Paper-16 - TAX MANAGEMENT AND PRACTICE

Full Marks: 100

Section A
Answer all Questions

1. Answer any three Question [3x5=15]

(a) Whether the machine which is not assimilated in permanent structure would be considered to be moveable so as to be dutiable under the Central Excise Act? [5]

Answer:

Facts of the case:

The asseseee was engaged in the manufacture of asphalt batch mix and drum mix/ hot mix plant by assembling and installing its parts and components. The Revenue contended that the said plant would be considered to be moveable so as to be dutiable under the Central Excise Act, 1944.

Decision of the case:

The Court in the case of CCE vs. solid & correct Engineering Works and Ors 2010 (252) ELT 481 (SC) opined that an attachment where the necessary intent of making the same permanent is absent cannot constitute permanent fixing, embedding or attachment in the sense that would make the machine a part and parcel of the earth permanently.

The Court observed that as per the assessee, the machine was fixed by nuts and bolts to a foundation not because the intention was to permanently attach it to the earth, but because a foundation was necessary to provide a wobble free operation to the machine.

Hence, the Supreme Court held that the plants in question were not immovable property so as to be immune from the levy of excise duty. Consequently, duty would be levied on them.

(b) In case of a specific entry viz-a-viz a residuary entry, which one should be preferred for classification purpose? [5]

Answer:

CCE vs. Wockhardt Life Sciences Ltd. 2012 (277) E.L. T. 299 (S.C.)

Facts of the Case:

Wockhardt Life Sciences Ltd. was the manufacturer of Povidone Iodine Cleansing Solution USP and Wokadine Surgical Scrub. The only difference between these two products was that Wokadine was a branded product whereas Povidone Iodine Cleansing Solution was a generic name.

The Revenue contended that the said products were not medicament in terms of Chapter Note 2(i) of the Tariff Act as it neither had "Prophylactic" nor "Therapeutic" usage. The Revenue said that in order to qualify as a medicament, the goods must be capable of curing or preventing some disease or aliment. Therefore, the said products cannot be classified under Chapter Heading 3003 of Tariff Act. They submitted that the product in dispute, namely Povidone Iodine

Solution or its patent and proprietary equivalent Wokadine surgical scrub, was essentially used as a medicated detergent.

The assessee stated that the Revenue, in their show cause notices, had admitted that the products in issue were antiseptic and used by surgeons for cleaning or de-germing their hands and scrubbing surface of skin of patient before operation. They further submitted that the products were medicament in which some carriers were added and therefore, it would fall under chapter sub-heading 3003 and not under chapter 34.

Point of Dispute:

The assessee's claim before the authorities and also before the Tribunal was that the aforesaid products were medicaments and, therefore, required to be classified under Chapter sub-heading 3003 of the Tariff, whereas the Revenue's stand was that the products in question are detergents and, therefore, to be classified under chapter subheading 3402.90.

Decision of the Case:

The Supreme Court observed that it is the specific case of the assessee that the products in question are primarily used for external treatment of the human-beings for the purpose of the prevention of the disease. This is not disputed by the Revenue. Revenue's stand is that since the products in question are primarily used as detergents/cleansing preparation, they cannot be brought under the definition of medicaments. Medicaments are products which can be used either for therapeutic or prophylactic usage. The Court said that since the product in question is basically and primarily used for the prophylactic uses, the Tribunal was justified in coming to a conclusion that the product was a medicament. The miniscule quantity of the prophylactic ingredient is not a relevant factor.

The Court said that the combined factor that requires to be taken note of for the purpose the classification of the goods are the composition, the product literature, the label, the character of the product and the use to which the product is put. In the instant case, it is not is dispute that this is used by the surgeons for the purpose of cleaning or de-germing their hands and scrubbing the surface of the skin of the patient that portion is operated upon. The purpose is to prevent the infection or disease. Therefore, the product in question can be safely classified as "medicament" which would fall under chapter sub-heading 3003 which is a specific entry and not under chapter sub-heading 3402.90 which is a residuary entry.

(c) The assessee claimed the CENVAT credit on the duty paid on capital goods which were later destroyed by fire. The Insurance Company reimbursed the amount inclusive of excise duty. Is the CENVAT credit availed by the assessee required to be reversed? [5]

Answer:

Facts of the case:

The assessee purchased some capital goods and paid the excise duty on it. Since, said capital goods were used in the manufacture of excisable goods, he claimed the CENVAT credit of the excise duty paid on it. However, after three years the said capital goods (which were insured) were destroyed by fire. The Insurance Company reimbursed the amount to the assessee, which included the excise duty, which the assessee had paid on the capital goods. Excise Department demanded the reversal of the CENVAT credit by the assessee on the ground that the assessee had availed a double benefit.

Decision of the case:

The High Court in the case of CCE vs. Tata Advanced Materials Ltd. 2011 (271) E.L.T. 62 (Kar.) noted that the as per CENVAT Credit Rules, 2004, CENVAT credit taken irregularly stands cancelled and CENVAT credit utilized irregularly has to be paid for.

In the instant case, the Insurance Company, in terms of the policy, had compensated the assessee. The High Court observed that merely because the Insurance Company had paid the assessee the value of goods including the excise duty paid, it would not render the availment of the CENVAT credit wrong or irregular. It was not a case of double benefit as contended by the Department.

The High Court therefore answered the substantial question of law in favour of the assessee.

(d) Whether non-filing of appeal for some assessment years is a bar in filing appeal for other assessment years? [5]

Answer:

The Supreme Court in the case of CIT vs. J. K. Charitable Trust 2008 (232) ELT 769 (SC) pronounced that there may be certain cases where because of the small amount of revenue involved, no appeal is filed. Policy decisions may be taken not to prefer appeal where the revenue involved is below a certain amount. Similarly, where the effect of the decision is revenue neutral, there may not be any need for preferring the appeal. All these certainly provide the foundation for making a departure.

In the case of *C.K. Gangadharan's vs. CIT 2008 (228) ELT 497 (SC),* it was held that merely because in some cases revenue has not preferred an appeal, that does not operate as a bar for the Revenue to prefer an appeal in another case where there is just cause for doing so, or it is in public interest to do so, or for a pronouncement by the higher court when divergent views are expressed by the different High Courts. The Court further provided that if the assessee takes the stand that the Revenue acted mala fide in not preferring appeal in one case and filing the appeal in other case, it has to establish mala fides.

However, in the given case, the Apex Court noted that it was accepted by the learned counsel for the appellant (Revenue) that the fact situation in all the assessment years was same. Under the circumstances, the Court concluded that since the fact situation had not changed, Revenue could not prefer an appeal and thus, the court dismissed the appeal filed by the Department.

2. Answer any two Questions [2x5=10]

(a) Explain the powers of the Central Government to increase the duty of excise under Section 3 of the Central Excise Tariff Act, 1985 in following cases:
(i) Where the rate of duty specified in First and Second Schedule is nil; and
(ii) Where the rate of duty is 14%. [5]

Answer:

Section 3 of the Central Excise Act, 1944, contains the provisions for levy of excise duty. There shall be levied and collected in such manner as may be prescribed,-

I. a duty of excise to be called as the Central Value Added Tax (CENVAT),-
   (i) on all excisable goods (excluding the goods produced or manufactured in Special

Economic Zones),

(ii) which are produced or manufactured in India,

(iii) as, and at the rates, set forth in the First Schedule to the Central Excise Tariff Act, 1985;

II. a special duty of excise, in addition to the duty of excise specified in clause (a) above,-

(i) on excisable goods specified in the Second Schedule to the Central Excise Tariff Act, 1985,

(ii) which are produced or manufactured in India (excluding goods produced or manufactured in Special Economic Zones),

(iii) as, and at the rates, set forth in the said Second Schedule.

Conclusion:

(i) The rate can be increased up to 50% ad valorem;

(ii) The rate can be increased upto 28%.

(b) With reference to Section 4 of Central Excise Act, 1944, briefly explain the meaning of the following:

(1) Assessee

(2) Related person

(3) Place of Removal

(4) Transaction value **[5]**

Answer:

The meaning of the aforesaid terms is discussed hereunder –

(1) Assessee [Section 4(3)(a)]: Assessee means the person who is liable to pay the duty of excise under this Act and includes his agent.

(2) Related Person [Section 4(3)(b)]: Persons shall be deemed to be related if –

(i) They are inter-connected undertakings; or

(ii) They are relatives; or

(iii) Amongst them the buyer is a relative and a distributor of the assessee, or a sub-distributor of such distributor; or

(iv) They are so associated that they have interest, directly or indirectly, in business of each other.

Note: Relative shall have the meaning assigned to it in Clause (41) of section 2 of the Companies Act, 1956.

(3) Place of Removal [Section 4(3)(c)]: Place of removal means –

(i) A factory or any other place or premise of production or manufacture of the excisable goods;

(ii) A warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited after their clearance for factory;

(iii) A depot, premises of a consignment agent or any other place or premises from where excisable goods are to be sold after their clearance from factory;
from where such goods are removed.
Time of removal in respect of the excisable goods removed from the place of removal referred to in i.e., (depot, premises of consignment agent or any other place) shall be deemed to be the time at which such goods are cleared from the factory.

(4) Transaction Value [Section 4(3)(d)]: As per Section 4(3)(d), transaction value has following ingredients –
   (a) Transaction value is the price actually paid or payable for the goods when sold.
   (b) It includes, in addition to the amount charged as price, any amount that the buyer is liable to pay to the assessee or to any other person on behalf of the assessee.
   (c) Such amount is payable by reason of or in connection with sale.
   (d) Such amount is payable at the time of sale or at any other time.
   (e) It includes any amount charged for, or to make provision for the following –
      (i) Advertising or Publicity;
      (ii) Marketing, selling and organization expenses;
      (iii) Storage;
      (iv) Outward handling;
      (v) Servicing;
      (vi) Warranty;
      (vii) Commission;
      (viii) Any other matter.
   (f) It does not include the amount of –
      (i) Excise duty;
      (ii) Sale tax;
      (iii) Any other taxes actually paid or payable on such goods.

(c) Compute assessable value for Central Excise purposes of Product A whose details are given below. Out of 1,000 units manufactured, 800 units of product 'A' have been cleared to a sister unit for further production of excisable goods on assessee's behalf; the balance 200 units are lying in stock –

(Amount in ₹)

Direct material consumed (inclusive of excise duty @ 8.24%)	**2,16,480**
Direct labour & direct expenses	**1,80,000**
Works overheads (inclusive of Quality Control costs of ₹25,000 and Research & Development Costs of ₹75,000)	**1,60,000**
Administrative Overheads (60% related to production)	**1,50,000**
Primary as well as secondary packing cost	**40,000**
Net value of non-excisable inputs received free of cost from sister unit for manufacture of A	**80,000**
Value of moulds, dies, etc. received free of cost from sister unit for manufacture of A (25% of the value relates to current production)	**2,00,000**
Interest and financial charges	**86,000**
Abnormal losses (not included above)	**14,000**
VRS compensation to labour/employees (not included above)	**1,00,000**
Selling and Distribution Costs (including advertisement)	**36,000**
Realisable value of Scrap/Wastage	**10,000**

[5]

Answer:

Calculation of cost of production in terms of Rule 8 of Valuation Rules, 2000 (Amounts in ₹)

Direct material consumed	2,00,000
Direct labour & expenses	1,80,000
Works Overheads – includible	1,60,000
Administrative Overheads (₹1,50,000 x 60%)	90,000
Primary and secondary packing cost – includible	40,000

Inputs received free of cost from sister unit	80,000
Amortized cost of modules, dies, etc. received free of cost from sister unit	50,000
Interest and financial charges – not includible	NIL
Abnormal losses – not includible	NIL
VRS compensation to labour / employees	NIL
Selling and Distribution Costs – not includible	NIL
Realizable value of Scrap / Wastage – deductible from cost	-10,000
Cost of production of 1,000 units (as per CAS – 4)	7,90,000
Cost per unit	790
Add: 10% notional profit margin as per Rule 8	79
Assessable Value under Rule 8 (110% of cost of production) (per unit)	869
Assessable Value of 800 units cleared to sister unit	6,95,200

Working Notes:

(1) Cost of direct material consumed shall be net of excise duty, assuming that CENVAT credit of inputs has been availed i.e., ₹2,16,480 x 100 ÷ 108.24 = ₹2,00,000.

(2) Administrative overheads relatable to production only shall form part of 'cost'.

(3) Inputs received free of cost from sister unit form part of 'cost' for the purpose of Rule 8 as per CAS – 4 as their value is 'cost' of product A.

(4) Since 25% of the cost is related to current year's production, hence, 25% of the total value of moulds and dies, etc. is includible in the 'cost'.

(5) VRS compensation shall also not form part of 'cost' as it is non-recurring cost arising due to unusual or unexpected occurrence of events.

3. Answer all Questions [3x5 = 15]

(a) An importer provided the producer with a mould to be used in production of imported goods. The cost of mould is ₹5,00,000 which is expected to produce 25,000 pieces. The importer has imported 5,000 pieces in the first lot. Is it necessary to add the cost of mould in transaction value? If yes, what will be the amount to be added? The importer is expecting an increase in the rate of customs duty next month, so he has requested to the proper officer that if cost of mould is required to be added in transaction value, the full cost of mould, i.e., ₹5,00,000 may be added in the transaction value of first lot of 5,000 pieces itself. Is his demand valid in law? [5]

Answer:

If a buyer is providing any goods or services free of charge or at reduced cost for production and sale of export goods, then, the valuation and apportionment thereof shall be done as follows -

(1) In case of goods supplied free of charge or at reduced cost by the buyer:

(a) Valuation: If such goods were acquired by the buyer from an unrelated seller, the valuation shall be done at purchase price, however, if such goods were produced by the buyer or were acquired from a related seller, the value shall be its cost of production. However, if the goods had been used by the buyer-importer prior to such supply, then the value will be adjusted downward to arrive at a correct value.

(b) Apportionment: The value determined above shall be apportioned to the imported goods in a reasonable manner following the generally accepted principles of accounting. Based on the documentation provided by the importer and as per the option exercised by him, such value may be apportioned to the first shipment of import or to the goods produced upto the first shipment of import or to the entire anticipated production under the contract.

(2) In case of services like engineering, development, etc. undertaken outside India by the buyer:

(a) Valuation: In case such elements/services were acquired/ leased by the buyer, the value shall be the cost of purchase/lease. However, in case such elements/services are available publicly, only the cost of obtaining copies thereof shall be added.

(b) Apportionment: If the importer maintains records of foreign design center's cost attributable to the given product, the addition shall be made accordingly. However, if the cost of such design center is carried as a general over head instead of attribution/allocation to each product, such cost shall be apportioned to the imported goods on a unit-basis in the ratio of such total cost to the total production benefiting therefrom.

Conclusion: Hence, in the given case, the cost of mould will be added to transaction value.

Or

Distinguish between transit and transhipment of goods? Under what conditions do they enjoy exemption from duty under Customs Act, 1962? [5]

Answer:

Differences between transit and transhipment has been summarized in the table hereunder:-

Basis of difference	Transit	Transhipment
Statutory provision	(i) Section 53 of the Customs Act, 1962 provides for transit of goods.	(i) Section 54 of the Customs Act, 1962 provides for transhipment of goods.
Conveyance	(ii) In case of transit of goods, goods are allowed to remain on the same conveyance.	(ii) In the case of transhipment of goods, the conveyance changes i.e., the goods are unloaded from one conveyance and loaded in another conveyance.
Documentation	(iii) In case of transit, the record already made in the ship's/aircraft's manifest continues. The imported goods are shown in the manifest as the same bottom cargo. Thus, there is continuity in the records and there is no chance of the control over such transit goods being lost.	(iii) In transhipment of goods, continuity in the records is not maintained as the goods are transferred to another conveyance.

Conditions subject to which exemption allowed on transit/transhipment: The conditions under which exemption from duty is allowed on transit and transshipment of goods are –

(i) The goods should be mentioned in the import manifest.
(ii) The goods should be intended for transshipment or transit, as the case may be.
(iii) The goods should not be prohibited goods.
(iv) A bill/declaration of transshipment should be presented to the proper officer in prescribed form.
(v) The owner of the vessel or his agent should execute a bond with surety or security for the due completion of transshipment.
(vi) The containers or packages transshipped should be sealed with the Department's seal.

(b) Who are not eligible for composition scheme under the VAT regime? Discuss briefly. [5]

Answer:

Person not eligible for composition scheme:
The following dealers/ persons are not eligible for the composition scheme –

(i) Person making inter-state sales or purchases: a manufacturer or a dealer who makes –
- Inter-state sales: or
- Inter-state purchases

(ii) Importer/ exporter: a dealer who sells goods in the course of import into or export out of India.

(iii) Stock transfers outside India: a dealer transferring goods outside the State otherwise than by way of sale or for execution of works contract.

(iv) Person issuing VATable invoices: a dealer/ manufacturer who is issuing VATable invoices.

(v) Person having stock of inter-state goods: a dealer having stock of goods purchased from outside State.

(c) Explain the Powers of the registering authority to forfeit the security under the Central Sales Tax Act, 1956. [5]

Answer:

The authority granting the certificate of registration may by order and for good and sufficient cause forfeit the whole or any part of the security furnished by a dealer-

i. for realizing any amount of tax or penalty payable by the dealer,

ii. if the dealer is found to have misused any of the forms referred to in sub-section (2A) or to have failed to keep them in proper custody:

Provided that no order shall be passed under this sub-section without giving the dealer an opportunity of being heard.

4. Answer any two Question [2x5=10]

(a) M/s. P Ltd. received the following sums (exclusive of taxes). Compute its service tax liability (Ignore small service provider's exemption) –

(1) Commission from selling of various goods belonging to other parties : ₹7 lakh;
(2) Commission from acting as Clearing and Forwarding Agent : ₹4 lakh;
(3) Commission from acting as clearing agent : ₹6 lakh;
(4) Commission from acting as forwarding agent : ₹5 lakh;
(5) Margin earned from trading in shares : ₹2 lakh;
(6) Margin from trading in futures: ₹5.50 lakh; [5]

Answer:

Computation of service tax liability

(1) Commission from selling of various goods belonging to other parties : ₹7 lakh – Taxable;
(2) Commission from acting as Clearing and Forwarding Agent : ₹4 lakh – Taxable;

(3) Commission from acting as Clearing Agent : ₹6 lakh – Taxable;
(4) Commission from acting as Forwarding Agent : ₹5 lakh – Taxable;
(5) Margin earned from trading in shares : ₹2 lakh – Shares are securities and "goods" and trading in goods is a service covered within negative list u/s 66D(e) - Not Taxable;
(6) Margin from trading in futures : ₹5.50 lakh – Futures are securities and "goods" and trading in goods is a service covered within negative list u/s 66D(e) – Not taxable;

Taxable Value = 7 + 4+ 6 + 5 = ₹22 lakh; and service tax thereon @ 12.36% = ₹2,71,920.

(b) Calculate the value of taxable service of 'X' Transport Company engaged in the business of transport of goods by road. Give reasons for taxability or exemption of each item. No freight is received from any of the specified category of consignor / consignee. Suitable assumptions may be made wherever required. X does not avail CENVAT credit (₹):

1. Total freight charges received by 'X' during the year	**16,50,000**
2. Freight charges received for transporting fruits	**1,25,000**
3. Freight collected for transporting small consignment for persons who paid less than ₹ 750 for each consignment	**75,000**
4. Freight collected for transporting goods in small vehicles for persons who paid less than ₹ 1,500 per trip	**1,50,000**

[5]

Answer:

Computation of taxable value (assuming no small service provider exemption available) (₹)

Total freight charges received by 'X' during the year	16,50,000
Less: 1. Freight charges received for transporting fruits – Exempt	1,25,000
2. Freight collected for transporting small consignment for persons who paid less than ₹ 750 for each consignment – Exempt, as amount per consignment doesn't exceed ₹ 750	75,000
3. Freight collected for transporting goods in small vehicles for persons who paid less than ₹1,500 per trip – Exempt, as amount per trip doesn't exceed ₹1,500 (it may be noted that both are separate exemptions)	1,50,000
Taxable sum	13,00,000
Taxable value = 25% of taxable sum (as CENVAT Credit is not claimed)	3,25,000

(c) M/s. P. Ltd. received the following sums (exclusive of taxes). Compute its service tax liability (Ignore small service provider's exemption) –

(1) Manufacture of exempted excisable goods: ₹4 lakh;
(2) Manufacture of dutiable excisable goods: ₹5 lakh;
(3) Job-work on goods on which duty is paid by principal manufacturer: ₹4 lakh;
(4) Job-work on goods on which on duty is payable by principal manufacturer due to exemption: ₹16 lakh;
(5) Manufacture of alcohol/wine: ₹11 lakh
(6) Job-work in printing: ₹3 lakh;
(7) Job-work of textile processing: ₹2 lakh. **[5]**

Answer:

Computation of service tax liability

(1) Manufacture of exempted excisable goods: ₹4 lakh – Covered within negative list u/s 66D(f)
(2) Manufacture of dutiable excisable goods: ₹5 lakh – Covered within negative list u/s 66D(f);

(3) Job-work on goods on which duty is paid by principal manufacturer: ₹4 lakh – Exempt
(4) Job-work on goods on which no duty is payable by principal manufacturer due to exemption: ₹16 lakh – Taxable, as no appropriate duty paid by principal manufacturer;
(5) Manufacture of alcohol / wine: ₹ 11 lakh – Covered within negative list u/s 66D(f)
(6) Job-work of printing: ₹ 3 lakh – Exempt;
(7) Job-work of textile processing: ₹ 2 lakh – Exempt.

Taxable Value = ₹ 16 lakh; and service tax thereon @ 12.36% = ₹ 1,97,760

Section B
Answer all the Questions

5. Answer any three Questions [3x5=15]

(a) Whether the Tribunal was justified in deleting the addition of an amount represented rate difference payment in the purchase of milk paid by the assessee even though the said payment was paid at the end of the previous year? [5]

Answer:

The assessee-societies were federal milk societies and their members were primary milk co-operative societies. The business of the assessee was to purchase milk from its members and other producers of milk at the rate, i.e., similar to both the members and outside milk producers and sell the milk to various parties. The rate of purchase price was fixed by the board of the assessee-societies. The purchase price was linked to the fat content of milk and also varied according to seasons. For instance, the rate for purchase of milk in the lean season was different from the flush seasons. The assessee-societies fixed the rate of processing of milk at the beginning of the year on the basis of the price declared by the Government of Maharashtra and the price which other buyers paid to the vendors. These rates were revised from time to time. It was made always clear that the rates were provisional and the final milk rate difference was determined in the month of March every year and the difference was paid subsequently in the following year. The primary milk society also in turn made payment of the final rate difference to the individual milk producers around Diwali. The assessees claimed deduction of the final rate difference. The Assessing Officer refused to exclude the final rate difference paid from the total amount paid by the assessee. The Commissioner (Appeals) upheld the order. The Tribunal allowed the appeal and allowed deductions of the final rate.

The High Court in the case of CIT vs. Solapur Dist. Co-Op. Milk Producers and Process Union Ltd. (2009) 315 ITR 304 (Bom.) held that the amount to be paid was not out of the profits ascertained at the annual general meeting. It was not paid to all shareholders. The amount which was the subject-matter was paid to members who supplied milk and in some case also to non-members. The payment was for the quantity of milk supplied and in terms of the quality supplied. The commercial expediency for payment of this price was the market conditions and the need to procure more milk from the members and non-members to the assessee. Therefore, the amount paid could not be said to be dividend to the members or shareholders or payment in the form of bonus as bonus also had to be paid from the accrued profits. It was deductible.

(b) Is the rental income from the sub-letting of a building taken on lease taxable under the head 'income from other sources' or 'income from house property' or 'income from business? [5]

Answer:

Fact of the case

A lease deed was executed between the owners of a property partly constructed and the assessee-trust. The trust took on lease the said property at a monthly lease rent of ₹4,000. The beneficiaries were dependent relatives of the co-owners of the property. The trust, after completing construction work of the balance portion of the building, rented out the whole premises and the rental income was shown as income from property and originally assessed as such. Subsequently, by virtue of action under section 263 of the Income-tax Act, 1961, the aside the order. After enquiry the Assessing Officer assessed the income as business income but the CIT(A) on appeal held that it was income from other sources. The Tribunal held that the amount was assessable as business income.

Decision of the case

The High Court in the case of Harikrishna Family Trust vs. CIT (2008) 306 ITR 303 (Guj.) held that the assessee -trust was merely a lessee of the property and had sub-let the property after completing the partly constructed building which the assessee-trust had taken on lease. In the circumstances, in the absence of the assessee-trust being the owner of the property, there could be no question of taxing the rental income from the said property in the hands of the assessee-trust under the head "Income from house property". The assessee-trust at no point of time indulged in any systematic activity so as to treat the assessee as having indulged in business or a venture in the nature of business. On facts the income was liable to be taxed as "Income from other sources".

(c) Can the actual sale consideration recorded in the agreement to sell of the asset and received by the assessee be substituted by the value as adopted by the District Valuation Officer under section 55A of the Act for the purpose of computing the capital gains chargeable to tax ?

[5]

Answer:

Fact of the case

The assessee declared income by way of capital gains arising from the sale of property. The Assessing Officer was of the view that the sale price disclosed in the agreement to sell was low and made a reference to the District Valuation Officer under section 55A for determining the fair market value of the property on the date of sale. The District Valuation Officer determined the value of the plot on the date of the sale and this was communicated to the assessee. The Tribunal accepted the stand of the Revenue that the actual sale consideration recorded in the agreement to sell should be substituted by the value arrived at by the District Valuation Officer under section 55A.

Decision of the case

The High Court in the case of Dev Kumar Jain vs. Income-tax Officer (2009) 309 ITR 240 (Del.) held that section 55A of the Income-tax Act, 1961, applies only where the Assessing Officer is required to ascertain the fair market value of a capital asset. Section 45(1A) stipulates that capital gains shall be computed by deducting from the full value of consideration received or accruing as a result of the transfer of the capital asset, the amount of expenditure incurred wholly and exclusively in connection with such transfer as also the cost of acquisition of the asset and the

cost of any improvement thereto. A combined reading of section 45(1A) and section 48 shows that when a sale of property takes place, the capital gains arising out of such a transfer has to be computed by looking at the full value of the consideration received or accruing as a result of such transfer. The expression "full value of sale consideration" is not the same as "fair market value" as appearing in section 55A. Thus, for the purpose of computing capital gains there is no necessity for computing the fair market value. Further, there was nothing on record to show that the assessee received consideration for the sale of the property in excess of that which was shown in the agreement to sell. Thus, the actual sale consideration recorded in the agreement to sell and received by the assessee could not be substituted by the value as adopted by the District Valuation Officer under section 55A for the purpose of computing the capital gains chargeable to tax.

(d) Can the Assessing Officer issue notice under section 154 to rectify a mistake apparent from record in the intimation under section 143(1), after issue of a valid notice under section 143(2)?

[5]

Answer:

CIT vs. Haryana State Handloom and Handicrafts Corporation Ltd. [2011] 336 ITR 699 (P&H)

On this issue, the Punjab and Haryana High Court referred to the Delhi High Court ruling in CIT vs. Punjab National Bank (2001) 249 ITR 763, where it was held that rectification of an intimation cannot be made after issuance of notice under section 143(2) and during the pendency of proceedings under section 143(3). It was held that if any change was permissible to be effected, the same can be done in the assessment under section 143(3) and not by exercising the power under section 154 to rectify the intimation issued under section 143(1).

In the present case, the Punjab and Haryana High Court relying, inter alia, on the said decision held that the scope of proceedings under section 143(2) is wider than the power of rectification of mistake apparent from record under section 154. The notice under section 143(2) is issued to ensure that the assessee has not understated the income or has not computed excessive loss or underpaid the tax. It is only on consideration of the matter and on being satisfied that it is necessary or expedient to do so that the Assessing Officer issues the notice under section 143(2). Therefore, the the Assessing Officer has to proceed under section 143(3) and issue an assessment order. If issue of notice under section 154 is permitted to rectify the intimation issued under section 143(1), then it would lead to duplication of work and wastage of time.
Therefore, it was concluded that proceedings under section 154 for rectification of intimation under section 143(1) cannot be initiated after issuance of notice under section 143(2) by the Assessing Officer to the assessee.

6. From the following information, compute the total income of Raghu Ltd., and the tax liability for the assessment year 2013-14.

Profit and Loss Account **(₹)**

Expenses relating to goods of unit in Special Economic Zone	**9,00,000**	**Sale of goods of unit in Special Economic Zone**	**15,00,000**
Expenses relating to other business	**7,00,000**	**Sale of other business**	**10,60,000**
I.T. Paid	**1,00,000**	**Interest from Bank deposits**	**20,000**
Interest on income tax	**20,000**		

General Reserve	**4,00,000**		
Provision for Contingent Liability	**1,00,000**		
Proposed Dividends	**2,00,000**		
Balance c/d	**1,60,000**		
	25,80,000		**25,80,000**

i. B/f loss as per books of account ₹2,00,000

ii. B/f depreciation as per books of account ₹1,60,000

iii. B/f unabsorbed depreciation as per income-tax ₹4,60,000. **[10]**

Answer:

In the Books of Raghu Ltd.

Assessment Year: 2013-14

1. Computation of Total Income

Profit as per P & L A/c			1,60,000
Add:	Expenses disallowed:	9,00,000	
	Relating to goods of unit in Special Economic Zone [Section 10AA]		
	Income tax paid	1,00,000	
	Interest on income tax	20,000	
	General reserve	4,00,000	
	Provision for contingent liability	1,00,000	
	Proposed dividends	2,00,000	17,20,000
			18,80,000
Less:	Sales of goods of unit in Special Economic Zone [Under section 10AA]	15,00,000	
	Income taxable under the head income from other sources	20,000	15,20,000
	Business Income		3,60,000

Statement of Total Income

	Business Income		3,60,000
Less:	B/f unabsorbed depreciation ₹4,60,000 but allowed to the extent of business income		3,60,000
	Income		Nil
	Income from other sources	20,000	
Less:	Unabsorbed depreciation (See note)	20,000	Nil
	Total Income		Nil

Note:

i. B/f unabsorbed depreciation C/f next year ₹10,60,000 – ₹9,60,000 - ₹20,000 = ₹80,000

ii. The assessee shall be allowed deduction of entire profit of ₹6,00,000 under section 10AA while computing total income as per normal provisions of Income tax Act.

Computation of Deemed Income under section 115JB

		₹	₹
	Income as per P&L A/c		1,60,000
Add:	Disallowed items		
	Income tax paid	1,00,000	
	Interest on income tax	20,000	
	General reserve	4,00,000	
	Provision for contingent liability	1,00,000	
	Proposed dividends	2,00,000	8,20,000
			9,80,000
Less:	B/f loss as per books of account or B/f depreciation as per books of account, whichever is less		1,60,000
	Book Profit		8,20,000

Income tax liability:

(i) 19.055% (18.5% + surcharge Nil + EC + SHEC @ 3%) of Book Profit i.e. ₹1,56,251 or

(ii) Tax on income computed under other provisions of the Act, (which is nil) whichever is more. Hence, tax liability shall be ₹1,56,250.

7. Answer any two Questions [2x5=10]

(a) A non-resident individual was assessed originally on income arising in India on 8-3-2012 in respect of assessment year 2010-11. The Assessing Officer discovered an omission in the assessment and issued notice to the statutory agent on 10-12-2012 for re-assessment of the omitted income under section 147. Assuming that the statutory agent has been given notice of his appointment and has been heard u/s 163, how will he contest the validity of the re-assessment? [5]

Answer:

Section 163(2) provides that no person shall be treated as the agent of a non-resident unless he had an opportunity of being heard by the Assessing Officer as to his liability to be treated as such.

In the present case, the assessee has been given an opportunity of being heard and also the notice has been issued within the time limits laid down under section 148. Hence, the reassessment proceedings are valid.

(b) What is written down value to be adopted for the amalgamated company in cases, where the full eligible depreciation had not been availed by the amalgamating company? [5]

Answer:

Explanation (2A) to section 43(1) provides that the written down value of the amalgamating company should be the actual cost for the amalgamated company. In CIT vs. Hindustan Petroleum Corporation Ltd. (1991) 187 ITR 1 (Bom.), it was held that the actual cost of the asset

need be reduced only by the unabsorbed depreciation availed (absorbed) in the hands of the amalgamating company for purposes of "actual cost" of such transferred assets in the hands of amalgamated company, unless it satisfies the condition under section 72A. This decision was followed in CIT vs. Kothari Industrial Corporation Ltd. (2005) 274 ITR 600 (Mad.) and CIT vs. Silical Mettalurgic Ltd. (2010) 324 ITR 29 (Mad). If these decisions are correct, there will be double deduction in cases where assessee avails set-off of past unabsorbed depreciation under section 72A.

The decision has not taken into consideration Explanation 7 to section 43(1), which provides for determination of actual cost of assets taken over by amalgamated company on amalgamation to be the same as for amalgamating company as if the amalgamated company had continued to hold the asset. It follows that the written down value will have to be taken as that of the amalgamated company. Explanation 2, 2A and 2B to section 43(6) providing for computation of written down value for the amalgamated company is also in conformity with Explanation 7 to section 43(1). The decision, therefore, run counter to these statutory provisions. There is, however, no reaction from revenue to the decisions of the High Court, which should probably work in favour of the taxpayer.

(c) Md. Aslam, a resident both in India and Malaysia in Previous Year 2012-2013, owns immoveable properties (including residential house) at Malaysia and India. He has earned income of ₹60 lakh from rubber estates in Malaysia during the Previous Year 2012-2013. He also sold some property in Malaysia resulting in short-term capital gain of ₹30 lakh during the year. Aslam has no permanent establishment of business in India. However, he has derived rental income of ₹8 lakh from property let out in India and he has a house in Lucknow where he stays during his visit to India. The Article 4 of the Double Taxation Avoidance Agreement between India and Malaysia provides that where an individual is a resident of both the Contracting States, he shall be deemed to be resident of the Contracting State in which he has permanent home available to him. If he has permanent home in both the Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests).
You are required to state with reasons whether the business income of Aslam arising in Malaysia and the capital gains in respect of sale of the property situated in Malaysia can be taxed in India. [5]

Answer:

Where the Central Government has entered into an agreement with the Government of any other country for granting relief to tax or for avoidance of double taxation, the provisions of the Income-tax Act, 1961 are applicable in such case to the extent they are more beneficial to the assessee.

Aslam has a residential house both in Malaysia and India. Thus, he has a permanent home in both the countries. However, he has no permanent establishment of business in India. The Double Taxation Avoidance Agreement (DTAA) with Malaysia provides that where an individual is a resident of both countries, he is deemed to be resident of that country in which he has a permanent home and if he has a permanent home in both the countries, he is deemed to be resident of that country, which is the centre of his vital interests, i.e. the country with which he has closer personal and economic relations. Aslam owns rubber estates in Malaysia from which he derives business income. However, Aslam has no permanent establishment of his business in

India. Therefore, his personal and economic relations with Malaysia are closer, since Malaysia is the place where:–

(i) the property is located ; and

(ii) the permanent establishment (PE) has been set-up. Therefore, he is deemed to be resident of Malaysia for A.Y. 2013-2014.

So, in this case, Aslam is not liable to Income tax in India for Assessement Year 2013-2014 in respect of business income and capital gains arising in Malaysia.

(d) The Madras High Court gave a judgment in the case of P Ltd. for 1977-78 under the Central Sales Act on August 23, 2012 as a result of which an income of ₹88,900 becomes taxable for the assessment year 1978-79. The Assessing Officer issue notice on January 1, 2013 under section 148 to P Ltd. to tax income of ₹88,900 which has escaped assessment. Discussed whether the notice under section 148 can be issued. [5]

Answer:

By virtue of section 150, a notice under section 148 can be issued at any time for the purpose of making reassessment in consequence of (or to give effect to) any finding or direction contained in an order passed by any authority in any proceeding by way of appeal, reference or revision or by a Court.

8. Answer any one Question [1x5]

(a) X made a gift of a house property to Mrs. X on April 1, 2012. The value of the house property as on the date of gift was ₹31,50,000. Mrs. X, in her turn, made a gift of that property to her friend Mrs. Y on October 30, 2012. The valuation date for the purposes of wealth-tax assessments of both Mr. and Mrs. X happens to be March 31. In whose net wealth will the value of the house be included ? What would have been the position if-

i. the house had been gifted by Mrs. X to her daughter-in-law; or

ii. the house had been sold to her daughter-in-law for a sum of ₹30,00,000 and she had lost the entire sale proceeds by gambling in horse races ; or

the house had been sold by Mrs. X to her major son for ₹31,50,000 and she had purchased another house property with the sale proceeds, the value of the new house property as on March 31, 2013 being ₹31,95,000. [5]

Answer:

i. In case house property is gifted by Mrs. X to her friend Mrs. Y before the valuation date of March 31, 2013, the property will not be included in net wealth of X or Mrs. X for the assessment year 2013-14. If the house property is gifted by Mrs. X to her daughter-in-low, it would amount to an indirect transfer from X to his daughter-in-law and, consequently, by virtue of section 4(1)(a)(v), the value of the house on March 31, 2013 will be includible in the net wealth of X for the assessment year 2013-14. Exemption may, however, be claimed under section 5(vi).

ii. If Mrs. X sells the house property to her daughter-in-law for ₹30,00,000 and loses the entire sale proceeds by gambling, no property is held by her in any form whatsoever on the valuation date. As the property is not in existence on March 31, 2013, there would be no question of wealth-tax incidence.

iii. If Mrs. X sells the house property for ₹31,50,000 and acquires another house from sale proceeds, the value of new house on the valuation date (i.e., ₹31,95,000) is includible in the net wealth of X for the assessment year 2013-14. Exemption may be claimed under section 5(vi).

(b) 'A' settles for the benefit of 'B', his minor son, certain house properties appointing P and Q as trustees. The settlement deed provides that the beneficiary would get the net income of the trust till he reached 30 years of age when the entire corpus or the remainder thereof would vest in the beneficiary. Till then the trustees have absolute discretion to expend the money out of the corpus of the trust fund and the annual income therefrom for the benefit of B for any of the various purposes enumerated in the deed. For the assessment year 2013-14 when B was 14 years of age, the Assessing Officer wants to add to the entire value of the corpus in the wealth-tax assessment of B on the ground that B held a vested interest in the corpus. [5]

Answer:

In the given problem the trustees have absolute discretion to spend the trust fund for the benefit of B, the beneficiary. The only right of B, the assessee, during the previous year in question is the contingent right to receive the corpus or such part thereof as remained on his completing the age of 30 years, the right being contingent, depending on the assessee completing the age of 30 years. In other words, B has only a contingent interest in the corpus of the trust till he reaches the age of 30 years. Hence, no portion of the corpus can be included in the net wealth of B- CWT v. MasterJehangir N.C. Jehangir [1982] 137 ITR 48 (Som.).

9. Answer any two Questions [2x5=10]

(a) An assessee rendered certain services from abroad without parting with technology. The assessee does not have any permanent establishment in India. He claims that he is not liable to pay tax on income from rendering such services. [5]

Answer:

As per section 9(1)(vii) if any services are rendered without parting with technology the same falls under "fees for technical services". The fees for technical services for services utilized in India are deemed to accrue or arise in India. The Income of a non-resident shall be deemed to accrue or arise in India under section 9(1)(vii) and shall he included in the total income of the non-resident, whether or not,-

(i) the non-resident has a residence or place of business or business connection in India; or

(ii) the non-resident has rendered services in India.

Hence, in this case, assuming that the services are utilized in India, the assessee is liable to tax in India.

(b) Write a note on profits and gains of foreign companies engaged in the business of civil construction, etc., in certain turnkey power projects. [5]

Answer:

Profits and gains of foreign companies engaged in the business of civil construction, etc., in certain turnkey power projects [Section 44BBB]

(A) Section applies to: A foreign company engaged in the business of civil construction or the business of erection of plant or machinery or testing or commissioning thereof, in connection with a turnkey power project approved by the Central Government in this behalf.

(B) Deemed profits and gains: 10% of the amount paid/payable in or outside India to the assessee or to any person on his behalf on account of such civil construction, erection, testing or commissioning.

(C) Claim of lower profits: The assessee may claim lower profits than what deemed under this section by maintaining proper books of account and getting its accounts audited. The provisions for claiming lower profits are same as that contained under section 44BB.

(c) Write a note on deduction of head office expenditure in the case of non-residents. [5]
Answer:

Deduction of head office expenditure in the case of non-residents [Section 44C]:

(A) Deduction: The expenditure in nature of head office expenditure is allowable to the extent of the lower of the following -
   (a) 5% of adjusted total income (in case the adjusted total income is a loss, then 5% of average adjusted total income); or
   (b) The amount of so much of the expenditure in the nature of head office expenditure incurred by the assessee as is attributable to the business or profession of the assessee in India.

(B) Meanings of :
   1. "Adjusted total income" means total income computed under Act before deducting the following-
      (i) Head office expenditure under section 44C;
      (ii) Unabsorbed depreciation under section 32(2);
      (iii) Unabsorbed Capital expenditure for promotion of family planning under section 36(1)(ix);
      (iv) Carried forward business losses under section 72; speculation losses under section 73; losses under the head 'Capital gains' under section 74; and losses from activity of owning and maintaining race horses u/s 74A;
      (v) Deductions under Chapter VIA.
   2. "Average adjusted total income" is computed as follows –

Case	Average adjusted total income
Where total income was assessable for all of the three preceding assessment years	Aggregate adjusted total income for such 3 assessment years ÷ 3
Where total income was assessable for two of the three preceding assessment years	Aggregate adjusted total income for such 2 assessment years ÷ 2

Where total income was assessable for one of the three preceding assessment years	Aggregate adjusted total income for such assessment years

3. "Head Office Expenditure" means executive and general administration expenditure incurred by the assessee outside India, including expenditure in respect of -
   (i) rent, rates, taxes, repairs or insurance of any premises outside India used for business and profession;
   (ii) salary, wages, annuity, pension, fees, bonus, commission, gratuity, perquisites or profits in lieu of or in addition to salary, whether paid or allowed to any to any employee or other managing person employed in any office outside India;
   (iii) travelling by any employee or other person employed in, or managing the affairs or, any office outside India; and
   (iv) such other matters connected with executive and general administration as may be prescribed.