Paper 16 – Tax Management and Practice

Time Allowed: 3 hours **Full Marks: 100**

This paper contains 9 questions, divided in two sections Section A and Section B. In total 7 questions are to be answered. Answer any five questions from Section A (out of six questions - Questions Nos. 1 to 6).

In Section B, Question No.9 is compulsory and answer any one question from the remaining two questions of the section (i.e. out of Question nos. 7 & 8).

Students are requested to read the instructions against each individual question also. All workings must form part of your answer. Assumptions, if any, must be clearly indicated.

All the questions relate to the assessment year 2014-15, unless stated otherwise.

Section A

Answer any four Questions

1. (a) Ram Ltd., a closely held Indian company, is engaged in the business of manufacture of paints in India. A profit or loss account for the year ending 31.3.2014 is given below:

Profit and Loss Account

Figures in lakhs

Particulars	₹	Particulars	₹
Salary and wages	7.50	Sales	48.00
Postage and Telegrams	0.40	Amount withdrawn from General	3.00
Travelling and Conveyance	0.50	Reserve	
Depreciation	5.00		
Income-tax	4.00		
Wealth tax	0.10		
Excise duty due	1.00		
Provisions for future losses	0.60		
Proposed dividend	0.80		
Loss of subsidiary company	0.50		
Audit fee	0.25		
Director remuneration	8.00		
Deferred tax liability	1.35		
Net profit	21.00		
Total	51.00		51.00

Additional information

1. **The excise duty due on 31.3.2014 was paid on 2.12.2014.**
2. **Custom duty of ₹ 1,20,000 which was due on 31.3.2012 was paid during the financial year 2013-14.**
3. **Depreciation as per income tax is ₹11.43 lakhs.**

4. The company wants of set off the following losses/allowances:

	For tax purposes (₹)	For accounting purposes (₹)
Brought forward loss of assessment year 2013-14	**12,00,000**	**10,00,000**
Unabsorbed depreciation	**3,00,000**	**3,00,000**

Compute the total income of the assessee and the tax liability for the assessment year 2014-15. **[10]**

Solution:

Computation of taxable income or R Ltd. as per normal provisions

	₹	₹
Net profit as per profit and loss account		21,00,000
Add: Amount disallowed		
Income-tax	4,00,000	
Wealth tax	10,000	
Outstanding excise duty	1,00,000	
Provision for future losses	60,000	
Proposed dividend	80,000	
Loss of subsidiary company	50,000	
Deferred tax liability	1,35,000	
Depreciation for separate consideration	5,00,000	13,35,000
		34,35,000
Less:		
Depreciation as per income-tax	11,43,000	
Amount withdrawn from General Reserve	3,00,000	
Custom duty of 2011 -12 paid	1,20,000	15,63,000
		18,72,000
Less: B/f business loss and unabsorbed depreciation (fully set off)		15,00,000
Gross total income		3,72,000
Less: Deduction under Chapter VIA		Nil
Total income		3,72,000

Book profit under section 115JB

Net profit as per profit and loss account		21,00,000
Add:		
Income-tax	4,00,000	
Provision for future losses	60,000	
Loss of subsidiary company	50,000	

Proposed dividend	80,000	
Deferred tax liability	1,35,000	
Depreciation	5,00,000	12,25,000
		33,25,000
Less:		
Depreciation (same amount as there is no revaluation)	5,00,000	
Amount withdrawn from general reserve	3,00,000	
Unabsorbed depreciation (Business loss or unabsorbed depreciation as per books whichever is less)	3,00,000	11,00,000
Book profit		22,25,000

Computation of tax liability

Total income computed	3,72,000
Tax on total income @ 30.9% (30% + surcharge Nil + EC + SHEC@3%)	1,14,950
Tax @ 19.055% (18.5% + surcharge Nil + EC + SHEC @ 3%) on ₹22,25,000 as per provisions of section 115JB	4,23,974

∴ Tax payable for assessment year 2014-15 is ₹4,23,970.

(b) A owns a house property situated in Delhi which is not let at all during the previous year. Compute the net maintainable rent of the house property assuming:

(i) The annual rent assessed by the local authority is ₹2,00,000 and the tax levied is ₹30,000.

(ii) The property has not yet been assessed by the local authority.

The fair market rent of the property is ₹2,40,000 and the standard rent is ₹2,20,000. [4]

Solution:

Case (i)	₹	₹
Gross Maintainable Rent		2,00,000
Less: (1) taxes levied	30,000	
(2) 15% of Gross Maintainable Rent	30,000	60,000
Net maintainable rent		1,40,000

Case (ii)		
Gross Maintainable Rent		2,20,000
Less: (1) taxes levied	Nil	
(2) 15% of Gross Maintainable Rent	33,000	33,000
Net maintainable rent		1,87,000

2. (a) Mr. X presents following details for quarter ending 31st March, 2013 -

(1) Opening Balance of Input VAT credit as on 1-1-2013 : ₹ 25,000.

(2) Inputs purchased during 1-1-2013 to 31-3-2013 : ₹ 40 lakh.

(3) Within the state sales of manufactured goods : ₹ 50 lakh.

(4) Inter-state Sales : ₹ 6 lakh.

CST rate is 2%. There was no inventory as on 1-1-2013 or 31-3-2013. The VAT laws governing Mr. X provide for the refund of input-VAT credit after the end of the first financial year itself.

VAT rate is 12.5% on inputs and 4% on sales. Compute the amount of refund available to Mr. X. [6]

Solution:

Computation of refund available to Mr. X (amounts in ₹):

Output VAT -		
VAT payable on sales (₹50,00,000 × 4%)		2,00,000
CST payable on sales (₹ 6,00,000 × 2%)		12,000
Total output tax		**2,12,000**
Less: Input tax credit -		
Opening balance of input VAT credit as on 01-01-2013	25,000	
Inputs purchased during 01-01-2013 to 31-3-2013 (₹ 40,00,000 × 12.5%)	5,00,000	5,25,000
Balance lying as VAT-credit as on 31-3-2013 eligible for refund		**-3,13,000**

(b) Write a short note on rebate of duty on goods exported out of India under the Central Excise. What are the conditions and limitations subject to which rebate is granted on finished goods? [8]

Answer:

(1) According to Rule 18 of the Central Excise Rules, 2002, the Central Government may, by a notification, grant rebate of -

(i) Duty paid on such excisable goods which are exported out of India, or

(ii) Duty paid on materials used in the manufacturing or processing of such goods.

The rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification.

(2) Conditions and Limitations for grant of refund

Rebate of the whole of the duty paid on all excisable goods, falling under First Schedule to Central Excise Tariff Act, 1985, exported to any country other than Bhutan, is granted subject to the conditions and limitations, specified hereunder -

(i) The excisable goods shall be exported, after payment of duty, directly from a factory/warehouse except as otherwise permitted by the CBEC by a general or special order;

(ii) The excisable goods shall be exported within 6 months from the date on which they were cleared for export from the factory of manufacture or warehouse or within such

extended period as the Commissioner of Central Excise may, in any particular case, allow;

(iii) The excisable goods supplied as ship's stores for consumption on board a vessel bound for any foreign port are in such quantities as the Commissioner of Customs at the port of shipment may consider reasonable;

(iv) The rebate claim by filing electronic declaration shall be allowed from such place of export and such date, as may be specified by the Board in this behalf;

(v) The market price of the excisable goods at the time of exportation is not less than the amount of rebate of duty claimed;

(vi) The amount of rebate of duty admissible is not less than ₹500;

(vii) The rebate of duty paid on those excisable goods, export of which is prohibited under any law for the time being in force, shall not be made.

(viii) In case if a manufacturer is availing area-based exemption and exporting goods therefrom, no rebate of duty shall be admissible.

3. (a) RP Ltd. an Indian company sold goods to S Ltd. in which RP Ltd. has Substantial interest @1425 per piece. As per the most appropriate method the following arms length prices have been determined:

Situation 1	**1475**
Situation 2	**1425**
Situation 3	**1375**
Situation 4	**1525**

(i) Compute the arm's length price assuming the Central Government has notified the variation to be 3%.

(ii) What will be your answer if actual price charged for the specified domestic transaction is ₹1,375 instead of ₹1,425. [7]

Solution:

(i) Arithmetical mean of prices determined by most appropriate method:

$$\frac{1475+1425+1375+1525}{4}$$

$$= \frac{5800}{4}$$

= ₹1450

3% of actual specified domestic transaction price $= \frac{1425 \times 3}{100} =$ ₹42.75

Difference between the Arithmetic mean of arms length price - actual specified domestic transaction price *i.e.* ₹1,450 - 1,425 = ₹25

The arm's length price shall be taken as ₹ 1,425 since the difference between the arm's length price and the actual transaction price does not exceed 3% of actual transaction price. Hence, arm's length price shall be taken as ₹ 1,425.

(ii) 3% of actual transaction price $= \frac{1375 \times 3}{100} =$ ₹41.25

Difference between the arithmetic means of arms length price – Actual specified domestic transaction price i.e. ₹1,450 – ₹1,375 = ₹75
In this case arm's length price shall be taken as ₹1,450 since the difference between the arm's length price and the actual transaction price exceeds 3% of actual specified domestic transaction price.

(b) Rosserie Private Limited is engaged in providing the taxable services. Compute the value of taxable service and the service tax payable by it in the month of March, 2014 from the information furnished below:

Receipts	**₹**
Advances received from clients for which no service has been rendered so far	**8,00,000**
Demurrage charges recovered for use of the services beyond the agreed period	**50,000**
Security deposits forfeited for damages done by service receiver owing to his negligence in the course of receiving a service	**5,00,000**

Besides, the above receipts, one of the clients - SBS Ltd. made a payment of ₹ 1,50,000 (out of which ₹ 25,000 were paid extra by mistake). However, Rosserie Private Limited refused to return the excess payment received.

Rosserie Private Limited is not eligible for small service providers' exemption under Notification No. 33/2012-ST, dated 20-06-2012. [7]

Solution:

Computation of the value of taxable service and the service tax payable:

Particulars	**₹**
Advances received from clients for which no service has been rendered so far [WN-1]	8,00,000
Demurrage charges recovered for use of the services beyond the agreed period [WN-2]	50,000
Security deposits forfeited for damages done by service receiver owing to his negligence in the course of receiving a service. [WN-2]	5,00,000
Payment received from SBS Ltd. [WN-3]	1,50,000
Total	**15,00,000**
Value of taxable service (₹ 15,00,000 ×100/112.36)	13,34,995
Service tax liability (₹ 15,00,000 ×12.36/112.36)	1,65,005

Working Notes:

(1) Advances received in March, 2013 shall be taxable in the month of receipt of advance only [Explanation to rule 3 of the Point of Taxation Rules, 2011].

(2) As per rule 6 of the Service Tax Valuation (Determination of Value) Rules, 2006, following charges are includible in the value of taxable service :

(a) Demurrage charges recovered for use of the services beyond the period agreed upon.

(b) Security deposits forfeited for damages done by service receiver in the course of receiving a service. However, if the forfeited deposits relate to accidental damages due to unforeseen actions not relatable to provision of service, then such forfeited deposits would be excluded.

(3) Excess payment made as a result of a mistake, if not returned and retained by the service provider, becomes a part of the taxable value. Hence, entire ₹1,50,000 would form part of taxable value.

4. (a) Who are the residents eligible to file an application for advance ruling under the Customs Act, 1962? [6]

Answer:

Residents eligible to file an application for advance ruling: The Central Government has, by notification, specified that the following resident persons shall be eligible to file an application for advance ruling, -

(1) Any public sector company; *(applicable for Excise, Customs and Service Tax)*

(2) A resident who proposes to import goods claiming for assessment under heading 9801 of First Schedule to Customs Tariff Act, 1975 (i.e. Project Imports by residents), (applicable only for Customs)

(3) Resident public limited company.

The expression 'resident public limited company' means,-

(i) a public company defined in the Companies Act and includes a private company, which is a subsidiary of a public company, and

(ii) which is resident in India in terms of Income-tax Act, 1961.

(b) Explain the procedure in appeal to be followed by the Commissioner (Appeals). [8]

Answer:

The procedure in appeal [Section 35A of Central Excise Act, 1944/Section 128A of Customs Act, 1962/ Section 85 of Finance Act, 1994] is as under,-

(1) Opportunity of hearing: The Commissioner (Appeals) shall give an opportunity to the appellant to be heard, if the appellant so desires.

(2) Additional grounds can be admitted : The Commissioner (Appeals) may, at the hearing of an appeal, allow an appellant to go into any ground of appeal not already specified in the grounds of appeal, if the Commissioner (Appeals) is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(3) Granting of time and Adjournment of hearing : The Commissioner (Appeals) may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing.

Maximum adjournment - 3 times : However, no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(4) **Time limit of disposal of appeal**: The Commissioner (Appeals) shall, where it is possible to do so, hear and decide every appeal within a period of six months from the date on which it is filed.

(5) **Order of Commissioner (Appeals)**: The Commissioner (Appeals) shall, after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against.

- **Enhancement by Commissioner (Appeals)** : An order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund shall not be passed by Commissioner (Appeals) unless the appellant has been given a reasonable opportunity of showing cause against the proposed order.
- **Issuance of show cause notice** : Where the Commissioner (Appeals) is of opinion that any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, no order requiring the appellant to pay any duty not levied or paid, short-levied or short-paid or erroneously refunded shall be passed unless the appellant is given notice within the time-limit specified in section 11A to show cause against the proposed order.
  The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.
- **Service Tax provisions relating to order of Commissioner (Appeals) [Section 85(4)]**: The Commissioner of Central Excise (Appeals) shall hear and determine the appeal and, subject to the provisions of this Chapter, pass such orders as he thinks fit and such orders may include an order enhancing the service tax, interest or penalty. The order of enhancement can be passed only after the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(6) **Communication of order passed by Commissioner (Appeal)**: On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the appellant, the adjudicating authority, the Chief Commissioner and the Commissioner.

(7) **Commissioner (Appeals) doesn't have power to refer the case back**: The Supreme Court in MIL India **Ltd.** v. CCEx. [2007] 210 ELT188 (SC), has held that the Commissioner Appeals does not have power to refer the case back to the adjudicating authority for fresh adjudication. The statutory power of remand has been taken away by the Finance Act, 2001, by making necessary amendment in the statute. The same view has been expressed by CBEC vide Circular No. 275/34/2006-CX. 8A, dated 18-2-2010.
However Commissioner (Appeals) has power to remand the case back in service tax law.

5. (a) Profit and Loss A/c of R G and Sons, a partnership firm is as follows:

Particulars	₹	Particulars	₹
Establishment and other expenses	**3,00,000**	**Gross Profit**	**11,60,000**
Interest on Capital to partners @ 24% p.a.	**48,000**	**Rent from House Property**	**60,000**
Interest on loan to partners @ 20%	**20,000**	**Interest from Government Securities**	**32,000**
Interest on loan to Mrs. @ 16%	**24,000**		
Municipal taxes of let out house property	**10,000**		
Repairs of the house property	**5,000**		

Donations to National Children's Fund	**10,000**		
Remuneration to partners	**5,60,000**		
Interest on money borrowed for investment in Government Securities	**10,000**		
Sales tax	**25,000**		
Net Profit	**2,40,000**		
	12,52,000		**12,52,000**

Other information

(a) Out of municipal taxes of ₹10,000; ₹6,000 was payable on 31.3.2014 and the same was paid on 30.6.2014.

(b) Sales tax includes a sum of ₹10,000 payable on 31.3.2014. ₹6,000 was paid on 31.7 2014 and ₹4,000 was paid on 30.11.2014, although the due date of payment under the Sales-tax Act was 14.5.2014.

Compute:

(i) The book-profit.

(ii) The maximum amount of remuneration deductible u/s 40(b).

(iii) The Total Income of the firm assuming that the maximum remuneration allowable u/s 40(b) is paid to the partners.

(iv) Also state the income from the firm which will be taxable in the hands of the partners. [10]

Solution:

	₹	₹	₹
(a) Calculation of book-profit:			
Net Profit as per P & L A/c			2,40,000
Less: Income credited to P & L A/c but taxable under other heads			
(i) Rent from house property		60,000	
(ii) Interest from Government Securities		32,000	92,000
			1,48,000
Add: 1. Inadmissible expenses			
(a) Interest to partners in excess of 12% on capital	24,000		
(b) Interest on loan in excess of 12% $\frac{20,000\times 8}{20}$	8,000		
(c) Remuneration to partners	5,60,000		
(d) Sales-tax subject to section 43B	4,000		
(e) Donation to NCF to be allowed as deduction from GTI	10,000	6,06,000	
2. Expenses debited to P & L A/c but allowable under other heads			
(a) Municipal taxes of house property	10,000		
(b) Repairs of house property	5,000		
(c) Interest on money borrowed for investment in Govt. Securities	10,000	25,000	6,31,000
Book Profit			7,79,000

(b)Maximum amount allowable on account of remuneration

First ₹3,00,000 @ 90%	2,70,000	
On balance ₹4,79,000 @ 60%	2,87,400	
	5,57,400	

(c) Computation of Total Income of the Firm

(i) Income from house property:		
Annual Value	60,000	
Less: Municipal taxes paid	4,000	
	56,000	
Less: deduction u/s 24(a) 30% as statutory deduction	16,800	39,200
(ii) Profit and gains of business or profession:		
Book Profit as calculated above	7,79,000	
Less: Remuneration to partners allowable as calculated under Step (b) above	5,57,400	2,21,600
(iii) Income from other sources:		
Interest from Government Securities	32,000	
Less: Interest on money borrowed	10,000	22,000
Gross Total Income		2,82,800
Less: Deductions u/s 80C to 8OU		
U/s 80G —50% of?10,000		5,000
Total Income		2,77,800

(d) (i) Share of profit from firm

50% of (Total Income - Tax paid) i.e., (2,77,800 - 85,840) = ₹95,980 shall be fully exempt for each partner.

(ii) Interest and remuneration of each partner will be taxable in their individual assessment under the head 'profits and gains of business or profession'. Assuming that both R and G have contributed equal capital/loan and both are entitled to equal remuneration, the amount includible as business income will be as under:

(a) 50% of interest on capital and loan, which was allowed to the firm u/s 40(b), i.e. (24,000+ 12,000) ₹36,000	₹
Therefore 50% of ₹36,000	18,000
(b) 50% of total remuneration allowed to the firm i.e. 50% of ₹5,57,400	2,78,700
Amount includible in the Total Income of each partner as business income	2,96,700

(b) The Assessing Officer has reasons to believe that the following incomes of the assessment year have escaped assessment:

	Amount of income escaped assessment
Assessment year 2007-08	**1,90,000**
Assessment year 2008-09	**95,000**
Assessment year 2009-10	**5,20,000**

The Assessing Officer has issued 3 notices on 15.11.2013. Are these notices valid?

What will be your answer if the person has some assets located outside. [4]

Solution:

Assessment year 2007-08, notice could be issued upto 31.3.2014, as the income escaped assessment is more than ₹1 lakhs. Hence, it is a valid notice provided it has been issued after getting proper sanction.

For assessment year 2008-09, notice could be issued upto 31.3.2013 as the income escaped assessment is less than 1 lakh. Hence, notice issued on 15.11.2013 is not a valid notice.

For assessment year 2009-10, notice can be issued upto 31.3.2016 for any income which has escaped assessment. Hence, notice issued on 15.11.2013 is a valid notice provided it has been issued after getting proper sanction, if required.

(b) The assessment can be opened in all the cases upto 6 years from the end of the previous year in which income has escaped assessment irrespective of the amount of income which has escaped assessment/reassessment provided the necessary sanction from the higher authority has been taken.

6. (a) Rahim, a resident Indian, has derived the following incomes for the previous year relevant to the assessment year 2014-15.

Sl. No.	Particulars	₹
1.	**Income from profession**	**2,84,000**
2.	**Rent from house property in Country X ₹ 10,000 p.m. received there, municipal tax paid in that country ₹20,000 (Tax paid in Country X for his income in equivalent Indian rupees 10,000 on the net income of ₹ 1,00,000)**	
3.	**Royalty on books from foreign country Y (eligible for deduction under section 80QQB) (Tax paid in country Y @ 20%) converted in Indian rupees**	**10,00,000**
4.	**The expenses incurred for earning royalty**	**1,00,000**
5.	**Interest from scheduled banks**	**18,000**

Rahim wishes to know whether he is eligible to any double taxation relief and if so, its quantum.

India does not have any Double Taxation Avoidance Agreement with Countries X and Y. [9]

Solution:

Computation of relief u/s 91 of Rahim for assessment year 2014-15

	₹	₹
Income from house property in country X		
Gross Annual value 10,000 x 12	1,20,000	
Less: Municipal tax paid in country X	20,000	
	1,00,000	
Less: Standard deduction @ 30%	30,000	70,000
Profits and Gains of Business or Profession		
Income from professions	2,84,000	
Royalty on books from country Y (₹10,00,000 - ₹1,00,000)	9,00,000	11,84,000
Income from other sources		
Interest from Schedule Banks		18,000
Gross total income		12,72,000
Less: Deduction under Chapter VIA (Section 80QQB)		3,00,000

Total income		9,72,000
Tax on total income of ₹9,72,000		1,24,400
Add: Education cess & SHEC @ 3%		3,732
Total tax payable		1,28,132
Average rate of income tax (₹I,28,132/₹9,72,000)	13.1823%	
Average rate of tax of country × 10,000/1,00,000	10%	
Average rate of foreign tax of country Y (₹2,00,000/₹ 10,00,000)	20%	
Relief under section 91 @ 10% on foreign income of ₹70,000	7,000	
Less: Relief under section 91@ 13.18237% on Foreign Income of ₹6,00,000	79,094	86,094
Balance tax payable (rounded off)		42,040

(b) Punjab National Bank provides the following information for the month of June:

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]

Solution:

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 and its net service tax liability will be computed as under *(amount in ₹)* :

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 (amount in ₹):

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**

Section B
Question no. 9 is compulsory and Answer any one Question from 7 & 8.

7. Answer the following Questions [3x5=15]

(a) Would the provisions of deemed dividend under section 2(22)(e) be attracted in respect of financial transactions entered into in the normal course of business?

Answer:

Under section 2(22)(e), loans and advances made out of accumulated profits of a company in which public are not substantially interested to a beneficial owner of shares holding not less than 10% of the voting power or to a concern in which such shareholder has substantial interest is deemed as dividend. However, this provision would not apply in the case of advance made in the course of the assessee's business as a trading transaction.

The same issues has been dealt with in the case of CIT vs Ambassador Travels (P) Ltd. (2009) 318 ITR 376 (Del.) wherein the assessee, a travel agency, has regular business dealings with two concerns in the tourism industry dealing with holiday resorts. The High Court observed that the assessee was involved in booking of resorts for the customers of these companies and entered into normal business transactions as a part of its day-to-day business activities. The High Court held that such financial transactions cannot under any circumstances be treated as loans or advances received by the assessee from these concerns for the purpose of application of section 2(22)(e).

(b) Would interest earned on fixed deposits made by a social club with its corporate members satisfy the principle of mutuality to escape taxability?

Answer:

CIT vs. Secunderabad Club Picket (2012) 340 ITR 121 (A.P.)

Fact of the case:

The assessee is a social and recreational club. It is a mutual association and a non-profit making concern. The assessee was in receipt of monthly subscriptions, admission/entrance fee and payments made by its members for use of club facilities. It earned interest from the fixed deposit made by it with certain banks and financial institutions, which were also its corporate members. The assessee filed its return claiming this interest to be exempt on the contention that the interest was earned from its members and, therefore, the same was not taxable. The assessee further contended that if a person carries on an activity, which is also trade, in such a way that they and the customers are the same persons, no profits are yielded by such trade for tax purpose and therefore, principle of mutuality would apply.

However, in this case, the Assessing Officer denied such exemption on the ground that neither the assessee deposited the amounts with the banks and financial institutions, treating them as corporate members, nor the banks and financial institutions accepted the same in the capacity of members of the club. The banks and the financial institutions treated the club at par with their other customers and offered them the same interest as offered to the general public.

Decision of the case:

The same issues have been addressed in the case of CIT vs. Secunderabad Club Picket (2012) 340 ITR 121 (A.P.) wherein the Andhra Pradesh High Court following the judgement of the Supreme Court in Bankipur Club Ltd (1997) 226 ITR 97, concluded that certain factors need to be considered to arrive at a conclusion as to what point the relationship of mutuality ends and that

of trading begins. If the object of the assessee claiming to be a 'mutual concern' is to carry on a business and the same consideration is realized both from the members and from non members by giving similar facilities to them, then, the resultant surplus would be an income liable to tax.

The High Court, considering, inter alia, the above mentioned facts, held that the principle of mutuality ends the moment the club deposits the amount with its corporate members, being banks and financial institutions, with the sole aim of earning interest on the deposits. Also, the corporate members, i.e. the banks and financial institutions, have treated the club as a regular customer, accepting deposits in the normal course of business. There is nothing to show that the interest on fixed deposits have been provided as a facility to the club. The social relationship and social activities of the club have nothing to do with its deposits with corporate members.

Therefore, the said interest income is not exempt on the principle of mutuality.

(c) Can an assessee revise the particulars filed in the original return of income by filing a revised statement of income?

Answer:

On this issue, the Orissa High Court in the case of Orissa Rural Housing Development Corpn. Ltd. vs. ACIT (2012) 343 ITR 316(Orissa) held that the assessee can make a fresh claim before the Assessing Officer or make a change in the originally filed return of income only by filing revised return of income under section 139(5). There is no provision under the Income-tax Act, 1961 to enable an assessee to revise his income by filling a revise statement of income. Therefore, filling of revised statement of income is of no value and will not be considered by the Assessing Officer for assessment purposes.

The High Court, relying on the judgement of the Supreme Court in Goetze (India) Ltd. vs. CIT (2006) ITR 323, held that the Assessing Officer has no power to entertain a fresh claim made by the assessee after filing of the original return except by way of filing a revised return.

8. Answer the following Questions [8+7=15]

(a) Whether the charges towards pre-delivery inspection and after-sale-service recovered by dealers from buyers of the cars would be included in the assessable value of cars?

Answer:

Facts of the case:
The appellants were manufacturers of various types of motor vehicles chargeable to duty on ad valorem basis. Department observed that while selling the vehicles to the customers, the dealers added their own margin known as the dealer's margin to the price at which the vehicles were made available to them by the appellants. This dealer's margin contained provision for rendering pre-delivery inspection and three after sale services. Hence, the Department contended that the cost of post delivery inspection and after sale services were to form part of the assessable value of the automobile while discharging the duty liability.

Decision of the case:
The Larger Bench of the Tribunal in the case of Maruti Suzuki India Ltd. vs. CCE 2010 (257) E.L. T. 226 (Tri. – LB) has drawn the following propositions:
(i) Transaction value includes the amount paid by reason of/in connection with sales of goods
The Court noted that the transaction value does not merely include the amount paid to the assessee towards price, but also includes any amount a buyer is liable to pay by reason of or in

connection with the sale of the goods, including any amount paid on behalf of assessee to the dealer or the person selling the vehicles. The reason of sale and inter connection thereto are essential elements to contribute for assessable value.

Measure of levying is expanded and its composition is broad based to bring all that a buyer is liable to pay or incur by reason of sale or in connection on therewith. The transaction value, therefore, is not confined to the amount actually paid and is not restricted to flow back of consideration or part thereof to the assessee directly but even for discharge of sales obligations both in present and future. Thus, all deferred and future considerations are added to assessable value.

(ii) Definition of transaction value is extensive, at the same time restrictive and exhaustive in relation to the items excluded therefrom

Extensive

The use of expressions like "includes in addition to" and "including but not limited to" in the definition clause establishes that it is of very wide and extensive in nature.

Restrictive and exhaustive

At the same time, it precisely pinpoints the items which are excluded therefrom, with the prefix as "but does not include''. Exclusions being defined no presumption for further exclusions is permissible. Hence, the definition is restrictive and exhaustive in relation to the items excluded therefrom.

(iii) PDI and after sales service charges is a payment on behalf of the assessee to the dealer by the buyer

Both, direct benefit as well as indirect benefit (wholly or partly), flowing from buyer to assessee, resulting from the payment made by the buyer to the dealer in connection with or by reason of the sale transaction will have to be included in the assessable value. Being so, any amount collected by the dealer towards pre-delivery inspection or after sale services from the buyer of the goods under the understanding between the manufacturer and the dealer or forming part of the activity of sales promotion of the goods would be a payment on behalf of the assessee to the dealer by the buyer, and hence, it would form part of the assessable value of such goods.

Hence, it was held that the charges towards pre-delivery inspection and after-sale-service recovered by dealers from buyers of the cars would be included in the assessable value of cars.

(b) In case the testing is critical to ensure marketability of manufactured product i.e. the manufacture is not complete without testing; is CENVAT credit of the testing material allowed?

Answer:

Flex Engineering Ltd. vs. Commissioner of Central Excise, U.P. 2012 (276) E.L. T. 153 (SC)
Facts of the Case:

The Flex Engineering Ltd. ('Flex' in short), a manufacturer was engaged in the manufacturing of various types of packaging machines, marketed Automatic Form Fill and Seal Machines ('F&S machines' in short) ,. The machines were 'made to order', in as much as all the dimensions of the packaging/sealing pouches, for which the F&S machine is required, are provided by the customer. The purchase order contained the following inspection clause:

"Inspection/ trial will be carried out at your works in the presence of our engineer before dispatch of equipment for the performance of the machine.''

As the machine ordered was customer specific, if after inspection by the customer it was found deficient in respect of its operations for being used for a particular specified packaging, it could not be delivered to the customer, till it was re-adjusted and tuned to make it match with the

required size of the pouches as per the customer's requirement. On completion of the above process and when the customer was satisfied, an entry was made in the RG-1 register declaring the machine as manufactured, ready for clearance.

As per the above clause, testing material to be used was Flexible Laminated Plastic Film in roll form & Poly Paper which are duty paid.

Point of Dispute:

The Department denied CENVAT credit on the material used for testing of the packaging machines. Two questions were raised to the High Court in this regard:

(i) Whether duties paid on testing material would be eligible as credit under rule 57A of the erstwhile Central Excise Rules, 1944 [now rule 2(k) of the CENVAT Credit Rules, 2004]?

(ii) Whether such use of material in testing in view of the purposes mentioned above, could be said to be used in the manufacture of or use in relation to the manufacture of the final products viz., machines as assembled?

The High Court answered both the above questions in the negative. According to the High Court, anything required to make the goods marketable must form a part of the manufacture and any raw material or any materials used for the same would be a component part of the end product. It thus observed that materials used for testing after manufacture of the final product, viz. the F&S machine, is only to detect the deficiency in the final product and therefore, could not be considered as the goods used in or in relation to the manufacture of the final product. The Flex made an appeal to the Supreme Court against the above order.

Decision of the Case:

The Supreme Court held that the process of manufacture would not be complete if a product is not saleable as it would not be marketable. Thus, the duty of excise would not be leviable on it.

The Supreme Court was of the opinion that the process of testing the customized F&S machines was inextricably connected with the manufacturing process, in as much as, until this process is carried out in terms of the afore-extracted covenant in the purchase order, the manufacturing process is not complete, the machines are not fit for sale and hence, not marketable at the factory gate. The Court was, therefore, of the opinion that the manufacturing process in the present case gets completed on testing of the said machine. Hence, the afore-stated goods viz. the flexible plastic films used for testing the F&S machines are inputs used in relation to the manufacture of the final product and would be eligible for CENVAT credit under rule 57A of the erstwhile Central Excise Rules, 1944 [now rule 2(k) the CENVAT Credit Rules, 2004].

9. Answer the following Questions [7+8 =15]

(a) Would refund of excise duty and grant of interest subsidy under the incentive scheme formulated by Central Government for public interest, namely, to accelerate industrial development, generate employment and create opportunities for self-employment in state of Jammu and Kashmir be treated as a revenue receipt or a capital receipt?

Answer:

In the case of M/s Shree Balaji Alloys vs. CIT (J&K High Court), the Tribunal contended that excise duty refund and grant of interest subsidy received by the assessee in pursuance of the New Industrial Policy introduced in Jammu and Kashmir were revenue receipt and not capital receipt on the grounds that:-

(i) the aforesaid incentives were not given to establish industrial units because the industry was already established.

(ii) the incentives were available only on commencement of commercial production.

(iii) the incentives were recurring in nature.

(iv) the incentives were not given for acquisition of capital assets.

(v) the incentives were given for easy market accessibility and to run the business more profitably.

The High Court observed that the fact that incentives would become available to industrial units entitled thereto from the date of commencement of commercial production and the fact that these were not granted for creation of new assets were not the sole criteria for determining the nature of subsidy. The fact that such incentives were provided to achieve a public purpose should also be considered to determine the nature of subsidy and hence, such subsidy could not be construed as a production or operational incentive for the benefit of the assessee.

Hence, the aforesaid incentives are capital receipts not liable to taxation.

(b) In case of specific classification viz-a-viz classification based on material used/composition of goods, which one should be adopted?

Answer:

Commissioner of Central Excise, Bhopal v. Minwool Rock Fibres Ltd. 2012 (278) E.L.T. 581 (SC)

Facts of the Case:

Minwool Rock Fibres Ltd. started manufacturing rockwool and slagwool using more than 25% of blast furnace slag by weight in 1993. They classified them under Central Excise Tarriff heading 6803.00 (i.e. Slagwool, Rockwool and similar mineral wools) and had been filing classification declarations mentioning this fact. Such declarations so filed prior to 1997-98 were accepted by the Department. However, another specific sub-heading 6807.10 of the Central Excise Tariff was introduced vide Budget 1997 for *'Goods having more than 25% by weight blast furnace slag'*. Accordingly, they claimed that the goods manufactured by them, namely, slagwool and rockwool should henceforth be classified under Chapter sub-heading 6807.10 of the Tariff.

The Revenue contended that when there was a specific sub-heading, i.e. 6803.00 wherein the goods, such as Slagwool, Rockwool and similar wools were enumerated, that entry requires to be applied and not Chapter sub-heading 6807.10.

Point of Dispute:

The assessee's contention was that the appropriate classification for their product was under Chapter sub-heading 6807.10 of the Act while the Department contended that the appropriate classification was under Chapter sub-heading 6803.00 of the Act.

This was the subject matter of the appeal before the Supreme Court.

Decision of the Case:

The Supreme Court held that there was a specific entry which speaks of Slagwool and Rockwool under sub-heading 6803.00 chargeable at 18%, but there was yet another entry which was consciously introduced by the Legislature under sub-heading 6807.10 chargeable at 8%, which speaks of goods in which Rockwool, Slag wool and products thereof were manufactured by use of more than 25% by weight of blast furnace slag.

It was not in dispute that the goods in question were those goods in which more than 25% by weight of one or more of red mud, press mud or blast furnace slag was used. If that be the case, then, in a classification dispute, an entry which was beneficial to the assessee required to be applied and the same had been done by the adjudicating authority, which had been

confirmed by the Tribunal. Further, tariff heading specifying goods according to its composition should be preferred over the specific heading. Sub-heading 6807.10 is specific to the goods in which more than 25% by weight, red mud, press mud or blast furnace slag is used as it is based entirely on material used or composition of goods.

Therefore, the Court opined that the goods in issue were appropriately classifiable under Sub-heading 6807.10 of the Tariff.