PAPER – 16: Tax Management and Practice

The following table lists the learning objectives and the verbs that appear in the syllabus learning aims and examination questions:

	Learning objectives	Verbs used	Definition
LEVEL C	KNOWLEDGE What you are expected to know	List	Make a list of
		State	Express, fully or clearly, the details/facts
		Define	Give the exact meaning of
	COMPREHENSION What you are expected to understand	Describe	Communicate the key features of
		Distinguish	Highlight the differences between
		Explain	Make clear or intelligible/ state the meaning or purpose of
		Identity	Recognize, establish or select after consideration
		Illustrate	Use an example to describe or explain something
	APPLICATION How you are expected to apply your knowledge	Apply	Put to practical use
		Calculate	Ascertain or reckon mathematically
		Demonstrate	Prove with certainty or exhibit by practical means
		Prepare	Make or get ready for use
		Reconcile	Make or prove consistent/ compatible
		Solve	Find an answer to
		Tabulate	Arrange in a table
	ANALYSIS How you are expected to analyse the detail of what you have learned	Analyse	Examine in detail the structure of
		Categorise	Place into a defined class or division
		Compare and contrast	Show the similarities and/or differences between
		Construct	Build up or compile
		Prioritise	Place in order of priority or sequence for action
		Produce	Create or bring into existence
	SYNTHESIS How you are expected to utilize the information gathered to reach an optimum conclusion by a process of reasoning	Discuss	Examine in detail by argument
		Interpret	Translate into intelligible or familiar terms
		Decide	To solve or conclude
	EVALUATION How you are expected to use your learning to evaluate, make decisions or recommendations	Advise	Counsel, inform or notify
		Evaluate	Appraise or asses the value of
		Recommend	Propose a course of action

Paper 16 – Tax Management and Practice

Time Allowed: 3 hours **Full Marks: 100**

This paper contains 9 questions, divided in two sections Section A and Section B. In total 7 questions are to be answered. Answer any five questions from Section A (out of six questions - Questions Nos. 1 to 6).

In Section B, Question No. 9 is compulsory and answer any one question from the remaining two questions of the section (i.e. out of Question nos. 7 & 8).

Students are requested to read the instructions against each individual question also. All workings must form part of your answer. Assumptions, if any, must be clearly indicated.

All the questions relate to the assessment year 2015-16, unless stated otherwise.

Section A

Answer any five Questions

1. (a) (i) X & Co. Diagnostic Centre P Ltd. has claimed Referral Fee paid to doctors as Revenue Expenditure for the Assessment Year 2015-16. However, TDS has been deducted u/s 194H of the Income Tax Act, 1961 for the said payments. The Assessing Officer proposes to disallow such expenditure. Examine the correctness of the action of the Assessing Officer. [2]

Answer:

Commission paid to Doctors by a Diagnostic Center for referring patients for Diagnosis cannot be allowed as Business Expenditure. Since such activity is contrary to the provisions of Indian Medical Council Regulations, the action of the Assessing Officer in disallowing the Referral Fee paid to Doctors is valid. Whether TDS is deducted or not, is not relevant in this regard.

(ii) An amount of ₹ 5 Lakhs was paid on 17.03.2015 to the parents of Rakesh by the Government of Maharashtra as a compensation to the grieved family whose only son Rakesh lost his life in Mumbai local train serial bomb blasts. Is the amount of compensation received chargeable to tax? [2]

Answer:

Any compensation received on account of disaster by an Individual or his Legal Heir from the Central or State Governments or Local Authority is exempt.

Disaster means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man-made causes, or by accident or negligence.

Hence, the above compensation received by Rakesh's parents from the Government of Maharashtra is exempt.

(iii) A Special Purpose Distinct Entity (regulated by SEBI), set up in the form of a trust to undertake securitization activities, receives ₹ 20 Lakhs from the activities of securitization, and distributes ₹ 5 Lakhs to its Investors. What would be the tax implications in the hands of:

(I) The Special Purpose Distinct Entity, in respect of its Income from the activity of

Securitization, and

(II) Investors, in respect of Income distributed by the Special Purpose Distinct Entity. [2]

Answer:

(I) In case of Special Purpose Distinct Entities set up as a Trust, and whose activities are regulated by SEBI, the income from the activity of securitization is exempt. Hence, the Income of ₹ 20 Lakhs from the activity of securitization, is exempt u/s 10(23DA).

(II) Income Distributed by a Securitization Trust is exempt from tax in the hands of Recipient Investors [Sec. 10(35A]. Additional Income Tax u/s 115TA is levied on such Distributed Income in the hands of Securitization Trust.

(iv) PQR Limited has written off certain debts as Bad Debts in the books of account and claimed deduction u/s 36(1)(vii) in the Return of Income filed for Assessment Year 2015-2016. The Assessing Officer (A.O.) made disallowance for deduction of Bad Debts on the ground that the Debts have not been established to have become irrecoverable and bad in the previous year 2014-2015. Examine the correctness of the action of A.O. [2]

Answer:

Assessee should only establish that the Debt was written off to claim u/s 36(1)(vii). It is not necessary to establish that the debt in fact has become irrecoverable.

The Assessee has established that the Debt was written off in the books of accounts and it is assumed that the condition u/s 36(1)(vii) has been fully satisfied. Therefore, the action taken by the Assessing Officer is not correct.

(v) State the circumstances under which Profit Split Method is applicable for determination of arm's length price under International Transactions. [2]

Answer:

This method is used mainly in International Transactions/Specified Domestic Transactions involving transfer of unique intangibles, or in multiple International Transactions/Specified Domestic Transaction which are so inter-related that they cannot be evaluated separately for the purpose of determining the Arm's Length Price of any one transaction.

(vi) What are the advantages while computing arm's length price Transactional Net Margin Method? [2]

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.

(vii) X & Co. Diagnostic Centre P Ltd. has claimed Referral Fee paid to doctors as Revenue Expenditure for the Assessment Year 2015-16. However, TDS has been deducted u/s 194H of the Income Tax Act, 1961 for the said payments. The Assessing Officer proposes to disallow such expenditure. Examine the correctness of the action of the Assessing Officer. [2]

Answer:

Commission paid to Doctors by a Diagnostic Center for referring patients for Diagnosis cannot be allowed as Business Expenditure. Since such activity is contrary to the provisions of Indian Medical Council Regulations, the action of the Assessing Officer in disallowing the Referral Fee paid to Doctors is valid. Whether TDS is deducted or not, is not relevant in this regard.

2.(a)(i) Mr. X, a dealer located in the State of Maharashtra, dealing in machinery used is rolling mills furnishes following information for the financial year 2014 - 15.

1. **Total inter-state Sales during in the financial year (CST not shown separately) – ₹2,29,50,000**
2. **Trade Commission for which credit notes have been issued separately – ₹ 5,78,125**
3. **Freight and Transportation charges charged separately in invoice – ₹ 4,00,000**
4. **Freight charges included in value but not shown separately – ₹ 2,00,000**
5. **Insurance for transport of machinery upto destination – ₹ 75,000**
6. **Installation and commissioning charges levied separately in invoice – ₹ 1,00,000**
7. **The buyers have issued C form in respect of machinery bought by them from Mr. X.**

Compute the tax liability under CST Act. [4]

Solution:

	₹	₹
Gross Sales Turnover (including CST)		2,29,50,000
Less:		
(i) Trade Commission	5,78,125	
(ii) Freight charged separately	4,00,000	
(iii) Installation and Commissioning	1,00,000	10,78,125
Aggregate Sale Price for CST		2,18,71,875
Less: CST payable - (2,18,71,875 x 2)/102		4,28,860
Turnover for year 2014-15		2,14,43,015

(ii) State the dealers who are not eligible to opt for composition scheme under Vat regime? [2]

Answer:

Small dealers having gross turnover exceeding ₹5 lakhs but upto ₹50 lakhs have option of composition scheme. They will have to pay a small percentage of gross turnover.

They will not be entitled to any input tax credit. Following dealers are not eligible for composition scheme -

I. Dealers who make inter-state purchases
II. Dealers who make inter-state sales
III. Dealers who import the goods and then sale in India
IV. Dealers who stock transfer goods outside the State
V. Dealers who export the goods
VI. Dealers who want to show Vat in their Invoice.
VII. Dealers whose turnover exceeds ₹50 lakhs.

(b)(i) Koel Ltd. is engaged in the manufacture of machines. It has supplied one machine to M/s. A & Co. with the following details. Determine the total amount of central excise duty and cess payable thereon.

Price of machine excluding taxes and duties — ₹ 8,50,000

Installation and erection expenses — ₹ 30,000

Packaging charges — ₹ 12,500

Design and engineering charges — ₹ 4,000

Cost of material supplied free of charge by buyer — ₹ 10,000

Pre-delivery inspection charges — ₹ 1,000

Other necessary information is as under:

Cash Discount @ 20% on price is allowed as per terms of contract because buyer made full payment in advance.

Bought out accessories worth ₹ 8,000 supplied with Machine. Central Excise Duty is 12%, Education Cess 2% and Secondary and Higher Education Cess is 1%. [4]

Solution:

Computation of Assessable Value of the Machine u/s 4 of Central Excise Act, 1944

Particulars	Amount (₹)	Reasons
Price of Machine	8,50,000	Assumed to be an all-inclusive price.
Less: Installation and erection expenses	(30,000)	Since installation is post-removal expense, it should be excluded from Assessable Value (AV).
Add: Value of materials supplied by buyer	10,000	Such free materials shall be considered as an additional consideration from buyer to manufacturer, and included as per Rule 6 of Central Excise (Valuation) Rules.
Assessable Value	8,30,000	
Less: Excise Duty at 12% Less: Education Cess at 2% Less: SHEC @ 1%	99,600 1,992 996	
Total Duty Payable	1,02,588	

Working Notes: Adjustments are not made for the following items based on the reasoning given therein -

1. Packing Charges are specifically included in AV u/s 4.
2. Design and Development Expenses are incurred in relation to manufacture, and hence includible in AV.
3. Pre-Delivery Inspect on Charges are assumed to be incurred as per the contract before removal from factory, and hence includible in Assessable Value.
4. Bought out items are considered as trading activity, and hence excluded from Assessable value u/s 4.
5. Assumed that the Price mentioned above is final price after deducting discounts. Further assumed that the discounts are given as part of the normal practice of trade, and hence eligible for deduction. Hence, no adjustment is required.

(ii) Keen Ltd. purchased certain inputs which were directly consigned to the job worker's premises for manufacture of intermediate goods. State the conditions subject to which Keen Ltd. will be entitled to take credit of the duty paid on such inputs. [2]

Answer:

Keen Ltd. will be entitled to take Cenvat credit of the duties paid on inputs/taxes paid on input services used in manufacture of intermediate products by the jobs worker, if the -

- Job worker is availing the benefit of exemption notification no. 214/86, where Keen Ltd. undertakes to pay duty liability on job work done by job worker.
- The said intermediate goods are received by Keen Ltd. for use in or in relation to manufacture of final product.

(iii) A Ltd., a manufacturer of excisable goods, has applied for provisional assessment under Rule 7 of Central Excise Rules, 2002 and paid duty on provisional basis. The Assistant Commissioner issued a show-cause notice before finalisation of provisional assessment on the ground of misclassification of goods. With the help of decided case law discuss the validity of show-cause notice. [2]

Answer:

The Supreme Court in Siddhartha Tubes Ltd. v. CCEx. [2012] 276 ELT A131 (SC) (also in CCEx. v. ITC Ltd. [2006] 203 ELT 532 (SC) has held that show-cause notice under section 11A of the Central Excise Act can be issued for recovery if duty of excise is not levied or short levied. Before finalisation of provisional assessment, the question of non levy or short levy cannot arise.

Moreover, the time-limit under section 11A for service of show-cause notice in case of provisional assessment, starts from the date of adjustment of duty after final assessment.

Thus, before finalization of provisional assessment, show cause notice so issued is not valid.

3. (a)(i) FLT LLP of France and Squar Ltd of India are associated enterprises. Squar Ltd. imports 5,000 compressors for Air Conditioners from FLT at ₹ 7,800 per unit and these are sold to Bihar 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.

FLT 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. [4]

Solution:

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

Particulars	₹	₹
Resale Price of Goods Purchased from FLT		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 FLT [₹ 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 FLT 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 FLT		1,000
Increase in Total Income of Squar Ltd [5,000 Units × ₹ 1,000]		₹ 50,00,000

(ii) Himalaya 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 Himalaya for manufacturing goods, for a consideration of Euro 2,00,000 per year.

Income of Himalaya Ltd is ₹ 180 Lakhs. Determine the Taxable Income of Himalaya 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 ₹ 60) [3]

Solution:

Computation of Total Income of Himalaya Ltd.

Particulars		
When Price Charged for Comparable Uncontrolled Transaction	2,00,000	1,20,000
Price actually paid by Himalaya Ltd [€ 2,00,000 x 60]	1,20,00,000	1,20,00,000
Less: Price charged in Rupees (under ALP) [€ 2,60,000 x 60] [€ 1,20,000 x 60]	1,56,00,000	72,00,000
Incremental Profit on adopting ALP [A]	(36,00,000)	48,00,000
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	48,00,000
Total Income of Himalaya Ltd	1,80,00,000	2,28,00,000

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.

(b)(i) A builder constructed 25 flats in a residential apartment, out of which 23 were booked before start of construction. The price thereof was to be received in instalments during the period of construction. The flats were priced at ₹ 45 lakhs per flat (exclusive of taxes) (the price of land apportioned as ₹ 15 lakhs per flat was included in the said sum). Construction was started and completed in the same year. After issuance but before receipt of completion certificate, the balance two flats were sold at a price of ₹ 55 lakhs per flat (exclusive of taxes). Determine taxable value under service tax law and service tax thereon assuming that builder has opted for abatement available under law. [4]

Solution:

Construction service u/s 66E(b) of Finance Act, 1994 covers construction of a residential apartment intended for sale to a buyer "wholly or partly" except where entire consideration is received after issuance of completion certificate by competent authority. Hence, sale of two flats after issuance of completion certificate, is not a declared service u/s 66E(b). In fact, it is a sale of immovable property and not a service.

Total sum charged on 23 flats (including value of land) (value of land is to be included in total amount as per the abatement Notification No. 26/2012-ST) = ₹ 45 lakhs X 23 flats = ₹ 1,035 Lakhs.

Taxable Value = ₹ 1,035 lakhs X 25% = ₹ 258.75 Lakhs (abatement of 75% will be available, as flat is residential, price is below ₹ 1 crore & area is assumed to be below 2,000 sq. ft.)

Service Tax @ 12.36% on ₹ 258.75 Lakhs = ₹ 31.98 Lakhs approx.

(ii) Mr. R provided repair and maintenance services of equipments belonging to Z Ltd., which are used in manufacture of oxygen. The repair and maintenance work was carried out at factory of Z Ltd. using electricity belonging to Z Ltd. The charges for services are fixed at ₹ 1,00,000, while value of electricity used is estimated at ₹ 10,000. The Department argued that the value of electricity is consideration in kind and is liable to service tax in hands of Mr. R. Decide. [3]

Answer:

On similar facts, it was held in Inox Air Products Ltd. v. CCEC [2012] 24 taxmann.com 114 (Bom.) that electricity supplied free of cost by customer for use by service provider in provision of operating and maintenance services cannot be regarded as a consideration in kind received by assessee and, hence, it is not includible in taxable value of services provided. This is so because such electricity doesn't result in any benefit accruing to assessee. In fact, such electricity is consumed in manufacture of final product of Z Ltd. viz. Oxygen. Hence, the value of services, in this case, is ₹ 1,00,000.

4.(a) Alo & Company Ltd. have imported a machine from U.K. From the following particulars furnished by them, arrive at the assessable value for the purpose of customs duty payable:

(i) F.O.B. cost of the machine	**10,000 U.K. Pounds**
(ii) Freight (air)	**3,000 U.K. Pounds**
(iii) Engineering and design charges paid to a firm in U.K.	**500 U.K. Pounds**
(iv) License fee relating to imported goods payable by the buyer as a condition of sale	**20% of F.O.B. cost**
(v) Materials and components supplied by the buyer free of cost valued	**₹ 20,000**
(vi) Insurance paid to the insurer in India	**₹ 5,000**
(vii)Buying commission paid by the buyer to his agent in U.K.	**100 U.K. Pounds**
Other particulars:	
(i) Inter-bank exchange rate as arrived by the authorized dealer	**₹ 72.50 per U.K. Pound**
(ii) CBEC had notified for purpose of Section 14 of the Customs Act, 1962, exchange rate of	**₹ 70.25 per U.K. Pound**
(iii) Import r paid demurrage charges for delay in clearing the machine from the Airport	**₹ 5,000**

(Make suitable assumptions wherever required and show workings with explanations) [6]

Solution:

Computation of assessable value

FOB cost of the machine	£ 10,000.00
Exchange rate notified by CBEC	₹ 70.25
FoB price in Indian ₹	7,02,500.00
Add: License fee relating to imported goods payable by the buyer as a condition of sale @ 20% of FoB Price [Includible in Value]	1,40,500.00
Add: Development work [Development work other than in India is includible] [£ 500X ₹ 70.25 = ₹ 35,125]	35,125.00
Add: Materials and components supplied by the assessee-buyer (free of charge) [Includible]	20,000.00
Add: Buying commission paid to agent abroad [Not includible]	NIL
Add: Cost of transport as follows —	
1. Normal cost: Actual is £ 3,000; but in case of import by air, it can't exceed 20% of FoB i.e. 20% of £ 10,000 = FoB i.e. 20% of £ 10,000 = 2,000 £ X ₹ 70.25 2,000 × ₹ 70.25	1,40,500.00
2. Demurrage: As per Rule 10(2), cost of transport includes the ship demurrage charges on charted vessels. In this case, the import is by air. Hence, the demurrage charges cannot be included.	Not included
Add: Insurance [It is assumed to be for import upto airport, hence, includible.]	5,000.00
CIF	10,43,625.00
Add: Loading, unloading and handling charges @ 1% of CIF	10,436.25

Assessable Value	10,54,061.25

(b)(i) A manufacturer purchased certain inputs from X. The assessable value was ₹ 20,000 and the Central Excise duty was calculated at ₹ 3,296 making a total amount of invoice at ₹ 23,296. However, buyer-manufacturer paid only ₹ 20,800 to X in full settlement of this bill. How much CENVAT credit can be availed by manufacturer and why? [2]

Answer:

As per Rule 3(1) of the CENVAT Credit Rules, 2004, a manufacturer of final products is allowed to take credit of excise duty paid on any input or capital goods received in the factory of manufacturer of final product. Thus, in case of inputs or capital goods, the eligibility of availing CENVAT credit does not depend upon making the payment for such inputs or capital goods to the supplier. Therefore, the manufacturer can avail full CENVAT credit of ₹ 3,296 provided X does not claim the refund of the excess excise duty paid by him. The same has been clarified vide Circular No. 877/15/2008-CX., dated 17-11-2008.

(ii) Star Ltd. sold farm equipments to the agriculturists on ex-factory basis, upon payments made before dispatch of the goods. Star Ltd. at the request of their customers, arrange for payment of freight and transit insurance and for the dispatch of the goods to the destination. The Department's view is that since freight and transit insurance has been paid by Star Ltd., and since they have also arranged for the transport of goods, there is no ex-factory delivery of goods, and the cost of insurance and freight has to be included to the price for purposes of determination of value and excise duty should be payable on such basis. Discuss whether the contention of the Department is correct in law. [3]

Answer:

Transaction Value will be assessable value where the goods are sold by the assessee, for delivery, at the time and place of removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale.

Factory is a place of Removal u/s 4(3) of Central Excise Act. Hence, transaction value for sale at factory, i.e. the place of removal can be taken as assessable value.

The delivery of the goods at the customers' destination and the payment of freight and transit insurance are made by the Company only on request by the customers. Therefore, the insurance and freight have no relevance in this matter. Escorts JCB Ltd. 146 ELT 31 (SC).

The Company is not liable to pay excise duty on the basis of the price inclusive of freight and insurance. Therefore, contention of the Department is invalid in law.

(iii) State the principles of imposition of restrictions on Foreign Trade Policy by Directorate General of Foreign Trade. [3]

Answer:

Directorate General of Foreign Trade (DGFT) may, through a notification, adopt and enforce any measure necessary for: -

A. Protection of public morals;
B. Protection of human, animal or plant life or health;
C. Protection of patents, trademarks and copyrights, and the prevention of deceptive practices;
D. Prevention of use of prison labour;
E. Protection of national treasures of artistic, historic or archaeological value;
F. Conservation of exhaustible natural resources;
G. Protection of trade of fissionable material or material from which they are derived;
H. Prevention of traffic in arms, ammunition and
I. Implements of war.

5.(a) (i) 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 A)	Stock (given to B)	Land (given to C)
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	**11,40,000**	**—**	**—**
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? [5]

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)	11,40,000
Short Term Capital Gains	5,60,000

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 × $\frac{1024}{100}$	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

(ii) XY & 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	**250.00**
Export Sales	**200.00**
Profit of the business	**20.00**

Out of the total export sales, realisation of sale of ₹ 12.5 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 ₹ 6 lakh was charged to the Profit and Loss Account.

Compute the taxable income of XY & Co for the Assessment Year 2015-2016. [4]

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	6,00,000
	26,00,000
Less: Depreciation on WDV basis @ 15% of 34,00,000 –[See Note below]	5,00,000
	20,90,000
Less: Deduction under Sec. 10AA : 20,90,000 × 75 ÷100	15,67,500
Taxable Income	5,22,500

Note :

1.	Computation of Depreciation:	₹
	Total purchase price of machine : [6,00,000 ÷15] × 100	40,00,000
	Less: Depreciation in the first year @ 15%	6,00,000
	WDV at the end of first year	34,00,000
	Less: Depreciation for second year @ 15%	5,10,000
	WDV at the end of second year	28,90,000
2.	Export Turnover:	
	Export Sales	2,00,00,000
	Less: Remittance not received due to insolvency of buyer	12,50,000
		1,87,50,000

(iii) The gross total income of Mr. Raju for the assessment year 2015-16 is ₹6,10,000 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. [5]

Solution:

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

	₹	₹
Gross total income		6,10,000
Less: Deductions		
U/s 80C	1,00,000	
U/s 80D	15,000	
U/s 80TTA	10,000	1,25,000
Total Income		4,85,000
Tax on ₹4,85,000		
Long-term capital gain ₹80,000 @ 20%	16,000	
Short-term capital gain ₹70,000 @ 15%	10,500	
Balance total income ₹3,35,000	8,500	
	35,000	
Less: rebate u/s 87A	2,000	
	33,000	
Add: Education cess & SHEC @ 3%	990	
	33,990	

Section B

Question no. 9 is compulsory and Answer any one Question from 7 & 8.

7. Answer the following Questions [3x5=15]

(a) Can refund of tax due to the assessee for a particular assessment year be adjusted, against sums due from the assessee in respect of another assessment year, under section 245, without giving prior intimation to the assessee of the proposed adjustment? [5]

Solution:

Jeans Knit P. Ltd. v. DCIT (2013) 358 ITR 0505 (Kar.)

Facts of the case:

In the present case, the company is an export oriented unit. A certain deduction was disallowed for A.Y.2011-12 by the Assessing Officer, but subsequently, on appeal by the assessee, the same was allowed by the Commissioner (Appeals). Consequent to the order of Commissioner (Appeals), the assessee became entitled to a refund of ₹ 14.25 crores. While giving effect to the order of Commissioner (Appeals), the Assessing Officer adjusted the refund towards the tax demand for the A.Y. 2012-13`.

High Court's Observations:

On the issue of whether refund can be adjusted against demand for the subsequent year without prior intimation, the Karnataka High Court observed that for the purpose of any adjustment of the amount due to the assessee by way of refund against an outstanding demand due from the assessee to the Revenue, an intimation in writing is required to be given to the concerned person of the action proposed. Proposed action would mean a notice before making the adjustments and not an intimation of making the adjustment. An order passed purporting to adjust the refund due to the assessee without prior intimation would be against the express provisions of law and is hence, bad in law. The provisions of section 245 are mandatory in nature.

High Court's Decision:

In view of the above rulings, the Karnataka High Court, in this case, held that the communication informing the adjustment of refund, without prior intimation to the assessee, is illegal and contrary to law. Therefore, the High Court set aside the order in so far as it relates to adjustment of refund against tax due.

(b) Can discount given on supply of SIM cards and pre-paid cards by a telecom company to its franchisee be treated as commission to attract the TDS provisions under section 194H? [5]

Solution:

Bharti Cellular Ltd. v. ACIT (2013) 354 ITR 507 (Cal.)

Same as Vodafone Essar Cellular Ltd. v. ACIT (Ker.) (2011)

The High Court held that there is an indirect payment of commission, in the form of discount, by the assessee-telecom company to the franchisee. Therefore, the assessee is liable to deduct tax at source on such commission as per the provisions of section 194H.

Note - Similar ruling was pronounced by the Kerala High Court in Vodafone Essar Cellular Ltd. v. ACIT (TDS) (2011) 332 ITR 255, wherein it was held that there was no sale of goods involved as claimed by the assessee-telecom company and the entire charges collected by the assessee from the distributors at the time of delivery of SIM cards or recharge coupons were only for

rendering services to ultimate subscribers. The assessee was accountable to the subscribers for failure to render prompt services pursuant to connections given by the distributor. Therefore, the distributor only acted as a middleman on behalf of the assessee for procuring and retaining customers and consequently, the discount given to him was within the meaning of commission on which tax was deductible under section 194H.

(c) Are the provisions of section 234D levying interest on excess refund attracted in a case where the refund granted to the assessee in pursuance of the order of Commissioner (Appeals) was reversed on account of setting aside of such order by the Tribunal? [5]

Solution:

DIT (International Taxation) v. Delta Air Lines Inc. (2013) 358 ITR 0367 (Bom.)

Facts of the case:

In the present case, the Assessing Officer disallowed the benefit of article 8 of the Double Taxation Avoidance Agreement between India and the U.S.A. (DTAA) to the assessee. The Commissioner (Appeals), on the other hand, held that the assessee was entitled to the benefit of article 8 of the DTAA. The Tribunal, however, set aside the order of the Commissioner (Appeals) and restored the order passed by the Assessing Officer. While giving effect to the order of the Tribunal, the Assessing Officer apart from levying interest under sections 234A and 234B, also levied interest under section 234D on the refund granted to the assessee pursuant to the order of Commissioner (Appeals).

High Court's decision:

The High Court observed that interest under section 234D is chargeable only where the refund has been granted to the assessee while processing the return of income under section 143(1) and thereafter, such refund is found to be excessive under the regular assessment.

In the present case, the refund was not granted under section 143(1). The refund was not granted even by way of an assessment order passed under section 143(3) read with section 147. The same was granted pursuant to the order passed by the Commissioner (Appeals). Consequently, the High Court concurred with the Tribunal's view that the provisions of section 234D were not attracted in this case.

Note: Section 234D(1) provides that where any refund is granted to the assessee under section 143(1) and –

(a) no refund is due on regular assessment; or

(b) the amount refunded under section 143(1) exceeds the amount refundable on regular assessment,

the assessee shall be liable to pay simple interest @½% on the whole or the excess amount refunded, for every month or part of a month comprised in the period from the date of grant of refund to the date of such regular assessment.

8. Answer the following Questions [5×3=15]

(a) Whether a heading classifying goods according to their composition is preferred over a specific heading? [5]

Solution:

Commissioner of Central Excise, Bhopal v. Minwool Rock Fibres Ltd. 2012 (278) E.L.T. 581 (S.C.)

The Supreme Court held that there was a specific entry which speaks of Slagwool and Rockwool under sub-heading 6803.00 chargeable at 18%, but there was yet another entry which was consciously introduced by the Legislature under sub-heading 6807.10 chargeable at 8%, which speaks of goods in which Rockwool, Slag wool and products thereof were manufactured by use of more than 25% by weight of blast furnace slag. It was not in dispute that the goods in question were those goods in which more than 25% by weight of one or more of red mud, press mud or blast furnace slag was used. If that be the case, then, in a classification dispute, an entry which was beneficial to the assessee was required to be applied. Further, tariff heading specifying goods according to its composition should be preferred over the specific heading. Sub-heading 6807.10 was specific to the goods in which more than 25% by weight, red mud, press mud or blast furnace slag was used as it was based entirely on material used or composition of goods. Therefore, the Court opined that the goods in issue were appropriately classifiable under Sub-heading 6807.10 of the Tariff.

(b) Whether filing of declaration of description, value etc. of input services used in providing IT enabled services (call centre/BPO services) exported outside India, after the date of export of services will disentitle an exporter from rebate of service tax paid on such input services? [5]

Solution:

Wipro Ltd. v. Union of India 2013 (29) S.T.R. 545 (Del.)

The High Court noted that the appellant was also required to describe, value and specify the amount of service tax payable on input services actually required to be used in providing taxable service to be exported. The High Court opined that except the description of the input services, the appellant could not provide the value and amount of service tax payable as any estimation was ruled out by the use of the word "actually required" and the bill/invoice for the input services were received by the appellant only after the calls were attended to. Further, the

High Court also observed that one-to-one matching of input services with exported services was impossible since every phone call was export of taxable service but the invoices in respect of the input-services were received only at regular intervals, viz. monthly or fortnightly etc. Thus, the High Court was of the view that in the very nature of things, and considering the peculiar features of the appellant's business, it was difficult to comply with the requirement "prior" to the date of the export. Furthermore, the High Court elaborated that if particulars in declaration were furnished to service tax authorities within a reasonable time after export, along with necessary documentary evidence, and were found to be correct and authenticated, object/purpose of filing of declaration would be satisfied. The High Court, therefore, allowed the rebate claims filed by the appellants and held that the condition of the notification must be capable of being complied with as if it could not be complied with, there would be no purpose behind it.

(c) Whether interest is liable to be paid on delayed refund of special CVD arising in pursuance of the exemption granted vide Notification No. 102/2007 Cus dated 14.09.2007? [5]

Solution:

KSJ Metal Impex (P) Ltd. v. Under Secretary (Cus.) M.F. (D.R.) 2013 (294) ELT 211 (Mad.)

The High Court held that :

(i) It would be a misconception of the provisions of the Customs Act, 1962 to state that notification issued under section 25 of the Customs Act, 1962 does not have any specific provision for interest on delayed payment of refund.

(ii) When section 27 of the Customs Act, 1962 provides for refund of duty and section 27A of the Customs Act, 1962 provides for interest on delayed refunds, the Department cannot override the said provisions by a Circular and deny the right which is granted by the provisions of the Customs Act, 1962 and CETA.

(iii) Paragraph 4.3 of the Circular No. 6/2008 Cus. dated 28.04.2008 being contrary to the statute has to be struck down as bad.

9. Answer the following Questions [8+7 =15]

(a) Whether non-disclosure of a statutory requirement under law would amount to suppression for invoking the larger period of limitation under section 11A? [8]

Solution:

CC Ex. & C vs. Accrapac (India) Pvt. Ltd. 2010 (257) E.L.T. 84 (Guj.)

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.

(b) In the case of an assessee, being a dealer in shares and securities, whose portfolio comprises of shares held as stock-in-trade as well as shares held as investment, is it permissible under law to convert a portion of his stock-in-trade into investment and if so, what would be the tax treatment on subsequent sale of such investment? [7]

Solution:

CIT v. Yatish Trading Co. Pvt. Ltd. (2013) 359 ITR 320 (Bom.)

Facts of the case:

The assessee, being a dealer in shares and securities, has a trading as well as an investment portfolio of shares and securities. On 1st April 2010 and 1st October 2012, the assessee converted certain shares and securities held as stock-in-trade into investments and thereafter, in the A.Y.2014-15, it transferred such converted shares and securities and declared income arising on such transfer under the head "Profits and gains of business or profession" and "Capital gains".

The profits and gains up to the date of conversion was offered as business income (i.e., fair market value on the date of conversion minus the cost of acquisition).

The profits and gains arising after conversion up to the date of sale was offered as capital gains (i.e., sale price minus the fair market value on the date of conversion).

The Assessing Officer, however, assessed the entire income arising on transfer of such converted shares and securities as business income.

Appellate Authorities' findings & views:

The Tribunal noted that the Department had accepted the conversion of stock-in-trade into investment while assessing the income of A.Y.2012-13 and A.Y.2013-14. Further, the books of account of the assessee showed such shares (on which the assessee offered income as capital gains) as investment. Also, the mere fact that the assessee company was trading in shares and securities cannot estop it from holding certain shares as investment and offering the gains on sale of such shares to tax under the head "Capital gains". It is open for a trader in shares to have a trading as well as an investment portfolio of shares and securities.

High Court's decision:

The High Court concurred with the Tribunal's ruling that the gains arising on sale of those shares held as investments by the dealer-assessee (i.e., the difference between the sale price and the fair market value on the date of conversion) were to be assessed under the head "Capital gains" and not under the head "Profits and gains of business or profession".