

**Paper 16 – Tax Management and Practice**

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Full Marks: 100

Time allowed: 3 hours

Answer Question No. 1 which is compulsory and any five from the rest

- 1.(a) Fill in the blanks: [5×1=5]
- (i) Authorisation for Export Promotion Capital Goods (EPCG) Scheme is valid for \_\_\_\_\_ months from the date of issue of Authorization.
  - (ii) The application for compulsory registration should be submitted by a dealer within \_\_\_\_\_ days of making an inter-state sale.
  - (iii) Goods cleared from DTA to SEZ \_\_\_\_\_ (is/ is not) liable to export duty.
  - (iv) As per section 245Q(3), an application can be withdrawn by the applicant within \_\_\_\_\_ days from the date of filling of a valid application complete in all respects according to the Act and Rules in the office of the Authority.
  - (v) An appeal once filled cannot be \_\_\_\_\_.

Answer:

- (i) 18
- (ii) 30
- (iii) is not
- (iv) 30 days
- (v) Withdrawn

- 1.(b) Choose the most appropriate alternative: [5×1=5]
- (i) Which of the following agriculture services or agricultural produce is excluded from the negative list of services?
    - (A) Cultivation, harvesting, seed testing
    - (B) Renting of agro machinery
    - (C) Cultivation of ornamental flowers
    - (D) Grinding, sterilizing extraction of packaging in retail packs of agricultural products.
  - (ii) If goods are pilfered after the order of clearance is made but before the goods are actually cleared, what will be the consequence?
    - (A) No duty is payable by the importer
    - (B) Importer has to pay duty and no refund can be claimed
    - (C) Importer has to pay duty but refund can be claimed
    - (D) None of the above.
  - (iii) Mr. A purchases the goods from a manufacturer for ₹ 1,000 plus VAT @4%. If he, sell the same by adding ₹ 200 profit, his net VAT payable will be:
    - (A) 48
    - (B) 8
    - (C) 40
    - (D) None of the above.
  - (iv) Failure to keep and maintain any information and document shall attract a penalty under section 271AA which shall be a sum equal to \_\_\_\_\_ of the value of each specified transaction entered into by the person.
    - (A) 2%
    - (B) 3%
    - (C) 5%
    - (D) 10%
  - (v) Deduction available under section 80GG towards rent paid shall not exceeds ₹ \_\_\_\_\_ per month.

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- (A) ₹ 2,000
- (B) ₹ 5,000
- (C) ₹ 7,500
- (D) ₹ 10,000.

**Answer:**

- (i) (D)
- (ii) (C)
- (iii) (B)
- (iv) (A)
- (v) (B)

**1.(c) State true or false with reasons:**

**[5×2=10]**

- (i) M/s. DLF Ltd., sponsored ₹ 20 lakhs in respect of a Tournament organized by Board of Council for Cricket in India (BCCI). BCCI is liable to pay service tax.
- (ii) Funeral, burial, crematorium or mortuary services including transportation of the deceased are included in the negative list.
- (iii) In case of Advance Authorisation, 20% value addition is required.
- (iv) Every application for stay of demand should be accompanied by fees of ₹ 1,000.
- (v) Where an offence under this Act has been committed by a Hindu undivided family, the karta thereof shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

**Answer:**

- (i) False. M/s DLF Ltd. is liable to pay service tax under reverse charge being the recipient of sponsorship services from BCCI (not a National Sports Federation).
- (ii) True. Funeral, burial, crematorium or mortuary services including transportation of the deceased and all other relevant services are included in the negative list.
- (iii) False. In case of Advance Authorisation, 15% value addition is required. In case of tea product, 50% value addition is required.
- (iv) False: As per Section 254 (7), every application for stay of demand should be accompanied by fees of ₹ 500.
- (v) True: As per Section 278C(1), Where an offence under this Act has been committed by a Hindu undivided family, the karta thereof shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

**2. The Statement of Profit & Loss of Ram Limited, a domestic company for the year ended 31st March, 2017 discloses a net profit of ₹ 120 lacs after debiting/crediting the following items:**

- (i) Provision for doubtful debts ₹ 2.40 lacs
- (ii) Provision for income tax ₹ 18 lacs
- (iii) Provision for deferred tax ₹ 9 lacs
- (iv) Depreciation ₹ 15 lacs (including depreciation on revaluation of assets ₹ 3 lacs.)
- (v) Provision from export in unit set up in Special Economic Zone ₹ 22 lacs (eligible for deduction under section 10AA)
- (vi) Provision for loss of subsidiary company ₹ 20 lacs
- (vii) Profit on sale of land held as capital asset for 10 years ₹ 10 lacs

The Company has informed you that the entire capital gain on sale of land was invested in bonds of Rural Electrification Corporation Limited within six months from the date of sale. Details of brought forward losses and unabsorbed depreciation as per books of the company:

Previous Year	Brought forward loss (₹ in lacs)	Unabsorbed depreciation (₹ in lacs)
2010-11	-	4

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2011-12	2	3
2012-13	8	2

Compute "book profit" under section 115JB of the Income- tax Act, 1961 for the Assessment Year 2017 – 18. [16]

**Answer:**

Computation of "Book Profit" of Ram Limited for Assessment Year 2017 – 18

	₹	₹
Net profit as per Statement of Profit & loss		120
Add: Provision for doubtful debts	2.40	
Provision for income tax	18	
Provision for deferred tax	9	
Depreciation	15	
Provision for loss of subsidiary company	20	64.40
Less: Depreciation (excluding depreciation on revaluation)	12	
Lower of brought forward loss or unabsorbed depreciation as per Books	9	21
Book profit		163.40

Note:

1. Profit from export in unit set up in Special Economic Zone though eligible for deduction under section 10AA for computation of total income is not eligible for deduction in computing "book profit" for determination of minimum alternate tax.
2. Investment in bonds of Rural Electrification Corporation Limited entitles the assessee company to claim exemption of capital gain in computation of total income. But in computation of "book profit" under section 115JB, capital gain cannot be excluded nor exemption under section 54F can be claimed.

**3.(a) Shree Ram Charitable Trust registered under section 12AA of the Income-tax Act, 1961 runs a school. During the year ended 31st March, 2014, it sold one building for a sum of ₹ 50 lacs. The building was acquired by the trust at ₹ 10 lacs in the year 2009- 10.**

**The trust utilized ₹ 41 lacs out of sale consideration in construction of an additional school building.**

**Advise the trust on the taxable capital gain.**

**Cost inflation indices are:**

**FY 2009 – 10 :632**

**FY 2013 – 14 :939**

**[8]**

**Answer:**

As per section 11(1A) of the Income-tax Act, where a capital asset held under trust is transferred and if only a part of the net consideration is utilised for acquiring the new capital asset, so much of such capital gain as is equal to the amount, if any by which the amount so utilised exceeds the cost of the transferred asset shall be considered to have been applied for the objects of the trust and the exemption shall be restricted to such amount.

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In the given case, the amount of capital gain = ₹ 50 lacs - ₹ 10 lacs = ₹ 40 lacs. The amount considered to be applied for the objects of the trust and exempted under section 11(1A) = ₹ 41 lacs - ₹ 10 lacs = ₹ 31 lacs.

The balance capital gain of ₹ 9 lacs shall be treated as part of other income. Exemption, however, can also be claimed by utilizing 85% of the taxable capital gain towards the objects of the trust within the previous year.

**3.(b) Rajat, who is an practicing CMA in Delhi, furnishes the following particulars for the previous year 2016-17**

Particulars	Amount (₹)
Income from profession	2,12,000
Short term capital gain on sale of gold	18,000
Long term capital gain on sale of gold	6,000
Interest on Government Securities	11,000
Payment of interest on loan taken from a bank for higher studies of his daughter	10,000
Payment made by credit card for Mediclaim policy on his own health and the health of his wife	4,000
Rent paid for a house in Delhi	42,000
Determine his total income for the assessment year 2017-18.	

[8]

**Answer:**

	₹	₹
Income from profession		2,12,000
Income from capital gain		
Short term	18,000	
Long term	<u>6,000</u>	24,000
Income from other sources		
Interest on Government Securities		11,000
Gross Total Income		2,47,000
Less: Deduction u/s 80C to 80U		
u/s 80D (Mediclaim)	4,000	
u/s 80E (Higher Education )	10,000	
u/s 80GG	<u>19,300</u>	
		33,300
Total Income		2,13,700

**Note:**

1. Deduction u/s 80Gg will be minimum of the following three limits
  - a. Rent paid – 10% ATI (42,000 – 22,700) ₹ 19,300
  - b. 25% of ATI ₹ 56,750
  - c. ₹5,000 p.m. ₹ 60,000

2. Adjusted Total Income has been computed as below;

GTI		2,47,000
Less: Deductions		
u/s 80D	4,000	
u/s 80E	<u>10,000</u>	
	14,000	
LTCG	<u>6,000</u>	
		20,000

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Adjusted Total Income		2,27,000

- 4.(a)(i) State the procedures to be adopted to import second hand goods under FTP. [4]**  
**(ii) "Duty credit scrip can be used for importing inputs and capital goods which are freely transferable." — State the uses of duty credit scrip under FTP. [4]**

**Answer:**

- (i)** Import of second hand PC, laptop, air conditioner, DG set, photocopier will require authorization. Import of re-conditioned, refurbished spares of capital goods will be allowed subject to certification of Chartered Engineer that it has at least 80% of residual life of original spares. Other Second hand capital goods including refurbished/reconditioned spares are freely permitted. Other second hand goods (other than capital goods) are restricted, i.e. can be imported against authorization only.

Government may take help of Inspection and Certification Agencies for certifying and valuation/purchase price of capital goods.

Import of computers as donations to schools, educational institutions, public library etc. was permitted. However, these were not be used for commercial purposes and could not be transferred. Now, such imports are not allowed w.e.f. 23-8-2010.

- (ii)** The duty credit scrips can be used for following - (i) Payment of customs duties for import of inputs except certain specified items (ii) Payment of excise duty on domestic procurement of inputs or goods, including capital goods as per customs notifications (iii) Payment of service tax on procurement of services as per service tax notification (iv) Payment of customs duty and fee.

Thus, lot of flexibility is available for utilization of the duty credit scrips. If despite this flexibility, the exporter is unable to utilize the scrip, it can be sold in the market.

**4.(b) Does the Income Tax Appellate Tribunal have the following powers?**

- (i) Power to allow the assessee to urge any ground of appeal which was not raised by him before the commissioner (Appeals).**  
**(ii) Power to recall its own order. [8]**

**Answer:**

- (i)** The Income-tax Appellate Tribunal has the power to entertain question raised for the first time. The Tribunal is not confined only to the issues arising out of the appeal before the Commissioner (Appeals). It has the power to allow the assessee to urge any ground not raised before the Commissioner (Appeals). However, the relevant facts in respect of such ground should be on record. The decision of the Supreme Court in the case of National Thermal Power Company Limited v CIT (1998) 229 ITR 383 (SC) supports this view. However, under section 80A(5), there is a restriction to this power of the Income-tax Appellate Tribunal. This Section provides that where the assessee fails to make a claim in his return of income for any deduction under section 10AA or under any provision of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes", no deduction shall be allowed to him thereunder.
- (ii)** The Delhi High Court, in Lachman Dass Bhatia Hingwala (P) Ltd. v ACIT (2011) 330 ITR 243 (Delhi)(FB) observed that the justification of an order passed by the Tribunal recalling its own order is required to be tested on the basis of the law laid down by the Apex Court in

Honda Sael Power Products Ltd. v CIT (2007) 295 ITR 466, dealing with the Tribunal's power under section 254(2) to recall its order where prejudice has resulted to a party due to an apparent omission, mistake or error committed by the Tribunal while passing the order. Such recalling of order for correcting an apparent mistake committed by the Tribunal has nothing to do with the doctrine or concept of inherent power of review. It is a well settled provision of law that the Tribunal has no inherent power to review its own judgment or order on merits or reappreciate the correctness of its earlier decision on merits. However, the power to recall has to be distinguished from the power to review. While the Tribunal does not have the inherent power to review its order on merits, it can recall its order for the purpose of correcting a mistake apparent from the record. When prejudice results from an order attributable to the Tribunal's mistake, error or omission, then it is the duty of the Tribunal to set it right. The Delhi High Court observed that the Tribunal, while exercising the power of rectification under section 254(2), can recall its order in entirety if it is satisfied that prejudice has resulted to the party which is attributable to the Tribunal's mistake, error or omission and the error committed is apparent.

**5.(a)(i) Briefly examine whether the following activities are liable to service tax as per the provisions of Finance Act, 1994.**

**(A) Mr. Ravi, a singer performs in a bus where passengers drop some coins in his bowl kept, either after feeling rejoiced or out of compassion.**

**(B) Mr. Rajesh during long drive with his wife Manju violated traffic rules and was imposed fine of ₹ 1,000.**

**Also, examine would your answer be different in (i) if Mr. Ravi is called upon Mumbai to perform in an award show for ₹ 50,000.** [6]

**(ii) Services of a NGO registered under sec. 12AA of the Income Tax Act, 1961 working for the rehabilitation of disabled. The aggregate value of taxable services is ₹ 20 Lakh. Determine its taxability.** [2]

**Answer:**

**(i) (A)** Mr. Ravi is not liable to pay service tax as service tax is leviable on the services provided or to be provided. Mr. Ravi has performed an activity without consideration and any activity without consideration does not come within the ambit of definition of "service". In this case passengers are under no obligation to pay any amount for listening to him nor have they engaged him for his services.

**(B)** Service tax is not leviable in this case as in order to be service; an activity has to be carried out for a consideration. Therefore, fine being the legal consequence of Mr. Rajesh's action is not in the nature of consideration for an activity.

If Mr. Ravi is called upon Mumbai to perform in an award show for ₹ 50,000, then this activity would come within the ambit of definition of "service", as it becomes an activity for a consideration. Resultantly, this activity would be liable to service tax.

**(ii)** Taxable service. Since, exemption has been withdrawn w.e.f 1-4-2013.

**5.(b) JE Ltd., manufactures two products L and M, L being a product specified under section 4A of the Central Excise Act, 1944. The sale prices of L and M are ₹ 60 and ₹ 40.80 per unit, respectively. The selling price of product M includes 12.5% basic excise duty, also 2% CST. For product L, 30% abatement is allowable under section 4A. 10,000 units of each product were removed from the factory to sales depots. Common inputs were used to manufacture product L and M. Total excise duty was paid on these inputs for ₹ 10,300. You are required to compute the excise duty liability. Product L is exempted from excise duty. JE Ltd. opted to pay an amount on exempted final product.** [8]

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**Answer:**

Statement showing net excise duty liability of JE Ltd.

Particulars	Value in ₹
Excise duty liable to pay on Product M	44,444
An amount liable to pay on product L	25,200
Total	69,644
Less: CENVAT credit allowed	10,300
Net excise duty liability	59,344

Working note:

(1) Product L (Maximum Retail Price product):

Sale value for 10,000 units = ₹ 6,00,000 (i.e. ₹ 60 per unit x 10,000 units)

Less: abatement @ 30% on ₹ 6 lacs = ₹ 1,80,000

Assessable Value = ₹ 4,20,000  
=====

An amount @6% payable on exempted final product is ₹ 25,200 (i.e. ₹ 4,20,000 x 6%)

(2) Product M (other than MRP product):

Sale value for 10,000 units = ₹ 4,08,000 (i.e. ₹ 40.80 per unit x 10,000 units)

Excise duty = ₹ 44,444 [(i.e. ₹ 4,08,000 x 100/102) x 12.50/112.50]

**6.(a) X Ltd. imported 500 units of minerals from High Seas for sale in India. Selling price exclusive of duties and taxes. Freight from port to depot in India is ₹ 10,150 and Insurance ₹ 1,250.**

Sale quantity	Unit price
400 units	100
300 units	90
150 units	100
500 units	95
250 units	105
350 units	90
50 units	100

**Basic Customs Duty 12% and education cess as applicable. Calculate total customs duty as per Rule 7 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Assume there are no CVD and Spl. CVD applicable for the product. [5]**

**Answer:**

Total quantity Sold	Unit price
650	90
500	95
600	100
250	105

The greatest number of units sold at a particular price is 650 units; therefore, the unit price in the greatest aggregate quantity is ₹ 90.

	₹
Selling Price	= 45,000 (i.e. 500 units x ₹ 90)
Less: Freight (post shipment)	= (10,150)
Less: Insurance (post shipment)	= (1,250)
Assessable Value	= 33,600 =====



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Total Customs Duty = ₹ 4,153 (i.e. ₹ 33,600 x 12.36%)

6.(b)(i) Mr. Sharvil reported under mentioned data for the financial year 2016-17:

	Amount ₹
(i) Total interstate sales during the F.Y. 2016-17 [Inclusive of C.S.T]	1,01,55,800
(ii) Above sales include excise duty	13,60,000
(iii) Incentive on sales received from manufacturer	2,30,000
(iv) Deposit for returnable containers and packages	8,00,000
(v) Good worth ₹ 87,550 (inclusive of tax) made vide Invoice No. 101/ACA, dated 29.9.2016 were returned on 31.3.2017.	

Determine the turnover and CST payable assuming the rate of tax at 2%. [8]

(ii) Mr. H is the owner of a restaurant selling food. He opted to pay the VAT by way of composition of tax. For January 2017, his total sales were ₹ 100,000. He also purchased the input material after payment of VAT of ₹ 1,000. Calculate the net VAT liability of Mr. H. [3]

**Answer:**

(i) Aggregate sale price inclusive of CST = ₹ 93,55,800 (i.e., ₹ 1,01,55,800 – ₹ 8,00,000)  
CST is ₹ 1,83,447 (i.e. ₹ 93,55,800 x 2/102)

Note:-

1. Excise duty forms part of sale price. Hence, it should not be deducted.
2. Incentive on sales received from manufacturer should not be deducted from sale price.
3. Deposit for returnable containers does not form part of sale price and hence, ₹ 8 lakhs has to be deducted from sales turnover.
4. Sales returns of ₹ 87,550 should not be deducted from the sale price since the goods were returned after 6 months from the date of sale.

(ii) The net VAT payable is as follows:

Output tax payable ₹ 100,000 x 12.5% x 60%	= ₹ 7,500
Less: ITC	= Nil
VAT payable	= ₹ 7,500

7.(a)(i) National Instruments Systems imported various products from its Holding Company and supplies the same to its customers in India. The imported products are PXI Controllers, Input/output Modules, Signal Converters, chassis and its parts. Assessee claims that these products were computer based instrumentation products. Accordingly N.I. Systems filed 64 bills of entries, under Customs Tariff Headings 8471, 8473 and other headings falling under Chapter 84.

However, on verification of the technical data (including the catalogue and the webcast of the importer), Department observed that the subject goods were not structurally designed to function as a computer. PXI Controllers, I.O. Modules and Chassis are parts and accessories of a system/instrument which are suitable for use solely or mainly with a number of machines, instruments, apparatus of the same Heading, i.e., 9032 like sensors, thermostats etc.

Discuss in the light of decided case law, if any, whether the view of the department is correct in law? [6]

(ii) An assessee claims that CENVAT credit can be availed on machineries purchased for being used in setting up a sugar plant in foreign country. But Department claims that the bought-out machinery was not eligible capital goods as the same had not been used by the assessee in its factory premises. Justify. [5]

**Answer:**

- (i) The Apex Court in the case of N.I. Systems (India) Pvt. Ltd. (2010) (SC), has held that imported goods were rightly classified by the Department under Chapter 90 (i.e. sensors, thermostats etc.).

Because, the imported goods were manufactured for a special purpose and that purpose was either measurement or control for industrial use and not as Automatic Data Processing (ADP) Machines. As per the test of common parlance the subject goods are measuring/controlling instruments.

Therefore, the view of the Department was right in classifying the Input/output Modules and Chassis as parts and accessories of Automatic Regulating or Controlling Instruments and Apparatus (i.e. the technical equipment or machinery needed for a particular activity or purpose) in terms of the Customs Tariff Heading 9032.90.00.

- (ii) The relevant case is KCP Ltd. v CCE. 2013 (295) ELT 353 (SC). The Supreme Court explained that if duty is not levied on the final product, question of grant of any relief would not arise as in that case there would not be any cascading effect on the duty imposed on inputs.

Further, since the bought-out machinery was not used in the assessee's factory premises (i.e. in India), the necessary condition for availing CENVAT credit on capital goods could not be fulfilled.

Therefore, Cenvat Credit could not be allowed to the assessee.

- 7.(b) The assessee's firm was engaged in the activity of developing of exposed negatives, film processing, and printing of photographs. According to the assessee, the services rendered by a colour photo laboratory did not fall within the mischief of "photography" and/or "photography studio or agency". Hence, they were not liable to pay the service tax. However, Department contended the views of assessee's and demanded the service tax under the category of photography and/or photography studio or agency services. Examine. [5]**

**Answer:**

The work of the photographer is not only to shoot the person or the scene but is also to develop the negatives and bring the prints. When a part of the work is done by the photographer and part of the work is assigned to others, such person i.e. colour laboratory would in fact be a "photography studio or agency". Colorway Photo Lab v UOI 2009 (15) STR 17 (MP).

In the light of the above discussion, the High Court concluded that the colour laboratories would be a part of the "photography studio or agency" involved in providing the service to the consumer and were liable to pay the service tax. Therefore, the Department is correct.

- 8.(a) Where any reference is made by the Assessing Officer to the Transfer Pricing Officer (TPO) under section 92 CA of the Income-tax Act, what are the procedures to be followed by the TPO ? Can TPO exercise his jurisdiction on any international transaction not referred to him but subsequently noticed by him in course of proceeding before him? [8]**

**Answer:**

Procedures to be followed by TPO when reference is made to him by AO under section 92CA:

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- (i) The TPO shall serve a notice on the assessee requiring him to produce evidences on which he relies in support of his computation of the arm's length price.
- (ii) After considering such evidences and after taking into account all materials gathered by him, the TPO shall pass an order determining the arm's length price and send a copy of the order to the AO and the assessee.
- (iii) The TPO shall pass the order at any time before the expiry of 60 days prior to the date on which the time limit referred to in section 153 or section 153B for completion of assessment or reassessment expires.

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

**8.(b) BB India Limited produces steel furniture which is supplied to its holding company BB Inc. USA. BB India Limited raises invoice for US \$ 3,000 per piece of furniture, while the direct and indirect costs of manufacturing work out to US \$ 2,250 per piece. BB India Limited does not supply its products to any other party either in India or abroad. The data base in public domain shows that the still furniture industry in India of comparable companies has export turnover of US \$ 3,000 million and the industry average of total expenses of comparable companies is 80%. Determine whether the transaction entered into by BB India Limited is at arm's length. [8]**

**Answer:**

Computation of net margin made by BB India Limited

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

Computation of net margin of the industry

Particulars	US\$ million
Industry turnover	3,000
Less: Direct and Indirect cost	2,400
Industry margin	600
% of net margin to sales	20%