

# **FINAL EXAMINATION**

**(REVISED SYLLABUS - 2008)**

## **GROUP - III**

### **Paper-14 : INDIRECT & DIRECT – TAX MANAGEMENT**

#### **PART - A**

#### **[ INDIRECT TAX ]**

**Q1. Discuss the Rules for Classification of Excisable Goods.**

**Answer 1.**

**The rules of classification of Excisable Goods are:**

General Rules for Interpretation of Schedule to Central Excise Tariff and Customs Tariff are given in First Schedule to the Tariff. The rules are same for excise and customs. The highlights of rules are given below.

#### **Rule 1**

Classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or Notes do not otherwise require, according to other provisions of the rules.

#### **First part of rule 2(a)**

Any reference to complete goods also includes incomplete or un-finished goods, if such incomplete or un-finished goods have the essential characteristic of finished goods.

#### **Second part of rule 2(a)**

Heading will also include finished goods removed un-assembled or disassembled i.e. in SKD or CKD packs.

#### **Second part of rule 2(b)**

Any reference in heading to material or substance will also include the reference to mixture or combination of that material or substance with other materials or substance. The classification of goods consisting of more than one material or substance shall be according to the principles contained in rule 3.

#### **Rule 3**

When by application of sub-rule (b) of rule 2 or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as given in rule 3(a), 3(b) or 3(c).

#### **Rule 3(a)**

The heading which provides most specific description shall be preferred to heading providing a general description.

**3(b)**

If Mixture and Composite goods consisting of different materials or different components cannot be classified based on above rule i.e. rule 3(a), it should be classified as if they consisted of the material or component which gives it their essential character.

**3(c)**

If two or more headings seem equally possible and the dispute cannot be resolved by any of the aforesaid rules, if both the headings appear equally specific, the heading which occurs last in numerical order is to be preferred (i.e. latter the better).

**Rule 4**

If the classification is not possible by any of the aforesaid rules 1, 2 and 3, then it should be classified under the heading appropriate to goods to which they are most akin. [This is only a last resort and a desperate remedy to resolve the classification issue]

**Rule 5**

Cases for camera, musical instruments, drawing instruments, necklaces etc. specially shaped for that article, suitable for long term use will be classified along with that article, if such articles are normally sold along with such cases. Further, packing materials and containers are also to be classified with the goods except when the packing is for repetitive use (This provision is obviously made to ensure that the packing and the goods are charged at same rate of duty).

**Rule 6**

Classification of goods in sub-headings shall be determined in terms of those sub-headings. Only sub-headings at the same level are comparable.

**Q2. State the rules of Valuation of Excisable Goods.****Answer 2.**

The important rules of Central Excise Valuation Rules, 2000.

**Rule 2(b):** "Normal transaction value" means the transaction value at which the greatest aggregate quantity of goods are sold.

If goods are not sold at the time of removal, then value will be based on the value of **such goods** sold by assessee at any other time nearest to the time of removal, subject to reasonable adjustments.

**Rule 5:** Some times, goods may be sold at place other than the place of removal e.g. in case of FOR delivery contract. In such cases, actual cost of transportation from place of removal upto place of delivery of the excisable goods will be allowable as deduction. Cost of transportation can be either on actual basis or on equalized basis.

**Rule 6:** If price is not the sole consideration for sale, the 'Assessable Value' will be the price charged by assessee, plus money value of the additional consideration received. The buyer may supply any of the following directly or indirectly, free or at reduced cost.

- (i) Materials, components, parts and similar items
- (ii) Tools, dies, moulds, drawings, blue prints, technical maps and charts and similar items used
- (iii) Material consumed, including packaging materials
- (iv) Engineering, development, art work, design work and plans and sketches undertaken elsewhere than in the factory of production and necessary for the production of the goods. In such cases, value of such additional consideration will be added to the price charged by assessee to arrive at the 'transaction value'. [explanation 1 to Rule 6].

**Explanation 2 to rule 6**

Where an assessee receives any advance payment from the buyer against delivery of any excisable goods, no notional interest on such advance shall be added to the value unless the Central Excise Officer has evidence to the effect that the advance received has influenced the fixation of the price of the goods.

**Rule 7**

When goods are sold through depot, there is no 'sale' at the time of removal from factory. In such cases, price prevailing at depot (but at the time of removal from factory) shall be the basis of Assessable Value. The value should be 'normal transaction value' of such goods sold from the depot at the time of removal or at the nearest time of removal from factory.

**Rule 8**

In case of captive consumption, valuation shall be done on basis of cost of production plus 10% (Cost of production is required to be calculated as per CAS-4)

**Rule 9**

If entire production is sold to 'related person' other than inter-connected undertakings, the assessable value will be 'normal transaction value' at which the related person sells the goods to unrelated buyers.

**Proviso to rule 9**

If assessee sales goods to 'related person', but related person uses them in captive consumption (and not sell them), valuation will be done on basis of cost of production plus 10%, as per rule 8.

**Rule 10**

If entire production is sold to 'related person' who are inter-connected undertakings, the assessable value will be as follows – (a) If they are 'related person' as defined in other clauses or is a holding or subsidiary company of assessee, 'normal transaction value' at which the related person sells the goods to unrelated buyers (b) In other cases, the value will be as if they are not 'related person'.

**Rule 10A**

In case of job worker manufacturing goods on behalf of Principal Manufacturer, value will be the value at which the Principal Manufacturer sales goods to unrelated buyer. 'Job worker' means a person engaged in manufacture or production of goods on behalf of a principal manufacturer, from any inputs or capital goods supplied by the said principal manufacturer or by any other person authorised by him.

**Rule 11**

**Residuary method** - If value cannot be determined under any of the foregoing rules, value shall be determined using reasonable means consistent with the principles and general provisions of section 4 and Valuation Rules.

**Q3. (a) Exemption granted to SSI.**

**(b) Define Captive Consumption**

**Answer 3.**

**(a) Exemption to SSI**

- SSI are eligible for exemption from duty under Notification No. 8/2003-CE dated 1-3-2003. The SSI unit need not be registered with any authority.

- Broadly, items generally manufactured by SSI (except in tobacco, matches and textile sector) are eligible for SSI exemption. Some items like pan masala, matches, watches, tobacco products, Power driven pumps for water not conforming to BIS, products covered under compounded levy scheme etc. are specifically excluded, even when these can be manufactured by SSI. Some items like automobiles, primary iron and steel etc. are not eligible for SSI exemption, but anyway, these are beyond capacity of SSI unit to manufacture.
- Unit whose turnover was less than Rs 4 crores in previous year are entitled to full exemption upto Rs 150 lakhs in current financial year.
- SSI units manufacturing goods with brand name of others are not eligible for exemption, unless the goods are manufactured in rural area.
- Turnover of all units belonging to a manufacturer will be clubbed for calculating SSI exemption limit.
- Clubbing is also possible if two units are sham or bogus or if there is unity of interest and practically they are one.

While calculating limit of Rs 400/150 lakhs –

- Turnover of Exports, deemed exports, turnover of non-excisable goods, goods manufactured with other's brand name and cleared on full payment of duty, job work done under notification No. 214/86-CE, 83/94-CE and 84/94-CE, processing not amounting to manufacture, strips of plastics used within factory is to be excluded.
- Value of intermediate products (when final product is exempt under notification other than SSI exemption notification), branded goods manufactured in rural area and cleared without payment of duty, export to Nepal and Bhutan and goods cleared on payment of duty is to be included.
- Value of turnover of goods exempted under notification (other than SSI exemption notification or job work exemption notification) is to be included for purpose of limit of Rs 400 lakhs, but excluded for limit of Rs 150 lakhs.

#### **(b) Captive consumption**

- Excise duty is payable on goods manufactured and used within the factory.
- The intermediate product manufactured within the factory is exempt from duty, if it is consumed captively for manufacture of (a) Capital goods as defined in Cenvat Credit Rules i.e. those which are eligible for Cenvat credit or (b) Used for in or in relation to manufacture of final products eligible for Cenvat, made from inputs which are eligible for Cenvat. [Notification No. 67/1995 dated 16-3-1995].
- Duty is payable only if intermediate goods are marketable.
- If duty is payable on intermediate products, valuation will be on basis of cost of production plus 10%.
- Cost of production should be calculated on basis of CAS-4.

#### **Q4. Discuss the procedures followed in Central Excise.**

##### **Answer 4.**

**Answer:** Some procedures are basic, which every assessee is required to follow. Besides, some procedures are required to be followed as and when required.

**Basic Procedures**

- (1) Every person who produces or manufactures excisable goods, is required to get registered, unless exempted. [Rule 9 of Central Excise Rules]. If there is any change in information supplied in Form A-1, the same should be supplied in Form A-1.
- (2) Manufacturer is required to maintain Daily Stock Account (DSA) of goods manufactured, cleared and in stock. [Rule 10 of Central Excise Rules]
- (3) Goods must be cleared under Invoice of assessee, duly authenticated by the owner or his authorised agent. In case of cigarettes, invoice should be countersigned by Excise officer. [Rule 11 of Central Excise Rules]
- (4) Duty is payable on monthly basis through GAR-7 challan / Cenvat credit by 5th/6th of following month, except in March. SSI units have to pay duty on monthly basis by 15th/16th of following month. Assessee paying duty through PLA more than Rs 50 lakhs per annum is required to make e-payment only [Rule 8].
- (5) Monthly return in form ER-1 should be filed by 10th of following month. SSI units have to file quarterly return in form ER-3. [Rule 12 of Central Excise Rules] - - EOU/STP units to file monthly return in form ER-2 – see rule 17(3) of CE Rules
- (6) Assessee paying duty of Rs one crore or more per annum through PLA are required to submit Annual Financial Information Statement for each financial year by 30th November of succeeding year in prescribed form ER-4 [rule 12(2) of Central Excise Rules].
- (7) Specified assesseees are required to submit Information relating to Principal Inputs every year before 30th April in form ER-5, to Superintendent of Central Excise. Return for 2004-05 was required to be submitted by 31-12-2004 [rule 9A(1) to Cenvat Credit rules inserted w.e.f. 25-11-2004]. Any alteration in principal inputs is also required to be submitted to Superintendent of Central Excise in form ER-5 within 15 days [rule 9A(2) to Cenvat Credit rules inserted w.e.f. 25-11-2004]. Only assesseees manufacturing goods under specified tariff heading are required to submit the return. The specified tariff headings are – 22, 28 to 30, 32, 34, 38 to 40, 48, 72 to 74, 76, 84, 85, 87, 90 and 94; 54.02, 54.03, 55.01, 55.02, 55.03, 55.04. Even in case of assesseees manufacturing those products, only assesseees paying duty of Rs one crore or more through PLA (current account) are required to submit the return.
- (8) Assessee who is required to submit ER-5 is also required to submit monthly return of receipt and consumption of each of Principal Inputs in form ER-6 to Superintendent of Central Excise by tenth of following month [rule 9A(3) to Cenvat Credit rules inserted w.e.f. 25-11-2004]. Only those assesseees who are required to submit ER-5 return are required to submit ER-6 return.
- (9) Every assessee is required to submit a list in duplicate of records maintained in respect of transactions of receipt, purchase, sales or delivery of goods including inputs and capital goods, input services and financial records and statements including trial balance [Rule 22(2)].
- (10) Inform change in boundary of premises, address, name of authorised person, change in name of partners, directors or Managing Director in form A-1. [Refer Instructions given below form A-1]

These are core procedures which each assessee has to follow. There are other procedures which are not routine.

**Non-core procedures** - The non-core procedures are as follows -

- (a) Export without payment of duty or under claim of rebate [Rules 18 and 19 of Central Excise Rules]
- (b) Receipt of goods for repairs / reconditioning [Rule 16 of Central Excise Rules]
- (c) Receipt of Goods at concessional rate of duty for manufacture of Excisable Goods.
- (d) Payment of duty under Compounded Levy Scheme
- (e) Provisional Assessment [Rule 7 of Central Excise Rules]
- (f) Warehousing of goods.
- (g) Appeals and settlement.

**Q5. (a) State the requirements for removal of final products.**

**(b) State the Export Procedures**

**(c) Procedure to be followed if the goods are brought for repairs.**

**Answer 5.**

**(a) Invoice for removal of final products**

Rule 11(1) of Central Excise Rules provides that excisable goods can be removed from factory or warehouse only under an 'Invoice' signed by owner or his authorised agent. In case of cigarettes, invoice shall be counter-signed by Inspector. Invoice should bear serial number and should be in triplicate.

As per Rule 11(2) of Central Excise Rules, Invoice shall contain –

- (a) Registration Number
- (b) Address of jurisdictional Central Excise Division.
- (c) Name of consignee
- (d) Description and classification of goods
- (e) Time and date of removal
- (f) Mode of transport and vehicle registration number
- (g) Rate of duty
- (h) Quantity and Value of goods
- (i) Duty payable on the goods.

**(b) Export Procedures**

- Exports are free from taxes and duties.
- Goods can be exported without payment of excise duty under bond under rule 19 or under claim of rebate of duty under rule 18.
- Excisable Goods should be exported under cover of Invoice and ARE-1 form.
- Merchant exporter has to execute a bond and issue CT-1 so that goods can be cleared without payment of duty. Manufacturer has to issue Letter of Undertaking.
- Export to Nepal /Bhutan are required to be made on payment of excise duty.
- EOU has to issue CT-3 certificate for obtaining inputs without payment of excise duty.

**(c) Bringing goods for repairs, re-making etc.**

- Duty paid goods can be brought in factory for being re-made, refined, reconditioned or for any other reason under rule 16.
- The goods need not have been manufactured by assessee himself.
- Cenvat credit of duty paid on such goods can be taken, on basis of duty paying documents of such goods.
- After processing/repairs, if the process amounts to 'manufacture', excise duty based on assessable value is payable.
- If process does not amount to manufacture, an 'amount' equal to Cenvat credit availed should be paid [rule 16(2)].
- If some self manufactured components are used, duty will have to be paid on such components.
- Buyer/recipient of such goods can avail Cenvat credit of such amount/duty.
- If the above procedure cannot be followed, permission of Commissioner is required [rule 16(3)].

**Q6. Discuss the duty liability of:****(a) Software and unbranded software****(b) Books on CD****(c) Unbranded software is service****Answer 6.****(a) Software is 'goods', but unbranded software is service.**

In *Tata Consultancy Services v. State of Andhra Pradesh* (2005) 1 SCC 308 = 141 Taxman 132 = 271 ITR 401 = AIR 2005 SC 371 = 2004 AIR SCW 6583 = 137 STC 620 = 178 ELT 22 (SC 5 member Constitution bench), it has been held that canned software (i.e. computer software packages sold off the shelf) like Oracle, Lotus, Master-Key etc. are 'goods'. The copyright in the programme may remain with originator of programme, but the moment copies are made and marketed, they become 'goods'. It was held that test to determine whether a property is 'goods' for purpose of sales tax, is not whether the property is tangible or intangible or incorporeal. The test is whether the concerned item is capable of abstraction, consumption and use, and whether it can be transmitted, transferred, delivered, stored, possessed etc. Even intellectual property, once it is put on a media, whether it be in form of books or canvas (in case of painting) or computer discs or cassettes and marketed would become goods. In all such cases, intellectual property has been incorporated on a media for purpose of transfer. The buyer is purchasing the intellectual property and not the media, i.e. the paper or cassette or discs or CD. - - There is no distinction between 'branded' and 'unbranded' software. In both cases, the software is capable of being abstracted, consumed and used. In both the cases, the software can be transmitted, transferred, delivered, stores, possessed etc. Unbranded software when marketed/sold may be goods. However, Supreme Court did not express any opinion because in case of unbranded software, other questions like situs of contract of sale and/or whether the contract is a service contract may arise. Hence, in case of unbranded software, the issue is not yet fully settled. [SC upheld decision of AP High Court reported in *Tata Consultancy Services v. State of AP* (1997) 105 STC 421 (AP HC DB)].

In *Bharat Sanchar Nigam Ltd. v. UOI* (2006) 3 SCC 1 = 152 Taxman 135 = 3 STT 245 = 145 STC 91 = 282 ITR 273 (SC 3 member bench), following extract from decision in case of *Tata Consultancy Services v. State of Andhra Pradesh* was quoted with approval and adopted, 'A

'goods' may be a tangible property or an intangible one. It would become goods provided it has the attributes thereof having regard to (a) its utility; (b) capable of being bought and sold and (c) capable of being transferred, delivered, stored and possessed. If a software, whether customised or non-customised satisfies these attributes, the same would be goods'.

Earlier also, in *Associated Cement Companies Ltd. v. CC* 2001(4) SCC 593 = 2001 AIR SCW 559 = 128 ELT 21 = AIR 2001 SC 862 = 124 STC 59 (SC 3 member bench), it was held that computer software is 'goods' even if it is copyrightable as intellectual property.

In *State Bank of India v. Municipal Corporation* 1997(3) Mh LJ 718 = AIR 1997 Bom 220, it was held that 'computer software' is 'appliance' of computer. It was held that it is 'goods' and octroi can be levied on full value and not on only value of empty floppy. [In this case, it was held that octroi cannot be levied on license fee for duplicating the software for distribution outside the corporation limits].

**Excise duty on software** - All software, except canned software i.e. software that can be sold off the shelf, is 'exempt' under notification No. 6/2006-CE dated 1-3-2006.

Para 138 of Finance Minister's speech dated 28-2-2006 reads as follows, 'I propose to impose an 8 per cent excise duty on packaged software sold over the counter. Customized software and software packages downloaded from the internet will be exempt from this levy'.

**Meaning of 'software'** - 'Information Technology Software' is defined in Supplementary Note of chapter 85 of Central Excise Tariff (and also Customs Tariff) as follows - 'For the purpose of heading 8523, 'Information Technology Software' means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine'.

In *CCE v. Pentamedia Graphics* (2006) 198 ELT 164 (SC), it was held that 'motion picture animation file' recorded in a machine readable format and capable of being manipulated by automatic data processing machine is software – referred in *Padmini Polymers v. CCE* (2007) 215 ELT 392 (CESTAT), where it was held that multimedia application software on CD ROM is exempt. In this case, Cook Books and games which were interactive were held as 'software'. Reference was made to CBE&C circular No. 7/98-Cus dated 10-2-1998 where it was clarified that encyclopedia, games, books will be 'software' if these satisfy the interactivity criterion.

The SC decision was also followed in *Gayatri Impex v. CC* (2007) 215 ELT 397 (CESTAT) and *Adani Exports v. CCE* (2007) 210 ELT 443 (CESTAT). However, from the decision, it is not clear what was exactly imported.

There is no requirement that to qualify as software, it must work without any operating system preloaded on computer. Any programme which requires another programme like operating system will also be treated as software – *Contessa Commercial Co. P Ltd. v. CC* (2007) 208 ELT 299 (CESTAT). In this case, the importer had imported educational programmes and games.

#### **(b) Books on CD.**

In case of encyclopedia and books, there is hardly any 'interactivity', except that search engine helps in locating particular information. Further, search engine, which can be termed as 'software' forms insignificant part of the whole goods. Applying the criteria of 'essential character' in case of mixture of goods, in my view, these cannot be termed as 'software'. These have to be classified as books.

Note 2 to chapter 49 reads as follows, 'For the purpose of Chapter 49, the term 'printed' also means reproduced by means of a duplicating machine, produced under the control of an automatic

data processing machine, embossed, photographed, photocopies, thermocopied or typewritten. Hence, it can be argued that a book can be 'printed' on CD since it is produced under the control of an automatic data processing machine.

As per item Sr. No. 26 of Notification No. 6/2006-CE dated 1-3-2006, CD-ROMs containing books of an educational nature, journal, periodicals (magazines) or newspaper are fully exempt from excise duty. Thus, a book can be on CD has been recognised in law.

### **(c) Unbranded software is service**

Though Supreme Court has held that tailor made software is also goods, Finance Bill, 2008 has imposed service tax on tailor made i.e. unbranded software.

"Information technology software" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment [proposed section 65(53a) of Finance Bill, 2008]

Any service provided or to be provided to any person, by any other person in relation to information technology software for use in the course, or furtherance, of business or commerce, including,—  
(i) development of information technology software, (ii) study, analysis, design and programming of information technology software, (iii) adaptation, upgradation, enhancement, implementation and other similar services related to information technology software, (iv) providing advice, consultancy and assistance on matters related to information technology software, including conducting feasibility studies on implementation of a system, specifications for a database design, guidance and assistance during the startup phase of a new system, specifications to secure a database, advice on proprietary information technology software (v) acquiring the right to use information technology software for commercial exploitation including right to reproduce, distribute and sell information technology software and right to use software components for the creation of and inclusion in other information technology software products (vi) acquiring the right to use information technology software supplied electronically, is a taxable service [proposed section 65(105)(zzzz) of Finance Bill, 2008].

### **Q7. State whether the following are "Goods" as per Central Excise Act, 1944.**

- (a) Plant and machinery assembled at site**
- (b) Articles marketable before erection**
- (c) Goods produced in SEZ in India.**
- (d) Dutiability of Steel and concrete Structures**
- (e) Structure for pre-fabricated building**
- (f) Fabrication of steel structure at site**

### **Answer 7.**

#### **(a) Plant and machinery assembled at site**

Plant and Machinery assembled and erected at site cannot be treated as 'goods' for the purpose of Excise duty, if it is not marketable and movable. [It may be noted that even if goods are held as 'excisable', they will be exempt if manufactured within factory of production. See case law under 'Captive Consumption' in later chapter].

The word 'goods' applies to those which can be brought to market for being bought and sold, and it is implied that it applies to such goods as are movable. Goods erected and installed in the

premises and embedded to earth cease to be goods and cannot be held to be excisable goods. - Quality Steel Tubes (P.) Ltd. v. CCE 75 ELT 17 (SC) = (1995) 2 SCC 372 = 6 RLT 131 = 1995 AIR SCW 11 - in this case, it was held that tube mill and welding head erected and installed in the premises and embedded in the earth for manufacture of steel tubes and pipes are not 'goods'. [followed in Mittal Works v. CCE (1997) 1 SCC 203 = 1996 (88) ELT 622 (SC) = 106 STC 201 - quoted with approval in Thermax Ltd. v. CCE 1998(99) ELT 481 (SC) - same view in Triveni Engineering v. CCE AIR 2000 SC 2896 = 2000 AIR SCW 3144 = 40 RLT 1 = 120 ELT 273 (SC) \* CCE v. Damodar Ropeways 2003(151) ELT 3 = 54 RLT 125 (SC 3 member bench).

In Municipal Corporation of Greater Bombay v. Indian Oil Corporation AIR 1991 SC 686 = 1991 Supp (2) SCC 18, it was held that if the chattel is movable to another place in the same position (condition?), it is movable property. If it has to be dismantled and re-erected at later place, it is attached to earth and is immovable property.

**Assembly at site is not manufacture, if immovable product emerges** - In Mittal Engg Works v. CCE 1996 (88) ELT 622 = 17 RLT 612 = 106 STC 201 = (1997) 1 SCC 203, it was held that if an article has to be assembled, erected and attached to the earth at site and if it is not capable of being sold as it is, without anything more, it is not 'goods'. Erection and installation of a plant is not excisable - followed in CCE v. Hyderabad Race Club 1996 (88) ELT 633 (SC), where it was held that an article embedded in the earth was not 'goods' and hence excise duty is not leviable – followed in TTG Industries v. CCE 2004 AIR SCW 3329 = 167 ELT 501 (SC) – same view in case of storage cabinets, kitchen counters etc. erected at site in Craft Interiors P Ltd. v. CCE 2006 (203) ELT 529 (SC) – same view in respect of refrigeration plant, air conditioning plant and caustic soda plant in CCE v. Viridi Brothers 2007 (207) ELT 321 (SC).

**Capital Goods manufactured within factory of production are exempt even if manufactured by third party** - It may be noted that capital goods manufactured within the factory and used within the factory are exempt from excise duty vide notification No. 67/1995-CE dated 16.3.1995. The exemption is available even when the capital goods are manufactured in the factory of production by third party. [see case law under 'Captive Consumption'].

**Assembly is manufacture only if machinery can be removed without dis-assembly** - In Triveni Engineering v. CCE AIR 2000 SC 2896 = 2000 AIR SCW 3144 = 40 RLT 1 = 120 ELT 273 (SC), it was observed, 'The marketability test requires that the goods as such should be in a position to be taken to market and sold. If they have to be separated, the test is not satisfied'. [Thus, if machine has to be dis-assembled for removal, it is not 'goods' and duty cannot be levied]. If machine (generating set in this case) is only bolted on a frame and is capable of being shifted from that place, it is capable of being sold. It is goods and not immovable property – Mallur Siddeswara Spinning Mills v. CCE 2004 (166) ELT 154 (SC).

**Present legal position in respect of machinery erected at site** – The latest judgment on the issue is of Triveni Engineering judgment dated 8-8-2000, which has been practically accepted by Board vide its circular dated 15-1-2002. Hence, the present legal provision is, as decided in Triveni Engineering, i.e. 'The marketability test requires that the goods **as such** should be in a position to be taken to market and sold. If they have to be separated, the test is not satisfied'. Thus, if machinery has to be dismantled before removal, it will not be goods. Following is also clear - (a) Duty cannot be levied on immovable property (b) If plant is so embedded to earth that it is not possible to move it without dismantling, no duty can be levied (c) If machinery is superficially attached to earth for operational efficiency, and can be easily removed without dismantling, duty is leviable (d) Turnkey projects are not dutiable, but individual component/machinery will be dutiable, if marketable.

**(b) Article can be 'goods' if marketable before erection**

An article will be liable to duty if its manufacture is complete before it is fastened to earth. Similarly, if 'machinery' is in marketable condition at the time of removal from factory of manufacture, duty will be leviable, even if subsequently, it is to be fastened to earth.

**(c) Goods produced in SEZ in India** is exempted from tax.

**(d) Dutiability of Steel and concrete Structures**

Following are covered in 'iron and steel structure' as defined in tariff heading 7308 – (i) big structures like bridges, transmission towers, and lattice masts, lock-gates, roofs etc. of iron and steel (ii) parts of structures e.g. doors, windows and their frames, shutters, balustrades, pillars and columns etc. of iron and steel (iii) Plates, rods, angles, shapes, sections, tubes and the like prepared for use in structures of iron and steel.

In *Mahindra & Mahindra Ltd. v. CCE 2005 (190) ELT 301 (CESTAT 3 member LB)*, it has been held as follows –

- (i) Immovable iron and steel structures are not goods.
- (ii) Structures and parts mentioned in parenthesis of 7308 like bridges, lock-gates, towers, trusses, columns frames etc., in their movable state will be subject to excise duty, even if latter they get permanently fixed in the structures.
- (iii) Plates, rods, angles, sections, tubes and the like, prepared for use in the structures will also be excisable goods subject to duty in their pre-assembled or disassembled state.

Fabrication of steel structurals like columns, crane, grinders, trusses amounts to 'manufacture' - *R S Avtar Singh v. CCE (2007) 213 ELT 105 (CESTAT)*.

**(e) Structure for pre-fabricated building is dutiable**

Steel structure for prefabricated building is dutiable. – *Mittal Pipe Mfg. Co. v. CCE 2002(146) ELT 624 (CEGAT)*.

**(f) Fabrication of steel structure at site is exempt**

As per Sr. No. 64 of notification No. 3/2005-CE dated 24-2-2005, (earlier it was in tariff entry 7308.50), structures fabricated at site of work for use in construction at site are exempt from duty. In *Delhi Tourism v. CCE 1999(114) ELT 421 (CEGAT)*, it was held that the term 'site' should be given wider meaning and not narrow meaning. Even if structure is cast at different place and brought to site of construction, it will be eligible for exemption.

**Q8. Comment on the classification of goods on the followings:**

- (a) Classification of parachute coconut oil**
- (b) Plastic name plate**
- (c) Meaning of 'set of articles' – distinction between laptop and desktop**
- (d) Software/records/tapes supplied along with equipment**

**Answer 8.****(a) Classification of parachute coconut oil**

In *Amardeo Plastics Industries v. CCE (2007) 210 ELT 360 (CESTAT 2 v. 1 order)*, on the basis of chapter notes, it was held that parachute coconut oil is 'vegetable oil' under chapter 15 and not 'preparation for use on the hair', since the marking on package did not say that it is for 'such specialized use', though advertisements did indicate so.

However, in *Shalimar Chemical Works v. CST* (2008) 12 VST 485 (WBTT), it has been held that except in a few Southern States, coconut oil is not treated as edible oil for use of daily cooking. In West Bengal, considering consumption pattern, coconut oil cannot be treated as 'edible oil'. It has to be treated as 'hair oil'.

**(b) Plastic name plate**

Plastic name plate for motor vehicle is to be classified as 'accessory of motor vehicle' in chapter 87 and not 'other articles of plastic' in chapter 39, since 'name plate' is not specified in any heading in chapter 39 – *Pragati Silicons P Ltd. v. CCE* (2007) 8 VST 705 = 211 ELT 534 (SC).

**(c) Meaning of 'set of articles' – distinction between laptop and desktop**

'Set of article' should consist of more than one item, each complementing the work of another and retaining their individual identity all the time – *CC v. Acer India P Ltd.* (2007) 218 ELT 17 (SC). In this case, it was held that a desktop computer is a combination of CPU with monitor, mouse and keyboard as a set. A desktop computer does not lose individual identities of CPU, monitor, mouse and keyboard. Not only they are marketable as separate items but are also used separately. On the other hand, a laptop (notebook computer) comes in an integrated and inseparable form. It is a combination of CPU, monitor, mouse and keyboard. A laptop cannot be said to be set of CPU with monitor mouse and keyboard – confirming Tribunal decision in *CC v. Acer India P Ltd.* (2007) 208 ELT 132 (CESTAT).

**(d) Software/records/tapes supplied along with equipment**

Software imports are exempt from customs duty.

Earlier, Customs and Central Excise Tariff had a note No. 6 which stated that software when presented with the apparatus for which it was intended will be classifiable as software. This note has been deleted w.e.f. 1-1-2007. Hence, software embedded or pre-loaded in machine is to be classified along with the machine. This will also be case when software is brought separately, but as a 'set'. If tangible software e.g. operating software or application software loaded on disk, floppy, CD-ROM etc. is imported, it will be classifiable as software under heading 8523 – *CC* (Import), Mumbai PN 39/2007 dated 3-12-2007.

In *CC v. Hewlett Packard India (Sales) P Ltd.* (2007) 215 ELT 484 (SC), it was held that pre-loaded software in laptop forms integral part of the laptop. Without operating system like windows, the laptop cannot work. Hence, the laptop along with software has to be classified as laptop and values as one unit. Software pre-loaded cannot be classified separately as software (In this case, the importer wanted to classify hard disk along with software as 'software' and refused to give value of software even when called upon to do so. Hence, the decision has to be seen from peculiar facts of the case).

**Q9. A small scale manufacturer produces a product 'P'. Some of the production bears his own brand name, while some production bears brand name of his customer. The customer purchases the goods from the small scale unit and sales himself by adding 20% margin over his purchase cost. Clearances of the SSI unit in 2006-07 was Rs. 3,53,00,000. He achieved clearances of Rs. 445 lakhs in 2007-08 as per following break up. [These clearances are without considering excise duty and sales tax]**

**(a) Clearances with his own brand name : Rs. 80 lakhs.**

**(b) Clearances of product bearing his customer's brand name : Rs. 365 lakhs.**

Normal excise duty of his product is 16% plus education cesses as applicable. The SSI unit intends to avail Cenvat benefit on inputs on goods supplied to the brand name owner but intends to avail SSI exemption on his own clearances.

- (A) Find the total duty paid by the manufacturer in 2007-08, if (a) Inputs are common but SSI unit is able to maintain separate records of inputs in respect of final products under his brand name and those with other's brand name (b) The inputs are common and SSI unit is not able to maintain separate records on inputs used in final products manufactured under his brand name and with other's brand name.
- (B) What will be the rate of excise duty payable by him in April 2008 (a) on product bearing his own brand name and (b) on product bearing his customer's brand name.
- (C) Will there be any difference in duty payable in April 2008 if all his clearances of Rs. 445 lakhs in 2007-08 were of product under his own brand name ?

**Answer 8.**

(A) SSI unit can avail Cenvat on final products cleared under other's brand name and avail SSI exemption in respect of his own production. (a) In the first case, he has to pay duty @ 16% on Rs 365 lakhs, i.e. Rs 58.40 lakhs plus education cess of Rs 1,16,800 plus SAH education cess of Rs 58,400. He cannot avail Cenvat credit in respect of inputs used to manufacture product under his own brand name. (b) In the second case, since he is unable to maintain separate record of inputs, he will have to pay 10% 'amount' on Rs 80 lakhs as per rule 6(3)(b) of Cenvat Credit Rules. Thus, he has to pay duty of Rs 58.40 lakhs, plus education cess of Rs 1,16,800 plus SAH education cess of Rs 58,000, plus an 'amount' of Rs 8.00 lakhs. He can avail Cenvat of all the inputs. - - Note that in respect of goods bearing customer's brand name, duty is payable on his selling price to the customer even if customer sells them subsequently at higher price.

The assessee has to carefully do his costing and decide (a) whether to avail Cenvat on all inputs, pay full duty on all final products and 10% 'amount' on final products cleared under his own brand name or (b) Not avail Cenvat at all and avail exemption from duty on his own production with his brand name.

(B) The turnover of SSI during 2007-08 was over Rs. 4 crores. However, for purposes of calculating the upper limit of Rs. 4 crores, clearances with other's brand name are not to be considered. Hence, from 1st April 2008, he can clear goods bearing his own brand name upto Rs 150 lakhs without payment of duty, if he does not avail Cenvat credit on inputs used in such products. If he is unable to maintain separate records, he will have to pay 10% 'amount' on goods manufactured under his own brand name.

(C) If total turnover of Rs. 4.45 crores in 2007-08 was under his own brand name, the manufacturer is not eligible for any Small industry concession in April 2006, and he will have to pay duty at normal rates on his total clearances in April 2008.

**Q10. An assessee cleared various manufactured final products during June 2008. The duty payable for June 2008 on his final products was as follows – Basic – Rs. 2,00,000 Education Cesses – As applicable. During the month, he received various inputs on which total duty paid by suppliers of inputs was as follows – Basic duty – Rs. 50,000, Education Cess – Rs. 1,000, SAH education Cess Rs. 500. Excise duty paid on capital goods received during the month was as follows – Basic duty – Rs. 12,000. Education Cess - Rs. 240. SAH education cess - Rs. 120. Service tax paid on input services was as follows – Service Tax – Rs. 10,000. Education cess – Rs. 200 SAH Education Cess - Rs. 100. How much duty the assessee will be required to pay by GAR-7 challan for the month of June 2008, if assessee had no opening balance in his PLA account? What is last date for payment?**

**Answer 10.**

Education Cess payable on final products is Rs. 4,000 (2% of Rs. 2,00,000). SAH education cess payable is Rs. 2,000.

The Cenvat credit available for June 2008 is as follows –

| Description                                                      | Basic duty    | Service Tax   | Education Cess | SAH Education Cess |
|------------------------------------------------------------------|---------------|---------------|----------------|--------------------|
| Inputs                                                           | 50,000        |               | 1,000          | 500                |
| Capital Goods<br>(50% will be eligible<br>and balance next year) | 6,000         |               | 120            | 60                 |
| Input Service                                                    |               | 10,000        | 200            | 100                |
| <b>Total</b>                                                     | <b>56,000</b> | <b>10,000</b> | <b>1,320</b>   | <b>660</b>         |

Credit of Rs 66,000 (56,000 + 10,000) can be utilised for basic duty Credit of education cess and SAH education cess can be utilised only for payment of education cess and SAH education cess on final product only.

Hence, duty payable through GAR-7 challan for June 2008 is as follows –

| Basic Duty Rs            | Education Cess Rs | SAH Education | Cess Rs |
|--------------------------|-------------------|---------------|---------|
| (A) Duty payable         | 2,00,000          | 4,000         | 2,000   |
| (b) Cenvat Credit        | 66,000            | 1,320         | 660     |
| Net amount payable (A-B) | 1,34,000          | 2,680         | 1,340   |

Last date for payment is 5th July, 2008.

**Q11. Discuss the process of import of baggage and courier through post.****Answer 11.****Baggage, Courier and import through post**

- Baggage includes unaccompanied baggage but does not include motor vehicles [section 2(3)]
- Indians going out can take out any amount of foreign currency as long as it is obtained from authorised foreign exchange dealer. He can take out and bring in Indian currency only upto Rs. 1,000.
- Baggage includes all dutiable articles imported by passenger or crew but does not include motor vehicles, alcoholic drinks (beyond limits) and goods imported through courier.
- Incoming passenger with no dutiable goods can pass through green channel.
- General rate of duty on import of baggage is 36.05% (35% basic customs duty plus 2% education cess plus 1% SAH education cess). One laptop computer is exempt.

- Bona fide luggage including used personal effects are exempt from customs duty. In addition to bona fide luggage and one laptop computer, Indian resident or foreigner residing in India over 12 years of age is allowed general free allowance (GFA) of Rs 25,000, after stay abroad for more than three days. GFA is lower when passenger comes from some countries like Nepal, Bhutan, Myanmar or China.
- Besides GFA, one laptop can be imported free of customs duty.
- GFA cannot be clubbed with other person.
- If a person comes after 6 months of stay, he can bring gold upto 10 Kg on payment of customs duty @ Rs 250 per 10 gms (plus education cess) and silver upto 100 Kg on payment of customs duty @ Rs 500 per Kg (plus education cess)
- Commercial samples can be brought in or taken out within prescribed limits.
- Additional concession is available if a person transfers his residence after stay abroad for two years. He is eligible for concessional rate of 15% duty (plus 2% education cess) of goods upto Rs 5 lakhs. In case of some goods, duty is Nil. He is also entitled to GFA.
- In case of mini TR (i.e. person returning after 365 days), used personal effects and household articles upto Rs 75,000 can be brought duty free, in addition to GFA. However, items specified in Annex I, II and III as specified in Baggage Rules are not allowed duty free.
- Foreign tourists can bring personal effects and travel souvenirs free of duty. Articles upto Rs 8,000 can be brought as gifts duty free.
- If value of foreign currency notes exceeds US \$ 5,000 or aggregate value of foreign exchange (in the form of currency note, bank notes, traveller cheques etc.) exceeds US \$ 10,000, the passenger has to make declaration in Currency Declaration Form (CDF).
- Unaccompanied baggage can be brought. GFA is not allowed on unaccompanied baggage.

#### **Import and export through Courier**

Imports and export through couriers are treated as imports or exports as any other mode. It is not treated as 'baggage'. There is no restriction on value of goods that can be brought through courier. The duty payable is normal duty as applicable to all other goods normally imported by ship or air transport. Duty concessions, if any, are also permissible. Courier Imports and exports (Clearance) Regulations, 1998 specify the procedures, which are summarised in Chapter 17 of CBE&C's Customs Manual, 2001.

#### **Import through post**

- Label/declaration on postal article is treated as 'Entry'. Separate Bill of Entry is not required.
- Postal articles are sent to Foreign parcel Department of Post Office. The list is handed over to Principal Appraiser of Customs.
- He will inspect mail. Packets suspected of dutiable articles will be opened and examined by him. He will assess the goods and then seal the parcel.
- Goods will be handed by postmaster to addressee only on receipt of customs duty payable on the goods.
- Gifts upto Rs 10,000 are free. Post parcel is exempt if customs duty is upto Rs 100.

#### **Q12. (a) Warehousing in Customs**

##### **(b) Penalties under Customs Act**

##### **(c) Margin of Dumping**

##### **(d) Rules for deciding subsidy or dumping margin**

**Answer 12.****(a) Warehousing in customs**

- Imported goods can be kept in customs warehouse without payment of customs duty.
- Goods can be kept in warehouse awaiting receipt of import authorisation.
- Goods can be kept in warehouse upto one year, but interest is payable beyond 90 days, @ 15%.
- Goods can be manufactured in warehouse and exported without payment of customs duty. This facility is useful to EOU.
- Warehoused goods can be (a) Cleared on payment of duty (b) Cleared for export without payment of duty or (c) transferred to another warehouse without payment of duty.

**(b) Penalties under Customs Act**

- Smuggling in relation to goods is an act or omission which will make the goods liable to confiscation.
- Penalty can be imposed for improper imports or improper exports.
- Monetary penalty upto value of goods or Rs 5,000 whichever is higher can be imposed.
- Goods can be confiscated. Permission can be granted for re-export of offending goods..
- In case of goods covered under section 123 of Customs Act, burden of proof that the goods are not smuggled goods is on the accused.

**(c) Margin of Dumping**

'Margin of dumping' means the difference between normal value and export price (i.e. the price at which these goods are exported). [section 9A(1)(a)].

'Normal Value' means comparable price in ordinary course in trade, for like article, when destined for consumption in the exporting country or territory. If such price is not available or not comparable (a) comparable representative price of like article exported from exporting country or territory to appropriate third country or (b) cost of production plus reasonable profit, can be considered [section 9A(1)(c) of Customs Tariff Act]. The 'normal value' is to be determined as per rules.

In *Reliance Industries Ltd. v. Designated Authority* 2006 (202) ELT 23 (SC), it was held that 'normal value' are not exporter specific but exporting country specific. Once dumping of specific goods from a country is established, dumping duty can be imposed on all exports of those goods from that country in India, irrespective of the exporter. Rate of duty may vary from exporter to exporter depending upon the export price.

'Export Price' means the price at which goods are exported. If the export price is unreliable due to association or compensatory arrangement between exporter and importer or a third party, export price can be constructed (revised) on the basis of price at which the imported articles are first sold to independent buyer or according to rules made for determining margin of dumping. [section 9A(1)(b)].

Margin of dumping is determined on basis of weighted average of 'normal value' and the 'export price' of product under consideration.

**(d) Rules for deciding subsidy or dumping margin**

Central Government has been empowered to make rules for determining (a) subsidy or bounty in case of bounty fed goods (b) the normal value and export price to determine margin of dumping in case of dumping. Accordingly, Customs Tariff (Identification, Assessment and Collection of Anti-

dumping duty on Dumped Articles and for determination of Injury) Rules, 1995 [Customs Notification No. 2/95 (N.T.) dated 1-1-95] provide detailed procedure for determining the injury in case of dumped articles.

#### **Procedure for fixing anti dumping duty**

After the 'designated authority' is satisfied about prima facie case, he will give notice to Governments of exporting countries. Opportunity to inspection of documents and making representations will be given to interested parties who are likely to be affected. Designated Authority will first give preliminary finding and then final finding within one year. Provisional duty can be imposed on basis of preliminary finding which can continue upto 6 months, extendable to 9 months. Additional duty may be imposed on basis of the final finding.

As per rule 18 of Anti-Dumping Duty Rules, Central Government has to issue a notification fixing anti-dumping duty within three months from date of notification issued by designated authority.

**Q13. (a) An importer imports some goods @ 10,000 US \$ on CIF basis. Following dollar rates are available on the date of presentation of bill of entry : (a) RBI Floor rate : Rs. 43.37 (b) Inter-bank closing rate : Rs. 43.38 (c) Rate notified by CBE&C under section 14 (3) (a) (i) of Customs Act : Rs. 43.55 (d) rate at which bank has realised the payment from importer : Rs. 43.58. Find the assessable value for customs purposes.**

**(b) A consignment is imported by air. CIF price is 1,000 US Dollars. Freight is 320 US \$. Insurance cost was \$ 35. Exchange rate is same as above. Find Value for customs purposes.**

**(c) FOB Cost of a consignment is 3,000 UK Pounds. Insurance and transport costs are not available. What is Customs Value? On the date of filing of bill of entry, Reserve Bank of India reference rate of US \$ was 43.37 and inter-bank closing rates were : Rs. 43.38 per US \$ and Rs. 69.38 per UK Pound. Exchange rate announced by Board (CBE&C) by customs notification was Rs. 69.78 per British Pound. T T buying rate was 69.70 and T T selling rate was Rs. 69.61 per UK pound.**

**Answer 13. (a)** The relevant exchange rate is Rs. 43.55. Thus, CIF Value of goods is Rs. 4,35,500. Landing charges [rule 9 (2) of Customs Valuation Rules] @1% of CIF Value are to be added - i.e. Rs. 4,355. Thus, Customs Value or Assessable Value is Rs. 4,39,855.

**(b)** FOB Price of consignment is \$ 645 (1,000 less 320 less 35). Air freight is to be restricted to 20% of FOB Value for purpose of customs valuation. Hence, freight should be considered as 20% of 645 i.e. 129 US \$ for valuation. Thus, CIF Value for customs purposes is \$ 809 (645 + 129 + 35) i.e. Rs. 35,231.95 @ Rs. 43.55 per dollar. Add 1% of CIF i.e. Rs. 352.32 as landing charges. Thus, Value for Customs purposes will be 35,584.27.

**(c)** FOB Price is 3,000 UK pounds. Add 20% as freight cost i.e. 600 as actual cost is not available. Since insurance charges are not known, insurance cost should be taken @ 1.125% of FOB price i.e. 33.75. Thus, CIF price is 3,633.75 UK pounds. Conversion rate is 69.78. Hence, CIF Value is Rs. 2,53,563.08 (3,633.75 x 69.78). Landing charges @ 1% of CIF will be Rs. 2,535.63. Thus, Customs Value is Rs. 2,56,098.71.

**Q14. Customs value (Assessable Value) of imported goods is Rs. 2,00,000. Basic Customs duty payable is 10%. If the goods were produced in India, excise duty payable would have been 16%. Education cess is as applicable. Special CVD is payable at appropriate rates. Find the Customs**

**duty payable. What are the duty refunds/benefits available if the importer is (a) manufacturer (b) service provider (c) Trader?**

**Answer 14.**

|                                                       | Duty % | Amount           |
|-------------------------------------------------------|--------|------------------|
| <b>Total Duty</b>                                     |        |                  |
| (A) Assessable Value Rs 10,000                        |        | 200,000.00       |
| (B) Basic Customs Duty                                | 10%    | 20,000.00        |
| (C) Sub-Total for calculating CVD '(A + B)'           |        | 220,000.00       |
| (D) CVD 'C' x excise duty rate                        | 16%    | 35,200.00        |
| (E) Education cess of excise - 2% of 'D'              | 2%     | 704.00           |
| (F) SAH Education cess of excise - 1% of 'D'          | 1%     | 352.00           |
| (G) Sub-total for edu cess on customs 'B + D + E + F' |        | 56,256.00        |
| (H) Edu Cess of Customs - 2% of 'G'                   | 2%     | 1,125.12         |
| (I) SAH Education Cess of Customs - 1% of 'G'         | 1%     | 562.56           |
| (J) Sub-total for Spl CVD 'C + D + E + F + H + I'     |        | 257,943.68       |
| (K) Special CVD u/s 3(5) - 4% of 'J'                  | 4%     | 10,317.75        |
| (L) Total Duty                                        |        | <b>68,261.43</b> |
| (M) Total duty rounded to                             |        | 68,261           |

**Notes :** Buyer who is manufacturer, is eligible to avail Cenvat Credit of D, E, F and K above. A buyer, who is service provider, is eligible to avail Cenvat Credit of D, E and F above. A trader who sells imported goods in India after charging Vat/sales tax can get refund of Special CVD of 4% i.e. 'K' above.

**Q15. Define 'Related Persons' as per Customs Valuation Rules, 1988.**

**Answer 15.**

For the purpose of these rules, persons shall be deemed to be "related" only if –

- (i) they are officers or directors of one another's businesses;
- (ii) they are legally recognised partners in business;
- (iii) they are employer and employee;
- (iv) any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;
- (v) one of them directly or indirectly controls the other;
- (vi) both of them are directly or indirectly controlled by a third person;
- (vii) together they directly or indirectly control a third person; or
- (viii) they are members of the same family.

**Q16. When are the custom authorities precluded from enhancing the value on the basis of contemporaneous import at higher price invoking Rule 4 of the Customs (Determination of Price of Imported Goods) Rules, 1989 read with section 14 of the Customs Act, 1962.**

**Answer 16.**

If methodology given under Rule 3 is not followed then custom authorities are precluded from enhancing the value of goods imported on the basis of contemporaneous imports. According to Rule 3, the value shall be transaction value determined in accordance with Rule 4 and where conditions of Rule 4 are not satisfied then valuation has to be done in accordance with Rule 5 to 8. The value can be enhanced on the basis of identical or similar goods imported at or about the same time as the goods are being valued. If the contemporaneous imports does not satisfy the criteria of the identical goods or similar goods then custom authorities cannot enhance the value.

**Q17. In a particular case of import of goods, the seller in USA and the Indian buyer were found to be together controlling a third company in India. What are the conditions subject to which then transaction value of such goods would be accepted for customs purpose?**

**Answer 17.**

- (A) Rule 2(2) of Customs Valuation Rules, 1989 specifies the situations in which persons shall be related. One of the specified situations is that the persons together directly or indirectly control a third person. It has been further clarified in the explanation to this sub-rule that the term 'person' also includes legal persons. In view of the above, the seller and buyer are deemed to be related in the given case.
- (B) Rule 4(3) of Customs Valuation Rules deals with acceptance of transaction value where buyer and seller are related. Refer Rule 4(3) above.

**Q18. Discuss the concept of 'Price actually paid or payable' with reference to 'Transaction Value' as given in Interpretative notes of Customs Valuation Rules, 1989.**

**Answer 18.**

- (a) The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods.
- (b) The payment need not necessarily take the form of a transfer of money. Payment may be made directly or indirectly.
- (c) Activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in Rule 9, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not be added in determining the value of imported goods.
- (d) The value of imported goods shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:
  - Charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
  - The cost of transport after importation;
  - Duties and taxes in India.

- (e) The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

**Q19. Explain whether the costs and services as given in Rule 9 of the Customs Valuation Rules, 1989 are to be added to the value of the identical goods or similar imported goods under Rule 5 & 6 respectively.**

**Answer 19.**

- (a) Rule 5(1)(c) of the Customs Valuation Rules, 1989 provides that where imported goods are being valued as per Rule 5, the value of identical goods is adjusted to take into account the difference attributable to the commercial level or to the quantity or both.
- (b) Rule 5(2) provides that where costs and charges referred to in Rule 9 are included in the value of identical goods, adjustment has to be made for the difference in such costs and charges between the imported goods and identical goods.
- (c) Therefore, if the value of the identical goods does not include certain specific costs and charges relating to the imported goods, these are to be included as per Rule 9.

**Q20. Determine Assessable Value from the following:**

| Sale quantity | Unit Price | Number of Sales                           | Total quantity sold at each price |
|---------------|------------|-------------------------------------------|-----------------------------------|
| 1-10 units    | 100        | 10 sales of 5 units<br>5 sales of 3 units | 65                                |
| 11-25 units   | 95         | 5 sales of 11 units                       | 55                                |
| Over 25 units | 90         | 1 sale of 30 units<br>1 sale of 50 units  | 80                                |

**Answer 20.**

The greatest number of units sold at a price is 80, therefore, the unit price in the greatest aggregate quantity is 90.

**Q21. XYZ Co., the assessee, has claimed before the Customs Authority that since the exports of goods in its case attracted no duty, the value, for purposes of the Customs Act, 1963, to be declared shall be the value of goods, which he expects to receive on sale of goods in the overseas market.**

**Briefly discuss giving reasons whether the stand taken by the XYZ Co. is correct.**

**Answer 21.**

The Supreme Court has addressed this issue in **M/s Om Prakash Bhatia V. Commissioner of Customs, Delhi** 2004 (155) ELT 423. The Apex Court observed that for finding the value section 14 of the Customs Act has to be read with section 2(41) which defines the term 'Value'. According to it value means the value as determined in accordance with section 14(1).

According to section 14(1) the value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the

buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale. Therefore, irrespective of the fact whether duty is to be levied or not, the value has to be determined in accordance with the provisions of section 14 only. Hence, contention of XYZ Co. is to be rejected.

**Q22. DD India Private Limited Imported components and spares of diesel engines such as impellers, gaskets, elements etc., from DD Asia Private Limited, Singapore. The Special Valuation Branch (SVB) Customs House Chennai Initiated Investigation into the question of admissibility of invoice value for the purpose of valuation of goods Imported and assessment of custom duty.**

The SVB found that DD India was re-selling the imported components at a margin of 65% (which includes expenses and profits) in the domestic market. The SVB felt that the said margin should not be more than 45%.

The SVB came to the following conclusions:

1. DD India is related to DD Asia as per rule 2(2) of the Customs Valuation Rules, 1987 as DD India are the sole distributors in India of DD Asia.
2. The “transaction value” shall be determined as per rule 8 of the Customs Valuation Rules, 1989. Consequently the invoice value of all imports by DD India was ordered to be loaded by 20% for the purpose of assessment of the custom duty.

DD India taken over the distribution from M/s Elandtee, who were the erstwhile distributors in India for DD Asia. During the enquiry proceedings DD India had placed evidence before the SVB that the margins enjoyed by M/s Elandtee was also 65%. However, this was ignored by SVB as not relevant.

The SVB also rejected the price list of foreign suppliers produced by DD India without assigning any reasons. Write a brief note on the two conclusions arrived at by SVB and state, how as the Excise and Customs consultant of DD India you would assail the same in the aforesaid facts and circumstances of the case.

**Answer 22.**

According to explanation to rule 2(2) of the Customs Valuation Rules, 1989, a sole distributor can be treated as a related person only if he is related in any of the manner specified under rules 2(r) to rule 2(viii). Therefore, in the given case, on the basis of given facts, DD India cannot be treated as a related person. First conclusion of SVB is not sustainable.

Second conclusion of SVB is also not sustainable. Assessment of duty has to be based on the price actually paid or payable and not on any fictitious or notional price. Rule 5 to 8 are adopted only when transaction value is not available. In *Eicher Tractors Ltd. V. CC2000(122) ELT321, 325* the Supreme Court has held that the reason should fall within the scope of rule 4(2). Before adopting rule 8 i.e. best judgment, all preceding rules shall be applied and it has to be determined why value cannot be decided according to any of those rules. The adjudicating authority cannot directly adopt rule 8 without examining the applicability of preceding rules.

It is to be noted that the facts given do not indicate that SVB has applied any of the preceding rules. Therefore, adoption of rule 8 is not correct.

**Q23. Due to congestion in the ports or non-availability of deep draught all ports are not navigable unto the jetty. Goods have to be discharged or transhipped at the outer anchorage with the help of barges. The charges associated with the delivery of cargo at outer anchorage are**

called 'barging/lighterage charges'. State giving the reasons whether such charges have to be included for purpose of determination of assessable value under the Customs Valuation (Determination of price of imported goods) Rules, 1989.

**Answer 23.**

AS per MF (DR) Circular No. 29/2005 - Cus dated 13.04.2001, the barging /lighterage charges borne by the importer in bringing the goods from outer anchorage to the landmass should be included in the assessable value as 'extended cost of transportation' under rule 9(2)(a) of the Customs Valuation Rules, 1988. The value of goods is deemed to be the price at which such goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade. The importation gets completed when the goods reach the landmass of the country and not at the outer anchorage point. Therefore, all the expenses incurred by the importer in bringing the goods to the landmass of the country will be includible in the assessable value.

**Q24. A consignment of 800 metric tonnes of skimmed milk powder of US origin was imported by a non-profit making organization for free distribution of milk to the children in a tribal area under a World Health Programme. This being a special transaction a nominal price of US \$ 10 per metric ton was charged for the consignment to cover freight and insurance charges. The customs department found out at or about the importation of this gift consignment there were the following imports of the skimmed milk powder of US origin :**

| Sl. No. | Quantity imported<br>In metric tonnes | Unit price in US \$ CIF |
|---------|---------------------------------------|-------------------------|
| 1       | 20                                    | 260                     |
| 2       | 100                                   | 220                     |
| 3       | 500                                   | 200                     |
| 4       | 900                                   | 175                     |
| 5       | 400                                   | 180                     |
| 6       | 780                                   | 160                     |

The rate of exchange as on the relevant date was 1 US\$ = Rs. 40.

Briefly explain how the assessable value for the purposes of the customs duty will be arrived at in this case under the Customs Act, 1963 and the Customs Valuation Rules, 1988.

**Answer 24.**

In the given case only a nominal value of US\$ 10 has been charged for covering up the cost of transportation and insurance of the goods. Not being the actual price of the goods, value cannot be determined in accordance with Rule 4 and hence, valuation has to be done on the basis of Rule 5 i.e. identical goods.

As per Rule 5, the contemporaneous imports at the same commercial level and in substantially same quantity will be considered. Therefore, consignments of 20 tonnes and 100 tonnes cannot be considered while the remaining four consignments can be considered to be of substantially the same quantity.

According to Rule 5(3) if more than one transaction is found for identical goods then lowest of them shall be considered for determination of import value of the goods. Therefore, unit price in the given case will be taken at US \$ 160 per metric tonne.

| Particulars                                         | Value          |
|-----------------------------------------------------|----------------|
| 1. CIF value of 800 metric tones @ US \$ 160 per MT | 1,28,000       |
| 2. Rate of Exchange                                 | 1US \$ = Rs.40 |
| 3. CIF in Indian Rupees = (1) × (2)                 | Rs.51,20,000   |
| 4. Add: Landing Charges @ 1% of CIF value (3)       | Rs.51,200      |
| 5. Assessable Value = (3) + (4)                     | Rs.51,71,200   |

**Q25. M/s SAS imported 10000 citizen calculators model No. CT 500 of Chinese origin from Singapore and declared value to be US\$0.90 per piece in the Bill of Entry. The customs authorities enhanced the value to be US\$ 1.80 per piece on the basis of price list of citizen calculator and contemporaneous imports at the same value. Is the action of Customs justified.**

**Answer 25.**

The customs authorities have enhanced the value of the goods based on price list of the contemporaneous imports of identical goods. Now, it is for the importer to prove that the price declared by him in the Bill of Entry is the genuine price and it is not affected by any other consideration. The facts of the case are similar to that of **SAS Impex V. CC 2002 (144) ELT 215 (T)** where the Tribunal held that enhancement of value on the basis of contemporaneous imports is sustainable in absence of any evidence that the price declared in the Bill of Entry is the genuine price.

**Q26. Gujrat Dry Fruits Limited imported dry fruits and declared the value as under –**

| Date of imports | Quantity | Declared value per MT | Country of import |
|-----------------|----------|-----------------------|-------------------|
| November 2008   | 250      | 25,000                | Egypt             |
| November 2008   | 150      | 25,000                | Egypt             |

**It was found that imports were also made by some other dealers as indicated below**

**Date of Imports:**

| Date of import and importer        | Quantity (MT) | Declared Value Rs. per MT | Country of import |
|------------------------------------|---------------|---------------------------|-------------------|
| September 2008<br>Mumbai           | 50            | 35,000                    | Dubai             |
| October 2008<br>Chennai Fruits Ltd | 20            | 40,000                    | Persia            |

**The Customs Department has sought to assess the imports made by the Gujarat Fruits Ltd. as contemporaneous imports under section 14 read with Rule 5 of the Customs Valuation Rules, 1989. Briefly examine whether the action proposed by the Department is correct.**

**Answer 26.**

The goods are said to be identical only if the goods to be valued have been produced in the same country. In the given question, the goods in question have been imported from Egypt while other importers have imported goods from other countries. Moreover, there is a substantial difference in the quantity of the goods imported and contemporaneous imports taken by the customs for

enhancing the value. In accordance with the provisions of section 14 and the Customs Valuation Rules, 1989 the action taken by the Department is not correct.

**Q27. C & Co. imported second hand machinery and declared the transaction value in the Bill of Entry filed for the purpose of assessment of import duty. The Assistant Commissioner ignored the transaction value and based on the chartered engineer's certificate showing that the machinery was in working condition and had a residual life of 10 years, he completed the assessment under Rule 8 of the Customs Valuation (Determination of value of Imported Goods) Rules, 1989 after allowing maximum depreciation of 70%.**

**Discuss briefly giving reasons whether the action of the Assistant Commissioner is valid in law.**

**Answer 27.**

The facts given in the case are similar to the facts in **Tolin Rubber Pvt. Ltd. V. COC, Cochin**, [2005] 163 ELT 289 (SC). In this case the Supreme Court stated that the value of the goods has to be determined as per rule 4(1) of the Customs Valuation Rules, 1989 and only in the circumstances referred under rule 4(2) the transaction value can be rejected and further determination has to be made as per rule 8. The assessing authority has not given any reason for rejecting the transaction value. It was held by the Supreme Court that the price declared by the company in the Bill of Entry has to be accepted by the Department.

Applying the same ratio in the given situation, it may be concluded that the decision of the Assistant Commissioner is not valid in law.

**Q28. V Steels imported various items for its captive power plant with technical know-how from N engineering USA. The relevant drawings of the turbine shaft and lay out of the turbine with other items were also supplied. One of the items which was turbine shaft was in semi-finished condition. Before fitting the turbine shaft had to be further ground and finished as per the dimensions of the shaft indicated in the lay out drawings. V Steels paid US\$ 2001 for the layout drawings and did not pay any custom duty on this amount. The Customs Department claims that this amount of USS 2001 forms part of the transaction value under Rule 9(1) of the Custom Valuation Rules, 1989. The counter of V steels to this claim made by the Department is that the drawings indicating the dimensions of the turbine shaft was merely a layout drawing of the turbine with other items of the turbine room.**

**Explain with reference to the provisions of Rule 9 of the Customs Valuation Rules, 1988, whether the claim made by the Department is tenable.**

**Answer 28.**

In accordance with Rule 9(1)(e) of the **Customs** Valuation Rules, **1989**, in determining the transaction value, any **payment made by the** buyer as a condition of sale **of goods will be included in** the value of the **goods**.

**In the given** case, the turbine shaft was imported in the semi-finished **condition and before** lifting, it has to be finished as per the specifications in the drawing. Therefore, drawing becomes essential for finishing and **fitting** of the shaft. Therefore, amount of USS **2001** paid **towards** the drawings, which is **essential** for working of the turbine, has to be included in the **assessable** value.

**Q29.** Rule 4 of the Customs Valuation Rules, 1989, states that the transaction value of the good shall be the price actually paid or payable for the goods when sold for export to India adjusted in accordance with provisions of Rule 9 with regard to costs and services. What is the benefit available to the importer with respect to cost of transportation for importation by air when FOB value is ascertainable.

**Answer 29.**

The cost of transportation is required to be added with the FOB value for **valuation purposes**. Where the import is by air, if the **cost of import exceeds 20% of FOB value then for the purpose of valuation it shall be restricted to 20% of the FOB value.**

**Q30.** M/s H.R.C. imported a consignment of computer software and manual valued at US\$ 42 lacs and contended that the actual value was only US\$ 10 lakhs and the balance amount represented licence fee for using the software at multiple locations and as such custom duty is payable only on the actual value of US\$ 10 lakhs. Is the contention raised by M/s HRC correct? Discuss.

**Answer 30.**

**The facts of the case** are similar to that **of the case of *Slate Bank of India v. C.C. Bombay* 2000 (115) ELT 597 (SC).** The Supreme Court held that the license **for country wide use** cannot be considered **as the charges for** the right to reproduce the imported **goods as envisaged in** the interpretative **Note to Rule 9(1)(c) of the Valuation Rules.** Therefore, **total cost incurred in** transaction value on which custom duty has to be paid and total **cost for the purpose of** assessment of custom duty would **include** single site licence fee as well **as country wide** licence fee.

**Since** software cannot be used **at multiple location** unless **licence** fee is paid **for such use**, it becomes a part of the software **and therefore** contention of M/s HRC is **not correct.**

**Q31.** RI is an indenting agent of an Italian Company. The agreement provides for payment of 20% commission on the Imported equipments supplied by RI to users in India. However, in respect of RI's own requirement of equipments supplied by the Italian company no commission was payable as there was to be no value addition by the indenting agent. The department wants to enhance the value of import by 20% as according to them the indenting agent is a 'Related Person'. Examine briefly whether the stand taken by the department is correct with reference to Section 14 of the Customs Act, 1963 and Rule 9 of the Customs Valuation Rules, 1989 regarding "cost and services" and Rule 2(2) regarding "Related Persons".

**Answer 31.**

**Valuation of imported goods** has to be done in accordance with the provisions of section 14 of the **Customs Act, 1963** read with the **Customs Valuation Rules, 1989** for the **purpose of charging** custom **duty.**

**Rule of 9** of the aforesaid Rules provide **that the value of the services** paid by importer **but not included** in the value of goods **shall be added.** 'Related person' has been defined **under Rule 2(2).** **Rule 4** provides that when **sale is to a** related person, the transaction value may be accepted if the relationship **has not affected the price in any way.**

Going by the definition of Rule 2(2) **the indenting agent cannot be treated as a related.** **As per rule 9** only the **cost of services** paid by the importer is **to be included** in the **value of goods.** **In the instant case** the commission of 20% cannot be added. Therefore, contention **of the department is not correct.**

**Q32. Discuss briefly with reference to decided case laws as to how the 'value' shall be determined under section 14 of the Customs Act, 1963 read with the Customs Valuation Rules, 1989 in the following cases —**

- (i) Goods are offered at specially reduced price to buyer and buyer is asked not to disclose specially reduced price to any other party In India.
- (ii) There has been a price rise between the date of contract and the date of importation. The contract was over 6 months before the date of shipment.
- (iii) The sale involves special discounts limited to exclusive agents.
- (iv) The goods are purchased on high seas.

**Answer 32.**

- (i) Where sale is made at a specially reduced price then such price cannot be said to be the ordinary price. In the case of *Padia Sales Corporation V. Collector of Customs* [1994] 66 ELT 35 (SC) the Supreme Court has stated that where goods are offered to the buyers at specially reduced price and the buyer has been asked not to disclose this to any other party, then the discounted price will not be acceptable.
- (ii) The value of imported goods is to be determined at the time of importation thereof. Therefore, where there has been a price rise between the date of contract and the date of actual importation then value at the time of actual importation i.e. after price hike, is to be considered for the purpose of levy of custom duty. *Rajkumar Knitting Mills Pvt. Ltd. V. Collector of Customs* [1999] 98 ELT (SC).
- (iii) In the case of *Eicher Tractors Ltd. V. Commissioner of Customs, Mumbai* [2001] 122 ELT 321 (SC), the Supreme Court observed that the price paid by the importer to the vendor in the ordinary course of commerce shall be taken to be the value of imported goods. Therefore, where seller and buyer are not related person and sale price is the genuine price, it shall be accepted for the purpose of custom duty. But according to revised rules, where special discounts are offered to the exclusive agents such discounted price shall not be accepted as the assessable value.
- (iv) In the case of *Godavari Fertilizers V. C.C.Ex* [1997] 81 ELT 535(T) the Tribunal observed that in case of high seas sales the price charged from the assessee will be value of the imported goods.

**Q33. M/s Agrawal Industries imported by Air from USA certain goods on CIF value \$ 6,500. Air freight US\$ 1,400 and insurance charges US\$ 100 were also paid. Bill of entry was presented on 28.02.09 but the Entry Inward was granted on 10.3.09. Other relevant information is as follows :**

|                             | As on 28.02.09 | As on 10.03.08 |
|-----------------------------|----------------|----------------|
| Rate of exchange            |                |                |
| As announced by CBEC US\$ 1 | Rs. 46.80      | Rs. 46.70      |
| As announced by RBI US\$ 1  | Rs. 46.60      | Rs. 46.50      |
| Rates of custom duty        |                |                |
| Basic Custom Duty           | 25%            | 16%            |
| Additional Custom Duty      | 20%            | 16%            |

**The same goods are exempt from Excise duty in India, if manufactured without the aid of power.**

**Compute the assessable value and give the rates of basic and additional custom .duty to be adopted in this case, as also the basis for arriving at the Basic and Additional custom duty (actual duty calculation need not be given).**

**Answer 33.**

When import is by air, the cost of air freight should not exceed 20% of FOB value, hence the FOB value is as under —

|                         |                   |
|-------------------------|-------------------|
| CIF Value               | US\$ 6,500        |
| Less: Air freight       | US\$ 1,400        |
| Insurance               | US\$ 100          |
| FOB Value of imports    | US\$ 5,000        |
| Add: Air freight 20% of |                   |
| Assessable value        | US\$1,000         |
| Insurance               | US\$ 100          |
| <b>TOTAL</b>            | <b>US\$ 6,100</b> |

CIF Value in Indian Rupees US\$ 1 = Rs. 46.80

US\$ 6,100 × 46.80 Rs.2,85,480.00

Add : 1% of GIF value towards handling charges Rs. 2,854.80

Assessable Value Rs. 2,88,334.80

**Q34. Infotech Limited has imported a machine from Japan at FOB cost of 50,000 Yen (Japanese). The other expenses incurred are as follows —**

- (i) Freight from Japan to Indian port 5000 yen.
- (ii) Insurance paid to insurer in India Rs. 2500
- (iii) Designing charges paid to consultancy firm in Japan 7500 yen
- (iv) M/s Infotech spent Rs. 25,000 in India for development work connected with the machine.
- (v) Transportation cost from Indian port to factory Rs. 7500.
- (vi) Central Government has announced exchange rate of 1 yen = Rs. 0.40 by notification under section 14(3) of the Customs Act, 1962. The exchange rate prevailing on that day in the market was 1 yen = Rs. 0.4052.
- (vii) M/s Infotech made payment to the bank based on the exchange rate of 1 yen = Rs. 0.4150.
- (viii) The commission payable to the agent in India was at 5% of the FOB price in Indian rupees.

**The rate of custom duty is 35%. Similar goods are subject to 15% excise duty in India. Clearly show your working to arrive at the total assessable value in rupees for purposes of lvey of custom duty.**

**Answer 34.****Computation of Assessable Value**

|                                                    |            |                   |
|----------------------------------------------------|------------|-------------------|
| FOB Value                                          | 50,000     |                   |
| Freight                                            | 5,000      |                   |
| Designing charges paid in Japan                    | 7,500      |                   |
| Total                                              | 62,500 yen |                   |
| FOB value in Indian rupees = $62,500 \times 0.40$  |            | Rs. 25,000        |
| Add:                                               |            |                   |
| Insurance                                          |            | Rs. 2,500         |
| Agents Commission @ 5% of 50,000 yen $\times 0.40$ |            | Rs. 1,000         |
| <b>Total CIF value</b>                             |            | <b>Rs. 28,500</b> |
| Add: 1% of CIF value as handling charges           |            | Rs. 285           |
| <b>Assessable value</b>                            |            | <b>Rs. 28,785</b> |

**Notes :**

- Designing charges paid in India have not been included in assessable value.
- Transportation charges paid in India for transportation from port to factory have not been included in the assessable value as this is post importation expenditure.

**Q35. Discuss briefly with reference to the decided case law whether the landing charges imposed after the landing of the goods, but prior to their clearance for custom purposes are to be included for determining the value under section 14 of the Customs Act, 1962 and arriving on the custom duty payable.**

**Answer 35.**

**In Garden Silk Mills Ltd. V. UOI** [1999] 113 ELT 358 (SC) the Supreme Court held **that** in determining the deemed price in **international** trade the element of port charges, which are borne by the importer, have **to be added** in the assessable value.

As per the Customs Valuation Rules, 1988, handling charges are added in the CIF value @ 1% of GIF value irrespective of the actual **amount of** landing charges.

**Q36. Discuss the Includibility or otherwise to the assessable value under the Customs Ac 1962 of the following payments made by the importer to the overseas supplier of second hand plant in India:**

- Dismantling charges for removing the second hand plant at the supplier's place and shipping to Indian importer.**
- Fees for supervision of erection and commissioning of plant in India. For this purpose the foreign supplier deputed their technician in India.**
- Payments for tools, dies and moulds (imported along with plant) for use in connection with the manufacture of excisable goods on successful commissioning of the plant.**
- Lump sum payment and annual royalty for transfer of technical know-how for manufacturing goods.**

**Answer 36.**

- (i) **Dismantling charges - According to Rule 9** of the Custom Valuation Rules, **1989**, a payments actually made or payable by the importer in connection with the import c goods, to the extent not included in the **price** of the goods are to be included. In the **give** case payment of dismantling charges is certainly incidental and essential for import c machine. Therefore, **it** is to be **included** in the assessable value.
- (ii) **Fees for supervision of erection and commissioning** – The activity of **erection an** commissioning is post import activity and thus, any amount of supervision for the same are not includible in the **assessable value**. **It** is also to be noted that **such cost is not included** in price of the plant at **the time** of importation into India, as required under section 14 of the Customs Act, **1963**.
- (iii) **Payments for tools, dies and moulds (imported along with plant)** - If the tools, **die and** moulds etc imported along with the plant are to be used with the **same plant the** value thereof is **to be** included in **the assessable value of** the plant otherwise not.
- (iv) **Lump sum payment and annual royalty for transfer of technical know-how - As per rule 9** of the Customs Valuation **Rules. 1989**, the transaction value is inflated by **cost c** services and expenses as specified. **Under** rule 9(1)(c) royalties and licence fee **related t** the imported **goods that** the buyer is required to pay **as a condition** of sale of **goods being valued, is added to the transaction price**. **It is** to be noted that **only** such amount c royalties and licence fee which **relate to the** imported goods is to be added **back**. **In this case** the lump sum payment and annual **royalty** are related to the manufacture **of good and** do not **relate to** the imported **goods**. Hence, this amount is not includible in this **assessable** value.

**Q37. Discuss the Includibility of the following payments made by an importer to the overseas supplier of an imported machine/equipment, to the assessable value of imported machine:**

- (a) Process licence fee and technology transfer fee
- (b) Dismantling charges for removing the machine before shipment to India at the foreign supplier's site
- (c) Training charges paid to supplier, for imparting training to Indian company's personnel, on how to use the equipment.

Your answer shall be with reference to section 14 of the Customs Act, 1962. You may draw support from decided cases.

**Answer 37.**

According to section 14, the value shall be the price at which **goods** are ordinarily **sold** in the course of international trade.

- (a) **Process licence fee and technology transfer fee - In Collector V. Essar Gujarat Ltd. [1997] 88 ELT 609**, the Supreme **Court held** that process licence **fees, cost of** technical services paid are inciudible in **the assessable** value vide section **14 of the Customs Act, 1963** read with rule **9** of the **Customs Valuation Rules, 1989**.
- (b) **Dismantling charges** - According to Rule 9 of the Custom Valuation Rules, **1989**, **all** payments actually made or **payable by** the importer in connection with **the import of** goods, to the **extent** not included in the price of the goods are to be included. **In the given case** payment of dismantling charges is **certainly** incidental and essential for **import of** machine. Therefore, it is **to be** included in the assessable value.

- (c) **Training charges** - Training charges are not includible in the assessable value because it is a **cost** to be **incurred after the** arrival of goods in India and **not at the time of** importation. **Collector V. Essar Gujarat Ltd.** [1997] 88 ELT 609 (SC)

**Q38. Explain briefly, how the following would be treated for purposes of valuation under section 14 of the Customs Act, 1963 and the Customs Valuation Rules, 1989 —**

- **Dismantling charges** paid by the importer of a machine to the foreign supplier for removal of the machine before shipment at the foreign supplier's place
- **Demurrage charges** actually incurred by the importer of goods.

**Answer 38.**

According to Rule 9 of the Custom Valuation Rules, 1989, all payments actually **made** or payable by the importer in connection **with the** import of goods, to the **extent not included** in the price of the goods are to be included. In the given **case** payment of dismantling **charges** is certainly incidental and essential for import of machine. Therefore, it is to be included **in the** assessable value.

**Demurrage charges** are the **charges** which are payable by the importer for failure to remove the goods from the port within the permitted time limit. **Rule 9(4) provides that any cost incurred in connection with the import but not provided in the rule shall not be included in the assessable value.** Therefore, **demurrage** charges are not to be included therein. Moreover, according to section 14, **the value** shall be the price at which goods are ordinarily sold in the course of international trade. Payment of demurrage is not an **ordinary** situation. Therefore, it is not includible in the **assessable** value.

**Q39. ABC Ltd. a manufacturer of fertilizers, imported large quantity of rock phosphate and sulphur. Goods were purchased by ABC Ltd. on high seas and the responsibility of unloading in India was theirs and they maintained their own wharf at port unloading equipment and staff for the same. Custom authorities assessed the landing charges at 1.4% on CIF value thereof (then assessed rate) and the importer had paid the same as demanded. Later on, custom authorities claimed that the said 1.4% did not include stevedoring charges or unloading charges and therefore they added them separately calculating them upon the basis of inter-alia unloading labour charges, custom staff over time, post-hire charges for dining hall, fuel, electricity, depreciation, maintenance cost, administrative over-heads and notional interest on capital.**

**State what your advise to the company would be, bearing in mind the provisions of the Customs Act, 1963 and decided cases.**

**Answer 39.**

The main issue in the question is **'landing charges'**. Custom authorities **are** within **the powers** to charge landing charges at **a percentage** basis **or on actual basis**. **In the given case though the** entire work of unloading is done by **the assessee** himself, the department **added** 1.4% **of** the CIF value as landing charges which are paid by the **assessee**. Later **on department has** claimed additional amount. The facts **of the** case are similar to that **of Coromondal Fertilizers Ltd.V. Collector of Customs** in which the **Supreme** Court observed that:

- (a) 'Landing charges' means the **expenditure incurred by the importer** for bringing **goods on board** the ship to land. **Landing charges, if any, in law, must be assessed on actuals, but as a matter of practice,** particularly to facilitate expeditious **clearance, landing charges** are

issued at a percentage of the value **of goods and such assessment is accepted. When so assessed, landing charges** cover the totality of all that an importer **spends to bring the** imported goods to land.

- (b) Stevedoring charges or unloading charges are not to be added **when landing charges are** assessed on percentage basis.

Thus, assessee is not required to **pay any** additional duty as **demand by the custom** authorities.

**Q40. M/s XYZ, a 100% Export Oriented Undertaking imported DG sets and furnace oil duty free for setting up captive power plant for its power requirements for export production. They used the power so generated for export production but sold surplus power in domestic tariff area. Is custom department justified in demanding duty on DG sets and furnace oil as surplus power has been sold in domestic tariff area.**

**Answer 40.**

No. the department cannot demand duty on DG set and furnace oil because the 100% EOU has already used power for production of export goods and it is only the surplus that has been sold in the domestic tariff area. CCE&CV. Hanil Era Textiles Ltd. [2005] 180 ELT A 44 (SC)

**Q41. An importer has imported certain goods and while determining the assessable value, landing charges @ 1% of CIF value were added. The importer has claimed that actual landing charges are much lower than 1% of the CIF value in his case. You have been asked to advise whether the importer can file a bill of entry by adding actual landing charges instead of notional 1% of CIF value or not.**

**Answer 41.**

The importer cannot file Bill of **Entry by** adding actual landing charges. Rule 3(2)(b) of Customs Valuation Rules, 1989 has statutorily laid down **a fixed 1% charge on free on board value (F.O.B Value)** of the **goods** plus the cost of transport plus the **cost of** insurance.

**In Wipro Ltd. Vs ACC**, it **was held that** handling charges of 1% of **CIF** Value, which is very nominal, are not arbitrary. It **has been** fixed under the power **conferred by the** Parliament on the rule making authority and such an act cannot be **considered beyond** the power conferred by **Section 14(1)** or **Section 156** of the **Customs Act, 1963**.

Accordingly, the importer should have filed Bill of Entry by adding the **statutorily fixed 1%** charges in the CIF value regardless **of the** actual handling charges being much lower in the present case.

**Q42. A consignment of 20 tonnes of chemicals produced by Company A in Berlin, West Germany is imported by Company B at \$ 20 per kg., C.I.F. Mumbai. At about the same time a consignment of 16 tonnes of same chemical manufactured by same company viz., Company A in Berlin, is imported by Company C at Mumbai; for their principals at \$ 16 per kg., C.I.F., Mumbai. What value should be taken for assessment of consignments of both the importers i.e. Company B and C? Give reason in support of your determination of value. Quote relevant sections of Customs Act, 1963.**

**Answer 42.**

The value is determined **as per Section 14(1)** of the **Customs Act**.

- It is **clear** from the **given** problem **that** the same **exporter** has supplied the goods, almost at the same time but quoting two different **rates** based **on** the **quantity**.
- A show cause notice **has** to be **issued to** importer for the lower **price of goods**.
- If the explanation **provided** by the importer **is not** satisfactory, then the customs officer can **finalise the** assessment on the basis of \$20 per kg.

**Q43. What would be the value for the purpose of customs, If a consignment imported by air has a CIF price of US \$ 2,500 including freight US \$700 and insurance US \$ 90? The exchange rate notified by the Government of India under section 14(3)(a)(i) of the Customs Act, 1963 is Rs. 42.50.**

**Answer 43.**

**Computation of Assessable Value**

| Particulars                                    | Amount<br>(in US \$) | Amount<br>(in Rs.) |
|------------------------------------------------|----------------------|--------------------|
| CIF Value                                      | \$2,500              |                    |
| Less : Freight                                 | \$700                |                    |
| Less : Insurance Cost                          | \$90                 |                    |
| <b>FOB Value</b>                               | <b>\$1,710</b>       |                    |
| <b>Computation of Assessable Value:</b>        |                      |                    |
| FOB Value as computed above                    | \$1,710              |                    |
| Add : Freight (restricted to 20% of FOB Value) | \$342                |                    |
| Add : Insurance Cost                           | \$90                 |                    |
| <b>CIF Value</b>                               | <b>\$2,142</b>       |                    |
| Exchange rate                                  | 1\$ = Rs.42.50       |                    |
| Total CIF in Rs. (\$2,142 × Rs.42.50)          | A                    | 91,035             |
| Add : Landing Charges @ 1% of 'CIF value'      | B                    | 910                |
| <b>Assessable Value</b>                        | <b>(A + B)</b>       | <b>91,945</b>      |

**Q44. A consignment is imported by air. CIF price is US\$ 12,500. Freight is US\$ 2,450 and insurance cost is US\$ 300. On the date of presentation of bill of entry, RBI floor rate was US\$ = Rs.42.80 and rate notified by Government of India was Rs.41.75. Find the value of the consignment for customs purposes.**

**Answer 44.****Computation of Assessable Value**

| Particulars                                    | Amount<br>(in USD) | Amount<br>(in Rs.) |
|------------------------------------------------|--------------------|--------------------|
| CIF Value                                      | \$12,500           |                    |
| Less : Freight                                 | \$2,450            |                    |
| Less : Insurance Cost                          | \$300              |                    |
| <b>FOB Value</b>                               | <b>\$9,750</b>     |                    |
| <b>Computation of Assessable Value :</b>       |                    |                    |
| FOB Value as computed above                    | \$9,750            |                    |
| Add : Freight (restricted to 20% of FOB Value) | \$1,950            |                    |
| Add : Insurance Cost                           | \$300              |                    |
| <b>CIF Value</b>                               | <b>\$12,000</b>    |                    |
| Exchange rate                                  | 1\$ = Rs.41.75     |                    |
| Total CIF in Rs. (\$12,000 X Rs.41.75)         | A                  | 5,01,000           |
| Add : Landing Charges @ 1% of 'CIF value'      | B                  | 5,010              |
| <b>Assessable Value</b>                        | <b>(A + B)</b>     | <b>5,06,010</b>    |

**Q45.** An importer in India imported raw materials @ US \$ 25,000 FOB. The goods were packed for which US \$ 600 were charged extra. The goods were stuffed in Container, the price of which was US \$ 2,000. Insurance charges and ocean freight of US \$ 250 and 800 respectively were paid. A commission of US \$ 500 had to be paid to a broker for arranging the deal: 1 US \$ = Rs.41.38 ; Customs Duty is 30%; Excise duty on similar goods in India is 14%. Determine the duty payable.

**Answer 45.****Computation of Assessable Value and Customs Duty Payable**

| Particulars                                                         | Amount<br>(in USD) | Amount<br>(in Rs.) |
|---------------------------------------------------------------------|--------------------|--------------------|
| FOB Value                                                           | \$25,000           |                    |
| Add: Packing Charges at USA                                         | \$600              |                    |
| Add: Freight charges (20% of FOB value or actual whichever is less) | \$800              |                    |
| Add: Commission to broker who made necessary arrangement at USA     | \$500              |                    |
| Add: Insurance Charge                                               | \$250              |                    |
| <b>CIF Value</b>                                                    | <b>\$27,150</b>    |                    |
| Exchange rate                                                       | \$1 = Rs.41.38     |                    |
| Total CIF Value in Rs.                                              | A                  | 11,23,467          |
| Add: Landing Charges @ 1 % of 'CIF value'                           | B                  | 11,235             |
| <b>Assessable Value</b>                                             | <b>(A + B)</b>     | <b>11,34,702</b>   |

| Particulars                                                                                                  | Amount<br>(in USD) | Amount<br>(in Rs.) |
|--------------------------------------------------------------------------------------------------------------|--------------------|--------------------|
| <b>Duty on Assessable Value :</b>                                                                            |                    |                    |
| Basic Customs Duty (BCD) @ 30% of AV<br>(11,34,702 × 30/100)                                                 |                    | 3,40,411           |
| Countervailing Duty (CVD) @ 14% is payable<br>on (AV + BCD) [11,34,702 + 3,40,411]<br>= (14,75,113 × 14/100) |                    | 2,06,516           |
| Total (BCD + CVD)                                                                                            |                    | 5,46,927           |
| Education Cess @ 2% on (BCD + CVD)                                                                           |                    | 10,939             |
| SHEC@1%on (BCD + CVD)                                                                                        |                    | 5,469              |
| <b>Total Duty Payable (BCD + CVD + Education Cess + SHEC)</b>                                                |                    | <b>5,63,335</b>    |

**Notes :**

1. Container is durable and returnable, so no Customs Duty is charged on the cost of containers.
2. Any expenses incurred outside India and any expenses committed outside India but paid in India shall be included to consider or calculate GIF Value, duty.

**Q46. A consignment is imported by air.**

- CIF price is 2,000 Euro.
- Air freight is 550 Euro.
- Insurance cost is Euro 50.
- Exchange rate announced by CBE&C as per customs notification is 1 Euro = Rs.67.10.
- Basic Customs duty payable is 30%.
- Excise duty on similar goods produced in India is 14%.

Find Value for customs purposes and total customs duty payable.

**Answer 46.****Computation of Assessable Value and Customs Duty Payable**

| Particulars                                | Amount<br>(in Euro) | Amount<br>(in Rs.) |
|--------------------------------------------|---------------------|--------------------|
| FOB Value (Refer Note 1)                   | 1,400               |                    |
| Add: Freight (Refer Note 2)                | 240                 |                    |
| Add: Insurance                             | 50                  |                    |
| CIF Value                                  | 1,730               |                    |
| Value as landing charges (1% of GIF Value) | 17                  |                    |
| Assessable Value                           | 1,747               |                    |
| Exchange Rate                              | 1Euro = Rs.67.10    |                    |
| <b>Assessable Value in Indian currency</b> |                     | <b>1,17,224</b>    |

|                                                                             |               |
|-----------------------------------------------------------------------------|---------------|
| <b>Duty on above</b>                                                        |               |
| Basic Customs Duty (BCD) @ 30% of AV                                        | 35,167        |
| Countervailing Duty (CVD) @14% is payable on (AV + BCD) [1,17,224 + 35,167] | 21,335        |
| Total [BCD + CVD]                                                           | 56,502        |
| Add: Education Cess @ 2% on (BCD + CVD) $(56,502 \times 2/100)$             | 1,103         |
| Add: SHEC @ 1% on (BCD + CVD)                                               | 565           |
| <b>Total Customs Duty Payable (BCD + CVD + Education Cess + SHEC)</b>       | <b>58,170</b> |

**Notes :**

1. FOB Price of consignment is 1,400 Euro [2,000-550-50].
2. Air freight is to be restricted to 20% of FOB Value for purpose of customs valuation. Hence, freight will be considered as 20% of 1,400 i.e. 280 Euro for purpose of valuation.

**Q47. Determine the total Customs Duty payable from the following data —**

- Quantity imported : 100 MTs
- FOB value : Swiss Franc 10000
- AIR Fright: Swiss Franc 2500
- Insurance : Data not available
- Exchange rate : 1 Swiss Franc = Rs.34
- Rate of BCD - 30%
- Rate of CENVAT under First Schedule to CETA : 14%
- Rate of SED under Second Schedule to CETA : 14%
- Rate of AED(GSI) under Additional Duties of Excise (GSI) Act: Rs.10/kg,
- Rate of NCCD 1%.

**Answer 47.****Computation of Assessable Value and Customs Duty Payable**

| Particulars                               | Computation               | Amount          |
|-------------------------------------------|---------------------------|-----------------|
| FOB Value - Swiss Francs                  |                           | 10,000          |
| Freight @ 20% of FOB                      | $10,000 \times 20\% =$    | 2,000           |
| Insurance @ 1.125% of FOB                 | $10,000 \times 1.125\% =$ | 113             |
| <b>CIF Value</b>                          |                           | <b>12,113</b>   |
| Add: Landing Charges @ 1% of CIF          | $12,112 \times 1\% =$     | 121             |
| Total Assessable Value in Swiss Francs    |                           | 12,234          |
| <b>Total Assessable Value (in Rupees)</b> | $2,234 \times 34 =$       | <b>4,15,956</b> |

|                                                       |                                        |                     |
|-------------------------------------------------------|----------------------------------------|---------------------|
| <b>Duty on above :</b>                                |                                        |                     |
| Basic Customs Duty (BCD) @ 30%                        | $\text{Rs. } 4,15,956 \times 30\% =$   | Rs. 1,24,787        |
| NCCD (1% of Assessable Value)                         | $\text{Rs. } 4,15,956 \times 1\%$      | Rs. 4,160           |
| CVD @ 28% of (AV + BCD + NCCD)                        | $\text{Rs. } 5,44,885 \times 28\%$     | Rs. 1,52,568        |
| AED (GSI) Rs.10 per Kg.                               |                                        |                     |
| Hence for 100 MT                                      | $10,000 \times 10 =$                   | Rs. 10,00,000       |
| Education Cess @ 2% on [BCD + NCCD + CVD + AED (GSI)] | $= \text{Rs. } 12,81,515 \times 2\% =$ | Rs. 25,630          |
| SHEC@1%on[BCD+NCCD+CVD+AED(GSI)]                      | $= \text{Rs. } 12,81,515 \times 1\% =$ | Rs. 12,815          |
| Total Customs Duty Payable                            |                                        |                     |
| = (BCD + NCCD + CVD + AED + Education Cess + SHEC)    |                                        | <b>Rs.13,19,960</b> |

**Notes:**

1. Since air freight is more than 20% of FOB, freight is required to be limited to 20% of FOB i.e. 2,000 SF (Swiss Francs).
2. Since insurance data is not available, insurance cost is to be taken @ 1.125% on FOB, i.e. 113 SF (Approximately).
3. Basic Excise Duty (Cenvat) is 14% and Special Excise Duty (SED) is 14%. Hence, CVD, which is equal to excise duty will be 28%.

**Q48. 'A' imports by air from USA a Gear cutting machine complete with accessories and spares. Its HS classification is 84.6140 and Value US \$ FOB 20,000.**

**Other relevant date/information:**

- (1) At the request of importer, US \$ 1,000 have been incurred for improving the design, etc. of machine, but is not reflected in the invoice, but will be paid by the party.
  - (2) Freight - US \$ 6,000.
  - (3) Goods are insured but premium is not shown/available in invoice.
  - (4) Commission to be paid to local agent in India Rs.4,500.
  - (5) Freight and insurance from airport to factory is Rs.4,500.
  - (6) Exchange rate is US \$ 1 = Rs.42.
  - (7) Duties of Customs: Basic - 30% CVD - 14%.
- Compute (i) Assessable value (ii) Customs duty.**

**Answer 48.****Computation of Assessable Value and Customs Duty Payable**

| Particulars                                                                     | Amount<br>(in \$) | Amount<br>(in Rs.) |
|---------------------------------------------------------------------------------|-------------------|--------------------|
| FOB Value of Machine                                                            | 20,000            |                    |
| Add: Expenditure for improving design                                           | 1,000             |                    |
| Add: Freight limited to 20% of FOB [Rule 9 (2)]                                 | 4,000             |                    |
| Insurance @ 1.125% of FOB [Rule 9(2)(c)(iii)]                                   | 225               |                    |
| Sub-Total                                                                       | 25,225            |                    |
| Sub-Total In Rs. [@ Rs. 42 per \$]                                              |                   | 10,59,450          |
| Add: Agents Commission [Rule 9(1)(i)]                                           |                   | 4,500              |
| <b>Total CIF Value</b>                                                          |                   | <b>10,63,950</b>   |
| Add: Landing charges 1% of CIF                                                  |                   | 10,640             |
| <b>Assessable Value( A.V )</b>                                                  |                   | <b>10,74,590</b>   |
| <b>Duty on above</b>                                                            |                   |                    |
| Basic Customs Duty (BCD) @ 30% of A.V                                           |                   | 3,22,377           |
| Countervailing Duty (CVD) @14%<br>on (A.V + BCD) [10,74,590 + 3,22,377]         |                   | 1,95,575           |
| Education Cess @ 2% on (BCD + CVD)<br>[3,22,377 + 1,95,575]                     |                   | 10,359             |
| SHEC @ 1% on (BCD + CVD)                                                        |                   | 5,180              |
| <b>Total Customs Duty Payable</b><br><b>(BCD + CVD + Education Cess + SHEC)</b> |                   | <b>5,33,491</b>    |

**Q49. Determine the assessable value and customs duty amount from the following data:**

|                                                                                                             |                                                                        |
|-------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|
| 1. Name of the raw material:                                                                                | <b>XL-105</b>                                                          |
| 2. FOB value:                                                                                               | <b>Euro 1 million</b>                                                  |
| 3. Ocean freight:                                                                                           | <b>Actual data not available</b>                                       |
| 4. Ocean Insurance:                                                                                         | <b>Actual data not available</b>                                       |
| 5. Freight from sea port to godown paid in India:                                                           | <b>Rs.10,000</b>                                                       |
| 6. Transit insurance in India:                                                                              | <b>Rs.2,000</b>                                                        |
| 7. Selling commission paid to agent in India:                                                               | <b>5%</b>                                                              |
| 8. Royalty on manufacture and sale of final product payable to foreign collaborator:                        | <b>5%</b>                                                              |
| 9. Interest payable on raw material imported at 180 days credit (on FOB value):                             | <b>12% p.a.</b>                                                        |
| 10. Dividend paid to the foreign supplier of raw material: on their equity participation for the year 08-09 | <b>Rs.2 per share on 1 million shares of face value Rs.10/- share.</b> |

- Importer supplied design and drawings worth Euro 10,000 to the foreign raw material supplier.
- Landing charges as per Customs provisions
- Customs duty rates: BCD - 30%, CVD - 14%
- Exchange rate: 1 Euro = Rs.68.

**Answer 49.**

**Computation of Assessable Value and Customs Duty Payable**

| Particulars                                | Amount in Euro   | Amount in Rs.      |
|--------------------------------------------|------------------|--------------------|
| FOB Value                                  | 10,00,000        |                    |
| Add: Freight @ 20% of FOB                  | 2,00,000         |                    |
| Add: Insurance @ 1.125% of FOB             | 11,250           |                    |
| Total                                      | 12,11,250        |                    |
| Add: Designing and drawing charges         | 10,000           |                    |
| <b>Total CIF Value</b>                     | <b>12,21,250</b> |                    |
| CIF Value in Rs. @ Rs.68.00                | 8,30,45,000      |                    |
| Add: Local Agency Commission @ 5%          | 41,52,250        |                    |
| Total Value                                | (A)              | 8,71,97,250        |
| Add: Landing Charges @ 1% of (A)           | (B)              | 8,71,972           |
| <b>Assessable Value</b>                    | <b>(A + B)</b>   | <b>8,80,69,222</b> |
| <b>Duty on above</b>                       |                  |                    |
| Basic Customs Duty (BCD) @ 30% of AV       |                  | 2,64,20,767        |
| CVD @ 14% is payable on (AV + BCD)         |                  | 1,60,28,598        |
| [8,80,69,222 + 2,64,20,767]                |                  |                    |
| Education Cess @ 2% on (BCD + CVD)         |                  | 8,48,987           |
| [2,64,20,767 + 1,60,28,598]                |                  |                    |
| SHEC @ 1% on [2,64,20,767 + 1,60,28,598]   |                  | 4,24,494           |
| <b>Total Customs Duty Payable</b>          |                  |                    |
| <b>(BCD + CVD + Education Cess + SHEC)</b> |                  | <b>4,37,22,846</b> |

**Notes :**

1. Since ocean freight is not available, it has to be taken at 20% of FOB.
2. Insurance is taken @ 1.125% of FOB Value.
3. Landing charges will be 1% of GIF Value, as per Customs Valuation Rules.
4. It is assumed that selling commission to selling agent in India is payable on basis of GIF Value of goods including cost of drawings supplied by buyer.
5. Royalty on manufacture and sale of final products payable to foreign collaborators has no relation to goods imported. Hence, it is not includible in Assessable Value for customs.

6. Dividend paid to foreign supplier has no relation with supply of raw materials. It is not includible in Assessable Value.
7. Interest payable for credit is not includible in assessable value for customs purposes, as it is not part of 'transaction value'.
8. Freight from seaport to godown and transit insurance in India are post-importation costs and are not includible.
9. As per rule 9(1)(b)(iv) of Customs Valuation Rules, cost of engineering drawings is includible only if work was undertaken outside India. Since, payment has been made in Euro; it is assumed that the design and drawing work was done outside India.

**Q50. Discuss the Excisability of the following goods:**

**(i) Do Cement Concrete Armour Units constitute excisable goods? Board of Trustees v. Collector of Central Excise 2007 (216) ELT 513 (S.C.)**

The assessee, Vishakhapatnam Port Trust, used Cement Concrete Armour Units for installation of break waters in the outer harbour for keeping the water calm. Concrete Armour Blocks were essentially in prismoid form, of certain specification and were made to order. These blocks were harbour or location specific. It was contended by the Department that the impugned units were excisable goods chargeable to excise duty.

The Supreme Court observed that there was no evidence to show that such blocks could be used in any other harbour. The Department did not produce any evidence to show that impugned units were bought and sold in market as a commodity. The Apex Court reiterated the settled principle that in order to constitute excisable goods, twin tests of process amounting to manufacture and marketability had to be satisfied.

The Apex Court stated that goods were manufactured with the object of being sold in market. If the goods were not capable of being sold, then the test of marketability was not fulfilled. Thus, the Apex Court rejected the claim of the Department.

**(ii) Whether process of converting raw asfoetida into compounded asfoetida amounts to manufacture? CCEx. v. Laljee Godhoo & Co. 2007 (216) ELT 514 (S.C.)**

The Supreme Court observed that the impugned process did not result in any chemical change. The product remained the same at the starting and terminal points of the process. Thus, the Apex Court upheld the Tribunal's decision holding that since the essential character of the impugned goods remained constant, there was no manufacture.

**(iii) Can waste material of building construction be taken as non-dutiable, when no credit has been availed on either inputs or capital goods? Union of India v. Banswara Syntex Ltd. 2008 (221) ELT 360 (Raj.)**

The High Court held that MS Scrap arising as waste material of building construction, wherein credit of duty neither as inputs nor capital goods had been availed would be non-dutiable as it did not arise from manufacturing process.

**(iv) Does an article become excisable by mere mention in Excise Tariff? CCEx., Chandigarh Vs Gurdaspur Distillery 2008 (224) ELT 337 (S.C.)**

The assessee was engaged in the manufacture of de-natured Ethyl alcohol. During the manufacture of de-natured Ethyl alcohol, a residue known as spent wash came into existence. The same was reacted in a closed type digester and methane gas was being

produced. This methane gas was being consumed captively by the assessee as a fuel in distillery. Revenue appealed that duty should be levied on the methane gas thereby produced. However, the assessee took the stand that since methane gas was not marketable as such, it was not dutiable.

Tribunal referred to the case of *Bhor Industries Ltd. v. Collector of Central Excise* 1989 (40) ELT 280 wherein it was held that marketability is an essential ingredient in order to attract excise duty and decided the case in favour of the assessee. SC upholding the Tribunal's decision held that an article did not become liable to excise duty merely because of its specification in Schedule to Central Excise Tariff Act, 1985 unless it was salable and known to market. Since, the Department failed to prove the marketability of the goods in question, it was held that the methane gas produced by respondent was not marketable and hence, was not liable to duty.

**(v) Is excise duty leviable on intermediate product when finding on marketability is absent? *White Machines v. CCEx., Delhi* 2008 (224) ELT 347 (S.C.)**

The assessee manufactured C.I. castings which were captively consumed for producing C.I. Chilled Rolls. These Chilled Rolls were exempted from payment of excise duty. Revenue alleged that C.I. castings which were intermediary product were marketable. Therefore, excise duty would be payable on them as the final product was exempt from duty.

Delhi High Court observed that if the intermediary product (C.I. castings) was marketable, then the excise duty would be payable because the final product i.e. C.I. Chilled Rolls was exempted from the payment of excise duty. However, the Tribunal failed to record any finding regarding marketability of the said intermediary product i.e. C.I. castings. Hence, it was held that in the absence of any findings recorded by the Tribunal regarding the marketability, duty could not be levied on the goods in question.

**(vi) Whether labeling or relabeling without repacking from bulk to retail amounts to "deemed manufacture"? *CCEx., Mumbai v. BOC (I) Ltd.* 2008 (226) ELT 323 (S.C.)**

The assessee, BOC, procured Helium from other manufacturers, affixed the labels and sold it under its own brand name. Revenue alleged that activity of affixing labels of their own name amounted to manufacture as per Note 10 of Chapter 28 of schedule to Central Excise Tariff.

Note 10 of Chapter 28 of First Schedule to Central Excise Tariff reads as under:

".....in relation to products of this Chapter, labeling or relabeling of containers and repacking from bulk packs, or the adoption of any other treatment to render the product marketable to the consumer, shall amount to manufacture".

In the case of *CCEx., Mumbai v. Johnson & Johnson Ltd* 2005 (188) ELT 467 (S.C.), SC held that mere packing for marketing or mere labeling or relabeling in the absence of any activity of repacking from bulk packs to retail packs would not render the product marketable directly to the consumer and not amounted to manufacture. SC observed that the respondent only labeled or relabeled the product and did not pack or repack from bulk packs to retail packs in the present case. Therefore, it held that the impugned activity did not amount to manufacture.

**Note** - Section 2(f) of Central Excise Act states that "manufacture" includes any process—

(i) incidental or ancillary to the completion of manufactured product or (ii) which is specified in relation to any goods in the Section or Chapter notes of the Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture, or (iii) which, in relation to goods

specified in third schedule to the CEA, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers or declaration or alteration of retail sale price or any other treatment to render the product marketable to consumer. Clauses (ii) and (iii) of section 2 (f) *ibid* pertain to “deemed manufacture”. Abovementioned case relates to clause (ii) of the said section.

**(vii) Whether swaging process amounts to manufacture in terms of Section 2(f) of the Central Excise Act, 1944? Prachi Industries vs. CCEx., Chandigarh 2008 (225) ELT 16 (S.C.)**

The appellant used to purchase duty paid MS tubes from its manufacturers and cut the same into requisite length. Thereafter, put it in the swaging machine for undertaking swaging process whereby dies fitted in the machine imparted “folds” to the flat surface of the MS tube/pipe. The Department took the plea that swaging process amounted to manufacture and hence, duty was payable on the goods manufactured by the appellant.

The Apex Court held that process of swaging amounted to manufacture and assessee was liable to pay duty thereon. As per Section 2 (f), Manufacture includes “any process – incidental or ancillary to the completion of a manufactured product”. In other words, incidental process must be an integral part of manufacture resulting into a new finished product which must be of a different physical shape, size and use. Moreover, the said process must impart a change of a lasting character to the original product or raw material.

SC observed that swaging was the process which imparted a change of a lasting character to the plane MS pipe or tube by use of dies which existed in the machine. After the process of swaging, the identity of the plane MS pipe or the tube underwent a change in terms of form, shape and use.

SC clarified that MS plane pipe/tube could carry water to the overhead tank whereas the work piece produced in the present case was useful as a decorative item or as an item which provided a strong grip in auto-rickshaw. Hence, SC held that swaging amounted to manufacture and thus, excise duty was payable by the assessee.

**(viii) When does the manufacturing activity get completed - either at the time of clearance of goods from the premises of the job-worker or at the time of their clearance from the premises of the manufacturer? CCEx., Pondicherry v. Sunco Rubbers Ltd. 2008 (228) ELT 27 (Mad.)**

The assessee, a job worker, received raw materials required for the manufacture of strips tyres from the primary manufacturers (*viz.* raw material suppliers) for further processing and after undertaking the processing returned them to the suppliers. Thereafter, the suppliers carried on the processes of deflashing, testing and inspection on those goods. The Department opined that since the goods processed at the premises of the job worker were fully manufactured goods, the job worker should pay excise duty on such goods before clearing them from its premises.

High Court ruled that having regard to the activities like deflashing, testing, inspection etc. being undertaken by the primary manufacturers, it was evident that the goods were made ready for marketing only after the same were subjected to the above mentioned processes at the hands of the raw material suppliers. Hence, the manufacturing process was complete only after these processes were carried out at the premises of the suppliers. The job worker collected only job charges for the various processes undertaken by him on the goods. Moreover, as per section-2(f)(i), any activity which is incidental or ancillary to the manufacture of the final product would be considered as a manufacturing activity. Therefore, the goods cleared from the premises of the job worker, could not be regarded

as fully manufactured goods, and as such, the activity undertaken by the assessee could not be regarded as a manufacturing process, as required under erstwhile rule 57F (2)/57F (3) of the Central Excise Rules, 1944 (now rule 16A of Central Excise Rules, 2002).

**Note** – Rule 16A of Central Excise Rules, 2002 relating to removal of goods for job work, etc. reads as under—

Any inputs received in a factory may be removed as such or after being partially processed to a job worker for further processing, testing, repair, re-conditioning or any other purpose subject to the fulfilment of conditions specified in this behalf by the Commissioner of Central Excise having jurisdiction.

**(ix) Can transmission apparatus installed in mobile tower stations be excisable? CCEx., Mumbai-IV v. Hutchison Max Telecom P. Ltd. 2008 (224) ELT 191 (Bom.)**

The respondent was engaged in providing mobile telecommunication services based on GSM. The question that arose in this case was whether, the transmission apparatus installed at site room was goods and secondly if even so, whether they were marketable.

Bombay High Court proceeded on the Tribunal's finding that what had been assembled and installed was a new commodity having a distinct name from the components from which it had been assembled. Now, considering the question of marketability of this new commodity, HC observed that, firstly, whenever the site had to be relocated, all the equipments like BTS/BSC, microwave equipment, batteries, control panels, air-conditioners, UPS, tower antennae were required to be dismantled into individual components, then they were to be moved from the existing site and reassembled at new site. This involved damages to certain parts like cable trays, etc. which were embedded/fixed to the civil structure as also the BTS microwave equipment itself. Secondly, all the components of the new product could not be shifted as an illustration the room housing the equipment because this act of dismantling from the permanent site would render such goods not marketable. Thirdly, the goods could not be re-erected as in the previous place as the requirement of each place was different. In the light of all these facts, the court inferred that the tests of marketability and mobility were not satisfied.

As per order dated 15-1-2002 by CBEC, New Delhi, if items assembled or erected at site and attached by foundation to earth cannot be dismantled without substantial damage to its components and thus cannot be reassembled then the items would not be considered as movable and will, therefore, not be excisable goods. So, in the present case, the new product would not be considered as movable, and, hence not excisable. Therefore, it was held that though a new product came into existence yet, as it was not movable, saleable and marketable, it would not be subject to excise duty.

**(x) Whether parts of compressor cleared as a 'stand alone item' should be classified along with the compressor? CCEx. v. Frick India Ltd. 2007 (216) ELT 497(S.C.)**

The assessee manufactured and cleared on payment of duty complete compressors, safety valves and filters under Heading 84.14, Heading 84.81 and Heading 84.21 respectively of the Central Excise Tariff. The assessee also supplied bought-out items like V belt, motor, pulley, belt guard, gauge etc. to their buyers, as a package. The Department contended that as per Rule 2(a) of the General Interpretative Rules for Classification, safety valves and filters should be classified along with the compressors as they were essential parts of the compressors. Consequently, the Department contended that the value of the safety valves and filters together with the value of bought-out items should be includible in the assessable value of the compressor.

The Supreme Court observed that Rule 2(a) of the General Interpretative Rules for Classification could not be applied in this case as:

- (i) The compressors manufactured by assessee were removed as 'stand-alone' item and not in an unassembled or disassembled condition; and
- (ii) Section and Chapter notes in Tariff and the Interpretative Rules did not provide guidelines for valuation of excisable goods because they decided the classification as valuation is different from classification.

Thus, the Apex Court upheld the Tribunal's decision holding that parts/accessories could not be classified as 'compressors' under Heading 84.14.

However, the Apex Court remanded back the matter relating to valuation to the Commissioner for denovo consideration so as to examine the pricing aspect of entire package supplied by the assessee to its buyers.

**(xi) Where would the processed cashew nuts, peanuts, almonds etc. manufactured by dry roasting, oil roasting, salting, and seasoning would be classifiable: Chapter 20 or Chapter 8 of the Central Excise Tariff? CCus. & CEx. v. Phil Corporation Ltd. 2008 (223) ELT 9 (SC)**

The respondent processed cashew nuts, peanuts, almonds etc. by dry roasting, oil roasting, salting, seasoning, packed them in different containers and cleared the same under its brand name. The respondent did not register with the Central Excise Authorities and cleared these goods without payment of excise duty on the ground that such goods were agricultural product classifiable under "Chapter 8- Edible Fruit and Nuts; Peel of Citrus Fruit or Melons" of the Central Excise Tariff and chargeable to nil rate of duty.

However, the Department claimed that such goods were classifiable under "Chapter 20 – Preparation of Vegetables, Fruit, Nuts or Other Parts of Plants" of the Central Excise Tariff on the ground that Notes to Chapter 20 of Harmonised System of Nomenclature (HSN) provide that Chapter 20 includes "almonds, ground nuts, areca (or betel) nuts and other nuts, dry-roasted, oil roasted or fat-roasted, whether or not containing or coated with vegetable oil, salt, flavours, spices or other additives".

The Supreme Court observed that the Central Excise Tariff Act was broadly based on the system of classification from the international convention called the Brussels' Convention on the Harmonised Commodity Description and Coding System (Harmonised System of Nomenclature) with necessary modification. HSN contained a list of all the possible goods that were traded (including animals, human hair etc.) and as such the mention of an item had got nothing to do whether it was manufactured and taxable or not.

The Supreme Court reiterated that the HSN was a safe guide for the purpose of deciding issues of classification. In the present case, the HSN explanatory Notes to Chapter 20 categorically stated that the products in question were so included in Chapter 20. The HSN explanatory Notes to Chapter 20 also categorically stated that its products were excluded from Chapter 8 as they fell in Chapter 20. Thus, the Apex Court held that processed cashew nuts, peanuts, almonds etc. manufactured by dry roasting, oil roasting, salting, and seasoning and packed in different containers and cleared under respondent's brand name would be classifiable under Chapter 20 of Central Excise tariff and not under Chapter 8 in view of HSN explanatory notes to Chapter 20.

**(xii) When should the excisable goods be valued on the basis of retail sale price? Jayanti Food Processing (P) Ltd. v. CCEx., Rajasthan 2007 (215) ELT 327 (SC)**

The Supreme Court elaborated on the scope of maximum retail price (MRP) based valuation under section 4A of the Central Excise Act, 1944 in this case. The Apex Court observed that excisable goods are valued on the basis of retail sale price when following conditions are fulfilled :

- (i) where the excisable goods are packaged and
- (ii) such packages are required to mention price thereof under Standards of Weights and Measures Act, 1976 or the Rules made thereunder or under any other law and
- (iii) such goods are specified by the Central Government by notification in the Official Gazette.

The Supreme Court held that nature of sales was not relevant for determining the application of section 4A. The following issues were discussed by the Supreme Court in the instant case:

- (i) The assessee sold four litre pack of ice-cream to intermediary (hotels) which ultimately sold the ice-cream in scoops (not the package) to individuals or group of individuals. The Supreme Court held that the package sold by the assessee could not be termed as retail package nor the sale thereof be termed as a retail sale and as such there was no requirement of mentioning the retail sale price on that package. Thus, the Apex Court held that section 4A of the Central Excise Act, 1944 would not apply to ice-cream sold by the assessee.
- (ii) The assessee sold telephone instruments to Department of Telecommunications, MTNL and BSNL who in turn provided such instruments to general public on rental basis. MRP's were declared on all the instruments in question. The Supreme Court held that sale of telephone instruments would be covered under retail sale and the package would be a retail package. The Supreme Court rejected the argument that since the purchasers were not the ultimate consumers, the sale was not a retail sale. The Court held that since purchasers used the telephone instruments for supplying to their customers on rental basis or on some other basis, it could not be said that they were not ultimate consumers. Thus, the Apex Court held that the assessment should be done under section 4A of the Central Excise Act, 1944 and not under section 4.
- (iii) Refrigerators were sold to bottling companies like Pepsi, Coca Cola etc., packed in a package declaring MRP on them. However, MRP and contract price were different. The Supreme Court held that duty should be paid on MRP and not on contract price and hence assessment should be done under section 4A of the Central Excise Act, 1944 and not under section 4.

**(xiii) Whether two parties can be deemed to be 'related persons' if the registered offices of both the parties are located in the same premises? CCEx. v. Damnet Chemicals Pvt. Ltd. 2007 (216) ELT 3 (SC)**

The registered offices of the assessee and one of the bulk buyers of the assessee were located in the same premises. Further, the factory of the assessee was located in the industrial area owned by the bulk buyer of the assessee, for which the assessee used to pay a suitable rent. The assessee gave 40% discount to the said bulk buyer. The Department questioned this discount on the ground that the two parties were related persons.

The Supreme Court observed that since there was no evidence of any mutuality of interest between the two parties, they would not be deemed to be related persons just because their registered offices were situated in same premises and manufacturing unit of the assessee was situated in industrial area owned by the buyer. There was no evidence that the assessee received anything extra from the bulk buyer other than the price charged. Also, there was no evidence that profit made by the bulk buyer had flown into the assessee company. Thus, the Apex Court held that there was nothing wrong in giving 40% discount to the bulk buyer.

**(xiv) Whether only the effective rate of taxes i.e., the rate as reduced by the concession provided by the exemption notification, if any, should be claimed as a deduction under section 4 for computing the assessable value? Modipon Fibre Company v. CCEX. 2007 (218) ELT 8 (SC)**

The assessee manufactured nylon and cleared it from its factory to its various depots in other States. Turnover tax on such clearances was payable at dual rate of 0.5% for sales in backward areas and at 2% for normal areas. The concession in rate of turnover tax, in case of backward areas, was given vide an exemption notification. However, the assessee claimed deduction under erstwhile section 4 at full rate of 2% in respect of entire clearance of goods.

The issue under consideration was that whether the deduction of 2% could be claimed in respect of entire clearance of goods i.e., even in case of clearance in backward areas where 0.5% turnover tax was paid.

The Supreme Court observed that erstwhile section 4 of the Central Excise Act, 1944 prescribed that only actual value of duty payable i.e., the effective duty of excise payable on the goods should be considered while computing the assessable value. Such effective duty of excise should be calculated on the basis of prescribed rate as reduced by the concession provided by the exemption notification, if any. The Apex Court ruled that such a principle would also apply in respect of actual value of any other tax including turnover tax.

**Note -** The principle enunciated in this judgment will hold good in respect of new section 4 also as the new section 4 also prescribes that transaction value is “the price actually paid or payable for the goods, when sold .....but does not include the amount of duty of excise, sales tax and other taxes, if any, **actually paid or actually payable** on such goods.” Thus, only effective rates of taxes are deductible under the scheme of new section 4 as well.

**(xv) Is a refrigerator a pre-packed commodity for the purpose of valuation under section 4A? Whirlpool of India Ltd. v. Union of India 2007 (218) ELT 167 (SC)**

The appellant manufactured refrigerators. A notification issued by the Central Government under section 4A (1) and (2) covered refrigerator. Therefore, the refrigerator had to be valued on the basis of retail sale price under section 4A with the prescribed abatement of 40%. However, the appellant contended that refrigerator was not a packaged commodity and hence should not find place in the notification.

The Supreme Court observed that the refrigerator was a pre-packed commodity. The Apex Court elaborated that even if the package of refrigerator was required to be opened for testing, the refrigerator would still continue to be a pre-packed commodity and its sale would be a retail sale under Standards of Weights and Measures Act, 1976 and Standards of Weights and Measures (Packaged Commodities) Rules, 1977. The Supreme Court observed that MRP would have to be printed on package and the plea that MRP would be different depending on the area of sale would not absolve the manufacturer from displaying the MRP.

The Supreme Court held that the said notification issued under section 4A of the Central Excise Act, 1944 could not be faulted merely because appellant felt that refrigerator was not a packaged commodity. The Apex Court made it clear that once the notification issued under section 4A of the Central Excise Act, 1944 included the refrigerator, the appellant could not get out of the scope of notification without challenging the notification.

**(xvi) Should the free samples be valued as per rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and not as per rule 4 as clarified vide Circular No. 813/10/2005 CX dated 25.04.2005? Indian Drugs Manufacturer's Assn. v. Union of India 2008 (222) ELT 22 (Bom)**

The High Court observed that since rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 only covers cases where goods are not sold but are cleared exclusively for use and consumption in the manufacture of other articles, it would not apply in the instant case as the samples were not cleared for captive consumption but were identical or similar to goods cleared on sale in wholesale trade. The fact that physician's samples might be distributed in a different pack or in a different bottle would not make them different from goods sold in the open market.

The High Court observed that there was nothing in rule 4 which suggested that it applied only to goods sold but not delivered at the time and place of removal; rather, rule 4 was a general rule and words "such goods" therein clearly meant that goods in question must be similar or identical to and had same quality or character to the goods sold and delivered. The High Court further explained that by use of words "if necessary" in rule 4 it was made clear that adjustments should be permitted, wherever necessary.

Thus, the High Court held that physician's free samples would be valued under section 4(1) (b) of Central Excise Act, 1944 read with rule 4 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, i.e., the free samples would be valued based on the value of such goods sold and delivered at any other time nearest to the time and place of removal of such samples.

**Note** - This case establishes that Circular No. 813/10/2005 CX dated 25.04.2005 states the correct position of law and is in consonance with the Central Excise Act, 1944 and the rules made thereunder.

**(xvii) How will assessable value of goods sold to related person at or about the same price at which it is sold to non-related parties be ascertained? CCEx., Chandigarh v. Bharti Telecom Ltd. 2008 (226) ELT 3 (S.C.)**

The assessee, Bharti telecom Ltd. (BTL), sold 75% of its product - electronic push button telephones - to Department of Telecommunications (DOT) and Mahanagar Telephone Nigam Limited (MTNL) and remaining 25% in the open market through Siemens Telecom Limited (STL). STL was a joint venture company of BTL and STL. According to Revenue, BTL and STL were related persons having mutuality of interest. And BTL sold its product to STL at a far less price than the price at which STL sold it in the whole sale market. So, the Revenue's contention was that assessable value in this case was the price at which STL sold the product in open market while as per assessee, assessable value was the price at which BTL sold the product to STL.

The Apex Court observed that BTL sold the goods to STL at or about the same price at which it sold the goods to DOT and MTNL. Therefore, it held that even if STL was taken to

be a related person to BTL (though the Court did not hold so); it had not influenced the price at which the goods were sold by BTL to STL. Under the circumstances, transaction value should be taken to be the assessable value.

**(xviii) Whether reversal of credit amounts to not taking of credit? CCEx. v. Bombay Dyeing & Mfg. Co. Ltd. 2007 (215) ELT 3 (SC)**

The assessee manufactured gray fabrics from yarn. The gray fabric was exempt from excise duty under a notification if the following two conditions were satisfied:

- (i) the duty on yarn (input) was paid before claiming the exemption and
- (ii) CENVAT credit for duty paid on yarn (input) was not taken.

The duty on yarn was supposed to be paid at the spindle stage. However, owing to practical difficulties the assessee deferred the payment of duty from spindle stage to the stage of clearance of gray fabric. At this stage the duty was paid along with the appropriate interest. The assessee took the credit for duty paid on yarn but reversed the same before its utilization.

The Apex Court observed that both the conditions of the notification were fulfilled as duty on yarn, though paid on deferred basis, was paid before the clearance of gray fabric on which exemption was claimed. Hence, payment was made before stage of exemption. Further, the assessee did not utilize the credit, which it got on payment of duty on input (yarn). The Supreme Court held that since the entry for credit was reversed before utilizing the same, it would amount to not taking of credit. Thus, gray fabrics were subject to nil rate of duty.

**(xix) Whether provisions of erstwhile rule 57CC of the Central Excise Rules, 1944 [now rule 6(3) (b) of the CENVAT Credit Rules, 2004] would apply when there is no sale but just stock transfer? CCEx. v. Ballarpur Industries Ltd. 2007 (215) ELT 489 (SC)**

As per erstwhile rule 57CC of the Central Excise Rules, 1944, where common inputs, on which credit is taken, are used to manufacture dutiable and exempted final products and separate accounts are not maintained, the manufacturer has to pay an amount equal to 8% (now 10%) of the price (excluding sales tax and other taxes, if any, payable on such goods) of the price of the exempted final goods charged for sale of such goods at the time of clearance of such goods from the factory.

The Tribunal, when the issue was brought before it, opined that rule 57CC would not apply in case of stock transfer as it applies only in case of sale. However, the Supreme Court rejected the Tribunal's view. The Apex court observed that erstwhile rule 57CC was a provision which sought to recover presumptive amount @ 8% of the price of exempted final goods at the time of removal for sale. Thus, rate of 8% was the measure to calculate the presumptive sum. The Court opined that since the entire rule was based on "deemed price" and "recovery of presumptive amount" hence, the words "price charged at the time of sale" must be read as "eight percent of the value of exempted goods". Thus, the Supreme Court held that rule 57CC applied in cases of stock transfers also.

**Note** - Rule 6(3) (b) of the CENVAT Credit Rules, 2004 corresponds with the erstwhile rule 57CC of the Central Excise Rules, 1944. Thus, the principle enunciated in this case law will hold good for present rule 6(3) (b) of the CENVAT Credit Rules, 2004 as well.

**(xx) Does cement used in constructing foundation for machinery qualify as an eligible input for the purpose of availing CENVAT? Union of India v. Hindustan Zinc Ltd. 2007 (218) ELT 503 (Raj.)**

The assessee availed credit of duty paid on cement which was used in the construction of foundation for machineries and as a building material. The Revenue claimed that cement was not an eligible input in terms of explanation II to rule 2(g) of the erstwhile CENVAT Credit rules, 2002 (now explanation II to rule 2(k) of the CENVAT Credit Rules, 2004).

The High Court observed that cement used as building material for laying foundation could not be directly or indirectly said to be an integral part in connection with the manufacture of final product. Further, the High Court opined that foundation made of cement would not fall under the category of capital goods as defined under rule 2(b) of the erstwhile CENVAT Credit Rules, 2002 (now rule 2(a) of CENVAT Credit Rules, 2004). Thus, cement would not qualify to be an input in terms of explanation II of rule 2(g) of erstwhile CENVAT Credit rules, 2002 (now explanation II of rule 2(k) of CENVAT Credit Rules, 2004).

**Q51. Whether hospitality services rendered at executive lounge at the airport come within the purview of airport services?**

**Answer 51.**

In the case of Oberoi Flight Services v. CST 2007 (7) STR 516 (Tri. – Del.)

The appellant maintained an “Executive Lounge and Snack Bar” at transit area in the airport. The facilities provided at the lounge were that of newspaper, magazines, tea, coffee, snacks, cable TV, liquor, cigarette, computer with internet, STD/ISD etc. The Department contended that these services were airport services.

The Tribunal held that these services are not airport services as they have nothing to do with arrival or departure of aircraft which is the substance of airport service. Further, some of the services provided at the lounge like cable TV, STD/ISD are separately liable to service tax under their respective headings. The Tribunal explained that a service would not be treated as airport service just because it is rendered in airport. The Tribunal held that the appellant was in hospitality business and the running of the executive lounge to provide facilities to passengers would form part of hospitality service and not airport service.

**Q52. Does port service cover repair of vessels in dry docks?**

**Answer 52.**

In the case of Homa Engineering Works v. CCEx., Mumbai 2007 (7) STR 546 (Tri.- Mum)

The appellant was engaged in repairing, chipping, cleaning and painting of vessels. The appellant had taken registration under maintenance or repair services. However, the Department relied on section 42 of the Major Port Trusts Act, 1963, which provides the scope of services to be provided by the Board or other person, and claimed that such service was port service. Clause (e) of section 42(1) provides that the Board shall inter alia have power to undertake piloting, hauling, mooring, remooring, hooking, or measuring of vessels or any other service in respect of vessels.

The Tribunal held that the expression ‘any other services in respect of vessels’ in the statutory definition could be extended only to the services which were connected with the movement of vessels. The Tribunal held that repairing of vessel in dry docks was not connected with the movement of vessel in any manner and thus such service would not be classified under port service.

The Tribunal further held that C.B.E & C Circular dated 10-11-2003 clarifying ship repair at dry docks taxable under port services was not in accordance with the law. The Tribunal stated that the impugned clarification was bin.

**Q53. Is the activity of collecting human blood samples and separating serum from it covered within the ambit of business auxiliary service?**

**Answer 53.**

In the case of CCEx. v. Dr. Lal Path. Lab (P) Ltd. 2007 (8) STR 337 (P&H)

The assessee owned a collection centre at Ludhiana, which was engaged in the drawing of human blood, urine and stool samples on behalf of the Principal Lab at Delhi for conducting biological tests. The assessee sent the samples so collected to the principal company at New Delhi through a courier. The assessee received 25% commission for such service. The Department demanded service tax on such commission on the ground that the activity carried out by the assessee amounted to promotion or marketing of service provided by its Principal Lab at New Delhi and thus would be covered under business or auxiliary service.

The High Court held that merely because the assessee renders any incidental service like putting across or dropping of the name of the principal company, it would not become part of the definition of 'business auxiliary service'. The High Court observed that the activity undertaken by the assessee was covered by the exception postulated by sub-section (106) of section 65, which excluded any testing or analysis service provided in relation to human beings or animals from the scope of taxable 'technical testing and analysis' service.

The High Court reaffirmed the Tribunal's opinion that the drawing of test samples form part of testing and analysis service and it was not a separate service covered under business auxiliary service. Moreover, even if the drawing of samples and testing and analysis were seen as entirely separate and different services, drawing of sample and initial processing of the same were clearly connected or incidental to testing and analysis.

**Q54. Whether 'retainer fee' is liable to service tax?**

**Answer 54.**

In the case of S. Maruthappan v. CCEx. 2007 (8) STR 228 (Tri-Chennai)

The appellant was engaged in the capacity of a consulting engineer by M/s Nagammal Mills Ltd. for supervising electrical works for a certain period. The remuneration paid to him by the company was accounted as 'retainer allowance' in the accounts of the company for the material period. The Department demanded service tax on such retainer allowance received by the appellant from the company.

The Tribunal opined that the transaction between a 'service provider' and a 'service recipient' must be on principal-to-principal basis. The Tribunal held that since this basic requirement was not satisfied in this case the demand of service tax was liable to be vacated.

**Q55. Whether supplying of computers and other hardware items on hire and generation of MIS reports would come under the ambit of 'business auxiliary service'?**

**Answer 55.**

In the case of Bellary Computers v. CCEx. (Appeals) 2007 (8) STR 470 (Tri.-Bang.)

The appellant entered into an agreement with an electricity concern for providing software and hardware for implementation of the computerized billing revenue management system. A large number of computers were supplied to the electricity concern by the appellants and for the supply of these computers, printers and other hardware items, the appellants received hire charges. They were also required to generate MIS reports and did a lot of data processing and generated reports. The Department contended that the services provided by the appellant were business auxiliary services and were thus liable to service tax.

The Tribunal observed that the appellants were not actually promoting the business of the electricity concern. The Tribunal held that except billing all other services rendered by the appellant were related to information technology service and hence were excluded from the scope of the 'business auxiliary service'. Thus, the Tribunal remanded the case to the original authority for recomputation of service tax liability by excluding the amount charged for hiring hardware and information technology services.

Note - Section 65(19) of the Finance Act, 1994 inter alia lays down that business auxiliary service does not include information technology.

**Q56. Whether sale of ready built flats is taxable under 'construction of complex service'?**

**Answer 56.**

In the case of Greenview Land & Buildcon limited v. CCEx., Chandigarh 2008 (11) STR 113 (Tri – Del.)

The assessee was engaged in construction of complex without engaging any contractor or service provider in relation to it. The entire work was carried out by appellant as developer and builder and ready built flats were sold.

Tribunal observed that as per CBEC Circular No. 96/7/2007-S.T. dated 23-8-2007, if no other person is engaged in construction work and the builder/promoter/developer/any such person undertakes construction work on his own without engaging the services of any other person, then in such cases, (i) service provider and service recipient relationship does not exist, (ii) services provided are in the nature of self-supply of services. Therefore, Tribunal held that sale of ready built flats in the instant case was not taxable under 'construction of complex service'.

## PART - B

### [ DIRECT TAX ]

**Q1.** R submits the following information regarding his salary income for the year 2006-07: Basic salary Rs.15,000p.m.; D.A(forming part of salary) 40% of basic salary;City Compensatory Allowance Rs.300p.m.; Children Education Allowance Rs.400 pm per child for 3 children; Transport Allowance Rs.1,000 p.m. He is provided with a rent free unfurnished accommodation which is owned by the employer. The fair rental value of the house is Rs.24,000 p.a. Compute the gross salary assuming accommodation is provided in a city where population is (a) exceeding 25 lakhs (b) exceeding 10 lakhs but not exceeding 25 lakhs (c) less than 10 lakhs

**Answer 1.**

#### Computation of Income from Salary

| Particulars                                                                    | Amount | Amount   |
|--------------------------------------------------------------------------------|--------|----------|
| Basic salary 15,000 x 12                                                       |        | 1,80,000 |
| D.A. (40% of 1,80,000)                                                         |        | 72,000   |
| City Compensatory Allowance (fully taxable) (300 x 12)                         |        | 3,600    |
| <b>Children Education Allowance</b>                                            |        |          |
| Actual amount received (400 x 12 x 3)                                          | 14,400 |          |
| Less: Exemption u/s 10(14)                                                     |        |          |
| @ Rs.100 per month per child subject to a maximum of 2 children (100 x 12 x 2) | 2,400  | 12,000   |
| <b>Transport Allowance</b>                                                     | 12,000 |          |
| Actual amount received ( 1,000 x 12)                                           | 9,600  | 2,400    |
| Less: Exemption u/s 10(14) @ Rs.800 p.m. (800 x 12)                            |        |          |
| Gross Income from Salary u/s 17(1)                                             |        | 2,70,000 |

**Add:** Value of Unfurnished accommodation u/s 17(2) rule

3(1) explanation 1

Case (a) Population exceeding 25 lakhs

15% of salary

Salary = Basic pay + DA( forming part of retirement benefits) + all other taxable allowances

$$= 1,80,000 + 72,000 + 3,600 + 12,000 + 2,400$$

$$= 2,70,000$$

$$40,500$$

**Total Income from Salary**

**3,10,500**

**Note: Case (b):** where population is exceeding 10 lakhs but not exceeding 25 lakhs

10% of Salary shall be considered as the value of taxable perquisite

$$= 10\% \text{ of Rs.}2,70,000 = \text{Rs.}27,000$$

**Case (c) :** where population is less than 10 lakhs

7.5 % of salary shall be considered as the value of taxable perquisite

$$= 7.5\% \text{ of Rs.}2,70,000 = \text{Rs.}20,250$$

**Q2. Mr.Sambhu was provided an accommodation in a hotel by his employer for 22 days before providing him a rent free accommodation which is owned by the employer. The hotel charges paid Rs.6,000. Salary for the purpose of accommodation for the period of 22 days is Rs.11,000. Compute the value of accommodation.**

**Answer 2.**

**Computation:**

In case of accommodation provided to the assessee on account of transfer, which is exceeding 15 days cumulatively, such shall be taxable as a perquisite. The company recovered Rs.1,000 from the employee. Compute taxability.

**Lower of the following:**

|                                                        |              |
|--------------------------------------------------------|--------------|
| (i) 24% of salary paid/payable = 24% of 11,000 = 2,640 |              |
| (ii) Actual charges paid/payable = 6,000               | 2,640        |
| <b>Less</b> Amount paid or payable by the employee     | 1,000        |
| <b>Taxable value of perquisite</b>                     | <b>1,640</b> |

**Q3. Mr.Ritesh is provided with an accommodation in Kolkata since April 2008. Salary Rs.40,000 p.m. Cost of furniture provided Rs.80,000. On 1st September, 2008, following a promotion with a increase in Salary by Rs.15,000, he was transferred to Jharkhand (population less than 25 lakhs but more than 10 lakhs),and was also provided an accommodation there. Mr.Ritesh was allowed to retain the Kolkata accommodation till March, 2009. Compute taxability.**

**Answer 3.**

**Computation:**

**Phase 1: Value of Furnished Accommodation (Kolkata) (April to September 2008)**

| Particulars                                                                | Rs.           |
|----------------------------------------------------------------------------|---------------|
| Value of unfurnished accommodation (15% of 40,000 × 6 months)              | <b>36,000</b> |
| <b>Add:</b> Value of Furniture provided:                                   |               |
| • 10%p.a. of original cost of such furniture<br>(10% of 80,000 × 6 months) | <b>8,000</b>  |
| <b>Value of Furnished Accommodation</b>                                    | <b>44,000</b> |

**Phase 2: Valuation of accommodation (October 2008 to December 2008)**

- For the first 90 days of transfer: Where accommodation is provided both at existing place of work and in new place, the accommodation, which has lower value, shall be taxable.
- After 90 days: Both accommodations shall be taxable.

**Computation for the first 90 days of transfer: (October 2008 to December 2008)**

**Lower of:**

- Value of accommodation at existing place of work
- Value of accommodation at new place

Value of accommodation at existing place of work (Kolkata)

15% of salary for 3 months (i.e. 90 days) = 15% of 55,000 x 3 months = 24,750

**Add:** Cost of furniture provided: 10% of 80,000 x 3 months = 24,000

**Total Value of Perquisite** **48,750**

Value of accommodation at new work place(Jharkhand)

10% of salary for 3 months (i.e. 90 days) = 10% of 55,000 x 3 months = 16,500

**Therefore, the assessee shall be assessed to tax on Rs.16,500 (being the lower)**

**Phase 3: Valuation of accommodation (after 90 days) (January 2009 to March 2009)**

For Kolkata accommodation: 15% of 55,000 x 3 months = Rs.24,750

**Add:** Cost of furniture provided: 10% x 80,000 x 3 months = Rs.24,000

**Total value of perquisite** **Rs.48,750**

For Jharkhand accommodation: 10% of 55,000 x 3 months = Rs.16,500

**Total value of perquisite:**

| Particulars                                                          | Taxable value of perquisite |
|----------------------------------------------------------------------|-----------------------------|
| Phase 1: Accommodation in Kolkata                                    | 44,000                      |
| Phase 2: Accommodation in Jharkhand (being the lower during 90 days) | 16,500                      |
| Phase 3: Accommodation in Kolkata                                    | 48,750                      |
|                                                                      | 16,500                      |
| <b>Total Value of Taxable Perquisite</b>                             | <b>1,25,750</b>             |

**OTHER FACILITIES AND PERQUISITES TO EMPLOYEE AND HIS HOUSEHOLD**

**Q4. Determine the value of education facility in the following cases:**

- (1) Three children of G, an employee of S Ltd., are studying in a school, run by S Ltd. School fees is Rs.2,500 pm and hostel fees is Rs.2,000 pm. But the employer recovers only Rs.600 pm and Rs.500 pm respectively. However, a similar school or a hostel around the locality charges Rs.1,800 pm and Rs.1,200 pm respectively.
- 2) The employer has also reimbursed the school fees of Rs.1,200 pm of his nephew, fully dependent on him after the death of his brother.

**Answer 4.**

**Computation of taxable value of education facility [As per Rule 3(5)]**

| Particulars                                                                                                                          | Taxable value of perquisite |
|--------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| (1)(a) School fees of his children, studying in a school run by employer:<br>(Rs.1,800 × 3 × 12) – (1,000 × 3 × 12) – (600 × 3 × 12) | 7,200                       |
| (b) Hostel fees: (2,000 × 3 × 12) – (500 × 3 × 12)                                                                                   | 54,000                      |
| 2) School fee of nephew (1,200 × 12)                                                                                                 | 14,400                      |
| <b>Total value of taxable perquisite</b>                                                                                             | <b>75,600</b>               |

**Q5. Mr. Z is the manager of F Ltd. his son is a student of Amity International School. School fees of Rs.4,000 pm and hostel fees of Rs.3,000 pm., are directly paid by Z Ltd. to the school but it recovers from Z only 30%. F also joins an advanced course of Marketing Management for 4 months at IIM, Ahmedabad, fees of the course, Rs.2,50,000 is paid by F Ltd. Determine the perquisite value of the education facility.**

**Answer 5.**

**Computation:**

**Computation of taxable value of education facility [As per Rule 3(5)]**

| Particulars                                                                                                  | Taxable value of perquisite (Rs.) |
|--------------------------------------------------------------------------------------------------------------|-----------------------------------|
| (1) (a) School fees of his children, studying in a school run by employer:<br>(Rs.4,000 × 12) – (1,200 × 12) | 33,600                            |
| (b) Hostel fees: (3,000 × 12) – (900 × 12)                                                                   | 25,200                            |
| (2) Fees paid for Marketing Management course for Mr. Z (it is a fully exempted perquisite)                  | Nil                               |
| <b>Total value of taxable perquisite</b>                                                                     | <b>58,800</b>                     |

**Q6. The Profit and Loss Account of RAI & Co. for the previous year 2008-2009 is given as follows:**

| Particulars                                                       | Rs.              | Particulars            | Rs.              |
|-------------------------------------------------------------------|------------------|------------------------|------------------|
| Purchases of goods                                                | 10,00,000        | Sale of goods          | 26,00,000        |
| Salaries, bonus and commission                                    | 8,00,000         | Closing stock          | 50,000           |
| Rent, rates and taxes                                             | 60,000           | Interest on drawings   | 7,000            |
| Depreciation @ 16% on WDV                                         | 20,000           | Interest on securities | 20,000           |
| Travelling expenses                                               | 1,50,000         |                        |                  |
| Interest on capital                                               | 25,000           |                        |                  |
| Advertisement                                                     | 1,20,000         |                        |                  |
| Entertainment expenses                                            | 60,000           |                        |                  |
| Expenditure on neon-sign board                                    | 50,000           |                        |                  |
| New telephone deposit under OYT scheme                            | 5,000            |                        |                  |
| Compensation for cancelling purchase order of an outdated machine | 10,000           |                        |                  |
| Expenses for promoting family planning among employees            | 20,000           |                        |                  |
| Net profit                                                        | 3,57,000         |                        |                  |
|                                                                   | <b>26,77,000</b> |                        | <b>26,77,000</b> |

**Additional Information :**

- (i) **Salaries, bonus and commission include:** **Rs**
- (a) Salary to the proprietor 1,50,000
- (b) Bonus paid to employees on 31-10-2009 75,000
- (c) Salary of Rs 1,20,000 was paid in India to B, a non-resident employee but neither any tax was deducted at source nor paid thereon. However, B is a PAN holder and has cleared his tax liability.
- (d) Advertisement includes:
- (i) a hoarding bill paid in cash, Rs.20,050
- (ii) advertisement published in souvenir, published by a political party Rs.10,000
- (e) Depreciation has been charged on plants and machinery and furniture and fittings in proportion of 3:2.
- Depreciation @ 15% on plant and @10% on furniture.
- (f) Purchases include goods of Rs.1,00,000, imported without a licence and confiscated by the customs authorities.
- (g) Travelling expenses include a sum of Rs.1,00,000 on foreign travel to purchase a machine. Negotiations have not been finalized.
- (h) Annual stock taking revealed a theft of goods, costing Rs.30,000.
- (i) This year stock valuation was deviated from the market price to cost price which is 20% less than its market price.

Compute taxable business profits for the Assessment year 2009-10.

**Answer 6.****Computation of Taxable Business Profits for the Assessment Year 2009-2010**

| Particulars                                                                                                                       | Rs       | Rs       |
|-----------------------------------------------------------------------------------------------------------------------------------|----------|----------|
| <b>Income from Business</b>                                                                                                       |          |          |
| Net profit as per profit and loss account                                                                                         |          | 3,57,000 |
| <b>Add : Inadmissible Expenses</b>                                                                                                |          |          |
| (a) Salary paid to Proprietor                                                                                                     | 1,50,000 |          |
| (b) Bonus paid to employees: Deduction will be allowed in Previous Year 2009-10 (Sec.43B, being disallowance of unpaid liability) | 75,000   |          |
| (c) Salary paid to non-resident employee, without deducting or paying TDS[Sec.40(a)(iii)]                                         | 1,20,000 |          |
| (d) Advertisement bills paid in cash [Sec. 37(1) r.w. Sec. 40A(3)]                                                                | 20,050   |          |
| (e) Advertisement in souvenir published by political party [Sec.37(2B)]                                                           | 10,000   |          |
| (f) Depreciation to be treated separately                                                                                         |          |          |

|                                                                                                                                                                                |          |                 |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|-----------------|--|
| (g) Expenses on family planning: allowable only to a company assessee [Sec.36(1)(ix)]                                                                                          |          | 20,000          |  |
| (h) Foreign travel to acquire a new machine, ( being capital in nature, deal not yet finalized. It may be added to the cost of the asset when such asset is actually procured) |          | 20,000          |  |
| (i) Interest on capital [Sec. 36(1)(iii)] [There is no borrowings]                                                                                                             |          | 1,00,000        |  |
| (j) Expenditure on neon sign board, being a capital expenditure on advertisement, hence disallowed.                                                                            |          | 25,000          |  |
| (k) Compensation paid to cancel a capital liability, capital in nature, hence disallowed u/s 37(1)                                                                             |          | 50,000          |  |
| (l) Under valuation of closing stock:[50,000/80% - 50,000]10,000                                                                                                               |          |                 |  |
| <b>Less: Expenses allowed:</b>                                                                                                                                                 |          |                 |  |
| Interest on Drawings                                                                                                                                                           | 12,500   | 6,12,550        |  |
| Depreciation u/s 32:                                                                                                                                                           |          | 9,69,550        |  |
| (a) Plant and machinery:                                                                                                                                                       |          |                 |  |
| WDV on 01.04.4007 : $20,000 \times \frac{4}{5} \times \frac{100}{16}$                                                                                                          | 1,00,000 | 7,000           |  |
| Add: Cost of neon-sign board                                                                                                                                                   | 50,000   |                 |  |
|                                                                                                                                                                                | 1,50,000 |                 |  |
| Less: Depreciation @15%                                                                                                                                                        | 22,500   |                 |  |
| WDV as on 31.3.08                                                                                                                                                              | 1,27,500 |                 |  |
| (b) Furniture and Fittings:                                                                                                                                                    |          | 22,500          |  |
| WDV on 01/04/07: $20,000 \times \frac{1}{5} \times \frac{100}{16}$                                                                                                             | 25,000   |                 |  |
| Less: Depreciation @10%                                                                                                                                                        | 2,500    |                 |  |
| WDV on 31.3.2008                                                                                                                                                               | 22,500   | 2,500           |  |
| <b>Less: Incomes credited to Profit and Loss A/c to be treated under separate Head of Income</b>                                                                               |          |                 |  |
| Interest on Government Securities                                                                                                                                              | 20,000   | 52,000          |  |
| <b>Taxable Business Profits</b>                                                                                                                                                |          | <b>9,17,550</b> |  |

**Note :**

- (1) Loss due to theft of stock-in-trade is allowable in computing business profits u/s 29. Such loss is incidental to business operation. Since purchase of goods have already been debited to profit and loss account, no separate adjustment is required.
- (2) Loss in illegal business may be allowed u/s 29. Explanation to Sec.37(1) does not apply to Sec.29.
- (3) Deposit for new telephone connection is allowable u/s 37(1). Hence, no adjustment is required.

**Q7. The Profit & Loss Account of Mr.Dipak Sinha for the previous year 2008-2009 is given below:**

| Particulars                                      | Rs               | Particulars                                 | Rs.              |
|--------------------------------------------------|------------------|---------------------------------------------|------------------|
| Cost of goods sold                               | 16,00,000        | Sales                                       | 34,70,000        |
| Salaries wages                                   | 9,00,000         | Rent of staff quarters                      | 3,00,000         |
| Rent of business premises, owned by the assessee | 2,50,000         | Sale price of machinery block on 31-03-2009 | 5,00,000         |
| Repairs and renewals                             | 1,40,000         |                                             |                  |
| Income tax paid                                  | 60,000           |                                             |                  |
| Excise duty paid                                 | 1,00,000         |                                             |                  |
| Sales tax payable                                | 2,00,000         |                                             |                  |
| Legal expenses                                   | 3,00,000         |                                             |                  |
| Municipal taxes payable for staff quarters       | 10,000           |                                             |                  |
| Provision for bad debts                          | 60,000           |                                             |                  |
| Contingency reserve                              | 1,00,000         |                                             |                  |
| Employees contribution to recognised fund        | 50,000           |                                             |                  |
| Net profit                                       | 5,00,000         |                                             |                  |
|                                                  | <b>42,70,000</b> |                                             | <b>42,70,000</b> |

**Additional Information:**

- (i) Salaries include:
  - (a) Rs 1,20,000 was paid outside India to an employee, “resident” in India but neither tax was deducted nor tax has been paid thereon,
  - (b) Rs 90,000 was paid in India to an employee “resident” in India but neither tax deducted therefrom nor paid thereon.
- (ii) Excise duty of Rs 50,000 for the assessment year 2008-2009 was paid on 1 January 2009 but it was not included in the profit and loss a/c.
- (iii) Sales tax amounting Rs 1,30,000 was paid on 31 July 2009 and the balance was paid on 1 August 2009, the due date of furnishing return of income is 31 July 2009.
- (iv) Repairs/renewals include remodelling and renovation costing Rs.80,000.
- (v) Legal expenses include:
  - (a) Lawyer fee of Rs 50,000 paid by bearer cheque to K, nephew of the proprietor. The Assessing Officer disallowed a sum of Rs.10,000, being found in excess of the desired qualifications;
  - (b) Gift of Rs 1,20,000, made to wife, a tax-advisor, but disallowed by the A.O.
- (vi) Employees contribution include:
  - (a) Rs 30,000 credited to their account on due date under Provident Fund rules,
  - (b) Rs 20,000 credited to their account in November 2009.
- (vii) Commission receipts of Rs 2,00,000 have not been credited to the profit and loss account as their recovery seems to be doubtful.



**Q8. The firm of M/s Amal & Associates is engaged in the business of growing and manufacturing tea. The Profit & Loss Account for the year, 2008-2009 is given as follows:**

| Particulars                           | Rs                 | Particulars | Rs                 |
|---------------------------------------|--------------------|-------------|--------------------|
| Cost of growing and manufacturing tea | 40,00,000          | Sales       | 95,00,000          |
| Salaries and wages                    | 15,00,000          | Stock       | 13,50,000          |
| Advertising                           | 5,00,000           |             |                    |
| Entertainment expenses                | 1,00,000           |             |                    |
| Travelling expenses                   | 3,00,000           |             |                    |
| Fine and penalties                    | 50,000             |             |                    |
| Cost of patent rights                 | 6,00,000           |             |                    |
| Expenses on scientific research       | 6,00,000           |             |                    |
| General and sundry expenses           | 2,00,000           |             |                    |
| Net profit                            | 30,00,000          |             |                    |
|                                       | <b>1,08,50,000</b> |             | <b>1,08,50,000</b> |

**You are further informed :**

- (i) Advertising includes payment of Rs 2,00,000 made to a political party for insertion of advertisement in party's journal. The payment has been made by bearer cheque,
- (ii) Travelling expenses include a visit of the director to UK for 10 days (including 2 days for travelling). Five days were utilized for business purpose. Permission for foreign exchange was granted for Rs 50,000. Total expenditure on the visit is Rs 1,00,000 (including air fare of Rs 40,000).
- (iii) Expenses on scientific research include:
  - (a) Purchase of land Rs.1,50,000
  - (b) Contribution to Agricultural Research Institute, New Delhi which is a National Laboratory Rs.20,000.
  - (c) Contribution to Bhaba Atomic Research Centre (an approved research association) for statistical research, which is not related to business Rs.30,000.
- (iv) Refund of custom duty, deducted in the previous year, 2006-2007, amounting to Rs 50,000, has not been credited to the profit and loss account.
- (v) Sundry expenses include a contribution of Rs 60,000 to Kolkata Municipal Corporation for undertaking a Drinking Water Project for slum-dwellers. The Project has been approved by National Committee but KMC has not issued any certificate indicating the progress of the project.
- (vi) A deposit of Rs 12,00,000 was made in instalments with National Bank for Agriculture and Rural Development (a) Rs 4,00,000 in September 2008, (b) Rs 6,00,000 in July 2009 and (c) Rs 2,00,000 in December 2009. It has not been included in the profit and loss account. Date of submitting return of income 30/09/2009.
- (vii) (a) W.D.V. of machinery on 01-04-2008 (Rate of depreciation 15%) Rs.15,00,000  
 (b) Machinery purchased in December 2008 for scientific research Rs.5,00,000  
 (c) Purchase of five small drier machine, each costing Rs.10,000  
 (d) Sale price of an old machinery (Rate of depreciation 15%) Rs.6,00,000

(viii) Lump sum payment of Rs 5,00,000 was made to acquire a licence regarding technical information to improve tea-flavour. It has not been charged to P/L a/c.

Compute the taxable business profits for the assessment year 2009-2010.

**Answer 8.**

**Computation of Business Profits for the Assessment Year 2009-2010**

| Particulars                                                                                                                                                                   | Rs               | Rs        |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|-----------|
| <b>Net profit</b>                                                                                                                                                             |                  | 30,00,000 |
| <b>Add: Inadmissible Expenses:</b>                                                                                                                                            |                  |           |
| 1. Advertisement payment to a political party [Sec. 37(2B)]                                                                                                                   | 20,00,000        |           |
| 2. Travelling outside India [Sec. 37(1)]. Proportionate expenses of foreign travel, (excluding air fare) not relating to business: $60,000 \times 3/8$                        | 22,500           |           |
| 3. Fine and penalties                                                                                                                                                         | 50,000           |           |
| 4. Cost of patent rights                                                                                                                                                      | 6,00,000         |           |
| 5. Expenditure on scientific research (Sec. 35): Purchase of land                                                                                                             | 1,50,000         |           |
| 6. Contribution to Bombay Municipal Committee (Sec. 35 AC):<br>Since the Certificate indicating progress in the prescribed form has not been issued, no deduction is allowed. | 60,000           | 10,82,500 |
| <b>Add: Deemed profit: Refund of Customs Duty, deducted in earlier years, not credited in the profit and loss A/c [Sec.41(1)]</b>                                             |                  | 50,000    |
| <b>Less: Admissible expenses:</b>                                                                                                                                             |                  |           |
| Capital expenditure on scientific research [Sec.35(1)(iv)(2)]                                                                                                                 | 4,00,000         |           |
| Depreciation on Patent rights @ 25% of Rs.6,00,000                                                                                                                            | 1,50,000         |           |
| Depreciation on know-how: @ 25% of Rs.5,00,000                                                                                                                                | 1,25,000         |           |
| Depreciation on Machinery:                                                                                                                                                    |                  |           |
| WDV as on 01/04/2008:                                                                                                                                                         | 15,00,000        |           |
| Add: Purchase of driers                                                                                                                                                       | 50,000           |           |
|                                                                                                                                                                               | 15,50,000        |           |
| Less: Sale of Old Machinery                                                                                                                                                   | 5,00,000         |           |
| WDV as on 31/3/2009                                                                                                                                                           | <b>10,50,000</b> |           |
| Depreciation @ 15% on Rs.10,50,000                                                                                                                                            |                  |           |
| Weighted Deduction for scientific research:                                                                                                                                   | 1,57,500         |           |
| (i) National Laboratory: @ 125% of Rs.20,000 = Rs.25,000 – Rs.20,000 = Rs.5,000                                                                                               |                  |           |
| (ii) Bhaba Atomic Research Laboratory: @ 125% of Rs.30,000 = Rs.37,500 – Rs.30,000 = Rs.7,500                                                                                 |                  |           |
| Therefore, total deduction Rs.(5,000 + 7,500)                                                                                                                                 | 12,500           | 8,45,000  |

|                                                                                                                                                                       |  |                  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|------------------|
| <b>Composite Profits before making deduction u/s 33AB</b>                                                                                                             |  | <b>32,87,500</b> |
| <b>Less: Deposit with NABARD (Sec.33AB)</b>                                                                                                                           |  |                  |
| Least of the followings:                                                                                                                                              |  |                  |
| (i) Deposit of Rs.10,00,000 (within the due date of submission of return)                                                                                             |  |                  |
| (ii) 40% of Business Profits: 40% of Rs.32,87,500 =<br>Rs.13.15,000                                                                                                   |  | 10,00,000        |
| <b>Composite Profits after deduction u/s 33AB</b>                                                                                                                     |  | <b>22,87,500</b> |
| Apportionment of profits into agricultural income and business income (As per Rule 8)[since the assessee is engaged in the business of growing and manufacturing tea: |  |                  |
| 40% of Rs.22,87,500                                                                                                                                                   |  | 9,15,000         |

**Q9. What would be your advice regarding admissibility of the following items of expenditure in computing the business income:**

- A donation of Rs 1 lakh made to a University for starting a laboratory for scientific research (i) relating to the assessee's business, (ii) not relating to the assessee's business.
- Travelling expenses include a sum of Rs 15,000 incurred by a director in travelling abroad for negotiating purchase of plant and purchase of plant and machinery.
- Amount payable as damages to Government on account of shortfall in export target.
- Overdraft from bank for payment of income tax: interest charged by the bank is Rs 20,000.
- Payment of interest of Rs 40,000 on monies borrowed from bank for payment of dividends to shareholders.
- Rs 12,000 paid for shifting of business from the original site to the present place which is more advantageously located.
- Retrenchment compensation of Rs 4 lakh paid to the workmen on the closure of one of the units.
- Fees paid to the Registrar of Companies for bringing about a change in the Memorandum and Articles of Association in regard to issue of Equity.

**Answer 9.**

- The donation has been made to University to be used for scientific research for starting a laboratory. If the University is approved for the purpose of Sec. 35(l)(ii), then irrespective of the consideration whether the scientific research is related to assessee's business or not, deduction could be claimed @ 125% of amount paid. If it is not approved, donation could not be claimed as a deduction under Sec. 35 in the computation of business income. However, the assessee could claim deduction from Gross Total Income under Sec. 80G, if the same is eligible.
- Travelling expenses incurred by the director for negotiating the purchase of plant and machinery is a capital expenditure and hence to be disallowed.
- The payment is not for any infraction of law but for failure to reach a target undertaken by the company being payment made wholly in the course of business, it is deductible.

- (d) Interest on overdraft taken to pay income tax is not allowable under Sec. 36(1)(iii). Interest on borrowings
- (e) utilised for payment of dividend is allowable under Sec. 36(1)(iii).
- (f) Shifting expenses of business premises resulting in an expenditure of enduring benefit is a capital expenditure and is not allowable.
- (g) Retrenchment compensation payable to workmen on the total closure of a business cannot be allowed as deduction as the expenses are not incurred for the purpose of carrying on of its business. When, however, the tax-payer closes one of its units and continues to carry on the same business as before, the compensation will be admissible under Sec. 37(1).
- (h) Fee paid to Registrar of Companies for bringing about change in memorandum and articles of association is a capital expenditure, where it relates to issue of equity shares. Where alterations are warranted by the changes made in the Companies Act, the expenses are allowable.

**Q10. Mr J K gets the following gifts during the previous year 2008-2009.**

| Date of gift   | Name of the donor                                                                  | Amount of gift (Rs) |
|----------------|------------------------------------------------------------------------------------|---------------------|
| 1. 01.07.2007  | Gift from R, a friend, by cheque                                                   | 50,000              |
| 2. 01.09.2007  | Cash gift from N, nephew                                                           | 1,00,000            |
| 3. 01.12.2007  | Gift of diamond ring on his birthday, by a friend, C                               | 75,000              |
| 4. 15.12.2007  | Cash gifts of Rs. 31,000 each made by four friends on the occasion of his marriage | 1,24,000            |
| 5. 01.12.2008  | Cash gift made by wife's sister on house opening ceremony                          | 51,000              |
| 6. 15.01.2008  | Cash gift from a close friend of father-in-law.                                    | 1,51,000            |
| 7. 31.01.2008  | Cash gift made by great-grandfather                                                | 1,51,000            |
| 8. 01.02.2008  | Cash gift received under the Will of a friend, who is seriously ill.               | 51,000              |
| 9. 15.02.2008  | Cash gift made by a business friend on his birthday                                | 75,000              |
| 10. 31.03.2008 | Cash gifts made by three friends of Rs. 25,000 each                                |                     |

Besides this, JK is engaged in the business of sale and purchase of retail goods.

He maintains no account books. Gross turnover from retail trading is Rs 35,00,000.

Compute his total income for the assessment year 2009-2010.

**Answer 10.****Solution:** Computation of taxable income for the AY 2009-2010

| Particulars                                                                                                     | Amount (Rs)     |
|-----------------------------------------------------------------------------------------------------------------|-----------------|
| 1. Income from retail trading business [Sec. 44 AF] 5% Rs 35,00,000                                             | 1,75,000        |
| 2. Income from other sources (money gifts):                                                                     |                 |
| (i) Cash gift from a friend, by cheque                                                                          | 50,000          |
| (ii) Cash gift from nephew, not covered by the definition of relative                                           | 1,00,000        |
| (iii) Gift of diamond ring—non-monetary gift not taxable                                                        | —               |
| (iv) Cash gifts on the occasion of marriage are not chargeable even if such gifts are made by unrelated persons | —               |
| (v) Cash gift made by wife's sister, a relative, not taxable                                                    | —               |
| (vi) Cash gift by a friend of father-in-law, unrelated person                                                   | 1,51,000        |
| (vii) Cash gift made by great-grand father, a relative                                                          | —               |
| (viii) Cash gift received under Will in contemplation of death of a friend                                      | —               |
| (ix) Cash gift made by a business friend on his birthday                                                        | 51,000          |
| (x) Cash gifts, made by three friends, of Rs 25,000 each                                                        | 75,000          |
| <b>Total income</b>                                                                                             | <b>6,02,000</b> |

**Q11. Mr Ayan Goel receives the following gifts of money:**

| S. No. | Date of gift | Donor                    | Form of gift   | Amount of gifts | Remarks                                                     |
|--------|--------------|--------------------------|----------------|-----------------|-------------------------------------------------------------|
| 1.     | 31.3.2008    | Friend                   | Cheque         | 25,000          | Cheque is encashed on 03.04.2008                            |
| 2.     | 01.05.2008   | Brother                  | Bank draft     | 50,000          |                                                             |
| 3.     | 30.07.2008   | Non-resident friend      | Cheque         | 30,000          |                                                             |
| 4.     | 01.10.2008   | Brother-in-law           | Cash           | 10,000          |                                                             |
| 5.     | 15.11.2008   | Great-grandfather-in-law | Cash           | 40,000          | On the occasion of the marriage<br>Maturity date 31.03.2009 |
| 6.     | 05.12.2008   | Cousin brother           | Cash           | 21,000          |                                                             |
| 7.     | 01.01.2009   | Neighbour                | NSC-VIII Issue | 10,000          |                                                             |
| 8.     | 31.03.2009   | Friend                   | Cash           | 10,000          |                                                             |

Determine the chargeability of the aforesaid gifts. Would it make any difference if the amount of gift made on 31.03.2009 is Rs 10,001.

**Answer 11.****Solution:** Computation of taxable gifts for the AY 2009-2010

| Particulars                                                                                                                                                                                                    | Case – I<br>Rs | Case – II<br>Rs |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|-----------------|
| 1. Gift of cheque dated 31.03.2008 from a friend but encashed on 03.04.2007 is not taxable since it does not exceed Rs 25,000. Chargeability is governed by the date of receipt and not by date of encashment. | —              | —               |
| 2. Gift from brother is exempt                                                                                                                                                                                 | —              | —               |
| 3. Gift from friend                                                                                                                                                                                            | 30,000         | 30,000          |
| 4. Gift from brother-in-law—Exempt                                                                                                                                                                             | —              | —               |
| 5. Gift from great grandfather-in-law: Exempt                                                                                                                                                                  | —              | —               |
| 6. Gift on the occasion of the marriage                                                                                                                                                                        | —              | —               |
| 7. Gift from neighbour                                                                                                                                                                                         | 10,000         | 10,000          |
| 8. Gift from friend                                                                                                                                                                                            | 10,000         | 10,000          |
|                                                                                                                                                                                                                | <u>50,000</u>  | <u>50,000</u>   |
| Taxable gift                                                                                                                                                                                                   | Exempt         | 50,001          |

**Q12. A company is engaged in the development and sale of computer software applications. It has started a new undertaking for which approval as a 100% export-oriented undertaking has been obtained from the CBDT. It furnishes the following data and requests you to compute the deduction allowable to it under Sec. 10B in respect of assessment year 2009-2010.**

| Particulars                                                                                                                                      | Rs (in lakh) |
|--------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| Total profit of the company for the previous year                                                                                                | 50           |
| Total turnover, i.e. Export sales and Domestic sales for the previous year                                                                       | 500          |
| Consideration received in respect of export of software received in convertible foreign exchange within 6 months of the end of the previous year | 250          |
| Sale proceeds credited to a separate account in a bank outside India with the approval of RBI                                                    | 50           |
| Telecom and insurance charges attributable to export of software                                                                                 | 10           |
| Staff costs and travel expenses incurred in foreign exchange to provide technical assistance outside India to a client                           | 40           |

**Answer 12.****Solution:** Computation of income of a 100% export-oriented undertaking: AY 2009-2010

| Particulars                                                                                                                                      | Rs (in lakh) |
|--------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| Total profit                                                                                                                                     | 50           |
| Less: Deduction under Sec. 10B: $\frac{\text{Export turnover} \times \text{Total profits}}{\text{Total turnover}} = 50 \times \frac{250}{500} =$ | 25           |
| Taxable profits                                                                                                                                  | 25           |
| <b>Note:</b>                                                                                                                                     |              |
| Export turnover                                                                                                                                  | (Rs in lakh) |
| (i) Sale proceeds of software received in convertible foreign exchange within the prescribed period                                              | 250          |
| (ii) Sale proceed in convertible foreign exchange kept outside India with the approval of RBI                                                    | 50           |
|                                                                                                                                                  | 300          |
| Less : (i) Telecom and insurance attributable to export turnover                                                                                 | (-) 10       |
| (ii) Expenses incurred in foreign exchange outside India to provide technical assistance to a client there                                       | (-) 40       |
| Export turnover                                                                                                                                  | <b>250</b>   |

**Q13. XY & Co., a partnership concern had established an undertaking for manufacturing computer software in Free Trade Zone. It furnishes the following particulars of its second year operations, ending on 31-03-2009:**

| Particulars                                                                                                                                                                    | Rs (in lakh)  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| <b>Total sales of business</b>                                                                                                                                                 | <b>100.00</b> |
| <b>Export sales</b>                                                                                                                                                            | <b>80.00</b>  |
| <b>Profit of the business</b>                                                                                                                                                  | <b>10.00</b>  |
| Out of the total sales, realisation of sale of Rs 5 lakh is difficult because of the deficiency of the buyer. Realisation of rest of the sales is received in time.            |               |
| The plant and machinery used in the business had been depreciated @ 15% on SLM basis of depreciation and depreciation of Rs 3 lakh was charged to the Profit and Loss Account. |               |

**Compute the taxable income of XY & Co; for the assessment year 2009-2010.**

**Answer 13.****Solution:**

| Particulars                                                            | Rs (in lakh)    |
|------------------------------------------------------------------------|-----------------|
| Profit of business                                                     | 10,00,000       |
| Add : Depreciation charged on SLM basis                                | 30,000          |
|                                                                        | 1,30,000        |
| Less : Depreciation on WDV basis @ 15% of 17,00,000 – [Sec Note below] | 2,55,000        |
|                                                                        | 10,45,000       |
| Less : Deduction under Sec. 10A : $10,45,000 \times 75 \div 100$       | 7,83,750        |
| <b>Taxable income</b>                                                  | <b>2,61,250</b> |

**Note:****Rs**

- Computation of Depreciation :
 

|                                                                 |           |
|-----------------------------------------------------------------|-----------|
| Total purchase price of machine : $3,00,000 \times 15 \div 100$ | 20,00,000 |
| Less : Depreciation in the first year @ 15%                     | 3,00,000  |
| WDV at the end of first year                                    | 17,00,000 |
| Less: Depreciation for second year @ 15%                        | 2,55,000  |
| WDV at the end of second year                                   | 14,45,000 |
- Export Turnover:
 

|                                                          |           |
|----------------------------------------------------------|-----------|
| Export Sales                                             | 80,00,000 |
| Less: Remittance not received due to insolvency of buyer | 5,00,000  |
|                                                          | 75,00,000 |

**Q14. Mr B holds 5% shares in A Ltd., where his brother and nephew hold 11% and 6% shares, respectively. Mrs B gets commission of Rs 1,00,000 from A Ltd. for canvassing orders. She holds no technical/professional qualification. Mr B earns income of Rs 5,00,000 from sugar business.**

**Compute their taxable income for the assessment year 2009-10**

**Answer 14.****Computation of Taxable Income for the AY 2009-10**

| Particulars of income                                                                              | Mr.B<br>Rs | Mrs.B<br>Rs |
|----------------------------------------------------------------------------------------------------|------------|-------------|
| Income from sugar business Commission for canvassing orders from Z Ltd.: Income from other sources | 2,00,000   | 90,000      |
|                                                                                                    | 2,00,000   | 90,000      |

**Note:** In the instant case, Mr B holds 7% and his brother holds only 12% shares in A Ltd. The total of their shareholding is less than 20%. They have no substantial interest.

Therefore, commission income is assessable as income of Mrs B.

**Q15. The shareholding of Mr K and Mrs K in S Ltd, is given as follows:**

|                                         |    |
|-----------------------------------------|----|
| (i) Shareholding of K                   | 7% |
| (ii) Shareholding of Mrs K              | 9% |
| (iii) Shareholding of M, brother of K   | 8% |
| (iv) Shareholding of F, father of Mrs K | 5% |

Mr K and Mrs K are employed with S Ltd. None of them hold technical qualification. Mr K gets salary @ Rs 10,000 p.m and Mrs K gets @ Rs 12,000 p.m.

|                            |          |
|----------------------------|----------|
| Income from other sources: | Rs       |
| Mr K                       | 80,000   |
| Mrs K                      | 1,00,000 |

**Compute taxable income for the assessment year 2009-2010**

**Answer 15.**

**Computation of taxable income for the AY 2009-2010**

| Particulars                                                                                                                                                                                 | Mr.K     | Mrs.K    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|----------|
| 1. Gross Salary                                                                                                                                                                             | 1,20,000 | 1,44,000 |
| Salary income of Mr.K to be included in the total income of Mrs.K as her income from other sources is greater and both of them have substantial interest alongwith their relative in s Ltd. |          | 1,20,000 |
| 2. Income from other sources                                                                                                                                                                | 80,000   | 1,00,000 |
|                                                                                                                                                                                             | 80,000   | 3,64,000 |

**Q16. Karan held 12% shares in a private limited company. He gifted all the shares to his wife Neha on 1 October 2008. On 1 November 2007, Neha obtained loan of Rs 5,00,000 from the company, when the company's accumulated profit was Rs 1,20,000.**

**What are the income tax implications of the above transactions?**

**Answer 16.**

Where a closely held company, other than a money-lending company, grants any loan or advance to a shareholder, holding 10% or more equity shares, such loan or advance to the extent of accumulated profits (excluding capitalised profits) up to the date of distribution, is deemed to be dividend [Sec. 2(22)(e)]. Thus, the loan of Rs 5,00,000, taken by wife, is deemed to be dividend. As the shares were transferred by husband to wife otherwise than for adequate consideration or in an agreement to live apart, dividend income from such shares will be included in the total income of her husband [Sec. 64(1)(iv)].

**Q17. Mr. Dey furnishes the following particulars of his income for the previous year 2008-2009:**

| Particulars                                                                        | Rs           |
|------------------------------------------------------------------------------------|--------------|
| A: Business loss                                                                   | (-) 4,00,000 |
| Unabsorbed depreciation                                                            | (-) 2,00,000 |
| B: Business profit                                                                 | 10,00,000    |
| Income from house property                                                         | 2,00,000     |
| Carried forward losses and allowance;<br>C business was discontinued on 31-12-2003 |              |
| Apart from the abovementioned, the following unabsorbed:                           |              |
| 1. Business loss                                                                   | (-) 3,00,000 |
| 2. Depreciation                                                                    | (-) 2,00,000 |
| D business was discontinued on 1-3-2006 leaving the following unabsorbed:          |              |
| 1. Business loss                                                                   | (-) 3,00,000 |
| 2. Depreciation                                                                    | (-) 1,00,000 |

**Compute his total income for the assessment year 2009-10.**

**Answer 17.**

**Solution :** Computation of total income for the AY 2009-2010:

| Particulars                                                   | Rs              | Rs           |
|---------------------------------------------------------------|-----------------|--------------|
| Income from house property                                    |                 | 2,00,000     |
| Business - profession                                         |                 |              |
| Prof it of B-business                                         | ( + ) 10,00,000 |              |
| Less: Business loss of A - business                           | (-) 4,00,000    |              |
| Depreciation of A-business                                    | (-) 2,00,000    |              |
|                                                               | ( + ) 4,00,000  | 4,00,000     |
| Aggregated income                                             | 6,00,000        |              |
| Less: Carried forward business loss:                          |                 |              |
| (i) Loss of C Business to be set-off against business profits | (-) 3,00,000    |              |
| (ii) Loss of D business                                       | (-) 3,00,000    |              |
|                                                               | 6,00,000        | (-) 6,00,000 |
| Total income                                                  |                 | Nil          |

**Note:** Where business loss and depreciation both are being carried forward, business loss has got priority, over depreciation. Unabsorbed depreciation is carried forward without time-limit.

**Q18. XYZ & Co., a partnership firm, submits the following particulars of its income and carry forward losses for the previous year 2008-2009:**

| Particulars                                                  | Betting on race horses made lawfully(Rs) | Betting on race horses made illegally(Rs) |
|--------------------------------------------------------------|------------------------------------------|-------------------------------------------|
| 1. Gross prize on race horses                                | 15,00,000                                | 5,00,000                                  |
| 2. Expenses incurred:                                        |                                          |                                           |
| (i) Horses purchased during the year                         | 6,00,000                                 | 75,000                                    |
| (ii) Medical expenses                                        | 1,00,000                                 | 20,000                                    |
| (iii) Animal trainer fees                                    | 50,000                                   | 15,000                                    |
| (iv) Fodder expenses                                         | 2,60,000                                 | 50,000                                    |
| (v) Stable-rent/insurance                                    | 1,20,000                                 | 36,000                                    |
| (vi) Depreciation in the value of horses                     | 4,60,000                                 | 1,50,000                                  |
| (vii) Staff salaries                                         | 1,00,000                                 | 40,000                                    |
| 3. Losses brought forward from the assessment year 2008-2009 | 6,00,000                                 | 2,00,000                                  |

**Solution:****Computation of total income for the Assessment Year 2009-10**

| Particulars                                           | Betting on race horses made lawfully (Rs) | Betting on race horses made illegally (Rs) |
|-------------------------------------------------------|-------------------------------------------|--------------------------------------------|
| <b>Gross prize</b>                                    |                                           |                                            |
| Less: Expenses incurred:                              | 15,00,000                                 | 15,00,000                                  |
| (i) Horses purchased—not allowed                      | —                                         | —                                          |
| (ii) Medical expenses                                 | (-) 1,00,000                              | (-) 20,000                                 |
| (iii) Animal trainer fees                             | (-) 50,000                                | (-) 15,000                                 |
| (iv) Fodder expense                                   | (-) 2,60,000                              | (-) 50,000                                 |
| (v) Stable rent/insurance                             | (-) 1,20,000                              | (-) 36,000                                 |
| (vi) Staff salaries                                   | (-) 1,00,000                              | (-) 40,000                                 |
| (vii) Depreciation in the value of horses—not allowed | —                                         | —                                          |
|                                                       | <b>8,70,000</b>                           | <b>3,39,000</b>                            |
| Less: Brought forward loss                            | 6,00,000                                  | Nil                                        |
|                                                       | <b>2,70,000</b>                           | <b>3,39,000</b>                            |
| <b>Total income of the firm = Rs 6,09,000</b>         |                                           |                                            |

**Note:**

“Horse race” means a horse race upon which wagering or betting may be lawfully made [Explanation (b) to Sec. 74A]. Thus, where wagering or betting is not lawfully made on race horses, any loss incurred on such betting can neither be set-off nor carried forward. Hence, the carried forward loss of Rs 2,00,000 cannot be set-off.

**Q19. Mr N discloses the following incomes for the PY 2008-2009**

| House property  | Business or profession |                    | Capital gains     |                  | Income from other sources                                   |
|-----------------|------------------------|--------------------|-------------------|------------------|-------------------------------------------------------------|
| Rs              | Speculation Rs         | Non-speculation Rs | STCG Rs           | LTCG Rs          | Rs                                                          |
| A<br>50,000     | P<br>3,00,000          | X<br>5,00,000      | C<br>6,00,000     | F<br>7,00,000    | Family pension<br>95,000                                    |
| B<br>(-) 40,000 | S<br>(-)2,00,000       | Y<br>(-) 3,00,000  | D<br>(-) 3,00,000 | E<br>(-)5,00,000 | Loss from<br>(-) 50,000 letting out from<br>machinery/plant |

**Determine income under head of income for the AY 2009-2010:**

**Solution :** Aggregation of income under each head of income: AY 2009-2010.

| House property | Business or profession |                    | Capital gains    |                  | Income from other sources                              |
|----------------|------------------------|--------------------|------------------|------------------|--------------------------------------------------------|
| Rs             | Speculation Rs         | Non-speculation Rs | STCG Rs          | LTCG Rs          | Rs                                                     |
| A<br>50,000    | P<br>3,00,000          | X<br>5,00,000      | C<br>6,00,000    | F<br>7,00,000    | Family pension<br>95,000                               |
| B<br>(-)40,000 | S<br>(-)2,00,000       | Y<br>(-)3,00,000   | D<br>(-)3,00,000 | E<br>(-)5,00,000 | Loss from<br>(-)50,000 letting out<br>machinery/ plant |
| Total          | 10,000                 | 1,00,000           | 2,00,000         | 3,00,000         | 2,00,000 45,000                                        |

**Q20. A discloses the following incomes from business or profession for the previous year 2009-2010:**

|                                                                                           | Rs           |
|-------------------------------------------------------------------------------------------|--------------|
| (i) Profit from X business                                                                | 6,00,000     |
| (ii) Loss from Y business                                                                 | (-) 2,00,000 |
| (iii) Loss from profession Z                                                              | (-) 2,50,000 |
| (iv) Profit from speculation business – M                                                 | 2,00,000     |
| (v) Loss from speculation business – N                                                    | (-) 3,00,000 |
| <b>Determine the income from business or profession for the assessment year 2009-2010</b> |              |

**Solution:** Income from business-profession for the AY 2009-2010

| Particulars                        | Rs           |
|------------------------------------|--------------|
| (i) X                              | 6,00,000     |
| (ii) Y                             | (-) 2,00,00  |
| (iii) Z                            | (-) 2,50,000 |
| Total business profits             | 1,50,000     |
| Income from speculation-profession |              |
| (i) M                              | 2,00,000     |
| (ii) N                             | (-)3,00,000  |
| Loss from speculation business     | (-) 1,00,000 |

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

Thus, taxable business profits for the assessment year 2009-2010 is Rs. 1,50,000. The speculation loss will be carried forward for future set-off for 4 assessment years, immediately succeeding the assessment year for which it was first computed [Sec. 73(4)].

The time-limit of 4 years is applicable from the assessment year 2008-2009 and subsequent year. Prior to this, the time-limit was 8 assessment years, immediately following the assessment year in which the loss was first computed.

**Q21. Karan discloses the following particulars of his income for the previous year 2008-2009:**

|                 | Rs           |
|-----------------|--------------|
| (i) Business A  | (+) 4,50,000 |
| (ii) Business B | (-) 6,00,000 |

Instead of full set-off of Rs (-) 6,00,000, Karan wants to claim a partial set-off of B-business loss of Rs (-) 50,000 against the profits of business-A. Comment.

**Solution:** Tax implication Karan's Option :

|                                        | Rs.             |
|----------------------------------------|-----------------|
| Profit from A business                 | 4,50,000        |
| Less : Business – Loss from B business | 3,50,000        |
| <b>Total income</b>                    | <b>1,00,000</b> |

There will be no tax liability of Karan for the assessment year 2008-2009 as his income does not exceed the exemption Jimit of Rs 1,00,000. Besides, Karan will be entitled to carry forward the business loss of Rs 2,50,000 for future set-off. The law does not allow him to claim partial set-off. He has to claim the full set-off:

|                                            | Rs.                 |
|--------------------------------------------|---------------------|
| Profit from A business                     | 4,50,000            |
| Loss from B business                       | (-) 6,00,000        |
| <b>Business loss to be carried forward</b> | <b>(-) 1,50,000</b> |

**Q22. Classic Exporters Ltd, runs a new industrial undertaking set up in 2002-2003 which satisfies the conditions of Sec. 80-IB. Given below is the profit and loss account for the previous year 2008-2009.**

| Particulars                                    | Rs               | Particulars                             | Rs               |
|------------------------------------------------|------------------|-----------------------------------------|------------------|
| Stock                                          | 4,00,000         | Domestic sales                          | 24,00,000        |
| Purchases                                      | 23,00,000        | Export sales                            | 43,00,000        |
| Salaries and wages                             | 9,70,000         | Export incentives Sec. 28(iia)/(iic)    | 50,000           |
| Entertainment expenses                         | 1,30,000         | Profit of foreign branch                | 2,50,000         |
| Freights and insurance attributable to exports | 3,00,000         | Brokerage/commission/interest/rent, etc | 50,000           |
| Travelling expenses                            | 2,20,000         | Transfer from contingency reserve       | 10,00,000        |
| Depreciation                                   | 1,50,000         | Stock                                   | 3,50,000         |
| Selling expenses                               | 1,20,000         |                                         |                  |
| Income tax paid                                | 90,000           |                                         |                  |
| Income-tax penalty                             | 20,000           |                                         |                  |
| Wealth tax paid                                | 10,000           |                                         |                  |
| Custom duty payable against demand notice      | 30,000           |                                         |                  |
| Provision for unascertained liabilities        | 20,000           |                                         |                  |
| Provision for ascertained liabilities          | 50,000           |                                         |                  |
| Proposed dividend                              | 3,00,000         |                                         |                  |
| Loss of subsidiary company                     | 50,000           |                                         |                  |
| Net profit                                     | 32,40,000        |                                         |                  |
|                                                | <b>84,00,000</b> |                                         | <b>84,00,000</b> |

You are further informed:

- (i) Excise duty for 2007-2008, amounting Rs 1,20,000 was paid on 15 December 2008
- (ii) Depreciation under Sec. 32 is Rs 2,20,000
- (iii) During the year 2005-2006, contingency reserve, amounting Rs 10,00,000, debited to profit and loss a/c, was added back to the extent of Rs 4,00,000 in the computation of book-profits. The company has transferred the said reserve to the profit and loss a/c during the year.
- (iv) Brought forward business loss/depreciation:

| PY        | Accounting purposes |              | Tax purposes |              |
|-----------|---------------------|--------------|--------------|--------------|
|           | Loss                | Depreciation | Loss         | Depreciation |
| 2005-2006 | (-) 10,00,000       | (-) 1,00,000 | (-) 5,00,000 | (-) 2,50,000 |
| 2006-2007 | (-) 2,00,000        | (-) 3,00,000 | (-) 1,00,000 | (-) 2,00,000 |

Compute the following: (a) Total income, (b) Book-profits and (c) Tax liability.

**Answer 22.****Computation of total income for the AY 2009-2010**

| Particulars                                                                                       | Rs        | Rs               |
|---------------------------------------------------------------------------------------------------|-----------|------------------|
| Net profit as per Profit & Loss A/c                                                               |           | 32,40,000        |
| <i>Add:</i>                                                                                       |           |                  |
| 1. Income tax                                                                                     | 90,000    |                  |
| 2. Wealth tax                                                                                     | 10,000    |                  |
| 3. Custom duty payable                                                                            | 30,000    |                  |
| 4. Provision for unascertained liability                                                          | 20,000    |                  |
| 5. Proposed dividend                                                                              | 3,00,000  |                  |
| 6. Loss of subsidiary company                                                                     | 50,000    |                  |
| 7. Income-tax penalty                                                                             | 20,000    | 5,20,000         |
|                                                                                                   |           | 37,60,000        |
| <i>Less:</i>                                                                                      |           |                  |
| (i) Withdrawals from contingency reserve                                                          | 10,00,000 |                  |
| (ii) Excise duty                                                                                  | 1,20,000  |                  |
| (iii) Depreciation                                                                                | 70,000    |                  |
| (iv) Brokerage, commission, interest and rent, etc.                                               | 50,000    | 12,40,000        |
| <b>Business profits</b>                                                                           |           | <b>25,20,000</b> |
| <i>Add:</i> Income from other sources: Brokerage/ commission, etc.                                |           | 50,000           |
| <b>Aggregated income</b>                                                                          |           | <b>25,70,000</b> |
| <i>Less:</i>                                                                                      |           |                  |
| (i) Brought forward losses (Sec. 72)                                                              | 6,00,000  |                  |
| (ii) Brought forward depreciation [Sec. 32(2)]                                                    | 4,50,000  | 10,50,000        |
| <b>Gross Total Income</b>                                                                         |           | <b>15,20,000</b> |
| <i>Less:</i> Profit from industrial undertaking Sec. 80IB: 30% of Rs 15,20,000 as included in GTI |           | 4,56,000         |
| <b>Total income</b>                                                                               |           | <b>10,64,000</b> |

**(b) Computation of Book Profits for the AY 2009-2010**

| Particulars                                                          | Rs       | Rs               |
|----------------------------------------------------------------------|----------|------------------|
| Net profits as per Profit & Loss A/c                                 |          | 32,40,000        |
| <i>Add:</i>                                                          |          |                  |
| (i) Income tax                                                       | 90,000   |                  |
| (ii) Provision for unascertained liability                           | 20,000   |                  |
| (iii) Proposed dividend                                              | 3,00,000 |                  |
| (iv) Loss of subsidiary                                              | 50,000   | 4,60,000         |
|                                                                      |          | 37,00,000        |
| <i>Less:</i>                                                         |          |                  |
| (i) Withdrawals from contingency reserve                             |          |                  |
| (ii) Brought forward business loss or depreciation whichever is less | 4,00,000 |                  |
| 2004-2005 Depreciation                                               | 1,00,000 |                  |
| 2005-2006 Loss                                                       | 2,00,000 | 7,00,000         |
| <b>Book-profits</b>                                                  |          | <b>30,00,000</b> |

**(c) Computation of tax liability for the AY 2009-2010**

| Particulars                                                                                                                                     | Rs              |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| (a) $30\% \times 10,64,000 = 3,19,200$                                                                                                          |                 |
| (b) $10\% \times 30,00,000 = 3,00,000$                                                                                                          |                 |
| Since the amount of income tax on total income is more than the amount of tax on book-profits, Accordingly, tax liability is computed as under: |                 |
| (i) Income tax                                                                                                                                  | 3,19,200        |
| (ii) Add: Surcharge on income tax @ 10%                                                                                                         | 31,920          |
|                                                                                                                                                 | 3,51,120        |
| (iii) Add: Education cess @ 2%                                                                                                                  | 7,022           |
| (iii) Add: SHEC @ 1%                                                                                                                            | 3,511           |
| Tax payable                                                                                                                                     | <b>3,61,653</b> |

**Note:** No adjustment is required for depreciation debited to profit and loss a/c because it is not on account of revaluation of any asset.

**Q23. Z Ltd is a qualifying shipping company which has got two qualifying ships during the previous year 2008-2009 :**

| Ship   | Tonnage weight           | No. of operational days |
|--------|--------------------------|-------------------------|
| Ship A | 37,949 tonnes and 990 kg | 300 days                |
| Ship B | 25,550 tonnes and 275 kg | 365 days                |

**Compute its tonnage income under Tonnage Tax Scheme for the assessment year 2009-2010.**

**Solution:**

| Ship A                                                                                                                                                                                                 | Ship B                                                                                                                                                        |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (i) Tonnage consisting of kilograms is ignored.                                                                                                                                                        | (i) Tonnage consisting of kilograms is ignored.                                                                                                               |
| (ii) If such tonnage is not a multiple of 100 tonnes and the last two digits are less than 50, the tonnage is reduced the tonnage is reduced to the previous lower tonnage which is a multiple of 100. | (ii) If such tonnage is not a multiple of 100, and last two digits are 50 or more, the tonnage is increased to next higher tonnage which is a multiple of 100 |
| (iii) Tonnage rounded off = 37,900 tonnes                                                                                                                                                              | (iii) Tonnage rounded off - 25,600 tonnes                                                                                                                     |

| Income— computation under TTS       |           | Income— computation under TTS    |           |
|-------------------------------------|-----------|----------------------------------|-----------|
| Daily TI:                           | Rs        | Daily TI:                        | Rs        |
| First 1,000 tonnes = Rs 46x10 =     | 460       | First 1,000 tonnes = Rs 46x10 =  | 460       |
| Next 9,000 tonnes = Rs 35x90 =      | 3150      | Next 9,000 tonnes = Rs 35x90 =   | 3150      |
| Next 15,000 tonnes = Rs 28x150 =    | 4200      | Next 15,000 tonnes = Rs 28x150 = | 4200      |
| Balance 12,900 tonnes = Rs 19x129 = | 2451      | Balance 600 tonnes = Rs 19x6 =   | 114       |
| Daily TI:                           | 10,261    | Daily TI:                        | 7,924     |
| Total TI for the previous year      | 30,78,300 | Total TI for the previous year   | 28,92,260 |
| Rs 10, 261x300 =                    |           | Rs 7,924x365                     |           |

**Q24. Whether the following expenses, incurred during the year 2008-2009, are liable to FBT? If so, determine the amount at which FBT would be charged.**

**(1) A five-star hotel in Bangalore, run by C Ltd., a foreign company, incurred the following expenses on the New Year Celebrations:**

|                                                                                  | Rs       |
|----------------------------------------------------------------------------------|----------|
| (i) Purchased musical instruments                                                | 3,00,000 |
| (ii) TV sets/coffee machines/fridges to entertain guests                         | 3,00,000 |
| (iii) Food, beverages and drinks                                                 | 3,00,000 |
| (iv) Cost of lighting/decoration                                                 | 1,00,000 |
| (v) Honorarium paid to cine stars/TV stars/singers to entertain customers/guests | 8,00,000 |
| (vi) Gifts/prizes to best dancing couples to attract more and more participation | 1,00,000 |
| (vii) Ad-firms                                                                   | 1,00,000 |

**(2) A firm of Chartered Accountants deputed its senior-most partner to attend a conference, held at Ontario, on Transfer Pricing & Accounting Standards and incurred the following expenditure:**

|                                       | Rs       |
|---------------------------------------|----------|
| (i) Participation fees                | 2,00,000 |
| (ii) Foreign travel                   | 4,00,000 |
| (iii) Boarding and loading in a hotel | 1,00,000 |

**(3) An association of persons, a construction enterprise, having total receipts of Rs 40,00,000 during the year, deputed its Engineer to supervise construction project of its client at Sydney for two weeks and incurred the following expenses:**

- (i) Air travel Rs.2,60,000
- (ii) Boarding and lodging in hotel Rs.2,00,000
- (iii) Participation fees in a seminar on latest construction techniques Rs.1,00,000

**(4) Education scholarship given by a charitable trust, registered under Sec. 12AA of the Income-tax Act Rs.5,00,000.**

**Solution : Computation of the liability of FBT for the AY 2009 –2010**

| Category of Employer                                        | Particulars of Expenditure                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Valuation Rule                                                                                             | Taxable Value                                                                                                  |
|-------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|
| 1. Hotel run by Z Ltd., a foreign company                   | <p>(A) Entertainment [Sec. 115WB(2)(A) r.w. Sec. 115WC(1)(c)] (i) Musical instrument, T.V., Coffee machines and fridges to entertain guests: Capital assets in respect of which depreciation is available under Sec. 32, only depreciation is liable to FBT. However, depreciation is liable for FBT only in respect of motor cars and aircrafts.</p> <p>(ii) Honorarium to cine stars/TV star singers to entertain customers/ guests</p> <p>(B) Hospitality [Sec. 115WB(2)(B) r.w. Sec. 115WC (1)(c)]: Food, beverages and drinks.</p> <p>(D) Sale promotion (including publicity) {Sec. 115WB(2)(D) r.w. Sec. 115WC(2)(c)}: Ad-films]</p> <p>(L) Festival celebrations [Sec. 115WB(2)(L) r.w. Sec. 115WC (2)(d)] Cost of lighting and decoration</p> <p>(O) Gifts and prizes to best dancing couples</p> <p><b>FBT:</b> 31.6725% of 275,000 and rounded off [Sec. 288B]</p> | <p>—</p> <p>20% of 8,00,000</p> <p>5% of 3,00,000</p> <p>—</p> <p>5% of 1,00,000</p> <p>5% of 1,00,000</p> | <p>—</p> <p>1,60,000</p> <p>15,000</p> <p>—</p> <p>50,000</p> <p>50,000</p> <p>27,000</p> <p><b>87,099</b></p> |
| 2. Partnership firm of Chartered Accountants                | <p>(C) Conference [Sec. 115WB(2)(C) r.w. Sec. 115WC(1)(c)] (i) Participation fee—exclusion does not apply to partner as he is not an employee</p> <p>(ii) Foreign travel</p> <p>(iii) Boarding/ lodging in hotel</p> <p><b>FBT:</b> 33.99% of 1,40,000 and rounded off (Sec. 288B)</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <p>20% of 2,00,000</p> <p>20% of 4,00,000</p> <p>20% of 1,00,000</p>                                       | <p>40,000</p> <p>80,000</p> <p>20,000</p> <p>1,40,000</p> <p><b>47,856</b></p>                                 |
| 3. Association of persons, engaged in construction activity | <p>(C) Conference [Sec. 115WB(2)(C) r.w. Sec. 115WC(1)(c)]: Participation fee in seminar not liable to FBT as the participant is an employee</p> <p>(F) Tour and travel including foreign travel [Sec. 115WB(2)(F)]</p> <p>(G) Use of hotel, boarding and lodging facility [Sec. 115WB(2)(G) r.w. Sec. 115WC(1)(c)]</p> <p><b>FBT:</b> 30.9% of Rs 53,000 and rounded off (Sec. 288B)</p> <p>Total income under Sec.44AD is 8% of Rs 40,00,000, i.e. Rs 3,20,000. As it does not exceed Rs 10,00,000, no surcharge is payable by the AOP.</p>                                                                                                                                                                                                                                                                                                                                 | <p>5% of 1,60,000</p> <p>20% of 3,00,000</p>                                                               | <p>13,000</p> <p>40,000</p> <p>53,000</p> <p><b>16,377</b></p>                                                 |
| 4. Charitable trust                                         | <p>(P) Scholarship [Sec. 115WB(2)(P) r.w. Sec. 115WC(1)(d)]</p> <p><b>FBT:</b> As the charitable trust is registered under Sec. 12AA, it is not liable to FBT (Proviso to Sec. 115W]. Hence, tax liability is nil.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <p>50% of 5,00,000</p> <p>—</p>                                                                            | <p>2,50,000</p> <p>—</p>                                                                                       |

**Q25.** ABC Ltd., an Indian company, operating airline, has incurred the following expenditure for its employees in the course of its business during the PY 2008-2009:

| Sr. No. | Particulars of expenditure                                                                                                                                                             | Amount<br>(Rs in crore) |
|---------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| 1.      | Free/concessional tickets provided to employees (including employees of its subsidiary airlines) and their family members for private journeys—Value of concessions, net of recoveries | 20                      |
| 2.      | Entertainment                                                                                                                                                                          | 10                      |
| 3.      | Hospitality                                                                                                                                                                            | 100                     |
| 4.      | Employees welfare                                                                                                                                                                      | 20                      |
| 5.      | Use of hotel for boarding and lodging                                                                                                                                                  | 10                      |
| 6.      | Repairs, running, maintenance and depreciation of coaches used to take passengers to and from the airport                                                                              | 50                      |
| 7.      | Repairs, running, maintenance and depreciation of aircrafts                                                                                                                            | 500                     |
| 8.      | Telephone expenses—for office use only                                                                                                                                                 | 2                       |
| 9.      | Interest on loan taken for purchasing aircrafts                                                                                                                                        | 10                      |
| 10.     | Use of club facilities                                                                                                                                                                 | 30                      |

**Additional information:**

- Entertainment expenses include 'entertainment allowances' to employees: Rs 2 crore.
- Hospitality includes an expenditure of Rs 10 crore on food, beverages provided to employees in office and expenditure on non-transferable lunch vouchers usable only on eating joints.
- Employees welfare expenses include employer's contribution to recognised fund, Rs 4 crore and scholarship Rs 1 crore.
- Club facilities include the cost of club building purchased for Rs 10 crore. Depreciation under Income-tax Rules amount to Rs 1 crore but depreciation for accounting purposes is Rs 1.5 crore.
- Free/concessional ticket provided to the employees of subsidiary airline amount to Rs 4 crore.

**Determine the liability of FBT for the assessment year 2009-2010.**

**Solution:**

**Computation of the liability of FBT for the A.Y. 2009-2010**

| Sr. No. | Expenditure on Fringe Benefits                                                                                                   | (Rs in crore)          | Valuation amount of Fringe Benefits (Rs. in crore) |
|---------|----------------------------------------------------------------------------------------------------------------------------------|------------------------|----------------------------------------------------|
| 1.      | Free and concessional tickets provided to employees [Sec. 115WB(1)(b)]:<br>Less: Tickets provided to the employees of subsidiary | 20.00<br>4.00<br>16.00 |                                                    |
|         | Valuation at 100% of the cost to the employer [Sec. 115WC(1)(a)]                                                                 |                        | 16.00                                              |
|         | Entertainment [Sec. 115WB(2)(A)]                                                                                                 | 10.00                  |                                                    |

|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                            |       |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|-------|
| 2. | Less: Entertainment allowance paid to employees is taxable as salary under Sec. 17(1) in their hands. Hence, it is excluded<br>20% of 8 crore [Sec. 115WC(1)(c)]<br>Hospitality [Sec. 115WB(2)(B):                                                                                                                                                                                                                                                          | 2.00<br>8.00<br>100        | 1.60  |
| 3. | Less: Payment for food or beverages provided by employer to his employees in office on non-transferable lunch vouchers to employees, usable on eating joints<br>20% of Rs. 90 crore [Sec. 115WC(1)(c)]                                                                                                                                                                                                                                                      | 10<br>90                   | 18.00 |
| 4. | Employee welfare [Sec. 115WB(2)(E):<br>Less: (i) Contribution recognized fund, not liable to FBT<br>(ii) Scholarship, not covered under this clause<br>20% of Rs. 15 crore [Sec. 115WC(1)(c)]                                                                                                                                                                                                                                                               | 20<br>(-) 4<br>(-) 1<br>15 | 3.00  |
| 5. | Use of hotel, boarding and lodging [Sec. 115WB(2)(G)]<br>20% of 10 crore [Sec. 115WC(1)(c)]                                                                                                                                                                                                                                                                                                                                                                 |                            | 2.00  |
| 6. | Repairs, running, maintenance and depreciation of coaches to take passengers to and from airport [Sec. 115WB (2)(H)]. Coaches are not motor cars. Therefore, no FBT can be charged.                                                                                                                                                                                                                                                                         | 500                        |       |
| 7. | Repairs, running, maintenance and depreciation of aircraft [Sec. 115WB(2)(1)]<br>Add: Interest on loan taken to purchase aircraft: CBDT has clarified that interest on loan taken to purchase motorcars is liable to FBT. Comments, applicable to motor car, would equally apply to aircraft. Accordingly, interest on loan, taken to purchase aircraft, would also be liable to FBT.<br>The valuation of this facility is taken at nil [Sec. 115WC(2)(f)]. | 10<br><br>510              | Nil   |
| 8. | Telephone facility [Sec. 115WB(2)(J)] 20% of 2 crore [Sec. 115WC(1)(c)]                                                                                                                                                                                                                                                                                                                                                                                     |                            | 0.40  |
| 9. | Scholarship [Sec. 115WB(2)(P)]: 50% of 1 crore [Sec. 115WC(1)(d)] Use of                                                                                                                                                                                                                                                                                                                                                                                    |                            | 0.50  |

|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |           |              |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|--------------|
| 10. | Club facility [Sec. 115WB(2)(N)]:                                                                                                                                                                                                                                                                                                                                                                                                                               | 30        |              |
|     | Less: Cost of building                                                                                                                                                                                                                                                                                                                                                                                                                                          | 10        |              |
|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 20        |              |
|     | Add: Depreciation on club building under Income-tax Rule: Where the legislature has intended to subject the amount of depreciation on any capital asset to FBT, it has specifically provided for it as in clause (H) and (1) of Sec. 115WB(2). In absence of any legislative intent to subject the amount of depreciation in respect of club building to FBT, such depreciation amount is not liable to FBT. Income-tax Rule 50% of 20 crore [Sec. 115WC(1)(d)] | Nil<br>20 | 10.00        |
|     | <b>Total value of Fringe Benefits</b>                                                                                                                                                                                                                                                                                                                                                                                                                           |           | <b>51.50</b> |
|     | FBT @ 33.99% of 51.50 crore                                                                                                                                                                                                                                                                                                                                                                                                                                     |           | 17.5049      |

**Q26. Anand and Aniket are equal members in AA & Associates. The profit and loss account of the AOP for the year ended 31 March 2009 is as follows:**

| Particulars                         | Rs               | Particulars                | Rs               |
|-------------------------------------|------------------|----------------------------|------------------|
| Selling and administrative Expenses | 8,00,000         | Gross Profit               | 20,00,000        |
| Interest to Anand @ 15%             | 60,000           | Income from house property | 3,60,000         |
| Remuneration:                       |                  |                            |                  |
| Anand                               | 1,50,000         |                            |                  |
| Aniket                              | 1,50,000         |                            |                  |
| Net profit:                         |                  |                            |                  |
| Anand                               | 6,00,000         |                            |                  |
| Aniket                              | 6,00,000         |                            |                  |
|                                     | <b>23,60,000</b> |                            | <b>23,60,000</b> |

**Other information:**

1. Selling and administrative expenses include Rs 60,000 paid to a consultant in cash.
2. The other income/investment details of the members are given as below:

| Members | Income   | Source of income                    | Investments                    |
|---------|----------|-------------------------------------|--------------------------------|
| Anand   | 90,000   | Interest on fixed deposit from bank | Purchase of NSC VIII Rs 30,000 |
| Aniket  | 1,00,000 | Interest on govt. securities        | Contribution to PPF Rs 50,000  |

**Compute the tax liability of the AOP and its members.**

**Solution :****Computation of total income of AOP: AY 2009-2010**

| Particulars                                                          | Rs               |
|----------------------------------------------------------------------|------------------|
| Net profit                                                           | 12,00,000        |
| Add: Inadmissible payments.                                          |                  |
| 1. Fees paid to consultants in cash Sec. 40A (3)                     | 60,000           |
| 2. Interest paid to members [Sec. 40(ba)]:                           | 60,000           |
| 3. Remuneration paid to members Sec. 40(ba)                          | 3,00,000         |
|                                                                      | 16,20,000        |
|                                                                      | 3,60,000         |
|                                                                      | <b>12,60,000</b> |
| Less: Income from house property                                     |                  |
| <b>Business profits</b>                                              |                  |
| Add: Income from house property                                      | 3,60,000         |
| <b>Total income</b>                                                  | <b>16,20,000</b> |
| <b>Tax liability</b> of AOP on total income                          |                  |
| Tax on slabs rates                                                   | 4,35,000         |
| Add: Surcharge on income tax @ 10%                                   | 43,500           |
|                                                                      | 4,78,500         |
| Education cess 2%                                                    | 9,570            |
| SHEC @ 1%                                                            | 4,785            |
| <b>Tax payable</b>                                                   | <b>4,92,855</b>  |
| Tax payable rounded off to the nearest multiple of Rs 10 (Sec. 288B) | <b>4,92,860</b>  |

Allocation of income amongst the members:

| Particulars                                            | Anand<br>Rs | Aniket<br>Rs | Total<br>Rs |
|--------------------------------------------------------|-------------|--------------|-------------|
| Interest                                               | 60,000      |              | 60,000      |
| Remuneration                                           | 1,50,000    | 1,50,000     | 3,00,000    |
| Share of divisible profit (12,60,000-60,000-30,00,000) | 4,50,000    | 4,50,000     | 9,00,000    |
| Share of profit                                        | 6,60,000    | 6,00,000     | 12,60,000   |
| Share of income from house property                    | 1,80,000    | 1,80,000     | 3,60,000    |
|                                                        | 8,40,000    | 7,80,000     | 16,20,000   |

Computation of total income of members:

| Particulars                                                               | Anand<br>Rs | Aniket<br>Rs |
|---------------------------------------------------------------------------|-------------|--------------|
| Share income from AOP                                                     | 8,40,000    | 7,80,000     |
| Income from other sources:                                                |             |              |
| Interest on bank deposits                                                 | 90,000      | —            |
| Interest on government securities                                         | —           | 1,00,000     |
| Gross total income                                                        | 9,30,000    | 8,80,000     |
| Less: Deduction under Sec. 80C                                            | 30,000      | 50,000       |
| Total income                                                              | 9,00,000    | 8,30,000     |
| Tax liability of members:                                                 |             |              |
| Tax on slab rates                                                         | 2,19,000    | 1,98,000     |
| Add: Surcharge on income tax                                              | Nil         | Nil          |
| Add: Education cess @ 2% on income tax + surcharge on income tax          | 4,380       | 3,960        |
| Add : SHEC @ 1%                                                           | 2,190       | 1,980        |
| Less: Rebate on share of profit at the average: (See Note below)          | 2,25,770    | 2,03,940     |
| Tax payable                                                               | 2,10,719    | 1,91,654     |
| Tax payable rounded off to the nearest multiple of Rs 10 (See. 288B)      | 15,051      | 12,286       |
| <b>Note:</b> Anand $\frac{2,25,770}{9,00,000} \times 8,40,000 = 2,10,719$ | 15,050      | 12,290       |
| Aniket : $\frac{2,03,940}{8,30,000} \times 78,00,000 = 19,1654$           | 2,10,719    | 1,91,654     |

**Q27. A, B and C Ltd. are three members of an AOP, sharing profit and losses in the ratio 2:2:1. The AOP discloses its income for the AY 2009-2010 as below:**

| Particulars                 | Rs       |
|-----------------------------|----------|
| (i) Long-term capital gains | 4,00,000 |
| (ii) Business profits       | 6,00,000 |

**Determine tax liability of AOP in the following cases:**

- (i) C Ltd. is an Indian company
- (ii) C Ltd. is a foreign company

**Solution:**

Allocation of income of AOP among partners

| Particulars of income       | A<br>Rs  | B<br>Rs  | C Ltd<br>Rs |
|-----------------------------|----------|----------|-------------|
| Long-term capital gains     | 1,60,000 | 1,60,000 | 80,000      |
| Business profits            | 2,40,000 | 2,40,000 | 1,20,000    |
| Share income of the members | 4,00,000 | 4,00,000 | 2,00,000    |

Tax liability of AOP

| Particulars                                              | Case – I<br>C Ltd. an Indian company<br>Rs | Case – II<br>C. Ltd. as foreign company<br>Rs |
|----------------------------------------------------------|--------------------------------------------|-----------------------------------------------|
| Tax on the share of C Ltd.<br>Case I : 1,20,000 x 33.99% | 40,788                                     | —                                             |
| Case II: 1,20,000 x 42.23%                               | —                                          | 50,676                                        |
| Tax on balance income at AOP:                            |                                            |                                               |
| (i) Long-term capital gain<br>4,00,000 x 22.66%          | 90,640                                     | 90,640                                        |
| (ii) Business profits<br>6,00,000 x 33.99%               | 2,03,940                                   | 2,03,940                                      |
| Total tax payable                                        | 3,35,368                                   | 3,45,256                                      |
| Total Tax (Rounded off a/c 288B)                         | 3,35,370                                   | 3,45,260                                      |

**Q28. Dinesh Pally Cooperative Society Ltd. furnishes the following particulars of its income for the previous year ending on 31 March 2009:**

|                                                                                        |          |
|----------------------------------------------------------------------------------------|----------|
| (i) Interest on government securities                                                  | 40,000   |
| (ii) Profits from banking business                                                     | 3,50,000 |
| (iii) Income from purchase and sale of agricultural implement and seeds to its members | 2,50,000 |
| (iv) Income from marketing of agricultural produce of its members                      | 4,00,000 |
| (v) Profits and gains of business                                                      | 2,20,000 |
| (vi) Income from cottage industry                                                      | 3,50,000 |
| (vii) Interest and dividends (gross) from other cooperative societies                  | 30,000   |

**Compute total income of the society and calculate the tax payable by it for the assessment year 2009-2010.**

**Solution:****Dinesh Pally Cooperative Society Ltd.**

Computation of income of the for the previous year 2008-2009 relating to the Assessment Year ending 2009-2010 :

| Particulars                                                                          | Rs       | Rs               |
|--------------------------------------------------------------------------------------|----------|------------------|
| 1. Profits and gains of business or profession:                                      |          |                  |
| a) Banking business                                                                  | 3,50,000 |                  |
| b) Income from purchase and sale of agricultural implements and seeds to its members | 2,50,000 |                  |
| c) Income from marketing of agricultural produce of its members                      | 4,00,000 |                  |
| d) Profits and gains of business                                                     | 2,20,000 |                  |
| e) Income from cottage industry                                                      | 3,50,000 | 15,70,000        |
| 2. Income from other sources:                                                        |          |                  |
| a) Interest on government securities                                                 | 40,000   |                  |
| b) Interest and dividends from other cooperatives                                    | 30,000   | 70,000           |
| <b>Gross Total Income</b>                                                            |          | <b>16,40,000</b> |
| Less: Deduction allowable from gross total income under Sec. 8OP                     |          |                  |
| 1. Banking business                                                                  | 3,50,000 |                  |
| 2. Income from purchase and sale of agricultural implement and seeds to its members  | 2,50,000 |                  |
| 3. Income from marketing of agricultural produce of its members                      | 4,00,000 |                  |
| 4. Income from cottage industry                                                      | 3,50,000 |                  |
| 5. Interest on government securities(not eligible for deduction)                     | Nil      |                  |
| 6. Interest and dividends from other cooperative societies                           | 30,000   | 13,80,000        |
| <b>Total Income</b>                                                                  |          | <b>2,60,000</b>  |

**Computation of Tax Liability:**

| Particulars              | Rate | Rs            |
|--------------------------|------|---------------|
| On first Rs 10,000       | 10%  | 1,000         |
| On next Rs 10,000        | 20%  | 2,000         |
| On balance Rs 2,40,000   | 30%  | 72,000        |
| Income tax payable       |      | 75,000        |
| Add: Education cess @ 2% |      | 1,5000        |
| Add: SHEC @ 1%           |      | 750           |
| <b>Tax payable</b>       |      | <b>77,250</b> |

**Q29. The following details have been supplied by the Karta of an HUF. You are required to compute its total income and tax liability for the assessment year 2009-2010.**

| Particulars                                                                                                                        | Rs        |
|------------------------------------------------------------------------------------------------------------------------------------|-----------|
| (i) Profits from business (after charging Rs 1,00,000 salary to Karta for managing the business).                                  | 15,00,000 |
| (ii) Salary received by the member of a family.                                                                                    | 60,000    |
| (iii) Director's fee received by Karta from B Ltd where HUF holds 20% shares but he became director because of his qualifications, | 40,000    |
| (iv) Rental income from house property (after deduction of municipal taxes Rs 2,000).                                              | 78,000    |
| (v) Dividends (gross) from Indian companies                                                                                        | 15,000    |
| (vi) Long-term capital gain                                                                                                        | 80,000    |
| (vii) Short-term capital gain                                                                                                      | 30,000    |
| (viii) Donation to a school, which is an approved institution,                                                                     | 1,00,000  |
| (ix) Deposits in Public Provident Fund                                                                                             | 20,000    |
| (x) NSC-VIII issues purchased on 15.3.2009.                                                                                        | 40,000    |

**Solution :**

**Computation of Total Income**

| Particulars                                                                                                                   | Rs     | Rs               |
|-------------------------------------------------------------------------------------------------------------------------------|--------|------------------|
| (i) Income from house property:<br>Gross annual value (Rs 78,000 + Rs 12,000)                                                 | 90,000 |                  |
| Less: Municipal taxes paid                                                                                                    | 12,000 |                  |
| Annual value                                                                                                                  | 78,000 |                  |
| Less: Statutory deduction: 30% × 78,000                                                                                       | 23,400 | 54,600           |
| (ii) Profits and gains from business                                                                                          |        | 15,00,000        |
| (iii) Capital gains (a) long-term + (b) short-term                                                                            |        | 1,10,000         |
| (iv) Income from other sources—gross dividends from Indian companies: Exempt [Sec. 10(34)]                                    |        | Nil              |
| <b>Gross total income</b>                                                                                                     |        |                  |
| Less:                                                                                                                         |        |                  |
| 1. Contribution to approved savings (Sec. 80C)                                                                                |        |                  |
| (i) Deposits in Public Provident Fund                                                                                         | 20,000 |                  |
| (ii) NSC-VIII Issue                                                                                                           | 40,000 |                  |
|                                                                                                                               | 60,000 |                  |
| 2. Donation to recognised school:                                                                                             |        |                  |
| (a) Actual donation: Rs 1,00,000 or                                                                                           |        |                  |
| (b) 10% of modified total income of<br>Rs 15,24,600 (16,64,600 - 80,000 - 60,000)<br>whichever is less, is qualifying amount. |        |                  |
| Amount of deduction : 50% of Rs. 1,00,000                                                                                     | 50,000 | 1,10,000         |
| <b>Total income</b>                                                                                                           |        | <b>15,54,600</b> |

**Computation of tax liability:**

| Particulars of total income                               | Rate of income tax |     | Rs              |
|-----------------------------------------------------------|--------------------|-----|-----------------|
|                                                           | Rs                 | Rs  |                 |
| (a) Long-term capital gain                                | 1,10,000           | 20% | 22,000          |
| (b) Balance of total income: Rs 14,44,600                 |                    |     |                 |
| (i) First                                                 | 1,10,000           | Nil | —               |
| (ii) Next                                                 | 40,000             | 10% | 4,000           |
| (iii) Next                                                | 1,00,000           | 20% | 20,000          |
| (iv) Balance                                              | 11,94,600          | 30% | 358,380         |
| <b>Gross income tax</b>                                   |                    |     | <b>3,80,380</b> |
| Add: 1. Surcharge on income tax @ 10% surcharge           |                    |     | 38,038          |
| 2. Education cess @ 2% on the aggregate of income tax and |                    |     | 8,368           |
| 3. SHEC @ 1%                                              |                    |     | 4,184           |
| <b>Tax payable</b>                                        |                    |     | <b>4,30,970</b> |

**Q30. RP Bros., an HUF, furnishes the following particulars of its income and outgoing for the previous year 2008-2009. Receipts**

|                                                                                                                                                 |           |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| <b>Receipts:</b>                                                                                                                                | 4,00,000  |
| (i) Short-term capital gain                                                                                                                     | 1,00,000  |
| (ii) Gross winning from lottery                                                                                                                 | 12,00,000 |
| (iii) Sale consideration of 3/4th of agriculture produce, derived from land located in India, the balance produce has been kept for family use. | 50,000    |
| (iv) Net sale proceeds of wild grass and fruits from trees of spontaneous growth                                                                |           |
| <b>Payments:</b>                                                                                                                                |           |
| (i) Repair of tube-well                                                                                                                         | 60,000    |
| WDV of tube-well on 1-4-2007                                                                                                                    | 10,00,000 |
| (ii) Wages paid to agriculture labour                                                                                                           | 6,00,000  |
| (iii) Manuring and spraying charges                                                                                                             | 50,000    |
| (iv) Rent of the building, used for storing agriculture produce on site                                                                         | 50,000    |
| (v) Petrol, repair, salary of driver and insurance of motor car.                                                                                | 1,50,000  |
| WDV of motor car on 1-4-2007                                                                                                                    | 2,00,000  |
| 50% use of the motor car is for personal purpose of the family                                                                                  |           |
| (vi) LIP paid to insure members of the family                                                                                                   | 20,000    |
| (vii) School fees paid for 3 children of the family @ Rs 15,000 per child                                                                       | 45,000    |
| (viii) Purchase of infrastructure bonds, covered under Sec. 80C(2)(xix)                                                                         | 90,000    |
| (ix) Deposit with LIC for maintenance of a dependant member with disability:                                                                    |           |
| Unabsorbed losses brought forward:                                                                                                              |           |
| AY: 1998-1999                                                                                                                                   | 40,000    |
| AY: 1999-2000                                                                                                                                   | 5,00,000  |
| AY: 2003-2004                                                                                                                                   | 1,00,000  |

Determine the total income of the HUF and its tax liability for the assessment year 2009-2010.

**Computation of Total Income: AY 2008-2009**

| Particulars                                                                                                                                                                                                            | Rs       | Rs              |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|-----------------|
| <b>Computation of net agriculture income for the purpose of aggregation to determine the rate of tax applicable to non-agriculture income of the HUF. Such computation is done under the head business profession:</b> |          |                 |
| Sale proceeds of agriculture produce                                                                                                                                                                                   |          | 12,00,000       |
| Add: Market value of produce kept for family use:                                                                                                                                                                      |          | 4,00,000        |
| 12,00,000 x (4/3) x (1/4)                                                                                                                                                                                              |          | 16,00,000       |
| Less: Permissible deductions:                                                                                                                                                                                          |          |                 |
| (i) Repair of tube-well                                                                                                                                                                                                | 60,000   |                 |
| (ii) Wages                                                                                                                                                                                                             | 6,00,000 |                 |
| (iii) Rent                                                                                                                                                                                                             | 50,000   |                 |
| (iv) Petrol, repair, salary of driver— 50%                                                                                                                                                                             | 75,000   |                 |
| (v) Manuring and spraying                                                                                                                                                                                              | 50,000   |                 |
| (vi) Depreciation on tube-well @ 10% on WDV                                                                                                                                                                            | 1,00,000 | 9,50,000        |
| (vii) 50% depreciation on motor car: (15% of 2,00,000) x 50%                                                                                                                                                           | 15,000   |                 |
| Less: Carried forward: Losses:                                                                                                                                                                                         |          |                 |
| (i) Loss 1999-2000-not allowed                                                                                                                                                                                         |          |                 |
| (ii) Loss from AY 2000-2001                                                                                                                                                                                            | 1,00,000 |                 |
| (iii) Loss from AY 2004-2005                                                                                                                                                                                           | 45,000   | 1,45,000        |
| <b>Net Agriculture Income</b>                                                                                                                                                                                          |          | <b>5,05,000</b> |
| (b) Computation of Total Income                                                                                                                                                                                        |          |                 |
| (i) Short-term capital gain                                                                                                                                                                                            |          | 4,00,000        |
| (ii) Income from other sources:                                                                                                                                                                                        |          |                 |
| (a) Winnings from lottery                                                                                                                                                                                              | 1,00,000 |                 |
| (b) Net sale proceeds of non-agriculture produce                                                                                                                                                                       | 50,000   | 1,50,000        |
| <b>Gross Total Income</b>                                                                                                                                                                                              |          | <b>5,50,000</b> |
| Less: 1. Contributions paid for approved savings [Sec. 80C(2)]:                                                                                                                                                        |          |                 |
| (i) LIP on the life of members                                                                                                                                                                                         | 20,000   |                 |
| (ii) School fees for 3 children of the HUF [Sec. 80(4)(c)]                                                                                                                                                             | Nil      |                 |
| (iv) Purchase of infrastructure bonds                                                                                                                                                                                  | 90,000   |                 |
|                                                                                                                                                                                                                        | 1,10,000 |                 |
| But deduction restricted upto a maximum of Rs.1,00,000                                                                                                                                                                 |          | 1,00,000        |
| 2. Deposit for maintenance (including medical treatment) of a dependant with disability (Sec. 80DD)                                                                                                                    |          | 50,000          |
| <b>Total income</b>                                                                                                                                                                                                    |          | <b>4,00,000</b> |

|                                                                                                                                                                                    |          |               |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|---------------|
| <b>Computation of Tax Liability</b>                                                                                                                                                |          |               |
| (i) Income tax on winnings 30%                                                                                                                                                     |          | 30,000        |
| (ii) Income tax on non-agriculture + agriculture income:<br>3,00,000 + 5,05,000 at slab rates<br>(Non-agricultural income = 3,00,000 = 5,50,000 – 1,00,000<br>– 1,00,000 – 50,000) |          |               |
| (a) Income tax on 8,05,000 as if it is the total income                                                                                                                            | 1,90,500 |               |
| (b) Income tax on agriculture income + exemption limit as if<br>it is the total income: 5,05,000 + 1,10,000 =                                                                      | 1,31,500 |               |
| Income tax on non-agriculture income: a - b                                                                                                                                        | 60,000   | 60,000        |
| Tax on total income                                                                                                                                                                |          | 90,000        |
| Add: (i) Surcharge on income tax                                                                                                                                                   |          | Nil           |
| (ii) Education cess @ 2%                                                                                                                                                           |          | 1,800         |
| (iii) SHEC @ 1%                                                                                                                                                                    |          | 900           |
| <b>Tax payable</b>                                                                                                                                                                 |          | <b>92,700</b> |

**Q31. B Ltd. grows sugarcane to manufacture sugar. The data for the financial year 2007-08 is as follows:**

|                                                                                  |                      |
|----------------------------------------------------------------------------------|----------------------|
| <b>Cost of cultivation of sugarcane</b>                                          | <b>Rs. 6,00,000</b>  |
| <b>Market value of sugarcane when transferred to factory</b>                     | <b>Rs. 10,00,000</b> |
| <b>Other manufacturing cost</b>                                                  | <b>Rs. 6,00,000</b>  |
| <b>Sales of sugar</b>                                                            | <b>Rs. 25,00,000</b> |
| <b>Salary of Managing Director who looks after all operations of the Company</b> | <b>Rs. 3,00,000</b>  |

**Solution:**

(1) Business Income:

|                                                             |                     |
|-------------------------------------------------------------|---------------------|
| Sales of Sugar                                              | Rs.25,00,000        |
| Less: Market value of sugarcane when transferred to factory | Rs.10,00,000        |
| Other manufacturing cost                                    | Rs. 6,00,000        |
| Salary of Managing Director                                 | Rs. 3,00,000        |
|                                                             | <b>Rs. 6,00,000</b> |

(2) Agricultural Income:

|                                                       |                     |
|-------------------------------------------------------|---------------------|
| Market value of sugarcane when transferred to factory | Rs.10,00,000        |
| Less: Cost of cultivation                             | Rs. 6,00,000        |
|                                                       | <b>Rs. 4,00,000</b> |

**Q32. Mr. P has estates in Rubber, Tea and Coffee. He has also a nursery wherein he grows plants and sells. For the previous year ending 31.3.2009, he furnishes the following particulars of his sources of income from estates and sale of Plants. You are requested to compute the taxable income for the Assessment year 2009-2010 :**

|                                       |              |
|---------------------------------------|--------------|
| Manufacture of Rubber                 | Rs. 5,00,000 |
| Manufacture of Coffee grown and cured | Rs. 3,50,000 |
| Manufacture of Tea                    | Rs. 7,00,000 |
| Sale of Plants from Nursery           | Rs. 1,00,000 |

**Solution :**

**Computation of Taxable Income**

| Rule | Nature of Business                                          | Agl Inc.         | Non-Agl. Inc.   |
|------|-------------------------------------------------------------|------------------|-----------------|
| 7A   | Sale of centrifuged latex or cenex manufactured from rubber | 3,25,000         | 1,75,000        |
| 7B   | Sale of grown and cured coffee by seller in India           | 2,62,500         | 87,500          |
| 8    | Growing and Manufacturing Tea                               | 4,20,000         | 2,80,000        |
|      | Sale of plants from nursery                                 | 1,00,000         | —               |
|      | <b>Total</b>                                                | <b>11,07,500</b> | <b>5,42,500</b> |

**Computation of Tax Liability:**

|                                                                  | Rs.       |
|------------------------------------------------------------------|-----------|
| (a) Total Income (Agricultural Income + Non-agricultural Income) | 16,50,000 |
| (b) Tax on (a) above                                             | 4,44,000  |
| (c) Total of (Agricultural Income + Basic Exemption Limit)       | 13,17,500 |
| (d) Tax on (c ) above                                            | 3,44,250  |
| (e) Tax Payable (b) – (d)                                        | 99,750    |
| Add: Surcharge @ 10% (since aggregate income > Rs.10 lakhs)      | 9,975     |
| Total of Tax (e) + Surcharge                                     | 1,09,725  |
| Add: Education Cess @ 2%                                         | 2,195     |
| Add: SHEC @ 1%                                                   | 1,097     |
| Total Tax Liability                                              | 1,13,017  |
| Tax payable rounded off u/s 288B                                 | 1,13,020  |

**Q33. Mr. Prasad, ordinarily resident in India, furnished the following particulars of his income/ savings during the previous year 2008-2009.**

|                                                                                                                   | Rs           |
|-------------------------------------------------------------------------------------------------------------------|--------------|
| (i) Income from foreign business (Including Rs 2,00,000 from business connection in India) accruing outside India | 12,00,000    |
| (ii) Loss from Indian business                                                                                    | (-) 2,00,000 |
| (iii) Income from house property                                                                                  | 4,00,000     |
| (iv) Dividends gross from Indian companies                                                                        | 60,000       |
| (v) Deposit in Public Provident Fund                                                                              | 70,000       |
| (vi) Tax paid in foreign country                                                                                  | 2,50,000     |
| There is no double taxation avoidance treaty.<br>Compute the tax liability                                        |              |

**Solution :**

(a) Computation of total income

| Particulars                                                                                                 | Rs            | Rs               |
|-------------------------------------------------------------------------------------------------------------|---------------|------------------|
| 1. Income from house property                                                                               |               | 4,00,000         |
| 2. Income from business :                                                                                   |               |                  |
| (a) Income from Indian business                                                                             | (-) 2,00,000  |                  |
| (b) (i) Income from foreign business accruing or arising outside India                                      | (+) 10,00,000 |                  |
| (ii) Income from foreign business deemed to accrue or arise in India                                        | (+) 2,00,000  | 10,00,000        |
| 3. Income from other sources                                                                                |               |                  |
| Dividends from Indian companies exempt [Sec. 10(34)]                                                        |               | Nil              |
| <b>Gross total income</b>                                                                                   |               | <b>14,00,000</b> |
| Less : Deduction for approved savings (Sec. 80C): PPF Deposits                                              |               | 70,000           |
| <b>Total income</b>                                                                                         |               | <b>13,30,000</b> |
| Tax liability on total income :                                                                             |               |                  |
| Income-tax on slab rates                                                                                    |               | 3,48,000         |
| Add: Surcharge on income tax @ 10%                                                                          |               | 34,800           |
|                                                                                                             |               | 3,82,800         |
| Add : Education cess : 2% on the aggregate of income tax and surcharge                                      |               | 7,656.           |
| Add : SHEC @ 1%                                                                                             |               | 3,828            |
| <b>Tax liability</b>                                                                                        |               | <b>3,94,284</b>  |
| Less : Double taxation relief on foreign business profits, not deemed to accrue or arise in India (Sec. 91) |               | 2,08,330         |
| $10,00,000 \times 20.833\%$                                                                                 |               |                  |
| <b>Tax payable</b>                                                                                          |               | <b>1,85,954</b>  |
| Tax payable to be rounded off to the nearest multiple of Rs 10 (Sec., 288B)                                 |               | <b>1,85,950</b>  |

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

- (a) Average rate of Indian income tax :  $3,94,284 / 13,30,000 \times 100 = 29.65\%$   
 (b) Average rate of foreign income tax:  $(2,50,000/12,00,000) \times 100 = 20.833\%$

2. The amount of doubly taxed income has been worked out as under:
- |                                                                                                                                      | <b>Rs</b>        |
|--------------------------------------------------------------------------------------------------------------------------------------|------------------|
| Income from foreign business, accruing outside India                                                                                 | 12,00,000        |
| <b>Less:</b> (i) Income from business connection deemed to accrue or arise in India which is not entitled to double taxation relief. | <u>2,00,000</u>  |
| Doubly taxed income                                                                                                                  | <u>10,00,000</u> |
3. Loss from Indian business has been set-off against profits from foreign business which is deemed to accrue or arise in India.  
 The mode of set-off increases the amount of double taxation relief.

**Q34. Sania, a resident Indian, furnishes the details for the assessment year 2009-2010.**

|                                                                                                                                  | Rs       |
|----------------------------------------------------------------------------------------------------------------------------------|----------|
| (1) Income from profession                                                                                                       | 1,04,000 |
| (2) Share income from a partnership in country X<br>(Tax paid in country X for this income in equivalent Indian rupees Rs 8,000) | 40,000   |
| (3) Commission income from concern in country Y<br>(Tax paid in country Y at 20%) converted in Indian rupee)                     | 30,000   |
| (4) Interest from scheduled banks                                                                                                | 20,000   |

**Sania wishes to know whether he is eligible to any double taxation relief, if so, its quantum. India does not have any Double Taxation Avoidance Agreement with countries X and Y.**

**Solution :**

**(a) Computation of total income**

| Particulars                                                     | Rs       | Rs              |
|-----------------------------------------------------------------|----------|-----------------|
| (a) Income from business:                                       |          |                 |
| (i) Income from profession                                      | 1,04,000 |                 |
| (ii) Share income in partnership firm in country X              | 40,000   | 1,44,000        |
| (b) Income from other sources:                                  |          |                 |
| (i) Interest from schedule bank                                 | 20,000   |                 |
| (ii) Commission earned in country Y, assumed from other sources | 30,000   | 50,000          |
| <b>Total income</b>                                             |          | <b>1,94,000</b> |

**(b) Computation of tax liability**

| Particulars                                  | Rs           |
|----------------------------------------------|--------------|
| Tax on total income of Rs 1,94,000           | 9,300        |
| Add: Surcharge on income tax                 | Nil          |
| Education cess @ 2%                          | 9,300        |
| SHEC @ 1%                                    | 186          |
|                                              | 93           |
|                                              | 9,579        |
| Less: Double taxation relief : 70,000 × 4.94 | 3,458        |
| <b>Tax payable</b>                           | <b>6,121</b> |
| Rounded off u/s 288B                         | <b>6,120</b> |

**Note:** (i) Average rate of tax in the foreign country : 20%

(ii) Average rate of tax in India :  $\frac{9,579}{1,94,000} \times 100 = 4.94\%$

**Q35. A is a musician deriving income from foreign concerts performed outside India, Rs 50,000. Tax of Rs 10,000 was deducted at source in the country where the concerts were given. India does not have any agreement with that country for avoidance of double taxation. Assuming that Indian income of A is Rs.2,00,000, what is the relief due to him under Sec. 91 for the assessment year 2009-2010.**

**Solution :**

|                                                               |                 |
|---------------------------------------------------------------|-----------------|
| (a) Computation of total income:                              | Rs              |
| (i) Indian income                                             | 2,00,000        |
| (ii) Foreign income                                           | 50,000          |
| <b>Gross total income or total income</b>                     | <b>2,50,000</b> |
| (b) Computation of tax liability:                             |                 |
| Income tax on total income at slab rates:                     |                 |
| Add: (i) Surcharge on income tax                              | 24,000          |
| (ii) Education cess @ 2%                                      | 480             |
| (iii) SHEC @ 1%                                               | 240             |
|                                                               | 24,720          |
| Less : Double taxation relief under Sec. 91: Rs 50,000 × 9.9% | 4,950           |
| <b>Tax payable</b>                                            | <b>19,770</b>   |

**Note:** 1. Average rate of Indian income tax:  $= \frac{24,720}{2,50,000} \times 100 = 9.9\%$

2. Average rate of foreign income tax:

Relief is allowed either at the average rate of Indian income tax or the average rate of

foreign income tax,  $\frac{10,000}{50,000} \times 100 = 20\%$

whichever is lower. Accordingly, the relief has been allowed at the average rate of Indian income tax.

**Q36.** ALtd is engaged in the construction of residential flats. For the valuation date 31.3.2009, it furnishes the following data and requests you to compute the taxable wealth -

- (a) Land in urban area (Construction is not permitted as per Municipal Laws in force) Rs.55,00,000
- (b) Motor-cars (used on hire by the company) Rs.10,00,000
- (c) Jewellery (Investment) Rs. 25,00,000. Loan taken for purchasing the same Rs. 20,00,000
- (d) Cash Balance (as per books) Rs.2,75,000
- (e) Bank Balances Rs.5,50,000
- (f) Guest House (situated in a place which is 30 Kms away from the local limits of the municipality) Rs.10,00,000
- (g) Residential flats occupied by the Managing Director Rs.15,00,000. The Managing Director is on whole time appointment and is drawing remuneration of Rs.2,00,000 per month.
- (h) Residential house were let out on hire for 200 days Rs.10,00,000

The computation should be supported with proper reasoning for inclusion or exclusion.

**Solution :**

**Valuation Date: 31.03.2009 Computation of Taxable Wealth**

| Nature of asset                                                 | Rs.                             | Reason                                                                                     |
|-----------------------------------------------------------------|---------------------------------|--------------------------------------------------------------------------------------------|
| Land in Urban Area                                              | NIL                             | Land in which construction is not permitted as per municipal law is not an asset u/s 2(ea) |
| Motor Cars                                                      | NIL                             | Motor cars used in business of hire is not an asset u/s 2(ea)                              |
| Jewellery                                                       | 25,00,000                       | Not held as stock in trade                                                                 |
| Cash Balance                                                    | NIL                             | Cash as per books - Not an asset U/s 2(ea)                                                 |
| Bank Balance                                                    | NIL                             | Not an asset u/s 2(ea)                                                                     |
| Guest House                                                     | 10,00,000                       | Asset u/s 2(ea)                                                                            |
| Residential Flat occupied by MD                                 | 15,00,000                       | Asset u/s 2(ea) since Annual Gross Salary is greater than Rs.5,00,000.                     |
| Residential House Let-out                                       | 10,00,000                       | Asset U/s 2(ea) as it is not let-out for a period > 300 days.                              |
| <b>Total Assets</b>                                             |                                 |                                                                                            |
| Less: Debt incurred in relation to an asset: Loan for Jewellery | <b>60,00,000</b><br>(20,00,000) |                                                                                            |
| <b>Taxable Net Wealth</b>                                       | <b>40,00,000</b>                |                                                                                            |

**Q37.** Compute the net wealth of Nivedita, a resident individual as on 31.3.2009 from the following particulars furnished —

- (a) She has a house property at Delhi, valued at Rs. 20,00,000 which is occupied by a firm in which she is a partner for its business purposes. Another house at Mumbai, valued at Rs.8,00,000 is being used for his own business.
- (b) Vehicles for personal use - (i) Motor Car Rs.10,00,000 (ii) Motor Van — Rs.3,00,000 (iii) Jeep — Rs.5,00,000.

- (c) Cash on hand - Rs.3,10,000
- (d) Jewellery - Rs.10,00,000
- (e) Nivedita has gifted to a Trust a residential property situated at Kolkata purchased 5 years back for Rs.20,00,000 for the benefit of the smaller HUF consisting of herself and her spouse and let-out for 8 months. Schedule-III, Rule 3 value as on 31.3.2009 is Rs. 14 Lakhs.
- (f) She had transferred an urban house plot in February 1998 in favour of her niece which was not revocable during her life time. This niece died on 14.3.2008. Nivedita could get the title to the plot retransferred to her name only on 15.4.2008 despite sincere and honest efforts. The market value of the house as on 31.3.2009 is Rs. 10,00,000.
- (g) Nivedita is the holder of an impartible estate in which urban agricultural lands of the value of Rs. 4,30,000 as on 31.3.2009 are comprised.

**Solution :**

**Assessee: Ms. Nivedita**

**Valuation Date: 31.3.2009**

**Assessment Year: 2009-10**

**Computation of Net Wealth**

| Nature of Asset                                                              | Amount Taxable   | Reasons                                                                                                              |
|------------------------------------------------------------------------------|------------------|----------------------------------------------------------------------------------------------------------------------|
| House Property at Delhi used for business by a firm in which he is a partner | NIL              | Property used for business purpose is not an asset u/s 2(ea) (Refer Note)                                            |
| House Property at Mumbai used for his own business                           | NIL              | Property used for business purpose is not an asset u/s 2(ea)                                                         |
| Vehicles for Personal Use                                                    |                  |                                                                                                                      |
| 1. Motor-car                                                                 | 10,00,000        | Vehicles used for personal purposes are asset u/s                                                                    |
| 2. Motor-van                                                                 | 3,00,000         | 2(ea)                                                                                                                |
| 3. Jeep                                                                      | 5,00,000         |                                                                                                                      |
| Cash on Hand                                                                 | 2,60,000         | For an Individual, cash in excess of Rs. 50,000 shall be chargeable to Wealth Tax u/s 2(ea) (Rs.3,10,000 -Rs.50,000) |
| Jewellery                                                                    | 10,00,000        | Jewellery other than those held as stock-in-trade are asset u/s 2(ea)                                                |
| Property at Kolkata transferred to a Trust 20,00,000                         | NIL              | Taxable u/s 4(1A). Value = Higher of Value as on Valuation Date Rs.14 Lakhs or Cost of Acquisition Rs. 20 Lakhs      |
| Less: Exemption u/s 5(vi)                                                    |                  |                                                                                                                      |
| 20,00,000                                                                    |                  |                                                                                                                      |
| Urban House Plot transferred to Niece                                        | 10,00,000        | Taxable u/s 4(5) as the title to the property stands vested in Nivedita's hands immediately on niece's demise        |
| Urban Agricultural Land                                                      | 4,30,000         | Holder of an impartible estate is deemed to be the owner of all properties comprised therein u/s 4(6)                |
| <b>NET WEALTH</b>                                                            | <b>44,90,000</b> |                                                                                                                      |

**Q38.** Hassan, a person of Indian origin was working in Australia since 1985. He returned to India for permanent settlement in June 2003 when he remitted the moneys into India. He furnished the following particulars of his wealth as on 31.3.2009. You are required to arrive at his wealth in respect of Assessment Year 2009-10.

- (a) Market Value of Residential house in Jharkhand (let-out for residence) Rs.10,00,000 with Net Maintainable Rent p.a. of Rs.1,20,000.
- (b) Share in building owned by a firm in which Hassan is a Partner - used for business Rs.5,00,000
- (c) Motor-car purchased in April 2008, out of moneys remitted to India from Australia Rs.4,00,000
- (d) Value of interest in Firm excluding item (b) above Rs.5,00,000
- (e) Shares in companies (quoted) Rs.2,00,000
- (f) Assets purchased out of amount remitted from Australia:
  - Jewellery purchased in March 2001 Rs.5,50,000
  - Vacant land purchased in October 2000 Rs.10,00,000
- (g) Amount standing to the credit of NRE Account Rs.15,00,000
- (h) Cash on hand (out of sale proceeds of agricultural income) Rs.65,000

**Assessee: Hassan      Valuation Date: 31.3.2009      Computation of Net Wealth**

| Nature of Asset                                                                                 | Amount Taxable   | Reasons                                                                                                |
|-------------------------------------------------------------------------------------------------|------------------|--------------------------------------------------------------------------------------------------------|
| Residential House in Jharkhand                                                                  | NIL              | Not an Asset u/s 2(ea) - Let-out for whole year - Hence, not taxable                                   |
| Share in the building owned by the firm                                                         | NIL              | Not an asset u/s 2(ea), used for its own business - not chargeable to tax                              |
| Motor-car 4,00,000<br>Less: Exempt u/s 5(v)-acquired out of money brought into India (4,00,000) | NIL              | Asset u/s 2(ea). But, exemption available u/s 5(v), since acquisition out of money brought into India. |
| Value of Interest in a Firm                                                                     | 5,00,000         | Assumed as deemed asset u/s 4(1)(b)                                                                    |
| Shares in Companies                                                                             | NIL              | Not an asset u/s 2(ea)                                                                                 |
| Value of Jewellery                                                                              | 5,50,000         | Asset u/s 2(ea) - Not entitled for exemption                                                           |
| Vacant Land                                                                                     | 10,00,000        | Asset u/s 2(ea) - Purchased in October 1999                                                            |
| Money in NRE A/c                                                                                | NIL              | Not an asset u/s 2(ea)                                                                                 |
| Cash in Hand in excess of Rs. 50,000                                                            | 15,000           | Asset u/s 2(ea), being an Individual                                                                   |
| <b>NET WEALTH</b>                                                                               | <b>20,65,000</b> |                                                                                                        |

**Q39.** Mr. Kushal Sengupta owns a house at Jharkhand, which is let-out at Rs.1,35,000 per annum. The annual value of the property as per municipal records also is Rs.1,00,000. Municipal taxes are partly borne by the owner (Rs.5,000) and partly by the tenant (Rs.6,000). Repair expenses are borne by tenant (Rs10,000) the difference between the un-built area and specified area does not exceed 5%. The property was acquired on 10.5.1998 for Rs. 15,00,000.

Determine for purposes of Wealth Tax Act, the value of the property as on 31.3.2009 on the following situations —

- The house is built on a freehold land.
- It is built on a leasehold land, the unexpired period of lease of the land is more than 50 years.
- If the area of the plot on which the house is built is 800 sq. meters. FSI, permissible is 1.4 and FSI utilised is 1088 Sq. metres. (136 Sq. metres x 8 Storeys)
- The tenant had made interest free deposit of Rs. 1,00,000 with the landlord.

**Assessee: Mr. Kushal Sengupta Valuation Date: 31.3.2009 Assessment Year: 2009-10**

**Computation of Value of House Property**

**For Situations (a) & (b):**

**Computation of Gross Maintainable Rent (Amount in Rs.)**

| Particulars                                                                                                | No Rental Deposit | Rental Deposit excess of 3 Mths |
|------------------------------------------------------------------------------------------------------------|-------------------|---------------------------------|
| Actual Annual Rent                                                                                         | 1,35,000          | 1,35,000                        |
| Add: Municipal Taxes borne by the tenant                                                                   | 6,000             | 6,000                           |
| 1/9 <sup>th</sup> of Actual Rent Receivable since repair expenses are borne by the tenant (Rs.1,35,000/ 9) | 15,000            | 15,000                          |
| Rental Deposits - 15% Interest on Rs. 1,00,000                                                             | Nil               | 15,000                          |
| <b>GROSS MAINTAINABLE RENT</b>                                                                             | <b>1,56,000</b>   | <b>1,71,000</b>                 |
| Less: Municipal Taxes Paid                                                                                 | 11,000            | 11,000                          |
| Less: 15% of Gross Maintainable Rent                                                                       | 23,400            | 25,650                          |
| <b>Net Maintainable Rent</b>                                                                               | <b>1,90,400</b>   | <b>2,07,650</b>                 |
| <b>Case (a) Capitalization of Net Maintainable Rent</b>                                                    |                   |                                 |
| -Freehold Land NMR x 12.5                                                                                  | <b>23,80,000</b>  | <b>25,56,625</b>                |
| <b>Case (b) Capitalization of Net Maintainable Rent</b>                                                    |                   |                                 |
| -Leasehold Land - Unexpired Lease 50 Years = NMR x 10                                                      | <b>19,04,000</b>  | <b>20,07,650</b>                |
| <b>Property Acquired after 31.3.1974 i.e. 10.5.1997</b>                                                    | <b>15,00,000</b>  | <b>15,00,000</b>                |
| <b>Therefore, Value of the Property (whether on Lease-hold Land or on Freehold Land)</b>                   | <b>15,00,000</b>  | <b>15,00,000</b>                |

**For Situation (c) : In case of excess unbuilt area:**

**Unbuilt Area** = (Actual Area of the Land **less** Built up Area) = (800 sq. mt **less** 136 sq. mt). = 664 sq. mt.

**Excess Unbuilt Area** = (Unbuilt Area less Specified Area) = 664 sq. mt. less 70% of 800 sq. mt.  
 = 664 Less 560 = 104 sq. mt

**% of Excess Unbuilt Area** = **Excess Unbuilt Area** × **100/Aggregate Area** =  $104 \times 100/800 = 13\%$

Therefore, Value of the Property = Substituted Net Maintainable Rent i.e. Rs.15,00,000 + 30% of SNMR = Rs. 19,50,000

**Q40. From the following dated furnished by Mr.Soumitra, determine the value of house property built on leasehold land as at the valuation date 31.3.2009:**

| Particulars                                                                                    | Rs.      |
|------------------------------------------------------------------------------------------------|----------|
| Annual Value as per Municipal valuation                                                        | 1,40,000 |
| Rent received from tenant (Property vacant for 3 months during the year)                       | 1,08,000 |
| Municipal tax paid by tenant                                                                   | 10,000   |
| Repairs on property borne by tenant                                                            | 8,000    |
| Refundable deposit collected from tenant as security deposit which does not carry any interest | 50,000   |
| The difference between unbuilt area and specified area over aggregate area is 10.5%.           |          |

**Assessee: Mr. Soumitra Valuation Date: 31.3.2009 Assessment Year: 2009-10**

#### Computation of Value of House Property

##### Step I: Computation of Gross Maintainable Rent(GMR)

| Particulars                                                                                             | Rs.    | Rs.             |
|---------------------------------------------------------------------------------------------------------|--------|-----------------|
| Actual Annual Rent- Rs. 1,08,000 x 12 Months/9 Months                                                   |        | 1,44,000        |
| Add: Municipal tax paid by the Tenant                                                                   | 10,000 |                 |
| 1/9 <sup>th</sup> of Actual Rent Receivable as repair expenses are borne by the tenant - Rs. 1,44,000/9 | 16,000 |                 |
| Interest on Refundable Security Deposit- Rs. 50,000 x 15% x 9/12                                        | 6,000  | 32,000          |
| <b>GROSS MAINTAINABLE RENT (GMR)</b>                                                                    |        | <b>1,76,000</b> |

##### Step II: Computation of Net Maintainable Rent (NMR)

| Particulars                                         | Rs.             | Rs.      |
|-----------------------------------------------------|-----------------|----------|
| Gross Maintainable Rent (GMR)                       | 1,76,000        |          |
| Less: Municipal Taxes levied by the local authority | 10,000          |          |
| 15% of Gross Maintainable Rent - Rs.1,76,000 x 15%  | 26,400          | (36,400) |
| <b>NET MAINTAINABLE RENT (NMR)</b>                  | <b>1,39,600</b> |          |

**Step III: Capitalisation of the Net Maintainable Rent (CNMR)** (Assumed that unexpired lease period is more than 50 Years)

NMR x Multiple Factor for an Unexpired Lease Period - Rs. 1,39,600 × 10 = Rs. 13,96,000

**Step IV:** Addition of Premium to SNMR in case of excess inbuilt area:

| Particulars                                                              | Rs.              |
|--------------------------------------------------------------------------|------------------|
| Add: Capitalisation of the Net Maintainable Asset                        | 13,96,000        |
| Premium for excess of 10.5% unbuilt area over specified area-30% of CNMR | 4,18,800         |
| <b>Value of House Property as per Wealth Tax Act</b>                     | <b>18,14,800</b> |

**Q41.** Property Company Ltd. has let-out a premise with effect from 1.10.2007 on monthly rent of Rs.1.5 lakh. The lease is valid for 10 years and the tenant has made a deposit equivalent to 3 months rent. The tenant has undertaken to pay the municipal taxes of the premises amounting to Rs. 2 lakh. What will be the value of the property under Schedule III of the Wealth Tax Act for assessment to wealth tax?

**Assessee:** Property Company Ltd. **Valuation Date:** 31.3.2009 **Assessment Year:** 2009-10

**Computation of Value of Let-out Property**

|                                                            |                  |
|------------------------------------------------------------|------------------|
| Actual Annual Rent Receivable - Rs. 1,50,000 × 12 Months   | 18,00,000        |
| Add: Municipal Taxes borne by the Tenant                   | 2,00,000         |
|                                                            | 20,00,000        |
| <b>GROSS MAINTAINABLE RENT</b>                             |                  |
| Less: Municipal Taxes levied by the Municipal Authority    | 2,00,000         |
| Less: 15% of Gross Maintainable Rent (Rs. 20,00,000 × 15%) | 3,00,000         |
| <b>NET MAINTAINABLE RENT</b>                               | <b>15,00,000</b> |

**Value of the Property = Capitalized Value of NMR**

$\text{NMR} \times 8$  (unexpired period of lease is less than 50 years) = Rs. 15,00,000 × 8 = Rs. **1,20,00,000**

**Valuation of Partner's Interest in Firm**

**Q42.** Net wealth of firm consisting of three partners Bidyut, Kingshuk and Deepak in 2:2:1 and a capital contribution of Rs.17 Lakhs, Rs.13 Lakhs, and Rs.12 Lakhs respectively is as under-

- |                                                   |               |
|---------------------------------------------------|---------------|
| (a) Value of assets located outside India         | Rs.30,00,000  |
| (b) Value of assets located in India              | Rs.80,00,000  |
| (c) Debts incurred in relation to assets in India | Rs. 40,00,000 |

Determine the value of interest of the partners in the firm under the Wealth Tax Act, 1958.

**Solution :**

**Assesses:** Bidyut, Kingshuk & Deepak **Valuation Date:** 31.3.2009

**Assessment Year:** 2009-10

**Computation of net wealth of the Firm**

| Particulars                                           | Rs.       | Rs.              |
|-------------------------------------------------------|-----------|------------------|
| Value of Assets located in India                      | 80,00,000 |                  |
| <b>Less:</b> Liability in relation to assets in India | 40,00,000 | 40,00,000        |
| Value of Assets located outside India                 |           | 30,00,000        |
| <b>Net Wealth of the Firm</b>                         |           | <b>70,00,000</b> |

**Computation of Interest of the Partner in the net wealth of the Firm (Amount in Rs.)**

| Particulars                                                                                            | Bidyut           | Kingshuk         | Deepak           |
|--------------------------------------------------------------------------------------------------------|------------------|------------------|------------------|
| To the extent of Capital Contribution                                                                  | 17,00,000        | 13,00,000        | 12,00,000        |
| Balance (Net Wealth-Capital Contribution) in Profit sharing ratio since dissolution ratio is not given | 11,20,000        | 11,20,000        | 5,60,000         |
| <b>Interest of the Partner in the Net Wealth of the Firm</b>                                           | <b>28,20,000</b> | <b>24,20,000</b> | <b>17,60,000</b> |

**Computation of the Interest of the Partner in the net wealth of the Firm on the basis of location of assets:** (Interest of the Partner in the Firm apportioned in the ratio of 4:3)

| Particulars                                                  | Balu             | Kausik           | Deepu            |
|--------------------------------------------------------------|------------------|------------------|------------------|
| Assets Located Inside India                                  | 16,11,429        | 13,82,857        | 10,05,714        |
| Assets Located Outside India                                 | 12,08,571        | 10,37,143        | 7,54,286         |
| <b>Interest of the Partner in the Net Wealth of the Firm</b> | <b>28,20,000</b> | <b>24,20,000</b> | <b>17,60,000</b> |

**Valuation of Life Interest**

**Q43. Satender is aged 35 years. His father settled a property in trust giving whole life interest therein to Satender. The income from the property for the years 2005-06 to 2008-09 was Rs.70,000, Rs.84,000, Rs.90,000, Rs.108,000, respectively. The expenses incurred each year were Rs.2,000, Rs.4,000, Rs.5,000 and Rs.6,000 respectively. Calculate the value of life interest of Mr. Jogi in the property so settled on the valuation date 31.3.2009, with the help of the factor of 9.267.**

| Step | Procedure                                                                                                               |
|------|-------------------------------------------------------------------------------------------------------------------------|
| 1    | Average Income for last three years = (Rs.84,000 + Rs.90,000 + Rs.1,08,000) / 3 = Rs.94,000.                            |
| 2    | Average Expenses for the last three years = (Rs.4,000 + Rs.5,000 + Rs.6,000) / 3 = Rs.5,000.                            |
| 3    | Maximum Permissible Expenses = Average Expenses or 5% of Average Income, whichever is less = 5% of Rs.70,000 = Rs.3,500 |
| 4    | Average Annual Income = Rs.94,000 Less Rs.3,500 = Rs.90,500.                                                            |
| 5    | Life Interest = Average Annual Income × Life Interest Factor = Rs.90,500 × 9.267 = Rs.8,38,664.                         |

**PROBLEMS ON TRANSFER PRICING DETERMINATION OF ARM'S LENGTH PRICE****(1) Computation of ALP using Comparable Uncontrolled Price method**

**Step I:** Identify the price charged/ paid for property transferred or services provided in a **comparable uncontrolled transaction(s)**.

**Step II:** **Adjust** the price derived in Step I above **for differences**, if any, which could materially affect the price in the open market.

- between the international transaction and the comparable uncontrolled transactions, or
- between the enterprises entering into such transactions.

**Step III:** Arm's Length Price = Step I **Add/Less:** Step II

**Illustration 1.**

J Inc. of Korea and CD Ltd, an Indian Company are associated enterprises. CD Ltd manufactures Cell Phones and sells them to J.K. & F Inc., a Company based at Nepal. During the year CD Ltd. supplied 2,50,000 Cellular Phones to J Inc. Korea at a price of Rs.3,000 per unit and 35,000 units to JK & F Inc. at a price of Rs.5,800 per unit. The transactions of CD Ltd with JK & F Inc. are comparable subject to the following considerations -

- I. Sales to J Inc. are on FOB basis, sales to JK & F Inc. are CIF basis. The freight and insurance paid by J Inc. for each unit @ Rs.700
- II. Sales to JK & F Inc. are under a free warranty for Two Years whereas sales to J Inc. are without any such warranty. The estimated cost of executing such warranty is Rs.500.
- III. Since J Inc.'s order was huge in volume, quantity discount of Rs.200 per unit was offered to it.

Compute the Arm's Length Price and the amount of increase in the Total Income of CD Ltd, if any, due to such Arm's Length Price.

**(a) Computation of Arm's Length Price of Products sold to J Inc. Korea by CD Ltd**

| Particulars                                                        | Rs. | Rs.          |
|--------------------------------------------------------------------|-----|--------------|
| Price per Unit in a Comparable Uncontrolled Transaction            |     | 5,800        |
| Less: Adjustment for Differences -                                 |     |              |
| (a) Freight and Insurance Charges                                  | 700 |              |
| (b) Estimated Warranty Costs                                       | 500 |              |
| (c) Discount for Voluminous Purchase                               | 200 | (1,400)      |
| <b>Arms's Length Price for Cellular Phone sold to J Inc. Korea</b> |     | <b>4,400</b> |

**(b) Computation of Increase in Total Income of CD Ltd**

| Particulars                                                     | Rs.                   |
|-----------------------------------------------------------------|-----------------------|
| Arm's Length Price per Unit Less:                               | 4,400                 |
| Price at which actually sold to J Inc. Korea                    | (3,000)               |
| <b>Increase in Price per Unit</b>                               | <b>1,400</b>          |
| No. of Units sold to J Inc. Korea                               | 2,50,000              |
| <b>Increase in Total Income of CD Ltd (2,50,000 × Rs.1,400)</b> | <b>Rs. 35 Crores.</b> |

**(2) Resale Price Method**

**Step I:** Identify the price at which property purchased or services obtained by the enterprise from an associated enterprise are resold or are provided to an **unrelated enterprise**.

**Step II:** Reduce the normal GP margin accruing to the enterprise or to an unrelated enterprise from the purchase and resale of the same or similar property or from II) obtaining and providing the same or similar services, in a comparable uncontrolled transaction/(s).

**Step III:** Reduce expenses incurred by the enterprise in connection with the purchase of property or obtaining of services.

**Step IV:** Adjust for functional and other differences, including differences in accounting practices, if any, between the international transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of gross profit margin in the open market.

**Step V:** Arm's Length Price = Step I

**Less:** Step II & III

**Add / Less:** Step IV.

### Illustration 2.

Megabyte Inc. of France and R Ltd. of India are associated enterprises. R Ltd. imports 3,000 compressors for Air Conditioners from Megabyte Inc. at Rs.7,500 per unit and these are sold to Pleasure Cooling Solutions Ltd at a price of Rs.11,000 per unit. R Ltd. had also imported similar products from Cold Inc. Poland and sold outside at a Gross Profit of 20% on Sales.

Megabyte Inc. offered a quantity discount of Rs.1,500 per unit. Cold Inc. could offer only Rs.500 per unit as Quantity Discount. The freight and customs duty paid for imports from Cold Inc. Poland had cost R Ltd. Rs. 1,200 per piece. In respect of purchase from Cold Inc., R Ltd. had to pay Rs.200 only as freight charges.

Determine the Arm's Length Price and the amount of increase in Total Income of R Ltd.

#### (a) Computation of Arm's Length Price of Products bought from Megabyte Inc., France by R Ltd, India

| Particulars                                                             | Amount (Rs.) |
|-------------------------------------------------------------------------|--------------|
| Resale Price of Goods Purchased from Megabyte Inc.                      | 11,000       |
| <b>Less:</b> Adjustment for Differences –                               |              |
| a) Normal Gross Profit Margin at 20% of Sale Price<br>[20% x Rs.11,000] | 2,200        |
| b) Incremental Quantity Discount by Megabyte Inc.<br>[Rs.1,500 -Rs.500] | 1,000        |
| c) Difference in Purchase related Expenses<br>[Rs. 1,200 -Rs.200]       | 1,000        |
| Arms Length Price                                                       | 6,800        |

#### (b) Computation of Increase in Total Income of R Ltd

| Particulars                                                 | Amount (Rs.) |
|-------------------------------------------------------------|--------------|
| Price at which actually bought from Megabyte Inc. of France | 7,500        |
| Less: Arms Length Price per unit under Resale Price Method  | (6,800)      |
| Decrease in Purchase Price per unit                         | 700          |
| No. of units purchased from Megabyte Inc.                   | 3,000 units  |
| Increase in Total Income (3,000 units × Rs.700)             | Rs.21,00,000 |

**(3) Cost plus Method in determining ALP**

**Step I:** Determine the direct and indirect costs of production incurred by the enterprise in respect of property transferred or services provided to an associated enterprise.

**Step II:** Determine the normal GP mark-up to such costs (computed under same accounting norms) arising from the transfer or provision of the same or similar property or services by the enterprise, or by an unrelated enterprise, in a comparable uncontrolled transaction(s).

**Step III:** Adjust the normal gross profit mark-up referred to in Step II to take into account the functional and other differences, if any, between the international transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect such profit mark-up in the open market.

**Step IV:** Arm's Length Price = Step I **Add** Step III

**Illustration 3.**

Branco Inc., French Company, holds 45% of Equity in the Indian Company Chirag Technologies Ltd (CTL). CTL is engaged in development of software and maintenance of the same for customers across the globe. Its clientele includes Branco Inc.

During the year, CTL had spent 2,400 Man Hours for developing and maintaining software for Branco Inc, with each hour being billed at Rs.1,300. Costs incurred by CTL for executing work for Branco Inc. amount to Rs. 20,00,000.

CTL had also undertaken developing software for Harsha Industries Ltd for which CTL had billed at Rs.2,700 per Man Hour. The persons working for Harsha Industries Ltd. and Branco Inc. were part of the same team and were of matching credentials and caliber. CTL had made a Gross Profit of 60% on the Harsha Industries work.

CTL's transactions with Branco Inc. are comparable to the transactions with Harsha Industries, subject to the following differences:

- I. Branco Inc. gives technical know-how support to CTL which can be valued at 8% of the normal gross profit. Harsha Industries does not provide any such support.
- II. Since the work for Branco involved huge number of man hours, a quantity discount of 14% of Normal Gross Profits was given.
- III. CTL had offered 90 Days credit to Branco the cost of which is measured at 2% of the Normal Billing Rate, No such discount was offered to Harsha Industries Ltd.

**Compute ALP and the amount of increase in Total Income of Chirag Technologies Ltd.**

**(a) Computation of Arms Length Gross Profit Mark Up**

| Particulars                                                                               | %    | %            |
|-------------------------------------------------------------------------------------------|------|--------------|
| Normal Gross Profit Mark Up                                                               |      | 60.00        |
| Less: Adjustment for differences:                                                         |      |              |
| (i) echnical support from Branco Inc. (8% of Normal Gross Profit 60%)                     | 4.80 |              |
| (ii) Quantity Discount @ 14% of Normal Gross Profit (14% of 60%)                          | 8.40 | 13.20        |
|                                                                                           |      | 46.80        |
| Add: Cost of Credit to Branco Inc. @2% of Normal Gross Profit<br>(2% of Gross Profit 60%) |      | 1.20         |
| <b>Arms Length Gross Profit Mark-up</b>                                                   |      | <b>48.00</b> |

**(b) Computation of Increase in Total Income of Branco Inc.**

| Particulars                                                                                     | Amount (Rs.)    |
|-------------------------------------------------------------------------------------------------|-----------------|
| Cost of Services provided to CTL                                                                | 20,00,000       |
| Billed Value at Arm's Length [ Cost / (100 – Arm's Length Mark) =<br>[Rs.20,00,000/ (100% -48%] | 38,46,154       |
| Less: Actual Billing to Branch Inc.                                                             | 31,20,000       |
| <b>Increase in Total Income of Branco Inc.</b>                                                  | <b>7,26,154</b> |

**(4) Profit Split Method**

This method is mainly applicable in international transactions involving transfer of unique intangibles or in multiple international transactions which are so inter-related that they cannot be evaluated separately for the purpose of determining the Arm's Length Price of any one transaction.

**Step I:** Determine the combined net profit of the associated enterprises arising from the international transaction in which they are engaged.

**Step II:** Determine the relative contribution made by each of the associated enterprises to the earning of such combined net profit. This is determined on the basis of the **FAR** Analysis:

- (a) Functions performed;
- (b) Assets employed;
- (c) Risks assumed by each enterprise;
- (d) on the basis of reliable external market data which indicates how such contribution would be determined by unrelated enterprises performing comparable functions in similar circumstances.

**Step III:** Split the combined net profit amongst the enterprises on the basis of reasonable returns and in proportion to their relative contributions, as determined in Step II. **(See note below)**

**Step IV:** Arm's Length Price - Profit apportioned to the assessee under Step III.

**NOTE: Combined Net Profit shall be split as under:**

**III. A. First Split = Reasonable Return:**

Allocate an amount to each enterprise so as to provide it with a basic return appropriate for the type of international transaction with reference to market returns achieved in similar types of transactions by independent enterprises.

**III. B. Second Split = Contribution Ratio:**

Allocate the residual net profit amongst the enterprises in proportion to their relative contribution.

**III. C. Total Profit:**

Share of profit of each enterprise = **Step III.A + III.B**

**Illustration 4.**

NBR Medical Equipments Inc. (NBR) of Canada has received an order from a leading UK based Hospital for development of a hi-tech medical equipment which will integrate the best of software and latest medical examination tool to meet varied requirements. The order was for 3,00,000 Euros. To execute the order, NBR joined hands with its subsidiary Precision Components Inc. (PCI)

of USA and Bioinformatics India Ltd (BIL), an Indian Company. PCI holds 30% of BIL. NBR paid to PCI and BIL Euro 90,000 and Euro 1,00,000 respectively and kept the balance for itself. In the entire transaction, a profit of Euro 1,00,000 is earned. Bioinformatics India Ltd incurred a Total Cost of Euro 80,000 in execution of its work in the above contract. The relative contribution of NBR, PCI and BIL may be taken at 30%, 30% and 40% respectively. Compute the Arm's Length Price and the incremental Total Income of Bioinformatics India Ltd, if any due to adopting Arms Length Price determined here under.

| Particulars |                                                                   | Euro            |
|-------------|-------------------------------------------------------------------|-----------------|
| <b>A.</b>   | Share of each of the Associates in the Value of the Order         | <b>3,00,000</b> |
|             | Share of BIL [Given]                                              | <b>1,00,000</b> |
|             | Share of PCI [Given]                                              | 90,000          |
|             | Share of NBR [Amount Retained = 3,00,000 – 1,00,000 - 90,000]     | 1,10,000        |
| <b>B.</b>   | <b>Share of each of the Associates in the Profit of the Order</b> | <b>1,00,000</b> |
|             | Combined Total Profits                                            |                 |
|             | Share of BIL [Contribution of 40% × Total Profit € 1,00,000]      | 40,000          |
|             | Share of PCI [Contribution of 30% × Total Profit € 1,00,000]      | 30,000          |
|             | Share of NBR [Contribution of 30% × Total Profit € 1,00,000]      | 30,000          |
| <b>C.</b>   | <b>Computation of Incremental Total Income of BIL</b>             |                 |
|             | Total Cost to BIL Ltd                                             | 80,000          |
|             | Add: Share in the Profit to BIL (from B above)                    | 40,000          |
|             | <b>Revenue of BIL on the basis of Arm's Length Price</b>          | <b>1,20,000</b> |
|             | Less: Revenue Actually received by BIL                            | (1,00,000)      |
|             | <b>Increase in Total Income of BIL</b>                            | <b>20,000</b>   |

#### (5) Transaction Net Margin Method

**Step I:** Compute the net profit margin realised by the enterprise from an international transaction entered into with an associated enterprise, in relation to costs incurred or sales effected or assets employed by enterprise or having regard to any other relevant base.

**Step II:** Compute the net profit margin realised by the enterprise or by an unrelated enterprise from a **comparable uncontrolled transaction (s)**, having regard to the same base as in Step I.

**Step III:** Adjust the net profit margin as per Step II for differences, if any, which could materially affect amount of net profit margin in the open market:

- between the international transaction and the comparable uncontrolled transactions, or
- between the enterprises entering into such transactions.

**Step IV:** Net Profit Margin for uncontrolled transactions = Step II **Add/Less** Step III.

**Step V:** Arm's Length Price = Transaction Value x Net Profit Margin as per Step IV above.

**Meaning of certain terms:** For the computation of Arm's Length Price -

- "Transaction"** includes a number of closely linked transactions.
- "Uncontrolled Transaction"** means a transaction between unrelated enterprises, whether resident or non-resident.

3. **"Unrelated Enterprises"**: Enterprises are said to be unrelated, if they are not associated or deemed to be associated u/s 92A.
4. **"Uncontrolled conditions"**: Conditions which are not controlled or suppressed or moulded for achievement of pre-determined results are said to be uncontrolled conditions.
5. **"Property"** includes goods, articles or things, and intangible property.
6. **"Services"** include financial services.

#### Illustration 5.

Fox Solutions Inc. a US Company, sells Laser Printer Cartridge Drums to its Indian Subsidiary Quality Printing Ltd at \$ 20 per drum. Doc Solutions Inc. has other takers in India for its Cartridge Drums, for whom the price is \$ 30 per drum. During the year, Fox Solutions had supplied 12,000 Cartridge Drums to Quality Printing Ltd.

Determine the Arm's Length Price and taxable income of Quality Printing Ltd if its income after considering the above is Rs.45,00,000. Compliance with TDS provisions may be assumed and Rate per USD is Rs.45. Also determine income of Doc Solutions Inc.

#### (A) Computation of Total Income of Quality Printing Ltd

| Particulars                                                                                                                                       | Amount (Rs.)       | Amount (Rs.)     |
|---------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|------------------|
| Total Income before adjusting for differences due to Arm's Length Price                                                                           |                    | 45,00,000        |
| <b>Add:</b> Difference on Account of adopting Arm's Length Price $[12,000 \times \$20 \times \text{Rs.45}]$                                       | 1,08,00,000        |                  |
| <b>Less:</b> Amount under Arm's Length Price $[12,000 \times \$30 \times \text{Rs.45}]$                                                           | 1,62,00,000        |                  |
| Incremental Cost on adopting ALP u/s 92(3), Taxable Income cannot be reduced on applying ALP. Therefore, difference on account of ALP is ignored. | <b>(54,00,000)</b> |                  |
| <b>Total Income of Quality Printing Ltd.</b>                                                                                                      |                    | <b>45,00,000</b> |

#### (B) Computation of Total Income of Fox Solutions Inc.

The provisions relating to taxing income of Fox Solutions Inc., on applying Arm's Length Price for transactions entered into by a Foreign Company is given in Circular 23 dated 23.7.1969, which is as follows:

- (I) **Transactions Not Taxable in India:** Transactions will not be subject tax in India if transactions are on principal-to-principal basis and are entered into at ALP, and the subsidiary also carries on business on its own.
- (II) **Transactions Taxable in India** if the Indian Subsidiary does not carry on any business on its own. The following are the other considerations in this regard -
  - a) Adopting ALP does not affect the computation of taxable income of Fox Solutions Inc. if tax has been deducted at source or if tax is deductible.
  - b) Where ALP is adopted for taxing income of the Parent Company, income of the recipient Company (i.e. Quality Printing Ltd) will not be recomputed.