Paper 16 – Tax Management and Practice

The following table lists the learning objectives and the verbs that appear in the syllabus learning aims and examination questions:

	Learning objectives	Verbs used	Definition
LEVEL C	KNOWLEDGE What you are expected to know	List	Make a list of
		State	Express, fully or clearly, the details/facts
		Define	Give the exact meaning of
	COMPREHENSION What you are expected to understand	Describe	Communicate the key features of
		Distinguish	Highlight the differences between
		Explain	Make clear or intelligible/ state the meaning or purpose of
		Identity	Recognize, establish or select after consideration
		Illustrate	Use an example to describe or explain something
	APPLICATION How you are expected to apply your knowledge	Apply	Put to practical use
		Calculate	Ascertain or reckon mathematically
		Demonstrate	Prove with certainty or exhibit by practical means
		Prepare	Make or get ready for use
		Reconcile	Make or prove consistent/ compatible
		Solve	Find an answer to
		Tabulate	Arrange in a table
	ANALYSIS How you are expected to analyse the detail of what you have learned	Analyse	Examine in detail the structure of
		Categorise	Place into a defined class or division
		Compare and contrast	Show the similarities and/or differences between
		Construct	Build up or compile
		Prioritise	Place in order of priority or sequence for action
		Produce	Create or bring into existence
	SYNTHESIS How you are expected to utilize the information gathered to reach an optimum conclusion by a process of reasoning	Discuss	Examine in detail by argument
		Interpret	Translate into intelligible or familiar terms
		Decide	To solve or conclude
	EVALUATION How you are expected to use your learning to evaluate, make decisions or recommendations	Advise	Counsel, inform or notify
		Evaluate	Appraise or asses the value of
		Recommend	Propose a course of action

Paper 16 – Tax Management and Practice

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

This paper contains 9 questions, divided in two sections Section A and Section B. In total 7 questions are to be answered. Answer any five questions from Section A (out of six questions - Questions Nos. 1 to 6).

In Section B, Question No. 9 is compulsory and answer any one question from the remaining two questions of the section (i.e. out of Question nos. 7 & 8).

Students are requested to read the instructions against each individual question also. All workings must form part of your answer. Assumptions, if any, must be clearly indicated.

All the questions relate to the assessment year 2015-16, unless stated otherwise.

Section A

Answer any five Questions

1. (a) X earns the following income during the financial year 2014-15:

		₹
(a)	**Interest from an Indian company received in London.**	**1,20,000**
(b)	**Pension from former employer in India received in USA.**	**1,80,000**
(c)	**Profits earned from a business in Paris which is controlled from India, half of the profits being received in India.**	**2,00,000**
(d)	**Income from agriculture in Bhutan and remitted to India.**	**1,25,000**
(e)	**Income from property in England received there.**	**4,00,000**
(f)	**Past foreign income brought to India.**	**10,000**

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. **[5]**

Solution:

	Resident and ordinarily resident (₹)	**Not ordinarily resident (₹)**	**Non-resident (₹)**
(1) Income deemed to accrue/arise in India			
Interest from Indian Company	1,20,000	1,20,000	1,20,000
Pension from employer in India.	1,80,000	1,80,000	1,80,000
(2) Income received in India			
50% of profits of business in Paris.	1,00,000	1,00,000	1,00,000
(3) Income earned and received outside India, from a business controlled from India			

50% of profits of business in Paris.	1,00,000	1,00,000	---
(4) Income earned and received outside India other than (3)			
Income from Agriculture in Bhutan.	1,25,000	---	---
Income from Property in England.	4,00,000	---	---
	10,25,000	**5,00,000**	**4,00,000**

Note:

(a) Any income which is either received in India or deemed to be received in India is taxable in India, irrespective of the residential status.

(b) Any income which is either earned in India or is deemed to be earned in India is taxable in India, irrespective of the residential status.

(c) For a Resident in India (for individual & HUF, resident and ordinarily resident in India) all global income, wherever earned/received is taxable ii India.

(d) For a non-resident, an income is taxable only if it is either earned in India or it is received in India.

(e) For not ordinary resident, income earned and received outside India will be taxable, only when it is from a business or profession controlled or set up in India.

(f) Past foreign income is not to be included because it is not the income of the previous year 2014-15.

(b) Balram furnishes you the following information for the previous year 2014-15.

Basic salary	**₹ 15,000p.m.**
Dearness allowance	**₹ 6,000 p.m. (60% of which is part of salary for retirement benefits)**
Entertainment allowance	**₹ 500 p.m.**
House rent allowance	**₹ 6,000 p.m.**
Actual rent paid for a house in Delhi	**₹ 7,000 p.m.**
Education allowance for 3 children	**₹ 200 p.m. per child**
Transport allowance for commuting from residence to office and back (He spent ₹ 14,000 during the year for such purpose)	**₹ 1,200 p.m.**
Medical allowance (He spent ₹ 5,000 during the year for his medical treatment)	**₹ 1,000 p.m.**
Lunch allowance (He spent ₹ 3,000 during the year for his lunch in the office)	**₹ 200 p.m.**

Compute taxable salary of Balram for the assessment year 2015-16. **[5]**

Solution:

Computation of taxable salary for the assessment year 2015-16

	₹	₹
Basic salary (₹15,000x 12)		1,80,000
Dearness allowance (₹6,000 x 12) – Fully taxable		72,000
Entertainment allowance (₹500 x 12)- Fully taxable to non-Government employee		6,000
Education allowance (₹200 x 12 x 3)	7,200	

Less: Exemption (₹100 x 12 x 2)	2,400	4,800
Transport allowance (₹1,200x 12)	14,400	
Less: Exemption (₹800 x 12)	9,600	4,800
Medical allowance (₹1,000 x 12) – Fully Taxable		12,000
Lunch allowance (₹ 200x 12) – Fully taxable		2,400
House rent allowance (₹ 6,000 x 12)	72,000	
Less: Exemption u/s 10(13A) Rule 2A (See working note)	61,680	10,320
Gross salary		**2,92,320**
Less: Deduction on account of entertainment allowance		Nil
Income under the head salary		**2,92,320**

Working Note

Meaning of salary for HRA

Basic salary + DA 60%

₹ 1,80,000 + 43,200 = ₹ 2,23,200

HRA exempt — Least of following:-

1. Actual HRA received ₹ 72,000
2. Rent paid — 10% of salary (₹ 84,000 – ₹ 22,320) ₹ 61,680
3. 50% of salary of ₹ 2,23,200 ₹ 1,11,600

∴ Amount exempted ₹ 61,680

(c) RP owns a house property in Delhi. From the particulars given below compute the income from house property for the assessment year 2015-16.

	₹
Municipal value	**2,00,000**
Fair rent	**2,52,000**
Standard rent	**2,40,000**
Actual rent (per month)	**23,000**
Municipal taxes	**20% of municipal value**
Municipal taxes paid during the year	**50% of tax levied**
Expenses on repairs	**20,000**
Insurance premium	**5,000**

RP had borrowed a sum of ₹ 12,00,000 @ 10% p.a. on 1.7.2012 and the construction of the property was completed on 28.02.2014. [4]

Solution:

Gross annual value shall be higher of the following two:

		₹	₹
(a)	Expected rent		
	[Municipal value (₹ 2,00,000), Fair rent (₹ 2,52,000) whichever is higher, but limited to standard rent (₹ 2,40,000)	2,40,000	
(b)	Actual rent received/receivable (₹ 23,000 x 12)	2,76,000	
	∴ Gross annual value		2,76,000

	Less: Municipal taxes paid 150% of (20% of ₹ 2,00,000)]		20,000
			2,56,000
	Less: Deductions u/s 24 (a)		
(a)	Statutory deduction @ 30%	76,800	
(b)	Interest on borrowed money (see note below)	1,38,000	2,14,800
	Income from house property		41,200

Notes:-

(1) Interest for pre-construction period

Pre-construction period shall be from 1.7.2012 to 31.3.2013 i.e. 9 months

Interest for 9 months = 12,00,000 x $\frac{10}{100}$ x $\frac{9}{12}$ = 90,000

1/5 of ₹ 90,000 18,000

(2) Interest for previous year (10% of ₹ 12,00,000) 1,20,000

1,38,000

2. (a) Mr. A, a first stage dealer in pharmaceutical plant and boiler in the State of Tamil Nadu, furnishes the under mentioned information:

Sl. No.	Particulars	₹
(i)	**Total inter-State sales during financial year 2014-15 (CST not shown separately)**	**2,31,25,000**
(ii)	**Trade commission for which credit notes have to be issued separately**	**5,78,125**
(iii)	**Freight and transportation charges (of this ₹ 1,50,000 is on inclusive basis)**	**4,50,000**
(iv)	**Insurance premium paid prior to delivery of goods**	**70,000**
(vi)	**Installation and commissioning charges levied separately in invoices**	**75,000**

Compute the tax liability under the CST Act, assuming the rate of tax @ 2%. [3]

Solution:

Particulars	(₹)
Sales turnover	2,31,25,000
Less: Trade Commission	5,78,125
Freight and transportation charges to the extent shown separately in the invoices	3,00,000
Installation and commissioning charges levied separately in invoices	75,000
Total Turnover	2,21,71,875
Less: Central Sales Tax (₹ 2,21,71,875 × 2 / 102)	4,34,743
Taxable turnover	2,17,37,132

(b) Compute the VAT amount payable by Mr. A who purchases goods from a manufacture on payment of ₹ 2,27,000 (including VAT) and earn 10% profit on cost to retailers. Vat rate on purchase and sale is 13.50%. [3]

Solution:

Computation of VAT Payable

Cost of purchase	₹ 2,27,000 × 100/113.5	₹ 2,00,000
Add: Profit	₹ 2,00,000 × 10%	₹ 20,000
Taxable turnover		₹ 2,20,000
VAT payable on sales	₹ 2,20,000 × 13.5%	₹ 29,700
Less: Input tax credit	₹ 2,27,000 × 13.5 / 113.5	₹ 27,000
Net VAT liability		₹ 2,700

(c) MNO Ltd. is in the manufacture of both excisable and non-excisable goods in their factory building rented by them from October 1, 2014 and have been occupying the same as a tenant. From the following particulars for the period October 1, 2014 to March 31, 2015, state with suitable explanations, whether MNO Ltd. could claim the benefit of exemption in terms of Notification No. 8/2003-CE dated 1-3-2003 for the financial year 2015-16.

		₹ in lakh
(i)	**Clearances of branded goods**	**60**
(ii)	**Export Sales to Nepal**	**80**
(iii)	**Export Sales to USA and Canada**	**120**
(iv)	**Clearances of goods (duty paid passed on Annual capacity of production under Section 3A of the Central Excise Act, 1944)**	**70**
(v)	**Clearances of goods subject to valuation based on retail sale price under Section 4A of the Central Excise Act, 1944 (said goods are eligible for 30% abatement)**	**200**
(vi)	**Job work under Notification No. 214/86-CE.**	**60**

During the period April 1, 2014 to September 30, 2014 the previous tenant of the building presently occupied by MNO Ltd. had cleared excisable goods of the aggregate value of ₹120 lakhs. [6]

Solution:

Computation of value of clearances for home consumption in the financial year 2014-15:

Sl. No.	Particulars		₹ in lakh
(i)	Clearances of branded goods	[WN-1]	Nil
(ii)	Export Sales to Nepal	[WN-1]	80
(iii)	Export Sales to USA and Canada	[WN-1]	Nil
(iv)	Clearances of goods (duty paid based on annual capacity of production under Section 3A of the Central Excise Act, 1944)		70
(v)	Clearances of goods subject to valuation based on retail sale price under Section 4A of the Central Excise Act, 1944	[WN-2]	140
(vi)	Job work under Notification No. 214/86-CE.	[WN-1]	Nil
(vii)	Clearances of previous tenant of the building occupied by MNO Ltd.	[WN-3]	120
	Total		410

Working Notes:

(1) In order to claim the benefit of exemption under Notification No. 8/2003-CE, dated 01.03.2003 in a financial year, the total turnover of a unit should not exceed ₹ 400 lakhs in the preceding financial year. Notification No. 8/2003-CE, dated 01.03.2003 provides that for the purpose of computing the turnover of ₹ 400 lakhs.

(a) clearances bearing the brand name or trade name of another person are excluded. It has been assumed that the branded goods are excisable goods and they bear the brand name of another person and not the brand name of MNO Ltd.

(b) export turnover is excluded. However, exports to Nepal and Bhutan are not excluded as these are treated as "clearance for home consumption". It has been assumed that goods exported by MNO Ltd. to Nepal are excisable goods.

(c) Clearances under specified job work notifications are excluded and Notification No. 214/86-CE, dated 25-03-1986 is one of the specified notification.

(2) In case of the goods subject to valuation under section 4A of the Central Excise Act, 1944, value for the purpose of the SSI exemption would mean value fixed under section 4A i.e., retail sale price less abatement. Hence, value of such clearances would be ₹ 200 lakhs × 70% = ₹ 140 lakhs.

(3) For the purpose of computing the turnover of ₹ 400 lakhs, all the clearances made by different manufactures from the same factory are to be clubbed together. Hence, clearances, worth ₹ 120 lakhs of previous tenant of the building occupied by MNO Ltd. have been added.

Since the value of clearances for home consumption exceeds ₹ 400 lakhs in the financial year 2014-15, hence MNO Ltd. is not eligible to claim the benefit to exemption under Notification No. 8/2003-CE, dated 01.03.2003 in the financial year 2015-16.

(d) Calculate the assessable value in respect of each of the clearances given below -

Removed to	**Price at Depot as on**		**Actual Sale Price at Depot on**
	01/02/2015	**31/01/2015**	**01/02/2015**
Mysore Depot	**₹ 210/unit**	**₹ 205/unit**	**₹ 215/unit**
Hosur Depot	**₹ 220/unit**	**₹ 215/unit**	**₹ 225/unit**
Tirupati Depot	**₹ 230/unit**	**₹ 225/unit**	**₹ 235/unit**

The goods were cleared to respective Depots on 01/01/2015 and actually sold at the depots on 01/02/2015. [2]

Solution:

Valuation for Depot Transfer: Price prevailing at the Depot on the date of clearance from the factory will be the Assessable Value to pay excise duty.

Assessable Value: Therefore Assessable Value for each of the clearances will be as under (based on price prevailing at the respective depot on the date of removal from factory i.e., 01.01.2015)-

Clearance from	Assessable Value
(a) Mysore Depot	₹ 210
(b) Hosur Depot	₹ 220
(c) Tirupati Depot	₹ 230

Note: The actual sale price has no relevance for determining the value of above goods.

3. (a) XYZ Ltd., a company incorporated in US, sells laser printer cartridge to its 100 per cent Indian subsidiary AB Ltd. @ $50 per cartridge. XYZ Ltd. also sells its laser printer cartridge to another company PQR Ltd. in India @ $80 per piece. Total income of AB Ltd. for the assessment year 2014-15 is ₹12,00,000 after making payment for 100 cartridges @ $50 (1$ = ₹49). AB Ltd. has deducted tax at source while making payments to XYZ Ltd. In this case, sale to unrelated party PQR Ltd. is @ $80. Compute the arm's length price and taxable income of XYZ Ltd. and AB Ltd. The rate of one dollar may be assumed to be equivalent to ₹ 49 in all transactions. [4]

Solution:

Arm's length price of laser printer cartridge, which is sold to AB Ltd. will be $80 per cartridge by comparable uncontrolled price method.

Income of AB Ltd. -
It will be computed as under-

	₹
Income as per books of account	12,00,000
Add: Amount charged by XYZ Ltd. [$50 x 100 x ₹ 49]	(+) 2,45,000
Less: Arm's length price [$80 x 1 00 X 49]	(-) 3,92,000
Income (after applying arm's length price)	10,53,000

By virtue of section 92(3), one cannot reduce taxable income by applying arm's length price. Therefore, income of AB Ltd. will be ₹ 12,00,000.

Income of XYZ Ltd. —
If the transactions are actually on a principal-to-principal basis and are at arm's length and the subsidiary company functions and carries on business on its own, instead of functioning as an agent of the parent company, the mere fact that the Indian company is a subsidiary of the non-resident company will not be considered a valid ground for invoking section 9 for assessing the non-resident.

If the aforesaid conditions are satisfied, then XYZ Ltd. is not chargeable to tax in India.

Conversely, if the aforesaid conditions are not satisfied, XYZ Ltd. will be chargeable to tax in India in respect of income which arises on sale of goods to AB Ltd. However, the adaptation of arm's length price by the Assessing Officer will not affect the computation of taxable income of XYZ Ltd. [as per second proviso to section 92C(4) when tax is deducted/deductible, the income of recipient enterprise will not be recomputed if arm's length price is adopted in the case of payer-enterprise].

(b) X Ltd, operating in India, is the dealer for the goods manufactured by ZOR Ltd of Japan. ZOR Ltd owns 55% of Shares of X Ltd, and out of 7 Directors of the Company, 4 were appointed by them. The Assessing Officer after verification of transactions of ₹ 350 Lakhs of X Ltd for the relevant year and by noticing that the Company had failed to maintain the requisite records and had also not obtained the Accountants' Report, adjusted its Income by making an addition of ₹ 35,00,000 to the declared income and also issued a Show Case Notice to levy various penalties. X Ltd seek your expert opinion. [4]

Solution:

1. Principle:
   (a) Associated Enterprises: Two Enterprises shall be deemed to be Associated Enterprises, if -
   - One Enterprise holds, directly or indirectly, shares carrying not less than 26% of shares/voting power in the other Enterprise (or)
   - More than half of Board of directors or members of Governing Board, or one or more Executive Directors or Executive Members of the Governing Board of one Enterprise, are appointed by the other Enterprise.

   (b) Assessing Officer's Powers u/s 92C(3):
   Where during the course of any proceeding for the assessment of income, the Assessing Officer is, on the basis of material or information or document in his possession, of the opinion that—
   (a) the price charged or paid in an international transaction or specified domestic transaction has not been determined in accordance with sub-sections (1) and (2); or
   (b) any information and document relating to an international transaction or specified domestic transaction have not been kept and maintained by the assessee in accordance with the provisions contained in sub-section (1) of section 92D and the rules made in this behalf; or
   (c) the information or data used in computation of the arm's length price is not reliable or correct; or
   (d) the assessee has failed to furnish, within the specified time, any information or document which he was required to furnish by a notice issued under sub-section (3) of section 92D,

   the Assessing Officer may proceed to determine the arm's length price in relation to the said international transaction or specified domestic transaction in accordance with sub-sections (1) and (2), on the basis of such material or information or document available with him:

   Provided that an opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the arm's length price should not be so determined on the basis of material or information or document in the possession of the Assessing Officer.

   (c) Penalty Provisions relating to non-compliance are also applicable.

2. Analysis and Conclusion:
   (a) In the given question, since ZOR Ltd holds 55% of the Shares of X Ltd, both are Associated Enterprises.
   (b) As the value of aggregate transactions of X Ltd with ZOR Ltd exceeds ₹ 1 Crore, X Ltd should maintain the prescribed documents and records. Since X Ltd has not maintained the required documents, A.O. is empowered to determine the ALP based on the materials available to him and levy penalty, after giving opportunity of being heard to X Ltd.
   (Note: Assumed that ₹ 350 Lakhs of transactions of X Ltd are carried out with ZOR Ltd)
   (c) If the Accountants' Report is not obtained, then the A.O. can levy penalty of ₹ 1 Lakh u/s 271BA.

(c) (i) Reddy & Co. a business owned by an individual, operates a Security Agency. It supplied 10 security personnel to R Ltd on a monthly charge of ₹ 10,000 per person. Determine the taxability in the hands of Reddy & Co. and R Ltd for this service assuming the service, is

provided only for June 2014.
If the services are provided to M/s Raju & Co. which is an individual business entity, determine the tax liability. [3]

(ii) Briefly answer the following questions:-

I. Is filing of return compulsory even if no taxable service is provided or received or no payments are received during a period (a particular half year)?

II. Whether a single return is sufficient when an assessee provides more than one service?

III. What are the returns a service tax assessee has to file? [3]

Solution:

(i) (1) For Security Services provided by an Individual, HUF, Firm or AOP to a Business Entity registered as a Body Corporate, then 25% of ST liability shall be discharged by the Service Provider, and balance 75% shall be discharged by the Service Receiver.

However, if the service is rendered to any person other than a Registered Body Corporate, then the entire Service Tax liability shall be borne by the Service Provider.

(2) Total Service Tax Liability on the above service is (₹ 10,000 × 10 persons × 12.36% = ₹ 12,360)

If Service Receiver is	Joint Charge applicable?	Liability for Service Provider	Liability for Service Receiver	Invoice Amount
R Ltd.	Yes (Body corporate)	12,360 × 25% = ₹ 3,090	12,360 × 75% = ₹ 9,270	₹ 1,03,090
Raju & Co.	No (Not a Body Corporate)	12,360 × 100% = ₹ 12,360	Nil	₹ 1,12,360

(ii)

Case (I)	Filing of Return within the prescribed time limit is compulsory, even if it may be a NIL return, failing which penal action is attracted.
Case (II)	A single return is sufficient, because the ST-3 Return is designed to capture details of each service separately with in the same return.
Case (III)	(i) ST-3 Return - For all the Registered Assessees, including Input Service Distributors. (ii) ST-3A Return - The Assessee who is making provisional assessment under rule 6(4) of the Service Tax Rules, 1994 is required to file a Memorandum in form ST-3A accompanying the Return.

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 $ 25,000
Quantity imported: 500 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 cost of commodity calculated @ US $70 per kg. and the landed value of the commodity as imported.
Calculate 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. **[4]**

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) or special additional duty of customs u/s 3(5) 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 $ 25,000 × ₹ 50]		12,50,000
Add: Landing Charges @ 1%		12,500
Assessable Value		12,62,500
Add: Basic Customs Duty @ 20%		2,52,500
Add: EC and SHEC @ 3% on Basic Customs Duty		7,575
Landed Value/Cost of the goods	[A]	15,22,575
Cost of commodity for the purposes of anti-dumping notification [500 Kg. × US $ 70 per Kg. × ₹ 50 per dollar]	[B]	17,50,000
Anti-dumping duty [B - A]		2,27,425

(b) HRC Co. imported a consignment of Computer Software and Manuals valued at US $42 Lakhs and contended that the actual value was only US $10 Lakhs while the balance amount represented License Fee for using the software at multiple locations, and as such Customs Duty is payable only on the actual value of US $10 Lakhs. Is the contention raised by HRC Co. correct? Discuss. **[2]**

Solution:

As per Rule 10(1), Royalty and License Fees relatable to Imported Goods as a condition of sale of goods, shall be included in Assessable Value. However, charges for right to reproduce will not be included in Assessable Value.

Amount of License Fee relatable to the use of software at multiple locations is not reproduction royalty. Hence, it is includible in the value of consignment of Computer Software and Manuals. [State Bank of India 115 ELT 597 (SC)]

The Total Cost of USD 42 Lakhs, (i.e., including the License Fee for countrywide use of software) should be taken as the Transaction Value, on which Customs Duty is to be charged.

(c) Explain the administrative authorities of Foreign Trade Policy. [4]

Solution:

The administrative machinery authorities of the foreign trade policy is as under -

I. Director General of Foreign Trade: Director General of Foreign Trade (DGFT), an attached office of the Ministry of Commerce & Industry, Government of India formulates, controls and supervises the Foreign Trade Policy. DGFT has several offices in various parts of the country for execution of the policy formed by the headquarters at Delhi.

II. Other Authorities involved in administration of FTP: Though the FTP is formulated by DGFT, it is administered in close coordination with other agencies, like -

A. Central Board of Excise and Customs (CBEC): CBEC, along with its two Departments viz Customs and Central Excise, under the Ministry of Finance, facilitate the implementation of FTP.

Responsibilities of the Departments: Customs Department which is responsible for clearance of export and import goods, follow the policy framed by FTP. On the other hand the Central Excise Authorities are required to be involved for all matters of exports, where goods have to be cleared without payment of duty.

B. Reserve Bank of India (RBI): RBI which is the nodal bank in the country, working under the Ministry of Finance, is entrusted with policy formulation for foreign exchange management including the payments and receipts of foreign exchange and promotion and orderly development and maintenance of foreign exchange market in India.

C. State VAT Departments : Since VAT is payable on domestic goods but not on export goods, formalities with State VAT departments assume importance in ensuring tax free exports.

(d) On 10-04-2014, M/s. Sheetal Packagings cleared plastic bottles whose assessable value was ₹ 20,00,000 and duty payable was ₹ 2,47,200. On 15-04-2014, the purchaser returned the plastic bottles to Sheetal Packagings. M/s. Sheetal Packaging took credit of duty of ₹ 2,47,200 on basis of invoice issued at the time of clearance of plastic bottles. The Department denies the credit on the ground that the duty on such goods has not been paid, as plastic bottles. The Department denies the credit on the ground that the duty on such goods has not been paid, as the due date for payment of duty falls on 06-05-2014. Discuss whether contention of department is correct. [4]

Solution:

The Board vide Instruction F. No. 267/44/2009-CX. 8, dated 25-11-2009 has clarified in accordance with Rule 8(2) of the Central Excise Rules, 2002, "the duty of excise shall be deemed to have been paid for the purposes of these rules on the excisable goods removed in the manner provided under sub-rule (1) and the credit of such duty is allowed as provided by or under any rule".

This provision explains that the invoice of the returned goods, would be a valid document for availing credit and duty is deemed to have been discharged.

According to Rule 16(1), the assessee shall be entitled to take CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules, 2004 and utilize this credit according to the said rules.

In view of above, credit on rejected/returned goods, received in the factory before prescribed date for duty payment, can be allowed to be taken under Rule 16(1). Hence, M/s. Sheetal Packaging's' action is correct in law. M/s. Sheetal packagings should pay duty of ₹ 2,47,200 on 06-05-2014 as per Rule 8.

5. (a) Compute the Advance Tax payable by R from the following estimated income submitted for the financial year 2014-15:

		₹
(1)	**Income from Salary**	**5,80,000**
(2)	**Rent from house property (per annum)**	**3,60,000**
(3)	**Interest on Government securities**	**25,000**
(4)	**Interest on saving bank deposits**	**13,000**
(5)	**Agricultural Income**	**90,000**
(6)	**Contribution towards PPF**	**60,000**

Tax deducted at source by the employer on salary is ₹ 29,870. **[5]**

Solution:

Computation of Estimated Total Income for the financial year 2014-15

	₹	₹
Income from Salary		
Gross salary	5,80,000	
Less: Deduction	Nil	5,80,000
Income from House Property		
Rent received	3,60,000	
Less: Statutory deduction @ 30%	1,08,000	2,52,000
Income from Other Sources		
Interest on Government securities	25,000	
Interest on Saving Bank Deposit	13,000	38,000
Estimated Gross Total Income		8,70,000
Less: Deduction under section 80C	60,000	
Deduction under section 80TTA	10,000	70,000
		8,00,000
Estimated Tax		
Step-1: Add (Agricultural income + Non-Agricultural income) (90,000 + 8,00,000) = 8,90,000		
Tax on ₹ 8,90,000	1,03,000	
Step-2: Add Maximum exemption limit to agricultural income (2,50,000 + 90,000) = 3,40,000		
Tax on ₹ 3,40,000	9,000	
Step-3: Tax on non-agricultural income		
Tax under step-1 - Tax under step-2 (1,03,000 - 9,000)	94,000	94,000
Estimated tax payable		2,820
Add: Education cess & SHEC @ 3%		96,820

Less: Estimated TDS on salary		29,870
Advance tax payable (rounded off)		66,950
First installment payable by 15.9.2014 (30%)		20,085
Second installment payable by 15.12.2014 (60% of ₹ 40,170 - 20,085)		20,085
Third installment payable by 15.3.2015 (100% of ₹ 66,950 - 40,170)		26,780

(b) Raman purchased 200 shares on 1.4.1978 for ₹ 80 each. He was allotted 200 right shares on 1.5.1979 for ₹ 100 each. He was also allotted 400 bonus shares on 1.5.1980. On 4.5.1990, he was further allotted 800 right shares for 160 each. Again on 7.8.1996, he was allotted 800 bonus shares. The fair market value of these shares as on 1.4.1981 was ₹ 120 each. All the above shares are sold by Raman on 16.10.2014 for ₹ 1300 per share. Compute the capital gain for assessment year 2015-16 assuming:
(a) the above shares are sold without paying any securities transaction tax.
(b) the above share are sold after paying securities transaction tax was paid by Raman. [5]

Solution:

(a) Where shares were sold without paying any securities transaction tax	
Capital gain on original shares bought in 1978	
Consideration price 200 x 1300	2,60,000
Less: Indexed cost of acquisition [200 x 120 (FMV) = 24,000 x $\frac{1024}{100}$]	2,45,760
Long-term capital gain	14,240
Capital gain on right shares allotted in May 1979	
Consideration price 200 x 1300	2,60,000
Less: Indexed cost of acquisition [200 x 120 (FMV) = 24,000 x $\frac{1024}{100}$]	2,45,760
	14,240
Capital gain on bonus shares allotted in May 1980	
Consideration price 400 x 1300	5,20,000
Less: Indexed cost of acquisition [400×120 (FMV as on 1.4.1981)=48,000 × $\frac{1024}{100}$]	4,91,520
	28,480
Capital gain on right shares allotted in May 1990	
Consideration price 800 x 1,300	10,40,000
Less: Indexed cost of acquisition (800 x 160 = 1,28,000 x $\frac{1024}{182}$)	7,20,176
Long-term capital gain	3,19,824
Capital gain on bonus shares allotted in August 1996	
Consideration price 800 x 1,300	10,40,000
Less: Indexed cost of acquisition	Nil
Long-term capital gain	10,40,000

* The assessee is allowed to opt for FMV as on 1.4.1981 for bonus shares allotted before 1.4.1981 but for bonus shares allotted after 31.3.1981, the cost of acquisition is Nil.

(b) Where shares are sold after paying securities transaction tax

Since shares have been sold by the assessee after paying securities transaction tax, entire long-term capital gain on these shares shall be exempt as per section 10(38).

(c) Where shares are sold through recognised stock exchange

Since shares have been sold through recognised stock exchange and securities transaction tax has been paid by the assessee, entire long-term capital gain on these shares shall be exempt as per section 10(38).

(c) Written down value of 4 machines at the beginning of the previous year 2014-15, forming part of a block of assets carrying 15% rate of depreciation was ₹ 5,00,000. The following 4 machines of the same block were bought:

Machines	Date of Purchase	Date when put to use	Cost(₹)
P	**5.1.2014**	**14.1.2015**	**50,000**
Q	**5.4.2014**	**15.5.2014**	**1,00,000**
R	**15.5.2014**	**31.1.2015**	**2,00,000**
S	**15.11.2014**	**27.3.2015**	**1,50,000**

Four machines of this block (other than those which were acquired and put to use for less than 180 days) were sold for ₹ 4,00,000.

(a) Calculate the depreciation for the assessment year 2015-16.

(b) What will be the answer if four machines were sold for ₹ 7,00,000 instead of ₹ 4,00,000? [4]

Solution:

		₹	₹
(a)	WDV at the beginning of the year		5,00,000*
	Additions during the year in the same block		
	(i) Machine acquired last year but put to use this year (depreciation to be allowed from this year)	50,000	
	(ii) Machine Q acquired and put to use for 180 days or more	1,00,000	
	(iii) Machine S acquired and put to use for less than 180 days and Machine R although acquired in the previous year for a period exceeding 180 days but put to use for less than 180 days (₹2,00,000+1,50,000)	3,50,000	5,00,000
	Total		10,00,000
	Less: Assets sold during the year		4,00,000
	WDV on which depreciation is to be charged		6,00,000
	Depreciation:		
	On ₹ 2,50,000 @ 15%	37,500	
	On ₹ 3,50,000 @ 7.5%	26,250	63,750
	Written down value at the end of the year		5,36,250
			5,00,000
(b)	WDV at the beginning of the year		
	Additions during the year in the same block		
	(i) Machine acquired last year but put to use this year	50,000	

	(ii) acquired and put to use for 180 days or more	1,00,000	
	(iii) acquired and put to use for less than 180 days	3,50,000	5,00,000
	Total		10,00,000
	Less: Assets sold during the year		7,00,000
	WDV on which depreciation is to be charged		3,00,000
	Depreciation on ₹ 3,00,000 @ 7.5% as the WDV is less than cost of machines which are put to use for less than 180 days		22,500
	Written down value at the end of the year		2,77,500

* It is assumed that machine P, which was purchased last year, must not have been entered in the last year block of assets as it was not put to use last year.

6. (a) The AO issued a notice u/s 142(1) on the Assessee on 24th December 2014, calling upon him to file Return of Income for AY 2014-2015. In response to the said notice, the Assessee furnished a Return of Loss and claimed carry forward of Business Loss and Unabsorbed Depreciation. State whether the Assessee would be entitled to carry forward as claimed in the return. [3]

Solution:

Principle:

(a) **U/s 72,** brought forward Unabsorbed Business Loss other than Speculation Loss can be set-off against income under the head Profits and Gains of Business or Profession only if the Return is filed u/s 139(1).

(b) **U/s 32(2),** brought forward Unabsorbed Depreciation can be set off against any income, and filing or non-filing of Return u/s 139(1) has no effect thereon.

Analysis:

U/s 142(1), the Assessing Officer, can issue notice to the Assessee to file his return, only after the expiry of due date prescribed **u/s 139(1).** Hence, any Return filed u/s 142(1) shall only fall after the due date u/s 139(1).

Conclusion:

In view of the above, the **Business Loss** cannot be carried forward, but the Unabsorbed Depreciation can be carried forward, because Sec.80 (Submission of Return for Losses) shall not apply for carry forward of Unabsorbed Depreciation.

(b) An Assessing Officer entered a Hotel run by a person, in respect of whom he exercises jurisdiction, at 8 p.m. for the purpose of collecting information, which may be useful for the purposes of the Act. The Hotel is kept open for business every day between 9 a.m and 9 p.m. The Hotelier claims that the Assessing Officer could not enter the hotel after sunset. The Assessing Officer wants to take away with him the books of account kept at the Hotel. Examine the validity of the claim made by the Hotelier and the proposed action of the Assessing Officer. [3]

Solution:

Sec.I33B:

(a) **Powers:**

- **Survey:** Assessing Officer is empowered to survey the place of business or profession at hours during which such place of business is open for the conduct of business or profession.
- **Collection of Information**: He is also empowered to collect prescribed information.

(b) **Restriction**: The AO has no right to remove any books of account, other documents, cash, stock or other valuable article or thing, from the place of survey.

Analysis and Conclusion:

(a) **Entry into Hotel**: The AO entered the Hotel during the hours at which such place is open for the conduct of business or profession at 8 p.m. (i.e. between 9 a.m. and 9 p.m.). So, the claim made by Hotelier in this respect is not valid.

(b) **Removing Books:** The Assessing Officer has no right to take away the books of accounts kept at the Hotel. Hence, the proposed action of the Assessing Officer is beyond his authority.

(c) Compute value and service tax from following sums received by M/s. A Ltd. (exclusive of service tax) (Ignore small service provider's exemption) -

(1) Holding a dance programme, entry tickets whereof were sold for : ₹ 50 lakh;
(2) Collections from a standalone ride set up in a mall: ₹ 11 lakh;
(3) Running a video-parlour showing cinematographic films : ₹ 12 lakh;
(4) Acting as an event manager for organisation of an entertainment event: ₹ 4 lakh;
(5) Receipts from running a circus : ₹ 12 lakh;
(6) Direct-to-Home Services on which it has paid entertainment tax under State laws: ₹ 20 lakhs [4]

Solution:

Computation of service tax liability

(1) Holding a dance programme, entry tickets whereof were sold for: ₹ 50 lakh - Amounts to entertainment event - Granting admission thereto is a negative list item u/s 66D(j)
(2) Collections from a standalone ride set up in a mall: ₹ 11 lakh - Amounts to amusement facility -Granting access thereto is a negative list item u/s 66D(j)
(3) Running a video-parlour showing cinematographic films : ₹ 12 lakh- Amounts to entertainment event - Granting admission thereto is a negative list item u/s 66D(j)
(4) Acting as an event manager for organisation of an entertainment event: ₹ 4 lakh - Auxiliary services in relation to an entertainment event are not covered within negative list - Taxable.
(5) Receipts from running a circus: ₹ 12 lakh - Amounts to entertainment event - Granting admission thereto is a negative list item u/s 66D(j).
(6) DTH Services on which it has paid entertainment tax under State laws : ₹ 20 lakhs - Taxable.

Taxable value = 4 + 20 = ₹ 24 lakh and service tax thereon @ 12.36% = ₹ 296,640.

(d) M/s. Auriga Pvt. Ltd. provides the following services relating to information technology software. Compute the value of taxable service and service tax payable thereon if all charges are exclusive of service tax. Ignore Small Service Providers exemption :

(1) Development and Design of information technology software : ₹ 18 lakhs;
(2) On-site development of software : ₹ 5 lakhs;
(3) Sale of pre packaged software which is put on media : ₹ 22 lakhs;
(4) Advice and consultancy on matters relating to information technology software : ₹ 8 lakhs;
(5) License to use software was given to different clients : ₹ 28 lakhs;
(6) On the basis of specification of P Ltd., a software was developed and delivered to it on media i.e. CD : ₹ 7 lakhs;
(7) Up-gradation of information technology software : ₹ 9 lakhs;
(8) Programming of software : ₹ 1 lakhs;
(9) Enhancement and implementation of information technology software: ₹ 5 lakhs. [4]

Solution:

The relevant computations are as follows (amount in ₹):

(1)	Development and Design of information technology software (Taxable since it is under the ambit of declared service)	18,00,000
(2)	On site development of software (Taxable, since it is under the ambit of declared service)	5,00,000
(3)	Sale of Pre packaged software which is put on media - Not taxable (as it is in the nature of sale of goods, hence outside the ambit of service)	—
(4)	Advice and consultancy on matters relating to information technology software	8,00,000
(5)	License to use software was given to different clients (Taxable, it is under the ambit of declared service as it does not involve transfer of right to use of goods)	28,00,000
(6)	A customised software was developed and delivered to it on media i.e. CD (Taxable as this transaction involves both contract of provision of service and transfer of title in goods. But the essential part of contract is development of software and it is put on media only to deliver it to client.)	7,00,000
(7)	Upgradation of information technology software	9,00,000
(8)	Programming of software	1,00,000
(9)	Enhancement and implementation of information technology software	5,00,000
	Value of taxable service	81,00,000
	Service tax u/s 66B @ 12.36%	**10,01,160**

Section B

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

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

(a) In case of an assessee whose income includes exempted income arising out of Mutual Fund Investment. Since no bifurcation was made by assessee between total and exempt income, Assessing Officer disallowed total expenditure under section 14A. However, Tribunal held that in absence of rule 8D, no disallowances can be made under section 14A. Whether it could not be said that in absence of rule 8D, no disallowance can be made under section 14A by proportionate bifurcation of expenditure. [5]

Answer:

CIT v. Sintex Industries Ltd.(2013) 215 Taxman 148(Mag.) (Guj.)(HC)

The issue pertains to disallowance of part of the remuneration paid to the directors. The Assessing Officer noted that the assessee had earned exempt income under Section 10(35) of the Income-tax Act, 1961, arising out of Mutual Fund Investment. He was therefore of the opinion that the expenditure incurred for earning exempt income should be disallowed under Section 14A of the Act. Since no bifurcation was made by the assessee, the Assessing Officer disallowed the total expenditure under this head. In the result, he added back a sum of ₹3,25,868/-being the amount of salary.

Commissioner (Appeals) and Tribunal did not approve such decision of the Assessing Officer. With respect to proposition that Rule 8D is not retrospective in operation, we have no hesitation in agreeing with the decision of the Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. (supra). Previously also, we had occasion to deal with the said Rule and held as and the Bombay High Court has done. That, however, does not mean in our prima-facie opinion that no disallowances can be made under Section 14A of the Act by bifurcating the expenditure in a reasonable manner towards earning of the taxable income and tax exempt income. In the present case, since the amount involved is not very large, we reserve our final conclusion on such an issue in appropriate case. Therefore, we are not inclined to entertain this Tax Appeal. However, we should not be seen to have confirmed the Tribunal's view on the aspect that in absence of Rule 8D, no disallowances can be made under Section 14A of the Act, by proportionate bifurcation of the expenditure. In the result, Tax Appeal stands dismissed.

(b) Whether the Tribunal was right in law in not deciding the issue on the merits and allowing the expenditure claimed by the assessee u/s.35D of the I. T. Act on the ground that such claim was not disallowed in earlier years and thereby allowing to perpetuate an error on the face of very clear and undisputed provision of law? [5]

Answer:

DCIT v. Gujarat Narmada Valley Fertilizers Co. Ltd. (2013) 215 Taxman 616 (Guj.)(HC)

The assessee claim deduction under Section 35D of the Act since last seven years. In the year under consideration, such claim was made to the extent of ₹87.73 lakh. The Assessing Officer restricted it to ₹13.50 lakh on the ground that only eligible expenses are allowed to be spread

over under Section 35D of the Act and therefore, expenses only to the extent that have nexus to the eligible projects are admissible.

Tribunal noted that in last seven years, no such disallowances were made. Referring to and relying on the decision in case of *Radhasoami* Satsang v. CIT 193 ITR 321, the Tribunal directed that such benefit be granted. It is an undisputed position that claim under Section 35D of the Act did not arise for consideration for the first time. Since last several years, the Assessing Officer granted such claim on the same consideration. The Tribunal therefore, correctly held that such claim could not have been suddenly disallowed. We may refer to a decision of this Court in case of Saurashtra Cement & Chemical Industries Ltd. v. Commissioner of Income-tax, Gujarat, reported in [(1980) 123 ITR 669], wherein, in the context of successive claim of tax holiday, the Court held that the ITO was not justified in refusing to continue the benefit of such tax holiday granted to the assessee in the earlier years, without disturbing the relief granted for the initial years. We are conscious that the issue is not identical in nature. However, the Income-tax Act recognizes the principle of consistency. In the present case, for as many as seven years, previously the Assessing Officer did not dispute certain claims and therefore, the Tribunal correctly interpreted that the Assessing Officer has sought to reopen the issue.

(c) Whether the Tribunal has erred in law in holding that the assessee carried on activity for charitable purpose in terms of section 2(15) and directing the Commissioner of Income-tax to grant registration under section 12AA of the Act to the assessee society? [5]

Answer:

CIT vs. National Institute of Aeronautical Engineering Educational Socieity (2009) 315 ITR 428 (Uttarakand)

The assessee, a registered society, moved an application before the Commissioner for grant of registration under section 12AA(1)(b)(i) of the Act, in Form 10A. The Commissioner examined the papers including the income and expenditure of the assessee for the previous years and concluded that the assessee was not carrying on any charitable activity within the meaning of section 2(15) of the Act, as it was in a profit making business. Consequently, he rejected the application for registration under section 12AA of the Act. The assessee preferred an appeal before the Appellate Tribunal, which was allowed.

The High Court held that section 12AA of the Act provides the procedure for registration. Clause (a) of sub-section (1) of section 12AA empowers the Commissioner to call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of the activities of the trust or institution and he may also make such inquiries, as he may deem necessary in this behalf. The Commissioner is not supposed to allow registration with blind eyes. The Commissioner had considered the relevant papers before him, which included the income and expenditure accounts of the previous years after the assessee society got registered with the Assistant Registrar of Firms, Societies and Chits.

The Commissioner observed that the society was charging substantial fees from the students and making huge profits. Merely imparting education for the primary purpose of earning profits could not be said to be a charitable activity. In the expression "charitable purpose", "charity" is the soul of the expression. Mere trade or commerce in the name of education cannot be said to be a charitable purpose and the Commissioner has to satisfy itself as provided under section 12AA of the Act before allowing the registration. The order of the Commissioner was justified.

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

(a) Whether sale of specified goods that do not physically bear a brand name from a branded sale outlet would amount to sale of banded goods and would disentitle the taxpayer from the benefit of SSI exemption notification. [8]

Answer:

CCE, Chennai v Australian Foods India Pvt Ltd [2013 (287) ELT 385 (SC)]

The taxpayer was engaged in the manufacturing and sale of cookies from the branded retails outlets of "Cookie Man". The Appellant had acquired this brand name from M/s Cookie Man Pvt Ltd, Australia. The taxpayer was selling some of these cookies in plastic pouches / container on which the brand name of Cookie Man was printed. No brand name was affixed or inscribed on the cookies. The taxpayer was paying excise duty on the cookie sold in the said pouches / container. However on the cookies sold loosely from the counter of the same retail outlet with plain plates and tissue paper excise duty was not paid.

Factually, no loose cookies were received in the outlet nor did the taxpayer manufacture the same. The taxpayer received all the cookies in sealed pouches / containers. Cookies which were sold separately were taken out of the container and displayed for sale separately.

The taxpayer argued that only specified goods bearing an affixed brand name of those goods which physically display the brand name would qualify as goods bearing brand name and hence won't be eligible for SSI exemption. In this case since no brand name was affixed on the cookies loosely sold he is entitled for SSI exemption.

The Supreme Court ('SC') observed that the same cookies when sold in containers do not become unbranded cookies. The in-voices carry the name of the company and the cookies were sold from the counter of the store. The SC held that the store's decision to sell some cookies without the container stamped with its brand or trade name doesn't change the brand of the cookies. The SC held that cookies once sold even without inscription of the brand name, indicate a clear connection with the brand name in the course of taxpayer's business of manufacture and sale of cookie under the brand name 'Cookie Man'. They continue to be the branded cookies of "Cookie Man" and hence SSI exemption is not available.

(b) Section 4A of the Central Excise Act, 1944 is applicable only in respect of those goods for which there is a requirement of declaration of MRP under the provisions of the Standards of Weights and Measures Act, 1976 and the rules made thereunder. [7]

Answer:

Hero Motorcorp Ltd v CCE [2013 (288) ELT 82 (TRI-DEL)]

The taxpayers were engaged in the manufacture of motorcycle and parts thereof. The spare parts in loose condition were cleared by the taxpayers from their Daruhera factory in Haryana to a Spare Parts Division ('SPD') in Gurgaon on payment of duty on 110 percent of the cost of production (i.e. the value determined as per Rules 8 and 9 of the Central Excise Valuation Rules, 2000). SPD, Gurgaon pack-aged such loose motor parts for retail sale and cleared them on payment of duty on the value determined under Section 4A of the Central Excise Act, 1944.

The Revenue Authorities insisted that the taxpayers should also pay duty on clearances of spare parts from Daruhera unit to SPD, Gurgaon as per the value determined under Section 4A. The matter reached the Tribunal where the taxpayers contended that the motorcycle parts were cleared by Daruhera unit in bulk and the same were not packed for retail sale at that stage. Further, packaging for retail sale was done at SPD, Gurgaon where MRP tags are also affixed on packages. It was also argued by the taxpayers that the provisions of the Standards of Weight and Measures Act, 1976 ('SWM Act') and the Standards of Weight and Measures (Packaged Commodities) Rules, 1977 ('SWM Rules') were not applicable to the loose parts as such provisions were applicable only on those commodities which have been packed for retail sale.

The Tribunal observed that for Section 4A to apply, it was a pre-requisite that there must be a requirement under the SWM Act or the SWM Rules to declare the MRP of the goods on their packages. Such requirement was there only in respect of commodities packaged for retail sale. The Tribunal further observed that the goods cleared in loose condition to SPD, Gurgaon were not packaged commodities, therefore the demand of duty in respect of such clearances was declared to be unsustainable.

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

(a) 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? [7]

Answer:

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.

(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? [8]

Answer:

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.