Solved SCANNEY Appendix

CS Professional Programme Module - III (Solution of December - 2014)

Paper - 6: Advanced Tax Laws and Practice

Chapter- 2: Companies under Income Tax Laws 2014 - Dec [2] (b)

	₹
Income from Profit and gains of business	2,25,000
Capital gains(Long Terms)	4,00,000
Income from other sources	25,000
Total Income	<u>6,50,000</u>
T	

Tax payable by LLP for the assessment year 2014-15

₹

On total income (exclusive of long term capital gains)	
@ 30% of ₹ 2,50,000	75,000
On long term capital gain @ 20% of ₹ 4,00,000	80,000
	1,55,000

Chapter-3: Tax Planning 2014 - Dec [1] (b)

Rural area for the above purpose is as follows:

From the assessment year 2014-15 Any area which is outside the jurisdiction of a municipality or cantonment board having a population of 10,000 or more and also which does not fall within distance (to be measured aerially) given below:

2 kilometres from the local limits of	If the population of the municipality/
municipality/ cantonment board	cantonment board is more than 10,000 but
	not more than 1 lakh
6 kilometres from the local limits of	If the population of the municipality/
municipality/ cantonment board	cantonment board is more than 1 lakh but
	not more than 10 lakh
8 kilometres from the local limits of	If the population of the municipality/
municipality/ cantonment board	cantonment board is more than 10 lakh

For the above purpose, "population means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.

Hence, in the given case the Land A, B and C are classified as "agricultural land".

2014 - Dec [2] (a), (c)

(a)

<u>x /</u>	
Advance Tax Payable	₹ 75,000
Amount to be deposited before 15.09.2014 30% of ₹ 75,000	₹ 22,500
Amount to be deposited before 15.12.2014 60% of ₹ 75,000 [₹ 45,000 – ₹ 22,500]	₹ 22,500
Amount to be deposited before 15.03.2015 100% of ₹ 75,000 [₹ 75,000 – ₹ 45,000]	₹ 30,000

- (c) Section 45 specifically provides that no wealth-tax shall be levied in respect of the net wealth of the following persons:
 - (a) any company registered under section 8 of the Companies Act, 2013 (non-profit making companies);
 - (b) any co-operative society:
 - (c) any social club;
 - (d) any political party;
 - (e) a Mutual Fund specified under section 10(23D) of the Income tax Act;
 - (f) the Reserve Bank of India incorporated under the Reserve Bank of India Act, 1934.

Besides the above persons, who have been specifically excluded from the purview of wealth-tax, other categories of persons like firm, AOP, local authority, artificial juridical person, public charitable or religious trusts other than those covered u/s 21A, etc. are not liable to wealth tax.

Hence, Hindu Deity, Reserve Bank of India, Partnership and Association of persons are not liable to wealth tax.

Chapter-4: Tax Management

2014 - Dec [3] (a), (b),(c)

(a) (i) All items in income tax return form (i.e. ITR-1 to ITR-7) must be filled in the manner indicated in the return form. If any schedule of the relevant form is not applicable in the case of an assessee, it should be scored across as "....NIL...." If any item is inapplicable, one should write "NA" against it. One should write "NIL" to donate nil figure. No column or row should be left blank. Otherwise the return may be liable to be held defective or even invalid.

- (ii) Section 139(9) has been amended with effect from June 1, 2013 to provide that the return of income shall be regarded as defective unless the tax together with interest, if any, payable in accordance with the provisions of Section 140A has been paid on or before the date of furnishing of the return.
- (iii) Under section 139(9), a few statements, reports, proof of pre-paid taxes, accounts, etc. should accompany the return of income, otherwise the return will become defective. However, it is not possible to attach any certificate or report or computation or final accounts with new income tax return forms. Likewise, it is not possible to attach proof of pre-paid taxes (like tax deducted/collected at source, advance payment of tax, self assessment tax). The assessee should, therefore, retain these certificates, report, computation, final accounts, proof of pre-paid taxes with him. These may be furnished whenever the Assessing Officer wants to examine them in assessment proceedings or otherwise. Return of income will not become defective because of non-fulfilment of this requirement.
- (b) (i) In the case of CIT v Sam Global Securities Ltd. (2014), the assessee did not claim deduction or business loss in the return of income declaring taxable income of ₹ 1,72,910. Subsequently, notice for scrutiny assessment under section 143(2)(ii) was issued. During the course of the assessment proceedings, the assessee although filed a revised computation of income claiming that dividend of ₹ 80,48,977 from the units of mutual fund was exempt under section 10(33) and loss on sale of units amounting to ₹ 85,18,583 was a business loss and not speculative loss but did not file revised return of income under section 139(5). The claims were rejected by the AO and CIT (A). Held, the Tribunal was justified in reversing the order of lower authorities. Courts have taken a pragmatic view and not a technical view as what is required to be determined is the taxable income of the assessee in accordance with the law. In this sense, assessment proceedings are not adversarial in nature.
 - (ii) As per the decision given by the High Court in the case of Deepak Kumar Garg v CIT (2010), the power to review the order passed is not an inherent power but need to be expressly provided in the statute by way of specific provisions or by way implication. It was observed that, by virtue of Section 260A(7), the power of re-admission or restoration of the appeal is always enjoyed by the High Court. However, such power cannot be treated to be a power to review its earlier order on merits as it is not expressly provided for in the law.

(c) As per Section 285BA(5), where a person who is required to furnish an annual information return has not furnished the same within the prescribed time, the prescribed income tax authority may serve upon such person a notice requiring him to furnish such return within a period not exceeding 60 days from the date of service of such notice and he shall furnish the annual information return within the time specified in the notice.

Where a person fails to furnish the return within the period specified in the notice issued by income tax authority under section 285BA(5), he shall pay by way of penalty a sum of ₹ 500 every day during which the failure continues beginning from the day immediately following the day on which the time specified in such notice for furnishing the return expires.

Chapter-6: Central Excise Laws

2014 - Dec [4] {C} (c), (d)

- (c) (i) Remission shall not be available
 - (ii) Remission shall be available
 - (iii) Remission shall not be available
- (d) The following categories of people fulfilling the requirements can make an application for settlement commission:
 - An importer/exporter or a manufacturer can approach the settlement commission by filing an application in the prescribed form. It may be noted that the department cannot approach the commission for settlement.
 - The application can only be made to admit the liability, not to contest it. The admitted liability shall be more than ₹ 3,00,000.
 - The applicant can file an application in the following cases.
 - Admission of short levy on account of misclassification.
 - Under valuation.
 - Inapplicability of exemption notification/CENVAT credit.

Note: Application can not be made in case where no return has been filed.

The applicant has to deposit the additional duty with interest along with the application. An application has only one opportunity to avail the settlement in his lifetime.

The exporter under DEEC, EOU/EPZ can approach the commission if he failed to fulfill his export obligation for reasons beyond his control.

Even an SSI units can approach the commission.

The cases involving the valuation dispute can be taken up with the commission.

Cases relating to interpretation of law and notifications can be taken up.

2014 - Dec [5] (a), (b)

<u>(a)</u>

Raw Material	₹ 280.90	
Less: Excise Duty	₹ 30.90	₹ 250.00
Availed Service	₹ 168.54	
Less: Service Tax	₹ 18.54	₹ 150.00
Other expenses		₹ 450.00
Cost of production		₹ 850.00
Profit		₹ 100.00
Assessable Value		₹ 950.00
Central excise duty @ 12.36% of ₹ 950.00		₹ 117.42
Total cost of final product to consumer		₹ 1067.42

(b)

Particulars	Working	Amount	Duty	Cenvat credit available
Assessable Value (under custom law)		30,00,000		
Add: Basic Customs duty	₹ 30,00,000×10%×50%	1,50,000	1,50,000	NIL
		31,50,000		
Add: Excise duty i.e. CVD u/s 3(1)	12% of ₹ 31,50,000	3,78,000	3,78,000	3,78,000
Total		35,28,000	5,28,000	
Add: Education Cess under custom law	2% of 5,28,000	NIL	NIL	NIL
Add: SHEC under custom law	1% of 5,28,000	NIL	NIL	NIL
Add: CVD u/s 3(5)		NIL	NIL	
Total		35,28,000	5,28,000	
Add: Education Cess & SHEC under Excise Law	3% of 5,28,000	15,840	15,840	15,840
Total Value/ Duty/Cen	vat credit	35,43,840	5,43,840	3,93,840

2014 - Dec [6] (a), (c)

(a) Clubbing provisions do not apply if both units namely 'X' and 'Y' are genuinely independent units. Otherwise, turnover of both units will be clubbed for calculating SSI exemption.

If these two units are truly independent their turnover cannot be clubbed. However, if the two units are formed with sole or main purpose of saving on excise, these may be sham i.e. bogus units.

Tribunal has held that the most important test is that if there is no financial control by one over the other and if there is no flow back of profits, the two units will be treated as independent units. Other tests to establish that the two factories are independent are: separate power, separate financial arrangements, separate material procurement, separate registration with Government authorities like sales tax, income tax etc., separate employees etc. In short, if the two units are really independent, their turnover will not be clubbed solely because some partners/directors/their relatives are common.

In CCE v Modi Alkalies (2004), it was held that pervasive financial and management control are *prima facie* indicators of inter independence.

Hence, in the given case, the action taken by the Department is valid in law.

(c) Tribunal transfer appeal of assessee from one bench to another bench in different state can be possible only in debt recovery tribunal. In the Supreme Court in Kulwinder Singh V Kandi Friends Education Trust (2008) and Pannalal Brijiraj v Union of India has held that there should be no hesitation to transfer the case even if it has caused some inconvenience to one of the parties.

2014 - Dec [7] (a)

In the Budget proposals for the Financial year 1996-97, the Finance Minister announced that a 'scheme of selective audit by the excise officers' in place of the then existing internal audit would be started. Instructions regarding this 'Selective' Audit were later issued by the CBEC in November 1996 vide Circular No. 267/101/96-CX, dated 13.11.1996. This audit was primarily directed at units other than SSI units and medium units paying annual revenue of less than ₹ 1,00,00,000 and it envisaged an in-depth scrutiny of the statutory records and returns.

In October 1999, the Department decided to 'have a more scientific and effective audit system by professionally trained officers', and introduced a 'New Excise Audit System Code' named as 'Excise Audit—2000' (EA-2000). Instructions and guidelines regarding this system were issued by CBEC vide Circular No. 491/57/99-CX, dated 28.10.1999, and No. 514/10/2000-CX, dated 16.2.2000.

As per the details circulated by the Department, the Excise Audit—2000 introduced with effect from 15th November, 1999 have the following main features:

- A minimum of 15 days' notice should be issued to the concerned assessee before commencing any audit.
- The actual audit shall commence w.e.f. 1st December, 1999.
- It is not an Additional Audit but only a modification of existing internal audit system.
- Emphasis under this audit has been made on scrutiny of business records of the company/assessee rather than statutory records.

It is separate from "Special Audit" under sections 14A and 14AA of the Act.

Excise Audit shall be conducted in respect of units paying duty of ₹ 5 crores and above from the account current in the preceding financial year. Audit of other units will continue to be made as per the existing Audit Manual.

Units already audited in the current financial year under the existing audit system shall continue to be audited as per existing Audit Manual.

Units already audited in the current financial year under the existing audit system shall continue to be audited as per existing Audit Manual.

It is a Departmental audit conducted by auditors who are excise officers and Assistant Director (Costs) who are Cost Accountants by qualification and are specially trained for this purpose. Assistant Director (Costs) shall conduct this audit in major units.

The main thrusts of Excise Audit are:

- to improve the present audit system;
- adoption of Information Technology in auditing;
- preparation of Manpower for Service Tax Audit;
- procedural relaxations in excise law;
- to provide tools for uniform decision making with the help of Information Technology;
- optimal use of manpower in audit.

work/verification done by the auditors.

This audit shall be conducted with the help of Audit Manual, Standard Audit Programme and Working Papers. The Audit Manuals will lay down audit standards, instructions, policies and procedures relating to audit of an assessee and ensure that audits are uniform, comprehensive and efficient in accordance with the standards laid therein. Standard audit programme is a systematic and comprehensive sequence outlining the procedure for conduct of audit in order to arrive at an opinion concerning the degree of compliance by the assessee to the law and procedure and working papers details the work done by the audit party in the given format and shall be filed by the Supervisors of the Audit team. There will be a set of working papers for each item of

This audit is required to be completed within 5 to 7 working days. This period may be extended in exceptional cases. To keep the number of days for audit within a reasonable limit, the Commissioner may enhance the strength of the audit team or depute two audit teams clearly specifying its functions.

Chapter - 7: Custom Laws

2014 - Dec [5] (c)

As per Section 47, where the proper officer (Superintendent of Customs and Central Excise or Appraiser) is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption.

Where the importer fails to pay the duty u/s 47(1) within 2 days excluding holidays from the date on which the bill of entry is returned to him for payment of duty, he shall pay interest at the rate 15% p.a. on such duty till the date of payment of the said duty.

Hence, in the given case, the interest payable as per the above said prescribed percentage is ₹ 300/- only.

Working Note:

3,65,000×15% p.a. = ₹ 54,750

= ₹ 54,750/365 days = ₹ 150

= ₹ 150×2 = ₹ 300/-.

Total Holidays were 4 including Sunday on 7th April, 2014.

2014 - Dec [6] (b)

Procedure for sale of goods and application of sale proceeds [Section 150]

- (1) Where any goods not being confiscated goods are to be sold under any provisions of this Act, they shall, after notice to the owner thereof, be sold by public auction or by tender or with the consent of the owner in any other manner.
- (2) The proceeds of any such sale shall be applied (a) firstly to the payment of the expenses of the sale, (b) next to the payment of the freight and other charges, if any, payable in respect of the goods sold, to the carrier, if notice of such charges has been given to the person having custody of the goods, (c) next to the payment of the duty, if any, on the goods sold, (d) next to the payment of the charges in respect of the goods sold due to the person having the custody of the goods, (e) next to the payment of any amount due from the owner of the goods to the Central Government under the provisions of this Act or any other law relating to customs and the balance, if any, shall be paid to the owner of the goods.

Section 27 of the Customs Act, 1962 deals with refund of duty paid on imported or exported goods in excess of what was actually payable. Sometimes, such excess payment of duty may be due to shortage/short landing, pilferage of goods or even incorrect duty by Customs. In such cases, any excess interest has been paid by the importer or exporter can also be claimed for refund.

As per Section 27A of the Customs Act, 1962, if the refund ordered is not paid within 3 months from the date of receipt of refund application by the Assistant Commissioner or Deputy Commissioner of Customs, then the department is liable to pay interest at the rate of 6% p.a. (i.e. interest is liable to be paid after expiry of three months from the date of receipt of the application for refund).

Hence, in the given case, the contention of Department that the amount paid did not represent the amount of duty or interest, the provisions of Sections 27 and 27A relating to claim for refund of duty and interest on delayed refunds respectively, would not be applicable is valid in law.

2014 - Dec [7] (b), (c)

(b) (i) Duty drawback is not allowed on re-export of wearing apparel without use is valid.

(ii) The statement is not valid

In case any manufacturer/exporter finds that the All industry rate of drawback for any class of goods is less than four-fifth of the duties paid on the materials or components used in the production/manufacture and packing of same goods being exported by him, he can make an application for fixation of an appropriate amount or rate of drawback (under Rule 7 of the Drawback Rules) for his products of specified description/characteristics. Such rates, wherever determined, are termed as 'Special Brand Rates'.

- (iii) In case where drawback is erroneously paid to the claimant, then he shall be liable to repay the amount of excess drawback within a period of 2 months from the date of demand otherwise he shall be liable to interest @ 18% p.a.
- (c) As per Section 245N(b) of the Income Tax Act, the advance ruling under the income-tax act could be sought by:
 - (a) A non-resident;
 - (b) Resident having transactions with non-residents.
 - (c) Specified categories of residents.
 - A non-resident is defined in Section 2(30) of the Income Tax Act as a person who is not a 'resident' and for the purposes of Section 92, 93 and 168, includes a person who is not ordinarily resident within the meaning of Clause 6 of Section 6.
 - 2. A resident has been defined in Section 2(42) of the Income Tax Act as a person who is resident in India within the meaning of Section 6.
 - 3. A person has been defined in Section 2(31) of the Income Tax Act as including:
 - (i) an individual
 - (ii) a Hindu undivided family

- (iii) a company
- (iv) a firm
- (v) an association of persons or a body of individuals, whether incorporated or not.
- (vi) a local authority; and
- (vii) every artificial juridical person, not falling within any of the preceding sub-clauses.

Chapter - 10 : Basic Concepts of International Taxation

2014 - Dec [8] (i),(ii),(iv),(v)

(i) Since Y Ltd. is a subsidiary of X Ltd. and X Ltd. is associated Enterprise. The computation of Arm's Length Price (ALP) by comparable uncontrolled Price Method and addition required to be made in total income of X Ltd. shall be computed as under:

	\$
Sale price charged by X Ltd. to Z Ltd.	<u>80</u>
Arm's Length Price	80
Actual price paid by Y Ltd. to X Ltd.	<u>50</u>
Difference per unit	<u>30</u>
Addition required to be made in the comp	outation total income of X Ltd.
\$ 30 × 100 compute	\$ 3,000
if \$ ₁ = ₹ 60	
Sold to Y Ltd.	100 × \$ 50 = \$ 5,000 = ₹ 3,00,000
Sold to Z Ltd.	200 × \$ 80 = \$ 16,000 = ₹ 9,60,000
Addition due to transfer pricing	= \$ 3,000 = <u>₹ 1,80,000</u>
Therefore taxable income of X Ltd.	₹ 4,40,000
Note: Examplian u/s 1000 and doducti	on under Chapter VI A will not be

Note: Exemption u/s 10AA and deduction under Chapter VI - A will not be available in respect of increased income of ₹ 1,80,000.

(ii) Section 92CB of the Act defines the term Safe Harbour as "circumstances under which the income-tax authorities shall accept the transfer pricing declared by the assessee." The Rule provides minimum operating profit margin in relation to operating expenses a taxpayer is expected to earn for certain categories of international transactions, that will acceptable to the income tax authorities as arm's length price (ALP). The rule also provides acceptable norms for certain categories of financial transactions such as intra-group loans made or guarantees provided to non-resident affiliates of an Indian tax payers. The safe harbor rules, optional for a taxpayer, contains the conditions and circumstances under which norms / margins would be accepted by the tax authorities and the related compliance obligations. The safe harbour rule are not arm's length prices, but in the nature of presumptive taxation, which generally enthuse taxpayers to opt for the same, as a compromise for not having to be involved in protracted litigation. Safe harbor typically include a premium payable by taxpayers for avoiding disputes and protracted litigations. Safe harbours may broadly take two forms (a) outright exclusion by setting thresholds; or (b) simplification of provisions by designating range, within which prices/profits should fall.

(iv) One of the important terms that occur in all the Double Taxation Avoidance Agreements is the term 'Permanent Establishment' (PE) which has not been defined in the Income Tax Act. However as per the Double Taxation Avoidance Agreements, PE includes, a wide variety of arrangements i.e. a place of management, a branch, an office, a factory, a workshop or a warehouse, a mine, a quarry, an oilfield etc. Imposition of tax on a foreign enterprise is done only if it has a PE in the contracting state. Tax is computed by treating the PE as a distinct and independent enterprise.

Some Salient aspects concerning a PE could be discussed as under:

- PE is defined with reference to place and persons;
- PE could be a fixed place, a construction site, service PE, agency PE branch etc.
- PE is defined with reference to place and persons;
- PE could be a fixed place, a construction site, service PE, agency PE branch etc.
- PE denotes non-resident's business preserves. The degree of preserve which could constitute PE has been illustrated by 'inclusions and exclusions'.
- An enterprise is liable to tax on its profits in a foreign country, if it conducts its subsidiary in that country through PE.

Isolated or occasional transactions through some persons or agency do not create liability for tax is the basis of PE. There has to be continuity of activities contributing to the earning of income something more than mere transaction of purchase and sale or transactions of preparatory or auxiliary nature. Such activities must be value creating activities requiring capital and lesson. 'Permanent' in PE does not mean everlasting.

(v) The statement is correct that if tax payer has legitimately reduced his tax burden by taking advantage of a treaty, the benefit cannot be denied to him on the ground of loss of revenue.

Case Law: Union of India v Azadi Bachao Andolan (2003).

Chapter - 11: Advance Ruling and Tax Planning 2014 - Dec [8] (iii)

The advance ruling pronounced by the Authority under section 245R shall be binding only:

- (a) On the applicant who had sought it;
- (b) In respect of the transactions in relation to which the ruling had been sought; and
- (c) On the Commissioner and the income-tax authorities subordinate to him, in respect of the applicant and the said transaction.

The effect of the ruling is, understandably, stated to be confined to the applicant who has sought it as well as the Commissioner and the income-tax authority subordinate to him having jurisdiction over the case and that too only in relation to transaction for which advance ruling was sought. It may, however, be stated that the Authority generally follows the ruling in other cases on materially similar facts and most certainly in other cases raising the same question of law, if any, which it has decided. The rule here is different from the position in other countries where either the taxpayer or the revenue or both are at liberty to accept the ruling or not.

Chapter - 14 : Objective Questions

2014 - Dec [1] (a) (i),(ii),(iii),(iv), (v)

(i) The statement is false

There is a threefold distribution of legislative powers as stipulated in Article 246 read with Schedule VII. List I of the Union list in Schedule VII comprises of 99 items or subjects over which the Union shall have the exclusive powers of legislation. List II of the State list comprises of 61 items over which the State Legislature shall have the exclusive powers of legislation. List III of the concurrent list comprises of 52 items over which the Parliament and the Legislatures of States shall have concurrent powers. These three lists demarcate the fields of legislation whereas the powers of legislation are conferred by Article 246.

(ii) The statement is false

Power subsidy received by the assessee is revenue in nature as it goes towards reduction of the electricity bills. Therefore, the subsidy is taxable as business income. It was so held by the Supreme Court in CIT v Rajaram Maize Products (2001).

(iii) The statement is correct

Duty drawback receipts cannot be treated as profit derived from business of the industrial undertakings to be eligible for deduction under section 80IB.

(iv) The statement is correct

Deduction under this section is allowed only to an Indian Company. Where the Gross Total Income of an Indian company includes any profits and gains derived from any industrial undertaking engaged in the manufacture or production of article or thing, a deduction under this section shall be allowed in respect of employment of new workmen if certain conditions are satisfied.

(v) The statement is false.

As per Section 115BBD(1), dividend from specified foreign company to be taxed at the special rate of 15%

2014 - Dec [4] {C} (a),(b)

- (a) (i) (a)
 - (ii) (a)
 - (iii) (c)
 - (iv) (d)
 - (v) (d)
- (b) (i) ₹ 5 Lakh
 - (ii) ₹ 5 Lakh only
 - (iii) ₹ 100
 - (iv) law of equity
 - (v) ₹ 50,000/-

Shuchita Prakashan (P) Ltd.

25/19, L.I.C. Colony, Tagore Town, Allahabad - 211002

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