

**PAPER – 16: Tax Management and Practice**

## Answer to PTP\_Final\_Syllabus 2012\_Dec2015\_Set 2

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

	<b>Learning objectives</b>	<b>Verbs used</b>	<b>Definition</b>
<b>LEVEL C</b>	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
		Identify	Recognize, establish or select after consideration
	APPLICATION  How you are expected to apply your knowledge	Illustrate	Use an example to describe or explain something
		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
	ANALYSIS  How you are expected to analyse the detail of what you have learned	Tabulate	Arrange in a table
		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
	SYNTHESIS  How you are expected to utilize the information gathered to reach an optimum conclusion by a process of reasoning	Produce	Create or bring into existence
Discuss		Examine in detail by argument	
Interpret		Translate into intelligible or familiar terms	
EVALUATION  How you are expected to use your learning to evaluate, make decisions or recommendations	Decide	To solve or conclude	
	Advise	Counsel, inform or notify	
	Evaluate	Appraise or asses the value of	
		Recommend	Propose a course of action

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### 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) Compute the deduction allowed under section 80C and the net-tax payable by 'A' from the following information submitted by him for the assessment year 2015-16:

		(₹)
1	Gross Salary	4,50,000
2	Royalty (Gross)	27,000
3	Expenses allowable from royalty	5,000
4	Interest on fixed deposits with bank (gross)	13,000
5	LIP on his own life (sum assured ₹ 20,000) policy issued on 01.04.2013	6,000
6	LIP on the life of his wife	2,000
7	LIP on the life of his major son (not dependent on 'A')	2,500
8	LIP on the life of dependent brother	2,000
9	Contribution to a Recognised Provident Fund	20,000
10	Amount deposited in PPF Account	65,000
11	Contribution to ULIP	3,000
12	Repayment of housing loan taken from LIC (principal amount ₹ 23,000 and interest ₹ 30,000)	53,000
13	Subscription to National Saving Certificate IXth issue	25,000
14	Amount incurred on the education of:	
	(a) Child X ₹ 14,000	
	(b) Child Y ₹ 7,000	
	(c) Child Z ₹ 5,000	
15	Term deposit for 5 years with a schedule bank	20,000
16	Five year time deposit in Post Office	15,000

He has taken the loan from LIC for construction of a residential house property which was completed in 2012 and which is being utilized by 'A' from his own residence. [5]

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**Solution:**

### Computation of Taxable Income and Tax Liability

	₹	₹	₹
Income from Salaries			
Gross Salary		4,50,000	
Less: Deduction under section 6		Nil	4,50,000
Income from house property			
Annual Value (being self occupied)		Nil	
Less: Deduction u/s 24			
Interest on money borrowed for construction		30,000	(-) 30,000
Income from Other Sources			
(i) Royalty	27,000		
Less: Expenses	5,000	22,000	
(ii) Interest on fixed deposits with bank		13,000	35,000
<b>Gross Total Income</b>			<b>4,55,000</b>
Less: Deductions u/s 80C to 80U			
U/s 80C (see working note)			1,50,000
<b>Total Income</b>			<b>3,05,000</b>
<b>Tax on Total Income</b>			
Tax on ₹ 3,05,000			5,500
Less: Rebate under section 87A			2,000
			3,500
Add: Education cess & SHEC - @ 3%			105
<b>Tax (rounded off)</b>			<b>3,610</b>

Working note for deduction allowable under section 80C

	₹
LIP on own life (Limited to 10% of sum assured)	2,000
LIP on life of wife	2,000
LIP on life of major son	2,500
LIP on life of brother	---
Contribution of RPF	20,000
Contribution to RPF	65,000
Contribution to PPF	3,000
Contribution to ULIP	
Repayment of housing loan (Principal amount ₹ 23,000)	23,000
Subscription to National Saving Certificate IXth issue	25,000
Which will subscribe to eligible issue of capital	
Tuition fee of children allowed only for 2 children (₹ 14,000 + 7,000)	21,000
Term deposit for 5 years with a schedule bank	20,000
Five year time deposit with Post Office	15,000
	1,98,500

But deduction limited to ₹ 1,50,000.

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(b) X (42 years) gives the following information for the previous year 2014-15:

- (1) On 01.12.2014, he get gift of House A from his friend B (stamp duty value is determined at ₹6,00,000).
- (2) On 03.12.2014, he gets gift of House B from C (who is father-in-law of his elder brother) (stamp duty value is ₹40,000, however, current market value is ₹65,000).
- (3) On 07.12.2014, X purchases a second hand car for ₹ 70,000 from D (market value is however, ₹3,00,000).
- (4) On 14.12.2014, X purchases a work of art for ₹5,00,000 from E (fair market value is ₹5,30,000).
- (5) On 20.12.2014, X purchases jewellery for ₹7,00,000 from F (fair market value is ₹7,25,000). F is not a registered dealer.
- (6) On 21.12.2014, X purchases a painting for ₹4,00,000 from G (who is brother of Mrs. X) (fair market value is ₹7,00,000).
- (7) On 24.12.2014, X purchase a commercial property for ₹75,00,000 from H (fair market value is ₹90,00,000).
- (8) On 25.12.2014, X gets a gift of 100 preference shares in A Ltd. from J (on 25-12-2014, stock exchanges are closed, the lowest quotation on the immediate preceding working day in National Stock Exchange is ₹45).
- (9) On 25.01.2015, X gets a gift cheque of ₹1,00,000 from his friend L on his birthday.
- (10) On 28.01.2015, minor son of X gets the gift of ₹55,000 from elder brother of X's grandfather).
- (11) X contributes ₹10,000 in the public provident fund account of his dependent mother.

Determine the amount of net income of X for the assessment year 2015-16.

[4]

**Solution:**

Computation of total income of X for assessment year 2015-16

	₹
Income from other sources (See note below)	8,08,500
Gross total income	8,08,500
Less: Deductions U/s 80C (Contribution of PPF account of mother not eligible)	---
Total Income	8,08,500

Note: - Treatment of gifts received shall be as under:

	₹	₹
I. Immovable property received without consideration		
(i) Gift of house A from friend (stamp duty value)	6,00,000	
(ii) Gift of house B (stamp duty value ₹ 40,000, being less than ₹ 50,000) (Value of each property should be taken separately)	Not taxable	6,00,000
II. Immovable property acquired for inadequate consideration		
Purchase of commercial property for inadequate consideration (₹ 90,00,000 – 75,00,000)		15,00,000
III. Movable property received without consideration		
Gift of preference shares (market value ₹ 4,500) (Aggregate value)		Not

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of gift of movable property does not exceed ₹ 50,000)		taxable
IV. Movable property acquired for inadequate consideration (Taxable if aggregate value exceeds ₹ 50,000)		
(i) Purchase of car (not a property within the meaning of section 56(2)(vii))	Not taxable	
(ii) Purchase of work of art (₹ 5,30,000 FMV – 5,00,000 purchase price)	30,000	
(iii) Purchase of jewellery (₹ 7,25,000 – ₹ 7,00,000)	25,000	
(iv) Purchase of painting (not taxable as brother of wife is a relative)	---	55,000
V. Gift of money		
(i) Gift from friend	1,00,000	
(ii) Gift received by minor son (₹ 55,000 less exempt ₹ 1,500)	53,500	1,53,500
Income from other sources		23,08,500

**(c) The Total Income of Mrs. A, resident in India, compute for assessment year 2015-16 is ₹3,20,000 which includes long-term capital gains of ₹ 30,000 and winning of lotteries ₹ 20,000 and short-term capital gain covered under section 111A ₹ 10,000. Compute the tax payable assuming his agricultural income for the previous year was ₹ 2,50,000. [3]**

**Solution:**

	₹	₹
Step - 1		
Add: Agricultural income and non-agricultural income (₹2,50,000 + ₹3,20,000)		5,70,000
Tax on above income		
(i) Tax on long-term capital gain of ₹ 30,000 @ 20%	6,000	
(ii) Tax on lottery income of ₹ 20,000 @ 30%	6,000	
(iii) Tax on short-term capital gain covered under section 111A 15% of ₹10,000	1,500	
(iv) Tax on balance income of ₹ 5,10,000 (including agricultural income)	27,000	40,500
Step – 2		
Add: minimum exemption limit to agricultural income (₹ 2,50,000 + ₹ 2,50,000)		5,00,000
Tax on ₹ 5,00,000		25,000
Step – 3		
Tax on non-agricultural income		
Tax under Step 1 – Tax under Step 2 (₹ 40,500 – ₹ 25,000)		15,500
Less: Rebate u/s 87A		2,000
		13,500
Add: Education cess & SHEC - @ 3%		405
Total tax payable (round off)		13,910

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**(d) An Assessing Officer makes a best judgment assessment for failure to comply with a notice u/s 143(2), without any further notice to the Assessee. What are the remedies available to him? [2]**

**Answer:**

1. Principle: U/s 144, where the Assessee does not comply with the terms of notice u/s 143(2), then the AO, after giving an opportunity of being heard to the Assessee, may make a best judgment assessment.
2. Conclusion: If notice as required u/s 144 is not given, then the Best Judgment Assessment shall be invalid.
3. Remedies available to the Assessee against Best Judgment Assessment without any notice to him –
  - (a) Appeal u/s 246A: The Assessee may prefer an appeal against the said judgment.
  - (b) Remedy u/s 264: The Assessee can also seek revision of the order u/s 264.However, the Assessee can resort to any one of the above remedies, and not both.

**(2)(a) From the following particulars arrive at the VAT liability for the month of January 2015 and also determine the amount of input tax credit to be carried forward for the next month: (I) Input tax rate 5% and output tax rate is 15% in the State, (II) Inputs purchased in the month from within the State – ₹48,00,000. (III) Output sold to buyers within the State during the month – ₹ 15,00,000. (IV) Output sold during the month to buyers as interstate sales – ₹3,00,000. (CST rate 2% against C Form) (V) Inputs purchased from other States as interstate purchases against C Form @2% - ₹ 2,00,000 (Provide suitable explanations where required with appropriate assumptions if necessary). [3]**

**Solution:**

Input tax credit (set off) – ₹2,40,000 (5% of ₹48 lakhs). No credit is available on inter-state purchases.

Output tax payable - (a) Sale within State – ₹2,25,000 (15% of ₹15 lakhs) (b) Inter-state sale – ₹6,000 (2% of ₹ 3 lakhs). Total output tax payable – ₹ 2,31,000.

Net Tax payable - Nil as Input tax credit (set off) available is more than output tax payable. The excess credit of ₹9,000 [₹ 2,40,000 – ₹ 2,31,000] will be carried forward for use in future month/s. If the credit cannot be utilised in the entire financial year, refund can be claimed.

**(b) Gross Inter State sales of ZX Co. Ltd., Patna, Bihar; were ₹ 18,00,000 during 14-15 (April 14 - March 15). CST was not shown separately in Invoice. Other information is as follows :**

- (A) The sales are of product 'P'. If the product is sold within State of Bihar, sales tax rate is 8%.**
- (B) Sale of ₹8 lakhs are inclusive of erection expenses of ₹1,00,000, excise duty of ₹ 76,000 and packing charges of ₹25,000. The sale price is also inclusive of trade discount of**

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₹30,000, which has been later given by issuing a Credit Note. Buyers of these goods have issued form 'C' for these purchases.

- (C) Balance sale of ₹ 10 lakhs are inclusive of excise duty of ₹95,000 and outward freight of ₹21,000. The freight was charged separately in Invoice. Buyers of these goods have not issued any declaration under Central Sales Tax Act. Out of these sales, goods of ₹2 lakhs were returned by customers. The goods were dispatched in February 15 and returned in June 15, i.e. after end of the accounting year.

Find the turnover and CST payable.

[3]

### Solution:

Since rate of tax is different for sale to registered dealers and un-registered dealers, we have to calculate 'aggregate sale price' separately.

- Where C form has been issued (i.e. buyer is a registered dealer and is eligible to buy goods as per his Central Sales Tax Registration Certificate), the sales tax payable is 2%. Out of sales of ₹ 8 lakhs, deduction of erection charges of ₹ 1 lakh and trade discount of ₹30,000 is available. Thus, 'Aggregate Sale Price' is ₹6,70,000. Sales tax is payable on excise duty and packing charges and hence no deduction is allowed on these accounts.
- Where no C form is received (i.e. buyer is un-registered dealer), CST rate is 8%. Out of sale of ₹10 lakhs, deduction of freight of ₹21,000 is available. Deduction of goods returned of ₹2 lakhs is also available as the goods were returned within 6 months, even if returned after close of financial year. Thus, 'Aggregate Sale Price' will be ₹ 7,79,000.

Thus, turnover and CST payable is as follows :

1	2	3	4	5
Product	Aggregate Sale price ₹	Sales tax Rate %	Turn over ₹	CST payable ₹
P	6,70,000	2%	6,56,862.75	13,137.25
P	7,79,000	8%	7,21,296.30	57,703.70
	Total		13,78,159.05	70,840.95

- (c) AB Ltd. has submitted following quotation to CD Ltd. for supply of 250 Xenon Processor Computers

CPU	₹ 21,000
Monitor	₹ 11,500
Cordless Keyboard & Mouse	₹ 6,000
Other Peripherals	₹ 6,500
Labour & Overheads	₹ 8,000
Profit	₹ 7,000
<b>Total Price per unit</b>	<b>₹ 60,000</b>

**Terms: Delivery within one month from the date of receipt of the firm order.**

CD accepts the quotation after the following alterations which are agreed to by AB Ltd. –

- Keyboard would be supplied free of cost by CD to AB since Eudora Ltd. is able to purchase the Keyboard for ₹3,000 per unit.



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2. Profit charged by AB Ltd. is to be reduced to ₹5,500, since CD would make an advance of ₹ 30,000. However, no interest is payable on the advance.

Determine the Assessable Value u/s 4 of the Central Excise Act, 1944, and the Excise Duty @ 12% Ad Valorem. Ignore Cess. [4]

**Solution:**

Particulars	₹
CPU	21,000
Monitor	11,500
Other Peripherals	6,500
Labour & Overheads	8,000
Profit	5,500
<b>Invoice Price</b>	<b>52,500</b>
Add: Value of Non-monetary Consideration under Rule 6 Cordless Keyboard & Mouse provided by Buyer (Cost to the Buyer to be included as per Rule 6)	3,000
Special Discount allowed due to receipt of advance (₹7,000 – ₹5,500)	1,500
<b>Assessable value</b>	<b>57,000</b>
<b>Excise Duty at 12%</b> (₹57,000 × 12%) (Note: Cess ignored as per the question)	<b>6,840</b>

- (d)(i) Abhi is doing only job work by charging ₹20 per product. The cost of materials supplied to him for the job work is ₹100 per product. From Abhi's factory, the principal manufacturer sells the goods at ₹200 per product to unrelated buyers. Calculate the excise duty payable @ 12.36%. [2]

- (ii) Compute assessable value and amount of excise duty payable under the Central Excise Act, 1944 and rules made there under from the following information:

Particulars	No. of Units	Price at Factory Per Unit	Price at Depot Per Unit	Rate of Duty Ad valorem
(i) Goods transferred from factory to depot on 8th February	1,000	₹200	₹220	10%
(ii) Goods actually sold at depot on 18th February	750	₹225	₹250	8%

[2]

**Solution:**

- (i) As per Rule 10A of the Central Excise Valuation Rules, 2000, where the goods are sold by the principal manufacturer for delivery at the time of removal of goods from the factory of job worker, the value of excisable goods shall be the transaction value of the said goods sold by the principal manufacturer.

Hence, value shall be ₹200 per product. Excise duty = 12.36% of ₹200 = ₹ 24.72 per product.

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[It is assumed that sale price of ₹ 200 is the transaction value (excluding all duties and taxes). If it is assumed to be price-cum-duty, then, excise duty = ₹200 × 12.36 ÷ 112.36 = ₹ 22.00 per product.]

- (ii) According to Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, in cases where the goods are not sold at factory gate, but are transferred by the assessee to his depot, the assessable value for the goods cleared from factory and sold from depot shall be normal transaction value of such goods at the depot at or about the same time at which the goods being valued are removed from the factory.

Assessable Value = 1,000 units × ₹220 = ₹ 2,20,000

**Calculation of central excise duty (amount in ₹)**

Basic excise duty @ 10% (₹2,20,000 × 10%)	22,000
Education cess @ 2%	440
Secondary and higher education cess @ 1%	220
<b>Total duty payable</b>	<b>22,660</b>

**Note:** It is assumed that price stated in question does not include duties of excise and cesses leviable thereon.

- (3)(a) Boulevard Inc. a French Company, holds 40% of Equity in the Indian Company Vista Technologies Ltd (VTL). VTL is engaged in development of software and maintenance of the same for customers across the globe. Its clientele includes Boulevard Inc.

During the year, VTL had spent 2,000 Man Hours for developing and maintaining software for Boulevard Inc, with each hour being billed at ₹1,250. Costs incurred by VTL for executing work for Boulevard Inc. amount to ₹18,00,000.

VTL had also undertaken developing software for Bal Industries Ltd for which VTL had billed at ₹2,700 per Man Hour. The persons working for Bal Industries Ltd and Boulevard were part of the same team and were of matching credentials and caliber. VTL had made a Gross Profit of 50% on the Bal Industries work.

VTL's transactions with Boulevard Inc. is comparable to transactions with Bal Industries, subject to following differences -

- (i) Boulevard gives technical knowhow support to VTL which can be valued at 8% of the Normal Gross Profit. Bal Industries does not provide any such support.
- (ii) Since the work for Boulevard involved huge number of man hours, a quantity discount of 14% of Normal Gross Profits was given.
- (iii) VTL had offered 90 Days credit to Boulevard the cost of which is measured at 2% of the Normal Billing Rate. No such discount was offered to Bal Industries Ltd.

Compute ALP and the amount of increase in Total Income of Vista Technologies Ltd. [4]

**Solution:**

1. Computation of Arms Length Gross Profit Mark Up

Particulars	%	%
Normal GP Mark Up		50
Less: Adjustment for Differences [14% of 50%]		
(i) Technical Support from Boulevard 8% of Normal GP [8% of 50%]	4	

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(ii) Quantity Discount 14% of Normal GP	7	(11)
		39
Add: Cost of Credit to Boulevard 2% of Normal Bill [2% x 50%]	1	1
Arms Length Gross Profit Mark-up		40

### 2. Computation of Increase in Total Income of VTL

Particulars	₹
Cost of Services Provided to VTL	18,00,000
Arms Length Billed Value $\frac{\text{Cost}}{100 - \text{Arms' Length Mark up}} = \frac{₹18,00,000}{100\% - 40\%}$	30,00,000
Less: Actual Billing to Boulevard [2,000 Hours × ₹ 1,250]	(25,00,000)
Therefore, increase in Total Income of VTL	5,00,000

**(b) Kio Japan and AB Ltd, an Indian Company are Associated Enterprises. AB Ltd manufactures Cellular Phones and sells them to Kio Japan and Geel, a Company based at Beijing. During the year AB Ltd supplied 2,50,000 Cellular Phones to Kio Japan at a price of ₹ 3,000 per unit and 35,000 units to Geel at a price of ₹ 4,800 per unit. The transactions of AB Ltd with Kio and Geel are comparable subject to the following considerations -**

- (i) Sales to Kio is on FOB basis, sales to Geel are CIF basis. Freight and Insurance paid by Kio for each unit is ₹ 700.**
- (ii) Sales to Geel are under a free warranty for Two Years whereas sales to Kio are without any such warranty. The estimated cost of executing such warranty is ₹ 500.**
- (iii) Since Kio's order was huge in volume, quantity discount of ₹ 200 per unit was offered to it.**

**Compute Arm's Length Price and amount of increase in Total Income of AB Ltd, if any, due to such Arm's Length Price. [4]**

**Solution:**

### 1. Computation of Arm's Length Price of Products sold to Kio Japan by AB Ltd

Particulars	₹	₹
Price per Unit in a Comparable Uncontrolled Transaction		4,800
Less: Adjustment for Differences -		
(c) Freight and Insurance Charges	700	
(a) Estimated Warranty Costs	500	
(b) Discount for Voluminous Purchase	200	(1,400)
Arm's Length Price for Cellular Phone sold to Kio Japan		3,400

### 2. Computation of Increase in Total Income of AB Ltd

Particulars	₹
Arm's Length Price per Unit	3,400
Less: Price at which actually sold to Kio Japan	(3,000)

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Increase in Price per Unit	400
No. of Units sold to Kio Japan	2,50,000
Therefore, increase in Total Income of AB Ltd (2,50,000 × ₹ 400)	₹ 10 Crores

**(c)(i) Compute value of taxable services of transport of passengers by air from the following data relating to sums received exclusive of service tax -**

- (1) Passengers embarking at Assam : ₹ 10 lakh ;**
- (2) Passengers where journey terminated at Manipur : ₹4 lakh ;**
- (3) Amount charged from passengers for flights starting from Dubai to Delhi: ₹400 lakh ;**
- (4) Amount charged from passengers from flights starting from Delhi to Dubai: ₹540 lakh (including passenger taxes levied by government and shown separately on ticket: ₹140 lakh).**

**Compute value of taxable services and service tax thereon, assuming that airlines has opted to pay service tax on abated value. [3]**

**(ii) Mr. Roy, an Output Service Provider, deposited the Service Tax amounting to ₹ 20 Lakh on 09-06-2014 for the quarter ending December 2013. Compute the amount of interest payable by Mr. Roy assuming he deposits Service Tax electronically, and his Value of Taxable Service in 2012-13 was ₹80 Lakh. Explain whether there would be any difference in the rate of interest if his Value of Taxable Services was as follows:**

<b>2012-13</b>	<b>₹ 59 Lakhs</b>
<b>2013-14</b>	<b>₹ 48 Lakhs</b>
<b>2014-15</b>	<b>₹ 54 Lakhs</b>

**[3]**

**Solution:**

**(i) Computation of taxable value and gross service tax**

1. Passengers embarking at Assam : ₹10 lakh - Exempt;
2. Passengers where journey terminated at Manipur : ₹4 lakh - Exempt;
3. Amount charged from passengers for flights starting from Dubai to Delhi: ₹400 lakh - Place of embarkation is Dubai viz. Outside India; hence, place of provision as per Rule 11 of PoP Rules is Dubai viz. Outside India, therefore, it is not chargeable to service tax in India ;
4. Amount charged from passengers from flights starting from Delhi to Dubai: ₹540; Gross amount charged = ₹540 lakh — Passenger taxes levied by government and shown separately on ticket ₹ 140 lakh = ₹400 lakhs. Taxable value = 40% of amount charged of ₹400 lakhs = ₹160 lakhs.

Therefore, taxable value = ₹ 160 lakhs and service tax thereon = ₹19.78 Lakhs approx.

**(ii)**

1. **Due Date:** Due Date for e-payment of Service Tax by an Individual Service Provider shall be the 6th of the month following the quarter in which the service is provided or deemed to be provided.
2. **Interest:** Any Delay in payment of the same shall attract interest u/s 75 as follows -  
(a) Assessee's whose Value of Taxable Service is ₹ 60 Lakhs and above in the Preceding

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- Financial year: 18% p.a  
 (b) Assessee whose Value of Taxable Service is Less than ₹60 Lakhs in the Preceding  
 Financial year: 15% p.a
3. **Delay given case:** Due date for payment of service tax is 06.01.2014, whereas Actual date of payment of service Tax is 09.06.2014. Hence, the number of days delay = 25+28+31+ 30 + 31+ 9 = 154 days.
4. **Interest Computation in given case:**

Particulars	Situation 1	Situation 2
I. Total amount of service tax payable	₹20,00,000	₹20,00,000
II. Value of taxable service in FY 2012 – 13	₹80,00,000	₹59,00,000
III. Interest rate Applicable (Since the period of delay does not exceed 6 months)	18%	15%
IV. Interest payable	₹20,00,000 × 18% × 154/365 = ₹1,51,890	₹20,00,000 × 15% × 154/365 = ₹1,26,575

- (4)(a) Sonal Containers imported by air from USA certain goods at CIF Value \$ 8,400. Air Freight US \$1,600 and Insurance Charges US \$800 were also paid. Bill of Entry was presented on 28th February, but the date of arrival of the aircraft was 10th March. Other relevant information is as follows:

	As on 28th February	As on 10th March
		Rates of Exchange
As announced by CBEC US \$ 1	₹48.50	₹48.20
As announced by RBI US \$ 1	₹48.90	₹48.50
		Rates of Customs
Basic Customs Duty	14%	16%
Additional Customs Duty	10%	10%
Special Additional Duty u/s 3(5)	4%	4%

The same goods are exempt from excise duty in India, if manufactured without the aid of power.

Compute A.V. and amounts of Basic, Additional and Special Additional Duty to be adopted.

[4]

Solution:

### 1. Adjustment for Freight and Insurance

Particulars	US \$	US \$
CIF Value		8,400
<b>Less:</b> Air Freight	1,600	
Insurance Charges	800	2,400
FOB value		6,000
<b>Add:</b> Air Freight at 20 % of FOB Value or actual, whichever is less.	1,200	

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Insurance Charges (ascertainable, so taken at actual)	800	
<b>Revised CIF Value</b>		<b>8,000</b>
1. CIF Value in Indian Rupees (US \$ 8,000 × CBEC Notified Rate on Bill of Entry (B/E) date ₹ 48.50)		₹ 3,88,000
2. Add: Landing Charges at 1 % of CIF Value		₹ 3,880
3. Assessable Value (AV) (1+ 2)		₹ 3,91,880
4. Basic Customs Duty (BCD) @ 16% of AV		₹ 62,701
5. Additional Customs Duty u/s 3(1) at 10% of (AV + BCD)		₹ 45,458
6. Total Custom Duty = BCD + ACD u/s 3(1) + EC + SHEC (4+5)		₹ 1,08,159
7. EC @ 2% on (6)		₹ 2,163
8. SHEC @ 1% on (6)		₹ 1,082
9. Special Additional Duty at 4% of (AV+BCD+ACD+ Customs EC+ SHEC)		₹ 20,131
10. <b>Total Duty (6+7+8+9)</b>		<b>₹ 1,31,535</b>

**Note:** Duty = Rate on the date of filing B/E or date of arrival of aircraft, whichever is later, should be considered.

**(b) Describe the types and usage of bill of entry in case of entry of goods on importation. [2]**

**Answer:**

The types and usage of bill of entry in case of entry of goods on importation:

1. Bill of entry for home consumption	Used when goods are cleared on payment of full duty for home consumption under section 47 of Customs Act.
2. Bill of entry for warehousing, or Into Bond bill of Entry	Used when goods are to be deposited into warehouse without payment of duty under execution of bond u/s 59 for twice the amount of duty.
3. Bill of entry for home consumption of warehoused goods, or Ex-bound bill of entry	Used when warehoused goods are cleared for home consumption on payment of duty, etc. under section 68

**(c) State the salient features of reward schemes mentioned under duty remission scheme. [4]**

**Answer:**

Reward schemes cover those schemes which provide duty credit scrips to exporters. Such schemes are subject to various conditions. The salient features of these schemes are –

(1) Scrips covered: VKGUY (Vishesh Krishi and Gram Udyog Yojana), SFIS (Served from India

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Scheme), FMS (Focus Market Scheme), FPS (Focus Product Scheme) etc.

- (2) Importable items: All items (freely importable or restricted) can be imported under these scrips. However, certain items like garlic, tea, etc. are not importable under these scrips.
  - (3) Validity: Duty credit scrip is valid only for 24 months. It can be revalidated only if it had expired when the goods were under the custody of customs.
  - (4) Time-limit for making application: Application for duty credit scrips must be made within –
    - (i) 12 months from date of export
    - (ii) 6 months from the date of realization, or
    - (iii) 3 months from the printing/release of shipping bill, whichever is later.
- For SFIS, last date is 12 months from the end of application frequency period.

**(d) M/s. Ram & Co. Ltd., a manufacturer of dutiable as well as exempted goods and also a provider of taxable as well as exempted services, furnishes the following information (₹ in lakhs) :**

Particulars	Financial year 13-14	For month of April, 2014
(1) Value of exempted goods removed @ ₹ 650 per unit	585	65
(2) Value of dutiable goods removed	400	50
(3) Value of exempted services provided	250	30
(4) Value of taxable services provided	500	60
(5) Credit of input services, commonly used for all goods & services, taken	-	₹ 2,24,720
(6) Credit of inputs, commonly used for all goods and services, taken (80,000 units × ₹30 per unit × 12.36%)	-	₹ 2,96,640

**You are required to compute the provisional amount of proportionate credit reversible under Rule 6(3A) of the Cenvat Credit Rules, 2004 for the month.**

**Given that for every unit of exempted goods, two units of inputs are required.**

**[4]**

**Solution:**

**The amount of provisional credit reversible under Rule 6 (3A) shall be as follows (amount in ₹):**

(a)	CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods (Inputs used in exempted goods = 10,000 × 2 = 20,000 units. Credit attributable to exempted goods = 20,000 × ₹ 30 per unit × 12.36%)	74,160
(b)	CENVAT credit attributable to inputs used for provision of exempted services = Value of exempted services during preceding financial year × (Cenvat credit taken on inputs – Cenvat credit attributable to inputs used in exempted goods) ÷ (Value of dutiable goods during preceding financial year + Value of taxable and exempted services during preceding financial year) = ₹250 lakh × (₹ 2,96,640 – ₹74,160) ÷ (₹400 lakh + ₹250 lakh + ₹500 lakh)	48,365
(c)	Cenvat credit attributable to input services used in or in relation to manufacture of exempted goods or provision of exempted services = Value of exempted goods and services during the preceding financial year × Cenvat credit taken on input services ÷ Total value of all goods and services	1,08,151

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	(exempted or dutiable/taxable) during the preceding financial year = ₹835 lakh × ₹2,24,720 ÷ ₹ 1,735 lakh	
	<b>Provisional Cenvat Credit reversible under Rule 6(3A) for the month</b>	2,30,676

**(5)(a) X came to India from America for the first time on 10.10.2014. he returns to his home country after staying in India upto 05.07.2015. Will he be a resident in India for the assessment year 2015-16? [3]**

**Solution:**

In this case although X has been in India for a continuous period of 270 days but it falls in two previous years i.e., previous year 2014-15 and previous year 2015-16. During the previous year 2014-15, his stay in India was only 173 days (22 + 30 + 31 + 31 + 28 + 31) (i.e., 10.10.2014 to 31.03.2015). Therefore, he will be a non-resident in India in previous year 2014-15 as he does not satisfy the first condition of 182 days stay in India during the previous year. Further, the second condition is also not satisfied as, although, he was in India for more than 60 days in the relevant previous year, he was not here for 365 days or more in 4 preceding previous years as he came to India for the first time on 10.10.2014. He would also be non-resident in previous year 2015-16, for the same reasons, if he does not come to India thereafter, as the period of stay in India will be 96 days only (i.e., 01.04.2015 to 5.7.2015). The second condition is also not satisfied as in the preceding 4 years he was here only for 173 days.

**(b) Mr. A is employed with ABC Ltd. on a basic salary of ₹ 30,000 per month. He is also entitled to a dearness allowance of 20% of basic salary. 70% of the dearness allowance is included in salary for retirement benefits. The company gives him HRA of ₹ 15,000 per month. With effect from 01.01.2015 he receives an increment of ₹ 5,000 in his basic salary. During the previous year 2014-15 he has received arrears of salary pertaining to earlier years amounting to ₹ 40,000. X was staying with his parents till 31.10.2014. From 01.11.2014 he takes an accommodation on rent in Delhi and pays ₹ 12,500 per month as rent for the accommodation. Compute his gross salary for the assessment year 2015-16. [5]**

**Solution:**

	₹	₹
Basic Salary:		
30,000 × 9	2,70,000	
35,000 × 3	1,05,000	3,75,000
Dearness allowance: 20% of basic salary		75,000
Arrears of salary		40,000
Actual amount of house rent allowance received	1,80,000	
Less: Exemption under section 10(13A)	43,690	1,36,310
Gross Salary		6,26,310



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### Working Notes:

In the above question, there are two factors which are changed but calculation of HRA will be done in 3 parts i.e., (i) 01.04.2014 to 31.10.2014 when he did not pay any rent (ii) 1.11.2014 – when he has paid rent but there is no change in other factors (iii) 01.01.2015 to 31.03.2015 – when the salary has incurred.

(i) Since no rent has been paid from 01.04.2014 to 31.10.2014, no exemption shall be available for that period.

(ii) For the period November and December 2014 exemption will be as under:

	Particulars	₹
(a)	Actual HRA received (15,000 × 2)	30,000
(b)	Rent paid – 10% of salary [25,000 – 10% of (60,000+8,400)] i.e. [25,000 – 6,840]	18,160
(c)	50% of salary of ₹ 68,400 (₹ 18,160 will be exempt).	34,200

(iii) For the period 01.01.2015 to 31.03.2015, exemption will be minimum of the following 3 amounts:

	Particulars	₹
(a)	Actual HRA received (15,000 × 3)	45,000
(b)	Rent paid – 10% of salary [37,500 – 10% of (1,05,000+14,700)] i.e. [37,500 – 11,970]	25,530
(c)	50% of salary of ₹ 1,19,700	59,850

Therefore, ₹ 25,530 will be exempt.

The total exemption shall be Nil + ₹ 18,160 + 25,530 = 43,690.

**(c) R has 9 house properties situated at Delhi.**

**Property A is let out for business**

**Property B is let out for residential purposes**

**Property C has four identical units:**

**Unit P – Let out for residential purposes throughout the previous year**

**Unit Q – Used for own business**

**Unit R – Used for own residence**

**Unit S – Let out for residential purposes; but w.e.f. 01.01.2015 was also used for own residence.**

**The particulars of property A and B are as under:**

	Property A (₹)	Property B (₹)
<b>Municipal Value</b>	50,000	60,000
<b>Actual rent</b>	5,000 P.M.	6,000 P.M.
<b>Fair Rent</b>	70,000	
<b>Standard Rent</b>	54,000	
<b>Date of completion of construction</b>	01.03.2007	01.03.1992
<b>Municipal tax paid</b>	10,000	20,000
<b>Repairs</b>	5,000	---
<b>Collection charges</b>	4,800	4,800
<b>Insurance premium paid</b>	2,000	2,000
<b>Interest on money borrowed for construction</b>	30,000	11,000

## Answer to PTP\_Final\_Syllabus 2012\_Dec2015\_Set 2

R had borrowed a sum of ₹ 3,00,000 @ 10% per annum on 01.01.2006 for construction of House – A. the entire loan is still outstanding through interest is being paid every year.

The particulars of Property –C are as under:

Date of completion of construction	01.03.1993
Date of purchase by R	01.05.1994
	₹
Municipal Value	1,60,000
Rent of Unit – P	3,000 p.m.
Rent of Unit – S	3,000 p.m.
Municipal tax paid	20,000
Other expense:	
Repair of Unit – P	5,000
Repair of Unit – Q	10,000
Collection charges of Unit - P	3,000
Collection charges of Unit – S	2,400
Insurance premium of house property	3,000
Interest on money borrowed for purchase of house	40,000
Lease rent of land of house property	5,000

Compute the income of R under the head 'Income from house property' for the assessment year 2015-16. [6]

**Solution:**

Property – A

Gross Annual Value

Higher of the following two:

	₹	₹
(a) Expected rent i.e., Municipal value (₹ 50,000) or Fair rent (₹ 70,000) whichever is higher but limited to standard rent i.e., ₹ 54,000		
(b) Actual rent received/receivable (₹ 5,000 x 12)		60,000
Less: Municipal taxes paid		10,000
Net Annual Value		50,000
Less: Deductions u/s 24		
(a) Statutory deduction @ 30%	15,000	
(b) Interest on money borrowed (Current year interest ₹ 30,000 Pre-construction interest, nil as five years are over)	30,000	45,000
Income from house property A		5,000

Property – B

Gross Annual Value

Higher of the following two:

	₹	₹
(a) Expected rent ₹ 75,000		

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(b)	Actual rent received/receivable ₹ 72,000		75,000
	Less: Municipal taxes paid		20,000
	Net Annual Value		55,000
	Less: Deductions u/s 24		
(a)	Statutory deduction @ 30%	16,500	
(b)	Interest on money borrowed	11,000	27,500
	Income from property B		27,500

### Property – C

Unit P (Let out for residential purposes throughout the previous year).

Gross Annual Value shall be higher of the following two:

		₹	₹
(a)	Expected rent (1/4 of municipal value ₹ 1,60,000) = ₹ 40,000		
(b)	Actual rent received/receivable ₹ 36,000		40,000
	Less: Municipal taxes (1/4 of property)		5,000
	Net Annual Value		35,000
	Less: Deductions u/s 24		
(a)	Statutory deduction @ 30%	10,500	
(b)	Interest (1/4)	10,000	20,500
			14,500
	Unit-Q (Used for own business)		Nil
	Unit-R (Used for own residence)		
	Annual Value		Nil
	Less: Interest on money borrowed (1/4 <sup>th</sup> of ₹ 40,000)		10,000
	Income from Unit R		(-) 10,000

### Unit – S

As it is part of the year let out and part of the year self,-occupied, it will not get benefit of self-occupation for residential purposes. The annual value of this unit will be determined as per section 23(1).

Gross annual value which shall be higher of the following two:

		₹	₹
(a)	Expected rent i.e., ₹ 40,000		
(b)	Actual rent received/receivable ₹ 27,000		40,000
	Less: Municipal taxes paid		5,000
	Net Annual Value		35,000
	Less: Deductions u/s 24		
(a)	Statutory deduction @ 30%	10,500	
(b)	Interest	10,000	20,500
	Income from unit S		14,500

Therefore, income from house property C = 14,500 + 14,500 – 10,000 = ₹ 19,000.

Aggregate of income from the three house properties = 5,000 + 27,500 + 19,000 = ₹ 51,500.

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Unit-Q of property –C is used for own business. Therefore, it will be covered under the head 'Profit and gains of business or profession', where the income of this property will be taken as Nil but deductions for actual expenses on account of municipal-tax, repairs, insurance premium, interest, etc. shall be allowed. In fact, depreciation on such units will also be allowed.

**(6)(a) From the following particulars, calculate the taxable income for the assessment year 2015-16.**

	₹
Salary per month	16,000
Dearness Allowance per month	6,000
Medical bill reimbursed (out of which ₹ 14,000 is treatment of specified ailment in a hospital approved by the Principal Chief Commissioner or Chief Commissioner)	42,000
Free telephone at residence	12,000
House Rent Allowance per month (Rent Paid ₹ 15,000 p.m. for a house in Delhi)	10,000

House property is let out on a monthly rent of ₹ 2,000. The annual value of the house property is ₹30,000. Municipal tax paid is ₹ 1,800 for whole year. Re-payment of house building loans taken from friends is ₹ 5,000 and from Life Insurance Corporation is ₹ 9,000 (which includes ₹ 6,000 on account of interest)

	₹
Interest on Savings Bank A/c	44,000
Interest on P.P.F. A/c.	2,000
Income from units of Unit Trust of India	800
Life Insurance Premium	6,000
Contribution to Public Provident Fund	6,000
Deposit in account under national Savings Scheme, 1992	10,000
Interest accrued on (NSC VIII Issue)	34,000

The construction of the building was completed on 01.01.1992.

[6]

**Solution:**

Computation of Taxable Income for the assessment year 2015-16

	₹	₹	₹
1. Income from salary			
Basic Pay		1,92,000	
Dearness Allowance		72,000	
Medical reimbursement (₹ 42,000 – 15,000 – 14,000)		13,000	
House rent allowance (₹ 1,20,000 – 96,000) See note below		24,000	
Taxable Salary		3,01,000	
Less: Deduction		Nil	
Taxable Salary			3,01,000
2. Income from House Property			
Annual Value (Actual rent or Annual rateable value whichever is higher)			30,000
Less: Municipal Taxes Paid		1,800	

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		28,200	
Less: (i) Standard deduction @ 30%	8,460		
(ii) Interest on amount borrowed for construction	6,000	14,460	13,740
Income from other sources:			
1. Interest on Savings Bank A/c		44,000	
2. Dividends on Units of UTI		Exempt	
3. Interest accrued on NSC VIII Issue		34,000	78,000
Gross Total Income			3,92,740
Less: Deduction u/s 80C		59,000	
Deduction u/s 80TTA		10,000	69,000
Total income			3,23,740

Deduction u/s 80C

Qualifying amount

1	Life Insurance Premium	6,000
2	Public Provident Fund	6,000
3	Interest accrued on NSC	34,000
4	National Savings Scheme, 1992	10,000
5	Repayment of housing loan to LIC	3,000
		59,000

House rent allowance shall be exempt to the extent of minimum of the following 3 limits:

(i) ₹ 1,20,000

(ii) ₹ 1,80,000 – 19,200 = ₹ 1,60,800

(iii) ₹ 96,000 (50% of salary i.e., ₹ 1,92,000)

1. Interest on loan taken for construction of house property will be allowed as deduction under the head 'Income from House Property' from annual value. On the other hand, repayment of principal amount to LIC will be eligible for deduction u/s 80C. Repayment of loan to a friend will not be eligible for deduction.
2. Interest on Public Provident Fund is fully exempt.
3. Interest accrued on NSC IX issue will be included under the head 'Income from other sources' and will also qualify for deduction u/s 80C.

**(b) A Ltd. have received services from a foreign company. Under the agreement, they are liable to pay know-how charges tax free. TDS @ 40% is liable to be made under Income-tax law. The sum paid tax-free : ₹588 ; rate of TDS : 41.2% and service tax: 12.36%. Compute the amount of service tax payable. [3]**

**Solution:**

Where the price set out in the Consultancy Agreement is net of all duties, taxes and other Government charges which, where applicable, were payable in addition to the price; then, consideration inclusive of income-tax deducted at source shall be assessable value for the purpose of the Act in the hands of the service recipient. Since the price of contract was net of taxes, the tax payable in India was to form part of contract price. Thus, consideration charged for the service provided shall include income-tax deducted at source as per terms of contract.

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In this case, —

1. **TDS is sum received:** Tax deducted at source is sum received by the person on whose behalf tax is deducted (section 198 of the Income-tax Act, 1961) and, is therefore, a part of consideration paid.
2. **Grossing up :** The consideration/sum paid shall be calculated by way of statutory grossing up specified in section 195A of the Income-tax Act, 1961 as follows :
  - (a) Grossed up sum = Sum paid (net of tax) ÷ (100 - TDS rate)
  - (b) Here, grossed up sum = ₹ 588 ÷ (100 - 41.2)% = ₹ 1,000.
3. **Value:** Therefore, the value of taxable service received is ₹ 1,000.

**(c) AM 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 Dubai in relation to organization of a festival celebration event in Dubai India : ₹ 4 lakh ;**
2. **Services provided to a company located in Jammu in relation to fashion show in Jammu : ₹ 3 lakh;**
3. **Services provided to a company located in Delhi in relation to fashion show in Jammu : ₹3 lakh.**
4. **Services of allowing downloading of digital content from its website : ₹ 10 lakhs (out of this, ₹ 2 lakh was provided to recipients located outside India).** [5]

**Solution:**

The taxable value and service tax is computed below:

Item	Treatment	₹
1. Services provided in relation to organization of a festival celebration event outside India	As per Rule 6 of the PoP 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 in relation to fashion show in Jammu	As per Rule 6 of the PoP 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 Delhi in relation to fashion show in Jammu	Since services are in relation to event held in Jammu, hence, as per Rule 6, they are not taxable. But, since the services are provided to a recipient located in taxable territory (Delhi) and both service provider and recipient are located in taxable territory, hence, as per Rule 8, these services are liable to service tax.	3,00,000

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4. Services of allowing downloading of digital content from its website	These services fall under online information and database access or retrieval services. As per Rule 9, the place of provision is the place of location of service provider. Since service provider AM Ltd. is located in Mumbai (taxable territory), hence, these services will be taxable in full irrespective of location of the service recipient.	10,00,000
	<b>Total Taxable value</b>	<b>13,00,000</b>
	<b>Service tax @ 12.36%</b>	<b>1,60,680</b>

### Section B

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

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

**(a) Is abkari licence covered under section 32(1)(ii) and eligible for depreciation @ 25% of written down value? [5]**

**Solution:**

#### **S. Ambika vs. DCIT (2011) 203 Taxman 2 (Ker.)**

On this issue, the High Court observed that abkari licence is treated as a transferable asset and the Excise Commissioner is authorised to approve transfers as per Foreign Liquor Rules. When licence is transferable according to the Rules under which it is issued, it is for consideration and the licence would be renewed every year unless general policy decision is taken by the Government against it, and therefore, it is a business asset for long-term exploitation. Therefore, abkari licence is a business right given to the party to carry on liquor trade.

As per section 32(1)(ii), the assessee is entitled to claim depreciation on know-how, patents, copyright, trademarks, licenses, franchises or any other business or commercial rights of similar nature as being intangible assets.

Therefore, the High Court held that the abkari licence squarely falls under section 32(1)(ii) on which the assessee is entitled to depreciation at 25% of the written down value as provided under Section 32(1).

**(b) Is the commission paid to doctors by a diagnostic centre for referring patients for diagnosis be allowed as a business expenditure under section 37 or would it be treated as illegal and against public policy to attract disallowance? [5]**

**Solution:**

#### **CIT vs. Kap Scan and Diagnostic Centre P. Ltd.(2012) 344 ITR 476 (P&H)**

On the above mentioned issue, the Punjab and Haryana High Court held that the argument of the assessee that giving commission to the private doctors for referring the patients for various

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medical tests was a trade practice which could not be termed to be illegal and therefore, the same cannot be disallowed under section 37(1), is not acceptable. Applying the rationale and considering the purpose of Explanation to section 37(1), the assessee would not be entitled to deduction of payments made in contravention of law. Similarly, payments which are opposed to public policy being in the nature of unlawful consideration cannot also be claimed as deduction. The assessee cannot take a plea that businessmen are entitled to conduct their business even contrary to law and claim deduction of certain payments as business expenditure, notwithstanding that such payments are illegal or opposed to public policy or have pernicious consequences to the society as a whole.

As per the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, no physician shall give, solicit, receive, or offer to give, solicit or receive, any gift, gratuity, commission or bonus in consideration of a return for referring any patient for medical treatment.

The demanding as well as paying of such commission is bad in law. It is not a fair practice and is opposed to public policy and should be discouraged. Thus, the High Court held that commission paid to doctors for referring patients for diagnosis is not allowable as a business expenditure.

**(c) Where the provision for bad and doubtful debts under section 36(1)(viia) relates to rural advances, can deduction for actual write off under section 36(1)(vii) in respect of urban advances be restricted to the amount in excess of the credit balance in the provision for bad and doubtful debts made under section 36(1)(viia)?** [5]

**Solution:**

**Catholic Syrian Bank Ltd. vs. CIT (2012) 343 ITR 270 (SC)**

As per the provisions of section 36(1)(viia), a scheduled bank can claim deduction in respect of provision for bad and doubtful debts in respect of its rural advances. Further, as per proviso to section 36(1)(vii), deduction under section 36(1)(vii) in respect of bad and doubtful debts written off shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts created under section 36(1)(viia). The issue under consideration is whether the claim for bad debts under section 36(1)(vii) in respect of urban advances can be restricted to the amount in excess of the credit balance in the provision for bad and doubtful debts made under section 36(1)(viia) in respect of rural advances.

On the above issue, the Supreme Court observed that the deduction on account of provision for bad and doubtful debts under section 36(1)(viia) relating to rural advances of a scheduled bank is distinct and independent of the provisions of section 36(1)(vii), where such bad debts are in respect of urban advances.

In effect, where the provision under section 36(1)(viia) is in respect of rural advances and the bad debts write off under section 36(1)(vii) is in respect of urban advances, the restriction contained in the proviso to section 36(1)(vii) would not apply. The Supreme Court held that in such a case, the benefit of deduction under section 36(1)(vii) in respect of urban advances would be available to the bank, subject to provisions of section 36(2).



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### **8. Answer the following Questions [5×3=15]**

**(a) 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. [5]**

**Solution:**

#### **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.

**(b) Does the process of removal of foreign materials from iron ore for concentration of such ore amount to manufacture? [5]**

**Solution:**

#### **Commissioner vs. Steel Authority of India Ltd. 2012 (283) E.L.T. A112 (S.C.)**

##### **Facts of the Case:**

The Steel Authority of India Ltd. (SAIL) was mining iron ore from mines. The Department submitted that Steel Authority of India Ltd. (SAIL) was mining iron ore from mines and subjecting the same to crushing, grinding, screening and washing with an aim to concentrate the ores.

The Department contended that in the case of the Respondents their mining activity was done by fully mechanized system; that they were mining iron ores from mines and then ores were subjected to process of crushing, grinding and screening and washing with a view to remove foreign materials and to concentrate such ores, that at each stage of washing water is added to improve the flowability of material by removing the sticky particles and the processes undertaken by them involved removal of parts of foreign material from the ores and increase the "Fe" content (i.e. iron content), thus goods so obtained by such process would qualify as concentrate.

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The SAIL submitted that the washing of iron ore by itself could never convert it into concentrates and that washing by itself did not amount to manufacture. The assessee also contended that the concentrates were manufactured by increasing the concentration of Fe content of the mineral by removing and separating different impurities, that concentrates were manufactured by enriching the material in terms of its Fe content, that under this process, raw iron ore of low Fe content was ground to very fine consistency and passed through various processes for making concentrates, that in the present matters neither they undertook any such process nor there was any variation in the Fe content of iron ore extracted from its mines and the Fe content of seized iron ore.

### **Point of Dispute:**

Department contended that any ore which after being subjected to physical or physico-chemical process viz., crushing, screening, etc., has had part or whole of its extraneous, foreign matter removed, would be termed as "concentrate", and thus the product obtained after the processes carried out by the Respondents was "iron ore concentrate" only and not iron ore.

### **Decision of the Case:**

The Supreme Court held that removal of foreign materials from iron ore, i.e., mining iron ore from mines and then subjecting to process of crushing, grinding, screening and washing with a view to remove foreign materials to concentrate such ores do not result in manufacture of different commercial commodity. No Central excise duty is leviable on iron ore concentrate.

**(c) Whether the addition and mixing of polymers and additives to base bitumen results in the manufacture of a new marketable commodity and as such exigible to Excise duty? [5]**

### **Solution:**

**CCE vs. Osnar Chemical Pvt. Ltd. 2012 (276) E.L. T. 162 (S.C.)**

### **Facts of the Case:**

Osnar Chemical Pvt. Ltd. (Osnar) was engaged in the supply of Polymer Modified Bitumen (for short "PMB"). It entered into a contract with M/s. Afcons Infrastructure Ltd. (Afcons) for supply of PMB at their work site. As per the agreement, the base bitumen and certain additives were to be supplied by Afcons to Osnar directly at the site, where Osnar, in its mobile polymer modification plant, was required to heat the bitumen at a temperature of 160°C with the help of burners. To this hot bitumen, 1% polymer and 0.2% additives were added under constant agitation, for improving its quality by increasing its softening point and penetration. The process of agitation was to be continued for a period of 12 to 18 hours till the mixture becomes homogenous and the required properties were met. The said bitumen in its hot agitated condition was mixed with stone aggregates which were then used for road construction. The Osnar paid duty on PMB processed at their factory in Mumbai but had not paid the same for the conversion done at their work site.

### **Point of Dispute:**

Revenue contended that the aforesaid process carried out by the assessee (Osnar) amounted to manufacture of PMB in terms of section 2(f) of the Central Excise Act, 1944.

It was submitted that the end products, viz. PMB and Crumbled Rubber Modified Bitumen (CRMB) were different from bitumen, in as much as polymers and additives were the raw materials consumed in the process of manufacture of the said final products and were therefore, covered by the definition of the term "manufacture" in section 2(f) of the Act. The Revenue further added that PMB and CRMB were exigible to Excise duty, both falling under a specific entry, while bitumen is classifiable under Chapter sub heading 2713 20 00, and polymer is classifiable under Chapter sub heading 3901 90 00, the finished products, PMB and CRMB were

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classifiable under Chapter sub heading 2715 00 90. Further, Revenue submitted that PMB and CRMB were commercially known in the market for being bought and sold and therefore, satisfied the test of marketability which is one of the essential conditions for the purpose of levy of excise duty.

### **Decision of the Case:**

The Supreme Court was of the view that "manufacture" could be said to have taken place only when there was transformation of raw materials into a new and different article having a different identity, characteristic and use. It was a well settled principle that mere improvement in quality did not amount to manufacture. It was only when the change or a series of changes take the commodity to a point where commercially it could no longer be regarded as the original commodity but was instead recognized as a new and distinct article that manufacture could be said to have taken place.

The Court held that in the Schedule to the Central Excise Tariff Act, no such process or processes have been specified in the Section notes or Chapter notes in respect of Petroleum Bitumen falling under Tariff Item 2713 20 00 or even in respect of bituminous mixtures falling under Tariff Item 2715 00 90 to indicate that the said process amounts to manufacture. Thus, it was evident that the said process of adding polymers and additives to the heated bitumen to get a better quality bitumen, viz. PMB or CRMB, could not be given an extended meaning under the expression manufacture in terms of section 2(f)(ii) of the Act. The Supreme Court thus concluded that the process of mixing polymers and additives with bitumen did not amount to manufacture.

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

### **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

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misconstrues the observations of the Supreme Court in the case of Suraj Lamp & Industries (P.) Ltd. (*supra*), 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) 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.