

Revisionary Test Paper_Final_Syllabus 2008_Jun2014

Paper-14: Indirect and Direct Tax Management

Section A: Indirect Tax Management

Question No. 1

(a) Indicate whether the following activities would fall under “Manufacture”, “Deemed Manufacture” or “Production”:

1. Production in a sugar factory of Sugar, Molasses, Bagasse.
2. Mining of Coal
3. Dyeing of Yarn
4. Removing pulp from coffee seeds
5. Activity on the CD pack and not on the CD
6. Labeling or relabeling without repacking from bulk to retail
7. Conversion of jumbo rolls into small rolls
8. Branding and Labeling of packed spices
9. Branding/Labeling of Stainless Steel screws
10. Melting of old brass tubes and converting into new brass tubes
11. Repairing, re-conditioning or re-making
12. Affixing a brand name on a product manufactured by a sister unit
13. Melting of old brass tubes and converting into new brass tubes
14. Making ice from water
15. Conversion of rough marble slabs into regular marble slab/tiles
16. Preparation of Mango Pulp from Raw Mango
17. Lamination of film
18. Up gradation of Computers
19. Crushing betel nuts into small pieces and sweetening the same with essential/non-essential oils, menthol, sweetening, agents, etc.
20. Cinders on burning coal.

(b) What is the system of classification in CETA?

(c) The burden to prove appropriate classification always lies on the Department. Discuss.

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Solution to Question 1(a)

| Activity | Classification |
|--|--|
| 1. Production in a sugar factory: (a) Sugar | Manufacture (main product) |
| (b) Molasses | Production (by-product) |
| (c) Bagasse | Production (by-product) |
| 2. Mining of Coal | Production |
| 3. Dyeing of Yarn | Deemed Manufacture [dyed and coloured yarn is a distinct commodity known to market] |
| 4. Removing pulp from coffee seeds | Curing |
| 5. Activity on the CD pack and not on the CD | Not a Manufacture [CCE v. Sony Music Entertainment (I) Pvt.Ltd.2010 (249) E.L.T.341 (Bom.)] |
| 6. Labeling or relabeling without repacking from bulk to retail | Deemed Manufacture [BOC (I) Ltd. 226 ELT 323(SC)] |
| 7. Conversion of jumbo rolls into small rolls | Manufacture [India Cine Agencies (2009) 233 ELT 8 (SC)] |
| 8. Branding and Labeling of packed spices | Manufacture |
| 9. Branding/Labeling of Stainless Steel screws | Not Manufacture |
| 10. Melting of old brass tubes and converting into new brass tubes | Manufacture. [Identity of original product is completely lost in the process] |
| 11. Repairing, re-conditioning or re-making | Not a manufacture [No new product emerges because of this activity. Shriram Refrigeration Industries 26 ELT 353 (Trib.)] |
| 12. Affixing a brand name on a product manufactured by a sister unit | Not a manufacture. [Branding is a mere process of identifying the end product and is not a manufacturing activity. Bush India Ltd. 6 ELT 258 (Bom.)] |
| 13. Melting of old brass tubes and converting into new brass tubes | Manufacture. Identity of original product is completely lost in the process |
| 14. Making ice from water | Manufacture. [Ice is distinctly marketed] |

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| | |
|--|---|
| 15. Conversion of rough marble slabs into regular marble slab/files | Deemed Manufacture as per Tariff Schedule |
| 16. Preparation of Mango Pulp from Raw Mango | Manufacture, as distinct product emerges which is marketable as different commodity |
| 17. Lamination of film | Not a manufacture, as no new and distinct product emerges [Meltex (I) Pvt. Ltd (165) ELT 129 (SC)] |
| 18. Up gradation of Computers | Not a Manufacture. Though up gradation involves in increasing its storage/processing capacity, however, no new goods with different name, character and use comes into existence. |
| 19. Crushing betel nuts into small pieces and sweetening the same with essential/non-essential oils, menthol, sweetening, agents, etc. | Not a manufacture, as there is no new product with a different character emerges [Crane Betel Nut Powder Works (2007) 210 ELT 171 (SC)] |
| 20. Cinders on burning coal | Not a manufacture. [After burning coal, the resultant cinders are not a new product, but only coal of an inferior quality. Also coal is not used as a raw material, but as a fuel. Hence, burning of coal is not manufacture and cinders arising there from are not dutiable. [Ahmedabad Electricity Co. Ltd. 158 ELT 3 (SC)] |

Solution to Question 1(b)

Excisable goods are identified/classified using 8-digits, as follows:

- ❖ First two digits- refers to Chapter number
- ❖ Next two digits- refers to Heading
- ❖ Next two digits- refers sub-heading
- ❖ Last two digits- product ID

❖

Example: (1): Tariff No. 2710 19 30: High Speed Diesel (HSD)

| | | | |
|------------------|----|-------------|--|
| First two digits | 27 | Chapter 27 | Mineral Fuels, Mineral Oils and Products of their distillation; bituminous substances: Mineral waxes |
| Next two digits | 10 | Heading | Petroleum Oil and Naptha |
| Next two digits | 19 | Sub-heading | |

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| | | | |
|-----------------|----|---------------------|-------------------------|
| Last two digits | 30 | Specific product ID | High speed diesel (HSD) |
|-----------------|----|---------------------|-------------------------|

Example: (2): Tariff No. 4013 10 20: High Speed Diesel (HSD)

| | | | |
|------------------|----|---------------------|----------------------------|
| First two digits | 40 | Chapter 40 | Rubber Articles |
| Next two digits | 13 | Heading | Inner tubes |
| Next two digits | 10 | Sub-heading | Used in motor cars/lorries |
| Last two digits | 20 | Specific product ID | For lorries and buses |

Solution to Question 1(c)

It is the responsibility of the Department to establish the correct Tariff Heading under which the product falls. The onus is on the Department to establish the alternate classification, when the department turns down the classification claimed by the Assessee.

However, when certain goods are prima facie covered by the generic description, the burden to prove that they are so covered would be on the person claiming so.

Question 2:

- (a) What are the conditions for treating the transaction value as the assessable value of the excisable goods?
- (b) Explain Assessable Value and the related principles in determining Assessable Value.
- (c) If the sale price is ₹275, inclusive of VAT @ 13.5% and ED @ 12%. Calculate the transaction value and excise duty.
- (d) The cum-duty price per piece was ₹150 and the assessee had paid duty @ 20% ad-valorem. Subsequently, it was found that the rate of duty was 30% ad-valorem and the assessee had not collected anything over and above ₹150 per piece. Determine the assessable value.

Solution to Question 2(a)

The following conditions must be fulfilled for considering Transaction Value as the Assessable Value for the levy of duty on ad-valorem basis:

- (i) The excisable goods must be sold by the Assessee;
- (ii) Such sale should be for delivery at the time and place of removal;

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- (iii) Price must be the sole consideration for sale; and
- (iv) Assessee and the buyer of the goods must not be related persons.

Solution to Question 2(b)

Assessable value is the value on which is excise duty payable on ad-valorem basis. Assessable value can be based on the followings:-

- (i) Transaction value- value of a transaction. i.e. price charged by a seller or as determined under valuation rules
- (ii) Tariff value – value fixed u/s 3(2) of the Central Excise Act
- (iii) Retail Sale Price – maximum retail price printed on packaged goods under Standards, Weights and Measures Act.

Solution to Question 2(c)

Transaction Value = ₹ $(275 \times 100 \times 100) / (100 + \text{VAT@ } 13.5\%) (100 + \text{ED @ } 12\%) = ₹216.33$

Excise Duty = ₹ $216.33 \times 12\% = ₹25.95$.

VAT = ₹ $(216.33 + 25.95) \times 13.5\% = ₹32.71$.

Solution to Question 2(d)

Assessable value = ₹ $(150 \times 100) / 130 = ₹115.38$.

Question 3:

(a) Discuss Place of Removal.

(b) The value of price support incentives received from the raw materials supplier should be included in the assessable value of the final product". Is this an agreeable proposition?

(c) Calculate the assessable value for the purpose of levy of excise duty from the following particulars:

Cum-duty selling price inclusive of sales tax @ 12% (before discount): ₹2,73,186.

Excise duty @ 12% plus applicable cess.

Trade discount allowed: ₹3,000;

Freight (to be charged extra): ₹5,400.

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Solution to Question 3(a)

Under Section 4(3)(c) of the Central Excise Act, 1944, Place of Removal refers :

- (i) **Place of Production**- factory or any other place or premises of production or manufacture of the excisable goods;
- (ii) **Place of storage**: warehouse or any other place where excisable goods have been permitted to be deposited without payment of duty;
- (iii) **Place of sale**- depot, consignment agent premises or any other place from where excisable goods are to be sold after their clearance from the factory.

Solution to Question 3(b)

The value of the price support incentives from the raw material supplier should not be included in the assessable value of the final product [Bisleri International Private Ltd (2005) 186 ELT 257(SC)]

However, when:

- (i) There was no flow back of any additional consideration from the buyers;
- (ii) The price uniformity was maintained;
- (iii) There was no evidence of any of the buyers or existence of any favoured buyers.

If the aforesaid conditions are not satisfied, the value of the price support incentives would be includible in the assessable value of the final product.

Solution to Question 3(c)

Computation of Assessable Value

| Particulars | Amount(₹) | Justification |
|--|-----------|---|
| Cum-duty selling price (inclusive of sales tax) | 2,73,186 | U/s 4(3)(d), Assessable Value excludes Duties and Taxes. As freight charges are not included in assessable value, it shall not be deducted. |
| Less: Sales Tax @ 12% (2,73,186 x 12/112) | 29,270 | |
| Less : Freight (to be charged extra) | Nil | |

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| | | |
|----------------------------|--------------------|---|
| Less: Trade Discount | (3,000) | However, discount passed on to the buyer is excluded from the Assessable Value [Circular 354/81 .2000 TRU] |
| | 2,40,916 | |
| Less: Excise Duty @ 12.36% | 29,777.22 | |
| Assessable Value | 2,11,138.78 | |

Question 4

(a) What is the assessable value in the following case?

| Dates | 4.2.2014 | 8.2.2014 | 12.2.2014 | 16.2.2014 | 20.2.2014 |
|---------------------------------|----------|----------|-----------|-----------|-----------|
| X Computers (Y1 composition) | ₹35,000 | ₹35,500 | ? | ₹35,800 | ₹35,500 |
| S Computers (Y2 composition) | ₹28,000 | ₹29,000 | ₹32,000 | ₹31,800 | ₹30,900 |

(b) B Ltd. is engaged in the manufacture of tablets that has an MRP of ₹100 per strip of 10 tablets. The company cleared 50,000 tables and distributed as physician's sample. The goods are not covered by MRP but MRP includes 12% excise duty and 3% CST. If the cost of production of the tablet is ₹2 per tablet, determine the total duty payable.

Solution to Question 4(a)

The price of the excisable goods removed is not available at the time of removal. Value of excisable goods shall be based on the value of such goods sold by the Assessee for delivery at any other time nearest to the time of removal of goods under assessment. Price prevailing at the nearest time may be adjusted for differences in dates of delivery & nearest dates.

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Such goods: In the above case, for valuing X Computers cleared on 12.2.2014, value of such goods, i.e. X Computers, sold during the nearest time only should be considered. S Computers are not such goods, as the composition of the computers are different, referred as Y1 composition and Y2 composition. Such goods refer to same goods or identical goods.

Value on nearest date: Nearest date in the instant case, i.e. 8th February, 2014 and 16th February, 2014. Interpolating the value between these two dates, value as on 12th February, 2014 is ₹ 35,650 (adjustment for difference in dates).

Solution to Question 4(b)

Where a product is not covered under MRP provisions, Sec.4A does not apply and valuation is required to be done as per the Central Excise Valuation Rules. CBEC has vide its circular, clarified that physicians samples or other samples distributed free of cost are to be valued under Rule 11 read with Rule 4 of the Valuation Rules,2000.

Under Rule 4, such samples are to be valued at the value of such goods nearest to the time of removal.

Computation of Duty Payable

| Particulars | ₹ |
|---|--------|
| Maximum Retail Price per strip | 100.00 |
| Less: CST @ 3% [₹100 x 3/103] | 2.91 |
| Cum-duty Price | 97.09 |
| Less: Excise Duty (including Cess) @ 12.36% [97.09 x 12.36/112.36] | 10.68 |
| Assessable Value | 86.41 |
| Excise Duty (including Cess) [₹86.41x 12.36%] | 10.68 |

Note: It is assumed that MRP is the cum-duty price collected by B Ltd on its normal sales. Excise duty rate is assumed to be inclusive of Education Cess and SHEC.

Question 5

(a) Raj & Co. furnish the following expenditure incurred by them and want you to find the assessable value for the purpose of paying excise duty on captive consumption. Determine the cost of production in terms of rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and as per CAS-4 (cost accounting standard)

- (i) Direct material cost per unit inclusive of excise duty at 20% - ₹ 1,320**
- (ii) Direct wages - ₹ 250**
- (iii) Other direct expenses - ₹ 100**
- (iv) Indirect materials - ₹ 75**
- (v) Factory Overheads - ₹ 200**

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- (vi) Administrative overhead (25% relating to production capacity) ₹ 100
- (vii) Selling and distribution expenses - ₹ 150
- (viii) Quality Control - ₹ 25
- (ix) Sale of scrap realized - ₹ 20
- (x) Actual profit margin - 15%.

(b) Hero Electronics Ltd. is engaged in the manufacture of colour television sets having its factories at Kolkata and Gujarat. At Kolkata the company manufactures picture tubes which are stock transferred to Gujarat factory where it is consumed to produce television sets. Determine the Excise duty liability of captively consumed picture tubes from the following information: -

- (i) Direct material cost (per unit): ₹ 800
- (ii) Indirect Materials: ₹ 50
- (iii) Direct Labour: ₹ 200;
- (iv) Indirect Labour: ₹ 50;
- (v) Direct Expenses: ₹ 100;
- (vi) Indirect Expenses: ₹ 50;
- (vii) Administrative Overheads: ₹ 50;
- (viii) Selling and Distribution Overheads: ₹ 100.
- (ix) Additional Information: -

- (1) Profit Margin as per the Annual Report of the company for 2011-2012 was 12% before Income Tax.
- (2) Material Cost includes Excise Duty paid ₹ 73
- (3) Excise Duty Rate applicable is 12%, plus education cess of 2% and SHEC @ 1%.

Solution to Question 5(a)

| Particulars | Amount (₹) |
|---|-----------------|
| Direct Material (exclusive of Excise Duty) [1,320 x 100/120] | 1,100.00 |
| Direct Labour | 250.00 |
| Direct Expenses | 100.00 |
| Works Overhead [indirect material (₹75) (+) Factory OHs (₹ 200)] | 275.00 |
| Quality Control Cost | 25.00 |
| Research & Development Cost | Nil |
| Administration Overheads (to the extent relates to production activity) | 25.00 |
| Less: Realizable Value of scrap | (20.00) |
| Cost of Production | 1,755.00 |

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| | |
|-------------------------|------------------------|
| Add 10% as per Rule 8 | 175.50 |
| Assessable Value | <u>1,930.50</u> |

Solution to Question 5(b)

Cost of production is required to be computed as per CAS-4. Material cost is required to be exclusive of CENVAT credit available.

| | Particulars | Total Cost (₹) |
|----|--|---------------------------|
| 1 | Material Consumed (Net of Excise duty) (800 – 73) | 727 |
| 2 | Direct Wages and Salaries | 200 |
| 3 | Direct Expenses | 100 |
| 4 | Works Overheads | 100 |
| 5 | Quality Control Cost | - |
| 6 | Research and Development Cost | - |
| 7 | Administrative Overheads (Relating to production capacity) | 50 |
| 8 | Total (1 to 7) | 1,177 |
| 9 | Less - Credit for Recoveries/Scrap/By-Products/Misc Income | - |
| 10 | Cost of Production (8-9) | 1,177 |
| 11 | Add - 10% as per Rule 8 | 118 |
| 12 | Assessable Value | 1,295 |
| 13 | Excise duty @ 12% of ₹ 1,295 | 155.40 |
| 14 | Education Cess @ 2% of ₹ 129.5 | 3.11 |
| 15 | SHEC @ 1% on ₹ 129.5 | 1.55 |
| | Total Duty Liability | 160 |

Note –

- (1) Indirect labour and indirect expenses have been included in Works Overhead
- (2) In absence of any information, it is presumed that administrative overheads pertain to production activity.
- (3) Actual profit margin earned is not relevant for excise valuation.

Question 6

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(a) How would you arrive at the assessable value for the purpose of levy of excise duty from the following particulars :

- Cum-duty selling price exclusive of sales tax ₹ 20,000
- Rate of excise duty applicable to the product 12.36%
- Trade discount allowed ₹ 2,400
- Freight ₹ 1,500

(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 (DPE) Rules, 2000 –

Direct material - ₹ 11,600,

Direct Wages & Salaries - ₹ 8,400,

Works Overheads - ₹ 6,200,

Quality Control Costs - ₹ 3,500,

Research and Development Costs - ₹ 2,400,

Administrative Overheads - ₹ 4,100,

Selling and Distribution Costs ₹ 1,600,

Realisable Value of Scrap - ₹ 1,200.

Administrative overheads are in relation to production activities.

Material cost includes Excise duty ₹ 1,054.

Solution to Question 6(a)

Trade discount of ₹ 2,400 and freight of ₹ 1,500 are allowed as deductions.

Hence, net price will be ₹ 16,100 [₹ 20,000 – 2,400 – 1,500].

Since the price is inclusive of excise duty of 12.36%, Excise Duty will be ₹ $(16,100 \times 12.36) / 112.36$. i.e. ₹ 1,771.05 and Assessable Value will be ₹ 14,329 [16,100 – 1,771.05].

Solution to Question 6(b)

Cost of production is required to be computed as per CAS-4. Material cost is required to be exclusive of CENVAT credit available.

| | Particulars | Total Cost (₹) |
|---|---|----------------|
| 1 | Material Consumed (Net of Excise duty) (11,600 – 1,054) | 10,546 |
| 2 | Direct Wages and Salaries | 8,400 |
| 3 | Direct Expenses | - |
| 4 | Works Overheads | 6,200 |
| 5 | Quality Control Cost | 3,500 |
| 6 | Research and Development Cost | 2,400 |

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| | | |
|-------|---------------------------|---------------|
| 7 | Administrative Overheads | 4,100 |
| Less: | Realisable Value of Scrap | 1,200 |
| | COST OF PRODUCTION | 33,946 |
| | Add: 10% as per Rule 8 | 3,395 |
| | ASSESSABLE VALUE | 37,341 |

Question 7

(a) Determine the value on which Excise duty is payable in the following instances. Quote the relevant section/rules of Central Excise Law.

(i) A Ltd. sold goods to B Ltd., at a value of ₹ 100 per unit, In turn, B Ltd. sold the same to C Ltd. at a value of ₹ 110 per unit. A Ltd. and B Ltd. are related, whereas B Ltd. and C Ltd. are unrelated.

(ii) A Ltd. and B. Ltd. are inter-connected undertakings, under section 2(g) of MRTP Act. A Ltd. sells goods to B Ltd. at a value of ₹ 100 per unit and to C Ltd. at ₹ 110 per unit, who is an independent buyer.

(iii) A Ltd. sells goods to B Ltd. at a value of ₹ 100 per unit. The said goods are captively consumed by B Ltd. in its factory. A Ltd. and B Ltd. are unrelated. The cost of production of the goods to A Ltd. is ₹ 120 per unit.

(iv) A Ltd. sells motor spirit to B Ltd. at a value of ₹ 31 per litre. But motor spirit has administered price of ₹ 30 per litre, fixed by the Central Government.

(v) A Ltd. sells to B Ltd. at a value of ₹ 100 per unit. B Ltd. sells the goods in retail market at a value of ₹ 120 per unit. The sale price of ₹ 100 per unit is wholesale price of A Ltd. Also, A Ltd. and b Ltd. are related.

Depot price of a company are –

| Place of removal | Price at depot on 1-1-2014 | Price at depot on 31-1-2014 | Actual sale price at depot on 1-2-2014 |
|------------------|-------------------------------|--------------------------------|---|
| Amritsar Depot | ₹ 100 per unit | ₹ 105 per unit | ₹ 115 per unit |
| Bhopal Depot | ₹ 120 per unit | ₹ 115 per unit | ₹ 125 per unit |
| Cuttack Depot | ₹ 130 per unit | ₹ 125 per unit | ₹ 135 per unit |

Additional information: (i) Quantity cleared to Amritsar Depot – 100 units (ii) Quantity cleared to Bhopal Depot – 200 units (iii) Quantity cleared to Cuttack Depot – 200 units (iv) The goods were cleared to respective depots on 1-1-2014 and actually sold at the depots on 1-2-2014.

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(b) Determine the transaction value and the Excise duty payable from the following information:

(i) Total Invoice Price ₹ 18,000; (ii) The Invoice Price includes the following :

| | |
|--|-----------------------|
| (a) Sales-tax | ₹ 1000 |
| (b) Surcharge on ST | ₹ 100 |
| (c) Octroi | ₹ 100 |
| (d) Insurance from Factory to depot | ₹ 100 |
| (e) Freight from factory to depot | ₹ 700 |
| (f) Rate of Basic Excise duty | 12% ad valorem |
| (g) Rate of Special excise duty | 24% ad valorem |

Solution to Question 7(a)

(i) Transaction value ₹ 110 per unit (Rule 9 of Transaction value Rules). [Sale to unrelated party].

(ii) Transaction value ₹ 100 per unit for sale to B and ₹ 110 for sale to C – Rule 10 read with Rule 4 [Note that inter connected undertaking will be treated as 'related persons' for purpose of excise valuation only if they are 'holding and subsidiary' or are 'related person' as per any other part of the definition of 'related person'. Note that A is selling directly to C as per the question, and not through B Ltd].

(iii) Transaction value will be ₹ 100. – Section 4(1)—In case of sale to unrelated person, question of cost of production does not arise.

(iv) Transaction value ₹ 31. – Section 4. – Since the goods are actually sold at this price, administered price is not considered.

(v) Transaction value ₹ 120 per unit – Rule 9 read with section 4 of Central Excise Act. Sale to an unrelated buyer. [Under new rules, there is no concept of 'wholesale price and retail price'].

(vi) Under Rule 7, the price prevailing at the Depot on the date of clearance from the factory will be the relevant value to pay Excise duty.

Therefore:

(i) Clearance to Amritsar depot will attract duty based on the price as on 1-1-2014.
Transaction value ₹ 110 × 100 units = ₹ 11,000

(ii) Clearance to Bhopal depot. Depot price on 1-1-2014. Transaction value ₹ 120 × 200 units = ₹ 24,000

(iii) Clearance to Cuttack Depot. Depot price on 1-1-2014. Transaction value ₹ 130 × 200 units = ₹ 26,000.

Note: The relevant date is 1-1-2014, since the goods were cleared to the depots on that date. No additional duty is payable even if goods are later sold from depot at higher price.

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Solution to Question 7(b)

Let us assume that the Invoice Price of ₹ 18,000 is depot price. Thus, deduction of insurance and transport charges from factory to depot will not be available.

The deductions available will be :

- Sales Tax ₹ 1,000; Surcharge on Sales Tax ₹ 100; and Octroi ₹ 100

Thus, net price excluding taxes on final product (but inclusive of excise duty) will be ₹ 16,800.

The rate of excise duty is 37.08% [12% basic plus 24% special plus 3% Education Cess].

Hence, duty payable is as follows –

Assessable Value = 16,800 – 4,544 = ₹ 12,256

Check: Excise duty payable (basic plus special) is 37.08% of ₹ 12,256 i.e. ₹ 4,544.

Question 8

(a) Having regard to the provisions of section 4 of the Central Excise Act, 1944, compute/derive the assessable value of excisable goods, for levy of duty of excise, given the following information:

| | Amount(₹) |
|---|----------------|
| Cum-duty wholesale price including sales tax of ₹ 2,500 | 15,000 |
| Normal secondary packing cost | 1,000 |
| Cost of special secondary packing | 1,500 |
| Cost of durable and returnable packing | 1,500 |
| Freight | 1,250 |
| Insurance on freight | 200 |
| Trade discount (normal practice) | 1,500 |
| Rate of C.E. duty as per C.E. Tariff | 12% Ad-valorem |

State in the footnote to your answer, reasons for the admissibility or otherwise of the deductions.

(b) Thunder TV Ltd is engaged in the manufacture of colour television sets having its factories at Bangalore and Pune. At Bangalore the company manufactures picture tube; which are stock transferred to Pune factory where it is consumed to produce television sets. Determine the Excise duty liability of the captively consumed picture tubes from the following information:

| | |
|---------------------------------|-------|
| Direct material cost (per unit) | ₹ 600 |
| Indirect material | ₹ 50 |
| Direct Labour | ₹ 100 |
| Indirect Labour | ₹ 50 |
| Direct Expenses | ₹ 100 |
| Indirect Expenses | ₹ 50 |
| Administrative overheads | ₹ 50 |

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Selling and Distribution overheads

₹ 100

Additional Information:

1. Profit margin as per the Annual Report for the company for 2008-2009 was 15% before income tax.
2. Material cost includes Excise duty paid ₹ 100.
3. Excise duty rate applicable is 12.36%.

Solution to Question 8 (a):

The assessable value from cum-duty price can be worked out by the under-mentioned formula.

Computation of Assessable value

| | ₹ | ₹ |
|---|--------------|------------------------|
| Cum-duty price | | 15,000 |
| Less : Deductions (See Notes) | | |
| Sales tax | 2,500 | |
| Durable & returnable-packing | 1,500 | |
| Freight | 1,250 | |
| Insurance | 200 | |
| Trade-Discout | <u>1,500</u> | <u>6,950</u> |
| | | 8,050 |
| Less: Central Excise Duty thereon @ 12.36% Ad-valorem | | |
| $8,050 \times 12.36/100$ | | <u>885.53</u> |
| Assessable value | | <u>7,164.47</u> |

Notes:

1. The transaction value does not include Excise duty, Sales tax and other taxes.
2. The Excise duty is to be charged on the net price, hence trade discount is allowed as deduction.
3. With regards to packing, all kinds of packing except durable and returnable packing is included in the assessable value. The durable and returnable packing is not included as the such packing is not sold and is durable in nature.
4. Freight and insurance on freight will be allowed as deduction only if the amount charged is actual and it is shown separately in the invoice as per Rule 5 of the Central Excise Valuation Rules, 2000.

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Solution to Question 8 (b):

As per Rule 8 of The Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, the valuation of captively consumed goods is 110% of the cost of production. The cost of production of goods would include cost of material, labour cost and overheads including administration cost and depreciation etc.

The cost of material would be net of excise duty if CENVAT credit is availed in respect of such inputs.

Accordingly, the assessable value will be determined as follows :

| | | |
|---|----------|-------------------|
| Raw materials Cost (net of excise duty) | ₹ | 500 |
| Indirect material | ₹ | 50 |
| Direct Labour | ₹ | 100 |
| Indirect Labour | ₹ | 50 |
| Direct Expenses | ₹ | 100 |
| Indirect Expenses | ₹ | 50 |
| Administrative overheads | ₹ | <u>50</u> |
| Total cost of production | ₹ | <u>900</u> |
| Assessable value | ₹ | 990 |
| (i.e. 110% of the cost of production) | | |
| Excise duty @ 12% | ₹ | 118.80 |
| Add: Education Cess @ 2% | ₹ | 2.37 |
| Add: SHEC @ 1% | Re. | 1.18 |
| Total Duty Liability = ₹122.364 | | |

The raw material cost has been taken at ₹ 500 after deducting the duty element assuming that the CENVAT credit has been availed.

Question 9

(a) From the following data, determine the CENVAT allowable if the goods are produced or manufactured in a FTZ or by a 100% EOU and used in any other place in India.

Assessable value : ₹ 770 per unit,

Quantity cleared 77,770 units,

BCD - 12%,

CVD – 10%

(b) M/S RPL has three units situated in Bangalore, Delhi and Pune. The total clearances from all these three Small Scale units of excisable goods were ₹ 350 lakhs during the financial year, 2013-2014. However, the value of individual clearances of excisable goods from each of the said units was Bangalore Unit ₹ 150 lakhs; Delhi Unit ₹ 100 lakhs; and Pune Unit ₹ 1000 lakhs.

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Discuss briefly with reference to the Notifications governing small scale industrial undertakings under the Central Excise Act, 1944 whether the benefit of exemption would be available to M/s RPL for the financial year, 2014-2015.

Solution to Question 9 (a):

As per Rule 3 of CENVAT Credit Rules, 2002 the following formula is to be used if a unit in DTA purchases goods from EOU –

$$\text{CENVAT} = 50\% \text{ of Assessable value} \times \{[1 + \text{BCD}/100] \times \text{CVD}/100\}$$

Hence, CENVAT Available per unit is as follows –

$$\begin{aligned} \text{CENVAT} &= 0.50 \times 770 \times \{[1 + 12/100] \times 10/100\} \\ &= 385 \{1.12 \times .10\} \\ &= ₹ 43.12 \text{ per unit} \end{aligned}$$

$$\text{Hence, CENVAT allowable on 77,770 units} = 77,770 \times 43.12 = ₹33,53,442.40$$

Solution to Question 9 (b):

Any SSI unit whose turnover was less than ₹400 Lakhs in the previous year is entitled for exemption irrespective of their investment in plant & machinery or number of employees.

Where the manufacturer has more than one factory, the turnover of all factories will have to be clubbed together for the purpose of calculating the SSI exemption limit of ₹ 400 lakhs.

Since in the above case, the total value of clearances during the preceding financial year 2013-2014 is 350 lakhs, hence it will be entitled for the SSI benefit.

Question 10

(a) An assessee has factory in Kolkata. As a sales policy, he has fixed uniform price of ₹ 2,000 per piece (excluding taxes) for sale anywhere in India. Freight is not shown separately in his invoice. During F.Y. 2011-12, he made following sales –

- (i) Sale at factory gate in Kolkata – 1,200 pieces – no transport charges
- (ii) Sale to buyers in Gujarat – 600 pieces – actual transport charges incurred – ₹ 28,000
- (iii) Sale to buyers in Bihar – 400 pieces – actual transport charges incurred – ₹ 18,000
- (iv) Sale to buyers in Kerala – 1,000 pieces – Actual transport charges – ₹ 54,800.

Find assessable value.

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- (b) An importer imports some goods @ 10,000 US \$ on CIF basis. Following dollar rates are available on the date of presentation of bill of entry : (a) RBI Floor rate : ₹ 43.21 (b) Inter-bank closing rate : ₹ 43.23 (c) Rate notified by CBE&C under section 14 (3) (a) (i) of Customs Act : ₹ 44.66 (d) Rate at which bank has realised the payment from importer : ₹ 44.02.

Find the assessable value for customs purposes.

Solution to Question 10(a)

The total pieces sold are 3,200 (1,200 + 600 + 400 + 1000). The actual total transport charges incurred are ₹ 1,00,800 (Nil + 28,000 + 18,000 + 54,800). Thus, equalized (averaged) transport charges per piece are ₹ 31.50. Hence assessable value will be ₹ 1968.50 (₹ 2,000 – ₹ 31.50). This will apply to all 3,200 pieces sold by the manufacturer.

Solution to Question 10(b)

The relevant exchange rate is ₹ 44.66. Thus, CIF Value of goods is ₹ 4,46,000. Landing charges [rule 9 (2) of Customs Valuation Rules] @1% of CIF Value are to be added - i.e. ₹ 4,460. Thus, Customs Value or Assessable Value is ₹ 4,50,460.

Question 11

- (a) An assessee cleared various manufactured final products during June 2011. The duty payable for June 2013 on his final products was as follows – Basic – ₹ 2,00,000; Education Cesses – As applicable. During the month, he received various inputs on which total duty paid by suppliers of inputs was as follows – Basic duty – ₹ 50,000, Education Cess – ₹ 1,000, SAH education Cess ₹ 500. Excise duty paid on capital goods received during the month was as follows – Basic duty – ₹ 12,000. Education Cess - ₹ 240. SAH education cess - ₹ 120. Service tax paid on input services was as follows – Service Tax – ₹ 10,000. Education cess – ₹ 200 SAH Education Cess - ₹ 100. How much duty the assessee will be required to pay by GAR-7 challan for the month of June 2013, if assessee had no opening balance in his PLA account? What is last date for payment?
- (b) In aforesaid example, calculate duty payable by GAR-7 challan if assessee had following balance in his PLA account on 6-6-2013 (after debiting utilised amount for payment of duty for May 2013) - Basic duty - ₹ 1,70,000, Service tax - ₹ 30,000. Education Cess - ₹ 4,000. SAH Education Cess - Nil.

Solution to Question 11(a)

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

The Cenvat credit available for June 2011 is as follows –

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

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

Hence, duty payable through GAR-7 challan for June 2009 is as follows –

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

Last date for payment is 5th July, 2013.

Solution to Question 11(b)

If credit was available on 1-6-2013, the total CENVAT credit available for June 2013 is as follows :

| Description | Basic duty | Service Tax | Education Cess | SAH Education Cess |
|--|-----------------|---------------|----------------|--------------------|
| Opening balance | 1,70,000 | 30,000 | 4,000 | Nil |
| Inputs | 50,000 | | 1,000 | 500 |
| Capital Goods (50% will be eligible and balance next year) | 6,000 | | 120 | 60 |
| Input Service | | 10,000 | 200 | 100 |
| Total | 2,26,000 | 40,000 | 5,320 | 660 |

The duty payable will be as follows :-

Hence, duty payable through GAR-7 challan for June 2011 is as follows –

| | Basic Duty | Education Cess | SAH Education Cess |
|--|------------|----------------|--------------------|
| (A) Duty payable | 2,00,000 | 4,000 | 2,000 |
| (b) Cenvat Credit (basic plus service tax) | 2,66,000 | 5,320 | 660 |
| Net amount payable (A-B) | (-)66,000 | (-),1,120) | 1,340 |

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The credit of education cess of ₹1,120 is to be carried forward since the credit cannot be utilised for payment of any other duty. Credit of basic duty can be utilised for payment of SAH education cess. Hence, the balance left in basic duty account will be ₹64,660.

Thus, no basic excise duty is required to be paid for the month of June 2013. Balance carried forward will be as follows - (a) Basic duty - ₹ 64,660 (b) Education Cess - ₹ 1,120.

Question 12

- (a) An importer imports some goods @ 10,000 US \$ on CIF basis. Following dollar rates are available on the date of presentation of bill of entry : (a) RBI Floor rate : ₹ 43.21 (b) Inter-bank closing rate : ₹ 43.23 (c) Rate notified by CBE&C under section 14 (3) (a) (i) of Customs Act : ₹ 44.66 (d) Rate at which bank has realised the payment from importer : ₹ 44.02. Find the assessable value for customs purposes.
- (b) A consignment is imported by air. CIF price is 4,000 US Dollar. Freight is 1,280 US \$. Insurance cost was \$ 140. Exchange rate is same as above. Find Value for customs purposes.

Solution to Question 12(a)

The relevant exchange rate is ₹ 44.66. Thus, CIF Value of goods is ₹ 4,46,600. Landing charges [rule 9 (2) of Customs Valuation Rules] @1% of CIF Value are to be added - i.e. ₹ 4,466. Thus, Customs Value or Assessable Value is ₹ 4,51,066.

Solution to Question 12(b)

| | |
|------------------------------------|----------------------|
| CIF Price | \$ 4,000 |
| (-) Freight | \$ 1,280 |
| (-) Insurance | \$ 140 |
| FOB Price | \$ 2,580 |
| (+) Freight @ 20% on FOB | \$ 516 |
| (+) Insurance | \$ 140 |
| CIF Value for Customs | \$ 3,236 |
| Equivalent INR USD 3,236 × 44.66 = | ₹ 1,44,519.76 |
| (+) Landing charges @ 1% = | ₹ 1,445.20 |
| | ₹ 1,45,964.96 |

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Question 13

- (a) FOB Cost of a consignment is 6,000 UK Pounds. Insurance and transport costs are not available. What is Customs Value? On the date of filing of bill of entry, Reserve Bank of India reference rate of US \$ was 43.37 and inter-bank closing rates were ₹ 43.38 per US \$ and ₹ 69.38 per UK Pound. Exchange rate announced by Board (CBE&C) by customs notification was ₹ 69.78 per British Pound. T T buying rate was 69.70 and T T selling rate was ₹ 69.61 per UK pound.
- (b) Customs value (Assessable Value) of imported goods is ₹ 4,00,000. Basic Customs duty payable is 10%. If the goods were produced in India, excise duty payable would have been 10%. Education cess is as applicable. Special CVD is payable at appropriate rates. Find the Customs duty payable. What are the duty refunds/benefits available if the importer is (a) manufacturer (b) service provider (c) Trader?

Solution to Question 13 (a)

| | |
|---|-----------------------------|
| FOB Price | \$ 6,000 |
| Add : Freight @ 20% | \$ 1,200 |
| Add : Insurance @ 1.125% on FOB | \$ 67.50 |
| CIF | \$ 7,267.50 |
| Exchange Rate | ₹ 69.78 per \$ |
| CIF Value (in ₹) (\$ 7,267.50×69.78) | ₹ 5,07,126.15 |
| Add : Landing charges @ 1% on CIF Value = | <u>₹ 5,071.26</u> |
| Assessable Value for Customs | <u>₹ 5,12,197.41</u> |

Solution to Question 13 (b)

| | | Duty (%) | Amount (₹) | Total Duty (₹) |
|------------|---|----------|------------------|----------------|
| (A) | Assessable Value | | 4,00,000.00 | |
| (B) | Basic Customs Duty | 10 | <u>40,000.00</u> | 40,000.00 |
| (C) | Sub-Total for calculating CVD '(A+B)' | | 4,40,000.00 | |
| (D) | CVD 'C' × excise duty rate | 10 | 44,000.00 | 44,000.00 |
| (E) | Education cess of excise – 2% of 'D' | 2 | 880.00 | 880.00 |
| (F) | SAH Education cess of excise – 1% of 'D' | 1 | 440.00 | 440.00 |
| (G) | Sub-total for Edu-cess on customs 'B+D+E+F' | | 85,320.00 | |

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| | | | | |
|------------|---|---|-------------|-------------|
| (H) | EduCess of Customs – 2% of 'G' | 2 | 1,706.40 | 1,706.40 |
| (I) | SAH Education Cess of Customs – 1% of 'G' | 1 | 853.20 | 853.20 |
| (J) | Sub-total for Spl CVD 'C+D+E+F+H+I' | | 4,87,879.60 | |
| (K) | Special CVD u/s 3(5) – 4% of 'J' | 4 | 19,515.18 | 19,515.18 |
| (L) | Total Duty | | | 1,07,394.78 |
| (M) | Total duty rounded off | | | 1,07,395.00 |

Question 14

(a) Discuss briefly with reference to decided case laws as to how the 'value' shall be determined under section 14 of the Customs Act, 1962 read with Customs Valuation Rules, 1988 in the following cases :

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

(b) Mr. B, an Indian resident, aged 52 years, returned to India after visiting England on 31.10.2013. He had been to England on 10.10.2013. On his way back to India he brought following goods with him –

- (a) His personal effect like clothes etc. valued at ₹ 40,000.**
- (b) 1 litre of Wine worth ₹ 1,000.**
- (c) A video cassette recorder worth ₹ 11,000**
- (d) A microwave oven worth ₹ 20,000.**

What is the customs duty payable?

Solution to Question 14 (a)

- (i) Where sales are made to buyers at specially reduced prices, the prices so offered cannot be said to be the ordinary prices. In Padia Sales Corporation v Collector of Customs (1993) 66 ELT 35 (SC) the Supreme Court held that where the goods are offered to the buyers is asked not to disclose the specially reduced price to any other party, then the said price will not be acceptable.**
- (ii) Where there is a price rise at the time when the goods are imported in comparison to the price when the contract was made then, the price at the time of importation will be taken to be the value of the goods. In Rajkumar Knitting Mills Pvt. Ltd. v Collector of Customs (1998) 98**

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ELT 292 (SC), the Supreme Court held that the contract price may have bearing while determining the value of the goods, but the value is to be determined at the time of importation of the goods.

- (iii) In *Eicher Tractors Ltd. v Commissioner of Customs, Mumbai* (2000) 122 ELT 321 (SC) the Supreme Court held that the price paid by the importer to the vendor in the ordinary course of commerce shall be taken to be the value of imported goods. Since the buyer and the seller are not related and the price is the sole consideration for sale, the discounted price was taken as the assessable value. However this decision has been nullified by the Customs Valuation Price of Imported Goods Rules, 2002 and consequently, where the sale involves special discounts limited to exclusive agents, such discounted price shall not be accepted as the assessable value.
- (iv) Where high sea sales are made, the price charged by the importer from the assessee will be taken to be the value of the goods. Similar view was expressed by the Tribunal in *Godavari Fertilizers v C.C.Ex.* (1996) 81 ELT 535 (Tri.).

Solution to Question 14 (b)

As per Rule 3 of the baggage Rules, 1998 passengers above 10 years of age and returning after stay abroad of more than 3 days are eligible for the following general free allowance :

- (i) Used personal effects of any amount;
- (ii) Articles other than those mentioned in Annex-I, up to a value of ₹ 35,000, if these are carried on the person or in the accompanied baggage of the passenger;

Therefore, in the instant case, the total customs duty payable by the passenger will be as follows :

| Articles | Duty |
|--|----------|
| 1. Used personal effects | No Duty |
| 2. Wine upto 1 Ltr. can be accommodated in General Free Allowance | ₹ 1,000 |
| 3. Video cassette recorder is dutiable | ₹ 11,000 |
| 4. A microwave oven | ₹ 20,000 |
| Total Dutiable goods imported (that can be accommodated in General Free Allowance) | ₹ 32,000 |
| Total General Free allowance (As per rule 3 of the Baggage Rules) | ₹35,000 |
| Balance Goods on which duty is payable | NIL |
| Duty payable | NIL |

Question 15

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- (a) MsPriya rendered taxable services to a client. A bill of ₹40,000 was raised on 29-4-2013. ₹15,000 was received from a client on 1-7-2013 and the balance on 23/10/2013. No service tax was separately charged in the bill. The questions are: (a) Is MsPriya liable to pay service tax, even though the same has not been charged by her? (b) In case she is liable, what is the value of taxable services and the service tax payable, if service tax rate is 12.36% plus education cess as applicable?
- (b) M/s. ABC & Associates, a firm of Cost and Management Accountants, raised an invoice for ₹38,605 (₹35,000 + service tax of ₹4,326 @ 12.36%) on 12th April, 2013. The client paid lump sum of ₹36,000 on 2nd June, 2013 in full and final settlement: (i) How much service tax M/s. ABC & Associates have to pay and what is the due date for payment of service tax? (ii) What will be the liability if the client refuses to pay service tax and pays only ₹ 35,000?

Solution to Question 15 (a)

She is liable to pay tax, even if tax was not charged separately. ₹ 40,000 will be treated as inclusive of service tax. Hence, 'Value' for service tax is ₹ 35,600 [(₹40,000 × 100)/112.36]. Service tax @ 12.36% is ₹4,400.16, including Education cess is ₹ 85.44 and SAHEducationcess is ₹42.72.

The tax is payable on 5th July, 2013 if paid by cheque/cash and 6th July, 2013 if paid electronically.

Solution to Question 15 (b)

In first case, ₹36,000 is treated as inclusive of service tax @ 12.36%. Hence, making back calculations, service tax will be ₹3,960.12 on value of ₹32,039.87. In second case,

₹35,000 is treated as inclusive of service tax @ 12.36%. Hence, making back calculations, service tax will be ₹3,850.12 on value of ₹31,149.88.

Question 16

- (a) Mr. Deshpande, Cost and Management Accountant rendered taxable service to Vishwa Cement Ltd. In this regard the company sent 200 cement bags free of cost, for the house construction of Mr. Deshpande. Explain how the value of the taxable service will be determined in this case. Will your answer be different if the service had been rendered free of charge?
- (b) Mr. Gombu, a proprietor of Intellect Security Agency received ₹ 100,000 by an account payee cheque, as advance while signing a contract from proceeding taxable services; he received ₹ 5,00,000 by credit card while providing the service and another ₹5,00,000 by a pay

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order after completion of service on January 31, 2014. All three transactions took place during financial year 2013-14. He seeks your advice about his liability towards value of taxable service and the service tax payable by him.

Solution to Question 16 (a)

In first case, value of 200 cement bags will be treated as consideration for services received. It will be treated as gross value of service and service tax will be calculated by making back calculations. In second case, no service tax is payable since 12.36% of Nil is Nil.

Solution to Question 16 (b)

He is liable on entire ₹11 lakhs, presuming that he is not eligible for exemption as small service provider. The entire amount, are to be taken as inclusive of service tax and service tax is payable by back calculations. Assuming service tax rate as 12.36%, the 'value' would be ₹9,78,996.08 and service tax @ 12.36% would be ₹ 1,21,003.92.

Question 17

(a) Mr. X took an accommodation for 6 days in a Hotel at Delhi. Basic Room Rent ₹6,000 per day. Food Bills amounting to ₹ 8,000. Delhi VAT is @ 12.5%. Calculate Total Bill amount to be paid inclusive of Service Charge @ 10% and applicable Service taxes. [Abatement rate is 30%. Service tax on un-abated amount @ 12.36% and on abatement amount @ 3.71%, Delhi VAT @ 12.5%].

(b) Two factories located in the same premises are to be considered as one factory for the purpose of arriving at the aggregate value of clearances in terms of the SSI notification. Explain.

Solution to Question 17(a)

The bill amount shall be computed in the following manner:

| Sl. No | Particulars | Amount (₹) |
|--------|--|------------|
| 1 | Room Rent @ ₹6,000 per day for 6 days | 36,000 |
| 2 | Add: Food Bill | 8,000 |
| 3 | Total of room rent including food bill | 44,000 |
| 4 | Add: Service Charges @ 10% on ₹44,000 | 4,400 |
| 5 | Total including Service Charges | 48,400 |

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| | | |
|----------|---|------------------|
| 6 | Add: Service Tax @ 12.36% on 70 % of ₹44,000 [considering abatement 30%] | 5438.40 |
| 7 | Add: Service Tax @ 3.71% on 30% of ₹44,000 [service tax on the amount claimed as an abatement] | 490 |
| 8 | Add: VAT @ 12.5% on 30% of ₹44,000 | 1,650 |
| | Total Bill Amount [5+6+7+8] | 55,978.40 |

Solution to Question 17(b)

Situs of a factory alone should not be considered as the sole criterion for clubbing its clearances with the other factory's clearances. The clubbing of clearances is dependent upon the facts and circumstances of each case. Two factories located in the same premises with common boundaries cannot be treated as one factory for the purpose of SSI exemption if they had separate staff, management passage, separate entrance with separate central excise registration and produced different end products.

Mere common boundary did not make them as one factory even though at the apex level both the factories are maintained by one company. [Rollantainers Ltd. 170 ELT 257(SC)]

Question 18

(a) Can SSI avail CENVAT Credit? Explain the transitional provision, when the SSI unit starts availing the exemption.

(b) An SSI unit has effected clearances of goods of the value of ₹575 lakhs during the financial year 2013-14. The said clearances include the following:

- (i) Clearance of excisable goods without payment of duty to a 100% EOU: ₹ 110 lakhs**
- (ii) Job work in terms of Notification No.214/86 CE which is exempt from duty: ₹ 75 lakhs**
- (iii) Export to Nepal and Bhutan: ₹50 lakhs**
- (iv) Goods manufactured in rural area with the brand name of others: ₹90 lakhs**

Examine whether SSI benefit of exemption would be available to the unit for the financial year 2014-15.

Solution to Question 18(a)

The assessee shall not avail input credit of excise duty paid on input services are used in relation to manufacture of clearances , till the aggregate clearances do not exceed ₹150 lakhs [notification no.8/2003]. CENVAT credit availed on inputs shall be reversed, if such input services

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are used in relation to manufacture of clearances, which are exempt based on the said notification. [Rule 6 of CENVAT Credit Rules,2004]

CENVAT credit can be availed on capital goods but has to be utilized only after the aggregate value of the clearances cross the limit of ₹150 lakhs.[Rule 6(4) of the CENVAT Credit Rules,2004].

Transitional provisions- for availing exemption: an eligible person who has been paying excise duty but wishes to avail SSI exemption, should pay an amount equivalent to CENVAT credit taken on inputs lying in stock or in process or contained in final product lying in stock on the date of exercising the SSI option.

Example:

In March, 2014, a company purchased goods worth ₹1,50,000 plus ₹30,000 as Excise Duty. It contained the whole duty paid as credit for that month. Half of the stock is still not consumed as on 31st March,2014. On 1st April,2014, the unit opts for SSI exemption. In this case, it has to pay Excise duty of ₹15,000 before claiming exemption.

Solution to Question 18(b)

Computation of Value of Clearances

| Particulars | ₹inlakhs | ₹inlakhs |
|--|----------|---------------|
| Value of clearance certified | | 575.00 |
| Less: | | |
| (i) Clearance to 100% EOU – excluded from the limit | | 110.00 |
| (ii) Clearance of exempt turnover | | 75.00 |
| Value of clearance as per notification | | 390.00 |

Clearance of excisable goods without payment of duty to a 100% EOU and job work amounting to manufacture done under specific notification 214/86 are not to be excluded in computation of turnover limit of ₹400 lakhs.

The total value of clearances for the financial year 2013-14 has not exceeded ₹400 lakhs. Therefore, the unit is SSI for the financial year 2011-12, i.e. it is eligible to avail the benefit of exemption.

Question 19

(a) Basic Ltd. is a SSI which is producing 'Active' , a tonic for growing children. Under the Annual Report for the financial year 2011-12, the unit shows a gross sales turnover of ₹1,89,20,000. The product 'Active' attracts excise duty @ 12% and sales tax @ 10%. Calculate the duty liability under notification no.8/2003.

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(b) State the various types of bonds required for different circumstances in Excise Law.

Solution to Question 19(a)

Computation of duty liability under Notification No.8/2003

| Particulars | Amount (₹) |
|---|-------------------|
| Gross Sales Turnover (including ED & Sales Tax) | 1,89,20,000 |
| Sales Tax on first `150 lakhs clearance = `150 lakhs x 5% [for first 150 lakh clearances, excise duty is NIL and sales tax is 5%] | 7,50,000 |
| Balance sales (including excise duty and sales tax) = [1,89,20,000 (1,50,00,000 + 7,50,000)] | 31,70,000 |
| Less: Sales Tax on the balance sales = 31,70,000 x 10/110 (since sales tax already included) | 2,88,182 |
| Cum-duty sales value | 28,81,818 |
| Excise duty (including 3% Cess) | 3,17,010.24 |
| Add: Education Cess @ 2% | 6,340.20 |
| Add: SHEC @1% | 3,170.10 |
| Total Excise Duty payable | 3,26,520.54 |

Solution to Question 19(b)

The following are the bonds required for different circumstances under Excise law:

- (i)** B1 Surety/Security (General Bond) – for export of goods without payment of duty under Rule 19
- (ii)** B2 Bond Surety/Security (General Bond) – for provisional assessment
- (iii)** B3 Bond Surety/Security – to obtain central excise stamp on credit (however, at present, this bond is of academic importance only)
- (iv)** B11 - Bond Surety/Security- for provisional release of seized goods
- (v)** B17 Bond (General) Surety/Security – composite bond for EPZ/100% EOU's for assessment, export, accounting and disposal of excisable goods obtained free of duty.

Question 20

(a) What are the returns to be filed by the Assessee under the Excise Law?

(b) What does the return forms under central excise law signify?

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Solution to Question 20 (a)

Central Excise Rules (CER),2002; CENVAT Credit Rules,2004 (CCR)

| Rule | Assessee Liable to comply | Frequency | Form No. | Due Date |
|--|---|---|-------------------|--|
| Return for Removal of Goods | | | | |
| 17(3) CER | 100% EOU for removals made in DTA | Monthly Return | ER-2 | 10 th of the following month |
| 12(1) CER | SSIs | Quarterly | ER-3 | 10 th of the month following the immediately preceding quarter ended [e.g. April-June quarter, to be submitted within 10 th July] |
| 12(1) CER | Assesses manufacturing processed yarn/unprocessed fabrics | Quarterly return | ER-3 | 20 th of the month following the quarter |
| 12(1) CER | Other Assessee's (not covered above) | Monthly return | ER-1 | 10 th of the following month |
| 9A(3)CCR | All Assesseees (information on principal inputs) | Monthly return | ER-6 | 10 th of the following month |
| 12(1) CER | Assesseees, availing exemption under notification no.1/2011 dated 1 st March,2011 (notification no.8/2011 dated 24 th March,2011) | Quarterly return | ER-1 | 10 th of the following month from the end of the previous quarter |
| Declaration | | | | |
| Notification No.36/2001 dated 26.06.2001 | Manufacturer of Nil rated or exempted goods | Declaration by persons exempt from registration | No specified form | Before the commencement of manufacture of such goods |
| | Persons availing SSI exemption- if value of clearances in preceding financial year is `90 lakhs or more | | | Not applicable |
| Annual Statement | | | | |
| 12(2) CER | Assessee's who have paid ED of `1 crore or more (through PLA and/or CENVAT credit) | Annual Financial Information Statement | ER-4 | 30 th November of the succeeding financial year |

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| | | | | |
|------------|----------------|--|------|---|
| 94(1) CCR | | Annual information on principal inputs | ER-5 | 30 th April of each financial year |
| 12(2A) CER | All Assesseees | Annual Installed Capacity of Factory | ER-7 | 30 th April of the succeeding financial year |

Solution to Question 20 (b)

| Form No. | Particulars | Returns under |
|-----------------|---|---------------------------|
| ER 1/ER 3 | Monthly returns | Central Excise Rules,2002 |
| ER 2 | Details regarding inputs and capital goods received without payment of duty by 100% EOU | Central Excise Rules,2002 |
| ER 4 | Annual Financial Information Statement | Central Excise Rules,2002 |
| ER 5 | Annual Information on Principal Inputs | CENVAT Credit Rules,2004 |
| ER 6 | Monthly Information on Principal Inputs | CENVAT Credit Rules,2004 |
| ER 7 | Annual Installed Capacity Statement | Central Excise Rules,2002 |

Question 21

(a) Mr. Deepak Sharma retired from the services of M/s Erudite Ltd. on 31.01.2014, after completing service of 30 years and one month. He had joined the company on 01.01.1984, at the age of 30 years and received the following on his retirement:

(i) Gratuity ₹6,00,000. He was covered under the Payment of Gratuity Act, 1972.

(ii) Leave encashment of ₹3,30,000 for 330 days leave balance in his account. He was credited 30 days leave for each completed year of service.

(iii) As per the scheme of the company, he was offered a car which was purchased on 01.02.2011, by the company for ₹5,00,000. Company had recovered ₹2,00,000 from him for the car. Company depreciates the vehicles at the rate of 15% on Straight Line method.

(iv) An amount of ₹3,00,000 as communication of pension for 2/3 of his pension commutation.

(v) Company presented him a gift voucher worth ₹6,000 on his retirement.

(vi) His colleagues also gifted him a LCD TV worth ₹50,000 from their own contribution.

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Following are the other particulars:

- (i) He has drawn a basic salary of ₹20,000 and 50% dearness allowance per month for the period 01.04.2013 to 31.03.2014.
- (ii) Received pension of ₹5,000 per month for the period 01.02.2014 to 31.03.2014 after commutation of pension.

Compute his taxable salary from the above for the Assessment Year 2014-15.

- (b) Two brothers Avinash and Prakash are co-owners of a house property with equal share. The property was constructed during the financial year 1998-1999. The property consisted of eight identical units and is situated at Mangalore.

During the financial year 2013-14, each co-owner occupied one unit for residence and the balance of six units were let out at a rent of ₹12,000 per month per unit. The municipal value of the house property is ₹9,00,000 and the municipal taxes are 20% of municipal value, which were paid during the year. The other expenses were as follows:

- (i) Repairs - ₹40,000.
- (ii) Insurance Premium paid - ₹15,000.
- (iii) Interest payable on loan taken for construction of house - ₹3,00,000.

One of the let out units remained vacant for four months during the year.

Avinash could not occupy his unit for six months, as he was transferred to Hyderabad. He does not own any other house.

Compute the income under the head "Income from House Property", for Mr. Avinash and Mr. Prakash.

Solution to Question 21(a)

Computation of Gross Total Income of Mr. Deepak Sharma, for the A.Y 2014-15

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| Particulars | Note No. | Amount (₹) |
|--|----------|-----------------|
| Basic Salary (₹20,000 × 10) | | 2,00,000 |
| Dearness Allowance = 50% of Basic Salary | | 1,00,000 |
| Gift Voucher | 1 | 6,000 |
| Transfer of car | 2 | 56,000 |
| Gratuity | 3 | 80,769 |
| Leave Encashment | 4 | 1,30,000 |
| Uncommuted Pension (₹5000 × 2) | | 10,000 |
| Commuted Pension | 5 | 1,50,000 |
| TAXABLE SALARY | | 7,32,769 |

NOTE:

- As per Rule 3(7)(iv) of the Income Tax Rules, the value of any gift or voucher or token in lieu of gift received by the employee or by member of his household not exceeding ₹5,000 in aggregate during the previous year is exempt. In this case, the amount was received on retirement and the sum exceeds the limit of ₹5,000.

Therefore, the entire amount of ₹6,000 is taxable as a perquisite.

- The taxable value of perquisite under Rule 3(7)(viii), in respect of transfer of car, has been computed as follows:

| Particulars | Amount (₹) |
|---------------------------------|------------|
| Purchase Price as on 01.02.2011 | 5,00,000 |
| Less: Depreciation @ 20% | 1,00,000 |
| WDV as on 31.01.2012 | 4,00,000 |
| Less: Depreciation @ 20% | 80,000 |
| WDV as on 31.01.2013 | 3,20,000 |
| Less: Depreciation @ 20% | 64,000 |
| WDV as on 31.01.2014 | 2,56,000 |
| Less: Amount received | 2,00,000 |
| Value of perquisite | 56,000 |

3. Taxable Gratuity

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| Particulars | Amount (₹) | Amount (₹) |
|---|------------|---------------|
| Gratuity received | | 6,00,000 |
| Less: Exemption under Section 10(10) – Least of the following | | |
| (i) Notified Limit | 10,00,000 | |
| (ii) Actual Gratuity | 6,00,000 | |
| (iii) $15/26 \times 30,000 \times 30$ | 5,19,231 | 5,19,231 |
| Taxable Gratuity | | 80,769 |

4. Taxable Leave Encashment

| Particulars | Amount (₹) | Amount (₹) |
|---|------------|-----------------|
| Leave Salary received | | 3,30,000 |
| Less: Exemption under Section 10(10AA) – Least of the following | | |
| (i) Notified Limit | 3,00,000 | |
| (ii) Actual Gratuity | 3,30,000 | |
| (iii) 10 months × ₹20,000 (assuming that dearness allowance does not form part of pay for retirement benefit) | 2,00,000 | |
| (iv) Cash equivalent of leave of credit ($330/30 \times 20,000$) | 2,20,000 | 2,00,000 |
| Taxable Leave Encashment | | 1,30,000 |

5. Commuted Pension

| Particulars | Amount (₹) | Amount (₹) |
|--|------------|-----------------|
| Amount received | | 3,00,000 |
| Less: Exemption under Section 10(10A) = $1/3 [3,00,000 \times 3/2]$ | | 1,50,000 |
| Taxable Amount | | 1,50,000 |

6. The taxability provisions under Section 56(2)(vii) are not attracted in respect of LCD TV received from colleagues, since television is not included in the definition of property therein.

Solution to Question 21(b)

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Computation of income from house property for the A.Y 2014-15

| Particulars | Avinash (₹) | Prakash (₹) |
|--|-----------------|-----------------|
| Income from House Property | | |
| I. Self-Occupied Portion (25%) | | |
| Annual Value | Nil | Nil |
| Less: Deduction under Section 24(b) | | |
| Interest on loan taken for construction ₹37,500 (being 25% of ₹1.5 Lakh) restricted to a maximum of ₹30,000 for each co-owner, since the property was constructed before 01.04.1999 | 30,000 | 30,000 |
| Loss from self occupied property | (30,000) | (30,000) |
| II. Let-out Portion (75%) [Note] | 1,25,850 | 1,25,850 |
| Income from House Property | 95,850 | 95,850 |

Working Note:

| | | |
|---|----------|-----------------|
| Let-out Portion (75%) | | |
| Gross Annual Value | | |
| Higher of: | 6,75,000 | |
| (i) Municipal Value (75% of ₹9 Lakh) | 8,16,000 | 8,16,000 |
| (ii) Actual Rent [(₹12,000 × 6 × 12) – (₹12,000 × 1 × 4)] | | |
| Less: Municipal taxes (75% × 20% × ₹9 Lakh) | | 1,35,000 |
| Net Annual Value | | 6,81,000 |
| Less: Deduction under Section 24 | | |
| (i) 30% of NAV | 2,04,300 | |
| (ii) Interest on loan taken for house (75% of ₹3 Lakh) | 2,25,000 | 4,29,300 |
| Income from let-out portion | | 2,51,700 |
| Share of each co-owner (50%) | | 1,25,850 |

Question 22

(a) Mr. Vishnu carries on his own business. An analysis of his trading and profit & loss for the year ended 31-3-2014 revealed the following information:

(1) The net profit was ₹ 11,20,000.

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- (2) The following incomes were credited in the profit and loss account :
- (i) Dividend from UTI: ₹ 22,000.
 - (ii) Interest on debentures: ₹ 17,500.
 - (iii) Winnings from races: ₹ 15,000.
- (3) It was found that some stocks were omitted to be included in both the opening and closing stocks, the value of which were:
- Opening stock: ₹ 8,000.
- Closing stock: ₹ 12,000.
- (4) ₹ 1,00,000 was debited in the profit and loss account, being contribution to a University approved and notified under Section 35(1)(ii).
- (5) Salary includes ₹ 20,000 paid to his brother which is excess, as compared to market standards, to the extent of ₹ 2,500.
- (6) Advertisement expenses include 15 gift packets of dry fruits costing ₹ 1,000 per packet presented to important customers.
- (7) Total expenses on car was ₹ 78,000. The car was used both for business and personal purposes. $\frac{3}{4}$ th is for business purposes.
- (8) Miscellaneous expenses included ₹ 30,000 paid to Roadtravel Co., a goods transport operator in cash on 31-1-2014 for distribution of the company's product to the warehouses.
- (9) Depreciation debited in the books was ₹ 55,000. Depreciation allowed as per Income-tax Rules, 1962 was ₹ 50,000.
- (10) Drawings ₹ 10,000.
- (11) Investment in NSC ₹ 15,000.

Compute the total income of Mr. Vishnu for the A.Y 2014-15.

- (b) Ms. Shruti Sharma, an individual resident Indian, aged 62 years, frequently visits foreign countries to conduct motivational seminars and receives honorarium of ₹ 4,00,000 for the same. Tax of ₹ 40,000 was deducted in the foreign country. India did not have any double taxation avoidance agreement with that foreign country. The particulars of income earned in India are stated as follows:
- (i) In India, her total income amounted to ₹12,00,000.
 - (ii) Contribution to the Public Provident fund - ₹ 1,50,000.
 - (iii) Contribution to the approved Pension Fund of LIC- ₹ 70,000.
 - (iv) Contribution to Central Government Health Scheme during the previous year- ₹36,000.

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- (v) Payment of medical Insurance premium, for mother (who is not dependent on her) – ₹21,000.

Compute the tax liability of Ms. Shruti Sharma for the Assessment Year 2014-15.

Solution to Question 22(a)

Computation of total income of Mr. Vishnu for the A.Y. 2014-15

| Particulars | ₹ |
|--|------------------|
| Profits and gains of business or profession (Working Note 1) | 10,46,500 |
| Income from other sources (Working Note 2) | 32,500 |
| Gross Total Income | 10,79,000 |
| Less: Deduction under Section 80C (Investment in NSC) | 15,000 |
| Total Income | 10,64,000 |

Working Notes:

1. Computation of profits and gains of business or profession

| Particulars | ₹ | ₹ |
|--|--------|-----------|
| Net profit as per profit and loss account | | 11,20,000 |
| Add: Expenses debited to profit and loss account but not allowable as deduction | | |
| Salary paid to brother disallowed to the extent considered unreasonable [Section 40A(2)] | 2,500 | |
| Motor car expenses attributable to personal use not allowable (₹ 78,000 x ¼) | 19,500 | |
| Depreciation debited in the books of account | 55,000 | |
| Drawings (not allowable since it is personal in nature) [Note (iii)] | 10,000 | |
| Investment in NSC [See Note(iii)] | 15,000 | 1,02,000 |
| | | 12,22,000 |
| Add: Under statement of closing stock | | 12,000 |

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| | | | |
|---|--------|-----------|-----------|
| Less: Under statement of opening stock | | 12,34,000 | |
| | | 8,000 | |
| | | 12,26,000 | |
| Less: Contribution to a University approved and notified under Section 35(1)(ii) is eligible for weighted deduction @ 175%. Since only the actual contribution (100%) has been debited to profit and loss account, the additional 75% has to be deducted. | | | 75,000 |
| | | | 11,51,000 |
| Less: Incomes credited to profit and loss account but not taxable as business income | | | |
| Income from UTI [Exempt under Section 10(35)] | 22,000 | | |
| Interest on debentures (taxable under the head "Income from other sources") | 17,500 | | |
| Winnings from races (taxable under the head "Income from other sources') | 15,000 | 54,500 | |
| | | | 10,96,500 |
| Less: Depreciation allowable under the Income-tax Rules, 1962 | | | 50,000 |
| | | | 10,46,500 |

Notes:

- (i) Advertisement expenses of revenue nature, namely, gift of dry fruits to important customers, is incurred wholly and exclusively for business purposes. Hence, the same is allowable as deduction under Section 37.
- (ii) Disallowance under Section 40A(3) is not attracted in respect of cash payment of ₹ 30,000 to Road Travel Co., a goods transport operator, since, in case of payment made for plying, hiring or leasing goods carriages, an increased limit of ₹ 35,000 is applicable (i.e. payment of upto ₹ 35,000 can be made in cash without attracting disallowance under Section 40A(3)).
- (iii) Since drawings and investment in NSC have been given effect to in the profit and loss account, the same have to be added back to arrive at the business income.

2. Computation of "Income from other sources"

| Particulars | ₹ |
|------------------------|--------|
| Interest on debentures | 17,500 |
| Winnings from races | 15,000 |
| | 32,500 |

Note:

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The following assumptions have been made in the above solution:

1. The figures of interest on debentures and winnings from races represent the gross income (i.e., amount received plus tax deducted at source).
2. As per the question, depreciation as per Income-tax Rules, 1962 is ₹ 50,000. It has been assumed that, in the said figure of ₹ 50,000, only the proportional depreciation (i.e., 75% for business purposes) has been included in respect of motor car.

Solution to Question 22(b)

Computation of tax liability of Ms. Shruti Sharma for the Assessment Year 2014-15

| Assessee: Ms. Shruti Sharma | | Assessment Year: 2014-15 | Previous Year: 2013-14 |
|---|----------|--------------------------|------------------------|
| Particulars | ₹ | | |
| Indian Income | | 12,00,000 | |
| Foreign Income | | 4,00,000 | |
| Gross Total Income | | 16,00,000 | |
| Less: Deductions | | | |
| Deposit in PPF [Section 80C] | 1,50,000 | | |
| Contribution to approved Pension Fund of LIC [Section 80CCC] | 70,000 | | |
| | 2,20,000 | | |
| The aggregate deduction under Sections 80C, 80CCC and 80CCD(1) has to be restricted to ₹1,00,000 [Section 80CCE] | 1,00,000 | 1,00,000 | |
| Contribution to Central Government Health Scheme. [Section 80D] (Under Section 80D, the maximum deduction allowed to a senior citizen is ₹20,000) | 20,000 | 20,000 | |
| Medical insurance premium paid for mother [Section 80D] | 20,000 | 20,000 | |
| GROSS DEDUCTIONS | | 1,40,000 | |
| TOTAL INCOME | | 14,60,000 | |
| <u>TAX ON TOTAL INCOME</u> | | | |
| Income Tax payable | 2,63,000 | | |
| Education Cess @ 2% | 5,260 | | |
| Secondary and Higher Education Cess@ 1% | 2,630 | 2,70,890 | |
| Average rate of tax in India [₹2,70,890/14,60,000 x 100] | | 18.55% | |
| Average rate of tax in foreign country [₹40,000/4,00,000 x 100] | | 10% | |
| Rebate under Section 91 shall be limited to the lower of average Indian tax rate or average foreign tax rate | | | |

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| | | |
|---|--|----------|
| Hence, rebate under Section 91 shall be = (₹4,00,000 x 10%) | | 40,000 |
| Tax payable in India (₹2,70,890 - ₹ 40,000) | | 2,30,890 |

Question 23

(a) The Profit & Loss Account of Regal Industries Ltd. for the previous year 2013-14, shows a net profit of ₹ 70 Lakhs after accounting for the following items:

(i) Depreciation of ₹40 Lakhs, was charged in the Profit and Loss Account. This amount included additional depreciation of ₹10 Lakhs on revalued assets. The amount of depreciation chargeable under Section 32 of the Income Tax Act, 1961, amounted to ₹30 Lakhs.

(ii) Interest of ₹10 lakhs due to a financial institution, was not paid before the due date of filing return of income.

(iii) Provision for doubtful debts was made at ₹1 lakh.

(iv) Provision for unascertained liabilities amounted to ₹1 lakh.

(v) ₹6 lakhs was transferred to the General Reserve.

(vi) Net Agricultural Income amounted to ₹20 lakhs.

(vii) ₹ 5 lakhs was withdrawn from reserve created during the financial year 2010-11.

(Book profit was increased by the amount transferred to such reserve in Assessment year 2011 - 12.)

Other Information:

Brought forward loss and unabsorbed depreciation as per books are ₹16 Lakhs and ₹15 Lakhs, respectively.

Compute Minimum Alternate Tax under Section 115JB of the Income Tax Act, 1961 for the A.Y. 2014 - 15.

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(b) Raymond & Weir, a partnership firm consisted of two partners R & W. The partnership firm reported a net profit of ₹14,00,000, before deduction of the following items:

- (1) Salary of ₹40,000 each per month was payable to two working partners of the firm (as authorized by the deed of partnership).
- (2) Depreciation on plant and machinery under Section 32 of the Income Tax Act, 1961 (computed) ₹3,00,000.
- (3) Interest on capital at 15% per annum (as per the partnership deed). The amount of capital eligible for interest ₹ 10,00,000.

Compute:

- (i) Book Profit of the firm under Section 40(b) of the Income Tax Act, 1961.
- (ii) Allowable working partner salary for the assessment year 2014-15, as per Section 40(b) of the Income Tax Act, 1961.

Solution to Question 23(a)

Computation of Book Profit under Section 115JB of the Income tax Act, 1961

Assessee: Regal Industries Limited

Assessment Year: 2014-15

Previous Year: 2013-14

| Particulars | ₹ | ₹ |
|---|-----------|-----------|
| Net Profit as per Profit and Loss account | | 70,00,000 |
| Add: Net Profit to be increased by the following amounts as per Explanation 1 to section 115JB | | |
| Transfer to general reserve | 6,00,000 | |
| Provision for unascertained liabilities | 1,00,000 | |
| Provision for doubtful debts | 1,00,000 | |
| Depreciation charged in the Profit and Loss Account (including the depreciation charged on revalued assets) | 40,00,000 | 48,00,000 |

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| | | |
|--|-----------|------------------|
| Less: Net Profit to be reduced by the following amounts as per Explanation 1 to Section 115JB | | 1,18,00,000 |
| Amount transferred from reserve and credited to profit and loss account [since the book profit was increased by the amount transferred to such reserve in the Assessment Year 2010–11] | 5,00,000 | |
| Depreciation, as per Section 32 of the Income Tax Act, 1961 | 30,00,000 | |
| Net Agricultural Income [Exempt under section 10 (1)] | 20,00,000 | |
| Loss brought forward (₹16 lakhs) or unabsorbed depreciation (₹15 lakhs) as per books, whichever is less | 15,00,000 | |
| | | 70,00,000 |
| Book Profit for computation of MAT under section 115JB | | 48,00,000 |

Computation of Minimum Alternate Tax (MAT) under Section 115JB of the Income Tax Act, 1961

| Particulars | ₹ | ₹ |
|---|--------|-----------------|
| 18.50% of book profit (18.5% of ₹48,00,000) | | 8,88,000 |
| Add: Education cess @ 2% | 17,760 | |
| Secondary and higher education cess @ 1% | 8,880 | 26,640 |
| Minimum Alternate Tax payable under Section 115JB | | 9,14,640 |
| <p>Note – Explanation 1 to section 115JB does not require adjustment of interest not paid before due date of filing return of income, while computing book profit.</p> | | |

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Solution to Question 23(b)

(i) Computation of Book Profit of the firm under Section 40(b) of the Income Tax Act, 1961

| Particulars | Amount (₹) | Amount (₹) |
|--|------------|-----------------|
| Net profit of the firm | | 14,00,000 |
| Less: | | |
| (i) Depreciation under Section 32 of the Income Tax Act, 1961 | 3,00,000 | |
| (ii) Interest @ 12% p.a. [being the maximum allowable as per Section 40(b)] (₹10,00,000 × 12%) | 1,20,000 | 4,20,000 |
| Book Profit | | 9,80,000 |

(ii) Salary actually paid to working partners = ₹ 40,000 × 2 × 12 = ₹9,60,000.

As per the provisions of Section 40(b)(v) of the Income Tax Act, 1961, the maximum allowable salary for the working partners for the A.Y 2014-15, has been computed as follows:

| Particulars | Amount (₹) |
|--|-----------------|
| On the first ₹3,00,000 of book profit [(₹1,50,000 or 90% of ₹3,00,000) whichever is more]. | 2,70,000 |
| On the balance of book profit [60% of (₹9,80,000 - ₹3,00,000)] | 4,08,000 |
| Book Profit | 6,78,000 |

Hence, allowable working partner's salary for the A.Y 2014-15, as per the provisions of Section 40(b)(v) of the Income Tax Act, 1961 is ₹6,78,000.

Question 24

(a) From the following dated furnished by Mr. Soumitra, determine the value of house property built on leasehold land as at the valuation date 31.3.2014:

| Particulars | ₹ |
|--|----------|
| Annual Value as per Municipal valuation | 1,40,000 |
| Rent received from tenant (Property vacant for 3 months during the year) | 1,08,000 |
| Municipal tax paid by tenant | 10,000 |
| Repairs on property borne by tenant | 8,000 |
| Refundable deposit collected from tenant as security deposit which does not carry any interest | 50,000 |

The difference between unbuilt area and specified area over aggregate area is 10.5%.

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(b)

SIPRA Constructions Ltd. is engaged in the construction of residential flats. For the valuation date 31.3.2014, furnishes the following data and requests you to compute the taxable wealth:

- (i) Land in urban area (construction is not permitted as per Municipal laws in force) ₹ 50 lakh.
- (ii) Motor-cars (in the use of company) ₹10lakh.
- (iii) Jewellery (Investment) ₹10 lakh.
- (iv) Cash balance (As per books) ₹3 lakh.
- (v) Bank Balance (As per books) ₹6 lakh.
- (vi) Guest House (Situated in rural area) ₹8 lakhs.
- (vii) Residential flat occupied by Managing Director (Annual remuneration of whom is ₹8 Lakhs excluding perquisites) ₹10 lakhs.
- (viii) Residential house let-out for 100 days in the financial year ₹5 lakhs.
- (ix) Loan obtained for:
 - Purchase of Motor Car ₹3 lakhs
 - Purchase of Jewellery ₹2 lakhs.

Solution to Question 24(a)

Assessee: Mr. Soumitra Valuation Date: 31.3.2014 Assessment Year: 2014-15
Computation of Value of House Property

Step I: Computation of Gross Maintainable Rent(GMR)

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

Step II: Computation of Net Maintainable Rent (NMR)

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

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

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

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

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

Solution to Question 24(b)

Assessee: SIPRA Constructions Ltd. Valuation Date: 31.3.2014 Assessment Year: 2014-15

| Nature of Asset | Amount taxable | Reasons |
|---|-----------------|---|
| | | (₹ Lakhs) |
| Land in Urban Area | NIL | Land in which construction is not permitted as per municipal laws is not an asset u/s 2(ea) |
| Motor-cars | 10 | Motor-car other than those used in the business of hire or held as stock-in-trade is an asset u/s 2(ea) |
| Jewellery | 10 | Not held as stock-in-trade - asset u/s 2(ea) |
| Cash Balance | NIL | Cash as per books - not an asset u/s 2(ea) |
| Bank Balance | NIL | Not an asset u/s 2(ea) |
| Guest House | 8 | Asset u/s 2(ea) |
| Residential Flat Occupied by MD | 10 | Asset u/s 2(ea)-since Gross Annual Salary of Managing Director is greater than ` 5 Lakhs |
| Let-out Residential House Property | 5 | Asset u/s 2(ea) – since not let-out for a period exceeding 300 days |
| TOTAL ASSETS | 43 | |
| Less: Debt incurred in relation to Assets | | |
| 1. Purchase of Motor-car | (3) | |
| 2. Purchase of Jewellery | (2) | |
| NET WEALTH | 38 | |
| Less: Basic Exemption | <u>30</u> | |
| Taxable Net Wealth | <u>8</u> | |

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| | | |
|------------------|-------|--|
| Tax Payable @ 1% | 8,000 | |
|------------------|-------|--|

Question 25

- (a) Compute the amount of tax deduction at source on the following payments made by M/s. Robust Ltd. during the previous year 2013-14, as per the provisions of the Income Tax Act, 1961:

| Sl. No | Date | Nature of Payment |
|--------|------------|---|
| (i) | 01.10.2013 | Payment of ₹2,00,000 to Mr. Vikas, a transporter, who is having PAN. |
| (ii) | 01.11.2013 | Payment of fee for technical services of ₹25,000 and royalty of ₹20,000 to Mr. Deepak, who is having PAN. |
| (iii) | 30.06.2013 | Payment of ₹25,000 to M/s PQR Ltd. for repair of building. |
| (iv) | 01.01.2014 | Payment of ₹2,00,000 made to Mr. Amar for purchase of diaries made according to the specifications of M/s Robust Ltd. However, no material was supplied to such diaries to Mr. Amar by M/s. Robust Ltd. |
| (v) | 01.01.2014 | Payment of ₹1,80,000 made to Mr. Vishwas for compulsory acquisition of his house, as per law of the State Government, |
| (vi) | 01.02.2014 | Payment of commission of ₹6,000 to Mr. Umesh. |

- (b) State in brief the applicability of tax deduction at source provisions, the rate and amount of tax deduction in the following cases for the previous year 2013-14:

(i) Winning by way of jackpot in a horse race ₹1,00,000.

(ii) Payment made by a firm to sub-contractor ₹3,00,000 with outstanding balance of ₹1,20,000 shown in the books as on 31.03.2014.

(iii) Payment made to Chris Gayle, a cricketer, by a newspaper for contribution of articles ₹25,000.

Solution to Question 25(a):

- (i) No tax is required to be deducted at source under **Section 194C** by M/s Robust Ltd. on payment to transporter Mr. Vikas, provided he furnishes his PAN to M/s Robust Ltd.
- (ii) As per **Section 194 J** of the Income Tax Act, 1961, liability to deduct tax is attracted only in case the payment made as fees for technical services and royalty, individually exceed ₹30,000 during the financial year. In the given case, since, the individual payments for fee of technical services ₹25,000 and royalty of ₹20,000, is less than ₹30,000 each, there is no liability to deduct tax at source. It is assumed that no other payment towards fees for technical services and royalty were made during that year to Mr. Deepak.
- (iii) Provisions of **Section 194 C** are not attracted in this case, since the payment for repair of building on 30.06.2013 to M/s. PQR Ltd is less than the threshold limit of ₹30,000.
- (iv) According to **Section 194C** of the Income Tax Act, 1961, the definition of "work" does not include the manufacturing or supply of product according to the specification by customer in case the material is purchased from a person other than the customer.

Therefore, there is no liability to deduct tax at source in respect of payment of ₹2,00,000 to Mr. Amar, since the contract is a contract for 'sale'.

- (v) As per **Section 194LA** of the Income Tax Act, 1961, any person liable for payment to a resident, any sum in the nature of compensation or consideration on account of compulsory acquisition under any law, of any immovable property, is responsible for deduction of tax at source if such payment or aggregate amount of such payments, to the resident during the financial year exceeds ₹2,00,000.

In the given case, no liability to deduct tax at source is attracted as the payment does not exceed ₹2,00,000.

- (vi) As per **Section 194H** of the Income Tax Act, 1961, any person (other than an individual or HUF), who is responsible for paying commission or brokerage to a resident shall deduct tax at source, if the amount of such income or, the aggregate of the amounts of such income credited or paid during the financial year exceeds ₹5,000. Since, the commission payment made to Mr. Umesh exceeds ₹5,000, the provisions of Section 194H are attracted.

The tax to be deducted at source shall be = ₹6,000 × 10% = ₹600.

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Solution to Question 25 (b):

- (i) Provisions for tax deduction at source under Section 194BB of the Income Tax Act, 1961 @ 30% are attracted if the amount exceeds ₹5,000 in respect of income arising by way of winning a jackpot in horse races.

Tax to be deducted = ₹1,00,000 × 30% = ₹30,000.

- (ii) Provisions for tax deduction at source under Section 194C of the Income Tax Act, 1961 are attracted in respect of payment by a firm to a sub-contractor. Under Section 194C of the Income Tax Act, 1961 tax is deductible at the time of credit or payment, whichever is earlier @ 1%, if the payment is made to an individual or HUF and 2% for others.

Assuming that the sub-contractor to whom the payment has been made is an individual and the aggregate amount credited during the year is ₹4,20,000, tax is deductible @ 1% on ₹4,20,000.

Tax to be deducted = ₹4,20,000 × 1% = ₹4,200.

- (iii) As per Section 194-I of the Income Tax Act, 1961, tax is to be deducted at source @ 2% on payment of rent for plant and machinery, only if the payment exceeds ₹1,80,000 during the financial year. Since, rent of ₹1,50,000 paid by a partnership firm does not exceed ₹1,80,000, tax is not deductible.

- (iv) Under Section 194-E the person responsible for payment of any amount to a non-resident sportsman for contribution to articles relating to any game or sport in India in a newspaper shall deduct tax at source @ 20%. Further, since Chris Gayle is a non-resident, education cess @ 2% and secondary and higher education cess @ 1% on TDS would also be added.

Therefore, tax to be deducted = ₹25,000 × 20.60% = ₹5,150.

Question 26

- (a) Aakansha holds 18% shares in a Private Limited Company. She gifted all her shares to her husband Mr. Dolichand on 1.10.2013. After a month, Mr. Dolichand obtained loan of ₹50,000 from the company, when the company's accumulated profit was ₹75,000. What are the tax implications of the above transactions?

- (b) Explain the concept of Reverse Mortgage and discuss its tax implications.

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(c) What is the due date of filling of return of income in case of a non-working partner of a firm whose accounts are not liable to be audited?

Solution to Question 26 (a):

U/s 2(22)(e), payment of any sum by a company in which the public are NOT substantially interested, as advance or loan, to the extent the Company possesses accumulated profits, to a shareholder, who is the beneficial owner of shares with not less than 10% voting power, shall be deemed to be dividend.

In view of the above, since Mr. Dolichand has 18% shareholding in a Private Limited Company, the loan amount of ₹50,000 would be considered as deemed dividend u/s 2(22)(e) in his hands.

Since the shares were gifted to Mr. Dolichand, by his wife, Aakansha, the said amount of ₹50,000 shall be clubbed in his total income of Ms. Aakansha.

Solution to Question 26 (b):

Reverse mortgage is a scheme for the benefit of senior citizens who own a residential house property. The senior citizens can mortgage their house with a scheduled bank or housing finance company, in return for a lump sum amount or for a regular monthly/quarterly/annual income.

Senior citizens can continue to live in the house and receive regular income without the botheration of having to repay the loan. They can use the loan amount for renovation and extension of residential property, family's medical expenditure and emergency expenditure, etc, but not for speculative or trading purpose. The bank will recover the loan along with the accumulated interest by selling the house after the death of the borrower. The excess amount, if any, will be given to the legal heir. However, before resorting to the sale of the house, preference will be given to the legal heirs to repay the loan and interest and vacate the mortgaged property.

Solution to Question 26 (c):

Due date of furnishing return of income in case of non-working partner shall be 31st July of the assessment year whether the accounts of the firm are required to be audited or not. A working partner for the above purpose shall mean an individual who is actively engaged in conducting the affairs of the business or profession of the firm of which he is a partner and is drawing remuneration from the firm.

Question 27

(a) An assessee sustained a loss under the head "Income from House Property" in the previous year relevant to the assessment year 2011-12, which could not be set off against income from any other head in that assessment year. The assessee did not furnish the return of loss within the time allowed u/s 139(1) in respect of the relevant assessment year. However, the

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assessee filed the return within the time allowed u/s 139(4). Can the assessee carry forward such loss for set-off against income from house property of the assessment year 2012-13?

(b) Mr. Janardan furnishes the following data for the previous year ending 31.03.2014:

1. 10,000 unlisted Equity shares of CD Ltd., were sold on 31.05.2013 at ₹500 per share.
2. The above shares were acquired by Mr. Janardan in the following manner:
 - (i) 5000 shares were gifted to him on 01.06.1980. The Fair Market Value as on 01.04.1981, per share was ₹ 50.
 - ii. 2,000 bonus shares were issued by CD Ltd. on 21.07.1985.
 - iii. 3,000 shares were acquired at ₹125 per share on 01.02.1994.
3. A residential house was purchased on 01.05.2014, for ₹25 Lakhs, out of the sale proceeds of the shares. Mr. Janardan was already owning a residential house, before the purchase of this house.

Compute the capital gain chargeable to tax in the hands of Mr. Janardan for the assessment year 2014-15.

Cost inflation Index: Financial year 1993-94= 244, Financial Year 2013-14= 939

(c) Joseph engaged in profession filed his return of income for assessment year 2013-14 on 15th November, 2013. He disclosed an income of ₹4,00,000 in the return. In February, 2014 he discovered that he did not claim certain expenses and filed a revised return on 3rd February, 2014 showing an income of ₹1,80,000 and claiming those expenses. Is the revised return filed by Joseph acceptable?

Solution to Question 27 (a):

Loss u/s 71B and Section 32(2), can be carried forward even if the return of income has been filed after the due date u/s 139(1) but before the time limit u/s 139(4) for filing belated return.

As per Sec. 139(4) of the Act, it states that, where an assessee failed to file return of income for any assessment year within the prescribed time limit u/s 139(1), the belated return can be filed either before:

- ❖ The expiry of one year from the end of the relevant assessment year; or
- ❖ Completion of assessment, whichever is earlier.

In the instant case, the assessee has filed the return of income for the assessment year 2011-12 belatedly but within the time limit u/s 139(4). In view of the above provisions of law, the loss under the head house property, can be carried forward and set off against the income of the assessment year 2012-13.

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Solution to Question 27 (b):

Computation of taxable capital gain of Mr. Janardan for the A.Y 2014-15

| Particulars | Amount(₹) | Amount(₹) |
|--|-----------|------------------|
| Sale consideration received on sale of 10,000 shares | | 50,00,000 |
| Less: Indexed Cost of Acquisition | | |
| (i) 5,000 Shares received as gift (5,000 × ₹50 × 939/100) | 23,47,500 | |
| (ii) 2,000 Bonus Shares received | Nil | |
| (iii) 3,000 shares purchased on 01.12.1994 (3,000 × ₹125 × 939/244) | 14,43,135 | 37,90,635 |
| Long Term Capital Gain | | 12,09,365 |
| Less: Exemption under Section 54F (₹12,09,365 × ₹25,00,000 / ₹50,00,000) | | 6,04,683 |
| Taxable Long Term Capital Gain | | 6,04,682 |

NOTE:

Exemption under Section 54F of the Income Tax Act, 1961 can be availed by the assessee subject to fulfillment of the following conditions:

1. The assessee should not own more than one residential house on the date of transfer of the long term capital asset;
2. The assessee should purchase a residential house within a period of 1 year before or two years after the date of transfer or construct a residential house within a period of 3 years from the date of transfer of the long term capital asset.

In this case, the assessee fulfilled the two conditions mentioned above. Therefore, he is entitled to exemption under Section 54F.

Solution to Question 27 (c):

Joseph is engaged in profession. The due date for filing income tax return for assessment year 2011-12 as per section 139(1) of the Income-tax Act is 30th September, 2013 if his accounts are required to be audited under any law. The due date is 31st July, 2013 if the accounts are not required to be audited under any law.

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The return was filed beyond the due date prescribed in section 139(1). The return so filed is covered by section 139(4) and the time limit is one year from the end of the relevant assessment year. The Apex court in *Kumar Jagadish Chandra Sinha v. CIT 220 ITR 67 (SC)* has held that a return filed under section 139(4) is not eligible for revision and hence a revised return cannot be filed.

Hence, the return filed by Joseph is not valid as the original return was not filed before the due date mentioned in section 139(1).

Question 28

(a) Write short notes on Alternate Minimum Tax (AMT).

(b) State the difference between Exemption u/s 10 and deduction under Chapter VIA of the Income Tax Act.

(c) Smt. Nidhi reports the following transactions :

- (i) She received gifts on the occasion of her marriage on 18.07.2013 of ₹2,40,000. It includes gift of ₹40,000 received from non-relatives.**
- (ii) Her mother's maternal uncle gifted her a cheque of ₹45,000, on her birthday, on 01.08.2013.**
- (iii) On 01.12.2013, she acquired a vacant site from her friend at ₹1,25,000. The State Stamp Valuation Authority fixed the value of the site at ₹2,00,000 for stamp duty purpose.**
- (iv) She bought 100 equity shares of a listed company from another friend for ₹70,000. The value of share in the stock exchange on the date of purchase was ₹1,20,000.**

Determine the amounts chargeable to tax in the hands of Smt. Nidhi for the A.Y 2014-15.

Solution to Question 28(a)

Where the income tax payable by a limited liability partnership is less than the alternate minimum tax payable for a previous year, it is liable to pay income tax @ 18.5% u/s 115JC. Tax would be computed on adjusted total income. Adjusted total income shall be the total income before giving effect to this chapter and must be increased by the followings:

- ❖ Deductions claimed (if any) included in Chapter VIA from Sec. 80H to 80TT ; and
- ❖ Deduction claimed (if any) under Sec.10AA

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Solution to Question 28(b)

| Exemption u/s 10 | Deduction under Chapter VIA |
|---|---|
| Income exempt does not form part of total income | Income forms part of Total Income |
| Expenditure in relation to income exempt is not deductible | Expenditure in relation to income is deductible |
| It will not be considered for the purpose of computing total income | It will be considered for the purpose of deduction from Gross Total Income |
| Income is normally exempt subject to certain conditions | Deduction is normally allowed based on payment or fulfillment of specified conditions |

Solution to Question 28(c)

| Sl. No | Particulars | Amount(₹) |
|---------------------------------|---|---------------|
| (i) | Cash gift of ₹2,40,000 received on the occasion of her marriage is taxable, since gifts received by an individual on the occasion of marriage is excluded under Section 56(2)(vii), even if the same are received from non-relatives. | Nil |
| (ii) | Even though mother's maternal uncle does not fall within the definition of 'relative' under Section 56(2)(vii) of the Income Tax Act, 1961, gift of ₹45,000 received from him by cheque is not chargeable to tax, since the aggregate sum of money received by Smt. Nidhi without consideration from non-relatives (other than on the occasion of marriage) during the previous year 2013-14 does not exceed ₹50,000. | Nil |
| (iii) | Purchase of land for inadequate consideration on 01.12.2013 would attract the provisions of Section 56(2)(vii) of the Income Tax Act, 1961. Where any immovable property is received for consideration which is less than the stamp duty value of the property by amount exceeding ₹50,000, the difference between the stamp duty value and consideration is chargeable to tax in the hands of the individual. Thus, in the given case ₹75,000 is taxable in the hands of Smt. Nidhi. | 75,000 |
| (iv) | Since, shares are included in the definition of "property" and difference between the purchase value and fair market value of shares is ₹50,000, it shall not be taxed under Section 56(2)(vii) of the Income Tax Act, 1961. | Nil |
| Amount chargeable to Tax | | 75,000 |

Question 29

(a) Mr. Sanghai had sold a commercial property, which was a long term asset and invested the same in purchase and construction of a flat in a apartment in Mumbai, within the one year of

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sale of asset and claimed deduction u/s 54F of Income Tax Act, but later the builder has not completed the possession of the apartment within 3 years and the apartment remained under construction even after 3 years. The period of 3 years is lapsed without any mistake of Mr. Sanghai now? Will Mr. Sanghai be levied tax on the capital gains derived from the sale of the commercial property (or) Will Mr. Sanghai be freed from the capital gains tax?

Discuss allowability of exemption u/s. 54F if builder does not complete construction of house within three Years?

(b) Whether the transfer of goods as a contribution for capital be considered as Sale?

Solution to Question 29(a)

The exemption u/s 54F is for those assesses who gets long term gains on any asset other than house property and who uses all the sales consideration within a specified period for purchase or constructing a residential house. The specified period in case of house purchase is one year before or two years after the date of transfer of asset on which gains were made. However, for construction, section 54 provides, time limit of three years. Therefore, the case explained above gains all popularity here. What would be the plight of the assessee when the construction gets delayed for no fault of his?

While the plain reading and strict application of the provision u/s 54F compel one to think that exemption is not allowable in case of any delay beyond 3 years, higher judicial authorities have rescued taxpayers by giving relief in those cases where they found that most of the sales consideration have been spent for construction of house, still some portions were not complete for various reasons. The appellate authorities have taken the view that section 54F being relief provision, should be viewed in a bit of relaxed manner. **We have given below few judgments in this regard which provides that exemption can be claimed even if construction is not completed within 3 years.** However, remember the **court needs to be satisfied** that either full amount or **most** of the amount of **sales consideration was already used.**

The decision of Tribunal was:

To qualify investment **for construction under section 54F the crucial date is the date of allotment of flat by DDA and payment of installments was only a follow-up action and taking possession of the flat is only a formality**, of course, installments have to be paid by the allottee as per the schedule fixed by the DDA. The Board after referring to the above mentioned Circular extended the facility of exemption under sections 54 and 54F in respect of allotment of flats/house by co-operative societies and other institutions, and the allotment and construction of the flat by co-operative societies and other institutions are to be considered in similar manner for the purpose of allowing exemption under section 54. The above circulars are binding on the revenue authorities under section 119 of the Act. Since the flat has been allotted to the assessee by the builder who would fall in the category of other institutions mentioned in the circulars, it has to be taken as a case of construction of the residential flat and not as a purchase of a residential flat.

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The decision has elaborated on the reasons why the CBDT issued circulars for such relief and that the word "institution 'in the circular will include "builder".

Hence, exemption u/s. 54F can be claimed even if construction is not completed within 3 years but when substantial payment been made.

Reference Cases:

1. Mrs. Seetha Subramanian. vs Assistant Commissioner Of Income-Tax. [59 ITD 94] ITAT , Madras :- CIT ,
2. Satish ChandraGupta v. Assessing Officer [1995] 54 ITD 508
3. CIT vs. Hilla J.B. Wadia [1995] 216 ITR 376 (Bom).

Solution to Question 29(b)

Query – *Transfer of goods on sale of the business as a whole by a proprietor to a company in which he is a promoter, as his contribution for capital, is a 'sale' under Uttar Pradesh Value Added Tax Act, 2008*

Analysis :Relevant Extracts of the State Act

Section 2(ac) of the State Act defines sale as follows:

"sale" with its grammatical variations and cognate expressions, means any transfer of property in goods (otherwise than by way of a mortgage, hypothecation, charge or pledge) by one person to another, for cash or for deferred payment or for any other valuable consideration....

Section 2(aq) of the State Act defines turnover of sale as:

"turnover of sale" means the aggregate of amount of sale prices of goods, sold or supplied or distributed by way of sale by a dealer, either directly or through another, whether on his own account or on account of others;

Section 2 (h) of the State Act defines dealer as:

"dealer" means any person who carries on in Uttar Pradesh (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods directly or indirectly, for cash or deferred payment or for commission, remuneration or other valuable consideration....

Extract of Rule 8 of Uttar Pradesh VAT Rules, 2008 determining taxable turnover is as follows:

"For the purposes of determining taxable turnover of sale, amounts specified below shall be deducted from the turnover of sale, determined in accordance with rule 7, if included in such turnover of sale

(iii) *all amounts realized from the sale by the dealer of his business as a whole;..."*

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It clear from the aforesaid provisions as well as from the scheme of the State Act that, what constitutes a "turnover" is only the aggregate amount for which goods are either bought or sold, and that the purchase or sale must be in respect of a "sale" as defined in the Act. In other words, *only sales which take place in the course of trade or business are taken into account in determining the turnover under the State Act.* The definition of the word "dealer" shows that every person, who buys or sells goods, is not a dealer, but only a person, who carries on the business of buying, selling, supplying or distributing goods. And the transaction must be in the course of his trade or business. Applying the above principles, it will be wrong to say that the transfer of a person's business or stock in trade into a firm or a company, as contribution of his capital therein amounts to a sale of goods in the course of trade or business as a dealer; and such a transaction involve any sale of goods. The transferor does not part with property in the goods. He only shares his rights therein with the other members under the contract of becoming a shareholder of the Company.

Even assuming there is a sale, it is not a sale in the course of trade or business, nor is it a transaction by a "dealer" as defined in the State Act.

Conclusion

The above conclusion taken and approved by various authorities and tax experts seems logical and correct.

Thus, final conclusion is as follows:

"Although, the transfer of property in goods may be considered as sale but as such the transfer is not made by a dealer in his normal proceedings of his business or trade, and thus shall not be included in the taxable turnover of the assessee. And, the sale proceeds of the stock-in-trade of business as a whole, are not, therefore, chargeable to sales tax.

Question 30

- (a) Discuss the admissibility of deduction of Interest Paid on More Than One Loan Borrowed for Purchase or Construction of same House.
- (b) How to determine share in property?
- (c) Given Mr.X and Mrs.X (husband-wife relationship)are both salaried employees, purchasing a house jointly. Mr.X is taking a loan of Rs 25 Lakhs from Govt and another loan of Rs.10 Lakhs from HDFC which is on joint name of both self and wife. Total interest outgo will be approxRs. 2.5 Lakhs in initial years. Can we split the total interest equally between self and wife for the purpose of claiming deduction under Sec 24 C or only the interest component from Rs 10 Lakhs loan (which is in joint name) can be shared? Also how to determine the share of property between husband and wife for the purpose of claiming tax deduction?

Solution to Question 30

(a) There is no bar in section 24 of the Income Tax Act regarding the number of loans on which interest is allowable simultaneously. In fact ,the simple rule of the deduction of interest u/s 24 of the Income Tax Act is that whatever be the interest paid or due on loan borrowed for purchase or construction of house is allowable as deduction. So, whether you take loan from one bank or five banks , all loan should be utilised for buying or constructing the house for allowance of interest paid to all the banks.

However, as far as self occupied house is concerned, the allowance of interest is limited to Rs 1,50,000 per owner.

(b) The documents of registration of the property is the main document in which proportion the house is registered along different co-owners. If nothing has been written specifically about share in which property is shared between two owners (Like you and your wife) in the registration document , the ownership should be deemed to be 50 : 50.

(c) As , Mr. X and his wife have taken joint loan from HDFC only , therefore, both co-owner can claim interest 50 % each in case of interest paid to HDFC. Mr. X can additionally claim for interest on loan from govt. sources to the extent that aggregate cannot exceed RS 1.5 lakh.

