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) The following are the particulars of income of Mr. P for the previous year 2014-15:

Particulars	₹
(a) Rent from a property in Delhi received in USA	**80,000**
(b) Income from a business in USA controlled from Delhi	**1,20,000**
(c) Income from a business in Bangalore controlled from USA	**1,80,000**
(d) Rent from a property in USA received there but subsequently remitted to India	**60,000**
(e) Interest from deposits with an Indian company received in USA	**20,000**
(f) Profits for the year 2013-14 of a business in USA remitted to India during the previous year 2014-15 (Not taxed earlier)	**75,000**
(g) Gift received from his parents.	**45,000**

Compute his income for the assessment year 2015 –16 if he is:

(i) Resident and ordinarily resident in India,
(ii) Not ordinarily resident in India,
(iii) Non-resident in India. **[6]**

Solution:

Particulars	Resident and ordinarily resident	Not Ordinarily resident	Non-Resident
(1) Income earned/deemed to a accrue/arise in India			
Rent from property in Delhi	80,000	80,000	80,000
Income from business in Bangalore	1,80,000	1,80,000	1,80,000
Interest from Indian company	20,000	20,000	20,000

(2) Income earned and received outside India, form a business controlled from India Income from business in U. S. A.	1,20,000	1,20,000	-
(3) Income earned and received outside India other than (2) Rent from property in U. S. A	60,000		
	4,60,000	4,00,000	2,80,000

1. Profits of 2013-14 are not income of the previous year 2014-15 and hence cannot be included in the income for assessment year 2015-16.
2. Gifts received are capital receipts and are not regarded as income.

(1)(b) Tarun is employed with ABC Ltd. on a monthly salary of ₹25,000 per month. The company provides him with the following benefits:

- **I. A company owned accommodation is provided to him in Delhi.**
- **II. The company has given him a housing loan of ₹5,00,000 on which it charges interest @6% per annum. The entire loan is still outstanding. (Assume the interest charged by SBI is 10% p.a.)**
- **III. The company gave him a gift worth ₹15,900 on his 50th birthday on 21.10.2014.**
- **IV. He is allowed to use the video camera belonging to the company. The company had purchased this camera for ₹60,000 on 1.5.2010. This camera was sold to him on 1.8.2014 for ₹30,000**
- **V. The company had purchased a car on 16.7.2011 for ₹2,50,000. This car is sold to Tarun on 14.7.2014 for ₹80,000. The car was not being used by Tarun.**
- **VI. The company pays the telephone bills of ₹24,000 for the telephone installed at the residence of Tarun.**

Compute the Gross income from salary of Tarun for the assessment year 2015-16. [8]

Solution:

	₹	₹
Salary (₹25,000 × 12)		3,00,000
Value of accommodation (15% of salary)		45,000
Value for housing loan (4% of ₹5,00,000)		20,000
Gift in kind on birthday (₹ 15,900 - 5,000)		10,900
Value for use of video camera for 4 months $\left(60,000 \times \frac{10}{100} \times \frac{4}{12}\right)$		2,000
Benefit of sale of camera		
W.D.V. on basis of straight line method (₹60,000 - 18,000 depreciation for 3 completed years)	42,000	
Lew: Amount recovered	30,000	12,000
Benefit on sale of car W.D.V. (see note)	1,60,000	
Less: Consideration paid	80,000	80,000
Payment of telephone bills		(Exempt)

Gross income from salary		4,69,900

Note.—The car has been used from 16.7.2011 to 14.7.2014 and the completed years in this case are two. Therefore, the WDV shall be determined as under:

	₹
Original cost	2,50,000
Less: Depreciation for first year @20%	50,000
W.D.V.	2,00,000
Less: Depreciation for second year	40,000
	1,60,000

(2)(a) Mr. Gaya, a dealer in Kolkata dealing in consumer goods, submits the following information pertaining to the Month of March, 2015:

(i) Exempt goods 'A' purchased for ₹ 1,50,000 and sold for ₹ 1,70,000.
(ii) Goods 'B' purchased for ₹ 2,00,000 (including VAT) and sold at a margin of 10% profit on purchases (VAT rate 12.5%);
(iii) Goods C purchased for ₹ 1,25,000 (excluding VAT) and sold for ₹ 1,70,000 (VAT rate 4%);
(iv) His unutilized balance in VAT input credit on 01.03.2015 was ₹ 2,000.

Compute the turnover, Input VAT, Output VAT and Net VAT payable by Mr. Gaya. [4]

Solution:

Computation of VAT payable

Finished goods	Tax on Finished Goods			Input Tax on Materials			Net (Output Tax - Input Tax) (₹)
	Value (₹)	Rate	Tax (₹)	Value (₹)	Rate	Tax (₹)	
Opening Balance						2,000	- 2,000
Goods A	1,70,000	NIL	Exempt	1,50,000	NIL	Exempt	0
Goods B (Purchase price excluding VAT = ₹ 2,00,000 × 12.5 ÷ 112.5)	1,95,556	12.50%	24,444	1,77,778	12.50%	22,222	2,222
Goods C	1,70,000	4.00%	6,800	1,25,000	4.00%	5,000	1,800
Total			**31,244**			**29,222**	**2,022**

(2)(b) What is Independent Professional Audit in the context of VAT? [2]

Answer:

Independent Professional Audit is also termed as Compulsory VAT-Audit or External Audit and one of the types of audit prescribed under the VAT provisions. This audit is conducted as the Department Audit cannot check the tax evasion to a significant extent. It is prescribed by some of the States and carried out by Cost Accountants or Chartered Accountants.

(2)(c) M/s. Human Care Ltd. has introduced a new product 'Paradise' toothpaste, notified under Section 4A of the Central Excise Act, 1944, with a notified abatement of 30%. Determine the central excise duty payable if rate of duty is 12%, education cess is 2% and secondary and higher education cess is 1%:

- **(i) 1,500 pieces having retail sale price (RSP) ₹ 65 per piece are sold in retail packages to wholesale dealer at ₹ 50 per piece.**
- **(ii) 2,500 pieces having RSP ₹ 65 per piece are sold in retail packages, but buyer is charged for 2,100 pieces only at ₹ 50 per piece (400 pieces have been given free as quantity discount).**
- **(iii) 50 pieces were given away as free samples, without any RSP on the pack.**
- **(iv) 350 multi-packs were cleared at ₹ 80 per pack, each containing two toothpaste tubes and one toothbrush free (without any RSP on it). Each tooth paste tube was having RSP ₹ 70, which was scored out and each multi-pack had RSP of ₹ 130.**

Make suitable assumptions wherever required and show the calculations with appropriate notes. **[8]**

Solution:

The duty is as computed below —

Particulars	₹
(i) 1,500 pieces @ RSP ₹ 65 per piece (The packages sold are 'retail packages' meant for retail sale to consumer. The fact that the same is to a wholesaler is irrelevant because the relevant factor is 'package', which is 'retail package'. Hence, the goods will be assessed under RSP based duty. The actual sale price is irrelevant for the purposes of section 4A.)	97,500
(ii) 2,500 pieces @ RSP ₹ 65 per piece (Even if price is charged for 2,100 pieces and 400 pieces are given free as quantity discount/bonus, such bonus quantity is also manufactured product and is, therefore, liable to duty. Section 4A refers to deemed value, which will be computed for all the 2,500 pieces removed from the factory in 'retail packages')	1,62,500
(iii) Samples : 50 pieces @ RSP ₹ 70 per piece (Samples of notified goods are to be valued under section 4A only and RSP of identical goods is to be taken as the value even if the RSP is not indicated on the pack)	3,500
(iv) Multi-packs : 350 packs RSP ₹ 130 per piece (In case of multi-packs, if RSP of individual items is scored out, then, RSP of multi-pack is to be considered. Here, the multi-pack contains tooth brush as well, which is not a commodity of same kind as the toothpaste; however, a composite RSP of ₹ 130 is affixed, which includes the value of toothpaste as well as toothbrush.)	45,500
Total RSP	3,09,000
Less /Abatement @ 30%	92,700

Assessable Value under section 4A	2,16,300
Duty @ 12.36%	26,735

(3)(a) Your client company is a subsidiary of a foreign company, having its registered office in India. This company has transaction of imports of raw materials and components and also exports of its manufacture components from & to holding company in Netherland and also other group companies in South East Asian countries. What are income tax regulations governing such international transactions? [4]

Answer:

Computation of income from international transaction having regard to arm's length price [Section 92]:

(1) Income to be computed as per ALP: Any income arising from an international transaction shall be computed having regard to the arm's length price.
Expense or interest also to be determined at ALP: The allowance for any expense or interest arising from an international transaction shall also be determined having regard to the arm's length price (ALP).

(2) Allocation/apportionment of common costs shall be done having regard to the ALP: Where in an international transaction or specified domestic transaction, two or more associated enterprises enter into a mutual agreement or arrangement for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises, the cost or expense allocated or apportioned to, or, as the case may be, contributed by, any such enterprise shall be determined having regard to the arm's length price of such benefit, service or facility, as the case may be.

(3) Any allowance for an expenditure or interest or allocation of any cost or expense or any income in relation to the specified domestic transaction shall be computed having regard to the arm's length price.

(4) Provisions of ALP not to apply if it results in reduction of income/increase of losses: The provisions shall not apply in a case where the computation of income or the determination of the allowance for any expense or interest or the determination of any cost or expense allocated or apportioned, or, as the case may be, contributed, has the effect of reducing the income chargeable to tax or increasing the loss, as the case may be, computed on the basis of entries made in the books of account in respect of the previous year in which the international transaction or specified domestic transaction was entered into.

(3)(b) One of the methods for determining Arm's Length Price is Resale Price Method (RPM). State the applicability of RPM. [4]

Answer:

RPM is applied in a backward process. From the sale price to an unrelated third party, appropriate adjustments to the gross margin are made by comparing the transaction to other, third party transactions.

(1) This method can be applied when there are no comparable uncontrolled sales and an applicable resale price is available within a reasonable time before or after the controlled sale.

(2) Where the reseller does not add substantial value to the goods through physical modification. Limited enhancements such as packaging, repackaging, labeling or minor assembly ordinarily do not generally affect the use of RPM. Hence, RPM may not be applicable if the reseller performs value added functions.

(3) RPM is more accurate where it is realized within a short time of the reseller's purchase of goods.

(4) RPM is ordinarily used when the controlled reseller does not use intangible property to add substantial value to the products.

(5) RPM is applied when the reseller does not alter the physical characteristics of the product.

(6) Where the reseller has the exclusive right to resell the goods, the gross margin would be affected by factors like size of market, existence of substitute goods, and level of activity undertaken by the reseller.

(3)(c) Bhubaneswar Ltd. Carried out following works, all of which are leviable to sales-tax/VAT as transfer of property involved in the execution of works contract (the sum charged given below are exclusive of all taxes) -

(1) New constructions: ₹ 65 lakh;

(2) Additions and alterations to damaged structures on land to make them workable: ₹ 30 lakhs;

(3) Supply along with erection, commissioning and installation of plants: ₹ 87 lakhs;

(4) Maintenance and repair of goods: ₹ 35 lakhs;

(5) Maintenance and repair of immovable property: ₹ 42 lakhs;

(6) Finishing and Glazing Services of an immovable property: ₹ 12 lakh;

(7) Other works contracts: ₹ 6 lakh.

Compute taxable value and service tax thereon. [6]

Solution:

Computation of taxable value & service tax: Since data regarding valuation under Rule 2A(i) is not given, value is computed as per Rule 2A(ii) at specified % of gross amount charged.

	Amount charged ₹	**% of amount charged**	**Taxable Value ₹**
New constructions (It is "original works")	65,00,000	40.00%	26,00,000
Additions and alterations to damaged structures on land to make them workable (It is "original works")	30,00,000	40.00%	12,00,000
Supply along with erection, commissioning and installation of plants (It is "original works")	87,00,000	40.00%	34,80,000
Maintenance and repair of goods	35,00,000	70.00%	24,50,000
Maintenance and repair of immovable property	42,00,000	70.00%	29,40,000

Finishing and Glazing Services of an immovable property	12,00,000	70.00%	8,40,000
Other works contracts (Assumed it is neither original works nor any works contract in relation to maintenance, etc. of goods)	6,00,000	70.00%	4,20,000
Total Taxable Value under Rule 2A(ii)			1,39,30,000
Service Tax @ 12.36%			**17,21,784**

(4)(a) A commodity is imported into India from a country covered by a notification issued by the Central Government under section 9A of the Customs Tariff Act, 1975. Following particulars are made available:

CIF value of the consignment: US$ 30,000
Quantity imported: 600 kgs.
Exchange rate applicable: ₹ 50 = US$ 1
Basic customs duty: 20%.
Education and secondary and higher education cess as applicable.

As per the notification, the anti-dumping duty will be equal to the difference between the costs of commodity calculated @ US$70 per kg. and the landed value of the commodity as imported.

Appraise the liability on account of normal duties, cess and the anti-dumping duty.
Assume that only 'Basic Customs Duty' (BCD) and education and secondary and higher education cess are payable. [6]

Solution:

The following points are to be taken note of –

(1) The question clearly states that only basic customs duty, EC and SHEC thereon and anti-dumping duty are leviable on the goods in question and no other duty viz. additional duty of customs u/s 3(1) of the Customs Tariff Act, 1975 or special additional duty of customs u/s 3(5) of the Customs Tariff Act, 1975 is leviable.
(2) For the purposes of the notifications imposing anti-dumping duty, "landed value" means the assessable value as determined under the Customs Act, 1962 and includes all duties of customs except duties levied under sections 3, 8B, 9 and 9A of the said Customs Tariff Act, 1975.
(3) No EC and SHEC is imposable on anti-dumping duty.

Keeping in mind the aforesaid, the relevant computations are as under:

	(Amounts in ₹)
CIF Value of the consignment (in Indian ₹) [US $ 30,000 x ₹ 50]	15,00,000
Add: Landing Charges @ 1%	15,000
Assessable Value	15,15,000
Add: Basic Customs Duty @ 20%	3,03,000
Add: EC and SHEC @ 3% on Basic Customs Duty	9,090
Landed Value/Cost of the goods [A]	18,27,090
Cost of commodity for the purposes of anti-dumping notification [B] [600 Kg. x US$ 70 per Kg. x ₹ 50 per dollar]	21,00,000

Anti-dumping duty [B - A]	**2,72,910**

(4) (b) M/s. Kalpana Ltd., sold machinery to Mr. Gupta at a price of ₹ 7 lakhs on 15th June, 2014 and the same was removed from the factory at Kolkata. The rate of excise duty applicable is 12.36% on the date of removal. Mr. Gupta refused to take delivery of the machine when it reached his destination. In the meantime, M/x. Kalpana Ltd. increased the prices of the similar type of machinery to ₹ 8.5 lakhs with effect from 16th June, 2013. The machinery as refused by Mr. Gupta has been sold on 20th June 2014 to Mr. Basu at the revised price of ₹ 8.5 lakhs. The excise duty including Education Cess is 12.36% applicable with effect from 10th June, 2014.

Explain the following with reasons:

(a) What is the value to be taken as assessable value?

(b) What is the rate of excise duty applicable and duty payable on above transaction?

(c) The Central Excise Officer is demanding duty on the price of ₹ 8.5 lakhs at the time of sale to Mr. Basu. Is he right in his approach?

Does cost of production have any bearing on the assessable value? [4]

Solution:

(i) The price prevailing at the time of removal from factory (i.e. ₹ 7 lacs on 15th June 2014 is the assessable value.

(ii) The applicable rate of duty is @12.36% and duty amount is ₹ 86,520 (i.e. ₹ 7 lacs x 12.36/100).

(iii) The Central Excise Officer is not right in his approach.

(iv) Cost of production has no bearing with assessable value in present case. Central Excise valuation can be below manufacturing cost. If price is the sole consideration and dealing between seller and buyer are arm's length, assessable value will be decided on the basis of selling price, even if it is below manufacturing cost. So cost of manufacturing will not change the assessable value.

(4)(c) Determine the cost of production on manufacture of the under-mentioned product for purpose of captive consumption in terms of Rule 8 of the Central Excise Valuation Rules, 2000 (amount in ₹)

Direct material	**13,483**
Direct wages & salaries	**7,900**
Works overheads	**5,700**
Quality control costs	**4,800**
Research and development costs	**2,700**
Administrative overheads	**3,900**
Selling and distribution costs	**3,200**
Realizable value of scrap	**1,300**

The Administrative Overheads are in relation to production activities.
Material cost includes Excise duty ₹ 1,483. **[4]**

Solution:

Calculation of cost of production in terms of Rule 8 of Valuation Rules, 2000 (amounts in ₹)

Direct material (13,483 – 1,483 = 12,000)	WN 1	12,000
Direct wages & salaries		7,900
Works overheads		5,700
Quality control costs	WN 2	4,800
Research and development costs	WN 2	2,700
Administrative overheads	WN 2	3,900
Selling and distribution costs	WN 3	-
Total		37,000
Less : Realisable Value of scrap	WN 4	1,300
Cost of production		35,700
Value of excisable goods under Rule 8 @ 110% of cost of production		39,270

Working notes:

1. Raw-material cost shall be taken net of excise duty assuming Cenvat credit is available.
2. Quality control cost, Research and Development cost and Administration overheads related to production shall form part of cost of production as per CAS-4.
3. Selling and distribution costs shall not form part of cost of production.
4. Realizable value of scrap shall be deducted to arrive at cost of production.

(5)(a) Ms. S who draws a salary of ₹20,000 p.m. received the following gifts during the previous year 2014-15:

(i) Gift of ₹5,00,000 on 16.4.2014 from a friend.
(ii) Gift of jewellery fair market value of which is ₹3,00,000 on 17.5.2014 from her fiancee.
(iii) Gifts of ₹51,000 each received from her 4 friends on the occasion of her marriage on 21.10.2014.
(iv) Gift of ₹1,00,000 on 22.11.2014 from her mother's sister.
(v) Gift of ₹60,000 on 25.11.2014 from her father's brother.
(vi) Gift of ₹50,000 from her husband's friend on 1.12.2014.
(vii) Gift of ₹21,000 on 15.12.2014 from her mother's friend.
(viii) Gift of ₹26,000 on 25.12.2014 from her brother's father in law.
(ix) Gift of ₹1,21,000 from her husband's brother.
(x) Gift of ₹26,000 from her employer.
(xi) Scholarship of ₹1,20,000 from a charitable institution registered under section 12AA.
(xii) He has purchased a immovable property from B who is not his relative from a sum of ₹24,50,000. The stamp duty value of the property is ₹26,00,000.
(xiii) She purchased bullion for ₹4,40,000 whose fair market value is ₹4,85,000.
(xiv) Gift of immovable property from her friend whose stamp duty value is ₹5,00,000.

Compute her total income for the assessment year 2015-16. **[8]**

Solution:

		₹	₹
Income under the head salary			
Salary (20,000 × 12)		2,40,000	
Add: cash gift from employer		26,000	
		2,66,000	
Less: Deduction		Nil	2,66,000
Income from other sources			
(1)	Gift of money	₹	₹
(i)	Gift from a friend is includable	5,00,000	
(ii)	Gifts received from her 4 friends are exempt as they have been received on the occasion of her marriage	-	
(iii)	Gift from her mother's sister is exempt as the donor is covered in the definition of relative	-	
(iv)	Gift from father's brother is exempt as the donor covered in the definition of relative	-	
(v)	Gift of ₹50,000 from her husband's friend on 01.12.2014 is taxable as aggregate sum of money received during the year exceeds ₹50,000	50,000	
(vi)	Gift of ₹21,000 from her mother's friend is includable as aggregate sum of money received during the year exceeds ₹50,000	21,000	
(vii)	Gift from her brother's father in law is taxable as the donor is not covered in the definition of relative	26,000	
(viii)	Gift from her husband's brother is exempt as the donor is covered in the definition of relative	-	
(ix)	Gift from her employer is taxable as income from salary	-	
(x)	Gift in the form of scholarship from charitable institution registered u/s 12AA	exempt	
(2)	Gift of moveable property - Gift of jewellery is taxable	3,00,000	
(3)	Moveable property acquired for inadequate consideration - Difference between fair market value of movable property and purchase price does not exceed ₹50,000	Not taxable	
(4)	Gift of immovable property - Gift of immovable property received from her friend	5,00,000	
(5)	Immovable property acquired for inadequate consideration - Difference between stamp duty value and purchase price	1,50,000	15,47,000
	Total income		18,13,000

(5)(b) Mrs. Satya Yadav received the following amounts during financial year 2014 –15:

	₹
Gross Salary	**5,30,000**
Family Pension (₹10,000 × 12)	**1,20,000**
Income of a minor child	**49,000**
Accumulated balance in PF of her husband after his death	**1,00,000**
Gratuity received after the death of husband	**1,00,000**

Calculate taxable income of Mrs. Satya Yadav and tax liability for the assessment year 2015-16.

[6]

Solution:

Computation of taxable income of Mrs. Satya Yadav for the assessment year 2015-16 Income from Salary

	₹	₹
Gross salary	5,30,000	
Less: Deduction	Nil	5,30,000
Income from other sources		
Family pension	1,20,000	
Less: Deduction u/s 56 1/3 or ₹ 15,000 whichever is less	15,000	1,05,000
Income of a minor child	49,000	
Less: Exemption u/s 10(32)	1,500	47,500
Gross total income		6,82,500
Tax payable		66,500
Add: Education cess & SHEC - @ 3%		1,995
Tax rounded off		68,500

Note.—Accumulated balance in PF and amount of gratuity received after the death of husband is exempt from tax as it is assumed to be within the limit prescribed by section 10(10).

(6)(a) M, who was born on 4.01.1950 submits the following information:

Particulars	₹
1. Rent from house (per month)	**25,000**
2. Municipal taxes paid during the previous year	**20,060**
3. Long-term capital gains on sale of gold	**1,00,000**
4. Interest on bank deposits (gross)	**44,150**
5. Term deposit made during the year in a schedule bank for six years	**20,000**

Compute the Total Income and tax liability of M for assessment year 2015-16. **[6]**

Solution:

	₹	₹
Income from house property:		
Actual rent	3,00,000	
Less: Municipal taxes (paid)	20,000	
	2,80,000	
Less: Statutory deduction @ 30%	84,000	1,96,000
Long-term capital gain: On sale of gold		1,00,000
Income from other sources: Interest on bank deposits		44,150
Gross Total Income		3,40,150
Less: Deduction u/s 80C		20,000
Total Income		3,20,150
Computation of tax:		
Tax on Total Income of ₹2,20,150 + 79,850 shifted from LTCG		Nil
Tax on long-term capital gains @ 20% on ₹20,150 (₹1,00,000 - 79,850)		4,030
Tax payable		4,030
Less: Rebate u/s 87A		2,000
		2,030
Add: Education cess & SHEC - @ 3%		61
Tax (round off)		2,090

(6)(b) The income of X, who is totally blind, for the previous year 2014-15, is as under:

		₹
(i)	**Income from house property**	**1,82,000**
(ii)	**Income from interest on loan**	**27,000**
(iii)	**Income from interest on bank deposits under recurring**	**10,000**
(iv)	**Long-term capital gains**	**1,20,000**

He is eligible for deduction of ₹10,000 u/s 80C on account of PPF and ₹50,000 under section 80U. Compute his tax liability. **[3]**

Solution:

Particulars	₹
Gross Total Income (without long-term capital gains)	2,19,000
Less: Deductions u/s 80C and 80U (10,000 + 50,000)	60,000
Total income (without LTCG)	1,59,000
Tax on total income (₹1,59,000 + 91,000 shifted from LTCG)	Nil
Tax on long-term capital gain @ 20% on ₹29,000 (1,20,000 - 91,000)	5,800
Tax payable	5,800
Less: Rebate u/s 87A	2,000
	3,800
Add: Education cess & SHEC - @ 3%	114

Total tax payable	3914
Tax rounded off	3910

(6)(c) PQR Ltd. enters into a contract with TBZ Ltd. for construction of a new building primarily for the purpose of commerce or industry for a total consideration of ₹ 370 lakhs on 02-04-2013. The relevant details are given as under –

Stage	Date [Expected]	Date of issuance of invoice	Date of Payment	Amount of Payment (₹)
Initial/Booking	**02-04-2014**	**02-04-2014**	**02-04-2014**	**50 lakhs**
50% completion of building [after getting certificate from the stipulated Chartered Engineer]	**14-10-2014**	**20-10-2014**	**26-10-2014**	**120 lakhs**
75% completion of building [after getting certificate from the stipulated Chartered Engineer]	**22-02-2015**	**24-03-2015**	**26-03-2015**	**110 lakhs**
100% completion of building [after getting certificate from the stipulated Chartered Engineer]	**30-07-2015**	**20-08-2015**	**10-08-2015**	**90 lakhs**

Determine the Point of Taxation in respect of each of above stage of completion. [5]

Solution:

The above case falls under continuous supply of service and the point of taxation shall be determined as under-

Stage of Completion	Deemed date of completion of provision of service as per Explanation 1 to Rule 6	Point of Taxation	Reason/Remarks
Initial/ Booking	02-04-2014	02-04-2014	Date of issuance of invoice as well as Date of Payment is same i.e. 02-04-2014.
50%	14-10-2014	20-10-2014	Since invoice has been issued on 20-10-2014 i.e. within 30 days from the date of completion of provision of service [which is 14-10-2014], comparison has been made between Date of issuance of invoice [20-10-2014] and Date of Payment [26-10-2014]. Accordingly, Point of Taxation will be 20 – 10- 2014.

75%	22-02-2015	22-02-2015	Since invoice has been issued on 24-03-2015 i.e. after 30 days from the date of completion of provision of service [which is 22-02-2015], comparison has been made between Date of Completion of Provision of Service [22-02-2015] and Date of Payment [26-03-2015]. Accordingly, Point to Taxation will be 22-02-2015.
100%	30-07-2015	10-08-2015	Since invoice has been issued on 20-08-2015 i.e. within 30 days from the date of completion of provision of service [which is 30-07-2015], comparison has been made between Date of issuance of Invoice [20-08-2015] and Date of Payment [10-08-2015]. Accordingly, Point of Taxation will be 10-08-2015.

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

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

(a) Whether the refund collected illegally by the assessee by producing bogus TDS certificates can be treated as income of the assessee?

Solution:

CIT vs. K. Than Gamani (2009) 309 ITR 015 (Mad.)

The expression income in section 2(24) of the Income-tax Act, 1961 is wide and the objective of the Act being to tax income it has to be given an extended meaning. Any kind of income earned by the assessee attracts income-tax at the point of earning and tax law is not concerned with the ultimate event how the income is expended. The Act makes an obligation to pay tax on all income received. The Act considers income earned legally as well as tainted income alike.

The assessee was engaged in tax consultancy and audit work. During the search conducted at the residential premises and office of the assessee certain incriminating documents were seized. From the documents seized it was revealed that the assessee had been claiming and receiving income-tax refunds by filing bogus TDS certificates with returns of income prepared by him even in the names of non-existing persons. The Assessing Officer treats the deposits, being the TDS certificates encashed by the assessee during the previous year, as professional income during the previous year. The Commissioner (Appeals) reduced the income on account of the refunds received by him and held it taxable under residuary head instead of Profession. The Tribunal held that the amount of refunds received by the assessee by fraudulent means could not be assessed as income of the assessee.

The High Court held that when the Tribunal found that the assessee had indulged in fabricating TDS certificates and got refunds from the Department it should not have come to the conclusion that such income was not taxable.

(b) Can winnings of prize money on unsold lottery tickets held by the distributor of lottery tickets be assessed as business income and be subject to normal rates of tax instead of the rates prescribed under section 115BB?

Solution:

CIT vs. Manjoo and Co. (2011) 335 ITR 527 (Kerala)

On the above issue, the Kerala High Court observed that winnings from lottery is included in the definition of income by virtue of section 2(24)(ix). Further, in practice, all prizes from unsold tickets of the lotteries shall be the property of the organising agent. Similarly, all unclaimed prizes shall also be the property of the organising agent and shall be refunded to the organising agent.

The High Court contended that the receipt of winnings from lottery by the distributor was not on account of any physical or intellectual effort made by him and therefore cannot be said to be "income earned" by him in business. The said view was taken on the basis that the unsold lottery tickets cease to be stock-in-trade of the distributor because, after the draw, those tickets are unsaleable and have no value except waste paper value and the distributor will get nothing on sale of the same except any prize winning ticket if held by him, which, if produced will entitle him for the prize money. Hence, the receipt of the prize money is not in his capacity as a lottery distributor but as a holder of the lottery ticket which won the prize. The Lottery Department also does not treat it as business income received by the distributor but instead treats it as prize money paid on which tax is deducted at source.

Further, winnings from lotteries are assessable under the special provisions of section 115BB, irrespective of the head under which such income falls. Therefore, even if the argument of the assessee is accepted and the winnings from lottery is taken to be received by him in the course of his business and as such assessable as business income, the specific provision contained in section 115BB, namely, the special rate of tax i.e. 30% would apply.

Therefore, the High Court held that the rate of 30% prescribed under section 115BB is applicable in respect of winnings from lottery received by the distributor.

(c) Assessing Officer imposed penalty under section 271(1)(c) upon assessee on account of disallowance of bad debt - Tribunal deleted penalty holding that it was a case of difference of opinion on allowability of certain deductions and in absence of any material to indicate any dishonest attempt on part of assessee to conceal income, no penalty could be imposed - Whether Tribunal was justified in deleting penalty?

Solution:

CIT v. Sambhav Media Ltd. (2013) 215 Taxman 161(Mag.)(Guj.)(HC)

The issue pertains to deletion of penalty imposed on account of disallowance of bad debts. It appears that the assessee disclosed all relevant material facts before the Assessing Officer at

the time of filing of return. The Assessing Officer did not find such claim sustainable and imposed penalty on the assessee. The CIT(A) deleted such penalty and the Tribunal has rightly held in the finding that it is a case of difference of opinion in allowability of certain deductions and in absence of any material to indicate any dishonest attempt on the part of the assessee to conceal the income, no penalty can be imposed.

Tribunal do not find anything to entertain this Tax Appeal as neither there is any concealment of income nor is there any material to indicate filing of inaccurate particulars of income by the assessee. The CIT(A) & Tribunal were right in deleting the penalty imposed under Section 271(1)(c) of the Act in view of the decision of the Apex Court in the case of CIT v. Reliance Petroproducts (P.) Ltd. [2010] 322 ITR 158/189 Taxman 322.

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

(a) In case of a specific entry viz-a-viz a residuary entry, which one should be preferred for classification purpose? [8]

Solution:

CCE vs. Wockhardt Life Sciences Ltd. 2012 (277) E.L. T. 299 (S.C.)

Facts of the Case:

Wockhardt Life Sciences Ltd. was the manufacturer of Povidone Iodine Cleansing Solution USP and Wokadine Surgical Scrub. The only difference between these two products was that Wokadine was a branded product whereas Povidone Iodine Cleansing Solution was a generic name.

The Revenue contended that the said products were not medicament in terms of Chapter Note 2(i) of the Tariff Act as it neither had "Prophylactic" nor "Therapeutic" usage. The Revenue said that in order to qualify as a medicament, the goods must be capable of curing or preventing some disease or aliment. Therefore, the said products cannot be classified under Chapter Heading 3003 of Tariff Act. They submitted that the product in dispute, namely Povidone Iodine Solution or its patent and proprietary equivalent Wokadine surgical scrub, was essentially used as a medicated detergent.

The assessee stated that the Revenue, in their show cause notices, had admitted that the products in issue were antiseptic and used by surgeons for cleaning or de-germing their hands and scrubbing surface of skin of patient before operation. They further submitted that the products were medicament in which some carriers were added and therefore, it would fall under chapter sub-heading 3003 and not under chapter 34.

Point of Dispute:

The assessee's claim before the authorities and also before the Tribunal was that the aforesaid products were medicaments and, therefore, required to be classified under Chapter sub-heading 3003 of the Tariff, whereas the Revenue's stand was that the products in question are detergents and, therefore, to be classified under chapter subheading 3402.90.

Decision of the Case:

The Supreme Court observed that it is the specific case of the assessee that the products in question are primarily used for external treatment of the human-beings for the purpose of the prevention of the disease. This is not disputed by the Revenue. Revenue's stand is that since the products in question are primarily used as detergents/cleansing preparation, they cannot be brought under the definition of medicaments. Medicaments are products which can be used either for therapeutic or prophylactic usage. The Court said that since the product in question is basically and primarily used for the prophylactic uses, the Tribunal was justified in coming to a conclusion that the product was a medicament. The miniscule quantity of the prophylactic ingredient is not a relevant factor.

The Court said that the combined factor that requires to be taken note of for the purpose the classification of the goods are the composition, the product literature, the label, the character of the product and the use to which the product is put. In the instant case, it is not is dispute that this is used by the surgeons for the purpose of cleaning or de-germing their hands and scrubbing the surface of the skin of the patient that portion is operated upon. The purpose is to prevent the infection or disease. Therefore, the product in question can be safely classified as "medicament" which would fall under chapter sub-heading 3003 which is a specific entry and not under chapter sub-heading 3402.90 which is a residuary entry.

Thus, on the basis of the above observation by the Court the Revenue's appeal was rejected.

(b) The assessee claimed the CENVAT credit on the duty paid on capital goods which were later destroyed by fire. The Insurance Company reimbursed the amount inclusive of excise duty. Is the CENVAT credit availed by the assessee required to be reversed? [7]

Solution:

CCE vs. Tata Advanced Materials Ltd. 2011 (271) E.L.T. 62 (Kar.)

Facts of the case:

The assessee purchased some capital goods and paid the excise duty on it. Since, said capital goods were used in the manufacture of excisable goods, he claimed the CENVAT credit of the excise duty paid on it. However, after three years the said capital goods (which were insured) were destroyed by fire. The Insurance Company reimbursed the amount to the assessee, which included the excise duty, which the assessee had paid on the capital goods. Excise Department demanded the reversal of the CENVAT credit by the assessee on the ground that the assessee had availed a double benefit.

Decision of the case:

The High Court noted that the as per CENVAT Credit Rules, 2004, CENVAT credit taken irregularly stands cancelled and CENVAT credit utilized irregularly has to be paid for.

In the instant case, the Insurance Company, in terms of the policy, had compensated the assessee. The High Court observed that merely because the Insurance Company had paid the assessee the value of goods including the excise duty paid, it would not render the availment of

the CENVAT credit wrong or irregular. It was not a case of double benefit as contended by the Department.

The High Court therefore answered the substantial question of law in favour of the assessee.

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

(a) Whether in absence of any defect in maintenance of books of account, disallowance could be made merely on ground that expenses incurred in current year were more than that in preceding year? [7]

Solution:

CIT v. Shree Rama Multi Tech Ltd. (2013) 215 Taxman 157 (Mag.) (Guj.)(HC)

The commission expenses to the tune of ₹1.24 crore was paid out by the assessee of the said total claim of the expenses of commission. The Assessing Officer had disallowed the same to the tune of 20% on noting that in the preceding year, the commission payment was claimed only at 0.70% whereas in the year under consideration 2005-06, the said claim was of 1.93% of the gross turnover. This was challenged before the Commissioner of Income Tax (Appeals) who confirmed the view of the Assessing Officer even though it was argued before it that no notice was served upon the assessee and on merit also, addition was not justifiable.

The Tribunal held that it was not open to the department to prescribe what expenditure the assessee should incur and in what circumstances he should incur the expenses. It sought to rely upon the decision of the Apex Court in case of Commissioner of Income Tax, Andhra Pradesh vs. Dhanrajgirji Raja Narasinghirji reported in 91 ITR 544 for arriving at such findings. In our opinion, sufficiently elaborate discussion already finds place in the order of the Tribunal. Tribunal has appropriately considered the entire gambit of facts presented before it. It also noted the maintenance of books of account for the assessee and absence of any defect in such record and therefore, it rightly held that merely because in the subsequent year more expenses are incurred by the assessee by making such comparison, disallowance was not justified.

(b) Rate of service tax prevailing at time of providing service is relevant under the erstwhile regime, not on the date of receipt of payment – TRU Instruction dated April 28, 2008 clarifying to the contrary quashed. [8]

Solution:

Vistar Construction Pvt Ltd v UOI [2013-TIOL-73-HC-DEL-ST]

The taxpayers were engaged in rendering works contract services which were taxable at the rate of 2 percent which was enhanced to 4 percent with effect from March 01, 2008. The issue for consideration be-fore the Court was what will be the effective rate of service tax on the works contract services rendered prior to March 01, 2008 for which the payment was received post March 01, 2008.

The revenue relied on TRU Instruction F No 545/6/2007-TRU, dated April 28, 2008 ('TRU Instruction') to contend that the date of receipt of payment by the taxpayers was relevant in determining

the correct rate of ser-vice tax applicable on the services rendered by the taxpayers and therefore, service tax would be payable at the rate of 4 percent. The TRU Instruction specifically clarified that the service tax was chargeable on receipt basis and on the amount so received for the service provided or to be provided, whether or not services were preformed.

The High Court relied on the Supreme Court judgement in the case of Association of Leasing and Financial Service Companies v UOI [2010 (20) STR 417 (SC)] and its own judgment in the case of Commissioner of Service Tax v Consulting Engineering Services India Pvt Ltd in Service tax Application 76/2012 decided on March 14, 2013. The Court held that since there were no provisions under the law to the contrary during the relevant period, date of rendering the service is the taxable event.

The Court quashed the TRU Instruction and held that services in the present case were taxable at the rate applicable on date of rendering such services i.e. 2 percent.

(a) Mr. Sanghai had sold a commercial property, which was a long term asset and invested the same in purchase and construction of a flat in a apartment in Mumbai, within the one year of sale of asset and claimed deduction u/s 54F of Income Tax Act, but later the builder has not completed the possession of the apartment within 3 years and the apartment remained under construction even after 3 years. The period of 3 years is lapsed without any mistake of Mr. Sanghai now? Will Mr. Sanghai be liable to tax on the capital gains derived from the sale of the commercial property (or) Will Mr. Sanghai be freed from the liability of capital gains tax?

Discuss allowability of exemption u/s. 54F if builder does not complete construction of house within three Years?

Solution:

The exemption u/s 54F is for those assesses who gets long term gains on any asset other than house property and who uses all the sales consideration within a specified period for purchase or constructing a residential house. The specified period in case of house purchase is one year

before or two years after the date of transfer of asset on which gains were made. However, for construction, section 54 provides, time limit of three years. Therefore, the case explained above gains all popularity here. What would be the plight of the assessee when the construction gets delayed for no fault of his?
While the plain reading and strict application of the provision u/s 54F compel one to think that exemption is not allowable in case of any delay beyond 3 years, higher judicial authorities have rescued taxpayers by giving relief in those cases where they found that most of the sales consideration have been spent for construction of house, still some portions were not complete for various reasons. The appellate authorities have taken the view that section 54F being relief provision, should be viewed in a bit of relaxed manner. **Few judgments are given below in this regard which provides that exemption can be claimed even if construction is not completed within 3 years.** However, remember the **court needs to be satisfied** that either full amount or **most** of the amount of **sales consideration was already used**.

The decision of Tribunal was:

To qualify investment **for construction under section 54F the crucial date is the date of allotment of flat by DDA and payment of installments was only a follow-up action and taking possession of the flat is only a formality**, of course, installments have to be paid by the allottee as per the schedule fixed by the DDA. The Board after referring to the above mentioned Circular extended the facility of exemption under sections 54 and 54F in respect of allotment of flats/house by co-operative societies and other institutions, and the allotment and construction of the flat by co-operative societies and other institutions are to be considered in similar manner for the purpose of allowing exemption under section 54. The above circulars are binding on the revenue authorities under section 119 of the Act. Since the flat has been allotted to the assessee by the builder who would fall in the category of other institutions mentioned in the circulars, it has to be taken as a case of construction of the residential flat and not as a purchase of a residential flat.

The decision has elaborated on the reasons why the CBDT issued circulars for such relief and that the word "institution 'in the circular will include "builder".
Hence, exemption u/s. 54F can be claimed even if construction is not completed within 3 years but when substantial payment been made.

Reference Cases:
1. Mrs. Seetha Subramanian. vs Assistant Commissioner Of Income-Tax. [59 ITD 94] ITAT , Madras :- CIT ,
2. SatishChandraGupta v. Assessing Officer [1995] 54 ITD 508
3. CIT vs. Hilla J.B. Wadia [1995] 216 ITR 376 (Bom).

(b) Whether the transfer of goods as a contribution for capital be considered as Sale?

Solution:

Query – *Transfer of goods on sale of the business as a whole by a proprietor to a company in which he is a promoter, as his contribution for capital, is a 'sale' under Uttar Pradesh Value Added Tax Act, 2008*

Analysis : Relevant Extracts **of the State Act**

Section 2(ac) of the State Act defines sale as follows:

"*sale*" with its grammatical variations and cognate expressions, means any transfer of property in goods (otherwise than by way of a mortgage, hypothecation, charge or pledge) by one person to another, for cash or for deferred payment or for any other valuable consideration….

Section 2(aq) of the State Act defines turnover of sale as:

"*turnover of sale*" means the aggregate of amount of sale prices of goods, sold or supplied or distributed *by way of sale by a dealer,* either directly or through another, whether on his own account or on account of others;

Section 2 (h) of the State Act defines dealer as:
"*dealer*" means *any person who carries on* in Uttar Pradesh (whether regularly or otherwise) *the business of buying, selling, supplying or distributing goods* directly or indirectly, for cash or deferred payment or for commission, remuneration or other valuable consideration….
Extract of Rule 8 of Uttar Pradesh VAT Rules, 2008 determining taxable turnover is as follows:
"For the purposes of determining taxable turnover of sale, amounts specified below shall be deducted from the turnover of sale, determined in accordance with rule 7, if included in such turnover of sale

(iii) all amounts realized from the sale by the dealer of his business as a whole;…"

It clear from the aforesaid provisions as well as from the scheme of the State Act that, what constitutes a "turnover" is only the aggregate amount for which goods are either bought or sold, and that the purchase or sale must be in respect of a "sale" as defined in the Act. In other words, *only sales which take place in the course of trade or business are taken into account in determining the turnover under the State Act*. The definition of the word "dealer" shows that every person, who buys or sells goods, is not a dealer, but only a person, who carries on the business of buying, selling, supplying or distributing goods. And the transaction must be in the course of his trade or business. Applying the above principles, it will be wrong to say that the transfer of a person's business or stock in trade into a firm or a company, as contribution of his capital therein amounts to a sale of goods in the course of trade or business as a dealer; and such a transaction involve any sale of goods. The transferor does not part with property in the goods. He only shares his rights therein with the other members under the contract of becoming a shareholder of the Company.

Even assuming there is a sale, it is not a sale in the course of trade or business, nor is it a transaction by a "dealer" as defined in the State Act.