FINAL EXAMINATION

GROUP III

(SYLLABUS 2012)

SUGGESTED ANSWERS TO QUESTIONS

DECEMBER 2013

Paper- 16 : TAX MANAGEMENT AND PRACTICE

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

The figures in the margin on the right side indicate full marks.
Wherever required, the candidate may make suitable assumptions and state them clearly in the answers.
Working notes should from part of the relevant answer.
All sub-divisions of a question should be answered continuously.

Section A
Answer all questions.

Answer Question No. 1 and any other two from the rest in this section.
(Please answer all parts of a question at one place.)

1. Answer any three sub-divisions: 5x3=15

(a) Techno Pvt. Ltd. manufactures microwave ovens of 15 litres capacity. The following dispatches were made from its factory in Nagpur on 29-12-2012:

- **10 units were sold to a customer in Delhi at an ex-factory agreed sale price of ₹ 15,000 each.**
- **100 units were sent to its depot in Chennai. As per the price list of the company in respect of the Chennai depot valid for the month of December, 2012, the per unit price was ₹ 15,750. 5 units had been sold from Chennai depot on 28-12-2012 at the aforesaid ex-depot price of ₹ 15,750 each.**
- **50 units were sent to its other factory in Indore for fitment of further attachments and subequent sale to various customers. The cost of production of the microwave ovens (worked out as per CAS-4) was ₹ 12,000 each.**

With effect from 01-01-2013, the ex-factory price was revised to ₹ 15,500 each and the ex-depot price of Chennai depot was revised to ₹ 16,500 each. From the same date the rate of Central Excise duty on microwave ovens was increased to 12% from 10%. All the above dispatches reached their destinations after 01-01-2013. Accordingly the ovens sent to Chennai depot were sold to customers at the revised price of ₹ 16,500 each.

Calculate the excise duty payable by the Nagpur factory of Techno Pvt. Ltd. on the above transactions along with suitable explanations on the basis of calculation. Ignore application cess and Cenvat credit.

(b) A is a manufacturer of weighing machines. Its value of clearances is above the exemption limit. During February, 2013, A obtained a large order for ₹ 50 lacs from a customer X. Since it did not have facilities in its factory for executing the order, A

outsourced the entire job to a job worker B. For this purpose, it was arranged that A would instruct the suppliers of all raw materials in respect of X's order to send them directly to B's factory. B would manufacture the completed weighing machines in its factory and dispatch them directly to X on payment of appropriate excise duty as applicable. The order was duly executed within February, 2013.

For executing the above order, the following transactions took place during February, 2013:
Raw materials supplied to B worth ₹ 30 lacs.
Processing charges charged by B from A (including profit margin)— ₹ 10 lacs.
Excise duty rate on the raw materials and the finished goods is 10% (ignore cess).

Assuming that the above were the only transactions carried out by B during the month, calculate the excise duty payable by B for February, 2013 along with suitable explanations on the basis of calculation.

Ignore opening balance of Cenvat credit and Education Cess.

(c) (i) Excel Ltd. started business on 01-04-2012. Its clearances during the year 2012-13 were ₹ 350 lacs which include exports of ₹ 200 lacs (including export of ₹ 150 lacs to Bhutan) and sales ₹ 100 lacs to 100% EOU. Excel Ltd. (which fulfills all other conditions of small scale exemption as required under Notification 8/2003-CE dated 01-03-2003), is of the view that it is not liable to pay any excise duty on its clearances in the financial year 2012-13 since it would opt for the aforesaid exemption and that the value of its clearances during the said year is below the exemption limit. Is the view taken by Excel Ltd. correct? 3

(ii) The Commissioner (Appeals) has passed an order confirming denial of an export rebate claim of ₹ 60 lacs. What is the appellate remedy available to the assessee? 2

(d) Write a short note on Special Audit u/s 14AA (Cenvat Credit Audit) of the Central Excise Act, 1944.

Answer:

1. (a) Excise duty payable by Nagpur factory of Techno Pvt. Ltd.

Particulars	₹
Ex-factory sale to customers in Delhi: ₹ 15,000 x 10= ₹ 1,50,000 @ 10%	15,000
Transfer to Chennai Depot: ₹ 15,750 x 100= ₹15,75,000 @10%	1,57,500
Transfer to Indore factory; ₹ [(12,000 x 50) x 110%] = ₹ 6,60,000 @10%	66,000
Total Duty Payable	2,38,500

Notes:

1. As per Rule 5 of the Central Excise Rules, 2002, the rate of duty and assessable value of final products shall be the rate and value in force as on the date of removal from the factory. Any subsequent change in rate or value shall not be relevant. Hence, the increase in rate of duty and value w.e.f. 01-01-2013 shall not have any effect on any of the removals, since it is subsequent to the date of removal from the factory.
2. As per Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, goods transferred to depots are to be valued at the price prevailing at the depot on or nearest to the date of removal from factory. Accordingly, the assessable value for depot transfer has been taken at ₹ 15,750 each.
3. As per Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, the assessable value of goods consumed captively (including inter-factory transfers within the same organization) shall be 110% of the cost of production or manufacture of such goods. The value of goods transferred to Indore

factory has been calculated accordingly.

(b) Excise duty payable by B for February, 2013

Particulars	₹
Value of goods cleared as job-worker for A: ₹ 50 lacs @10%	5,00,000
Less: Cenvat credit on raw materials: ₹ 30 lacs @ 10%	3,00,000
Net duty payable	**2,00,000**

Notes:

1. As per Rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rule, 2000, where a principal manufacturer gets goods manufactured by a job worker on his behalf and sells those goods ex the job worker's factory, the assessable value of such goods shall be the price at which the principal manufacturer sells such goods to its customer. Since A' sale price to X is ₹ 50 lacs, the goods in this case has been valued at ₹ 50 lacs irrespective of its intrinsic value comprising value of raw materials and processing charges.
2. Cenvat credit on raw materials is available to B even if it has not purchased them, so long as it is supported by excise invoices from suppliers mentioning B as the consignee.

(c) (i) As per Notification No. 8/2003-CE dated 01-03-2003 (As amended) exemption as small scale industry is available up to first clearance of ₹ 150 lacs during a year, provided that the value of clearances during the previous financial year is ₹ 400 lacs or below. While calculating the limit of ₹ 150 lacs, the value of exports (except to Nepal and Bhutan) and supplies to 100% EOU are to be excluded.

Accordingly, in the instant case the value of clearance during 2012-13 for the purpose of SSI exemption is ₹ 200 lacs ₹ [350 – (200 – 150) – 100] lacs. It may be noted that since the business started on 01-04-2012, the value of clearances during the year 2011-12 is NIL i.e. below ₹ 400 lacs.

Thus the assessee can avail exemption of ₹ 150 lakhs and will have to pay duty on balance ₹ 50 lakhs (₹ 200 lakhs – ₹ 150 lakhs). Therefore, the view of Excel Ltd. as not to pay any excise duty during 2012-13 is not correct.

(ii) As per section 35EE of the Central Excise Act, 1944 if an assessee is aggrieved by an order of the Commissioner (Appeals) relating to excise duty rebate on exports, he shall make an application to the Revisionary Authority of the Central Government.

It may be noted that appeal on such matter shall not lie before the Central Excise & Service Tax Appellate Tribunal as down in the first Proviso to section 35B of the Central Excise Act.

(d) Special Audit u/s 14AA (CENVAT Credit Audit)

Special Audit in Cases where Credit of Duty Availed or Utilised is not within the Normal Limits, etc. —

(1) If the Commissioner of Central Excise may call for an audit if he has reason to believe that the credit of duty availed of or utilized by a manufacturer of any excisable goods —
   (a) is not within the normal limits having regard to the nature of the excisable goods produced or manufactured, the type of inputs used and other relevant factors, as he may deem appropriate;
   (b) has been availed of or utilized by reason of fraud, collusion or any willful mis-statement or suppression of facts.

The Commissioner shall direct such manufacturer to get the accounts of his

factory, office, depot, distributor or any other place, as may be specified by him, audited by a Cost Accountant or Chartered Accountant nominated by him. Cost Accountant shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959. Chartered Accountant shall have the meaning assigned to it in section 2(1)(b) of the Chartered Accountants Act, 1949.

(2) The cost accountant so nominated shall, within the period specified by the Commissioner of Central Excise, submit a report of such audit duly signed and certified by, him to the said Commissioner mentioning therein such other particulars as may be specified.

(3) The provisions of sub-section (1) shall have effect notwithstanding that the accounts of the said manufacturer aforesaid have been audited under any other law for the time being in force or otherwise.

(4) The expenses of, and incidental to, such audit (including the remuneration of the Cost Accountant) shall be determined by the Commissioner of Central Excise (which determination shall be final) and paid by the manufacturer and in default of such payment shall be recoverable from the manufacturer in the manner provided in section 11 for the recovery of sums due to the Government.

(5) The manufacturer shall be given an opportunity of being heard in respect of any material gathered on the basis of the audit under sub-section (1) and proposed to be utilized in any proceeding under this Act or rules made thereunder.

2. Answer any two sub-divisions: 5x2=10

(a) Explain whether the following items can be included in/excluded from the transaction value under section 4 of the Central Excise Act, 1944:

(i) Collection expenses incurred in respect of empty bottles for filling aerated waters from the premises of buyers to the manufacturer.

(ii) Delivery and collection charges of gas cylinders and collection of empty cylinders.

(iii) Interest, notional or real, accruing on deposits for sales return of gas cylinders as well as rentals.

(iv) Cash discount known at the time of clearance of goods, but not availed by the customers.

(b) Snow White Ltd., manufactures paper and in the course of such manufacture, waste paper is also produced (paper being the main product and a dutiable good). Assume that the Central Excise Tariff Act, 1985 (CETA) was amended w.e.f. 01-03-2013, so as to include waste paper also. The assessee was issued show cause notice (SCN) by the central excise officer, demanding duty of ₹ 2 lacs on waste paper produced during October, 2012 to February, 2013, but cleared during April to May, 2013. A reply is due to be filed immediately to the notice. As the Cost Accountant of Snow White Ltd., you are required to advise the company suitably for the SCN received from the Department.

(c) What is the procedure to be followed for export of goods free from taxes and duties?

Answer:

2. (a) i) Transaction value includes any amount charged in addition to the price of the goods by reason of or in connection with the sale. Since collection expenses are incurred by reason of or in connection with the sale, it would be included in the transaction value.

ii) CBEC has vide circular No.643/34/2002 dated 1.7.2002 clarified that delivery and collection charges of gas cylinders are by reason of or in connection with the sale of goods and therefore the same would be included in the transaction value.

iii) The interest on advances taken from the customers would not be included in the assessable value, unless the receipt of such advance had no effect of depressing the wholesale price. In VST Industries Ltd. vs. C.C. Ex. Hyderabad 1998 (97) ELT 395 (SC) where interest free deposits were taken because of commercial consideration of covering the risk of credit sales, no special consideration flowing from the assessee to the buyer keeping the deposit was found and the Supreme Court held that notional interest cannot be included in the assessable value.

However in such case, the burden of proof lies on the Department to prove a nexus between the fact of advance taken and the depression in the value.

iv) The transaction value is the price actually paid or payable for the goods. In the given situation as the case of cash discount had not been passed on to the customer, it will not be allowed as deduction.

(b) The issue involved in the given case is determination of taxable event for the purpose of levy of excise duty. As per section 3 of the Central Excise Act 1944, the taxable event for levy of Central Excise is 'manufacture of excisable goods'. The date for determination for rate of duty and tariff valuation is the date of actual removal of the goods from the factory or warehouse. However, there must be a levy of duty of excise at the time of manufacture and only then, the duty can be collected at the time of removal as "has already been held in Vazir Sultan Tobacco Industry's case 1996(83) ELT3(SC). Therefore, the waste paper produced prior to the levy will not be chargeable to duty of excise even though it has been cleared after such levy and the proposed show cause notice demanding ₹ 2 lakhs of excise duty on such waste paper is invalid and illegal and liable to be quashed.

(c) Export procedure:

i) Goods can be exported without payment of excise duty under bond under rule 19 or under claim of rebate of duty under rule 18 of Central Excise Rules, 2002.
ii) Excisable goods should be exported under cover of invoice and ARE-1 Form.
iii) Merchant exporter has to execute a bond and issue CT-1 so that goods can be cleared without payment of duty. Manufacturer has to issue letter of undertaking.
iv) Export to Nepal/Bhutan are required to be made on payment of excise duty.
v) EOU has to issue CT-3 Certificate for obtaining inputs without payment of excise duty.

3. Answer all sub-divisions: 5x3=15

(a) M/s Uzagar Ltd. has provided following information related to importation of a machine during financial year 2012-13:

FOB Price of the machine	**US$ 10.00 lacs**
Air freight paid	**US$ 2.50 lacs**
Insurance for transit of machine	**Not ascertainable**
Cost of development work in India	**₹ 4.00 lacs**
Local agent commission	**₹ 5.00 lacs**
Cost of local transport	**₹ 0.50 lacs**
Exchange rate applicable	**$ 1 = ₹ 51**

(i) Compute the Assessable Value of the machine imported under the Customs Act, 1962.

(ii) Provide explanation in support of treatment of different items in the computation of

Assessable Value.

Or

M/s. Excel IT Company Ltd. imported Laptops with Hard Disk Drives (HDD) pre-loaded with operating software like Windows, XP, etc. The department of Customs claimed that the said laptop along with the operating softwares was classifiable and assessable as a single unit. It is the claim of the assessee that the software loaded HDD should be classified and assessed separately as an exemption is available as per notification issued under section 25(1) of the Customs Act, 1962. Decide with a brief note whether the action proposed by the Department is correct in law.

(b) From the following transactions compute net VAT payable by M/s. S. Kumar & Co. for the month of March, 2013. Also provide explanation wherever required to justify your answer:

Particulars	Amount in ₹
Inputs Purchased:	
Raw materials at Nil VAT	**10,00,000**
Raw materials at 4% VAT	**40,00,000**
Raw materials at 12% VAT	**20,00,000**
Output:	
Inter-state sale of finished goods at 4% VAT (these goods were produced entirely from raw material at NIL VAT rate procured as Inputs)	**15,00,000**
Exempted Sales (these goods were produced entirely from raw material at 4% VAT to the extent of 50%)	**20,00,000**
Sale of finished goods Intra State at 12% VAT	**20,00,000**
Intra State Sale of raw materials purchased at 4% VAT	**10,00,000**
50% of the raw material procured at 4% VAT has been utilized to produce capital goods for the manufacturing process in M/s. S. Kumar & Co.'s factory (market value)	**15,00,000**

(c) (i) While importing goods under Duty Free Import Authorisation (DFIA), is it required to pay any customs duty? Is the DFIA transferable? 2

(ii) A bill of entry was presented on 4th August, 2013. The vessel carrying goods arrived on 11th August, 2013. Entry inwards was granted on 13th August, 2013, and the bill of entry was assessed on that date and was also returned to the importer for payment of duty on that date. The duty amounting to ₹ 5,00,000 was paid by the importer on 22nd August, 2013. Calculate the amount of interest payable under section 47(2) of the Customs Act, 1962, given that there were four holidays during the period from 14th August to 22nd August, 2013. 3

Answer:

3. (a) (i) Computation of Assessable Value of machine imported by M/s Uzagar Ltd under Customs Act.

Particulars	Amount in Lakhs
FOB Price of the machine	US$ 10.00
Add: Air Freight (Max 20% of FOB)-Note-I	US$ 2.00
Add: Insurance charges (1.125% of FOB)- Note-2	US$ 0.1125

Value excluding Local Agent Commission	US$ 12.1125
OF value in Indian Rupees - US$ 12.1125 × ₹ 51	₹ 617.7375
Add: Local Agent Commission- Note-4	₹ 5.00
CIF Value	₹ 622.7375
Add: Loading Charges (1% of CIF)- Note-6	₹ 6.227375
Assessable value	₹ 628.964875

(ii) Explanations in support of treatment of different items in the computation of Assessable Value under Customs Act are given below: (Notes)

1. Air freight cannot exceed 20% of FOB value of goods.
2. Cost of insurance is taken at 1.125% of FOB Value of Goods [First Proviso to rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules 2007.
3. Cost of local transport is not includable in assessable value as it is a post importation activity.
4. Local Agent commission is not a buying commission & hence includable in assessable value Rule 10(1)(a) of Customs Valuation (Determination of Value of Imported Goods) Rules 2007.
5. Cost of development work in India is not includable in assessable value Rule 10(1)(b) of Customs Valuation (Determination of Value of Imported Goods) Rules 2007.
6. Loading charges should be 1% of CIF Value (First Proviso to rule 10(2) Customs Valuation (Determination of Value of Imported Goods) Rules 2007.

OR

The preloaded operating system recorded in Hard Disc Drive in laptop (items of computer) forms an integral part of the laptop as the laptop cannot work without the operating system. A laptop without operating system is an empty box. Hence laptop should be treated as one single unit classifiable under Customs Act 1962.

The Apex Court in case of CCUs. v. Hewlett Packard India Sales (P) Ltd (2007) 215 ELT 484(SC) has held that when a laptop is imported with inbuilt preloaded operating system recorded on HDD, the said item forms an integral part of laptop (Computer System). Hence laptop should be treated as one single unit classifiable under Headings 84.71.

However, the operating system is imported as packaged software like an accessory then it would be classifiable under Head 85.24.

The claim of the assessee that the software loaded HDD should be classified and assessed separately to get an exemption which is available as per notification issued under section 25(1) of the Customs Act 1962 is not in consonance of provisions of law. The action proposed by the department is correct in law.

(b) Statement of Computation of Input Tax Credit and VAT payable for the month of March 2013:

Statement of Input Tax Credit eligible under VAT

Particulars	**Amount in ₹**
Raw material purchase at 4% VAT (₹ 40 lakhs × 4% × 50%)	80,000
Raw material purchase at 12% VAT (₹ 20 lakhs ×12%)	2,40,000
Total	**3,20,000**

Statement of Computation of VAT Payable

Particulars	Amount in ₹
Interstate sale of finished goods at 4% VAT (₹ 15 lakhs × 4%)	60,000
Sale of finished goods Intra State at 12% VAT (₹ 20 lakhs ×12%)	2,40,000
Intra State Sale of raw materials purchased at 4% VAT (₹ 10 lakhs × 4%)	40,000
Total	**3,40,000**

Statement showing VAT Payable after Input Tax Credit

Particulars	Amount in ₹
VAT Payable on Sales	3,40,000
Less: Input Tax Credit	3,20,000
Net VAT Payable	**20,000**

Note:
(i) No computation of VAT is required for exempted sales
(ii) Raw material purchased used for production of Capital Goods for the manufacturing process in the factory - VAT does not attract on Market Value.

(c) (i) Duty Free Import Authorisation (DFIA) has been introduced w.e.f. 1.5.2006. It is issued to allow duty free import of inputs, fuel, oil, energy sources, catalyst required for export products. Imports under DFIA will be exempted from payment of basic customs duty, additional customs duty/ excise duty, education cess, antidumping duty and safeguard duty, if any.

After export obligation is fulfilled, the scrip can be made transferable by Regional Authority. After endorsement of transferability, duty free inputs (except fuel) can be transferred.

(ii) As per section 47(2) of Customs Act, the importer is liable to pay interest where –
- the importer fails to pay the import duty under this section within 5 days, excluding holidays
- from the date on which the bill of entry is returned to him for payment of duty, he shall pay interest @ 15% p.a. on such duty till the date of payment of the said duty.

In the given case, the assessed bill of entry was returned to him, on 13th August 2013 and the duty was paid on 22nd August 2013.
Excluding holidays, the number of days from 13th August 2013 to 22nd August 2013 = 10 days – 4 days = 6 days.

Since duty has not been paid within time period of 5 days, interest is payable u/s 47 (2) of Customs Act on ₹ 5,00,000/-.
So, interest payable is = ₹ 5,00,000 x 15% x 6/365 = ₹ 1,233/-

However, there is an amendment to the relevant section w.e.f. 10.05.2013 vide Finance Act, 2013, which specifies the no. of days within which the payment can be made without interest as 2 (before 10.05.2013 it was 5).

4. Answer any two sub-divisions: 5x2=10

(a) Mr. Vaibhav Vasudevan, registered service provider, has furnished the following details of receipts (excluding service tax), for the half year ended 31-03-2013:

Particulars	Amount

	(₹ in lacs)
For arranging manpower to projects undertaken by:	
Central Government	**10**
United Nations Organisation	**2**
Public charitable trusts	**3**
From private individuals for supply of farm labour	**4**
Advance received from X Ltd., no services were rendered till the year end	**5**
Director sitting fees from a company (not employed)	**6**

Ascertain the total value of taxable services for the second half year. He had rendered taxable services of ₹ 23 lacs in the earlier year.

(b) What is the taxable event and arisal of tax liability in service tax, when payment is received after the services have been rendered? Is there any concession from service tax liability for bad debt?

(c) Explain the service tax liability of 'bundled service', with an example of services which are normally bundled in the ordinary course of hotel business.

Answer:

4. (a)

Computation of taxable services of Mr. Vaibhav Vasudevan for half year ended 31-3-2013

Particulars	Amount (₹ in lacs)
For arranging manpower to projects undertaken by:	
Central Govt. This is a taxable service	10
United Nations Organisation ₹ 2 lacs. Exempt under mega Notification	Nil
Public charitable trusts. This is a taxable service	3
From private individuals for supply of farm labour ₹ 4 lacs. This is covered by negative list, hence not taxable.	Nil
Advance received from X Ltd., no services were rendered till the year end. This is chargeable to tax; it is immaterial that no services were rendered. [5x100/112.36]	4.45
Director sitting fees from a company (not employed) ₹ 6 lacs : Assessee is not liable; company is liable under Reverse Charge Mechanism	Nil
Total value of taxable services	**17.45**

(b) Taxable event and service tax liability

Taxable event and tax liability do not happen at the same time. Taxable event happens when a taxable service is rendered. Tax liability is required to pay as per Point of Taxation Rules, 2011 (w.e.f. 1-4-2011).

Point of Taxation as per the Point of Taxation Rules, 2011,

- Date of Invoice (or)
- Payment received (or)
- Completion of the provision of service

Whichever is earlier.

As per the Point of Taxation Rules, discussed above, different points of time have been

chosen when a service shall be deemed to have been provided, whereas the rules has made by introducing a deeming fiction when a service shall be deemed to have been provided, but no such provisions have been made in the Finance Act, 1994.

However, the said provision is not applicable for those service providers named under Rule 7 of the Point of Taxation Rules, 2011 namely determination of point of taxation in case of specified services or persons. For them taxable event is rendering of taxable service only.

Concession is not available for bad debts
If an assessee issues invoice, say for ₹ 5,00,000 and realized only ₹ 4,80,000 from his client and ₹ 20,000 becomes bad debt, then he cannot claim that he has paid excess tax for ₹ 20,000 and in such a situation, he shall not be entitled to make any adjustment of tax paid in respect of ₹ 20,000, which has become a bad debt.

(c) Taxability of 'bundled services'
'Bundled service' means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services. An example of 'bundled service' would be air transport services provided by airlines wherein an element of transportation of passenger by air is combined with an element of provision of catering service on board. Each service involves differential treatment as a manner of determination of value of two services for the purpose of charging service tax is different.

Two rules have been prescribed for determining the taxability of such services in clause (3) of section 66F of the Act. These rules, which are explained below, are subject to the provisions of the rule contained in sub section (2) of section 66F of the Finance Act, 1994.

Services which are naturally bundled in the ordinary course of hotel business
The rule is - 'If various elements of a bundled service are naturally bundled in the ordinary course of business, it shall be treated as provision of a single service which gives such bundle its essential character'

Illustrations -
A hotel provides a 4-D/3-N package with the facility of breakfast. This is a natural bundling of services in the ordinary course of business. The service of hotel accommodation gives the bundle the essential character and would, therefore, be treated as service of providing hotel accommodation.

A 5 star hotel is booked for a conference of 100 delegates on a lump sum package with the following facilities:

Accommodation for the delegates
Breakfast for the delegates,
Tea and coffee during conference, etc.

As is evident a bouquet of services is being provided, many of them chargeable to different effective rates of tax. None of the individual constituents are able to provide the essential character of the service. However, if the service is described as convention service it is able to capture the entire essence of the package. Thus the service may be judged as convention service and chargeable to full rate. However it will be fully justifiable for the hotel to charge individually for the services as long as there is no attempt to offload the value of one service on to another service that is chargeable at a concessional rate.

Section B
Answer all the questions.

5. Answer any three sub-divisions: 5x3=15
Answer the following with the help of decided case law:

(a) Can, the benefit of self-occupation of house property under section 23(2) of the Income-tax Act, 1961 be denied to HUF on the ground that it cannot occupy a house property, being a fictional entity?

(b) For claiming deduction of bad debts, under section 36(1)(vii) of the Income-tax Act, 1961, is it necessary for the assessee to establish that the debt had, in fact, become irrecoverable?

(c) In case of a house property registered in joint names, will the exemption under section 54F of the Income-tax Act, 1961 be allowed fully to the co-owner who has paid whole of the purchase consideration of the property or will it be restricted to a proportionate share only?

(d) Can interest under sections 234B and 234C of the Income-tax Act, 1961 be levied where a company is assessed on the basis of book profits under section 115JB?

Answer:

5. (a) Provision of Law: As per Section 23 (2) of the Income Tax Act, if the house consists of one house in the occupation of owner for his own residence, the annual value of such house shall be taken to be nil.

Fact of the Case: The issue similar to present case decided in case of CIT vs. Hariprasad Bhojnagarwala (2012)342 ITR 69 (Guj.) (Full Bench). The assessee, being a Hindu Undivided Family (HUF), claimed the benefit of self occupation of a house property under section 23(2). However, the Assessing Officer did not accept the said claim and denied the benefit of self occupation of house property by the HUF arguing that such benefit is available only to the owner who can reside in his own residence i.e., only an individual assessee, who is a natural person, and not to a imaginary assessable entity being HUF or a firm, etc.

Decision: On the above mentioned issue, the Gujarat High Court observed as follows:

- That a firm, which is a fictional entity, cannot physically reside in a house property and therefore a firm cannot claim the benefit of this provision, which is available to an assessable entity who can actually occupy the house.
- The HUF is a group of individuals related to each other i.e., a family comprising of a group of natural persons. The said family can reside in the house, which belongs to the HUF. Since a HUF cannot consist of artificial persons, it cannot be said to be a fictional entity.
- Since singular includes plural, the word "owner" would include "owners" and the words "his own" used in section 23(2) would include "their own".

Therefore, the Court held that the HUF is entitled to claim benefit of self-occupation of house property under section 23(2) of income tax act.

(b) Provision of Laws: In order to claim deduction of bad debt u/s 36(1)(vii) of Income Tax Act, the following points must be satisfied:

- There must be a debt
- Debt must be incidental to the business or profession of the assessee.
- Debt must have been taken into account in computing assessable income.

- Debt must have been written off in the Books of Account of the assessee.

However, w.e.f. 1st April, 1989, the condition for claim of deduction under section 36(1)(vii) of income tax act is that the bad debts should be written off as irrecoverable in the accounts of the assessee for the previous year. Therefore, there is presently no requirement to prove that the debt has actually become irrecoverable.

Fact of case and Decision: A similar fact to the present issue come up before Hon'ble Apex Court in case of T.R.F. Ltd. vs. CIT (2010) 323 ITR397 (SC) and it was held that in order to obtain deduction in relation to bad debts under section 36(1)(vii), it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. It is enough if the bad debts are written off as irrecoverable in the accounts of the assessee for the relevant previous year.

(c) Provision of Law: Section 54F of Income Tax Act mandates that to get exemption of long term capital gain on the condition that the tax payer shall have to purchase a residential house property or construct a residential house property within the time frame. It does not say about ownership.

Fact of Case: A similar issue was came up for decision before Hon'ble Delhi High Court in case of CIT vs. Ravinder Kumar Arora (2012) 342 ITR 38 (Delhi). In this case the assessee had claimed exemption under section 54F from the long-term capital gain on account of new residential house property purchased in joint names of assessee and his wife within the stipulated time period as mentioned in the aforesaid section. He claimed exemption under section 54F taking into consideration the whole of purchase price of the residential house property where as the Assessing Officer allowed 50% of the exemption claimed under section 54F, being the share of the assessee in the property purchased in joint names.

The assessee submitted before Hon'ble Court as follows:

- Inclusion of his wife's name in the sale deed was just to avoid any litigation after his death.
- All the funds invested in the said house were provided by him, including the stamp duty and corporation tax paid at the time of the registration of the sale deed of the said house.
- Exemption under section 54F is to be allowed with reference to the full amount of purchase consideration paid by him for the aforesaid residential house and is not to be restricted to 50%.
- The Assessing Officer did not deny the fact that the whole amount of purchases of the house was contributed by the assessee and nothing was contributed by his wife.
- However, the Assessing Officer opined that exemption under section 54F shall be allowed only to the extent of assessee's right in the new residential house property purchased jointly with his wife, i.e. 50%.

Decision: Considering the above mentioned facts, the Delhi High Court held that

- Assessee was the real owner of the residential house in question and mere inclusion of his wife's name in the sale deed would not make any difference.
- Section 54F mandates that the house should be purchased by the assessee but it does not stipulate that the house should be purchased only in the name of the assessee.
- In this case, the house was purchased by the assessee in his name and his wife's name was also included additionally.
- Therefore, the conditions stipulated in section 54F of Income Tax Act stand fulfilled and the entire exemption claimed in respect of the purchase price of the house property shall be allowed to the assessee.

A similar view was taken by the Karnataka High Court in the case of DIT (IT) vs. Mrs. Jennifer Bhide (2011)15 Taxmann.com 82, in the context of deductions under section 54 and 54EC of Income Tax Act, wherein the assessee had sold a residential house property.

(d) Provision of Law: Section 234C is applicable if an assessee has not paid advance tax or understated installments of advance tax and calculated by taking into account 31st March of the previous year. Whereas Section 234B is applicable if an assessee who is liable to pay advance tax, has failed to pay such tax or who had paid advance tax but the amount of advance tax paid by him is less than 90% of assessed tax and period of interest payable is from 1st April of assessment year till the date of determination of income u/s 143(1) or till such regular assessment.

According to section 207, tax shall be payable in advance during any financial year, in accordance with the provisions of sections 208 to 219 (both inclusive), in respect of the total income of the assessee which would be chargeable to tax for the assessment year immediately following that financial year. Under section 115JB(1) of income tax act, where the tax payable on total income is less than 18.5% of "book profit" of a company, the "book profit" would be deemed to be the total income and tax would be payable at the rate of 18.5%. Since in such cases, the book profit is deemed to be the total income, therefore, as per the provisions of section 207, tax shall be payable in advance in respect of such book profit (which is deemed to be the total income) also.

Fact of the Case & Decision: A similar issue was decided by Hon'ble Supreme Court in case of Joint CIT vs. Rolta India Ltd. (2011))330 ITR 470 (SC)

On this issue, it was observed that there is a specific provision in section 115JB(5) providing that all other provisions of the Income-tax Act, 1961 shall apply to every assessee, being a company, mentioned in that section. Section 115JB is a self-contained code pertaining to MAT, and by virtue of sub-section (5) thereof, the liability for payment of advance tax would be attracted. Therefore, if a company defaults in payment of advance tax in respect of tax payable under section 115JB, it would be liable to pay interest under sections 234B and 234C of Income Tax Act. Therefore, interest under sections 234B and 234C shall be payable on failure to pay advance tax in respect of tax payable under section 115JB.

6. VKS Polymers LLP is a LLP consisting of the partners L, M and N. The LLP derives income from a trading unit (D) as well as a manufacturing unit (E). The summarised details of the profits and other related aspects for the year ended are as under:

	₹ in lacs
Profits from unit D	**40**
Profits from unit E	**60**

The turnover of the company is 120 crores and transfer pricing provisions are not attracted. Unit E is eligible to claim 100% deduction under section 80-ID and all necessary conditions stand fulfilled.

The assessee is planning to file the return of income on 30th September, 2013. Compute the total income and tax payable for the assessment year 2013-14.

There is some doubt in the mind of the Taxation Manager over two issues relating to unit D. The assessee seeks your view whether it can file the return of income on 1st November, 2013, after the issues are settled.

The assessee has prepaid taxes to the extent of ₹ 13 lacs and hence it is felt that there will be no interest chargeable under sections 234A, 234B and 234C. Advise the assessee suitable. 10

Answer:

6. (i) When the return of income has been filed on 30-9-2013 [within due date laid down in s. 139(1)]

Computation of Total Income and tax as per normal provisions

Particulars	(₹ in Lacs)
Gross Total Income	100.00
Less: Deduction U/S 80-ID	60.00
Total Income	40.00
Tax Liability as per normal provisions @ 30.9%	12.36

Computation of Adjusted Total Income and AMT as per s. 115JC

Particulars	(₹ in Lac)
Total Income	40.00
Add: Deduction u/s 80-ID	60.00
Adjusted Total Income	100.00
Tax Liability @ 19.055% u/s 115JC	19.055
Tax Payable (Higher of Tax on Adjusted Total Income and Total Income)	**19.055**

(ii) When the return of income has NOT been filed within due date laid down in s. 139(1)

As per the provisions of s. 80AC, no deduction will be available u/s 80-ID when the return of income is filed beyond the due date laid down in s. 139(1).

When no deduction is available u/s 80-ID, the AMT provisions u/s 115JC will not apply.

The total income and tax payable as per normal provisions will be as under:

Particulars	(₹ in Lacs)
Gross Total Income	100.00
Less: Deduction U/S 80-ID (Not allowable in view of s. 80AC)	Nil
Total Income	100.00
Tax Liability as per normal provisions @ 30.9%	30.900

It can be seen from above that there will be a heavily increased tax liability, if the return is filed on 1st Dec, 2013. The assessee is therefore advised to file the return of income on 30-9-2013.

In case of any error, a revised return can be filed on 1-12-2013.

7. Answer any two sub-divisions: 5x2=10

(a) State the circumstances under which the Authority for Advance Ruling (AAR) shall not allow the application for advance ruling and the duties of AAR in such case.

(b) Better Ltd. was amalgamated with Best Ltd. with effect from 15th September, 2012 (the

appointed date). Amalgamation was in accordance with section 2(1B) of the Income-tax Act. The details regarding block of assets are given below:

Block of Asset	Rate of Depreciation	WDV in the hands of Better Ltd. u/s 43(6) of the Income-tax Act as on 1st April, 2012 (₹)	Value at which assets were transferred to Best Ltd. (₹)
Building		10%	15,00,000
14,00,000			
Plant & Machinery	15%	30,00,000	25,00,000
Furniture	10%	5,00,000	3,00,000

Compute depreciation admissible under section 32 to Better Ltd. and Best Ltd. in respect of each block of assets for the assessment year 2013-14.

(c) The following are the broad details pertaining to Excel Pvt. Ltd., for the assessment year 2012-13 (all amounts are ₹ in lacs):

From specified business covered by section 35AD: Loss	12
From other non-speculation business:	
Unabsorbed depreciation	8
Business loss excluding depreciation	7
The return of income had been filed on 11.01.2013.	
For the assessment year 2013-14, the broad position is as under:	
From specified business covered by section 35AD: Profit	9
From other non-speculation business:	
Depreciation of FY 2012-13 alone	3
Business income before depreciation	22

How will the brought forward items be set off in the assessment year 2013-14 and what is the business income for the assessment year 2013-14?

Answer:

7. (a) As per section 245R Authority for Advance ruling shall not allow the application of a non-resident for advance ruling in the following cases:

(i) where the question raised in the application is already pending before any income-tax authority or Appellate Tribunal

(ii) where the question raised in the application involves determination of fair market value of any property.

(iii) where the question so raised relates to a transaction or issue which is designed prima facie for the avoidance of income tax.

Before rejecting the application the AAR is to give an opportunity to the applicant of being heard.

AAR is to give reasons for rejection in the order passed by it.

Further where the application is rejected, reason for such rejection shall be given in the order and copy of the same.

(b) As per section 32 the aggregate deduction in respect of depreciation to the amalgamating company and the amalgamated company in the case of amalgamation shall not exceed in any previous year the deducted calculated at the

prescribed rates as if the amalgamation had not taken place. Such deduction shall be apportioned between amalgamating company and the amalgamated company in the ratio of the number of days for which the assets were used by them.

Depreciation is calculated on WDV as per section 43(6) and not on value at which the assets were transferred from amalgamating company to the amalgamated company.

Block	Total depreciation ₹	Depreciation to Better Ltd.	Depreciation Best Ltd.
Building	1,50,000	₹ 1,50,000 x 167 / 365 = ₹ 68,630	₹ 1,50,000 x 198/365 = ₹ 81,370
Plant & Machinery	4,50,000	₹ 4,50,000 x 167/365 = ₹ 2,05,890	₹ 4,50,000 x 198/365 = ₹ 2,44,110
Furniture	50,000	₹ 50,000 x 167/365 = ₹ 22,877	₹ 50,000 x 198/365 = ₹ 27,123

(c) Set off and carry forward of business loss

In terms of sec 80 and 139(3), for carrying forward business loss covered by sec 72, the return of income should be filed within the due date as per sec 139(1). Hence the assessee cannot carry forward the non-speculation business loss of ₹ 7 lacs.

Unabsorbed depreciation is not covered by above and hence the unabsorbed depreciation of ₹ 8 lacs can be carried forward and the same will be deemed to be current depreciation.

The need for filing of return within the time stipulated u/s 139(1) enjoined by sec 139(3) is for the purpose of carrying forward losses under sections 72(1), 73(2), 74(3) or 74A(3). Loss under section 73A is not covered.

Hence filing the return of income on 11-1-2013 will not affect the right of carry forward of loss as per section 73A, which covers loss from specified business u/s 35AD.

Loss from specified business covered by sec 35AD can be set off only against profit from specified business covered by sec 35AD.

Business income for AY 2013-14:	**(₹ In lacs)**
From specified business covered by section 35AD : Profit	9
Less: brought forward loss from specified business set off	9
Balance income	NIL
From other non-speculation business:	
Business income before depreciation	22
Less: Current depreciation as per sec 32(2) [3+8]	11
Balance income	11
Business income chargeable to tax	11

8. Answer any one sub-division: 5

(a) Mr. Sudhir furnishes the following particulars for the computation of his wealth tax return for the assessment year 2013-14:

(i) Gifts of jewellery made to his wife from time to time aggregating ₹ 1,00,000. Market value on valuation date ₹ 4,00,000.

(ii) Flat purchased under installment payment scheme in 1990 for ₹ 10,00,000, used for purposes of his residence and market value as on 31.03.2013 (Installment remaining unpaid ₹ 1,00,000) ₹ 12,00,000.

(iii) Cash balance ₹ 2,50,000.

(iv) Bank balance ₹ 1,50,000.

(v) Urban land transferred to minor handicapped child, value as on 31.03.2013 ₹ 7,00,000.

You are required to compute his net wealth as on 31.03.2013.

(b) The Customs Departments confiscated the gold held by Mr. Basu:

Situation	Date of confiscation
1	30.03.2013
2	31.03.2013
3	01.04.2013

(i) Will this gold shall be included in the net wealth of Mr. Basu as on the valuation date 31.03.2013?

(ii) Would your answer be different, if the gold is seized, but not confiscated?

Answer:

8. (a)

Assessee : Sudhir — Valuation Date : 31.03.2013

Assessment Year: 2013 -14

Computation of Taxable Wealth	₹
(i) Gift of Jewellery made to wife	4,00,000
(ii) Flat used for Residence	NIL
(iii) Cash Balance	2,00,000
(iv) Bank Balance	NIL
(v) urban land in the hands of the minor	NIL
Total Wealth	**6,00,000**

Note :

(1) Deemed asset U/S 4. Fair market value of the Jewellery is taxable.

(2) Taxable as an asset U/S 2(ea) but the assessee can claim exemption u/s 5(vi). So full value of asset is exempt from tax.

(3) Cash balance in excess if ₹ 50,000 is an asset.

(4) Bank balance is not an asset.

(5) Asset held by the minor who is handicapped U/S 80U, clubbing provision does not apply.

(b) i) 1. Since the Gold was confiscated on 30.03.2013, it does not belong to the assesses on the valuation date. Hence it shall not be included in the net wealth.

2. The asset must belong to the assessee on the last moment of the valuation date so as to be included in the net wealth of the assessee. Therefore, in the present case, the gold which has been confiscated by the customs department, ceases to be the property of the assessee on the last moment of 31.3.2013 and hence is not to be included in the net wealth of the assessee as on 31.3.2013.

3. As on 31.3.2013 gold belongs to the assessee and thus is to be included in the net wealth of Mr. Basu.

ii) Then in all the three cases above, it shall be included in the net wealth of Mr. Basu as on 31.3.2013 since the gold belongs to Mr. Basu as on 31.3.2013. This was the view expressed by the Gujarat High Court in Jayantilal Amritlal 135 ITR 742.

9. Answer any two sub-divisions: 5x2=10

(a) In the context of transfer pricing provisions, discuss whether the following are associated

enterprises of R Ltd. an Indian company:

(i) Goods are sold to N & Co., a firm based in Singapore; N & Co., is a partner in this firm with 8% share;

(ii) There are 8 directors in N Inc., a company at USA. R Ltd. holds enough clout to appoint five directors; will your answer change if only 3 directors can be appointed?

(b) What are the difficulties involved in applying arm's length principle in the context of taxation of international transactions under the Income-tax Act, 1961?

(c) Alpha Ltd., the assessee has sold goods on 23.01.2013 to Beta Ltd., which is situated in a notified jurisdictional area. The CIF value of the goods (4,000 MT) sold is ₹ 4 crores. Beta Ltd., is an absolute stranger to Alpha Ltd. Will the transfer pricing provisions apply and will these two companies be regarded as associated enterprises? Following further data are available:

(i) Identical goods have been sold to H Ltd., in Sydney, at ₹ 10,200 per MT, the trade terms being the same;

(ii) As per TNM method, the price arrived at is ₹ 10,180 per MT.

If transfer pricing provisions are applicable, what will be the impact on the profits of Alpha Ltd., for the assessment year 2013-14?

Answer:

9. (a) (i) To be treated as associated enterprise, R Ltd. should hold a minimum of 10% share in N & Co., a non-resident entity. Since only 8% share is held, N & Co., it is not an associate enterprise of R Ltd.

(ii) R Ltd. and N Inc. are associated enterprises if more than half of the directors or members of the governing board, or one or more of the executive directors or executive members of the governing board of R Ltd. are appointed by N Inc. or vice versa.

Since 5 of the 8 directors can be appointed by R Ltd., N Inc. is its associated enterprise.

The answer will change since the above requirement is not met. If 4 or lesser number of directors alone can be appointed, N Inc. and R Ltd. are not associated enterprises.

(b) Difficulties in applying the arm's length principle

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

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

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

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

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

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

(c) Transfer pricing applicability

As per s. 94A(2) of the Income-tax Act, 1961, notwithstanding anything to the contrary contained in the Act, if an assessee enters into a transaction where one of the parties to the transaction is a person located in a notified jurisdictional area, then all the parties to the transaction shall be deemed to be associated enterprises within the meaning of section 92A of the Act.

Therefore Alpha Ltd. and Beta Ltd. will be regarded as associated enterprises and the transfer pricing provisions will apply.

Determination of ALP

(i) As per CUP method, the price sold to a stranger is taken, i.e. ₹ 10,200 per MT is the ALP, since the trade terms are identical. So the price of 4000 MT will be ₹ 4.080 crores.

(ii) As per TNM method, the ALP is ₹ 10,180 per MT. So the price of 4000 MT will be ₹ 4.072 crores.

(iii) Where values are available from more than one method, the mean of the two values is to be taken. So ALP is ₹ 4.076 crores.

(iv) Where one of the entities is in a notified jurisdictional area, no adjustment of 3% or 5% can be given to the ALP. Hence the ALP has to be taken as ₹ 4.076 crores.

Impact on net profits of Alpha Ltd.

ALP as per transfer pricing provisions	₹ 407 lacs
Sale price as per books	₹ 400 lacs
Increase in net profit of Alpha Ltd.	₹ 7 lacs.