Paper 16 - TAX MANAGEMENT AND PRACTICE

Full Marks: 100

Section A
Answer all Questions

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

(a) Whether the metal scrap or waste generated during the repair of his worn out machineries/ parts of cement manufacturing plant by a cement manufacturer amounts to manufacture? [5]

Answer:

Facts of the case

The assessee was the manufacturer of the white cement. He repaired his worn out machineries/ parts of the cement manufacturing plant at its workshop such as damaged roller, shafts and coupling with the help of welding electrodes, mild steel, cutting tools, M.S. Angles, M.S. Channels, M.S. Beams, etc. In this process of repair, M.S. scrap and Iron scrap were generated. The assessee cleared this metal scrap and waste without paying any excise duty. The Department issued a show cause notice demanding duty on the said waste contending that the process of generation of scrap and waste amounted to the manufacture in terms of section 2(f) of the Central Excise Act.

Decision of the case

The Apex Court in the case of Grasim Industries Ltd. vs. UOI 2011 (273) E.L.T. 10 (S.C.) observed that manufacture in terms of section 2(f) includes any process incidental or ancillary to the completion of the manufactured product. This 'any process' can be a process in manufacture or process in relation to manufacture of the end product, which involves bringing some kind of change to the raw material at various stages by different operations. The process in relation to manufacture means a process which is so integrally connected to the manufacturing of the end product without which, the manufacture of the end product would be impossible or commercially inexpedient.

However, in the present case, it is clear that the process of repair and maintenance of the machinery of the cement manufacturing plant, in which M.S. scrap and Iron scrap arise, has no contribution or effect on the process of manufacturing of the cement, (the end product). The repairing activity in any possible manner cannot be called as a part of manufacturing activity in relation to production of end product. Therefore, the M.S. scrap and Iron scrap cannot be said to be a by-product of the final product. At the best, it is the by-product of the repairing process.

Hence, it held that the generation of metal scrap or waste during the repair of the worn out machineries/parts of cement manufacturing plant does not amount to manufacture.

(b) Whether CENVAT credit can be denied on the ground that the weight of the inputs recorded on receipt in the premises of the manufacturer of the final products shows a shortage as compared to the weight recorded in the relevant invoice? [5]

Answer:

The Larger Bench of the Tribunal in the case of CCE vs. Bhuwalka Steel Industries Ltd. 2010 (249) ELT 218 (Tri-LB) held that each case had to be decided according to merit and no hard and fast rule can be laid down for dealing with different kinds of shortages. Decision to allow or not to allow credit under rule 3(1), in any particular case, will depend on various factors such as the following:

(i) Whether the inputs/capital goods have been diverted en-route or the entire quantity with the packing intact has been received and put to the intended use at the recipient factory.

(ii) Whether the impugned goods are hygroscopic in nature or are amenable to transit loss by way of evaporation etc.

(iii) Whether the impugned goods comprise countable number of pieces or packages and whether all such packages and pieces have been received and accounted for at the receiving end.

(iv) Whether the difference in weight in any particular case is on account of weighment on different scales at the dispatch and receiving ends and whether the same is within the tolerance limits with reference to the Standards of Weights and Measures Act, 1976.

(v) Whether the recipient assessee has claimed compensation for the shortage of goods either from the supplier or from the transporter or the insurer of the cargo.

Tolerances in respect of hygroscopic, volatile and such other cargo has to be allowed as per industry norms excluding, however, unreasonable and exorbitant claims. Similarly, minor variations arising due to weighment by different machines will also have to be ignored if such variations are within tolerance limits.

(c) Whether non-disclosure of a statutory requirement under law would amount to suppression for invoking the larger period of limitation under section 11A? [5]

Answer:

Facts of the case:

The respondent-assessee was engaged in manufacture of various toilet preparations such as after-shave lotion, deo-spray, mouthwash, skin creams, shampoos, etc. The respondent procured Extra Natural Alcohol (ENA) from the local market on payment of duty, to which Di-ethyl Phthalate (DEP) is added so as to denature it and render the same unfit for human consumption. The Department alleged that the intermediate product i.e. Di-ethyl Alcohol manufactured as a result of addition of DEP to ENA, was liable to central excise duty.

Issue:

The question which arose before the High Court in the instant case is whether non-disclosure as regards manufacture of Denatured Ethly Alcohol amounts to suppression of material facts thereby attracting the larger period of limitation under section 11A.

Decision of the case:

The Tribunal in the case of CC Ex. & C vs. Accrapac (India) Pvt. Ltd. 2010 (257) E.L.T. 84 (Guj.) noted that denaturing process in the cosmetic industry was a statutory requirement under the Medicinal & Toilet Preparations (M&TP) Act. Thus, addition of DEP to ENA to make the same unfit for human consumption was a statutory requirement. Hence, failure on the part of the respondent to declare the same could not be held to be suppression as Department, knowing the fact that the respondent was manufacturing cosmetics, must have the knowledge of the said requirement. Further, as similarly situated assesses were not paying duty on denatured ethyl

alcohol, the respondent entertained a reasonable belief that it was not liable to pay excise duty on such product.
The High Court upheld the Tribunal's judgment and pronounced that non-disclosure of the said fact on the part of the assessee would not amount to suppression so as to call for invocation of the extended period of limitation.

(d) Whether subsequent increase in the market price of the imported goods due to inflation would lead to increase in customs duty although the contract price between the parties has not increased accordingly? [5]

Answer:

Commissioner of Cus., Vishakhapatnam vs. Aggarwal Industries Ltd. . 2011 E.L. T. 641 (S.C.)
Facts of the Case:

On 26th June 2001, Aggarwal Industries Ltd. entered into a contract with foreign suppliers viz M/s. Wilmar Trading Pvt. Ltd., Singapore, for import of 500 metric tons of crude sunflower seed oil at the rate of US $ 435 CIF/metric ton. Under the contract, the consignment was to be shipped in the month of July 2001. However, the mutually agreed time for shipment was extended to 'mid August 2001'. Thus, the goods were actually shipped on 5th August 2001 at the price prevailing at the contract date.

Point of Dispute:

The Revenue contended that when actual shipment took place, after the expiry of the original shipment period, the international market price of crude sunflower seed oil had increased drastically, and, therefore, the contract price could not be accepted as the 'transaction value' in terms of rule 4 of the erstwhile Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 [now rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007]. Therefore the duty should be imposed on the increased prices.

Decision of the Case:

The Supreme Court held that in the instant case, the contract for supply of crude sunflower seed oil @ US $ 435 CIF/ metric ton was entered into on 26th June 2001. It could not be performed on time because of which extension of time for shipment was agreed between the contracting parties. It is true that the commodity involved had volatile fluctuations in its price in the international market, but having delayed the shipment, the supplier did not increase the price of the commodity even after the increase in its price in the international market. There was no allegation of the supplier and importer being in collusion. Thus, the appeal was allowed in the favour of the respondent- assessee.

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

(a) How are the goods valued when they are sold to related person? [5]

Answer:

When the assessee so arranges that –
(i) The excisable goods are not sold by an assess except to or through related person; and
(ii) The person is related in any one of the manner specified in section 4(3)(b)(ii) /(iii)/(iv) (as given in the definition of related person in question no. 10);

the value of the goods shall be the normal transaction value at which these are sold by the related person at the time of removal,

(a) to buyers (not being related person); or

(b) where such goods are not sold to such buyers, to buyers (being related person), who sells such goods in retail.

However, in a case where the related person does not sell the goods but uses or consumers such goods in the production or manufacture of articles, the value shall be determined in the manner specified in Rule 8.

Applicability of Rule 9: Rule 9 is applicable when entire goods manufactured by assessee are sold to or through related person by the manufacturer. On analysis of Rule 9, the following situations arise, -

(1) when goods are sold by related person to unrelated buyers: When the goods sold by the assessee to a related person are in turn sold by the related person to unrelated buyers, the value shall be normal transaction value at which goods are sold by related person to unrelated buyers at the time of removal of goods from the place of removal. The unrelated buyers may be wholesaler or retailer or ultimate consumer.

(2) When goods are sold by related person to related retail dealer: When the goods sold by the assessee to a related person are in turn sold by the related person to a related retail dealer, then the value of the goods shall be the normal transaction value at which these goods are sold by the related person to the related retail dealer at the time of removal of goods from the place of removal.

(3) When goods are used/ consumed by related person: In a cans where the related person does not sell the goods but uses or consumes such goods in the production or manufacture of articles, the value shall be determined in the manner specified in Rule 8 i.e., 110% of cost of production of such goods in hands of assessee.

Example: If assessee manufactures clinker from limestone and sells it to a related person who uses the clinker in the manufacture of cement, then the value of the goods shall be 110% of cost of production of clinker.

(b) Clean & Clean Ltd. manufactures tooth pastes at its factory in Nagpur. The following maximum retail prices (MRP) are printed on the packet:

MRP in Punjab : `35
MRP in Assam : `37
MRP in other places Punjab : `33

What is the assessable value of tooth paste cleared for sale in the State of Andhra Pradesh as per section 4A of the Central Excise Act, 1944? Give reasons for your answer. [5]

Answer:

The similar issue was discussed in Mount Everest Mineral Water Ltd. v. CCEx. [2004] 166 ELT 52 (Tri. – Del.), Wherein it was held that where the assessee had declared different retail prices on its mineral water bottles for sale in different states and he does not fulfill the requirement under Explanation 2(c) to Section 4A that marking of different prices must be on different packages, then highest price declared on the package is to be taken into account for valuation.

In the given case, different retail sale prices are printed on same packet, the highest of those will be taken. Hence, MRP of `37 will be taken and assessable value shall be `37 – Permissible Abatement.

(c) Reversal of Cenvat credit and computation of service tax liability: Punjab National Bank provides the following information for the month of June 2012:

CENVAT Credit available on Inputs	**`2,00,000**
CENVAT Credit available on Inputs Services	**`4,00,000**
Service Tax liability before availing eligible CENVAT	**`10,00,000**

Determine the amount of CENVAT Credit available to Punjab National Bank for the month of June, 2012 in view of Rule 6(3B) of Cenvat Credit Rules, 2004. Also determine the net service tax liability of the bank after availing the eligible CENVAT Credit. [5]

Answer:

According to Rule 6(3B) of CCR, 2004, a banking company and a financial institution including a non-banking financial company engaged in providing services by way of extending deposits, loans or advances, shall pay for every month, an amount equal to 50% of the CENVAT credit available on inputs and input service in that month. Therefore, a banking company is entitled to avail only 50% of CENVAT credit in respect of inputs and input services.
In view of above statutory provisions, CENVAT Credit available to bank for the month of June 2012 and its net service tax liability will be computed as under:

CENVAT Credit available on Inputs	`2,00,000
Less: Payment of 50% of CENVAT Credit available on Input by virtue of Rule 6(3B). It effectively means 50% of available CENVAT Credit is to be disallowed	`1,00,000
Net CENVAT Credit available on Inputs	`1,00,000
CENVAT Credit available on input Services	`4,00,000
Less: Payment of 50% of CENVAT Credit available on Input Services by virtue of Rule 6(3B). It effectively means 50% of available CENVAT Credit is to be disallowed.	`2,00,000
Net CENVAT Credit available on input services	`2,00,000

Determination of Net Service Tax liability of Bank for the month of June, 2012:

Service Tax liability of bank before availing eligible CENVAT Credit	`10,00,000
Less: Net /Eligible CENVAT Credit available on Inputs	`1,00,000
Less: Net/Eligible CENVAT Credit available on input Services	`2,00,000
Net Service Tax liability of bank after availing eligible CENVAT Credit	`7,00,000

3. Answer all Questions [3x5 = 15]

(a) A commodity is imported into India from a country covered by a notification issued by the Central Government under section 9A of the Customs Tariff Act, 1975. Following particulars are made available:

CIF value of the consignment: US$ 25,000
Quantity imported: 500 Kgs.
Exchange rate applicable: ` 50 = US$1
Basic customs duty: 20%
Education and secondary and higher education cess as applicable.
As per the notification, the anti-dumping duty will be equal to the difference between the cost of commodity calculated @ US$70 per kg. and the landed value of the commodity as imported.
Appraise the liability on account of normal duties, cess and the anti-dumping duty.

Assume that only 'Basic Customs Duty' (BCD) and education and secondary and higher education cess are payable. [5]

Answer:

The following points are to be taken note of –

(1) The question clearly states that only basic customs duty, EC and SGEC thereon and anti-dumping duty are leviable on the goods in question and on other duty viz. additional duty of customs u/s 3(1) or special additional duty of customs under section 3(5) is leviable.

(2) For the purposes of the notifications imposing anti-dumping duty, "landed value" means the assessable value as determined under the Customs Act, 1962 and includes all duties of customs except duties levied under sections 3, 8B, 9 and 9A of the said Customs Tariff Act, 1975.

(3) No EC and SHEC is imposable on anti-dumping duty.

Keeping in mind the aforesaid, the relevant computations are as under (amounts in `) –

CIF Value of the consignment (in Indian `) [US$ 2500 x 50]		12,50,000
Add: Landing Charges @ 1%		12,500
Assessable Value		12,62,500
Add: Basic Customs Duty @ 20%		2,52,500
Add: EC and SHEC @ 3% on Basic Customs Duty		7,575
Landed Value/ Cost of the goods	[A]	15,22,575
Cost of commodity for the purposes of anti-dumping notification [500 Kg. x US$ 70 per Kg. x `50 per dollar]	[B]	17,50,000
Anti dumping duty [B – A]		2,27,425

OR,

Mr. Ravi, an Indian resident and an Engineer by profession who was engaged in his profession in USA for 9 months, brought with him on 05-05-2012 the following items on his return on India:

(i) **Used personal effects like clothes etc. of `1,00,000;**

(ii) **A camera of `45,000;**

(iii) **Jewellery of `25,000;**

(iv) **Used household articles of `20,000;**

(v) **Professional equipments `40,000;**

(vi) **A Laptop wroth `1,20,000.**

Calculate the custom duty payable by him.

Answer:

Duty free allowances allowed to Mr. Ram are as follows –

(i) Under Rule 3, goods eligible for General free allowance are:
  (a) Used personal effects (excluding jewellery) and
  (b) Other articles (other than those mentioned in Annexure I) upto `35,000

(ii) Under Rule 5, Duty free allowance of used household articles upto `12,000, and professional equipments upto `40,000 is allowed.

(iii) However duty free allowance in case of jewellery shall be allowed only if stay abroad is for at least one year.

Accordingly, the total customs duty payable by Mr. A shall be as follows: - `

Used personal effects like clothes etc.	NIL
Camera	45,000
Jewellery	25,000

Used household articles	20,000
Professional equipments	40,000
Laptop Computer	Exempt
Total	1,30,000
Less: Total allowance (i.e., `35,000 + `12,000 + `40,000)	87,000
Value of goods on which duty is payable	43,000
Customs duty @ 36.05% (inclusive of EC of SHEC)	15,502

(b) State briefly the key principles adopted by the State under the VAT laws with regard to incentive schemes. [5]

Answer:

Key principles adopted by States with regard to VAT incentive schemes:

(i) VAT chain is not broken ;
(ii) there should not be any loss of revenue to the States ;
(iii) scheme should he such that the VAT Department can trace transactions misusing such schemes and ensure that there is no tax evasion/ avoidance ;

Further, in case of continuance of old exemptions/ incentives, following points have been ensured -

(i) existing units availing such incentives under old law are not put at loss under VAT law ; and

(ii) facility of buying input without payment of tax granted under old law may continue.

(c) Explain the term "Place of business" under CST Act, 1956. [5]

Answer:

Section 2(dd) of CST Act defines 'place of business'. It includes-

(i) Place of business of agent where dealer carries on business through an agent.
(ii) Warehouses, godown or other place where a dealer stores his goods
(iii) Place where a dealer keeps his books of accounts.

This is an 'inclusive definition' i.e. other place of business e.g. where dealer has a shop or factory is obviously covered. A dealer can have more than one 'places of business' within one state or even within one city.

If a dealer has more than one place of business in one state, he has to make a single application in respect of all the places. One of the places should be specified as 'principal place of business'. This place should be same as declared by him under general tax law of the state.

If a dealer has 'place of business' in different states, he will have to register in each such state. Alternatively, he can register in the state where head office is situated and in other states, take registration as branch.

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

(a) Compute the service tax liability from the following receipts, exclusive of service tax of M/s. A Ltd. (Ignore small service provider's exemption) –

(1) **Services by way of breeding of fish: `8 lakh;**
(2) **Services of rearing of horses: `13 lakh;**
(3) **Supply of farm labour: `3 lakh;**
(4) **Job-work in relation of agriculture: `5 lakh;**
(5) **Leasing of vacant land for storage of agricultural produce: `2 lakh;**
(6) **Loading and Unloading of agricultural produce: `4 lakh;**
(7) **Processing of potato chips: `1.5 lakh.**
(8) **Farmer education and training: `7 lakh.** **[5]**

Answer:

Computation of service tax liability

(1) Services by way of breeding of fish: `8 lakh – It amounts to agriculture – Not taxable /u/s 66D(d);
(2) Services of rearing of horses: `13 lakh – It doesn't amount to agriculture – Taxable;
(3) Supply of farm labour: `3 lakh – Specifically covered in negative list u/s 66D(d) – Not taxable;
(4) Job-work in relation to agriculture: `5 lakh – Exempted;
(5) Leasing of vacant land for storage of agricultural produce: `2 lakh – Covered in negative lit u/s 66D(d) – Not taxable;
(6) Loading and Unloading of agricultural produce: `4 lakh – Covered in negative list u/s 66d(d) – Not taxable;
(7) Processing of potato chips: `1.5 lakh – Potato chips are not agricultural produce and process is not agricultural – Taxable;
(8) Farmer education and training: `7 lakh – Covered under agricultural extension services – Covered in negative list u/s 66D(d) – Not taxable.

Taxable value = `13 + 1.50 = `14.50 lakh and service tax thereon @ 12.36% = `1,79,220.

(b) A Ltd. Collected following sums (exclusive of taxes)-

(1) **Transport of passengers on vessel from Chennai to Port Blair : ` 10 lakh;**
(2) **Transport of passengers by vessels from Chennai to Dubai : ` 60 lakhs (services of ` 7 lakh was provided after crossing maritime zones of India);**
(3) **Transport of passengers by vessels from Dubai to Chennai : ` 45 lakhs (services of ` 8 lakh were provided after crossing maritime zones of India);**
(4) **Transport of passengers by stage carriage : ` 10 lakh;**

(5) **Transport of passengers by contract carriage : ` 4 lakh;**
(6) **Transport of passengers by contract carriage for tour : ` 3 lakh;**
(7) **Transport of passengers by ropeway : ` 4 lakh;**
(8) **Running cruise ships : ` 7 lakh (within territorial waters of India);**
(9) **Metro transport of passengers : ` 55 lakh;**
(10) **Running of metered cabs and taxis : ` 11 lakh;**
(11) **Transport through national water-ways: ` 18 lakh.**

Compute taxable value. **[5]**

Answer:

(1) Transport of passengers on vessel from Chennai to Port Blair: `10 lakh – Covered within negative list under section 66D(o), as transport by vessels takes place within India. It is assumed that vessel is not predominant meant for tourism purpose – Not taxable;
(2) Transport of passengers by vessels from Chennai to Dubai: `60 lakhs (services of `7 lakh was provided after crossing maritime zones of India) – Place where passenger embarks for a continuous journey viz. Chennai is the place of provision as per Rule 11 of PoP Rules; further, as per Rule 12, services provided on board a conveyance is provided at the place of first schedule point of departure thereof viz. Chennai. Hence, whole of the sum WILL BE TAXABLE in India;
(3) Transport of passengers by vessels from Dubai to Chennai: `45 lakhs (services of `8 lakh were provided after crossing maritime zones of India) – Place were passenger embarks for a continuous journey viz. Dubai is the place of provision as per Rule 11 of PoP Rules; further, as per Rule 12, services provided on board a conveyance is provided at the place of first schedule point of departure thereof viz. Dubai. Hence, whole of the sum will be NOT BE TAXED in India;
(4) Transport of passengers by stage carriage: `10 lakh – Covered within negative list under section 66D(o);
(5) Transport of passengers by contract carriage: `4 lakh – Exempt;
(6) Transport of passengers by contract marriage for tour: `3 lakh – Not exempt, as meant for tour purposes – TAXABLE;
(7) Transport of passengers by ropeway: `1 lakh – covered within negative list under section 66D(o);
(8) Running cruise ships: `7 lakh (within territorial waters of India)– Cruise ships are predominantly meant for tourism purposes, hence, not covered within negative list – Taxable;
(9) Metro transport of passengers: `55 lakh – Covered within negative list under section 66D(o);
(10) Running of metered cabs and taxis: `11 lakh – Covered within negative list under section 66D(o);
(11) Transport through national water-ways: `18 lakh – Covered within negative list u/s 66D(o).

Taxable Value = 60 + 3 + 7 = ` 70 lakhs.

(C) ZEE Bank Ltd., furnishes the following information relating of services provided and the gross amount received:

	` (lakhs)
Merchant Banking Services	**17**
Asset Management (including portfolio management)	**8**
Service charges for services to the Government of India	**2.5**
Interest on overdraft and cash credits	**2**
Banker to the issue	**9**
Locker rent	**2**

Repayment of financial lease made by the customer to the bank `90 lacks which includes a principal amount of `70 Lakhs.

Compute the value of taxable service under the Finance Act, 1994, and the service tax liability of ZEE Bank Ltd., considering the rate of service tax at 12.36%. [5]

Answer:

Computation of taxable value and tax payable (assuming all sums received are exclusive of service tax)

Particulars	`
Merchant Banking Services – Taxable	17,00,000
Asset management (including portfolio management) – Taxable,	8,00,000
Service charges for services to the Government of India – No exemption, hence, taxable	2,50,000
Interest on overdraft and cash credits – Not taxable, as covered within negative list u/s 66D(n)	Not taxable
Banker to the issue – Taxable;	9,00,000
Locker rent – Taxable (It is renting and taxable)	2,00,000
Hire-purchase/Finance Lease: Value of taxable service = 10% of (Installment ` 90 lakh – Principal sum ` 70 lakh) i.e., 10% of interest of ` 20 lakh [This is a declared service u/s 66E(g).]	2,00,000
Total taxable value	40,50,000
Service tax @ 12.36%	5,00,580

Section B
Answer all the Questions

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

(a) Can expenditure incurred on alteration of a dam to ensure adequate supply of water for the smelter plant owned by the assessee be allowed as revenue expenditure? [5]

Answer:

Fact of the case

The assessee company owned a super smelter plant which requires large quantity of water for its day-to-day operation, in the absence of which it would not be able to function. The assessee, therefore, incurred expenditure for alteration of the dam (constructed by the State Government) to ensure sharing of the water with the State Government without having any right or ownership in the dam or water. The assessee's share of water is also determined by the State Government. The assessee claimed the expenditure as deduction under section 37, which was disallowed by the Assessing Officer on the ground that it was of capital nature. The Tribunal, however, was of the view that since the object and effect of the expenditure incurred by the assessee is to facilitate its trade operation and enable the management to conduct business more efficiently and profitably, the expenditure is revenue in nature and hence, allowable as deduction.

Decision of the case

The High Court in the case of CIT vs. Hindustan Zinc Ltd. (2010) 322 ITR 478 (Raj.) observed that the expenditure incurred by the assessee for commercial expediency relates to carrying on of business. The expenditure is of such nature which a prudent businessman may incur for the purpose of his business. The operational expenses incurred by the assessee solely intended for the furtherance of the enterprise can by no means be treated as expenditure of capital nature.

(b) Would sale of a plot of land held as stock-in-trade by an assessee engaged in the business of real estate and construction of plots, be treated as sale of capital assets, to attract the provisions of section 50C? [5]

Answer:

CIT vs. Kan Construction and Colonizers (P) Ltd (2012) 208 Taxman 478 (All.)

On this issue, the High Court observed that for applicability of section 50C, the essential requirement is that the building and land transferred should be a capital asset. Further, as per section 2(14), capital asset does not include stock-in-trade held for the purpose of an assessee's business or profession.

The Assessing Officer treated the sale of plot of land held by the assessee as sale of capital asset and accordingly, applied the provisions of section 50C.

The High Court held that since the assessee is a builder and construction of buildings is its business, investment in purchase and sale of plots by it is ancillary and incidental to its business activity. Therefore, it was held that the assessee has held the land as stock in-trade and not as a capital asset. Hence, section 50C will not apply in this case and the profit on sale of land will be treated a business income.

(c) Whether the Tribunal was right in law in upholding the order of the CIT(A) in deleting the trading addition made by the Assessing Officer, as the assessee failed to produce the quantitative details of raw materials and finished products? [5]

Answer:

CIT vs. Om Overseas (2009) 315 ITR 185 (P&H)

The assessee-firm derived its income from manufacturing and export of duries, rugs, woollen carpets, made ups, etc., and filed a nil return of income. Subsequently it was assessed under section 143(3) of the Income-tax Act, 1961 and it declared gross profit on the total turnover of 25.38 per cent as against 29.5 per cent declared in the immediate preceding assessment year.

Being dissatisfied with the explanation given by the assessee, the Assessing Officer rejected the books of account of the assessee invoking section 145(3) and applied the gross profit rate of 27 per cent which resulted in certain additions. The Commissioner (Appeals) deleted the additions made by the Assessing Officer. The Tribunal upheld the order of the Commissioner (Appeals).

The High Court held that the factual finding given by the Commissioner (Appeals) that the additions were made by the Assessing Officer without pointing out any specific defect in the books of account was upheld by the Tribunal. As no perversity or illegality in the finding was pointed out by the Department, no substantial question of law arose for determination.

(d) Can the Assessing Officer reassess issues other than the issues in respect of which proceedings were initiated under section 147 when the original "reason to believe" on basis of which the notice was issued ceased to exist? [5]

Answer:

Ranbaxy Laboratories Ltd. vs. CIT (2011) 336 ITR 136 (Delhi)

In the present case, the assessee company was engaged in the business of manufacture and trading of pharmaceutical products. The Assessing Officer accepted the returned income filed by the assessee but initiated reassessment proceedings under section 147 in respect of the addition to be made on account of club fees, gifts and presents and provision for leave encashment. It was observed that the Assessing Officer had reason to believe that income has escaped assessment due to claim and allowance of such expenses and accordingly, he issued notice under section 148. However, after sufficient enquiries were made during reassessment proceedings, the Assessing Officer came to the conclusion that no additions are required to be made on account of these expenses. Therefore, while completing the reassessment he did not make additions on account of these items but instead made additions on the basis of other issues which were not the original "reason to believe" for the issue of notice under section 148. The Assessing Officer made such additions on the basis of Explanation 3 to section 147 as per which the Assessing Officer may assess the income which has escaped assessment and which comes to his notice subsequently in the course of proceedings under section 147 even though the said issue did not find mention in the reasons recorded in the notice issued under section 148.

The issue under consideration is whether the Assessing Officer can make an assessment on the basis of an issue which came to his notice during the course of assessment, where the issues, which originally formed the basis of issue of notice under section 148, were dropped in its entirety.

As per section 147, the Assessing Officer may assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice in the course of proceedings under this section. The Delhi High Court observed that the words "and also" used in section 147 are of wide amplitude.

The correct interpretation of the Parliament would be to regard the words 'and also' as being "conjunctive and cumulative with" and not "in alternative to" the first part of the sentence, namely, "the Assessing Officer may assess and reassess such income". It is significant to note that Parliament has not used the word 'or' but has used the word 'and' together and in conjuction with the word 'also'. The words 'such income' in the first part of the sentence refer to the income chargeable to tax which has escaped assessment and in respect of which the Assessing Officer has formed a reason to believe for issue of the notice under section 148. Hence, the language used by the Parliament is indicative of the position that the assessment or reassessment must be in respect of the income, in respect of which the Assessing Officer has formed a reason to

believe that the same has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment. If the income, the escapement of which was the basis of the formation of the "reason to believe" is not assessed or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. If he intends to do so, a fresh notice under section 148 would be necessary.

6. Following are the particulars of the income of Mr. Kapil for the Previous Year 2012-2013

	`
1. Income from House Property	
(a) Property R	**(+) 1,12,000**
(b) Property J	**(-)1,20,000**
2. Profits and Gains from Business:	
(A) Non-speculation:	
(i) Business X	**2,40,000**
(ii) Business Y	**(-)1,50,000**
(B) Speculation:	
(i) Silver	**1,40,000**
(ii) Bullion	**(-) 10,000**
3. Capital Gains:	
(i) Long-term Capital Gains	**(+) 2,30,000**
(ii) Short-term Loss	**(-) 1,10,000**
4. Income from Other Sources:	
(i) Card games-loss	**(-)10,000**
(ii) From the activity of owing and maintaining race horses:	
(a) Loss at Mumbai	**(-) 50,000**
(b) Profit at Kolkata	**(+) 40,000**
(iii) Dividend from Indian companies	**20,000**
(iv) Income by letting out plant and machinery	**2,22,000**
The following losses have been carried forward:	
(i) Long-term Capital Loss from the Assessment Year 2009-2010	**18,000**
(ii) Loss from silver speculation from the Assessment Year 2009-2010 and which was discontinued in the Assessment Year 2010-2011	**25,000**

Compute the Gross Total Income for the Assessment Year 2013-2014. **[10]**

Answer:

Computation of Gross Total Income for the Assessment Year 2013-2014

Particulars	`	`

1. Income from House Property (+1,12,000 – 1,20,000)		(-) 8,000
2. Profits from speculation:		
(i) Profit from Silver Business	1,40,000	
Less: Current year loss from bullion	(-) 10,000	
	1,30,000	
Less: Carried forward silver speculative loss	(-) 25,000	
Surplus from Speculation Business	1,05,000	
(ii) Add: Business profit from X business	2,40,000	
(iii) Less: Business loss from Y business	(-) 1,50,000	
3. Capital Gains:		1,95,000
Long-term Capital Gains	2,30,000	
Less : Short-term Capital Loss	(-) 1,10,000	
Long-term Capital Gain		1,20,000
4. Income from Other Sources:		
(i) Income by letting out plant and machinery		2,22,000
(ii) Card game-loss		
(Neither it can be set-off nor it can be carried forward)	10,000	
(iii) Profit from race horses at Kolkata	(+)40,000	
Less : Loss from race horses at Mumbai	(-) 50,000	
Less : to be carried forward for next four Assessment Year	(-) 10,000	Nil
(iv) Dividend from Indian companies: Exempt under Sec. 10(34)		
Aggregated income after setting-off current year losses from house property, profit and business against income from other sources:		5,29,000
Less : Carried forward Long-term Capital Loss, from the Assessment Year 2009-2010 to be set-off against Long-term Capital Gains		18,000
Gross Total Income or total income as there is no deduction available from GTI		5,11,000

Unabsorbed business loss may be set-off against the income of any other head except 'salaries' and 'winnings from lottery, card games, crossword puzzle, betting on race horses', etc.

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

(a) A discloses the following incomes from business or profession for the Previous Year 2012-2013:

`

(i) Profit from A business	**16,00,000**
(ii) Loss from B business	**(-) 7,00,000**
(iii) Loss from profession C	**(-) 6,50,000**
(iv) Profit from speculation business – M	**5,00,000**

(v) Loss from speculation business – N **(-) 7,00,000**

Determine the Income from Business or Profession for the Assessment Year 2013-2014 **[5]**

Answer:

Income from Business or Profession for the AY 2013-2014

Particulars	`
(i) A	16,00,000
(ii) B	(-) 7,00,000
(iii) C	(-) 6,50,000
Total Income from Non Speculation Business and Profession	2,50,000
Income from Speculation Business	
(i) M	5,00,000
(ii) N	(-)7,00,000
Loss from Speculation Business	(-) 2,00,000

Speculation loss cannot be set-off against the income from business profit, though both of them fall under the same head of income.

Thus, taxable business profits for the Assessment Year 2013-2014 is ` 2,50,000. The speculation loss will be carried forward for future set-off for 4 Assessment Years, immediately succeeding the Assessment Year for which it was first computed [Sec. 73(4)].

The time-limit of 4 years is applicable from the Assessment Year 2014-2015 and subsequent year.

(b) Orange Ltd., an Indian company, starts an industrial undertaking on 1st April, 2012. During the Previous Year, it earns profits of ` 87 lakh before allowing any deduction for wages. Compute its Total Income for the Previous Year 2012-2013 taking into account the following employment schedules of workers:

Date of employment	Number of workers	Status of workers	Rate of wages
1-5-2012	**90**	**Casual**	**3000 p.m.**
1-6-2012	**20**	**Regular**	**4000 p.m.**
1-7-2012	**10**	**Regular**	**4000 p.m.**

[5]

Answer:

Computation of Total Income for the AY 2013-2014

Particulars	`	`

Profits before allowing deduction for wages		87,00,000
Less: Wages paid to workers [Sec. 37(1)] :		
(i) 90 × ` 3000 × 11	29,70,000	
(ii) 20 × ` 4000 × 10	8,00,000	
(iii) 10 × ` 4000 × 9	3,60,000	(-) 41,30,000
Business Profits and Gross Total Income		45,70,000
Less: Deduction in respect of employment of new workmen U/s 80JJAA - 30% (` 4000×10×10)[Excess of 100 workmen (including casual)]		(-) 1,20,000
Total Income		44,50,000

(c) Unexplained investment of `35,00,000 was found for Assessment Year 2013-14 and the source of such investment was claimed to have come from intangible additions made in the past. The following addition has been made and penalty imposed in the past years:

Assessment Year	Total addition	Amount of addition on which penalty levied
2012-13	**15,00,000**	**Penalty levied on intangible additions of `5,00,000 only**
2011-12	**15,00,000**	**Penalty levied on intangible addition of `6,00,000**
2010-11	**5,00,000**	**Nil**

You are required to describe how will penalty proceeding be initiated in this case? [5]

Answer:

In the above case penalty proceedings will be initiated for Assessment Year 2013-14 on the amount mentioned in last column, calculated as under:

Assessment Year	Intangible Additions made starting from immediately preceding Assessment Years in which intangible addition is made	Penalty already levied	Balance amount on which penalty is leviable in respective Assessment Years
1	2	3	4
2012-13	15,00,000	5,00,000	10,00,000
2011-12	15,00,000	6,00,000	9,00,000

2010-11	5,00,000	—	5,00,000

(d) Mr. Iyer, ordinarily resident in India, furnished the following particulars of his income/savings during the Previous Year 2012-2013.

(i)	**Income from foreign business (Including `4,00,000 from business connection in India) accruing outside India**	**24,00,000**
(ii)	**Loss from Indian business**	**(–) 4,00,000**
(iii)	**Income from house property**	**8,00,000**
(iv)	**Dividends gross from Indian companies**	**1,20,000**
(v)	**Deposit in Public Provident Fund**	**,70,000**
(vi)	**Tax paid in foreign country**	**5,00,000**

There is no double taxation avoidance treaty. Compute the tax liability [5]

Answer:

(1) Computation of Total Income for the Assessment Year 2013-14

Particulars	Amount (`)	Amount (`)
Income from House Property		8,00,000
Income from Business:		
(a) Loss from Indian Business	(4,00,000)	
(i) Income from foreign business accruing or arising outside India	20,00,000	
(ii)income from foreign business deemed to accrue or arise in India	4,00,000	
		20,00,000
Income from other sources		
Dividends from Indian Companies- exempted u/s 10(34)		Nil
Gross Total Income		28,00,000
Less: Deduction for approved savings u/s 80C – PPF deposits		70,000
Total Income		27,30,000

(2) Computation of Tax liability on Total Income for the Assessment Year 2013-14

Particulars	Amount (`)

Tax on Total Income of ` 27,30,000	6,49,000
Add: Surcharge on Income Tax (total income is less than one crore)	Nil
Add: Education Cess @ 2%	12,980
Add: Secondary and Higher Education Cess @ 1%	6,490
	6,68,470
Less: Double taxation relief : 20,00,000 x 20.833%	4,16,660
Tax Payable	2,51,810

Note: 1. Relief is allowed on the doubly taxed income either at average rate of Indian tax or average rate of foreign income tax, whichever is lower:-

(a) Average rate of Indian income tax: 6,68,470/ 27,30,000 × 100 = 24.486%

(b) Average rate of foreign income tax: (5,00,000/24,00,000) × 100 = 20.833%

2. The amount of doubly taxed income has been worked out as under:

Income from foreign business, accruing outside India	24,00,000
Less: Income from business connection deemed to accrue or arise in India which is not entitled to double taxation relief.	4,00,000
Doubly taxed income	20,00,000

3. Loss from Indian business has been set-off against profits from foreign business which is deemed to accrue or arise in India. The mode of set-off increases the amount of double taxation relief.

8. Answer any one Question [1x5]

(a) ABC is a charitable society registered under the Societies Registration Act. On the ground that it was pursuing an objective that involved the carrying of an activity for profit, the Assessing Officer wants to levy wealth-tax on it. Is such a society liable to wealth-tax? [5]

Answer:

Under section 3 of the Wealth-tax Act, the only taxable entities are individuals, Hindu undivided families and companies. A society registered under the Societies Registration Act is neither an "individual" nor a "Hindu undivided family". Moreover it is not an association of persons or body of individuals, or body of trustees which can, by stretching the Supreme Court rulings in Trustees of Gordhandass Govindram Family Charity Trust v. CIT [1973] 88 ITR 47 or CWT v. Kripashankar Dayashankar Worah [1971] 81 ITR 763, be treated as an individual. A society acquires an artificial juridical character which is separate from its members.

(b) P, belonging to the Northern School of Mitakshara law, inherited certain ancestral house properties from his father. His mother was alive when he married under the Special Marriage Act

and subsequently solemnised this marriage according to Hindu rites. Subsequent to this, after the birth of two sons, P gifted the aforesaid family properties to his wife and minor sons and claimed exclusion of the gifted properties in the wealth-tax assessment of his HUF. His mother was dead then. He claimed before the Assessing Officer that his marriage under the Special Marriage Act amounted to severance of his joint family status making the inherited properties his separate property which he could deal with in any manner he liked. Discuss the liability to wealth-tax of the properties in HUF's hands. [5]

Answer:

Though after the death of P's father, the entire property of the family devolves on P as the sole coparcener he still constituted a joint Hindu family along with his mother. His marriage under the Special Marriage Act would have normally resulted in his severance from the joint family, but for the fact that he had later solemnised his marriage in accordance with the Hindu rites also. This being the position, as a coparcener of the family, the gift made by him in respect of any part of the joint property is an illegal and invalid transaction. Moreover, the minor sons have already acquired a right in this property by birth and their father cannot confer any better right on them by making the gift. Thus, the value of the property gifted away by P is liable to be assessed in the hands of P's HUF - Rai Satya Varta v. CWT [1982] 10 Taxman 316 (All.).

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

(a) H Ltd., engaged in providing cellular phone facilities to their subscribers, had been granted licenses by the Department of Telecommunication for operating is specific circles. For providing inter connection, H Ltd. entered into agreement with MTNL/BSNL, which were regulated by the TRAI and under the agreement, H Ltd. had to pay interconnection, access charges and port charges to the interconnection providers. The income-tax department was of the view that interconnection/ port/access charges were liable for tax deduction at source in view of the provisions of section 194J and that these charges were in the nature of fees for technical services. Whether the contention taken by the Income-tax department is tenable in law? Discuss. Support your answer with citation of relevant case law. [5]

Answer:

The Delhi High Court in CIT v. Bharti Cellular Ltd. [20113 330 ITR 239 (SC) has held that, the services rendered qua interconnection/part access did not involve any human interface and, therefore, the services could not be regarded as 'technical services' as contemplated under section 194J of the Act. The interconnect/port access facility was only a facility to use the gateway and the network of MTNL/ other companies. MTNL or other companies did not provide any assistance or aid or help to the assessee in managing operating, setting up their infrastructure and network.

No doubt, the facility of interconnection and port access provided by MTNL/ other companies was 'technical' in the sense that it involved sophisticated technology. The expression 'technical service' was not to be construed in the abstract and general sense but in the narrower sense as circumscribed by the expressions 'managing service' and 'consultancy service' as appearing in

Explanation 2 to Section 9(1)(vii) of the Act. The expression technical service' would have reference to only technical service rendered by a human. it would not include any service provided by machines or robots.

Therefore, the interconnect charges/ port access charges could not be regarded as fees for technical services hence not liable for tax deducted at source.

(b) Write a note on profits and gains of shipping business in case of non-residents. [5]

Answer:

Profits and gains of shipping business in the case of non-residents [Section 44B]:

(A) Section applies to: A non-resident assessee engaged in the business of operation of ships.

(B) Deemed profits and gains of business or profession : $7\frac{1}{2}\%$ of the aggregate of the following -

(i) Amount paid/payable in or outside India to assessee or any person on his behalf for carriage of goods, livestock, mail or passengers shipped at any port in India; and

(ii) Amount received or deemed to be received in India by or on behalf of the assessee for any of the above shipped at any port outside India.

Note: Demurrage and handling charges - The amount referred above shall include the amount paid or payable or received or deemed to be received, as the case may be, by way of demurrage charges or handling charges or any other amount of similar nature.

(c) Write a note on profits and gains in connection with business of exploration, etc. of mineral oils. [5]

Answer:

Profits and gains in connection with business of exploration, etc. of mineral oils [Section 44BB]

(A) Section applies to : A non-resident engaged in the business of providing services or facilities in connection with, or supplying plant (including ships, aircraft, vehicles, drilling units, scientific apparatus and equipment, used for the said business) and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils (including petroleum and natural gas).

(B) Deemed profits and gains of business or profession: 10% of the aggregate of following -

(i) Amount paid or payable in or outside India to the assessee or to any person on his behalf for any of the above for prospecting for, or extraction or production of, mineral oils in India; and

(ii) Amount received or deemed to be received in India by or on behalf of the assessee for any of the above for prospecting for or extraction or production of mineral oils outside India.

(C) Claim of lower profits : The assessee may claim lower profits and gains than the profits as deemed above, if he -

(i) keeps and maintains books of account and other documents as per Section 44AA; and

(ii) gets his accounts audited and furnishes a report thereof as per Section 44AB.

Thereupon, the Assessing Officer shall proceed to make an assessment of the total income or loss of the assessee under section 143(3) and determine the sum payable by, or refundable to, the assessee.

(D) Non-Applicability: This section shall not apply in a case where the provisions of Sections 42/ 44DA/115A/293A apply for computing profits or gains or any other income referred therein.