

FINAL EXAMINATION

GROUP III

(SYLLABUS 2012)

SUGGESTED ANSWERS TO QUESTIONS

JUNE 2016

Paper- 16: TAX MANAGEMENT AND PRACTICE

Time Allowed : 3 Hours

Full Marks : 100

The figures in the margin on the right indicate full marks.

*Wherever required, the candidate may make suitable assumptions and
State them clearly in the answers.*

Working notes should form part of the relevant answer.

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

All questions in Income Tax relate to the Assessment year 2016 – 17, unless stated otherwise.

Question No. 1 is compulsory and answer any five from the rest of 7 Questions.

1. (a) Choose the most appropriate alternative(s): 1×5=5
- (i) An application under section 12AA of the Income-tax Act for registration of a charitable or religious trust or institution is to be disposed of by the Principal Commissioner of Income-tax or Commissioner of Income-tax, by passing an order before the expiry of
- (A) 3 months from the end of the month in which the application for registration was received.
- (B) 6 months from the date of submission of application by the trust or institution.
- (C) 6 months from the date of completion of enquiry by the Principal Commissioner of Income-tax or Commissioner of Income-tax.
- (D) 6 months from the end of the month in which application for registration was received.
- (ii) Which of the following conditions are to be satisfied for levy of Central Excise Duty?
[If more than one condition is applicable, write both, say for example, A, B and C]
- (A) The final product should be excisable goods.
- (B) Such product should be manufactured or produced.
- (C) Such product should be owned by the manufacturer.
- (D) Such manufacture or production should be carried out in India.
- (iii) In case of a company which is not an Indian company, the determining factor for its residential status under the Income-tax Act, 1961 is
- (A) Whether there is a Permanent Establishment in India.
- (B) Whether at least one executive director is a resident in India.

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- (C) Whether the place of effective management is in India.
(D) None of the above
- (iv) Input which is eligible for CENVAT credit is
- (A) Medicines for use in company medical clinic.
(B) Consumables used for maintenance of convention hall given on rent to outsiders.
(C) Diesel used for vehicles used for transporting raw materials to factory.
(D) Motor vehicles.
- (v) The rate of tax deductible at source on the interest income paid to non-residents by real estate investment trust (REIT) would be
- (A) NIL
(B) 5%
(C) 10%
(D) 30%
- (b) Fill up the blanks: 1×5=5
- (i) Leasing of machinery with transfer of right to use.....(is/is not) liable to service tax.
- (ii) Rate of surcharge applicable to a foreign company having total income of ` 12 Crore is..... %.
- (iii) Service provided by an Indian company to another Indian company by way of undertaking repairs to machinery located in Singapore is.....(taxable /not taxable) for levy of service tax purposes.
- (iv) In order to claim exemption under section 54B in respect of capital gain from transfer of agricultural land, land should have been used for agricultural operation by the assessee or his parents for at least.....years before transfer.
- (v) Penalty for non-registration of factory/warehouse under the Central Excise Rules would be up to `
- (c) Answer the following with brief reasons: 2×5=10
- (i) An SSI unit omitted to file its return for the quarter ended 31.12.2015. It filed the return ER-3 on 10.02.2016. What is the maximum amount that can be collected as late fee for filing the return after the due date?
- (ii) What is the point of taxation when service tax is payable under reverse charge, where an invoice has been raised?
- (iii) Can a partnership firm or HUF with less than ` 50 lakhs turnover opt to pay service tax on receipt basis?
- (iv) The premises of Mr. Dayal was affected by cyclone leading to loss of stock to the extent of ` 2 lakhs and on that ` 80,000 was allowed as deduction in the income-tax assessment. After 2 years, the State Government awarded ` 2 lakhs as compensation to Mr. Dayal. How much of the receipt is chargeable to income-tax or exempt from income tax?
- (v) A proprietor declares his turnover for the financial year 2015-16 as ` 80 lakhs and wants to declare income under section 44AD of the Income-tax Act, 1961. He has brought forward business loss of ` 1 lakh and unabsorbed depreciation of ` 3 lakhs

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relating to assessment year 2015-16 eligible for set off. Compute his total income for the Assessment Year 2016-17.

Answer: 1 (a)

- (i) (D) 6 months from the end of the month in which application for registration was received.
- (ii) (A), (B) & (D)
 - (A) The final product should be excisable goods
 - (B) Such product should be manufactured or produced
 - (D) Such manufacture or production should be carried out in India.
- (iii) (C) Whether the place of effective management is in India
- (iv) (B) Consumables used for maintenance of convention hall given on rent to outsiders.
- (v) (B) 5%

1 (b)

- (i) Is not
- (ii) 5
- (iii) Taxable
- (iv) Two
- (v) the duty payable on contravening goods manufactured or ` 10,000, whichever is higher

1 (c)

- (i) The due date for filing the quarterly return by SSI unit is 10th day of the next month following the quarter. The due date is 10.01.2016.
As per rule 12(6) of the Central Excise Rules if the return is filed after 'due date' the assessee shall pay `100 per day subject to a maximum of `20,000 for such delay.
Therefore, for the delay of 31 days (11.01.2016 to 10.02.2016) the late fee leviable is `100 per day aggregating to `3,100.
- (ii) When the service tax is payable by service recipient, the point of taxation shall be the date on which the payment is made to service provider if the payment is made within 3 months from the date of invoice.
If the payment is not made within three months from the date of invoice, the point of taxation will be the date immediately following the period of 3 months.
- (iii) Individuals and partnership firms including LLPs whose total value of taxable service from all premises is less than `50 lakh in the previous financial year can opt to pay service tax on receipt basis instead of accrual basis.
However, this concession will not apply to HUF who are liable to pay service tax only on accrual basis and not on cash basis irrespective of the quantum of taxable service value in the preceding financial year.
- (iv) As per section 10(10BC) of the Income-tax Act, 1961, any amount received by way of compensation on account of any disaster is exempt from tax except the amount received which has been allowed as a deduction on account of any loss or damage caused by the disaster.

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A sum of ₹80,000 is already allowed as deduction for the loss occurred and the balance of ₹1,20,000 will be exempt under section 10(10BC). Thus ₹80,000 on receipt will be chargeable to tax.

- (v) The presumptive income under Section 44AD would be ₹6.40 lakhs (8% of ₹80 lakhs).

The brought forward business loss of ₹1 lakh is eligible for set off.

However, the unabsorbed depreciation forms part of current depreciation as per section 32(2) and would be deemed to have been allowed and adjusted when the income is determined under section 44AD.

Hence his total income would be ₹5.40 lakhs (i.e. ₹6.40 lakhs minus ₹1 lakh) for the assessment year 2016-17.

2. (a) **AFB Ltd. manufactures water heaters and has its factory in Pune. During March, 2016, it stock transferred its entire production to its central depot in Nagpur from where the products are sold to customers. The relevant particulars are as follows:**

No. of water heaters transferred to depot	1,000 nos.
Sale price to independent buyers ex-depot as prevailing during the month	₹5,000 per piece.
The following are included in ex-depot sale price:	
Freight cost from factory to depot	₹5 lakhs
Freight cost from depot to customers	₹10 lakhs
Packing cost	₹1 lakh

The company increased the sale price of water heaters to ₹5,500 per piece with effect from 10.04.2016.

Out of the 1000 nos. water heaters transferred to depot during the month, 700 nos. were sold to customers from the depot on or after 14.03.2016 at the increased price of ₹5,500 per piece.

Calculate the Central Excise Duty payable by AFB Ltd. for the month of March, 2016. Assume excise duty rate at 12.5%. Ignore Cess. 8

- (b) **AB Private Limited, an Indian company (having 5,000 shares of ₹100 per share) is engaged in producing cooking spices. CD Private Ltd., another Indian company is engaged in producing edible oil and processing foods. It is decided that AB Private Limited will be amalgamated with CD Private Limited with effect from 1st March, 2016. The total consideration for transfer of assets is ₹9.75 lakhs, the break-up of which is as follows:**

Capital assets ₹6 lakhs.

Net current assets ₹3.75 lakhs.

Consideration is to be satisfied by issue of 3 equity shares of CD Private Limited at ₹130 per share for every 2 equity shares of AB Private Limited.

One Mr. Ganesh held 700 equity shares in AB Private Limited which were acquired in the financial year 2009-10 for ₹2,00,000. Mr Ganesh received 1,050 equity shares from CD Private Limited consequent to amalgamation in March, 2016.

Against the above backdrop, you are required to answer the following questions:

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- (i) Does the transaction of amalgamation attract any income-tax liability in the hands of AB Private Ltd.?
 - (ii) Compute capital gain in the hands of Mr. Ganesh on receipt of shares of CD Private Limited.
 - (iii) Compute capital gain in the hands of Mr. Ganesh if he sells the shares of CD Private Limited at ₹600 per share on 31st March, 2016.
 - (iv) Will sale of shares of CD Private Limited by Mr. Ganesh affect the tax benefit, if any availed by AB Private Limited?
 - (v) Suggest any investment plan for Mr. Ganesh to mitigate his tax liability.
- Note: Cost inflation index: FY 2009-10: 632; FY 2015-16:1081.

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Answer 2 (a)

Calculation of excise duty payable by AFB Ltd. for the month of March, 2015

Particulars	₹
Ex-depot sale price (1000 pieces @ ₹5000 each)	50,00,000
Less: freight cost from depot to customers	10,00,000
Assessable value	40,00,000
Excise duty @ 12.5%	5,00,000

Notes:

1. The cost of transportation from the place of removal to the place of delivery should be excluded in arriving at the assessable value. [Rule 5 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000]
2. The cost of transportation from factory to depot is to be included in arriving at the assessable value. [Rule 5, Explanation 2 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000]
3. Cost of packing is includible in arriving at the assessable value of excisable goods. [Rule 6, Explanation 1 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000]
4. The assessable value in case of transfer to depot shall be the normal transaction value at the depot prevailing at the time of removal from the factory, i.e. the ex-depot price at which the greatest aggregate quantity of such goods are sold from the depot at or about the time of removal from the factory. In this case, the ex-depot price on the dates of removal from the factory was ₹5000 per piece. Accordingly the assessable value has been arrived at on the basis of such price. Hence, despite the fact that 700 pieces of March delivery were sold from depot on after 10-4-2016 at the increased price of ₹5500 per piece, the value has to be taken at ₹5000 per piece, being the depot price prevailing on the date and time of removal from the factory. [Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000]

2 (b)

- (i) As per section 47(vi), transfer, in a scheme of amalgamation, of a capital asset by the amalgamating company to the amalgamated company is exempted from levy of tax on capital gain, provided the amalgamated company is an Indian company.

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Therefore, transaction of amalgamation does not attract any tax liability in the hands of AB Private Ltd.

(ii) As per section 47(vii), any transfer by a shareholder in a scheme of amalgamation, of shares of amalgamating company held as capital asset is not liable to capital gain tax, if the transfer is made in consideration of the allotment to him of any shares in the amalgamated company and the amalgamated company is an Indian company. Thus, there is no capital gain in the hands of Ganesh on receipt of shares of CD Private Ltd.

(iii) Computation of Capital Gain in hands of Mr. Ganesh on sale of share of CD Private Ltd.

Sale Consideration	(1050 × ` 600)	` 6,30,000
Less: Indexed Cost of acquisition	(`2,00,000 × 1081/632)	` 3,42,089
 Long-term Capital Gain		 ` 2,87,911

Note: (a) Cost of shares of amalgamating company is to be taken as cost of shares of the amalgamated company-section 49(2).

(b) Period of holding of shares in the amalgamating company is included for computing period of holding of shares in the amalgamated company.

(iv) There is no provision in the Income-tax Act which affects the tax benefits availed by the amalgamating company (i. e. exemption under section 47(vi) in the event of sale of shares of the amalgamated company).

(v) In order to mitigate tax liability on long-term capital gain, Mr. Ganesh should be advised to invest within 6 months from the date of transfer/sale (i.e. 31st March, 2016) the whole amount of long-term capital gain i.e. ` 2,87,911 in bonds approved u/s 54EC of the Income-tax Act, 1961.

Alternatively, it may be assumed that the assessee fulfills the eligibility conditions for section 54F and hence can invest the net sale proceeds within the stipulated time in a residential house.

3. (a) Vasumathi Hotels has provided the following information for the month of December, 2015:

Sl. No.	Services Provided	`
(i)	Outdoor catering services provided to a coaching institute, coaching students for civil service examination	3,00,000
(ii)	Renting of rooms (declared tariff `3,000 per room per day)	2,10,000
(iii)	Supply of food in convention centre for organizing convention along with rent thereof	5,00,000
(iv)	Catering services provided to a CBSE affiliated school	1,00,000
(v)	Serving food in a restaurant with air-conditioned facility	7,00,000

Note: The amounts mentioned above are exclusive of service tax. You may assume that the assessee is not eligible for small service provider exemption under Notification No. 33/2012 and does not avail CENVAT credit on inputs and capital goods.

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You are required to compute the amount of service tax liability of Vasumathi Hotels for the month of December, 2015. 8

- (b) Krishna Ltd. distributed a dividend of `42 lakhs on 28.09.2015. It has received the following dividends:
- (i) A sum of `5,00,000 from Info-Computer (P) Ltd. in which it holds 90% equity capital. Info Computer (P) Ltd. paid DDT under section 115-O on the dividend paid.
 - (ii) A sum of `20,00,000 from Norway Trading LLC, Dubai in which Krishna Ltd. has 60% equity capital.
- From the above information, compute the amount of dividend distribution tax payable by Krishna Ltd. 8

Answer:

3. (a) **Computation of value of taxable services and service tax payable by Vasumathi Hotel**

S. No.	Services Provided	Value	Taxable Value
(i)	Outdoor catering services provided to a coaching institute, coaching students for civil service examination [Note 1]	3,00,000	
	Value of service @ 60%		1,80,000
(ii)	Renting of rooms with declared tariff `3000 per room per day [Note 2]	2,10,000	
	Less: Abatement @ 40%	84,000	
			1,26,000
(iii)	Supply of food in convention centre for organizing convention along with rent thereof [Note 3]	5,00,000	
	Less: Abatement @ 30%	1,50,000	
			3,50,000
(iv)	Catering services provided to a CBSE affiliated school [Note 4]	Exempt	Nil
(v)	Serving food in a restaurant with air-conditioned facility [Note 5]	7,00,000	
	Value of service @ 40%		2,80,000
	Value of taxable services		9,36,000
	Service tax payable @ 14.5%		1,35,720

Note 1: Outdoor catering to a coaching institute is not eligible for exemption as it does not provide the qualification but meant for passing a competitive examination.

Note 2: Since the declared tariff is more than `1000 per day it is not eligible for exemption vide Notification No.25/2012 dated 20.06.2012. However, it is eligible for abatement of 40% as per Notification No.26/2012 dated 20.06.2012.

Note 3: Abatement of 30% is available in case of bundled service by way of supply of food or any other article of human consumption including inter alia convention centre

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for organizing a function together with renting of such premises where CENVAT credit has not been taken.

Note 4: Services provided to an educational institution by way of catering is exempt from service tax. Educational institution means a institution providing service by way of education up to higher secondary level and education as a part of curriculum for obtaining a qualification recognized by any law for the time being in force.

Note 5: Value of service portion in an activity where goods such as food or any other article of human consumption or any drink is supplied as a part of the activity, at a restaurant is liable for service tax at 40% of the amount charged if provider of taxable service has not taken CENVAT credit of duties paid on any goods.

(b)

Computation of Dividend Distribution Tax payable by Krishna Ltd.

Particulars	Note	`	`
Amount of dividend distributed			42,00,000
Less: Deduction permissible under section 115-O(1A)			
Dividend received from Indian subsidiary, Info-Computer P Ltd.	1	5,00,000	
Dividend received from foreign subsidiary, Norway Trading LLC, Dubai	2	20,00,000	
			25,00,000
Net Dividend			17,00,000
Grossing up of dividend $17,00,000 \times 100 / 85$			20,00,000
DDT @ 15%		3,00,000	
Add: Surcharge @ 12%	3	36,000	
Add: Education cess @ 3% on `3,36,000		10,080	
Total Tax Liability			3,46,080

Note 1: Amount of dividend received by a domestic company from its subsidiary which is also a domestic company and who has paid DDT shall be reduced for computing DDT of the parent company in terms of section 115-O(1A).

Note 2 : When dividend is received from a foreign company and the tax is payable by the recipient domestic company under section 115BBD (by virtue of holding more than 26% or more in the nominal value of equity share capital of the foreign company), such amount shall also be reduced for computing the DDT payable by the recipient domestic company.

Note 3: The Finance Act, 2015 has provided for levy of flat 12% surcharge on dividend distributed regardless of the quantum of dividend or the total income of the paying company.

4. (a) **Compute the customs duty payable by an importer of a machine with reference to the following particulars:**

Particulars	US \$
Ex-factory price of the exporter	5,000
Transport charges from the exporter's factory to port of shipment	250
Handling charges for loading in the ship	25

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Buying commission paid by the importer	20
Ocean freight from exporting port to India	500
Insurance charges	Not ascertainable

Exchange rate to be considered. 1 \$ = `60.

Assume basic customs duty rate at 10%. Excise duty of similar goods manufactured in India is 12%. Ignore Cess. 8

- (b) Mr. Kalam is entitled to salary of `50,000 per month. He is given an option by his employer either to choose house rent allowance or rent free accommodation owned by the company. The HRA would be `7,500 per month though he has to pay actual monthly rent of `10,000. He is employed in the city of Jaipur.

Compute the most beneficial option which the assessee should exercise, based on net take-home cash benefits. 8

Answer:

4. (a)

Computation of Customs Duty

Particulars	Amount
Ex-factory price of the exporter	US \$ 5,000
Transport charges from the exporter's factory to port of shipment	US \$ 250
Handling charges for loading in the ship	US \$ 25
F.O.B. value	US \$ 5,275
Ocean freight from exporting port to India	US \$ 500
Insurance charges 1.125% of F.O.B. value	US \$ 59
C.I.F. value	US \$ 5,834
C.I.F. value in Indian Rupees @ `60 per \$	` 3,50,040
Landing charges @ 1% of C.I.F. value	` 3,500
Assessable value	` 3,53,540
Basic customs duty @ 10%	` 35,354
Value after BCD	` 3,88,894
CV Duty equivalent to Indian excise duty (12%)	` 46,667
Total customs duty (` 35,354 + ` 46,667)	` 82,021

Notes:

1. Insurance charges and landing charges have been computed at 1.125% of FOB value and 1% of CIF value respectively [Rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007]
2. Buying commission is not included in the assessable value. [Rule 10(i)(a)(i) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

4. (b)

Computation of Total Income of Mr. Kalam under both the options

Particulars	Option- 1	Option- 2
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		HRA	Rent-free accommodation
Basic salary		6,00,000	6,00,000
Rent-free accommodation @ 15% of salary			90,000
House rent allowance	90,000		
Less: Exemption U/s.10(13A)			
40 % of basic salary `2,40,000			
Actual HRA `90,000			
Rent paid less 10% of salary			
`1,20,000 minus `60,000 = `60,000			
Least of the above is exempt	60,000		
		30,000	
Income from salaries		6,30,000	6,90,000
Tax on total income		52,530	64,890
Cash flow statement:			
Salary		6,00,000	6,00,000
HRA		90,000	
		6,90,000	6,00,000
Less: Rent paid		1,20,000	
		5,70,000	6,00,000
Less: Income tax liability		52,530	64,890
Net inflow		5,17,470	5,35,110
Thus, rent free accommodation will be beneficial to the employee.			

5. (a) (i) Mr. Thomas provides taxable service which are exported. He claimed rebate of service tax paid on input services used in providing the services which were exported by him in July, 2015. The Assistant Commissioner of Central Excise has denied the claim of Mr. Thomas and the disallowance was confirmed by Commissioner (Appeals).
Does Mr. Thomas have the right to file an appeal with CESTAT, against the order of Commissioner (Appeals)? Your answer must be with reference to the amendment made by the Finance Act, 2015. 4
- (ii) State the 'due date' of return under the Central Excise Act/Rules in respect of the following cases: 4
- (A) A manufacturing company not eligible for SSI concession.
 (B) Manufacturing company eligible for SSI concession even if it does not avail the concession.
 (C) Half yearly return, in the case of persons liable to pay service tax.
 (D) Quarterly return of CENVAT-able invoices issued by registered dealers.
- (b) (i) In 2010 Brijesh borrowed `15 lakhs at 15% interest per annum from Ashok for his business purpose. This loan has not been repaid so far by Brijesh. His average bank balance in current account was around `7 lakhs on which the bank was not paying

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him any interest. On 1st June, 2014 Brijesh's wife, Tina borrowed from him ₹7.50 lakhs repayable on demand at 7.5% interest per annum. She lent this money and received interest @ 18% p.a. In course of assessment of Brijesh, the Assessing Officer disallowed 50% of this interest paid to Ashok on the ground that the loan to the extent of 50% has been diverted for non-business purpose i.e. for lending to wife. Further, interest earned by Tina by advancing ₹7.50 lakhs was included in the hands of Brijesh by invoking section 64(1)(iv).

Examine the correctness of the actions of the Assessing Officer.

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(ii) ABN Bank Ltd. is incorporated in Australia and it carries on banking business. It has branches in different countries including India. During the Financial Year 2015-16, the Indian branch of the bank paid interest of ₹25 lakhs and ₹10 lakhs to its head office in Australia and the branch office in London.

Explain with reasons whether interest so paid shall be liable to tax in India in the hands of HO and London branch.

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Answer:

5. (a) (i)

Section 35EE of the Central Excise Act says that in respect of orders passed by Commissioner (Appeals) relating to transit loss, processing loss, rebate of duty or export without payment of duty, a revision application has to be filed with the revision authority.

As per section 86 of the Finance Act, 1994 an appeal can be made to CESTAT against the order of Commissioner (Appeals). However, section 35B of the Central Excise Act in line with the provision of section 35EE bars an appeal to CESTAT in respect of transit loss, processing loss, rebate of duty on export without payment of duty. There was no such restriction in section 86 under service tax.

With effect from 14.05.2015, the Finance Act, 2015 has amended section 86 of the Finance Act, 1994. It prescribes that the remedy against the order passed by Commissioner (Appeals) in a matter involving rebate of service tax on input services or rebate of duty paid on inputs, used in providing the service which has exported, shall be governed by section 35EE of the Central Excise Act, 1944.

In view of the above, Mr. Thomas cannot file appeal with CESTAT against the order of Commissioner (Appeals) who denied service tax rebate. Mr. Thomas has to file revision application with the revision authority (Central Government) under section 35EE of the Central Excise Act, 1944.

5. (a) (ii)

- (A) Monthly return in ER – 1 must be filed on or before 10th of the following month.
- (B) Quarterly return in ER-3 on or before 10th of the next month following the quarter.
- (C) Within 25 days from the close of financial year or half year, as the case may be in ST-3.
- (D) By 15th day of the following month after the quarter by registered dealers of CENVATable invoices issued.

5. (b) (i) Disallowance of 50% of interest on borrowed capital

As per section 36(1)(iii) interest on borrowed capital is allowed as deduction, if the borrowed capital is used for purchase of business or profession of the assessee.

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In this case Brijesh had borrowed `15 lacs from Ashok for his business purpose in 2010. He has lent ` 7.50 lacs to his wife in June 2014. There is no nexus between the amount borrowed by Brijesh in 2010 and the amount lent by him to his wife in 2014. There is no evidence to prove that the loan obtained by Brijesh in 2010 remained unutilised for his business purpose and he lent ` 7.50 lacs out of unutilised borrowing made by him. In absence of such nexus, no part of interest paid by Brijesh to Ashok can be disallowed by the Assessing Officer.

Application of Clubbing provisions of section 64(1)(iv)

Section 64(1)(iv) provides that where an asset is transferred by an individual to his spouse, otherwise than for adequate consideration or not in connection with an agreement to live apart, income arising from such transferred asset shall be included in the total income of the individual.

Thus, clubbing provisions get attracted only where an asset is transferred by an individual to his spouse without adequate consideration. In this case Brijesh has paid loan to his wife. Loan presupposes repayment from the borrower. There was no transfer of asset by Brijesh to his wife. Hence interest earned by Brijesh's wife cannot be clubbed with the income of Brijesh. Such interest is to be taxed in the hands of Brijesh's wife. Therefore, both the actions of Assessing Officer are incorrect.

5. (b)(ii)

As per Explanation to section 9(1)(v) inserted by the Finance Act 2015 with effect from assessment year 2016-17, in the case of a Non Resident engaged in the business of banking, any interest payable by the Permanent Establishment in India of Non Resident to Head Office or any Permanent Establishment or any other part such Non Resident outside India shall be deemed to accrue or arise in India. Such interest shall be taxable in India in addition to any income attributable to the PE in India.

Indian Branch of ABN Bank Ltd, Australia is a Permanent Establishment in India. In view of the above provision Head Office of ABN Bank Ltd & London Branch of ABN Bank Ltd are deemed to be persons separate and independent of ABN Bank Ltd.

Therefore, Head Office of ABN Bank Ltd & London Branch of ABN Bank Ltd is liable to tax in India in respect of interest received from Indian Branch.

6. **Ind Bharat Ltd. is engaged in manufacturing of textiles. Its Statement of Profit & Loss shows a Net Profit of `108 lakhs for the year ended 31.03.2016, after debiting or crediting the following items:** **16**

(i) **Depreciation debited as per SLM basis ` 10 lakhs.**

(ii) **Normal depreciation allowable `21 lakhs. The company has made addition to machinery, a new twisting machine on 12th June, 2015 of `15 lakhs. The new machine was put to use on 30th June, 2015.**

(iii) **The company made cash payment for purchases on 05.06.2015 (bank holiday) ` 2,00,000.**

(iv) **A bad debt write off in Financial Year 2012-13 of `5,00,000 was allowed in the assessment. `2,00,000 was recovered this year and is credited to general reserve.**

(v) **Cash payment of ` 80,000 to a transporter on 04.06.2015 and who furnished his PAN.**

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- (vi) Sales tax of ₹ 1,50,000 for the Financial Year 2014-15 was paid on 10.02.2016.
- (vii) Rent paid ₹ 2,40,000 inclusive of service tax of ₹ 28,000. Tax was not deducted on the service tax on rent paid.
- (viii) Expenditure towards alteration of Memorandum of Association for increase in authorized share capital ₹ 1 lakh.
- (ix) Legal expenses for issue of bonus shares ₹ 5,00,000.
- (x) Donation paid to a political party ₹ 4,50,000 by cheque and ₹ 2,70,000 by cash.
- (xi) Purchase of raw material from a company in which the directors are interested for ₹ 32,00,000 and the market value of the goods is ₹ 30 lakhs.
- (xii) Expenditure incurred towards complying with Corporate Social Responsibility obligation under the Companies Act, 1956 ₹ 3 lakhs.

Compute the total income and tax payable by the company for the Assessment Year 2016-17. Ignore MAT provisions.

Answer:

6.

Computation of total income and tax payable of Ind Bharat Ltd For the Assessment year 2016-17

Particulars	₹ in lakhs
Net Profit as per Profit and Loss Account	108.00
Add: Amount debited to Profit & Loss Account but not allowed and other amounts	
Depreciation as per SLM method	10.00
Cash payment for purchases on bank holiday - allowed
Bad debt recovered during the year credited to general reserve is chargeable to tax as the write off was allowed in the assessment earlier	2.00
Cash payment to transporter is liable for disallowance since the payment exceeds ₹ 35,000	0.80
TDS on rent payment excluding service tax is as per Circular No.1/2014 dated 13.01.2014. Hence no disallowance
Expenses in connection with alternation of Memorandum of Association for enhancing authorized capital is not deductible. [Punjab State Industrial Development Corpn Ltd v. CIT 225 ITR 792 (SC)]	1.00
Donation to political party considered under section 80GGB	7.20
Expenditure being excessive or unreasonable compared to fair market value to be disallowed under section 40A(2)(a)	1.50
Expenditure incurred towards CSR, not allowable in view of section 37(1)	3.00
	133.50

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Less: Deductions allowed		
Normal Depreciation	21	
Additional depreciation @ 20% on `15 lakhs	3	
Sales tax paid is deductible on payment basis under section 43B. Since it is debited on payment no adjustment is required	
Legal expenses for issue of bonus shares is deductible revenue expenditure as held in CIT v. General Insurance Corporation 240 ITR 139. Since the amount is already debited hence no adjustment is required	
		24.00
Business income/ Gross Total Income		109.50
Less: Deduction under Chapter VI-A		
Donation to political party by cash not allowed.		
Donation to political party by cheque allowed U/s.80GGB		4.50
Total Income		105.50
Income tax liability @ 30%	31,65,000	
Surcharge @ 7% is applicable as the income exceeds `100 lakhs	2,21,550	
Cess @ 3%	1,01,597	
Total tax liability	34,88,147	

7. (a) (i) An advocate rendered service to a private limited company engaged in business and raised a bill with the following amounts: 4
- (I) Legal fees `50,000;
- (II) Reimbursement of out of pocket expenses like travelling, photocopying, typing etc. ` 5,000;
- (III) Court fee paid on behalf of company ` 10,000.
- Compute the service tax and Swachh Bharat Cess liability in respect of the above.
- (ii) Do you agree that the circulars issued by the Central Board of Excise and Customs (CBEC) contrary to the judgments of Supreme Court and High Courts are not binding on the authorities under the respective statutes? 4
- (b) A manufacturer availed CENVAT credit on service tax paid on transportation bills for transporting its final products from its factory to the premises of its customers. Such credit was disallowed by the department on the ground that such freight related to transportation beyond the place of removal. The manufacturer contends that since as per terms of contract the ownership of the products is transferred to the customers only after reaching the customers' premises, such freight related to transportation upto the place of removal and therefore the credit should be allowable. Discuss whether the contention of the manufacturer is correct. 8

Answer:

7. (a) (i) The advocate is not liable to service tax. The company is liable to pay service tax on reverse charge.

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The company is liable to pay service tax of ₹7,700. [14% of ₹55,000]

Swachh Bharat Cess of ₹275 (0.5% of ₹55,000).

Service tax is payable on out of pocket expenses also as per rule 5 of Service Tax Valuation Rules; however court fee is paid on behalf of client as pure agent. Hence on that amount, the client is not liable to pay service tax.

(a) (ii) I do not agree with the Statement.

The Supreme Court in Ratan Melting & Wire Industries v. CCE (2008) 231 ELT 22 has held that the Circulars and Instructions of the Board i.e. CBEC is binding in law on the authorities under respective statutes. However, when the Supreme Court or the High Court declares the law on the question arising for consideration it would not be appropriate for the court to direct that the circulars be given precedence and not the view expressed by the courts.

The CBEC in Circular No.1006 dated 21.09.2015 has instructed its officers not to follow the Board's Circular which are contrary to the judgments of Hon'ble Supreme Court and High Court where Board has decided not to file an appeal on merit as such circulars become non-est in law.

7. (b) As per Rule 2(l) of the CENVAT Credit Rules, 2004 (CCR), input service in relation to a manufacturer inter alia includes services for clearance of final products upto the place of removal. As per section 4(3)(c) of the Central Excise Act [as also Rule 2(qa) of CCR], place of removal means the place from where the final products are removed by way of sale to customers. Thus in case of ex-factory sales, the place of removal is the factory, while in case of ex-depot sale, the place of removal is the depot. In the instant case, the issue is what would be the place of removal where the sales take place only after reaching the customer's premises

Since the law does not specify this aspect, the issue had come up for interpretation before courts on several occasions and gave rise to diverse conclusions.

The current legal position can be summarized as follows:

- (i) CBEC Circular dated 23-08-2007 considered the issue and took a view that where the contract with the customer is on F.O.R. destination basis, whereby the ownership and risks of the goods are transferred to the customer only after reaching the customer's premises, and the freight is included in the price charged to the customer, then the place of removal would be the customer's premises and the freight incurred till reaching the customer's premises shall be entitled to CENVAT credit as input services.
- (ii) The aforesaid view was relied upon and supported in 2009 by the Punjab & Haryana High Court in Ambuja Cements Ltd. Vs Union of India. Several other courts have also supported this view. The CBEC vide subsequent Circular dated 20-01-2014, took a more focused view stating that the moot consideration would be whether sale as per the Sale of Goods Act took place after reaching the customer's premises. The position was reiterated in 2015 by the Supreme Court in Commissioner Vs Roofit Industries Ltd.

In view of the above, in the instant case, the place of removal should be the customer's premises and service tax paid on freight incurred upto the buyer's premises should be eligible for CENVAT credit. Hence the contention of the manufacturer is correct.

8. (a) **'Advance Authorisation' is not transferable, while material imported under DFIA (Duty Free Import Authorisation) will be transferable after fulfillment of export obligation. Is this**

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true? Write a brief note to the management about Advance Authorisation and DFIA in this context. 8

- (b) (i) Ms. Mala, a resident (aged 56) derived income of ₹15,00,000 from a business in a foreign country during the Financial Year 2015-16. She paid flat tax at 30% on the above said income. She has rental income of ₹12,00,000 from a let out property at Mumbai for the year. Interest on moneys borrowed for the acquisition of house property at Mumbai amounts to ₹90,000. The Government of India does not have any agreement with the foreign country for avoidance of double taxation. Compute the tax payable by Ms. Mala for the Assessment Year 2016-17. 4
- (ii) ABC Ltd. an Indian company exported goods to XY Inc. for ₹29 lakhs. XY Inc. is located in a Notified Jurisdictional Area (NJA). ABC Ltd. charged the following for the below said countries to whom similar goods of identical quantity and trade terms were sold:

Company Name	Location	Value of export
EF Inc.	USA	30 lakhs
RLLP	UK	36 lakhs

Assume the above said companies are not associated enterprises of ABC Ltd., and that permissible variation notified by Central Government for such class of international transaction is 3% of the transaction price. Examine the tax implications under section 94A of the Income- tax Act, 1961 in respect of sale of goods to XY Inc. 4

Answer:

8. (a) **Advance Authorisation:** It is issued to allow duty free import of input, which is physically incorporated in export product (making normal allowance for wastage). In addition, fuel, oil, catalyst which is consumed / utilised in the process of production of export product, may also be allowed. Import of mandatory spares which are required to be exported / supplied with the resultant product shall be permitted duty free to the extent of 10% of CIF value of Authorisation. Imports under Advance Authorisation are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-dumping Duty, Safeguard Duty and Transition Product Specific Safeguard Duty, wherever applicable.

Advance Authorisation can be issued either to a manufacturer exporter or merchant exporter tied to supporting manufacturer. Advance Authorisation for Annual Requirement shall only be issued for items notified in Standard Input Output Norms (SION). Advance Authorisation and / or material imported under Advance Authorisation shall be subject to 'Actual User' condition. The same shall not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose of product manufactured out of duty free input once export obligation is completed.

Exporters having past export performance (in at least preceding two financial years) shall be entitled for Advance Authorisation for Annual requirement. Entitlement in terms of CIF value of imports shall be upto 300% of the FOB value of physical export and / or

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FOR value of deemed export in preceding financial year or ` 1 crore, whichever is higher.

Minimum value addition required to be achieved under Advance Authorisation is 15%, except notified products, Gems & Jewellery Sector and physical exports for which payments are not received in freely convertible currency. In case of Tea, minimum value addition shall be 50%.

Duty Free Import Authorisation Scheme (DFIA): Duty Free Import Authorisation is issued to allow duty free import of inputs. In addition, import of oil and catalyst which is consumed / utilised in the process of production of export product, may also be allowed.

Duty Free Import Authorisation shall be exempted only from payment of Basic Customs Duty. Additional customs duty/excise duty, being not exempt, shall be adjusted as CENVAT credit as per DoR rules.

Duty Free Import Authorisation shall be issued on post export basis for products for which Standard Input Output Norms (SION) have been notified. Merchant Exporter shall be required to mention name and address of supporting manufacturer of the export product on the export document viz. Shipping Bill / Airway Bill / Bill of Export / ARE-1 / ARE-3. Application is to be filed with concerned Regional Authority before effecting export under Duty Free Import Authorisation.

Minimum value addition of 20% shall be required to be achieved. For items where higher value addition has been prescribed under Advance Authorisation in Appendix 4C of AANF, the same value addition shall be applicable for Duty Free Import Authorisation also.

After completion of exports and realization of proceeds, request for issuance of transferable Duty Free Import Authorisation may be made to concerned Regional Authority within a period of twelve months from the date of export or six months (or additional time allowed by RBI for realization) from the date of realization of export proceeds, whichever is later. No Duty Free Import Authorisation shall be issued for an export product where SION prescribes 'Actual User' condition for any input. Regional Authority shall issue transferable DFIA with a validity of 12 months from the date of issue. No further revalidation shall be granted by Regional Authority.

8(b)(i)

Ms. Mala

Computation of Total Income and tax payable after relief U/s 91 for the A.Y. 2016-17

Particulars	
Indian income	

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Income from house property	12,00,000
Less: Deduction U/s 24 @ 30%	3,60,000
	8,40,000
Less: Interest on money borrowed	90,000
Indian Income	7,50,000
Income earned outside India	15,00,000
Total Income	22,50,000
Income tax on `22,50,000	5,00,0000
Add: Education cess @ 3%	15,000
Total tax liability before Relief	5,15,000
Relief U/s 91	
(a) Average rate at the total income is charged to tax	
$\text{`5,15,000} \times 100 / 22,50,000 = 22.89\%$	
(b) Average rate at which income earned outside India is charged to tax in that country @ 25%	
Less: Relief U/s 91 @ 22.89% being the lower of two rates (a) or (b)	
$\text{`15,00,000} \times 22.89\% =$	3,43,350
Balance tax payable after relief U/s 91	1,71,650

8(b)(ii)

When an assessee transacts with persons residing in Notified Jurisdictional Area (NJA), the transactions would be regarded as international transactions and all the provisions of transfer pricing would apply.

The benefit of allowance of a specified percentage of variation in the price will not be applicable. The variation of 3% would not be available since the transaction was carried out with XY Inc. residing in NJA.

Two parties viz. EF inc. and RR LLP are not located in NJA and are not associated enterprises of ABC Ltd.

The average price of the similar transaction carried out with persons other than the associated enterprise (XY Inc) is `33 lakhs ($\text{`30 lakhs} + 36 \text{ lakhs} / 2$).

The difference of `4 lakhs is to be added to the income of ABC Ltd as per section 94A. The assessee will not be eligible for any relief, deduction or exemption under any provision in respect of the income so added.