FINAL EXAMINATION
GROUP III
(SYLLABUS 2012)

SUGGESTED ANSWERS TO QUESTIONS
JUNE 2014

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.

Working notes should form part of the relevant answer.

All sub-divisions of a question should be answered continuously.

Section A

Answer all questions.

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

(a) An assessee submitted an application under section 32E of the Central Excise Act, 1944 to the Settlement Commission. Pointing out that the applicant had not made a true and full disclosure of its duty liability and the manner in which same was arrived at was also not correct, the Commission rejected the application. The assessee contended that obligation to make truthful disclosure of duty liability would arise only after the application was admitted and not prior to that. Is plea taken by the assessee, tenable in law?

(b) The assessee was engaged in the manufacture of tooth paste. It was sold as a combo pack of tooth paste and a bought out tooth brush. No extra amount was collected from buyers for the tooth brush. The assessee availed CENVAT credit of central excise duty paid on the tooth brush. Revenue contended that the tooth brush was not an input for the manufacture of the tooth paste and the cost of tooth brush was not added in the M.R.P. of the combo pack and hence the assessee had availed CENVAT credit of duty paid on tooth brush in contravention of the provisions of the CENVAT Credit Rules, 2004. Is this contention justified?

(c) The assessee was running a fast-food restaurant in which "soft-serves" were dispensed through vending machines. Such softy ice-creams in fast food chain outlets contain just 5 per cent milk fat, whereas hardened ice-creams served as dessert must mandatorily contain more than 8 percent. According to the assessee, soft-serve will not fall in the definition of "ice-cream" as understood under the Prevention of Food Adulteration Act. Assume that while ice-creams attracted 16 percent exicse duty, edible preparations not specified elsewhere enjoyed complete exemption. The assessee contended that it dealt with only the latter. Is such claim correct?

(d) (i) A SSI unit has purchased new machinery in April, 2013, on which excise duty of ₹ 2 lacs has been paid.
The monthly clearances for home consumption from this unit are as under:

Month	Value (₹ in lacs)
April, 2013	30
May, 2013	40
June, 2013	60
July, 2013	52
August, 2013	55

Can the unit avail Cenvat credit for new machinery purchased? If so, how much and in which month can it avail the same? 3

(ii) A SSI unit has paid excise duty of ₹ 15,450 during the year ended 31-3-2013. Is it required to submit its return of excise duty electronically during the subsequent year? 2

Answer:

1. (a) Correctness of order of the Settlement Commission

The contention of the applicant is not correct.

The matter of the case is similar to the case of Customs & Central Excise Settlement Commission v. Mars Therapeutics & Chemicals Ltd. 2008 (223) ELT 363 (HC).

The High Court held that the application made u/s 32E of the Central Excise Act, 1944 could be admitted and proceeded with, only when Settlement Commission is satisfied that

- the application has made true and full disclosure of the duty liability, and
- the manner in which the same was arrived at.

The High Court also clarified that the onus is on the applicant to make full and true disclosure of the duty liability and the manner in which the same was arrived at and the Settlement Commission will admit the application only when it is satisfied on the true and full disclosure of the duty liability and the manner it was arrived at.

Further, the object behind the enactment of the provisions of Settlement Commission is the creation of a forum of self surrender and true confession and to have matter settled once for all. It is not a forum to challenge the legality of the order passed under the provisions of the Act. The High Court opined that the view that the obligation to make truthful disclosure of duty liability would arise only after the application was admitted and not before that, was devoid of merit.

(b) Facts of the case

The assessee was engaged in the manufacture of tooth paste. It was sold as a combo pack of tooth paste and a bought out tooth brush. The assessee availed CENVAT credit of central excise duty paid on the tooth brush. Revenue contended that the tooth brush was not an input for the manufacture of the tooth paste and the cost of tooth brush was not added in the M.R.P. of the combo pack and hence the assessee had availed CENVAT credit of duty paid on tooth brush in contravention of the

provisions of the CENVAT Credit Rules, 2004."

Cenvat credit on combo-pack:

The situation as given in the problem was considered by the Gujarat High Court in CCE vs. Prime Health Care Products 2011 (272) E. L T. 54 (Guj.).

The High Court noted that the process of packing and re-packing the input, that was, toothbrush and tooth paste in a unit container would fall within the ambit of "manufacture" [as per section 2(f)(iii) of the Central Excise Act, 1944].

Further, the word "input" was defined in rule 2(k) of the CENVAT Credit Rules, 2004 which also included accessories of the final products cleared along with final product.

There was no dispute about the fact that on toothbrush, excise duty had been paid. The toothbrush was put in the packet along with the tooth paste and no extra amount was recovered from the consumer on the toothbrush.

Considering the definition given in the rules of "input" and the provisions contained in rule 3, the High Court upheld the Tribunal's decision that the credit was admissible in the case of the assessee.

(c) Classification: Is softy classified as ice cream?

The situation resembles the one considered by the Apex Court in CCE vs. Connaught Plaza Restaurant P Ltd. 2012 (286) ELT 321 (SC).

In this case, the assessee - respondent was engaged in the business of selling burgers, nuggets, shakes, soft-serves, etc., through its fast food chain of restaurants, under the brand name McDonalds.

According to the Supreme Court, the definition as of ice cream, as contained in the Prevention of Food Adulteration Act (PFA) should not be taken for excise purposes, since the object of enactment of PFA Act was different. The definition as given in PFA Act should not be mechanically applied for interpreting another Central legislation, having a different object.

The Supreme Court also held that marketing the product as "soft serve" will not make it a commercially different product from "ice cream".

The Supreme Court rejected the argument that in matters relating to classification of a commodity, scientific or technical meaning should be preferred to common parlance meaning. In common parlance, soft serve will be understood only as ice cream.

The Supreme Court held that in the market, ice creams both hard and soft were known as ice creams, hence exigible to excise duty as such i.e. at 16 per cent. Hence the claim of the assessee is incorrect.

(d) (i) SSI: Cenvat credit on machinery

The SSI can claim Cenvat credit in respect of the capital inputs.
The entire sum of ₹ 2 lacs can be claimed in the financial year.
The SSI unit can avail the same only in the month in which it exceeds the limit of ₹ 150 lacs. Hence it can be availed in the month of July, 2013.

(ii) Filing of excise return by SSI unit

The Central Excise (Fourth Amendment) Rules, 2011 has been issued vide Notification No. 21/2011-CE (NT) dated 14.09.2011, amending Rule 12 and Rule 17 of the Central Excise Rules, 2002., w.e.f. 1-10-2011.

ER-3 Return, filed under the proviso to Rule 12(1) of the Central Excise Rules, 2002, will be required to be filed by the concerned assessees including SSI units electronically irrespective of the duty paid in the preceding financial year.

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

(a) Briefly discuss the Central Excise procedures to be followed by an EOU in respect of its DTA sales.

(b) Compute the Assessable Value and Excise Duty payable u/s 4 of the Central Excise Act, 1944 from the following information:

Particulars	Amt. in ₹
Price of machinery excluding taxes and duties	6,00,000
Installation and erection expenses	25,000
Packing charges (primary and secondary)	13,000
Design and engineering charges	4,000
Cost of material supplied by buyer free of charge	10,000
Pre-delivery inspection charges	850

Other information:

(i) Cash discount @ 2% on price of machinery was allowed as per terms of contract since full payment was received before dispatch of machinery.
(ii) Bought out accessories supplied along with machinery valued at ₹ 7,250.
(iii) Central Excise Duty rate 12% and cess as applicable.

(c) M/s Action Ltd. is a manufacturer having its factory situated in Mumbai. During the financial year 2013-14, the total value of clearances from the factory was ₹520/- lakhs. The detailed break up of clearances are as follows:

- **Clearances without payment of duty to a unit in Software Technology Park— ₹100/- lakhs.**
- **Clearances of non-excisable goods ₹110 lakhs.**
- **Clearances worth ₹60 lakh which are used captively to manufacture finished products that are exempt under notification other than Notification No. 8/2003.**
- **Clearances of excisable goods in normal course ₹ 250 lakhs.**

Part of the factory at Mumbai is used by M/s Action Ltd. and another part of the same factory is used by M/s Passion Ltd. M/s Passion Ltd. has cleared the goods worth ₹100 lakhs during F.Y. 2013-14, which were exempted under notification other than SSI exemption notification.

Briefly explain whether M/s Action Ltd. will be eligible to the benefits of exemption under Notification No. 8/2003 for the year 2014-15.

Answer:

2. (a) Procedure for removal by 100% EOU to DTA [Rule 17]

(i) Invoice U/R 11: Goods removed from a 100% EOU to DTA, shall be made under an Invoice specified in Rule 11.
(ii) Payment of duty: Duty shall be paid before removal of goods by utilizing the CENVAT Credit or PLA Payment.
(iii) Maintenance of Records: Unit shall maintain in Form AC1 details relating to Production, Description of Goods, Quantity Removed, and the Duty paid.
(iv) Monthly Return: The unit shall submit a monthly return in Form ER 2 to the superintendent of Central Excise, in respect of Excisable Goods manufactured in, and receipt of Inputs and Capital Goods in, the unit.
(v) Time Limit: Return shall be submitted within 10 days from the close of the month to which the return relates.

(b) Computation of Assessable Value and Excise Duty Payable

Particulars	Amount (₹)	Reason in support of the computation
Price of machine	6,00,000	Net of taxes and duties
Machine installation expenses	0	Installation expenses are not includible in AV. Hence not added. Thermax Ltd. v. CCE, 99 ELT 481(SC)
Packing charges (primary and secondary)	13,000	Packing charges are includible in AV
Design and engineering charges	4,000	Essential for purpose of manufacture and hence included in AV
Cost of material supplied by buyer free of charge	10,000	Deemed to be money value of additional charge consideration
Pre-delivery inspection charges	850	Included in AV. Costs can be incurred at any time as per the definition of Transaction value. Therefore, cost incurred just before removal also covered.
Bought out accessories supplied along with the machine	0	Supply of optional bought out accessory is a trading activity and hence duty is not payable on it.
Total	**6,27,850**	
Less: Cash discount (2% x 6,00,000)	12,000	Deductible if actually passed on to buyer. Circular No. 643/34/2002 - CX dated 01.07.2002
Assessable value	6,15,850	
Excise duty @ 12%	73,902	
Add: Education cess @ 2%	1,478	
Add: Secondary & Higher Education Cess @1%	739	
Total duty payable	76,119	

Note: It is assumed that the bought out accessories supplied along with machinery is optional.

(c) Computation of Annual Turnover of M/S Action Ltd for determination of SSI exemption

for the year 2013 -14:

Particulars	Amount (₹ in lakhs)
Total clearance of M/S Action Ltd. during the year 2013 -14	520
Less:(i)Clearances without payment of duty to a Unit in Software Technology Park	(100)
(ii) Clearances of non-excisable goods	(110)
Turnover of Action Ltd. during the year 2013 -14	**310**
Add : Turnover of M/S Passion Ltd. during 2013 -14	100
Total Turnover for the year 2013 -14	**410**

Action Ltd. is not eligible to avail the benefit under Notification 8/2003 for the year 2014 -15, since the previous year (2013 -14) turnover was exceeded ₹400 lakhs (as the above remained as ₹410 lakhs).

It may be noted that while calculating for SSI exemption of ₹150/₹400 lakhs total clearance from the factory shall be taken even if part of the factory may be used by one manufacturer and other part of the same factory may be used by another manufacturer.

3. Answer all sub-division:

(a) From the following details furnished by Mrs. Vasudha, a registered dealer for the month of March, 2014, ascertain the VAT payable for the said month, as per White Paper on VAT: 5

Particulars	Amount in (₹)
Raw materials imported from China	**5,00,000**
Customs duty paid in addition at 10.3%	
Intra-State purchase of raw materials	**2,00,000**
CST, at 2% has been charged on the above, in addition	
Intra-State purchase of raw materials from registered dealers	**4,00,000**
VAT paid on above, over and above the price	
Sale of finished goods within State	**12,00,000**
Branch transfer to other State (from foods purchased within State) at cost price	**1,25,000**
Closing stock of finished goods	**1,00,000**
Opening VAT	**2,250**
Input and output VAT rates are	**1%**

OR,

From the following particulars, calculated assessable value and total customs duty payable:

(i) CIF value 2000 US Dollars; Air Freight 500 US Dollars, Insurance cost 100 US Dollars; Landing Charges not available.

(ii) Date of presentation of bill of entry: 20.01.2014 (Rate of BCD 25%; Exchange Rate: ₹ 58.60 and rate notified by CBEC ₹ 58.80)

(iii) Date of arrival of goods in India: 30.01.2014 (Rate of BCD 20%; Exchange Rate: ₹ 58.90 and rate notified by CBEC ₹ 59.00)

(iv) Rate of Additional Customs Duty under section 3(1): 12%

(v) Additional Duty of customs u/s 3(5): 5%

(vi) Education Cess applicable 2% and SAHEC is 1% 5

(b) Are the clearance of goods from DTA to Special Economic Zone chargeable to export duty under the SEZ Act, 2005 or the Customs Act, 1962? 5

Answer:

3. (a)

Computation of VAT Payable

Particulars	Amount (₹)
Raw materials imported from China ₹ 5,00,000	
Customs duty paid in addition at 10.3% ₹ 51,500 Not eligible for input tax credit (ITC)	Nil
Inter-State purchase of raw materials ₹ 2,00,000	
CST at 2% has been charged on the above ₹ 4,000 Not eligible for input tax credit (ITC)	Nil
Intra-State purchase from registered dealers ₹ 4,00,000	
Less: used for branch transfer ₹ 1,25,000 As per White Paper, for branch transfer, ITC in excess of 2% alone is available	
VAT on above @ 1%, on balance ₹ 2,75,000 eligible for ITC	2,750
Total ITC available **(A)**	2,750
Sale of finished goods within State ₹ 12,00,000	
Output VAT on above at 1% **(B)**	12,000
Closing stock of finished goods ₹ 1,00,000 has no impact on VAT	
Opening VAT **(C)**	2,250
Net VAT payable **(B)-(A)-(C)**	7,000

Computation of Assessable Value

Particulars	Amount
FOB Price (CIF $ 2000 - Air freight $ 500 - Insurance $ 100)	$1400.00
Exchange rate notified by the CBEC (in force on the date of presentation of bill of entry)	₹ 58.80
FOB price in Indian ₹	₹ 82,320
Add : Cost of transport under rule 10(2)(a) is @ 20% of FOB [Actual is 500 $, while in case of import by air, it cannot exceed 20% of FOB (i.e. 20% of 1400 = 280$ X ₹ 58.80)]	₹16,464
Add: Insurance under Rule 10(2)(c) is (Actual viz 100 $ X ₹58.80)	₹5,880
Computed CIF Value	₹1,04,664
Add: Loading, unloading and handling charges under Rule 10(2)(b) is @ 1% of CIF	₹1,047
Assessable Value	₹1,05,711

Computation of duty

Particulars	Duty		Total
	Rate	₹	₹
Assessable Value			1,05,711

Add: Basic Customs Duty [AS per section 15(1)(a), rate of duty prevalent on date of presentation of bill of entry or date of entry inwards, whichever is later, shall be applicable. Therefore, rate prevalent on 31.01.2014 viz. 20% shall be taken	20%	21,142	21,142
Sub-total for calculation of CVD u/s 3(1)		21,142	1,26,853
Add: Additional duty i.e. CVD u/s 3(1) (excise duty excluding EC and SHEC due to exemption)	12%	15,222	15,222
		36,364	1,42,075
Add: EC @2% on duty	2%	727	727
Add: SHEC @ 1% on duty	1%	364	364
Sub-total for calculation of CVD u/s 3(5)		37,455	1,43,166
Add: Special CVD u/s 3(5) @4% of total value (including duty)	4%	5,727	5,727
Total		43,182	1,48,893

(b) SEZ Act, 2005

A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words he cannot be taxed at all.
SEZ Act does not contain any provision for levy and collection of export duty for goods supplied by a DTA unit to a Unit in a Special Economic Zone for its authorised operations. In the absence of a charging provision in the SEZ Act providing for the levy of customs duty on such goods, export duty cannot be levied on the DTA supplier by implication.

Customs Act, 1962

With regard to the Customs Act, 1962, a conjoint reading of section 12(1) with sections 2(18), 2(23) and 2(27) of the Customs Act, 1962 makes it clear that customs duty can be levied only on goods imported into or exported beyond the territorial waters of India. Since both the SEZ unit and the DTA unit are located within the territorial waters of India, Section 12(1) of the Customs Act 1962 (which is the charging section for levy of customs duty) is not attracted for supplies made by a DTA unit to a unit located within the Special Economic Zone.

Hence the clearance of goods from DTA to Special Economic Zone is not liable to export duty either under the SEZ Act, 2005 or under the Customs Act, 1962.

Such a view has been taken in CCE vs. Biocon Ltd. 2011 (267) E.L.T. 28 (Kar) and Tirupati Udyog Ltd. vs. UOI 2011 (272) E.LT. 209 (A.P.).

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

(a) Phoenix Ltd., an Indian company, has been allocated an oilfield in Sibsagar district of Assam and has engaged Beta Ltd., a Canadian company, for prospecting and exploration of the oilfield, for which Phoenix Ltd. has paid fees for prospecting & exploration to Beta Ltd. Is any service tax leviable on such fees? If so, on whom? Would your answer be different if the oilfield was located in Anantnag district of Jammu & Kashmir?

(b) State with reasons, whether Cenvat credit is available to a manufacturer on the following:

(i) Service tax charged by outdoor caterers in their bills (raised for outdoor catering services), for serving food in the employees' canteen.
(ii) Excise duty paid on purchase of steel and cement purchased for constructing factory building.
(iii) Service tax charged by contractor in his bill for repair of factory building.
(iv) Excise duty paid on purchase of machinery meant for trading.
(v) Excise duty paid on diesel purchased for running of diesel generators used for running of factory machinery.

(c) Dolphin Ltd. has approached you for advice as to whether the company has any service tax liability under the reverse charge mechanism in respect of the following expenses incurred by them during the financial year 2013-14:
(i) Fees for legal advice obtained from M/s L. Srikumaran & Associates, a firm of advocates.
(ii) Fees for technical consultancy paid to Macdermott Inc., a company located in New York.
(iii) Amount paid to N. K. Builders Ltd., an Indian company, for construction of its factory shed, where both material and labour were provided by N. K. Builders Ltd.
(iv) Freight paid to ABC Carriers, a Goods Transport Agency, for transporting raw materials by road, from Vasant Ltd., a supplier who is an Indian company.
(v) Sitting fees paid to non-whole time directors
What would be your advice?

Answer:

4. (a) As per Rule 5 of the Place of Provision of Service Rules, 2012, in case of services that are directly in relation to immovable property, the place of provision of the service is where the immovable property (like land or building) is located. In the instant case, the service of exploration and prospecting of oilfield as rendered by Beta. Ltd. is directly in relation to immovable property located in India, and will fall within the purview of service tax.

However, since in this case the service provider is located in a non-taxable territory (Canada) and service recipient (Phoenix Ltd.) is located in India, reverse charge mechanism will apply, whereby Phoenix Ltd. will be liable to pay the entire service tax.

If the oilfield was located in Jammu & Kashmir, the answer would have been different. In such a case, since Jammu & Kashmir is outside the taxable territory, the place of provision of service would be outside the taxable territory and hence the transaction would be out of the purview of service tax.

(b) (i) Outdoor catering for factory employees will not be eligible for Cenvat credit since there is specific exclusion for this in the definition of input service under Rule 2(1) of the Cenvat Credit Rules, 2004 (CCR).
(ii) Steel and cement used for constructing factory building will not be eligible for Cenvat credit since there is specific exclusion for this in the definition of inputs under Rule 2(k) of CCR.
(iii) Repair of factory building will be eligible for Cenvat credit since it is an eligible input service under Rule 2(1) of CCR.
(iv) Cenvat credit shall not be allowable since the machinery is for the purpose of trading and neither for use as input for manufacture, nor for use as capital goods.
(v) Cenvat credit shall not be allowable since high speed diesel oil is specifically excluded from the definition of inputs as defined in Rule 2(k) of CCR.

(c) (i) Dolphin Ltd. is liable to pay 100% of the service tax on legal fees paid to M/s L. Sukumaran & Associates as recipient of service under the reverse charge mechanism.

(ii) Dolphin Ltd. is liable to pay 100% of the technical consultancy fees paid to Macdermott Inc. as recipient of service under the reverse charge mechanism since the service provider is in a non-taxable territory and the recipient of service is in the taxable territory.

(iii) This amounts to a works contract involving original works, on which service tax is payable on the service portion. However, reverse charge will not apply since N.K. Builders, i.e. the service provider, is a corporate entity. Hence the entire service tax will be payable by the service provider and there is no service tax liability on Dolphin Ltd.

(iv) Dolphin Ltd. is liable to pay 100% of the service tax on freight paid to Goods Transport Agency as recipient of service under the reverse charge mechanism.

(v) Dolphin Ltd. is liable to pay 100% of the service tax on fees paid to non-whole time directors as recipient of service under the reverse charge mechanism.

Section B
Answer all questions.

5. Answer any three sub-divisions: 3x5=15

(a) ABC Ltd. paid a sum of 12,000 USD to Kiwi Consultants, based only at Singapore, relating to consultation involving the installation of play-back facilities to be used in the cricket stadium in Bangalore. The payment was made in Singapore and the entire consultation took place in Singapore. Can this amount be taxed in India on the ground that the payment related to services of a product used in India?

(b) Mr. David had obtained an asset by virtue of adverse possession, i.e. he was enjoying uninterrupted possession of a house plot since April, 1980. His name was taken as owner in revenue and municipal records. This house was sold on 12-2-2014 for ₹ 35 lacs. The assessee contends that since the cost of acquisition is not ascertainable, there can be no exigibility to capital gains. The Assessing Officer opines that the FMV as on 1 -4-1981 can be taken to be the cost. You are required to help the assessee with your views and work out the capital gains, if any.
Cost inflation index for FY 2013-14 is 912.

(c) The income-tax assessment of Nathan Windmills Ltd. was completed under section 143(3) of the income-tax Act, 1961 for the assessment year 2008-09, accepting the claim of the assessee for deduction under section 80-IA. The Explanation to Section 80-IA was later on substituted by the Finance (No. 2) Act, 2009, retrospectively w.e.f. 01.04.2000, whereby the deduction was denied to profits derived as mere works contractor. The assessee was a mere works contractor only. The Assessing Officer, after nearly five years, sought to initiate the reassessment proceedings in March, 2014 on the grounds that the assessee had not disclosed that he had undertaken the projects only on works contract and that in the light of the retrospective amendment, deduction u/s 80-IA was not available, as a consequence of which income chargeable to tax has escaped assessment. Is the reopening justified?

(d) Miss Niranjana, aged 61, resident, has derived income from a country X, with which India does not have any Double Taxation Avoidance Agreement. The broad details of income for the assessment year 2013-14 are as under:

	₹ in crores)

Business Income in India	**8**
Income from country X:	
Income from business	**3**
Gross rent received for let out house	**2**
Life Insurance premium paid	**1.2**

In Country X, the rate of tax is flat 10%. Incomefrom house property is not taxed in Country X. Compute the total income of the assessee and the tax payable.

Answer:

5. (a) In the hands of a non-resident, income accruing or arising in India alone is chargeable to tax.
Income accruing or arising outside India is not chargeable to tax, unless the same is deemed to accrue or arise in India.
As per section 9, certain incomes are deemed to accrue or arise in India.
This section, inter alia, covers fees for technical services. "Fees for technical services" means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head "Salaries". The payment mentioned in the problem is covered by this definition.

As per the retrospective amendment effected by the Finance Act, 2010 w.e.f. 1st April, 1976, income by way of fees for technical services relating to services utilized in India is deemed to accrue or arise in India, in the hands of a non-resident.

Since the services were utilized in India in the instant case, the payment received by Kiwi Consultants is chargeable to tax in India, since it is deemed to accrue or arise in India.

(b) The Supreme Court in the case of B.C. Srinivasa Setty held that unless the cost of acquisition is capable of ascertainment, the entire computation provisions will fail and as a consequence, the charging provisions also will fail.
It was emphasised by the Apex Court that capital gains is an integrated code and both charging and computation provisions are inter-linked. If the computation provisions fail then the charging provisions will fail automatically.
In case of adverse possession, the cost of acquisition is not ascertainable.
Cost of acquisition cannot be taken to be nil, or the FMV as on 1-4-1981 cannot be estimated and taken.
As a result, there will be no taxability to capital gains. The assessee's contention is right.

(c) Reassessment proceedings can be initiated u/s 147, where income chargeable to tax has escaped assessment.
Where the assessment had been originally completed u/s 143(3), reopening of assessment beyond four years can be made only where there is failure on the part of the assessee to disclose all material facts necessary for making the assessment.
When the original assessment was completed, the same was a scrutiny assessment; the assessment was made after examining the claim for deduction u/s 80-IA, including the audit reports filed.
When the original assessment was made, there was no denying of deduction for works contractor also. Hence it cannot be said that the assessee had failed to disclose material facts.

As a consequence, reassessment proceedings are not justified. The original assessment can be tested in the light of the law as it then stood and not on the basis of a retrospective assessment.
Similar view was taken by the Gujarat Court in the case of Sadbhav Engineering Ltd. vs. Dy. CIT reported in (2011) 333 ITR 483(Guj).

(d) Computation of Total Income:

Particulars		Amount (₹)
Income from house property		
GAV (Rent received)	2,00,000	
Less: Statutory deduction at 30%	60,000	
Income chargeable to tax		1,40,000
Profits and gains of business or profession		
Business income in India and Country X		11,00,000
Gross total income		12,40,000
Less: deduction Under u/s 80C LIP (maximum)		1,00,000
Total income		11,40,000

Tax on above income	₹1,67,000
Add: Education cess and SAH cess at 3%	₹5,010
Total tax on above	₹1,72,010
Less : Double taxation relief	
Tax on business income from Country X 10% on 3 lacs	₹30,000
Tax payable by the assessee	₹1,42,010

Note:

A. Double taxation relief is available only in respect of income taxed in both countries. Hence it is available only in respect of foreign business income.
B. Double taxation relief is the lower of Indian rate of tax or foreign rate of tax.
Indian rate of tax is 1,72,010 x 100/11,40,000 = 15.09%
Foreign rate of tax is 10%
So, Double taxation relief is at 10%.

6. Janak Pharma Ltd., a manufacturer of pharmaceuticals, started in April, 2014 requests you to compute the depreciation allowable u/s 32 of the Income-tax Act, 1961 for the assessment year 2014-15: 10

	₹ in crores)
Items installed in May 2013:	
New machinery	**84**
Cold chamber	**22**
Items installed December 2013:	
Lorries for transporting goods within factory	**4**
Cranes	**3**
Computers installed in office premises	**1**
Currency counting machine for wages payment	**1**

Is any other allowance available while computing the business income?
Also compute the WDV of the various blocks of assets.

Answer:

6.

Computation of depreciation for the Accounting Year 2014-15

(₹ in crores)

Particulars		
Block 1: Plant and machinery (15% rate), used for more than 180 days:		
New machinery	84	
Cold chamber	22	
	106	
Normal Depreciation at 15%		**15.9**
Additional depreciation at 20%		**21.2**
Block 2: Used for less than 180 days: (Rate of Depreciation = 50% of 15% i.e.7.5%)		
Lorries for transporting goods within factory	3	
Cranes	4	
Currency counting machine for wages payment	1	
	8	
Normal Depreciation at 7.5%		**0.6**
Additional depreciation at 10% on above plant and machinery		**0.8**
Total allowable depreciation is (15.9+21.2+0.6+0.8)		**38.5**
WDV of the block as on 31-03-2014 is (106 – 38.5)		**75.5**
Block 3: (Computers at 60%), used for less than 180 days:		
Computers installed in office premises	**1**	
Normal Depreciation at 30%		0.3
Total allowable depreciation		**0.3**
WDV of the block as on 31-03-2014 is (1- 0.3)		**0.7**
Investment allowance u/s 32AC Where the investment in new plant and machinery exceeds ₹ 100 crores by manufacturing companies, investment allowance at 15% is allowable. Items in the prohibited list are the same as those for additional depreciation. For rest of the items, investment allowance is available.		
Investment allowance at 15% on ₹114	**114**	**17.1**

This is not deductible in computing the WDV of the block of assets.

Notes:

Additional depreciation is not available for

- Road transport vehicles
- Plant installed in office premises

[Lorries for transporting goods within factory are not road transport vehicles]

- Computers installed in office premises

Currency counting machine for wages payment are not office equipments.

7. Answer any two sub-divisions: 2x5=10

(a) (i) If any assessment is remanded back to Assessing Officer, can he introduce new sources of income for assessment? 3

(ii) Can the Department make fresh computation, once tax assessment is made final? 2

(b) Anand, an individual, had filed a Return of Income, showing an income of ₹ 5,00,000 for the assessment year 2014-15. He paid a sum of ₹ 20,000 as tax whereas the tax payable on such income was ₹30900 (including cess). His income is assessed at ₹ 5,90,000 and the tax payable on the assessed income is ₹ 58,710. Anand wishes to file an appeal against the above order. Advice Anand about the procedure of filing an appeal. 5

(c) (i) Return of Income for previous year 2010-11 was submitted by Rahim on 28-7-2011 declaring an income of ₹12,80,000. A revised return was filed on 18.5.2012 declaring an income of ₹9,80,000. Upto what time a notice for scrutiny can be served by the Assessing Officer? 3

(ii) Can father, mother, son and his wife presently assessed as Hindu undivided family, as well as individual, form an association of persons as well as a source of income not belonging to the Hindu undivided family? 2

Answer:

7. (a) (i) Where the assessment is set aside by the Tribunal and the matter remanded to the Assessing officer, it is not open to him to introduce into the assessment new sources of income so as to enhance the assessment.
Any power to enhance is confined to the old sources of income which were the subject matter of appeal (Kartar Singh Vs. CIT (1978) III ITR 184 (P&H)).

(ii) It is now a well settled principle that an assessment once made is final and that it is not open to the department to go on making fresh computation and issuing fresh notices of demand to the end of all time. (ITO Vs. Habibullah (S.K) (1962) 44 ITR 809 (SC)).

(b) (i) Anand should deposit tax of ₹ 10,900 i.e., Tax payable on returned income minus tax deposited by him. (₹ 30,900 - ₹ 20,000).
(ii) Anand should deposit ₹ 1000 as filing fee as the income assessed is more than ₹ 2,00,000.
(i) He should file an appeal in Form 35 (in duplicate).
(iv) Appeal should be filed within 30 days of the receipt of the assessment order.
(ii) He should apply to the Assessing Officer for stay of demand of ₹27,810 (₹ 58,710 - ₹ 30,900).

(c) (i) **Notice under section 143(2)**

For initiating scrutiny assessment, a notice shall be served on the asessee within a period of 6 months from the end of the financial year in which return is furnished. The notice requires the assessee to produce any evidence which the assessee may rely in support of the return.

Since revised return is filed on 18.5.2012 notice for scrutiny can be served upto 30.9.2013 i.e. six months from the end of the financial year in which revised return was filed.

(ii) No, HUF is a separate and distinct tax entity. The income of a HUF can be assessed in the hand of the HUF alone and not in the hands of any of its members unless specifically provided by law.

8. (a) Sudhir furnishes the following particulars for the compilation of his wealth tax return for assessment year 2014-15: 5

(i) Gift of jewellery made to wife from time to time aggregating ₹ 2,00,000. market value on valuation date ₹ 4,00,000.
(ii) Flat purchased under instalment payment scheme in 1990 for ₹ 1,00,000 used for purposes of his residence and market value as on 31.3.2014 (instalment remaining unpaid is ₹ 1,00,000) ₹ 15,00,000.
(iii) Cash balance ₹ 2,50,000.
(iv) Bank balance ₹ 3,00,000.
(v) Urban land transferred to minor handicapped child valued on 31.3.2014 ₹ 30 lacs.
Compute the net wealth as on 31.3.2014, adducing brief reason for treatment of each item.

(b) (i) Arvind received a vacant site under his father's will. The value of the site on 31.3.2014 is ₹ 30 lakhs. As per terms of the 'will' in the event Arvind wants to sell the site, he should offer it to his brother for sale at ₹ 20 lakhs. Arvind therefore claims that the value of the site should be taken at ₹ 20 lakhs as at 31.3.2014. Is the claim correct? 3
(ii) The cash balance of A Pvt. Ltd. as on 31-3.2014 as per books was ₹ 2.5 lakhs. Upon physical verification, actual cash balance was found to be ₹ 1.5 lacs only. What is the impact of this in the statement of net wealth as on 31.3.2014? 2

Answer:

8. (a) Assessee : Sudhir **Valuation Date : 31.03.2014**
Assessment Year : 2014 – 15

Computation of Taxable Wealth

	Particulars	**₹**
(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:

A. Deemed asset U/s 4. Fair market value of the Jewellery is taxable.
B. Taxable as an asset U/s 2(ea) but the assessee can calim exemption U/s 5(vi). So full value of asset is exempt from tax.
C. Cash balance in excess if ₹ 50,000 is an asset.
D. Bank balance is not an asset.
E. Asset held by the minor who is handicapped U/s 80U, clubbing provision does not apply.

(b) (i) As per Rule 21 of Schedule III to the Act, the price or other consideration for which any property may be acquired by or transferred to any person under the terms of a deed of trust or through or under any restrictive agreement in any instrument of transfer shall be ignored for the purpose of determining the value under the provisions of the schedule.
In view of the above, the value of the site should be taken at ₹ 30 lakhs and not as ₹ 20 lakhs. Therefore claim of Arvind is not correct.

(ii) In the case of a private limited company, any cash balance not recorded in the books, will be treated as an asset U/s 2(ea).

Here the cash balance is not in excess, but in deficit. Hence, there will be no impact on the net wealth statement as on 31.03.2014.

9. Answer any two sub-divisions: 2x5=10

(a) Where any reference is made by the Assessing Officer to the Transfer Pricing Officer (TPO) under section 92 CA of the Income-tax Act, what are the procedures to be followed by the TPO? Can TPO exercise his jurisdiction on any international transaction not referred to him but subsequently noticed by him in course of proceeding before him?

(b) BB India Limited produces steel furniture which is supplied to its holding company BB Inc. USA. BB India Limited raises invoice for US $ 3,000 per piece of furniture, while the direct and indirect costs of manufacturing work out to US $ 2,250 per piece. BB India Limited does not supply its products to any other party either in India or abroad. The data base in public domain shows that the still furniture industry in India of comparable companies has export turnover of US $ 3,000 million and the industry average of total expenses of comparable companies is 80%. Determine whether the transaction entered into by BB India Limited is at arm's length.

(c) Write a short note on "Safe harbour rule".

Answer:

9. (a) Procedures to be followed by TPO when reference is made to him by AO under section 92CA:

(i) The TPO shall serve a notice on the assessee requiring him to produce evidences on which he relies in support of his computation of the arm's length price.

(ii) After considering such evidences and after taking into account all materials gathered by him, the TPO shall pass an order determining the arm's length price and send a copy of the order to the AO and the assessee.

(iii) The TPO shall pass the order at any time before the expiry of 60 days prior to the date on which the time limit referred to in section 153 or section 153B for completion of assessment or reassessment expires.

According to section 92CA (2A), the jurisdiction of the TPO shall extend to the determination of the arm's length price in respect of other international transactions which are noticed by him subsequently, in course of proceeding before him. Such international transactions are in addition to the international transactions referred to the TPO by the AO.

(b)

Computation of net margin made by BB India Limited

Particulars	US$
Export price per set of furniture	3,000
Less: Direct and Indirect cost per set of furniture	2,250
Net margin	750
% of net margin to sales	25%

Computation of net margin of the industry

Particulars	US$ million
Industry turnover	3,000

Less: Direct and Indirect cost	2,400
Industry margin	600
% of net margin to sales	20%

As the net margin realised by BB India Limited is more than the net margin realised by the industry, international transactions entered into with the associated enterprise, BB Inc., USA shall be considered to be at arm's length.

(c) In view of the powers granted to the Assessing Officer under section 92C, he can do adjustment in the transfer price of an international transaction, if the same is not in accordance with the arm's length price. As a result, many transactions are subjected to adjustments and dispute arises for that.

In order to overcome the above problem section 92CB empowers the CBDT to frame rules, namely "safe harbour rules". Section 92CB provides as under:

(i) The determination of arm's length price under section 92C or section 92CA shall be subject to safe harbour rules.

(ii) "Safe harbour" means circumstances in which the income tax authorities shall accept the transfer price declared by the assessee.

CBDT can identify certain types of businesses and notify a certain percentage as minimum profit expected to be declared by the assessee. If an assessee declares profit at or above such notified percentage, then in the case of that assessee transfer pricing provisions shall not be invoked in respect of international transaction or specified domestic transaction. This is how the concept of safe harbour functions.