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) ABC Ltd an Indian company has received the following dividend from its subsidiary companies:

1. **₹ 10,00,000 on 5.08.2014 from S Ltd. a subsidiary company in India.**
2. **₹20,00,000 on 09.07.2014 from T Ltd., a specified company in Germany in which ABC Ltd. holds 60% shares.**

ABC Ltd. wishes to declare dividend of ₹1 crore to its shareholders.

Determine the amount of dividend distribution tax payable by ABC Ltd.

Also determine the tax payable on dividend received from T Ltd. assuming the total income of ABC Ltd. including the above dividend is ₹80,00,000.

What shall be your answer if ABC Ltd. holds 36% shares in T Ltd. **[9]**

Solution:

	₹	₹
Total dividend proposed to be declared		1,00,00,000
Less: Dividend received from		
S Ltd.	10,00,000	
T Ltd.	20,00,000	30,00,000
Balance amount which DDT is payable		70,00,000
Amount of DDT payable		
Net dividend to be gross up (₹70,00,000/85 x 100)	82,35,294	
DDT payable on ₹82,35,294@16.995%	13,99,588	
Tax payable by ABC Ltd. on its total income		

- On ₹20,00,000 received from T Ltd. @ 15%	3,00,000	
- Balance total income 60,00,000 @ 30%	18,00,000	
	21,00,000	
Add: Education cess & SHEC @ 3%	63,000	
	21,63,000	

Second part -
Since ABC Ltd hold 36% shares in T Ltd., it is not subsiding company although T Ltd. is a specified company. Hence, dividend received from T Ltd. shall not be deductible while computing DDT payable by ABC Ltd.

	₹
Total dividend proposed to be declared	1,00,00,000
Less: Dividend received from S Ltd.	10,00,000
Balance	90,00,000
Amount of DDT payable	
Net dividend to be gross up (₹90,00,000/85 x 100)	1,05,88,235
DDT payable on ₹1,05,88,235@16.995%	17,99,471

(1)(b) 'U' was born in 1977 in India. His parents were also born in India in 1948. His grandparents were, however, born in England. 'U' was residing in India till 15.3.2012. Thereafter, he migrated to England and took the citizenship of that country on 15.3.2014. He visits India during 2014-15 for 90 days. Determine the residential status of 'U' for assessment year 2015-16. [5]

Solution:

In this case, U is neither a citizen of India nor a person of Indian origin, because neither he nor his parents nor his grandparents were born in undivided India.

Although in this case, he does not satisfy the first condition of category A but he satisfies the second condition as he was in India for more than 60 days during the relevant previous year and his stay in the four preceding previous years was as under:

	₹
2013 – 14	Nil
2012 – 13	Nil
2011 – 12	349 days
2010 - 11	365 days
	714 days

He is therefore, resident in India.

For determining whether he is "ordinarily resident in India", he has to satisfy both the conditions of category B. He is resident for more than one previous year in the preceding 10 years and the second condition is also satisfied as he is in India for 730 days or more in the 7 preceding previous years. Hence, he is resident and ordinarily resident in India.

(2)(a) Umar Constructions undertakes works contracts and maintains sufficient records to quantify the labour and other service charges. From the details given below, calculate the taxable turnover, input tax credit and net VAT payable under the State VAT Law.

Sl. No.	Particulars	Amount (₹)
(i)	Total contract price (excluding VAT @ 12.5%)	1,95,00,000
(ii)	Materials purchased and used for the contract taxable at 12.5% VAT (inclusive of VAT)	33,75,000
(iii)	Labour charges paid for execution of the contract (excluding VAT @12.5%)	40,00,000
(iv)	Other service charges paid for the execution of the contract (excluding VAT	
(v)	@12.5%)	20,00,000
	Cost of consumables used not involving transfer of property in goods (excluding VAT @12.5%)	15,00,000

Umar Constructions also purchased a plant for use in the contract for ₹ 20,80,000 (inclusive of VAT). In the VAT invoice relating to the same VAT was charged at 4% separately.
Assume 100% input tax credit is available on capital goods immediately. [6]

Answer:

The question states that -

- contractor maintains sufficient records to quantify the labour charges;
- hence, value of transfer of property in goods involved in execution of works contract is to be computed by deducting labour and service charges from total contract price.

The computations in this regard are as follows -

	Value (excl. VAT) (₹)	VAT Rate	VAT (₹)
Total Contract Price	1,95,00,000		
Less: Labour charges (assumed inclusive of normal profit)	40,00,000		
Other service charges (assumed inclusive of normal profit)	20,00,000		
Cost of consumables (assumed inclusive of normal profit)	15,00,000		
Value of goods involved in works contract	**1,20,00,000**	**12.50%**	**15,00,000**
Materials purchased and used for contract (eligible for credit)[Value excluding VAT = ₹ 33,75,000 × 100 ÷ 112.5]	30,00,000	12.50%	3,75,000
Capital goods used for contract (eligible for credit; in fact, question itself states that capital goods are eligible for 100% credit) [Value excluding VAT = ₹20,80,000 × 100 ÷ 104]	20,00,000	4.00%	80,000
Net VAT payable in cash			**10,45,000**

(2)(b) Boral Ltd., which is engaged in the manufacture of excisable goods started its business in May, 2014. It availed small scale exemption in terms of Notification No. 8/2003-C.E. dated 01-03-2003. The following details are provided (₹);

15,000 kg of inputs purchased @ ₹ 992.70 per kg. (inclusive of excise duty @ 12.36%)	**1,48,90,500**
Capital goods purchased on 25-06-2014 (inclusive of excise duty at 12.36%)	**45,60,000**
Finished goods sold (at uniform transaction value throughout the year)	**2,50,00,000**

Calculate excise duty payable by M/s. Boral Ltd. in cash, if any, during year 2014-15. Rate of duty on finished goods sold may be taken at 12.36% and you may assume that selling price is exclusive of central excise duty. There is neither any processing loss nor any inventory of input and output. Show your workings notes with suitable assumptions as required. [6]

Answer:

Computation of duty payable by Boral Ltd. during financial year 2014-15

Particulars	Units	₹/unit	₹
Total value of all finished goods Less:	15,000	1,666.67	2,50,00,000
Exemption of ₹150 lakhs	9,000	1666.67	1,50,00,000
Dutiable clearances (60% clearances are exempt and 40% dutiable)	6,000	1,666.67	1,00,00,000
Duty @ 12.36% on final product		**206.00**	**12,36,000**
Total Credit on inputs [Duty = ₹ 992.70 x 12.36 ÷ 112.36]	15,000	109.20	16,38,000
Less: 60% credit relating to exempted clearances [Reversal under Rule 6 of the CENVAT CREDIT Rules, 2004]	9,000	109.20	9,82,800
Credit relating to dutiable clearances	6,000	109.20	6,55,200
Add: Credit relating to capital goods [100% credit available in first year to SSI- units] [₹ 45,60,000 x 12.36 ÷112.36]			5,01,616
Total CENVAT Credit			11,56,816
Duty payable in cash [Duty on Final Product – CENVAT Credit]			**79,184**

(2)(c) Under Central Excise Tariff Act goods are classified using 8-digit system as headings under 'Harmonised System of Nomenclature' — Justify. [2]

Answer:

In case of harmonised system of nomenclature under Central Excise Tariff Act, goods are classified using 4 digit system as headings. Further 2 digits are added for sub-classification, called

'sub – headings' and further 2 digits are added for sub-sub-classification, which is termed as 'tariff item'. Thus Goods are classified under Central Excise Tariff Act under the ―Harmonized System of Nomenclature having eight digit classifications. Rate of duty is indicated against each 'tariff item'and not against heading or sub-heading.

(3) (a) State the object of introducing Transfer pricing? [3]

Answer:

There is legislative object behind provisions relating to transfer pricing. The existence of different tax rates in different countries offers multinational enterprises to fix up their prices for goods and services and allocate profits among the enterprises within the group in such a way that there may be either no profit or negligible profit in the jurisdiction which taxes such profits and substantial profit in the jurisdiction which is tax haven or where the tax liability is minimum. This may adversely affect a country's share of due revenue and which may lead to erosion of tax revenue. Therefore, transfer pricing provisions have been brought with a view to provide a statutory framework which can lead to computation of reasonable, fair and equitable profits and tax in India, in the case of such multinational enterprises.

(3)(b) State the difficulties in applying the arm's length principle? [4]

Answer:

The arm's length principle, although survives upon the international consensus, does not necessarily mean that it is perfect. There are difficulties in applying this principle in a number of situations.

(a) The most serious problem is the need to find transactions between independent parties which can be said to be exact compared to the controlled transaction.

(b) It is important to appreciate that in an MNE system, a group first identifies the goal and then goes on to create the associated enterprise and finally, the transactions entered into. This procedure obviously does not apply to independent enterprises. Due to these facts, there may be transactions within an MNE group which may not be between independent enterprises.

(c) Further, the reductionist approach of splitting an MNE group into its component parts before evaluating transfer pricing may mean that the benefits of economies of scale, or integration between the parties, is not appropriately allocated between the MNE group.

(d) The application of the arm's length principle also imposes a burden on business, as it may require the MNE to do things that it would otherwise not do (i.e. searching for comparable transactions, documenting transactions in detail, etc).

(e) Arm's length principle involves a lot of cost to the group.

(3)(c) Uday Ltd. of Mumbai (having diversified business) has provided the following services, whose values are listed below. Compute its service tax liability:

(1) Services provided to a company located in Colombo in relation to organization of a sport event in Colombo: ₹ 25 lakh;

(2) Services provided to a company located in Srinagar in relation to festival celebration in Srinagar: ₹ 5 lakh;

(3) Services provided to a company located in Chennai in relation to fashion show in Dubai: ₹12 lakh;

(4) Services of online database access and retrieval services provided from its website: ₹17 lakhs (out of this, ₹10 lakh was provided to recipients located outside India). [5]

Solution:

The taxable value and service tax is computed below (amount in ₹) —

(1)	Services provided to a company located in Colombo in relation to organization of a sport event in Colombo: As per Rule 6 of the Place of Provisions Rules, 2012, in case of services provided in relation to organization of events, the services shall be taxable at the place of location of event. Since event is held in non-taxable territory, it is not liable to service tax.	Nil
(2)	Services provided to a company located in Srinagar in relation to festival celebration in Srinagar: As per Rule 6 of the Place of Provisions Rules, 2012, in case of services provided in relation to organization of events, the services shall be taxable at the place of location of event. Since event is held in non-taxable territory, it is not liable to service tax.	Nil
(3)	Services provided to a company located in Chennai in relation to fashion show in Dubai: Since services are in relation to event held in Dubai, hence, as per Rule 6, they are not taxable. But, since the services are provided to a recipient located in taxable territory (Chennai) and both service provider and recipient are located in taxable territory, hence, as per Rule 8, these services are liable to service tax.	₹ 12,00,000
(4)	Services of online database access and retrieval services provided from its website: As per Rule 9, the place of provision is the place of location of service provider. Since service provider Navin Ltd. is located in Mumbai (taxable territory), hence, these services will be taxable in full irrespective of location of the service recipient.	₹ 17,00,000
	Total Taxable Value	**29,00,000**
	Service tax @ 12.36%	**3,58,440**

(3)(d) Mr. X practicing Cost Accountant received ₹ 20,00,000 (exclusive of service tax) in the June 2014. He paid service tax on 26th July 2014. Gross receipt in the year 2013-14 is ₹ 25 lakhs. You are required to calculate Interest on delay payment of service tax. [2]

Answer :

Service tax @12.36% on ₹ 20,00,000 = ₹ 2,47,200.

Due date of payment of service tax = 6th July, 2014.

No. of days delay = 20 days

Interest = ₹ 2,032 (i.e. ₹ 2,47,200 x 15/100 x 20/365)

(4)(a) From the following particulars, calculate assessable value and total customs duty payable:

(i) Date of presentation of Bill of entry : 14-05-2014 [Rate of BCD 25%; Exchange Rate: ₹43.40 and rate notified by CBEC ₹ 43.80]

(ii) Date of arrival of goods in India: 27-05-2014 [Rate of BCD 20%; Exchange Rate; ₹ 44.10 and rate notified by CBEC ₹ 44.20]

(iii) Rate of Additional Customs Duty : 12%;

(iv) CIF value 2,000 US Dollar; Air Freight 500 US Dollars, Insurance cost 100 US Dollars [Landing Charges no ascertainable].

(v) Education Cess applicable 3%

(vi) Assume there is no special CVD.

Also determine the Cenvat credit eligibility if the buyer is — (1) manufacturer; (2) service provider and (3) trader. [Provide working notes as and when required] [6]

Answer:

Computation of assessable value and the total customs duty payable –

CIF value		US $	2,000
Less: Freight		US $	500
Insurance		US $	100
FOB Value		US $	1,400
Add: Air Freight restricted @ 20% of FOB value		US $	280
Insurance (actual amount)		US $	100
CIF value		US $	1,780
CIF Value in Indian ₹ (CIF Value in US$ x ₹ 43.80 per US$)		₹	77,964
Add: 1% for landing charges		₹	780
Assessable value	**[A]**	₹	**78,744**
Add: Basic Customs duty @ 20% of [A]	[B]	₹	15,749
Total for additional duty of customs u/s 3(1) Customs Tariff Act, 1975	[C]	₹	9 4 , 4 9 3
Add: Additional Customs Duty (@ 12% of ₹ 94,493 i.e., [C])	[D]	₹	11,339
Add: Education Cess on total customs duty i.e., 3% of [B+D]	[E]	₹	813
Total for the levy of additional duty of customs u/s 3(5) of Customs Tariff Act, 1975	[F=C+D+E]	₹	1,06,645
Add: Additional duty of customs equal to sales tax etc.	[G]	₹	---
Total cost of imported goods		₹	1,06,645
Total Customs duty [B+D+E+G] (rounded off)		₹	**27,901**

Cenvat credit eligibility:

(1) Buyer, who is manufacturer, is eligible to avail Cenvat credit of [D] and [G] above. As there is no Special CVD as per section 3(5) of the Customs Tariff Act, 1975, he will be eligible to avail credit of [D] only.

(2) A buyer who is service provider is eligible to avail Cenvat credit of [D] above.

(3) A trader who sells imported goods in India after charging VAT/ sales tax can get refund of Special CVD of 4%, i.e. [G] above. Alternatively, he can pass on the credit of Special CVD also to his customer. In this case, as there is no Special CVD, the trader cannot avail the said benefit.

Working Notes:

(1) Rate of exchange notified by CBEC on the date of presentation of bill of entry has been considered.
(2) Rate of duty as applicable on the arrival of aircraft which is later than the date of submission of the bill of entry has been considered.
(3) Landing charges @ 1% have been considered as per Rule 10(2)(b) of the Customs Valuation (Determination of Value of Imported Goods)Rules, 2007.
(4) Since Air freight exceeds 20% of FOB value of goods, it shall be restricted to 20% of FOB value of goods.

(4)(b) When is the CENVAT Credit on inputs not admissible? [5]

Answer:

CENVAT Credit is not admissible on the following:-

(1) Light diesel oil, high speed diesel oil, Motor spirit commonly known as petrol.

(2) Any goods used for –

  (i) Construction of a building or a civil structure or part thereof; or

  (ii) laying of foundation or making of structure for support of capital goods.

  (iii) Capital goods (unless the same are used as parts or components in the manufacture of a final products.

  (iv) Motor Vehicles

  (v) Any goods are used primarily for personal use or consumption of any employee including food articles etc.

  (vi) Goods having no relationship with whatsoever with the manufacture of final product.

(3) If nthe final products is exempt from excise duty except in relation to removals to EOU/FTZ/SEZ or clearance under the bond/LUT etc.

(4) Whan inputs are not received at the point of manufacture.

(5) When received on documents which do not specify the duty paid or where there is no duty paying document.

(6) When not used to manufacture of excisable goods.

(4)(c) What is Automation of Central Excise and Service Tax or ACES? [3]

Answer:

The Central Board of Excise & Customs has developed a new software application called Automation of Central Excise and Service Tax or ACES, which aims at improving taxpayer services, transparency, accountability and efficiency in indirect tax administration. It is a centralized, web based software application which automates various processes of Central Excise and Service Tax for Assessees and Department, and gives complete end to end solution.

(5)(a) Determine the Gross Total Income of X and his wife from the following particulars for the year ending 31.3.2015:

(i) X and his wife are partners in a firm carrying on cloth business, their respective shares of profit being ₹78,000 and ₹60,000.

(ii) Their 16 years old son has been admitted to the benefits of another firm, from which he received ₹80,000 as his share of profit in the firm and ₹90,000 as interest on capital. The capital was invested out of the minor's own funds amounting to ₹9,00,000.

(iii) A house property in the name of X was transferred to his wife on 1.12.2014 for adequate consideration. The property has been let at a rent of ₹30,000 p.m

(iv) Debentures of a company of ₹1,40,000 and ₹1,12,000 purchased two years ago are in the names of X and his wife respectively, on which interest is receivable at 10% p.a. His wife had in the past transferred ₹70,000 out of her income to X for the purchase of the debentures in X's name.

(v) X had transferred ₹50,000 to his wife in the year 2010 without any consideration which was given as a loan by her to Y. She earned ₹20,000 as interest during the earlier previous years which was also given on loan to Y. During the financial year 2014-15, she received interest at 10% p.a. on ₹70,000.

(vi) X transferred ₹75,000 to a trust, the income accruing from its investment as interest amounted to ₹7,500, out of which ₹5,000 shall be utilised for the benefit of his son's wife and ₹2,500 for the benefit of his son's minor child. [10]

Solution: Computation of Gross Total Income of X for the assessment year 2015-16

		₹	₹
(1)	Income from House Property:		
	Rental value for 8 months (i.e., before transfer) (8 × 30,000)	2,40,000	
	Less: 30% as statutory deduction	72,000	1,68,000
(2)	Profit from Business:		
	(i) Share from firm (exempt)	Nil	
	(ii) Minor Son's share in another firm (Exempt)	Nil	
	(iii) Interest on minor's capital with firm (₹90,000 – Exemption u/s 10(32) ₹1,500)	88,500	88,500
(3)	Income from other Sources:		
	(i) Interest @ 10% on ₹70,000 Debentures (only one-half of ₹1,40,000 were bought by own funds)	7,000	

	(ii) Interest received by his wife @ 10% on ₹50,000 (being transferred without any consideration)	5,000	
	(iii) Interest on ₹50,000 from his trust (Interest income utilized for the benefit of son's wife)	5,000	17,000
	Gross Total Income		2,73,500

Computation of Gross Total Income of Mrs. X for the assessment year 2015-16

Income from House Property:	₹	₹
Rental value for 4 months (i.e., after transfer) (30,000 × 4)	1,20,000	
Less: 30% as statutory deduction	36,000	84,000
Income from business:		
Share from firm (Exempt)	Nil	
Income from other Sources:		
(i) Interest on ₹ 1,12,000 10% Debentures	11,200	
(ii) Interest on ₹70,000 10% Debentures in husband's name but funds invested by her	7,000	
(iii) Interest on ₹20,000 @ 10% (This interest is on accrued income of ₹50,000, which have been transferred to her by the husband and interest on such accrued income is treated as the income of the transferee, although the income on the transferred amounts is treated as the income of the transferor as it was transferred without any consideration.)	2,000	20,200
Gross Total Income		1,04,200

Note:

1. Shares of profit from a firm, which is assessed as such, is fully exempt u/s 10(2A) in the hands of the partners; although husband and wife may be partners in the same firm. Even in a case where one spouse gifts some amount to the other spouse to be invested as capital in the firm, the clubbing provisions though applicable, it will not affect the Total Income since the share of the profit is itself exempt. However, if interest on capital contribution is received, it will be clubbed to the extent of the amount invested as capital contribution out of the transfer made without adequate consideration.
2. Similarly, the minor son's income though clubbed, but as the share of the profit from the firm is exempt, will not affect the Total Income. However, if interest on capital contribution is received, it will be clubbed to the extent of the amount invested as capital contribution out of the transfer made without adequate consideration.
3. Where the asset is transferred to a Trust for the benefit of son's wife, the income from such asset is taxable in the hands of the transferor. However, income utilised for the benefit of son's minor son shall be clubbed in the hands of that parent of the son's minor son, whose income is greater. It shall, therefore, not be clubbed in the hands of the transferor *i.e.* X.

(5)(b) Q, a resident of India, aged 81 years, submits the following information for the previous year 2014-15:

		₹
(1)	**Income from salary**	**4,86,000**
(2)	**Interest on Fixed Deposits with Banks (gross)**	**49,000**
(3)	**Long-term capital gains**	**1,10,000**
(4)	**Short-term capital gains on the sale of equity shares on which securities**	**10,000**

He pays ₹5,000 as Life Insurance Premium on a policy of ₹40,000 and deposits ₹22,000 in Public Provident Fund account.

Compute the tax payable by Q for the assessment year 2015-16. [4]

Solution:

		₹
Step 1	Gross Total Income (without LTCG and STCG)	5,35,000
Step 2	Less: Deduction permissible u/s 80C	27,000
	Total income (without LTCG and STCG)	5,08,000
Step 3	Tax on ₹5,08,000 (20% on amount in excess of ₹5,00,000)	1,600
Step 4	Tax on long-term capital gain (20% of ₹ 1,10,000)	22,000
Step 5	Tax on short-term capital gain (15% of ₹ 10,000)	1,500
Step 6	Total tax payable	25,100
	Add: Education cess & SHEC - @ 3%	753
	Total tax payable	25,853
	Tax rounded off	25,850

(6)(a) R, S, G are three members of an AOP sharing profit and losses in the ratio of 2:2:1. The profit and loss account of the AOP for year ending 31.3.2015 is as follows:

	₹		₹
Cost of good sold	**52,00,000**	**Sales**	**63,00,000**
Interest to members @ 24%		**Long-term capital gain**	**1,60,000**
R	**48,000**		
S	**72,000**		
G	**24,000**		
Salary to members			
R	**90,000**		
G	**40,000**		
Other expenses	**3,80,000**		
Net Profit	**6,06,000**		
	64,60,000		**64,60,000**

Other Information:

1. **The AOP gives a donation of ₹40,000 to a public charitable trust (not debited to P/L A/c) which is eligible u/s 80G.**
2. **Out of other expenses ₹20,000 are not deductible by virtue of section 43B.**

Other incomes and particulars of the members are given below.

	Amount ₹	Nature of Income	Deduction u/s 80D	PPF contribution ₹
R	**1,22,000**	**Saving bank Interest**	**₹3,000 medical**	**12,000**
S	**1,16,000**	**Saving bank Interest**		**4,000**
	10,000	**Dividend from U.T.I**		
G	**1,10,000**	**Interest on company Deposits**	**₹4,000 medical insurance premium**	**5,000**

Find out the liability of the AOP and members for the assessment year 2015 –16. [9]

Solution:

A. Computation of Total Income of AOP

1. Profits & gains	₹	₹	₹
Net Profit as per P and L A/c		6,06,000	
Add: Disallowed expenses			
Interest to members			
R	48,000		
S	72,000		
G	24,000		
Salary to members			
R	90,000		
G	40,000		
Other expenses not allowed u/s 43B	20,000	2,94,000	
		9,00,000	
Less: Income not taxable under this head			
Long-term capital gain		1,60,000	
Business Income		7,40,000	
2. Capital gains			
Long-term capital gain		1,60,000	
Gross Total Income		9,00,000	
Deduction u/s 80G			
Donation ₹40,000 @ 50%		20,000	
Total Income		8,80,000	

A. Computation of Tax of AOP

As no member of AOP has income exceeding the maximum exemption limit nor any member is taxable at a rate higher than the maximum marginal rate, the tax shall be charged on the total income of AOP at the rate applicable to individuals.

Tax on first ₹2,50,000	Nil
Next ₹2,50,000@10%	25,000
Next ₹2,20,000 @ 20%	44,000

Long-term capital gain ₹ 1,60,000 @ 20%	32,000
Total Tax	1,01,000
Add: Education cess & SHEC @ 3%	3,030
	1,04,030

B. Allocation of AOP's total income

	R	S	G
Interest on capital	48,000	72,000	24,000
Salary	90,000	-	40,000
Share [2:2:1] (8,80,000 - 1,60,000 (LTCG) - 2,74,000)	1,78,400	1,78,400	89,200
Business income	3,16,400	2,50,400	1,53,200
Long-term capital gain	64,000	64,000	32,000
Share of profit of each member	3,80,400	3,14,400	1,85,200

Member R

	₹	₹
Business income	3,16,400	
Long-term capital gain	64,000	
Share from AOP		3,80,400
Other Income: Bank Interest		1,22,000
Gross Total Income		5,02,400
Deductions		
(i) U/s 80C	12,000	
(ii) U/s 80D	3,000	
(iii) U/s 80TTA	10,000	25,000
Total Income		4,77,400
Tax on ₹2,50,000 of total income	Nil	
On next 1,63,400 of total income @ 10%	16,340	
Tax on Long-term capital gain ₹64,000 @ 20%	12,800	29,140
Less: Rebate u/s 86 [₹29,140 × 3,80,400/4,77,400]		23,219
Net tax		5,921
Less: Rebate u/s 87A		2,000
		3,921
Add: Education cess & SHEC @ 3%		118
Tax rounded off		4,040

Member S

Share from AOP	₹	₹
Business income	2,50,400	
Long-term capital gain	64,000	3 ,14,400

Other Income: Bank interest		1,16,000
Dividend from UTI		Exempt
Gross Total Income		4,30,400
Deduction u/s 80C	4,000	
Deduction u/s 80TTA	10,000	14,000
Total Income		4,16,400
Tax on ₹3,52,400	10,240	
Tax on long-term capital gain ₹64,000 @ 20%	12,800	23,040
Less: Rebate of tax u/s 86 [₹23,040 × 3,14,400/4,16,400]		17,396
		5,644
Less: Rebate u/s 87A		2,000
		3,644
Add: Education cess & SHEC @ 3%		109
Tax rounded off		3750

Member G

Share from AOP	₹	₹
Business income	1,53,200	
Long-term capital gain	32,000	1,85,200
Other income: Interest on deposits		1,10,000
Gross total income		2,95,200
Less: Deduction u/s 80C	5,000	
Deduction u/s 80D	4,000	9,000
Taxable Income		2,86,200
Tax on ₹4,200	420	
Tax on long-term capital gain ₹32,000 @ 20%	6,400	6,820
Less: Rebate u/s 86 [6,820 × 1,85,200/2,86,200]		4,413
Net Tax Payable		2,407
Less: Rebate u/s 87A		2,000
		407
Add: Education cess and SHEC @ 3%		12
Tax rounded off		420

(6) (b) DEB Ltd. has a manufacturing unit situated in Lucknow. In the financial year 2014-15, the total value of clearances from the unit was ₹ 465 lakhs.

The breakup of clearances is as under:

i. Clearances worth ₹ 85 lakhs of certain non-excisable goods manufactured by it.

ii. Clearances worth ₹ 55 lakhs exempted under specified job work notification.

iii. Exports worth ₹ 100 lakhs (₹ 75 lakhs to USA and ₹ 25 lakhs to Nepal).

iv. Clearances worth ₹ 50 lakhs which were used captively to manufacture finished products those are exempt under notifications other than Notification No. 8/2003-CE., dated 01-03-2003 as amended. v. Clearances worth ₹ 200 lakhs of excisable goods in the normal course.

Explain briefly, the treatment for various items and state, whether the unit will be eligible for the benefits of exemption under Notification No. 8/2003-CE dated 1-3-2003 as amended for the financial year 2015-16. [5]

Solution:

In order to claim the benefit of SSI exemption in a financial year, the total turnover of a unit should not exceed ₹ 400 lakh in the preceding year.

For this purpose, the total value of clearances shall be calculated as follows – **(₹ lakhs)**

Total value of clearances	465
Less:	
(i) Clearances of certain non-excisable goods manufactured by it	85
(ii) Clearances exempted under specified job-work notification	55
(iii) Exports clearances to USA	75
(iv) Clearances of goods used captively to manufacture finished products, which are exempt under Notification other than SSI- exemption notification	Nil
Value of clearances	**250**

Unit eligible for exemption: Since the aggregate value of clearances during the preceding financial year doesn't exceed ₹ 400 lakhs, therefore, the unit is eligible for SSI - exemption in the financial year 2015-16.

Section B

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

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

(a) Would expenditure incurred on feasibility study conducted for examining proposals for technological advancement relating to the existing business be classified as a revenue expenditure, where the project was abandoned without creating a new asset?

Solution:

CIT vs. Priya Village Roadshows Ltd. (2011) 332 ITR 594 (Delhi)

In this case, the assessee, engaged in the business of running cinemas, incurred expenditure towards architect fee for examining the technical viability of the proposal for takeover of cinema theatre for conversion into a multiplex/ four-screen cinema complexes. The project was, however, dropped due to lack of financial and technical viability. The issue under consideration is whether such expenses can be treated as revenue in nature, since no new asset has been created.

On this issue, the High Court observed that, in such cases, whether or not a new business/asset comes into existence would become a relevant factor. If there is no creation of a new asset, then the expenditure incurred would be of revenue nature. In this case, since the feasibility studies were conducted by the assessee for the existing business with a common administration and common fund and the studies were abandoned without creating a new asset, the expenses were of revenue nature.

(b) Whether the amount received by the assessee under a lease agreement is income from other sources or business income?

Solution:

East West Hotels Ltd. vs. DCIT (2009) 309 ITR 149 (Kar.)

The assessee was engaged in the hotel business activities. The assessee by an agreement with IHC gave one of its hotels on lease for an initial period of 33 years with an option to renew for a further period of 33 years. The assessee claimed that the amount received from IHC had to be treated as its business income. The claim was rejected by the Assessing Officer on the ground that the assessee was not getting any business income as the hotel had been leased out by the assessee to IHC and any amount received by the assessee from such company had to be treated as income from other sources and not business income. The Commissioner (Appeals) as well as the Tribunal held that the income received by the assessee from such hotel building was income from other sources.

The High Court held that the clauses in the agreement were more in the nature of a lease deed and not a licence given for a particular period with no intention to resume its business of hotel in the premises. It could not be said that the assessee had been managing the hotel through IHC. Therefore, the amount received from IHC had to be treated as income from other sources and not as business income.

(c) Can exemption under section 54F be denied to an assessee in respect of investment made in construction of a residential house, on the ground that the construction was not completed within three years after the date on which transfer took place, on account of pendency of certain finishing work like flooring, electrical fittings, fittings of door shutter, etc?

Solution:

CIT vs. Sambandam Udaykumar (2012) 345 ITR 389 (Kar.)

In this case, the assessee has claimed benefit of exemption under section 54F in respect of capital gain arising on sale of shares of a company by investing the amount in construction of a house property. However, the Assessing Officer contended that no exemption under section 54F would be available in this case, as the construction of a residential house was not completed on account of pendency of certain work like flooring, electrical fittings, fittings of door shutter, etc., even after lapse of three years from the date of transfer of the shares.

The Karnataka High Court held that the condition precedent for claiming the benefit under section 54F is that capital gains realized from sale of capital asset should have been invested either in purchasing a residential house or in constructing a residential house. If he has invested the money in the construction of a residential house, merely because the construction was not completed in all respects and possession could not be taken within the stipulated period, would not disentitle the assessee from claiming exemption under section 54F. In fact, in this case, the assessee has taken the possession of the residential building and is living in the said premises despite the pendency of flooring work, electricity work, fitting of door and window shutters. The condition precedent for claiming exemption under section 54F is that the capital gain realized from sale of capital asset should have been parted by the assessee and invested either in purchasing a residential house or in constructing a residential house within the stipulated period.

Therefore, the Court held that in this case the assessee would be entitled to exemption under section 54F in respect of the amount invested in construction within the prescribed period.

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

(a) Whether the metal scrap or waste generated during the repair of his worn out machineries/ parts of cement manufacturing plant by a cement manufacturer amounts to manufacture? [8]

Solution:

Grasim Industries Ltd. vs. UOI 2011 (273) E.L. T. 10 (S.C.)

Facts of the case:

The assessee was the manufacturer of the white cement. He repaired his worn out machineries/ parts of the cement manufacturing plant at its workshop such as damaged roller, shafts and coupling with the help of welding electrodes, mild steel, cutting tools, M.S. Angles, M.S. Channels, M.S. Beams, etc. In this process of repair, M.S. scrap and Iron scrap were generated. The assessee cleared this metal scrap and waste without paying any excise duty. The Department issued a show cause notice demanding duty on the said waste contending that the process of generation of scrap and waste amounted to the manufacture in terms of section 2(f) of the Central Excise Act.

Decision of the case:

The Apex Court observed that manufacture in terms of section 2(f) includes any process incidental or ancillary to the completion of the manufactured product. This 'any process' can be a process in manufacture or process in relation to manufacture of the end product, which involves bringing some kind of change to the raw material at various stages by different operations. The process in relation to manufacture means a process which is so integrally connected to the manufacturing of the end product without which, the manufacture of the end product would be impossible or commercially inexpedient.

However, in the present case, it is clear that the process of repair and maintenance of the machinery of the cement manufacturing plant, in which M.S. scrap and Iron scrap arise, has no contribution or effect on the process of manufacturing of the cement, (the end product). The repairing activity in any possible manner cannot be called as a part of manufacturing activity in relation to production of end product. Therefore, the M.S. scrap and Iron scrap cannot be said to be a by-product of the final product. At the best, it is the by-product of the repairing process.

Hence, it held that the generation of metal scrap or waste during the repair of the worn out machineries/parts of cement manufacturing plant does not amount to manufacture.

(b) In case of specific classification viz-a-viz classification based on material used/ composition of goods, which one should be adopted? [7]

Solution:

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

Facts of the Case:

Minwool Rock Fibres Ltd. started manufacturing rockwool and slagwool using more than 25% of blast furnace slag by weight in 1993. They classified them under Central Excise Tarriff heading 6803 00 (i.e. Slagwool, Rockwool and similar mineral wools) and had been filing classification declarations mentioning this fact. Such declarations so filed prior to 1997-98 were accepted by the Department. However, another specific sub-heading 6807 10 of Central Excise Tariff was introduced vide Budget 1997 for 'Goods having more than 25% by weight blast furnace slag'. Accordingly, they claimed that the goods manufactured by them, namely, slagwool and rockwool should henceforth be classified under Chapter sub-heading 6807 10 of the Tariff.

The Revenue contended that when there was a specific sub-heading, i.e. 6803 00 wherein the goods, such as Slagwool, Rockwool and similar wools were enumerated, that entry requires to be applied and not Chapter sub-heading 6807.10.

Point of Dispute:

The assessee's contention was that the appropriate classification for their product was under Chapter sub-heading No. 6807 10 of the Act while the Department contended that the appropriate classification was under Chapter sub-heading No. 6803 00 of the Act.

This was the subject matter of the appeal before the Supreme Court.

Decision of the Court:

The Supreme Court held that there was a specific entry which speak of Slagwool and Rockwool under sub-heading 6803 00 chargeable at 18%, but there was yet another entry which was

consciously introduced by the Legislature under sub-heading 6807 10 chargeable at 8%, which speaks of goods in which Rockwool, Slag wool and products thereof were manufactured by use of more than 25% by weight of blast furnace slag.

It was not in dispute that the goods in question were those goods in which more than 25% weight of one or more of red mud, press mud or blast furnace slag was used. If that be the case, then, in a classification dispute, an entry which was beneficial to the assessee required to be applied and the same had been done by the adjudicating authority, which had been confirmed by the Tribunal. Further, tariff heading specifying goods according to its composition should be preferred over the specific heading. Sub-heading 6807 10 is specific to the goods in which more than 25% by weight, red mud, press mud or blast furnace slag is used as it is based entirely on material used or composition of goods.

Therefore, the Court opined that the goods in issue were appropriately classifiable under Sub-heading 6807 10 of the Tariff.

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

(a) Assessee a company entered into a collaboration agreement with owner of an immovable property, who executed a General Power of Attorney (GPA) in assessee's favour - Sub-Registrar resisted to register GPA on basis of circular issued by Government of NCT of Delhi, holding that transaction was, in effect, a transaction of sale, and it was sought to evade stamp duty - Whether, circular directing Registrars not to register conveyance of immovable property based on a GPA, was contrary to observation of Supreme Court and was liable to be set aside. [8]

Solution:

Pace Developers & Promoters (P.) Ltd. v. Government of NCT (2013) 215 Taxman 554 (Delhi)(HC)

The petitioner company entered into a collaboration agreement with 'R', owner of an immovable property, who executed a General Power of Attorney (GPA) in favour of the assessee. The GPA was duly registered and stamped. 'R' also executed a will, as per which 25 per cent of the land on which the said property was built, was to devolve on the director of the petitioner company on her death. The Divisional Commissioner, Government of NCT of Delhi (respondent) issued a circular, which is claimed to be contrary to the judgment of the Supreme Court in the case of Suraj Lamp & Industries (P.) Ltd. v. State of Haryana [2012] 340 ITR 1/[2011] 202 Taxman 607/14 taxmann. com 103 by the assessee. The assessee filed instant writ petition requesting the Court to direct the sub-registrar to register the GPA. The respondents claimed that the transaction between assessee and 'R' was entered into to evade stamp duty and it was in effect, a transaction of sale; rate of stamp duty being 6 per cent and not 3 per cent. Therefore, there was resistance by the sub-registrar to register the document.

A bare reading of the circular would show that the respondents have issued across the board, a directive to all Registrars and Sub-Registrar not to register any conveyance vis-à-vis an immovable property which is based on a GPA, Will or Agreement to Sell. This direction clearly misconstrues the observations of the Supreme Court in the case of Suraj Lamp & Industries (P.)

Ltd. (s*upra*), wherein the Supreme Court has not said that in no case a conveyance can be registered by taking recourse to a GPA. As long as the transaction is genuine, the same will have to be registered by the sub-registrar. There is distinctly a specific reference to the fact that, a person may enter into a development agreement with a land developer or builder for development of a parcel of land or for construction of apartments in a building, and for this purpose, a power of attorney empowering the developer to execute sale agreements can be executed. Therefore, the directions contained in the impugned circular dated 27-4-2012, are quite contrary to the observations made by the Supreme Court in Suraj Lamp & Industries (P.) Ltd. (supra). Accordingly, the same are set aside.

(b) Can the plastic dropper supplied along with pediatric drops be considered as an input used in or in relation to manufacture of final product (pediatric drops)? [7]

Solution:

CCEx., Mumbai vs. Okasa Ltd. 2009 (241) E.L.T. 359 (Bom.)

The assessee was engaged in the manufacture of pharmaceutical product-pediatric drops. They contended that the plastic droppers supplied with the bottle containing drops were inputs used in or in relation to manufacture of final product namely Novamox pediatric drops. However, the Revenue argued that these droppers were separately kept in the cartons along with the sealed bottle of the pediatric drop. These droppers were neither used in the manufacture of pediatric drop nor used in relation to its manufacture.

The High Court agreed with the contention of the assessee that for purpose of dispensation or administration of the drugs in proper quantity as per the medical prescription, dropper had to be affixed on the bottle containing the drug. Further, as the droppers were necessary packaging material for marketing of the drug (as per the directions given by the Controller of Drugs for India), they would be covered by the words "packaging material". The Tribunal, while allowing the appeal in the instant case, had relied upon the decision taken in *Heal Well Pharmaceutical vs. Collector 1994 (72) E.L. T. 446 (Tribunal)* wherein it was held that where dropper was provided in the carton along with bottle containing the drug, it amounted to manufacture and the manufacturer was entitled to credit of duty paid on such product being input of the firm product.

Considering the all the facts, circumstances and the legal position, the High Court, upholding the Tribunal's decision, held that the plastic dropper packed in the pediatric drops and marketed at the factory gate should be construed to be an input used in or in relation to the manufacture of the final product.