

Paper-14: Indirect and Direct - Tax Management

Whenever required, the candidate may make suitable assumptions and state them clearly on the answers.

Working notes should form part of the relevant answer.

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

Question 1.

(a) Fill up the blanks:

[25 × 1]

- (i) Goods are classified under Central Excise Tariff Act based on the “Harmonized System of Nomenclature” having _____ digit classification.
- (ii) A service provider whose previous year taxable services are less than or equal to ₹ _____, in the current year such service provider is called as small service provider.
- (iii) Sea beyond _____ miles from the coastal base line is called High Sea.
- (iv) _____ goods means goods declared under Section 14 of CST Act to be of special importance in interstate trade or commerce.
- (v) Chapter V of the Finance Act, 1994 (i.e. the service tax law), extends to the whole of India except the state of _____.
- (vi) The return form ER-1 in excise is to be filed by _____ [100% Export Oriented Unit (EOU)/ manufacturer/ SSI (Small Scale Industries) unit].
- (vii) Registration under VAT for those dealers is compulsory whose gross annual turnover is above _____.
- (viii) _____ Scheme is presently applicable only to stainless steel pattas/pattis and aluminium circles.
- (ix) An SSI unit _____ (is eligible/ is not eligible) for SSI exemption, if it manufactures goods bearing the brand name of any other person.
- (x) In customs, if cost of transport is not ascertainable, it will be taken as _____ of the FOB value of goods.
- (xi) The provisions of Alternate Minimum Tax are applicable in case of an individual, HUF, AOP, BOI, artificial juridical person if adjusted total income exceeds ₹ _____.
- (xii) Exemption of capital gains under section 54GA of the Income-tax Act is allowed on transfer of assets in case of shifting of an industrial undertaking from urban area to any _____.
- (xiii) As per section 35DD of the Income-tax Act, if an Indian company incurs any expenditure for the purpose of amalgamation or demerger, it is allowed as deduction in _____ successive years in _____ equal installments.
- (xiv) In computing income from the house property, interest on borrowed capital is allowable as deduction u/s _____ of the Income-tax Act if the capital is borrowed for the purpose of purchase, construction, repair, renewal or reconstruction of the property.
- (xv) In case of corporate assessee, the due date of installment in a relevant previous year for payment of 45% of advance tax is on or before _____.

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- (xvi) The Central Excise Revenue Audit is conducted by the _____.
- (xvii) In excise, in case of exports, the place of removal is _____ where export documents are presented to customs office.
- (xviii) Upgradation of computer system by increasing its storage or processing capacity _____ (is/ is not) manufacture.
- (xix) _____ is the basic document for assessment of custom duty and clearance of imported goods.
- (xx) _____ goods in custom means any goods, the import or export of which is subject to any prohibition under the Customs Act or any other law for the time being in force.
- (xxi) Employers contribution towards an approved superannuation fund will be chargeable to tax in the hands of an employee to the extent it exceeds ₹ _____ per annum.
- (xxii) Any sum received under a Keyman insurance policy (including bonus) is taxable under the head _____.
- (xxiii) In case of family pension, the amount of standard deduction is ₹ _____ or _____ per cent of such income, whichever is less.

Answer to 1(a):

- (i) eight
- (ii) 10 lakhs
- (iii) 200 nautical
- (iv) Declared
- (v) Jammu and Kashmir
- (vi) Manufacturer
- (vii) ₹ 5 lakh
- (viii) Compounded Levy
- (ix) is not eligible
- (x) 20%
- (xi) 20 lakhs
- (xii) Special Economic Zone.
- (xiii) five, five
- (xiv) 24(b)
- (xv) 15th September
- (xvi) Comptroller and Auditor General of India
- (xvii) Port
- (xviii) is not
- (xix) Bill of entry
- (xx) Prohibited
- (xxi) 1 lakh
- (xxii) income from other sources
- (xxiii) 15,000, 33 $\frac{1}{3}$

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Question 2.

(a) Whether recovery from buyer is not essential condition for levy of indirect taxes? [2]

Answer:

In general, indirect taxes are recovered from buyer, it is not an essential feature of indirect taxes. Tax on goods or services will be valid even if it is not recovered or recoverable from buyer.

(b) State the power of taxation under Constitution of India. [2]

Answer:

(i) The Central Government gets tax revenue from Income Tax (except on Agricultural Income), Excise (except on alcoholic drinks) and Customs.

(ii) The State Governments get tax revenue from sales tax, excise from liquor and alcoholic drinks, tax on agricultural income.

(iii) The Local Self Governments e.g. municipalities, etc. get tax revenue from entry tax and house property tax.

Article 265 provides that no tax shall be levied or collected except by authority of Law. The authority for levy of various taxes has been provided for under Article 246 and the subject matters enumerated under the three lists set out in the Schedule VII to the Constitution.

(c) List out the items which will appear on the Concurrent List (list III) given in Schedule Seven of the Constitution. [2]

Answer:

Concurrent List (List-III) given in Schedule Seven of constitution:

Both union and State Government can exercise power in respect of —

Entry No.17A – Forest Income

Entry No. 25 – Education Income

(d) M/s. Kalpana Ltd., sold machinery to Mr. Gupta at a price of ₹ 7 lakhs on 15th June, 2014 and the same was removed from the factory at Kolkata. The rate of excise duty applicable is 12.36% on the date of removal. Mr. Gupta refused to take delivery of the machine when it reached his destination. In the meantime, M/x. Kalpana Ltd. increased the prices of the similar type of machinery to ₹ 8.5 lakhs with effect from 16th June, 2013. The machinery as refused by Mr. Gupta has been sold on 20th June 2014 to Mr. Basu at the revised price of ₹ 8.5 lakhs. The excise duty including Education Cess is 12.36% applicable with effect from 10th June, 2014.

Explain the following with reasons:

(i) What is the value to be taken as assessable value?

(ii) What is the rate of excise duty applicable and duty payable on above transaction?

(iii) The Central Excise Officer is demanding duty on the price of ₹ 8.5 lakhs at the time of sale to Mr. Basu. Is he right in his approach?

Does cost of production have any bearing on the assessable value? [4]

Solution:

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- (i) The price prevailing at the time of removal from factory (i.e. ₹ 7 lacs on 15th June 2014 is the assessable value.
- (ii) The applicable rate of duty is @12.36% and duty amount is ₹ 86,520 (i.e. ₹ 7 lacs x 12.36/100).
- (iii) The Central Excise Officer is not right in his approach.
- (iv) Cost of production has no bearing with assessable value in present case. Central Excise valuation can be below manufacturing cost. If price is the sole consideration and dealing between seller and buyer are arm's length, assessable value will be decided on the basis of selling price, even if it is below manufacturing cost. So cost of manufacturing will not change the assessable value.

(e) The following are the particulars of income of Mr. P for the previous year 2014-15:

Particulars	₹
(a) Rent from a property in Delhi received in USA	80,000
(b) Income from a business in USA controlled from Delhi	1,20,000
(c) Income from a business in Bangalore controlled from USA	1,80,000
(d) Rent from a property in USA received there but subsequently remitted to India	60,000
(e) Interest from deposits with an Indian company received in USA	20,000
(f) Profits for the year 2013-14 of a business in USA remitted to India during the previous year 2014-15 (Not taxed earlier)	75,000
(g) Gift received from his parents.	45,000

Compute his income for the assessment year 2015 –16 if he is:

- (i) Resident and ordinarily resident in India,
 (ii) Not ordinarily resident in India,
 (iii) Non-resident in India.

[5]

Solution:

Particulars	Resident and ordinarily resident	Not Ordinarily resident	Non-Resident
(1) Income earned/deemed to accrue/arise in India			
Rent from property in Delhi	80,000	80,000	80,000
Income from business in Bangalore	1,80,000	1,80,000	1,80,000
Interest from Indian company	20,000	20,000	20,000
(2) Income earned and received outside India, from a business controlled from India			
Income from business in U. S. A.	1,20,000	1,20,000	-
(3) Income earned and received outside India other than (2)			
Rent from property in U. S. A	60,000		
	4,60,000	4,00,000	2,80,000

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1. Profits of 2013-14 are not income of the previous year 2014-15 and hence cannot be included in the income for assessment year 2015-16.
2. Gifts received are capital receipts and are not regarded as income.

Question 3.

(a) The income of X, who is totally blind, for the previous year 2014-15, is as under:

	₹
(i) Income from house property	1,82,000
(ii) Income from interest on loan	27,000
(iii) Income from interest on bank deposits under recurring	10,000
(iv) Long-term capital gains	1,20,000

He is eligible for deduction of ₹10,000 u/s 80C on account of PPF and ₹50,000 under section 80U. Compute his tax liability. [5]

Solution:

Particulars	₹
Gross Total Income (without long-term capital gains)	2,19,000
Less: Deductions u/s 80C and 80U (10,000 + 50,000)	60,000
Total income (without LTCG)	1,59,000
Tax on total income (₹1,59,000 + 91,000 shifted from LTCG)	Nil
Tax on long-term capital gain @ 20% on ₹29,000 (1,20,000 - 91,000)	5,800
Tax payable	5,800
Less: Rebate u/s 87A	2,000
	3,800
Add: Education cess & SHEC - @ 3%	114
Total tax payable	3914
Tax rounded off	3910

(b) Determine the cost of production on manufacture of the under-mentioned product for purpose of captive consumption in terms of Rule 8 of the Central Excise Valuation Rules, 2000

(amount in ₹)

Direct material	13,483
Direct wages & salaries	7,900
Works overheads	5,700
Quality control costs	4,800
Research and development costs	2,700
Administrative overheads	3,900
Selling and distribution costs	3,200
Realizable value of scrap	1,300

The Administrative Overheads are in relation to production activities.

Material cost includes Excise duty ₹ 1,483.

[4]

Solution:

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Calculation of cost of production in terms of Rule 8 of Valuation Rules, 2000		(amounts in ₹)
Direct material (13,483 – 1,483 = 12,000)	WN 1	12,000
Direct wages & salaries		7,900
Works overheads		5,700
Quality control costs	WN 2	4,800
Research and development costs	WN 2	2,700
Administrative overheads	WN 2	3,900
Selling and distribution costs	WN 3	-
Total		37,000
Less : Realisable Value of scrap	WN 4	1,300
Cost of production		35,700
Value of excisable goods under Rule 8 @ 110% of cost of production		39,270

Working notes:

1. Raw-material cost shall be taken net of excise duty assuming Cenvat credit is available.
2. Quality control cost, Research and Development cost and Administration overheads related to production shall form part of cost of production as per CAS-4.
3. Selling and distribution costs shall not form part of cost of production.
4. Realizable value of scrap shall be deducted to arrive at cost of production.

(c) E, an employee of XYZ Pvt. Ltd. retired from the company on 30.11.2014. At the time of his retirement, he received ₹1,44,000 as leave salary from his employer. The following information is provided by the employee:

(1) Salary at the time of retirement (per month)	₹9,000
(2) Period of Service	20 years & 8 months
(3) Leave encashment	₹1,44,000
(4) Leave availed while in service	14 months
(5) Balance unavailed leave at the time of retirement	16 months
(6) Average salary for the months of February, 2014 to November, 2014	₹8,800
(7) Leave entitlement	1 ½ month for every completed year of service

Compute the amount of taxable leave encashment.

[3]

Solution:

The minimum of the following four amounts will be exempt:

- (a) Leave encashment actually received = ₹1,44,000
- (b) 10 months' average salary i.e. ₹8,800 × 10 = ₹88,000
- (c) Leave encashment for 6 months @ ₹8,800 p.m. = ₹52,800
- (d) Amount specified by the Government i.e. ₹3,00,000

Hence ₹52,800 would be exempt and the balance of ₹91,200 would form part of gross salary.

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(d) 'X' received a vacant site under his father's will. The value of the site on 31.3.2015 is ₹15 Lakhs. As per terms of the 'Will' in the event 'X' wants to sell the site he should offer it to his brother for sale at ₹10 Lakhs. 'X', therefore, claims that the value of the site should be taken at ₹10 Lakhs as at 31.3.2015. Is the claim correct? [3]

Solution :

1. As per Rule 21 of Schedule III to the Act, the **price or other consideration for which** any property may be **acquired by or transferred to any person under the terms of a deed of trust** or through or under any restrictive agreement in any instrument of transfer **shall be ignored** for the purpose of determining the value under the provisions of the Schedule.
2. In view of the above, the value of the site should be taken as ₹ 15 Lakhs and not as ₹ 10 Lakhs.
3. Therefore, **claim of X is incorrect.**

Question 4.

(a) In case of a specific entry viz-a-viz a residuary entry, which one should be preferred for classification purpose? (Answer the following with the help of decided case law) [8]

Solution:

CCE vs. Wockhardt Life Sciences Ltd. 2012 (277) E.L. T. 299 (S.C.)

Facts of the Case:

Wockhardt Life Sciences Ltd. was the manufacturer of Povidone Iodine Cleansing Solution USP and Wokadine Surgical Scrub. The only difference between these two products was that Wokadine was a branded product whereas Povidone Iodine Cleansing Solution was a generic name.

The Revenue contended that the said products were not medicament in terms of Chapter Note 2(i) of the Tariff Act as it neither had "Prophylactic" nor "Therapeutic" usage. The Revenue said that in order to qualify as a medicament, the goods must be capable of curing or preventing some disease or ailment. Therefore, the said products cannot be classified under Chapter Heading 3003 of Tariff Act. They submitted that the product in dispute, namely Povidone Iodine Solution or its patent and proprietary equivalent Wokadine surgical scrub, was essentially used as a medicated detergent.

The assessee stated that the Revenue, in their show cause notices, had admitted that the products in issue were antiseptic and used by surgeons for cleaning or de-germing their hands and scrubbing surface of skin of patient before operation. They further submitted that the products were medicament in which some carriers were added and therefore, it would fall under chapter sub-heading 3003 and not under chapter 34.

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Point of Dispute:

The assessee's claim before the authorities and also before the Tribunal was that the aforesaid products were medicaments and, therefore, required to be classified under Chapter sub-heading 3003 of the Tariff, whereas the Revenue's stand was that the products in question are detergents and, therefore, to be classified under chapter subheading 3402.90.

Decision of the Case:

The Supreme Court observed that it is the specific case of the assessee that the products in question are primarily used for external treatment of the human-beings for the purpose of the prevention of the disease. This is not disputed by the Revenue. Revenue's stand is that since the products in question are primarily used as detergents/cleansing preparation, they cannot be brought under the definition of medicaments. Medicaments are products which can be used either for therapeutic or prophylactic usage. The Court said that since the product in question is basically and primarily used for the prophylactic uses, the Tribunal was justified in coming to a conclusion that the product was a medicament. The miniscule quantity of the prophylactic ingredient is not a relevant factor.

The Court said that the combined factor that requires to be taken note of for the purpose the classification of the goods are the composition, the product literature, the label, the character of the product and the use to which the product is put. In the instant case, it is not in dispute that this is used by the surgeons for the purpose of cleaning or de-germing their hands and scrubbing the surface of the skin of the patient that portion is operated upon. The purpose is to prevent the infection or disease. Therefore, the product in question can be safely classified as "medicament" which would fall under chapter sub-heading 3003 which is a specific entry and not under chapter sub-heading 3402.90 which is a residuary entry.

Thus, on the basis of the above observation by the Court the Revenue's appeal was rejected.

(b) Ms. S who draws a salary of ₹20,000 p.m. received the following gifts during the previous year 2014-15:

- (i) Gift of ₹5,00,000 on 16.4.2014 from a friend.
- (ii) Gift of jewellery fair market value of which is ₹3,00,000 on 17.5.2014 from her fiancée.
- (iii) Gifts of ₹51,000 each received from her 4 friends on the occasion of her marriage on 21.10.2014.
- (iv) Gift of ₹1,00,000 on 22.11.2014 from her mother's sister.
- (v) Gift of ₹60,000 on 25.11.2014 from her father's brother.
- (vi) Gift of ₹50,000 from her husband's friend on 1.12.2014.
- (vii) Gift of ₹21,000 on 15.12.2014 from her mother's friend.
- (viii) Gift of ₹26,000 on 25.12.2014 from her brother's father in law.
- (ix) Gift of ₹1,21,000 from her husband's brother.
- (x) Gift of ₹26,000 from her employer.
- (xi) Scholarship of ₹1,20,000 from a charitable institution registered under section 12AA.
- (xii) He has purchased a immovable property from B who is not his relative from a sum of ₹24,50,000. The stamp duty value of the property is ₹26,00,000.
- (xiii) She purchased bullion for ₹4,40,000 whose fair market value is ₹4,85,000.

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(xiv) Gift of immovable property from her friend whose stamp duty value is ₹5,00,000.

Compute her total income for the assessment year 2015-16.

[7]

Solution:

		₹	₹
Income under the head salary			
Salary (20,000 × 12)		2,40,000	
Add: cash gift from employer		26,000	
		2,66,000	
Less: Deduction		Nil	2,66,000
Income from other sources			
(1)	Gift of money	₹	₹
(i)	Gift from a friend is includable	5,00,000	
(ii)	Gifts received from her 4 friends are exempt as they have been received on the occasion of her marriage	-	
(iii)	Gift from her mother's sister is exempt as the donor is covered in the definition of relative	-	
(iv)	Gift from father's brother is exempt as the donor covered in the definition of relative	-	
(v)	Gift of ₹50,000 from her husband's friend on 01.12.2014 is taxable as aggregate sum of money received during the year exceeds ₹50,000	50,000	
(vi)	Gift of ₹21,000 from her mother's friend is includable as aggregate sum of money received during the year exceeds ₹50,000	21,000	
(vii)	Gift from her brother's father in law is taxable as the donor is not covered in the definition of relative	26,000	
(viii)	Gift from her husband's brother is exempt as the donor is covered in the definition of relative	-	
(ix)	Gift from her employer is taxable as income from salary	-	
(x)	Gift in the form of scholarship from charitable institution registered u/s 12AA	exempt	
(2)	Gift of moveable property - Gift of jewellery is taxable	3,00,000	
(3)	Moveable property acquired for inadequate consideration - Difference between fair market value of movable property and purchase price does not exceed ₹50,000	Not taxable	
(4)	Gift of immovable property - Gift of immovable property received from her friend	5,00,000	
(5)	Immovable property acquired for inadequate consideration - Difference between stamp duty value and purchase price	1,50,000	15,47,000
Total income			18,13,000

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Question 5.

(a) Distinguish between Safeguard Duty and Anti-dumping Duty for the purpose of customs. [5]

Solution:

The difference between safeguard duty and anti-dumping duty are listed below –

Basis	Safeguard Duty	Anti-dumping Duty
1. Levy under	Section 8B or 8C of the Customs Tariff Act, 1975.	Section 9A of the Customs Tariff Act, 1975.
2. Objective	To ensure that bulk imports of goods do not cause serious injury / disruption to domestic industry.	To ensure that goods are not imported at lower than normal value (dumping), thereby, causing loss to domestic market.
3. Based on	Increased imports in quantity.	Imports at value less than normal value.
4. Quantum	Levied as determined by the Government.	Cannot exceed margin of dumping.
5. Duration	Remains in force for 4 years, extendable upto 10 years from date of levy.	Remains in force for 5 years, extendable by further 5 years.
6. Exception	Not levied if imports from a developing country doesn't exceed 3% and total imports from all developing countries (each with share upto 3%) doesn't exceed 9% in total.	Exceptions to levy of this duty are listed in section 9B of the Customs Tariff Act, 1975.

(b) Mrs. Satya Yadav received the following amounts during financial year 2014 –15:

	₹
Gross Salary	5,30,000
Family Pension (₹10,000 × 12)	1,20,000
Income of a minor child	49,000
Accumulated balance in PF of her husband after his death	1,00,000
Gratuity received after the death of husband	1,00,000

Calculate taxable income of Mrs. Satya Yadav and tax liability for the assessment year 2015-16.

[6]

Solution:

Computation of taxable income of Mrs. Satya Yadav for the assessment year 2015-16 Income from Salary

	₹	₹

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Gross salary	5,30,000	
Less: Deduction	Nil	5,30,000
Income from other sources		
Family pension	1,20,000	
Less: Deduction u/s 56 1/3 or ₹ 15,000 whichever is less	15,000	1,05,000
Income of a minor child	49,000	
Less: Exemption u/s 10(32)	1,500	47,500
Gross total income		6,82,500
Tax payable		66,500
Add: Education cess & SHEC - @ 3%		1,995
Tax rounded off		68,500

Note.—Accumulated balance in PF and amount of gratuity received after the death of husband is exempt from tax as it is assumed to be within the limit prescribed by section 10(10).

(c) Dream Company Ltd. has let-out a premise with effect from 1.10.2014 for monthly rent of ₹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 ₹ 2 lakh. What will be the value of the property under Schedule III of the Wealth Tax Act for assessment to wealth tax? [4]

Solution :

Assessee: Property Company Ltd. Valuation Date: 31.3.2015 Assessment Year : 2015-

16

Computation of Value of Let-out Property

Actual Annual Rent Receivable - ₹ 1,50,000 × 12 Months	18,00,000
Add: Municipal Taxes borne by the Tenant	2,00,000
GROSS MAINTAINABLE RENT	20,00,000
Less: Municipal Taxes levied by the Municipal Authority	2,00,000
Less: 15% of Gross Maintainable Rent ₹ 20,00,000 × 15%	3,00,000
NET MAINTAINABLE RENT	15,00,000

Question 6.

(a) Snow Ltd. sold 100 units manufactured by it for ₹ 15,000 per unit. It had received interest-free advance of ₹ 3,00,000 from the buyer for the whole of the year. Compute the assessable value of 100 units sold in following independent case:

- (i) The price charged from other buyers is ₹ 14,500 per unit.**
- (ii) The price charged from other buyers is ₹ 16,300 per unit.**
- (iii) The normal rate of interest is 12% per annum and the price charged from other buyers is ₹16,300 per unit. [3]**

Solution:

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Computation of Assessable Value of Snow Ltd.: As per the explanation 2 to Rule 6 of the Central Excise Valuation Rules, 2000, 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. Hence, the assessable value shall be determined as under:

- (i) Assessable value = ₹ 15,000 x 100 = ₹ 15,00,000.
No notional interest shall be added as advance received has not influenced the price.
- (ii) Assessable value = (₹ 15,000 + ₹ 1,300) x 100 = ₹ 16,30,000.
₹ 1,300 shall be added as notional interest (₹16,300 - ₹ 15,000) as the price charged is influenced due to the receipt of advance.
- (iii) Assessable value = (₹ 15,000 + ₹ 1,300) x 100 = ₹ 16,30,000.
Rate of interest is irrelevant, however, ₹ 1,300 shall be added as notional interest (₹ 16,300 - ₹ 15,000) as the price charged is influenced due to the receipt of advance.

(b) M, who was born on 4.01.1950 submits the following information:

Particulars	₹
1. Rent from house (per month)	25,000
2. Municipal taxes paid during the previous year	20,060
3. Long-term capital gains on sale of gold	1,00,000
4. Interest on bank deposits (gross)	44,150
5. Term deposit made during the year in a schedule bank for six years	20,000

Compute the Total Income and tax liability of M for assessment year 2015-16.

[7]

Solution:

	₹	₹
Income from house property:		
Actual rent	3,00,000	
Less: Municipal taxes (paid)	20,000	
	2,80,000	
Less: Statutory deduction @ 30%	84,000	1,96,000
Long-term capital gain: On sale of gold		1,00,000
Income from other sources: Interest on bank deposits		44,150
Gross Total Income		3,40,150
Less: Deduction u/s 80C		20,000
Total Income		3,20,150
Computation of tax:		
Tax on Total Income of ₹2,20,150 + 79,850 shifted from LTCG		Nil
Tax on long-term capital gains @ 20% on ₹20,150 (₹1,00,000 - 79,850)		4,030
Tax payable		4,030
Less: Rebate u/s 87A		2,000
		2,030
Add: Education cess & SHEC - @ 3%		61

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Tax (round off)		2,090
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(c) X, a German national, came to India for the first time on 1.7.2008. During the period from 1.7.2008 to 31.3.2015, he stayed in India as follows—from 1.7.2008 to 31.10.2008; from 1.5.2008 to 31.10.2010; from 1.11.2010 to 31.12.2010 and from 1.7.2013 to 31.8.2014. During the previous year ended on 31.3.2015, X's income consisted of: (a) business in India: ₹40,000; (b) interest from an Indian company: ₹2,000; (c) dividends from non-Indian companies received in Germany but remitted to India: ₹5,000; (d) business in Germany (controlled from India): ₹25,000; (e) income from house property in Germany: ₹8,000. Determine, giving full reasons, the gross total income of X for the assessment year 2015-16 after ascertaining his 'residence' for the purpose of income-tax. [5]

Solution:

Stay in India during previous year 2014 –15	Days
1.4.2014 to 31.8.2014 (30 + 31 +30 + 31 +31)	153
Stay in India during 4 years preceding the previous year	
2013-14(31+31+30 + 31+30 + 31 +31+28 + 31)	274
2012 – 13	Nil
2011 – 12	Nil
2010 – 11 (30 + 31)	61
	333

Hence, he does not satisfy any condition for being a resident

Therefore he is a Non-resident

Taxable Income

	₹
(i) Business Income	40,000
(ii) interest from an Indian Company	2,000
	42,000

Question 7.

(a) M/s. Human Care Ltd. has introduced a new product 'Paradise' toothpaste, notified under Section 4A of the Central Excise Act, 1944, with a notified abatement of 30%. Determine the central excise duty payable if rate of duty is 12%, education cess is 2% and secondary and higher education cess is 1%:

Answer to MTP_Final_Syllabus 2008_Jun2015_Set 1

- (i) 1,500 pieces having retail sale price (RSP) ₹ 65 per piece are sold in retail packages to wholesale dealer at ₹ 50 per piece.
- (ii) 2,500 pieces having RSP ₹ 65 per piece are sold in retail packages, but buyer is charged for 2,100 pieces only at ₹ 50 per piece (400 pieces have been given free as quantity discount).
- (iii) 50 pieces were given away as free samples, without any RSP on the pack.
- (iv) 350 multi-packs were cleared at ₹ 80 per pack, each containing two toothpaste tubes and one toothbrush free (without any RSP on it). Each tooth paste tube was having RSP ₹ 70, which was scored out and each multi-pack had RSP of ₹ 130.

Make suitable assumptions wherever required and show the calculations with appropriate notes. [5]

Solution:

The duty is as computed below —

Particulars	₹
(i) 1,500 pieces @ RSP ₹ 65 per piece (The packages sold are 'retail packages' meant for retail sale to consumer. The fact that the same is to a wholesaler is irrelevant because the relevant factor is 'package', which is 'retail package'. Hence, the goods will be assessed under RSP based duty. The actual sale price is irrelevant for the purposes of section 4A.)	97,500
(ii) 2,500 pieces @ RSP ₹ 65 per piece (Even if price is charged for 2,100 pieces and 400 pieces are given free as quantity discount/bonus, such bonus quantity is also manufactured product and is, therefore, liable to duty. Section 4A refers to deemed value, which will be computed for all the 2,500 pieces removed from the factory in 'retail packages')	1,62,500
(iii) Samples : 50 pieces @ RSP ₹ 70 per piece (Samples of notified goods are to be valued under section 4A only and RSP of identical goods is to be taken as the value even if the RSP is not indicated on the pack)	3,500
(iv) Multi-packs : 350 packs RSP ₹ 130 per piece (In case of multi-packs, if RSP of individual items is scored out, then, RSP of multi-pack is to be considered. Here, the multi-pack contains tooth brush as well, which is not a commodity of same kind as the toothpaste; however, a composite RSP of ₹ 130 is affixed, which includes the value of toothpaste as well as toothbrush.)	45,500
Total RSP	3,09,000
Less /Abatement @ 30%	92,700
Assessable Value under section 4A	2,16,300
Duty @ 12.36%	26,735

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(b) Bhubaneswar Ltd. Carried out following works, all of which are leviable to sales-tax/VAT as transfer of property involved in the execution of works contract (the sum charged given below are exclusive of all taxes) -

- (1) New constructions: ₹ 65 lakh;
- (2) Additions and alterations to damaged structures on land to make them workable: ₹ 30 lakhs;
- (3) Supply along with erection, commissioning and installation of plants: ₹ 87 lakhs;
- (4) Maintenance and repair of goods: ₹ 35 lakhs;
- (5) Maintenance and repair of immovable property: ₹ 42 lakhs;
- (6) Finishing and Glazing Services of an immovable property: ₹ 12 lakh;
- (7) Other works contracts: ₹ 6 lakh.

Compute taxable value and service tax thereon.

[4]

Solution:

Computation of taxable value & service tax: Since data regarding valuation under Rule 2A(i) is not given, value is computed as per Rule 2A(ii) at specified % of gross amount charged.

	Amount charged ₹	% of amount charged	Taxable Value ₹
New constructions (It is "original works")	65,00,000	40.00%	26,00,000
Additions and alterations to damaged structures on land to make them workable (It is "original works")	30,00,000	40.00%	12,00,000
Supply along with erection, commissioning and installation of plants (It is "original works")	87,00,000	40.00%	34,80,000
Maintenance and repair of goods	35,00,000	70.00%	24,50,000
Maintenance and repair of immovable property	42,00,000	70.00%	29,40,000
Finishing and Glazing Services of an immovable property	12,00,000	70.00%	8,40,000
Other works contracts (Assumed it is neither original works nor any works contract in relation to maintenance, etc. of goods)	6,00,000	70.00%	4,20,000
Total Taxable Value under Rule 2A(ii)			1,39,30,000
Service Tax @ 12.36%			17,21,784

(c) Whether in absence of any defect in maintenance of books of account, disallowance could be made merely on ground that expenses incurred in current year were more than that in preceding year? (Answer the following with the help of decided case law) [6]

Solution:

CIT v. Shree Rama Multi Tech Ltd. (2013) 215 Taxman 157 (Mag.) (Guj.)(HC)

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The commission expenses to the tune of ₹1.24 crore was paid out by the assessee of the said total claim of the expenses of commission. The Assessing Officer had disallowed the same to the tune of 20% on noting that in the preceding year, the commission payment was claimed only at 0.70% whereas in the year under consideration 2005-06, the said claim was of 1.93% of the gross turnover. This was challenged before the Commissioner of Income Tax (Appeals) who confirmed the view of the Assessing Officer even though it was argued before it that no notice was served upon the assessee and on merit also, addition was not justifiable.

The Tribunal held that it was not open to the department to prescribe what expenditure the assessee should incur and in what circumstances he should incur the expenses. It sought to rely upon the decision of the Apex Court in case of Commissioner of Income Tax, Andhra Pradesh vs. Dhanrajgirji Raja Narasinghirji reported in 91 ITR 544 for arriving at such findings. In our opinion, sufficiently elaborate discussion already finds place in the order of the Tribunal. Tribunal has appropriately considered the entire gambit of facts presented before it. It also noted the maintenance of books of account for the assessee and absence of any defect in such record and therefore, it rightly held that merely because in the subsequent year more expenses are incurred by the assessee by making such comparison, disallowance was not justified.

Question 8.

(a) Mr. Gaya, a dealer in Kolkata dealing in consumer goods, submits the following information pertaining to the Month of March, 2015:

- (i) Exempt goods 'A' purchased for ₹ 1,50,000 and sold for ₹ 1,70,000.
- (ii) Goods 'B' purchased for ₹ 2,00,000 (including VAT) and sold at a margin of 10% profit on purchases (VAT rate 12.5%);
- (iii) Goods C purchased for ₹ 1,25,000 (excluding VAT) and sold for ₹ 1,70,000 (VAT rate 4%);
- (iv) His unutilized balance in VAT input credit on 01.03.2015 was ₹ 2,000.

Compute the turnover, Input VAT, Output VAT and Net VAT payable by Mr. Gaya. [4]

Solution:

Computation of VAT payable

Finished goods	Tax on Finished Goods			Input Tax on Materials			Net (Output Tax - Input Tax) (₹)
	Value (₹)	Rate	Tax (₹)	Value (₹)	Rate	Tax (₹)	
Opening Balance						2,000	- 2,000
Goods A	1,70,000	NIL	Exempt	1,50,000	NIL	Exempt	0
Goods B (Purchase price excluding VAT = ₹ 2,00,000 × 12.5 ÷ 112.5)	1,95,556	12.50%	24,444	1,77,778	12.50%	22,222	2,222
Goods C	1,70,000	4.00%	6,800	1,25,000	4.00%	5,000	1,800

Answer to MTP_Final_Syllabus 2008_Jun2015_Set 1

Total		31,244		29,222	2,022
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(b) What are the export incentives available to the manufacturer? [5]

Answer:

The export incentives for manufacturers are —

- a) Indigenous inputs without payment of excise duty or rebate if duty paid.
- b) No excise charged on final product or rebate if duty paid.
- c) Imported inputs without payment of customs duty, or rebate if duty paid.
- d) No export duty on export of final product.
- e) Bank finance on priority basis and at concessional rate of interest.
- f) Import of capital goods at concessional rate (under EPCG scheme).
- g) Exemptions/relaxations from Income tax.
- h) Exemption from sales tax on final product (refund of CST paid on inputs in case of EOU. No CST for
- i) supply to SEZ and SEZ units).
- j) Usance bills of exchange executed by an exporter in relation to export transaction are fully exempt from stamp duty – SO 804(E) dated 8-7-2004.

(c) Why indirect taxes are called regressive in nature as against direct taxes? [3]

Answer:

Direct taxes depend on paying capacity. Rich person is taxed more compared to poor person. But Indirect taxes do not depend on paying capacity. Since the indirect tax is uniform, the tax payable on commodity is same, whether it is purchased by a poor man or a rich person. Hence, the indirect taxes are termed as 'regressive'.

Although this argument is only partially correct for indirect taxes; as it is possible to levy lower taxes on goods of daily consumption while levying higher taxes on luxury goods and the regressive effect can be reduced in many circumstances.

(d) An interior decorator charges ₹ 7,00,000 from a client for providing professional services. The breakup of the bill is as follows:-

- i. Value of furniture sold to the client – ₹ 3,50,000
- ii. Labour and facility charges – ₹ 1,50,000
- iii. Value of materials consumed in providing the service – ₹ 2,00,000

Compute the amount of service tax to be charged from the client. Provided all the amounts are exclusive of service tax. [3]

Solution:

Computation of service tax payable:

	(₹)
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Answer to MTP_Final_Syllabus 2008_Jun2015_Set 1

Value of furniture sold to the client [Sale of furniture is 'sale of goods', which cannot be regarded as a service. Though sale is in course of providing the service, however, it constitutes a separate sale, because the parties intend to have separate rights arising out of sale. Such sale cannot be charged to service tax.]	Sale, not service
Add: Labour and facility charges [They are for provision of interior decoration service; hence, includible in value]	1,50,000
Add: Value of materials consumed in providing the service [Materials consumed viz. consumables, etc. in providing services are a part of the value of the service, because service cannot be provided without them.]	2,00,000
Value of service	3,50,000
Service Tax @ 12.36%	43,260