

Advanced Tax Laws and Practice

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Roll No.....

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 8

Total number of printed pages : 8

NOTE : All the references to sections mentioned in Part–A and Part–C of the Question Paper relate to the Income-tax Act, 1961 and relevant Assessment Year 2012-13, unless stated otherwise.

PART — A

(Answer ANY TWO questions from this part.)

1. (a) Discuss briefly the treatment of un-availed tax credit of minimum alternate tax (MAT) in case of conversion of a private company or unlisted public company into a limited liability partnership (LLP).
(3 marks)
 - (b) Enumerate the conditions prescribed in the proviso to section 47(xiiib) in order to avail of total exemption from capital gains tax upon transfer of capital assets by a private company or an unlisted public company to a limited liability partnership (LLP).
(6 marks)
 - (c) Comment in brief on the allowability of depreciation under section 32 —
 - (i) Both the stipulated conditions under section 32 have been complied with but assessee company has not claimed the depreciation.
 - (ii) A Ltd. and B Ltd. jointly owned plants in the proportion of 80% and 20% respectively and put to use by both the companies during the previous year 2011-12.
 - (iii) X Ltd. acquired following assets during the previous year 2011-12, but could not use them :
 - (a) High powered inverter costing `2,50,000; and
 - (b) Fire extinguisher costing `75,000.
(2 marks each)
2. (a) The Assessing Officer issued a notice under section 142(1) on the assessee on 18th December, 2011 calling him upon to file return of income for the assessment year 2011-12. In response to the said notice, the assessee furnished a return of loss and claimed carry forward of business loss and unabsorbed depreciation. State whether the assessee would be entitled to carry forward as claimed in the return.
(9 marks)

- (b) Whether minimum alternate tax (MAT) under section 115JB is payable in advance and interest under sections 234B and 234C is payable on failure to pay such advance tax ? Also explain whether MAT credit admissible under section 115JAA has to be set-off against the assessed tax payable before calculating the interest under sections 234A, 234B and 234C.

You may take help of decided case law, if any.

(6 marks)

3. (a) Discuss with the help of an example, the cascading effect of dividend distribution tax and the remedial action taken by the government.

(7 marks)

- (b) Does the Income-tax Appellate Tribunal has the following powers —

- (i) Power to recall its order in entirety under section 254(2); and
 (ii) Power to grant indefinite stay in any proceeding relating to an appeal under section 254(2A) ?

(3 marks each)

- (c) A company incorporated outside India is not liable to wealth-tax in India. Discuss.

(2 marks)

PART — B

*(Answer Question No.4 which is compulsory
and any two of the rest from this part.)*

4. (a) Write the most appropriate answer from the given options in respect of the following :
- (i) Section 61 of the Customs Act, 1962 provides for warehousing in the case of capital goods intended for use in any 100% export oriented undertaking (EOU) till the expiry of —
- (a) One year
 (b) Three years
 (c) Five years
 (d) None of the above.

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- (ii) Rule 2(b) of the Central Excise Rules, 2002 defines 'assessment' to include —
- (a) Summary assessment
 - (b) Scrutiny assessment
 - (c) Self-assessment made by the assessee and provisional assessment under Rule 7
 - (d) *Ex-party* assessment.
- (iii) Section 11BB of the Central Excise Act, 1944 provides for the payment of interest @ 6% per annum on refund of duty which is not paid to the applicant within —
- (a) 30 Days
 - (b) 1 Year
 - (c) Three months
 - (d) None of the above.
- (iv) The Customs, Excise, Service Tax Appellate Tribunal (CESTAT) may in its discretion, refuse to admit an appeal where the amount of fine or penalty determined does not exceed —
- (a) ` 1 lakh
 - (b) ` 2 lakh
 - (c) ` 50,000
 - (d) None of the above.
- (v) Fees for filing an appeal to the CESTAT under section 35B of the Central Excise Act, 1944 when the amount of duty and interest demanded and penalty levied is more than ` 50 lakh is —
- (a) ` 1,000
 - (b) ` 10,000
 - (c) ` 5,000
 - (d) None of the above.

(1 mark each)

(b) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :

- (i) There is no separate enactment for the levy of service tax. _____ provides for the legal basis for the levy and collection of service tax in India.
- (ii) The authority for advance ruling is required to pronounce its advance ruling in writing within _____ days from the date of application.
- (iii) A computer print-out is admissible _____ in any proceeding under the law relating to customs without further requirement of production of the original document itself.
- (iv) Every assessee is required to submit a monthly return in proper form of production or removal of goods and other relevant particulars to the Superintendent of central excise within _____ days of the succeeding month.
- (v) Where the value of the export goods cannot be determined under Rules 4 and 5 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 the value shall be determined under Rule 6 by _____ .

(1 mark each)

(c) Star Manufacturing Ltd. defaulted in payment of central excise duty of ₹ 1,00,000 in the month of April, 2012. The company wants to pay this amount of duty in July, 2012 out of the CENVAT credit taken in the months of June and July, 2012. Advise Star Manufacturing Ltd. in this regard.

(5 marks)

(d) Discuss whether a manufacturer of excisable goods is eligible to take the CENVAT credit of excise duty paid on motor vehicles.

(5 marks)

5. (a) Superb Electronics Ltd. is a manufacturer of electronic transformers, semi-conductor devices and other electrical and electronic equipments. During the course of such manufacture, the assessee also manufactured machinery in the nature of testing equipments to test their final products and stated in their balance sheet that the addition to the plant and machinery included testing equipments.

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The department demanded excise duty on such testing equipments. The assessee denied the liability contending that :

- (i) Assembly of testing equipments from various parts and components bought from outside didn't amount to manufacture. Moreover, these were assembled for purely research and development purposes, but research being unsuccessful, same were dismantled;
- (ii) Even if manufacture was involved, the testing equipments were not marketable; and
- (iii) The said project was undertaken only to avoid import of such equipments from the developed countries to save the foreign exchange.

Examine the veracity of the assessee's contentions with reference to a decided case law.

(5 marks)

- (b) Sun Power Ltd. is registered under 'Project Import Regulations, 1986' for import of power equipments at concessional rate to implement a project for setting-up of a power plant. It imported a gas turbine and generator under the Project Import Regulations, 1986, but before these could reach the project site, these were lost/destroyed in the sea within India.

The department denied project import concession under the heading 9801 and demanded full duty, as the goods were not used in the project. Discuss in the light of decided case law, whether the demand made by the department is tenable in law.

(5 marks)

- (c) In an appeal proceeding, the Customs, Excise, Service Tax Appellate Tribunal (CESTAT) looked into shareholding pattern and arrived at a conclusion that the assessee and the buyer were inter-connected companies and also held that appointment of department's cost accountant for the purpose of valuation audit under section 14A of the Central Excise Act, 1944 was valid in law. On an application of the assessee for rectification, the CESTAT in the same evidence and arguments, altogether changed its conclusion and held that the assessee and the buyer were not inter-connected companies and also that the cost accountant should be a cost accountant in practice.

The department alleged that CESTAT rectification order amounted to review, which was not permissible in view of section 35C(2) of the Central Excise Act, 1944.

Examine whether the CESTAT's order of rectification is bad in law. Cite relevant case law also.

(5 marks)

6. (a) From the following particulars, compute the assessable value for central excise purposes. Out of 1,000 units manufactured, 800 units have been cleared to a sister unit for further production of excisable goods on assessee's behalf, the balance 200 units are lying in the stock :

Direct material consumed (inclusive of excise duty @10.3%)	2,20,600
Direct labour and direct expenses	1,60,000
Works overheads	40,000
Research and development costs	25,000
Administration overheads (75% related to production)	80,000
Inputs received free of cost from sister units	35,000
Abnormal losses (not included above)	24,000
Advertisement and selling costs	36,000
VRS compensation to employees (not included above)	1,20,000
Realisable value of scrap/wastage	20,000

(5 marks)

- (b) Bhanu Enterprises is a manufacturing company. In the financial year 2011-12, the details of its clearances of goods are as follows :

	(` in lakhs)
(i) Total exports (including export to Bhutan `50 lakh)	300
(ii) Clearances of excisable goods without payment of duty to a 100% EOU	100
(iii) Clearances of non-excisable goods	20
(iv) Job work under Notification No. 84/94-CE dated 11 th April, 1994	175
(v) Clearances of packing materials which bear the brand name of Ravi Ltd. and meant for packing its products	40

Clearances of goods notified under section 4A of the Central Excise Act, 1944 (retail sale price of goods `100 lakh; abatement notified 40%; and transaction value `80 lakh).

On the basis of above information, you are required to ascertain the eligibility of Bhanu Enterprises for exemption based on the value of clearances in terms of Notification No. 8/2003-CE dated 1st March, 2003 as amended for the financial year 2012-13. Also give suitable notes.

(5 marks)

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- (c) Bhaskar Ltd. has imported certain equipments from Japan at CIF value of 5,00,000 Yen. Other details are as under :

(i) Air freight	90,000 Yen
(ii) Insurance charges	10,000 Yen
(iii) Freight from airport to factory in India	₹ 20,000
(iv) Date of presentation of bill of entry	28 th April, 2012
(Exchange rate notified by CBEC 1 Yen = ₹ 0.40)	
(v) Date of arrival of goods in India	8 th May, 2012
(Exchange rate notified by CBEC 1 Yen = ₹ 0.42)	
(vi) Commission payable to the agent in India	10% of FOB cost
(Not included in CIF value of 5,00,000 Yen)	in Indian rupees

Arrive at the assessable value for the purposes of customs duty providing brief notes wherever required with appropriate assumptions.

(5 marks)

7. (a) (i) Smart & Co. took CENVAT credit amounting to ₹ 2 lakh on inputs wrongly included in their RG 23A Register in the month of February, 2012. During audit, the internal audit party pointed out the mistake in August, 2012. Smart & Co. immediately reversed the amount from balance of ₹ 15 lakh in their CENVAT credit account lying since February, 2012.

Examine whether the company is liable to pay interest on the amount of CENVAT credit taken wrongly.

(3 marks)

- (ii) Mention the 'relevant date' for the purpose of issuing show cause notice for demanding customs duty under section 28 of the Customs Act, 1962 in the following cases :

- Where duty has been erroneously refunded;
- Where duty is provisionally assessed; and
- Where duty is not levied at the time of importation of goods.

(3 marks)

(b) Mention the circumstances under which the penalty is imposable on any person under Rule 26 of the Central Excise Rules, 2002.

(6 marks)

(c) Briefly mention the provisions about temporary detention of baggage in the Customs Act, 1962.

(3 marks)

PART — C

8. Attempt *any five* of the following :

(i) "The Finance Act, 2011 has expanded the scope of powers of the Transfer Pricing Officer (TPO) under section 92CA." Discuss.

(4 marks)

(ii) When can an advance ruling become void ? Explain.

(4 marks)

(iii) What will be the tax treatment for dividend received by Indian companies from specified foreign companies under section 115BBD ? Explain clearly with meaning of specified foreign company and dividend.

(4 marks)

(iv) A non-resident foreign company has a permanent establishment (PE) in India, in respect of which royalty `101 lakh was earned from an Indian company in pursuance of an agreement dated 10th June, 2009 (expenditure incurred on PE in India `12,37,600). Compute the gross tax liability of foreign company ignoring TDS/advance tax for the assessment year 2012-13, assuming that there is no other income of the company for the year.

(4 marks)

(v) Distinguish between 'inbound transactions' and 'outbound transactions'.

(4 marks)

(vi) Write a note on unilateral relief under section 91.

(4 marks)