

FINAL EXAMINATION GROUP III (SYLLABUS 2008)

SUGGESTED ANSWERS TO QUESTIONS JUNE 2014

Paper- 14 : INDIRECT & DIRECT – TAX MANAGEMENT

Time Allowed : 3 Hours

Full Marks : 100

The figures in the margin on the right side indicate full marks.

Answer Question No. 1 (carrying 25 marks), which is compulsory and any five from the rest.

1. Fill in the blanks.

1×25=25

- (i) The maximum penalty u/s 271A of the Income Tax Act, 1961 for failure to keep, maintain or retain books of accounts and documents as required u/s 44AA is _____. (₹ 25,000 / ₹ 1,00,000)
- (ii) The rate of depreciation under the Income Tax Act, 1961 on wind mill installed after 31.03.2012 will be _____. (15% / 80%)
- (iii) Dealers who make interstate purchases.....eligible for the composition scheme under value added tax (VAT) system, (are / are not)
- (iv) Penalty upto.....can be imposed for violation of Cenvat Credit Rules. (₹ 5,000 / ₹ 10,000)
- (v) Upgradation of computer system.....manufacture under Central Excise.(is/is not)
- (vi) If provisions of Alternate Minimum Tax u/s 115J to 115JF of Income Tax Act is applicable, the assessee will have to obtain a report in form _____ certified by an Accountant and must be available during assessment. (No.29B / No.29C)
- (vii) As per Sec 49 of Customs Act, goods can be kept in the warehouse for 30 days only. The period can be extended by the Commissioner for further period upto _____ days at a time. (30 / 60)
- (viii) Section 92BA of Income Tax Act, applies to certain transactions within the meaning of "specified domestic transaction" if the aggregate of these transactions entered into by assessee in previous year exceeds ₹ _____ crore. (one / five)
- (ix) As per Sec. 139(9) of Income Tax Act, a return of income filed without payment of self assessment tax (along with interest under Section 140A of Income Tax Act) is considered as _____. (valid / defective)
- (x) Demurrage is charged if imported goods are not cleared from port/air port within _____ working days, (three / seven)
- (xi) Remission of Duty Excise shall be _____ if finished goods after manufacturing entered in Daily Stock Account (DSA) are stolen from the factory, (granted / not granted)
- (xii) Unexplained credits, money, investment, expenditure etc., which has been deemed as income under Section 68, Section 69, Section 69A, Section 69B, Section 69C or Section 69D will be taxed at the special rate of _____ plus surcharge and cess as applicable without deduction of any expenditure or allowance under any provision of Income Tax Act. (20% / 30%)
- (xiii) For the purpose of customs valuation, rate of exchange means the rate of

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- exchange determined % by _____, (Reserve Bank of India / Central Board of Excise & Customs)
- (xiv) A petrol dealer at Kolkata Airport, supplied aviation spirit from his depot to an Aircraft proceeding to Japan. It is _____ out of India eligible for exemption under CST Act. (an export / not export)
- (xv) If a product is not defined in the Schedules and Section Notes and Chapter Notes of the Central Excise Tariff Act, 1985, then it should be classified according to its _____ meaning attached to it. (dictionary / scientific / popular common parlance)
- (xvi) E-filing of service tax return is _____ for a non-corporate assessee. (optional / mandatory)
- (xvii) Mr. A has rendered free services to his close relative; an outsider would have charged ₹ 1,20,000 for such services. The value of taxable services is..... (₹ 1,20,000/ nil)
- (xviii) Declared services are covered by Section of the Finance Act, 1994. (66B/ 66A/ 66F)
- (xix) Taxes and duties are.....for computing the assessable value for customs duty purposes. (deductible / not deductible)
- (xx) Under Export Promotion Capital Goods (EPCG) scheme, an authorization holder can import capital goods (i.e. plant, machinery, equipment, etc.)- at concessional rate of customs duty of _____ . (5% / 10%)
- (xxi) The net wealth computed under the provisions of the Wealth Tax Act shall be rounded off to the nearest _____ rupees, (one thousand / one hundred)
- (xxii) For a farm house not to be treated as an "asset" under Section 2(ea) of the Wealth Tax Act, it should be located.....kilometers beyond the municipal or corporation limits. (10 / 25)
- (xxiii) Cenvat credit.....be availed by a manufacturer in respect of excise duty paid on jigs and dies purchased and used in the factory, (can / cannot)
- (xxiv) For availing exemption from CST for subsequent interstate sale in transit, the seller should obtain Form E-I from his..... (vendor / customer)
- (xxv) Interest in HUF property is _____ asset under Wealth Tax. (exempted / taxable)

Answer:

1. (i) ₹25,000 (ii) 15% (iii) Are not (iv) ₹10,000 (v) is not
(vi) No.29C (vii) 30 (viii) five (ix) defective (x) three
(xi) granted (xii) 30% (xiii) Central Board of Excise & Customs (xiv) an
export (xv) Popular/common parlance (xvi) Mandatory (xvii) Nil
(xviii) 66B (xix) deductible (xx) NIL (xxi) one hundred (xxii) 25
(xxiii) can (xxiv) vendor (xxv) exempted.

2. (a) An SSI manufacturer wants to pay full duty even when he is eligible for SSI exemption. 1×3=3

- (i) Can he do so?
(ii) Why he would like to pay full duty?
(iii) What is the duty payable?

- (b) Calculate the central sales tax payable from the following data: 8
- (i) Invoice No. 11 dated 01.04.2013 for ₹ 3,57,934 inclusive of CST @ 2%
- (ii) Invoice No.12 dated 02.04.2013 for ₹ 3,82,754 exclusive of CST @ 2%
- (iii) Invoice No.13 dated 03.04.2013 for ₹ 3,50,000 inclusive of local sales tax @ 10%
- (iv) 50% of the goods sold on 01.04.2013 on interstate trade was rejected and returned on 31.07.2013.
- (v) 30% of the goods sold on 02.04.2013 on interstate trade was returned on 02.06.2013

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(vi) Goods of ₹ 3,00,000 recorded as stock transferred from Bangalore to Indore on 05.04.2013 excludes CST element of 2%

(vii) Purchased goods for ₹ 6,00,000 from the market on 09.01.2013 and exported to Singapore on 14.03.2014 to the Agent for further sale (The goods attracted local sales tax of 10%). Give reasons for inclusion / non-inclusion of the above.

(c) What are the capital goods as per Rule 2(a)(i) of Cenvat Credit Rules in respect of sending out of capital goods by service provider? 4

Answer:

2. (a)

(i) Yes, he can do so. He can avail cenvat on inputs.

(ii) In practice, the following SSI manufacturers would be interested:

- Manufacturers who have CENVAT credit (on capital goods plus on other than capital goods) which is more than the duty payable on exempted turnover.
- Manufacturers who clear the goods for export and whose rebate (duty drawback, cash assistance, etc) is less than the CENVAT credit.
- He might like to do so, if his customer wants to avail CENVAT and the duty paid on his input is higher. In such case effective cost of the buyer might be reduced, if the manufacturer pays duty. The manufacturer may agree, if the same is beneficial to him in overall computation of excise duty works to his advantage, or if the market conditions demand the same.

(iii) Duty payable will be normal rate less CENVAT credit available.

(b) Calculation of Central sales Tax:

	Col 1	Col 2	Col 3
Invoice No & Date	Aggregate Sale price ₹	Col 1 × 100/102	Col 1 - Col 2
11 Dt. 01.04.2013	3,57,934	3,50,915	7,019
12 Dt. 02.04.2013	3,90,410	3,82,754	7,656
Total	7,48,344	7,33,669	14,675
Less: Rejected & Returned good sold on 01.04.2013	1,78,967	1,75,458	3,509
Returned goods sold on 02.04.2013	1,17,123	1,14,826	2,297
Net Amount	4,52,254	4,43,385	8,869

Hence the central sales Tax payable is ₹8,869

Working Notes:

1. Since CST payable is required to be calculated local sales as given in item no. 3 is not considered.
2. Any rejections are excludible without restriction that these must be returned within six months.
3. Direct exports and exports through canalizing Agency are exempted from CST. Hence sales given in item No.7 is ignored.

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4. No. tax is payable on stock transfer and hence transfer as shown in item no 6 is not taxable. Thus we consider only item no. 1, 2, 4 & 5.

(c) Rule 2(a): capital goods:

The term "Capital goods" under CENVAT Rules is Different from capital goods as understood in accounting or in income-tax. Items like spare parts, tools, dies, tubes fittings etc. are never capitalized in accounts for income-tax purposes but are defined as capital goods for CENVAT.

(A) Capital goods are —

- (i) All goods falling under Chapters 82, 84, 85, 90, heading number 6805, grinding wheels and the like parts thereof falling under heading 6804 of the First Schedule to Central Excise Tariff Act, 1985.
Chapter 82: Tools, Implements, Cutlery etc.
Chapter 84: Nuclear Reactors, Boilers, Machinery and Mechanical appliances parts thereof
Chapter 85: Electrical Machinery & Equipment & parts thereof, sound recorders, and parts and accessories of such articles
Chapter 90: Optical, photographic, medical & surgical instruments and apparatus parts and accessories thereof.
- (ii) Pollution control equipment
- (iii) Components, spares and accessories of goods specified at (i) and (ii) above
- (iv) Moulds and dies
- (v) Refractories and refractory materials
- (vi) Tubes, pipes and fittings thereof, used in the factory
- (vii) Storage tank and
- (viii) Motor vehicles other than those falling under tariff heading 8702,8703,8704,8711 and their chassis, (but including dumpers and trippers) used—
- (1) In the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or
- (1A) Outside the factory of the manufacturer of the Final products for generation of electricity for captive use within the factory (w.e.f. 1-4-2011); or
- (2) For providing output service;

3. (a) **M/s X & Co. Ltd. engaged in the manufacturing of PVC granules. The written down value of plant and machinery on 1st April 2013 is ₹ 1,000 Lacs. The company purchased additional plant and machinery of ₹ 800 Lacs on 18th April 2013 which includes a second hand machine imported from China of ₹ 200 Lacs to increase its installed capacity of production from 1000 MT per annum to 1500 MT per annum. The production from new machine was taken with effect from 1st December 2013. Find out the allowable depreciation under Section 32 of Income Tax Act for the previous year 2013-14 and support your answer with reasons.** 5

(b) **Discuss the following with applicable provisions under Income Tax Act for the Assessment Year 2014-15.**

CLT Ltd., Indian company had entered into an agreement with Mr. Ron, a non-resident, on 1st July 2006. Pursuant to said agreement, fees for technical services (FTS) of ₹ 10 lakh, is payable to Mr. Ron, every year. What would be the tax consequence of the said transaction in the hands of Mr. Ron in the following situation where the normal tax rate under Section 115A of Income Tax Act is 25%

- (i) **Mr. Ron is a resident of a country with which India has no DTAA.**
- (ii) **Mr. Ron is a resident of a country, with which India has a DTAA, which provides for taxation of such FTS @15%**

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- (iii) Mr. Ron is a resident of a country with which India has a DTAA, which provides for taxation of such FTS @28% 1×3=3

- (c) Compute the interest payable by the service providers in the following cases on account of delay in payment of service tax : 4

Name of the service provider	MNO Ltd.	Mr. Rohan
Aggregate Value of Taxable service during financial year 2012-13	₹ 50 Lakhs	₹ 62 Lakhs
Service tax liability delayed during 2013-14	₹ 1,25,800	₹ 2,46,000
Delay in payment of service tax	15 days	30 days

- (d) Explain the taxability of following receipts (exclusive of service tax) in the hands of M/s Power Gen Ltd. (a State Electricity Utility). (Ignore small service provider's exemption) 3

- Collections from transmission and distribution of electricity — ₹ 100 Lakh;
- Rent from hiring of electricity meters — ₹ 25 Lakh.

Answer:

3. (a) Calculation of Depreciation for the year 2013- 2014 in the hands of M/S X & Co. Ltd.

Particulars	₹ in lakhs
Written Down Value of Block of Assets as on 1 st April 2013	1,000
Add : Cost of Plant and machinery purchased on 18 th April 2013 but used on 18 th December 2013.	800
WDV of Block of Assets as on 31 st March 2014	1,800
Normal Depreciation (15% of ₹ 1000 lakhs + 50% of 15% × ₹ 800 Lakhs)	210
Additional Depreciation (50% of 20% of ₹ 600 lakhs)	60
Total Depreciation for the year 2013-14	270

Note: (i) On addition of ₹800 lakhs purchased on 18th April 2013, 50% of the normal rate (15%) would be charged as the machine was ready to use on 1st December 2013.

(ii) No additional depreciation is available on second hand machine of ₹200 lakhs imported from China.

- (b) The tax consequences in the hands of Mr. Ron for the Assessment Year 2014-15 under three situations are as follows.

- (i) The FTS would be taxable @ 25% as per section 115A, since India does not have a DTAA with the other country.
- (ii) The FTS would be taxable @ 15%, being the rate specified in the DTAA, even though section 115A provides for a higher rate of tax. As per section 90 of income tax act, the provisions of the DTAA would apply if they are more beneficial.
- (iii) The FTS would be taxable @ 25% as per section 115A even though the DTAA provides for a higher rate of tax, since as per section 90, the provisions of the income-tax Act, 1961 (i.e. section 115A, in this case) would apply if they are more beneficial.

- (c) As per section 75 of the Finance Act, 1994, failure to pay service tax, including a part there of within the prescribed period attracts simple interest @ 18%. However, the applicable rate gets reduced to 15% for service providers whose turnover of services does not exceed ₹ 60 lakh during any of the financial years covered in the notice or during the preceding financial year. Such interest is payable for the period by which such crediting of the tax or any part thereof is delayed.

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Computation of interest on delayed payment of service tax

Name of the service provider	MNO Ltd.	Mr. Rohan
Service tax liability	₹ 1,25,800	₹ 2,46,000
Delay in payment of service tax	15 days	30 days
Value of taxable services in the previous financial year	₹ 50 lakhs	₹ 62 lakhs
Rate of interest	15%	18%
Interest		
[₹ 1,25,800 × $\frac{15}{100} \times \frac{15}{365} = 775$]		
[₹ 2,46,000 × $\frac{18}{100} \times \frac{30}{365} = 3,639$]	₹ 775	₹ 3,639

(d) Computation of service tax liability

- Collections from transmission and distribution of electricity: ₹ 100 lakh - Covered within negative list under section 66D (k) of service tax act-Not taxable.
- Rent from hiring of electricity meters: ₹ 25 lakh - Has a close and direct nexus with transmission or distribution of electricity - Covered within negative list under section 66D(k) of service tax act - Not taxable

Taxable value = NIL and service tax thereon = Nil

4. (a) M/s ARMAN LTD. a manufacturer has imported a machinery along with accessories required for the said machinery on 15th June, 2013. Details of information related to import of machinery are given below. Please

Particulars	Amount
Machinery imported from USA by air (FOB price)	US\$. 5000
Accessories compulsorily along with the machinery	US\$. 1000
Air freight	US\$. 1800
Insurance charges	Not available
Local agent's commission to be paid in India currency	₹ 9300
Transportation from India Airport to factory	₹ 4000
Exchange Rate notified by CBDT — US\$1 = ₹ 62	
Exchange Rate as per RBI — US\$1 = ₹ 59.50	

- (i) Compute the assessable value for purpose of determination of customs duty. 4
(ii) Provide explanations where necessary. 3

(b) Mrs. Jyothika, an individual, furnishes the following details of her assets and liabilities as on 31-03-2014. Calculate her net taxable wealth as per Wealth Tax Act : 8

	Particulars	(₹ in Lacs)
i.	Agricultural lands in urban area, used for agricultural purposes	34
ii.	Loan taken for purchase of above land	10
iii.	Helicopter for commercial purposes	54
iv.	Commercial complex let out for 280 days during the year	65
v.	Motor cars used exclusively for business purposes	24
vi.	Jewellery	33

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vii.	Units in XYZ Gold Fund, an exchange - traded fund (ETF in NSE), market value	12
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Brief reason for treatment of each item should be given.

Answer:

4. (a)

(i) Computation of Assessable value of Machinery and Accessories.

Particulars	Accessories USD	Machinery USD
FOB price - Note - 1	1,000.00	5,000.00
Add : Air Freight (restricted to 20% of FOB price) - Note 2	200.00	1,000.00
Add : Insurance charges (1.125% of FOB price) -Note 3	11.25	56.25
Total CIF price excluding agent's commission	1,211.25	6,056.25
	₹	₹
Total in Indian currency - Exchange rate 1USD = ₹ 62	75,098	3,75,488
Add : Local agent's commission (allocated on prorata basis) - Note 4.	1,550	7,750
CIF Value	76,648	3,83,238
Add : Landing charges @ 1% of CIF value - Note 5	766	3832
Assessable value	77,414	3,87,070

Notes:

- 1) The price of the accessories is not included in the price of the machinery and is charged separately. So the accessories will not be charged at the same rate as applicable to the machinery for which separate assessable value for the machinery and accessories have been computed. Ref: Proviso (a) to section 19 of the Customs Act, read Accessories (Condition) Rules, 1963.
- 2) If the goods are imported by air, the freight cannot exceed 20% of FOB price. Ref: Second proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007.
- 3) Insurance charges are taken as 1.125% of FOB price if actual charges are not known/unavailable. Ref. Clause (iii) of first proviso to rule 10(2) of the customs (Determination of value of Imported Goods) Rules, 2007.
- 4) The commission paid to local agent is includible as it is not a buying commission. Ref; Rule 10(l)(a)(i) of the Customs (Determination of Value of Imported Goods) Rules, 2007.
- 5) Even if there is no information regarding landing charges, still they are charged @ 1% of CIF value. Ref: Clause (ii) of first proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007.

Alternative Solution:

Computation of Assessable value of Machinery and Accessories

	US \$
FOB value of Machinery	5,000.00
FOB Value of Accessories compulsorily supplied with machine	1,000.00
Total FOB Value	6,000.00
Add: Air freight @ 20% on FOB – Note 2	1,200.00
Add: Insurance (1.125% of FOB Price)	67.50
CIF price before agent's commission	7,267.50
	₹
Total in Indian Currency – Exchange rate 1\$ = ₹ 62	4,50,585.00

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Add: Commission	9,300.00
CIF Value	4,59,885.00
Add: 1% unloading charges on CIF Value	4,599.00
Assessable Value	4,64,484.00

Notes:

- In case of the alternative solution, it is assumed that the accessory is compulsorily supplied with the main equipment. Hence it should be assessed with main machinery.
- All other notes of first alternative is also applicable for second alternative.

(b) **Mrs. Jyothika – Net wealth as on 31-03-2014**

Particulars	(₹ in lacs)
Agricultural lands in urban area, used for Agricultural purposes, is not an asset u/s 2(ea), Since this is land on which construction is not permissible	Nil
Loan taken for purchase of above land ₹ 10 lacs, is not deductible.	Nil
Helicopter for business use is not an asset u/s 2(ea) [aircraft used for commercial purpose]	Nil
Commercial complex let out for 280 days during the year is not an asset (minimum let out of period of 300 days applies only to residential houses)	Nil
Motor cars used exclusively for business purposes is an asset	24
Jewellery is an asset	33
Units in XYZ Gold Fund, an exchange - traded fund (ETF in NSE), are not included in the definition of asset as per section 2(ea)	Nil
Gross wealth	57
Less: Basic exemption	30
Net taxable wealth	27

5. (a) M/s EXPO LTD., an Export Oriented Unit cleared the goods to Domestic Tariff Area (DTA) during 2013-14. Based on following data, arrive at the duty payable and Cenvat Credit available on clearance of goods to Domestic Tariff Area (DTA) from an Export Oriented Unit (EOU) : 4

Assessable value	₹ 40 Lakhs
Basic customs duty	10%
Excise duty	12%
Education cess	2%
Secondary and Higher Education cess	1%
VAT payable under State VAT law	4%

- (b) A manufacturer purchased certain inputs from KIMS LTD. The assessable value was ₹ 25,500 and the Central Excise Duty was calculated at ₹ 3,152 making a total amount of invoice at ₹ 28,652. However, the buyer manufacturer paid only ₹ 22,320 to KIMS LTD. in full and final settlement of this bill. How much CENVAT credit can be availed by the manufacturer and why? 3

- (c) Mr. Kiran Kumar, employed in M/s. KSP Ltd. at Delhi, furnishes you the following information for the year ended 31.03.2014:
- (i) Basic salary ₹ 50,000 per month.

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- (ii) Dearness allowance @40% of Basic salary (eligible for retirement benefits).
- (iii) A laptop was purchased by M/s. KSP Ltd. in August, 2013 for ₹ 40,000 and the ownership of said laptop immediately transferred to Mr. Kiran Kumar. An amount of ₹ 5,000 was recovered from him for the same.
- (iv) Accommodation taken on lease by M/s. KSP Ltd. given to Mr. Kiran Kumar from 01.04.2013 at a concessional monthly rent of ₹ 5,000. The annual lease rent paid to the landlord by the company is ₹ 3,00,000.
- (v) Leave Travel Concession given to employee, his wife and three children (one daughter aged seven and twin sons aged three). Cost of air tickets (economy class) reimbursed by the employer ₹ 30,000 for adults and ₹ 45,000 for three children. Kiran Kumar is eligible for availing exemption this year to the extent it is permissible in law.
- (vi) Employer contribution of PF was 15% of the Basic salary plus dearness allowance. Equal amount was contributed by Mr. Kiran Kumar.
- (vii) Professional tax paid is ₹ 3,000 of which ₹ 2,000 was paid by the employer.

Compute the Taxable Income of Mr. Kiran Kumar for the Asst. Year 2014-15 with suitable notes in support of your answer. 8

Answer:

5. (a) Computation of Duty payable & Cenvat Credit available thereof -

	Duty ₹	Total ₹
Value of goods under customs law	-	40,00,000
Add : BCD @ 5% of value of goods [BCD is exempt by 50%]	2,00,000	2,00,000
Total	2,00,000	42,00,000
Add : Additional duty 3(1) @ 12% (excluding EC & SHEC, as exempted)	5,04,000	5,04,000
Total	7,04,000	47,04,000
Add : Education Cess & SHEC @ 3% on import duty	21,120	21,120
	7,25,120,	47,25,120
Add : Special CVD u/s 3(5) [Exempt as VAT payable]	Exempt	Exempt
Total	7,25,120	47,25,120
Excise duty payable = Total Customs Duty = ₹ 7,25,120.		
Credit available = CVD = ₹ 5,04,000		

- (b) CENVAT credit that can be availed by the manufacturer is ₹3,152 that is the duty applicable at the time of removal of the goods under central excise law. CENVAT credit availed on the basis of duty that is ₹ 3,152/- at the time of removal of goods cannot be reversed just because the supplier of inputs has given some reduction in price after removal of goods or the buyer manufacturer paid only reduced amount than that of invoice as final settlement. (Unless supplier of inputs claim and gets refund of excise duty paid by him).

- (c) Computation of total income of Mr. Kiran Kumar for the A. Y. 2014 -2015

S.No.	Particulars	Amt. in ₹
(i)	Basic Salary	6,00,000
(ii)	Dearness allowance (40% of basic salary)	2,40,000
(iii)	Cost of laptop ₹ 40,000 less ₹ 5,000 being amount recovered from Mr. Kiran Kumar. (Note-1)	35,000
(iv)	Perquisite on Leased accommodation : Note - 2	66,000
(v)	Leave Travel Concession (Note - 3)	Nil

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(vi)	Contribution of employer to PF was 15% of basic salary plus dearness allowance. Contribution in excess of 12% of salary is taxable. Note - 4	25,200
(vii)	Professional tax paid by employer - Note -5	2,000
	Gross salary	9,68,200
	Less : Deduction u/s 16 (iii) Professional tax (see Note-5)	3,000
	Net Salary /Gross Total Income	9,65,200
	Less : Deduction under section 80C PF contribution at 15% of basic pay + dearness allowance = 126,000 Limited to ₹ 1,00,000/-	1,00,000
	Total Taxable Income	8,65,200

Notes:

1. Since the ownership of the laptop is immediately transferred after acquisition, there would be no deduction by way of depreciation and the amount taxable is Cost ₹ 40,000 - ₹ 5,000/- being amount recovered from Kiran Kumar
 2. Taxability value of accommodation perquisite = Actual lease rent paid ₹ 3 lakhs or 15% of salary that is ₹ 1,26,000 (i.e. 15% of ₹ 8,40,000). So value of perquisite = ₹ 1,26,000/- Taxable Value of perquisite = ₹ 1,26,000/- less recovered ₹ 60,000 = ₹ 66,000/-
 3. Mr. Kiran Kumar can avail exemption under section 10(5) on the entire amount of ₹ 75,000 reimbursed by M/s KSP Ltd towards Leave Travel Concession since the same was availed for himself, his wife and three children and the journey was undertaken by economy class airfare. The restriction imposed for two children is not applicable in case of multiple births which take place after the first child.
 4. Taxability of Contribution to Provident Fund = (15% of ₹ 6,00,000 + ₹ 2,40,000) - (12% of ₹ 6,00,000 + ₹ 2,40,000) = ₹ 25,200/-
 5. Professional tax of ₹ 2,000 paid by M/S KSP Ltd is taxable as a perquisite u/s 17(2)(iv) of income tax act in the hands of Mr. Kiran Kumar. He is eligible to claim deduction of professional tax of ₹ 3,000/- u/s 16(iii) of income tax act from the salary.
6. (a) Define the expression "transaction value" as per Section 4(3)(d) of the Central Excise Act, 1944. Should pre-delivery inspection charges and after-sale service charges collected by the dealers be included in the assessable value? 5
- (b) Under what circumstances can the penalty be imposed in terms of Section 112(a)(ii) of the Customs Act, 1962? 4
- (c) State with brief reasons, whether the following subsidies received during the year ended 31.03.2014 are capital or revenue in nature, as per the provisions of the Income Tax Act, 1961 :
- (i) Power subsidy received by Jayakrishna Flour Mills Pvt. Ltd., a manufacturing company, from the State Government, year after year, on the basis of actual power consumption; 3
 - (ii) One-time subsidy, equivalent to 80% of State VAT paid in the year, received by RR Polyfibres Ltd. from the Tamil Nadu State Government under the scheme of industrial promotion for expansion of its capacity and modernization. 3

Answer:

6. (a) **Inclusion of PDI charges in assessable value**
 As per section 4(3) (d) of the Central Excise Act, 1944, transaction value is defined as follows: -
 Transaction value: -
 • **means** the price actually paid or payable for the goods, when sold, and **includes in**

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addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time,

- **including but not limited to**, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter;
- **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.

It may be noted that CBEC, vide Circular No. 936/26/2010-CX. Dated 27-10-2010 has clarified that pre-delivery Inspection charges and after - sale service charges collected by the dealers are to be included in the assessable value under section 4 of the Central Excise Act, 1944.

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

(b) Imposition of penalty in terms of section 112(a) (ii) of the Customs Act

Under sub-clause (ii) of clause (a) of section 112, the liability to penalty is determined on the basis of duty sought to be evaded. Therefore, the jurisdictional fact to impose a penalty in terms of section 112(a)(ii) includes the essential ingredient that "duty was sought to be evaded".

Being a penal provision, it requires to be strictly construed. 'Evade' means to escape, slip away, to escape or avoid artfully, to shirk, to baffle, elude. The concept of evading involves a conscious exercise by the person who evades. Therefore, the process of "seeking to evade" essentially involves a mental element and the concept of the status "sought to be evaded" is arrived at only by a conscious attempt to evade.

It may therefore be inferred that unless it is established that a person has, by his omissions or commissions, led to a situation where duty is sought to be evaded, there cannot be an imposition of penalty in terms of section 112(a)(ii) of the Act.

(c) (i) Power subsidy received year after year on the basis of actual power consumption

In CIT vs. Rassi Cement Ltd. (2013) 351 ITR 169, the Andhra Pradesh High Court referred to the decision of the Supreme Court in Sahney Steel & Press Works Ltd. v CIT (1997) 228 ITR 253, in holding that the incentives (including power subsidy) granted year after year were treated as supplementary trade receipts. It was observed that the power subsidy granted after commencement of production, based on actual power consumption, has nothing to do with the investment subsidy given for establishment of industries or expanding industries in the backward areas.

The power subsidy, given as a part of an incentive scheme year after year, is linked to actual power consumed, i.e. production and hence, has to be treated as a revenue receipt, since such assistance is given for the purpose of carrying on of the business of the assessee.

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Accordingly, the High Court held that the power subsidy received by the assessee from the State Government on the basis of actual power consumption has to be treated as a trading receipt and not as a capital receipt. Applying the rationale of the above ruling to the case on hand, power subsidy received by the assessee from the State Government, year after year, on the basis of actual power consumption is a revenue receipt.

(ii) One-time subsidy (received as a percentage of VAT paid) for capacity expansion, modernisation, etc.

In **CIT vs. Rasoi Ltd.** (2011) 335 ITR 438 (cal.), the subsidy received by the company was a onetime receipt, equivalent to 90% of the amount of VAT paid. In that case, the company received subsidy by way of financial assistance for expansion of their capacities, and modernization.

The Calcutta High Court, applying the rationale of Supreme Court in **CIT vs. Ponni Sugars & Chemicals Ltd.(2008)** 306 ITR 392, pointed out that if the object of the subsidy is to enable the assessee to run the business more profitably, the receipt would be a capital receipt. Therefore, the object for which subsidy is given determines the nature of the subsidy and not the form or the mechanism through which the subsidy is given.

In **Rasoi Ltd.'s** case, the subsidy was for expansion of its capacities, modernization and improvement of its capabilities. Therefore, merely because the subsidy was equivalent to 80% of the VAT paid, it cannot be construed that the same was in the form of refund of VAT paid. Therefore, the Calcutta High Court held that the subsidy received has to be treated as a capital receipt and not as a revenue receipt. Consequently, in the given situation, the onetime subsidy, equivalent to 80% of VAT paid, received from the State Government under the scheme of industrial promotion for expansion of its capacities and modernization is a capital receipt.

7. (a) Is the Port Trust liable to pay customs duty on imported goods pilfered by miscreants, while in their possession? 5
- (b) Write brief note on Export Promotion Councils in India. 5
- (c) Hema Textiles has two factories, whose clearances for home consumption, during the year ended 2012-13 were ₹ 140 lakhs and ₹ 300 lakhs. During the next year, the assessee anticipates huge export orders and is confident of exporting all its production in the first factory to USA. The clearances for home consumption in the other factory are likely to show 10% increase.
Can the assessee avail SSI exemption for the year 2013-14 under Not. No. 8/2003-CE dated 01.03.2003? 3
- (d) Provide brief calculations/answers for the following question: 2
Mr. A, an individual, purchased a car on 01.07.2012 for ₹ 6 lakhs. This is the only asset in the block. Apart from business use, it is estimated that 20% of the usage is for personal purposes. The car is sold on 30.03.2014 for ₹ 5 lakhs. No other asset was purchased in this block during the year ended 31.03.2014. Ascertain the short-term capital gain/loss chargeable to tax under Section 50 of the Income Tax Act, 1961.

Answer:

7. (a)

In Board of Trustees of the port of Bombay vs. UOI 2009 (241) E.L.T. 513 (Bom.), the goods were pilfered before clearance while in possession of the Port Trust as custodian. The Department raised the demand of custom duty on the Port Trust because goods were pilfered whilst in their custody.

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The Bombay High Court viewed that considering the language of section 45(3) of the Customs Act, the liability to pay duty is of the person, in whose custody the goods remain, as an approved person under section 45 of the Customs Act. Considering that the possession of the goods by the Port Trust is by virtue of powers conferred on the Port Trust under the Port Trust Act, the Court found it impossible to hold that the Port Trust is an approved person or can be notified as an approved person. It implies that section 45(3) of the Customs Act refers to the persons who have approved warehouses in terms of sections 9 and 10 of the Customs Act.

Under section 45 of the Customs Act, the person referred to in sub-section (1) thereof can only be the person approved by the Commissioner of Customs. It excludes a body of persons, who by virtue of a law for the time being in force, is entrusted with the custody of goods by incorporation of law under another enactment, (for example, the Port Trust Act in the given case).

The intention of the law might have been to check the pilferage taking place from a private warehouse or a customs warehouse run by a private party. The negligence on such private parties should not cause loss to the exchequer.

Under section 45(1) of the Customs Act, the recovery of duty in respect of pilfered goods could only be from the approved person and the Port Trust is not liable to pay duty on goods pilfered while in their possession. The Bombay High Court held so.

(b) **Export Promotion Councils**

19 Export Promotion Councils have been set up to promote and develop export of the country. These EPCs (Export Promotion Councils) are expected to monitor and encourage exports and to assist and guide the exporters. Their main aim is to project India's image abroad as a reliable supplier of high quality goods and services.

EPCs are non-profit autonomous organisations.

Each Council is responsible for promotion of a particular group or products like Engineering Export Promotion Council, Apparel Export Promotion Council, Gem and Jewellery Export Promotion Council etc. These Councils are non-profit organisations registered as Companies or registered Societies.

Export Promotion Council for EOU and SEZ units has also been constituted. Services Export Promotion Council has also been established.

Some Agencies like Coffee Board, Tea Board, Tobacco Board etc. are also considered as Export Promotion Councils. These are autonomous professional bodies. Government may provide financial support to these EPCs .

Exporter has to obtain Registration Cum Membership Certificate (RCMC) from Export Promotion Council or Commodity Board. Membership of EPC is compulsory, if an exporter intends to get export incentives.

(c) **Availability of SSI exemption**

What is relevant is the value of clearances for home consumption in the preceding year and NOT the current year.

The clearances of both factories will have to be considered.

Since the total value of clearances for home consumption exceed ₹ 400 lacs, the assessee cannot avail the benefit of SSI exemption.

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(d)

Particulars	₹	₹
Original cost		6,00,000
Depreciation at 15%	90,000	
Less : Disallowance for personal use	18,000	
Depreciation allowable for AY 2013-14		72,000
WDV as on 31-03-2013		5,28,000
Sold for		5,00,000
Short Term Capital Loss under sec 50		(28,000)

8. (a) X Private Limited's Balance Sheet as on 31st March, 2014 reveals that the company issued shares for ₹ 10 lakhs during the previous year 2013-2014 to five individuals, who are residents in India. The Assessing officer having jurisdiction over the company asks those shareholders for explanations on the nature and source of the amount credited in the books of the company. The explanations offered by the shareholders regarding sources are not found satisfactory. Explain the income tax implications in the hands of X Private Limited. 5
- (b) State the provisions under Central Excise Law regarding removal of inputs as such from the factory of a manufacturer or from the premises of the provider of output service. 5
- (c) Answer the following :
- (i) What do you mean by SION? Who fixes SION? 1
- (ii) How is advance authorisation issued where SION does not exist? 1
- (d) Calculate the amount of duty drawback allowable under Section 74 of the Customs Act, 1962 in following cases : 1x3=3
- (i) Priyanka imported a motor car for her personal use and paid ₹ 5,00,000 as import duty. The car is re-exported after 6 months and 20 days.
- (ii) Katrina imported wearing apparel and paid ₹ 50,000 as import duty. She used it and subsequently as she did not like the apparel, these are re-exported after 20 days.
- (iii) FAB Tech Ltd. imported 10 computer systems paying customs duty of ₹ 50 lakh. Due to some technical problems, the computer systems were returned to foreign supplier after 2 months without using them at all.

Answer:

8. (a)

Under section 68 in case any sum is found credited in the books of the assessee maintained for any previous year and the assessee offers no explanation about the nature and source thereof or, the explanation offered is not satisfactory, the sum so credited may be charged to income of the assessee for that previous year.

It is also provided that where the assessee is a closely held company and the sums credited consist of share application money, share capital or share premium or any such money by whatever name called, any explanation offered by such assessee company shall be deemed to be not satisfactory, unless the person (being a resident) in whose name such credit is recorded in the books of such company also offers an explanation to the satisfaction of the Assessing Officer about the nature and source of such sum so credited.

In the instant case, the sum of ₹10 lacs has been credited in the books of X. Private

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Ltd. as share capital received from five resident individuals. The explanation offered to the Assessing officer by the five individuals regarding source of their contribution have not been found satisfactory. Therefore, explanation offered by the assessee company shall not be considered satisfactory.

In view of above, the amount of ₹10 lacs shall be treated as unexplained cash credit and such sum shall be treated as undisclosed income chargeable to tax in the hands of X. Private Ltd.

The above amount shall be taxed at the rate of 30% as per section 115BBE.

No deduction in respect of any expenditure or allowance shall be allowed in computation of such income.

(b) The provisions relating to the payment of excise duty on inputs cleared as such, are as under:

(i) **Removal of inputs as such without use – 100% credit to be paid:** As per provisions Rule 3(5) of CENVAT Credit Rules, 2004, when inputs, on which CENVAT credit has been taken, are removed as such from the factory or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods.

(ii) **Removal of inputs under the cover of an invoice:** When inputs are removed as such from the factory, or premises of the provider of output service, such removal shall be made under the cover of an invoice referred to in Rule 9.

(iii) **CENVAT payment not required when inputs removed for provision of output service:** Such payment shall not be required to be made where any inputs are removed outside the premises of the provider of output service for providing the output service.

(iv) **CENVAT payment not required when inputs removed for providing free warranty:** Such payment shall not be required to be made where any inputs are removed outside the factory for providing free warranty for final products.

(v) **Amount paid by the manufacturer or service provider eligible as CENVAT credit to the buyer of such inputs:** As per Rule 3(6), the amount paid as aforesaid shall be eligible as CENVAT credit in the hands of the buyer of such inputs, as if it was a duty paid by the person who removed such goods.

(vi) **Recovery as per Rule 14 of CENVAT Credit Rules, 2004:** If the manufacturer of goods or the provider of output service fails to pay the amount payable under Rule 3(5) it shall be recovered, in the manner as provided in Rule 14, for recovery of CENVAT credit wrongly taken.

(c) (i) Standard Input –Output Norms (SION), fixed by Norms Committee at DGFT and notified by the DGFT for the purpose of issue of licences under Duty Exemption Scheme. These have been periodically updated. At present, the SION cover the following product categories:

(a) Chemical and Allied Products; (b) Engineering Products; (c) Plastic Products; (d) Food Products; (e) Marine Products; (f) Textile Products; (g) Leather Products;

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(h) Sports goods; (i) Miscellaneous Products

(ii) The Advance License Committees (ALC) notified SION where the exporter had only applied for advance authorization/license on ad-hoc basis (i.e. where SION did not exist).

(d) The amount of drawback is computed here in below –

SI No.	Goods	Period of use	Import duty (₹)	Drawback rate	Drawback (₹)
(i)	Motor car for personal use	6 months and 20 days = 3 quarters	5,00,000	100% - 4%.per quarter × 3 quarters = 88%	4,40,000
(ii)	Wearing apparel	20 days after use	50,000	Not allowed on wearing apparel re-exported after use	Nil
(iii)	Computer	NIL	50,00,000	98.00%	49,00,000