# FINAL EXAMINATION
## GROUP III
## (SYLLABUS 2012)

## SUGGESTED ANSWERS TO QUESTIONS
## JUNE 2015

## 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 answer.***

***Working notes should form part of the relevant answer.***
***All sub-divisions of a question should be answered continuously.***
***All questions in Income-tax relate to the assessment year 2015-16, unless stated otherwise.***

**Section A**

**Tax Management**

**Answer any five questions (14 marks each) from this section.**

**1. (a) Sarath Dtergents Ltd., suffered heavy losses due to a fire accident which happened in their factory on 01-05-2014.**
**The following particulars are furnished to you:**

| | | ₹ |
|---|---|---|
| **(i)** | **Excise duty on finished product is 12%**<br>**In addition, Education cess and SAH Education cess are chargeable.** | |
| **(ii)** | **Transaction value of finished goods destroyed in fire** | **8,00,000** |
| **(iii)** | **Value of input services used in the manufacture of finished products (Including total service tax of ₹ 37,080)** | **3,37,080** |
| **(iv)** | **Value of input goods used in the manufacture of finished products (Including Canvat credit of ₹ 20,600)** | **2,20,600** |
| **(v)** | **Insurance compensation received from the insurance company on 1-12-2014 for loss of stocks.** | **8,00,000** |

**You are required to:**

**(i) Compute the amount of remission of duty granted to the assessee under Rule 21, of the Central Excise Rules, 2002 assuming that the necessary conditions stand fulfilled. 2**

**(ii) Compute, the quantum of Cenvat credit to be reversed, if any. 3**

**Will your answer change, if the amount of insurance compensation received is ₹ 8,50,000? 2**

**(b) Balaji, an importer, has imported a machinery from Tokyo, in March, 2015 as per following details:**

| | |
|---|---|
| **FOB value of machinery** | **USD 40,000** |
| **Date of arrival at Chennai port** | **12/3/2015** |
| **Bill of entry presented on the same day** | |
| **Exchange rate was 1 USD = ₹ 65** | |
| **Customs duty on this date** | **15%** |
| **Goods were placed at the customs warehouse.** | |
| **Date of clearance from warehouse** | **22/07/2015** |
| **Exchange rate was 1 USD = ₹ 66** | |
| **Customs duty on this date** | **14%** |
| **CVD payable for the machinery is** | **10%** |
| **Required to find out:** | |
| **(i) Total Customs duty payable, and** | **5** |
| **(ii) Interest, if any, payable by the importer.** | **2** |

Answer:

1. (a) Rule 21 of the Central Excise Rules, 2002 inter alia provides that where it is shown to the satisfaction of the Commissioner that goods have been lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal, the Commissioner may remit the duty payable on such goods, subject to such conditions as may be imposed by him by order in writing.

Remission is available if the amount of insurance compensation does not include the excise portion of the value of finished goods. Here, the insurance compensation is ₹ 8,00,000 i.e. value of goods destroyed without including any excise element. Hence, the company can claim remission of ₹ 98,880 (12.36% of 8,00,000).

According to Rule 3(5C) of the Cenvat Credit Rules, 2004, where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under Rule 21 of the Central Excise Rules, 2002, the CENVAT credit taken on the inputs or input services used in the manufacture or production of said goods shall be reversed.

Hence, assuming that the duty on destroyed goods is ordered to be remitted, the amount of Cenvat credit on inputs and input services, (₹37,080 + ₹20,600) i.e. ₹ 57,680 shall be required to be reversed.

**Where the insurance compensation received is ₹ 8,50,000.**

In case the amount of insurance compensation is ₹8,50,000, then the remission of duty shall stand reduced by ₹48,880, as insurance compensation is inclusive of excise element on finished goods, to the said extent.

Reversal of Cenvat Credit:-
As per Rule 3(5C) of Cenvat Credit Rules, 2014, Cenvat Credit reversal should be ₹57,680, i.e. the entire amount of Cenvat Credit in inputs and inputs services.

(b)

| Particulars | USD |
|---|---|
| FOB value of the machinery | 40,000 |
| Add: Freight at 20% on FOB | 8,000 |
| Insurance at 1.1.25% on FOB | 450 |

| | | | |
|---|---|---|---|
| CIF value | | | 48,450 |
| Add:-Landing charges at 1% of CIF | | | 484.5 |
| Assessable value | | | 48,934.5 |
| | | | **INR** |
| Exchange rate to be applied is 1 USD = 65 | | | |
| Assessable value | | | 31,80,742.5 |
| BCD @ 14% | | | 4,45,304 |
| CVD @ 10% | | | 3,18,074 |
| BCD plus CVD | | | 7,63,378 |
| E Cess and SAH Cess at 3% | | | 22,901 |
| Total customs duty payable(BCD+CVD+EC & SHEC) | | | 7,86,279 |
| Interest payable at 15% for 43 days (7,86,279 * 15% * 43/365) | | | 13,895 |
| | | | |
| No of day of Delay | | | |
| | March | 20 | |
| | April | 30 | |
| | May | 31 | |
| | June | 30 | |
| | July | 22 | 133 |
| Delay beyond 90 days | | | 43 |

**2. (a) Ray Charitable Trust was formed on 1st April, 2013. The object of the trust is to provide financial assistance to the individuals who are below the poverty line and undergoing medical treatment in hospitals. The trust makes direct-payments to the concerned hospitals where the individuals are admitted for treatment.**

**The trust applied for registration under section 12AA of the Income-tax Act, 1961 on 4th April, 2015 and the registration was granted by the Commissioner of Income Tax on 30th April, 2015.**

**Income of the trust from properties held in trust and voluntary contribution (not forming part of corpus of the trust) during the previous year 2013-14 and 2014-15 were ₹3.50 lacs and 5 lacs respectively. The trust applied ₹2 lacs and 3.50 lacs respectively, out of such incomes of the two years, towards its objects/purpose.**

**The trustees seek advice from you as to whether the trust is entitled to exemption under section 11 in the assessment for Assessment Year 2014-2015, even though registration under section 12AA was sought and granted in April, 2015. The proceeding for Assessment Year 2014-2015 is pending before the Assessing Officer.**

**What should be your opinion? 4**

**(b) BKG LLP, a Limited liability partnership engaged in production of micro ovens is entitled to deduction under section 10AA of the Income-tax Act, 1961 in respect of export profit of a unit established in a notified special economic zone (SEZ). It has another unit engaged in production of same item, but this unit is not entitled to deduction under section 10AA. Relevant details are furnished below:**

| | |
|---|---|
| **Profit of unit located in SEZ** | **₹ 30,50,000** |
| **Export sales of above unit** | **₹ 90,00,000** |
| **Domestic sales of above unit** | **₹ 10,00,000** |
| **Profit of unit located in other area** | **₹ 10,00,000** |

**Compute the income-tax liability of the assessee-LLP for Assessment Year 2015-16. 10**

Answer:

2. (a) **Benefit of registration to trust for earlier year**

As per, the finance (No. 2) Act, 2014, with effect from 1st October, 2014 in case where a trust or institution has been granted registration under section 12AA, the benefit of section 11 and 12 shall be available in respect of any income held under trust in any assessment proceeding for an earlier assessment year which is pending before the assessing officer as on the date.

However, the above benefits are subject to condition that the objects and activities of the trust or institution in the relevant earlier assessment year should be the same as those on the basis of which registration under section 12AA was granted.

Therefore, Roy Charitable Trust should be advised to claim the benefit of section 11 in respect of income from property held in trust and voluntary contribution received during the previous year 2013-2014 in assessment proceeding for assessment year 2014-2015, if the above condition is satisfied.

(b)

Computation of total income and tax liability of BKG LLP for assessment year 2015-16 under normal provisions

| Particulars | (₹) | (₹) |
|---|---|---|
| Profit of unit located in SEZ | 30,50,000 | |
| Less: Deduction under section 10AA | | |
| [Profit of business of Undertaking being SEZ unit] x [Export Turnover of Undertaking / Total Turnover of business of Undertaking]<br>[₹ 30,50,000 × 90,00,000 ÷ 1,00,00,000] | 27,45,000 | |
| Taxable profits of SEZ unit | | 3,05,000 |
| Profit located in other area | | 10,00,000 |
| Total income | | 13,05,000 |
| Tax on above @ 30% | 3,91,500 | |
| Education cess @ 3% | 11,745 | |
| | | 4,03,245 |

Computation of adjusted total income and alternate minimum tax for the assessment year 2015-16

| Particulars | (₹) |
|---|---|
| Total income as computed | 13,05,000 |
| Add: Deduction under section 10AA | 27,45,000 |
| Adjusted total income | 40,50,000 |
| Tax on above @ 18.5% | 7,49,250 |
| Since tax on adjusted total income is higher than tax calculated on total income, adjusted total income is deemed to be total income. | |
| Tax payable (7,49,250 + education cess @ 3%) | 7,71,728 |

**3. (a) Mr. Rohit sold a house property on 19-01-2015 for ₹ 110 lakhs. The stamp valuation authority assessed the value at ₹ 120 lakhs. The property was inherited-by him from his grandmother by means of a 'will' in April, 2014. The property was originally acquired by his grandmother in April, 1979 for ₹ 2 lakhs. The fair market value of the asset on 01-04-1981 was ₹ 4 lakhs.**

**Mr. Rohit deposited ₹ 30 lakhs in REC Capital Gain Bonds in March, 2015 and ₹ 40 lakhs in NHAI Capital Gain Bonds in May, 2015. He acquired a residential house property in Colombo, Sri Lanka for ₹ 35 lakhs (converted in Indian rupees) in June, 2015.**

**Cost inflation indices : 1981-82 = 100**
**2014-15 = 1024**

**Compute the amount of capital gain chargeable to tax in the hands of Mr. Rohit for the assessment year 2015-16. 4**

**(b) Hema Chemicals Pvt. Ltd., was a manufacturer of goods falling under Chapter headings 32 and 84 of the First Schedule to the Central Excise Tariff Act. The goods falling under Chapter heading 84 were wholly exempt from duty vide an exemption notification. However, by mistake, duty was paid by the assessee in respect of such goods. For claiming SSI exemption, the assessee excluded such exempted turnover, but the same is opposed by the Department on the ground that the assessee had paid duty on the goods falling under one Chapter heading and the turnover attributable to it cannot be excluded. The assessee has otherwise fulfilled all the necessary conditions for SSI exemption.**

**Test the veracity of the rival contentions, with the help of decided case law. 4**

**(c) Brett Lee gives you the following information for the previous year 2014-15:**

| | | ₹ |
|---|---|---|
| **(i)** | **Income from business (computed)** | **6,00,000** |
| **(ii)** | **Dividend income from shares in listed Indian companies** | **90,000** |
| **(iii)** | **Consultancy changes paid to investment consultant for investing in shares referred in (i) above. This has been deducted while computing business income given in (ii) above.** | **8,000** |
| **(iv)** | **Interest expenditure relating to both taxable and non-taxable income. The entire amount has been deducted while computing income from business given in (i) above.** | **1,00,000** |

**Value of investments on the first and last days of the previous year are ₹ 8 lakhs and ₹ 10 lakhs respectively.**
**Value of total assets appearing in Balance Sheet on the first and last day of the previous year are ₹ 40 lakhs and ₹ 50 lakhs respectively.**

**Brett Lee claims that no expenditure was incurred for earning exempt income during the year. The Assessing Officer is not satisfied with the claim of the assessee.**
**Compute the total income of Breet Lee for the assessment year 2015-16. 6**

**Answer:**

3. (a)

Computation of capital gain chargeable to tax in the hands of Mr. Rohit for A.Y.2015-16

| Particulars | ₹ |
|---|---|
| Sale consideration | 110 lakhs |
| Value assessed by stamp valuation authority | 120 lakhs |
| As the value assessed by stamp valuation authority such value is adopted as deemed sale consideration | 1,20,00,000 |
| Less: Indexed cost of acquisition | |
| Since the previous owner acquired the property before 01.04.1981 the assessee is eligible to adopt FMV as on 01.04.1981 as cost of acquisition | |

| | |
|---|---|
| for indexation purpose. | |
| The asset is a long-term capital asset considering the period of holding of the previous owner i.e. grandmother | |
| The indexation benefit is available by taking the base year as 1981-82 and not the year of inheritance as held in Manjula Shah (318 ITR 417 (Bom)) and other decisions. | |
| Indexed cost of acquisition = 4,00,000 × 1024 ÷ 100 | 40,96,000 |
| | 79,04,000 |
| Less: Exemption U/s.54 | |
| As the property was acquired outside India, it is not eligible for exemption | Nil |
| Exemption U/s.54EC: | |
| The maximum amount of exemption cannot exceed ₹ 50 lakhs. Though the subscription to the eligible bond has been made within 6 months from the date of transfer of capital asset, the deduction is limited to ₹ 50 lakhs. | 50,00,000 |
| Long term capital gain | 29,04,000 |

(b) **Eligibility for SSI exemption**

Facts of the case are similar to the one decided by the Apex Court in Bonanzo Engg. & Chemical P. Ltd. vs. CCEx. 2012 (277) E.L.T. 145 (SC).

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

For the purposes of computing the eligible turnover for SSI exemption, the assessee excluded the goods which were exempted although duty was paid mistakenly on them. However, the Revenue contended that clearances of such goods should be included while computing the eligible turnover. Decision of the Case:

The Supreme Court in the case of **Bonanzo Engg. & Chemical P. Ltd. vs. CCEx. 2012 (277) E.L.T. 145 (SC)** opined that **SSI exemption would be allowable** to the assessee, as they meet all the conditions thereof.

The amount of clearances in the SSI exemption notification needs to be computed after excluding the value of exempted goods. Merely because the assessee by mistake paid duty on the goods which were exempted from the duty payment under some other notification, did not mean that the goods would become goods liable for duty under the Act. Secondly, merely because the assessee had not claimed any refund on the duty paid by him would not come in the way of claiming benefit of the SSI exemption. Accordingly the appeal was allowed in the favor of the appellant-assessee. The Court directed the adjudicating authority to apply the SSI exemption notification in the assessee's case without taking into consideration the excess duty paid by the assessee under the other exemption notification.

(c) **Expenditure in relation to exempt income**

Expenditure incurred in relation to exempt income is not allowed as deduction while computing the income chargeable to tax, as per section 14A of the Income-tax Act, 1961. However, if the Assessing Officer is not satisfied with the correctness of the claim

of the assessee in relation to exempt income or with the claim made by the assessee that no expenditure was incurred in relation to exempt income, he shall determine the amount of expenditure in relation to such income in the manner provided in Rule 8D.

Computation of amount as per rule 8D

| Particulars | ₹ |
|---|---|
| Amount of expenditure directly relating to exempt income: | |
| Consultancy charges paid to investment consultant | 8,000 |
| Calculation of interest expenditure attributable to exempt income | |
| Interest expenditure × Average value of investment on the first and last day of the previous year ÷ Average of total assets of the assessee appearing in the balance sheet on the first and last day of the previous year i.e. ₹1,00,000 × 9,00,000 ÷ 45,00,000 | 20,000 |
| Half percent of the average value of investment, income from which is exempt from tax i.e. ½% of the average value of investment in shares. i.e. ₹ 9,00,000 × ½% | 4,500 |
| Total amount of expenditure in relation to exempt income | 32,500 |
| **Computation of total income** | |
| Income from business | 6,00,000 |
| Add: Amount of expenditure added U/s.l4A | 32,500 |
| Total Income | 6,32,500 |

Further an assumption is to be made as follows:-
Since it has been stated in the question that Mr. Brett Lee claims no expenditure was incurred by him for exempt income earned, it is logical to assume that total interest expenditure of ₹1,00,000 has been deducted to arrive at the income from business of ₹6,00,000. The amount of interest expenditure in relation to exempt income has been added back to compute the resultant total income.

**4. (a) An interior designer based at Mumbai, renders his services in May 2014, to an Indian MNC based at New Delhi, for construction of a shopping mall at Dubai.**

**Determine the Place of Provision of Service (PoP) in the above situation and discuss if the service is taxable in India. 5**

**(b) Daffodils Ltd., an Indian company rendered services to its off shore subsidiary Lily Inc., an associated enterprise, electronically. No invoice was raised by Daffodils Ltd., the assessee. An advice was given to the effect that the same will not be exigible to service tax, as the point of taxation cannot be determined.**
**Advise the assessee suitably. 4**

**(c) Vasudha Automobiles Pvt. Ltd., the assessee, assembled a machinery at its factory, to be used as testing equipment. There were clear disclosures in its financial statements, as well as in the Directors' Report that the impugned machine was added as testing equipment. It was further stated by the assessee that such assembling was done to save precious foreign exchange, if a similar machine is to be imported.**

**The management seeks your advice as to whether such assembling will be regarded as manufacture for the purposes of excise duty.**

**Advise the assessee suitable, will the help of recent decisions. 5**

**Answer:**

4. (a) **Place of provision of service and taxability in India**

The Place of Provision of Services Rules, 2012 is to be applied.

If Rule 5 were to be applied, the place of provision would be the location of the property i.e., Dubai (outside the taxable territory).
With this result, the service would not be taxable in India.

However, by the application of Rule 8, since both the provider and the receiver are located in taxable territory, the place of provision would be the location of the service receiver, i.e. Delhi.
Place of provision being in the taxable territory, the service would be taxable in India.

By application of Rule 14, the later of the Rules i.e. Rule 8 would be applied to determine the place of provision. The service, not being one in the negative list, the same would be liable to tax in India.

(b) **Associated enterprise: POT**

The advice received by the assessee is incorrect.
As per second proviso to rule 7 of the Point of Taxation Rules, 2011, in case of services such goods from "associated enterprises" located outside India, point of taxation shall be:-

- The date of credit in the books of account of the person receiving the service or
- Date of making the payment.

whichever is earlier.

The above facts are to be ascertained from Lily Inc., the associated enterprise of the assessee and POT decided accordingly.

(c) **Assembling of machinery in factory for use as testing equipment**

The given situation is similar to the facts of the case in **Usha Rectifier Corpn. (I) Ltd. vs. CCEx., 2011 (263) E.L. T. 655 (S.C.)**, decided by the Apex Court.

The assessee-appellant was a manufacturer of electronic transformers, semi-conductor devices and other electrical and electronics equipments. During the course of such manufacture, the appellant also manufactured machinery in the nature of testing equipments to test their final products. The appellant had stated in their balance sheet that the addition to the plant and machinery included testing equipments. The said position was further substantiated in the Director's report wherein it was mentioned that during the year, the company developed a large number of testing equipments on its own.

The Supreme Court observed that once the appellant had themselves made admission regarding the development of testing equipments in their own Balance Sheet, which was further substantiated in the Director's report, it was clear that the machine assembled could be used as testing equipment.

Moreover, assessee's stand that testing equipments were developed in the factory to avoid importing of such equipments with a view to save foreign exchange, confirmed that such equipments were saleable and marketable.
Hence, the Apex Court held that excise duty was payable on such testing equipments.

Advice should be given on the above lines to the management.

**5. (a) Compute the net wealth of Mrs. Hemalatha, a resident, as on 31-3-2015 from the following information:**

| Particulars | Amount (₹ in lacs) |
|---|---|
| Residential house let out for 275 days | 56 |
| Advance given for purchase of urban land | 32 |
| Motor car exclusively used for business purposes | 10 |
| Jewellery | 13 |
| Market value of units in DEF Gold Mutual Fund | 12 |
| Industrial plot in urban area purchased on 12-1-2012 | 25 |
| Loan taken for above plot | 8 |

**You are required to adduce brief treatment of each item in your answer. 7**

**(b) Ajay has exported certain products in February, 2015 and furnishes the following data:**

| Product exported | FOB value (₹) | Market value (₹) | Rate of duty drawback |
|---|---|---|---|
| I | 3,00,000 | 2,40,000 | 30% |
| J | 90,000 | 60,000 | 0.8% |
| K | 2,200 | 2,300 | 2% |
| L | 6,00,000 | 6,50,000 | 3% |

**Discuss whether any duty drawback is admissible under section 75 of the Customs Act, 1952. You are further informed that the import value of L is ₹ 7,00,000. 4**

**(c) Name any three schemes adopted in India for giving Import Duty Relief to exporters. 3**

**Answer:**

5. (a)

Computation of net wealth of Mrs. Hemalatha as on 31-3-2015

| Particulars | Amount (₹ in lacs) |
|---|---|
| Residential house let out for 275 days is an asset ₹ 56 lacs. However one house is exempt u/s 5(vi). | Nil |
| Advance given for purchase of urban land ₹ 32 lacs is not an asset | Nil |
| Motor car exclusively used for business purposes is an asset | 10 |
| Jewellery is an asset | 13 |
| Market value of units in DEF Gold Mutual Fund is not an asset | Nil |
| Industrial plot in urban area purchased on 12-1-2012:<br>Is an asset, since exemption is available only for 2 years from date of purchase. | 25 |
| | 48 |
| Less: Loan taken for industrial plot is deductible debt u/s 2(m) | 8 |
| Gross wealth | 40 |
| Less: Basic exemption | 30 |
| Net wealth chargeable to tax | 10 |
| Wealth tax payable at 1% | 0.1 |

(b) (i) Drawback on I:
Drawback allowable is 30% of FOB value = ₹ 90,000
Same cannot exceed 1/3 rd of market value = ₹ 80,000
Hence duty drawback allowable is ₹ 80,000.

(ii) Drawback on J:
Drawback allowable is 0.8% of FOB value = ₹ 720/-
Even though the rate is below 1%, this amount is to be taken, as it exceeds ₹ 500/-

(iii) Drawback on K:
No duty drawback is payable as the amount is less than ₹ 50/-
This is so, even though the rate is more than 1%.

(iv) Drawback on L:
No duty drawback is allowable, since the export value is less than the import value.

(c) **Import Duty Relief Schemes**

Various schemes have been devised to obtain inputs free from duty or to grant refund of the same. In some schemes, the unit has to be isolated from domestic production units, while in some schemes, the units producing goods for domestic production are also entitled to get inputs free of cost. Following are such schemes:
(i) Schemes where export production unit has to be isolated from domestic production units
(ii) Schemes where domestic production unit can get inputs free from taxes;
(iii) Relief of excise duty on inputs;
(iv) Relief of customs duty on inputs, and
(v) Capital goods at concessional rate

**6. (a) Mrs. Sarala, a practising Cost Accountant has raised a bill on her client Miss. Chinmayi, on 23-3-2015, for the following amount:**

| Particulars | ₹ |
|---|---|
| **Fees** | **1,00,000** |
| **Service tax at 12.36%** | **12,360** |
| **Total amount** | **1,12,360** |

**On 26-3-2015, the client pays the assessee ₹ 1,05,000 in full settlement of the bill. What is the Point of Taxation?**

**What is the quantum of service tax liability and assuming that e-payment is made, what is the due date for making payment of service tax?**

**Will there be a change in quantum of service tax, if the client refuses to pay the service tax component and pays a sum of ₹ 1,00,000 only, in toto. 4**

**(b) Lasya (P) Ltd. engaged in manufacture of toys, reported a net profit of ₹ 60,00,000 in the Profit and Loss Account for the year ended 31.03.2015. The following amounts were debited/credited to profit and loss account:**
**(i) Non-compete fee paid to an ex-director ₹ 10,00,000 on 10.12.2014 and no tax was deducted at source.**
**(ii) One employee who was employed only upto December 2014 was paid salary of ₹ 5,00,000 and on which no tax was deducted at source. The whereabouts of the employee is not known and it is not possible to ascertain whether he has admitted and paid income tax on such salary income.**
**(iii) ₹ 11,50,000 was incurred towards sponsoring of higher studies of a director's son in United Kingdom.**

**(iv) ₹ 15,00,000 was incurred on glow-sign boards displayed at dealer outlets and on which depreciation at 15% was claimed.**
**(v) One factory in Meerut was closed and a sum of ₹12,00,000 was paid as retrenchment compensation to employees on its closure.**
**(vi) Dividend received from its subsidiary company located in Mysore ₹ 1,05,000.**
**(vii)₹ 1,20,000 representing amount forfeited after the buyer of a vacant site backed out of the agreement.**

**Compute the total income of Lasya (P) Ltd. for the assessment year 2015-16 (ignore MAT provisions). 6**

**(c) Vimala & Co., a partnership firm, which suffered business loss of ₹ 5 lakhs and unabsorbed depreciation of ₹ 4 lakhs, filed its return of income for the assessment year 2014-15 in June, 2014. The firm originally consisted of five equal partners of which two partners retired from the firm on 01.04.2014. The firm has income of ₹ 8 lakhs for the previous year 2014-15.**

**It wants to know the 'due date' by which the return of income is to be filed for having unhampered carry forward of loss and depreciation. Assume the turnover of the firm as ₹ 105 lakhs. Your answer must be supported by reasons. 4**

Answer:

6. (a) As per Rule 3 of the Point of Taxation Rules,2011, in case the invoice issued within the prescribed period of 30 days from the date of completion of provision of service, point of taxation is :-
(i) Date of invoice, or
(ii) Date of payment

Whichever is earlier.
Therefore in this case, POT is 23/3/2015, being earlier of 23/3/2015 & 26/3/2015.
An individual is required to pay service tax quarterly latest by 6th of the following quarter. However for the quarter ending on the month of March, due date for payment is 31st March. Therefore Mrs. Sarala is required to pay service tax by 31st March. Quantum of service tax is ₹ 12,360.

Where service tax is not separately calculated then the amount received is treated as inclusive of the service tax liability. Thus fees of ₹ 1,00,000 is inclusive of service tax amount, so the service tax = 1,00,000/112.36*12.36= ₹ 11,000.

(b)

**Lasya (P) Ltd.**
**Computation of total income for the year ended 31.03.2015**

| Particulars | ₹ |
|---|---|
| Net Profit as per Profit and Loss Account | 60,00,000 |
| **Add:** | |
| Non-compete fee paid to ex-director and on which TDS under section 194J should have been deducted. However, the disallowance is limited to 30% as per section 40(a)(ia). | 3,00,000 |
| Salary paid to an employee without deduction of tax at source is liable for disallowance at 30% as section 40(a)(ia) will apply. The scope of disallowance U/s.40(a)(ia) has been widened by the Finance (No.2) Act, 2014 | 1,50,000 |
| Expenditure incurred for sponsoring higher studies of director's son has no | 11,50,000 |

| | |
|---|---|
| nexus to the business of the assessee-company and hence is not deductible. [Echjay Forgings Ltd v. ACIT (2010) 328 ITR 286 (Bom)]. | |
| Retrenchment compensation paid to employees on closure of one unit when the business of the assessee is continued, such expenditure is deductible. Therefore, the amount paid is a deductible expenditure. [CIT v. DCM Ltd (2010) 320 ITR 307 (Del)] | |
| | 76,00,000 |
| **Less:** | |
| Expenditure incurred on glow-sign boards displayed in dealers outlets is revenue expenditure as they have short life and the sign board is not an asset of permanent nature. It is eligible for deduction as revenue expenditure. Since depreciation at 15% has already been claimed, the balance is deductible. [₹15 lakhs minus ₹2,25,000][CIT v. Orient Ceramics & Industries Ltd (2013) 358 ITR 49 (Del)] | 12,75,000 |
| Dividend received from its subsidiary company exempt under section 10(34) | 1,05,000 |
| Advance forfeited on transfer of capital asset taxable under the head 'other sources' hence excluded now. | 1,20,000 |
| | 15,00,000 |
| **Income from Business (A)** | 61,00,000 |
| **Income from other sources (B)**: Advance forfeited for transfer of vacant site | 1,20,000 |
| **Total Income (A+B)** | 62,20,000 |

(c) **Due date for filing return of income in given situation**

Section 78 of the Income-tax Act, 1961 deals with the carry forward and set off of loss in the case of change in constitution of the partnership firm. The brought forward loss attributable to the share of the retired partners shall not be eligible for set off in the subsequent years.

However, this restriction applies only to losses and will not apply as regards unabsorbed depreciation brought forward from earlier year for set off.

The brought forward business loss attributable to retired partners i.e. 2/5 is not eligible for set off. The balance i.e. 3/5 of ₹ 5 lakhs being ₹ 3 lakh is eligible for set off.

The unabsorbed depreciation is also eligible for set off against income of the previous year 2014-15. The entire unabsorbed depreciation i.e. ₹ 4 lakhs and business loss of ₹ 3 lakhs could be set off against the income of ` 8 lakhs.

The firm has to file the return before 30th September 2015 as its accounts are to be audited under section 44AB. The filing of return **does not impact the brought forward business loss and unabsorbed depreciation** whether set off fully in this year or carried forward to subsequent assessment year for set off.

**SECTION B**
**Tax Practice & Procedures**

**Question No. 9 is Compulsory.**

**Answer *any one* question from the rest in this section.**

**7. (a) A manufacture's units were subjected to a search by the Excise Department. Thereafter, the manufacturer got his units registered a few days after the search. A consolidated return was filed for all the units subsequently, including for the period prior to the search. When proceedings were initiated by the Commissioner, a Settlement application was filed. The same was rejected by the Settlement Commission on the ground that the required conditions had not been fulfilled.**

**Is the rejection of the Settlement application justified in law? 5**

**(b) Jhunjunwala Pipes Ltd., claimed Cenvat credit on the basis of private challans and not on the basis of prescribed documents. This was disallowed by the Department. Is the assessee entitled to the Cenvat credit? The documents were found genuine. You are required to offer your view on the basis of decided case law. 4**

**(c) Swaran Singh, a resident individual, sold a factory building purchased by him 5 years back on 1-2-2015. He had been allowed depreciation during all the past years. This was the only asset in the block. He purchased a residential house in Chennai on 1-6-2015, investing the whole of capital gains. He does not own any other house property. He has claimed exemption under section 54F of the Income-tax Act, 1961. The Department opposes the claim of the ground that the asset sold was a depreciable asset and the resultant capital gain was short-term in nature.**

**(i) Is the assessee eligible for the exemption? 4**

**(ii) Will your answer be the same if the new residential house purchased is in London? 1**

Answer:

7. (a) **Rejection of application for settlement**

Section 32E(1) of the Central Excise Act lays down certain conditions to be fulfilled for entertaining an application for settlement with the Settlement Commission. One of the conditions is that the applicant has filed a return showing, inter alia, the production details of all units.

In the case of **Icon Industries Ltd. vs. UOI (2012) 273 ELT 487 (del)**, the Delhi High Court had to consider an identical situation. The High Court pointed out these aspects:

(i) Sec 32E(1) of the Central Excise Act does not refer to rule 12 of the Central Excise Rules, 2002 under which ER1/ER 3 returns have been prescribed; however, the said returns can be deemed to be returns referred to section 32E(1), as these returns contain details of excisable goods manufactured, cleared and duty paid in the prescribed manner. Hence the concept of return has to be understood in the manner referred to in rule 12.

(ii) Returns are to be filed on a monthly or quarterly basis. There is no provision for filing consolidated return for several periods. However, there is no ban for filing belated monthly/quarterly returns.

(iii) Even if returns are filed belatedly after obtaining ECE number, it will not be possible to indicate in any manner, leave alone in the prescribed manner, the duty paid.

The High Court hence held that the consolidated return filed by the applicant for all the units covering the pre-application period, will not serve the requirements of law and hence the Settlement Commission was justified in rejecting the application for settlement.

(b) **Taking Cenvat credit on the basis of private challans**

For resolving the issue, we can take the help of the decision rendered in the case of **CCE vs. Stelko Strips Ltd. 2010 (255) ELT 397 (P&H)**. Though this was a decision rendered with reference to Modvat credit, the rationale will apply to Cenvat credit as well.

The Court pointed out that the payment of duty or the genuineness of the documents were not in dispute.

It is further not in dispute that the goods in respect of which Modvat credit had been taken were inputs used for manufacture of a dutiable product.

The High Court held that credit cannot be denied when it was found that the documents were not fake and there was a proper certification that duty had been paid.

(c) **Exemption u/s 54F**

(i) Exemption under section 54F is available to an individual assessee fulfilling the following conditions:

(1) The gain must result from transfer of a long-term capital asset;
(2) Such long-term capital asset should be other than a residential house;
(3) The assessee should not own more than one residential house;
(4) The assessee should purchase a residential house property within two years from the date of transfer.

There are no doubts about conditions (ii) to (iv). The only point of dispute is whether the asset sold was a long-term capital asset.

In case of a residential house, to be treated as long-term capital asset, the asset should have been held for a period of 36 months. This condition is satisfied. Merely because under the deeming provisions of section 50, the resultant gain is taxed as short-term capital gain, exemption under section 54F cannot be denied to the assessee if all the conditions are satisfied. Reference may be made to the ratio of the decisions in **CIT vs. Ace Builders Pvt. Ltd.** [2006] 281 ITR 210 (Bom) and **CIT vs. Cello Plast Ltd.** (2012) 209 Taxman 817 (Del).

(ii) The answer will not be the same, if the new house purchased is in London. It is specifically stated in section 54F that w.e.f. assessment year 2015-16, exemption will not be available where the house property acquired is located outside India.

**8. (a) Discuss with brief reason whether the following are taxable services as per the provisions of the Finance Act, 1994: 1x5**

**(i) Services rendered by a service provider from India, for use in Singapore.**
**(ii) Services rendered by a service provider having his registered office in Kashmir, in the State of Tamil Nadu.**
**(iii) Services rendered by a betting house in Kerala.**
**(iv) Services rendered to an EOU.**
**(v) Services rendered outside India, received and used in India by an individual otherwise than for personal use.**

**(b) Surya Petro P. Ltd., made a claim for deduction under section 80-IC of the Income-tax Act, 1961, which was disallowed. The Assessing Officer seeks to levy penalty under section 271(1)(c) of the Income-tax Act, 1961 for making an incorrect claim in the return of income. Is the same justified in law? 4**

**(c) State whether tax has to be deducted at source under the provisions of the Income-**

**tax Act, 1961:**

**(i) Vaasu & Co., a partnership firm pays following amounts as interest to the partners in the firm X ₹ 43,000, Y ₹ 9,000. X is resident in India, Y is a non-resident and he is resident of Country J with which India has no DTAA. 3**

**(ii) Barun Pvt. Ltd., has paid ₹ 35,000 as sitting fees to D, who is a director not employed with the company. 2**

Answer:

8. (a) (i) These services can be considered as export of services, which are exempted from the service tax liability.
(ii) These are taxable services. Services rendered within India (except in the state of Jammu and Kashmir) come under the service tax net, provided these services are taxable services.
(iii) Betting services are covered in the Negative List. Hence, not liable for service tax.
(iv) Service provided to Export Oriented Undertaking (EOU) is liable to service tax. Service rendered to EOU or supplies of services by EOU in domestic market is not presently exempt from service tax.
(v) Services in the nature of import are taxable if these are imported for the purpose of business or commerce. Services imported for the purpose of personal use by individuals are exempted from service tax.

(b) **Concealment penalty for making incorrect claim in the return of income**

In the case of **CIT vs. Reliance Petro Products Pvt. Ltd.** (2010)322 ITR 158 (SC), the Supreme Court observed that in order to attract the penal provisions of section 271(1)(c), there has to be concealment of the particulars of income or furnishing inaccurate particulars of income.

Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars.

Making an incorrect claim (i.e. a claim which has been disallowed) would not, by itself, tantamount to furnishing inaccurate particulars. The Apex Court, therefore, held that where there is no finding that any details supplied by the assessee in its return are incorrect or erroneous or false, there is no question of imposing penalty under section 271(1)(c).

A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee.

(c) **TDS applicable**

(i) No tax is to be deducted at source from interest paid to a resident partner.
However, where such interest is paid to a non-resident partner, tax has to be deducted at source.
Tax has to be deducted at source under section 195 at the rate of 20% plus Education cess 2% and SAH Cess 1% i.e.20.6%. TDS amount will be ₹ 1,854.
(ii) Where sitting fees is paid to a non-employee director, tax has to be deducted at source u/s 194J.

Rate is 10% and TDS amount will be ₹ 3,500.

**9. (a) Strawberries Pvt. Ltd., a domestic company, has derived income from India, as well as from Country Y, with which India does not have a DTAA. The following details of income earned during the year ended 31-3-2015 are made available:**

| Type of Income | Earned in India (₹) | Earned in Y (₹) |
|---|---|---|
| **Gross rental income from house property** | **12,00,000** | **6,00,000** |
| **Municipal taxes paid** | **40,000** | **30,000** |
| **Own business income** | **7,20,000** | **11,20,000** |
| **Share in profits of firm** | **2,50,000** | **3,00,000** |
| **Agricultural income** | **4,00,000** | **2,41,000** |

**In country Y, municipal taxes are not allowed as deduction and the gross rentals are taxed. Agricultural income and share income from firm in Country Y are exempt in that nation. The Income tax rate in Y is flat 25%.**
**Ascertain the income-tax payable by the assessee. 8**

**(b) Latha Footwears Ltd., is a manufacturer of footwear. In the course of manufacture of the final product, it produces and captively uses a fabric called "double texturised fabric", which is never marketed anywhere. The Department contends that this is a distinct and separate product and there is a theoretical possibility of it being marketable, and that hence excise duty is leviable. Is the contention of the Department justified in law? 5**

**(c) The assessee mistakenly paid higher excise duty in March, 2015, even though the same had been reduced by way of a notification. The buyer of the assessee however refused to pay the duty at higher rate and paid only at the correct/reduced rate and raised debit notes on the assessee for the difference. Based on this, the assessee applied for refund of excess duty paid.**

**Will the assessee succeed in getting the refund? 3**

Answer:

9. (a)

| Type of income | (₹) | (₹) |
|---|---|---|
| **Income from house property** | | |
| Gross rental income from house property in both nations | 18,00,000 | |
| Less: Municipal taxes paid in both nations | 70,000 | |
| Net ALV | 17,30,000 | |
| Less: Statutory allowance at 30% | 5,19,000 | |
| Chargeable income under this head | | 12,11,000 |
| **Business income:** | | |
| Own business income in both nations | | 18,40,000 |
| Share in profits of firm<br>Less: Exempt u/s 10(2A)<br>Chargeable income under this head | 5,50,000<br>5,50,000 | Nil |
| Agricultural income from India is exempt | 4,00,000 | Nil |
| Agricultural income derived outside India is taxable | | 2,41,000 |
| Total income | | 33,00,000 |
| Tax on above at 30.9% | | 10.19.700 |
| Less: Double Taxation Relief | | 3,85,000 |
| Balance tax payable | | 6,34,700 |

**Note:**
Double taxation relief u/s 91 is allowable on income which is doubly taxed, i.e. taxed in both the nations. Only Income from house property and own business income have been doubly taxed.
House property income in Y (6,00,000 - 1,80,000) = ₹ 4,20,000 and own business

income is ₹ 11,20,000. Total ₹ 15,40,000.
Relief is at the Indian rate of tax or foreign rate of tax, whichever is lower. Obviously rate of country Y is lower, i.e. 25. Tax on 15,40,000 at 25% is ₹ 3,85,000.

(b) **Theoretical possibility of marketability is not sufficient to levy excise duty**

The given situation closely resembles the facts of the case before the Supreme Court in **Bata India Ltd. vs. CCE 2010 (252) ELT 492 (SC).**

For levy of excise duty, one of the conditions is that the product must be marketable. The Supreme Court opined that the question of marketability is one of fact and that there can be no generalization in this aspect.

The test of marketability for levy of duty on a product is that the product should be marketable in the condition in which it emerges.

Mere theoretical possibility of a product being marketable is not sufficient. There should be sufficient proof that the impugned product is commercially known. Theory and practice do not go together when to come to the question of marketability of a product.

According to the Apex Court, the burden of showing that the product was marketable is on the Revenue. The intermediary product was hence held to be not dutiable. Thus, in the given situation also, excise duty is not leviable.

(c) **Refund of excise duty**

For deciding this issue, we can refer to the decision of the Karnataka High Court in **CCE vs. Techno Rubber Industries P. Ltd. (2011) 272 ELT 19 (Kar).**
The High Court opined that once the Department had received excise duty in excess, it was bound to refund the excess duty to the person making the excess payment.
Had the buyer made the excess payment, he would have been entitled to the refund of the excess money paid. Here the buyer refused to pay the excess money and issued debit note to the assessee for the difference amount. The Department was bound to refund the same to the assessee.
Applying this ratio, it can be concluded that the assessee will succeed in the refund claim.