Paper-16 - TAX MANAGEMENT AND PRACTICE

Full Marks: 100

Section A
Answer all Questions

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

Answer the following with the help of decided case laws -

(a) Whether the theoretical possibility of product being sold is sufficient to establish the marketability of a product?

Answer:

The Apex Court in the case of Bata India Ltd. vs. CCE 2010 (252) ELT 492 (SC) observed that marketability is essentially a question of fact to be decided on the facts of each case and there can be no generalization. The test of marketability is that the product which is made liable to duty must be marketable in the condition in which it emerges. The question is not whether there is a hypothetical possibility of a purchase and sale of the commodity, but whether there is sufficient proof that the product is commercially known. The mere theoretical possibility of the product being sold is not sufficient but there should be commercial capability of being sold. Theory and practice will not go together when one examine the marketability of a product.

The Supreme Court further ruled that the burden to show that the product is marketed or capable of being bought or sold is entirely on the Revenue. Revenue, in the given case had not produced any material before the Tribunal to show that the product was either being marketed or capable of being marketed, but expressed its opinion unsupported by any relevant materials.

Note: The above judgment is in conformity with the explanation to section 2(d) of the Central Excise Act, 1944 inserted by the Finance Act, 2008.

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

Answer:

Facts of the case:

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

Decision of the case:

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

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

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

(c) How to determine whether a product is covered by 'cosmetics' or 'medicaments?

Answer:

In the case of CCEx., Nagpur vs. Shree Baidyanath Ayurved Bhawan Ltd. 2009 (237) E.L.T. 225 (S. C.) the question that arose for consideration before the Apex Court was in relation to classification of "Dant Manjan Lal" (DML) manufactured by M/s. Baidyanath Ayurved Bhawan Limited. While Baidyanath contended that the product DML was a medicament under Chapter sub-heading 3003 31 of the Central Excise Tariff Act, 1985, the stand of the Department was that the said product was a cosmetic/ toiletry preparation/ tooth powder classifiable under Chapter heading 3306.

The Apex Court observed that in order to determine whether a product is covered by 'cosmetics' or 'medicaments' or in other words whether a product falls under Chapter 30 or Chapter 33, common parlance test continues to be relevant. One should resort to the popular meaning and understanding attached to such products by those using the product and not to the scientific and technical meaning of the terms and expressions used. Hence, it is important to note how the consumer looks at a product and what is his perception in respect of such product.

The Supreme Court further ruled that merely because there is some change in the tariff entries, the product will not change its character. Something more is required for changing the classification especially when the product remains the same. Therefore, since there was no change in the nature, character and uses of DML, it had to be classified as a tooth powder as held earlier in case of the assessee itself in *Shree Baidyanath Ayurved Bhavan Ltd. vs. Collector 1996 (83) E.L. T. 492 (S.C.)*. The Apex Court clarified that although, this case related to old Tariff period i.e. prior to enactment of new Tariff Act but since the product in its composition, character and uses continued to be the same, even after insertion of new sub-heading 3301 30, change in classification was not justified as common parlance test continued to be relevant for classification.

(d) Whether the price used for selling of a product below the cost price for penetration of market can be considered as transaction value?

Answer:

Facts of the Case:

The Fiat India Pvt. Ltd. (Fiat) was the manufacturer of motor cars. They were selling Fiat UNO model cars below cost and were making losses in wholesale trade. The purpose was penetrate the market and competing with other manufacturers of similar goods. The prices were not based on manufacturing cost and profit. This was happening over the period of five years. The Assistant

Commissioner directed for the provisional assessment of the cars at a price which would include cost of production, selling expenses including transportation and landing charges, wherever necessary and profit margin, on the ground that the cars were not ordinarily sold in the course of wholesale trade as the cost of production is much more than their wholesale price, but were sold at loss for a consideration.

Point of Dispute:

The Department disputed that as the extra commercial consideration was involved in this case an additional consideration should be added to the price for the purpose of duty. Thus, the Department invoked Best Judgment Assessment.

Decision of the Case:

The Supreme Court held in the case of CCEx., Mumbai vs. Fiat India Pvt. Ltd. 2012 (283) E.L. T. 161 (SC) that the duty has to be paid on the "transaction value". Section 4(1)(a) of the Central Excise Act, 1944 defines transaction value as under "in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value.

If any of the ingredients in the above definition is missing then the price shall not be considered as the sole consideration as transaction value.

Supreme Court opined that this is a case of extra commercial consideration in fixing of price and artificially depressing it. Full commercial cost of manufacturing and selling was not reflected in the price as it was deliberately kept below the cost of production. Thus, price could not be considered as the sole consideration for sale. No prudent business person would continuously suffer huge loss only to penetrate market; they are expected to act with discretion to seek reasonable income, preserve capital and, in general, avoid speculative investments. It is immaterial that the cars were not sold to related persons.

In view of the above resorting to best judgment assessment was proper.

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

(a) An SSI unit paid central excise duty for the quarter ending March 2012 on 31st March, 2012 by demand draft with GAR-7 challan. However, the bank received and stamped GAR-7 challan on 2nd April 2012 on account of weekly holiday. Whether any interest will be charged on SSI unit for late payment of duty? If yes, whether interest will be charged as per the provisions of rule 8(3) of the Central Excise Rules, 2002 or as per the provisions of delayed payment of duty under section 11AA of the Central Excise Act 1944. Also calculate the amount of interest payable by SSI unit if the amount of duty is ₹3,10,000.

Answer:

In case of payment by cheque, the date of presentation is regarded as date of payment.
The date of presentation shall be the date on which bank receives and stamps GAR -7 Challan.
Hence, date of payment = date of presentation of cheque = 2nd April.
Hence, interest will be payable under Rule 8(3) as follows –

Amount ₹	Due date	Date of payment	Delay days	Rate	No. of days in the year	Interest ₹
3,10,000	31st March, 2012	2nd April	2	18%	365	306

(b) The plastic jars manufactured by a company got destroyed by fire, in respect of which the company presents the following details:

(i) Inputs used in manufacture of such plastic jars - ₹2,24,720 (inclusive of excise duty of ₹24,720 of which Cenvat credit has been taken);

(ii) Value of input services used in manufacture of such plastic jars - ₹28,090 (inclusive of service tax of ₹ 309 of which Cenvat Credit has been taken);

(iii) Transaction value of plastic jars destroyed - ₹4,00,000;

(iv) Duty on finished goods - 12% (plus 2% education cess and 1% SHEC)

(v) Value of insurance compensation received ₹4,00,000.

You are required to:

1) State the amount of remission that will be granted to the company under Rule 21 if other conditions are satisfied;

2) Calculate the amount of Cenvat credit required to be reversed, if any.

What will be your answer if the amount of insurance compensation is ₹4,49,440.

Answer:

The answer is as follows -

(1) Rule 21 of the Central Excise Rules, 2002 inter alia provides that where it is shown to the satisfaction of the Commissioner that goods have been lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal, the Commissioner may remit the duty payable on such goods, subject to such conditions as may be imposed by him by order in writing.

Remission is available if the amount of insurance compensation doesn't include the excise portion of the value of finished goods. Here, the insurance compensation is ₹4,00,000 i.e. value of goods destroyed without including any excise element. Hence, the company can claim remission of ₹49,440 (12.36% of 4,00,000).

(2) According to Rule 3(5C) of the Cenvat Credit Rules, 2004, where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under Rule 21 of the Central Excise Rules, 2002, the CENVAT credit taken on the inputs used in the manufacture or production of said goods shall be reversed.

Rule 3(5C) does not apply to input services. Thus, there is no requirement as to reversal of Cenvat credit on input services. Hence, assuming that the duty on destroyed goods is ordered to be remitted, the amount of Cenvat credit on inputs i.e. ₹24,720 shall be required to be reversed.

In case the amount of insurance compensation is ₹4,49,440, then no remission of duty shall be granted as insurance compensation is inclusive of excise element on finished goods. Since no remission of duty has been granted, there is no requirement to reverse any Cenvat Credit, neither on inputs, nor on input services.

(c) State the provision of Rule 17 of the Central Excise Rules regarding removal of goods by a 100% Export Oriented Undertaking for Domestic Tariff Area.

Answer:

The provisions relating to removal of goods by a 100% Export Oriented Undertaking for Domestic Tariff Area contained in Rule 17 of Central excise Rules 2002, are as under-

(i) Goods to be removed under cover of invoice and duty to be paid as per Rule 8: Where any goods are removed from a 100% export-oriented undertaking to domestic tariff area, such removal shall be made under an invoice by following the procedure specified in Rule 11, and the duty leviable on such goods shall be paid by utilizing the CENVAT credit or by crediting the duty payable to the account of the Central Government in the manner specified in Rule 8.

(ii) Statutory Records to be maintained: The unit shall maintain in the specified form appropriate accounts relating to production, description of goods, quantity removed, and the duty paid.

(iii) Filing of monthly return electronically in ER-2 Form: The unit shall electronically submit a monthly return, in ER-2 Form to the Superintendent of Central Excise, within 10 days from the close of the month to which the return relates, in respect of -

- excisable goods manufactured in the unit; and
- receipt of inputs and capital goods in the unit.

(iv) Returns to be scrutinised by proper officer: The proper officer may, on the basis of information contained in the return filed by the unit and after such further enquiry as he may consider necessary, scrutinise the correctness of the duty assessed by the assessee on the goods removed, in the manner to be prescribed by the Board. Every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer.

3. Answer all Questions

(a) An importer imported some goods for subsequent sale in India at $ 37,000 on CIF basis. Relevant exchange rate as notified by the Central Government ₹65. The item imported attracts basic duty at 16% and education Cess as applicable. If similar goods were manufactured in India, Excise Duty payable as per Tariff is 12% plus education Cess of 2% and SAH 1%. Special Additional Customs Duty is 4%. Find the total duty payable. [5]

Answer:

		(₹)
CIF value USD 37,000 X 65	=	24,05,000
Add: Loading and unloading @1%	=	24,050

Assessable Value	=	24,29,050
Add: Basic Customs Duty @16% on ₹24,29,050	=	3,88,648
	=	28,17,698
Add: Additional Customs Duty [@12% x ₹28,17,698]	=	3,38,124
		31,55,822
Add: Education Cess 2% on (₹3,88,648 + ₹3,38,124)	=	14,535
Add: SAH @1% on (₹3,88,648 + ₹3,38,124)	=	7,268
		31,77,625
Add: Special Additional Customs Duty [@4% x ₹31,77,625]	=	1,27,105
Total value of imported goods	=	33,04,730

Therefore total duty payable is ₹ 8,75,680.

Note:

(i) While calculating CVD we should not take into account NCCD of excise.
(ii) CVD can also be imposed even if there is exemption from Basic Customs Duty.
(iii) Imported goods contain more than one classification and the importer is unable to give the breakup of each item with value then the highest rate of duty among them will be considered.
(iv) CVD can be levied only when the importer imported manufactured goods. It means CVD can be levied only if goods are obtained by a process of manufacture *Hyderabad Industries Ltd* v *Union of India* (1995) (SC).

OR,

An importer imported Mulberry Raw Silk products (not thrown) from China. CIF value was US $ 45,000 and quantity 2,250 Kgs. Exchange rate was US $ = ₹64 on date of presentation of Bill of Entry. Customs Duty rates are – (i) Basic Customs Duty 18%, (ii) Education Cess 2%, (iii) SAH Education Cess -1%. There is no excise duty payable on these goods if manufactured in India. As per Notification No. 106/2003-Cus dated 10-7-2003, anti-dumping duty has been imposed on these goods imported from China, manufactured by any producer in People's Republic of China. The anti-dumping duty will be equal to difference between amount calculated @ US $31.69 per Kg and 'Landed value' of goods. Compute Customs Duty liability & anti-dumping liability.

Answer:

(a)	Computation of Customs Duty	
	Total CIF Price	US $ 45,000
	CIF @ ₹64 per 1 US $	₹ 28,80,000
	Add – Landing charges @ 1%	₹28,800
	Assessable Value	₹29,08,800
	Basic duty @ 18%	₹5,23,584

	Education Cess @ 2% on ₹5,23,584	₹10,472
	SAH education Cess @1% on ₹5,23,584	₹5,236
	Total Customs Duty payable (Basic + Education Cess)	₹5,39,292
(b)	Computation of landed value	
	Assessable Value under Customs Act	₹29,08,800
	Add: All Duties of Customs	₹5,39,292
	Landed Value as per Anti-Dumping Notification	₹34,48,092
(c)	Computation of anti-dumping duty	
	Rate of Silk Yarn as per Anti-Dumping Notification	
	(US \$ 31.69 per kg) × 2,250 kgs =	US \$ 71,302.5
	Value @ ₹ 64 per US \$ = (71,302.5\$ x ₹ 64)	₹ 45,63,360
	Less : Landed value as per Anti-Dumping	₹34,48,092
	Anti-Dumping Duty Payable	₹ 11,15,268

(b) (i) What are the conditions to be fulfilled to granting exemption from CST in the case of stock transfers? [3]

Answer:

In case of stock transfer, F form is required to be produced as proof of stock transfer. As per section 6A (1) submission of F form is mandatory to prove stock transfer. Otherwise, the transaction will be treated as sale for all purposes of CST Act.

F Form is issued by the branch office/consignment agent receiving goods as branch/stock transfer to its head office/ principal who is sending the goods by way of stock/ branch transfer. The H.O./ Principal produces such F forms to its assessing authority to prove such stock/ branch transfer.

(ii) In the case of loss of original copy of VAT invoice, can an assessee claim input credit on the basis of Xerox copy of the same invoice? Give your answer with supporting of the relevant provision of the VAT Act. [2]

Answer:

The VAT invoices should be kept with due care as credit of input-tax can be availed of only on the basis of such invoice. In case the original invoice is lost or misplace, a duplicate authenticated copy of the same must be obtained from the issuing dealer. Input tax credit cannot be utilized on the basis of Xerox copy of the invoice.

(c) What is 'Importer Exporter Code Number' (IEC)? State the manner in which IEC has to be applied for. In what export/ import document should the same be stated? [5]

Answer:

Import/ Export Code Number:

Every importer and exporter must obtain an 'Importer Exporter Code Number' (IEC) from DGFT (Director General of Foreign Trade) or officer authorised by him, by applying in prescribed form (section 7 of FT (D&R) Act). Import and export without IEC number is not permitted, unless specifically exempted.

Procedure for obtaining the IEC Number:

An application in the prescribed form has to be submitted to the office of the jurisdictional Joint Director of Foreign Trade wherein details including Bank Account Number and PAN Number have to be furnished. After processing the application, the office of the Joint DGFT would grant the IEC Certificate. The IEC number has to be indicated in the documents filed with Customs for clearance of imported goods. This number is not required in case of import of gifts and baggage. Details can be obtained from DGFT's website http//www.dgft.gov.in.

Any person importing goods has to file a Bill of Entry for the clearance of goods. The Bill of Entry can be filed online using the ICEGATE at the ICEGATE portal, namely www.icegate.gov.in. The Bill of Entry can also be filed at the EDI Service Centre functioning in different Custom Houses wherein particulars are fed and a check-list is generated. The importer can also fill in details in their respective business premises and bring in material in a floppy and hand over the same to the Service Centre.

The details to be furnished while filing a Bill of Entry include the IEC Number, Import Invoice Number and date, Description of goods including Customs Tariff heading, Quantity of goods, Value of goods, relevant Notification No. and date, if concessional rate of duty is claimed.

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

(a) A interior decorator charges ₹7,75,000 from a client for providing professional services. The break-up of the bill is as follows:-

(i) Value of furniture sold to the client - ₹3,50,000
(ii) Labour and facility charges -₹2,50,000
(iii) Value of materials consumed in providing the service -₹1,75,000

Compute the amount of service tax to be charged from the client.

Answer:
Computation of service tax payable (amount assumed exclusive of service tax)

	₹
Value of furniture sold to the client	Sale, not

[Sale of furniture is 'sale of goods' which cannot be regarded as a service. Though sale is in course of providing the service, however, it constitutes a separate sale, because the parties intend to providing the service, however, it constitutes a separate sale, because the parties intend to have separate rights arising out of sale. Such sale cannot be charged to service tax.]	service
Add: Labour and facility charges [They are for provision of interior decoration service; hence, includible in value]	2,50,000
Add: Value of material consumed in providing the service [Material consumed viz. consumables, etc. in providing services are a part of the value of the service, because service cannot be provided without them.]	1,75,000
Value of service	4,25,000
Service Tax @12.36%	52,530

(b) Compute taxable value and service tax from following sums received by M/s. DSS Society (exclusive of service tax) (Ignore small service provider's exemption)-

(i) Collection from running a school upto 12th Standard: ₹25 lakhs;

(ii) Fees for conduction of examinations, etc. in school: ₹2 lakhs;

(iii) Collection from conveyance facility to students of school: ₹5 lakhs;

(iv) Collection from pre-school education: ₹4 lakh;

(v) Collection from running an approved vocational educational course: ₹3 lakhs;

(vi) Running a boarding school with fees of ₹15 lakhs (package offered inclusive of food, rent, etc.);

(vii) Running courses recognized by foreign law: ₹4 lakhs and collections from bus facility to such students: ₹2 lakhs;

(viii) Running a coaching centre: ₹15 lakhs (including ₹1 lakh for coaching in dance);

(ix) Placement services: ₹4 Lakhs

(x) College education fees (affiliated to Indian university) ₹15 lakh;

(xi) Holding admission test for admission to college: ₹3 lakh;

(xii) Campus recruitment fees: ₹2 lakhs.

Answer:

Computation of service tax liability

(i) Collections from running a school upto 12th Standard: ₹25 lakh - Covered within negative list u/s 66D(1) - Not taxable.

(ii) Fees for conduction of examinations, etc. in school: ₹2 lakh -- Auxiliary Educational Services in relation to exempted school education - Exempt;

(iii) Collections from conveyance facility to students: ₹5 lakh - Auxiliary Educational Services in relation to exempted school education - Exempt;

(iv) Collections from pre-school education: ₹4 lakh - Covered within negative list u/s 66D(1) - Not taxable.

(v) Collections from running an approved vocational educational course: ₹3 lakh - Covered within negative list u/s 66D(1) - Not taxable.

(vi) Running a boarding school with fees of ₹15 lakh (package offered inclusive of food, rent, etc.) - Covered within negative list u/s 66D(1) Not taxable (Essential character is education, hence, wholly exempt u/s 66F(3), which provides that naturally bundled provision of service in ordinary course of business is to be taxed at rate applicable to its essential character service).

(vii) Running courses recognized by foreign law : ₹4 lakh and collections from bus facility to such students : ₹2 lakh - Not covered by negative list and auxiliary services of exempted education also taxable - Fully Taxable ₹6 lakh ;

(viii) Running a coaching centre : ₹15 lakh - Taxable, but, coaching/training in dance ₹1 lakh is exempt - Taxable amount is ₹14 lakh ;

(ix) Placement services : ₹4 lakh - Taxable ;

(x) College education fees (affiliated to Indian university) ₹15 lakh - Recognized by law - Covered within negative list u/s 66D(1) - Not taxable.

(xi) Holding admission test for admission to college: ₹3 lakh - Recognized by law - Covered within negative list u/s 66D(1) - Not taxable.

(xii) Campus recruitment fees: ₹2 lakh - Taxable.

Taxable value = 6 + 14 + 4 + 2 = ₹26 lakh and service tax thereon 12.36% = ₹321,360

(c) Mr. A received advance of ₹1,01,124 (inclusive of service tax but after deducting TDS of ₹11,236) on 5.4.2012, but, such services could not be provided to the extent of 40% and he had to refund the proportionate total sum including service tax on 10.07.2012. What shall be the treatment of such receipt and refund?

Answer:

As per Rule 3 of PoT Rules, 2011, PoT = Date of receipt or Date of Invoice, whichever is earlier. Hence, owing to receipt of advance on 5.4.2012, service tax thereon shall be payable with reference to that date. But, when value of services along with service tax is refunded, as per Rule 6(3), the sum of service tax so refunded shall be eligible for credit. The relevant calculations are –

Sum received (net of TDS)	1,01,124
Add: TDS (tax deducted at source is a part of consideration)	11,236
Total Advance received [It is assumed as inclusive of service tax in view of section 67]	1,12,360
Service Tax @12.36% (Sum Received x 12.36% ÷112.36%	12,360
Service tax of ₹12,360 shall be payable on due date (Quarterly)	5.7.2012 (6th, if e-payment)
Date of refund of 40% amount	10.7.12
Credit allowed on date of refund under Rule 6(3) (40% of service tax)	4,944

Section B

Answer all the Questions

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

Answer the following with the help of decided case laws-

(a) Whether the refund collected illegally by the assessee by producing bogus TDS certificates can be treated as income of the assessee?

Answer:

The expression income in section 2(24) of the Income-tax Act, 1961 is wide and the objective of the Act being to tax income it has to be given an extended meaning. Any kind of income earned by the assessee attracts income-tax at the point of earning and tax law is not concerned with the ultimate event how the income is expended. The Act makes an obligation to pay tax on all income received. The Act considers income earned legally as well as tainted income alike.

The assessee was engaged in tax consultancy and audit work. During the search conducted at the residential premises and office of the assessee certain incriminating documents were seized. From the documents seized it was revealed that the assessee had been claiming and receiving income-tax refunds by filing bogus TDS certificates with returns of income prepared by him even in the names of non-existing persons. The Assessing Officer treats the deposits, being the TDS certificates encashed by the assessee during the previous year, as professional income during the previous year. The Commissioner (Appeals) reduced the income on account of the refunds received by him and held it taxable under residuary head instead of Profession. The Tribunal held that the amount of refunds received by the assessee by fraudulent means could not be assessed as income of the assessee.

The High Court held in the case of CIT vs. K. Thangamani (2009) 309 ITR 015 (Mad.) that when the Tribunal found that the assessee had indulged in fabricating TDS certificates and got refunds from the Department it should not have come to the conclusion that such income was not taxable.

(b) Can exemption under section 10(10C) be availed by a retiring employee of Reserve Bank of India opting for the Optional Early Retirement Scheme?

Answer:

The same issues was held in the case of Chandra Ranganathan vs. CIT (2010) 326 ITR 49 (SC) where the appeals before the Supreme Court were directed against the order passed by the High Court in several tax appeal cases where the question involved was with regards to the deduction available to the appellants u/s.10(10C) of the Income-tax Act, 1961. The order of the Commissioner of Income-tax (Appeals)-IV, Chennai, relating to the A.Y. 2004-05, was questioned before the Income-tax Appellate Tribunal, Chennai Bench, which were disposed of by the Tribunal upholding the claim for deduction made by the appellants. The same was the subject matter of the tax appeal cases before the High Court, which referred to the order of the Appellate Tribunal on the basis of letter F. No. 225/74/2005-ITA-II, dated October 20, 2005, of the

Central Board of Direct Taxes so far as the Reserve Bank of India was concerned. The High Court held that having regard to the above letter of the Central Board of Direct Taxes, the amount received by the employees of the RBI opting for Optional Early Retirement Scheme did not qualify for deduction u/s.10(10C) of the aforesaid Act.

During the course of hearing of the appeals, it was brought to the notice of the Supreme Court that by the subsequent letter dated May 8, 2009, issued by the Central Board of Direct Taxes, it was indicated that the matter had been reviewed on the basis of the judgment of the Bombay High Court dated July 4, 2008, in the case of *CIT v. Koodathil Kallyatan Ambujakshan,* (2009) 309 ITR 113 (Bom.); and it was held that amount received by the retiring employees of the RBI would be eligible for exemption under the aforesaid provisions of the Income-tax Act. On behalf of the Union of India and the Commissioner of Income-tax, the respondent herein, it was submitted that in view of the said Circular, the respondent would allow the benefit of deduction to the appellants u/s.10(10C) of the Income-tax Act, 1961, as far as the retired employees of the Reserve Bank of India were concerned.

Having regard to the above, the Supreme Court held that the appeals had succeeded and were allowed. The impugned order passed by the High Court was set aside and that of the Tribunal was restored.

(c) Can the valuation done by any authority of the State Government for the purpose of payment of stamp duty in respect of land or building be taken as actual sale consideration received by the purchaser?

Answer:

CIT vs. Chandni Buchar (2010) 323 ITR 0510 (Pun. & Har.)

The Assessing Officer added the difference between purchase price disclosed in the sale deed and purchase price of the property adopted for the purpose of paying the stamp duty to the total income of the assessee as income from unexplained sources. The Commissioner of Income-tax (Appeals) deleted this addition by holding that section 50C is a deeming provision for the purpose of bringing to tax the difference as capital gain. Further, he also held that in the absence of any legally acceptable evidence, valuation done for the purpose of section 50C would not represent actual consideration passed on to the seller. The Tribunal also held that valuation done by any State agency for the purpose of stamp duty would not ipso facto substitute the actual sale consideration as being passed on to the seller by the purchaser in the absence of any admissible evidence. The Assessing Officer is obliged to bring on record positive evidence indicating the fact that the assessee has paid anything more than the sum disclosed in the purchase deed. In this case, the assessee has discharged the burden of proving the sale consideration as projected in the sale deed by producing original bank statement.

The High Court, therefore, held that the view taken by the Tribunal while accepting the order of the Commissioner of Income-tax (Appeals) does not suffer from any legal infirmity.

(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?

Answer:

The same issue has been held in the case of Ranbaxy Laboratories Ltd. vs. CIT (2011) 336 ITR 136 (Delhi) wherein 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 conjunction 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. (a) Suresh, maintaining the financial year as his accounting period, is engaged in the business of manufacture of dyes and chemicals as small-scale industrialist. Intending to expand his activities he wants to take Mr. Yadav, a person experienced in the line, in equal partnership with him with effect from July 1, 2012. Mr. Yadav is to contribute ₹3,00,000 as capital and Mr. Suresh is to contribute by way of capital the fixed assets of his proprietary business. Particulars of such fixed assets are as follows:

Particulars	Original Cost ₹	Book Value on March 31, 2012 ₹	Income-tax written down value on March 31, 2012 ₹	Market value on June 30, 2012 ₹
Plant & machinery	1,50,000	80,000	70,000	1,80,000
Land & buildings	50,000	35,000	30,000	90,000
Furniture	15,000	5,000	6,000	6,000

Mr. Suresh proposes to write up the values of these assets in his books to their market value as at June 30, 2012 so that the partnership firm taken over the assets at such values and credits Mr. Suresh's opening capital account by ₹2,76,000. Mr. Suresh wants your advice on the undernoted questions:

(i) By writing up the values in books of the proprietorship prior to the commencement of the partnership does he become liable to a balancing charge and/or capital gains?
(ii) Does the taking over the assets by the partnership firm give rise to a balancing charge and/or capital gains and/or revocation of development rebate or investment allowance in Mr. Suresh's hands?
(iii) What will be the cost of the fixed assets to the partnership firm for granting depreciation under the Income-tax Act, 1961?
Advice Mr. Suresh giving your reason. [5]

Answer:

(i) As the act of writing up the values in the books of proprietorship does not amount to sale or transfer of assets, Suresh will not be liable to tax in respect of balancing charge or capital gains – CIT v. Hind Construction Ltd. [1972] 83 ITR 211 (SC).
(ii) Section 45(3) provides for charging tax on profit arising from the transfer of a capital asset by a partner to a firm. For this purpose, the amount recorded in the books of account of the firm shall be deemed to be full value of the consideration as a result of such transfer. Therefore, the amount chargeable to tax will be calculated as follows:

	₹
Sale Consideration (i.e., ₹1,80,000 + ₹90,000 + ₹6,000)	2,76,000
Less: Cost of acquisition (as per section 50, i.e., ₹70,000 + ₹30,000 + ₹6,000)	1,06,000
Short-term capital gain (in the case of depreciation assets, resulting surplus is always short-term capital gain)	1,70,000

(b) XYZ Ltd. proposes to construct a hospital for its workers. The alternatives open to it are:
(i) To purchase building worth ₹40 lakhs, the purchase price being payable in two annual equal installments.
(ii) To purchase the aforesaid building but instead of paying the price in installments, an agreement would be entered into with the vendor of the building to pay him 10 per cent of the net profits of the company for an indefinite period of time.
(iii) To contribute ₹30 lakh to the UP Government, which will construct a building on land owned by it and allow the company to use it as a hospital for its workers though the ownership of the building will vest with the Government.

Consider each proposal in detail and advise the company to enable it to make the right choice. [5]

Answer:

Under situation (i), the company can claim normal depreciation on ₹40 lakh.
Under situation (ii), the company has to pay 10% of profits to the vendor of the building. The amount on this account is allowable deduction as per ruling given by the Supreme Court in CIT v. Travancore Sugar & Chemicals Ltd. [1973] 88 ITR 1. If the ownership of the building is transferred to the assessee, it can also claim normal depreciation.
Under situation (iii), the assessee has to pay ₹30 lakh to the UP Government for construction of building. The ownership of the building will, however, remain with the Government. Even if the title of the building will remain with the Government, the assessee can claim deduction of ₹30 lakh. It cannot, however, claim depreciation.

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

(a) A public sector company is proposing to enter into an agreement for transfer of technology with a Japanese company. The consideration is a lump sum royalty of ₹42,00,000 (net of the India taxes). The company will get the necessary Government approval. It wants to know the tax implications and in particular whether the Indian tax payable by it would be grossed up. Advise the company.

Answer:

It is chargeable to tax @10.3%	₹
Grossed amount [₹40,00,000 ÷0.897]	44,59,309
Less: Tax to Government @ 10.3% of ₹44,59,309	4,59,309
Payment to Japanese company	40,00,000

(b) For the assessment year 2013-14, the Calcutta Co-operative Society derives total income from the following sources: income from processing with the aid of power: ₹10,000; income from collective disposal of labour of its members: ₹15,000; interest from another co-operative society: ₹30,000; income from house property: ₹80,000; and income from other business: ₹61,000. Determine its taxable income.

Answer:

	₹	₹
Income from house property		80,000
Business Income		
- Processing with the aid of power	10,000	
- Collective disposal of labour	15,000	
- Other business	61,000	86,000
Interest received from a co-operative society		30,000
Gross total income		1,96,000
Less: Deductions in respect of income from		
- Interest [sec. 80P(2)(d)]	30,000	
- Collective disposal of labour [sec. 80P(2)(a)(vi)	15,000	

- Other business [sec. 80P(2)(c)	50,000	95,000
Net Income		1,01,000

(c) On April 1, 2012, D and Mrs. D purchased all the shares of a private limited company. The company had the unabsorbed allowances/losses:

	₹
Accumulated loss	**3,00,000**
Unabsorbed depreciation	**8,00,000**

State the effect of change of shareholders on the right of the company to carry forward the above items.

Answer:

Section 79 provides that where a change in the shareholding of a closely-held company has taken place during the previous year, no loss can be carried forward under section 70 to 80 unless on the last day of the previous year the shares of the company carrying not less than 51 per cent voting rights are being beneficially held by persons who similarly held share carrying 51 per cent voting rights on the last day of the previous year(s) in which the loss was incurred.

In the given problem, since the entire shareholding is changed, the aforesaid condition is not satisfied. The loss of ₹30,00,000 cannot be carried forward. Unabsorbed depreciation can, however, be carried forward under section 32(2) and hence the above said restriction contained in section 79 has no application – CIT v. Concord Industries [1979] 119 ITR 458, CIT v. Kalpaka Enterprises (P.) Ltd. [1986] 157 ITR 659 (Ker.).

(d) A particular expense has been regularly allowed to the assessee every year from assessment year 1961-62. However, for the assessment year 2004-05, this expense was disallowed by the Assessing Officer vides his order under section 143(3) on 30.06.2012. The assessee filed an appeal against such order of Assessing Officer which ultimately went up to Supreme Court and the Apex Court on 05.07.2012 held that deduction for this particular expense is not allowable.

Discuss, for what period, notice under section 148 can be issued under provision of section 150(1) assuming:

(i) The Assessing Officer allowed the deduction of such expenses for assessment years 2005-06 to 2011-12.
(ii) The Assessing Officer did not allow deduction of such expenses after assessment year 2004-05.

Answer:

(i) As per section 150(1) separate notice under section 148 can be issued for the following assessment years at any time.
   (1) Assessment years 2004-05 to 2011-12.
   (2) Assessment year 2000-01 to 2003-04.

Note. – It may be noted that order under section 143(3) against which appeal was filed was passed on 30.6. 2006 and as such as per section 150(2), at the time of passing order on 30.6.2006, the assessment could only be reopened for 6 assessment years prior to 30.6.2006 i.e. 2000-01 to 2005-06. Hence, the assessment of assessment years 1961-62 to 1999-00 cannot be reopened under section 150(1) due to exception given under section 150(2).

(ii) Notice under section 148 can be issued at any time for the following assessment years:
   (1) Assessment year 2004-05.
   (2) Assessment years 2000-01 to 2003-04.

8. Answer any one Question [1x5]

(a) Suggest some tax planning measures in relation to wealth tax.

Answer:

The following tax planning measures can be adopted to minimise tax incidence -

(i) Do not invest in taxable unproductive assets: The companies should not invest their funds in unproductive taxable assets like jewellery, motor cars etc. The investment should be diverted only in productive taxable assets. If the assessee has extra funds for investment, such funds should be invested in non-taxable assets only.

(ii) Invest in taxable assets out of borrowed funds: Further, the investment in taxable assets should be made out of borrowed funds. Owned funds can be used for investment in non-taxable assets while borrowed funds should be used for investment in taxable assets. This will ensure deduction of borrowed debts while computing net wealth.

(iii) The transactions, which attract inclusion of deemed assets in the net wealth, should be avoided.

(iv) The exemptions under section 5 should be availed of.

(v) The individuals and HUF should not maintain cash in excess of ₹50,000. Any excess should be kept deposited in bank. This will avoid inclusion of cash in assets for computation of net wealth.

(vi) All procedures specified in Wealth Tax Act and rules made thereunder must be complied with.

(b) Under what circumstances can the Assessing Officer make a reference to the Valuation Officer for the purpose of making an assessment under the Wealth-tax Act?

Answer:

Reference to Valuation Officer [Section 16A]: The provisions relating thereto are as follows -

(1) Cases where AO can refer the valuation to Valuation Officer: Where under the provisions of Section 7 read with the rules made thereunder, or the rules in Schedule III, the market value of any asset is to be taken into account for the purpose of making an assessment, the Assessing Officer may refer the valuation of any asset to a Valuation Officer -

(a) in a case where the value of the asset as returned is in accordance with the estimate made by a registered valuer, if the Assessing Officer is of the opinion that the value so returned is less than its fair market value;

(b) in any other case, if the Assessing Officer is of the opinion that -

(i) the fair market value of the asset exceeds the value of the asset as returned by 33-1/3% or ₹50,000; or

(ii) that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do.

(2) Notice by valuation officer for furnishing required information: For the purpose of estimating the value of any asset in pursuance of the reference made to him by the Assessing Officer, the Valuation Officer may serve on the assessee a notice requiring him to produce or cause to be produced on a date specified in the notice such accounts, records or other documents as the Valuation Officer may require.

(3) Order to be passed if value as returned is correct: Where the Valuation Officer is of opinion that the value of the asset has been correctly declared in the return made by the assessee, he shall pass an order in writing to that effect and send a copy of his order to the Assessing Officer and to the assessee.

(4) Opportunity of being heard to assessee if value as returned is incorrect: Where the Valuation Officer is of opinion that the value of the asset is higher than the value declared in the return made by the assessee, or where the asset is not disclosed or the value of the asset is not declared in such return or where no such return has been made, the Valuation Officer shall serve a notice on the assessee intimating the value which he proposes to estimate and giving the assessee an opportunity of being heard, on a date specified in the notice, his objections either in person or in writing before the Valuation Officer and to produce or cause to be produced on that date such evidence as the assessee may rely in support of his objections.

(5) Passing of final order by the valuation officer: On the date specified in the notice, or as soon thereafter, after hearing such evidence as the assessee may produce and after considering such evidence as the Valuation Officer may require on any specified points and after taking into account all relevant material which he has gathered, the Valuation Officer shall, by order in writing, estimate the value of the asset and send a copy of his order to the Assessing Officer and to the assessee.

(6) Assessment by AO as per price estimated by valuation officer: On receipt of the order from the Valuation Officer, the Assessing Officer shall, so far as the valuation of the asset in question is concerned, proceed to complete the assessment in conformity with the estimate of the Valuation Officer.

Note: Valuation Officer to follow rules while valuing assets: Valuation Officer should follow Rules forming part of Part B of the Schedule to the Act for the valuation of the assets - Bharat Hari Singhania v. CWT [1994] 207 ITR I (SC).

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

(a) Anuradha Ltd. a foreign company, enters into an agreement with Nitin Ltd., an India company. The agreement relates to a matter included in the industrial policy of the central government and is in accordance with the policy. During the year 2012-13, a royalty of ₹60 lakh is paid by Nitin Ltd. to Anuradha Ltd. Anuradha Ltd. has spent ₹15 lakh on expenses covered under sections 28 to 44. Compute the tax payable by Anuradha Ltd. under the following situations:

(i) Nitin Ltd. pays income-tax payable by Anuradha Ltd., as per the terms of agreement entered into before 1-6-2002.

(ii) The agreement does not provided that Nitin Ltd. will bear the tax, but it is mutually agreed between the parties that royalty of ₹60 lakh will be paid net of taxes.

(iii) The agreement was entered into on 5th June 2002.

Answer:

Tax paid by an Indian company on behalf of the foreign company on the amount of royalty payable to such foreign company under the terms of an agreement (entered into before 1st June, 2002) relating to matter included in industrial policy of the Central Government is exempt from tax u/s 10(6A).

The royalty is taxable © 20% u/s I15A. The computation of tax payable by Anuradha Ltd. is as under:

(a) In this case the amount of tax payable by Nitin Ltd. under terms of agreement will be exempt under section 10(6A). So, no grossing up will be required.

Total Income of Anuradha Ltd. (Expenses are not allowed as deduction)	60 ,00,000
Tax on royalty income @20.6% (20% + 3% Education Cess)	12,36,000
Less: Tax paid by Nitin Ltd. on behalf of Anuradha Ltd.	12,36,000
Tax Payable by Anuradha Ltd.	Nil

(b) In this case amount of tax paid by Nitin Ltd. on behalf of Anuradha Ltd. will not be exempt from tax because the tax is not payable as per the terms of agreement. Hence grossing up will be required to compute the net income of AnuradhaLtd.

Royalty income of Anuradha Ltd. (net of taxes)	60,00,000
Net Income of Anuradha Ltd. [Grossed up: {₹60,00,000 x 100: (100 - 20.6)}]	75,56,675
Tax on net income of ₹75,56,675 @ 20.6%	15,56,675
Less: Tax paid by Nitin Ltd. on behalf of Anuradha Ltd.	15,56,675
Tax Payable by Anuradha Ltd.	Nil

(c) Since the agreement has been entered on or after 1st June 2002, the amount of tax payable by Nitin Ltd. on behalf of Anuradha Ltd. will not be exempt under section 10(6A). Therefore, grossing up of income will be required and the amount of tax payable by Anuradha Ltd. will be computed in the same manner as in (b) above.

(b) ERR Ltd., a foreign company, owns a property in Chennai. It is given on rent (rent being 5,000 US$ per month) to Deter Ltd., another foreign company. The two companies are non-residents in India. The agreement is made outside India. Rent is payable in foreign currency outside India. As per agreement, rent is accrued outside India. Discuss whether the rental income of ERR Ltd. is chargeable to tax in India under the Income-tax Act,1961.

Answer:

As per section 9(1) of the Act, any income arising through or from any business connection in India or property or asset or source of income in India is deemed to accrue or arise in India. Since, in this case, the property from which rent is earned is located in India, the rental income will be taxable in India.

However, if any DTAA provides that such income shall be accrued outside India and shall not be deemed to accrue or arise in India, then, the provision of the DTAA shall prevail.

(c) Why are foreign collaboration Agreement entered into? Give their types.

Answer:

Foreign collaboration agreements are entered into with an object of encouragement of financial and technological advancement of Indian industries. To participate in Indian industries, the overseas investors may adopt any of the following modes – (i) joint ventures; (ii) technical collaboration; (iii) setting up a branch or liaison office or project office; (iv) portfolio investment and foreign direct investments including investments by non-resident Indians and overseas corporate bodies.

Foreign collaboration agreements are of two types –

(a) Technical collaboration agreement: Such agreements relate to transfer of technology to an Indian concern against agreed payments and are only confined to transfer of technology. Nature of payments made under these agreements are as follows –
   (i) Initial lump sum for sale of patent, trademarks and technical Know-how; or
   (ii) Initial lump sum for the transfer of right in any technology or imparting or information;
   (iii) Royalty for use of patents, trademarks and technical Know-how; or
   (iv) Fees for technical services i.e. the consideration for the rendering of any managerial, technical or consultancy service.
   (v) Payment for supply of drawings and designs;
   (vi) Payment for supply of machinery and/ or other equipment.

(b) Financial and Technical collaboration Agreement: In such agreements foreign collaborator makes investment in the capital of the Indian collaborator, besides transfer of technology. The collaborator receives payments, aforesaid case, in respect of transfer of technology. Besides, it receives dividend on shares allotted to the foreign participants in lieu of technological transfers or as part of capital contribution, and also interest on money lent and/ or balance remaining outstanding for any transfer of technology.

   It must be noted that foreign collaboration proposals must comply with the policies of the Government of India and such agreements are subject to the Indian laws.