

FINAL EXAMINATION GROUP III (SYLLABUS 2012)

SUGGESTED ANSWERS TO QUESTIONS DECEMBER 2016

Paper- 16: TAX MANAGEMENT AND PRACTICE

Time Allowed : 3 Hours

Full Marks : 100

The figures in the margin on the right side indicate full marks.

*Wherever required, the candidate may make suitable assumptions and
State them clearly in the answers.*

Working notes should form part of the relevant answer.

All sub- divisions of a questions should be answered continuously.

All questions in Income tax relate to the Assessment year 2016 – 17, unless stated otherwise.

Answer Question No. 1 which is compulsory and answer any five from the rest.

1. (a) Fill up the blanks: $1 \times 10 = 10$
- (i) For a foreign company, surcharge on income-tax is applicable, where the total income exceeds ₹ _____.
 - (ii) For transfer pricing provisions to apply, the monetary limit for specified domestic transactions is ₹ _____.
 - (iii) A manufacturing company has acquired new machinery for ₹200 lakhs on 12-03-2015 and put the same to use. In respect of this machinery, the additional depreciation allowable for the assessment year 2016-17 is ₹ _____.
 - (iv) Where donation of ₹30,000 is given in cash to a charitable trust recognised for section 80G purposes and the adjusted total income before grant of deduction u/s 80G is ₹ 6,00,000, the deduction allowable u/s 80G is ₹ _____.
 - (v) Where a non-compete fee of ₹10 lakhs is paid to a resident Indian, the rate at which tax has to be deducted at source is _____.
 - (vi) Where a person renders a service to a SEZ developer on 12-03-2016, the rate of service tax chargeable is _____.
 - (vii) Where three types of taxable services are rendered by an individual, _____ service tax return(s) has / have to be filed.
 - (viii) Cenvat credit to be claimed on diesel purchased for generators used in factory is at _____ rate.

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- (ix) The rate of service tax applicable in respect of a charitable institution conducting yoga classes would be _____.
- (x) Normally, the purchasing dealer has to issue C Form to the selling dealer, once in _____ months under the CST Act.
- (b) Choose the most appropriate alternative for the following: $1 \times 10 = 10$
- (i) For an Indian citizen being a member of a ship bound for foreign trip leaving India, for prescribing the manner of computation of stay for determining the residential status under Income-tax Act, _____ has been authorised.
- (A) Central Government
(B) Parliament
(C) CBDT
(D) None of the above
- (ii) For the assessment year 2016-17, the following has been included in the definition of "Charitable purpose" under the Income-tax Act, 1961 :
(A) Meditation
(B) Yoga
(C) Transcendental meditation
(D) None of the above
- (iii) For manufacturing industries set up in notified backward areas, the benefit of deduction available u/s 32AC of the Income-tax Act, 1961, calculated at a percentage of the actual cost of eligible assets is
(A) 15%
(B) 20%
(C) 10%
(D) 5%
- (iv) A block of buildings, all acquired on 01-01-2013 by ABC Ltd., was transferred in a scheme of demerger to R Ltd., effective from 01-04-2015, vide order of High Court pronounced on 12-06- 2015. These buildings were sold by R Ltd., on 12-03-2016. For reckoning the period of holding of the asset, the starting date to be taken is
(A) 01-01-2013
(B) 01-04-2015
(C) 12-06-2015
(D) None of the above
- (v) An Individual aged 58 has paid medical insurance premium of ₹22,000 by way of account payee cheque and has incurred ₹5,000 by way of expenditure on preventive health check up. Deduction available u/s 80D of the Income-tax Act is
(A) 15,000
(B) 22,000
(C) 27,000
(D) 25,000
- (vi) Rate of service tax on fees payable to court or Tribunal is:
(A) 14.5%
(B) 15.5%
(C) Nil
(D) None of the above

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(vii) Taxable event in the case of exportation of goods from India is when

- (A) Vessel leaves the Indian port.
- (B) Vessel crosses Indian territorial waters.
- (C) Vessel cross Indian customs station.
- (D) None of the above

(viii) DEF Ltd., a company incorporated in USA holds 39% shares in L Ltd., an Indian Company. It also holds 35% shares of M Ltd., a company incorporated in Singapore. For the transfer pricing provisions, L Ltd. and M Ltd. are

- (A) Not Associated enterprises because the shareholding of DEF Ltd., in each of these is less than 40%.
- (B) Not Associated enterprises because the shareholding of DEF Ltd., in each of these is less than 45%.
- (C) Associated enterprises because the shareholding of DEF Ltd., in each of these is more than 30%.
- (D) Associated enterprises because the shareholding of DEF Ltd., in each of these is more than 26%.

(ix) VAT credit is refundable

- (A) When such credit exceeds ₹5 lacs.
- (B) When the State Government passes an order to this effect.
- (C) When goods are exported.
- (D) In none of the above circumstances.

(x) In the context of customs, APTA means

- (A) Asia Pacific Trade Agreement
- (B) Africa Pennsylvania Trade Agreement
- (C) Asia Pan-American Trade Agreement
- (D) None of the above

Answer: 1 (a)

- (i) 1 crore
- (ii) 20 cores
- (iii) 20 lakhs
- (iv) Nil
- (v) 10%
- (vi) Nil
- (vii) One
- (viii) Nil
- (ix) Nil
- (x) Three

Answer: 1 (b)

- (i) C
- (ii) B
- (iii) A

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- (iv) A
- (v) D
- (vi) C
- (vii) B
- (viii) D
- (ix) C
- (x) A

2. (a) Padmaja Granular Ltd., engaged in manufacture of generators, sold generators to Gautam Cotton Mills Ltd. for ₹45 lakhs. The following amounts were not included /adjusted in the above said amount:
- (i) Transit insurance from depot to buyer's premises ₹70,000
 - (ii) Optional bought out accessories ₹50,000
 - (iii) Delayed payment charges collected from the buyer ₹1,00,000
 - (iv) Consultancy charges relating to design, layout of final product upto the place of removal ₹1,50,000
 - (v) Special packing expenses for protecting the generator ₹ 3,00,000
 - (vi) Notional interest on deposit taken from the buyer ₹1,25,000 which is reduced from sale price
 - (vii) Trade discount ₹ 2,75,000

Compute the transaction value under the Excise Act, 1944, adducing brief note for the treatment of each item above.

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- (b) BG Wires Ltd. engaged in manufacturing activity has furnished to you the following details regarding inputs received in the factory and input services used for manufacturing excisable products:

Particulars	Excise Duty/Service Tax ₹
Raw materials (invoice dated 15-09-2014)	32,000
Grease and Oil (invoice dated 10-04-2015)	7,000
Input service (invoice dated 20-12-2014)	20,000
Office equipment (invoice dated 28-11-2014)	8,000
Motor spirit (invoice dated 03-04-2015)	21,000
Paints (invoice not traceable)	3,500

Compute the amount of total CENVAT credit that can be availed by BG Wires Ltd. during November, 2015. The company is not entitled to SSI exemption under Notification No. 8/2003CE dated 01-03-2013. For none of the items, CENVAT credit has not been claimed earlier.

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Answer: 2 (a)

The term transaction value is defined in section 4 of the Central Excise Act, 1944. The items in the definition are only illustrative and many more are includable.

	Nature	Reason	₹
	Sale price before adjustment of the following amounts		45,00,000
(i)	Transit insurance from depot to	It would not form part of the transaction	—

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	buyer's premises.	value.	
(ii)	Optional bought out accessories.	It would not form part of the transaction value. [Only bought out essential items fitted to the main article at the time of removal is to be included].	—
(iii)	Delayed payment charges collected from the buyer.	It is not to be included in the transaction value.	—
(iv)	Consultancy charges relating to design, layout of final product upto the place of removal.	It is to be included in the transaction value	1,50,000
(v)	Special packing expenses for protecting the goods.	All forms of packing whether general, special or protective are to be included for arriving at the transaction value.	3,00,000
(vi)	Notional interest on deposit taken from the buyer and the price is reduced by applying interest on advance.	Since the price has been lowered on account of such advance it has to be included in the transaction value.	1,25,000
			50,75,000
(vii)	Trade discount.	All forms of discount actually passed on to the buyer has to be excluded from transaction value.	(-) 2,75,000
	Transaction Value		48,00,000

Answer: 2 (b)

**Computation of CENVAT credit that can be availed by BG Wires Ltd.
During November, 2015**

Particulars	₹
Raw materials (Note 1)	-
Grease and Oil (Note 1)	7,000
Input service (Note 2)	20,000
Office equipment (Note 3)	-
Motor spirit (Note 4)	-
Paints (Note 5) invoice found missing.	-
Total CENVAT credit that can be availed during November, 2015	27,000
Notes	

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1. As per third proviso to rule 4(1) of CENVAT Credit Rules, 2004, a manufacturer can take CENVAT credit of inputs upto one year from the date of issue of invoice.
2. As per sixth proviso to rule 4(7) of CENVAT Credit Rules, 2004, a manufacturer can take CENVAT credit of input services upto one year from the date of issue of invoice.
3. Office equipment is not an eligible capital goods for the manufacture as per rule 2(a)(A)(1) of CENVAT Credit Rules, 2004.
4. Motor spirit is not an input eligible under CENVAT credit as per rule 2(k)(A) of CENVAT Credit Rules, 2004.
5. CENVAT credit cannot be availed without a valid invoice [rule 9(8) of CENVAT Credit Rules, 2004].

3. (a) **Sanvitha Medicos Pvt. Ltd., proposes to manufacture a skin ointment, which will be available in all stores and super markets, across the counter, without a prescription of a doctor or medical practitioner.**

The company wishes to know whether the product will be classified as a cosmetic or medicament, for central excise purposes, merely on this ground. Advise the company suitably.

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- (b) (i) **VKS Constro P Ltd., the assessee, is engaged in preparation of ready mix concrete (RMC). While carrying out such dominant objects, other ancillary and incidental activities like pouring, pumping and laying of concrete were also carried out.**

The Department contends that the whole activity carried out by the assessee was not a sale transaction, as it also included element of service in it and that therefore, the assessee was liable to pay service tax. The Department was of the view that the activities like pouring, pumping and laying of concrete is a significant part of the transaction and not incidental to transaction of sale.

Advise the suitably to rebut the contentions of the Department.

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- (ii) **Alpha Ltd. has awarded a turnkey contract to Beta Ltd. for erection, installation and commissioning of a Central Air Conditioning Plant. The Central Excise Department raises a demand for excise duty on Beta Ltd. in respect of the aforesaid installed plant.**

Discuss whether such demand is justified in law.

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Answer: 3 (a)

Classification as cosmetic or medicament

Availability of a skin ointment in stores or super market without the prescription of a doctor or medical practitioner is not the relevant criterion to classify it as a cosmetic/toilet preparation; what is relevant is the function of the ointment i.e., whether the same is used for "care" or "cure".

The Supreme Court in the case of CCE vs. Ciens Laboratories 2013 (295) ELT 3 (SC) has laid down certain broad guidelines relating to classification of such goods.

As per the decision, the following significant guiding principles to determine as to whether a product will be classified as a medicament or a cosmetic/toilet preparation:

- (i) When a product contains pharmaceutical ingredients that have therapeutic or prophylactic or curative properties, the proportion of such ingredients is not invariably the decisive factor in classification. The relevant factor is the curative attributes of such ingredients that render the product a medicament and not a cosmetic.

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- (ii) Though a product is sold without the prescription of a medical practitioner, it does not lead to the immediate conclusion that all products that are sold over / across the counter are cosmetics. There are several products that are sold over-the-counter and are yet, medicaments.
- (iii) Prior to adjudicating upon whether a product is a medicament or not, it ought to be seen as to how do the people who actually use the product, understand it to be. If a product's primary function is "care" and not "cure", it is not a medicament. Medicinal products are used to treat or cure some medical condition whereas cosmetic products are used in enhancing or improving a person's appearance or beauty.
- (iv) A product that is used mainly in curing or treating ailments or diseases and contains curative ingredients, even in small quantities, is to be treated as a medicament. Based upon the above observations, the Supreme Court held that presence of pharmaceutical ingredients in the cream (in the instant case the impugned cream had pharmaceutical content) showed that it was used for prophylactic and therapeutic purposes namely, for curing dry skin conditions of the human skin and was not primarily intended to protect the skin; therefore, the same was classifiable as a medicament.
Advice should be tendered on the above lines to the company.

Answer: 3 (b) (i)

Provision of ready mix concrete, whether taxable service

The objective behind introduction of certain clauses in the Finance Act, 1994 was to levy tax on services rendered and not on commodities.

What is to be looked into is the dominant object of the agreement entered into between the assessee and the buyers.

The agreement is to supply RMC and not to provide any taxable services. Therefore, since the Finance Act, 1994 is not a law relating to commodity taxation, the Department's contention would fail under mistake of fact and law.

The Supreme Court in **Commissioner v. GMK Concrete Mixing Pvt. Ltd. 2015 (38) STR J113 (SC)** has taken a similar view.

The assessee may be advised on the above lines.

Answer: 3 (b) (ii)

- I. As per Sec 3 of Central Excise Act, 1944, Excise Duty shall get attracted on all excisable goods manufactured or produced in India.
- II. The term "Goods" represent all products which satisfy the following 2 conditions -
 - Movability at the time of creation of the product.
 - Marketability.
- III. The goods should be capable of being moved from one place to another without causing substantial damage.

In the given case, the product is Central Air Conditioning Plant. Though the individual components of such AC Plant are movable, product as such is not movable at the time of its creation. [CCE v. Viridi Brothers 2007 (207) ELT 321 (SC)]. In the given situation, Beta Ltd. is not liable for Excise Duty, as the product is not goods.

4. (a) (i) **Eastern Union is a money changer. It wants to pay service tax availing abatement instead of the regular rate. Advise them suitably.** 4
- (ii) **Vimala Oils Ltd. of Mumbai imported some taxable services from XYZ Inc. of Singapore on 10.01.2016. The invoice for 1,00,000 Singapore dollars was raised by XYZ Inc. on 20.01.2016.**

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Determine who is liable to pay service tax and the point of taxation if Vimala Oils Ltd. made full payment on the dates given below:

- (A) On 25.03.2016;
(B) On 26.05.2016.

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- (b) Mr. Mitra imported certain goods from China. CIF value of the goods is US \$30,000. Basic customs duty is chargeable at 10% and education cess as applicable. No excise duty is payable on these goods, if manufactured in India. Moreover, additional duty under section 3(5) of the Customs Tariff Act is not payable.

As per the relevant notification of the Government of India, anti-dumping duty has been levied on the goods so imported. As per the said notification anti-dumping duty is equal to the difference between the amount calculated @ US \$ 60 per kg and landed value of the goods.

Compute customs duty and anti-dumping duty payable by Mr. Mitra. Exchange rate on the date of presentation of bill of entry is US \$ = ₹50.

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Answer: 4 (a) (i)

Options available to Money Changer under Service tax

In the case of persons rendering service by way of purchase or sale of foreign currency instead of paying service tax at regular rate, a presumptive rate is prescribed. However, it is optional for the money changer whether to pay at the regular rate or at the presumptive rate.

The presumptive rates are as under:

For an amount	Service tax shall be calculated at the rate of
Upto ₹1,00,000	0.14% of the gross amount of currency exchanged or ₹35 - whichever is higher.
Exceeding ₹1,00,000 and upto ₹10 lakhs	₹140 + 0.07% of the (gross amount of currency exchanged - ₹1,00,000).
Exceeding ₹10 lakhs	₹770 + 0.014% of the (gross amount of currency exchanged - ₹10,00,000) or ₹7,000 whichever is lower.

Answer to 4(a) (ii)

Determination of Point of Taxation

When a taxable service is provided by a person located in a non-taxable territory and is received by another person (i.e. service receiver) in the taxable territory, the person liable to pay service tax is the recipient of service under reverse charge mechanism.

Therefore, the recipient Vimala Oils Ltd in India is liable to pay service tax on the services rendered by XYZ Inc.

The point of taxation in respect of persons required to pay service tax under reverse charge mechanism is the date of payment. Where the payment is not made within 3 months from the date of invoice, the point of taxation will be the date immediately following the said period of 3 months.

Date of payment	Point of Taxation
25.03.2016	Since the Indian company i.e. service receiver has made the payment within 3 months from the date of invoice, the point of taxation will be the date of payment i.e. 25.03.2016 .
26.05.2016	As the payment was made after 3 months from the date of invoice, the point of taxation will be the date immediately following the said period of 3 months after the date of invoice. In this case it is 21.04.2016 .

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Answer: 4(b)

Computation of customs duty payable and anti-dumping duty payable

Particulars	₹
Total CIF value in Indian Rupee -US \$ $30,000 \times 50$	15,00,000
Add: Landing charges @ 1%	15,000
Assessable value	15,15,000
Basic customs duty (BCD) @ 10%	1,51,500
Education cess (EC) @ 2% on BCD	3,030
Secondary and higher education cess (SHEC) @ 1% on BCD	1,515
Landed value of imported goods	16,71,045
Total customs duty payable (BCD + EC + SHEC)	1,56,045
Value of goods in Indian Rupee as per notification: $1,000 \times \text{US \$ } 60 \times 50$	30,00,000
Less: Landed value of goods	16,71,045
Anti-dumping duty	13,28,955

Note: No Cess is applicable on anti-dumping duty.

It is assumed here that 1,000 units of goods were imported from China.

5. Peacock Ltd. is engaged in manufacturing of steel and cement. Its Statement of Profit & Loss shows a Net Profit of ₹45 lakhs for the year ended 31.03.2016. The following information is provided to you:
- (a) A provision was made to meet the loss suffered by subsidiary company by debiting Profit & Loss A/c ₹15 lakhs.
 - (b) Provision for bad and doubtful debts debited to Profit & Loss A/c is ₹ 10 lakhs.
 - (c) Deferred tax reversed and credited to Profit & Loss A/c ₹ 7 lakhs.
 - (d) Agriculture income credited to Profit & Loss A/c ₹ 2 lakhs.
 - (e) Dividend from Indian companies credited to Profit & Loss A/c ₹ 1 lakh.
 - (f) Long term capital loss from off market sale of shares of listed companies ₹ 50,000. This is debited to Profit & Loss A/c.
 - (g) A liability of ₹ 5 lakhs relating to earlier year omitted to be recorded in the books of account is now recorded by debiting Profit & Loss A/c.
 - (h) Proposed dividend debited to Profit & Loss A/c ₹ 6 lakhs.
 - (i) Amount of depreciation debited to Profit & Loss A/c ₹12 lakhs which includes depreciation on account of revaluation of assets of ₹ 3 lakhs.
 - (j) The company has brought forward business loss of ₹4 lakhs and unabsorbed depreciation of ₹ 10 lakhs as per the books of account.
 - (k) The company made one contract payment of ₹ 8 lakhs without deduction of tax at source.
 - (l) Provision for income tax debited to Profit & Loss A/c ₹ 20 lakhs.

Compute the minimum alternate tax under section 115JB payable by the company for the assessment year 2016-17. Ignore regular computation provisions.

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Answer: 5

Peacock Ltd.

Computation of Minimum Alternatives Tax U/s.115 JB for the Asst. year 2016 – 2017

Particulars	₹	₹
Net Profit as per Profit and Loss Account		45,00,000
Add:		
Provision for loss of subsidiary company		15,00,000
Provision for bad and doubtful debts - being a provision for diminution in value of asset		10,00,000
Long term capital loss on sale of shares through off market transaction debited to profit and loss account not to be adjusted (Apollo Tyres Ltd v. CIT (255 ITR 273 (SC)))		Nil
Prior period item of liability debited to Profit and loss account not to be adjusted (Tamilnadu Cement Corpn Ltd v. Joint CIT (340 ITR 58 (Mad)))		Nil
Proposed dividend debited to Profit and loss account		6,00,000
Depreciation debited to Profit and loss account		12,00,000
Contract payment without deduction of tax at source - not liable to be adjusted		Nil
Provision for income tax debited to profit and loss account		20,00,000
		1,08,00,000
Less:		
Deferred tax liability reversed and credited to profit and loss account is excluded	7,00,000	
Agricultural income credited to profit and loss account - excluded	2,00,000	
Dividend from Indian Companies-excluded	1,00,000	
Depreciation excluding depreciation on revalued amounts is deductible	9,00,000	
Brought forward loss or unabsorbed depreciation as per books of account whichever is less to be deducted	4,00,000	
		23,00,000
Book Profit U/S.115JB		85,00,000
MAT at 18.5% plus cess @ 3%		16,19,675
Rounded off		16,19,680

6. (a) India Green LLP is carrying on two businesses viz. (i) wind power generation; and (ii) solar panels trade and erection. The firm has maintained two separate books of account. The wind power generation was commenced in the financial year 2010-11 and the solar panels trade and erection business in the financial year 2014-15. The following details are furnished:
- (i) Net Profit from wind generation before deduction under section 80-IA ₹55 lakhs.
 - (ii) Net Profit from solar panels trade and erection ₹ 30 lakhs before debiting interest on capital and working partners' salary.
 - (iii) The LLP agreement provides for interest on capital and working partner salary payable only in respect of solar panels trade and erection. No such payment is

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permissible out of the income of wind power generation. The amount of capital of the partners as per partnership agreement in solar panels trade and erection which is eligible for interest is ₹100 lakhs and the LLP agreement authorizes working partner salary of ₹ 18 lakhs.

- (iv) The LLP has not claimed deduction under section 80-IA so far. There is no unabsorbed depreciation or business loss brought forward by the LLP from either of the businesses.
- (v) The depreciation on wind mill meant for generation of power claimed so far amounts to ₹ 300 lakhs. The WDV of the wind mill as on 01.04.2015 is to be taken as 'nil'.

Compute the total income of the LLP for the assessment year 2016-17. Computation should be made in the manner, most beneficial to the assessee. 6

- (b) H. Ltd. is engaged in manufacturing of steel. It set up a manufacturing unit in a notified backward area in the State of West Bengal. It acquired new plant and machineries at a cost of ₹20 crores for such unit on 01.07.2015. It further invested ₹25 crores in plant and machinery on 31.12.2015. Investment on 31.12.2015 includes machinery worth ₹10 crores previously used by another manufacturer.
- (i) Compute depreciation under section 32 and other deductions, if any admissible under the Income-tax Act for assessment year 2016-17. Also compute written down value as on 01.04.2016.
- (ii) Will your answer be different, if the manufacturing unit is set up by H. LLP, a limited liability partnership, instead of as a limited company? 10

Answer: 6(a)

Computation of Total Income of India Green LLP

Particulars	Wind Power	Solar Panels
Net Profit as per Profit and Loss Account	55,00,000	30,00,000
Less:		
Interest on capital allowable @ 12%		12,00,000
Book Profit		18,00,000
Less: Working partner salary		
On first ₹3,00,000 @ 90% ₹2,70,000		
On the balance ₹15 lakhs @ 60% 9,00,000		
		11,70,000
	55,00,000	6,30,000
Gross Total Income (55 lakhs + 6.30 lakhs)		61,30,000
Less: Deduction U/s.80-IA @ 100% on ₹55 lakhs		55,00,000
Total Income		6,30,000

Note: Deduction U/s.80-IA is to be allowed as and when claimed by the assessee for 10 consecutive assessment years commencing from the assessment year in which such claim is made. The depreciation on wind mill already adjusted including losses if any when already adjusted against other incomes, it need not be again reckoned for deciding the quantum of deduction under section 80-IA. [Velayaudhaswamy Spinning Mills (P) Ltd. v. Asst. CIT (2010) 340 ITR 477 (Mad)]

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Answer: 6(b)

(i) Computation of depreciation admissible under section 32 for Assessment year 2016 – 2017

Particulars	₹ in crores	₹ in cores
Plant & machinery purchased on 01-07-2015		20
Plant & machinery purchased on 31-12-2015		25
		45
Less: Normal depreciation on ₹ 20 crores at 15%	3	
Normal depreciation on ₹25 crores at 7.5% (50% of 15%) (Note 1)	1.875	
Additional depreciation on ₹20 crores at 35% (Note 2)	7	
Additional depreciation on ₹15 crores at 17.5% (50% of 35%) (Note 3)	2.625	
		14.50
Written down value as on 01-04-2016		30.50

**Computation of Deduction admissible under section 32AC and 32AD for
Assessment Year 2016 – 17**

Particulars	₹ in crores
Deduction under section 32AC (1A) @ 15% on ₹ 35 crores (Note 4)	5.25
Deduction under section 32AD @ 15% on ₹ 35 crores (Note 5)	5.25

Notes:

1. Since plant & machinery was put to use for less than 180 days in the previous year, normal depreciation is restricted to 50% of the amount computed at prescribed percentage.
 2. Additional depreciation at 35% on original cost is allowable in case the new plant and machinery is installed in a unit set up in notified backward area of the specified States (including State of West Bengal)
 3. Additional depreciation is allowed at 50% of the prescribed percentage, as the new plant and machinery was put to use for less than 180 days.
 4. As investment in new plant and machinery acquired and installed in the previous year 2015-16 by the assessee company, H. Ltd exceeds ₹ 25 crores, it is entitled to deduction under section 32AC (1A)
 5. As investment in new plant and machinery has been made in notified district of State of West Bengal, deduction under section 32AD is admissible.
- (ii) In case the manufacturing unit is set up by H. LLP, deduction by way of investment allowance under section 32AC will not be available; as such deduction is available only to a company.
7. (a) **State with reason, whether tax is required to be deducted at source with reference to relevant provision of the Income-tax Act, 1961, and the quantum of tax, if any for the following:** 8
- (i) Premature withdrawal from recognized provident fund ₹55,000 on 01.10.2015 by Mr. H, who furnished declaration in Form No. 15G.
 - (ii) Interest on fixed deposit to Mr. J paid by one branch of State Bank of India ₹ 7,000 and another branch of the same bank ₹4,000. The bank uses Core Banking Solutions (CBS).
 - (iii) Salary paid to Mr. K, aged 58, by a software company located in Hyderabad ₹15

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- lakhs. Mr. K was employed throughout the year at New Jersey, United States and the payment was made by branch office at New Jersey.
- (iv) Payment of ₹2 lacs made by LS Company Ltd. for internet services to ABC Communications (P) Ltd.
- (b) Mr. Murali, aged 50, resident of India, earned ₹20 lakhs during the financial year 2015-16 by playing promotional cricket matches in countries with which there is no DTAA. Income-tax was charged on such income at 20% by those countries. He also went to United States for playing charity matches and earned ₹5,00,000 which was chargeable to income-tax at United States. As per the DTAA between India and United States, such income is chargeable to tax as per source rule and not based on residential status. It was taxed at 30%. His gross income earned in India, other than those mentioned above, during the financial year 2015-16 was ₹30 lakhs (computed). He deposited ₹2,00,000 in Tax Saver Deposit in a scheduled bank in India and paid by account payee cheque ₹40,000 towards health insurance premium for his mother (aged 72). Compute his income-tax liability for the assessment year 2016-17. 8

Answer: 7 (a)

- (i) Premature withdrawal from RPF in excess of ₹ 30,000 is liable for tax deduction at source under section 192A.

However, from 01.06.2015 a declaration in Form No.15G / 15H as the case may be, when given, no tax is deductible at source. Hence in the given case, no tax is deductible at source.

- (ii) Interest on time deposit paid by bank having core banking solution must be with reference to customer and not branch-wise under section 194A.

Therefore, the aggregate payment when exceeds ₹10,000, tax is deductible at source at 10% on ₹ 11,000. TDS amount is ₹ 1,100.

- (iii) Salary paid to employee outside India when covered by section 192 it is not by section 195. Hence, tax is deductible at source under section 192.

Normal rates of tax will apply. Hence the TDS amount is ₹ 2,75,000.

(As Mr. K was employed throughout the year at New Jersey, he was non-resident in India. Therefore, salary having accrued at New Jersey is not liable to tax in India as per the provision of section 5.

Hence, there is no liability for deduction of tax at source under section 192.)

- (iv) Payment for internet services is not a technical service to attract the provisions of section 194J. CIT v. Estel Communications (P) Ltd 318 ITR 185 (Del). It will therefore be covered by the provisions of section 194-C.

TDS amount will be 2% on ₹ 2,00,000 i.e. ₹ 4,000.

Answer: 7 (b)

Computation of Total Income of Mr. Murali for the Assessment Year 2016-17

Particulars	₹
Income earned in India	30,00,000
Income earned outside India with which there is no DTAA and hence it is included first and later relief u/s 91 is to be allowed.	20,00,000
Income earned outside India and there is DTAA between India and the	

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country where it was earned and as per the DTAA it is taxable at source of accrual and not based on residential status of the taxpayer.	
Gross Total Income	50,00,000
Less: Deduction under Chapter VI-A	
In respect of Tax Saver deposit u/s 80 C (Ceiling)	1,50,000
In respect of medical insurance u/s 80 D (Ceiling)	30,000
Total Income	48,20,000
Tax on Total Income ₹48,20,000	12,71,000
Add: Education cess @ 3%	38,130
Total Tax	13,09,130
Average rate at which income is charged to tax in India	
₹13,09,130 × 100 / 48,20,000 = 27.16 %	
Average rate at which income earned abroad is charged to tax in the said country = 20%	
Relief u/s 91 @ 20% being lower of the two rates (₹20,00,000 × 20%)	4,00,000
Balance tax payable after relief u/s 91	9,09,130

8. (a) State the differences between Advance Authorisation and Duty Free Import Authorisation. 5
- (b) The appeal of Mr. Kumar, a non-resident pertaining to the assessment year 2014-15 is pending before Income Tax Appellate Tribunal. The issue involved in the appeal is taxability of certain income in India. The same issue persists for the assessment year 2015-16. Mr. Kumar's friend, Mr. Rangachari, who is also a non-resident, has obtained an advance ruling under Chapter XIX-B of the Income-tax Act on identical issue. Mr. Kumar proposes to use the said ruling for his assessment pertaining to assessment year 2015-16.
Advise Mr. Kumar whether his proposal is tenable. 4
- (c) EF Ltd. incorporated in Japan and JK Ltd., an Indian company are associated enterprises. JK Ltd. manufactures refrigerators and sells them to EF Ltd. and also MN Ltd., Malaysia. During financial year 2015-16 JK Ltd. sold 5000 refrigerators to EF Ltd. at ₹ 25,000 per refrigerator and 2000 refrigerators to MN Ltd. at ₹ 32,000 per refrigerator. The transactions with EF Ltd. and MN Ltd. are comparable subject to the following differences:
 (i) Sales to EF Ltd. are on FOB basis, but sales to MN Ltd. are on CIF basis. Freight and Insurance paid by EF Ltd. per refrigerator is ₹ 500.
 (ii) Sales to EF Ltd. are without warranty. Sales to MN Ltd. are under a free warranty for one year and estimated cost of executing such warranty is ₹ 600 per refrigerator.
 (iii) Because of large order JK Ltd. offered quantity discount of ₹ 125 per refrigerator to EF Ltd.
 In the light of above,
 (A) State, with reasons, the method to be adopted for determining arm's length price in above case.
 (B) Compute arm's length price and the amount by which total income will be increased in the above case. 7

Answer: 8 (a)

Advance Authorisation scheme and Duty Free Import Authorisation (DFIA)

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Following are the differences between Advance Authorisation scheme and Duty Free Import Authorisation (DFIA) scheme:

1. Advance Authorisation is not transferable. DFIA is transferable after fulfillment of export obligation.
2. Materials imported under Advance Authorisation are not transferable even after export obligation is fulfilled. Materials imported under DFIA can be transferred after export obligation is fulfilled.
3. Advance Authorisation requires 15% value addition. In case of DFIA, minimum 20% value addition is required.
4. Advance Authorisation scheme is available to gems and jewellery. DFIA scheme is not available to gems and jewellery.
5. Advance Authorisation can be issued even if standard input output norms (SION) for that product is not fixed. DFIA can be issued only if SION has been fixed for the product to be exported.

Answer: 8 (b)

Advance Ruling

As per section 245S of the Income-tax Act, advance ruling is binding:

- (i) on the applicant who had sought the ruling, and
- (ii) in respect of the specific transaction in relation to which advance ruling was sought.

Advance ruling shall also be binding on the Principal Commissioner or Commissioner and the income tax authorities subordinate to the commissioner.

In view of the above provision, Mr. Kumar is not allowed to use the ruling obtained by Mr. Rangachari and he should be advised accordingly.

Answer: 8 (c)

Determination of ALP

A. Comparable uncontrolled price (CUP) method is applicable in the given case for determining arm's length price (ALP) for the following reasons:

- (i) The transaction is transfer of goods.
- (ii) JK Ltd., Indian company sells identical goods (refrigerator) to EF Ltd, Japan (associated enterprise) and MN Ltd. (independent enterprise)

Computation of Arm's Length Price and the amount of increase to be made to total Income

Particulars	₹	₹
Sale price of refrigerators sold to MN Ltd.		32,000
Less: Adjustment of differences		
Freight & insurance	500	
Estimated cost of warranty	600	
Quantity discount	125	1,225
Arm's length price per refrigerator sold to EF Ltd.		30,775
Arms' length price for 5000 refrigerators sold to EF Ltd.(5000 × ₹ 30,775)		15,38,75,000
Actual sale proceeds realized from EF Ltd. (5,000 × ₹25,000)		

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Increase in total income		12,50,00,000 2,88,75,000
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