

**FINAL EXAMINATION**  
**GROUP III**  
**(SYLLABUS 2008)**

**SUGGESTED ANSWERS TO QUESTIONS**  
**JUNE 2013**

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

Time Allowed : 3 Hours

Full Marks : 100

The figures in the margin on the right side indicate full marks.  
Answer Question No. 1 (carrying 25 marks), which is compulsory and any five from the rest.

1. Fill in the blank 1x25=25
- (i) Sec. 44AB of Income Tax Act makes it obligatory for every person carrying on business to get his accounts of any previous year, audited by an accountant before specified date if the total sales, turnover or gross receipts in business for the previous year exceeds..... (₹100 lakhs/₹60 lakhs).
- (ii) Asst./Deputy/Joint Commissioner is required to scrutinize the return filed by the assessee who is paying duty of more than rupees five crores per annum through PLA under Central Excise Law in every..... (six/twelve) months and send a report to Commissioner.
- (iii) Power generating unit which claims depreciation on SLM basis.....(can/cannot)claim additional depreciation under sec.32(1)(ia) of Income Tax Act @20% of actual cost of eligible new machinery or plant acquired and installed in a previous year.
- (iv) As per Sec. 10(10D) of Income Tax Act, any sum received under a life insurance policy (including the bonus on such policy) is exempt, provided in respect of such policy issued on or after 01.04.2012 in respect of which the premium payable for any of the years does not exceed..... (10%/20%) of the actual capital sum assured.
- (v) Cenvat Credit..... (can/cannot) be utilized for payment of Service Tax in respect of services where the person liable to pay tax is the Service Receiver.
- (vi) In case of goods covered under Section 4A of the Central Excise Act, packing or repacking and relabelling.....(is/is not) treated as deemed manufacture.
- (vii) An Assessee eligible for SSI concession (even if it does not avail the concession) is required under rule 12(1) of Central Excise Rules to file quarterly return in the prescribed format..... (ER 3/ER 8) by 10th of next month of the quarter.

- (viii) Goods manufactured in notified "designated area" in the continental shelf and Exclusive Economic Zone of India is..... (liable/ not liable) to excise duty.
- (ix) A certificate of registration shall be issued in prescribed Form ST 2 under Service Tax laws within.....(7/30) days of the receipt of the application.
- (x) A residential property which is let out for a minimum period of..... (240/300) days in the previous year is not treated as asset u/s 2(ea) of Wealth Tax Act.
- (xi) .....(Green/Yellow) bill of entry is for clearance from warehouse on payment of customs duty.
- (xii) Mr. A holds 25% of the equity shares in LMN Ltd., a listed company. He has borrowed a sum of rupees ten lakhs from this company on 21.03.2013. As on this date, the accumulated profits and free reserves are rupees eight lakhs. The deemed dividend taxable under section 2(22) (e) of the Income Tax Act, 1961 is ₹..... (8,00,000/10,00,000/Nil).
- (xiii) Where a job work is given to a partnership firm by a corporate assessee, the rate of tax to be deducted at source under section 194 C of the Income Tax Act, 1961 is.....% (1/2/4).
- (xiv) E filling of service tax return is.....for a non corporate assessee (mandatory/ optional).
- (xv) Cenvat credit.....be availed by a service provider in respect of special CVD paid u/s 3(9) of Customs Tariff Act (can/cannot).
- (xvi) EOU can sell a portion of their production in Domestic Tariff Area (DTA) upto 50% of their..... value of exports in earlier year (FOB/CIF).
- (xvii) The net wealth computed under the provisions of the Wealth Tax Act shall be rounded off to the nearest .....Rupees (one hundred/one thousand).
- (xviii) For a farm house not to be treated as an " asset" under section 2(ea) of the Wealth Tax Act, it should be located.....kilometers beyond the municipal or corporation limits (8/25/16).
- (xix) Demurrage charges payable to port trust authorities for delay in clearing goods..... (are/are not) to be added for calculating assessable value of goods.
- (xx) Under special brand rate of duty drawback, the rate should not be less than..... (5%/1 %) of FOB value of the product except when amount of drawback per shipment is more than ₹500.
- (xxi) Bonafide Samples and prototypes up to..... (₹10,000/₹5000) are exempt from customs duty if imported by post or in Air Craft or by Courier Service.
- (xxii) Under Public Provident Scheme 1968, the maximum limit for subscription by an individual for the A.Y. 2013- 14 is..... (₹70,000/₹1,00,000).
- (xxiii) Under section 44 BBA of Income Tax Act, 1961.....(8%/5%) on turnover is deemed to be income from business of operation of Aircraft in case of Non Resident.
- (xxiv) CENVAT Credit..... (is/is not) available if there is loss of input due to leakage in storage tank during process.
- (xxv) Cost of installation if charged separately.....(shall/ shall not) be a part of sale price for the calculation of sales tax liability.

**Answer 1.**

- (i) ₹ 100 lakhs
- (ii) Six
- (iii) Can
- (iv) 10%
- (v) cannot
- (vi) is not
- (vii) ER-3
- (viii) liable
- (ix) 7
- (x) 300
- (xi) Green
- (xii) Nil
- (xiii) 2%
- (xiv) Mandatory
- (xv) can not
- (xvi) FOB
- (xvii) one hundred
- (xviii) 25
- (xix) are not
- (xx) 1%
- (xxi) 10,000
- (xxii) 1,00,000
- (xxiii) 5%
- (xxiv) is
- (xxvi) shall not

2. (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. 2
  - (ii) There has been a price rise between the date of contract and the date of importation. The contract was over 6 months before the date of shipment. 2
- (b) Explain with reference to Foreign Trade Policy 2009-14.
- (i) What do you mean by "Status Holder"? Who are eligible for recognition as Status Holder? 2
  - (ii) What is the average export value to be achieved to become the Status Holder? 2
- (c) M/s. Akash Ltd. manufactured an Intermediate Product 'A' using the raw material 'X' on 28th Feb., 2013. Product 'A' is movable, marketable and excisable. Intermediate Product 'A' is issued for captive consumption to manufacture Product 'B' on dt. 02.03.2013. Product 'B' was manufactured on dated 05.03.2013 and is exempt from duty. The value of product 'A' is ₹ 15 lakhs and product 'B' is ₹18 lakhs. The rate of excise duty on product 'A' on dated 28.02.2013, dated 02.03.2013 and on dated 05.03.2013 was 5%, 6% and 10% respectively plus education cess 3%. Explain in detail:
- (i) Whether any Excise Duty is payable by M/s. Akash Ltd.? If yes, on which product? 2
  - (ii) Is it required to issue invoice for intermediate product 'A' ? 1

- (iii) Is there any VAT applicable on Captive Consumption? 1
- (iv) What is the date of removal of intermediate product 'A' for Captive Consumption? 2
- (v) What is the excise duty payable? 1

**Answer 2.**

(a) DETERMINATION OF 'VALUE' U/S 14 OF THE CUSTOMS ACT, 1962.

- (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 vs. Collector of Customs* (1993) 66 ELT 35 (SC), the Supreme Court held that where the goods are offered to the buyers and the buyers are asked not to disclose the specially reduced price to any other party, then the said price will not be acceptable, and the normal price will have to be considered for valuation.
- (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 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.

(b) Foreign Trade Policy, 2009

- (i) **Status Holder** means an exporter recognized as Export House, Trading House, etc. by DGFT/Development Commissioner. The applicant is required to achieve prescribed average export performance. The 'Status Holder' is eligible for many procedural simplifications under Customs and FEMA.

Merchant Exporters, Manufacture Exporters, Service Providers, EOU, Units in SEZ/AEZ/EHTP/STP are eligible for recognition as Status Holder.

- (ii) The average FOB/FOR export value during the current year plus preceding three licensing years in rupees required to be treated as Status Holder as follows:

|                       |               |
|-----------------------|---------------|
| Export House          | ₹ 20 crores   |
| Star Export House     | ₹ 100 crores  |
| Trading House         | ₹ 500 crores  |
| Star Trading House    | ₹ 2500 crores |
| Premier Trading House | ₹ 7500 crores |

- (c) (i) Product 'A' is movable, marketable & excisable. If excise duty is payable on final product, then excise duty is not payable on intermediate product used in manufacture of such final product. Intermediate product 'A' is used for manufacture of Product 'B' which is exempted from duty as per notification. So, Excise Duty is payable by M/s Akash Ltd. on Product A only.
- (ii) Invoice is required for removal of excisable goods if it is dutiable, even for captive consumption. So it is required to issue invoice for intermediate product 'A', as it is excisable.
- (iii) Captive Consumption does not mean sale. Hence, captive consumption of product 'A' is not covered under VAT.

(iv) As per rule 5 of Central Excise Rules 2002, in case of captive consumption, the date of issue of intermediate product for use within factory is deemed to be the date of removal. So, in this case the intermediate product 'A' was issued for captive consumption for manufacture of product 'B' on date 2<sup>nd</sup> March 2013, which is to be treated as date of removal.

(vi) The excise duty payable is as follows:

The Rate of duty applicable on the deemed date of removal i.e., on 2<sup>nd</sup> March, 2013 is 6%.

Duty payable is ₹ 15 lakh X 6.18% = ₹ 92,700/-.

3. (a) M/s. XYZ Ltd. presented shipping bill in respect of an export consignment to the Customs Authority on dated 8th March, 2013. The Customs Authority granted entry outward to the ship on dated 11th March, 2013. The loading of goods in ship had commenced only after dated 17th March, 2013. A notification was issued under Customs Act, 1962, exempting the export goods from Customs Duty on dated 17th March, 2013. M/s. XYZ Ltd. contends that, since loading of goods in the ship had commenced after dated 17th March, 2013 the export consignment is eligible for the benefit of exemption notification. Briefly explain whether the contention of M/s. XYZ Ltd. is tenable in law? 3
- (b) (i) Who should be approached when an assessee is aggrieved by an order/decision of the Adjudicating authority subordinate to Commissioner of Central Excise/Service Tax in respect of Service tax? 1
- (ii) What is the procedure for filling the Appeal? 2
- (iii) What is the statutory time limit for filling appeal with commissioner (Appeals)? 1
- (iv) Can the statutory time for filling the appeal to the Commissioner (Appeals) be extended? If yes, under what circumstances? 1
- (c) Following details pertaining to Mr. Vaamana, a resident Indian aged 58 years, are furnished to you. 7

| Particulars   | ₹        |
|---|----------|
| (i) Salary received from ABC Ltd.   | 7,20,000 |
| (ii) Profession tax paid by employer  | 12,000   |
| (iii) Loss from own business not covered by section 35 AD   | 2,20,000 |
| (iv) Long term capital gains from sale of listed shares in recognised stock exchange, held for more than one year | 1,30,000 |
| (v) Long term capital gains from sale of residential house property   | 1,20,000 |
| (vi) Winning from T.V. games show (Net of TDS ₹30,000)  | 70,000   |
| Expenses incurred for participating in the show   | 5,000    |
| (vii) Loss in card games  | 12,000   |
| (viii) Loss from agricultural lands in India  | 32,000   |

Compute the total income of the assessee under proper heads of income for the assessment year 2013-14.

**Answer 3.**

- (a) Relevant date for determination of customs duty

As per Sec 16(1) (a) of Customs Act 1962, in case of goods entered for export u/s 50 (i.e., on submitting shipping bill/ bill of export), the relevant date for determination of rate of duty shall be the date on which the proper officer makes an order u/s 51 permitting clearance, and loading of goods for export. So the relevant date is the date of making order u/s 51 permitting clearance & loading of goods and not the actual date of clearance & loading of goods.

In the given case, the notification was issued on dated 17.3.2013 whereas the Customs Authority granted entry outward to the ship on dated 11.3.2013. Therefore, as per the above provision the contention of XYZ Ltd. Is not valid and they will not be eligible to avail the benefit of exemption notification.

- (b) Remedy against order of Adjudicating Authority in service Tax

(i) An assessee aggrieved by such order / decision of the Adjudication authority subordinate to the Commissioner of Central Excise / Service Tax in respect of Service Tax may file an Appeal to the Commissioner (Appeals).

(ii) a) The Appeal shall be filed in Form ST-4 in duplicate, which includes statement of facts, grounds of appeal.

b) It should be accompanied by a certified copy of the decision or order against which appeal is filed.

c) Section 35F of Central Excise Act provides that person desirous of appealing against the order shall, pending the appeal, deposit the duty demanded or penalty levied. This section has been made applicable to service tax also. However, the appellate authority is empowered to dispense with such deposit if it is of the opinion that the deposit of duty or penalty will cause undue hardship to the person.

d) If a person has to make statement on oath or if he has to be examined/cross examined, he has to personally attend the hearing. Otherwise, a person can appear either himself or through authorized representative.

e) There is no fee for filing an Appeal before the Commissioner of Central Excise (Appeals) (Section 85 of the Act and Rule 8 of the STR, 1994).

(iii) The Appeal should be filed within 3 months from the date of receipt of the order / decision of the Adjudicating authority.

(iii) Yes. If the Commissioner (Appeals) is satisfied that the appellant was prevented by sufficient cause from presenting the Appeal within the statutory period of three months, he may allow the appeal to be presented within a further period of three



months. The law does not provide for further extension of time. (Proviso to Section 85(3) of the Act).

**Note :** In case of all adjudication orders after **28.05.2012** :

(i) the appeal should be filed within **2 months** from the date of receipt of the order.

(ii) If the Commissioner (Appeals) is satisfied that the appellant was prevented by sufficient cause from presenting the Appeal within the statutory period, he may allow the appeal to be presented within a further period of **1 month**. The law does not provide for further extension of time.

(c) Computation of total income Mr. Vaamana  
Assessment Year 2013 -14

| Particulars   | Amount<br>(₹)   | Amount<br>(₹)   |
|---|-----------------|-----------------|
| <b>Salaries</b>   |                 |                 |
| Received from employer  | 7,20,000        |                 |
| Profession tax paid by employer (to be treated as perquisite)   | 12,000          |                 |
|   | 7,32,000        |                 |
| Less: Professional tax paid   | 12,000          |                 |
| Income chargeable under this head   |                 | 7,20,000        |
| <b>Profits and gains of business or profession</b>  |                 |                 |
| Loss from non-speculative business not covered by sec-35AD<br>(Cannot be set off against salaries)  | <b>2,20,000</b> |                 |
| <b>Capital gains</b>  |                 |                 |
| Long-term capital gains:  |                 |                 |
| (a) From sale of listed shares in recognized stock exchange ₹<br>1,30,000 exempt u/s 10(38)   | Nil             |                 |
| (b) From sale of residential house property   | 1,20,000        |                 |
| Total LTCG  | <b>1,20,000</b> |                 |
| Business loss can be set off against LTCG<br>Hence chargeable LTCG is   |                 | 0               |
| <b>Balance business loss ₹ 1 lac to be carried forward</b>  |                 |                 |
| <b>Income from other sources</b>  |                 |                 |
| (a) Income from T.V. Games show Gross<br>No expenditure is allowable from this income u/s 58(4)<br>(No other loss can be set off against this winnings) | 1,00,000        |                 |
| (b) Loss from card games<br>(Can neither be set off, nor carried forward)   | 12,000          |                 |
| Income chargeable under this head   |                 | <b>1,00,000</b> |
| Gross total income/Total income   |                 | <b>8,20,000</b> |

**Note:**

1. It is assumed that the long term capital gain arising from sale of listed shares is chargeable to STT.
2. Agricultural income being net loss, the same has to be ignored.

**4. (a) Determine the transaction value and the excise duty payable from the following information:**

- (i) Total invoice price is ₹36,000
- (ii) The invoice price includes the following:
  - (A) Sales Tax = ₹2000
  - (B) Surcharge on ST = ₹200
  - (C) Octroi = ₹200
  - (D) Insurance from factory to depot = ₹200
  - (E) Freight from factory to depot = ₹900
  - (F) Rate of Basic excise duty = 10% advalorem
  - (G) Rate of special excise duty = 24% advalorem

5

- (b) M/s. Infratech Ltd. carried out following works all of which liable to VAT as transfer of property involved in the execution of works contract. The value of different works excluding all taxes are given below.

For New construction- ₹50 lakhs, (In addition to it the service receiver supplied material worth of ₹20 lakhs used in the contract).

Addition and alteration to the damaged structure on land to make it workable ₹25 lakhs.

Supply along with erection, installation, commissioning of plant ₹70 lakh.

Maintenance and repair of goods ₹40 lakh.

Maintenance & repair of immovable property ₹30 lakh.

Compute taxable value of service and service tax thereon under rule 2A(ii) of Service Tax (Determination of value) Rules, 2006. 5+1

- (c) In the context of marketability test under excise law, test the veracity of the following statements:

- (i) A product with a low shelf life of 3-5 days does not fulfill the marketability test; 2
- (ii) Theoretical possibility of product being sold is not sufficient to establish the marketability of a product. 2

**Answer 4.****(a) Determination of transaction value**

It is assumed that the Invoice price of ₹ 36,000 is depot price. Hence, deduction of Insurance and Transport charges from factory to depot will not be available.

| Particulars      | ₹     | ₹      |
|------------------|-------|--------|
| Invoice Price    |       | 36,000 |
| (Less) Sales tax | 2,000 |        |
| Surcharge on ST  | 200   |        |
| Octroi           | 200   |        |
|                  |       | -2,400 |



|   |  |        |
|---|--|--------|
| Net price excluding taxes on final product (but inclusive of excise duty) |  | 33,600 |
|---|--|--------|

Hence, duty payable is as follows:

$$\text{Duty payable} = \frac{33,600 \times 34}{134} = 8,525$$

$$\text{Assessable Value for Excise duty} = 33,600 - 8,525 = 25,075.$$

- (b) Computation of taxable value of services & Service Tax payable in case of M/s. Infratech Ltd.,

₹ In Lakhs

| Particulars   | Value of Contract | Abatement | Taxable Amount after Abatement |
|---|-------------------|-----------|--------------------------------|
| New construction  | 50.00             |           |                                |
| Add: Material supplied by Service Receiver  | 20.00             |           |                                |
| Total   | 70.00             | 60%       | 28.00                          |
| Additional & alternation to the damaged structure on land to make it workable       | 25.00             | 60%       | 10.00                          |
| Supply along with erection, installation, commissioning of plant                    | 70.00             | 60%       | 28.00                          |
| Maintenance & repair of goods   | 40.00             | 30%       | 28.00                          |
| Maintenance & repair of immovable properties  | 30.00             | 40%       | 18.00                          |
| Total Taxable value U/R 2A (ii) of Service Tax (Determination of value) Rules 2006. | 235.00            |           | 112.00                         |
| Service tax payable at 12.36%   |                   |           | 13.8432                        |

- (c) (i) The statement is incorrect. The Apex Court has ruled that short shelf-life of 3-5 days could not be equated with no shelf-life. A shelf-life of 2 to 3 days was sufficiently long enough for a product to be commercially marketed. Shelf-life of a product would not be relevant factor to test the marketability of a product unless it was shown that the product has absolutely no shelf-life or the shelf-life of the product was such that it was not capable of being brought or sold during that shelf-life. Hence, product with the shelf life of 2 to 3 days was marketable and hence, excisable (Nicholas Piramal India Ltd. v CCE 2010 (260) ELT 338 (SC)).
- (ii) Theoretical possibility alone insufficient  
The statement is correct.  
It means to say that a product known in the market with a nomenclature is not sufficient for marketability unless for the said product there is a buyer to buy it.  
Example: M/s X Ltd. Manufactured Double Textured Rubberized Fabric (i.e. upper lace of the shoe) and removed from the factory for job work, it has no marketability, because the said product known in the market with no buyer [Bata India Ltd v CCE 2010 (252) ELT 492 (SC)].

5. (a) Determine the value of perquisite chargeable to income tax in the hands of Mr. Hari Kashyup, drawing annual salary of ₹4,80,000 for the assessment year 2013 – 14: 5

- (i) Employer has a mineral water bottling plant. 2,400 litres have been supplied during the year to the assessee. Manufacturing cost to employer is ₹3 per litre; suppliers of identical product sell the same at ₹5 per litre in the open market.
- (ii) The employer is running a school. Assessee's younger brother, who is dependent on him, is studying there. The cost of providing such education to the employer is ₹10,000. Cost of such education in similar school is ₹18,000.
- (iii) The employer has granted housing of ₹20 lacs at 6% per annum, on 01.07.2012. The interest rates charged for similar loans by certain other entities are as follows:
- |                       |           |
|-----------------------|-----------|
| State Bank of India   | 9% p.a.   |
| National Housing bank | 9.5% p.a. |
- (iv) Interest free loan of ₹18,000 was availed from employer for undergoing medical treatment of disease specified in Rule 3A of the Income Tax Rules, 1962. Assessee has no medical insurance policy.

Adduce brief reasons for each item.

- (b) List out any six export incentives given to manufacturers under the EXIM policy. 6
- (c) Briefly explain, whether M/s. PQR Ltd., a manufacturer can avail cenvat credit in following cases: 4
- (i) Inputs used in Trial runs
- (ii) Materials used in expenses on modernization and repair of factory building.
- (iii) Goods for personal use of employees.
- (iv) Expenses on market research.

**Answer:**

5. (a) Computation of perquisite

| Sl. No. | Particulars  | Amount (₹) |
|---------|--|------------|
| (i)     | As per the rule 3(4), where the employer is the manufacturer of water supplied, the value of perquisite in the hands of the assessee, a specified employees, is the manufacturing cost to the employer. (2,400 x 3)                                | 7,200      |
| (ii)    | As per Rule 3(5), where the school is run by the employer, where the education is provided to other household members (other than children), the perquisite value is the cost of such education in similar school.                                 | 18,000     |
| (iii)   | As per Rule 3(7) (i), the perquisite in case of concessional housing loan is the difference in interest, applying the SBI rate. Same works out to ₹ 20,00,000 x 3% x 9/12  | 45,000     |
| (iv)    | Interest-free loan availed for undergoing medical treatment of disease specified in Rule 3A of the Income-tax Rules, 1962, ₹ 18,000 (assessee has no medical insurance policy) does not result in any perquisite, since the loan is below ₹ 20,000 | Nil        |
|         | Total value of perquisite  | 70,200     |

(b) **Export incentives for manufacturers under EXIM policy**

Broadly, the export incentives for manufacturers are –

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

(c) **Cenvat credit eligibility**

- (i) Yes, Inputs used in Trial Run production must be used within factory and have relation with manufacture so as to qualify as input u/s 2(x). Since such input used in trial run are necessary for manufacture, hence eligible as inputs.
- (ii) Yes, Maintenance of factory building facilitates manufacture, as goods are produced within factory. So it qualifies as input and is eligible for credit U/R 2(i) of Cenvat Credit Rules.
- (iii) No, Food items, medicines etc. primarily used for consumption of employees are not eligible for cenvat credit as per rule – 2(k)(E) of Cenvat Credit Rules. It is specifically excluded and not treated as input goods eligible for cenvat credit.
- (iv) Yes. Services related to market research is eligible as input service for manufacturer and output service providers and eligible for cenvat credit and qualifies as an input service under Rule 2(1) of Cenvat Credit Rules.

6. (a) **M/s. B Ltd., a domestic company has unit A & B. Unit A which commenced business two years back is engaged in the business of developing a toll road. Unit B is carrying on the business of trading in cement. Unit B transfers cement of the value of ₹8.50 crores to Unit A for ₹6.5 crores. Briefly explain whether transfer pricing provisions under Income Tax Act,1961 are attracted.** 4

(b) **M/s. ABC & co. is a partnership firm consisting of three partners Mr. A, Mr. B & Mr. C. It is engaged in civil construction. The turnover of the business for the year ending 31<sup>st</sup> March, 2013 amounted to ₹95 lakhs. Following additional information is available.**

- ♦ Maintenance charges of ₹68,000 paid to contractor on which tax has not been deducted at source and deposited so far.
- ♦ Bad debt written off in the books of accounts are ₹ 92,000.
- ♦ Interest @ 12% is provided to partner C on his capital of ₹5 lakhs as per partnership deed.
- ♦ The firm carried forward business loss of ₹50,000 and unabsorbed depreciation of ₹ 1,20,000 which is carried forward from assessment year 2010 - 11.
- ♦ The firm preferred and opted for presumptive taxation under section 44AD for the

assessment year 2013 -14.

- ♦ The firm has not paid any advance tax during the previous year 2012-13.

(i) Compute Net Income of the firm from business. 5

(ii) What would be the liability of the firm for levy of interest u/s 234B & 234C for failure on their part to pay advance tax? 2

- (c) Determine the CENVAT allowable if goods are produced or manufactured in a Free Trade Zone or by a 100% Export Oriented Unit and used in any other place in India from the following data.

(i) Assessable value ₹ 770 per unit,

(ii) Quantity cleared 1000 units and

(iii) BCD 10%, CVD 14% plus education cess as applicable, 4

#### Answer 6.

- (a) **Applicability of Domestic Transfer Pricing provisions**

Unit A is engaged in the business of development of toll roads, eligible for deduction @ 100% of profit derived from business (eligible) u/s 80IA of Income-Tax Act. Unit B is not engaged in eligible business. Unit B transferred cement to Unit-A at a price lower than the fair market value which is an inter unit transfer of goods between eligible business and other business and the consideration for transfer does not correspond with market value of goods.

Section 92BA covers transfer of goods or services by one unit of business to another, in respect of business covered by sec 80-IA(8).

This transaction would fall within the meaning of specified domestic transaction to attract transfer pricing provisions as aggregate value of transaction during the year specified in section 92BA of Income Tax Act exceeds ₹ 5 crores.

- (b) (i) Computation of Income from Business of M/s ABC & Co for the Assessment Year 2013-14

| Particulars  | Amount in ₹ |
|--|-------------|
| Income from business as per section 44AD (8% of ₹ 95 lakhs)  | 7,60,000    |
| Less: Interest to partner – Mr. C (12% of ₹ 5 lakhs)   | 60,000      |
| <b>Gross Business income for the Assessment Year 2013-14</b>   | 7,00,000    |
| Less:  |             |
| Brought forward business loss  | 50,000      |
| Unabsorbed depreciation (unabsorbed depreciation of the previous year becomes depreciation allowance for the current year. |             |
| No separate deduction is allowed in respect of depreciation under section 44AD when opted for presumptive taxes)           | Nil         |
| <b>Net Income</b>  | 6,50,000    |

Note: Maintenance charges of ₹ 68,000 paid to contractor on which tax has not been deducted at source and deposited so far and Bad debt written off in the books of

accounts of ₹ 92,000 will not be adjusted or looked into as the assessee has opted for presumptive tax under section 44AD.

(ii) **Liability to interest under ss. 234B and 234C**

If the assessee opts for determination of business income under section 44AD, he is exempted from payment of advance tax. Consequently interest under section 234B and 234C is not applicable. So in view of above there is no liability for payment of interest under section 234B and 234C even if advance tax has not been paid during previous year 2012-13.

(c) Computation of cenvat credit available to the EOU unit

|        |                             |      |
|--------|-----------------------------|------|
| Given: | BCD                         | 10%  |
|        | CVD                         | 14%  |
|        | Quantity cleared            | 1000 |
|        | Assessable value per unit ₹ | 770  |

As per Rule 3(7)(a) of Cenvat Credit Rules 2004, the following formula is to be used if a unit in DTA purchases goods from EOU for clearances on or after 01.03.2006:

Assessable value  $\times ((1 + \text{BCD}/400) \times \text{CVD}/100)$

Hence, Cenvat available per unit is as follows:

$$770 \times ((1 + 10/400) \times 14/100) = 110.495$$

$$\begin{aligned} \text{Total cenvat available on 1000 units} &= 1000 \times 110.495 \\ &= ₹ 1,10,495 \end{aligned}$$

7. (a) **Rahul imports machinery worth 50,000 US\$ on CIF basis.** 3

Following dollar rates are available on the date of presentation of bill of entry:  
RBI floor rate: ₹45.60

(i) Inter bank closing rate : ₹45.20

(ii) Rate notified by CBE & C under section 14(3) (a) (i) of the Customs Act : ₹46

(iii) Rate at which bank has realized the payment from importer Rahul: ₹45.80

Find the assessable value for customs purposes.

(b) **M/s. Traders Ltd. furnished the following information related to transaction of sales effected from Kolkata to New Delhi. All sales are effected against issue of declaration in Form C.**

(i) Basic price of 10,000 kgs of material sold ₹3,00,000

(ii) Excise duty 10% ad valorem and education cess as applicable

(iii) Trade discount @ 8%

(iv) Additional Trade discount given after discount at (iii) above as a regular buyer of 2%

(v) Quantity rejected by buyer within 3 days of delivery 1,000 kgs

(vi) Quantity returned by buyer after 6 months of dispatch 1,000kgs.

Determine:

- (i) The value of Net sales 4  
(ii) Central sales tax liability 1
- (c) Discuss whether a Duty Free Import Authorisation (DFIA) is transferable 3
- (d) Mrs. Aishwarya transferred tenancy rights in a building for a consideration of ₹80 lakhs. The Assessing Officer, while computing capital gains from the transaction, sought to apply the provisions of section 50C of the Income Tax Act, 1961 and adopted the stamp duty valuation of ₹120 lakhs. Discuss the correctness of this action. 4

**Answer 7.**

- (a)
- Computation of Assessable value**

Rate notified by the CBEC is relevant in this regard.  
The relevant exchange rate is ₹ 46.

Thus CIF value of goods is ₹ 23,00,000 (50,000 x ₹ 46)

Landing charges @ 1% of CIF

Value are to be added 23,000

i.e., (23,00,000 x 1%)

Thus customs value or assessable value is 23,23,000

- (b) Computation of Net sales & Central Sales Tax Payable by M/s Traders Ltd.

| Particulars   | Amount (₹) |
|---|------------|
| Basic Price – 10,000 kg @ ₹ 30/kg                                       | 3,00,000   |
| Less: Goods rejected/returned by buyer within 6 months 1000 kg @ ₹ 30/- | 30,000     |
| Balance   | 2,70,000   |
| Less: Trade discount @ 8% of ₹ 2,70,000                                 | 21,600     |
| Balance   | 2,48,400   |
| Less: Additional Trade Discount @ 2% of ₹ 2,70,000                      | 5,400      |
| Net Sales   | 2,43,000   |
| Add: Excise Duty @ 10.30% of ₹ 2,43,000                                 | 25,029     |
| Aggregate sale value for calculation of CST                             | 2,68,029   |
| Total CST @ 2% against Form 'C' ₹ 2,68,029                              | 5,361      |

Note: Goods returned after 6 months cannot be deducted.

(i) The value of Net Sales – ₹ 2,43,000/-

(ii) Central Sales Tax liability – ₹ 5,361

- (c)
- Transferability of DFIA**

DFIA is issued to allow duty free import of inputs, fuel, oil, energy sources, catalyst which are required for production of export product. DGFT, by means of Public Notice, may exclude any product(s) from purview of DFIA. This scheme is in force from 1st May, 2006.

Once export obligation has been fulfilled, request for transferability of Authorisation or inputs imported against it may be made before concerned Regional Authority. Once transferability is endorsed, Authorisation holder may transfer DFIA or duty free inputs, except fuel and any other item(s) notified by DGFT. However, for fuel, import entitlement may be transferred only to companies which have been granted authorisation to market fuel by Ministry of Petroleum and Natural Gas. Once transferability is endorsed, imports / domestic



procurement against authorisation or transfer of imported inputs / domestically procured inputs shall be subject to payment of applicable additional customs duty / excise duty. While endorsing transferability, authorisation would bear a note as to liability of such additional customs duty / excise duty. However, in case where CENVAT facility has not been availed, exemption from additional customs duty / excise duty would be available even after endorsement of transferability on DFIA. Wherever SIONs (Standard Input and Output Norms) prescribe actual user condition and in case of Acetic Anhydride, Ephedrine and Pseudo Ephedrine, DFIA shall be issued with actual user condition for these inputs and no transferability shall be allowed for these inputs even after fulfillment of export obligation.

However, for authorisations issued prior to 1.4.2007, exemption from Additional Customs Duty / Excise Duty shall continue to be available even after endorsement of transferability, as provided in FTP (RE-2006).

- (d) Section 50C(1) of the Income Tax Act 1961 enjoins that where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by the 'stamp valuation authority' for the purpose or payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purpose of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

The primary condition is that the asset which is the subject matter of transfer is land or building or both. It does not apply where the asset which is transferred is any right associated with land or building or both.

Tenancy right is some right associated with building and hence is not covered by section 50C.

Hence, Section 50C cannot be invoked by the AO in the impugned situation.

8. (a) **"VKS Infra Pvt. Ltd." is an Indian company engaged in undertaking infrastructure projects. In April, 2010, it has received a big highway project for expansion of existing roads in one area and also for re laying of existing roads in another area. There is an apprehension in the mind of the managing director of the company that these projects will not entitle the company to claim deduction under section 80 IB(4). Advise the company suitably. 5**
- (b) **The assessee, Mr. Janak is a partner in a firm Vimal & Co. The assessee had borrowed funds on interest at the rate of 15% per annum. These funds were utilized for lending moneys to the aforesaid firm. No interest was charged on this loan. Discuss whether any disallowance is required under any of the provisions of the Income Tax Act, 1961, in computing the total income of the assessee. 4**
- (c) **Determine the Net Wealth of Mr. Ramana, a non resident for the assessment year 2013-14 based on the following information obtained on 31st March, 2013. 6**
- (i) **He own a commercial complex and had earned a rental income of ₹12,00,000 during the year from it. It is valued at ₹6 crores. Loan taken for the same is ₹4.5 crores.**
- (ii) **He has jewellery worth ₹1.5 crores which he has pledged and taken a loan of ₹1 crore. This was used to buy a land in Mumbai, which was later transferred as gift to his wife on 30th March, 2013 on their wedding anniversary.**
- (iii) **He also has a foreign make motor car purchased outside India. He had ordered it to be transported to India and is expected to reach by April 7, 2013. The ship was on international waters on 31st March, 2013.**

- (iv) He bought a land 12 kms away from Chennai for ₹50 lakhs. He planned to construct a residential house property at an estimate of ₹2 crores. 50% of the work was completed on 31st March, 2013.
- (v) He has a residential house property at Washington, USA, valued at ₹8 crores.
- (vi) He has another house property at Chicago, USA, valued at ₹6 crores for which a loan of ₹4 crores has been taken.

**Answer 8.**

**(a) Widening /re-laying of existing roads whether eligible for benefit of section 80-IB(4)**

As per section 80IA(1) of the Income Tax Act, 1961, where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (4), there shall, in accordance with the subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to hundred per cent of the profits and gains derived from such business for 10 consecutive assessment years.

Sub-section (4)(i) provides for a deduction to an undertaking engaged in developing, or operating and maintaining, or developing, operating and maintaining any infrastructure facility subject to satisfaction of the conditions laid down in the section.

The explanation to subsection 80IA(4)(i) states that for the purpose of this clause, infrastructure facility means inter alia:

“(a) a road including toll road, a bridge or a rail system;

(b) a highway project including housing or other activities being an integral part of the highway project;”

References were received by the Board as to whether widening of existing roads constitutes creation of new infrastructure facility for the purpose of Section 80IA(4)(i).

The issue has been examined by the Board. In Circular 4/2010 dt. 18<sup>th</sup> May 2010, it was decided that widening of an existing road by constructing additional lanes as a part of a highway project by an undertaking would be regarded as a new infrastructure facility for the purpose of Section 80IA(4).

However, simply re-laying of an existing road would not be classifiable as a new infrastructure facility for this purpose.

Advice should be tendered on the above lines.

**(b) Disallowance of interest applying section 14A**

The assessee had borrowed funds, paying interest at 15% p.a., which is normally a deductible expenditure under section 36(1)(viii), While computing the business income of the assessee.

The assessee is a partner in the firm, to which interest-free funds have been advanced. The share income from the partnership firm is assessable as business income, which is exempt under section 10(2A).

Since the interest expenditure incurred, to the extent to which the funds have been

utilized for making the interest-free loan to this firm, is in relation to the income which does not form part of the total income, section 14A is clearly attracted.

Consequently, proportionate interest payment will be disallowed from the interest payment under section 36(1)(viii) read with sec. 14A, while computing the business income of the assessee.

The Kerala High Court has taken such a view in CIT vs. Popular Vehicles & Services Ltd. 228 CTR (Ker) 436.

(c)

Computation of Net Wealth of Mr. Ramana as on 31-03-2013

Amount ₹ in crores

| Particulars  | Amount | Total Amount |
|--|--------|--------------|
| <b>Assets</b>  |        |              |
| (i) Commercial Complex – Not an asset                                  | Nil    |              |
| (ii) Jewellery   | 1.50   |              |
| (iii) Land in Mumbai – Deemed Asset                                    | 1.00   |              |
| (iv) Motor Car in International Waters – Not an Asset for Non-Resident | Nil    |              |
| (v) Land in Chennai – Construction Started – Not an Asset              | Nil    |              |
| (vi) Residential House Property in USA – Not an Asset                  | Nil    |              |
| (vii) Residential House Property in USA – Not an Asset                 | Nil    |              |
| <b>Gross wealth</b>  |        | 2.50         |
| <b>Less: Deduction of Loans:</b>                                       |        |              |
| Loans for Commercial Complex – Asset Exempted                          |        |              |
| Loan for Land in Mumbai  | 1.00   | 1.00         |
| <b>Taxable net wealth</b>  |        | 1.50         |

