FINAL EXAMINATION

GROUP III

(SYLLABUS 2012)

SUGGESTED ANSWERS TO QUESTIONS

DECEMBER 2015

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 answer.

All sub-divisions of a question should be answered continuously

Working notes should form part of the relevant answer.

All questions in Income Tax relate to the Assessment Year 2015-16, unless stated otherwise

SECTION A

Tax Management

Answer **any five** *questions from this Section.*

1. (a) Visvakshena Footwear P. Ltd., was started on 1-5-2014. It has two divisions, one for manufacture of footwear and another, for manufacture of account books. In both the divisions, it also undertakes job work of branded products of other customers.

The following details of its turnover are made available for the year ended 31-03-2015:

Particulars	Amount (` in lacs)
Net value of normal specified goods, excluding taxes and levies	370
Net value of footwear, manufactured on behalf of others bearing brand name of others.	22
Net value of account books and registers, manufactured on behalf of others bearing brand name of others.	35

Compute the excise duty payable by the unit for the year 2014-15. **7**

(b) Mrs. Vimala, a resident individual aged 41, furnishes the following data relating to the year ended 31-3-2015:

	`
Loss from self occupied house property	- 2,10,000

Interest on capital at 15% from A & Co., a partnership firm	**3,00,000**
Salary received as working partner from above firm	**5,40,000**
Long-term capital gains from sale of listed shares in recognised stock exchange	**2,40,000**
Winnings from lotteries (Net)	**70,000**
Lottery tickets purchased for	**2,000**
Current year's business loss	**-3,00,000**
Unabsorbed losses of assessment year 2014-15:	
Business loss	**1,20,000**
Depreciation	**80,000**
Return of income filed on 15-12-2014	
Housing loan principal repayment to bank	**70,000**

Compute the total income of the assessee and tax payable. In the hands of the firm A & Co., remuneration relating to assessee allowed u/s 40(b) was ` 4,80,000. 7

Answer:

1. (a)

Computation of excise duty payable by Visvakshena Footwear P Ltd.

Particulars	Amount (`)
Net value of normal specified goods, excluding taxes and levies	3,70,00,000
Net value of footwear, manufactured on behalf of others bearing brand name of others. (Note – 2)	Nil
Net value of account books and registers, manufactured on behalf of others bearing brand name of others. (Note – 2)	35,00,000
Gross value of goods to be considered for excise duty	4,05,00,000
Less: SSI exemption	1,50,00,000
Value of goods chargeable to excise duty	2,55,00,000
Excise duty payable at 12.36%	31,51,800

(1) Units having turnover up to ` **400 lakhs in the earlier financial year** and manufacturing goods specified in the SSI exemption notification are eligible for exemption from duly upto ` 150 lakhs in the current financial year.

(2) SSI exemption is not available In respect of clearance bearing a brand name of another person. However goods manufactured in rural areas, packing materials, account books, register and writing pads are entitled to SSI exemption even though they bear the brand name of another person.

(3) Since its business came into existence in the year 2014-15, the assessee is entitled to SSI Exemption in the year 2014-15, as its previous year clearance are NIL.

(b)

Statement of total income Ms. Vimala for a.y. 2015-16

	`	`
Income from house property		
Loss from self occupied house property		-2,10,000
Profits and gains of business or profession		
Interest on capital from firm (Only 12% is allowable in the hands of the firm and also	2,40,000	

chargeable u/s 28)		
Remuneration as working partner (Only the amount allowed to the firm u/s 40(b) is chargeable u/s 28)	4,80,000	
Loss from own business	-3,00,000	
Total business income before set off	4,20,000	
Brought forward depreciation set off	80,000	
Chargeable income from business		3,40,000
Long-term capital gains		
Long-term capital gains from sale of listed shares in recognised stock exchange is exempt		Nil
Income from other sources		
Lottery winnings (Gross)		1,00,000
Gross total income		2,30,000
Less: Deduction under Chapter VIA		70,000
Total income		1,60,000
Tax working		
Tax on Normal Profit - `60,000 not taxable -basic exemption limit upto `2,50,000		
Tax on lottery winnings 1,00,000 at 30%	30,000	
Less: TDS from lottery winnings	30,000	
Balance tax due	Nil	

Notes:

1. Since the return of income for the AY 2015-16 was filed belatedly, business loss cannot be carried forward.
   However, unabsorbed depreciation is not affected.
2. No expenditure is deductible form lottery winnings.
3. Loss from house property can be set off against Business Income.

2. (a) Damodhar Bank Ltd., is a bank rendering certain special types of services to its customers. For the month of March, 2015, the following details are made available:

Particulars	Amount (` in lacs)
Interest on overdrafts	**220**
Interest on loans with a collateral security	**432**
Interest on corporate deposit	**235**
Processing charges (over and above interest) for loans	**10**
Sale of foreign exchange to general public	**5**
Service charges relating to issuance of CD	**2**

The aforesaid receipts are exclusive of service tax and wherever applicable, service tax has been charged separately. The assessee is not eligible for small service provider exemption.

As regards sale of foreign exchange to general public, the above represents value of taxable service as per rule 2B of the Service Tax (Determination of Value) Rules, 2006.

Compute the service tax payable by the assessee. 7

(b) X Ltd. incurred following expenditures during the financial year 2014-15 on which no tax was deducted at source.

Particulars	`
Interest on deposits to AMC Ltd.	**7,000**
Commission and brokerage to Mr. Z, a broker for raw materials	**3,000**
Plant & Machinery hire rent paid to Mr. A	**2,10,000**
Premises rent paid to Mrs. A	**1,50,000**

State the applicability of TDS provisions under the Income-tax Act, 1961 and the consequence of non-deduction of tax at source. 7

Answer:

2. (a)

Computation of service tax payable by Damodhar Bank ltd.

PARTICULARS	AMOUNT (`)
Interest on overdrafts	Nil
Interest on loans with a collateral security	Nil
Interest on corporate deposit	Nil
Processing charges (over and above interest) for loans	10,00,000
Sale of foreign exchange to general public	5,00,000
Service charges relating to issuance of CD	2,00,000
Value of taxable services	17,00,000
Service tax payable on above at 12.36%	2,10,120

1. Following services provided are included in the negative list so far as the consideration is represented by way of interest and hence are not taxable:-
   - Overdraft facility
   - Loans with a collateral security
   - Corporate deposits
2. As CDS are in the nature of promissory notes transactions in CDS shall be considered as transaction in money. However a related activity for which a separate consideration is charged would not be treated as a transaction of money and would be taxable. Hence processing charges and service charges relating to issuance of CDS shall be liable for service tax.

(b) (i) Interest on deposit to AMC Ltd is liable for tax deduction at source as the amount of interest exceeds the limit of `5,000 prescribed in section 194A.
Tax is deductible at source @ 10%

(ii) Commission paid to Mr. Z a broker for raw materials ` 3,000. As the expenditure is less than the limit prescribed in section 194H viz. `5000, tax need not be deducted at source on such expenditure.

(iii) Hire rent paid for plant and machinery during the year is more than `1,80,000 and hence tax is deductible at source as per section 194-I
Tax is deductible at source @ 2%

(iv) The premises rent paid to Mrs. A is less than the monetary limit prescribed in section 194-I Hence the provisions of section 194-I is not attracted to this case.

Non-deduction of tax at source would attract disallowance of expenditure at 30% in addition to penal consequences for non-compliance of TDS provisions. {Sec 40(a)(ia)}
Further, the assessee will be liable to interest for the delayed payment and may also face payment of penalty.

3. (a) State with reason whether you agree with the following statements:

(i) CENVAT credit on inputs must be availed within 12 months from the date of invoice.

(ii) Payment of value of input service to service provider is not a pre-condition for availing credit when service tax is paid under full reverse charge. 4

(b) ABC Co. Ltd., is a leading manufacturer of mobile phones. A particular brand manufactured by it whose cost was ` 8,000 was sold in the market for ` 6,500. The reason for sale below the manufacturing cost was to penetrate the market. The average industry profit on such type of mobile phone is 5%. Determine the assessable value of the mobile phone manufactured by ABC Co. Ltd. 3

(c) Mr. Harivallabh, a resident individual, furnished the following details relating to sale of an office building in the previous year 2014-15:

	`
Land purchased on 12-6-2011 for	12,00,000
Registration expenses and stamp duty for above	1,08,000
Office building completed on 30-1-2013 for	32,00,000
Sale of land and building made on 12-3-2015:	
Land portion	30,00,000
Office building portion for	27,00,000
Guideline value for above, as per stamp valuation authority were as under:	
Land portion	32,00,000
Office building portion	23,00,000

In August, 2014, one buyer made an advance of ` 50,000 for buying this property from the assessee. However, the transaction did not take place and the advance was forfeited.

Compute the capital gain chargeable to tax and enumerate in brief, the exemptions available to the assessee, where he wants to reduce his tax liability.

Cost inflation indices are as under: 7

Financial Year	Index
2011-12	785
2012-13	852
2014-15	1024

Answer:

3. (a) (i) I do not agree with the statement.
This is because under rule 4(1) of the CENVAT Credit Rules, the manufacturer or the provider of output service shall not take CENVAT credit after six months of the date of issue of any of the documents specified in rule 9(1).

(ii) I agree with the statement.
Where service tax is to be paid under full reverse charge, payment of service tax will ensure availability of credit of input services even if the value of input service is not paid by the service provider.
Tutorial Notes: However, in the case of partial reverse charge credit of input service will be allowed only after payment has been made of both value of input service and service tax paid or payable, as indicated in invoice/ bill.

(b) A new proviso to rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 was inserted w.e.f. 11.07.2014. It lays down that where the price is not the sole consideration for sale of excisable goods and they are sold at a price less than the manufacturing cost without profit provided no additional consideration is flowing directly or indirectly from the buyer to the seller, the price of such sale shall be deemed to be the transaction value.

The CBEC Notification No.20/2014 CE (NT) dated 11.07.2014 also explains the same. This has upset the apex court decision in the case of *CCEx Mumbai V. Fiat India (P) Ltd 2012 (283) ELT161 (SC)*.

In view of the above, ABC Co Ltd selling its mobile phone below manufacturing cost will not affect the transaction value.

The assessable value of such goods shall be deemed to be the transaction value, which in the given case is `6,500.

(c)

	`
Long-term capital gain	
Sale of land portion	32,00,000
Less:	
Cost of acquisition = $\frac{12,00,000 + 1,08,000}{785} \times 1,024$	17,06,232
Indexed cost	15,65,350
LTCG	14,93,768
Short-term capital gain	
Sale value of building	27,00,000
Less: Cost	32,00,000
STCG	-5,00,000
Chargeable LTCG after set off	9,93,768

Notes:

1. Land has been held for more than 36 months. Hence it is a long-term capital asset. Profit arising on its sale will be long-term in nature.
2. Office building is a short-term capital asset. Further, section 50 will apply.
3. As per the provisions of section 50C, where the land is sold for a value lower than the value adopted by the stamp valuation authority, the latter has to be adopted. Hence for land, guideline value will be adopted. For building, sale value is more and hence the same is taken.
4. Advance forfeited in the current financial year is to be treated as income from other sources.

Exemptions available:

Where the land along with building is sold, the former is a long term capital asset and the latter, short-term capital asset, in respect of the land portion, exemptions available can be claimed. The assessee can claim exemption under section 54EC by investing in

specified bonds within six months from the date of transfer. To avail full exemption, whole of LTCG has to be invested.

Where the eligibility conditions are fulfilled, the assesse can claim exemption U/S. 54F also. The net sale consideration has to be invested in the purchase or sale of residential house property. In case of purchase, the same has to be within one year prior or two years from the date of transfer, in case of construction, it should be within three years from the date of transfer.

4. (a) Can goods meant for export kept in the warehouse be diverted by an assessee for home consumption? If yes, state the procedure to be followed in this regard. 7

(b) (i) Explain briefly the provision relating to payment of interest on refund under rule 7(5) of the Central Excise Rules, 2002, where the assessee is entitled to a refund arising due to finalization of provisional assessment. 2

(ii) Discuss briefly the provision stipulating punishment that can be imposed under section 9(1) (i) of the Central Excise Act, 1944 for criminal offences under the Act. 2

(iii) State the powers regarding rectification of mistakes given to Appellate Tribunal under section 35C(2) of the Central Excise Act, 1944. 3

Answer:

4. (a) Diversion of goods stored in warehouse for home consumption:

Yes, the goods meant for export kept in the warehouse can be diverted by an assessee for home consumption.

The following procedure as specified in Chapter 10, part 6 of CBECs Excise Manual of Supplementary Instructions, 2005 is to be followed in this regard:-

- With the permission of the jurisdictional Deputy or Assistant Commissioner of Central Excise, the goods can be cleared for home consumption on invoice after payment of duty, interest and any other charges.
- Necessary entries are to be made in the export warehouse register maintained by the exporter in the warehouse.
- Credit will be permitted in the Running Bond Account equivalent to the duty involved in the goods so diverted, which shall not exceed amount of duty debited on the basis of ARE-3 on which such goods were received in the warehouse. If entire quantity is not diverted, calculation shall, be done on pro-rata basis.
- Goods can be diverted for home-consumption even after the clearance from the warehouse on ARE.1.
- For cancellation of documents, provisions of Notification No 46/2001-CE (NT) dated 26.6.2001 as amended vide notification no. 30/2003 – CE (NT) dated 4.4.2003 shall be followed. The intimation shall be given to Deputy/Assistant Commissioner having jurisdiction over the warehouse. Credit in Running Bond Account will be permitted in the same manner as mentioned above.

The exporter has to pay interest @ 24% p.a. on the amount of duty payable on such goods from the day of clearance from the factory of production or any other premises approved till the date of payment of duty and clearance.

(b) (i) **Interest on refund**

As per Rule 7(5) of the Central Excise Rules, 2002, where the assessee is entitled to a refund consequent to the order for final assessment, the assessee shall be granted such refund along with interest on such refund as provided u/s 11BB of the Central Excise Act, 1944, i.e. @ 6% p.a. from the date after expiry of 3 months from receipt of duly completed application till the date of refund.

(ii) **Acts that constitute an offence. Section 9(1)(i) of the Central Excise Act**

Section 9 of the Central Excise Act, 1944 enumerates the acts that constitute an offence. Section 9(1)(i) of the Act provides that an offence relating to any excisable goods on which the duty leviable exceeds ` 50 Lakh are punishable with a imprisonment for a term which may extend to seven years and with fine. It is also provided that in absence of special and adequate reasons to the contrary to be recorded in the judgement of the court such imprisonment shall not be for a term of less than six months.

(iii) **Central excise Tribunal's power to rectify mistake**

As per section 35C(2) of the Central Excise Act, 1944, the Appellate Tribunal may, at any time within six months from the date of order, with a view to rectifying any mistake apparent from the record, amend any order passed by it.

The Tribunal shall make such amendments if the mistake is brought to its notice by the Principal Commissioner of Central Excise or the Commissioner of Central Excise or the other party to the appeal.

However, an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the other party will not be made without giving a notice to him and allowing him a reasonable opportunity of being heard.

5. (a) A person made unauthorized import of goods which was confiscated by the customs authorities. The person was given an option to pay fine in lieu of confiscation, it is proposed to impose fine equal to 50% of margin of profit. From the following particulars calculate the maximum of fine that can be imposed:

(i) Assessable value ` 60,000;
(ii) Total duty payable ` 24,000; and
(iii) Market value ` 1,00,000.

Calculate the amount of fine and the total amount to be paid by the importer to clear the consignment. 7

(b) Vaishnav Hotels (P) Ltd., located in a specified district having 'World Heritage Site' status and is eligible for deduction under section 80-ID of the Income-tax Act, 1961. It furnishes you the following information for the year ended 31.3.2015:

(i) Net Profit as per Statement of Profit and Loss ` 20 lakhs.
(ii) Amount received towards Dharmadha by separately mentioning in the sales bills ` 7,00,000. This has not been credited to profit and loss account.
(iii) ` 10 lakh was paid towards use of trademark for 10 years in April, 2014. This has been debited to Profit and Loss Account.
(iv) ` 5,00,000 was paid towards feasibility study for examining proposals for commencing a textile business and the project was abandoned.

Compute the total income of the assessee for the assessment year 2015-16. Ignore MAT provisions. 7

Answer:

5. (a)

Sr. No.	Particulars	`
(i)	Profit = market value minus total cost of goods (including duty) ` 1,00,000 minus 60,000 minus 24,000 =	16,000
(ii)	Proposed fine in lieu of confiscation = 50% of profit	8,000
(iii)	Maximum fine U/s.125 of the Customs Act = market value minus import duty thereon (`1,00,000 minus `24,000)	76,000
(iv)	Redemption fine U/s.125 = Proposed fine or maximum fine whichever is less	8,000
(v)	Total amount payable by the importer = redemption fine plus import duty (8,000 + 24,000)	32,000

Note: In addition to the above, penalty U/s.112 is also payable by the importer which depends on the nature of the offence and the type of goods (whether prohibited or not).

(b)

Computation of total income of Vaishnav Hotels (P) Ltd for the Asst. year 2015-16

Particulars	`	`
Net Profit as per Profit and Loss Account		20,00,000
Add:		
Amount paid towards use of trademark [This is a revenue expenditure since the assessee has not purchased trademark on outright basis]		Nil
Expenditure towards feasibility of study for new business [This is not allowable since the business is unrelated to existing business - CIT v. Priya Village Road shows Ltd 332 ITR 594]		5,00,000
Gross Total Income		25,00,000
Less: Deduction U/s. 80-ID @ 100% of the profits		25,00,000
Total Income		**Nil**

Note:

"Dharmada", "mandir" and "gaushala" receipts are customarily levies by trader for charitable purposes. Amount received under these heads are not trading receipts. The fact that the amount collected under these heads are spent for other purposes would amount to breach of trust but it would not affect the initial nature and character of the receipt. Such receipts are not taxable. [Bijili Cotton Mills (P) Ltd.'s case].

6. (a) Anantha Pipes Ltd., imported a machinery from Tokyo, Japan in March, 2015. The pertinent details relevant to you:

FOB value of machinery (USD)	**8,00,000**
Date of presentation of bill of entry	**28-2-2015**
Customs duty rate as on above date	**12%**
Date of arrival of ship at Mumbai sea port	**4-3-2015**
Customs duty rate as on above date	**10%**
Excise duty charged for similar goods manufactured in India	**12%**
General VAT rate	**4%**
Special CVD	**As applicable**

For above, wherever applicable, cess will be extra.
Compute the customs duty payable. You may take 1 USD = ` 65 **7**

(b) Vayu Foods Ltd., engaged in the activity of converting normal heena leaves into herbal heena powder, employing processes like mixing, grinding, etc. Other conditions being satisfied, the company wants to know whether it is entitled to claim deduction under section 80-IB of the Income-tax Act, 1961. Advise the company suitably. 7

Answer:

6. (a)

Particulars	`	`
FOB value of machinery (USD)	8,00,000	
Add: Ocean freight at 20%	1,60,000	
Insurance at 1.1.125% on FOB	9,000	
CIF value	9,69,000	
Add: Landing charges at 1% on CIF	9,690	
Assessable value USD	9,78,690	
Assessable value in INR at ` 65/USD	6,36,14,850	
Add: Basic custom duty @ 10% (Note) [BCD]		63,61,485
Total	6,99,76,335	
Add: CVD@ 12% (Rate of excise duty)		83,97,160
Education cess (3% on BCD+CVD)		4,42,759
Sub-total for special CVD	**7,88,16,254**	
Special CVD at 4%		**31,52,650**
Total customs duty payable		**1,83,54,054**

Note: The Rate of custom duty shall be the rate in force on the date of presentation of bill of entry or on the date of entry inward whichever is later.

(b) Assessee, whether eligible for deduction u/s 80-IB

Prima facie, deduction under section 80-IB is available to profits and gains derived from the business of an industrial undertaking.

An undertaking can be said to be an industrial undertaking where it is engaged in manufacture or production of an article or thing.

Hence the core issue to be seen in the given situation is whether the processes employed by the assessee can be said to be manufacture.

In order to manufacture heena powder, heena leaves only constitute about 40 per cent of the raw material which is dried with other raw-materials by using various acids and thereafter these raw materials are grinded by putting a definite quantity of mixture to get the resultant product, which is commercially known differently. The end product so manufactured has a different name and is identified by the buyer and seller as a different produce and is distinct in its form from the original raw-material.

Thus, the conversion of heena leaves into herbal heena powder by process of mixing and grinding amounts to manufacture and therefore the profits derived from such activity are eligible for deduction under section 80-IB.

Advice should be given on the above lines.

Reference may be made to the decision of the Himachal Pradesh High Court in the case of CIT v. Indus Cosmeceuticals (2015) 273 CTR 168 / 229 Taxman 246 (HP).

SECTION B
Tax Practice

Answer Question No. 9 which is compulsory and any one from the rest in this Section.

7. (a) (i) Lasya Textiles Ltd., an importer, imported one unit of the equipment which was declared as "Kari Mayer High Speed Draw Warping Machine with 1536 ends along with essential spares". The assessee-importer claimed that these goods are covered under an exemption notification. Under said notification, exemption was available in respect of the High Speed Warping Machine with yarn tensioning, pneumatic suction devices and accessories. Undisputedly, the assessee had imported High Speek Warping Machine, but it had drawing unit and not the pneumatic suction device. The textile commissioner, who was well conversant with these machines, had stated that the goods imported by the assessee were covered under the exemption notification. He further stated that drawing unit was just an essential accessory to the machines imported by assessee and, therefore, was covered under said notification.

The Customs authorities did not accept the request of the assessee and accordingly, directed the assessee to pay the duty under the provisions of the Customs Act, 1962.

The assessee seeks your advice on the issue. Please advise the assessee suitably. 5

(ii) Where a classification (under a Customs Tariff head) is recognized by the Government in a notification at any point of time, can the same be made applicable in a previous classification in the absence of any conscious modification in the Tariff? Explain with the help of a recent decision of the Supreme Court. 3

(b) Padmanabha Constructions Ltd., the assessee, a joint venture company, was awarded a project work. However the assessee did not execute the contract and the said work was done by one of its constituents namely SMS Infrastructure Limited ('SIL'). Accordingly, receipts from the said project work were reflected in the books of account and return of income of SIL and the same was also accepted by the Assessing Officer ('AO') in the assessment made under section 153A read with 143(3) of the Income-tax Act, 1961.

The assessee had filed return of income and erroneously claimed full TDS of ` 30 lacs pertaining to contract awarded to it and executed by SIL. During the assessment proceedings a query was raised by the AO for non-disclosure of receipts of the said project work and TDS claimed by the assessee. The AO wants to assess the income from the project in the hands of the assessee-company, by estimating at 3% of the contract amount.

The assessee-company seeks your advice to controvert the above. Advise the assessee suitably. 7

Answer:

7. (a) (i) **Opinion of a trade expert in the absence of statutory definition**

The facts are similar to the decision of the Apex Court in Keihin Penalfa Ltd. v. Commissioner of Customs 2012 (278) E.L.T. 578 (SC.)

The impugned term "High speed Draw warping machine" has not been defined in the Act or in the Rules.

The issue to be considered is, whether in the absence of a statutory definition, the opinion of a trade expert who deals in the goods can be given weightage.

The SC stated that it was a settled proposition in a fiscal or taxation law that while ascertaining the scope or expressions used in a particular entry, **the opinion of the expert in the field of trade, who deals in those goods, should not be ignored, rather it should be given due importance**. The SC on referring to the case of Collector of Customs v. Swastik Woollens (P) Ltd. & Ors 1988 (37) E.L.T. 474 (S.C.), held that when no statutory definition was provided in respect of an item in the Customs Act or the Central Excise Act, the trade understanding, i.e. **the understanding in the opinion of those who deal with the goods in question was the safest guide**.

Thus, the SC concluded that the imported goods were covered under the exemption notification.

Based on the above decision, the assessee can be advised that the stand of the customs authorities is incorrect and hence the assessee should seek appropriate remedial measures. [To be evaluated as a whole]

(ii) **Adoption of classification for an earlier year**

We may refer to the decision of the Apex Court in Keihin Penalfa Ltd. v. Commissioner of Customs 2012 (278) E.L.T. 578 (S.C.)

Department contended that 'Electronic Automatic Regulators' were classifiable under Chapter sub-heading 8543.89 whereas Keihin Penalfa Ltd. was of the view that the aforesaid goods were classifiable under Chapter sub-heading 9032.89. An exemption notification dated 1-3-2002 exempted the disputed goods classifying them under chapter sub-heading 9032.89. The period of dispute, however, was prior to 1-3-2002.

The dispute was on classification of Electronic Automatic Regulators.

The Apex Court observed that the CG has issued a exemption notification dated 1-3-2002 and in the said notification it has classified the Electronic Automatic Regulators under Chapter sub-heading 9032.89. Since the Revenue itself has classified the goods in dispute under Chapter sub-heading 9032.89 from 1-3-2002, the said classification needs to be accepted. [To be evaluated as a whole]

(b) Following points need to be highlighted in the reply to the AO:

1. If the TDS claim was not erroneous, the income could have been shown in the account of the assessee. If leave to withdraw was being sought with some ulterior

motive, the income would have been reflected in the account of the assessee. The consideration either by the AO or appeal authorities does not show this position.

2. Further, guess work done by the AO in working out 3% tax of the contract value would not have been essential, had the assessee actually received the amounts and those amounts would have been reflected in the books of accounts.
3. The Department has not procured some material to show receipts by the assessee towards contract. There is no material to show receipt of any income by joint venture assessee on account of said contract.

Similar issue arose before the Bombay High Court in CIT v. SMSL- UANRCL (JV)(2015) 116 DTR 430/277 CTR 47 (Bom.).

The High Court had to consider whether the entire income earned by the joint venture company is liable to be taxed in the hand of one of the members of the assessee company without appreciating the fact that the contract was awarded to the assessee company and not to the individual member of the assessee company. It also had to consider the impact of C.H. Acthaiya 218 ITR 239 (SC) and Murugesa Naicker Mansion 244 ITR 461 (SC) wherein it was held that AO is not precluded from taxing the right person merely on the ground that a wrong person is taxable.

The High Court dismissing the appeal, opined thus:

The ITAT has as a matter of fact found that the assessee/joint venture did not execute the contract work and the said work was done by one of its constituents namely SMS Infrastructure Limited. It is also found that the receipts for the said project work are reflected in the books of account of SMS Infrastructure Limited and in return, said SMS Infrastructure Limited has disclosed that income. The said return was accepted by the Assessing Officer in the assessment made under Section 153A read with Section 143 (3) of the Income Tax Act, 1961. It found that, therefore, same income could not have been taxed again in the hands of joint venture/assessee.

Advice may be tendered on the above lines to the assessee-company.

[To be evaluated on an overall basis]

8. (a) (i) Kesav Constructions Ltd., collects security deposits running to several lakhs of rupees from its clients. The same are to be returned after completion of contracts. The management wants to know whether the security deposits collected would form part of the consideration received from customers for performing service, for service tax purposes. In this context, highlight the importance of consideration for levy of service tax. 5

(ii) Vaibhav Pharma, a company engaged in manufacturing of medicines and drugs, seeks your opinion whether the cenvat credit can be claimed for the following: (a) Technical testing and analysis service availed for testing of clinical samples prior to commencement of commercial production, and (b) Services of commission agent (for rendering sales only). You are required to furnish your professional opinion. 5

(b) Ranganathu Soaps Ltd., had claimed deduction of ` 43 lacs under section 80-ID of the Income-tax Act, 1961. In the assessment, the said claim was negatived by the Assessing

Officer. The Assessing Officer (AO) wants to levy penalty under section 271(I)(c) of the Income-tax Act, 1961 on the ground that aforesaid claim for deduction has resulted in "furnishing inaccurate particulars of income" to the said extent.

Is this action of the AO justified under law? Fortify your answer with leading decision of the Apex Court on the issue. 5

Answer:

8. (a) (i) **Importance of consideration for service tax**

As per section 67 of the Finance Act, 1994, 'consideration' includes any amount that is payable for the taxable service provided or to be provided. As per section 2(d) of the Indian Contract Act, 1872, consideration is defined as —when at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or abstain from doing, something such act or abstinence or promise is called a consideration for the promise.
Activity carried out without any consideration is outside the ambit of service, such as donations, gifts, free charities etc. However an act by a charitable institution for consideration would be a service and taxable unless otherwise exempted. But following are some examples of non-monetary consideration:

(i) Supply of goods and services in return for provision of service.
(ii) Refraining or forbearing to do an act in return for provision of service.
(iii) Tolerating an act or a situation in return for provision of a service.
(iv) Doing or agreeing to do an act in return for provision of service.

Grants given for a research where the researcher is under no obligation to carry out a particular research would not be a consideration for such research. Donations to a charitable organisation are not consideration unless charity is obligated to provide something in return.

Security deposit which is in the nature of security and hence do not represent consideration for service. However if the deposit is in the nature of a colourable substance wherein the interest on the deposit substitutes for the consideration for service provided or the interest earned has a perceptible impact on the consideration charged for service then such interest would form part of gross amount received for the service. Also security deposit should not be in lieu of advance payment for the service.
Assuming that the security deposits are genuine and are returnable after completion of contracts, the same will not form part of consideration for the construction contracts.

(ii) **CENVAT CREDIT OF SERVICE TAX ON ELIGIBLE INPUT SERVICE**

We can refer to the decision of the Gujarat High Court in CCE vs. Cadilla Healthcare Ltd. (2013) 30 STR 3 (Guj).

The High Court pointed out that unless the assessee carried out the activity of the testing and analysis of the trial batches, and based on the same obtained the approval of the controlling authority, it cannot proceed to the stage of commercial production at all and hence these services were in relation to manufacture of final product only.

The High Court saw no merit in the contention of the Department that no CENVAT credit can be availed in respect of testing and analysis services of the trial run as the commercial product had not begun at all. It was more so, since the assessee was removing the products of trial run after payment of excise duty.

The High Court was hence of the firm view that the service tax paid on such services relating to trial run would be eligible for CENVAT credit.

As regards the foreign commission agents, they were directly connected with sales rather than sales promotion which activity alone was covered in the definition of input service. Hence the service tax paid to such foreign commission agents will not be eligible for CENVAT credit.

Based on the above decision, the assessee can claim Cenvat credit on the technical testing and analysis service, availed for testing of clinical samples prior to commencement of commercial production. It is also concluded that the assessee will not be eligible to claim Cenvat credit for the service tax paid to the services of commission agent in relation to sales only.

[To be evaluated on overall basis]

(b) This issue of the nature given in the question came up for consideration before the Hon'ble Supreme Court in the case of CIT vs. Reliance Petro Products Pvt. Ltd., wherein after going through the meaning of the words "furnishing of inaccurate particulars" it held as under:

- Mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing of inaccurate particulars regarding the income of the assessee. Such claims made in the return of income cannot amount to furnishing of inaccurate particulars.
- Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself, would not attract penalty u/s. 271(1) (c) of the Income Tax Act.
- Unless there is a finding that any details supplied by the assessee in its return of income were found to be incorrect or erroneous or false, there is no question of levying penalty u/s. 271(1)(c).
- If the contentions of the Revenue are accepted, then in case of every return where claim is not accepted by the Assessing Officer for any reason, the assessee will invite penalty u/s. 271(1)(c). That is clearly not the intendment of the Legislature.

This judgment clearly indicates that penalty can be levied by the assessing officer only once he proves that assessee has concealed the particulars of income or he has furnished inaccurate particulars of income at the time of filing of return of income or in any submissions thereafter (whether willfully or otherwise).

[To be evaluated on overall basis]

Alternative Answer:

The same issue has been decided in the case of CIT vs. Reliance Petro Products Pvt. Ltd. (2010)322 ITR 158 (SC) wherein, the Supreme Court observed that in order to attract the penal provisions of section 271(1)(c), there has to be concealment of the particulars of income or furnishing inaccurate particulars of income. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. Making an incorrect claim (i.e. a claim which has been disallowed) would not, by itself, tantamount to furnishing inaccurate particulars.

The Apex Court, therefore, held that where there is no finding that any details supplied by the assessee in its return are incorrect or erroneous or false, there is no question of imposing penalty under section 271(1)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee.

9. Thiruvikram & Co., is a partnership firm consisting of two partners L and M, with equal shares. During the earlier year, N was also a partner with equal share and he had retired from the firm with effect from 1-4-2014.'

The firm has two units, one in SEZ and another in a DTA. The following details are available for the year ended 31-3-2015:

	(` In lacs)	
	DTA Unit	**Both units**
Export sales	**150**	**420**
Domestic sales	**180**	**210**
Net profit	**50**	**200**

The firm has given the following donations:
(a) ` 50,000 to Prime Minister's Relief Fund by account payee cheque;
(b) `25,000 in cash to a public charitable trust registered u/s 12 AA of the Income tax Act, 1961.

The unit in DTA is engaged in trading activities. The SEZ unit was set up on 18-9-2008 and is eligible for deduction u/s 10AA of the Income-tax Act, 1961.

Compute the total income of the firm and the tax payable, if the brought forward losses/ allowances of the DTA unit relating to the assessment year 2014-15 are as under:

Business loss	**` 30 lacs**
Depreciation	**` 20 lacs.**

15

Answer:

9. In respect of deduction u/s 10AA, considering the year of set up, the AY 2015-16 is the 7th assessment year.

Hence the deduction available u/s 10AA is 50% of the eligible profits.

$$\text{Eligible profit} = \text{Profit of the SEZ unit} \times \frac{\text{Export turnover of SEZ unit}}{\text{Total turnover of SEZ unit}} = 150 \times 270/300 = 135.$$

Deduction available u/s 10AA is 50% of above = 67.5 lacs

Total income as per normal provisions

Particulars	`	`
Business income		
Net profit from both units		200
Less: Deduction u/s 10AA		67.5
Profit before set off		132.5
Less: Brought forward business loss (30-10)	20	
Unabsorbed depreciation	20	40
Profit after set off		92.5
Gross total income		92.5
Less: Deduction under Chapter VIA		
Deduction u/s 80G		
Donation to PM Relief fund (100% eligible)		0.5
Total income		92
Tax on above at 30.9%		28.428

Notes:

1. In case of change in constitution of firm, the share of loss of retiring partner cannot be carried forward. This however does not apply to depreciation.
2. Donation given in cash is not deductible u/s 80G.
3. Computations relating to SEZ unit:

(` in lacs)

Particulars	DTA Unit	Both Units	SEZ Unit
Export sales	150	420	270
Domestic sales	180	210	30
Total turnover	330	630	300
Net profit	50	200	150

Computation of AMT u/s 115JC

Total income	`92
Add: Deduction u/s 10AA	`67.5
Adjusted total income as per sec 115JC	`159.5
AMT at 18.5% on above	`29.5075
Add: Cess at 3%	`0.885225
Tax as per AMT provisions	`30.39273

Tax payable by assesseee

Since the AMT is more than normal tax, the same has to be taken

Tax payable by assesseee is `30.39273 lacs.