Add: Loading, unloading and handling charges under Rule 10(2(b) @ 1% of CIF	7,038.00
Assessable Value	**7,10,838.00**

Part 2: Computation of Duty

Particulars	Duty		Total
	Rate	₹	₹
Assessable Value	-	-	7,10,838.00
Add: Basic Customs Duty [rate of duty prevalent on date of presentation of bill of entry or date of entry inwards, whichever is later, shall be applicable. Therefore, rate prevalent on 24th October viz. 20% shall be taken.]	20.00	1,42,167.60	1,42,167.60
		1,42,167.60	8,53,005.60
Add: Additional duty i.e., CVD u/s 3(1) (excise duty excluding EC and SHEC due to exemption)	10.00%	85,300.56	85,300.56
		2,27,468.16	9,38,306.16
Add: Education Cess @ 3% on DUTY sub-total upto last stage	3.00%	6,824.04	6,824.04
		2,34,292.20	9,45,130.20
Add: Special CVD u/s 3(5) @ 4% of total value *(including duty)*	4.00%	37,805.21	37,805.21
Total (rounded off to nearest rupee)		**2,72,097.00**	**9,82,935.00**

(ii) State the consequences in case of inter-unit transfer among 100% EOU/EHTP/STP/BTP units.

Answer:

(a) **Transfer of manufactured goods**: Transfer of manufactured goods from one 100% Export Oriented Unit / Electronic Hardware Technology Park / Software Technology Park / Bio-Technology Park unit to another 100% Export Oriented Unit / Electronic Hardware Technology Park / Software Technology Park / Bio-Technology Park unit is allowed with prior intimation to concerned DC and Customs authorities, following procedure of in-bond movement of goods. Transfer of manufactured goods shall also be allowed from EOU/EHTP/STP/BTP unit to a SEZ developer or unit following procedure prescribed in SEZ Rules, 2006.

(b) **Transfer of Capital Goods:** Capital goods may be transferred or given on loan to other EOU/EHTP/STP/BTP/SEZ units, with prior intimation to concerned DC and Customs authorities.

(c) **Goods to be regarded as imported goods for transferee, if sold in DTA by transferee:** Goods

supplied by one unit of EOU/EHTP/STP/BTP to another unit shall be treated as imported goods for second unit for payment of duty, on DTA sale by second unit.

(iii) Radha Development Corporation (RDC) Ltd., a real estate developer, is engaged in construction of a residential complex (consisting of more than 20 houses) named Green County for Almeco Builders.

The particulars are as follows:

Contracted Price (excluding VAT, if leviable)	**₹ 25,00,000**
Steel supplied by Almeco Builders to RDC	**₹ 1,00,000**
Excise duty paid on -	
(a) capital goods used in providing construction service	**₹ 40,000**
(b) inputs used in relation to construction service	**₹ 17,000**
Service tax paid on input services used in construction service	**₹ 25,000**

You are required to calculate the net service tax payable by Radha Development Corporation in the following two cases:

(A) The aforesaid contract for construction of residential complex involves the transfer of property in goods and materials involved in the construction of residential complex of worth ₹ 2,50,000. VAT of ₹ 10,000 has been paid on the said goods and materials. RDC has opted to pay service tax on a composite value as eligible under the service tax valuation rules.

(B) The aforesaid contract for construction of residential complex does not invoke any transfer of property in goods and materials used in the construction of residential complex. It is to be noted that RDC has opted to avail abatement of service tax. The value of land (not included in the aforesaid price) is ₹ 14 lakh.

Solution:

Case (A) Works Contract Service u/s 66E(h) of Finance Act, 1994: Since transfer of property involved goods and material involved in construction is leviable to VAT/sales-tax as sale of goods, hence, it is "works contract" u/s 65B(54). Since data regarding valuation on actual basis is not available, hence, value is determined as per Rule 2A(ii) of Valuation Rules, 2006 and tax liability is as follows -

Total amount as per Rule 2A(ii) = Amount charged (excluding VAT) + FMV of goods/steel supplied by client free of cost = ₹ 25 lakh + 1 lakh = ₹ 26 lakh	26,00,000
Taxable Value (it is original works) @ 40% of total amount	**10,40,000**
Service Tax @ 12.36%	1,28,544
Less : CENVAT Credit on inputs not allowed	N.A.
Less /CENVAT Credit on input services and capital goods (It is assumed that capital goods were acquired in the current year and only 50% of duty paid is eligible for credit in the 1st year as per Rule 4(2)(a) of the CENVAT Credit Rules, 2004.) [25,000 + 50% of 40,000]	45,000
Service tax payable in cash	**83,544**

Case (B) Construction service u/s 66E(b) : Since supply of goods and materials involved in the construction is not leviable to VAT/sales-tax as sale of goods, hence, it would not be "works contract". It would be construction services and assuming that the entire consideration is not received after issuance of completion certificate, it would be construction service u/s 66E(b) of the Act. The service tax payable is as under –

Total amount as per Notification No. 26/2012-ST = Amount charged (excluding VAT) + FMV of goods/steel supplied by client free of cost + Value of land — ₹ 25 lakh + 1 lakh + 14 lakh = ₹ 40 lakh, *(value of land is includible in the total sum)*	40,00,000
Taxable Value @ 25% of total amount (Since total amount is inclusive of value of land, and amount charged per house (including land) is less than ₹ 1 crore, hence, abatement is 75%)	**10,00,000**
Service Tax @ 12.36%	1,23,600
Less : CENVAT Credit on inputs not allowed	N.A.
Less: CENVAT Credit on input services and capital goods (It is assumed that capital goods were acquired in the current year and only 50% of duty paid is eligible for credit in the 1st year as per Rule 4(2)(a) of the CENVAT Credit Rules, 2004.) [25,000 + 50% of 40,000]	45,000
Service tax payable in cash	**78,600**

(iv) Based on the following particulars, arrive at the CENVAT credit available on clearance of goods to Domestic Tariff Area (DTA) from an 100% Export Oriented Unit (EOU):

Assessable Value	**₹ 20 Lakhs**
Basic customs duty	**10%**
Excise duty	**12%**
Education Cess	**2%**
Secondary and Higher Education Cess	**1%**
VAT payable under State VAT law	**4%**

Solution:

As per Notification No. 23/2003 -CE dated 31st March, 2003 as amended, it is stipulated that while calculating the aggregate of the customs duties, additional duty of customs leviable under Sub Section 5 of Section (3) of the Customs Tariff Act shall be included, if the goods cleared into Domestic tariff Area (DTA) are exempt from payment of Sales Tax or Value Added Tax. Hence in the given case, it is evidenced that VAT is payable. So section 3(5) is not attracted and the special CVD is exempted.

As per Notification No. 23/2003 CE dated 31.03.2003, 50% of basic customs duty is exempt in case of clearance of goods by an EOU to DTA. The amount of excise duly payable by EOU is calculated as under:

Calculation of duty payable by EOU/EHTP/STP is as follows, w.e.f. 17.03.2012:

	Duty %	Amount (₹)	Total Duty (₹)
A. Assessable value		20,00,000	
B. Basic customs duty	5	1,00,000	1,00,000
C. Sub - Total for calculating CVD (A+B)'		21,00,000	
D. CVD [C × excise duty rate]	12	2,52,000	2,52,000
E. Sub - Total for edu cess on customs [B+D]		3,52,000	
F. Edu cess of Custom - 2% of 'E'	2	7,040	7,040
G. SAH Education Cess of Customs - 1% of 'E'	1	3,520	3,520
H. Sub - total for spl CVD [A+B+D+F+G]		23,62,560	
I. Special CVD u/s 3(5) - 4% of 'H' (Nil if state VAT paid)	exempt	exempt	exempt
J. Total		23,62,560	3,62,560
Notes - buyer who is manufacturer in DTA, is eligible to avail cenvat credit of D above.			

As per second proviso to rule 3(7)(a) of CENVAT Credit Rules, 2004, the amount of CENVAT credit will be as under:

	(₹)
Additional duty of customs (CVD)	2,52,000
Special CVD u/s 3(5)	exempt
Total amount of credit	2,52,000

(v) An interior decorator charges ₹ 6,50,000 from a client for providing professional services. The breakup of the bill is as follows:-

(a) Value of furniture sold to the client – ₹ 3,00,000

(b) Labour and facility charges – ₹ 2,00,000

(c) Value of materials consumed in providing the service – ₹ 1,50,000

Compute the amount of service tax to be charged from the client.

Solution:

Computation of service tax payable (amounts assumed exclusive of service tax)

	(₹)
Value of furniture sold to the client [Sale of furniture is 'sale of goods', which cannot be regarded as a service. Though sale is in course of providing the service, however, it constitutes a separate sale, because the parties intend to have separate rights arising out of sale. Such sale cannot be charged to service tax.]	Sale, not service
Add: Labour and facility charges [They are for provision of interior decoration service; hence, includible in value]	2,00,000

Add: Value of materials consumed in providing the service [Materials consumed viz. consumables, etc. in providing services are a part of the value of the service, because service cannot be provided without them.]	1,50,000
Value of service	**3,50,000**
Service Tax @ 12.36%	**43,260**

Question 18:

(i) An importer imported some goods for subsequent sale in India at $ 30,000 on CIF basis. Relevant exchange rate as notified by the Central Government ₹ 60. The item imported attracts basic duty at 10% and education Cess as applicable. If similar goods were manufactured in India, Excise Duty payable as per Tariff is 14% plus education Cess of 2% and SAH 1%. Special Additional Customs Duty is 4%. Find the total duty payable.

Solution:

Calculation of duty payable:

	(₹)
CIF value USD 30,000 X 60	18,00,000
Add: Loading and unloading @1%	18,000
Assessable Value	18,18,000
Add: Basic Customs Duty @10% on ₹ 18,18,000	1,81,800
	19,99,800
Add: Additional Customs Duty [@14% x ₹ 19,99,800]	2,79,972
	22,79,772
Add: Education Cess 2% on (₹ 1,81,800 + ₹ 2,79,972)	9,235
Add: SAH @1% on (₹ 1,81,800 + ₹ 2,79,972)	4,618
	22,93,625
Add: Special Additional Customs Duty [@4% x ₹ 22,93,625]	91,745
Total value of imported goods	23,85,370

(ii) What is Anti - Dumping? Describe the features of it with the help of an example.

Answer:

Dumping means export of goods by exporters of one country/territory to the market of another country/ territory at a price lower than the price prevailing in the country of export and the difference in such price is called margin of dumping. This is an unfair trade practice which can have a distortive effect on international trade and needs to be condemned under WTO law.
Dumping is said to occur when the goods are exported by a country to another country at a price lower than its normal value. Anti dumping is a measure to rectify the situation arising out of the dumping of goods and its trade distortive effect. Thus, the purpose of anti dumping duty is to rectify the trade distortive effect of dumping and re-establish fair trade. The use of anti dumping measure as an instrument of fair competition is permitted by the WTO. In fact, anti dumping is an instrument for ensuring fair trade and is not a measure of protection per se for the domestic industry. It provides relief to the domestic industry against the injury caused by dumping. Anti - dumping is a measure to rectify the trade distortive effect of dumping and re-establish fair trade,

which is achieved by imposition of a duty on dumped imports, not exceeding the margin of dumping.

Salient Features of Anti-Dumping:

a. It is an instrument for ensuring fair trade and is not a measure of protection per se for the domestic industry
b. It provides relief to the domestic industry against the injury caused by dumping and gives domestic industry a level playing field.
c. The duty is imposed as a deterrent effect to discourage dumped imports, so that users can buy material from domestic industry from whom they were not buying earlier on account of availability of cheap dumped imports.
d. The idea is to levy and collect extra tax, rather to take the landed value of imports to a level where domestic industry can fairly compete with imports and sell the product in the domestic market.

Example:

Sale value of domestic industry at factory gate ₹150 (net of taxes). Landed Value of imports ₹100. Hence, Price under cutting = ₹ 150 (-) ₹ 100 = ₹ 50. This is positive undercutting. It creates pressure on domestic industry from imports, as the imported goods are sold at ₹ 100, which is less than the price charged by domestic industry. On the contrary, if the Sale value of domestic industry at factory gate (net of taxes) is ₹ 120 and the Landed value of imports ₹ 135, then, price under cutting = ₹ 120 (-) ₹ 135 = ₹ (15). This is negative undercutting. The domestic industry is in a comfortable position, as the price of imports is more than the price charged by the domestic industry.

(iii) Mr. Sen has provided the following services during the year 2014-15. Determine whether he is eligible for threshold exemption (Small Service Providers exemption) during the year 2015-16:

(1) Services provided outside India: ₹ 3 lakh;
(2) Services (falling under negative list): ₹ 5 lakh;
(3) Services fully exempt under other notifications: ₹ 6 lakh;
(4) Declared Services (Sum charged ₹ 4 lakh, but, value determined as per the valuation rules is 60% i.e., ₹ 2,40,000);
(5) Services (where amount charged is ₹ 60,000, but, after abatement, value is ₹ 24,000) and
(6) Other services provided: ₹ 7 lakh (including ₹ 1 lakh towards services where whole of the service tax was payable by the service recipient). Provided Mr. Sen is not a GTA (Goods Transport Agency) service provider.

Solution:

Mr. Sen would be eligible for threshold exemption or small service providers' exemption if the "aggregate value" of taxable services provided during the year 2014-15 is upto ₹ 10 lakhs. The relevant computations are shown below —

Case	Treatment	₹
(1) Services provided outside India	Not taxable service, as not liable to service tax u/s 66B of Finance Act, 1994 – Not includible	NIL
(2) Services (falling under negative list)	Not taxable service, as not liable to service tax u/s 66B of Finance Act, 1994 – Not includible	NIL
(3) Services fully exempt under other notifications	Specifically excluded in determination of aggregate value	NIL
(4) Declared Services	Value as determined as per section 67 of Finance	2,40,000

	Act, 1994 and Valuation Rules is to be taken	
(5) Services eligible for abatement	Abatement is a form of partial exemption. Value as per section 67 of Finance Act, 1994 viz. ₹ 60,000 shall be taken.	60,000
(6) Other Services	Includible (Even services covered under reverse charge are includible).	7,00,000
Aggregate Value for Financial Year 2014-15		10,00,000
Since the aggregate value of service is ₹ 10 lakhs (i.e., not exceeding ₹ 10 lakhs) during financial year 2014-15, Mr. Sen is eligible for threshold exemption (Small Service Providers exemption) during the financial year 2015-16.		Eligible for exemption

(iv) Define 'Associate Enterprise' in the context of International Transfer Pricing.

Answer:

Associate Enterprise: An enterprise would be regarded as an associated enterprise of another enterprise, if:

(i) it participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise; or

(ii) in respect of it one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise [Section 92A(1) of Income Tax Act].

Thus, either direct and indirect participation or control is covered.

(v) State the provisions of safe harbour for domestic transactions in case of international taxation.

Answer:

Safe harbour provisions have been made for specified domestic transactions *vide* rule 10TH to 10THD of Income Tax Rules.
These are applicable to supply of electricity, transmission of electricity, wheeling of electricity where tariff is determined by Commission under Electricity Act, 2003.

(vi) A dealer claims that he has sent some goods out of State on stock transfer basis. What evidence he is required to produce before sales tax officer to prove the stock transfer? State the consequences, if he is unable to produce that evidence?

Answer:

The dealer has to produce F form which is to be issued by the branch or depot which has received the goods despatched by dealer. If the dealer is unable to produce F form, the sale will be treated as sale within the State of dealer and will be liable to State Vat at applicable rate. Interest will also become payable for delayed payment.

Question 19

(i) Determine the cost of production on manufacture of the under-mentioned product for purpose of captive consumption in terms of Rule 8 of the Central Excise Valuation Rules, 2000 (amount in ₹)

Direct material	**11,648**
Direct wages & salaries	**8,400**
Works overheads	**6,200**
Quality control costs	**3,500**
Research and development costs	**2,400**
Administrative overheads	**4,100**
Selling and distribution costs	**1,600**
Realizable value of scrap	**1,200**

The Administrative Overheads are in relation to production activities.
Material cost includes Excise duty ₹ 1,648.

Solution:

Calculation of cost of production in terms of Rule 8 of Valuation Rules, 2000 (amounts in ₹)

Direct material (11,648 – 1,648 = 10,000)	WN 1	10,000
Direct wages & salaries		8,400
Works overheads		6,200
Quality control costs	WN 2	3,500
Research and development costs	WN 2	2,400
Administrative overheads	WN 2	4,100
Selling and distribution costs	WN 3	—
Total		34,600
Less: Realizable value of scrap	WN 4	1,200
Cost of production		33,400
Value of excisable goods under Rule 8 @ 110% of cost of production		36,740

Working notes:
1. Raw-material cost shall be taken net of excise duty assuming Cenvat credit is available.
2. Quality control cost, Research and Development cost and Administration overheads related to production shall form part of cost of production as per CAS-4.
3. Selling and distribution costs shall not form part of cost of production.
4. Realizable value of scrap shall be deducted to arrive at cost of production.

(ii) 'Smartphone' is in the business of providing mobile telephone service. The assessee sells "SIMCARDS" to its mobile telephone subscribers for a price. 'Smartphone' pay service tax on the activation and other charges. On the 'SIMCARDS' sold to the customers, VAT under the applicable State law is paid. The Department's view is that the "SIMCARD" is used for provision of mobile services and is a part of the service and therefore the value of the "SIMCARD" has to be included in the category of 'telecommunication services' for purpose of service tax. Explain with a brief note and reference to decided case law whether the view taken by the department is correct in law.

Solution:

On similar facts, it was held in Idea Mobile Communication Ltd. v. CCEx. [2011] 12 taxmann.com 307 (SC) that -

- Without SIM Card telecommunication services cannot be provided ;
- It is a part and parcel of the mobile telecommunication service ;
- The dominant nature test in selling SIM Card is to provide services ;
- The parties never intended to buy and sell SIM Card as a separate object of sale ;
- SIM Card doesn't have any value other than providing connection with telecom operator;

Hence, it was a part of service and not 'sale'. The whole of the amount was liable to service tax. The view taken by Department, therefore, is correct in law.

(iii) BMR Co. Pvt. Ltd., an SSI unit procured the following inputs during the month of Jan. 2015. Determine the amount of CENVAT credit available with necessary explanation for the treatment of various items.

Items	Excise duty paid (₹)
Raw materials	**52,000**
Manufacturing machine	**1,00,000**
Light diesel oil	**45,000**
Greases	**10,000**
Office equipment	**20,000**
Paints	**5,000**

(Note: M/s. BMR Co. Pvt. Ltd. is not eligible to avail exemption under a notification based on value of clearances in a financial year)

Solution:

Computation of CENVAT Credit available during Jan. 2015.
[Since the assessee is not eligible for SSI-exemption i.e., its value of clearances during preceding year exceeds ₹ 400 lakhs, hence, the credit of capital goods is admissible only upto 50% in the first year i.e. current year of acquisition and balance in the next year(s).]

Name of Item	Eligible as	Reason	₹
Raw materials	Input	Used in factory and related to manufacture	52,000
Manufacturing machine	Capital goods	Used within factory [50% of ₹ 1,00,000]	50,000
Light diesel oil	Not eligible	Specifically excluded from 'input' [Rule 2(k)(A) of Cenvat Credit Rules, 2004]	NIL
Greases	Input	Used in factory and related to manufacture	10,000
Office equipment	Not eligible	Specifically excluded from capital goods [Rule 2(a) of Cenvat Credit Rules, 2004]	NIL
Paints	Input	Used in factory and related to manufacture	5,000
Total CENVAT Credit admissible			1,17,000

(iv) AB Ltd. carried out following works, all of which are leviable to sales-tax/VAT as transfer of property involved in the execution of works contract (the sum charged given below are exclusive of all taxes) -

(1) New constructions: ₹ 50 lakh;
(2) Additions and alterations to damaged structures on land to make them workable: ₹ 25 lakhs;
(3) Supply along with erection, commissioning and installation of plants: ₹ 72 lakhs;
(4) Maintenance and repair of goods: ₹ 40 lakhs;
(5) Maintenance and repair of immovable property: ₹ 30 lakhs;

Compute taxable value and service tax thereon.

Solution:

Computation of taxable value & service tax:

	Amount Charged (₹)	% of amount charged	Taxable Value (₹)
New constructions (It is "original works")	50,00,000	40%	20,00,000
Additions and alterations to damaged structures on land to make them workable (It is "original works")	25,00,000	40%	10,00,000
Supply along with erection, commissioning and installation of plants (It is "original works")	72,00,000	40%	28,80,000
Maintenance and repair of goods	40,00,000	70%	28,00,000
Maintenance and repair of immovable property	30,00,000	60%	18,00,000
Total Taxable Value			1,04,80,000
Service Tax @ 12.36%			12,95,328

(v) Compute the Assessable Value and amount of Excise Duty payable under the Central Excise Act, 1944 and Rules made there under from the following information –

Particulars	**No. of Units**	**Price at Factory Per Unit**	**Price at Depot Per Unit**	**Rate of Duty Advalorem**

(i) Goods transferred from Factory to Depot on 8th March	**1,000**	**₹200**	**₹220**	**10%**
(ii)Goods actually sold at depot on 18th March	**750**	**₹225**	**₹250**	**8%**

Solution:

As per Rule 7 of Central Excise (Determination of Value of Excisable Goods) Rules, 2000**,** when goods are removed from Factory Gate to Depot / Consignment Agent, etc. and there is no sale at the factory gate, then Assessable Value for such removals will be "Normal Transaction Value" of such goods prevailing at the depot at the time of removal from the factory.
Normal Transaction Value: Transaction value of the goods sold in greatest aggregate quantity should be considered as Normal Transaction Value subject to the following conditions -
(i) Buyer is not related to the Assessee; and
(ii) Such price is the sole consideration for sale.
Rates: Excise Duty Rate as existing at the time of removal shall be considered. In respect of sales from depot, the time of removal shall be the time at which such goods are removed from the factory. Hence, the relevant date for excise duty rate shall be the date of removal from factory. The subsequent sale prices or excise duty rates are not relevant.
In the above case, goods are removed from the factory on 8th March, and the relevant value is the Price at the Depot on the same date i.e. ₹ 220 per unit. Relevant Rate of Duty is 10%.
Price on the date of actual sale (18th March), or price for sale at factory gate on the date of removal is irrelevant.
Assessable Value: Units Removed 1,000 x Price per Unit at Depot ₹ 220 = ₹ 2,20,000.
Duty Amount: Assessable Value ₹ 2,20,000 x 10% = ₹ 22,000.

Question 20:

(i) Mr. Jain, an IT Professional and a person of Indian origin, is residing in Denmark for the last 14 months. He wishes to bring a used Microwave Oven (costing approximately ₹ 4,200 and weighing 15 kg) with him during his visit to India. He purchased the oven in Denmark 6 months back, and he has been using that oven for his personal use in his kitchen. He is not aware of Indian Customs Rules. Discuss the consequences in this regard.

Answer:

As per Rule 5 of the Baggage Rules, 1998, Mr. Jain is entitled to bring the used household articles upto an aggregate value of ₹ 12,000 free of duty.
Hence, Mr. Jain can clear the used Microwave Oven free of duty within the permissible allowance.

(ii) Mention the areas which are covered by the deemed export under Foreign Trade Policy.

Answer:
Deemed exports broadly cover three areas -
(a) Supplies to domestic entities who can import their requirements duty free or at reduced rates of

duty,

(b) Supplies to projects/ purposes that involve international competitive bidding (ICB), and

(c) Supplies to infrastructure projects of national importance.

(iii) A controversy has arised as to classification of Coconut oil. Is it (i) Hair oil (ii) Edible Oil (iii) Pure Coconut Oil or Coconut Oil? Advice.

Answer:

Classification of Coconut oil is based on End user test vide Circular No.890/10/2009 – CX dated 03.06.3009. It refers to coconut oil sold with the indications on the containers or the labels such as (a) Hair oil; (b) Edible Oil; (c) Pure Coconut Oil or Coconut Oil.

(a) If the Coconut Oils are sold with the label ― Hair Oil meant for retail sale, they are classified under the heading ―hair oil, Heading No.3305;

(b) If the coconut oil sold with the label ― Edible Oil ― Pure Coconut or Coconut Oil meant for retail sale:
- If such oil is sold in small packs i.e. 50ml/100 ml/200ml – classify as ― Hair oil only (Chapter 33), since majority of customers use as Hair oil;
- If such oil is sold in larger packs for e.g. 1 litre or 2 litres – classify as ―Edible Oil (Chapter 15), since majority of customers use as Edible oil.

Hence, the classification of coconut oil would depend upon the fact as to how the majority of the customers use the said product.

(iv) Lucky, a registered dealer submits the following information for the month of February, 2015:

(A) Details of purchase –

a. Raw material purchased from another State (CST @ 2%) - ₹ 10,00,000.

b. Raw material X purchased within the State - ₹ 15,00,000. Vat rate 1%.

c. Raw material Y imported from Singapore (includes customs duty paid @ 10%) - ₹11,00,000.

d. Raw material Z purchased within the State - ₹ 6,00,000. Vat rate 12.5%.

(B) Details of sales –

a. Sale of goods produced from raw material X - ₹ 27,00,000. Rate of Vat 4%.

b. Sale of goods produced from inter-state purchase and imported raw materials - ₹32,00,000. Rate of Vat 1%.

c. Sale of goods produced from raw material Z - ₹ 8,00,000. Rate of Vat 12.5%.

(Note - The purchase and sales figures given above do not include VAT/CST.)

Assume that there was no opening or closing inventory. Compute the amount of Value Added Tax (VAT) payable by Lucky for the month of February, 2015.

Solution:

Input Tax Credit (Set off) Available –

(a) CST paid on purchases	No credit
(b) ITC on purchase of X	₹ 15,000
(c) Customs duty paid on imports of Y	No credit
(d) ITC on purchase of Z	₹ 75,000
Hence, total Input Tax Credit available	₹ 90,000

(B) Vat payable on sales –

(a) Sale of goods produced from raw material X	₹ 1, 08,000 (4% of ₹ 27 lakhs)
(b) Sale of goods produced from inter - state purchase and imported raw materials	₹ 32,000 (1% of ₹ 32,00,000)
(c) Sale of goods produced from raw material Z	₹ 1,00,000 (12.5% of ₹ 8,00,000)
Total Vat payable on sales	₹ 2,40,000

Net Vat payable = ₹ 1,50,000 (₹ 2,40,000 - ₹ 90,000).

(v) Ria Mills Ltd. has produced 10,000 kg of yarn. The cost of production of the yarn is ₹ 230 per kg (as per CAS 4). The removal of yarn on 01-12-2014 is as under:

(a) 2500 kg of yarn is sold to independent buyers at a transaction value of ₹ 250 per kg.

(b) 1500 kg of yarn is sold to relative distributor at a transaction value of ₹ 240 per kg. The said yarn is sold by relative distributor to independent parties at a normal transaction value of ₹ 255 per kg.

(c) 6000 kg of yarn is captively consumed by the company for manufacture of fabric which is exempt from duty.

Solution:

The valuation of yarn will be as under -

S. No.	Transaction	Applicable statutory provision	Valuation
(i)	2500 kg of yarn is sold to independent buyers at a transaction value of ₹ 250 per kg.	Section 4(1)(a) of the Central Excise Act, 1944	Assessable Value = Transaction Value 2500 kg. × ₹ 250 per kg. = ₹ 6,25,000
(ii)	1500 kg of yarn is sold to relative distributor at a transaction value of ₹ 240 per kg. The said yarn is sold by relative distributor to independent parties at a normal transaction value of ₹ 255 per kg.	Valuation as per amended rule 9 of Valuation Rules, 2000	Assessable Value = Normal Transaction Value at which yarn is sold by relative distributor i.e. 1500 kg. × ₹ 255 per kg. = ₹ 3,82,500
(iii)	6000 kg of yarn is captively consumed by the company for manufacture of fabric which is exempt from duty.	Valuation as per amended rule 8 of Valuation Rules, 2000	Assessable Value = 110% of Cost of Production i.e. 110% of ₹ 230 per kg = ₹ 253 per kg. Transaction Value = 6000 kg. × ₹ 253 per kg. = ₹ 15,18,000

Question 21:

(i) Reel Private Limited is engaged in providing the taxable services. Compute the value of taxable service and the service tax payable by it in the month of March, 2015 from the information furnished below:

Receipts	₹
Free Services provided to friend of director (Similar services are rendered for consideration of ₹ 1,00,000).	**Nil**
Subsidy received from Government for making investment in backward area	**1,00,000**
Interest received from client who has not made timely payment of service	**2,00,000**
For free services rendered to customers, amount reimbursed by the manufacturer of such product	**50,000**
Other taxable services provided during the month	**15,00,000**

Note: Reel Private Limited is eligible for small service providers' exemption under Notification No. 33/2012-ST, dated 20-06-2012.
All the above amounts are exclusive of service tax.

Solution:

Computation of the value of taxable service and the service tax payable:

Particulars	₹
Free Services provided to friend of director [WN-1]	NIL
Subsidy received from Government for making investment in backward area [WN-2]	NIL
Interest received from client who has not made timely payment of service [WN-3]	NIL
For free services rendered to customers, amount reimbursed by the manufacturer of such product [WN-4]	50,000
Other taxable services provided during the month	15,00,000
Total Value of services	**15,50,000**
Less: Small Service Providers' Exemption under Notification No. 33/2012-ST, dated 20-06-2012	10,00,000
Total value of taxable services	**5,50,000**
Service tax @ 12.36%	**67,980**

Working Notes:

(1) Section 67(1)(iii) of the Finance Act, 1994 ensures payment of service tax based on valuation even when consideration is not ascertainable. However, these provisions apply only when there is consideration. If there is no consideration i.e., in case of free service, section 67

cannot apply.

(2) As per Rule 6 of the Service Tax (Determination of Value) Rules, 2006, any subsidy or grant disbursed by the Government cannot form part of the value of taxable service unless such subsidy or grant directly influences the value of such service.

(3) As per Rule 6 of the Service Tax (Determination of Value) Rules, 2006, interest on delayed payment of any consideration for the provision of services shall not form part of value of taxable services.

(4) Amount received from manufacturer for free services rendered to customers is liable for service tax. The consideration towards the services may be received from any person, not necessarily the service receiver.

(ii) Alia Tours Co. has arranged following tours during half year ended on March, 2015. The particulars of the services and charges are as under:

(a) Tour 1: October- Charges received ₹ 40 lakhs. The package includes transportation, accommodation, food, tourist guide and entry fees for monuments.

(b) Tour 2: November - Charges received ₹ 65 lakhs. The package includes transportation and accommodation for stay.

(c) Tour 3: December - Charges received ₹ 40 lakhs. The charges are solely for arranging accommodation for stay. However, the bills issued to the clients do not mention it clearly that the charges are solely for arranging the accommodation for stay.

(d) Tour 4: January - Charges received ₹ 50 lakhs (inclusive of charges of stay). The bill issued to the clients mentions it clearly that the charges are solely for arranging the accommodation for stay.

(e) Tour 5 : March - Charges received from Sri Lankan tourist in relation to a tour conducted wholly in Nepal: ₹ 35 lakhs

All the charges are exclusive of service tax.

Compute the value of taxable service and service tax payable thereon.

Solution:

The service tax payable by M/s. Alia Tours Co., assuming that it opts for abatement under Notification No. 26/2012-ST and complies with the conditions thereunder, is as follows:

(amounts in ₹)

Particulars	Gross value	% of abatement	Net value
Tour 1 - October: In case of package tours, an abatement of 75% of gross amount charged is available. It has been assumed that the bill issued for this purpose indicates that it is inclusive of charges for such a tour.	40,00,000	75%	10,00,000

Tour 2 - November: Since, this tour package includes only transportation and accommodation for stay, it is not a package tour as per Notification No. 26/2012-ST, dated 20-06-2012. In case of services provided in relation to a tour other than in relation to a package tour or accommodation tour, an abatement of 60% of the gross amount charged is available. It has been assumed that the bill issued for this purpose indicates that the amount charged in the bill is the gross amount charged for such a tour.	65,00,000	60%	26,00,000
Tour 3 - December: The abatement of 90% of the gross amount charged will not be available because the bills issued to clients do not indicate that the charges are solely for arranging the accommodation for stay. However, it is eligible for general abatement of 60%, assuming that the bill indicates that the amount charged in the bill is the gross amount charged for such a tour.	40,00,000	60%	16,00,000
Tour 4 - January: Since charges are inclusive of the charges of stay and the invoice issued to the clients mentions it clearly that the charges are solely for arranging the accommodation for stay, hence, it will be eligible for 90% abatement.	50,00,000	90%	5,00,000
Tour 5 : March : Charges received from Sri Lankan tourist in relation to a tour conducted wholly in Nepal shall be exempt from tax under Mega Exemption Notification 25/2012.	Exempt		Exempt
Total	**1,90,00,000**		**57,00,000**
Service tax payable @ 12.36%			**7,04,520**

(iii) Kanhai Experts Limited has exported goods worth ₹ 1,00,000 (FOB Value). Ascertain whether Kanhai Experts Limited is entitled to duty drawback. Given that the rate of duty drawback on such export of goods is 0.9%. Discuss.

Answer:

As per Rule 8 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, drawback is not allowed if Drawback Amount or Rate is less than 1% of FOB Value, unless Drawback Claim per Shipment exceeds ₹ 500. However, this restriction is not applicable to - (i) Exports made in discharge of export obligation against advance license issued under EXIM policy, & (ii) Export by Post.
In the given case, Rate of Duty Drawback is less than 1% of FOB Value., i.e. 0.9%
However, amount of drawback = 0.9% of FOB Value = 0.9% of ₹ 1,00,000 = ₹ 900, which is more

than ₹ 500 per Shipment.
Hence, Kanhai Experts Limited is entitled to duty drawback.

Question 22:

(i) State the Resale Price Method (RPM) in computation of Arm's Length Price? Also state the adjustments required in the case of Resale Price Method where it is not possible to compare the transactions even by comparing with the transactions entered by the third party and that the differences have a material effect on price?

Answer:

The Resale Price Method (RPM) is a direct method which comprises the gross margins (i.e. gross profit over sales) earned in transactions between related and unrelated parties for the determination of the arm's- length price. The RPM method requires high level of functional comparability and is mainly applicable where the controlled party is a distributor.

The required adjustment to Resale Price Method (RPM):

(1) Inventory adjustment: An adjustment to operating income for ratios other than the Return on Assets (ROA) is necessary if a comparable company has a different relative level of inventory holding than the tested party. The inventory adjustment thus estimates the implicit capital cost of holding inventory.
(2) Accounts payable adjustment: This adjustment eliminates the implicit interest in the price of goods purchased on other than a cash basis from suppliers. The purpose of this adjustment is to identify and eliminate from profit comparisons the effect of companies' decisions on how to finance purchases.
(3) Accounts receivable adjustment: This adjustment eliminates the implicit interest in the price of goods or services sold on other than cash basis to customers. The purpose of this adjustment is to identify and eliminate the profit related to finance decisions of the seller. A company selling on cash basis would receive a lower price than a company selling the goods on terms, because selling on terms subjects the seller to a capital cost that will be reflected in the price.
(4) Contractual terms: where the contractual terms includes the provisions like warranties, terms of credit, facilities for transportation and transshipment of goods, facilities related to quantity of purchase or sale of goods.
(5) The level of the market: The adjustments also consider the level of the market, i.e. wholesale, retail, etc.
(6) Foreign currency adjustments: In case of an export transaction, the foreign exchange loss because of depreciation of the export income is disadvantageous to the exporter and it results in lower margin. The comparable companies having domestic sale transactions will be having higher margin. If the tested party imports raw material from foreign company, being an associated enterprise, it will be exposed to foreign exchange risk. The comparable companies using raw material procured from India will not be exposed from this risk. If the comparable companies hedge, the forex risk using financial instruments adjustment for the same is required for the tested party which does not perform the hedging.

(ii) AB Ltd. procures duty-paid Kraft Paper and then laminates it in its own factory with a coating of Polyethelene resulting in Polyethelene Laminated Kraft Paper. In reply to Show-Cause-Cum-Demand Notice, AB Ltd. has challenged the demand of duty on the following grounds -

(a) Lamination with Polyethelene does not amount to manufacture.

(b) Both unlaminated and laminated Kraft Papers admittedly fall under the same entry under the Central Excise Tariff.

As the jurisdictional Assistant Commissioner of Central Excise, explain the sustainability or otherwise of the duty demand on AB Ltd.

Answer:

Manufacture means transformation of a commodity to a different commercial commodity having a distinct character, use and name.
In the instant case, the process of laminating Ordinary Kraft Paper with Polyethelene, results in manufacture of a commercially distinct product called Polyethelene Laminated Kraft Paper. Therefore, the process is a manufacture.
Input and Output being under same Tariff Entry is not relevant.

(iii) State the circumstances where applications can be made to Settlement Commission.

Answer:

An application to Settlement Commission can be made only in the following situations -

1. Case is pending before Adjudicating Authority on the date of application.
2. Where any excisable / dutiable goods, books of accounts, other documents, (in case of Customs including sale proceeds of the goods) have been seized, the application can be made only after the expiry of 180 days from the date of seizure..
3. The applicant has filed a Bill of Entry or a Shipping Bill or a Bill of Export or a Baggage declaration or a Label or declaration along with the goods imported or exported through post or courier and a Show Cause Notice has been issued to him by the Proper Officer.
4. The applicant has filed the Returns of production clearance of goods and excise duty paid thereon. However, if the Settlement Commission is satisfied that there are circumstances for not filing the returns, then it may allow the application after recording the reasons.
5. The Assessee must have paid the duties payable along with Interest u/s 28AA.

Question 23:

(i) M/s. Rekha Associates deposits ₹ 7,50,000 as pre-deposit on 15-10-2014 and files an appeal with CESTAT. CESTAT decides the appeal in favour of M/s. Rekha Associates on 25-12-2014. M/s. Rekha Associates submits a letter seeking refund of the pre-deposit on 30-01-2015. The pre-deposit is refunded to M/s. Rekha Associates on 28-02-2015. Compute the amount of interest payable on refund of such pre-deposit, if any.

Answer:

With effect from 06-08-2014, section 35FF of Central Excise Act, 1944 which provides for interest on delayed refund of pre-deposit has been substituted with a new section. The substituted

section 35FF provides for payment of interest @ 6% per annum on the refund of such pre-deposit from the date of its payment [15.10.14] to the date of refund [28.02.15].
Thus, interest payable on refund of pre-deposit of ₹ 7,50,000 will be ₹ 16,767 (rounded off) [₹ 7,50,000 × 6% × 136/365].

(ii) Mr. Jeet was found engaged in smuggling in respect of certain imported goods, the value whereof, as computed for the purposes of section 14 of the Customs Act, 1962, is ₹ 25,00,000. Compute the maximum amount of penalty imposable on Mr. Jeet in the following independent cases -

(a) if the said goods are prohibited goods, otherwise chargeable to duty @ 5% ;

(b) if the said goods are non-prohibited goods chargeable to duty @ 5% ;

(c) if the said goods are non-prohibited goods chargeable to Nil rate of duty, but the value declared by Mr. Jeet is ₹ 40,00,000 ;

(d) if the said goods are prohibited goods, which were declared by Mr. Jeet to be some other goods valuing ₹ 40,00,000 chargeable to duty @ 5%.

(e) if the said goods are non-prohibited goods chargeable to duty @ 30%, but Mr. Jeet had declared them to be some other goods valuing ₹ 40,00,000 chargeable to duty @ 5%.

Answer:
The amount of penalty imposable on Mr. Jeet shall be as follows -

(a) Penalty = Value of goods i.e. ₹ 25,00,000 or ₹ 5,000, whichever is greater = ₹ 25,00,000 ;

(b) Penalty = Duty sought to be evaded i.e. (₹ 25,00,000 x 5.15% = ₹ 1,28,750) or ₹ 5,000, whichever is greater = ₹ 1,28,750.

(c) Penalty being the greater of the following -
  (A) Declared Value - Actual Value = ₹ 40,00,000 - ₹ 25,00,000 = ₹ 15,00,000 ;
  (B) ₹ 5,000.
  i.e. ₹ 15,00,000.

(d) In this case, the goods are prohibited goods, which have been declared by Mr. Jeet to be some other goods valuing ₹ 40,00,000. Since the value declared by Mr. Jeet is greater than its actual value and the goods are prohibited, therefore, penalty being the highest of the following three -
  (A) Actual value i.e. ₹ 25,00,000;
  (B) Declared value - Actual Value = ₹ 40,00,000 - ₹ 25,00,000 = ₹ 15,00,000 ;
  (C) ₹ 5,000.
  i.e. ₹ 25,00,000.

(e) In this case, the goods are dutiable goods on which duty has been sought to be evaded and the value declared by Mr. Jeet is also greater than its actual value. Therefore, maximum penalty imposable being the highest of the following three -
  (A) Duty sought to be evaded i.e. (30.9% of ₹ 25,00,000- 5.15% of ₹ 40,00,000) = ₹ 5,66,500 ;
  (B) Declared Value - Actual Value = ₹ 40,00,000 - ₹ 25,00,000 = ₹ 15,00,000 ;
  (C) ₹ 5,000.
  i.e. ₹ 15,00,000.

(iii) Sharan Ltd. commenced its business on 21st June, 2014 in Kolkata. It has provided/availed following services upto 31st March, 2015. Determine its service tax liability for the Financial Year 2014-15:

(a) Taxable services provided under its own brand name : ₹ 9,00,000.

(b) Declared services (Sum charged ₹ 4 lakh, but value determined as per valuation rules is 60% ie. ₹ 2,40,000).

(c) Services wholly exempt under Notification No. 25/2012, dated 20-06-2012 : ₹ 6,00,000.

(d) Services provided under brand-name of other person (fully taxable): ₹ 3,60,000.

(e) Availed services of goods transport agency and paid freight of ₹ 2,00,000.

The assessee is ready to opt any exemption available to it under Service Tax Law.

(Make suitable assumptions wherever required and show workings.)

Solution:

M/s. Sharan Ltd. has commenced its business in the financial year 2014-15 i.e., its 'aggregate value of taxable services' during the financial year 2013-14 was NIL. Accordingly, it is eligible for threshold exemption of ₹ 10 lakhs in respect of its 'aggregate value' during the financial year 2014-15 under Not. No. 33/2012-ST.

The relevant computations are as follows —

Particulars	₹
(a) Own brand name services: It is assumed that ₹ 9 lakh is the value of the services. Includible in determining aggregate value.	9,00,000
(b) Declared services: Value of services = 60% of 4 lakh = ₹ 2,40,000. Value as determined as per section 67 of Finance Act, 1994 and Valuation Rules is taken. Includible in determining aggregate value.	2,40,000
(c) Services fully exempt: Specifically excluded in determination of aggregate value	NIL
Aggregate Value for purposes of Not. No. 33/2012-ST for 2014-15	11,40,000
Less : Threshold exemption under Notification No. 33/2012-ST	10,00,000
Sum liable to service tax	1,40,000

(iv) Abhijit who entered into a roll over contract, approached Syn Bank Ltd. for selling US $ 46,000 at the rate of ₹ 60 per US dollar. RBI Reference rate at that time was ₹ 60.50 per US Dollar. However, the rate of exchange declared by CBEC for the day is ₹ 61.50 per US dollar. Calculate the value of taxable service with reference to rule 2B of the service tax (Determination of value) Rules, 2006 and Service Tax payable thereon.

Answer:

As per Rule 2B of the Service Tax (Determination of Value) Rules, 2006, value of taxable services = (RBI Reference Rate - Buying Rate) × No. of units of currency = (₹ 60.5 per $ - ₹ 60 per $) × $ 46,000 = ₹ 23,000.

Service Tax @ 12.36% = ₹ 23,000 × 12.36% = ₹ 2,842.80.

Note: CBEC rate has no relevance under Rule 2B of the Service Tax (Determination of Value) Rules,2006.

Question 24:

(i) M/s.Solid Cement Ltd. is engaged in the manufacture of Cement. Explosives are used for blasting the mines in order to excavate limestone, which is used in the manufacture of Cement/clinkers in the factory situated at some distance away from the mines. Cenvat credit on explosives has been denied by the Excise Department of the ground that the explosives are not used as inputs "within the factory of production". You are required to advise with reference to the CENVAT Credit Rules, 2004 whether the stand taken by the department is correct.

Answer:
Goods must be used within factory of production and must have some relation with manufacture so as to qualify as 'input' under Rule 2(k) of the CENVAT Credit Rules, 2004. As per judgment in Vikram Cement v. CCEx. [2006 (197) E.L.T. 145 (S.C.)], captive mines supplying goods only to assessee's factory are treated as extension of factory. Therefore, in case of captive mines, explosive used thereat may be regarded as 'input'. But, in case of non-captive mines, which are not regarded as extension of factory, explosive used shall not be eligible for CENVAT Credit.

(ii) A manufacturer has Head Office registered as input service distributor and four units. It furnishes following details and asks you to determine Cenvat Credit distributable under Rule 7 of Cenvat Credit Rules, 2004 for the month of April, 2015 –

	Unit I: Potlan	Unit 2: Kolkata	Unit 3: Jaipur	Unit 4: Ahmedabad	Unit 5: Surat	Total
Turnover for the year 2014-15	**₹ 50 crores**	**₹ 15 crores**	**₹ 10 crores**	**₹ 55 crores**	**₹ 10 crores**	**₹ 140 crores**
Credit of service tax on security services (used at Jaipur only)						**₹ 3 lakh**
Credit of service tax on consultancy services (for Potlan)						**₹ 2 lakh**
Credit of service tax on Cleaning Services (for Potlan, Jaipur and Ahmedabad unit)						**₹ 6.5 lakh**
Credit of service tax on other services (common for all)						**₹ 19.5 lakh**

You are informed that Unit 1 (Potlan) is exclusively engaged in manufacture of exempted goods. You are also informed that Unit 5 (Surat) was closed on 31-3-2015.

Solution:

Credit of service tax to be distributed as per Rule 7 of Cenvat Credit Rules, 2004

	Unit: Potlan (wholly exempt)	Unit : Kolkata	Unit: Jaipur	Unit: Ahmedabad
Turnover for the year 2014-15	₹50 crores	₹ 15 crores	₹ 10 crores	₹ 55 crores

Security Services - Since they are used at Jaipur only, credit will be distributed to Jaipur only	--	--	₹ 3,00,000	--
Consultancy Services - It relate exclusively to Potlan Unit	₹ 2,00,000	--	--	--
Credit of cleaning and other common services ₹ 26 lakh (₹ 6.5 lakh + ₹ 19.5 lakh) will be distributed in ratio of turnover viz, 50 : 15 : 10 : 55 **[See Note 1]**	₹10,00,000	₹ 3,00,000	₹ 2,00,000	₹ 11,00,000
Total Credit (₹)	**NIL (Note 2)**	**3,00,000**	**5,00,000**	**11,00,000**

Notes:

1. As per Rule 7 of the CENVAT Credit Rules, 2004, in case of credit of service tax attributable to service used by more than one unit, credit is distributed to all operational units, whether such service relates to that unit or not. In other words, credit of cleaning services will be distributed over all the four units, even if it relates only to Potlan, Jaipur and Ahmedabad units and not to Kolkata unit. Therefore, for ease of computation, cleaning services credit ₹ 6.5 lakh and other services credit ₹ 19.5 lakhs has been distributed in totality of ₹ 26 lakh — [Circular No. 178/4/2014-ST, dated 11-7-2014].

2. Since Potlan unit is engaged in manufacture of exempted goods only, no credit can be taken/ distributed to such unit. Hence, total credit will be NIL.

3. Since Unit 5 (Surat) was discontinued on 31-3-2015 i.e., it is not operational during the current financial year; therefore, the turnover of Surat Unit would not be considered for determining the turnover ratio under Rule 7 of the Cenvat Credit Rules, 2004.

(iii) Distinguish between a Sale for Export and Sale in the Course of Export in the context of Central Sales Tax.

Answer:

Distinctions between a Sale for Export and Sale in the Course of Export

Sale for Export	Sale in the Course of Export
i. A sale is effected by the dealer (seller) and he is not connected with the export of the goods which actually takes place subsequently.	Seller has an express between the sale and the export.
ii. Seller may or may not have the knowledge that the buyer intends to export the goods purchased.	The seller who purchases goods in India subsequently exports as such.
iii. Seller does not know the ultimate destination of the goods he has sold.	Seller has clear address for ultimate destination of his goods.
iv. Seller has no intention for export.	Seller has clear intention to export.
v. This sale may be called as penultimate sale.	This sale is called as export sale.
vi. Sale exempted from CST provided Form-H received from his buyer.	Sale exempted from CST automatically.

vii. This sale is covered under Section 5(3) of the CST Act, 1956.	This sale is covered under Section 5(1) of the CST Act, 1956.

Question 25:

(i) Prediction Ltd. sold 100 units manufactured by it for ₹ 12,000 per unit. It had received interest-free advance of ₹ 6,00,000 from the buyer for the whole of the year. Compute the assessable value of 100 units sold in following independent case:
(a) The price charged from other buyers is ₹ 11,500 per unit.
(b) The price charged from other buyers is ₹ 12,800 per unit.
(c) The normal rate of interest is 12% per annum and the price charged from other buyers is ₹ 12,800 per unit.

Answer:
Computation of Assessable Value of Prediction Ltd.: As per the explanation 2 to Rule 6 of the Central Excise Valuation Rules, 2000, where an assessee receives any advance payment from the buyer against delivery of any excisable goods, no notional interest on such advance shall be added to the value unless the Central Excise Officer has evidence to the effect that the advance received has influenced the fixation of the price of the goods. Hence, the assessable value shall be determined as under:
(a) Assessable value = ₹ 12,000 x 100 = ₹ 12,00,000.
No notional interest shall be added as advance received has not influenced the price.
(b) Assessable value = (₹ 12,000 + ₹ 800) x 100 = ₹ 12,80,000.
₹ 800 (₹ 12,800 - ₹ 12,000) shall be added as notional interest as the price charged is influenced due to the receipt of advance.
(c) Assessable value = (₹ 12,000 + ₹ 800) x 100 = ₹ 12,80,000.
Rate of interest is irrelevant, however, ₹ 800 (₹ 12,800 - ₹ 12,000) shall be added as notional interest as the price charged is influenced due to the receipt of advance.

(ii) Explain the important features of the Foreign Trade Policy.

Answer:
The important features of the Foreign Trade Policy (FTP) are -

(a) **Free Export-Import**: Export-Import is free unless specifically regulated by the provisions of the Policy or any other law for the time being in force.

(b) **Restrictions for strategic and health reasons:** There are restrictions on exports and imports for various strategic, health, and other reasons. If the goods are not banned, the government can give a permission/ license for specific reasons.

(c) **Export Promotion Schemes:** Exports are promoted through various promotional schemes.

(d) **Duty exemptions, drawbacks and rebates available:** To provide for tax free exports, the taxes on exports are either exempted or adjusted or refunded on both outputs and inputs, through schemes of Duty Exemption, Duty Refund (Drawbacks and Rebates).

(e) **Free import of capital goods for exports:** Even capital goods can be imported at NIL duty for the purpose of exports under the scheme of EPCG.

(f) **Special Schemes for EOU**: For units undertaking to export all their production, there are

special schemes so that they can avoid taxes at every stage under the scheme of EOU.

(g) **Deemed Exports:** In certain cases imports get duty exemption/concession for certain special purposes. In such cases, to enable domestic suppliers compete with the international suppliers, the supplies of domestic suppliers are treated as deemed exports.

(iii) What is 'Importer Exporter Code Number' (IEC)? State the manner in which IEC has to be applied for. In what export/import documents should the same be stated?

Answer:

Importer Exporter Code Number (IEC Number): Every importer and exporter must obtain an 'Importer Exporter Code Number' (IEC) from DGFT (or officer authorised by it), by applying in prescribed Form. IEC is a unique 10 digit code issued by DGFT to Indian companies.

Permanent Account Number (PAN) is pre-requisite for grant of an IEC. Only one IEC can be issued against a single PAN.

Import and export without IEC number is not permitted, unless specifically exempted.

Application for IEC Number: An Application for IEC number has to be made to Regional Authority (RA) of DGFT in prescribed form ANF 2A, with fees of ₹250 and shall be accompanied by prescribed documents. In case of STP/EHTP/BTP units, the Regional Offices of the DGFT having jurisdiction over the district in which the Registered/Head Office of the STP unit is located shall issue or amend the IECs. Profile of importer/exporter should be given in form ANF 1.

Declaration of IEC number on import/export documents: IEC number will be declared on Bill of Entry, Shipping Bill and other documents relating to customs.

Question 26:

(i) State whether the principle of 'unjust enrichment' shall be applicable in the following cases:

(a) Refund of duty paid on provisional basis under section 18 of the Customs Act;

(b) Refund of an advance payment made in anticipation of importation of goods;

(c) Refund of duty paid under protest.

Answer:

(a) Yes. Section 18 of the Customs Act, 1962 statutorily provides that refund of import duty of customs paid on provisional basis can be made only if the importer proves that he has not passed on the incidence of duty to any other person. Hence, doctrine of 'unjust enrichment' is applicable in such case.

(b) No. The doctrine of "unjust enrichment" will not be applicable in case duty is paid in advance in anticipation of importation of goods. The Delhi High Court in United News of India v. UOI [2004] 168 ELT 442 (Del.) has held that till the advance payment is appropriated against the duty on actual importation of goods, such amount cannot be regarded as duty to be hit by doctrine of unjust enrichment. Thus, the time limit under section 27 and bar of unjust enrichment is not applicable in such cases.

(c) Yes. The Supreme Court in Allied Photographics India Ltd. [2004] 166 ELT 3 (SC) has held that every claim of refund, even if duty is paid under protest, shall be dealt in accordance with provisions of Section 27. Thus, refund of duty paid under protest is also governed by doctrine of unjust enrichment.

(ii) Having regard to the provisions of Section 4 of the Central Excise Act, 1944, compute the Assessable Value of Excisable Goods, for levy of duty of excise, given the following information:

Particulars	₹
Cum-duty Wholesale Price including Sales Tax of ₹ 2,000	**15,000**
Normal Secondary Packing cost	**1,000**
Cost of Special Secondary Packing	**1,500**
Cost of Durable and Returnable Packing	**1,500**
Freight	**750**
Insurance on Freight	**200**
Trade Discount (Normal Practice)	**1,000**
All Inclusive Rate of Central Excise Duty as per CE Tariff	**12% Ad Valorem**

State the reasons for the admissibility or otherwise of the deductions.

Solution:

Assessable Value (from cum-duty price)= $\frac{\text{Cum} - \text{Duty Excise Price Less Permissible Deductions}}{100 + \text{Rate of Duty}} \times 100$

Computation of Assessable Value

Particulars	₹	₹	Reasoning
Cum-duty Wholesale Price		15,000	Assumed to be all inclusive and all adjusted price.
Less: Sales Tax	(2,000)		Sales Tax actually paid can be reduced from AV (Assessable Value)
Normal Secondary Packing Special Secondary Packing Durable and Returnable Packing	- - (1,500)		Normal and Special packing cost includible in AV. Only Proportionate cost of Durable and Returnable Packing is includible in AV. It is assumed that the given value is total cost of durable packing and hence excluded.
Freight Insurance on Freight	(750) (200)		Freight and Insurance are deductible, as they are incurred after removal. Assumed they are actual costs.
Trade Discount	-	(4,450)	Note-2
Cum-Duty Price **Less:** Excise Duty at 12.36% incl. EC+SHEC		**10,550** (1,161)	$\frac{10{,}550 \times 12.36}{112.36}$
Assessable Value		**9,389**	

Notes:

1. Since Wholesale Price is given, it is assumed to include all costs and the profit margin.

2. Trade Discount is deductible on the assumption that it is part of the Manufacturer's policy to allow trade discount in ordinary course of his business. Since it is assumed that the cum-duty price is all inclusive and all adjusted price, it is assumed that the trade discount is already deducted in the price given.
3. Though the Excise Duty rate is given as 12%, EC and SHEC have to be considered apart from 12%.

(iii) Beauty Ltd. imported a Shampoo. Maximum Retail Price (MRP) of a Shampoo under Customs Tariff Sub-Heading No. 3305 10 is ₹ 800. However, its Assessable Value as per Section 14(1) of the Customs Act, 1962 is ₹ 500. Shampoo is assessable under Central Excise, on the basis of MRP after allowing an Abatement of 40%. Basic Excise Duty Rate is 12% plus EC of 2% and SHEC of 1%. Basic Customs Duty rate is 10%. Calculate the total Duty Payable under the Customs Tariff Act, 1975 on the Shampoo.

Solution:

Computation of Total Customs Duty Payable

Particulars	₹
1. Transaction Value u/s 14(1)	500.00
2. Basic Customs Duty (BCD) at 10%	50.00
3. Additional Customs Duty (ACD) u/s 3(1) [Refer Note Below]	57.60
6. Total Customs Duty = BCD + ACD u/s 3(1) = (2) + (3)	107.60
7. Education Cess on Customs Duty = 2% on 107.60	2.15
8. SHE Cess at 1% on Customs Duty = 1% on 107.60	1.08
9. Total Customs Duty, EC, SHEC payable (6) + (7) + (8)	110.83
10. Total Customs Duty Payable (rounded off to nearest rupee)	**111.00**

Note: Since the product is covered under MRP, ACD u/s 3(1) is payable on MRP. MRP is ₹ 800 and abatement is 40%.

Particulars	₹
Assessable Value u/s 4A of CEA, 1944 (60% of ₹ 800)	480.00
Additional Duty of Customs (12% × 480)	57.60

Question 27:

(i) Compute the Duty Payable under the Customs Act, 1962 for an imported equipment based on the following information-

(a) Assessable Value of the imported equipment US$10,100.

(b) Date of Bill of Entry 27th April., Basic Customs Duty on this date 20% and Exchange Rate notified by the Central Board of Excise and Customs US $1 = ₹ 65.

(c) Date of Entry Inwards 22nd April. Basic Customs Duty on this date 16% and Exchange Rate notified by the Central Board of Excise and Customs US $ 1 = ₹ 50

(d) Additional Duty payable under Section 3(1) and (2) of the Customs Tariff Act, 1975- 15%.

(e) Additional Duty under Section 3(5) of the Customs Tariff Act, 1975- 4%.

(f) Educational Cess @ 2% and Secondary and Higher Educational Cess @ 1%.

Solution:

Assessable Value & Customs Duty

Particulars	**₹**
1. Assessable value (AV) [10,100 USD x ₹65]	6,56,500
2. Basic Customs Duty (BCD) @ 20% of AV [6,56,500x20%]	1,31,300
3. ACD u/s 3(1) and 3(2) at 15% = 15% of (Assessable Value + BCD) = 15% of [6,56,500+1,31,300]	1,18,170
4. Sub-total for EC , SHEC	2,49,470
5. EC on Customs Duty = 2% on 2,49,470	4,989
6. SHEC on Customs Duty = 1% on 2,49,470	2,495
7. ACD u/s 3(5) at 4% = 4% on [AV + BCD + ACD u/s 3(1) + EC + SHEC thereon] = 4% on (6,56,500 + 1,31,300 + 1,18,170 + 4,989+ 2,495)	36,538
8. Total Customs Duty including EC and SHEC = (2) + (3) + (5) + (6)+ (7) = [BCD + ACD u/s 3(1) and 3(2) + EC & SHEC u/s 3(1) and 3(2) + ACD u/s 3(5)]	2,93,492

Note: Rate of Exchange notified by CBEC as applicable for the month of filing the B/E should be considered. Duty = Rate as per date of B/E or date of arrival of aircraft, whichever is later, should be considered.

(ii) M/s Abanti Associates is a registered dealer engaged in the manufacturing of steel in the State of Maharashtra. During the year 2014-15 the firm has procured raw materials of ₹ 25,50,320 (VAT @ 4%) and purchased plant and machinery of ₹ 20,00,000 (VAT @ 4%) and ₹ 5,00,000 (CST @ 2%) for use in the manufacturing of steel. Sales of steel materials made during the year is ₹ 40,00,000 (VAT @ 4%) and inter-state sale is ₹ 5,29,000 (@ 2% CST). Besides above, branch transfer of ₹ 3,20,000 was made to Kolkata. Calculate the following as per White Paper on VAT Law in India –

(a) Output tax
(b) Input tax credit to be availed during the year
(c) Balance tax payable and
(d) Input tax credit, if any, to be carried forward.

Solution:

(A) Output tax payable - (i) sale within State - ₹ 1,60,000 (4% of ₹ 40,00,000) (ii) Inter-state sale - ₹ 10,580 (2% of ₹ 5,29,000) (iii) Stock transfer of ₹ 3,20,000 - No tax. Total sales (including stock transfer) -₹ 48,49,000. Total Tax payable - ₹ 1,70,580.

(B) Input tax credit (set off) on raw material ₹ 1,02,012.80 (4% of ₹ 25,50,320 - It is presumed that the purchase price given is net of VAT).
Total sales (including stock transfer) are ₹ 48,49,000, out of which stock transfer is of ₹ 3,20,000 i.e. 6.6%. Hence, on 6.6% of input raw material, 2% Input Tax Credit is disallowed.
Total raw material - ₹ 25,50,320. Raw material used for stock transfer (6.6%) i.e. ₹ 1,68,321.12. Hence, 2% of ₹ 1,68,321.12 i.e. ₹ 3,366.42 is not allowed. Thus, Input Tax Credit available is ₹ 98,646.38 (₹ 1,02,012.80 - ₹ 3,366.42)

(C) Input credit on Plant and machinery - ₹ 80,000 (4% of ₹ 20,00,000) - the credit is to be taken in

three years. Hence, credit in first year is ₹ 26,666.67. Balance ₹ 53,333.33 will be carried forward.

(D) No Input tax credit of inter-state purchases of ₹ 5,00,000.

(E) Hence, total Input Tax Credit (set off) available for use = ₹ 1,25,313.05.[98,646.38 (On inputs) + ₹ 26,666.67 (On capital goods)]

(F) Net tax payable by cash - ₹ 45,266.95 (₹ 1,70,580 - ₹ 1,25,313.05).

(G) Credit of ₹ 53,333,33 on capital goods will be carried forward.

Note: It is assumed here that input tax credit on capital goods is to be taken in three years.

(iii) Ram & Co., a registered dealer with head office at Kolkata, furnishes to you the following information - (i) Inter-State sale of goods (it includes ₹ 10,00,000 being the value of goods transferred to Chennai Branch covered by Form F) - ₹ 49,20,000 (ii) Dharmada collected - ₹ 25,000 (iii) Weighment dues charged separately from buyers 2,15,000 (iv) Cash discount shown in invoice as per trade practice - ₹ 60,000 (v) Indemnity charges (recovered from buyers to cover transit loss based on their request) - ₹ 53,000. Calculate the turnover and CST payable, on the assumption that all the sales were made to registered dealers.

Solution:

CST is not payable on stock transfer. Hence, sales tax is payable on ₹ 39,20,000 (₹ 49,20,000 – ₹ 10,00,000)plus Dharmada ₹ 25,000 plus weighment dues ₹ 2,15,000. Cash discount is allowable as deduction. Indemnity charges are in nature of insurance charges and hence allowable as deduction.

Thus, 'turnover' = 39,20,000 + 25,000 + 2,15,000 - 60,000 - 53,000 = ₹ 40,47,000. CST @ 2% of ₹40,47,000 would be ₹ 80,940.
It is assumed that price given is exclusive of CST.

Question 28:

(i) In the context of international transfer pricing, which method is applied if there is comparability at functional level in two associated enterprise. Explain the method.

Answer:

Transactional Net Profit Method is applied if there is comparability at functional level in two associated enterprise in the context of international transfer pricing.

In this method, the net profit margin realised by the enterprise from an international transaction entered into with an associated enterprise is computed in relation to costs incurred or sales affected or assets employed or to be employed by the enterprise or having regard to any other relevant base. The net profit margin realised by the enterprise or by an unrelated enterprise from a comparable uncontrolled transaction or a number of such transactions is computed having regard to the same base.

The net profit margin arising in comparable uncontrolled transactions is adjusted to take into account the differences, if any, between the international transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of net profit margin in the open market. The net profit margin realised by the enterprise is established. The net profit margin thus established is then taken into account to arrive at an arm's length price.

(ii) S Ltd. received the following sums (exclusive of taxes). Compute service tax liability (Ignore small service provider's exemption) -

(a) Manufacture of exempted excisable goods : ₹ 5 lakh ;
(b) Manufacture of dutiable excisable goods : ₹ 4 lakh ;
(c) Job-work on goods on which duty is paid by principal manufacturer : ₹ 3 lakh ;
(d) Job-work on goods on which no duty is payable by principal manufacturer due to exemption : ₹ 15 lakh;
(e) Manufacture of alcohol/wine : ₹ 10 lakh
(f) Job-work of printing : ₹ 2 lakh ;
(g) Job-work of textile processing: ₹ 1 lakh.
(h) Manufacture of medicines containing alcohol: ₹ 2.5 lakhs.

Solution:

Computation of service tax liability

(a) Manufacture of exempted excisable goods : ₹ 5 lakh - Covered within negative list u/s 66D(f) of Finance Act, 1994;
(b) Manufacture of dutiable excisable goods : ₹ 4 lakh - Covered within negative list u/s 66D(f);
(c) Job-work on goods on which duty is paid by principal manufacturer : ₹ 3 lakh – Exempt;
(d) Job-work on goods on which no duty is payable by principal manufacturer due to exemption : ₹ 15 lakh - Taxable, as no appropriate duty paid by principal manufacturer ;
(e) Manufacture of alcohol/wine : ₹ 10 lakh - Covered within negative list u/s 66D(f);
(f) Job-work of printing : ₹ 2 lakh - Exempt;
(g) Job-work of textile processing: ₹ 1 lakh – Exempt;
(h) Manufacture of Medicines containing alcohol falls under M&TP Act - Covered in Negative list - Not taxable.

Taxable Value = ₹ 15 lakh; and service tax thereon @ 12.36% = ₹ 1,85,400.

Question 29:

(i) Property held for charitable purposes – Exemption - Can be denied- In absence of production of details of expenditure.

Solution:

ACIT v. Amritsar Improvement Trust (2013) 153 TTJ 364/56 SOT 106 /85 DTR 99 (Asr.)(Trib.)

Assessee trust being registered under section 12AA claimed exemption under section 11 of the Act. The Assessing Officer asked for details of various expenditure whereas assessee failed to submit the same. The Assessing Officer denied exemption under section 11 of the Act and taxed the amount as Income from business as the trust failed to achieve other activities required for exemption under section 11 of the Act. CIT(A) allowed the appeal of the assessee. Tribunal allowed the appeal of the Revenue and held that when the registration is granted, it does not debar the Assessing Officer from examining the details of various activities / work undertaken by the trust to achieve the object of the assessee trust. Secondly the Tribunal also held that the assessee trust has not proved its case for seeking exemption under section 11 by producing various details of expenditure incurred by the assessee Trusts on various activities undertaken to achieve its objects before the Tribunal not even before the Tribunal inspite of asking to the counsel for the assessee trust.

(ii) Income deemed to accrue or arise in India – Fees for technical services-DTAA-India-Thailand - Royalty and fees for technical services cannot be taxed under residual Article 22 of India-Thailand DTAA, unless item of income does not fall under any other express provisions of DTAA.

Solution:

Bangkok Glass Industry Co. Ltd. v. ACIT (2013) 82 DTR 326/215 Taxman 116(Mag.) (Mad.)(HC).

The assessee, a non-resident company of Thailand, entered into technical assistance know-how agreement and India Company for transfer of technology know-how. The assessee received technical know-how fees for five years, which was treated as not taxable as per Article 12 of DTAA between India and Thailand. The Assessing Officer took a view that what was transferred was sharing of knowledge and not know-how, and therefore, consideration received was not covered by definition of royalty under Article 12 of DTAA. Therefore, he held that consideration could be taxed only or in the contracting State where the income arose under the residual clause that is Article 22 of DTAA. On appeal High Court held that residual clause of Article 22 of DTAA had no relevance as far as royalty and fees for technical services were contemplated as it would come into play only when item of income did not fall for consideration under any express provisions of DTAA.

(iii) Capital or revenue-Income earned on sale of carbon credits is capital receipt and not revenue receipt liable to tax.

Solution:

My Home Power Ltd. vs. Dy. CIT (2013) 21 ITR 186/81 DTR 173 (Hyd.)(Trib.)

The assessee company was generating power through biomass power generation unit. During the year, it had received CERs (Carbon Emission Reduction certificates) and sold CERs to a foreign company. The Assessing Officer held that the sale of CERs was a revenue receipt since they are a tradable and even quoted in stock exchange. The CIT(A) upheld the addition. The Tribunal deleted the addition by holding that carbon credit was in the nature of "an entitlement" received inter alia to improve world atmosphere heat and gas emissions. The entitlement is to be regarded as a capital receipt and cannot be taxed as a revenue receipt as

it is not generated or created due to carrying on business but it is accrued due to "world concern" and "environment". The amount received for carbon credits does not have any element of profit and hence not liable for tax in terms of sections 2(24), 28, 45 and 56.

(iv) Can the expense incurred by the assessee on the education and travelling of an employee, for acquiring knowledge relating to assessee's business, be disallowed merely on the ground that the employee is the son of an ex-director of the assessee company?

Solution:

CIT vs. Naidunia News and Networking (P.) Ltd. (2012) 210 Taxman 73 (MP)

In the present case, the assessee was engaged in the business of printing and distribution of newspapers and magazines. It incurred foreign travel and education expenditure on higher studies in printing technology for its employee, who was the son of the ex-director of the company. However, the said expense was disallowed by the Assessing Officer.

The Madhya Pradesh High Court held that the expenses incurred by the assessee on the foreign travel and education of a regular employee outside India for gaining advanced knowledge of the latest printing technology, which was directly related to the business of the assessee, is allowable under section 37(1). The expenditure cannot be disallowed merely because it was incurred in respect of an employee, who was son of ex-director of the assessee company.

(v) Would expenditure incurred on feasibility study conducted for examining proposals for technological advancement relating to the existing business be classified as a revenue expenditure, where the project was abandoned without creating a new asset?

Solution:

CIT vs. Priya Village Roadshows Ltd. (2011) 332 ITR 594 (Delhi)

In this case, the assessee, engaged in the business of running cinemas, incurred expenditure towards architect fee for examining the technical viability of the proposal for takeover of cinema theatre for conversion into a multiplex/ four-screen cinema complexes. The project was, however, dropped due to lack of financial and technical viability. The issue under consideration is whether such expenses can be treated as revenue in nature, since no new asset has been created.

On this issue, the High Court observed that, in such cases, whether or not a new business/asset comes into existence would become a relevant factor. If there is no creation of a new asset, then the expenditure incurred would be of revenue nature. In this case, since the feasibility studies were conducted by the assessee for the existing business with a common administration and common fund and the studies were abandoned without creating a new asset, the expenses were of revenue nature.

Question 30:

(i) 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:

CCEx., Bhubneshwar vs. Champdany Industries Limited 2009 (241) E.L. T. 481 (S.C.)

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.

In this regard, the Apex Court considered the following points:

(a) Relying on Note 1 to Chapter 571, 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.

(b) Further referring to the relevant statutory provisions laid down in Section Notes 2(A) and 14(A) of Section XI2, 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.

(c) 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.

(d) 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.

(e) 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 note as polypropylene carpet.

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

Solution:

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

Facts of the Case:

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

Point of Dispute: -

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

Decision of the Case:

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

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

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

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

(iii) In case the testing is critical to ensure marketability of manufactured product i.e. the manufacture is not complete without testing; is CENVAT credit of the testing material allowed?

Solution:

Flex Engineering Ltd. vs. Commissioner of Central Excise, U.P. 2012 (276) E.L. T. 153 (S. C.)

Facts of the Case:

The Flex Engineering Ltd. ('Flex' in short), a manufacturer was engaged in the manufacturing of various types of packaging machines, marketed Automatic Form Fill and Seal Machines ('F&S

machines' in short) ,. The machines were 'made to order', in as much as all the dimensions of the packaging/sealing pouches, for which the F&S machine is required, are provided by the customer. The purchase order contained the following inspection clause:

"Inspection/ trial will be carried out at your works in the presence of our engineer before dispatch of equipment for the performance of the machine.''

As the machine ordered was customer specific, if after inspection by the customer it was found deficient in respect of its operations for being used for a particular specified packaging, it could not be delivered to the customer, till it was re-adjusted and tuned to make it match with the required size of the pouches as per the customer's requirement. On completion of the above process and when the customer was satisfied, an entry was made in the RG-1 register declaring the machine as manufactured, ready for clearance.

As per the above clause, testing material to be used was Flexible Laminated Plastic Film in roll form & Poly Paper which are duty paid.

Point of Dispute:

The Department denied CENVAT credit on the material used for testing of the packaging machines. Two questions were raised to the High Court in this regard:

(i) Whether duties paid on testing material would be eligible as credit under rule 57A of the erstwhile Central Excise Rules, 1944 [now rule 2(k) of the CENVAT Credit Rules, 2004]?

(ii) Whether such use of material in testing in view of the purposes mentioned above, could be said to be used in the manufacture of or use in relation to the manufacture of the final products viz., machines as assembled?

The High Court answered both the above questions in the negative. According to the High Court, anything required to make the goods marketable must form a part of the manufacture and any raw material or any materials used for the same would be a component part of the end product. It thus observed that materials used for testing after manufacture of the final product, viz. the F&S machine, is only to detect the deficiency in the final product and therefore, could not be considered as the goods used in or in relation to the manufacture of the final product. The Flex made an appeal to the Supreme Court against the above order.

Decision of the Case:

The Supreme Court held that the process of manufacture would not be complete if a product is not saleable as it would not be marketable. Thus, the duty of excise would not be leviable on it.

The Supreme Court was of the opinion that the process of testing the customized F&S machines was inextricably connected with the manufacturing process, in as much as, until this process is carried out in terms of the afore-extracted covenant in the purchase order, the manufacturing process is not complete, the machines are not fit for sale and hence, not marketable at the factory gate. The Court was, therefore, of the opinion that the manufacturing process in the present case gets completed on testing of the said machine. Hence, the afore-stated goods viz. the flexible plastic films used for testing the F&S machines are inputs used in relation to the manufacture of the final product and would be eligible for CENVAT credit under rule 57A of the erstwhile Central Excise Rules, 1944 [now rule 2(k) the CENVAT Credit Rules, 2004].

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

Solution:

CC Ex. & C vs. Accrapac (India) Pvt. Ltd. 2010 (257) E.L.T. 84 (Guj.)

Relevant Section: 11A of the Central Excise Act, 1944

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 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.

(v) Whether the interest on delayed refund under section 11BB would be payable from the date of deposit of tax or from the date of receipt of application for refund?

Solution:

Kanyaka Parameshwari arameshwari Engineering Ltd. . vs. Comm of Cus & Cx 2012 (26) STR 380 (A.P)

Facts of the Case:

Kanyaka Parameshwari Engineering Ltd. was engaged in business of manufacture and sale of LPG cylinders. The appellant had paid excise duty under protest for the financial year 1999-2000 as the price was not finalized by the oil companies so the appellant undertook to pay the differential duty, if any, on fixation of exact price.

Pursuant to the reduction in the prices of LPG cylinders, the appellant filed applications for finalization of assessments and for refund of excess duty so paid by them. The Department

refunded the excess duty paid by the appellant with interest from three months after the application for refund filed till the date of payment.

The appellant further filed an appeal demanding interest on the excess duty so paid by them as per section 11BB of Central Excise Act from the date of payment as duty was paid under protest.

Point of Dispute:

Whether under section 11BB, the interest on refund is payable from the date of deposit of tax or from the date three months after the submission of the application the refund?

Decision of the Case:

Under section 11BB of the Central Excise Act, 1944, if any duty is no refunded within three months from the date of receipt of application under sub-section (1), the interest shall be paid on such duty from the date immediately after expiry of three month from the date of receipt of such application till the date of refund of such duty.

The High Court upheld the order of the CESTAT and granted interest on delayed refund from the expiry of three months from the date of application till the date of refund.