

Paper-14: Indirect and Direct - Tax Management

Time Allowed: 3 hours

Full Marks: 100

All the questions relate to the assessment year 2014-15, unless stated otherwise.

Working notes should form part of the answers.

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

1. Fill up the blanks:

[1×25]

- (i) Service tax is levied on services provided within the taxable territory of India including territorial waters of India extending up to _____ (under International Sea Act).
- (ii) To avoid disputes between sale of goods and services, Section 66E of the Finance Act, 1994 provides certain activities to be specifically treated as _____.
- (iii) Section 2(42C) of the Income Tax Act, 1961 defines _____ as, the transfer of one or more undertakings as a result of the sale, for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales.
- (iv) Section 17(2)(iv) of the Income Tax Act, 1961 provides that, amount paid by _____, in respect of any obligation which otherwise would have been payable by the employee, is taxable as a perquisite in the hands of the employee.
- (v) Section 2(29C) of the Income Tax Act, 1961 defines _____ as the rate of income-tax (including surcharge on income-tax, if any) applicable in relation to the highest slab of income in the case of an individual, association of persons or, as the case may be, body of individuals] as specified in the Finance Act of the relevant year.
- (vi) Section 194B of the Income Tax Act, 1961 provides that, any person responsible for paying to any person any income by way of winnings from lottery, or crossword puzzle or card game and other game of any sort shall be liable to deduct tax at source, at the time of _____ of such income @ 30%.
- (vii) Section 139(4) of the Income Tax Act, 1961 provides that, a belated return can be filed by the assessee for any previous year at any time, before the _____.
- (viii) Section 272B of the Income Tax Act, 1961 provides that, if any person fails to comply with the provisions of Section 139A or to quote or intimate his Permanent Account Number, as required under section 139A or willfully quotes or intimates a number which is false, then he shall be liable to a penalty of _____.
- (ix) Section 271(1)(c) of the Income Tax Act, 1961 provides that, if the Assessing Officer is satisfied that, any person has concealed the particulars of his income; or furnished inaccurate particulars of such income, then, he may direct such person to pay the penalty, in addition to tax, if any, payable by him, which shall not be less than the amount of tax sought to be evaded, but not exceeding _____.
- (x) Section 206A of the Income Tax Act, 1961 provides that, any banking company, a co-operative society, or a public company, who is responsible for paying to a resident, interest

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(other than interest on securities), not exceeding ₹5,000, the person responsible for making the payment, is _____ to deduct tax at source under Section 194A.

- (xi) Rule 10A(a) of the Income Tax Rules dealing with the Transfer Pricing Regulations defines an "uncontrolled transaction" to mean a transaction between enterprises other than _____ enterprises, whether resident or non-resident.
- (xii) Rule 6(2) of the Service Tax Rules, 1994, as amended by Notification No. 16/2013-ST, dated 22.11.2013, makes e-payment of service tax mandatory for the assessee, who has paid a total service tax of _____ or above, including the amount paid by utilization of CENVAT Credit, in the preceding financial year (₹10 Lakhs; ₹1 Lakh; ₹50 Lakhs).
- (xiii) In the case of a non-resident engaged in the business of operation of aircraft, the income is determined under Section 44BBA of the Income Tax Act, 1961 at _____ (7.5% of turnover; 10% of turnover; 5% of turnover).
- (xiv) The deduction allowable under Section 80LA of the Income Tax Act, 1961 in respect of eligible income of Offshore Banking Units and International Financial Services Centre is _____ of such income for 5 consecutive assessment years and 50% of such income for 5 consecutive assessment years thereafter (100%; 80%; 75%).
- (xv) Under Section 194LA of the Income Tax Act, 1961, any person responsible for paying to a resident any sum exceeding ₹2 Lakhs towards compensation for compulsory acquisition of the seller's urban industrial land under any law, has to deduct income-tax at the rate of _____ (10%; 15%; 20%).
- (xvi) Section 13B of the Income Tax Act, 1961 provides that, voluntary contributions received by electoral trusts during the Previous Year 2013-14 is _____ (fully taxable; fully exempt from tax; exempt only if the trust distributes to a registered political party during the year 95 % of the aggregate donations received by it).
- (xvii) Section 10(32) of the Income Tax Act, 1961 provides for an exemption up to _____, in respect of each minor child, where a minor's income is clubbed with the income of the parent (₹1200, ₹1500, ₹2000).
- (xviii) Special Audit under Section 14A of the Central Excise Act, 1944 can be ordered by any Central Excise officer, not below the rank of a/an _____ (Assistant Commissioner of Central Excise; Deputy Commissioner of Central Excise; Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise), with the prior approval of the Chief Commissioner of Central Excise.
- (xix) Under the provisions of Section 48 of the Customs Act, 1962, if the imported goods are not cleared within _____ days of unloading at the customs station, the custodian may sell them under permission of the proper officer (30; 45; 60).
- (xx) Under the provisions of Section 11A of the Central Excise Act, 1944, Show Cause Notice for recovery of excise duties not levied, or not paid or short levied or short paid or erroneously refunded can be served on the person chargeable with duty, within _____ (6 months; 1 year; 2 years) from the relevant date.
- (xxi) Section 15 of the Customs Act, 1962 provides that, the rate of duty and tariff valuation of imported goods, entered for home consumption under Section 46, shall be applicable, as on the date on which _____ (Bill of Entry is presented; Customs Duty is paid).
- (xxii) Where an employee has more than one employer, he is required by section 192(2) of the Income-tax Act to furnish in Form no. _____ (16; 16A; 12B) to one of the employers the details of the salary due/ received by him from other employers.

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- (xxiii)** Section 114 of the Customs Act, 1962, provides for levy of penalty in case of goods in respect of which any prohibition is in force not exceeding _____ (one time of the value of the goods; two times of the value of the goods; three times of the value of the goods).
- (xxiv)** The authority for advance ruling is required to pronounce its advance ruling in writing within _____ (90; 45; 60) days from the date of application.
- (xxv)** An assessee can file revised return for _____ (three times; as many number of times; two times) within the limitation period if the assessee discovers any omission or wrong statement therein.

Answer:

- (i)** 12 nautical miles.
- (ii)** Declared Services.
- (iii)** Slump Sale.
- (iv)** Employer.
- (v)** Maximum marginal rate of tax.
- (vi)** Payment.
- (vii)** Expiry of 1 year from the relevant assessment year or the completion of assessment, whichever is earlier.
- (viii)** ₹10,000.
- (ix)** Three times the amount of such tax sought to be evaded.
- (x)** Not required.
- (xi)** Associated.
- (xii)** ₹1 Lakh.
- (xiii)** 5% of turnover.
- (xiv)** 100%.
- (xv)** 10%.
- (xvi)** Exempt only if the trust distributes to a registered political party during the year 95 % of the aggregate donations received by it.
- (xvii)** ₹1500.
- (xviii)** Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise.
- (xix)** 30 days.
- (xx)** 1 year.
- (xxi)** Bill of Entry is presented.
- (xxii)** 12B
- (xxiii)** three times of the value of the goods
- (xxiv)** 90
- (xxv)** as many number of times

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Question 2.

(a) Calculation of Income Tax in the case of an employee below the age of sixty years having a handicapped dependent (With valid PAN furnished to employer), for A.Y. 2014-2015:

S. No.	Particulars	₹
1	Gross Salary	3,20,000
2	Amount spent on treatment of a dependant, being person with disability (but not severe disability)	7000
3	Amount paid to LIC with regard to annuity for the maintenance of a dependant, being person with disability(but not severe disability)	50,000
4	GPF Contribution	25,000
5	LIP Paid	10,000

[5]

Solution:

Computation of Tax

S.No.	Particulars	₹
1	Gross Salary Less: Deduction U/s 80DD (Restricted to ₹50,000/- only)	3,20,000 50,000
2	Taxable income Less: Deduction U/s 80C (i) GPF ₹25,000/- (ii) LIP ₹ 10,000/- = ₹35,000/-	2,70,000 35,000
3	Total Income	2,35,000
4	Income Tax thereon/payable Add: (i) Education Cess @2% (ii) Secondary and Higher Education Cess @1%	3,500 70 35
5	Total Income Tax payable	3,605
6	Rounded off to	3,610

(b) Mr. Y submits the following particulars of his income for the assessment year 2014-2015

	(₹)
Income (other than income from business & profession)	4,00,000
Dividend from Indian Company	1,000
Interest on Bank Deposit	2,000
Life Insurance Premium paid	6,000
Donation to Jawahar Lal Nehru Memorial Fund	15,000
Donation to Prime Minister's National Relief Fund	16,000
Donation to a Public Charitable Institution	24,000
Donation to a University for statistical research approved U/s 35(1)(iii)	5,000

Determine the net income and tax liability for the assessment year 2014-2015. [10]

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Solution:

Computation of Taxable Income:-

	₹
Income	4,00,000
Dividend from Indian Co.	1,000 (exempt)
Interest on Bank Deposit	2,000
Gross total Income	4,02,000
Less: Deductions under Chapter VI-A	
U/s 80C for Life Insurance Premium	6,000
U/s 80G (see Note 1)	35,500
U/s 80GGA for Donation to University (see note 3)	5,000
Net Income	3,55,500
Tax on ₹ 3,55,500 [(3,55,500 – 2,00,000) x 10%]	15,550
Add : Surcharge @ 10%	NIL
Add : Education Cess @ 2%	311
Add : Additional SHE Cess @ 1%	156
Net Tax payable	16,017

Note 1: Computation of deduction u/s 80G in respect of donations-

	₹
Qualifying amount:-	
Donation to Jawahar Lal Nehru Memorial Fund	15,000
Donation to Prime Minister's National Relief Fund	16,000
Donation to Public Charitable Institution	24,000
Gross qualifying amount	55,000
(i) Donation to Jawahar Lal Nehru Memorial Fund (without any maximum limit)	15,000
(ii) Donation to Prime Minister's National Relief Fund (without any maximum limit)	16,000
(iii) Donation to Public Charitable Institution [least of (a) ₹ 24,000 & (b) ₹ 39,100 being 10% of adjusted gross total income calculated in Note 2]	24,000
Net qualifying amount	55,000
Amount deductible:	
50% of Net Qualifying Amount of Item (i) & (iii) [i.e., 50% of (15,000 + 24,000)]	19,500
100% of Net Qualifying Amount of item(ii)	16,000
	35,500

Note 2: Adjusted gross total income –

	₹
Gross total income	4,02,000
Less: Amount of deduction under Chapter VI-A (except 80G)	
U/s 80 C	6,000
U/s 80 GGA	<u>5,000</u>
Adjusted gross total income	3,91,000

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Note-3 : Deduction u/s 80 GGA is allowed in the Case where gross total income does not include income from business profession.

Question 3.

(a) Determine the assessable value for purpose of excise duty under the Central Excise Act, 1944 in the following cases:

- (i) An assessee sells his excisable goods for ₹ 120 per piece and does not charge any duty of excise in his invoice. Subsequently it was found that the goods were not exempted from excise duty but were liable at 20% advalorem.
- (ii) Certain excisable goods were sold for ₹ 120 per piece and 20% advalorem is the rate of excise duty. Subsequently it was found that the price cum duty was in fact ₹ 140 per piece as the assessee had collected ₹ 20 per piece separately.
- (iii) The cum duty price per piece was ₹120 and the assessee had paid duty at 20% advalorem. Subsequently it was found that the rate of duty was 30% advalorem and the assessee had not collected anything over and above ₹ 120 per piece. [9]

Solution:

The assessable value shall be calculated as under-

$$\text{Assessable Value} = \frac{\text{Price cum duty} - \text{Permissible deductions}}{100 + \text{Rate of Excise duty}} \times 100$$

It is assumed that all the prices given in question excludes permissible deductions i.e. sales taxes and other taxes and EC & SHEC have also been ignored.

(i) Assessable Value = $\frac{\text{Price cum duty} - \text{Permissible deductions}}{100 + \text{Rate of Excise duty}} \times 100$ i.e., $\frac{120}{100 + 20} \times 100 = ₹ 100$

(ii) Assessable Value = $\frac{\text{Price cum duty} + \text{Additional consideration} - \text{Permissible deductions}}{100 + \text{Rate of Excise duty}} \times 100$

$$\text{i.e., } \frac{120 + 20}{100 + 20} \times 100 = ₹ 116.67$$

(iii) Assessable Value = $\frac{\text{Price cum duty} - \text{Permissible deductions}}{100 + \text{Rate of Excise duty}} \times 100$ i.e., $\frac{120}{100 + 30} \times 100 = ₹ 92.30$

(b) Give the consequences regarding excise duty liability if goods manufactured by EOU (Export Oriented unit) & brought to DTA (Domestic tariff Area). [6]

Answer:

Goods manufactured by EOU (Export Oriented unit) & brought to DTA (Domestic tariff Area) will be liable to excise duty equal to customs duty [Proviso to section 3(1) of the Central Excise Act].

Any excisable goods -

- (i) manufactured by a 100% Export Oriented Units (EOU) and
- (ii) brought to any other place in India (termed, "Domestic Tariff Area" or DTA) are also liable to

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excise duty.

However, Excise duty = Aggregate of customs duties which would be leviable under Customs Act, 1962, or any other law on like goods produced/manufactured outside India if imported into India.

For this purpose -

- (i) Valuation as per Customs law : The value of such goods shall be determined in accordance with the provisions of the Customs Act, 1962 and the Customs Tariff Act, 1975 ; and
- (ii) Highest rate to be taken in case of different rates: Where in respect of any such like goods, any duty of customs is leviable at different rates, then, the highest of those rates shall be taken.

Question 4.

(a) State briefly with reasons whether credit under the CENVAT Rules, 2004 would be available in the following cases:

- (i) Inputs are pilfered from the store-room.**
- (ii) Final product is cleared in durable and returnable packing material.**
- (iii) An input becomes a waste and is sold as scrap.**
- (iv) Inputs used in trial runs.**

[8]

Answer:

The admissibility of CENVAT credit is discussed as under –

- (i) Inputs are pilfered from the store-room:** No, since credit on inputs is available only for inputs used in the factory of manufacturer of final products. If the inputs are lost in the store-room without being used at all, credit of duty paid on such inputs will not be available.
- (ii) Final product is cleared in durable and returnable packing material:** Yes, The definition of 'input' covers all goods used in the factory of production by the manufacturer and such packing has relationship with the manufacture of the final products therefore, Cenvat credit will be available on durable and returnable packing material. Besides this, since the proportionate cost of durable container is included in assessable value of final product, they are eligible for Cenvat credit.
- (iii) An input becomes a waste and is sold as scrap:** Yes. If inputs becomes waste and sold as scrap, it cannot be said that input is cleared 'as such' [Rule 3(4) of the Cenvat Credit Rules 2004]. What is cleared is 'waste' and duty will be payable as if waste has been removed. In case the inputs have become waste during the manufacturing process, then the CENVAT credit shall be allowed on such waste, even if such waste is exempted or chargeable with nil rate of duty.
- (iv) Inputs used in trial runs:** Yes. Inputs used in trial runs during the production or commissioning of plant are eligible for CENVAT credit as they are used in the manufacture of final product. Since trial run/ production is a pre-requisite for manufacture of the final product, hence, they bear relationship with the manufacture of the final product. Hence, they are eligible as 'input'. - Fertiliser Corporation of India v. CCEx.

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(b) The Net Profit of X Ltd. for the year ended March 31, 2014 amounted to ₹ 7,50,000 after debiting/crediting the following items:

Particulars	₹
Provision for bonus (paid on November 15,2014)	30,000
Provision for commission to employees (paid on December 1,2013)	76,000
Payment of annual installment under an approved agreement to a foreign collaborator for technical knowhow	1,00,000
Legal expenses incurred for issue of capital	30,000
Interest paid on unpaid purchase price of business assets	15,000
Cost of goods purchased from Y Co. Ltd. which was paid by bearer cheque	50,000
Sales include sale of gold not being stock in trade (indexed cost of acquisition ₹ 1,70,000)	2,00,000
Rent received from Staff for the quarters allotted	75,000
Rent received for commercial property rented to a foreign bank	1,50,000
Expenditure on scientific research include cost of land ₹30,000 and ₹20,000 paid to approved national laboratory. Land revenue in connection with worker's quarters and let-out commercial property (paid on June 15,2013)	12,000

Calculate Taxable Income of the company for the Assessment Year 2014-15. The answer should clearly indicate the basis for treatment of each item. [7]

Solution:

Computation of Taxable Income of the company for the Assessment Year 2014-15, relating to the Previous Year 2013-14

	Particulars	₹	₹
	Net Profit as per Profit and Loss Account		7,50,000
Add:	Disallowed Expenses		
	Provision for bonus	30,000	
	Provision for commission	76,000	
	Legal expenses incurred for issue of capital [being capital expenditure]	30,000	
	Expenditure on scientific research	50,000	
	Land revenue for commercial property	8,000	
	Goods purchase by bearer cheque u/s 40A(3)	50,000	2,44,000
			9,94,000
Less:	Disallowed Income		
	Rent received from commercial property	1,50,000	
	Sale of gold (not being stock in trade)	2,00,000	3,50,000
			6,44,000
Less:	Allowable Expenses		
	Expenses on scientific research u/s 35 (1) (20,000 x 125%)		25,000

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	Income from Business		6,19,000
	Income from House Property		
	Gross annual value	1,50,000	
Less:	Municipal Tax	Nil	
Less:	Standard deduction u/s 24(a) (30% of 1,50,000)	45,000	1,05,000
	Income from long-term capital gain		
	Sales value of gold	2,00,000	
Less:	Indexed cost of acquisition	1,70,000	30,000
	Gross Total Income		7,54,000

Note:

- (1) Provision for Bonus and Provision for commission is allowable as deduction under cash basis u/s 43B.
- (2) Interest paid on Unpaid purchase price of Business assets is allowable u/s 36(1) (iii).
- (3) Scientific research expenditure through an approved national laboratory is allowable as deduction @ 125% on such payment whereas deduction u/s 35(1) is not allowable on the purchase of land.
- (4) Rent received from staff-quarter is business income.
- (5) Land revenue will be allowed as deduction for staff-quarter only, i.e.

$$₹ \left(12,000 \times \frac{1,50,000}{2,25,000} \right) = ₹ 8,000 .$$

Question 5.

- (a) Compute taxable value and service tax from following sums received by M/s. ABC Medical Centre (exclusive of service tax) (Ignore small service provider's exemption) -
- (1) Testing (with Transmission of medical samples between laboratories): ₹ 6 lakh ;
 - (2) Medicines consumed as a part of health care services : ₹ 5 lakh ;
 - (3) Preventive health care services : ₹ 4 lakh ;
 - (4) Treatment along with Facilities provided such as TV, AC, room rent, meal to patient (as a part of package): ₹ 33 lakh ;
 - (5) Genetic affinity examination for determining biological father : ₹ 4 lakh ;
 - (6) Hair transplant services due to injury in a fire accident: ₹ 7 lakh ;
 - (7) Cosmetic surgery of a film star : ₹ 16 lakh ;
 - (8) Conducting medical examinations of individuals : ₹ 1 lakh.[5]

Solution:

Computation of service tax liability

- (1) Testing (with Transmission of medical samples between laboratories) - Exempt;
- (2) Medicines consumed as a part of health care services - Such medicine are never sold - Dominant nature is health care services, which is exempt - Fully exempt.
- (3) Preventive health care services : ₹ 4 lakh - Exempt ("care" is also exempt);
- (4) Treatment along with Facilities provided such as TV, AC, room rent, meal to patient (as a part of package): ₹ 33 lakh - Natural bundling in ordinary course of business - Essential character is "health care services", which is exempt - Fully exempt;

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- (5) Genetic affinity examination for determining biological father : ₹ 4 lakh - Not related to "diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy" - Not exempt - Taxable ;
- (6) Hair transplant services due to injury in a fire accident : ₹ 7 lakhs – Exempt, as it has been done to restore damage due to fire accident;
- (7) Cosmetic surgery of a film star : ₹ 16 lakhs – Not exempt – Taxable;
- (8) Conducting medical examinations of individuals: ₹ 1 lakhs – Exempt;
- Taxable value = ₹ (4 + 16) lakhs = ₹ 20 lakhs and service tax thereon @ 12.36% = ₹ 2,47,200.

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

- (1) New constructions: ₹ 50 lakh;
- (2) Additions and alterations to damaged structures on land to make them workable: ₹ 25 lakhs;
- (3) Supply along with erection, commissioning and installation of plants: ₹ 72 lakhs;
- (4) Maintenance and repair of goods: ₹ 40 lakhs;
- (5) Maintenance and repair of immovable property: ₹ 30 lakhs;

Compute taxable value and service tax thereon.

[5]

Solution:

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

	Amount charged ₹	% of amount charged	Taxable Value ₹
New constructions (It is "original works")	50,00,000	40.00%	20,00,000
Additions and alterations to damaged structures on land to make them workable (It is "original works")	25,00,000	40.00%	10,00,000
Supply along with erection, commissioning and installation of plants (It is "original works")	72,00,000	40.00%	28,80,000
Maintenance and repair of goods	40,00,000	70.00%	28,00,000
Maintenance and repair of immovable property	30,00,000	60.00%	18,00,000
Total Taxable Value under Rule 2A(ii)			1,04,80,000
Service Tax @ 12.36%			12,95,328

(c) The book profits of Star Heights Ltd., for the previous year 2013-14 computed in accordance with Section 115JB is ₹ 37.50 Lakhs. If the total income computed for the same period as per the provisions of the Income Tax Act, 1961 is ₹ 7.50 Lakhs, compute the tax payable by the company in the Assessment Year 2014-15. Is Star Heights Ltd. eligible for any tax credit? If so, for how many years, shall Star Heights Ltd. avail such tax credit?

[5]

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Solution:

Computation of tax payable in the Assessment Year 2014-15 by Star Heights Ltd.

Particulars	Amount (₹)
(A) Tax on total income computed in accordance with the provisions of the Income tax act, 1961 = ₹7.50 Lakhs × 30%	2,25,000
(B) Income tax @ 18.5% of the book profits = ₹37.50 Lakhs × 18.5%	6,93,750
Since, the tax payable on book profits exceed the tax payable on total income computed in accordance with the provisions of the Income Tax Act, 1961, therefore Star Heights Ltd. is liable to pay Minimum Alternate Tax.	
Tax payable on book profit	6,93,750
Add: Surcharge	Nil
Add: Education Cess @ 2%	13,875
Add: Senior and higher Education Cess @ 1%	69,375
(C) TAX PAYABLE IN THE ASSESSMENT YEAR 2014-15	7,14,562.50
(D) TAX CREDIT AVAILABLE TO THE COMPANY [(A)- (B)]	4,68,750
Tax credit shall be available to Star Heights Ltd. for ten succeeding assessment years for set-off against the tax payable on total income during such period. If the credit is not so set off, it shall lapse.	

Question 6.

(a) Dream House Constructions Ltd. furnishes the following particulars of its wealth for the valuation date as on 31.03.2014:

	Particulars	₹ in lacs
(i)	Land in urban area (held as stock in trade since 1998)	70
(ii)	Motor cars (including one imported car worth ₹35lacs used for hiring)	45
(iii)	125 acres of land acquired at Ghaziabad township on 15.5.2012 for construction of commercial complex	150
(iv)	Two Residential flats of 950 sq feet each provided to 2 employees (salary of one employee exceeds ₹5 lacs per annum)	30
(v)	Farm house of 8 acres at a remote village	7
(vi)	Cash in hand as per cash book	5
Liabilities:		
(i)	Loan for purchase of land at urban area	50
(ii)	Loan for purchase of land at Ghaziabad	100
(iii)	Wealth-tax liability for A.Y. 2014-15	10
(iv)	Loan for construction of residential flats	10

Compute the net wealth of the company for the A. Y. 2014 – 2015. [5]

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Solution:

Computation of Net Wealth of Dream House Constructions Ltd.

Sl.No.	Particulars	₹ in lacs
Assets [as per the definition of assets under Section 2(ea) of the Wealth Tax Act, 1957]		
(i)	Land in urban area (held as stock in trade since 1998) - [NOTE 1]	70
(ii)	Motor cars (excluding imported car not being an asset since it is used for hiring) [45 lac - 35 lac]	10
(iii)	Land at Ghaziabad township - [NOTE 2]	Nil
(iv)	(a) Residential flat provided to an employee drawing salary less than ₹5 lacs per annum - not an asset (b) Residential flat provided to an employee drawing salary exceeding ₹5 lacs per annum is an asset [30 x 1/2]	Nil 15
(v)	Farm house at a remote village - [NOTE 3]	Nil
(vi)	Cash in hand as per cash book - [NOTE 4]	Nil
		95
Less: Liabilities		
(i)	Loan for purchase of land in urban area - [NOTE 1]	50
(ii)	Loan for purchase of land at Ghaziabad - not deductible since the land, being stock-in-trade, is not an asset under section 2(ea). [NOTE 2]	Nil
(iii)	Wealth-tax liability for A.Y.2014-15 - wealth tax liability is not deductible	Nil
(iv)	Loan for construction of residential flats - the portion relating to taxable asset (1/2) is deductible i.e. ½ x 10 lacs	5
		55
Total Liabilities		55
Net Wealth		40

NOTE:

1. Land in urban area is a taxable asset, under the provisions of Wealth Tax Act, 1957 since it is held as stock-in-trade for more than 10 years. Hence, loan for purchase of land in urban area is deductible.
2. Since the assessee is engaged in construction business, land and building would form part of his stock-in-trade. Hence, land at Ghaziabad township is not taxable. Loan for purchase of land at Ghaziabad is not deductible since the land, being stock-in-trade, is not an asset under Section 2(ea) of the Wealth Tax Act, 1957.
3. Farm house at a remote village is not an asset as it is not situated within 25 km of a municipality.
4. Cash in hand as per cash book is not an asset since it represents cash recorded in the books.

(b) On 08-04-2013, M/s. Agrawal Packagings cleared plastic bottles whose assessable value was ₹10,00,000 and duty payable was ₹1,23,600. On 16-4-2013, the purchaser returned the plastic bottles to Agrawal Packagings. M/s. Agrawal Packaging took credit of duty of ₹1,23,600 on basis of invoice issued at the time of clearance of plastic bottles. The Department denies the credit on the ground that the duty on such goods has not been paid, as the due date for payment of duty falls on 05-05-2013. Discuss whether contention of department is correct. [5]

Solution:

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The Board vide Instruction F. No. 267/44/2009-CX. 8, dated 25-11-2009 has clarified in accordance with Rule 8(2) of the Central Excise Rules, 2002, "the duty of excise shall be deemed to have been paid for the purposes of these rules on the excisable goods removed in the manner provided under sub-rule (1) and the credit of such duty is allowed, as provided by or under any rule".

This provision explains that the invoice of the returned goods, would be a valid document for availing credit and duty is deemed to have been discharged.

According to Rule 16(1), the assessee shall be entitled to take CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules, 2004 and utilise this credit according to the said rules.

In view of above, credit on rejected/returned goods, received in the factory before prescribed date for duty payment, can be allowed to be taken under Rule 16(1). Hence, M/s. Agrawal Packagings action is correct in law. M/s. Agrawal packagings should pay duty of ₹1,23,600 on 05-05-2013 as per Rule 8.

(c) Sky High Airways Ltd. sold tickets to the travel agents in India at a minimum fixed commercial price. The agents were permitted to sell the tickets at a higher price. The price to be charged by the travel agents was restricted to a maximum of published price. Sky High Airways Ltd. was obliged to pay to its travel agents, a commission @ 9% of published price, on which tax was deducted under Section 194H of the Income Tax Act, 1961 by the company. The Assessing Officer contended that company was also liable to deduct tax at source, on the amount of difference between the published price and the minimum fixed commercial price, by treating it as "additional special commission" in the hands of the agents.

Examine whether the contention of the Assessing Officer is tenable in law, in the light of decided case law/s under Income Tax Act, 1961. [5]

Solution:

Section 194H of the Income Tax Act, 1961 provides that, any person (other than an individual or Hindu Undivided Family), who is responsible for paying commission or brokerage (not being insurance commission), to a resident shall deduct tax at source, at the time of payment or credit, whichever is earlier. No tax is deductible if the amount paid/ credited during the financial year does not exceed ₹5,000.

In the present case, Sky High Airways Ltd. correctly deducted tax at source under Section 194H of the Income Tax Act, 1961, from the commission paid to the travel agents (@9% of the published price). The travel agents were permitted to sell the tickets, at a price higher than the minimum fixed commercial price, subject to a maximum of the published price. However, the Assessing Officer contended that, the airline company was also obliged to deduct tax at source on the difference between the published price and the minimum commercial price, by treating it as "additional special commission", in the hands of the agents.

The facts of the case are similar to the case of **CIT v. Qatar Airways (2011) 332 ITR 253**. In this case, the Bombay High Court held that the difference between the published price and the

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minimum fixed commercial price of the tickets cannot be taken as "additional special commission" in the hands of the agents.

Firstly, the travel agents were given the discretion to sell the tickets at any rate between the minimum fixed commercial price and the published price (which was the maximum price). Secondly, in the absence of any communication/ feedback from the air travel agents, the airline company would not have any information about, the exact rate at which the tickets were finally sold by the travel agents. For deducting tax at source on the difference between the actual sale price and the minimum fixed commercial price (as contended by the Assessing Officer), the exact income in the hands of the agents must necessarily be ascertainable by the airline company.

Applying the rationale of the above case to the case of Sky High Airways Ltd, the airline company shall not be liable to deduct tax at source under Section 194H of the Income Tax Act, 1961, on the difference between the published price and the minimum fixed commercial price. However, the amount earned by the agent over and above the minimum fixed commercial price would be taxable as income in the hands of the agent.

Therefore, the contention raised by the Assessing Officer is not tenable in law.

Question 7.

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

(Amount in ₹)

Direct material	11,648
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
Realizable value of scrap	1,200

The Administrative Overheads are in relation to production activities.
Material cost includes Excise duty ₹1,648.

[5]

Answer:

Calculation of cost of production in terms of Rule 8 of Valuation Rules, 2000 (Amounts in ₹)

Direct material (11,648 – 1,648 = 10,000)	WN 1	10,000
Direct wages & salaries		8,400
Works overheads		6,200
Quality control costs	WN 2	3,500

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Research and development costs	WN 2	2,400
Administrative overheads	WN 2	4,100
Selling and distribution costs	WN 3	-
Total		34,600
Less : Realisable Value of scrap	WN 4	1,200
Cost of production		33,400
Value of excisable goods under Rule 8 @ 110% of cost of production		36,740

Working notes:

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

(b) Mr. Vinod Dutta, an Indian resident, won a Tata Indica worth ₹ 6 Lakhs, as the first prize in a lottery. According to Section 194B of the Income Tax Act, 1961, tax has to be deducted at source from the winnings of lottery at the time of payment of the prize money. Explain the procedure to be adopted before handing over the Tata Indica (the lottery prize) to Mr. Vinod Dutta. [5]

Solution:

Section 194B of the Income Tax Act, 1961 provides that where the winnings are wholly in kind or partly in kind and partly in cash, but the cash part of it is not sufficient to meet the liability for tax deduction at source, in respect of the whole of the winnings, the person responsible shall, before releasing the winnings, ensure that, the tax has been paid in respect of the winnings.

Therefore, in the case under consideration, the entire winnings being in kind, a sum equal to the tax to be deducted at source (i.e. ₹1,80,000 being 30% of ₹6,00,000) must be collected from the assessee, by the agent and remitted to the Government account before releasing the lottery prize to him.

Thus, ₹1,80,000 - being 30% of ₹ 6,00,000 must be collected from the assessee, by the agent and remitted to the Government account before releasing the Tata Indica to him.

(c) Mr. Rupesh Kumar, an Indian resident, is a practicing Cost and Management Accountant. He was paid ₹90,000 on 1st September, 2013 towards fees for his professional services, without deducting tax at source. Later on, a further sum of ₹1,00,000, was due to him on 1st March, 2014, from which tax of ₹20,000 was deducted at source. The tax so deducted, was deposited on 26th June, 2014. Compute interest payable by the deductor under Section 201(1A) of the Income Tax Act, 1961. [5]

Solution:

Section 201J of the Income Tax Act, 1961 provides for deduction of tax at source @ 10%, in respect of fees for professional services. Since, there is delay in deduction and deposit of tax, interest under Section 201(1A) is attracted.

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As per the provisions of Section 201(1A), if a person, who is liable to deduct tax at source, fails to deduct tax at source or after deducting such tax, fails to pay the tax required by the Act, then he is liable to pay interest as follows:

- (i) 1% for every month or part of month, on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually deducted.
- (ii) 1.5% for every month or part of the month on the amount of such tax from the date on which such tax was deducted to the date on which tax is actually paid.

Therefore, in the given case, interest under **Section 201(1A)** would be computed as follows:

Particulars	Computation	Amount (₹)
1% on tax deductible, but not deducted	1% on ₹9,000 for 7 months	630
1.5% on tax deducted, but not deposited	1.5% on ₹20,000 for 4 months	1,200
TOTAL		1,830

Thus, interest payable by the person liable to deduct tax at source, amounts to ₹1,830.