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) XY & Co. a partnership firm engaged in the manufacturing business has a total turnover of ₹59,00,000 from such business. The partnership deed provides for payment of salary of ₹10,000 p.m. to each of the partners i.e. X and Y. The firm uses machinery for the purpose of its business and the WDV of the machinery as on 01.04.2014 is ₹2,00,000. The machinery is eligible for depreciation @ 15%. Compute the profits from the business, if the firm opts for the scheme under section 44AD.

What will be profit from the business, if each partner is paid ₹20,000 p.m. as salary instead of ₹10,000 p.m. [3]

Solution:

As per section 44AD the profits will be computed as under:

8% of total turnover of ₹59,00,000 = ₹4,72,000 – ₹2,40,000 [as the salary to working partners is within the limits of section 40(b)] = 2,32,000

No deduction will be allowed on account of depreciation.

The WDV of the machinery for next year shall be taken as ₹1,70,000 (2,00,000 - 15% of ₹2,00,000) assuming as if depreciation has been allowed.

Salary as per partnership deed 20,000 × 12 × 2 = 4,80,000

Salary allowed as per section 40(b)

	₹
On first 3,00,000 of profits @ 90% On the balance profit 60% of ₹1,72,000	2,70,000 1,03,200
Total salary allowed as per section 40(b)	3,73,200

∴ Profits from business: ₹4,72,000 – 3,73,200 = ₹98,800

(ii) PQR Ltd is a manufacturer of Steel and allied products. Its Income for Ay 2015–2016 is as follows -

1. Profits and gains from Business computed under the provisions of Income Tax Act	**19,50,000**
2. Book Profit	**1,00,40,000**

Compute the Tax payable by the Company. [5]

Solution:

Assessee: PQR Ltd Previous Year: 2014-15 Assessment Year: 2015 – 16

1. Comparison of Normal Tax and MAT, and Computation of Marginal Relief thereon

Particulars	₹
Tax on total Income = ₹19,50,000 × 30%	5,85,000
Add: Surcharge (Since Total Income does not exceed ₹1 Crore)	Nil
Income tax including Surcharge based on Total Income (A)	5,85,000
Tax on Book Profit = ₹1,00,40,000 × 18.5%	18,57,400
Add: Surcharge @ 5% (since Book Profits exceed ₹1 Crore)	92,870
Tax on Book Profit including Surcharge = MAT (B)	19,50,270

2. Computation of marginal relief

Particulars	₹
Tax payable [Higher of (1A) or (1B)]	19,50,270
Less: Tax on ₹1 Crore excluding Surcharge (since based on MAT)	
₹18,50,000	
Book Profit exceeding ₹1 Crore ₹ 40,000	18,90,000
Marginal relief	60,270

3. Computation of Tax Liability

Particulars	₹
Tax including surcharge [Higher of 1A and 1B] = as per MAT =	19,50,270
Less: Marginal Relief as per 1 (C) above	60,270
Tax payable after Marginal Relief	18,90,000
Add: Education Cess at 2%	37,800
Add: Secondary and Higher Education Cess at 1%	18,900
Total Tax Payable	19,46,700

4. Computation of MAT Credit

Particulars	₹
Tax payable u/s 115JB as per WN 2 above	19,46,700
Less: Tax on Total Income + SC (if applicable) + 2% EC + 1% SHEC = 5,85,000 + Nil + 2% + 1%	6,02,550
MAT Credit available (can be carried forward for 10 successive Asst. Years)	13,44,150

(b)(i) Rohit has a house property in Delhi whose Municipal Value is ₹1,00,000 and the Fair Rental Value is ₹1,20,000. It was self occupied by Rohit from 01.04.2014 to 31.07.2014. W.e.f. 01.08.2014 it

was let out at ₹9,000 p.m. Compute the annual value of the house property for the assessment year 2015-16 if the municipal taxes paid during the year were ₹20,000. [2]

Solution:
The gross annual value shall be higher of the following two—

	₹
Expected rent (Municipal value ₹1,00,000 or FRV ₹1,20,000 whichever is higher)	1,20,000
Actual rent received/receivable for let out period i.e. 9,000 × 8	72,000
∴ Gross annual value	1,20,000
Less: Municipal taxes	20,000
Net annual value	1,00,000

(ii) An electricity company which was charging depreciation on straight line method and whose actual cost of the asset was ₹5,00,000 and written down value ₹4,50,000 sold the said asset during 2014-15 after 2 years. What will be the tax treatment if the asset is sold for:
(I) ₹3,50,000
(II) ₹4,80,000
(III) ₹6,00,000 [2]

Answer:

(I) ₹4,50,000 – ₹3,50,000 = ₹1,00,000 will be allowed as terminal depreciation in the previous year 2014-15.

(II) ₹4,80,000–₹4,50,000 = ₹30,000 shall be balancing change and taxable as business income as per section 41(2).

(III) ₹5,00,000-4,50,000 = ₹50,000 shall be balancing charge and hence taxable as business income. ₹6,00,000-5,00,000 = ₹1,00,000 shall be short-term capital gain.

(iii) X joined a service on 01.08.2010 in the grade of ₹12,000 - 300 - 13,800 - 400 - 17,800 and his salary was fixed at ₹14,200 from the date of joining. Compute his basic salary for the assessment year 2015-16. [2]

Solution:

		₹
Salary from April, 2014 to July, 2014	₹15,400 × 4	61,600
Salary from August, 2014 to March, 2015	₹15,800 × 8	1,26,400
		1,88,000

Working notes: basic salary drawn

(I)	01.08.2010 to 31.07.2011	₹14,200 p.m
(II)	01.08.2011 to 31.07.2012	₹14,600 p. m.
(III)	01.08.2012 to 31.07.2013	₹15,000 p.m.
(IV)	01.08.2013 to 31.07.2014	₹15,400 p.m.
(V)	01.08.2014 TO 31.07.2015	₹15,800 p. m.

2.(a) The following information relates to purchases and sales of Prism Ltd. for the month of May, 2014:

	₹
Purchases for resale within the State	**7,00,000**
Purchases from registered dealers who opted for composition scheme	***4,00,000***
Purchases to be used as consumable stores for manufacture of taxable goods	**6,00,000**
Purchases of goods where invoices does not show the amount of taxes separately	**5,00,000**
Purchases of goods for personal consumption	**2,00,000**
Purchases of capital goods (not eligible for input credit)	**5,50,000**
Purchases of capital goods (eligible for input credit)	**5,76,000**

Sales made within the State during the month of May, 2014 was ₹ 50,00,000 on which VAT @ 4% was payable. The input VAT credit on eligible capital goods is available in 24 equal monthly installments. Assuming that all purchases given above are exclusive of VAT @ 12.5%, calculate:

(A) The amount of input tax credit available for the month of May, 2014.
(B) VAT payable for the month of May, 2014.
(C) Input tax credit carried forward. **[6]**

Solution:

(A) Calculation of Vat Credit Available

1. Purchases for resale within the State - ₹ 7,00,000 - VAT paid @ 12.5% - ₹ 87,500.
2. Purchases from registered dealers who opted for composition scheme - No VAT credit available
3. Purchases to be used as consumable stores for manufacture of taxable goods - ₹6,00,000. VAT paid @ 12.5% - ₹ 75,000
4. Purchases of goods where invoices does not show the amount of taxes separately - No VAT credit available
5. Purchases of goods for personal consumption - - No VAT credit available
6. Purchases of capital goods (not eligible for input credit) - No VAT credit available
7. Purchases of capital goods (eligible for input credit) - ₹ 5,76,000. Vat paid @ 12.5% - ₹72,000. VAT Credit on capital goods is available in 24 equal monthly installments. Hence, VAT credit for May, 2014 will be ₹ 3,000.

Hence, total Vat Credit available - ₹ 87,500 + ₹ 75,000 + ₹ 3,000 = ₹ 1,65,500.

(B) Calculation of Gross Vat Payable:

Sales ₹ 50,00,000 - VAT @ 4%. Hence, VAT payable ₹ 2,00,000.

(C) Net VAT payable by cash:

VAT payable by cash = B - A = ₹ 34,500.

Since Vat is payable by cash, there is no Vat credit which can be carried forward.

(b) (i) A Ltd. has given a Turnkey Contract to B Ltd. for erection, installation and commissioning of a Central Air Conditioning Plant. The Central Excise Officer raises a demand for Excise Duty on B Ltd in respect of the installed plant. Examine as to whether the Excise Duty is payable on the Plant. **[3]**

Answer::

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. [Virdi Brothers 207 ELT 321 (SC)]

In the given case, A Ltd. is not liable for Excise Duty, as the product is not goods.

(ii) D Ltd., engaged in the manufacture of Machines (and not availing Small-Scale oncession) sold a Machine to A Ltd. The Cum-Duty Sale Price of the Machine excluding VAT is ₹5,80,000. Rate of Excise Duty is 12%, Education Cess is 2% and Secondary Higher Education Cess is 1%. Sale Price includes the following Charges:

Particulars	₹
Warranty Charges	**28,000**
Secondary Packing	**6,000**
Trade Discount actually allowed	**30,000**
Design and Development Charges of Machine	**20,000**
Primary Packing	**10,000**
Cost of return fare of vehicles	**5,000**
Advertisement & Publicity charges borne by A Ltd.	**16,000**
Pre-Delivery Inspection Charges	**22,000**
After Sales Service Charges	**18,000**

Determine the Assessable Value of the machine for the purpose of Central Excise Duty. Provide notes in respect of the treatment for each of the items listed above. [5]

Solution:

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

Particulars	₹	Reasons
Cum Duty Price	5,80,000	Assumed to be all inclusive and all adjusted price.
Less: Trade Discount	-	Note 2
Less: Cost of Return Fare of Vehicles	5,000	All expenses after the place of removal shall be excluded from AV (Assessable Value). When cost of onward journey is excluded as per Rule 5, cost of return journey shall also be excluded from AV.
Net Cum-Duty Price	5,75,000	
Excise Duty Liability	63,252	(5,75,000 x 12.36) ÷ 112.36
Assessable value	5,11,748	

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

1. Warranty Charges, Secondary Packing and Primary Packing are specifically included in Assessable Value u/s 4 of the Central Excise Act.
2. Trade Discount is deductible on the assumption that it is part of the Manufacturer's policy to allow trade discount in ordinary course of his business. Since it is assumed that the cum-duty price is all inclusive and all adjusted price, it is assumed that the trade discount is already deducted in the price given.
3. Design and Development expenses are incurred in relation to manufacture, and hence includible in AV.
4. Advertisement, Publicity and After-Sales Service charges are specifically included u/s 4.
5. Pre-Delivery Inspection Charges are assumed to be incurred as per the contract before removal from Factory, and hence includible in Assessable Value.

(3)(a)(i) Boulevard Inc. a French Company, holds 40% of Equity in the Indian Company Vasak Technologies Ltd (VTL). VTL is engaged in development of software and maintenance of the same for customers across the globe. Its clientele includes Boulevard Inc.

During the year, VTL had spent 2,000 Man Hours for developing and maintaining software for Boulevard Inc, with each hour being billed at ₹ 1,350. Costs incurred by VTL for executing work for Boulevard Inc. amount to ₹ 18,00,000.

VTL had also undertaken developing software for Bal Industries Ltd for which VTL had billed at ₹ 2,700 per Man Hour. The persons working for Bal Industries Ltd and Boulevard were part of the same team and were of matching credentials and caliber. VTL had made a Gross Profit of 50% on the Bal Industries work.

VTL's transactions with Boulevard Inc. is comparable to transactions with Bal Industries, subject to following differences -

(I) Boulevard gives technical knowhow support to VTL which can be valued at 8% of the Normal Gross Profit. Bal Industries does not provide any such support.

(II) Since the work for Boulevard involved huge number of man hours, a quantity discount of 14% of Normal Gross Profits was given.

(III) VTL had offered 90 Days credit to Boulevard the cost of which is measured at 2% of the Normal Billing Rate. No such discount was offered to Bal Industries Ltd.

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

[5]

Solution:

1. Computation of Arms Length Gross Profit Mark Up

Particulars	%	%
Normal GP Mark Up		50
Less: Adjustment for Differences		
(a)Technical Support from Boulevard 8% of Normal GP [8% of 50%]	4	
(b)Quantity Discount 14% of Normal GP [14% of 50%]	7	(11)
		39

Add: Cost of Credit to Boulevard 2% of Normal Bill [2% x 50%]	1	1
Arms Length Gross Profit Mark-up		40

2. Computation of Increase in Total Income of VTL

Particulars	₹
Cost of Services Provided to VTL	18,00,000
Arms Length Billed Value $\frac{\text{Cost}}{100 - \text{Arms' Length Mark up}} = \frac{₹18,00,000}{100\% - 40\%}$	30,00,000
Less: Actual Billing to Boulevard [2,000 Hours × ₹ 1,350]	(27,00,000)
Therefore, increase in Total Income of VTL	3,00,000

(ii) Define Advance Pricing Agreement? [2]

Answer:

An Advance Pricing Agreement (APA) is an agreement between a Taxpayer and a Taxing Authority on an appropriate Transfer Pricing methodology for set of transactions over a fixed period of time in future. They offer better assurance on transfer Pricing Methods and provide certainty and unanimity of approach.

(b) TLT Industries furnishes the details of its activities undertaken in the month of May, 2014 as under (Amounts are exclusive of service tax):

S. No.	Particulars	Amount (₹)
1.	**Supply of farm labour**	**60,000**
2.	**Warehousing of refined vegetable oil**	**1,30,000**
3.	**Sale of wheat on commission basis**	**60,000**
4.	**Hiring of trucks for transport of minerals**	**2,50,000**
5.	**Leasing of vacant land to a stud farm**	**40,000**
6.	**Renting of farmhouse for marriage and birthday parties**	**45,000**
7.	**Dehusking of paddy in rice mill**	**30,000**

Compute the service tax liability of company for the month of May, 2014.

Assume that the point of taxation in respect of all the activities falls in the month of May, 2014 itself. Company had paid service tax ₹ 3,18,000 during the Financial Year 2013-14. [7]

Solution:

Since the company paid a service tax of ₹ 3,18,000 during the preceding financial year, it is not eligible for Small Service Provider's exemption under Notification No. 33/2012-ST., as the turnover last year was exceeding ₹ 10 lakhs.

The amount of service tax payable is as follows —

Sl. No.	Particulars	Treatment	Amount (₹)
1.	Supply of farm labour	Falls under negative list entry under Section 66D(d) of the Finance Act, 1994 [Agricultural Services] - Not liable to service tax	Negative List
2.	Warehousing of refined vegetable oil	Refined Vegetable Oil is not 'agricultural produce'; hence, warehousing thereof is not in negative list under Section 66D(d) - It is therefore, liable to service tax.	1,30,000
3.	Sale of wheat on commission basis	Wheat is agricultural produce; activity of sale of wheat on commission basis falls under negative list under Section 66D(d)	Negative List
4.	Hiring of trucks for transport of minerals	As per Entry 22 of Not. No. 25/2012-ST, services by way of giving on hire to a goods transport agency, a means of transportation of goods shall be exempt from service tax. It is clear that truck has been given on hire to a 'goods transport agency'.	Exempt
5.	Leasing of vacant land to a stud farm	Leasing of vacant land, with or without incidental structure for its use, for purposes of agriculture falls under negative list. However, definition of agriculture does not cover 'rearing of horses'. Since 'stud farm' is used for rearing of horses, leasing of vacant land therefore is not in negative list and is liable to service tax.	40,000
6.	Renting of farmhouse for marriage and birthday parties	Since the purpose is not 'agriculture', hence, said renting is liable to service tax.	45,000
7.	Dehusking of paddy in rice mill	Dehusking of paddy is a process that is generally not carried out at farm and is carried out at rice mill and, therefore, the same is not in negative list. However, the same is exempt from service tax if carried out on job-work basis under Entry 30 of the Notification No. 25/2012-ST.	Exempt, assuming carried out on job-work basis
	Taxable Value (assumed amounts excluding service tax)		2,15,000
	Service Tax @ 12.36%		26,574

4.(a) Ms. Roy, a resident of India and carrying out her profession in USA, returned back to India after 2 years of stay and brought -

1. **Used personal effects (including jewellery ₹1,10,000): ₹ 1,60,000 ;**
2. **Professional equipments : ₹ 1,20,000 (including personal computer : ₹ 45,000)**
3. **Used household articles : ₹ 25,000 ;**

Determine duty payable by Ms. Roy.

Assume that Ms. Roy is not eligible for concession available on termination of work under Rule 5 of the Baggage Rules, 1998 and concession on transfer of residence under Rule 8.

[6]

Solution:

Ms. Roy is eligible for allowance under Rules 3, 5 (professional equipments) and 6 (jewellery) of the Baggage Rules.

Particulars	**Rule 3**	**Rule 5**	**Rule 6**
Used personal effects (jewellery claimed as exempt under Rule 6)	Exempt	-	1,10,000.00
Professional equipments (personal computer is not professional equipment, but, is covered by GFA under Rule 3; other professional equipments are covered by Rule 5)	45,000.00	75,000.00	
Used household articles - Covered by Allowance under Rule 5	-	25,000.00	-
Total	45,000.00	1,00,000.00	1,10,000.00
Less : Duty Free Allowance [Under Rule 5 : ₹ 12,000 for household articles and ₹ 40,000 for professional equipments, as stay is more than 6 months. Further, Allowance under Rule 6 is available as stay abroad is more than 1 year.]	45,000.00	52,000.00	1,00,000.00
Dutiable Value	—	48,000.00	10,000.00
Total dutiable value			58,000.00
Duty @ 36.05%			20,909.00

(b)(i) C Ltd. is a manufacturer of tooth powder, which is a commodity notified u/s 4A of the Central Excise Act, 1944 and the notified percentage of abatement is 35%. It sells tooth powder in cans to various retail shop-keepers and gives 2 cans free along with purchase of every 100 cans. The MRP indicated on each can is ₹ 150 per cans. The transaction value is ₹130 per can. During a month, M/s. C Ltd. sold 1,00,000 cans and gave away 2,000 cans free to the retail shop-keepers. Compute the amount of excise duty payable by C Ltd. Excise Duty is 12%. [4]

Solution:

It has been clarified vide *Circular No. 938/28/2010-CX., dated 29-11-2010* that quantity discount, bonuses etc. are applicable for the valuation of goods under section 4 of the Central Excise Act, 1944 and not in case of goods valued u/s 4A. It was held that sale is not a necessary condition for charging to excise duty; duty becomes payable (unless otherwise exempted) in respect of every removal of excisable goods.

In the present case, the sale is for the gross quantity (1,02,000) at the net price (₹ 130 per can on 1 lakh cans) and the claimed free supply (2,000 cans) is not meant for the ultimate customer; and such quantity claimed to be given free (2,000 cans) also carries MRP. Therefore, duty is to be discharged on the entire quantity including goods covered as "the quantity discount" *i.e.* 1,02,000 cans on the basis of valued arrived at under Section 4A after giving the abatement provided for.

Accordingly, the computation of duty payable is as shown below:

No. of cans on which duty payable	(A)	1,02,000
Retail Sale Price or MRP per can	(B)	150
Retail Sale Price of all cans on which duty payable	(C) = (A) x (B)	1,53,00,000
Less: Abatement @ 35%	(D) = (C) x 35%	53,55,000
Value (net of abatement) (E= C-D)		99,45,000
Excise duty @ 12.36% (F = E * 12.36%)		12,29,202

(ii). ABC Bank provides the following information for the month of June:

CENVAT Credit available on Inputs	**2,50,000**
CENVAT Credit available on Inputs Services	**3,00,000**
Service Tax liability before availing eligible CENVAT	**10,00,000**

Determine the amount of CENVAT Credit available to ABC Bank for the month of June, 2014 in view of Rule 6(3B) of CENVAT Credit Rules, 2004. Also determine the net service tax liability of the bank after availing the eligible CENVAT Credit. [4]

Solution:

According to Rule 6(3B) of CENVAT Credit Rules, 2004, a banking company and a financial institution including a non-banking financial company engaged in providing services by way of extending deposits, loans or advances, shall pay for every month, an amount equal to 50% of the CENVAT credit available on inputs and input service in that month. Therefore, a banking company is entitled to avail only 50% of CENVAT credit in respect of inputs and input services.

In view of above statutory provisions, CENVAT Credit available to ABC bank for the month of June and its net service tax liability will be computed as under:

CENVAT Credit available on Inputs	₹2,50,000
Less: Payment of 50% of CENVAT Credit available on Input by virtue of Rule 6(3B). It effectively means 50% of available CENVAT Credit is to be disallowed.	₹1,25,000
Net CENVAT Credit available on Inputs	₹1,25,000
CENVAT Credit available on input Services	₹3,00,000
Less: Payment of 50% of CENVAT Credit available on Input Services by virtue of Rule 6(3B).	₹1,50,000
Net CENVAT Credit available on Input Services	₹1,50,000

Determination of Net Service Tax liability of ABC Bank for the month of June:

Service Tax liability of bank before availing eligible CENVAT Credit	₹10,00,000
Less: Net Eligible CENVAT Credit available on Inputs	₹1,25,000
Less: Net/Eligible CENVAT Credit available on Input Services	₹1,50,000
Net Service Tax liability of bank after availing eligible CENVAT Credit	₹7,25,000

5.(a) (i) A Ltd. has an industrial plot which was purchased on 14.10.1986 for ₹2,00,000. It has since been used for its industrial purposes as an open stockyard. This plot was compulsorily acquired by the Government on 15.11.2010 and a sum of ₹11,90,000 was determined as compensation which was received by the company on 04.04.2013. The company, not being satisfied with the compensation appealed against the above award and the compensation was enhanced by ₹1,00,000 on 30.01.2014 but the enhanced compensation was received on 05.04.2014. Meanwhile, the assessee purchased another industrial plot on 15.09.2013 for ₹1,90,000. On receipt of the enhanced compensation, the company deposited the entire amount under the Capital Gains Accounts Scheme on 30.09.2015. Till the time the amount was deposited, the company used the said amount of ₹1,00,000 for its business purposes. Compute the capital gains for various assessment years arising on this transaction. [4]

Solution:

Assessment year 2011-12: Although there is compulsory acquisition and thus transfer, but capital gain will arise in the previous year, in which full or part of the compensation is received.
Assessment year 2014-15

	₹
Full value of consideration	11,90,000
Less: Indexed cost of acquisition – ₹2,00,000 × $\frac{711}{140}$	10,15,714
Long-term capital gain	1,74,286
Less: Exemption u/s 54D	
Cost of land acquired but restricted to capital gain	1,74,286
Taxable capital gains	Nil
Assessment year 2015 - 16	
Enhanced compensation	1,00,000
Less: Cost of acquisition and improvement	Nil
Long-term capital gain	1,00,000
Less: Exemption u/s 54D	1,00,000
Capital gain	Nil

(ii) From the following information submitted to you, compute the total income of A for the assessment year 2015-16 and calculate his tax liability assuming he is not allowed any deduction under sections 80C to 80U.

	₹
Income from salary	**1,80,000**
Income from house property	**40,000**
Business loss	**(-) 1,90,000**
Loss from a specified business referred to in section 35AD	**(-) 60,000**
Short-term capital loss	**(-) 60,000**
Long-term capital gain	**2,40,000**

[4]

Solution:

Computation of total income of A for the assessment year 2015-16

	₹	₹
Income from salary		1,80,000
Income from House property		
Income	40,000	
Less: Business loss adjusted	(-) 10,000	30,000
Business loss	(-) 1,90,000	
Less: Set off against capital gain	1,80,000	
Less: Set off against ho use property income	10,000	Nil
Loss from specified business not allowed to be set off	(-) 60,000	
Income from capital gain		
Long-term capital gain	2,40,000	
Less: short-term capital loss	60,000	
	1,80,000	
Less: Business loss adjusted	1,80,000	Nil
Gross total income		2,10,000
Less: Deductions		Nil
Total income		2,10,000

1. Business loss should first be set off from long-term capital gain as the long-term capital gain is taxable @20% where as the income from house property, in this case, is taxable @ 10%.
2. It may be noted that business loss cannot be set off against income under the head salary.

(b)(i) X owns the following commercial vehicles:

(I) 2 light commercial vehicles — One for 9 months and two days and the other for 12 months.

(II) 2 heavy goods vehicle — one for 6 months and 25 days and the other for 11 months and 12 days

(III) 2 medium goods vehicles — One for 6 months and the other for 8 months and 15 days.

A. Compute the income from business if X opts for the scheme u/s 44AE. Also compute his tax liability for the assessment year 2015-16, if he deposits ₹20,000 in PPF Account during the previous year.

B. What will be the income if the trucks were not used for business for two months during the year due to strike? [3]

Solution:

(A) The income u/s 44AE shall be computed as under:

		₹
(i)	10 × 7,500 +12 × 7,500	1,65,000
(ii)	7 × 7,500 + 12 × 7,500	1,42,500
(iii)	6 × 7,500 + 9 × 7,500	1,12,500
	Income from Business	4,20,000
	Less: Deduction u/s 80C	20,000

	Total income	4,00,000
	Tax on ₹4,00,000	15,000
	Less: rebate u/s 87A	2,000
		13,000
	Add: Education cess & SHEC-@ 3%	390
		13,390

(B)Income from vehicles is to be computed for every month or part of the month during which these were owned by the assessee even though these are not actually used for business. Therefore there will be no change in the answer

(ii) An Assessing Officer made an order of Assessment on Ramnath determining the Total Income at ₹ 3,75,000 by an order dated 30.03.2015 in respect of Assessment Year 2012-2013. This was served on the Assessee on 02.04.2015. A tax of ₹1,87,500 was determined subsequently and a Demand Notice served on the Assessee on 20.07.2015. Discuss the validity of the proceedings in the above case. [3]

Solution:

U/s 153(1), assessment order u/s 143 or 144 should be passed within 2 Years from the end of the Assessment Year in which the income was first assessable. There is no time limit prescribed as to the service of demand notice, if any raised after passing the above assessment order.
Unless the Total Income is determined and the determination of tax is also done, the assessment cannot be regarded as complete. Order of Assessment implies order of not only determining the Total Income, but also the tax liability due.
In the instant case, the assessment is fully complete only after determination of tax i.e. on 20.07.2015, which is after the prescribed period of 2 years.
In view of the above, the proceeding is time barred and not valid.

(6)(i) A, a Resident Indian aged 21 years, earned a sum of ₹10 Lakhs during the Previous Year 2014-2015 from playing Badminton Matches in a Country with which India does not have Double Taxation Avoidance Agreement. Tax of ₹2 Lakhs was levied on such income in the source country. In India, he earned ₹15 Lakhs during the Previous Year 2014-2015 from playing Badminton Matches. He has deposited ₹1 Lakh in Public Provident Fund during the year. Compute his Income Tax Liability for Assessment Year 2015-2016. [4]

Solution:

Assessee: Mr. A Previous Year: 2014-15 Assessment Year: 2015 – 16
Status: Resident Indian Computation of Total Income and Tax payable

Particulars	₹	₹
Profits and Gains from Business or Profession		
(a) Income from playing outside India	10,00,000	
(b) Income from India	15,00,000	
Taxable Profit or Gains from Business or Profession		25,00,000
Gross Total Income		25,00,000
Less: Chapter VIA Deduction		
U/s 80C - Contribution to PPF (allowed upto a maximum of 1,50,000)		(1,00,000)

Total Income		24,00,000
Tax on Total Income (1,25,000 + (24,00,000 - 10,00,000) × 30%) Add: Education Cess @ 2% Add: Secondary and Higher Education Cess @ 1%		5,45,000 10,900 5,450
Total Tax Payable Average Rate of Indian Tax (5,61,350 ÷ 24,00,000) Average Rate of Foreign Tax (2,00,000 ÷ 10,00,000) Less: Relief u/s 91 @ 20% of Foreign Income of ₹10,00,000 (Least of the above)	 23.39% 20%	5,61,350 2,00,000
Net Tax Payable (Rounded Off u/s 288 B)		3,61,350

(ii) T has rented out his agricultural land to S who uses the same for agricultural purposes. As per the agreement, 'S' will pay the rent in the shape of agricultural produce from the land to T. T has received during the previous year agricultural produce valued at ₹60,000. He has consumed agricultural produce worth ₹40,000 for his own consumption and the balance has been sold by him for ₹20,000.
Compute the total income for the assessment year 2015-16 assuming he is getting a salary of ₹20,000 p.m. from Y Ltd. He has no other income. Also compute the tax payable by him. [3]

Solution:

Computation of Total income of T for assessment year 2015 – 16

Particulars	₹
Income from salary Salary ₹20,000 × 12 Agriculture income ₹60,000	 2,40,000 Exempt
Gross total Income Less: Deduction	2,40,000 Nil
Total Income	2,40,000

Since Total Income of T is ₹2,40,000 which does not exceed the maximum exempt limit, there will be no integration of Agricultural Income for tax purposes.

(iii) Suvidha Hospitals Pvt. Ltd, the Assessee, has recently been accorded recognition by several Insurance Companies to admit and treat patients on cashless hospitalization basis. Payment to the Assessee Hospital will be made by Third Party Administrators (TPA) who will process the claims of the patients admitted and make the payments to the various hospitals including the Assessee. All TPAs are Corporate Entities. The Assessee wants to know whether the TPAs are bound to deduct tax at source u/s 194J or u/s 194C. [3]

Answer:

Sec 194J applies even if payment is not made by the person to whom services are rendered. Therefore, TDS u/s 194J has to be deducted by Third Party Administrators (TPA) on payment made to Hospitals on behalf of Insurance Companies for settling medical/ insurance claims with Hospitals.

On failure, TPA shall be liable for Interest u/s 201(1A) and Penalty u/s 271C. No proceeding u/s 201 shall be initiated after the expiry of 6 years from the end of the Financial Year in which such payment has been made without deducting TDS.

If tax has been paid by the Hospitals, and a Certificate from the Auditor of Hospital has been

obtained, the TPA shall not be considered-to be in default.

(b) During the year ended 31-3-2015, Anil & Co. (partnership firm), running a coaching centre, has collected a sum of ₹ 10.2 lakhs as service tax. ₹ 70,000 was met through CENVAT credit and the balance was paid by cheque on various dates. The details pertaining to the quarter ended 30-9-2015 are as under (all sums exclusive of service tax):

Particulars	**Amount (₹)**
Value of free coaching rendered	**30,000**
Coaching fees collected from students	**14,50,000**
Advance received from a college for coaching their students on 30-9-2015.	**3,00,000**

Determine the service tax liability for the quarter and indicate the date by which the service tax has to be remitted by the assessee. [4]

Solution:

Since the service tax paid during the last year exceeds ₹ 10 lakhs, it is reasonable to assume that Anil & Co. is not eligible for option under Rule 6(1) of the Service Tax Rules, 1994 to pay service tax on receipt basis, as the value of services provided during the preceding year would surely be higher than ₹ 50 lakhs. The computations are as follows -

Particulars	**Amount (₹)**
Value of free coaching rendered (free services are not taxable)	NIL
Coaching fees collected from students (taxable)	14,50,000
Advance received from a college for coaching their students on 30-9-2015	3,00,000
[PoT = Date of Invoice or Date of receipt of payment, whichever is earlier = 30-9-2015. Hence, the service tax shall be payable in the quarter ended September 2015]	
Taxable Value	17,50,000
Service Tax @ 12.36%	2,16,300
Due date for payment is 6-10-2015: Since e-payment is mandatory, due date for e-payment is 6-10-2015.	

Section B

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

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

(a) Can the Assessing Officer reopen an assessment on the basis of merely a change of opinion? [5]

Solution:

Aventis Pharma Ltd. vs. ACIT (2010) 323 ITR 0570 (Bom.)

The power to reopen an assessment is conditional on the formation of a reason to believe that income chargeable to tax has escaped assessment. The existence of tangible material is essential to safeguard against an arbitrary exercise of this power.

In this case, the High Court observed that there was no tangible material before the Assessing Officer to hold that income had escaped assessment within the meaning of section 147 and the reasons recorded for reopening the assessment constituted a mere change of opinion. Therefore, the reassessment was not valid.

(b) Whether the Tribunal was right in law in upholding the order of the CIT(A) in deleting the trading addition made by the Assessing Officer, as the assessee failed to produce the quantitative details of raw materials and finished products? [5]

Solution:

CIT vs. Om Overseas (2009) 315 ITR 185 (P&H)

The assessee-firm derived its income from manufacturing and export of duries, rugs, woollen carpets, made ups, etc., and filed a nil return of income. Subsequently it was assessed under section 143(3) of the Income-tax Act, 1961 and it declared gross profit on the total turnover of 25.38 per cent as against 29.5 per cent declared in the immediate preceding assessment year. Being dissatisfied with the explanation given by the assessee, the Assessing Officer rejected the books of account of the assessee invoking section 145(3) and applied the gross profit rate of 27 per cent which resulted in certain additions. The Commissioner (Appeals) deleted the additions made by the Assessing Officer. The Tribunal upheld the order of the Commissioner (Appeals).

The High Court held that the factual finding given by the Commissioner (Appeals) that the additions were made by the Assessing Officer without pointing out any specific defect in the books of account was upheld by the Tribunal. As no perversity or illegality in the finding was pointed out by the Department, no substantial question of law arose for determination.

(c) Is the Assessing Officer's refusal to deliver a carbon copy of the statement on oath taken at the time of special survey under section 133A valid or against the law? [5]

Solution:

Sub-section (5) of section 133A, which relates to enquiries in connection with a function or ceremony, empowers an income-tax authority to have the statements of the assessee or any other person recorded. It is also stated that any statement so recorded may, thereafter, be used in evidence in any proceeding under the Act. Further, clause (iii) of section 133A(3) similarly authorises the recording of the statement of any person which may be useful for or relevant to any proceeding under the Act.

No rules have been framed in respect of the proceedings under section 133A. However, since statements recorded under section 133A wi11 constitute evidence in relation to assessment proceedings, and the assessee will have to be given full opportunity for rebuttal of any material likely to be used against him, for which he will need appropriate preparation, it is obvious that the assessee is entitled to copies of such recorded evidence. The denial of such opportunity to the assessee may weaken or even invalidate the proceedings against him. It is not, however, necessary that the tax authorities should give the assessee a carbon copy of the statement immediately it is recorded, i.e., on the spot.

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

(a) Can the excess duty paid by the seller be refunded on the basis of the debit note issued by the buyer? [5]

Solution:

CCE vs. Techno Rubber Industries Pvt Ltd. 2011 (272) E. L. T. 191 (Kar.)

Facts of the case:

The assessee cleared the goods paying higher rate of excise duty in the month of March, although the rate of duty on the said goods had been reduced in the budget of the same financial year. However, the buyer refused to pay the higher duty which the assessee had paid by mistake. The customer raised a debit note in his name in the month of June of the same year. The assessee applied for the refund of excess excise duty paid. Revenue rejected his claim on the ground that incidence of the duty had been passed by him to the buyer.

While claiming refund, the assessee relied on the debit note raised by the buyer in his name in the month of June to demonstrate that his customer had not paid the excess duty to him. The adjudicating authority argued that since the debit note was issued in the month of June and not March, it could not be the basis for refund.

Decision of the case:

The High Court elucidated that once it is admitted that the Department has received excess duty, they are bound to refund it to the person who has paid the excess duty. If the buyer of the goods has paid that excess duty, he would have been entitled to the said refund.

In the instant case, when the buyer had refused to pay excess duty claimed and had raised a debit note, the only inference to be drawn was that the assessee had not received that excess duty which he had paid to the Department. Consequently, Department was bound to refund to the assessee the excess duty calculated. Hence, the substantial question of law raised was answered in favour of the assessee and against the revenue.

(b) Discuss the interpretation of phrase "a mistake apparent from record". [5]

Solution:

Asst Commr, IT, Rajkot vs. Saurashtra Kutch Stock Exchange Ltd. 2008 (230) ELT 385 (SC)

Supreme Court, while interpreting the phrase "any mistake apparent from record" under section 254(2) of the Income Tax Act, 1961, stated that a patent, manifest and self-evident error which does not require elaborate discussion of evidence or argument to establish it, can be said to be an error apparent on the face of the record and can be corrected while exercising certiorari jurisdiction. An error apparent on the face of the record means an error which strikes on mere looking and does not need long drawn-out process of reasoning on points where there may conceivably be two opinions. Such error should not require any extraneous matter to show its incorrectness.

The Apex Court further clarified that an error cannot be said to be apparent on the face of the record if one has to travel beyond the records to see whether the judgment is correct or not. An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record.

The Court held that the error should be so manifest and clear that no Court would permit it to remain on record. If the view accepted by the Court in the original judgment is one of the possible views, the case cannot be said to be covered by an error apparent on the face of the record.

(c) Whether non-filing of appeal for some assessment years is a bar in filing appeal for other assessment years? [5]

Solution:

CIT vs. J. K. Charitable Trust 2008 (232) ELT 769 (SC)

The Supreme Court pronounced that there may be certain cases where because of the small amount of revenue involved, no appeal is filed. Policy decisions may be taken not to prefer appeal where the revenue involved is below a certain amount. Similarly, where the effect of the decision is revenue neutral, there may not be any need for preferring the appeal. All these certainly provide the foundation for making a departure.

In the case of C.K. Gangadharan's vs. CIT 2008 (228) ELT 497 (SC), it was held that merely because in some cases revenue has not preferred an appeal, that does not operate as a bar for the Revenue to prefer an appeal in another case where there is just cause for doing so, or it is in public interest to do so, or for a pronouncement by the higher court when divergent views are expressed by the different High Courts. The Court further provided that if the assessee takes the stand that the Revenue acted mala fide in not preferring appeal in one case and filing the appeal in other case, it has to establish mala fides.

However, in the given case, the Apex Court noted that it was accepted by the learned counsel for the appellant (Revenue) that the fact situation in all the assessment years was same. Under the circumstances, the Court concluded that since the fact situation had not changed, Revenue could not prefer an appeal and thus, the court dismissed the appeal filed by the Department.

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

(a) Whether the exempted goods on which duty has been paid by mistake by the assessee and refund thereof has also not been claimed would be excluded while computing turnover for preceding year for claiming SSI exemption? [7]

Solution:

Bonanzo Engg. & Chemical P. Ltd. vs. CCEx. 2012 (277) E.L. T. 145 (S.C.)

Facts of the case:

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

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

Decision of the Case:

The Supreme Court 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.

(b) Can the order of the Settlement Commission be considered to be a judicial proceeding? [8]

Solution:

UOI vs. East and West Shipping Agency 2010 (253) E.L.T. 12 (Bom.)

Relevant section: 127M of the Customs Act, 1962

Facts of the case:

The Custom House Agent License of the respondents was suspended on the ground that authorised agent of the respondents had committed misconduct by taking active part in the act of smuggling and had thus violated the Custom House Agent Licensing Regulations, 2004. During pendency of the misconduct proceedings, respondents approached Settlement Commission. The Settlement Commission after hearing all the parties held that Revenue had failed to prove that the authorised agent of the respondent Custom House Agent (CHA) had a

conscious knowledge of mis-declaration of goods. On the basis of said order of the Settlement Commission, Tribunal decided the case in favour of the respondents and dropped the misconduct proceedings against them. The appellants challenged the Tribunal's order alleging that the order passed by the Settlement Commission was ab-initio, null and void being without jurisdiction.

Decision of the case:

The High Court observed that as per section 127M of the Customs Act, 1962, the order passed by the Settlement Commissioner is in judicial proceedings and it is a judicial order. Further, the appellants had not challenged the said order. Hence, the order passed by the Settlement Commissioner could not be brushed aside considering the scheme of Chapter XVIA. It must be held good in law so long as it is not set aside. Considering the facts and circumstances of the case, the High Court answered the question of law in affirmative in favour of the respondents and against the appellant.