PAPER – 16: TAX MANAGEMENT AND PRACTICE

Paper – 16 : Tax Management and Practice

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

Answer Question No. 1 which is compulsory and any five from the rest.

1. (a) **Computation of total income of firm**

Particulars	Amount in ₹
Presumptive Income u/s 44AD : 8% of gross sales = 60,00,000 × 8%	4,80,000
(-) Deduction u/s 40 (b)	
Interest on Capital (5,00,000 × 3 12%	1,80,000
Book Profits	3,00,000
(-) Deduction u/s 40(b)	
Salary to partners (WN)	1,80,000
Business Income	1,20,000
(-) Brought forward loss	80,000
Profit against from business / profit.	40,000
Other Incomes	Nil
Total Income	40,000

Deduction u/s 40(b)

Salary as per Profit & Loss A/c	1,80,000	Whichever is lower
Permissible limit (90% of book profits)	2,70,000	

Note: All expenses (including depreciation) are deemed to be allowed as deduction while applying provisions u/s 44AD.

(b) Determination of assessable value (Ref. 8 of CER/CAS – 4)

Particulars	₹
Direct material [net of duty : 9,00,000 × $\frac{100}{112.50}$]	8,00,000
Administrative overheads [Production based : 2,00,000 × 25%]	50,000
Selling and distribution	---
	8,50,000
(-) Sale of Scrap	30,000
	8,20,000
(+) Margin of profit @ 10% as per (AS-4)	82,000
Assessable Value	9,02,000

Excise duty @ 12.50% = ₹ 1,12,750.

(c) Determination of CENVAT Credit for December, 2015

Particulars	₹
Raw material (not availed within one year)	Nil
Office equipment (not covered under capital goods)	Nil
Light Diesel Oil (Not eligible)	Nil
Paints (not eligible as duty document not available)	Nil
Storage service (input service eligible)	7,500
CENVAT Credit	7,500

(d) Determination of assessable value

Particulars	US $
CIF value	3000
(-) Air freight	700
(-) Insurance	100
FOB Value	2,200
(+) Air freight (Max 20% of FOB)	440
(+) Insurance	100
CIF Value	2,740
	₹
CIF value in Indian currency = ₹ 2,740 × 68 (as on BOE)	1,86,320
(+) Landing charges @ 1%	1,863.20
Assessable value	1,88,183.20

Calculation of Customs Duty (latest of BOE/arrival of aircraft)

Particulars	₹
BCD @ 12% on AV	22,581.98
CVD u/s 3(1) exempted	Nil
Cess @ 3%	677.46
SAD u/s 3(5) @ 4%	8,457.71
Total Duty	31,717.15

2. (a) Computation of total income of firm

Particulars		₹
Net profit as per Profit & Loss A/c		8,00,000
(+) Excess depreciation debited [1,50,000×15%-1,50,000×15%×½]		11,250
(-) Additional depreciation [1,50,000 × 20% × ½]		15,000
(+) Speculation loss (taken separately)		50,000
(+) Salary to partners (not debited)		---
(-) Interest to partners (upto 12%)		
Mr. x (8000 × $\frac{12}{16}$)		6,000
Mr. y (7000 × $\frac{12}{14}$)		6,000
Mr. z (6000 × $\frac{12}{12}$)		6,000
(-) Dividend from a non-domestic Co.		20,000
Book Profits		8,08,250
(-) Salary to partners u/s 40(b)		
Mr. x (8000 × 12) 96,000		
Mr. y (7000 × 12) 84,000		
Mr. z Nil	1,80,000	
Or Permissible limit (3,00,000×90%+5,08,250×60%) (Whichever is lower)	5,74,950	1,80,000
Business Income		6,28,250
(-) Brought forward loss		30,000
PGBP		5,98,250
IOS Dividend		20,000
GTI		6,18,250
(-) Deduction u/s 80G		
SBK Fund		40,000

Total Income		5,78,250

Total Income of Partners

Particulars	Mr. x	Mr. y	Mr. z
IHP	2,00,000	---	---
PGBP:			
Share from firm	---	---	---
Salary from firm	96,000	84,000	---
Interest from firm	6,000	6,000	6,000
IOS Interest	---	---	50,000
Total Income	3,02,000	90,000	56,000

(b) Income Computation and Disclosure standards VII (Government Grants)

Grants relating to depreciable assets shall be deducted from actual cost of asset or WDV of the block of assets.
Grants relating to non-depreciable assets shall be recognized as income of the period in which a person is rewired to fulfill the obligations for availing the grants and over that period over which the cost of meeting such obligations changed to income.
All other grants shall be recognized as income of the period in which it is receivable.

Significant deviations between ICDS VII and AS 12.

	ICDS VII	AS 12	Remarks
(i)	Recognition of grants shall not be postponed beyond the date of actual receipt.	Recognition of grants depend upon reasonable assurance of complying conditions attached to receive such grants	Even when all the conditions are not fulfilled, recognition shall not be postponed beyond date of receipt
(ii)	There is no specific requirement to capitalize grants in the nature of promoter's contribution.	Grants in the nature of promoter's contribution, treated as capital reserve which can neither be considered as income nor can be distributed as dividend.	Object for which the grant is given which determines the nature of grant is not taken into consideration under ICDS VII

3. (a) Computation of Taxable Income.

Particulars	₹
Profits from Unit I WN (i)	92,86,250
Profits from Unit II WN (ii)	37,37,500
Taxable Income	1,30,23,750

Working Note: (i)
Profit of Unit = Profit as per IT Rules–AOE u/s 10AA= ₹ 1,21,12,500–28,26,250 = ₹ 92,86,250

AOE u/s 10AA = 50% [Profits × $\frac{ETO}{TTO}$] = 50% [1,21,12,500 × $\frac{2,10,00,000}{4,50,00,000}$] = 28,26,250.
Export Turnover = [3,00,00,000 – 20,00,000] × 75% = 2,10,00,000.

Working Note: (ii)

Particulars	Unit I	Unit II
Profits as per books	1,20,00,000	40,00,000

(+) Depreciation as per books [(6,00,000 × $\frac{3}{4}$), [6,00,000 × $\frac{1}{4}$)	4,50,000	1,50,000
(-) Depreciation u/s 32 [(6,00,000 × $\frac{15}{20}$ × $\frac{3}{4}$), [6,00,000 × $\frac{15}{20}$ × $\frac{1}{4}$)	3,37,500	1,12,500
Profit as per IT Rules	1,21,12,500	37,37,500

(b) Computation of amount of TDS

(i) Since the amount during the year exceeds ₹ 75,000 amount of TDS @ 2% u/s 194C is ₹ 1600 (i.e., 80,000 × 2%)
(ii) Since the amount during the year does not exceed ₹ 1,80,000 amount of TDS u/s 194I is 'Nil'.
(iii) Payment to non-resident sportsman is subject to TDS @ 20% u/s 194E. Therefore, amount of TDS is ₹ 30,000 (i.e., 1,50,000 × 20%.
(iv) Since the amount during the year exceeds ₹ 5,000, amount of TDS u/s 194H @ 10% is ₹ 25,000 (i.e., 2,50,000 × 10%).
(v) Since the amount during the year exceeds ₹ 30,000, amount of TDS u/s 194J @ 10% is ₹ 6,000 (i.e., 60,000 × 10%).
(vi) Since the amount does not exceed is ₹ 50 lakhs, amount of TDS u/s 194IA is 'Nil'.
(vii) Payment to a resident individual towards interest on securities, who is not having PAN is subject to TDS to the extent of higher of:
(a) Rate in force or
(b) Rate as per Act or
(c) 20%.

4. (a) Kotak Mahindra Finance Ltd. v. CIT
Lessor of the vehicle would be entitled to higher depreciation provided the lessee had used the vehicles in the business of running them on hire. This is applicable even if the lessee is registered as owner under the Motor Vehicles Act, 1988.
In the given case, Viswas Ltd. can claim depreciation of ₹ 3 lakhs in the books of account. Hence, the action of the assessing officer is not valid.

(b) CIT v Bijli Cotton Mills Pvt. Ltd.
Any amount received, which is specifically mentioned for 'local charities' and disclosed separately in the books of amount should be treated as 'diversion of income by overriding its title'. The assessing officer issuing a show cause notice treating the amount of charity as income of the assessee is not acceptable.
The apex court observed that the amount of charity is not part of trading receipts and should not be treated as 'application of income' as said by the department and hence, should not be included in total income of assessee.

(c) Rollatainers Ltd. CIT
In the given case waiver of loan results in decrease of capital liability but not revenue liability and waiver of interest before its accrual does not result in 'recovery against deduction' as levied u/s 41(1). However, waiver of cash credit amounts to chargeable income as it is received in the cause of business and for conducting day-to-day operations.
The court observed that benefit in the nature of capital and benefit before the liability arise should not be treated as taxable income but benefit derived by way of waiver of cash credit is taxable income as per sec. 68. Hence, the view of assessing officer is invalid.

5. (a) (i) The price prevailing at the time of removal from factory (i.e., ₹ 16 lakhs on 01.07.2015/sale is taken place on 15.06.2015) is taken as assessable value Computation of Assessable Value.

(ii) The applicable rate of duty is @ 8.50% (Rate on removal) and duty is ₹ 1,36,000 (i.e., is 16,00,000 × 8.50%)

(iii) Cost of production has no bearing with assessable value in present case. Assessable value can be considered, if the dealing between seller and buyer are not arm's length.

(b) Since final product is exempt from excise duty, duty will be payable on intermediate product.
Process Loss = 5,000 × 2% = 100 Kg.
Total units of intermediate product 'y' = 5,000 – 100 = 4,900
Excise duty payable on 'y' = 4900 × 120 × 12.50% = ₹ 73,500

Cenvat Credit available

Particulars	₹
Raw material 'x' [5000 × 100 × 12.50%]	62,500
CVD u/s 3(1) on capital goods [50% of ₹ 12,000]	6,000
CVD u/s 3(5) on capital goods [100% of ₹ 5,000]	5,000
Total credit	73,500

Net excise duty = ₹ 73,500 – ₹ 73,500 = Nil.

6. (a) Value of taxable service in case of Man Power Supply (MPS)

Particulars	₹
Wages	4,00,000
PF	40,000
Amount paid to SP	60,000
	5,00,000

If Mr. X provides MPS to X Ltd., reverse charge shall apply if X ltd. is a business entity.
If X Ltd. provides MPS to Mr. X, normal charge shall apply if Mr. x is a business entity or not amount of service tax @ 14.50% = ₹ 72,500.

(b) Determination of Assessable value

	US $
CIF value	40,000
(-) Insurance	2,000
(-) Freight	8,000
FOB Value	30,000
(+) Insurance	2,000
Air freight (Max 20% of FOB)	6,000
CIF value	38,000
CIF value in Indian currency = 38,000 × 60	22,80,000
(+) Landing charges @ 1%	22,800
Assessable value	23,02,800

Calculation of duty

	₹
BCD @ 10% on AV	2,30,280
CVD u/s 3(1)	Nil
Cess @ 3% on BCD	6,908.40
CVD u/s 3(5) @ 4% [on AV + BCD + Cess]	1,01,599.54
Total Duty	3,38,788

<u>Anti-dumping duty u/s 9A</u>
Dumping Margin or Injury Margin which is lower

Dumping margin = Normal Value – Export price
= [35,000 – 30,000] × 60
= ₹ 3,00,000.

Injury margin = Selling price – Landed cost
= 30,00,000 – (23,02,800 + 3,38,788)
= ₹ 3,58,412

Selling Price $= \frac{40,000}{4} \times 300 = 30,00,000.$
ADD u/s 9A = ₹ 3,00,000.

7. (a) Khaitan Electricals Ltd. v CCE

Provision: Goods should be assessed in the stage in which they are removed. Value of essential bought out items, supplied with the main article at the time of removal should be included in the assessable value. The payment for such bought out items is in "connection with the sale" and the main article cannot work without the bought out part.

Conclusion: Value of Regulators is includible in assessable value of fan as they are parts of fan.

(b) Pro Musicals v Joint Commissioner of Customs
Provision: Where any goods are seized u/s 110 and no SCN is given u/s 124(a) within 6 months of the seizure of the goods, the goods shall be returned to the person from whom they were seized.

Conclusion: The court observed that detention is not seizure but seizure includes detention and SCN is given within the limit and hence valid.

(c) Infinity InfoTech Parks Ltd. v UOI
Provision: Extended period of limitation can be invoked u/s 73(1), if the service tax has not been levied or paid or has been short levied or short paid or erroneously refunded by reason of fraud or collusion or willful misstatement or suppression of facts or contravention of any the provisions made there under with an intent to evade the payment of service tax.

Conclusion: It was held that mere contravention of provisions, of Chapter V does not enable the authorities to invoke the extended period of limitation.

8. (a) Transfer pricing provisions are applicable in cases where the persons involved in the transaction are either associated enterprises or deemed associated enterprises as envisaged u/s 92A (1) or 92A(2). TP is applied u/s 92BA in respect of specified domestic transactions if aggregate amount exceeds ₹ 20 crores.

   (i) Domestic transaction is not covered u/s 92BA if the amount does not exceeds the given limit and hence the given case is not subject to Transfer Pricing.
   (ii) If one enterprise supplies atleast 90% of the required raw material of another enterprise during the courage of international trade, such transaction is covered u/s 92A(2) and hence the given case is subject to TP.
   (iii) If one enterprise holds atleast 26% of the voting rights of another enterprise, such case is covered u/s 92A(2) and hence the given case is subject to TP.
   (iv) If one enterprise appoints more than half of the Directors in another enterprise, such case is covered u/s 92A(2) and hence the given case is subject to TP.

(b) Status Holders

Units in SEZ/EOU/STP/EHTP/BTP engaged in exports and recognized as export house are eligible as status holders.

Categories of Status Holders

One Star Export House 3 US $ Million	Based on average FOB value of exports during three financial years
Two Star Export House 25 US $ Million	
Three Star Export House 100 US $ Million	
Four Star Export House 500 US $ Million	
Five Star Export House 2000 US $ Million	

<u>Benefits of Status Holders</u>

(i) Clearance on self-declaration basis
(ii) Priority in fixing SION
(iii) Exemption from furnishing of Bank guarantee
(iv) Permission to establish export warehouses in case of two star and above.
(v) Benefit of accredited clients programme in case of three star and above.
(vi) Free export exportable items subject to annual limit of ₹ 10 lakhs or 2% of Average Annual Export Realization during three licensing years preceding the year whichever is higher.

Note: In addition to above, all status holders are eligible for the benefits under Duty Free Credit Entitlement Certificate Schemes (duty credit scrip).