Paper 16 – Tax Management and Practice

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

Whenever required, the candidate may make suitable assumptions and state them clearly on the answers.

Working notes should form part of the relevant answer.

Section A
(Answer all the Questions)

1. Answer any three Question [3x5=15]

Answer the following with the help of decided case law:

(a) Articles of precious metals made and supplied by the applicant to their customers according to their specifications and designs and some articles of jewelry like pendants of various shapes and sizes made by involving various complex processes on raw precious metals is 'Manufacture' as the resultant product has its own distinct character, identity and use.

Whether the process amounted to manufacture or not? And if it is carried out as job work even then it will be manufacture or not? [5]

Solution:

MMTC – Pamp India Pvt. Ltd. v CCEx., Delhi [2013] 292 ELT 129 (A.A.R)

Facts:

The applicants were engaged in refining and minting of products of precious metals namely gold, silver and platinum. The articles of precious metals that were made and supplied by the applicant to their customers included medallions/coins made according to specifications and designs agreed with the customers and some articles of jewelry like pendants of various shapes and sizes. It involved a number of steps of complex processes such as manufacture of dies and moulds, purification of metal, melting of the gold or silver, cold rolling, blanking, pickling and polishing, stamping with the aid of dies made as per designs agreed with their customers and lacquering and packing. The item that they took in was precious metals in raw (bullion) form and what they produced was finished articles, such as medallions and articles of jewelry etc., in marketable form.

Decision: It was held that -

As per section 2(f) of Central Excise Act, 1944, process resulting in a new item with distinct name, character and use amounts to manufacture. Process of Manufacture could be on own account or on job work. Merely because it is on job work, it cannot be precluded from being considered as manufacturing. Job work and manufacturing are not mutually

exclusive. From the facts it was clear that the processes undertaken by the applicant resulted in the emergence of goods which have their own distinct character, identity and use. The activities of the applicant, therefore, clearly met the definition of manufacture beyond any shadow of doubt.

(b) Whether the assessee manufactures blank CDs/DVDs as an intermediate product to be classifiable as excisable goods?

Whether the writ petition was maintainable for quashing of a show cause notice and also of an adjudication order when the alternative remedies by way of an appeal has not been exhausted. [5]

Solution:

Sidharth Optical Disc Pvt. Ltd v. UOI [2013] 288 ELT 17 (Del)

Facts:

The assessee, a manufacturer of pre-recorded audio CDs, VCDs, DVDs, claimed exemption from payment of central excise duty. The manufacturing process undertaken by the assessee is an integrated one, where the process of manufacture and transfer of data takes place simultaneously. The pre-recorded CDs are manufactured using the basic raw material polycarbonate. The stamping and the moulding takes place simultaneously, i.e in the process of moulding the polycarbonate, the data on the stamper is transferred on to the discs in the form of lands and pits and then the said discs are coated with aluminium layer etc. to form a final pre-recorded disc. The Revenue issued a show cause notice demanding duty/interest/penalty contending that during the manufacture of pre-recorded CDs etc. blank CDs, VCDs etc are manufactured and thereafter the data is recorded, as data cannot be recorded on granules. The blank CDs/ VCDs/ DVDs so produced at the intermittent stage are liable to duty as they are a distinct commodity separately classifiable and dutiable under the Central Excise Tariff Act, 1985 and there is no exemption thereon. The Commissioner having confirmed the demand, the writ petition was filed by the assessee.

Assessee 's contention:

The manufacturing process is an integrated one and the manufacture and printing takes place simultaneously and no independent exigible product as blank CD emerged in the intermittent stage. To support its contention the assessee also produced the Expert's opinion for the same.

Decision:

It is evident from analysis of the manufacturing process that at no point of time there emerged blank CD's /DVD's as excisable goods. The stamping and moulding takes place simultaneously i.e while liquified polycarbonate solidifies, it is imprinted with data by the stamper. It is not the case where pressed discs after cooling were captively used for the data transfer. Thus, no manufacture takes place of blank CD's. Since first test of manufacture is not satisfied therefore second test of marketability cannot be satisfied as no product comes into existence. Therefore, blank CD's/DVD's/VCD's are not manufactured and are not excisable. The burden to prove the test of manufacture and marketability vests

with the department. Considering the second question regarding maintainability of the writ petition, it was held that, 'Ordinarily' a writ petition under Article 266 cannot be entertained when adequate remedy by way of an appeal is available with the assessee. However, when situation warrants, the interference of High Court by exercise of powers under Article 266 is justified. Thus, when there is no disputed question of fact and SCN demanding duty is found to be misconceived, the writ petition to High Court can be entertained.

(c) Fuel Life Ltd. entered into a contract, with foreign suppliers for import of crude sunflower seed oil on 5th July, 2013. The contract was entered into for supply of crude sunflower seed oil at the rate of US$ 525 CIF/metric ton. The consignment was to be shipped in the month of August 2013, which was extended till mid-September, after mutual agreement between the parties. The crude oil consignment was actually shipped on 5th September, 2013, at the price prevailing at the contract date.

The Assessing Officer refused to accept the contract price as the 'transaction value', on the ground that, the international market price has increased drastically, after the expiry of the original shipment period.

In the light of decided case, discuss whether the contention of the Assessing Officer is tenable in law. [5]

Solution:

The facts of the given case are similar to the decided case of **Commissioner of Customs., Vishakhapatnam v. Aggarwal Industries Ltd. 2011(272) E.L.T 641 (S.C).**

In the said case, the assessee had entered into a contract on 26th June, 2001, with foreign suppliers for import of crude sunflower seed oil at the rate of US$ 435 CIF/Metric Ton. Though, the consignment was supposed to be shipped in the month of July 2001, the consignment was actually shipped on 5th August, 2001. After expiry of the initial shipment period, the shipment period was agreed to be extended to 'mid August 2001'.

The Revenue refused to accept the contract price as the 'transaction value', in terms of Rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, on the ground that, the international market price has increased drastically, after the expiry of the original shipment period. The Revenue intended to levy duty on the increased prices.

The Supreme Court held that, the extension of time limit for shipping of consignment was mutually agreed upon between the parties. Though, the commodity involved volatile fluctuations in its price in the international market, the supplier did not increase the price of the commodity even after increase in the international market price. There was no allegation of the supplier and the assessee, being in collusion. Thus, the increased price cannot be considered for valuation of the crude sunflower seed oil. The Apex Court allowed the appeal in favour of the assessee.

Thus, it can be inferred that the contention of the Assessing Officer, in the case of Fuel Life Ltd., is not tenable in law.

(d) Whether the manufacture and sale of the specified goods that do not physically bear a brand name, from sale outlets, would disentitle the assessee from benefit of SSI exemption? [5]

Solution:

CCEx. v. Australian Foods India (P) Ltd. [2013] 287 ELT 385 (SC)

Facts:

The assessee was engaged in the manufacture and sale of cookies from branded retail outlets of "Cookie Man", acquiring the brand name from M/s. Cookie Man Pvt. Ltd., Australia. No brand name was affixed or inscribed on the cookies, but they were sold in plastic pouches/ containers on which the brand name was affixed. Along with these, the assessee also sold cookies loosely with plain plates and tissue papers, from the counter of the same retail outlet. These loose cookies were not separately manufactured by retail outlets or received separately by the retail outlets. They were taken out of the sealed pouches or containers and displayed for sale separately. Excise duty was paid on the cookies sold in the said pouches/containers but no duty was paid on cookies sold loosely claiming the same as unbranded and therefore eligible for SSI exemption.

Assessee 's contention:

As the specified goods did not bear any brand name affixed or inscribed on it or the packaging in which these were sold also did not bear any brand name or logo, the said goods will be considered as unbranded goods and the prescribed SSI exemption cannot be denied.

Decision:

It is not necessary for goods to be stamped with a trade or a brand name to be considered as branded goods (under SSI exemption notification). In case of goods like liquids, soft drinks, bulk, dairy products etc., which cannot physically bear the brand name, a scrutiny of the surrounding circumstances is necessary to decide whether it is branded or unbranded. Factors like packaging/ wrapping, accessories, uniform of vendors, invoices, menu cards, hoardings/displays, boards of outlets are to be considered. Exclusive branded outlets from which the goods are sold, is often conclusive/crucial factor to hold goods as branded. In the given case, as the same cookies were sold unbranded from same counter, from outlet carrying the brand name (where no other products were sold), under same invoices as that of the branded cookies, they continued to be branded cookies. Hence, they were not entitled to SSI exemption. It is immaterial that the tissues and plates in which the cookies were served did not bear the brand name.

2. Answer any two Questions [2x5=10]

(a) M/s. Rashmi Ltd. purchased fibre 5,000 Kg @ ₹ 50 per Kg plus excise duty. The said fibre was used to manufacture intermediate product yarn. The said yarn was captively used for the manufacture of fabrics. The said fabric was exempt from duty. The other information are as follows:

(i) Normal processing loss: 2% of inputs in manufacture of yarn
(ii) Rate of excise duty on all products is 12.36%;
(iii) Assessable Value of yarn: ₹80 per Kg.;
(iv) Assessable Value of Fabric (Total): ₹10 lakhs;
(v) Colouring Dyes used in the manufacture of Fabric: ₹ 1 lakhs plus excise duty.
(vi) Duty on Capital Goods imported during the period and used in the manufacture of yarn: Basic Customs Duty ₹ 20,000; Additional duty of customs u/s 3(1) of the Customs Tariff Act ₹ 20,000; Additional duty of customs u/s 3(5) of the Customs Tariff Act ₹ 6,000.

Compute - (i) CENVAT Credit available; (ii) Duty payable.

M/s. Rashmi Ltd. is not eligible for SSI-exemption available under Notification No. 8/2003 CE. [5]

Solution:

Since the final product 'fabrics' is exempt from duty, hence, the intermediate product 'yarn' shall be liable to excise duty. Thus, the CENVAT Credit of raw material fibre shall be available.

The relevant computations are as follows:

(amounts in ₹)

1. Excise duty on yarn : (5,000 kg - 2% Normal Loss = 4,900 kg) × 80 per kg × 12.36%	48,451
2. CENVAT Credit:	
(i) On raw material fibre 5,000 kg x 50 per kg x 12.36% [WN-1]	30,900
(ii) Colouring Dyes [WN-2]	-
(iii) Capital goods used in the manufacture of yarn are eligible for 50% credit as follows –	
Basic Customs Duty is not eligible for Cenvat credit.	-
Additional Customs Duty u/s 3(1) of Customs Tariff Act - Eligible for 50% credit in the current year and the balance in subsequent year	10,000
Additional duty of customs u/s 3(5) of Customs Tariff Act - Eligible for 100% credit in current year	6,000
Total Credit [2(i) + 2(ii) + 2(iii)]	**46,900**
3. Duty payable in cash [1 - 2]	1,551

Working Notes:

(1) Normal loss of inputs is incurred in factory and in relation to manufacture, hence the same shall also be eligible for Cenvat Credit.

(2) Colouring dyes used in the manufacture of fabric shall not be eligible for credit as fabric is exempt from duty.

(b) (i) ABC Ltd. purchased a Pollution Control equipment for ₹ 15,14,250 which is inclusive of excise duty at 16% plus education cess 2% plus secondary and higher education cess 1%. The equipment was purchased on 01-09-2011 and was disposed of as second hand equipment on 10-10-2013 for a price of ₹ 13,50,000. The excise duty rate on the date of

disposal was 12% plus education cess @ 2% plus secondary and higher education cess 1%.

1. **You are required to calculate the amount of CENVAT credit allowable for the financial year 2011-12 and 2012-13.**
2. **What is the amount payable towards CENVAT credit already availed at the time of disposal of the equipment in the financial year 2013-14?**

Make suitable assumptions where required and show the working and explanation wherever required. [2]

(ii) Mr. Lal is a manufacturer of dutiable as well as exempted goods. Mr. Lal has manufactured goods of ₹ 1,00,00,000 in the Financial Year 2013-14. Out of this, ₹ 80,00,000 are taxable final products and ₹ 20,00,000 are exempted final products.

Excise duty paid on his inputs is ₹ 10,00,000.

Rate of basic excise duty on final products is 12% plus education cess @2% and SAH education cess @1%.

Discuss the options available to Mr. Lal for availment of CENVAT credit, if he is not able to bifurcate inputs between those used for exempt goods and taxable final products. Calculate CENVAT credit available to him under different options and explain which option is beneficial to him. [3]

Solution to (b)(i):

(i) Total Cenvat credit allowed = (₹15,14,250 × 16.48 /116.48) = ₹ 2,14,240 (approx.)

Cenvat Credit Allowed	Amount (₹)
2011-12	1,07,120
2012-13	1,07,120

(ii) Amount payable in the financial year 2013-14 is ₹ 1,68,714 (Working Note)

Working note:

Total Excise duty	= ₹ 2,14,240
Less: Reduction	
₹ 1,07,120 x 2.5% x 10 qtrs.	= ₹ (26,780)
₹ 1,07,120 x 2.5% x 7qtrs.	= ₹ (18,746)
Amount to be paid	= **₹ 1,68,714**

Excise duty on transaction value is ₹ 1,66,860 (₹ 13,50,000 x 12.36/100)
Whichever is higher is to be paid as an amount.

Solution to (b)(ii):

Option 1:

Maintain separate records for taxable and exempted goods and accordingly take the credit attributable for taxable final goods.

Option 2:

Excise duty on taxable goods	= ₹ 9,88,800	(i.e. ₹ 80,00,000 x 12.36%)
Less: CENVAT credit allowed	= ₹ (10,00,000)	
Excess Credit	= ₹ (11,200)	
Add: 6% amount payable on exempted goods	= ₹ 1,20,000	(i.e. ₹ 20,00,000 x 6%)
Net amount payable by GAR -7 challan	= **₹ 1,08,800**	

Option 3:

Excise duty payable on taxable goods	= ₹ 9,88,800
Less: proportionate credit allowed (₹ 10,00,000 x ₹ 80 lacs/₹ 100 lacs)	= ₹ 8,00,000
Net Excise Duty payable by GAR -7 Challan	= **₹ 1,88,800**

Option 2 is beneficial.

(c) M/s. ABC Ltd., a manufacturer of various excisable goods, furnishes you with the following information for the year ended 31st March, 2014. From the under mentioned information, determine whether the company will be entitled SSI exemption under Notification No. 8/2003 dated 01-03-2003 during the financial year 2014-15:

(i) Clearances of finished excisable goods covered under Section 4A of Central Excise Act [Notified abatement 20% RSP of goods ₹ 150 lakhs;

(ii) Value of clearances of inputs as such under Rule 3(5) of Cenvat Credit Rules, 2004 on which Cenvat Credit has been taken ₹ 25 lakhs;

(iii) Value of clearances of excisable goods bearing brand name of foreign company which is assigned in favour of ABC Ltd. ₹ 86 lakhs;

(iv) Value of clearance as licensee of goods carrying the brand name of another person upon full payment of duty ₹ 250 lakhs;

(v) Value of clearance of waste and scrap which were exempt from duty ₹ 30 lakhs;

(vi) Value of clearances of plastic containers for packing of pickles produced by then under brand name of Nilons Pickles. Nilons pickles use these plastic containers ₹ 30 lakhs;

(vii) Clearances of other excisable goods ₹ 134 lakhs. [5]

Solution:

Computation of value of clearances in the financial year 2013-14 (₹ in lakhs):

(i)	Clearances of finished excisable goods covered under Section 4A of Central Excise Act (₹150 lakhs - 20%)	120
(ii)	Value of clearances of inputs as such under Rule 3(5) of Cenvat Credit Rules, 2004 on which Cenvat Credit has been taken. **[WN-1]**	-
(iii)	Value of clearances of excisable goods bearing brand name of foreign company which is assigned in favour of ABC Ltd. **[WN-2]**	86
(iv)	Value of clearance as licensee of goods carrying the brand name of another person upon full payment of duty **[WN-3]**	-
(v)	Value of clearance of waste and scrap which were exempt from duty **[WN-4]**	30
(vi)	Value of clearances of plastic containers packing of pickles produced by then	30

under brand name of Nilons Pickles **[WN-5]**	
(vii) Clearances of other excisable goods	134
Total value of clearances	**400**

Working Note:

(1) As per Circular No. 57/88, dated 27-10-1988 in case inputs on which Cenvat credit has been taken are removed as such, there value shall not be included in value of clearances of ₹400 lakhs. Since the same have not been manufactured by the assessee.

(2) In case if trade mark of foreign company is assigned in favour of assessee, then assessee becomes the owner of such trade mark and exemption in respect of clearances made under such brand name will be available, hence the same shall be included in determination of value of clearances of ₹400 lakhs.

(3) Since the said goods are manufactured in brand name of another person, hence the same are not eligible for exemption and the value of the same shall not be included in determination of ₹400 lakhs.

(4) Clearances of waste and scrap shall be includible in value of clearance for determination of ₹400 lakhs even if the same are exempt from duty.

(5) Clearances of plastic containers bearing the brand name of others is included provided that such plastic containers are meant for use as packing materials by the person whose brand name such goods bear. Hence, clearances of plastic containers bearing the brand name of Nilons Pickles would be included.

Conclusion: Since the value of clearances for home consumption does not exceed ₹400 lakhs in the financial year 2013-14, ABC Ltd. is eligible to claim the benefit of exemption under Notification No. 8/2003 - G.E. dated 01.03.2003 in the financial year 2014-15.

3. Answer all Questions

(a) Gopal Care Ltd. imported a lift from England at an invoice price of ₹17,50,000. The assessee had supplied raw material worth ₹7,50,000 to the supplier for the manufacture of said lift. Due to safety reasons, the lift was not taken to the jetty in the port but was unloaded at the outer anchorage. The charges incurred for such unloading to ₹25,000 and the cost incurred on transport of the lift from outer anchorage to the jetty was ₹50,000. The importer was also required to pay ship demurrage charges ₹10,000. The lift was imported at an actual cost of transport ₹45,000 and insurance charges ₹20,000.

Compute its assessable value. **[5]**

Solution:

The answer is as follows -

	Total	
	₹	₹
FOB value being the invoice price		17,50,000
Add: Raw material supplied by assessee under Rule 10(1)(b) of the Customs Valuation (Determination of Value of Imported Goods)		7,50,000

Rules, 2007		25,00,000
FOB Value		
Add: Transportation under Rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 **[WN-1]**		
Sea Freight	45,000	
Ship demurrage charges	10,000	
Lighterage	25,000	1,30,000
Barge charges		20,000
Add: Actual cost of insurance		26,50,000
CIF Value		26,500
Assessable Value		26,76,500

Working Notes:

(1) The cost of transport of the imported goods includes the ship demurrage charges on charted vessels, lighterage or barge charges.
(2) The landing charges @1% of CIF value relate to loading, unloading and handling charges at port.

OR

Compute the duties payable by a 100% EOU from the following information in respect of excisable goods cleared by it to Domestic Tariff Area on 1-4-2013:

(i) Assessable value under Excise Law = ₹1,20,000 (Assessable Value under Customs Law = ₹2 lakh);
(ii) Basic Customs Duty (net) = 10% ;
(iii) Excise duty on like goods manufactured in India = 12% ;
(iv) Additional duty of customs u/s 3(5) of Customs Tariff Act 1975 on similar goods = 4% ;
(v) Education Cess = 2% and Secondary and Higher Education Cess = 1 %.

Assume that the goods are not liable to VAT in India. The goods have been removed in accordance with the policy and procedures applicable to the EOU, after obtaining requisite permissions. [5]

Solution:

Proviso to section 3(1) of the Central Excise Act, 1944 provides that excise duty leviable on DTA sales by 100% EOU would be equal to aggregate of customs duties leviable on like goods imported into India.

It has been held in *Kumar Arch Tech Pvt. Ltd. v. CCEx. [2013] 290 ELT 372 (Tri.-Del.-LB)* that education cess shall not be added twice. Once the customs duty is determined and education cess is computed on the whole of the customs duty, there is no question of the addition of the education cess. The customs duty (including the education cess thereon) is the final excise duty payable by the assessee - EOU as per proviso to section 3 of the Central Excise Act, 1944. The said section 3 deems excise duty = customs duty, hence, after computation of the customs duty, the second time addition of the education cess need not be made.

The customs duties leviable on like goods imported into India will be computed as follows -

Assessable value	2,00,000.00
Add: Basic customs duty @ 5% (after 50% exemption) [1]	10,000.00
Total for levy of section 3(1) duty	2,10,000.00
Add: Additional duty of customs u/s 3(1) equal to excise duty @ 12% [2] (No EC & SHEC included in excise duty in view of exemption in this regard)	25,200.00
Add: Education cess and SHEC on imported goods @ 3% on [1 + 2] [3]	1,056.00
Total for levy of additional duty of customs u/s 3(5)	2,36,256.00
Additional duty of customs u/s 3(5) @ 4% (since goods are not liable to VAT in India, therefore, this duty will not be exempt) [4]	9,450.24
Excise duty under proviso to section 3(1) = Total Customs duties (1+2+3+4)	45,706.24

(b) Mr. A, a manufacturer, purchased raw material for ₹1,04,000 (inclusive of 4% VAT) and capital goods for ₹5,62,500 (inclusive of 12.5% VAT). The manufacturing and other expenses (excluding depreciation) are ₹1,17,000. He sells the resultant product at 80% above cost (VAT on sales is 20%). The capital goods are to be depreciated at 25% straight line. Ascertain the VAT payable in cash as per Gross Product Variant. [5]

Solution:

Computation of VAT liability *(amounts in ₹)*:

Raw material (net of VAT)	[WN-1]	1,00,000
Depreciation on capital goods	[WN-2]	1,40,625
Manufacturing and other expenses		1,17,000
Total cost		**3,57,625**
Add: 80% mark-up on cost		2,86,100
Sale price		**6,43,725**
VAT on sales (20% of ₹ 6,43,725)		1,28,745
Less: Input tax credit on raw material (₹ 1,04,000 × 4 ÷104)		4,000
VAT payable in cash		**1,24,745**

Working Notes:

(1) VAT paid on raw material is available as credit, hence cost of raw material = ₹1,04,000 × 100 ÷104 = ₹1,00,000.

(2) No credit is allowed of VAT paid on capital goods, hence depreciation = 25% of ₹5,62,500 = ₹1,40,625.

(c) Mr. Devesh Verma, an Indian resident, aged 52 years, returned to India after visiting England on 31.10.2013. He had been to England on 10.10.2013. On his way back to India he brought following goods with him –

(i) His personal effect like clothes etc. valued at ₹ 40,000.

(ii) 1 litre of Wine worth ₹ 1,000.

(iii) A video cassette recorder worth ₹ 11,000

(iv) A microwave oven worth ₹ 20,000.

What is the customs duty payable? [5]

Solution:

As per Rule 3 of the baggage Rules, 1998 passengers above 10 years of age and returning after stay abroad of more than 3 days are eligible for the following general free allowance :

(i) Used personal effect of any amount;
(ii) Articles other than those mentioned in Annex-I, up to a value of ₹ 35,000, if these are carried on the person or in the accompanied baggage of the passenger;

Therefore, in the instant case, the total customs duty payable by the passenger will be as follows:

Articles	**Duty**
1. Used personal effects	No Duty
2. Wine upto 1 Ltr. can be accommodated in General Free Allowance	₹ 1,000
3. Video cassette recorder is dutiable	₹ 11,000
4. A microwave oven	₹ 20,000
Total Dutiable goods imported (that can be accommodated in General Free Allowance)	₹ 32,000
Total General Free allowance (As per rule 3 of the Baggage Rules)	₹ 35,000
Balance Goods on which duty is payable	NIL
Duty payable	NIL

4. Answer any two Question [2x5=10]

(a) X provides the following information for the quarter ending March 31, 2014 -

	₹
Sale of space for advertisement in Times of India	**17,80,000**
Sale of space for advertisement in billboards outside different cricket stadium in Maharashtra	**62,90,000**
Sale of space for advertisement in FM channels	**18,50,500**

Service tax is charged extra (wherever applicable). Invoices are issued within 10 days of completion of service. Payment is generally received after 4 months. Find out the tax liability for the quarter ending March 31, 2014. [5]

Solution:

Computation of Service Tax Liability

	₹
Sale of space for advertisement in print media (a negative list service, not chargeable to service tax)	-
Sale of space for advertisement in billboards (a negative list service, not	

chargeable to service tax) Sale of space for advertisement in FM channels	- 18,50,500
Total	18,50,500
Service tax @12.36%	2,28,722

(b) Discuss whether the following services are chargeable to service tax -

(i) Marketing service provided by Punjab Government to a business entity.
(ii) Development of course contents for Delhi University against a charge.
(iii) Service provided as agents for inland waterways.
(iv) Sale of time for broadcasting on Radio Mirchi. [5]

Solution:

(i) Marketing service - Marketing service is a support service. It is provided by Government of Punjab to a business entity. It is not in negative list and chargeable to tax.

(ii) Development of course contents - It is a service provided to an educational institute in respect of education which is not chargeable to service tax. Consequently, service tax is not applicable. It is given in Mega Exemption Notification.

(iii) Services provided as agents for inland waterways - These services *are* not covered in the negative list. These are in the nature of services used for providing the negative list entry service of transport of goods on inland waterways and, consequently, covered by service tax.

(iv) Broadcasting - Sale of space or time for advertisement to be broadcast on radio or TV, is not in the negative list and chargeable to tax.

(c) Find out the amount of service tax in the following cases -

Case 1 - Service provider is X Ltd. which is based in Jammu and Kashmir. Services are, however, provided in the State of Karnataka (amount of invoice being ₹8,50,000).

Case 2 - Service is provided by Y Ltd. to UNO in New Delhi (amount of invoice being ₹30,00,000).

Case 3 - Service is provided by Z Ltd. to a unit in a Special Economic Zone (amount of invoice being ₹4,00,000).

Case 4 - Service is provided by A Ltd. A Ltd was incorporated in 2004. Since then its annual turnover/gross receipt is not more than ₹6,00,000 (amount of invoice being ₹3,50,000). [5]

Solution:

Point wise answer -

Case 1 - Service provided in the State of Karnataka is chargeable to tax, even if it is provided by a company having its registered office in Jammu and Kashmir. Service tax liability is ₹1,05,060 (i.e., 12.36% of ₹8,50,000).

Case 2 - Service provided to UNO is not chargeable to service tax.

Case 3 - Service provided to a unit in Special Economic Zone is not subject to service tax. However, the unit should be approved by the Development Commissioner/Board of approvals and the unit should maintain proper account of receipt and utilization of taxable services.

Case 4 - A Ltd. is a small service provider (annual gross receipt being less than ₹ 10,00,000). It is not chargeable to service tax.

Section B
(Answer all the Questions)

5. Answer any three Questions [3x5=15]

Answer the following with the help of decided case laws:

(a) Whether the amount received by the employee on cessation of employment with his employer will be exempted from tax under section 17(3)(i) of the Income-tax Act? [5]

Solution:

CIT vs. Shyam Sundar Chhaparia (2008) 305 ITR 181 (MP)

Relevant Section: 17(3)

The assessee after his retirement was granted an amount of ₹ 27,50,000 as a special compensation in lieu of an agreement for refraining from taking up any employment activities or consultation which would be prejudicial to the business/interest of his employer. The assessee claimed that it was a non-taxable receipt being the compensation for not taking up any competitive employment under a restrictive covenant. The Assessing Officer did not accept the claim of the assessee on the grounds that (i) the decision of the Supreme Court relied on by the assessee was that of an agency whereas the case of the assessee was that of one who was in service, and (ii) section 17(3)(i) was squarely applicable to the case of the assessee. The Commissioner (Appeals) held that as there was restriction for the assessee not to work in business of any type and anywhere, the compensation was received in lieu of loss of future work and was a capital receipt. The Tribunal held in favour of the assessee.

The High Court held that the assessee retired from service on attaining the age of superannuation and hence there was severance of the master-servant relationship and there was no material to suggest that there existed a service contract providing therein a restrictive covenant preventing thereby the assessee from taking up any employment or activities on consultation which would be prejudicial to the business/interest of his employer. Therefore, it could not be termed as profit in lieu of salary because it was not compensation due to or received by the assessee from his employer or partner- employer at or in connection with the termination of his employment. Thus, the Commissioner (Appeals) and the Tribunal rightly held that the amount could not be added for the purpose of income-tax.

(b) In respect of a co-owned property, would the threshold limit mentioned in section 194-I for non-deduction of tax at source apply for each co-owner separately or is it to be considered for the complete amount of rent paid to attract liability to deduct tax at source? [5]

Solution:

Relevant Judicial Case: CIT v. Senior Manager, SBI (2012) 206 Taxman 607 (All.)

In the present case, the assessee was paying rent for the leased premises occupied. The said premise was co-owned and the share of each co-owner was definite and ascertainable. Also, the assessee made payment to each co-owner separately by way of cheque. The assessee did not deduct tax at source under section 194-I stipulating that the payment made to each co-owner was less than the minimum threshold mentioned in the said section and therefore, no liability to deduct tax at source on the rent so paid is attracted, though the whole rent taken together exceeds the said threshold limit.

The Revenue contended that since the premises let out to the assessee had not been divided/partitioned by metes and bounds, it cannot be said that any specified portion let out to the assessee was owned by a particular person. Therefore, the assessee had to deduct tax at source on the rent so paid assessing the co-owners as association of persons and the threshold limit mentioned in section 194-I was to be seen in respect of the entire rent amount. Hence, the Revenue was of the view that assessee was liable to deduct tax on the payment of rent and interest would be leviable on failure to deduct such tax under section 201.

Considering the above mentioned facts, the Allahabad High Court held that since the share of each co-owner is definite and ascertainable, they cannot be assessed as an association of persons as per section 26. The income from such property is to be assessed in the individual hands of the co-owners. Therefore, it is not necessary that there should be a physical division of the property by metes and bounds to attract the provisions of section 26.

Therefore, in the present case, since the payment of rent is made to each co-owner by way of separate cheque and their share is definite, the threshold limit mentioned in section 194-I has to be seen separately for each co-owner, Hence, the assessee would not be liable to deduct tax on the same and no interest under section 201 is leviable.

(c) Whether for the purpose of Section 54EC of Income-tax Act, 1961, the period of investment of six months should be reckoned after the date of transfer or from the end of the month in which transfer of capital asset took place? [5]

Solution:

Facts

Assessee in individual capacity has sold a flat situated at Lotus Co-operative Society, Usmanpura Ahmedabad for a consideration of ₹64 lacs. The appellant had computed the Capital Gain at Nil and declared the same as per the Return of Income. A working of the Capital Gain was admittedly furnished along with the return of income. The basis for "Nil" capital gain was that the gain was stated to be at ₹56,65,767/- however the assessee had made the investment in NHAI bond of ₹45 lacs and claimed the deduction u/s. 54EC of IT Act. The assessee has also made an investment in "capital gain account scheme" of ₹12 lacs, not in controversy.

Contention of the Revenue

The AO has referred the provisions of Section 54EC of IT Act and thereafter discussed that a sale document was registered on 10th of June, 2008; hence, the assessee was required to purchase the NHAI bond within six months from the said date of registration, i.e., 10th June, 2008. However, the assessee had purchased the NHAI bond on 17th of December, 2008, alleged by the AO. A show cause was issued as to why the claim of exemption be not disallowed in respect of the investment made in NHAI bond in the light of the provisions of Section 54EC of IT Act being not invested within six months.

Contention of the Assessee

The assessee has informed that the sale consideration was deposited in a capital gain account out of which the investment was made in the specified asset, i.e., NHAI bond to claim the benefit of the provisions u/s.54EC of IT Act. The assessee has also explained to the AO that the last date of expiry of six months from the date of transfer of the Long Term Capital Asset was 10th of December, 2008 however the assessee had allegedly tendered a cheque on 8th December, 2008 vide an application no.157602 to the bank. According to assessee since the application for the purchase of those bonds was tendered in the bank on 8th December, 2008, which was within the period of six months from the date of the transfer of the Long Term Capital Asset, therefore, the assessee was eligible for the deduction u/s.54EC. According to the assessee the cheque was cleared on 17th of December, 2008.

Alternatively the assessee's contention was that up to the end of the month of December 2008 the said investment was eligible for the deduction. The AO was not convinced and held that the assessee was required to invest the capital gain in the specified asset within a period of six months from the date of the transfer and that requirement was not complied with by the assessee; hence, not eligible for the deduction u/s. 54EC of IT Act. Accordingly an addition of ₹45 lacs was made in the hands of the assessee.

ITAT Judgment and discussion

The subtle question is that whether the word "month" refers in this section a period of 30 days or it refers to the months only. Section 54EC, if we read again prescribes that an investment is required to be made within a period of six months. Whether the intention of the legislator was to compute six calendar months or to compute 180 days. To resolve this controversy, we are guided by a decision of Hon'ble Allahabad High Court pronounced in the case of Munnalal Shri Kishan Mainpuri, 167 ITR 415 where answering the dispute in respect of law of limitation the Hon'ble Court has clearly held that there is nothing in the context of section 256(2) to warrant the conclusion that the word 'month' in it refers to a period of 30 days, therefore, refers to six months in Section 256(2) is to six calendar months and not 180 days. Rather, in this cited decision an interesting observation of the court was that while comparing the precedents the contextual setting is to be examined and if entirely distinct and different then do not warrant to apply universally. Even in the case of Tamal Lahiri Vs. Kumar P. N. Tagore, 1978 AIR 18 11/1979 SCC (1) 75, it was opined while interpreting Section 533 of Bangalore Municipal Act, 1932 that the expression six months in the said section means six calendar months and not 180 days. A copy of the judgment is placed before us. The purpose of mentioning this plank of argument is that after scrutinizing few more Sections of The Act it is evident that on some occasion the Legislature had not used the terms "Month" but used the number of days to prescribe a specific period. For example in Section 254(2A) First Proviso it is prescribed that the Tribunal may pass an order granting stay but for a period not exceeding one hundred and eighty days. This is an important distinction made in this statute while subscribing the limitation/ period. This distinction thus resolves the present controversy by itself.

So the logical conclusion is that in the absence of any definition of the word ' month' in The Act, the definition of General Clauses Act 1897 shall be applicable and by doing so there is no attempt on our part to interpret the language of Sec. 54EC , what to say a liberal or literal interpretation. We hereby hold that the Legislature has in its wisdom has chosen to use the word 'month'. This was done by keeping in mind the definition as prescribed in General Clauses Act 1857. Therefore we have also read the word 'month' within the recognized ways of interpretation. Rather we have also seen both; the conventional as well as lexicon meaning. Here there in no attempt to supply casus omissus but replicated as per the language used.

Investment had been made in the month of December, 2008. However the present case there is no dispute about the investment which had actually been made by the assessee. The said investment, alleged to be few days late from the date of transfer in the month of June, 2008. It is not the case of the Revenue that the appellant had altogether fudged the dates. Once the purpose of the introduction of the section was served by making the investment in the specified assets then that purpose has to be kept in mind while granting incentive.

We hereby hold that the investment in question qualifies for the deduction U/s 54EC. Resultantly assessee's grounds are hereby allowed. The question referred is answered in favour of the assessee.

(d) Can non-cumulative preference shares carrying a fixed rate of dividend with a fixed holding period be said to be equated with bonds or debentures so as to deny the indexation benefit while computing capital gain on its transfer, applying the third proviso to section 48 of Income-tax Act? [5]

Solution:

CIT vs. Enam Securities P. Ltd. (2012) 345 ITR 64 (Bom.)

As per the third proviso to section 48, benefit of indexation is not available on transfer of a long-term capital asset, being bond or debenture other than capital indexed bonds issued by the government.

In the present case, the assessee had subscribed to non-cumulative preference shares of a private limited company carrying dividend@4% p.a. and redeemable after the expiry of 10 years from the date of allotment. On the redemption of a part of the aforesaid preference shares at par, the assessee computed the capital loss on the same after claiming the benefit of indexation. However, the Assessing Officer claimed that the above mentioned 4% non-cumulative redeemable preference shares have a fixed holding period and a fixed rate of return which are the principal characteristics of a bond and on this basis denied the benefit of cost indexation to the assessee, applying the third proviso to section 48.

On this issue, the Bombay High Court, following the judgement of the Supreme Court in Anarkali Sarabhai vs. CIT (1997) 224 ITR 422, observed that the redemption of preference shares by a company falls within the ambit of section 2(47) and amounts to transfer so as to attract capital gain tax.

The Court held that, since shares, debentures and bonds are not defined in the Income-tax Act, 1961, the terms have to be understood from the meaning given in the Companies Act, 1956. As per the Companies Act, 1956, the share capital of a company limited by shares can be of two kinds only, namely, equity share capital and preference share capital. Further, as per section 2(12) of the Companies Act, 1956, debenture is defined to include debenture stock, bonds and any other securities of a company, whether or not they constitute a charge on the assets of the company. A debenture is a certificate of a loan or a bond evidencing

the fact that the company is liable to pay an amount specified with interest. Though the amount which is raised by a company through debentures becomes a part of its capital structure, it does not become part of share capital. Hence, the 4% non-cumulative preference shares cannot be said to be in the nature of bonds or debentures.

Therefore, the indexation benefit on the transfer of long-term capital asset, being 4% non-cumulative preference shares cannot be denied applying the provisions of the third proviso to section 48.

6. (i) X Ltd. is engaged in the business of manufacture of garments.

	₹
Sale proceeds of goods (domestic sale)	**23,23,900**
Sale proceeds of goods (export sale)	**4,76,100**
Amount withdrawn from general reserve (reserve was created in 1996-97 by debiting P&L A/c)	**2,00,000**
Amount withdrawn from revaluation reserve	**1,50,000**
Total	**31,50,000**
Less: Expenses	
Depreciation (normal)	**6,16,000**
Depreciation (extra depreciation because of revaluation)	**2,70,000**
Salary and wages	**2,20,000**
Income- tax	**3,50,000**
Outstanding customs duty (not paid as yet)	**17,500**
Proposed dividend	**60,000**
Consultation fees paid to a tax expert	**21,000**
Other expenses	**1,39,000**
Net Profit	**14,56,500**

For tax purposes the company wants to claim the following:

- **Deduction under section 80- IB (30 per cent of ₹14,56,500).**
- **Depreciation under section 32 (₹5,36,000)**

The company wants to set off the following losses/allowances:

	For tax purposes ₹	For accounting purposes ₹
Brought forward loss of 2008 - 09	**14,70,000**	**4,00,000**
Unabsorbed depreciation	**—**	**70,000**

Compute the net income and tax liability of X Ltd. for the assessment year 2014-15 assuming that X Ltd. has a (deemed) long-term capital gain of ₹60,000 under proviso (i) to section 54D(2) which is not credited in Profit and Loss Account. [9]

(ii) If it is given that A receives ₹ 1,05,000 on account of winnings from lotteries then what will be the gross amount of such winnings? [1]

Solution to 6(i):

Computation of tax liability of X Ltd.

	₹

Net profit as per P&L a/c	14,56,500
Add:	
Excess depreciation [i.e., ₹ 6,16,000 + ₹ 2,70,000 — ₹ 5,36,000]	3,50,000
Income-tax	3,50,000
Customs duty which is not paid	17,500
Proposed dividend	60,000
Total	22,34,000
Less: Amount withdrawn from reserve (i.e., ₹2,00,000 + ₹1,50,000)	3,50,000
Business income	18,84,000
Less: Unabsorbed business loss	14,70,000
Business income	4,14,000
Long-term capital gain	60,000
Gross total income	4,74,000
Less: Deduction under section 80 – IB [30% of ₹4,14,000]	1,24,200
Net income (round off)	3,49,800
Tax liability (under normal provisions) [20% of ₹60,000 + 30% of ₹2,89,800, plus 3% of tax as cess]	1,01,910

Computation of Book Profit for the purposes of section 115JB & Tax Liabilities thereon -

Book profit	
Net profit	14,56,500
Add:	
Depreciation [i.e., ₹6,16,000 + ₹2,70,000]	8,86,000
Income tax	3,50,000
Proposed dividend	60,000
Less:	
Amount withdrawn from general reserve	(-) 2,00,000
Unabsorbed depreciation	(-) 70,000
Depreciation (normal)	(-) 6,16,000
Amount withdrawn from revaluation reserve to the extent it does not exceed extra depreciation because of revaluation	(-) 1,50,000
Book profit	17,16,500
Tax liability(19.055% of book profit)	3,27,080

X Ltd. will pay ₹3,27,080 as tax for the assessment year 2014-15 as per section 115JB. Tax credit is however, available in respect of excess tax (i.e., ₹ 2,25,170) under section 115JB.

Solution to 6(ii):

The net receipt shall be converted into gross amount as follows:

$$\frac{\text{Net amount}}{[1-(0.30)]}$$

$$= \frac{₹\ 1{,}05{,}000}{[1-(0.30)]}$$

= ₹ 1,50,000 will be the gross amount on account of winnings from lotteries.

7. Answer any two Questions [2x5=10]

(a) X, Y and Z are members of X (HUF). They are also partners of XYZ & Co., a partnership firm. X (HUF) deposits ₹ 90,000 in XYZ & Co. (interest rate being 20 per cent). On April 1, 2013

there is a partial partition of X(HUF) and after partial partition, the deposit of ₹90,000 with the firm is divided between the three members- X, Y and Z equally. In other words, from April 1, 2013, deposit of ₹90,000 is transferred in the individual names of X, Y and Z and the firm pays interest on the deposit to the individual partners. Discuss whether interest on deposit is covered by section 40(b) and interest will be partly disallowed. [5]

Solution:

A reading of section 171(9) of the income-tax Act clearly shows that a partial partition effected in a HUF after December 31, 1978 is held to be null and void and clause (b) of sub-section (9) of section 171 provides that the joint family shall continue to be assessed under the Act as if no partial partition has taken place.

It is not possible to accept the submission that when the partial partition had been declared null and void, it should be limited only for the purpose of assessment of the joint family and it would not extend to other purposes like claiming deduction or grant of exemption which is available under other provisions of the Act. Once the partial partition is declared to be null and void, it is null and void for the purposes of the Act and the interest paid by the firm, though to the erstwhile members of the joint family, should be treated as if the interest is paid to the joint family.

Therefore, the interest payments made by the firm, would be treated as if the firm had made the interest payments to the joint family and such payments are not hit by section 40(b) – CIT v. B.S. Sundaravadivel Mudaliar & Cons [2003] 128 Taxman 74 (Mad.).

(b) During the accounting period ended on March 31st, 2014, a charitable trust derived — (i) income from property held for charitable purposes : ₹ 3,00,000 (₹ 1,50,000 received in cash and the remaining balance of ₹1,50,000 is to be received in the year 2015-16), (ii) voluntary contribution : ₹ 2,00,000 with no specific direction, and (iii) ₹20,00,000 with specific direction that it shall form corpus of the trust.

During the previous year 2013-14, the trust spends only ₹ 1,40,000 for charitable purposes. Determine its taxable income on the assumption that the trust has obtained extension of time for applying the unrealised income of ₹ 1,50,000 in the year of receipt, i.e., 2015-16 whereas it actually spends ₹ 30,000 in the year 2015-16 and ₹ 40,000 in the year 2016-17. [5]

Solution:

Taxable income of the trust will be computed as under:

For the assessment year 2014-15 (previous year 2013-14)

	₹
Income from property held under trust for charitable purposes Voluntary contributions with no specific direction	3,00,000 2,00,000
Total Income Less: 15% set apart for future	5,00,000 75,000
Balance Less: Amount spent during the previous year	4,25,000 1,40,000
Shortfall Less: Amount not realised during the previous year	2,85,000 1,50,000
Taxable income	1,35,000

For the assessment year 2017-18 (previous year 2016-17,i.e., the year next following previous year in which the unrealised income of the previous year 2013-14 is received):

	₹	₹
Income received during the previous year 2015-16 Less: Amount spend during ➢ previous year 2015- 2016 ➢ previous year 2016 -2017	 30,000 40,000	1,50,000 70,000
Taxbale income		80,000

Note: Voluntary contributions received with specific direction that they shall form corpus of the trust are not treated as income of the trust.

(c) Sweta Ltd. is one hundred per cent subsidiary company of Hema. Ltd. Sweta Ltd. owns Plants A and B (depreciation rate 30 per cent, depreciated value of the block ₹3,00,000 on April 1, 2013). Plant B(old) was purchased and put to use on November 10,2011 (cost being ₹70,000). Plant B is transferred by Sweta Ltd. to Hema Ltd. on December 14, 2013 for (i) ₹8,000, (ii) ₹2,70,000, (iii) ₹4,10,000. It is put to use by Hema Ltd. on the same day. Hema Ltd. owns Plant C on April 1, 2013 (depreciation rate 30 per cent, depreciated value; ₹60,000). Find out the tax consequences if Hema Ltd. is an Indian company or if Hema Ltd. is a foreign company. [5]

Solution:

(₹ in '000)

Sweta. Ltd.	**If Hema Ltd. is an Indian company**			**If Hema Ltd. is a foreign company**		
	Situation (i)	Situation (ii)	Situation (iii)	Situation (i)	Situation (ii)	Situation (iii)
Depreciated value of Plants A and B on April 1, 2013	300	300	300	300	300	300
Less : Money payable in respect of Plant B transferred to Hema Ltd. [see Note 1]	8	270	410	8	270	410
Written down value of the block on March 31, 2014	292	30	Nil	292	30	Nil
Depreciation for the block for the previous year 2013-14	87.6	9	Nil	87.6	9	Nil
Capital gains in case of Sweta Ltd.						
Sale proceeds of Plant B	8	270	410	8	270	410
Less : Cost of acquisition as per section 50	NA	NA	300	NA	NA	300
Short-term capital gain [*exempt by virtue of section	NA	NA	Nil*	NA	NA	110

47(v)] [see Note 2]						
Hema Ltd.						
Depreciated value of the block on April 1, 2013	60	60	60	60	60	60
Add : Actual cost of Plant B acquired from Sweta Ltd. (see Note 3)	41.65	41.65	41.65	8	270	410
Written down value of the block on March 31, 2014	101.65	101.65	101.65	68	330	470
Depreciation - on Plant B @ ½ of 30%	6.25	6.25	6.25	1.2	40.5	61.5
- other asset @ 30%	18	18	18	18	18	18

Notes –

1. If the transferee- company, i.e., Hema Ltd. is an Indian Company, then "actual Cost" shall be ₹41,650 [as is shown in Note 3]. However, in the hands of transferor, i.e., Sweta Ltd. money payable by Hema Ltd. shall be deducted from the block of asset (it is incorrect to deduct ₹41,650). Consequently, in Situations (ii) and (iii), quantum of depreciation available to Sweta Ltd. will be quite low. It is advisable that in such transactions the sale consideration should be fixed keeping in view, the effect of it on the quantum of depreciation available in future.
2. In situations (i) and (ii), section 50 is not applicable.
3. Actual cost of plant B in the hands of Hema Ltd, if it is an Indian company.

	₹
Actual cost of plant B in the hands of Sweta Ltd. on November 10, 2011 Less: Depreciation for the previous year 2011 – 12 (1/2 of 30% of ₹ 70,000)	70,000 10,500
Balance on April 1, 2012 Less: Depreciation for the previous year 2012- 2013	59,500 17,850
Balance on April 1, 2013	41,650

8. Answer any one Question [1x5]

(a) Mr. Umesh Malhotra, a resident individual, furnishes the following information, in respect of the assets held by him on 31.03.2014. Compute the net wealth of Mr. Umesh Malhotra, by explaining the reasons, for inclusion/exclusion of the following items in the computation of net wealth.

(i) Mr. Umesh Malhotra gifted jewellery worth ₹35 Lakhs, to his wife. The fair market value of such jewellery, as on the valuation date was ₹60 Lakhs.

(ii) A flat in Pune was purchased in 1998, under installment scheme, for ₹15 Lakhs. The flat is used by the assessee for his own residence. The fair market value of this self-occupied property was ₹30 Lakhs on the valuation date, and installment of ₹10 Lakh was also outstanding.

(iii) The assessee is a medical practitioner and possesses medical instruments worth ₹9 Lakhs, which are used by him in his profession.

(iv) The assessee purchased a land in Nagpur, in July 2010, in the name of his minor son (who was suffering from a disability specified under Section 80U of the Income Tax Act, 1961), for ₹6 Lakhs.

(v) The house, situated in Gandhinagar, was shown to be of value of ₹70 Lakhs, in the wealth-tax return for the A.Y 2013-14. However, this property was sold on 26.03.2014 for ₹75 Lakhs. The sale deed in respect of the transfer of property in Gandhinagar, was executed in 10.05.2014. [5]

Solution:

Computation of net wealth of Mr. Umesh Malhotra as on valuation date 31.03.2014

SL. NO	Assets held by the assessee on the valuation date	Reason for inclusion/ exclusion of assets from the net wealth of the assessee	Amount (₹)
1.	Jewellery held by assessee's wife.	Under Section 4(1)(a)(i) of the Wealth Tax Act, 1957, read with Rule 18 of Schedule III, the fair market value of the jewellery gifted to spouse, as on the valuation date will be included in the net wealth of the assessee.	60,00,000
2.	Flat located in Pune.	The flat, located in Pune, is used by the assessee for his own residence, and is an exempt asset, under the provisions of the Wealth Tax Act, 1957. Under Section 5(vi) of the Wealth Tax Act, 1957, the liability of outstanding installment is not deductible.	Nil
3.	Medical instruments held by the assessee and used in his profession.	Medical instruments, held by the assessee, which are used by him in his profession, do not fall within the definition of "asset" under Section 2(ea) of the Wealth Tax Act, 1957.	Nil
4.	Land situated in Nagpur, in the name of the assessee's son.	Urban Land is an "asset" under Section 2(ea)(v) of the Wealth Tax Act, 1957. However, the land situated in Nagpur, is held in the name of the assessee's son, who is suffering from disability under Section 80U of the Income Tax Act, 1961. Therefore, the clubbing provisions of Section 4(1)(a)(ii) of the Wealth Tax Act, 1957, shall not apply in the given case.	Nil
5.	House situated in	The house situated in Gandhinagar, was not	Nil

	Gandhinagar.	held by the assessee, on the valuation date. Though the sale deed was executed on 10.05.2014, the property is not an asset, in the hands of the assessee. It will be treated as an asset in the hands of the beneficial owner, since the ownership in property passes on to the buyer, in the event of sale of the property. The sale deed only confirms the acts of the parties.	
Net Wealth of the Assessee			**60,00,000**

(b) X is aged 35 years. His father has settled a house property in trust giving whole life interest therein to X. The income from the property for the years 2010-11 to 2013-14 was ₹70,000, ₹81,000, ₹82,000 and ₹86,000 respectively. The expenses incurred each year were ₹3,000, ₹17,000, ₹500 and ₹18,000 respectively. Calculate the value of life interest of X in the property so settled on the valuation date March 31, 2014 on the assumption that the value of house as per Schedule III is (i) ₹15 lakh, or (ii) ₹6 lakh. [Multiplier at the age of 35 is 10.804] [5]

Solution:

Situation (i) - X has a life interest in the property which has been settled by his father. The value of the life interest has to be determined under rule 17 of Schedule III to Wealth-tax Act. The multiplier at the age of 35 is given as 10.804. The value of life interest, therefore, comes to ₹8,51,895 (i.e., ₹78,850 x 10.804) (see Note). The value of life interest of X in the house will be taken as ₹8,51,895 (as it is less than ₹15,00,000)

Note: The average annual income from one property for the years 2011-12 to 2013-14 is determined as under:

Years	2011-12 ₹	2012-13 ₹	2013-14 ₹	Total ₹	Average ₹
Income (i)	81,000	82,000	86,000	2,49,000	83,000
Expenses	17,000	500	18,000	35,500	11,833
Less: Expenses (₹11,833 or 5% of ₹83,000 whichever is less) (ii)					4,150
Average annual income [(i) - (ii)]					78,850

Situation (ii) - The value of life interest is ₹8,51,895. However, value of the house in respect of which X has interest is ₹6,00,000. Therefore, value of life interest shall be taken as equal to ₹6,00,000 (it cannot be more than value of the house).

9. Answer any two Questions [2x5=10]

(a) Explain the modes of doing business through tax havens. [5]

Solution:

The modes of doing business through tax havens broadly, are as under -

(i) Personal Residency: Where wealthy individuals reallocate themselves from high tax zones to low tax zones.

(ii) Asset Holding: It involves utilizing a trust or a company or a trust owing a company. Usually in this case, an entity from high tax jurisdiction transfers its assets to a trust in a low tax jurisdiction and settles his share in the trust on himself and later to his descendents without going through the vagaries of probate or inheritance tax.

(iii) Business Activity: Many corporate entities do not require locational or factor leverage to establish their business entities. Simply by transferring activities to low tax jurisdiction, they can earn 'margin' even though they are not performing any financial activity. They change their tax jurisdictions and through 'rein voicing' process they earn profit via investment in high tax jurisdictions. E.g. Reinsurance companies.

(iv) Financial Intermediaries: The business activities are done in tax havens through financial intermediaries like mutual funds, banking, life insurance, pension funds, etc. The funds are deposited with such intermediaries located in tax havens (often known as "offshore funds"), who, in turn, invest in business activities in such tax haven and earn income therefrom. This strategy doesn't avoid tax in home country of the investor, but helps him to earn income from opportunities across the world, without bearing any double/additional burden of tax.

(b) Retails India Ltd. is an Indian company. The following incomes are noted from its books of account:
Income from a business in India — ₹ 7,60,000

Income from a business in a foreign country with whom India has ADT agreement — ₹ 4,32,000

According to the ADT agreement, ₹4,32,000 is taxable in India. However, it can also be taxed in the foreign country @ 11.85% which can be set off against Indian tax liability. Find out the Indian tax liability. [5]

Solution:

Computation of Indian Tax liability of Retails India Ltd. (amounts in ₹) –

Income from a business in a foreign country with whom Indian has ADT agreement	4,32,000
Income from business in India	7,60,000
Total Income	11,92,000
Total tax payable in India (11,92,000 × 30.9%)	3,68,328
Less: Tax paid in foreign country @11.85% of ₹4,32,000 (as per ADT agreement)	51,192
Net Indian tax liability (rounded off to nearest ₹10)	3,17,140

(c) Discuss the taxability of the following incomes in case of a foreign company, assuming that the Indian subsidiary has no authority to enter into or conclude contracts on behalf of the foreign company:

(i) Income derived from back office operations performed by its Indian subsidiary.

(ii) Income from providing stewardship services to its Indian subsidiary involving briefing of the staff of the Indian company to ensure that the output meets the requirements of foreign company. [5]

Solution:

The following case-law discusses the two issues -

(i) The Supreme Court has, in DIT (International Taxation) v. Morgan Stanley and Co. Inc. [2007] 292 ITR 416 (SC), held that back office operations and stewardship services are not taxable as these activities do not fall under the scope of "permanent establishment" of the Double Taxation Avoidance Agreement (DTAA).

Back Office operations performed by an Indian subsidiary company for its foreign holding company would not be considered as a permanent establishment in India, since the Indian subsidiary company has no authority to enter into or conclude contracts on behalf of the foreign company. Therefore, income arising from back office operations performed by an Indian company for the foreign company cannot be taxed in India in the hands of the foreign company.

(ii) Stewardship services involving briefing of the staff of the Indian Company was performed by the foreign company to ensure that the output meets the requirements of the foreign company. Through these activities, the foreign company was merely protecting its own interests in the competitive world by ensuring the quality and confidentiality of the services of the Indian Company.

Though as per Article 5(2)(1) of the DTAA, furnishing of services within the contracting state (India, in this case) by an enterprise through its employees or other personnel can constitute a permanent establishment, however, in this case, the stewards are not involved in the day to day management or in any specific services to be undertaken by the Indian subsidiary company. Accordingly, these activities do not fall under the definition of ''permanent establishment' of the DTAA.